GAHENDA v. RUTSINDURA

[Rwanda URUKIKO RW'IKIRENGA – RCAA0020/14/CS (Rugege, P.J., Mugenzi na Kanyange, J.) 07 Nyakanga 2015]

Amategeko agenga ububasha bw'Inkiko – Ububasha bw'Urukiko rw'Ikirenga hashingiwe ku gaciro k'ikiburanwa – Igenwa ry'agaciro k'ikiburanwa – Agaciro k' ikiburanwa gashobora kugenwa no mu Rukiko rw'Ikirenga iyo katigeze kagenwa n'izindi nkiko – Itegeko Ngenga Nº03/2012 ryo kuwa 14/06/2012 ryerekeye imitunganyirize, imiterere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 28.

Amategeko agenga ibimenyetso – Agaciro k'ikizamini cya ADN – Ikizamini cya ADN gifatwa nk'ikimenyetso cya kamarampaka ku byerekeye kumenya isano riri hagati y'abapimwe, igihe cyakozwe n'umuhanga ubifitiye ubumenyi buhagije.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Huye aho uwavugaga ko yitwa Rutsindura Alexis ariko abo baburana bakavuga ko atari ko yitwa ahubwo ko yitwa Bigirimana Cedric yareze asaba kuzungura umutungo wasizwe n'abo yitaga ababyeyi be aribo Rutsindura Alphonse na Dusabe Emma Marie bishwe muri Jenoside yakorewe abatutsi mu 1994 wari warazunguwe na Gahenda Bienvenue n'abavandimwe be. Urwo Rukiko rwemeje ko Rutsindura ari we muzungura wenyine wa Rutsindura Alphonse na Dusabe Emma Marie, rutegeka Gahenda n'abavandimwe be gusubiza uwo umutungo wose

Gahenda yajuririye Urukiko Rukuru, hagati aho Urukiko Rwisumbuye rwa Nyarugenge rwaregewe ku icyaha cyo kwihesha inyandiko z'irangamimerere mu butegetsi ashingiye ku nkomoko ye n'izina by'ibihimbano rwemeje ko nta shingiro bifite kubera gushidikanya ku bimenyetso harimo n'icya "test ADN", ruvuga ko yakozwe hadakurikijwe amategeko. Urukiko Rukuru rwemeje ko urubanza rwajuririwe rudahindutse mu ngingo zarwo zose.

Gahenda ntiyishimiye iyo mikirije y'urubanza maze ajurira mu Rukiko rw'Ikirenga ariko mbere y'uko iburanisha ritangira mu mizi, uregwa yatanze inzitizi yo kutakira ubwo bujurire kuko yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe kandi ko urubanza rwajuririwe rutagenwemo indishyi zingana nibura na 50.000.000Frw. Uwajuriye yireguye avuga ko bitari ngombwa ku nkiko zaciye urubanza rujuririrwa ko habaho impaka ku gaciro k'ikiburanwa, ariko ko hari expertise yatanze igaragaza ko agaciro k'umutungo basaba kuzungura karenze 50.000.000Frw. Avuga kandi ko atigeze atsindwa ku mpamvu zimwe, kuko mu Rukiko Rwisumbuye rwa Huye, yatsinzwe bitewe n'abatangabuhamya bavuze ibinyoma, naho mu Rukiko Rukuru atsindwa bitewe n'umucamanza utarashatse gutegereza ibimenyetso bya nyabyo yitwaje ko byatinza urubanza.

Urukiko rw'Ikirenga rwasuzumye iyo nzitizi rwemeza ko agaciro gashobora kugenwa no mu Rukiko rw'Ikirenga iyo katigeze kagenwa n'izindi nkiko, bityo ruhereye kuri *expertise* yatanzwe n'uwajuriye igaragaza ko imwe mu mitungo izungurwa ifite agaciro karenze 50.000.000Frw rufite ububasha bushingiye ku gaciro k'ikiburanwa bwo kuruburanisha.

Kubirebana no kuba Gahenda yaratsinzwe ku mpamvu zimwe, rwemeje ko Urukiko Rwisumbuye rwasuzumye urubanza mu mizi rusanga ugomba kuzungura umutungo wa Rutsindura Alphonse ari Rutsindura Alexis kuko abavugaga ko atari umwana we batashoboye kubigaragaza. Urukiko Rukuru rwo rwafashe umwanzuro ku nzitizi rwashyikirijwe, rusuzuma niba gusubirishamo urubanza ku mpamvu z'akarengane byaba impamvu yo gusubika iburanisha, rusuzuma niba kugobokesha umuntu mu rubanza utararurezwemo ari uburenganzira bw'umuburanyi ubisaba, rusuzuma n'ibirebana no kugena

agaciro k'inzu,Urukiko rw'Ikirenga rusanga Urukiko Rukuru rutarakemuye ikibazo cy'ingenzi rwari rwashyikirijwe cyo kumenya ufite uburenganzira bwo kuzungura hagati y'uwajuriye n'uregwa, bityo rwemeza ko hatabayeho gutsindwa ku mpamvu zimwe.

Mu ngingo z'ubujurire mu Rukiko rw'Ikirenga,Gahenda avuga ko uwiyita Rutsindura Alexis atari mwene Rutsindura Alphonse na Dusabe Emma Marie kuburyo yasaba kubazungura ndetse n'amazina ya Rutsindura Alexis ari ayo yihaye kuko amazina ye yukuri ari Bigirimana Cedric ufite ababyeyi b'abarundi, agasaba ko hakorwa ikizamini cya ADN hagati y'uwiyita Rutsindura Alexis n'abo bita ababyeyi be baba i Burundi

Uregwa yiregura avuga ko hari abatangabuhamya benshi bemeje ko ari mwene Rutsindura Alphonse na Dusabe Emma Marie, kandi uwo baburana atigeze abivuguruza , kandi ko ikizamini cya ADN atari ngombwa kuko ibimenyetso mu manza mbonezamubano bifite uko bikurikirana akaba asanga imvugo z'abatangabuhamya zihagije, ko nubwo yaba ikozwe hapimwa amagufwa y'ababyeyi n'umwana wabo.

Urukiko rwafashe icyemezo ko hakorwa ikizamini cya ADN hagati y'uwiyita Rutsindura Alexis n'abo Gahenda Bienvenu afata nk'ababyeyi be (Nahishakiye Berchmans) kigakorerwa mu Budage. Ibisubizo by'ibizami biza byerekana ko uwiyita Rutsindura Alexis ari mwene Nahishakiye Berchmans ku kigero cya 99,9999%.

Incamake y'icyemezo: 1. Agaciro k'ikiburanwa gashobora kugenwa no mu Rukiko rw'Ikirenga iyo katigeze kagenwa n'izindi Nkiko

2. Urukiko Rwisumbuye rwasuzumye ugomba kuzungura umutungo wa Rutsindura Alphonse naho Urukiko Rukuru rwasuzumye inzitizi gusa rwashyikirijwe, bityo uwajuriye ntiyatsinzwe ku mpamvu zimwe.

3. Ikizamini cya ADN gifatwa nki kimenyetso cya kamarampaka ku byerekeye kumenya niba isano iri hagati yabapimwe ari isano y'umwana na se, igihe cyakozwe n'umuhanga ubifitiye ubumenyi buhagije, bityo ikizamini cyakozwe hagati y'uwiyita Rutsindura Alexis na Nahishakiye Berchmans cyemeje ko bafitanye isano y'umwana na se ku kigero cya 99,9999%. Kubera iyo mpamvu rero uwiyita Rutsindura Alexis nta burenganzira afite bwo kuzungura umutungo wa Rutsindura Alphonse.

Ubujurire bufite ishingiro;
Amagarama y'uru rubanza aherereye ku uregwa.

Amategeko yashingiweho:

Itegeko Ngenga Nº03/2012 ryo kuwa 14/06/2012 ryerekeye imitunganyirize, imiterere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 28.

Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 7.

Itegeko N°15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3 n'iya 76.

Itegeko N°22/99 ryo kuwa 12/11/1999 ryuzuza igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, ingingo ya 50.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uregwa mu bujurire ku izina rya Rutsindura Alexis, naho abo baburana bakavuga ko yitwa Bigirimana Cedric yatanze ikirego mu Rukiko Rwisumbuye rwa Huye asaba kuzungura umutungo wasizwe n'abo yitaga ababyeyi be aribo Rutsindura Alphonse na Dusabe Emma Marie bishwe muri Jenoside yakorewe abatutsi mu 1994. Uwo mutungo wari warazunguwe na Gahenda Bienvenue n'abavandimwe be hakurikijwe urubanza RCA8697/132 rwaciwe ku wa 15/06/2004 n'Urukiko rw' Ubujurire rwa Nyabisindu.

[1] Kuwa 05/01/2010, Urukiko Rwisumbuye rwa Huye rwaciye urubanza RC00053/08/TGI/Hye rwemeza ko Rutsindura Alexis ari we muzungura wenyine wa Rutsindura Alphonse na Dusabe Emma Marie, ko agomba kuzungura umutungo wose basize aho wagaragara hose, rutegeka Gahenda Bienvenu n'abavandimwe be gusubiza umutungo wose wa Rutsindura Alphonse na Dusabe Emma Marie bari bazunguye mu rubanza RCA8697/132 cyangwa se undi mutungo wa Rutsindura Alphonse na Dusabe Emma Marie baba barihaye cyangwa uri ahandi.

[2] Gahenda Bienvenu ntiyishimiye imikirize y'urwo rubanza, yarujuririye mu Rukiko Rukuru, urugereko rwa Nyanza, urubanza rwandikwa kuri RCA0003/10/HC/NY. Hagati aho, urubanza rw'inshinjabyaha uregwa yari akurikiranyweho icyaha cyo kwihesha inyandiko z'irangamimerere mu butegetsi ashingiye ku nkomoko ye n'izina by'ibihimbano rwaraciwe, Urukiko Rwisumbuye rwa Nyarugenge rwemeza ko kitamuhama bitewe no gushidikanya ku bimenyetso harimo n'icya "test ADN", Urukiko rwavuze ko yakozwe hadakurikijwe amategeko, iyo "test ADN" ikaba yari yemeje ko Rutsindura Alexis ari mwene Nahishakiye Jean Berchmans. Ku itariki ya 12/03/2014, Urukiko Rukuru, urugereko rwa Nyanza rwaciye urubanza RCA0003/10/HC/NY rwemeza ko urubanza RC0053/08/TGI/Hye rwajuririwe rudahindutse mu ngingo zarwo zose.

[3] Ku itariki ya 03/04/2014, Gahenda Bienvenu yajuririye mu Rukiko rw'Ikirenga, urwo rubanza rwaciwe n'Urukiko Rukuru. Iburanisha ry'uru rubanza mu Rukiko rw'Ikirenga ryatangiye ku itariki ya 13/01/2015 Gahenda Bienvenu wajuriye yitabye yunganirwa na Me Protais Mutembe naho uregwa mu bujurire yunganirwa na Me Mwine Geoffrey.

[4] Mbere y'uko iburanisha ritangira mu mizi, Me Mwine Geoffrey uburanira uregwa yatanze inzitizi avuga ko ubujurire bwatanzwe na Gahenda butagomba kwakirwa hashingiwe ku ngingo ya 28 y'Itegeko Ngenga Nº03/2012 ryo kuwa 14/06/2012 ryerekeye imitunganyirize, imiterere n'ububasha by'Urukiko rw'Ikirenga igika cyayo cya nyuma[1] kimwe n'agace ka 7[2] k'iyo ngingo. Abisobanura avuga ko urwo rubanza rutagenwemo indishyi zingana nibura na 50.000.000Frw, ko nta n'umucamanza wagaragaje ko agaciro k'ikiburanwa kari hejuru ya 50.000.000Frw, ndetse n'uwajuriye akaba yaratsinzwe ku mpamvu zimwe haba mu Rukiko Rwisumbuye no mu Rukiko Rukuru.

[1]Iki gika kivuga ngo "….icyakora, urubanza umuburanyi yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe, ntirushobora kujuririrwa mu Rukiko rw'Ikirenga".

[2] Agace ka 7 k'igika cya kabiri kavuga ngo « …Urukiko rw'Ikirenga rufite kandi ububasha bwo kuburanisha mu rwego rw'ubujurire imanza zaciwe ku rwego rwa kabiri n'Urukiko Rukuru, Urukiko Rukuru rw'Ubucuruzi iyo izo manza ……..zagenwemo n'urukiko indishyi zingana nibura na miliyoni mirongo itanu z'amafaranga y'u Rwanda (50.000.000Frw) cyangwa se zifite agaciro kagenwe n'umucamanza igihe habaye impaka, kangana nibura n' amafaranga y'u Rwanda miliyoni mirongo itanu (50.000.000Frw)»;

[5] Me Mutembe Protais yavuze ko iyo nzitizi nta shingiro ifite kuko bitari ngombwa ku nkiko zaciye urubanza rujuririrwa ko habaho impaka ku gaciro k'ikiburanwa, ariko ko hari expertise yatanzwe n'uwo aburanira igaragaza ko agaciro k'umutungo ababuranyi basaba kuzungura karenze 50.000.000FRW. Ku bijyanye no kuba Gahenda yaratsinzwe ku mpamvu zimwe, Me Protais Mutembe yavuze ko izo mpamvu atari zimwe kubera ko mu Rukiko Rwisumbuye rwa Huye, Gahenda yatsinzwe bitewe n'abatangabuhamya bavuze ibinyoma, naho mu Rukiko Rukuru atsindwa bitewe n'umucamanza utarashatse gutegereza ibimenyetso bya nyabyo yitwaje ko byatinza urubanza.

[1] Urukiko rwafashe icyemezo kuri iyo nzitizi yatanzwe na Me Mwine Geoffrey uburanira uregwa, rwemeza ko nta shingiro ifite. Ku kirebana n'agaciro k'ikiburanwa, Urukiko rwavuze ko gashobora kugenwa no mu Rukiko rw'Ikirenga iyo katigeze kagenwa n'izindi nkiko, ko no muri uru rubanza katigeze kagenwa n'inkiko zo hasi kuko bitari ngombwa. Ruhereye kuri expertise yatanzwe n'uwajuriye igaragaza ko imwe mu mitungo izungurwa ifite agaciro karenze 50.000.000Frw, Urukiko rwemeje ko rufite ububasha bushingiye ku gaciro k'ikiburanwa bwo kuburanisha uru rubanza.

[2] Ku birebana no kuba Gahenda Bienvenu yaratsinzwe ku mpamvu zimwe, Urukiko rwavuze ko Urukiko Rwisumbuye rwasuzumye urubanza mu mizi rusanga ugomba kuzungura umutungo wa Rutsindura Alphonse ari Rutsindura Alexis kuko abavugaga ko atari umwana we batashoboye kubigaragaza. Urukiko Rukuru rwo rwafashe umwanzuro ku nzitizi rwashyikirijwe, rusuzuma niba gusubirishamo urubanza ku mpamvu z'akarengane byaba impamvu yo gusubika iburanisha, rusuzuma niba kugobokesha umuntu mu rubanza utararurezwemo ari uburenganzira bw'umuburanyi ubisaba, rusuzuma n'ibirebana no kugena agaciro k'inzu, rwemeza ko nta gihindutse ku rubanza rwajuririwe. Uru Rukiko, rwasanze Urukiko Rukuru rutarakemuye ikibazo cy'ingenzi rwari rwashyikirijwe cyo kumenya hagati y'uwajuriye n'uregwa, ufite uburenganzira bwo kuzungura Rutsindura Alphonse nyamara Urukiko Rwisumbuye rwo rwari rwemeje ugomba kuzungura, bityo rwemeza ko hatabayeho gutsindwa ku mpamvu zimwe.

[3] Gahenda Bienvenu na Me Mutembe Protais umwunganira baburanye bavuga ko uwiyita Rutsindura Alexis atari mwene Rutsindura Alphonse na Dusabe Emma Marie kuburyo yasaba kubazungura, ko ndetse n'amazina ya Rutsindura Alexis ari ayo yihaye kugirango agaragaze ko akomoka kuri ba nyakwigendera, ko amazina ye yukuri ari Bigirimana Cedric ufite ababyeyi b'abarundi. Basaba ko hakorwa ikizamini cya ADN hagati y'uwiyita Rutsindura Alexis n'abo bita ababyeyi be baba i Burundi.

[4] Me Mwine Geoffrey avuga ko hari abantu benshi babajijwe bakemeza ko uwo aburanira ari mwene Rutsindura Alphonse na Dusabe Emma Marie, ko Gahenda atigeze abivuguruza, naho ku birebana n'ikizamini cya ADN, inkiko zaciye urubanza rujuririrwa zagifasheho umwanzuro, akaba asanga atari ngombwa ko cyakorwa cyane cyane ko n'ababyeyi ba Rutsindura Alexis bapfuye, ko nubwo yaba ikozwe hapimwa amagufwa y'ababyeyi n'umwana wabo. Asoza ashimangira ko ADN atari ngombwa kuko ibimenyetso mu manza mbonezamubano bifite uko bikurikirana akaba asanga imvugo z'abatangabuhamya zihagije.

[5] Urukiko rwafashe icyemezo ko icyakemura impaka zo kumenya niba uregwa mu bujurire ku izina rya Rutsindura Alexis atari mwene Rutsindura Alphonse ari ikizamini cy'ADN, igakorwa hagati y'uwiyita Rutsindura Alexis n'abo Gahenda Bienvenu afata nk'ababyeyi be. Ku itariki ya 23/02/2015, Umwanditsi Mukuru w'Urukiko rw'Ikirenga yandikiye Umushinjacyaha Mukuru amusaba gufasha Urukiko, hagakorwa ikizamini cya

ADN hagati ya Nahishakiye Berchmans ukomoka i Burundi n'uwiyita Rutsindura Alexis. Ku itariki ya 24/02/2015 hafashwe ibipimo by'amacandwe byoherezwa mu Budage, ku itariki ya 26/03/2015 nibwo "test ADN" yakozwe na Dr Christa Augustine wo muri "Institute of legal medicine" iri *Hamburg* muri icyo gihugu. Ku itariki ya 02/04/2015, Umushinjacyaha Mukuru yandikiye Perezida w'Urukiko rw'Ikirenga amwohererereza ibisubizo by'ikizamini cyasabwe. Iburanisha ry'urubanza ryasubukuwe ku itariki ya 09/06/2015 ababuranyi bagira icyo bavuga ku kizamini cy'ADN cyakozwe. Kuri uwo munsi, Me Uwimabera Beatha yaje mu rubanza nawe aburanira uregwa mu bujurire ku izina rya Rutsindura Alexis.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba uregwa mu bujurire ari umwana wa Rutsindura Alphonse ku buryo byamuhesha uburenganzira bwo kuzungura umutungo wasizwe na nyakwigendera Rutsindura Alphonse.

[6] Me Mwine Geoffrey avuga ko ikizamini cya ADN cyakozwe atagihakana, ndetse n'inzego zagize uruhare mu ikora ryacyo, yaba Police cyangwa Ubushinjacyaha ntacyo azinenga. Ariko ko nubwo ibyo bimeze gutyo, abashakashatsi bemeje ko uwakoze ikizamini cya ADN ashobora kwibeshya ku kigero cya 75%. Yakomeje asaba ko hakorwa indi ADN hagati y'uwo aburanira n'abakomoka kuri se wa Gahenda witwa Seburikoko Narcisse, ibivuyemo bigahuzwa n'ikizamini cyakozwe kuko, asanga ibyo byakemura impaka burundu, kandi nkuko bisanzwe iyo hakozwe "expertise" hakorwa na "contre expertise".

[7] Me Uwimabera Beatha avuga ko atewe amakenga no kuba ikizamini cya ADN cyarakozwe ku ngufu, uwo aburanira atabyemera ndetse nuwo bita se wavuye i Burundi akaba yaravuze ko atamuzi. Avuga ko niba Gahenda yaravuze ko uwo aburanira ari umurundi bikemerwa, naho we akaba avuga ko ari umunyarwanda nabyo akaba asaba ko byakwemerwa, impande zombi zikumvikana ku muganga zisanzuyeho, akabaherekeza mu kindi gihugu kitari Ubudage hagakorwa indi "ADN" test kugirango ababuranyi babe bizeye ubutabera.

[8] Gahenda Bienvenue avuga ko ibyagaragajwe n'ikizamini cya ADN abyemera kuko bishimangira ibyo yari asanzwe azi, ko n'indi ADN yakozwe mbere yagaragaje ko uwo baburana atari mwene Rutsindura Alphonse, izo ADN zose zikaba zaragaragaje ko uwiyita Rutsindura Alexis ari mwene Nahishakiye Berchmans ku kigero cya 99,9999%. Kubirebana no kuba Nahishakiye Berchmans yaravuze ko atamuzi, Gahenda Bienvenu avuga ko yemereye *commission rogatoire* ko Bigirimana Cedric ari umwana we kandi ko bari baramubuze. Asoza avuga ko hari urubanza RPAA0054/10/CS rwaciwe n'Urukiko rw'Ikirenga rwemeza ko iyo igisubizo cya ADN kije ari 99, 9999% kiba kizewe.

[9] Me Mutembe Protais avuga ko ibyavuye mu kizamini cya ADN cyakozwe nta kibazo abifiteho, ko atemera ibindi bizamini byakorwa hagamijwe kwemeza ko uwo baburana ari mwene Rutsinndura Alphonse kuko ibizamini byose byakozwe byagaragaje ko ari mwene Nahishakiye Berchmans. Ikindi nuko hari ibindi bimenyetso bishimangira ibyagaragajwe na ADN, birimo amafoto agaragaza ko umwana Rutsindura Alexis yari afite amatwi abangutse, kandi uburana na Gahenda afite amatwi aryamye ku misaya.

UKO URUKIKO RUBIBONA

[10] Urukiko Rukuru, Urugereko rwa Nyanza rwaciye urubanza rujuririrwa, ntirwasuzumye ingingo y'ingenzi muri uru rubanza yo kumenya niba uregwa mu bujurire ku izina rya Rutsindura Alexis ariwe muzungura wa Rutsindura Alphonse. Urwo Rukiko rukaba rwaranyuranije n'ingingo ya 7 y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko umucamanza aca urubanza ku cyasabwe cyose. Niyo mpamvu, uru Rukiko rugomba gusuzuma ikibazo cyo kumenya niba uregwa mu bujurire ari umwana wa Rutsindura Alphonse ku buryo byamuhesha uburenganizira bwo kumuzungura.

[11] Ingingo ya 3 y'Itegeko N°15/2004 ryo ku 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, igira iti "buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana''. Na none ingingo ya 76 y'iryo Tegeko, igira iti "Ubuhamya bw'abahanga ni ubugamije guha urukiko ibisobanuro bishingiye ku bumenyi kimwe n'umwanzuro urenze ubumenyi busanzwe bw'umucamanza mu kazi ke bitewe n'uko ibiburanwa bishingiye ku buhanga bwihariye''.

[12] Urukiko rurasanga muri dosiye hari igisubizo cya "test ya ADN" cyatanzwe n'umuhanga witwa Dr Christa Augustine ukorera mu Kigo cyo mu Budage cyitwa "Institute of Legal Medicine". Icyo kizamani cya ADN cyakozwe hagati y'uvuga ko ari Rutsindura Alexis na Nahishakiye Jean Berchmas, kigaragaza ko isano iri hagati yabo, ari iy'umwana na se ku kigero cya 99,9999%. Abakoze icyo kizamini cya ADN bemeje ko bakurikije ibipimo bakoresheje basanze uvuga ko ari Rutsindura Alexis na Nahishakiye Jean Berchmas hari ibyo bahuriyeho ku buryo ntawahakana ko Jean Berchmans Nahishakiye ari se. Babivuze muri aya magambo "Jean Berchmas Nahishakiye and Alexis Rutsindura share atleast one allele in every STR-system tested here. Thus Jean Berchmas Nahishakiye cannot be excluded from paternity".

[13] Urukiko rurasanga icyo cyemezo cya "test ADN" kigomba guhabwa agaciro kuko cyakozwe n'Umuhanga ubifitiye ubumenyi buhagije ahereye kuri "saliva samples" (ibipimo by'amacandwe) zafashwe kuw'uregwa muri uru rubanza na Nahishakiye Jean Berchmas, kikaba rero kigomba gufatwa nk'ikimenyetso cya kamarampaka ku bijyanye no kumenya niba uwiyita Rutsindura Alexis atarabyawe na Rutsindura Alphonse, ko ahubwo yabyawe na Nahishakiye Jean Berchmans.

[14] Urukiko rusanga ibyagaragajwe n'ikizamini cya ADN byerekana nta shiti ko uwiyita Rutsindura Alexis ari mwene Nahishakiye Jean Berchmans. Ibi bikaba bikuraho ibyo uwiyita Rutsindura Alexis avuga ko yabyawe na Rutsindura Alphonse. Ikizamini cya ADN cyakozwe kikaba gifite agaciro kandi kikaba kizewe kurusha ibindi bimenyetso bishingiye ku mvugo z'abatangabuhamya byatanzwe n'uregwa mu bujurire ku izina rya Rutsindura Alexis (Bigirimana Cedric) ashaka kugaragaza ko ari uwa Rutsindura Alphonse. Test ADN igaragaza ko uwiyita Rutsindura Alexis ari uwa Nahishakiye Jean Berchmans si ubwa mbere yari ikozwe, dore ko yigeze gukorwa mu rubanza nshinjabyaha (RPA0138/11/TGI/NYGE) mu Rukiko Rwisumbuye rwa Nyarugenge, urwo Rukiko ntiruyihe agaciro bitewe n'inzira yakoreshejwemo, atari uguhakana ukuri ku byo yagaragaje. Nabwo hari hagaragajwe ko uregwa ari uwa Nahishakiye Jean Berchmans ku kigero cya 99,9999999%.

[15] Ku birebana n'ibyo Me Mwine Geoffrey yavuze ko abashakashatsi bemeje ko uwakoze ikizamini cya ADN ashobora kwibeshya ku kigero cya 75%, Urukiko rushingiye ku nyandiko yarushyikirije, rusanga ibyo atariko byanditse. Ahubwo ukurikije iyo nyandiko, abashakashatsi bagaragaje ko kudasobanukirwa neza ikoranabuhanga rikoreshwa mugukora "test AND" bituma abaregwa bahamwa n'icyaha ku kigero cya 75% ugereranije na 42% aho

abafata icyemezo baba basobonukiwe iby'iryo koranabuhanga. (..*it is from this study she concluded the less people understood the technology the higher were conviction rates. Low understanding of the technology translated to 75% conviction rates versus 42% conviction with better knowledge*[3]).

[16] Urukiko rurasanga imvugo z'abunganira uregwa mu bujurire zijyanye nuko hakorwa ikindi kizamini cya ADN hagati ye n'abakomoka kuri Seburikoko Narcisse nta shingiro zifite kuko, icyo kizamini kindi gisabwa ntacyo cyaba kije gukemura mu gihe hari icyakozwe kikagaragaza ko uwiyita Rutsindura Alexis ari uwa Nahishakiye Jean Berchmans kandi bakaba batagaragaza icyo banenga icyo kizamini ku buryo ibyo cyagaragaje byahinyuzwa hakorwa ikindi kizamini. Umuhanga wapimye "ADN" hagati y'uregwa mu bujurire ku izina rya Rutsindura Alexis na Nahishakiye Jean Berchmans, mu mwanzuro we, ntashidikanya ku bijyanye n'uko isano iri hagati yabo ari iy'umwana na se. Ibyo bikaba bihagije kugirango Urukiko rufate umwanzuro bitabaye ngombwa kongera gukoresha ikizamini gisa nk'icyakozwe, keretse iyo ababuranira uregwa bashobora kugaragaza ko umuhanga wakoze icyo kizamini yibeshye.

[17] Hagati y'umwaka wa 2007 na 2014, u Rwanda rwohereje ibipimo mu Budage, mu kigo kitwa ,"Institute of Legal Medicine, University Hospital of Hamburg" hakorwa "test ADN" zirenga 400[4]. Muri icyo kigo, niho Dr Christa Augustine wakoze "test ADN" muri uru rubanza akora. Ashinzwe gupima za "test ADN" akaba akuriye kandi "Forensic Genetics Laboratory" muri icyo kigo. Mu bizamini bya "ADN" yakoze byose biturutse mu Rwanda nta kibazo cyari cyagaragara mu bisubizo yagiye atanga ku bizamini yabaga yasabwe gukora. Nkuko tubikesha umuryango "Organization Research Gate"[5], Dr Christa Augustine amaze kwandika inyandiko (*scientific papers*) zerekeranye na ADN zirenga 46. Ibi byose byerekana ko ari impuguke mu birebana na ADN. Kuba ababuranira uregwa mu bujurire ku izina rya Rutsindura Alexis bavuga ko banyurwa aruko hakozwe indi "test AND" ikagereranywa n'iyakozwe batagaragaje icyo bayinenga, nta gaciro byahabwa.

[18] Urukiko rurasanga kandi muri dosiye hari raporo yakozwe n'Umushinjacyaha wo muri Parike ya Muramvya, mu Gihugu cy'Uburundi, yise "rapport d'une descente effectuée sur la colline Gahweza, Commune de Kiganda, Province de Muramvya en date du 23/11/2010 ». Muri iyo raporo, Umushinjacyaha wa Repubulika i Muramvya avuga ko yeretse Nahishakiye Jean Berchmas ifoto ya Bigirimana Cedric akavuga ko ari umwana we wa kane, Nahishakiye amubaza niba umwana we akiriho. Abivuga muri aya magambo ". […..] j'ai rencontré sieur Nahishakiye Jean Berchmas. Son épouse était encore aux champs. Je lui ai alors montré la photo de Bigirimana Cédric. Il l'a aussitôt reconnu et a déclaré que c'est son fils et qu'il est son quatrième enfant. Avec beaucoup d'étonnement, il m'a demandé de lui dire si son fils vivait encore.. ». Ibyagaragajwe na « test ADN » bishimangira ibyavuzwe n'Umushinjacyaha wa Repubulika i Muramvya/Burundi, ko ababyeyi b'uwiyita Rutsindura Alexis, babonye ifoto ye bakamumenya ndetse bakanemera ko ari umwana wabo wa kane.

[19] Muri raporo ivugwa mu gika kibanziriza iki, Umushinjacyaha wa Repubulika i Muramvya/Burundi anerekana ko uwarezwe mu bujurire muri uru Rukiko yagiye ahindagura amazina. Ikigaragara nuko ababyeyi be batamuzi nka Rutsindura Alexis. Bavuze amazina

[3] www.news-medical.net/news/20100329/DNA
[4] Reba urubuga rwa internet rw'Ubushinjacyaha Bukuru bw'u Rwanda: www.rnpa.gov.rw
[5] www.researchgate.net

atandukanye ye nuko yagiye ayahindura ariko iryo ntibigeze barikomozaho. Umushinjacyaha avuga ko nyina w'uwiyise Rutsindura Alexis yavuze ko umwana we mbere yuko abatizwa yitwaga Nahishakiye Cedric nyuma aza kwiyita Bigirimana Cedric. Yabivuze muri aya magambo "elle a précisé qu'avant qu'il ne soit baptisé, il' s'appelait Nahishakiye Cédric mais qu'il s'est baptisé Bigirimana Cedric " [….]. Uguhindagura amazina k'uwarezwe mu bujurire uko yishakiye, ku buryo naho avuga ko yabaye i Burundi batamuzi nka Rutsindura Alexis, byongera gushimangira ko atari mwene Rutsindura Alphonse. Urukiko ruhereye ku bisobanuro biri muri iki gika ndetse no mu bika bikibanziriza, rurasanga uregwa muri uru rubanza ku izina rya Rutsindura Alexis (Bigirimana Cedric), atari uwa Rutsindura Alphonse.

[20] Ingingo ya 50 y'Itegeko N°22/99 ryo kuwa 12/11/1999 ryuzuza igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura ivuga ko abana amategeko mbonezamubano yemera ko ari aba nyakwigendera bazungura ku buryo bungana. Bivuze ko kugirango umuntu agire uburenganzira bwo kuzungura nk'umwana wa nyakwigendera, ari uko hakurikijwe amategeko mbonezamubano, uzungura agomba kuba ari umwana w'uwo azungura. Uregwa mu bujurire si uwa Rutsindura Alphonse nkuko byasobanuwe, hakurikijwe ingingo ya 50 ivugwa muri iki gika nta burenganzira afite bwo kuzungura umutungo wasizwe na Rutsindura Alphonse, bityo imikirize y'imanza zose zaciwe zimuha uburenganzira bwo kuzungura uwo mutungo ikaba igomba guhinduka.

III. ICYEMEZO CY'URUKIKO

[21] Rwemeje ko ubujurire bwatanzwe na Gahenda Bievenu bufite ishingiro;

[22] Rwemeje ko uregwa mu bujurire ku izina rya Rutsindura Alexis (Bigirimana Cedric) atari umwana wa Rutsindura Alphonse bityo akaba adafite n'uburenganzira bwo kumuzungura;

[23] Ruvuze ko imikirize y'urubanza RCA0003/10/HC/NYA rwaciwe kuwa 12/03/2014 n'Urukiko Rukuru, Urugereko rwa Nyanza rukajuririrwa mu uru Rukiko kimwe n'imikirize y'urubanza RC0053/08/TGI/HYE rwaciwe n'Urukiko Rwisumbuye rwa Huye kuwa 05/01/2010 ihindutse kuri byose;

[24] Rutegetse uregwa mu bujurire ku izina rya Rutsindura Alexis (Bigirimana Cedric) gutanga amagarama y'uru rubanza angana na 100.000Frw.