UBUSHINJACYAHA v. NSANZINTWALI

[Rwanda URUKIKO RW'IKIRENGA – RPAA0048/12/CS (Hatangimbabazi, P.J., Karimunda na Gakwaya, J.) 6 Gicurasi 2016]

Amategeko agenga imiburanishirize y'imanza Nshinjabyaha – Gushidikanya – Iyo hari impamvu zikomeye zitera gushidikanya, birengera ushinjwa – Itegeko Nº30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 165.

Incamake y'ikibazo: Uregwa yakurikiranywe ku cyaha cyo gusambanya umwana w'imyaka hafi itanu ariko we aburana ahakana icyaha, asobanura ko impamvu yacyemeye imbere y'Umucamanza w'ifunga n'ifungurwa ry'agateganyo ari ukubera ububabare yari afite. Urukiko Rwisumbuye rwamuhamije icyaha rushingiye ku kuba yaracyiyemereye imbere y'Umucamanza w'ifunga n'ifungurwa ry'agateganyo, no kuri raporo ya Muganga igaragaza ko umwana yasambanyijwe koko, rumuhanisha igifungo cy'imyaka makumyabiri (20 ans) n'ihazabu y'amafaranga 20.000Frw, agabanyirijwe ibihano kubera ko yemeye icyaha no kuba ari ubwa mbere yagwa mu cyaha. Ntiyishimiye imikirize y'urubanza, ajuririra Urukiko Rukuru, Urugereko rwa Nyanza, asaba kugabanyirizwa ibihano kubera ko yemera icyaha, akanagisabira imbabazi, maze Urukiko rumugabanyiriza ibihano, rumuhanisha igifungo cy'imyaka cumi n'itanu.

Uregwa yajuriye nanone mu Rukiko rw'Ikirenga, asaba kugabanyirizwa ibihano kubera ko yemera icyaha, agasaba n'imbabazi, ariko iburanisha ritangiye, avuga ko n'ubwo yajuriye ashaka kugabanyirizwa ibihano yahawe, ariko mu by'ukuri atemera icyaha yarezwe cyo gusambanya umwana akaba atazi n'uburyo icyo cyaha cyakozwe, akaba yaracyemeye mu Rukiko agira ngo arebe gusa ko yagabanyirizwa ibihano, ko ariko ubundi yahamijwe icyaha atigeze akora.

Ubushinjacyaha bwo bwaburanye buvuga ko ubujurire bw'uregwa nta shingiro bufite kubera ko aho yaburanye hose yagiye yemera icyaha, akaba asanga kandi kuba yaremeye icyaha mu Nkiko zo hasi atari impamvu ituma agabanyirizwa igihano, ahubwo ari impamvu ituma icyaha kimuhama. Ko kuba ahakana icyaha imbere y'Urukiko rw'Ikirenga bidakwiye guhabwa agaciro, kuko hari n'ibindi bimenyetso bishimangira ko yemeye icyaha, naho ibyo kuba yaracyemeye kubera gutinya ibihano birebire akaba asanga atari ukuri, kubera ko yemeye icyaha ataramenya ibihano azahabwa.

Incamake y'icyemezo: Gushidikanya birengera ushinjwa, bityo hari ugushidikanya gukabije gutuma uregwa agomba kugirwa umwere ku cyaha akurikiranyweho.

Ubujurire bw'uregwa bufite ishingiro.
Uregwa agizwe umwere.
Amagarama aherereye ku isanduku ya Leta.

Amategeko yashingiweho:
Itegeko Nº30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 165.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Muhanga, Ubushinjacyaha burega Nsanzintwali Pascal kuba yarakoze icyaha cyo gusambanya umwana w'imyaka hafi itanu witwa I.P., Nsanzintwali Pascal aburana ahakana icyaha, asobanura ko impamvu yacyemeye imbere y'Umucamanza w'ifunga n'ifungurwa ry'agateganyo ari ukubera ububabare yari afite.

[2] Urukiko Rwisumbuye rwa Muhanga rwaciye urubanza, rumuhamya icyaha rushingiye ku kuba yaracyiyemereye imbere y'Umucamanza w'ifunga n'ifungurwa ry'agateganyo, no kuri raporo ya Muganga igaragaza ko umwana yasambanyijwe koko, rumuhanisha igifungo cy'imyaka makumyabiri (20ans) n'ihazabu y'amafaranga 20.000Frw, agabanyirijwe ibihano kubera ko yemeye icyaha no kuba ari ubwa mbere yagwa mu cyaha.

[3] Nsanzintwali Pascal ntiyishimiye imikirize y'urubanza, ajuririra Urukiko Rukuru, Urugereko rwa Nyanza, asaba kugabanyirizwa ibihano kubera ko yemera icyaha, akanagisabira imbabazi.

[4] Uru Rukiko rwaciye urubanza ruvuga ko Nsanzintwali Pascal agomba kugabanyirizwa ibihano, rumuhanisha igifungo cy'imyaka cumi n'itanu.

[5] Nsanzintwali Pascal na none ntiyishimiye imikirize y'urubanza, ajuririra Urukiko rw'Ikirenga, asaba kugabanyirizwa ibihano kubera ko yemera icyaha, agasaba imbabazi.

[6] Urubanza rwaburanishijwe ku wa 04/04/2016, Nsanzintwali Pascal yunganiwe na Me Girayo Eric, Ubushinjacyaha buhagarariwe na Dushimimana Claudine, Umushinjacyaha ku rwego rw'Igihugu.

[7] Iburanisha ritangiye, Nsanzintwali Pascal avuga ko n'ubwo yajuriye ashaka kugabanyirizwa ibihano yahawe, ariko mu by'ukuri atemera icyaha yarezwe cyo gusambanya umwana witwa I.P., akaba atazi n'uburyo icyo cyaha cyakozwe, akaba yaracyemeye mu Rukiko agira ngo arebe gusa ko yagabanyirizwa ibihano, ko ariko ubundi yahamijwe icyaha atigeze akora.

II. ISESENGURA RY'IKIBAZO KIBAZWA MU URUBANZA

- **Kumenya niba hari ibimenyetso bihamya icyaha Nsanzintwali Pascal.**

[8] Nsanzintwali Pascal avuga ko impamvu yatumye ajurira ari uko yashakaga kugabanyirizwa ibihano yahawe, akaba asaba Urukiko ko rwamuhanisha nibura igifungo cy'imyaka itanu kuko asanga igifungo cy'imyaka icumi yahawe ari kirekire cyane.

[9] Ku kibazo cyo kumenya impamvu asaba kongera kugabanyirizwa ibihano kandi yari yaragabanyirijwe, Nsanzintwali Pascal avuga ko Urukiko arirwo rwazaha agaciro ibyo asaba, kuko icyo yifuza ari uko yagabanyirizwa ibihano yahawe, ko ariko ubusanzwe yahamijwe icyaha atigeze akora. Asobanura ko kuba yaracyemeye mbere hose, yagira ngo arebe ko yagabanyirizwa ibihano, ariko mu by'ukuri nta cyaha yakoze, ko yacyemeye kubera ko

yabonaga ari akarengane yakorewe, kuko yahakanaga icyaha bakabyanga, hakiyongeraho akababaro yahuye nako aho afungiye.

[10] Ku kibazo cyo kumenya niba yifuza kugabanyirizwa ibihano cyangwa gufungurwa akagirwa umwere, Nsanzintwali Pascal avuga ko yumva yagabanyirizwa ibihano, kuko atariwe ubikuraho, gusa akaba yarahamijwe icyaha atigeze akora, kuko asanga cyarakozwe n'abandi bana bari mu rugero rw'uriya mwana bavuga ko yasambanyije, ko nyina w'uwo mwana yageze mu rugo, amenye ko umwana we yasambanyijwe, avuga ko ari Nsanzintwali Pascal wabikoze kubera ko yageze muri urwo rugo, nyamara yarahageze gusa azanywe no kwiba ipine.

[11] Me Gariyo Eric wunganira Nsanzintwali Pascal avuga ko ibyo uwo yunganira avugiye mu Rukiko yumva ari bishyashya, kuko igihe yateguraga dosiye, bavuganye, amwemerera ko azaburana yemera icyaha, asaba kugabanyirizwa ibihano, ko rero niba ubungubu ahakana icyaha, yareka ibyo gusaba kugabanyirizwa ibihano. Asaba Urukiko umwanya wo kugirango aganire na Nsanzintwali Pascal kugira ngo bafate umurongo umwe bagomba kuburanisha mu bujurire bwe kubera ko hari ubwo avuga ko hari igihe ibintu bimuyobera.

[12] Nyuma yo guhabwa umwanya wo kuganira n'umwunganira, Nsanzintwali Pascal yongeye guhabwa ijambo, avuga ko yemera icyaha, ko ariko atabona uburyo yasobanura uko yagikoze n'iyo yarara atetse ibuye rigashya.

[13] Uhagarariye Ubushinjacyaha avuga ko ubujurire bwa Nsanzintwali Pascal nta shingiro bufite kubera ko aho yaburanye hose yagiye yemera icyaha, akaba asanga kandi kuba yaremeye icyaha mu Nkiko zo hasi atari impamvu ituma agabanyirizwa igihano, ahubwo ari impamvu ituma icyaha kimuhama. Avuga ko kuba ubungubu noneho Nsanzintwali Pascal ahakana icyaha imbere y'Urukiko rw'Ikirenga bidakwiye guhabwa agaciro, kuko hari n'ibindi bimenyetso bishimangira ko yemeye icyaha, naho ibyo kuba yaracyemeye kubera gutinya ibihano birebire akaba asanga atari ukuri, kubera ko yemeye icyaha ataramenya ibihano azahabwa, ko rero n'ubwo Nsanzintwali Pascal ahakana icyaha, ntabwo avuguruza ibimenyetso byari byatanzwe n'Ubushinjacyaha mu Rukiko, ari yo mpamvu asaba ko urubanza rwajuririwe rwagumaho mu ngingo zarwo zose.

UKO URUKIKO RUBIBONA

[14] Ingingo ya 165 y'Itegeko Nº30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko "Gushidikanya birengera ushinjwa. Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze".

[15] Inyandiko zigize dosiye y'uru rubanza, zigaragaza ko Nsanzintwali Pascal abazwa mu Bugenzacyaha ku wa 19/11/2009, no mu Bushinjacyaha ku wa 23/11/2009, aho hose atigeze yemera icyaha akurikiranyweho cyo gusambanya umwana witwa I.P., ndetse ageze mu Rukiko Rwisumbuye rwa Muhanga, nabwo aburana ahakana icyaha, asobanura ko impamvu yacyemeye imbere y'Umucamanza w'ifunga n'ifungurwa ry'agateganyo ari ukubera ububabare yari afite, akaba yarifuzaga gufungwa iminsi cumi n'itanu aho kuba iminsi mirongo itatu yasabirwaga n'Ubushinjacyaha kubera ko yabonaga ari myinshi kandi arengana.

[16] Dosiye y'uru rubanza igaragaza nanone ko nyuma yo gukatirwa igifungo cy'imyaka makumyabiri (20 ans), Nsanzintwali Pascal yajuririye Urukiko Rukuru, Urugereko rwa Nyanza, yemera icyaha, anagisabira imbabazi, bituma agabanyirizwa ibihano, ahanishwa noneho igifungo cy'imyaka cumi n'itanu, nacyo akaba yarasanze ari igifungo kirekire, ari yo mpamvu yaje gutakambira Urukiko rw'Ikirenga, asaba ko icyo gifungo cyagabanywamo kabiri, agahanishwa igifungo cy'imyaka itanu.

[17] Urukiko rurasanga mbere yo gusuzuma niba Nsanzintwali Pascal yagabanyirizwa igihano kimaze kuvugwa yahawe hashingiwe ku kuba yaremeye icyaha, ari ngombwa kubanza gusuzuma niba koko icyaha yavugaga yemera kimuhama.

[18] Nk'uko byavuzwe haruguru, uretse imbere y'Urukiko Rukuru, Urugereko rwa Nyanza, aho Nsanzintwali Pascal yemeye icyaha, ikigaragara ni uko ahandi hose icyaha yagihakanye, n'aho yacyemeye akaba asobanura ko yabiterwaga no kugirango abone uko ava mu karengane, ni ukuvuga kajyanye no kuba yarashyizwe muri gereza ku cyaha atakoze.

[19] Ku bijyanye n'icyaha aregwa cyo gusambanya umwana witwa I.P. Nsanzintwali Pascal aregwa, ibimenyetso bikubiye muri dosiye Urukiko rufite ni ibikurikira:

1. Imvugo ya N.C., se w'umwana uvugwa ko yahohotewe, aho yasobanuriye Umugenzacyaha ko icyamubwiye we n'umugore we ko umwana wabo yasambanyijwe ari uko barebye mu gitsina no ku matako y'umwana bakabonaho amasohoro.

2. Inyandiko yakozwe n'Umugenzacyaha ku wa 20/11/2009 iri kuri "cote" ya 7 ya dosiye, aho avuga ko yagiranye ikiganiro na I.P., akamubwira ko ari Pascal wamurongoye, akoresheje intoki ebyiri yamushyize mu gitsina.

3. Raporo ya Muganga yo ku wa 19/11/2009 ivuga mu buryo bukurikira ibyo Muganga yasanze ku mwana, akavugamo "état général bon, hymen intact, elle aurait été violée, elle aurait été violée sans maladie sexuellement transmissible".

[20] Urukiko rurasanga hasesenguwe ibimenyetso bimaze kuvugwa haruguru, hari ugushidikanya ku cyaha Nsanzintwali Pascal aregwa cyo gusambanya I.P., mu gihe raporo ya Muganga mu by'ukuri ubwayo itemeza ko uwo mwana yasambanyijwe, ahubwo ikaba ikekeranya ivuga ko umwana ashobora kuba yarasambanyijwe ku ngufu (elle aurait été violée), bigahuza n'uko Muganga yanasanze umwana agifite akarangabusugi ke (hymen intact), ndetse nta n'ikibazo cy'uburwayi afite (état général bon).

[21] Ikindi gitera gushidikanya ni uko muri iyo raporo ya Muganga yakozwe rugikubita ku wa 19/11/2009, ni ukuvuga bukeye umwana amaze gusambanywa ku wa 18/11/2009 nk'uko bivugwa, nta na hamwe havugwa ko Muganga yaba yarabonye amasohoro mu gitsina cy'umwana, nyamara N.C., se w'umwana, avuga ko we n'umugore we bayabonye nk'uko byagaragajwe haruguru.

[22] Ikindi gitera nanone gushidikanya ni uko N.C., se w'umwana, avuga ko yabonye ayo masohoro mu gitsina, bikumvikanisha ko niba Nsanzintwali Pascal yarasambanyije uwo mwana, yinjije igitsina cye mu cy'umwana agasukamo n'ayo masohoro yabonywe n'ababyeyi be, nyamara umwana yaribwiriye Umugenzacyaha ko icyo Nsanzintwali Pascal yakoze ari ukumurongora akoresheje intoki ebyiri yashyize mu gitsina cye.

[23] Urukiko rurasanga rero hasesenguwe ibimaze kuvugwa, hari ugushidikanya gukabije gutuma Nsanzintwali Pascal agomba kugirwa umwere ku cyaha akurikiranyweho,

hashingiwe ku ngingo ya 165 y'Itegeko Nº30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryavuzwe haruguru, bityo urubanza Nsanzintwali Pascal yajuririye rukaba rugomba guhinduka mu ngingo zarwo zose.

III. ICYEMEZO CY'URUKIKO

[24] Rwemeje ko ubujurire bwa Nsanzintwali Pascal bufite ishingiro;

[25] Rwemeje ko Nsanzintwali Pascal agizwe umwere;

[26] Rutegetse ko ahita afungurwa uru rubanza rukimara gusomwa;

[27] Ruvuze ko urubanza RPA0263/10/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, kuwa 08/04/2011 ruhindutse mu ngingo zarwo zose;

[28] Rutegetse ko amagarama ry'urubanza aherera ku Isanduku ya Leta.