UBUSHINJACYAHA v. HABIMANA

[Rwanda URUKIKO RW'IKIRENGA – RPAA0321/10/CS (Mugenzi, P.J., Nyirinkwaya na Rugabirwa, J.) 18 Werurwe 2016]

Amategeko agenga ibimenyetso – Indahiro y'umuhanga – Agaciro ka raporo itabanjirijwe n'indahiro y'uwayikoze – N'ubwo amategeko ateganya ko raporo ya muganga igomba kubanzirizwa n'indahiro, ukutabaho kwayo kukagira raporo impfabusa, nta kibuza ko iyo nenge ijyanye n'imyandikire aho kuba ijyanye n'ireme ry'igikorwa yabasha gukosorwa, nk'igihe uwakoze raporo yahamagazwa mu Rukiko akabanza kurahira mbere yo kuyisobanura – Itegeko N°15/2004 ryo ku wa 12/04/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 93.

Indishyi – Igenwa ry'indishyi – Indishyi zagenwe n'Urukiko rubanza mu bushishozi bwarwo ntizahinduka mu gihe hatagaragajwe ko ari ikirenga.

Incamake y'ikibazo: Uregwa yakurikiranyweho kuba yarasambanyije umwana w'imyaka 6, ubwo yari amuhawe na nyirakuru, bavanye gusenga akamusaba kumumugereza kwa nyina baturanye, bikavugwa ko mu nzira yanze ko umwana ajyana n'umugabo baturanye, ahubwo amusambanyiriza haruguru y'inzu. Urukiko Rwisumbuye rwa Nyarugenge rwamuhamije icyaha, rumuhanisha igifungo cy'imyaka icumi (10) n'ihazabu y'amafaranga ibihumbi ijana (100.000Frw), agabanyirijwe ibihano kubera ko yari akiri muto, afite imyaka 25, runagenera nyina w'umwana indishyi z'akababaro zingana na 500.000Frw.

Yajuririye Urukiko Rukuru, narwo rwemeza ko ubujurire bwe nta shingiro bufite, rusobanura ko ibyo yireguza ko umwana yapimwe nyuma y'iminsi itatu, na raporo ya muganga ikaba yanditse mu buryo budasobanutse nta shingiro byahabwa, kuko Urukiko rwasabye muganga gusobanura raporo yakoze, akagaragaza ko umwana yafashwe ku ngufu kandi gupimwa nyuma y'iminsi itatu nabyo bikaba bidakuraho icyaha. Uregwa yajuririye Urukiko rw'Ikirenga avuga ko yahamijwe icyaha nta bimenyetso bifatika bikimuhamya, kandi ko hatitawe ku kwiregura kwe aho yavugaga ko yagejeje umwana hafi y'iwabo akamutungira agatoki, kandi ko n'ubuhamya bwa mwarimu butatangiwe ibimenyetso ndetse na raporo ya muganga ikaba itagaragaza ko ariwe wasambanyije uwo mwana.

Uhagarariye Ubushinjacyaha avuga ko raporo ya muganga yakozwe atabanje kurahira koko ariko arangije yandika amazina ye aranasinya, ikaba itakwamburwa agaciro kayo kuko kuba hari ibitarubahirijwe byatewe n'uko muganga atari umunyamategeko, kandi ko atari yo yashingiweho yonyine mu guhamya uregwa icyaha.

Incamake y'icyemezo: 1. N'ubwo amategeko ateganya ko raporo ya muganga igomba kubanzirizwa n'indahiro, ukutabaho kwayo kukagira raporo impfabusa, nta kibuza ko iyo nenge ijyanye n'imyandikire aho kuba ijyanye n'ireme ry'igikorwa yabasha gukosorwa, nk'igihe uwakoze raporo yahamagazwa mu Rukiko akabanza kurahira mbere yo kuyisobanura. Bityo rero, kuba ariko byagenze mu iburanisha ubwo muganga yarahiraga mu Rukiko mbere yo gusobanura ibikubiye muri raporo ye, bituma raporo ye ihabwa agaciro.

2.Indishyi zagenwe n'Urukiko rubanza mu bushishozi bwarwo ntizahinduka mugihe hatagaragajwe ko ari ikirenga.

Ubujurire nta shingiro bufite.
Urubanza rwajuririwe ntiruhindutse.

Amagarama y'urubanza aherereye ku isanduku ya Leta.

Amategeko yashingiweho:
Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 93.
Itegeko N°15/2004 ryo ku wa 12/04/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo za 93 na 108.

Imanza zifashishijwe:
RPAA0039/12/CS, Ubushinjacyaha v. Ntakiyimana na Mugirwanake, rwaciwe n'Urukiko rw'Ikirenga ku wa 26/02/2016.
RPA0018/10/CS, Ubushinyacyaha v. Rubyiruko Sylvestre n'abandi rwaciwe n'Urukiko rw'Ikirenga ku wa 25/11/2011.
RPA0227/08/CS, Ubushinjacyaha v. Sibomana Nathanaël rwaciwe n'Urukiko rw'Ikirenga ku wa 19/02/2010.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Habimana Jean Claude yakurikiranyweho kuba ku wa 14/06/2008, yarasambanyije umwana w'imyaka 6, Ugirimbabazi Yvette, ubwo yari amuhawe na nyirakuru, bavanye gusenga akamusaba kumumugereza kwa nyina baturanye, bikavugwa ko mu nzira yanze ko umwana ajyana n'umugabo baturanye, ahubwo amusambanyiriza haruguru y'inzu. Mu rubanza RP0540/08/TGI/NYGE, rwaciwe ku wa 27/03/2009, yahamijwe icyaha, ahanishwa igifungo cy'imyaka icumi (10) n'ihazabu y'amafaranga ibihumbi ijana (100.000Frw), agabanyirijwe ibihano kubera ko yari akiri muto, afite imyaka 25, Umumararungu Sylvie, nyina w'umwana, agenerwa indishyi z'akababaro zingana na 500.000Frw.

[1] Habimana yajuririye Urukiko Rukuru, ruca urubanza RPA0440/09/HC/KIG, ku wa 18/02/2010 rwemeza ko ubujurire bwe nta shingiro bufite, rusobanura ko ibyo yireguza ko umwana yapimwe nyuma y'iminsi itatu, na raporo ya muganga ikaba yanditse mu buryo budasobanutse nta shingiro byahabwa, kuko Urukiko rwasabye muganga gusobanura raporo yakoze, akagaragaza ko umwana yafashwe ku ngufu kandi gupimwa nyuma y'iminsi itatu nabyo bikaba bitakuraho icyaha.

[2] Rwasobanuye kandi ko imyiregurire y'uko nta kigaragaza ko udukomere twari ku gitsina cy'umwana twatewe no gusambanywa kandi ko na mwarimu wigishaga umwana watanze ubuhamya atatanze ibimenyetso, nta shingiro bifite, kuko nta kindi Habimana

agaragaza cyaba cyarakomerekeje uwo mwana akaba kandi ariwe wamuhawe ngo amugeze iwabo, mwarimu akaba yaragaragaje uburyo umwana yagiye asiba kujya kwiga, hakiyongeraho ko na bashiki ba Habimana bagiye gushakira uwo mwana ku ishuri bakanasaba nyina ko yamubabarira.

[1] Habimana yajuririye Urukiko rw'Ikirenga avuga ko yahamijwe icyaha nta bimenyetso bifatika bikimuhamya, kandi ko hatitawe ku kwiregura kwe aho yavugaga ko yagejeje umwana hafi y'iwabo akamutungira agatoki, kandi ko n' ubuhamya bwa mwarimu butatangiwe ibimenyetso ndetse na raporo ya muganga ikaba itagaragaza ko ariwe wasambanyije uwo mwana.

[2] Mu iburanisha ry'urubanza, Habimana n'umwunganira banavuze ko ikirego cy'indishyi kitagombaga kwakirwa mu nkiko zabanje, kandi ko n'indishyi nta bimenyetso zishingiyeho.

[3] Urubanza rwaburanishijwe mu ruhame ku wa 05/10/2015 no ku wa 15/02/2016, Habimana Jean Claude yunganiwe na Me Habimana Adolphe, Umumararungu Sylvie, uregera indishyi atitabye ariko yarahamagajwe mu buryo bukurikiije amategeko, Ubushinjacyaha buhagarariwe na Bunyoye Grậce, mu iburanisha ryo ku wa 15/02/2016 hitabye kandi muganga Rumanya Liliane.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

Kumenya niba Habimana Jean Claude yarahamijwe icyaha nta bimenyetso bishingiweho

[4] Habimana avuga ko yahamijwe icyaha nta bimenyetso Urukiko rushingiyeho kuko ubuhamya bwatanzwe na mwarimu butari buherekejwe n'ibimenyetso, raporo ya muganga ikaba yari idasobanutse, ahubwo rukaba rwaragendeye ku magambo yavuzwe na nyina w'umwana ko atagejeje umwana mu rugo ariko rwirengagiza ukwiregura kwe.

[5] Asobanura ko ubuhamya bw'umwarimu wavuze ko uwo umwana yasibaga ishuri zitaherekejwe n'ibitabo abanyeshuri bahamagarirwagaho ngo byerekane koko ko uwo mwana atazaga kwiga, yongeraho ariko ko n'iyo yari kuba ataza kwiga bitari guhamya ko yasambanyijwe kandi ko uwamusambanyije ari Habimana.

[6] Avuga ko ubuhamya bwa nyina w'umwana busubira mu byo yabwiwe n'umwana, uyu nawe n'ubwo yavuze ko yamusambanyije, hakaba hatagaragazwa impamvu atahise abibwira nyina akigera mu rugo, ataranatabaje ubwo yasambanywaga, ndetse n'umubyeyi we akaba atarahise amurega akibimenya kandi yari amuzi, ahubwo agategereza kumufatira mu nzira bahuye, abanje kumubeshya ko hari ikibazo amufasha gukemura kuri Polisi.

[7] Habimana avuga kandi ko raporo ya muganga itari ikwiye gushingirwaho ngo ahamwe n'icyaha kubera ko itubahirije ibiteganywa n'amategeko kuko muganga atabanje kurahira, ikaba yarabonetse mu buryo budakurikije amategeko kandi ntisobanure ko udusebe (lésions) twabonetse ku mwana twaba twaratewe no gusambanywa, bikozwe na Habimana.

[8] Avuga ko ingingo z'imiburanire ye zitahawe agaciro kandi yaragaragaje ko yemeye ko yasabwe na Safi, umukecuru wabigishaga Bibiliya, kujyana umwana iwabo, hanyuma ageze hafi y'iwabo amutungira urutoki, we aritahira, aza gutangazwa n'uko yafashwe nyuma

y'iminsi itatu ari uko ahuye na nyina w'umwana akamubeshya ko hari icyo ajya kumufasha kuri Polisi, kandi ko iyo agira icyo yikeka atari kujyayo.

[9] Uhagarariye Ubushinjacyaha avuga ko raporo ya muganga yakozwe atabanje kurahira koko ariko arangije yandika amazina ye aranasinya, ikaba itakwamburwa agaciro kayo kuko kuba hari ibitarubahirijwe byatewe n'uko muganga atari umunyamategeko, kandi ko atari yo yashingiweho yonyine mu guhamya Habimana icyaha. Avuga ko raporo nk'iyi y'aho muganga atarahiye yahawe agaciro n'Urukiko rw'Ikirenga mu rubanza RPA0227/08/CS rwo ku wa 19/02/2010, Ubushinjacyaha buburana na Sibomana Nathanaël.

[10] Avuga ko muganga atari we wemeza ko uregwa yasambanyije, ahubwo agaragaza ibyo abona ku mwana nk'uko yavuze ko hari udusebe ku matako no ku myanya ndangagitsina kandi ko umwana atari isugi, ibi bikaba byahuzwa n'imvugo z'umwana, Urukiko akaba ari rwo rwemeza ko uregwa ahamwa icyaha.

[11] Ku byerekeye ubuhamya bw'umwarimu Mukakabego Judith wigishaga uwo mwana, uhagarariye Ubushinjacyaha avuga ko uwo mwarimu ativuguruje, kuko mbere atari yarabajijwe, ahubwo yahamagawe n'Urukiko kandi ko Habimana yahawe umwanya wo kugira icyo avuga kuri ubwo buhamya, naho igitabo abanyeshuri bahamagarirwagaho akaba atarigeze agisaba. Avuga ko kuba umwana yaba yarasibishijwe n'ubundi burwayi bivuguruzwa na raporo ya muganga yerekana ko umwana yagaragaje ibimenyetso by'uko yasambanyijwe.

UKO URUKIKO RUBIBONA

[12] Nk'uko bigaragara muri dosiye, Habimana yemera ko yahawe umwana Ugirimbabazi bavanye gusenga ari ku mugoroba, ngo amugeze iwabo ariko ntamugezeyo, na nyina w'umwana akavuga ko umwana yamugezeho yatinze gutaha, amubajije impamvu yatinze, amubwira ko yari kumwe na Habimana, hanyuma nyuma y'iminsi ibiri, abona umwana afite ikibazo cyo kwicara no kugenda, amureba ku myanya ndangagitsina, abona ahafite udusebe, amubajije icyo yabaye umwana amubwira ko igihe batahanaga na Habimana, yamukuyemo ikariso agafata "ikidudu cye agishyira mu gapipi" anamubwira ko nabivuga azamwica.

[13] Ubuhamya bw'umwarimu Mukakabego, wigishaga uwo mwana nabwo bugaragaza ko yabonye kuri uwo mwana ikibazo cyo gusiba ishuri, yanaza akaba yigunze atisanzuye uko bisanzwe, ndetse agaragaza ikibazo cyo kwicara, hanyuma atumaho umubyeyi we, aho aziye amubwira ko umwana yasambanyijwe, ko ikibazo kiri muri Polisi.

[14] Raporo ya muganga yakozwe ku wa 15/06/2008, nyuma y'iminsi 3 Habimana aherekeje Ugirimbabazi, yerekanye ko uwo mwana atakiri isugi, ko agaragaza udusebe ku matako no ku gitsina (lésions au niveau du cuisse, du vagin et de la vulve), ibi kandi akaba ari nabyo muganga yasobanuriye Urukiko ubwo yarwitabaga ku wa 15/02/2016, akongeraho ariko ko muganga atariwe wafata umwanzuro wo kwemeza ko umwana yasambanyijwe cyangwa se ko yasambanyijwe na runaka.

[15] Habimana nawe kandi aburana ku ifunga n'ifungurwa ry'agateganyo[1] yavuze ko mu masaha ya saa moya yari kumwe n'uriya mwana yamuhawe na nyirakuru ngo amugeze iwabo ariko ntamugeze yo, anavuga ko Ugirimbabazi yashatse kujyana n'umugabo baturanye

[1] Inyandikomvugo y'iburanisha ku ifunga n'ifungurwa ry'agatanyo ku wa 23/06/2008, kote ya 17.

akabimwangira, ahubwo bagahagararana nk'iminota itanu bategereje undi muntu waza ngo amumuhe bajyane, ariko bikarangira atamujyanye ahubwo amutungiye agatoki ngo yijyane.

[16] Urukiko rurasanga hari ibimenyetso byuzuzanya bigaragaza icyaha kuri Habimana, bigizwe no kuba Umumararungu nyina w'umwana yarabonye uyu afite udusebe ku gitsina, maze umwana akamubwira ko yasambanyijwe na Habimana, raporo ya muganga nayo ikagaragaza ko umwana yasambanyijwe, bikubitiyeho ko igihe umwana avuga yasambanyijwe aribwo yari yahawe Habimana ngo amugeze iwabo, ariko ntahamugeze kandi bwari bunagorobye, ndetse Habimana akaba yarivugiye ko hari n'uwashatse kuba yahamugeza ariko ntabimwemerere.

[17] Urukiko rurasanga, ibyo bimenyetso birebewe hamwe, bigize impurirane y'impamvu zihuye kandi zikomeye, zituma, hashingiwe ku biteganywa n'ingingo ya 108 y'Itegeko N^{o}15/2004 ryo ku wa 12/04/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, isobanura igihe ibimenyetso bicukumbuwe bihabwa agaciro[2], uru Rukiko rwemeza nta gushidikanya ko icyaha Habimana aregwa cyo gusambanya umwana yagikoze[3], bityo ubujurire bwe bukaba nta shingiro bufite.

[18] Urukiko rurasanga imiburanire ya Habimana inenga ubuhamya bwa nyina w'umwana n'ubw'umwarimu wamwigishaga nta shingiro ifite kuko itagaragaza ko baba bataravuze ukuri ubwo bemezaga ko umwana yagaragaje ko afite ikibazo anavuga ko yasambanyijwe, ahubwo raporo ya muganga ikaba yaraje yerekana ko uwo mwana yasambanyijwe koko. Habimana ntiyagaragarije Urukiko kandi icyari gutuma nyina w'umwana amuhimbira icyaha atakoze, ahubwo mu ibazwa rye mu Bugenzacyaha yivugiye ko ntacyo bapfa.

[19] Ku byerekeye raporo ya muganga, uregwa anenga kuba itagaragaza indahiro y'uwayikoze nk'uko biteganywa n'ingingo ya 93 y'Itegeko N^{o}15/2004 ryo ku wa 12/06/2004 ryerekeye Ibimenyetso mu manza n'itangwa ryabyo[4], Urukiko rurasanga n'ubwo iyo ndahiro koko iteganyijwe muri iyo ngingo isobanura ko ukutabaho kwayo kugira raporo impfabusa, nta kibuza ko iyo nenge ijyanye n'imyandikire (vice de forme) aho kuba ijyanye n'ireme ry'igikorwa (vice de fond) yabasha gukosorwa[5], nk'igihe uwakoze raporo yahamagazwa mu Rukiko akabanza kurahira mbere yo kuyisobanura[6], ari nako byagenze mu iburanisha ryo kuwa 15/02/2016, ubwo Muganga Rumanya Liliane yarahiraga mu Rukiko mbere yo gusobanura ibikubiye muri raporo ye.

Ku byerekeye indishyi zagenwe n'Urukiko Rukuru

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[2] Iyo ngingo ya 108 igira iti: "Ibimenyetso bicukumbuwe no gusesengura urubanza ni ibimenyetso bitacukumbuwe n'amategeko, bicukumburwa n'ubwenge n'ubushishozi bw'abacamanza. Abacamanza bagomba kwemera gusa ibyo bimenyetso iyo bikomeye, bisobanuye kandi bihuje".

[3] Ibimenyetso bicukumbuwe muri ubu buryo kandi byanashingiweho mu zindi manza zaciwe n'uru Rukiko: Reba Urubanza RPAA0039/12/CS rwo ku wa 26/02/2016, Ubushinjacyaha buburana na Ntakiyimana na Mugirwanake, n'urubanza RPA0018/10/CS rwo ku wa 25/11/2011, Rubyiruko Sylvestre n'abandi baburana n'Ubushinjacyaha.

[4] Iyo ngingo ya 93 iteganya ko raporo ishyirwaho umukono n'abahanga bose. Umukono w'abahanga kugira ngo utaba impfabusa ubanzirizwa n'indahiro mu nyandiko iteye itya : "Jyewe …………….. ndahiye ko nakoze umurimo nashinzwe ntacyo nirengagije, nywukora uko ugomba gukorwa nta buhemu. Niba ntawukoze uko bikwiye nzabihanirwe n'amategeko".

[5] Ingingo ya 93 y'Itegeko N^{o}21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ukutagira agaciro kw'inyandiko y'Urukiko kubera inenge y'imyandikire bikurwaho no kubikosora nyuma iyo hari icyo bikimaze kandi kubikosora bikaba ntacyo byangije.

[6] Reba urubanza RPA0227/08/CS rwo ku wa 19/02/2010, Ubushinjacyaha buburana na Sibomana Nathanaël.

[20] Me Rwigema wunganira Habimana yavuze ko ikirego cy'indishyi cyatanzwe mu buryo budakurikije amategeko kuko hareze umwana bikosorwa n'Urukiko Rwisumbuye rwa Nyarugenge, ku wa 01/10/2008 mu iburanisha kandi rudafite ububasha bwo guhindura ikirego cy'umuburanyi, kikaba kitari gikwiye kwakirwa ngo gisuzumwe. Avuga ariko ko niyo cyari kwakirwa, indishyi zagenwe nta bimenyetso byagaragajwe n'abarega.

[21] Urukiko rusanga ibijyanye n'iyakirwa ry'ikirego cy'indishyi byarafashweho icyemezo n'inkiko zabanje, imyandikire y'uburyo cyatanzwe igakosorwa, Habimana ntiyigera abijuririra, bityo, akaba atakwemererwa kubigarukaho muri uru rubanza.

[22] Naho ku byerekeye ibimenyetso by'indishyi Habimana avuga ko bitagaragajwe, Urukiko rurasanga, adasobanura ubwoko bw'ibyari bikenewe, mu gihe indishyi zagenwe mu bushishozi ari iz'akababaro, mu rugero rwa 500.000Frw, akaba atagaragaza ko zaba ari umurengera.

III. ICYEMEZO CY'URUKIKO

[23] Urukiko rwemeje ko ubujurire bwatanzwe na Habimana Jean Claude nta shingiro bufite;

[24] Rwemeje ko urubanza RPA0440/09/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 18/02/2010 rudahindutse;
Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.