UBUSHINJACYAHA v. UWIZEYE

[Rwanda URUKIKO RW'IKIRENGA – RPA0255/13/CS (Mutashya, P.J., Rugabirwa na Karimunda, J.) 21 Mata 2017]

Amategeko mpanabyaha – Ihohotera rishingiye ku gitsina – Ihohotera rikorewe umugore – Ubwicanyi – Igabanyagihano – Uburemere bw'icyaha – Kwirengagiza uburemere bw'icyaha cyakozwe no kutacyicuza bituma urukiko rutagabanya igihano – Ihohohotera ry'abagore rishobora gutuma uwakoze icyo cyaha ahanwa by'intangarugero – Itegeko Ngenga Nº01/2012 ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 76.

Incamake y'ikibazo: Uregwa yakurikiranyweho icyaha cy'ubwicanyi, ubushinjacyaha bumurega kwica umugore we babanaga batarasezeranye, akaba yaraburanaga yemera icyaha. Urukiko Rukuru urugereko rwa Rwamagana rwasanze yiyemerera ko yari yarateguye kwica umugore we rumuhanisha igifungo cya burundu, anategekwa kwishyura amagarama y'urubanza. Yajuririye Urukiko rw' Ikirenga avuga ko urukiko rubanza rwafashe ibintu uko bitari kuko atigeze agambirira kwica umugore we, ahubwo ko yasembuwe n'ubusambanyi bwe akamwica abitewe n'umujinya, atakambira uru urukiko asaba kugabanyirizwa no gusubikirwa igihano kugirango abone uko yajya kwita kuri nyina yari abeshejeho n'abana be yasize bandagaye.

Ubushinjacyaha bwo buvugako uregwa yari asanzwe afitanye amakimbirane n'umugore we kuko yamukekeraga ubusambanyi, bugasaba urukiko kutita kubyo aburanisha by'uko yahanishwa igihano gito kugirango ajye kwita kuri nyina n'abana be, ko uregwa atakwitwaza ingaruka mbi z'icyaha yakoze agamije kuzungukiramo agabanyirizwa igihano.

Incamake y'icyemezo: 1. kutumva uburemere bw'icyaha cyakozwe no kutacyicuza bigomba kwitabwaho mu kugena igihano.

2. Kuba icyaha cyakozwe kiri mu rwego rw'ihohotera hagati y'abashakanye, uregwa akaba ashaka kumvikanisha ko hari amakosa yakozwe n'uwahohotewe yatumye yicwa, bikwiye gutuma ahanwa by'intangarugero, kuko ihohohotera ry'abagore rikwiye kwitabwaho mu kugena igihano.

3. Ubugome bukabije bwakoranywe icyaha butuma hatabaho kugabanya igihano.

Ubujurire nta shingiro bufite.
Nta gihindutse ku rubanza rwajuririwe.
Amagarama aherereye ku isanduku ya Leta.

Amategeko yashingiweho:

Itegeko Ngenga Nº01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 76.

Imanza zifashishijwe:

Angelique Lyn Lavalle v. Ubushinjacyaha (Angelique Lyn Lavalle contre sa majesté la Reine), Rwaciwe n'Urukiko rw'Ikirenga rwa Canada, 1990, 1 SCR 852. p.872

Urubanza

I. IMITERERE Y’URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rukuru, Urugereko rwa Rwamagana, Uwizeye Eustache aregwa kuba kuwa 27/11/2012, yaricishije umuhoro umugore we witwa Uwineza Médiatrice babanaga batarasezeranye. Yamutemesheje umuhoro mu mutwe no ku kaboko, amaze kumwica abwira abaturanyi ko amuhoye kuba ari mwiza, ko ubwiza bwe bukwiye kumupfira ubusa. Uwizeye Eustache yaburanye yemera icyaha.

[1] Mu rubanza RP0100/12/HC/RWG rwaciwe ku wa 21/12/2012, Urukiko rwasanze Uwizeye Eustache yiyemerera ko yari yarateguye kwica Uwineza Médiatrice, amutema inshuro eshatu mu ijosi ashaka kurivanaho. Urukiko rwamuhanishije igifungo cya burundu, anategekwa kwishyura amagarama y’urubanza.

[2] Uwizeye Eustache ntiyanyuzwe n’icyo cyemezo, ajuririra mu Rukiko rw’Ikirenga avuga ko Urukiko rubanza rwafashe ibintu uko bitari kuko atigeze agambirira kwica umugore we ahubwo ko uyu yamusembuye kubera ubusambanyi bwe, amwica abitewe n’umujinya, akaba asaba kugabanyirizwa igihano kubera ko yemera icyaha kandi agisabira imbabazi, hanyuma igihano ahawe kigasubikwa mu nyungu zo kurengera abana be basigaye bandagaye no kugirango adakomeza kubera Leta umutwaro.

[3] Iburanisha mu ruhame ryabaye ku wa 20/03/2013, Uwizeye Eustache yunganiwe na Me Mberabagabo Balinda Richard, naho Ubushinjacyaha buhagarariwe na Habineza Jean Damascène, Umushinjacyaha ku rwego rw’Igihugu.

II. IKIBAZO KIGIZE URUBANZA N’ISESENGURWA RYACYO

Kumenya niba Uwizeye Eustache yagabanyirizwa igihano kubera ko yemera icyaha akanagisabira imbabazi.

[4] Uwizeye Eustache avuga ko yatonganye na Uwineza Médiatrice, wari umugore we, bapfuye ko umugore yari amubajije impamvu atatetse ibishyimbo, babiheraho baratongana. Yasobanuye ko atari abanye neza n’umugore we kuko yari afite ingeso y’ubusambanyi ndetse ko yigeze kumufata asambana ariko umusambane we aramucika. Asoza avuga ko yemera ko yakoze icyaha ndengakamere kandi ko agisabira imbabazi, ariyo mpamvu atakambira uru Rukiko ngo ruce inkoni izamba rumuvane ku gifungo cya burundu yahanishijwe n’Urukiko Rukuru, Urugereko rwa Rwamagana kugira ngo abone uko yajya kwita kuri nyina yari abeshejeho n’abana be yasize bandagaye.

[5] Me Mberabagabo Balinda Richard, umwunganira, avuga ko nubwo Uwizeye Eustache atashoboye gufata umusambane w’umugore we, iyo ngeso y’umugore ariyo yamushoye mu cyaha yemera, asobanura uko yakoze kandi asabira imbabazi kuva yatangira gukurikiranwa n’inzego z’ubutabera kugeza imbere y’uru Rukiko. Asoza asaba uru Rukiko kwita ku myitwarire y’uwo yunganira, rukarengera inyungu z’abana ba Uwizeye Eustache bandagaye, rukamugabanyiriza igihano kugeza ku myaka icumi y’igifungo rushingiye ku ngingo ya 77, igika cya 3 n’iya 78, igika cya 1, z’Itegeko-Ngenga N^{o}01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy’amategeko ahana.

[6] Uhagarariye Ubushinjacyaha avuga ko Uwizeye Eustache yari asanzwe afitanye amakimbirane n'umugore we kuko yamukekeraga ubusambanyi, amaze kwica umugore we ajya kwa Ugiriwabo Eugénie acyuzuyeho amaraso, amubwira ko ubwiza bwa Uwineza Médiatrice ntacyo buzamumarira kuko amaze kumwica. Asaba uru Rukiko kutita k'ubyo Uwizeye Eustache aburanisha by'uko yahanishwa igihano gito kugirango ajye kwita kuri nyina no ku bana be bandagaye kuko umurongo rwatanze mu rubanza Ubushinjacyaha bwaburanaga na Mpitabakana[1] ari uko uregwa atakwitwaza ingaruka mbi z'icyaha yakoze agamije kuzungukiramo agabanyirizwa igihano, bityo rukemeza ko nta gihindutse ku mikirize y'urubanza rujuririrwa.

UKO URUKIKO RUBIBONA

[1] Ingingo ya 76 y'Itegeko-Ngenga N^{o}01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, iteganya ko "Umucamanza ubwe aha agaciro impamvu nyoroshyacyaha, ari izakibanjirije, ari izagiherekeje cyangwa izagikurikiye. Kwemeza impamvu zoroshya uburemere bw'icyaha bigomba gusobanurwa".

[2] Dosiye y'urubanza igaragaza ko Uwizeye Eustache yavugiye mu Bugenzacyaha no Bushinjacyaha ko kuva muri 2006 bashakana, nta mahoro yigeze arangwa mu rugo rwabo kuko umugore yirirwaga azerera agataha mu gicuku, akaba ari we utekera abana, umugore agakunda kumutuka ko ari imbwa. Yasobanuye ko uretse rimwe yigeze kumufata amuca inyuma muri 2007 nta bundi yigeze amufata, ariko ko yakomeje kubimukekera. Yavuze ko yemera ko ku wa 27/11/2012, ari we wiyiciye umugore, amwubikiriye yicaye ku ntebe, amutemesheje umuhoro inshuro eshatu ku ijosi, yitura hasi, ahita apfa, ko akimara kumwica yahungiye kwa Ugiriwabo Eugénie, amubwira ko amaze kwica umugore we, uyu ahuruza abaturanyi na Polisi (cotes 5-7 na 22-24).

[3] Dosiye y'urubanza irimo kandi imvugo ya Ugiriwabo Eugénie wavugiye mu Bugenzacyaha ko Uwizeye Eustache yageze iwe yitwaje umuhoro mu ntoki, ujojobaho amaraso, amubwira ko arangije kwica umugore we, nawe akibyumva ahita ahuruza Sibomana Théophile waje amwaka uwo muhoro. Naho Sibomana Théophile avuga ko yasanze Uwineza Médiatrice arambaraye mu kirambi, amaraso atemba, abajije Uwizeye Eustache icyo amuhoye asubiza ko yari arambiwe kuko yahoraga amutesha umutwe, ko nta mugabo uzongera kumutereta kuko ubwiza bwe bumuhombeye, kandi ko abana b'impanga asize bashatse babaho cyangwa nabo bagapfa (cotes 14 na 15).

[4] Dosiye irimo na none imvugo za Iragena Jeannette wavugiye mu Bugenzacyaha ko Uwizeye Eustache yamubwiye ko kuva umugore we yajya gukora mu materasi y'indinganire hashize ukwezi badahura, kandi ko hari umugabo bakorana uza iwe, umugore akamutekera bagasangira, ko rero ahisemo kumwica kugira ngo ubwiza bwe bumupfire ubusa. Naho Ndagijimana Jean Bosco yavuze ko yumvise induru ivugira mu rugo rwa Uwizeye Eustache, ahuruye asanga umugore we arambaraye hasi yapfuye, yatemwe mu mutwe no ku kuboko kandi ko Uwizeye Eustache yavuze ko icyo ahoye umugore we ari uko yari amaze kumunanira kuko hari umugabo bakorana wazaga kumusura akamutekera (cotes 10-12).

[5] Urukiko rurasanga imvugo ya Uwizeye Eustache imbere y'uru Rukiko y'uko yari yagambiriye kwica Uwineza Médiatrice kandi ko yamwicishije umuhoro yamutemesheje ku ijosi ihura n'iyo yavugiye mu Bugenzacyaha, mu Bushinjacyaha n'imbere y'Urukiko Rukuru,

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[1] Reba urubanza RPA0129/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 07/03/2014.

Urugereko rwa Rwamagana, ihura kandi n'ibyemejwe n'abatangabuhamya babajijwe muri dosiye by'uko icyo yahoye umugore we ari ukumufuhira, muri dosiye hakaba kandi harimo ifoto iri kuri cote ya 18 igaragaza nyakwigendera arambaraye mu kizenga cy'amaraso mu ruganiriro rw'inzu, iruhande rwe hari umuhoro nawo wuzuyeho amaraso, uwo muhoro kandi ukaba warafatiriwe n'Ubugenzacyaha nk'uko bigaragazwa n'inyandiko-mvugo y'ifatira yo ku wa 28/11/2012, byose byerekana ko, nk'uko byemejwe n'Urukiko Rukuru, Urugereko rwa Rwamagana mu rubanza rujuririrwa ku rupapuro rwa gatatu, Uwizeye Eustache yemera icyaha mu buryo budashidikanywaho.

[6] Urukiko rurasanga cyakora nyuma yo kwica Uwineza Médiatrice, Uwizeye Eustache yaravuze ko amuhoye ubwiza bwe, imbere y'uru Rukiko akaba yarongeye kuvuga ko yakekaga ko umugore we yamucaga inyuma nubwo atigeze amufata kandi ko umugore we yajyaga amutuka ngo ni imbwa ndetse akirirwa azerera akamusigira abana, icyo ashaka kumvikanisha akaba ari uko Uwineza Médiatrice yazize amakosa ye, iyi myumvire ikaba igaragaza ko Uwizeye Eustache atarumva uburemere bw'icyaha yakoze kandi ko atacyicuza n'ubwo avuga ko agisabira imbabazi, nabyo bikaba bigomba kwitabwaho mu kumugenera igihano gikwiranye n'icyaha yakoze.

[7] Urukiko rurasanga icyaha Uwizeye Eustache yakoze kiri mu rwego rw'ihohotera hagati y'abashakanye, na n'ubu akaba agishaka kumvikanisha ko hari amakosa Uwineza Médiatrice yakoze yatumye amwica, ibi ubwabyo bikaba bikwiye gutuma ahanwa by'intangarugero kugirango abagabo bagifite iyo myumvire bamenye ko umugore atari igikoresho cy'umugabo ahubwo ari ikiremwamuntu gifite uburenganzira, agaciro n'ubushobozi nk'ubw'umugabo bashakanye.

[8] Urukiko rurasanga kandi iby'uko ihohotera ry'abagore rikwiye kwitabwaho mu kugena igihano, byaragarutsweho n'Urukiko rw'Ikirenga rwa Canada mu rubanza hagati ya *Angélique Lyn Lavallee n'Ubushinjacyaha*, urwo Rukiko rwibutsa ko imyumvire y'uko umugabo afite uburenganzira bwo gukosora umugore we yashinze imizi mu miryango y'abantu, bituma umugore ahora yumva ko ari igikoresho cy'umugabo, akwiye guhanwa iyo atashoboye kumushimisha no kugumana nawe kugeza batandukanyijwe n'urupfu. Iyi myumvire ikaba yaragiye ituma ihohotera rikorerwa abagore riba ubwiru kandi ridakurikiranwa ngo rihanwe bihagije n'Inkiko, ndetse naho amategeko y'uburinganire agiriyeho, rikaba rigikomeza mu duce tumwe na tumwe. Igishimishije cyakora akaba ari uko imyumvire y'uko nta mpamvu n'imwe yatuma umugabo ahohotera umugore igenda itera imbere.[2]

[9] Hashingiwe ku bimaze gusobanurwa hejuru, Urukiko rurasanga, n'ubwo Uwizeye Eustache yemera icyaha mu buryo budashidikanywaho, avuga ko agisabira imbabazi, asaba ko yagabanyirizwa igihano kugirango ajye kwita kuri nyina hamwe n'abana b'imfubyi yasize, kuba atariyimbaje umuryango, inshuti, inzego z'ubuyobozi cyangwa iz'ubutabera kugirango zimukiranure n'umugore we yakekeraga kumuca inyuma, akamwubikira yicaye ku

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[2] "La notion qu'un homme a le droit de discipliner sa femme est profondément enracinée dans l'histoire de notre société. L'obligation de la femme était de servir son mari, de rester mariée à tout prix jusqu'à ce que la mort les sépare et de subir toute punition pouvant lui être infligée pour défaut de plaire à son mari. Cette attitude a eu notamment pour conséquence que la violence faite aux femmes était rarement mentionnée, rarement rapportée, rarement poursuivi et encore plus rarement punie. Bien après que la société eut cessé d'approuver officiellement la violence conjugale, on continuait, et on continue encore aujourd'hui, à la tolérer dans certains milieux. Heureusement, on constate depuis quelques années une conscience accrue qu'aucun homme n'a, dans aucune circonstance, le droit de brutaliser une femme.", Cour Suprême du Canada, *Angelique Lyn Lavallee contre Sa Majesté la Reine*, [1990] 1 SCR 852, at 872.

ntebe, akamutemesha umuhoro ku ijosi inshuro eshatu zose agamije guhita amwica nk'uko abyivugira, akabikora yirengagije inyungu zo kwirerera abana no kwita kuri nyina aburanisha imbere y'uru Rukiko nyamara izo nyungu zarashoboraga gutuma yirinda kugwa mu cyaha yakoze, bigaragaza ubugome bukabije yakoranye icyaha bukwiye gutuma atagabanyirizwa igifungo cya burundu yahanishijwe n'Urukiko Rukuru, Urugereko rwa Rwamagana kuko aricyo gikwiranye n'uburemere bw'icyaha yakoze.

III. ICYEMEZO CY'URUKIKO

[10] Rwemeje ko ubujurire bwa Uwizeye Eustache bugamije igabanyagihano nta shingiro bufite;

[11] Rwemeje ko nta gihindutse ku mikirize y'urubanza no RP0100/12/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 21/12/2012;

[12] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.