UBUSHINJACYAHA v. DUSABEYEZU

[Rwanda URUKIKO RW' IKIRENGA – 2013SC – RPAA 0014/10/CS (Mugenzi, P.J., Hatangimbabazi na Munyangeri, J.) 25 Ukwakira, 2013]

Amategeko mpanabyaha – Icyaha gikozwe n' umwana – Igabanyirizwa-bihano rishingiye ku buto kuritandukanya n' irishingiye ku kwemera icyaha – Itegeko n⁰ 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y' imanza nshinjabyaha, ingingo ya 35.

Incamake y' ikibazo: Uwajuriye yakurikiranyweho icyaha cyo gusambanya umwana w' imyaka irindwi, amusanze ku buriri aho yari aryamye. Mu bimenyetso byashingiweho ahanini harimo ko we ubwe yatangiye yemera icyaha anagisabira imbabazi. Urukiko Rwisumbuye rwa Muhanga rwamuhamije icyaha rumuhanisha igifungo cy' imyaka icumi, rusobanura ko agabanyirijwe ibihano kubera ko yakoze icyaha ari umwana. Yajuririye Urukiko Rukuru, rwemeza ko ubujurire bwe nta shingiro bufite, ajuririra Urukiko rw' Ikirenga avuga ko Urukiko rwanze kumugabanyiriiza ibihano, kandi yarajuriye yemera icyaha agisabira n' imbabazi, ari umwana utarageza imyaka 18 y' amavuko kandi ari ubwa mbere akurikiranyweho icyaha mu Nkiko.

Ubushinjacyaha buvuga ko uregwa adakwiye kugabanyirizwa ibihano kuko yagabanyirijwe bihagije ubwo yahanishwaga igifungo cy' imyaka 10 gusa aho guhanishwa igifungo cya burundu, naho kuba ihame ari iryo kudafunga umwana, ibyo bikaba aribyo ariko bigomba kurebanwa n' uburemere bw' icyaha yakoze, ngo kuba yarasambanyije umwana w' imyaka 7 kikaba gifite uburemere butuma akwiye gufungwa.

Incamake y' icyemezo: Mugihe ibihano byagabanyijwe hashingiwe ku buto, biba bitandukanye n' igabanya bihano rishingiye ku kwemera icyaha, bityo mu gihe bigaragara ko ukwemera icyaha kuzuye, bikaba byakongera kugabanywa.

Ubujurire bufite ishingiro,
Uwajuriye ahanishijwe igihano cy' imyaka irindwi,
Amagarama aherereye ku isanduku ya Leta

Amategeko yashingiweho:

Itegeko n⁰ 54/2011 ryo kuwa 14/12/2013 ryerekeye uburenganzira bw' umwana n' uburyo bwo kumurinda no kumurengera, ingingo ya 62.

Itegeko n⁰ 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y' imanza nshinjabyaha, ingingo ya 35.

Itegeko-Teka Nº 21/77 ryo kuwa 18/8/1977 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 83,3.

Nta rubanza rwifashishijwe.

Urubanza

I.IMITERERE Y’ URUBANZA

[1] Urukiko Rwisumbuye rwa Muhanga rwahamije Dusabeyezu icyaha cyo gusambanya umwana w’ imyaka irindwi (7) witwa Niyomuhoza Diane, ku buriri aho yari aryamye, rumuhanisha igifungo cy’ imyaka icumi (10), rusobanura ko agabanyirijwe ibihano kubera ko yakoze icyaha ari umwana. Yajuririye Urukiko Rukuru, rwemeza ko ubujurire bwe nta shingiro bufite.

[2] Dusabeyezu yajuririye Urukiko rw’ Ikirenga avuga ko Urukiko rwanze kumugabanyiriza ibihano, kandi yarajuriye yemera icyaha agisabira imbabazi, ari umwana utaragera ku myaka 18 kandi ari n’ ubwa mbere akurikiranyweho icyaha mu nkiko, asaba ko Urukiko rwamugabanyiriza rushingiye ku ngingo ya 83 agace ka 3 y’ Igitabo cy’ amategeko ahana ibyaha.

[3] Urubanza rwaburanishijwe kuwa 18/09/2013, Dusabeyezu yunganiwe na Me Kayiranga Callixte, Ubushinjacyaha buhagarariwe na Mutayoba Alphonse.

II.IKIBAZO KIGIZE URUBANZA N’ ISESENGURA RYACYO

Kumenya niba Dusabeyezu yagabanyirizwa ibihano hashingiwe ku kwemera icyaha kwe.

[4] Dusabeyezu n’ umwunganira bavuga ko Urukiko Rukuru rwanze kumugabanyiriza ibihano, kandi yarajuriye yemera icyaha agisabira imbabazi, ari umwana afite imyaka 15 gusa kandi ari n’ ubwa mbere akurikiranyweho icyaha mu nkiko, asaba ko Urukiko rwamugabanyiriza rushingiye ku ngingo ya 83 agace ka 3 y’ Igitabo cy’ amategeko ahana ibyaha yakurikizwaga igihe icyaha cyakorwaga, Dusabeyezu akaba yagabanyirizwa kugeza ku gifungo cy’ imyaka ibiri (2).

[5] Bavuga kandi ko imyaka itandatu amaze muri gereza afunze ari myinshi, akaba akwiye kurekurwa hakurikijwe ingingo ya 62 y’ Itegeko ryerekeye uburenganzira bw’ umwana bwo kumurinda no kumurengera, iteganya ko gufungura umwana by’ agateganyo ari ihame, kurangiza igihano cyose yahawe akaba ari ibidasanzwe.

[6] Uhagarariye Ubushinjacyaha we avuga ko Dusabeyezu adakwiye kugabanyirizwa ibihano kuko yagabanyirijwe bihagije ubwo yahanishwaga igifungo cy’ imyaka 10 gusa aho guhanishwa igifungo cya burundu, naho kuba ihame ari iryo kudafunga umwana, ibyo bikaba aribyo ariko bigomba kurebanwa n’ uburemere bw’ icyaha yakoze, icyo kuba Dusabeyezu yarasambanyije umwana w’ imyaka 7 kikaba gifite uburemere butuma akwiye gufungwa.

[7] Urukiko rurasanga kuba Dusabeyezu yaragabanyirijwe ibihano hashingiwe ku buto bwe, ari impamvu itandukanye n’ iyo kuba yagabanyirizwa ibihano hashingiwe ku kwemera icyaha guteganywa n’ ingingo ya 35 y’ Itegeko n^0 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y’ imanza z’ inshinjabyaha. Bityo, hashingiwe kuri ukwo

kwemera icyaha kwe bigaragara ko kwuzuye, no kuri iyo ngingo y' itegeko, akaba yakongera kugabanyirizwa, agahanishwa igifungo cy' imyaka irindwi.

III.ICYEMEZO CY'URUKIKO

[8] Rwemeje ko ubujurire bwa Dusabeyezu Damascène bufite ishingiro;

[9] Rumuhanishije igifungo cy' imyaka irindwi;

[10] Ruvuze ko imikirize y' urubanza rwajuririwe ihindutse ku byerekeye ibihano;

[11] Rutegetse ko amagarama y' urubanza aherera ku isanduku ya Leta.