UBUSHINJACYAHA v. UZABAKIRIHO N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RPAA0O21/14/CS-RPAA0022/14/CS (Mukanyundo, P.J., Hitiyaremye na Munyangeri, J.) 13 Ukwakira 2017]

Amategeko Mpanabyaha – Igabanyagihano – Impamvu nyoroshyacyaha – Umucamanza niwe uha agaciro impamvu nyoroshyacyaha – Igihe icyaha cyakoranywe ubugome bukabije byaba impamvu yo kutagabanyirizwa igihano – Itegeko Ngenga N°01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 71.

Amategeko Mpanabyaha – Uburyozwacyaha bw'icyitso – Kuba byonyine uregwa nk'icyitso yari aho icyaha cyakorewe kabone nubwo we ntakintu gifatika yakoze, bitera akanyabugabo uwari urimo gukora icyaha, iyo myitwarire imushyira mu rwego rw'icyitso cy'uwakoze icyaha – Itegeko Ngenga N°01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 98.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Muhanga, Ubushinjacyaha bukurikiranyeho abaregwa icyaha cy'ubwicanyi buvuga ko bakoreye Nteziryayo Anastase mu ijoro ryo ku itariki ya 06/12/2013 bamutemesheje umuhoro ku gikanu, ku maboko no mu mugongo kugeza apfuye, iperereza rigitangira abaregwa bombi bahise bemera icyaha. Urukiko rwaciye urubanza rwemeza ko abaregwa bahamwa n'icyaha, ruhanisha buri wese igifungo cya burundu rutabagabanyirije igihano n'ubwo bari batangiye bemera icyaha, rushingiye ku kuba Ntabanganyimana yarakoze icyaha yabiteguye, naho Uzabakiriho ntiyagabanyirizwa igihano kuko yageze mu Rukiko agahindura imvugo ntavugishe ukuri.

Abaregwa bombi bajuririye Urukiko Rukuru, Urugereko rwa Nyanza, rwemeza ko n'ubwo Ntabanganyimana yemera icyaha adakwiye kugabanyirizwa igihano kuko ashaka gukingira ikibaba umuvandimwe we Uzabakiriho amukuraho icyaha kandi hari ibimenyetso bigaragaza ko yagikoze, ruhamishaho igifungo cya burundu buri wese yari yarahawe n'Urukiko Rwisumbuye rwa Muhanga.

Icyo cyemezo nacyo nticyashimishije abaregwa maze barongera bajuririra Urukiko rw'Ikirenga basobanurako Ntabanganyimana yasangiye inzoga na nyakwigendera mu kabari nyuma baza kurwana maze kubera umujinya Ntabanganyimana yari afite yagiye i muhira kubyutsa murumuna we Uzabakiriho amusaba kumuhereza ngo ajye kwihorera undi nawe arabyemera, nyakwigendera ababonye yarirutse agwa ahantu h'ikizenga maze Ntabanganyimana amutema ku gikanu no mu mugongo aramwica.

Ntabanganyimana asaba kugabanyirizwa igihano avuga ko yaburanye yemera icyaha ariko inkiko zabanje zimuha igihano kirekire, naho Uzabakiliho we avuga ko inkiko yaburaniyemo zirengagije ibisobanuro yatanze by'uko icyaha cyakozwe na Ntabanganyimana, ariko ko zamuhamije icyaha zidakoze iperereza, ariko imbere y'uru rukiko yemeye ko yabaye icyitso cya mukuru we.

Ubushinjacyaha bwo buvugako kuba Ntabanganyimana yaragiye kubyutsa murumuna we bakajyana yabona uwo yari agiye gutega yirutse akamwirukaho akamutema akaboko, ijosi n'umugongo atarisubiraho kugeza ubwo amwishe, ibi bikaba bigaragaza ko yari yatekereje neza ku cyaha yakoze mbere hose (préméditation), iyi myitwarire akaba ari impamvu nkomezacyaha, naho kuri Uzabakiriho buvugako yagize uruhare mu rupfu rwa nyakwigendera nk'umufatanyacyaha wa mukuru we, kubera ko yatemwe akarinda yicwa ari aho arebera (participation passive), ibi bikaba bigaragara nko kumutera

akanyabugabo ubushinjacyaha bukaba bwarasabaga Urukiko rw'Ikirenga ko rwahamishaho imikirize y'Urukiko Rukuru.

Incamake y'icyemezo: 1. Nubwo Ntabanganyimana yemera icyaha aregwa ntiyagabanyirizwa igihano bitewe n'ubugome bukabije yakoranye icyaha kuko umucamanza adategetswe kukigabanya kuwemeye icyaha mu gihe asanze cyarakoranywe ubugome bukabije.

2. Kuba byonyine uregwa nk'icyitso yari aho icyaha cyakorewe kabone nubwo we ntakintu gifatika yakoze, byateye akanyabugabo uwari urimo gukora icyaha, kuko iyo atemera kumuherekeza yashoboraga gucika intege ntakore icyaha, ibi binatuma kandi uwahohotewe adashobora kwirwanaho kuko yabonaga atahangana nabo bombi, iyo myitwarire imushyira mu rwego rw'icyitso cy'uwakoze icyaha.

3. Nubwo Uzabakiriho yabaye icyitso mu rupfu rwa Nteziryayo, uruhare rwe ntirungana nurwa Ntabanganyimana wateguye umugambi wo kwica akanabikorana ubugome bukabije, kubera iyo mpamvu akaba agomba guhanishwa igifungo cy'imyaka 10.

Ubujurire bwa Ntabanganyimana nta shingiro bufite;
Ubujurire bwa Uzabakiriho bufite ishingiro kuri bimwe;
Basonewe kwishyura amagarama.

Amategeko yashingiweho:
Itegeko Ngenga N°01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 71,78, 98, 99.

Imanza zifashishijwe:
Ubushinjacyaha v. Nshutirakiza Narcisse, RPA0047/11/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 27/03/2015.

Inyandiko z'abahanga zifashishijwe:
Jean Pradel, Droit Pénal Général, 20ème édition, P. 405.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Muhanga, Ubushinjacyaha bukurikiranyeho Uzabakiriho Bernard na Ntabanganyimana Félicien icyaha cy'ubwicanyi buvuga ko bakoreye Nteziryayo Anastase mu ijoro ryo ku itariki ya 06/12/2013 bamutemesheje umuhoro ku gikanu, ku maboko no mu mugongo kugeza apfuye, iperereza rigitangira bombi bahita bemera icyaha.

[2] Urukiko rwaciye urubanza RP0534/13/TGI/MHG ku itariki ya 09/01/2014 rwemeza ko abaregwa bahamwa n'icyaha, ruhanisha buri wese igifungo cya burundu rutabagabanyirije igihano n'ubwo bari batangiye bemera icyaha. Urukiko rwavuze ko Ntabanganyimana Félicien adashobora

kugabanyirizwa kubera ko yakoze icyaha yabiteguye, naho Uzabakiriho Bernard ntiyagabanyirizwa igihano kuko yageze mu Rukiko agahindura imvugo ntavugishe ukuri.

[3] Ntabanganyimana Félicien na Uzabakiriho Bernard bajuririye Urukiko Rukuru, Urugereko rwa Nyanza, ruca urubanza RPA0075/014/HC/NYA-RPA0083/014/HC/NYA ku itariki ya 20/03/2014, rwemeza ko n'ubwo Ntabanganyimana Félicien yemera icyaha adakwiye kugabanyirizwa igihano kuko ashaka gukingira ikibaba umuvandimwe we Uzabakiriho Bernard amukuraho icyaha kandi hari ibimenyetso bigaragaza ko yagikoze, ruhamishaho igifungo cya burundu buri wese yari yarahawe n'Urukiko Rwisumbuye rwa Muhanga.

[4] Icyo cyemezo nacyo nticyashimishije Ntabanganyimana Félicien na Uzabakiriho Bernard bajuririra Urukiko rw'Ikirenga; Ntabanganyimana Félicien asaba kugabanyirizwa igihano avuga ko yaburanye yemera icyaha ariko inkiko zabanje zimuha igihano kirekire, Uzabakiriho Bernard we avuga ko inkiko yaburaniyemo zirengagije ibisobanuro yatanze by'uko icyaha cyakozwe na Ntabanganyimana Félicien, ariko ko zamuhamije icyaha zidakoze iperereza, usibye ko ageze imbere y'uru Rukiko yemeye icyaha cyo kuba yarabaye icyitso cya mukuru we.

[5] Urubanza rwaburanishijwe mu ruhame ku itariki ya 18/09/2017 ababuranyi bitabye, Ntabanganyimana Félicien yunganiwe na Me Dushimire Jeannette, Uzabakiliho Bernard yunganiwe na Me Nzabarantumye Augustin, Ubushinjacyaha buhagarariwe na Munyaneza Nkwaya Eric, Umushinjacyaha ku rwego rw'Igihugu.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

A. Ku birebana na Ntabanganyimana Félicien.

Kumenya niba Ntabanganyimana Félicien yemera icyaha aregwa mu buryo budashidikanywaho ku buryo byamubera impamvu nyoroshyacyaha ituma agabanyirizwa igihano.

[6] Ntabanganyimana Félicien avuga ko icyo anenga urubanza yajuririye ari uko yaburanye yemera icyaha kuva agifatwa, nyamara inkiko zikabirengaho zikamuha igihano kiremereye nta kumugabanyiriza, akaba asaba guhabwa igihano cyoroheje kuko icyo yahawe gikabije kuremera kandi itegeko riteganya ko yashoboraga kugabanyirizwa kugeza ku gifungo cy'imyaka icumi (10).

[7] Ku birebana n'imikorere y'icyaha, Ntabanganyimana Félicien asobanura ko yasangiye inzoga na nyakwigendera Nteziryayo Anastase mu kabari, nyuma bakaza kurwana ariko abari aho bakabakiza. Avuga ko kubera umujinya yari afite awutewe n'ibyo nyakwigendera yari yamukoreye, yagiye imuhira kubyutsa murumuna we Uzabakiriho Bernard amubwira ko hari umuntu bamaze kurwana, ko agiye kwihorera, amusaba ko amuherekeza undi arabyemera. Akomeza avuga ko nyakwigendera yabakubise amaso akiruka, Ntabanganyimana Félicien amwirukaho, asimbutse ahantu h'ikizenga agwa mu mazi nawe amusimbukaho, nyakwigendera amufashe akaboko undi aragatema ararekura, hanyuma amutema ku gikanu no mu mugongo aramwica, asubira inyuma aho yari yasize murumuna we Uzabakiriho Bernard amubwira ko uwo bari bafitanye amakimbirane ari we Nteziryayo Anastase amaze kumwica, ko ariko atagomba kuzagira uwo abibwira. Arangiza avuga ko icyaha cyo kwica Nteziryayo Anastase yagikoze wenyine, ko uretse kuba murumuna we yaremeye kumuherekeza, ari nta rundi ruhare yakigizemo uretse kuba yaramenye ko cyakozwe akagihishira.

[8] Me Dushimire Jeannette avuga ko mu nkiko zabanje Ntabanganyimana Félicien yagiye akingira ikibaba murumuna we, ariko muri uru Rukiko akaba avugisha ukuri kuko agaragaza ko habayeho ubufatanyacyaha aho yemeye kumuherekeza, bityo akaba akwiye kugabanyirizwa igihano.

[9] Uhagarariye Ubushinjacyaha avuga ko ubujurire bwa Ntabanganyimana Félicien nta shingiro bufite kubera ko icyaha aregwa yagiteguye agamije kwihorera nyuma y'imirwano yari yagiranye na nyakwigendera. Avuga ko ibyo Ntabanganyimana Félicien ashaka kugaragaza ko yasembuwe (provocation) bidakwiye guhabwa agaciro, ko mu kubisuzuma neza, Urukiko rwazifashisha urubanza RPA0274/08/CS rw'Ubushinjacyaha na Mbanzamihigo Jean Pierre rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 07/01/2011, aho Urukiko rwashingiye ku byanditswe n'umuhanga mu mategeko Jean Claude Soyer ku byerekeye ukwirwanaho n'ubusembure (légitime défense et provocation), akaba avuga ko iyo uwasembuwe akoze icyaha impitagihe aba yihoreye, mu yandi magambo aba yihaniye aho kwiyambaza ubutabera.

[10] Uhagarariye Ubushinjacyaha akomeza avuga ko, ku birebana n'uru rubanza, Ntabanganyimana Félicien nawe yihoreye kuko hashize umwanya munini nyuma yo kurwana na Nteziryayo Anastase atarabasha kwigarura. Avuga ko ibi bisobanurwa no kuba Ntabanganyimana Félicien yaragiye kubyutsa murumuna we bakajyana, yabona uwo yari agiye gutega yirutse akamwirukaho akamutema akaboko, ijosi n'umugongo atarisubiraho kugeza ubwo amwishe, ibi bikaba bigaragaza ko yari yatekereje neza ku cyaha yakoze mbere hose (préméditation), iyi myitwarire akaba ari impamvu nkomezacyaha, ari yo mpamvu asaba ko Urukiko rw'Ikirenga rwahamishaho imikirize y'Urukiko Rukuru.

UKO URUKIKO RUBIBONA

[11] Ingingo ya 71 y'Itegeko-Ngenga N°01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, iteganya ko "Umucamanza atanga igihano akurikije uko uhanwa yakoze icyaha, ashingiye ku mpamvu zabimuteye, uko uwakoze icyaha yari asanzwe yitwara, uburyo icyaha cyakozwemo n'imibereho ye bwite".

[12] Inyandiko zigize dosiye y'urubanza zigaragaza ko Ntabanganyimana Félicien agifatwa yemeye ko ari we wishe Nteziryayo Anastase amutemye, imbere y'uru Rukiko asobanura ko yabonye nyakwigendera aho bari bamutegeye ariruka, undi amwirukaho agwa mu kizenga amusangamo, amutemagura amaboko, igikanu n'umugongo kugeza amwishe.

[13] Urukiko rw'Ikirenga rurasanga icyaha cy'ubwicanyi Ntabanganyimana Félicien yakoreye Nteziryayo Anastase yaragikoranye ubugome bukabije nk'uko na raporo ya muganga ndetse n'amafoto y'umurambo wa nyakwigendera biri muri dosiye bigaragaza ko yishwe atemaguwe umubiri wose kugeza n'aho aciwe ikiganza, mu kumuha igihano ibyo bikaba bigomba kwitabwaho nk'uko biteganywa n'ingingo ya 71 y'Itegeko-Ngenga N°01/2012 ryavuzwe haruguru.

[14] Urukiko rw'Ikirenga rurasanga, n'ubwo Ntabanganyimana Félicien yemera icyaha aregwa, umucamanza adategetswe kugabanya igihano ku wemeye icyaha mu gihe asanga icyaha cyarakoranwe ubugome bukabije nk'uko Ntabanganyimana Félicien yagikoze. Uyu murongo ni nawo wafashwe n'uru Rukiko mu rubanza RPA0047/11/CS rw'Ubushinjacyaha na Nshutirakiza Narcisse rwaciwe ku itariki ya 27/03/2015, aho uyu uregwa yaburanye yemera icyaha, ariko Urukiko rukanga kumugabanyiriza

igihano kubera ubugome n'agashinyaguro yakoresheje mu kwica umugore we amutemaguye ibice bitandukanye by'umubiri[1].

[15] Hashingiwe ku mategeko no ku bisobanuro bimaze gutangwa, Urukiko rw'Ikirenga rurasanga ubujurire bwa Ntabanganyimana Félicien nta shingiro bufite, bityo igifungo cya burundu yakatiwe n'Urukiko Rukuru, Urugereko rwa Nyanza, mu rubanza RPA0075/14/HC/NYA - RPA0083/14/HC/NYA rwaciwe ku itariki ya 09/01/2014 kikaba kidahindutse.

B. Ku byerekeye Uzabakiriho Bernard

Kureba uruhare Uzabakiriho Bernard yagize mu iyicwa rya Nteziryayo Anastase.

[16] Uzabakiriho Bernard avuga ko yemera kuba yaragize uruhare rw'ubufatanyacyaha mu rupfu rwa nyakwigendera Nteziryayo Anastase akaba abisabira imbabazi. Asobanura ko Ntabanganyimana Félicien yaje saa mbiri z'ijoro yakomeretse yavuyemo n'iryinyo akamubyutsa amubwira ngo naze bagende, amubajije aho bagiye amubwira ko hari umuntu umukubise akaba agiye kwihorera ni uko barajyana. Akomeza avuga ko bageze mu nzira bakabona umuntu, yikanze ariruka, Ntabanganyimana Félicien amwirukaho aramutema agaruka amubwira ko amwishe ariko amubuza kubivuga, nawe yiyemeza kubikira ibanga mukuru we.

[17] Akomeza avuga ko yicuza kuba yaraherekeje mukuru we kandi amaze kumubwira ko kwihorera, ko iyo atemera kumuherekeza n'undi atari kugenda, ko ariko byatewe n'amarangamutima y'umuvandimwe we wari uje yakomeretse kandi yagiye ari muzima, ndetse akaba yarumvaga ko n'ubwo amubwiye ko agiye kwihorera, nawe yashoboraga kuhagwa.

[18] Me Nzabarantumye Augustin, umwunganira, avuga ko Uzabakiriho Bernard ntacyo yakoze atagombaga gukora kuko yabonye mukuru we Ntabanganyimana Félicien afashe umupanga agakeka ko ashobora guhura n'igitero, niko kwemera ko bajyana kuko yumvaga agomba kumuherekeza kugira ngo hagize ikimubaho amutabare. Avuga ko, kuba yemera ko yavuye mu rugo agaherekeza mukuru we azi neza ko agiye mu gikorwa cy'ubugizi bwa nabi, urwo ari uruhare rutaziguye yagize mu rupfu rwa nyakwigendera Nteziryayo Anastase, bityo bikaba byamubera impamvu ituma agabanyirizwa igihano.

[19] Uhagarariye Ubushinjacyaha avuga ko Uzabakiriho Bernard yagize uruhare mu rupfu rwa Nteziryayo Anastase nk'umufatanyacyaha wa mukuru we Ntabanganyimana Félicien, kubera ko yatemwe akarinda yicwa ari aho arebera (participation passive), ibi bikaba bigaragara nko kumutera akanyabugabo nk'uko byemejwe mu rubanza rwa Kayishema Clément na Ruzindana Obed rwaciwe ku itariki ya 01/08/2001 n'Urukiko Mpuzamahanga Mpanabyaha rwashyiriweho u Rwanda rwakoreraga Arusha.

UKO URUKIKO RUBIBONA

[20] Ingingo ya 78, 1° y'Itegeko-Ngenga N°01/2012 ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, iteganya ko "iyo hari impamvu zoroshya uburemere bw'icyaha, igihano cyo gufungwa burundu cyangwa cya burundu y'umwihariko gisimbuzwa igihano cy'igifungo kitari munsi y'imyaka icumi (10)."

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[1] Urukiko rw'Ikirenga, Icyegeranyo cy'ibyemezo by'inkiko, V. 3, Nyakanga 2016, P. 189-194.

[21] Ingingo ya 98, igika cya mbere, agace ka 3, Itegeko-Ngenga rimaze kuvugwa, iteganya ko icyitso ari uwafashije uwakoze icyaha mu byagiteguye, mu byoroheje imikorere yacyo cyangwa mu byakinonosoye kandi yarabikoze abizi, cyangwa uwoheje uwakoze icyaha, naho ingingo ya 99 y'iriyo Tegeko-Ngenga, igateganya ko icyitso kidahanwa kimwe n'uwakoze icyaha cyangwa uwafatanyije na we kugikora, keretse igihe itegeko ribiteganya ukundi cyangwa umucamanza abona ko uruhare rw'icyitso mu gukora icyaha rungana cyangwa ruruta urwa gatozi.

[22] Umuhanga mu mategeko Jean Pradel agaragaza ko hari ubwo kuba byonyine uregwa nk'icyitso yari aho icyaha cyakorewe, bitera akanyabugabo bigatuma abagizi ba nabi basohoza umugambi wabo cyangwa bigaca intege uhohoterwa bigatuma adashobora kuba yakwirwanaho. Kuba rero uregwa yari ari aho icyaha cyakorewe, kabone n'ubwo we nta kintu yakoze gifatika, kuba iruhande rw'uwakoze icyaha nyirizina ubwabyo ari inkunga ikomeye, mu kumukurikirana bikaba bigomba kwitabwaho *(... Un auteur avait noté à juste titre qu'il peut se faire qu'à elle seule la présence sur les lieux du prévenu….ait pour résultat d'accroître l'audace des malfaiteurs ou d'affaiblir la résistance de leur victime. Cette attitude physiquement passive comporte alors une aide psychologique positive et efficace qui doit être prise en considération au même titre)*[2].

[23] Imbere y'uru Rukiko, Uzabakiriho Bernard ubwe yiyemerera ko yajyanye na mukuru we Ntabanganyimana Félicien amaze kumubwira ko hari umuntu bamaze kurwana kandi ko agomba kwihorera, agafata umupanga undi akamukurikira, bahuye na Nteziryayo Anastase abakubise amaso ari babiri agira ubwoba ariruka, Ntabanganyimana Félicien amwirukaho aramutemagura Uzabakiriho Bernard ntiyagira icyo abikoraho. Urukiko rw'Ikirenga rurasanga iyi myitwarire yarateye akanyabugabo mukuru we mu gukora icyaha, kuko iyo atemera kumuherekeza yashoboraga gucika intege ntajye kwica nyakwigendera, cyangwa se yanagenda nyakwigendera akaba yarashoboraga kwirwanaho. Ariko si ko byagenze kuko yababonye ari babiri agira ubwoba ariruka kubera ko yabonaga atashobora guhangana nabo bombi. Iyi myitwarire imaze kuvugwa iramushyira mu rwego rw'icyitso cy'uwakoze icyaha nk'uko biteganywa n'ingingo ya 98, igika cya mbere, agace ka 3, y'Itegeko-Ngenga N°01/2012 ryo kuwa 02/05/2012 ryavuzwe haruguru.

[24] Urukiko rw'Ikirenga rurasanga ariko, n'ubwo Uzabakiriho Bernard yabaye icyitso mu rupfu rwa Nteziryayo Anastase, uruhare rwe rutangana n'urwa Ntabanganyimana Félicien wateguye umugambi wo kwica nyakwigendera akanabikorana ubugome bwinshi nk'uko byasobanuwe haruguru, cyane cyane ko abyemera akanabisabira imbabazi, bityo rero, hashingiwe ku ngingo ya 78,1° n'iya 99 z'Itegeko-Ngenga N°01/2012 ryavuzwe haruguru, Uzabakiriho Bernard akaba agomba guhanishwa igifungo cy'imyaka icumi (10).

III. ICYEMEZO CY'URUKIKO

[25] Rwemeje ko ubujurire bwa Ntabanganyimana Félicien nta shingiro bufite;

[26] Rwemeje ko ubujurire bwa Uzabakiriho Bernard bufite ishingiro kuri bimwe;

[27] Rwemeje ko igifungo cya burundu Ntabanganyimana Félicien yahanishijwe n'Urukiko Rukuru, Urugereko rwa Nyanza, kidahindutse;

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[2] Jean Pradel, Droit Pénal Général, 20ème édition, P. 405.

[28] Rwemeje ko imikirize y'urubanza RPA0075/14/HC/NYA-RPA0083/14/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, ihindutse ku birebana na Uzabakiriho Bernard;

[29] Ruhanishije Uzabakiriho Bernard igifungo cy'imyaka icumi (10);

[30] Rutegetse ko amagarama y'ibyakozwe muri uru rubanza aherera ku isanduku ya Leta.