GAHENDA v. RUTSINDURA (2)

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RP 00005/2017/CS (Mukandamage, P.J., Muhumuza na Gakwaya, J.) 09 Werurwe 2018]

Amategeko agenga ibimenyetso – Itangwa ry'ibimenyetso – Ibimenyetso bishobora gutangwa aho urubanza rwaba rugeze hose, icyangombwa ni uko ushinjwa abyireguraho – Itegeko Nº15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 119.

Incamake y'ikibazo: Bigirimana Cédric yakurikiranywe n'ubushinjacyaha mu rukiko rw'ibanze rwa Nyarugunga ku cyaha cy'inyandiko mpimbano, buvuga ko yiyitirira kuba umuhungu wa Rutsindura Alphonse wazize jenoside yakorewe Abatutsi mu mwaka wa 1994 maze yiyita Rutsindura Alexis, ibi byose akaba yarabikoze agamije kwegukana umutungo wa nyakwigendera, abeshya ko yari se. Urukiko rw'Ibanze rwa Nyarugunga rwamuhamije icyaha rumuhanisha igifungo cy'imyaka ibiri runamutegeka guha indishyi Gahenda waziregerega.

Uregwa ntiyishimiye imikirize yurwo rubanza maze arujuririra mu Rukiko Rwisumbuye rwa Nyarugenge avugako urukiko rubanza rwanze gukoresha ikizamini cya ADN hagati ye nabiswe ababyeyi be bo mu Burundi ndetse ko n'ubuhamya rwashingiyeho buvuguruzanya, maze urwo rukiko rumugira umwere rushingiye ku kuba rwarasanze imvugo z'abatangabuhamya zashingiweho ku rwego rwa mbere zidahagije kugirango uregwa ahamwe n'icyaha, rwanashingiye

kandi no ku kuba ibindi bimenyetso byatanzwe birimo amafoto, indangamanota, *attestations de frequentation*, raporo yakozwe n'umushinjacyaha wa Repubulika y'i Burundi, Parquet ya Muramvya n'imvugo zabiswe ababyeyi ba Bigirimana bifite inenge, urwo Rukiko rwasanze kandi ikizami cya ADN nacyo cyakozwe nta gaciro cyahabwa kuko cyakozwe mu buryo bunyuranyije n'amategeko.

Nyuma y'icibwa ry'urwo rubanza, Gahenda yaje kwiyambaza urwego rw'umuvunyi avugako rwabayemo akarengane maze urwo rwego rwandikira perezida w'Urukiko rw'Ikirenga rusaba ko rwasubirwamo ku mpamvu z'akarengane kuberako mu icibwa ryarwo hirengagijwe ibimenyetso bigaragarira buri wese,birimo raporo y'umushinjacyaha w'u Burundi n'ikimenyetso cya ADN, nyuma yaho kandi bitegetswe n' Urukiko rw'ikirenga mu rubanza mbonezamubano hagati ya Gahenda na Bigirimana Cédric wiyitaga Rutsindura Alexis hakaba haraboneste ikimenyetso simusiga nacyo cya ADN gishimangira ko Bigirimana ari mwene Nahishakiye. Perezida w'Urukiko rw'Ikirenga yafashe icyemezo cy'uko urwo rubanza rwasabirwaga gusubirwamwo ku mpamvu z'akarengane rwandikwa kugirango ruzongere ruburanishwe.

Urubanza rwaburanishijwe ubushinjacyaha bwitabye naho Bigirimana we atitabye ariko yarahamagawe ahatazwi mu buryo bukurikije amategeko, Gahenda yagaragazaga ko hari ingingo z'amategeko zirengagijwe ku buryo ubujurire bwa Bigirimana butagombaga kwakirwa n'Urukiko Rwisumbuye, yavugaga kandi ko urubanza rwaciwe n'inteko y'abacamanza bataruburanishije ndetse hirengagizwa n'ibimenyetso.

Incamake y’icyemezo: 1. Gahenda ntakwiye kuvuga ko yarenganyijwe n’ icyemezo gihuza imanza kandi ataracyijuririye.

2. Ibimenyetso bishobora gutangwa aho urubanza rwaba rugeze hose, icyangombwa ni uko ushinjwa abyireguraho, bityo ubushinjacyaha bwari bwemerewe gutanga raporo ya muganga kuri “Test ADN”.

3. Imvugo z’abatangabuhamya, raporo y’iperereza i Burundi n’ikizamini cya ADN cyakorewe mu Budage incuro ebyiri, ni ibimenyetso bidashidikanywaho bititaweho n’Urukiko Rwisumbuye rwa Nyarugenge.

4. Gahenda akwiye guhabwa indishyi z’akababaro za 100Frw y’umugenzo (symbolique) asaba kuko bigaragara ko Bigirimana (wiyita Rutsindura Alexis) yamuteje akarengane.

Ikirego cyo gusubirishamo urubanza ku mpamvu z’akarengane gifite ishingiro;
Urubanza rwaciwe n’Urukiko rw’Ibanze rugumanye agaciro karwo;
Amagarama y’urubanza aherereye ku isanduku ya Leta.

Amategeko yashingiweho:

Itegeko Ngenga Nº51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n’ububasha by’inkiko, ingingo 156.

Itegeko Nº13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y’imanza z’inshinjabyaha, ingingo ya 164, 1º .

Itegeko Nº30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y’imanza z’inshinjabyaha, ingingo ya 175, igika cya kabiri.

Itegeko Nº15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 65, 119
Itegeko -Teka Nº21/77 ryo kuwa 18/07/1977 rishyiraho Igitabo cy'amategeko ahana ibyaha, ingingo ya 206.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw' Ibanze rwa Nyarugunga, Ubushinjacyaha bukurikiranyeho Rutsindura Alexis alias Bigirimana Cédric icyaha cy'inyandiko mpimbano, buvuga ko yagikoze mu bihe bitandukanye guhera mu mwaka wa 2008, aho yiyitirira umuntu witwa Rutsindura Alphonse wazize jenoside yakorewe Abatutsi mu mwaka wa 1994, kandi we yitwa Bigirimana Cédric, ibi byose akaba yarabikoze agamije kwegukana umutungo wa nyakwigendera Rutsindura Alphonse nawe wazize jenoside, abeshya ko yari Se.

[2] Mu rubanza RP0075/10/TB/NYRGA rwo ku wa 06/05/2011, Urukiko rw'Ibanze rwa Nyarugunga, rwemeje ko Bigirimana Cédric (wiyita Rutsindura Alexis) ahamwa n'icyaha akurikiranyweho, kubera ko mu Bushinjacyaha yemeye ko yavuye i Burundi yitwa Bigirimana Cédric, kandi hari n'ubuhamya bwa Kalisa Célestin wemeje ko yibaruje mu Mudugudu wa Kanogo - Rwimbogo - Nyarugunga - Kicukiro amubwira ko yitwa Bigirimana Cédric, n'ubuhamya bwa Uwingabire Angélique, Munezero Raïssa n'abandi bemeje ko atari Rutsindura Alexis mwene Rutsindura Alphonse, maze

rumuhanisha igifungo cy'imyaka ibiri (2), rumutegeka guha Gahenda Bienvenu, umuvandimwe wa Rutsindura Alphonse waregeye indishyi, izingana na 500.000Frw no gutanga amagarama y'urubanza.

[3] Rutsindura Alexis alias Bigirimana Cédric, yajuririye Urukiko Rwisumbuye rwa Nyarugenge avuga ko Urukiko rw'Ibanze rwa Nyarugunga rwanze gukoresha ikizamini cya ADN hagati ye n'abiswe ababyeyi be bo mu Burundi, ko kandi n'ubuhamya rwashingiyeho buvuguruzanya, maze urwo rukiko, mu rubanza RPA0138/11/TGI/NYGE - RPA0260/11/TGI/NYGE rwaciwe ku wa 14/11/2013, rwemeza ko Rutsindura Alexis adahamwa n'icyaha cy'inyandiko mpimbano, ko ari umwere, kuko rwasanze imvugo z'abatangabuhamya babajijwe n'Ubushinjacyaha zashingiweho mu icibwa ry'urubanza ku rwego rwa mbere zidahagije kugira ngo hemezwe ko Rutsindura Alexis yakoze icyaha cy'inyandiko mpimbano. Urukiko rwasanze kandi n'ibindi bimenyetso byatanzwe birimo amafoto, indangamanota na "*attestations de fréquentation*" na raporo yakozwe na "*Procureur de la République du Burundi, Parquet de* Muramvya" kimwe n'imvugo z'abiswe ababyeyi ba Bigirimana n'izindi bifite inenge. Ku byerekeye ikizamini cya ADN cyakozwe ku wa 11/01/2012, Urukiko rwasanze nta gaciro nacyo cyahabwa kuko cyakozwe mu buryo budakurikije amategeko.

[4] Nyuma y'icibwa ry'urwo rubanza Gahenda Bienvenu yiyambaje Urwego rw'Umuvunyi avuga ko rwabayemo akarengane, maze ku wa 09/07/2015 urwo Rwego rwandikira Perezida w'Urukiko rw'Ikirenga rusaba ko urubanza RPA0138/11/TGI/NYGE-RPA0260/11/TGI/NYGE rwasubirwamo kuko rugaragaramo akarengane, kubera ko

Urukiko Rwisumbuye rwa Nyarugenge rwirengagije ibimenyetso bigaragarira buri wese, nko kuba rutarahaye agaciro raporo ya *Procureur* w'u Burundi n'ikimenyetso cy'ikizamini cya ADN, ko kandi nyuma y'imanza habonetse ikimenyetso simusiga cy'ikizamini cya ADN bitegetswe n'Urukiko rw'Ikirenga mu rubanza RCAA0020/14/CS rwaburanwaga hagati ya Rutsindura Alexis alias Bigirimana Cédric na Gahenda Bienvenu, nacyo gishimangira ko Bigirimana Cédric ari mwene Nahishakiye Jean Berchmas.

[5] Ku wa 19/07/2017 Perezida w'Urukiko rw'Ikirenga yafashe icyemezo Nº038/2017 cy'uko urubanza RPA0138/11/TGI/NYGE - RPA0260/11/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 14/11/2013 rwandikwa n'Ubwanditsi bw'Urukiko kugira ngo ruzongere ruburanishwe, maze ruburanishwa mu ruhame ku wa 08/01/2018, Rutsindura Alexis alias Bigirimana Cédric atitabye ariko yarahamagawe ahatazwi mu buryo bukurikije amategeko, Gahenda Bienvenu yunganiwe na Me Mutembe Protais, naho Ubushinjacyaha buhagarariwe na Bunyoye Grâce, Umushinjacyaha ku rwego rw'Igihugu. Mu rubanza rubanziriza urundi rwaciwe ku wa 09/02/2018, Urukiko rwasanze ari ngombwa ko mbere yo gufata icyemezo cya burundu, Ubwanditsi bw'Urukiko bwatumiza dosiye y'urubanza RPA0138/11/TGI/NYGE - RPA0260/11/TGI/NYGE, kuko muri "*dossier scané*" rufite hari inyandiko zitabonekamo, n'izindi zidafotoye neza, isomwa ry'urubanza ryimurirwa ku wa 23/02/2018 no ku wa 09/03/2018, ariko dosiye ntiyabasha kuboneka mu bubiko b'Urukiko Rwisumbuye rwa Nyarugenge.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

a. Kumenya niba ubujurire bwa Rutsindura Alexis alias Bigirimana Cédric n'ikirego cye gisubirishamo urubanza ingingo nshya bitaragombaga kwakirwa n'Urukiko Rwisumbuye rwa Nyarugenge.

[6] Me Mutembe Protais, wunganira Gahenda Bienvenu, avuga ko ikirego cye gishingiye ku biteganywa n'ingingo ya 81, igika cya 1, agace ka 2º, y'Itegeko Ngenga Nº03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga iteganya ko urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirishwamo ku mpamvu z'akarengane, ... iyo mu icibwa ryarwo hirengagijwe amategeko cyangwa ibimenyetso bigaragarira buri wese.

[7] Akomeza avuga ko urubanza RPA0138/11/TGI/NYGE - RPA0260/11/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge rwasabiwe gusubirwamo ku mpamvu z'akarengane rwaburanishijwe muri urwo rukiko ku rwego rw'ubujurire nk'urubanza rusubirishamo urundi ingingo nshya (recours en révision), nk'uko bigaragara ku rupapuro rwa mbere rw'urubanza ahanditse ngo "icyaha ashinjwa" no ku rupapuro rwa kabiri, igika cya kabiri, bituma rutajuririrwa, ibyo bikaba byaratewe n'uko Rutsindura Alexis alias Bigirimana Cédric, amaze guhamwa n'icyaha mu rubanza RP0075/10/TB/NYRGA, yajuriye akimara gusomerwa, ubujurire bwe bwandikwa kuri RPA0152/11/TGI/NYGE ariko ntibwakirwa kubera ko nta garama yari yatanze nk'uko byemejwe ku wa 08/09/2011 n'Urukiko rwajuririwe, asubirishamo urwo rubanza ingingo nshya, ikirego gihabwa RPA0260/11/TGI/NYGE kandi gisabirwa guhuzwa n'ikindi kirego cy'ubujurire bwatanzwe na Avoka we ku itariki ya 03/06/2011 atanga n'igarama, cyanditswe kuri RPA0138/11/TGI/NYGE, nyamara nacyo

kitaragombaga kwakirwa kuko nta “procuration ” yari yahawe n’uwo yunganira nk’uko byateganywaga n’ingingo ya 164, 1º y’Itegeko Nº13/2004 ryo ku wa 17/05/2004 ryerekeye imiburanishirize y’imanza z’inshinjabyaha ryakurikizwaga icyo gihe.

[8] Me Mutembe Protais avuga na none ko Urukiko Rwisumbuye rwa Nyarugenge rwirengagije ibiteganywa n’ingingo ya 180 y’Itegeko Nº13/2004 ryo ku wa 17/05/2004 ryavuzwe haruguru, kubera ko ikirego cye cyahawe RPA0260/11/TGI/NYGE nta na kimwe mu bintu 4 biteganywa n’iyo ngingo Rutsindura Alexis alias Bigirimana Cédric yarugaragarije, ko rero nta ngingo nshya yatumye icyo kirego cyakirwa, ahubwo rwapfuye kwemeza gusa ko gihuzwa n’ubujurire RPA0138/11/TGI/NYGE bwatanzwe na Avoka we.

[9] Asanga rero kuba izo ngingo z’amategeko zarirengagijwe, byaratumye habaho akarengane, kubera ko ubujurire bwose bwakozwe na Rutsindura Alexis alias Bigirimana Cédric butagombaga kwakirwa, ahubwo hagombaga kugumaho imikirize y’urubanza rwajuririwe, maze imitungo y’umuryango wa Rutsindura Alphonse yari yarigaruriye igasubizwa mu maboko y’umuvandimwe we Gahenda Bienvenu wamuzunguye.

UKO URUKIKO RUBIBONA

[10] Ingingo ya 164,1º y’Itegeko Nº13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y’imanza z’inshinjabyaha ryakurikizwaga igihe Rutsindura Alexis alias Bigirimana Cédric yajuriraga iteganya ko ububasha bwo kujurira bufitwe n’ushinjwa, ariko ibi ntibibuza ko

n'umwunganizi we (Avoka) ashobora kubikora mu mwanya we. Ibyo binashimangirwa n'uko mu Itegeko Nº30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryasimbuye iryo rya mbere, mu ngingo yaryo ya 175, igika cya kabiri riteganya ko ubujurire bw'uwahamwe n'icyaha bushobora gutangwa n'umwunganira.

[11] Inyandiko ziri muri dosiye zigaragaza ko ubujurire bwa Rutsindura Alexis alias Bigirimana Cédric bwahawe nimero ebyiri (2) arizo RPA0152/11/TGI/NYGE na RPA0138/11/TGI/NYGE, maze ku wa 08/09/2011 hacibwa urubanza ubwo bujurire bwa mbere ntibwakirwa urukiko ruvuga ko nta garama yatanze, asubirishamo ingingo nshya urwo rubanza ku wa 14/10/2011 ruhabwa RPA0260/11/TGI/NYGE, ruza guhuzwa n'urwanditswe kuri RPA0138/11/TGI/NYGE bisabwe n'umwunganizi we mu ibaruwa ye yo kuwa 17/02/2012 aho yavugaga ko ubujurire bwa Rutsindura Alexis *alias* Bigirimana Cédric bwahawe nomero ebyiri.

[12] Bigaragara kandi ko mu iburanisha ryo kuwa 23/02/2012 Rutsindura Alexis alias Bigirimana Cédric yabajijwe impamvu yatumye asubirishamo urubanza ingingo nshya, umwunganizi we asubiza ko yari yatanze igarama ajurira mu Rukiko rw'Ibanze rwa Nyarugunga, bazanye icyemezo cy'igarama umwanditsi w'Urukiko afungura indi dosiye, ko rero imyanzuro batanze yashyizwe muri dosiye RPA0138/11/TGI/NYGE itariyo, asaba ko ubujurire bwanditswe kuri RPA0152/11/TGI/NYGE butakiriwe kuko butatangiwe igarama byahinduka, maze urukiko rukemeza ko ryatanzwe rikagera mu rukiko. Uhagarariye Ubushinjacyaha yavuze ko izo mpamvu zifite ishingiro, ko abona imanza zakwakirwa zigahuzwa zikaburanishwa, ndetse na Gahenda yabajijwe icyo abivugaho,

ariko n'ubwo igisubizo yatanze kitagaragara, ntiyigeze ajuririra icyo cyemezo cyo guhuza imanza nk'uko yabyemererwaga n'ingingo 156 y'Itegeko Ngenga Nº51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko iteganya ko imanza n'ibyemezo by'urukiko bitegeka cyangwa byanga kwimurira imanza mu zindi nkiko, kimwe n'ibitegeka ko zifatanywa cyangwa zitandukanywa, bishobora kujuririrwa.

[13] Hashingiwe ku bimaze kuvugwa haruguru, Urukiko rurasanga, kuba Gahenda Bienvenu atarajuririye icyemezo gihuza imanza atabyitwaza muri uru rubanza ngo avuge ko yarenganye.

b. Kumenya niba urubanza RPA0138/11/TGI/NYGE-RPA0260/11/TGI/NYGE rwaraciwe n'inteko y'abacamanza bataruburanishije.

[14] Me Mutembe Protais na Gahenda Bienvenu yunganira bavuga ko indi nenge ikomeye ku rubanza RPA0138/11/TGI/NYGE - RPA0260/11/TGI/NYGE ari uko rwaciwe n'inteko y'abacamanza itararuburanishije, kuko rwaburanishijwe n'umucamnza witwa Mukagasana Marciana, ariko rusomwa n'abacamanza batatu.

[15] Nk'uko bigaragara mu cyemezo cyarwo cyo ku wa 09/02/2018, uru Rukiko rwari rwasabye Ubwanditsi bw'Urukiko ko bwatumiza dosiye y'urubanza RPA0138/11/TGI/NYGE - RPA0260/11/TGI/NYGE mu Rukiko Rwisumbuye rwa Nyarugenge, ariko dosiye rwifuzaga ntiyabonetse kugira ngo rubashe gusesengura neza iki kibazo, bityo rero ntaho rwahera rwemeza koko ko urwo rubanza rwaciwe n'inteko y'abacamanza Perezida w'Urukiko

Rwisumbuye rwa Nyarugenge atabahaye ububasha bwo kuruburanisha.

c. Kumenya niba Urukiko Rwisumbuye rwa Nyarugenge rwarirengagije ibimenyetso byatanzwe n'Ubushinjacyaha.

[16] Me Mutembe Protais, wunganira Gahenda Bienvenu, avuga ko n'ubwo Urukiko Rwisumbuye rwa Nyarugenge rwashingiye ku ngingo ya 65 y'Itegeko Nº15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, nk'uko bigaragara mu gika cya 10 cy'urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, rwirengagije ibiteganywa n'igice cyayo cya nyuma kivuga ngo Urukiko ntirwitsitsa ku mubare w'abatangabuhamya. Rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze ntacyo bihimbira, maze ruvuga ko abatangabuhamya babajijwe n'Ubushinjacyaha bose batavuze ko Rutsindura Alexis atari umwana wa Rutsindura Alphonse kandi mu gihe Urukiko rwakoze iperereza, ababajijwe bose bemeje ko Rutsindura Alexis ari umwana wa Rutsindura Alphonse. Asanga rero Urukiko rwararebye mbere na mbere umubare w'abatangabuhamya aho kureba ubumenyi bafite ku byo babazwa, n'umutima utaryarya wo kuvugisha ukuri ku byo babajijwe.

[17] Akomeza avuga ko ingingo ya 65 y'Itegeko Nº15/2004 ryo kuwa 12/06/2004 ryavuzwe haruguru idateganya ko abatangabuhamya bemerwa ari abahurije bose ku buhamya bumwe, kuko bose bashobora no guhuriza ku buhamya bw'ibinyoma, ko kandi ababajijwe n'Urukiko batemeje bose ko Rutsindura Alexis ari umwana wa Rutsindura Alphonse, ahubwo bavuze ko bafite ibyo asaho n'umwana we witwaga Rutsindura Alexis, ko na none kuvuga ko ababajijwe

n'Ubushinjacyaha bose batavuze ko Bigirimana Cédric atari umwana wa Rutsindura Alphonse, bitaba ikimenyetso cy'uko ari umwana we, ahubwo byaba intandaro yo gushidikanya ko uwo muhungu yaba ari we Rutsindura Alexis mwene Rutsindura Alphonse.

[18] Me Mutembe Protais avuga na none ko iyo Urukiko rwita ku ngingo y'itegeko yavuzwe haruguru, rwari guha agaciro ubuhamya bw'abantu bazi neza umwana Rutsindura Alexis wa Rutsindura Alphonse aribo Françoise Mukashyaka wabaga iwe mu rugo, Mukamazimpaka Ciphrose wajyaga atwara abana be n'aba Rutsindura Alphonse mu modoka bajya ku ishuri na Uwingabire Angélique nyina wabo wa Rutsindura Alexis, ko rero abo batangabuhamya batanze ibimenyetso bibiri bidasibangana byajyaga kwemeza Urukiko nta shiti ko Rutsindura Alexis muhimbano atari we w'ukuri, ni ukuvuga ikibibi ku itama no ku kibero, n'amatwi abanguye cyane, ibyo yita ibimenyetso "*scientifiques*", aho gushingira ku kimenyetso cy'agasatsi kaje imbere.

[19] Me Mutembe Protais avuga na none ko Urukiko rwirengagije ibiteganywa n'ingingo ya 45 y'Itegeko Nº13/2004 ryo ku wa 17/05/2004 ryavuzwe haruguru, maze rwemeza ko "*test ADN*" yakorewe mu Budage nta gaciro yahabwa ngo kubera ko 1º Ubushinjacyaha n'Ubugenzacyaha bwayikoresheje dosiye yararangije kugezwa mu Rukiko kandi idasabwe n'Urukiko, 2º *"commission rogatoire"* yakozwe mu buryo butubahirije ingingo ya 77 y'itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakurikizwaga icyo gihe, 3º nta "*requisition à expert"* yabayeho mu gupimisha ADN, nyamara iyo "*test ADN"* yarakozwe mu buryo bukurikije amategeko.

[20] Avuga ko itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakurikizwaga igihe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane rwaburanishwaga, ritabuzaga Ubushinjacyaha gushaka ibimenyetso bishobora gukorerwa inyandikomvugo z'inyongera (*PV subséquents)*, cyane cyane iyo dosiye itaraburanishwa, ko kandi mu ngingo ya 41 yaryo ryahariye Ubushinjacyaha gukurikirana ibyaha imbere y'inkiko, naho mu ya 44 riteganya ko ari bwo bugomba gutanga ibimenyetso by'icyaha, ko rero aho dosiye yaba igeze hose bushobora gutanga ibimenyetso by'inyongera, ko icyangombwa ari uko bigibwaho impaka mu ruhame nk'uko biteganywa n'ingingo ya 45 y'iryo tegeko yakurikizwaga.

[21] Me Mutembe Protais avuga ko hari n'ibindi bimenyetso bititaweho n'Urukiko birimo amafoto ya Rutsindura Alexis n'aya Bigirimana Cédric (cyangwa Emmanuel, Jean Claude) n'iya Bigirimana, indangamanota na "*fiche individuelle*" za Bigirimana Cédric, agasaba ko uru Rukiko rwakwemeza ko Gahenda Bienvenu yagiriwe akarengane, maze urubanza yaregeye rugahinduka mu ngingo zarwo zose, hakagumaho urubanza RP0075/10/TB/NYRGA rwaciwe n'Urukiko rw'Ibanze rwa Nyarugunga.

[22] Uhagarariye Ubushinjacyaha avuga ko Rutsindura Alexis alias Bigirimana Cédric yakurikiranyweho icyaha cyo gukoresha ibyangombwa by'ibihimbano aho yasabaga kuzungura imitungo yasizwe na nyakwigendera Rutsindura Alphonse wishwe muri jenoside yakorewe Abatutsi mu mwaka wa 1994, avuga ko ari umwana we, ko ibimenyetso

bwatanze byateshejwe agaciro n'Urukiko, hakaba nta yindi nzira y'ubujurire yari ihari.

[23] Akomeza avuga ko Rutsindura Alexis alias Bigirimana Cédric yatanze ikirego cy'imbonezamubano asaba kuzungura imitungo yasizwe n'uwo yitaga Se, urubanza rugeze mu Rukiko rw'Ikirenga ruhabwa RCAA0020/14/CS, hakorwa indi "*test ADN",* ibisubizo bigaragaza ko ari mwene Nahishakiye Jean Berchmas na Ndayisaba Rose, maze aratsindwa, akaba ariyo mpamvu yatumye Gahenda Bienvenu asaba ko urubanza rwavuzwe haruguru rusubirwamo ku mpamvu z'akarengane, ko n'Ubushinjacyaha busanga harabayeho akarengane, bukaba bwifuza ko urubanza RP0075/10/NYRGA rwaciwe n'Urukiko rw'Ibanze rwa Nyarugunga ku wa 05/05/2011 rwemeje ko ikirego cy'Ubushinjacyaha gifite ishingiro rwasubirana agaciro, n'ibyarutegetswemo bikubahirizwa.

UKO URUKIKO RUBIBONA

[24] Ingingo ya 65 y'Itegeko Nº15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko Urukiko ni rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa. Urukiko ntirwitsitsa ku mubare w'abatangabuhamya. Rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze ntacyo bihimbira.

[25] Naho ingingo ya 119 y'iryo tegeko igateganya ko "mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose

z'ibyabaye, n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye. Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura ari byo kandi ko bishobora kwemerwa. Ku byerekeye icyaha cy'inyandiko mpimpano, ingingo ya 206 y'Itegeko - Teka Nº21/77 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana ibyaha ryakurikizwaga igihe icyaha cyakorwaga iteganya ko : Azahanishwa igifungo kuva ku mezi atatu kugeza ku myaka ibiri n'ihazabu y'amafaranga atarenga ibihumbi cumi cyangwa kimwe gusa muri ibyo bihano, uzaba yihesheje atabikwiye (…) izindi nzandiko zitangwa n'abategetsi b'ibihugu kugirango zigaragaze uburenganzira, irangamuntu cyangwa (…), aruko yavuze ibinyoma, aruko yiyise irindi zina cyangwa yihaye agaciro adafite, cyangwa abeshya, atanga za seritifika cyangwa inyandiko-nyemezo zinyuranije n'ukuli (…).

[26] Mu buhamya bwe, Mukashyaka Françoise yavuze ko mu kwezi kwa Werurwe 2008 umukobwa witwa Munezero Raïsa yamuzaniye umwana w'umuhungu amubaza niba amuzi, amwitegereje asanga atamuzi amubwira ko ari Dede, nawe amusubiza ko uwo yari azi yitwaga Rutsindura Alexis akaba mwene Rutsindura Alphonse na Dusabe Emma Marie, ko ashingiye ku bimenyetso yari amuziho yari imibiri yombi, afite ikibibi ku itama n'amatwi maremare ku buryo bugaragara, amukuramo inkweto n'amasogisi ngo arebe ibirenge bye abona atari we yari azi.

[27] Naho Mukamazimpaka Ciphrose mu Bushinjacyaha yarabajijwe avuga ko yari azi umuryango wa Rutsindura Alphonse na Dusabe Emma Marie kuko yakoraga hafi y'aho bari batuye n'abana babo bigaga hamwe mu kigo cya Elena Guerra, mushiki we Musika yigana n'umwana we wa gatanu

witwa Christian, ko yabatwaraga bajya kwiga, ko Rutsindura Alexis yari umwana ubyibushye no mu maso, w'imibiri yombi, afite ikibibi kigaragara ku itama n'indegeya, izuru rinini n'amaso manini, ko ariko atahamya ko uwo mwana yapfuye kuko we yari yarahungiye i Burundi, ko bajya bavuga ko nyina yapfuye n'abana be bose. Yavuze ko umwana Bigirimana Cédric bamweretse yasanze atari Rutsindura Alexis, ko n'ibyo yamuganirije yabonye atabizi.

[28] Bigaragara muri raporo y'iperereza ya "*Parquet*" ya Muramvya y'i Burundi yo kuwa 23/11/2010 ko Umushinjacyaha Mukuru yageze mu Murenge wa Gahweza, Komini Kiganda kwa Nahishakiye Jean Berchmans akamwereka amafoto ya Bigirimana Cédric agahita amumenya, akamubwira ko ari umwana we wa kane, akamubaza niba akiriho kuko yavuye mu gihugu mu mwaka wa 2006 agiye mu Rwanda mu irushanwa mu mikino ngororamubiri akaba ataragaruka, amumenyesha ko ubundi avuka yamwise Nahishakiye Cédric, aza guhindura izina, ndetse amuha n'andi mafoto ye akiga muri ETS y'i Kamenge, amubwira n'amazina y'abandi bavandimwe be batanu, ko na nyina Ndayisaba Rose yamumenye amubwira ko yari yariyise Bigirimana Cédric.

[29] Iyo raporo igaragaza ko ibyo Umushinjacyaha yabwiwe n'ababyeyi ari nabyo yabonye byanditse mu irangamimerere aho yabonye ko izina rya Bigirimana Cédric ryanditse munsi y'irya Nahishakiye Jean Claude wavutse ku wa 12/01/1985 i Gahweza, Komini Kiganda, naho kuri Paroisse aho yabatirijwe ku wa 06/04/1996 akaba yitwa Nahishakiye Cédric.

[30] Umushinjacyaha yanzuye avuga ko Bigirimana Cédric ari mwene Nahishakiye Jean Berchmans na Ndayisaba Rose Marie bafite ubwenegihugu bw'Uburundi.

[31] Ku byererekeye raporo ya muganga kuri *"Test ADN",* nayo yagaragaje ko Bigirimana Cédric ari mwene Nahishakiye Jean Berchmans, ariko Urukiko Rwisumbuye rwa Nyarugenge rusanga rutayishingiraho mu guca urubanza kuko yabonetse mu buryo budakurikije amategeko, ariko nk'uko bigaragara mu rubanza ni ikimenyetso cyatanzwe n'Ubushinjacyaha kandi ntibubujijwe gutanga ibimenyetso aho urubanza rwaba rugeze hose, icyangombwa ni uko ushinjwa abyireguraho. Iby'iyo raporo yagaragaje byaje gushimangirwa n'indi *"Test ADN"* yasabwe n'Urukiko rw'ikirenga mu rubanza RCAA0020/14/CS rwaburanwaga hagati ya Rutsindura Alexis alias Bigirimana Cédric na Gahenda Bienvenu, rusanga yerekana nta shiti ko uwiyita Rutsindura Alexis atari mwene Rutsindura Alphonse, ko ahubwo ari mwene Nahishakiye Jean Berchmans, ko kandi ifite ikizere kurusha ibindi bimenyetso bishingiye ku mvugo z'abatangabuhamya, maze rwemeza ko adafite uburenganzira bwo kumuzungura.

[32] Urukiko rurasanga rero ibyo abatangabuhamya bavuze, raporo y'iperereza I Burundi n'ikizamini cya ADN cyakorewe mu Budage incuro ebyiri, ari ibimenyetso bidashidikanywaho bititaweho n'Urukiko Rwisumbuye rwa Nyarugenge, kandi bigaragaza nta gushidikanya ko Rutsindura Alexis alias Bigirimana Cédric yahinduye amazina ye, agamije guhabwa inyandiko z'ubutegetsi zirimo icyemezo cyo kuvuka, icyemezo gisimbura irangamuntu n'indangamuntu Nº1185800190916087 byose bigaragaza ko yitwa Rutsindura Alexis mwene Rutsindura Alphonse na Dusabe Emma Marie, agamije kugirango abone uko azungura imitungo yabo kuko bapfuye muri jenoside yakorewe Abatutsi mu mwaka wa 1994.

[33] Urukiko rurasanga rero ubujurire bwa Bigirimana Cédric (wiyita Rutsindura Alexis) yatanze mu Rukiko Rwisumbuye rwa Nyarugenge butaragombaga guhabwa ishingiro, maze hakagumaho imikirize y'urubanza RP0075/10/TB/NYRGA rwo ku wa 06/05/2011 rwaciwe n'Urukiko rw'Ibanze rwa Nyarugunga, rwemeje ko Bigirimana Cédric (wiyita Rutsindura Alexis) ahamwa n'icyaha cy'inyandiko mpimbano, rukamuhanisha igifungo cy'imyaka ibiri (2).

d. Indishyi zisabwa na Gahenda Bienvenu

[34] Me Mutembe Protais na Gahenda Bienvenu yunganira bavuga ko kuri uru rwego nta ndishyi mu by'ukuri bifuza gusaba Bigirimana Cédric (wiyita Rutsindura Alexis), cyane cyane ko ataboneka, ko urukiko rwazamuca 100Frw y'umugenzo (symbolique) y'indishyi z'akababaro yamuteje.

[35] Urukiko rurasanga indishyi z'akababaro za 100Frw Gahenda Bienvenu asaba kuri uru rwego akwiye kuzihabwa kuko bigaragara ko Bigirimana Cédric (wiyita Rutsindura Alexis) yamuteje akarengane.

III. ICYEMEZO CY'URUKIKO

[36] Rwemeje ko ikirego cyatanzwe na Gahenda Bienvenu cyo gusubirishamo ku mpamvu z'akarengane urubanza RPA0138/11/TGI/NYGE - RPA0260/11/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 14/11/2013 gifite ishingiro;

[37] Rwemeje ko rubanza RPA0138/11/TGI/NYGE - RPA0260/11/TGI/NYGE rwaciwe kuwa 14/11/2013 n'Urukiko Rwisumbuye rwa Nyarugenge ruhindutse kuri byose kuko hari

ibimenyetso byirengagijwe bigaragaza ko Bigirimana Cédric (wiyita Rutsindura Alexis) ahamwa n'icyaha cy'inyandiko mpimbano;

[38] Ruvuze ko rubanza RP0075/10/TB/NYRGA rwo kuwa 06/05/2011 rwaciwe n'Urukiko rw'Ibanze rwa Nyarugunga Bigirimana Cédric (wiyita Rutsindura Alexis) yari yajuririye rugumanye agaciro karwo;

[39] Rutegetse Bigirimana Cédric (wiyita Rutsindura Alexis) kwishyura Gahenda Bienvenu 100 Frw y'indishyi z'akababaro kuri uru rwego;

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