UBUSHINJACYAHA v. KANGABE

[Rwanda URUKIKO RW'IKIRENGA – RPA0027/16/CS (Kayitesi Z, P.J. Kanyange na Ngagi, J.) 09 Kamena 2016]

Amategeko yerekeye imiburanishirize y'imanza nshinjabyaha – Irangizarubanza – Kugira abana bato ntibihagije kugirango habe ihagarikwa ryo kurangiza urubanza kuko hateganyijwe uburyo abo bana bitabwaho mu buryo bw'umwihariko – Itegeko N^o54/2011 ryo kuwa 14/12/2011 ryerekeye uburenganzira bw'umwana, ingingo ya 56 igika cya 2.

Incamake y'ikibazo: Mu Rukiko Rukuru urugereko rwa Rwamagana, Kangabe yatanze ikirego gisaba gusubirishamo ingingo nshya imanza RPA0207/15/HC/RWG, RPA0253/15/HC/RWG, RPA0254/15/HC/RWG na RPA0266/15/HC/RWG (zakomatanyirijwe hamwe), we na bagenzi be bahamijwemo icyaha cyo kurigisa umutungo n'icyaha cyo gukora no gukoresha inyandiko mpimbano.

Mu gihe urubanza rwo gusubirishamo ingingo nshya rutararangira, Kangabe yatanze ikirego cyihutirwa, asaba guhagarika irangizwa ry'imanza yasubirishijemo kubera ko afite abana bato, umugabo we akaba afite uburwayi buhoraho bwa *Hepatite B*, ndetse nawe ubwe akaba afite uburwayi buhoraho bw'igifu.

Urukiko Rukuru, Urugereko rwa Rwamagana rwaciye urwo rubanza, ruvuga ko ikirego cyihutirwa cya Kangabe nta shingiro gifite, nyuma yo gusanga ataragaragarije Urukiko uburyo impamvu atanga ari ibibazo byihuta mu rubanza rw'iremezo.

Yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rwirengagije ibimenyetso bigaragaza impamvu asaba guhagarika kurangiza imanza yasubirishijemo ingingo nshya birimo ibigaragazako afite uburwayi buhoraho bw'igifu ndetse n'umugabo we akaba afite uburwayi buhoraho bwa Hepatite B, bakaba banafite abana babiri bato.

Ubushinjacyaha bwo bukaba bwaragaragazako impamvu uwajuriye atanga zaburanywe mu Rukiko Rukuru, urugereko rwa Rwamagana, bukaba busanga ikirego cyihuritwa ari uburyo bwo gutinza urubanza kugira ngo rutarangizwa, bityo ko kitakwakirwa.

Uru rubanza kandi rwarimo na BPR Ltd, yo ikagaragazako nta nyungu ifite zo kuba Kangabe yafungwa ariko ko muri gereza hari uburyo bafata abafite uburwayi nk'ubwe.

Incamake y'icyemezo: 1. Impamvu z'uburwayi za Kangabe ntizatuma habaho ihagarikwa ryo kurangiza imanza yasubirishijemo ingingo nshya kuko bidahagije kwitwaza uburwayi hasabwa ko habaho ihagarikwa ryo kurangiza urubanza, kuko gereza ifite uburyo bwo kwita ku barwayi bafunze.

2. Kugira abana bato ntibihagije kugirango habe ihagarikwa ryo kurangiza urubanza kuko hateganyijwe uburyo abo bana bitabwaho mu buryo bw'umwihariko. Bityo impamvu itangwa na Kangabe yo kugira abana bato ntiyatuma habaho ihagarikwa ryo kurangiza imanza yasubirishijemo ingingo nshya.

Ubujurire nta shingiro bufite;

Imikirize y'urubanza rwajuririwe ntihindutse;
Amagarama aherereye ku wajuriye.

Amategeko yashingiweho:
Itegeko Ngenga N°30/2013/OL ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 197 na 279.
Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 1,190 na 320.
Itegeko N°34/2011 ryo kuwa 14/12/2011 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda no kumurengera, ingingo ya 56 igika cya 2
Itegeko N°34/2010 ryo kuwa 12/11/2010 rishyiraho urwego rw'igihugu rushinzwe imfungwa n'abagororwa, rikanagena imitunganyirize n'imikorere byarwo, ingingo ya 39 igika cya 2

Nta manza zifashishijwe

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nyuma y'uko Urukiko Rukuru, Urugereko rwa Rwamagana ruciye imanza RPA0207/15/HC/RWG, RPA0253/15/HC/RWG, RPA0254/15/HC/RWG na RPA0266/15/HC/RWG (zakomatanyirijwe hamwe), aho Kangabe Christine na bagenzi be baregwagamo icyaha cyo kurigisa umutungo, gukora no gukoresha inyandiko mpimbano, Kangabe Christine yatanze ikirego gisaba kuzisubirishamo ingingo nshya, gihabwa N°RPA 0134/16/HC/RWG.

[2] Mu gihe urwo rubanza RPA0134/16/HC/RWG rutaracibwa, Kangabe Christine yatanze ikirego cyihutirwa, gihabwa N°RPA0139/016/HC/RWG, akaba yarasabaga Urukiko Rukuru, Urugereko rwa Rwamagana guhagarika irangizwa ry'imanza RPA0207/15/HC/RWG, RPA0253/15/HC/RWG, RPA0254/15/HC/RWG na RPA0266/15/HC/RWG, kubera ko afite abana bato, umugabo afite uburwayi buhoraho (maladie chronique) bwa Hepatite B, ndetse nawe ubwe akaba afite uburwayi buhoraho bw'igifu.

[3] Kuwa 22/04/2016, Urukiko Rukuru, Urugereko rwa Rwamagana rwaciye urwo rubanza, ruvuga ko ikirego cyihutirwa cya Kangabe Christine nta shingiro gifite, ko ikirego cyo gusubirishamo ingingo nshya kitagomba guhagarika irangizwa ry'imanza zavuzwe haruguru, iki cyemezo kikaba cyarafashwe nyuma yo gusanga Kangabe Christine ataragaragarije Urukiko uburyo impamvu atanga ari ibibazo byihuta mu rubanza rw'iremezo (RPA0134/16/HC/RWG), cyane cyane ko Me Nizeyimana Léopord umwunganira avuga ko ibiri mu rubanza rw'ingingo nshya bitandukanye n'ibyihutirwa, bityo ko byumvikana neza ko impamvu zitangwa ntaho zihuriye n'urubanza rw'iremezo.

[4] Kangabe Christine yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru, Urugereko rwa Rwamagana rwanze guha agaciro ibimenyetso biri muri dosiye bigaragaza ko afite uburwayi buhoraho bw'igifu, ko umugabo we Nyagatare Janvier afite uburwayi buhoraho bwa Hépatite B

guhera mu mwaka wa 2010, ndetse bakaba bafite utwana tubiri duto, kamwe gafite amezi ane n'igice (4,5mois) gakeneye kwitabwaho kandi bikaba bishimangirwa n'ingingo ya 56 y'Itegeko N^{o}54/2011 ryo ku wa 14/12/2011 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda no kumurengera, iteganya ko mu gihe umugore afite umwana utaregeza ku myaka 3 y'amavuko akurikiranweho icyaha, umucamanza akora ibishoboka byose kugira ngo ahabwe ikindi gihano kitari igifungo.

[5] Uru rubanza rwaburanishijwe mu ruhame ku wa 06/06/2016, Kangabe Christine yunganiwe na Me Nizeyimana Léopold, Ubushinjacyaha buhagarariwe na Munyaneza NKWAYA Eric, Umushinjacyaha ku rwego rw'Igihugu, BPR Ltd iburanirwa na Me Ntwari Justin.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

Kumenya niba irangizwa ry'imanza RPA0207/15/HC/RWG, RPA0253/15/HC/RWG, RPA0254/15/HC/RWG na RPA0266/15/HC/RWG ryahagarikwa mu gihe urubanza ruzisubirishamo ingingo nshya rutaracibwa

[6] Kangabe Christine n'umwunganizi we, Me Nizeyimana Léopold, bavuga ko umucamanza wa mbere yavuze ko nta cyihutirwa kiri mu rubanza, ariko ko yibeshye kuko gusubirishamo urubanza ingingo nshya ubwabyo bidahagarika irangiza ryarwo, ahubwo ko bisabwa Urukiko rwaregerwe, ko Kangabe Christine yaburanye imanza zabanje ari hanze, bityo akaba ari byo aheraho asaba ko n'urubanza rwo gusubirishamo ingingo nshya rwaburanishwa ari hanze, cyane cyane ko afite umwana muto w'amezi 5, akaba afite uburwayi bw'igifu buhoraho, ndetse n'umugabo we akaba arwaye uburwayi buhoraho bwa *Hépatite B.*

[7] Uhagarariye Ubushinjacyaha avuga ko impamvu zitangwa na Kangabe Christine zishingiye ku ngingo ya 56 y'Itegeko No54/2011 ryo kuwa 14/12/2011 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda no kumurengera no ku ngingo ya 322 y'Itegeko No 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ariko ko izo mpamvu zaburanwe mu Rukiko Rukuru, Urugereko rwa Rwamagana, ko igika cya kabiri cy'ingingo ya 56 yavuzwe haruguru gifite icyo giteganya k'umugore utwite cyangwa ufite umwana muto. Avuga ko gutanga ikirego cyihuritwa ari uburyo bwo gutinza urubanza kugira ngo rutarangizwa, bityo ko kitakwakirwa.

[8] Me Ntwari Justin, uburanira BPR Ltd, avuga ko nta nyungu BPR Ltd ifite zo kuba Kangabe Christine yafungwa, ariko ko muri Gereza hari uburyo bafata abafite uburwayi nk'ubwe, ko Kangabe Christine yari yaraburanye mbere asaba guhabwa igihano gisubitswe hashingiwe ku burenganzira bw'umwana, hanyuma Urukiko rugira icyo rubivugaho.

UKO URUKIKO RUBIBONA

[9] Ingingo ya 279 y'Itegeko N^{o}30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko ku bindi bidateganyijwe muri iri tegeko bijyanye n'imiburanishirize, hakurikizwa itegeko rigenga imiburanishirize y'imanza z'imbonezamubano,

keretse mu gihe amahame ateganywa n'iryo tegeko adashobora gukoreshwa mu miburanishirize y'imanza nshinjabyaha. Iyi ngingo ishimangirwa n'ingingo ya 1 y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko iri tegeko rigenga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Ni na ryo rigenga imiburanishirize y'izindi manza mu gihe nta yandi mategeko yihariye agenga iyo miburanishirize yindi, keretse mu gihe amahame ateganywa n'iri tegeko adashobora gukoreshwa mu zindi manza.

[10] Ingingo ya 190 y'Itegeko N°21/2012 ryavuzwe haruguru, iteganya ko gusubirishamo urubanza ingingo nshya ntabwo birubuza kurangizwa, keretse iyo iryo rangizwa ryahagaritswe bitangiwe impamvu n'urukiko rwaregewe gusubirishamo urubanza ingingo nshya. Ingingo ya 320, igika cya mbere, y'iryo Tegeko, iteganya ko umucamanza uburanisha ibirego byihutirwa afata icyemezo ku bibazo byose byihuta, ariko mu buryo butabangamiye urubanza rw'iremezo mu mizi yarwo. […].

[11] Muri uru rubanza, dosiye igaragaza ko Urukiko Rukuru, Urugereko rwa Rwamagana rwanze guhagarika irangiza ry'imanza RPA0207/15/HC/RWG, RPA0253/15/HC/RWG, RPA0254/15/HC/RWG na RPA0266/15/HC/RWG, kubera ko Kangabe Christine atashoboye kurugaragariza ko impamvu ashingiraho abisaba ari ibibazo byihuta mu rubanza rw'iremezo (RPA0134/16/HC/RWG) rutaracibwa, izo mpamvu zikaba ari uko afite abana bato, ndetse we n'umugabo we bakaba bafite uburwayi buhoraho (*maladies chroniques*). Ikindi kigaragara ni uko kuva imanza zatangira kugeza ubu, Kangabe Christine yaburanye adafunzwe.

[12] Urukiko rurasanga mu manza z'imbonezamubano, irangizarubanza rihagarikwa mu buryo bw'ibirego byihutirwa kugira ngo bigire icyo biramira ku buryo bitinze haba ingaruka zitagira igaruriro[1] (préjudice irréparable), nko kuba ikiburanwa gishobora kwangirika burundu ku buryo usaba ihagarikwa ry'irangizarubanza adashobora kukibona mu gihe agitsindiye mu rubanza rw'iremezo. Mu manza z'inshinjabyaha, ibijyanye n'ihagarikwa ry'irangizarubanza ku gihano bigaragara ko, biramutse bikozwe, byaba bishingiye ku muntu wahamwe n'icyaha, ku buryo aramutse afunzwe, habaho ingaruka zitagira igaruriro, ariko Urukiko rurasanga izo ngaruka zidashobora kubaho mu buryo bumwe n'ubwasobanuwe mu manza z'imbonezamubano, kuko ingingo ya 197[2] y'Itegeko N°30/2013 ryavuzwe haruguru yateganyije ko mu gihe uwasubirishijemo ingingo nshya abaye umwere, ashobora guhabwa indishyi y'akababaro kubera umubabaro icyo gihano kiba cyaramuteye, yaba yarapfuye, izo ndishyi zikakwa n'abazungura be, ibi bikaba bisobanura ko, nyuma y'ishyirwa mu bikorwa ry'urubanza rwasubirishijwemo ingingo nshya, Kangabe Christine afite uburenganzira bwo kuzaregera indishyi y'akababaro, mu gihe yafungwa nyuma akagirwa umwere.

[13] Ku bijyanye n'impamvu Kangabe Christine atanga avuga ko afite abana bato, Urukiko rurasanga iyo mpamvu itatuma habaho ihagarikwa ry'imanza yasubirishijemo ingingo nshya kuko ingingo ya 56, igika cya kabiri, y'Itegeko N°54/2011 ryo kuwa 14/12/2011 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda no kumurengera, iteganya ko iyo

---

1 Urubanza Nº RCA 0008/10/CS rwo kuwa 21/01/2011, Mukamurenzi Diane na Akingeneye Jean de Dieu vs Karangwa Elisé na Mukarutesi Espérance.

2 Iyo ngingo ya 197 igira iti: "Bisabwe n'umuburanyi, urubanza rwasubirishijwemo ingingo nshya rukagaragaza ko uwatsinzwe yarenganye, urukiko rushobora kumuha indishyi y'akababaro kubera umubabaro icyo gihano kiba cyamuteye. Iyo uwahaniwe ubusa yapfuye, uburenganzira bwo kwaka indishyi y'akababaro buhabwa, kuri ubwo buryo, abazungura be

guhanisha ikindi gihano kitari igifungo bidashoboka k'umugore ufite umwana utarageza ku myaka 3 y'amavuko, afungirwa mu gice cya gereza gifungirwamo abagore bafite abana batarageza ku myaka 3 y'amavuko, byongeye kandi n'Itegeko No 34/2010 ryo ku wa 12/11/2010 rishyiraho urwego rw'Igihugu rushinzwe imfungwa n'abagororwa, rikanagena imitunganyirize n'imikorere byarwo, iteganya uburyo abo bana bitabwaho mu buryo bw'umwihariko[3]

[14] Naho ku bijyanye n'impamvu y'uburwayi bwe (bwa Kangabe), Urukiko rurasanga iyo mpamvu nayo itatuma habaho ihagarikwa ry'imanza yasubirishijemo ingingo nshya kuko Gereza ifite uburyo bwo kwita ku barwayi bafunzwe nk'uko biteganywa n'ingingo ya 39, igika cya kabiri, y'Itegeko N° 34/2010 ryo kuwa 12/11/2010 rishyiraho urwego rw'Igihugu rushinzwe imfungwa n'abagororwa, rikanagena imitunganyirize n'imikorere byarwo[4], ku buryo ntawakwitwaza uburwayi afite ngo asabe ko atafungwa.

[15] Ku mpamvu ijyanye n'uburwayi bw'umugabo we, Urukiko rurasanga ubwo burwayi butafatwa nk'impamvu yatuma irangizwa ry'imanza zavuzwe rihagarara kuko ntaho buhuriye n'urubanza rugomba kurangizwa.

[16] Hakurikijwe ibimaze gusobanurwa haruguru, Urukiko rurasanga ntaho rwahera ruhagarika irangizwa ry'imanza RPA0207/15/HC/RWG, RPA0253/15/HC/RWG, RPA0254/15/HC/RWG na RPA0266/15/HC/RWG, bityo urubanza RPA0139/016/HC/RWG rwaciwe ku wa 22/04/2016 n'Urukiko Rukuru, Urugereko rwa Rwamagana rukaba rudahindutse.

III. ICYEMEZO CY'URUKIKO

[17] Rwemeje ko ubujurire bwa Kangabe Christine nta shingiro bufite.

[18] Rwemeje ko imikirize y'urubanza RPA0139/016/HC/RWG rwaciwe ku wa 22/04/2016 n'Urukiko Rukuru, Urugereko rwa Rwamagana, idahindutse.

[19] Rutegetse ko ingwate y'igarama yatanzwe na Kangabe Christine ajurira ihwanye n'ibyakozwe mu rubanza.

---

[3] Ingingo ya 33 y'Itegeko No 34/2010 ryo ku wa 12/11/2010 rishyiraho urwego rw'Igihugu rushinzwe imfungwa n'abagororwa, rikanagena imitunganyirize n'imikorere byarwo, iteganya ko: "Umugore utwite cyangwa wonsa ufunzwe yitabwaho by'umwihariko. Umwana uri ku ibere ahabwa ibimutunga bigenerwa abana bato, agahabwa umuryango we amaze imyaka itatu (3) y'amavuko. Iyo nta muryango ushobora kwakira uwo mwana, Leta imushakira aho arererwa.

[4] Ingingo ya 39, igika cya 2, y'Itegeko No 34/2010 ryavuzwe, iteganya ko: " […]Umuntu ufunzwe afite uburenganzira bwo kuvurwa nk‟ubw'umuturarwanda wese udafunzwe. Buri gereza igira ahantu abarwayi bavurirwa hakorana n‟ibigo by‟ubuzima by'aho gereza yubatswe. Iyo umuntu ufunzwe adashoboye kuhavurirwa yoherezwa ahandi yashobora kuvurirwa.[…]".