

UBUSHINJACYAHA v. DUSABIMANA

[Rwanda URUKIKO RW'IKIRENGA – RPAA0066/15/CS (Rugege, P.J., Kayitesi Z. na Kayitesi R., J) 04 Mutarama 2019]

Amategeko agenga ibimenyetso – Kwemera icyaha – Buri gihe kwemera icyaha ntibiba ikimenyetso ntakuka gihagije cyashingirwaho mu kwemeza ko uregwa ahamwa n'icyaha akurikiranyweho – Kuba uregwa yemera icyaha ubundi akagihakana bishyira inshingano ku Bushinjacyaha zo gutanga ibindi bimenyetso bishyigikira ukwemera icyaha k'uregwa.

Incamake y'ikibazo:Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Ngoma Dusabimana akurikiranywe n'ubushinjacyaha ku cyaha cyo kwihekura buvuga ko afatanyije na Hategekimana yishe umwana we w'umuhungu witwa Sibomana wari ufite imyaka ibiri. Muri uru rukiko uregwa yaburanye ahakana icyaha asobanura ko atiyiciye umwana ko ahubwo yazize uburwayi ko kandi afite impapuro zo kwa muganga zibigaragaza, urukiko rwaciye urubanza rwemeza ko abaregwa bahamwa n'icyaha, ruhanisha buri wese igihano cy'igifungo cya burundu.

Abaregwa bajuririye Urukiko Rukuru, urugereko rwa Rwamagana, Dusabimana yaburanye noneho yemera icyaha abisabira imbabazi ariko urwo Rukiko ntirwemeye ukwemera icyaha kwe kuko rwasanze kutuzuye kuko ngo hari aho yavugaga ko yajyanye umwana kwa muganga agapfira mu nzira ubundi akavuga ko yishe uwo mwana abitewe n'uburakari bityo ntiyagabanyirizwa igihano.

Dusabimana yaje nanone kujuririra Urukiko rw'Ikirenga avuga ko yaburanye yemera icyaha akagisabira imbabazi, ariko Urukiko ntirumugabanyirize ibihano, rukamugumisha ku gifungo cya burundu ko mu nkiko zabanje yaburanye yemera icyaha atakoze bitewe nuko yari yabwiwe ko nacyemera ahita arekurwa, ko ariko atiyiciye umwana ahubwo ko uwo mwana yarwaye bakamutwara ku bitaro akaza gupfa bakamushyigura kwa sekuru ubyara se kandi ko ariwe mwana wenyine yabyaye. Yakomeje avuga ko kuba yaragiye arangwa no kwivuguruza byatewe nuko atari afite umwunganira mu mategeko ariko ko nta kimenyetso kigaragaza ko yiyiciye umwana.

Nyuma yo kumva ubujurire bw'uregwa ndetse nicyo ubushinjacyaha bubivugaho urukiko rwasanze mbere yo guca urubanza rugomba kwikorera iperereza ku birebana n'umwana uregwa ashinjwa kwica, urukiko rwanasabye kandi ko Dusabimana akorerwa isuzumwa kugirango hamenyekane niba nta kibazo cyo mu mutwe yaba afite, runategeka ko ubushinjacyaha bwongera gukora iperereza bukagaragaza umubare w'abana uregwa yaba yarabyaye, bukerekana igice umwana yiciwemo naho yashyinguwe. Urukiko rwanasanze kandi ari ngombwa ko umurambo washyinguwe kwa sekuru w'umwana utabururwa (exhumation) kugira ngo ukorerwe ikizamini cya DNA, hagaragazwe niba umwana ushyinguwe muri icyo mva ari umukobwa cyangwa ari umuhungu n'isano yaba afitanye na Dusabimana.

Ku byerekeranye n'ikibazo cyo mu mutwe yaba yari afite, ibitaro by'indwara zo mu mutwe by'i Ndera byagaragaje ko ibitekerezo bye biri ku murongo, naho ikizami cya ADN cyakozwe kigaragaza ko nta sano y'umwana n'umubyeyi ihari hagati ya Dusabimana n'umurambo w'umwana wapimwe.

Urubanza rwaje gusubukurwa Dusabimana avuga ko kuba ikizamini cya ADN kigaragaza ko umwana byavugwaga ko ari uwe nta sano y'umwana n'umubyeyi bafitanye bityo ko nta cyashingirwaho hemezwa ko yishe umwana we, ko ahubwo Ubushinjacyaha bwagombye kugaragaza ikindi cyaba cyarishe umwana.

Ubushinjacyaha bwo buvuga ko kuba uregwa ahakana icyaha mu bujurire kandi yaracyemeye mu nkiko zabanje byamutsindisha kandi ko imiburanire y'uregwa n'umwunganira itafatwaho ukuri kuko inyuranye n'ibimenyetso biri muri dosiye, naho ku bijyanye naho umwana Sibomana yaba yarashyinguwe, Ubushinjacyaha bwagaragaje ko aho umurambo w'umwana washyinguwe cyangwa wajugunywe hatazwi kuko uregwa yanze kuhavuga.

Incamake y'icyemezo: 1. Buri gihe kwemera icyaha ntibiba ikimenyetso ntakuka gihagije cyashingirwaho mu kwemeza ko uregwa ahamwe n'icyaha akurikiranyweho, bityo imvugo zashingiweho n'inkiko zibanza zihamya Dusabimana icyaha cyo kwihekura ntizihagije kugirango ahamwe n'icyaha kuko izo mvugo zitagaragaza neza icyaha yemeye.

2. Iyo uregwa yemera icyaha ubundi akagihakana bishyira inshingano ku Bushinjacyaha zo gutanga ibindi bimenyetso bishyigikira ukwemera icyaha k'uregwa.

3. Gushidikanya birengera ushinjwa, bityo kuba umurambo wapimwe udafitanye isano y'umwana n'umubyeyi n'uregwa utandukanye nuwo ubushinjacyaha bwavuze buhereye ku mvugo z'abatangabuhamya, no kuba ibimenyetso byatanze n'ubushinjacyaha bitemeza nta shiti ko uregwa yakoze icyaha cyo kwihekura, agomba kugirwa umwere.

**Ubujurire bufite ishingiro;
Amagarama aherereye ku isanduku ya Leta.**

Amategeko yashingiweho:

Itegeko N°01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 143.

Itegeko N° 30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 85 na 165.

Imanza zifashishijwe:

Ubushinjacyaha v.Nyirahabimana, RPA0229/10/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 19/09/2014.

Ubushinjacyaha v.Ndungutse, RPA0042/14/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 02/06/2017.

Inyandiko z'abahanga zifashishijwe:

Adrien Masset , Ann Jacobs & Michel Franchimont, Manuel de procédure pénale, Maison d'édition Larcier, 2009, p. 1174.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Ngoma, Ubushinjacyaha burega Dusabimana Jeannette, ko ku wa 22/06/2013, afatanyije na Hategekimana Léonard, bishe umwana we witwa Sibomana Samuel, wari ufite imyaka 2 y'amavuko, kugira ngo bakunde babane nk'umugore n'umugabo.

[2] Dusabimana Jeannette yaburanye avuga ko atishe uwo mwana ahubwo ko yazize uburwayi, ndetse ko afite n'impapuro zo kwa muganga zibihamya. Ku wa 21/11/2013, Urukiko Rwisumbuye rwa Ngoma rwaciye urubanza RP0678/13/TGI/Ngoma, rwemeza ko Dusabimana Jeannette na Hategekimana Léonard bahamwa n'icyaha bakurikiranyweho, ruhanisha buri wese igifungo cya burundu. Bombi barujuririyeye mu Rukiko Rukuru, Urugereko rwa Rwamagana maze ruca urubanza RPA0385/13/HCRWG–RPA394/13/HC/RWG, ku wa 12/06/2014 rwemeza ko ubujurire bwabo nta shingiro bufite.

[3] Urukiko mu gusuzuma ingingo z'ubujurire bwa Dusabimana Jeannette, aho avuga ko yajuriye agira ngo asabe imbabazi ku cyaha yakoze, rwasanze ukwemera icyaha kwe kutuzuye kuko nubwo acyemera atagaragaje ukwicuza ahubwo ko yivuguruzaga, rimwe akavuga ko yajyanye umwana kwa muganga ari kumwe na Hategekimana Léonard, ari nawe wari umuteruye, bagera mu gashyamba akamubwira ngo umwana ashizemo umwuka kandi yaragiye amukandakanda, ubundi akavuga ko yishe uwo mwana abitewe n'uburakari bwuko umugabo we yamuriye umutungo w'iwabo, agafasha Hategekimana Léonard bakica uwo mwana.

[4] Dusabimana Jeannette yajuriye mu Rukiko rw'Ikirenga avuga ko yaburanye yemera icyaha akagisabira imbabazi, ariko Urukiko ntirumugabanyirize ibihano, rukamugumisha ku gifungo cya burundu, no kuba yarashinjuye Hategekimana Léonard agaragaza ko ntaho ahuriye n'imikorere y'icyaha, ariko Urukiko ntirubihe agaciro, asaba ko Hategekimana Léonard yagirwa umwere, kuko icyaha ari gatozi. Ubujurire bwanditswe kuri N° RPAA 0066/15/CS.

[5] Urubanza rwaburanishijwe mu ruhamwe ku wa 22/01/2018, Dusabimana Jeannette yitabye yunganiwe na Me Ndayambaje Gilbert naho Ubushinjacyaha buhagarariwe na Me Munyaneza Nkwaya Eric, Umushinjacyaha ku Rwego rw'Igihugu. Dusabimana Jeannette yatangiye ahakana ibikubiye mu nyandiko y'ubujurire yazanywe mu Rukiko rw'Ikirenga, avuga ko atari we wayanditse kuko yari arwaye, ko mu nkiko zabanje yaburanye yemera icyaha atakoze bitewe nuko yari yabwiye ko nacyemera ahita arekurwa, ko ariko atiyiciye umwana Sibomana Samuel ahubwo ko uwo mwana yarwaye bakamutwara ku bitaro akaza gupfa bakamushyngura kwa sekuru ubyara se.

[6] Nyuma yo kumva ubujurire bwa Dusabimana Jeannette, uhagarariye Ubushinjacyaha akagira icyo abuvugaho, Urukiko rwasanze mbere yo guca urubanza burundu, rugomba kwikorera iperereza ku birebana n'umwana Dusabimana Jeannette ashinjwa kwica. Ubwo uru Rukiko rwakoraga iperereza ku wa 28/02/2018, abatangabuhamya babajijwe aribo Uwimana Beatrice, Ntirenganya Fabien, Harerimana Damascene bavuze ko Tuyisenege na Dusabimana babyaranye abana babiri ariko bakaba batazi aho umwana wa kabiri witwaga Sibomana Samuel aherereye, kuko umwana bazi wapfuye arwaye ari uwitwa Uwineza Aline kandi ko bamushynguye kwa sekuru ubyara se.

[7] Mu iburanisha ryo ku wa 19/03/2018, uregwa yitabye Urukiko yunganiwe n'Ubushinjacyaha buhagarariwe nk'uko byari bimeze mu iburanisha riheruka. Nyuma yo

gusuzuma uko Dusabimana Jeannette asobanura uko ibintu byabaye ugereranije nibyo yari yavuze mbere, Urukiko rwemeje ko hongera gukorwa iperereza, Ubushinjacyaha bugashyikiriza Dusabimana Jeannette abaganga babifitiye ubumenyi kugira ngo bamusuzume, bamenyeshe Urukiko niba nta kibazo cy'uburwayi bwo mu mutwe yaba afite. Urukiko rwasanze kandi ari ngombwa ko Ubushinjacyaha bukora iperereza ry'inyongera, bukagaragaza niba Dusabimana Jeannette yaba yarabyaye abana babiri (Uwineza Aline na Sibomana Samuel) cyangwa niba yarabyaye umwe, ndetse bukanagerageza kwerekana igice buvuga ko Sibomana Samuel yiciwemo naho yashyinguwe. Urukiko rwanategetse ko Tuyisenge Emmanuel, umugabo wa Dusabimana Jeannette atumizwa kugira ngo agire ibyo arusobanurira, hemezwa ko iburanisha rizasubukurwa ku wa 25/06/2018.

[8] Ku wa 20/06/2018, Ibitaro by'Indwara zo mu Mutwe by'i Ndera byoherereje Urukiko raporo yerekana ko isuzuma Dusabimana Jeannette yakorewe kuva yinjira ibitaro ku wa 17/05/2018 kugeza ku wa 20/06/2018, ryagaragaje ko ibitekerezo bye biri ku murongo. Ikimenyetso kimwe yagaragaje n'icy'agahinda kuko rimwe na rimwe arira, akavuga ko ababara umutwe, ariko muganga akaba asobanura ko ibyo ashobora kuba abiterwa n'ubuzima yanyuzemo mbere na nyuma yo gufungwa, byanzura ko nta bimenyetso bifatika by'uburwayi bwo mu mutwe byamugaragayeho.

[9] Ku wa 25/06/2018, ababuranyi bose baritabye, impande zombi zigira icyo zivuga ku byavuye mu iperereza no kuri raporo ya muganga. Kimwe mu byo Urukiko rwari rwasabye Ubushinjacyaha, ni ukugaragaza niba Dusabimana Jeannette yaba yarabyaye abana babiri (Uwineza Aline na Sibomana Samuel) cyangwa niba yarabyaye umwe. Ubushinjacyaha bukaba bwagaragaje amafoto y'imva buvuga ko Uwineza Aline ariho ashyinguye, ko aho Sibomana Samuel yashyinguwe cyangwa yajugunywe hatazwi kuko uregwa yanze kuhavuga.

[10] Dusabimana Jeannette we yavuze ko iyo mva ishyinguyemo Sibomana Samuel kandi ko ariwe mwana wenyine yabyaye kandi ko ajya kubana na Tuyisenge Emmanuel yasanze afite undi mwana w'umukobwa ukiriho.

[11] Urukiko rwasanze mbere yo guca urubanza burundu, ari ngombwa ko umurambo washyinguwe kwa sekuru w'umwana utabururwa (exhumation) kugira ngo ukorerwe ikizamini cya DNA, hagaragazwe niba umwana ushyinguye muri iyo mva ari umukobwa cyangwa ari umuhungu n'isano yaba afitanye na Dusabimana Jeannette, rutegeka ko Tuyisenge Emmanuel yongera guhamagazwa kugira ngo agire ibyo arusobanurira. Ikizamini cya ADN cyakozwe na Dr Christa Augustin wo mu kigo *UKE Institute of Legal Medecine, Hamburg, Germany*, kigaragaza ko umurambo wapimwe ari uw'umukobwa, ariko ko atari uwa Dusabimana, ntabe n'uwa Tuyisenge.

[12] Urubanza rwongeye kuburanishwa mu ruhame ku wa 03/12/2018, uregwa yitabye Urukiko yunganiwe n'Ubushinjacyaha buhagarariwe na Rudatinya Nyangezi Gaspard, naho Tuyisenge atitabye, ariko yarahamagajwe mu buryo bukurikije amategeko, maze ababuranyi bahabwa umwanya kugira ngo bagire icyo bavuga kuri raporo ku kizamini cya DNA.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

Kumenya niba hari ibimenyetso bidashidikanywaho bigaragaza ko Dusabimana Jeannette yishe umwana we Sibomana Samuel.

[13] Dusabimana Jeannette avuga ko mu nkiko zabanje yahamijwe icyaha atakoze kandi atariwe wiyiciye umwana, ko ahubwo yamujyanye kwa muganga ari kumwe na Tuyisenge Emmanuel (Se w'umwana), uwo mwana aza kuzira uburwayi. Avuga ko yemeye icyaha mu Bugenzacyaha no mu nkiko zabanje bitewe nuko yari yabwiwe n'abamufunze ko nacyemera ahita arekurwa, ko anajurira mu Rukiko rw'Ikirenga atariwe wanditse ibaruwa ijurira kuko yari arwaye.

[14] Avuga ko umwana bamushinja ko yishe atapfuye mu 2013 nk'uko muri dosiye bivugwa ko ahubwo yapfuye mu 2011, bamushyigura mu murima wa Sekuru, mu Mudugudu wa Nyabageni, Akagari ka Kabazungu, Umurenge wa Musanze, Intara y'Amajyaruguru, kandi bakaba baramushyinye Se w'umwana n'abaturanyi babo bahari, abo yibuka bari bahari barimo Ntiringaya Fabien, Harerimana Damascène, Ntawiha na Uwimana Nirere.

[15] Abajijwe kugira icyo avuga ku mvugo z'abantu we yivugiye ko bamuherekeje kwa muganga ajya kuvuza umwana, nyamara bakaba barahakanye ko batazi iby'urupfu rwa Sibomana Samuel ndetse ko ntaho agaragara mu bitabo by'irangamimerere, yasubije ko muganga wabasuzumye ashobora kuba yararangaye ntiyandike mu gitabo cyabugenewe, naho kuba ababajijwe barahakanye ibyo yavuze, yasobanuye ko atamenya impamvu yabibateye kuko ibyabaye byabaye ku manywa, abantu bose babireba.

[16] Ku birebana n'ibyavuye mu iperereza ry'inyongera, Dusabimana Jeannette yongeye gushimangira ko yabyaranye na Tuyisenge Emmanuel umwana umwe witwa Sibomana Samuel, ariko bajya kubana akaba yari afite undi mwana kandi ko nubu agihari, bityo abemeza ko yari afite abana babiri bakaba aribyo bashingiyeho babivuga, umwana yabyaranye na Tuyisenge akaba yarapfuye afite imyaka 3 kandi ashyingurwa kwa Sekuru, ndetse ko mu gihe bimukaga bajya Kirehe uwo mwana yari yarapfuye.

[17] Me Ndayambaje Gilbert umwunganira, yavuze ko kuba Dusabimana Jeannette yagiye arangwa no kwivuguruzwa, bitewe nuko atari afite umwunganizi mu mategeko, ariko muri rusange nta kimenyetso na kimwe kigaragaza ko uwo mwana yishwe na nyina, ndetse ko ababajijwe mu iperereza ryakozwe ntacyo bafashije urukiko, icyo bose bahurizaho nuko batazi icyishe uwo mwana.

[18] Me Ndayambaje Gilbert avuga ko ikizamini cy'ADN cyakozwe kigaragaza ko nta sano ry'umwana n'umubyeyi hagati y'umurambo wapimwe na Dusabimana na Tuyisenge, ko kuba ADN igaragaza ko umwana bavugaga ko bahuriyeho atari uwabo, hakwibazwa icyashingirwaho bemeza ko Dusabimana yishe umwana we kandi nta kigaragaza aho yapfiriye, ahubwo ko ikigaragara ari uko babyaranye umwana nyuma akicwa n'urw'ikirago, bitafatwa bityo, Ubushinjacyaha bukaba bwagombye kugaragaza ikindi cyaba cyarishe uwo mwana. Asaba ko yagirwa umwere hashingiwe ku biteganywa n'ingingo ya 165 y'Itegeko rigenga imiburanishirize y'imanza z'inshinjabyaha kuko hari ugushidikanya.

[19] Uhagarariye Ubushinjacyaha we avuga ko ibivugwa na Dusabimana Jeannette ko yajyanye na Se w'umwana kumuvuza kandi ko yaguye kwa muganga nta kuri kurimo kuko mu

Bugenzacyaha Tuyisenge Emmanuel, yasobanuye ko yabajije Dusabimana aho umwana ari undi aramwihorera, nyuma yaho aza kumubwira ko yapfuye, ibyo bikaba bigaragaza ko umwana apfa atari kumwe na Se.

[20] Akomeza avuga ko nubwo Dusabimana Jeannette ahakana inyandiko y'ubujurire, ibiyikubiyemo birimo kuba yarasobanuye uburyo umwana yarize, agahinda kamwica akamuniga, akamuta mu kirombe cyari mu gasozi aho bacukuraga umucanga, izo mvugo ziri muri iyo baruwa zikaba zumvikanisha ko nta wazandikira undi cyane ko muri ubwo bujurire, ashinjura Hategekimana Léonard.

[21] Avuga ko kuba Dusabimana Jeannette ahakana icyaha mu bujurire kandi yaracyemeye mu nkiko zabanje, byamutsindisha hashingiwe ku ngingo ya 104 y'Itegeko ry'ibimenyetso ndetse ko ibyo Dusabimana n'umwunganira bavugiye mu iburanisha bitafatwaho ukuri kuko binyuranye n'ibimenyetso biri muri dosiye kandi bikaba bihagije.

[22] Yavuze ko ibyavuye mu iperereza bigaragaza neza uko ibintu byagenze, kuko ababajijwe bose bagaragaje ko umwana bazi washyinguwe kwa Sebukwe wa Dusabimana Jeannette, yitwaga Aline ndetse bagahuriza ko umwana wa kabiri wa Dusabimana yari mu kigero cy'imyaka 2, uwo mwana akaba atandukanye n'umwana witwa Sibomana wakiriwe ku Kigo Nderabuzima cya Bisate ku wa 25/05/2011. Asoza avuga ko inyandiko Dusabimana Jeannette yiyandikiye ajurira ariyo irimo ukuri kwe nubwo avuga ko yayandikiwe.

[23] Ku ngingo ijyanye no kumenya aho Sibomana Samuel yiciwe n'igihe yiciwe, avuga ko bitaboroheye kubibonera igisubizo kuko abafite amakuru bose bavuze ko bayakuye kuri Dusabimana, ariko bakavuga ko umwana yaguye hagati ya Kirehe na Musanze. Akomeza avuga ko mu rwego rwo kumenya ukuri kw'ibivugwa na Dusabimana Jeannette ko atariwe wiyandikiye umwanzuro ujurira ngo kuko yari arwaye, habajijwe umutangabuhamya ufungiyeye muri Gereza ya Ngoma witwa Nyirabarima Florida (umwe mu bandikira abandi imyanzuro muri Gereza ya Ngoma), yasobanuye ko yamwandikiye umwanzuro ari muzima ko atari arwaye ndetse bakaba barabanje no kuganira amwerekana ibibi byo guhisha ukuri ndetse mu gihe yamwandikiraga uwo mwanzuro akaba yaricujije impamvu yabeshyeye Hategekimana Léonard.

[24] Uhagarariye Ubushinjacyaha avuga ko ikizamini cya ADN cyagaragaje ko umwana washyinguwe ari umwana w'umukobwa kandi ko icyo ari ikimenyetso kigaragaza ko uregwa yishe umwana we w'umuhungu witwa Sibomana Samuel, binyuranye n'ibyo uregwa avuga ko yapfuye agashyungurwa kwa sekuru, ko rero iki kimenyetso gishimangira ibindi bimenyetso batanze mbere, kikaba kigaragaza ko uwo mwana atashyinguwe kwa sekuru.

UKO URUKIKO RUBIBONA

[25] Dusabimana Jeannette yarezwe icyaha cyo kwihekura giteganywa n'ingingo ya 143 y'Itegeko Ngenga N°01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana iteganya ko "kwihekura ni ubwicanyi bukorewe umwana wabyaye cyangwa uwo ubereye umubyeyi mu buryo bwemewe n'amategeko. Kwihekura bihanishwa igifungo cya burundu".

[26] Ingingo ya 85 y'Itegeko N°30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko "ubushinjacyaha, uwakorewe icyaha cyangwa abamufiteho uburenganzira iyo baregeye indishyi z'akababaro cyangwa biregeye umuburanyi, nibo bagomba gutanga ibimenyetso byemeza icyaha". Dosiye y'urubanza igaragaraza ko Dusabimana Jeannette yahamijwe icyaha cyo kwihekura n'inkiko zibanza zishingiye ku kuba yaba yaremeze icyaha.

[27] Dosiye y'uru rubanza inagaragaza ko Dusabimana Jeannette abazwa mu Bugenzacyaha ku wa 06/08/2013 (cote 17-20) yahakanye icyaha aregwa, asobanura ko umwana we yishwe n'uburwayi bwo mu nda kandi ko yari yaramuvuje. Dusabimana Jeannette yahinduye imvugo mu Bushinjacyaha ku wa 12/08/2013, yemera icyaha avuga ko ari Hategekimana wanize umwana we ubwo yari agiye kumwereka umuvuzi wa gakondo. Yongeye guhindura imvugo ageze mu Rukiko Rwisumbuye rwa Ngoma, ahakana icyaha cyo kwihekura, avuga ko atishe umwana we ahubwo ko yamurwaje agapfa. Na none kandi Dusabimana Jeannette, yongeye guhindura imvugo aburana mu Rukiko Rukuru, yemera ko yafatanyije na Hategekimana Léonard kwiyicira umwana bakamushyngura mu gashyamba. Aburana mu Rukiko rw'Ikirenga yahakanye icyaha.

[28] Ukwemera icyaha kwa Dusabimana mu Bushinjacyaha kugaragara muri aya magambo "icyaha ndegwa ndacyemera. Hari tariki 22/06/2013 mu gihe cya saa cyenda z'amanywa ubwo twari i Musanze, umwana yararwaye twarajyanye na Hategekimana agiye kunyereka umuvuzi wa gakondo icyo gihe Hategekimana niwe wari ufashe umwana, tugeze mu nzira hagati arambwira ati umwana avuye mu mubiri mubaza uko bigenze ambwira ko yapfuye. Icyo nabivugaho nuko ashobora kuba yaramunize akabimpisha [...]" . Iyi mvugo ya Dusabimana mu Bushinjacyaha yiyongera kuyindi ye mu Bugenzacyaha (C7) aho avuga "[...] icyo nsabira imbabazi nuko nahishiriye icyaha cyo kwica umwana wacu nkaba ntaragaragaje ukuri [...]" . Nubwo yaburanye mu Rukiko Rwisumbuye ahakana icyaha, izi mvugo nizo urwo rukiko rwashingiyeho rumuhamya icyaha.

[29] Indi mvugo ya Dusabimana yemera icyaha, yayivugiye mu Rukiko Rukuru aburana. Yagize ati: "ndemera icyaha nkagisabira imbabazi kuko naburanye ngihakana. Nemeye ko umwana wange yicwa. Yarambwiye ngo uyu mwana simushaka aramufata aramuhotora [...]. Ndasaba kugabanyirizwa ibihano [...]". Nkuko bigaragara mu gika cya 9 cy'urubanza RPA0385&394/13/HC/RWG rwaciwe n'Urukiko Rukuru, imvugo ya Dusabimana yafashwe nk'ikimenyetso kimushinja, ariko urwo Rukiko rusanga atarasobanuye ku buryo bufatika uko yakoze icyo cyaha.

[30] Imvugo zashingiweho n'inkiko zibanza zihamya Dusabimana Jeannette icyaha cyo kwihekura uru Rukiko rurasanga ubwazo zidahagije kugirango ahamwe n'icyaha kuko mu Bugenzacyaha no mu Bushinjacyaha izo mvugo ntizigaragaza neza icyaha Dusabimana yemeye kuko nawe yavuze ko yakekaga ko umwana we yishwe na Hategekimana. Nkuko ingingo ya 85 y'Itegeko N°30/2013 ryo ku wa 24/05/2013 ryavuzwe haruguru ibiteganya, Ubushinjacyaha nibwo bufite inshingano yo kugaragaza ibimenyetso by'icyaha burega Dusabimana, no gusobanura uko cyakozwe. Bwashoboraga guhera kuri izi mvugo za Dusabimana Jeannette bushingiraho buvuga ko yemeye icyaha, bugashaka ibimenyetso bizishyigikira. Ntibyumvikana ukuntu yabwiye Ubugenzacyaha aho baba barataye umurambo w'umwana ntibumujyane ngo ahabereke, kandi umurambo ufatwa nka kimwe mu bigize icyaha.

[31] Kwemera icyaha, ni kimwe mu bimenyetso bishobora gushingirwaho n'urukiko rukemeza ko uregwa yakoze icyaha. Ariko, buri gihe, kwemera icyaha ntibiba ikimenyetso ntakuka kihagije cyashingirwaho mu kwemeza ko uregwa ahamwa n'icyaha akurikiranyweho. Abahanga mu mategeko Adrien Masset, Ann Jacobs, Michel Franchimont bo bemeza mu gitabo banditse kitwa “ *Manuel de procédure pénale*” ko kwemera icyaha ari ikimenyetso nk'ibindi, gishobora no kudahabwa agaciro, kuko gishobora kuba ikimenyetso kidafatika kandi cyoroshye . Babivuga muri aya magambo: “*l'aveu n'est plus qu'un élément parmi d'autres de la conviction du juge, dont il faut d'ailleurs se méfier, car il peut être une preuve fragile*”.¹

[32] Ku birebana n'uru rubanza, Dusabimana yatangiye ahakana icyaha, nyuma avuga ko acyemeye nabwo akabikora mu buryo budasobanutse. Urukiko rurasanga guhitamo imvugo yemera icyaha nk'icyimenyetso gishinja uregwa, rukirengagiza imvugo ye igihakana bigomba kugendana n'ibindi bimenyetso cyane cyane nko muri uru rubanza aho uregwa ari umuturage utajijutse, utazi gusoma no kwandika² ushobora kwemera ibyo abandi bamubwiye atabanje gushishoza ngo amenye ingaruka zibyo avuga.

[33] Iby'uko kwemera icyaha kudashobora kuba ikimenyetso cyonyine gihagije gishobora gutuma uregwa ahamwa n'icyaha mu gihe nta kindi kimenyetso gifatika kicyunganira, byemejwe mu rubanza RPA0229/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/09/2014 haburana Ubushinjacyaha na Nyirahabimana Esperance no mu rubanza RPA0042/14/CS rwaciwe ku wa 02/06/2017 haburana Ubushinjacyaha na Ndungutse Deo. Muri izi manza zombi, Urukiko rwasanze kuba uregwa yaremeye ibyaha nyuma akaza kubihakana, bishyira inshingano ku Bushinjacyaha yo gutanga ibindi bimenyetso bishyigikira imvugo z'uregwa zemera icyaha.

[34] Aburana mu Rukiko rw'Ikirenga, Dusabimana Jeannette yavuze ko Sibomana Samuel yishwe n'uburwayi, ashyingurwa mu isambu yo kwa sekuru. Ubushinjacyaha n'ababajijwe mu iperereza bavuze ko umwana ushyinguye aho Dusabimana Jeannette yavuze ari undi mwana we witwa Uwineza Aline yabyaranye na Tuyisenge. Kugaragaza ko umwana ushyinguye aho Dusabimana Jeannette yavuze, ari umwana we w'umukobwa nkuko Ubushinjacyaha bwabivuze, byari kuba ikimenyetso kigaragaza ko atari Sibomana Samuel (umwana w'umuhungu) uhashyinguwe.

[35] Ikizamini cy'ADN cyakozwe cyagaragaje ko umurambo wapimwe ari uw'umwana w'umukobwa, ariko ko hagati ye na Dusabimana Jeannette nta sano y'umwana n'umubyeyi ihari. Ibyo ninako bimeze hagati y'uwapimwe na Tuyisenge, ibizamini byagaragaje ko atari se. Urukiko rurasanga ibyo bigize ugushidikanya ku murambo wapimwe, kuko nubwo ikizamini cyagaragaje ko ar'uw'umukobwa, ntabwo ari uw'umwana wa Dusabimana nkuko byari byavuzwe n'Ubushinjacyaha.

[36] Ubushinjacyaha nibwo bwakoresheje ikizamini cya ADN hasuzumwa umurambo bwavugaga ko ari uwa Uwineza Aline ushyinguye kwa sekuru Gakaramu wafatanije n'umuhungu we Tuyisenge Emmanuel gutanga ikirego bavuga ko Dusabimana yishe Sibomana. Ibirebana n'ipimishwa ry'umurambo byakozwe n'Ubushinjacyaha Dusabimana atabigizemo

¹ Adrien Masset , Ann Jacobs & Michel Franchimont, *Manuel de procédure pénale*, Maison d'édition Larcier, 2009, p. 1174.

² Kuba Dusabimana Jeannette atazi gusoma no kwandika yabivuze ubwo yabazwaga mu Bugenzacyaha ku wa 6/8/2013, yongera kubivuga ku wa 12/8/2013 abazwa mu Bushinjacyaha.

uruhare kuko afunzwe. Igiteye gushidikanya nuko hapimwe umurambo utandukanye nuwo Ubushinjacyaha bwavuze buherereye ku mvugo ya Gakaramu sekuru w'umwana Sibomana Samuel, n'abandi batangabuhama b'Ubushinjacyaha bavuze ko umwana w'umukobwa wa Dusabimana witwa Uwineza Aline ariwe ushyinguye kwa sekuru, ko atari Sibomana Samuel. Sekuru w'umwana wagaragaje imva ntiyakabaye yitiranyaga imva yaho umwuzukuru we avugaga witwa Uwineza Aline iherereye. Ibi bitera gushidikanya kukuri kw'ibyavuzwe na Gakaramu ndetse n'abandi batangabuhama.

[37] Urukiko rurasanga ikindi gituma habaho gushidikanya ari imiterere ya dosiye idasobanura neza uko ibintu byagenze cyane cyane uko Sibomana Samuel yapfuye, icyamwishe ndetse naho ashyinguye. Mu rwego rwo gushakira kubimenya neza no kvanaho urujijo, Urukiko rw'Ikirenga rwatumije mu buryo bukurikije amategeko Tuyisenge Emmanuel se w'umwana Sibomana Samuel inshuro ebyiri kugirango rugire ibyo rumubaza, yanga kwitaba nta mpamvu kandi ariwe watanze ikirego. Bikaba byatera kwibaza niba ibyo yavugiye mu Bugenzacyaha yaravugishije ukuri cyangwa niba hari ibyo ashakira guhisha.

[38] Nkuko biteganywa n'ingingo ya 85 y'Itegeko N°30/2013 ryo kuwa 24/05/2013 ryavuzwe haruguru, Ubushinjacyaha nibwo bufite inshingano zo gutanga ibimenyetso byemeza ko uwo bwavuze yakozwe icyaha. No muri uru rubanza nibwo bwagombaga gutanga ibimenyetso bigaragaza nta shiti ko Dusabimana yishye umwana we Sibomana, uko yamwishe, aho yamwiciye n'ibindi bimenyetso ku mikorere y'icyaha. Muri uru rubanza, Urukiko rurasanga byarakozwe igice, Ubushinjacyaha bugendera gusa ku mvugo z'uregwa nazo zidahagije nkuko byasobanuwe hejuru.

[39] Ingingo ya 165 y'Itegeko rivugwa muri iki gika ivugaga ko "gushidikanya birengera ushinjwa. Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakozwe icyaha koko, bagomba kwemeza ko atsinze". Urukiko rurasanga rero hasesenguye ibimaze kuvugwa n'ingingo z'amategeko zavuzwe haruguru, hari ugushidikanya gukabije gutuma Dusabimana Jeannette agomba kugirwa umwera ku cyaha yarezwe cyo kwihokura kubera ko ibimenyetso byatanze n'Ubushinjacyaha bitemeza nta shiti ko yagikoze koko.

III. ICYEMEZO CY'URUKIKO

[40] Rwemeje ko ubujurire bwa Dusabimana Jeannette bufite ishingiro.

[41] Rwemeje ko Dusabimana Jeannette adahamwa n'icyaha cyo kwihokura kubera gushidikanya.

[42] Rwemeje ko imikirize y'urubanza RPA0385&394/13/HC/RWG rwaciye n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 12/06/2014 ihindutse mu ngingo zayo zose.

[43] Rutegetse ko Dusabimana Jeannette ahita arekurwa urubanza rukimara gusomwa.

[44] Rutegetse ko amagarama y'urubanza aherera mu Isanduku ya Leta kuko uregwa afunze.