

UBUSHINJACYAHA v. DUSENGIMANA

[Rwanda URUKIKO RW'IKIRENGA – RPAA 0001/14/CS
(Mukanyundo, P.J., Munyangeri na Hitiyaremye, J.) 17
Ugushyingo 2017]

*Amategeko agenga imiburanishirize y'imanza nshinjabyaha –
Ibimenyetso mu manza nshinjabyaha – Nta muntu ugomba
kwemezwa ko ahamwe n'icyaha nyuma y'urubanza atari uko
Ubushinjacyaha bugaragaje ibimenyetso bidatera
ugushidikanya uko ari kose.*

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Musanze, uregwa akurikiranyweho icyaha cyo gusambanya umwana muto cyane, Ubushinjacyaha buvuga ko ku wa 17/06/2012, mu ma saa tatu z'amanya, uregwa yagiye mu rugo rw'uwitwa Nshizirungu adahari, ahengeramugore we witwa Uwamahoro agiye gutunganya mu nzu, afata umwana wabo w'umukobwa w'amezi 10 aramusambanya, nyina w'umwana yumvise arize, ajya kureba icyo abaye asanga ngo uregwa amaze kumusambanya, maze aratabaza, hanyuma uregwa ariruka, bamwirukaho arabasiga. Urwo rukiko rwahamije uregwa icyaha rumuhanisha igifungo cya burundu y'umwihariko, rushingiye ku buhamya bwatanzwe.

Uregwa yajuriye mu Rukiko Rukuru, Urugereko rwa Musanze, avuga ko Urukiko Rwisumbuye rwamuhamije icyaha atakoze avuga ko Urukiko rwamuhamije icyaha rushingiye ku mvugo z'abatangabuhamya kandi zivuguruzanya ku byerekeye igihe umwana yasambanyirijwe n'ahantu we yafatiwe, aho gushingira

ku buhamya bw'Umuforomo wemeje ko nta bimenyetso yabonye ku mwana bigaragaza ko yasambanyijwe. Urwo rukiko rwaciye urubanza rwemeza ko nta gihindutse ku rubanza rwajuririwe.

Uregwa yarongeye ajuririra Urukiko rw'Ikirenga, avuga ko Urukiko rutahaye agaciro imiburanire ye y'uko nta cyaha yakoze, avuga ko yakigeretsweho n'ababyeyi b'umwana kubera akagambane biturutse ku mafaranga y'ishuri yohererejwe n'umugiraneza ababyeyi b'umwana bakaba barashakaga ko ayabahaho, yongeraho ko Urukiko rwashingiye ku buhamya bw'abamushinja ibinyoma bemeza ko amaze gukora icyaha yirutse kandi afite ubumuga bwo kutabona ku buryo atakwiruka ngo asige abafite amaso mazima, ndetse ko Urukiko rwanze no guha agaciro ibyagaragajwe na muganga wakiriye umwana bwa mbere wemeje ko nta bimenyetso yabonye byerekana ko umwana yasambanyijwe.

Ubushinjacyaha bwo bwagaragazaga ko impamvu z'ubujurire z'uregwa nta shingiro zifite, kuko abazwa mu Bushinjacyaha yavuze ko yageze mu rugo rw'ababyeyi b'umwana, kandi ko ntacyo apfa n'ababyeyi b'uwo mwana, bwongeraho ko umutangabuhamya Mukarusanga yavuze ko yiboneye n'amaso ye amasohoro yari ku gitsina no ku matako y'umwana, ibi bimenyetso byose ngo bikaba bishimangirwa na raporo ya muganga igaragaza ko umwana yasambanyijwe kandi ko yatewe udusebe. Ku birebana n'imvugo y'Umuforomo wasuzumye umwana bwa mbere wemeje ko nta kimenyetso na kimwe yabonye ku mwana kigaragaza ko yasambanyijwe, Ubushinjacyaha buvuga ko imyitwarire y'uwo muforomo itahabwa agaciro kuko bigaragara ko yashatse kutiteranya n'uregwa. Naho ku bijyanye no kuba yari impumyi nyamara akabasha kwiruka Ubushinjacyaha buvuga ko bitafatwa

nk'ibidashoboka mu gihe uregwa ubwe yivugiye ko inzira yari nyabagendwa.

Incamake y'icyemezo: 1. Nta muntu ugomba kwemezwa ko ahamwe n'icyaha nyuma y'urubanza atari uko Ubushinjacyaha bugaragaje ibimenyetso bidatera ugushidikanya uko ari ko kose, bityo Urukiko rurasanga nta bimenyetso bikiranuye kandi bidashidikanywaho rwashyikirijwe ku buryo rwabishingiraho mu guhamya uregwa icyaha.

**Imikirize y'urubanza rwajuririwe ihindutse kuri byose;
Amagarama y'urubanza aherereye ku isanduku ya Leta.**

Amategeko yashingiweho:

Itegeko N° 15/2004 ryo ku wa 12/06/2004, ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 4,65 n'iya 119.

Nta manza zifashishijwe.

Inyandiko z'abahanga:

Henry Bosly et Damien Vandermeersch, Droit de la procédure pénale, 4e édition, P. 1316, 5

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ubushinjacyaha bwareze Dusengimana Ferdinand mu Rukiko Rwisumbuye rwa Musanze, bumukurikiranyeho icyaha

cyo guhohotera umwana muto cyane, busobanura ko ku wa 17/06/2012, mu ma saa tatu z'amanywa, yagiye mu rugo kwa Nshizirungu Emmanuel, ahengera umugore we witwa Uwamahoro Solange agiye gutunganya mu nzu, naho umugabo we agiye guca ubwatsi bw'inka, afata umwana wabo w'umukobwa w'amezi 10 witwa I.B., amushyira ku bibero aramusambanya, nyina w'umwana yumvise arize, ajya kureba icyo abaye abona Dusengimana Ferdinand ari gusubiza igitsina cye mu ipantalo, amwaka uwo mwana, asanga yamutayeho amasohoro ku gitsina, ku matakano no ku gakanzu yari yambaye, maze aratabaza, Dusengimana Ferdinand ariruka, bamwirukaho arabasiga.

[2] Urukiko Rwisumbuye rwa Musanze rwaciye urubanza RP 0322/012/TGI/ MUS, ku wa 21/03/2013, rwemeza ko Dusengimana Ferdinand ahamwa n'icyaha cyo gusambanya umwana, kubera ko hari abatangabuhamya bamushinja, rumuhanisha igifungo cya burundu y'umwihariko.

[3] Dusengimana Ferdinand yajuririye Urukiko Rukuru, Urugereko rwa Musanze, avuga ko Urukiko rwamuhamije icyaha rushingiye ku mvugo z'abatangabuhamya kandi zivuguruzanya ku byerekeye igihe umwana yasambanyirijwe n'ahantu we yafatiwe, aho gushingira ku buhamya bw'Umuforomo wemeje ko nta bimenyetso yabonye ku mwana bigaragaza ko yasambanyijwe. Urwo rukiko rwaciye urubanza RPA 0077/13/HC/MUS ku wa 21/10/2013, rwemeza ko ubujurire bwe nta shingiro bufite.

[4] Dusengimana Ferdinand yajuririye Urukiko rw'Ikirenga, avuga ko Urukiko rutahaye agaciro imiburanire ye y'uko nta cyaha yakozwe, ko yakigeretsweho n'ababyeyi b'umwana kubera akagambane, rushingira ku buhamya bw'abamushinja ibinyoma

bemeza ko amaze gukora icyaha yirutse kandi afite ubumuga bwo kutabona, rwanga no guha agaciro ubuhamywa bwa muganga wakiriye umwana bwa mbere wemeje ko nta bimenyetso yabonye byerekana ko umwana yasambanyijwe.

[5] Urubanza rwaburanishijwe mu ruhamwe ku wa 16/10/2017, Dusengimana Ferdinand yunganiwe na Me Umupfasoni Blandine, naho Ubushinjacyaha buhagarariwe na Munyaneza Nkwana Eric, Umushinjacyaha ku rwego rw'Igihugu.

II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

Kumenya niba hari ibimenyetso bidashidikanywaho bihamya Dusengimana icyaha aregwa.

[6] Dusengimana Ferdinand avuga ko impamvu yatumye ajurira ari uko Urukiko rutahaye agaciro ibisobanuro yatanze bigaragaza ko icyaha aregwa ntacyo yakoze, ko ahubwo ari akagambane yagiriwe na Nshizirungu Emmanuel n'umugore we Uwamahoro Solange biturutse ku makimbirane bari bafitanye n'umuryango we, kuko bamaze kumenya ko afite amafaranga yari yahawe n'umugiraneza w'Umudage witwa Thomas kugira ngo akomeze amashuri y'ababana n'ubumuga bwo kutabona i Rwamagana, bashakishije uburyo bayamukuraho dore ko ngo bari barigeze no gucisha ababyeyi be amafaranga ku buryo bw'amaherere, maze bamuhimbira icyaha bakimugerekaho kugira ngo bayatware.

[7] Avuga kandi ko Urukiko Rukuru rwashingiye ku mvugo z'abatangabuhamywa bemeje ko yafatiwe ku mugezi arimo

kwimeseraho imyenda akanakomeza kuyambara itose, nyamara umuforomo basanze kuri *Centre de Santé*, yemeje ko amubona atari yambaye imyenda itose. Akomeza asobanura ko ikindi kigaragaza ko ubuhamya bwashingiweho ari ibinyoma, ari uko abo batangabuhamyanya bavuze ko bamubonye yiruka ajya ku mugezi, nyamara bizwi ko afite ubumuga bwo kutabona, ko agenda yiyoboza agakoni; byongeye kandi, ngo ni uko amakuru batanga bayavuga nk'aho bari bahari icyaha gikorwa, mu gihe ari inkuru mbarirano babwiwe n'ababyeyi b'umwana. Atanga urugero nk'aho bavuga ko babonye amasohoro ku myenda y'umwana, ariko hakibazwa icyo bayapimishije nyamara umuforomo muganga wamwakiriye bwa mbere ntayo yabonye.

[8] Me Umufasoni Blandine wunganira Dusengimana Ferdinand avuga ko uwo yunganira yageretsweho icyaha biturutse ku mafaranga y'ishuri yohererejwe n'umugiraneza, maze akajya ayagendana aribwo Nshizirungu Emmanuel wari wabimenye yamubonye anyuze iwe akamubaza niba atabahaho, undi aramuhakanira, maze aherako amucurira umugambi wo kuyamwaka. Avuga ko icyerekana ko bamuhoye amafaranga ye ari uko ubwo bari bageze kuri Centre de Santé bavuga ko bagiye gupimisha umwana mu rwego rwo gushaka ibimenyetso, Umuforomo wabakiriye yababwiye ko nta bimenyetso bigaragaza ko yasambanyijwe, abagira inama yo kujya kumvikana ku bibazo bindi baba bafitanye, maze bageze mu Mudugudu basaba Dusengimana Ferdinand kubaha amafaranga, ayabimye bahita bajya kumurega kuri Polisi, akaba atekereza ko nyina w'umwana yageze mu rugo akamukuba ku gitsina (ibyoyise frottement) kugira ngo noneho hazze kuboneka ibimenyetso bigaragaza ko Dusengimana Ferdinand ariwe wakubye igitsina cyeky'umwana.

[9] Akomeza avuga ko ikindi kigaragaza ko n’imvugo z’abatangabuhamya zirimo ibinyoma, ari uko hari nk’aho bavuze ko nyina w’umwana yabatabaje ababwira ko Dusengimana Ferdinand yirutse amaze guhohotera umwana, byumvikanisha ko batamwiboneye. Avuga ko umutangabuhamya Harerimana Adrien we avuga ko yumvise umugore ataka ngo bamusambanyirije umwana, ahageze asanga umwana afite amashoro, ngo maze Dusengimana Ferdinand ahita yiruka, ibi bikaba bitumvikana kuko afite ubumuga bwo kutabona, bivuga ko adashobora kwiruka ngo asige abafite amaso mazima. Avuga ko ikindi cyerekana ko icyaha kiregwa uwo yunganira cyahimbwe, ari ivuguruzanya riri hagati y’imvugo z’ababyeyi b’umwana ubwabo, aho mu ibazwa ryabo umwe yavuze ko umwana batamwuhagiye naho undi akavuga ko bamwuhagiye.

[10] Avuga kandi ko ikindi kimenyetso cyerekana ko Dusengimana Ferdinand ari umwere, ari ukuba umuforomo wakiriye umwana bwa mbere ataramubonyeho ikimenyetso na kimwe kigaragaza ko yasambanyijwe, ndetse na Muganga wamusuzumye bwa kabiri akavuga ko nta masohoro yabonye, mu gihe nyina w’umwana atigeze avuga ko yamwuhagiye mbere yo kumuzana ku ivuriro, uwo muganga wamusuzumye nyuma akaba yarasabye ko hasuzumwa n’uwamuhohoteye (il faut tester le violeur) nyamara bikaba bitarigeze bikorwa. Akomeza avuga ko kuba Dr Nteziryayo Ezéchiel, umuganga wemewe wa Leta, yaravuze ko umwana yabyimbiwe ku myanya ndangagitsina ngo hariho n’udusebe twinshi, atari ikimenyetso cyashingirwaho mu guhamya uwo yunganira icyaha aregwa, kuko utwo dusebe dushobora guterwa n’impamvu nyinshi nk’uko yabisobanuye haruguru (frottement yakorewe mu rwego rwo gushakisha ibimenyetso).

[11] Uhagarariye Ubushinjacyaha avuga ko impamvu z’ubujurire za Dusengimana Ferdinand nta shingiro zifite, kuko abazwa mu Bushinjacyaha yavuze ko yageze kwa Nshizirungu Emmanuel, kandi ko ntacyo apfa n’ababyeyi b’uwo mwana, ndetse n’umutangabuhamya Mukarusanga Marie Josée akaba yaravuze ko yiboneye n’amaso ye amasohoro yari ku gitsina no ku matako y’umwana, ibi bimenyetso byose ngo bikaba bishimangirwa na raporo ya Dr Nteziryayo Ezéchiel igaragaza ko umwana yasambanyijwe kandi ko yatewe udusebe.

[12] Ku birebana n’invugo y’Umuforomo wasuzumye umwana bwa mbere wemeje ko nta kimenyetso na kimwe yabonye ku mwana kigaragaza ko yasambanyijwe, uhagarariye Ubushinjacyaha avuga ko imyitwarire y’uwo muforomo itahabwa agaciro kuko bigaragara ko yashatse kutiteranya n’uregwa, ko yakoze nkaho yavuze ngo nagende azagwe ku bandi. Avuga kandi ko kuba nyina w’umwana yarabonye Dusengimana Ferdinand azamura imashini ya risani amaze gukora amarorerwa ari nk’aho yafatiwe mu cyuho, ku buryo bitagombye kugibwaho impaka. Naho ku bijyanye no kuba yari impumyi ariko akiruka kurinda ageze ku mugezi akamesa imyenda. Uhagarariye Ubushinjacyaha avuga ko bitafatwa nk’ibidashoboka mu gihe ubwe yivugiye ko inzira yari nyabagendwa.

UKO URUKIKO RUBIBONA

[13] Ikibazo kiri muri uru rubanza ni icyo kumenya niba invugo z’ababyeyi n’iz’abatangabuhamya bumviswe zihura n’ibyabaye, ku buryo hakwemezwa ko koko Dusengimana Ferdinand yasambanyije uriya mwana I.B.

[14] Ingingo ya 4 y'Itegeko n° 15/2004 ryo ku wa 12/06/2004, ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko " Urukiko ruca urubanza rwaregewe hakurikijwe ibimenyetso bihujwe na kamere y'ikiburanwa". Ingingo ya 65 y'Itegeko N° 15/2004 ryo ku wa 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...». Naho ingingo ya 119 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 rimaze kuvugwa, iteganya ko "Urukiko ruhama ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura ari byo kandi bishobora kwemerwa".

[15] Ku bijyanye n'imvugo z'abatangabuhamya nk'ikimenyetso nyamukuru cyashingiweho mu guhama Dusengimana Ferdinand icyaha, inyandikomvugo z'ibazwa zabo zigaragaza ko nta n'umwe wigeze abona Dusengimana Ferdinand asambanya uwo mwana, usibye nyina Uwamahoro Solange wavuze ko yamubonye aubiza igitsina cye mu ipantalo, kandi ubuhama bw'ababajijwe bukaba burimo imvugo zitera urujijo mu kwemeza ko Dusengimana Ferdinand yakozwe koko icyaha akurikiranyweho, kuko:

- Uwamahoro Solange, Harerimana Adrien na Mukarusanga Marie Josée, bavugaga ko Dusengimana Ferdinand yirutse akabacika, bakamusanga ku mugezi wa Gaseke. Ubu buhama burimo urujijo kuko bidashoboka ko umuntu ufite ubumuga bwo kutabona yakwirukango asige abafite amaso mazima, cyane cyane ko ababajijwe bese bemeje ko iyo

atabonye umurandata, yiyobora akoresheje agakoni.

- Abo babajijwe uko ari batatu bavuga kandi ko umwana yasambanyijwe saa tatu, Dusengimana Ferdinand bajya kumushaka saa yine n'igice, hakibazwa icyo bari batagereje aho kwihutira kumufata kandi nyina w'umwana avuga ko yamufatiye mu cyuho arimo gusubiza igitsina cye mu ipantalo.
- Abatangabuhamya babajijwe bavuzwe haruguru, bavuze na none ko Dusengimana Ferdinand yagiye kwimeseraho imyenda mu mugezi ayivanaho ibintu byayigiyeho mu rwego rwo gusibanganya ibimenyetso, ariko akaba nta n'umwe uvuga ibyo ari byo.
- Bavuga kandi ko aho bafatiye Dusengimana Ferdinand ari ku mu mugezi wa Gaseke aho basanze yambaye imyenda itose maze bakamujiyanana kuri Centre de Santé, nyamara umuforomo wabakiriye yavuze ko imyenda ye itari itose, kandi ntaho abo batangabuhamya bavuga ko yaba yarayikuyemo akabambara indi.
- Uwo muforomo wakiriye umwana bwa mbere yavuze ko nta kimenyetso na kimwe yabonye kigaragaza ko uwo mwana yasambanyijwe, ababwira gusubira mu rugo bakajya gukemura ikibazo kindi baba bafitanye, ababyeyi baremera basubirayo. Niba koko ababyeyi b'uwo mwana barabonaga inama uwo muforomo abagiriye itabanyuze, hakwibazwa impamvu batahise bajya

kuri Polisi aho kubanza kujya kumvikana na Dusengimana Ferdinand niba nta kibazo kindi bari bafitanye.

- Raporo yakozwe na muganga wa kabiri wasuzumye umwana igaragaza ko yasanze ku myanya ndangagitsina ye hariho udusebe duto (frottement au niveau des grandes lèvres compte tenu des oedèmes et des ulcérations de ces grandes lèvres), kandi ko nta gitsina cy'umugabo kinjijye mu cy'umwana, ahubwo asaba ko hasuzumwa ukekwa ko yaba yamusambanyije (il faut tester le violeur), ariko bikaba bitarakozwe, ko rero iyi raporo itafatwa nk'ikimenyetso simusiga cyerekana ko turiya dusebe twatewe no kuba umwana yarasambanyijwe.

[16] Urukiko rurasanga hashingiwe ku ngingo ya 65 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryavuzwe haruguru, ubuhamya bw'abantu babajijwe nk'uko bwagaragajwe haruguru, butafatwa nk'ibimenyetso bidashidikanywaho Urukiko rwashingiraho rwemeza ko umwana I.B. yasambanyijwe na Dusengimana Ferdinand, kuba nyina w'umwana avuga ko yahamagaye abantu akabereka ibintu we yita amasohoro, ariko ntibyerekwe Muganga ngo yemeze ko ariyo koko, ibyo bidahagije kugira ngo hemezwe ko ibyo bavuga ari amasohoro kandi ko ari aya Dusengimana Ferdinand kuko umuforomo wasuzumye umwana bwa mbere atigeze ayabona, muganga wamusuzumye ku nshuro ya kabiri nawe ntiyemeza ko yayabonye, ategutse ko uregwa apimwa, nabyo ntibyakorwa.

[17] Urukiko rurasanga imvugo y’uhagarariye Ubushinjacyaha ko kuba Umuforomo wakiriye umwana bwa mbere avuga ko nta kimenyetso yabumubonyeho kigaragaza ko yasambanyijwe atari uko nta cyari gihari, ko ahubwo yashatse guhishira uregwa nta shingiro yahabwa kuko nta nta kimenyetso cyashyikirijwe Urukiko kibishimangira. Ku byerekeranye na raporo ya muganga, Urukiko rurasanga nta cyemeza ko turiya dusebe n’ububyimbirwe muganga yabonye ku gitsina cy’umwana, byaba byaratewe byanze bikunze no kumusambanya.

[18] Abahanga mu mategeko yerekeye imiburamishirize y’imanza z’inshinjabyaha Henry Bosly et Damien Vandermeersch, nabo bavuga ko nta muntu ugomba kwemezwa ko ahamwe n’icyaha nyuma y’urubanza atari uko Ubushinjacyaha bugaragaje ibimenyetso bidatera ugushidikanya uko ari ko kose (Une personne ne peut être déclarée coupable au terme du procès que si l’accusation a apporté la preuve au-delà de tout doute raisonnable de la culpabilité de l’accusé).¹

[19] Hashingiwe ku ngingo ya 4, iya 65 n’iya 119, z’Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryavuzwe haruguru, Urukiko rurasanga nta bimenyetso bikiranuye kandi bidashidikanywaho rwashyikirijwe ku buryo rwabishingiraho mu guhamya Dusengimana Ferdinand icyaha akurikiranyweho, bityo akaba agomba kugihanagurwaho.

III. ICYEMEZO CY’URUKIKO

¹ Henry Bosly et Damien Vandermeersch, Droit de la procédure pénale, 4e édition, p. 1316, 5

[20] Rwemeje ko ubujurire bwa Dusengimana Ferdinand bufite ishingiro;

[21] Rwemeje ko urubanza rwajuririwe ruhindutse muri byose;

[22] Rwemeje ko Dusengimana Ferdinand agizwe umwere ku cyaha yari akurikiranyweho;

[23] Rutegetse ko ahita arekurwa uru rubanza rukimara gusomwa;

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