

UBUSHINJACYAHA v. MUKARUYANGE

[Rwanda URUKIKO RW'IKIRENGA –RS/INJUST/Pen
00004/2017/CS (Mugenzi, P.J., Kanyange na Gakwaya, J.) 23
Gashyantare 2018]

Amategeko agenga imiburanishirize y'ianza nshinjabyaha – Inyito y'icyaha – Guhindura inyito y'icyaha ni uburenganzira n'inshingano umucamanza afite mu gihe asanga ibikorwa uregwa akurikiranyweho bidahuye n'inyito byahawe, hakurikijwe ihame ry'uko umucamanza aregerwa ibikorwa bigize icyaha – Igihe cyose icyemezo cy'Urukiko kitaraba ndakuka, inyito y'icyaha ishobora guhinduka, ariko uregwa agahabwa igihe cyo kugira icyo abivugaho, mu rwego rwo kubahiriza ihame ryo kwiregura.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko rw'Ibanze rwa Nyarugunga, Ubushinjacyaha bukurikiranye Habumugisha ku cyaha cy'ubujura buciye icyuho no kuri Mukaruyange ku cyaha cyo guhisha ibikomoka ku cyaha. Urwo rukiko rwaciye urubanza rwemeza ko Habumugisha ahamwa n'icyaha, rumuhanisha igihano cy'igifungo cy'umwaka umwe runamutegeka gushyiraho 80.000.000Frw uwaregeye indishyi, naho Mukaruyange agirwa umwere.

Ubushinjacyaha n'waregeye indishyi ntibishimiye imikirize y'urwo rubanza maze bajuririra Urukiko Rwisumbuye rwa Nyarugenge bavugaga ko hirengagijwe imvugo z'abatangabuhamyaga bashinje Mukaruyange ko yahishiriye Habumugisha akamuhishana n'amafaranga yari yibye, maze

rumugira umwere. Basaba Urukiko ko rwasuzumana ubushishozi ibimenyetso byatanzwe. Urwo Rukiko rwaciye urubanza rwemeza ko igihano Habumugisha yahanishijwe kigumyeho runemeza ko Mukaruyange ahamwa n'icyaha cyo gufatanywa na Habumugisha kwiba amafaranga aburanwa, n'icyo guhishira umujura n'ibintu bikomoka ku cyaha, rumuhanisha igifungo cy'imyaka ibiri (2) gisubitswe mu mwaka umwe (1) runategeka ko bafatanywa kwishyura amafaranga yaburanwaga.

Mukaruyange ntiyishimiye imikirize y'urwo rubanza maze yandikira Urwego rw'Umuvunyi asaba gusuzuma akarengane kabaye muri urwo rubanza, avuga ko yahamijwe ubufatanyacyaha mu bujura kandi atari cyo yarezwe, ndetse ko hanashingiwe ku bimenyetso bidafatika kuko yamenyanye n'uwakoze icyaha nyuma y'uko gikozwe, bagura ikibanza.

Nyuma yo gusuzuma ikibazo cye, Umuvunyi Mukuru yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza RPA 0230/14/TGI/NYGE rusubirishwamo ku mpamvu z'akarengane, gatewe no kwirengagiza amategeko n'ibimenyetso, asobanura ko Mukaruyange yahamijwe ubufatanyacyaha mu cyaha cy'ubujura mu bujuri atarigeze agikurikiranwaho n'Ubushinjacyaha mu rwego rwa mbere ngo anacyiregureho, bikaba kandi ngo bitashoboka ko Mukaruyange yaba yaragize ubufatanyacyaha mu cyaha cy'ubujura, kuko yahuye na Habumugisha, uyu yarangije kwiba, naho ku cyaha cyo guhishira ibyibano, Urwego rw'Umuvunyi ruvuga ko Urukiko rutagaragaje ko hari amafaranga akomoka ku cyaha Mukaruyange yaba yarafatanywe, ingano yayo n'aho yaba yarayahishe.

Perezida w'Urukiko rw'Ikirenga, yafashe icyemezo cy'uko urwo rubanza rwongera kuburanishwa, maze Mukaruyange aburana avuga ko mu Rukiko Rwisumbuye yaburanye ku cyaha gishya mu bujuri, atari yarakirezwe ngo akiburaneho ku rwego rwa

mbere mu Rukiko rw'Ibanze, kuko yari yaraharezwe icyaha cyo guhisha ibintu bikomoka ku cyaha, nyamara mu bujirire aburanishwa ku bufatanyacyaha mu bujura buciye icyuho, yongeraho ko n'ubwo umucamanza ashobora guhindura inyito y'icyaha, agomba kuba agendeye ku byabaye, akaba asanga ikosa ryabaye ari uko umucamanza wo mu bujirire atabanje kwumva uregwa ngo abone guhindura inyito y'icyaha, ahubwo icyabaye akaba ari ukuzana mu bujirire icyaha gishya kitaburanwe mbere.

Uregera indishyi we avuga ko yemeranya n'abo baburana ku bijyanye n'ububasha bw'umucamanza bwo guhindura inyito y'icyaha cyaregewe, ngo akaba asanga ari cyo cyakozwe n'umucamanza w'Urukiko Rwisumbuye, amaze kumva imiburanire y'impande zombi ndetse n'abatangabuhamy, abona kwemeza inyito y'ubufatanyacyaha mu bujura buciye icyuho.

Ubushinjacyaha bwo buvuga ko nta cyaha gishya cyaciriweho urubanza mu Rukiko Rwisumbuye rwari rwajuririwe, ko ahubwo hahujwe ingingo ya 98 y'Itegeko Ngenga N° 01/2012/OL rishyiraho Igitabo cy'amategeko ahana, n'iya 327 y'iryo Tegeko Ngenga, iteganya ko uwahishe inkozi z'ibibi cyangwa uwazifashije guhisha nawe yitwa icyitso, Urukiko ngo rukaba rwarasanze ibikorwa Mukaruyange yakoze bigize icyaha cyo gufasha Habumugisha ubujura buciye icyuho.

Incamake y'icyemezo: 1. Guhindura inyito y'icyaha ni uburenganzira n'inshingano umucamanza afite mu gihe asanga ibikorwa uregwa akurikiranyweho bidahuye n'inyito byahawe, hakurikijwe ihame ry'uko umucamanza aregerwa ibikorwa bigize icyaha, ataregerwa inyito, bityo ingingo ijyanye no kuba Urukiko Rwisumbuye rwarahinduye icyaregewe rukaburanisha icyaha gishya, ikaba nta shingiro ifite.

2. Igihe cyose icyemezo cy'Urukiko kitaraba ndakuka, inyito y'icyaha ishobora guhinduka, ariko uregwa agahabwa igihe cyo kugira icyo abivugaho, mu rwego rwo kubahiriza ihame ryo kwiregura, bityo umucamanza yagombaga guha ababuranyi umwanya wo kugira icyo bavuga ku nyito y'icyaha.

3. Ku kibazo cyo kumenya niba Mukaruyange ahamwa n'ubufatanyacyaha mu bujura buciye icyuho, ibikorwa bye Urukiko Rwisumbuye rwabonyemo icyo cyaha, ntibigaragaramo ubwo bufatanyacyaha, kuko mu isesengura urwo Rukiko rwakoze, mu rwego rw'ibimenyetso bicukumbuwe no gusesengura urubanza, mu bwenge n'ubushishozi bw'umucamanza ntihagaragajwe ko hari ibimenyetso bikomeye, bisobanuye kandi bihujwe byagaragaza nta gushidikanya ko Mukaruyange yafashije Habumugisha igikorwa nyir'izina cy'ubujura buciye icyuho, bityo Mukaruyange akaba agihanaguweho.

4. Ku byerekeye ibyaha byo guhisha uwakoze icyaha no guhisha ibikomoka ku cyaha, nta bimenyetso Mukaruyange agaragaza byirengagijwe mu rubanza byagaragaza ko atahishe ibikomoka ku cyaha n'uwagikoze, ahubwo hashingiwe ku mvugo y'uwakoze icyaha, n'invugo zihujwe z'abatangabuhamya, bigaragariza Urukiko nta gushidikanya, ko Mukaruyange ahamwa n'ibyaha byo guhisha uwakoze icyaha no guhisha ibikomoka ku cyaha nk'uko yabihamijwe mu rubanza RPA 0230/14/TGI/NYGE, hakaba rero nta karengane karugaragaramo, gashingiye ku kuba haba harirengagijwe ibimenyetso.

**Ikirego cyo gusubirishamo urubanza ku mpamvu
z'akarengane gifite ishingiro kuri bimwe;
Amagarama y'urubanza aherereye ku isanduku ya Leta.**

Amategeko yashingiweho:

Itegeko Ngenga N°01/2012/OL rishyiraho Igitabo cy'amategeko ahana, ingingo ya 326 n'ya 573.

Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 320.

Itegeko N°15/2004 ryo ku wa 12/06/2004, ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 108 n'ya 119.

Imanza zifashishijwe:

Ubushinjacyaha vs Nyawera Céléstin, RPA 0033/11/CS
rwaciwe n'Urukiko rw'Ikirenga kuwa 14/9/2012.

Inyandiko z'abahanga :

Likulia Bolongo, Droit Pénal spécial zairois, Tome I, 2ème édition, Paris, 1985, P. 20, 21.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ubushinjacyaha bwakurikiranye Habumugisha Butoyi ku cyaha cy'ubujura buciye icyuho no kuri Mukaruyange Athanasie

icyaha cyo guhisha ibikomoka ku cyaha, Rwasibo Mutesi Béatrice aregera indishyi.

[2] Mu rubanza RP 0355/13/TB/NYRGA rwaciwe n'Urukiko rw'Ibanze rwa Nyarugunga ku wa 20/03/2014, urwo Rukiko rwemeje ko Habumugisha Butoyi ahamwa n'icyaha cy'ubujura buciye icyuho, rumuhanisha igifungo cy'umwaka umwe (1), runamutegeka gusubiza Rwasibo Mutesi Béatrice 80.000.000Frw n'indishyi zingana na 900.000Frw, runemeza ko Mukaruyange Athanasie adahamwa n'icyaha aregwa.

[3] Ubushinjacyaha na Rwasibo Mutesi Béatrice bajuririyeye Urukiko Rwisumbuye rwa Nyarugenge bavuga ko hirengagijwe imvugo z'abatangabuhamya bashinja Mukaruyange Athanasie ko yahishiriyeye Habumugisha Butoyi akamuhishana n'amafaranga yari yibye, maze rumugira umwere. Busaba Urukiko ko rwasuzumana ubushishozi ibimenyetso byatanzwe, Mukaruyange Athanasie agahanirwa icyaha yakoze.

[4] Mu rubanza RPA 0230/14/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 24/07/2014, urwo Rukiko rwemeje ko ubujurire bw'Ubushinjacyaha n'ubwa Rwasibo Mutesi Béatrice bufite ishingiro, rwemeza ko igihano Habumugisha Butoyi yahanishijwe kigumyeho, rwemeza ko Mukaruyange Athanasie ahamwa n'icyaha cyo gufatanya na Habumugisha Butoyi kwiba amafaranga aburanwa, n'icyo guhishira umujura n'ibintu bikomoka ku cyaha, rumuhanisha igifungo cy'imyaka ibiri (2) gisubitswe mu mwaka umwe(1), rumutegeka gufatanya na Habumugisha Butoyi kwishyura 84.740.000Frw rusobanura ko hari imvugo z'abatangabuhamya bashinja Mukaruyange Athanasie uruhare yagize mu kwiba amafaranga, barimo umukozi wamukoreraga witwa Uwamahoro Sara wemeje ko Mukaruyange Athanasie yacumbikiye

Habumugisha Butoyi igihe kitari gito mu rugo iwe, hakaba n’aho we yiyemereye ko yamucumbikiye kugira ngo atagirirwa nabi, kubera amafaranga menshi yari afite, bikaba bigaragaza ko bari baziranye ku mugambi wo kwiba amafaranga ya Rwasibo Mutesi Béatrice, hakoreshewe ubujura buciye icyuho.

[5] Ku wa 10/03/2015, Mukaruyange Athanasie yandikiye Umuvunyi Mukuru amusaba gusuzuma akarengane kabaye mu rubanza RPA 0230/14/TGI/NYGE, kuko yahamijwe ubufatanyacyaha mu bujura kandi atari cyo yarezwe, hanashingirwa ku bimenyetso bidafatika kuko yamenyanye n’uwakoze icyaha nyuma y’uko gikozwe, bagura ikibanza.

[6] Umuvunyi Mukuru nawe yandikiye Perezida w’Urukiko rw’Ikirenga asaba ko urwo rubanza RPA 0230/14/TGI/NYGE rusubirishwamo ku mpamvu z’akarengane, gatewe no kwirengagiza amategeko n’ibimenyetso, asobanura ko Mukaruyange Athanasie yahamijwe ubufatanyacyaha mu cyaha cy’ubujura mu bujirire atarigeze agikurikiranwaho n’Ubushinjacyaha mu rwego rwa mbere ngo anacyiregureho, bikaba kandi bitashoboka ko Mukaruyange Athanasie yaba yaragize ubufatanyacyaha mu cyaha cy’ubujura, kuko yahuye na Habumugisha Butoyi, uyu yarangije kwiba, naho ku cyaha cyo guhishira ibyibano, avuga ko Urukiko rutagaragaje ko hari amafaranga akomoka ku cyaha Mukaruyange Athanasie yaba yarafatanywe, ingano yayo n’aho yaba yarayahishe.

[7] Mu cyemezo N° 026/2017 cyo ku wa 18/04/2017, Perezida w’Urukiko rw’Ikirenga, yategetse ko urubanza RPA 0230/14/TGI/NYGE rwavuzwe haruguru rwongera kuburanishwa, iburanisha ribera mu ruhame ku wa 15/01/2018, Mukaruyange Athanasie yunganiwe na Me Kayijuka Ngabo, Rwasibo Mutesi Béatrice yunganiwe na Me Munyeshema

Napoléon, naho Ubushinjacyaha buhagarariwe na Niyonkuru Françoise, Umushinjacyaha ku rwego rw'Igihugu.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

[8] Muri uru rubanza harasuzumwa niba harabaye akarengane, ku ruhande rumwe gatewe no kwirengagiza amategeko, ku rundi ruhande gatewe no kwirengagiza ibimenyetso, hanasuzumwe iby'indishyi zisabwa n'ababuranyi.

A. Kumenya niba harabaye akarengane gatewe no kwirengagiza amategeko.

[9] Mukaruyange Athanasie na Me Kayijuka Ngabo umwunganira, bavuga ko Mukaruyange Athanasie yaburanye ku cyaha gishya mu bujirire mu Rukiko Rwisumbuye, atari yarakirezwe ngo akiburaneho ku rwego rwa mbere mu Rukiko rw'Ibanze, kuko yari yaraharezwe icyaha cyo guhisha ibintu bikomoka ku cyaha, giteganywa kandi kigahanishwa ingingo ya 326 y'Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, nyamara mu bujirire aburanishwa ku bufatanyacyaha mu bujura buciye icyuho.

[10] Me Kayijuka Ngabo avuga ko n'ubwo umucamanza ashobora guhindura inyito y'icyaha, agomba kuba agendeye ku byabaye, akaba asanga ikosa ryabaye ari uko umucamanza wo mu bujirire atabanje kwumva Mukaruyange Athanasie ngo abone guhindura inyito y'icyaha, ahubwo icyabaye akaba ari ukuzana mu bujirire icyaha gishya kitaburanwe mbere.

[11] Rwasibo Mutesi Béatrice na Me Munyeshema Napoléon umwunganira, bavuga ko bumvikana n’abo baburana ku bijyanye n’ububasha bw’umucamanza bwo guhindura inyito y’icyaha cyaregewe, bakaba basanga ari cyo cyakozwe n’umucamanza w’Urukiko Rwisumbuye, amaze kumva imiburanire y’impande zombi ndetse n’abatangabuhamya, abona kwemeza inyito y’ubufatanyacyaha mu bujura buciye icyuho.

[12] Me Munyeshema Napoléon anavuga, mu myanzuro ye ko ingingo ya 98 y’Itegeko Ngenga N° 01/2012/OL ryavuzwe haruguru, igaragaza uburyo bunyuranye umuntu agira uruhare mu cyaha cyakozwe: kuba umuntu yakoze icyaha ubwe, kuba yabaye umufatanyacyaha (yafashije mu buryo butaziguye), cyangwa kuba yabaye icyitso, aha bigasobanurwa ko “yitwa kandi icyitso uwahishe inkozi z’ibibi cyangwa uwazifashije guhisha, mu buryo buteganywa n’ingingo ya 327 y’iri Tegeko Ngenga”, akaba asanga ibimenyetso umucamanza hashingiyeho byerekana mu buryo budashidikanywa ko Mukaruyange Athanasie yabaye icyitso, ko rero yagombaga kubihanirwa, hakaba nta karengane kabayeho, ari nacyo basaba Urukiko rw’Ikirenga kwemeza.

[13] Avuga ko, hashingiwe ku ngingo ya 81 y’Itegeko y’Itegeko N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n’ububasha by’Urukiko rw’Ikirenga, hakwiye kwemezwa ko isubirishamo ry’urubanza ku mpamvu z’akarengane ridafite ishingiro, kuko nta mategeko yishwe.

[14] Uhagarariye Ubushinjacyaha avuga ko nta cyaha gishya cyaciriweho urubanza mu Rukiko Rwisumbuye rwari rwajuririwe, ko ahubwo hahujwe ingingo ya 98 y’Itegeko Ngenga N° 01/2012/OL ryavuzwe haruguru, n’iya 327 y’iryo Tegeko Ngenga, iteganya ko uwahishe inkozi z’ibibi cyangwa

uwazifashije guhisha nawe yitwa icyitso, Urukiko rukaba rwarasanze ibikorwa Mukaruyange Athanasie yakoze bigize icyaha cyo gufasha Habumugisha Butoyi ubujura buciye icyuho.

UKO URUKIKO RUBIBONA

[15] Ku ngingo yo kuba Urukiko Rwisumbuye rwaba rwaraciriye urubanza ku cyaha kitaregewe, Urukiko rurasanga, nk'uko dosiye y'urubanza ibigaragaza, Mukaruyange Athanasie yararezwe mu Rukiko rw'Ibanze icyaha cyo guhisha ibyibano, giteganywa n'ingingo ya 326 y'Itegeko Ngenga N°01/2012/OL rishyiraho Igitabo cy'amategeko ahana, rukimuhanaguraho, Urukiko Rwisumbuye rwo rusanga kuba yaracumbikiye igihe kitari gito Habumugisha Butoyi wari wibye amafaranga aciye icyuho, hakiyongeraho ibikorwa byose byo kugura amazu n'ibibanza bakoranye muri icyo gihe yashakishwaga ataramutorokeshya, bimugaragazaho ahubwo kuba barafatanyije umugambi n'igikorwa by'ubujura Habumugisha Butoyi yakoze, kuko hari n'aho uyu yiyemereye ko yamucumbikiye kubera amafaranga menshi yari afite ngo atagirirwa nabi, runamuhamya icyaha cyo guhisha ibikomoka ku cyaha, n'icyo guhisha uwakoze icyaha.

[16] Urukiko rurasanga, kuba umucamanza yarahereye ku bikorwa yaregewe by'imyitwarire ya Mukaruyange Athanasie kuri Habumugisha Butoyi, mu kubisesengura agasanga byerekana kuri Mukaruyange Athanasie, ubufatanyacyaha mu bujura buciye icyuho, bitafatwaho kuba yaraciye urubanza ku cyaha ataregewe, mu gihe ibikorwa yasuzumye ari ibyo yaregewe n'Ubushinjacyaha, ahubwo umucamanza akaba yarabihaye inyito y'ubufatanyacyaha mu bujura buciye icyuho, nyuma yo kubisesengura, kuko guhindura inyito ari uburenganzira

n’ishingano umucamanza afite mu gihe asanga ibikorwa uregwa akurikiranyweho bidahuye n’inyito byahawe¹, hakurikijwe ihame ry’uko umucamanza aregerwa ibikorwa bigize icyaha, ataregerwa inyito, bityo ingingo ijyanye no kuba Urukiko Rwisumbuye rwarahinduye icyaregewe rukaburanisha icyaha gishya, ikaba nta shingiro ifite.

[17] Urukiko rurasanga ahubwo, ikibazo kiriho ari cyo kumenya niba iryo sesengura Urukiko Rwisumbuye rwakoze ryarakozwe neza, mu rwego rw’ibimenyetso byagaragaza ko Mukaruyange Athanasie yagiranye na Habumugisha Butoyi umugambi w’ubujura bakanafatanyaga kuwushyira mu bikorwa.

[18] Ku bijyanye no kuba umucamanza yarahinduye inyito y’icyaha atabanje guha Mukaruyange Athanasie umwanya wo kubijyaho impaka, Urukiko rurasanga, koko, yaragombaga kubikora yabajije Mukaruyange Athanasie icyo abivugaho, kuko, nk’uko abahanga mu mategeko babisobanura, igihe cyose icyemezo cy’Urukiko kitaraba ndakuka, inyito y’icyaha ishobora guhinduka, ariko uregwa yahawe igihe cyo kugira icyo abivugaho, mu rwego rwo kubahiriza ihame ryo kwiregura,² iryo kosa rikaba ariko ryarakosowe muri uru Rukiko, aho ababuranyi babonye umwanya wo kubijyaho impaka, nk’uko byagaragajwe mu ngingo zigize imiburanire yabo.

¹ Reba urubanza RPA 0033/11/CS rwaciwe n’Urukiko rw’Ikirenga kuwa 14/9/2012, haburana Ubushinjacyaha na Nyawera Céléstin.

² “Aussi longtemps que la décision judiciaire n’est pas encore devenue irrévocable, toute qualification est susceptible de modification.... Le respect des droits de la défense exige cependant qu’en cas de requalification s’opérant au niveau du jugement, les délais prévus par la loi soient accordés au prévenu pour répondre d’une qualification nouvelle”: Likulia Bolongo, Droit Pénal spécial zairois, Tome I, 2ème édition, Paris, 1985, P 20, 21.

B. Kumenya niba harabaye akarengane gatewe no kwirengagiza ibimenyetso.

[19] Mukaruyange Athanasie avuga ko Urukiko Rwisumbuye rwa Nyarugenge rwirengagije ibimenyetso bigaragaza ko atigeze akora icyaha, rwemeza ko yacumbikiye Habumugisha Butoyi amaze kumenya ko afite amafaranga menshi kandi atari byo. Asobanura ko haketswe ko yacumbikiye Habumugisha Butoyi bitewe n’uko, ubwo bamaraga kugura ikibanza, bahujwe n’umukomisiyoneri, Habumugisha Butoyi yajyanye na Mukaruyange Athanasie iwe bwije, gufata ibya ngombwa byacyo, nyuma arataha, usibye ko imodoka ye yaraye aho Mukaruyange Athanasie nawe ajya ahagarika iye, kuko umushoferi wari uyitwayemo Habumugisha Butoyi yasabaga ko yayiharaza.

[20] Avuga ko ubuhamya bwa Uwamahoro Sara wahoze ari umukozi we mu rugo, akaba yaremeje ko yacumbikiye Habumugisha Butoyi nta gaciro bwahabwa, kuko uwo mukozi batandukanye nabi atagikora neza, akaba ari yo mpamvu amubeshyera.

[21] Me Kayijuka Ngabo avuga ko ibyo Habumugisha Butoyi yavugiye mu Bugenzacyaha by’uko amafaranga yibye yayagabanye na Mukaruyange Athanasie atari ukuri, kuko atari anaziranyi na Mukaruyange Athanasie, ko ahubwo Habumugisha Butoyi yaje kuvuga ko yabivuze abitewe n’inkoni ya kubitwaga muri Police akimara gufatwa. Avuga ko ipererereza ryatangiye riyobye kuva mu Bugenzacyaha, rinakomeza gutyo mu Bushinjacyaha, riyobejwe n’ibyatumye hakekwa ko Mukaruyange Athanasie yafatanyije icyaha na Habumugisha Butoyi, birimo kuba yaramufashije gushaka abapolisi kugira ngo abashe kubona ibya ngombwa, kuba baraguze inzu, kuba

yaramutwaye akamugeza iwe, kuba imodoka ya Habumugisha Butoyi yararaye iwe, ibyo byose bikaba ari byo byuririweho mu gukeka ko yaba yaramubikije amafaranga kandi ataribyo.

[22] Avuga ko Habumugisha Butoyi yibye ari ku wa 3, agura inzu na Mukaruyange Athanasie ku wa 6, afatwa nyuma y'ukwezi, ayo mataliki akaba agaragaza ko batari baziranyi, bityo rero hakaba hari ugushidikanya ku byo Mukaruyange Athanasie aregwa.

[23] Rwasibo Mutesi Béatrice, uregera indishyi, avuga ko ubwo Habumugisha Butoyi yafatirwaga mu Gatsata, agashyikirizwa Police, yabajijwe aho yashyize amafaranga avuga ko amwe yayaguze inzu, andi ayagura imodoka, andi ayabitsa Mukaruyange Athanasie, kandi ko uyu yamucumbikiye iwe mu rugo. Avuga ko atari bwo bwa mbere Mukaruyange Athanasie akurikiranyweho gucumbikira abajura, kuko hari hashize iminsi akurikiranyweho icyaha nk'icyo, ko ibyo kuba yaracumbikiye Habumugisha Butoyi akahamara iminsi byamenywe n'abantu benshi bo mu Gatsata barimo Uwamahoro Sara na Turatsinze Abdallah, ndetse binarakaza abana ba Mukaruyange Athanasie, bikaba bibabaje kubona atinyuka ibintu nk'ibyo kandi ari umuyobozi.

[24] Me Munyeshema Napoléon avuga ko ibikorwa Mukaruyange yakoze bigaragaza ko yabayeye umufatanyacyaha mu buryo bw'icyitso, buteganywa mu ngingo ya 98 y'Itegeko Ngenga N°01/2012/OL ryavuzwe haruguru. Avuga ko Habumugisha Butoyi yiyemereye, mu Bugenzacyaha, ko Mukaruyange Athanasie yamucumbikiye, nyuma aza guhindura imvugo, avuga ko ibyo yabivuze kubera inkoni, nyamara nta kimenyetso abitangira, kandi hari umutangabuhamywa witwa Migezo wemeza ko Mukaruyange Athanasie yabonye

Habumugisha Butoyi afite amafaranga menshi amujyana kumucumbikira, hakaba na Turatsinze Abdala nawe memeza ko yamenye Habumugisha Butoyi amugejweho na Mukaruyange Athanasie, kandi abo bose ntacyo bapfa.

[25] Uhagarariye Ubushinjacyaha avuga ko Habumugisha Butoyi amaze kwiba yaje kugisha inama Mukaruyange Athanasie yo kujya kugura ubutaka mu Bugesera, Mukaruyange Athanasie amucumbikira igihe kirekire, afite amafaranga menshi kandi bigaragara ko ntaho yari kuba yayavanye humvikana. Avuga ko ibyo byose Mukaruyange Athanasie yabyireguyeho, kandi ko Urukiko ruregerwa ibikorwa akaba ari rwo rutanga inyito y'icyaha, ibi akaba ari ko byemejwe n'uru Rukiko, mu rubanza RPAA 0117/07/CS, haburana Ubushinjacyaha na Ngabonziza na mugenzi we.

UKO URUKIKO RUBIBONA

[26] Ku kibazo cyo kumenya niba Mukaruyange Athanasie ahamwa n'ubufatanyacyaha mu bujura buciye icyuho, uru Rukiko rusanga, ibikorwa bye Urukiko Rwisumbuye rwabonyemo icyo cyaha nk'uko byibukijwe haruguru, mu gika cya 15, bitagaragaramo ubwo bufatanyacyaha, kuko mu isesengura urwo Rukiko rwakoze, mu rwego rw'ibimenyetso bicukumbuwe no gusesengura urubanza, mu bwenge n'ubushishozi bw'umucamanza (présomptions humaines) nk'uko biteganywa n'ingingo ya 108 y'Itegeko N° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo³, hatagaragajwe ko hari ibimenyetso bikomeye,

³ Iyo ngingo ya 108 igira iti: "Ibimenyetso bicukumbuwe no gusesengura urubanza ni ibimenyetso bitacukumbuwe n'amategeko, bicukumburwa

bisobanuye kandi bihujе byagaragaza nta gushidikanya ko Mukaruyange Athanasie yafashije Habumugisha Butoyi igikorwa nyir'izina cy'ubujura buciye icyuho, bityo Mukaruyange Athanasie akaba agomba kugihanagurwaho.

[27] Urukiko rurasanga kandi, ku byerekeye Mukaruyange Athanasie, ubufatanya cyaha mu bujura buciye icyuho, butanashingirwa ku ngingo ya 98, agace ka 3, igika cya 2, y'Itegeko Ngenga N° 01/2012/OL ryavuzwe haruguru, iteganya ko, uwahishe inkosi z'ibibi cyangwa uwazifashije guhisha mu buryo butegangwa n'ingingo ya 327 y'iry Tegeko Ngenga yitwa icyitso, nk'uko Ubushinjacyaha n'uwunganira Rwasibo Mutesi Béatrice babiburanisha, kuko iyo ngingo ya 327, irebana n'ibyo "guhisha ibintu byakoreshejwe cyangwa byagenewe gukoreshwa icyaha" nk'uko byumvikana ku mutwe wayo, ndetse no ku mutwe w'agace (section) ka 10 iyo ngingo ibarizwamo, gatandukanya ibirebana n'iy ngingo hamwe n'iya 326, iyi yo ikaba irebana no "guhisha ibikomoka ku cyaha", bikaba bigaragara rero ko ibijyanye no guhisha ibikomoka ku cyaha byongeye gushyirwa mu ngingo ya 327 habaye kwibeshya, kuko byari byamaze guteganywa ku buryo bwihariye kandi buhagije mu ngingo ya 326 nk'uko bisobanuwe haruguru.

[28] Urukiko rurasanga rero, ibikorwa byo guhisha ibikomoka ku cyaha Mukaruyange Athanasie yarezwe bigomba gusuzumwa hashingiwe ku biteganywa n'ingingo ya 326 y'Itegeko Ngenga N°01/2012/OL ryavuzwe haruguru, harebwa niba koko hari ibimenyetso Urukiko Rwisumbuye rwaba rwarirengagije bigaragaza ko atakoze icyaha cyo guhisha ibikomoka ku cyaha,

n'ubwenge n'ubushishozi bw'abacamanza. Abacamanza bagomba kwemera gusa ibyo bimenyetso iyo bikomeye, bisobanuye kandi bihujе”.

ndetse hanashingiwe ku ngingo ya 573 y'iryo Tegeko Ngenga⁴, iteganya icyaha cyo guhisha uwakoze icyaha, akaba ari byo bikorwa yakurikiranyweho kandi yireguyeho mu nkiko zombi yaburanyemo, ari nabyo bisuzumwa mu cyiciro cya kabiri cy'ikibazo cya kabiri kigize uru rubanza.

[29] Mu kwemeza ko Urukiko Rwisumbuye rwirengagije ibimenyetso bigaragaza ko atigeze akora icyaha, Mukaruyange Athanasie n'umwunganira ntiberekana ibyo bimenyetso byirengagijwe, ahubwo bagaruka ku bisobanuro by'imyitwarire ye kuri Habumugisha Butoyi, bagamije kugaragaza ko iyo myitwarire itabonekamo guhisha ibyibano no guhisha uwakoze icyaha.

[30] Ingingo ya 119 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, abaturanyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye. Urukiko ruhama ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura ari byo kandi ko bishobora kwemerwa”.

[31] Mu bimenyetso byashingiweho n'Urukiko Rwisumbuye, mu kwemeza ko Mukaruyange Athanasie yahishe uwakoze icyaha n'ibigikomokaho, harimo icyo kuba Habumugisha Butoyi yariyemereye mu ibazwa rye mu Bugenzacyaha, akanabisubiramo mu ibazwa rye mu Bushinjacyaha, ko

⁴ Iyo ngingo iteganya ko:” Umuntu wese ucumbikira ukurikiranywe cyangwa uwakoze icyaha gikomeye cyangwa cy'ubugome, cyangwa icyitso cye, umushakira ubwihisho cyangwa se ubundi buryo ubwo ari bwo bwose bwatuma inzego z'ubutabera zimubura, ahanishwa igifungo kuva ku myaka ibiri(2) kugeza ku myaka itanu(5), n'ihazabu y'amafaranga y'u Rwanda kuva ku bihumbi ijana(100.000) kugeza kuri miliyoni imwe(1.000.000)”.

yamenyesheje Mukaruyange Athanasie ko yibye amafaranga aho yakoraga, akamuha igice kimwe ngo akimubikire, akanasobanura ko yamuhaye imishandiko itatu y'amadolari n'amayero atazi umubare, amubwira ko nibamufata azayamuha bakayasubiza nyirayo, ibyo bikajyana n'imvugo y'umutangabuhamya Turatsinze Abdallah wemeje ko yamenye Habumugisha Butoyi amuzaniwe na Mukaruyange Athanasie, ngo amufashe gushaka ikibanza cyo kugura mu Bugesera.

[32] Urukiko rurasanga, n'ubwo mu Rukiko Habumugisha Butoyi yahinduye imvugo akavuga ko yabeshyeye Mukaruyange Athanasie kubera inkoni yakubitwaga mu ibazwa rye, nta kimenyetso cyagaragajwe cy'uko yaba yarabeshye kubera inkoni, ndetse nta n'ubwo byumvikana ko yaba yarakubitiwe mu rwego rw'Ubugenzacyaha n'urw'Ubushinjacyaha, kandi bigaragara ko ibyo yiyemereye bihura n'ibyo umutangabuhamya Turatsinze Abdallah yemeje nk'uko byibukijwe haruguru.

[33] Urukiko rurasanga, ibyo Habumugisha Butoyi yari yemeye mbere bihura n'ibyo umutangabuhamya Uwamahoro Sara, wahoze ari umukozi mu rugo kwa Mukaruyange Athanasie, yavuze asobanura ko Mukaruyange Athanasie yacumbikiye Habumugisha Butoyi mu rugo iwe, igihe kitari gito, ibi kandi bikaba bitabura gufatwaho ukuri n'ubwo Mukaruyange Athanasie avuga ko uwo mukozi yavuye iwe batumvikana, mu gihe hari n'undi mutangabuhamya, Manaturikumwe Eric wemeza ko ariwe watwaye Habumugisha Butoyi mu modoka uyu yari yaguze, akamugeza kwa Mukaruyange Athanasie akararayo, ndetse n'imodoka ikaba yararaye hafi aho ku muhanda, aho Mukaruyange Athanasie yari asanzwe araza iye, akaba kandi yemera ko iyo modoka yaharaye koko, n'ubwo avuga ko

Habumugisha Butoyi we yaje gutaha, yo iharara kubera ikibazo yari ifite, nyamara uwari uyitwaye akaba atariko abivuga.

[34] Urukiko rurasanga kandi hari n’ubundi buhamya bwatanzwe n’uwitwa Migezo Jean Bosco, buhuza n’ubwagaragajwe haruguru, aho nawe yasobanuye ko Mukaruyange Athanasie yacumbikiye Habumugisha Butoyi kubera ko yari afite amafaranga menshi, ngo hatagira umugirira nabi.

[35] Urukiko rusanga rero nta bimenyetso Mukaruyange Athanasie agaragaza byirengagijwe mu rubanza RPA 0230/14/TGI/NYGE byagaragaza ko atahishe ibikomoka ku cyaha n’uwagikoze, ahubwo harashingiwe ku bimenyetso bihagije nk’uko byibukijwe haruguru, naho impamvu zashingiweho n’Urwego rw’Umuvunyi ruvuga ko habaye akarengane kuko hatagaragajwe umubare w’amafaranga yahishwe, ngo Mukaruyange Athanasie abe yarayafatanywe, nta shingiro zifite, kuko ibyo atari byo bimenyetso kamara bisabwa n’Itegeko, ahubwo ingingo ya 119 y’Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo, yibukijwe haruguru, ikaba iteganya ko, mu manza nshinjabyaha, “ibimenyetso bishingira ku mpamvu zose z’ibyabaye n’ibyemejwe n’amategeko...”, akaba ari muri ubwo buryo, ukwiyemerera kwa Habumugisha Butoyi, n’imvugo zihuje z’abatangabuhamya, bigaragariza Urukiko nta gushidikanya, ko Mukaruyange Athanasie ahamya n’ibyaha byo guhisha uwakoze icyaha no guhisha ibikomoka ku cyaha⁵ nk’uko

⁵ Ingingo ya 326 iteganya ko « umuntu wese uhisha, abizi, ibintu cyangwa igice cyabyo, byambuwe, byarigishijwe cyangwa bikomoka ku cyaha kitari icy’ubugome, ahanishwa igifungo kuva ku mezi atandatu kugeza ku myaka ibiri, n’ihazabu y’amafaranga y’u Rwanda yikubye incuro kuva kuri ebyiri

yabihamijwe mu rubanza RPA 0230/14/TGI/NYGE, hakaba rero nta karengane karugararamo, gashingiye kuba haba harirengagijwe ibimenyetso.

[36] Urukiko rurasanga, n’ubwo Mukaruyange Athanasie ahanaguweho icyaha cy’ubufatanya cyaha mu bujura, nta kigomba guhinduka ku gihano yahawe n’Urukiko Rwisumbuye, kuko ahamwa n’ibyaha byo guhisha ibikomoka ku cyaha no guhisha uwakoze icyaha.

C. Ku bijyanye n’indishyi zasabwe.

[37] Rwasibo Mutesi Béatrice na Me Munyeshema Napoléon basaba ko, mu gihe Urukiko rwasanga nta karengane kabaye mu rubanza rusabirwa gusubirwamo, Mukaruyange Athanasie yategekwa kwishyura 600.000Frw y’igihembo cya Avoka wamuburaniye ikirego cyihutirwa, na 1.000.000Frw y’igihembo cya Avoka kuri uru rubanza, hamwe na 500.000Frw y’ikurikiranarubanza, yose hamwe akaba 2.100.000Frw.

[38] Me Ngabo Kayijuka avuga ko izo ndishyi nta shingiro zifite, kuko nta cyaha Mukaruyange Athanasie yakoze, ko ahubwo ari Rwasibo Mutesi Béatrice ukwiye kwishyura Mukaruyange Athanasie indishyi z’akababaro zihwanye na 2.000.000Frw, 1.000.000Frw y’igihembo cya Avoka, na 500.000Frw y’ikurikiranarubanza.

[39] Me Munyeshema Napoléon avuga ko indishyi zisabwa na Mukaruyange Athanasie nta shingiro zifite, kuko Rwasibo Mutesi uzisabwa ariwe ahubwo wakorewe icyaha.

kugeza ku icumi z’agaciro k’ibyahishwe, cyangwa kimwe gusa muri ibyo bihano ».

UKO URUKIKO RUBIBONA

[40] Urukiko rurasanga indishyi zisabwa n’uburanira Mukaruyange Athanasie zitasuzumwa, kuko adatsinda urubanza, ahubwo hasuzumwa izisabwa na Rwasibo Mutesi Béatrice n’umwunganira.

[41] Urukiko rurasanga, hashingiwe ku ngingo ya 258 y’Igitabo cya Gatatu cy’Urwunge rw’amategeko mbonezamubano, iteganya ko igikorwa cy’umuntu cyangirije undi gitegeka nyiri ugukora ikosa rigikomokaho kuriha ibyangiritse, Rwasibo Mutesi Béatrice yagenerwa indishyi z’ikurikiranarubanza n’amafaranga y’igihembo cya Avoka, kuko byumvikana ko hari ibyo yatakaje akurikirana uru rubanza, anahemba avoka, ariko kuko nta bimenyetso bifatika yarugaragarije byakwerekana urugero rw’ibyo yatanze, akaba agomba kugenerwa indishyi mu bushishozi bw’Urukiko, agahabwa 300.000Frw y’ikurikiranarubanza, na 500.000Frw y’igihembo cya Avoka, hamwe n’amafaranga y’igihembo cya Avoka waburanye urubanza rw’Ikirego cyihutirwa, hashingiwe ku ngingo ya 258 yibukijwe haruguru, hamwe n’iya 320 y’Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, iteganya ko indishyi n’ibindi byakozwe mu rubanza bijyanye n’amafaranga umuburanyi yakoresheje mu rubanza ku kirego cyihutirwa, biregerwa hamwe n’ikirego cy’iremezo.

III. ICYEMEZO CY’URUKIKO

[42] Rwemeje ko ikirego cya Mukaruyange Athanasie cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro kuri bimwe;

[43] Rwemeje ko adahamwa n'icyaha cy'ubufatanyacyaha mu bujura buciye icyuho;

[44] Rwemeje ko, mu buryo bw'impurirane y'imbonezamugambi, ahamwa n'icyaha cyo guhisha ibikomoka ku cyaha, hamwe n'icyo guhisha uwakoze icyaha;

[45] Rumuhanishije igifungo cy'imyaka ibiri (2), gisubitswe mu mwaka umwe(1);

[46] Ruvuze ko indishyi n'amagarama yaciwe mu rubanza RPA 0230/14/TGI/NYGE bigumyeho;

[47] Rumutegetse kwishyura Rwasibo Mutesi Béatrice amafaranga 500.000 y'igihembo cya Avoka, na 300.000Frw y'ikurikiranarubanza, hamwe na 500.000Frw y'igihembo cya Avoka waburanye mu rubanza rw'ikirego cyihutirwa rwabanjirije uru;

[48] Rutegetse ko amagarama y'uru rubanza aherera ku Isanduku ya Leta.