UMUKUNZI v UWANTEGE N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00043/2017/SC – (Nyirinkwaya, P.J., Rugabirwa na Mukandamage, J.) 22 Kamena 2018]

Amategeko agenga umuryango – Izungura – Umunani – Kuba umwana w'umuhungu cyangwa w'umukobwa yarahawe umunani ntibivanaho uburenganzira bwo kuzungura abo akomokaho.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko rw'Ibanze rwa Nzige Umukunzi asaba ko igabana ryabaye ku mutungo wa Se Gahutu riseswa kuko yambuwe n'abo bavukana kuri Se uburenganzira bwo kuzungura bitwaje ko Atari umwana wa Gahutu. Uwitwa Kambarangwe na we yagobotse mu rubanza nk'umuzungura wa Gahutu avuga ko atahawe umugabane wa Se Nyangezi umuhungu wa Gahutu. Urukiko rwemeje ko Urega ari umwana wa Gahutu akaba agomba kumuzungura na Kambarangwe nawe nk'umwuzukuru we agomba kuzungura umugabane wa Se kuko abaregwa nta kimenyetso bagaragaje cy'uko yahawe umunani, ko kandi nabyo bitamubuza kuzungura ababyeyi be mu gihe batakiriho. Bityo, Urukiko rwemeje kandi ko igabana ryabayeho mbere riteshejwe agaciro, ndetse ko n'ibyemezo by'ubutaka byatanzwe ku bagabanye ubutaka buburanwa nta gaciro bifite.

Abaregwa aribo Uwantege, Uwicyeza na Umukurira bajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Ngoma maze rwemeza ko ubujurire bwabo bufite ishingiro, rusobanura ko Umukunzi yagombaga guhabwa icyemezo cy'amavuko cyerekana ko ari umwana wa Gahutu ari uko abanje kwemezwa ko ari umwana we wemewe n'amategeko, kuba bitarakozwe bigomba rero gufatwa ko atari umwana we, ko nta n'uburenganzira afite bwo kumuzungura. Rwemeje kandi ko Kambarangwe atagomba kuzungura Se Nyangezi kuko rwasanze atarigeze yemezwa nk'umwana wemewe n'amategeko wa Gahutu. Aba bombi bajuririye Urukiko Rukuru, urugereko rwa Rwamagana, ariko ubujurire bwabo ntibwakiriwe kuko bwatanzwe mu buryo bunyuranyije n'amategeko.

Umukunzi yasubirishijemo urubanza rwaciwe n'Urukiko Rwisumbuye ku mpamvu z'akarengane avuga ko rwamurenganyije kuko hirengagijwe amategeko n'ibimenyetso yatanze. Urubanza rwaburanishijwe mu ruhame habanza gusuzumwa inzitizi yo kutakira ikirego yatanzwe n'Abaregwa bavuga icko urubanza rwaciwe ku rwego rwa nyuma ari urwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, aho kuba urubanza rwaciwe n'Urukiko Rwisumbuye rwa Ngoma abarega bavuga ko rurimo akarengane. Nyuma yo kumva ababuranyi bose, Urukiko rwafatiye icyemezo mu ntebe, rusanga iyo nzitizi nta shingiro kuko Urukiko Rukuru, Urugereko rwa Rwamagana, rwemeje ko ubujurire butari mu bubasha bwarwo, ko rero urubanza rwaciwe ku rwego rwa nyuma ari narwo rusabirwa gusubirishwamo ku mpamvu z'akarengane ari urwaciwe mu mizi n'Urukiko Rwisumbuye rwa Ngoma.

Urubanza rwarakomeje mu mizi habanza gusuzumwa niba hari ibimenyetso n'amategeko byirengagijwe bigaragaza ko Umukunzi ari umwana wa Gahutu, ko kandi afite uburenganzira bwo kumuzungura. Aha Urega asobanura ko Urukiko Rwisumbuye rwavuze ko atagombaga kwiyambaza amategeko yanditse ko ahubwo yari kwiyambaza umuco ariko rwagera ku baburanyi be rugashingira ku mategeko yanditse kandi ababuranyi bose bavuka ku buryo bumwe, kuko Se ubabyara, Gahutu, yababyaye ku bagore batandukanye kandi batigeze basezerana nawe mu buryo bwemewe n'amategeko. Avuga kandi ko hirengagijwe ibyemezo yatanze bigaragaza ko ari umwana wa Gahutu, ubuhamya bwatanzwe na Sekuru, Nyiransenge hamwe n'abakomoka kuri Sekuru n'inyandiko y'Ubuyobozi.

Abaregwa bavuga ko nta karengane kabayeho mu rubanza rusabirwa gusubirishwamo kubera ko itegeko ryakoreshejwe ari Itegeko N° 22/99 ryo ku wa 15/11/1999 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura ariko rikaba ritashoboraga gukoreshwa ku muntu utari umwana wa Gahutu. Ku bijyanye n'ibimenyetso, bavuga ko icyemezo cy'amavuko cyahawe

Umukunzi cyashingiye ku nyandiko yakozwe n'Ubuyobozi bw'Umudugudu w'Agasharu bwemeza ko ariho yavukiye, kandi nyirasenge yemeza ko nyina yari atuye i Ntunga. Niyo mpamvu amakuru y'icyo cyemezo atafatwa nk'ukuri mu gihe hari ubundi buryo bukoreshwa kugira ngo hemezwe ko umuntu ari mwene runaka, ko rero n'izindi nyandiko Urega. aburanisha zuzuzwaga hashingiwe kubyo yabwiye uwazuzuzaga, ko kandi ibimenyetso uru Rukiko rukwiye gusuzuma ari ibyakoreshejwe mu rubanza avuga ko rwamurenganyije atari ibishya yashatse nyuma.

Ku kibazo cyo kumenya niba Kambarangwe afite uburenganzira bwo kuzungura sekuru Gahutu ahagarariye se Nyangezi, avuga ko ari mwene Nyangezi ariko yababajwe n'uko Urukiko Rwisumbuye rwamukuye mu bazungura ba Gahutu kandi nyirakuru Nyirakigage ari nawe wasezeranye mu buryo bukurikije amategeko na Sekuru.

Abaregwa baburana bemera ko Kambarangwe ari umwuzukuru wa Gahutu ariko adakwiye kuzungura umutungo we kuko nyirakuru ariwe nyina wa Nyangezi yari afite isambu ye iri mu Mudugudu w'Agasharu itandukanye n'iregerwa muri uru rubanza, uwo muhungu we yahaweho umunani, maze arayigurisha ajya gutura mu Bugesera.

Incamake y'icyemezo: 1. Kugira ngo uzungure umubyeyi, ugomba kuba uri umwana we mu buryo bwemewe n'amategeko. Bityo, icyemezo cy'amavuko, ubuhamya bwa Nyirasenge Kabuto Scholastique kimwe n'ibindi bimenyetso yatanze, sibyo bimenyetso biteganywa n'amategeko byashingirwaho hemezwa ko Umukunzi Jeanne d'Arc ari umwana wa Gahutu Gervais ufite n'uburenganzira bwo kumuzungura.

2. Kuba umwana w'umuhungu cyangwa w'umukobwa yarahawe umunani ntibivanaho uburenganzira bwo kuzungura abo akomokaho. Bityo, kuba Nyangezi Fidèle yaba yarahawe umunani na se Gahutu Gervais bitabuza Kambarangwe Diane kuzungura umugabane wa Se ku mutungo uburanwa.

Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro kuri bimwe.
Amagarama aherera ku Isanduku ya Leta.

Amategeko yashingiweho:
Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 03/08/1993, ingingo ya 16.
Itegeko ngenga Nº 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha bw'Urukiko rw'Ikirenga, ingingo ya 81.
Itegeko Ngenga Nº 51/08 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha bw'inkiko, ingingo ya 106.
Ingingo ya 111 y'Itegeko Nº 22/2018 ryo ku wa 29/042018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111.
Itegeko Nº 22/99 ryo ku wa 15/11/1999 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, ingingo ya 42, 50 n'iya 51.
Igitabo cya mbere cy'Urwunge rw'amategeko mbonezamubano (CCL I), ingingo ya 318 – 328.
Igitabo cya gatatu cy'uruwunge rw'amategeko mbonezamubano (CCLIII), ingingo ya 258.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mu Rukiko rw'Ibanze rwa Nzige, Umukunzi Jeanne d'Arc yareze Uwantege Immaculée, Uwicyeza Marie Claude na Umukurira Claire, avuga ko bamuvukije uburenganzira bwe bwo kuzungura, bagabana bonyine isambu y'umubyeyi wabo Gahutu Gervais, asaba ko igabana ryabaye ryateshwa agaciro kimwe n'ibyemezo by'ubutaka byatanzwe nyuma yaryo. Kambarangwe Diane,

umwuzukuru wa Gahutu Gervais nawe yagobotse muri urwo rubanza avuga ko atahawe umugabane wa se Nyangezi Fidèle mwene Gahutu Gervais na Nyirakigage Madalina.

[2] Urwo Rukiko rwabanje gusuzuma inzitizi y'iburabubasha bwa Umukunzi Jeanne d'Arc yatanzwe n'abaregwa bavuga ko nta bubasha afite bwo kuburana umutungo wa Gahutu Gervais kuko atari umwana we, rusanga iyo nzitizi nta shingiro ifite, maze rwemeza ko Umukunzi Jeanne d'Arc ari umwana we nk'uko bigaragazwa n'icyemezo cy'amavuko, (*attestation de naissance*) yarushyikirije.

[3] Ku bijyanye n'imizi y'urubanza, Urukiko rw'Ibanze rwa Nzige rwaciye urubanza RC 0001/12/TB/NZG ku wa 14/09/2012 rwemeza ko Umukunzi Jeanne d'Arc agomba kuzungura Gahutu Gervais, ko Kambarangwe Diane nawe nk'umwuzukuru we agomba kuzungura umugabane wa se Nyangezi Fidèle, kuko abaregwa nta kimenyetso bagaragaje cy'uko yahawe umunani, ko kandi nabyo bitamubuza kuzungura ababyeyi be mu gihe batakiriho, maze rutegeka ko bombi bagomba kujya mu bazungura bakazungura isambu iherereye mu Mudugudu w'Agasharu, Akagari ka Mutamwa, Umurenge wa Gahengeri igice kimwe, ikindi gice kikaba giherereye mu Mudugudu wa Nyirarwirungu, Akagari ka Mutamwa, Umurenge wa Gahengeri, bakazigabana mu buryo bungana. Urukiko rwemeje kandi ko igabana ryabayeho mbere riteshejwe agaciro, ndetse ko n'ibyemezo by'ubutaka byatanzwe ku bagabanye ubutaka buburanwa nta gaciro bifite, rutegeka abaregwa guha Umukunzi Jeanne d'Arc 100.000 Frw y'ikurikiranarubanza, bakanamusubiza 2.000 Frw y'ingwate y'amagarama yatanze arega, no guha Kambarangwe Diane 80.000 Frw y'ikurikiranarubanza, bakanatanga 7.200 Frw y'umusongongero wa Leta na 12.550 Frw y'amagarama y'urubanza.

[4] Uwantege Immaculée, Uwicyeza Marie Claude na Umukurira Claire bajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Ngoma, maze mu rubanza RCA 0517/012/TGI/Ngoma rwaciwe ku wa 28/12/2012, urwo Rukiko rwemeza ko ubujurire bwabo bufite ishingiro, rusobanura ko Umukunzi Jeanne d'Arc yagombaga guhabwa icyemezo cy'amavuko (*attestation de naissance*) cyerekana ko ari umwana wa Gahutu Gervais ari uko abanje kwemezwa ko ari umwana we wemewe n'amategeko, ko kuba bitarakozwe nk'uko biteganywa n'ingingo ya 318 y'Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano, bigomba rero gufatwa ko atari umwana we, ko nta n'uburenganzira afite bwo kumuzungura.

[5] Kuri Kambarangwe Diane, Urukiko rwasanze nawe se Nyangezi Fidèle atarigeze yemezwa nk'umwana wemewe n'amategeko wa Gahutu Gervais, akaba atagomba kuzungura, maze rutegeka ko Umukunzi Jeanne d'Arc na Kambarangwe Diane bafatanya guha abajuriye indishyi zingana na 750.000 Frw no gutanga 17.300 Frw y'amagarama y'urubanza.

[6] Umukunzi Jeanne d'Arc na Kambarangwe Diane bajuriye mu Rukiko Rukuru, Urugereko rwa Rwamagana, maze ku wa 27/09/2013, mu rubanza RCAA 0025/13/HC/RWG, rwemeza ko ubujurire bwabo butakiriwe kuko bwatanzwe mu buryo butubahirije amategeko, hashingiwe ku biteganywa n'ingingo ya 106 y'Itegeko Ngenga N^{o} 51/08 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha bw'inkiko, rubategeka gufatanya kwishyura 14.450 Frw y'amagarama y'urubanza.

[7] Mukunzi Jeanne d'Arc yiyambaje Urwego rw'Umuvunyi avuga ko urubanza RCA 0517/012/TGI/Ngoma rwaciwe ku wa 28/12/2012 n'Urukiko Rwisumbuye rwa Ngoma rwamurenganyije, kuko hirengagijwe amategeko n'ibimenyetso yatanze, maze ku wa 15/01/2015 Urwego rw'Umuvunyi rwandikira Perezida w'Urukiko rw'Ikirenga rusaba ko urwo rubanza rwasubirwamo, kubera ko rubonamo akarengane kuko urwo Rukiko rwavuze ko Umukunzi Jeanne d'Arc atagomba kwiyambaza amategeko yanditse kubera ko yagombaga kwiyambaza umuco, ariko rwagera ku baburanyi be rugashingira ku mategeko yanditse, kandi bose se ubabyara Gahutu Gervais yarababyaye ku bagore batandukanye kandi batigeze basezerana nawe ku buryo bwemewe

n'amategeko, rukaba rero rusanga harirengagijwe icyemezo cye cy'amavuko cyakozwe n'ubuyobozi bubifitiye ububasha kandi kitaregewe ko ari inyandiko mpimbano, n'ubuhamya bwa Kabuto Scholastique, nyirasenge w'ababuranyi, wemeje ko Umukunzi Jeanne d'Arc ari mwene Gahutu Gervais.

[8] Urwego rw'Umuvunyi ruvuga kandi ko Urukiko Rwisumbuye rwa Ngoma rwashingiye ku Itegeko Nº 22/99 ryo ku wa 15/11/1999 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, nyamara Gahutu Gervais yarapfuye mu mwaka wa 1994 kandi iryo tegeko ridasubira inyuma, aho gushingira ku ihame ry'uko abantu bareshya nk'uko byateganywaga mu ngingo ya 16 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 03/08/1993 mu kugena uburenganzira bwo kuzungura.

[9] Iburanisha ry'urubanza ryabaye mu ruhame ku wa 29/05/2018, Uwantege Marie, Uwicyeza Marie Claude na Umukurira Claire bunganiwe na Me Mukaruzagiriza Chantal, naho Umukunzi Jeanne d'Arc na Kambarangwe Diane bunganiwe na Me Nshuti Salim, habanza gusuzumwa inzitizi yo kutakira ikirego yatanzwe n'abaregwa bavuga ko ikirego cyatanzwe na Umukunzi Jeanne d'Arc kitujuje ibiteganywa n'ingingo ya 81 y'Itegeko ngenga Nº 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha bw'Urukiko rw'Ikirenga kuko urubanza rwaciwe ku rwego rwa nyuma ari urubanza RCAA 0025/13/HC/RWG rwaciwe ku wa 27/09/2013 n'Urukiko Rukuru, Urugereko rwa Rwamagana, aho kuba urubanza RCA 0517/012/TGI/NGOMA rwaciwe ku wa 28/12/2012 n'Urukiko Rwisumbuye rwa Ngoma abarega bavuga ko rurimo akarengane.

[10] Nyuma yo kumva ababuranyi bose, Urukiko rwafatiye icyemezo mu ntebe, rusanga iyo nzitizi nta shingiro kuko Urukiko Rukuru, Urugereko rwa Rwamagana, rwemeje ko ubujurire butari mu bubasha bwarwo, ko rero urubanza rwaciwe ku rwego rwa nyuma ari narwo rusabirwa gusubirishwamo ku mpamvu z'akarengane ari urwaciwe mu mizi n'Urukiko Rwisumbuye rwa Ngoma.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba hari ibimenyetso n'amategeko byirengagijwe bigaragaza ko Umukunzi Jeanne d'Arc ari umwana wa Gahutu Gervais, ko kandi afite uburenganzira bwo kumuzungura

[11] Me Nshuti Salim, wunganira Umukunzi Jeanne d'Arc, avuga ko akarengane yaregeye gashingiye ku mpamvu y'uko Urukiko Rwisumbuye rwa Ngoma, mu rubanza RCA 0517/012/Ngoma rwavuze ko Umukunzi Jeanne d'Arc atagombaga kwiyambaza amategeko yanditse (*droit écrit*), ko ahubwo yari kwiyambaza umuco (*coutume*), nyamara rwagera ku baburanyi be rugashingira ku mategeko yanditse kandi ababuranyi bose bavuka ku buryo bumwe, kuko se ubabyara, Gahutu Gervais, yababyaye ku bagore batandukanye kandi batigeze basezerana nawe mu buryo bwemewe n'amategeko aribo Nyirakigage Madalina, Nyiramatibiri Verediyana, Mukamusoni Gaudencia na Kanyana Rose, ari we nyina w'abaregwa, akaba n'umugore muto.

[12] Avuga na none ko Urukiko Rwisumbuye rwa Ngoma rwirengagije nkana ibimenyetso byatanzwe n'Umukunzi Jeanne d'Arc birimo icyemezo cy'amavuko (*attestation de naissance*) cyatanzwe n'inzego zibifitiye ububasha, kandi kitararegewe ko ari inyandiko mpimbano, kigaragaza ko ari mwene Gahutu Gervais, ubuhamya bwa Kabuto Scholastique, nyirasenge w'ababuranyi, bugaragara mu gika cya 15 cy'urubanza RC 0001/12/TB/NZG, aho yemeje ko Umukunzi Jeanne d'Arc yabyawe na Gahutu Gervais, inyandiko y'ubuyobozi yo ku wa 24/10/2013 n'ubuhamya bwatanzwe n'abakomoka kuri Seburimbwa, se wa Gahutu Gervais, ifishi y'ibarura yo ku wa 06/05/1996 n'irangamuntu ye ya kera.

[13] Asanga rero, iyo hakurikizwa Itegeko Nº 22/99 ryo ku wa 15/11/1999 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, Umukunzi Jeanne d'Arc yari kwemererwa kuzungura, kuko ari umwana wa Gahutu Gervais.

[14] Umukunzi Jeanne d'Arc avuga ko ari umwana wa Gahutu Gervais na Mukamusoni Gaudencia, ko yahungutse ageze mu matongo y'iwabo asanga nta muntu uhari, akomeza gushakisha abavandimwe be aza kubona Uwantege Immaculée na Umukurira Claire ahitwa mu Migina mu Mujyi wa Kigali, ko na mbere ya jenoside yakorewe abatutsi mu mwaka wa 1994 yazanaga urugori iwabo yabyaye, ubwa mbere hakaba hari mu mwaka wa 1980 ubwo se yamuhaga inka, ko rero badakwiye kuvuga ko batamuzi, ahubwo ibibazo byavutse nyuma habayeho kwigabanya amasambu.

[15] Me Mukaruzagiriza Chantal wunganira abaregwa, avuga ko nta karengane kabayeho mu rubanza rusabirwa gusubirishwamo kubera ko itegeko ryakoreshejwe ari Itegeko Nº 22/99 ryo ku wa 15/11/1999 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, ko ariko iryo tegeko ritashoboraga gukoreshwa ku muntu utari umwana wa Gahutu Gervais.

[16] Ku byerekeye ibimenyetso bivugwa ko byirengangijwe, Me Mukaruzigiriza Chantal avuga ko icyemezo cy'amavuko cyahawe Umukunzi Jeanne d'Arc cyashingiye ku nyandiko yakozwe n'Ubuyobozi bw'Umudugudu w'Agasharu bwemeza ko ariho yavukiye, kandi nyirasenge Kabuto Scholastique yemeza ko nyina Mukamusoni yari atuye i Ntunga, nyuma akaza guhunga akajya muri Tanzaniye nk'uko bigaragara mu gika cya 13 cy'urubanza RC 0001/12/TB/NZG, bikaba rero bigaragaza ko inyandiko ubwayo yashingiweho hatangwa icyemezo cy'amavuko atari iyo kwizerwa kuko umuntu adashobora kuvukira ahantu habiri.

[17] Me Mukaruzagiriza Chantal avuga na none ko habayeho kwitiranya ibintu abarega bavuga ko abaregwa bemeye ubuhamya bwa Kabuto Scholastique wemeje ko Umukunzi Jeanne D'Arc ari umwana wa Gahutu Gervais, kandi atiriko byagenze, ko ahubwo icyo bemeye ari uko Kabuto Scholastique ari nyirasenge, bakaba batumva ukuntu uwo nyirasenge atari yarababwiye ko Umukunzi Jeanne D'Arc ari umuvandimwe wabo agategereza kubivuga ari uko imanza zitangiye.

[18] Abaregwa bavuga ko Urukiko rukwiye kwibaza, mu rwego rw'amategeko, agaciro rwaha icyo cyemezo cy'amavuko (*attestation de naissance*), mu gihe bizwi ko "acte de naissance" ariyo ihamya ivuka n'ababyeyi b'uyihawe, ko kandi mu myaka ya 1960, abavukaga bagiraga aho bandikwa, ko hari n'ifishi y'ibarura ry'umuryango wa Gahutu Gervais yo ku wa 12/06/1973, igaragaza umugore we n'abana ndetse n'abatarabyawe na nyina Kanyana Rose, bose bandikishijwe na Gahutu Gervais kuri Komini, bakibaza impamvu atandikishije Umukunzi Jeanne d'Arc muri icyo gihe niba yari ko ari uwe kandi icyo gihe yari ariho, bakaba basanga rero atari umuzungura we.

[19] Bakomeza bavuga ko icyemezo cy'amavuko (*attestation de naissance*) gitangwa hashingiwe ku mvugo z'uyisaba, ari nayo mpamvu amakuru yayo atafatwa nk'ukuri mu gihe hari ubundi buryo bukoreshwa kugira ngo hemezwe ko umuntu ari mwene runaka, ko rero n'izindi nyandiko Umukunzi Jeanne d'Arc aburanisha zuzuzwaga hashingiwe kubyo yabwiye uwazuzuzaga, ko kandi ibimenyetso uru Rukiko rukwiye gusuzuma ari ibyakoreshejwe mu rubanza avuga ko rwamurenganyije atari ibishya yashatse nyuma.

[20] Ku birebana n'ubuhamya bwatanzwe mu mwaka wa 2013 bw'abagize umuryango wa Seburimbwa, n'inyandiko yo mu mwaka wa 2013 y'Umuyobozi w'Akagari ka Mutamwa, abaregwa bavuga ko izo nyandiko zitahabwa agaciro kubera ko zakozwe urubanza rusubirishwamo ku mpamvu z'akarengane rwaramaze gucibwa, ko kandi inyandiko y'abo mu muryango irimo abantu bane b'umuryango wa Kabuto Scholastique kandi Gahutu Gervais afite abamukomokaho benshi, ibyo bikaba bigaragaza ko ari umugambi w'ubwumvikane Umukunzi Jeanne d'Arc yagiranye nabo hashingiye ku makimbirane yo mu muryango, n'abandi bane (Sana Claudine, Bizimana Damien, Bagwaneza Espérance na Joséphine) bahamya ibintu byababayeho bataravuka, naho ku by'inyandiko

y'Ubuyobozi irebana no gusobanura ibibazo by'ubushobozi buke bwa Umukunzi Jeanne d'Arc bwo kwishyura ibyo yategetswe mu rubanza RCA 0517/012/TGI/Ngoma, bavuga ko Akagari kasabaga Umurenge kugira icyo wakora kuri icyo kibazo, ko kandi nta nyandiko Uwantege yigeze ashyiraho umukono yemera ko Umukunzi Jeanne d'Arc ari umuvandimwe wabo.

UKO URUKIKO RUBIBONA

[21] Ingingo ya 81, igika cya mbere, y'Itegeko - Ngenga Nº 03/2012/OL ryo ku wa 13/06/2012 rigenga imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ryakurikizwaga igihe Umukunzi Jeanne d'Arc yatangaga ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane, iteganya ko urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirwamo ku mpamvu z'akarengane kubera impamvu zikurikira: (...) 2° iyo mu icibwa ry'urubanza hirengagijwe amategeko n'ibimenyetso bigaragarira buri wese;(...).

[22] Ingingo za 318 – 328 z'Igitabo cya mbere cy'Urwunge rw'amategeko mbonezamubano (CC L I) cyakurikizwaga igihe Umukunzi Jeanne d'Arc yatangaga ikirego mu Rukiko rw'Ibanze rwa Nzige, ziteganya ko umwana wavutse ku babyeyi batashyingiranywe ashobora kwemerwa n'ababyeyi be igihe bashyingiranywe nyuma yo kumubyara, iyo umwe mu babyeyi amwemeye nk'umwana we bigakorwa mu nyandiko mvaho iyo bitakozwe mu cyemezo cye cy'amavuko cyangwa se iyo umwana ubwe atanze ikirego mu rukiko cyo gushakisha umubyeyi.

[23] Naho ku byerekeye izungura, ingingo ya 50 y'Itegeko nº 22/99 ryo ku wa 15/11/1999 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura ryakurikizwaga igihe abazungura ba Gahutu Gervais bagabanaga amasambu yasize, iteganya ko abana amategeko mbonezamubano yemera ko ari aba nyakwigendera bazungura ku buryo bungana hagati y'umwana w'umuhungu n'uw'umukobwa.

[24] Izi ngingo zumvikanisha ko kugira ngo uzungure umubyeyi, ugomba kuba uri umwana we mu buryo bwemewe n'amategeko.

[25] Nk'uko bigaragara muri uru rubanza, Umukunzi Jeanne d'Arc yareze asaba kuzungura amasambu yasizwe na Gahutu Gervais avuga ko ari umwana we yabyaranye na Mukamusoni Gaudencia batashyingiranywe, ko ikigaragaza ko ari umwana wabo ari icyemezo cy'amavuko (*attestation de naissance*) yashyikirije urukiko cyatanzwe n'ubuyobozi bubifitiye ububasha, ubuhamya bwa nyirasenge Kabuto Scholastique wemeje mu Rukiko ko yabyawe na Gahutu Gervais, inyandiko y'ubuyobozi yo ku wa 24/10/2013 n'ubuhamya bwatanzwe n'abakomoka kuri Seburimbwa, se wa Gahutu Gervais.

[26] Ku byerekeye itegeko ryagombaga gukurikizwa muri uru rubanza, Urukiko rurasanga, kuba izungura rya Gahutu Gervais ritarahise riba mu mwaka wa 1994 amaze kwitaba Imana, ahubwo abazungura be bagatangira kugabana amasambu ye ari nabyo byavuyemo ikirego cyatanzwe ku wa 03/01/2012, Umukunzi Jeanne d'Arc aregera iryo gabana, Itegeko nº 22/99 ryo ku wa 15/11/1999 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura ari ryo ryagombaga gukurikizwa, aho kuba Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 03/08/1993 nk'uko Urwego rw'Umuvunyi rubivuga.

[27] Urukiko rurasanga, rushingiye ku biteganywa n'ingingo z'amategeko zavuzwe haruguru, kandi mu gihe abo Umukunzi Jeanne d'Arc arega bo bavuga ko batamuzi mu bana babyawe na Gahutu Gervais, kugirango yemererwe kumuzungura, agomba gutanga ikimenyetso cy'urubanza rwaciwe n'urukiko rwemeje ko ari umwana we, kuko nk'uko nawe abivuga, nyina umubyara ntiyigeze ashyingiranwa na Gahutu Gervais, ku buryo inkomoko ye yaba ishingiye kuri ubwo bushyingiranwe, cyangwa se ko Gahutu Gervais yaba yaramwemeye nk'umwana we mu buryo buteganywa n'amategeko.

[28] Urukiko rurasanga rero icyemezo cy'amavuko, ubuhamya bwa Kabuto Scholastique yatangiye mu Rukiko rw'Ibanze rwa Nzige yemeza ko Umukunzi Jeanne d'Arc yabyawe na Gahutu Gervais, Urwego rw'Umuvunyi ruvuga ko byirengagijwe n'Urukiko Rwisumbuye rwa Ngoma mu rubanza RCA 0517/012/TGI/Ngoma bigatuma habaho akarengane, kimwe n'ibindi bimenyetso yatangiye muri uru Rukiko, ataribyo bimenyetso biteganywa n'amategeko byashingirwaho hemezwa ko Umukunzi Jeanne d'Arc ari umwana wa Gahutu Gervais ufite n'uburenganzira bwo kumuzungura, kandi icyaregewe muri uru rubanza ni amasambu asaba kuzungura mu buryo bungana hamwe n'abandi bamukomokaho, ntabwo ari ukwemeza inkomoko ye.

[29] Kubera izo mpamvu, Urukiko rurasanga nta kimenyetso cyemewe n'amategeko cyangwa se amategeko yirengagijwe mu icibwa ry'urubanza RCA 0517/012/TGI/Ngoma rwaciwe ku wa 28/12/2012 n'Urukiko Rwisumbuye rwa Ngoma, bityo ikirego cyatanzwe na Umukunzi Jeanne d'Arc kigamije gusubirishamo ku mpamvu z'akarengane urwo rubanza nta shingiro gifite.

2. Kumenya niba Kambarangwe Diane afite uburenganzira bwo kuzungura sekuru Gahutu Gervais ahagarariye se Nyangezi Fidèle

[30] Me Nshuti Salim, wunganira Kambarangwe Diane, avuga ko ari mwene Nyangezi Fidèle, ko yamenye ko hari umutungo wa sekuru urimo kugabanywa ahita agoboka mu rubanza, ko ariko yababajwe n'uko Urukiko Rwisumbuye rwa Ngoma rwamukuye mu bazungura ba Gahutu Gervais kandi nyirakuru Nyirakigage Madalina ari nawe wasezeranye mu buryo bukurikije amategeko na Gahutu Gervais.

[31] Me Mukaruzagiriza Chantal avuga ko kuri Kambarangwe Diane uhagarariye se Nyangezi Fidèle abaregwa bemera ko ari umwuzukuru wa Gahutu Gervais na Nyirakigage Madalina, ko ariko adakwiye kuzungura umutungo wa Gahutu Gervais na Kanyana Rose, kuko nyirakuru ariwe nyina wa Nyangezi Fidèle yari afite isambu ye iri mu Mudugudu w'Agasharu itandukanye n'iregerwa muri uru rubanza, uwo muhungu we yahaweho umunani, maze arayigurisha ajya gutura mu Bugesera.

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[32] Nk'uko byagaragajwe haruguru, ingingo ya 50 y'Itegeko Nº 22/99 ryo ku wa 15/11/1999 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura yemerera abana bemewe n'amategeko kuzungura ababyeyi babo.

[33] Muri uru rubanza, ababuranyi bose bemera ko Kambarangwe Diane ari umwana wa Nyangezi Fidèle, umuhungu wa Gahutu Gervais na Nyirakigage Madalina, bose bitabye Imana.

[34] Urukiko rurasanga kuba Nyangezi Fidèle yaba yarahawe umunani na se Gahutu Gervais bitabuza Kambarangwe Diane kuzungura umugabane wa se ku mutungo uburanwa muri uru rubanza kuko, nk'uko biteganywa n'ingingo ya 42 y'Itegeko Nº 22/99 ryo ku wa 15/11/1999 ryavuzwe haruguru, itanga ry'umunani ni igikorwa ababyeyi bakora bakiriho kigamije kugabira umutungo abana babo cyangwa ababakomokaho bagahita bawegukana, bikitwa ko bashoje inshingano yo kubarera no kububakira[1]. Byongeye kandi nta kimenyetso abaregwa batanze kigaragaza ko Kambarangwe Diane yaba yarazunguye isambu bavuga ko yari itunzwe na nyirakuru Nyirakigage Madalina.

[35] Hashingiwe ku ngingo z'amategeko zavuzwe haruguru, no ku bimaze gusobanurwa, Urukiko rurasanga ikirego kigamije gusubirishamo urubanza rwavuzwe haruguru gifite ishingiro ku bireba Kambarangwe Diane.

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[1] Mu rubanza RCAA 0006/15/CS rwa Nsanzabera v. Bariganza n'abandi, Urukiko rw'Ikirenga rwemeje ko kuba umwana w'umukobwa yaragenewe igiseke cyangwa umurima w'uburushyi, ntibivanaho uburenganzira bwo kuzungura abo akomokaho. Icyegeranyo cy'ibyemezo by'inkiko, V1-2018, Mutarama 2018.

3. Indishyi zisabwa n’ababuranyi

[36] Me Nshuti Salim uburanira abarega ashingira ku ngingo ya 258 y’Igitabo cya gatatu cy’uruwunge rw’amategeko mbonezamubano (CCLIII), asaba ko Urukiko rw’Ikirenga rwategeka abaregwa kubaha 3.000.000 Frw y’igihembo cy’Avoka na 300.000 Frw y’ikurikiranarubanza.

[37] Me Mukaruzagiriza Chantal, uburanira abaregwa, avuga ko izo ndishyi nta shingiro zifite, ko ahubwo aribo bakwiye guhabwa izingana na 3.000.000 Frw y’igihembo cy’Avoka na 300.000 Frw y’ikurikirarubanza.

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[38] Ingingo ya 111 y’Itegeko Nº 22/2018 ryo ku wa 29/042018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi iteganya ko ikirego cy’amafaranga y’ikurikiranarubanza ni ikirego gishamikira ku kirego cy’iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza.

[39] Urukiko rurasanga amafaranga y’ikurikiranarubanza n’igihembo cy’Avoka Umukunzi Jeanne d’Arc asaba Uwantege Marie, Uwicyeza Marie Claude na Umukurira Claire atayagenerwa kuko ikirego cye gisaba gusubirimo urubanza ku mpamvu z’akarengane nta shingiro gifite.

[40] Urukiko rurasanga amafaranga y’ikurikiranarubanza n’igihembo cy’Avoka Kambarangwe Diane asaba Uwantege Marie, Uwicyeza Marie Claude na Umukurira Claire afite ishingiro kuko yaburanye yunganiwe na Avoka kandi hari ibyo yatakaje akurikirana uru rubanza, akaba agenewe mu bushishozi bwarwo 500.000 Frw y’igihembo cya Avoka na 100.000 Frw y’ikurikiranarubanza, yose hamwe akaba 600.000 Frw kuri uru rwego.

[41] Ku byerekeye amafaranga y’ikurikiranarubanza n’igihembo cy’Avoka Uwantege Marie, Uwicyeza Marie Claude na Umukurira Claire basaba Umukunzi Jeanne d’Arc, Urukiko rurasanga afite ishingiro kuko baburanye bunganiwe na Avoka banakurikirana urubanza mu bujurire bakaba bagenewe mu bushishozi bwarwo 500.000 Frw y’igihembo cya Avoka na 100.000 Frw yo gukurikirana urubanza, yose hamwe akaba 600.000 Frw kuri uru rwego.

III. ICYEMEZO CY’URUKIKO

[42] Rwemeje ko ikirego cyo gusubirishamo urubanza ku mpamvu z’akarengane cyatanzwe na Umukunzi Jeanne d’Arc na Kambarangwe Diane gifite ishingiro kuri bimwe.

[43] Rwemeje ko urubanza RCA 0517/012/TGI/Ngoma rwaciwe ku wa 28/12/2012 n’Urukiko Rwisumbuye rwa Ngoma ruhindutse gusa kuri Kambarangwe Diane.

[44] Rutegetse ko Kambarangwe Diane yemerewe kuzungura umugabane wa se Nyangezi Fidèle ku isambu iherereye mu Mudugudu w’Agasharu, Akagari ka Mutamwa, Umurenge wa Gahengeri igice kimwe, ikindi gice kikaba giherereye mu Mudugudu wa Nyirarwirungu, Akagari ka Mutamwa, Umurenge wa Gahengeri, akagabana n’abandi ku buryo bungana.

[45] Rutegetse Uwantege Marie, Uwicyeza Marie Claude na Umukurira Claire gufatanya kwishyura Kambarangwe Diane 600.000 Frw y’ikurikiranarubanza n’igihembo cy’Avoka kuri uru rwego.

[46] Rutegetse Umukunzi Jeanne d’Arc kwishyura Uwantege Marie, Uwicyeza Marie Claude na Umukurira Claire 600.000 Frw y’ikurikiranarubanza n’igihembo cy’Avoka kuri uru rwego.

[47] Rutegetse ko amafaranga y'amagarama y'urubanza aherereye ku Isanduku ya Leta.