UBUSHINJACYAHA v. NZITAKUZE

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00500/2018/CA (Muhumuza, P.J.,) 23 Gicurasi 2019]

Amategeko mpanabyaha – Ubwinjiracyaha bw'ubwicanyi – Kugira ngo habeho uburyozwacyaha ku cyaha cy'ubwiracyaha bw'ubwicanyi, ntibihagije gushingira gusa ku bikoresho cyangwa intwaro uregwa yafatanywe ahubwo hagomba kugaragazwa niba yari afite umugambi cyangwa ubushake bwo kwica – Itegeko Nº 01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko, ingingo ya 27.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Ngoma, Nzitakuze akurikiranyweho icyaha cy'ubwinjiracyaha bw'ubwicanyi, Ubushinjacyaha buvuga ko ubwo yari kumwe nuwitwa Nsabimana mu kabari baje kugirana amakimbirane nuko uregwa aza kumutegera mu nzira ashaka kumwicisha umuhoro ariko ku bw'amahirwe Nsabimana ahita amubona, barwanira wa muhoro yaragiye kumutemesha, hanyuma abaturage baratabara basanga bakirwanira umuhoro barawubaka, baranabakiza. Urwo Rukiko rwahamije uregwa icyaha rumuhanisha igifungo cya burundu, rushingiye ku buhamya bw'abari mu batabaye ubwo Nsabimana na Nzitakuze barwanaga, no kuri raporo y'Inzego z'umutekano yemeje ko umuhoro uregwa yari afite yawukuye k'uwitwa Hakizimana.

Uregwa yajuriye mu Rukiko Rukuru, Urugereko rwa Rwamagana, avuga ko Urukiko Rwisumbuye rwamuhamije icyaha atakoze rwirengagije ibimenyetso yarushyikirije nuko urwo Rukiko rwemeza ko nta gihindutse ku rubanza rwajuririwe, rusobanura ko impamvu uregwa ahamwa n'icyaha

akurikiranyweho ari uko atabashije kuvuguruza ibimenyetso byashingiweho n'Urukiko Rwisumbuye rwa Ngoma mu kumuhamya icyaha.

Uregwa na none yajuririye urwo rubanza mu Rukiko rw'Ikirenga urubanza rwimurirwa mu Rukiko Rw'Ubujurire nyuma y'ivugururwa ry'ububasha bw'inkiko. Mu bujurire bwe akaba avuga ko Urukiko Rukuru rwamuhamije icyaha rudasesenguye neza ibimenyetso byashingiweho mu ku muhamya icyaha, ko rwanirengagije ibisobanuro bye kandi rugaca urubanza rudakoze iperereza ryimbitse kandi yarabisabye guhera igihe cy'iperereza, yongeraho ko umuhoro yari afite yari awujyanye ku kazi ke k'izamu hanyuma ubwo yari mu nzira agahura na Nsabimana uyu akavuga ko agiye kumutema, bagafatana, bakaza gukizwa n'abaturage. Akomeza avuga ko anenga urubanza rwajuririwe kuberako ruvuga ko yateze igico Nzitakuze kandi atari byo, cyane cyane ko nta cyo bapfaga, ko Urukiko Rukuru rwafashe icyemezo ntaho rushingiye.

Ubushinjacyaha bwo buvuga ko Inkiko zombi zibanza zafashe ibyemezo zishingiye ku bimenyetso birimo raporo y'Inzego z'umutekano, umuhoro wari aho Nzitakuze na Nsabimana barimo kurwanira, kandi ko abahuruye bose bemeje ko basanze Nzitakuze ari hejuru ya Nsabimana barimo kurwanira umuhoro Nzitakuze yashakaga kumutemesha. Bwongeraho ko abari mu kabari babajijwe basobanuye ko Nzitakuze amaze gutongana na Nsabimana yahise ataha afata umuhoro ajya gutega Nsabimana, bwanavuze ko kuba nta gikomere Nsabimana yarafite bitaturutse ku bushake bw'uregwa ko ahubwo aruko yarushijwe imbaraga, busoza busaba Urukiko kwemeza ko uregwa ahamwa n'icyaha akurikiranyweho.

Incamake y'icyemezo: 1. Ku cyaha cy'ubwinjiracyaha bw'ubwicanyi, ntibihagije gushingira ku bikoresho cyangwa intwaro uregwa yafatanywe ahubwo hagomba kugaragazwa niba yari afite umugambi cyangwa ubushake bwo guzikoresha mu gukora icyaha, bityo ntaho Urukiko rwahera rwemeza ko uregwa ahamwa n'icyaha.

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

Amategeko yashingiweho:
Itegeko Nº 01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko, ingingo ya 27.
Itegeko Nº 30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 165.

Nta manza zifashishijwe.

Inyandiko z'abahanga:
Arshworth Andrew, Sentencing and Criminal Justice, sixth edition, Cambridge University Press p.127

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ubushinjacyaha bwareze Nzitakuze Théoneste mu Rukiko Rwisumbuye rwa Ngoma bumukurikiranyeho icyaha

cy'ubwinjiracyaha bw'ubwicanyi buvuga ko yakoreye uwitwa Nsabimana Blaise, ubwo bari kumwe mu kabari bakaza kugirana amakimbirane. Ubushinjacyaha buvuga ko Nsabimana Blaise yasohotse atashye, Nzitakuze Théoneste nawe arasohoka ajya kuzana umuhoro, amutegera mu nzira ashaka kumwica ariko ku bw'amahirwe Nsabimana Blaise ahita amubona, barwanira wa muhoro yaragiye kumutemesha, Nsabimana Blaise avuza induru abaturage baratabara basanga bakirwanira umuhoro barawubaka, baranabakiza.

[2] Urukiko Rwisumbuye rwa Ngoma, mu rubanza RP 0402/15/TGI/NGOMA, rwaciwe ku wa 05/11/2015, rwamuhamije icyaha, rumuhanisha igifungo cya burundu, rushingiye ku buhamya bwa Mukarukundo Languida n'ubwa Nyirahabimana Juliette bari mu batabaye ubwo Nsabimana Blaise na Nzitakuze Théoneste barwanaga, no kuri raporo y'Inzego z'umutekano yemeje ko umuhoro Nzitakuze Théoneste yari afite yawukuye kwa Hakizimana Valens.

[3] Nzitakuze Théoneste yajuriye mu Rukiko Rukuru, Urugereko rwa Rwamagana, avuga ko Urukiko Rwisumbuye rwamuhamije icyaha atakoze rwirengagije ibimenyetso yarushyikirije.

[4] Urukiko Rukuru, Urugereko rwa Rwamagana mu rubanza RPA 0480/15/HC/RWG, rwaciwe ku wa 12/05/2016, rwemeje ko nta gihindutse ku rubanza rujuririrwa, rusobanura ko impamvu Nzitakuze Théoneste ahamwa n'icyaha akurikiranweho ari uko atabashije kuvuguruza ibimenyetso byashingiweho n'Urukiko Rwisumbuye rwa Ngoma mu kumuhamya icyaha.

[5] Nzitakuze Théoneste na none yajuririye urwo rubanza mu Rukiko rw'Ikirenga, avuga ko Urukiko Rukuru rwamuhamije icyaha rudasesenguye neza ibimenyetso byashigiweho mu ku muhamya icyaha, ko rwanirengagije ibisobanuro bye kandi rugaca urubanza rudakoze iperereza ryimbitse

[6] Mbere yuko uru rubanza ruburanishwa habayeho ivugururwa ry'Inkiko, hashyirwaho Urukiko rw'Ubujurire, uru rubanza rwimurirwa muri urwo Rukiko hakurikijwe ibiteganywa n'Ingingo ya 52 n'iya 105, z'Itegeko Nº 30/2018 ryo kuwa 02/06/2018, rigena ububasha bw'Inkiko.

[7] Iburanisha ry'urubanza ryabereye mu ruhame ku wa 09/04/2019, Nzitakuze Théoneste yunganiwe na Me Hategekimana Gratien, Ubushinjacyaha buhagarariwe na Rudatinya Gaspard, Umushinjacyaha ku rwego rw'Igihugu.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

Kumenya niba Nzitakuze Theoneste yarahamijwe icyaha atakoze.

[8] Nzitakuze Théoneste avuga ko yajuriye kubera ko Urukiko Rukuru rwaciye urubanza rudasesenguye ibimenyetso yarushyikirije, ko nta perereza rwakoze kandi yararisabye guhera mu Bugenzacyaha aho yasabaga ko habazwa nyirakabari banyweragamo, na Hakizimana Valens bivugwa ko ariwe wamuhaye umuhoro, yemera ko ubwo yajyaga mu kabari yahahuriye na Nsabimana Blaise akamusaba kumugurira inzoga, undi akamusubiza ko nta mafaranga afite, ko yahise

ataha mu rugo akajya kuzana umuhoro yagombaga kujyana ku kazi k'izamu, hanyuma mu kuzamuka agiye ku kazi ko ari bwo yahuye na Nsabimana Blaise, uyu akavuga ko agiye kumutema, bagafatana, Nsabimana Blaise agatabaza abaturage bakaza bakabakiza, bakabaka n'umuhoro barwaniraga. Avuga ko ibyo bavuga ko yemeye icyaha atari byo kuko atigeze yemera ko yaragiye kwica Nsabimana Blaise, ko ahubwo yemeye ko yafashe umuhoro awukuye iwe awujyanye ku izamu.

[9] Me Hategekimana Gracien umwunganira, avuga ko icyo we n'uwo yunganira banenga urubanza rwajuririwe ari uko bivugwa ko Nzitakuze Théoneste yateze igico Nsabimana Blaise kandi atari byo, ko yasabye iperereza kugirango hamenyekane ko Nsabimana yahuye na Nzitakuze Théoneste agiye ku izamu bityo bivaneho iyo mvugo yuko yari yamuteze igico, cyane cyane ko nta cyo bapfaga, ko Urukiko Rukuru rwafashe icyemezo ntaho rushingiye. Asoza avuga ko nubwo Nzitakuze Théoneste nta cyaha yakoze ariko Urukiko ruramutse rubibonye ukundi kikamuhama, akwiye guhanwa hashingiwe ku Itegeko Nº 68/2018 ku wa 30/08/2018 riteganya ibyaha muri rusange kuko ari ryo riteganya ibihano byoroheje.

[10] Uhagarariye Ubushinjacyaha avuga ko Inkiko zombi zibanza zafashe ibyemezo zishingiye ku bimenyetso birimo raporo y'Inzego z'umutekano, umuhoro wari aho Nzitakuze Théoneste na Nsabimana Blaise barimo kurwanira, abahuruye bose bemeje ko basanze Nzitakuze Théoneste ari hejuru ya Nsabimana Blaise barimo kurwanira umuhoro Nzitakuze yashakaga kumutemesha. Avuga ko mu Rukiko Rwisumbuye Nzitakuze Théoneste yasobanuye ukuntu yagiye mu kabari akahasanga Nsabimana Blaise wamusabye kumusengerera,

asobanura ukuntu bateranye amagambo, ukuntu yatashye akahamusiga, akagaruka ku izamu afite umuhoro.

[11] Akomeza avuga ko abari mu kabari babajijwe basobanuye ko Nzitakuze Théoneste amaze gutongana na Nsabimana Blaise yahise ataha afata umuhoro ajya gutega Nsabimana Blaise, ko kuvuga ko nta gikomere Nsabimana Blaise yarafite nta gaciro byahabwa kuko kuba ataramwishe bitaturutse ku bushake bwe, ko ahubwo byaturutse ku kuba Nsabimana Blaise yaramurushije imbaraga, ko asanga impamvu z'ubujurire za Nzitakuze Théoneste ntashingiro zifite, asaba uru Rukiko kwemeza ko Nzitakuze Théoneste ahamwa n'icyaha akurikiranweho cy'ubwinjiracyaha bw'ubwicanyi ariko mu kugena ibihano ko hazakurikizwa ingingo ya 21, igika cya 3 y'Itegeko Nº 68/2018 ku wa 30/08/2018 riteganya ibyaha muri rusange.

UKO URUKIKO RUBIBONA

[12] Ingingo ya 27 y'Itegeko Nº 01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryariho Nzitakuze akurikiranwa iteganya ko ubwinjiracyaha buhanirwa iyo umugambi wo gukora icyaha wagaragajwe n'ibikorwa biboneka bidashidikanywa by'intangiriro y'icyaha, bigamije gushyigikira ko gikorwa, nyuma bigahagarikwa, bikabuzwa kugera ku cyifuzo cyangwa bikazitirwa n'impamvu zidakomoka ku bushake bwa nyir'ugukora icyaha.

[13] Urukiko Rwisumbuye rwa Ngoma rwahamije Nzitakuze Théoneste icyaha cy'ubwinjiracyaha bw'ubwicanyi rushingiye ku mvugo y'umutangabuhamya Mukarukundo Languida umushinja kuba ubwo yatabaraga yaramusanze hejuru ya

Nsabimana Blaise, bigashimangirwa na raporo y'Inzego z'umutekano yemeza ko umuhoro Nzitakuze Théoneste yarafite yawukuye kwa Hakizimana Valens.

[14] Mu Rukiko Rukuru, Urugereko rwa Rwamagana Nzitakuze Théoneste yahamijwe icyaha hashingiwe ku kuba atarabashije kuvuguruza ibimenyetso byatanzwe n'Ubushinjacyaha byanashingiweho n'Urukiko Rwisumbuye mu kumuhamya icyaha, birimo imvugo z'abatangabuhamya babajijwe, raporo y'ubuyobozi no kuba ubwo yabazwaga mu Bugenzacyaha yaremeye ko we na Nsabimana Blaise barwaniye umuhoro.

[15] Dosiye y'urubanza igaragaza ko ubwo Mukarukundo Languida yabazwaga mu Bugenzacyaha ku wa 16/07/2015 ko yaba azi uburyo Nzitakuze Théoneste yashatse gutema Nsabimana Blaise, yasubije ko yumvise induru zivuga aryamye, arabyuka agenda agiye gutabara ahageze asanga Nsabimana Blaise aryamye hasi Nzitakuze Théoneste amuri hejuru barwanira umuhoro, ko we n'abandi bahahuriye bahise babambura uwo muhoro, ahita ahamagara ushinzwe umutekano kandi ko nta kintu azi Nzitakuze Théoneste apfa na Nsabimana Blaise.

[16] Dosiye y'urubanza igaragaza kandi ko ku wa 11/07/2015 Ubuyobozi bw'Umudugudu icyaha cyakorewemo bwakoze raporo bugaragaza uko ibintu byagenze, busobanura ko mu ijoro ryo ku wa 11/07/2015 saa 22h Nsabimana Blaise yarikumwe na Nzitakuze Théoneste na Hakizimana Valens mu kabari ka Nyirabungeri Alphonsine, ariko Nsabimana Blaise aza gusiga abo bagenzi be muri ako kabari arataha, ko aribwo Nzitakuze Théoneste yahise azenguruka ako kabari ajya kwihisha mu miyenzi yo ku rugo rwo kwa Nsabimana Blaise afite n'umuhoro

ashaka kuwumutemesha, kandi ko ubwo bari muri ako kabari bari babanje kugirana amakimbirane.

[17] Ku wa 12/07/2015 Ubuyobozi bw'Akagari ka Ntebe nabwo bwakoze raporo bugaragaza ko Umusore witwa Nzitakuze Théoneste yategeye umuturanyi we Nsabimana Blaise ku rugo rwe ashaka kumutema dore ko yaranafite umuhoro, ariko Nsabimana Blaise akigera ku irembo yahise abona Nzitakuze Théoneste yihishe mu miyenzi aza amusanga afite umuhoro, abanguye umuhoro kumutema Nsabimana Blaise arasimbuka barwanira uriya muhoro ari nako avuza induru abaturage baratabara basanga bombi bafashe uwo muhoro barawubaka.

[18] Ubwo Nzitakuze Theoneste yabazwaga mu Bugenzacyaha ku wa 12/07/2015, yavuze ko ubwo bari mu kabari we na Nsabimana Blaise bateranye amagambo, birangiye arataha ajya iwe kuzana umuhoro ngo ajye ku kazi k'izamu, ko yageze haruguru yo kwa Nsabimana Blaise asanga yamutegeye mu miyenzi, agiye kwiruka yumva yamufashe, barafatana Nsabimana Blaise aramutega yikubita hasi ariko bakomeza kurwanira umuhoro, Nsabimana Blaise avuza induru, hatabara Hakizimana Valens wahise abaka uwo muhoro, aribwo hahitaga haza abantu batabaye barimo ushinzwe umutekano bakamushinja ko yaragiye kwica Nsabimana Blaise, ariko ko uwo muhoro atari uwo yaragiye kumwicisha ahubwo ari uwo yarajyanye mu kazi ke k'izamu.

[19] Mw'ibazwa rya Nsabimana Blaise mu Bugenzacyaha ku wa 15/07/2015, yavuze ko Nzitakuze Théoneste yamutegeye ku irembo atashye abona ahubutse mu miyenzi afite umuhoro awubanguye ashaka kumutema aramuhusha aribwo yamufataga barawurwanira, atabaza abaturanyi, habanza kuza uwitwa

Hakizimana Valens ari nawe wari watije Nzitakuze Théoneste umuhoro, arabakiza abaka n'umuhoro, haza n'abandi barimo Mukarukundo, kandi ko ntacyo bapfa usibye kumugirira ishyari ryuko atunze we adatunze.

[20] Isesengura ry'ingingo ya 27 y'Itegeko Nº 01/2012 ryo ku wa 02/05/2012 ryagarutsweho haruguru ryumvikanisha ko kugirango habeho ubwinjiracyaha kandi buhanwe, ari ngombwa ko haba habayeho ibikorwa biboneka kandi bidashidikanywaho mu rwego rwo gutangira gushyira mu bikorwa umugambi wo gukora icyaha, hanyuma ibyo bikorwa bigakomwa mu nkokora n'impamvu zitaturutse kuri nyir'ukubikora.

[21] Ibi by'umugambi mu bwinjiracyaha ni nako abahanga mu mategeko babisobanura, aho bavuga ko"the culpability required for an attempted murder is an intent to kill"[1] tugenekereje mu Kinyarwanda bisobanura ko kugirango habeho uburyozwacyaha ku cyaha cy'ubwiracyaha bw'ubwicanyi, ni ngombwa ko habaho umugambi cyangwa ubushake bwo kwica.

[22] Ku birebana n'uru rubanza, Urukiko rurasanga hashingiwe ku bikubiye muri dosiye nkuko byibukijwe haruguru, nubwo uregwa n'uwakorewe icyaha batabivugaho rumwe, ibyabaye hagati ya Nsabimana Blaise na Nzitakuze Théoneste ari imirwano ishingiye ku makimbirane bari bagiranye ubwo bari mu kabari, kuko Ubushinjacyaha butashoboye kugaragariza Urukiko ko Nzitakuze Théoneste yateze Nsabimana Blaise afite umugambi wo kumwica.

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[1] Arshworth Andrew, Sentencing and Criminal Justice, sixth edition, Cambridge University Press p.127.

[23] Urukiko rurasanga abatangabuhamya babajijwe bose bemeza ko basanze Nzitakuze Théoneste na Nsabimana Blaise barwanira umuhoro, ariko ntawamenye uko byatangiye (niba barahuye buri wese akikanga undi, cyangwa harabaye ko umwe atega undi kubera amakimbirane bari bagiranye) kuko bose bavuga ko baje bahuruye bagakiza abarwanaga, bakaba batagaragaza ko hari ubushake ku ruhande rwa Nzitakuze Theoneste bwo kwica Nsabimana Blaise, akabibuzwa gusa nuko uyu yatabawe.

[24] Urukiko rurasanga hashingiwe ku biteganywa n'ingingo ya 165 y'Itegeko N◦ 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ivuga ko gushidikanya birengera ushinjwa, ko iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze.

[25] Rurasanga hari ugushidikanya ku bimenyetso ku cyaha cy'ubwinjiracyaha mu cyaha cy'ubwicanyi Nzitakuze Théoneste akurikiranyweho kuko nta cyarugaragariye ko yagize umugambi wo gushaka kwambura Nsabimana Blaise ubuzima, bityo Urukiko rukaba ntaho rwahera rwemeza ko icyaha akurikiranyweho kimuhama.

III. ICYEMEZO CY'URUKIKO

[26] Rwemeje ko Ubujurire bwa Nzitakuze Théoneste bufite ishingiro;

[27] Rwemeje ko imikirize y'urubanza RPA 0480/15/HC/RWG rwaciwe ku wa 12/05/2016 n'Urukiko Rukuru, Urugereko rwa Rwamagana ihindutse muri byose;

[28] Rwemeje ko Nzitakuze Théoneste adahamwa n'icyaha cy'ubwinjiracyaha bw'ubwicanyi yarakurikiranweho;

[29] Rutegetse ko Nzitakuze Théoneste waburanaga afunzwe ahita arekurwa uru rubanza rukimara gusomwa;

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