

UBUSHINJACYAHA v. NSENGIYUMVA N'ABANDI

[Rwanda URUKIKO RW'UBUJURIRE – RPA 00074/2018/CA
(Muhumuza, P.J., Kaliwabo na Tugireyezu, J.) 12 Nyakanga
2019]

Amategeko mpanabyaha – Gucuruza amahembe y'inzovu – Gucuruza amahembe y'inzovu no kuyashakira isoko ntibigize icyaha cyo gushimuta, kwica, gukomeretsa cyangwa gucuruza inzovu nta n'ubwo bigize kuba icyitso mu gushimuta, kwica, gukomeretsa cyangwa gucuruza inzovu ahubwo bigize icyaha cyo kwakira, gutunga, guhisha cyangwa gutanga ngo bahishe ibicuruzwa bazi neza ko bibujijwe cyangwa bisabirwa uruhushya byatumijwe cyangwa byinjijwe mu buryo bunyuranije n'amategeko – Itegeko ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za Gasutamo, Ingingo ya 200 (d) (i) (ii).

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rukuru urugereko rwa Rwamagana abaregwa bakurikiranywe n'Ubushinjacyaha ku cyaha cyo gukora ubucuruzi butemewe bw'amahembe y'inzovu mu mwaka wa 2012 kugeza muri Gicurasi 2015, Ubushinjacyaha bukavuga ko bagize uruhare mu kwica inzovu zo mu gihugu cya Tanzaniya, bagakurayo amahembe yazo bambutsaga mu Rwanda, bakayashakira isoko.

Urwo Rukiko rwemeje ko icyaha cyo kwica inzovu rwaregewe kitambuka imipaka kuko Ubushinjacyaha butagaragaje ibimenyetso by'aho inzovu zakuweho amahembe ziciwe, bityo rwemeza ko rudafite ububasha bwo kukiburanisha ku rwego

rwa mbere. Ku birebana n'Urukiko rufite ububasha bwo kuburanisha icyaha cyo gucuruza amahembe y'inzovu, urwo Rukiko rwasanze ibikorwa byo gucuruza amahembe y'inzovu no kuyashakira isoko nta tegeko ribihana mu Rwanda, bityo rwemeza ko urubanza nta Rukiko rugomba koherezwamo, rutegeka ko Nsengiyumva na Karambizi bari bakurikiranywe bafunze barekurwa.

Ubushinjacyaha ntibwishimiye imikirize y'urubanza, bujuririra Urukiko rw'Ikirenga, ubujurire buza koherezwa mu Rukiko rw'Ubujurire nyuma y'ivugururwa ry'inkiko. Mu bujurire bwabwo Ubushinjacyaha buvuga ko Urukiko rukwiye kwemeza ko abaregwa bagize uruhare mu kwica inzovu, kuko bitari gushoboka ko amahembe yazo aboneka zitabanje kwicwa cyangwa ngo zikomere, Ubushinjacyaha bwongeraho ko banahamwa n'ibikorwa byo gucuruza amahembe y'inzovu kuko ngo abaregwa bari abahuza b'abica inzovu bakazikuraho amahembe yazo n'ababa bagomba kuyagura.

Ubushinjacyaha bukomeza busaba gukosora icyemezo cy'Urukiko Rukuru, Urugereko rwa Rwamagana rwavuze ko abaregwa badakwiye gukurikiranwaho icyaha cyo gucuruza amahembe y'inzovu ngo kuko nta tegeko ry'u Rwanda cyangwa amasezerano mpuzamahanga abihana, ko ahubwo Urukiko rwagombaga gushingira ku Itegeko ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za Gasutamo.

Muri uru rubanza kandi Urukiko rwemeje ko hatumizwa Inshuti y'urukiko kugirango igire ibyo isobanurira Urukiko ku birebana n'icuruza ry'amahembe y'inzovu n'ibiyakomokaho, ni muri urwo rwego hatumiwe Ikigo cy'igihugu cy'iterambere(RDB) maze iyo nshuti y'urukiko isobanura ko hari uburyo bune umuntu ashobora kubonamo amahembe y'inzovu, ubwa mbere akaba ari uko wayica maze ukayikuraho amahembe yayo, ubwa

kabiri akaba ari uko wayikomeretsa mu gihe cyo kuyikuraho amahembe, ubwa gatatu akaba ari uko wayagura ku isoko naho ubwa kane akaba ari uko wayatora ku nzovu yipfushije. Yongeyeho kandi ko nubwo amategeko ahana yo mu Rwanda adateganya igihano ku bakora ubucuruza bw'amahembe y'inzovu n'ibice by'izindi nyamaswa zirinze hariho Itegeko ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za Gasutamo rihana abakora ibyaha byo gucuruza ibice by'inyamaswa zirinze n'ibikomoka kuri izo nyamaswa biri ku rutonde rw'ibibanza gusabirwa uruhushya.

Abaregwa baburanye bahakana icyaha uretse Nsengiyumva waburanye yemera gucuruza amahembe y'inzovu ariko akavuga ko ku birebana n'Itegeko ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za Gasutamo, ko iryo tegeko ritashingirwaho kuko ngo Ubushinjacyaha butarigaragaje ngo baryisobanureho. Uwitwa Vunumwami we yaburanye avuga ko adakwiye gukurikiranwa ku bikorwa byo gucuruza amahembe y'inzovu kuko nta tegeko ribihana mu Rwanda, naho Semasaka yiregura avuga ko Ubushinjacyaha butabashije kugaragaza uruhare rwe mu ikorwa ry'icyaha, bityo ngo akaba agomba kugirwa umwere naho Karambizi we aburana avuga ko Ubushinjacyaha bwahinduye imiburanire mu bujurire kuko ngo mu bujurire baregwa kwica inzovu aho kuba gucuruza amahembe y'inzovu no kuyashakira isoko, akavuga ko ibi byafatwa nk'imiburanire mishya.

Incamake y'icyemezo: 1. Gucuruza amahembe y'inzovu no kuyashakira isoko ntibigize icyaha cyo gushimuta, kwica, gukomeretsa cyangwa gucuruza inzovu nta n'ubwo bigize kuba icyitso mu gushimuta, kwica, gukomeretsa cyangwa gucuruza inzovu ahubwo bigize icyaha cyo kwakira, gutunga, guhisha

cyangwa gutanga ngo bahishe ibicuruzwa bazi neza ko bibujijwe cyangwa bisabirwa uruhushya, byatumijwe cyangwa byinjijwe mu buryo bunyuranije n'amategeko.

2. Urukiko Rukuru ntirwari kwemeza ko nta tegeko rihana gucuruza amahembe y'inzovu kubera ko rwagombaga gushingira ku ngingo ya 200 (d) (i) (ii) y'Itegeko ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za Gasutamo.

**Ubujurire bufite ishingiro kuri bimwe;
Imikirize y'urubanza rwajuririwe irahindutse.**

Amategeko yashingiweho:

Itegeko -Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 4 n'ya 78, 3°.

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 1 n'ya 154.

Itegeko N° 30/2013 ryo ku wa 24/5/2013 y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 165 n'ya 190.

Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 110

Itegeko ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za Gasutamo, ingingo ya 200 (d) (i) (ii).

Itegeko N° 72/2008 ryo ku wa 31/12/2008 rigenga itangira gukurikizwa ry'Itegeko N°1 ryo ku wa 01 Mutarama 2005 ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za gasutamo.

Amasezerano yerekeye icuruzwa rikorerwa hagati y'ibihugu ku bwoko bw'inyamaswa n'ibimera mu gasozi byenda gucika yabereye i Washington ku wa 3/03/1973, ingingo ya 1,2 n'ya 3.

Iteka rya Minisitiri N^o 007/2008 ryo ku wa 15/08/20084, rishyiraho urutonde rw'ubwoko bw'inyamaswa n'ibimera birinzwe.

Imanza zifashishijwe:

Ubushinjacyaha vs Uwamurengeye, RPAA 0110/10/CS rwaciwe n'Urukiko rw'Ikirenga, icyegeranyo cy'ibyemezo by'inkiko V.1, Nyakanga 2014, p. 133-140.

Ubushinjacyaha vs CPL Ngabonziza na SGT Biziyaremye, RPAA 0117/07/CS rwaciwe n'Urukiko rw'Ikirenga, icyegeranyo cy'ibyemezo by'inkiko, Igitabo cya kabiri 2011, N^o 9, P.57-62.

Ubushinjacyaha vs Mukashema na Bihimana, RPA 0176/11/CS rwaciwe n'Urukiko rw'Ikirenga, icyegeranyo cy'ibyemezo by'inkiko, V.1-2017, P147-160.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rukuru, Urugereko rwa Rwamagana, Ubushinjacyaha burega Nsengiyumva Vincent, Vunumwami Egide, Semasaka Silas na Karambizi Alphonse kuba barakoze ubucuruzi butemewe bw'amahembe y'inzovu mu mwaka wa 2012 kugeza muri Gicurasi 2015 ubwo batangiraga gukurikiranwa,

Ubushinjacyaha bukavuga ko bagize uruhare mu kwica inzovu zo mu gihugu cya Tanzaniya, bagakurayo amahembe yazo bambutsaga mu Rwanda, bakayashakira isoko, amafaranga avuyemo bakayagabana.

[2] Ku wa 06/10/2016, Urukiko Rukuru, Urugereko rwa Rwamagana rwaciye urubanza RP 0013/15/HC/RWG, rwemeza ko icyaha cyo kwica inzovu rwaregewe kitambuka imipaka kuko Ubushinjacyaha buvuga ko budafite ibimenyetso by'aho inzovu zakuriweho amahembe ziciwe, bityo rukaba rutagifite ububasha bwo kukiburanisha ku rwego rwa mbere. Ku birebana n'Urukiko rufite ububasha bwo kuburanisha icyaha cyo gucuruza amahembe y'inzovu, Urukiko Rukuru, Urugereko rwa Rwamagana rwasanze ibikorwa byo gucuruza amahembe y'inzovu no kuyashakira isoko nta Tegeko ribihana mu Rwanda, bityo urubanza hakaba nta Rukiko rugomba koherezwamo, rutegeka ko Nsengiyumva Vincent na Karambizi Alphonse bari bakurikiranywe bafunze barekurwa.

[3] Ubushinjacyaha ntibwishimiye imikirize y'urubanza, bujuririra Urukiko rw'Ikirenga, buvuga ko Urukiko rwavuze ko butagaragaje ikimenyetso cy'uko abakurikiranywe bagize uruhare mu kwica inzovu, ariko ko ibi ari ukwirengagiza kuko ntawasobanura ukuntu yafatanywe amahembe y'inzovu atabanje kuyica cyangwa kuyikomereza, Urukiko Rukuru, Urugereko rwa Rwamagana rukaba rwarirengagije ko ibyo bikorwa bihanwa n'ingingo ya 417 y'Itegeko-Ngenga N° 01/2012 ryavuzwe haruguru.

[4] Mu bujirire, Ubushinjacyaha buvuga kandi ko mu kwemeza ko abaregwa badakwiye gukurikiranwa, Urukiko Rukuru, Urugereko rwa Rwamagana rwavuze ko nta Tegeko rihari, rihana ibikorwa byo gucuruza amahembe y'inzovu,

rwirengagije ibiteganywa n'Itegeko ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za Gasutamo mu ngingo yaryo ya 200 (d) (i).

[5] Ubushinjacyaha busaba Urukiko kwemeza ko abaregwa bakoze mu buryo bw'impurirane icyaha cyo kwica inzovu no kuzikuraho amahembe yazo bakayacuruzwa, buri wese agahanishwa igihano cy'igifungo cy'imyaka 10 n'ihazabu iri hagati ya 500.000Frw kugeza na 5.000.000Frw hashingiwe ku ngingo ya 417 y'Igitabo cy'amategeko ahana.

[6] Nyuma y'ivugururwa ry'inkiko, ubujurire bw'Ubushinjacyaha bwoherejwe mu Rukiko rw'Ubujurire hashingiwe ku ngingo ya 52 na 105 z'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko¹, buhabwa N° RPA 00074/2018/CA.

[7] Urubanza rwaburanishijwe mu ruhame ku wa 24/06/2019, Nsengiyumva Vincent yunganiwe na Me Mujawamaliya Immaculée, Vunumwami Egide yunganiwe na Me Kampire Claudine, Semasaka Silas yunganiwe na Me Nyirabasinga Hélène, Karambizi Alphonse yunganiwe na Me Mukesha David, Ubushinjacyaha buhagarariwe na Habineza Jean Damascène, Umushinjacyaha ku Rwego rw'Igihugu, maze Urukiko ruvuga ko urubanza ruzasomwa ku wa 26/07/2019.

¹ Ingingo ya 52 iteganya ko Urukiko rw'Ubujurire rufite ububasha bwo kuburanisha ku rwego rw'ubujurire bwa mbere, imanza zaciwe mu rwego rwa mbere n'Urukiko Rukuru, Urukiko Rukuru rw'Ubucuruzi n'Urukiko Rukuru rwa Gisirikare naho ingingo ya 105, igika cya 1, ivuga ko guhera igihe iri tegeko ritangiriye gukurikizwa, uretse imanza zatangiye kuburanishwa, imanza zose zitakiri mu bubasha bw'urukiko zaregewe, zohererezwa Urukiko rubifitiye ububasha hakurikijwe ibiteganywa n'iri tegeko.

Kuri uwo munsu Urukiko rwaciye urubanza rubanziriza urundi rwemeza ko iburanisha ripfundurwa hagatumizwa inshuti y'Urukiko kugirango igire ibyo isobanurira Urukiko ku birebana n'icuruza ry'amahembe y'inzovu n'ibiyakomokaho birebewe hamwe n'amategeko ahana y'u Rwanda, amategeko arengera ibidukikije, hamwe n'amasezerano mpuzamahanga n'ayo mu karere, u Rwanda rwashyizeho umukono. Hagati aho Perezida w'Urukiko yafashe icyemezo cyo kwagura inteko iburanisha.

[8] Urubanza rwongeye kuburanishwa mu ruhame ku wa 9/9/2019, ababuranyi bitabye Urukiko bunganiwe nka mbere, Ubushinjacyaha buhagarariwe na Rudatinya Gaspard, Umushinjacyaha ku Rwego rw'Igihugu, RDB nk'inshuti y'Urukiko, ihagarariwe na Richard Muvunyi, ukuriye ishami rishinzwe kubungabunga ibidukikije.

[9] Nyuma yo kumva umwirondoro we, kumva inshingano ze n'ubunararibonye bwe mu kubungabunga ibidukikije, Richard Muvunyi yamenyesheje Urukiko ko hari amasezerano yabereye i Washington muri Leta Zunze Ubumwe za Amerika yerekeye icuruzwa rikorerwa hagati y'Ibihugu ku bwoko bw'inyamaswa zo ku gasozi n'ibimera byenda gucika, u Rwanda rwashyizeho umukono, ko ariko nta bihano byateganyirijwe muri ayo Masezerano ku bacuruzwa inyamaswa cyangwa ibice by'inyamaswa zirinze, akaba ariyo mpamvu buri gihugu mu byashyize umukono kuri ayo masezerano, kigomba kwishyiriraho amategeko ahana ubucuruzi butemewe.

[10] Yasobanuriye Urukiko kandi ko nyuma yo gusesengura, muri RDB baje gusanga Itegeko-Ngenga N^o 04/2005 ryo ku wa 08/04/2005 rigena uburyo bwo kurengera, kubungabunga no guteza imbere ibidukikije mu Rwanda ndetse n'andi mategeko ahana y'u Rwanda yakozwe muri urwo rwego atarigeze

ateganya ibihano ku bantu bakora ibyaha byo gucuruza ibice by'inyamaswa zirinze n'ibikomoka kuri izo nyamaswa, akaba ari yo mpamvu RDB yateguye umushinga w'itegeko rigamije kuziba icyo cyaho, ubu ukaba warashyikirijwe Guverinoma.

[11] Inshuti y'Urukiko yakomeje imenyeshya Urukiko ko ariko n'ubwo amategeko ahana yo mu Rwanda atateganya igihano ku bakora ibikorwa by'ubucuruzi bw'amahembe y'inzovu n'ibice by'izindi nyamaswa zirinze, hariho Itegeko ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za Gasutamo rihana abakora ibyaha byo gucuruza ibice by'inyamaswa zirinze n'ibikomoka kuri izo nyamaswa biri ku rutonde rw'ibibanza gusabirwa uruhushya, kandi ko amahembe y'inzovu nayo ari kuri urwo rutonde.

[12] Inshuti y'Urukiko yanavuze kandi ko hari uburyo bune umuntu ashobora kubona amahembe y'inzovu, ubwa mbere akaba ari uko wayica maze ukayikuraho amahembe yayo, ubwa kabiri akaba ari uko wayikomeretsa mu gihe cyo kuyikuraho amahembe, ubwa gatatu akaba ari uko wayagura ku isoko naho ubwa kane akaba ari uko wayatora ku nzovu yipfushije; ko kandi uburyo bwose umuntu yaba abonyemo amahembe y'inzovu, aba agomba gusobanura aho yayakuye, kandi ko gucuruza amahembe y'inzovu bitemewe ku isi hose, haba ari ugucuruza amahembe ubwayo cyangwa se ibiyakomokaho keretse gusa ubifitiye uruhushya.

[13] Nsengiyumva Vincent aburana yemera gucuruza amahembe y'inzovu, agasaba imbabazi, Vunumwami Egide akavuga ko yabikijwe na Nsengiyumva Vincent amahembe y'inzovu ariko we azi ko ari ay'inka, Semasaka na Karambizi Alphonse bakaburana bahakana icyaha naho Ubushinjacyaha bwo bukavuga ko hari ibimenyetso bihamya icyaha

Nsengiyumva Vincent na Vunumwami Egide ko ariko budafite ibimenyetso bihagije ku birebana na Semasaka na Karambizi Alphonse.

[14] Ibibazo bigomba gusuzumwa muri uru rubanza akaba ari ukumenya niba ibikorwa abaregwa bakurikiranyweho bigize icyaha n'Itegeko rigomba gushingirwaho mu kubihana no kumenya niba hari ibimenyetso bihamya abakurikiranywe icyaha.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

II.1. Kumenya niba ibikorwa abaregwa bakurikiranyweho bigize icyaha n'Itegeko rigomba gushingirwaho mu kubihana.

[15] Uhagarariye Ubushinjacyaha avuga ko ibikorwa byabaye byo gucuruza amahembe y'inzovu bigize icyaha cyo kwica inzovu, gucuruza amahembe yazo no kuyashakira isoko, akanenga Urukiko Rukuru, Urugereko rwa Rwamagana kuba rwaremeje ko ibyo bikorwa bitagize icyaha, rwirengagije ingingo ya 417 y'Itegeko rishyiraho igitabo cy'amategeko ahana ryakoreshwaga ubwo icyaha cyakorwaga, ihana icyaha cyo gushimuta, gucuruza no kwica inyamaswa zirimo gucika.

[16] Akomeza asaba Urukiko kwemeza ko abaregwa ari ibyitso mu cyaha cyo kwica inzovu kuko amahembe yazo atari gushobora kuboneka, inzovu zitabanje kwicwa cyangwa ngo zikomere, kandi ko banahamwe n'ibikorwa byo gucuruza amahembe yazo kuko bigaragara ko abaregwa ari abahuza (intermédiaires) b'abica inzovu bakazikuraho amahembe

n'ababa bagomba kuyagura. Asaba kandi ko mu gufata icyemezo, Urukiko rwazifashisha urubanza RPA ECON 00001/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 6/12/2018 kuko rusa neza n'uru rubanza ku birebana n'ibikorwa byakozwe.

[17] Uhagarariye Ubushinjacyaha asaba gukosora icyemezo cy'Urukiko Rukuru, Urugereko rwa Rwamagana rwavuze ko abaregwa badakwiye gukurikiranwaho icyaha cyo gucuruza amahembe y'inzovu ngo kuko n'ubwo bibujijwe nta tegeko ry'u Rwanda cyangwa amasezerano mpuzamahanga abihana, kubera ko asanga Urukiko Rukuru, Urugereko rwa Rwamagana rwaragombaga gushingira ku Itegeko ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za Gasutamo mu ngingo yaryo ya 200 mu guhana icyo cyaha.

[18] Nsengiyumva Vincent na Me Mujawamaliya Immaculée umwunganira, bavuga ko Ubushinjacyaha mu Rukiko rw'Ubujurire bwahinduye ikirego kuko bwari bukurikiranye abaregwa ku cyaha cyo gucuruza amahembe y'inzovu gusa ariko ubu bukaba bwongeraho no kwica inzovu, asaba Urukiko ko rwasuzuma niba icyaburanishijweho mu Rukiko Rukuru ari nacyo kiburanishwaho mu Rukiko rw'Ubujurire, rukanareba niba kuba umuntu afite amahembe y'inzovu hagomba kwemezwa byanze bikunze ko aba yabanje kwica inzovu, kuko ushobora kuyabona uyaguze nk'uko byemejwe n'inshuti y'Urukiko. Avuga kandi ko nta rutonde rw'innyamaswa zirimo zicika Ubushinjacyaha bwagaragaje ngo bwerekane ko n'inzovu zirimo.

[19] Ku birebana n'Itegeko ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za Gasutamo, Me Mujawamaliya Immaculée wunganira Nsengiyumva Vincent

asaba ko mu guca urubanza, iryo Tegeko ritashingirwaho, kuko Ubushinjacyaha butarigaragaje ngo baryisobanureho mu Rukiko rw'Ubujurire.

[20] Vunumwami Egide na Me Kampire Claudine umwunganira bavuga ko ingingo ya 417 y'igitabo cy'amategeko ahana Ubushinjacyaha bushingiraho itakoreshwa muri uru rubanza, kuko ntaho ihuriye no gucuruza amahembe y'inzovu, uwo yunganira akaba adakwiye gukurikiranwaho iki cyaha. Avuga ko nk'uko bigaragara ku rupapuro rwa 5, urwa 7 n'urwa 10 rw'urubanza rwajuririwe, mu Rukiko Rukuru Ubushinjacyaha bwavuze ko nta bimenyetso bufite ko inzovu ziciwe muri Tanzania, ko icyo bukurikiranyeho abaregwa ari ugucuruza no gushaka aho bacururiza amahembe y'inzovu kandi ko byakorewe mu Rwanda, ibyo bikorwa, Vunumwami Egide akaba atagomba kubikurikiranwaho, kuko nta tegeko ribihana.

[21] Semasaka Silas na Me Nyirabasinga Helène umwunganira bavuga ko Ubushinjacyaha butabashije kugaragaza uruhare rwa Semasaka Silas mu ikorwa ry'icyaha, ko ku bw'ibyo agomba kugirwa umwere.

[22] Karambizi Alphonse na Me Mukesha David umwunganira, bavuga ko Ubushinjacyaha bwahinduye imiburanire mu bujurire bukavuga ko icyaha buregera ari ukwica inzovu aho kuba gucuruza amahembe y'inzovu no kuyashakira isoko, ibi bikaba byafatwa nk'imiburanire mishya (moyen nouveau), idashobora gushingirwaho bwa mbere mu rwego rw'ubujurire.

[23] Ku birebana n'Itegeko ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za Gasutamo, Me

Mukeshu David wunganira Karambizi Alphonse avuga ko iryo Tegeko ritashingirwaho kuko Ubushinjacyaha butigeze buriburanisha mu Rukiko rubanza kandi ko amahembe y'inzovu atari ibicuruzwa; ko ariko Urukiko rusanze rwarishingiraho rwareba niba u Rwanda rwararishyizeho umukono.

UKO URUKIKO RUBIBONA

[24] Inyandiko ziri muri dosiye zigaragaza ko Ubushinjacyaha bukurikiranye abaregwa ku cyaha cyo kwica inzovu, kuba icyitso mu kwica inzovu kuko ngo bitari gushoboka kubona amahembe y'inzovu hatabayeho kubanza kuzica n'icyaha cyo gucuruza amahembe yazo no kuyashakira isoko, ariko Urukiko Rukuru, Urugereko rwa Rwamagana rukaba rwaremeje ko nta bimenyetso bigaragaza ko abakurikiranywe bagize uruhare mu kwica inzovu kandi ko gucuruza amahembe y'inzovu no kuyashakira isoko bitagize icyaha gihanwa n'ingingo ya 417 y'Itegeko rishyiraho igitabo cy'amategeko ahana cyangwa Itegeko-Ngenga N^o 04/2005 ryo ku wa 08/04/2005 rigena uburyo bwo kurengera, kubungabunga no guteza imbere ibidukikije mu Rwanda.

[25] Ku birebana n'icyaha cyo kwica inzovu, Ubushinjacyaha bushingira ku ngingo ya 417 y'Itegeko-Ngenga N^o 01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga ubwo Nsengiyumva Vincent na bagenzi be batangiraga gukurikiranwa iteganya ko umuntu wese ushimuta, ucuruza, ukomeretsa cyangwa wica ingagi cyangwa izindi nyamaswa zirengerwa ziriho zicika, ahanishwa igifungo kirenze imyaka itanu (5) kugeza ku myaka icumi (10) n'ihazabu y'amafaranga y'u Rwanda kuva ku bihumbi magana atanu (500.000) kugeza kuri miliyoni eshanu (5.000.000).

[26] Urukiko rurasanga n'ubwo koko inzovu iri ku rutonde rw'inyamaswa zirinzwe zivugwa mu Iteka rya Minisitiri N⁰ 007/2008 ryo ku wa 15/08/2008², rishyiraho urutonde rw'ubwoko bw'inyamaswa n'ibimera birinzwe (list of protected animal and plant species) ntabwo ingingo ya 417 y'Itegeko-Ngenga N⁰ 01/2012 rishyiraho igitabo cy'amategeko ahana yakoresha muri uru rubanza nk'uko biburanishwa n'Ubushinjacyaha, kubera ko nta bimenyetso bwagaragarije Urukiko rw'Ubujurire byemeza ko abakurikiranywe baba barakoze ibikorwa byo kwica inzovu cyane ko no mu miburanire yabwo mu Rukiko Rukuru bwari bwabanje kuvuga ko nta bimeyetso bifatika bufite byemeza ko abakurikiranywe bagize uruhare mu kwica inzovu, aho byabereye muri Tanzaniya.

[27] Hashingiwe ku bisobanuro bimaze kuvugwa haruguru, Urukiko rw'Ubujurire rurasanga, nk'uko byemejwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ibikorwa Ubushinjacyaha bwaregeye byo kwica inzovu bidahura n'ibiteganyijwe mu ngingo ya 417 y'Itegeko-Ngenga N⁰ 01/2012 ryavuzwe haruguru ihana ibikorwa byo gushimuta, gucuruza, gukomeretsa cyangwa kwica ingagi cyangwa izindi nyamaswa zirengerwa

² Iteka rya Minisitiri N⁰ 007/2008 ryo ku wa 15/08/2008 ryasohotse mu Igazeti ya Leta N⁰ 22 yo ku wa 15/11/2008, iri teka rikaba ryarashyizweho hashingiwe ku ngingo ya 54 y'Itegeko-Ngenga N⁰ 04/2005 ryo ku wa 08/04/2005 rigena uburyo bwo kurengera, kubungabunga no guteza imbere ibidukikije mu Rwanda, rishyiraho urutonde rw'ubwoko bw'inyamaswa n'ibimera birinzwe (list of protected animal and plant species), ku mugereka wa mbere w'inyamabere rivuga inzovu hamwe n'izindi nyamaswa zitandukanye zirimo ingagi, impundu, inkura, inkoronko n'izindi, bikaba byumvikana ko inzovu nayo iri ku rutonde rw'inyamaswa zirinzwe zivugwa mu ngingo ya 417 yavuzwe haruguru.

ziriho zicika ryakoreshwaga ubwo Nsengiyumva Vincent na bagenzi be batangiraga gukurikiranwa.

[28] Ku birebana n’uko abakurikiranywe baba barabaye ibyitso by’abishe inzovu muri Tanzania ngo kuko bitari gushoboka kubona amahembe y’inzovu hatabayeho kubanza kuzica, Urukiko rw’Ubujurire rurasanga na none, hakurikijwe ingingo ya 98 y’Itegeko-Ngenga N°01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy’amategeko ahana ryibukijwe haruguru³, nta gikorwa na kimwe Ubushinjacyaha bugaragaza cyerekana ko abaregwa babaye ibyitso mu kwica inzovu muri Tanzania mu buryo butandukanye buteganywa n’iyi ngingo. Ikindi kandi nta n’ubwo Ubushinjacyaha bwashoboye kugaragaza ko abafatanywe amahembe y’inzovu mu Rwanda baba barahishe babizi, ikintu cyangwa ibikoresho byakoreshejwe mu kwica inzovu, ibikoresho cyangwa inyandiko byabonetse bikomotse ku cyaha cyo kwica inzovu nk’uko byumvikana mu ngingo ya 327 y’Itegeko-Ngenga N°01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy’amategeko ahana.

[29] Urukiko rurasanga ibyo Ubushinjacyaha buvuga ko abaregwa babaye ibyitso by’abishe inzovu kubera ko amahembe atari kuboneka hatabanje kwicwa inzovu ari ukugenekereza kuko ayo mahembe ashobora kuboneka ku bundi buryo nko kuyakura ku nzovu yapfuye, gukomeretsa inzovu uyikuraho

³ Icyitso ni uwafashije uwakoze icyaha mu byagiteguye, mu byoroheje imikorere yacyo cyangwa mu byakinonosoye kandi yarabikoze abizi cyangwa uwoheje uwakoze icyaha. Yitwa kandi icyitso uwoheje uwakoze icyaha cyangwa uwahishe inkozi y’ibibi cyangwa uwazifashije guhisha mu buryo buteganywa n’ingingo ya 327 y’Itegeko-Ngenga rivugwa muri iki gika.

amahembe, kuyatoragura cyangwa kuyagura n'abayacuruza mu buryo butemewe n'amategeko nk'uko inshuti y'Urukiko Muvunyi Richard ushinzwe kubungabunga ibidukikije muri RDB yabisobanuriye Urukiko.

[30] Hashingiwe kuri ibyo bisobanuro, Urukiko rw'Ubujurure rurasanga rero ibikorwa Ubushinjacyaha bwaregeye bidahura n'ibiteganyijwe mu ngingo ya 98 n'ya 327 y'Itegeko-Ngenga N^o 01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga ubwo Nsengiyumva Vincent na bagenzi be batangiraga gukurikiranwa kubera ko Ubushinjacyaha butashoboye kugaragaza ibimenyetso byashingirwaho mu kwemeza ko abakurikiranywe babaye ibyitso by'abahigi baba barishe inzovu muri Tanzaniya nk'uko byasobanuwe haruguru.

[31] Ku birebana no gucuruza by'umwihariko, Urukiko rurasanga ibikorwa bihanwa n'ingingo ya 417 y'Igitabo cy'amategeko ahana byo gucuruza inyamaswa zirinze harimo n'inzovu nta byakozwe n'abakurikiranywe, kuko ahubwo ibyabaye ari ugucuruza amahembe y'inzovu aho kuba gucuruza inzovu. Gucuruza inzovu no gucuruza amahembe yazo bikaba bidashobora kwitiranywa mu rwego rw'amategeko kubera ko iyi ngingo ya 417 yumvikanisha ko gucuruza bireba inyamaswa ubwayo, atari ibice byayo cyangwa ibiyikomokaho.

[32] Urukiko rusanga kwitiranywa ibyo bikorwa byombi byo gucuruza inzovu no gucuruza amahembe yazo byaba ari ugusobanura amategeko nshinjabyaha mu buryo butandukira (Interprétation extensive), kandi ibyo bibujijwe mu rwego rw'amategeko ahana ibyaha nk'uko bivugwa mu ngingo ya 4 y'Itegeko Ngenga N^o 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ivuga ko amategeko

ahana adashobora gukoreshwa ku buryo butandukira, ko ahubwo agomba gufatwa uko ateye.⁴

[33] Hashingiwe kuri ibyo bisobanuro bimaze kuvugwa haruguru rero, Urukiko rw'Ubujurire rurasanga ahubwo icyabaye ari kubika no ugucuruza amahembe y'inzovu mu gihe yarimo gushakirwa isoko kuko Nsengiyumva Vincent yemera ko yakiriye amahembe y'inzovu ayahawe n'abahigi bayambukije bayavanye muri Tanzaniya maze akayabitsa Vunumwami Egide mu gihe bari bategereje kuyashakira isoko, Vunumwami Egide nawe akemera kuyahisha mu gihe bagishakisha umuguzi ndetse bakaba barayafatanywe bagiye kuyashyikiriza uwashakaga kuyagura.

[34] Ingingo ya 1, 2 n'ya 3 z' Amasezerano yerekeye icuruzwa rikorerwa hagati y'ibihugu ku bwoko bw'inyamaswa n'ibimera mu gasozi byenda gucika yabereye i Washington ku wa 3/03/1973, yemejwe burundu n'Iteka rya Perezida N° 211 ryo ku wa 25/08/1980, zumvikanisha ko inzovu ari inyamaswa iri ku mugereka wa I (Annexe I) w'ayo Masezerano kandi ko icuruzwa ry'inyamaswa zenda gucika, rireba inyamaswa nzima, izapfuye, ibice by'izo nyamaswa cyangwa ibikomoka kuri izo nyamaswa (...) kandi ko icuruza rigomba kubahiriza ibiteganywa n'aya Masezerano harimo kuba icuruzwa ryatangiwe uruhushya n'umuyobozi ubifitiye ububasha.⁵

⁴ Ibi bihuye n'ibiteganywa n'ingingo ya 4, igika cya mbere y'Itegeko n°68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange ivuga ko amategeko ahana agomba gufatwa uko ateye, ntashobora gukoreshwa ku buryo butandukira.

⁵ *Convention sur le commerce international des espèces de faune et de flore sauvages menacées d'extinction Article I. Aux fins de la présente Convention et, sauf si le contexte exige qu'il en soit autrement, les expressions suivantes signifient:*

[35] Ingingo ya 200 (d) (i) (ii) y'Itegeko ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za Gasutamo nayo yumvikanisha ko umuntu wakira, utunga, uhisha cyangwa utanga ngo bahisha ibicuruzwa azi neza ko bibujijwe cyangwa bisabirwa uruhushya byatumijwe cyangwa byinjijwe mu buryo bunyuranije n'amategeko ahanishwa igihano cy'igifungo kitarenze imyaka itanu (5) cyangwa ihazabu ingana na 50%

a) "Espèces": toute espèce, sous-espèce, ou une de leurs populations géographiquement isolée;

b) "Spécimen":

i) tout animal ou toute plante, vivants ou morts;

ii) dans le cas d'un animal: pour les espèces inscrites aux Annexes I et II, toute partie ou tout produit obtenu à partir de l'animal, facilement identifiables, et, pour les espèces inscrites à l'Annexe III, toute partie ou tout produit obtenu à partir de l'animal, facilement identifiables, lorsqu'ils sont mentionnés à ladite Annexe; iii) (...).

Article II. L'Annexe I comprend toutes les espèces menacées d'extinction qui sont ou pourraient être affectées par le commerce. Le commerce des spécimens de ces espèces doit être soumis à une réglementation particulièrement stricte afin de ne pas mettre davantage leur survie en danger, et ne doit être autorisé que dans des conditions exceptionnelles.

Article III. 1. Tout commerce de spécimens d'une espèce inscrite à l'Annexe I doit être conforme aux dispositions du présent Article. 2. (...), 3. L'importation d'un spécimen d'une espèce inscrite à l'Annexe I nécessite la délivrance et la présentation préalables d'un permis d'importation et, soit d'un permis d'exportation, soit d'un certificat de réexportation. Un permis d'importation doit satisfaire aux conditions suivantes:

a) une autorité scientifique de l'Etat d'importation a émis l'avis que les objectifs de l'importation ne nuisent pas à la survie de ladite espèce;

b) une autorité scientifique de l'Etat d'importation a la preuve que, dans le cas d'un spécimen vivant, le destinataire a les installations adéquates pour le conserver et le traiter avec soin;

c) un organe de gestion de l'Etat d'importation a la preuve que le spécimen ne sera pas utilisé à des fins principalement commerciales.

y'umusoro byari busore cyangwa byombi⁶ naho umugereka wa 2, B w'iryo Tegeko, mu gace ka 8 ukaba ushyira amahembe y'inzovu ku rutonde rw'ibintu bicuruzwa bibanje gusabirwa uruhushya⁷.

[36] Kubera ko rero abakurikiranywe batigeze bagaragariza Urukiko ko bahawe uruhushya rwo gucuruza amahembe y'inzovu bakuye muri Tanzaniya nk'uko bisabwa n'Itegeko ry'Umuryango w'Afurika w'iburasirazuba rigenga imicungire ya za Gasutamo ndetse n'amasezerano yabereye i Washington ku wa 3 Werurwe 1973 yerekeye icuruzwa rikorerwa hagati y'ibihugu ku bwoko bw'inyamaswa n'ibimera mu gasozi byenda gucika, bakaba kandi barinjije ayo mahembe mu buryo bunyuranije n'amategeko, Urukiko rurasanga ibikorwa abashinjwa bakurikiranyweho bigize icyaha cyo gucuruza amahembe y'inzovu giteganywa kandi gihanishwa ingingo ya ingingo ya 200 (d) (i) (ii) y'Itegeko ry'Umuryango w'Afurika y'iburasirazuba rigenga imicungire ya za Gasutamo ihana kwakira, gutunga, guhisha cyangwa gutanga ngo bahishe ibicuruzwa bazi neza ko bibujijwe cyangwa bisabirwa uruhushya byatumijwe cyangwa byinjijwe mu buryo bunyuranije n'amategeko, ku bw'ibyho, Urukiko rukaba rusanga icyemezo cyari cyafashwe n'Urukiko Rukuru, Urugereko rwa Rwamagana cy'uko gucuruza amahembe y'inzovu bitagize icyaha nta shingiro gifite.

⁶ Any person who acquires, has in his or her possession, keeps or conceals, or procures to be kept or concealed, any goods which he or she knows, or ought reasonably to have known, to be (...) commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine equal to fifty percent of the dutiable value of the goods involved, or both.

⁷ Ivory, elephant unworked or simply prepared but not cut to shape, worked ivory and articles of ivory

[37] Kuba Me Mujawamaliya Immaculée wunganira Nsengiyumva Vincent asaba kudashingira ku Itegeko ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za Gasutamo kuko Ubushinjacyaha butarigaragaje ngo baryisobanureho, Urukiko rurasanga bidafite ishingiro kubera ko iri Tegeko ari nk'ayandi yose, rikaba ryaratangajwe mu igazeti ya Leta N° idasanzwe yo ku wa 26/06/2009; bikaba bidasanzwe ko amategeko yose ashingiweho mu Rukiko agomba kubanza kugaragazwa n'abaturanyi imbonankubone kugirango yemerwe. Ahubwo buri wese ukeneye itegeko, akaba ashobora kurisanga mu igazeti bitabaye ngombwa ko Ubushinjacyaha burizana mu Rukiko ngo burigaragarize Abavoka mu nyandiko. Umuburanyi apfa gusa kuba yavuze itegeko ashingiraho iryo ariryo na numero yaryo, ari nabyo Ubushinjacyaha bwakoze.

[38] Kuba Me Mukesha David wunganira Karambizi Alphonse asaba ko Itegeko ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za Gasutamo ritashingirwaho ngo kuko Ubushinjacyaha butigeze buriburanisha mu Rukiko Rukuru ngo maze nabo baryisobanureho, Urukiko rw'ubujurire rusanga icy'ingenzi ari uko ibikorwa birebana no gucuruza amahembe y'inzovu byari bikubiye mu nyandiko itanga ikirego y'Ubushinjacyaha ndetse akaba ari n'uko abaturanyi babyireguyeho, Urukiko rukaba rugomba kubihuza n'amategeko yaba ari ayagaragajwe n'umuburanyi cyangwa ayo rwiboneye ubwarwo, kuko ari inshingano y'umucamanza guhuza inyito y'icyaha n'igikorwa ubwacyo gikurikiranywe iyo asanga inyito y'igikorwa

gikurikiranywe atari yo ihura n'ibyabaye nk'uko Urukiko rw'Ikirenga rwabyemeje mu manza zitandukanye rwacye.⁸

[39] Ikindi kandi ingingo ya 1 n'ya 154 y'Itegeko N⁰ 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ari naryo rigenga imiburanishirize y'izindi manza mu gihe nta yandi mategeko yihariye agenga iyo miburanishirize yindi, iteganya ko bitabujijwe mu rwego rw'ubujurire gutanga ibisobanuro bishya cyangwa ibimenyetso bishya bigamije kumvikanisha kurushaho ibyari byaraburanishijwe mu rwego rwa mbere, bityo rero Urukiko rukaba rubona nta kosa Ubushinjacyaha bwakoze mu gushingira ku rindi tegeko mu rwego rw'ubujurire, icyangombwa akaba ari uko ntacyo bwahinduye ku bikorwa bwaregeye byo gucuruza amahembe y'inzovu no kuyashakira isoko.

[40] Ku birebana n'ibivugwa na Me Mukesha David wunganira Karambizi Alphonse ko amahembe y'inzovu atari igicuruzwa, Urukiko rurasanga Itegeko ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za Gasutamo riteganya ibyo bita ibicuruzwa muri iri Tegeko, ari ibintu by'ubwoko bwose harimo ibigenewe gucuruzwa, ibikoresho (...)⁹, bityo rero n'amahembe y'inzovu akaba arebwa

⁸ Urubanza RPAA 0110/10/CS rw'Ubushinjacyaha na Uwamurengeye Vénant, icyegeranyo cy'ibyemezo by'inkiko V.1, Nyakanga 2014, p. 133-140 ; Urubanza RPAA 0117/07/CS rw'Ubushinjacyaha na CPL Ngabonziza Faustin na SGT Biziyaremye Jean Baptiste, icyegeranyo cy'ibyemezo by'inkiko, Igitabo cya kabiri 2011, N⁰ 9, P.57-62.

⁹ Reba Itegeko ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za Gasutamo ingingo zibanza, Preliminary provisions, 2. (1) *Goods includes all kinds of articles, wares, merchandise, livestock, ...*

nk'ibicuruzwa cyane ko anagaragara ku mugereka wa 2, B w'iryo Tegeko, mu gace ka 8.

[41] Ku kibazo Me Mukesha David wunganira Karambizi Alphonse asaba Urukiko gusuzuma kirebana no kumenya niba Itegeko ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za Gasutamo ryarinjijwe mu mategeko y'u Rwanda, Urukiko rurasanga kwinjiza ayo masezerano mu mategeko y'u Rwanda byarakozwe n'Itegeko N° 72/2008 ryo ku wa 31/12/2008 rigena itangira gukurikizwa ry'Itegeko N° 1 ryo ku wa 01 Mutarama 2005 ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za gasutamo ryatangajwe mu igazeti ya Leta muri numero idasanzwe yo ku wa 26/06/2009.

[42] Urukiko rw'Ubujurire rurasanga rero Urukiko Rukuru rutaragombaga kwemeza ko nta tegeko rihana gucuruza amahembe y'inzovu kubera ko rusanga rwaragombaga gushingira ku ngingo ya 200 (d) (i) (ii) y'Itegeko ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za Gasutamo nk'uko byasobanuwe haruguru.

[43] Ingingo ya 190 y'Itegeko N° 30/2013 ryo kuwa 24/5/2013 y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko: "Urukiko rwajuririwe, iyo rusanze rugomba guhindura icyemezo cyajuririwe, ruburanisha urwo rubanza mu mizi yarwo, keretse iyo rurutesheje agaciro ku mpamvu y'uko rwaregewe mu buryo budakurikije amategeko cyangwa ku mpamvu y'iburabubasha". Hashingiwe kuri iyi ngingo, Urukiko rukaba rusanga rugomba gukomeza kuburanisha uru rubanza.

II.2. Kumenya niba hari ibimenyetso bihamya abakurikiranywe icyaha.

A. Kuri Nsengiyumva Vincent na Vunumwami Egide.

[44] Uhagarariye Ubushinjacyaha avuga ko abaregwa bakurikiranyweho ibyaha byo kwica inzovu, kuba icyitso mu kwica inzovu n'icyo gucuruza amahembe yazo, ibimenyetso ashingiraho bikaba bigizwe n'inyandikomvugo ya Nsengiyumva Vincent, nk'uko yabyemeye mu ibazwa rye ryo ku wa 22/05/2015, aho yabajijwe aho yakuraga amahembe y'inzovu, akavuga ko yayahawe n'umurobyi wo muri Tanzaniya witwa Nyabyenda nawe yarayahawe n'abahigi yambukije bava muri Tanzaniya, ayamuhera i Kirehe, ndetse avuga ko byari inshuro ya kabiri ajya muri ubwo bucuruzi, akaba yari amaze kugurisha ibiro 13. Uhagarariye Ubushinjacyaha asaba kandi Urukiko ko Nsengiyumva Vincent atagabanyirizwa igihano kuko adasobanura neza uko icyaha cyakozwe ndetse hakaba hari ibyo ahisha.

[45] Nsengiyumva Vincent yemera icyaha kandi akagisabira imbabazi, agasobanura ko yari hamwe na Vunumwami Egide, maze amutuma iwe mu rugo kumuzanira amahembe y'inzovu, mu gihe bariho bayashyikiriza uwayashakaga, babona haje imodoka y'abasirikare, ihita ibatwara. Avuga ariko ko iby'uko amahembe yayahawe n'umuhigi ayavanye muri Tanzaniya ntabwo yavuze, ndetse ko atazi uko Semasaka na Karambizi bageze muri iyi dosiye kuko atigeze abashinja ndetse atari asanzwe abazi.

[46] Me Mujawamaliya Immaculée wunganira Nsengiyumva Vincent avuga ko uwo yunganira yatumwe na Vunumwami Egide, wari usanzwe ari umukoresha we, kuzana igikapu

cyarimo amahembe y'inzovu, ariko ko kuba yaremeye gutumwa na shebujya bitagize icyaha giteganywa mu ngingo ya 417 y'Igitabo cy'amategeko ahana ibyaha. Avuga kandi ko nta cyemeza ko inzovu zavanyweho ayo mahembe zishwe kuko byanashoboka kuyaca nk'uko byasobanuwe n'inshuti y'Urukiko.

[47] Ku birebana na Vunumwami Egide, Uhagarariye Ubushinjacyaha avuga ko mu ibazwa rye ryo ku wa 28/05/2015 yemeye ko ari we wari ubitse aya mahembe y'inzovu yazaniwe na Nsengiyumva Vincent ko ariko na Nsengiyumva Vincent amushinja ko bari basanzwe bafatanyaga gucuruza amahembe y'inzovu.

[48] Vunumwami Egide we ahakana icyaha cyo kwica inzovu, akemera gusa ko yabitse amahembe Nsengiyumva Vincent yamubikije kandi ko yari azi ko ari amahembe y'inka. Avuga ko asanzwe azi Nsengiyumva Vincent kuko bakoranye mu bucuruzi bw'amafi, ariko ko nta bucuruzi bw'amahembe y'inzovu bakoranye. Avuga ko iby'uko Ubushinjacyaha buvuga y'uko yabaye icyitso mu ikorwa ry'icyaha atari byo kuko atigeze yambuka umupaka, akaba afite n'ubumuga bw'ukuboko amaranye igihe kinini ku buryo ubwo bumuga butari kumwemerera kujya muri ibyo bikorwa, asoza asaba ko Urukiko rumurenganura.

[49] Me Kampire Claudine wunganira Vunumwami Egide avuga ko Ubushinjacyaha bukwiye gutanga ibimenyetso by'icyaha bukurikiranyeho Vunumwami Egide, kuko we yemeza ko amahembe yabitse ari ay'inka, aho kuba ay'inzovu.

UKO URUKIKO RUBIBONA

[50] Ingingo ya 86 y'Itegeko N^o 30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko ibimenyetso bishobora gushingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, abaturanyi bapfa kuba babigiyeho impaka. Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose bishinje cyangwa bishinjura ari byo kandi bishobora kwemerwa.

[51] Inyandiko ziri muri dosiye zigaragaza ko Urukiko Rukuru, Urugereko rwa Rwamagana rwemeje ko ibikorwa Nsengiyumva Vincent na bagenzi be bakurikiranyweho bitagize icyaha cyambuka imipaka kandi ko bidahanwa n'amategeko y'u Rwanda, mu gihe nyamara mu Bugenzacyaha, Nsengiyumva Vincent yabajijwe agasobanura ko amahembe y'inzovu yafatanywe yayahawe n'uwitwa Nyabyenda w'umurobyi ukomoka muri Tanzaniya, avuga ko yayamuhaye mu mwaka wa 2013, amubwira ko hari bene wabo b'abahigi baba muri Tanzaniya bayamuhaye abambukije mu bwato babuze amafaranga bishyura, aba ari yo bamwishyura, Nyabyenda akaba yarayamuhaye amusaba ko azamushakira umukiliya.

[52] Izo nyandiko zigaragaza kandi ko Nsengiyumva Vincent yemeye ko yatangiye gucuruza amahembe y'inzovu mu mwaka wa 2012, akaba yarayahabwaga n'uwitwa Joachim uba Tanzaniya, ayamugurisha ku kiro 20.000Frw, nawe akayagurisha ku bihumbi mirongo itanu (50.000Frw), kandi ko mu bucuruzi bwe yafatanyaga na Vunumwami Egide na Semasaka Silas. Mu Bushinjacyaha, mu Rukiko Rukuru ndetse n'imbere y'uru Rukiko, Nsengiyumva Vincent akaba yarakomeje kwemera icyaha kandi agashinja Vunumwami Egide ko bafatanyaga muri ubwo bucuruzi ariko akavuga ko

Semasaka Silas atamuzi, kandi ko batigeze bafatanya muri ubwo bucuruzi.

[53] Izi nyandiko zigaragaza ko Vunumwami Egide mu ibazwa rye mu Bugenzacyaha yemeye ko hari umurobyi wamuzaniye amahembe amubwira ko ari Nsengiyumva Vincent uyamuhaye kandi ko azaza kuyafata, ko yayabitse umwaka wose (Cote 8-11), mu Bushinjacyaha akaba yarakomeje kubyemera (cote 53-58) ndetse n'imbere y'uru Rukiko, ariko akavuga ko yabonaga ari amahembe y'inka.

[54] Urukiko rw'Ubujurire rurasanga imvugo za Nsengiyumva Vincent, aho yemera ko yakiriye kandi agatanga ngo bahishe amahembe y'inzovu mu gihe barimo kuyashakira isoko, ari ikimenyetso kimutsindisha kandi kimuhamya kuba yaracurujye amahembe y'inzovu nk'uko ingingo ya 110 y'Itegeko N^o 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ibiteganywa ivuga ko ukwiyemerera mu rubanza ari amagambo umuburanyi cyangwa umuhagarariye avugira mu Rukiko agira ibyo yemera, ayo magambo akaba atsindisha uwayavuze.

[55] Kuba Nsengiyumva Vincent avuga ko ayo mahembe atayahawe n'umuhigi wo muri Tanzaniya, Urukiko rusanga bidafite ishingiro kuko mu Bugenzacyaha yasobanuye neza ko ayo mahembe yayahawe n'uwitwa Nyabyenda w'umurobyi ukomoka muri Tanzaniya nawe ayahawe n'abahigi yambukije mu bwato i Kirehe bakamusigira ayo mahembe mu mwanya wo kumwishyura, ko kandi yatangiye gukora ubwo bucuruzi kuva mu mwaka wa 2012, ubwo yahabwaga amahembe n'uwitwa Joachim uba Tanzaniya.

[56] Ku bireba Vunumwami Egide, Urukiko rurasanga n'ubwo ahakana kugira uruhare mu bucuruzi bw'amahembe y'inzovu, imvugo ya Nsengiyumva Vincent wemeje ko yamubikije aya mahembe mu gihe cy'umwaka wose, ko bari basanzwe bafatanyaga muri ubwo bucuruzi, kandi ko bafatiwe hamwe bariho bayashyikiriza uwayashakaga ari ikimenyetso kigaragaza ko yacurujye amahembe y'inzovu kandi bibujijwe no mu gihe bitasabiwe uruhushya. Iki gitekerezo cyo guhamya icyaha uregwa hashingiwe ku mvugo za mugenzi we bagifatanyije kigaragara mu rubanza RPA 0176/11/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 16/10/2015, Ubushinjacyaha buburana na Mukashema na Bihimana¹⁰.

[57] Urukiko rw'Ubujurire rurasanga ibyo Vunumwami Egide n'umwunganizi we bavuga ko yari azi ko ibyo abitse ari amahembe y'inka atari byo ahubwo ari uburyo bwo guhunga icyaha kubera ko mugenzi we Nsengiyumva Vincent uburana yemera icyaha, amushinja ko bari basanzwe bakorana ubucuruzi bw'amahembe y'inzovu (cote 6) nk'uko byasobanuwe haruguru.

[58] Ku birebana n'ibihano, ingingo ya 200 (d) (i) (ii) y'Itegeko ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za Gasutamo iteganyaga ko umuntu wakira, utunga, uhisha cyangwa utanga ngo bahishe ibicuruzwa azi neza ko bibujijwe cyangwa bisabirwa uruhushya byatumijwe cyangwa byinjijwe mu buryo bunyuranije n'amategeko ahanishwa igihano cy'igifungo kitarenze imyaka itanu (5) cyangwa ihazabu ingana na 50% y'umusoro byari busore cyangwa byombi.

¹⁰ Reba RPA 0176/11/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 16/10/2015, Ubushinjacyaha buburana na Mukashema na Bihimana, icyegeranyo cy'ibyemezo by'inkiko, V.1-2017, P147-160.

[59] Kubera ko rero Nsengiyumva Vincent na Vunumwami Egide bahamwa n'icyaha cyo gucuruza amahembe y'inzovu bakoze ubwo bakiraga kandi bagahisha amahembe y'inzovu bagamije kuyacuruza bazi neza ko bibujijwe, Urukiko rurasanga buri wese akwiye guhanishwa igifungo cy'imyaka itatu (3) hakurikijwe ingingo ya 200 (d) (i) (ii) y'Itegeko ry'Umuryango w'Afurika y'Iburasirazuba rigenga imicungire ya za Gasutamo.

[60] Urukiko rurasanga ariko Nsengiyumva Vincent akwiye kugabanyirizwa igihano, hashingiwe ku mpamvu y'uko yaburanye yemera icyaha kuva yatangira gukurikiranwa kugera imbere y'uru Rukiko, hashingiwe ku ngingo ya 78, 3° y'Itegeko-Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, iteganya ko iyo hari impamvu zoroshya uburemere bw'icyaha, igihano cy'igifungo kirenze imyaka itanu (5) ariko kitageze ku myaka 10, gishobora kugabanywa kugeza ku gifungo cy'umwaka umwe (1); bityo akaba agomba guhanishwa igifungo cy'imyaka 2.

B. Kuri Semasaka Silas na Karambizi Alphonse.

[61] Ubushinjacyaha buvuga ko ibimenyetso bwari bwashingiyeho mu gushinja Semasaka Silas na Karambizi Alphonse ari imvugo ya Nsengiyumva Vincent ubashinja ko bakoranaga ubucuruzi, ko ariko busanga ibyo bimenyetso birimo gushidikanya.

[62] Semasaka avuga ko atigeze akora ubucuruzi bw'amahembe y'inzovu kuko, nk'uko Nsengiyumva Vincent abivuga, bahuriye kuri Police, bityo akaba asaba Urukiko kwemeza ko ari umwere, naho Me Nyirabasinga Hélène umwunganira akavuga ko Ubushinjacyaha butabashije

kugaragaza uruhare rwa Semasaka Silas mu ikorwa ry'icyaha, ko ku bw'ibyo agomba kugirwa umwere.

[63] Karambizi Alphonse avuga ko icyaha cyo kwica, kuba icyitso mu kwica inzovu no gucuruza amahembe yazo ntacyo yakozwe, kuko akazi yakoraga k'Umunyamabanga nshingwabikorwa w'Umurenge katari kumwemerera kwishora muri ibyo bikorwa, maze asaba Urukiko kwemeza ko ari umwere kuko ibimenyetso bitangwa n'Ubushinjacyaha birimo ugushidikanya, naho Me Mukesha David wunganira Karambizi Alphonse avuga ko Ubushinjacyaha butigeze bugaragaza igihe icyaha cyakorewe, kandi ko kuri uru rwego butashoboye kunenga icyemezo cy'Urukiko Rukuru, Urugereko rwa Rwamagana.

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[64] Ingingo ya 165 y'itegeko N° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'Inshinjabyaha iteganya ko iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakozwe icyaha koko, bagomba kwemeza ko atsinze.

[65] Inyandiko zigize dosiye y'urubanza zigaragaza ko Ubushinjacyaha burega Semasaka Silas na Karambizi Alphonse bushingiye ku mvugo ya Nsengiyumva Vincent wabashinje ko bafatanyaga mu bucuruzi bw'amahembe y'inzovu, ko ariko bugeze mu Rukiko rw'Ubujurire bwavuze ko nta bimenyetso bidashidikanywaho bibahamya icyaha.

[66] Inyandiko zigize dosiye y'urubanza zigaragaza kandi ko ubwo Nsengiyumva Vincent yabazwaga mu Bugenzacyaha akemera ko yakoraga ubucuruzi bw'amahembe y'inzovu, Nsengiyumva Vincent yavuze ko yafatanyaga na Semasaka Silas na Karambizi Alphonse muri ubu bucuruzi ariko ntiyagira ibisobanuro atanga ku buryo bakoranaga (cote 5-7), nabo babajijwe barabihakana (12-16), Nsengiyumva Vincent ageze mu Bushinjacyaha avuga ko Semasaka atamuzi, ko yamumenye bafunganywe naho ku bireba Karambizi Alphonse avuga ko icyo yemeza ari uko bacuruzanyije amafi, ko ibindi nta byo yavuze naho imbere y'uru Rukiko, akaba atarabashinje.

[67] Urukiko rw'Ubujurire rurasanga nk'uko n'Ubushinjacyaha bubivuga, nta bimenyetso bidashidikanywaho bigaragaza ko Semasaka Silas na Karambizi Alphonse bagize uruhare mu bucuruzi bw'amahembe y'inzovu bigize icyaha cyo kwakira, gutunga, guhisha amahembe y'inzovu mu buryo bunyuranije n'amategeko, kuko na Nsengiyumva Vincent n'ubwo yari yabashinje mu Bugenzacyaha, atongeye kubashinja mu Bushinjacyaha no mu Rukiko, uretse ko no mu Bugenzacyaha nta bisobanuro yari yatanze bigaragaza uruhare rwabo muri ubwo bucuruzi, bityo bakaba bagomba guhanagurwaho icyaha bakurikiranyweho.

[68] Kubera ibyo bisobanuro rero, Urukiko rw'Ubujurire rurasanga hashingiwe ku ngingo ya 165 y'itegeko N° 30/2013 ryo kuwa 24/5/2013 ryavuzwe haruguru, nta bimenyetso byemeza nta shiti ko Semasaka Silas na Karambizi Alphonse bakoze icyaha bakurikiranyweho, kubw'ibyo bakaba bagizwe abere.

III. ICYEMEZO CY'URUKIKO

[69] Rwemeje ko ubujurire bw'Ubushinjacyaha bufite ishingiye kuri bimwe;

[70] Rwemeje ko imikirize y'urubanza RP 0013/15/HC/RWG rwaciye n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 06/10/2016 ihindutse;

[71] Rwemeje ko Nsengiyumva Vincent na Vunumwami Egide bahamwa n'icyaha cyo gucuruza amahembe y'inzovu kigizwe no kwakira, gutunga, guhisha no gutanga ngo bahishe ibicuruzwa mu buryo bunyuranije n'amategeko;

[72] Rwemeje ko Semasaka Silas na Karambizi Alphonse badahamwa n'icyaha cyo gucuruza amahembe y'inzovu kigizwe no kwakira, gutunga, guhisha no gutanga ngo bahishe ibicuruzwa mu buryo bunyuranije n'amategeko, bakaba bagizwe abere;

[73] Ruhanishije Nsengiyumva Vincent igifungo cy'imyaka ibiri (2);

[74] Ruhanishije Vunumwami Egide igifungo cy'imyaka itatu (3);

[75] Rutegetse Nsengiyumva Vincent na Vunumwami Egide kwishyura amagarama y'ibyakozwe muri uru rubanza angana n'ibihumbi mirongo itanu (50.000Frw).