UBUSHINJACYAHA v KANKINDI

[Rwanda URUKIKO RW'UBUJURIRE – RPA 00016/2019/CA (Nyirandabaruta, P.J.) 23 Ukwakira 2020]

Amategeko agenga imanza nshinjabyaha – Icyaha cyo gucuruza abantu – Mu byaha byo gucuruza abantu, harebwa amayeri yakoreshejwe n'ukurikiranweho gucuruza abantu kugira ngo uwo ateganya gucuruza yemere ibyo amubwiye, aho kureba ukwemera k'uwakorewe icyaha.

Incamake y'ikibazo: Uru Urubanza rwatangiriye mu Rukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibi, Ubushinjacyaha burega uwitwa Kankindi icyaha cy'ubwinjiracyaha bwo gucuruza abantu, buvuga ko tariki 26/05/2017, uregwa yageze ku biro by'umupaka w'Akanyaru ava i Burundi bikaza kugaragara ko yari ari kumwe n'uwitwa Kwizera yari agiye gucuruza. Uregwa yaburanye avuga ko atigeze akora icyaha kuko mu Bugenzacyaha Kwizera yagaragaje ko ibyangobwa yabishakiwe n'uwitwa FABRICE, ahubwo ko bari kumwe nk'uko abantu bicarana mu rugendo, kuko Kwizera yari yavuze ko atamuzi ariko nyuma mu mvugo ze akaza kwivuguruza. Urwo Rukiko rwaciye urubanza, ruhamya uregwa icyaha cyo gucuruza abantu aho kuba ubwinjiracyaha muri icyo cyaha, rumuhanisha igifungo cy'imyaka irindwi (7) n'ihazabu ya miliyoni icumi z'amafaranga y'u Rwanda (10.000.000 Frw).

Uregwa yajuririye urwo rubanza muri uru Rukiko rw'Ubujurire, avuga ko Urukiko Rukuru rwirengagije imvugo ya Kwizera wari uzi neza igikorwa agiyemo, rukaba rwarashingiye ku mvugo zirimo urujijo no kwivuguruza, akaba yarahamijwe icyaha hashingiwe ku gikorwa cyo gutunda kandi atari cyo yakoze. Yongeraho ko byagaragaye ko uwitwa Fabrice ariwe wagize uruhare mu gikorwa cyo kujyana Kwizera kuko yari afite telephone ye, Kwizera aza kuyitanga yabanje kuvunagura Sim kandi ariyo yari gutanga amakuru, naho iya Kankindi ikaba iri mu maboko y'Ubushinjacyaha, bukaba rero ngo budakwiye kuvuga ko ubuzima bwa Kwizera bwari mu maboko ya Kankindi kuko yamufashije gusa mu rugendo amuha itike(ticket).

Ubushinjacyaha bwo buvuga ko Kwizera (victim) yashutswe arabyemera, bagenda bamuhererekanya kugera kuri Kankindi wari wahawe pasiporo n'ubwo ataramuzi, ngo Kankindi akaba yaremeye kumurihirira amatike, kuko pasiporo yari yaramaze gushakwa n'uwitwa Fabrice, ayirekera kuri Immigration nk'abantu basanzwe bakorana, ifatwa igihe Kankindi yari avanye Kwizera i Bujumbura nk'uko bigaragara mu nyandikomvugo ye. Buvuga kandi ko kuba Kankindi atari we wamushakiye ibyangombwa bidakuraho uruhare rwe rwo kumutunda, kuko ari we wari ufite itike kandi akaba ari we wari kumushyikiriza Bukuru wari muri Uganda, ko ikigaragaza icyaha cyo gucuruza abantu atari igiciro umuntu yacurujweho, ko ahubwo ari inyungu uwamucuruje abikuramo.

Incamake y'icyemezo: 1. Mu byaha byo gucuruza abantu, harebwa amayeri yakoreshejwe n'ukurikiranweho gucuruza abantu kugira ngo uwo ateganya gucuruza yemere ibyo amubwiye, aho kureba ukwemera k'uwakorewe icyaha, bityo kuba Kwizera yaba yaremeye ko Kankindi amutwara, ntibivana icyaha cyo kumucuruza.

Ubujurire nta shingiro bufite.

Amategeko yashingiweho:
Itegeko Nº 51/2018 ryo ku wa 13/08/2018 ryerekeye gukumira, kurwanya no guhana icuruzwa ry'abantu no gushakira inyungu mu bandi, Ingingo ya 16.
Itegeko Ngenga Nº 01/2012/OL ryo ku wa 002/05/2012, rishyiraho Igitabo cy'amategeko ahana, Ingingo ya 250, 252 n'iya 253.
Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, Ingingo ya 2 n'iya 3.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibi, Ubushinjacyaha burega Kankindi Joselyne ubwinjiracyaha cyo gucuruza abantu, buvuga ko tariki 26/05/2017, Kankindi Joselyne yageze ku biro by'umupaka w'Akanyaru ava i Burundi bikaza kugaragara ko yari ari kumwe n'uwitwa Kwizera Fatu yari agiye gucuruza, iperereza riratangira, risojwe, Kankindi Joselyne akurikiranwaho ubwinjiracyaha bw'icyaha cyo gucuruza abantu.

Kankindi Joselyne yaburanye avuga ko atigeze akora icyaha kuko mu Bugenzacyaha Fatu yagaragaje ko ibyangobwa yabishakiwe na Fabrice, ahubwo ko bari kumwe nk'uko abantu bicarana mu rugendo, kuko Fatu yari yavuze ko atamuzi ariko nyuma mu mvugo ze akaza kwivuguruza.

[2] Urwo Rukiko rwaciye urubanza RP 00030/2018/HC/HCCIC ku wa 14/11/2018, rusanga ibikubiye mu ngingo ya 252 y'Itegeko Ngenga nº 01/2012 ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana byuzuye kugira ngo icyaha cyo gucuruza abantu kibeho, kuko hagomba kuba hakozwe igikorwa byibuze kimwe mu biteganyijwe n'iyo ngingo, kandi hagamijwe byibuze kimwe mu biteganyijwe na none muri iyo ngingo.

Urukiko rwasanze rutashingira ku ngingo ya 27 y'Itegeko Ngenga nº 01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, iteganya ibijyanye n'ubwinjiracyaha kuko nk'uko bigaragara mu nyandikomvugo z'ibazwa rya Kwizera Fatu na Kankindi Joselyne, Kwizera Fatu yasobanuye neza uburyo yari atwawe mu gikorwa cyagirwagamo uruhare n'abantu banyuranye na Kankinkdi arimo, uyu ntabe yarabinyomoje, akaba yari atwawe n'agatsiko kagenda kamuhererakanya uhereye kuri Bukuru wohereje amafaranga, Fabrice wamushakiye Pasiporo akayiha Kankindi Joselyne, wari ushinzwe kumutunda amuvana i Burundi amujyana Uganda amunyujije mu Rwanda.

[3] Rwasanze ibyakorewe Kwizera Fatu, ari uburyo bwo kumutwara bumubuza urwinyagamburiro mu kugira icyo yemera cyangwa ahakana kandi bumubuza ubushobozi n'uburyo bwo kwifatira icyemezo cyo gukomeza urugendo cyangwa kugaruka inyuma i Burundi, rumuhamya icyaha cyo gucuruza abantu aho kuba ubwinjiracyaha muri icyo cyaha, rumuhanisha

igifungo cy'imyaka irindwi (7) n'ihazabu ya miliyoni icumi z'amafaranga y'u Rwanda (10.000.000 Frw).

[4] Kankindi Joselyne yajuririye urwo rubanza muri uru Rukiko, avuga ko Urukiko Rukuru rwirengagije imvugo ya Kwizera Fatu wari uzi neza igikorwa agiyemo, rukaba rwarashingiye ku mvugo zirimo urujijo no kwivuguruza, akaba yarahamijwe icyaha hashingiwe ku gikorwa cyo gutunda kandi atari cyo yakoze, asaba kurenganurwa.

[5] Iburanisha ryabereye mu ruhame ku wa 21/9/2020, hifashishijwe ikoranabuhanga, Kankindi Joselyne wari kuri Gereza ya Nyarugenge yunganiwe na Me Nkundabatware Bigimba Félix na Me Shenge Laurent, naho Ubushinjacyaha buhagarariwe na Habarurema Jean Pierre umushinjacyaha ku rwego rw'igihugu, wari ku cyicaro cy'Urukiko rw'Ubujurire.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

Kumenya niba Urukiko rwarahamije Kankindi Joselyne icyaha atakoze.

Kankindi Joselyne avuga ko Kwizera Fatu yari azi aho agiye, ko ari nawe wishakiye umudamu witwa Evelyne ujya atwara abana b'abakobwa ajyana muri Arabia Saoudite, akoresheje abo basanzwe bavugana, ko Evelyne ari we wohereje amafaranga Fabrice washakiye Kwizera Fatu pasiporo, naho we bakaba barahuriye mu rugendo bavugana ko bombi bagiye Kampala, bageze ku Kanyaru Kwizera Fatu ajya kuvunjisha agaruka avuga ko bamwibye 50.000 FB, ko yayamuha akazayamusubiza bageze Uganda, nawe akamugirira impuhwe akayamuha nubwo yari atamuzi, akaba yibaza uburyo yaregwa ko yari agiye kumucuruza.

[6] Kankindi Joselyne akomeza avuga ko Ubushinjacyaha bucurika ibintu kuko Kwizera Fatu avuga ko ariwe waterefonnye Fabrice, Ubushinjacyaha bukaba butagaragaza aho Kankindi Joselyne yamuhereye iyo pasiporo mu gihe bahuriye na Kwizera Fatu mu modoka.

Me Nkundabatware Bigimba Félix umwunganira, avuga ko byagaragaye ko Fabrice ariwe wagize uruhare mu gikorwa cyo kujyana Kwizera Fatu kuko yari afite telephone ye, Kwizera Fatu aza kuyitanga yabanje kuvunagura Sim kandi ariyo yari gutanga amakuru, naho iya Kankindi Joselyne ikaba iri mu maboko y'Ubushinjacyaha, bukaba rero budakwiye kuvuga ko ubuzima bwa Kwizera Fatu bwari mu maboko ya Kankindi Joselyne, kuko yamufashije gusa mu rugendo amuha ticket Kanyaru- Nyabugogo- Uganda. Akomeza avuga ko imvugo y'Ubushinjacyaha iteza urujijo, ko budasobanura isano (connection) iri hagati ya Kwizera, Fabrice na Kankindi Joselyne n'uburyo yari kumutwaza Pasiporo ye nk'aho ari uruhinja.

[7] Me Shenge Laurent avuga ko uwo Ubushinjacyaha bwita uwahohotewe yari azi umugambi wose, ariko agashaka kuwusunikira ku wundi muntu utawuzi.

[8] Uhagarariye Ubushinjacyaha avuga ko Kwizera Fatu yashutswe arabyemera, bagenda bamuhererekanya hagati ya Bukuru Evelyne na Fabrice kugera kuri Kankindi Joselyne wari wahawe pasiporo n'ubwo yari atamuzi, Kankindi Joselyne akaba yaremeye kumurihirira amatike, kuko pasiporo yari yaramaze gushakwa na Fabrice, ayirekera kuri Immigration nk'abantu basanzwe bakorana, ifatwa igihe Kankindi yari avanye Kwizera Fatu i Bujumbura nk'uko bigaragara mu nyandikomvugo ye.

[9] Avuga ko kuba Kankindi Joselyne atari we wamushakiye ibyangombwa bidakuraho uruhare rwe rwo kumutunda, kuko ari we wari ufite itike kandi akaba ari we wari kumushyikiriza BUKURU wari muri Uganda, ko ikigaragaza icyaha cyo gucuruza abantu atari igiciro umuntu yacurujweho, ko ahubwo ari inyungu uwamucuruje abikuramo.

UKO URUKIKO RUBIBONA

[10] Ingingo ya 2 y'Itegeko nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko ikimenyetso cyo mu rubanza ari uburyo bukoreshwa kugira ngo ukuri kw' ibyabaye kugaragare. Naho ingingo ya 3 y'iryo Tegeko igateganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

[11] Ingingo ya 250, 1o, y'Itegeko Ngenga no 01/2012/OL ryo ku wa 002/05/2012, rishyiraho Igitabo cy'amategeko ahana yariho ubwo icyaha Kankindi Joselyne akurikiranyweho cyakorwaga igira iti: "Icuruzwa ry'abantu ni ibikorwa bihindura umuntu igicuruzwa bijyanye no gushakisha cyangwa kwimurira umuntu ahandi mu gihugu cyangwa mu mahanga hakoreshejwe uburiganya, ibikangisho, imbaraga cyangwa agahato, ububasha ubikora aba amufiteho, akenshi hagamijwe kumwangiriza ubuzima cyangwa kumubyaza inyungu zitemewe akoreshwa mu biterasoni, mu buraya, mu bikorwa binyuranyije n'amategeko, mu bisa n'ubucakara, kumwica urubozo no kumukorera urugomo ndengakamere cyangwa kumukoresha imirimo yo mu rugo nk'umuja, hishingikirijwe intege nke umuntu afite zikomoka ku bibazo afitanye n'ubuyobozi, ku gutwita k'umugore wibana, indwara, ubumuga n'ibindi bibazo byatuma umuntu muzima akora icyo atatekereje…..".

[12] Ingingo ya 16 y'Itegeko Nº 51/2018 ryo ku wa 13/08/2018 ryerekeye gukumira, kurwanya no guhana icuruzwa ry'abantu no gushakira inyungu mu bandi igira iti: "Kuba uwakorewe icyaha cy'icuruzwa yaremeraga ibyo yakorewe nta gaciro bigira mu myiregurire y'ukurikiranyweho icyaha cy'icuruzwa ry'abantu".

Urukiko Rukuru mu guhamya Kankindi Joselyne icyaha aregwa, rwashingiye ku mvugo ya Kankindi Joselyne ubwe, ku ya Kwizera Fatu, ndetse no mu ivuguruzanya ryabo bombi imbere y'Umugenzacyaha, rusanga nk'uko bigaragara muri izo nyandikomvugo, Kwizera Fatu yarasobanuye neza uburyo yari atwawe mu gikorwa cyagirwagamo uruhare n'abantu banyuranye na Kaninkdi Joselyne arimo, ntabashe kumunyomoza, agatsiko k'abantu kagenda kamuhererakanya uhereye kuri Bukuru wohereje amafaranga, Fabrice wagiye gushaka pasiporo akayiha Kankindi Joselyne, wari ushinzwe kumutunda amuvana i Burundi amujyana Uganda amunyujije mu Rwanda, rusanga uburyo Kwizera Fatu yari atwawemo, ikintu cyose akenera kijyanye n'urwo rugendo agikesha Kankindi Joselyne, agendera gusa ku cyizere ko azahabwa akazi atazi neza imiterere yako, atazi uzamugeza kuri ako kazi by'ukuri n'igihe azagereravo, atazi uzamukoresha n'aho azakorera, uretse kugenda ahererakanywa hagati y'abantu atazi, ari uburyo bwo kumutwara bumubuza urwinyagamburiro mu kugira icyo yemera cyangwa ahakana kandi bumubuza ubushobozi n'uburyo bwo kwifatira icyemezo cyo gukomeza urugendo cyangwa kugaruka inyuma i Burundi, bigaragaza uburyo yari yahinduwe igicuruzwa.

[13] Urukiko Rukuru rwasobanuye ko harebwe uburyo icyaha cyo gucuruza abantu giteganyijwe kandi gihanwa mu ngingo ya 250 n'iya 252 z'Itegeko nº 01/2012 ryo ku wa 02/05/2012 ryavuzwe, Kankindi Joselyne yafashwe ageze mu Rwanda ari mu gikorwa nyirizina

cyo gutunda Kwizera Fatu, ko kandi rubona n'ubwo atari yakamugejeje aho yari amujyanye, igikorwa cyo gutunda nka kimwe mu bigize icyaha cyo gucuruza abantu, cyarakozwe ku ntera y'urugendo yari amaze gukora, kuva i Burundi kugera mu Rwanda, ko nk'uko bisobanurwa n'abahanga mu mategeko, kugira ngo icyaha cyo gucuruza abantu kibeho, atari ngombwa ko intego igikorwa cyakoranywe iba yagezweho, ko icy'ingenzi ari uko hagaragazwa icyari kigamijwe mu ikorwa ry'icyo gikorwa harebwe uburyo cyakozwemo, icyari kigamijwe ari ukubyazwa inyungu zitemewe.

[14] Urwo Rukiko rwasanze kandi mu gihe Kankindi Joselyne yari atwaye Kwizera Fatu muri ubwo buryo butuma yumva ko yungukiye mu kubona akazi nta mutungo we bwite ashoyemo, maze akemera buhumyi ibyo atagakwiye kwemera aramutse akoresheheje ubushishozi bwe bwuzuye, bigaragaza intego yo kumubyaza inyungu zitemewe mu buryo Bukuru wari kumushyikirizwa yari kugena uko abishaka, akamukoresha icyo ashaka agamije kwiyishyura ibyo yari kuba yamutakajeho. Ruhereye kuri ibyo byose byagaragajwe, rushingiye kandi ku ngingo ya 119 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo, rwemeje ko icyaha kankindi Joselyne akurikiranyweho cyo gucuruza abantu kimuhama, rumuhanisha igifungo cy'imyaka irindwi (7) n'ihazabu ya 10.000.000 Frw.

Dosiye igaragaza ko mu ibazwa rya Kankindi Joselyne mu Bugenzacyaha bw'Abinjira n'Abasohoka ku wa 26/5/2018, yavuze ko yamenye Kwizera Fatu amuhawe n'undi mudamu witwa Bukuru uba muri Uganda, kuko yamumuhaye amubwira ko yazamumugereza Uganda, kandi ko iyo amugeza Uganda yari kumusaba amafaranga yamutanzeho. Avuga kandi ko yigishije Kwizera Fatu amayeri azakoresha ageze ku mupaka, ariko akaba yari azi ko arimo kumufasha.

[15] Dosiye igaragaza inyandiko yo ku wa 26/5/2018, Kankindi Joselyne yanditse asaba imbabazi ko atazasubira gukora icyaha cyo kujyana abana Uganda uretse umwana we, ko atari azi ko ari icyaha kuko yari amaze kubikora kabiri, ko ubusanzwe akoresha amafaranga ye, yagera Kampala, akayasubizwa bakanamwongera 50$, akaba afashwe agiye ku ishuli kuzana bulletin y'umwana, arahira ko atabyongera.

[16] Dosiye igaragaza ubuhamya bwa Karekezi Christian, bwo ku wa 27/5/2018, wemeje ko yafashe Kankindi Joselyne ku wa 26/5/2018, mu ma saa cyenda, ubwo yamwakiraga amubwira ko agiye Uganda gusura umwana ku ishuli, hashize akanya yakira na Kwizera Fatu, nawe wamubwiye ko agiye Uganda gusura nyina wabo urwaye witwa Bukuru, bamubajije aho atuye biramuyobera, abajijwe niba hari umuntu bari kumwe avuga ko ari ntawe, nyuma avuga ko agiye kwiga muri African Bible University, amubajije ticket amusubiza ko hari uza kuyimwishyurira agezeyo, ibyo bituma akeka ko yaba ajyanwe mu bikorwa byo gucuruzwa, ahita ahamagara mugenzi we, wahise asanga wa mugore muri bus amubajije ntiyazuyaza yemera ko bari kumwe, kwizera Fatu nawe akaba yarahise avuga ko atazi aho yari agiye, anavuga ko ibyo yavuze byose yabibwiwe na Kankindi Joselyne.

[17] Dosiye igaragaza nanone ubuhamya Kambanda Goefrey yatanze ku wa 27/5/2018, avuga uburyo yafashe Kankindi Joselyne; ko ku wa 26/5/2018 Karekezi Christian yamuhamagaye akamubwira ko hari umuntu yakiriye ushobora kuba ari Victim utwawe mu bikorwa by'icuruzwa, amusobanurira uko yambaye, maze ahita ajya muri Bus, arahagarara, Kwizera Fatu yinjiye ahita asanga Kankindi Joselyne, aribwo yahise abavana muri Bus, ababajije niba bari kumwe barabyemera, Kankindi Joselyne amubwira ko yari amushyiriye umuntu witwa Bukuru uba

Uganda, abajije Kwizera impamvu yabeshye, asubiza ko ibyo yavuze byose yabibwiwe na Kankindi Joselyne (ibyo yamubwiye kuvuga mu gihe hagira umubaza aho agiye).

[18] Ku bijyanye no kumenya niba Urukiko Rukuru rwarahamije Kankindi Joselyne icyaha atakoze, rwirengagije imvugo ya Kwizera Fatu wari uzi neza igikorwa agiyemo, Urukiko rusanga nk'uko bigaragara mu mvugo z'ababajijwe bose, Kankindi Joselyne ari we wabwiye Kwizera Fatu amagambo agomba kuvuga ku biro by'Abinjira n'Abasohoka kugira ngo batabatahura, iyo Kwizera Fatu aza kumenya ibikorwa yari agiyemo, Kankindi Joselyne akaba atari kumubwira amagambo yagombaga kuvuga mu biro by'Abinjira n'abasohoka cyangwa ngo bibe ngombwa ko amuhuza na Bukuru uba Uganda, ikindi akaba nta kuntu yari kuba atazi umuntu n'umwe muri abo bantu bose bari muri icyo gikorwa cyo kumuhererekanya, ni ukuvuga Bukuru, Fabrice ndetse na Kankindi Joselyne kuko nawe yavuze ko adasanzwe amuzi bahujwe n'uko ari we wagombaga kumwishyurira ibyo akeneye byose akamujyana akamugeza Uganda.

[19] Urukiko rusanga kandi nk'uko Kwizera Fatu yabyemeje mu ibazwa rye, atari azi aho agiye n'icyo yari kuzakoreshwa, uretse kuvuga gusa ko Kankindi Joselyne yari kumugeza kwa Bukuru uba Uganda, ibindi byari gukurikiraho akaba atari abizi. Rusanga kandi n'iyo Kwizera Fatu aza kuba yarinjiye mu gikorwa cyo kumutunda abizi yabyemeye, uko kwemera kwe nako kutavanaho Kankindi Joselyne icyaha aregwa cyo kumucuruza, kuko nk'uko ingingo ya 16 y'Itegeko Nº 51/2018 ryo ku wa 13/08/2018 ryerekeye gukumira, kurwanya no guhana icuruzwa ry'abantu no gushakira inyungu mu bandi yavuzwe haruguru ibiteganya, ukwemera k'uwakorewe icyaha cy'icuruzwa nta gaciro bigira mu myiregurire y'ukurikiranyweho icyaha cy'icuruzwa ry'abantu.

Urukiko rurasanga kandi impamvu zibukijwe haruguru Urukiko Rukuru rwashingiyeho rwemeza ko icyaha Kankindi Joselyne aregwa kimuhama, zirimo imvugo ye mu Bugendacyaha n'iya Kwizera Fatu ndetse n'iz'abandi babajijwe, ariko zigaragara muri dosiye, nk'uko nabyo byerekanywe, izo mpamvu zikaba zeigaragaza ku buryo budashidikanywaho, ko Kankindi Joselyne yavanye Kwizera Fatu i Burundi amujyanye Uganda amunyujije mu Rwanda, amushyiriye Bukuru wari usanzwe ajyana abana b'abakobwa muri Arabie Saoudite, kandi ko uyu yagombaga kumusubiza amafaranga yatanze kuri Kwizera Fatu akamwongereraho n'andi agera kuri 50$, bigaragaza inyungu itaziguye kandi itemewe n'amategeko Kankindi Joselyne yagombaga kuvana mu gikorwa cyo kumutunda, nk'uko yari asanzwe abikora, dore ko ubwe yivugiye ko yari amaze kujyana Uganda abandi bakobwa babiri yashyiriye Bukuru, ubwo bukaba bwari ubwa gatatu abikoze.

[20] Urukiko rushingiye ku bisobanuro byose byatanzwe, rusanga ingingo y'ubujurire bwa Kankindi Joselyne y'uko yahamijwe icyaha atakoze kubera ko hirengagijwe ko Kwizera Fatu yari azi neza ibyo agiyemo, nta shingiro bufite.

2) Kumenya niba Urukiko rwarahamije Kankindi Joselyne icyaha rushingiye ku mvugo za KWIZERA Fatu zirimo urujijo no kwivuguruza.

[21] Kankindi Joselyne avuga ko Kwizera Fatu yagiye yivuguruza, ko yabanje kuvuga ko yamenye Kankindi bari i Bujumbura amushakira ibyangombwa, nyuma akavuga ko yamuboneye ku mupaka, ubundi akavuga ko ari we wamubwiye ibyo avuga.

[22] Me Shenge umwunganira, avuga ko hibazwa ukuntu ubushinjacyaha buvuga ko yari yabuze ubwenge ariko ntibusobanure uburyo yabuze ubwenge, ko amakuru bafite ari uko Kwizera Fatu yamaze kugera muri Arabiya Soudite kuko yari yaramaze kunoza umugambi we, ndetse ko hari umuvandimwe we witwa Irakoze Salomé waburanishijwe kuri iki cyaha, mu rubanza RPA 00027/2019/CA, rwasomwe ku wa 17/7/2020, uyu akaba yarajyaga ku musura aho yari afungiye Nyamagabe, akaba asanga imvugo za Kwizera Fatu zirimo ukwivuguruza gukabije, ku buryo zitari gushingirwaho ngo Kankindi ahamwe n'icyaha.

[23] Me Nkundabatware Bigimba Félix avuga ko Kwizera Fatu asakwa yasanganywe inyemezabwishyu y'ibihumbi 25.000 Frw yari yishyuriweho ko agiye kwiga Uganda, ubushinjacyaha bukaba butarakurikiranye ngo bumenye uko yayibonye niba hari aho bihuriye na Kankindi Joselyne.

[24] Ubushinjacyaha buvuga ko hatakwirengagizwa ko Kwizera yakorerwagaho icyaha (Victime) atazi aho agiye, ko Kankindi ubwe avuga ko ariwe wamuhaye amafaranga kandi akaba atari kuyamuha batabanje kugirana ikiganiro dore ko yari yamubwiye kubeshya aho agiye, uwo agiye gushaka n'uburyo ari bumubone, ibi kandi bikaba bihuje n'imvugo ya Kwizera Fatu wemeje ko Kankindi Joselyne yari azi aho agiye akambuka mbere , akamubwira ibyo ari buvuge nibaramuka bamubajije aho agiye kuko we mu byukuri yari atahazi, kandi ko icyo kimenyetso cy'inyemeza bwishyu bashyize muri syteme butakizi, igihari akaba ari uko Kwizera Fatu yari atazi aho agiye n'ibyo agiyemo.

UKO URUKIKO RUBIBONA

[25] Ingingo ya Ingingo 3 y'Itegeko nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

[26] Dosiye igaragaza ko ku wa 30/5/2018 Kankindi Joselyne na Kwizera Fatu babajijwe bari kumwe mu nyandiko mvugo ivuguruzanya, aho Kwizera Fatu yemeje ko yamenyanye na Kankindi Joselyne i Bujumbura akamuhamagara amubwira uko biri bugende mu rugendo, ibyo ari buvuge kandi ko yari kumwishingira ku bintu byose, akaba yari yamubwiye ko amujyanye Kampala, aho nyuma yari gushakirwa akazi mu bihugu by'Abarabu, ibyo byose bikaba byaramenyekanye ubwo umudamu w'umu Afande yabonye Kankindi akatisha amatike abiri, noneho akanamubona ategereje ku modoka kuko amatike yari afitwe na Kankindi, umugabo wari winjiye mu mudoka akabona ari kumwe nawe, aribwo yahise abasohora, Kankindi akavugira hejuru ngo "karabaye".

[27] Dosiye igaragaza ko mu mvugo za Kankindi Joselyne avuga ko Kwizera Fatu amubeshyera kuko bari badasanzwe baziranye, uretse kuba yarahuriye nawe ku mupaka, akamubwira ko nta mafaranga afite kuko bari bamaze kumwiba amafaranga y'amarundi ageze kuri 50.000 FB, noneho agahita yiyemeza kumwishyurira itike, ibindi avuga akaba amubeshyera.

[28] Ku bijyanye no kumenya niba Urukiko rwarahamije Kankindi Joselyne icyaha rushingiye ku mvugo za KWIZERA Fatu zirimo urujijo no kwivuguruza, Urukiko rusanga mu mvugo za KWIZERA Fatu, nta rujijo cyangwa kwivuguruza kurimo, kuko ibyo yavugiye imbere y'Ubugenzacyaha, arinabyo yavugiye imbere y'ubushinjacyaha, aho avuga ko Kankindi Joselyne ariwe wari umujyanye Uganda kwa BUKURU, ikindi akaba yaremeje ko ariwe wamubwiye ibyo

avuga ageze ku mupaka, ibi akaba yarabisubiyemo mu Bushinjacyaha, izi mvugo ze kandi uretse no kuba zitavuguruzanya cyangwa ngo zitere urujijo, zinahura n'ibyo Kankindi Joselyne yivugiye ko ariwe wari kumwishyurira itike, bigaragara mu nyandikomvugo y'ibazwa rye mu Bugenzacyaha, akabishimangira mu nyandiko ye yanditse asaba imbabazi yagarutsweho haruguru, aho yavuze ko yari ku mushyikiriza Bukuru muri Uganda nawe akamusubiza amafaranga yari yatanze kuri Kwizera Fatu akanamwongerereraho ayandi agera kuri 50$.

[29] Urukiko rusanga rero nta rujijo ruri mu mvugo za Kwizera Fatu, bityo ubujurire bwa Kankindi Joselyne kuri iyi ngingo y'uko Kwizera Fatu yagiye yivuguruza bukaba nta shingiro bufite.

3) Kumenya niba Kankindi Joselyne yarahamijwe icyaha hashingiwe ku gikorwa cyo gutunda kandi nta bimenyetso bikigaragaza

Kankindi Joselyne avuga ko nta kimenyetso na kimwe Ubushinjacyaha bwagaragaje cy'uko yaba yaramenye Kwizera Fatu, ku buryo yaba yari agiye kumucuruza.

[30] Me Nkundabatware Bigimba Félix avuga ko Ubushinjacyaha bwagiye bushingira gusa ku mvugo za Kwizera Fatu zaranzwe no kwivuguruza mu buryo bukomeye, mu gihe Kankindi Joselyne aregwa icyaha cyo gucuruza abantu, hirengagijwe ingingo ya 251 ariyo yagombaga kugaragaza ibikorwa bamurega, ko ibyo babihuje n'urubanza rwa Goodluck baruheraho basaba ko uwo bunganira yagirwa umwere, rwabibona ukundi agahanwa hakurikijwe iyo ngingo ntihashingirwe ku ngingo ya 252.

[31] Akomeza avuga ko ubushinjacyaha butavuga ko Kankindi Joselyne yatanze amafaranga y'itike Kanyaru - Nyabugogo agamije gucuruza Kwizera Fatu, ahubwo ko yayatanze kuko Kwizera Fatu yari mu bihe ayakeneye, Kankindi akaba yari guhanwa mu gihe atayatanze. Avuga kandi ko mu Rukiko hakoreshejwe imvugo ngereranywa, ko Kwizera Fatu yari yirihiye itike kuva i Burundi kugera ku Kanyaru, aho banyuraga hose bakaba barerekanaga ibyangombwa birimo pasiporo zabo cyangwa izindi mpapuro z'ingendo, akaba ntaho Ubushinjacyaha bugaragaza uburyo Kankindi yari afite pasiporo ya Kwizera Fatu, ko izindi mvugo uwo yunganira yavuze zoze zari zigamije kwirwanaho.

[32] Ubushinjacyaha buvuga ko hadakwiye gushingirwa ku ngingo ya 251 ihana umuntu wese ugira uruhare mu buryo ubwo ari bwo bwose mu kuvana abantu mu gihugu abajyana mu mahanga, ko ingingo ya 250 y'igitabo cy'amategeko ahana cyariho icyaha gikorwa itanga ubusobanuro bw'icyaha cyo gucuruza abantu, naho ingingo yacyo ya 252 ikaba ariyo ihana icyaha cy'icuruzwa ry'abantu, ndetse ikanarondora n'ibikorwa bibujijwe bikorwa hagamijwe kubyaza umuntu inyungu zitemewe, ko rero ingingo ya 252 ari yo igomba gukoreshwa.

UKO URUKIKO RUBIBONA

Ingingo ya 250 y'Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy"amategeko ahana ryakoreshaga ubwo icyaha cyakorwaga itanga ubusobanuro bwo gucuruza, ivuga ko harimo ibikorwa bihindura umuntu igicuruzwa bijyanye no gushakisha cyangwa kwimurira umuntu ahandi mu gihugu cyangwa mu mahanga hakoreshejwe uburiganya, ibikangisho, imbaraga cyangwa agahato, ububasha ubikora aba amufiteho, akenshi hagamijwe

kumwangiriza ubuzima cyangwa kumubyaza inyungu zitemewe akoreshwa mu biterasoni, mu buraya …. Bifatwa kandi nko gucuruza abantu, kubashakamo inyungu hakoreshejwe kubagira abasabirizi ku gahato, kubabera ababyeyi batababyaye hakoreshejwe ikiguzi mu buryo butemewe n'amategeko…. Gushakwamo inyungu ni uburyo bwose bwo gushaka inyungu zishingiye ku gitsina, imirimo y'agahato, ubucakara n'ibindi bisa na bwo cyangwa guca urugingo rw'umuntu…

Ingingo ya 252 y'Itegeko Ngenga rivuzwe haruguru, iteganya ko Umuntu wese utwara cyangwa utuma batwara, ufata cyangwa ufatisha, ufunga cyangwa ufungisha, utunda cyangwa utundisha abantu abo ari bo bose, agamije kubahindura abacakara cyangwa kubagurishiriza kuba abacakara, kubagira abasabirizi ku gahato, kubabera umubyeyi utarababyaye mu buryo butemewe n'amategeko hakoreshejwe ikiguzi kubakoresha mu mashusho y'urukozasoni, mu masiporo ateye ubwoba, kubashora mu ntambara, kubana na bo nk'umugore n'umugabo hagamijwe iyicarubozo cyangwa icuruzwa ry'ingingo z'imibiri yabo, ahanishwa igifungo kuva ku myaka irindwi (7) kugeza ku myaka icumi (10) n'ihazabu y'amafaranga y'u Rwanda kuva kuri miliyoni eshanu (5.000.000) kugeza kuri miliyoni icumi (10.000.000).

Dosiye igaragaza ko mu rubanza rwajuririwe mu gika cya 26 Urukiko Rukuru rwasanze kuva Kankindi Joselyne yarakoze igikorwa cyo gutunda abantu agamije kubacuruza ku rwego mpuzamahanga kuko yari abavanye mu gihugu cy'u Burundi, abanyuza mu Rwanda, agamije kubageza ku gihugu cya Uganda aho Kwizera yari kuvanwa ajyanwa mu bindi bihugu, akwiye guhanishwa igifungo cy'imyaka icumi (10) n'ihazabu ingana na miliyoni icumi y'amafaranga y'u Rwanda (10.000.000). Ariko kubera ko icyaha nta ngaruka zikomeye cyateje, kuko uwari utunzwe yagaruriwe hafi ku Kanyaru atarahangayika cyane, ibi bigize impamvu nyoroshyacyaha, byatumye ahanishwa igifungo cy'imyaka irindwi (7ans) n'ihazabu ingana na miliyoni icumi (10.000.000 frw).

Urukiko rusanga kugira ngo ushinjwa ahamwe n'icyaha cyo gucuruza abantu, ari ngombwa ko akora kimwe mu bikorwa bivugwa mu ngingo ya 252 aribyo gutwara cyangwa gutuma batwara, gufata cyangwa gufatisha, gufunga cyangwa gufungisha, gutunda cyangwa gutundisha abantu abo ari bo bose, kandi akabikora agamije kubyaza inyungu umuntu cyangwa korohereza undi ugamije kumubyaza inyungu zitemewe.

[33] Urukiko rurasanga imvugo ya Kankindi Joselyne y'uko nta bushukanyi bwabayeho kuri Kwizera Fatu yari ashyiriye Bukuru uba Uganda nta shingiro ifite, kubera ko uretse n'uko yamufatiranye mu bukene, adafite akazi mu gihugu cye cy'i Burundi, yamwijeje ko amushyiriye umuntu uzamushakira akazi kazamuhemba amafaranga menshi, bituma amushakira pasiporo, aramujyana ariko Kwizera Fatu akaba atari afite amakuru ahagije y'uko aho agiye azagerayo, igihe azagererayo, uwo azakorera n'icyo azahembwa, kuko Kankindi Joselyne ariwe wari wishingiye ibirebana n'ibyo azakenera byose mu rugendo harimo itike, ibyo kurya, aho gucumbika, kugeza amugejeje kuri Bukuru akishyurwa amafaranga bari bumvikanye, kuko mu busanzwe yivugiye ko uwa mbere yajyanye yahawe amadolari 50 yiyongera kuyo yari yamutanzeho.

[34] Urukiko rusanga niyo Kwizera Fatu yaba yaremeye ko Kankindi Joselyne amutwara, ibyo bitavanaho Kankindi Joselyne icyaha cyo kumucuruza, mu gihe bigaragara ko yari yamubeshye ko amushyiriye umuntu uzamushakira akazi keza atabwiwe akariko, kandi yizeye ibihembo mu gihe azaba amugejeje ku wamumutumye, kuko mu byaha byo gucuruza abantu, harebwa amayeri

yakoreshejwe n'ukurikiranweho gucuruza abantu kugira ngo uwo ateganya gucuruza yemere ibyo amubwiye, aho kureba ukwemera k'uwakorewe icyaha[1].

[35] Ku bijyanye no kubyaza abantu inyungu, abahanga mu mategeko bavuga ko igikorwa cyo kubyaza umuntu inyungu mu cyaha cyo gucuruza abantu atari ngombwa ko intego cyakoranywe iba yagezweho, ko icy'ingenzi ari uko hagaragazwa icyari kigamijwe mu ikorwa ry'icyo gikorwa, kuko igihanwa ari icyari kigambiriwe, ni ukuvuga kubyaza umuntu inyungu zitemewe aho kuba icyagezweho[2]. Nk'uko byasobanuwe haruguru, Kankindi Joselyne akaba yari agamije kubyaza Kwizera Fatu inyungu, kuko nyuma yo kumugeza Uganda, yari gusubizwa ibyo yamutanzeho, agahembwa n'amadolari mirongo itanu (50$).

[36] Ibimaze kuvugwa haruguru binahura n'ibiteganyijwe mu ngingo ya 3 y'Amasezerano y'inyongera ku masezerano y'Umuryango w'Abibumbye agamije gukumira, kurwanya no guhana icuruzwa ry'abantu, by'umwihariko abagore n'abana, yashyiriweho umukono i Palermo mu Butaliyani ku wa 15/11/2000, u Rwanda rukaba rwarayemeje ku wa 26/09/2003[3].

[37] Urukiko rw'ubujurire rusanga nk'uko Urukiko Rukuru rwabibonye, kandi nk'uko rwagaragajwe haruguru, uruhare rwa Kankindi Joselyne mu gikorwa cyo gutunda no gucuruza Kwizera Fatu, bigaragara ko yari afite aho azagarukira n'inyungu y'amadorali yari guhabwa amugejeje Uganda, akishyurwa n'abandi bantu batari Kwizera Fatu, kandi ari we wagombye kumuhemba cyangwa kumushimira ubufasha avuga yamuhaga, ikigaragara muri iyi migirire akaba ari uko itundwa rya Kwizera Fatu atari ubufasha busanzwe nk'uko Kankindi Joselyne abivuga, ahubwo ryari rifite intego yo kumubyaza inyungu zitemewe mu buryo "Bukuru" wari kumusigirwa yari kugena uko abishaka, agamije kwiyishyura byibuze ibyo yari kuba yamutakajeho byose, kuko Kwizera Fatu yari kumugeraho bataziranye nta n'icyo basezeranye, nta n'uburyo afite bwo kwirengera ku buryo nta kundi yari kubigenza uretse kwemera gukoreshwa

---

[1] *Le paragraphe b de l'article 3 du Protocole relatif à la traite des personnes stipule que le consentement d'une victime de la traite des personnes à l'exploitation envisagée est indifférent lorsqu'il a été démontré que la duperie, la contrainte, la force ou d'autres moyens interdits ont été utilisés. Le consentement ne peut donc pas être invoqué à titre de défense pour exonérer une personne de sa responsabilité pénale. (https://www.unodc.org/documents/congress/background information/Human_Trafficking/TIP_Manual_fr_module_01.pdf*

[2] *L'"objectif de l'exploitation" est un élément moral de type dolus specialis: le dolus specialis (The Specific Intent) peut être défini comme l'objectif visé par l'auteur du crime lorsqu'il commet les actes matériels de l'infraction. C'est l'objectif qui importe et non le résultat concret auquel est parvenu l'auteur du crime. Ainsi, la satisfaction de l'élément de dolus specialis ne nécessite pas que le but soit effectivement atteint. En d'autres termes, les "actes" et les "moyens" de l'auteur du crime doivent viser à exploiter la victime. Il n'est par conséquent pas nécessaire que l'auteur du crime exploite effectivement celle-ci. P.5. (https://www.unodc.org/documents/congress/background information/Human_Trafficking/TIP_Manual_fr_module_01.pdf*

[3] https://www.unodc.org/documents/data-and-analysis/glotip/Annex_II_-_Definition_and_mandate.pdf, *Article 3, paragraph (a) of the Protocol states that trafficking in persons "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*
Article 3, (b) states that: "The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used."

ibyo atagakoze aramutse afite ubwinyagamburiro, ibi bikorwa bya Kankindi Joselyne bikaba bihuye n'ibiteganywa n'ingingo ya 250 bihanwa n'ingingo ya 252 z'Itegeko-Ngenga nº01/2012 ryo ku wa 02/05/2012 ryavuzwe haruguru ndetse n'Amasezerano mpuzamahanga nayo yibukijwe haruguru, bityo ibigize icyaha cyo gucuruza abantu bikaba byuzuye, akaba rero agomba guhanirwa icyaha cyo gucuruza abantu aho kuba ubwinjiracyaha bw'icyaha cyo gucuruza abantu.

[38] Urukiko rurasanga ibyo uwunganira Kankindi Joselyne avuga ko inyito y'icyaha akurikiranyweho yahinduka nk'uko byemejwe mu rubanza RPA 00022/2019/CA rwa GOOD Luck Asser Marahaba rwaciwe ku wa 17/7/2020, nta shingiro byahabwa, kuko n'ubwo muri urwo rubanza havuzwe ko kuba Ngowe Goodluck ahamwa n'icyaha cy'ubwinjiracyaha ku cyaha cyo kugira uruhare mu kuvana umuntu mu gihugu agamije kumucuruza, hashingiwe ku mpamvu y'uko yafatiwe mu nzira atarageza Kwizera Marie Claire muri Uganda aho yari amujyanye, ntashobore kugera ku mugambi, muri uru rubanza byasobanuwe neza ko icy'ingenzi muri ibi byaha byo gucuruza abantu, ari nacyo gihanwa, ari icyari kigamijwe mu ikorwa ry'icyo cyaha, kuko igihanwa ari icyari kigambiriwe (dolus specialis), ni ukuvuga ku byaza umuntu inyungu zitemewe, aho kuba icyagezweho (results), ubujurire bwa Kankindi Joselyne kuri iyi ngingo nabwo bukaba nta shingiro bufite.

III. ICYEMEZO CY'URUKIKO

[39] Rwemeje ko ubujurire bwatanzwe na Kankindi Joselyne nta shingiro bufite;

[40] Rwemeje ko imikirize y'urubanza No RP 00030/2018/HC/HCCIC rwaciwe ku wa 14/11/2018 n'Urukiko Rukuru, Urugereko ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibi idahindutse;

[41] Rutegetse ko amagarama y'urubanza aherera ku isanduku ya Leta..