UBUSHINJACYAHA v BUTALI

[Rwanda URUKIKO RW’UBUJURIRE – RPAA 00026/2021/CA – (Gakwaya, P.J) 25 Kamena 2021]

Amategeko agenga imanza z’inshinjabyaha – Icyaha cyo kubika ibiyobyabwenge - Ibikorwa bihanwa n’itegeko – Icyo umushingamategeko agamije guhana – Mu gihe Umushingamategeko yashatse guhana umuntu wese unywa, urya, witera cyangwa wisiga ibiyobyabwenge, byumvikana ko atashakaga no guhana ubifata (consommateur) nk’ukora icyaha cyo kubibika, kuko ubifata/ubinywa cyangwa ubyisiga ashobora igihe cyose kubifatanwa (en possession), kubitwara cyangwa kubitunda (transporter) – Kugira ngo ushinjwa ahanirwe kubika cyangwa gucuruza ibiyobyabwenge, hagomba kugaragazwa byanze bikunze ibimenyesto bishimangira ko iyo ngano y’ibiyobyabwenge yafatanwe byari ibyo kugurisha (trafic de stupéfiants).

Amategeko agenga imanza z’inshinjabyaha – – Icyaha cyo gucuruza ibiyobyabwenge – Ingano y’ibiyobyabwenge byafatanywe ushinjwa – Harebwe ingano y’ibiyobyabwenge byafatanywe ushinjwa ishobora gutuma hemezwa ko iyo ngano y’ibiyobyabwenge yafatanwe byari ibyo kugurisha (trafic de stupéfiants) cyangwa nibyo yinyweraga ubwe (consommation personnelle).

Incamake y’icyibazo: Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Ubushinjacyaha burega Butali icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw’urumogi, kuko yasanganywe udupfunyika (boules) umunani (8) twarwo muri boutique ye. Butali Athanase yiregura ahakana icyaha cyo gucuruza urumogi, akemera gusa ko arunywa. Urukiko Rwisumbuye rwa Gasabo rwemeje ko nta kimenyetso kigaragaza ko Butali Athanase acuruza ibiyobyabwenge byo mu bwoko bw’urumogi, rwemeza ko ahamwa no kurubika rumuhanisha igihano cy’igifungo cy’imyaka makumyabiri n’itanu (25) n’ihazabu y’amafaranga y’u Rwanda miliyoni makumyabiri n’ibihumbi ijana (20.100.000).

Butali Athanase ntiyishimiye imikirize y’urubanza, arujuririra mu Rukiko Rukuru, avuga ko yahawe ibihano biremereye, kandi yarasobanuriye Urukiko Rwisumbuye rwa Gasabo ko urumogi yafatanywe yarunywaga, atarucuruzaga, asaba kugabanyirizwa ibihano. Urukiko Rukuru rwemeje ko ubujurire bwe nta shingiro bufite, rwemeza ko imikirize y’urubanza yajuririye idahindutse.

Butali Athanase ntiyishimiye imikirize y’urubanza, ajuririra Urukiko rw’Ubujurire avuga ko Urukiko Rukuru rutahaye agaciro ibisobanuro bye bishimangira ko urumogi yafatanwe, atarubikaga, ahubwo ko yarunywaga, ko rero agomba guhamywa icyaha cyo gufatanwa ibiyobyabwenge asobanura ko inkiko zabanje zamuhamije kubika ibiyobyabwenge by’urumogi kandi Atari byo kuko urumogi yafatanywe rwari mu ipantalo yari imanitse muri boutique acururizamo, akanayiraramo, kandi uretse kuba rwari ruri muri iyo pantalon, nta store y’urumogi yari afite, kuko iyo inzu ye ataricyo yagenewe akomeza avuga ko Urukiko Rwisumbuye rwa Gasabo rwamuhamije icyaha cyo kubika urumogi, rusobanura ko nta kimenyetso ko yarucuruzaga, ariko ko Urukiko Rukuru rwo rwamuhamije icyaha cyo gucuruza urumogi, ko ibyo bigaragaza ukwivuguruza ku nkiko zombie, asoza asaba uru Rukiko kwemeza ko ahamwa n’icyaha cyo gufatanwa urumogi, rukamugabanyiriza igihano kuko kuva mu ntangiriro ry’ikurikaranwa rye, yemeye ko yafatanywe udupfunyika umunani (8) tw’urumogi, kandi ko abisabira imbabazi no kuba ari ubwa mbere akoze icyaha. Yongeraho ko imyaka amaze muri gereza, amaze kugororoka ku buryo atazabisubiramo.

Mu iburanisha m’Urukiko rw’Ubujurire Ubushinjacyaha bwavuze ko impamvu y’ubujurire bwa Butali Athanasa nta shingiro ifite kuko yafatanywe abitse udupfunyika umunani (8) tw’urumogi

muri boutique ye, bukaba busanga icyaha yahamijwe cyo kubika urumogi aricyo yakoze, ari nacyo akwiye gukomeza guhanirwa bukomeza buvuga ko ibisobanuro byatanzwe na Butali Athanase birebana no kuba hagomba kurebwa ingano y'urumogi ukurikiranyweho icyaha yasanganywe mbere yo kwemeza ko yakoze icyaha cyo kubika urumogi, bitahabwa agaciro kuko mu Rwanda, Umushingamategeko atagennye ingano runaka kugirango hemezwe ko habayeho icyaha cyo kubika urumogi. Ubushinjacyaha busoza busaba Urukiko rw'Ubujurire, kwemeza ko urubanza rujuririrwa rudahindutse mu ngingo zarwo zose.

Incamake y'icyemezo: 1. Mu gihe Umushingamategeko yashatse guhana umuntu wese unywa, urya, witera cyangwa wisiga ibiyobyabwenge, byumvikana ko atashakaga no guhana ubifata (consommateur) nk'ukora icyaha cyo kubibika, kuko ubifata/ubinywa cyangwa ubyisiga ashobora igihe cyose kubifatanwa (en possession), kubitwara cyangwa kubitunda (transporter). Bityo rero, kugira ngo ushinjwa ahanirwe kubika cyangwa gucuruza ibiyobyabwenge, hagomba kugaragazwa byanze bikunze ibimenyesto bishimangira ko iyo ngano y'ibiyobyabwenge yafatanwe byari ibyo kugurisha (trafic de stupéfiants). Bityo ingano y'udupfunyika umunani (8) tw'urumogi uregwa yafatanywe, ntabwo ari umubare munini ku buryo yakekwaho kurubika agamije kurugurisha.

2. N'ubwo amategeko y'u Rwanda atavuga ingano y'ibiyobyabwenge ishobora gutuma hemezwa ko uwabifatanwe, yabibitse agamije kubigurisha, ariko harebwe ibyo ibindi bihugu byemeza, ko umuntu ufatanywe ingano y'urumogi irenze amagarama mirongo itatu (30) afatwa nk'urubika agamije kurugurisha, ibi byumvikanisha ko ingano y'udupfunyika umunani (8) tw'urumogi atari twinshi ku buryo hatakwemezwa ko udufatanywe yari agambiriye kugurisha. Bityo udupfunyika umunani (8) tw'urumogi uregwa yafatanywe ntabwo ari twinshi ku buryo hakwemezwa ko yatugurishaga, ahubwo ni utwo yinyweraga.

Ikirego cy'ubujurire gifite ishingiro;
Urubanza rujuririrwa ruhindutse ku ngingo zarwo zose.

Amategeko yashingiwe ho:
Itegeko nº 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 263

Ntamanza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Ubushinjacyaha burega Butali Athanase icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, kuko yasanganywe udupfunyika (boules) umunani (8) twarwo muri boutique ye, aho asanzwe acururiza. Butali Athanase yiregura ahakana icyaha cyo gucuruza urumogi, akemera gusa ko arunywa.

[2] Mu rubanza nº RP 00383/2019/TGI/GSBO rwaciwe ku wa 23/4/2019, Urukiko Rwisumbuye rwa Gasabo rwemeje ko nta kimenyetso kigaragaza ko Butali Athanase acuruza ibiyobyabwenge byo mu bwoko bw'urumogi, rwemeza ko ahamwa no kurubika kuko urwo rumogi rwasanzwe muri boutique ye, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri n'ibihumbi ijana (20.100.000).

[3] Butali Athanase ntiyishimiye imikirize y'urwo rubanza, arujuririra mu Rukiko Rukuru, avuga ko yahawe ibihano biremereye, kandi yarasobanuriye Urukiko Rwisumbuye rwa Gasabo ko urumogi yafatanywe yarunywaga, atarucuruzaga, asaba kugabanyirizwa ibihano.

[4] Mu rubanza nº RPA 01019/2019/HC/KIG rwaciwe ku wa 29/5/2020, Urukiko Rukuru rwemeje ko ubujurire bwa Butali Athanase nta shingiro bufite, rwemeza ko imikirize y'urubanza yajuririye idahindutse.

[5] Butali Athanase ntiyishimiye imikirize y'urwo rubanza, ajuririra Urukiko rw'Ubujurire ku wa 25/6/2020, avuga ko anenga urwo rubanza kubera ko Urukiko Rukuru rutahaye agaciro ibisobanuro bye bishimangira ko urumogi yafatanwe, atarubikaga, ahubwo ko yarunywaga, ko rero agomba guhamywa icyaha cyo gufatanwa ibiyobyabwenge.

[6] Urubanza rwaburanishijwe ku wa 24/5/2021, Butali Athanase yunganirwa na Me Kwisanga Yves Bruce, Ubushinjacyaha buhagarariwe na Uwizeye Jean-Marie, Umushinjacyaha ku rwego rw'Igihugu.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

1. Kumenya niba ibikorwa Butali Athanase aregwa bigize icyaha cyo kunywa ibiyobyabwenge aho kuba icyo gucuruza ibiyobyabwenge

[7] Butali Athanase avuga ko inkiko zabanje zamuhamije kubika ibiyobyabwenge by'urumogi, nyamara icyaha yakoze ari ugufatanwa ibiyobyabwenge, kuko yasanganywe udupfunyika umunani (8) gusa tw'urumogi. Asobanura ko urumogi yafatanywe rwari mu ipantalo yari imanitse muri boutique acururizamo, akanayiraramo, ko uretse kuba rwari riri muri iyo pantalon, nta store y'urumogi yari afite, kuko iyo inzu ye ataricyo yagenewe.

[8] Butali Athanase avuga kandi ko Urukiko Rwisumbuye rwa Gasabo rwamuhamije icyaha cyo kubika urumogi, rusobanura ko nta kimenyetso ko yarucuruzaga, ariko ko Urukiko Rukuru rwo rwamuhamije icyaha cyo gucuruza urumogi, ko ibyo bigaragaza ukwivuguruza ku nkiko zombi.

[9] Butali Athanase asoza asaba uru Rukiko kwemeza ko ahamwa n'icyaha cyo gufatanwa urumogi, rukamugabanyiriza igihano kuko kuva mu ntangiriro ry'ikurikiranwa rye, yemeye ko yafatanywe udupfunyika umunani (8) tw'urumogi, kandi ko abisabira imbabazi no kuba ari ubwa mbere akoze icyaha. Yongeraho ko imyaka amaze muri gereza, amaze kugororoka ku buryo atazabisubiramo.

[10] Mu myanzuro y'ubujurire, Me Ilimubahanga Jean de Dieu, wunganira Butali Athanase, avuga ko Urukiko Rukuru rwahamije Butali Athanase icyaha cyo gucuruza ibiyobyabwenge by'urumogi, rushingiye ku kuba yarafatanywe udupfunyika umunani (8) twarwo, kandi mu by'ukuri yararunywaga gusa, ko ariyo mpamvu icyaha yakoze ari icyo gufatanwa no kunywa urumogi.

[11] Me Ilimubahanga Jean de Dieu avuga ko mu guhamya Butali Athanase icyaha cyo kubika urumogi, Urukiko Rukuru rwirengagije ko kubika no gufatanwa urumogi byemezwa habanje kureba ingano y'urumogi ukurikiranyweho icyaha yafatanywe n'uburyo yafashwemo, ko hari igihe umuntu wese unywa urumogi arubika, ko ibyo bitafatwa nko kurubika hagamijwe kurucuruza cyangwa kurukwirakwiza, ariyo mpamvu nk'uko byemejwe mu bindi bihugu,

hagomba kurebwa mbere na mbere ingano y’urumogi umuntu urunywa ashobora kugira, ko harebwe udupfunyika umunani (8) tw’urumogi Butali Athanase yasanganywe, bitakwitwa kubika urumogi rwo gucuruza, ahubwo ko rwari urumogi rwe rwo kunywa.[1]

[12] Me Ilimubahanga Jean de Dieu akomeza avuga ko uretse n’ibyo, kugirango rwemeze ko Butali Athanase yacuruzaga urumogi, Urukiko Rukuru rwagombaga gusuzuma niba hari amafaranga menshi yafatanywe, niba yarafashwe arimo kurugurisha, niba hari ikimenyetso kigaragaza ko yavuganaga n’abaguzi be cyangwa se hari abo yaba arubikiye. Asobanura ko Urukiko Rukuru rutagaragaje abantu bavugwa n’umutangabuhamya Nshizirungu Jean-Baptiste ko baguraga urumogi kwa Butali Athanase, ko nta kimenyetso gihamya ko yari abitse urumogi kandi ko anarucuruza.

[13] Me Ilimubahanga Jean de Dieu asoza asaba uru Rukiko guhamya Butali Athanase icyaha cyo gufatanwa no kunywa ibiyobyabwenge by’urumogi giteganywa n’ingingo ya 263, igika cya mbere (1) y’Itegeko nº 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n’ibihano muri rusange, agahanishwa igihano cy’igifungo cy’umwaka umwe (1) kuko yaburanye yemera icyaha cyo kunywa urumogi ku buryo budashidikanywaho, hashingiwe ku ngingo ya 59 , agace ka mbere (1) n’aka gatatu (3) n’iya 60, agace ka kabiri, z’Itegeko nº 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru.

[14] Mu iburanisha, Me Kwisanga Yves Bruce yasubiye kubyo Me Ilimubahanga Jean de Dieu yasobanuye mu myanzuro.

[15] Ubushinjacyaha buvuga ko impamvu y’ubujurire bwa Butali Athanasa nta shingiro ifite kuko yafatanywe abitse udupfunyika umunani (8) tw’urumogi muri boutique ye, bukaba busanga icyaha yahamijwe cyo kubika urumogi aricyo yakoze, ari nacyo akwiye gukomeza guhanirwa, ko atari icyaha cyo kunywa urumogi.

[16] Ubushinjacyaha buvuga ko ibisobanuro byatanzwe na Butali Athanase birebana no kuba hagomba kurebwa ingano y’urumogi ukurikiranyweho icyaha yasanganywe mbere yo kwemeza ko yakoze icyaha cyo kubika urumogi, bitahabwa agaciro kuko mu Rwanda, Umushingamategeko atagennye ingano runaka kugirango hemezwe ko habayeho icyaha cyo kubika urumogi. Bukomeza buvuga ko kubika urumogi ari ukuruhisha ahantu atari ku mubiri, ko urumogi rwasanzwe mu ipantalo ye mu cyumba yabagamo, ko inyandiko-mvugo y’ifatira itagaragaza ko yari ayambaye.

[17] Ubushinjacyaha busoza busaba Urukiko rw’Ubujurire, kwemeza ko urubanza rujuririrwa rudahindutse mu ngingo zarwo zose.

UKO URUKIKO RUBIBONA

[1]California health and safety code-HSC paragraphe 11357 of January 1, 2018 iteganya ko ‘’ Except as authorized by law, possession of not more than 28.5 grams of cannabis, or not more than eight grams of concentrated cannabis, or both, shall be punished or adjudicated’’ ni ukuvuga ko iryo Tegeko ryemera kuba umuntu yagira urumogi rugera ariko rutarengeje amagarama 28.5. Act respecting cannabis and to amend the controlled drugs and substances Act, the Criminal Code and other Acts (Cannabis Act) of 2018 iteganya ko ‘’ Unless authorized under this Act, is prohibited (a) for an individual who is 18 years of age or older to possess, in a public place, cannabis of one or more classes of cannabis the total amount of which, as determined in accordance with schedule 3, is equivalent to more than 30 g of dried cannabis’’, ni ukuvuga ko iryo Tegeko ryemera ko umuntu yagira urumogi rugera ariko rutarengeje amagarama 30.

[18] Ingingo ya 263, igika cya mbere, y'Itegeko nº 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange iteganya ko ''Umuntu wese ufatanwa, urya, unywa, witera, uhumeka cyangwa wisiga mu buryo ubwo aribwo bwose ibiyobyabwenge cyangwa urusobe rw'imiti ikoreshwa nka byo, aba akoze icyaha''. Igika cyayo cya kabiri giteganywa ko ''Umuntu wese uhamijwe n'urukiko gukora ibikorwa bivugwa mu gika cya mbere cy'iyi ngingo, ahanishwa igifungo kitari munsi y'uwmwaka umwe (1) ariko kitarenze imyaka ibiri (2) cyangwa imirimo y'ingungu rusange''.

[19] Ingingo ya 263, igika cya gatatu, y'Itegeko nº 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru iteganya ko '' Umuntu wese ukora, uhinga, uhindura, utunda, ubika, uha undi, ugurisha mu gihugu ibiyobyabwenge cyangwa urusobe rw'imiti ikoreshwa nka byo mu buryo bunyuranyije n'amategeko, aba akoze icyaha''.

[20] Nk'uko bigaragara mu gace ka cumi na rimwe (11) k'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko BUTALI Athanase atemera icyaha cyo gucuruza urumogi, ariko ko yafatanywe urumogi rwinshi yari abitse, ko byumvikana neza ko yarucuruzaga, ndetse ko hari umutangabuhamya Nshizirungu Jean-Baptiste wahamije ko bahoraga bafata abantu bavuye kugura urumogi iwe muri boutique, bityo ko nta makosa Urukiko Rwisumbuye rwa Gasabo rwakoze rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri n'ibihumbi ijana (20.100.000).

[21] Nk'uko bigaragara mu nyandiko-mvugo yo ku wa 15/3/2019 ya Butali Athanase mu Bugenzacyaha, n'ubwo yamenyeshejwe ko akekwaho kuba yarakoze ibikorwa byo kunywa no gucuruza ibiyobyabwenge, yasobanuye ko urumogi yafatanywe, yaruhawe n'umuturanyi witwa Tuyisenge uruguris ha, ko yari agiye kurunywa no kurukoresha umuti wo gushyira ku gisebe.

[22] Dosiye y'urubanza igaragaza ko umutangabuhamya Nshizirungu Jean-Baptiste yasobanuye ko hari hashize amezi atatu (3) (abanyerondo) bafite amakuru ko Butali Athanase acuruza urumogi muri boutique ye kuko bahoraga bafata abantu baruguraayo, ariko bakamuhishira, ko babibwiye abapolisi n'abasirikare bari kumwe, bose bakajya gusaka boutique ye ku wa 15/3/2019, bagasanga urumogi mu cyumba cye.

[23] Inyandiko-mvugo y'ifatira yo ku wa 15/3/2019 yakozwe n'Urwego rw 'Igihugu rushinzwe Ubugenzacyaha (RIB) igaragaza ko ibyafatiriwe byasanganywe Butali Athanase ari udupfunyika umunani (8) tw'urumogi. Iyi nyandiko-mvuga y'ifatira ariko ntivuga aho byafatiriwe.

[24] Urukiko rw'Ubujurire rurasanga igika cya mbere cy'ingingo ya 263 y'Itegeko nº 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru ihana umuntu wese ufatanywe ibiyobyabwenge cyangwa ufata ibiyobyabwenge mu buryo bwo kubirya, kubinywa, kubyitera cyangwa kubihumeka, ni ukuvuga ubikoresha (usage illicite personnel de stupéfiants). Igika cya gatatu cy'iyo ngingo cyo gihana umuntu wese ukora ubucuruzi bw'ibiyobyabwenge (trafic de stupéfiants) mu buryo bunyuranije n'amategeko, abikora, abihinga abihindura, abitunda, abibika abiha undi, abigurisha mu gihugu cyangwa hanze y'igihugu, bivuze ko abikora mu buryo buhungabanya ubuzima bw'abandi, ariko mu nyungu ye bwite agamije kubonamo amafaranga.

[25] Urukiko rw'Ubujurire rurasanga Urukiko Rukuru rwaremeje ko Butali Athanase acuruza urumogi kubera ko yasanganywe urumogi rwinshi, ndetse ko hari umutangabuhamya wavuze ko arugurisha.

[26] Urukiko rw'Ubujurire rurasanga mu kwemeza ko Butali Athanase acuruza urumogi, Urukiko Rukuru rwaragombaga kugaragaza impamvu udupfunyika umunani (8) tw'urumogi yafatanywe ari twinshi ku buryo byanze bikunze yatugurishaga, ko atari atubitse cyangwa adufite kugirango atunywe. Rurasanga kandi mu gihe Urukiko Rukuru rwashingiye ku mvugo y'umutangabuhamya Nshirizungu Jean-Baptiste wari wemeje ko bari bafite amakuru ko Butali Athanase acuruza urumogi muri boutique ye kuko bahoraga bafata abantu baruguragayo, byari ngombwa ko rugaragaza abo bantu baruguragayo.

[27] Urukiko rw'Ubujurire rurasanga kutagaragaza ibyavuzwe mu gace kabanziriza aka, ntibihagije kwemeza ko ukurikiranyweho yafatanywe udupfunyika umunani (8) tw'urumogi, yatubitse agamije kutugurisha abandi.

[28] Urukiko rw'Ubujurire rurasanga rero mu gihe Umushingamategeko yashatse guhana umuntu wese unywa, urya, witera cyangwa wisiga ibiyobyabwenge, byumvikana ko atashakaga no guhana ubifata (consommateur) nk'ukora icyaha cyo kubibika, kuko ubifata ashobora igihe cyose kubifatanwa (en possession), kubitwara cyangwa kubitunda (transporter). Rurasanga kandi ingano y'udupfunyika umunani (8) tw'urumogi Butali Athanase yafatanywe, atari umubare munini ku buryo yakekwaho kurubika (trafic de stupéfiant) agamije kurugurisha, bivuze ko hagomba kugaragazwa byanze bikunze ibimenyesto bishimangira ko iyo ngano y'ibiyobyabwenge yafatanwe byari ibyo kugurisha (trafic de stupéfiants).2

[29] Urukiko rw'Ubujurire rurasanga n'ubwo amategeko y'u Rwanda atavuga ingano y'ibiyobyabwenge ishobora gutuma hemezwa ko uwabifatanwe, yabibitse agamije kubigurisha, ariko harebwe ibyo ibindi bihugu byemeza, ko umuntu ufatanywe ingano y'urumogi irenze amagarama mirongo itatu (30)[3], afatwa nk'urubika agamije kurugurisha, ibi byumvikanisha ko y'udupfunyika umunani (8) tw'urumogi Butali Athanase yafatanywe, atari twinshi ku buryo hatakwemezwa ko atugurisha.

[30] Hashingiwe ku byasobanuwe haruguru, Urukiko rw'Ubujurire rurasanga kuba Butali Athanase yaremeye kuva mu Bugenzacyaha ko anywa urumogi kandi ko udupfunyika umunani (8) tw'urumogi yafatanywe atari twinshi ku buryo hakwemezwa ko yatugurishaga, ahubwo ari utwo yinyweraga, bityo yagombaga guhanirwa icyaha cyo gufatanwa no kunywa urumogi.

[31] Urukiko rw'Ubujurire rurasanga hashingiwe ku gika cya kabiri cy'ingingo ya 263 y'Itegeko nº 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru, Butali Athanase yagombaga guhanishwa igifungo kitari munsi y'umwaka umwe (1), ariko kitarenze imyaka ibiri (2) cyangwa imirimo y 'inyungu rusange. Rurasanga n'ubwo Butali yaburanye yemera ko yafatanwe utwo dupfunyika umunani (8) tw'urumogi, ndetse ko anywa urumogi, nta mpamvu yatuma agabanyirizwa igihano giteganywa n'Itegeko, harebwe uko Leta ishishikariza buri gihe

[2] "Il a été jugé que la qualification d'usage illicite de produits stupéfiants exclut celle de détention de tels produits si les substances détenues étaient exclusivement destinées à la consommation personnelle du prévenu'', Cass.Crim. 14 mars 2017, nº 16-81805. '' En réprimant spécifiquement l'usage illicite de stupéfiants, pour consommation personnelle, le législateur a entendu ne pas sanctionner lesdits usagers ………pour trafic de stupéfiants dès lors que tout consommateur est nécessairement tenu d'acquérir et de transporter ces stupéfiants'', idem. ''Par conséquent, la Cour de Cassation impose aux juges de caractériser les faits de detention de stupéfiants indépendamment de la consommation personnelle du prévenu pour pouvoir valablement sanctionné sur le fondement e la détention'', Me Anthony Bem, La différence entre le délit pénal d'usage et celui de détention de produits stupéfiants, publié le 19/4/2017 in https://www.legavox.fr/blog consulté le 24/6/2021.

[3] Reba ibivugwa mu gace ka cumi na rimwe (11) k'uru rubanza.

Abanyarwanda kudafata urumogi kuko rufite ingaruka mbi ku buzima bw'umuntu, bityo agomba guhanishwa igihano cy'igifungo cy'imyaka ibiri (2).

[32] Urukiko rw'Ubujurire rurasanga kuba Butali Athanase yarafashwe agafungwa ku wa 15/3/2019, agomba kurekurwa uru rubanza rukimara gusomwa kuko yarangije igihano cy'igifungo cy'imyaka ibiri (2) yakatiwe n'uru Rukiko.

[33] Kubera izo mpamvu zose, Urukiko rw'Ubujurire rurasanga ubujurire bwatanzwe na Butali Athanase bufite ishingiro, urubanza rujuririrwa rukaba ruhindutse mu ngingo zarwo zose.

III. ICYEMEZO CY'URUKIKO

[34] Rwemeje ko ubujurire bwa Butali Athanase bufite ishingiro.

[35] Rwemeje ko urubanza nº RPA 01019/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 29/5/2020, ruhindutse ku ngingo zarwo zose.

[36] Rwemeje ko Butali Athanase ahamwa n'icyaha cyo gufatanwa no kunywa ibiyobyabwenge by'ubwoko bw'urumogi.

[37] Rumuhanishije igihano cy'igifungo cy'imyaka ibiri (2).

[38] Rutegetse ko ahita arekurwa uru rubanza rukimara gusomwa kuko yarangije igihano cy'igifungo cy'imyaka ibiri (2) yakatiwe n'uru Rukiko.

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