UBUSHINJACYAHA v TUYISHIMIRE

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00225/2020/CA (Gakwaya, P.J.) 24 Gicurasi 2022]

Amategeko agenga imanza z'inshinjabyaha – Inyito y'icyaha – Ikibazo kirebana no guhindura inyito y'icyaha - Mu nyungu z'itegeko, ikibazo kirebana no guhindura inyito y'icyaha gishobora kuzamurwa, kigasuzumwa, ndetse inyito y'icyaha igahinduka niba bikwiye, aho urubanza rwaba rugeze hose, byaba bisabwe n'ababuranyi ni ukuvuga Ubushinjacyaha cyangwa uregwa, ndetse n'Urukiko rubyibwirije, mu gihe urubanza rutaraba ndakuka.

Amategeko agenga imanza z'inshinjabyaha – Ibiyobyabwenge – Inyito y'icyaha – Icyaha cyo gufatanywa no kunywa ibiyobyabwenge aho kuba icyo kubibika – Icyo umushingamategeko agambiriye guhana mubikorwa bigize icyaha – Ibiteganywa mu gika cya mbere cy'ingingo ya 263 y'Itegeko nº 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange hahanwa umuntu wese ufatanywe ibiyobyabwenge (possession de stupéfiants), ubifata mu buryo bwo kubirya, kubinywa, kubyitera kubihumeka cyangwa kubyisiga, ni ukuvuga ubikoresha ubwe (usage illicite personnel de stupéfiants) – Naho igika cya gatatu cy'iyo ngingo cyo gihana umuntu wese ukora ubucuruzi bw'ibiyobyabwenge (trafic de stupéfiants) mu buryo bunyuranije n'amategeko, akora ibiyobyabwenge, abihinga, abihindura, abitunda, abibika (entreposage de stupéfiants), abiha undi, abigurisha mu gihugu cyangwa hanze y'igihugu, bivuze ko Umushingamategeko yashatse guhana umuntu wese ukora ibikorwa bivugwa muri icyo gika agamije gucuruza ibiyobyabwenge mu buryo bunyuranije n'amategeko ariko mu nyungu ye bwite, ashaka kubonamo amafaranga kuko buhungabanya ubuzima bw'abandi.

Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Musanze, Ubushinjacyaha bukurikiranyeho Tuyishimire Bahimba Elias icyaha cyo kubika ibiyobyabwenge by'urumogi, kuko yafatanywe udupfunyika icyenda (9) tw'urumogi, nyuma y'uko se umubyara arusanze mu cyumba araramo agahamagara aba Dasso bakaza bakaruhasanga. Tuyishimire Bahimba Elias yaburanye yemera icyaha, ariko asobanura ko urwo rumogi yafatanywe ari uwari warumuhaye ngo arumubikire maze urukiko Rwisumbuye rwa Musanze rushingiye kumvugo ze yemera icyaha no kumvugo z'abatangabuhamya rwemeza ko ahamwa n'icyaha cyo kubika ibiyobyabwenge byo mu bwoko bw'urumogi rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri (20).

Tuyishimire Bahimba Elias ntiyishimiye imikirize y'urubanza, ajuririra Urukiko Rukuru, Urugereko rwa Musanze, avuga ko icyatumye ajurira ari ukugira ngo agabanyirizwe igihano, kuko yamaze kumenya ingaruka z'icyaha kandi ko atazongera. Mu rubanza no RPA 00209/2019/HC/MUS rwaciwe ku wa 6/2/2020, Urukiko Rukuru, Urugereko rwa Musanze rwemeje ko ubujurire bwa Tuyishimire Bahimba Elias nta shingiro bufite, rwemeza ko imikirize y'urubanza no RP 00135/2019/TGI/MUS rwaciwe n'Urukiko Rwisumbuye rwa Musanze idahindutse.

Tuyishimire Bahimba Elias ntiyishimiye imikirize y'urwo rubanza, ajuririra Urukiko rw'Ubujurire avuga ko urukiko Rukuru rwaramuhanishije ibihano by'umurengera, akaba asaba Urukiko rw'Ubujurire kumugabanyiriza igihano. Avuga kandi ko anenga urwo rubanza kuba rwamuhamije icyaha cyo kubika ibiyobyabwenge, nyamara icyaha yagombaga gukurikiranwaho ari icyo kunywa urumogi.

Murukiko rw'Ubujurire ubushinjacyaha buvuze ko ku kijyanye no no guhindura inyito y'icyaha yahamijwe cyo kubika urumogi agahanirwa kunywa urumogi bitahabwa ishingiro kuko aburana mu Rukiko Rukuru atigeze agaragaza ikibazo cy'inyito y'icyaha kandi yari abifitiye uburenganzira, ko ahubwo ku bushake bwe Tuyishimire Bahimba Elias yemeye icyaha cyo kubika ibiyobyabwenge, nk'uko bigaragara mu nyandikomvugo y'iburanisha yo ku wa 26/3/2019, aho yasabye kugabanyirizwa igihano kuko yemera ko yabitse ibiyobyabwenge, ko atabinywa. Bukomeza buvuga ko kubika

ibiyobyabwenge bihura n'ibimenyetso bitandukanye Ubushinjacyaha bwashingiyeho bumurega icyo cyaha, ndetse n'Urukiko rukaba rwarabihaye agaciro, bityo kuba ubuuregwa avuga ko impamvu y'ubujurire bwe ari ugusaba guhindura inyito y'icyaha nta shingiro bikwiye guhabwa, bikaba bidakwiye kwakirwa kuko bikozwe impitagihe,

Incamake y'icyemezo: 1. Mu nyungu z'itegeko, ikibazo kirebana no guhindura inyito y'icyaha gishobora kuzamurwa, kigasuzumwa, ndetse inyito y'icyaha igahinduka niba bikwiye, aho urubanza rwaba rugeze hose, byaba bisabwe n'ababuranyi ni ukuvuga Ubushinjacyaha cyangwa uregwa, ndetse n'Urukiko rubyibwirije, mu gihe urubanza rutaraba ndakuka. Bityo urukiko rwasanze inyito y'icyaha igomba guhinduka uregwa agahanirwa icyaha cyo gufatanwa no kunywa urumogi.

2. Ibiteganywa mu gika cya mbere cy'ingingo ya 263 y'Itegeko nº 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange hahanwa umuntu wese ufatanywe ibiyobyabwenge (possession de stupéfiants), ubifata mu buryo bwo kubirya, kubinywa, kubyitera kubihumeka cyangwa kubyisiga, ni ukuvuga ubikoresha ubwe (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, akora ibiyobyabwenge, abihinga, abihindura, abitunda, abibika (entreposage de stupéfiants), abiha undi, abigurisha mu gihugu cyangwa hanze y'igihugu, bivuze ko Umushingamategeko yashatse guhana umuntu wese ukora ibikorwa bivugwa muri icyo gika agamije gucuruza ibiyobyabwenge mu buryo bunyuranije n'amategeko ariko mu nyungu ye bwite, ashaka kubonamo amafaranga kuko buhungabanya ubuzima bw'abandi.

Ubujurire bufite ishingiro,
Urubanza rujuririrwa ruhindutse kungingo zarwo zose.

Amategeko yashingiweho:
Itegeko nº 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 263, igika cya mbere n'icya gatatu
Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Musanze, Ubushinjacyaha bukurikiranyeho Tuyishimire Bahimba Elias icyaha cyo kubika ibiyobyabwenge by'urumogi, busobanura ko ku wa 14/3/2019 ari mu Mudugudu wa Gikamba, Akagali ka Nyanza, Umurenge wa Coko, Akarere ka Gakenke, yafatanywe udupfunyika icyenda (9) tw'urumogi, se umubyara arusanze mu cyumba araramo, yarushyize mu ntebe, arutwikiriza umwenda, maze ahamagara aba Dasso baraza bararuhasanga.

[2] Tuyishimire Bahimba Elias yaburanye yemera icyaha, ariko asobanura ko urwo rumogi yafatanywe ari uwari warumuhaye ngo arumubikire.

[3] Mu rubanza no RP 00135/2019/TGI/MUS rwaciwe ku wa 18/4/2019, Urukiko Rwisumbuye rwa Musanze, rushingiye ku mvugo ze yemera icyaha no ku mvugo z'abatangabuhamya bamushinja, rwemeje ko ahamwa n'icyaha cyo kubika ibiyobyabwenge byo mu bwoko bw'urumogi, maze rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri (20).

[4] Tuyishimire Bahimba Elias ntiyishimiye imikirize y'urubanza, ajuririra Urukiko Rukuru, Urugereko rwa Musanze, avuga ko icyatumye ajurira ari ukugira ngo agabanyirizwe igihano, kuko yamaze kumenya ingaruka z'icyaha kandi ko atazongera.

[5] Mu rubanza no RPA 00209/2019/HC/MUS rwaciwe ku wa 6/2/2020, Urukiko Rukuru, Urugereko rwa Musanze rwemeje ko ubujurire bwa Tuyishimire Bahimba Elias nta shingiro bufite, rwemeza ko imikirize y'urubanza no RP 00135/2019/TGI/MUS rwaciwe n'Urukiko Rwisumbuye rwa Musanze idahindutse.

[6] Tuyishimire Bahimba Elias ntiyishimiye imikirize y'urwo rubanza, ajuririra Urukiko rw'Ubujurire ku wa 25/2/2020, avuga ko anenga urubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze kuba rwaramuhanishije ibihano by'umurengera, akaba asaba uru Rukiko kumugabanyiriza igihano. Avuga kandi ko anenga urwo rubanza kuba rwamuhamije icyaha cyo kubika ibiyobyabwenge, nyamara icyaha yagombaga gukurikiranwaho ari icyo kurunywa.

[7] Urubanza rwaburanishijwe ku wa 5/5/2022, Tuyishimire Bahimba Elias yunganirwa na Me Alex Ndayisabye, Ubushinjacyaha buhagarariwe na Niyonzima Vincent, Umushinjacyaha ku rwego rw'Igihugu. Mu gihe cy'iburanisha, Me Alex Ndayisabye, yavuze ko ku bijyanye n'ingingo y'ubujurire yari yongeye kuyo uregwa yatanze, aho yavugaga ko ashingiye ku ngingo ya 96 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015 no ku itangazo ry'Umuryango w'Abibumbye (ONU) ryabaye itegeko mu kwezi k'Ubukoza 2020, ko urumogi rutakiri ibiyobyabwenge bihambaye, yamenyesheje uru Rukiko ko baretse iyo ngingo y'ubujurire yari yongeyeho, aho aboneye ibaruwa yo ku wa 7/6/2021 Minisitiri w'Ubuzima isubiza ibaruwa ye yo ku wa 31/5/2021, aho yamubwiye ko urumogi rukiri ku rutonde rw'ibiyobyabwenge bihambaye.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

1. Kumenya niba ibikorwa Tuyishimire Bahimba Elias aregwa bigize icyaha cyo kunywa ibiyobyabwenge aho kuba icyaha cyo kubibika no kumenya niba akwiye kugabanyirizwa igihano giteganyijwe n'Itegeko

[8] Tuyishimire Bahimba Elias avuga ko impamvu zamuteye kujurira ari uko atimishimiye imikirize y'urubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze kuko rwamuhamije icyaha cyo kubika ibiyobyabwenge byo mu bwoko bw'urumogi kandi we yemera ko arunywa, ndetse rukaba rwamuhaye ibihano by'umurengera.

[9] Me Alex Ndayisabye, wunganira Tuyishimire Bahimba Elias, mu mwanzuro yashyikirije Urukiko rw'Ubujurire, avuga ashingiye ku mikorere y'icyaha n'ibimenyetso byatanzwe, inyito y'icyaha yakurikiranyweho ikwiye guhinduka, ko yagombaga gukurikiranwaho kurunywa, hashingiwe ku ngingo ya 263[1] igika cya mbere (1) y'Itegeko no 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange. Akomeza avuga ko mu gace ka karindwi (7) k'urubanza rujuririrwa, Tuyishimire Bahimba Elias yasobanuye ko anywa urumogi, ndetse ibyo bishimangirwa n'invugo za se, wasobanuye muri RIB ko asanzwe azi ko Tuyishimire Bahimba Elias anywa urumogi kuko ajya yumva runuka mu nzu. Avuga na none ko mu ibazwa rye mu Bugenzacyaha, Tuyishimire Bahimba Elias atigeze abazwa ku kubika urumogi, ahubwo yabajijwe ku kurunywa, ko rero hagendewe ku bimenyetso Ubushinjacyaha bufite n'imikorere y'icyaha, byerekana ko Tuyishimire Bahimba Elias yanywaga urumogi.

[1] "Umuntu wese ufatanwa, urya, unywa, witera, uhumeka cyangwa wisiga mu buryo ubwo aribwo bwose ibiyobyabwenge bito cyangwa urusobe rw'imiti ikoreshwa nka byo, aba akoze icyaha".

[10] Ubushinjacyaha buvuga ko ku kijyanye no kuba umwunganizi wa Tuyishimire Bahimba Elias avuga ko inyito y'icyaha yahamijwe cyo kubika urumogi ikwiye guhinduka, agahanirwa kunywa urumogi, nta shingiro ifite, kuko aburana mu Rukiko Rukuru, Urugereko rwa Musanze atigeze agaragaza ikibazo cy'inyito y'icyaha kandi yari abifitiye uburenganzira, ko ahubwo ku bushake bwe Tuyishimire Bahimba Elias yemeye icyaha cyo kubika ibiyobyabwenge, nk'uko bigaragara mu nyandikomvugo y'iburanisha yo ku wa 26/3/2019, aho yasabye kugabanyirizwa igihano kuko yemera ko yabitse ibiyobyabwenge, ko atabinywa. Bukomeza buvuga ko kubika ibiyobyabwenge bihura n'ibimenyetso bitandukanye Ubushinjacyaha bwashingiyeho bumurega icyo cyaha, ndetse n'Urukiko rukaba rwarabihaye agaciro, bityo kuba ubu bavuga ko impamvu y'ubujurire bwabo ari ugusaba guhindura inyito y'icyaha nta shingiro bikwiye guhabwa, bikaba bidakwiye kwakirwa kuko bikozwe impitagihe.

UKO URUKIKO RUBIBONA

[11] 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''.

[12] 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''.

[13] Ku birebana n'ibivugwa n'Ubushinjacyaha ko Tuyishimire Bahimba Elias atigeze agaragaza ikibazo cy'inyito y'icyaha mu Rukiko Rukuru, Urugereko rwa Musanze, atagomba kukizamura ubwa mbere muri uru Rukiko, Urukiko rw'Ubujurire rurasanga bitahabwa agaciro kuko mu nyungu z'itegeko, ikibazo kirebana n'inyito y'icyaha gishobora kuzamurwa, kigasuzumwa, ndetse kigahinduka niba bikwiye, aho urubanza rwaba rugeze hose, byaba bisabwe n'ababuranyi ni ukuvuga Ubushinjacyaha cyangwa uregwa, ndetse n'Urukiko rubibwirije, mu gihe urubanza rutaraba ndakuka.[2] Ibi byumvikanisha ko inkiko zose zifite inshingano yo gusuzuma inyito y'icyaha ivugwa mu rubanza, Urukiko rubanza rusuzuma inyito y'icyaha Ubushinjacyaha bwagaragaje[3], naho Urukiko ruburanisha urubanza mu bujurire[4] narwo rusuzuma inyito y'icyaha rwemeje n'Urukiko rwabanje, bitabaye ngombwa ko umwe mu baburanyi azamura icyo kibazo nk'ingingo y'ubujurire, kuko Inkiko ziburanisha ibikorwa bigize icyaha, zitaburanisha inyito y'icyaha.

[14] Urukiko rw'Ubujurire rurasanga uretse n'ibyo, bigaragara mu gace ka karindwi (7) n'aka munani (8) tw'urubanza rujuririrwa ko Tuyishimire Bahimba Elias yavuze ko icyatumye ajurira ari ukugira ngo agabanyirizwe ibihano, ko ukuri nyakuri ari uko yanywaga urumogi, ko urwo

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[2] "Aussi longtemps que la décision judiciaire n'est pas encore devenue irrevocable, toute qualification est susceptible de modification'', Général Likulia Bolongo, Droit pénal spécial Zaïrois, tome 1, 2e édition, L.G.D.J., Paris, 1985, P. 20.

[3] '' De même la jurisdiction de jugement étant saisie de faits, elle peut souverainement modifier la qualification qui lui est proposée par l'officier du ministère public ou par la partie civile en cas de citation directe. La jurisprudence estime même que le juge est saisi des faits avec toutes leurs consequences, fussent-elles légalement aggravantes lors même que la citation n'en a pas' fat état et n'est même pas lié par la qualification retenue dans le libellé de la prévention'', Général Likulia Bolongo, op.cit., PP. 20-21.

[4] "Le juge d'appel et le juge de cassation procèdent également de la même manière. Car ni l'un ni l'autre n'est lié par la qualification du premier juge. Ils doivent, à leur tour, examiner l'exactitude de la première qualification'', Général Likulia Bolongo, op.cit., P. 21.

bamusanganye rwari urwe, ko ibyo yavuze mbere ko hari uwarumubikije atari ukuri, Ubushinjacyaha bwo bwavuze ko n'ubwo Tuyishimire Bahimba Elias yemera ko urumogi yafatanywe rwari urwo kunywa bitavanaho ko yari arubitse. Rurasanga ibyo ababuranyi bavuze mu bujurire, byari bihagije kugira ngo Urukiko Rukuru, Urugereko rwa Musanze rusuzume inyito y'icyaha yahamijwe, harebwe ibikorwa yarezwe.

[15] Hashingiwe ku byavuzwe mu bice bibiri bibanziriza aka, Urukiko rw'Ubujurire rugiye gusuzuma ikibazo cy'inyito y'icyaha inkiko zabanje zahamije Tuyishimire Bahimba Elias.

[16] Nk'uko bigaragara mu gace ka cyenda (9) n'aka cumi (10) tw'urubanza rujuririrwa, Urukiko Rukuru, Urugereko rwa Musanze rwanzuye ko kuba Urukiko rwabanje, rushingiye ku ngingo ya 263 no 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, rwahaye Tuyishimire Bahimba Elias igihano cy'igifungo cy'imyaka makumyabiri (20), igihano gito giteganywa n'itegeko, ibyo asaba byo kugabanyirizwa igihano, atabihabwa kuko yarabihawe, bityo imikirize y'urubanza rwajuririwe ikaba itagomba guhinduka.

[17] Dosiye y'urubanza igaragaza ko Tuyishimire Bahimba Elias, mu Bugenzacyaha yabajijwe niba yemera ko yafatanywe udupfunyika (9) tw'urumogi, asubiza ko abyemera, ko yaruhawe n'uwitwa Zacharie wari kuza kurufata umunsi yafungiweho. Igaragaza kandi ko mu Bushinjacyaha, Tuyishimire Bahimba Elias yasobanuye ko urumogi yafatanwe yari yarubikiye Zacharie, ariko ko atanywa urumogi, ko mu Rukiko Rwisumbuye rwa Musanze, yemeye ko yari abitse urumogi ariko atarunywa.

[18] Dosiye na none ikagaragaza ko umutangabuhamya Murwanashyaka Appolinaire ise wa Tuyishimire Bahimba Elias yasobanuye ko yabonanye umuhungu we urumogi mu cyumba araramo, kandi ko yari amaze icyumweru amenye ko arunywa, ajya kubibwira ba Dasso baraza baramufata. Naho umutangabuhamya Uwamahoro Pacifique w'umu Dasso avuga ko bafatanye uregwa udupfunyika (boules) icyenda (9) tw'urumogi, umutangabuhamya Ukwizagira Gaspard nawe w'umu Dasso avuga ko bahamagawe na se wa Tuyishimire Bahimba Elias ababwira ko umuhungu we yazanye urumogi, ko asigaye arunywa akamukubita.

[19] 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 (possession de stupéfiants), ubifata mu buryo bwo kubirya, kubinywa, kubyitera kubihumeka cyangwa kubisiga, ni ukuvuga ubikoresha ubwe (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, akora ibiyobyabwenge, abihinga, abihindura, abitunda, abibika (entreposage de stupéfiants), abiha undi, abigurisha mu gihugu cyangwa hanze y'igihugu, bivuze ko Umushingamategeko yashatse guhana umuntu wese ukora ibikorwa bivugwa muri icyo gika agamije gucuruza ibiyobyabwenge mu buryo bunyuranije n'amategeko ariko mu nyungu ye bwite, ashaka kubonamo amafaranga kuko buhungabanya ubuzima bw'abandi.

[20] Urukiko rw'Ubujurire rurasanga 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 cyangwa ubinywa ashobora igihe cyose kubifatanwa (en possession), kubitunda cyangwa kubibika.

[21] Urukiko rw'Ubujurire rurasanga n'ubwo Tuyishimire Bahimba Elias yemeye mu Rukiko rwabanje ko yari abitse urumogi, bitavuze ko aribyo ukuri kuko bigaragara nta shiti ko atari yasobanukiwe icyo ijambo yakoresheje risobanura mu mategeko, kandi mu Bugenzacyaha no mu Bushinjacyaha yari yemeye ko yarufatanywe, arubikiye Zacharie. Rurasanga kandi nk'uko byagaragajwe haruguru, kubika urumogi bivugwa mu ngingo ya 263, igika cya kabiri, y'Itegeko y'Itegeko nº 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru isobanura kurubika hagamijwe

kurugurisha, nyamara nta kiminyetso kigaragaza ko urumogi yarafatanywe rwari rwo kugurisha. Rurasanga kandi ingano y'udupfunyika icyenda (9) tw'urumogi Tuyishimire Bahimba Elias yafatanywe, avuga ko yadukuye kwa Zacharie, atari umubare munini ku buryo hari ikindi yakekwaho kitari ukuba yararufatanywe nyine, kandi akaba arunywa nk'uko nawe ubwe abyiyemerera, cyane cyane ko na makuru ise yatanze ndetse n'imvugo z'abatangabuhamya batandukanye bagaragajwe haruguru, hamwe n'Ubushinjacyaha nta kindi kirenze ibyo, bavuga ko yaba yararukoresheje, uretse kuba we yemera ko urwo yafatanywe yarunywaga.

[22] Hashingiwe ku byasobanuwe haruguru, Urukiko rw'Ubujurire rurasanga kuba Tuyishimire Bahimba Elias yaremeye kuva mu Bugenzacyaha ko yafatanywe urumogi (possession), ndetse imbere y'Urukiko akemera ko urwo yafatanywe arunywa (consommation), nk'uko na se Murwanashyaka Appolinaire yabimureze, avuga ko yajyaga yumva urumogi runuka, kandi udupfunyika icyenda (9) tw'urumogi yafatanywe tukaba atari twinshi ku buryo hakwemezwa ko hari ikindi yari atubikiye, keretse hari ikindi kimenyetso kigaragajwe cyemeza ibitandukanye nibyo, hakwiye kwemezwa ko koko urumogi Tuyishimire Bahimba Elias yafatanywe ari urwo yinyweraga, bityo yagombaga guhanirwa icyaha cyo gufatanwa no kunywa urumogi.

[23] 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, Tuyishimire Bahimba Elias yagombaga guhanishwa igifungo kitari munsi y'umwaka umwe (1), ariko kitarenze imyaka ibiri (2) cyangwa imirimo y 'inyungu rusange.

[24] Urukiko rw'Ubujurire rurasanga kuba Tuyishimire Bahimba Elias yarafashwe agafungwa ku wa 14/3/2019, agomba kurekurwa uru rubanza rukimara gusomwa kuko yarangije igihano cy'igifungo cy'imyaka ibiri (2) yakatiwe n'uru Rukiko, nta mpamvu rero yo gusuzuma ingingo irebana n'igabanyacyaha asaba.

[25] Kubera izo mpamvu zose, Urukiko rw'Ubujurire rurasanga ubujurire bwatanzwe na Tuyishimire Bahimba Elias bufite ishingiro, urubanza rujuririrwa rukaba ruhindutse mu ngingo zarwo zose.

III. ICYEMEZO CY'URUKIKO

[26] Rwemeje ko ubujurire bwa Tuyishimire Bahimba Elias bufite ishingiro.

[27] Rwemeje ko urubanza n° RPA 00209/2019/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 6/2/2020, ruhindutse ku ngingo zarwo zose.

[28] Rwemeje ko Tuyishimire bahimba Elias ahamwa n'icyaha cyo gufatanwa no kunywa ibiyobyabwenge by'ubwoko bw'urumogi.

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

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

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