UBUSHINJACYAHA v. AKAYEZU

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00111/2021/CA (Kaliwabo, P.J.) 22 Nyakanga 2022]

Amategeko nshinjabyaha – Icyaha cyo gutunda ibiyobyabwenge – Kuba ingano y'urumogi rwatunzwe iri hejuru cyane n'ingaruka zabyo zigera ku mubare munini w'abantu.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rubavu, Ubushinjacyaha bukurikiranyeho Akayezu icyaha cyo gutunda ibiyobyabwenge byo mu bwoko bw'urumogi, buvuga ko yafashwe afite ibiro 4 by'urumogi yazingiye mu myenda. Uregwa yaburanye ahakana icyaha cyo gutunda ibiyobyabwenge, avuga ko yemera ko yafatanywe igipfunyika atazi ibikirimo, ko kandi yaragitwaje uwitwa Nyirakamana. Urwo Rukiko Rwisumbuye rwa Rubavu rwaciye urubanza ruhamya uregwa icyaha cyo gutunda ibiyobyabwenge rumuhanisha igifungo cya burundu n'ihazabu y'amafaranga 20.000.000.

Uregwa yajuririye Urukiko Rukuru, Urugereko rwa Musanze, avuga ko yahamijwe icyaha atakoze ngo kuko urumogi yafatanywe rutari urwe, asaba Urukiko kumurenganura kuko atigeze amenya ibyari muri icyo gipfunyika. Urwo Rukiko rwaciye urubanza rwemeza ko ubujurire bw'uregwa nta shingiro bufite, ko ahamwa n'icyaha cyo gutunda ibiyobyabwenge. Ku birebana n'igihano, Urukiko rushingiye ku kigero cy'imyaka uregwa afite no kuba ari ubwa mbere aguye mu cyaha, rwamuhanishije igifungo cy'imyaka 25 n'ihazabu y'amafaranga 20.000.000 mu mwanya w'igifungo cya burundu yari yahawe ku rwego rwa mbere.

Uregwa yarongeye ajuririra Urukiko rw'Ubujurire avuga ko anenga inkiko zibanza ko zamuhamije icyaha cyo gutunda ibiyobyabwenge kandi yarazigaragarije ko urumogi yafatanywe rutari urwe, ko rwari urwuwitwa Nyirakamana nawe wari urutwariye uwitwa Sebitabi, kandi ko uyu nawe yabyemeje. Yongeyeho kandi ko anaramutse ahanwe, yahanirwa icyaha cyo gufatanwa ibiyobyabwenge aho kuba icyo kubitunda.

Ubushinjacyaha bwo bwaburanye buvuga ko uregwa yafatanywe ibiyobyabwenge (ibiro 4 by'urumogi), ngo mu Bugenzacyaha akaba yaremeye ko yari yahawe amafaranga kugira ngo atware igipfunyika nyamara kuri ubu akaba avuga ko yafashwe agihagaze iruhande gusa ategereje nyiracyo warugiye kugura *unités*, ibyo ngo bikaba bigaragaza ko atavugisha ukuri. Buvuga kandi ko nta kosa ryakozwe n'Urukiko mu gutesha agaciro ubuhamya bwa Sebitabi kuko uyu yanditse inyandiko amaze kubona Akayezu ahaniwe gutunda ibiyobyabwenge, ahitamo kubyigerekaho kuko nawe yari asanzwe yarahaniwe iki cyaha, ko ahubwo ibyo yakoze bishimangira ko bari basanzwe bakorana. Bwavuze kandi ko Akayezu adashobora kuvuga ko akwiye guhanirwa gufatanwa ibiyobyabwenge mu gihe avuga ko yasigaye ahagaze hafi y'umutwaro utari uwe, ko ahubwo ari uburyo bwo guhunga icyaha yakoze.

Incamake y'icyemezo: Kuba ingano y'urumogi rwatunzwe iri hejuru cyane n 'ingaruka zabyo zigera ku mubare munini w'abantu, bityo igihano cy'igifungo cy'imyaka 25 n'ihazabu y'amafaranga 20.000.000 Akayezu yahanishijwe mu rubanza rwajuririwe, kikaba kigomba kugumaho.

Ubujurire nta shingiro bufite.

Amategeko yakoreshejwe:
Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 263, igika cya 3 nk'uko yahinduwe n'ingingo ya 11 y'Itegeko N° 69/2019 ryo kuwa 08/11/2019.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rubavu, Ubushinjacyaha bukurikiranyeho Akayezu Théophile icyaha cyo gutunda ibiyobyabwenge byo mu bwoko bw'urumogi, buvuga ko kuwa 05/09/2019, yafashwe afite ibiro 4 by'urumogi yazingiye mu myenda. Akayezu Théophile yaburanye ahakana icyaha cyo gutunda ibiyobyabwenge, avuga ko yemera ko yafatanywe igipfunyika atazi ibikirimo, ko kandi yaragitwaje Nyirakamana.

[2] Urukiko Rwisumbuye rwa Rubavu rwaciye urubanza RP 00520/2019/TGI/RBV kuwa 27/09/2019, ruhamya Akayezu Théophile icyaha cyo gutunda ibiyobyabwenge ndetse rumuhanisha igifungo cya burundu n'ihazabu y'amafaranga 20.000.000.

[3] Mu kumuhamya icyaha, Urukiko rwashingiye ku kuba yaremeye icyaha imbere y'Ubugenzacyaha, no ku buhamya bwa Bosenibamwe Xavier na Bizimana Paul, ibimenyetso bishimangirwa n'inyandikomvugo y'ifatira yo kuwa 05/09/2019 igaragaza ko Akayezu yasinyiye ko afatanywe ibiro bine by'urumogi.

[4] Akayezu Théophile yajuririye Urukiko Rukuru, Urugereko rwa Musanze, avuga ko yahamijwe icyaha atakoze ngo kuko urumogi yafatanywe rutari urwe, ko ahubwo yari yarusigiwe na Nyiramana Olive wari ugiye kugura "unités" zo gushyira muri telefoni, asaba Urukiko kumurenganura kuko atigeze amenya ibyari muri icyo gipfunyika.

[5] Mu rubanza RPA 00508/2019/HC/MUS rwaciwe kuwa 12/08/2020, Urukiko rwemeje ko ubujurire bwa Akayezu Théophile nta shingiro bufite, ko ahamwa n'icyaha cyo gutunda ibiyobyabwenge. Ku birebana n'igihano, Urukiko rushingiye ku kigero cy'imyaka Akayezu afite no kuba ari ubwa mbere aguye mu cyaha, rwamuhanishije igifungo cy'imyaka 25 n'ihazabu y'amafaranga 20.000.000 mu mwanya w'igifungo cya burundu yari yahawe ku rwego rwa mbere.

[6] Akayezu Théophile yajuririye Urukiko rw'Ubujurire avuga ko anenga inkiko zibanza ko zamuhamije icyaha cyo gutunda ibiyobyabwenge kandi yarazigaragarije ko urumogi yafatanywe ari urwa Nyirakamana Olive nawe wari urutwariye SEBITABI, kandi ko uyu nawe (Sebitabi) yabyemeje ubwo yabazwaga mu Rukiko Rukuru, asaba kugirwa umwere. Yavuze ko abamufashe bamusanze ahagaze iruhande rw'iki gipfunyika Nyirakamana yari yamusigiye agiye kugura unités za telefoni.

[7] Ubushinjacyaha bwasubije buvuga ko impamvu y'ubujurire bwa Akayezu nta shingiro ifite kuko mu Bugenzacyaha ndetse no mu Bushinjacyaha yavuze ko yahawe akazi ko gutwaza Nyirakamana igipfunyika atazi ibirimo, akaba yaragombaga guhembwa 500, naho muri uru Rukiko akaba avuga ko abasirikare bamusanze ahagaze iruhande rw'umutwaro wa Nyirakamana warugiye kugura unités za telefoni, ko iri vuguruzanya nta kindi rigamije uretse guhunga icyaha cyo gutunda ibiyobyabwenge, ko ibimenyetso by'ubuhamya byatanzwe atashoboye kubivuguruza bityo ko urubanza yajuririye rwaguma uko rwaciwe.

[8] Iburanisha ryabaye Akayezu Théophile yunganiwe na Me Alex Ndayisabye naho Ubushinjacyaha buhagarariwe na Rudatinya N. Gaspard, Umushinjacyaha ku Rwego rw'Igihugu. Urukiko rurasuzuma niba Akayezu yarahamijwe icyaha atakoze.

II. ISESENGURWA RY'IKIBAZO KIGIZE URUBANZA.

Kumenya niba Akayezu Théophile yarahaniwe icyaha atakoze.

[9] Akayezu Théophile yajuririye Urukiko rw'Ubujurire avuga ko anenga inkiko zibanza ko zamuhamije icyaha cyo gutunda ibiyobyabwenge kandi yarazigaragarije ko urumogi yafatanywe rwari urwa Nyirakamana Olive warumusigiye agiye kugura unités za telefoni, ndetse ko hamwe n'iki gipfunyika hari n'umutwaro w'ibigori bya Nyirakamana, ko Nyirakamana wagombye kubazwa ibirebana n'umutwaro we ahubwo yabajijwe nk'umutangabuhamya umushinja, ko na Sebitabi wari warumutumye nawe yatanze ubuhamya yemera ko urumogi ari urwe kandi ko yari asanzwe akorana na Nyirakamana ariko ubuhamya bwe ntibwahabwa agaciro, ko Nyirakamana yahakanye kuba ibiyobyabwenge byafatiriwe ari ibye kubera ko yari yamaze kumenya igihano kiremereye Akayezu yahanishijwe. Yasabye ko hazasuzumwa ubuhamya bwa Nyirakamana bityo akarenganurwa kuko yahaniwe icyaha atakoze.

[10] Me Alex Ndayisabye wunganira Akayezu yavuze ko uyu yahaniwe icyaha cyo gutunda ibiyobyabwenge nyamara hatagaragajwe uwo yaragiye kurugurisha, icyo yakoresheje arutunda (moto cyangwa imodoka), ko gutunda byagombye kumvikana nk'umutwaro uremereye umuntu ashakira uburyo bwo gutunda (transport). Yakomeje avuga ko Akayezu yagaragaje ko urumogi yafatanywe atari urwe ariko Urukiko rurarenga ruramuhana, arusaba kuzasuzuma imvugo za Nyirakamana. Yavuze kandi ko, mu gihe Akayezu yaramuka ahanwe, yahanirwa icyaha cyo gufatanwa ibiyobyabwenge aho kuba icyo kubitunda, kabone nubwo atari yamenye ko igipfunyika asigaranye kirimo urumogi.

[11] Urukiko rwashatse kumenya impamvu ki Akayezu avuga ko yafashwe ahagaze iruhande rw'igipfunyika cya Nyirakamana warugiye kugura unités za telefoni mu gihe mu Bugenzacyaha yavuze ko yari yahawe ikiguzi cyo gutwaza Nyirakamana hanyuma agafatwa, uyu avuga ko nta kiguzi yahawe. Yabajijwe niba Nyirakamana yaraje gutwara ibigori bye mu gihe urumogi rwajyanwaga kuri polisi asubiza ko nabyo babitwaye kuri polisi.

[12] Ubushinjacyaha bwaburanye buvuga ko Akayezu wafatanywe ibiyobyabwenge (ibiro 4 by'urumogi), mu Bugenzacyaha yemeye ko yari yahawe amafaranga kugira ngo atware igipfunyika nyamara kuri ubu akaba avuga ko yafashwe agihagaze iruhande gusa ategereje nyiracyo warugiye kugura unités, ibyo ngo bikaba bigaragaza ko atavugisha ukuri. Buvuga kandi ko nta kosa ryakozwe n'Urukiko mu gutesha agaciro ubuhamya bwa Sebitabi kuko uyu yanditse

inyandiko amaze kubona Akayezu ahaniwe gutunda ibiyobyabwenge, ahitamo kubyigerekaho kuko nawe yari asanzwe yarahaniwe iki cyaha, ko ahubwo ibyo yakoze bishimangira ko bari basanzwe bakorana. Bwavuze kandi ko Akayezu adashobora kuvuga ko akwiye guhanirwa gufatanwa ibiyobyabwenge mu gihe avuga ko yasigaye ahagaze hafi y'umutwaro utari uwe, ko ahubwo ari uburyo bwo guhunga icyaha yakoze.

[13] Ubushinjacyaha buvuga kandi ko gutunda bidasaba kwifashisha ikinyabiziga, ko ahubwo igihe cyose uvanye ibintu ahantu ubijyana ahandi byitwa kubitunda, hatitawe ku cyakoreshejwe mu kubitunda. Ubushinjacyaha nabwo bwasabye ko imvugo ya Nyirakamana yasuzumwa kuko igaragaza ko Akayezu yari asanzwe acuruza urumogi.

UKO URUKIKO RUBIBONA

[14] Urukiko rurasanga ubujurire bwa Akayezu bugamije kugirwa umwere ku cyaha cyo gutunda ibiyobyabwenge kuko ngo yafashwe ahagaze iruhande rw'igipfunyika cy'urumogi yari asigiwe na Nyirakamana agiye kugura unités, nyamara ngo akaba atari azi ko icyo gipfunyika kirimo urumogi. Ubwunganizi burasaba ko yahanirwa gufatanwa ibiyobyabwenge mu mwanya wo kubitunda.

[15] Urukiko rurasanga, mu kumuhamya icyaha cyo gutunda ibiyobyabwenge, Urukiko Rukuru rwarashingiye ku kuba Akayezu yarafatanywe ibiro 4 by'urumogi yari yazingazingiye mu myenda, uyu akavuga ko yari yahawe amafaranga 500 yo gutwara uyu mutwaro, ariko we akaba yarazi ko atwaye ifumbire.

[16] Urukiko rurasanga, kuwa 05/09/2019 Akayezu yarafatiwe mu nzira nyabagendwa[1], afite ibiro 4 by'urumogi, avuga ko yaratwaje uwitwa Nyirakamana Olive. Rurasanga, uretse we ubivuga, nta wundi muntu uhamya ko urumogi yafatanywe ari urwa Nyirakamana, na Sebitabi waje guhamya mu Rukiko Rukuru ashaka kwigerekaho icyaha nk'uko yari yahamijwe ikindi cyaha cyo gucuruza ibiyobyabwenge, imvugo ye ikaba idashinjura Akayezu kuko kuvuga ko yahaye ibiyobyabwenge Nyirakamana ngo abimutwarire, uyu nawe akabiha Akayezu waje kubifatanwa byaba bivuze ko na Akayezu ari mu runana rw'abakwirakwiza ibiyobyabwenge kabone n'iyo byaba bitari ibye, uruhare rwe rwo kubikwirakwiza akaba arirwo yahaniwe.

[17] Urukiko rurasanga imvugo ya Akayezu ko atamenye ibyo atwaye nta shingiro ifite, kuko nk'umuntu ujijutse wemeye igiciro cyo gutwara igipfunyika kiri mu myenda, atari kubura kumenya ibyo yemeye gutwara kuko nta cyamuzitiraga no kumenya ibyo atwaye, iyi ikaba ari imvugo ishaka guhunga icyaha, ukuri kukaba aruko yarazi ko atwaye urumogi.

[18] Urukiko rurasanga imvugo ya Nyirakamana yabwiye Urukiko Rukuru mu iperereza ryarwo ryo kuwa 01/06/20201 ntacyo irenganura Akayezu kuko, nubwo yemera ko basanzwe baziranye ariko ahakana ko nta kintu yamubikije kuko aho yafatiwe hahabanye kure n'aho Nyirakamana yacuruzaga (iGasizi), rukaba ntaho rwahera ruhamya ko ibiyobyabwenge Akayezu yafatanywe ari ibya Nyirakamana kuko nta kimenyetso kibihamya.

[1] Mu mudugudu wa Gitotonu, Akagari ka Hehu, Umurenge wa Bugeshi mu Karere ka Rubavu.

[19] Urukiko rurasanga imvugo ya Me Alex Ndayisabye yuko gutunda bikorwa hifashishijwe ikinyabiziga nta shingiro ifite, kuko utunda aba avana ikintu ahantu akijyanye ahandi hatitawe ku buryo bwakoreshejwe. Rurasanga nta n'igisobanuro gihamye Me Ndayisabye afite mu kuvuga ko gutunda bireba umutwaro uremereye, ahubwo ibi bikaba bireberwa mu mugambi uri inyuma yo gutunda ariwo w'urwunguko, ari nabyo bihura n'imikorere y'iki cyaha kuko utwaye ibiro 4 by'urumogi nta kindi aba agamije uretse inyungu ivuka mu runana rwo gukwirakwiza ibiyobyabwenge muri rubanda. Rurasanga nta kosa Urukiko Rukuru rwakoze mu kumuhana rushingiye ku gace ka 1° k'igika cya 3 cy'ingingo ya 263[2] y'Itegeko n° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko yahinduwe n'ingingo ya 11 y'Itegeko n° 69/2019 ryo kuwa 08/11/2019.

[20] Urukiko rurasanga, ntaho rwahera ruhindura icyemezo cyafashwe n'Urukiko Rukuru na cyane ko ingano y'urumogi yatunze (4kg) iri hejuru cyane ari nako ingaruka zabyo zigera ku mubare munini w'abantu, bityo igihano cy'igifungo cy'imyaka 25 n'ihazabu y'amafaranga 20.000.000 Akayezu Théophile yahanishijwe mu rubanza RPA 00508/2019/HC/MUS, rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze kuwa 12/08/2020, kikaba kigomba kugumaho.

III. ICYEMEZO CY'URUKIKO

[21] Rwemeje ko ubujurire bwa Akayezu Théophile nta shingiro bufite;

[22] Rwemeje ko imikirize y'urubanza RPA 00508/2019/HC/MUS, rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze kuwa 12/08/2020, igumyeho mu ngingo zayo zose;

[23] Rwemeje ko igihano cy'igifungo cy'imyaka 25 n'ihazabu y'amafaranga 20.000.000 Akayezu Théophile yahanishijwe mu rubanza RPA 00508/2019/HC/MUS kigumyeho;

[24] Rutegetse ko Akayezu Théophile asonerwa amagarama y'Urukiko kuko yaburanye afunzwe.

[2] Uhamwe n'icyaha cyo gutunda ibiyobyabwenge bihambaye ahanishwa igifungo cya burundu n' ihazabu itari munsi y'amafaranga 20.000.000 ariko itarenze amafaranga 30.000.000