UBUSHINJACYAHA v UWIMBABAZI

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00226/2021/CA (Mukamurenzi, P.J.) 22 Nyakanga 2022]

Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Gutanga ibihano – Kuba uregwa yararanzwe no guhindagura imvugo ahunga icyaha byatuma atagabanyirizwa igihano.

Incamake y'ikibazo: Uru Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rubavu, Ubushinjacyaha bukurikiranye uregwa ku cyaha cyo gutunda ibiyobyabwenge byo mu bwoko bw'urumogi, buvuga ko yafatiwe ku mupaka muto bita Petite barrière uhuza u Rwanda na Repubulika iharanira Demokarasi ya Congo, afite urumogi rungana n'udupfunyika 1.010 arwinjiza mu Rwanda. Urwo Rukiko rwaciye urubanza rwemeza ko uregwa ahamwa n'icyaha cyo kubika no gutunda ibiyobyabwenge bihambaye byo mu bwoko bw'urumogi, rumuhanisha igifungo cy'imyaka 20 n'ihazabu 10.000.000 Frw.

Uregwa yajuririye Urukiko Rukuru, Urugereko rwa Musanze, avuga ko yahamijwe icyaha kandi yarakiguyemo atabizi kubera ko yaratwariye umugabo impungure yaraguze muri Repubulika Iharanira Demokarasi ya Congo, ageze aho basakira ku mupaka basanga harimo urumogi, asaba kugabanyirizwa ibihano yahawe no kubisubikirwa kuko atigeze agambirira gukora icyaha. Urwo Rukiko narwo rwaciye urubanza rwemeza ko uregwa atabasha kuvuguruza ibimenyetso Urukiko Rwisumbuye rwa Rubavu rwashingiyeho mu kumuhamya icyaha, rwemeza ko imikirize y'urubanza rwajuririwe idahindutse.

Uregwa yajuririye na none Urukiko rw'Ubujurire, asaba kugabanyirizwa ibihano avuga ko atigeze akwirakwiza ibiyobyabwenge ahubwo yakoreshejwe kubera gushaka imibereho y'abana, asaba no guhabwa ibihano nsimbura gifungo kuko ari ubwa mbere yaraguye mu cyaha.

Ubushinjacyaha bwo bwaburanye buvuga nubwo uregwa avuga ko yemeye icyaha, atigeze acyemera mu buryo budashidikanywaho ngo asobanure n'uburyo yagikoze, n'ibyo asaba byo kugabanyirizwa igihano bikaba nta shingiro byahabwa kuko yagabanyirijwe mu buryo buhagije, busaba ko hagumaho imikirize y'urubanza rwajuririwe.

Incamake y'icyemezo: 1. Kuba uregwa yararanzwe no guhindagura imvugo ahunga icyaha byatuma atagabanyirizwa igihano, bityo nta kigomba guhinduka ku rubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze kuko igihano uregwa yahanishijwe gihuye n'uburemere bw'icyaha yakoze.

Ubujurire nta shingiro bufite.

Amategeko yashingiweho:

Itegeko Nº 69/2019 ryo ku wa 08/11/2019 rihindura Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, Ingingo ya 1 n'iya 11.

Itegeko Nº68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, Ingingo ya 49.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y’URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rubavu, Ubushinjacyaha bukurikiranye kuri Uwimbabazi Phonique icyaha cyo gutunda ibiyobyabwenge byo mu bwoko bw’urumogi, buvuga ko ku wa 22/10/2019 yafatiwe ku mupaka muto bita Petite barrière uhuza u Rwanda na Repubulika iharanira Demokarasi ya Congo, afite urumogi rungana n’udupfunyika 1.010 arwinjiza mu Rwanda.

[2] Uwimbabazi Phonique yaburanye ahakana icyaha aregwa, avuga ko urwo rumogi yari yaruhawe n’umugore wari usigaye muri Repubulika iharanira Demokarasi ya Congo wamubwiye ko ari imisemburo bashyira mu kigage, yemera kuyitwara atazi ko ari urumogi. Urukiko rwaciye urubanza nº RP 00646/2019/TGI/RBV ku wa 14/11/2019, rushingiye ku kuba Uwimbabazi Phonique yemera ko yafatanywe udupfunyika 1.010 tw’urumogi, ku buhamya bwatanzwe na Mukundufite Emeline wamusatse agasanga afite urwo rumogi ndetse no ku nyandiko mvugo y’urumogi rwafatiriwe rungana n’udupfunyika 1.010 Uwimbabazi yashyizeho umukono, rwemeza ko Uwimbabazi Phonique ahamwa n’icyaha cyo kubika no gutunda ibiyobyabwenge bihambaye byo mu bwoko bw’urumogi, rumuhanisha igifungo cy’imyaka 20 n’ihazabu 10.000.000 Frw.

[3] Uwimbabazi Phonique yajuririye Urukiko Rukuru, Urugereko rwa Musanze, avuga ko yahamijwe icyaha kandi yarakiguyemo atabizi kubera ko yaratwariye umugabo impungure yaraguze muri Repubulika Iharanira Demokarasi ya Congo, ageze aho basakira ku mupaka basanga harimo urumogi, asaba kugabanyirizwa ibihano yahawe no kubisubikirwa kuko atigeze agambirira gukora icyaha.

[4] Urukiko Rukuru, Urugereko rwa Musanze, ku wa 30/06/2020 rwaciwe urubanza nº RPA 00001/2020/HC/MUS, rusanga nubwo Uwimbabazi Phonique mu kujurira yavuze ko atari azi ko ibyo atwaye ari urumogi, ariko atabasha kuvuguruza ibimenyetso Urukiko Rwisumbuye rwa Rubavu rwashingiyeho mu kumuhamya icyaha, rwemeza ko ubujurire bwe nta shingiro bufite, ko imikirize y’urubanza rwajuririwe idahindutse.

[5] Uwimbabazi Phonique yajuririye na none Urukiko rw’Ubujurire, asaba kugabanyirizwa ibihano kuko atigeze akwirakwiza ibiyobyabwenge ahubwo yakoreshejwe kubera gushaka imibereho y’abana, asaba no guhabwa ibihano nsimbura gifungo kuko ari ubwa mbere yaraguye mu cyaha.

[6] Uhagarariye Ubushinjacyaha avuga ko nubwo Uwimbabazi Phonique avuga ko yemeye icyaha, atigeze acyemera mu buryo budashidikanywaho ngo asobanure n’uburyo yagikoze, n’ibyo asaba byo kugabanyirizwa igihano bikaba nta shingiro byahabwa kuko yagabanyirijwe mu buryo buhagije, asaba Urukiko rw’Ubujurire kwemeza ko ubujurire bwa Uwimbabazi Phonique nta shingiro bufite, hakagumaho imikirize y’urubanza rwajuririwe.

[7] Urubanza rwaburanishijwe mu ruhame ku wa 08/07/2022, Uwimbabazi Phonique yunganiwe na Me Cyiza Clément, Ubushinjacyaha buhagarariwe na Habimana Jean Cabin, Umushinjacyaha ku rwego rw'Igihugu. Urubanza rupfundikiwe, ababuranyi bamenyeshejwe ko ruzasomwa kuwa 22/07/2022.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

- **Kumenya niba Uwimbabazi Phonique yagabanyirizwa igihano.**

[8] Uwimbabazi yajuriye avuga ko atigeze arushya ubutabera na gato, kuko kuva mu Bugenzacyaha yemeye icyaha anagisabira imbabazi, agasaba kugabanyirizwa ibihano kuko yahawe ibihano birebire kandi yarasize abana babiri umwe akaba yarapfuye undi akaba adafite umwitaho, ko yagiye mu biyobyabwenge kubera ko umugabo yari amaze kumuta kandi ibyamubayeho atigeze abigambirira ahubwo ari umuntu wamuhaye imizigo awutwara atazi ko ari urumogi atwaye, ko yakoreshejwe kubera gushaka imibereho y'abana. Mu iburanisha ry'urubanza yavuze ko yemera icyaha yivuye inyuma kuko mbere yagize abajyanama babi bituma ahakana icyaha, avuga ko bwari ubwa mbere atwaye urumogi, ko yanarwambaye ku mubiri azi neza ko ari rwo kuko yari aruhawe ngo arushyire uwitwa Nsengiyumva Jean Claude.

[9] Me Cyiza Clément wunganira Uwimbabazi Phonique avuga ko yaburanye yemera icyaha ku buryo budashidikanywaho, ariko Urukiko Rukuru rukaba rwaragize imbogamizi yo kumugabanyiriza igihano ngo rujye munsi y'igihano cyateganyijwe n'Itegeko ruvuga ko bitemewe, asaba Urukiko rw'ubujurire ko rwakosora iryo kosa n'izo mbogamizi zagaragajwe n'Urukiko Rukuru, rugashingira no ku rubanza RS/INCOS00003/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 04/12/2019 aho rwasobanuye ko Umucamanza afite uburenganzira bwo kugena ibihano ashingiye ku ngingo ya 49 y'Itegeko nº68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange ivuga ibishingirwaho mu kugenera uregwa igihano.

[10] Akomeza asaba ko mu kugabanyiriza igihano Uwimbabazi hazashingirwa ku rubanza RPAA 00202/2020/CA rwa Havugimana Valens, rwaciwe n'uru Rukiko ku wa 20/05/2022, nawe waregwaga gutunda ibiyobyabwenge, muri urwo rubanza Urukiko rukaba rwaragarutse ku ngingo ya 60 y'Itegeko riteganya ibyaha n'ibihano muri rusange, runashingira ku rubanza RPAA 00032/2019/CA rugaragaza ko guhabwa igihano gito ntarengwa mu gihe hari impamvu nyoroshyacyaha ubwabyo atari ukugabanya igihano. Anasaba ko Urukiko rwazashingira no kuba icyaha Uwimbabazi Phonique yakoze yaragitewe n'inzara no gushakira abana be imibereho kubera ko aba wenyine kandi afite abana arera, rukemeza ko agabanyirizwa igihano harebwe ko icyaha yakoze nta ngaruka cyateje kandi akaba yari asanzwe yitwara neza muri sosiyete.

[11] Uhagarariye Ubushinjacyaha avuga ko ashingiye ku biteganywa n'ingingo za 47, 48 n'iya 60 z'Itegeko nº68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, asanga Urukiko Rwisumbuye rutarubahirije ibivugwa n'izo ngingo kuko rwahanishije Uwimbabazi Phonique igifungo cy'imyaka 20 aho kumuhanisha igifungo cya burundu nyamara ukwemera icyaha kwe kutuzuye kuko atemera icyaha mu buryo budashidikanywaho kubera ko mu miburanire ye yagiye ahindura imvugo ndetse ko no kugabanya igihano bitarakurikije amategeko kuko igihano kitari kujya munsi y'igifungo cy'imyaka 25, ko rero kuba Urukiko Rukuru rutarongeye kukigabanya nta kosa rwakoze.

[12] Anavuga ko urukiko rutashingira ku manza zivugwa n'umwunganira kuko ntaho Urukiko rw'Ikirenga cyangwa Urukiko rw'Ubujurire rwanzuye ko Umucamanza ategetswe kugabanya akajya munsi y'igihano gito giteganywa n'Itegeko, ko nta n'ahantu na hamwe Urukiko rw'Ikirenga rwigeze ruvuga ko ingingo ya 60 y'Itegeko nº 68/2018 ryo kuwa 30/08/2018 ryavuzwe inyuranyije n'Itegeko Nshinga, ko n'urubanza rwa Havugimana bavuga rutashingirwaho kuko imanza zombi zidasa. Asoza avuga ko ibyo bavuze ko icyaha nta ngaruka cyateye atari byo kuko Uwimbabazi Phonique abazwa yivugiye ko atari ubwa mbere acuruje urumogi, byumvikana ko urwo atafatanywe rwagiye mu baturage n'ibyo avuga ko yasize abana asaba ko byashingirwaho nta shingiro kuko atakwitwaza ko yacuruje urumogi kugira ngo arere abana, asaba ko hakagumaho imikirize y'urubanza rwajuririwe.

UKO URUKIKO RUBIBONA

[13] Ingingo ya 49 y'Itegeko Nº 68/2018 ryo ku wa 30/8/2018 ryavuzwe iteganya ko "Umucamanza atanga igihano akurikije uburemere bw'icyaha, ingaruka icyaha cyateye, impamvu zatumye uregwa agikora, uko uwagikoze yari asanzwe yitwara, imibereho ye bwite n'uburyo icyaha cyakozwemo.''

[14] Ingingo ya 11 y'itegeko Nº 69/2019 ryo ku wa 08/11/2019 rihindura Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange 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. Iyo abihamijwe n'Urukiko ahanishwa: 1º igifungo cya burundu n'ihazabu y'amafaranga y'u Rwanda atari munsi ya miliyoni makumyabiri (20.000.000 Frw) ariko atarenze miliyoni mirongo itatu (30.000.000 Frw) ku byerekeye ibiyobyabwenge bihambaye".

[15] Ingingo ya 1, agace ka 1º y'Itegeko nº 69/2019 ryo ku wa 08/11/2019 ihindura ingingo ya 60 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange iteganya ko "Iyo hari impamvu nyoroshyacyaha, ibihano bishobora kugabanywa ku buryo bukurikira: (…) 1º haseguriwe ibiteganywa mu ngingo ya 92 n'iya 133 z'iri tegeko, igihano cyo gufungwa burundu gishobora kugabanywa ariko ntikijye munsi y'imyaka makumyabiri n'itanu (25)".

[16] Ingingo ya 59 agace ka 1o n'aka 3o y'iryo Tegeko yo ikavuga ko: "Umucamanza ashobora kugabanya ibihano nk'iyo ushinjwa, mbere yo gukurikiranwa, yemeye icyaha akagisabira imbabazi uwo yakoreye icyaha n'umuryango nyarwanda mu buryo budashidikanywa, akicuza kandi akishyura ibyo yangije nk'uko bari babimutegerejeho n'iyo mu ntangiriro z'iburanisha ku rwego rwa mbere, ushinjwa yireze akemera icyaha mu buryo budashidikanywa"..

[17] Uwimbabazi Phonique anenga igihano yahanishijwe avuga ko ari kirekire kandi kuva afatwa yaremeye icyaha ataruhanyije, agasaba ko icyo gihano cyagabanywa kuko ari ubwa mbere yari aguye mu cyaha no kugira ngo abashe kujya kwita ku bana yasize. Ubushinjacyaha bwo bukagaragaza ko n'ubwo atemera icyaha ku buryo budashidikanywaho, Urukiko Rwisumbuye rwamugabanyirije igihano kugera munsi y'igihano gito itegeko riteganyiriza icyaha, ko kuba Urukiko Rukuru, urugereko rwa Musanze rutarakigabanyije nta kosa rwakoze.

[18] Urukiko rusanga ikibazo kijyanye no kugabanya igihano Uwimbabazi Phonique yahanishijwe ku rwego rwa mbere cyarasuzumwe n'Urukiko Rukuru, urugereko rwa Musanze aho

rwagaragaje ko Urukiko Rwisumbuye rwa Rubavu rwamugabanyirije igihano kubera ko yaburanye asaba kugabanyirizwa igihano avuga ko atazongera no kuba yarafatiwe mu cyuho, bituma igifungo cya burundu n'ihazabu ya 20.000.000 Frw yari guhabwa kigabanywa kugera ku gifungo cy'imyaka 20 n'ihazabu ya 10.000.00 Frw. Runavuga ko harebwe ibiteganywa n'ingingo ya 60 y'Itegeko No 68/2018 ryo kuwa 30/08/2018 ryavuzwe atahabwa ibihano biri munsi y'ibyo yahawe.

[19] Urukiko rusesenguye imiburanire y' Uwimbabazi Phonique, rukayihuza n'imvugo ze kuva afatwa, rusanga yararanzwe no kugenda ahindagura imvugo agerageza guhunga icyaha kuko abazwa mu Bugenzacyaha yemeye ko acuruza urumogi, ko urwo yafatanywe ari urwe yari akuye muri Congo, avuga ko aruranguza abitwa Nsengiyumva Jean Claude na Habimana Eric, ko ubwa mbere yari yabazaniye urumogi ruke, afatwa ubwo yari asubiye kubazanira urundi naho Ubushinjacyaha bumubajije uburyo yakozemo icyaha avuga ko hari umukongomanikazi wamuhaye akazi ko gutunda urumogi arumuzanira mu Rwanda akamuhemba amafaranga ibihumbi birindwi (7.000 Frw) ariko aburana ku rwego rwa mbere avuga ko urumugi yafatanwe yaruhawe azi ko ari imisemburo bashyira mu kigage, yemera kuyambutsa kubera amafaranga yari yemerewe kandi ko atari asanzwe azi urumogi. Ajuriye mu Rukiko Rukuru, urugereko rwa Musanze ho avuga ko yahamijwe icyaha kandi yarakiguyemo atabizi kubera ko yaratwariye umugabo impungure yaraguze muri Repubulika iharanira Demokarasi ya Congo, ageze ku mupaka aho basakira basanga harimo urumogi.

[20] Urukiko rusanga uku guhindagura imvugo bigaragaza ko ibyo avuga ko yahanishijwe igihano kirekire kandi kuva afatwa yaremeye icyaha ku buryo budashidanywaho, nta shingiro bifite kuko aburana muri uru Rukiko ubwe yivugiye ko yagiye ahakana icyaha abitewe n'abajyanama babi. Kuba rero Urukiko Rukuru, urugereko rwa Musanze rutaramugabanyirije igihano rukaba nta kosa rwakoze kuko yaburanye muri urwo Rukiko atemera icyaha.

[21] Urukiko rusanga mu miburanire ye muri uru Rukiko, Uwimbabazi Phonique avuga ko yemera icyaha yivuye inyuma, asobanura ko yafatanywe urumogi arwambaye, arukuye mu gihugu cya Repubulika iharanira Demokarasi ya Congo, arushyiriye uwitwa Nsengiyumva Jean Claude, kandi ko arutwara yari azi ko ari urumogi, ko bwari n'ubwa mbere arutwaye. Rusanga n'ubwo iyi miburanire ye ifite ibyo ihuriraho n'imvugo ze agifatwa ariko rushingiye ku biteganywa n'ingingo ya 59 agace 1o na 3o y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 ryavuzwe nta cyo yamumarira mu rwego rwo kugabanya igihano kuko ukwemera icyaha kugirira uregwa akamaro ari uko akoze ataratangira gukurikiranwa cyangwa yemeye icyaha mu ntangiriro z'iburanisha ku rwego rwa mbere, akemera icyaha mu buryo budashidikanywaho.

[22] Urukiko rusanga kandi ibisabwa n'umwunganira ko urukiko rwashingira ku rubanza RPAA 00202/2020/CA rwa Havugimana Valens rwaciwe n'Urukiko rw'Ubujurire, uwo yunganira akagabanyirizwa ibihano kuko urwo rubanza rumeze kimwe n'urwe, nabyo nta shingiro byahabwa kuko muri urwo rubanza Havugimana Valens yaburanye yemera icyaha, anasobanura aho yari ajyanye urwo rumogi, mu gihe Uwimbabazi Phonique we yaranzwe no guhindagura imvugo ahunga icyaha.

[23] Urukiko runasanga kandi ibivugwa n' Uwimbabazi Phonique n'umwunganira ko yagabanyirizwa igihano kuko atwara urumogi yagiraga ngo ashakire abana imibereho n'uko icyaha yakoze nta ngaruka cyateje, nabyo nta gaciro byahabwa kuko atari yarabuze undi murimo

yakora watuma abasha kuramira abana be kandi akaba atanavuga ko nta ngaruka icyaha yakoze cyateje mu gihe yinjizaga mu gihugu urumogi aruvanye muri Repubulika iharanira Demokarasi ya Congo kandi n'ubwo urwo yari atwaye uwo munsi rwafashwe rugatwikwa ariko abazwa mu iperereza yagaragaje koatari inshuro ya mbere yambukije urumogi kuko yivugiye ko urwo yazanye bwa mbere yarugurishije ruba ruke, ko afatwa yari asubiye kuzana urundi, bivuze ko urwo yazanye mbere rwakwirakwijwe mu baturage barugura bakarunywa.

[24] Hashingiwe ku bimaza gusobanurwa no ku ngingo z'amategeko zagaragajwe urukiko rw'Ubujurire rusanga ubujurire bwa Uwimbabazi Phonique nta shingiro bufite, hakaba nta kigomba guhinduka ku rubanza N° RPA 00001/2020/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 30/06/2020 kuko igihano yahanishijwe gihuye n'uburemere bw'icyaha yakoze

III. ICYEMEZO CY'URUKIKO

[25] Rwemeje ko ubujurire bwa Uwimbabazi Phonique nta shingiro bufite.

[26] Rwemeje ko urubanza n° RPA 00001/2020/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 30/06/2020 rudahindutse.

[27] Rwemeje ko igihano cy'igifungo cy'imyaka makumyabiri (20) n'ihazabu y'amafaranga miliyoni icumi (10.000.000 Frw) yahanishijwe kigumyeho.

[28] Rutegetse ko asonerwa amagarama y'urubanza kuko aburana afunzwe.