UBUSHINJACYAHA v. KABERUKA N'UNDI

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00024/2020/CA (Rugabirwa, P.J) 17 Nyakanga 2020]

Amategeko agenga ibimenyetso – Raporo ya muganga – Indahiro – N'ubwo amategeko ateganya ko raporo ya muganga igomba kubanzirizwa n'indahiro, ukutabaho kwayo kukagira raporo impfabusa, nta kibuza ko iyo nenge ijyanye n'imyandikire aho kuba ijyanye n'ireme ry'igikorwa yabasha gukosorwa, nk'igihe uwakoze raporo yahamagazwa mu Rukiko akabanza kurahira mbere yo kuyisobanura.

Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko rw'Isumbuye rwa Nyarugenga haregwa Kaberuka na Habiyambere, barega kwica Zirimwabagabo. Urukiko rwemeje ko Kaberuka na Habiyaremye bahamwa n'Icyaha cy'ubwicanyi rubahanisha igifungo cy'imyaka 20 buri wese rubagabanirije igihano kubera ko ari ubwa mbere bari bakoze icyaha ndetse ntayindi myitwarire mibi bazwiho.

Abaregwa bajuririye Urukiko Rukuru rwemeza ko imikirize y'Urukiko rw'Isumbuye idahindutse. Bongeye na none bajuririra Urukiko rw'Ubujurire aho bagaragaje ko bahamijwe icyaha bagahabwa ibihano biremereye kandi batarigeze bakora icyaha baregwa cyane ko abatanga buhamya bashyingiweho nta kuri bavugishije kuko baranzwe no kwivuguruza, ko kandi na raporo y amuganga yashingiweho itahabwa agaciro kuko nta ndahiro ya muganga wayikoze iriho bityo baka basaba Urukiko kubagira abere.

Ubushinjacyaha buvuga ko ubujurire bwabo budahabwa agaciro kuko ibimenyetso byatanzwe bigaragaza ko bakoze icyaha baregwa naho kuri raporo ya muganga bavuga ko itashyingirwaga akaba ataribyo kuko yerekana ukuri kandi yakozwe na muganga wemewe.

Incamake y'icyemezo: 1. N'ubwo amategeko ateganya ko raporo ya muganga igomba kubanzirizwa n'indahiro, ukutabaho kwayo kukagira raporo impfabusa, nta kibuza ko iyo nenge ijyanye n'imyandikire aho kuba ijyanye n'ireme ry'igikorwa yabasha gukosorwa, nk'igihe uwakoze raporo yahamagazwa mu Rukiko akabanza kurahira mbere yo kuyisobanura. Bityo raporo yakozwe na muganga waje guhamagazwa mu Rukiko akarahira akayisobanura ikaba itateshwa agaciro, ahubwo ikaba yashingiweho muguhamya icyaha abarezwe ndetse imikirize y'Urukiko Rukuru ikaba igumyeho.

Ubujurire ntashingiro bufite.
Amagarama y'urubanza aherereye k'isanduku ya Leta.

Amategeko yashingiweho :

Itegeko nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 107 igika cya 3, n'iya 79 igika 1

Itegeko Nº 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 65, 93 igika cya 2 n'iya 119.

'Itegeko – Ngenga nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 97 n'iya 98

Imanza zifashishijwe.

Urubanza nº RPAA 0321/10/CS rwaciwe ku wa 09/06/2017, Ubushinjacyaha buburana na HABIMANA Jean Claude

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Ubushinjacyaha burega Kaberuka Jean Pierre na Habiyambere Alexis kuba barirukanse kuri Zirimwabagabo Emmanuel bakeka ko yabibye ibisheke mu gishanga cya Nyabarongo kugeza ubwo Kaberuka Jean Pierre yamusanze mu kidendezi cy'amazi yo muri icyo gishanga, akakimunigiramo akamwica, akanamuzirika umugozi mu ijosi, akawumusigamo bakigendera, ariko ko abaturage batanze amakuru bituma bafatwa barafungwa. Abaregwa baburanye bahakana icyaha.

[2] Urwo Rukiko rwaciye urubanza RP 00442/2018/NYGE ku wa 30/05/2018, rwemeza ko Kaberuka Jean Pierre na Habiyambere Alexis bahamwa n'icyaha cy'ubwicanyi, rubahanisha igifungo cy'imyaka 20 kuri buri wese rubagabanyirije igihano kubera ko aribwo bwa mbere baguye mu cyaha, no kuba nta yindi myitwarire idasanzwe ibarangwaho.

[3] Kaberuka Jean Pierre na Habiyambere Alexis bajuririye urwo rubanza mu Rukiko Rukuru, ruca urubanza RPA 00670/2018/HC/KIG ku wa 11/01/2019, rwemeza ko imikirize y'urubanza rwajuririwe idahindutse.

[4] Kaberuka Jean Pierre na Habiyambere Alexis bajuririye na none urwo rubanza mu Rukiko rw'Ubujurire, bahakana icyaha, ubujurire bwabo bwandikwa kuri nimero RPAA 00024/2020/CA.

[5] Urubanza rwaburanishijwe mu ruhame ku wa 12/05/2020 no ku wa 25/06/2020, Kaberuka Jean Pierre yunganiwe na Me Nyirihirwe Hilaire, Habiyambere Alexis yunganiwe na Me Mukahiganiro Julienne, naho Ubushinjacyaha buhagarariwe na Rudatinya Gaspard, Umushinjacyaha ku rwego rw'Igihugu.

II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO:

Kumenya niba Urukiko Rukuru rwarakoze amakosa yo guhamya Kaberuka Jean Pierre na Habiyambere Alexis icyaha batakoze

[6] Kaberuka Jean Pierre avuga ko Urukiko Rukuru rwamuhanishije ibihano birebire kandi nta cyaha yakoze. Asobanura ko akiva muri Uganda, we na Habiyambere Alexis, Hitimana na Ndayambaje Jean Claude, bagiye kurya ibisheke aho babirindaga, bagezeyo, babona umuntu wari ubyikoreye, amwirukankaho, asiga Habiyambere Alexis nk'itambwe makumyabiri (20), bageze ahantu hari umwuzure uwo muntu aranyerera, agwa mu kidendezi cy'amazi ya Nyabarongo ahita ayibiramo, ko Habiyambere Alexis yahise amugeraho, maze Kaberuka Jean Pierre amuha telefoni ze ebyiri (2) yari afite bashakisha wa muntu baramubura.

[7] Akomeza asobanura ko nyuma y'aho, Ndayambaje Jean Claude na Hitimana, barindaga ibyo bisheke, baje bakabageraho, maze Kaberuka Jean Pierre na Habiyambere Alexis bababwira ko babuze wa muntu wari ufite ibisheke, noneho bahita bazamuka bahura n'abashinzwe umutekano (DASSO) bababaza aho wa muntu birukankanaga yagiye, bababwira ko yaguye mu mazi, maze abashinzwe umutekano bikira mu kidendezi cy'amazi bakimukuramo yapfuye, naho bo bahita bizamukira baragenda, ariko ko Ndayambaje Jean Claude na Hitimana batabonye Kaberuka Jean Pierre agundagurana na nyakwigendera kubera ko bari basigaye inyuma.

[8] Yongeraho ko nyakwigendera atishwe n'uko yanizwe kuko iyo anigwa atari kumira imyanda igizwe n'imisenyi n'ibyondo, ko ahubwo yari afite ibintu by'imicaca byari byamwizingiye mu ijosi. Asaba imbabazi z'uko yamwirukankanye agapfa atari yagambiriye kumwica, kuko iyo atamwirukankana ataba yarapfuye, ariko ko ntacyo bapfaga kuko batari baziranye.

[9] Me Nyirihirwe Hilaire, umwunganira, avuga ko Urukiko Rukuru rutahaye agaciro ibisobanuro Kaberuka Jean Pierre yaruhaye bigaragaza ko atakoze icyaha kuko yarusobanuriye ko yirukanse kuri nyakwigendera agwa mu cyobo cy'amazi yasizwe na Nyabarongo ararohama, arapfa, ariko ko atari yagambiriye kumwica kuko ntacyo bapfaga bitewe n'uko batari baziranye, ndetse ko nta n'uruhare yagize mu gukora icyaha kubera ko atigeze akora kuri nyakwigendera, uretse ko yamwirukanseho akarusha intera mukuru we Habiyambere Alexis.

[10] Avuga kandi ko hashingiwe ku ngingo ya 165, 110 na 62 z'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, Kaberuka Jean Pierre akwiye kugirwa umwere kubera ko nta kimenyetso kigaragaza ko yakoze icyaha. Asobanura ko imvugo z'abatangabuhamya zashingiweho n'Urukiko Rukuru rumuhamya icyaha zitahabwa agaciro kubera ko zivuguruzanya kuko Ndayambaje Jean Claude na Hitimana bashinje abaregwa mu Bugenzacyaha, ariko bageze mu Rukiko ntibabashinja, kandi ko imvugo za Ndayambaje zitahabwa agaciro kuko avuga ibyo atahagazeho kubera ko yavuze ko ari umwana wo kwa Nzabanita wababwiye ko wa mugabo birukankanye yaguye mu mazi, bikaba byumvikanisha ko ibyo uwo mwana yavuze aribyo yabwiwe na Kaberuka Jean Pierre, naho Hitimana we yavuze ko atazi uko bamwishe, bivuze rero ko hagombaga gukorwa iperereza ry'inyongera kugira ngo hamenyekane ukuri kw'ibyabaye kuko ibimenyetso biri muri dosiye bishidikanywaho.

[11] Avuga na none ko hashingiwe ku ngingo ya 96 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, raporo ya muganga yashingiweho n'Urukiko Rukuru itahabwa agaciro kubera ko itariho indahiro, bityo ko igomba gufatwa nk'itarakozwe n'umuhanga. Avuga ko indi mpamvu ituma iyo raporo itahabwa agaciro, ari uko ivuguruzwa n'Ubushinjacyaha kuko ivuga ko abaregwa bishe nyakwigendera barangije bamuroha mu mazi, naho Ubushinjacyaha bukavuga ko Kaberuka Jean Pierre yasanze Zirimwabagabo Emmanuel mu mazi akamunigiramo, yamara kumwica akamuzirika umugozi mu ijosi, ko mu yandi magambo, Ubushinjacyaha buvuga ko nyakwigendera yiciwe mu mazi, naho raporo ya muganga ikavuga ko yanizwe, nyamara iyo nyakwigendera yicwa mbere y'uko ajugunywa mu mazi, nta kintu na kimwe cyashoboraga kujya mu nda ye kubera ko ingingo ze zose (*organes*) zitari zigikora, ko ndetse n'imvugo z'Ubushinjacyaha ubwazo zitandukanye kubera ko mu Rukiko Rwisumbuye rwa Nyarugenge, Umushinjacyaha yavuze ko Zirimwabagabo yiciwe mu mazi, ariko ko imbere y'uru Rukiko yavuze ko yishwe akajugunywa mu mazi.

[12] Avuga kandi ko raporo ya muganga igaragaza ko hari imigozi ibiri, ndetse ko Kaberuka Jean Pierre yanigishije nyakwigendera umugozi wa gisirikare igihe bari bari mu mazi, nyamara nta mahugurwa ya gisirikare yigeze akora ku buryo yari kunigira nyakwigendera mu mazi yarangiza kumwica akayavamo. Ikindi n'uko uwo mugozi utigeze uboneka kuko utafatiriwe kandi barawusabye kuva ku rwego rwa mbere kugera muri uru Rukiko.

[13] Akomeza asobanura ko nta mugozi Kaberuka Jean Pierre yari afite igihe yirukankanaga nyakwigendera, ko kandi ntacyo bapfaga cyari gutuma amwica kuko atarindaga ibisheke ku buryo yashakaga gushimisha shebuja, ko ahubwo Umuyobozi w'Umudugudu ariwe wategetse abaturage gukura umurambo wa nyakwigendera mu mazi mu buryo busanzwe, ariko ko atari Polisi yakoresheje ikinyamwuga kugira ngo iwukure muri ayo mazi.

[14] Yongeraho ko Kaberuka Jean Pierre yahawe igihano kiremereye cy'imyaka 20 kandi nta kigaragaza ko yakoze icyaha, ko ahubwo akwiye kugirwa umwere kubera ko kuba yarirukankanye nyakwigendera ubwabyo bitagize icyaha.

[15] Mu gusoza, avuga ko imanza zaciwe n'Urukiko rw'Ikirenga (jurisprudence) Ubushinjacyaha bushingiraho imiburanire yabwo zitashingirwaho muri uru rubanza mu gihe hari itegeko rigenga imiburanishirize y'imanza z'inshinjabyaha n'iry'ibimenyetso asobanutse.

[16] Uhagarariye Ubushinjacyaha avuga ko ubujurire bwa Kaberuka Jean Pierre butahabwa agaciro kubera ko atahawe igihano kiremereye harebwe uburemere bw'icyaha cy'ubwicanyi yakoze kuko mu Bugenzacyaha yemeye ko yirukankanye Zirimwabagabo Emmanuel agwa mu kidendezi cy'amazi, akaba yibaza ukuntu yamenye ko nyakwigendera yari afite umusenyi mu nda, ko kandi mukuru we Habiyambere Alexis yavuze ko babonye umuntu, bamwirukankaho, bageze ku kidendezi cy'amazi, Zirimwabagabo Emmanuel akijyamo, Kaberuka Jean Pierre akimusangamo, baragundagurana, banakirwaniramo nk'uko na muganga yabigaragaje muri raporo ye, aho yasobanuye ko *il ya eu une lutte* hagati ya nyakwigendera na Kaberuka Jean Pierre ku buryo uyu yamusize mu mazi akazamuka, ndetse ko uyu yari yabanje guha Habiyambere Alexis telefoni ze ebyiri yari afite kugira ngo azimufashe no kugira ngo abone uko amusanga muri ayo mazi.

[17] Avuga kandi ko uru Rukiko rutashingira ku ngingo ya 110 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, kubera ko iyi ngingo itareba abatangabuhamya nka Ndayambaje Jean Claude, ko ahubwo ireba gusa ababuranyi n'ababunganira. Asobanura ko imvugo Ndayambaje Jean Claude yavugiye mu Bugenzacyaha y'uko KABERUKA Jean Pierre na Habiyambere Alexis birukankanye Zirimwabagabo Emmanuel, bakamukuramo ikoti, maze uyu yikira mu mazi, Kaberuka Jean Pierre akayamusangamo, bakagundaguranira muri ayo mazi ikwiye guhabwa agaciro kuko ihura n'iya Hitimana, ndetse n'iya Habiyambere Alexis. Avuga ko indi mpamvu ituma iyo mvugo ikwiye guhabwa agaciro, ari uko Ndayambaje Jean Claude yayivuze ku ikubitiro atari yagira amarangamutima, bivuze ko iyo yavugiye mu Rukiko itahabwa agaciro kubera ko yari igamije gushinjura abavandimwe be bavukana kuri se na nyina kugira ngo batazaborera muri Gereza.

[18] Akomeza avuga ko raporo ya muganga ikwiye guhabwa agaciro kuko ingingo ya 32 y'Itegeko nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha[1], iteganya iby'indahiro, iteganya gusa ihame ry'uko umuhanga agomba kurahira, ariko ko idateganya ko iyo atarahiye, raporo ye iteshwa agaciro. Asobanura ko kuba raporo ya muganga yavuzwe haruguru itariho indahiro, atari inenge yayitesha agaciro kuko yayikoze abifitiye ububasha, anakoresha *form* cyangwa *formulaire* asanzwe akoresha mu kazi ke, ayirangije, ayiteraho kashe, ndetse ko ibyo bihura n'ibyemejwe mu rubanza RPA 227/2008/CS, rw'Ubushinjacyaha na Sibomana Nathanaël, rwaciwe n'Urukiko rw'Ikirenga ku wa 19/02/2010, aho rwanze gutesha agaciro raporo ya muganga ngo n'uko itariho indahiro.

[19] Akomeza asobanura ko iyo raporo ya muganga itavuga ko zirimwabagabo Emmanuel yaburiye umwuka mu mazi, ko ahubwo ivuga ko yibiye mu mazi yapfuye, kandi ko yanigishijwe umugozi kuko ipfundo ryawo ryagaragaraga ku gikanu, bivuze ko Zirimwabagabo Emmanuel yageze mu mazi akiri muzima, ariko ko yanigishijwe urusinga (*métallique*) ari muri ayo mazi igihe yagundaguranaga na Kaberuka Jean Pierre, arangije kumwica ayamujugunyamo, ariko ko atishwe

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[1] Iyo ngingo iteganya ko "Umugenzacyaha ashobora kwiyambaza impuguke iyo bibaye ngombwa ko iperereza rikorwa ku bibazo risaba ubumenyi bwihariye bw'inzobere. Inzobere yiyambajwe mbere yo gukora imirimo yasabwe igomba kubanza kurahirira ko izafasha ubutabera mu ndahiro ikurikira: «Jyewe …………….. Ndahiriye ko nzakora umurimo nshinzwe ntacyo nirengagije, nkawukora uko ugomba gukorwa nta buhemu. Niba ntawukoze uko bikwiye nzabihanirwe n'amategeko»

n'amazi kubera ko Habiyambere Alexis yavuze muri Polisi ko nyakwigendera yari azi koga, ko kandi atari yanyoye amazi, kuko iyo ayanywa aba yararohamye. Ikindi n'uko Zirimwabagabo Emmanuel atamize imicanga kuko muganga yagaragaje ko yasanze intumbi ya nyakwigendera irimo ibiryo bitari byagogowe n'igifu (*aliments non digérés*).

[20] Yongeraho ko Polisi yasanze abaturage bavanye umurambo wa nyakwigendera mu mazi banawuryamishije ku ruhande ufite umugozi mu ijosi, Umugenzacyaha ahita akora inyandikomvugo (*PV de Constat*) igaragaza uko uwo murambo wari umeze, ariko ko uwo mugozi atari uwo abaturage bakoresheje ubwo bavanaga umurambo wa nyakwigendera mu mazi kuko iyo uba ariwo bakoresheje, baba barawumukuye mu ijosi bamaze kumugeza imusozi, ko kuba batarawumukuyemo, bigaragaza ko batashakaga kuzimangatanya ibimenyetso Polisi itari yahagera.

[21] Habiyambere Alexis avuga ko akwiye kugirwa umwere kubera ko atakoze icyaha. Asobanura ko yari kumwe na Kaberuka Jean Pierre, Ndayambaje Jean Claude na Hitimana igihe babonaga Zirimwabagabo Emmanuel afite ibisheke, ko Kaberuka Jean Pierre yamwirutseho kugeza ubwo nyakwigendera yabijugunye hasi, undi akomeza kumukurikirana, ariko ko Habiyambere Alexis yicaye hasi arya ibyo bisheke, ariko yumvise abaturage bahingaga mu gishanga bavugije induru, yarahagurutse, yirukanka igihe gito cyane ku buryo yasanze Zirimwabagabo Emmanuel yaguye mu kidendezi cy'amazi, naho Kaberuka Jean Pierre ahagaze mu mazi arimo amushakisha yafashwe n'ibyatsi, maze amuhereza telefoni ze ebyiri yari afite, aramukurura, amuvana muri ayo mazi, ko nyuma y'aho, Ndayambaje Jean Claude na Hitimana babagezeho, Ndayambaje Jean Claude abona ikoti rya Zirimwabagabo Emmanuel arikubita mu mazi.

[22] Avuga kandi ko imvugo za Ndayambaje Jean Claude n'iza Hitimana zitahabwa agaciro kubera ko bavuze ibyo batazi bitewe n'uko baje nyuma ye basanga ari kumwe na Kaberuka Jean Pierre, ndetse ko uyu yari mu mazi, ko ahubwo babashinje ibinyoma bagamije kubafungisha kugira ngo batagira icyo babazwa kuko aribo barindaga ibyo bisheke.

[23] Akomeza asobanura ko atigeze avuga ko Zirimwabagabo Emmanuel azi koga kubera ko atamuzi kuko batigeze baturana, ko ahubwo yamubonye bamaze kumurohora mu mazi hakoreshejwe umugozi wari ufitwe n'Umunyegari, uretse ko atawitegereje cyane kuko atibuka uko wasaga.

[24] Me Mukahiganiro Julienne, umwunganira, avuga ko hashingiwe ku ngingo ya 111 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko gushidikanya birengera ushinjwa, Habiyambere Alexis akwiye kugirwa umwere kubera ko atakoze icyaha.

[25] Asobanura ko Habiyambere Alexis atigeze yemera icyaha, kandi ko atagize uruhare mu kwica nyakwigendera kubera ko Kaberuka Jean Pierre atigeze avuga ko bari kumwe igihe yirukankanaga nyakwigendera, ko kuba yarafashije Kaberuka Jean Pierre telefoni ze ebyiri (2) atari ikimenyetso kigaragaza ko yakoze icyaha cy'ubwicanyi, ariko ko Inkiko zabanje zemeje muri rusange ko Habiyambere Alexis yemeye icyaha zinemeza muri rusange ko yafatanyije na Kaberuka Jean Pierre mu gukora icyaha, ariko ko zitagaragaje uruhare rwe bwite yagize mu mikorere yacyo, maze asaba uru Rukiko ko rwakosora ayo makossa yakozwe n'izo Nkiko.

[26] Avuga ko ikindi kigaragaza ko Habiyambere Alexis atakoze icyaha, ari uko yashatse Ubuyobozi bw'Ibanze akanabuha amafaranga yo guhemba abarohoye umurambo wa nyakwigendera mu mazi.

[27] Avuga kandi ko imvugo za Ndayambaje Jean Claude n'iza Hitimana zitahabwa agaciro kubera ko bavuze ibyo batigeze babona, kuko Ndayambaje Jean Claude yasobanuye ko amakuru ya Zirimwabagabo Emmanuel yayabwiwe n'umwana wo kwa Nzabanita wababwiye ko wa mugabo

birukankanye yaguye mu mazi, ndetse ko na Kaberuka Jean Pierre yavuze ko yirukankanye Zirimwabagabo Emmanuel akamucikira mu mazi, yamukurikira muri ayo mazi akamubura, noneho yajya kurohama, Habiyambere Alexis akamukurura akayamuvanamo, bakigendera.

[28] Akomeza asobanura ko nyakwigendera atanigishijwe umugozi kubera ko utafatiriwe, bivuze ko utafatwa nk'ikimenyetso kimushinja mu gihe utafatiriwe kubera ko Ubushinjacyaha butigeze bugaragaza inkomoko yawo kuva mbere hose kugeza muri uru Rukiko, ko ahubwo iyo Ubushinjacyaha bukora iperereza ry'inyongera, buba bwarasanze, umugozi uvugwa muri uru rubanza, ari uwakoreshejwe n'abaturage mu kurohora umurambo wa nyakwigendera mu mazi, aho kuba umugozi yicishijwe.

[29] Avuga ko raporo ya muganga yavuzwe haruguru itafafwa nk'ikimenyetso cya kamarampaka gishinja abaregwa icyaha cy'ubwicanyi kubera ko impamvu yatumye muganga wayikoze atayisinya, ari uko atazi neza icyishe nyakwigendera, bivuze ko igomba gufatwa nk'itarakozwe n'umuhanga. Avuga ko indi mpamvu ituma iyo raporo itahabwa agaciro, ari uko itavugisha ukuri kubera ko abaregwa batishe nyakwigendera, ko ahubwo yishwe n'uko yabuze umwuka igihe yagwaga mu mazi.

[30] Yongeraho ko *jurisprudence* y'Urukiko rw'Ikirenga yatanzwe n'Ubushinjacyaha itashingirwaho muri uru rubanza mu gihe hari itegeko rigenga imiburanishirize y'imanza z'inshinjabyaha n'iry'ibimenyetso asobanutse nk'uko mugenzi we yabisobanuye haruguru.

[31] Uhagarariye Ubushinjacyaha avuga ko ubujurire bwa Habiyambere Alexis butahabwa agaciro kubera ko yakoze icyaha aregwa afatanyije na Kaberuka Jean Pierre kubera ko babonye Zirimwabagabo Emmanuel yikoreye ibisheke bamwirukaho bombi, bamugejeje ku kidendezi cy'amazi, bamwambura ikoti rye, bikaba bigaragaza ko babanje kumufatira kuri icyo kidendezi nk'uko byasobanuwe na Hitimana, noneho Zirimwabagabo Emmanuel abahungira muri icyo kidendezi azi ko batakimusangamo, ariko ko Kaberuka Jean Pierre atashyizwe, ko ahubwo yabwiye Habiyambere Alexis ngo n'amufashe telefoni ze ebyiri (2) yari afite, undi arazimufasha, maze Kaberuka Jean Pierre amusanga muri ayo mazi baragundagurana.

[32] Asobanura ko Habiyambere Alexis yagize uruhare mu rupfu rwa nyakwigendera Zirimwabagabo Emmanuel kubera ko yahagarikiye Kaberuka Jean Pierre ari ku nkombe bituma yikira mu mazi anayiciramo Zirimwabagabo Emmanuel, bivuze ko Habiyambere Alexis yatije Kaberuka Jean Pierre umurindi wo gukora icyo cyaha, ubwo yamufashaga telefoni ze kugira ngo abone uko yikira muri ayo mazi no kugira ngo abone uko ayiciramo Zirimwabagabo Emmanuel kubera ko atigeze amutabariza ubwo yabonaga arimo kugundagurana na Kaberuka Jean Pierre bari muri ayo mazi yamwiciyemo, bivuze ko iyo Habiyambere Alexis adashaka ko Kaberuka Jean Pierre amwica aba yaramubujije kumusanga muri ayo mazi.

[33] Akomeza avuga ko raporo ya muganga yavuzwe haruguru ikwiye guhabwa agaciro kuko itavuga ko nyakwigendera yaburiye umwuka mu mazi, ko ahubwo ivuga ko yajugunywe mu mazi atagifite umwuka, akaba asanga ivugisha ukuri kuko bitumvikana ukuntu Kaberuka Jean Pierre yoze akava muri ayo mazi, ariko Zirimwabagabo Emmanuel akaba yarapfiriye muri ayo mazi kandi Habiyambere Alexis yaravuze ko nyakwigendera yari azi koga.

[34] Asobanura kandi ko imvugo ya Ndayambaje Jean Claude n'iya Hitimana bavugiye mu Bugenzacyaha zikwiye guhabwa agaciro kuko bavuze ibyo biboneye ubwabo, nyamara izo bavugiye mu Rukiko zitahabwa agaciro kubera ko zinyuranyije n'izo bavuze igihe cy'iperereza. Avuga kandi kuba abaregwa batarasobanuye mu buryo bumwe uburyo nyakwigendera yapfuye, kubera ko Kaberuka Jean Pierre avuga ko yirukankanye Zirimwabagabo Emmanuel akanyerera akagwa mu mazi akarohama, naho Habiyambere Alexis bari kumwe icyo gihe, we akavuga ko Kaberuka Jean Pierre yamuhaye telefoni ze ebyiri (2) akamusanga mu mazi, bakagundagurana, byumvikanisha ko

nyakwigendera atarohamye nk'uko na muganga yabigaragaje muri raporo ye, aho yasobanuye ko banize nyakwigendera bagata umurambo we mu mazi.

[35] Yongeraho ko ibimaze gusobanurwa mu gika kibanziriza iki bihuje kandi n'ibyemejwe mu rubanza RPAA0031/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 09/06/2017, Ubushinjacyaha buburana na AIP Bahizi Méthode na PC Hagenimana Jean de Dieu, aho urwo Rukiko rwasobanuye ko imvugo z'abaregwa zitahabwa agaciro kuko zinyuranyije ku bijyanye n'ibyo kurohama mu mazi kwa Kuradusenge Justin kuko iyo biza kubaho batari kubivuga mu buryo butandukanye kandi bari kumwe icyo gihe.

[36] Iburanisha ry'urubanza ryarapfundikiwe, uru Rukiko rutangariza ababuranyi b'impande zombi ko ruzasomwa ku wa 12/06/2020, uwo munsi ugeze, rwaciye urubanza rubanziriza urundu, rwemeza ko mbere yo guca urubanza burundu, ari ngombwa ko muganga, Dr Valens Higiro, wakoze raporo yo ku wa 20/04/2018 ku birebana n'urupfu rwa Zirimwabagabo Emmanuel aza imbere y'uru Rukiko ku wa 25/06/2020, kugira ngo ayisobanure, no kugira ngo ababuranyi b'impande zombi bagire icyo bavuga kuri ibyo bisobanuro.

[37] Kuri iyo tariki, iburanisha ry'urubanza ryasubukuwe ababuranyi b'impande zombi bahari banahagarariwe nka mbere, hari na muganga, Dr Valens Higiro, wasobanuye iyo raporo, maze ababuranyi b'impande zombi bagira icyo bavuga kuri ibyo bisobanuro.

[38] Muganga Valens Higiro amaze kurahira indahiro iteganyijwe mu ngingo ya 93, igika cya 2, y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo[2], yasobanuye raporo ye yavuzwe haruguru, avuga ko iyo umuntu wari muzima apfuye, imitsi y'amaraso ye iguma uko yari imeze mbere, ariko ko yasuzumye umurambo wa nyakwigendera Zirimwabagabo Emmanuel abona amaraso yavuriye mu maso ye, bikaba bigaragaza ko hari icyabuzaga amaraso kumanuka kugira ngo ajye mu mutima we no kugira ngo abone uko akwira umubiri we wose, kandi ko ururimi rwe rwari rwasohotse, bikaba bigaragaza ko hari ikintu cyatumaga arwana no guhumeka, kuko iyo umuntu yanigishijwe umugozi, hari ikimenyetso kigaragarira iburyo cyangwa ibumoso mu ijosi rye, ko ku birebana na nyakwigendera, icyo kimenyetso cyagaragaye iburyo mu ijosi rye kuko hakoreshejwe urusinga (*métallique)* rufite 1,2 cm kuko yarubonye, ndetse ko anarufite kuko rubitse i Kacyiru, bikaba bitandukanye n'uwiyahuye winigishije umugozi, aho icyo kimenyetso kiba kiri hejuru mu ijosi rye. Yongeraho ko urusinga yavuze ari urwakoze kuri nyakwigendera kugira ngo igikorwa kibe, ariko ko atari urwakoreshejwe n'abaturage igihe bamukuraga mu mazi kuko atigeze arubona.

[39] Akomeza asobanura ko igufwa ryo mu muhogo wa nyakwigendera ryari ryangiritse, kandi ko utwanya duto two mu bihaha bye twari twangiritse twanabyimbye bitewe n'uko yasohoraga umwuka mwishi igihe yarwanaga no guhumeka, kuko ubusanzwe iyo umuntu aguye mu mazi ari muzima, amwinjira mu nda kubera ko aba arwana nayo hakajyamo n'imyanda, ariko ko atasanze amazi mu nda ya nyakwigendera, ko ahubwo yayisanzemo ibiryo bike, bivuze ko Zirimwabagabo Emmanuel ashobora kuba yarashyizwe mu mazi atakiri muzima.

[40] Kaberuka Jean Pierre avuga ko atemera raporo ya muganga yavuzwe haruguru, ko ahubwo yibaza impamvu muganga yibutse kurahira, kandi atararahiye igihe yakoraga iyo raporo. Asobanura ko atanigishije nyakwigendera umugozi w'icyuma kuko atari awutunze, asaba muganga ko yawumwereka kuko atigeze awubona. Yongeraho ko atumva ukuntu nyakwigendera Zirimwabagabo Emmanuel yagiye mu mazi yapfuye, maze inda ye ikajyamo imisenyi n'imyanda.

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[2] Ingingo ya 93, igika cya 2, y'Itegeko nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya indahiro iteye itya: « Jyewe ………. ndahiye ko nakoze umurimo nashinzwe ntacyo nirengagije, nywukora uko ugomba gukorwa nta buhemu. Niba ntawukoze uko bikwiye nzabihanirwe n'amategeko »

[41] Me Nyirihirwe Hilaire, wunganira Kaberuka Jean Pierre, avuga ko raporo ya muganga yavuzwe haruguru ikwiye guteshwa agaciro kuko atagaragaje ko Zirimwabagabo Emmanuel yaguye mu mazi ari muzima, ariko ko ari umugozi bamukuruje wamugizeho ingaruka. Avuga ko ikindi kigaragaza ko iyo raporo idafite shingiro, ari uko irimo gushidikanya kubera ko muganga nk'umuhanga wayikoze, yavuze ko Zirimwabagabo Emmanuel ashobora kuba yaranizwe mbere y'uko apfa, ariko ko atabyemeje neza mu buryo budashidikanywaho. Avuga kandi ko muganga yavuze ko amaraso ya nyakwigendera yari yiretse mu maso ye, yirengagiza ko n'ubusanzwe iyo umuntu yapfuye, amaraso ye ataba agitembera mu mubiri we wose, ko ahubwo muganga yagombye kumwereka umugozi yabonye kugira ngo yirebere uko umeze. Nyuma y'aho muganga avugiye ko awufite, avuga ko iburanisha ritahagarara kugira ngo muganga ajye kuwuzana kubera ko ari Ubushinjacyaha bwakagombye kuba bwarawugaragaje igihe bwaregaga kuko aribwo bufite inshingano yo gutanga ibimenyetso. Avuga kandi ko muganga yagombye, mu bisobanuro bye, kuba yatandukanyije umugozi nyakwigendera yanigishijwe n'uwo bamukuruje igihe bamuvanaga mu mazi kuko iyo migozi yombi yamugizeho ingaruka.

[42] Yongeraho ko Kaberuka Jean Pierre yirukanse kuri nyakwigendera, ariko ko atamunigishije umugozi kuko hari ku manywa y'ihangu, ko atumva aho ibiryo muganga yasanze mu nda ya nyakwigendera bihuriye n'urupfu rwe, mu gihe Kaberuka Jean Pierre we avuga ko harimo umusenyi, ko rero hashingiwe ku ngingo ya 165 y'Itegeko Nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko gushidikanya birengera ushinjwa, Kaberuka Jean Pierre akwiye kugirwa umwere kubera gushidikanya.

[43] Habiyambere Alexis avuga ko raporo ya muganga itahabwa agaciro kuko ibimenyetso yatanze biyivuguruza. Asobanura ko umugozi muganga yavuze, ari uwakurujwe umurambo wa nyakwigendera igihe bawuvanaga mu mazi kubera ko yari ahahagaze, ariko ko atabonye uwo yicishijwe. Yongera ko atagize uruhare mu kwica nyakwigendera kubera ko yumvise induru ivuze bavuga ko hari umuntu waguye mu mazi, aragenda, agezeyo, asanga KABERUKA Jean Pierre nawe yayaguyemo, amuhereza ukuboko ayamuvanamo, ariko ko yamubwiye ko na wawundi yirukankanye yayaguyemo.

[44] Me Mukahiganiro Julienne, wunganira Habiyambere Alexis, avuga ko raporo ya muganga itahabwa agaciro kuko kuba amaraso ya nyakwigendera yaravuriye mu mutwe we ntagere mu mutima we, ari ibintu byumvikana kubera ko yaguye mu mazi akabura umwuka.

[45] Avuga ko indi mpamvu ituma iyo raporo itahabwa agaciro, ari uko irimo gushidikanya kubera ko muganga yemera ko Zirimwabagabo Emmanuel yagiye mu mazi ari muzima ngo kuko udutsi duto two mu bihaha bye twari twabyimbye, ubundi akavuga ko yajugunywe mu mazi yapfuye, no kuba rimwe avuga ko yabonye umugozi, ubundi akavuga ko atawubonye, ariko ko asanga muganga atarigeze awubona kubera ko Ubushinjacyaha butigeze buwubona.

[46] Nyuma y'aho muganga avugiye ko afite uwo mugozi, avuga ko iburanisha ritahagarara kugira ngo muganga ajye kuwuzana kubera ko ntacyo waza gufasha uru Rukiko, cyane cyane ko n'Ubushinjacyaha butemera ko uhagera. Asaba uru Rukiko ko rwazashingira ku bimenyetso yarushyikirije bigaragaza ko Habiyambere Alexis atakoze icyaha, rukemeza ko ari umwere, rukanemeza ko uwo mugozi utabayeho kuko yasabye ko hakorwa iperereza, ariko ntiryakorwa.

[47] Uhagarariye Ubushinjacyaha avuga ko raporo ya muganga yavuzwe haruguru ikwiye guhabwa agaciro kuko muganga yasobanuye ko Zirimwabagabo Emmanuel yanizwe kubera ko udutsi two mu maso ye twari twavuriyemo amaraso ku buryo amaraso atashoboraga kumanuka ngo agere mu mutima we, bikaba bitandukanye n'uwapfuye mu buryo busanzwe kuko amaraso ye atajya avurira mu maso ye.

[48] Avuga ko ikindi kigaragaza ko nyakwigendera yanizwe, ari uko muganga yasanze udutsi two mu bihaha bye twari twabimbye, utundi twaturitse, ururimi rwe rwasohotse ruri hagati y'amenyo bikaba bigaragaza ko yarwanaga no guhumeka, kuba umugozi yanigishijwe wari wafashe iburyo bw'ijosi rye, mu gihe nyamara iyo umuntu yimanitse ujyufata hejuru mu ijosi rye, kandi icy'ingenzi akaba ari uko uwo mugozi uhari, ariko ko muganga utawuzana muri uru Rukiko kubera ko abaregwa batawubona bitewe n'uko baburana bari muri Gereza ya Mageragere, aho bafungiye. Ikindi n'uko inda yanyakwigendera itari irimo amazi n'imyanda, ko ahubwo yari irimo ibiryo igifu kitari cyagogoye, bikaba bitandukanye n'uwaguye mu mazi mu buryo busanzwe kuko ajya ayamiragura bakayasanga mu gifu cye hakanajyamo n'imyanda, bivuze rero ko iyo raporo itashidikanywaho kuko muganga yavuze ko nyakwigendera yashyizwe mu mazi yapfuye, iyo mvugo ikaba itandukanye n'iyo abaregwa bavuga ko nyakwigendera yagiye mu mazi akiri muzima.

UKO URUKIKO RUBIBONA

[49] Ingingo ya 107, igika cya 3, y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko Icyakora, iyo icyaha cyabonewe ibimenyetso bikigaragaza, ugikurikiranyweho cyangwa umwunganira ashobora kwerekana impamvu zose yireguza, zerekana ko ikirego kitakwemerwa, zihamya ko icyo aregwa atari icyaha cyangwa se ko ari umwere n'izindi mpamvu zose zivuguruza izimuhamya icyo cyaha[3].

[1] Ingingo ya 119 y'Itegeko nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko «Mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye».

[2] Naho ingingo ya 65 y'Itegeko ryavuzwe haruguru, igateganya ko "Urukiko ni rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa."

[3] Imikirize y'urubanza rwajuririwe muri uru Rukiko, igaragaza ko ibimenyetso Urukiko Rukuru rwashingiyeho ruhamya Kaberuka Jean Pierre na Habiyambere Alexis icyaha cy'ubwicanyi, ari uko raporo ya muganga yo ku wa 20/04/2018, igaragaza ko Zirimwabagabo Emmanuel yaheze umwuka mbere y'uko yibira mu mazi, no kuba ururimi rwe rwari rwasohotse, kandi ko Ndayambaje Jean Claude abashinja ko bamwishe kuko bamwambuye ikote yari yambaye barita mu mazi bamaze kumwica, ndetse ko n'abaregwa bemera ko birukankanye nyakwigendera kugeza ubwo yituraga mu mazi.

[4] Dosiye y'urubanza igaragaza ko mu Bugenzacyaha, Kaberuka Jean Pierre yasobanuye ko yemera icyaha akagisabira imbabazi kubera ko we na Habiyambere Alexis birukankanye Zirimwabagabo Emmanuel akagwa mu mazi, agahita apfa, ariko ntibabivuga. Asobanura kandi ko we na Habiyambere Alexis, ndetse na Ndayambaje Jean Claude birukankanye umuntu wari wikoreye umuba w'ibisheke, bamufatira aho Nyabarongo yamennye amazi, ariko ko uwo muntu yanyereye akagwa mu mazi bamaze kurwana, agapfa. Kaberuka Jean Pierre avuga kandi ko yaguye mu mazi ashaka kuyakuramo Zirimwabagabo Emmanuel kuko yabonaga yapfuye, kandi ko icyo gihe yari kumwe na Habiyambere Alexis, ubundi akavuga ko batashye batamutabarije kuko bari bazi ko azi koga.

[3] Iyo ngingo ihuye n'iya 85, igika cya 3, y'Itegeko nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha yakurikizwaga igihe icyaha cyakorwaga, iteganya ko Ariko, iyo icyaha cyabonewe ibimenyetso bikigaragaza, ugikurikiranywe cyangwa umwunganira agomba kwerekana impamvu zose yireguza, zerekana ko ikirego kitakwemerwa, zihamya ko icyo aregwa atari icyaha cyangwa se ko ari umwere, n'izindi mpamvu zose zivuguruza izimuhamya icyo cyaha

[5] Mu Bugenzacyaha, Habiyambere Alexis avuga ko bagiye kurinda ibisheke ari bane (4), ko Kaberuka Jean Pierre yabonye aho Zirimwabagabo Emmanuel yabishyize, amwirukaho bituma uyu agwa mu mazi, ko Kaberuka Jean Pierre yamuhaye telefoni ze ebyiri (2) arazimufasha, yikira mu mazi atangira kugundagurana no kurwana n'uwari wibye ibisheke, nyuma y'aho, afata ukuboko kwa Kaberuka Jean Pierre amukura mu mazi, ariko abona aje wenyine, ariko ko batanigishije nyakwigendera umugozi, ko ahubwo ari ibintu byari byamwiboheyeho, uretse ko yabonye nyakwigendera atari yabyimbye inda nk'uwari wanyoye amazi.

[6] Na none abatangabuhamya Ndayambaje Jean Claude na Htimana bashinja Kaberuka Jean Pierre na Habiyambere Alexis kuba barishe Zirimwabagabo Emmanuel kubera ko aribo bamwirukankanye kugeza ubwo yageraga ku mazi, bakamwambura ikoti yari yambaye bakarita muri ayo mazi, ko Zirimwabagabo Emmanuel yabahungiye muri ayo mazi, Kaberuka Jean Pierre aha Habiyambere Alexis telefoni ze ebyiri (2) ngo azimufashe kugira ngo abone uko yikira muri ayo mazi, ko Kaberuka Jean Pierre yayikiyemo kugira ngo amurangize, ko yatangiye kugundagurana no kurwanira muri ayo mazi na Zirimwabagabo Emmanuel, maze Kaberuka Jean Pierre ayamwiciramo, arangije, ayamusigamo, maze ajyana na Habiyambere Alexis bahita bigendera badatabaje abaturage kugira ngo bamurohore kubera ko bakekaga ko avuye kwiba ibisheke barindaga.

[7] Muri dosiye hari raporo yo ku wa 20/04/2018 yakozwe na muganga witwa Valens Higiro nk'umuhanga wasuzumye umurambo wa nyakwigendera Zirimwabagabo Emmanuel akimara gupfa, ndetse n'ibisobanuro yahaye uru Rukiko mu iburanisha ryo ku wa 25/06/2020, bigaragaza kandi ko Zirimwabagabo Emmanuel yishwe n'uko yanigishijwe urusinga (*métallique)* kubera ko yaheze umwuka mbere y'uko ashyirwa mu mazi kuko muganga atayasanze mu nda ye, kuba ururimi rwe rwari rwasohotse, no kuba amaraso ya nyakwigendera yari yavuriye mu maso ye**.**

[8] Na none mu nyandikomvuyo ye yo ku wa 18/04/2018, Umugenzacyaha asobanura ko yageze aho umurambo wa nyakwigendera Zirimwabagabo Emmanuel wari uri aho Nyabarongo yamennye amazi, abona ufite umugozi mu ijosi, ko bishoboka ko bamutaye muri ayo mazi bamaze kumuniga.

[9] Hashingiwe ku ngingo z'amategeko no ku bisobanuro byatanzwe haruguru, Urukiko rurasanga Zirimwabagabo Emmanuel atarishwe n'amazi kubera ko muganga atayasanze mu nda ye nk'uko byanemejwe na Habiyambere Alexis mu mvugo ze zavuzwe haruguru, ahubwo yishwe na Kaberuka Jean Pierre amunigishije urusinga (*métallique)* igihe bagundaguranaga bari mu mazi barwaniragamo kuko muganga yasobanuye ko nyakwigendera yaheze umwuka mbere y'uko arohwa mu mazi nk'uko bigaragazwa na raporo ye yo ku wa 20/04/2018 n'ibisobanuro yaruhaye mu iburanisha ryo ku wa 25/06/2020, bikanashimangirwa n'ubuhamya bwa Ndayambaje Jean Claude na Hitimana batangiye mu nzego z'iperereza bwavuzwe haruguru, inyandikomvuyo y'Umugenzacyaha yo ku wa 18/04/2018 yavuzwe haruguru, ndetse n'imvugo za Habiyambere Alexis zavuzwe haruguru, uretse ko yakingiye Kaberuka Jean Pierre ikibaba ubwo yavugaga ko atamwicishije umugozi.

[10] Ku bijyanye n'uruhare rwa Habiyambere Alexis mu mikorere y'icyaha, ingingo ya 97 y'Itegeko – Ngenga Nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga igihe icyaha cyakorwaga, iteganya ko Icyaha kiryozwa uwagikoze, uwafatanyije na we kugikora n'icyitso cye". Naho ingingo ya 98, 2°, y'iryo Tegeko Ngenga, igateganya ko umufatanyacyaha: ni uwafatanyije ku buryo butaziguye n'uwakoze icyaha.

[11] Hashingiwe ku ngingo z'amategeko no ku bisobanuro byatanzwe haruguru, Urukiko rurasanga, kuba Habiyambere Alexis yarirukankanye Zirimwabagabo Emmanuel ari kumwe na KABERUKA Jean Pierre kugeza ubwo bamufatiye ku kidendezi cy'amazi ya Nyabarongo bakanafatanya kumwambura ikoti yari yambaye bakarita muri ayo mazi, barangiza, agafasha KABERUKA Jean Pierre telefoni ze ebyiri

[12] yari afite bigatuma uyu asanga Zirimwabagabo Emmanuel muri ayo mazi yari yabahungiyemo, maze Kaberuka Jean Pierre akamunigisha urusinga yari afite kugeza amwishe, ariko Habiyambere Alexis akaba ataramubujije cyangwa ngo atabarize nyakwigendera kugeza amwishe, bigaragaza ko yafatanyije na Kaberuka Jean Pierre kwica Zirimwabagabo Emmanuel nk'uko bigaragazwa n'ubuhamya bwatanzwe mu Bugenzacyaha na Ndayambaje Jean Claude na Htimana bwavuzwe haruguru, ndetse n'imvugo za Habiyambere Alexis zavuzwe haruguru, usibye ko yagerageje guhunga icyaha ubwo yavugaga ko Kaberuka Jean Pierre aticishije nyakwigendera umugozi.

[13] Hashingiwe ku ngingo ya 65 y'Itegeko ryavuzwe haruguru, Urukiko rurasanga ubuhamya bwatanzwe na Ndayambaje Jean Claude na Hitimana mu nzego z'iperereza bukwiye guhabwa agaciro kuko buhuje kandi barabajijwe batari kumwe, no kuba barabutanze icyaha kikimara kuba batari bashyirwaho igitutu n'imiryango yabo hagamijwe gufunguza Kaberuka Jean Pierre na Habiyambere Alexis.

[14] Urukiko rurasanga kandi raporo ya muganga yo ku wa 20/04/2018 yavuzwe haruguru, itateshwa agaciro n'uko itariho indahiro iteganywa n'ingingo ya 79, igika cya mbere, y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha[4] ryakurikizwaga igihe icyaha cyakorwaga, kubera ko iyo nenge ijyanye n'imyandikire (*vice de forme*), aho kuba ijyanye n'ireme ry'igikorwa (*vice de fond*), ishobora gukosorwa nk'igihe uwakoze iyo raporo yahamagarwa imbere y'uru Rukiko akabanza kurahira mbere yo kuyisobanura nk'uko byakozwe na Dr Valens Higiro, aho mu iburanisha ryabereye muri uru Rukiko ku wa 25/06/2020, yabanje kurahira indahiro iteganywa n'ingingo ya 93, igika cya 2, y'Itegeko nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo[5], mbere y'uko asobanura ibikubiye muri iyo raporo ye.

[15] Ibimaze gusobanurwa mu gika kibanziriza iki bihuje kandi n'ibyemejwe mu manza nyinshi zaciwe n'Urukiko rw'Ikirenga, aho rwemeje ko raporo z'abahanga Rubanzana Wilson na Dusengamungu Cyrille zitagirwa imfabusa n'uko zitariho indahiro[6], kuko uwo muhango utari mo inenge ijyanye n'ireme ry'igikorwa (*nullité pour vice de fond*) ku buryo ibijyanye nawo biteshwa agaciro burundu nta rindi garuriro, ko ahubwo ari inenge ijyanye n'imyandikire (*nullité pour vice de forme*) ishobora gukosorwa n'indahiro noneho ikozwe ku buryo bwubahirije amategeko, maze kugira ngo izo raporo zihabwe agaciro, iburanisha ry'urubanza ryimuriwe ku wa 13/01/2010, kugira ngo hahamagazwe abo baganga bazikoze, uwo munsi ugeze, baritaba banarahira buri wese indahiro iteganywa n'ingingo ya 93 y'Itegeko nº 15/2004 ryo ku wa 12/06/2004 ryavuzwe haruguru, bituma izo raporo zabo zihabwa agaciro. Ibyo bihuje na none n'ibyemejwe mu rubanza RPAA 0321/10/CS rwaciwe ku wa 09/06/2017, Ubushinjacyaha buburana na Habimana Jean Claude, aho Urukiko rw'Ikirenga rwahamagaje muganga Rumanya Liliane, maze mu iburanisha ryo ku wa 15/02/2016, amaze kurahira no gusobanura raporo ye yanengwaga n'abaregwa n'uko itariho indahiro, bituma iyo raporo ihabwa agaciro.

[16] Hakurikijwe ibisobanuro byatanzwe haruguru, Urukiko rurasanga nta kosa Urukiko Rukuru rwakoze ubwo rwemezaga ko KABERUKA Jean Pierre na HABIYAMBERE Alexis bakoze icyaha cy'ubwicanyi nk'uko byasobanuwe haruguru.

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[4] Iyo ngingo iteganya ko mbere yo gutangira imirimo ye, impuguke, umusemuzi, uhindura mu ndimi cyangwa umuganga, abanza kurahira muri aya magambo «Jyewe ……………. Ndahiriye ko nzakora umurimo nshinzwe ntacyo nirengagije, nkawukora uko ugomba gukorwa nta buhemu. Niba ntawukoze uko bikwiye nzabihanirwe n'amategeko.

[5] Iyo ngingo iteganya indahiro iteye itya: « Jyewe…ndahiye ko nakoze umurimo nashinzwe ntacyo nirengagije, nywukora uko ugomba gukorwa nta buhemu. Niba ntawukoze uko bikwiye nzabihanirwe n'amategeko

[6] Iyo ndahiro iteye itya: « Mbere yo gutangira imirimo yabo, impuguke, abasemuzi, abahindura mu ndimi n'abaganga, babanza kurahira ko bazayitunganya kandi bagakora raporo bakurikije umutimanama wabo».

III. ICYEMEZO CY'URUKIKO

[17] Rwemeje ko ubujurire bwa KABERUKA Jean Pierre na HABIYAMBERE Alexis nta shingiro bufite;

[18] Ruvuze ko imikirize y'urubanza RPA 00670/2018/HC/KIG rwaciwe n'Urukiko Rukuru, ku wa 11/01/2019, idahindutse;

[19] Rutegetse ko amagarama y'uru rubanza aherera ku Isanduku ya Leta.