# UBUSHINJACYAHA v. SHUJUN N'ABANDI

[Rwanda URUKIKO RW'UBUJURIRE - RPA 00034/2022/CA (Rukundakuvuga, P.J., Tugireyezu na Umugwaneza, J.) 19 Nzeri 2022]

*Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Gufungwa by'agateganyo – Guhita ufatwa ugafungwa – Guhita ufatwa ugafungwa ntibishobora gushingira ku mpamvu zari zashingiweho mu ifungwa n'ifungurwa ry'agateganyo – Bishingira ku mpamvu nshya iyo hari ibimenyetso bishobora gutuma ugira impungenge ko uregwa ashobora gutoroka*

*Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Isesengura ry'impamvu zumvikana zivugwa mu itegeko - Impamvu zumvikana zishobora gutuma umuntu waburanaga adafunzwe ashobora gusabirwa guhita afatwa agafungwa kabone n'ubwo yajurira zivugwa mu ngingo ya 186 y'itegeko nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, zigomba kuba ari impamvu zitandukanye n'izashingiweho mu cyemezo ku ifunga n'ifungurwa ry'agateganyo kandi zikomeye.*

**Incamake y'icyibazo:** Mu rubanza RP 00504/2021/TGI/KNG, rwaciwe n'Urukiko Rwisumbuye rwa Karongi, rwahamije Shujun Sun na Renzaho Alexis icyaha cy'iyicarubozo ruhanisha Shujun igihano cy'igifungo cy'imyaka 20 naho Renzaho rumuhanisha igihano cy'igifungo cy'imyaka 12 runategeka ko bahita bafatwa bagafungwa kabone n'iyo urubanza rwajuririrwa, rubishingiye ku cyifuzo cy'ubushinjacyaha bwagaragaje mu iburanisha ry'urwo rubanza. Abaregwa bajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Rusizi, buri wese anatanga ikirego kihutirwa muri urwo Rukiko asaba ko icyemezo gitegeka ko bahita bafatwa bagafungwa kabone n'ubwo bajurira, cyavanwaho kuko kinyuranyije n'amategeko, ariko Urukiko Rukuru rwemeza ikirego cyabo cyihutirwa ntashingiro gifite rutegeka ko icyemezo bafatiwe cyo gufungwa bagafungwa kabone n'ubwo bajurira kigumanye agaciro kacyo.

Abaregwa ntibanyuzwe n'icyo cyemezo bakijuririra mu Rukiko rw'Ubujurire. Mu bujurire bwabo, Shujun avuga ko nta mpamvu nshya zaba zaragaragajwe zitandukanye nizatanzwe igihe baburanaga ifungwa ry'agateganya, Urukiko rukemeza ko aburana adafunzwe. Na ho Renzaho we akavuga ko Urukiko Rukuru rutahaye agaciro ko nta mpamvu zimureba ku giti cye zashingiweho Urukiko rutegeka ko afungwa urubanza rutaracibwa burundu. Bombi kandi bahuriza ku kuba Urukiko Rukuru rwarirengagije inenge zigaragara mu gutanga ikirego ku bireba ubusabe bw'uko bafatwa bagafungwa urubanza rutaraba ntakuka, kuko Ubushinjacyaha butabigaragaje mu nyandiko itanga ikirego ngo bunagaragaze impamvu zumvikana rubishingiraho babashe kuzireguraho, bakomeza basobanura ko Urukiko Rukuru rutasesenguye neza ko impamvu zashingiweho n'Urukiko Rwisumbuye rwa Karongi uretse no kuba atari impamvu rwari rwahawe n'Ubushinjacyaha nk'uko itegeko ribiteganya, atari n'impamvu zumvikana kandi zidasanzwe zagombaga gushingirwaho hafatwa icyemezo cy'uko bahita bafatwa bagafungwa.

Ubushinjacyaha bwo bwagaragaje ko ibyo gusaba ko Shujun na Renzaho bafatwa bagafungwa kabone n'ubwo bajurira, bidafite aho bihuriye n'ifunga n'ifungurwa ry'agateganyo ku buryo kuba bari barafunguwe byabuza ko bafatwa bagafungwa. Busobanura kandi ko impamvu zivugwa mu ngingo ya 186 ari impamvu zumvikana, ntaho itegeko riteganya ko zigomba kuba ari nshya kandi zidasanzwe. Impamvu zumvikana Ubushinjacyaha bukavuga ko bwazishyikirije urukiko, busobanura ko bitewe n'uburemere bw'icyaha cy'iyicaruboza baregwaga, Ubushinjacyaha bwasabye ko mu gihe bagihamywa n'Urukiko, bahita bafatwa bagafungwa kuko uburemere bw'igihano cy'icyo cyaha ubwabwo ari impamvu yumvikana yatuma uwagihanishijwe atoroka ubutabera; cyane ko abaregwa bo batari bacyiteze kuko bo baburanye bagaragaza ko icyo bakoze ari ugukubita no gukomeretsa gusa.

**Incamake y'icyemezo:** Impamvu zumvikana zishobora gutuma umuntu waburanaga adafunzwe ashobora gusabirwa guhita afatwa agafungwa kabone n'ubwo yajurira zivugwa mu ngingo ya 186 y'itegeko nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, zigomba kuba ari impamvu zitandukanye n'izashingiweho mu cyemezo ku ifunga n'ifungurwa ry'agateganyo kandi zikomeye. Bityo icyemezo gitegeka ko abaregwa bahita bafatwa bagafungwa cyafashwe mu buryo budakurikije amategeko, kivanywe ho.

**Ubujurire bufite ishingiro.**
**Abaregwa bagomba gukurikiranwa badafunzwe.**

**Amategeko yakoreshejwe:**
Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015 Ingingo ya 29
Itegeko nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 90, 126 na 186.

**Nta manza zifashishijwe.**

**Inyandiko z'abahanga:**
Voir Michel Franchimot, Ann Jacobs an Adren Masset, Manuel de Procédure Pénale, 4édition 2012, pg 726. «… Les cours et les tribunaux peuvent ordonner l'arrestation immédiate sur requisition du ministère public, s'il ya lieu de craindre que le prévenu ou l'accusé ne tente de se soustraire à l'exécution de sa peine. Seul le risque de fuite doit être pris en consideration. La décision doit être motivée sur ce point. »
Henri-D. BOSLY DAMIEN VANDERMEERSCH, droit de la procedure penale, 2e éd 2001, Pg 706 « lorsque la juridiction condamne le prévenu ou l'accusé comparaissant libre à un emprisonment principal d'un an ou à un peine plus grave, san sursis, elle peut ordonner son arrestation immédiate s'il ya lieu de craindre qu'il ne tente de se soustraire à lexécution de la peine. »

## Urubanza

## I. IMITERERE Y'URUBANZA

[1] Mu rubanza RP 00504/2021/TGI/KNG, rwaciwe ku wa 30/03/2022, Urukiko Rwisumbuye rwa Karongi, rwahamije Shujun Sun na Renzaho Alexis icyaha cy'iyicarubozo maze ruhanisha Shujun Sun igihano cy'igifungo cy'imyaka 20 naho Renzaho Alexis rumuhanisha igihano cy'igifungo cy'imyaka cumi n'ibiri. Urukiko kandi rwanategetse ko bahita bafatwa bagafungwa kabone n'iyo urubanza rwajuririrwa, rubishingiye ku cyifuzo cy'ubushinjacyaha bwagaragaje mu iburanisha ry'urwo rubanza;

[2] Shujun Sun na Renzaho Alexis bajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Rusizi, buri wese anatanga ikirego kihutirwa muri urwo Rukiko asaba ko icyemezo gitegeka ko bahita bafatwa bagafungwa kabone n'ubwo bajurira, cyavanwaho kuko kinyuranyije n'amategeko. Ibirego byabo byombi byahurijwe mu kirego kimwe gihabwa n° RP 00004/2022/HC/RSZ-CMB RP 00005/2022/HC/RSZ;

[3] Mu kirego kihutirwa cya Shujun Sun yavugaga ko Urukiko Rwisumbuye rwa Karongi rwafashe icyemezo ku byo rutaregewe, kuko mu nyandiko itanga ikirego, ibijyanye no guhita bafatwa bagafungwa ubushinjacyaha butigeze bubigaragaza mu byo busaba Urukiko. Yavuze kandi ko Urukiko rwategetse ko ahita afatwa agafungwa ntacyo ruvuze ku rubanza rwari rwaramurekuye ku

kirego cy'ifungwa ry'agateganyo cyangwa ngo rushingire ku mpamvu zumvikana kandi zidasanzwe zagaragajwe n'Ubushinjacyaha nk'uko itegeko ribiteganya.

[4] Renzaho Alexis we yavugaga ko Urukiko rwirengagije amategeko, rukishakira impamvu zituma rufata icyemezo gitegeka ko uregwa afatwa agafungwa urubanza rutaraba itegeko (arrestation immédiate), cyane ko mu nyandiko ikubiyemo ikirego cy'Ubushinjacyaha, butigeze bubisaba (arrestation immédiate) ngo banabigaragarize impamvu n'ibimenyetso byazo, ngo nabo babashe kubyireguraho. Yavuze kandi ko Urukiko rwafashe icyemezo gishingiye ku marangamutima kuruta uko gishingiye ku mategeko ndetse ntirwagaragaza n'impamvu bwite zibimureba ku giti cye zatumye rufata kiriya cyemezo.

[5] Mu rubanza kuri icyo kirego kihutirwa abaregera indishyi barugaragayemo basaba ko ubusabe bw'abatanze iki kirego kirimo gusuzumwa butagomba guhabwa ishingiro. Nyuma y'impaka ndende ku kibazo cyo kumenya niba abaregera indishyi bakwiye kuba ababuranyi mu kibazo cy'ifungwa n'ifungurwa ry'abaregwa, Urukiko rwanzuye ko nta mpamvu yatuma abaregera indishyi bagaragara muri urwo rubanza kuko nta nyungu barufitemo bitewe n'uko nta mpaka ku ndishyi zirurimo; rwemeza ko ikirego cyabo cyo kugoboka kitakiriwe.

[6] Mu rubanza RP 00004/2022/HC/RSZ-CMB RP 00005/2022/HC/RSZ rwaciwe ku wa 19/04/2022, Urukiko Rukuru, Urugereko rwa Rusizi rwemeje ko ikirego cya Shujun Sun na Renzaho Alexis nta shingiro gifite. Rwemeza ko icyemezo bafatiwe mu rubanza RP 00504/2021/TGI/KNG rwaciwe n'Urukiko Rwisumbuye rwa Karongi ku wa 30/03/2022 cyo gufungwa kabone n'ubwo bajurira kigumanye agaciro kacyo.

[7] Shujun Sun na Renzaho Alexis ntibanyuzwe n'icyo cyemezo bakijuririra mu Rukiko rw'Ubujurire, ubujurire bwabo bwandikwa kuri n° RPA 00034/2022/CA.

[8] Iburanisha mu ruhame ryashyizwe ku wa 13/09/2022. Uwo munsi, Renzaho Alexis na Shujun Sun bitabye bunganiwe na Me Werabe SAFI Chantal, Me Fred Mugisha na Me Karisiti Ndahiro. Shujun Sun yari kumwe n'umusemuzi we Bwana Uwihoreye Emmanuel. Uyu yabanje kurahirira kuzuza inshingano ze nk'uko biteganywa n'ingingo ya 208 y'itegeko nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha.

[9] Abaregeye indishyi mu rubanza RP 00504/2021/TGI/KNG nabo bitabiriye iryo buranisha, maze basaba kuba ababuranyi muri urwo rubanza. Ibyo babisabye babishingiye ku ngingo ya 153 y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "Iyo bamwe mu baburanyi bajuriye abandi ntibajurire, bitabuza ko bose bahamagarwa mu rubanza rw'ubujurire". Banabisabye kandi babishingiye ku kuba ubwanditsi bw'uru Rukiko bwarabasabye gusubiza ku myanzuro y'abajuriye.

[10] Abahagarariye abaregwa bahise batanga inzitizi bavuga ko abaregera indishyi batagomba kuba muri uru rubanza kuko bataruhamagawemo nk'uko biteganywa n'ingingo ya 153 y' Itegeko ryavuzwe haruguru, kandi bakaba baravanywe mu rubanza rujuririrwa ntibabijuririre. Kuri icyo kibazo Ubushinjacyaha bwavuze ko ntacyabuza ko abaregera indishyi baba ababuranyi muri uru rubanza, ariko ko Urukiko mu bushishozi bwarwo rwabisuzuma.

[11] Urukiko nyuma yo kwiherera, rwasanze icyo ingingo ya 153 yumvikanisha, ari uko ababaye ababuranyi mu rubanza rujuririrwa ari nabo bashobora guhamagarwa mu rubanza mu bujurire. Bityo ko kuba abaregera indishyi baravanywe mu rubanza rujuririrwa, bituma badashobora kuba ababuranyi kuri uru rwego, mu gihe batigeze bajuririra icyemezo cyabakuye mu rubanza ku rwego rubanza.

[12] Urukiko rwasobanuye kandi ko kuba abaregera indishyi barasabwe n'ubwanditsi kugira icyo basubiza ku myanzuro y'abajuriye byari ukwibeshya k'ubwanditsi, ariko ko ibyo ntacyo byabamarira muri uru rubanza mu gihe bigaragara ko batabaye ababuranyi mu rubanza rujuririrwa. Kubera izo mpamvu, Urukiko rwemeje ko abaregera indishyi batari ababuranyi muri uru rubanza, iburanisha rirakomeza.

[13] Mu bujurire bwabo, Shujun Sun ajurira avuga ko nta mpamvu nshya zaba zaragaragajwe zitandukanye nizatanzwe igihe baburanaga ifungwa ry'agateganya, Urukiko rukemeza ko aburana adafunzwe. Na ho Renzaho Alexis we akavuga ko Urukiko Rukuru rutahaye agaciro ko nta mpamvu zimureba ku giti cye zashingiweho Urukiko rutegeka ko afungwa urubanza rutaracibwa burundu. Bombi kandi bahuriza ku kuba Urukiko Rukuru rwarirengagije inenge zigaragara mu gutanga ikirego ku bireba ubusabe bw'uko bafatwa bagafungwa urubanza rutaraba ntakuka, kuko Ubushinjacyaha butabigaragaje mu nyandiko itanga ikirego ngo bunagaragaze impamvu zumvikana rubishingiraho babashe kuzireguraho.

[14] Shujun Sun na Renzaho Alexis banenga kandi kuba Urukiko Rukuru rutarasesenguye neza ko impamvu zashingiweho n'Urukiko Rwisumbuye rwa Karongi uretse no kuba atari impamvu rwari rwahawe n'Ubushinjacyaha nk'uko itegeko ribiteganya, atari n'impamvu zumvikana kandi zidasanzwe zagombaga gushingirwaho hafatwa icyemezo cy'uko bahita bafatwa bagafungwa.

# II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

[15] Muri uru rubanza impaka zishingiye ku nenge zivugwa mu rubanza rujuririrwa abaregwa bagaragaje mu bujurire bwabo. Izo nenge zivugwa ni nazo zigize ibibazo bigomba gusuzumwa, bikurikira:

- Kuba Urukiko Rukuru rwarahaye agaciro icyemezo gitegeka ko bahita bafatwa bagafungwa kandi icyo cyemezo kitaragaragaje impamvu nshya zumvikana kandi zidasanzwe gishingiyeho;
- Kuba abaregwa batarahawe umwanya wo kwiregura ku mpamvu zituma bafatwa bagafungwa kabone n'ubwo bajurira; bakabigaragariza Urukiko Rukuru ariko ntirubihe agaciro;
- Kuba ku bireba Renzaho Alexis nta mpamvu bwite zimureba zatuma afatwa agafungwa zagaragajwe
- Kuba Urukiko rwarashingiye ku kuba Renzaho Alexis yarashatse gutoroka ubutabera kandi nta kimenyetso kibigaragaza n'Urukiko Rukuru, urugereko rwa Rusizi rukabiha agaciro

**1. Kuba Urukiko Rukuru, urugereko rwa Rusizi rutaragaragaje impamvu nshya zumvikana kandi zidasanzwe zatanzwe n'Ubushinjacyaha**

[16] Abaregwa Shujun Sun na Renzaho Alexis hamwe n'ababunganira bavuga ko Urukiko Rukuru/Urugereko rwa Rusizi rutasesenguye neza impamvu bagaragaje mu kirego kihutirwa ijyanye n'uko Urukiko Rwisumbuye rwa Karongi rwafashe icyemezo gitegeka y'uko bahita bafatwa bagafungwa kabone n'iyo bajurira (arrestation immediate) nyamara nta mpamvu nshya zagaragajwe n'Ubushinjacyaha zitandukanye n'izo bwari bwaragaragaje ubwo inkiko zemezaga ko barekurwa bagakurikiranywa badafunzwe.

[17] Abunganira abaregwa bavuga ko Urukiko rwirengagije ingingo ya 90 y'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko "Iyo ukurikiranyweho icyaha afatiwe icyemezo cyo kudafungwa by'agateganyo cyangwa icyo

kutongererwa igihe cy'igifungo, adashobora kongera gufungwa kubera cya cyaha yarezwe, keretse habonetse izindi mpamvu nshya kandi zikomeye zituma agomba gufungwa by'agateganyo". Banenga rero ko Urukiko Rukuru, Urugereko rwa Rusizi, rwahaye agaciro icyemezo gitegeka ko bahita bafatwa bagafungwa kabone n'ubwo bajurira, rwirengagije ko icyaha cy'iyicarubozo bahamijwe n'ubundi cyari mu byo baregwaga ubwo Ubushinjacyaha bwabasabiraga gufungwa by'agateganyo.

[18] Abunganira abaregwa bavuga kandi ko n'impamvu zirimo iz'uburemere bw'icyo cyaha, kimwe n'impungenge z'uko bashobora gutoroka, Urukiko rwashingiyeho rwemeza ko bahita bafatwa bagafungwa, ari nazo mpamvu zari zatumye Ubushinjacyaha bubasabira gukurikiranwa bafunzwe by'agateganyo ariko Urukiko rugategeka ko bafungurwa: Shujun Sun agategekwa kugira ibyo yubahiriza kandi akaba yarabyubahirije uko yabisabwe, naho Renzaho Alexis we akaba yari yafunguwe nta kindi ategetswe. Basanga rero kuba nta mpamvu nshya zatanzwe ngo Ubushinjacyaha bugaragaze impungenge zitewe n'imyitwarire mibi abaregwa bagize nyuma y'aho hafashwe icyemezo cy'uko barekurwa by'agateganyo, ngo bubihereho busaba ko bahita bafatwa bagafungwa nta n'icyari gutuma urukiko rutegeka ko bafatwa bagafungwa urubanza rutaraba ntakuka kandi nta cyahindutse ku byaha baregwa.

[19] Abunganira abaregwa basobanuye kandi ko ibyo bavuga banabishingira ku cyo ifungwa ry'agateganyo kimwe no guhita ufatwa ugafungwa kabone n'ubwo wajurira biba bigamije. Bavuga ko byose ari ibyemezo by'agateganyo bigira ibyo bishingiraho. Impamvu z'ifungwa ry'agateganyo zikaba ziteganyijwe mu ngingo 66 y'itegeko rigenga imiburanishiriza y'imanza nshinjabyaha ryavuzwe haruguru naho ingingo 186 y'iryo tegeko ikavuga ko gufatwa ugafungwa kabone n'ubwo wajurira bishingira ku mpamvu zumvikana zatanzwe n'Ubushinjacyaha. Bakavuga ko rero n'ubwo itegeko ritagaragaje izo mpamvu zumvikana izo ari zo, basanga bishingira gusa ku kuba hari impungenge ko icyemezo cy'Urukiko gishobora kutazashyirwa mu bikorwa mu gihe ukurikiranywa adafunze yahamwa n'icyaha ariko agatoroka ubutabera. Ibyo akabishingira ku nyandiko z'abahanga barimo IRUNGA KANKEKE, mu nyandiko yise "L'execution des mesures d'arrestation immediate'' aho yavuze ko L'arrestation immédiate peut être ordonnée s'il y a lieu de craindre que le condamné ne tente de se soustraire à l'exécution de la peine. »

[20] Ku bijyanye no gutoroka ubutabera byavuzwe n'Ubushinjacyaha abunganira abaregwa, banenga raporo ya Polisi yatanzwe n'Ubushinjacyaha ivuga ko abaregwa bafashwe bagerageza gutoroka kuko uretse n'inenge zijyanye n'uburyo iyo raporo yakozwemo kuko ubwayo idasinye ariko n'ibiyikubiyemo atari ukuri. Ibyo bakabishingira ku kuba nta rwego rw'ibanze rwigeze rugaragaza ko abaregwa bashakiwe aho batuye bakabura cyangwa ngo hagaragazwe ko bigeze basiba akazi ku buryo byatekerezwa ko bari baratorotse, cyane cyane ko Shujun Sun bamufashe bamusanze aho akorera naho Renzaho Alexis akaba ariwe wishyikirije urwego rushinzwe kurangiza imanza zategetse igifungo, nyamara ubwo mugenzi we yafatwaga bari bari kumwe ku kazi.

[21] Ku bijyanye n'Uburemere bw'igihano bahawe nk'impamvu ituma uhita ufatwa ugafungwa kabone n'ubwo wajurira, bavuze ko bitashingirwaho kuko ari ubwa mbere ubushinjacyaha bubivuze. Bavuga ko igihe baburanaga ku rwego rwa mbere bari batarahanishwa igihano icyo ari cyo cyose ku buryo uburemere bw'igihano Ubushinjacyaha bwari kubyitwaza busaba ko bahita bafatwa bagafungwa kabone n'ubwo bajurira. Basobanura kandi ko icyaha bahamijwe, n'ubundi ubwo baburanaga iby'ifungwa ry'agateganyo cyari mu byo baregwaga kandi bari bazi n'igihano giteganyirijwe.

[22] Ubushinjacyaha bwo bwagaragaje ko ibyo gusaba ko Shujun na Renzaho bafatwa bagafungwa kabone n'ubwo bajurira, bidafite aho bihuriye n'ifunga n'ifungurwa ry'agateganyo ku buryo kuba bari barafunguwe byabuza ko bafatwa bagafungwa. Busobanura kandi ko impamvu zivugwa mu ngingo ya 186 ari impamvu zumvikana, ntaho itegeko riteganya ko zigomba kuba ari nshya kandi zidasanzwe.

Impamvu zumvikana Ubushinjacyaha bukavuga ko bwazishyikirije urukiko nk'uko rwazigaragaje mu gika cya 78 cy'urubanza RP 00504/2021/TGI/KNG.

[23] Ubushinjacyaha bukomeza busobanura ko bitewe n'uburemere bw'icyaha cy'iyicaruboza Shujun Sun na Renzaho Alexis baregwaga, Ubushinjacyaha bwasabye ko mu gihe bagihamywa n'Urukiko, bahita bafatwa bagafungwa kuko uburemere bw'igihano cy'icyo cyaha ubwabwo ari impamvu yumvikana yatuma uwagihanishijwe atoroka ubutabera; cyane ko abaregwa bo batari bacyiteze kuko bo baburanye bagaragaza ko icyo bakoze ari ugukubita no gukomeretsa gusa. Naho ibijyanye n'ingingo ya 90 y'itegeko ryavuzwe, abunganira abaregwa bitsitsaho, Ubushinjacyaha buvuga ko bayikoresha aho itagenewe nk'uko Urukiko Rukuru, urugereko rwa Rusizi rwabisobanuye mu gika cya 99 cy'urubanza rujuririrwa.

## UKO URUKIKO RUBIBONA

[24] Urukiko rusanga impaka kuri iyi ngingo zishingiye ku bintu bikurikira:

- Ese impamvu zituma uhita ufatwa ugafungwa kabone n'ubwo wajurira zigomba kuba ari nshya?
- Ese uburemere bw'igihano cyahawe abaregwa ni impamvu yumvikana yatuma bahita bafatwa bagafungwa kabone n'ubwo bajurira?
- Ese abaregwa baba baragerageje gutoroka nyuma y'uko bafungurwa by'agateganyo?

### i. Kumenya niba impamvu zituma umuntu ahita afatwa agafungwa kabone n'ubwo yajurira zigomba kuba ari nshya

[25] Impaka kuri iyi ngingo zishingiye ku kumenya niba impamvu zo guhita ufatwa ugafungwa kabone n'ubwo wajurira zigomba kuba ari nshya, uzigereranyijwe n'izari zashingiweho igihe uregwa yafungurwaga mu rubanza rwerekeye ifungwa n'ifungurwa ry'agateganyo.

[26] Ingingo ya 90 y'itegeko nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko "Iyo ukurikiranyweho icyaha afatiwe icyemezo cyo kudafungwa by'agateganyo cyangwa icyo kutongererwa igihe cy'igifungo, ntashobora kongera gufungwa kubera cya cyaha yarezwe, keretse habonetse izindi mpamvu nshya kandi zikomeye zituma agomba gufungwa by'agateganyo". Na ho ingingo 186 yo ikavuga ko: "Iyo uregwa aburana adafunze, agakatirwa igihano cy'igifungo, akomeza kuburana adafunze iyo yajuririye icyo cyemezo. Icyakora, urukiko rushobora gutegeka ko uwakatiwe waburanye adafunze ahita afatwa agafungwa iyo Ubushinjacyaha bwabitangiye impamvu zumvikana kandi ababuranyi barazigiyeho impaka…"

[27] Izo ngingo zombi zisomewe hamwe zumvikanisha ko uwarekuwe mu ifungwa n'ifungurwa ry'agateganyo adashobora kongera gufungwa by'agateganyo ku cyaha yarezwe keretse habonetse impamvu nshya zikomeye kandi zumvikana. Mu yandi magambo impamvu zumvikana zivugwa mu ngingo ya 186 zigomba kuba ari impamvu zitandukanye n'izashingiweho mu cyemezo ku ifunga n'ifungurwa ry'agateganyo kandi zikomeye. Muri urwo rwego, impamvu zishobora gutuma umuntu waburanaga adafunzwe ashobora gusabirwa guhita afatwa agafungwa kabone n'ubwo yajurira nk'uko bivugwa n'abahanga Michel Franchimont, Ann Jacobs na Adrien Masset ni izijyanye no kuba hari impamvu zituma utinya ko uregwa ashobora gutoroka kandi, iyo mpamvu ari yo yonyine ikwiye gushingirwaho.[1] Ibi kandi babihuriyeho na Henri-D. BOSLY na DAMIEN VANDERMEERSCH.[2]

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[1] Voir Michel Franchimot, Ann Jacobs an Adren Masset, Manuel de Procédure Pénale, 4édition 2012, pg 726. «… *Les cours et les tribunaux peuvent ordonner l'arrestation immédiate sur requisition du ministère public, s'il ya lieu de craindre que le prévenu ou l'accusé ne tente de se soustraire à l'exécution de sa peine. Seul le risque de fuite doit être pris en consideration. La décision doit être motivée sur ce point*. »

[28] Ibi bisobanuro bigaragaza ko Urukiko Rukuru, urugereko rwa Rusizi rutumvise izi ngingo uko bikwiye. Nk'uko bigaraga mu gika cya 99 cy'urubanza rujuririrwa, Urukiko Rukuru Urugereko rwa Rusizi rwavuze ko ingingo ya 90 ababuranyi bayikoresha aho itagenewe, kuko ibiyikubiyemo bikoreshwa mu gihe hagikorwa iperereza urubanza rutarajya mu mizi, ko aribwo uwarekuwe by'agateganyo adashobora kongera gufungwa by'agateganyo keretse mu zindi nzira n'ubundi ziteganywa n'amategeko. Ruvuga ko atariko bimeze muri izi manza kuko ho ari mu mizi aho umuntu n'ubwo yaba yararekuwe by'agateganyo, ashobora gufungwa kabone n'ubwo yajurira, mu gihe Ubushinjacyaha bwabitangiye impamvu zumvikana kandi ababuranyi barazigiyeho impaka, maze rwanzura ko kuri urwo rwego hadasabwa impamvu nshya kandi zikomeye, ahubwo ari impamvu zumvikana kandi zagiweho impaka.

[29] Urukiko rw'Ubujurire rurasanga icyo Urukiko Rukuru, urugereko rwa Rusizi rutumvise ari uko nyuma y'icyemezo ku ifungurwa ry'agateganyo rivugwa mu ngingo ya 90 nta kindi cyemezo gifunga by'agateganyo gishobora kubaho kuri cya cyaha yarezwe keretse habonetse impamvu nshya zikomeye. Izo mpamvu nshya, zikomeye zivugwa ntizishobora kuba impamvu ituma hongera kubaho indi imihango mishya yerekeye ifunga n'ifungurwa ry'agateganyo ahubwo zishobora gusuzumirwa gusa mu buryo buteganywa n'ingingo 186 nk'uko byasobanuwe haruguru. Bitabaye ibyo byaba ari uburyo bwo gutesha agaciro icyemezo cyafashwe cyo gufungura uregwa mu rubanza rwabaye ndakuka rwategetse ko uregwa akurikiranwa adafunze.

[30] Muri uru rubanza abaregwa bafunguwe by'agateganyo mu cyemezo RDPA 00081/2021/TGI/KNG Urukiko rumaze gusuzuma ubusabe bw'ubushinjacyaha bushingiye ku kuba abaregwa bakurikiranweho ibyaha bikomeye birimo iyicarubozo, gukubita no gukomeretsa n'icyo kudatabara umuntu uri mu kaga. Icyo cyemezo cyarekuye Shujun Sun cyimutegeka kugira ibyo yubahiriza birimo gutanga ingwate ya miliyoni icumi, kwitaba ubushinjacyaha inshuro eshatu mu kwezi mu gihe cy'amezi atatu no gufatira passport ye. Renzaho we yarekuwe ntacyo ategetswe kubahiriza.

[31] Mu rubanza RP 00504/2021/TGI/KNG rwaburanishije ikirego mu mizi, Ubushinjacyaha bwasabiye abaregwa ko bahita bafatwa bagafungwa kabone n'ubwo bajurira bubishingiye ku ngingo ya 186. Urukiko rwanzura ko bahita bafatwa bagafungwa kabone n'ubwo bajurira rubishingiye: ku buremere bw'icyaha bahamijwe n'ubugome cyakoranywe, kuba baragikoreye ku karubanda, kuba barabeshye ko Leta yabibahereye uburenganzira no kuba gukomeza kwidegembya kwabo byatuma abaturage batekereza ko Leta ishyigikiye ibikorwa nk'ibyo kandi bikanaha urwuho abandi bashobora gukora ibyaha nk'ibyo.

[32] Kuri iki kibazo, mu rubanza ku kirego kihuta gisaba gukuraho icyemezo cyo guhita bafatwa bagafungwa, Urukiko Rukuru urugereko rwa Rusizi ntirwitaye ku kumenya niba impamvu zashingiweho n'Urukiko rwisumbuye ari impamvu nshya kandi zikomeye, ahubwo rwavuze ko atari ngombwa ko ziba nshya, ko ahubwo icyangombwa ari uko zumvikana kandi zikaba zagiweho impaka.

[33] Uru rukiko rusanga iyo myumvire atari yo nk'uko byasobanuwe mu gika cya 29. Rusanga ahubwo impamvu zashingiweho n'Urukiko Rwisumbuye rwa Karongi zavuzwe mu gika cya 31 atari impamvu nshya kuko zishingiye ahanini ku buremere bw'icyaha n'ubugome cyakoranywe kandi ibyo ari nabyo byari byasuzumwe mu cyemezo kibafungura by'agateganyo, urwo urukiko rugasanga nta mpamvu zatuma bakurikiranywa bafunzwe, ahubwo rukagira icyo rutegeka umwe mu baregwa nk'uko

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[2] Henri-D. BOSLY DAMIEN VANDERMEERSCH, droit de la procedure penale, 2e éd 2001, Pg 706 *« lorsque la juridiction condamne le prévenu ou l'accusé comparaissant libre à un emprisonnement principal d'un an ou à un peine plus grave, san sursis, elle peut ordonner son arrestation immédiate s'il ya lieu de craindre qu'il ne tente de se soustraire à lexécution de la peine.* »

byasobanuwe mu gika cya 30. Kubera izo mpamvu dusanga ibyo Urukiko Rukuru, ururgereko rwa Rusizi rwavuze by'uko atari ngombwa ko impamvu zituma Shujun Sun na Renzaho Alexis bahita bafatwa bagafungwa atari ngombwa ko ziba nshya ugereranyije n'izashingiweho mu ifunga n'ifungurwa ry'agateganyo nta shingiro bifite. Bityo bikaba bigomba gukosorwa kuri uru rwego.

**ii. Kumenya niba uburemere bw'igihano cyahawe abaregwa ari impamvu yumvikana yatuma bahita bafatwa bagafungwa kabone n'ubwo bajurira**

[34] Mu rubanza rujuririrwa mu gika cya 59 Urukiko Rukuru, urugereko rwa Rusizi rwashimangiye impamvu zatanzwe n'Urukiko Rwisumbuye rwa Karongi z'uko kubera uburemere bw'igihano bahawe, baramutse bakukiranywe bari hanze, bashobora gutoroka, bityo ubutabera bwari bugamijwe ntibugerweho. Izo mpamvu ni nazo Ubushinjacyaha bwaburanishije kuri uru rwego busaba ko abaregwa bakomeza gufungwa. Abarega bo bakomeje gusobanura ko, uretse no kuba ibyo byari byaravuzwe mu gihe cy'urubanza ku ifunga n'ifungurwa ry'agateganyo bikaba rero atari bishya, ariko ko n'uburemere bw'igihano bahawe bari basanzwe biteze ko gishoboka kuko ku byaha baregwaga kuva mu ifunga n'ifungurwa ry'agateganyo nta cyahindutse, kandi ibyo byaha bikaba bifite ibihano bizwi biteganywa n'amategeko.

[35] Urukiko rw'Ubujurire rurasanga uburemere bw'icyaha abaregwa bakurikiranwaho buba busanzwe buzwi no mu rubanza ku ifunga n'ifungwa ry'agateganyo, ariko Urukiko rukarenga rugafungura abaregwa ngo bazaburane urubanza badafunze ku mpamvu rwasobanuye. Bityo iyo mpamvu ikaba idashobora kongera gushingirwaho mu rubanza rutegeka ko abaregwa bahita bafatwa bagafungwa nk'uko byasobanuwe mu gika cya 27. Naho ku bijyanye n'uburemere bw'igihano cyatanzwe, Urukiko rusanga nacyo kidashobora gushingirwaho nk'impamvu ituma abaregwa muri uru rubanza bafatwa bagafungwa kabone n'iyo bajurira kuko igihe Ubushinjacyaha bwasabaga ko bahita bafatwa bagafungwa bari bakiburana batarahabwa igihano icyo aricyo cyose. Nk'uko byasobanuwe, uwategetswe gukuriranwa adafunzwe ahsobora gusabirwa guhita afatwa agafungwa gusa, igihe hari ibimenyetso bishya bituma ugira impungenge ko ashobora gutoroka.

**iii. Kumenya niba abaregwa baba baragerageje gutoroka nyuma y'uko bafunguwe by'agateganyo**

[36] Ubwo ubushinjacyaha bwasabaga ko abaregwa bafatwa bagafungwa mu Rukiko Rwisumbuye nta bimenyetso bwatanze bigaragaza ko abaregwa bagerageje gutoroka ubutabera. Ahubwo bwibanze ku kuba icyaha abaregwa bakurikirwanyweho ari icyaha kiremereye, kuba barabeshyeye Leta ko ari yo yabemereye kujya bakubita abaturage babibye no kuba ingingo y'186 ibemerera kubisaba. Ibyo ni nabyo bwagarutseho mu Rukiko Rukuru ariko bunongeraho raporo ya polisi igaragazako Shujun Sun yafashwe agerageza gutoroka naho Renzaho Alexis we akaba yarabuze ngo afungwe kuko yari yabanje gucika. Ibyo akaba ari nabyo ubushinjacyaha bwongeye gushimangira muri uru Rukiko. Abaregwa banenga kuba Urukiko Rukuru, urugereko rwa Rusizi rwarashingiye kuri raporo ya polisi kandi ari bwo bwa mbere yari itanzwe ikaba yari isinye paji imwe ngo ndetse ikaba itavuga ukuri.

[37] Raporo ya polisi iri muri dosiye, igaragaza ko yakozwe taliki ya 19/04/2022, ivuga ko nyuma y'uko rubanza ruciwe polisi yasabwe kujya gufata abaregwa, ifata umushinwa Shujun Sun ari kugerageza gutoroka ariko uwitwa Renzaho Alexis ntiyaboneka kuko yari yamaze gucika.

[38] Uru rukiko rurasanga ibimenyetso byatanzwe mu Rukiko Rukuru bigaragaza ko abaregwa bagerageje gutoroka nk'uko bivugwa mu gika kibanziriza iki, byarashatswe nyuma y'uko ubushinjacyaha bubasabira guhita bafatwa bagafungwa kabone n'ubwo bajurira, mu rubanza RP 00504/2021/TGI/KNG rwaciwe n'Urukiko rwisumbuye rwa Karongi ku wa 30/03/2022. Naho impaka zo kumenya niba ibikubiye muri iyo raporo ari byo cyangwa atari byo, uru rukiko rusanga rutazijyamo kuko ibiyivugwamo bidashobora kuba igisobanuro cy'impamvu zatumye hategekwa ko bahita bafatwa

bagafungwa kabone n’ubwo bajurira, kuko iyo raporo yakozwe nyuma y’uko urubanza rutegeka ko bafungwa rucibwa; bityo gushingira ku biyikubiyemo bikaba nta shingiro bifite.

[39] Uru rukiko rurasanga, hashingiwe ku bisobanuro byatanzwe muri rusange kuri iyi gingo, nta mpamvu nshya zumvikana kandi zidasanzwe zatanzwe n’ubushinjacyaha zatumye Urukiko rukuru, urugereko rwa Rusizi rwemeza ko icyemezo cyo guhita bafatwa bagafungwa cyafashwe n’Urukiko Rwisumbye rwa Karongi gifite ishingiro.

**iv. Kuba abaregwa batarahawe umwanya wo kwiregura ku mpamvu zituma bafatwa bagafungwa kabone n’ubwo bajurira**

[40] Abaregwa bavuga ko Ubwo Ubushinjacyaha bwaregeraga Urukiko Rwisumbuye rwa Karongi, mu nyandiko ikubiyemo ikirego cyabwo butigeze bugaragaza icyifuzo kijyanye n’uko hazafatwa icyemezo gitegeka ko abaregwa bafatwa bagafungwa kabone n’iyo bajurira ndetse ngo bunagaragaze impamvu zabyo. Bavuga ko iyo bikorwa, byari gufasha abaregwa kumenya mbere ibyo baregwa byose, bityo bakabona n’umwanya uhagije wo gutegura ubwiregure bwabo. Icyo cyifuzo Ubushinjacyaha bukaba bwarakigaragaje ubwo bwari bumaze gusobanura ikirego nyirizina cyose bugeze kucyo bwifuza ku birebana n’ibihano bwasabiraga abaregwa.

[41] Abaregwa banenga kandi ko Urukiko Rukuru, Urugereko rwa Rusizi rwirengagije ko Urukiko Rwisumbuye, mu guca urubanza rwahaye ishingiro ubusabe bw’Ubushinjacyaha bwo guhita bafatwa bagafungwa, nyamara rudashingiye ku mpamvu zatanzwe n’Ubushinjacyaha ubwo bwatangaga ubwo busabe, ahubwo Urukiko rushingira icyemezo cyarwo ku mpamvu ubwarwo rwishakiye, zitagiweho impaka n’ababuranyi.

[42] Abunganira abaregwa basobanura ko hirengagijwe ingingo ya 29, igika cya 2 cy’Itegeko Nshinga rya Repubulika y’u Rwanda iha abaregwa uburenganzira bwo kwiregura. Bakavuga ko Urukiko rwagombaga kubona ko icyo ubushinjacyaha busaba ari ikintu cy’ingenzi cyagira ingaruka ku burenganzira bwabo maze rukabaha umwanya wo kugira icyo bakivugaho cy’umwihariko kandi mu buryo burambuye aho kubitwarira hamwe n’urubanza mu mizi.

[43] Bavuga kandi ko ibyo Urukiko Rukuru, urugereko rwa Rusizi rwavuze ko bireguye kuri ubwo busabe atari byo, kuko ibyo bavuzeho ari ibirebana n’urubanza mu mizi. Bavuga ko nk’uko biri mu nyandiko z’iburanisha (iyo ku itariki 03/02/2022 n’iyo ku itariki 04/02/2022), nta hagaragara ibisobanuro by’abaregwa ku mpamvu ubushinjacyaha bushingiraho busaba ko bahita bafatwa bagafungwa kabone n’ iyo bajurira. Bavuga kandi ko n’ibimenyetso ubushinjacyaha bwatanze bubasabira guhita bafatwa bagafungwa birimo nk’urubanza rw’abandi bashinwa bigeze gutoroka ubutabera, bwabitanze mu gicuku urubanza ruburanishwa mu gitondo cyaho, bakaza mu iburanisha batarubonye ngo bagire icyo baruvugaho.

[44] Ubushinjcyaha bwo buvuga ko iyi mpamvu y’ubujurire nta shingiro yahabwa kubera ko ubwo iburanisha ryabaga mu Rukiko Rwisumbuye rwa Karongi, Ubushinjacyaha bwasabye ko bazahita bafatwa bagafungwa ako kanya kabone n’iyo bajurira (arrestation immédiate) kandi bunabitangira impamvu zumvikana nk’uko biteganywa n’ingingo ya 186 igika cya 2 y’itegeko No 027/2019 ryo kuwa 19/09/2019 ryerekeye imiburanishirize y’imanza z’inshinjabyaha.

[45] Ubushinjacyaha buvuga ko ibivugwa n’abaregwa ari ukwigiza nkana kuko no mu Rukiko Rukuru bamwe mu bunganira abarega bavuze ko ibyasabwe n’Ubushinjacyaha bumvaga ari urwenya. Naho, ku kijyanye no kuba impamvu ubushinjacyaha bwatanze atarizo urukiko rwashingiyeho, buvuga ko ataribyo, ko ahubwo impamvu bwatanze ari nazo Urukiko rwashingiyeho. Izo mpamvu zikaba zarimo iz’ububi bw’icyaha cyakozwe mu buryo ndengakamere, aho abaregwa bazirikaga abantu ku biti bakabakubitira ku karubanda, no kuba barabeshyeraga ubuyobozi bw’igihugu ko aribwo

bwahaye Shujun Sun uburenganzira bwo gukubita ibisambo. Ubushinjacyaha bwanagaragaje kandi ko bakomeje gukurikiranwa bari hanze bashobora gutoroka ubutabera.

## UKO URUKIKO RUBIBONA

[46] Ingingo ya 29 igika cya mbere agace ka 1° y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015 iteganywa ko "Buri muntu wese afite uburenganzira ku butabera buboneye, burimo uburenganzira bwo: 1° kumenyeshwa imiterere n'impamvu z'icyaha akurikiranyweho, kwiregura no kunganirwa;" Naho ingingo y'126 igika cya mbere agace ka 3° n'aka 4° y'Itegeko nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha igateganya ko: "imanza z'inshinjabyaha zigomba gushingira ku mahame y'ingenzi akurikira:…3° kubahiriza uburenganzira bwo kwiregura no kugira umwunganizi;4° kubahiriza ihame ry'ivuguruzanya no kureshyeshya uburenganzira bw'ababuranyi imbere y'amategeko;"

[47] Izo ngingo zisomewe hamwe zumvikanisha ko buri muburanyi agomba kumenyeshwa ingingo zose z'urubanza, kuzireguraho no kuzijyaho impaka zivuguruzanya, ko bitabaye ibyo umuburanyi aba avukijwe uburenganzira bwe ku butabera buboneye.

[48] Dosiye y'urubanza igaragaza ko mu rubanza No RP 00504/2021/TGI/KNG, rwaciwe kuwa 30/03/2022, rwategetse ko abaregwa bongera gufungwa kabone n'iyo bajurira rwaciwe n'Urukiko Rwisumbuye rwa Karongi, impaka zagiwe ku birebana n'ingingo z'urubanza mu mizi. Naho ibyo kuba bagomba guhita bafatwa bagafungwa, ubushinjacyaha bwabivuze mu kwanzura bugaragaza icyo busaba Urukiko. Mu gusaba iryo fungwa ariko, Ubushinjcyaha bwasobanuye ko bubishingira ku ngingo 186, k'uburemere bw'icyaha abaregwa bakoze, no ku kuba barabeshyeye Leta ko ari yo yabahaye uburenganzira bwo gukubita abajura. Bigaragara kandi ko abaregwa nabo basubije kuri izo mpamvu, bakavuga ko ubwo busabe butatanzwe mu nyandiko itanga ikirego ngo babwireguremo mu myanzuro yabwo, ko bityo batabutindaho cyane ko nta bimenyetso ubushinjacyaha bwatanze bugaragaza ko koko babeshyeye Leta kandi bukaba nta mpamvu nshya kandi zikomeye butanga zatuma ubwo busabe buhabwa ishingiro.

[49] Uru rukiko rukaba rusanga rero impande zombi zaragiye impaka ku busabe bw'ubushinjacyaha bw'uko abaregwa bahita bafatwa bagafungwa kabone n'ubwo bajurira, ahubwo abaregwa bakaba aribo bahisemo guhina ibisobanuro byabo ku mwanya bahawe. Bityo rero ibyo bavuga kuri iyi ngingo y'ubujurire by'uko babujijwe uburenganzira bwo kwiregura bikaba nta shingiro bifite.

2. **Kuba ku bireba Renzaho Alexis nta mpamvu bwite zimureba zatuma afatwa agafungwa zagaragajwe**

[50] Renzaho Alexis n'umwunganira bavuga ko ubwo yaregeraga Urukiko Rukuru, urugereko rwa Rusizi asaba gukuraho icyemezo cyamufatiwe gitegeka ko ahita afatwa agafungwa kabone n'iyo yajurira, yagaragaje inenge zikubiye muri icyo cyemezo zirimo, kuba Urukiko rwarafashe ibyavugwaga kuri Shujun Sun rukabishingiraho nawe rumufatira icyo cyemezo, nyamara rutaragaragaje aho we ahurira na byo.

[51] Ubushinjacyaha bwavuze ko butanga ikirego cyabwo bwareze Shujun Sun, Renzaho Alexis na Nsanzimana Léonidas nk'abafatanyacyaha b'icyaha cy'iyicarubozo, kandi bose bubasabira guhita bafatwa bagafungwa. Buvuga ko rero ibyo Renzaho Alexis avuga atari ukuri, ubushinjacyaha butari kumusabira gufungwa butagaragaje icyo rubishingiraho. Bukomeza buvuga ko nko mu gika cya 127 cy'urubanza rujuririrwa, Urukiko rwemeje ko hari ibikorwa Renzaho Alexis yagizemo uruhare, ibi kandi bigashimangirwa n'ama videos ari muri syteme (IECMS) agaragaramo, afasha Shujun Sun mu bikorwa by'iyicarubozo. Kuri ibyo, hakiyongeraho ko no mu mvugo z'abatangabuhamya babajijwe

muri iyi dosiye cyane cyane nka Mbarushumugaba David, Ndebaneza Donatien na Katabarwa Felix bigaragara ko uyu Renzaho Alexis nawe yafashaga Shujun Sun gukubita no gukorera iyicarubozo abakekwagaho ubujura ndetse akanabatera ubwoba.

## UKO URUKIKO RUBIBONA

[52] Uru rukiko rurasanga atari ngombwa kwirirwa rusuzuma niba nta mpamvu bwite zireba Renzaho Alexis by'umwihariko zatumye urukiko rutegeka ko ahita afatwa agafungwa kabone n'ubwo yajurira, mu gihe rwamaze kugaragaza mu ngingo zibanza, ko nta mpamvu nshya zagaragajwe zitandukanye n'izari zarashingiweho abaregwa bafungurwa by'agateganyo zatuma abaregwa, na Renzaho Alexis arimo, bafungwa kabone n'ubwo bajurira.

3. **Kuba Urukiko rwarashingiye ku kuba Renzaho Alexis yarashatse gutoroka ubutabera kandi nta kimenyetso kibigaragaza.**

[53] Renzaho Alexis n'umwunganizi we bavuga ko mu gika cya 128 cy'urubanza rujuririrwa, Urukiko Rukuru, urugereko rwa Rusizi rwavuze ko "ubwo Renzaho Alexis yari amaze gufatirwa umwanzuro wo gufungwa by'agateganyo kabone n'ubwo yajurira, atishyikirije inzego zibishinzwe ahubwo yashatswe akabura; nyuma yamara kubona ko nta bundi buryo kandi agomba kuburana urubanza ku kirego yatanze, akaba ari bwo yishyikiriza inzego zishinzwe kurangiza ibyemezo by'inkiko ". Iyi mvugo y'ubushinjacyaha ngo akaba ari yo Urukiko Rukuru, urugreko rwa Rusizi rwashingiyeho rugaragaza ko imyitwarire ya Renzaho Alexis iteye impungenge zo kuba ashobora gutoroka, nyamara nta kimenyetso bwigeze bugaragaza cy'uko Renzaho yihishe cyangwa se cyerekana ko bamushakiye aho abarizwa bakamubura.

[54] Ubushinjacyaha buvuga ko ibyo Renzaho Alexis avuga atari ko biri kuko nyuma y'uko afatiwe icyemezo kimufunga, yabanje kwihisha aburirwa irengero. Bukomeza buvuga ko nyuma yaje kubona ko nta bundi buryo yaburana ikirego yatanze kandi atari aho Urukiko rwemeje ko agomba kuba ari, bituma yemera kwigaragaza kugirango abone uko aburana. Buvuga ko ibyo kubura kwe bishimangirwa na raporo y'inzego z 'umutekano iri muri dosiye nayo yemeje ko yashatswe ngo hubahirizwe icyemezo cy'Urukiko akabura. Akaba nta bushake yagize bwo kwijyana muri gereza ngo afungwe nk'uko abivuga.

## UKO URUKIKO RUBIBONA

[55] Uru rukiko rusanga nk'uko rwabisobanuye mu gika cya 38 cy'uru rubanza, ibyo kuba Renzaho Alexis yarashatswe akabura kugira ngo hashyirwe mu bikorwa icyemezo cyategetse ko ahita afatwa agafungwa bidashobora kuba igisobanuro cy'impamvu zatumye Urukiko Rukuru urugereko rwa Rusizi rwemeza ko icyemezo gitegeka ko ahita afatwa agafungwa gifite ishingiro. Koko rero ibyo kubura kwe bivugwa n'ubushinjacyaha n'iyo byaba byarabaye, byaba byarabaye nyuma y'ifatwa ry'icyemezo cyategetse ko ahita afatwa agafungwa, bikaba bidashobora rero kuba impamvu yatumye hafatwa icyo cyemezo.

[56] Urukiko rusanga rero icyemezo cyafashwe n'Urukiko rwisumbuye rwa Karongi mu rubanza RP 00504/2021/TGI/KNG, rwaciwe kuwa 30/03/2022 rwemeje ko Shujun Sun na Renzaho Alexi bahita bafatwa bagafungwa ndetse kigashimangirwa n'Urukiko Rukuru urugereko rwa Rusizi, cyarafashwe mu buryo budakurikije amategeko ku ngingo zimwe zagaragajwe, bityo cyikaba kigomba kuvanwaho.

## III. ICYEMEZO CY'URUKIKO

[57] Rwemeje ko ubujurire bwa Shujun Sun na Renzaho Alexis bufite ishingiro kuri bimwe.

[58] Rwemeje ko icyemezo cyafashwe n'Urukiko Rukuru urugereko rwa Rusizi mu rubanza no RP/00004/2022/HC/RSZ-CMB RP/00005/2022/HC/RSZ gitegeka ko Shujun Sun na Renzaho Alexis bakomeza gufungwa gihindutse;

[59] Rutegetse ko Shujun Sun na Renzaho Alexis barekurwa, bagakurikiranwa badafunzwe; Shujun Sun agakomeza kubahiriza ibyo yari yategetswe mu cyemezo RDPA 00081/2021/TGI/KNG cyamufunguye by'agateganyo.

[60] Ni uko rukijijwe kandi rusomewe mu ruhame, none ku wa 19/Nzeri/2022.