UBUSHINJACYAHA v. TURIMUBYIZA

[Rwanda URUKIKO RW'UBUJURIRE - RPAA 00221/2021/CA (Gakwaya, P. J.) 19 Nzeri 2022]

Amategeko agenga imanza z'inshinjabyaha – Impamvu nyoroshyacyaha – Igabanyagihano rishingiye kumpamvu nyoroshyacyaha - Ihame ry'amategeko ku birebana n'impamvu nyoroshyacyaha, ni uko ubugome bw'icyaha butabuza Urukiko kwemeza impamvu nyoroshyacyaha no kugabanya igihano, ariko mu bushishozi bwarwo, n'ubwo hari impamvu nyoroshyacyaha, rushobora kwanga kugabanyiriza uregwa igihano mu gihe rusanga uburemere bw'icyaha yakoze n'ubugome cyakoranywe buruta kure impamvu nyoroshyacyaha ziri mu nyungu ze.

Incamake y'icyibazo: Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rubavu, Ubushinjacyaha bukurikiranyeho Turimubyiza Jean Népo icyaha cy'ubwicanyi, busobanura ko uregwa yashwanye n'umugore we witwa Ntabanganyimana Domitile babanaga batarasezeranye imbere y'amategeko, mu ijoro bamaze kuryama aramuniga kugeza apfuye. Uregwa yaburanye yemera icyaha, asobanura ko yanize umugore we kugeza apfuye abitewe n'uko atari yatetse ngo amugaburire, asaba imbabazi no kugabanyirizwa ibihano, urukiko rwemeza ko ahamwa n'icyaha cy'ubwicanyi, rumuhanisha igifungo cya burundu, ajuririra Urukiko Rukuru, Urugereko rwa Musanze, avuga ko akomeje gutakamba no gusaba imbabazi, kugira ngo agabanyirizwe igihano. Urukiko Rukuru rwemeza ko ubujurire bwe nta shingiro bufite, rwemeza ko imikirize y'urubanza yajuririye igumyeho.

Uregwa ntiyishimiye imikirize y'urubanza, ajuririra Urukiko rw'Ubujurire avuga ko asaba kugabanyirizwa igihano kuko icyaha cyo kwica Ntabanganyimana Domitile, umugore we babanaga batarasezeranye imbere y'amategeko, yagitewe n'uburwayi bw'amashitani asanganywe, atererezwa nabo mu miryango, agasobanura ko we n'umugore we bari bamaze igihe kigera ku kwezi kumwe batabana, ko yageze mu rugo, mu gihe cyo kuryama, batongana n'umugore, bigatuma amuniga kugeza apfuye, akaba asaba Urukiko kumugabanyiriza igihano. Avuga kandi ko bari bamaranye n'umugore we (Ntabanganyimana Domitile) ukwezi kumwe n'icyumweru babana, ko ariko akimara kumubwira ko hari undi mugabo bari barasezeranye, yahise ava mu rugo aragenda, akajya arara ahantu hatandukanye, agaruka mu rugo aje kumwica. Mu iburanisha Ubushinjacyaha bwasobanuye ko nta kwemera no kwicuza icyaha guhari kuri Turimubyiza Jean Népo, mu gihe yisobanura avuga ko icyaha yakoze atari akigambiriye, ko uretse n'ibyo kandi niyo haba hari izo mpamvu nyoroshyacyaha, Umucamanza adategetswe kuzishingiraho agabanya igihano, ko ndetse mu gace ka cyenda (9) k'urubanza rujuririrwa ariko Urukiko Rukuru, Urugereko rwa Musanze rwabisobanuye, ko kandi kuba yaranize umugore we kugeza apfuye, bigaragaza ubugome bukabije yabikoranye, ibyo bikaba bitatuma agabanyirizwa igihano n'ubwo yaba yemera icyaha, ndetse kuba yarabikoze afite imyaka makumyabiri (20) y'amavuko, bigaragaza ko ari umuntu mubi kuri sosiyete, naho ibyo yireguza avuga ko yakoze icyaha abitewe n'uburwayi bwo mu mutwe, nta gaciro byahabwa kuko nta cyemezo cyo kwa muganga abigaragariza, ko ahubwo mbere abazwa yavuze ko yamwishe amuhoye ko yari asanze atatetse ngo amugaburire. Busoza busaba uru Rukiko kwemeza ko urubanza rujuririrwa rudahindutse.

Incamake y'icyemezo: Ihame ry'amategeko ku birebana n'impamvu nyoroshyacyaha, ni uko ubugome bw'icyaha butabuza Urukiko kwemeza impamvu nyoroshyacyaha no kugabanya igihano, ariko mu bushishozi bwarwo, n'ubwo hari impamvu nyoroshyacyaha, rushobora kwanga kugabanyiriza uregwa igihano mu gihe rusanga uburemere bw'icyaha yakoze n'ubugome cyakoranywe buruta kure impamvu nyoroshyacyaha ziri mu nyungu ze. Bityo Turimubyiza Jean Népo ntakwiriye kugabanyirizwa igihano kubera ubugome yakoranye icyaha cyo kuniga umugore we kugeza apfuye,

Ubujurire nta shingiro bufite.

Amategeko yakoreshejwe:

Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, ingingo zaryo za 49 na 58

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rubavu, Ubushinjacyaha bukurikiranyeho Turimubyiza Jean Népo icyaha cy'ubwicanyi, busobanura ko mu ijoro ryo ku wa 15/10/2019, yashwanye n'umugore we witwa Ntabanganyimana Domitile babanaga batarasezeranye imbere y'amategeko, bamaze kuryama aramuniga kugeza apfuye. Turimubyiza Jean Népo yaburanye yemera icyaha, asobanura ko yanize umugore we kugeza apfuye abitewe n'uko atari yatetse ngo amugaburire, asaba imbabazi no kugabanyirizwa ibihano.

[2] Mu rubanza n° RP 00643/2019/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa Rubavu ku wa 6/12/2019, rushingiye ku kwemera icyaha kwa Turimubyiza Jean Népo n'imvugo z'abatangabuhamya batandukanye bamushinja, rwemeje ko ahamwa n'icyaha cy'ubwicanyi, rumuhanisha igifungo cya burundu.

[3] Turimubyiza Jean Népo ntiyishimiye imikirize y'urubanza, ajuririra Urukiko Rukuru, Urugereko rwa Musanze, avuga ko akomeje gutakamba no gusaba imbabazi, kugira ngo agabanyirizwe igihano.

[4] Mu rubanza n° RPA 00044/2020/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 20/10/2020, rwemeje ko ubujurire bwa Turimubyiza Jean Népo nta shingiro bufite, rwemeza ko imikirize y'urubanza yajuririye igumyeho.

[5] Turimubyiza Jean Népo ntiyishimiye imikirize y'urubanza, ajuririra Urukiko rw'Ubujurire ku wa 26/10/2020, avuga ko asaba kugabanyirizwa igihano kuko icyaha cyo kwica Ntabanganyimana Domitile, umugore we babanaga batarasezeranye imbere y'amategeko, yagitewe n'uburwayi bw'amashitani asanganywe, atererezwa nabo mu miryango.

[6] Urubanza rwaburanishijwe mu mizi ku wa 6/9/2022, Turimubyiza Jean Népo yunganirwa na Me Muhire Jean-Marie Eugène, Ubushinjacyaha buhagarariwe na Ninahazwa Roselyne, Umushinjacyaha ku rwego rw'Igihugu. Mu gihe cy'iburanisha, Turimubyiza Jean Népo n'umwunganira mu mategeko, bavuze ko ku bijyanye n'impamvu zatumye ajurira baretse ibisobanuro birebana no kuba yarakoze icyaha abitewe n'uburwayi bw'amashitani, ko iyo asaba gusa ari ukugabanyirizwa igihano kuko yemera icyaha.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

a. Kumenya niba Turimubyiza Jean Népo akwiye kugabanyirizwa igihano

[7] Turimubyiza Jean Népo avuga ko yemera icyaha cyo kuba yarishe umugore we babanaga batarasezeranye byemewe n'amategeko, ariko bakaba bari bamaze igihe kigera ku kwezi kumwe batabana, ko yageze mu rugo, mu gihe cyo kuryama, batongana n'umugore, bigatuma amuniga kugeza apfuye, akaba asaba uru Rukiko kumugabanyiriza igihano.

[8] Me Muhire Jean-Marie Eugène, wunganira Turimubyiza Jean Népo, avuga ko yaburanye yemera icyaha, asobanura uko yagikoze ataruhije Urukiko, kandi agaragaza ko akicuza, ko ariko Urukiko Rukuru, Urugereko rwa Musanze rwanze kumugabanyiriza igihano kandi bwari ubwa mbere ahamijwe icyaha n'inkiko, ko rero asaba uru Rukiko kuzabona ko Turimubyiza Jean Népo yakoze icyaha afite imyaka makumyabiri n'umwe (21), maze rugashingira ku ngingo ya 49 y'Itegeko no 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, rukamugabanyiriza igihano, agahabwa ikitarenze igifungo cy'imyaka makumyabiri n'itanu (25).

[9] Ubushinjacyaha buvuga ko nta kwemera no kwicuza icyaha guhari kuri Turimubyiza Jean Népo, mu gihe yisobanura avuga ko icyaha yakoze atari akigambiriye, ko uretse n'ibyo kandi niyo haba hari izo mpamvu nyoroshyacyaha, Umucamanza adategetswe kuzishingiraho agabanya igihano, ko ndetse mu gace ka cyenda (9) k'urubanza rujuririrwa ariko Urukiko Rukuru, Urugereko rwa Musanze rwabisobanuye, uwo ukaba ari nawo murongo watanzwe n'Urukiko rw'Ikirenga mu rubanza n° RPA 0282/8/CS rwaciwe ku wa 12/3/2010, haburana Ubushinjacyaha na NYIRANGONGO Virginie. Buvuga kandi ko kuba yaranize umugore we kugeza apfuye, bigaragaza ubugome bukabije yabikoranye, ibyo bikaba bitatuma agabanyirizwa igihano n'ubwo yaba yemera icyaha, ndetse kuba yarabikoze afite imyaka makumyabiri (20) y'amavuko, bigaragaza ko ari umuntu mubi kuri sosiyete, naho ibyo yireguza avuga ko yakoze icyaha abitewe n'uburwayi bwo mu mutwe, nta gaciro byahabwa kuko nta cyemezo cyo kwa muganga abigaragariza, ko ahubwo mbere abazwa yavuze ko yamwishe amuhoye ko yari asanze atatetse ngo amugaburire. Busoza busaba uru Rukiko kwemeza ko urubanza Turimubyiza Jean Népo yajuririye rudahindutse.

UKO URUKIKO RUBIBONA

[10] Ingingo ya 49 y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange iteganya ko "Umucamanza atanga igihano akurikije uburemere bw'icyaha, ingaruka icyaha cyateye, impamvu zatumye agikora, uko uwagikoze yari asanzwe yitwara, imibereho ye bwite n'uburyo icyaha cyakozwemo (…) ".

[11] Ingingo ya 58, igika cya mbere, y'iryo Tegeko iteganya ko "Umucamanza ubwe ni we ugena niba impamvu nyoroshyacyaha zemezwa n'umucamanza zahabwa agaciro''. Igika cya kabiri cy'iyo ngingo giteganya ko "Kwemeza impamvu nyoroshyacyaha bigomba gusobanurwa mu cyemezo cy'urukiko''.

[12] Nk'uko bigaragara mu gace ka munani (8) k'urubanza rujuririrwa, Urukiko Rukuru, Urugereko rwa Musanze rwasobanuye ko koko Turimubyiza Jean Népo yemeye icyaha aho yabajijwe hose, yemera ko ari we wishe umugore we, asobanura ukuntu bari baryamanye akamuniga kugeza apfuye, ko ariko atasobanuye nibura icyo yamuhoye, uretse kuba avuga ko akeka ko byatewe n'amashitani yaterejwe nabo mu miryango, rusobanura rero ko nk'uko Urukiko Rwisumbuye rwa Rubavu rwabibonye, rusanga icyaha yakoze yaragikoranye ubugome bukabije, bikaba ari nabyo byatumye atagabanyirizwa igihano, ko ndetse atari ihame ko buri gihe iyo hari impamvu nyoroshyacyaha zemerwa, ko ahubwo Umucamanza ariwe we uziha agaciro, akemeza niba zikwiye gushingirwaho, agabanya igihano.

[13] Dosiye y'urubanza igaragaza inyandiko-mvugo ya Turimubyiza Jean Népo abazwa mu Bugenzacyaha ku wa 16/10/2019, aho yavuze ko yemera icyaha cyo kuba yarishe umugore we babanaga batarasezeranye, asobanura ko yamwishe kuko atari yaramubwiye ko yari yarasezeranye n'undi mugabo mu murenge, ko yavuye mu rugo akajya kureba telefone ye yari ifitwe n'uwitwa NZARAMBA, arayimwima, ajya kwicara ku rusengero rwa badive, aza kuhava nka saa mbiri z'ijoro ajya mu rugo, ahita aryama kuko yari asanze umugore atatetse, bigeze nka saa sita z'ijoro batangira

gutongana, umugore arabyuka aramusunika amubwira ko yasaze, maze nawe arabyuka, barafatana bararwana, ahita amufata mu ijosi aramuniga, arapfa.

[14] Turimubyiza Jean Népo yakomeje avuga ko yahise afata imfunguzo z'inzu, arasohoka, arongera arafunga, afata ibyangombwa bye hamwe na gasengeri yari yambaye kagiyeho amaraso, abijiugunya ahantu mu gashyamba yari anyuze, yambuka umuhanda ajya kwa nyirasenge, ariko arara inyuma y'inzu, atinya kumukinguza kuko bwari bwije ari nka saa saba y'ijoro, bumaze gucya atega imodoka ajya kureba filime ahitwa ku Mukamira, ko ku mugoroba nka saa kumi yagiye muri gare ya Musanze gutega imodoka ngo ajye i Kigali, ariko asanga yibagiwe imyenda, agaruka kwa nyirasenge araryama, ari naho abanyerondo bamufatiye bamujyana muri RIB. Avuga kandi ko bari bamaranye n'umugore we (Ntabanganyimana Domitile) ukwezi kumwe n'icyumweru babana, ko ariko akimara kumubwira ko hari undi mugabo bari barasezeranye, yahise ava mu rugo aragenda, akajya arara ahantu hatandukanye, agaruka mu rugo aje kumwica.

[15] Nk'uko bigaragara mu mwanzuro wa Turimubyiza Jean Népo ajuririra uru Rukiko, avuga ko asaba kugabanyirizwa igihano, kuko yaburanye yemera icyaha, ko yishe umugore we abitewe n'uburwayi bwo mu mutwe aterwa n'amashitani yo mu miryango. Naho umwunganira mu mategeko akavuga ko akwiye kugabanyirizwa igihano kuko ari ubwa mbere akurikiranywe n'inkiko kandi akaba yicuza icyaha yakoze.

[16] Isesengura ry'ingingo ya 58 y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange ryavuzwe haruguru, ryumvikanisha nta shiti ko Umucamanza ariwe wemeza mu bushishozi bwe impamvu nyoroshyacyaha (circonstances atténuantes judiciaires ou causes judiciaires d'atténuation), bivuze ko n'ubwo yasanga hari impamvu nyoroshyacyaha ku nyungu z'uregwa cyangwa uregwa yamugaragarije impamvu nyoroshyacyaha ku nyungu ze, adategetswe kuzemeza, ashobora kwanga kuzemeza, arebye ibindi bikorwa bigize icyaha uregwa akurikiranyweho. Ryumvikanisha kandi ko Umucamanza afite ishingano yo kugaragaza no gusobanura mu rubanza rwe impamvu nyoroshyacyaha yemeje.

[17] Isesengura kandi ry'ingingo ya 49 y'iryo Tegeko ryavuzwe haruguru, ryumvikanisha ko Umucamanza mu gutanga igihano, areba imibereho y'uwakoze icyaha mbere yo kugikora, igihe yagikoraga na nyuma yo kugikora, akabihuza n'uko icyaha cyakozwe, uburemere bwacyo n'ingaruka cyateye muri sosiyete, bivuze ko atanga igihano kigereranyijwe n'icyaha cyakozwe (principe de la proportionnalité de la peine à l'infraction), akaba abikora uko agamije kurengera sosiyete, guhana koko uwakatiwe, kurengera inyungu z'uwahohotewe, abihuza n'inyungu yo gusubiza mu buzima busanzwe uwakatiwe no gukumira ibyaha bishya.[1]

[18] Urukiko rw'Ubujurire rurasanga nk'uko byagaragajwe haruguru, ihame ry'amategeko ku birebana n'impamvu nyoroshyacyaha, ari uko ubugome bw'icyaha butabuza Urukiko kwemeza impamvu nyoroshyacyaha no kugabanya igihano, ariko mu bushishozi bwarwo, n'ubwo hari impamvu nyoroshyacyaha, rushobora kwanga kugabanyiriza uregwa igihano mu gihe rusanga uburemere bw'icyaha yakoze n'ubugome cyakoranywe buruta kure impamvu nyoroshyacyaha ziri mu nyungu ze. Ku birebana na Turimubyiza Jean Népo, n'ubwo yemeye icyaha aregwa, Urukiko Rukuru, Urugereko rwa Musanze rwanze kumugabanyiriza igihano, rushingiye ku mpamvu zagaragajwe mu gace ka cumi na gatatu (13) k'urubanza rujuririrwa, aho rwemeje ko n'ubwo yemeye icyaha, ariko rwabigereranyije n'ubugome yagikoranye aniga umugore we kugeza apfuye, bivuze ko urwo Rukiko rutanze kumugabanyiriza rwirengagije ukwemera icyaha kwe, cyangwa izindi mpamvu umwunganira ashingiraho avuga ko yari akwiye kugabanyirizwa igihano, ahubwo rwasanze mu

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[1] '' Le choix de la peine par le juge doit donc obéir à cinq considérations: la protection de la société, la punition du condamné, la prise en compte des intérêts de la victime, la réinsertion du condamné et la lutte contre la récidive.'', Harald Renoult, <u>Droit pénal général</u>, 19e édition, Bruylant-Paradigme, Bruxelles, 2020, P. 291.

bushishozi bwarwo izo mpamvu zitamubera nyoroshyacyaha cyangwa ngabanya gihano, rurebye uburemere bw'icyaha n'ubugome bukabije yabikoranye nk'uko byasobanuwe haruguru.

[19] Urukiko rw'Ubujurire rurasanga rero nta kosa Urukiko Rukuru, Urugereko rwa Musanze rwakoze mu kutagabanyiriza Turimubyiza Jean Népo igihano yakatiwe ku rwego rwa mbere, ko ahubwo rurebye uburyo yakoze icyaha yahamijwe, nk'uko byagaragajwe haruguru, rukaba rusanga igihano yahawe gikwiranye n'icyaha yakoze, bityo ubujurire bwe bushingiye kugusaba kugabanyirizwa igihano bukaba nta shingiro bufite, akaba adakwiye kubihabwa kubera impamvu zose zasobanuwe.

III. ICYEMEZO CY'URUKIKO

[20] Rwemeje ko ubujurire bwa Turimubyiza Jean Népo nta shingiro bufite.

[21] Rwemeje ko urubanza n° RPA 00044/2020/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 20/10/2020, rudahindutse.

[22] Ruvuze ko amagarama y'urubanza aherera ku Isanduku ya Leta.