UBUSHINJACYAHA v. UWAMALIYA

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00256/2021/CA (Gakwaya, P.J.) 30 Ugushyingo 2021]

Amategeko agenga imanza nshinjabyaha – Igabanyagihano – Nta cyabuza Urukiko rwajuririwe kongera kugabanya igihano mu gihe rusanga igihano cyatanzwe n'urukiko rubanza kitaragabanyijwe mu buryo buhagije ubirebeye hamwe n'uburemere bw'icyaha cyakozwe.

Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, uregwa akurikiranyweho icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, urwo Rukiko rwaciye urubanza nuko rushingiye ku mvugo ze yemera icyaha cyo gucuruza urumogi, no ku nyandiko-mvugo ifatira udupfunyika makumyabiri na dutandatu (26) tw'urumogi yashyizeho umukono yemera ko rwari urwe, rwemeje ko ahamwa n'icyaha cyo kubika no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, rumuhanisha igihano cy'igifungo cya burundu n'ihazabu y'amafaranga miliyoni makumyabiri (20.000.000 Frw).

Uregwa ntiyishimiye imikirize y'urubanza, ajuririra Urukiko Rukuru avuga ko Urukiko Rwisumbuye rwa Gasabo rwirengagije ko yaburanishijwe hashingiwe ku ngingo ya 34 n'iya 35 z'Itegeko Nº 30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, rumuhanisha igihano kirekire. Urwo Rukiko narwo rwaciye urubanza nuko rwemeza ko ubujurire bwe bufite ishingiro kuri bimwe, rwemeza urubanza rwajuririwe ruhindutse gusa ku birebana n'igihano cy'igifungo yahawe, ahanishwa igihano cy'igifungo cy'imyaka makumyabiri (20) n'ihazabu y'amafaranga miliyoni makumyabiri (20.000.000 Frw).

Uregwa yarongeye ajuririra Urukiko rw'Ubujurire avuga ko Urukiko Rukuru rwamuhanishije igihano kinini kandi yaraburanye yemera icyaha, akaba atarigeze arushya inkiko, asaba kugabanyirizwa igihano.

Ubushinjacyaha bwo buvuga ko impamvu y'ubujurire y'uregwa yo gusaba kugabanyirizwa igihano nta shingiro yahabwa, kuko yafatiwe mu cyuho acuruza urumogi, buvuga kandi ko uregwa yagabanyirijwe igihano hashingiwe ku kuba yaraburanye yemera icyaha, ko rero mu Rukiko rw'Ubujurire adashobora kongera gusaba kugabanyirizwa igihano kandi yaramaze kubihabwa n'Urukiko Rukuru**.**

Incamake y'icyemezo: 1. Nta cyabuza Urukiko rwajuririwe kongera kugabanya igihano mu gihe rusanga igihano cyatanzwe n'urukiko rubanza kitaragabanyijwe mu buryo buhagije ubirebeye hamwe n'uburemere bw'icyaha cyakozwe.

Urubanza ruhindutse ku bijyanye n'igihano.

Amategeko yashingiweho:
Itegeko Nº 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 49,58, 60, 64 n'iya 263.

Imanza zifashishijwe:
Ubushinjacyaha v. Nahayo, RPAA 00406/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 22/10/2021.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Ubushinjacyaha bukurikiranyeho UWAMARIYA Diane icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, busobanura ko ku wa 17/4/2019, yafashwe afite udupfunyika makumyabiri na dutandatu (26) tw'urumogi, ko kandi akimara gufatwa yemeye ko urumogi yafatanywe yari agiye kurucuruza. UWAMARIYA Diane yaburanye yemera icyaha aregwa, asaba imbabazi no kugabanyirizwa igihano, ndetse kikanasubikwa kuko yasize abana babiri, umwe ufite imyaka itandatu (6) n'undi ufite imyaka ine (4), asaba imbabazi ko bitazongera

[2] Mu rubanza nº RP 00548/2019/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 24/5/2019, rushingiye ku mvugo ze yemera icyaha cyo gucuruza urumogi, no ku nyandiko-mvugo ifatira udupfunyika makumyabiri na dutandatu (26) tw'urumogi yashyizeho umukono yemera ko rwari urwe, rwemeje ko UWAMARIYA Diane ahamwa n'icyaha cyo kubika no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, rumuhanisha igihano cy'igifungo cya burundu n'ihazabu y'amafaranga miliyoni makumyabiri (20.000.000 Frw), rutegeka ko urumogi rwafatiriwe rutwikwa.

[3] UWAMARIYA Diane ntiyishimiye imikirize y'urubanza, ajuririra Urukiko Rukuru avugako Urukiko Rwisumbuye rwa Gasabo rwirengagije ko yaburanishijwe hashingiwe kungingo ya 34 n'iya 35 z'Itegeko nº 30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, rumuhanisha igihano kirekire.

[4] Mu rubanza nº RPA 01087/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 29/0/2020, rwemeje ko ubujurire bwa UWAMARIYA Diane bufite ishingiro kuri bimwe,rwemeza ko imikirize y'urubanza nº RP00548/2019/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 24/5/2019, ihindutse gusa ku birebana n'igihano cy'igifungo yahawe, rwemeza ko UWAMARIYA Diane ahanishishwa igihano cy'igifungo cy'imyaka makumyabiri (20) n'ihazabu y'amafaranga miliyonimakumyabiri (20.000.000 Frw).

[5] UWAMARIYA Diane ntiyishimiye imikirize y'urubanza, ajuririra Urukiko rw'Ubujurire ku wa 23/6/2020, avuga ko Urukiko Rukuru rwamuhanishije igihano kinini kandi yaraburanye yemera icyaha, akaba atarigeze arushya inkiko, asaba kugabanyirizwa igihano.

[6] Urubanza rwaburanishijwe ku wa 16/11/2022, UWAMARIYA Diane yunganirwa na Me NDEJEJE Pascal, Ubushinjacyaha bwari buhagarariwe na UWANZIGA Lydia, Umushinjacyaha ku rwego rw'Igihugu.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba UWAMARIYA Diane yakongera kugabanyirizwa igihano akanagisubikirwa

[7] UWAMARIYA Diane avuga ko Urukiko Rukuru rwamuhanishije igihano kinini cy'igifungo cy'imyaka makumyabiri (20), kandi yaraburanye yemera icyaha, ntiyarushya inkiko, ndetse anatanga amakuru y'umuntu witwa Jimmy ari nawe wamushutse, akamushora mu gucuruza urumogi, nawe akaba yarafashwe arafungwa. Asaba Urukiko rw'Ubujurire guca inkoni izamba agahabwa imbabazi, akongera kugabanyirizwa igihano, agahabwa igihano gito, ndetse kikanasubikwa, kuko atigeze agambirira gukora

icyaha, ahubwo yashutswe, ntakomeze guhanwa nk’umuntu wari usanzwe amenyereye gucuruza ibiyobyabwenge, ndetse agahabwa amahirwe yo kujya kurera abana be babiri (2) batoya yasize.

[8] Me NDEZE Pascal asaba Urukiko rw’Ubujurire kongera kumugabanyiriza igihano yahawe n’Urukiko Rukuru, agahabwa igihano gito gishoboka, hashingiwe ku murongo watanzwe n’Urukiko rw’Ikirenga mu rubanza nº RS/INCONST/SPEC 00003/2019/SC rwo ku wa 4/12/2019, aho rwasanze icyo aricyo cyose cyabuza Umucamanza guca urubanza mu bwisanzure, mu gutanga igihano akurikije uburemere bw’icyaha, ndetse no kugeza munsi y’igihano gito giteganywa n’itegeko, cyaba kinyuranyije n’ihame ry’ubwigenge bw’Umucamanza, ko ariyo mpamvu asaba uru Rukiko gushingira ku kukwemera icyaha kwa UWAMARIYA Diane no kuba ari ubwa mbere akoze icyaha, akagabanyirizwa igihano, ndetse kikanasubikwa kuko yasize abana babiri batoya.

[9] Ubushinjacyaha buvuga ko impamvu y’ubujurire ya UWAMARIYA Diane yo gusaba kugabanyirizwa igihano nta shingiro yahabwa, kuko yafatiwe mu cyuho acuruza urumogi, ndetse afite udupfunyika twarwo makumyabiri na dutandatu (26), ahita yemera icyaha, ashyira umukono ku nyandiko-mvugo y’ifatira, mu kuburana ahanishwa igihano cy’igifungo cy’imyaka makumyabiri (20), kandi icyo cyaha yahamijwe cyo gucuruza ibiyobyabwenge (urumogi), ubusanzwe itegeko ryaragiteganyirije igihano cy’igifungo cya burundu, nk’uko ingingo ya 263, igika cya 3, y’Itegeko nº 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n’ibihano muri rusange ibiteganya, ko ariko hashingiwe ku ngingo ya 60 y’iryo Tegeko, iteganya ko iyo hari impamvu nyoroshyacyaha igihano cy’igifungo cya burundu gishobora kugabanywa kugera ku gifungo cy’imyaka makumyabiri n’itanu (25), UWAMARIYA Diane yagabanyirijwe igihano hashingiwe ku kuba yaraburanye yemera icyaha, ko rero mu Rukiko rw’Ubujurire adashobora kongera gusaba kugabanyirizwa igihano kandi yaramaze kubihabwa n’Urukiko Rukuru.

[10] Ku birebana no gusubikirwa igihano, Ubushinjacyaha buvuga ko ibyo UWAMARIYA Diane asaba atabihabwa, kuko nk’uko ngingo ya 64 y’Itegeko nº 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru, ibiteganya, uwahanishijwe igihano cy’igifungo kirengeje imyaka itanu (5) adashobora gusaba gusubikirwa igihano.

UKO URUKIKO RUBIBONA

[11] Ingingo ya 49 y’Itegeko nº 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’’

[12] Ingingo ya 58, igika cya mbere (1), y’Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n’ibihano muri rusange, iteganya ko “Umucamanza ubwe ariwe we ugena niba impamvu nyoroshyacyaha zemezwa n’umucamanza zahabwa agaciro’’

[13] Ingingo ya 60, agace ka mbere, y’Itegeko n° 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru iteganya ko ‘’ Iyo hari impamvu zigabanya ububi bw’icyaha, haseguriwe ibiteganywa mu ingingo ya 107, igihano cyo gufungwa burundu gishobora kugabanywa ariko ntikijye munsi y’imyaka makumyabiri n’itanu (25)’’.

[14] Ingingo ya 64 y’iryo Tegeko iteganya ko ‘’Isubikagihano ari icyemezo cy’urukiko gihagarika irangizarubanza ku gihano itegeko riteganyiriza igifungo kitarengeje imyaka itanu (5)’’.

[15] Ingingo ya 263, igika cya gatatu, y’Itegeko Nº 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru iteganya ko ‘’Umuntu wese ukora, uhinga, uhindura, utunda, ubika, uha undi, ugurisha mu gihugu ibiyobyabwenge cyangwa urusobe rw’imiti ikoreshwa nka byo mu buryo bunyuranyije n’amategeko, aba

akoze icyaha''. Agace ka mbere k'igika cya gatatu (3) cy'iyo ngingo ya 263 gateganya ko ''Iyo abihamijwe n'Urukiko ahanishwa igifungo cya burundu n'ihazabu y'amafaranga arenze miliyoni makumyabiri (20.000.000 Frw) ariko atarenze miliyoni mirongo itatu (30.000.000 Frw) ku byerekeye ibiyobyabwenge bihambaye''

[16] Imikirize y'urubanza rwaciwe ku rwego rwa mbere n'Urukiko Rwisumbuye rwa Gasabo, mu gace karwo karindwi (7), igaragaza ko rwashingiye ku Iteka rya Minisitiri n˚001/MoH/2019 ryo ku wa 4/3/2019 rigena urutonde rw'ibiyobyabwenge n'ibyiciro byabyo, rugaragaza ko urumogi ruri ku rutonde rw'ibiyobyabwenge bihambaye, ruhanisha UWAMARIYA Diane igihano cyo gufungwa burundu.

[17] Nk'uko bigaragara mu gace ka cyenda (9) k'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko UWAMARIYA Diane yaraburanye yemera icyaha nk'uwafatiwe mu cyuho, ko rero hashingiwe ku ngingo ya 35 y'Itegeko nº 30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko iyo ukurikiranyweho gukora icyaha acyiyemereye mu buryo budashidikanywaho, mu kumukurikirana hubahirizwa ibiteganywa n'ingingo ya 34 y'iryo tegeko, kandi umucamanza waregewe urwo rubanza akaba ashobora kugabanya igihano cyari giteganyijwe kugeza kuri kimwe cya kabiri (½) cyacyo, ko iyo yari guhabwa igihano cyo gufungwa burundu ashobora kugabanyirizwa kugera ku gifungo cy'imyaka makumyabiri (20), bityo ko UWAMARIYA Diane nawe agomba guhanishwa igifungo cy'imyaka makumyabiri (20) n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri (20.000.000 Frw).

[18] Urukiko rw'Ubujurire rurasanga ibivugwa n'Ubushinjacyaha ko kuba Urukiko Rukuru, rwarashingiye ku mpamvu nyoroshyacyaha yo kuba UWAMARIYA Diane yaraburanye yemera icyaha ku buryo budashidikanywaho, bihurijwe hamwe no kuba yarafatiwe mu cyuho, yagabanyirijwe igihano, ko muri uru Rukiko atakongera gusaba kugabanyirizwa igihano, nta shingiro bifite, kuko ugereranije uburemere bw'icyaha yakoze ndetse n'ingano y'urumogi yari afite rungana n'udupfunyika makumyabiri na dutandatu (26) usanga igihano cy'igifungo cy'imyaka makumyabiri (20) yahawe, ataragabanyirijwe ku buryo buhagije, kandi nta cyabuza Urukiko rwajuririwe kongera kugabanya igihano mu gihe rusanga igihano cyatanzwe n'urukiko rubanza kitaragabanyijwe mu buryo buhagije ubirebeye hamwe n'uburemere bw'icyaha cyakozwe, kandi ishingano y'Umucamanza ari uguha uwahamwe n'icyaha igihano gikwiye, kandi gihuje n'imigendekere y'icyaha cyakozwe (principe de la proportionnalité des peines à l'infraction), uyu ukaba ari nawo murongo wafashwe n'uru Rukiko, mu rubanza nº RPAA 00406/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 22/10/2021, haburana Ubushinjacyaha na NAHAYO Ignace.

[19] Urukiko rw'Ubujurire rurasanga, hashingiwe ku bimaze gusobanurwa haruguru, no ku ngingo ya 49 y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 nayo yavuzwe haruguru, n'ubwo icyaha UWAMARIYA Diane yahamijwe kiremereye, ariko harebwe ingaruka cyateje si nyinshi cyane kuko yafatiwe mu cyuho agiye gucuruza urumogi, ariko ahagarikwa nta muntu yari yaruha, kuba kandi yaraburanye yemera icyaha akaba agaragaza kwicuza no kutazongera kugwa mu biyobyabwenge, kandi akaba atarigeze na rimwe ashaka kurushya inkiko ahakana, akaba ari ubwa mbere akurikiranywe, mu bushishozi bw'uru Rukiko, rurasanga igihano cy'igifungo cy'imyaka irindwi (7) n'ihazabu y'amafaranga miliyoni eshanu (5.000.000 Frw) ari cyo gikwiranye n'uburyo ikorwa ry'icyaha ryagenze.

[20] Urukiko rw'Ubujurire rurasanga ibijyanye n'isubikagihano UWAMARIYA Diane asaba ashingiye ku kuba yarasize abana batoya, atabihabwa, kuko atakwitwaza ingaruka z'icyaha ubwe yakoze kandi yemera ngo zimubere impamvu ituma atarangiza igihano yahawe kandi gikwiranye n'uburemere bw'icyaha yahamijwe, ndetse ku bijyanye n'amategeko igihano cy'igifungo yahawe kikaba kirengeje igifungo cy'imyaka itanu (5) nk'uko ingingo ya 64 y'Itegeko nº 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru ibiteganya, bityo ibyo asaba akaba atabyemerewe.

[21] Kubera izo mpamvu zose zimaze kugaragazwa, Urukiko rw'Ubujurire rurasanga ubujurire bwa UWAMARIYA Diane bufite ishingiro ku bijyanye no gusaba kugabanyirizwa igihano.

III. ICYEMEZO CY'URUKIKO

[22] Rwemeje ko ubujurire bwa UWAMARIYA Diane bufite ishingiro ku bijyanye no gusaba kugabanyirizwa igihano.

[23] Rwemeje ko urubanza n° RPA 01087/2019/HC/KIG rwaciwe n'Urukiko Rukuru, ku wa 29/5/2020, ruhindutse ku birebana n'igihano.

[24] Rwemeje ko UWAMARIYA Diane ahanishwa igihano cy'igifungo cy'imyaka irindwi

[25] (7) n'ihazabu y'amafaranga miliyoni eshanu (5.000.000 Frw).

[26] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.