UBUSHINJACYAHA v MUGWANEZA

[Rwanda URUKIKO RW'UBUJURIRE - RPAA 01496/2021/CA (Mukandamage, P.J.) 28 Ukwakira 2022]

Amategeko agenga imanza z'inshinjabyaha – Ibimenyetso mu manza – Ikiranga ubukure bw'umwana – Ubukure cyangwa imyaka y'umuntu ntibipimirwa ku gihagararo cye, kuko aba afite ibyangombwa bimuranga byakwifashishwa kugira ngo hamenyekane imyaka ye.

Amategeko agenga imanza z'inshinjabyaha – Icyaha cyo gusambanya umwana – Ishingiro ry'impamvu nyoroshyacyaha – Kwandikisha umwana no kumwitaho - Ntawakwitwaza ko yandikishije umwana yabyaranye n'umwana yasambanyije, cyangwa ko atamutereranye mukwita k'umwana ngo bimubere impamvu nyoroshyacyaha, kuko kurera umwana biri mu nshingano ze zisanzwe nk'umubyeyi we.

Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gicumbi Ubushinjacyaha burega Mugwaneza Marcel icyaha yakoze mu mwaka wa 2013 cyo gusambanya umwana w'imyaka 16 y'amavuko akamutera inda, nyuma bakabyarana umwana wavutse muri Mutarama 2014. Uregwa yaburanye yemera icyaha aregwa anagisabira imbabazi, asobanura ko yasambanye na I. F. mu mwaka wa 2016 amutera inda, mu mwaka wa 2017 babyarana umwana, ariko ko yari yaramubwiye ko afite imyaka y'ubukure, nyuma aza gutungurwa no kubona bamufashe baramufunga. Urukiko rwamuhamije icyaha cyo gusambanya umwana, rumuhanisha igifungo cy'imyaka 20, ajurira m'Urukiko Rukuru avuga ko icyaha yagikoze mu kwezi kwa 04/2016, umukobwa amutera inda, abyara ku itariki ya 24/01/2017, bivuze ko icyaha gikorwa yari afite imyaka 19 y'amavuko. Urukiko Rukuru rwemeje ko ubujurire bwe nta shingiro bufite, rwemeza ko imikirize y'urubanza yajuririye idahindutse.

Mugwaneza yajuririye na none Urukiko rw'Ubujurire avuga ko yemera icyaha yakoze cyo gusambanya umwana I. F. w'imyaka 16 y'amavuko akamutera inda, ko ariko yabikoze atazi imyaka afite, ko bakoranaga akazi ko gucukura amabuye y'agaciro bagatahana, ko aho amenyeye ko yari muto yemeye icyaha, akaba asaba imbabazi kugira ngo igihano yahawe kigabanywe kuko kiremereye, akomeza asobanura ko uretse no kuba yarasambanyije umwana bakoranaga atazi neza imyaka ye, ko atigeze yirengagiza umwana babyaranye kuko yamwiyandikishijeho, n'ubu akaba ataratereranye uwo mwana na nyina bityo akaba asanga ibyo byamubera impamvu nyoroshyacyaha, asaba urukiko kumugabanyiriza igihano. Uhagarariye Ubushinjacyaha avuga ko ashingiye ku manza zitandukanye zaciwe n'Urukiko rw'Ikirenga ndetse n'ibyo amategeko ateganya, atari itegeko ko Umucamanza agabanya ibihano mu gihe ukurikiranyweho icyaha acyemera, ahubwo ko ari uburenganzira gusa itegeko ryamuhaye bwo kuba yagabanya ibihano igihe abona biri ngombwa. Akomeza asobanura ko asanga Mugwaneza Marcel yaragabanyirijwe igihano mu buryo buhagije, kuko aho guhanishwa igifungo cy'imyaka 25, yahanishijwe icy'imyaka 20, ko izindi mpamvu atanga ntaho zihuriye n'umwana w'umukobwa w'imyaka 16 yarangije gutesha umurongo w'ubuzima amutera inda, agasaba Urukiko rw'Ubujurire kwemeza ko ubujurire bwe nta shingiro bufite, maze hakagumaho imikirize y'urubanza rwajuririwe.

Incamake y'icyemezo: 1. Ubukure cyangwa imyaka y'umuntu ntibipimirwa ku gihagararo cye, kuko aba afite ibyangombwa bimuranga byakwifashishwa kugira ngo hamenyekane imyaka ye.

2. Ntawakwitwaza ko yandikishije umwana yabyaranye n'umwana yasambanyije, cyangwa ko atamutereranye mukwita k'umwana ngo bimubere impamvu nyoroshyacyaha, kuko kurera umwana biri mu nshingano ze zisanzwe nk'umubyeyi we.

Ubujurire bufite ishingiro.
Urubanza rujuririrwa ruhindutse kubirebana n'igihano gusa.

Amategeko yakoreshejwe:
Itegeko nº 69/2019 ryo ku wa 08/11/2019 ihindura ingingo ya 133 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 4, 49 na 58.

Imanza zashingiweho:
Urubanza n° RS/INCONST/SPEC 00003/2019/SC rwaciwe n'Urukiko rw'Ikirenga Kabasinga Florida ku wa 4/12/2019
Urubanza nº RS/INCONST/SPEC 00005/2020/CS - RS/INCONST/SPEC 00006/2020/CS; Re Kabasinga n'undi rwaciwe n'Urukiko rw'Ikirenga.
Urubanza nº RPAA 00032/2019/CA; Ubushinjacyaha v Nzafashwanimana rwaciwe n'Urukiko rw'Ubujurire ku wa 28/02/2020.
Urubanza nº RPAA 00384/2020/CA Ubushinjacyaha v Nsengiyaremye rwaciwe n'Urukiko rw'Ubujurire ku wa 29/10/2021;
Urubanza nº RPAA 00039/2021/CA Ubushinjacyaha v Shakabatenda rwaciwe n'Urukiko rw'Ubujurire ku wa 02/07/2021.
Urubanza nº RPAA 00174/2021/CA Ubushinjacyaha v Dusabimana rwaciwe n'Urukiko rw'Ubujurire ku wa 18/03/2022.
Urubanza nº RPAA 00205/2020/CA; Ubuinjacyaha v Barakagwira rwaciwe n'Urukiko rw'Ubujurire ku wa 12/11/2021.
Urubanza nº RPAA 00013/2020/CA; Ubushinjacyaha v Habiyakare Olivier n'Urukiko rw'Ubujurire ku wa 31/12/2021.
Urubanza n° RPAA 00105/2020/CA, Ubushinjacyaha v Uwimana Pascal rwaciwe n'Urukiko rw'Ubujurire ku wa 30/09/2021.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gicumbi Ubushinjacyaha burega Mugwaneza Marcel, bumukurikiranyeho icyaha yakoze mu mwaka wa 2013 cyo gusambanya umwana I. F. w'imyaka 16 y'amavuko akamutera inda, nyuma bakabyarana umwana witwa I. Q. wavutse muri Mutarama 2014.

[2] Mugwaneza Marcel yaburanye yemera icyaha aregwa anagisabira imbabazi, asobanura ko yasambanye na I. F. mu mwaka wa 2016 amutera inda, mu mwaka wa 2017 babyarana umwana, ariko ko yari yaramubwiye ko afite imyaka y'ubukure, nyuma aza gutungurwa no kubona bamufashe baramufunga.

[3] Mu rubanza nº RP 00199/2019/TGI/GIC rwaciwe ku wa 31/07/2019, Urukiko Rwisumbuye rwa Gicumbi rwasanze hari ibimenyetso bifatika byerekana ko Mugwaneza Marcel yasambanyije I. F., birimo kuba yaraburanye yemera icyaha aregwa, imvugo z'abatangabuhamya na raporo y'ubuyobozi bw'inzego bw'ibanze bigaragaza ko yamusambanyije afite imyaka 16 y'amavuko, maze rwemeza ko ahamwa n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cy'imyaka 20.

[4] Mugwaneza Marcel yajuririye Urukiko Rukuru avuga ko icyaha yagikoze mu kwezi kwa 04/2016, umukobwa amutera inda, abyara ku itariki ya 24/01/2017, bivuze ko icyaha gikorwa yari

afite imyaka 19 y'amavuko, ko kandi mu kumuhana Urukiko Rwisumbuye rwa Gicumbi rwashingiye ku Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange aho gushingira ku Itegeko Ngenga nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ryakurikizwaga ubwo yakoraga icyaha, riteganya ibihano byoroheje.

[5] Mu rubanza nº RPA 01496/2019/HC/KIG rwaciwe ku wa 25/11/2020, Urukiko Rukuru rwemeje ko ubujurire bwa Mugwaneza Marcel nta shingiro bufite, ko imikirize y'urubanza yajuririye idahindutse.

[6] Mugwaneza Marcel yajuririye na none Urukiko rw'Ubujurire avuga ko yagombaga guhanwa hakurikijwe Itegeko Ngenga nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, kuko ariryo ryakoreshwaga igihe yakoraga icyaha, kandi ritanga igihano gito, anasaba kugabanyirizwa igihano yahawe, ariko igihe cy'iburanisha avuga ko iyo ngingo ya mbere yerekeye itegeko ryagombaga gukurikizwa ayiretse.

[7] Uhagarariye Ubushinjacyaha avuga ko ibyo Mugwaneza Marcel asaba ko yagabanyirizwa igihano yabihawe, kuko aho guhanishwa igifungo cy'imyaka 25 yahanishijwe icy'imyaka 20, ko rero ubujurire bwe nta shingiro bufite.

[8] Urubanza rwaburanishijwe mu ruhame ku wa 17/10/2022, Mugwaneza Marcel yunganiwe na Me Rwimo Clothilde, naho Ubushinjacyaha buhagarariwe na Nkusi Faustin, Umushinjacyaha ku rwego rw'Igihugu, iburanisha rirangiye bamenyeshwa ko urubanza ruzasomwa ku wa 28/10/2022, akaba ari wo munsi rusomwe.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba hari impamvu yatuma Mugwaneza Marcel agabanyirizwa igihano

[9] Mugwaneza Marcel avuga ko yemera icyaha yakoze cyo gusambanya umwana I. F. w'imyaka 16 y'amavuko akamutera inda, ko ariko yabikoze atazi imyaka afite, ko bakoranaga akazi ko gucukura amabuye y'agaciro bagatahana, ko aho amenyeye ko yari muto yemeye icyaha, akaba asaba imbabazi kugira ngo igihano yahawe kigabanywe kuko kiremereye.

[10] Me Rwimo Clothilde, wunganira Mugwaneza Marcel, avuga ko ubujurire bwe bugamije kugabanyisha igihano cy'imyaka 20 yahawe n'inkiko zabanje, kuko yaburanye yemera icyaha asaba imbabazi ariko ntibyahabwa agaciro. Avuga kandi ko Mugwaneza Marcel yasambanyije umwana bakoranaga atazi neza imyaka ye, ko atigeze yirengagiza umwana babyaranye kuko yamwiyandikishijeho, n'ubu akaba ataratereranye uwo mwana na nyina.

[11] Asaba Urukiko rw'Ubujurire gushingira ku ngingo ya 49 n'iya 59 z'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, no ku rubanza nº RPA 00060/2021/CA rwaciye haburana Ubushinjacyaha na Nsabimana Callixte na bagenzi be (mu gika cya 10, urupapuro rwa 23), aho rwasanze buri mucamanza ku rwego urwo ari rwo rwose yemerewe gusuzuma mu bushishozi impamvu nyoroshyacyaha no kwemeza ko zashingirwaho agamije gutanga igihano kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo, kandi ko mu bujurire Umucamnza yemerewe gusa guhindura igihano cyatanzwe n'uwo mu Rukiko rwabanje ari uko amaze kugaragaza ko rwakoresheje nabi itegeko cyangwa ubushishozi bwarwo mu gutanga icyo gihano, maze rukagabanyiriza Mugwaneza Marcel igihano yahawe, rukamuhanisha igifungo cy'imyaka 10, kuko hari ibikorwa yakoze bigabanya ububi bw'icyaha yakoze byagaragajwe haruguru.

[12] Uhagarariye Ubushinjacyaha avuga ko ashingiye ku rubanza nº RPA/0246/09/CS rwaciwe n'Urukiko rw'ikirenga ku wa 14/12/2012, haburana Ubushinjacyaha na Mukankusi Victoire, urwo Rukiko rwanzuye ko, nk'uko byumvikana mu ngingo ya 77 y'Itegeko n° 01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ndetse no mu ya 35 y'Itegeko n° 13/2004 ryo ku wa 17/05/2004, ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakurikizwaga icyo gihe, atari itegeko ko Umucamanza agabanya ibihano mu gihe ukurikiranyweho icyaha acyemera, ahubwo ari uburenganzira gusa itegeko ryamuhaye bwo kuba yagabanya ibihano.

[13] Asanga rero Mugwaneza Marcel yaragabanyirijwe igihano mu buryo buhagije, kuko aho guhanishwa igifungo cy'imyaka 25, yahanishijwe icy'imyaka 20, ko izindi mpamvu atanga ntaho zihuriye n'umwana w'umukobwa w'imyaka 16 yarangije gutesha umurongo w'ubuzima amutera inda, agasaba Urukiko rw'Ubujurire kwemeza ko ubujurire bwe nta shingiro bufite, maze hakagumaho imikirize y'urubanza rwajuririwe.

UKO URUKIKO RUBIBONA

[14] Ubujurire bwatanze na Mugwaneza Marcel bugamije kugabanyisha igihano cy'igifungo cy'imyaka makumyabiri (20) yahawe n'Urukiko Rukuru ku cyaha yahamijwe cyo gusambanya umwana w'imyaka 16, kubera ko hari impamvu nyoroshyacyaha yatanze y'uko yemeye icyaha yirengagijwe.

[15] Ku byerekeye icyaha cyo gusambanya umwana, ingingo ya 4, y'Itegeko nº 69/2019 ryo ku wa 08/11/2019 ihindura ingingo ya 133 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange iteganya ibikurikira: "Umuntu wese ukorera ku mwana kimwe mu bikorwa bishingiye ku gitsina bikurikira, aba akoze icyaha: 1º gushyira igitsina mu gitsina, mu kibuno cyangwa mu kanwa k'umwana; 2º gushyira urugingo urwo arirwo rwose rw'umubiri w'umuntu mu gitsina, cyangwa mu kibuno cy'umwana; 3º gukora ikindi gikorwa cyose ku mubiri w'umwana hagamijwe ishimishamubiri; Iyo abihamijwe n'urukiko, ahanishwa igifungo kitari munsi y'imyaka makumyabiri (20) ariko kitarenze imyaka makumyabiri n'itanu (25)". Iyo umuntu mukuru asambanyije umwana uri munsi y'imyaka cumi n'ine (14), igihano kiba igifungo cya burundu kidashobora kugabanywa kubera impamvu nyoroshyacyaha" (…).

[16] Ku bijyanye no gutanga ibihano, 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''.

[17] Naho ingingo ya 58 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 rivuzwe haruguru, iteganya ibikurikira: "Umucamanza ubwe niwe ugena niba impamvu nyoroshyacyaha zemezwa n'umucamanza zahabwa agaciro. Kwemeza impamvu nyoroshyacyaha bigomba gusobanurwa mu cyemezo cy'Urukiko".

[18] Mu manza zitandukanye zaciwe n'uru Rukiko,[1] rushingiye ku rubanza n° RS/INCONST/SPEC 00003/2019/SC rwo ku wa 4/12/2019 haburana Kabasinga Florida no ku

[1] Reba imanza zikurikira:
- Urubanza nº RPAA 00032/2019/CA rwaciwe ku wa 28/02/2020, haburana Ubushinjacyaha na NZAFASHWANIMANA Jeande Dieu;
- Urubanza nº RPAA 00384/2020/CA rwaciwe ku wa 29/10/2021 haburana NSENGIYAREMYE Jean Paul n'Ubushinjacyaha;
- Urubanza nº RPAA 00039/2021/CA rwaciwe ku wa 02/07/2021 haburana SHAKABATENDA Jean de Dieun'Ubushinjacyaha;

rubanza nº RS/INCONST/SPEC 00005/2020/CS - RS/INCONST/SPEC 00006/2020/CS rwo ku wa 12/02/2020, haburana Kabasinga Florida na Niyomugabo Ntakirutimana zaciwe n'Urukiko rw'Ikirenga, rwasanze nta cyabuza Umucamanza kugabanyiriza mu buryo bukwiye uwahamwe n'icyaha igihano giteganywa n'itegeko, hakurikijwe ibiteganywa n'ingingo ya 49 y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru.

[19] Nk'uko bigaragara mu manza zabanje, Mugwaneza Marcel yaburanye yemera icyaha aregwa asaba n'imbabazi, Urukiko Rwisumbuye rwa Gicumbi rumuhamya icyaha cyo gusambanya umwana w'imyaka 16 y'amavuko, ahanishwa igifungo cy'imyaka makumyabiri (20), icyo gihano kiza gushimangirwa n'Urukiko Rukuru, rusobanura ko ku rwego rwa mbere yagabanyirijwe igihano.

[20] Urukiko rurasanga igihano Mugwaneza Marcel yahawe ari igihano gito giteganywa ku cyaha cyo gusambanya umwana ufite hejuru y'imyaka 14 y'amavuko, ariko nk'uko byasobanuwe haruguru kandi byafashweho umurongo n'uru Rukiko mu manza zitandukanye, nta mpamvu yatuma icyo gihano kitagabanywa mu gihe haba hari impamvu nyoroshyacyaha.

[21] Urukiko rurasanga kuba Mugwaneza Marcel yemera icyaha mu buryo budashidikanywaho kandi asaba imbabazi, no kuba ari ubwa mbere akurikiranyweho icyaha mu buryo buzwi, byamubera impamvu nyoroshyacyaha yatuma igihano cy'igifungo cy'imyaka makumyabiri yahawe kigabanywa agahabwa igihano cyamufasha kwikosora agasubira mu muryango nyarwanda, n'ubwo icyaha yakoze gikomeye, kuko yasambanyije umwana w'imyaka 16 y'amavuko amutera inda, bituma abyara imburagihe, byumvikana ko yatumwe imibereho ye n'ubuzima bwe muri rusange buhungabana, nyamara we yari akuze afite imyaka 27 y'amavuko.

[22] Urukiko rurasanga ibyo Mugwaneza Marcel avuga ko atari azi imyaka y'umwana yasambanyije, ko yabona akuze bitahabwa agaciro, kubera ko imyaka y'umuntu idapimirwa ku gihagararo cye, kuko aba afite ibyangombwa bimuranga yari kwifashisha kugira ngo amenye imyaka ye. Na none ntiyakwitwaza ko yandikishije umwana babyaranye n'uwo yasambanyije, ko atamutereranye, maze ngo bimubere impamvu nyoroshyacyaha, kubera ko biri mu nshingano ze zisanzwe nk'umubyeyi we.

[23] Urukiko rurasanga rero mu rwego rwo guhuza uburemere bw'icyaha n'akamaro k'igihano, Mugwaneza Marcel agomba kugabanyirizwa igihano cy'igifungo cy'imyaka makumyabiri (20) yahanishijwe, maze agahanishwa icy'imyaka cumi n'itanu (15).

[24] Hashingiwe ku ngingo z'amategeko zavuzwe haruguru, no ku bimaze gusobanurwa, Urukiko rurasanga ubujurire bwa Mugwaneza Marcel bugamije kugabanyisha igihano yahawe n'Urukiko Rukuru bufite ishingiro, bityo urubanza yajuririye rugomba guhinduka gusa ku birebana n'icyo gihano.

III. ICYEMEZO CY'URUKIKO

- Urubanza nº RPAA 00174/2021/CA rwaciwe ku wa 18/03/2022 haburana DUSABIMANA Vivens n'Ubushinjacyaha;
- Urubanza nº RPAA 00205/2020/CA rwaciwe ku wa 12/11/2021, haburana BARAKAGWIRA Gilbert n'Ubushinjacyaha;
- Urubanza nº RPAA 00013/2020/CA rwaciwe ku wa 31/12/2021 haburana HABIYAKARE Olivier n'Ubushinjacyaha;
- Urubanza n° RPAA 00105/2020/CA rwaciwe ku wa 30/09/2021, haburana UWIMANA Pascal n'Ubushinjacyaha.

[25] Rwemeje ko ubujurire bwa Mugwaneza Marcel bugamije kugabanyisha igihano bufite ishingiro;

[26] Rwemeje ko urubanza nº RPA 01496/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 25/11/2020 ruhindutse ku birebana n'igihano;

[27] Rutegetse ko Mugwaneza Marcel ahanishijwe igifungo cy'imyaka cumi n'itanu (15) ku cyaha cyo gusambanya umwana w'imyaka 16 y'amavuko yahamijwe muri urwo rubanza;

[28] Ruvuze ko amafaranga y'amagarama y'urubanza aherera ku Isanduku ya Leta, kubera ko Mugwaneza Marcel afunze, akaba asonewe kuyatanga.