NYIRABATONI v GAHIMA N'UNDI

[Rwanda URUKIKO RW'UBUJURIRE – RS/INJUST/RP 00001/2019/CA, (Karimunda, P.J., Nyirandabaruta na Umugwaneza, J., 08 Mutarama 2021]

Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Icyaha cy'imaragihe – Ku byerekeye icyaha cyo gukoresha inyandiko mpimbano, kubara igihe cy'ubuzime bitangira ku uhereye igihe igikorwa cya nyuma cyarangiriyeho.

Incamake y'ikibazo: Uru rubanza rwatangiye ubwo urega witwa Nyirabatoni yaregaga uwitwa Gahima avuga yamuhaye umurima maze bagirana amasezerano yanditse y'impano, ariko nyuma Gahima aza kumuhemukira, bituma Nyirabatoni atangiza imanza ashaka gusubirana umurima we, atsindwa n'uko Gahima yahakanye iyo mpano, ahubwo yerekana inyandiko igaragaza ko uwo murima asangiye na murumuna we Mupenzi, ari uwo basaranganyijwe na Nyirabatoni.

Nyuma yaho, mu mwaka wa 2013, Nyirabatoni yareze Gahima ndetse n'uwitwa Munyakarama wanditse inyandiko y'isaranganya ubwo yari Umunyamabanga w'Akagali ka Nyagahinga, mu Murenge wa Rusororo, ko bakoze icyaha cyo gukora no gukoresha inyandiko mpimbano. Ubugenzacyaha bwohereje dosiye mu Bushinjacyaha ariko bufata umwanzuro wo gushyingura dosiye ku mpamvu yuko icyaha cyashaje.

Nyirabatoni yatanze ikirego mu Rukiko Rwisumbuye rwa Gasabo, atisunze Ubushinjacyaha, arega Gahima na Munyakarama icyaha cyo gukora no gukoresha inyandikompimbano, maze urwo Rukiko ruca urubanza rwemeza ko icyo kirego kitakiriwe kuko habaye ubusaze bwo kugikurikirana.

Nyirabatoni yajuririye urwo rubanza mu Rukiko Rukuru, arusaba gukosora amakosa yakozwe n'Urukiko Rwisumbuye rwa Gasabo, asobanura ko yareze Gahima na Munyakarama atisunze Ubushinjacyaha, icyaha cyo gukora no gukoresha inyandiko mpimbano, mu guca urubanza Urukiko Rwisumbuye rwa Gasabo rusuzuma ibijyanye n'icyaha cyo gukora inyandiko mpimbano gusa, rwemeza ko cyashaje, ko rutasuzumye icyo kuyikoresha kandi ari icy'imaragihe. Urukiko Rukuru, rwasanze icyaha Nyirabatoni yareze Gahima na Munyakarama, ari icyo gukora inyandiko mpimbano, kandi akaba ari cyo cyaha yari yatanze mu Bushinjacyaha bukemeza ko cyashaje, ruvuga ko uburenganzira bwe bwo gutanga ikirego atisunze Ubushinjacyaha bugarukira gusa ku cyaha cyari gikubiye muri dosiye yashyinguwe, cyo gukora inyandiko mpimbano, kuko icyo gikorwa cy'Ubushinjacyaha cyo gushyingura dosiye ari cyo yahereyeho arega atabwisunze, rubiheraho rwemeza ko ubujurire bwe nta shingiro bufite.

Nyirabatoni yandikiye Umuvunyi Mukuru, amusaba gusuzuma akarengane kabaye mu rubanza RPA 0571/14/HC/KIG rwaciwe n'Urukiko Rukuru, Nyuma yo gusuzuma dosiye y'urubanza rwe, Urwego rw'Umuvunyi rwasanze urwo rubanza rugaragaramo akarengane maze rwandikira Perezida w'Urukiko rw'Ikirenga, rumugaragariza akarengane Nyirabatoni yagize, mu cyemezo N° 086/CJ/2019 cyo ku wa 14/03/2019, Perezida w'Urukiko rw'Ikirenga yemeza ko urubanza RPA 0571/14/HC/KIG rusubirwamo ku mpamvu z'akarengane, maze urwo rubanza ruburanishwa n'Urukiko rw'Ubujurire.

Mu Rukiko rw'Ubujurire, urubanza rwaburanishijwe Gahima adahari ariko yarahamagajwe mu buryo bukurikije amategeko, iburanisha ryatangiye hasuzumwa inzitizi yatanzwe na

Munyakarama, y'uko umwirondoro Nyirabatoni yatanze atari uwe. Nyuma yo kumva icyo ababuranyi bose babivugaho no gusuzuma umwirondoro we, Urukiko rwemeza ko ntawe ufite uburenganzira bwo kumenya umwirondoro w'umuntu kurusha nyirawo, bityo ko inzitizi nta shingiro ifite.

Iburanisha ryaje gukomeza, Nyirabatoni avuga ko yaregeye gukora no gukoresha inyandiko mpimbano, nk'uko bigaragara muri dosiye z'Ubugenzacyaha, ahagaragara ibimenyetso by'icyo cyaha, kuko no mu bigize dosiye (inventaire) mu Rukiko Rwisumbuye rwa Gasabo ndetse no mu rubanza RP 0140 /14/TGI/GSBO, bigaragara ko aricyo cyaregwe, ndetse aba aricyo kijuririrwa mu Rukiko Rukuru, ariko ko ibijyanye no gukoresha inyandiko mpimbano bitigeze bisuzumwa n'inkiko zombi, akaba ari cyo cyamuteye akarengane, yongeraho kandi ko inyandiko baregera ko ari impimbano igikoreshwa kugeza ubu, kandi yagiye ishingirwaho mu manza zisaba gutesha agaciro impano yatanzwe, kuko urubanza rwaciwe n'Urukiko Rw'Ibanze rwa Rusororo rwavuze ko nta mpano yabayeho ahubwo habaye isaranganya, ko rero ubuzime butagomba kubarwa kuko iyo nyandiko igikoreshwa kugeza ubu, akaba ariho bashingira bavuga ko icyaha cyo gukoresha inyandiko mpimbano ari icy'imaragihe.

Munyakarama, avuga ko atigeze aregwa gukoresha inyandiko mpimbano ahubwo yarezwe icyo kuyikora, naho Gahima aregwa n'icyo kuyikoresha, ko nk'Umuyobozi n'Umwanditsi wa Komite yo gusaranganya, yakoze inyandiko y'isaranganya ry'isambu yahoze ari iya Benda na Mukagatare hagati ya Nyirabatoni na Gahima, kuko bombi bari batangiye kuyirwaniramo, ubuyobozi bufata icyemezo cyo kuyibasaranganya. Ku bijyanye no kumenya niba icyaha cyo gukoresha inyandiko mpimbano ari icyaha cy'imaragihe, Munyakarama avuga ko icyo cyaha atakirezwe.

Ubushinjacyaha bwo buvuga ko, nubwo muri uru rubanza butazanywe no kugira uwo bushinja cyangwa bushinjura, ikirego cyatanzwe na Nyirabatoni ndetse kikakirwa n'Ubugenzacyaha ari icyo gukora no gukoresha inyandiko mpimbano, ko Ubushinjacyaha butashishoje uko bikwiye bushyingura dosiye bushingiye ku cyaha cyo gukora inyandiko mpimbano gusa, busaba ko mu bushishozi bwarwo, Urukiko rw'Ubujurire rwasuzuma niba koko Nyirabatoni yararegeye no gukoresha inyandiko mpimbano, rwasanga yari yabiregeye, rukemeza ko yarenganye.

Incamake y'icyemezo: 1. Ku bijyanye n'icyaha cy'imaragihe, ni icyaha gifite ibikorwa bikomeza mu gihe, kandi bikagaragaza nta gushidikanya umugambi uhoraho wo kugikora, kubara igihe cy'ubuzime bitangira ku munsi icyaha cyarangiriyeho, kandi umucamanza akaba agomba gutanga igihano kimwe ku bikorwa byose bikigize biba byakozwe.

Gusubirishamo urubanza ku mpamvu z'akarengane bifite ishingiro kuri bimwe.

Amategeko yashingiweho:

Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 6,7,107 n'iya 118.

Itegeko nº 30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, Ingingo ya ya 5, 1° n'iya 6.

Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, Ingingo ya 22, 609 n'iya 610

Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, Ingingo ya 2.

Nta manza zifashishijwe.

Inyandiko z'abahanga:
Jean-Paul DOUCET, Dictionnaire de droit criminel
Michel Franchimont, Ann Jacobs et Adrien Masset, *Manuel de Precédure Pénale,* 4ed, Larcier, Bruxelles, 2012, P. 131
Serge Guinchard et Jacques Buisson, Procedure Penale, 10 ed, LexisNexis, Paris, 2014, P.806

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza NYIRABATONI Elizabeth, avuga ko yahaye GAHIMA Dembe Eduard umurima maze bagirana amasezerano yanditse y'impano, ariko nyuma GAHIMA Dembe Eduard aza kumuhemukira, bituma NYIRABATONI Elizabeth atangiza imanza ashaka gusubirana umurima we, atsindwa n'uko GAHIMA Dembe Eduard yahakanye iyo mpano, ahubwo yerekana inyandiko igaragaza ko uwo murima asangiye na murumuna we MUPENZI Vincent, ari uwo basaranganyijwe na NYIRABATONI Elizabeth. NYIRABATONI Elizabeth yaregeye Ubugenzacyaha mu mwaka wa 2013, avuga ko GAHIMA Dembe Eduard na MUNYAKARAMA Pierre wanditse inyandiko y'isaranganya ubwo yari Umunyamabanga w'Akagali ka Nyagahinga, mu Murenge wa Rusororo, bakoze icyaha cyo gukora no gukoresha inyandiko mpimbano. Ubugenzacyaha bwohereje dosiye mu Bushinjacyaha ariko bufata umwanzuro wo gushyingura dosiye ku mpamvu yuko icyaha cyashaje.

[2] NYIRABATONI Elizabeth yatanze ikirego mu Rukiko Rwisumbuye rwa Gasabo, atisunze Ubushinjacyaha, arega GAHIMA DEMBE Eduard na MUNYAKARAMA Pierre icyaha cyo gukora no gukoresha inyandikompimbano, maze mu rubanza n° RP 0140/14/TGI/GSBO rwaciwe ku wa 15/07/2014, urwo Rukiko rwemeza ko icyo kirego kitakiriwe kuko habaye ubusaze bwo kugikurikirana.

[3] NYIRABATONI Elizabeth yajuririye urwo rubanza mu Rukiko Rukuru, arusaba gukosora amakosa yakozwe n'Urukiko Rwisumbuye rwa Gasabo, asobanura ko yareze GAHIMA Dembe Eduard na MUNYAKARAMA Pierre atisunze Ubushinjacyaha, icyaha cyo gukora no gukoresha inyandiko mpimbano, mu guca urubanza Urukiko Rwisumbuye rwa Gasabo rusuzuma ibijyanye n'icyaha cyo gukora inyandiko mpimbano gusa, rwemeza ko cyashaje, ko rutasuzumye icyo kuyikoresha kandi ari icy'imaragihe.

[4] Urukiko Rukuru, mu rubanza n° RPA 0571/14/HC/KIG rwaciye ku wa 31/12/2015, rwasanze icyaha NYIRABATONI Elizabeth yareze GAHIMA Dembe Eduard na MUNYAKARAMA Pierre, ari icyo gukora inyandiko mpimbano, kandi akaba ari cyo cyaha yari yatanze mu Bushinjacyaha bukemeza ko cyashaje, ruvuga ko uburenganzira bwe bwo gutanga ikirego atisunze Ubushinjacyaha bugarukira gusa ku cyaha cyari gikubiye muri dosiye yashyinguwe, cyo gukora inyandiko mpimbano, kuko icyo gikorwa cy'Ubushinjacyaha cyo gushyingura dosiye ari cyo yahereyeho arega atabwisunze, rusanga icyemezo cyafashwe ku rwego rwa mbere gishingiye ku biteganywa n'ingingo ya 6 y'Itegeko ryerekeye imiburanishirize

y’imanza z’inshinjabyaha, gifite ishingiro, rubiheraho rwemeza ko ubujurire bwe nta shingiro bufite, ko imikirize y’urubanza rwajuririwe idahindutse.

[5] NYIRABATONI Elizabeth yandikiye Umuvunyi Mukuru, amusaba gusuzuma akarengane kabaye mu rubanza RPA 0571/14/HC/KIG rwaciwe n’Urukiko Rukuru ku wa 31/12/2015.

[6] Nyuma yo gusuzuma dosiye y’urubanza rwe, Urwego rw’Umuvunyi rwasanze n’ubwo Urukiko Rwisumbuye rwa Gasabo rwemeje ko habayeho ubuzime bw’ikurikiranacyaha ku kirego cyari cyatanzwe na NYIRABATONI Elizabeth, yari yarugaragarije ko icyaha akurikiranyeho GAHIMA Dembe Eduard na MUNYAKARAMA Pierre atari iccyo gukora inyandiko mpimbano gusa, ahubwo hari n’icyo kuyikoresha kandi akaba yaramenye iriya nyandiko ari uko GAHIMA Dembe Eduard ayitanzeho ikimenyetso mu Rukiko Rw’Ibanze rwa Rusororo, mu rubanza n◦ RC0143/011/TB/RUS rwaciwe ku wa 25/08/2011, GAHIMA Dembe akaba yaranayitanze mu rubanza rw’ubujurire n◦ RCA 0231/12/TGI/GSBO rwaciwe ku wa 07/09/2012 n’Urukiko Rwisumbuye rwa Gasabo, bivuga ko iyo nyandiko GAHIMA Dembe Eduard yayikoresheje bwa nyuma ku wa 07/09/2012.

[7] Urwego rw’Umuvunyi rwandikiye Perezida w’Urukiko rw’Ikirenga, rumugaragariza akarengane NYIRABATONI Elizabeth yagize, mu cyemezo N° 086/CJ/2019 cyo ku wa 14/03/2019, Perezida w’Urukiko rw’Ikirenga yemeza ko urubanza RPA 0571/14/HC/KIG rusubirwamo ku mpamvu z’akarengane, ategeka ko rwoherezwa mu Rukiko rw’Ubujurire kugira ngo abe ari rwo ruzaruburanisha, muri urwo Rukiko ruhabwa no RS/INJUST/RP00001/2019/CA.

[8] Iburanisha mu ruhame ryashyizwe ku wa 16/10/2019, uwo munsi ryimurwa ku mpamvu yuko MUNYAKARAMA Pierre arwaye, na nyuma rikomeza kwimurwa biturutse ku mpamvu z’ababuranyi ndetse n’icyorezo cya COVID-19, kugeza ubwo ku wa 22/9/2020 rwaburanishijwe, Ubushinjacyaha buhagarariwe na RUDATINYA Nyangezi Gaspard, Umushinjacyaha ku rwego rw’igihugu, NYIRABATONI Elizabeth ahagarariwe n’umuhungu we MUNANIRA John, nawe ahagarariwe na Me KARANGWA Vincent na Me BANDORA Alfred, MUNYAKARAMA Pierre yunganiwe na Me NSENGIMANA Emmanuel na Me NIZEYIMANA Boniface, naho GAHIMA Dembe Eduard atitabye, ariko yarahamagajwe mu buryo bukurikije amategeko, urubanza ruburanishwa adahari.

[9] Iburanisha ryatangiye hasuzumwa inzitizi yatanzwe na Me NSENGIMANA Emmanuel wunganira MUNYAKARAMA Pierre, y’uko umwirondoro NYIRABATONI Elizabeth yatanze atari uwe. Nyuma yo kumva icyo ababuranyi bose babivugaho no gusuzuma umwirondoro wa NYIRABATONI Elizabeth mwene GACEMERI na KABERA, ukubiye mu nyandiko ziri muri dosiye, nk’uko wagaragajwe haruguru, rushingiye ku ngingo ya 61 y’Itegeko nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n’umuryango, iteganya ko “… Inyandiko z’irangamimerere cyangwa imanza zizisimbura cyangwa zizikosora zubahwa na buri wese .…”, rwemeza ko ntawe ufite uburenganzira bwo kumenya umwirondoro w’umuntu kurusha nyirawo, bityo ko inzitizi yazamuwe na Me NSENGIMANA Emmanuel nta shingiro ifite.

[10] Iburanisha ry’urubanza mu mizi ryarakomeje, ruburanishwa mu ngingo zarwo zose, iburanisha rirapfundikirwa, ariko Ubushinjacyaha busabwa gushyikiriza Urukiko dosiye bwashyinguye y’ikirego NYIRABATONI Elizabeth yareze GAHIMA Dembe Eduard na MUNYAKARAMA Pierre, ababuranyi bamenyeshwa ko urubanza ruzasomwa ku wa 30/10/2020.

[11] Ku wa 05/10/2020, Ubushinjacyaha Bukuru bwashyize muri dosiye y'uru rubanza (muri IECMS) dosiye y'Ubugenzacyaha y'ikirego NYIRABATONI Elizabeth yatanze arega GAHIMA Dembe Eduard na MUNYAKARAMA Pierre, ababuranira NYIRABATONI Elizabeth nabo bashyiramo ikimenyetso gishya kigizwe n'umwanzuro we, ubwo yatangaga ikirego atisunze Ubushinjacyaha, ndetse n'inyandiko igaragaza amategeko yerekeye impano.

[12] Ku wa 30/10/2020, Urukiko rwemeje mu rubanza rubanziriza urundi, ko iburanisha rizasubukurwa ku wa 10/11/2020 saa mbili n'igice za mu gitondo, kugira ngo ababuranyi bagire icyo bavuga ku nyandiko n'ibimenyetso byashyizwe muri dosiye nyuma y'uko iburanisha ripfundikiwe, uwo munsi ugeze ntirwaburanishwa kuko Ubushinjacyaha butitabye, rwimurirwa ku wa 08/12/2020, ruburanishwa mu ruhame ababuranyi bahagarariwe cyangwa bunganiwe, nka mbere.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

Kumenya niba mu Rukiko Rwisumbuye rwa Gasabo, NYIRABATONI Elizabeth yarareze GAHIMA Dembe Eduard na MUNYAKARAMA Pierre icyaha cyo gukoresha inyandiko mpimbano no kumenya niba ari icyaha cy'imaragihe.

[13] Me KARANGWA Vincent avuga ko NYIRABATONI Elizabeth yaregeye gukora no gukoresha inyandiko mpimbano, nk'uko bigaragara muri dosiye z'Ubugenzacyaha, ahagaragara ibimenyetso by'icyo cyaha, kuko no mu bigize dosiye (inventaire) mu Rukiko Rwisumbuye rwa Gasabo ndetse no mu rubanza no RP 0140 /14/TGI/GSBO, bigaragara ko aricyo cyaregwe, ndetse aba aricyo kijuririrwa mu Rukiko Rukuru, ariko ko ibijyanye no gukoresha inyandiko mpimbano bitigeze bisuzumwa n'inkiko zombi, akaba ari cyo cyateye NYIRABATONI Elizabeth akarengane.

[14] Me KARANGWA Vincent, avuga ko inyandiko baregera ko ari impimbano igikoreshwa kugeza ubu, kandi yagiye ishingirwaho mu manza zisaba gutesha agaciro impano yatanzwe, kuko urubanza rwaciwe n'Urukiko Rw'Ibanze rwa Rusororo rwavuze ko nta mpano yabayeho ahubwo habaye isaranganya, ko rero ubuzime butagomba kubarwa kuko iyo nyandiko igikoreshwa kugeza ubu, ari naho bashingira bavuga ko icyaha cyo gukoresha inyandiko mpimbano ari icy'imaragihe.

[15] Me BANDORA Alfred avuga ko NYIRABATONI Elizabeth na GAHIMA Dembe Eduard bose batahutse bava Uganda, NYIRABATONI Elisabeth amaze kuzungura umutungo wa MUKAGATARE, umuvandimwe we, aha GAHIMA Dembe Eduard impano, nyuma haza kuvuka ikibazo umuryango wa GAHIMA Dembe Eduard uhemukira uwa NYIRABATONI Elizabeth, bituma asaba ko iyo mpano iteshwa agaciro. Asobanura ko inyandiko y'impano yahinduwemo iy'isaranganya ari naho hakomotse icyaha cyo gukora no gukoresha inyandiko mpimbano, ko kubera ko NYIRABATONI Elizabeth afite imyaka irenga mirongo inani, umuhungu we ariwe watanze ikirego muri *Criminal Investigation Department* (CID) cyo gukora no gukoresha inyandiko mpimbano, ko icyaha cyabagizeho ingaruka nk'uko bigaragara mu myanzuro yabo mu Bugenzacyaha ari icyo gukoresha iyo nyandiko nyuma y'uko ihinduwemo isaranganya kandi yari iy'impano.

[16] Me BANDORA Alfred avuga kandi ko icyaha cyo gukoresha inyandiko mpimbano ari icyaha cy'imaragihe, kuko yakoreshejwe n'ubu ikaba igikoreshwa, kandi na *Rwanda Forensic Laboratory* ikaba yaremeje ko MUNYAKARAMA Pierre na GAHIMA Dembe Eduard bagize uruhare mu

guhindura inyandiko y'impano iy'isaranganya, bituma NYIRABATONI Elisabeth atakaza uburenganzira ku mutungo we.

[17] Uhagarariye Ubushinjacyaha avuga ko, nubwo muri uru rubanza atazanywe no kugira uwo ashinja cyangwa ashinjura, ikirego cyatanzwe na NYIRABATONI Elisabeth ndetse kikakirwa n'Ubugenzacyaha ari icyo gukora no gukoresha inyandiko mpimbano, ko Ubushinjacyaha butashishoje uko bikwiye bushingura dosiye bushingiye ku cyaha cyo gukora inyandiko mpimbano gusa, ko inkiko zari zararegwe ibyaha byombi, ariko zibanda ku cyaha cyo gukoresha inyandiko mpimbano gusa, asaba ko mu bushishozi bwarwo, Urukiko rw'Ubujurire rwasuzuma niba koko NYIRABATONI Elizabeth yararegeye no gukoresha inyandiko mpimbano, rwasanga yari yabiregeye, rukemeza ko yarenganye kuko inkiko zitari kwanga kwakira ikirego kijyanye n'icyaha cyo gukoresha inyandiko mpimbano GAHIMBA Dembe Edouard na MUNYAKARAMA Pierre bakomeje gukoresha kugeza mu mwaka wa 2013 bitewe n'uko icyo cyaha ari icy'imaragagihe kandi kikaba cyarangirije NYIRABATONI Elisabeth.

[18] MUNYAKARAMA Pierre, avuga ko atigeze aregwa gukoresha inyandiko mpimbano ahubwo yarezwe icyo kuyikora, naho GAHIMA Dembe Eduard aregwa icyaha n'icyo kuyikoresha, ko nk'Umuyobozi n'Umwanditsi wa Komite yo gusaranganya, yakoze inyandiko y'isaranganya ry'isambu yahoze ari iya Benda na Mukagatare hagati ya NYIRABATONI Elizabeth na GAHIMA Dembe Eduard, kuko bombi bari batangiye kuyirwaniramo, ubuyobozi bufata icyemezo cyo kuyibasaranganya, ko yabikoze mu nyungu z'abanyarwanda aho kuba mu nyungu ze, kuko nta n'umwe mu bo yasaranganyije bari baziranye, ndetse ko nta bubasha yari afite bwo guhindura amasezerano abantu babiri bagiranye, cyangwa ngo hagire ubuyobozi bwivanga muri bene ayo masezerano uretse kuyashyiraho kashe, kandi ko ibyo yakoraga byose byemezwaga n'Umurenge, asaba uru Rukiko narwo kwemeza ko icyaha yarezwe cyo gukora inyandiko mpimbano cyashaje.

[19] Me NSENGIMANA Emmanuel, umwunganira, avuga ko inteko yatangiye urubanza yari yasabye abahagarariye NYIRABATONI Elizabeth kugaragaza inyandiko yatangiyeho ikirego kugira ngo harebwe niba yararegeye ibyaha byombi, ariko bakaba batarabikoze, ko mu nyandiko ziri muri dosiye (cote 38) hagaragara inyandiko y'Ubushinjacyaha ishyingura dosiye, igaragaza ko icyaha NYIRABATONI Elizabeth yaregeye ari icy'inyandiko mpimbano cyateganywaga n'ingingo ya 609 y'Igitabo cy'amategeko ahana ibyaha, ko ahereye ku biteganywa n'ingingo ya 111 y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha asanga hari ugushidikanya, kuko NYIRABATONI Elizabeth atagaragaje ibimenyetso by'ibyo aregera, kuko abazwa mu Bugenzacyaha yavuze ko aregera icyaha cyo gukora inyandiko mpimbano, arega GAHIMA Dembe Eduard na MUNYAKAYANZA Pierre, bivuze ko nta nyungu yari afite yo kurega, kuko yatanze ikirego mu mwaka wa 2013, amaze kubona uburenganzira bwo kuzungura, ko kuba Ubushinjacyaha buvuga ko habaye kwibeshya byarengera uregwa.

[20] Me NIZEYIMANA Boniface, nawe wunganira MUNYAKARAMA Pierre, avuga ko akosora ibyo yari yavuze mbere ko MUNYAKARAMA Pierre na GAHIMA Dembe Eduard barezwe icyaha cyo gukora no gukoresha inyandiko mpimbano kandi bararezwe icyo gukora inyandiko mpimbano gusa, ko ikirego NYIRABATONI Elizabeth yagitanze atisunze Ubushinjacyaha agatsindwa ariko ntabe yarasabye ko ayo makosa akosorwa, kandi ko imanza zamurenganyije atari zo zasuzumwe, ko mu gihe gukoresha inyandiko mpimbano byaba byaramwangirije, hazarebwa niba MUNYAKARAMA Pierre cyangwa GAHIMA Dembe Eduard barayikoresheje.

[21] Ku bijyanye no kumenya niba icyaha cyo gukoresha inyandiko mpimbano ari icyaha cy'imaragihe, abunganira MUNYAKARAMA Pierre bavugaka ko icyo cyaha atakirezwe.

[22] MUNANIRA John (umuhungu wa NYIRABATONI Elizabeth ari nawe uri mu mwanya wa nyina mu rubanza), avuga ko NYIRABATONI Elizabeth nta sano afitanye na GAHIMA Dembe Eduard, ahubwo ko ahantu NYIRABATONI Elizabeth yari yazunguye, GAHIMA Dembe Eduard yaje kuhabohoza bituma ajya kumurega mu buyobozi, ariko GAHIMA ashaka abayobozi bamufasha gukora inyandiko mpimbano bandika ko habaye isaranganya. Avuga ko impano itangwa GAHIMA Dembe Eduard yasabye ko hakorwa inyandiko NYIRABATONI Elizabeth arabyemera, basaba MUNYAKARAMA Pierre kubyandika mu gitabo cy'amakuru cy'Akagari ari naho yahereye akora inyandiko mpimbano kuko yari yungirije Responsable w'Akagari, ariko ko Umuyobozi w'Akagari kimwe n'Umuyobozi w'Umurenge bemeje ko nta nyandiko y'isaranganya yabayeho, kandi ko na *forensic Laboratory* yabyemeje.

[23] MUPENZI Vincent (umuvandimwe wa GAHIMA Dembe) wumviswe nk'utanga amakuru, avuga ko GAHIMA Dembe Eduard yari muri iyo sambu guhera mu mwaka wa 1994, NYIRABATONI Elizabeth aza mu mwaka wa 2000 asanga GAHIMA Dembe Eduard yarubatsemo inzu, NYIRABATONI Elizabeth asaba ko yava muri iyo sambu, Ubuyobozi buvuga ko NYIRABATONI Elizabeth yaguma muri iyo nzu kuko avuga ko ari iy'umuvandimwe we, ibindi bigasaranganywa kuko ari yo yari gahunda ya Leta, ariko ko ibyiswe impano bitabayeho kuko NYIRABATONI Elizabeth na GAHIMA Dembe Eduard batari baziranye ahubwo bagonganiye muri iyo sambu.

UKO URUKIKO RUBIBONA

a) **Kumenya niba GAHIMA Dembe Eduard na Munyakarama Pierre bararezwe icyaha cyo gukoresha inyandiko mpimbano.**

[24] Ingingo ya 2 y'Itegeko nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko ikimenyetso cyo mu rubanza ari uburyo bukoreshwa kugira ngo ukuri kw' ibyabaye kugaragare. Naho ingingo ya 3 y'iryo tegeko igateganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

[25] Ingingo ya 107 y'Itegeko nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko «*Ubushinjacyaha, uwakorewe icyaha cyangwa se abamufiteho uburenganzira iyo baregeye indishyi z'akababaro cyangwa biregeye umuburanyi, ni bo bagomba gutanga ibimenyetso byemeza icyaha (…)* ».

[26] Ku cyaha cyo gukora inyandiko mpimbano, Urukiko rurasanga nta mpaka ziri hagati y'ababuranyi, zishingiye ku kuba mu kirego NYIRABATONI Elisabeth yareze GAHIMA Dembe Eduard na MUNYAKARAMA Pierre, yarabareze icyaha cyo gukora inyandiko mpimbano, cyangwa kuba ikurikiranacyaha kuri icyo cyaha ryarazimwe kuko cyashaje, ahubwo impaka zishingiye ku kumenya niba mu kirego cye, NYIRABATONI Elizabeth yarabareze n'icyaha cyo gukoresha inyandiko mpimbano.

[27] Ku cyaha cyo gukoresha inyandiko mpimbano, dosiye igaragaza ko ku wa 30/7/2013, Ubugenzacyaha bwohererereje Ubushinjacyaha ku rwego rw'Ibanze rwa Rosororo dosiye igaragaza ko ibyaha biregwa GAHIMA Dembe Eduard na MUNYAKARAMA Pierre, ari ibyo gukora no gukoresha inyandiko mpimbano, naho inyandiko yo ku wa 14/8/2013, ishyingura dosiye y'ikirego cyatanzwe na NYIRABATONI Elizabeth igaragaza ko Ubushinjacyaha bwashyinguye dosiye bwashyikirijwe bushingiye ku ngingo ya 609 y'Igitabo cy'amategeko ahana, iteganya kandi

igahana icyaha cyo gukora inyandiko mpimbano, bivuze ko Ubushinjacyaha bushyingura dosiye bwahereye gusa ku cyaha cyo gukora inyandiko mpimbano, busanga cyarashaje, burayishyingura.

[28] Umwanzuro w'ikirego NYIRABATONI Elizabeth yashyikirije Urukiko Rwisumbuye rwa Gasabo, aho yareze atisunze Ubushinjacyaha, ugaragaza ko icyaha yareze GAHIMA Dembe Eduard na MUNYAKARAMA Pierre ari icyo gukora no gukoresha inyandiko mpimbano, bigaragara kandi ko mu gika cya 13 cy'urubanza no RP 0140/14/TGI/GSBO, rwaciwe ku wa 15/07/2014, abaregwa baburanishijwe kuri ibyo byaha byombi, uburanira NYIRABATONI Elizabeth avuga ko icyaha cy'inyandiko mpimbano akurikiranyeho GAHIMA Dembe Eduard ari icy'imaragihe, Urukiko rusanga nta shingiro bifite kuko icyaha cyo gukora inyandiko mpimbano atari icyaha gikomeza, ko iyo inyandiko itanzwe, icyaha kibarwa ku munsi inyandiko yatanzweho bikarangirana n'igikorwa cyo kuyitanga, ko kuba yakongera kuyitanga nk'ikimenyetso ikindi gihe atari byo biyigira icyaha cy'imaragihe.

[29] Dosiye igaragaza mu rubanza no RPA 0571/14/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 31/12/2015, NYIRABATONI Elizabeth yajuririye urwo Rukiko avuga ko uburyo Urukiko Rwisumbuye rwitwaye mu kirego yaruregeye atari bwo, ko rwitaye ku cyaha cyo gukora inyandiko mpimbano gusa ntirwita ku cyo kuyikoresha, asaba ko byakosorwa. Urwo Rukiko rushingiye ku nyandiko y'Ubushinjacyaha ishyingura dosiye, rwasanze uburenganzira bwa NYIRABATONI Elizabeth bwo kurega atisunze Ubushinjacyaha bugarukira ku cyaha cyari cyaregewe muri dosiye yashyinguwe, ni ukuvuga icyo gukora inyandiko mpimbano, ko rero icyemezo cyafashwe ku rwego rwa mbere nta nenge gifite, kikaba kigomba kugumaho.

[30] Ku byerekeye icyaha cyo gukoresha inyandiko mpimbano, Urukiko rurasanga nk'uko byerekanwe haruguru, muri dosiye y'ikirego cya NYIRABATONI Elizabeth Ubugenzacyaha bwohereje Ubushinjacyaha ari nayo Ubushinjacyaha bwashyinguye, mu mwanzuro wa NYIRABATONI Elizabeth utanga ikirego mu Rukiko Rwisumbuye rwa Gasabo atisunze Ubushinjacyaha, ndetse no mu rubanza no RP 0140/14/TGI/GSBO rwaciwe n'urwo Rukiko, kuri icyo kirego, NYIRABATONI Elisabeth yaregeye icyaha cyo gukora n'icyo gukoresha inyandiko mpimbano, bityo imvugo ya MUNYAKARAMA Pierre n'abunganizi be y'uko NYIRABATONI Elizabeth atanga ikirego yabareze icyaha cyo gukora inyandiko mpimbano gusa, ikaba nta shingiro ifite.

[31] Urukiko rurasanga kuba Urukiko Rukuru mu gusesengura ikibazo cyo kumenya niba NYIRABATONI Elizabeth yarareze GAHIMA Dembe Eduard na MUNYAKARAMA Pierre icyaha cyo gukoresha inyandiko mpimbano rushingiye ku nyandiko y'Ubushinjacyaha bwemeje ko ikurikiranacyaha ryazimye rushingiye gusa ku cyaha cyo gukora inyandiko mpimbano kandi bwari bwaregewe n'icyo kuyikoresha, dore ko n'Ubushinjacyaha bwemereye uru Rukiko ko butashishoje bihagije, bushyingura dosiye, urwo Rukiko rukita gusa kuri iyo nyandiko ishyingura dosiye ntirusuzume na dosiye nyiri izina yashyinguwe, rukabiheraho rwemeza ko nta gihindutse ku mikirize y'urubanza RP 0140/14/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo, bigaragaza amakosa urwo Rukiko rwakoze, bikaba kandi bigaragaza akarengane NYIRABATONI Elizabeth yatewe n'urubanza yasabiye ko rwasubirwamo ku mpamvu z'akarengane.

b) Kumenya niba icyaha cyo gukoresha inyandiko mpimbano ari icyaha cy'imaragihe.

[32] Ingingo ya 6 y'Itegeko nº 30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha yakoreshwaga igihe ikirego cyatangwaga, iteganya ko ubusaze bw'ikirego cy'ikurikiranacyaha butangira kubarwa guhera ku munsi icyaha cyakoreweho iyo muri icyo gihe nta bikorwa by'iperereza cyangwa iby'ikurikiranacyaha byigeze bikorwa. Ku byerekeye ibyaha bikozwe ako kanya kandi bidakomeza, igihe cy'ubusaze bw'ikirego cy'ikurikiranacyaha gitangira kubarwa ku munsi icyaha gikoreweho. Ku byerekeye ibyaha by'imaragihe, igihe cy'ubusaze bw'ikirego cy'ikurikiranacyaha gitangira kubarwa ku munsi igikorwa cya nyuma kigize icyaha cyarangiriyeho. Ibiteganywa muri iyi ngingo akaba aribyo bigarukwaho n'ingingo ya 7 y'Itegeko nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha[1].

[33] Ingingo ya 5, 1° y'Itegeko y'Itegeko nº 30/2013 ryo ku wa 24/5/2013 ryavuzwe haruguru yakoreshwaga igihe ikirego cyatangwaga, iteganya ko uretse icyaha cya jenoside, ibyaha byibasiye inyokomuntu n'ibyaha by'intambara bidasaza, ikirego cy'ikurikiranacyaha ku bindi byaha gisaza mu gihe cy'imyaka icumi (10) yuzuye ku byaha by'ubugome.

[34] Ingingo ya 22 y'Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ryakoreshwaga igihe icyaha GAHIMA Dembe Eduard na MUNYAKARAMA Pierre bakurikiranyweho cyakorwaga, iteganya ko icyaha cy'ubugome ari icyaha itegeko rihanisha igihano cy'iremezo cy'igifungo kirenze imyaka itanu (5).

[35] Ingingo ya 609 y'Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012, iteganya ko "*Umuntu wese uhimba cyangwa uhindura mu buryo ubwo ari bwo bwose inyandiko, ashyiraho umukono cyangwa igikumwe bitari byo, yonona inyandiko cyangwa imikono, asimbuza abantu abandi, ahimba amasezerano, imiterere y'ingingo zayo, igitegetswe gukorwa cyangwa icyarangije kwemeranywa, ahanishwa igifungo kirenze imyaka itanu (5) kugeza ku myaka irindwi (7)*". Naho ingingo yaryo ya 610, iteganya ko "*Umuntu wese uzi ko inyandiko ari impimbano, akayikoresha ku buryo ubwo ari bwo bwose, ahanishwa ibihano bimwe n'iby"uwayihimbye"*.

[36] Dosiye igaragaza inyandiko yo ku wa 28/5/2000, NYIRABATONI Elizabeth yahereyeho GAHIMA Dembe Eduard isambu, harimo kandi inyandiko yo ku wa 28/4/2000 yiswe raporo y'uko igabana hagati ya NYIRABATONI Elizabeth na GAHIMA Dembe Eduard ryagenze, havugwa ko NYIRABATONI Elisabeth na GAHIMA Dembe Eduard bagabanye isambu, GAHIMA Dembe Eduard agasubirana ahantu bari baramugabanyije na NYIRABATONI Elizabeth.

[37] Dosiye igaragaza urubanza RC 0143/011/TB/RUS rwaciwe n'Urukiko rw'Ibanze rwa Rusororo ku wa 25/8/2011, NYIRABATONI Elizabeth aburana na GAHIMA Dembe Eduard gutesha agaciro impano, aho urwo Rukiko rwemeje ko "*ikirego cya NYIRABATONI Elizabeth nta shingiro gifite, kuko habayeho amasezerano yo gutanga umurima hagati ye na GAHIMA Dembe Eduard, ayo masezerano agakorerwa inyandiko yo ku wa 20/8/2009 (niko byanditse mu rubanza)*

[1] Ingingo ya 7 y'itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza w'inshinjabyaha, iteganya ko *ubusaze bw'ikirego cy'ikurikiranacyaha butangira kubarwa guhera ku munsi icyaha cyakoreweho iyo muri icyo gihe nta bikorwa by'iperereza cyangwa iby'ikurikiranacyaha byigeze bikorwa. Ku byerekeye ibyaha bikozwe ako kanya kandi bidakomeza, igihe cy'ubusaze bw'ikirego cy'ikurikiranacyaha gitangira kubarwa ku munsi icyaha gikoreweho. Ku byerekeye ibyaha by'imaragihe, igihe cy'ubusaze bw'ikirego cy'ikurikiranacyaha gitangira kubarwa uhereye igihe icyo gikorwa cyarangiriye* (…)

mu Kagari ka Nyagahinga, bityo akaba agumanye agaciro kayo kandi akaba agomba gushyirwa mu bikorwa".

[38] Dosiye igaragaza ko NYIRABATONI Elizabeth yajuririye urubanza RC 0143/011/TB/RUS mu Rukiko Rwisumbuye rwa Gasabo, ruca urubanza no RCA 0231/12/TGI/GSBO ku wa 7/9/2012, rwemeza ko ikirego cya NYIRABATONI Elizabeth nta shingiro gifite, ko habayeho isaranganya ry'isambu hagati ye na GAHIMA Dembe Eduard n'umuvandimwe we MUPENZI Vincent, imikirize y'urubanza no RC 0143/011/TB/RUS ikaba idahindutse, bikaba bigaragara ko mu gufata icyemezo, Urukiko rwashingiye ku kuba GAHIMA Dembe Eduard na MUPENZI Vincent bararugaragarije inyandiko y'isaranganya yo ku wa 28/4/2000 kandi NYIRABATONI Elizabeth akaba atarashoboye kuyivuguruza. NYIRABATONI Elizabeth yavuze ko iyo nyandiko atayizi, ko ari impimbano, kuko ubwo yahaga GAHIMA Dembe Eduard impano babikoreye inyandiko yo ku wa 28/5/2000, iyo nyandiko akaba ari yo GAHIMA DEMBE Eduard yahinduyemo iy'isaranganya yo ku wa 28/4/2000.

[39] Dosiye igaragaza ko inyandiko yo ku wa 28/04/2000 n'iyo ku wa 28/05/2000 zombi zapimwe na *Forensic Laboratory*, isanga: "umubare 5 wari wanditswe mu itariki **warahinduwemo** 4, bityo itariki nyakuri y'amasezerano y'impano hagati ya NYIRABATONI Elizabeth na GAHIMA Eduard ni ku wa 28/5/2000; ko amagambo "Gusaranganya hagati ya …y'abantu (2)" **yanditswe nyuma** y'andi magambo ari ku masezerano y'impano hagati ya NYIRABATONI Elisabeth na GAHIMA Dembe Eduard, ikanagaragaza ko imyandikire (handwriting) y'inyuguti n'umubare kabiri byanditsse ku mutwe w'amasezerano bigibwaho impaka, **bifitanye isano** y'imyandikire n'ibyanditse ku masezerano hagati ya NYIRABATONI Elizabeth na GAHIMA Eduard".

[40] Ku bijyanye n'icyaha cy'imaragihe, umuhanga mu mategeko Jean-Paul Doucet, muri *Dictionnaire de droit criminel*[2], avuga ko ari icyaha gifite ibikorwa bikomeza mu gihe, kandi bikagaragaza nta gushidikanya umugambi uhoraho wo kugikora …. Icyaha kizima ku munsi icyaha cyarangiriyeho, kandi umucamanza akaba agomba gutanga igihano kimwe ku bikorwa byose bikigize biba byakozwe (…), naho Michel Franchimont, Ann Jacobs na Adrien Masset[3], bavuga ko icyaha cy'imaragihe kigamije kubyara kandi kikagumishaho ibikorwa bikurikiranwa nk'icyaha, ko ubusaze butangira kubarwa uhereye ku munsi igikorwa gikurikiranwe cyahagaze[4].

[41] Urukiko rurasanga nk'uko dosiye ibigaragaza, umuntu wanditse inyandiko y'impano yo ku wa 28/5/2000, ari nawe wayihinduye iy'isaranganya bivugwa ko ryakozwe ku wa 28/04/2000, kuko raporo ya *Forensinc Laboratory* yerekanye ko imyandikire/umukono (handwriting) y'ibiri ku mutwe w'iyo nyandiko, ahavugwa ngo "Gusaranganya hagati ya …y'abantu (2)" bifitanye

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[2] Jean-Paul DOUCET, Dictionnaire de droit criminal, (Infraction continue. Une infraction est dite continue, ou continuée, lorsqu'elle résulte d'une activité qui se prolonge dans le temps et qui marque concrètement la persistance d'une intention délictueuse (tel est le cas du délit d'édification d'un bâtiment sans permis de construire, qui se prolonge pendant toute la durée des travaux). Les auteurs parlent parfois, dans un sens proche, d'Infraction successive*, ou d'infraction continue successive. Le délai de prescription ne commence à courir que du jour où l'infraction a pris fin, mais les juges ne peuvent prononcer qu'une seule peine pour l'ensemble des agissements reprochés.)

[3] Michel Franchimont, Ann Jacobs et Adrien Masset, *Manuel de Precédure Pénale*, 4ed, Larcier, Bruxelles, 2012, P. 131 (Lorsque l'infraction est continue, c'est-à-dire lorsqu'elle vise la création et le maitien d'une situation délictueuse, la prescription ne commence à courrir que le jour ou l'état délictuel prend fin).

[4] Serge Guinchard et Jacques Buisson, Procedure Penale, 10 ed, LexisNexis, Paris, 2014, P.806

isano n'imyandikire y'ibyanditse mu masezerano, byemeza ko inyandiko yo ku wa 28/04/2008 ari impimbano.

[42] Urukiko rusanga kuva iyo nyandiko yo ku wa 28/04/2000 yarakoreshejwe kugeza ku wa 07/09/2012, ubwo GAHIMBA Dembe Eduard yayitangagaho ikimenyetso cy'uko yasaranganyije na NYIRABATONI Elizabeth, mu Rukiko Rwisumbuye rwa Gasabo, mu rubanza RCA 0231/12/TGI/GSBO rwaciwe ku wa 07/09/2012, NYIRABATONI Elizabeth akaba yaratanze ikirego cyo gukora no gukoresha inyandiko mpimbano mu Rukiko Rwisumbuye rwa Gasabo mu mwaka wa 2013, ariko urwo Rukiko rukavuga ko ikirego cy'ikurikiranacyaha cyashaje kuko inyandiko ari iyo mu mwaka wa 2000, rwaritiranyije ibintu, kubera ko n'ubwo inyandiko yakozwe mu mwaka wa 2000 ariko yakomeje gukoreshwa mu manza zitandukanye kugeza mu mwaka wa 2012.

[43] Urukiko rusanga igihe NYIRABATONI Elizabeth yamenyeye ko inyandiko yo ku wa 28/05/2000, ariyo GAHIMA Dembe Eduard yahinduyemo inyandiko y'isaranganya ari igihe yayitanzeho ikimenyetso mu rubanza rwaciwe ku wa 25/08/2011. Kuba rero GAHIMA Dembe Eduard yarakomeje kuyikoresha kugeza mu mwaka wa 2012, nk'uko byavuzwe haruguru, ubusaze bw'ikurikiranacyaha bwagombaga kubarwa uhereye igihe iyo nyandiko yakoresherejwe bwa nyuma, ni ukuvuga guhera mu mwaka wa 2012, bivuze ko kuba ikoreshwa ry'inyandiko mpimbano ryararegewe mu mwaka wa 2013, icyo gihe hari hataraba ubuzime kw'ikurikiranwa kuri icyo cyaha, kuko nk'uko byasobanuwe mu mategeko yagaragajwe haruguru, ubusaze ku byaha by'ubugome ari imyaka icumi, kandi icyaha cyo gukoresha inyandiko mpimbano GAHIMA Dembe Eduard na MUNYAKARAMA Pierre bakurikiranyweho n'icy'ubugome, byumvikana rero ko bareze icyaha bakurikiranyweho kitarasaza.

[44] Urukiko rusanga kuba NYIRABATONI Elizabeth yaratanze ikirego nticyakirwe ku mpamvu y'uko ngo habaye ubusaze bw'ikurikiranacyaha, bigaragaza ko yarenganye, bityo akaba agomba kurenganurwa, ikirego cye kikakirwa, abaregwa bagakurikiranwa ku cyaha cyo gukoresha inyandiko mpimbano.

2) Kumenya niba hari ibimenyetso bihamya GAHIMBA Dembe Eduard na MUNYAKARAMA Pierre icyaha cyo gukoresha inyandiko mpimbano

[45] Abahagarariye NYIRABATONI Elizabeth, bavuga ko GAHIMBA Dembe Eduard na MUNYAKARAMA Pierre bakoze inyandiko mpimbano, aho bafashe inyandiko yo ku wa 28/5/2000 y'impano, bayihinduramo iy'isaranganya bavuga ko ryakozwe ku wa 28/4/2000. Bavuga kandi ko hari ibimenyetso bibahamya icyaha, birimo inyandiko z'abayobozi bemeza ko muri ako gace nta saranganya ryabayeho, ndetse n'ikigo *Rwanda Forensic Laboratory* kikaba cyaremeje ko inyandiko yo ku wa 28/4/2000 ari impimbano, kandi iyo nyandiko ikaba yarakomeje gukoreshwa mu nkiko mu manza zitandukanye, zigaherwaho NYIRABATONI Elizabeth atsindwa, basaba ko GAHIMA Dembe Eduard na MUNYAKARAMA Pierre bahanirwa nk'uko amategeko abiteganya.

[46] MUNYAKARAMA Pierre kimwe n'abamwunganira, bavuga ko nta nyandiko mpimbano yakoze, kuko isaranganya ryabaye rikandikwa mu gitabo cyabugenewe, kandi ko n'iyo yaba yarayikoze habayeho ubuzime bw'ikurikirana cyaka, kuko inyandiko ivugwa ko ari impimbano ari iyo mu mwaka wa 2000, NYIRABATONI Elizabeth akaba yaratanze ikirego mu mwaka wa

2013, kandi ko n'icyaha cyo kuyikoresha cyiswe icyaha cy'imaragihe hatagaragazwa igihe MUNYAKARAMA Pierre yagikoreye, basaba ko yagirwa umwere ku cyaha akurikiranweho.

[47] Uhagarariye Ubushinjajcyaha avuga ko dosiye yashyinguwe ku cyaha cyo gukora inyandiko mpimbano, atari ku cyaha cyo kuyikoresha, ariyo mpamvu ashingiye ku bimenyetso byagaragajwe n'abahanga ndetse no kunyandiko y'ubuyobozi bw'Umurenge wa Rusosororo, abaregwa bahamwa n'ibyaha bakurikiranyweho, bagahanwa hakurikijwe ibiteganywa n'ingingo ya 609 n'iya 610 y'Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ryakoreshwaga igihe icyaha cya korwaga.

UKO URUKIKO RUBIBONA

[48] Ingingo ya 609 y'Itegeko-Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga igihe icyaha GAHIMA Demde Eduard na MUNYAKARAMA Pierre bakurikiranyweho cyakorwaga, iteganya ko umuntu wese uhimba cyangwa uhindura mu buryo ubwo ari bwo bwose inyandiko, ashyiraho umukono cyangwa igikumwe bitari byo, yonona inyandiko cyangwa imikono, asimbuza abantu abandi, ahimba amasezerano imiterere y'ingingo zayo, igitegetswe gukorwa cyangwa icyarangije kwemeranywa, ahanishwa igifungo kirenze imyaka itanu (5) kugeza ku myaka irindwi (7) n'ihazabu y'amafaranga y'u Rwanda kuva ku bihumbi magana atatu (300.000) kugeza kuri miliyoni eshatu (3.000.000). Naho ingingo ya 610 y'iryo Tegeko Ngenga igateganya ko Umuntu wese uzi ko inyandiko ari impimbano, akayikoresha ku buryo ubwo ari bwo bwose, ahanishwa ibihano bimwe n'iby'uwayihimbye.[5]

[49] Ingingo ya 118, igika cya kabiri, y'Itegeko no 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha igira iti:"*Kuregera urukiko utisunze Ubushinjacyaha bikorwa mu kirego uwangirijwe n'icyaha atanga mu rukiko ruburanisha imanza z'inshinjabyaha agamije ko uwakoze icyaha, uwo bafatanyije cyangwa icyitso bahanwa kandi bagategekwa no kwishyura indishyi zihwanye n'ibyo bangije*".

[50] Ingingo ya 6 y'Itegeko no 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru, iteganya ko: "*Uretse ibyaha bidasaza biteganywa n'amategeko, ikirego cy'ikurikiranacyaha ku bindi byaha gisaza: 1° mu gihe cy'imyaka icumi (10) yuzuye ku byaha by'ubugome*".

[51] Dosiye igaragaza ko ku wa 10/2/2013, Umunyamabanga Nshingwabikorwa w'Umurenge wa Rusororo yandikiye Umuyobozi wa Station ya Police ya Kabuga, amumenyesha ko mu gitabo cy'isaranganya bafite nta mazina ya NYIRABATONI Elizabeth na GAHIMA Dembe bagaragaramo nk'abasaranganyijwe.

[52] Dosiye igaragaza na none ko nk'uko byagarutsweho haruguru, inyandiko yo ku wa 28/5/2000 y'impano n'iyo ku wa 28/04/2000 y'iswe iy'isaranganya zapimwe na *Rwanda Forensic Laboratory*, igasanga umubare 5 wari wanditswe mu itariki warahinduwemo 4, amagambo gusaranganya hagati y'abantu (2) yaranditswe nyuma y'andi magambo ari ku masezerano y'impano hagati ya NYIRABATONI Elisabeth na GAHIMA Dembe Eduard, bityo itariki nyakuri

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[5] Iki gihano ni nacyo giteganywa n'ingingo ya 276, igika cya 3, y'Itegeko nº68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange.

y’amasezerano y’impano hagati ya NYIRABATONI Elizabeth na GAHIMA Dembe Eduard akaba ari iyo ku wa 28/05/2000.

[53] Dosiye igaragaza ko ku wa 8/7/2013 uwitwa NTIDENDEREZA Anaclet wayoboye Akagari ka Runyonza guhera mu mwaka wa 1997 kugeza mu mwaka wa 2004, wari muri Komite y’isaranganya, yemeje ko nta saranganya ryabaye hagati ya NYIRABATONI Elizabeth na GAHIMA Dembe Eduard, ahubwo ko (NYIRABATONI Elizabrth) yamuhaye ariko ahanditse impano hakaba harahinduwemo gusaranganya bikozwe n’umunyamabanga w’Akagari (secrétaire) witwa MUNYAKARANA Pierre kuko ariwe wandikaga, kuko igikorwa cyo gutanga cyabaye we, MUNYAKARAMA Pierre, uwari ugiye guhabwa n’uwatanze bahari, kikaba kitaritabirwaga n’abantu benshi, uretse igihe cy’isaranganya.

[54] Urukiko rurasanga n’ubwo GAHIMA Dembe Eduard na MUNYAKARAMA Pierre badakurikiranyweho icyaha cyo gukora inyandiko mpimbano kubera ko ikurikiranacyaha kuri icyo cyaha ryashaje, ari ngombwa kwemeza niba inyandiko y’isaranganya yo ku wa 28/04/2000, ari impimbano, mbere yo kwemeza niba abo bombi bahamwa cyangwa badahamwa n’icyaha cyo kuyikoresha.

[55] Ku bijyanye n’iyo nyandiko, Urukiko rushingiye ku buhamya bwa NTIDENDEREZA Anaclet, wari Umuyobozi w’Akagari ka Runyonza, wari uhari impano itangwa akaba yaranashyize umukono ku nyandiko y’impano, no kuri raporo y’Ikigo *Rwanda Forensic Laboratory* byavuzwe haruguru, rurasanga nk’uko kandi isesengura ryakozwe mu gika cya [49] muri uru rubanza ribyerekana, inyandiko yo ku wa 28/04/2000 yiswe iy’isaranganya ryabaye hagati ya NYIRABATONI Elizabeth na GAHIMA Dembe Eduard ari inyandiko mpimbano.

a) Ku byerekeye GAHIMA Dembe Eduard

[56] Ku bijyanye n’icyaha cyo gukoresha inyandiko mpimbano, Urukiko rw’Ubujurire rusanga GAHIMA Dembe Eduard ahamwa n’icyaha cyo gukoresha inyandiko mpimbano yo ku wa 28/4/2000, kuko nk’uko byavuzwe haruguru, yayikoresheje mu rubanza RC 0143/011/TB/RUS rwaciwe n’Urukiko rw’Ibanze rwa Rusororo ku wa 25/8/2011, anayikoresha ku wa 7/9/2012, mu rubanza RCA 0231/12/TGI/GSBO rwaciwe n’Urukiko Rwisumbuye rwa Gasabo, aho yayikoresheje nk’ikimenyetso cyerekana ko isambu yaburanaga na NYIRABATONI Elizabeth bayisaranganyijwe, Urukiko ruyishingiraho rwemeza ko ikirego cya NYIRABATONI Elizabeth nta shingiro gifite, ko habayeho isaranganya ry’isambu hagati ye na GAHIMA Dembe Eduard, bityo akaba agomba kubihanirwa.

[57] Urukiko rushingiwe ku biteganywa n’ingingo ya 609 n’iya 610 z’Itegeko-Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy’amategeko ahana ryakoreshwaga igihe icyaha cyakorwaga, rurasanga GAHIMA Dembe Eduard agomba guhanishwa igifungo cy’imyaka itanu (5) n’ihazabu y’amafaranga y’u Rwanda ibihumbi Magana atatu (300.000 Frw).

[58] Urukiko rusanga ariko igihano cy’imyaka itanu (5) GAHIMA Dembe Eduard ahawe gikwiye gusubikwa mu gihe cy’umwaka umwe, kubera ko kugeza ubu nta kindi gihano kizwi yigeze ahabwa mu rubanza rwabaye ndakuka, cy’igifungo cyangwa igihano nsimburagifungo cy’imirimo ifitiye igihugu akamaro kirenze amezi atandatu (6).

b) Kuri MUNYAKARAMA Pierre

[59] Urukiko rurasanga nta bimenyetso NYIRABATONI Elizabeth cyangwa Ubushinjacyaha batanze bigaragaza ko GAHIMA Dembe Eduard akoresha inyandiko mpimbano yavuzwe, yari kumwe na MUNYAKARAMA Pierre, cyangwa ngo berekane ahandi MUNYAKARAMA Pierre ubwe yaba yarayikoresheje, bityo icyaha cyo gukoresha inyandiko mpimbano kikaba kitamuhama, akaba agomba kugirwa umwere kuri icyo cyaha.

[60] Urukiko rurasanga ibijyanye no gusesa amasezerano y'impamo bivugwa n'abahagarariye NYIRABATONI Elizabeth, bitasuzumwa muri uru rubanza, kuko bitigeze biburanwa mu rubanza n° RPA 0571/14/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 15/07/2014, rwasabiwe gusubirwamo ku mpamvu z'akarengane.

3) Ku byerekeye n'indishyi

[61] Me KARANGWA Vincent na Me BANDORA Alfred basaba gutegeka GAHIMA Dembe Eduard na MUNYAKARAMA Pierre guha NYIRABATONI Elisabeth 5.000.000 Frw y'indishyi z'akababro kubera gushorwa mu manza, 1.000.000 Frw y'ikurikiranarubanza na 3.000.000 Frw y'igihembo cya Avoka.

[62] MUNYAKARAMA Pierre avuga ko nta ndishyi yasabwa, Me NSENGIMANA Emmanuel, umwunganira, nawe akavuga ko indishyi zisabwa MUNYAKARAMA Pierre nta shingiro zifite, kuko nta ruhare cyangwa inyungu yigeze agira mu ikoreshwa ry'iyo nyandiko mpimbano, naho ku bijyanye n'igihembo cya Avoka, avuga ko ababuranira NYIRABATONI Elisabeth bakwiye kugisaba uwabahaye izo nshingano.

UKO URUKIKO RUBIBONA

[63] Ku byerekeye indishyi z'akababaro NYIRABATONI Elizabeth yaka kubera gushorwa mu manza, Urukiko rusanga igikorwa cyose cy'umuntu cyangiririje undi, gituma nyiri ukugikora abiryozwa, bityo kuba GAHIMBA Dembe Eduard yarakoresheje inyandiko mpimbano, bikaba ari byo byatumye NYIRABATONI Elisabeth atsindwa mu manza mbonezamubano, yaregeraga gutesha agaciro impano yamuhaye, ariyo nacyo cyatumye agana Ubugenzacyaha arega GAHIMA Dembe Eduard na MUNYAKARAMA Pierre gukora no gukoresha inyandiko mpimbano, Ubushinjacyaha bushyinguye dosiye buvuga ko icyaha cyashaje, yiyambaza inkiko atabwisunze, byumvikana ko yababajwe no kubona yaragiriye neza GAHIMA Dembe Eduard akamuha isambu, bakagirana amasezerano yanditse, nyuma akamuhemukira bigatuma asiragira mu nzego z'ubutabera, agashaka na Avoka wo kumuburanira, bityo GAHIMA Dembe Eduard akaba agomba gutegekwa kwishyura NYIRABATONI Elisabeth indishyi z'akababaro, akanamwishyura ibyagiye kuri izo manza, nk'uko ngingo ya 111 y'Itegeko n◦ 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ibiteganya[6].

[64] Urukiko rurasanga ariko 5.000.000Frw y'indishyi z'akababaro NYIRABATONI Elizabeth asaba ari ikirenga, mu bushishozi bw'Urukiko akaba akwiye guhabwa 1.000.000 Frw.

[65] UrukiKo rusanga kandi GAHIMA Dembe Eduard akwiye kumuha 500.000Frw y'ikurikiranarubanza, na 1.000.000Frw y'igihembo cya Avoka wamuburaniye ku nzego zose,

akaba agenwe mu bushishozi bw’Urukiko kuko ayo NYIRABATONI Elizabeth yaka ari menshi, yose hamwe akamuha 2.500.000Frw.

[66] Urukiko rurasanga MUNYAKARAMA Pierre nta ndishyi yacibwa kuko icyaha cyo gukoresha inyandiko mpimbano kitamuhama, bityo indishyi zikaba zigomba kwishyurwa na GAHIMA Dembe Eduard.

III. ICYEMEZO CY’URUKIKO

[67] Rwemeje ko ikirego cya NYIRABATONI Elizabeth gisubirishamo ku mpamvu z’akarengane urubanza RPA 0571/14/HC/KIG rwaciwe n’Urukiko Rukuru ku wa 15/07/2014 gifite ishingiro kuri bimwe;

[68] Rwemeje ko MUNYAKARAMA Pierre adahamwa n’icyaha cyo gukoresha inyandiko mpimbano;

[69] Rwemeje ko GAHIMA Dembe Eduard ahamwa n’icyaha cyo gukoresha inyandiko mpimbano;

[70] Ruhanishije GAHIMA Dembe Eduard igifungo cy’imyaka itanu (5) gisubitswe mu gihe cy’umwaka umwe, n’ihazabu y’amafaranga y’u Rwanda ihumbi magana atatu (300.000 Frw);

[71] Rutegetse GAHIMA Dembe Eduard guha NYIRABATONI Elizabeth 1.000.000 Frw y’indishyi z’akababaro, 1.000.000 Frw y’igihembo cya Avoka na 500.000 Frw y’ikurikiranarubanza ku nzego zose, yose hamwe akaba angana na 2.500.000Frw.