UBUSHINJACYAHA v NIRINGIYIMANA

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00052/2023/CA (Rutazana J.) 29 Mutarama 2024]

Amategeko yerekeye ibimenyetso mu manza – Ubuhamya butanzwe n'umwana – Ubuhamya butanzwe n'umwana utarageza ku myaka 14 y'amavuko buremewe kandi ntasabwa kurahira, ariko ko kugira ngo inkiko zibushingireho hagomba kuba hari ibindi bimenyetso bibushimangira.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gicumbi, uregwa akurikiranyweho icyaha cyo gusambanya abana 2 harimo uwitwa I.A w'imyaka 5 y'amavuko n'undi witwa U.E.D w'imyaka 4 y'amavuko nyuma yuko abo bana babwiye ababyeyi babo ko ubwo bari baryamye iwabo wa I.A umuhungu witwa Niringiyimana (wakoraga iwabo wa I.A) yabasanze aho bari baryamye maze abaryama iruhande arabasambanya. Urwo Rukiko rwaciye urubanza maze rwemeza ko hari ibimenyetso bigaragaza ko uregwa yakoze icyaha bigizwe n'imvugo z'abana I.A na U.E.D bamushinja, imvugo y'umutangabuhamya Mutuyimana wemeza ko yiriwe mu rugo, na raporo ya muganga wasuzumye abana; maze rutegeka ko ahanishwa igihano cy'igifungo cya burundu.

Uregwa yajuririye urwo rubanza mu Rukiko Rukuru, avuga ko yahamijwe icyaha atigeze akora, akomeza gushimangira ko yagambaniwe na nyirabuja kugira ngo atamwishyura amafaranga ye yakoreye; mu bujurire bwe kandi yavuze ko igihe kivugwa ko yasambanyirije abo bana atari mu rugo kuko bavuye ku ishuri adahari yagiye kwahira ubwatsi; anavuga ko hapimwe abana gusa we ntiyapimwa. Urwo Rukiko narwo rwaciye urubanza rusanga atarashoboye kuvuguruza ibimenyetso byashingiweho n'Urukiko Rwisumbuye rwa Gicumbi rumuhamya icyaha, rwemeza ko nta gihindutse ku mikirize y'urubanza.

Uregwa yarongeye ajuririra urubanza mu Rukiko rw'Ubujurire avuga ko Urukiko Rukuru rwemeje ko hagumaho igihano yahawe cyo gufungwa burundu kandi nta bimenyetso simusiga rushingiyeho bigaragaza ko yakoze icyaha aregwa, asaba ko agirwa umwere kandi agahita afungurwa, ariko urukiko rwabibona ukundi igihano yahanishijwe kikagabanywa hashingiwe ku mpamvu y'uko ari ubwa mbere yaba akoze icyaha kandi akaba ari bwo akiva mu bugimbi.

Ubushinjacyaha bwo buburana buvuga ko ubujurire nta shingiro bufite kuko mu rubanza uregwa yajuririye urukiko rwagaragaje ibimenyetso rwashingiyeho rumuhamya icyaha, kuba atarabyishimiye bikaba bitavuze ko bidahari; asaba ko igihano yahawe kigumaho hashingiwe ku buremere bw'icyaha.

Incamake y'icyemezo: 1. Ubuhamya butanzwe n'umwana utarageza ku myaka 14 y'amavuko buremewe kandi ntasabwa kurahira, ariko ko kugira ngo inkiko zibushingireho hagomba kuba hari ibindi bimenyetso bibushimangira.

Urubanza ruhindutse gusa ku birebana n'igihano.

Amategeko yashingiweho:

Itegeko Nº 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo yaryo ya 2.

Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 49.

Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kugeza, Ingingo ya 49.

Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, Ingingo ya 65 n'iya 119.

Imanza zifashishijwe:

Ubushinjacyaha vs Nsengiyumva, RPAA 00028/2023/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 25/01/2024.

Ubushinjacyaha vs Shakabatenda, RPAA 00039/2021/CA CA rwaciwe n'Urukiko rw'Ubujurire 03/07/2021

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 28/08/2018 umwana witwa I.A w'imyaka 5 y'amavuko n'undi witwa U.E.D w'imyaka 4 y'amavuko babwiye ababyeyi babo ko kuri uwo munsi nyuma ya saa sita ubwo bari baryamye iwabo wa I.A umuhungu witwa Niringiyimana Lambert (wakoraga iwabo wa I.A) yabasanze aho bari baryamye maze abaryama iruhande arabasambanya, ababyeyi babo bahita babimenyesha ubuyobozi hanyuma Niringiyimana Lambert arafatwa, hatangira iperereza akekwaho icyaha cyo gusambanya abo bana bombi.

[2] Iperereza rirangiye Ubushinjacyaha bwareze Niringiyimana Lambert mu Rukiko Rwisumbuye rwa Gicumbi, akurikiranyweho icyo cyaha cyo gusambanya abana 2, busaba ko ahanishwa igifungo cya burundu.

[3] Niringiyimana Lambert yaburanye ahakana icyaha aregwa, avuga ko yagihimbiwe na nyirabuja witwa Nyabuhara Philomène (nyina wa I.A) ngo kuko yari amukoreye amezi umunani atamuhemba, amwishyuje abona kumuhimbira icyaha kugira ngo amwikize; Niringiyimana Lambert kandi yaburanye avuga ko imvugo z'abamushinje zitashingirwaho kuko bavuga ibyo babwiwe, asaba urukiko kugirwa umwere ngo kuko Mutuyimana Adeline nawe wakoraga kwa Nyabuhara Philomène asobanura ko yiririranywe n'abo bana kandi akaba atarigeze abona Niringiyimana Lambert abahohotera.

[4] Mu rubanza RP 00580/2019/TGI/GIC rwaciwe n'Urukiko Rwisumubuye rwa Gicumbi ku wa 23/06/2020 rwemeje ko hari ibimenyetso bigaragaza ko Niringiyimana Lambert yakoze icyaha aregwa, bigizwe n'imvugo z'abana I.A na U.E.D bamushinja, imvugo y'umutangabuhamya Mutuyimana Adeline wemeza ko Niringiyimana Lambert yiriwe mu rugo, na raporo ya muganga wasuzumye abana ; maze rutegeka ko ahanishwa igifungo cya burundu.

[5] Urwo rubanza Niringiyimana Lambert yarujuririye mu Rukiko Rukuru, avuga ko yahamijwe icyaha atigeze akora, akomeza gushimangira ko yagambaniwe na nyirabuja kugira ngo atamwishyura amafaranga ye yakoreye ; mu bujurire bwe kandi yavuze ko igihe kivugwa ko yasambanyirije abo bana atari mu rugo kuko bavuye ku ishuri adahari yagiye kwahira ubwatsi ;

anavuga ko hapimwe abana gusa we ntiyapimwa. Ubushinjacyaha bwo buvuga ko Urukiko Rwisumbuye rwagaragaje ibimenyetso bihamya ko Niringiyimana Lambert yakoze icyaha yarezwe cyo gusambanya abana, busaba ko urubanza rwajuririwe rudahinduka.

[6] Mu rubanza RPA 00797/2020/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 09/12/2022, rwemeje ko impamvu z'ubujurire zatanzwe na Niringiyimana Lambert nta shingiro zifite kuko atashoboye kuvuguruza ibimenyetso byashingiweho n'Urukiko Rwisumbuye rwa Gicumbi rumuhamya icyaha, rwemeza ko nta gihindutse ku mikirize y'urubanza RP 00580/2019/TGI/GIC.

[7] Niringiyimana Lambert yajuririye imikirize y'urwo rubanza mu Rukiko rw'Ubujurire. Mu myanzuro yabo we n'umwunganira bavuga ko Urukiko Rukuru rwemeje ko hagumaho igihano yahawe cyo gufungwa burundu kandi nta bimenyetso simusiga rushingiyeho bigaragaza ko yakoze icyaha aregwa, basaba ko agirwa umwere kandi agahita afungurwa, ariko urukiko rwabibona ukundi igihano yahanishijwe kikagabanywa hashingiwe ku mpamvu y'uko ari ubwa mbere yaba akoze icyaha kandi akaba ari bwo akiva mu bugimbi.

[8] Uhagarariye Ubushinjacyaha we avuga ko ubujurire bwa Niringiyimana Lambert nta shingiro bufite kuko mu rubanza yajuririye urukiko rwagaragaje ibimenyetso rwashingiyeho rumuhamya icyaha, kuba atarabyishimiye bikaba bitavuze ko bidahari ; asaba ko igihano yahawe kigumaho hashingiwe ku buremere bw'icyaha.

[9] Iburanisha mu ruhame ryabaye ku wa 05/12/2023, Niringiyimana Lambert yunganiwe na Me Ruganza Bin Seba naho Ubushinjacyaha buhagarariwe na Nkusi Faustin, Umushinjacyaha ku Rwego rw'Igihugu, isomwa ry'urubanza rishyirwa ku wa 22/12/2023, ariko mu gihe urukiko rwari rwiherereye rusuzuma urubanza rusanga ari ngombwa ko ababuranyi bagira icyo bavuga ku buryo bwo kugabanya igihano mu gihe hari impamvu nyoroshyacyaha zemezwa n'umucamanza, buteganyijwe mu ngingo ya 2 y'Itegeko N° 59/2023 ryo kuwa 04/12/2023 rihindura Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange ryasohotse nyuma y'uko iburanisha ripfundikiwe; maze rwemeza ko iburanisha ry'urubanza rizongera gufungurwa kuwa 11/01/2024 saa tatu za mu gitondo (9h00).

[10] Kuri uwo munsi urubanza rwaburanishijwe Niringiyimana Lambert yunganiwe na Me RUGANZA Bin Seba naho Ubushinjacyaha buhagarariwe na Nkusi Faustin, Umushinjacyaha ku Rwego rw'Igihugu. Niringiyimana Lambert n'umwunganira bavuga ko urukiko rusanze icyaha kimuhama yagabanyirizwa igihano hashingiwe ku biteganywa mu ngingo ya 2 y'Itegeko N° 59/2023 ryavuzwe haruguru ; uhagarariye Ubushinjacyaha nawe avuga ko Niringiyimana Lambert agomba guhanwa hashingiwe kuri iryo tegeko ariko akomeza gushimangira ko atagabanyirizwa igihano kubera uburemere bw'icyaha yakoze.

[11] Impaka hagati y'ababuranyi zigaragaza ko muri uru rubanza hagomba gusuzumwa ibibazo bikurikira : kumenya niba Niringiyimana Lambert yarahamijwe icyaha hadashingiwe ku bimenyetso bigaragaza ko yagikoze koko, no kumenya niba, mu gihe urukiko rwasanga icyaha kimuhama, yagabanyirizwa igihano.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

- **Kumenya niba Niringiyimana Lambert yarahamijwe icyaha hadashingiwe ku bimenyesto bigaragaza ko yagikoze koko**

[12] Mu bujurire bwe Niringiyimana Lambert n'umwunganira bavuga ko Urukiko Rukuru rwemeje ko igihano yahawe ku rwego rwa mbere kigumaho kandi nta bimenyetso simusiga rushingiyeho bigaragaza ko yakoze icyaha aregwa koko, bakabisobanura mu buryo bukurikira :

- Raporo ya muganga yashingiweho n'urukiko ntiyuzuye kuko igaragaza ko mu gitsina cy'umwana wasuzumwe harimo ibikomere, ariko Niringiyimana Lambert akaba atarigeze apimwa ngo hagaragazwe isano rishingiye kuri ADN yaba afitanye n'ibyo bikomere ;

- Urukiko rwashingiye ku mvugo y'ibinyoma ya nyirabuja (Nyabuhara Philomène) no ku mvugo z'abana bavuga ko basambanyijwe, ngo kandi yaragaragaje ko nyirabuja yamuhimbiye icyo cyaha akanakoresha abo bana ngo nabo bamubeshyere kuko yashakaga kumwikiza kugira ngo atamwishyura amafaranga ye yakoreye ;

- Urukiko kandi rwavuze ko ubuhamya bwa Mutuyimana Adeline ntacyo bwarenganuyeho Niringiyimana Lambert kandi uyu mutangabuhamya yaravuze ko atigeze amubona asambanya abo bana.

[13] Uhagarariye Ubushinjacyaha avuga ko impamvu z'ubujurire zatanzwe na Niringiyimana Lambert nta shingiro zifite kuko urubanza rwajuririwe rugaragaza ibimenyetso urukiko rwashingiyeho rumuhamya icyaha, kuba atarabyishimiye bikaba bitavuze ko byanze bikunze ibyo bimenyetso bidahari ; agasaba ko urubanza rwajuririwe rudahinduka.

[14] Uhagarariye Ubushinjacyaha asobanura ko raporo ya muganga urukiko rwashingiyeho yakozwe n'umuhanga akagaragaza ibyo yabonye kandi ikaba yuzuye, kuba Niringiyimana Lambert atarasuzumwe bikaba bitayitesha agaciro. Naho ku bijyanye n'imvugo y'uwo yakoreraga witwa Nyabuhara Philomène hamwe n'imvugo y'umwana wamushinje, uhagarariye Ubushinjacyaha avuga ko hashingiwe ku byo Urukiko rw'Ikirenga rwasobanuye mu rubanza RPAA 0012/08/CS rwaciwe ku wa 26/22/2010 haburana Ubushinjacyaha na Hakizimana Servillien na Sibomana, Urukiko Rukuru rwasuzumye ubuhamya bwabo rukemeza ko bufite ishingiro.

[15] Uhagarariye Ubushinjacyaha asobanura ko umwana washinje Niringiyimana Lambert akiri muto cyane nta bucakura yari yagira ku buryo bidashoboka ko bari kumubwira ibyo avuga, ahubwo ko yavuze ibyamubayeho kandi Niringiyimana Lambert akaba nta kimenyetso yatanze kigaragaza ko uwo mwana yakoreshejwe na Nyabuhara Philomène ngo amubeshyere nk'uko abivuga; bityo ubuhamya bw'uwo mwana bukaba bugomba guhabwa agaciro hashingiwe ku biteganywa mu ngingo ya 63 y'Itegeko No 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itagwa ryabyo, no ku byasobanuwe n'Urukiko rw'Ikirenga mu rubanza RPAA0012/08/CS rwaciwe ku wa 26/22/2010 (mu gika cya 13 n'icya 14) aho rwagaragaje ko uwahohotewe cyangwa umubyeyi we umufiteho uburenganzira batabujijwe gutanga ibisobanuro bijyanye n'icyaha cyakorewe uwahohotewe bakanagitangira ibimenyetso.

[16] Ku bijyanye n'ubuhamya bwa Mutuyimana Adeline Niringiyimana Lambert avuga ko bwagombaga kumurengera ngo kuko yiriranywe n'abo bana kandi akaba yaravuze ko atigeze amubona abasambanya, uhagarariye Ubushinjacyaha avuga ko nta shingiro bifite kuko atari guhamya ibyo atabonye ; ko ahubwo Mutuyimana Adeline yemeje ko abo bana bari baryame kandi

igihe bari baryamye na Niringiyimana Lambert yari ahari, mu gihe uyu we avuga ko yari yagiye kwahira ubwatsi. Kuba rero Mutuyimana Adeline ataramubonye mu mwanya yasanze abana aho bari baryamye bikaba bitamushinjura kuko uwo mukobwa atari aryamanye nabo cyangwa ngo abe yaremeje ko mu gihe bari baryamye yabagumye iruhande kugeza babyutse.

UKO URUKIKO RUBIBONA

[17] Impaka kuri iki kibazo zishingiye ku kumenya niba ibimenyetso Urukiko Rukuru rwashingiyeho ruhamya Niringiyimana Lambert icyaha bitagaragaza ko yagikoze koko.

[18] Ingingo ya 119 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo igira iti: "Mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye. Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura ari byo kandi bishobora kwemerwa". Ibyo iyi ngingo iteganya binahura n'ibiteganywa n'ingingo ya 108 y'Itegeko nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha.

[19] Naho ingingo ya 65 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ryavuzwe haruguru igateganya ko urukiko ari rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa; ko rutitsitsa ku mubare w'abatangabuhamya, ko rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze nta cyo bihimbira.

[20] Mu rubanza nº RPAA 00028/2023/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 25/01/2024 haburana Ubushinjacyaha na Nsengiyumva Innocent, rwasobanuye ko ubuhamya butanzwe n'umwana utarageza ku myaka 14 y'amavuko bwemewe kandi ko adasabwa kurahira, ariko ko kugira ngo inkiko zibushingireho hagomba kuba hari ibindi bimenyetso bibushimangira, hashingiwe ku biteganywa mu ngingo ya 49[1], agace ka(2) , y'Itegeko nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kugeza ubu.

[21] Ibikubiye muri izo ngingo no mu rubanza byavuzwe haruguru byumvikanisha ko mu manza nshinjabyaha ibimenyetso byose, iyo byagiweho impaka bishobora gushingirwaho mu kwemeza ko uregwa yakoze icyaha kandi ko ibyo ibimenyetso bishobora no kuba imvugo z'abatangabuhamya, harimo n'abana batarageza ku myaka cumi n'ine (14) y'amavuko iyo ubuhamya bwabo bwunganiwe n'ibindi bimenyetso; urukiko rukaba arirwo rusuzuma niba ibyo abatangabuhamya bavuga byakwemerwa cyangwa ntibyemerwe.

[22] Mu rubanza rwajuririwe, Urukiko Rukuru rwemeje ko Niringiyimana Lambert ahamwa n'icyaha cyo gusabanya abana U.E.D na I.A rushingiye ku mvugo y'umutangabuhamya witwa Mutuyimana Adeline, imvugo y'umwana U.E.D n'imvugo ya nyina. Rwasobanuye ko Mutuyimana Adeline wakoranaga na Niringiyimana Lambert mu ibazwa rye mu Bushinjacyaha

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[1] Ingingo ya 49 y'Itegeko nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kugeza ubu, agace ka (2) iteganya ibikurikira: "Umwana utarageza ku myaka 14 atanga ubuhamya atagombye kurahira. Icyakora, icyemezo cy'urukiko ntigishingira kuri ubwo buhamya bwonyine. Muri icyo gihe, ubuhamya bw'umwana bushyigikirwa n'ibindi bimenyetso."

yavuze ko uyu (Niringiyimana Lambert) yiriwe mu rugo kandi n'abana bari bahari, ko kuba Niringiyimana Lambert avuga ko igihe kivugwa ko yasambanyije abo bana atari mu rugo kuko yari yagiye kwahira ibyatsi atari ukuri, ahubwo ari ugushaka kubeshya, bigaragaza ko agamije guhunga icyaha yakoze; no kuba avuga ko Mutuyimana Adeline yamushinjuye bikaba nta shingiro bifite kuko mu buhamya uyu yatanze mu Bushinjacyaha ntaho yigeze yemeza ko Niringiyimana Lambert atakoze icyaha aregwa. Urukiko kandi rwasobanuye ko umwana witwa U.E.D yabwiye umubyeyi we ko Niringiyimana Lambert yabasambayije, uwo mubyeyi nawe ajya kubibwira nyina wa I.A witwa Nyabuhara Philomène ari we nyi'r'urugo uwo mwana yari yiriwemo, nyamara Niringiyimana Lambert akaba ntacyo yagaragaje cyatuma U.E.D na nyina bamubeshyera kuko batanababanaga; maze rusanga ibyo byose bigize ibimenyetso bicukumbuye bigaragaza ko icyaha Niringiyimana Lambert aregwa yagikoze, hashingiwe ku ngingo ya 108 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko ibimenyetso bicukumbuwe no gusesengura urubanza ari ibimenyetso bitacukumbuwe n'amategeko, bicukumburwa n'ubwenge n'ubushishozi bw'abacamanza.

[23] Inenge ya mbere Niringiyimana Lambert ashingiraho ubujurire bwe kuri uru rwego, igamije kugaragaza ko raporo ya muganga yashingiweho ahamwa n'icyaha ituzuye ngo kuko we atapimwe na muganga ngo hagaragazwe isano rishingiye kuri ADN yaba afitanye n'ibikomere byagaragaye mu gitsina cy'umwana aregwa gusambanya.

[24] Uru rukiko rurasanga muri dosiye harimo raporo za muganga zakozwe hasuzumwa abana bombi (U.E.D na I.A), basuzumwe ku wa 29/08/2029 ni ukuvuga ku munsi ukurikira uwo bavuga ko basambanyirijweho. Raporo ya muganga wasuzumye U.E.D igaragaza ko yasanze mu gitsina cye harimo ibimenyetso bidasanzwe, birimo gutukura mu buryo budasanzwe, ibikomere, ibimenyetso bigaragaza ko yavuye amaraso (erythema au niveau des petites levres rougeur; laceration à 5h00; traces d'hemorragie minime; traces de sang); na raporo ya muganga wasuzumye I.A ikagaragaza ko nawe yasanze mu gitsina cy'uwo mwana harimo ibikomere (lacerations).

[25] Uru rukiko rurasanga kuba Niringiyimana Lambert we atarapimwe bitatesha agaciro ibikubiye muri izo raporo nk'uko ashaka ubyumvikanisha, kuko icyo abaganga bari basabwe ari ugusuzuma abana kandi bakaba barabikoze bakagaragaza ibyo babonye ku bana basuzumye, Niringiyimana Lambert akaba ntacyo agaragaza anenga ibikubiye muri izo raporo nyir'izina, akaba kandi ntacyo ashingiraho kigaragaza ko byanze bikunze kugira ngo hemezwe ko raporo ya muganga wasuzumye umwana bikekwa ko yasambanyijwe ifite agaciro, ari ngombwa ko ukekwaho icyaha nawe apimwa hakagaragazwa isano rishingiye kuri ADN yaba afitanye n'ibyo muganga yagaragaje muri raporo ye.

[26] Urukiko rurasanga ahubwo nk'uko byasobanuwe haruguru mu gika cya 19 kandi biteganywa mu ngingo ya 119 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ibimenyetso mu manza nshinjabyaha bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, icyangombwa akaba ari uko ababuranyi baba barahawe uburyo bwo kubinyomozanyaho; urukiko rushingiye ku byo rwabonye rukaba ari rwo ruhamya ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura ari byo kandi bishobora kwemerwa; bityo ku bireba raporo z'abaganga basuzumye abana U.E.D na I.A hakaba nta kibuza ko urukiko ruzisuzumana hamwe n'ibindi bimenyetso byatanzwe rukemeza agaciro zikwiriye guhabwa kabone n'ubwo uregwa we atapimwe, ari nabyo Urukiko Rukuru rwakoze ruhuza ibyagaragajwe na raporo ya muganga n'imvugo z'abana basambanyijwe kimwe

n'iy'umutangabuhamya wari wiriranywe nabo, maze rugera ku mwanzuro w'uko Niringiyimana Lambert ahamwa n'icyaha aregwa; ibyo kuba imiburanire y'uregwa uvuga ko raporo ya muganga wasuzumye umwana wahohotewe idakwiriye gushingirwaho ngo kuko we atapimwe nta shingiro bihabwa mu gihe hari ibindi bimenyetso byuzuzanya n'ibyagaragajwe n'iyo raporo byanatanzweho umurongo mu rubanza nº RPAA 00028/2023/CA rwavuzwe haruguru; hashingiwe kuri ibyo bisobanuro byose, iyi ngingo Niringiyimana Lambert aburanisha y'uko raporo ya muganga ituzuye hashingiwe ku mpamvu rukumbi y'uko we atapimwe ikaba nta shingiro ifite.

[27] Inenge ya kabiri Niringiyimana Lambert ashingiraho ubujurire bwe ni ukuba Urukiko Rukuru rwaramuhamije icyaha rushingiye ku mvugo ya nyirabuja (Nyabuhara Philomène) n'imvugo z'abana bavuga ko basambanyijwe, ngo kandi yaragaragaje ko nyirabuja yamubeshyeye akanakoresha abo bana ngo nabo bamubeshyere kuko yashakaga kumwikiza kugira ngo atamwishyura amafaranga ye yakoreye. Uru rukiko rurasanga ibyo Niringiyimana Lambert avuga ko nyirabuja Nyabuhara Philomène yashakaga kumwikiza kugira ngo atamwishyura amafaranga ye yakoreye, uretse kubivuga gusa nta kimenyetso atanga kigaragaza ko ari ukuri koko ku buryo urukiko rwabishingiraho rwemeza ko yamubeshyeye akanakoresha abana ngo bamubeshyere.

[28] Urukiko rurasanga ahubwo nk'uko Urukiko Rukuru rwabisobanuye, amakuru y'uko Niringiyimana Lambert yasambanyije abana U.E.D na I.A yaramenyekanye bivuzwe na nyina wa U.E.D witwa Uwanyirigira Marie Louise nawe wari ubibwiwe n'umwana we (U.E.D), hanyuma uyu mubyeyi nawe abibwira Nyabuhara Philomène, babaza n'umwana we witwa I.A, nka mugenzi we U.E.D nawe avuga ko Niringiyimana Lambert yabasambanyije abasanze aho bari baryamye, abo babyeyi babona kubimenyesha Ubuyobozi bw'Umudugudu hanyuma Niringiyimana Lambert arashakishwa aza gufatwa n'irondo rya nijoro; bikaba rero byumvikana ko ibyo Niringiyimana Lambert ashaka kumvikanisha ko Nyabuhara Philomène ari we wamuhimbiye icyaha amubeshyera akanakoresha abana ngo bamubeshyere nta shingiro bifite, kuko atari we watanze amakuru bwa mbere ahubwo yavuze ibyo yabwiwe na Uwanyirigira Marie Louise (nyina wa U.E.D), kandi uyu we Niringiyimana Lambert akaba ntacyo agaragaza bapfa ku buryo yari kumubeshyera dore ko no mu ibazwa rye mu gihe cy'iperereza yivugiye ko ntacyo bapfa; hashingiwe kuri ibyo bisobanuro iyi mpamvu y'ubujurire nayo ikaba nta shingiro ifite.

[29] Indi mpamvu y'ubujurire ya Niringiyimana Lambert ni ukuba avuga ko Urukiko Rukuru rutashingiye ku buhamya bwa Mutuyimana Adeline ngo rumurenganure kandi uwo mutangabuhamya yariiranywe n'abo bana, akaba yaravuze ko atigeze amubona abasambanya. Urukiko rurasanga mu ibazwa rya Mutuyimana Adeline (nawe wabaga kwa Nyabuhara Philomène) mu Bushinjacyaha yaravuze ko ku wa 28/08/2019, umunsi abana U.E.D na I.A bavuze ko basambanyirijweho yariiranywe nabo mu rugo kwa Nyabuhara Philomène aho yakoraga kandi ko Niringiyimana Lambert yari ahari; mu rubanza rwajuririwe Urukiko Rukuru rwasanze iyo mvugo ya Mutuyimana Adeline ihura n'ibyo umwana U.E.D yabwiye nyina ko Niringiyimana Lambert yabasanze aho bari baryamye (kwa Nyabuhara Philomène) akabasambanya, runabihuza no kuba uwo mwana U.E.D akimara kubibwira umubyeyi we yarajyanywe kwa muganga agahita asuzumwa raporo ya muganga ikagaragaza ko yasangaywe ibikomere n'amaraso mu gitsina, maze urukiko rubishingiraho rwemeza ko uwo mwana yahohotewe mu gihe cya vuba kandi nta wundi yavuze wamuhohoteye muri icyo gihe utari Niringiyimana Lambert; maze rubishingiraho rwemeza ko ibyo byose ari ibimenyetso bigaragaza ko ari Niringiyimana Lambert wamuhohoteye.

[30] Uru rukiko rurasanga Niringiyimana Lambert ntacyo agaragaza anenga uburyo Urukiko Rukuru rwahuje ibimenyetso bigizwe n'imvugo ya Mutuyimana Adeline, imvugo y'umwana U.E.D na raporo ya muganga rugasanga bihurijwe hamwe bigize ibimenyetso bicukumbuwe n'ubwenge n'ubushishozi bw'abacamanza, bigaragaza ko ahamwa n'icyaha. Uru rukiko rurasanga kuba avuga ko hagombaga gushingirwa ku gace k'ubuhamya bwa Mutuyimana Adeline aho yavuze ko atamubonye asambanya abo bana nta shingiro bifite kuko nk'uko Urukiko Rukuru rwabisobanuye, uwo mutangabuhamya ntaho yigeze yemeza nk'uwabihagazeho, ko Niringiyimana Lambert atasambanyije abo bana; ahubwo icyo yavuze ari uko atigeze abibona kandi ibi bikaba bitavuze byanze bikunze ko bitabayeho kuko Niringiyimana Lambert atagaragaza niba igihe cyose yaragombaga kuba ari kumwe na Mutuyimana Adeline ku buryo ibyo yari gukora byose yagombaga kuba yarabibonye. Uru rukiko rushingiye kuri ibyo bisobanuro rukaba rusanga iyi mpamvu y'ubujurire nayo nta shingiro ifite.

[31] Uru rukiko rurasanga hashingiwe ku bisobanuro byose byatanzwe mu bika bibanziriza iki (17- 30), impamvu Niringiyimana Lambert ashingiraho agaragaza ko yahamijwe icyaha nta bimenyetso bihamya ko yagikoze koko nta shingiro bifite. Uru rukiko rurashimangira ko nk'uko n'Urukiko Rukuru rwabibonye: kuba ku wa 28/08/2029 nyuma ya saa sita Niringiyimana Lambert yari yiriwe mu rugo kwa Nyabuhara Philomène n'abo bana bombi bahari nk'uko byemejwe na Mutuyimana Adeline nawe wakoraga muri urwo rugo; kuba yarashinjwe n'abo bana bombi kuko ku mugoroba w'uwo munsi umwe muri abo bana witwa U.E.D yabwiye nyina ko umushumba wo kwa Nyabuhara Philomène yabasanze mu nzu aho bari baryamye akabasambanya, bikanemezwa na mugenzi we I.A; kuba kuri uwo munsi abo bana barahise bajyanwa kwa muganga bagasuzumwa raporo za muganga zikagaragaza ko mu gitsina cyabo harimo ibimenyetso bidasanzwe birimo gutukura mu buryo budasanzwe, ibikomere, amaraso (erythema au niveau des petites levres rougeur; laceration à 5h00; traces d'hemorragie minime; traces de sang) kuri U.E.D n'ibikomere (lacerations) kuri I.A; ari ibimenyetso bihagije kandi bigaragaza ko ari Niringiyimana Lambert wabasambanyije. Kuba mu myiregurire ye avuga ko atari muri urwo rugo icyo gihe no kuba avuga ko ari nyirabuja wamugeretseho icyaha bikaba nta shingiro bifite nk'uko byasobanuwe haruguru, ahubwo bikaba bishimangira ko hari ibyo ashaka guhunga.

- **Kumenya niba Niringiyimana Lambert akwiriye kugabanyirizwa igihano**

[32] Niringiyimana Lambert n'umwunganira bavuga ko mu gihe urukiko rwasanga icyaha kimuhama, yagabanyrizwa igihano hashingiwe ku biteganywa mu ngingo ya 2 y'Itegeko N° 59/2023 ryavuzwe harugurum agahanishwa igifungo cy'imyaka 15 aho kuba igifungo cya burundu.

[33] Uhagarariye Ubushinjacyaha nawe avuga ko Itegeko N° 59/2023 ryavuzwe haruguru ari ryo rigomba gushingirwaho Niringiyimana Lambert agenerwa igihano, ariko ko igihano yahanishijwe kidakwiriye kugabanywa kubera uburemere bw'icyaha yakoze cyo kwangiza abana, kuko igihe cyose hari impamvu nyoroshyacyaha umucamanza adategetswe kugabanya igihano.

UKO URUKIKO RUBIBONA

[34] Urukiko rurasanga n'ubwo nk'uko byasobanuwe mu bika bibanziriza iki Niringiyimana Lambert ahamwa n'icyaha, nta cyabuza urukiko gusuzuma ibijyanye n'igihano yahanishijwe,

hashingiwe ku murongo watanzwe n'uru rukiko mu rubanza RPAA 00039/2021/CA haburana Ubushinjacyaha na Shakabatenda Jean de Dieu, n'izindi zakurikiyeho.

[35] Urukiko rurasanga mu gihe uru rubanza rwari rutaracibwa muri uru rukiko, harasohotse Itegeko nº 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo yaryo ya 2 ikaba iteganya ko „iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano ku buryo bukurikira: … (a) igifungo cya burundu gishobora kugabanywa ariko ntikijwe munsi y'igihano cy'igifungo cy'imyaka 15"; iyi ngingo ya 2 ikaba ariyo yashingirwaho mu kugena igihano cyahanishwa Niringiyimana Lambert mu gihe urukiko rwasanga hari impamvu nyoroshyacyaha.

[36] N'ubwo Niringiyimana Lambert yakoze icyaha azi neza ingaruka zacyo kuko yari afite imyaka y'ubukure (akora icyaha yari afite imyaka 18 y'amavuko), rurebeye hamwe uburemere bw'icyaha yakozwe cyo gusambanya abana babiri bari munsi y'imyaka 14, imyaka nawe yari afite akora icyaha kuko aribwo yari akiva mu bugimbi kandi iki gihe kikaba kirangwa no kudashishoza bihagije, no kuba ari ubwa mbere akurikiranyweho icyaha mu buryo buzwi, igihano cy'igifungo cya burundu yahanishijwe cyagabanywa hashingiwe ku ngingo ya 49 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, iteganya ko mucamanza atanga ibihano akurikije uburemere bw'icyaha, ingaruka cyateye, impamvu zatumye agikora, uko uwagikoze yari asanzwe yitwara, imibereho ye bwite n'uburyo icyaha cyakozwemo, agahanishwa igifungo cy'imyaka makumyabiri (20).

III. ICYEMEZO CY'URUKIKO

[37] Rwemeje ko imikirize y'urubanza n° RPA 00797/2020/HC/KIG rwaciwe n'Urukiko Rukuru, ku wa 09/12/2022, ihindutse gusa ku birebana n'igihano.

[38] Rutegetse ko Niringiyimana Lambert ahanishijwe igifungo cy'imyaka makumyabiri (20).

[39] Ruvuze ko amagarama y'urubanza aherereye ku Isanduku ya Leta, kuko Niringiyimana Lambert yajuriye afunze, akaba asonewe kuyatanga.

[40]