UBUSHINJACYAHA v NKORERIMANA

[Rwanda URUKIKO RW'UBUJURIRE – RPAA00574/2021/CA (Kanyange, P.J.) 25 Gicurasi 2024]

Amategeko yerekeye imiburanishirize y'imanza nshinjabyaha – Ubujurire – Impamvu z'ubujurire – Ujurira afite inshingano yo kugaragaza ukwibeshya kwakozwe n'Urukiko gushingiye ku mategeko cyangwa ku byabaye, umuburanyi ntiyanenga urubanza ashingiye kubyo ataburanishije.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo Ubushinjacyaha bukurikiranye uregwa ku cyaha cyo gusambanya umwana, nyuma yaketsweho gusambanya umwana witwa M. w'imyaka cumi n'ine (14) akaba musaza we kwa se wabo. Urwo Rukiko rwaciye urubanza rusanga hari ibimenyetso byemeza ko uregwa yakoze icyaha akurikiranyweho, bigizwe na raporo ya muganga igaragaza ko M. afite ibimenyetso bishya by'uko yasambanyijwe, kuba uregwa yaremeye icyaha mu Bugenzacyaha no kuba hari umutangabuhamya wamubonye asambanya uwo mwana, maze rwemeza ko ahamwa n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cya burundu.

Uregwa yajuriye mu Rukiko Rukuru avuga ko yahaniwe icyaha atakoze, ko ahubwo ari akagambane k'umuryango we washatse ko afungwa kuko ntaho yigeze ahurira n'umwana bavuga ko yasambanyije. Urwo Rukiko narwo rwaciye urubanza rusanga ubujurire bwe nta shingiro bufite, rusanga ariko kuba umwana wasambanyijwe yari afite imyaka cumi n'ine (14), Urukiko Rwisumbuye rwa Gasabo rutaragombaga kumuhanisha igifungo cya burundu, ko ahubwo agomba guhanisha igifungo cy'imyaka makumyabiri (20).

Uregwa yarongeye arajurira noneho mu Rukiko Rw'Ubujurire avugako Urukiko rwamuhamije icyaha rushingiye ku bimenyetso bitamushinja icyaha kuko bishidikanywaho, bigizwe na raporo ya muganga itagaragaza ko ari we wasambanyije M., n'ubuhamya bw'ufite munsi y'imyaka cumi n'ine (14) kandi akaba avuguruzanya n'umubyeyi wa M., ko kandi rwirengagije ko atari gukora icyaha ashinjwa kuko umunsi bivugwa ko cyakorewe yari yiriwe mu kazi ko kubumba amatafari.

Ubushinjacyaha bwo bwaburanye buvuga ko impamvu z'ubujurire nta shingiro zifite, ko raporo ya muganga yagaragaje ko umwana yasambanyijwe kandi ikaba igomba guhuzwa n'ibindi bimenyetso, naho ubuhamya bw'umwana bwatanzwe bushimangirwa na raporo ya muganga, ko kandi nta kimenyetso uregwa atanga cy'aho avuga ko yari yiriwe, usibye ko atabiburanishije mbere.

Incamake y'icyemezo: 1. Ubuhamya bwatanzwe n'umwana utarageza ku myaka cumi n'ine (14) nta gaciro buhabwa mu gihe butunganiwe n'ibindi bimenyetso.

2. Ujurira afite inshingano yo kugaragaza ukwibeshya kwakozwe n'Urukiko gushingiye ku mategeko cyangwa ku byabaye, umuburanyi ntiyanenga urubanza ashingiye kubyo ataburanishije. Bityo Nkorerimana ntiyaburanisha mu bujurire bwa kabiri ibyerekeye kuba atari gukora icyaha ashinjwa kuko umunsi bivugwa ko cyakorewe yari yiriwe mu kazi ko kubumba amatafari kwa Karasira.

Urubanza ruhindutse ku birebana n'igihano.

Amategeko yashingiweho:
Itegeko N° 15/2004 ryo ku wa 12/6/2004 ry'ibimenyetso n'itangwa ryabyo, ingingo ya 119.

Imanza zifashishijwe:
Ubushinjacyaha vs Mvuyekure, RPAA 0133/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 07/11/2014.
Ubushinjacyaha vs Niringiyimana, RPAA 00052/2023/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 29/01/2024.
Ubushinjacyaha vs Ndayishimiye, RPAA 00194/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 22/07/2024.
Ubushinjacyaha vs Shakabatenda, RPAA 00039/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 02/07/2021.
Ubushinjacyaha vs Nyirandikubwimana, RPAA 00151/2023/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 26/04/2024.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nkorerimana Benjamin yaketsweho gusambanya umwana witwa M. w'imyaka cumi n'ine (14) akaba musaza we kwa se wabo, mu manza zabanje hakaba havugwa ko uwo mwana yavukanye ubumuga bwo mu mutwe[1], nyuma y'uko bimenyekanye Nkorerimana atangira gukorwaho iperereza.

[2] Nyuma y'iperereza, Ubushinjacyaha bwamureze mu Rukiko Rwisumbuye rwa Gasabo bumukurikiranyeho icyaha cyo gusambanya umwana, buvuga ko yagikoze ku wa 10/10/2019 abonwa n'uwitwa Niyigena Florence kandi ko na Nkorerimana Benjamin yabyemeye mu Bugenzacyaha, hakaba na raporo ya muganga igaragaza ko uwo mwana yasambanyijwe, bumusabira igifungo cya burundu.

[3] Nkorerimana Benjamin yaburanye avuga ko nta cyaha yakoze. ko ahubwo umurega ari uwo mu muryango wabo wahoraga avuga ko azamufungisha kubera amasambu.

[4] Urukiko rwaciye urubanza nº RP 01544/2019/TGI/GSBO ku wa 15/06/2020, rusanga hari ibimenyetso byemeza ko Nkorerimana Benjamin yakoze icyaha akurikiranyweho, bigizwe na raporo ya muganga igaragaza ko M. afite ibimenyetso bishya by'uko yasambanyijwe, kuba Nkorerimana yaremeye icyaha mu Bugenzacyaha no kuba hari umutangabuhamya wamubonye asambanya uwo mwana, maze rwemeza ko ahamwa n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cya burundu.

[5] Nkorerimana Benjamin yajuriye mu Rukiko Rukuru avuga ko yahaniwe icyaha atakoze, ko ahubwo ari akagambane k'umuryango we washatse ko afungwa kuko ntaho yigeze ahurira n'umwana bavuga ko yasambanyije.

[1] Umubyeyi we atanga ikirego yavuze ko uwo mwana yarwaye mugiga akiri muto, ko ashobora kumva ariko ko adashobora gutobora neza ngo avuge

[6] Uhagarariye Ubushinjacyaha yavuze ko ubujurire bwa Nkorerimana Benjamin butahabwa agaciro, kuko yahamijwe icyaha hashingiwe ku bimenyetso birimo raporo ya muganga, ibyo yiyemereye igihe cy'iperereza hamwe n'ubuhamya bw'uwamubonye akora icyaha, ariko ko kuba uwakorewe icyaha yari afite imyaka cumi n'ine, yagombaga guhanishwa igifungo kiri hagati y'imyaka makumyabiri (20) na makumyabiri n'itanu(25), bityo ko urubanza rwajuririwe rwahinduka gusa ku birebana n'igihano.

[7] Urukiko rwaciye urubanza nº RPA 00792/2020/HC/KIG ku wa 20/05/2021, rusanga impamvu ye y'ubujurire nta shingiro ifite, kuko atashoboye kuvuguruza ibimenyetso byashingiweho ku rwego rwa mbere, ko n'ibyo akagambane avuga ko yagiriwe n'umuryango we nta kuri kwabyo yagaragaje, rusanga ariko kuba umwana wasambanyijwe yari afite imyaka cumi n'ine (14), Urukiko Rwisumbuye rwa Gasabo rutaragombaga kumuhanisha igifungo cya burundu, ko ahubwo agomba guhanisha igifungo cy'imyaka makumyabiri (20).

[8] Nkorerimana Benjamin yatanze ubujurire bwa kabiri mu Rukiko rw'Ubujurire, urubanza ruhabwa nº RPAA 00574/2021/CA, ruburanishwa mu ruhame ku wa 08/02/2024, Nkorerimana Benjamin yunganiwe na Me Rugeyo Jean, Ubushinjacyaha buhagarariwe na Rudatinya Nyangezi Gaspard, Umushinjacyaha ku rwego rw'Igihugu. Iburanisha ry'urubanza ryapfunduwe ku wa 02/05/2024 kugira ngo ababuranyi bagire icyo bavuga ku byagaragajwe na Laboratwari y' u Rwanda y'ibimenyetso (RFI) ku birebana n'ikizamini cya DNA, uwo munsi ruburanishwa Nkorerimana Benjamin yunganiwe nka mbere naho Ubushinjacyaha buhagarariwe na Siboyintore Jean Bosco, Umushinjacyaha ku rwego rw'Igihugu.

[9] Mu myanzuro y'ubujurire no mu miburanire, Nkorerimana Benjamin n'umwunganira bavuga ko banenga urubanza rwajuririwe ku mpamvu y'uko Urukiko rwamuhamije icyaha rushingiye ku bimenyetso bitamushinja icyaha kuko bishidikanywaho, bigizwe na raporo ya muganga itagaragaza ko ari we wasambanyije M., n'ubuhamya bwa Niyigena Florence wari ufite munsi y'imyaka cumi n'ine (14) kandi akaba avuguruzanya n'umubyeyi wa M., ko kandi rwirengagije ko atari gukora icyaha ashinjwa kuko umunsi bivugwa ko cyakorewe yari yiriwe mu kazi ko kubumba amatafari kwa Karasira.

[10] Uhagarariye Ubushinjacyaha avuga ko izo mpamvu z'ubujurire nta shingiro zifite, kuko icyangombwa raporo ya muganga yagaragaje ari uko umwana yasambanyijwe kandi ikaba igomba guhuzwa n'ibindi bimenyetso, naho ubuhamya bwa Niyigena Florence bukaba bushimangirwa na raporo ya muganga, ko kandi nta kimenyetso Nkorerimana atanga cy'aho avuga ko yari yiriwe, usibye ko atabiburanishije mbere.

[11] Muri uru rubanza harasuzumwa niba Urukiko Rukuru rwarahamije icyaha Nkorerimana Benjamin rushingiye ku bimenyetso bitamushinja icyaha kuko bishidikanywaho, rukanirengagiza ko atashoboraga kugikora kuko yari yiriwe mu kazi.

II. ISESENGURA RY'IBIBAZO BIRI MU RUBANZA

Kumenya niba ibimenyetso byashingiweho n'Urukiko Rukuru bidashinja icyaha Nkorerimana Benjamin kuko bishidikanywaho

[12] Nkorerimana Benjamin n'umwunganira bavuga ko mu bimenyetso byashingiweho mu kumuhamya icyaha harimo raporo ya muganga kandi itagaragaza ko ari we wasambanyije M., ko kandi iyo raporo yagaragaje ko akarangabusugi ke kari kamaze igihe gacitse ariko ko nta cyemeza ko ari we wagaciye. Bavuga kandi ko kuba uwo mwana yaratinze gusuzumwa kuko raporo yakozwe ku wa 19/10/2019 kandi bivugwa ko icyaha cyakozwe ku wa 10/10/2019, nta cyakwemeza ko nta wundi muntu babonanye kuko atashyizwe ahantu ngo arindwe.

[13] Ku birebana n'ubuhamya bwashingiweho bwa Niyigena Florence, Nkorerimana Benjamin n'umwunganira bavuga ko uwo mutangabuhamya yari atarageza ku myaka cumi n'ine (14) y'amavuko, ko rero ubuhamya bwe bwagombaga gushyigikirwa n'ibindi bimenyetso nk'uko biteganywa n'ingingo ya 63 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo. Bavuga kandi ko uwo mutangabuhamya yavuze ko yabonye NKORERIMANA Benjamin asambanya M. ku wa 18/10/2019 saa tanu, akaba avuguruzanya n'umubyeyi w'uwo mwana wavuze ko yasambanyijwe ku wa 10/10/2019, saa kumi.

[14] Ku birebana n'ibisubizo byatanzwe na Laboratwari y'u Rwanda y'ibimenyetso (RFI), Nkorerimana Benjamin n'umwunganira bavuga ko ibyo bisubizo byaje bishimangira imiburanire ye y'uko atigeze asambanya M., ko ibyo bisubizo byagaragaje ko nta turemangingo duhagije twa Nkorerimana turi mu byakuwe ku mwana ashinjwa gusambanya, akaba ari ikimenyetso kimushinjura.

[15] Uhagarariye Ubushinjacyaha avuga ko impamvu z'ubujurire bwa Nkorerimana Benjamin nta shingiro zifite, kuko ku birebana na raporo ya muganga, icy'ingenzi yagaragaje ari uko M. yasambanyijwe, ko kandi iyo raporo ihujwe n'ibindi bimenyetso, byemeza neza ko uwo mwana yasambanyijwe na Nkorerimana Benjamin, kandi ko muganga atari yasabwe kuvuga uwamusambanyije ahubwo yasabwe kureba niba yarasambanyijwe, umwanzuro yagezeho ukaba ugaragaza ko yasambanyijwe. Avuga kandi ko kuba uwo mwana yarasambanyijwe ku wa 10/10/2019 raporo igakorwa ku wa 19/10/2019, nta kimenyetso cya vuba muganga yari kubona, ko kandi igihe byamenyekaniye ari bwo yajyanwe kwa muganga kandi ibyo raporo yagaragaje bikaba bihura n'imvugo ya Niyigena Florence wavuze ko yiboneye M. asambanywa.

[16] Ku birebana n'ubuhamya bwa Niyigena Florence, uhagarariye Ubushinjacyaha avuga ko kuba yari atarageza ku myaka (14) y'amavuko atari byo byatuma budashingirwaho, kuko bushimangirwa n'ibindi bimenyetso birimo raporo ya muganga n'imvugo ya Nkorerimana Benjamin mu Bugenzacyaha. Avuga kandi ko kuba uwo mutangabuhamya na se wa M. baravuze itariki n'isaha bitandukanye, bishobora kuba byaratewe no kwibeshya, ariko ko ikigomba kurebwa ari ireme ry'ubuhamya nk'uko byemejwe mu manza zitandukanye harimo urubanza nº RPAA 0117/2007CS rwaciwe ku wa 17/09/2010 haburana Ubushinjacyaha na Ngabonziza Faustin n'abandi, aho Urukiko rwemeje ko ukwivuguruza k'umutangabuhamya kureberwa ku ireme ry'ibyo avuga, ndetse Nkorerimana Benjamin we akaba ataribeshye kuko yasobanuye uko yasambanyije M.

[17] Ku byagaragajwe na Laborawari y'u Rwanda y'ibimenyetso (RFI), avuga ko raporo yakozwe ivuga ko ibyavamwe ku mwana bidahagije kugira ngo habonekemo uturemangingo tw'umugabo (DNA y'umugabo), ko rero n'ubwo iyo raporo ntacyo yamara muri uru rubanza, ariko idashinjura Ndorerimana kuko basanze ibyo basuzumiraho bidahagije, ko rero ibimenyetso byatanzwe mbere ari byo byahabwa agaciro.

UKO URUKIKO RUBIBONA

[18] Impaka ziri muri uru rubanza zishingiye ku kumenya niba ibimenyetso byashingiweho bigizwe na raporo ya muganga n'ubuhamya bwa Niyigena Florence bidashinja Nkorerimana Benjamin, no kumenya niba Urukiko rwarirengagije aho yari yiriwe umunsi bivugwa ko icyaha cyakorewe.

- **Ku birebana n'ibimenyetso byashingiweho**

- **Ku birebana na raporo ya muganga**

[19] Ingingo ya 119 y'Itegeko nº 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko ''Mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe umwana wo kuhaba ngo banyomozanye. Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose birega cyanga biregura ari byo kandi ko bishobora kwemerwa''.

[20] Imikirize y'urubanza rwajuririwe igaragaza ko mu kugumishaho imikirize y'urubanza rwo ku rwego rwa mbere, Urukiko Rukuru rwarabishingiye ku kuba Nkorerimana Benjamin ataravuguruje ibimenyetso byashingiweho kuri urwo rwego. Nk'uko imikirize y'urubanza rwaciwe kuri urwo rwego ibigaragaza, ibimenyetso byashingiweho bigizwe na raporo ya muganga, imvugo ya Nkorerimana wemeye icyaha mu Bugenzacyaha, n'ubuhamya bwa Niyigena Florence wamubonye asambanya uwo mwana.

[21] Ku birebana na raporo ya muganga, Urukiko rw'Ubujurire rurasanga ibyo Nkorerimana Benjamin ayinenga avuga ko itagaragaza ko ari we wasambanyije M., nta shingiro bifite, kuko inshingano muganga yahawe atari iyo kugaragaza uwamusambanyije ahubwo ari iyo kumusuzuma akagaragaza ibyo yabonye, raporo yabyo igasuzumwa n'Urukiko mu bushishozi bwarwo hamwe n'ibindi bimenyetso.

[22] Ku bivugwa na Nkorerimana by'uko raporo ya muganga yagaragaje ko akarangabusugi kamaze igihe gacitse ariko ko nta cyemeza ko ari we wagaciye, Urukiko rurasanga nabyo nta shingiro bifite, kuko kuba mu byo muganga yabonye mu isuzuma rya M. harimo kuba akarangabusugi kamaze igihe gacitse, bitari ngombwa ko hagaragazwa ko kaciwe na Nkorerimana, kuko n'ubwo yaba yaragatakaje mbere, ubwabyo bitamugira umwere ahubwo hagomba kurebwa ibindi muganga yabonye rukabihuza n'ibindi bimenyetso, usibye ko umwana yabwiye muganga ko itari ishuro ya mbere amusambanya, ko ahubwo baryamanaga nka kabiri mu cyumweru, bikaba byashoboka ko ari naho yatakarije akarangabusugi.

[23] Na none kandi, ibyo Nkorerimana n'umwunganira banenga bashingiye ku itariki bivugwa ko icyaha cyakorewe(10/10/2019) n'igihe raporo ya muganga yakorewe (19/10/2019), Urukiko rurasanga nabyo nta shingiro bifite, kuko n'ubwo kuva mu ntangiriro ya dosiye hagiye handikwa ko icyaha cyakozwe ku wa 10/10/2019, harebwe amatariki yavuzwe mu zindi nyandiko ziri muri dosiye, bigaragara ko itariki ya 10/10/2019 ivugwa mu nyandiko itanga ikirego ari nayo yavuzwe mu manza za mbere, atari yo icyaha cyakoreweho, ahubwo rusanga cyarakozwe ku wa 19/10/2019 ku mpamvu zikurikira:

- mu nyandiko yo kwiyambaza impuguke yakozwe n'Ubugenzacyaha ku wa 21/04/2021[2], mu gice cy'uko ibintu byagenze, havugwamo ko ku wa 19/10/2019 saa kumi n'ebyiri n'iminota mirongo itatu n'itatu (18h 33 PM) ari bwo Gakwaya Faustin yatanze ikirego avuga ko umwana we yasambanyijwe uwo munsi saa kumi (16H);

- Ibyavuzwe muri iyo nyandiko bihura n'ibivugwa mu nyandikomvugo y'ubuyobozi bw'inzego z'ibanze yakozwe ku wa 19/10/2019 yashyizweho umukono n'abantu batanu bo mu nzego z'ibanze, ivuga ko umwana wa Gakwaya yafashwe ku ngufu ku wa gatandatu, kandi tariki 19/10/219 hakaba hari kuwa gatandatu, ko kandi se w'umwana yasabwe na polisi kujyana umwana kwa muganga, ibi bigahura n'uko umwana yasuzumwe uwo munsi ku wa 19/10/2019 nk'uko bivugwa muri raporo ya muganga;

- Ibimaze kuvugwa bihura kandi n'itariki ya 19/10/2019 muganga yanditse ko ari yo icyaha cyakorewe (date of fact);

[24] Urukiko rurasanga rero, itariki ya 10/10/2019 yanditswe mu nyandikomvugo y'ibazwa rya Gakwaya Faustin, yaranditswe ku bwo kwibeshya, uko kwibeshya kukaba ari ko kwatumye mu nyandiko itanga ikirego handikwa ko icyaha cyakozwe ku wa 10/10/2019. Naho itariki ya 18/10/2019 yavuzwe na Niyigena Florence, bikaba bigaragara ko nayo yayivuze kubwo kwibeshya, kuko kuba mu nyandiko yo kwiyambaza impuguke yavuzwe haruguru Gakwaya yaravuze ko M. yasambanyijwe ku wa 19/10/2019, naho mu nyandikomvugo ye akavuga ko iby'isambanywa ry'uwo mwana yabyumvanye abantu barimo Niyigena, byumvikana ko uyu yibeshya mu kuvuga ko yasambanyijwe ku wa 18/10/2019, cyane cyane ko hari izindi nyandiko kandi zuzuzanya zigaragaza ko yasambanyijwe ku wa 19/10/2019, ndetse n'itariki ya 17/10/2019 yavuzwe na Nkorerimana ikaba idahura n'iyo icyaha cyakoreweho, ahubwo kuba baragiye bavuga amatariki yegeranye, bishimangira ko hari abagiye bibeshya ku munsi nyakuri icyaha cyakorewe.

[25] Hashingiwe ku ngingo ya 119 y'Itegeko nº 15/2004 ryo ku wa 12/6/2004 ryavuzwe haruguru no ku byasobanuwe, Urukiko rurasanga ibyo Nkorerimana Benjamin anenga raporo ya muganga nta shingiro bifite, ikaba rero yaragombaga gushingirwaho nk'ikimenyetso kimushinja icyaha kirebewe hamwe n'ibindi bimenyetso.

- **Ku birebana n'ubuhamya bwa Niyigena Florence**

[26] Nkorerimana Benjamin anenga ubwo buhamya ku mpamvu y'uko bwagombaga gushyigikirwa n'ibindi bimenyetso bitewe n'uko uwabutanze yari atarageza ku myaka cumi n'ine (14), no kuba avuguruzanya na se w'umwana ku birebana n'itariki icyaha cyakorewe.

[27] Ikibazo cy'ubuhamya bw'umwana utarageza ku myaka cumi n'ine (14) cyatanzweho umurongo mu rubanza nº RPAA 0133/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 07/11/2014[3] wakurikijwe no mu zindi manza zaciwe nyuma, harimo urubanza nº RPAA 00052/2023/CA rwaciwe ku wa 29/01/2024[4], uwo murongo ushingiye kubyo itegeko riteganya ukaba uvuga ko ubuhamya bwatanzwe n'umwana utarageza ku myaka cumi n'ine (14) nta gaciro buhabwa mu gihe butunganiwe n'ibindi bimenyetso.

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[2] Ni iyo gusaba gufata mu gitsina cy'uwo mwana ibyagombaga gusuzumwa (vaginal swabs)
[3] Haburana Ubushinjacyaha na MVUYEKURE Faustin
[4] Haburana Ubushinjacyaha na Niringiyimana Lambert

[28] Nk’uko byibukijwe mu gika cya 20 cy’uru rubanza, Urukiko Rukuru rwagumishijeho imikirize y’urubanza rwaciwe ku rwego rwa mbere rushingiye ku kuba Nkorerimana Benjamin ataravuguruje ibimenyetso byashingiweho kuri urwo rwego, ibyo bimenyetso bikaba bigizwe na raporo ya muganga, imvugo ya Nkorerimana wemeye icyaha mu Bugenzacyaha hamwe n’ubuhamya bwa Niyigena Florence wamubonye asambanya uwo mwana.

[29] Urukiko rurasanga rero byumvikana ko mu kwemeza ko Nkorerimana ahamwa n’icyaha akurikiranweho, hatarashingiwe gusa ku buhamya bwa Niyigena Florence, kuko hari na raporo ya muganga yagaragaje cyane cyane ko ku myanya ndangagitsina y’umwana hatukuraga, icyo akaba ari ikimenyetso cy’uko yasambanyijwe nk’uko no mu mwanzuro muganga yavuze ko hari ibimenyetso by’uko umwana yasambanyijwe[5], naho kuba yarongeyeho ko atari ibya vuba, bikaba birebana n’uko yabonye ko hashize igihe uwo mwana atakaje akarangabusugi, ibi kandi bikaba byahuzwa n’ibyo umwana yabwiye muganga ko yari amaze igihe aryamana na Nkorerimana, ndetse bikaba byanahuzwa n’imvugo ya Nkorerimana mu Bugenzacyaha y’uko bari bamaze amezi atandatu bakundana.

[30] Urukiko rurasanga ubuhamya bwa Niyigena Florence wavuze ko yabonye Nkorerimana aryamye hejuru ya M. bishimangirwa n’ibyo raporo ya muganga yagaragaje, ndetse bigashimangirwa n’inyandiko yo mu nzego z’ibanze ivuga ko agifatwa yemeye ko yasambanyije uwo mwana, nawe kandi ageze mu Bugenzacyaha akaba yaremeye ko yasambanyije uwo mwana n’ubwo mu rwego rwo kujijisha yavuze ko yamusambanyirije mu rugo iwabo.

[31] Hashingiwe ku murongo wavuzwe mu gika cya 29 cy’uru rubanza, Urukiko ruraanga ibyo Nkorerimana anenga ubuhamya bwa Niyigena Florence nta shingiro bifite, kuko hari ibimenyetso bibwunganira.

[32] Naho ku birebana n’uko Niyigena Florence avuguruzanya na se w’umwana ku itariki icyaha cyakoreweho, Urukiko rurasanga icyo kibazo cyasubijwe hasuzumwa ibirebana na raporo ya muganga, aho rwagaragaje ko hagiye habaho kwibeshya ku itariki icyaha cyakorewe.

[33] Ku bivugwa na Nkorerimana n’umwunganira by’uko ibisubizo byatanzwe na Laboratwari y’u Rwanda y’ibimenyetso (RFI), ari ikimenyetso gishimangira ko atasambanyije M., Urukiko rurasanga nta shingiro bifite, kuko kuba nta turemangingo tw’umugabo (male DNA) twabonetse mu byasuzumwe byakuwe ku wakorewe icyaha, bitambura agaciro ibindi bimenyetso byagaragajwe baruguru, cyane cyane ko Nkorerimana yavuze ko yasambanyije M. akoresheje agakingirizo[6], bikaba byasobanura impamvu utwo turemangingo tutabonetse.

- **Kumenya niba Urukiko rwarirengagije aho Nkorerimana yari yiriwe**

[34] Nkorerimana Benjamin n’umwunganira bavuga ko Urukiko rwirengagije ko ntaho yari guhurira n’umwana ashinjwa gusambanya kuko umunsi bivugwa ko ari wo yamusambanyije yari yiriwe abumba amatafari kwa Karasira, akaba yaratanze nomero ya telephone ye kugira ngo azahamagazwe abazwe niba ibyo avuga ari ukuri.

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[5] She has signs of sexual abuse.
[6] Reba inyandikomvugo yo mu Bugenzacyaha.

[35] Uhagarariye Ubushinjacyaha avuga ko Nkorerimana Benjamin atagaragaza ko ibyo avuga yabiburanishije mbere ngo noneho abe anenga icyo Urukiko rwabivuzeho, ko kandi ari we ugomba kugaragaza ikimenyetso cy'ibyo avuga nk'uko biteganywa n'ingingo ya 3 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo.

UKO URUKIKO RUBIBONA

[36] Urukiko rurasanga ikibazo cy'uko Nkorerimana Benjamin yari yiriwe ku kazi umunsi icyaha akurikiranyweho gikorwa, usibye kuba nta kimenyetso abigaragariza, atarigeze akiburanisha mu Rukiko Rukuru, akaba rero atakizana mu bujurire bwa kabiri nk'impamvu y'ubujurire kuko ntacyo anenga urubanza yajuririye ku birebana n'icyo kibazo, mu gihe nk'uko byatanzweho umurongo n'uru Rukiko mu rubanza nº RPAA 00194/2021/CA rwaciwe ku wa 22/07/2024 haburana Ubushinjacyaha na Ndayishimiye Emmanuel, ujurira afite inshingano yo kugaragaza ukwibeshya kwakozwe n'Urukiko gushingiye ku mategeko cyangwa ku byabaye, bikaba rero byumvikana ko umuburanyi atanenga urubanza ashingiye kubyo ataburanishije.

[37] Hashingiwe ku byasobanuwe byose, Urukiko rurasanga ubujurire bwa Nkorerimana Benjamin nta shingiro bufite.

[38] Urukiko rurasanga ariko n'ubwo ubujurire bwe nta shingiro bufite, bitarubuza gusuzuma ibirebana n'igihano yahawe nk'uko byatanzweho umurongo mu rubanza nº RPAA 00039/2021/CA rwaciwe ku wa 02/07/2021 haburana Ubushinjacyaha na Shakabatenda Jean de Dieu wanakurikijwe mu zindi manza zaciwe vuba, harimo urubanza nº RPAA 00151/2023/CA rwaciwe ku wa 26/04/2024 haburana Ubushinjacyaha na Nyirandikubwimana Médiatrice, uwo murongo ukaba uvuga ko nta cyabuza urukiko kugabanyiriza igihano uregwa, hagamijwe gutanga igihano gihwanye n'uburemere bw'icyaha kabone n'ubwo impamvu z'ubujurire zitawawe ishingiro.

[39] Urukiko rurasanga umwirondoro wa Nkorerimana Benjamin ugaragaza ko ari ubwa mbere akurikiranwe mu nkiko mu buryo buzwi, ukanagaragaza ko yakoze icyaha akiri muto kuko yari afite imyaka cumi n'icyenda (19), bivuze ko yari akiva mu bwana akirangwa n'imyitwarire y'abantu bo muri icyo cyiciro yo kudashishoza neza no kudatekereza ku ngaruka y'ibikorwa bakora, izo mpamvu rero zikaba zafatwa nk'impamvu nyoroshyacyaha zatuma igihano yahawe kigabanywa.

[40] Ku birebana n'igihano Nkorerimana Benjamin yahanishwa, harebwe izindi manza uru Rukiko ruheruka guca ku bantu bari bakurikiranyweho icyaha cyo gusambanya umwana, nk'urubanza nº RPAA 000124/2022/CA rwaciwe ku wa 28/02/2024 haburana Ubushinjacyaha na Havugimana Djumaine, wari ufite imyaka makumwabiri (20) agasambanya umwana w'imyaka cumu n'itanu (15), Urukiko rwamugabanyirije igihano rushingiye ku mpamvu nyoroshyacyaha zirimo kuba yaremeye icyaha, kuba yarakoze icyaha akiri muto no kuba ari ubwa mbere akurikiranwe mu nkiko mu buryo buzwi, rumuhanisha igifungo cy'imyaka icumi (10), bityo hashingiwe ku mpamvu zagaragajwe haruguru ku birebana na Nkorerimana Benjamin, nawe yagabanyirizwa igihano ariko ntahanwe kimwe na Havugimana kuko uyu yemeye icyaha kandi umwana yasambanyije akaba arutaho gato uwo Nkorerimana yasambanyije, akaba rero ahanishijwe igifungo cy'imyaka cumi n'ibiri (12), bityo urubanza rwajuririwe rukaba ruhindutse gusa ku birebana n'igihano.

III. ICYEMEZO CY'URUKIKO

[41] Rwemeje ko ubujurire bwa Nkorerimana Benjamin nta shingiro bufite;

[42] Rwemeje ko urubanza nº RPA 00792/2020/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 20/05/2021, ruhindutse gusa ku birebana n'igihano;

[43] Ruhanishije Nkorerimana Benjamin igifungo cy'imyaka cumi n'ibiri (12);

[44] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta kuko Nkorerimana Benjamin yajuriye afunze, akaba asonewe kuyatanga.