

## UBUSHINJACYAHA v. KAGENZA

[Rwanda URUKIKO RUKURU/ HCCIC – RPA 00001/2021/HC/HCCIC (Kanyegeri, P.J., Ngabire na Nsanzimana J.) 28 Nyakanga 2022]

*Amategeko agenga imiburanishirize y’imanza z’inshinjabyaha – icyaha cyo gucuruza abantu – Ibimenyetso mu manza nshinjabyaha – Ibimenyetso bidashidikanywaho – Ushinjwa aba umwere iyo Ubushinjacyaha budashoboye kugaragaza ibimenyetso bidashidikanywaho bimushinja.*

**Incamake y’ikibazo:** Uru rubanza rwabanje gucibwa n’urukiko Rwisumbuye rwa Gicumbi, Ubushinjacyaha buvuga ko mu mpera z’umwaka wa 2019 mu bihe bitandukanye, Kagenza yajyanye n’abana bitwa Ishimwe w’imyaka cumi n’itatu (13) y’amavuko, Mugarura w’imyaka cumi n’ine (14) na Tuyizere w’imyaka cumi n’umunani (18) mu Gihugu cya Uganda kubaheshayo akazi, ngo akaba yaratwaye aba bantu agamije kubacuruza kuko yabajyanye ababyeyi babo batabizi kandi abanyuza mu nzira zitemewe. Urwo Rukiko rwahamije Kagenza icyaha cyo gucuruza abantu, rumuhanisha igifungo cy’imyaka makumyabiri (20) n’ihazabu y’amafaranga y’u Rwanda miliyoni makumyabiri (20.000.000).

Kagenza yajuririye Urukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha byo mu rwego Mpuzamahanga n’ibyambuka imbibi, asaba ko iki cyemezo yafatiwe cyakurwaho kuko yahanwe n’urukiko rutabifitiye ububasha kandi arengana, urwo Rukiko rwabanje kwemeza ko urubanza rwajuririye ruteshejwe agaciro kuko rwaburanishijwe n’Urukiko rutabifiye ububasha rusingiye ku ngingo ya 42 y’itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’inkiko nuko ruburanisha ikirego cy’Ubushinjacyaha. Mu miburanire y’uregwa imbere y’uru Rukiko avuga ko ko atajyanye aba bana ku bacuruza kuko nta nyungu yari agamije kubabonamo, ko ahubwo bagiyeyo gushaka akazi kandi ubu bakaba baragarutse mu rugo.

**Incamake y’icyemezo:** 1. Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze, bityo kuba nta kimenyetso cyagaragajwe cyemeza mu buryo budashidikanywaho ko uregwa yajyanye abo aregwa gucuruza mu Gihugu cya Uganda agamije kubacuruza bituma adahamwa n’icyaha aregwa cyo gucuruza abantu.

**Ikirego cy’Ubushinjacyaha nta shingiro gifite.**

**Amategeko yashingiweho:**

Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y’imanza nshinjabyaha, ingingo ya 111.

Itegeko N° 51/2018 ryo ku wa 13/08/2018 ryerekeye kurwanya, guhana icuruzwa ry’abantu no gushakira inyungu ku bandi, Ingingo ya 3 igika cya 6.

**Nta manza zifashishijwe.**

**Urubanza**

## I. IMITERERE Y'URUBANZA

[1] Mu mpera z'umwaka wa 2019 mu bihe bitandukanye, Kagenza Leonard yajyanye na Ishimwe Jimmy w'imyaka cumi n'itatu (13) y'amavuko, Mugarura Irakoze w'imyaka cumi n'ine (14) na Tuyizere Sandrine w'imyaka cumi n'umunani (18) mu Gihugu cya Uganda ku baheshayo akazi.

[2] Ubushinjacyaha buvuga ko Kagenza Leonard yatwaye aba bantu mu Gihugu cya Uganda agamije kubacuruza kuko yabajyanye ababyeyi babo batabizi kandi abanyuza mu nzira zitemewe, mu gihe uregwa we yiregura avuga ko aba bana bagiye muri Uganda ku bushake bwabo bagamije gushakayo akazi.

[3] Urukiko Rwisumbuye rwa Gicumbi rwaregwe mbere iki kirego, rwahamije Kagenza Leonard icyaha cyo gucuruza abantu, rumuhanisha igifungo cy'imyaka makumyabiri (20) n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri (20.000.000). Tariki ya 22/02/2021 Kagenza Leonard yajuririyeye uru Rukiko asaba ko iki cyemezo yafatiwe cyakurwaho kuko yahanwe n'urukiko rutabifitiye ububasha kandi arengana, n'Ubushinjacyaha rurabishigikira.

[4] Ku wa 05/05/2021 urukiko rushingiye ku ngingo ya 42 y'itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko Urukiko rwemeza urubanza rujuririrwa ruteshejwe agaciro.

[5] Muri uru rubanza hagomba gusuzumwa niba Kagenza Leonard yaratwaye Ishimwe Jimmy, Mugarura Irakoze na Tuyizere Sandrine mu Gihugu cya Uganda agamije kubacuruza, n'igihano yahanishwa mu gihe icyaha cyaba kimuhanye.

## II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

- **Ku bijyanye no kumenya niba Kagenza Leonard yaratwaye abitwa Ishimwe Jimmy, Mugarura Irakoze na Tuyizere Sandrine mu Gihugu cya Uganda agamije kubacuruza.**

### A. Icyo Ubushinjacyaha bwavuze.

[6] Ubushinjacyaha bwavuze ko tariki ya 07/11/2019 Kagenza Leonard yatwaye abana bitwa Ishimwe Jimmy w'imyaka cumi n'itatu (13) y'amavuko, Mugarura w'imyaka cumi n'ine (14) na Tuyizere Sandrine w'imyaka cumi n'umunani (18) mu Gihugu cya Uganda agamije kubacuruza. Bwavuze ko umugambi w'iki cyaha ugaragazwa n'uko uregwa yatwaye aba bana atabibwiye ababyeyi babo kuko yari azi ko ibyo abajyanyije bitemewe, anabanyuza mu nzira zitemewe kugira ngo hatagira ubabona, byose abikora agamije kubabonamo inyungu.

[7] Bwavuze kandi ko ibimenyetso by'iki cyaha bigizwe n'imvugo z'uregwa mu Bugenzacyaha<sup>1</sup>, aho yiyemereye yajyanye umwana witwa Ishimwe mu gihugu cya Uganda tariki ya 10/10/2019, naho abitwa Mugarura na Tuyizere abatwara tariki ya 07/11/2019. Bwavuze ko ikindi kimenyetso bushingiraho ari imvugo za bamwe mu babyeyi b'aba bana nk'abitwa

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<sup>1</sup> Inyandikomvugo y'ibazwa ry'uregwa mu Bugenzacyaha tariki ya 19/11/2019 ;

Tindiceyitira Jeanne na Ingabire Marie Aline<sup>2</sup> bavuze ko uregwa yajyanye abana babo mu gihugu cya Uganda batabizi.

[8] Ikindi kimenyetso kigizwe nanone n'imvugo za Tuyizere Sandrine<sup>3</sup> umwe mu bana bajyanywe mu Gihugu cya Uganda n'uregwa, ndetse n'iz'abatangabuhamyi bajijijwe mu Bushinjacyaha mu iperereza ryategetswe n'urukiko ndetse na raporo y'Ubuyobozi bw'Inzego z'Ibanze<sup>4</sup> zemeza ko Kagenza Leonard yajyanye abana muri Uganda ababyeyi babo batabizi. Ubushinjacyaha bwasoje busaba ko uregwa yahanirwa iki cyaha.

## **B. Imyiregurire y'uregwa.**

[9] Kagenza Leonard yireguye avuga ko ubwo yajyaga gupagasa mu Gihugu cya Uganda, yajyanye n'undi musore nawe wamubwiraga ko nawe ari yo yajyaga, ko nyuma uregwa yashatse kugaruka mu Rwanda amusabye ko bataha avuga ko azataha ikindi gihe yabonye amafaranga, yageze mu rugo nyina w'uwo mwana abonye batazanye ajya kumurega avuga ko yamugurishirije umwana.

[10] Yavuze kandi ko atajyanye aba bana ku bacuruza kuko nta nyungu yari agamije kubabonamo, ko ahubwo bagiyeyo gushaka akazi kandi ubu bakaba baragarutse mu rugo. Yavuze ko atari umucuruzi w'abantu kuko n'isoko ryabo atazi aho riba, ko aba bajyanye mu rwego rwo kujya gukora akazi kandi ari bo bijyanyeyo kuko uwo yajyanye ari umwana wa muramu we gusa, n'amafaranga ibihumbi bibiri (2.000) Ubushinjacyaha buvuga yahawe ntayo yigeze ahabwa.

## **UKO URUKIKO RUBIBONA**

[11] Ingingo ya 3 igika cya 6 y'itegeko N° 51/2018 ryo ku wa 13/08/2018 ryerekeye kurwanya, guhana icuruzwa ry'abantu no gushakira inyungu ku bandi iteganya ko 'igikorwa cyose gikozwe n'umuntu hagamijwe gushaka inyungu, uha cyangwa ushakira undi akazi, utwara, wimura, uhisha cyangwa wakira undi muntu; hakoreshejwe ibikangisho, imbaraga cyangwa ubundi buryo bwose bw'agahato, ishimuta, uburiganya, ubushukanyi, kumubonerana kubera ububasha umufiteho cyangwa kubera ko ari umunyanteye nke, gutanga cyangwa kwakira ubwishyu cyangwa inyungu kugira ngo umuntu ufite ububasha ku wundi muntu yemere'.

[12] Urukiko rusanga Ubushinjacyaha buvuga ko uregwa yajyanye Ishimwe Jimmy, Mugarura Irakoze na Tuyizere Sandrine mu Gihugu cya Uganda agamije kubacuruza kuko yabajyanye ababyeyi babo batabizi kandi abambutsa muri Uganda abanyujije mu nzira zitemewe. Kagenza Leonard we yiregura avuga ko abana aregwa kujya gucuruza muri Uganda bijyanye ku bushake bwabo gushakayo akazi.

[13] Rusanga, nubwo Ubushinjacyaha buvuga ko uregwa yajyanye aba bana muri Uganda atabibwiye ababyeyi babo, uwitwa Ingabire Marie Alice umwe muri mu babyeyi b'aba bana yabwiye Ubugenzacyaha ko yamenye amakuru y'aho umwana we ari muri Uganda abibwiye na

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<sup>2</sup> Inyandikomvugo ya Ingabire Marie Alice mu Bugenzacyaha ku wa 18/11/2019, n'iya Tindiceyitira mu Bushinjacyaha tariki ya 26/05/2021.

<sup>3</sup> Inyandikomvugo ye mu Bushinjacyaha tariki ya 26/05/2021.

<sup>4</sup> Raporo y'Ubuyobozi bw'Akagali ka Rwankonjo, mu Murenge wa Cyumba, mu Karere ka Gicumbi yo ku wa 21/11/2019

Kagenza Leonard ubwo yari avuyeyo. Mu bandi batangabuhamya babajijwe mu Bushinjacyaha, uwitwa Uwizeyimana Charlotte yavuze ko uregwa ari we wagiye avuga ko yajyanye abana kubahesha akazi muri Uganda, umukobwa ahabwa akazi ko kurera, naho abahungu bahabwa ako kwahirira inka, nk'uko n'uwitwa Leonard Mahoko yavuze ko ubwo bari bicaye ku muhanda uregwa yaje aseka avuga ko abana yababoneye akazi.

[14] Rusanga, Kagenza Leonard atari kuba yarajyanye aba bana muri Uganda agamije kubabonamo inyungu, atanashaka ko ababyeyi babo babimenya, ngo yongera aje kubwira abantu ko ari we wabajyanyeyo aba bana muri Uganda, avuga aho bakorera n'icyo bakora. Ibi bituma umugambi wo kuba uregwa yari agiye gucuruza aba bana utagaragara, kuko nubwo yaba yarabanyujije mu nzira zitemewe atari ikimenyetso cy'umugambi w'iki cyaha cyane ko bisanzwe ku bantu baturiyeye imipaka kwambukira aho bashatse batishyuye ibyangombwa by'inzira.

[15] Rusanga nanone, nubwo uwitwa Tuyizere Sandrine umwe mu bajyanywe n'uregwa mu Gihugu cya Uganda yabwiye Umushinjacyaha ko we n'umuvandimwe we Mugarura Irakoze bajyanywe na Kagenza Leonard, kandi ko mbere y'uko abajyana yabasabye kutagira uwo babibwira, bageze muri Uganda amusaba gukora neza kuko umukoresha we yamuhaye amafaranga ibihumbi bibiri (2.000), nabyo bitagaragaza umugambi wo kuba yari abajyanye muri Uganda kubacuruza kuko n'uregwa ubwe atashakaga ko inzira acamo zitemewe zimenyekana, kuko n'aya mafaranga Tuyizere Sandrine avuga ko Kagenza Leonard yahawe ku bwe avuga ko uregwa ari we wamubwiye ko yahawe aya mafaranga, nyamara mu iburanisha ry'uru rubanza Kagenza Leonard yabihakanye.

[16] Rusanga kandi, uretse kujyana aba bana ababyeyi babo batabizi no kubanyuza mu nzira zitemewe bifatwa nk'ikimenyetso cy'umugambi wo kubajyana kubacuruza, nta bundi buryo cyangwa igikorwa giteganywa mu ngingo ihana iki cyaha, nk'uburiganya cyangwa ibikangisho bigaragazwa ko uregwa yaba yarakoresheje kugira ngo aba bana bemere kujyana nawe. Kuko no kuba aba bana bafitanye isano ya bugufi na Kagenza Leonard nk'uko ababyeyi babo babivuga, bajyanye nawe bamwizeye nk'umuvandimwe wabo ku buryo nawe atari kumva ko kutabibwira ababyeyi babo byaba ari ikosa, cyane ko nubwo byitwa ko ari ukujya mu kindi gihugu, agace ka Uganda bari bagiyemo atari kure cyane n'aho batuye mu Rwanda.

[17] Rusanga, nk'uko ingingo ya 111 y'itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza nshinjabyaha, iteganya ko "Gushidikanya birengera ushinjwa. Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakozwe icyaha koko, bagomba kwemeza ko atsinze", nta kimenyetso cyagaragajwe cyemeza mu buryo budashidikanywaho ko Kagenza Leonard yajyanye Ishimwe Jimmy, Mugarura Irakoze na Tuyizere Sandrine mu Gihugu cya Uganda agamije kubacuruza. Bityo, Kagenza Leonard akaba adahamwa n'icyaha aregwa cyo gucuruza abantu.

### **III. ICYEMEZO CY'URUKIKO**

[18] Rwemeje ko ikirego cy'Ubushinjacyaha nta shingiro gifite.

[19] Rwemeje ko Kagenza Leonard adahamwa n'icyaha cyo gucuruza abantu.

[20] Rutegetse ko Kagenza Leonard ahita arekurwa urubanza rukimara gusomwa.

[21] Rutegetse ko amafaranga y'igarama ry'uru rubanza aherezwa ku Isanduku ya Leta.

[22] Rwibukije ko kujurira bikorwa mu gihe cy'iminsi mirongo itatu (30) uhereye isomwa ry'urubanza.