

UBUSHINJACYAHA v ITANGISHAKA

[Rwanda URUKIKO RUKURU - RPA 00171/2022/HC/MUS (Gatwaza, P.J.) 06 Ukwakira 2022]

Amategeko agenga imanza z'inshinjabyaha – Impamvu nyoroshyacyaha – Ubutabera buboneye bushingiye ku gisobanuro kijyanye n'impamvu nyoroshyacyaha, ihame ni uko iyo umucamanza azemeje, byemewe kujya munsu y'igihano gito itegeko riteganywa. – Kunyuranywa nabyo rero byaba ari uguhonyora amahame amategeko ahana yubakiye ho.

Incamake y'ikibazo: Urubanza rwatangiriye murukiko Rwisumbuye rwa Rubavu Ubushinjacyaha bukurikiranye ho Itangishaka Meshack icyaha cyo guhindura inyandiko bugasobanura ko kuwa 14/09/2021, Imanizabayo Isaac, Karambizi Jean Pierre, Niyonkuru Daniel, Niyonkuru Jean de Dieu na Zigiranyirazo Ildephonse bagiye gukorera i Goma muri Repubulika iharanira Demokarasi ya Congo, bageze kuri Immigration ikorera ku mupaka wa Grande Barriere, berekana ibyemezo bigaragaza ko bipimishije Covid 19 babigenzuye basanga ari ibyemezo bari basanganywe byarangije igihe, ahubwo byahinduriwe itariki, bahita bafatwa, babajijwe aho babivanye, bavuga ko bipimishirije muri Cyber café ya Itangishaka Meshack, abakorera ibyo byemezo arabibaha, bajya kuherekana, Itangishaka Meshack na we arafatwa bose baregerwa urukiko, rwemeza ko Itangishaka Meshack ahamwa n'icyaha cyo guhindura inyandiko yarezwe; ahanishwa igifungo cy'imyaka itandatu (6), n'ubwo yaburanye ahakana icyaha avuga ko ibyemezo byafatanywe abamushinja nta kigaragaza ko byakorewe iwe, cyane ko ngo nta n'umwe muri bo wageze muri Cyber café ye. Itangishaka Meshack yajuririye icyo cyemezo m'Urukiko Rukuru Urugereko rwa Musanze avuga ko yemera icyaha anasobanura uburyo yagikoze, akaba asaba imbabazi naho kuba murukiko rwabanje yaraburanye ahakana icyaha yakoze, agasaba imbabazi anasaba kudohorerwa ibahano. Mu iburanisha, Ubushinjacyaha buvuga ko kuba mu bujuriye yiyemeje kuvugisha ukuri, agasobanura uko icyaha cyakozwe, urukiko rwazabisuzuma rukareba uko rumugabanyiriza ibihano yahanishijwe.

Incamake y'icyemezo: Mubutabera buboneye bushingiye ku gisobanuro kijyanye n'impamvu nyoroshyacyaha, ihame ni uko iyo umucamanza azemeje, byemewe kujya munsu y'igihano gito itegeko riteganywa. Kunyuranywa nabyo rero byaba ari uguhonyora amahame amategeko ahana yubakiye ho.

**Ubujuje bufite ishingiro kuri bimwe,
Urubanza rujuririrwa ruhindutse kubirebana n'igihano gusa.**

Amategeko yakoreshejwe:

Itegeko N° 68/ 2018 ryo kuwa 30/6/2018 riteganywa ibyaha n'ibihano muri rusange, ingingo ya 276.

Itegeko N° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3, 4, 110 na 119.

Nta manza zashingiweho.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Itangishaka Meshack yajuririre Urubanza RP00752/2021/TGI/RBV yahamijwemo icyaha cyo guhindura inyandiko yarezwe; ahanishwa igifungo cy'umwaka itandatu (6). Ubujurire bwe bwanditswe mu bitabo by'ibirego kuri RPA 00171/2022/HC/MUS, urubanza ruburanishwa mu ruhamwe aburanyi bose bitabye, Itangishaka Meshack wajuriye yunganirwa na Musabwa Kiruhura Frederic.

[2] Uko ibintu byagenze, Ubushinjacyaha bwakurikiranye, imbere y'Urukiko Rwisumbuye rwa Rubavu uwitwa Itangishaka Meshack kubera icyaha cyo guhindura inyandiko. Bwasobanuye ko kuwa 14/09/2021, Imanizabayo Isaac, Karambizi Jean Pierre, Niyonkuru Daniel, Niyonkuru Jean dre Dieu na Zigiranyirazo Ildephonse bagiye gukorera i Goma muri Repubulika iharanira Demokarasi ya Congo, bageze kuri Immigration ikorera ku mupaka wa Grande Barriere, berekana ibyemezo bigaragaza ko bipimishije Covid 19 babigenzuye basanga ari ibyemezo bari basanganywe byarangije igihe, ahubwo byahinduriwe itariki, bahita bafatwa, babajijwe aho babivanye, bavuga ko bipimishirije muri Cyber café ya Itangishaka Meshack, abakorera ibyo byemezo arabibaha, bajya kuherekana, Itangishaka Meshack na we arafatwa, bose bashyikirizwa Ubugenzacyaha, bubakorera dosiye ishyikirizwa Ubushinjacyaha, na bwo bubaregera Urukiko.

[3] Ubushinjacyaha ku rwego Rwisumbuye rwa Rubavu bwakurikiranyeho Itangishaka Meshack icyaha cyo guhimba cyangwa guhindura inyandiko, naho Imanizabayo Isaac, Karambizi Jean Pierre, Niyonkuru Daniel, Niyonkuru Jean de Dieu na Zigiranyirazo Ildephonse bubakurikiranaho icyaha cyo gukoresha inyandiko mpimbano, bushingira ku byemezo by'abipimishije Covid 19 byahinduriwe itariki bifitwe n'abaregwa no kuba abafatanywe ibyo byemezo bashinja Itangishaka Meshack kuba ari we wababwiye ko bahawe uburenganzira na RBC ngo bapime Covid kandi batange ibyemezo, bituma bipimishayo, banabaha ibyemezo, no kuba no kuba ibyo byemezo bitaragaragaraga ku rutonde rw'ibyemezo by'abipimishije kuri ayo matariki bifite, busaba Urukiko kubahamya ibyaha baregwa, rukabahanisha igifungo cy'imyaka 7 n'ihazabu y'amafaranga 3.000.000.

[4] Itangishaka Meshack yaburanye ahakana icyaha, avuga ko ibyemezo byafatanywe abamushinja nta kigaragaza ko byakorewe iwe, cyane ko ngo nta n'umwe muri bo wageze muri Cyber café ye, byongeye kandi ngo nta raporo y'abahanga mu by'ikoranabuhanga igaragaza ko ibyo byemezo bafatanywe byakorewe muri secretariat ye, bityo ko nta nyandiko yakoze cyangwa ngo ayihindure. Ku bijyanye n'icyo avuga ku bihano asabirwa n'Ubushinjacyaha, asaba ko yarenganurwa akagirwa umwere.

[5] Urukiko rwasanze icyaha cyo guhindura inyandiko Itangishaka Meshack yarezwe kimuhama, ahanishwa igifungo cy'umwaka itandatu (6).

[6] Itangishaka Meshack ajurira yemera ko yakoze icyaha akavuga ko asaba imbabazi kuba yaraburanye ahakana icyaha yakoze, agasaba imbabazi anasaba kudohorerwa ibahano. Asobanura uburyo icyaha yagikoze, ko yafashe ibyangombwa by'abantu bipimishije test ya Covid 19, akora edit n'ibyo bita photo shop ahindura amatariki, noneho abo bantu batangira kwambukira kuri ibyo byangombwa, nyuma yaho batangira kumuzanira n'abandi, nibwo bafashwe bahita bamuvuga kubibafashamo; asobanura ko kubera ko bavuze ko bamusanganye n'umuganga aho muri subercaffe yakoreraga, niyo mpamvu yabajye guhakana icyaha.

[7] Ubushinjacyaha buvuga ko kuba mu bujurire yiyemeje kuvugisha ukuri, agasobanura uko icyaha cyakozwe, urukiko rwazabisuzuma reba uko rumugabanyiriza ibihano yahanishijwe.

[8] Ibibazo bisuzumwa:

Kumenya niba uwajuriye yagabanyirizwa ibihano bijya muni ya minimum legal kubwo kwemera icyaha mu bujurire.

II. ICYAGARAGARIYE URU RUKIKO N' UKO RUSESENGURA IKIBAZO

[9] Itangishaka Meshack yaburanye ahakana icyaha ariko mu bujurire akaba yemera icyaha agaragaza ko ababajwe n' ikibi yakoze; anaboneraho gusaba imbabazi no kugabanyirizwa ibihano.

[10] Mu kumuhana, Urukiko rwasanze icyaha Itangishaka Meshack yakoze, ari uguhindura inyandiko, giteganwa n'ingingo ya 276 y'Itegeko N° 68/ 2018 ryo kuwa 30/6/2018 riteganya ibyaha n'ibihano muri rusange, kigahanishwa igifungo kitari muni y'imyaka 5 ariko kitarenze imyaka 7, n'ihazabu y'amafaranga atari muni ya miliyoni 3.000.000, ariko atarenze miliyoni 5.000.000 cyangwa kimwe gusa muri ibyo bihano; rwanzura ko akwiye guhanishwa igifungo cy'imyaka itandati (6) gusa, kingana n'igihano mpuzandengo cy'igihano kinini n'igihano gito ntarengwa biteganyirijwe iki cyaha, ko ahawe igihano kinini kubera ko yaburanye atemera icyaha; ku gifungo cy' imyaka irindwi yari yasabiwe n'Ubushinjacyaha n'ihazabu ya 3.000.000frw.

[11] Mu bujurire agaragaza kubabazwa no kuba yarahakanye ikibi yakoze, agasaba imbabazi n'Ubushinjacyaha bukavuga ko yagabanyirizwa ibihano.

[12] Ingingo ya 119 y'itegeko N° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga ko mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye. Mu gika cya 2 cy'iyi ngingo kikavuga ko urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura aribyo kandi ko bishobora kwemerwa;

[13] Ingingo ya 3 y'itegeko N°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana;

[14] Ingingo ya 4 y'Itegeko N°15/2004 ryo kuwa 12/06/2004 ry'ibimenyetso mu manza n'itangwa ryabyo ivuga ko urukiko ruca urubanza rwaregwe hakurikijwe ibimenyetso bihuje na kamere y'ikiburanwa.

[15] Ingingo ya 110 y'Itegeko N°15/2004 ryo kuwa 12/06/2004 ry'ibimenyetso mu manza n'itangwa ryabyo mu manza ukwiyemerera mu rubanza ivuga ko ukwiyemerera mu rubanza ari amagambo umuburanyi cyangwa umuhagarariye avugira mu rukiko agira ibyo yemera. Ayo magambo atsindisha uwayavuze.

[16] Uru rukiko, ruhuje uko ibintu byagenze, imiburanire ye n'ingingo z'amategeko, zavuzwe haruguru, mu guhana uwajuriye, urukiko rwisumbuye rwaramuhanishije igifungo kiremereye kuko atemeye icyaha akaba nta kosa rwakoze.

[17] Rurasanga kuba noneho agaragaza kwicuza ikibi yakoze, agasaba imbabazi avuga ko atazabyongera, yagabanyirizwa ibihano, impamvu n' uko mu manza z'inshinjabyaha n'ubwo mbere atemeye icyaha, nta cyabuza gusuzuma kwemera icyaha kwe mu mu gihe agaragaza kwicuza icyaha, bikaba kandi byanakorwa mu bujurire kuko amategeko agenga imiburanishirize y'imanza z'inshinjabyaha ari indemya gihugu;

[18] Rurasanga rero yahanishwa igifungo cy' imyaka itatu (3). Impamvu yo kujya muni y'igifungo gito cy' imyaka itanu giteganywa n'ingingo ya 276 y'Itegeko N° 68/ 2018 ryo kuwa 30/6/2018 riteganywa ibyaha n'ibihano muri rusange, n'uko mu by'ukuri n' ubwo ingingo ya 60 CP iteganywa ko iyo umucamanza asanze hari impamvu nyoroshyacyaha ahanishwa uregwa wahamwe n'icyaha igifungo kitari muni y'igito itegeko riteganywa, ibyo bintu ntibijyanye n'amahame agenga amategeko ahana ibyaha ateganywa ko iyo habonetse impamvu nyoroshyacyaha urukiko rugabanywa ibihano bikava mu cyiswe igihano gito ntaregwa n'ikinini ntaregwa, itegeko rihana riba ryateganyijwe. Rurasanga kandi uyu ari nawo murongo winganje mu nkiko, cyane cyane inkiko nkuru, ariko by'umwihariko Urukiko Rukuru n'Urukiko rw'Ubujurire bikaba byaranahawe umugisha n' Uruwikirenga; byongeye bikaba kandi aribyo bibereye ubutabera bubonye bushingiye ku gisobanuro kijyanye n' impamvu nyoroshyacyaha, aho ihame ari uko iyo umucamanza azemeje byemewe kujya muni y'igihano gito itegeko riteganywa. Kunyuranya nabyo rero bikaba ari uguhonyora amahame amategeko ahana yubakiyeho kandi bikaba byaba kurenganya uregwa wavutswa kugabanyirizwa ibihano bijya muni y' igihano gito, abandi bacamanza baba batanze.

[19] Ikindi kandi n'uko n'Ubushinjacyaha bwemeye ko ibihano bijya muni y' igihano gito giteganywa n'itegeko rihana mu rubanza RPA 00610/2021/HC/MUS rwaciwe n'uru rukiko kuwa 20/05/2022, aho SHYIRAMBERE Festus, wari wakatiwe igifungo cy'imyaka itandatu (6) kubera icyaha cyo gukubita no gukomeretsa umwana, bwamusabiye kugabanyirizwa ahanishwa igifungo cy'imyaka itatu (3) nyara igifungo gito giteganywa n'itegeko rihana ibyaha ari imyaka itanu (5); bivuze ko no kuri uyu wajuriye igifungo cye cyagabanywa kikajya muni y'igihano gito itegeko riteganywa.

[20] Kubera rero izo mpamvu, urubanza rwajuririwe ruhindutse ku gifungo gusa, gishyizwe ku myaka itatu (3) kivuye ku myaka itandatu (6).

III. ICYEMEZO CY'URUKIKO

[21] Rwemeje ko ubujurire bwa Itangishaka Meshack buhawe ishingiro kuri bimwe.

[22] Rwemeje ko, agabanyirijwe igifungo kigashyirwa ku myaka itatu (3) kivuye ku myaka itandatu (6).

[23] Rwemeje ko urubanza rwajuririwe ruhindutse gusa ku gifungo.