NTABWOBA (IKIREGO KIGAMIJE KUVANAHO INGINGO Y'ITEGEKO INYURANYIJE N'ITEGEKO NSHINGA)

[Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/GEN 0001/14/CS (Rugege, P.J., Mugenzi, Nyirinkwaya, Hatangimbabazi, Kanyange, Mukamulisa, Mukandamage, Rugabirwa na Munyangeri N., J.) 27 Werurwe 2015]

Itegeko Nshinga – Amategeko anyuranyije n'itegeko Nshinga – Ikirego kigamije gukuraho ingingo ya 10, agace ka kabiri y'Itegeko Ngenga N° 04/2012 ryo kuwa 15/06/2012 rikuraho Inkiko Gacaca rikanagena uburyo bwo gukemura ibibazo byari mu bubasha bwazo kuko inyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda – Ingingo ya 10, agace ka kabiri ni ikosa ry'imyandikire rishobora gukosorwa aho kuba ikibazo cy'itegeko rinyuranye n'Itegeko Nshinga ndetse kakaba gakwiye kumvikana mu buryo butabangamiye ihame ry'uko uburyozwacyaha ari gatozi ku wakoze icyaha – Itegeko Nshinga ryo ku wa 04/06/2003 nkuko ryavuguruwe kugeza ubu, ingingo ya 17.

Imiterere y'ikibazo: Urukiko Gacaca rw'Ubujurire rw'Umurenge wa Kinyinya rwahamije Ntabwoba Amiru bita Cyuma icyaha cya Jenoside ashinjwa ko yishe Uwimbabazi Thérèse, rumuhanisha igifungo cy'imyaka 15. Ntabwoba yaje gutanga ikirego cyo gusubirishamo ingingo nshya urwo rubanza mu Rukiko rw'Ibanze rwa Nyamirambo avuga ko yabonye izindi manza zahamije Nshimiyimana Thomas, Harelimana Joseph bita Ngayi na Rwabuhungu Augustin icyaha cyo kwica Uwimbabazi Thérèse kandi izo manza zitagaragaza ubufatanyacyaha hagati yabo

Nyuma yo gutanga icyo kirego, Ntabwoba yatanze ikirego mu Rukiko rw'Ikirenga arusaba gukuraho agace ka kabiri k'ingingo ya 10 y'Itegeko Ngenga N° 04/2012/OL rikuraho Inkiko Gacaca rikanagena uburyo bwo gukemura ibibazo byari mu bubasha bwazo avuga ko kanyuranyije n'Itegeko Nshinga.

Imiterere y'icyemezo: Agace k'amagambo "*cyonyine gusa*" kari mu ngingo ya 10, agace ka kabiri ni ikosa ry'imyandikire rishobora gukosorwa aho kuba ikibazo cy'itegeko rinyuranye n'Itegeko Nshinga. Kuba ari ikosa ry'imyandikire rishobora gukosorwa, bigaragazwa kandi nuko ibyanditse mu cyongereza bitandukanye n'ibyanditse mu zindi ndimi. Bityo, aka gace k'iyi ngingo kakaba gakwiye kumvikana mu buryo butabangamiye ihame ry'uko uburyozwacyaha ari gatozi ku wakoze icyaha nkuko biteganywa n'ingingo ya 17 y'Itegeko Nshinga.

Agace k'ingingo yaregewe ntikanyuranyije n'itegeko Nshinga.
Amagarama aherera ku isanduku ya Leta.

Amategeko yashingiweho:

Itegeko Ngenga N° 04/2012 ryo kuwa 15/06/2012 rikuraho Inkiko Gacaca rikanagena uburyo bwo gukemura ibibazo byari mu bubasha bwazo, ingingo ya 10, agace ka kabiri.

Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 53, igika cya kabiri.

Itegeko Nshinga ryo kuwa 04/06/2003 nk'uko ryavuguruwe kugeza ubu, ingingo ya 17.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka ku rubanza rwaciwe n'Urukiko Gacaca rw'Ubujurire rw'Umurenge wa Kinyinya rwahamije Ntabwoba Amiru bita Cyuma icyaha cya Jenoside. Urukiko rwemeje ko yishe Uwimbabazi Thérèse, rumuhanisha igifungo cy'imyaka 15. Ntabwoba Amiru bita Cyuma yaje gutanga ikirego cyo gusubirishamo ingingo nshya urwo rubanza mu Rukiko rw'Ibanze rwa Nyamirambo avuga ko yabonye izindi manza zahamije Nshimiyimana Thomas, Harelimana Joseph bita Ngayi na Rwabuhungu Augustin icyaha cyo kwica Uwimbabazi Thérèse kandi izo manza zitagaragaza ubufatanyacyaha hagati yabo nawe.

[2] Mu gihe urubanza rwo gusubirishamo ingingo nshya rwari rutaracibwa, Ntabwoba Amiru bita Cyuma yatanze ikirego mu Rukiko rw'Ikirenga arusaba gukuraho agace ka kabiri k'ingingo ya 10 y'Itegeko Ngenga N° 04/2012/OL rikuraho Inkiko Gacaca rikanagena uburyo bwo gukemura ibibazo byari mu bubasha bwazo avuga ko kanyuranyije n'Itegeko Nshinga.

[3] Urubanza rwaburanishirijwe mu ruhame kuwa 23/02/2015 hari ntabwoba Amiru bita cyuma yunganiwe na Me Muhikira Jean Claude, hari kandi na Me Rubango Epimaque uhagarariye Minisiteri y'Ubutabera watanze ibitekerezo kuri icyo kirego.

II. KU BIJYANYE N'UBUBASHA BW'URUKIKO N'IMIHANGO Y'IYAKIRWA RY'IKIREGO

[4] Ku byerekeranye n'ububasha bw'Urukiko rw'Ikirenga, ingingo ya 53, igika cya kabiri y'Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga ivuga ko "Urukiko rw'Ikirenga ruburanisha […] ibirego bisaba gukuraho Itegeko Ngenga, Itegeko cyangwa Itegeko Teka kubera ko binyuranyije n'Itegeko Nshinga, haba kubikuraho byose cyangwa se zimwe mu ngingo zabyo zinyuranyije n'Itegeko Nshinga".

[5] Ntabwoba Amiru bita Cyuma yandikiye Urukiko rw'Ikirenga asaba ikurwaho ry'ingingo ya 10, agace ka 2 y'Itegeko Ngenga N° 04/2012/OL ryo kuwa 15/06/2012 ryavuzwe haruguru kubera ko inyuranyije n'Itegeko Nshinga ryo ku wa 04/06/2003 nkuko ryavuguruwe kugeza ubu, bityo iki kirego kikaba kiri mu bubasha bwarwo.

[6] Ku birebana n'imihango y'iyakira ry'ikirego, dosiye y'urubanza irimourwandiko Ntabwoba Amiru bita Cyuma yandikiye Urukiko rw'Ikirenga ku wa 20/11/2014 asaba ikurwaho ry'agace k'ingingo yavuzwe haruguru kubera ko kanyuranyije n'Itegeko Nshinga ryo ku wa 04/06/2003 nkuko ryavuguruwe kugeza ubu.

[7] Ntabwoba Amiru bita Cyuma afite inyungu yo kuregera Urukiko rw'Ikirenga kubera ko agace k'ingingo y'Itegeko Ngenga asaba ko gakurwaho ariko kashingirwaho hasuzumwa niba ikirego yatanze cyo gusubirishamo urubanza ingingo nshya cyakwakirwa.

[8] Ku mugereka w'urwandiko rwa Ntabwoba Amiru bita Cyuma hari kandi imyanzuro yoherereje Urukiko rw'Ikirenga asobanura ikirego cye. Yanatanze kopi y'Itegeko Ngenga

asaba ko agace k'ingingo yaryo kavanwaho bitewe nuko kaaba kanyuranije n'Itegeko Nshinga.

[9] Ntabwoba Amiru bita Cyuma ufungiye muri Gereza ya Nyarugenge ntiyatanze ingwate y'amagarama kuko asonewe kuyitanga hashingiwe ku biteganywa n'ingingo ya 268 y'Itegeko N° 30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y' imanza z'inshinjabyaha[1].

[10] Urukiko rw'Ikirenga rusanga ku birebana n'imihango y'iyakirwa ry'Ikirego, Ntabwoba Amiru bita Cyuma yarubahirije ibiteganywa n'ingingo ya 54 y'Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 ryavuzwe haruguru.

III. ISESENGURA RY'IKIBAZO KIGIZE URU RUBANZA N'UKO URUKIKO RUBIBONA

Kumenya niba ingingo ya 10, agace ka kabiri y'Itegeko Ngenga N° 04/2012 ryo kuwa 15/06/2012 inyuranyije n'Itegeko Nshinga.

[11] Urwandiko n'imyanzuro Ntabwoba Amiru bita Cyuma yashyikirije Urukiko rw'Ikirenga ku wa 21/11/2014 bigaragaza ko aregera gukuraho ingingo ya 10, agace ka kabiri y'Itegeko Ngenga N° 04/2012/OL ryo kuwa 15/06/2012 rikuraho Inkiko Gacaca rikanagena uburyo bwo gukemura ibibazo byari mu bubasha bwazo kuko asanga agace ka kabiri k'iyo ngingo kanyuranyije n'Itegeko Nshinga ryo ku wa 04/06/2003 nkuko ryahinduwe kandi ryavuguruwe kugeza ubu. Ntabwoba Amiru bita Cyuma avuga ko kunyuranya kw'Itegeko Ngenga N° 04/2012/OL ryo ku wa 15/06/2012 ryavuzwe haruguru n'Itegeko Nshinga bigaragarira mu kuba iryo tegeko rimubuza gusubirishamo urubanza ingingo nshya yifashishije urundi rubanza rwahamije undi muntu icyo cyaha aregwa.

[12] Asobanura ko kugirango asubirishemo urubanza rwaciwe n'Inkiko Gacaca ingingo nshya, yifashishije urubanza rwahamije icyaha undi muntu, bisaba kuba uwo muntu yarahamwe gusa n'icyo cyaha cy'ubwicanyi. Mugihe uwo muntu wundi yaba yarahamwe n'icyaha cy'ubwicanyi, agahamwa n'ibindi byaha, bizitira uwifuza kwifashisha urwo rubanza kandi nta bufatanyacyaha bwababayeho hagati y'usubirishamo urubanza ingingo nshya n'undi wahamwe n'icyo cyaha mu rundi rubanza.

[13] Me Muhikira Jean Claude wunganira Ntabwoba Amiru bita Cyuma avuga ko agace ka kabiri k'ingingo ya 10 y'Itegeko Ngenga ryavuzwe haruguru, ariko gateje ibibazo kuko Ntabwoba Amiru bita Cyuma yahamijwe kwica Uwimbabazi Thérèse, ariko nyuma aza gusanga hari abandi bantu baciriwe imanza zemeza ko aribo bishe Uwimbabazi Thérèse, uwo yunganira akaba atakwifashisha izo manza zindi asubirishamo urubanza ingingo nshya mu gihe abo bantu bandi baba barakoze ibindi byaha kandi nta bufatanyacyaha bwababayeho hagati yabo na Ntabwoba Amiru bita Cyuma, akaba asanga iyo ngingo igumyeho byaba ari uguhanirwa ibyaha utakoze bikaba binyuranye n'Itegeko Nshinga mu ngingo yaryo ya 17 ivuga ko uburyozwacyaha ari gatozi ku wakoze icyaha.

[14] Intumwa ya Leta, Me Rubango Epimaque avuga ko uwatanze ikirego yafashe ibintu uko bitari, kuko itsinda ry'amagambo "**cyonyine gusa**" rigaragara mu gace ka kabiri

[1] Ingingo ya 268 y Itegeko No 30/2013 ryerekeye imiburanishirize y imanza z'inshinjabyaha ivuga ko abantu bafunzwe basonewe gutanga ingwate y'amagarama igihe barega.

k'ingingo inengwa, rishaka kuvuga ibindi byaha bitandukanye n'icyaha cy'ubwicanyi byahamye usubirishamo urubanza ingingo nshya, aho kuba ibyaha byahamye undi muntu mu rundi rubanza usubirishamo ingingo nshya ashaka kwifashisha. Me Rubango Epimaque akomeza avuga ko imyandikire y'ingingo inengwa na Ntabwoba Amiru bita Cyuma iteje ikibazo ariko ko itanyuranye n'Itegeko Nshinga kandi ko ibyo byakosorwa binyuze mu zindi nzira bitanyuze mu nzira ikoreshwa havanwaho itegeko cyangwa ingingo y'itegeko inyuranye n'Itegeko Nshinga.

[15] Ingingo ya 53, igika cya kabiri y'Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga ivuga ko Urukiko rw'Ikirenga ruburanisha (…) ibirego bisaba gukuraho Itegeko Ngenga, Itegeko cyangwa Itegeko-Teka kubera ko binyuranyije n' Itegeko Nshinga, haba kubikuraho byose cyangwa se zimwe mu ngingo zabyo zinyuranyije n'Itegeko Nshinga. Ntabwoba Amiru bita Cyuma yatanze ikirego asaba gukuraho ingingo ya 10, agace ka kabiri y'Itegeko Ngenga N° 04/2012/OL ryo kuwa 15/06/2012 rikuraho Inkiko Gacaca, rikanagena uburyo bwo gukemura ibibazo byari mu bubasha bwazo.

[16] Ingingo ya 10, agace ka kabiri y'Itegeko Ngenga N° 04/2012/OL ryavuzwe haruguru, rikanagena uburyo bwo gukemura ibibazo byari mu bubasha bwazo ivuga ko "urubanza rwaciwe n'Urukiko Gacaca rushobora gusubirishwamo ingingo nshya mu rukiko rubifitiye ububasha hakurikijwe ibiteganywa n'iri tegeko ngenga [……] iyo umuntu yari yarahamijwe icyaha cy'ubwicanyi n'urubanza rwabaye ndakuka rwaciwe n'Urukiko Gacaca kandi ari cyo cyaha cyonyine cyamuhamye, nyuma hakaboneka urundi rubanza rwahamije undi muntu icyo cyaha cyonyine gusa kandi nta bufatanyacyaha buri hagati ya bombi". Agace k'amagambo yo muri iyi ngingo "**cyonyine gusa**" niko Ntabwoba Amiru bita Cyuma avuga ko kanyuranyije n'Itegeko Nshinga mu ngingo yaryo ya 17, igika cya mbere aho ivuga iti "Uburyozwacyaha ni gatozi ku wakoze icyaha [….].

[17] Imyandikire y'ingingo ya 10, agace ka kabiri ivugwa mu gika kibanziriza iki, cyane cyane agace ka magambo "cyonyine gusa" agaragara mu nteruro ya nyuma yako gace, ishobora kumvikanisha ko kugirango uwahamijwe icyaha cy'ubwicanyi n'Inkiko Gacaca, asubirishemo urubanza ingingo nshya yifashishije urundi rubanza rwahamije undi muntu icyo cyaha, bisaba ko uwahamwe n'icyaha cy'ubwicanyi muri urwo rubanza ashingiraho asubirishamo ingingo nshya, aba atarahamwe n'ibindi byaha. Bivuze ko ukurikije uko aka gace ka kabiri k'ingingo ya 10 kanditse, itsinda ry'amagambo "cyonyine gusa" ryaba ribaye inzitizi ku muntu wahamijwe icyaha cy'ubwicanyi n'Inkiko Gacaca, mu gihe yaba ashatse gusubirishamo ingingo nshya urubanza rwamuhamije icyaha, ashingiye ku kuba hari abandi bantu bahamijwe icyo cyaha mu rundi rubanza kandi nta bufatanyacyaha bwabayeho.

[18] Ukurikije iyi myandikire, kuba undi muntu yarahamwe n'icyaha cy'ubwicanyi, agahamwa n'ikindi cyaha cyangwa ibindi byaha, byumvikana nkaho byambura uburenganzira undi muntu wahamwe n'icyo cyaha cy'ubwicanyi, bwo gusubirishamo urubanza ingingo nshya yitwaje ko hari undi wahamwe n'icyaha gisa n'icyo yahamijwe kandi nta bufatanyacyaha buri hagati yabo. Nkuko bikubiye mu ngingo ya 17, igika cya mbere y'Itegeko Nshinga, uburyozwacyaha ni gatozi ku wakoze icyaha. Ibi bisobanuye ko uwakoze icyaha ariwe ugihanirwa, ntanushobora guhanirwa icyaha cyangwa ibyaha byakozwe n'abandi.

[19] Nubwo imyandikire y'ingingo ya 10 agace ka kabiri y'Itegeko Ngenga N° 04/2012/OL ryo ku wa 15/06/2012, iteye ikibazo nkuko byasobanuwe hejuru, Urukiko

rurasanga ari ngombwa kureba niba Umushingamategeko yarashyizeho iriya ngingo agamije gukumira abantu basubirishamo imanza zaciwe n'Inkiko Gacaca ahereye ku byaha byakozwe n'abandi cyangwa niba ari imyandikire y'ingingo iteje ikibazo ku buryo yakosorwa binyuze mu zindi nzira ziteganywa n'amategeko.

[20] Ubusanzwe, gusubirishamo urubanza ingingo nshya, ni ihame ryemewe mu mategeko agenga imiburanishirize y'imanza mu Rwanda[2]. Gusubirishamo urubanza ingingo nshya, bigamije gusaba ko urubanza rwaciwe burundu ruvanwaho rukongera gusuzumwa bundi bushya hashingiwe ku mpamvu ziteganywa n'itegeko. Ku birebana n'imanza zaciwe n'Inkiko Gacaca, Itegeko Ngenga N° 04/2012/OL ryo ku wa 15/06/2012 rikuraho izo nkiko, naryo ryemera ko izo manza zishobora gusubirishwamo ingingo nshya, ndetse ryanarondoye mu ngingo ya 10 impamvu zishingirwaho mu gusubirishamo urubanza rwaciwe n'inkiko gacaca. Ikigaragara aha, nuko Umushingamategeko yemeye ko imanza zaciwe n'Inkiko Gacaca zishobora gusubirishwamo ingingo nshya bishingiye ku mpamvu zateganijwe n'iryo Tegeko Ngenga.

[21] Umushingamategeko ntiyari kwemera ko imanza zaciwe n'Inkiko Gacaca zisubirishwamo ingingo nshya, ngo narangiza ashyireho amananiza atuma uwahamijwe icyaha cy'ubwicanyi n'inkiko gacaca atemererwa gusubirishamo urubanza bitewe n'ibyaha byakozwe n'abandi. Urukiko rw'Ikirenga rusanga agace k'amagambo "cyonyine gusa" kari mu ngingo ya 10, agace ka kabiri ari ikosa ry'imyandikire rishobora gukosorwa aho kuba ikibazo cy'itegeko rinyuranye n'Itegeko Nshinga. Kuba ari ikosa ry'imyandikire rishobora gukosorwa, bigaragazwa kandi nuko ibyanditse mu cyongereza[3] bitandukanye n'ibyanditse mu zindi ndimi.

[22] Urukiko rw'Ikirenga rusanga ingingo ya 10, agace ka kabiri y'Itegeko Ngenga N° 04/2012/OL ryo ku wa 15/06/2012 rikuraho Inkiko Gacaca, rikanagena uburyo bwo gukemura ibibazo byari mu bubasha bwazo gakwiye kumvikana mu buryo butabangamiye ihame ry'uko uburyozwacyaha ari gatozi ku wakoze icyaha nkuko biteganywa n'ingingo ya 17 y'Itegeko Nshinga.

IV. ICYEMEZO CY'URUKIKO

[23] Rwemeje ko ikirego rwashyikirijwe na Ntabwoba Amiru bita Cyuma asaba kwemeza ko ingingo ya 10, agace ka kabiri y'Itegeko Ngenga N° 04/2012 ryo kuwa 15/06/2012 rikuraho inkiko gacaca rikanagena uburyo bwo gukemura ibibazo byari mu bubasha bwazo inyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda cyakiriwe.

[24] Rwemeje ko iyo ngingo itanyuranije n'Itegeko Nshinga.

[25] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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[2] Reba Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi kuva ku ngingo yaryo ya 184 kugeza kuya 193. Reba kandi Itegeko Nº 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, kuva ku ngingo yaryo ya 192 kugeza kuya 197.3 "[……] if a person is definitively convicted of homicide by a Gacaca Court and it is the only crime to which he/she is convicted, and later another person is convicted of the same crime where there is no complicity between the two";