UBUSHINJACYAHA v. MUKARUSAGARA

[Rwanda URUKIKO RW' IKIRENGA – RPA 0241/09/CS (Rugege, P.J, Rugabirwa na Mukanyundo) 19 Nzeli 2014]

Amategeko Mpanabyaha – Gukubita no gukomeretsa byateye urupfu – Ntibyitwa gutyo ahubwo byitwa ubwicanyi mu gihe hagaragara ko habayeho ubushake bwo kwica – Itegeko Teka n° 21/77 ryo kuwa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, ingingo ya 311.

Amategeko Mpanabyaha – Igabanyagihano – Rishobora gushingira ku kuba ari ubwa mbere uregwa akoze icyaha – Itegeko Teka n° 21/77 ryo kuwa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, ingingo za 82 na 83.

Amategeko agenga imirimo nshinganwa – Kuriha ibyangiritse – Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse – Itegeko rishyiraho igitabo cy'urwunge rw'amategeko y'imbonezamubano, ingingo ya 258.

Incamake y'ikibazo: Uregwa yakurikiranywe mu Rukiko Rukuru, urugereko rwa Nyanza kuba yarishe umugabo we Kalinda Nicolas. Muri urwo rubanza kandi bene nyakwigendera batanze ikirego basaba ko uregwa yabaha indishyi. Uregwa yahamwe n'icyaha cy'ubwicanyi, ahanishwa igifungo cya burundu, anategekwa guha bene nyakwigendera indishyi. Uregwa yajuririye mu Rukiko rw'Ikirenga avuga ko atakoze icyaha aregwa, ariko ko Urukiko Rukuru rwamuhanishije igifungo cya burundu rwirengagije imvugo ze n'iz'abatangabuhamya bamufashije guterura umurambo w'umugabo we bazi ko atakoze icyo cyaha ariko iburanisha ry'urubanza ritangiye, uregwa avuga ko yemera icyaha, ko kandi agisabiye imbabazi kugira ngo Urukiko rumugabanyirize igihano, ariko akomeza ashimangira ko yishe umugabo we kubwo impanuka.

Ubushinjacyaha bwo bwavuze ko nta kosa Urukiko Rukuru rwakoze ubwo rwemezaga ko uregwa yakoze icyaha cy'ubwicanyi kuko igihe yakoraga icyaha yari afite ubushake bwo kwica umugabo we Kalinda Nicolas kubera ko batari basanzwe babanye neza, ko kandi ubwo bushake bugaragazwa n'uko yahise arakara amukubita umwase mu gihorihori arapfa, ko iyo baba bari basanzwe babanye neza, uregwa yari guhunga umugabo we igihe yashakaga kumukubita urushyi, uretse ko bitashobokaga kuko umugabo we yari ashaje cyane, ndetse ko uregwa yashobora nawe kumukubita urundi rushyi, aho kumwicisha umwase awumukubise mu gihorihori.

Abaregera indishyi nabo bavuze ko uregwa akwiye guhamwa n'icyaha cy'ubwicanyi kubera ko yari afite ubushake bwo kwica se kubera ko yari asanzwe agirana amakimbirane nawe kuko uregwa yicishaga inzara nyakwigendera ndetse ngo akaba yari yaravuze ko azamwica kugira ngo Se atazarya wenyine amafaranga yavuye mu ikawa bagurishije.

Incamake y'icyemezo: 1. Kuba uregwa yarakubise Kalinda Nicolas umwase (intwaro) ukamupfumura inyuma mu mutwe (mu cyico) agapfa nk'uko bigaragazwa na raporo ya muganga yavuzwe haruguru, bigaragara ko yari afite ubushake bwo kumwica, bityo akaba agomba guhamwa n'icyaha cy'ubwicanyi nk'uko n'Urukiko Rukuru rwabyemeje, aho kuba icyaha cyo gukubita no gukomeretsa byateye urupfu.

2. Uregwa akwiye kugabanyirizwa igihano hashingiwe ku mpamvu nyoroshyacyaha yerekeranye n'uko aribwo bwa mbere akurikiranyweho icyaha, agahanishwa igifungo cy'imyaka makumyabiri (20), aho kuba icya burundu yari yahawe.

3. Uregwa ategetswe guha indishyi zitandukanye abaziregeye.

Ubujurire bw'uregwa bufite ishingiro kuri bimwe.
Ubujurire bwuririye ku bundi bw ' abaregera indishyi bufite ishingiro kuri bimwe.
Uregwa ahanishijwe igifungo cy 'imyaka 20.
Uregwa ategetswe guha indishyi zitandukanye abaziregeye.
Urubanza rwajuririwe ruhindutse kuri bimwe.
Amagarama aherereye ku Isanduku ya Leta.

Amategeko yashingiweho:
Itegeko Teka n° 21/77 ryo kuwa 18/08/1977 rishyiraho igitabo cy' amategeko ahana, ingingo za 82, 83 na 311.
Itegeko rishyiraho igitabo cy'urwunge rw'amategeko y'imbonezamubano, ingingo ya 258.

Nta manza zifashishijwe.

Inyandiko z'abahanga :
Général Likulia Bolongo, Droit Pénal Spécial Zaïrois, LGDJ, T1, 1985, P.52.

Urubanza

IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rukuru, Urugereko rwa Nyanza, Ubushinjacyaha burega Mukarusagara Immaculée kuba yarishe umugabo we Kalinda Nicolas. Bene nyakwigendera Kalinda Nicolas bavuzwe haruguru bahagarariwe na mukuru wabo witwa Nyirandungutse Françoise batanze ikirego muri urwo Rukiko basaba ko Mukarusagara Immaculée yabaha indishyi zingana na 32.027.500 Frw.

[2] Urwo Rukiko rwaciye urubanza, rwemeza ko Mukarusagara Immaculée ahamwa n'icyaha cy'ubwicanyi, rumuhanisha igifungo cya burundu, rumutegeka guha bene Kalinda Nicolas indishyi zingana na 2.000.000 Frw bakazazigabanira ku buryo bungana.

[3] Mukarusagara Immaculée yajuririye urwo rubanza mu Rukiko rw'Ikirenga avuga ko atakoze icyaha aregwa, ariko ko Urukiko Rukuru rwamuhanishije igifungo cya burundu rwirengagije imvugo ze n'iz'abatangabuhamya bamufashije guterura umurambo w'umugabo we bazi ko atakoze icyo cyaha.

[4] Iburanisha ry'urubanza ritangiye, Mukarusagara Immaculée avuga ko yemera icyaha, ko kandi agisabiye imbabazi kugira ngo uru Rukiko rumugabanyirize igihano.

[5] Urubanza rwaburanishijwe mu ruhame kuwa 21/07/2014, Mukarusagara Immaculée yitabye kandi yunganiwe na Me Munyansanga Amina Gisèle, abaregera indishyi bahagarariwe na Nyirandungutse Françoise yunganiwe na Me Yves Habinshuti, naho Ubushinjacyaha buhagarariwe na Mutayoba Alphonse.

IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO:

Kumenya inyito y'icyaha Mukarusagara Immaculée yakoze

[6] Mukarusagara Immaculée n'umwunganira bavuga ko Urukiko Rukuru rutagombaga kumuhamya icyaha cy'ubwicanyi kuko igihe yakubitaga umugabo we umwase mu gahanga agapfa atari afite ubushake bwo kumwica, ko ahubwo yamwishe by'impanuka, ko rero akwiye guhamwa n'icyaha cyo gukubita no gukomeretsa byateye urupfu giteganywa ubu n'ingingo ya 151 y'Itegeko Ngenga nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana.

[7] Mukarusagara Immaculée asobanura ko ibyo abana ba nyakwigendera Kalinda Nicolas bavuga ko atari asanzwe abanye neza na Se kubera amakimbirane bari bafitanye bitahabwa agaciro kuko ubuhamya buri muri dosiye bwatanzwe na Mukagahutu udafitanye isano n'abo bana yasobanuye ko yari asanzwe abanye neza n'umugabo we.

[8] Uhagarariye Ubushinjacyaha avuga ko nta kosa Urukiko Rukuru rwakoze ubwo rwemezaga ko Mukarusagara Immaculée yakoze icyaha cy'ubwicanyi kuko igihe yakoraga icyaha yari afite ubushake bwo kwica umugabo we Kalinda Nicolas kubera ko batari basanzwe babanye neza, ko kandi ubwo bushake bugaragazwa n'uko yahise arakara amukubita umwase mu gihorihori arapfa, ko iyo baba bari basanzwe babanye neza, Mukarusagara Immaculée yari guhunga umugabo we igihe yashakaga kumukubita urushyi, uretse ko bitashobokaga kuko umugabo we yari ashaje cyane, ndetse ko Mukarusagara yashobora nawe kumukubita urundi rushyi, aho kumwicisha umwase awumukubise mu gihorihori.

[9] Nyirandungutse Françoise uhagarariye abaregera indishyi n'ubunganira muri uru rubanza bavuga ko Mukarusagara Immaculée akwiye guhamwa n'icyaha cy'ubwicanyi kubera ko yari afite ubushake bwo kwica Se kubera ko yari asanzwe agirana amakimbirane nawe kubera ko Mukarusagara Immaculée yamwicishaga inzara kuko yirirwaga anywa inzoga mu kabare kitwa Tuyamarize, ko kandi Nyirandungutse Françoise yabahoraga hagati kuko Se yamubwiyeko Mukarusagara Immaculée yavuze ko azamwica kugira ngo Se atazarya wenyine amafaranga yavuye mu ikawa bagurishije.

[10] Akomeza avuga ko ikindi kimenyetso kigaragaza ko Mukarusagara Immaculée yari afite ubushake bwo kwica Se ari uko yivugiye kuwa kane ko azamwica, amwica kuwa mbere w'icyumweru cyakurikiyeho amukubise agafuni ka nyirabinyagwa mu gihorihori arapfa kuko Nyirandungutse Françoise yamweguyeakabona ubwonko n'amagufwabyavaga mu mutwe wa Se byisutse hasi,nyamara Mukarusagara Immaculée akaba atarashakaga ko bamenya ko ariwe wamwishe kuko yahishe ako gafuni n'imyenda yariho amaraso munsi y'igitanda cye, ariko ko babibonye amaze gufungwa, usibye ko batabishyikirije Polisi kugirango bizabe ibimenyetso bimuhamya icyaha muri uru rubanza.

UKO URUKIKO RUBIBONA

[11] Ingingo ya 311 y'Igitabo cy'amategeko ahana cyakurikizwaga igihe icyaha cyakorwaga, iteganya ko "*Ukwica umuntu ubishaka byitwa ubwicanyi, bihanishwa igifungo cya burundu".*

[12] Naho mu gitabo cye cyitwa "Droit Pénal Spécial Zaïrois", Général Likulia Bolongo, umuhanga mu mategeko ahana, asobanura ko ubushake bwo kwica bushobora kugaragazwa n'intwaro yakoreshejwe mu kwica umuntu nk'imbunda yo mu bwoko bwa "revolver",

umwambi, igiti kinini, icyuma gityaye cyangwa umupanga,ko kandi bushobora kugaragazwa n'igice cy'umubiri izo ntaro zateweho nko munda, mu gituza, mu mutwe, mu bihaha cyangwa mu mutima, ndetse ko ubwo bushake bushobora kugaragazwa na none n'ingano y'ingufu zakoreshejwe mu gukora icyaha[1].

[13] Ku birebana n'uru rubanza, muri dosiye hari raporo ya muganga yo kuwa 01/11/2007 (C15-16), igaragaza ko Kalinda Nicolas yishwe n'ikintu gityaye yakubiswe inyuma mu mutwe kikawupfumura (Le nommé Kalinda Nikola est décédé à la suite d'un traumatisme crânio-encéphalique provoqué par un objet contondant).

[14] Imbere y'uru Rukiko kandi Mukarusagara Immaculée yiyemereye ko yicishije umugabo we Kalinda Nicolas umwase yamukubise mu gahanga.

[15] Hashingiwe ku mategeko n'ibisobanuro byavuzwe haruguru, Urukiko rurasanga kuba Mukarusagara Immaculée yarakubise Kalinda Nicolas umwase (intwaro) ukamupfumura inyuma mu mutwe (mu cyico) agapfa nk'uko bigaragazwa na raporo ya muganga yavuzwe haruguru, bigaragara ko yari afite ubushake bwo kumwica, bityo akaba agomba guhamwa n'icyaha cy'ubwicanyi giteganywa n'ingingo ya 311 y'Igitabo cyavuzwe haruguru nk'uko n'Urukiko Rukuru rwabyemeje, aho kuba icyaha cyo gukubita no gukomeretsa byateye urupfu.

Kumenya niba Mukarusagara Immaculée yagabanyirizwa igihano kubera ukwemera icyaha kwe no kugisabira imbabazi

[16] Mukarusagara Immaculée n'umwunganira bavuga koUrukiko rw'Ikirenga rwamugabanyiza igihano cy'igifungo cya burundu yahawe mbere kubera koyemeye icyaha cyo gukubita no gukomeretsa byateye urupfu, ko kandi agisabiye imbabazi ku Banyarwanda n'Abacamanza bose, ndetse n'abo mu muryango wa nyakwigendera Kalinda Nicolas bose.

[17] Mukarusagara Immaculée asobanura ko yicishije umugabo we umwase yamukubise mu gahanga igihe yari amuhagaze imbere kuko yamusumbaga bitewe n'umujinya w'umuranduranzuzi yagize ubwo umugabo we yari amaze kumutuka no kumukubita urushyi amuziza ko kuba yaratinze gutaha mu rugo, kandi yari yamusize arwaye, nyamara we akaba yarumvaga ko atakoze ikosa kuko yari yiriwe asarura ibishyimbo mu ishyirahamwe.

[18] Uwunganira Mukarusagara Immaculée asaba ko uregwa yagabanyirizwa igihano, agahanishwa igifungo kiri munsi y'imyaka icumi (10) iteganywa n'ingingo ya 151 y'Itegeko Ngenga nº 01/2012/OL ryavuzwe haruguru hashingiwe ku mpamvu nyoroshyacyaha ijyanye n'uko yemeye icyaha no kuba yagisabiye imbabazi nk'uko byasobanuwe haruguru.

[19] Uhagarariye Ubushinjacyaha avuga ko Mukarusagara atagabanyirizwa igihano kuko atavugishije ukuri ku mikorere y'icyaha cy'ubwicanyi kubera ko yavuze ko yakubise umugabo we umwase mu mutwe arapfa, nyamara raporo ya muganga iri muri dosiye igaragaza ko nyakwigendera yishwe n'ikintu yakubiswe mu gihorihori, ko kandi Mukarusagara Immaculée atashoboraga kuhamukubita umwase amuturutse imbere kuko yivugiye ko yari mugufi kuri nyakwigendera.

[1] « L'intention homicide peut résulter, soit de l'arme employée (…) telle qu'une arme à feu, comme un revolver (…), une flèche, un gros morceau de bois, un couteau pointu, une machette, soit de l'endroit où le coup a été porté, par exemple l'abdomen, la tête, la poitrine, le poumon ou le cœur », soit du degré de la violence ou de sa gravité », par Général Likulia Bolongo, Droit Pénal Spécial Zaïrois, LGDJ, T1, 1985, P.52.

[20] Abaregera indishyi n'ubunganira bavuga ko Mukarusagara atagabanyirizwa igihano kuko ukwemera icyaha kwe nta gaciro gufite kubera ko atagaragarije uru Rukiko uburyo yakoze icyaha kuko yavuze ko yakubise nyakwigendera umwase mu gahanga arapfa, nyamara raporo ya muganga iri muri dosiye igaragaza ko nyakwigendera yishwe n'ikintu cyamukomerekeje inyuma mu mutwe, ko rero ukwemera icyaha kwe gukwiye kumubera ikimenyetso kigaragaza ko yakoze icyaha cy'ubwicanyi akurikiranyweho yahakanye kuva agifatwa muri Polisi kugera mu Rukiko Rukuru.

UKO URUKIKO RUBIBONA

[21] Ku byerekeye igabanyagihano Mukarusagara Immaculée asaba ashingiye ku kuba yemera icyaha akanagisabira imbabazi, ingingo ya 82 y'Igitabo cy'amategeko ahana ibyaha iteganya ko "*Juji ubwe aha agaciro impamvu zigabanya ubugizi bwa nabi bw'uwakoze icyaha, ari izakibanjirije, ari izagiherekeje cyangwa izagikurikiye*".Naho ingingo ya 83 y'icyo gitabo, ikavuga ko *"Iyo hari impamvu zoroshya icyaha, (...) igihano cyo gufungwa burundu gisimbuzwa igihano cy'igifungo cy'igihe kitari munsi y'imyaka ibiri*".

[22] Ku birebana n'uru rubanza, raporo ya muganga iri muri dosiye igaragaza ko Kalinda Nicolas yishwe n'ikintu gityaye yakubiswe inyuma mu mutwe (crânio-encéphalique), nyamara imbere y'uru Rukiko, Mukarusagara Immaculée yarusobanuriye ko yamwicishije umwase yamukubise mu gahanga igihe yari amuhagaze imbere, ko kandi atari afite ubushake bwo kumwica kuko bari basanzwe babanye neza.

[23] Hakurikijwe ibyo bisobanuro, Urukiko rurasanga ukwemera icyaha kwa Mukarusagara Immaculée kutagomba guhabwa agaciro kuko atemera icyaha cy'ubwicanyi akurikiranyweho mu buryo budashidikanywaho kubera ko atarugaragarije uburyo yakoze icyo cyaha bitewe n'uko abeshya ko yicishije Kalinda Nicolas umwase yamukubise mu gahanga igihe yari amuturuse imbere, nyamara raporo ya muganga iri muri dosiye yavuzwe haruguru ikaba igaragaza ko nyakwigendera yishwe n'ikintu gityaye yakubiswe inyuma mu mutwe (crânio-encéphalique).

[24] Urukiko rurasanga ariko Mukarusagara Immaculée akwiye kugabanyirizwa igihano hashingiwe ku mpamvu nyoroshyacyaha yerekeranye n'uko aribwo bwa mbere akurikiranyweho icyaha hakurikijwe ibiteganywan'ingingo ya 82 na 83 z'Igitabo cyavuzwe haruguru, akaba rero agomba guhanishwa igifungo cy'imyaka makumyabiri (20), aho kuba icya burundu yari yahawe.

3. Kumenya niba ubujurire bwuririye ku bundi bwatanzwe n'abaregera indishyi bufite ishingiro

[25] Abaregera indishyi n'ubunganira bavuga ko batanze ubujurire bwuririye ku bundi kugira ngo Mukarusagara Immaculée abahe indishyi zikurikira: 30.000.000 Frw y'indishyi z'impozamarira z'uko yabiciye umubyeyi wabo, 200.000 Frw bakoresheje mu rupfu rwe, 100.000 Frw yakoreshejwe mu gukura ikiriyo, 200.000 Frw bakoresheje mu gushyingira Nibabyare Solange, 1.500.000 Frw yo kurihira Mukeshimana Béatrice ishuri na 27.500 Frw y'ikurikiranarubanza, yose hamwe akaba 32.075.000 Frw, aho kuba 2.000.000 Frw bagenewe ku rwego rwa mbere kuko ari make cyane.

[26] Mukarusagara Immaculée n'umwunganira bavuga ko atazaha abaregera indishyi 32.075.000 Frw y'indishyi basaba kuko ari menshi cyane, ko kandi bari barakuze ku buryo

batari bagiteze amaso kuri Se, ko ahubwo azabaha 2.000.000 Frw y'indishyi yaciwe n'Urukiko Rukuru kuko aciriritse.

UKO URUKIKO RUBIBONA

[27] Ingingo ya 258 y'Igitabo cy'urwunge rw'amategeko y'imbonezamubano cyakurikizwaga igihe icyaha cyakorwaga iteganya ko "*Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse*".

[28] Ku birebana n'indishyi z'impozamarira, Urukiko rurasanga kuba Mukarusagara Immaculée yarishe Kalinda Nicolas nk'uko byasobanuwe haruguru, bigaragara ko yateje akababaro abana be bavuzwe haruguru, bityo hashingiwe ku ngingo ya 258 y'Igitabo kimaze kuvugwa haruguru, akaba agomba guha buri mwana miriyoni imwe (1.000.000 Frw) y'indishyi z'impozamarira zigenwe mu bushishozi bw'Urukiko, ni ukuvuga 1.000.000 Frw x 6 abana, bityo akaba 6.000.000 Frw kuko 30.000.000 Frw basaba ari ikirenga.

[29] Urukiko rurasanga kandi Mukarusagara Immaculée agomba guha abaregera indishyi 200.000 Frw bakoresheje mu rupfu rw'umubyeyi wabo hamwe na 100.000 Frw bakoresheje mu gukura ikiriyo cye kuko ari mu rugero rukwiriye, yose akaba 300.000 Frw.

[30] Ku byerekeye amafarangayakoreshejwe mu gushyingira Nibabyare Solange,Urukiko rurasanga abaregera indishyi batayahabwa kuko adafitanye isano n'urupfu rwa nyakwigendera.

[31] Urukiko rurasanga na none abaregera indishyi batagomba guhabwa amafaranga bakoresheje mu kwishyurira Mukeshimana Béatrice ishuri kuko nta kimenyetso bayatangira kigaragaza ko uwo mwana yigaga, uretse kubivuga gusa.

[32] Ku bijyanye n'amafaranga y'ikurikiranarubanza, Urukiko rurasanga Mukarusagara Immaculée agomba kubaha 27.500 Frw y'ikurikiranarubanza kuko ari mu rugero rukwiye, cyane cyane ko bigaragara ko hari ibyo batakaje bakurikirana uru rubanza.

[33] Urukiko rurasanga rero igiteranyo cy'amafaranga Mukarusagara Immaculée agomba guhaabaregera indishyi bavuzwe haruguru ayavanye mu gice kigize umutungo we bwite ari: 6.000.000 Frw y'indishyi z'akababaro + 300.000 Frw yakoreshejwe mu rupfu no gukura ikiriyo cya nyakwigendera+27.500 Frw y'ikurikiranarubanza, yose hamwe akaba 6.327.500 Frw.

III.ICYEMEZO CY'URUKIKO

[34] Rwemeje ko ubujurire bwa Mukarusagara Immaculée bufite ishingiro kuri bimwe;

[35] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe n'abaregera indishyi bufite ishingiro kuri bimwe;

[36] Ruhanishije Mukarusagara Immaculée igifungo cy'imyaka makumyabiri (20);

[37] Rutegetse Mukarusagara Immaculée guha Nyirandungutse Françoise, Ndungutse Anastase, Uwihoreye François, Nibabyare Solange, Nyirimana Shakira na Mukeshimana Béatrice, bene Kalinda Nicolas 6.327.500 Frw y'indishyi;

[38] Ruvuze ko imikirize y'urubanza n° RP 0022/08/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza kuwa 25/09/2009ihindutse kuri bimwe.

[39] Rutegetse ko amagarama y'uru rubanza aherera ku Isanduku ya Leta.