UBUSHINJACYAHA v. GAHONGAYIRE

[Rwanda URUKIKO RW'IKIRENGA – RPA 0283/10/CS (Nyirinkwaya, P.J., Mukanyundo na Rugabirwa, J.) 19 Ukuboza 2014]

Amategeko mpanabyaha – Igenwa ry'ibihano – Igihe hari impurirane z'impamvu nkomezacyaha iz'igabanyagihano, iz'isubiracyaha n'izinyoroshyacyaha, inkiko zigena igihano zikurikije uko izo mpamvu zikurikirana muri iyi ngingo – Itegeko Ngenga nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo gishya cy'amategeko ahana ibyaha, ingingo ya 71.

Amategeko mpanabyaha – Igabanyagihano – Ntiryatangwa mu gihe ibyo ryagashingiyeho byitaweho n'urukiko rubanza – Rishobora kudatangwa kubera uburemere bw'icyaha cyakozwe.

Incamake y'ikibazo: Uregwa yarezwe ubuhotozi bwakorewe umwana ukivuka ubwo yamutaga mu musarane amaze kumubyara. Urukiko Rukuru rwemeje ko icyaha aregwa kimuhama rushingiye ku kuba yemera ko ariwe wataye umwana yari amaze kwibaruka mu musarane, kuba yarahishe ko atwite no kuba igihe cyo kubyara cyarageze agahitamo kubyara mu ibanga, rumuhanisha igifungo cy'imyaka 10.

Yajuririye Urukiko rw'Ikirenga, avuga ko yajurijwe no gusaba kongera kugabanyirizwa ibihano kuko yabyaye atazi ibimubayeho yibwira ko nawe agiye gupfa. Ubushinjacyaha bwo bwavuze ko uregwa adasobanura neza imikorere y'icyaha kuko mu Bugenzacyaha yavuze ko umwana yamubyariye mu musarane hanyuma akamusigamo akigendera.

Incamake y'icyemezo: Mu kugena ibihano, Urukiko Rukuru rwitaye ku mpamvu nyoroshyacyaha zishingiye ku kuba hari ibyo uregwa yemeye nubwo atavuga ukuri ku buryo bwuzuye rumuhanisha igifungo cy'imyaka icumi, mu gihe ubundi icyaha yakoze gihanishwa igifungo cya burundu. Bityo, ntakwiye kongera kugabanyirizwa ibihano harebwe uburemere bw'icyaha yakoze.

Ubujurire nta shingiro bufite.
Urubanza rwajuririwe ntiruhindutse.
Amagarama aherereye ku isanduku ya Leta.

Amategeko yashingiweho:
Itegeko Ngenga nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo gishya cy'amategeko ahana ibyaha, ingingo ya 71 na 83.
Itegeko-Teka nº 21/77 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'amategeko, ingingo ya 312.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rukuru, Ubushinjacyaha burega Gahongayire Jeanne icyaha cy'ubuhotozi bwakorewe umwana ukivuka ubwo yamutaga mu musarane amaze kumubyara mu ijoro ryo kuwa 23/03/2009, urukiko ruca urubanza RP 0049/09/HC/KIG kuwa 20/08/2010, rwemeza ko icyaha aregwa kimuhama rushingiye ku kuba yemera ko ariwe wataye umwana yari amaze kwibaruka mu musarane, kuba yarahishe ko atwite no kuba igihe cyo kubyara cyarageze agahitamo kubyara mu ibanga, rumuhanisha igifungo cy'imyaka 10.

[2] Gahongayire Jeanne yajuririye Urukiko rw'Ikirenga kuwa 20/09/2010. Urubanza rwaburanishijwe mu ruhame kuwa 24/11/2014, Me Batware Jean Claude amwunganiye, Ubushinjacyaha buhagarariwe na PN Bunyoye Grâce.

II. IBIBAZO BIGIZE URU RUBANZA N'ISESENGURWA RYABYO

a) Kumenya niba hari ibimenyetso bihamya Gahongayire Jeanne icyaha cy'ubuhotozi.

[3] Gahongayire Jeanne avuga ko yajurijwe no gusaba kongera kugabanyirizwa ibihano kuko yabyaye atazi ibimubayeho yibwira ko nawe agiye gupfa. Ku byerekeye imikorere y'icyaha, asobanura ko yatwise akabihisha nyirakuru babanaga, igihe cyo kubyara kigeze ajya mu rutoki, amaze kubyara nka saa cyenda za nijoro intege zimubana nkeya asubira mu nzu kuryama uruhinja arusize aho, bukeye agarutse asanga yapfuye, yigira inama yo kumujugunya mu musarane kuko n'ubundi ntawe yari yamenyesheje ko yabyaye.

[4] Me Batware Jean Claude umwunganira avuga ko akurikije ibyo Gagongayire Jeanne asobanura, asanga icyaha cy'ubuhotozi kitamuhama, ahubwo yarasinziriye umwana agapfa kubera kutitabwaho.

[5] Uhagarariye Ubushinjacyaha avuga ko Gahongayire Jeanne adasobanura neza imikorere y'icyaha kuko mu Bugenzacyaha yavuze ko umwana yamubyariye mu musarane hanyuma akamusigamo akigendera.

UKO URUKIKO RUBIBONA

[6] Urukiko rusanga ibisobanuro bya Gahongayire Jeanne biganisha ku kuvuga ko atari yagambiriye kwica umwana yari amaze kwibaruka kuko yamusize aho yamubyariye mu rutoki mu ma saa cyenda zijoro, bukeye agarutse agasanga yapfuye, nyamara atari byo kuko iyo aza kuba adafite umugambi wo kumwica ntiyari guhitamo gusohoka hanze mu ijoro ngo abyare mu ibanga nyirakuru babanaga atabizi, amaze kubyara naho ntiyari gusubira mu nzu kuryama nk'aho nta kintu cyabaye asize uruhinja ku gasozi.

[7] Rusanga kandi kwicisha uruhinja imbeho n'inzara ubizi neza ko nutarufubika cyangwa se ngo uruhe ibyo rukeneye rugomba gupfa nta kabuza, ibyo kandi ukabikora ari wowe wari ushinzwe kurwitaho, nabyo ari ubuhotozi bukorewe umwana ukivuka kimwe nko kurujugunya mu musarane ari ruzima, icyo cyaha kikaba gihanwa n'ingingo ya 312 y'Itegeko-Teka n° 21/77 ryo kuwa 18 Kanama 1977 rishyiraho Igitabo cy'amategeko ahana cyariho igihe icyaha cyakorwaga.

b) Kumenya niba Gahongayire Jeanne yakongera akagabanyirizwa ibihano.

[8] Gahongayire Jeanne avuga ko igifungo cy'imyaka 10 yahanishijwe kiremereye cyane, akaba asaba kugabanyirizwa igihano, naho Me Batware umwunganira akavuga ko icyaha yagikoze kubera gutereranywa n'ababyeyi be kugeza ubwo ahungira kwa nyirakuru aho yabyariye, imibereho yarimo ikaba ikwiye kumubera impamvu nyoroshyacyaha.

[9] Uhagarariye Ubushinjacyaha avuga ko igihano yahawe kidakwiye kongera kugabanywa harebwe uburemere bw'icyaha yakoze.

UKO URUKIKO RUBIBONA

[10] Ingingo ya 71 y'Itegeko Ngenga nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo gishya cy'amategeko ahana ibyaha ivuga ko "umucamanza atanga igihano akurikije uko uhanwa yakoze icyaha, ashingiye ku mpamvu zabimuteye, uko uwakoze icyaha yari asanzwe yitwara, uburyo icyaha cyakozwemo n'imibereho ye bwite", naho ingingo ya 82 y'icyo gitabo ikavuga ko "igihe hari impurirane z'impamvu nkomezacyaha iz'igabanyagihano, iz'isubiracyaha n'izinyoroshyacyaha, inkiko zigena igihano zikurikije uko izo mpamvu zikurikirana muri iyi ngingo".

[11] Mu kugena ibihano muri uru rubanza, Urukiko rusanga Urukiko Rukuru rwaritaye ku mpamvu nyoroshyacyaha zishingiye ku kuba hari ibyo Gahongayire Jeanne yemeye nubwo atavuga ukuri ku buryo bwuzuye, ku kuba icyaha ahanini yaragitewe n'uko uwamuteye inda yamwihakanye akanamuhunga kandi yari asanzwe ari umuntu utishoboye.

[12] Urukiko rusanga rero ibyo Gahongayire Jeanne asaba yararangije kubihabwa kuko icyaha yakoze ubundi gihanishwa igifungo cya burundu ariko we akaba yarahawe igihano cy'imyaka 10, akaba adakwiye kwongera kugabanyirizwa harebwe uburemere bw'icyaha yakoze.

III. ICYEMEZO CY'URUKIKO

[13] Rwemeje ko ubujurire bwa Gahongayire Jeanne nta shingiro bufite.

[14] Rwemeje ko urubanza RP 0049/09/HC/KIG rwamuhanishije igifungo cy'imyaka icumi (10) rudahindutse.

[15] Ruvuze ko amagarama y'urubanza aherera ku isanduku ya Leta.