UBUSHINJACYAHA v. SINDIKUBWABO N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RPA 0372/10/CS (Mutashya, P.J., Gakwaya na Hitiyaremye, J.) 24 Mata 2015]

Amategeko mpanabyaha – Kuroga – Mu gihe ibimenyetso bihamya icyaha bidahagije, abaregwa bagirwa abere – Itegeko nº 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 165.

Incamake y'ikibazo: Abajuriye bakurikiranyweho icyaha cyo kuroga umuryango wa Nyirarukundo n'icyaha cyo gupfobya jenocide.Ubushinjacyaha bugasobanura ko uwo mugambi bawucuze bavuye muri Gacaca maze ntibishimira ko Nyiramugisha yabashinje kuba kuba barishe umugabo we muri jenocide. Hasobnuwe ko bashyize uburozi mu byo kurya maze umuryango wa Nyiramugisha umaze kubirya urarwara ndetse umwana umwe muri bo arapfa.

Urukiko Rukuru, Urugereko rwa Rusizi rwaciye urubanza rwemeza ko abajuriye bahamwa n'icyaha cyo kuroga ariko rubahanaguraho icyaha cyo gupfobya jenocide maze ruhanisha Sindikubwabo antoine igifungo cya burundu y'umwihariko naho Nyiramihanda ahanishwa igifungo cya burundu.

Abaregwa bajuririye icyo cyemezo mu Rukiko rw'Ikirenga, Sindikubwabo Antoine avuga ko Urukiko Rukuru rwavanze ibyaha bya jenoside n'ibindi byaha yaregwaga barabihuza barabimuhanira, ko rwamuhamije icyaha cy'uburozi nta cyemezo cya muganga no kuba rwarirengagije imvugo z'abatangabuhamya, naho Nyiramihanda Florence avuga ko Urukiko rwaciye urubanza rumuhamya icyaha rushingiye ku buhamya bw'uwo basangiye urubanza n'abandi batangabuhamya batakwizerwa.

Incamake y'icyemezo: Kuba nta raporo ya muganga igaragaza umuryango uvugak warozwe wariye ibiryo birimo uburozi ndetse n'imvugo z'abatangabuhamya zikaba zirimo gushidikanya bigaragaza ko nta bimeneyetso bihagije bihamya abaregwa icyaha.Bityo abaregwa bagomba kugirwa abere.

Ubujurire bufite ishingiro.
Abajuriye ntibahamwa n'icyaha cyo kuroga.
Bagomba guhita barekurwa urubanza rukimara gusomwa.
Amagarama y'urubanza aherera ku isanduku ya Leta.

Imanza zifashishijwe:

Ubushinjacyaha v. Musabyimana, RPA 0244/08/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 30/09/2012.

Ubushinjacyaha v. Nyirakamana, RPA 0262/09/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 26/04/2013.

Amategeko yashingiweho:

Itegeko nº 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 165.

Itegeko Ngenga n° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 144.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rukuru, Urugereko rwa Rusizi SINDIKUBWABO Antoine na Nyiramihanda Florence baregwa icyaha cyavuzwe haruguru bakoreye umuryango wa Nyirarukundo. Ubushinjacyaha bukavuga ko ubwo bari bavuye muri Gacaca batishimiye uburyo Nyirarukundo yabatanzeho ubuhamya bw'uko bamwiciye umugabo muri Jenoside, bagize umugambi wo kurimbura umuryango we wose bakoresheje uburozi bashyize mu byo kurya, nyuma yo kurya ku biryo byaribyarozwe Nyirarukundo n'umuryango we bakaba baramerewe nabi ndetse ngo hakaba hari n'umwana umwe wapfuye.

[2] Uru Rukiko rwaciye urubanza R.P 0121/08/HC/RSZ kuwa 18/03/2010 rwemeza ko Sindikubwabo Antoine na Nyiramihanda Florence bahamwa n'icyaha cyo kuroga bakurikiranyweho ariko ko icyaha cyo gupfobya jenoside baregwa kitabahama, ruhanisha Sindikubwabo Antoine igifungo cya burundu y'umwihariko naho Nyiramihanda Florence rumuhanisha igifungo cya burundu. Urwo Rukiko kandi rwanabategetse gufatanya gutanga amagarama y'urubanza angana na 67.050Frw.

[3] Sindikubwabo Antoine na Nyiramihanda Florence ntibishimiye iki cyemezo maze bakijuririra mu Rukiko rw'Ikirenga, Sindikubwabo Antoine avuga ko Urukiko Rukuru rwavanze ibyaha bya jenoside n'ibindi byaha yaregwaga barabihuza barabimuhanira, ko rwamuhamije icyaha cy'uburozi nta cyemezo cya muganga no kuba rwarirengagije imvugo z'abatangabuhamya, naho Nyiramihanda Florence avuga ko Urukiko rwaciye urubanza rumuhamya icyaha rushingiye ku buhamya bw'uwo basangiye urubanza n'abandi batangabuhamya batakwizerwa.

[4] Urubanza rwaburanishijwe mu ruhame ku wa 09/03/2015, Sindikubwabo Antoine yitabye yunganiwe na Me Akimanizanye Béatrice, Nyiramihanda Florence nawe yitabye yunganiwe na Me Mutabaruka Jean naho Ubushinjacyaha buhagarariwe na Bunyoye Grace, Umushinjacyaha ku Rwego rw'Igihugu.

II. IKIBAZO KIRI MU RUBANZA N'ISESENGURA RYACYO

Kumenya niba hari ibimenyetso bihamya Sindikubwabo Antoine na Nyiramihanda icyaha cyo kuroga bakurikiranyweho.

[5] Sindikubwabo Antoine avuga ko nta mugambi yigeze agirana na Nyiramihanda Florence wo gushaka kwivugana umuryango wa Nyirarukundo Godelive bakoresheje uburozi. Avuga ko icyatumye ajurira ari akarengane yagiriwe aho Urukiko Rukuru, Urugereko rwa Rusizi rwafashe icyaha cya jenoside rukagihuza n'icyaha cy'uburozi akurikiranyweho rukakimuhanira, ndetse rufata icyemezo nta perereza rukoze ahubwo rugendera ku buhamya bwatanzwe n'abo bafitanye ikibazo aribo Sebahire na Turikumwe.

[6] Avuga ko bitumvikana ukuntu yahamijwe icyaha cyo kuroga nta cyemezo cya muganga kiri muri dosiye cyemeza ko umuryango wa Nyirarukundo Godelive wariye ibiryo birimo uburozi, ndetse ko n'icupa rya acide rivugwa ntaryigeze rigaragazwa muri dosiye, no kuba ibyo yemeye mbere mu Bugenzacyaha yarabitewe n'inkoni yakubiswe.

[7] Me Akimanizanye Béatrice umwunganira avuga ko Sindikubwabo Antoine yahamijwe icyaha nta bimenyetso Urukiko rushingiyeho, kubera ko yaketswe ko yaroze umuryango wa Nyirarukundo ngo kubera ko yari yamushinje muri Gacaca, ariko ntihagaragazwa uko icyo cyaha cyakozwe ndetse ntihagaragazwa ikindi kimenyetso gishimangira ibyavuzwe, ahubwo rufata icyemezo nta cyemezo cya muganga kigaragajwe rushingiye ku magambo y'abatangabuhamya arimo gushidikanya, cyane cyane ko byavuzwe ko abo bantu bajyanwe kwa muganga, ariko ntihagaragazwa raporo ya muganga igaragaza uko byagenze.

[8] Avuga ko kuba Sindikubwabo Antoine na Nyiramihanda Florence barahuriye mu nzira nyabagendwa bidasobanuye ko aribo bagiye kuroga kwa Nyirarukundo cyane cyane ko yabyemeye mu Bugenzacyaha honyine ariko ageze mu zindi nzego arabihakana akavuga n'impamvu abihakana.

[9] Asoza avuga ko nk'uko bigaragara ku rupapuro rwa munani rw'urubanza rujuririrwa, aho Ubushinjacyaha bwatanzeho umugabo uwitwa Sebahire ngo waba yaravuze ko yiboneye Sindikubwabo Antoine na Nyiramihanda Florence bajya umugambi wo kujya kuroga umuryango wa Nyirarukundo, mu iperereza ryakozwe n'Urukiko Sebahire yarabihakanye avuga ko atahamya ko aribo baroze uwo muryango, ndetse avuga ko atigeze ababona bahurira mu rutoki. Byongeye kandi undi mutangabuhamya wabajijwe wari ubarwaje witwa Mukantembera yasobanuye ko batari barwaye uburozi bwa kinyarwanda kuko uburozi bwa kinyarwanda butavurirwa ku bitaro bisanzwe.

[10] Nyiramihanda Florence avuga ko Urukiko rwamuhamije icyaha cyo kuroga kandi abeshyerwa, rukaba rwarafashe icyemezo nta kimenyetso rushingiyeho kuko rutagaragaje icyo yapfaga n'uwo muryango cyane cyane ko atigeze aburana muri Gacaca nk'uko byavuzwe, ahubwo rugendera ku bimenyetso byatanzwe n'uwo bafatanyije urubanza. Avuga ko kuba yarahuriye na Sindikubwabo Antoine mu rutoki ubwabyo bidahagije kumuhamya icyaha kuko bahuye akamubaza ngo amurangire aho Perezida w'Inkiko Gacaca ari nawe akamubwira ko ari muri sosiyete bagahita batandukana.

[11] Yavuze ko imvugo z'abatangabuhamya babajijwe barimo Haguma na Nyirabuhoro zitakwizerwa kuko bafitanye ikibazo kuko bagiye bagirana amakimbirane mu muryango.

[12] Me Mutabaruka umwunganira yavuze ko Urukiko rwamuhamije icyaha rugendeyeku mvugo zivuguruzanya kuko nta kintu gifatika rwashingiyeho rumuhamya icyaha kuba umuryango wa Nyirarukundo waragiye kwa muganga hakagira umwana upfa, muganga akaba yaragombaga kugaragaza icyamwishe ndetse n'abandi akagaragaza icyo bari barwaye, bityo kuba atarabikoze bigaragara ko abo bantu batigeze barogwa nk'uko bivugwa cyane cyane ko uwari ubarwaje mu buhamya yatanze, yavuze ko yasanze bacibwamo babajyana kwa muganga ndetse ko n'ibikoresho bakoresheje iryo joro babijugunye kuko byari byahindanye, abajijwe niba abo bantu yarabonaga ko bari barozwe asubiza ko batari bahawe uburozi bwa kinyarwanda, bityo asaba ko uwo yunganira yagirwa umwere kubera kubura ibimenyetso.

[13] Uhagarariye Ubushinjacyaha avuga ko Sindikubwabo Antoine na Nyiramihanda Florence bafatanyije umugambi wo gushaka kwivugana umuryango wa Nyirarukundo bakoresheje uburozi kubera ko bombi ariwe wari wabashinje muri Gacaca kandi Sindikubwabo Antoine akaba yarabyiyemereye mu ibazwa rye mu Bugenzacyaha.

[14] Ku birebana n'impamvu z'ubujurire za Sindikubwabo Antoine, avuga ko kuba yarabanje gufungirwa jenoside n'ibindi yasobanuye nta shingiro bifite kuko Urukiko rujya kumuhamya icyaha sibyo rwashingiyeho, rwasuzumye imvugo yavugiye mu Bugenzacyaha ruzihuza n'iz'abatangabuhamya ndetse n'ibyo rwivaniye mu iperereza rwakoze.

[15] Avuga ko nubwo nta cyemezo cya muganga gihari kigaragaza ko abo bantu barozwe atari cyo cyonyine kigomba gushingirwaho, cyane cyane ko hari imvugo ze bwite yivugiye akimara gufatwa yemeye icyaha asobanura n'uko yagikoze n'uko yagiteguranye na Nyiramihanda Florence ndetse agasobanura ko icyo bamuhoye ari uko yabashinje muri Gacaca, bikaba bitumvikana ukuntu abantu bariye ku biryo bose bagahita barwara kandi hakaba hari uwiyemereye ko yabaroze.

[16] Ku birebana no kuba Urukiko rwarirengagije imvugo z'abatangabuhamya, uhagarariye Ubushinjacyaha avuga ko ataribyo kubera ko imvugo zabo zashingiweho cyane kuko zashimangiraga ibyo we yari yiyemereye mu Bugenzacyaha kandi nta n'umutangabuhamya wigeze umuhakanira ahubwo bahamije ko yaroze uriya muryango awuziza ko Nyirarukundo yamushinje muri Gacaca ndetse n'iperereza Urukiko rwikoreye ababajijwe bose ntawigeze amuhakanira nk'uko abivuga, naho kuba yarakubiswe mu Bugenzacyaha ntabwo aribyo kuko nta bimenyetso abitangira.

[17] Kuri Nyiramihanda Florence, uhagarariye Ubushinjacyaha yavuze ko ibyo avuga nta shingiro bifite kubera ko Sindikubwabo Antoine yasobanuye uko bakoze icyaha akaba atari kubica ku ruhande ngo areke kumuvuga kandi ariwe bagiteguranye, naho ku birebana n'ubuhamya bw'uwitwa Nyirabuhoro Daphrose yavuze ko butahabwa agaciro ntacyo byamumarira kuko we n'ubundi ntabwo yigeze ahamya ko yamubonye aroga.

UKO URUKIKO RUBIBONA

[18] Ku byerekeranye n'icyaha cyo kuroga, ingingo ya 144 y'Itegeko Ngenga n° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, iteganya ko "byitwa kuroga, kugambirira ubuzima bw'umuntu umuha ibintu bishobora kwica bwangu cyangwa bitinze, batagombye kwitegereza ibyakoreshejwe cyangwa uko byahawe nyiri ukubigirirwa n'inkurikizi zabyo (…)".

[19] Iyi ngingo yumvikanisha neza[1] ko icyaha cyo kuroga kibaho mu gihe habayeho igikorwa cyo guha umuntu uburozi.

[20] Umuhanga mu mategeko witwa Robert Kint[2] wasesenguye iyi ngingo asanga ko kugirango icyaha cyo kuroga kibeho hagomba kubaho "kugambirira ubuzima bw'umuntu no gukoresha ibintu bishobora kwica bwangu cyangwa bitinze". Na none kandi kugira ngo icyo cyaha kibeho ni ngombwa ko haba hakoreshejwe uburozi, hatitawe ku ngaruka bwagize ku muntu. Undi muhanga witwa Général Likulia Bolongo yasobanuye ko kugirango umenye ko ibyakoreshejwe ari uburozi, ari ngombwa kwiyambaza ubuhanga bw'abaganga cyangwa abahanga mu by'imiti n'ubutabire.

---

[1] Droit pénal spécial, 1993, p.76-77.

[2] Il a été jugé que nonobstant l'absence d'une preuve rapportée d'une manière spéciale par un rapport toxicologique établi par un homme de l'art ayant une connaissance approfondie de la nature et des effets du poison et affirmant que les matières administrés à la victime étaient de nature à donner la mort, par Général Likulia Bolongo, Droit Pénal Spécial Zairois, L.G.D.J, T1, 1985, p.80.

[21] Nyuma y'isesengura ry'inyandiko zikubiye muri dosiye, Urukiko rusanga nta kigaragaza ko umuryango wa Nyirarukundo Godelive wasuzumwe na muganga cyangwa se abahanga mu by'imiti n'ubutabire kugira ngo hamenyekane niba koko barariye ibiryo birimo uburozi hashingiwe ku bisobanuro by'abahanga mu mategeko bavuzwe haruguru.

[22] Urukiko rurasanga kuba uwo muryango warajyanwe kwa muganga nk'uko bivugwa ariko ntihagaragare raporo ya muganga igaragaza uko byagenze ndetse n'agacupa karimo acide bashyize mu biryo kakaba kataragaragajwe, ntaho rwahera rwemeza ko bariye ibiryo birimo uburozi bahawe na Sindikubwabo Antoine na Nyiramihanda Florence, uyu kandi akaba ariwo murongo wafashwe mu rubanza RPA 0244/08/CS rwo ku wa 30/09/2011, MP c/ Musabyimana Marie n'urubanza RPA 0262/09/CS rwaciwe n'uru Rukiko ku wa 26/04/2013, MP c/ Nyirakamana Florence, muri izo manza hakaba haremejwe ko ari ngombwa kwiyambaza ubuhanga bw'abaganga cyangwa abahanga mu by'imiti n'ubutabire kugirango umenye ko ibyakoreshejwe ari uburozi.

[23] Ku bijyanye n'imvugo z'abatangabuhamya babajijwe mu Bugenzacyaha barimo Sebahire Isidore wavuze ko mu gihe Sindikubwabo Antoine yari aje kumureba yahuye na Nyiramihanda Florence bajya umugambi wo kujya kuroga Nyirarukundo, imvugo ya Turikumwe Jonathan (musaza wa Nyirarukundo) wavuze ko bavuye muri Gacaca, Sindikubwabo Antoine yahuriye na Nyiramihanda Florence muri Cellule ya Twarizo mu rutoki ruri ruguru ku mutwe w'inzu ya Nyirarukundo, Nyiramihanda Florence ngo akaba ariwe washyize uburozi mu nkono yo kwa Nyirarukundo kandi ko abaturage bose bari bazi ko asanzwe ari umurozi, naho Uwiragiye Malachie abazwa mu Bushinjacyaha akaba yaravuze ko icyo ahindura kubyo yavugiye mu Bugenzacyaha ari uko ku birebana n'uburozi bitamureba, Urukiko rurasanga izo mvugo zose zitahabwa agaciro kuko, uretse no kuba nta muhanga wemeje ko umuryango wa Nyirarukundo wariye ibiryo birimo uburozi, muri bo ntawababonye batanga ubwo burozi ndetse nta n'umwe wemeza ko babahaye ibintu bishobora kwica bwangu cyangwa bitinze mu buryo buteganywa n'ingingo ya 144 y'Itegeko Ngenga n° 01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru, ahubwo icyo bemeza akaba ari uko Sindikubwabo Antoine yahuye na Nyiramihanda Florence.

[24] Ku bijyanye no kuba Sindikubwabo Antoine yaremeye icyaha mu ibazwa rye mu Bugenzacyaha ariko yagera mu zindi nzego akagihakana, Urukiko rurasanga ibyo bitahabwa agaciro kuko uburozi bugomba kwemezwa n'umuhanga kugira ngo hamenyekanye niba icyakoreshejwe ari ikintu gishobora kwica bwangu cyangwa bitinze.

[25] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga ubujurire bwa Sindikubwabo Antoine na Nyiramihanda Florence bukwiye guhabwa ishingiro bagahanagurwaho icyaha cyo kuroga kuko ibimenyetso byashingiweho n'Urukiko rubanza rubahamya icyaha bidahagije hashingiwe ku ngingo ya 165 y'Itegeko nº 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko "gushidikanya birengera ushinjwa. Iyo urubanza rwakurikiranywe mu buryo bwose ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze".

III. ICYEMEZO CY'URUKIKO

[26] Rwemeje ko ubujurire bwa Sindikubwabo Antoine na Nyiramihanda Florence bufite ishingiro;

[27] Rwemeje ko icyaha cyo kuroga bakurikiranweho kitabahama;

[28] Rutegetse ko bahita barekurwa urubanza rukimara gusomwa;

[29] Rutegetse ko amagarama aherera ku isanduku ya Leta.