MUKARUBIBI v. UMUGIRE

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/INJUST/CIV 0005/15/CS (Mukamulisa, P.J., Rugabirwa na Hitiyaremye, J.) 19 Kamena 2015]

Amategeko agenga ibimenyetso – Ikirego cy'umwana ushaka kugira se – Inshingano yo gutanga ibimenyetso – Ubuhamya bw'abahanga – Agaciro k'ikimenyetso kigizwe n'igisubizo cya Test ADN – Ingaruka y'ikizamini cya ADN ku manza zaciwe mbere y'uko gikorwa ku kirego cy'umwana ushaka kugira se – Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana – Ubuhamya bw'abahanga ni ubugamije guha Urukiko ibisobanuro bishingiye ku bumenyi kimwe n'umwanzuro urenze ubumenyi busanzwe bw'umucamanza mu kazi ke bitewe n'uko ibiburanwa bishingiye ku buhanga bwihariye – Igisubizo cy'ikizamini cya "ADN" kigomba guhabwa agaciro nk'ikimenyetso cya kamarampaka ku bijyanye no kumenya se w'umwana mu gihe cyakozwe n'Umuhanga ubifitiye ubumenyi buhagije ashingiye ku bizamini "echantillons/samples" bya "ADN" byafashwe kuri bamwe mu bavandimwe ba nyina w'urega, abo ku ruhande rw'ukekwaho kuba se hamwe n'urega ubwe – Igisubizo cy'ikizamini cya "ADN" kigaragaza ko ukekwa kuba se w'umwana atariwe gituma imanza zose zaciwe n'inkiko zemeza ko ari se zikanamuhesha n'imitungo yasizwe nawe zivanwaho – Itegeko N° 15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3 n'iya 76.

Indishyi – Indishyi z'akababaro – Indishyi zo gusiragizwa mu manza – Amafaranga y'ikurikiranarubanza n'igihembo cy'avoka – Uregwa ntiyaha urega indishyi z'akababaro asaba mu gihe uregwa yari afite uburenganzira bwo kwiyambaza Inkiko kugira ngo zemeze ko uwo akeka kuba se ari we se kandi zinamugenere imitungo yasize – Mu gihe uregwa atsinzwe mu rubanza ntagenerwa indishyi zo gusiragizwa mu manza – Iyo umuburanyi ugomba kugenerwa amafaranga y'ikurikiranarubanza n'igihembo cy'avoka yasabye ay'umurengera icyo gihe Urukiko ruyagena mu bushishozi bwarwo – Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Incamake y'ikibazo: Umugire yatsinze mu rubanza yari yaregeye Urukiko rw'Ibanze rwa Kacyiru ko akomoka kuri Renzaho Froduard, wishwe muri Jenoside yabaye mu mwaka wa 1994, akaba yari yamubyaranye na Mukanyandwi Jeannine mu mwaka wa 1985. Amaze gutsinda urwo rubanza, yaregeye kuzungura imitungo ya Renzaho Froduard igizwe n'inzu ebyiri (2) zari zarisubijwe na nyina witwa Mukarubibi kubera ko yumvaga nyakwigendera atarasize umwana bitewe n'uko yapfuye akiri ingaragu.

Mukarubibi yatambamiye urwo rubanza ariko Urukiko rwemeza ko imikirize y'urubanza rwatambamiwe idahindutse. Yajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Gasabo ruca urubanza RCA 0395/06/TGI/GSBO kuwa 29/06/2007, narwo rwemeza ko imikirize y'urubanza rwajuririwe idahindutse.

Mukarubibi yasubirishijemo ingingo nshya urubanza RCA 0395/06/TGI/GSBO, ikirego cye cyandikwa kuri nomero RCA 0195/09/TGI/GSBO, rwemeza ko ikirego cye nta shingiro gifite kubera ko ikimenyetso cy'inyandiko yo kuwa 15/09/2009 yasinyweho n'Ubuyobozi bw'Inzego z'Ibanze hamwe n'abatangabuhamya barimo n'abagize umuryango we ashingiraho atari ikimenyetso gishya bitewe n'uko abo batangabuhamya bariho igihe ababuranyi baburanaga imanza zose zavuzwe haruguru, ko kandi babajijwe.

Kuwa 07/02/2011, Mukarubibi yandikiye Ubushinjacyaha Bukuru abusaba gukoresha ikizamini (test) cya "ADN" kugira ngo hamenyekane niba Umugire Alphonse yarabyawe cyangwa atarabyawe na Renzaho Froduard. Icyo kizamini cyarakoreshejwe maze kigaragaza ko Renzaho Froduard atari Se wa Umugire Alphonse na mushiki we Umurerwa Charlotte, biyitirira ko babyawe na we.

Mukarubibi amaze kubona igisubizo cya "test ya ADN", yandikiye Urwego rw'Umuvunyi asaba ko urubanza nomero RCA 0195/09/TGI/GSBO rwaciwe burundu rusubirwamo ku mpamvu z'akarengane kubera ko urwo Rukiko rwemeje ko Umugire Alphonse yabyawe na Renzaho Froduard, rwirengagije ubuhamya bwatanzwe na bamwe mu bagize umuryango we, abaturanyi ba Renzaho Froduard ndetse n'abaturanyi ba Mukanyandwi Jeannine i Gikondo, bemeje ko Umugire Alphonse atabyawe na Renzaho Froduard, ko ahubwo ari mwene Mukanyandwi Jeannine na Bucyabahiga Sylvère, ko kandi ubwo buhamya bwashimangiwe n'ikimenyetso simusiga cya "ADN" cyabonetse nyuma y'icibwa

ry'urubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane, cyemeje ko Renzaho Froduard atari we Se wa Umugire Alphonse.

Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga rusaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane kubera ko Urukiko Rwisumbuye rwa Gasabo rwaciye urubanza, rwirengagije ubuhamya bukubiye mu nyandiko y'Ubuyobozi yo kuwa 15/09/2009, ko kandi urwo Rukiko rwirengagije gukora iperereza aho ababyeyi be bari batuye i Gikondo kugira ngo rubabaze. Ikindi akaba ari uko ubwo buhamya bushimangirwa n'igisubizo cya "test" ya "ADN" cyabonetse nyuma y'icibwa ry'urubanza, kigaragaza ko Umugire Alphonse atari mwene Renzaho Froduard. Nyuma yo gusuzuma raporo yakozwe n'Ubugenzuzi Bukuru bw'Inkiko, Perezida w'Urukiko rw'Ikirenga yafashe icyemezo gitegeka ko uru rubanza rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga rukandikwa mu bitabo byarwo kugira ngo ruzongere kuburanishwa, ruhabwa nomero RS/REV/INJUST/CIV 0005/15/CS.

Mu iburanisha ry'urubanza, Umugire Alphonse n'umwunganira bavuga ko inyandiko yo kuwa 15/09/2009 yakozwe n'Ubuyobozi bw'Ibanze atari ikimenyetso gishya kandi ko atari n'inyandikomvaho bitewe n'uko itanditswe mu buryo bwemewe n'amategeko. Ku bijyanye n'igisubizo cy'ikizamini cya "ADN", bavuga ko kitahabwa agaciro kuko hashingiwe ku bisobanuro by'abahanga, atari ihame ko Umugire Alphonse ahuza "Chromosomes Y" na Se wabo Bihoyiki Augustin, ndetse ko kuba Se Renzaho Froduard yarapfuye, hagombaga gupimwa Sekuru kuko ariwe

bagombaga guhuza za “Chromosomes Y” mu buryo budashidikanywaho, bityo bagasaba Urukiko kudashingira kuri iki kimenyetso kuko hakurikijwe ibiteganywa n’amategeko, abacamanza badategetswe byanze bikunze gushingira ku kimenyetso cy’abahanga.

Mukarubibi asaba ko hashingiwe ku ngingo ya 258 y’Igitabo cya gatatu cy’urwunge rw’amategeko y’imbonezamubano, Umugire Alphonse yamwishyura 4.000.000Frw y’indishyi z’akababaro yatewe no kwamburwa uburenganzira ku nzu ye yasigiwe na nyakwigendera bitewe n’uko adashobora kuyivugurura cyangwa kuyigwatiriza, 5.000.000Frw y’indishyi zo kumusiragiza mu manza baburanye mbere harimo n’iz’inshinjabyaha na 2.000.000Frw y’igihembo cy’Avoka.

Hakizimana wunganira Umugire Alphonse avuga ko umukiliya we ataha Mukarubibi indishyi asaba kuko ariwe watumye ajya kumurega mu nkiko, ko ahubwo ariwe ukwiye kumuha indishyi zingana na 8.000.000Frw.

Incamake y’icyemezo: 1. Igisubizo cy’ikizamini cya “ADN” kigomba guhabwa agaciro nk’ikimenyetso cya kamarampaka ku bijyanye no kumenya se w’umwana mu gihe cyakozwe n’Umuhanga ubifitiye ubumenyi buhagije ashingiye kuri “echantillons/samples” za “ADN” zafashwe kuri bamwe mu bagize umuryango wa nyina w’Umugire Alphonse; n’abo ku ruhande rwa Renzaho Froduard hamwe n’Umugire Alphonse ubwe.

2. Kuba hari ubuhamya bwatanzwe n’abagize umuryango wa Mukarubibi bugaragaza ko Renzaho

atagiraga umwana kuko yapfuye akiri ingaragu, ubwo buhamya bugahuza n'ubw'abaturanyi ba Renzaho ndetse bukaba bushimangirwa n'ikizamini cyizewe kandi kidashidikanywaho cya ADN, ni ibimenyetso bihagije bigaragaza nta shiti ko Umugire Alphonse atabyawe na Renzaho Froduard, bityo imanza zose zemeje ko Umugire Alphonse ari mwene Renzaho Froduard hamwe n'izamuhesheje imitungo yasizwe na nyakwigendera Renzaho Froduard zikaba zigomba kuvanwaho.

3. Uregwa ntiyaha urega indishyi z'akababaro asaba kuko uregwa yari afite uburenganzira bwo kwiyambaza inkiko kugira ngo zemeze ko uwo yakekaga kuba se ari we se kandi zinamugenere imitungo yasize.

4. Uregwa ntiyahabwa indishyi asaba muri uru rubanza kubera ko atsinzwe.

5. Urega agenewe mu bushishozi bw'Urukiko 500.000Frw y'ikurikiranarubanza na 1.000.000Frw y'igihembo cy'Avoka hashingiwe ku mubare w'imanza zose baburanye n'igihe bamaze baziburana.

Ikirego gisubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro.
Imanza zose zaciwe mbere zivanyweho.
Amagarama aherereye ku uregwa.

Amategeko yashingiweho:

Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 78.

Itegeko N° 15/2004 ryo ku 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3 n'iya 76.
Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Renzaho Froduard yishwe muri Jenoside yabaye mu mwaka wa 1994, nyina witwa Mukarubibi Marguerite yisubiza amazu ye abiri (2) kubera ko yumvaga nyakwigendera atarasize umwana bitewe n'uko yapfuye akiri ingaragu.

[2] Nyuma yaho, Umugire Alphonse yatanze ikirego mu Rukiko rw'Ibanze rwa Kacyiru, asaba kwemeza ko yabyawe na Renzaho Froduard na Mukanyandwi Jeannine, Urukiko ruca urubanza RC 0102/06/TB/KCY kuwa 05/07/2006, rwemeza ko Umugire Alphonse yabyawe na nyakwigendera Renzaho Froduard na Mukanyandwi Jeannine mu mwaka wa 1985.

[3] Mukarubibi Marguerite yatambamiye urwo rubanza kuri RC 0129/06/TB/KCY, Urukiko ruca urubanza kuwa 31/10/2006, rwemeza ko imikirize y'urubanza rwatambamiwe idahindutse.

[4] Mukarubibi yajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Gasabo kuri RCA 0395/06/TGI/GSBO, ruca urubanza 29/06/2007, rwemeza ko imikirize y'urubanza rwajuririwe idahindutse.

[5] Mukarubibi yasubirishijemo ingingo nshya urubanza RCA 0395/06/TGI/GSBO muri urwo Rukiko, ikirego cye cyandikwa kuri nº RCA 0195/09/TGI/GSBO, ruca urubanza kuwa 20/08/2010, rwemeza ko ikirego cye nta shingiro gifite kubera ko inyandiko ashingiraho yo kuwa 15/09/2009 yasinyweho n'Ubuyobozi bw'Inzego z'Ibanze hamwe n'abatangabuhamya barimo n'abagize umuryango we atari ikimenyetso gishya bitewe n'uko abo batangabuhamya bariho igihe ababuranyi baburanaga imanza zose zavuzwe haruguru, ko kandi babajijwe.

[6] Umugire Alphonse yatanze kandi ikirego mu Rukiko rw'Ibanze rwa Kacyiru asaba kuzungura imitungo yasizwe na nyakwigendera Renzaho Froduard, ruca urubanza RC 0784/09/TB/KCYkuwa 13/09/2010, rwemeza ko Umugire Alphonse yemerewe kuzungura inzu ebyiri (2) zasizwe na Se Renzaho Froduard ziri mu Kagari ka Rukiri I n'aka Bibare, Umurenge wa Kimironko n'uwa Remera, Akarere ka Gasabo, Umujyi wa Kigali.

[7] Umugire Alphonse yatanze na none ikirego mu Rukiko rw'Ibanze rwa Kagarama arusaba guca urubanza rusimbura inyandiko ye y'amavuko (jugement supplétif de l'acte de naissance), urwo Rukiko rwaciye urubanza RC 399/09/TB/KMA kuwa 07/01/2010, rwemeza ko

Umugire Alphonse wavutse kuwa 04/12/1985, ari mwene Renzaho Froduard, rutegeka ko urwo rubanza rwoherererezwa Umwanditsi w'irangamimerere kugira ngo Umugire yandikwe mu bitabo by'irangamimerere.

[8] Kuwa 07/02/2011, Mukarubibi Marguerite yandikiye Ubushinjacyaha Bukuru abusaba gukoresha ikizamini (test) cya "ADN" kugira ngo hamenyekane niba Umugire Alphonse yarabyawe cyangwa atarabyawe na Renzaho Froduard, burayikoresha. Kuwa 17/05/2011, Ubushinjacyaha Bukuru bwohereje Mukarubibi igisubizo cya "ADN" cyo kuwa 10/05/2011 kigaragaza ko Renzaho Froduard atari Se wa Umugire Alphonse na Umurerwa Charlotte, mushiki we wiyita ko yabyawe na Renzaho Froduard.

[9] Mukarubibi amaze kubona igisubizo cya "test ya ADN" cyavuzwe haruguru, yandikiye Urwego rw'Umuvunyi asaba ko urubanza nº RCA 0195/09/TGI/GSBO rwaciwe burundu rusubirwamo ku mpamvu z'akarengane kubera ko urwo Rukiko rwemeje ko Umugire Alphonse yabyawe na Renzaho Froduard, rwirengagije inyandiko y'Ubuyobozi yo kuwa 15/09/2009 yanditswe hashingiwe ku buhamya bwatanzwe na bamwe mu bagize umuryango we, abaturanyi ba Renzaho Froduard mu Ruturusu, ndetse n'abaturanyi ba Mukanyandwi Jeannine i Gikondo, bemeje ko Umugire Alphonse atabyawe na Renzaho Froduard, ko ahubwo yabyawe na Mukanyandwi Jeannine na Bucyabahiga Sylvère, ko kandi ubwo buhamya bwashimangiwe n'ikimenyetso simusiga cya "ADN" cyabonetse nyuma y'icibwa ry'urubanza

rusabirwa gusubirishwamo ku mpamvu z'akarengane, cyemeje ko Renzaho Froduard atari we Se w'Umugire Alphonse.

[10] Kuwa 20/12/2013, Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga rusaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane kubera ko Urukiko Rwisumbuye rwa Gasabo rwaciye urubanza, rwirengagije ubuhamya bukubiye mu nyandiko y'Ubuyobozi yo kuwa 15/09/2009 yavuzwe haruguru iriho amazina y'abatangabuhamya batandukanye barimo n'abaturanye n'ababyeyi b'Umugire Alphonse, bemeje ko atabyawe na Renzaho Froduard, ko ahubwo yabyawe na Mukanyandwi Jeannine na Bucyabahiga Sylvère, ko kandi urwo Rukiko rwirengagije gukora iperereza aho ababyeyi be bari batuye i Gikondo kugira ngo rubabaze. Ikindi ni uko ubwo buhamya bushimangirwa n'igisubizo cya "test" ya "ADN" cyabonetse nyuma y'icibwa ry'urubanza, kigaragaza ko Umugire Alphonse atari mwene Renzaho Froduard.

[11] Nyuma yo gusuzuma raporo yakozwe n'Ubugenzuzi Bukuru bw'Inkiko, Perezida w'Urukiko rw'Ikirenga yafashe icyemezo nº 21/2015 gitegeka ko uru rubanza rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga asaba ko rwandikwa mu bitabo byarwo kugira ngo ruzongere ruburanishwe, maze ruhabwa Nº RS/REV/INJUST/CIV 0005/15/CS.

[12] Urubanza rwaburanishijwe mu ruhame kuwa 12/05/2015, Mukarubibi Marguerite ahagarariwe n'umwana we witwa Nyirabasigurubariho Béatrice, uyu

nawe yunganiwe na Me Kayiranga Prudent, naho Umugire Alphonse yunganiwe na Me Hakizimana Gérard.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba hari ibimenyetso bigaragaza ko Umugire Alphonse yabyawe na Renzaho Froduard.

[13] Me Kayiranga uhagarariye Mukarubibi avuga ko urubanza nº RCA 0195/09/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo kuwa 20/08/2010 rugaragaramo akarengane kubera ko urwo Rukiko rwemeje ko Umugire Alphonse yabyawe na nyakwigendera Renzaho Froduard, rwirengagije ko inyandiko yo kuwa 15/09/2009 y'Umunyamabanga Nshingwabikorwa w'Umurenge wa Kigarama ari ikimenyetso gishya gifite agaciro, kuko yakozwe nyuma y'iperereza ryakorewe mu Tugari dutandukanye no mu Midugudu y'Ubumwe na Rutoki, aho abagize umuryango wa Mukarubibi ugizwe n'abana be bemeje ko Umugire Alphonse atari mwene Renzaho Froduard bitewe n'uko yapfuye akiri ingaragu.

[14] Avuga kandi ko umuhungu wa Mukarubibi witwa Bihoyiki ariwe wenyine wagambaniye nyina akavuga ko uwo mwana yabyawe na Renzaho Froduard abitewe n'uko nyina yamuhaye ibihumbi makumyabiri (20.000Frw) bikomoka ku nzu yasizwe na nyakwigendera yagurishije, Bihoyiki akanga ayo

mafaranga avuga ko ari make cyane, anamubwira ko atazaheza umutungo wa murumuna we yariye.

[15] Akomeza avuga ko urwo Rukiko rwanirengagije ko inyandiko yo kuwa 15/09/2009 yavuzwe haruguru, uretse kuba cyari ikimenyetso gishya, yari n'inyandikomvaho kuko yakozwe n'Umunyamabanga Nshingwabikorwa ufite ububasha mu byerekeranye n'irangamimerere, ko kandi rwirengagije ko inakubiyemo ubuhamya bw'abaturanyi ba Renzaho Froduard bemeje ko uyu atabyaye Umugire Alphonse kuko atagiraga umugore.

[16] Anavuga ko Urukiko rwirengagije na none ubuhamya bw'abaturanyi b'ababyeyi ba Umugire Alphonse bari batuye i Gikondo, bavuze ko yabyawe na Mukanyandwi Jeannine na Bucyabahiga Sylvère. Ikindi n'uko urwo Rukiko rwanirengagije gukora iperereza ryari ryasabwe na Mukarubibi kugira ngo rwumve abo batangabuhamya, ahubwo ruca urubanza rushingiye ku buhamya bwatanzwe na Gasana, Twagirayezu na Habyarimana badafite aho bahuriye n'umuryango wa Mukarubibi.

[17] Yongeraho ko ikindi kimenyetso kigaragaza akarengane Mukarubibi yatewe n'urubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane, ari igisubizo cya "Test ya ADN" cyabonetse nyuma y'icibwa ry'urwo rubanza, kigaragaza ko Renzaho Froduard atari Se wa Umugire Alphonse na Umurerwa Charlotte, ko rero icyo gisubizo cyaje gishimangira ubuhamya bwavuzwe haruguru bukubiye mu nyandiko yo kuwa 15/09/2009

bugaragaza ko Umugire Alphonse atari mwene Renzaho Froduard.

[18] Umugire Alphonse n'umwunganira bavuga ko inyandiko yo kuwa 15/09/2009 yakozwe n'Ubuyobozi bw'Ibanze atari ikimenyetso gishya nk'uko n'Urukiko Rwisumbuye rwa Gasabo rwabibonye, aho rwasobanuye ko abatangabuhamya bayisinyeho barimo abemeje ko Se w'Umugire Alphonse ari Bucyabahiga bari bahari igihe ababuranyi b'impande zombi baburanaga imanza zose zavuzwe haruguru, ko kandi babajijwe icyo gihe.

[19] Bavuga kandi ko iyo nyandiko atari inyandikomvaho bitewe n'uko itanditswe mu buryo bwemewe n'amategeko, ko ahubwo ari inyandiko isanzwe yasinywe na bamwe mu bavandimwe ba nyakwigendera batuye mu Mudugudu w'Ubumwe kuwa 03/08/2009, ko kandi yasinywe n'Ubuyobozi bw'Umudugudu wa Rutoki kuwa 04/08/2009, nyamara atari wo Umugire Alphonse yavukiyemo, ndetse ko ayo makosa yose yashimangiwe n'Ubuyobozi bw'Umurenge wa Kigarama kuwa 15/09/2009, nyamara nta perereza ryakozwe kugira ngo ribyemeze.

[20] Ku byerekeye igisubizo cya "Test ya ADN", bavuga ko kitahabwa agaciro kuko hashingiwe ku bisobanuro by'abahanga ku byerekeranye na "Test ya ADN", atari ihame ko Umugire Alphonse ahuza "Chromosomes Y" na Se wabo Bihoyiki Augustin, ko ahubwo mu gihe Se Renzaho Froduard yapfuye, bagombaga gupima Sekuru kuko ariwe bagombaga guhuza za "Chromosomes Y" mu buryo budashidikanywaho. Basaba Urukiko rw'Ikirenga

kudashingira kuri iki kimenyetso kuko hakurikijwe ibiteganywa n'amategeko, abacamanza badategetswe byanze bikunze gushingira ku kimenyetso cy'abahanga.

UKO URUKIKO RUBIBONA

[21] Ingingo ya 78 y'Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, iteganya ko "Urukiko rw'Ikirenga ni rwo ruburanisha ibirego byerekeranye no gusubirishamo ku mpamvu z'akarengane imanza zaciwe ku rwego rwa nyuma byemejwe na Perezida w'Urukiko rw'Ikirenga".

[22] Naho ingingo ya 3 y'Itegeko N° 15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, igateganya ko "buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana". Na none ingingo ya 76 y'iryo Tegeko, igateganya ko "Ubuhamya bw'abahanga ni ubugamije guha urukiko ibisobanuro bishingiye ku bumenyi kimwe n'umwanzuro urenze ubumenyi busanzwe bw'umucamanza mu kazi ke bitewe n'uko ibiburanwa bishingiye ku buhanga bwihariye".

[23] Urukiko rurasanga muri dosiye hari igisubizo cya "test ya ADN" cyatanzwe n'umuhanga witwa Dr Christa Augustin ukorera mu Kigo cyo mu Budage cyitwa Institute of Legal Medicine, Dept. of Forensic Molecular biology, kigaragaza ko Renzaho Froduard atari Se

w'Umugire Alphonse na Umurerwa Charlotte[1], icyo kizamini cyakozwe n'uwo muhanga hashingiwe kuri "echantillons/samples" ya "ADN" zikomoka kuri Umugire Alphonse, Mukanyandwi Jeannine, Umurerwa Charlotte, Mukarubibi Marguerite, Bihoyiki Augustin na Nyirabasigurubariho Béatrice.

[24] Urukiko rurasanga icyo cyemezo cya "test ADN" kigomba guhabwa agaciro kuko cyakozwe n'Umuhanga ubifitiye ubumenyi buhagije ahereye kuri "echantillons/samples" za "ADN" zafashwe ku bantu bakomoka mu miryango ibiri itandukanye bavuzwe haruguru bo ku ruhande rwa nyina w'Umugire Alphonse n'abo ku ruhande rwa Renzaho Froduard, kikaba rero kigomba gufatwa nk'ikimenyetso cya kamarampaka ku bijyanye no kumenya niba Umugire Alphonse yarabyawe na Renzaho Froduard.

[25] Urukiko rurasanga imvugo ya Umugire Alphonse ijyanye n'uko icyo cyemezo kitahabwa agaciro bitewe n'uko mu gihe uwo yita Se Renzaho Froduard yapfuye bagombaga gupima "ADN" ya Sekuru, aho gupima iya Se wabo Bihoyiki Augustin nta shingiro ifite, kubera ko umuhanga wapimye "ADN" z'abantu bavuzwe haruguru, mu mwanzuro we, atigeze ashidikanya ku bijyanye n'uko Renzaho Froduard atari Se w'Umugire Alphonse.

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[1] *Renzaho, Froduard could not be the father of Umugire, Alphonse and Umurerwa, Charlotte.*

[26] Urukiko rurasanga kandi iyo umuhanga abona atari bugere ku gisubizo cyizewe bitewe n'uko adafite "echantillons/samples" za "ADN" zihagije nk'uko Umugire abivuga, yari gusaba ko hafatwa izindi, kuba rero atarabikoze, ahubwo akaba yaremeje ko Umugire Alphonse atabyawe na Renzaho Froduard, Urukiko ntaho rwahera rutesha agaciro umwanzuro we.

[27] Byongeye kandi, Urukiko rurasanga muri dosiye hari ubuhamya bwatanzwe n'abagize umuryango wa Mukarubibi Marguerite bugaragaza ko Renzaho Froduard yapfuye atagira umwana kuko atagiraga umugore, uretse Bihoyiki Augustin wemeje ko Umugire Alphonse ari mwene Renzaho Froduard ngo bitewe n'akagambane yagiriye nyina gakomoka ku kuba atarahawe amafaranga ahagije akomoka mu mutungo wa nyakwigendera wagurishijwe na nyina. Ubwo buhamya bugaragarira mu maraporo atandukanye ari muri dosiye harimo na raporo yo kuwa 15/09/2009 y'Umunyamabanga Nshingwabikorwa w'Umurenge wa Kigarama yakoze ashingiye ku maraporo atandukanye y'Abayobozi b'Inzego z'Ibanze ari muri dosiye.

[28] Urukiko rurasanga kandi ubwo buhamya buhuje n'ubwatanzwe n'abaturanyi ba nyakwigendera Renzaho Froduard i Remera no mu Ruturusu, ndetse n'ubwatanzwe na Mukobwa Charlotte na Nsengiyumva Joseph nk'abaturanyi ba Mukanyandwi Jeannine i Gikondo, bugaragaza ko Umugire Alphonse atabyawe na Renzaho Froduard, ko ahubwo yabyawe na Bucyabahiga Sylvère na Mukanyandwi Jeannine, bukanagaragaza ko n'igihe cy'ikusanyamakuru ry'Inkiko Gacaca ryabereye

mu Mudugudu wa Rutoki, Mukanyandwi Jeannine yiyemereye ubwe ko umugabo we yitwaga Bucyabahiga Sylvère, uretse ko yaje kwitaba Imana nyuma.

[29] Urukiko rurasanga rero icyemezo cya "test ADN" cyizewe kandi kidashidikanywaho cyavuzwe haruguru kiza gishimangira ubuhamya bwavuzwe haruguru, byose akaba ari ibimenyetso bihagije bigaragaza nta shiti ko Umugire Alphonse atabyawe na Renzaho Froduard, bityo imanza zose zavuzwe haruguru zemeje ko Umugire Alphonse ari mwene Renzaho Froduard hamwe n'izamuhesheje imitungo yasizwe na nyakwigendera Renzaho Froduard zikaba zigomba kuvanwaho.

2. Kumenya niba Mukarubibi na Umugire Alphonse bahabwa indishyi basaba.

[30] Me Kayiranga uhagarariye Mukarubibi avuga ko hashingiwe ku ngingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano, Umugire Alphonse akwiye kumuha 4.000.000Frw y'indishyi z'akababaro yatewe no kwamburwa uburenganzira ku nzu ye yasigiwe na nyakwigendera bitewe n'uko adashobora kuyivugurura cyangwa kuyigwatiriza, 5.000.000Frw y'indishyi zo kumusiragiza mu manza baburanye mbere harimo n'iz'inshinjabyaha na 2.000.000Frw y'igihembo cy'Avoka.

[31] Me Hakizimana wunganira Umugire Alphonse avuga ko ataha Mukarubibi indishyi asaba kuko ariwe watumye Umugire Alphonse ajya kumurega mu Nkiko,

ko ahubwo ariwe ukwiye kumuha indishyi zingana na 8.000.000Frw.

UKO URUKIKO RUBIBONA

[32] Ingingo ya 258 y'Igitabo cya gatatu cy'amategeko y'imbonezamubano, iteganya ko "Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse".

[33] Hashingiwe ku biteganywa n'iyo ngingo, Urukiko rurasanga Umugire Alphonse ataha Mukarubibi indishyi z'akababaro asaba kuko, mu gihe yumvaga ko Renzaho Froduard ari Se, yari afite uburenganzira bwo kwiyambaza Inkiko kugira ngo zibyemeze zinamugenere imitungo yasizwe na nyakwigendera Renzaho Froduard.

[34] Urukiko rurasanga Umugire Alphonse agomba guha Mukarubibi amafaranga y'ikurikiranarubanza n'igihembo cya avoka, ariko kubera ko ayo asaba ari menshi, Urukiko rumugeneye mu bushishozi bwarwo 500.000Frw y'ikurikiranarubanza na 1.000.000Frw y'igihembo cya avoka hashingiwe ku mubare w'imanza zose baburanye zavuzwe haruguru n'igihe bamaze baziburana.

[35] Urukiko rurasanga rero Umugire Alphonse atahabwa indishyi asaba muri uru rubanza kubera ko atsinzwe.

III. ICYEMEZO CY'URUKIKO

[36] Rwemeje ko ikirego cyatanzwe na Mukarubibi Marguerite gisaba gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro;

[37] Rwemeje ko Umugire Alphonse atari mwene Renzaho Froduard;

[38] Ruvuze ko imikirize y'imanza RC 0102/06/TB/KCY, RC 0129/06/TB/KCY, RC 0784/09/TB/KCY, RC 399/09/TB/KMA, RCA 0395/06/TGI/GSBO hamwe n'urubanza RCA 0195/09/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo kuwa 20/08/2010 rusubirishwamo ku mpamvu z'akarengane, zivanyweho;

[39] Rutegetse Umugire Alphonse guha Mukarubibi Marguerite 500.000Frw y'ikurikiranarubanza na 1.000.000Frw y'igihembo cya avoka, yose hamwe akaba 1.500.000Frw;

[40] Rutegetse Umugire Alphonse gutanga amagarama y'uru rubanza angana na 100.000Frw.