UBUSHINJACYAHA v. NSHUTIRAKIZA

[Rwanda URUKIKO RW'IKIRENGA – RPA0047/11/CS (Mutashya, P.J., Gakwaya na Hitiyaremye, J.) 27 Werurwe 2015]

Amategeko Mpanabyaha – Igabanyagihano – Umucamanza ubwe aha agaciro impamvu nyoroshyacyaha, ari izakibanjirije, ari izagiherekeje cyangwa izagikurikiye – Igihe icyaha cyakoranywe ubugome bukabije, byaba impamvu yo kutagabanyirizwa igihano – Itegeko-Teka N°21/77 ryo kuwa 18/8/1977 rishyiraho igitabo cy'amategeko ahana, ingingo ya 82.

Incamake y'ikibazo: Uregwa yakurikiranywe ku cyaha cy'ubuhotozi mu Rukiko Rukuru Urugereko rwa Rusizi, aregwa kuba yaratemaguye mu mutwe umugore we Bayavuge Francine, kugeza apfuye. Urukiko rwamuhamije icyaha cy'ubuhotozi, rumuhanisha igifungo cy'imyaka 20, rusobanura ko agabanyirijwe ibihano kubera ko yemera icyaha akanagisabira imbabazi kandi ko ari ubwa mbere akurikiranyweho icyaha mu nkiko. Yajuririye mu Rukiko rw'Ikirenga, avuga ko yaburanye mu Rukiko Rukuru yemera icyaha ariko ko rwamuhannye nk'utarigeze yemera icyaha. Akomeza avuga ko yemera icyaha ashinjwa, akanagisabira imbabazi. Asobanura ko yasabye imbabazi umuryango w'umufasha we ndetse n'umuryango nyarwanda, akaba asaba rero kongera kugabanyirizwa ibihano kuko yemera icyaha.

Ubushinjacyaha buvuga ko iyi ngingo y'ubujurire bwa Nshutirakiza nta shingiro ifite kuko yagabanyirijwe ibihano n'Urukiko Rukuru hashingiwe kukuba atigeze arushya ubutabera kuko yahereye mu Bugenzacyaha yemera icyaha, yagera no mu Rukiko akacyemera, akanagisabira imbabazi, bityo bukaba busanga ibyo asaba yaramaze kubihabwa n'Urukiko Rukuru.

Incamake y'icyemezo: Igabanyagihano uregwa asaba ntakwiye kurihabwa kuko uru Rukiko rwemeranya n'Urukiko Rukuru ko hashingiwe ku buryo icyaha aregwa cyakozwemo n'uburemere bwacyo, nta yindi mpamvu yatuma yongera kugabanyirizwa igihano yakatiwe mu rwego rwa mbere, bityo igihano yagenewe n'Urukiko Rukuru gikwiranye n'icyaha yakoze.

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

Amategeko yashingiweho:
Itegeko-Teka N°21/77 ryo kuwa 18 Kanama 1977 rishyiraho igitabo cy'amategeko ahana, ingingo za 82, 83, 84.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rukuru, Urugereko rwa Rusizi, Ubushinjacyaha bukurikiranyeho Nshutirakiza Narcisse, icyaha cy'ubuhotozi. Busobanura ko kuwa 9/2/2008, nka saa kumi n'imwe za mu gitondo, Nshutirakiza Narcisse, akoresheje umupanga n'icyuma, yatemaguye mu mutwe umugore we Bayavuge Francine, kugeza apfuye bitewe n'uko ngo batari babanye neza kuko yari yaramutaye, akazana undi mugore, akaba yarabikoze ashaka kumwikiza ngo yibanire n'iyo nshoreke ye Nzayisaba Patricia.

[2] Urukiko Rukuru, Urugereko rwa Rusizi, kuwa 30/11/2010, rwaciye urubanza RP0027/08/HC/RSZ, rwemeza ko icyaha cy'ubuhotozi gihama Nshutirakiza Narcisse, rumuhanisha igifungo cy'imyaka 20, rusobanura ko agabanyirijwe ibihano kubera ko yemera icyaha akanagisabira imbabazi kandi ko ari ubwa mbere akurikiranyweho icyaha mu Nkiko.

[3] Nshutirakiza Narcisse ntiyishimiye imikirize y'urubanza, kuwa 13/12/2010, arujuririra mu Rukiko rw'Ikirenga, asaba kongera kugabanyirizwa ibihano.

[4] Urubanza rwaburanishijwe mu ruhame kuwa 23/2/2015, Nshutirakiza Narcisse yunganiwe na Me Mujawamariya Immaculée, Ubushinjacyaha buhagarariwe na Ntawangundi Béatrice, Umushinjacyaha ku rwego rw'Igihugu.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

Kumenya niba Nshutirakiza Narcisse yakongera kugabanyirizwa igihano.

[5] Nshutirakiza Narcisse avuga ko yaburanye mu Rukiko Rukuru yemera icyaha ariko ko rwamuhannye nk'utarigeze yemera icyaha. Akomeza avuga ko yemera icyaha ashinjwa, akanagisabira imbabazi. Asobanura ko yasabye imbabazi umuryango w'umufasha we ndetse n'umuryango nyarwanda, akaba asaba rero kongera kugabanyirizwa ibihano kuko yemera icyaha.

[6] Nshutirakiza Narcisse avuga kandi ko atigeze ategura umugambi wo kwica umugore we, ko batonganye mu ma saa kumi n'imwe, agafata umupanga akamutemagura ku gikanu agapfa. Asobanura ko nyuma yaho yamukereye ijosi ariko ntiryavaho kuko hasigaye akantu gatoya kinyuma. Yongeraho ko icyo bapfaga ari umutungo w'urutoki kuko umugore we yagurishaga ibirimo batabyumvikanyeho. Asoza avuga ko ubwo yicaga umugore we, yari yaramaze gutandukana na mukeba we.

[7] Me Mujawamariya Immaculée avuga ko Nshutirakiza Narcisse yemeye icyaha ku buryo busesuye kuva mu Bugenzacyaha kugeza mu Rukiko, akagisobanura neza ariko Urukiko Rukuru, Urugereko rwa Rusizi rukaba rutaramugabanyirije bihagije rushingiye ku kuba yarishe umugore we ashaka kubana na Nzayisaba Patricie kandi ataribyo kuko yari amaze umwaka batabana.

[8] Me Mujawamariya Immaculée akomeza avuga ko Nshutirakiza Narcisse afite abana bane bakiri batoya, bakaba bandagaye kandi ko imyaka irindwi amaze muri gereza bigaragara ko yamaze kwicuza rwose, bityo akaba asaba uru Rukiko kongera kumugabanyiriza ibihano kugeza ku gifungo cy'imyaka irindwi amaze muri gereza.

[9] Ubushinjacyaha buvuga ko iyi ngingo y'ubujurire bwa Nshutirakiza Narcisse nta shingiro ifite kuko yagabanyirijwe ibihano n'Urukiko Rukuru hashingiwe ku ngingo ya 83 n'iya 84 z'Itegeko-Teka N^{o}21/77 ryo kuwa 18/8/1977 rishyiraho Igitabo cy'amategeko ahana

kubera ko atigeze arushya ubutabera kuko yahereye mu Bugenzacyaha yemera icyaha, yagera no mu Rukiko akacyemera, akanagisabira imbabazi, bityo rukaba rusanga ibyo asaba yaramaze kubihabwa n'Urukiko Rukuru.

[10] Ubushinjacyaha bukomeza buvuga ko ukurikije ubugome yakoranye icyo cyaha, ni ukuvuga gufata umugore we akamutema ijosi, ko ari inzika yari amaranye iminsi, ko yashoboraga guhanishwa igifungo cya burundu ariko ko yahanishijwe igifungo cy'imyaka makumyabiri gusa, bityo bukaba busanga yahamana igihano yakatiwe n'Urukiko Rukuru.

UKO URUKIKO RUBIBONA

[11] Ingingo ya 82 y'Itegeko-Teka N^{o}21/77 ryo kuwa 18/8/1977 rishyiraho Igitabo cy'amategeko ahana yakoreshwaga igihe icyaha cyakorwaga iteganya ko "Juji ubwe aha agaciro impamvu zigabanya ubugizi bwa nabi bw'uwakoze icyaha, ari izakibabanjirije ari izagiherekeje cyangwa izagikurikiye".

[12] Urukiko rw'Ikirenga rurasanga mu gika cya gatanu n'icya karindwi by'urubanza rwajuririwe, hashingiwe ku ngingo ya 82 n'iya 83 z'Itegeko-Teka N^{o}21/77 ryo kuwa 18/8/1977 rishyiraho Igitabo cy'amategeko ahana cyakoreshwaga igihe icyaha cyakorwaga, Urukiko Rukuru, mu bushishozi bwarwo, rwaragabanyirije Nshutirakiza Narcisse ibihano yagombaga gukatirwa ku cyaha yakoze, ni ukuvuga igihano cy'igifungo cya burundu, rumuhanisha igifungo cy'imyaka makumyabiri gusa (20) kuko yaburanye yemera icyaha aregwa kandi akaba ari ubwa mbere akora icyaha.

[13] Urukiko rw'Ikirenga rurasanga kandi mu rubanza rwajuririwe, cyane cyane mu gika cyarwo cya karindwi, Urukiko Rukuru rwarasobanuye ko kuba Nshutirakiza Narcisse yarahotoye umugore we, akabikorana ubugome n'agashinyaguro amutemagura n'umuhoro, agacoca umutwe we ndetse n'igikanu cye, atagabanyirizwa bya cyane.

[14] Ku byerekeranye n'ibivugwa na Me Mujawamariya Immaculée y'uko Urukiko rwa mbere rutagabanyirije bihagije Nshutirakiza Narcisse igihano kuko ngo yishe umugore we ashaka kubana na Nzayisaba Patricie, Urukiko rw'Ikirenga rurasanga ataribyo kuko rwasobanuye neza, nk'uko bigaragara mu bika bibanziriza iki, ko atagabanyirijwe bya cyane kubera ubugome n'agashinyaguro yakoresheje mu guhotora umugore we.

[15] Ku byerekeranye n'impamvu Nshutirakiza Narcisse atanga zatuma yongera kugabanyirizwa igihano yakatiwe mu rwego rwa mbere, Urukiko rw'Ikirenga rurasanga ugukomeza kwemera icyaha no kuba afite abana bane bakiri batoya bandagaye, bidahagije mu kongera kumugabanyiriza igihano yakatiwe, hakurikijwe imikorere y'icyaha aregwa, impamvu zabiteye n'uburyo cyakozwemo nk'uko byasobanuwe n'Urukiko Rukuru, bityo izo mpamvu zikaba nta gaciro zikwiye guhabwa.

[16] Urukiko rw'Ikirenga rurasanga rero igabanya ry'igihano, Nshutirakiza Narcisse asaba, adakwiye kurihabwa kuko uru Rukiko rwemeranya n'Urukiko Rukuru ko hashingiwe ku buryo icyaha aregwa cyakozwemo n'uburemere bwacyo nk'uko bivugwa mu gika cya 6 n'icya 13 cy'uru rubanza, nta yindi mpamvu yatuma yongera kugabanyirizwa igihano yakatiwe mu rwego rwa mbere, bityo rukaba rusanga igihano yagenewe n'Urukiko Rukuru gikwiranye n'icyaha yakoze.

[17] Kubera izo mpamvu zose, Urukiko rw'Ikirenga rurasanga ubujurire bwa Nshutirakiza Narcisse nta gaciro bwahabwa, bityo igihano yakatiwe n'Urukiko Rukuru kikaba kigomba kugumaho.

III. ICYEMEZO CY'URUKIKO

[18] Rwemeje ko ubujurire bwa Nshutirakiza Narcisse nta shingiro bufite.

[19] Rwemeje ko igihano cy'igifungo cy'imyaka makumyabiri (20ans) Nshutirakiza Narcisse yakatiwe mu rubanza RP0027/08/HC/RSZ rwaciwe kuwa 30/11/2010 n'Urukiko Rukuru, Urugereko rwa Rusizi kidahindutse.

[20] Rwemeje ko amagarama y'uru rubanza aherera ku Isanduku ya Leta.