UBUSHINJACYAHA v. GATARE

[Rwanda URUKIKO RW'IKIRENGA – RPA0317/08/CS (Nyirinkwaya, P.J., Hatangimbabazi na Munyangeli, J.) 24 Ukwakira 2014]

Amategeko Mpanabyaha – Ubwicanyi – Ibimenyetso bicukumbuye – Mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose z'ibyabaye – Uregwa ashobora guhamwa n'icyaha hashingiwe ku bimenyetso byasesenguwe mu bushishozi bw'urukiko – Itegeko N°15/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 119.

Incamake y'ikibazo: Uregwa yakurikiranyweho icyaha cy'ubuhotozi cyakorewe umugore we n'umwana we mu Rukiko Rukuru rwa Repubulika, bakaba barishwe batwikiwe mu modoka ahitwa Nieuwerkerken mu gihugu cy'u Bubiligi. Ubushinjacyaha bwagaragaje ibimenyetso bimushinja icyaha birimo ibi bikurikira: kuba ikoti ry'uregwa ryaratoraguwe aho ba nyakwigendera batwikiwe ritahiye uwari uryambaye akaba yaravuye aho icyaha cyakorewe yerekeza ku muhanda nk'uko byagaragajwe n'imbwa ya polisi, kuba imfunguzo zifungura inzu babagamo zatoraguwe aho icyaha cyakorewe, kuba bukeye bw'umunsi ba nyakwigendera bicwa yaragaragayeho ibikomere by'ubushye byatewe n'ikibatsi cy'umuriro, kuba amasaha make mbere y'uko bicwa yaratelefonnye akoresheje umunara wa Nieuwerkerken no kuba yarafatanywe ibyangombwa bya ba nyakwigendera nyuma y'amezi atatu bishwe, kuba uregwa yaragiye gusaba ubutane no kwiyandukuzaho abana akigera mu Rwanda ntagire umuntu n'umwe abwira ko ba nyakwigendera babuze ahubwo abo bavuganye akagenda ababwira aho baba bari hagiye hatandukanye, n'ibindi.

Uregwa yaburanye muri urwo rukiko ahakana icyaha aregwa, akavuga ko ikoti ryatoraguwe ahabereye icyaha ryari ryambawe na nyakwigendera, naho ibikomere by'ubushye byamugaragayeho bikaba byaratewe na "echappemenent" y'imodoka yamutwitse arimo kuyisana. Ku birebana n'imfunguzo z'inzu yabo zari mu ikoti ryatoraguwe aho icyaha cyabereye, avuga ko zari iza nyakwigendera kuko we yari afite ize ari nazo yakoresheje afungura. Ibijyanye no kuba yarakoresheje umunara w'aho icyaha cyabereye ku munsi ba nyakwigendera biciweho, yavuze ko yaba yarawukoresheje ahanyuze agenda.

Ku birebana no kuba atarumvikanaga na nyakwigendera, yavuze ko mu rugo rwabo hataburaga utubazo nko muzindi ngo naho kuba yarafatanywe ibyangombwa byabo, yavuze ko byose byari bibitse hamwe ubwo biteguraga kuzana mu Rwanda, ntibibuka kubikuramo. Ku birebana no kuba yaragiye gusaba ubutane no kwiyandukuzaho abana akigera mu Rwanda kandi abo bavuganye mu Bubiligi no mu Rwanda, akababwira aho ba nyakwigendera bari hagiye hatandukanye, yasobanuye ko yasabye ubutane bitewe n'umujinya ko banze kujyana nawe ku munota wa nyuma bikamutera igihombo.

Urukiko rushingiye ku bimenyetso byatanzwe rwamuhamije icyaha, rumuhanisha igifungo cya burundu y'umwihariko, runamutegeka guha indishyi uwaziregeye.Yajuririye Urukiko rw'Ikirenga avuga ko yahamijwe icyaha hashingiwe ku bimenyetso bitagaragaza nta gushidikanya ko ariwe wakoze icyaha kandi ko urukiko rwamuhanishije igihano kirenze icyasabwe n'ubushinjacyaha. Uhagarariye Ubushinjacyaha we avuga ko ibimenyetso bihari bihagije kumuhamya icyaha. Naho kubijyanye n'ibihano, avuga ko kuba yarahanishijwe igihano

kirenze icyo ubushinjacyaha bwamusabiye bitaba impamvu y'ubujurire cyane ko yahaniwe icyaha yakoze.

Murumuna wa nyakwigendera wisunze ubushinjacyaha akaregera indishyi nawe yarajuriye, avuga ko indishyi yagenewe zidahagije. Uregwa we avuga ko nta ndishyi akwiye gutanga kuko ari umwere.

Incamake y'icyemezo: 1. Kuba ikoti ry'uregwa ryaratoraguwe hanze y'imodoka ba nyakwigendera batwikiwemo ni ikimenyetso kimushinja.

2. Kuba uregwa yaragaragayeho ubushye amasaha make cyane nyuma y'uko ba nyakwigendera batwikirwa mu modoka ni ikimenyetso nacyo kimushinja kiyongera ku kimenyetso cy'ikoti rye ryatoraguwe aho icyaha cyakorewe.

3. Nyakwigendera ntiyari guhira mu modoka ngo imfunguzo yarafite zigaragare mu ikote ryatoraguwe hanze y'imodoka. Bityo kuba imfunguzo zifungura inzu babagamo zaratoraguwe aho icyaha cyakorewe nacyo ni ikimenyetso gishinja uregwa cyiyongera ku bindi.

4. Akuma kamanura kakanazamura ibirahure kakuwe mu modoka n'uwatwitse ba nyakwigendera agamije kubabuza gusohoka mu modoka.

5. Kuba uregwa yaratelefonnye binyuze ku munara uri aho ba nyakwigendera batwikiwe amasaha make mbere y'uko bicwa bigomba kureberwa hamwe n'ibindi bimenyetso.

6. Kuba uregwa ntawe yamenyesheje ko ba nyakwigendera babuze ahubwo abo yasize mu Bubiligi akabumvisha ko bagiye mu Rwanda, naho abo yasanze ino akabumvisha ko basigaye mu Bubiligi ni ikimenyetso kimushinja.

7. Kuba hari umutangabuhamya utarahamagajwe mu rukiko ngo aze asubiremo ibyo yavugiye mu bushinjacyaha ko uregwa yamubwiye ko umugore amaze kumunanira, ko aho bigeze n'ubwo yapfa ntacyo byamubwira atari byo byatesha agaciro imvugo ye kuko urukiko rudategetswe guhamagara ababajijwe bose igihe cy'iperereza, cyane ko igisuzumwa mu mvugo ye ari imibanire ye n'umugore we, hakaba hari ibimenyetso bihagije bikubiyemo n'imvugo ze bigaragaza ko iyo mibanire yari mibi.

8. Kuba uregwa yaraguriye ba nyakwigendera amatike yo kugenda gusa byerekana impamvu banze kuzana nawe mu Rwanda kuko bari yamenye ko afite gahunda yo kuhabasiga.

9. Gusaba ubutane bishobora kumvikana nk'uburyo uregwa yakoresheje bwo gusibanganya ibimenyetso. Bityo kuba uregwa yarasabye ubutane akigera mu Rwanda akaniyandukuzaho abana ba nyakwigendera batari abe bigomba kureberwa hamwe n'ibindi bimenyetso.

10. Kuba uregwa yarazanye mu Rwanda ibyangombwa bya banyakwigendera agafatwa nyuma y'amezi 3 akibifite ntibyafatwa ko ari ukwibagirwa cyangwa kwibeshya, ahubwo bishimangira ko yari azi ko batavuye mu rugo bajya gufata iyabo nzu kuko batari kubura gutwara nibura ibyangombwa bikunze gukenerwa mu buzima bwa buri munsi.

11. Kuba uregwa yarahinduranyije imvugo ku bijyanye n'uburyo yakoresheje amasaha y'umunsi ba nyakwigendera biciweho kugeza ubwo avuze ko yiriranywe n'umwana kugeza atashye ninjoro, bituma imvugo ze zitafatwaho ukuri.

12. Kuba uwaguze n'uwagurishije imodoka batarandikiranye no kuba imodoka yarambitswe "plaques" zasibwe bigaragaza ko uwayiguze yari yateguye uburyo azasibanganya ibimenyetso

bishobora gutuma amenyekana. Kuba rero iperereza ritarashoboye kugaragaza umwirondoro w'uwaguze imodoka ntibyatesha agaciro ibindi bimenyetso byatanzwe.

13. N'ubwo ari ubwa mbere uregwa akoze icyaha bizwi ntiyahabwa inyoroshyacyaha nk'uko bisabwa n'abamwunganira harebwe uburyo yishe ba nyakwigendera yabiteguye neza n'ubugome bukabije yabicanye, harebwe n'uburyo yakoze uko ashoboye kugira ngo asibanganye ibimenyetso by'icyaha, abana ba nyakwigendera bakaba barabuze umubyeyi bari basigaranye, ndetse na mukuru wabo bitewe n'uwari wariyemeje kubabera umubyeyi ubwo yabiyandikagaho.

14. Uregera indishyi ntagaragaza icyo anenga indishyi z'akababaro yagenewe mu rwego rwa mbere, bityo zikaba zigomba kugumaho.

15. Indishyi zijyanye n'igikorwa giteganywa gukorwa ntizigenwa. Bityoamafaranga yo kuzana imirambo iva mu Bubiligi no kuyishyingura mu Rwanda uregera indishyi asaba akaba atayahabwa.

Ubujurire nta shingiro bufite.
Ubujurire bwuririye ku bundi nta shingiro bufite.
Uregwa ahamwa n'icyaha aregwa, ahanishijwe igifungo cya burundu.
Uregwa ategetswe kwishyura indishyi zitandukanye.
Amagarama aherereye ku isanduku ya Leta.

Amategeko yashingiweho:

Itegeko Ngenga N°01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 71 iya 82 iya 140 n'iya 145.

Itegeko N°15/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 119.

Itegeko-Teka N°21/77 ryo kuwa 18 Kanama 1977 rishyiraho igitabo cy'amategeko ahana ibyaha, ingingo ya 312.

Nta manza zifashishijwe.

Urubanza

I.IMITERERE Y'URUBANZA

[1] Ku cyumweru tariki ya 02/07/2006 ahitwa Nieuwerkerken (Limbourg) 23h45 abashinzwe kuzimya imiriro (pompiers) bahurujwe n'umuntu wari ubonye ahantu hari umuriro ugurumana, basanga imodoka irimo gushya mu gashyamba kari nko mu bilometero 300 y'umuhanda N716, muri iyo modoka harimo imirambo y'abantu babiri bahiye bikabije ku buryo itashoboraga kumenyekana.

[2] Abakoze iperereza basanze imodoka yahiye ari MAZDA 121 ifite plaque N°CFI 204, basangamo "portefeuille" yahiye irimo udupapuro natwo twahiye, mu metero 4 inyuma y'aho yahiriye bahasanga akuma gafunga kandi kakanafungura ikirahure cy'imodoka (manivelle), igitambaro cy'umukara cyahiye kirimo ibimene by'ikirahure "briquet", impapuro z'imodoka zirimo n'iy'ubugure bwayo mu isoko ry'imodoka rya Bierset, muri metero 6 naho bahasanga

ikoti ry'umukara ryahiye ririmo imfunguzo (trousseau de clés), ibahasha ry'umweru yanditseho n'intoki nomero ya telefone y'igaraji riri ahitwa Lambermont.

[3] Ikoti barihumurije imbwa ikurikira impumuro y'uwari uryambaye kugeza kuri metero 100 nyuma y'imodoka kugeza aho agahanda k'igitaka karangirira.

[4] Iperereza ryakurikiye naryo ryagaragaje ibi bikurikira:

Impapuro zahiriye mu modoka ni ikarita y'itora yo mu Rwanda, n'ikarita ya Centre Public d'Action Sociale (CPAS) ya Liège;

Abatwikiwe mu modoka ni Uwimana Libératha n'umukobwa we Ingabire Cléscence, bakaba baratwitswe bakiri bazima kuko ibihaha byabo byarimo umwotsi;

Libératha yari afite abana 4 aribo Umulisa Clémence, Uwase Clémentine, Ingabire Cléscence na Urwibutso Emmanuella yasigiwe n'umugabo we wa mbere witabye Imana muri 1994 azize jenoside yakorewe Abatutsi, n'undi umwe Pierre Alexandre yabyaranye na Gatare Edouard, uyu bakaba barashakaniye mu Rwanda kuwa 23/11/2002 yiyandikaho abana b'umugabo wa mbere;

Gatare mbere yo gushakana na Uwimana yari afite umugore w'umubiligi Jacquet Fabienne batandukanye babyaranye abana 2 Charlie na Estelle, akaba nawe yari yarabonye ubwenegihugu bw'ububiligi;

Muri 2004 Libératha yasanze Gatare mu Bubiligi ari kumwe na Ingabire Cléscence, Urwibutso Emmanuella na Pierre Alexandre;

Imfunguzo zari mu mufuka w'ikoti ryatoraguwe aho imodoka yatwikiwe zifungura inzu yabo aho bari batuye i Liège 4020, rue Lairesse 134;

Gatare yasabye nyiri inzu izindi mfuguzo (double) amubwira ko yataye izo yari afite;

Imodoka Libératha na Cléscence bahiriyemo yagurishijwe umwirabura ku cyumweru tariki ya 25/06/2006 mu isoko ry'imodoka rya Bierset (Liège);

Amasaha make mbere y'uko Libératha na Cléscence bicwa, Gatare yari yakoresheje umunara (*pylônetéléphonique)* wa Nieuwerkerken kandi bukeye bw'uwo munsi yagaragayeho ibikomere by'ubushye;

Gatare yavuye mu Bubiligi yerekeza mu Rwanda kuwa 18/07/2006 ari hamwe n'umwana we muto Pierre Alexandre, naho mbere yaho kuwa 11/07/2006 akaba yari yarohereje Emmanuella.

Libératha na Cléscence nabo bari barafatiwe amatike yo kujya mu Rwanda ariko atabasubiza mu Bubiligi;

Umukozi wakoranaga na Gatare Edouad avuga ko yari yaramubwiye ko azasiga Libératha n'abana b'umugabo wa mbere mu Rwanda kuko batacyumvikana.

[5] Gatare yafatiwe mu Rwanda kuwa 17/10/2006 ahamaze amezi 3 Iperereza ryarakomeje hanyuma ubushinjacyaha bwohereza dosiye mu Rukiko Rukuru rwa Repubulika bumurega ubuhotozi bwakorewe Uwimana Libératha na Ingabire Cléscence.

[6] Gatare yaburanye muri urwo rukiko ahakana icyaha aregwa, ruca urubanza RP0303/06/HC/KIG kuwa 12/11/2008, rwemeza ko icyaha kimuhama, rumuhanisha igifungo cya burundu y'umwihariko, runamutegeka guha uwaregeye indishyi Uwanyirigira Sylvie 8.000.000Frw y'indishyi z'akababaro na 300.000Frw y'igihembo cy'avoka.

[7] Ingingo z'ingenzi urukiko rwashingiyeho ruhamya Gatare icyaha ni izi zikurikira:

Kuba hafi y'aho imodoka yatwikiwe haratoraguwe ikoti rye n'imfunguzo ze zifungura inzu babagamo;

Kuba imbwa ya polisi yarakurikiranye impumuro y'uwari wambaye iryo koti kuva aho imodoka yatwikiwe kugeza ku muhanda, bivuze ko uwari uryambawe yavuye aho icyaha cyakorewe akerekeza ku muhanda;

Kuba bukeye bw'umunsi Libératha na Cléscence batwikirwaga mu modoka, yaragaragayeho ibikomere by'ubushye;

Kuba amasaha make mbere y'uko icyaha gikorwa yarakoresheje umunara wa Nieuwerkerken;

Kuba kuva kuwa 02/07/2006 kugeza kuwa 18/07/2006 yaramaze ibyumweru bibiri n'igice akiri mu Bibiligi ntabwire polisi yaho ko atazi aho Libératha na Cléscence bari ngo ibashakishe naho agereye mu Rwanda akaba yaramaze amezi atatu nta muyobozi abimenyesheje;

Kuba yari afite imibanire mibi na Libératha akaba yarashakaga kumusiga mu Rwanda baje mu biruhuko ariko umugore we akabimenya akanga ko bazana;

Kuba akigera mu Rwanda yarihutiye kujya gusaba ubutane no kwiyandukuzaho abana yari yariyanditseho ba Libératha;

kuba mu rubanza rw'ubutane yarahamagaje Libératha kuri adresi y'aho bari batuye i Liège kandi avuga ko yavuye mu Bubiligi umugore we amaze ibyumweru bibiri yaragiye gushaka irindi cumbi;

Kuba igihe yafatwaga baramusanganye ibyangombwa birimo pasiporo n'indangamuntu bya Libératha na Cléscence, ndetse n'impeta y'isezerano ya Libératha, bikaba bitumvikana ukuntu yari abitse ibyo byangombwa byabo kandi nawe ubwe yemera ko bari baramuhakaniye ko batagitashye mu Rwanda.

[8] Gatare yajuririye Urukiko rw'Ikirenga kuwa 08/12/2008 avuga ko Urukiko Rukuru rwa Repubulika rwamuhamije icyaha rushingiye ku bimenyetso bitagaragaza nta gushidikanya ko ariwe wishe Libératha na Clescence abatwikiye mu modoka.

[9] Urubanza rwaburanishijwe mu ruhame kuwa 25/01/2010 no kuwa 15/03/2010, Gatare Edouard yitabye yunganiwe na Me Hakundanabahari Théotime, ubushinjacyaha buhagarariwe na Ruberwa Bonaventure, naho Uwanyirigira Sylvie uregera indishyi ahagarariwe na Me Nsengiyumva Viateur.

[10] Nyuma y'iburanisha ryo kuwa 15/03/2010 urubanza rwarasubitswe bisabwe na Gatare kugira ngo zimwe mu nyandiko z'iperereza zakorewe mu Bubiligi mu rurimi rw'igifarama zihindurwe muri rumwe mu ndimi zikoreshwa mu Rwanda, hanahamagazwe Urwibutso

Emmanuella na Uwase Clémentine kugira ngo bagire ibyo basobanura ku mibanire ye n'umubyeyi wabo.

[11] Urubanza rwongeye kuburanishwa mu ruhame kuwa 16/06/2014 ari nawo munsi iburanisha ryashojwe, Gatare Edouard yitabye yunganiwe na Me Gashema Félicien, ubushinjacyaha buhagarariwe na Mutayoba Alphonse, Uwanyirigira Sylvie uregera indishyi ahagarariwe na Me Habineza Gasore Gilbert. Uwo munsi urukiko rwumvise Urwibutso Emmanuella na Uwase Clémentine nk'uko byari byasabwe na Gatare Edouard.

II.IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

A. Kumenya niba ibimenyetso Urukiko Rukuru rwa Repubulika rwashingiyeho bitagaragaza ko Gatare ariwe wishe Liberatha na Clescence abatwikiye mu modoka.

a) Kuba ikoti rye ryaratoraguwe hafi y'aho imodoka yatwikiwe no kuba imbwa yararyihumurije igakurikirana impumuro y'uwari uryambaye kugera ku muhanda aho yabuze irengero rye.

[12] Gatare avuga ko yasobanuriye urukiko ko nubwo ikoti ryatoraguwe hafi y'aho imodoka yatwikiwe ryari irye ari Libératha wari uryambaye ku itariki 2/07/2006 nk'uko bari basanzwe bambarana n'indi myenda itandukanye.

[13] Avuga ko impamvu abyemeza ari uko uwo munsi baherukanaga mu gitondo agiye gukata urugo rw'umukecuru uturanye na Fabienne Jacquet umugore we wa mbere batandukanye, Libératha nawe akaba yari yamubwiye ko aza kujya kuzana Cléscence aho yari yaraye ariko atahamubwiye ngo ahamenye, bakaba batarongeye kubonana kuko yatashye saa mbiri z'ijoro mu gihe abakoze iperereza berekanye ko we n'umukobwa we bahiriye mu modoka 23h45 mu birometero birenga 40 cyangwa 50 uvuye i Liege aho bari batuye.

[14] Avuga ko ikindi kigaragaza ko ari Libératha wari wambaye iryo koti ari uko yahamagaye murumuna we Uwanyiligira Sylvie mu Rwanda 13h00, bivuze ko atari mu rugo kuko aho babaga i Liège nta telefone bagiraga usibye iyo yagendanaga, Uwanyiligira akaba ariwe wagaragaza aho mukuru we yari ari niba yarahamubwiye.

[15] Ku bijyanye n'uko ikoti ryatoraguwe hanze y'imodoka Libératha na Cléscence batwikiwemo, avuga ko Libératha ashobora kuba yari arifite mu ntoki, akarita hanze nk'aho yavugije induru.

[16] Ku bijyanye n'uko imbwa yinukirije ikoti igakurikirana impumuro y'uwari uryambaye kuva aho icyaha cyakorewe kugera ku muhanda, avuga ko ataribyo byashingirwaho hemezwa ko ari we wari uryambaye nta kindi kimenyetso kigaragajwe kuko iyo mbwa itigeze ivuga ko ikurikiranyemo impumuro ye.

[17] Uhagarariye ubushinjacyaha avuga ko iyo ikoti ryatoraguwe hafi y'aho imodoka yatwikiweriza kuba ryambawe na Libératha naryo riba ryarahiriye mu modoka nk'uko umucamanza wa mbere yabigaragaje.

[18] Avuga kandi ko imbwa ihereye ku ikoti yakurikiye impumuro y'uwari uryambaye kugeza aho agahanda karangirira, bivuze ko uwari uryambaye yavuye mu modoka, ibyo Gatare avuga ko imbwa itavuze ko yakurikiye impumuro ye akaba ari ukurushya urukiko.

UKO URUKIKO RUBIBONA

[19] Imiburanire ya Gatare igamije kugaragaza ko ikoti rye ryari rifitwe na Libératha igihe atwikirwa mu modoka kuko we yari mu rugo ku isaha bivugwa ko biciweho, abishwe bakaba bataririwe mu rugo kuko Cléscence atari yaharaye umunsi ubanziriza uwo biciweho, naho Libératha akaba yari yamubwiye mu gitondo mbere y'uko ajya gukata urugo rw'umuturanyi wa Fabienne ko afite gahunda yo kujya kuzana Cléscence aho yari yaraye atamubwiye aho ariho ngo ahamenye.

[20] Urukiko rusanga ariko nta kimenyetso na kimwe kigaragaza ko Gatare yari mu rugo koko ku isaha Libératha na Cléscence biciweho nka telefone yaba yarafatiwe ku munara w'aho atuye cyangwa umuturanyi waba waramubonye ataha.

[21] Urukiko rusanga kandi ntaho rwahera rwemeza ukuri kw'ibyo avuga bijyanye n'igihe yabonye bwa nyuma Libératha na Cléscence kuko atagaragaza aho hantu bombi bagiye umwe ku munsi ubanziriza uwo biciweho, undi mu gitondo cy'umunsi biciweho ngo bibe byakorerwaho iperereza, bikaba bitumvikana impamvu Libératha yafata umwanya wo kumubwira ko aza kujya kuzana Cléscence aho yaraye ariko ntamubwire aho hantu aho ariho.

[22] Urukiko rusanga nanone ibyo avuga ko kuba Libératha yarahamagaye mu Rwanda saa saba z'amanywa byerekana ko atiriwe mu rugo umunsi yiciweho kuko nta telefone bagiraga mu rugo ataribyo kuko umuntu ashobora kuva mu rugo ajyanywe n'igikorwa runaka yakirangiza agataha.

[23] Urukiko rusanga kandi Libératha atari kuba afite ikoti rya Gatare igihe yicwaga ngo ritoragurwe hanze y'imodoka kandi yaratwikiwe mu modoka maze imbwa yabitojwe igakurikira impumuro y'uwari uryambaye kuri metero 100 kugeza ubwo ibuze irengero rye, bivuze ko uwari uryambaye yavuye aho icyaha cyakorewe akagenda.

[24] Urukiko rusanga rero kuba ikoti rya Gatare ryaratoraguwe hanze y'imodoka Libératha na Cléscence batwikiwemo ari ikimenyetso kimushinja nk'uko byemejwe n'Urukiko Rukuru rwa Repubulika.

b) Kuba bukeye bw'umunsi Libératha na Cléscence batwikirwa mu modoka yaragaragaweho ibikomere by'ubushye.

[25] Gatare avuga ko ubushye yagaragaweho bukeye bw'umunsi Libératha na Cléscence batwikirwa mu modoka ntaho buhuriye n'ibyabaye kuri Libératha na Cléscence.

[26] Gatare avuga ko yagaragaje ko yahiye kuwa mbere taliki ya 03/07/2006 hagati ya 11h na 13h yokejwe na "échappement" y'imodoka ishyushye arimo ayikora ubwo yari avuye gutwara imizigo yabo muri "consigne" y'ikibuga cy'indege cya Zaventem, mu gihe ba nyakwigendera bivugwa ko batwikiwe mu modoka 23h 45 mu ijoro ryo kuwa 02/07 rishyira kuwa 03/07/2006.

[27] Avuga kandi ko urukiko rwagaragaje ukubogama gukabije rwemeza ko yokejwe n'ikibatsi cy'umuriro rugendeye ku mvugo z'abatangabuhamya batigeze bagaragara mu rukiko, bavuga ibyo batazi ndetse batabwiwe, buri wese avuga ibye, maze rubiheraho rwemeza ko atatwitswe na "echappement" y'imodoka ishyushye ngo kuko iyo atwikwa nayo yari gushya mu biganza, ariko ntiyari gushya ku nda no ku gatuza, nyamara nawe atarigeze avuga ko yahiye ku nda no mu gatuza, ndetse na Emmanuella wamubonye umunsi ashya akaba atarigeze avuga ko yamubonye yahiye ku nda no ku gatuza.

[28] Yongeraho ko mu kwezi kwa 02/2007 yari yatumijwe n'ubushinjacyaha, yerekana uburyo yokejwe na "echappement" y'imodoka ye, abanyamakuru baranamufotora, akaba yemeza ko batigeze bamubonana ubushye ku nda no ku gatuza nk'uko bivugwa.

[29] Ku bijyanye na raporo ya muganga Urukiko rwashingiyeho, avuga ko nayo yakoranywe amarangamutima kuko yivugira ko kumenya icyateye ubwo bushye bigoye kubera ibimenyetso byabwo byasibanganye, ariko nyuma akemeza ko yatwitswe n'ikibatsi cy'umuriro, akaba yibaza aho ibimenyetso yashingiyeho byavuye mu gihe avuga ko ibimenyetso by'ubwo bushye byasibanganye, akaba atari afite impapuro za muganga wamuvuye mu Bubiligi.

[30] Urwibutso Emmanuella nawe ubwo yabazwaga mu rukiko yavuze ko yabonye Gatare afite ibikomere ku maboko, ku biganza no ku munwa, ko yamubajije icyo yabaye, amubwira ko yatwitswe na "echappement" y'imodoka.

[31] Uhagarariye ubushinjacyaha avuga ko ibyo Gatare avuga ko yatwitswe na ‘‘echapement" y'imodoka bivuguruzwa n'uburyo yari yahiye mu maso, mu ijosi, mu gatuza, ku nda nk'uko byatangiweho ubuhamya n'abantu benshi bamubonye bose badashobora kuba ababeshyi cyangwa ngo bagire icyo bapfa, bikanavuguruzwa na raporo ya muganga igaragaza ko yatwitswe n'ikibatsi cy'umuriro.

UKO URUKIKO RUBIBONA

[32] Imiburanire ya Gatare igamije kugaragaza ko ubushye yagaragayeho bukeye bw'umunsi Libératha na Cléscence batwikirwa mu modoka butatewe n'ikibatsi cy'umuriro nk'uko raporo ya muganga ibyemeza, ahubwo bwatewe na "echappement" y'imodoka.

[33] Urukiko rusanga ariko rutagendera ku mvugo ye ko yokejwe na "echappement" y'imodoka mu gihe nta bindi bimenyetso abitangira.

[34] Urukiko rusanga kandi nubwo Gatare avuga ko raporo ya Muganga wamusuzumye ishingiye ku marangamutima, ntaho rwahera rubyemeza kuko kuba yaravuze ko ibimenyetso byinshi byasibanganye ntibibuza ko yamubonyeho inkovu z'ubushye n'amabara ku maboko, ku gahanga, ku ijosi no ku gutwi, agasanga izo nkovu n'ayo mabara bidashobora kuba byaratewe n'ikintu gifatika (un objet solide) cyangwa kimeneka (un liquide), ahubwo ubushye bugomba kuba bwaratewe n'ikibatsi cy'umuriro cyamuturutse imbere umutwe ureba iburyo (les flammes sont venues de face tête tournée vers la droite).

[35] Urukiko rusanga rero kuba Gatare yaragaragayeho ubushye amasaha make cyane nyuma y'uko Libératha na Cléscence batwikirwa mu modoka ari ikimenyetso nacyo kimushinja

kiyongera ku kimenyetso cy'ikoti rye ryatoraguwe aho icyaha cyakorewe nk'uko byemejwe n'Urukiko Rukuru rwa Repubulika.

c) Kuba mu ikoti rye ryatoraguwe hafi y'aho imodoka yatwikiwe harimo imfunguzo zifungura inzu Gatare n'umuryango we babagamo, akaba yarasabye nyiri inzu izindi mfunguzo.

[36] Gatare avugako urukiko rwagaragaje ukubogama gukabije rwemeza ko imfunguzo zabonetse aho Libératha na Cléscence bahiriye zari ize ngo kuko nta wundi wagiraga imfunguzo mu rugo kandi yaragaragaje ko Libératha yari asanzwe afite imfunguzo ze nawe akagira ize.

[37] Asobanura ko bitari gushoboka ko bagira urufunguzo rumwe bitewe n'uko yagendaga ku kazi 06h00 za mu gitondo akagaruka 18h00 za nimugoroba, umugore akajyana abana kw'ishuri na Cléscence akajya kwiga, bityo bakaba batari gusiga inzu idakinze bose basohotse.

[38] Avuga kandi koikindi cyerekana kubogama gukabije k'umucamanza ari uko yagaragaje ko kuwa mbere tariki ya 03/07/2006 nyuma ya 14h00 yagiye kuzana Emmanuella na Alexandre kwa Fabienne akinguza imfunguzo ze, ndetse ko na Emmanuella yemeza ko yafunguye mu rugo avuye kubazana kandi ko nta muntu basanze mu rugo.

[39] Ku bijyanye n'impamvu yasabye izindi mfunguzo nyiri inzu bari batuyemo Jacques Lebrun nk'uko uyu yabyemeje ubwo yabazwaga n'abakoze iperereza mu Bubiligi, avuga ko ari ukugira ngo Cléscence abone urwe kuko hari hashize iminsi babibye igare agatekereza ko uwabibye yakoresheje imfunguzo aho bazisigaga, ndetse ko nyiri inzu yazimuzaniye mbere y'itariki Libératha na Clescence biciweho na mbere y'uko "echapement" y'imodoka imutwika.

[40] Ku kibazo cyo kumenya impamvu abazwa mu bushinjacyaha yavuze ko yasabye imfunguzo afite ibikomere by'ubushye (j'ai demandé les clés alors que j'avais les brulures), yabanje kuvuga ko kwari ukwibeshya (reba inyandiko mvugo y'iburanisha yo kuwa 15/03/2010), ariko nyuma avuga ko yazatse nyiri inzu mbere y'uko akomereka agira ngo bazihe Cléscence kuko hari igihe yazaga badahari, ariko azimuzanira nyuma yarakomeretse (reba inyandiko-mvugo yo kuwa 16/06/2014).Yongeyeho ko n'ubwo nyiri inzu yazimuzaniye yarakomeretse yasanze urujyi rw'inzu ari ruzima kandi rukinguye kuko we yari agifite ize.

[41] Urwibutso Emmanuella nawe ubwo yabazwaga kuri icyo kibazo muri uru rukiko, yavuze konta wundi wagiraga imfunguzo zo mu rugo usibye Gatare, ibi akaba ari nabyo yari yaravuze ubwo yabazwaga mu bushinjacyaha.

[42] Uhagarariye ubushinjacyaha avuga ko imfunguzo zabonetse mu ikoti rya Gatare ari ize kuko Emmanuella yasobanuye ko mu rugo bagiraga rumwe gusa kandi ko nyina nta mfunguzo yagiraga.

[43] Avuga ko ikindi kigaragaza ko izo mfunguzo zari ize ari uko zari kuri "*porte clé*" yari yarahawe n'umukobwa we Estelle nk'uko nawe yabyiyemereye ubwo yabazwaga mu bushinjacyaha.

[44] Avuga kandi ko Liberatha atari kuba ashya ngo ahindukire kandi ajugunye imfunguzo hamwe n'ikoti hanze y'imodoka.

[45] Yongeraho ko kuba Emmanuella yarabonye Gatare afungura inzu babagamo ari ibisanzwe kuko nyiri inzu yari yamuhaye izindi mfunguzo.

UKO URUKIKO RUBIBONA

[46] Imiburanire ya Gatare igamije kugaragaza ko imfunguzo zatoraguwe aho icyaha cyakorewe zari iza Libératha kuko bombi bagiraga imfunguzo, we akaba yari afite ize bukeye bw'umunsi bivugwa ko batwikiwe mu modoka kuko yazikinguje avuye kuzana Emmanuella na Pierre Alexandre kwa Fabienne umugore we wa mbere batandukanye.

[47] Urukiko rusanga ariko imvugo ya Gatare ko hari hashize iminsi babibye igare, agatekereza ko uwabibye yakoresheje imfunguzo zabo azisanze aho bazisigaga yumvikanisha ko mu rugo bakoreshaga urufunguzo rumwe basigaga ahantu baziranyeho, ibi bikaba bihura n'imvugo ya Emmanuella ko mu rugo bagiraga urufunguzo rumwe gusa.

[48] Urukiko rusanga kandi kuba Gatare yiyemerera n'ubwo yabanje kubihakana ko nyiri inzu yamuhaye "double" y'imfunguzo afite ibikomere by'ubushye, nyiri inzu nawe mu mvugo ye imbere y'inzego z'iperereza zo mu Bubiligi akaba yaremeje ko Gatare yamutelefonnye amusaba izindi mfunguzo ngo kuko yataye ize, byumvikanisha ko iyo "double" ariyo yafunguje ubwo yari avuye kuzana Emmanuella na Pierre Alexandre kwa Fabienne.

[49] Urukiko rusanga nanone Libératha atari guhira mu modoka ngo imfunguzo yari afite zigaragare hanze y'imodoka mu ikoti byagaragajwe haruguru ko ryari ryambawe n'umuntu wavuye aho icyaha cyakorewe akerekeza ahandi.

[50] Hashingiwe kuri ibyo bisobanuro, Urukiko rusanga kuba imfunguzo zifungura inzu babagamo zaratoraguwe aho icyaha cyakorewe ari ikimenyetso nacyo gishinja Gatare kiyongera ku bindi bimenyetso byagaragajwe haruguru.

d) Kuba hafi y'aho imodoka yatwikiwe haratoraguwe akuma kamanura ikirahure cy'imodoka (manivelle) katahiye.

[51] Gatare avuga ko umucamanza ashingiye ku marangamutima yakomeje gukoreshwa mu guca uru rubanza kugira ngo icyaha gikunde kimufate yemeje ko akuma kazamura kakanamanura ikirahuri cy'imodoka kavanywemo kugira ngo Libératha na Cléscence batabona uko basohokamo, nyamara ako kuma katari kubabuza kuva mu modoka kuko ntaho gahuriye no gukingura inzugi.

[52] Gatare avuga kandi ko kuba ako kuma katarahiye bishoboka ko ba nyakwigendera bagataye hanze mu gushaka gufungura bamanura ikirahure kandi katari gafashe.

[53] Avuga nanone ko nta bimenyetso ubushinjacyaha bwatanze bigaragaza ko ikirahure cy'imodoka cyari gifunze, ndetse ko ntaho bigaragarira mu mpapuro zavuye mu Bubiligi.

[54] Uhagarariye ubushinjacyaha avuga ko kuba akuma kazamura kakanamanura ikirahure cy'imodoka karabonetse hafi y'aho imodoka yatwikiwe katahiye bivuga ko kakuwemo mbere y'uko imodoka itwikwa kugira ngo abarimo babure uko basohoka, dore ko nta n'imiryango iyo modoka yagiraga inyuma.

UKO URUKIKO RUBIBONA

[55] Urukiko rusanga igitekerezo cya Gatare ko akuma kazamura kakanamanura ikirahure cy'imodoka katoraguwe hafi y'aho icyaha cyakorewe katahiye kaba karatawe hanze na ba nyakwigendera mu gushaka gufungura bamanura ikirahure kandi katari gafashe kitafatwaho ukuri kuko abakoze iperereza mu Bubiligi bagaragaje ko bagasanze iruhande rw'igitambaro cy'umukara cyahiye kirimo ibimene by'ikirahure na "briquet", bivuze ko n'ako kuma kakuwemo n'uwabatwikiye mu modoka kuko katari kuba kajugunywe n'abahiriye mu modoka ngo kisange uruhande rw'ibikoresho birimo''briquet" byakoreshejwe n'uwabatwikiye mu modoka.

[56] Urukiko rusanga kandi uwatwikiye Libératha na Cléscence mu modoka atarakuyemo ako kuma ntacyo agamije, ahubwo yagakuyemo kugira ngo agere ku mugambi we wo kubabuza gusohoka mu modoka, bikaba bitumvikana impamvu Gatare ahakana ko babaye ''bloqué" mu modoka n'uwabatwikiyemo abyita amarangamutima y'umucamanza kuko nta mpamvu uwabikoze yari kuba afite yo gukuramo akuma kamanura ikirahure niba inzugi z'imodoka zo zarashoboraga gufungukira imbere.

e) Kuba yarahamagaye kuri telefone 16h47 na 16h48 akoresheje umunara ya Nieuwerkerken umunsi Uwimana Libératha na Ingabire Cléscence batwikirwa mu modoka

[57] Gatare avuga ko kuwa gatandatu mu gitondo tariki ya 01/07/2006 yagiye gukata urugo rw'umuturanyi wa Fabienne, bukeye ku cyumweru tariki ya 02/07/2006 asubirayo, arurangiza hagati ya 14h00 na 15h00 afashwa n'abana Emmanuella na Estelle batundaga ibyatsi, aruhukira akanya gato kwa Fabienne, nyuma ajya St Trond mu bilometero 40 cyangwa 50 agiye gushaka imodoka yo kugura yagombaga kuzana mu Rwanda ariko abura iyo yashima, ahava nka 17h, asubira i Liège aho atuye, ahageze asanga urugo rukinze, arinda ajya kuryama Libératha na Cléscence bataraza.

[58] Avuga kandi ko kuba yaratelefonye 16h47 na 16h48 akoresheje umunara wa Nieuwerkerken atari ikimenyetso urukiko rwari gushingiraho rumuhamya icyaha kuko uvuye aho yari atuye i Liège ukajya St Trond nta hantu hitwa Niewerkerken unyura, umucamanza akaba yarabihimbye ko yahageze kugira ngo amuhamye icyaha gusa kuko aho hantu atahazi, atigeze ahagera, nta n'uwahamubonye.

[59] Yongeraho ko saa mbiri zibura iminota 8 yari iwe mu rugo kandi ko Libératha batigeze birirwana ku cyumweru, ko nta kuntu yari kumubwira saa mbiri ngo bagende ngo abyemere, ko n'iyo ufite uwo uzasura ubibwira umugore mbere kugira ngo yitegure.

[60] Uhagarariye ubushinjacyaha avuga ko kuba Gatare yarakoresheje umunara w'aho icyaha cyakorewe 16h47 na 16h48 bigaragaza ko yari yabanje kuhagera ategura umugambi we (reconnaissance des lieux), cyane ko nawe ubwe yiyemereye mu Rukiko Rukuru ko ashobora kuba yarahanyuze nyuma ya saa sita agiye St-Trond kugura imodoka.

[61] Avuga kandi ko ibyo Gatare avuga ko yagiye St-Trond ku itariki ya 02/07/2006 nyuma ya saa sita gushaka imodoka yo kohereza mu Rwanda bitumvikana kuko bwacyaga ku itariki ya 04/07/2006 afata indege aza mu Rwanda, akaba atari kuba yakoze ''formalités" zose zo kwohereza imodoka, bivuze ko hari ikindi cyari kimujyanyeyo.

UKO URUKIKO RUBIBONA

[62] Imiburanire ya Gatare igamije kugaragaza ko atigeze agera Niewerkerken umunsi Libératha na Cléscence batwikirwa mu modoka.

[63] Urukiko rusanga ariko kuba muri dosiye yakorewe mu Bubiligi hari imvugo z'abantu batandukanye bagaragaza ko Gatare yajyaga St-Trond buri mwaka agiye mu kazi ko gusoroma imbuto no kuba aho hantu ari mu bilometero bitarenze 20 ya Niewerkerken bitera ugushidikanya ku mvugo ye ko atazi Niewerkerken.

[64] Ku bijyanye n'ibyo yaba yari agiye gukora St-Trond umunsi Libératha na Cléscence bicwa, Urukiko rusanga nta kimenyetso na kimwe Gatare atanga kigaragaza ko yari agiye kureba umukoresha we Milants nk'uko yabivuze ubwo yabazwaga mu bushinjacyaha cyangwa ko yari agiye kugura imodoka yo kujyana mu Rwanda nk'uko yabivugiye mu bushinjacyaha no mu rukiko, hakaba rero hagomba kwemezwa ko yari afite ikindi kimujyanye.

[65] Urukiko rusanga rero kuba Gatare yaratelefonye akoresheje umunara wa Niewerkerken amasaha make mbere y'uko Libératha na Cléscence bicwa bigomba kureberwa hamwe n'ibindi bimenyetso byagaragajwe birimo ikoti n'imfunguzo byatoraguwe aho icyaha cyakorewe n' ubushye bwamugaragayeho bukeye bw'umunsi icyaha gikorwa.

f) Ku bijyanye n'uko ntawe yabwiye ko atazi aho Libératha na Clescence bari ngo bashakishwe.

[66] Gatare avuga ko nta mpamvu yari afite yo kumenyesha ubuyobozi ko atazi aho Libératha na Cléscence bari kuko atari azi ko bahuye n'ibyago, akaba yaribajije ubwo yabonaga batagarutse mu rugo guhera kuwa 02/07/2006 ko umugore we yashyize mu bikorwa igitekerezo yigeze kuvuga cyo kwishakira icumbi rye.

[67] Ku bijyanye n'impamvu yaba yaratekereje ko Libératha yagiye gushaka irindi cumbi, asobanura ko yamushakiye mu Rwanda we aba mu Bubiligi, amuzana mu Bubiligi hamwe n'abana bato batatu barimo umutoya babyaranye, hasigara abakuru babiri nabo bateganyaga kuzatwara bamaze kubona ubushobozi, ko nyuma y'imyaka ibiri Libératha yari amaze kumenyera igihugu, atangira kujya atumva icyo amubwiye, ahubwo akamwumvisha ko ashobora kuzibana akishakira iye nzu.

[68] Uhagarariye ubushinjacyaha avuga ko ibyo Gatare avuga ko yamaze ibyumweru bibiri n'igice mu Bubiligi n'amezi atatu mu Rwanda nta makuru ya Libératha na Cléscence agerageje gushaka ngo kuko yari azi ko bafashe iyabo nzu bitumvikana kuko Libératha nk'umubyeyi atari kumara igihe kingana gutyo atabajije amakuru y'abana be barimo n'uwari ufite imyaka 4 gusa y'amavuko.

UKO URUKIKO RUBIBONA

[69] Urukiko rusanga ibyo Gatare avuga ko guhera tariki ya 02/07/2006 atongeye kumenya amakuru ya Libératha na Cléscence ariko ko yibajije ko bagiye kwishakira icumbi ahandi ataribyo kuko nta muntu n'umwe mu babajijwe igihe cy'iperereza wavuze ko yababwiye ko

umugore we yataye urugo, ahubwo mu Bubiligi yabwiye nyiri inzu ko Libératha na Clescence bamaze kugenda nk'uko bigaragara mu nyandiko mvugo ye, naho mu Rwanda yabwiye abavandimwe be Muhirwa Frédérik na Munigantama Cyriaque ko banze ko bazana ku munota wa nyuma nk'uko bigaragara mu nyandiko mvugo zabo zakorewe imbere y'ubushinjacyaha.

[70] Urukiko rusanga no mu rubanza rw'ubutane ubwo yatangaga ibimenyetso bigaragaza ko imibanire ye n'umugore itagishobotse, Gatare yaravuze ko umugore yanze ku munota wa nyuma ko bazana mu Rwanda bikaba byaramuhombeje amafaranga menshi, ndetse ko amuhoza ku nkeke amutuka ibitutsi bikomeye imbere y'abana, ariko nta na hamwe yigeze avuga ko yataye urugo amutanye abana 2 barimo n'uw'imyaka 4 akaba atazi aho bari kandi nabyo byarashoboraga kumubera ikimenyetso gikomeye cy'imyitwarire ye mibi yasabaga urukiko gushingiraho rumuha ubutane.

[71] Urukiko rusanga nanone ibyo Gatare avuga ko yatekereje ko Libératha yafashe iye nzu bitashoboka kuko nawe azi ko atari kugenda adatwaye ibyangombwa bye n'ibya Cléscence birimo n'indangamuntu (carte d'identité pour étranger) zabo, imyenda n'ibindi bikoresho by'ibanze umuntu akenera mu buzima bwa buri munsi, bikaba bivuguruzwa n'ibyo yivugiye mu bushinjacyaha ubwo yabazwaga niba yari akibana na Uwimana Libératha nk'umugabo n'umugore agasubiza ko batigeze batandukana usibye ko bari bafite ubwunvikane buke.

[72] Urukiko rusanga rero ukurikije imvugo ze mu bihe bitandukanye nta mpamvu Gatare yari afite zo gutekereza ko Libératha na Cléscence bagiye gushaka iyabo nzu, kuba ntawe yamenyesheje ko Libératha na Clescence babuze ahubwo abo yasize mu Bubiligi akabumvisha ko bagiye mu Rwanda, naho abo yasanze ino akabumvisha ko basigaye mu Bubiligi akaba ari ikimenyetso kimushinja kigomba kwitabwaho kiyongera ku bindi bimenyetso byagaragajwe haruguru kuko iyo mvugo ye yashoboraga gutuma abantu babazi bamara igihe batibajije ku ibura ryabo ngo bashakishwe.

g) Ku bijyanye n'uko urukiko rwemeje ko atumvikanaga na Libératha.

[73] Gatare avuga ko ibyo urukiko rwashingiyeho rwemeza ko atumvikanaga n'umufasha we nta shingiro bifite kuko iyo aza kuba atumvikana nawe ataba yaramujyanye we n'abana be mu Bubiligi ngo babeho kuri konti ye, yarahaye inka uwitwa Tegibanze Joseph amushimira ko yamuhishe muri Jenoside, ndetse yarakoreye iwabo no kwa musaza we "installation" z'umuriro ku buryo byamutwaye amafaranga ari hagati ya 700.000Frw na 1.000.000Frw.

[74] Avuga kandi ko mu rugo rwabo hataburaga utubazo nko mu zindi ngo ariko ko batwikemuriraga ubwabo bitagombye guteza impagarara, ibyo bikaba byarashimangiwe na Uwanyirigira Sylvie bajyaga bavuganira kuri telefoni, uretse ko imvugo ze ubu yazihinduye kubera impamvu ze adashobora gusobanura.

[75] Avuga nanone ko urukiko rwasesenguye nabi amagambo akubiye mu mabaruwa ye, ko ibaruwa imwe yayandikiye Libératha ataraza mu Bubiligi amubwira ibintu baziranyeho, ko iyo haza kubamo ubugome atari kwemera kumusanga mu Bubiligi, ko indi yayandikiye nyirabukwe hashize imyaka ibiri Libératha aba mu Bubiligi amumenyesha ko umukobwa we yahindutse akaba atakimwumva kubera ko yamaze kumenyera igihugu kugira ngo bamuhwiture kuko hari igihe yabibabwiraga bakamuhana kuri telefoni akabona hari igihindutse.

[76] Yongeraho ko niyo yari kuba afite icyo apfa gikomeye na Libératha bitari kuba impamvu yo kumuvutsa ubuzima bwe akanagerekaho n'ubw'uriya mwana Ingabire Cléscence.

[77] Ku bijyanye n'imvugo ya Murangwa Anthère ko bahuriye mu Bubiligi mu kwezi kwa 10/2005 akamubwira ko Libératha amaze kumunanira, ndetse ko aho bigeze n'ubwo yapfa ntacyo byamubwira amaze kumuhaga, avuga ko ari ibinyoma n'ibihimbano akaba asanga urukiko rwarishe amategeko rwanga kumutumiza ngo aze imbere yarwo kubisobanura ahibereye, usibye ko afitanye isano na nyakwigendera kuko nyina we yari yaramubyaye muri Batisimu.

[78] Ku bijyanye n'imvugo ye mu rubanza rw'ubutane ko umugore we yamutukaga akamuhoza ku nkeke, avuga ko yabivuze ashaka impamvu z'ubutane, naho ku bijyanye n'imvugo ya Emmanuella muri urwo rubanza rw'ubutane yari yamuzanyemo gutanga ubuhamya ko yajyaga atuka nyina ko ari igicucu, injiji, nyina nawe akamusubiza ko ari igicucu, amabyi, avuga ko kubwira umuntu ngo wa gicucu we atari ibintu bikomeye.

[79] Uwanyirigira Sylvie uregera indishyi akaba namurumuna wa Libératha avuga ko mukuru we yajyaga amubwira ko umugabo we amumerera nabi ku buryo atari akinamuhamagara ari mu rugo akaba yaragombaga kumuhamagara ari hanze.

[80] Avuga nanone ko ikintu bapfaga ari uko nta mafaranga Gatare yagiraga, akaba yarayakuraga kuri Fabienne umugore we wa mbere batandukanye.

[81] Uhagarariye ubushinjacyaha avuga ko kuba Gatare yaba yarafashije umuryango wa Libératha bitakuraho ko yategura umugambi wo kumwica kandi ko imibanire mibi yari afitanye n'umugore we igaragazwa n'ibaruwa yandikiye nyirabukwe amubwira ko umukobwa wabo yamunaniye, ikanemezwa n'abatangabuhamya batandukanye, akaba asanga bidahagije kuvuga gusa ko uwitwa Murangwa Anthère abeshya mu gihe atari we wenyine ubivuga.

UKO URUKIKO RUBIBONA

[82] Urukiko rusanga n'ubwo Gatare avuga ko urukiko rwa mbere rwemeje ko yari afitanye imibanire mibi n'umugore we rushingiye ku mabaruwa rwasesenguye nabi no ku buhamya bwa Murangwa Anthère bwuzuyemo ibinyoma kandi butatangiwe mu rukiko, ibyo bimenyetso atari byo byonyine bigaragaza imibanire mibi bari bafitanye kuko nawe ubwe ubwo yabazwaga mu bushinjacyaha yivugiye ko bari bafite ubwumvikane buke, ndetse n'imbere y'uru rukiko yavuze ko nyuma y'imyaka ibiri umugore we aba mu Bubiligi yatangiye kujya atumva icyo amubwiye ahubwo akamwumvisha ko ashobora kuzibana akishakira iye nzu, akaba yari yaranamusubije impeta y'isezerano ari nayo mpamvu bayimusanganye ubwo yafatwaga.

[83] Urukiko rusanga ubwo bwumvikane buke bunagaragazwa na Muhirwa Frédérick murumuna we wo kwa Se wabo nawe wemeje mu bushinjacyaha ko mu kwezi kwa 05/2005 ubwo yari mu Bubiligi muri stage y'akazi, Gatare yamubwiye ko afitanye ibibazo bikomeye n'umugore we, ko asigaye amusuzugura cyane akanamuteza abana yari yariyanditseho batari be, ko yoshywa cyane na bene wabo bari mu Bubiligi, ko umugore we amucyurira cyane ko atunzwe n'amafaranga avana ku mugore n'abana, ndetse ko Gatare yamutelefonye bucya aza mu Rwanda akamubwira ko bazaza ariko ko Libératha yatangiye gushyiramo umutima mubi abana ko afite gahunda yo kubasiga mu Rwanda.

[84] Urukiko rusanga kandi kuba Murangwa Anthère atarahamagajwe mu rukiko ngo aze asubiremo ibyo yavugiye mu bushinjacyaha ko yamubwiye ko Libératha amaze kumunanira, ko aho bigeze nubwo yapfa ntacyo byamubwira atari byo byatesha agaciro imvugo ye kuko urukiko rudategetswe guhamagara ababajijwe bose igihe cy'iperereza, cyane ko igisuzumwa mu mvugo ye ari imibanire ye n'umugore we, hakaba hari ibimenyetso bihagije bikubiyemo n'imvugo ze bigaragaza ko iyo mibanire yari mibi.

h) Ku bijyanye n'uko yashakaga kuzasiga Libératha n'abana be mu Rwanda baje mu biruhuko, umugore we akabimenya akanga kobazana mu Rwanda.

[85] Gatare avuga ko ibyo urukiko rwemeje ko Libératha yanze ko bazana mu Rwanda kubera ko yari yaramenye ko ashaka kuhamusiga ataribyo kuko bivuguruzwa na ''réservation" yari yarakoresheje yerekana neza ko bagombaga kuva mu Bubiligi tariki ya 4/7/2006 bagasubirayo kuwa 29/08/2006,usibye Estelle wagombaga kugaruka mbere kubera gahunda zamurebaga ubwe, ndetse binavuguruzwa n'inyandiko yo muri Ambassade y'Ububiligi mu Rwanda yerekana ko bari bafite gahunda yo kuzazana n'abandi bana bari barasigaye mu Rwanda kugira ngo be gukomeza kuba intatane.

[86] Avuga kandi ko Libératha yabujijwe kuza n'impamvu ze bwite atashatse kumubwira cyangwa se ngo anazisobanurire murumuna we n'umukobwa we mu gihe bavuganiraga kuri telefone kuwa 02/07/2007 kuko iyo aza kuba afite ikibazo aba yarabivuze.

[87] Yongeraho ko kuba Libératha yarahinduye gahunda akanga ko bazana mu Rwanda bitafatwa nk'impamvu yo kuvuga ko yashakaga kuzahamusiga, cyangwa yo kumwica.

[88] Ku bijyanye n'imvugo ya Nsa Emoli bakoranaga kwa Milants mu kazi ko gusoroma imbuto ko yamubwiye ko umugore we atari "gentille" kandi ko azamusiga mu Rwanda, Gatare avuga ko ari ibinyoma, ko batari inshuti ku buryo yamubwira amabanga, akaba nta n'ububasha na buke yari afite bwo kubuza abantu kugaruka mu Bubiligi.

[89] Ku byerekeye impamvu Libératha, Cléscence na Emmanuella yabaguriye tike zo kugenda gusa, avuga ko ari uko yari yababoneye ''réduction" ya 25% anyuze muri Organisation Internationale de Migration (OIM), yishyura, 75% ayashyira kuri konti yayo.

[90] Ku byerekeye impamvu we na Pierre Alexandre batakoresheje ubwo buryo ngo nabo bagabanyirizwe igiciro, avuga ko OIM irihira gusa abanyamahanga kandi ko bo ari ababirigi.

[91] Ku byerekeranye n'imvugo ya Anne Christine Ghysens ukora muri OIM yasemuwe mu gifaransa igaragaza ko yamubwiye ko Libératha yananiwe n'ubuzima bw'Iburayi akaba ashaka gutaha mu Rwanda burundu, yasubije ko yamubeshye ko batazagaruka abyumvikanyeho na Libératha kugira ngo bishyure amafaranga make.

[92] Uhagarariye ubushinjacyaha avuga ko kuba Gatare yari afite umugambi wo kuzasiga Liberatha n'abana yabyaranye n'umugabo we wa mbere mu Rwanda bigaragazwa n'uko yari yarabaguriye amatike yo kugenda gusa yifashishije OIM ifasha abimukira (*immigrants*) gusubira mu bihugu byabo abeshya ko Liberatha yananiwe n'ubuzima bw'Iburayi, bikanemezwa n'abantu bakoranaga kwa Milants mu kazi ko gusoroma imbuto St-Trond.

[93] Avuga kandi ko ibyo Gatare avuga ko we na Libératha bari bumvikanye kubeshya OIM ko batazagaruka kuko Libératha yananiwe n'ubuzima bw'Iburayi ataribyo kuko aho Libératha abimenyeye ko Gatare yaguze amatike yo kugenda gusa yahise abibwira abana ko we atakigiye kuko yamenye ko azamusiga mu Rwanda.

UKO URUKIKO RUBIBONA

[94] Urukiko rusanga "réservation" ubwayo atari ikimenyetso ko Gatare yari kuzagura amatike yo kugaruka ageze mu Rwanda.

[95] Urukiko rusanga imvugo ya Kassi Bilé wakoranaga na Gatare ko uyu yamubwiye ko umugore we atari "gentille" kandi ko azamusiga mu Rwanda hamwe n'abana yabyaranye n'umugabo we wa mbere batari abe yuzuzanya n'iya N'sa Emoli nawe bakoranaga igaragaza ko yamenye ko Gatare afite umugambi wo gusiga umugore we n'abana be babiri mu Rwanda abibwiwe na Kassi Bilé, zikaba zigomba gufatwaho ukuri kuko nta mpamvu n'imwe bari bafite yo kubeshyera Gatare

[96] Urukiko rusanga kandi no kuba Gatare yaranyuze kuri OIM kugira ngo agure amatike ya Libératha n'abakobwa be babiri bigaragaza ko nta mugambi yari afite wo kubagarura mu Bubiligi kuko nk'uko abyivugira OIM ntabwo ijya ifasha abimukira kujya mu biruhuko, ahubwo ibafasha gutaha burundu, ibyo avuga ko bari bumvikanye kubeshya OIM akaba ataribyo kuko aho Libératha amenyeye ko yaguze amatike yo kugenda gusa yahise abwira abana ko atakigiye, ibi bikaba byemezwa na Emmanuella mu mvugo ye mu bushinjacyaha, bikashimangirwa na Muhirwa Frédérick wemeje nk'uko byagaragajwe haruguru ko Gatare yamutelefonye bucya aza mu Rwanda amubwira ko Libératha yatangiye gushyiramo umutima mubi abana ko afite gahunda yo kubasiga mu Rwanda.

[97] Urukiko rusanga rero ntacyo urukiko rwa mbere rwibeshyeho rwemeza ko Libératha yanze ko bazana mu Rwanda kuko yari yamenye ko Gatare afite gahunda yo kuhabasiga.

i)Ku bijyanye n'uko yageze mu Rwanda agasaba ubutane.

[98] Gatare avuga ko gusaba ubutane ageze mu Rwanda atari umugambi yaje afite, ahubwo ari icyemezo yafashe ahageze kubera ko yari yababajwe n'ukuntu batuzuzanya nk'abashakanye, ukuntu bateguye urugendo rwo kuza mu biruhuko mu Rwanda bazanye n'umuryango wose n'abana babiri b'umugore we w'umubiligikazi batandukanye, nyuma yo guhihibikana ashakisha amafaranga azabazana kandi akabasubizayo, amatike yaramaze kwishyurwa, hasigaye iminsi 3 gusa ngo bafate indege akamubwira ko atazagenda nta mpamvu amugaragarije, akanga n'uko Cléscence wabishakaga nawe aza, ku buryo yari yamuhombeje 2.716Euro ahwanye na 2.700.000Frw arenga, akaba ndetse yari yataye urugo yagiye atamubwiye iyo agiye.

[99] Akomeza asobanura ko yafashe icyemezo cyo kwaka ubutane bitewe nuko Libératha yari yaramurakaje cyane, ariko ko iyo aza gusiga amwishe atari kwiririrwa yaka ubutane, naho kuba yarabikoze vuba akaba ari uko yari afite igihe gito yagombaga kumara mu Rwanda.

[100] Ku bijyanye n'impamvu yasabiye ubutane mu Rwanda kandi we n'umugore we barabaga mu Bubiligi, avuga ko mu Rwanda ariho basezeraniye, kandi ko ariho bihendutse kurusha mu Bubiligi, ko rero bwari uburyo bwo kubyihutisha kuko yashakaga ko bimutwara amikoro make.

[101] Uhagarariye ubushinjacyaha avuga ko Gatare yagiye kwaka ubutane akigera mu Rwanda mu rwego rwo guhisha ibimenyetso kuko atari kubona uburyo avuga ko Libératha yapfuye.

UKO URUKIKO RUBIBONA

[102] Gatare yageze mu Rwanda kuwa 18/07/2006, ahita ajya gusaba ubutane mu Rukiko rw'Ibanze rwa Busasamana nk'uko bigaragazwa n'imyanzuro ya Me Nkurunziza Jean Chrysotome yo kuwa 26/07/2006, ndetse ahita anasaba ko Libératha yatumizwa mu gihe gito, urukiko rurabimwemerera, igihe cyo kuburana kigeze arubwira ko yoherereje Libératha ihamagara binyujijwe ku iposita ariko yanga kujya kurifata, kuwa 29/09/2006 umucamanza yemeza ko ahawe ubutane ku makosa ya Libératha ngo kuko ahoza umugabo we ku nkeke bigatera intugunda mu muryango wabo, ndetse ko Gatare agomba gusigarana umwana Pierre Alexandre, naho abandi bagasigara barerwa na nyina.

[103] Nyuma y'urwo rubanza Gatare yatanze ikindi kirego mu Rukiko rw'Ibanze rwa Busasamana cyo kwiyandukuzaho abana Libératha yabyaranye n'umugabo we wa mbere nk'uko bigaragazwa nanone n'imyanzuro iri muri dosiye yakozwe na Me Niyomugabo Christophe ariko umucamanza yemeza ko inyandiko z'amavuko z'abo bana zitagomba gukosorwa kuko nta makosa yakozwe mu myandikire yazo, ndetse zikaba zarakozwe mu nzira no mu buryo bukurikije amategeko.

[104] Urukiko rusanga gusaba ubutane bishobora kumvikana nk'uburyo bwo gusibanganya ibimenyetso kugira ngo hatagira utangazwa n'uko atakibana n'umugore we cyangwa n'uko atazi amakuru yabo, ndetse no kwiyandukuzaho abana ba Libératha batari abe bikaba nabyo bishobora kumvikana muri ubwo buryo, bityo kuba Gatare yarasabye ubutane akigera mu Rwanda no kwiyandukuzaho abana ba Libératha batari abe nabyo bikaba bigomba kureberwa hamwe n'ibindi bimenyetso byagaragajwe muri uru rubanza.

j) Ku bijyanye n'ibyangombwa bya Libératha na Cléscence byasanganywe Gatare ubwo yafatwaga nyuma y'amezi atatu bishwe.

[105] Gatare avuga ko ibyo urukiko rwavuze ko yambuye Libératha na Cléscence ibyangombwa byabo kugira ngo batazamenyekana atariko biri kuko bateguye urugendo ari benshi ibyangombwa byabo biri mu isakoshi imwe bari barateguye, kandi ko Libératha yahakanye hasigaye iminsi 3 gusa ngo bafate indege, ntiyibuka kumwaka ibyangombwa yari abitse, nawe akomeza gahunda ze ku buryo atigeze abikomaho agatima.

[106] Avuga kandi ko iyo aza kuba yarabishe aba yaratwitse ibyo byangombwa kugira ngo bitagaragara ariko ko we yamaze amezi 3 abigendana, akaba yari agiye no kubisubiranayo igihe yafatwa n'inzego z'umutekano bucya agenda.

[107] Akomeza avuga ko kuba baramusanganye ibyangombwa byabo bombi n'impeta y'isezerano ya Libératha ataribyo byerekana ko yabishe, ko atari kuba yabishe ngo akomeze

abike ibintu byabo kandi aribyo byari kumufatisha, ibyo bikaba byerekana ahubwo ko atazi imipfire y'abo kuko iyo ashaka gusibanganya ibimenyetso yari kubambura n'ikarita y'itora ndetse n'ikarita ya Centre Public d'Action Sociale (C.P.A.S) basanze mu modoka noneho umugambi akawugerereraho rimwe.

[108] Uhagarariye ubushinjacyaha avuga ko ibyo Gatare avuga ko yazanye ibyo byangombwa yibeshye bitafatwaho ukuri kuko iyo aza gusanga yabizanye yibeshye yari guhita abyohereza ariko akaba atarabyohereje kuko yari azi ko ntawe abyohererereza kuko bapfuye.

UKO URUKIKO RUBIBONA

[109] Mu byangombwa Gatare yafatanywe harimo indangamuntu za Libérathana Cléscence zihabwa abanyamahanga baba mu Bubiligi (carte d'identité pour étranger) na pasiporo zabo zo mu Rwanda.

[110] Urukiko rusanga ibyo Gatare avuga ko iyo aza kuba ariwe wishe Libératha na Clescence agashaka gusibanganya ibimenyetso yari kubambura ikarita y'itora yo mu Rwanda n'ikarita ya C.P.A.S ari ukwirengagiza ko izo nyandiko zari zahiye bikabije, bityo kuba abashinzwe iperereza bifashishije ''laboratoire" barashoboye guhuza umuyonga wazo bakamenya inkomoko yazo akaba atari ikintu cyari cyateganyijwe n'uwabatwikiye mu modoka.

[111] Urukiko rusanga kandi kuba Gatare yarazanye mu Rwanda ibyangombwa byabo agafatwa nyuma y'amezi 3 akibifite bitafatwa ko ari ukwibagirwa cyangwa kwibeshya, ahubwo bishimangira ko Gatare yari azi ko batavuye mu rugo bajya gufata iyabo nzu kuko batari kubura gutwara nibura indangamuntu zikunze gukenerwa mu buzima bwa buri munsi nko kubikuza amafaranga muri banki, gushaka akazi no guhabwa servisi zinyuranye, bityo kuba yari abifite bikaba bigomba kureberwa hamwe n'ibimenyetso bindi byatanzwe muri uru rubanza.

k) Kuba urukiko rwaramuhamije icyaha rwirengagije ikimenyetso kimushinjura ko yari kumwe na Pierre Alexandre w'imyaka ine, akaba atari gutwikira Libératha na Cléscence mu modoka bari kumwe.

[112] Gatare avuga ko urukiko rwirengagije ko yari kumwe na Pierre Alexandre kuko atari kuvana abantu babiri mu rugo ngo uwo mwana amusige mu rugo wenyine, akaba atari kubatwikira mu modoka ari kumwe nawe.

[113] Ku bijyanye n'impamvu mu Rukiko Rukuru rwa Repubulika yavuze ko Pierre Alexandre yari yajyanye na Emmanuella kwa Fabienne umugore we wa mbere, asubiza ko kwari ukwibeshya, ko imvugo ya Emmanuella mu bushinjacyaha ko yaje gutema ibyatsi ari kumwe na Pierre Alexandre ariyo yatumye yibuka neza ko uwo mwana bari kumwe mu ijoro ryo kuwa 02/07 rishyira kuwa 03/07/2006, ndetse ko bajyanye St-Trond arangije gutema ibyatsi.

[114] Uhagarariye ubushinjacyaha avuga ko ibyo Gatare avuga ko yari kumwe na Pierre Alexandre ariwe wabitangira ibimenyetso kuko yashoboraga no kureba aho amusiga.

UKO URUKIKO RUBIBONA

[115] Gatare ubwo yabazwaga mu bushinjacyaha yavuze ko ku cyumweru tariki ya 02/07/2006 yagiye St Trond gushaka imodoka yo kugura, ndetse ko abana bombi Emmanuella na Pierre Alexandre yari yabasize kwa Fabienne aho yagiye kubafata kuwa mbere tariki ya 03/07/2006.

[116] Mu mwanzuro we wanditse mu Rukiko Rukuru rwa Repubulika naho yavuze ko kuwa gatandatu tariki ya 01/07/2006 yajyanye abana gusura Fabienne kugira ngo bamusezereho noneho bazahave bazana n'abana be kugira ngo bajyane mu Rwanda, ndetse yabisubiyemo igihe cy'iburanisha imbere y'urwo rukiko n'imbere y'uru rukiko mbere y'uko yisubiraho agahindura imvugo.

[117] Urukiko rusanga n'aho yabajijwe hose gusobanura uko yakoresheje igihe cye ku itariki ya 02/07/2006 nta na hamwe yigeze avuga ko yagiye St Trond gushaka imodoka yo kugura ari kumwe n'uwo mwana Pierre Alexandre, cyangwa ko bari kumwe ubwo yatahaga agasanga urugo rukinze, bityo imvugo ye ko biriranywe umunsi wose bakanatahana mu rugo ihindura ibyo yavuze mbere ikaba itafatwaho ukuri.

l) Kuba urukiko rwaramuhamije icyaha hatagaragajwe uburyo yaba yarabonye imodoka MAZDA 123 Libératha na Cléscence bahiriyemo.

[118] Gatare avuga ko imodoka Mazda Libératha na Cléscence bahiriyemo yagurishirijwe i Liège mu isoko rya Bierset, ko bitashoboka ko imodoka yagurishwa nta nyandiko ikozwe igaragaza uwaguze imodoka, akaba asanga, uretse gusa amarangamutima yakomeje kugaragara muri uru rubanza, ataragombaga guhamwa n'icyaha hatabanje byibura kugaragara uwagurishije imodoka ya MAZDA123 ngo asobanure uburyo yayimugurishije cyangwa yayimutije kugira ngo ajye kuyikoresha amarorerwa.

[119] Avuga kandi ko yasabye ko nyiri imodoka bivugwa ko yayigurishije kuwa 25/06/2006 mu isoko rya Bierset yatumizwa muri uru rubanza kuko ari we pfundo ryarwo ariko urukiko rubyima amatwi rwirengagije ingingo ya 46 al.2 y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha ivuga ko urukiko rutegetswe guca urubanza rwishakira ibimenyetso bitagezweho n'ubuhinjacyaha.

[120] Avuga nanone ko ibyo uwitwa Rauschen ukora muri iryo soko ry'imodoka yasobanuye bigaragaza itandukaniro hagati ye n'uwaguze imodoka kuko yavuze ko uwayiguze yari afite imyaka 35, ko yari yambaye agakufi, ko yari mu modoka ya Mitsubishi, iyo myaka we akaba atariyo afite, akaba nta gakufi yigeze yambara, ndetse akaba atarigeze atunga imodoka ya Mitsubishi.

[121] Uwunganira Gatare avuga ko hari byinshi bishidikanywaho muri uru rubanza, nko kumenya aho uwo yunganira ahuriye n'imodoka Libératha na Cléscence batwikiwemo cyangwa uko yaba yaravuye aho batwikiwe, bityo akaba asaba ko yagirwa umwere hashingiwe ku ngingo ya 71 y'itegeko N°15/04 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga ko gushidikanya birengera uregwa.

[122] Uhagarariye ubushinjacyaha avuga ko bitari ngombwa ko urukiko rutegeka irindi perereza ku modoka Libératha na Cléscence bahiriyemo kuko iryakorewe mu Bubiligi ryari ryagaragaje ko "plaques" zabonetse aho imodoka yahiriye zari zarasibwe (radiés), uwagurishije

imodoka akaba yarasobanuye ko imodoka yaguzwe n’umwirabura kandi ko batandikiranye, bityo urukiko rukaba rwarasanze ibimenyetso rwashyikirijwe bihagije.

UKO URUKIKO RUBIBONA

[123] Iperereza ryakorewe mu Bubiligi ryagaragaje ko uwatunze bwa nyuma imodoka MAZDA123 Libératha na Cléscence bahiriyemo ari umudagekazi witwa Schwarzer Tamara, akaba yarayigurishije mu kwezi kwa 06/2006 umucuruzi witwa Behrwanger, uyu nawe akayigurisha ku isoko ry’imodoka rya Bierset ku cyumweru tariki ya 25/06/2006, uwo munsi igurwa n’umwirabura ariko nta nyandiko z’ubugure zakozwe.

[124] Ku bijyanye na “plaques” CFI 204 zari kuri iyo modoka, iperereza ryagaragaje ko zari iz’imodoka Peugeot 206 kandi ko zari zarabaye “radiés” kuwa 28/08/2002.

[125] Urukiko rusanga kuba uwaguze n’uwagurishije imodoka batarandikiranye no kuba imodoka yarambitswe “plaques” zasibwe bigaragaza ko uwayiguze yari yateguye uburyo azasibanganya ibimenyetso bishobora gutuma amenyekana, kuba rero iperereza ritarashoboye kugaragaza umwirondoro w’uwaguze imodoka bikaba bitatesha agaciro ibindi bimenyetso byatanzwe muri uru rubanza.

m) Umwanzuro.

[126] Ingingo ya 119 y’Itegeko ryerekeye ibimenyetso mu manza n’itangwa ryabyo ivuga mu gace k’ayo ka mbere ko “mu manza z’inshinjabyaha, ibimenyetso bishingira ku mpamvu zose z’ibyabaye n’ibyemejwe n’amategeko, ababuranyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye” naho mu gace ka kabiri ikavuga ko “urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura ari byo kandi ko bishobora kwemerwa”.

[127] Urukiko rukurikije ibimenyetso byose byagaragajwe haruguru, kuba ikoti rya Gatare ryaratoraguwe aho Libératha na Cléscence batwikiwe ritahiye uwari uryambaye akaba yaravuye aho icyaha cyakorewe yerekeza ku muhanda, kuba imfunguzo ze zifungura inzu babagamo nazo zatoraguwe aho icyaha cyakorewe, kuba bukeye bw’umunsi Libératha na Cléscence bicwa yaragaragayeho ibikomere by’ubushye byatewe n’ikibatsi cy’umuriro, kuba amasaha make mbere y’uko bicwa yaratelefonnye akoresheje umunara wa Nieuwerkerken no kuba yarafatanywe ibyangombwa bya Libératha na Cléscence nyuma y’amezi atatu bishwe, rukanareba uburyo Gatare yagiye gusaba ubutane no kwiyandukuzaho abana akigera mu Rwanda ntagire umuntu n’umwe abwira ko Libératha na Cléscence bababuze ahubwo abo bavuganye mu Bubiligi akabumvisha ko bari mu Rwanda, abandi b’inaha akabumvisha ko basigaye mu Bubiligi, rusanga nta gushidikanya ko ariwe wishe Liberatha na Clescence abatwikiye mu modoka hanyuma akagerageza gusibanganya ibimenyetso nk’uko byemejwe n’Urukiko Rukuru rwa Repubulika, impamvu yabishe zikaba zishingiye ku mujinya yagize Libératha yanze ko bazana mu Rwanda amaze gutahura umugambi we wo kuhabasiga baje mu biruhuko no ku bwumvikane buke bari bafitanye.

B. Ku byerekeye ibihano.

[128] Abunganira Gatare bavuga ko umucamanza yagennye igihano kitubahirije amategeko kuko yahanishijwe igihano cya burundu y'umwihariko, nyamara ubushinjacyaha bwari bwamusabiye igihano cya burundu, icyo yahawe kikaba kirenze icyo bwari bwamusabiye.

[129] Bavuga kandi ko urukiko rusanze Gatare ahamwa n'icyaha rwamuhanisha igihano kitarenze imyaka 10 kuko ari ubwa mbere akora icyaha.

[130] Uhagarariye ubushinjacyaha avuga ko kuba Gatare yarahanishijwe igihano kirenze icyo bwari bwamusabiye bitaba impamvu y'ubujurire kuko nta tegeko ryishwe cyane ko icyaha yarezwe aricyo yahaniwe.

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[131] Ingingo ya 312 y'Itegeko-Teka N°21/77 ryo kuwa 18 Kanama 1977 rishyiraho igitabo cy'amategeko ahana ibyaha yakurikizwaga mu Rwanda igihe icyaha cyakorwaga yateganyaga igihano cyo kwicwa ku muntu wishe umuntu yabigambiriye ariko icyo gihano cyavanyweho n'Itegeko Ngenga N°31/2007 ryo kuwa 25/07/2007, gisimbuzwa igihano cy'igifungo cya burundu hamwe n'igihano cya burundu y'umwihariko (réclusion criminelle à perpétuité). Iri tegeko naryo ariko ryavanyweho n'Itegeko Ngenga N°01/2012/OL ryo kuwa 02/05/2012 ryatangajwe mu Igazeti ya Leta kuwa 14/06/2012 riteganya mu ngingo yaryo ya 140 igihano cyo gufungwa burundu ku muntu wahamwe n'icyaha cy'ubwicanyi, naho mu ngingo yayo ya 145 igateganya igihano cya burundu y'umwihariko ku wishe umuntu yabanje kumushinyagurira (homicide en recourant à des actes dégradants) cyangwa kumukorera ikindi cyaha cy'ubugome (homicide précédé d'un autre crime).

[132] Urukiko rusanga rero Gatare agomba guhanishwa ingingo ya 140 iteganya igihano cya burundu ku muntu wahamwe n'icyaha cy'ubwicanyi.

[133] Ku bijyanye n'ibigomba gushingirwaho mu kugena igihano, ingingo ya 71 y'igitabo gishya cy'amategeko ahana 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".

[134] Urukiko rusanga n'ubwo Gatare ari ubwa mbere akoze icyaha bizwi atahabwa inyoroshyacyaha nk'uko bisabwa n'abamwunganira harebwe uburyo yishe Libératha na Cléscence yabiteguye neza n'ubugome bukabije yabicanye, harebwe n'uburyo yakoze uko ashoboye kugira ngo asibanganye ibimenyetso by'icyaha, abana ba Libératha bakaba barabuze umubyeyi bari basigaranye, ndetse na mukuru wabo bitewe n'uwari wariyemeje kubabera umubyeyi ubwo yabiyandikagaho.

C. Kumenya niba Uwanyirigira Sylvie yaragenewe indishyi zidahagije.

[135] Uwanyirigira Sylvie avuga ko yuririye ku bujurire bwa Gatare Edouard asaba ko Urukiko rw'Ikirenga rwamugenera indishyi mbonezamusaruro yari yasabye mu Rukiko Rukuru rwa

Repubulika zingana za 32.560.000Frw akubiyemo amafaranga yo gutunga abana basizwe na Uwimana Libératha, ay'ishuri n'ayo kuzana imirambo no kuyishyingura mu Rwanda, rukamugenera n'indishyi mpozamarira yari yasabye zingana na 10.000.000Frw, ndetse n'amafaranga yo gukurikirana urubanza n'igihembo cy'avoka angana na 4.256.000Frw, yose hamwe akaba 46.816.000Frw.

[136] Gatare avuga ko nta ndishyi yasabwa izo arizo zose kubera ko ari umwere.

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[137] Urukiko rusanga Uwanyirigira Sylvie nta kimenyetso atanga kigaragaza ko ariwe urera abana basizwe na Libératha akaba ari nawe ubishyurira amashuri n'ibindi byose bigenerwa umwana mu muryango, bityo akaba atagomba guhabwa indishyi mbonezamusaruro asaba nk'uko Urukiko Rukuru rwa Repubulika rwabyemeje.

[138] Ku bijyanye n'indishyi z'akababaro asaba, Urukiko rusanga atagaragaza icyo anenga izo yagenewe mu rwego rwa mbere zingana na 8.000.000Frw, bityo zikaba zigomba kugumaho.

[139] Ku bijyanye n'amafaranga yo kuzana imirambo iva mu Bubiligi no kuyishyingura mu Rwanda angana na 10.000.000Frw asaba, Urukiko rusanga nk'uko byasobanuwe n'urukiko rwa mbere rutagena indishyi zijyanye n'igikorwa giteganywa gukorwa.

[140] Ku byerekeye igihembo cy'avoka, Urukiko rusanga 300.000Frw Uwanyirigira yagenewe ku rwego rwa mbere akwiye rukurikije amafaranga asanzwe agenwa mu manza, hakiyongeraho 500.000Frw y'igihembo cy'avoka ku rwego rwa kabiri imbere y'uru rukiko.

III.ICYEMEZO CY'URUKIKO

[141] Rwemeje ko ubujurire bwa Gatare Edouard nta shingiro bufite.

[142] Rwemejeko ubujurire bwuririye ku bundi bwa Uwanyirigira Sylvie nabwo nta shingiro bufite.

[143] Rwemeje ko Gatare Edouard ahamwa n'icyaha cy'ubwicanyi bwakorewe Uwimana Liberata na Ingabire Clescence.

[144] Rumuhanishije igifungo cya burundu.

[145] Rumutegetse kwishyura Uwanyirigira Sylvie 8.000.000Frw y'indishyi z'akababaro, 300.000Frw y'igihembo cy'avoka ku rwego rwa mbere na 500.000Frwku rwego rwa kabiri imbere y'uru rukiko, yose hamwe akaba 8.800.000Frw.

[146] Ruvuze ko amagarama y'urubanza aherera ku Isanduku ya Leta kuko uwajuriye afunze