UBUSHINJACYAHA v. MUZATSINDA

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/INJUST/PEN0001/16/CS (Mugenzi, P.J., Mutashya na Gatete, J.) 10 Kamena 2016]

Amategeko Mpanabyaha – Ubushoreke – Kubana nk'inshoreke mu buryo buhoraho – Byitwa kubana mu buryo buhoraho hitawe kugihe bamarana babana, kiba cyaratumye rubanda n'abaturanyi bababonamo imyitwarire y'umugabo n'umugore babana hatitawe ku burebure bw'icyo gihe bamarana, gusa uko kubana kwabo kugaherekezwa n'ibikorwa bifatika ku buryo buri wese ubibona, nta gushidikanya agira mu kwemeza ko abo bantu babana nk'umugabo n'umugore – Itegeko Ngenga Nº01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 247.

Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Uburenganzira busesuye bw'ubushinjacyaha bwo gukurikirana cyangwa kudakurikirana – Kuba umwe mu nshoreke atakurikiranywe, ntibivuga ko uwakurikiranywe agomba kuba umwere – Itegeko Nº13/2004 ryo ku wa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 43.

Indishyi – Indishyi zikomoka ku cyaha hagati y'abashyingiranywe – Ntibibujijwe ko umuntu yategekwa guha uwo bashyingiranywe indishyi z'akababaro zijyanye n'icyaha yamukoreye mu gihe kimuhama, kabone n'iyo baba baravanze umutungo.

Incamake y'ikibazo: Uregwa yagejejwe imbere y'Urukiko rw'Ibanze rwa Nyarugunga akurikiranywe ku cyaha cy'ubushoreke, rwemeza ko adahamwa n'icyaha kubera ko umucamanza yasanze nta kigaragaza ko abana n'uwafatwaga nk'inshoreke nk'umugabo n'umugore mu buryo buhoraho, kuko aba mu Bubiligi, ko n'abatangabuhamya babajijwe batagaragaza ko babana mu buryo buhoraho.

Uwari waregeye indishyi, yajuririye Urukiko Rwisumbuye rwa Nyarugenge avuga ko Urukiko rwirengagije imvugo z'abatangabuhamya bemeje ko uregwa afite inshoreke, ajuririra kandi indishyi avuga ko atahawe. Urukiko rwemeje ko ubujurire bufite ishingiro, rutegeka ko urubanza rwaciwe n'Urukiko rw'Ibanze rwa Nyarugunga ruhindutse mu ngingo zarwo zose, runategeka ko uregwa ahamwa n'icyaha cy'ubushoreke, rumuhanisha igifungo cy'amezi 6 n'ihazabu y'amafaranga ibihumbi ijana (100.000Frw), runamutegeka guha indishyi z'akababaro uwaziregeye.

Uregwa yasubirishijemo urwo rubanza mu Rukiko rw'Ikirenga ku mpamvu z'akarengane, avuga ko Urukiko Rwisumbuye rwa Nyarugenge rwirengagije ibimenyetso, rushingira ku mvugo z'ibinyoma z'abatangabuhamya, runirengagiza amategeko ahana ubushoreke, aho rwamuhamije icyaha cy'ubushoreke kubera ko yabaga kwa Nyirantakirutimana Espérance mu buryo buhoraho, kandi kuhaba mu buryo buhoraho bitaranashobokaga, kuko adashobora kuba icyarimwe mu buryo buhoraho kwa Nyirantakirutimana Espérance atahatuye ngo anahabarurirwe, ngo anabe mu buryo buhoraho mu Bubiligi kuko ariho abarizwa.

Uhagarariye Ubushinjacyaha avuga ko Urukiko rwazasobanura icyo ariya magambo mu "buryo buhoraho" avuga, kuko itegeko ritayasobanuye, hakamenyekana niba ari mu buryo buhoraho umunsi ku munsi kugeza gupfa, cyangwa se niba ari ukuhaza kenshi gashoboka, cyangwa se niba kuza ukahamara icyumweru kimwe, ukwezi kumwe, abiri, atatu se cyangwa umwaka, bihagije kugirango byitwe mu buryo buhoraho**.**

Incamake y'icyemezo: 1. Ku cyaha cy'ubushoreke, ijambo kubana "mu buryo buhoraho, si ukuvuga ko abantu bagomba kubana bagatandukanywa n'urupfu, cyangwa se ngo babane akaramata nk'umugabo n'umugore bashyingiranywe mu buryo bwemewe n'amategeko, ahubwo icyangombwa, ni uko igihe bamarana babana, kiba cyaratumye rubanda n'abaturanyi bababonamo imyitwarire y'umugabo n'umugore babana hatitawe ku burebure bw'icyo gihe bamarana, gusa uko kubana kwabo kugaherekezwa n'ibikorwa bifatika ku buryo buri wese ubibona, nta gushidikanya agira mu kwemeza ko abo bantu babana nk'umugabo n'umugore birimo kuhaba, kuharara, kwakira abashyitsi, kujyana guhaha, kujyana abana ku ishuri, n'ibindi.

2. Ubushinjacyaha bufite uburenganzira busesuye bwo guhitamo uwo bushyikiriza Urukiko. Bityo rero kuba umwe mu nshoreke atakurikiranywe, ntibivuga ko uwakurikiranywe agomba kuba umwere.

3. Ntibibujijwe ko umuntu yategekwa guha uwo bashyingiranywe indishyi z'akababaro zijyanye n'icyaha yamukoreye mu gihe kimuhama, kabone niyo baba baravanze umutungo. Bityo, kuba uregwa yaraciwe indishyi z'akababaro nta karengane karimo.

Ikirego cyo gusubirishamo ku mpamvu z'akarengane nta shingiro gifite.

Amategeko yashingiweho:
Itegeko Ngenga Nº01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 247 na 249.
Itegeko Nº59/2008 ryo kuwa 10/9/2008 rikumira kandi rihana ihohoterwa iryo ariryo ryose rishingiye ku gitsina, ingingo ya 2(4º) na 21(2º).
Itegeko Nº13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 43.
Itegeko N°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 65.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ibanze rwa Nyarugunga Muzatsinda aregwa icyaha cy'ubushoreke biturutse ku mugore we witwa Umutesi Afisa wamureze ko yinjiye undi mugore witwa Nyirantakirutimana Espérance. Urukiko rwemeje ko Muzatsinda adahamwa n'icyaha yaregwaga agirwa umwere kubera ko umucamanza yasanze nta kigaragaza ko abana na Nyirantakirutimana Espérance nk'umugabo n'umugore mu buryo buhoraho, kuko aba mu Bubiligi (domicilié en Belgique), ko n'abatangabuhamya babajijwe batagaragaza ko babana mu buryo buhoraho.

[2] Umutesi Afisa waregeye indishyi, yajuririye Urukiko Rwisumbuye rwa Nyarugenge avuga ko Urukiko rwirengagije imvugo z'abatangabuhamya bemeje ko Muzatsinda Emmanuel afite inshoreke, ajuririra kandi indishyi avuga ko atahawe.

[3] Urubanza rwaburanishijwe Muzatsinda adahari, ariko yarasinyiye itariki y'iburanisha, Urukiko ruca urubanza ku wa 09/05/2013 rwemeza ko ubujurire bwatanzwe na Umutesi Afisa bufite ishingiro, rutegeka ko urubanza rwaciwe n'Urukiko rw'Ibanze rwa Nyarugunga ku wa 31/07/2012 ruhindutse mu ngingo zarwo zose, rutegeka ko Muzatsinda Emmanuel ahamwa n'icyaha cy'ubushoreke, rumuhanisha igifungo cy'amezi 6 n'ihazabu y'amafaranga ibihumbi ijana (100.000Frw), runamutegeka guha Umutesi Afisa indishyi z'akababaro zingana na 500.000Frw.

[4] Mu bimenyetso Urukiko rwashingiyeho rumuhamya icyo cyaha bikaba ari ubuhamya bwatanzwe n'abantu batandukanye barimo ushinzwe umudugudu witwa Nshimiyimana Jean Damascène wavuze ko yamubonaga kwa Nyirantakirutimana Espérance nk'umugabo we atazi ko afite undi mugore w'isezerano, Harerimana alias Kazungu wemeje nawe ko Muzatsinda Emmanuel na Nyirantakirutimana Espérance babanaga nk'umugabo n'umugore, Byukusenge Claudine nawe wemeje ko yajyanaga na Muzatsinda Emmanuel ari kumwe na Nyirantakirutimana Espérance amuhaye lift, Kamana Sylvestre ushinzwe amarondo nawe wemeje ko "convocations" zose zajyaga kwa Nyirantakirutimana Espérance wamubonaga nk'umugore wa Muzatsinda Emmanuel.

[5] Ku bijyanye n'indishyi z'akababaro Umutesi Afisa yari yasabye, Urukiko rwasanze ari ikirenga rumugenera izingana na 500.000Frw, naho izijyanye n'indishyi yasabye zingana na 14.400.000Frw z'uko Muzatsinda amaze igihe kinini yarataye urugo, izo atazihabwa kuko atagaragaje aho ashingira azaka.

[6] Muzatsinda Emmanuel yasubirishijemo urwo rubanza mu Rukiko rw'Ikirenga ku mpamvu z'akarengane, avuga ko Urukiko Rwisumbuye rwa Nyarugenge rwirengagije ibimenyetso, rushingira ku mvugo z'ibinyoma z'abatangabuhamya, runirengagiza amategeko ahana ubushoreke.

[7] Urwego rw'Umuvunyi rwasanze kuba Muzatsinda Emmanuel yararezwe wenyine ku cyaha cy'ubushoreke kandi mu ngingo ya 249 y'igitabo cy'amategeko ahana bitegetswe ko uwarezwe agomba gukurikiranwa hamwe n'uwo bakoranye icyaha, bigaragara ko uko kwica itegeko byateje akarengane, cyane cyane ko na Umutesi Afisa mu bujurire bwe, yari yagaragaje ko atishimiye ko Nyirantakirutimana Espérance atakurikiranywe.

[8] Urwego rw'Umuvunyi rwasanze kandi indishyi zingana na 500.000Frw Muzatsinda Emmanuel yategetswe guha umugore we Umutesi Afisa bitari byemewe kuko bari baravanze umutungo, hakirengagizwa amasezerano y'ivangamutungo w'abashyingiranywe, bityo ruhereye ku bimaze kuvugwa, rushingiye ku ngingo ya 79 n'iya 81 z'Itegeko Ngenga Nº03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha bw'Urukiko rw'Ikirenga, urwo rwego rusaba ko urubanza RPA0250/12/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge rwasubirwamo ku mpamvu z'akarengane.

[9] Perezida w'Urukiko rw'Ikirenga, amaze kubona ibaruwa y'Umuvunyi isaba gusubirishamo urwo rubanza ku mpamvu z'akarengane, amaze gusuzuma raporo yakozwe n'Ubugenzuzi Bukuru bw'Inkiko kuri uru rubanza, ashingiye ku Itegeko Ngenga Nº03/2012 ryo ku wa 13/06/2012 rigena imiterere, imikorere, n'ubushasha by'Urukiko rw'Ikirenga mu ngingo yaryo ya 80, yemeje ko urubanza RPA0250/12/TGI/NYGE rwoherezwa mu bwanditsi bw'Urukiko rw'Ikirenga, rukandikwa mu bitabo byabugenewe kugira ngo ruzongere ruburanishwe mu mizi.

[10] Iburanisha ryabaye ku wa 25/04/2016 Muzatsinda Emmanuel yunganiwe na Me Barahira Eric na Me Ruberwa Pierre, Umutesi Afisa (uregera indishyi) yunganiwe na Me Ayifayi Augustin, naho Ubushinjacyaha buhagarariwe na Mukunzi Faustin, Umushinjacyaha ku rwego rw'Igihugu.

[11] Usibye ibibazo Umuvunyi yashyikirije Urukiko, Muzatsinda Emmanuel mu iburanisha ry'urubanza yongeyeho ikindi cyo kuba yarahamijwe icyaha cy'ubushoreke kandi atarabaga kwa Nyirantakirutimana Espérance mu buryo buhoraho buvugwa mu ngingo ya 247 y'Itegeko Ngenga Nº01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

[12] Ibibazo bigomba gusuzumwa muri uru rubanza: hari icyo kumenya icyo amagambo "mu buryo buhoraho" avugwa mu ngingo ya 247 y'Itegeko Ngenga Nº01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana asobanura, kumenya niba hari ibimenyetso bifatika bigaragaza ko Muzatsinda Emmanuel yabanaga na Nyirantakirutimana Espérance mu buryo buhoraho ku buryo bifatwa nk'ubushoreke, kumenya niba kuba Nyirantakirutimana Espérance atarakurikiranywe, byafatwa nk'akarengane, n'icyo kumenya niba umwe mu bashakanye ku ivangamutungo risesuye, ashobora gutegekwa guha uwo bashakanye indishyi zikomoka ku cyaha yamukoreye.

A. Kumenya niba hari ibimenyetso bifatika bigaragaza ko Muzatsinda Emmanuel yabanaga na Nyirantakirutimana Espérance mu buryo buhoraho ku buryo bifatwa nk'ubushoreke.

A.1. Kumenya icyo amagambo "mu buryo buhoraho" avugwa mu ngingo ya 247 y'Itegeko Ngenga Nº01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana asobanura.

[13] Muzatsinda Emmanuel avuga ko Urukiko rwamwemeje icyaha cy'ubushoreke kubera ko yabaga kwa Nyirantakirutimana Espérance mu buryo buhoraho, kandi atarahabaga mu buryo buhoraho, ko cyakora yahanyuraga aje kumusura kubera ko asanzwe ari inshuti y'umuryango, kandi ko kuhaba mu buryo buhoraho bitanashoboka, kuko adashobora kuba icyarimwe mu buryo buhoraho kwa Nyirantakirutimana Espérance atahatuye ngo anahabarurirwe, ngo anabe mu buryo buhoraho mu Bubiligi kuko ariho abarizwa.

[14] Umutesi Afisa uregera indishyi avuga ko ubwo bushoreke bwabayeho kuko Muzatsinda Emmanuel yavaga mu Bubiligi akaza mu Rwanda akahamara amezi atatu kandi ko ayo mezi yose yayamaraga kwa Nyirantakirutimana Espérance babana, ko n'abaturanyi be bose babizi.

[15] Me Ayifayi Augustin avuga ko kugirango icyaha cy'ubushoreke kibeho, igihe atari cyo kamara, ko gishobora kuba kigufi cyangwa kirekire, gishobora kungana n'ukwezi cyangwa umwaka, icyangombwa ni uburyo babigaragariza rubanda.

[16] Uhagarariye Ubushinjacyaha avuga ko Urukiko rwazasobanura icyo ariya magambo mu "buryo buhoraho" avuga, kuko itegeko ritayasobanuye, hakamenyekana niba ari mu buryo buhoraho umunsi ku munsi kugeza gupfa, cyangwa se niba ari ukuhaza kenshi gashoboka, cyangwa se niba kuza ukahamara icyumweru kimwe, ukwezi kumwe, abiri, atatu se cyangwa umwaka, bihagije kugirango byitwe mu buryo buhoraho.

UKO URUKIKO RUBIBONA

[17] Ingingo ya 247 y'Itegeko Ngenga Nº01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, iteganya ko ubushoreke ari imibanire nk'umugabo n'umugore ku buryo buhoraho ku bantu batashyingiranywe, umwe muri bo cyangwa bombi bafite uwo bashyingiranywe.

[18] Urukiko rurasanga iyi ngingo itarateganyije ingano y'igihe umugabo n'umugore bashobora kumarana, kugirango byitwe ko babana mu buryo buhoraho.

[19] Urukiko rurasanga ibisobanuro rwatanga kuri ayo magambo "mu buryo buhoraho", ari uko atavuga ko abantu bagomba kubana bagatandukanywa n'urupfu, cyangwa se ngo babane akaramata nk'umugabo n'umugore bashyingiranywe mu buryo bwemewe n'amategeko, ahubwo icyangombwa, aruko igihe bamarana babana, kiba cyaratumye rubanda n'abaturanyi bababonamo imyitwarire y'umugabo n'umugore babana hatitawe ku burebure bw'icyo gihe bamarana, gusa uko kubana kwabo kugaherekezwa n'ibikorwa bifatika ku buryo buri wese ubibona, nta gushidikanya agira mu kwemeza ko abo bantu babana nk'umugabo n'umugore birimo kuhaba, kuharara, kwakira abashyitsi, kujyana guhaha, kujyana abana ku ishuri, n'ibindi.

A.2. Kumenya niba hari ibimenyetso bifatika byashingiweho mu guhamya Muzatsinda Emmanuel icyaha cy'ubushoreke.

[20] Muzatsinda Emmanuel avuga ko umucamanza yashingiye ku mvugo z'abatangabuhamya zivuguzanya, aho yavuze ko abatangabuhamya bamushinje ko abana na Nyirantakirutimana Espérance mu buryo buhoraho kandi kuri we atari byo, kuko atuye mu Bubiligi adatuye mu Rwanda, ko n'iyo aje mu Rwanda ataba kwa Nyirantakirutimana Espérance ahubwo aba iwe mu Rugunga.

[21] Abunganira Muzatsinda Emmanuel bavuga ko hari urwandiko rwo kuba ahantu (permis de résidence) igaragaza ko Muzatsinda Emmanuel aba mu Bubiligi ataba mu Rwanda, hakaba n'inyandiko y'ubuyobozi bw'Umudugudu wa Muhabura n'ubw'Akagari ivuga ko atahabarurirwa, ko imvugo z'abatangabuhamya zidasimbura ibyemezo by'ubuyobozi.

[22] Bavuga ko ku byerekeye inyandiko z'ihamagara za Muzatsinda Emmanuel zanyuraga kwa Nyirantakirutimana Espérance, ntazo Muzatsinda yigeze yakira ngo azisinyeho kuko yabaga mu Bubiligi, ko kandi Urukiko rutari gushingira ku mvugo z'abatangabuhamya, kandi hari inyandiko zivuga ko Muzatsinda Emmanuel atuye mu Bubirigi.

[23] Me Ayifayi Augustin avuga ko Muzatsinda Emmanuel adashobora kugaragaza impapuro za Hotel yararagamo igihe yazaga mu Rwanda, ahubwo ko yazaga akaba kwa Nyirantakirutimana Espérance kandi atari mushiki we. Avuga ko n'ubwo hari ibyemezo by'Umudugudu bivuga ko adatuye mu Rwanda, ibyo bitavuze ko kuba atahatuye atahagendaga.

[24] Uhagarariye Ubushinjacyaha avuga ko imvugo z'abatangabuhamya zitavuguruzanya nk'uko Muzatsinda Emmanuel ashaka kubyumvikanisha, kuko imvugo ya Byukusenge Claudine iri kuri cote ya 29, igaragaza ko Muzatsinda Emmanuel na Nyirantakirutimana Espérance ababona binjira banasohoka mu gipangu, bakamuha lift mu gitondo ajyanye abana ku ishuri nabo bagiye mu mugi, ko Nshimiyimana nawe kuri "*cote* ya 31" ashimangira ko

Muzatsinda Emmanuel aba muri ruriya rugo, ko Kamana ushinzwe irondo avuga ko yajyagayo ajyanye "convocations" zikakirwa n'umugore we Nyirantakirutimana Espérance, ibyo biri kuri ya "cote 33, hakaba n'undi mutangabuhamya Harerimana Jean kuri "cote 35" wavuze ko urugo rwa Nyirantakirutimana Espérance rwinjiwe n'umugabo ufite undi mugore.

[25] Avuga kandi ko ingingo ya 247 y'Itegeko Ngenga Nº01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ivuga ko ubushoreke ari imibanire y'umugabo n'umugore babana mu buryo buhoraho kandi buri wese afite undi bashakanye, ko ibyo bita ku buryo buhoraho, yabigereranya nk'umukozi wa Leta ukorera mu Ntara afite urugo i Kigali, ko ibyo bitavuze yuko atabana n'umugore we ku buryo buhoraho, asaba Urukiko kuzasuzuma iyo ngingo kuko itegeko ryatandukanyije ubushoreke n'ubusambanyi, ko nta kuntu wakwinjira ahantu ngo uhamare amezi atatu, ngo uvuge ko aho hantu utahaba mu buryo buhoraho.

UKO URUKIKO RUBIBONA

[26] Ingingo ya 2(4º) y'Itegeko Nº59/2008 ryo ku wa 10/9/2008 rikumira kandi rihana ihohoterwa iryo ariryo ryose rishingiye ku gitsina, ndetse n'ingingo ya 247 y'Itegeko Ngenga Nº01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, zombi ziteganya ko ubushoreke ari imibanire nk'umugabo n'umugore ku buryo buhoraho ku bantu batashyingiranywe, umwe muri bo cyangwa bombi bafite uwo bashyingiranywe.

[27] Inyandiko ziri muri dosiye zigaragaza imvugo z'abatangabuhamya batandukanye barimo ushinzwe Umudugudu wa Muhabura witwa Nshimiyimana Jean Damascène, wemeje ko kuva akibona Muzatsinda Emmanuel, atari azi ko afite undi mugore w'isezerano usibye Nyirantakirutimana Espérance, ko na "convocations" za Muzatsinda Emmanuel bazijyanaga kuri uwo mugore kuko babonaga ariho aba.

[28] Muri dosiye harimo kandi imvugo z'undi mutangabuhamya witwa Harerimana Jean wavuze ko Muzatsinda Emmanuel na Nyirantakirutimana Espérance babana nk'umugore n'umugabo ahubwo atari azi ko Muzatsinda Emmanuel afite undi mugore w'isezerano. Hakaba hari n'abandi batangabuhamya barimo Byukusenge Claudine wavuze ko mu gitondo iyo yabaga ajyanye umwana ku ishuri, Muzatsinda Emmanuel ari kumwe n'uwo mugore Nyirantakirutimana Espérance bamuhaga lift bavuye mu rugo bagiye ku kazi, n'undi witwa Kamana Sylvestre wari ushinzwe amarondo nawe wavuze ko Muzatsinda Emmanuel amuzi nk'umugabo wa Nyirantakirutimana Espérance kuko amubona buri gihe muri urwo rugo, ko kandi na "convocations" ariho yazijyanaga zikakirwa na Nyirantakirutimana Espérance.

[29] Urukiko rurasanga, n'ubwo Muzatsinda Emmanuel ahakana ko atabanaga na Nyirantakirutimana Espérance mu buryo buhoraho akavuga ko yabaga mu Bubiligi akaza ahitira mu nzu ye iri mu Rugunga, iyo mvugo ye itahabwa agaciro kuko Muzatsinda Emmanuel atigeze abasha kuvuguruza imvugo z'abatangabuhamya bavuzwe haruguru, bagiye bemeza ko yazaga mu Rwanda agahitira kwa Nyirantakirutimana Espérance akaba ariho yibera, ko babanaga nk'umugabo n'umugore abantu bakabifata batyo kugeza n'aho inyandiko z'ihamagara zigenewe Muzatsinda Emmanuel zajyanwaga kwa Nyirantakirutimana Espérance.

[30] Urukiko rurasanga imvugo z'abatangabuhamya babajijwe zitavuguruzanya nk'uko Muzatsinda Emmanuel ashaka kubyumvikanisha ahubwo ziruzuzanya, kuko bose bahuriza ku mvugo y'uko Muzatsinda Emmanuel iyo yazaga mu Rwanda avuye mu Bubiligi, yabaga kwa

Nyirantakirutimana Espérance kugeza igihe asubiriyeyo, ndetse ko batari bazi ko afite undi mugore w'isezerano, bityo imvugo zabo zikaba zigomba guhabwa agaciro hashingiwe ku ngingo ya 65 y'Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo1, kuko bavuga ibyo bazi kandi babonye.

[31] Ku byerekeye ibyo Muzatsinda Emmanuel avuga ko adatuye mu Rwanda aba mu Bubiligi, ko hari ibyemezo by'Ubuyobozi bw'Umudugudu bibyemeza, kandi ko bitashobokaga ko yaba kwa Nyirantakirutimana Espérance mu buryo buhoraho, ngo anabe mu Bubiligi mu buryo buhoraho kuko ariho atuye, Urukiko rurasanga iyo mvugo nta gaciro yahabwa kuko kuba adatuye mu Rwanda, bitavuze ko atahagenda.

[32] Urukiko rurasanga kandi kuba yarazaga mu Rwanda akahamara amezi arenga abiri aba kwa Nyirantakirutimana Espérance, byakwitwa ko yahabaga mu buryo buhoraho kuko ariho yatahaga, babana ku buryo buzwi n'umuhisi n'umugenzi, ariho ashakishirizwa, ariho afite "addresse", kandi ntibyabaye rimwe gusa, kuko buri gihe iyo yazaga ariho yahitiraga, nawe ubwe akaba yiyemerera ko atashoboraga kureka kuhajya kubera ko umugabo wa Nyirantakirutimana Espérance bari inshuti.

[33] Urukiko rurasanga rushingiye ku bimaze kuvugwa, nta karengane kabaye mu ica ry'urubanza kuri iyi ngingo.

B. Kumenya niba kuba Nyirantakirutimana Espérance atarakurikiranywe byafatwa nk'akarengane.

[34] Muzatsinda Emmanuel avuga ko yakurikiranywe wenyine kandi ingingo ya 249 y'Itegeko Ngenga Nº01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana iteganya ko uwarezwe agomba gukurikiranwa hamwe n'uwakoranye icyaha nawe, bityo kuba uwo bakoranye icyaha atarakurikiranywe, hakaba harimo akarengane.

[35] Abamwunganira bavuga ko amategeko y'ikurikirana ry'icyaha cy'ubushoreke yirengagijwe kuko uwakoranye icyaha na Muzatsinda Emmanuel atakurikiranywe ariwe Nyirantakirutimana Espérance, bakaba basanga ari akarengane

[36] Me Ayifayi Augustin avuga ko ikirego bagitanze kuri bombi muri police, kuba nyuma harakurikiranywe umwe, ntibyabazwa uregera indishyi, kuko ibyo yagombaga gukora yabikoze.

[37] Uhagarariye Ubushinjacyaha avuga ko kuba Muzatsinda yarakurikiranywe wenyine Nyirantakirutimana Espérance ntakurikiranwe, nta karengane babibonamo, ko kandi kuba atarakurikiranywe, bitagira Muzatsinda Emmanuel umwere.

UKO URUKIKO RUBIBONA

[38] Ingingo ya 21, igika cya 2, y'Itegeko Nº59/2008 ryo ku wa 10/9/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina iteganya ko ahanishwa ibihano bivugwa mu gika cya mbere cy'iyi ngingo umuntu wese wemeye kuba inshoreke.

[1] Urukiko ni rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa. Ntirwitsitsa ku mubare w'abatangabuhamya. Rwita cyane cyane ku bumenyi bwabo bw'ibyabaye no ku buryo babivuga uko byagenze ntacyo bihimbira.

[39] Ingingo ya 249 y'Itegeko Ngenga N°01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, iteganya ko ku cyaha cy'ubusambanyi n'icy'ubushoreke, hakurikiranwa uwarezwe n'uwakoranye icyaha na we.

[40] Urukiko rurasanga inyandiko ziri muri dosiye zigaragaza ko Nyirantakirutimana Espérance na Muzatsinda Emmanuel bari barakurikiranywe n'Ubugenzacyaha bombi baregwa icyaha kimwe cy'ubushoreke, bakaza no gukorerwa inyandiko mvugo y'ifunga nkuko bigaragara muri dosiye y'Ubugenzacyaha, bakaba baranakurikiranywe no mu Bushinjacyaha ku rwego rwo mu Rukiko rw'Ibanze rwa Nyarugunga ubwo babazwaga nk'uko bigaragara kuri cote 66- 69, n'ubwo Nyirantakirutimana Espérance yaje kurekurwa by'agateganyo, ariko nawe yari yatangiye gukurikiranwa.

[41] Urukiko rurasanga ingingo ya 249 y'Itegeko Ngenga N°01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru Muzatsinda Emmanuel ashingiraho ibisobanuro bye by'uko abakoranye icyaha cy'ubushoreke bombi bagomba gukurikiranwa, itakurikizwa muri uru rubanza, kuko iryo Tegeko atari ryo ryakoreshwaga icyo gihe icyaha cyakorwaga, hakoreshwaga Itegeko Nº59/2008 ryo ku wa 10/9/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, kandi muri iryo Tegeko, ntahategetswe ko ku cyaha cy'ubushoreke uwakoze icyaha n'uwo bagikoranye bombi bagomba gukurikiranwa.

[42] Urukiko rurasanga icyo iyo ngingo ivuga gusa, ari uko inshoreke igihe nayo ikurikiranywe, igomba guhanishwa ibihano bimwe n'ibyo uwo bakoranye icyaha yahanishijwe.

[43] Urukiko rurasanga kandi niyo bombi baba bagomba gukurikiranwa, bitavuga ko iyo umwe adakurikiranywe, uwakurikiranywe agomba kuba umwere.

[44] Byongeye kandi, hashingiwe ku Itegeko Nº59/2008 ryo ku wa 10/9/2008 ryavuzwe haruguru, Ubushinjacyaha bwari bufite uburenganzira bwo gukurikirana uwo bushatse bukamuregera Urukiko nk'uko byateganywaga n'ingingo ya 43 y'Itegeko Nº13/2004 ryo ku wa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakoreshwaga igihe icyaha cyakorwaga, aho iyo ngingo yahaga uburenganzira busesuye Ubushinjacyaha kuri dosiye bwabaga bwashyikirijwe n'Ubugenzacyaha, burimo no kudakomeza gukurikirana uregwa mu gihe busanze atari ngombwa.

[45] Urukiko rurasanga rushingiye ku bimaze kuvugwa, kuri iyi ngingo nayo nta karengane kabayemo.

C. Kumenya niba Muzatsinda Emmanuel ataragombaga gutegekwa guha Umutesi Afisa indishyi kandi barashakanye ku ivangamutungo risesuye

[46] Ku bijyanye n'uko Muzatsinda Emmanuel avuga ko atagombaga gutegekwa guha Umutesi Afisa indishyi kandi barashakanye ku ivangamutungo risesuye, Urukiko rurasanga iyo ngingo nta shingiro ifite, kuko Umutesi Afisa yaregeye izo ndishyi ashingiye ku ngingo ya 131 y'Itegeko Nº13/2004 ryo ku wa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakoreshwaga igihe yatangaga ikirego cy'indishyi, kubera akababaro yatewe n'icyaha umugabo we Muzatsinda Emmanuel yamukoreye Urukiko rukakimuhamya, ikibazo kiramutse kinabaye cyaba mu irangiza ry'urubanza ariko ibyo ntibibuza kuba uwakorewe icyaha yabiherwa indishyi.

[47] Urukiko rurasanga kuba Umutesi Afisa na Muzatsinda Emmanuel baravanze umutungo, ibyo bidakuraho icyaha Muzatsinda Emmanuel yamukoreye ngo bityo

binamukureho n'indishyi, ikindi kandi, nta ngingo n'imwe yagaragaje ivuga ko uwakoreye icyaha umwe mu bashyingiranywe adaha uwagikorewe indishyi z'akababaro zijyanye n'icyaha yamureze kikamuhama.

[48] Urukiko rurasanga no kuri iyi ngingo nta karengane kabayemo.

III. ICYEMEZO CY'URUKIKO

[49] Rwemeje ko ikirego cya Muzatsinda Emmanuel cyo gusubirishamo ku mpamvu z'akarengane urubanza RPA0250/12/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge, nta shingiro gifite.