

UBUSHINJACYAHA v. NDABARINZE

[Rwanda URUKIKO RW' IKIRENGA – RPAA0202/10/CS (Mutashya, P.J., Nyirinkwaya na Hitiyaremye, J.) 31 Nyakanga 2014]

Amategeko mpanabyaha – Gusambanya umwana utarageza ku myaka 14 – Kwemera icyaha, imwe mu mpamvu nyoroshiyacyaha – Itegeko n°13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y’imanza z’inshinjabyaha, ingingo ya 35.

Amategeko mpanabyaha – Isubikagihano – Ntirishoboka mugihe igihano cy’ iremezo kiri hejuru y’ igifungo cy’ imyaka itanu – Itegeko n° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y’imanza z’inshinjabyaha, ingingo ya 252.

Incamake y’ ikibazo: Uwajuriye yahamijwe n’ Urukiko Rwisumbuye rwa Muhanga, icyaha cyo gusambanya umwana wari ufite imyaka cumi n’itandatu y’amavuko, rumuhanisha igifungo cy’imyaka icumi, rumugabanyirije kubera ko yemeraga icyaha akanagisabira imbabazi. Yajuririyeye Urukiko Rukuru, urugereko rwa Nyanza, avuga ko yahanishijwe igihano kiremereye kandi yaraburanye yemera icyaha, narwo ruca urubanza n° RPA 008/09/HC/NYA kuwa 08/04/2010, rwemeza ko ubujurire bwe nta shingiro bufite kuko yagabanyirijwe ibihano ku buryo buhagije. Yajuriye kandi mu Rukiko rw’ Ikirenga avuga ko atagabanyirijwe igihano kandi acyemera akanagisabira imbabazi.

Mu gihe cy’ iburanisha, yakomeje avuga ko amategeko atubahirijwe kuko atagabanyirijwe igihano kandi yaraburanye yemera icyaha akagisabira imbabazi, umwunganira nawe asaba ko inyungu z’umwana zakwitabwaho, maze uregwa akakagabanyirizwa ibihano, byashoboka bigasubikwa, kugira ngo ajye kurera umwana yabyaranye n’ uwo yakoreye icyaha. Uhagarariye Ubushinjacyaha yavuze ko asanga izo mpamvu z’ubujurire nta shingiro zifite kuko uregwa yahanishijwe igifungo cy’imyaka icumi kandi icyaha yakoze gihanishwa ubu igifungo cya burundu, kandi ngo kuba kandi yarateye inda uwo yasambanyije akaba atari impamvu yatuma agabanyirizwa igihano.

Incamake y’ icyemezo: 1. Ibyo uwajuriye asaba byo kugabanyirizwa igihano hashingiwe ku kuba yemera icyaha akagisabira imbabazi, yamaze kubihabwa kuko aho guhanishwa igifungo kuwa ku myaka 20 kugeza ku myaka 25 yahanishijwe igifungo cy’imyaka 10 gusa, iki gihano kikaba cyubahirije amategeko.

2. Ibyo asaba byo kongera kugabanyirizwa igihano mu nyungu z’umwana yabyaranye n’uwo yasambanyije nta gaciro byahabwa kuko atari impamvu yatuma uwakoze icyaha areka kugihanirwa.

3. Isubikagihano asaba ntiyarihabwa kuko ritangwa ari uko igihano cy’iremezo cy’igifungo umuntu yakatiwe kitarenze imyaka 5, nyamara we yakatiwe igifungo cy’imyaka 10.

Ubuujurire nta shingiro bufite.

Amategeko yakoreshejwe:

Itegeko n° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y’imanza z’inshinjabyaha, ingingo ya 252.

Itegeko n°13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y’imanza z’inshinjabyaha, ingingo ya 35.

Nta rubanza rwifashishijwe.

Urubanza

I. IMITERERE Y’URUBANZA:

[1] Urukiko Rwisumbuye rwa Muhanga mu rubanza N°RP 0113/06/03/TGI/MHG rwo kuwa 28/11/2008 rwahamije Ndabarinze Védaste icyaha cyo gusambanya Nikuze Charlotte wari ufite imyaka cumi n'itandatu(16 ans) y'amavuko, rumuhanisha igifungo cy'imyaka icumi(10 ans), rumugabanyirije kubera ko yemeraga icyaha akanagisabira imbabazi.

[2] Ndabarinze Védaste ntiyishimiye igihano yahawe maze ajuririra Urukiko Rukuru, urugereko rwa Nyanza, avuga ko yahanishijwe igihano kiremereye kandi yaraburanye yemera icyaha, urukiko ruca urubanza n° RPA 008/09/HC/NYA kuwa 08/04/2010, rwemeza ko ubujurire bwe nta shingiro bufite kuko yagabanyirijwe ibihano ku buryo buhagije.

[3] Ndabarinze yarongeye ajuririra Urukiko rw'Ikirenga avuga ko atagabanyirijwe igihano kandi yaremeye icyaha akanagisabira imbabazi.

[4] Urubanza rwaburanishijwe mu ruhame kuwa 07/07/2014, Ndabarinze yunganiwe na Me Bizimana Jean de Dieu, Ubushinjacyaha buhagarariwe na PN Higaniro Hermogène.

II. ISESENGURA RY'IKIBAZO KIGIZE URU RUBANZA:

Kumenya niba Ndabarinze yagabanyirizwa igihano kuko yemera icyaha.

[5] Ndabarinze avuga ko amategeko atubahirijwe kuko atagabanyirijwe igihano kandi yaraburanye yemera icyaha akagisabira imbabazi.

[6] Me Bizimana Jean de Dieu umwunganira nawe asaba ko inyungu z'umwana zakwitabwaho, maze Ndabarinze akakagabanyirizwa ibihano, byashoboka bigasubikwa, kugira ngo ajye kurera umwana yabyaranye na Nikuze Charlotte.

[7] Uhagarariye Ubushinjacyaha avuga ko asanga izo mpamvu z'ubujurire nta shingiro zifite kuko Ndabarinze yahanishijwe igifungo cy'imyaka 10 kandi icyaha yakoze gihanishwa ubu igifungo cya burundu, kuba kandi yarateye inda uwo yasambanyije akaba atari impamvu yatuma agabanyirizwa igihano.

UKO URUKIKO RUBIBONA:

[8] Icyaha cyo gusambanya umwana ufite hagati y'imyaka 14 na 18 y'amavuko Ndabarinze yahamijwe cyahanishwaga igifungo kuva ku myaka 20 kugeza ku myaka 25 hashingiwe ku ngingo ya 34,1° y'itegeko no 27/2001 ryo kuwa 28/04/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa ryakurikizwaga igihe icyaha cyakorwaga.

[9] Ku bijyanye n'impamvu nyoroshiyacyaha, ingingo ya 35 igika cya mbere y' Itegeko n°13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryariho igihe inkiko zabanje zagenaga igihano ivuga ko iyo ukurikiranyweho icyaha acyiyemereye mu buryo budashidikanywaho umucamanza ashobora kugabanya ibihano byari biteganyijwe kugeza kuri ½ cyabyo, naho ingingo ya 83 y'itegeko teka n° 21/77 ryo kuwa 18/08/1977 rishyiraho igitabo cy'amategeko ahana cyakurikizwaga igihe icyaha cyakorwaga, ikavuga ko iyo hariho impamvu zoroshya icyaha, ibihano bihindurwa cyangwa bikagabanywa ku buryo igihano cyo gufungwa cy'igihe cy'imyaka 5 kugeza kuri 20 cyangwa kirengeje, gishobora kugabanywa kugeza ku mwaka 1.

[10] Urukiko rusanga ibyo Ndabarinze asaba byo kugabanyirizwa igihano hashingiwe ku kuba yemera icyaha akagisabira imbabazi, yaramaze kubibabwira kuko aho guhanishwa igifungo kuva ku myaka 20 kugeza ku myaka 25 yahanishijwe igifungo cy'imyaka 10 gusa, iki gihano kikaba cyubahirije amategeko yavuzwe haruguru.

[11] Urukiko rusanga kandi ibyo asaba byo kongera kugabanyirizwa igihano mu nyungu z'umwana yabyaranye n'uwo yasambanyije nta gaciro byahabwa kuko atari impamvu yatuma uwakoze icyaha areka kugihanirwa.

[12] Ku bijyanye n'isubika gihano Ndabarinze asaba, Urukiko rushingiye ku bivugwa mu ngingo ya 252 y'itegeko n° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, rusanga atarihabwa kuko iyo ngingo ivuga ko ritangwa ari uko igihano cy'iremezo cy'igifungo umuntu yakatiwe kitarenze imyaka 5, nyamara we akaba yarakatiwe igifungo cy'imyaka 10.

III. ICYEMEZO CY'URUKIKO:

[13] Rwemeje ko ubujurire bwa Ndabarinze Védaste nta shingiro bufite.

[14] Ruvuze ko nta gihindutse ku rubanza n° RPA 008/09/HC/NYA rwajuririwe, Ndabarinze Védaste akaba ahanishijwe igifungo cy'imyaka icumi (10).

[15] Rutegetse ko amagarama y'urubanza aherera ku isanduku ya Leta kuko uwajurire afunze.