

AKISANTI v. TUYISHIMIRE

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00021/2018/SC (Rugege, P.J.,
Cyanzayire na Rukundakuvuga, J) 22 Ugushyingo 2019]

Amategeko agenga ibimenyetso – Ikimenyetso gishingiye ku bumenyi (scientific evidence) – Mu nyungu z'ubutabera, Urukiko rwagombye kwifashisha ibimenyetso bishingiye ku bumenyi (science) igihe bishoboka kugira ngo rushobore kugaragaza ukuri.

Amategeko agenga umuryango – Ikirego cy'umwana kigamije gushaka umubyeyi – Ikizamini cya ADN – Ibisubizo bitanzwe n'ikizamini cya ADN bifite agaciro kanini kandi birizewe kuko ari ikimenyetso gishingiye ku bumenyi budashidikanywaho.

Incamake y'ikibazo: Tuyishimire yatanze ikirego mu Rukiko rw'Ibanze rwa Nyamirambo asaba ko yakwemezwa nk'umwana wa Gusenga Innocent witabye Imana muri Jenocide yakorewe Abatutsi mu 1994, bityo akaba yagira uruhare ku mutungo yasize. Urukiko rwemeje ko yabyawe na Gusenga hashingiwe ku bimemeyetso rwagaragarijwe, harimo ifishi ya batisimu, icyemezo cya FARG n'ibindi.

Nyuma y'urwo rubanza uwitwa Akisante Ayubu uvuga ko ari umuvandimwe wa Ugusenga yatambamiye urubanza avuga ko atemera ibyemejwe n'Urukiko ko Tuyishimire yabyawe na Gusenga kandi ko atemera ibyashingiweho. Nyuma yo gusuzuma impamvu ashingiraho atambamira urubanza, Urukiko rwasanze zidafite ishingiro, bityo rutegeka ko imikirize y'urubanza yabanje igumanye agaciro kayo. Akisanti ntiyanyuzwe n'imikirize y'urubanza ajuririra Urukiko rwisumbuye rwa Nyamirambo, narwo rwanzura ko ikirego cye kidafite ishingiro, rugumizaho imikirize y'urubanza rwajuririwe.

Akisante yakomeje kutemeranya n'imyanzuro yagiye ifatwa n'inkiko zitandukanye, yisunga Urwego rw'Umuvunyi asaba ko urubanza rwasubirishwamo ku mpamvu z'akarengane. Urwego rw'Umuvunyi narwo, nyuma yo gusuzuma ikibazo, rwandikiye Perezida w'Urukiko rw'Ikirenga rusaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, kuko Urukiko rwanze gukoresha ikizamini cya ADN dore kuri Nyirabarera na Akisanti ubwe bombi bahuje ababyeyi na nyakwigendera. Nyuma yo kubisuzuma, Perezida w'Urukiko rw'Ikirenga yemeje ko urwo rubanza rusubirishwamo ku mpamvu z'akarengane.

Mu gihe cy'iburanisha ry'urubanza rw'akarengane, hashingiwe ku mpaka zabaye hagati y'ababuranyi bose, Urukiko rw'Ikirenga rwaciye urubanza rubanziriza urundi, rwemeza ko mbere y'uko urubanza rucibwa mu mizi habanza gupimwa ibizamini bya AND, hagereranywa: Tuyishimire n'umubiri wa Gusenga (ushyinguye m'Urwibutso rwa Jenocide yakorewe abatutsi mu mwaka wa 1994 ruherereye I Gisozi); abavugwa ko ari abavandimwe ba nyakwigendera bari mu Rwanda, aribo Akisanti, Nyirabarera n'umubiri wa Gusenga; Abavandimwe ba Gusenga Innocent bamaze kuvugwa na Tuyishimire Yves.

Nyuma yo gusuzuma umubiri wa nyakwigendera n'abavugwa ko bafitanye isano nawe, raporo yashyikirijwe urukiko rw'Ikirenga yagaragaje ko:

Hagati ya Gusenga na Tuyishimire, isano hagati y'umwana na se iri ku kigero cya 99.9999999999483 %, bikaba bigaragaza nta gushidikanya ko Gusenga Innocent ari se wa Tuyishimire;

Hagati ya Gusenga Innocent na Akisanti Ayubu, kuba umwe yaba ari umuvandimwe (brother) w'undi biri ku kigero cya 2.3125452031 %, naho kuba nta sano iri hagati yabo bikaba ku kigero cya 97.6874547968%;

Hagati ya Gusenga Innocent na Nyirabarera Jacqueline, kuba uyu yaba ari mushiki wa Gusenga Innocent, bivuga ko basangiye ababyeyi, biri ku kigero cya 99.9999999927 %, naho kuba nta sano bafitanye bikaba ku kigero cya 0.0000000072 %;

Hagati ya Akisanti na Tuyishimire, kuba uyu yaba ari umwana wabo (fraternal nephew) wa Akisanti Ayubu, bivuga ko se wa Tuyishimire Yves yaba ari umuvandimwe wa Akisanti Ayubu, biri ku kigero cya 2.3125452031 %, naho kuba nta sano bafitanye, biri ku kigero cya 97.6874547968 %;

Hagati ya Nyirabarera na Tuyishimire, kuba uyu yaba ari umwisengeneza (fraternal nephew) wa Nyirabarera Jacqueline, bivuga ko se wa Tuyishimire ari musaza wa Nyirabarera Jacqueline, biri ku kigero cya 99.9999999927 %, naho kuba nta sano bafitanye biri ku kigero cya 0.0000000072 %.

Mbere yo gusubukura iburanisha ngo ababuranye bajye impaka kuri iyo raporo, Akisanti yasabye ko urubanza rwaburanishwa mu muhezo ku mpamvu z'uko asanga hashobora kuvugirwamo ibintu birebana n'ubuzima bwite bwe, uwo baburana asanga kuva batangira kuburana ntabwo yigeze asaba ko rwaburanishwa mu muhezo akaba abona icyo cyifuzo nta shingiro cyahabwa, nyuma yo kwihereza, rwemeza ko icyifuzo cye nta shingiro gifite.

Urubanza rwakomeje mu ruhamwe, Akisanti agaragaza kutemeranywa nayo avuga ko byatanzwe n'urwego ariko hatariho umukono w'umuyobozi warwo, ko byanditse mu mvugo adashobora gusobanukirwa igenda yivuguruza, bigatuma hakemangwa ibiyivugwamo, ko abayikoze banditse ibyo babwiwe na Tuyishimire, n'ibindi.

Tuyishimire we avuga ko kuba Akisanti avuga ko batemera ibyavuye mu isuzuma ryakozwe, ari ukurushya ubutabera no gushaka gutinza imanza kuko aribo ubwabo babyisabiye.

Tuyishimire yasabye ko yahabwa indishyi zitandukanye, mukwiregura kuri izo ndishyi Urega avuga ko ibitaravuzwe mbere bidakwiye gusuzumwa, kuko byaba ari bishya nawe yasabye indishyi zitandukanye.

Incamake y'icyemezo: 1. Mu nyungu z'ubutabera, Urukiko rwagombye kwifashisha ibimenyetso bishingiye ku bumenyi (science) igihe bishoboka kugira ngo rushobore kugaragaza ukuri.

2. Igisubizo cy'ikizamini cya "ADN" kigomba guhabwa agaciro nk'ikimenyetso cya kamarampaka ku bijyanye no kumenya umubyeyi w'umwana kuko ari ikimenyetso gishingiye ku bumenyi (scientific evidence) budashidikanywaho.

**Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane, nta shingiro gifite;
Tuyishimire yabyawe na Gusenga Innocent.**

Amategeko yishingiweho :

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza

z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, ingingo ya 6, 75

Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango, ingingo ya 282

Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo, ingingo ya 76

Itegeko N° 41/2016 ryo ku wa 15/10/2016 rishyiraho laboratwari y’u Rwanda y’ibimenyetso bishingiye ku bumenyi n’ubuhanga bikoreshwa mu butabera (RFL), rikanagena inshingano, imiterere n’imikorere byayo, ingingo ya 26, agace ka 6 n’aka 7

Imanza zifashishijwe:

Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik, (2014) 2 SCC 576

Inyandiko zabahanga zifashishijwe

Dr. HIMANSHU Pandey & Ms. ANHITA Tiwari, Evidential value of DNA, Bharati Law Review (on line), Jan. – March, 2017, p. 1[seen the 18th Nov. 2019], published in articles section of www.manupatra.com

Urubanza

I. IMITERERE Y’URUBANZA

[1] Gusenga Innocent yishwe muri Jenocide yakorewe Abatutsi mu 1994. Mu mwaka wa 2014, Tuyishimire Yves yatanze ikirego mu Rukiko rw’Ibanze rwa Nyamirambo arusaba kwemeza ko ari mwene Gusenga Innocent no kugira uruhare ku mutungo we. Ikirego cyanditswe kuri N° RC 0669/14/TB/NYB, urubanza rucibwa ku wa 08/10/2014. Urwo Rukiko rwemeje ko Tuyishimire Yves ari mwene Gusenga Innocent, kandi ko agomba kumwandikwaho. Rwashingiye ku mvugo z’abatangabuhamya, kw’ ifishi ya batisimu, no ku cyemezo cya FARG, byerekana ko se wa Tuyishimire Yves ari Gusenga Innocent.

[2] Nyuma y’uko Tuyishimire Yves yemejwe nka mwene Gusenga Innocent, Akisanti Ayubu yatambamiye urubanza avuga ko amakuru yashingiweho atariyo. Yatanze ikirego ku wa 17/03/2016, Urubanza rwandikwa kuri N° RC 0162/16/TB/NYB, rucibwa ku wa 29/11/2016. Urukiko rwemeje ko ikirego cyatanzwe na Akisanti Ayubu nta shingiro gifite, ko urubanza rutambamirwa rugumanye agaciro karwo. Urukiko rwashingiye ku kuba abatangabuhamya Akisanti Ayubu yatanze aribo Misago Pascal na Gakire Steven badafite amakuru ajyanye n’ikiburanwa, kuko bavuze ko bazi Gusenga Innocent mu rwego rw’akazi bakaba batarinjiraga mu buzima bwe busanzwe ngo babe bamenya ibye byose.

[3] Akisanti Ayubu yajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Nyarugenge, rwandikwa kuri N° RCA 00010/2017/TGI/Nyge, rucibwa ku wa 06/07/2017. Urukiko rwemeje ko ubujurire bwe budafite ishingiro, rwemeza ko hubahirizwa imikirize y’ urubanza N° RC 00162/16/TB/NYB rwaciwe n’Urukiko rw’Ibanze rwa Nyamirambo ku wa 29/11/2016.

[4] Nyuma y’izo manza zose, Akisanti Ayubu yandikiye Urwego rw’Umuvunyi asaba ko urubanza N° RCA 00010/2017/TGI/NYGE rwasubirwamo kubera ko rurimo akarengane. Urwego rw’Umuvunyi, nyuma yo gusuzuma ikibazo cya Akisanti Ayubu, rwandikiye Perezida w’Urukiko rw’Ikirenga rusaba ko urubanza N° RCA 00010/2017/TGI/NYGE rusubirwamo ku mpamvu z’akarengane. Urwego rw’Umuvunyi rwasobanuye ko Urukiko Rwisumbuye rwanze gukora

ikizamini cya ADN kuri Nyirabarera Jacqueline na Akisanti Ayubu ubwe, bombi bahuje ababyeyi na Gusenga Innocent, hitwajwe ko nta kizamini kigeze gikorwa hagati yabo na Gusenga Innocent ngo harebwe niba hari isano y'amaraso bafitanye. Urwego rw'Umuvunyi rwagaragaje ko ibyemejwe n'Urukiko Rwisumbuye ataribyoye kuko binyuranyije n'ibyemejwe n'Urukiko rw'Ikirenga mu rubanza N^o RS/REV/INJUST/CIV 0005/15/CS rwaciwe ku wa 19/06/2015.

[5] Urwego rw'umuvunyi rwagaragaje ko imiburanire ya Tuyishimire Yves isa n'ya Umugire Alphonse mu rubanza N^o RS/REV/INJUST/RC 0005/15/CS, kuko bose bavugaga ko bidashoboka ko ikizamini cya ADN cyakorwa hagati y'abavandimwe b'umuntu wapfuye n'umwana uvuga ko yabyawe n'uwo wapfuye, ko rero kunyuranya n'ibyemejwe muri urwo rubanza ari ukwica amategeko kubera ko ibyemezo by'Urukiko rw'Ikirenga bigomba kubahirizwa n'izindi nkiko zose zo mu gihugu nk'uko ingingo ya 47 igika cya 6 y'Itegeko- ngenga N^o 03/2012 OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga ryakoreshwaga igihe urubanza rwacibwaga ryabiteganyaga¹¹.

[6] Perezida w'Urukiko rw'Ikirenga, ashingiye ku isesengura ryakozwe n'Urwego rw'Umuvunyi no kuri raporo yakozwe n'Ubugenzuzi Bukuru bw'Inkiko, yemeje ko urubanza rwandikwa mu bitabo byabugenewe kugira ngo ruzongere ruburanishwe, ruhabwa N^o RS/INJUT/RC 00021/2018/SC, iburanisha ryarwo rishyirwa ku wa 14/05/2019.

[7] Ku wa 14/05/2019, iburanisha ryabereye mu ruhamwe Akisanti Ayubu yitabye yunganiwe na Me Mhayimana Isaie afatanyije na Me Abijuru Emmanuel, Tuyishimire Yves nawe yitabye yunganiwe na Me Murindabigwi Mariam afatanyije na Me Muhiganwa Damas. Ababuranyi bagiye impaka ku bimenyetso byashingiweho n'inkiko zibanza, bagaruka no ku kibazo cyo kumenya niba ari ngombwa ko hakoreshwa ikizamini cya ADN kugira ngo hamenyekane niba koko Tuyishimire Yves yarabyawe na Gusenga Innocent.

[8] Nyuma yo kumva ibisobanuro bya buri ruhande, Urukiko rw'Ikirenga rwafashe icyemezo cy'uko mbere y'uko urubanza rucibwa mu mizi ari ngombwa ko habanza gupimwa ibizamini bya ADN hagereranywa:

- Tuyishimire Yves n'umubiri wa Gusenga Innocent;
- Abavugwa ko ari abavandimwe ba Gusenga Innocent bari mu Rwanda aribo Akisanti Ayubu, Nyirabarera Jacqueline n'umubiri wa Gusenga Innocent;
- Abavandimwe ba Gusenga Innocent bamaze kuvugwa na Tuyishimire Yves.

[9] Ku wa 03/06/2019, Umwanditsi Mukuru w'Urukiko yandikiye "Rwanda Forensic Laboratory" ayisaba gukora ikizamini cya ADN mu rwego rwo gushyira mu bikorwa icyemezo cyafashwe n'Urukiko. Igikorwa cyo gufata ADN cyakozwe ku wa 15/10/2019, gikorwa ku Rwibutso rwa Jenocide yakorewe Abatutsi ku Gisozi. Ibisubizo byashyikirijwe Urukiko rw'Ikirenga ku wa 06/11/2019, impande zombi zirabimenyeshwa, urubanza rwongera gusubukurwa ku wa 07/11/2019, ababuranyi bose bahari.

[10] Mbere y'uko iburanisha ritangira, Me Abijuru Emmanuel uburanira Akisanti Ayubu, ashingiye ku ngingo ya 70, igika cya 2 y'Itegeko N^o 22/2018 ryo ku wa 29/04/2018 ryerekeye

¹ Imanza n'ibyemezo by'Urukiko rw'Ikirenga bigomba kubahirizwa n'izindi nkiko zose zo mu gihugu

imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegets², yasabye ko urubanza rwaburanishirizwa mu muhezo ku mpamvu z’uko asanga hashobora kuvugirwamo ibintu birebana n’ubuzima bwite bwa Akisanti Ayubu, bikaba byabangamira imico mbonezabupfura.

[11] Tuyishimire Yves n’abamwunganira bavuze ko kuva urubanza rwatangira rwabereye mu ruhame ntibyagira uwo bibangamira, kandi kugirango umuhezo wemerwe ababuranyi bose bagomba kuba babyemeranywaho, bo bakaba babona icyo cyifuzo nta shingiro cyahabwa.

[12] Nyuma yo kwiherera ngo rusuzume icyifuzo cyatanze na Me Abijuru Emmanuel, Urukiko rwasanze kuva urubanza rwatangira mu Rukiko rw’Ibanze no mu Rukiko Rwisumbuye rwaraburanishirijwe mu ruhame, Akisanti Ayubu akaba atagaragaza ko hari icyo byamutwaye, kandi urubanza rwabereye mu ruhame nta mpagarara byateza, bikaba bitabangamira umuco w’imbenezabupfura, rwemeza ko icyifuzo cye nta shingiro gifite. Urubanza rwarakomeje ruburanishirizwa mu ruhame, ababuranyi bagira icyo bavuga kuri raporo yatanze na “Rwanda Forensic Laboratory”. Umwe mu bahanga bakoze ikizamini cya ADN nawe yari yitabye Urukiko kugirango atange ibisobanuro kuri raporo yakozwe.

[13] Iburanisha ry’urubanza ryarapfundikiwe, ababuranyi bamenyeshwa ko ruzasomwa ku wa 22/11/2019. Ikibazo cy’ingenzi cyagiweho impaka mu rubanza, kikaba ari nacyo cyasuzumwe, ni ukumenya niba hari ibimenyetso bidashidikanywaho byemeza ko Tuyishimire Yves yabyawe na Gusenga Innocent.

II. IBIBAZO BIGIZE URUBANZA N’ISESENGURA RYABYO

A. Kumenya niba hari ibimenyetso bihamya ko Tuyishimire Yves yabyawe na Gusenga Innocent

[14] Me Mhayimana Isaie na Me Abijuru Emmanuel bunganira Akisanti Ayubu bavuga ko akarengane k’uwo bunganira gashingiye ku mpamvu zikurikira:

- ingingo ya 282 y’Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n’umuryango niyo itanga umurongo mu bijyanye no kwemeza ko umwana ari mwene runaka, igashyigikirwa n’ibindi bimenyetso.
- Ibiteganywa n’iyo ngingo nta na kimwe cyubahirijwe mu kwemeza ko Tuyishimire Yves ari mwene Gusenga Innocent, harimo ikizamini cya ADN;
- uwo bunganira yasabye ko hakorwa ikizamini cya ADN kigaragaza ku buryo budashidikanywaho isano y’umwana n’umubyeyi, kandi ibi bikaba bishoboka mu gihe hari abavandimwe ba Gusenga Innocent bakiriho, Urukiko rurabyanga. Nyamara nk’uko byemejwe n’Urukiko rw’Ikirenga mu rubanza RS/REV/INJUST/CIV 0005/15/CS rwaciwe ku wa 19/6/2015, bene icyo kizamini gishoboka kandi kigakemura impaka ku buryo budasubirwaho;

² Icyakora, iyo urukiko rubyibwirije cyangwa rubisabwe n’ababuranyi bombi cyangwa umwe muri bo, rusanga kuburanisha mu ruhame byatera impagarara cyangwa byabangamira umuco w’imbenezabupfura n’uburenganzira bw’abantu mu mibereho yabo, rufata icyemezo ko iburanisha ribera mu muhezo kandi rugasobanura n’impamvu yabyo”.

- Urukiko Rwisumbuye ntirwasuzumye inenge mu mvugo z’abatangabuhamya babajijwe mu Rukiko rw’Ibanze, kuko batashoboye kwemeza ko bazi neza ko Tuyishimire Yves yabyawe na Gusenga Innocent:
- Uwitwa Migambi Déogratias yivugiye ko nta gihamya afite ko ababyeyi ba Tuyishimire Yves ari Gusenga Innocent na Nzitonda Médiatrice; ibi bikaba bitandukanye n’ibigaragara muri kopi y’urubanza ku rupapuro rwa mbere, aho Urukiko rwemeza ko yavuze ko Tuyishimire yabyawe na Gusenga Innocent;
- Umutangabuhamya witwa Nyiribambe Joselyne wavuze ko yiganye na Nzitonda Médiatrice (nyina wa Tuyishimire Yves), imvugo ze ntizari gushingirwaho kuko avuga ko uwahaga Nzitonda Médiatrice amafaranga yo kwita ku mwana ari mushiki wa Gusenga Innocent wabaga muri gare, nyamara nyirubwite yari akiriho;
- Niba Tuyishimire Yves yaravutse mu 1992 cyangwa 1993 kuko ahindura kenshi itariki n’umwaka yavukiyeho, imvugo ya Nyiribambe Joselyne irakemangwa mu gihe avuga ko Nzitonda Médiatrice atigeze ahagarika amasomo, nyamara bikaba bidashoboka kubera ikibazo cyo gutwita no kubyara, ndetse no gufata igihe cyo konsa umwana; kandi muri icyo gihe iyo bamenyaga ko umukobwa yatwaye inda atagira umugabo, yahitaga ava mu ishuri;
 - ifishi ya batisimu yashingiweho nk’ikimenyetso igaragaraho inenge zikomeye zikurikira:
- kuba arahindaguwe (falsification) ku mwana w’amazina ya nyina w’umwana, ahari handitse Béatrice bagahinduramo Médiatrice;
- kuba amazina y’ababyeyi yanditswemo (Gusenga na Nzitonda) atariyo agaragara muri “Registre” y’abana babatirijwe muri “Eglise Episcopale au Rwanda” guhera taliki ya 11/03/1992 kugeza ku wa 10/04/1993;
- iyo ifishi ya batisimu itaza kuba ari impimbano, amazina y’ababyeyi b’umwana Tuyishimire wabatijwe ku wa 24/12/1992, yari kuba ari Rwabutogo Emmanuel na Nzitonda Béatrice nk’uko bimeze ku bandi bana babatijwe kuri iyo taliki ya 24/12/1992;
- uwitwa Rwabutogo Emmanuel, ugaragara ku ifishi nk’umwishingizi w’umwana, ahubwo agaragara muri “registre” nka se w’umwana. Ibi bikaba ahubwo aribyo byafatwaho ukuri, kuko n’umutangabuhamya wavuzwe witwa Migambi Déogratias yabikomojeho, aho yavuze ko nta gihamya afite ko se wa Tuyishimire Yves ari Gusenga Innocent;
- ikindi kitumvikana ni uburyo Gusenga Innocent wari umugatorika yari kujya kubatirisha umwana muri Angilikani;
 - ikarita y’ishuli ya “Ecole Technique Nyarurema” y’umwaka wa 2012, Urukiko rubanza rwise ko ari icyemezo cya FARG rukagiheraho ruca urubanza, ivugwamo ko umwana wahawe iyo karita yitwa Tuyishimire Yves, atari Tuyishimire Yves waregeye Urukiko. Akisanti Ayubu avuga kandi ko iyo karita yanditseho ko Tuyishimire Yves yavutse ku wa 25/05/1992 (uwo mwaka ukaba unasibasibye), nyamara ku ifishi y’ibatizwa nayo yashingiweho mu guca urubanza, hakaba handitseho ko Tuyishimire yavutse ku wa 14/05/1992;
 - uburyo Tuyishimire Yves ahindura amazina ye, umwaka n’itariki yavukiyeho nk’uko NIDA yabyerekanye, ni ikimenyetso cyerekana ko akora akanakoresha inyandiko uko

ashatse bitewe n'icyo agamije. Bavuga kandi ko se wanditse mu bitabo by'irangamimerere uzwi wanamureze kuva akiri muto yitwa Kanyamibwa, akaba ataramwihakana.

[15] Tuyishimire Yves, Me Murindabigwi Mariam na Me muhiganwa Damas bamwunganira basubiza kuri izo mpamvu Akisanti Ayubu ashingiraho akarengane ke muri aya magambo:

- Urukiko Rwisumbuye rwafashe icyemezo mu bushishozi bwarwo, kuko rwasobanuye ko Akisanti Ayubu asaba ko hakorwa ikizamini cya ADN hagati ye na Tuyishimire Yves cyangwa hagati ya Tuyishimire Yves na Nyirabarera Jacqueline mushiki we na Gusenga Innocent, ariko ntagaragaze ko hari ikizamini cya ADN cyakozwe hagati ye na Gusenga cyangwa hagati ya Gusenga na nyirabarera, cyaba cyaragaragaje ko Gusenga afitanye n'umwe muri bo isano y'amaraso;
- Igihe ikirego cyatangwaga, ikizamini cya ADN nticyateganywaga n'itegeko ryo kuwa 27 Ukwakira 1988 ryerekeye interuro y'ibanze n'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano, umucamanza akaba yarashingiye ku bimenyetso binyuranye, birimo ifishi yo kubatizwa igaragaza ko Gusenga yamwiyandikishije, n'icyemezo cya FARG cyerekana ko ari mwene Gusenga Innocent;
- uwo baburana yasabaga ko hakorwa ikizamini cya ADN hagati ya Tuyishimire Yves, Akisanti Ayubu na Nyirabarera Jacqueline, kandi nta cyemeza ko bava indimwe na Gusenga Innocent. Tuyishimire Yves n'abamwunganira basaba ko ikizamini cyakorwa hagati ye n'umubiri wa Gusenga Innocent uri ku Rwibutso rwa Jenocide rwa Gisozi, kuko hari abazi aho ashyinguye hakaba hari na "video" yafashwe ashyingurwa;
- Ku bijyanye n'imvugo z'abatangabuhamya, Akisanti Ayubu yirengagiza ko zishimangira ibimenyetso byanditse yatanze mu rukiko, birimo ikarita ya batisimu n'icyemezo cy'umwana wishyurirwa na FARG. Ku bijyanye n'abatangabuhamya batanzwe na Akisanti Ayubu, bavuze ko bazi Gusenga Innocent mu kazi, bakaba batazi uburyo Tuyishimire Yves yavutse;
- Ku bijyanye n'ifishi ya batisimu:
 - kuba harabayeho kwandika nabi amazina si igitangaza, bikaba byarakosowe na "Anglican Church";
 - Ahanditse Rwabutogo bireba undi mwana wabatirijwe rimwe na Tuyishimire Yves;
 - Kuba yarabatirijwe muri "Anglican Church" kandi Gusenga Innocent yari umugatorika byatewe n'uko ariryo dini nyina yabarizwagamo;
 - Nyuma y'impaka zabaye ku ifishi ya batisimu na "registre" y'abatirijwe yatanzwe mu Rukiko n'uko baburana, Tuyishimire Yves yahawe icyemezo cy'umukristu, cyemeza ko yabatijwe ari mwene Gusenga Innocent na Nzitonda;
- Ku bijyanye n'icyemezo cya FARG, hari icyemezo cy'umunyeshuri wishyurirwa na FARG cyashyikirijwe Urukiko, n'ikarita y'ishuri itangwa ukwayo. Kuba ikarita y'ishuri yanditse nabi si ikibazo kuko afite "diplôme" iriho amazina ye. Akisanti Ayubu yatanze ikirego muri Polisi aregera inyandiko mpimbano, ikirego gishyikirizwa Ubushinjacyaha, busanga nta shingiro gifite bushyingura dosiye;

- Ku bijyanye n'amazina, ntabwo Tuyishimire Yves ayahindagura nk'uko bivugwa, ahubwo nyina yagiye gushaka ajya kubana na nyirakuru, ayo mazina yombi bayamwandikaho; nyuma amaze gukura ajya guhinduza kugira ngo yitwe izina ababyeyi be bamwise.

[16] Nyuma y'uko Urukiko rwemeje ko "Rwanda Forensic Laboratory" ikora ikizamini cya ADN, kigakorwa, na raporo ikamenyeshwa ababuranyi, ababuranira Akisanti Ayubu bavuze ko bayibonyemo ibibazo bituma basaba Urukiko kutayishingiraho:

- ikibazo cya mbere kirebana n'abayikoze ubwabo, kuko uburyo yakozwemo utashobora kumenya uwayikoze;
- Raporo yoherejwe mu Rukiko igaragaraho amazina y'abantu 3 ariko nta kigaragaza ko ibyo bakoze byemejwe n'Umuyobozi Mukuru wa "Rwanda Forensic Laboratory". Ntihagaragara inyandiko Umuyobozi Mukuru yandikiye Urukiko rw'Ikirenga arushyikiriza raporo yasabwe nk'uko biteganywa n'ingingo ya 26 y'Itegeko rishyiraho "Rwanda Forensic Laboratory" cyane cyane mu gace ka 6 n'aka 7³, ahateganywa ko Umuyobozi Mukuru ariwe muvugizi w'Urwego, bivuga ko mu gihe raporo yakozwe n'undi utari we cyangwa ngo abe ariwe wayisinyeho, nta gaciro yagira;
- iyo raporo itatanzwe n'urwego rwayisabwe bivuze ko iba yakozwe n'utabifitiye ububasha, bityo n'ibiyivugwamo bikaba bitashingirwaho. Ku bijyanye n'abaje gusobanurira Urukiko ibivugwa muri raporo, ntacyo babavugaho kuko ntacyemeza ko ari abakozi ba "Rwanda Forensic Laboratory", kandi n'iyi Umuyobozi Mukuru atakwiyizira mu Rukiko cyangwa ngo abe ariwe ushinzwe kuri raporo, byari gukorwa n'uwo yatumye bikagaragara mu nyandiko yohereza raporo mu Rukiko;
- raporo yagombye kuba iherekejwe n'izindi nyandiko zishobora gutuma uyisoma ayisobanukirwa bitamugoye kuko irimo amagambo ahinnye menshi, ikaba ikoresha imvugo ya gihanga, n'imibare iyigaragaramo ikaba idafitiye igisobanuro ku buryo byakorohera utari umuhanga kuyumva. Bavuga ko abahanga bayikoze basabwa kuyuzuzza;
- abakoze raporo ntiberekana aho bagiye bakura imibare n'ibyifashishijwe (software), bikaba ari impamvu ituma raporo batanze itafatwa nk'itanga umucyo ku bibazo Urukiko rwarirwibajije;
- raporo igenda yivuguruza, bigatuma hakemangwa ibiyivugwamo, hakanakemangwa ukuri kuyivugwamo. Ibi bikaba bishimangirwa no kuba ku wa 06/11/2019, "Rwanda Forensic Laboratory" yaravugaga ko itari yapima isano iri hagati ya Gusenga Innocent n'abavandimwe be kimwe na tuyishimire Yves n'abavandimwe ba Gusenga Innocent, bitewe n'uko uburyo bwifashishwa (software) butari bwakabonetse, bikaba rero bitumvikana ukuntu iyo "software" yahita iboneka mu gitondo hakurikijwe uburyo imihango ijyanye n'amasoko ya Leta ikorwamo;

³ Umuyobozi Mukuru wa RFL ashinzwe ibi

Bikurikira:

6°guhagararira RFL imbere y'amategeko no kumenyekanisha ibikorwa byayo

7°kuba umuvugizi wa RFL »

- indi mpamvu ituma raporo ishidikanywaho, ni uko imibare yatanzwe igenda itandukana, aho usanga isano iri hagati ya Gusenga Innocent na Tuyishimire Yves itandukanye n'imibare y'ijanisha y'isano iri hagati ya Gusenga Innocent na Nyirabarera Jacqueline. Bavuga kandi ko imibare idahura neza, bakaba batumva uburyo ijanisha rigera kuri 99,999%, ugasanga Gusenga Innocent afite 15/16, Tuyishimire Yves afite 13/16, ahandi Gusenga Innocent afite 7/8, Tuyishimire Yves afite 6/11, naho ku murongo wa 14 Tuyishimire Yves akaba afite 8/11 Gusenga Innocent afite 13/14;
- abahanga berekanye ko Nyirabarera Jacqueline afitanye isano na Tuyishimire Yves ku kigero cya 99.9999999927 %, noneho hagati ya gusenga Innocent na Tuyishimire Yves ikaba ku kigero cya 99.999999999483 %, bigasa n'ibyerekanwa ko Tuyishimire Yves afitanye isano na Nyirabarera kurusha uko ayifitanye na gusenga Innocent. Bavuga ko niba bitarabaye impurirane cyangwa kwibeshya, ari ukubeshya, ariyo mpamvu basaba ko raporo itahabwa agaciro, hakaba ahubwo hakorwa indi iyivuguruza idakorewe mu Rwanda (*Contre expertise*);
- kuba raporo yakozwe isa n'ishimangira ibyavugwaga na Tuyishimire Yves kuva urubanza rugitangira, ko mu bavandimwe ba Gusenga Innocent hari abo batava indimwe, bivuga ko abayikoze banditse ibyo babwiwe na Tuyishimire Yves, ku buryo hashobora kuba harabayemo kubogama cyangwa ruswa n'ubwo batabyemeza cyangwa ngo babihakane.

[17] Tuyishimire Yves n'abamwunganira basubije ku byo urega yanenze raporo mu buryo bukurikira:

- kuba Akisanti Ayubu n'umwunganira bavuga ko batemera ibyavuye mu isuzuma ryakozwe, ni ukurushya ubutabera no gushaka gutinza imanza kuko aribo ubwabo babyisabiye;
- ntibyumvikana uburyo abanyamategeko bashobora gushaka kuvuguruza ibyakozwe n'abahanga mu gihe nta bumenyi babifitemo, bityo ibyo abunganira Akisanti Ayubu bavuga bikaba bidakwiye guhabwa agaciro; kandi kuba hari ibyo batumva, akaba ariyo mpamvu umuhanga yatumijwe ngo abisobanure;
- bashingiye ku ngingo ya 93 y'Itegeko rigenga ibimenyetso n'itangwa ryabyo, basanga raporo yarakozwe mu buryo bwubahirije amategeko kubera ko nta hantu itegeko riteganywa ko raporo igomba gusinywaho n'Umuyobozi w'Ikigo cyayikoze;
- Ku bijyanye n'uburyo raporo yakozwemo, nta kibazo babonamo kuko kuri buri kibazo Urukiko rwagiye rwibaza, abahanga bagiye bagikoraho bakanatanga umwanzuro;
- Kuvuga ko abahanga bakoze ibyo Tuyishimire Yves ashaka, ko kandi babogamye, nta bimenyetso babifitiye kandi bikaba bidakwiye ko umunyamategeko apfa kuvuga ibyo yishakije mu Rukiko, bakaba bakwiye gukuraho iryo jambo bakoresheje;
- Gusaba ko hakorwa ikindi kizamini, gikorewe hanze y'Igihugu, bisa no kutizera inzego n'ubutabera bw'u Rwanda;

- Basoza bavuga ko bitangaje kubona Akisanti Ayubu ariwe wasabye ko hakorwa ikizamini cya ADN, ariko akaba ariwe uhindukira agasaba ko iteshwa agaciro.

[18] Umwe mu bahanga bakoze ikizamini cya ADN waje kuyisobanura mu Rukiko, akaba ahagarariye agashami ka ADN muri “Rwanda Forensic Laboratory“, yerekanye uburyo ikizamini cyakozwemo, asobanura n’ibyo abunganira Akisanti Ayubu batumvaga. Yagaragaje ko ikigero cy’isano hagati ya Gusenga Innocent na Tuyishimire Yves (99.999999999483 %) aricyo kiri hejuru ugereranyije n’ikigero cy’isano hagati ya Nyirabarera Jacqueline na Tuyishimire Yves (99.9999999927 %), ibyo bikaba bireberwa ku mibare ya “9” irimo. Yasobanuye ko ubusanzwe umwana agira 50% by’utaremangingo nyina yamuhaye, na 50% by’utaremangingo yahawe na se. Yavuze kandi ko nta soko ryo gushaka “software “ryagombaga gutangwa, ahubwo ari ukongera “licence”.

UKO URUKIKO RUBIBONA

[19] Inenge ikomeye yagaragajwe nk’impamvu yatumye urubanza N° RCA 00010/2017/TGI/NGYE rusabirwa gusubirwamo ku mpamvu y’akarengane, ni ukuba Urukiko Rwisumbuye rwa Nyarugenge rwaremeje ko Gusenga Innocent ari se wa Tuyishimire Yves nta kizamini cya ADN gikozwe nk’uko byari byasabwe na Akisanti Ayubu.

[20] Ingingo ya 76 y’Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo iteganya ko ubuhanga bw’abahanga ari ubugamije guha urukiko ibisobanuro bishingiye ku bumenyi kimwe n’umwanzuro urenze ubumenyi busanzwe bw’umucamanza mu kazi ke bitewe n’uko ibiburanwa bishingiye ku buhanga bwihariye. Naho ingingo ya 282 y’Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n’umuryango igateganya ibipimo bya ADN cyangwa ibindi bimenyetso bibonetse hakoreshejwe ikoranabuhanga (DNA test or other scientific evidence) nk’imwe mu mpamvu zituma ikirego cy’umwana ushaka se cyemerwa⁴.

[21] Izi ngingo zumvikanisha ko umucamanza ashobora kwiyambaza abahanga bafite ubumenyi bwihariye bwamufasha gufata umwanzuro ku kibazo yashyikirijwe, by’umwihariko akaba yakwifashisha ikizamini cya ADN mu gukemura ikibazo cy’umwana ushaka se. Nk’ uko kandi byemejwe n’Urukiko rw’Ikirenga rwo mu Buhinde mu rubanza Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik,(2014)2 SCC 576, Urukiko rwagombye kwifashisha ibimenyetso bishingiye ku bumenyi(science) igihe bishoboka kugirango rushobore kugaragaza ukuri, mu nyungu z’ubutabera. Rwabyemeje muri aya magambo: “The interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left bank upon presumptions, unless science has no answer to the facts in issue”.

[22] Muri uru rubanza, Urukiko rwasabye “Rwanda Forensic Laboratory” gukora ikizamini cya ADN nk’urwego rwa Leta rubifitemo ubuhanga n’ubumenyi, kugirango hamenyekane niba Gusenga Innocent ari se wa Tuyishimire Yves. Muri raporo yashyikirijwe Urukiko, abahanga ba

⁴ N’ubwo iri tegeko ryatangajwe uru rubanza rwaramaze kuregerwa, ryashingirwaho hakurikijwe ibiteganywa mu ngingo yaryo ya 330, igika cya mbere, igira iti: « Imanza zose zari mu nkiko mbere y’uko iri tegeko ritangira gukurikizwa ziburanishwa hakurikijwe ibiteganywa n’iri tegeko ariko nta gihinduwe ku mihango y’iburanisha yakozwe ».

“Rwanda Forensic Laboratory” basobanura ko, nyuma yo gukora ikizamini bahereye ku macandwe (saliva samples) y’abagombaga gupimwa, ndetse n’igufa ryavanywe ku mubiri wa Gusenga Innocent, hagaragaye ibi bikurikira:

- Hagati ya Gusenga Innocent na Tuyishimire Yves, isano hagati y’umwana na se iri ku kigero cya 99.999999999483 %, bikaba bigaragaza nta gushidikanya ko Gusenga Innocent ari se wa Tuyishimire Yves (The calculated probability of paternity is 99.999999999483 %. From a forensic point of view there is no doubt about the fatherhood of late Gusenga Innocent and the child Tuyishimire Yves);
- Hagati ya Gusenga Innocent na Akisanti Ayubu, kuba umwe yaba ari umuvandimwe(brother) w’undi biri ku kigero cya 2.3125452031 %, naho kuba nta sano iri hagati yabo bikaba ku kigero cya 97.6874547968%;
- Hagati ya Gusenga Innocent na Nyirabarera Jacqueline, kuba uyu yaba ari mushiki wa Gusenga Innocent, bivuga ko basangiye ababyeyi, biri ku kigero cya 99.9999999927 %, naho kuba nta sano bafitanye bikaba ku kigero cya 0.0000000072 %;
- Hagati ya Akisanti Ayubu na Tuyishimire Yves, kuba uyu yaba ari umwana wabo (fraternal nephew) wa Akisanti Ayubu, bivuga ko se wa Tuyishimire Yves yaba ari umuvandimwe wa Akisanti Ayubu, biri ku kigero cya 2.3125452031 %, naho kuba nta sano bafitanye, biri ku kigero cya 97.6874547968 %;
- Hagati ya Nyirabarera Jacqueline na Tuyishimire Yves, kuba uyu yaba ari umwisengeneza (fraternal nephew) wa Nyirabarera Jacqueline, bivuga ko se wa Tuyishimire Yves ari musaza wa Nyirabarera Jacqueline, biri ku kigero cya 99.9999999927 %, naho kuba nta sano bafitanye biri ku kigero cya 0.0000000072 %.

[23] Urukiko rushingiye ku byagaragajwe n’abahanga, bivugwa mu gika kibanza, rurasanga nta gushidikanya ko Tuyishimire Yves ari umwana wa Nyakwigendera Gusenga Innocent, akaba ari umwisengeneza wa Nyirabarera Jacqueline, ariko hakaba nta sano iri hagati ye na Akisanti Ayubu. Ibisubizo bitanzwe n’ikizamini cya ADN bifite agaciro kanini kandi birizewe kuko ari ikimenyetso gishingiye ku bumenyi (scientific evidence) budashidikanywaho. Abahanga bavugaga ko ADN y’umuntu igizwe n’uturemangiko tuva ku babyeyi bombi, ibi bikaba ari byo bishimangira ko ikizamini cya ADN kizewe mu kugaragaza isano hagati y’ababyeyi n’ababakomokaho⁵. Bihura kandi n’ibyo abahanga ba “Rwanda Forensic Laboratory” basobanuye mu iburanisha.

[24] Urukiko rurasanga atari ngombwa gusuzuma ibimenyetso byari byashingiweho n’Urukiko Rwisumbuye rwa Nyarugenge mu rubanza rusabirwa gusubirwamo, bikanengwa na Akisanti Ayubu, bigizwe ahanini n’imvugo z’abatangabuhamya, ikarita ya batisimu yatanzwe n’Itorero Anglikani mu Rwanda, hamwe n’ikarita y’umunyeshuri wishyurirwa na FARG, kuko ibisubizo byatanzwe n’ikizamini cya ADN bihagije kugaragaza ukuri. Urukiko rurasanga kandi kuba Tuyishimire Yves yaranditswe ku witwa Kanyamibwa (umugabo wa nyina) mu bitabo by’irangamimerere, ntacyo byahindura ku kuri kwagaragajwe n’ikizamini cya ADN.

⁵ DNA is made up of one half of our biological mother’s DNA and one half of our biological father’s DNA. 50 % of our DNA is passed down to our biological children. It is this that ensures DNA is unique, and allows for accurate testing of parentage and direct descendants through a DNA paternity test”; DR. HIMANSHU Pandey & Ms. ANHITA Tiwari, Evidential value of DNA, Bharati Law Review (on line), Jan. – March, 2017, p. 1[seen the 18th Nov. 2019], published in articles section of www.manupatra.com

[25] Ibyo abunganira Akisanti Ayubu bavuga ko raporo yakozwe n’abahanga ari imfabusa, ngo kuko nta kigaragaza ko ibyo bakoze byemejwe n’ubuyobozi bwa “Rwanda Forensic Laboratory”, ngo abe ari nabwo bubishyikiriza Urukiko, Urukiko rurasanga nta shingiro byahabwa kuko ikizamini cyakozwe n’abahanga bagenwe n’icyo Kigo hashingiwe ku bumenyi n’ubuhanga bafite, bamaze kubirahirira nk’uko bisabwa n’ingingo ya 93 y’Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo, bakora raporo yashyikirijwe Ubwanditsi bw’Urukiko nk’uko bisabwa n’ingingo ya 95 y’Itegeko rimaze kuvugwa.

[26] Urukiko rusanga ingingo ya 26, agace ka 6 n’aka 7 y’Itegeko N° 41/2016 ryo ku wa 15/10/2016 rishyiraho laboratwari y’u rwanda y’ibimenyetso bishingiye ku bumenyi n’ubuhanga bikoreshwa mu butabera (RFL), rikanagena inshingano, imiterere n’imikorere byayo, Abunganira Akisanti Ayubu baburanisha, ntaho iteganya ko Umuyobozi w’Ikigo agomba kwandikira Urukiko yohereza raporo yakozwe n’abahanga, amaze kuyemeza. Icyo iyo ngingo iteganya, mu gace kayo ka 6 n’aka 7, ni uko Umuyobozi afite inshingano zo guhagararira RFL imbere y’amategeko, kumenyekanisha ibikorwa byayo (to serve as legal representative of RFL and give publicity to its activities), no kuyibera umuvugizi.

[27] Abunganira Akisanti Ayubu banenga nanone raporo y’abahanga bavuga ko irimo amagambo ahinnye menshi n’imibare idafite ibisobanuro. Ibi nabyo nta shingiro byahabwa kuko, uretse no kuba abahanga barakoze incamake ya raporo yumvikana ku muntu wese udafite ubumenyi mu byerekeye ibizamini bya ADN, bafashe umwanya uhagije wo kuyisobanura mu Rukiko, ndetse basubiza ibibazo byose ku byo abaturanyi bari bakeneye gusobanukirwa. Ku bijyanye n’impungenge zagaragajwe n’abunganira urega, bavuga ko hari raporo yaje ivuga ko hari “software” itaraboneka, bugacya hatangwa indi raporo irimo ibyagombaga gukorwa n’iyo “software” kandi amasoko ya leta ubusanzwe atwara igihe, abahanga basobanuye ko icyari gikenewe ari ukwongera igihe (renewal) cya “Licence, atari ugutanga isoko kandi ibyo bikaba bishobora gukorwa mu gihe gito. Urukiko rusanga rero iyo nenge kuri raporo nayo nta shingiro ifite.

[28] Urukiko rurasanga muri rusange inenge zigaragazwa n’abunganira urega, basaba ko raporo itahabwa agaciro, ari inenge zidafite aho zihuriye n’ireme(consistence/substance) ry’ibyagaragajwe n’abahanga. Urukiko rusanga kandi ibyo bavuga, uretse kuba nta shingiro bifite, bitanashobora kwambura raporo y’abahanga agaciro kayo, ndetse n’ibyo basaba ko hakorwa ikindi kizamini kidakorewe mu Rwanda bikaba nta shingiro byahabwa.

[29] Urukiko rurasanga rero, hashingiwe ku bisobanuro byose byatanzwe, hari ibimenyetso bihamya ko Tuyishimire Yves yabyawe na Gusenga Innocent.

B. Kumenya niba hari indishyi zatangwa muri uru rubanza

i. indishyi zisabwa na Tuyishimire Yves

[30] Tuyishimire Yves avuga ko Akisanti Ayubu yamusiragije ku buryo bukomeye kandi azi neza ko ari mwene Gusenga Innocent, kubera iyo mpamvu akaba akwiye kumuha indishyi ziteye mu buryo bukurikira:

- Indishyi mpozamarira zingana na 10.000.000 Frw kubera kumuhakana kandi azi ukuri, kumusebya akamwita umubeshyi kandi ariwe wakagombye kumurera, no kubera ko yigeze guhagarika akazi afunze bitewe n'izi manza;
- indishyi zingana na 6.000.000 Frw zo kumusiragiza mu nkiko, zirimo:
 - Frw yishyuye Avoka mu Rukiko rw'Ibanze;
 - Frw yishyuye Avoka mu Rukiko Rwisumbuye;
 - 500.000 Frw yatanze dosiye iri muri Police, na 500.000 Frw muri Parike;
 - Frw yatanze ku rwego rw'Urukiko rw'Ikirenga;
- amafaranga yatanze kugira ngo ikizamini cya ADN gishobore gukorwa angana na 493.020 Frw.

[31] Akisanti Ayubu n'abamwunganira bavuga ko ibitaravuzwe igihe cy'inama ntegurarubanza no mu myanzuro bidakwiye gusuzumwa, kuko byaba ari bishya. Bavuga ko indishyi Tuyishimire Yves asaba z'ibyakorewe mu zindi nkiko no mu Bushinjacyaha nta shingiro zifite kuko zitaburanishwa muri uru Rukiko.

ii. Indishyi zisabwa na Akisanti Ayubu

[32] Akisanti Ayubu asaba Urukiko kumugenera indishyi zo gukururwa mu manza ku maherere, ziteye mu buryo bukurikira:

- 3.000.000 Frw yo kumukurura mu manza nta mpamvu;
- 2.500.000 Frw y'igihembo cy'Avoka mu nkiko eshatu uru rubanza rwanyuzemo;
- Amafaranga y'ikurikiranarubanza.

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Ku bijyanye n'indishyi zisabwa na Tuyishimire Yves

[33] Ingingo ya 6, igika cya mbere, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu iteganya ko ikiburanwa kigenwa n'ibisabwa na buri muburanyi, ibisabwa bikagaragarira mu myanzuro iregera Urukiko n'imyanzuro yo kwiregura, bigashimangirwa burundu mu nama ntegurarubanza mu manza iteganyijwemo.

[34] Ibiteganywa n'iyi ngingo bigamije gukumira ko ababuranyi batunguza, mu gihe cy'iburanisha, abo baburana ndetse n'Urukiko ibintu batigeze bagaragaza mbere. Ibi biri no mu murongo umwe (même logique) n'ibiteganyijwe mu ngingo ya 75, igika cya mbere, y'Itegeko ryavuzwe haruguru; icyari kigambiriwe akaba ari ukubahiriza uburenganzira bwo kwiregura (droit de la défense). Iyo ngingo ya 75, igika cya mbere, igira iti "muri rusange nta nyandiko, imyanzuro

y'urubanza cyangwa inyandiko ikubiyemo ingingo ziburanishwa bishobora kohererezwa urukiko nyuma y'inama ntegurubanza”.

[35] Dosiye y'urubanza igaragaza ko Tuyishimire Yves atigeze asaba indishyi, haba mu nkiko zabanje, haba mu myanzuro yo kwiregura yashyikirije uru Rukiko, haba no mu nama ntegurubanza; akaba ahubwo yarazisabye mu iburanisha ryo ku wa 07/11/2019. Urukiko rurasanga ibyo yakoze binyuranyije n'ibiteganywa n'ingingo ya 6, igika cya mbere, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru.

[36] Hashingiwe ku bisobanuro bimaze gutangwa, no ku ngingo z'amategeko zavuzwe haruguru, Urukiko rurasanga indishyi mpozamarira n'indishyi mbonezamusaruro zigizwe n'amafaranga Tuyishimire Yves yakoresheje kubera dosiye yari yarezwemo mu Bugenzacyaha no mu Bushinjacyaha, zidashobora gusuzumwa. Urukiko rurasanga icyo yahabwa ari amafaranga y'ikurikiranarubanza n'ay'igihembo cy'Avoka agenwe mu bushishozi bw'urukiko kuko ayo asaba ari menshi, kandi akaba nta bimenyetso yayatangiyeye. Urukiko rumugeneye 793.020 Frw y'ikurikiranarubanza akubiyemo 300.000 Frw yakoresheje mu ngendo na 493.020 Frw yishyuye ku kizamini cya ADN, hamwe na 1.500.000 Frw y'igihembo cy'Avoka mu nzego uko ari eshatu yaburanyemo, yose hamwe akaba 2.293.020 Frw.

Ku bijyanye n'indishyi zisabwa na Akisanti Ayubu

[37] Urukiko rurasanga indishyi Akisanti Ayubu asaba atazihabwa kuko ntacyo yatsindiye mu rubanza.

III. CYEMEZO CY'URUKIKO

[38] Rwemeje ko ikirego cyatanzwe na Akisanti Ayubu gisaba gusubirishamo, ku mpamvu z'akarengane, urubanza N° RCA 00010/2017/TGI/NYGE rwaciye n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 06/07/2017, nta shingiro gifite;

[39] Rwemeje ko imikirize y'urubanza N° RCA 00010/2017/TGI/NYGE rwaciye n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 06/07/2017, igumyeho;

[40] Rwemeje ko Tuyishimire Yves yabyawe na Gusenga Innocent;

[41] Rwemeje ko indishyi mpozamarira n'indishyi mbonezamusaruro zasabwe na Tuyishimire Yves zitasuzumwa;

[42] Rutegetse Akisanti Ayubu guha Tuyishimire Yves 2.293.020 Frw y'ikurikiranarubanza n'igihembo cy'Avoka.