UWIRAGIYE v UWAMAHORO

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00010/2017/SC (Hatangimbabazi, P.J., Ngagi na Kanyange, J.) 12 Mutarama 2018]

Amategeko agenga umuryango – Ababanaga batarashakanye mu buryo bukurikije amategeko – Umutungo – Kugabana umutungo wababanaga nk'umugabo n'umugore batarashyingiranywe mu buryo byemewe n'amategeko – Umugore n'umugabo, nubwo baba batarashyingiranywe umutungo bungutse bakibana, waba utimukanwa cyangwa uwimukanwa, iyo batandukanye barawugabana – Mu gihe umwe mu babanaga nk'umugore n'umugabo ahawe imodoka mu rwego rw'akazi bakibana, iba ari kimwe mu bigize umutungo wabo, igomba kujya mu bigomba kugabanwa igihe bahagaritse kubana.

Incamake y'ikibazo: Uwamahoro Jeannine yabanye na Uwiragiye Charles nk'umugabo n'umugore ariko batarasezeranye. Nyuma yo gutandukana, Uwamahoro yareze Uwiragiye Charles mu Rukiko Rwisumbuye rwa Gasabo asaba ko bagabana umutungo bashakanye ugizwe n'inzu, ikibanza n'imodoka biri mu mujyi wa Kigali, n'indi mitungo iherereye mu karere ka Gatsibo.

Mu guca urubanza, Urukiko rwabagabanyije imwe mu mutungo yari iherereye mu mujyi wa Kigali, ruvuga ariko ko ibyo kugabana imitungo iherereye mu karere ka Gatsibo biri mu bubasha bw'Urukiko Rwisumbuye rwa Nyagatare, Uwiragiye Charles ategekwa gutanga indishyi n'amafaranga y'igihembo cya avoka.

Uwiragiye yahise ajuririra urwo rubanza mu Urukiko Rukuru rwa Kigali, narwo ruhindura urubanza rwa mbere ku bijyanye gusa n'amafaranga y'ikurikirana-rubanza n'igihembo cya Avoka, bituma Uwiragiye Charles yongera kujuririra Urukiko rw'Ikirenga avuga ko umutungo uburanwa atawusangiye na Uwamahoro Jeannine kuko yawumusanganye, ko n'uwabonetse nyuma ari uwakomotse ku mitungo yamusanganye akayigurisha.

Urubanza rwaburanishijwe mu mizi nyuma y'uko inzitizi y'iburabubasha bw'urwo rukiko yabyukijwe na Uwamahoro idahawe ishingiro. Mu kuburana kwabo, Uwamahoro Jeannine yemeza ko imitungo yose yayishakanye na Uwiragiye Charles babana nk'umugabo n'umugore, mu gihe Uwiragiye Charles ko yayimusanganye n'uwabonetse nyuma wakomotse ku mitungo imwe yagurishije, naho imwe mu modoka igize imitungo yayihawe na Leta mu rwego rw'akazi akora.

Incamake y'icyemezo:1. Ababana nk'umugore n'umugabo nubwo baba batarashyingiranywe, umutungo bungutse bakibana waba utimukanwa cyangwa uwimukanwa, iyo batandukanye barawugabana.

2. Mu gihe umwe mu babanaga nk'umugore n'umugabo ahawe imodoka mu rwego rw'akazi bakibana, iba ari kimwe mu bigize umutungo wabo, igomba kujya mu bigomba kugabanwa igihe bahagaritse kubana.

Ingingo z'ubujurire nta shingiro zifite;
Urubanza rwajuririwe ntiruhindutse.

Amagarama y'urubanza ahwanye n'ibyarukozwemo.

Amategeko yashingiweho:
Itegeko Nº 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ariryo ryose rishingiye ku gitsina, Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 39, igika cya mbere.
Itegeko ryo kuwa 30 Nyakanga 1888 rishyiraho igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano: ibyerekeye imirimo nshinganwa cyangwa amasezerano, ingingo ya 258 (Ryakuweho n'itegeko n'Itegeko n° 020/2019 ryo kuwa 22/08/2019 rikuraho amategeko yose yashyizweho mbere y'itariki y'ubwigenge).

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uwamahoro Jeannine yabanye na Uwiragiye Charles nk'umugabo n'umugore kuva ku wa 25/08/2000 kugera ku wa 24/02/2015, ariko batarasezeranye, nyuma baza gutandukana. Uwamahoro Jeannine yareze Uwiragiye Charles mu Rukiko Rwisumbuye rwa Gasabo, asaba gutegeka ko bagabana umutungo bashakanye babana nk'umugabo n'umugore, umutungo ugizwe n'inzu iri mu kibanza nº 367 n'ikibanza nº 139. Yanatanze ibindi birego by'inyongera mu nama ntegura rubanza no mu iburanisha bijyanye no kugabana umutungo ugizwe n'imodoka 2, ndetse n'inzu n'ikibanza biri mu Karere ka Gatsibo.

[2] Urukiko rwaciye urubanza ku wa 26/02/2016, rwemeza ko Uwiragiye Charles na Uwamahoro Jeannine bafite uburenganzira bungana ku mutungo ugizwe n'inzu iri mu kibanza nº 367 n'ikibanza nº 139, bakaba bagomba kuwugabana. Rwemeje kandi ko ikirego cy'inyongera cya Uwamahoro Jeannine kijyanye no kugabana na Uwiragiye Charles ubutaka buherereye mu Kagari ka Agakomeye,Umurenge wa Kiziguro, Akarere ka Gatsibo, kitari mu bubasha bushingiye ku kiburanwa bw'Urukiko Rwisumbuye rwa Gasabo, ahubwo kiri mu bubasha bw'Urukiko Rwisumbuye rwa Nyagatare. Rwemeje ko ikirego cy'inyongera cya Uwamahoro Jeannine gisaba kugabana imodoka 2 na Uwiragiye Charles gifite ishingiro, bityo ko bagomba kuzigabana kuko Uwiragiye Charles yiyemereye ko zimwanditseho. Rwategetse kandi Uwiragiye Charles guha Uwamahoro Jeannine indishyi zo kumusiragiza zingana na 200.000 Frw, indishyi z'igihembo cya Avoka zingana na 500.000 Frw no kumusubiza igarama yatanze arega.

[3] Uwiragiye Charles yajuririye urwo rubanza mu Rukiko Rukuru rwa Kigali, ikirego cyandikwa kuri RCA 00239/2016/HC/KIG, ruca urubanza ku wa 30/09/2016, rwemeza ko ubujurire bwa Uwiragiye Charles nta shingiro bufite, ko ubujurire bwuririye ku bundi bwa Uwamahoro Jeannine bufite ishingiro kuri bimwe, ko imikirize y'urubanza rwajuririwe idahindutse, uretse ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. Rwategetse kandi Uwiragiye Charles guha Uwamahoro Jeannine 350.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza, yiyongera kuyo yari yagenewe mu rubanza rwajuririwe Uwiragiye

Charles yajuririye urwo rubanza mu Rukiko Rukuru rwa Kigali, ikirego cyandikwa kuri RCA 00239/2016/HC/KIG, ruca urubanza ku wa 30/09/2016, rwemeza ko ubujurire bwa Uwiragiye Charles nta shingiro bufite, ko ubujurire bwuririye ku bundi bwa Uwamahoro Jeannine bufite ishingiro kuri bimwe, ko imikirize y'urubanza rwajuririwe idahindutse, uretse ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. Rwategetse kandi Uwiragiye Charles guha Uwamahoro Jeannine 350.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza, yiyongera kuyo yari yagenewe mu rubanza rwajuririwe.

[4] Uwiragiye Charles yajuririye urwo rubanza mu Rukiko rw'Ikirenga avuga ko umutungo uburanwa atawusangiye na Uwamahoro Jeannine kuko yawumusanganye, n'uwabonetse nyuma ukaba warakomotse ku mitungo yamusanganye yagurishije.

[5] Iburanisha ryashyizwe ku wa 25/4/2017, Uwiragiye Charles yunganiwe na Me Ruhanga Prince, naho Uwamahoro Jeannine yunganiwe na Me Abasa Fazili, uyu yatanze inzitizi yuko uru Rukiko rudafite ububasha bwo kuburanisha uru rubanza kubera ko Uwiragiye Charles yatsinzwe ku mpamvu zimwe mu nkiko zombi zabanje.

[6] Urukiko rwasuzumye iyo nzitizi rusanga nta shingiro ifite, rwemeza ko rufite ububasha bwo kuburanisha ubujurire bwa Uwiragiye Charles, iburanisha mu mizi rishyirwa ku wa 11/07/2017, kuri uwo munsi ababuranyi baritaba kandi bunganiwe nka mbere.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

Kumenya niba imitungo Uwamahoro Jeannine asaba kugabana na Uwiragiye Charles barayishakanye babana nk'umugabo n'umugore.

[7] Uwiragiye Charles avuga ko nta mutungo agomba kugabana na Uwamahoro Jeannine kuko batawushakanye ahubwo yarawumusanganye, n'uwabonetse nyuma wakomotse ku mitungo imwe yagurishije kuko yari asanganywe ibibanza bine (4), agurishamo bibiri (2) yubaka mu kibanza kimwe gifite nº 367, ikindi gifite nº 139 gisigara kitubatse. Avuga ko n'imodoka zitagombaga kujya mu bigabanywa, kuko imwe ifite pulaki RAB 718V yayihawe mu rwego rw'akazi akora ka Leta, ko Urukiko rutari gufata icyemezo cyo kugabana iyo modoka mu gihe icyo yayiherewe kitararangira kugeza ubu, ko n'indi ifite pulaki RAA 497 P, batayisangiye kuko amasezerano y'ubugure agaragaza ko ari Uwiragiye Charles uguze atari Uwiragiye Charles na Uwamahoro Jeannine.

[8] Akomeza avuga ko Urukiko Rukuru rwirengagije uburenganzira bw'abana kuko rutavuze ugomba kubarera mu gihe inzu bayigabanye kandi Itegeko nº 54/2011 ryo ku wa 14/12/2011 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa riteganya ko inyungu z'umwana zigomba kwitabwaho mbere mu gihe inzego z'ubucamanza n'iz'ubutegetsi zisuzuma ikibazo kubireba umwana.

[9] Me Ruhanga Prince wunganira Uwiragiye Charles avuga ko ikibanza gifite nº 139 Uwamahoro Jeannine yagisanganye Uwiragiye Charles, agasaba ko cyakurwa mu mitungo igomba kugabanywa. Avuga ko inzu yubatswe bari kumwe ariko ko amafaranga yayubatse yavuye mu igurisha ry'ibibanza Uwamahoro Jeannine yasanganye Uwiragiye Charles. Avuga ko ku byerekeye imodoka, hari imodoka Capt Mugabo John yahaye Uwiragiye mu rwego rw'akazi,

ko iyo modoka igomba kuva mu bigabanwa, indi modoka Uwiragiye Charles yaguze na Kananura, nayo yavanwa mu bigabanwa kuko yaguzwe mu mafaranga yavuye mu igurisha rya bya bibanza Uwamahoro Jeannine yasanganye Uwiragiye Charles.

[10] Uwamahoro Jeannine yireguye kuri izo mpamvu z'ubujurire za Uwiragiye Charles, avuga ko umutungo wose bawusangiye kuko wabonetse babana nk'umugore n'umugabo. Avuga ko babanye kuva tariki ya 25/08/2000 baba mu nzu Uwiragiye Charles yabohoje, ko nta kintu na kimwe Uwiragiye Charles yagiraga, ko biriya byose baburana babibonye bari kumwe, kandi ko yatanze n'ibyemezo by'igihe ibibanza Uwiragiye Charles avuga byabonekeye. Ku birebana n'abana, avuga ko umwe afite imyaka 17 undi 16, undi 8, kandi ko ariwe ubakurikirana ku ishuri.

[11] Me Abasa Fazili umwunganira, avuga ko iyo mitungo yose bayishatse bari kumwe, bakaba bagomba kuyigabana nubwo umugore yaba adafite akazi kinjiza amafaranga. Naho ku birebana n'imodoka, avuga ko Capt Mugabo John yatanze imodoka ku giti cye, atari mu rwego rw'akazi, ko kandi na pulaki yayo ibigaragaza ko ari iy'umuntu ku giti cye. Ku byerekeye abana, avuga ko bemeranywa yuko ababyeyi bombi bafite ishingano zo kurera abana babo, ko imitungo ari iy'ababyeyi, atari iy'abana mu gihe ababyeyi bakiriho, bikaba rero bitabangamira ko imitungo bayigabana.

UKO URUKIKO RUBIBONA

[12] Ingingo ya 39, igika cya mbere, y'Itegeko nº 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ariryo ryose rishingiye ku gitsina, iteganya ko ababanaga nk'umugore n'umugabo batarashyingiranywe mu buryo buteganwa n'amategeko bagabana mu buryo bungana umutungo wabo bahahanye.

[13] Urukiko rurasanga iyi ngingo yumvikanisha ko umutungo ugabanwa, ari uwo abantu babiri babana nk'umugore n'umugabo bashatse bari kumwe, hatitawe kureba uruhare rwa buri muntu, cyangwa aho amafaranga bakoresheje yakomotse.

[14] Muri dosiye, harimo imvugo ya Uwamahoro Jeannine yemeza ko yabanye na Uwiragiye Charles nk'umugore n'umugabo kuva tariki ya 25/08/2000 kugeza ku wa 24/01/2015, ibyo Uwiragiye Charles ntiyigeze abihakana, kimwe nuko yemera ko inzu yubatswe babana.

[15] Urukiko rurasanga, hashingiwe ku ngingo y'Itegeko ryavuzwe haruguru, kuba inzu iri mu kibanza nº 367 yarubatswe Uwiragiye Charles na Uwamahoro Jeannine babana nk'umugabo n'umugore, kandi bombi bakaba babyemeranywaho, ndetse n'ikibanza nº 139 bakaba barakibonye babana, mu gihe batandukanye bagomba kubigabana kuko ari iby'umuryango wabo bombi, atari iby'umuntu ku giti cye.

[16] Urukiko rurasanga nanone nkuko byasobanuwe haruguru, ababana nk'umugore n'umugabo nubwo baba batarashyingiranywe, umutungo bungutse bakibana waba utimukanwa cyangwa uwimukanwa, iyo batandukanye barawugabana.

[17] Urukiko rurasanga kuba Uwiragiye Charles yarahawe imodoka ifite pulaki RAB 718V nkuko abivuga, akayihabwa abana na Uwamahoro Jeannine nk'umugore n'umugabo, ikaba

kimwe mu bigize umutungo wabo, nayo igomba kujya mu bigomba kugabanwa kuko yabonetse bari kumwe, kimwe n'iyo avuga ko yaguze ifite pulaki RAA 497 P kuko ntiyayiguze ari iye ku giti cye, yayiguze ari iy'umuryango, kuba mu masezerano y'ubugure ariwe yanditseho nkuko abivuga bikaba ntacyo bihindura.

[18] Urukiko rurasanga ku ngingo ya Uwiragiye Charles yuko uburenganzira bw'abana bwirengagijwe kuko Urukiko rutagennye aho bazaba mu gihe inzu babagamo bayigabanye, nta shingiro ifite kuko nkuko Urukiko Rukuru rwabivuze, kugabana umutungo ntaho bibangamiye uburenganzira bw'umwana kuko bitambura umubyeyi inshingano yari amufiteho.

[19] Urukiko rurasanga hashingiwe ku mpamvu zavuzwe haruguru, ingingo z'ubujurire za Uwiragiye Charles nta shingiro zifite.

Ku byerekeye indishyi zisabwa muri uru rubanza.

[20] Uwiragiye Charles avuga ko yashowe mu manza, umugore akaregera kugabana imitungo atarigeze agira uruhare mu kuyishaka, akaba asaba indishyi zinyuranye zo gushorwa mu manza ku maherere zingana na 1.000.0000 Frw igihembo cy' Avoka kingana na 700.000 Frw, no gusubizwa amafaranga y'igarama angana 100.000 Frw.

[21] Uwamahoro Jeannine ku ndishyi zisabwa, avuga ko kubera ko ubujurire bwa Uwiragiye Charles nta shingiro bufite, asanga ari uburyo gusa bwo kumuhoza mu manza nta mpamvu, izi ndishyi asaba zikaba nta shingiro zahabwa, ahubwo atanga ubujurire bwuririye ku bundi asaba Uwiragiye Charles kumuriha 1.000.000 Frw y'igihembo cy'Avoka, 500.000 Frw y'ikurikiranarubanza na 1.000.000 Frw y'indishyi z' akababaro kubera guhozwa mu manza nta mpamvu, yose hamwe akaba 2.500.000 Frw yiyongera k'uyo yahawe ku nzego za mbere.

UKO URUKIKO RUBIBONA.

[22] Ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano iteganya ko uwangirije undi ategekwa kuriha uwo yangirije indishyi z'ibyo yangije.

[23] Urukiko rurasanga, nta ndishyi zo gushorwa mu manza Uwiragiye Charles yahabwa na Uwamahoro Jeannine kuko ntacyo yamwangirijeho, ahubwo ibyo uyu yasabye byo kugabana umutungo akaba ariwe ubitsindiye.

[24] Urukiko rurasanga ku birebana n'indishyi zo gushorwa mu manza ku maherere Uwamahoro Jeannine asaba, ntazo yahabwa kuko bwari uburenganzira bwa Uwiragiye Charles bwo kugana Inkiko mu gihe yumva hari ibyo yangirijwe.

[25] Urukiko rurasanga, ku birebana n'indishyi z'ikurikiranarubanza n' igihembo cy'Avoka Uwamahoro Jeannine asaba, azikwiye ariko zikaba zigomba kugenwa n'Urukiko mu bushishozi bwarwo kuko izo asaba ari nyinshi, rukaba rumugeneye izingana na 1.000.000 Frw zikubiyemo igihembo cy'Avoka n'indishyi z'ikurikiranarubanza, zikiyongera kuri 1.050.000 Frw yari yagenewe mu Nkiko zombi, yose hamwe akaba 2.050.000 Frw.

III. ICYEMEZO CY'URUKIKO

[26] Rwemeje ko ubujurire bwa Uwiragiye Charles nta shingiro bufite;

[27] Rwemeje ko imikirize y'urubanza RCA 00239/2016/HC/KIG rwaciwe n'Urukiko Rukuru rwa Kigali ku wa 30/09/2016 idahindutse;

[28] Rutegetse Uwiragiye Charles guha Uwamahoro Jeannine 2.050.000 Frw y'igihembo cy' Avoka, n'indishyi z'ikurikiranarubanza;

[29] Rutegetse ko amagarama y'uru rubanza Uwiragiye Charles yatanze ajurira ahwanye n'ibyakozwe muri uru rubanza