Repubulika y'u Rwanda

Ubutegetsi bw'Ubucamanza

IMIRONGO YATANZWE MU MANZA ZACIWE N'URUKIKO RW'IKIRENGA

GASHYANTARE – NYAKANGA 2025

ISHAKIRO

IJAMBO RY'IBANZE 3

IMANZA Z'IMBONEZAMUBANO 6

IMANZA Z'UBUCURUZI 21

IMANZA Z'INSHINJABYAHA 29

IMANZA ZIHARIYE 36

UMWANZURO 53

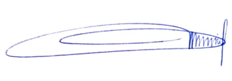
IJAMBO RY'IBANZE

Urwego rw'Ubucamanza rwihaye intego yo gutanga ubutabera bunoze kandi bwihuse. Ni muri urwo rwego, Urukiko rw'Ikirenga rwiyemeje kubaka ubutabera bushingiye ku mirongo yatanzwe (*precedent/jurisprudence*) hagamijwe gufata abantu kimwe ku buryo abafite ibibazo bimwe babona ibisubizo bimwe. Kugira ngo ibyo bigerweho, hafashwe ingamba ko imirongo yafashwe mu manza Urukiko rw'Ikirenga ruca, izajya ihurizwa hamwe ikamenyeshwa abo bireba bose. Ni muri urwo rwego Urukiko rw'Ikirenga runejejwe no kongera kubagezaho imirongo yatanzwe mu manza zaciwe kuva mu kwezi Gashyantare 2025 kugera muri Nyakanga 2025.

Abacamanza, abashakashatsi mu nkiko, ababuranyi (Abavoka n'Abashinjacyaha cyane cyane), basabwe kujya bayitaho kugira ngo twese hamwe dufatanye guteza imbere no gushimangira uyu muco wo gutanga ibisubizo bimwe ku bibazo bimeze kimwe. Ibyo bizatuma habaho kwirinda kujyana mu nkiko ibirego bitari ngombwa, kuko mu gihe babona ko ikibazo bafite gisa n'icyatanzweho umurongo, bahita bumva n'igisubizo urukiko ruzatanga (predictability).

Turasaba Abacamanza kwita kuri iyi mirongo mu manza baca tunabibutsa ko batemerewe kunyuranya na yo kimwe n'indi mirongo yatanzwe n'izindi nkiko uko zigenda zisumbana nk'uko biteganywa mu mabwiriza ya Perezida w'Urukiko rw'Ikirenga yo ku wa 15/03/2021 agenga itangazwa ry'ibyemezo by'inkiko.

Abavoka kimwe n'undi wese ubifitemo inyungu, barashishikarizwa kubaha imirongo yatanzwe, ntibakomeze gutanga ibirego bitari ngombwa kandi bazi ibisubizo inkiko zatanze ku birego bimeze nka byo. Igihe kandi hari umurongo batemeranya na wo cyangwa bumva utanoze, baributswa ko itegeko ryateganyije uko bene iyo mirongo iregerwa ikaba yakosorwa cyangwa igahindurwa (reba ingingo ya 65 n'iya 73 z'Itegeko rigena ububasha bw'inkiko). Mu gihe ariko umurongo utarahinduka, ugomba kubahirizwa na bose uko uri.



Digitally signed by
SC(Chief Justice)
Date: 2025.10.07
19:44:23 +02'00'

MUKANTAGANZWA Domitilla

Perezida w'Urukiko rw'Ikirenga

IRIBURIRO

Aka gatabo gakubiyemo imirongo yatanzwe n'Urukiko rw'Ikirenga kuva muri Gashyantare kugera muri Nyakanga 2025. Iyo mirongo yafashwe mu byiciro bikurikira:

- **IMANZA Z'IMBONEZAMUBANO**

  - Ubushobozi n'uburenganzira bw'intumwa mu masezerano yo kwikiranura (imirongo 3);
  - Uburyo n'ibihe byo gutanga ikirego gisaba gutesha agaciro cyamunara (imirongo 4);
  - Izungura ry'umugabo washakaye n'abagore babiri bose mu buryo bwemewe n'amategeko n'uruhare rwa buri wese mu mutungo yasize
  - (imirongo 7);
  - Kurega umuntu wapfuye (imirongo 2).

- **IMANZA Z'UBUCURUZI**

  - Ibishingirwaho kugira ngo umuntu cyangwa itsinda ry'abantu bafatwe nk'abanyamigabane (imirongo 6)
  - Kuregera gutesha agaciro cyamunara (imirongo 2)

- **IMANZA Z'INSHINJABYAHA**

  - Kuba icyitso mu gukora icyaha/Ubuhamya bwemewe mu Rukiko (imirongo 2)
  - Gucura umugambi wo gukora icyaha (imirongo 3)

- **IMANZA ZIHARIYE**

  - Gukuraho ingingo ya 39 y'Itegeko Nº 60/2018 ryo ku wa 22/08/2018 ryerekeye gukumira no guhana ibyaha bikoreshejwe ikoranabuhanga kubera ko inyuranyije n'ingingo ya 38 y'Itegeko Nshinga rya Repubulika y'u Rwanda (umurongo 1);
  - Kwemeza ko ingingo ya 81, igika cya mbere n'icya kabiri, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe inyuranyije n'ingingo ya 29 n'iya 152 z'Itegeko Nshinga rya Repubulika y'u Rwanda (imirongo 5).

- Gusaba urukiko kwemeza ko igika cya 4 cy'ingingo ya 161 z'Itegeko Nº 22/2018 ryo ku wa 29/04/20218 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kinyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda (umurongo 1).

IMANZA Z'IMBONEZAMUBANO

1. Ubushobozi n'Uburenganzira bw'intumwa mu masezerano yo kwikiranura

Urubanza rwasuzumwe: Urubanza N° RS/INJUST/RC 00009/2024/SC rwaciwe ku wa 07/02/2025 haburana NYIRANZABANDORA Aline; MUKAKARISA Alphonsine; KARONKANO Etienne; NYIRANEZA Rosine; NYIRANSABIMANA Dorothée; MUSABYIMANA Valentine; SONARWA GENERAL INSURANCE CAMPANY LTD.

Ikibazo cyasuzumwe:

- Ubushobozi n'Uburenganzira bw'intumwa mu masezerano yo kwikiranura;
- Ubusaze bw'ikirego cy'uburyozwe ku ndishyi zikomoka ku mpanuka zo mu muhanda;
- Indishyi mbonezamusaruro zikomoka ku mpanuka zo mu muhanda.

IMITERERE Y'URUBANZA

Ku itariki ya 24/01/2010, imodoka GR 466 C ifite ubwishingizi muri SONARWA yagonze NSHIMYUMUREMYI François arapfa.

MUKAKALISA Alphonsine, umubyeyi we n'abavandimwe be bane (4), ari bo MUSABYIMANA Vestine, NYIRANEZA Rosine, NYIRANZABANDORA Aline, NYIRANSABIMANA Dorothée, bifashishije KARONKANO Etienne, basabye SONARWA indishyi zikomoka kuri iyi mpanuka, ku wa 23/10/2010 yishyura 357.000 Frw yashyizwe kuri konti ya MUKAKALISA Alphonsine muri Banki y'Abaturage.

MUKAKALISA Alphonsine avuga ko amafaranga ageze kuri konti yabajijie KARONKANO Etienne impamvu indishyi zishyuwe ari nkeya, undi amusubiza ko hari andi mafaranga SONARWA izohereza, ni uko arategereza.

Abonye ayo mafaranga yasigaye atayabonye, yashatse umunyamategeko, maze ku itariki ya 09/11/2020 arega SONARWA na KARONKANO Etienne mu Rukiko Rwisumbuye rwa Karongi, abarega uburiganya bakoze mu iyishyurwa ry'indishyi, asaba Urukiko gutegeka SONARWA kwishyura indishyi zikwiye zibazwe hashingiwe ku mategeko agenga iki kibazo; kuri Karonkano asaba ko ategekwa kumusubiza igihembo yamuhaye kingana na 180.000 Frw, ikirego gihabwa N° RC 00071/2020/TGI/KNG.

Abaregwa bireguye bavuga ko ikirego kidakwiriye kwakirwa kuko habayeho kwikiranura kandi ko cyanashaje, kuko cyatanzwe nyuma y'imyaka itanu. Urukiko Rwisumbuye rwa Karongi rwaciye urubanza ku wa 28/10/2020 ruvuga ko ikirego kitakiriwe kuko cyashaje ndetse ko impande zombi zikiranuye.

MUKAKALISA Alphonsine n'abana be bajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Rusizi, bavuga ko nta kwikiranura nta n'ubusaze byabayeho, icyo kirego gihabwa N° RCA 00054/2021/HC/RSZ. Ku itariki ya 29/06/2022, Urukiko Rukuru, Urugereko rwa Rusizi, rwaciye urubanza rwemeza ko ubujurire bwakiriwe, rutesha agaciro urubanza rwari rwajuririwe, rutegeka ko rusubira mu Rukiko Rwisumbuye rukaburanishwa mu mizi. Urukiko rwasobanuye ko Urukiko Rwisumbuye rwirengagije ibimenyetso byatanzwe n'abarega bigaragaza ko nta kwikiranura kubahirije amategeko kwabayeho, kandi ko nta n'ubusaze bw'ikirego bwabayeho.

Urukiko Rwisumbuye rwa Karongi rwakiriye dosiye ruyandika kuri N° RC 00047/2022/TGI/KNG, ruca urubanza ku wa 21/12/2022 rurongera rwemeza ko habayeho kwikiranura n'ubwo inyandiko yabyo itagaragara, rwanzura ko nta buranisha mu mizi rigomba gukorwa.

Uru rubanza MUKAKALISA Alphonsine n'abo barusangiye barongeye barujuririra mu Rukiko Rukuru, Urugereko rwa Rusizi, ruhabwa N° RCA 00001/2023/HC/RSZ. Ku wa 16/10/2023, Urukiko rwaciye urubanza rwemeza noneho ko ababuranyi bikiranuye "nubwo amasezerano yo kwikiranura afite imyandikire yayo" ndetse no muri dosiye "akaba atagaragazwa", rwemeza ko hagumyeho imikirize y'urubanza N° RC 00047/2022/TGI/KNG.

Urwo rubanza nirwo rwasabiwe gusubirwamo ku mpamvu z'akarengane, hemezwa ko ruburanishwa n'Urukiko rw'Ikirenga maze rwandikwa kuri N° RS/INJUST/RC 00009/2024/SC.

Mu rubanza rubanziriza urundi, Urukiko rwemeje ko nta masezerano yo kwikiranura yabayeho hagati ya MUKAKALISA Alphonsine, MUSABYIMANA Valentine, NYIRANEZA Rosine, NYIRANZABANDORA Aline na NYIRANSABIMANA Dorothée na SONARWA.

Ingingo z'amategeko umurongo ushingiyeho :

- Ingingo za 11, 12, na 23 z'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga

Inyandiko z'abahanga :

- Loic CADIET « Dictionnaire de la Justice », Paris, 2004, verbo Transaction.
- Encyclopédie de droit civil belge, code civil, I, Tome VI, articles 1915 à 2281, p.103, n°4 al.3, par Gustave BELTJENS, Bruxelles, Etablissement Emile Bruylant, 1907).
- François LAURENT, Principes de droit civil, Bruxelles, Bruylant – Christophe et cie., 1877, p.486-487, n° 434).
- Note 2, sous art.2044 du Code civ. Paris, Dalloz, 107 édition, 2008, p. 2183

Imirongo yatanzwe ku masezerano yo kwikiranura :

- ➢ Ukwikiranura ni amasezerano abayagiranye bakora barangiza ikibazo cyari hagati yabo, cyangwa se cyashoboraga kuvuka, buri wese agize ibyo yigomwa, bikozwe hakurikijwe amategeko agenga amasezerano rusange kugira ngo ukwikiranura bigire agaciro ;
- ➢ Amasezerano y'ubutumwa ajyanye no kwikiranura yakozwe n'utabifitiye ububasha bwuzuye, afatwa nk'atarabayeho kuko nta kwemera k'uwatanze ubutumwa kwabayeho.

Ku birebana n'ubusaze n'indishyi zasabwe n'abarega, Urukiko rwasanze nta busaze bwabaye, ruca urubanza ku wa 07/02/2025, ku birebana n'indishyi zasabwe n'ababuranyi.

- ➢ Ubusaze ku wishingiye buhagarikwa n'impamvu zose zishaka ubwumvikane hagati y'uwishingiye n'uwangirijwe. Igihe cy'ubusaze cyongera kubarwa guhera ku munsi ukurikira, itariki umwe mu bari mu bwumvikane amenyeshereje undi mu nyandiko y'umuhesha w'inkiko cyangwa mu ibaruwa ishinganye yashyikirijwe iposita, ko ahagaritse ibiganiro byari bigamije ubwumvikane. Iyo iyo nyandiko itakozwe, ntaho wahera uvuga ko ikirego cyashaje ;

2. Uburyo n'ibihe byo gutanga ikirego gisaba gutesha agaciro cyamunara

Urubanza rwasuzumwe : Urubanza N° RS/INJUST/RC 00009/2023/SC rwaciwe ku wa 14/02/2025, haburana UWIMANA Aline; MUREKATETE Devothe; MUGABO Eric; MUKAMANA Eugenie; UWAMBAYE Florence; MUKAKABERA Margaritha; MUNYERAGWE Epimaque; MUPENDA Asiimwe Stephen; SAFARI Willy; IRIBAGIZA Yvonne.

Ikibazo cyasuzumwe :

- Ububasha bw'urukiko rw'ibanze mu kuburanisha ibirego birebana n'impaka zirebana no kwandikwaho umutungo wavuye mu cyamunara

- Kumenya niba cyamunara yarakurikije amategeko ku buryo yashingirwaho haba ihererekanyamutungo

Inkomoko y'ikibazo :

MUPENDE Asiimwe Stephen yareze abazungura ba NYABUHENE Innocent mu Rukiko rw'Ibanze rwa Nyamata asaba kwandikwaho imitungo ifite UPI: 5/07/09/02/200 ndetse na UPI: 5/07/09/02/223 yaguze muri cyamunara yabaye ku wa 05/06/2010, ubwo harangizwaga urubanza rwaciwe n'Urukiko Gacaca rw'Akagari ka Kanzenze kugira ngo hishyurwe imitungo yangijwe na NYABUHENE Innocent. Abazungura ba NYABUHENE Innocent bireguye bavuga ko batigeze bamenyeshwa imanza zaregwagamo umubyeyi wabo ndetse n'indi mihango yose ibanziriza cyamunara. Batanze kandi inzitizi bavuga ko ikirego cyatanzwe kidakwiye kwakirwa kuko kitari mu bubasha bw'Urukiko rw'Ibanze rwa Nyamata, kuko bene ibyo birego biburanishwa n'inkiko zisumbuye.

Urukiko rw'Ibanze rwa Nyamata rwavuze ko iyo nzitizi nta shingiro ifite, rwemeza ko rufite ububasha, hanyuma rwemeza ko isambu ibaruye kuri UPI: 5/07/09/02/200 ari yo yonyine MUPENDE Asiimwe Steven yaguze muri cyamunara, rutegeka ko icyemezo gifite UPI: 5/07/09/02/200 cyanditse ku bazungura ba NYABUHENE Innocent giteshejwe agaciro, kikandikwa kuri MUPENDE Asiimwe Steven. Rwemeje kandi ko ubutaka bubaruye kuri UPI: 5/07/09/02/223 bukomeza kwandikwa ku bazungura ba NYABUHENE Innocent, runabategeka gusubiza MUPENDE Asiimwe Steven 1.010.000 Frw y'indishyi. Abazungura ba NYABUHENE Innocent bajuriye Urukiko Rwisumbuye rwa Gasabo banenga imikirize y'Urukiko rwabanje, maze ubujurire bwabo ntibwahabwa ishingiro. Bongeye kujuririra Urukiko Rukuru,

maze rwanzura ko ubujurire bwabo butakiriwe kuko bwatanzwe impitagihe. Rwasobanuye ko urubanza rwajuririwe rwasomwe ku wa 30/07/2021, ariko batanga ubujurire ku wa 30/08/2021 kandi umunsi wa nyuma wo kujurira wari ku wa 29/08/2021. Abazungura ba NYABUHENE Innocent basabye ko urubanza rusubirwamo ku mpamvu z'akarengane, ubusabe bwabo burakirwa, ruburanishwa n'Urukiko rw'Ikirenga.

Urukiko rwasuzumye ikibazo cyo kumenya niba Urukiko rw'Ibanze rwa Nyamata rwari rufite ububasha bwo kuburanisha ikirego cyatanzwe na MUPENDE Asiimwe Steven, kumenya niba cyamunara yo ku wa 05/06/2010 yarakurikije amategeko ku buryo yashingirwaho MUPENDE Asiimwe Stephen yandikwaho umutungo ; maze rusanga :

i. Urukiko rw'Ibanze rwa Nyamata rwari rufite ububasha bwo kuburanisha urubanza nk'uko biteganywa n'ingingo ya 27, igika cya 3, y'Itegeko N^{o} 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko.

ii. Ikirego gisaba gutesha agaciro cyamunara gitangwa mu buryo bw'ibirego byihutirwa kandi kigatangwa mu Rukiko rw'aho cyamunara igomba kubera cyangwa yabereye.

iii. Ikirego gisaba gutesha agaciro cyamunara gitangwa mu minsi 15 kuva umunsi yabereyeho cyangwa aho umuburanyi ayimenyeye ; kikaburanishwa mu minsi 4 kandi Urukiko rugafata icyemezo mu gihe kitarenze amasaha mirongo ine n'umunani (48).

iv. Rutasuzuma ibijyanye no kumenya niba cyamunara yarubahirije amategeko, kuko atari byo byaregewe muri uru rubanza, bityo rero hakaba ntakibuza ko yashingirwaho MUPENDE Asiimwe Stephen yandikwaho umutungo yaguze.

Ingingo z'amategeko umurongo ushingiyeho

- Ingingo ya 27 y'Itegeko N^{o} 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko

- Ingingo za 110, 185, 186, 260 z'Itegeko N^{o} 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe

Imirongo yatanzwe :

- Ikirego kirebana n’impaka ziri hagati y’uwahawe amasezerano y’ubukode burambye n’uwiyita nyir’umutungo ariko atayafite ku butaka bugenewe ubuhinzi n’ubworozi, kiri mu bubasha bw’inkiko z’ibanze ;

- Ikirego gisaba gutesha agaciro cyamunara gitangwa mu buryo bw’ibirego byihutirwa kandi gitangwa mu rukiko rw’aho cyamunara igomba kubera cyangwa yabereye ;

- Ikirego gisaba gutesha agaciro cyamunara gitangwa mu minsi 15 kuva umunsi yabereyeho cyangwa aho umuburanyi ayimenyeye; kikaburanishwa mu minsi 4 kandi urukiko rugafata icyemezo mu gihe kitarenze amasaha mirongo ine n’umunani (48);

- Urukiko ntirushobora gusuzuma ibijyanye no kumenya niba cyamunara yarubahirije amategeko, mu gihe atari byo byaregewe mu rubanza kuva rutangira.

Izindi manza zihuriye kuri iyi mirongo:

- Urubanza rubanziriza urundi N° RS/INJUST/RCOM 00006/2023/SC rwaciwe ku wa 15/11/2024 haburana BIMENYIMANA Innocent na NDERERIMANA Gédéon.

3. Izungura ry'umugabo washakaye n'abagore babiri bose mu buryo bwemewe n'amategeko n'uruhare rwa buri wese mu mutungo yasize

Urubanza rwasuzumwe: Urubanza N° RS/INJUST/RC 00013/2021/SC rwaciwe ku wa 13/06/2025, NYIRAMUGWERA Zilipa aburana na NYIRANGANIZI Félicité hamwe n'abazungura ba MUNYAMPETA Gaspard.

Ibibazo byasuzumwe :

- Kumenya niba ubushyingiranwe bwabayeho mbere y'uko hashyirwaho Itegeko Nshinga ryo ku wa 24/11/1962 bufatwa kimwe nk'ubwakorewe imbere y'Umwanditsi w'Irangamimerere;
- Kumenya uko umutungo wasizwe na nyakwigendera ugabanywa iyo bigaragaye ko atari umugore umwe basezeranye mu buryo bw'ivangamutungo rusange;

IMITERERE Y'URUBANZA :

MUNYAMPETA Gaspard yapfuye yarabanye n'abagore 5, aribo NYIRABURANGA (mu 1947), CYURINYANA Mélanie (mu 1950), NYIRAMUGWERA Zilipa (mu 1961), MUREKATETE Caritas (mu 1976) na NYIRANGANIZI Félicité (mu 1988), aba babiri ba nyuma akaba aribo yari yarasezeranye nabo mu buryo bukurikije amategeko yanditse; MUREKATETE Caritas we baje gutandukana. Uru rubanza rwatangiye muri abo bagore abakiriho ari babiri gusa NYIRANGANIZI Félicité na NYIRAMUGWERA Zilipa.

Aho MUNYAMPETA Gaspard apfiriye, umutungo we wasigaye mu maboko ya NYIRANGANIZI Félicité, bituma NYIRAMUGWERA Zilipa, abana n'abuzukuru ba MUNYAMPETA Gaspard, baregera Urukiko Rwisumbuye rwa Nyarugenge barusaba gutegeka ko bagabana umutungo bahuriyeho bakava muri *indivision*, buri rugo rukagira umutungo warwo rwigengaho; by'umwihariko NYIRANGANIZI Félicité we agasaba Urukiko ko, nk'umugore w'isezerano, yahabwa ½ cy'umutungo umugabo we yasize, ikindi ½ kigahabwa abana ba MUNYAMPETA Gaspard bose. Urukiko rwemeje ko hari ubusobekerane hagati y'imanza zose rwemeza ko zigomba kuburanishirizwa hamwe. Ku nzitizi yo kutemera ukugoboka kwa MUKAMUSONERA Béatrice,

Urukiko rwemeje ko ntaho itegeko rimwemerera kuba yaregera kugabana umutungo wasizwe na sebukwe.

Mu rubanza Nº RC 0166/10/TGI/NYGE - RC 0730/10/TGI/NYGE - RC 0425/11/TGI/NYGE, Urukiko rwaciye urubanza rwemeza ko NYIRANGANIZI Félicité, nk'umugore w'isezerano, agomba guhabwa ½ cy'umutungo wasizwe n'umugabo we, ikindi ½ gisigaye kikazungurwa ku buryo bungana n'abana bose basizwe na Nyakwigendera, abatakiriho bagahagararirwa n'ababakomokaho, nta vangura ribaye hagati y'abahungu n'abakobwa. Rwavuze ko nubwo abareze batemera uburyo ikibanza gifite Nº 4674 giherereye i Nyarutarama cyagurishijwemo, bigaragara ko nta kirego gisaba gutesha agaciro ubwo bugure bigeze batanga, rutegeka ko imitungo yasizwe na nyakwigendera yose igomba kugurishwa, ikiguzi kivuyemo kikagabanywa abagifiteho uruhare ku rwego buri wese yemererwa n'amategeko.

Urwo rubanza rwajuririwe mu Rukiko Rukuru na bamwe mu baburanyi, maze mu rubanza Nº 0609/13/HC/KIG - 0641/13/HC/KIG - 0611/13/HC/KIG, Urukiko rwemeza ko urubanza rwajuririwe ruhindutse gusa ku byerekeye imisoro ivugwa mu gika cya 30.

NYIRAMUGWERA Zilipa yatanze ikirego gisubirishamo urwo rubanza ku mpamvu z'akarengane, ruburanishwa n'Urukiko rw'Ikirenga maze muri urwo rubanza hagobokeshwa abatari ababuranyi mu manza zabanje ariko bafite imitungo iburanwa.

Urukiko rwasuzumye inzitizi yatanzwe n'abahagarariye NYIRAMUGWERA Zilipa bavuga ko NYIRANGANIZI Félicité yaburanishijwe n'Urukiko Rukuru kandi yarapfuye, ko rero urubanza rwaciwe rukwiye kuvaho. Nyuma yo kumva ibisobanuro byatanzwe n'ababuranyi, rwasanze iburanisha ry'urubanza rusubirishwamo ku mpamvu z'akarengane ryabaye ku itariki ya 20/03/2014 kandi rirapfundikirwa, Urukiko rumenyesha ababuranyi ko urubanza ruzasomwa ku itariki ya 18/04/2014, ariko uwo munsi isomwa ntiryaba, ahubwo ryimurirwa ku itariki ya 30/07/2014, uwo munsi ugeze urubanza rurasomwa. Rwasanze kandi NYIRANGANIZI Félicité yarapfuye ku itariki ya 21/03/2014, iburanisha ryarapfundikiwe. Rushingiye ku ngingo ya 128 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize

y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi13 ryakoreshwaga igihe urubanza rwacibwaga mu Rukiko Rukuru, rwasanze ntacyabuzaga Urukiko Rukuru guca urubanza mu mazina y'abaruburanye bose harimo na NYIRANGANIZI Félicité, rwemeza ko inzitizi yatanzwe na NYIRAMUGWERA Zilipa nta shingiro ifite.

Iburanisha ryarakomeje, ababuranyi bajya impaka ku kibazo kirebana no kumenya niba hari uburenganzira NYIRAMUGWERA Zilipa afite ku mitungo yasizwe na MUNYAMPETA Gaspard, ingano y'umugabane yemerewe mu gihe yaba abufite, n'indishyi zinyuranye zasabwe n'ababuranyi.

Mu rubanza rubanziriza urundi rwaciwe ku wa 05/07/2024, Urukiko rwemeje ko NYIRAMUGWERA Zilipa agomba gufatwa nk'umugore wemewe n'amategeko wa MUNYAMPETA Gaspard, akaba afite uburenganzira ku mitungo yasizwe n'umugabo we. Urukiko rwatanze ibisobanuro birambuye, bigaragaza impamvu ubushyingiranwe bwabayeho mbere y'uko hashyirwaho Itegeko Nshinga ryo ku wa 24/11/1962, nk'uko bimeze kuri NYIRAMUGWERA zilipa, bufatwa kimwe n'ubwakorewe imbere y'umwanditsi w'irangamimerere. Urubanza rwongeye kuburanishwa hasuzumwa ikibazo kirebana n'ingano y'umugabane NYIRAMUGWERA Zilipa yemerewe ku mutungo wasizwe na MUNYAMPETA Gaspard.

Urukiko rwasanze nta tegeko rigena uko bigenda igihe cy'izungura, iyo umugabo apfuye yari afite abagore barenze umwe bafatwa nk'abemewe n'amategeko, kuko Itegeko Nshinga n'andi mategeko byemera gusa ugushyingirwa k'umugabo umwe n'umugore umwe gukorewe mu butegetsi bwa Leta. Mu rwego rwo gutanga ubutabera, Urukiko rusanga hakwifashishwa ibiteganywa mu ngingo z'Itegeko ryerekeye izungura, zigena uko rikorwa iyo bibaye ngombwa ko uwapfakaye agabana umutungo n'abana basizwe n'uwapfuye, mu gihe abashyingiranywe bari barasezeranye ivangamutungo rusange.

Urukiko rwasanze kandi nk'uko biteganywa n'ingingo ya 76 y'Itegeko Nº 27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura mu duce twa 5º na 6º, iyo bibaye ngombwa ko uwapfakaye agabana umutungo n'abana basizwe n'uwapfuye,

afata kimwe cya kabiri (1/2) cy'umutungo bari basangiye nk'uburenganzira akura ku masezerano y'ivangamutungo. Ni ukuvuga ko umutungo abashyingiranywe bari basangiye ugabanywamo kabiri, kuko bombi bari bawufiteho uruhare rungana rwa 50%. Ibyo ariko itegeko ryabiteganyije rityo ku bashakanye babiri, basezeranye mu buryo bwemewe n'amategeko.

Urukiko rwanasanze, nk'uko byemejwe mu rubanza rubanziriza urundi rwavuzwe haruguru, MUNYAMPETA Gaspard atari afite umugore umwe basezeranye mu buryo bw'ivangamutungo rusange, ahubwo yari afite n'undi. Rusanga umutungo utagabanywamo ibice bibiri bingana kandi uhuriweho n'abantu batatu, ni ukuvuga MUNYAMPETA Gaspard, NYIRANGANIZI Félicité na NYIRAMUGWERA zilipa, ahubwo wagabanywamo ibice bitatu bingana; bityo, 1/3 kikaba icy'abazungura bose ba MUNYAMPETA Gaspard, ikindi 1/3 kikaba icy'abazungura ba NYIRANGANIZI Félicité, ikindi 1/3 kikaba icya NYIRAMUGWERA Zilipa.

Imirongo yatanzwe :

- Iyo iburanisha ritarapfundikirwa hakabaho guhindura irangamimerere k'umuburanyi, kuva ku mirimo cyangwa urupfu, umuburanyi usigaye agaragariza urukiko abafite ububasha bwo kurukomeza. Ariko iyo rwaburanishijwe rugapfundikirwa ariko rutarasomwa, urubanza ruguma ku mazina y'abaruburanye rugacibwa kandi rugasomwa ku mazina yabo.

- Iteka ryo ku wa 04/04/1950 ryatangiye gukurikizwa mu Rwanda no mu Burundi hashingiwe kuri O.R.U. N° 21/132 ryo ku wa 11/12/1951 rirebana no guca ubuharike ntabwo ryigeze rikurikizwa kuko ryari rinyuranyije n'umuco kandi na Leta nta ngamba zifatika zo guca ubwo buharike yashyizeho.

- Ubushyingiranwe bwabayeho mbere y'uko hashyirwaho Itegeko Nshinga ryo ku wa 24/11/1962 bufatwa kimwe nk'ubwakorewe imbere y'Umwanditsi w'Irangamimerere. Bityo umugore wo mu buharike afite uburenganzira ku mutungo wasizwe n'umugabo we, bungana n'ubw'umugore wasezeranye imbere y'Umwanditsi w'Irangamimerere;

- Iyo uwapfakaye bigaragara ko yari afitanye na nyakwigendera amasezerano y'ivangamutungo kandi akaba agomba kugabana umutungo n'abana basizwe n'uwapfuye, afata kimwe cya kabiri (1/2) cy'umutungo bari basangiye kuko bombi bari bawufiteho uruhare rungana rwa 50%, ikindi kigahabwa abazungura bose.

- Iyo bigaragaye ko nyakwigendera atasezeranye mu buryo bw'ivangamutungo rusange n'umugore umwe, ahubwo yari afite n'undi, umutungo ntugabanywamo ibice bibiri kuko uba uhuriweho n'abantu batatu, ahubwo ugabanywamo ibice bitatu bingana, 1/3 kikaba icy'abazungura bose ba nyakwigendera, ikindi 1/3 kikaba icy'umugore umwe cyangwa abazungura be, ikindi 1/3 kikaba icy'undi mugore cyangwa abazungura be.

- Umwe mu bashakanye na nyakwigendera uvuga ko hari umutungo yihariye utari mu yo asangiye n'abazungura, agomba kugaragaza ibimenyetso by'uko yawukomoye mu mafaranga ye bwite, adakomoka mu mitungo yasizwe na nyakwigendera.

- Ikimenyetso gishingiye ku buhamya ntigishobora kwemerwa ku masezerano atanditse afite agaciro kari hejuru ya 50.000 Frw cyangwa ku kintu cyose gifite agaciro kayarengeje, keretse ubwo buhamya bwunganiwe n'ibindi bimenyetso.

4. **Kurega umuntu wapfuye**

Urubanza rwasuzumwe: Urubanza N° RC 00004/2024/SC, rwaciwe ku wa 06/05/2025 haburana KAZAVIYO Pascal na NYIRIMANZI Pascal, MURWANASHYAKA Gilbert na HAGUMARUSEKE Aaron.

Ibibazo byasuzumwe:

- ✓ **Kumenya niba NYIRIMANZI Pascal, MURWANASHYAKA Gilbert na HAGUMARUSEKE Aaron baragombaga kuregwa muri uru rubanza.**

IMITERERE Y'URUBANZA

BYAMANA yari afite abagore 4 barimo KABASANZA wari umugore wa nyuma. BYAMANA amaze gupfa, umwuzukuru we BAGANUKUNDI yahise ajya mu mitungo ye, avuga ko yayimuraze.

KABASANZA yatanze ikirego mu Rukiko rwa Kanto ya Nyamyumba, aregera ingabane y'urutoki hamwe n'imirima 2 yasigiwe n'umugabo we BYAMANA, arega BAGANUKUNDI.

Mu rubanza Nº RC 169/78 rwaciwe ku itariki ya 04/08/1978, Urukiko rwa Kanto ya Nyamyumba rwemeje ko ikirego cya KABASANZA nta shingiro gifite, runemeza ko nta burenganzira afite bwo gutunga imirima n'urutoki aregera kuko atigeze abitunga.

KABASANZA yajuririye mu Rukiko rwa Mbere rw'Iremezo rwa Gisenyi aregera ingabane y'urutoki n'umurima urimo ikawa n'insina uri ahitwa i Nyakabingo, maze mu rubanza Nº RCA 40/79 rwaciwe ku wa 18/04/1983, urwo Rukiko rwemeza ko ubujurire bwe bufite ishingiro, ko urubanza Nº RC 169/78 rwaciwe n'Urukiko rwa Kanto ya Nyamyumba ku wa 26/10/1978, ruhindutse muri byose, ruvuga ko BAGANUKUNDI atsinzwe naho KABASANZA akaba atsinze.

Mu mwaka wa 1996, NYIRIMANZI Pascal yareze KAZAVIYO Pascal (umuhungu wa KABASANZA) mu Rukiko rwa Kanto ya Nyamyumba, avuga ko yatwaye itongo rya Sekuru witwaga BYAMANA rigizwe n'imirima 2, anavuga ko KAZAVIYO Pascal adafite uburenganzira bwo kuba muri iyo mitungo kuko atari umwuzukuru wa BYAMANA, asaba Urukiko kumutegeka kuva mu itongo rya Sekuru.

Mu rubanza N° RC 86/96/NYAMY rwaciwe ku wa 27/12/1996, Urukiko rwa Kanto ya Nyamyumba rwemeje ko KAZAVIYO Pascal ava mu itongo rya BYAMANA yari yarasizemo umugore we witwaga KABASANZA rigizwe n'imirima 2 kuko batigeze babyarana, ko KAZAVIYO Pascal akwiye gusanga Se NSIGAYEHE akaba ariwe umuha umunani n'umugabane kuko atabyarwa na BYAMANA.

KAZAVIYO Pascal yajuririye urwo rubanza mu Rukiko rwa Mbere rw'Iremezo rwa Gisenyi arega NYIRIMANZI Pascal, MURWANASHYAKA Gilbert na HAGUMARUSEKE Aaron, maze mu rubanza N° RCA 302.R1/97 rwaciwe ku wa 04/09/1997, urwo Rukiko rwemeza ko imikirize y'urubanza N° RC 86/96/NYAMY idahindutse, ko KAZAVIYO Pascal atsinzwe, rumutegeka kuva mu itongo rya BYAMANA.

KAZAVIYO Pascal yongeye kuregera Urukiko Rwisumbuye rwa Rubavu ikirego cyo gusubirishamo urubanza N° RCA 302/R1/97 ingingo nshya ashingiye ku kuba yarahawe icyemezo (Attestation d'identité complète) kigaragaza ko ari mwene BYAMANA cyatanzwe na Komini Nyamyumba ku wa 16/07/1994, maze mu rubanza N° RCA 0515/011/TGI/RBV/RCA 05/16/01/TGI/RBV, urwo Rukiko rwemeza ko ikirego cya KAZAVIYO Pascal kitakiriwe.

KAZAVIYO Pascal yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Musanze, maze mu rubanza N° RCAA 009/12/HC/MUS, urwo Rukiko rwemeza ko ubujurire bwe butakiriwe.

KAZAVIYO Pascal yatanze ikirego mu Rukiko rw'Ubujurire, arusaba gukemura ikibazo cy'ivuguruzanya kiri hagati y'imanza 2 zaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Gisenyi, ari zo N° RCA 40/79 rwaciwe ku wa 18/04/1983 na N° RCA 302/R1/97 rwaciwe ku wa 04/08/1997, avuga ko muri izo manza zombi, umutungo waburanwaga ari umwe ariko ko ibyemezo byawufashweho bitandukanye kandi byanabaye itegeko, ikirego cye cyoherezwa mu Rukiko rw'Ikirenga maze cyandikwa kuri N° RC 00004/2024/SC.

Urukiko rw'Ikirenga rwasanze KAZAVIYO Pascal yaratanze ikirego kandi azi neza ko abo arega bapfuye, bityo rwemeza ko ikirego cye kidakwiye kwakirwa kubera iburabubasha ry'abo arega.

Ingingo z'amategeko zashingiwe:

- Ingingo ya 2, agace ka (w) n'iya 14 z'Itegeko N° 71/2024 ryo ku wa 26/06/2024 rigenga abantu n'umuryango;

Imirongo yatanzwe

- Ububasha bugomba kugaragazwa ku ruhande rw'urega no ku rw'uregwa kandi iburabubasha ryabo rituma ikirego kitakirwa;
- Kurega umuntu wapfuye (nyakwigendera), binyuranyije n'amategeko kuko umuntu wapfuye aba adashobora kwitaba mu rubanza mu buryo bwemewe n'amategeko ngo aburane, ingaruka zabyo akaba ari uko icyo kirego kiba kitagomba kwakirwa ngo gisuzumwe mu mizi.

Inyandiko z'abahanga zakoreshejwe

- C. CADIET et E. JEULAND, Droit judiciaire privé, 5è éd., Litec, Paris, 2006, pp. 225-226.
- SERGE GUINCHARD, Droit et Pratique de la Procédure Civile, 5è éd., Paris, Dalloz, 2006-2007, p. 22.

IMANZA Z'UBUCURUZI

1. Ibishingirwaho kugira ngo umuntu cyangwa itsinda ry'abantu bafatwe nk'abanyamigabane

Urubanza rwasuzumwe : Urubanza Nº RS/INJUST/RCOM 00018/2024/SC, rwaciwe ku wa 20/06/2025 haburana NGADJOLE Norbert na MUGANDA RWIBASIRA John.

Ibibazo byasuzumwe:

- ✓ Kumenya niba agaciro MUGANDA RWIBASIRA John yari afite mu ivuriro Cabinet Médical Peace, kari gutuma agenerwa amafaranga y'ingurane mu ivuriro Polyclinique Peace na Clinique Peace Gakenke Ltd;
- ✓ Kumenya niba MUGANDA RWIBASIRA John yasubiza NGADJOLE Norbert amafaranga yahawe harangizwa urubanza Nº RCOMA 00712/2021/HCC;

IMITERERE Y'URUBANZA:

Ku wa 19/07/2005, MUGANDA RWIBASIRA John yaguze ivuriro *Cabinet Medical Peace* n'uwitwa Dr NGAMIJE Daniel ku gaciro ka 400.000 Frw, arigurana n'ibikoresho byose byarimo. Yaje kwegera NGADJOLE Norbert amusaba ko barifatanya, maze nyuma yo kumusubiza 200.000 Frw bumvikana ko buri wese agira uruhare rungana na 50%. Avuga ko mu mwaka wa 2010, yagiye gukomeza amashuri ye, asigira NGADJOLE Norbert ubuyobozi bw'iryo vuriro.

Ku wa 12/01/2010, Minisiteri y'Ubuzima yandikiye MUGANDA RWIBASIRA John imubwira ko ivuriro rigomba guhita rifunga kubera ko ryakoraga mu buryo bunyuranyije n'amategeko. Nyuma yaho, NGADJOLE Norbert ntiyumvikanye na MUGANDA RWIBASIRA John, uyu avuga ko NGADJOLE Norbert yagombaga kujya amuha buri kwezi 80.000 Frw y'inyungu zikomoka ku migabane ye, nyamara akaba yarayamuhaye amezi abiri gusa.

MUGANDA RWIBASIRA John yatanze ikirego mu Rukiko rw'Ubucuruzi avuga ko NGADJOLE Norbert atigeze yubahiriza ibyo bumvikanye kandi nyamara ivuriro ryarabonye ibyangombwa, rikaguka rikaba *Polyclinique Peace* ndetse rinagira ishami ryaryo ryitwa *Clinique Medicale Peace Gakenke Ltd*. Akomeza

avuga ko aho aviriye kwiga, yatunguwe no gusanga imigabane yose yarigaruriwe na NGADJOLE Norbert, akaba yarasabaga Urukiko ko rwategeka NGADJOLE Norbert kumusubiza uburenganzira bwe nk'umunyamigabane w'ivuriro Peace; guhabwa inyungu zikomoka ku mugabane we; indishyi z'akababaro, iz'ikurikiranarubanza ndetse n'igihembo cya Avoka.

Mu rubanza N° RCOM 00481/2021/TC rwaciwe ku wa 12/10/2021, Urukiko rw'Ubucuruzi rwasanze ibisabwa na MUGANDA RWIBASIRA John atabihabwa ku mpamvu z'uko ivuriro *Cabinet Médical Peace* ryafunzwe kubera kutubahiriza ibisabwa kandi kuva icyo gihe hakaba nta kimenyetso na kimwe kigaragaza ko ryigeze ryongera gukora cyangwa ngo hashingwe ivuriro rindi bafatanyije. Rwanavuze ko nta na hamwe MUGANDA RWIBASIRA John agaragara nk'umunyamigabane mu mavuriro asaba kugiramo uburenganzira.

MUGANDA RWIBASIRA John yajuririye Urukiko Rukuru rw'Ubucuruzi maze mu rubanza N° RCOMA 00712/2021/HCC rwaciwe ku wa 16/02/2024, rusanga nta burenganzira MUGANDA RWIBASIRA John afite ku mavuriro *Polyclinique Peace* na *Clinique Médicale Peace Gakenke Ltd*, ariko ko kubera ko NGADJOLE Norbert atagaragaza irengero ry'imitungo yahoze ari iya *Cabinet Médical Peace* kandi ryarinjizaga, ibyo ari igihamya cy'uko iyo mitungo ari yo yahereyeho afungura andi mavuriro nayo yabyaye inyungu; bityo akaba akwiye gutegekwa gusubiza MUGANDA RWIBASIRA John uburenganzira yari afite nk'umunyamigabane w'ivuriro *Cabinet Médical Peace*.

NGADJOLE Norbert yasubirishijemo urwo rubanza ku mpamvu z'akarengane, maze ruburanishwa n'Urukiko rw'Ikirenga, hasuzumwa ikibazo cyo kumenya niba MUGANDA RWIBASIRA John yafatwa nk'umunyamigabane w'ivuriro Polyclinique Peace ndetse na Clinique Peace Gakenke Ltd kubera uburenganzira yari afite muri Cabinet Médical Peace.

Urwo Rukiko rwasanze kugira ngo MUGANDA RWIBASIRA John abe yafatwa nk'umunyamigabane mu mavuriro avugwa muri uru rubanza ari uko yaba yanditse nk'umunyamigabane, yarayashoyemo imari kandi agaragara mu gitabo cy'abanyamigabane bayo, ndetse yerekana icyemezo cy'imigane afite muri ayo mavuriro. Kuba nta na kimwe yujuje mu bimaze kuvugwa, haba muri *Polyclinique Peace*, haba no muri *Clinique Peace Gakenke Ltd*, akaba ntaho yahera asaba guhabwa uburenganzira muri ayo mavuriro yombi. Urwo Rukiko

rwemeje ko agaciro MUGANDA RWIBASIRA John yari afite muri Cabinet Médical Peace katari gutuma agenerwa amafaranga y'ingurane mu ivuriro Polyclinique Peace ndetse na Clinique Peace Gakenke Ltd.

Ingingo z'amategeko zashingiwe:

- Ingingo ya 2, agace ka 32°, y'Itegeko N° 07/2009 ryo ku wa 27/04/2009 ryerekeye amasosiyete y'ubucuruzi ryakurikizwaga Polyclinique Peace ishingwa;
- Ingingo ya 2, agace ka 33°, y'Itegeko N° 17/2018 ryo ku wa 13/04/2018 rigenga amasosiyete y'ubucuruzi ryakurikizwaga Clinique Médicale Peace Gakenke Ltd ishingwa;
- Ingingo ya 6 n'iya 10 z'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe.

Imirongo yatanzwe

- Isosiyete idafite ubuzima gatozi, umutungo wayo, inyungu n'ibihombo biba ari ibya ba nyiri sosiyete ku giti cyabo, kandi sosiyete ntishobora gukorana amasezerano n'abandi kuko iba itazwi imbere y'amategeko. Ni ukuvuga ko irekera aho kubaho iyo ihagaze gukora cyangwa ba nyirayo bayisheshe;
- Kugira ngo umuntu cyangwa itsinda ry'abantu bafatwe nk'abanyamigabane bagomba kuba banditse mu gitabo cy'abanyamigabane cyangwa baratangiye ibikorwa byo kwandikwa muri icyo gitabo nk'abafite imigabane muri sosiyete;
- Umunyamigabane ni umuntu cyangwa abantu, cyangwa ishyirahamwe rifite ubuzimagatozi bifite umugabane umwe cyangwa myinshi muri sosiyete; kandi izina ryabo rikaba ryanditse mu gitabo cy'abanyamigabane;
- Kugira ngo umuntu abe umunyamigabane muri sosiyete agomba kuba yarayishoyemo imari mu buryo bufatika. Ibyo bijyana no gushyira hamwe umutungo ndetse hakanumvikanwaho igikorwa cy'ubucuruzi sosiyete izakora;

- Umunyamigabane agomba kuba afite icyemezo cy'imigabane gihamya imigabane afite muri sosiyete. Icyemezo cy'imigane ni ikimenyetso cy'uburenganzira bwa nyir'imigabane bwa burundu *(prima facie evidence of the title of the member to the shares);*

- Umunyamigabane afite uburenganzira bwo kumenya uburyo sosiyete yashoyemo imari ikora, ubwo gufata icyemezo ndetse n'ubwo guhabwa urwunguko ku migabane yashoye.

Inyandiko z'abahanga zakoreshejwe

- James Marson and Katy Ferris, Business law, 6th ed., Oxford University Press, New York, 2020, p.403.
- Michael Carrigan, Denise Collins, Rob Corbet and others, Business Law, 4th ed., Oxford University Press Inc, New York, 2009, p.71.

Urundi rubanza ruhuriye kuri uyu murongo:

- Urubanza N° RCOMAA 0056/14/CS rwaciwe ku wa 23 Kamena 2017 haburana KAKOOZA Nkuriza Charles na NYAGATARE Jean Luc, igika cya 14.

2. Kuregera gutesha agaciro cyamunara.

Urubanza rwasuzumwe: Urubanza N° RS/INJUST/RCOM 00006/2023/SC rwaciwe ku wa 15/11/2024 haburana BIMENYIMANA Innocent na NDERERIMANA Gédéon.

Ibibazo byasuzumwe:

-Kumenya niba ubujurire bwa NDERERIMANA Gédéon butaragombaga kwakirwa mu Rukiko Rukuru rw'Ubucuruzi;

-Kumenya niba NDERERIMANA Gédéon yaratinze kuregera gutesha agaciro cyamunara.

IMITERERE Y'URUBANZA

BIMENYIMANA Innocent, Umuhesha w'inkiko w'umwuga, yateje cyamunara umutungo wa NDERERIMANA Gédéon ubaruye kuri UPI: 4/03/03/04/3678 harangizwa urubanza N° RCOM 00335/2019/TC rwaciwe ku wa 29/04/2019, NDERERIMANA Gédéon yatsinzwemo na Universal Trading Ltd, agategekwa kuyishyura 13.067.050 Frw, 202.191 Frw y'inyungu, 600.000 Frw akubiyemo igihembo cya Avoka, ay'ikurikiranarubanza n'igihembo cy'Umuhesha w'inkiko na 20.000 Frw y'amagarama yishyuye atanga ikirego.

NDERERIMANA Gédéon yatanze ikirego mu Rukiko rw'Ibanze rwa Muhoza asaba gutesha agaciro iyo cyamunara, urwo Rukiko rwemeza ko ikirego kitakiriwe kubera ko yaregeye Urukiko rutabifitiye ububasha. Nyuma y'icyo cyemezo yatanze ikirego mu Rukiko rw'Ubucuruzi asaba ko cyamunara yabaye ku mutungo we iteshwa agaciro kuko Umuhesha w'Inkiko atigeze ayimumenyesha ndetse akaba ataranubahirije imihango iteganyijwe n'amategeko. BIMENYIMANA Innocent yatanze inzitizi asaba ko ikirego cya NDERERIMANA Gédéon kitakwakirwa kuko yagitanze impitagihe.

Mu rubanza N° RCOM 01295/2022/TC rwaciwe ku wa 05/09/2022, Urukiko rw'Ubucuruzi rwemeje ko ikirego cya NDERERIMANA Gédéon kitakiriwe, rumutegeka kwishyura BIMENYIMANA Innocent 500.000 Frw y'igihembo cya Avoka na 50.000 Frw y'ikurikiranarubanza.

Ku wa 12/09/2022, NDERERIMANA Gédéon yajuririye mu Rukiko Rukuru rw'Ubucuruzi avuga ko Urukiko rw'Ubucuruzi rwanze kwakira ikirego cye rushingiye ku kuba yaratinze kugitanga nyamara atari byo, kubera ko uhereye igihe yamenyeye iby'igurishwa ry'umutungo we, ni ukuvuga ku wa 10/05/2022, nta gukererwa kwabayeho; ko kandi yaciwe indishyi zidafite icyo zishingiyeho, asaba Urukiko Rukuru rw'Ubucuruzi guha ishingiro ikirego cye no gutesha agaciro cyamunara yaregeraga.

BIMENYIMANA Innocent yatanze inzitizi yo kutakira ubujurire bwa NDERERIMANA Gédéon kubera ko yatinze kujurira, anavuga ko no ku rwego rwa mbere ikirego kitagombaga kwakirwa nk'uko Urukiko rw'Ubucuruzi rwabibonye kubera ko yamenyeshejwe igurishwa ry'umutungo we mu cyamunara, hagashira igihe kigera ku myaka 2 atararegera kuyitesha agaciro, asaba ko iyo nzitizi nayo yakongera gusuzumwa, urubanza rwaciwe ku rwego rwa mbere rukagumaho.

Mu rubanza N° RCOMA 00599/2022/HCC rwaciwe ku wa 07/10/2022, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bwa NDERERIMANA Gédéon

bufite ishingiro, rutegeka ko imikirize y’urubanza N° RCOM 01295/2022/TC rwajuririwe ihinduka kuri byose.

BIMENYIMANA Innocent yasabye ko urubanza rusubirwamo ku mpamvu z’akarengane, ubusabe bwe burakirwa, ruburanishwa n’Urukiko rw’Ikirenga.

Urukiko rwasanze cyamunara yakozwe ku mutungo wa NDERERIMANA Gédéon ufite UPI: 4/03/03/04/3678 ku wa 28/05/2020 itarubahirije ibiteganywa n’amategeko, rwemeza ko iteshwa agaciro NDERERIMANA Gédéon agasubizwa umutungo we, NDERERIMANA Gédéon ategekwa gusubiza UWAMBAYINEMA Anne agaciro k’inyubako yashyize ku butaka kangana na 1.080.818 Frw y’urugo + 595.018 Frw ya fondasiyo, yose hamwe akaba 1.675.819 Frw. Rwanategetse ko UWAMBAYINEMA Anne asubizwa 300.000 Frw yishyuye agura uwo mutungo muri cyamunara kuko bibaye ngombwa ko awusubiza, akayahabwa na BIMENYIMANA Innocent kuko ari we wayahawe, akaba ataranayashyikirije uwo yishyurizaga mu rubanza yarangizaga.

Amategeko umurongo ushingiyeho:

- Ingingo ya 260 y’Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’’umurimo n’iz’ubutegetsi nk'uko ryahinduwe.
- Ingingo ya 35 y’Itegeko Ngenga N° 03/2013/OL ryo ku wa 16/06/2013 rikuraho Itegeko Ngenga N° 08/2005 ryo ku wa 14/07/2005 rigenga imikoreshereze n’imicungire y’ubutaka mu Rwanda.

Imirongo yatanzwe :

- ➢ Kuba itangazo rya cyamunara ritarubahirije igihe rigomba gukorerwamo, ntirinamenyeshwe nyir’umutungo utezwa cyamunara n’uwishyurizwa, ndetse ntirinatangazwe mu gitangazamakuru icyo ari cyo cyose, iyo ni inenge ikomeye ituma cyamunara iteshwa agaciro ;

- ➢ Mu gihe hari inyubako zashyizwe ku butaka bugomba gusubizwa nyirabwo, izo nyubako zishobora gusabirwa gukurwaho iyo uwazishyizeho yabikoze azi neza ko zishyizwe ku butaka yabonye mu buryo butubahirije amategeko, ariko igihe yazishyizeho yumva ko ari ubwe, ntiyategekwa kuzikuraho, ahubwo azihererwa indishyi zingana n’agaciro kazo, akazihabwa n’ugomba gusubizwa ubwo butaka.

Izindi manza zihuriye kuri uyu murongo urebana n'inyubako nshya zashyizwe ku butaka bugomba gusubizwa nyirabwo w'ukuri :

- Urubanza N° RCAA 00031/2016/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 25 Nzeri 2019 NISHIMWE n'undi yaburanagamo na MUGENGA n'undi, igika cya 44.
- Urubanza N° RCAA 0018/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 24/12/2014 HARERIMANA n'abandi baburanagamo na SEBUKAYIRE, igika cya 28.

IMANZA Z'INSHINJABYAHA

1. Kuba icyitso mu gukora icyaha/Ubuhamya bwemewe mu Rukiko

Urubanza rwasuzumwe : Urubanza Nº RS/INJUST/RP 00006/2024/SC haburana Ubushinjacyaha na NTAGANIRA Samuel na MUKAMAZIMPAKA Lidivine.

IMITERERE Y'URUBANZA

Ubushinjacyaha burega NTAGANIRA Samuel na MUKAMAZIMPAKA Lidivine ko babaye ibyitso mu cyaha cyo guha inzoga umwana wahawe izina rya NAK no mu cyaha cyo gusambanya uwo mwana; ibyaha byakozwe na NIYOMUGABO Job ku wa 14/07/2021. Ubushinjacyaha bwasobanuye ko ubwo NIYOMUGABO Job, NTAGANIRA Samuel na MUKAMAZIMPAKA Lidivine bajyaga impaka z'uko NAK yaba akiri isugi, MUKAMAZIMPAKA Lidivine yababwiye ko aribo bazabyipimira, hanyuma ahamagara NAK, batangira kumuha inzoga. Buvuga ko amaze gusinda bamusiganye na NIYOMUGABO Job babakingiranye akaba ari bwo NAK yasambanyijwe.

Urukiko Rwisumbuye rwa Nyarugenge rwanzuye ko MUKAMAZIMPAKA Lidivine ahamwa no kuba icyitso mu cyaha cyo guha umwana inzoga, ariko ko adahamwa no kuba icyitso mu cyaha cyo gusambanya umwana, rutegeka ko afungwa ukwezi kumwe. Kuri NTAGANIRA Samuel, Urukiko rwanzuye ko ahamwa no kuba icyitso mu cyaha cyo gusambanya umwana, ariko ko adahamwa no kuba icyitso mu cyaha cyo kumuha inzoga ; rutegeka ko afungwa imyaka 25 ; runasonera abaregwa bombi kwishyura 20.000 Frw y'ingwate y'amagarama y'urubanza. NTAGANIRA Samuel yajuririye Urukiko Rukuru asaba kurenganurwa kuko atigeze agira uruhare mu ikorwa ry'icyaha cyo gusambanya umwana. Ubushinjacyaha bwaburanye busaba ko hagumaho imikirize y'urubanza rwaciwe n'Urukiko rwabanje.

NTAGANIRA yarajuriye, maze Urukiko Rukuru rusanga ubujurire bwe nta shingiro bufite, ariko rushingiye ku mpamvu nyoroshyacyaha yuko ari ubwa mbere akoze icyaha, rumuhanisha imyaka 8 y'igifungo. Urwo rubanza NTAGANIRA Samuel yarusubirishijemo ku mpamvu z'akarengane, avuga ko Urukiko rwirengagije ikimenyetso cyerekanaga ko nta ruhare yagize mu ikorwa ry'icyo cyaha, akaba ari nta n'inkunga yatanze muri icyo cyaha maze ruburanishwa n'Urukiko rw'Ikirenga, rusuzuma ibibazo 2 aribyo : kumenya ubuhamya bukwiye kwemerwa mu rukiko no kureba ibishingirwaho ngo umuntu yitwe ko ari icyitso mu gukora icyaha. Urukiko rwasanze ubuhamya

avuga butashingirwaho kuko ubutanga atiboneye cyangwa ngo yiyumvire ibyo atangaho ubuhamya ahubwo ari ibyo yabwiwe, hakaba hari n'ubuhamya budashidikanywaho kuba yaratanze inkunga yatumye icyaha gikorwa, rwemeza ko urubanza rwaciwe n'Urukiko Rukuru rugumyeho.

Ingingo z'amategeko zashingiweho:

- Ingingo 62 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ryakoreshwaga igihe icyaha cyakorwaga
- Ingingo ya 2, agace ka 5°, y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe

Imirongo yatanzwe

- Ubuhamya bwemewe mu Rukiko ni ubutanzwe n'uvuga ibyo yiboneye cyangwa yiyumviye ubwe, ubutanzwe n'umuntu utariboneye cyangwa ngo yiyumvire ubwe ibijyanye n'imikorere y'icyaha cyangwa ikiburanwa bukaba butakirwa, iyo bugamije kwemeza ukuri kw'ibivugwa.

- Inkunga mu gukora icyaha ifatwa mu buryo bukurikira:

a. Kuba icyitso bisaba ibintu bitatu ari byo ko haba habayeho (i) igikorwa cyo kuba icyitso (ii) igikorwa kigize icyaha gihanwa n'amategeko kandi (iii) bigakorwa bigambiriwe hagamijwe kwifatanya n'uwakoze icyaha;

b. Igikorwa cyo kuba icyitso (L'acte matériel de complicité) kibaho hatangwa ubufasha (aide ou assistance) cyangwa mu gushishikaza ukora icyaha cyangwa kumuha amabwiriza (provocation ou fourniture d'instruction);

c. Si ngombwa ko ubufasha cyangwa inkunga yatanzwe iba yabaye ngombwa cyangwa ko haba hari icyo yafashije koko mu ikorwa ry'icyaha, ikirebwa ni uko iba yafashije ukora icyaha gufata icyemezo;

d. Inkunga mu gutegura icyaha igizwe no gufatanya n'ukora icyaha mu bikorwa bigitegura cyangwa mu gufata ingamba zigamije koroshya ikorwa ry'icyaha, uzi neza ko ibyo bikorwa biri buze gutuma icyaha gikorwa; inkunga mu gukora icyaha, ni iyatanzwe mu gihe icyaha gikorwa, nubwo uyitanga atari we ubwe ukora icyaha.

Inyandiko z'abahanga zakoreshejwe

- Jean Pradel, droit pénal comparé, 4è éd., Dalloz, Paris, 2016, p.304.
- R. c. Baldree, 2013 CSC 35, [2013] 2 R.C.S. 520 para 32
- www.jurisource.ca/wpcontent/uploads/2019/06/Ou%C3%AF-dire_d%C3%A9finitif_PDF.pdf
- Jean-Philippe Vicentini, Gérard Clément, Frédérique Dubost et Béatrice Clément https://shs.cairn.info/article/ELLI_GERAR_2015_01_0142?lang=fr
- Avi Bitton na Lois Pamela Lesot. https://www.village-justice.com.
- Bernard Bouloc, Droit Pénal Général, Editions Dalloz, 24è éd., p.303-304

2. Gucura umugambi wo gukora icyaha

Urubanza rwasuzumwe: Urubanza N° RS/INJUST/RP 00003/2023/SC, rwaciwe ku wa 27/06/2025 haburana Ubushinjacyaha na NSENGIYUMVA Théoneste, MUNYAKAZI Evariste, MUGIRANEZA Ildephonse, MUNYAMAHORO Innocent, UWAMARIYA Visensiya na HITIMANA Jean de Dieu.

Ikibazo cyasuzumwe:

Kumenya niba abaregwa barakoze icyaha cy'ivangura rishingiye ku bwoko, icyaha cy'ubwicanyi, icyo gutwikira undi inyubako ku bushake n'icyo gukubita no gukomeretsa ku bushake byateye ubumuga buhoraho.

IMITERERE Y'URUBANZA

Ku mugoroba wo ku wa 22/02/2020 hagati ya saa kumi n'ebyiri (18h00) na saa moya (19h00) mu Mudugudu wa Marantima, Akagari ka Rwebeya, Umurenge wa Cyuve, Akarere ka Musanze, hatwitswe abana 2 ba MANIFASHE Jerôme na SIFA Célestine ubwo bari mu nzu yabo, bikorwa habanje kumenwa ikirahure cy'idirishya ry'icyumba bari baryamyemo. Umwana witwa IKIREZI KUNDWA Délice wari ufite imyaka 2 yahise apfa, undi witwa UMUTONIWACU AGATAKO Winner wari ufite imyaka 3.5 arashya bikomeye biza no kumuviramo ubumuga bwo gucika akaguru.

Ibyo bimaze kuba, hakozwe iperereza hafatwa MUNYAKAZI Evariste, umukobwa we UWAMARIYA Visensiya, abahungu be MUNYAMAHORO Innocent na MUGIRANEZA Ildephonse, hafatwa na NSENGIYUMVA Théoneste wari SEDO w'Akagari ka Cyamvumba mu Murenge wa Kabatwa, ndetse na HITIMANA Jean de Dieu wari Umukuru w'Umudugudu wa Marantima. MUNYAKAZI Evariste, abahungu be n'umukobwa we ndetse na NSENGIYUMVA Théoneste, Ubushinjacyaha bwababakurikiranyeho icyaha cy'ivangura, icy'ubwicanyi, icyo gutwikira undi ku bushake n'icyo gukubita no gukomeretsa undi ku bushake byateye ubumuga buhoraho, naho HITIMANA Jean de Dieu bumukurikiranaho icyaha cy'ivangura, maze bubaregera Urukiko Rwisumbuye rwa Musanze.

Mu rubanza N° RP 00209/2020/TGI/MUS, rwaciwe ku wa 08/04/2021, urwo Rukiko rwemeje ko NSENGIYUMVA Théoneste, MUNYAKAZI Evariste, MUGIRANEZA Ildephonse, MUNYAMAHORO Innocent na UWAMARIYA Visensiya bahamwa n'ibyaha by'ivangura rishingiye ku bwoko, ubwicanyi, gutwikira undi ku bushake no gukomeretsa ku bushake, rubahanisha igifungo cya burundu buri wese. Rwemeje kandi ko HITIMANA Jean de Dieu ahamwa n'icyaha cy'ivangura rishingiye ku bwoko, maze rumuhanisha igifungo cy'imyaka 7 n'ihazabu ya 1.000.000 Frw.

Abaregwa bose bajuririye uru rubanza mu Rukiko Rukuru, Urugereko Rwa Musanze, maze ku wa 07/07/2022, urwo Rukiko rwemeza ko NSENGIYUMVA Théoneste, MUNYAKAZI Evariste, MUGIRANEZA Ildephonse na UWAMARIYA Visensiya bahamwa n'icyaha cy'ivangura rishingiye ku bwoko ariko ko badahamwa n'ibyaha by'ubwicanyi, gutwika ku bushake inyubako y'undi no gukomeretsa ku bushake umuntu byateye ubumuga buhoraho, rubahanisha igifungo cy'imyaka 7 n'ihazabu ya 1.000.000 Frw. Rwemeje kandi ko MUNYAMAHORO Innocent na HITIMANA Jean de Dieu ari abere ku byaha bari bakurikiranyweho, rutegeka ko bahita bafungurwa.

Ubushinjacyaha bwasubirishijemo urwo rubanza ku mpamvu z'akarengane, maze ruburanishwa n'Urukiko rw'Ikirenga. Rwasanze Urukiko Rukuru rwarahamije gusa MUNYAKAZI Evariste, NSENGIYUMVA Théoneste, UWAMARIYA Visensiya na MUGIRANEZA Ildephonse icyaha cy'ivangura, rushingiye ku bimenyetso birimo ubuhamya bwa MUNYAMAHORO Innocent mu Bugenzacyaha ndetse n'abatangabuhamya nka HABYARIMANA Emmanuel na GAKARA Danani ; nyamara bigaragara ko urwango bari

bafitiye SIFA Célestine kandi rushingiye ku ivangura ari rwo rwatumye bacura umugambi wo gutwika abana be, mu gihe (SIFA Célestine) bamubuze.

Urukiko rwasanze ibyashingiweho n'Urukiko Rukuru mu guhamya abaregwa icyaha cy'ivangura rishingiye ku bwoko, ari na byo byari gushingirwaho rubahamya icyaha cy'ubwicanyi, icyo gutwikira undi inyubako ku bushake n'icyo gukubita no gukomeretsa ku bushake byateye ubumuga buhoraho ; kuko iryo vangura ari ryo ryaje kugira ubukana bwavuyemo ubugome, abaregwa bacura umugambi wo gutwikira abana mu nzu, ko kwemeza ko ari abere kuko ntawababonye bajya gukora icyaha cyangwa bava kugikora, ari ukwigiza nkana kuko n'ubundi ntibari kujya kugikora kumugaragaro cyangwa umuntu abareba.

Rwasanze harabayeho impurirane mbonezamugambi ku byaha byakozwe na MUNYAKAZI Evariste, MUGIRANEZA Ildephonse, MUNYAMAHORO Innocent, UWAMARIYA Visensiya na NSENGIYUMVA Théoneste kuko bakoreye SIFA Célestine ivangura rishingiye ku bwoko, baramutoteza bamuziza ko ari umututsikazi bagamije kumugirira nabi, ari byo byaje kuvamo gutwika aho abana bari baryamye mu nzu umwe agapfa, undi agasigarana ubumuga buhoraho, bityo rusanga igihano ntarengwa cyo hejuru bagomba guhanishwa ari igifungo cya burundu giteganyijwe ku cyaha cy'ubwicanyi.

Rwasanze ku bireba HITIMANA Jean de Dieu, yarashinjwe na MUNYAKAZI Evariste mu Bugenzacyaha ko ari we wamugiriye inama yo kubaka urukuta rw'amabuye mu nzira kugira ngo imodoka ya MANIFASHE Jerôme na SIFA Célestine niyinjira mu rupangu ntizasohoke, no kuba umutangabuhamya GAKARA Danani avuga ko itotezwa ryakorerwaga SIFA yaribonaga akarebera ntagire icyo abikoraho, ibyo bikaba byaranashimangiwe n'umutangabuhamya MURWANASHYAKA Célestin wabajijwe n'Urukiko Rwisumbuye rwa Musanze ubwo rwakoraga iperereza ku wa 05/03/2021, wavuze ko HITIMANA atajyaga agaragaza ibibazo kwa MANIFASHE Jerôme bamugezagaho, ndetse ko yavuze ko abatutsi bafite ahandi bakwiye gutura, no kuba nta raporo n'imwe HITIMANA yigeze akora irimo itotezwa rishingiye ku ivangura rishingiye ku bwoko ryakorewe umuryango wa MANIFASHE Jerôme na SIFA Célestine, kandi muri dosiye rigaragara ndetse bamwe bakaba barahamijwe icyo cyaha n'inkiko zombi zibanza, icyo akaba ari ikimenyetso cy'uko yari arishyigikiye. Rwemeje ko ahamwa n'icyaha

cy'ivangura rishingiye ku bwoko, rumuhanisha igifungo cy'imyaka irindwi (7) n'ihazabu ya 1.000.000 Frw.

Ingingo z'amategeko zashingiweho:

- Ingingo ya 48, iya 53 n'iya 81 z'Itegeko N° 62/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso;
- Ingingo ya 107, iya 121, iya 163 n'iya 180 z'Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe;

Imirongo yatanzwe

- Kugira ngo umugambi wo gukora icyaha ubeho, bisaba ubwumvikane bwo gukora igikorwa gifatwa nk'icyaha n'itegeko. Uko gusangira igitekerezo cyo gukora icyaha, kumva kimwe ko icyaha muri bugikore, ni cyo kivamo gucura umugambi wo gukora icyaha uhanwa n'itegeko, kabone nubwo icyaha ubwacyo cyakorwa n'umwe mu bacuze umugambi cyangwa ntigikorwe, kuko ubwumvikane bwo gukora icyaha buhagije;

- Amategeko yemera ko umucamanza mu bwigenge n'ubwisanzure bwe, ari we uha agaciro ibimenyetso afite muri dosiye, kandi ibimenyetso bishingira ku mpamvu zose z'ibyabaye;

- Ubuhamya bw'abantu ntibuteshwa agaciro n'uko bafitanye amasano hagati yabo, cyangwa se bafite inyungu mu rubanza, kuko agaciro kabwo kadashingiye ku babutanga, ahubwo gashingiye ku kuri gukubiye muri ubwo buhamya, kwemezwa gusa n'Urukiko nyuma yo gusesengura imvugo z'abatangabuhamya.

Inyandiko z'abahanga zakoreshejwe

- Raoul Declercq, La preuve en matière pénale, Bruxelles, Editions juridiques Swinnen H., 1988, p.25.
- H-D. Bosly et Damien Vandermeersch, *Droit de la procédure pénale,* Bruxelles, La Charte, 2001, p.926.
- Michel Franchimont, Ann Jacobs et Adrien Masset, Manuel de procédure pénale, Bruxelles, Larcier, 2012, 4è éd., p.1191.

IMANZA ZIHARIYE

1. Gukuraho ingingo ya 39 y'Itegeko Nº 60/2018 ryo ku wa 22/08/2018 ryerekeye gukumira no guhana ibyaha bikoreshejwe ikoranabuhanga kubera ko inyuranyije n'ingingo ya 38 y'Itegeko Nshinga rya Repubulika y'u Rwanda.

Urubanza rwasuzumwe : Urubanza Nº RS/INCONST/SPEC00002/2024/SC rwaciwe ku wa 05/06/2025 haburana IBAMBE Jean Paul, rwahamagawemo Intumwa Nkuru ya Leta

Ikibazo cyasuzumwe :

Kumenya niba ingingo ya 39 y'Itegeko Nº 60/2018 ryo ku wa 22/08/2018 ryerekeye gukumira no guhana ibyaha bikoreshejwe ikoranabuhanga inyuranyije n'ingingo ya 38 y'Itegeko Nshinga rya Repubulika y'u Rwanda.

IMITERERE Y'URUBANZA :

IBAMBE Jean Paul yatanze ikirego mu Rukiko rw'Ikirenga arusaba kwemeza ko ingingo 39 y'Itegeko Nº 60/2018 ryo ku wa 22/08/2018 ryerekeye gukumira no guhana ibyaha bikoreshejwe ikoranabuhanga inyuranyije n'ingingo ya 38 y'Itegeko Nshinga rya Repubulika y'u Rwanda.

Yasobanuye ko ingingo ya 39 y'Itegeko rivuzwe haruguru ibangamira ubwisanzure bw'itangazamakuru bwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru kuko ikoreshwa mu buryo bwo guhana bw'inshinjabyaha abanyarwanda, ariko cyane cyane abanyamakuru kubera akazi kabo ka buri munsi. Iyo ngingo iteganya ko : « *Umuntu wese ubizi, wifashishije mudasobwa cyangwa urusobe rwa mudasobwa agatangaza amakuru y'ibihuha ashobora guteza ubwoba, imvururu cyangwa ihohoterwa muri rubanda cyangwa ashobora gutuma umuntu atakarizwa icyizere aba akoze icyaha, kandi ko iyo abihamijwe n'urukiko, ahanishwa igifungo kitari munsi y'imyaka itatu(3) ariko kitarenze imyaka itanu (5) n'ihazabu y'amafaranga y'u Rwanda atari munsi miliyoni imwe (1000.000 frw), ariko atarenze miliyoni eshatu (3.000.000 frw)* », urega akavuga ko inyuranyije n'ingingo ya 38 y'Itegeko Nshinga iteganya ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru, ko gufata igikorwa cyo gutangaza amakuru y'ibihuha ashobora gutuma umuntu atakarizwa icyizere nk'icyaha bibangamiye ubwisanzure bwo gutanga ibitekerezo kuko ikigamijwe ari ukurengera izina

ry'umuntu ku giti cye aho kuba inyungu rusange kubera ko nta ngaruka zigaragara byagira kuri sosiyete cyangwa kuri rubanda muri rusange.

Asobanura ko gutangaza amakuru y'impuha ashobora gutuma umuntu atakarizwa icyizere ntaho bitandukaniye n'icyaha cyo gusebanya ndetse ko ari nabyo bisobanuro byacyo, kandi icyo cyaha kikaba cyaravanywe mu mategeko ahana y'u Rwanda nk'uko byemejwe mu rubanza Nº RS/INCONST/SPEC 00002/2018/SC rwaciwe ku wa 24/04/2019 haburana MUGISHA Richard, mu gika cya 65 cy'urwo rubanza, Urukiko rukaba rwaremeje ko guhana icyaha cyo gusebanya binyuranyije n'Itegeko Nshinga.

Asoza avuga ko uretse kuba ingingo ya 39 y'Itegeko ryavuzwe haruguru inyuranyije n'Itegeko Nshinga, inanyuranyije n'ingingo ya 19 y'Itangazo mpuzamahanga ryerekeye uburenganzira bwa muntu ryo mu 1948 u Rwanda rwashyizeho umukono, ku itariki 18 Nzeri 1962 hamwe n'ingingo ya 19 y'Amasezerano mpuzamahanga yerekeye uburenganzira mu by'imbonezamubano no mu bya Politiki u Rwanda rwashyizeho umukono mu mwaka wa 1975, ingingo z'ayo masezerano zikaba ziteganya uburenganzira busesuye bwo gutanga ibitekerezo.

Leta y'u Rwanda yahamagawe mu rubanza, yo isanga ibivugwa na IBAMBE Jean Paul nta shingiro bikwiriye guhabwa, ko ingingo ya 39 y'Itegeko Nº 60/2018 ryo ku wa 22/08/2018 ryerekeye gukumira no guhana ibyaha bikoreshejwe ikoranabuhanga itanyuranyije n'ingingo ya 38 y'Itegeko Nshinga rya Repubulika y'u Rwanda, ahubwo ko ishyira mu bikorwa iyo ngingo ya 38 y'Itegeko Nshinga.

Urukiko rwasanze n'ubwo IBAMBE Jean Paul yaregeye ingingo yose ya 39 y'Itegeko Nº 60/2018 ryo ku wa 22/08/2018 ryerekeye gukumira no guhana ibyaha bikoreshejwe ikoranabuhanga ko inyuranyije n'ingingo ya 38 y'Itegeko Nshinga rya Repubulika y'u Rwanda, agace avuga ko karebana n'ikirego cye, ari agace ka nyuma k'iyo ngingo kavuga ko "…. ***Umuntu wese, ubizi, wifashishije mudasobwa cyangwa urusobe rwa mudasobwa agatangaza amakuru y'ibihuha ashobora gutuma umuntu atakarizwa icyizere, aba akoze icyaha***".

Urukiko rwasanze, haba mu Itegeko Nshinga no mu masezerano mpuzamahanga yagaragajwe, ubwisanzure bw'itangazamakuru ari

uburenganzira butagomba kuvogerwa, ariko hose hateganyijwemo irengayobora rijyanye no kuba butagomba kubangamira ubundi burenganzira, burimo ubw'umwenegihugu bwo kugira icyubahiro n'agaciro. Iryo rengayobora rikaba ryaranashimangiwe n'Akanama k'Uburenganzira bwa Muntu k'Umuryango w'Abibumbye (UN Human Rights Committee) mu 2011, kasobanuye ko ubwisanzure bwo kugaragaza ibitekerezo n'ubwo kubona amakuru butagomba kubangamira umutekano rusange w'igihugu n'uburenganzira bw'umwenegihugu bwo kugira icyubahiro n'agaciro.

Urukiko rwasobanuye kandi ko hari itandukaniro rikomeye riri hagati y'icyaha cyo gukoza isoni abayobozi b'Ibihugu n'abashinzwe umurimo w'Igihugu n'icyaha cyo gutangaza amakuru y'ibihuha, ashobora gutuma umuntu atakarizwa icyizere hifashishijwe mudasobwa cyangwa urusobe rwa mudasobwa, kubera ko mbere na mbere urubanza N° RS/INCONST/SPEC 00002/2018/SC rwa MUGISHA Richard rwasobanuye impamvu y'ivanwaho ry'ingingo ya 233 CP, ndetse n'impamvu z'ishyirwaho ry'Itegeko Nº 60/2018 ryo ku wa 22/08/2018 ryagarutsweho haruguru zikaba nazo zishimangira ko ingingo ya 39 yaryo itanyuranyije n'Itegeko Nshinga, ahubwo ko hari hagamijwe inyungu rusange z'umwenegihugu mu kumurinda ibitero yahura nabyo kubera ikoreshwa ry'ikoranabuhanga rikomeje gutera imbere.

Ingingo z'amategeko umurongo ushingiyeho :

► Ingingo ya 38 y'Itegeko Nshinga rya Repubulika y'u Rwanda.

► Ingingo ya 39 y'Itegeko Nº 60/2018 ryo ku wa 22/08/2018 ryerekeye gukumira no guhana ibyaha bikoreshejwe ikoranabuhanga.

Imirongo yatanzwe :

Kuba umushingamategeko yarashyizeho ingingo ya 39 y'Itegeko Nº 60/2018 ryo ku wa 22/08/2018 ryerekeye gukumira no guhana ibyaha bikoreshejwe ikoranabuhanga hagamijwe ihanwa ry'umuntu uwo ari we wese ubizi neza ukwirakwiza amakuru y'ibihuha ashobora gutuma umuntu atakarizwa icyizere/gutesha agaciro umuntu, ntibikwiriye gufatwa nk'aho bivutsa abanyamakuru cyangwa undi muntu uwo ari we wese uburenganzira bwo gutanga ibitekerezo mu bwisanzure ;

Ubwisanzure bw’itangazamakuru no gutanga ibitekerezo ni uburenganzira ntavogerwa, ariko ntibutagomba kubangamira ubundi burenganzira burimo, ubw’umwenegihugu bwo kugira icyubahiro n’agaciro (privacy) n’umutekano rusange w’igihugu.

Izindi manza zihuje umurongo ku bijyanye n’ihame ryo gutanga ibitekerezo mu bwisanzure :

Urubanza Nº RS/INCONST/SPEC00001/18/CS rwaciwe n’Urukiko rw’Ikirenga ku wa 24/04/2019 haburana MUGISHA Richard

Urubanza Nº RS/INJUST/SPEC/0003/2021/CS, rwaciwe ku wa 25/03/2022, haburana BYANSI Samuel Baker

Imanza zaciwe mu mahanga n’inyandiko z’abahanga n’amategeko mpuzamahanga

- G. R Nº 256700. April 25, 2023] People of the Philippines, Petitioner, Vs JOMERITO S. SOLIMAN

- Sunstein, Cass R. liars: Falsehoods and Free Speech in an age of deception. Oxforf University Press, 2021, page171&172

- Universal Declaration of human rights (1948) UN General Assembly Resolution 302.2, art.19

- International convenant on Civil and Political Rights, art.19

- African (Banjul) Charter on Human and Peoples’ Rights (adopted on 27th June 1981, art 9, al 1 & 2;

- General Comment Nº 34, adopted by the UN Human Rights Committee in 2011, in its article 9, par. 3.

2. Kwemeza ko ingingo ya 81, igika cya mbere n'icya kabiri, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe inyuranyije n'ingingo ya 29 n'iya 152 z'Itegeko Nshinga rya Repubulika y'u Rwanda.

Urubanza rwasuzumwe: Urubanza Nº RS/INCONST/SPEC00005/2023/SC rwaciwe ku wa 07/03/2025 haburana MIRONKO François Xavier

Ikibazo cyasuzumwe:

Kumenya niba ingingo ya 81, igika cya mbere n'icya kabiri, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe inyuranyije n'ingingo ya 29, igika cya mbere, agace ka (a), (b) n'aka (c) n'ingingo ya 152, igika cya mbere, uduce twa (a) na (b) z'Itegeko Nshinga.

IMITERERE Y'URUBANZA

Ku wa 13/09/2023, MIRONKO François Xavier yatanze ikirego mu Rukiko rw'Ikirenga asaba kwemeza ko ingingo ya 81, igika cya mbere n'icya kabiri, y'Itegeko Nº 22/2018 ryo ku wa 29/04/20218 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe , ndetse n'ingingo ya 137, igika cya mbere y'Itegeko Nº 27/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, zinyuranyije n'ingingo ya 29, igika cya mbere agace ka (a), (b) n'aka (c) n'ingingo ya 152, igika cya mbere agace ka (a) n'aka (c) z'Itegeko Nshinga.

MIRONKO François Xavier yasobanuye ko impamvu yatanze iki kirego ari uko ku wa 22/02/2023, mu iburanisha ry'urubanza Nº RS/INJUST/RCOM 00001/2019/SC, Urukiko rw'Ikirenga rwashingiye ku ngingo aregera ruhagarika iburanisha hanyuma rugaca urubanza Nº RP 00001/2023/SC rukamuha igihano ku cyaha ruvuga ko cyakorewe mu iburanisha.

Me NGENDAHIMANA Bernard wari uhagarariye MIRONKO François Xavier yasobanuye ko ingingo ya 81, igika cya 1 n'icya 2, y'Itegeko yaregeye iteganya ko « Mu gihe cy'iburanisha iyo hakozwe icyaha gihanishwa igihano kitarenga igifungo cy'imyaka itanu (5), urukiko rushobora guhera ko ruhana

uwagikoze kabone nubwo rwaba rudasanganywe ububasha bwo kuburanisha mu rwego rwa mbere bene ibyo byaha. Muri icyo gihe, umucamanza ahagarika iburanisha, agategeka ushinzwe umutekano gusohora uwakoze icyaha, agasaba abari mu iburanisha kugira ituze. Umwanditsi akora inyandiko mvugo y'ibyabaye. Umucamanza ahita yandika urubanza ashingiye ku byabaye n'amategeko yishwe, hanyuma agahamagaza uwo bari basohoye, akamusomera urubanza amuciriye mu ngingo zarwo zose, agasubukura iburanisha. Nta yindi mihango ikorwa cyangwa ngo ababuranyi bahabwe ijambo kugira ngo bagire icyo bavuga ku cyaha cyakozwe ».

MIRONKO François Xavier avuga ko impamvu yatumye aregera ingingo ivuzwe haruguru, ari uko yaciriwe urubanza N° RP 00001/2023/SC, agahanwa hashingiwe kuri iyo ngingo, nyamara ariko hatubahirijwe uburenganzira ku butabera buboneye, bityo agasaba ko yavanwaho kugira ngo akarengane yahuye nako hatazagira undi uwo ari we wese wazongera guhura nako, ibyo akabishingira ku ngingo ya 3, igika cya 2, y'Itegeko Nshinga iteganya ko icyemezo cyose cyangwa itegeko binyuranyije n'Itegeko Nshinga nta gaciro biba bifite.

Yasobanuye ko ingingo ya 29, igika cya mbere, agace ka (a) na (c) y'Itegeko Nshinga iteganya ko buri muntu wese afite uburenganzira ku butabera buboneye, burimo ubwo kumenyeshwa imiterere y'icyaha akurikiranyweho, kwiregura no kunganirwa, akanagira uburenganzira bwo kuburanira imbere y'urukiko rubifitiye ububasha ; naho ingingo ya 152, igika cya mbere, agace ka (a) n'aka (b) y'Itegeko Nshinga, igateganya ko imanza zose ziburanishirizwa mu ruhame, keretse igihe urukiko rwemeje ko habaho umuhezo mu buryo buteganyijwe n'amategeko. Asobanura ko uburenganzira ku butabera buboneye yavukijwe, harimo uburenganzira bwo kumenyeshwa ibikorwa bigize icyaha yahaniwe ngo abyiregureho nk'uko ingingo ya 29, igika cya mbere, agace (a), y'Itegeko Nshinga ibiteganya, uburenganzira bwo kuburanira imbere y'Urukiko rubifitiye ububasha kuko yaburaniye imbere y'Urukiko rw'Ikirenga ruruta izindi bikamuvutsa uburenganzira bwo kujuririra icyemezo yafatiwe, ubu burenganzira yavukijwe uretse kuba abuteraganyirizwa n'Itegeko Nshinga rya Repubulika y'u Rwanda, bukaba bunashimangirwa n'Amasezerano Nyafurika y'Uburenganzira bwa muntu n'ubw'Abaturage (Charte Africaine des Droits de l'Homme et des Peuples) u

Rwanda rwashyizeho umukono, cyane cyane mu ngingo yaryo ya 7, 10(A) na (C).

Mu gusobanura ubutabera buboneye, Me NGENDAHIMANA Bernard, ashingira ku bisobanuro byagiye bigarukwaho mu icibwa ry'imanza zitandukanye, nk'urubanza Nº RS/INCONST/SPEC 00003/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 04/12/2019 mu gika cya 13, rukaba rwarasobanuye ko uburenganzira ku butabera buboneye bureberwa bu buryo butandukanye, harimo ubutabera buboneye bushingiye ku migendekere y'urubanza hashingiwe ku mahame ateganywa n'amategeko, hakaba n'ubutabera buboneye bushingiye ku biteganywa n'Itegeko bubuza ishyirwaho ry'amategeko cyangwa izindi ngamba zidashyira mu gaciro uburenganzira bw'abaturage.

Mu butabera buboneye, yasobanuye kandi ko harimo n'uburenganzira bwo kujurira nk'uko Urukiko rw'Ikirenga rwabisobanuye mu rubanza N° RS/INCONST/SPEC 00004/2020/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 26/03/2021 haburana ASIIMWE Frank na Leta y'u Rwanda, mu gika cya 18 aho rwavuze ko ingingo ya 14, igika cya mbere n'icya 5, y'Amasezerano Mpuzamahanga yerekeye uburenganzira mu by'imbonezamubano no mu bya Politike, igaragaza uburenganzira bwo kuburanira imbere y'urukiko rubifitiye ububasha n'uburenganzira bwo kujurira, ko kuba ingingo ya 81, igika cya 1 n'icya 2, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, yima uregwa uburenganzira bwo kujuririra icyemezo kimufatiwe, inyuranyije n'ingingo ya 29 y'Itegeko Nshinga irebana n'uburenganzira ku butabera buboneye.

Asobanura kandi ko ingingo ya 81, igika cya mbere, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, nanone inyuranyije n'ingingo ya 29, igika cya mbere y'Itegeko Nshinga kubera ko iteganya ko ukekwaho icyaha ahita ahanwa adahawe umwanya wo kumenyeshwa ibyo aregwa ngo anabyiregureho, ndetse agahita ahanwa adahawe uburenganzira bwo kunganirwa nk'uko abyemererwa n'Itegeko Nshinga. Kubera iyo mpamvu, kuba umushingamategeko yarabiteganyije atyo kandi bibangamiye abaturage kuko bibavutsa uburenganzira ku butabera buboneye, icyo gika kikaba kigomba gukurwaho. Avuga ko indi mpamvu asaba ko iyo ngingo yakurwaho, ari uko itanga icyuho kuko itigeze iteganya uko byagenda mu gihe rwaba ari urukiko rwa nyuma rufashe icyemezo cyo guhana umuntu atamenyeshejwe

icyaha yakoze, ataburanye ndetse atemerewe no kujurira kandi harateganyijwe uburyo bw'ubujurire ku cyaha gikorewe mu iburanisha nk'uko byamugendekeye.

Me NGENDAHIMANA Bernard yasoje avuga ko mu rubanza rwavuzwe haruguru MIRONKO François Xavier yahereyeho atanga ikirego, hatubahirijwe n'ihame ry'uko ubutabera butangwa mu izina ry'abaturage, kandi ko ntawe ushobora kwicira urubanza, riteganywa n'ingingo ya 152, igika cya mbere, agace ka (a), y'Itegeko Nshinga, n'ihame ry'uko imanza zose zibera mu ruhame riteganywa n'ingingo imaze kuvugwa mu gace kayo ka (b) bitewe nuko ukoze icyaha asohorwa mu rukiko, akongera guhamagarwa asomerwa urubanza umucamanza yamuciriye ataburaniye mu ruhame, bityo akaba atabonye ubutabera buboneye. Asoza avuga ko bitumvikana uburyo umucamanza wakorewe icyaha yahindukira akaba ari we uburanisha urubanza rw'icyaha yakorewe, ko asanga iyo ari inenge ikomeye kuko biba bisa nko kwiregera warangiza ukanicira urubanza. Avuga ko icyaha kitaba gikorewe Urukiko, kubera ko bizwi neza ko Urukiko ruba ruhagarariwe n'abacamanza, bityo akaba ari bo baba bakorewe icyo cyaha.

Urukiko rwasanze umushingamategeko ashyiraho ingingo ya 81, igika cya mbere n'icya kabiri, y'Itegeko Nº 22/ ryo ku wa 29/04/2018 ryavuzwe haruguru iteganya ko icyaha gikorewe mu iburanisha gihita gihanwa ikanasobanura uburyo gihanwa, icyo yari agamije kwari ukubahiriza umutekano mu gihe cy'iburanisha, no kugira ngo habeho kubaha no guha agaciro imirimo ikorwa n'Urukiko.

Rwasanze kuba iyo ngingo idaha uregwa icyaha gikorewe mu iburanisha uburenganzira bwo kumenyeshwa imiterere n'impamvu z'icyaha akurikiranyweho, kwiregura no kunganirwa kubera ko ahita asohorwa mu iburanisha, akagarurwa asomerwa urubanza yaciriwe, binyuranyije n'ihame ry'ubutabera buboneye, cyane cyane ku bijyanye no kumenyeshwa imiterere n'impamvu z'icyaha akurikiranyweho, kwiregura no kunganirwa biteganyijwe n'ingingo ya 29, igika cya mbere, agace ka (a), y'Itegeko Nshinga ryavuzwe haruguru.

Urukiko rwasanze ku birebana no kuba ingingo iregerwa idaha uregwa uburenganzira bwo kuburanira imbere y'Urukiko rubifitiye ububasha, iyo ngingo iteganya mu gika cyayo cya 1 ko iyo mu gihe cy'iburanisha hakozwe

icyaha gihanishwa igihano kitarenga igifungo cy'imyaka itanu (5), Urukiko rushobora guhera ko ruhana uwagikoze kabone nubwo rwaba rudasanganywe ububasha bwo kuburanisha mu rwego rwa mbere bene ibyo byaha. Ibyo bikaba bisobanuye ko iyo mu rukiko runaka hakorewe icyaha cyari mu bubasha bw'urundi rukiko, urukiko gikorewemo ruhita rugira ububasha bwo kukiburanisha, kandi ibyo ni byo uwatanze ikirego anenga ingingo aregera ko ubwo umuntu aba ataburaniye imbere y'urukiko rufite ububasha.

Urukiko rwasanze ingingo 153, igika cya 5, y'Itegeko Nshinga iteganya ko itegeko ari ryo rigena imitunganyirize, imikorere n'ububasha by'inkiko. Ibyo bikaba bisobanuye ko Itegeko Nshinga ryemereye umushingamategeko kugenera ububasha inkiko akoresheje itegeko, ko ari muri urwo rwego umushingamategeko, ashingiye ku bubasha ahabwa n'Itegeko Nshinga, yateganyije mu ngingo ya 81, igika cya mbere, y'Itegeko ryavuzwe haruguru ko, ku birebana n'icyaha gikorewe mu iburanisha, urukiko gikorewemo ari rwo ruhita rugira ububasha bwo kukiburanisha, kabone nubwo rutaba rusanganywe ububasha bwo kukiburanisha mu rwego rwa mbere.

Rwasanze kuba urukiko rukorewemo icyaha gikorewe mu iburanisha ari rwo ruhita rugira ububasha bwo kukiburanisha, bifite impamvu z'ingenzi zikurikira: Iya mbere ni uko biba ari ngombwa kugarura ituze mu cyumba cy'iburanisha riba ryahungabanyijwe n'icyo cyaha, kugira ngo urubanza rwaburanishwaga rushobore gukomeza; icya kabiri akaba ari uko icyaha kiba cyabereye imbere y'umucamanza yakiboneye, akaba ari we uri mu mwanya mwiza wo gusobanura ibyo yiboneye ubundi akagihana ashingiye ku mategeko.

Rwasanze rero ingingo ya 81, igika cya mbere, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, itanyuranyije n'Itegeko Nshinga ku birebana no kuba uregwa afite uburenganzira bwo kuburanira imbere y'urukiko rubifitiye ububasha, kubera ko ubwo bubasha buteganywa n'Itegeko (statutory powers).

Ku birebana no kuba uwatanze ikirego avuga ko ingingo iregerwa idaha uwahamwe n'icyaha gikorewe mu iburanisha uburenganzira bwo kujurira mu gihe atishimiye icyemezo yafatiwe, Urukiko rwasanze ibyo nta shingiro bifite kubera ko, icyo iyo ngingo isobanura ari uburyo icyo cyaha kiburanishwa, uko yanditse ikaba ntaho ivuga ko uwahamwe n'icyo cyaha adafite uburenganzira bwo kujurira, ahubwo ikibazo uwatanze ikirego afite ni mu gihe

uwakoze icyaha aburanira mu Rukiko rw'Ikirenga ku buryo ntaho yajuririra. Urukiko rwasanze Urukiko rw'Ikirenga ari urukiko rusumba izindi, imanza ruciye zikaba nta handi zishobora kujurirwa, ibyo bikaba atari umwihariko w'ibyaha bibera mu iburanisha gusa, ndetse nta n'igitangaza kuba rwafatira uregwa icyemezo ku rwego rwa mbere n'urwa nyuma.

Ku ngingo irebana n'ibivugwa n'uwatanze ikirego ko ingingo aregera inyuranye n'ihame ry'uko imanza zicibwa mu izina ry'abaturage kandi ntawe ushobora kwicira urubanza ubwe, aho avuga ko kuba urukiko rukorewemo icyaha ruhita ruburanisha uwakoze icyo cyaha ari nko kwicira urubanza, Urukiko rwasanze icyaha gikorewe mu iburanisha kiba cyakorewe Urukiko kikabangamira ituze mu cyumba cy'iburanisha, rusanga atari icyaha kiba gikorewe umucamanza ku giti cye, ahubwo aba agikorewe nk'umuntu uri muri ako kazi k'ubucamanza. Kubera iyo mpamvu kuba yakurikirana uwagikoze, yarangiza akamufatira icyemezo, ntibikwiriye kwitiranywa no kuba umucamanza yakorerwa icyaha atari mu mirimo y'urukiko, dosiye yamugera imbere akayiburanisha. Ibyo umushingamategeko yarabibujije mu ngingo ya 104 ya CPCCSA nk'uko ryahinduwe, iteganya ko iyo umucamanza asanze hari imwe cyangwa nyinshi mu mpamvu zavuzwe ngingo ya 103 y'iri tegteko imureba, yivana mu rubanza.

Hashingiwe ku bisobanuro byatanzwe haruguru, Urukiko rwasanze ingingo ya 81, igika cya mbere, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru itanyuranyije n'Itegeko Nshinga kubera ko ntaho ibangamira ihame ry'uko ntawe ushobora kwicira urubanza ubwe.

Ku ngingo irebana no kuba ingingo yaregeye yaba inyuranye n'ihame ry'uko imanza ziburanishirizwa mu ruhame, Urukiko rwasanze iburanisha ribereye mu ruhame, ari igihe icyumba cy'iburanisha kiba gifunguye aho buri wese aba ashobora kwinjira agakurikira uko iburanisha rigenda. Ibi bikaba binyuranye n'igihe iburanisha ribera mu muhezo aho umucamanza ategeka ko abantu bari mu cyumba cy'iburanisha bose basohoka hagasigara ababuranyi bonyine n'ababunganira iyo bahari. Urukiko rwasanze uko iyo ngingo yanditse, nta hantu na hamwe iteganya ko ukurikiranyweho icyaha cyabereye mu iburanisha aburana abari mu cyumba babanje gusohorwa.

Hashingiwe ku gisobanuro kimaze gutangwa, Urukiko rwasanze ingingo ya 81, igika cya kabiri, y'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryavuzwe

haruguru uwatanze ikirego anenga, ntaho inyuranya n'ihame ry'uko imanza ziburanishirizwa mu ruhame, bityo ikaba itanyuranyije n'Itegeko Nshinga ku birebana n'iryo hame.

Urukiko rwasanze uburyo ingingo ya 81, igika cya mbere n'icya kabiri, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru uwatanze ikirego aregera, nta na hamwe inyuranyije n'Itegeko Nshinga ku birebana no kuba umuntu afite uburenganzira bwo gufatwa nk'umwere kugeza igihe urukiko rubifitiye ububasha rumuhamije icyaha.

Urukiko rwasanze ari ngombwa ko ingingo ya 81 y'itegeko ryavuzwe haruguru, igika cya 2 cyuzuzwa mu buryo bukurikira:

"Muri icyo gihe, umucamanza ahagarika iburanisha, agasaba abari mu iburanisha kugira ituze. Umwanditsi akora inyandiko mvugo y'ibyabaye. Umucamanza amenyesha uregwa ibyaha yakoze ndetse agasaba umwanditsi gusomera uregwa inyandiko mvugo y'ibyabaye. Umucamanza abaza uregwa n'umwunganira iyo ahari cyangwa ashobora guhita aboneka ako kanya, kugira icyo avuga kuri ibyo byaha. Iyo uregwa afite imyitwarire idatanga ituze, umucamanza ategeka abashinzwe umutekano kumusohora. Umucamanza ahita yandika urubanza, hanyuma agasoma icyemezo afashe, agasubukura iburanisha"

Ingingo z'amategeko umurongo ushingiyeho:

►Ingingo ya 81, igika cya mbere n'icya kabiri, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe;

► Ingingo ya 29 n'iya 152 z'Itegeko Nshinga rya Repubulika y'u Rwanda.

Imirongo yatanzwe :

- Kuba ingingo ya 81, igika cya mbere y'icya kabiri, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamunano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe, iteganya ko umucamanza ategeka ushinzwe umutekano gusohora uwakoze icyaha, manze agahita yandika urubanza, uregwa adahawe ijambo kugira ngo agire icyo avuga cyaha cyakozwe, binyuranyije n'ihame ry'ubutabera buboneye cyane cyane ku bijyanye n'uburenganzira bwo kumenyeshwa imiterere n'impamvu z'icyaha akurikiranyweho, kwiregura no kunganirwa biteganyijwe mu ngingo ya 29, igika cya mbere, agace ka (a), y'Itegeko Nshinga rya Repubulika y'u Rwanda.
- Kuba urukiko rukorewemo icyaha gikorewe mu iburanisha ari rwo ruhita rugira ububasha bwo kukiburanisha, bifite impamvu z'ingenzi zishingiye ku kuba biba ari ngombwa kugarura ituze mu cyumba cy'iburanisha riba ryahungabanyijwe n'icyo cyaha kugira ngo urubanza rwaburanishwaga rushobore gukomeza, no kuba icyo cyaha kiba cyabereye imbere y'umucamanza yakiboneye, akaba ari we uba uri mu mwanya mwiza wo gusobanura ibyo yiboneye, ubundi akagihana ashingiye ku mategeko. Urukiko rwasanze rero ingingo ya 81, igika cya 1, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, itanyuranyije n'Itegeko Nshinga ku birebana no kuba uregwa afite uburenganzira bwo kuburanira imbere y'urukiko rubifitiye ububasha, kubera ko ubwo bubasha buteganywa n'itegeko (statutory powers).
- Kuba uwakoreye icyaha mu iburanisha ribera mu Rukiko rw'Ikirenga, nta rundi rukiko yemerewe kuba yajuririramo mu gihe yafatiwe icyemezo kimuhana, ntaho binyuranyije n'ihame ry'uko uregwa afite uburenganzira bwo kujuririra icyemezo aba yafatiwe mu gihe atacyishimiye nk'uko biteganywa n'Itegeko Nshinga kubera ko, ubusanzwe Urukiko rw'Ikirenga ari rwo rukiko rusumba inkiko zose ndetse ibyemezo rufata bikaba bigomba gukurikizwa n'izindi nkiko. Ikindi kandi, si umwihariko w'uregwa uba wakoreye icyaha mu iburanisha ufatirwa icyemezo ku rwego rwa mbere n'urwa nyuma n'Urukiko rw'Ikirenga, kubera ko hari n'izindi manza ruca kandi zitajuririrwa.

- Icyaha gikorewe mu iburanisha kiba cyakorewe urukiko, kikabangamira ituze mu cyumba cy'iburanisha, ntabwo ari icyaha kiba cyakorewe umucamanza ku giti cye, ahubwo aba yagikorewe nk'umuntu uri mu kazi k'ubucamanza. Kuba rero yakurikirana uwagikoze, yarangiza akamufatira icyemezo, ntaho bibangamira ihame ry'uko ntawe ushobora kwicira urubanza.
- Kuba uwakoreye icyaha mu iburanisha, umucamanza ategeka ko asohorwa mu cyumba iburanisha ryaberagamo, akagarurwa asomerwa urubanza yaciriwe, ntabwo binyuranyije n'ihame ry'uko imanza ziburanishwa ndetse zikanasomerwa mu ruhame kubera ko, ntaho ingingo ya 81 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru iteganya ko abari mu cyumba cy'iburanisha bose bahita basohorwa, imiryango igakingwa kugira ngo byitwe ko biba bibaye umuhezo.

Izindi manza zihuje umurongo ku bijyanye n'ihame ry'ubutabera buboneye :

N° RS/INCONST/SPEC 00003/2019/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 04/12/2019;

N° RS/INCONST/SPEC 0004/2020/CS, rwaciwe ku wa 26/03/201, haburana ASIIMWE Frank;

N° RS/INCONST/PEN00001/08/CS rwaciwe ku wa 26/09/2008 haburana MURORUNKWERE;

Imanza zaciwe mu mahanga n'inyandiko z'abahanga n'amategeko mpuzamahanga

-COOKE v US, 267 US, 517;

-Universal Declaration of human rights (1948) UN General Assembly Resolution 302.2, art.19

- International convenant on Civil and Political Rights, art.19

-Amasezerano Nyafurika y'Uburenganzira bwa Muntu n'ubw'Abaturage, ingingo ya 7, igika cya mbere, uduce twa (b) na (c),

3. **Gusaba Urukiko kwemeza ko igika cya 4 cy'ingingo ya 161 y'Itegeko Nº 22/2018 ryo ku wa 29/04/20218 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kinyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda**.

Urubanza rwasuzumwe: N° RS/INCONST/SPE C00007/2023/SC rwaciwe ku wa 25/04/2025 haburana BUCYENSENGE MENDE Claude

Ikibazo cyasuzumwe: Kumenya niba igika cya 4 cy'ingingo ya 161 y'Itegeko Nº 22/2018 ryo kuwa 29/04/20218 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kinyuranyije n'ingingo ya 15, iya 29(1) (c) n'iya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda.

IMITERERE Y'URUBANZA

Ku itariki 13/12/2023, BUCYENSENGE Mende Claude yatanze ikirego mu Rukiko rw'Ikirenga arusaba kwemeza ko igika cya 4 cy'ingingo ya 161 y'Itegeko Nº 22/2018 ryo ku wa 29/04/20218 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kinyuranyije n'ingingo ya 15 na 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda.

Impamvu yashingiyeho ni uko BUCYESENGE avuga ko yaguze imitungo mu cyamunara yakozwe harangizwa urubanza rwabaye itegeko, nyuma ababuranyi baza kugirana amasezerano yo kumvikana batamutumiyemo nk'uwaguze umutungo uburanwa. Ku wa 15/06/2023, ababuranyi bashyize muri sisitemu ya IECMS amasezerano y'ubwumvikane, maze ku wa 27/06/2025, Urukiko rw'Ubujurire rwemeza ko amasezerano y'ubwumvikane yabaye hagati ya VALOIS Jean Marie n'abavandimwe be ku ruhande rumwe, na DUSABE Fazil ku rundi ruhande afite agaciro, kandi ko asoje urubanza Nº 00001/2022/CA, ibiyakubiyemo bikaba ari byo bishyirwa mu bikorwa, nyamara urwo rubanza ari rwo rwari rwarashingiweho hakorwa cyamunara.

BUCYENSENGE Mende Claude, amaze kumenya ko urubanza rwashingiweho agura mu cyamunara imitungo yagarutsweho haruguru rwasimbuwe n'amasezerano y'ubwumvikane, yashatse gutambamira urubanza Nº 00001/2022/CA kugira ngo arengere inyungu ze, azitirwa n'igika cya 4 cy'ingingo ya 161 y'Itegeko Nº 22/2018 ryavuzwe haruguru; giteganya ko imanza zaciwe n'Urukiko rw'Ubujurire n'Urukiko rw'Ikirenga zidatambamirwa. Iyi ikaba ariyo mpamvu yahisemo gutanga ikirego mu Rukiko rw'Ikirenga arusaba kwemeza ko icyo gika kivanwaho kuko kinyuranyije n'ingingo ya 15, iya 29 n'iya 34 z'Itegeko Nshinga.

BUCYENSENGE Mende Claude asobanura ko igika cya 4 cy'ingingo yagarutsweho haruguru kinyuranyije n'ingingo ya 15 y'Itegeko Nshinga kubera ko kibuza umuntu uburenganzira bwo gutambamira urubanza rwaciwe n'Urukiko rw'Ubujurire n'Urukiko rw'Ikirenga yumva rumurenganya, nyamara urubanza rwaciwe n'izindi nkiko byemewe, bityo agasanga icyo gika kinyuranyije n'ingingo ya 15 y'Itegeko Nshinga kubera ko kitareshyeshya abantu ngo kibarengere ku buryo bumwe. Asobanura kandi ko igika cya 4 cy'ingingo yagarutsweho kinyuranyije n'ingingo ya 29 (1) (c) y'Itegeko Nshinga kuko cyambura umuntu wumva ko yarenganyijwe n'urubanza rwaciwe n'Urukiko rw'Ubujurire n'urw'Ikirenga uburenganzira bwo kuburanira imbere y'Urukiko rubifitiye ububasha. Yavuze kandi ko icyo gika kinyuranyije n'ingingo ya 34 y'Itegeko Nshinga kubera ko kimubuza kurengera umutungo yaguze mu cyamunara harangizwa urubanza N° RCAA 00017/2019/CA, ntashobore kuwiyandikishaho kubera ko urubanza Nº 00001/2022/CA rwaciwe n'Urukiko rw'Ubujurire rukarutesha agaciro, atarubayemo umuburanyi, icyo cyemezo cy'Urukiko rw'Ubujurire kikaba cyaravogereye ndetse gihungabanya uburenganzira bwe kuri uwo umutungo yaguze.

Urukiko rwasanze ingingo ya 161 y'Itegeko Nº 22/2018 ryo kuwa 29/04/2018 ryavuzwe haruguru iteganya ibyiciro bibiri; icyiciro cy'ababuranira mu Rukiko rw'Ubujurire n'Urukiko rw'Ikirenga batemerewe gutambamira imanza zaciwe n'izo nkiko, n'icyiciro cy'ababuranira mu zindi nkiko bemerewe gutambamira imanza zaciwe nazo.

Rwasanze kuba Umushingamategeko yarabiteganyije atyo, ashingiye ku bubasha bw'inkiko no ku ihame rusange ryo kuba iburanisha ry'imanza rigomba kugira aho rirangirira, agamije kubungabunga uburenganzira bw'uwatsindwa mu rubanza rutambamira urwaciwe n'Urukiko rw'Ubujurire

cyangwa Urukiko rw'Ikirenga akabura aho ajuririra, bitanyuranyije n'ihame ryo kureshya kw'abantu imbere y'amategeko, kuko bishingiye ku mpamvu yumvikana kandi ifite ireme. Kubera izo mpamvu rusanga icyo gika kitanyuranyije n'ingingo z'Itegeko Nshinga zagarutsweho.

Ingingo z'amategeko umurongo ushingiyeho:

► Ingingo ya 15, 29, n'iya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda.

►Ingingo ya 161, igika cya 4, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe.

Imirongo yatanzwe :

- Ingingo ya 161, igika cya 4, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe, iteganya ko imanza zaciwe n'Urukiko rw'Ubujurire kimwe n'Urukiko rw'Ikirenga zidatambamirwa, ntikwiriye gufatwa nk'inyuranyije n'ihame ryo kutareshya kw'abantu imbere y'amategeko kubera ko Umushingamategeko yabiteganyije gutyo ashingiye ku bubasha bw'inkiko no ku ihame rusange ryo kuba iburanisha ry'imanza rigomba kugira aho rirangirira, ndetse akaba yari agamije kubungabunga uburenganzira bw'uwatsindwa mu rubanza rutambamira urwaciwe n'Urukiko rw'Ubujurire cyangwa Urukiko rw'Ikirenga akabura aho ajuririra, icyo gika kikaba gishingiye rero ku mpamvu yumvikana kandi ifite ireme.

Izindi manza zihuje umurongo ku bijyanye n'ihame ryo kureshya kw'abantu imbere y'amategeko

Urubanza Nº RS/INCONST/SPEC 00004/2021/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 10/02/2023 harega NGENDAHAYO KABUYE;

Urubanza Nº RS/INCONST/SPEC 0004/2024/CS, rwaciwe ku wa 26/04/2024, haburana Feminist Action Development Ambition (FADA);

Urubanza Nº RS/INCONST/SPEC 00002/2022/SC rwaciwe ku wa 31/03/2023 haburana Kamanzi Anaclet;

Urubanza Nº RS/INCONST/SPEC 00002/2023/SC haburana UWOMBONYE Hirwa Sudi;

Imanza zaciwe mu mahanga n'inyandiko z'abahanga n'amategeko mpuzamahanga

-Universal Declaration of human rights (1948) UN General Assembly Resolution 302.2, art.7

- International convenant on Civil and Political Rights, art.26

-Amasezerano Nyafurika y'Uburenganzira bwa Muntu n'ubw'Abaturage, ingingo ya 3.

UMWANZURO

Kugira ngo intego yo guhuriza hamwe iyi mirongo igerweho, abagana inkiko n'abatanga ubutabera (Abacamanza, Abashakashatsi n'Abanditsi b'inkiko…) bakwiye kujya bayifashisha mu gihe cyose batanga cyangwa basuzuma ibirego bihuje imiterere n'ibyatanzweho umurongo.

Kubera ko umurongo watanzwe n'Urukiko ushobora guhinduka bitewe n'impamvu zitandukanye, abifuza kwifashisha imirongo yatanzwe n'Urukiko bakwiye kujya bihatira kumenya ibyemezo by'inkiko uko byagiye bikurikirana, kugira ngo binababafashe kumenya impinduka zabaye ku mirongo yagiye itangwa mbere.