

RWANDA / JUDGMENT

# UBUSHINJACYAHA v. SULULU MARUGIRA N'UNDI

RPAA 00248/2021/CA

COURT

Court of Appeal

DECIDED

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## UBUSHINJACYAHA v. SULULU MARUGIRA N'UNDI

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### Text

#### Page 1

UBUSHINJACYAHA v. SULULU MARUGIRA N'UNDI [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00248/2021/CA (Gakwaya, P.J.) 28 Werurwe 2025 Amategeko agenga imanza nshinjabyaha – Icyaha cyo kwiba hakoreshejwe intwaro – Bifatwa nk'icyaha cyo kwiba hakoreshejwe intwaro, igihe uregwa yitwaje igikoresho gityaye cyangwa gitema gishobora kwica, gukomeretsa cyangwa gukubitishwa. Amategeko agenga imanza nshinjabyaha – Icyaha cyo kwiba hakoreshejwe intwaro – Kugirango uregwa ahamwe n'icyaha cyo kwiba hakoreshejwe intwaro, ntibisaba ko aba yazikoresheje cyangwa yari afite ubushake bwo kuzikoresha agirira abantu nabi, abakubita, abakomeretsa cyangwa ashaka kubica, kuba yari yitwaje ibyo bikoresho, byonyine birahagije kugira ngo ahamwe n'icyo cyaha. Incamake y'ikibazo: Ubushinjacyaha bwakurikiranye Michael Sululu Marugira na Abel Sululu Vigi mu Rukiko Rwisumbuye rwa Karongi ku cyaha cyo kwiba hakoreshejwe intwaro, nyuma yuko ku wa 30/9/2018 saa saba z'ijoro (1h00), bitwikiriye ijoro bitwaje intwaro zirimo fer à béton, scie à métaux n'umutarimba, bajya kwiba mu kigo cy'amashuri cya Rugabano (Ecole secondaire de Rugabano), baca idirishya rya cantine y'icyo kigo

bibamo ibintu bitandukanye. Bakaba bari bavuye iwabo muri Congo baje gusura ise ubabyara wigisha kuri icyo kigo. Urwo Rukiko rwaciye urubanza rwemeza ko bahamwa n'icyaha cy'ubujura bukoreshejwe intworo, rubahanisha igihano cy'igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga miliyoni eshanu (5.000.000 Frw) kuri buri wese. Abaregwa bombi bajuririye Urukiko Rukuru, Urugereko rwa Rusizi, basaba kugabanyirizwa ibihano no gukurirwaho ihazabu, Michael Sululu Marugira avuga ko Urukiko rwabanje rwamuhanishije igihano kirekire, kuko yaburanye yemera icyaha igice, ahishira umuvandimwe we agaragaza ko nta ruhare yagize mu ikorwa ry'icyaha yahaniwe, ariko akaba yarabitewe n'ubumenyi buke mu mategeko, n'amarangamutima ashingiye ku isano bafitanye. Abel Sululu Vigi we avuga ko ubu noneho aburana yemera icyaha, ko ku rwego rwa mbere yaburanye ahakana icyaha, Urukiko rumuhanisha igihano kirekire, kuba yarahakanye akaba yarabitewe no kutamenya amategeko, kandi nta mwunganizi yari afite, byatumye atamenya amahirwe ahabwa ababurana bemera icyaha. Urwo Rukiko rwaciye urubanza rusanga igihano bahawe aricyo gito giteganywa n'Itegeko kandi baraburanye bahakana icyaha, ko rero kitakongera kugabanywa kuko gikurikije amategeko. Abaregwa bajuririye Urukiko rw'Ubujurire, Michael Sululu Marugira avuga ko kuva mu ntangiriro yaburanye yemera icyaha bidashidikanywaho ariko Urukiko Rukuru rwanga kumugabanyiriza igihano rwitwaje ko yahishiriyemo murumuna we, rwirengagiza uko kwemera icyaha kwe. Naho Abel Sululu Vigi, avuga ko atakamba asaba guca inkoni izamba, Urukiko rugaha agaciro ukwemera icyaha kwe kudashidikanywaho, ko yemera ko icyaha yakoze gikomeye, bakaba bari bafite ibikoresho birimo fer à béton na scie à métaux bakoresheje bakata idirishya, ko nta zindi ntwaro bari bafite, asaba uru Rukiko kumugabanyiriza igihano. Bombi banahuriza ku kuba ibikoresho bari bitwaje aribyo fer à béton na scie à métaux, bitakabaye bifatwa nk'intworo, ko byajijishije Urukiko rubifata nk'aho ari intworo zikomeye.

## Page 2

Ubushinjacyaha buburana buvuga ko impamvu z'ubujurire za Michael na Abel zishingiye kugusaba kugabanyirizwa igihano nta shingiro zifite, kuko ntacyo bagaragaza banenga urubanza bajuririye, bakaba batagaragaza amakosa Urukiko Rukuru rwakoze, ko ndetse bagabanyirijwe igihano bihagije. Bukomeza buvuga ko ku bijyanye no kuba hasuzumwa niba ibikoresho bitwaje bajya kwiba byafatwa nk'intworo zikomeye kuko uretse kubikoresha bica idirishya nta kindi bari bagamije, ko nta gaciro bikwiye guhabwa kuko itegeko ridadeganya ko uwagiye kwiba yitwaje intworo agomba kuba afite izikomeye kugira ngo ahamwe n'icyaha, ko kandi atari ngombwa ko aba yazikoresheje. Incamacye y'icyemezo: 1. Bifatwa nk'icyaha cyo kwiba hakoreshejwe intworo, igihe uregwa yitwaje igikoresho gityaye cyangwa gitema, gishobora kwica, gukomeretsa cyangwa gukubitishwa.

2. Kugirango uregwa ahamwe n'icyaha cyo kwiba hakoreshejwe intworo, ntibisaba ko aba yazikoresheje cyangwa yari afite ubushake bwo kuzikoresha agirira abantu nabi, abakubita, abakomeretsa cyangwa ashaka kubica, kuba yari yitwaje ibyo bikoresho, byonyine birahagije kugira ngo ahamwe n'icyo cyaha. Ubujurire bufite ishingiro kuri bimwe; Urubanza ruhindutse ku bijyanye n'ibihano. Amategeko yashingiweho: Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, Ingingo ya 60,165 n'ya 170.

Ingingo ya 2, y'Itegeko N° 059/2023 ryo ku wa 4/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganyanya ibyaha n'ibihano muri rusange. Imanza zifashishijwe: Ubushinjacyaha vs Nsabimana n'abandi, RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 4/4/2022. Ubushinjacyaha vs Mpitabakana, RPA 0129/10/CS rwaciwe n'Urukiko Rw'Ikirenga ku wa 7/3/2014. Ubushinjacyaha vs Nteziryayo, RPA 0249/13/CS rwaciwe n'Urukiko Rw'Ikirenga ku wa 25/11/2016. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 30/9/2018 saa saba z'ijoro (1h00), Michael Sululu Marugira na Abel Sululu VIGI bitwikiriye ijoro bitwaje intwaro zirimo fer à béton, scie à métaux n'umutarimba, bajya kwiba mu ku kigo cy'amashuri cya Rugabano (Ecole secondaire de Rugabano), baca idirishya rya cantine y'icyo kigo bibamo ibintu bitandukanye bifite agaciro k'amafaranga miliyoni imwe n'ibihumbi ijana na mirongo irindwi na bitatu na magana inane na mirongo itanu (1.173.850 Frw), bakaba bari

### Page 3

bavuye iwabo muri Congo baje gusura ise ubabyara wigisha kuri icyo kigo, bafatwa bakomereje n'ahandi kuhiba. [2] Iperereza rirangiye, Ubushinjacyaha bwareze Michael Sululu Marugira na Abel Sululu Vigi mu Rukiko Rwisumbuye rwa Karongi icyaha cyo kwiba hakoreshejwe intwaro, busaba ko cyabahama, Abel Sululu Vigi agahanishwa igihano cy'igifungo cy'imyaka makumyabiri (20) n'ihazabu y'amafaranga miliyoni zirindwi (7.000.000 Frw), Michael Sululu Marugira agahanishwa igihano cy'igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw). [3] Michael Sululu Marugira yaburanye yemera icyaha, agisabira imbabazi, murumuna we Abel Sululu Vigi aburana ahakana icyaha. [4] Mu rubanza no RP 00228/2018/TGI/KNG rwaciwe n'Urukiko Rwisumbuye rwa Karongi ku wa 30/7/2019, rushingiye ku kuba Michael Sululu Marugira yemera icyaha agasobanura uko yaciye grillage z'idirishya akoresheje scie à métaux kandi akaba yarafatiwe mu cyuho afite ibyo yibye, yanasinyiye ku nyandikomvugo ibifatira, akaba yari agiye no kujya gutobora ahandi, kuba ndetse hari mvugo z'abatangabuhamya bamufashe, rwemeje ko ahamwa n'icyaha cy'ubujura bukoreshejwe intwaro. Rwemeje kandi ko n'ubwo Abel Sululu Vigi yahakanye icyaha, ariko ibimenyetso bigaragaza ko yafatanyije n'umuvandimwe we gukora ubwo bujura kuko bavanye i Bukavu bitwaje ibikoresho nk'itindo na scie à métaux, bageze mu kigo ise yigishamo, aho kujya kumureba ahubwo bakajya kwiba, ndetse abazwa hari aho yagiye yivuguruza, kandi abatangabuhamya bemeje ko bagifatwa we yirutse akabacika aza gufatwa nyuma, uko gucika nawe akaba yarabyiyemereye n'ubwo yavuze ko yumvise induru zivuze ariruka, rubahanisha igihano cy'igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga miliyoni eshanu (5.000.000 Frw) kuri buri wese, rusobanura ko ukwemera icyaha kwa Michael Sululu Marugira nta gaciro gufite kuko n'ubundi yafatiwe mu cyuho. [5] Michael Sululu Marugira yajuririye Urukiko Rukuru, Urugereko rwa Rusizi avuga ko Urukiko rwabanje rwamuhanishije igihano kirekire, kuko yaburanye yemera icyaha igice, ahishira umuvandimwe we agaragaza ko nta ruhare yagize mu ikorwa ry'icyaha yahaniwe, ariko akaba yarabitewe n'ubumenyi buke mu mategeko, n'amarangamutima ashingiye ku isano bafatanye, ko ariko icyemezo Urukiko rwabanje rwamufatiye kinyuranyije n'ibiteganywa n'ingingo ya 35 y'Itegeko n° 30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza

nshinjabyaha, ko ndetse rwafashe icyemezo rubogamiye ku Bushinjacyaha, rutandukira icyo amategeko avuga ku rubanza ruboneye, asaba kugabanyirizwa igihano yahawe ku rwego rubanza, avuga ko iminsi amaze muri gereza yabonye ingaruka z'icyaha bakoze, asaba imbabazi ko atazongera gukora icyaha ukundi, anasaba gusubikirwa igihano cy'igifungo kugira ngo asubire kwiga, anasaba ko yakurirwaho ihazabu kuko nta mikoro afite. [6] Abel Sululu Vigi yajuririye Urukiko Rukuru, Urugereko rwa Rusizi, avuga ko ku rwego rwa mbere yaburanye ahakana icyaha, Urukiko rumuhanisha igihano kirekire, ko kuba yarahakanye yabitewe no kutamenya amategeko, kandi nta mwunganizi yari afite, byatumye atamenya amahirwe ahabwa ababurana bemera icyaha mu buryo budashikanwaho, ndetse ko bwari ubwa mbere ageze imbere y'inzego z'ubutabera; ko ubu yemera icyaha, akaba asaba Urukiko kumugabanyiriza igihano akazasubira mu masomo, rukamugabanyiriza n'igihano cy'ihazabu kubera ko yari umunyeshuri, ihazabu yaciwe akaba atayibona.

## Page 4

[7] Mu rubanza no RPA 00319/2019/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi ku wa 17/12/2020, rushingiye ku kuba ku rwego rwa mbere Ubushinjacyaha bwari bwababonye Abel Sululu Vigi na Michael Sululu Marugira igihano cy'igifungo cy'inyaka makumyabiri (20) n'ihazabu y'amafaranga miliyoni zirindwi (7.000.000F) kuri buri muntu, Urukiko mu gusesengura rukaba rwarasanze baribye bari kumwe (barenze umwe), kuko nk'uko Urukiko rwigereye ahibwe, idirishya banyujijemo ibyo bibye nta kuntu umwe yari kubifata adafite undi abihereza, bakaba barakoresheje intwari scie à métaux baca iryo dirishya, biba cantine isanzwe ikorerwamo, ko igihano bahawe aricyo gito giteganywa n'Itegeko kandi baraburanye bahakana icyaha, ko rero kitakongera kugabanywa kuko gikurikije amategeko, kandi ko bagabanyirijwe igihano bihagije bahabwa igikwiranye n'icyaha bakoze, ko kandi Michael Sululu Marugira adashobora gusubikirwa igihano kuko icyaha yakoze gihanishwa igihano cy'igifungo kirenze imyaka itanu (5). [8] Ku wa 30/12/2020, Michael Sululu Marugira yajuririye Urukiko rw'Ubujurire avuga ko kuva mu ntangiriro yaburanye yemera icyaha bidashidikanywaho ariko Urukiko Rukuru rwanga kumugabanyiriza igihano rwitwaje ko yahishiriye murumuna we, rwirengagiza uko kwemera icyaha kwe, ko urwo Rukiko rwafashe intwari bari bafite nk'aho zari zikomeye kandi yari scie à métaux gusa, yakoresheje akata idirishya, ko asaba uru Rukiko ubutabera, akagabanyirizwa igihano. [9] Ku wa 20/10/2021, Michael Sululu Marugira yakoze undi mwanzuro yise uw'inyongera avuga ko Urukiko Rukuru, Urugereko rwa Rusizi rutamuhaye uburenganzira bwo gusobanura uburyo yageze muri ES Rugabano n'uburyo yahibye, ko Ubushinjacyaha bwavuze ko yari yitwaje intwari kandi twari udukoresho twa fer à béton na scie à métaux, bijijishye Urukiko rubifata nk'aho ari intwari zikomeye, bituma ahabwa igihano kiremereye, ko rero asaba uru Rukiko kumuha amahirwe agasobanura ibyutwo dukoresheye yari afite maze rugahindura inyito y'icyaha agahamwa n'ubujura busanzwe kuko atigeze atwifashisha, ko asaba ko yagabanyirizwa igihano kuko ari ubwa mbere akoze icyaha kandi kikaba nta ingaruka zikomeye cyateye kuko ibyo yibye byasubijwe, ko kandi asaba kuzoherezwa kurangiriza igihano aho mama we atuye kugira ngo bijye bimworohera kumugeraho kubera ko kuva

yafatwa atamuheruka. [10] Ku wa 30/12/2020, Abel Sululu Vigi nawe yajuririye Urukiko rw'Ubujurire, avuga ko atakambira uru Rukiko arusaba guca inkoni izamba, rugaha agaciro ukwemera icyaha kwe kudashidikanywaho, ko yemera ko icyaha yakoze gikomeye, bakaba bari bafite ibikoresho birimo fer à béton na scie à métaux bakoresheje bakata idirishya, ko nta zindi ntwaro bari bafite, asaba uru Rukiko kumugabanyiriza igihano. [11] Ku wa 20/10/2021, Abel Sululu Vigi yakoze undi mwanzuro yise uw'inyongera avuga ko Urukiko Rukuru rutamuhaye uburenganzira bwo gusobanura impamvu nk'izo yagaragaje mu mwanzuro wa mbere ajuririra uru Rukiko, akaba arusaba guhabwa amahirwe akisobanura. [12] Ubushinjacyaha buvuga ko impamvu z'ubujurire za Michael Sululu Marugira na Abel Sululu Vigi zishingiye kugusaba kugabanyirizwa igihano nta shingiro zifite, kuko ntacyo bagaragaza banenga urubanza bajuririye, bakaba batagaragaza amakosa Urukiko Rukuru rwakoze, ko ndetse bagabanyirijwe igihano bihagije.

## Page 5

- [13] Urubanza rwahawe no RPAA 00248/2021/CA, ruburanishwa ku wa 10/3/2025, Michael Sululu Marugira na Abel Sululu Vigi bunganiwe na Me Ruberwa N. Silas n'umusemuzi GATERA Athanase, naho Ubushinjacyaha buhagararaiwe na Habimana Jean Cabin, Umushinjacyaha ku rwego rw'Igihugu. [14] Mu iburanisha Michael Sululu Marugira yavuze ko ibyo yari yasabye byo koroherezwa agafungirwa hafi yaho nyina akorera atakibikomeje. [15] Harebwe imyanzuro n'imiburanire y'ababuranyi, ibibazo bizasuzumwa muri uru rubanza ni ukumenya niba inyito y'icyaha abaregwa bahamijwe yahinduka bagahamwa n'ubujura busanzwe, aho kuba ubujura bukoreshwe intwaro, kuko udukoresho bari bafite twafashwe nk'aho ari intwaro zikomeye kandi ataribyo no kumenya niba bagabanyiriza igihano. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA II.1. Kumenya niba ibikoresho abaregwa bari bafite igihe bakoraga icyaha bitaragombaga gufatwa nk'intwaro ku buryo inyito y'icyaha cy'ubujura bwitajwe intwaro bahamijwe yahinduka, bagahamwa no kwiba byoroheje [16] Michael Sululu Marugira avuga ko intwaro bashinjwa y'uko bakoresheje biba batari bazitwaje ngo bagire umuntu barwanya cyangwa uwo bagirira nabi, ko n'ikimenyimenyi umuntu wabafatiye mu cyuho biba yari umwe, nyamara nta kintu bigeze bamutwara, ko kandi udukoresho bari bitwaje ari fer à béton na scie à métaux, byajijishije Urukiko rubifata nk'aho ari intwaro zikomeye, bituma ahabwa igihano kiremereye, akaba asaba ko yahanirwa kwiba byoroheje. [17] Abel Sululu Vigi we yongeyeho ko ikibazo bagize ari ukutamenya amategeko, ko yari azi ko umuntu ugiye kwiba yitwaje intwaro ari ufite imbunda cyangwa grenade. [18] Me Ruberwa N. Silas, wunganira Abel Sululu Vigi na Michael Sululu Marugira yavuze ko nyuma yo kuganira nabo yabasobanuriye ko ibyo bari bitwaje ari intwaro kandi ko bazikoresheje mu kwiba, ko nta makosa yabayeho mu kugena inyito y'icyaha bahamijwe, ko icyo basaba uru Rukiko ari ukugabanyirizwa igihano gusa. [19] Ubushinjacyaha buvuga ko bwemeranyaga na Me Ruberwa N. Silas ku bijyanye n'intwaro Abel Sululu Vigi na Michael Sululu Marugira bari bafite igihe bajyaga kwiba, ko ikibazo abaregwa bafite ari uko bumva ko zidakomeye ku buryo bagombaga guhamwa n'ubujura bwitwaje intwaro, ko ariko igikoresho cyose wakwitwaza kandi ukaba ushobora kuba wakifashisha muri icyo gikorwa

cyo kwiba ugiyemo, ndetse byaba ngombwa ukaba wakirwanisha, hatitawe ko ari igikoresho gikomeye cyangwa se cyoroheje, ari intwaro, bityo ko inyito y'icyaha bahamijwe ariyo ikwiye. [20] Ubushinjacyaha bukomeza buvuga ko ku bijyanye no kuba hasuzumwa niba ibikoresho bitwaje bajya kwiba byafatwa nk'intwaro zikomeye kuko uretse kubikoresha bica idirishya nta kindi bari bagamije, nta gaciro bikwiye guhabwa kuko ingingo ya 170 y'Itegeko no 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange yashingiweho bahanwa, idateganya ko uwagiye kwiba yitwaje intwaro agomba kuba afite izikomeye kugira ngo ahamwe n'icyaha, ko

## Page 6

kandi atari ngombwa ko aba yayikoresheje, ko rero kuba basaba ko inyito y'icyaha yahinduka, nta shingiro bifite. UKO URUKIKO RUBIBONA [21] Impaka kuri iki kibazo zishingiye ku kumenya niba ibikoresho Abel Sululu Vigi na Michael Sululu Marugira bari bafite bajya kwiba bitafatwa nk'intwaro ivugwa n'Itegeko ku buryo inyito y'icyaha bahamijwe yahinduka, bagahamwa no kwiba byoroheje aho kuba kwiba witwaje intwaro. [22] Ingingo ya 165, agace ka kabiri (2°), y'Itegeko no 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange ivuga ko kwiba witwaje intwaro ari ukwiba witwaje igikoresho icyo ari cyo cyose, imbunda, icyuma cyangwa ikindi kintu cyose gitama, gitobora cyangwa gisekura, gishobora kwica, gukomeretsa cyangwa gukubitishwa kigaragara cyangwa gihishe cyangwa kibonetse hafi y'aho icyaha cyakorewe. [23] Ingingo ya 170 y'Itegeko no 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru iteganya ko " Umuntu wese wiba akoresheje intwaro, aba akoze icyaha cyo kwiba hakoreshejwe intwaro". [24] Isuzumira hamwe ry'ingingo ya 165 n'ya 170 zavuzwe haruguru, ryumvikanisha ko uregwa wakoze ubujura yitwaje intwaro igaragara, ihishe cyangwa ibonetse hafi y'aho icyaha cyakorewe, iyo ntware ikaba ityaye cyangwa itama, itobora, isekura, ndetse ishobora kwica, gukomeretsa cyangwa gukubitishwa, bihagije kugira ngo ahamwe n'icyaha cyo kwiba hakoreshejwe intwaro, yaba yayikoresheje cyangwa atayikoresheje. [25] Urukiko rw'Ubujurire rurasanga Abel Sululu Vigi na Michael Sululu Marugira bavuga ko bagombaga guhamwa n'icyaha cyo kwiba byoroheje cyangwa ubujurura bworoheje (vol simple) aho kuba kwiba (ubujura) bitwaje intwaro kuko ibikoresho bari bafite atari intwaro zikomeye, kandi ko ntazo bigeze bakoresha bagira uwo bagirira nabi, uretse kuba barabikoresheje gusa bakata idirishya banyuzemo bajya mu nzu bibyemo. [26] Urukiko rw'Ubujurire rurasanga hashingiwe ku ngingo ya 165, agace ka kabiri (2°), y'Itegeko no 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru, ibivugwa n'abaregwa ko ibikoresho bari bafite atari intwaro zikomeye ku buryo batari guhamwa n'icyaha cyo kwiba hakoreshejwe intwaro, bitahabwa agaciro kuko scie à métaux bari bitwaje ari igikoresho gityaye cyangwa gitama gishobora kwica, gukomeretsa cyangwa gukubitishwa, ndetse fer à béton ikaba ari icyuma gitobora gishobora kwica, gukomeretsa cyangwa gukubitishwa, ibi bikaba ari nabyo umuhanga mu mategeko, Georges Mineur, yasobanuye agaragaza urutonde rutuzuye (liste non exhaustive) rw'ibyatwaje intwaro. [27] Urukiko rw'Ubujurire rurasanga ibivugwa n'abaregwa ko batari guhamwa n'icyaha cyo kwiba hakoreshejwe intwaro kuko batakoresheje ibikoresho bari bafite bagira uwo bakomeretsa cyangwa bagirira nabi, bitahabwa agaciro kuko uretse no kuba barabikoresheje bica idirishya rya

1 “On entend par armes, un instrument qui sert à attaquer ou à défendre, “toutes machines, tous instruments, tous ustensiles ou autre objets tranchants, perçants ou contondants”. Constituent donc des armes, les fusils, revolvers, lances, bâtons, couteaux, machettes, etc,”G. Mineur, Commentaire du code pénal congolais, deuxième édition, Larcier, Bruxelles, 1953, P. 200.

## Page 7

cantine kugira ngo bagere ku mugambi wabo, kubahamya icyo cyaha ntibisaba ko baba babikoresheje cyangwa batari bafite ubushake bwo kubikoresha bagirira abantu nabi, babakubita, babakomeretsa cyangwa bashaka kubica, kuba bari bitwaje ibyo bikoresho, byonyine<sup>2</sup> birahagije kugira ngo bahamwe n’icyo cyaha. [28] Hashingiwe kuri ibyo bisobanuro, Urukiko rw’Ubujurire rurasanga nta kosa Urukiko Rukuru, Urugereko rwa Rusizi rwakoze ruhamya abaregwa icyaha cyo kwiba hakoreshejwe intwari, aho kuba icyo kwiba byoroheje. [29] Kubera izo mpamvu zose, Urukiko rw’Ubujurire rurasanga iyi ngingo y’ubujurire bwa Abel Sululu Vigi na Michael Sululu Marugira ishingiyeye ku gusaba guhindurirwa inyito y’icyaha, nta shingiro ifite. II.2. Kumenya niba Abel Sululu Vigi na Michael Sululu Marugira bagabanyirizwa igihano kubera impamvu nyoroshyacyaha bagaragaza [30] Michael Sululu Marugira avuga ko ari ubwa mbere akoze icyaha kandi ko nta ngaruka zikomeye cyateje kuko ibyo yibye yahise abifatanwa bisubizwa ba nyirabyo, ko rero asaba uru Rukiko gushingira kuri izo mpamvu nyoroshyachaha, rukamugabanyiriza igihano. [31] Abel Sululu Vigi avuga ko mbere y’uko akora icyaha yari afite imyitwarire myiza, ko ari ubwa mbere akoze icyaha kandi ko nta ngaruka mbi cyateje kuko ibyo bari bibye babafashe bakibifite bisubizwa ba nyirabyo, ko ndetse nta muntu bashakaga kugirira nabi, akaba ariyo mpamvu asaba uru Rukiko gushingira kuri izo mpamvu nyoroshyacyaha rukamugabanyiriza igihano. [32] Me RUBERWA N. Silas, wunganira Abel Sululu Vigi na Michael Sululu Marugira, avuga ko mu kubahana Urukiko Rukuru rutagombaga gushingira ku gihano gito giteganywa n’Itegeko kuko Umucamanza agomba guca urubanza akurikije umutimanama we iyo hari impamvu nyoroshyacyaha, mu rwego rwo gutanga ubutabera buboneye, akaba abishingira ku murongo watanze n’Urukiko rw’Ikirenga mu rubanza no RS/INCONST/SPEC 00003/2019/SC no ku rubanza no [33] RPAA 00314/2022/CA rw’Ubushinjacyaha na Hakizimana Innocent, rwemeje ko Umucamanza atabujijwe gutanga igihano kiri muni y’igito giteganyijwe n’Itegeko mu gihe hari impamvu nyoroshyacyaha kandi rugatanga igikwiranye n’icyaha cyakozwe; ko rero asaba ko abo yunganira bahanishwa igihano kiri muni y’igitoya cyateganyijwe n’Itegeko nk’uko byemejwe mu rubanza no RPAA 00171/2022/CACMB RPAA 00193/2022/CA-CMB RPAA 00207/2022, haburana Ubushinjacyaha na MUSABYIMANA Jean Bosco na bagenzi be, bagahanishwa igihano cy’igifungo cy’imyaka umunani (8). [34] Ubushinjacyaha buvuga ko impamvu z’ubujurire za Michael Sululu Marugira na Abel Sululu Vigi nta shingiro zifite, kuko kuba bavugaga ko bemera icyaha bagasaba kongera kugabanyirizwa ibihano ku rwego rw’ubujurire bwa kabiri, ntacyo baba banenga urubanza

2 “ (.....) érige en circonstance aggravante le port d’armes sans distinguer entre le cas où l’on en aurait fait usage contre les personnes ou contre les animaux. Le seul fait qu’un auteur est porteur d’une arme autorise l’application de l’article (.....)”, idem.

## Page 8

rwaciwe, ko bivuze ko bemeranya n'icyemezo cyafashwe, mu gihe bakagombye kujurira banenga amakosa yabonetse mu rubanza bajuririra nk'uko biteganywa mu ngingo ya 183 y'Itegeko n° 027/2019 ryo ku wa 19/9/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ko ahubwo n'uko kwemera kwabo gushidikanywaho kuko icyaha batacyemera mu buryo bwuzuye. Buvuga ko busaba uru Rukiko kuzabona ko nta kosa Umucamanza waciye urubanza rwajuririye yakoze kuko abajuriye batagaragaza niba Urukiko rubanza rwaba rwarakoresheje nabi Itegeko cyangwa ubushishozi bwari mu gutanga icyo gihano, kuko kongera kubagabanyiriza igihano bishoboka gusa igihe igihano bahawe kitajyanye n'uburemere bw'icyaha, ndetse n'ingaruka zacyo. [35] Ubushinjacyaha bukomeza buvuga ko ariko mu gihe uru Rukiko rwasanga igihano bagenewe kidahwanye n'uburemere bw'icyaha bakoze, rwakigabanya, ariko ntirujye muni y'inyaka umunani (8) y'igifungo n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw), hakurikijwe ingingo ya 2 y'Itegeko no 059/2023 ryo ku wa 4/12/2023 rihindura Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, nk'uko ryahinduwe kugeza ubu, mu gace kayo ka b) yemera ko mu gihe hari impamvu nyoroshyacyaha, igihano cy'igifungo kimara igihe gishobora kugabanywa ariko ntikijye muni ya ½ cy'igihano gito giteganyirijwe icyo cyaha, kandi igihano gito ku cyaha abajuriye bahamijwe ni inyaka cumi n'itanu (15). UKO URUKIKO RUBIBONA [36] Impaka kuri iki kibazo zishingiye ku kumenya niba Michael Sululu Marugira na Abel Sululu Vigi bagabanyirizwa igihano hashingiwe ku mpamvu nyoroshyacyaha bagaragaza. [37] Ingingo ya 60, agace ka kabiri (2°), y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 nk'uko yahinduwe n'ya 2, agace ka (b), y'Itegeko no 059/2023 ryo ku wa 4/12/2023 riteganya ibyaha n'ibihano muri rusange, iteganya ko iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano cy'igifungo kimara igihe kizwi kiva ku mezi 6 kuzamura, ariko ntikijye muni ya kimwe cya kabiri cy'igihano gito giteganyirijwe icyaha cyakozwe. [38] Ingingo ya 170 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 ribyaha n'ibihano muri rusange, iteganya ko iyo kwiba hakoreshejwe intwari byakozwe n'abantu barenze umwe (1), intwari yitwajwe yakoreshejwe; byakorewe mu nzu ituwemo cyangwa mu biyikikije, kabone n'yo yaba ituwemo by'agateganyo cyangwa mu nzu ikorerwamo, ubihanijwe n'Urukiko ahanishwa igifungo kirenze inyaka cumi n'itanu (15) ariko kitarenze inyaka makumyabiri (20) n'ihazabu y'amafaranga y'u Rwanda atari muni ya miliyoni eshanu (5.000.000 Frw) ariko atarenze miliyoni zirindwi (7.000.000 Frw). [39] Nk'uko byemejwe mu rubanza n° RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 4/4/2022, haburana Ubushinjacyaha na Nsabimana Callixte alias Sankara na bagenzi be3, iyo uregwa nta kindi anenga urubanza yajuririye, uretse kuvuga gusa ko atagabanyirijwe igihano bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha n'ingaruka zacyo (.....), cyakora mu bujurire Umucamanza akaba agomba kuzirikana ko yemerewe gusa guhindura igihano cyatanze n'Umucamanza wo mu

3 Reba urubanza n° RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 4/4/2022, haburana Ubushinjacyaha na NSABIMANA Callixte na bagenzi be, mu gika cya 252 na 254.

## Page 9

Rukiko rubanza ari uko amaze kugaragaza ko urwo Rukiko rwaba rwarakoresheje nabi Itegeko cyangwa ubushishozi bwarwo mu gutanga igihano. [40] Mu gace ka makumyabiri na gatatu (23) n'aka makumyabiri na kane (24) tw'urubanza rujuririrwa, Urukiko Rukuru, Urugereko rwa Rusizi rushingiye ku ngingo ya 60 y'Itegeko no 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, ku murongo watanze n'Urukiko rw'Ikirenga mu rubanza no RPA 0129/10/CS4 rwaciwe ku wa 7/3/2014, haburana Ubushinjacyaha na Mpitabakana no ku rubanza no RPA 0249/13/CS5 rwaciwe ku wa 25/11/2016, haburana Ubushinjacyaha na Nteziryayo Emmanuel, rwemeje ko Michael Sululu Marugira na Abel Sululu Vigi batakongera kugabanyirizwa igihano kuko impamvu bashingiraho babisaba zitaweho n'Urukiko rwabanje kandi ko igihano cy'igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga miliyoni eshanu (5.000.000 Frw) rwabahanishije aricyo gito Urukiko rutajya munsu, iyo habayeho kugabanya igihano ku cyaha bakoze cy'ubujura bwitwaje intwari, bukoze n'abantu barenze umwe (1), intwari bitwaje yarakoreshejwe mu kwiba byakorewe mu nzu ituwemo cyangwa mu biyikikije, kabone n'iyi yaba ituwemo by'agateganyo cyangwa mu nzu ikorerwamo. [41] Urukiko rw'Ubujurire rurasanga umurongo wagaragajwe haruguru urebwe hamwe n'imiburanire ya Michael Sululu Marugira na Abel Sululu Vigi mu Rukiko Rukuru, Urugereko rwa Rusizi aho bagaragaje impamvu nyoroshyacyaha bashingiraho barusaba kugabanyirizwa igihano, rutari rukwiye kwemeza ko batagomba kubihabwa kuko bamaze kugabanyirizwa igihano ku rwego rwabanje, kubera ko urwo Rukiko narwo rwari rufite inshingano yo kongera gusuzuma izo mpamvu zabo, rureba niba igihano bahawe gikwiranye koko n'imigendekere y'uko bakoze icyaha ugereranyije n'izindi mpamvu nyoroshyacyaha bagaragazaga. [42] Uru Rukiko rurasanga rero n'ubwo icyaha cyo kwiba hakoreshejwe intwari Michael Sululu Marugira na Abel Sululu Vigi bahamijwe, gikomeye, hagendewe ku mpamvu nkomezacyaha Inkiko zombi zabanje zagaragaje, ariko na none harebwe imyitwarire yabo nyuma yo kugikora, kuba mu kuburana bagaragaza ukwicuza, kuba nta ngaruka zikomeye icyo cyaha cyateje no kuba baragikoze bakiva mu butoya bari mu kigero kiri hagati y'imyaka makumyabiri

- (20) na makumyabiri n'itatu (23) y'amavuko, ndetse bakaba aribwo bwa mbere bakoze icyaha, byose bikwiye kubabera impamvu zituma igihano bahanishijwe cyongera kugabanywa, bagahabwa igihwanye n'imigendekere ya mbere na nyuma yo gukora icyaha. [43] Urukiko rw'Ubujurire, rushingiye ku ngingo z'amategeko zavuzwe, ku murongo rwatanze nk'uko nawo wagarutsweho haruguru, mu bushishozi bwarwo rubirebeye hamwe n'izindi mpamvu rwasobanuye mu gace kabanziriza aka, igihano gikwiranye n'imigendekere y'icyaha Michael Sululu Marugira na Abel Sululu Vigi bahamijwe ari igifungo cy'imyaka umunani (8) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw). [44] Kubera impamvu zose zasobanuwe haruguru, Urukiko rw'Ubujurire rurasanga iyi ngingo y'ubujurire bwa Michael Sululu Marugira na Abel Sululu Vigi ifite ishingiro, bityo ubujurire bwabo bukaba bufite ishingiro kuri bimwe.

4 Rwemeje ko impamvu nyoroshyacyaha zitaweho n'inkiko zibanza zitongera gushingirwaho mu kugabanya ibihano. Na none kandi mu rubanza 5Rwemeje ko ntawasaba kongera kubaganyirizwa igihano mu gihe mu rukiko rubanza yagabanyirijwe bihagije ndetse agahabwa igihano gikwiranye n'icyaha yakoze

## Page 10

III. ICYEMEZO CY'URUKIKO [45] Rwemeje ko ubujurire bwa Michael Sululu Marugira na Abel Sululu Vigi bufite ishingiro kuri bimwe. [46] Rwemeje ko Michael Sululu Marugira na Abel Sululu Vigi bahamwa n'icyaha cyo kwiba hakoreshejwe intwari. [47] Rwemeje ko imikirize y'urubanza n° RPA 00319/2019/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi ku wa 17/12/2020, ihindutse ku birebana n'igihano abaregwa bari bakatiwe. [48] Rwemeje ko Michael Sululu Marugira na Abel Sululu Vigi bahanishwa igihano cy'igifungo cy'imyaka umunani (8) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw), aho kuba igihano cy'igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw), bari bahanishijwe n'Inkiko zabanje. [49] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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