

RWANDA / JUDGMENT

UBUSHINJACYAHA v KANAMUGIRE

RPAA/GEN 00002/2019/CA

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UBUSHINJACYAHA v KANAMUGIRE

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Text

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UBUSHINJACYAHA v KANAMUGIRE [Rwanda URUKIKO RW'UBUJURIRE – RPAA/GEN 00002/2019/CA – (Kanyange, J. P., Munyangeri na Mukandamage, J.) 29 Gicurasi 2020] Icyaha cya jenoside – Uburyozwacyaha – Kuba icyitso – Umuntu ufatwa nk'icyitso agomba kuba afite ubushake bwo gufasha gukora icyaha, cyangwa se akaba yumva neza ingaruka zishobora gukomoka ku bufasha bwe. Agomba kandi kuba azi ibikorwa byose bigize icyaha cyakozwe n'icyari kigamijwe n'uwigikoze Icyaha cya jenoside – Icyitso mu cyaha cyo gusambanya abagore ku gahato – Kuba uregwa mu gihe cya jenoside yakorewe Abatutsi mu mwaka wa 1994 yashyikirizaga abagore b'Abatutsikazi ababahigaga bakabasambanya, afatwa nk'i Icyitso mu cyaha cyo gusambanya abagore ku gahato. Incamake y'ikibazo: Kanamugire yarezwe n'Ubushinjacyaha mu Rukiko Rwisumbuye rwa Huye icyaha cyo gusambanya abagore ku ngufu mu gihe cya jenoside yakorewe Abatutsi mu mwaka wa 1994 maze akatirwa igihano cy'igifungo cya burundu no kwamburwa uburenganzira bwose afite mu gihugu kuko ahamwa n'icyaha cy'ubufatanyacyaha bw'icyo cyaha aregwa ndetse ategukwa no guha indishyi ku bagikorewe. Uregwa yajuririye Urukiko Rukuru, Urugereko rwiheriye ruburanisha ibyaha byo ku rwego mpuzamahanga n'ibyangabuka imbibi, agaragaza uruhare rwe mu bufatanyacyaha bw'icyo cyaha aregwa ndetse akaba ashaka gusaba

imbabazi, ariko ubujurire bwe ntibwahawe ishingiro. Ibi byatumye ajuririra Urukiko rw'ikirengo ariko urubanza rwe rwohereje mu Rukiko rw'Ubujurire nyuma y'ivugururwa ku bubasha bw'inkiko. Muri uru rubanza avuga ko, Urukiko Rukuru rwamuhamije icyaha cyo gufata abagore ku ngufu rutitaye ku bisobanuro bye kuko ntacyo yakoze, ko ahubwo yajuriye ashaka gusaba imbabazi z'icyaha yemera cyo gusenya no gusahura inzu y'uwishwe muri icyo guhe cya jenocide yakorewe Abatutsi. Akomeza avuga ko icyo cyaha cyo gusambanya abagore b'Abatutsikazi cyakozwe n'abasirikari yari yeretse aho batashya inkwi maze bakaza kugaruka mu ijoro bagasambanya abo bagore b'uwo mugabo wari wishwe, akaba ari nabo basaba indishyi muri uru rubanza. Avuga kandi ko abo bagore basambanyijwe ku ngufu na bo ubwabo batamurega ko yabasambanyije ko ahubwo yabazaniye abo basirikare aho bari bihishe kuko nabo bari mu bahigwaga. Uhagarariye Ubushinjacyaha avuga ko Uregwa ahakana ko atajyanye abo basirikare kuberaka abo bagore bakorewe icyo cyaha aregwa, nyamara hari abatangabuhamya bamushinja barimo abo bagore ndetse n'abandi bamubonye muri icyo gihe jenocide yakorwaga, ngo we akaba yemera icyaha cyo gusenya no gusahura. Akomeza avuga ko icyaha cyakozwe n'Uregwa ari icyo gusenya inzu izwi nyirayo, yarimo abagore batagira kirengera kandi bizwi ko umugabo wabo yishwe azize jenocide. Uregwa yajyanye abo basirikare kuri icyo nzu azi ko harimo abo bagore b'Abatutsikazi bihishemo, ko kuba yarabajyanye bigaragaza umugambi yari afite wo kuberekana ngo abasirikare babasambanye ku gahato kubera ko icyo baba abagore b'Abahutukazi batari kubasenyeraho inzu. Bityo, uyu Kanamugire akaba afatwa nk'icyitso kuri icyo cyaha cyo gusambanya ku ngufu dore ko icyo atarangira bariya basirikare batari gusambanya ku ngufu abaregera indishyi. Ku kibazo cy'Abaregera indishyi muri urubanza bakorewe icyo cyaha, Urukiko rw'Ubujurire ntirwagihaye ishingiro kuko kitigeze kijuririrwa mu Rukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha byo ku rwego mpuzamahanga n'ibyambuka imbibi Incamake y'icyemezo: Uregwa afatwa nk'icyitso mu cyaha cyakozwe, icyo yafashije abakoze icyaha mu byagiteguye, mu byoroheje imikorere yacyo cyangwa mu byakinonosoye kandi yarabikoze abizi cyangwa

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yabashishikariye gukora icyaha. Bityo, Kanamugire Albert ni icyitso mu cyaha cyo gusambanya ku ngufu cyakorewe abagore baregera indishyi muri uru rubanza, cyakozwe n'abasirikare mu gihe cya jenocide yakorewe Abatutsi mu mwaka wa 1994. Ubujurire nta shingiro bufite. Ubujurire bwuririye ku bundi nta shingiro bufite. Amagarama aherera ku isanduku ya Leta. Amategeko yashingiweho: Itegeko N° 68/2018 ryo ku wa 30/08/2018 rigena ibyaha n'ibihano muri rusange, ingingo ya 2 n'ya 84. Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 105. Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 119. Imanza zifashishijwe: Ubushinjacyaha na Semanza Laurent, ICTR-97-20-T rwaciwe n'Urukiko Mpanabyaha Mpuzamahanga Rwashyirirweho u Rwanda, Urugereko rwa Mbere rw'Iremezo III, tariki ya 15 Gicurasi 2003. Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Huye, Ubushinjacyaha burega Kanamugire Albert icyaha cyo gusambanya abagore ku ngufu mu gihe cya jenocide yakorewe Abatutsi mu mwaka wa

1994. Urukiko Rwisumbuye rwa Huye rwaciye urubanza RP/GEN 0033/05/TP/BUT, ku wa 31/05/2006, rwemeza ko icyaha cy'ubufatanyacyaha bwo gusambanya ku gahato mu gihe cya jenocide kimuhama, rumuhanisha igifungo cya burundu no kwamburwa uburenganzira bwose afite mu gihugu, rumutegeka guha Mukarubuga Vestine na Kamagaju Bellancille indishyi z'amafaranga ibihumbi magana atanu (500.000 Frw) kuri buri wese. [2] Kanamugire Albert yajuririye urubanza mu Rukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha byo ku rwego mpuzamahanga n'ibyambuka imbibi, avuga ko ashaka kugaragaza uruhare rwe mu bufatanyacyaha mu cyaha cyo gusambanya abagore mu gihe cya jenocide cyakozwe n'abasirikare, ndetse akaba ashaka gusaba imbabazi. [3] Urukiko Rukuru, Urugereko rwihariye rwaciye urubanza RPA 0035/15/HC/HCCI, ku itariki 08/12/2016, rwemeza ko ubujurire bwatanzwe na Kanamugire Albert nta shingiro bufite, ko imikirize y'urubanza RP/GEN 0033/05/TP/BUT rwaciye ku wa 31/05/2006, n'Urukiko Rwisumbuye rwa Huye idahindutse. [4] Kanamugire Albert yajuririye Urukiko rw'Ikirenga, urubanza ruhabwa RPAA/GEN 00001/2017/SC, ariko kubera ivugurura ry'inze z'ubutabera, rwoherezwa mu Rukiko rw'Ubujuje hashingiye ku biteganywa n'ingingo ya 105 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ruhabwa RPAA/GEN 00002/2019/CA. [5] Urubanza rwaburanishijwe mu ruhamwe ku wa 02/03/2020, Kanamugire Albert yunganiye na Me Musabyimana Aphrodis, Ubushinjacyaha buhagarariye na Mutayoba Alphonse, Umushinjacyaha ku rwego rw'igihugu, naho Mukarubuga Vestine na Kamagaju Bellancille baregera indishyi bahagarariye na Me Gasengayire Alice.

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II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba hari uruhare Kanamugire Albert yagize mu cyaha cyo gufata ku ngufu abagore baregera indishyi muri uru rubanza [6] Kanamugire Albert avuga ko Urukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha byo ku rwego mpuzamahanga n'ibyambuka imbibi, rwamuhamije icyaha cyo gufata abagore ku ngufu rutitaye ku bisobanuro bye kuko ntacyo yakoze, ko ahubwo yajurijwe no gusaba imbabazi z'icyaha yemera cyo gusenya no gusahura inzu ya Serikanuye wari warishwe muri jenocide yakorewe Abatutsi mu mwaka wa 1994. [7] Avuga ko abasirikare bari kumwe na Rutabayiro bamufashe avuye kuvoma amazi, bamubaza niba yabereka amazu y'Abatutsi kugira ngo bajye gusenya yo inkwi, arabajyana abagezayo, ko kandi icyo cyaha acyemera, akanagisabira imbabazi. [8] Akomeza avuga ko bagezeyo ari ku manywa, bagasenya inkwi kuri ya nzu maze bakagenda, ko mu gihe basenyaga inkwi, Mukarubuga na Kamagaju bari bahari, ko ariko ntacyo babatwaye, ko ahubwo we na Rutabayiro babwiye abo basirikari ko abo bagore ari Abahutukazi, ko ariyo mpamvu bo batagize icyo baba mu gihe umugabo wabo we yari yarishwe kubera ko yari Umututsi. [9] Asobanura ko Mukarubuga Vestine na Kamagaju Bellancille nabo batamurega ko ari mu babasambanyije ku ngufu, ko ahubwo icyo yari agiye gukora ari ukwereka abasirikare aho basenya inkwi, ko kandi koko yaberetse inzu ya Mukarubuga yari yarashenywe, noneho we na Rutabayiro bari kumwe n'abasirikare basenya

inkwi barataha nta kindi gikozwe, ko ahubwo abasirikare basubiyeyo bonyine nijoro atari kumwe nabo barabasambanya, bityo rero ko nta mugambi yari afite wo kujyana abasirikare ngo bajye kubasambanya. [10] Avuga na none ko abatangabuhamyi bose babajijwe muri uru rubanza bagiye inama yo kumushinja ibinyoma, kuko hari ibyo bapfa, ko ndetse Mukarubuga we yigeze gusaba Kanamugire Albert ko bakorana imibonano mpuza bitsina uyu akabyanga, akaba ari cyo cyamuteye kumugerekaho icyaha atakoze. [11] Me Musabyimana Aphrodis, umwunganira, avuga ko kuba Urukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha byo ku rwego mpuzamahanga n'ibyambuka imbibi narwo rwarashimangiye ko Kanamugire Albert yakoze icyaha cyo gusambanya ku gahato abaregera indishyi muri uru rubanza, rubishingiye ku kuba yari kumwe n'abasirikare igihe bafataga ku ngufu abo bagore, bitandukanye cyane n'ibyo abaregera indishyi bivugiye mu ibazwa ryabo ko icyo bamushinja ari uko yajyaga yereka abasirikare aho Abatutsikazi baherereye bakabasambanya ku ngufu, kandi no muri uru Rukiko bakaba batarahinduye imiburanire yabo, nubwo Kanamugire Albert atanabyemera atyo. [12] Akomeza avuga ko iby'Urukiko Rukuru rwemeje ko Kanamugire Albert nawe yasambanyije abaregera indishyi muri uru rubanza bitanashoboka, kuko umuntu atabasha gusambanya umugore hari abandi bantu bahagaze iruhande rwe, cyangwa se ngo abasivili (civils) babe bahagarikira abasirikare mu gikorwa cyo gusambanya abo bagore ku ngufu. [13] Avuga kandi ko ibyo Ubushinjacyaha buvuga by'uko Kanamugire Albert ariwe wajyaga kwereka abasirikare Abatutsikazi kugira ngo babasambanye ku ngufu atari byo, kubera ko nta handi hantu hagaragazwa cyangwa habayeho ko Kanamugire Albert yagiye ajyana n'abo basirikare, uretse aho yagiye kubafasha gusenya inkwi gusa, ko kandi naho bahavuye nta mugore usambanyijwe ku gahato. Avuga ko

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icyo gikorwa yakoze cyo kujyana n'abasirikare gushaka inkwi kidakwiye gufatwa nk'aho cyari igikorwa gihoraho kigamije kwereka abasirikare Abatutsikazi kugira ngo babasambanye ku ngufu cyangwa ngo bifatwe ko kari akazi gahoraho ka Kanamugire Albert ku buryo byatuma hemezwa ko yari afite ubushake bwo kwerekana abo bagore b'Abatutsikazi ngo basambanywe ku ngufu. [14] Me Musabyimana Aphrodis avuga ko icyaha Kanamugire Albert yakoze ari icyo gusenya inzu mu gihe cya jenocide, ko ariko nta mugambi ku bijyanye n'icyaha cyo gusambanya ku ngufu (intention ya viol) yari afite, kuko abasirikare bagiyeyo mu gitondo saa yine bajyanye na Kanamugire Albert, abagore basambanywa saa munani z'ijoro kandi muri iryo joro abasirikare bajyanye na Rutabayiro, kuko ntawe uvuga ko Kanamugire Albert yaba yarageze muri ruriya rugo rw'abagore basambanyijwe muri iryo joro. Avuga ko Kanamugire Albert atari ajyanywe no kugaragaza aho bariya bagore bihishe, ko ariko naramuka ahamwe n'icyaha, Urukiko rwamugabanyiriza igihano. [15] Uhagarariye Ubushinjacyaha avuga ko kuba Kanamugire Albert akomeza guhakana ko atajyanye abo basirikare gusambanya bariya bagore, atagaragaza uruhare rwe mu cyaha cyakozwe, mu gihe Ubushinjacyaha mu rubanza rwabanyirije uru bwashingiye ku mvugo y'abakorewe icyaha no ku buhamya bw'abari bahari mu gihe cya jenocide banabonye uko Kanamugire Albert yajyanaga abasirikare kubereka aho abakorewe icyaha bari kugira ngo babasambanye ku ngufu. Avuga ko asanga Kanamugire Albert atemera uruhare rwe mu cyaha

aregwa cyo gufata ku ngufu abagore baregera indishyi muri uru rubanza, ahubwo yemera icyo gusenya inzu no gusahura kandi atakiregwa. [16] Uhagarariye Ubushinjacyaha avuga ko umugambi wabaye mu by'ukuri muri iki cyaha utari uwo gusenya inkwi nk'uko Kanamugire Albert n'umwunganira babivuga, ahubwo bagiye gusenya inzu izwi ya Serikanuye yarimo abagore batagira kirengera kandi bizwi ko umugabo wabo yishwe azize jenocide. [17] Akomeza avuga ko abasirikare batigeze bajyana Kanamugire Albert ku ngufu, ko ikigaragara ari uko yabajyanye ku nzu izwi neza kandi azi ko harimo abagore bahigwaga kubera ubwoko bwabo, kuko yari azi ko ari Abatutsikazi kandi bakiriho, ko kuba yarabajyanye mu nzu Abatutsikazi bihishishemo bigaragaza umugambi yari afite wo kuberekana ngo abasirikare babasambanye ku gahato kubera ko iyo baba abagore b'Abahutukazi batari kubasenyeraho inzu. [18] Akomeza avuga ko hari abatangabuhamya bamushinje ko bamwiboneye azana abasirikare baje gusenya no gusambanya ku ngufu abagore n'abakobwa bari aho, aribo Kamanzi Félicien, Kabera Xavier, Gahutu Godefroid, Twagiramungu Jean Baptiste, ndetse n'abagore baregera indishyi muri uru rubanza Kamagaju Bellancille na Mukarubuga Vestine. Avuga ko kuba Kanamugire Albert avuga ko afite icyo apfa n'abamushinja, uretse Kamanzi na Kamagaju, ntacyo byamumarira, kuko noneho n'abo yemera ko ntacyo bapfa bamushinja kandi abatangabuhamya bemeza ko aba basirikare babaga kuri bariyeri babanaga umunsi ku munsi na Kanamugire Albert na Rutabayiro. [19] Ku bijyanye no kuba umuntu atabasha gusambanya umugore hari abandi bantu bahagaze iruhande rwe, uhagarariye Ubushinjacyaha avuga ko atari byo, kuko ibyo bikorwa kenshi, kandi n'ibyo bavuga ko Kanamugire Albert yafashwe hashize imyaka 9 ntacyo byamumarira kuko icyaha aregwa kidasaza. [20] Ku bijyanye n'icyaha Kanamugire Albert akurikiranyweho, uhagarariye Ubushinjacyaha avuga ko mbere amategeko yahanaga icyitso kimwe n'uwakoze icyaha, ko ariko ubu Kanamugire Albert bamufata nk'icyitso, kuko n'ubwo atasambanyije ku ngufu abaregera indishyi, bariya basirikare batari gusambanya bariya bagore iyo atabaranga. Asoza avuga ko uruhare Kanamugire Albert ahabwa ari icyitso kandi ko itegeko rishya rimuhana ryoroshya igihano, ko adahanishwa igifungo cya burundu, ahubwo yahanishwa imyaka makumyabiri n'itanu y'igifungo (25 ans). UKO URUKIKO RUBIBONA

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[21] Ingingo ya 119 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose z'ibyabaye, n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye. Urukiko ruhamya ku buryo butavuguruzwa, ko ibimenyetso byose birega cyangwa biregura aribyo kandi ko bishobora kwemerwa. [22] Ingingo ya 2, 5°, b) y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 rigena ibyaha n'ibihano muri rusange, iteganya ko muri iri tegeko icyitso ni umuntu wafashije uwakoze icyaha mu byagiteguye bigaragarira muri kimwe mu bikorwa bikurikira: ...ufasha uwakoze icyaha mu byagiteguye, mu byoroheje imikorere yacyo cyangwa mu byakinonosoye kandi yarabikoze abizi, cyangwa uwashishikaje uwakoze icyaha.... [23] Ingingo ya 84, igika cya 2, 2° y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, iteganya ko icyitso ntigihanwa kimwe n'uwakoze icyaha keretse igihe: umucamanza abona ko uruhare rw'icyitso mu

gukora icyaha rungana cyangwa ruruta urw'uwakoze icyaha... [24] Dosiye y'urubanza igaragaza ko mu guhamya Kanamugire Albert icyaha, inkiko zabanje zashingiye ku mvugo z'abatangabuhamya bemeje ko yazanaga abasirikare bagasambanya abagore n'abakobwa b'Abatutsikazi mu gihe cya jenocide yakorewe Abatutsi mu mwaka wa 1994, zishingira no kuba yaranyuranyije n'umwunganira wavuze ko kujya kwerekana abo bagore byatewe n'igitutu yashyizweho n'abasirikari naho we yivugira ko atigeze ababona. [25] Dosiye y'urubanza igaragaza ko mu ibazwa rye mu Bugenzacyaha no mu Bushinjacyaha, Kanamugire Albert yahakanye icyaha, avuga ko atigeze azana abasirikare kwa Mukarubuga Vestine na Kamagaju Bellancille ngo babasambanye ku ngufu, ko ahubwo yabyumviye iyo yabaga mu buhungiro ko abo bagore basambanyijwe ku ngufu n'abasirikare. [26] Urukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha byo ku rwego mpuzamahanga n'ibyambuka imbibe rwasanze, kuba Kanamugire Albert aburana mu Rukiko rwabanje yaranyuranyije n'umwunganizi we, akavuga ko muri kiriya gihe atigeze abonana n'abasirikare, mu gihe uwamwunganiraga yavuze ko ibyo uwo yunganira ashinjwa yaba yarabitewe no kuba abasirikare baramuteye igitutu, ibyo bishimangira ko imyiregurire ye nta shingiro yahabwa, kuko nta kuri kurimo. [27] Ku bijyanye no kuba Kanamugire Albert yarahanwe nk'umufatanyacyaha mu cyaha cyo gusambanya ku ngufu mu gihe cya Jenocide yakorewe Abatutsi mu mwaka wa 1994, Urukiko rurasanga abatangabuhamya babajijwe, aribo Kamanzi Félicien, Kabera Xavier, Gahutu Godefroid, Twagiramungu Jean Baptiste, hamwe na Kamagaju Bellancille na Mukarubuga Vestine baregera indishyi muri uru rubanza barahamije ko icyo yakoze ari ukuzana abasirikare yabanaga nabo kuri bariyeri akabereka aho Abatutsikazi babaga bihishe bakabafata ku ngufu, ariko nta muntu numwe wigeze avuga ko Kanamugire Albert nawe yafashe ku ngufu abagore baregera indishyi muri uru rubanza. [28] Imbere y'uru Rukiko, Ubushinjacyaha bwahinduye imiburanire buvuga ko uregwa yahanwa nk'icyitso, aho kuba umufatanyacyaha, hakaba hagomba gusuzumwa niba hari uruhare rwo kuba icyitso yagize mu cyaha aregwa. [29] Kugira ngo uregwa afatwe nk'icyitso mu cyaha cyakozwe, agomba kuba yarafashije abakoze icyaha mu byagiteguye, mu byoroheje imikorere yacyo cyangwa mu byakinonosoye kandi yarabikoze abizi, cyangwa yabashishikarije gukora icyaha. [30] Mu rubanza ICTR-97-20-T rwa Semanza Laurent, Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda, Urugereko rwa Mbere rw'Iremezo III rwemeje ko umuntu ufatwa nk'icyitso

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agomba kuba afite ubushake bwo gufasha gukora icyaha, cyangwa se akaba yumva neza ingaruka zishobora gukomoka ku bufasha bwe. Agomba kandi kuba azi ibikorwa byose bigize icyaha cyakozwe n'icyari kigamijwe n'uwagikoze (...dans le cas de la complicité et notamment de la complicité de génocide, l'intention criminelle n'exige pas la preuve d'une intention génocidaire. Elle requiert simplement que le complice ait l'intention de fournir une assistance ou, tout au moins, qu'il ait conscience que cette assistance peut être une conséquence possible et prévisible de son comportement. Il doit toutefois avoir connaissance des éléments essentiels du crime commis par l'auteur principal, y compris l'intention qui animait ce dernier).¹ [31] Ku birebana

n'uru rubanza, bigaragara ko mu Rukiko Rwisumbuye rwa Huye, Mukarubuga Vestine na Kamagaju Bellancille batavuze ko Kanamugire Albert yabafashe ku ngufu ubwe, ahubwo ko yabashyikirizaga abasirikare, bakaba aribo babasambanya ku ngufu, kandi mu Rukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha byo ku rwego mpuzamahanga n'ibyangabuka imbibi no muri uru Rukiko ntibigeze bahindura imiburanire yabo. [32] Urukiko rurasanga, imvugo ya Kanamugire Albert ko yajyanye n'abasirikare mu rugo rwa Serikanuye ku manywa, nyuma akumva ko basubiyeyo nijoro bagasambanya ku ngufu abagore bombi baregera indishyi nta shingiro yahabwa, kuko ivuguruzwa n'abatangabuhamya babajijwe, barimo Kamanzi Félicien, Kabera Xavier, Gahutu Godefroid, Twagiramungu Jean Baptiste, bemeje ko yazanaga abasirikare bagasambanya ku ngufu abagore n'abakobwa b'Abatutsikazi mu gihe cya jenocide yakorewe Abatutsi mu mwaka wa 1994. [33] Urukiko rurasanga, ibyo kujyana abasirikare mu rugo azi neza ko rwihishemo abagore b'Abatutsikazi biciwe umugabo mu gihe cya jenocide yakorewe Abatutsi mu mwaka wa 1994, nubwo bigaragaza uruhare rwa Kanamugire Albert mu cyaha cyo gufata abagore ku ngufu, ntibyari gufatwa nk'aho ari gatozi mu cyaha cyakozwe nkuko inkiko zabanje zabitwaye zikanabimuhanira, kuko nta mutangabuhamya wigeze avuga ko ubwe yabafashe ku ngufu abagore baregera indishyi, ahubwo bimushyira mu rwego rw'icyitso, kuko ababajijwe bese bemeje ko yashyikirizaga abasirikare abagore bakabasambanya, akaba ariyo mpamvu agomba guhanwa nk'icyitso muri uru rubanza. [34] Urukiko rurasanga, ibyo Kanamugire Albert avuga ko nta bushake yagize bwo kwerekana abagore baregera indishyi muri uru rubanza kugira ngo abasirikare babasambanye, nta shingiro bifite, kuko mu ibazwa rye mu Bugenzacyaha no mu Bushinjacyaha, yasobanuye ko atigeze ababona abasirikare muri icyo gihe, avuga ko iby'uko abagore basambanyijwe ku gahato n'abasirikare yabyumviye mu buhungiro, uko kwivuguruza kugaragaza ko ahishira icyaha yakoze azi neza ko ajyanye abasirikare gusambanya abagore b'Abatutsikazi ku ngufu. [35] Urukiko rurasanga kandi, imyiregurire ya Kanamugire Albert muri uru Rukiko ko asabira imbabazi uruhare rwe rwagarukiye ku gikorwa cyo kujyana abasirikare gusenya inkwi aho abagore bari bihishye, akababwira ko ari Abahutukazi, agahita ataha, ntacyo byamumarira kuko icyaha yemera atari cyo aregwa, ahubwo aregwa icyaha cyo kuba yarajyanye abasirikare akabageza ku bagore baregera indishyi muri uru rubanza bakabafata ku ngufu, kandi kikaba kimuhama hashingiwe ku mvugo z'abatangabuhamya, barimo Kamanzi Félicien, Kabera Xavier, Gahutu Godefroid na Twagiramungu Jean Baptiste bamushinja ko yazanye abasirikare bagafata ku ngufu Mukarubuga Vestine na Kamagaju Bellancille baregera indishyi muri uru rubanza. [36] Ku bijyanye n'igihano cy'igifungo cya burundu Kanamugire Albert yahawe asaba ko cyagabanywa mu gihe ahamwe n'icyaha, Urukiko rurasanga kitagomba guhinduka hashingiwe ku ngingo ya 84, igika cya

1 Urubanza ICTR-97-20-T rwaciwe tariki ya 15 Gicurasi 2003 n'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda, Urugereko rwa Mbere rw'Iremezo III, haburana Ubushinjacyaha na Semanza Laurent.

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2, 2° y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru2, kuko nubwo agomba guhanwa nk'icyitso, ariko kuba yarerekanye Mukarubuga Vestine na Kamagaju Bellancille abasirikare bakabasambanya ku ngufu, uruhare rwe ruhwaye n'urw'abasirikare mu cyaha cyo gusambanya abagore ku ngufu, bityo ubujurire bwe bukaba nta shingiro bufite.

2. Ku byerekeye indishyi [37] Me Gasengayire avuga ko Kanamugire yajyanye abasirikare kwa Serikanuye umugabo wa Mukarubuga na Kamagaju bahigwaga kugira ngo bagirirwe nabi, kuko mu rubanza rwajuririwe no mu nyandikomvugo y'iburanisha yo ku wa 08/11/2019 yemera ko iyo atabajyanayo batari kuhamenya nijoro. [38] Akomeza avuga ko umugambi wo kubagirira nabi yereka abasirikare aho bihishe uhari kandi ko ibyo avuga ko atari azi ubwoko bwabo ntacyo bimufasha kuko baba Abatutsikazi cyangwa ari Abahutukazi, ikigaragara ari uko umugabo wabo yari Umututsi kand yishwe muri jenocide. [39] Avuga ko basaba guhabwa indishyi zihwanye na miliyoni eshatu buri muntu, kubera ibikomere batewe, intimba ku mutima, n'ubumuga babasigiye no gusambanywa ku gahato, kuko izo bahawe mu Rukiko Rwisumbuye rwa Huye zingana na 500.000 Frw kuri buri muntu, ari nkeya. [40] Kanamugire na Me Musabyimana Aphrodis umwunganira bavuga ko indishyi zitatangwa kuko nta cyaha Kanamugire yakozwe kandi ko nta bujurire abaregera indishyi batanze mu Rukiko Rukuru, ko ikirego cy'indishyi kidakwiye kwakirwa muri uru Rukiko, ko ariko icyaha kiramutse kimuhamye, indishyi zagabanywa kuko ari umukene ntaho yazikura. UKO URUKIKO RUBIBONA [41] Kopi y'urubanza rwajuririwe igaragaza ko nta kibazo cy'indishyi cyigeze gisuzumwa mu Rukiko Rukuru, Urugereko rwiheriye ruburanisha ibyaha byo ku rwego mpuzamahanga n'ibyambuka imbibi, kuko abaregeye indishyi batari bazijuririye, maze hemezwa ko urubanza rwaciwe n'Urukiko Rwisumbuye rwa Huye rudahindutse. [42] Urukiko rusanga ntaho rwahera rusuzuma indishyi zitigeze zigibwaho impaka n'ababuranyi mu rubanza rwajuririwe, bityo ubujurire bw'abaregera indishyi bukaba butakiriwe. III. ICYEMEZO CY'URUKIKO [43] Rwemeje ko ubujurire bwatanzwe na Kanamugire Albert nta shingiro bufite. [44] Rwemeje ko ubujurire bwuririye ku bundi bw'abaregeye indishyi butakiriwe. [45] Rwemeje ko Kanamugire Albert ahamwa no kuba icyitso mu cyaha cyo gusambanya ku gahato mu gihe cya jenocide. [46] Rwemeje ko igihano cy'igifungo cya burundu n'icyo kwamburwa uburenganzira bwose mu gihugu Kanamugire Albert yahawe bigumyeho. [47] Rutegetse ko amagarama y'uru rubanza aherera ku isanduku ya Leta.

2 Ingingo ya 84, igika cya 2, 2° y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, iteganya ko icyitso ntigihanwa kimwe n'uwakoze icyaha keretse igihe umucamanza abona ko uruhare rw'icyitso mu gukora icyaha rungana cyangwa ruruta urw'uwakoze icyaha...

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