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UBUSHINJACYAHA v MVUYEKURE

RPAA 0133/10/CS

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UBUSHINJACYAHA v MVUYEKURE

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Text

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UBUSHINJACYAHA v. MVUKIYEHE [Rwanda URKIKO RW'IKIRENGA – RPAA 0195/09/CS (Mutashya, P.J., Munyangeri na Hitiyaremye, J.) 15 Ugushyingo 2013] Amategeko yerekeye ibimenyetso – Imvugo z'abatangabuhamya – Ntizateshwa agaciro no kuba abazitanze ari abo mu nzu imwe cyangwa mu rusisiro rumwe – Itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 62 Amategeko agenga ibimenyetso – Inyandiko ya muganga (protocole de prise en charge) – Kuba itararahiriwe n'umuganga wayikoze nk'uko bigenda kuzindi raporo z'abahanga ntibiyitesha agaciro kuko icyakozwe atari raporo y'abahanga; ahubwo icyakozwe ni inyandiko ya muganga wemewe – Itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 77 na 93 Amategeko yerekeye ibimenyetso – Imyaka y'amavuko – Nubwo nta kigaragaza imyaka afite kubera inyandiko yangiritse ariko nta cyabuza guha agaciro imvugo za nyina w'umwana kuko yazikoze atunguwe kandi z'igahura n'ibyo umwana yari yavuze. Amategeko mpanabyaha – Kugena ibihano – Kugabanyirizwa ibihano – Hitawe kuba ari ubwa mbere yari akoze icyaha, kuba kandi yari ari mu myaka y'ubusore no kuba icyaha nta ngaruka zizwi cyagize ku wasambanyijwe ni impamvu nyoroshyacyaha – Itegeko-Teka N° 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko

ahana ibyaha, ingingo ya 82 na 83 Incamake y'ikibazo: Ushinjwa yarezwe n'ubushinjacyaha mu Rukiko Rwisumbuye rwa Gasabo ashinjwa gusambanya umwana uri hagati y'imyaka 14 na 18. Rwamuhamije icyo cyaha rumukatira igifungo cy'imyaka 25 n'ihazabu y'amafaranga 100 000Frw. Yajuririye mu Rukiko Rukuru rwo rwemeza ko nta mpamvu nkomezacyaha ziboneka mu rubanza rumuhanisha igifungo cy'imyaka 20 n'ihazabu y'amafaranga 100 000Frw. Yajuririye Urukiko rw'Ikirenga avuga ko yatanze ibimenyetso bigaragaza ko arengana ariko ntibyahabwa agaciro. Ikindi ngo ni raporo ya muganga Urukiko rutagombaga guha agaciro ngo kuko nta ndahiro iriho. Akomeza avuga ko Urukiko rutashishoje ngo rurebe neza imyaka y'uwo umukobwa.

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Ubushinjacyaha bwo buvuga ko ku birebana n'abatangabuhamya ibyo avuga nta shingiro bikwiye guhabwa kuko atanyuranyije nabo igihe yabazwaga haba mu Bugenzacyaha, mu Bushinjacyaha ndetse no mu Rukiko ku rwego rw'ubujurire. Ku birebana na raporo ya muganga, buvuga ko yakozwe n;umuganga wemewe bityo ikaba itagomba guteshwa agaciro kuko yerekanye ko umwana yasambanyijwe kandi akaba tari kugaragaza ibyo atabonye. Icamake y'icyemezo: 1. Kuba abatangabuhamya babajijwe ari abo munzu imwe ndetse no murusisiro rumwe ntibyatesha agaciro imvugo zabo kuko bavuga ibyo babonye cyane ko ibyo bavuze bihura n'imvugo z'ushinjwa ubwe aho yemeye ko binjiranye munzu yamukoraho agatangira kwiriza agahita agenda nta cyo amukozeho.

2. Singombwa ko inyandiko ya muganga yatanzweho ikimenyetso yagomba gushyirwaho umukono kandi ubanjirijwe n'indahiro itegenywa n'itegeko kugirango uwo mukono utaba imfabusa byanze bikunze kuko atari raporo y'abahanga. Ahubwo ni "protocole de prise en charge" yakozwe n'umuganga wemewe wasuzumye uwasambanyijwe yatanzweho ikimenyetso kandi ishimangiwe n'ibindi bimenyetso. Bityo iyo nyandiko igomba guabwa agaciro kayo dore ko yakozwe n'umuganga wemewe.

3. N'ubwo inyandiko zigaragaza imyaka nyakuri y'umwana wasambanyijwe zangiritse, ntacyatuma imvugo zatanzwe na nyina w'umwana zidahabwa agaciro dore ko yanabajijwe atunguwe kandi imyaka avuze igahura n'iyari yavuzwe n'uwo mwana.

4. Kuba ushinjwa ari ubwa mbere yari akoze icyaha, kuba kandi yari ari mu myaka y'ubusore itarashoboraga kwihanganira umukobwa yabonaga inkumi mu nzu kwihangana bikamunanira, kuba nta ngaruka zizwi uwakorewe icyaha yaba yaragaragaweho ni impamvu nyoroshyacyaha. Bityo rero ahanishijwe imyaka 12 n'ihazabu y'amafaranga 100 000 Frw. Ubujurire bukurikije inzira ziteganywa n'amategeko Ubujurire nta shingiro bufite Ahanishijwe igifungo cy'imyaka 12 n'ihazabu y'amafaranga 100 000Frw Urubanza rwajuririwe ruhindutse gusa ku bijyanye 'igihano Amagarama y'urubanza ahereye ku isanduku ya leta. Amategeko yshingiweho Itegeko ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo,, ingingo 62,77 na 93

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Itegeko-Teka N° 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana ibyaha, ingingo ya 82 na 83 Nta manza zifashishijwe Urubanza I. IMITERERE Y'URUBANZA. [1] Inyandiko ziri muri dosiye zigaragaza ko ku itariki ya 15/1/2004 Mvukiyehe Janvier yajyanye na Uwumutima Clémentine mu rugo kwa nyirasenge mu murenge wa Gisozi, mu Karere ka Gasabo, Umujyi wa Kigali, aho uyu Uwumutima ngo yari agiye kumwereka aho bimukiye. Uwumutima avuga ko bageze mu nzu, Mvukiyehe yamufashe akamusambanya ku ngufu, ariko uyu akaba abihakana. Uwumutima yagiye kumurega mu nzego z'ikurikiranacyaha, dosiye irakorwa ishyikirizwa Urukiko. [2] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo aho ku wa 23/6/2006 rwaciye urubanza ruhamya Mvukiyehe icyaha, rumukatira igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu y'amafaranga y'amanyarwanda ibihumbi ijana (100.000 rwf). [3] Mvukiyehe yajuririye Urukiko Rukuru, ruca urubanza ku itariki ya 14/4/2009 na rwo rumuhamya icyaha, icyakora ruvuga ko nta mpamvu ndemerezacyaha zigaragara mu migendekere y'ibikorwa bigize icyaha akurikiranyweho, maze rumugabanyiriza igihano rumuhanisha igifungo cy'imyaka makumyabiri (20) n'ihazabu y'amafaranga y'u Rwanda ibihumbi ijana (100.000 rwf). [4] Mvukiyehe yajuriye mu Rukiko rw'Ikirenga avuga ko Urukiko rwirengagije ibimenyetso yatanze bigaragaza ko arengana, ko rutashishoje ku batangabuhamya avuga ko bamushinje ibinyoma maze rukemeza ko nta kinyoma kirimo. Ikindi anenga icyemezo cy'urukiko ni raporo ya muganga avuga ko urukiko rutagombaga kuyiha agaciro kubera ko nta ndahiro iriho. Arangiza avuga ku myaka ya Uwumutima aho anenga urukiko ko rutashishoje nyuma y'iperereza rukagendera ku myaka ivugwa muri dosiye. [5] Iburanisha ryabaye ku itariki 16/10/2013 ababuranyi bose bahari, uregwa ari we Mvukiyehe Janvier yunganiwe na Me Uwimpaye J. de Dieu

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na ho Ubushinjacyaha buhagarariwe na Niyonkuru Françoise, Umushinjacyaha ku Rwego rw'Igihugu. II. ISESENGURA CY'IBIBAZO BIGIZE URUBANZA. Kureba niba hari ibimenyetso bihagije kugira ngo uregwa ahamwe n'icyaha akurikiranyweho no kumenya imyaka nyakuri y'umwana wasambanyijwe.

a. Ku byerekeranye n'ibimenyetso. [6] Mvukiyehe Janvier mu gusobanura ubujurire bwe, avuga ko Urukiko rwashingiye ku batangabuhamya babiri (2) bo mu rugo rumwe ndetse no mu rusisiro rumwe bashatswe na Uwumutima, kandi na bo ngo akaba nta n'umwe wamubonye amusambanya. Ikindi kimenyetso uregwa anenga ni raporo ya muganga avuga ko yashatswe mu buryo bw'amanyanga nk'ubwakoreshejwe mu gushaka abatagabuhamya. [7] Ku birebana na raporo ya muganga, Me Uwimpaye Jean de Dieu wunganira Mvukiyehe Janvier, avuga ko ingingo ya 98 y'itegeko ry'ibimenyetso ivuga ko abacamanza batagomba kwemera byanze bikunze icyemezo cyatanzwe n'abahanga. Avuga ko ashingiye ku ngingo ya 96 y'iryo tegeko, asanga umuhanga agomba kurahira kugira ngo nanyuranya n'itegeko azahanwe. Ko kuba raporo ya muganga itariho indahiro, bigaragaza ko yayikoze afite igitekerezo (intention) ko umukobwa yafashwe, kuko yari yagiye kwivuza nk'abandi, Me Uwimpaye Jean de Dieu akaba asaba urukiko kuyitesha agaciro. [8] Uhagarariye Ubushinjacyaha avuga ko ku birebana

n’abatangabuhamya, ibyo Mvukiyehe avuga nta shingiro bifite kuko ibyo bamushinja atigeze anyuranya na byo mu mvugo ze mu bugenzacyaha, mu bushinjacyaha ndetse n’imbere y’urukiko mu gihe cy’iburanisha ry’urubanza ku rwego rw’ubujurire, nko kuba atarigeze ahakana ibyo abatangabuhamya bamushinja ko bamubonye ashoreranye na Uwumutima kugera ubwo binjiranye mu nzu. [9] Ku birebana na raporo ya muganga, uhagarariye Ubushinjacyaha avuga ko itateshwa agaciro kuko yakozwe n’umuganga wemewe n’ubwo atarahiye, iyi raporo ikaba yarerekanye ko Uwumutima yasambanyijwe, kandi muganga ntiyari kugaragaza ibyo atabonye. Ikindi uhagarariye

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Ubushinjacyaha aheraho asaba urukiko kudatesha agaciro raporo ya muganga, ni urubanza RPA 227/08/CS rwaciwe n’Urukiko rw’Ikirenga ku wa 19/10/2010. Muri uru rubanza hakaba harimo raporo ya muganga itari isinywe kandi urukiko rukaba rutarayitesheje agaciro. Uko Urukiko rubibona. [10] Ku birebana n’abatangabuhamya, ingingo ya 62 y’itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo iteganya ko Ubuhamya ari ibivugwa mu rukiko bivuzwe n’umuntu wabibonye cyangwa wabyumvise ubwe ku byerekeye ikiburanwa. Muri uru rubanza, habajijwe abatangabuhamya babiri (2) ari bo Munyankindi Straton na Nizeyeyezu Bertin. [11] Munyankindi Straton avuga ko yabonye Uwumutima na Mvukiyehe bashoreranye binjira mu nzu bari kumwe n’abana ariko abana bo bagahita basohoka, muri ako kanya yumva Uwumutima ataka cyane, abajije abana baramubwira bati “nujyayo urakubitwa”. Akomeza avuga ko yagiye kumureba agezeyo asanga yicaye mu cyumba arira cyane, amubajije ikimuriza amubwira ko ari Mvukiyehe umufashe. [12] Nizeyeyezu Bertin avuga ko yavuye gushaka ikiraka agasanga Uwumutima arira cyane yicaye ku gitanda, abajije Munyankindi na Nshimiye bari aho bamubwira ko hari umuhungu umufashe ku ngufu. Urukiko rurasanga imvugo zabo zitateshwa agaciro kuko umwe avuga ibyo yabonye n’ibyo yumvise, undi na we akavuga ibyo yumvise. [13] Urukiko rurasanga kuba abatangabuhamya bari abo mu nzu imwe no mu rusisiro rumwe nk’uko Mvukiyehe Janvier abivuga mu bujurire bwe, bitarubuza guha agaciro imvugo zabo kuko bavuga ibyo babonye, cyane cyane ko na Mvukiyehe ubwe yemeza ko kuri uwo munsi icyaha cyabereyeho, yinjiranye na Uwumutima mu nzu, bagezemo baraganira amukozeho atangira kwiriza ahita agenda ntacyo amukozeho. Bityo ingingo aburanisha yuko abatangabuhamya babajijwe imvugo zabo atazemera kuko ari abo mu nzu imwe no mu rusisiro rumwe ikaba nta shingiro ifite. [14] Ku byerekeranye na raporo ya muganga, ingingo ya 77 n° 15/2004 y’itegeko ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo ivuga ko kugira ngo urukiko ruce urubanza rwaregewe, rushobora gutegeka umuhanga cyangwa abahanga gusuzuma no gutanga ibitekerezo ku bintu bifitanye isano n’urwo rubanza kandi bijyanye n’umwuga wabo”. Na ho ingingo ya 93 y’iryo tegeko yo iteganya ko iyo imirimo irangiye,

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abahanga bamenyesha urukiko ibyo bagezeho raporo igashyirwaho umukono n’abahanga bose. Kugira ngo umukono w’abahanga utaba imfabusa ubanzirizwa n’indahiro iteganywa n’iyi ngingo. [15] Ku birebana n’uru rubanza, inyandiko ya muganga yatanzweho ikimenyetso ntabwo ari

raporo y'abahanga igomba kubaho indahiro byanze bikunze nk'uko bimaze gusobanurwa, ahubwo ni "protocole de prise en charge" yakozwe n'umuganga wemewe asuzuma Uwumutima, ikaba yaratanzwe nk'ikimenyetso kandi amakuru ayikubiyemo akaba afite ibimenyetso biyashimangira nk'uko byasobanuwe haruguru. Kubera iyo mpamvu, Urukiko rurasanga rugomba guha agaciro ibikubiye muri "Protocole de prise en charge" yatanzwe nk'ikimenyetso, cyane cyane ko yakozwe n'umuganga wemewe na Leta.

b. Ku byerekeranye n'imyaka nyakuri y'umwana wasambanyijwe. [16] MVUKIYEHE Janvier n'umwunganira bavuga ko Urukiko rutahaye agaciro ibimenyetso yatanze bigaragaza ko UWUMUTIMA yari afite imyaka cumi n'icyenda (19) ubwo icyaha aregwa cyakorwaga, ahubwo ruha agaciro ibyo rwavanye mu iperereza rishingiye ku mvugo ya nyina wa UWUMUTIMA avuga ko yari afite imyaka cumi n'itandatu (16), aho gukora ibiteganywa n'ingingo ya 86 y'igitabo cya mbere cy'Urwunge rw'amategeko mbonezamubano ivuga ko irangamimerere y'abantu rishobora gusa kwemezwa no kugaragazwa n'inyandiko z'irangamimerere, zandikwa ku buryo bwerekanwa n'iyi nteruro bikagirwa na none, ku buryo budasanzwe, n'imanza zisimbura cyangwa zikosora izo nyandiko. [17] Kuri iyi ngingo y'ubujurire, Uhagarariye Ubushinjacyaha avuga ko ibyavuye mu iperereza ryakozwe n'Urukiko bihagije, kandi ko byasobanuwe, bityo akaba atari ngombwa kubigarukaho mu Rukiko rw'Ikirenga. Ku birebana n'ingingo ya 86 y'igitabo cya mbere cy'Urwunge rw'amategeko mbonezamubano yavuzwe n'uwunganira MVUKIYEHE, Uhagarariye Ubushinjacyaha arasanga bitari gushoboka gukosora inyandiko zitabonetse. Uko Urukiko rubibona. [18] Nk'uko Urukiko Rukuru rwabyemeje, ntibyashobotse kubona inyandiko z'irangamimerere za UWUMUTIMA Clémentine kuko zazimiye mu gihe cya jenoside yakorewe abatutsi, bityo ntacyatumaga Urukiko rudaha agaciro ibyatangajwe n'umubyeyi wa UWUMUTIMA, cyane cyane ko

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yabajijwe atunguwe kandi imyaka avuze igahura n'iyari yaratangajwe na UWUMUTIMA. Urukiko rero rurasanga MVUKIYEHE n'umwunganira batarashoboye kugaragaza aho bashingira bavuga ko UWUMUTIMA yari afite imyaka cumi n'icyenda (19) ubwo yasambanywaga, mu gihe nyina umubyara we yemeza ko yari afite imyaka cumi n'itandatu (16). [19] Hashingiwe ku bimaze kuvugwa, Urukiko rurasanga ibimenyetso byose byatanzwe muri uru rubanza bigaragaza nta gushidikanya ko MVUKIYEHE Janvier yasambanyije umwana w'umukobwa ufite imyaka cumi n'itandatu (16) nk'uko byemejwe mu rubanza rwajuririwe, bityo akaba agomba guhanirwa icyo cyaha. [20] Urukiko rurasanga ariko, kuba MVUKIYEHE Janvier ari ubwa mbere aguye mu cyaha, kuba kandi ku myaka ye y'ubusore yarisanze mu nzu n'umukobwa ari bonyine kandi abona ari inkumi ak'ubusore kakanga bikamunanira kwihangana akamufata akamusambanya, kuba nta ngaruka zizwi zagaragaye ku wakorewe icyaha, byamubera impamvu nyoroshyacyaha hashingiwe ku ngingo ya 82 y'igitabo cy'amategeko ahana ibyaha mu Rwanda cyakoreshwaga igihe icyaha cyakorwaga, iteganya ko umucamanza ari we uha agaciro impamvu zigabanya ubugizi bwa nabi bw'uwakoze icyaha, ari izakibanjirije, ari izagiherekeje cyangwa izagikurikiye, noneho akaba yahera ahongaho agabanya igihano. [21] Urukiko rurasanga hashingiwe ku mpamvu zigabanya

ububi bw’icyaha n’impamvu nyoroshyacyaha zavuzwe mu gika kibanziriza iki, MVUKIYEHE Janvier agomba kugabanyirizwa igihano hashingiwe ku ngingo ya 83 y’ Itegeko-Teka N° 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy’amategeko ahana ibyaha mu Rwanda ivuga ko igihano cyo gufungwa burundu gisimbuzwa igihano cy'igifungo cy'igihe kitari munsi y'imyaka ibiri (2), bityo MVUKIYEHE Janvier akaba ahanishijwe igihano cy’igifungo cy’imyaka cumi n‘ibiri (12) n’ihazabu y’amafaranga ibihumbi ijana (100 000 rwf) . III. ICYEMEZO CY’URUKIKO [22] Rwemeye kwakira ubujurire bwatanzwe na MVUKIYEHE Janvier kuko bwatanzwe mu buryo no mu nzira bikurikije amategeko. [23] Rwemeje ko ubujurire bwa MVUKIYEHE Janvier nta shingiro bufite.

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[24] Rumuhanishije igifungo cy’imyaka cumi n‘ibiri (12) n’ihazabu y’amafaranga y’amanyarwanda ibihumbi ijana (100.000 rwf). [25] Ruvuze ko urubanza n° RPA 0440/08/HC/KIG rwaciwe n’Urukiko Rukuru ku wa 14/04/2009 ruhindutse ku byerekeye igihano cy‘igifungo. [26] Rutegetse ko amagarama y’urubanza aherera ku isanduku ya Leta.

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