

RWANDA / JUDGMENT

UBUSHINJACYAHA v RUTAGANDA

RS/INJUST/RP 00002/2024/SC

COURT

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UBUSHINJACYAHA v RUTAGANDA

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Text

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UBUSHINJACYAHA v RUTAGANDA [Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RP 00002/2024/SC (Mukantaganzwa, P.J, Muhumuza na Kalihangabo J.) 07 Ugushyingo 2025] Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Iburanisha ry'uwihiye cyangwa uwatorotse ubutabera – Ubujurire – Iyo ukurikiranyweho icyaha waburanishijwe adahari kuko yatorotse cyangwa yihishe ubutabera, agakatirwa n'urukiko igihano cy'igifungo, iyo abonetse cyangwa afashwe igihano kitarasaza, icyemezo cy'urukiko gita agaciro, ikurikiranacyaha rigakorwa mu buryo busanzwe; bikaba bisobanuye ko adashobora kujuririra urubanza rwaciwe n'Urukiko adahari kuko ruba rutakiriho. Incamake y'ikibazo: Uru rubanza rwaciwe n'Urukiko Rw'Ikirenga hasubirishwamo ku mpamvu z'akarengane urubanza RPA 00344/2022/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, ku wa 10/02/2023. Ubushinjacyaha bukaba bwari bwakurikiranye uwitwa Rutaganda Emmanuel n'umuhesha w'inkiko w'umwuga Nsengiyumva John ku cyaha cyo gukora no gukoresha inyandiko mpimbano, buvuga ko bahimbye urubanza N^o 199 rwaciwe ku wa 05/07/2008 n'Urukiko Gacaca rw'umurenge wa Cyambara, mu Karere ka Nyabihu, rwemezaga ko mu gihe cya Jenocide yakorewe Abatutsi mu 1994, uwitwa Bikumbi yangije imitungo ya Rutaganda n'iy'abavandimwe be igizwe n'inka 352 zifite agaciro ka

105.600.000 Frw; maze uwo muhesha w'inkiko arangiza urwo rubanza rutigeze rubaho, umutungo wa Bikumbi utezwa cyamunara, ugurwa ku giciro cya 55.700.000 Frw. Mu rukiko rwisumbuye, Rutaganda yaburanishijwe adahari kuko yatorotse ubutabera, urwo Rukiko rumuhamya icyaha cyo gukora no gukoresha inyandiko mpimbano, rumuhanisha igihano cy'igifungo cy'imyaka 7 n'ihazabu ya 1.000.000 Frw, naho umuhesha w'inkiko ntiyahamwa n'icyaha. Rutaganda yajuririye Urukiko Rukuru, Urugereko rwa Musanze, avuga ko yaburanishijwe nk'uwatorotse ubutabera kandi atarigeze amenya ko akurikiranywe, Urukiko rukamuhamya icyaha cyo gukora no gukoresha inyandiko mpimbano rushingiye ku makuru yuzuyemo gushidikanya no gukekeranya yatanze n'abatangabuhamya barimo abari bagize inteko y'inyangamugayo za Gacaca. Ubushinjacyaha bwatanze inzitizi yo kutakira ubujurire bwe buvuga ko yaburanishijwe nk'uwatorotse ubutabera; akaba yaragombaga kwishyikiriza inzego z'ikurikiranabyaha kugira ngo urubanza ajuririra ruvanweho maze akurikiranwe mu buryo busanzwe ariko urwo rukiko rwemeza kwakira ubujurire nyuma ruza no kwemeza ko adahamwa n'icyaha. Ubushinjacyaha bwashubirishijemo ku mpamvu z'akarengane urwo rubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze maze ruburanishwa n'Urukiko Rw'Ikirenga. Bukaba buvuga ko urukiko rwemeye kwakira ubujurire bwa Rutaganda rwirengagije ko yakurikiranywe nk'uwihishe ubutabera hanirengagizwa ibimenyetso bimuhamya icyaha cyo gukora no gukoresha inyandiko mpimbano. Mu rubanza hasuzumwe ibijyanye no kumenya niba Rutaganda yari yemerewe kujuririra urubanza RP 00362/2018/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa Rubavu adahari kubera ko yihishe ubutabera. Incamake y'icyemezo: Iyo ukurikiranyweho icyaha waburanishijwe adahari kuko yatorotse cyangwa yihishe ubutabera, agakatirwa n'urukiko igihano cy'igifungo, iyo abonetse cyangwa

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afashwe igihano kitarasaza, icyemezo cy'urukiko gita agaciro, ikurikiranacyaha rigakorwa mu buryo busanzwe; bikaba bisobanuye ko adashobora kujuririra urubanza rwaciwe n'Urukiko adahari kuko ruba rutakiriho. Gusubirishamo urubanza ku mpamvu z'akarengane bifite ishingiro; Rutaganda ntiyari yemerewe kujuririra urubanza RP 00362/2018/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa Rubavu. Amategeko yashingiweho: Itegeko Nshinga rya Repubulika y'u Rwanda, ingingo ya 29. Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, Ingingo ya 160, 162 n'ya 168. Amasezerano Mpuzamahanga yerekeye Uburenganzira mu by'Imbonezamubano no mu bya Politiki yo mu 1966, ingingo ya 14(3). Imanza zifashishijwe: Cour de cassation, criminelle, Chambre criminelle, 23 août 2017, 17-83.386. Inyandiko z'abahanga: Thierry Garé et Catherine Ginest, Droit Pénal, Procedure pénale, 13^{éd}, Dalloz, Paris, 2021, p.428, pp 593. Bernard Bouloc, procédure pénale, 28^e éd., Dalloz, Paris, 2022, P.1053.

Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rubavu, Ubushinjacyaha bukurikiranyeho Rutaganda Emmanuel n'umuhesha w'inkiko w'umwuga Nsengiyumva John icyaha cyo gukora no gukoresha inyandiko mpimbano, buvuga ko bahimbye urubanza N° 199 rwaciwe ku wa 05/07/2008 n'Urukiko Gacaca rw'umurenge wa Cyambara, mu Karere ka Nyabihu, rwemezaga ko mu gihe cya Jenocide yakorewe Abatutsi mu

1994, Bikumbi Raphael yangije imitungo ya Rutaganda Emmanuel n'iy'abavandimwe be aribo Mukeshimana, Rubayita Daniel, Munyaneza na Hakizimana, igizwe n'inka 352 zifite agaciro ka 105.600.000 Frw; maze ku wa 05/09/2014 Nsengiyumva John arangiza urwo rubanza rutigeze rubaho, umutungo wa Bikumbi Raphael utezwa cyamunara, ugurwa na Mbanjimbere ku giciro cya 55.700.000 Frw. Ikirego cyandikwa kuri No RP 00362/2018/TGI/RBV. [2] Ku wa 26/07/2019, urwo Rukiko rwaciye urubanza rwemeza ko Rutaganda Emmanuel yaburanishijwe adahari kuko yatorotse ubutabera, ahamwa n'icyaha cyo gukora no gukoresha inyandiko mpimbano, rumuhanisha igihano cy'igifungo cy'imyaka 7 n'ihazabu ya 1.000.000 Frw ; rwemeza ko Nsengiyumva John agizwe umwere kuri icyo cyaha, rutegeka ko ahita arekurwa urubanza rukimara gusomwa ; rutegeka kandi ko urubanza N° 199 rwashingiweho hatezwa

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cyamunara imitungo ya Bikumbi Raphael ruteshejwe agaciro. Rwemeza nanone ko ikirego cyatanzwe na succession Bikumbi Raphael ihagarariwe na Uwera Bikumbi Providence kitakiriwe kuko cyatanzwe mu buryo bunyuranyije n'amategeko. [3] Urukiko Rwisumbuye rwa Rubavu rwaburanishije kandi rwemeza ko Rutaganda Emmanuel yihishe ubutabera rushingiye ku mpamvu zikurikira:

- a) Kuba Rutaganda Emmanuel yarahamagajwe mu Bugenzacyaha no mu Bushinjacyaha ntaboneke nk'uko byemezwa n'urwandiko ruzana uregwa ku gahato rwo ku wa 19/03/2018 na raporo yo ku wa 13/07/2018 yakozwe n'ubuyobozi bw'Akagari ka REGA, bwemeza ko atakiboneka aho yari atuye kuko abayeho yihishahisha.
- b) Kuba ku wa 24/12/2018, Rutaganda Emmanuel yarahamagajwe n'Urukiko Rwisumbuye rwa Rubavu hakoreshejwe icyemezo cy'Umucamanza gitegeka ushinjwa watorotse ubutabera kwitaba Urukiko ku wa 26/02/2019, uwo munsu ugeze ntiyitaba; urubanza rukaburanishwa adahari. [4] Ku wa 31/05/2022, Rutaganda Emmanuel yajuririye icyo cyemezo mu Rukiko Rukuru, Urugereko rwa Musanze, avuga ko yaburanishijwe nk'uwatorotse ubutabera kandi atarigeze amenya ko akurikiranywe, Urukiko rukamuhamya icyaha cyo gukora no gukoresha inyandiko mpimbano rushingiye ku makuru yuzuyemo gushidikanya no gukekeranya yatanzwe n'abatangabuhamya barimo abari bagize inteko y'inyangamugayo za Gacaca, na bamwe mu bavandimwe be babajijwe mu gihe cy'iperereza; ubujurire bwe bwandikwa kuri N° RPA 00344/2022/HC/MUS. [5] Ubushinjacyaha bwatanze inzitizi yo kutakira ubujurire bwe buvuga ko yaburanishijwe nk'uwatorotse ubutabera; akaba yaragombaga kwishyikiriza inzego z'ikurikiranabyaha kugira ngo urubanza ajuririra ruvanweho maze akurikiranwe mu buryo busanzwe. Rutaganda Emmanuel yireguye kuri iyo nzitizi avuga ko atigeze atoroka ubutabera cyangwa ngo amenyeshwe urubanza abure, kandi ko asanga kujuririra urubanza ari uburenganzira bwe cyane ko ari na we bifiteho ingaruka mbi zo kwibuza andi mahirwe y'ubujurire. [6] Urukiko Rukuru, Urugereko rwa Musanze, rwakiriye ubujurire bwa Rutaganda Emmanuel, rwemeza ko bukurikije amategeko rushingiye ku mpamvu zikurikira:

- 1) Kuba Ubushinjacyaha butagaragaza inyandiko zerekana ko Rutaganda Emmanuel yatorotse ubutabera;
- 2) Kuba nta nyandiko ihamya ko Rutaganda Emmanuel yashakishijwe akabura;
- 3) Kuba nta kigaragaza ko amahamagara yoherezwaga iwe ntibigire icyo bitanga. [7] Urukiko Rukuru, Urugereko rwa Musanze rwaburanishije urubanza rusuzuma impamvu z'ubujurire za Rutaganda Emmanuel. Ku wa 10/02/2022, Urukiko rwaciye urubanza rwemeza ko adahamwa n'icyaha cyo gukora no gukoresha inyandiko mpimbano, ko agizwe umwere; rwemeza kandi ko urubanza No RP 00362/2018/TGI/RBV rwaciye ku wa 26/07/2019 n'Urukiko Rwisumbuye rwa Rubavu ruhindutse mu ngingo zarwo zose.

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- [8] Urukiko Rukuru, Urugereko rwa Musanze rwagize umwere Rutaganda Emmanuel rushingiye ku kuba ibimenyetso byashingiweho n'Urukiko Rwisumbuye rwa Rubavu harimo gushidikanya gukomeye kubera impamvu zikurikira:
- a) Kuba abatangabuhamya barimo Gashabarara Ntwari Faustin na Masengesho Esdras, Inyangamugayo z'Inkiko Gacaca ndetse na Mukeshimana Erada, mushiki wa Rutaganda Emmanuel, barabajijwe n'Urukiko Rwisumbuye rwa Rubavu mu iperereza rwakoze, bakavuga ko urubanza N°199 ari uruhimbano ngo kuko Rutaganda Emmanuel atigeze aburana na Bikumbi Raphael; ariko nyuma bose bakandika inyandiko bivuguruza;
 - b) Kuba Urukiko Rukuru, Urugereko rwa Musanze, rwarabatumije rukababaza icyatumye bavuguruza ibyo bavuze, bagasobanura ko Umwanditsi w'Urukiko waje mu iperereza yabandikiye ibyo batavuze, kandi ko bashyize umukono ku nyandikomvugo batabanje kuyisoma cyangwa ngo bayisomerwe;
 - c) Kuba inyandiko yavuye muri MINUBUMWE igaragaza ko urubanza N°199 rutagaragara mu bubiko bwayo, itafatwa nk'ikimenyetso gihamya nta nshiti ko urwo rubanza rutabayeho. [9] Ubushinjacyaha bwandikiye Perezida w'Urukiko rw'Ubujurire busaba ko urubanza N° RPA 00344/2022/HC/MUS rwaciye n'Urukiko Rukuru, Urugereko rwa Musanze, ku wa 10/02/2022 rwasubirishwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujurire, amaze gusuzuma ubwo busabe, yandikiye Perezida w'Urukiko rw'Ikirenga amusaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane, maze ku wa 03/10/2024, ashingiye kuri raporo yarukozweho, Perezida w'Urukiko rw'Ikirenga afata icyemezo N° 145/CJ/2024 cyo kongera kuruburanisha, maze rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga ; ikirego cyandikwa kuri N° RS/INJUST/RP 00002/2024/SC. [10] Urubanza rwahamagawe ku wa 08/10/2025, Urukiko rw'Ikirenga ruruburanisha mu ruhame, Ubushinjacyaha buhagarariwe n'Umushinjacyaha ku rwego rw'Igihugu Gakwerere Javan, naho Rutaganda Emmanuel atitabye, ataranatanze imyanzuro yo kwiregura, maze Ubushinjacyaha busaba ko urubanza rwaburanishwa Rutaganda Emmanuel adahari kuko yamenyeshejwe itariki y'iburanisha mu buryo bukurikije amategeko. [11] Urukiko rwafatiye icyemezo mu ntebe, rushingiye ku ngingo ya 56 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza

z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu nk'uko ryahinduwe, rwemeza ko urubanza ruburanishwa Rutaganda Emmanuel adahari kuko atitabye kandi yarahamagawe mu buryo bukurikije mategeko. [12] Mu myanzuro hamwe no mu miburanire ye, uhagarariye Ubushinjacyaha avuga ko kuba Urukiko Rukuru, Urugereko rwa Musanze, rwaremeye kwakira ubujurire bwa Rutaganda Emmanuel rwirengagije ko yakurikiranywe nk'uwihishe ubutabera nk'uko biteganywa n'ingingo ya 160 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe¹, kandi ko rwirengagije ibimenyetso bigizwe n'imvugo

1 ivuga ko iyo ukurikiranyweho icyaha atashoboye gufatwa kuko yihishe cyangwa yatorotse ubutabera, yaba ari mu Rwanda cyangwa se mu mahanga, Ubushinjacyaha bumukorera dosiye bukurikishyikiriza urukiko rubifitiye ububasha

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abatangabuhamya bavugiyemo mu iperereza rwakoze ku wa 03/06/2019 zihamya Rutaganda Emmanuel icyaha cyo gukora no gukoresha inyandiko mpimbano. [13] Muri uru rubanza, Urukiko rwasuzumye ikibazo gikurikira: Kumenya niba Rutaganda Emmanuel yari yemerewe kujuririra urubanza No RP 00362/2018/TGI/RBV rwaciwe adahari kubera ko yihishe ubutabera. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO Kumenya niba Rutaganda Emmanuel yari yemerewe kujuririra urubanza No RP 00362/2018/TGI/RBV rwaciwe adahari kubera ko yihishe ubutabera. [14] Uhagarariye Ubushinjacyaha avuga ko Urukiko rwirengagije ibiteganywa n'ingingo ya 162 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza nshinjabyaha nk'uko ryahinduwe, yuzuza iya 160 y'iryo Tegeko, iteganya ko "iyi igihe kivugwa mu ngingo ya 160 y'iri Tegeko kitubahirijwe nk'uwihishe cyangwa uwatorotse ubutabera, acirwa urubanza adahari, Urukiko rugaca urubanza rushingiye ku myanzuro y'Ubushinjacyaha yonyine". [15] Yakomeje avuga ko Urukiko rwirengagije kandi ibiteganywa n'ingingo ya 168 y'Itegeko ryavuzwe haruguru, iteganya ko iyo uwaciriwe urubanza yatorotse cyangwa yihishe ubutabera yishyikirije Ubugenzacyaha, Ubushinjacyaha cyangwa Ubuyobozi bwa Gereza cyangwa afashwe igihano kitarasaza, urubanza n'imihango yakozwe guhera ku cyemezo cyamutegekaga kwitaba kugeza urubanza ruciwe bita agaciro, agakurikiranwa mu buryo busanzwe, kuko kuba Rutaganda Emanuel yaraburanishijwe adahari, akaba atarigeze abazwa ngo yiregure ku cyaha yakekwagaho kubera ko yihishe ubutabera, iyi ngingo itamwemerera kujuririra urwo rubanza, ahubwo imuha amahirwe yo kurutesha agaciro mu gihe yishyikirije Ubugenzacyaha, Ubushinjacyaha cyangwa se afashwe noneho agakurikiranwa mu buryo busanzwe; urubanza ruciwe mu buryo busanzwe akaba arirwo rwemerewe kujuririrwa nk'uko amategeko abiteganyye. [16] Asobanura kandi ko uwo ari na wo murongo watanzwe n'Urukiko rw'Ubujurire mu rubanza N° RPAA 00504/2021/CA rwaciwe ku wa 24/09/2021, aho rwagaragaye ko kuba uwaburanishijwe nk'uwihishe ubutabera agaragaye mu bujurire, bitagomba kwitwa ko abonetse ku buryo busobanurwa n'ingingo ya 168 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe, kuko inzego zishinzwe iperereza zivugwa muri iyi ngingo ziba zitamubonye (zitamufiteho "accès"); mu rwego rw'amategeko, akaba aba agifatwa nk'uwihishe ubutabera. Rwasobanuye kandi ko

uwaburanishijwe nk'uwihishe ubutabera wifuza kugaragara mu rubanza kugira ngo yisobanure ku byaha akurikiranyweho n'Ubushinjacyaha, ari ngombwa ko yishyikiriza inzego z'iperereza ziteganywa n'Itegeko (Ubugenzacyaha cyangwa Ubushinjacyaha) kugira ngo akurikiranwe bisanzwe, abazwe ku cyaha akekweho, Ubugenzacyaha n'ubushinjacyaha bikore iperereza bishaka ibimenyetso bishinje n'ibishinjura; bityo uburenganzira bwe bwo kwiregura no kuvuguruzanya bwubahirizwe.

n'ubwo yaba atarabajijwe. Nyuma yo gushyikirizwa dosiye, urukiko rufata icyemezo kimutegeka kwitaba mu gihe cy'ukwezi kumwe (1), atakwitaba, hakemezwa ko yasuzuguye amategeko.

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[17] Asoza avuga ko urubanza ruciwe mu buryo busanzwe k'uwihishe ubutabera wabonetse, aba arirwo yemerewe kujuririra mu buryo busanzwe agaragaza inenge arubonamo². [18] Rutaganda Emmanuel ntacyo yavuze kuri iyi ngingo kuko atari yitabye Urukiko ngo yiregure. UKO URUKIKO RUBIBONA [19] Muri uru rubanza, ipfundo ry'ikibazo ni ukumenya niba Rutaganda Emmanuel, wakurikiranywe nk'uwihishe ubutabera, akaba yarahamijwe icyaha cyo gukora no gukoresha inyandiko mpimbano n'Urukiko Rwisumbuye rwa Rubavu mu rubanza No RP 00362/2018/TGI/RBV yari yemerewe kurujuririra. [20] Ingingo ya 160 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe iteganya ko iyo ukurikiranyweho icyaha atashoboye gufatwa kuko yihishe cyangwa yatorotse ubutabera, yaba ari mu Rwanda cyangwa mu mahanga, Ubushinjacyaha bumukorera dosiye bukayishyikiriza urukiko rubifitiye ububasha n'ubwo yaba atarabajijwe; nyuma yo gushyikirizwa dosiye, urukiko rugafata icyemezo kimutegeka kwitaba mu gihe cy'ukwezi kumwe (1), atakwitaba, hakemezwa ko yasuzuguye amategeko. [21] Ingingo ya 162 y'Itegeko rivugwa haruguru iteganya ko iyo igihe kivugwa mu ngingo ya 160 yaryo kitubahirijwe n'uwihishe cyangwa uwatorotse ubutabera, acirwa urubanza adahari hashingiwe ku myanzuro y'Ubushinjacyaha yonyine; naho ingingo yaryo ya 168, mu gika cyayo cya mbere (1) igateganya ko iyo uwaciriwe urubanza yaratorotse cyangwa yarihishe ubutabera yishyikirije Ubugenzacyaha, Ubushinjacyaha cyangwa Ubuyobozi bwa Gereza cyangwa afashwe igihano kitarasaza, urubanza n'imihango yakozwe guhera ku cyemezo cyamutegekaga kwitaba kugeza urubanza ruciwe bita agaciro agakurikiranwa mu buryo busanzwe". [22] Abahanga mu mategeko Thierry Garé et Catherine Ginest, bavuga ko iyo ukurikiranyweho icyaha atabonetse kubera ko yihishe ubutabera agatangira gukurikiranwa, aburanishwa nk'uwatorotse cyangwa uwihishe ubutabera; kandi ko iyo abonetse atemerewe kujuririra icyemezo yafatiwe Bavuga nanone ko mu gihe yishyikirije gereza cyangwa agafatwa mbere y'uko haba ubusaze bw'igihano, ibyakozwe byose bita agaciro agakurikiranwa bundi bushya³. [23] Umuhanga Bernard Boulloc nawe avuga ko ukurikiranyweho icyaha waburanishijwe adahari kuko yihishe cyangwa yatorotse ubutabera, urukiko rukamuhamya icyaha, rukanamukatira igihano cy'igifungo, iyo yishyikirije inzego z'iperereza cyangwa afashwe igihano kitarasaza, icyemezo cy'urukiko gita agaciro mu ngingo zacyo zose, agakurikiranwa mu buryo busanzwe.

2 Ingingo ya 183 y'itegeko n° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko ujurira agomba kugaragaza urutonde rw'inenge z'urubanza zisabirwa gukosorwa n'ibindi bibazo bigomba gusuzumwa; no kugaragaza ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragaza amakosa yakozwe n'uburyo agomba gukosorwa hashingiwe ku mategeko n'ibimenyetso n'igisabwa urukiko. 3 Thierry Garé et Catherine Ginest, Droit Pénal, Procedure pénale, 13éd, Dalloz, Paris, 2021, p.428, pp 593, (La procédure du défaut criminal s'applique au cas de fuite de l'accusé ou lorsque ce dernier ne se présente pas, sans excuse valable. Au cas de condamnation par défaut, l'appel n'est pas possible. Toutefois, si le condamné se constitue prisonnier ou s'il est arrêté avant que la prescription de la peine ne soit acquise, l'arrêt précédent est non avenue et la cour entame une procédure ordinaire.)

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Uwakatiwe adahari kubera gutoroka cyangwa kwihisha ubutabera akaba atemerewe kujuririra urubanza.⁴ [24] Urukiko rwa Rubanda rwo mu Bufaransa (la Cour d'assises des Bouches-du-Rhône) rwasobanuye ko icyemezo cyafashwe n'Urugereko rushinzwe ibanzirizasuzuma mu manza nshinjabyaha (Chambre d'instruction) cyashingiye ku biteganywa n'ingingo ya 379-4 y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko iyo ukurikiranyweho icyaha wakatiwe adahari kubera ko yatorotse ubutabera afashwe mbere y'uko habaho ubusaze bw'igihano, icyemezo cyafashwe n'Urukiko rwa Rubanda gihita gitakaza agaciro maze urubanza rukongera gusuzumwa bundi bushya n'urwo Rukiko. Rwasobanuye kandi ko hashingiwe kuri iyo ngingo, kuba icyemezo gisaba ko umuntu akurikiranwaho icyaha kidashobora kujuririrwa, bitamuvutsa uburenganzira ku butabera buboneye buteganywa n'ingingo ya 6 y'Amasezerano y'Ibihugu by'Uburayi yerekeye Uburenganzira bwa Muntu, kuko uburenganzira bwe bwo kumenyeshwa imiterere n'impamvu z'icyaha akurikiranyweho, kwiregura n'ubwo kunganirwa, ashobora kubukoresha imbere y'Urukiko rwa Rubanda.⁵ [25] Ibivuzwe haruguru byumvikanisha ko iyo ukurikiranyweho icyaha waburanishijwe adahari kuko yatorotse cyangwa yihishe ubutabera, agakatirwa n'urukiko igihano cy'igifungo, iyo abonetse cyangwa afashwe igihano kitarasaza, icyemezo cy'urukiko gita agaciro, ikurikiranacyaha rigakorwa mu buryo busanzwe; bikaba bisobanuye ko adashobora kujuririra urubanza rwaciwe n'Urukiko adahari kuko ruba rutakiriho. [26] Gutakaza agaciro kw'icyemezo cy'urukiko cyafashwe uregwa adahari kuko yatorotse cyangwa yihishe ubutabera gushingiye ku ihame ry'uburenganzira ku butabera buboneye riteganywa n'ingingo ya 29 y'Itegeko Nshinga rya Repubulika y'u Rwanda, iteganya ko uregwa afite uburenganzira bwo kumenyeshwa imiterere n'impamvu z'icyaha akurikiranyweho, kwiregura no kunganirwa. [27] Ibiteganywa n'ingingo ya 29 y'Itegeko Nshinga rya Repubulika y'u Rwanda bihura n'ibiteganywa n'ingingo ya 14(3)(a)6 y'Amasezerano Mpuzamahanga yerekeye Uburenganzira mu by'Imbonezamubano no mu bya Politiki yo mu 1966, ndetse mu gace kayo ka (d) ikaba iteganya ko umuntu wese uregwa icyaha giteganywa n'amategeko ahana yemerewe ku buryo bungana n'ubw'abandi nibura uburenganzira bukurikira: [...] kwitaba ubwe mu rubanza no

4 Bernard Bouloc, procédure pénale, 28e éd., Dalloz, Paris, 2022, P.1053 Si l'accusé condamné se constitue prisonnier ou s'il est arrêté avant que l'expiration du délai de prescription de la peine, l'arrêt de la Cour est non avenue, dans toutes ses dispositions, et la procédure normale est mise en oeuvre. L'appel n'est pas ouvert à l'accusé condamné par défaut. 5 Cour de cassation, criminelle, Chambre criminelle, 23 août 2017, 17-83.386, [...] Qu'en cet état, la chambre de l'instruction a justifié sa décision dès lors qu'en application des dispositions de l'article 379-4 du code de procédure pénale, si l'accusé condamné par défaut est arrêté avant que la peine soit éteinte par la prescription, l'arrêt de la cour d'assises est non avenue et il est procédé à un nouvel examen de son affaire par la cour d'assises ; que cette disposition, dont il se déduit que l'ordonnance de mise en accusation ne peut plus faire l'objet d'une voie de recours, ne porte atteinte à aucun des principes conventionnels invoqués dès lors que les droits de la défense de l'accusé peuvent s'exercer tant lors du supplément d'information, que lors de sa comparution devant la cour d'assises ; 6 International Covenant on Civil and Political Rights in its article 14 (3) (a) states that in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

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kwiburanira cyangwa kunganirwa n'umwunganizi mu mategeko yihitiyemo, kumenyeshwa uburenganzira bwe bwo kugira umwunganira niba atamufite, ndetse no kugenerwa umwunganizi ku buntu mu gihe cyose biri mu nyungu z'ubutabera, kandi adafite ubushobozi bwo kumuhemba.⁷ [28] Ku birebana n'uru rubanza, dosiye y'urubanza igaragaza ko ku wa 15/9/2015, Me Nzirabatinyi Fidèle ahagarariye Uwera Bikumbi Providence yatanze ikirego mu Bugenzacyaha, asaba gukurikirana umuhesha w'inkiko w'umwuga Nsengiyumva John wateje cyamunara umutungo ugizwe n'inzu yasigiwe n'umubyeyi we arangiza urubanza ruvugwa ko rwaciye n'Urukiko Gacaca rwa Cyamabara ; maze ku wa 09/07/2018 Nsengiyumva John afatwa n'Urwego rw'Igihugu rushinzwe Ubugenzacyaha, arafungwa nk'uko bigaragazwa n'inyandikomvugo y'ifunga. [29] Dosiye y'urubanza igaragaza kandi ko ku wa 13/07/2018, Ubuyobozi bw'akagari ka Rega bwakoreye Umunyamabanga Nshingwabikorwa w'Umurenge wa Bigogwe, mu Karere ka Nyabihu, raporo igaragaza ko Rutaganda Emmanuel wari usanzwe abarizwa muri ako kagari, mu mudugudu wa Nyagafumberi, batazi aho aherereye, ko yihishahisha ntagaragare. Iyi raporo yashyikirijwe Ubugenzacyaha. [30] Dosiye igaragaza kandi inyandikomvugo imenyeshya yakozwe ku wa 16/07/2018, Umugenzacyaha yohereje Ubushinjacyaha bwo ku rwego rw'Ibanze rwa Gisenyi, igaragaza ko Rutaganda Emmanuel yabuze kuko yihishe ubutabera, n'urwandiko rumuzana ku gahato (mandat d'amener), rwerekana ko yashakishijwe akabura. [31] Dosiye igaragaza nanone ko nyuma yo gushyikirizwa iyo dosiye, ku wa 19/03/2018 Umushinjacyaha ku rwego rwisumbuye rwa Rubavu yakoze urwandiko rutegeka abagenzacyaha na buri wese ushinzwe umutekano, kumuzanira Rutaganda Emmanuel ku gahato. [32] Dosiye igaragaza ko ku wa 01/08/2018 Ubushinjacyaha bwatanze ikirego mu Rukiko Rwisumbuye rwa Rubavu, bukurikiranyeho Nsengiyumva John na Rutaganda Emmanuel icyaha cyo gukora no gukoresha inyandiko mpimbano, maze ku wa 24/12/2018 Umucamanza

agafata icyemezo gitegeka Rutaganda Emmanuel watorotse Ubutabera kwitaba Urukiko ku wa 26/02/2019; iyo tariki igeze Urukiko ruburanisha urubanza hitabye Nsengiyumva John naho Rutaganda Emmanuel aburanishwa adahari kuko atitabye. [33] Rushingiye ku bimaze kuvugwa haruguru, Urukiko rurasanga guhera mu Bugenzacyaha, mu Bushinjacyaha ndetse no mu Rukiko Rwisumbuye rwa Rubavu, Rutaganda Emmanuel yarashakishijwe kugira ngo amenyeshwe imiterere y'icyaha yari akurikiranyweho, anacyiregureho ariko ntiyaboneka. Kuba rero Urukiko Rwisumbuye rwa Rubavu rwaramuburanishije adahari nk'uwihishe ubutabera, rukamucira urubanza rwemeza ko ahamwa n'icyaha cyo gukora no gukoresha inyandiko mpimbano, rukamuhanisha igifungo cy'imyaka 7 n'ihazabu ya 1.000.000 Frw bikurikije amategeko.

7 International Covenant on Civil and Political Rights in its article 14, para. 3 (d) states that in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

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[34] Hashingiwe kandi ku biteganywa n'ingingo ya 168 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe n'ibivugwa n'abahanga mu mategeko, Urukiko rurasanga Urukiko Rukuru, Urugereko rwa Musanze, rutaragombaga kwakira ubujurire bwa Rutaganda Emmanuel kuko impamvu rwashingiyeho y'uko Ubushinjacyaha butagaragaje inyandiko zemeza ko bwamushakishije akabura nta shingiro ifite; rukaba rusanga ahubwo Rutaganda Emmanuel yaragombaga kwishyikiriza Ubugenzacyaha cyangwa Ubushinjacyaha kugira ngo urubanza yakatiwemo rubanze ruteshwe agaciro maze akurikiranwe mu buryo busanzwe; bityo n'uburenganzira bwe ku butabera buboneye bushobore kubahirizwa. [35] Urukiko rushingiye ku ngingo z'amategeko yagaragajwe haruguru, ibyavuzwe n'abahanga mu mategeko n'ibisobanuro byatanzwe, rurasanga mu rubanza No RPA 00344/2022/HC/MUS, Urukiko Rukuru, Urugereko rwa Musanze, rwariyangagije mu buryo bugaragarira buri wese ibimenyetso n'amategeko byari gutuma ubujurire bwa Rutaganda Emmanuel butakirwa; bityo urubanza No RPA 00344/2022/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 10/02/2023 rukaba ruteshejwe agaciro. III. ICYEMEZO CY'URUKIKO [36] Rwemeje ko ikirego cyatanzwe n'Ubushinjacyaha gisaba gusubirishamo ku mpamvu z'akarengane, urubanza No RPA 00344/2022/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 10/02/2023, gifite ishingiro; [37] Rwemeje ko Rutaganda Emmanuel atari yemerewe kujuririra urubanza No RP 00362/2018/TGI/RBV rwaciwe n' Urukiko Rwisumbuye rwa Rubavu ku wa 26/07/2019; [38] Rwemeje ko urubanza No RPA 00344/2022/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 10/02/2023 ruvanyweho; [39] Rutegetse ko hagumye

urubanza No RP 00362/2018/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa Rubavu ku wa 26/07/2019.

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