THEME : IVYEREKEYE GUSUBIRISHAMWO N'UKWUNGURUZA URUBANZA.

(source:code de procedure pénale)

0. INTANGAMARARA

Mu kiganiro c'agateka ka zina muntu co kuri uno munsi naho, turabira hamwe ivyerekeye gusubirishamwo n'ukwunguruza urubanza.

Mw'ido n'ido ry'ikiganiro, tuza kurabira hamwe ibi bikurikira :

1. Ingene urubanza rusubirishwamwo.

2. Ingene iyunguruzwa ry'urubanza rigenda

   Tubamenyeshe ko tuza kwisunga ibwirizwa inomero 1/10 ryo ku wa 3 ndamukiza 2013 risubiramwo igitabu c'amategeko yerekeye ingene imanza z'ivyaha zitohozwa, ziburanishwa n'ingene zicibwa, tukaba tuza kurabira hamwe ivyiyumviro biri mu ngingo zo kuva ku 253 gushika ku ya 271.

I .IDO N'IDO RY'IKIGANIRO

I.1 Ingene urubanza rusubirishwamwo.

Ivyerekeye gusubirishamwo urubanza, tubisanga kuva ku ngingo ya 253 gushika ku ya 260 za rya bwirizwa nari mpejeje kubabwira.

Ingingo ya 253 ivuga ko imanza ziciwe impaga zifatwa ko zamenyeshejwe iyo hatanzwe iyimuriro ry'iciro ry'urubanza, ryerekana igenekerezo urubanza rwaciriweko, sentare yaruciye, amazina, umwuga n'aho ababuranyi baba, imvo n'iciro ry'urubanza, amazina y'abacamanza n'umwanditsi w'imanza barushashemwo.

Uwaciriwe igihano mu rubanza ruciwe impaga,ashobora gusaba sentare yaruciye kurusubiramwo mu kiringo c'imisi mirongo itatu ikurikira umunsi yarumenyeshejweko, hongeweko umwanya urugendo rumara,urwo rugendo rukaba ari ururi hagati ya sentare ica urwo rubanza niyo umuburanyi ava.

Iyo ata cemeza ko yamenye ko yarumenyeshejwe, arashobora gusaba ko rusubirwamwo na sentare yaruciye gushika igihe co gukurikiza igihano ku caha kirangiye no gushika urubanza rukurikijwe ku vyerekeye indishi.

Umutahe umenyesha ingene urubanza rwaciwe, uramenyesha kandi ababuranyi ko bafise uburenganzira bw'ugusubirishamwo urubanza, ikiringo n'ingene bigenda.

Uwusaba indishi n'uwuyironderwako, bashobora gusubirishamwo urubanza mu minsi mirongo itatu kuva barumenyeshejwe, hongeweko ikiringo urugendo rumara.

Nkuko tubibwirwa n'ingingo ya 256 ya rino bwirizwa, uwusaba ko urubanza rwaciwe impaga rusubirwamwo na sentare yaruciye, ashobora kuvyandika musi y'umutahe w'imvaho urumumenyesha, canke akabimenyesha mw'iyandikiro ry'imanza rya sentare yaruciye canke mw'ikete yandikiye umwanditsi w'imanza w'iyo sentare.

Igenekerezo umwanditsi w'imanza yakiriyeko iryo kete ni ryo ryerekana umunsi wo gusaba gusubiramwo urubanza.

Uwo munsi nyene aronkeyeko iryo kete, umwanditsi w'imanza araryandikako igenekerezo yarironkeyeko akarimenyesha uwusaba gusubirishamwo urubanza.

Umwanditsi w'imanza aca amenyesha buno nyene Umushikirizamanza ko hasabwe ko urubanza rusubirwamwo na sentre yaruciye.

Umucamanza aca agena umunsi urubanza ruzoburanishirizwako yisunze ibiringo bitegekanijwe mu vyerekeye imitahe.

Umwanditsi w'imanza ararengukisha uwusaba ko urubanza rusubirwamwo na sentare yaruciye, amasura, uwurusubirishamwo canke ubushikirizamanza bwipfuza ko yumvirizwa, bikenewe akarengukisha uwusaba indishi n'uwuyironderwako.

Uwusavye gusubirishamwo urubanza atarengutse, bafata ko ata subirishwamwo ryasabwe. Ntashobora gusubira gusaba isubirwamwo ry'urwo rubanza ruciwe.

Uwusubirishamwo urubanza ategerezwa kurenguka ubwiwe mu gihe n'imbere y'uko urwo rubanza asubirishamwo rucibwa impaga yategerezwa kurenguka canke iyo urubanza rwaciwe impaga rutegekanya ko uwurusubirishamwo arenguka ubwiwe kugira ngo ugusubirishamwo vyakirwe.

Ikurikizwa ry'urubanza rwaciwe impaga riba rirabangira gushika ikiringo cashinzwe kirangiye, no gushika hashikirijwe urubanza kuri iryo subirishwamwo mu gihe ryasabwe.

Ikindi naco nuko sentare y'iyungururizo iba irabangiye kuburanisha urubanza rwaciwe impaga ku wagirizwa icaha rwungurujwe n'ubushikirizamanza, uwuronderwako indishi canke uwuyisaba.

Mu gihe urubanza ruciwe impaga ku wuronderwako indishi canke uwuyisaba gusa, isubirwamwo ry'urubanza ntiribuza ko rukurikizwa ku vyerekeye uwagiriye icaha.

Ingingo ya 260 ya rino bwirizwa ivuga ko, iyo uwagirizwa icaha asavye gusubirishamwo urubanza, isubirwamwo yasavye rikakirwa, urubanza rwaciwe impaga rufatwa nk'uko rutiigeze rucika kandi sentare ica iruca ukundi gushasha mu bice vyarwo vyose.

Iyo isubirishwamwo ry'urubanza rigizwe n'uwuronderwako indishi canke uwuyisaba ryakiriwe, urubanza rusubirwamwo na sentare yaruciye ku vyerekeye ababisavye gusa.

Ivyo ari vyo vyose, amagarama y'isubirwamwo ry'urubanza, harimwo n'ikiguzi c'ikopi yemejwe ko isa n'urubanza rwaciwe impaga n'imenyeshwa ryarwo bitangwa n'uwarusubirishijemwo iyo rwari rwaciwe impaga kubera we.

Ugusubirishamwo urubanza rwaciwe impaga bituma ikiringo c'uguta igihe kw'ibihano vyaciwe gihagarikwa kandi ikiringo c'uguta igihe kw'urubanza rw'icaha giharurwa gushasha kuva umunsi urubanza rusabiwe gusubirwamwo.

I.2. Ingene iyunguruzwa ry'urubanza rigenda

Ivyerekeye iyunguruzwa ry'imanza, tubisanga mu ngingo za 261 gushika ku ya 271 za rino bwirizwa

Ingingo ya 261 ivuga ko hatirengagijwe ibitegekanijwe mu ngingo ya 239, abashobora kwunguruza urubanza ni ababakurikira :

1° Uwagirizwa icaha ;
2° Umushikirizamanza ;
3° Uwategetswe gutanga indishi ;
4°Uwusaba indishi canke abantu baciriwe kuyironka batarinze kuyiburana ku vyerekeye iyo ndishi gusa.

Kugira urubanza rushobore kwakirwa, rutegerezwa kwunguruzwa mu misi mirongo itatu ikurikira umunsi rusomeweko, iyo ari Umushikirizamanza yarwunguruje, canke kuva umunsirumenyesherejweko canke ku bandi baburanyi iyo rwaburanishijwe imbonankubone canke rwaciwe impaga.

Ariko Ubushikirizamanza bukukira sentare y'iyungururizo,burashobora kwunguruza mu gihe c'amezi atatu kuva urubanza rusomwe.

Kiretse ku vyerekeye Ubushikirizamanza, uwo mwanya urongerwako umwanya urugendo rumara rwategekanijwe n'ingingo ya 150, ariko ntushobore kurenga na rimwe iminsi mirongo ine n'itanu.

Urugendo bafatirako mu guharura uwo mwanya,ni ururi hagati y'aho uwunguruje aba n'iyandikiro ry'imanza yamenyesheje ko yunguruje iyo ari urubanza rwaburanishijwe imbonankubone, iyo ari urubanza rwaciwe impaga na ho, ni urugendo ruri hagati y'aho urubanza rwamenyesherejwe n'iryo yandikiro ry'imanza.

Igihe cose uwusaba indishi ashinze urubanza muri sentare y'iyungururizo, uwo wese vyerekeye arashobora na we nyene kwunguruza mu mbavu urubanza ku vyerekeye indishi aburana, akabivuga mu ntahe igihe cose sentare itaba iraheza kwumviriza imburano.

Ukwunguruza urubanza bishobora kugirwa vyanditswe munsi y'urwandiko rumumenyesha urwaciwe, canke mu kubimenyesha mw'iyandikiro ry'imanza rya sentare yaruciye canke rya sentare y'iyungururizo canke mw'ikete yandikiye umwanditsi w'imanza w'imwe muri izo sentare.

Muri ico gihe, igenekerezo umwanditsi w'imanza aronkeyeko iryo kete, niryo ryerekana umusi iyunguruzwa ry'urubanza ryagiriweko.
Umwanditsi w'imanza niwe amenyesha abandi baburanyi ivyerekeye iyunguruzwa ry'urubanza.

Uwo munsi nyene aronse iryo kete, umwanditsi w'imanza aca aryandikako igenekerezo arironkeyeko, akabimenyesha uwunguruje urubanza.

Igihe uwunguruje urubanza apfunzwe, igenekerezo iyunguruzwa rigiriweko ryerekanwa n'igenekerezo umuyobozi w'ibohero ashiriyeko ikidodo kw'ikete ryo kwunguruza urubanza.

Umwanditsi w'imanza wa sentare yaciye urubanza rwungurujwe, aca arungika mu maguru masha umwanditsi w'imanza wa sentare y'iyungururizo, inzandiko urubanza rwaburanishijweko n'iyimuriro ry'urwo rwungurujwe, kandi hatarenze ikiringo c'iminsi icumi n'itanu kuva rwungurujwe.

Sentare y'iyungururizo itegerezwa kwisunga ivyashikirijwe mu rwandiko rusaba kwunguruza n'uko uwunguruje abifitiye uburenganzira.Iyo uwagirizwa icaha ataronse ikopi y'urubanza imbere y'ukwunguruza, arashobora gutanga ibindi bikenewe vyunganira urwandiko rw'ukunguruza urubanza rwatanguye kuburanishwa.

Umucamanza wa sentare y'iyungururizo ntashobora kwunyura ivyaciriwe uwunguruje urubanza yaba uwagiriwe n'icaha,uwuronderwako indishi canke uwusaba indishi.

Ikurikizwa ry'urubanza riba rirabangiye gushika indagano yo kwunguruza irangiye ; iyo rwungurujwe na ho, ikurikizwa ryarwo rirarindirizwa gushika sentare y'iyungururizo ishinze ingingo yayo.

Iyunguruzwa ry'urubanza ku vyerekeye indishi ntibuza ko urubanza rukurikizwa ku vyerekeye ibihano vy'ivyaha.

Iyo ari Ubushikirizamanza bwunguruje urubanza, ntaco bihindura ku vyerekeye indishi.

Iyunguruzwa ry'urubanza ntirihagarika urubanza rwaciwe rwambika izera uwagirizwa icaha, rumucira ugupfungwa umunyororo ungana n'igihe amaze apfunzwe.

Ingingo ya 267 ivuga ko iyo urubanza ruciwe uwagirizwa icaha apfunzwe canke iyo sentare yategetse ko aca afatwa ubwo nyene, aguma apfunzwe n'aho yokwunguruza.

Ariko, arashobora gusaba sentare y'iyungururizo ngo ibe iramutezurira.

Umukuru wa sentare y'iyungururizo ni we ashinga umunsi urubanza ruhamagarwa mu ntahe.

Sentare y'iyungururizo irashobora guca urubanza iyo umwanditsi w'imanza yamaze kumenyesha abo urubanza rwega igenekerezo ruzohamagarirwako mu kiringo kiri hagati y'umunsi ababuranyi babimenyesherejweko n'igenekerezo urubanza rwahamagariweko mu ntahe, kingana n'ikiringo categekanijwe mu mitahe.

Ariko, iyo sentare y'iyungururizo ibona ko bishobora kugira ingaruka mbi ku wuriko arakurikiranwa canke icaha yagirizwa gishobora guhanishwa umunyororo w'uguherayo, urubanza ntirucibwa uwukurikiranwa ku caha, bikenewe, uwutegerezwa kumutangira indishi n'amagarama batabanje kurungikirwa umutahe.

Kiretse iyo hakozwe icaha gitoyi, umuburanyi ategerezwa kwitaba mu ntahe we nyene ubwiwe.
Ingingo ya sentare y'iyungururizo ifatwa nk'uko urubanza rwaburanishijwe imbonankubone, iyo uwagirizwa icaha yatumweko hakurikijwe amategeko ariko akanka kwitaba n'ibigirankana.

Uwaciriwe igihano yari asanzwe apfunzwe ivy'agateganyo canke iyo apfunzwe urubanza ruhejeje gucibwa, aca yimurirwa mw'ibohero riri hafi y'icicaro ca sentare y'iyungururizo iyo asavye kurenguka we nyene ubwiwe imbere y'iyo sentare canke iyo yamutegetse kurenguka ubwiwe.

Bisabwe n’umushikirizamanza akukira sentare y’iyungururizo canke n’umwe mu baburanyi, amasura arashobora gusubira kwumvirizwa bushasha, mbere n’ayandi masura akumvirizwa.

Iyo urubanza rwungurujwe n’Ubushikirizamanza bwonyene hanyuma rukemezwa, amagarama y’iyunguruzwa ry’urubanza ntaronderwa ku wagirizwa icaha.

Iyo igihano kigabanijwe, urubanza ruciwe na sentare y’iyungururizo rutangisha uwaciriwe igihano igice c’amagarama canke mbere rukayamukurako yose.

Iyo mu rubanza hari uwusaba indishi, uko bigenda kwose, aratanga amagarama yose y’iyunguruzwa ry’urubanza canke igice cayo hakurikijwe ibitegekanijwe n’agahimba ka 2 k’ingingo ya 202, kiretse iyo indishi yari yaronse yongerejwe.

II. UGUSOZERA

Ncuti bagenzi namwe mwese mwaduhaye akanya kanyu mukatwumviriza muri kino kiganiro c’agateka ka zina muntu,ndabibutse ko twariko tubira hamwe IVYEREKEYE GUSUBIRISHAMWO N’UKWUNGURUZA URUBANZA aho mw’ido n’ido ry’ikiganiro twarabiye hamwe ingene iyunguruzwa ry’urubanza rigenda n’ingene urubanza rusubirishwamwo, tukaba twisunze ibiri mw’ ibwirizwa inomero 1/10 ryo ku wa 3 ndamukiza 2013 risubiramwo igitabu c’amategeko yerekeye ingene imanza z’ivyaha zitohozwa, ziburanishwa n’ingene zicibwa, ivyiyumviro biri mu ngingo zo kuva ku 253 gushika ku ya 271.

Ikiganiro c’uno munsi munkundire ndakigarukirize ngaha,kuko n’umwanya cagenewe urarangiye. Gédéon NINDAMUTSA nakibashikirije ndabasezeye.

MURAKOZE.