UBUSHINJACYAHA v. CYUMA MIRUHO

[Rwanda URUKIKO RW'IKIRENGA– RPA 0142/10/CS (Rugege, P.J., Mukanyundo na Rugabirwa) 19 Nzeli 2014]

Amategeko Mpanabyaha – Ubwicanyi – Ntibyakwitwa gukubita no gukomeretsa ku bushake nta gitekerezo cyo kwica kiriho byateye urupfu mu gihe bigaragara ko hari hagambiriwe kwica.

Amategeko Mpanabyaha – Igabanyagihano – Ntawagabanyirizwa igihano mugihe impamvu nyoroshyacyaha atanga nta bimenyetso azitangira.

Amategeko Mpanabyaha – Igifungo kimara igihe – Igifungo kimara igihe, kimara nibura umunsi umwe kandi ntikirenza imyaka makumyabiri (20) ukurikije uko biteganijwe n'itegeko, keretse mu gihe cy'insubira-cyaha cyangwa mu bihe bindi itegeko riba ryarateganije ibindi bihano – Itegeko-Teka n^{o}21/77 ryo kuwa 18/8/1977 rishyiraho igitabo cy'amategeko ahana ibyaha mu Rwanda, ingingo ya 35.

Incamake y'ikibazo: Uregwa yatemye umugore we akeka ko yarimo gusambana n'undi mugabo, ajyanwa kwa muganga ariko apfira mu nzira ataragerayo. Ubushinjacyaha bwatanze ikirego mu Rukiko Rwisumbuye rwa Nyagatare bumurega icyaha cyo gukubita no gukomeretsa ku bushake nta gitekerezo cyo kwica kiriho byateye urupfu. Urwo Rukiko rwaciye urubanza rwemeza kouregwa agomba gukurikiranwaho icyaha cy'ubwicanyi aho kuba icyo gukubita no gukomeretsa ku bushake byavuyemo urupfu rutagambiriwe, rwemeza ko urubanza rutari mu bubasha bwarwo, rutegeka ko rwoherezwa

mu Rukiko Rukuru, Urugereko rwa Rwamagana. Urukiko Rukuru rwamuhamije icyaha, rumuhanisha igifungo cy'imyaka 25.Uregwa yajuririye Urukiko rw'Ikirenga, avuga ko inyito y'ubwicanyi yahawe icyaha yahamijwe atariyo, ko icyo yakoze ari ugukubita no gukomeretsa byateye urupfu. Yavugaga kandi koUrukiko Rukuru rutitaye ku mpamvu nyoroshyacyaha.

Uhagarariye ubushinjacyaha yavuze ko nta mpamvu uregwa agaragaza zatuma inyito y'icyaha ihindurwa, ko ibyo avuga ko yishe umugore we atabigambiriye atari ukuri kuko yavuye mu rugo avuga ko nasanga umugore ari mu makosa amukubita, akaba yaragiye yitwaje umuhoro bigaragaza ko yari agamije kuwumutemesha inshuro nyinshi, akaba yarabikoze arinayo ntandaro y'urupfu rw' umugore we.

Incamake y'icyemezo:1. Harebwe intwaro uregwa yakoresheje, umuhoro, inshuro yawutemesheje Akimana Léonille, inshuro eshatu cyangwa enye nk'uko yagiye abyivugira, ndetse na nyuma yo kumutema akaba yaramuhondaguye akoresheje umuhini bigaragaza ko atari afite umugambi wo kumukubita nk'uko abivuga. Ibikandi yabikoreraga umuntu uryamye hasi utamurwanya.Ruhereye kuri ibi byose, Urukiko rusanga uregwa yari afite umugambi wo gukora icyaha cyo kwica, bityo, icyaha agomba guhanirwa kikaba icyo kwica aho kuba icyo gukubita no gukomeretsa ku bushake byavuyemo urupfu rutagambiriwe.

2. Urukuru ntirwirengagije impamvu nyoroshyacyaha z'uregwa nk'uko abivuga, kuko rwamuhanishije igifungo cy'imyaka 25 aho kuba igifungo cya burundu.Kubijyanye n'uko yakongera kugabanyirizwa igihano kuko yaba yaratemye umugore we bitewe n'uko yamusanze asambana, Urukiko rurasanga iyo atari impamvu nyoroshyacyaha kuko atigeze abitangira ibimenyetso.

3. Igifungo kimara igihe uregwa yagombaga guhabwa, nticyagombaga kurenza imyaka makumyabiri (20) nk'uko biteganywa n'amategeko, bityo igifungo cy'imyaka makumyabiri n'itanu yahawe kikaba gisimbuwe n'igifungo cy'imyaka makumyabiri.

Ubujurire bufite ishingiro kuri bimwe.
Urubanza rwajuririwe ruhindutse gusa kubirebana n'igihano.
Uregwa ahanishijwe igifungo cy'imyaka makumyabiri.
Amagarama aherereye ku Isanduku ya Leta.

Amategeko yashingiweho:
Itegeko-Teka n°21/77 ryo ku wa 18/8/1977 rishyiraho igitabo cy'amategeko ahana ibyaha mu Rwanda, ingingo ya 35.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mu ijoro ryo kuwa 13/04/2007 ahagana saa tanu zijoro, Cyuma Miruho, akoresheje umuhoro yatemye umugore we Akimana Leonille akeka ko yararimo gusambana n'undi mugabo. Akimana yahise ajyanwa kwa muganga ariko apfira mu nzira ataragerayo. Iperereza rirangiye, Ubushinjacyaha bwatanze ikirego mu Rukiko Rwisumbuye rwa Nyagatare burega Cyuma Miruho Alexandre icyaha cyo gukubita no gukomeretsa ku bushake, nta gitekerezo cyo kwica kiriho

byateye urupfu. Urwo Rukiko rwaciye urubanza kuwa 30/04/2008, rwemeza ko Cyuma Miruho agomba gukurikiranwaho icyaha cy'ubwicanyi aho kuba icyo gukubita no gukomeretsa ku bushake byavuyemo urupfu rutagambiriwe, rwemeza ko urubanza rutari mu bubasha bwarwo, rutegeka ko rwoherezwa mu Rukiko Rukuru, Urugereko rwa Rwamagana.

[2] Urubanza rwageze mu Rukiko Rukuru rwandikwa kuri n°RP 0039/08/HC/RWA, rucibwa kuwa 07/05/2010 rwemeza ko Cyuma Miruho Alexandre ahamwa n'icyaha cyo kwica umugore we Akimana Léonille, rumuhanisha igifungo cy'imyaka 25. Ku itariki ya 31/05/2010, Cyuma Miruho Alexandre yajuririye urwo rubanza mu Rukiko rw'Ikirenga. Avuga ko inyito y'ubwicanyi yahawe icyaha yahamijwe atariyo, ko icyo yakoze ari ugukubita no gukomeretsa byatanze urupfu. Indi mpamvu atanga ajurira, ngo nuko Urukiko Rukuru rutitaye ku mpamvu nyoroshyacyaha.

[3] Iburanisha ry'uru rubanza mu Rukiko rw'Ikirenga ryabereye mu ruhame ku itariki ya 21/07/2014, Cyuma Miruho Alexandre yitabye yunganirwa na Me Aimable Ngendahimana naho Ubushinjacyaha buhagarariwe na Bwana Mutayoba Alphonse, Umushinjacyaha ku Rwego rw'Igihugu.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

Kumenya niba ibikorwa bigize icyaha Cyuma Miruho Alexandre aregwa byakwitwa ubwicanyi cyangwa gukubita no gukomeretsa ku bushake byavuyemo urupfu rutagambiriwe.

[4] Cyuma Miruho Alexandre avuga ko umugore we yatinze gutaha akava mu rugo agiye kureba icyo yabaye, yagera mu nzira agasanga umugore we asambana n'undi mugabo akamutema abitewe n'uburakari, ko icyo yari agendereye atari ukumwica ahubwo yaragamije kumuhana. Akomeza avuga ko yatemye umugore we inshuro eshatu akoresheje umuhoro, umaze kumucika atangira kumuhondesha umuhini.

[5] Me Ngendahimana Aimable avuga ko yemera ibyakozwe n'Ubushinjacyaha ku Rwego Rwisumbuye rwa Nyagatare rwasanze ibyo Cyuma Miruho Alexandre yakoze ari ugukubita no gukomeretsa byateye urupfu. Akomeza avuga ko uwo yunganira yavuye mu rugo agiye kureba umugore we, ageze mu nzira asanga barimo kumusambanya aherako amutema akaba asanga uwo yunganira yaratemye umugore we bitewe nuko yasanze bamusambanya kandi ko atavuye mu rugo afite umugambi wo kumutema.

[6] Uhagarariye ubushinjacyaha yavuze ko nta mpamvu Cyuma Miruho Alexandre agaragaza zatuma inyito y'icyaha ihindurwa, ko ibyo avuga ko yishe umugore we atabigambiriye atari ukuri kuko yavuye mu rugo avuga ko nasanga umugore ari mu makosa amukubita, akaba yaragiye yitwaje umuhoro bigaragaza ko yari agamije kuwumutemesha inshuro nyinshi, akaba yarabikoze arinayo ntandaro y'urupfu rwa Akimana Léonille.

UKO URUKIKO RUBIBONA

[7] Ubwo yabazwaga mu Bugenzacyaha, Cyuma Miruho Alexandre yemeye ko yatangiye atema umugore we mu bitugu, arongera amutema izindi nshuro eshatu, arangije aca igiti

akimukubitisha inshuro nyinshi. Naho mu iburanisha ry'uru rubanza, yavuze yatemye umugore we inshuro eshatu, umuhoro umaze kumucika akomeza kumuhondesha umuhini. Harebwe intwaro Cyuma Miruho Alexandre yakoresheje, umuhoro, inshuro yawutemesheje Akimana Léonille, inshuro eshatu cyangwa enye nk'uko yagiye abyivugira, ndetse na nyuma yo kumutema akaba yaramuhondaguye akoresheje umuhini bigaragaza ko atari afite umugambi wo kumukubita nkuko abivuga. Ibi kandi yabikoreraga umuntu uryamye hasi utamurwanya. Urukiko ruhereye kuri ibi byose, rusanga Cyuma Miruho Alexandre yari afite umugambi wo gukora icyaha, bityo, icyaha agomba guhanirwa kikaba icyo kwica aho kuba icyo gukubita no gukomeretsa ku bushake byavuyemo urupfu rutagambiriwe.

Kumenya niba Urukiko rutaritaye ku mpamvu nyoroshyacyaha ngo Cyuma Miruho Alexandre agabanyirizwe ibihano.

[8] Cyuma Miruho Alexandre avuga ko amaze gukora icyaha yishyikirije ubutabera, naho yagiye abazwa akaba yaremeye icyaha akagisabira n'imbabazi kandi ko n'ibyo yakoze yabitewe nuko yasanze umugore we asambana. Akaba asanga ibyo byose ari impamvu nyoroshyacyaha zari gushingirwaho akagabanyirizwa ibihano.

[9] Me Ngendahimana Aimable avuga ko muri dosiye hari impamvu nyoroshyacyaha zitandukanye zirimo kuba Cyuma Miruho Alexandre yarishyikirije inzego z'umutekano, akaba atararuhije ubutabera, kandi icyaha yakoze akaba yaragitewe nuko yasanze umugore we asambana. Akongeraho ko nta mugabo numwe wasanga umugore we asambana ngo narangiza agendere aho.

[10] Uhagarariye ubushinjacyaha avuga ko uregwa atemera icyaha ku buryo budashidikanywaho ngo kuko ahunga kuba yarishe Akimana Léonille abigambiriye. Naho ibyo kuba Cyuma Miruho Alexandre yarasanze umugore we asambana, uhagarariye Ubushinjacyaha akavuga ko ibyo nta bimenyetso uregwa yabitangiye kandi ko niyo byaba byo, ntiyagombaga kumwica, naho kuba Cyuma Miruho Alexandre yarishyikirije inzego z'umutekano, uhagarariye ubushinjacyaha avuga ko aribyo ariko ko bitaba impamvu nyoroshyacyaha. Asoza asaba ko hagumaho imikirize y'urubanza rwajuririwe.

UKO URUKIKO RUBIBONA

[11] Mu rubanza RP0039/08/HC/RWG rwaciwe kuwa 7/05/2010, mu gika cyarwo cya 12, Cyuma Miruho Alexandre yahamijwe icyaha cyo kwica agenerwa igihano cyo gufungwa burundu hashingiwe ku ngingo ya 311 y'Itegeko-Teka n°21/77 ryo ku wa 18/8/1977 rishyiraho igitabo cy'amategeko ahana ibyaha mu Rwanda ryakoreshwaga icyo gihe. Umucamanza yasobanuye kandi ko Cyuma Miruho Alexandre ari ubwa mbere akurikiranyweho icyaha abiheraho amugabanyiriza ibihano maze igifungo cya burundu gishyirwa ku myaka makumyabiri n'itanu (25 ans). Ibi rero bigaragaza ko Cyuma Miruho Alexandre yagabanyirijwe ibihano hashingiwe ku mpamvu y'uko bwari ubwa mbere akurikiranyweho icyaha ku buryo buzwi. Naho kuba uru Rukiko rwakongera kugabanya igihano kuko yaba yaratemye umugore we bitewe nuko yamusanze asambana, Urukiko rurasanga iyo atari impamvu nyoroshyacyaha kuko Cyuma Miruho Alexandre atigeze abitangira ibimenyetso.

[12] Ingingo ya 35 y'Itegeko-Teka n°21/77 ryo kuwa 18/08/1977 ryavuzwe mu gika kibanziriza iki ivuga iti "Igifungo kimara igihe, kimara byibura umunsi umwe kandi ntikirenza imyaka makumyabiri ukurikije uko biteganijwe n'itegeko, keretse mu gihe cy'insubira-cyaha cyangwa mu bihe bindi itegeko riba ryarateganije ibindi bihano". Mu kugabanya ibihano, Urukiko Rukuru rwavanyeho igifungo cya burundu ruhanisha Cyuma Miruho Alexandre gufungwa imyaka 25. Igifungo kimara igihe Cyuma Miruho Alexandre yagombaga guhabwa, nticyagombaga kurenza imyaka makumyabiri (20) nk'uko biteganywa n'ingingo ya 35 ivugwa muri iki gika.

III. ICYEMEZO CY'URUKIKO

[13] Rwemeje ko ubujurire bwatanzwe na Cyuma Miruho Alexandre bufite ishingiro kuri bimwe.

[14] Rwemeje ko imikirize y'urubanza RP0039/10/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 7/05/2010 rujuririrwa muri uru Rukiko ihindutse gusa ku birebana n'igihano.

[15] Ruhanishije Cyuma Miruho Alexandre igifungo cy'imyaka makumyabiri (20).

[16] Rutegetse ko amagarama y'urubanza ahererejwe ku isanduku ya Leta.