UBUSHINJACYAHA v. FATIRAKUMUTIMA

[Rwanda URUKIKO RW'IKIRENGA – RPA 0255/09/CS (Nyirinkwaya, P.J., Havugiyaremye na Mukamulisa, J.) 26 Mata 2013]

Amategeko mpanabyaha – Ubwicanyi – Byitwa ubwicanyi mu gihe bigaragara ko uwarezwe yishe nyakwigendera abishaka – Itegeko-teka N° 21/77 ryo kuwa 18 Kanama 1977 rishyiraho igitabo cy'amategeko ahana, ingingo ya 311.

Amategeko Mpanabyaha – Kugabanyirizwa ibihano – Kwemera icyaha – Ntawagabanyirizwa igihano hashingiwe ku kwemera icyaha, mu gihe uko kwemera kutuzuye.

Amategeko mpanabyaha – Ubusembure – Ntibyafatwa nk'aho habaye ubusembure buteganywa n'amategeko mu gihe ubiburanisha atabitangira ibimenyetso – Itegeko-teka N° 21/77 ryo kuwa 18 Kanama 1977 rishyiraho igitabo cy'amategeko ahana, ingingo ya 79.

Incamake y'ikibazo: Uregwa yishe umugore we bari babyaranye abana bane, mu gitondo abibwira umuturanyi we, uyu amugira inama yo kwishyikiriza ubuyobozi ariko uregwa ntiyabikora bituma uwo yabibwiye ajya kubibwira ubuyobozi. Uregwa yabanje kwihisha ariko nyuma aza gufatwa na Polisi. Urukiko Rukuru rwaregewe rwemeje ko adahamwa n'icyaha cy'ubuhotozi kuko nta kigaragaza ko yari asanzwe afite umugambi wo kwica umugore we, ariko ko ahamwa n'icyaha cy'ubwicanyi, rumuhanisha igifungo cya burundu.

Uregwa yajuririye urwo rubanza mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rwirengagije ko yishe umugore we atabishaka, kandi ko rwamuhanishije igihano kiremereye rutitaye ku mpamvu nyoroshyacyaha yagaragaje yo kuba yaremeye icyaha, kuba yarasize abana b'imfubyi n'ubusembure bushingiye ku kuba umugore we yaramukanze ubugabo.

Uhagarariye Ubushinjacyaha avuga ko ibyo uregwa yireguza ari urwitwazo, kuko n'ubundi yari asanzwe amukubita kandi ko icyaha cyabaye mu kwezi kwa 9/2007, yivuza hashize igihe kirekire kuwa 26/07/2011, ndetse ibivugwamo akaba ari ibyo Fatirakumutima yabwiye muganga gusa, ndetse mu cyemezo cya muganga ntaho yemeje ko uburwayi bwatewe no gukandwa ubugabo. Yongeraho ko icyemezo gifite inenge kuko nta kashe ya muganga cyangwa amazina ye bigaragaraho.

Incamake y'icyemezo: 1. Hakurikijwe kuba uregwa yaranize nyakwigendera, akamukanda mu ijosi cyane yarangiza akamukubita ingumi mu musaya, bigaragaza ko yamwishe abishaka, nk'uko binashimangirwa n'uko atihutiye gutabaza no kumujyana kwa muganga abonye arabiranye kuko hari uwemeje ko yamwumvise mu ma saa cyenda ataka ngo arapfuye. Bityo, uregwa ahamwa n'icyaha cyo kwica umugore we ku bushake.

2. Uregwa ntiyashoboye kugaragaza ko umugore we yamukanze ubugabo nk'uko abivuga, bikaba rero bitari ngombwa gusuzuma niba icyo gikorwa cyafatwa nk'ubusembure. Nta mpamvu n'imwe yatuma urubanza rwajuririwe ruhinduka, hakaba hagumyeho imikirize y'urubanza rwajuririwe.

3. Uregwa ntiyahabwa igabanyagihano rishingiye ku kwemera icyaha asaba, kuko we yemera ko yishe nyakwigendera kubw'impanuka nyamara bigaragara ko yamwishe ku bushake, bityo, ukwemera kwe kukaba kutuzuye.

Ubujurire nta shingiro bufite.
Hagumyeho imikirize y'urubanza rwajuririwe.

Amagarama aherereye ku isanduku ya Leta.

Amategeko yashingiweho:
Itegeko-teka N° 21/77 ryo kuwa 18 Kanama 1977 rishyiraho igitabo cy'amategeko ahana, ingingo za 79 na 311.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA MURI MAKE

[1] Mu ijoro ryo kuwa 02/09/2007 Fatirakumutima yishe umugore we Uwamahoro Marie Louise bari babyaranye abana bane, mu gitondo ahamagara umuturanyi we witwa Mugemangango Venuste, uyu amugira inama yo kwishyikiriza ubuyobozi ariko Fatirakumutima ntiyabikora bituma Mugemangango ajya kubibwira ubuyobozi. Fatirakumutima yabanje kwihisha ariko nyuma aza gufatwa na Polisi.

[2] Iperereza rirangiye Ubushinjacyaha bwamukurikiranye ku byaha bitandukanye byavuzwe haruguru. Urukiko Rukuru rwaregewe rwaciye urubanza RP 0085/07/HC/KIG kuwa 02/10/2009, rwemeza ko icyaha cyo gukoresha inyandiko mpimbano n'icyo gusezerana n'undi mugore kandi asanzwe yarasezeranye n'uwa mbere amasezerano akiriho bitamuhama kuko nta bimenyetso Ubushinjacyaha bubitangira, ndetse ko adahamwa n'icyaha cy'ubuhotozi kuko nta kigaragaza ko yari asanzwe afite umugambi wo kwica umugore we, ariko ko ahamwa n'icyaha cy'ubwicanyi, rumuhanisha igifungo cya burundu.

[3] Fatirakumutima yajuririye urwo rubanza mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rwirengagije ko yishe umugore we atabishaka, kandi ko rwamuhanishije igihano kiremereye rutitaye ku mpamvu nyoroshyacyaha yagaragaje.

[4] Urubanza rwaburanishijwe mu ruhame kuwa 18/03/2013, Fatirakumutima yunganiwe na Me Nyamunanage Atticus na Me Mukahiganiro Julienne naho Ubushinjacyaha buhagarariwe na PN Muhumuza Richard.

II. ISESENGURA RY'IBIBAZO BIGIZE URU RUBANZA:

A. Kumenya niba Fatirakumutima yarishe Uwamahoro nta bushake afite bwo kumwica.

[5] Fatirakumutima avuga ko Urukiko Rukuru rwamuhamije icyaha cy'ubwicanyi rwirengagije ibisobanuro bye ko icyaha yakiguyemo ku bw'impanuka. Asobanura ko umugore we yari yanze kumuhindukirira noneho ashaka gushyiraho ingufu, umugore amukanda ubugabo, nawe ahita amuniga, ndetse aranamukubita, amurekuye abona yituye hasi, ahamagara Mugemangango ngo bamujyane kwa muganga ariko asanga yapfuye, amugira inama yo kwishyikiriza ubuyobozi arabitinya.

[6] Me Nyamunanage avuga ko ikigaragaza ko Fatirakumutima avuga ukuri iyo avuga ko umugore we yamukanze ubugabo bigatuma nawe amuniga bikamuviramo gupfa, ariko nawe byamusigiye uburwayi nk'uko bigaragazwa n'icyemezo cya muganga.

[7] Me Mukahiganiro avuga ko Fatirakumutima na Uwamahoro batari babanye neza bitewe no gufuha k'umugore, ko urupfu rwa Uwamahoro kwaturutse ku mirwano yagiranye n'umugabo we ariko ko Fatirakumutima nta bushake bwo kwica yari afite.

[8] Uhagarariye Ubushinjacyaha avuga ko ibyo Fatirakumutima avuga ko Uwamahoro yanze kumuhindukirira ari urwitwazo kuko n'ubundi yari asanzwe amukubita.

[9] Ku bijyanye n'icyemezo cya muganga Fatirakumutima yatanze ashaka kugaragaza ko yishe Uwamahoro atabishaka kuko nawe yarimo amukanda ubugabo, avuga ko nta gaciro cyahabwa kuko icyaha cyabaye mu kwezi kwa 9/2007, yivuza hashize igihe kirekire kuwa 26/07/2011, ndetse ibivugwamo akaba ari ibyo Fatirakumutima yabwiye muganga gusa.

[10] Avuga kandi ko uburwayi buvugwa muri icyo cyemezo bushobora kuba bwaratewe n'indi mpamvu, cyane ko na muganga atemeje ko uburwayi bwatewe no gukandwa ubugabo. Yongeraho ko icyemezo gifite inenge kuko nta kashe ya muganga cyangwa amazina ye bigaragaraho.

UKO URUKIKO RUBIBONA

[11] Kugira ngo hemezwe niba Fatirakumutima yarishe umugore we Uwamahoro ku bw'impanuka nk'uko abivuga, hagomba kureberwa hamwe imvugo ye mu Bugenzacyaha, iya Mwitirihe Théoneste wari umukozi we igihe icyaha cyakorwaga, ndetse n'iya Mugemangango Venuste yatabaje muri iryo joro, hakanarebwa niba icyemezo cya muganga cyatanzwe na Fatirakumutima kuwa 15/03/2013 gishimangira ibyo avuga ko Uwamahoro yamukanze ubugabo, akaba aribyo byabaye intandaro yo kumwica ariko atabishaka.

[12] Ubwo yabazwaga gusobanura uburyo Uwamahoro yapfuye, Fatirakumutima yavuze ati "kuva saa tanu twaratonganye, saa sita nibwo yahagurutse amfata amabya, ndataka mvuza induru nibwo nakubise ingumi mu musaya ararabirana ariko namukubise nabanje kumufata mw'ijosi ndakanda". Yavuze kandi ko umugore we yatatse avuga ngo "ndapfuye we", ko ibyo biba radiyo yavugaga cyane, ndetse ko Mugemangango amaze kuhagera yamusabye ko bamuta mu musarane, undi amubwira ko byamenyekana (reba cote 34-39).

[13] Mwitirehe we ubwo yabazwaga yavuze ko atigeze yumva Fatirakumutima ataka, ko ariko yumvise mu ma saa cyenda muri iryo joro umugore ataka ngo "Fatiri we". Yavuze kandi ko ibyo byabaye radiyo ivuga cyane (reba cote 12-13).

[14] Mugemangango wari umuturanyi wa Fatirakumutima yavuze ko yamuhamagaye akamusaba guta umurambo wa nyakwigendera mu musarani yarangiza akawubakira, aramuhakanira ahubwo amubwira ko agiye kumushakira amafaranga yo guhunga, aho kuyamuzanira azana ubuyobozi. Yavuze kandi ko Fatirakumutima yamusobanuriye ko yagiranye ikibazo n'umugore mu ijoro, bararwana, amukubita ikofi, yitura hasi (reba cote 29 – 33).

[15] Urukiko rusanga nta kintu na kimwe mu mvugo za Mwitirehe na Mugemangango cyumvikanisha ko Uwamahoro yaba yarakanze Fatirakumutima ubugabo nk'uko abivuga

kuko Mwitirehe atigeze yumva ataka, Mugemangango nawe akaba avuga gusa ko Fatirakumutima yamubwiye ko yarwanye n'umugore.

[16] Urukiko rusanga n'icyemezo cya muganga Fatirakumutima agaragaza nk'ikimenyetso cy'uko umugore yamuteye ubumuga kitashingirwaho, kuko usibye n'uko kitagaragaza amazina n'umukono bya muganga, ndetse na kashi y'ibitaro yivurijeho, ibikubiyemo ni ibyo Fatirakumutima yabwiye muganga, uyu akaba ataremeje ko yatewe indwara no gukandwa ubugabo.

[17] Ku bijyanye n'uburyo Uwamahoro yapfuyemo, Urukiko rusanga kuba Fatirakumutima yaramunize amukanda mu ijosi cyane yarangiza akamukubita ingumi mu musaya, bigaragaza ko yamwishe abishaka, ibi bikaba binashimangirwa n'uko atihutiye gutabaza no kumujyana kwa muganga abonye arabiranye kuko mu ma saa cyenda yari akiriho ubwo Mwitirehe yamwumvaga ataka ngo arapfuye.

[18] Urukiko, rushingiye kuri ibyo bisobanuro, rusanga icyaha cyo kwica Uwamahoro Marie Louise ku bushake gihama Fatirakumutima Jean de Dieu nk'uko biteganywa n'ingingo ya 311 y' itegeko-teka N° 21/77 ryo kuwa 18 Kanama 1977 rishyiraho igitabo cy'amategeko ahana cyariho igihe icyaha cyakorwaga.

B. Kumenya niba Fatirakumutima yagabanyirizwa ibihano.

[19] Fatirakumutima n'abamwunganira bavuga ko Urukiko Rukuru mu kumuhana rutitaye ku kuba yaraburanye yemera icyaha no kuba afite utwana tw'imfubyi yasigiwe na nyakwigendera dukeneye kurerwa.

[20] Me Nyamunanage yongeraho ko Fatirakumutima yakoze icyaha kubera ubusembure, bityo akaba agomba kugabanyirizwa hashingiwe ku ngingo ya 78 y'igitabo cy'amategeko ahana ibyaha.

[21] Uhagarariye Ubushinjacyaha avuga ko Fatirakumutima adakwiye kugabanyirizwa igihano kuko atigeze avugisha ukuri, ahubwo yaranzwe no kwivuguruza mu miburanire ye kuko hari aho yavuze ko Mugemangango yamufashije kuzingazinga umurambo wa nyakwigendera bawuta munsi y'igitanda, ahandi akavuga ko nta muntu wamumufashije, ko ariwe witeruje nyakwigendera akamuhisha munsi y'igitanda.

[22] Ku bijyanye n'uko Fatirakumutima afite imfubyi yasigaranye akaba asaba igihano gito ngo abone uko azajya kuzirera, avuga ko iyi ngingo nta gaciro ikwiye guhabwa kuko atagomba gushakira inyungu mu bugizi bwa nabi bwe mu gihe ariwe wabagize imfubyi.

[23] Ku bijyanye n'ubusembure Fatirakumutima aburanisha, avuga ko nta bimenyetso abitangira.

UKO URUKIKO RUBIBONA

[24] Urukiko rusanga ibyo Fatirakumutima avuga ko yagabanyirizwa ibihano kuko yaburanye yemera icyaha nta shingiro bifite kuko atigeze yemera ko yishe umugore we abishaka, ibyo yemera ko yishe umugore ku bw'impanuka uretse ko nta n'ikibigaragaza nk'uko byavuzwe nta n'ubwo aribyo aregwa.

[25] Ku bijyanye n'ibyo avuga ko hari abana b'imfubyi yasigaranye bakeneye kurerwa, Urukiko rusanga nabyo bitamubera impamvu nyoroshyacyaha kuko uretse no kuba ariwe wabagize imfubyi nk'uko ubushinjacyaha bubivuga, na mbere yaho yaranzwe no kubatererana ajya mu bandi bagore nk'uko yabyiyemereye mu bugenzacyaha kuri cote ya 34 no mu bushinjacyaha kuri cote ya 51, ibyo kandi bikemezwa na Mugemangango wari inshuti ye nk'uko bigaragara mu ibazwa rye mu bugenzacyaha kuri cote ya 32.

[26] Ku bijyanye n'ubusembure, ingingo ya 79 y'Itegeko-teka N° 21/77 ryo kuwa 18 Kanama 1977 rishyiraho igitabo cy'amategeko ahana cyariho igihe icyaha cyakorwaga iteganya ko "ibyaha by'ubugome n'ibikomeye, bitubywa, iyo ababikoze basembuwe bakubitwa cyangwa bahutazwa bikomeye", Urukiko rusanga ariko, nk'uko byasobanuwe haruguru, Fatirakumutima atarashoboye kugaragaza ko umugore we yamukanze ubugabo nk'uko abivuga, bikaba rero bitari ngombwa gusuzuma niba icyo gikorwa cyafatwa nk'ubusembure.

[27] Urukiko rurasanga hashingiwe ku bisobanuro byatanzwe, nta mpamvu yatuma urubanza rwajuririwe ruhinduka, hakaba hagomba kugumaho imikirize yarwo.

III. ICYEMEZO CY'URUKIKO

[28] Rwemeje ko ubujurire bwatanzwe na Fatirakumutima Jean de Dieu nta shingiro bufite.

[29] Rwemeje ko urubanza RP0085/07/HC/KIG rwaciwe n'Urukiko Rukuru kuwa 02/10/2009 rudahindutse.

[30] Ruvuze ko amagarama y'urubanza aherera ku isanduku ya Leta.