UBUSHINJACYAHA v. NIYONSABA

[Rwanda URUKIKO RW'IKIRENGA – RPAA0126/11/CS (Mutashya, P.J., Gakwaya na Hitiyaremye, J.) 8 Gicurasi 2015]

Amategeko Mpanabyaha – Ubwicanyi burimo agashinyaguro – Azahanwa kimwe n'uwahotoye yabigambiriye, umuntu ushaka kwica undi, uko byakwitwa kose, akabanza kumushinyagurira cyangwa kumugaragura – Itegeko-Teka Nº21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, ingingo ya 316.

Amategeko Mpanabyaha – Kwemera icyaha mu buryo butuzuye – Gukorana icyaha ubugome ndengakamere – Ni impamvu zatuma igihano kitagabanywa – Itegeko-Teka Nº21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, ingingo ya 82.

Incamake y'ikibazo: Uregwa yakurikiranywe mu Rukiko Rukuru, urugereko rwa Musanze ku cyaha cy'ubuhotozi bwakorewe Nzabanita Nsangiranabo. Ubushinjacyaha bwasobanuye ko bagiranye amakimbirane, nyuma yaho umurambo we ukaza kuboneka mubuvumo hafi y'aho bari bacumbitse. Uregwa yaraketswe ndetse ahita yemera icyaha agifatwa anasobanura uko yagikoze ariko ageze mu Bushinjacyaha aragihakana. Urukiko Rukuru, rwahamije uregwa icyaha cy'ubuhotozi, rumuhanisha igifungo cya burundu.

Uregwa yajuririye mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rwamukatiye rushingiye ku buhamya bw'ibinyoma bwatanzwe n'umubyeyi wa nyakwigendera, ko kandi rwirengagije ibimenyetso bimurenganura yarushyikirije birimo n'ubuhamya bw'uwitwa Dusabimana, cyakora iburanisha rigitangira amenyesha Urukiko ko imyanzuro yanditse yari yaratanze atakiyishingiyeho, ko icyaha cy'ubuhotozi aregwa acyemera, ko ndetse imiburanire ye mu Rukiko Rukuru ayitesheje agaciro, ubu akaba asaba imbabazi no kugabanyirizwa igihano. Uhagarariye Ubushinjacyaha we avuga ko uburyo uregwa yemeramo icyaha budasobanutse kandi nta kuri avugisha kubera ko avuga ko yahiritse nyakwigendera akagusha agatuza, yarangiza akamuca ururimi akamukuramo n'ijisho, mu gihe raporo ya muganga yo igaragaza ko umurambo wari ufite ibikomere mu maso no mu mutwe ari nabyo byabaye intandaro y'urupfu rwe, ko ahandi nta kibazo kidasanzwe muganga yabonyeho. Arangiza asaba ko ukwemera icyaha kwa Niyonsaba Boniface kutafatwaho ukuri, cyangwa se bibaye ngombwa muganga wakoze raporo akaba yahamagazwa akayisobanura.

Incamake y'icyemezo: Kuba uregwa atemera icyaha ku buryo budasubirwaho no kuba icyaha aregwa yaragikoranye ubugome ndengakamere, bituma imbabazi asaba atagomba kuzihabwa. Bityo, igifungo cya burundu yahawe mu rubanza rujuririrwa kikaba kigomba kugumaho.

Ubujurire nta shingiro.
Urubanza rwajuririwe ntiruhindutse.
Amagarama y'urubanza aherereye ku isanduku ya Leta.

Amategeko yashingiweho:
Itegeko -Teka Nº21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, ingingo ya 82, 312 n'iya 316.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ubushinjacyaha buvuga ko Nzabanita Nsangiranabo yagiye mu kabari Niyonsaba Boniface yacururizagamo, aricara acira ku meza, ndetse arahipfunira, Niyonsaba aramwegera amukubita urushyi n'umugeri nyuma amusohora hanze. Nyina umubyara Mukayezu Vérédiana yagiye gutabaza nyiri akabare Niyibizi Jean Damascène, ari na we wari ubacumbikiye, araza abategeka gutaha, hashize iminsi ibiri (2) umurambo wa Nzabanita wabonetse mu buvumo buri hafi y'aho bari bacumbitse.

[2] Niyonsaba Boniface yaketswe kugira uruhare mu rupfu rwa Nzabanita, abajijwe imbere y'Ubugenzacyaha yemera icyaha anasobanura uburyo yagikoze, ariko ageze mu Bushinjacyaha aragihakana. Nyuma y'iperereza dosiye yashyikirijwe Urukiko Rukuru, Urugereko rwa Musanze, ku itariki ya 23/9/2010 ruca urubanza N° RP0115/09/HC/MUS rwemeza ko icyaha cy'ubuhotozi Niyonsaba Boniface aregwa kimuhama, rumuhanisha igifungo cya burundu.

[3] Niyonsaba Boniface ntiyishimiye imikirize y'urubanza, ku itariki ya 18/10/2010 arujuririra mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rwamukatiye rushingiye ku buhamya bw'ibinyoma bwatanzwe n'umubyeyi wa nyakwigendera, ko kandi rwirengagije ibimenyetso bimurenganura yarushyikirije birimo n'ubuhamya bw'uwitwa Dusabimana.

[4] Urubanza rwaburanishijwe mu ruhame ku itariki ya 30/3/2015 Niyonsaba Boniface yunganiwe na Me Musabwa Frédéric, Ubushinjacyaha buhagarariwe na Mukurarinda Alain, Umushinjacyaha ku rwego rw'Igihugu.

[5] Iburanisha rigitangira, Niyonsaba Boniface yamenyesheje Urukiko ko imyanzuro yanditse yari yaratanze atakiyishingiyeho, ko icyaha cy'ubuhotozi aregwa acyemera, ko ndetse imiburanire ye mu Rukiko Rukuru ayitesheje agaciro, ubu akaba asaba imbabazi no kugabanyirizwa igihano.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

- **Kumenya niba ukwemera icyaha kwa Niyonsaba Boniface kwamubera impamvu nyoroshyacyaha.**

[6] Niyonsaba Boniface asobanura ko Nzabanita Nsangiranabo yamusanze mu kabari yakoreragamo bakahatonganira kugeza barwanye bapfa imyifatire mibi yari ahagaragarije ariko abantu barababakiza. Avuga ko nyuma y'iyo mirwano Nzabanita yasohotse atashye, ariko ageze hanze akomeza kumutuka yinjira no mu buzima bwe bwite, nuko kubera ko yari yanyoye inzoga agira umujinya afata icyuma yakatishaga ibitunguru amusanga iwabo aho yari ari aramufata aramujyana, bageze ku buvumo buri hafi aho amukubita ku mabuye yari ahari abanzaho agatuza, mu gihe yari atarashiramo umwuka amukata ururimi amukuramo n'ijisho akoresheje cya cyuma mu rwego rwo kuzimangatanya ibimenyetso. Ku kibazo cyo kumenya niba akora ibyo ntawamubonye, Niyonsaba Boniface yashubije Urukiko ko yatwaye nyakwigendera nyina amureba, amubajije aho atwaye umwana we aramubwira ngo naceceke na we atamukubita.

[7] Me Musabwa Frédéric wunganira Niyonsaba Boniface, avuga ko uwo yunganira agifatwa yabanje kwemera icyaha ariko ageze mu Bushinjacyaha no mu Rukiko Rukuru aragihakana, agasaba ko ubwo noneho yemera icyaha nk'uko n'ababibonye bakimushinja kandi akaba anagisabira imbabazi, Urukiko rwashingira ku ngingo ya 83 y'Igitabo cy'amategeko ahana cyakoreshwaga icyaha gikorwa, rukamugabanyiriza igihano kubera ko imyaka itanu n'amezi arindwi amaze muri gereza yatekereje bihagije.

[8] Uhagarariye Ubushinjacyaha avuga ko uburyo Niyonsaba Boniface yemeramo icyaha budasobanutse kandi nta kuri avugisha kubera ko avuga ko yahiritse nyakwigendera akagusha agatuza, yarangiza akamuca ururimi akamukuramo n'ijisho, mu gihe raporo ya muganga yo igaragaza ko umurambo wari ufite ibikomere mu maso no mu mutwe ari nabyo byabaye intandaro y'urupfu rwe, ko ahandi nta kibazo kidasanzwe muganga yabonyeho. Arangiza asaba ko ukwemera icyaha kwa Niyonsaba Boniface kutafatwaho ukuri, cyangwa se bibaye ngombwa muganga wakoze raporo akaba yahamagazwa akayisobanura.

UKO URUKIKO RUBIBONA

[9] Niyonsaba Boniface yabanje kuburana mu Rukiko Rukuru ahakana icyaha cyo kuba ari we wishe Nzabanita Nsangiranabo, nyuma asubiza agatima impembero yemera icyaha ntacyo asize inyuma, ndetse asobanura ko impamvu zamuteye gukora icyaha ari inzoga zatumye agira umujinya nyuma yo gushotorwa na nyakwigendera, ndetse akomeza avuga ko yicuza icyaha, akaba anagisabira imbabazi.

[10] Ingingo ya 82 y'Itegeko-Teka Nº21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana ibyaha mu Rwanda cyakoreshwaga igihe icyaha cyakorwaga, ivuga ko "umucamanza ari we ubwe uha agaciro impamvu zigabanya ubugizi bwa nabi bw'uwakoze icyaha, ari izakibanjirije, ari izagiherekeje cyangwa izagikurikiye".

[11] Ingingo ya 316 y'Itegeko-Teka Nº21/77 rimaze kuvugwa, iteganya ko "azahanwa kimwe n'uwahotoye yabigambiriye, umuntu ushaka kwica undi, uko byakwitwa kose, akabanza kumushinyagurira cyangwa kumugaragura".

[12] Ingingo ya 312 y'iryo Tegeko-Teka iteganya ko "ukwica. umuntu byagambiriwe cyangwa byategewe igico, byitwa ubuhotozi, bihanishwa igihano cyo kwicwa"[1].

[13] Ku birebana n'uru rubanza, Urukiko rurasanga ababajijwe bose barimo Niyibizi Jean Damascène, nyiri akabari kabereyemo amakimbirane hagati ya Niyonsaba Boniface na nyakwigendera, Dusabimana Jean Baptiste wari uhari ayo makimbirane aba, bose bemeza ko Niyonsaba Boniface yakubise nyakwigendera akamuhunga ariko agakomeza kumukurikirana n'ubwo abari aho bamubuzaga gukomeza gukurura amahane. Urukiko rurasanga kandi, Mukayezu Vérédiana ari we nyina wa nyakwigendera, avuga ko yumvise induru yajya kureba agasanga Niyonsaba Boniface ari gukubita umuhungu we amupfukamye imbere amusaba imbabazi.

[14] Urukiko rw'Ikirenga rushingiye kuri izo mvugo, rurasanga bigaragara ko nyirabayazana ari Niyonsaba Boniface kuko nyuma yo kugirana amakimbirane nyakwigendera yamuhunze undi akamukurikirana aho yamuhungiye nk'uko byemejwe na

[1] Ingingo ya 3 y'Itegeko Ngenga N°31/2007 ryo ku wa 25/07/2007 rikuraho igihano cyo kwicwa yagisimbuje igifungo cya burundu n'igifungo cya burundu cy'umwihariko.

Mukayezu Vérédiana ko yaje abakurikiye n'icyuma, bikaba bitandukanye n'ibyo avuga ko nyakwigendera yakomeje kumushotora.

[15] Urukiko rurasanga kandi, ku birebana n'uburyo icyaha cyakozwemo, Niyonsaba Boniface yemera imbere y'Ubugenzacyaha, ko nyuma y'uko ayo makimbirane ahosha, yasanze nyakwigendera iwabo akamutwara bagera ku buvumo buri hafi aho akamukubita ku ibuye akabanzaho agatuza agahita apfa, ko ndetse yamukase umunwa akamukuramo n'ijisho, imbere y'uru Rukiko akaba yarashimangiye ko ari we wishe nyakwigendera agasobanura ko yamukase ururimi atarashiramo umwuka akamuvanamo n'ijisho agamije kuyobya uburari.

[16] Ku bijyanye n'ibigomba gushingirwaho mu gutanga igihano, hagomba kurebwa uko uhanwa yakoze icyaha, kureba impamvu zabimuteye, uko uwakoze icyaha yari asanzwe yitwara, uburyo icyaha cyakozwemo n'imibereho ye bwite.

[17] Urukiko rurasanga, mu kwica Nzabanita Nsangiranabo, Niyonsaba Boniface yarabikoranye ubugome bwinshi kubera ko yabanje kumushinyagurira amukata bimwe mu bice by'umubiri nk'uko nawe ubwe abyiyemerera.

[18] Ku birebana no kuba raporo ya muganga iri muri dosiye itagaragaza ko hari ibice by'umubiri byakaswe ku murambo, Ubushinjacyaha bukaba busanga ntabyayeho, Urukiko rurasanga, n'ubwo muganga atabyanditse muri raporo ye, rutabishidikanyaho kubera ko uregwa ubwe yiyemerera ko ibyo bice yabikase, kandi akaba nta nyungu yakura mu kubyemera atarabikoze.

[19] Hashingiwe ku byavuzwe haruguru, Urukiko rurasanga Niyonsaba Boniface adasobanura neza impamvu zamuteye gukora icyaha, kuko avuga ko yashotowe na nyakwigendera mu gihe abari bahari bemeza ko ahubwo ari we wabaye nyirabayazana nk'uko byasobanuwe, ikindi kandi icyaha aregwa yagikoranye ubugome ndengakamere nk'uko byasobanuwe, bityo imbabazi asaba akaba atagomba kuzihabwa, igifungo cya burundu yahawe mu rubanza rujuririrwa kikaba kigomba kugumaho.

III. ICYEMEZO CY'URUKIKO

[20] Rwemeje ko ubujurire bwa Niyonsaba Boniface nta shingiro bufite;

[21] Ruvuze ko igihano cya burundu yakatiwe mu rubanza RP0115/09/HC/MUS rwaciwe ku itariki ya 23/9/2010 n'Urukiko Rukuru, Urugereko rwa Musanze, kidahindutse.

[22] Rutegetse ko amagarama y'uru rubanza aherera ku isanduku ya Leta.