

## UBUSHINJACYAHA v. FAYIRARA

[Rwanda URUKIKO RW'IKIRENGA –RS/REV/PEN0016/10/CS (Kayitesi Z., P.J., Mugenzi na Munyangeri, J.) 18 Ukwakira 2013]

*Amategeko agenga imiburanishirize y'imanza nshinjabyaha –Gusubirishamo urubanza ingingo nshya – Ikimenyetso umuburanyi yari azi mu gihe cy'iburanisha nyamara ntakigaragarize urukiko cyangwa ngo avuge impamvu ntakumirwa atabikoze ntabwo cyafatwa nk'ikimenyetso gishya cyatuma habaho gusubirishamo urubanza ingingo nshya – Itegeko n° 13/2004 ryo kuwa 15/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 180.*

**Incamake y'ikibazo:** Urukiko Rwisumbuye rwa Rusizi rwahamije Fayirara Ananias icyaha cyo kwigana ibimenyetso by'amafaranga y'u Rwanda no kuyakwirakwiza rumuhanisha igifungo cy'imyaka 10. Yajuririyeye Urukiko Rukuru avuga ko Urukiko Rwisumbuye rutahaye agaciro imvugo ye ahubwo rugashingira ku bamushinje gusa. Urukiko rwasanze nta shingiro ikirego cye gifite. Yaje kujuririra mu Rukiko rw'Ikirenga avuga ko yahaniwe icyaha atakoze nyamara narwo rushimangira ibyo Urukiko Rukuru rwari rwemeje. Nyuma yaregeye urwo Rukiko avuga ko asaba gusubirishamo urwo rubanza ingingo nshya aho ibanzirizasuzuma ryerekanye ko urega atemerewe gukoresha iyi nzira kuko aterekanaga aho ubushya bw'ikimenyetso yatanze buherereye. Yajuririyeye icyo cyemezo avuga ko hari inyemezabuguzi atigeze aburanisha kuko yari yarayibuze akaba atarashoboraga kuyiburanisha kuko atashoboraga kuyigaragariza urukiko

Ubushinjacyaha busanga ibi nta gaciro byahabwa kuko icyo nyemezabuguzi ari we wayikoranye n'uwo avuga wamuhaye akazi. Bwongeraho ko aburana mbere yari azi ko icyo nyemezabuguzi iriho. Akaba rero, n'ubwo atashoboraga kuyigaragariza Urukiko, yagombaga kuvuga ko iriho kugirango izashakishwe ishyikirizwe Urukiko. Ubushinjacyaha bwashimangiye ko bitabaye ibyo nta cyabuza ko yaba yarayihimbye nyuma y'icibwa ry'urubanza, akagerageza guhuza ibyo yaburanishije n'igipapuro yanditse.

**Incamake y'icyemezo:** Mu gihe ushinjwa yari azi ko hari ikimenyetso ntakigaragarize urukiko cyangwa ngo agaragaze impamvu atakigaragaza ntabwo gifatwa nk'ikimenyetso gishya cyatuma habaho gusubirishamo urubanza ingingo nshya. Kubera izi mpamvu Urukiko rwanze kwakira ikirego cy'uwajuriye gisaba gusubirishamo urubanza ingingo nshya.

**Ubujurire ku cyemezo cy'ibanzirizasuzuma nta shingiro bufite.  
Icyemezo cy'ibanzirizasuma n° RP 0410/09/Pré-ex/CS ntigihindutse.**

**Amategeko yashingiweho:**

Itegeko n° 13/2004 ryo kuwa 15/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 180.

**Nta rubanza rwifashishijwe.**

**Ibitekerezo by'abahanga:**

M. Franchimont . et al., Manuel de Procédure Pénale, 2ème. ed., Bruxelles, Larcier, 2006, p.1200.

## Urubanza

### I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rusizi, Fayirara Ananias aregwa gufatanywa na Munyaneza Joseph na Kazungu kwigana ibimenyetso by'amafaranga y'u Rwanda no kuyakwirakwiza mu baturage bakoresheje uburyo bwo kuyabavunjira. Urukiko Rwisumbuye rwasanze Fayirara yarafatanyaga n'Abanyekongo atashatse kuvuga amazina gukora ayo mafaranga nyuma akayaha Munyaneza Joseph ngo jye kuyagurisha, rumuhanisha igifungo cy'imyaka 10.

[2] Fayirara yajuririye Urukiko Rukuru, Urugereko rwa Rusizi, avuga ko Urukiko Rwisumbuye rutahaye agaciro imvugo ye, ahubwo rwamuhamije icyaha rushingiye ku mvugo z'ushinja gusa. Urukiko Rukuru rwasanze ubujurire bwa Fayirara nta shingiro bufite rwemeza ko nta gihindutse ku mikirize y'urubanza rwajuririwe.

[3] Fayirara yajuririye icyo cyemezo mu Rukiko rw'Ikirenga avuga ko yahaniwe icyaha cyakozwe na Munyaneza Joseph, ko atazi muri Congo ndetse nabo banyekongo bavugwa muri dosiye bataziranye. Mu rubanza N° RPAA0103/08/CS/, Urukiko rwasanze ubujurire bwa Fayirara nta shingiro bufite, rwemeza ko nta gihindutse ku mikirize y'inkiko za mbere.

[4] Fayirara yaregeye gusubirishamo urwo rubanza ingingo nshya mu Rukiko rw'Ikirenga, ikirego cye cyandikwa kuri n° RS/REV/PEN0039/09/CS-RPAA0103/08/CS/, umucamanza w'ibanzirizasuzuma agisuzumye asanga atagaragaza aho ubushya bw'ibimenyetso yatanze buherereye, afata icyemezo n° RP 0410/09/ Pré-ex/CS cyo kuwa 26/10/2009 ko atemerewe isubirishamo ry'urubanza ingingo nshya kuko nta mpamvu abitangira yemewe n'amategeko.

[5] Fayirara yajuririye icyo cyemezo cy'ibanzirizasuzuma muri uru Rukiko, ubujurire bwe bwandikwa kuri RS/REV/PEN 0016/10/CS. Urubanza rwaburanishijwe mu ruhamwe kuwa 02/10/2013, Fayirara yitabye kandi yunganiwe na Me Kayitare Dieudonné, naho Ubushinjacyaha buhagarariwe na Mukurarinda Alain.

### II. IKIBAZO KIGIZE URUBANZA N'UKO URUKIKO RUBIBONA

**Kumenya niba inyemezabuguzi (Risi/recu) FAYIRARA yagaragaje nyuma y'urubanza yafatwa nk'ikimenyetso gishya.**

[6] Fayirara Ananias avuga ko Umucamanza w'ibanzirizasuzuma yanze kwakira ikirego cye kuko atahaye agaciro ikimenyetso ashingiraho asaba gusubirishamo urubanza rwe ingingo nshya, cyerekeranye n'inyemezabuguzi (Risi/recu) yagiranye na Munyaneza Joseph igaragaza ko imashini ivugwa muri dosiye atari iyo kwigana amafaranga ahubwo ari iyo kudoda, ko iyo nyemezabuguzi atigeze ayiburanisha mbere kubera ko yari yarayibuze, ngo nubwo yari azi ko iriho ntiyari kuburanisha ikimenyetso adashobora kugaragariza Urukiko.

[7] Avuga ko iyo mpamvu ikwiye gutuma yemererwa gusubirishamo urubanza rwe ingingo nshya hashingiwe ku ngingo ya 180, agace ka 4 y'Itegeko No 13/2004 ryo kuwa 17/5/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakoreshwaga igihe yangiye ikirego. Naho Me Kayitare Dieudonné umwunganira yongeraho ko icyo asaba

Urukiko ari ukurenganura Fayirara ruha agaciro inyemezabuguzi yagiranye n'uwamuhaye akazi, ko kuva Fayirara yemeza ko iyo nyemezabuguzi ari umwimerere, Urukiko rwabifata nk'ukuri.

[8] Uhagarariye Ubushinjacyaha avuga ko ubushya bw'inyemezabuguzi Fayirara yashyikirije umucamanza ubwo yasabaga ko urubanza rusubirishwamo ingingo nshya nta shingiro bufite kubera ko iyo nyemezabuguzi ari we wayikoranye n'uwo avuga wamuhaye akazi, ko aburana mbere yari azi ko iyo nyemezabuguzi iriho, ko nubwo atashoboraga kuyigaragariza Urukiko yakagombye kuba yaravuze ko iriho kugirango izashakishwe ishyikirizwe Urukiko, ko mu gihe atagaragaza ko itari izwi igihe yaburanaga, nta cyabuza ko yaba yarayihimbye nyuma y'icibwa ry'urubanza, akagerageza guhuza ibyo yaburanishije n'igipapuro yanditse; asoza avuga ko asanga icyemezo cy'umucamanza w'ibanzirizasuzuma nta nenge gifite.

## UKO URUKIKO RUBIBONA

[9] Kubyerekeye impamvu zigomba gushingirwaho kugirango ikirego cyakirwe, ingingo ya 180 y'Itegeko n° 13/2004 ryo kuwa 15/05/2004 ryerekeye imiburanishirize y'ianza z'inshinjabyaha ryakoreshwaga igihe ikirego cyatanzwe, iteganya ko: "Gusubirishamo urubanza rw'inshinjabyaha rwaciwe burundu ingingo nshya bishobora gusabwa ku nyungu z'umuntu wese wahamijwe icyaha cy'ubugome cyangwa gikomeye iyo:

1° umuntu amaze gucibwa urubanza rw'uko yicanye, hanyuma hakaboneka ibimenyetso bihagije byemeza ko uwo bakeka ko yishwe atapfuye; 2° bamaze gucira umuntu urubanza ku cyaha yashinjwaga, hakaboneka urundi rubanza nk'urwo rwahannyeye undi muntu kuri icyo cyaha izo manza zombi zivuguruzanya kandi zigaragaza ko umwe mu bakatiwe yarenganye; 3° umwe mu batangabuhamyaha yahaniwe kuba yarabeshyeye uwahanwe kandi urubanza rumuhana rwaramaze gucibwa; 4° n'yo bamaze guca urubanza, hakaboneka ibimenyetso bitagaragaye mbere byerekana ko uwakatiwe yatsinzwe azize akarengane".

[10] Urukiko rurasanga icyemezo cy'ibanzirizasuma no RP 0410/09/ Pré-ex/CS cyo kuwa 26/10/2009 kigaragaza ko impamvu zatanzwe na Fayirara yamenye nyuma y'icibwa ry'urubanza, yita nshya, umucamanza yashingiyeho afata icyemezo ari : 1) Ko amafaranga aregwa yatanzwe n'uwitwa Bellancille wayashyiriyeye iwabo ayakuye k'uwo bita Kayiranga, 2) Ko ayo mafaranga yakorewe ahitwa mu Mwaga k'uwo bita Karinda Antoine wari wahawe akazi na Kayiranga, 3) Ko inyito y'icyaha aregwa yahinduwe hakabaho no guhindagura amagambo kubyo yavuze bakamwandikira ibyo bashatse, 4) Ko hari umutangabuhamyaha usobanura uburyo umugambi wo kumufungisha wakozwe n'abawuteguye.

[11] Urukiko rurasanga na none muri dosiye y'urubanza hari ibaruwa yo kuwa 26/07/2009, Fayirara yandikiye Urukiko rw'Ikirenga asaba gusubirishamo urubanza rwe ingingo nshya, avugamo ko, mu mpamvu ashingiraho ikirego cye harimo kuba "hari na risi (recu) yabonetse atari akibuka ko yaba yari igihari"; iyo nyemezabuguzi (risi /recu) Fayirara yagiranye na Munyaneza Joseph, yometswe kuri iyo barwa (cote 1, urupapuro rwa 4.). Biragaragara ko umucamanza atayisuzumye bitewe nuko na nyirubwite atayigarutseho mu myanzuro ye ndetse no mu nyandiko yo kuwa 10/03/2010 yandikiye Urukiko yongerera kurusaba gusubirishamo urubanza ingingo nshya (cote 1, 2, 3). Ariko kandi niyo umucamanza aza kuyisuzuma yari gusanga atari ikimenyetso gishya, kuko nkuko Fayirara abiyemerera ubwe, yari azi ko iyo nyemezabuguzi (risi /recu) ihari, gusa akaba atarayiburanishije mu nkiko zibanza kuko atari kuyibona, ibi bikaba bishimangira ko iyo nyemezabuguzi (risi /recu) atari ikimenyetso gishya kuko abahanga mu mategeko bavugaga ko

ikirego gisaba gusubirishamo urubanza ingingo nshya kitakirwa, iyo uregwa yarafite inyemezabuguzi igihe cy'iburanisha, kandi ntanashobore kugaragariza Urukiko impamvu ndakumirwa zamubujije kugaragariza Urukiko ko iyo nyemezabuguzi yariho<sup>1</sup>, bityo ikimenyetso cyatanzwe na Fayirara kikaba kitashingirwaho ngo yemererwe isubirishamo ry'urubanza ingingo nshya.

### **III. ICYEMEZO CY'URUKIKO**

[12] Rwemeje ko ubujurire bwa Fayirara Ananias ku cyemezo cy'ibanzirizasuma N° RP 0410/09/Pré-ex/CS cyo kuwa 26/10/2009 nta shingiro bufite.

[13] Rwemeje ko icyemezo cy'ibanzirizasuma n° RP 0410/09/Pré-ex/CS cyo kuwa 26/10/2009 kidahindutse.

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<sup>1</sup>«Est irrecevable la demande en révision fondée sur une facture en possession du requérant lors du procès et qu'il n'allègue pas avoir été dans l'impossibilité de produire au cours des débats». Reba Michel Franchimont *et alii*, *Manuel de Procédure Pénale*, 2ème ed., Bruxelles, Larcier, 2006, p.1200.