

## UBUSHINJACYAHA v. MUNYANKUMBURWA

[Rwanda URUKIKO RW'IKIRENGA – RPA 0210/10/CS (Kayitesi Z., P.J., Mukanyundo na Rugabirwa, J.) 18 Nyakanga 2014]

*Amategeko mpanabyaha – Ubwicanyi – Inyito y'icyaha – Ntibyakwitwa kwica umuntu atabigambiriye kuko ubushake bwo kwica bugaragarira mu kwica umuntu amurashe nyuma yo gushyira amasasu mu mbunda akabuzwa kurasa n'umukuriye akabirengaho – Itegeko Teka n° 21/1977 ryo ku wa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana ibyaha, ingingo ya 311.*

*Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Uburyozwe bw'umukoresha ku makosa yakozwe n'umukozi – Umukoresha aryozwa ibyangijwe n'amakosa y'umukozi we igihe yayakoze arangiza inshingano ze – Ushinzwe kurinda ubusugire bw'igihugu n'umutekano w'abantu n'ibyabo ntiyabona ibikorwa bihungabanya umutekano harimo na magendu ngo abure kugira icyo akora yitwaje ko atari mu ifasi akoreramo inshingano ze – Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 260.*

**Incamake y'ikibazo:** Munyankumburwa Valens yarezwe n'Ubushinjacyaha mu Rukiko Rukuru ashinjwa ubwicanyi aho ari kumwe na Munyurasi Gakara, umupolisi, bakurikiranye abaforoderi nuko babagezeho abategeka gushyira ibyo bari bafite hasi, ashyira isasu mu mbunda, Munyurasi abyumvise amubuza inshuro ebyiri kurasa ariko undi abirengaho arasa umwe muri bo witwa Nkuzimana. Akarere ka Burera nk'umukoresha w'uwakekwagaho icyaha kahatiwe kugoboka mu rubanza kugirango kazishyure indishyi. Uwashinjwaga yahamijwe icyaha ahanishwa igifungo cy'imyaka icumi naho Akarere ka Burera gategekwa kwishyura indishyi zingana na 7, 450,000.

Munyankumburwa ndetse n'Akarere ka Burera bajuririye mu Rukiko rw'Ikirenga. Munyankumburwa yavugaga ko Urukiko Rukuru rwamuhanishije igihano kiremereye cy'imyaka icumi rwirengagije ko yaburanye yemera icyaha kandi akagisabira imbabazi akaba yaranagikoze atakigambiriye. Yasabaga kugabanyirizwa igihano. Umwunganira yavuze ko abona harabayeho kwitiranya ibintu maze asaba ko icyaha cyakozwe cyakwitwa kwica umuntu atabigambiriye. Ubushinjacyaha bwavuze ko ibi bitahabwa agaciro kuko Munyurasi yamubujije kurasa nyamara akabirengaho akarasa amasasu yahitanye nyakwigendera; bigaragaza ubushake yari afite bwo kwica.

Intumwa ya Leta yo yavugaga ko Urukiko rwategetse Akarere ka Burera kwishyura indishyi hirengagijwe imiburanire y'abaregwaga ndetse n'imyanzuro bashyikirije urukiko. Ikindi kandi ngo ni uko urukiko rwagennye indishyi rushingiye ku ngingo ya 27 y'Itegeko n° 25/2004 ryo kuwa 19/11/2004 rishyiraho kandi rigena imitunganyirize n'imikorere by'urwego rw'abaturage rushinzwe gufasha gucunga umutekano, Local defence, ariko ntirwagira icyo ruvuga ku gika cya kabiri cyayo kandi aricyo cyari ingenzi mu myiregurire y'Akarere ka Burera. Abaregera indishyi basabye amafaranga y'igihembo cya avoka mu bujurire bwuririye ku bundi.

**Inshamake y'icyemezo:** 1. Inyito y'icyaha igomba guhura n'ibyabaye. Ibikorwa ushinjwa yakoze bihabanye n'inyito ashaka ko ihabwa icyaha yakoze kuko ubushake bwo gukora iki cyaha bushimangirwa n'uko yashyize amasasu mu mbunda akabuzwa kurasa n'uwari

umukuriye mu kazi akabirengaho akarasa amasasu atatu yahitanye nyakwigendera. Bityo, ibikorwa yakoze bigize ubwicanyi.

2. Uwajuriye ntiyagabanyirizwa igihano kuko nyuma yo kurasa yabigambiriye akica umuturage utagize icyo amautwaye yahanishijwe igihano cy'igifungo cy'imyaka icumi (10) aho guhanishwa igifungo cya burundu.

3. Kurinda ubusugire bw'igihugu no gucunga umutekano w'abantu n'ibyabo biri mu nshingano za Polisi y'Igihugu ndetse n'Urwego rw'abaturage rushinzwe gufasha gucunga umutekano "Local defence". Ushinjwa rero ntiyabona ibikorwa bihungabanya umutekano, harimo na magendu imunga ubukungu bw'igihugu, ngo areke kugira icyo akora yitwaje ko atari mu ifasi akoreramo inshingano ze. Ntiyari kwanga kandi gukora ako kazi mu gihe bizwi ko mu nshingano ze "local defence" agomba gufatanya n'izindi nzego bakorana gucunga umutekano.

4. Mu guca urubanza rusaba indishyi zikomoka ku cyaha cyakozwe n'umukozi, inkiko zigomba kureba niba igikorwa cyakozwe n'umukozi cyari gifitanye isano n'akazi ke cyangwa n'inshingano ze. Umukoresha ntiyaryozwa ibyangijwe n'amakosa y'umukozi igihe ntaho bihuriye n'inshingano ze kandi bigakorwa igihe umukoresha atashoboraga kubigenzura. Ariko rero, umukoresha aryozwa ize indishyi igihe umukozi yarimo arangiza inshingano ze kabone niyo yazirangiza nabi. Gukoresha igikoresho nabi mu kazi ashinzwe ko gucunga umutekano ntibibuza umukoresha kuryozwa ibyangijwe n'iryo kosa mu gihe umukozi aba atatandukiriye inshingano ze.

**Ubujurire ku mpande zombi nta shingiro bufite.**

**Ubujurire bwuririye ku bundi bufite ishingiro.**

**Akarere ka Burera gategetswe kwishyura 7.450.000 Frw y'indishyi na 500.000 Frw y'igihembo cy'avoka.**

**Amagarama y'urubanza aherereye ku isanduku ya Leta.**

**Amategeko yashingiweho:**

Itegeko Iteka n° 21/1977 ryo ku wa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana ibyaha, ingingo ya 311.

Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 260.

**Imanza zifashishijwe:**

Ubushinjacyaha v. Pte Niyoyita, RPA 0074/07/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 25/07/2007

**Ibitekerezo by'abahanga:**

Ch. Larroumet, note sous cass. Com.12 oct. 1993, Dalloz.1994.124, séc.p.125.

F. Benac-Schmidt, Responsabilité du fait d'autrui, Répertoire de droit civil, Dalloz, TIX, mise à jour en 1999, p.17, n° 135.

## **Urubanza**

### **I. IMITERERE Y'URUBANZA**

[1] Uru rubanza rwatangiriye mu Rukiko Rukuru, Ubushinjacyaha burega Munyankumburwa Valens (wari Local defense), kuba ku itariki ya 26/8/2008 ahagana mu ma saa ine z'ijoro, ari kumwe n'umupolisi witwa Sergeant Munyurasi Gakara, barakurikiranye abaforoderi bari batambukanye ibicuruzwa bya magendu, babagezeho, Munyurasi ahagarika moto, naho Munyankumburwa Valens abategeka gushyira ibyo bari bafite hasi ariko ajya gutangira abari imbere nuko ku mpamvu zitazwi ahita ashya amasasu mu imbunda yari afite, Munyurasi abyumvise amubuza kurasa ariko undi ntiyamwuvira ahubwo abikorera icyo, bagiye kureba basanga umwe muri ba baforoderi witwa Nkunzimana yarashwe, bamujyanye kwa muganga ahita apfa.

[2] Akarere ka Burera nk'umukoresha wa Munyankumburwa Valensi kagobokeshejwe ku gahato muri urwo rubanza kugira ngo kazishyure indishyi. Urukiko rwaregewe ruca urubanza kuwa 28/06/2010, rwemeza ko Munyankumburwa Valensi n'Akarere ka Burera batsinzwe, ruhanisha Munyankumburwa igifungo cy'inyaka 10, rutegeka Akarere ka Burera mu izina ry'Umuyobozi wako guha Manirarora Rosette n'abana be indishyi izingana na 7.450.000 Frw.

[3] Munyankumburwa Valensi ndetse n'Akarere ka Burera mu izina ry'Umuyobozi wako, ntibishimiye imikirize y'urubanza bajuririra Urukiko rw'Ikirenga, Munyankumburwa Valensi avuga ko Urukiko Rukuru rutahaye agaciro ibisobanuro yarugaragarije kuko igihano cy'inyaka 10 rwamuhaye gihanitse kandi yaraburanye yemera icyaha ndetse agasaba n'imbabazi.

[4] Me Karemera George, Intumwa ya Leta mu mwanya w'Akarere ka Burera avuga ko kategetswe kwishyura indishyi zingana na 7.450.000 Frw hirengagijwe imyiregurire yabo haba igihe cy'iburanisha ndetse no mu myanzuro yashyikirijwe Urukiko. Ikindi batishimiye ni ukuba Umucamanza yategetse Akarere kwishyura indishyi ashingiyeye ku gika cya mbere cy'ingingo ya 27 y'Itegeko n° 25/2004 ryo kuwa 19/11/2004 rishyiraho kandi rigena imitunganyirize n'imikorere by'urwego rw'abaturage rushinzwe gufasha gucunga umutekano "Local defence", ariko ntiyagira icyo avuga ku gika cya kabiri cyayo kandi aricyo cyari ingenzi mu myiregurire y'Akarere ka Burera. Abaregera indishyi mu bujuriye bwuririye ku bundi basabye amafaranga y'igihembo cya avoka.

[5] Iburanisha mu ruhamwe ryabaye kuwa 07/07/2014, Munyankumburwa valensi yunganiwe na Me Nzabonimana John Peter, abaregera indishyi bahagarariwe na Me Bizimana Jean de Dieu, naho Akarere ka Burera gahagarariwe na Me Umwali Claire, Intumwa ya Leta.

## **II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO**

**a. Kumenya inyito yahabwa icyaha Munyankumburwa Valensi yakoze kandi niba yakongera kugabanyirizwa igihano yahawe.**

[6] Munyankumburwa Valensi na Me Nzabonimana John Peter umwunganira bavuga ko impamvu yatumye ajurira ari uko Urukiko rwamuhanishije igifungo gihanitse cy'inyaka icumi kandi yaraburanye yemera icyaha akurikiranweho cyo kuba yarishe Nkunzimana amurashe, ko yarusobanuriye ko yagikoze atakigambiriye kuko ntacyo yapfaga na nyakwigendera ariko rurabyirengagiza. Bavuga ko Munyankumburwa nta bushake na bucyeye yigeze agira bwo kwica Nkunzimana kuko nta hantu na hamwe yari aziranye nawe ku buryo hari icyo bapfaga cyatuma amwica.

[7] Bavuga ko igihe Munyankumburwa Valensi n'umupolisi wamuhaye imbunda bari bageze ku bantu bari bikoreye magendu, uwo mupolisi yamutegetse kubahagarika, hanyuma nawe ashyira isasu mu mbunda, abageze iruhande yumva isasu rirasohotse ryerekeza kuri Nkuzimana, ariko ibyo bikaba byarabaye atabishakaga. Bakomeza basobanura ko iyo Munyankumburwa aza kuba afite umugambi wo gushaka kurasa, yari kurasa abo baforoderi bose, kuba atarabikoze, ibyamubayeho bikaba ari impanuka kuko yari afite gahunda yo kubahagarika gusa kuko n'ubusanzwe magendu itemewe.

[8] Me Nzabonimana John Peter avuga ko mu rwego rw'amategeko, asanga harabaye gufata ibintu uko bitari, maze icyaha bagihya inyito itariyo, we akaba asanga iki cyaha Munyankumburwa yakoze cyakwitwa icyaha cyo kwica umuntu utabishaka giteganywa n'ingingo ya 145 y'Itegeko Ngenga n°01/2012/OI ryo kuwa 2/5/2012 rishyiraho Igitabo cy'amategeko ahana ibyaha, kuko ibigize icyaha cy'ubwicanyi bituzuye kubera ko haburamo icyerekeranye n'ubushake bwo gukora icyaha. Asobanura ko Munyankumburwa yibagiwe gufunga "self" y'imbunda maze amasasu arisohora, ibyamubayeho bikaba byagereranywa n'ibikorwa n'umushoferi ugonga umuntu mu muhanda kubera uburangare.

[9] Uhagarariye Ubushinjacyaha yavuze ko ibisobanuro bya Munyankumburwa Valensi n'umwunganira nta shingiro bifite, kuko mu gihe Munyankumburwa yirukankanaga abaforoderi, yabagezeho maze ashira amasasu mu mbunda, mugenzi we amubujije kurasa undi arabyanga arabikora, bityo rero akaba adakwiriyeye kubwira Urukiko ko ibyo yakoze ari impanuka kandi yararashye abishaka.

[10] Avuga ko ibyo Munyankumburwa Valensi yireguza ko ntacyo yapfaga na nyakwigendera nabyo nta gaciro byahabwa kuko atari ngombwa ko haba amakimbirane kugira ngo habe ubushake bwo kwica. Avuga ko kuba yarashyize amasasu mu mbunda, mugenzi we Gakara yamwumva akamubaza kurasa ubugira kabiri ariko undi akabyanga, byumvikana ko ibyo yakoze bitabaye ku bw'impanuka. Yasoje avuga ko Munyankumburwa atakongeraga kugabanyirizwa igihano yahawe kuko byakozwe ku rwego rwa mbere.

[11] Ingingo ya 311 y'Iteka n° 21/1977 ryo ku wa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana ibyaha ryakoreshwaga icyaha gikorwa iteganywa ko "Ukwica umuntu ubishaka, byitwa ubwicanyi: bihanishwa igifungo cya burundu".

[12] Ku birebana n'uru rubanza, n'ubwo imbere y'uru Rukiko Munyankumburwa Valensi n'umwunganira bahakana ko atigeze agira ubushake bwo kwica Nkuzimana, ko icyaha bumva yakoze ari icyo kwica umuntu utabishaka (homicide involontaire), Urukiko rurasanga inyito Munyankumburwa Valensi asaba ko yahabwa icyaha akurikiranyweho idahura n'ibyabaye kuko ubushake bwo kwica bugaragarira ku kuba yarashyize amasasu mu mbunda, Munyurasi Gakara abyumvise amubaza kurasa, undi aho kumwumvira ahubwo ahita abikora maze arasa Nkuzimana amasasu atatu yose nuko ahita apfa.

[13] Urukiko rurasanga ahubwo kuba Munyankumburwa Valensi mu Rukiko Rukuru yaremeye icyaha ndetse rukabiheraho rumugabanyiriza igihano, kandi icyaha aregwa ndetse yaburanye ari icy'ubwicanyi, atasaba ko cyakwitwa ukundi, cyane ko ibyo yemeye akanabisabira imbabazi bihura n'invugo za Munyurasi ndetse n'iz'abatangabuhamya bari aho icyaha cyakorewe (bagenzi ba Nkuzimana), bose bemeje ko yarashye nyakwigendera ku bw'urugomo gusa kuko atari yigeze amurwanyana.

[14] Hashingiwe ku bimaze gusobanurwa, Urukiko rurasanga Munyankumburwa Valensi yararashye Nkuzimana abishaka, bityo icyaha yakoze kandi kimuhama akaba ari

icy'ubwicanyi giteganywa kandi kigahanishwa ingingo ya 311 y'Itegeko Teka n° 21/1977 ryo ku wa 18/08/1977 ryavuzwe.

[15] Ku bijyanye no kongera kugabanyirizwa igihano Munyankumburwa Valensi n'umwunganira basaba, imikirize y'urubanza rwajurirwe igaragaza ko mu kumugenera igihano, Urukiko Rukuru rwamugabanyirije ku buryo buhagije kuko rwamuhanishije igifungo cy'imyaka 10 rushingiye ku mpamvu nyoroshyacyaha z'uko yemeye icyaha akagisabira n'imbabazi, kandi akaba ari ubwa mbere akatiwe igihano ku buryo bwa burundu n'Inkiko.

[16] Urukiko rurasanga rero, kuba Munyankubwurwa Valensi yaragombaga guhanishwa igifungo cya burundu hashingiwe ku ngingo ya 311 y'Itegekoyavuzwe haruguru, ariko agahanishwa igifungo cy'imyaka icumi (10) gusa, byumvikana ko Urukiko Rukuru rwamugabanyirije igihano mu buryo buhagije ugereranyije n'uburemere bw'icyaha yakoze cyo kurasa umuturage utagize icyo amutwara; bityo ubujurire bwe bukaba nta shingiro bufite.

**b. Kumenya niba Akarere ka Burera kagomba kuryozwa amakosa yakozwe na Munyankumburwa Valens wari “local defence”.**

[17] Me Umwali uhagarariye Akarere ka Burera avuga ko Urukiko rwategetse ko Akarere ka Burera karyozwa indishyi kandi Munyankumburwa yariyemereye ko imbunda yakoresheje arasa Nkuzimana itari iye kandi ko yayikoresheje atabifitiye uburenganzira, byongeye kandi umupolisi wari wamuhaye iyo mbunda akaba yaramubujije kurasa ariko undi arabyanga ararasa.

[18] Avuga ko indi mpamvu ituma Akarere ka Burera katagomba kuryozwa amakosa yakozwe na Munyankumburwa, ari uko icyaha akurikiranyweho yagikoreye mu Karere ka Rulindo, ni ukuvuga hanze y'aho asanzwe akorera mu Karere ka Burera, kandi akaba yaragiye Akarere katamutumye, bityo rero akaba ariwe ugomba kuryozwa amakosa ye bwite cyane ko yarashe umuntu abishaka kandi azi neza ko bibujijwe.

[19] Ikindi batishimiye ni ukuba mu kuryoza Akarere ka Burera indishyi zikomoka ku cyaha Munyankumburwa yakoze, Urukiko rwarashingiye ku gika cya mbere cy'ingingo ya 27 y'Itegeko n°25/2004 ryo kuwa 19/11/2004 rishyiraho kandi rigena imitunganyirize n'imikorere by'urwego rw'abaturage rushinzwe gufasha gucunga umutekano (Local defence), ariko ntirwagira icyo ruvuga ku gika cya kabiri cyayo Akarere kari kaburanishije, iki gika kikaba giteganywa ko iyo „local defence“ akoresheje imbunda nabi abihanirwa mu buryo buteganywa n'amategeko<sup>1</sup>.

[20] Munyankumburwa yavuze ko iyo umupolisi atamuha imbunda atari kwipangira akazi cyane ko imbunda yakoreshejwe itari iye, ko kandi kuba yaragiye gukurikirana bariya baforoderi mu Karere ka Rulindo nta kosa abibonamo kuko atari kwanga amabwiriza kuko yayaborwaga nk'abandi bose.

[21] Me Bizimana uburanira abaregera indishyi yavuze ko Munyankumburwa yari umukozi w'Akarere ka Burera nka LDF, bityo rero hashingiwe ku biteganywa n'ingingo ya 260 CCLIII, indishyi zikomoka ku cyaha yakoze, zikaba zatangwa n'Akarere kuko yari umukozi wako.

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<sup>1</sup> Ingingo ya 27 igira iti : «Igihe ugize “Local Defence” ari mu kazi kajyanye n'inshingano ze, amakosa akoze aryozwa Akarere cyangwa Umujyi akoreramo». Ariko iyo akoze ibinyuranyije n'inshingano ze ahanwa hakurikijwe amategeko.

[22] Yasoje atanga ubujurire bwuririye ku bundi asaba indishyi za 500.000frw y'ikurikirana rubanza n'igihembo cy'avoka kingana na 500.000 frw ziyongera kuzo bari bagenewe ku rwego rwa mbere.

## UKO URUKIKO RUBIBONA

[23] Ingingo ya 260, igika cya gatatu, y'Igitabo cya gatatu cy'Urwunge rw'Amategeko Mbenezamubano iteganya ko umukoresha aryozwa ibyangijwe n'abakozi igihe bakora imirimo bashinzwe.

[24] Ku byerekeranye n'imiburanire y'uhasarariye Akarere ka Burera ko kuba karategetswe kwishyura abasizwe na nyakwigendera Nkunzimana wishwe na Munyankumburwa ari amakosa bitewe nuko yabikoze yarenze inkengero y'ako Karere ashinzwe gukoreramo imirimo ye, Urukiko rurasanga inshingano nyamukuru ya Polisi y'Igihugu ndetse n'iy'Urwego rw'abaturage rushinzwe gufasha gucunga umutekano "Local defence", ari iyo kurinda ubusugire bw'Igihugu, kurinda umutekano w'abantu n'ibyabo. N'ubwo Local defence aba afite agace ashinzwe gukoreramo, ibyo ntibyatumye yipfumbata ngo arebere cyangwa yirengagize ibirimo gukorwa kandi byangiza umutekano w'Igihugu. Ikindi ni uko atari kwanga gukurikiza amabwiriza Sergeant Munyura Gakara amuhaye mu gihe bizwi ko mu nshingano ze "local defence" agomba gufatanya n'izindi nzego bakorana gucunga umutekano.

[25] Ku birebana n'uru rubanza, Urukiko rusanga kuba Polisi ikorera mu Karere ka Burera yari imaze kubona amakuru ko hari magendu irimo kunyura muri ako Karere yerekeza mu Karere ka Rulindo bihanye imbibi, kandi yahamagara bagenzi be bo muri Rulindo ntibitabe, byari ngombwa mu rwego rwo gushyira mu bikorwa inshingano zabo zo gucunga umutekano w'Igihugu harimo no kurwanya magendu imunga ubukungu bwacyo, gukurikirana abo bagizi ba nabi hatitawe ku mbibi z'Akarere ubusanzwe bakoreramo, bityo iyi ngingo y'ubujurire y'Akarere ka Burera ikaba nta shingiro ifite.

[26] Me Umwali Claire uhagarariye Akarere ka Burera asaba ko ibyemejwe mu rubanza n° RPA 0074/07/CS rwaciwe kuwa 25/07/2007, Ubushinjacyaha burega Pte Niyoyita icyaha cy'ubwicanyi, uwitwa Gakosi Nkuriza n'abavandimwe be baregera indishyi, byakurikizwa no muri uru rubanza maze Akarere ka Burera ntikagire indishyi gatanga kubera ko Munyankumburwa yakoresheje imbunda itari iye kandi katamutumye, Urukiko rurasanga izi manza zombi zitandukanye harebwe ibyabaye (les circonstances du crime) kuko abahanga mu mategeko barimo Viney, Joudrday na Starck<sup>2</sup> bavuga ko mu guca urubanza, inkiko zigomba kureba niba igikorwa cyakozwe n'umukozi cyari gifitanye isano n'akazi ke cyangwa n'inshingano ze, bikumvikana ko umukoresha atakagombye kuryozwa ingaruka z'ibyangijwe n'umukozi we mu gihe ibyo yakozwe ntaho bihuriye n'akazi ke cyangwa n'inshingano ze kandi bigakorwa mu gihe umukoresha atashoboraga kubigenzura. Ibi ni nabyo bivugwa mu ngingo ya 260 y'Igitabo cy'amategeko cyavuzwe haruguru.

[27] Urukiko rurasanga ku byerekeranye n'amasaha y'akazi, Munyankumburwa yararashe Nkunzimana hafi saa yine za nijoro, ariko ari mu kazi yategetswe gukora na Sergeant Munyurasi Gakara wari usanzwe amuyobora mu kazi ke ka buri muni mu gihe Pte Niyoyita we yarashye Mukagatana n'umwana we yataye akazi kandi icyaha akagikorera aho atatumwe. Ku bijyanye n'aho icyaha cyakorewe, nk'uko byasobanuwe haruguru, kuba barakurikiranye

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<sup>2</sup>F. Benac-Schmidt, *Responsabilité du fait d'autrui*, Répertoire de droit civil in Encyclopédie Dalloz, TIX, mise à jour en 1999, p.17, n° 135.

abaforoderi mu Karere ka Rulindo gahana imbibi n'Akarere ka Burera bakoreramo kandi bigaragara ko abo bagizi ba nabi bari baturutse muri Burera, atari amakosa y'akazi Akarere kakwitsitsaho gahakana uburyozwe nk'umukoresha we mu gihe icyari kibajyanye aho muri Rulindo ari akazi (inyungu za Leta).

[28] Ku byerekeranye n'imburanire y'Akarere ka Burera ko katakwishyura indishyi kubera ko imbunda yarashishije atari iye, Urukiko rurasanga imbunda yakoreshejwe icyaha yaba iya Munyankumburwa cyangwa iy'undi ubwabyo bidahagije kugira ngo Akarere ka Burera nk'umukoresha wa Munyankumburwa gategekwe kwishyura iby'abandi yangije ayikoresheje, ko ahubwo hagomba kurebwa impamvu yayikoresheje. Muri uru rubanza, bigaragara ko Munyankumburwa na mugenzi we bari bitwaje iriya mbunda kugira ngo babe bayitabaza mu gihe hagize ushaka kubahohotera mu kazi bashinzwe ko gucunga umutekano. Nk'uko bigaragara ariko, Urukiko rurasanga Munyankumburwa yarakoresheje nabi iriya mbunda n'ubwo byabaye ari mu gikorwa kijyanye n'inshingano ze, ibi akaba ari nabyo bigize ikosa rishingirwaho mu gusaba Akarere ka Burera kwishyura indishyi zikomoka ku cyaha cyakozwe n'umukozi wako.

[29] Ku kibazo cyo kumenya niba Munyankumburwa yaba yarahawe amabwiriza yo kurasa Nkuzimana, inyandiko mvugo ya Sergeant Munyurasi Gakara, igaragaza ko amaze kumva atangiye gukokinga (gushyira isasu mu cyumba cy'imbunda) yamubujije kurasa ubugira kabiri ariko undi aranga asohora amasasu atatu yose ariyo yahitanye nyakwigendera, ko rero iki gikorwa yakibwirije ariyo mpamvu akiryozwa mu rwego rw'amategeko ahana, kuko yarenze ku biteganywa n'ingingo ya 15 ndetse n'ya 16 z'Itegeko n° 25/2004 ryo kuwa 19/11/2004 rishyiraho kandi rigena Urwego rw'abaturage rushinzwe gufasha gucunga umutekano "Local defence"<sup>3</sup>, zerekana igihe "Local defence" ashobora gukoresha ibikoresho by'umutekano, nk'imbunda.

[30] Hashingiwe ku byasobanuwe, Urukiko rurasanga Akarere ka Burera kagomba kwishyura indishyi kategetswe n'Urukiko Rukuru kuko n'ubwo Munyankumburwa yarashe Nkuzimana kubera impamvu ze bwite atasobanuye, yabikoze ari mu gikorwa kijyanye n'inshingano ye yo gucunga umutekano arwanya magendu, ibyo akaba yarabikoze mu rwego rwo kubahiriza ibiteganywa n'ingingo ya 7<sup>4</sup> y'Itegeko n° 25/2004 ryo kuwa 19/11/2004 aho yafatanyije n'Urwego rwa Polisi gutangira abantu bafatiye mu cyuho batorokesha ibicuruzwa bya magendu.

[31] Akarere ka Burera rero nk'umukoresha kagomba kwishyura indishyi kaciwe bitewe nuko Munyankumburwa yaguye mu cyaha atatandukiriye inshingano ze, ahubwo nk'uko byakomeje gusobanurwa yari arimo azuzuzwa n'ubwo yabikoze nabi. Ibi birahura

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<sup>3</sup> Ingingo ya 15 igira iti "Ibikoresho by'umutekano, nk'imbunda, bikoreshwa gusa mu gihe cyabigenewe. Iyo umwe mu bagize "Local Defence" abikoresheje agahungabanya umutekano, ahanwa hakurikijwe amategeko ahana y'u Rwanda. Naho ingingo ya 16 ikagira iti" 1. Kwiyambaza imbunda ntibyemewe ku bagize "Local Defence" keretse gusa iyo: Bagiriwe urugomo cyangwa rugiriwe abandi nta bundi buryo bakoresha kandi barwana n'abantu bitwaje intwari;

2. Bagiywe gufata abantu bagaragayeho kuba ba ruharwa mu bugizi bwa nabi cyangwa abantu bitwaje intwari bateza umutekano muke».

<sup>4</sup> Ingingo ya 7 igira iti: 1° gufatanywe n'abandi baturage gucunga umutekano w'abantu n'uw'ibintu byabo; 2° kumenyeshya inzego z'ubuyobozi zimwegereye ikintu cyose gishobora guhungabanya umutekano; 3° gufasha izindi nzego zishinzwe umutekano w'abaturage n'uw'ibintu byabo mu gihe bibaye ngombwa; 4° gufata umuntu wese ufatiye mu cyuho ahungabanya umutekano, agahita amushyikiriza ubuyobozi cyangwa ikigo cya Polisi kiri hafi.

n'ibyemejwe n'abahanga<sup>5</sup> mu mategeko aho bavuga ko kugira ngo umukoresha aryozwe ibyangijwe n'umukozi we, bihagije kureba nibura niba igikorwa cye cyangirije undi gifitanye isano n'inshingano ze..... bagatanga urugero rw'umushoferi uba atwaye imodoka y'umukoresha we maze agakora impanuka kubera umuvuduko mwinshi. Ku bireba uru rubanza, byafatwa ko Munyankumburwa nawe yakoze kuriya cyaha ari mu kazi n'ubwo yagakoze nabi.

[32] Ku byerekeranye na 500.000 Frw y'igihembo cya avoka Me Bizimana asabira abaregera indishyi kuri uru rwego, Urukiko rusanga Akarere ka Burera kagomba kuyabaha kuko byabaye ngombwa ko bashaka umunyamategeko ubaburanira kuri uru rwego kandi uyu mubare bifuzwa ukaba uri mu rugero

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

[33] Rwemeje ko ubujurire bwa Munyankumburwa nta shingiro bufite.

[34] Rwemeje ko ubujurire bw'Akarere ka Burera nabwo nta shingiro bufite.

[35] Rwemeje ko ubujurire bwuririye ku bundi bwa Manirarora Rosette n'abana be Mukandengo, Hategekimana na Nsengiyumva Fidèle bwakiwe kandi ko bufite ishingiro;

[36] Rwemeje ko Akarere ka Burera kishyura Manirarora Rosette, Mukandengo, Hategekimana na Nsengiyumva 500.000 Frw y'igihembo cya avoka agenwe kuri uru rwego, akiyongera ku ndishyi zingana na 7.450.000 Frw bagenewe n'Urukiko Rukuru, ku cyicaro cyarwo i Kigali, yose hamwe akaba 7.950.000 Frw.

[37] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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<sup>5</sup>CH. Larroumet, note sous cass. Com.12 oct.1993, Dalloz.1994.124, séc.p.125 cité par Françoise BENAC-SCHMIDT, op cit, p.11, n° 74. "On peut se contenter d'un simple lien de connexité entre l'acte dommageable du préposé et ses fonctions, pour pouvoir engager la responsabilité du commettant. L'auteur continue en disant que " lorsque l'acte du préposé consiste en un exercice défectueux de ses fonctions, le rattachement est manifeste: tel est le cas du chauffeur livreur qui commet un accident de la circulation du fait d'une vitesse excessive....