

## UBUSHINJACYAHA v. MINANI N’UNDI

[Rwanda URUKIKO RW’IKIRENGA – RPA0299/12/CS (Hatangimbabazi, P.J., Karimunda na Gakwaya, J.) 18 Werurwe 2016]

*Amategeko Mpanabyaha – Impamvu nkomezacyaha – Kunywa ibiyobyabwenge mbere yo gukora ikindi cyaha – Gushakishiriza ubutwari bwo gukora icyaha mu biyobyabwenge ni impamvu nkomezacyaha aho kuba impamvu nyoroshyacyaha cyangwa impamvu yo kutaryozwa icyaha.*

**Incamake y’ikibazo:** Abajuriye bakurikiranywe mu Rukiko Rukuru, urugereko rwa Rwamagana ku kuba baritwikiriye ijoro bagatera mu rugo rwa Nsabimana Didace alias Kanuma bitwaje intwari gakondo bakica abantu batatu barusanzemo. Minani yaburanye yemera icyaha naho Ntaganira aburana agihakana. Urukiko rwasanze ukwiyemerera icyaha kwa Minani guhagije mu kumuhanya icyaha aregwa, naho kuri Ntaganira ruha agaciro imvugo z’abatangabuhanya no kuba abaregwa bombi barasanganywe ibikomere, rubahamya icyaha bakurikiranyweho, maze ruhanisha buri wese igifungo cya burundu.

Ntibishimiye icyo cyemezo bajuririra mu Rukiko rw’Ikirenga, Minani avuga ko yifuza kugaragaza ukuri kugirango ashobore kugabanyirizwa igihano, naho Ntaganira avuga ko umugambi wo gukora icyaha wateguwe na Minani we atabizi, aza kumushuka amunywesha ibiyobyabwenge anamukoresha icyaha atateguye, izo mpamvu zikaba zitaritaweho n’Urukiko Rukuru ngo bahanishwe ibihano bitandukanye.

Ubushinjacyaha buvuga ko n’ubwo abaregwa bashinjanywe, nta n’umwe uvugisha ukuri kuko Minani avuga ko ibyuma babivanye kwa Kanuma nyamara dosiye igaragaza ko bagiye babyitwaje, naho Ntaganira agahunga urumogi arushyira kuri Minani ngo warugurishaga kandi n’ubwo nta kimenyetso atanga ko ari we wamushoye mu cyaha, kuba yaranyoye urumogi ubwabyo bitamubera impamvu nyoroshyacyaha kuko ari icyaha, byose bigaragaza ko muri bombi nta wemera icyaha mu buryo budashidikanywaho, akaba asaba uru Rukiko gufata ko ukwemera icyaha kwabo kutuzuye, ahubwo rugashingira ku kuba barakoze icyaha ndengakamere kandi bakagikorana ubugome bukabije, imikirize y’urubanza rwajuririwe ikagumaho.

**Incamake y’icyemezo:** Gushakishiriza ubutwari bwo gukora icyaha mu biyobyabwenge ni impamvu nkomezacyaha aho kuba impamvu nyoroshyacyaha cyangwa impamvu yo kutaryozwa icyaha. Bityo, kuba abaregwa baranyweye urumogi ku bushake mbere yo gukora icyaha uretse no kuba ari icyaha gihanwa n’amategeko, bigaragaza ko umugambi wateguwe mbere y’uko banywa urwo rumogi, ahubwo barushakishirizamo imbaraga zo gushyira mu bikorwa umugambi mubisha wabo. Ibyo bituma igihano cya burundu bahawe n’Urukiko Rukuru, Urugereko rwa Rwamagana gikwiye kugumaho.

**Ubujurire nta shingiro.  
Urubanza rwajuririwe rugumyeho.  
Amagarama aherereye ku isanduku ya Leta.**

**Amategeko yashingiweho:**

Itegeko-Teka N<sup>o</sup>21/77 ryo ku wa 18/08/1977 rishyiraho Igitabo cy’amategeko ahana, ingingo ya 82 n’iya 312.

**Imanza zifashishijwe:**

State versus Chretien 1981 (1) SA 1097 (A).

**Inyandiko z'abahanga zifashishijwe:**

Nyabirungu mwene Songa, *Traité de droit pénal Congolais*, Kinshasa: Editions Universitaires, 2007, p.288.

CR Snyman, *Criminal Law*, Durban: Lexis-Nexis, 2008, at p.222.

## Urubanza

### I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rukuru, Urugereko rwa Rwamagana, Minani Alexandre na Ntaganira Vincent baregwa kuba ku wa 21/12/2010, baritwikiriye ijoro bagatera mu rugo rwa Nsabimana Didace alias Kanuma bitwaje intwaro gakondo zirimo imihoro, ibyuma n'imihini, bakica urugi, bakinjira, bagatemagura abantu batatu barusanzemo, urugo rugasigaramo imirambo n'imivu y'amaraso. Minani Alexandre yaburanye yemera icyaha naho Ntaganira Vincent aburana agihakana.

[2] Mu rubanza N°RP0009/11/HC/RWG rwaciwe ku wa 10/11/2011, Urukiko rwasanze ukwiyemerera icyaha kwa Minani Alexandre ko yishe Nsabimana Didace n'abana be babiri aribo Mukamuvunyi Joselyne na Nyiraminani Xavérine guhagije mu kumuhamya icyaha aregwa, naho kuri Ntaganira Vincent, rusanga abatangabuhamya barimo Mukarushema Christine, Ntiyamira na Twagirayezu Vianney bemeza ko babwiwe na Minani Alexandre ko yagiye kwica kwa Nsabimana Didace alias Kanuma ari kumwe na Ntaganira Vincent, ibyo yababwiye bikaba bishimangirwa no kuba Ntaganira Vincent na Minani Alexandre bombi barasanganywe ibikomere, rwemeza ko bombi bahamwa n'icyaha bakurikiranweho, ruhanisha buri wese igifungo cya burundu.

[3] Minani Alexandre na Ntaganira Vincent ntibishimiye icyo cyemezo bajuririra mu Rukiko rw'Ikirenga. Minani Alexandre yajuriye avuga ko yifuza kugaragaza ukuri kugirango ashobore kugabanyirizwa igihano. Naho Ntaganira Vincent ajurira avuga ko umugambi wo gukora icyaha wateguwe na Minani Alexandre we atabizi, aza kumushuka amunyweshya ibiyobyabwenge anamukoresha icyaha atateguye, izo mpamvu zikaba zitaritaweho n'Urukiko Rukuru ngo bahanishwe ibihano bitandukanye.

[4] Iburanisha mu ruhame ryashyizwe ku wa 13/07/2015, ariko kubera ko Ntaganira Vincent yari atarabona umwunganira mu mategeko rigenda ryimurwa kugeza ku wa 15/02/2016. Uwo munsu Ntaganira Vincent yitabye yunganiwe na Me Habyarimana Christine, Minani Alexandre yitaba yunganiwe na Me Uwanyirigira Delphine naho Ubushinjacyaha buhagarariwe na Niyonkuru Françoise, Umushinjacyaha ku rwego rw'Igihugu.

### II. IKIBAZO KIGIZE URU RUBANZA N'ISESENGURA RYACYO

**Kumenya niba hari impamvu zatuma Minani Alexandre na Ntaganira Vincent agabanyirizwa igihano.**

[5] Minani Alexandre avuga ko Ntaganira Vincent yamusabye kumuherekeza kwishyuzwa amafaranga ye mu ma saa ine z'ijoro, bageze hafi yo kwa Kanuma, Ntaganira Vincent atekera urumogi bararunywa, akingura inzu nk'umuntu uhamenyereye, aba afashe Mukamuvunyi ajya kumwicira mu rutoki akoresheje umuhini wakingaga inzu, naho we asigara afashe Kanuma waje no kumukomeretsa mu kiganza barwanira umuhoro yari afite, Ntaganira Vincent agarutse yica Kanuma na none akoresheje wa muhini, hanyuma haza gusohoka umwana mu nzu, Ntaganira Vincent amusaba kumwica, nawe amwica akoresheje wa muhini.

[6] Asobanura kandi ko ibyuma bavuga byaturutse iwe ntabyabayeho kuko icyo bamufatanye ari agahoro yari atunze, ko yabajije Ntaganira Vincent impamvu ibyo kwishyuzwa amafaranga byavuyemo kwica, akamusezeranya kumuha 20.000Frw bukeye, ariko bimwanga mu nda arara abibwiye mukuru we Ntiyamira Emmanuel na nyina, bukeye abibwira murumuna wa Ntaganira Vincent. Avuga ko Kabamba uvugwa ko bateguranye uwo mugambi bataziranye, ahubwo yamwumvanye Ntaganira Vincent, ko yemera ko yabeshye Urukiko Rukuru ariko ubu noneho yashatse kuvugisha ukuri kuko yicuza icyaha yakoze kandi agisabira imbabazi, akaba asaba uru Rukiko guca inkoni izamba akagabanyirizwa igihano.

[7] Me Uwanyirigira Delphine wunganira Minani Alexandre avuga ko Minani Alexandre yemeye icyaha mu Rukiko Rukuru ariko ntiyasobanura neza imikorere yacyo n'uburyo yafatanyije na Ntaganira Vincent kwica umuryango wa Kanuma, ariko ko ubu yemera icyaha mu buryo budashidikanywaho, akaba asaba uru Rukiko guha agaciro imiburanire ye akagabanyirizwa igihano cya burundu yakatiwe hashingiwe ku ngingo ya 35 y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha no ku ya 77, agace ka 3 y'Itegeko-Ngenga rishyiraho Igitabo cy'amategeko ahana gikoreshwa ubu.

[8] Ntaganira Vincent avuga ko we na Minani Alexandre babanje gusangira urumogi, baza kuganira k'ubukene bubugarije kandi ari igihe cy'iminsi mikuru, aribwo bateguye umugambi wo kujya kwiba amafaranga kwa Kanuma, bagenda bambaye ibikoti kandi bitwaje ibyuma bibiri by'imishyo bavanye mu gisenge (plafond) kwa Minani Alexandre, bagezeyo Minani Alexandre yica urugi, arinjira, asanga Kanuma aho yari aryamye, atangiye kumukubita, umukobwa we mukuru asohoka yiruka, Ntaganira Vincent amutera icyuma, ariko mbere yo kugenda bumvikana ko bagomba kubanogonora kuko bari babamenye, bakirangiza kubica hasohoka undi mwana muto mu nzu, nawe baramwica.

[9] Asobanura ko bavuye aho bajya kwa Ntiyamira, mukuru wa Minani Alexandre, uyu amutekerereza ibyo bavuyemo, ari nabyo umugore wa Ntiyamira yasobanuye mu Bugenzacyaha, ariko ko bageze muri Gereza yabaza Minani Alexandre icyatumye yica abo bantu akamusubiza ko ari umugambi yari amaranye iminsi, ko uwari kumufasha kuwushyira mu bikorwa witwa Kabamba yamubuza, ari nabwo bapanze uko bazaburana, Minani Alexandre akaburana abigereka kuri Kabamba naho we akaburana ahakana icyaha.

[10] Asoza avuga ko ari ubwa mbere aguye mu cyaha, ko yakigushijwemo na Minani Alexandre wamushutse hamwe n'ibiyobyabwenge yari yanyoye, ariko ko igihe amaze muri Gereza cyatumye amenya ububi bw'icyaha, akaba acyicuza kandi agisabira imbabazi ndetse anatakambira uru Rukiko ngo rumuvane ku gifungo cya burundu ahanishwe igifungo kibarwa.

[11] Me Habyarimana Christine wunganira Ntaganira Vincent avuga ko nubwo abaregwa bitana bamwana k'uwacuze umugambi n'uwatanze urumogi banyoye mbere yo gukora

icyaha, Ntaganira Vincent yemera icyaha mu buryo budashidikanywaho, akaba asaba uru Rukiko guha agaciro imiburanire ye ariko rukita no kuba ari ubwa mbere yagwa mu cyaha, yaragikoze akiri mu myaka yo kubyiruka kuko yari afite imyaka 24 y'amavuko gusa kandi yari yanyoye ibiyobyabwenge, akagabanyirizwa igihano kugeza nibura ku gifungo kitari muni y'umwaka umwe nk'uko biteganywa n'ingingo ya 82 n'ya 83 z'Itegeko-Teka N°21/77 ryo ku wa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana ryakoreshwaga icyaha gikorwa.

[12] Uhagarariye Ubushinjacyaha avuga ko nubwo Minani Alexandre na Ntaganira Vincent bashinjanyana, nta n'umwe uvugisha ukuri kuko Minani Alexandre avuga ko ibyuma babivanye kwa Kanuma nyamara dosiye igaragaza ko bagiye babyitwaje, naho Ntaganira Vincent agahunga urumogi arushyira kuri Minani Alexandre ngo warugurishaga kandi nubwo nta kimenyetso atanga ko ari we wamushoye mu cyaha, kuba yaranyoye urumogi ubwabyo bitamubera impamvu nyoroshyacyaha kuko ari icyaha, byose bigaragaza ko muri bombi nta wemera icyaha mu buryo budashidikanywaho, akaba asaba uru Rukiko gufata ko ukwemera icyaha kwabo kutuzuye, ahubwo rugashingira ku kuba barakoze icyaha ndengakamere kandi bakagikorana ubugome bukabije, imikurizwe y'urubanza rwajuririwe ikagumaho.

## **UKO URUKIKO RUBIBONA**

[13] Haseguriwe Itegeko-Ngenga N°31/2007 ryo ku wa 25/07/2007 rivanaho igihano cyo kwicwa, ingingo ya 312 y'Itegeko-Teka N°21/77 ryo ku wa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana ryakoreshwaga icyaha gikorwa, iteganya ko "Ukwica umuntu byagambiriwe cyangwa byategewe igico, byitwa ubuhotozi; bihanishwa [igifungo cya burundu]."

[14] Ingingo ya 82 y'Itegeko-Teka N°21/77 ryo ku wa 18/08/1977 ryavuzwe haruguru, iteganya ko umucamanza ariwe uha agaciro impamvu zigabanyana ubugizi bwa nabi bw'uwakoze icyaha, ari izakibanjiririje, ari izagiherekeje cyangwa izagikurikiye, yaba azemeje akagomba kubisobanurira impamvu.

[15] Abazwamu Bugenzacyaha no mu Bushinjacyaha, Minani Alexandre yavuze ko nyuma y'ubwicanyi bwakorewe umuryango wa Nsabimana Didace alias Kanuma, abashinzwe umutekano baje kumusaka, bamusangana agahoro, ibyuma bibiri by'imishyamba hamwe n'urumogi, muri ibyo byose ako gahoro akaba ariko kari ake, kandi ko ku wa 21/12/2010, mu gihe cya saa mbiri z'ijoro, yagiye gutira mukuru we Ntiyamira Emmanuel isitimu agiye guca igitoki, ageze aranyerera, agahoro yari yitwaje kamukomeretsa mu kiganza, ajya kwiyomora kwa nyina Mukamurenzi Anne Marie, arangije arataha, bukeye abona abapolisi baje kumufata (cotes 26-29, 54-56).

[16] Dosiye y'urubanza igaragaza kandi ko Ntaganira Vincent yavugiyemo mu Bugenzacyaha no mu Bushinjacyaha ko nubwo ntacyo apfà n'abamushinja, mu ma saa saba z'amanywa w'umunsi ubuhotozi baregwa bwabereyeho (ku wa 21/12/2010) yari ageze i Giheta kwa Gatera agiye kubaruza umurima we, agarukana na muramu we Kayumba wari umuherekeje, bajyana kunywa inzoga kwa Ruhura, barangije nawe aramuherekeza, avuyeyo ajyana n'umugore we gukamisha kwa Mukabugingo Chantal, bataha mu ma saa kumi n'ebiri n'igice, baguma mu rugo kugeza bagiye kuryama, bukeye nka saa kumi n'ebiri n'igice, abona kumenya iby'urupfu rw'umuryango wa Nsabimana Didace alias Kanuma abibwiwe n'umwana witwa Pilote, ahita ajyana na mushiki we witwa Mujawayezu Vivia gutabara, naho

ku bijyanye n'icyamukomerekeje kuri iyo tariki ya 21/12/2010, avuga ko ari ibyatsi ubwo yahiraga urubingo (cotes 50-52).

[17] Naho aburana imbere y'Urukiko Rukuru, Urugereko rwa Rwamagana, Minani Alexandre yemeye ko mu ijoro ryo ku wa 21/12/2010 yatiye Ntaganira Vincent igare, ajyana n'uwitwa Kabamba kwa Nsabimana Didace alias Kanuma ngo agiye kumwereka aho bakura amafaranga, akinguye urugi, umukobwa we ahubukira hejuru aramumenya, Kabamba ahita amutera icyuma, Nsabimana Didace alias Kanuma, aza aje gutabara bararwana aramukomeretsa ariko ashobora kumutura hasi, Kabamba atwara wa mukobwa mu rutoki batindayo, agarutse amubwira ko amaze kumwica, babona kujya kwa nyina Mukamurenzi. Naho Ntaganira Vincent yavuze ko abamushinja babanje gukubitwa babona guhuza invugo zabo n'uko yari afite ikiguma kandi yatije Minani Alexandre igare umunsi icyaha gikorwa, bigaragaza ko invugo zabo zari amatakirangoyi kuko atashoboraga kwica abaturanyi be (cotes 101-105).

[18] Urukiko rurasanga na n'ubu Minani Alexandre na Ntaganira Vincent batavugisha ukuri kwatuma hamenyekana uwateguye umugambi w'ubwicanyi, uwari utunze intwaro zakoreshejwe, uwatekeye urumogi banyoye n'uburyo banyakwigendera bishwe. Cyakora niyo bari kubigaragaza, kuba barakoze icyaha gikomeye, bitwaje irari ry'amafaranga batari bazi ko Nsabimana Didace alias Kanuma afite, bakica abaturanyi b'inzirakarengane, bakarimbura umuryango wose mu buryo bwa kinyamaswa bakoresheje ibyuma n'imihini, bagahotora abana bato b'abakobwa bari bazi ko badafite amafaranga yabajyanye kandi ko batari bubarwanye, barangiza bakabashinyagurira kuko basize imirambo yambaye ubusa kandi bayigeretseho amabuye, ubwabyo bihagije kugirango batagabanyirizwa igihano bakatiwe n'Urukiko Rukuru.

[19] Urukiko rurasanga kandi kuba Minani Alexandre na Ntaganira Vincent bavuga ko mbere yo kujya guhotorera umuryango wa Nsabimana Didace alias Kanuma babanje kunywa urumogi, nubwo bataragaraza urumogi banyoye uko rungana n'ingaruka zarwo ku myitwarire yabo, kunywa urumogi ku bushake mbere yo gukora icyaha bitafatwa nk'impamvu nyoroshyacyaha kuko, uretse kuba ari icyaha gihanwa n'amategeko, bigaragaza ko umugambi wateguwe mbere y'uko banywa urwo rumogi, ahubwo barushakishirizamo imbaraga zo gushyira mu bikorwa umugambi mubisha wabo. Inkiko<sup>1</sup> n'abahanga mu mategeko<sup>2</sup> bakaba bemeranywa kogushakishiriza ubutwari bwo gukora icyaha mu biyobyabwenge ari impamvu nkomezacyaha aho kuba impamvu nyoroshyacyaha cyangwa impamvu yo kutaryozwa icyaha, nabyo bishimangira ko igihano cya burundu cyatanzwe n'Urukiko Rukuru, Urugereko rwa Rwamagana kuri Minani Alexandre na Ntaganira Vincent gikwiye kugumaho.

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<sup>1</sup>“Society has for years been subjected to alcohol abuse by certain of its members. This abuse has continued unabated and today is often accompanied by drug abuse. Because so many assaults and deaths are caused by persons under the influence of alcohol, a section of the community have in the past been skeptical about the “soft treatment meted out to intoxicated offenders...” *State versus Chretien* 1981 (1) SA 1097 (A).

<sup>2</sup> “Il est unanimement admis que lorsque l'auteur d'une infraction a bu et s'est enivré pour se donner le courage de la commettre, étouffer les cris de sa conscience ou s'aménager une excuse, l'ivresse, loin de lui profiter, devient une circonstance aggravante.” Nyabirungu mwene Songa, *Traité de droit pénal Congolais*, Kinshasa : Editions Universitaires, 2007, p.288. “X intends to commit a crime but does not have the courage to do so and takes to drink in order to gain the necessary courage, knowing that he will be able to perpetrate the crime once he is intoxicated. In this instance, intoxication is not a defense whatsoever. It is not even a ground for mitigation of punishment; in fact it would be a ground for imposing a heavier sentence than the normal.” CR Snyman, *Criminal Law*, Durban: Lexis-Nexis, 2008, at p.222.

### III. ICYEMEZO CY'URUKIKO

[20] Rwemeje ko ubujurire bwa Minani Alexandre na Ntaganira Vincent *alias* Rudomoro, Vuduka, Kiwani nta shingiro bufite.

[21] Ruvuze ko nta gihindutse ku mikirize y'urubanza N<sup>o</sup>RP0009/11/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 10/11/2011.

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