

SAIKOLOJIA YA AKILI YA BINADAMU MUDA MWINGINE NI NGUMU KUWEZA KUIELEWA

Vijana watatu JOB MLAMA , ANICENTH EDWARD na SHIJA MADATA wanajikuta matatani katikati ya mtanziko wa kisheria baada ya kufanya tendo ambalo mithiri yake ni ngumu hata kuifikiria.

Job Mlama akifanya kazi kama mpishi kwenye kambi ya Barrick Mines Exploration iliyopo katika kijiji cha Sota Wilaya ya Sengerema mkoani Mwanza, ANICENTH EDWARD yeye alikuwa akifanya kazi kama mlinzi wa eneo hilo wakati SHIJA MADATA yeye ni mpenzi wa Job Mlama.

Watu hawa kwa pamoja wanafanya tendo ambalo akili ya binadamu ikilichakata lazima iishie kupata gagasiko.

Vijana hawa wanamlazimisha binti wa miaka 13 (jina linahifadhiwa) kufanya mapenzi na mbwa ambaye walikuwa naye pale kambini, mbwa huyo alifahamika kwa jina la **BADYA** na alikuwa ni aina ya Pitbull

kwa mtu mwenye maadili kitendo hiki sio cha kufurahisha hata kidogo

Muhanga wa tukio hili alikuwa ni rafiki wa karibu na SHIJA MADATA, Shija alichukulia faida ya urafiki huo kumualika muhanga kwenye kambi ambayo mpezi wake anafanya kazi na tarehe 20/03/2008 Muhanga pamoja na Shija walifika kambini hapo na kukaa katika chumba cha Job na baadaye waliondoka.

Kesho yake tarehe 21/03/2008 majira ya jion, Shija aliondoka na muhanga kuelekea kambini tena na walivyofika huko wakiwa chumbani, Shija alionekana kuongea na mpezi wake Job, kwa lugha ambayo muhanga hakuielewa na baadae walimtoa nje na kumpeleka kwenye kibanda alikokuwa ANICENTH EDWARD, huko walimuingiza ndani na kumvua nguo zake kisha Shija alimshika miguu na Job alimshika muhanga Kiuno

Pitbull **BADYA** alifunguliwa na moja kwa moja alifika na kuingiza uume wake kwenye uke wa Muhanga, Muhanga alisikia maumivu makali na kupiga yowe lakini haikusaidia kitu na hatimaye mbwa huyo alimaliza tendo lake ovu na kumuacha muhanga akiwa na maumivu makali na kuharibika sehemu za uke wake.

Tazama ni sehemu ya maneno aliyoyasema muhanga akiwa mahakamani anatoa ushahidi wake

“Job came and started to talk with Shija in another language not Swahili where I did not hear them what they what we (sic) were talking. After their talking I heard Shija saying Tumpeleke sasa where Job replied ee tumpeleke Shija told me to follow her and we found second

accused in another area there was a gate covered with a turubai. Second accused had keys and opened the gate entered there followed Job and Shija.

I refused to get in that gate where second accused pulled me inside that house. At that time Job and Shida were inside that house. 2nd accused after pulling me he took off all my clothes and forced me to lie.”

Muhanga anaendelea kueleza ushiriki wa kila mmoja katika unyama huo

*“Shija held my legs and Job my waist. I started raising noise in Sukuma **Welelo nayo nacha** meaning "mama nakufa" (mother I am dying) A big dog was inside small hut at that area The dog was very fat. 2nd accused untied that dog The dog came, surrounded me and held me tight with its legs and entered its penis to my vagina forcing me to have sex with it, The dog continued to have sexual intercourse with me and pulled me to follow the dog where Shija also pushed me so that I follow the dog when pulling me my stomach was aching my vagina got damaged and I started bleeding, When the dog finished I failed down while my head and stomach were aching.”*

Baada ya tukio hili ANICENTH EDWARD alimpatia muhanga shilingi 1000 na muhanga alilala pale kambini mpaka kesho yake alipoenda famasi kununua dawa maana maumivu yalikuwa makali na aliambiwa asimwambie mtu yeyote yaliyomkuta huko kambini, baada ya kuzidiwa sana na maumivu alimua kumwambia Mama yake kilichomsibu na tukio lilitaarifiwa polisi na uchunguzi ulianza mara moja na kupelekea JoB Mlama. Anicent Edward na Shija Madata kukamatwa na kufikishwa Mahakamani kwa makosa ya unyanyasaji wa kingono kwa mtoto k/f 138B(1) ya Kanuni ya Adhabu.

Mashtaka ili kuthibitisha hatia ya washtakiwa walisimamisha mashahidi saba na Mahakama iliwaamini mashahidi hao na kuwatia hatiani washtakiwa wote watatu kisha kuwahukumu kifungo cha miaka 20 jela kwa Mshtakiwa wa kwanza na wapili na Mshitakiwa wa tatu Shija Madata alihukumiwa miaka 15 jela.

Washtakiwa hawakuridhishwa na adhabu na kutiwa hatiani hivyo wakakata rufaa Mahakama kuu Mwanza mbele ya Jaji Mruma ambaye aliendeleza kifungo kwa msitakiwa wa 1 na 2 kisha kubadilisha kifungo cha miaka 15 jela kwa mshtakiwa wa tatu na kikawa cha miaka 20.

Hii pia haikuwaridhisha na wakaamua kukata rufaa mahakama ya rufaa wakianisha sababu 8 za rufaa rufaa yao ilisajiliwa kama rufaa nambali 222/2012

Mrufani wa kwanza na watatu hawakuwa na uwakilishi, mrufani namba mbili aliwakilishwa na wakili msomi sana SALUM MAGONGO na upande wa Jamhuri uliwakilishwa na Athumani Matuma (kwa sasa ni Jaji wa Mahakama Kuu)

JOPO LA MAJAJI WA RUFANI

1. J.H MSOFE J.A

2. N.P KIMARO J.A

3. I.H JUMA J.A

Majaji hawa wa rufani wataamua lipi kuhusiana na hatima za watu hawa na tendo hili walilolifanya?

Tarehe 25/7/2013 rufaa hii ilisikilizwa na kutolewa Maamuzi tarehe 31/7/2013.

KIMARO J.A aliandika maamuzi haya kwaniaba ya Jopo la Majaji wa rufani na hoja zilizojadiliwa ni tano tu na ziliwahusisha warufani wote.

Kwanza wanajiuliza majaji wa rufani kama ushahidi uliowasilishwa unatosheleza kuwatia hatiani warufani, wakili wa mrufani wa pili anasema shahidi hakuwa wa kuaminika lakini mahakama iliyosikiliza shauri inasema ilimuamini na Majaji wa rufani wanasema hawaoni sababu ya kutomwamini shahidi hiyo anayeelezea yaliyomsibu kama ambavyo tumeanisha sehemu ya ushahidi wake hapo juu, kipande hicho kinaonyesha ni kwa jinsi gani tukio hilo lilikuwa limeandaliwa na kwa mujibu wa Kesi ya **SELEMANI MAKUMBA V R** criminal Appeal No 94 ya 1999 mahakama inasema kuwa muhanga ni shahidi bora katika mashauri ya ubakaji.

Pili Warufani wanalalamika kuwa kwanini yule aliyempakia kwenye baiskeli muhanga kutoka kambini kurudi nyumbani kwao hajaitwa kama shahidi, mahakama inasema kuwa hiyo isingeweza kusaidia kuelezea kuwa muhanga amefanyiwa ukatili wa kingono na mbwa na wanasema shahidi huyo hakuwa na haja ya kuitwa.

Tatu wanasema kuwa muhanga hakuwa bikra jambo ambalo si la kawaida kwa binti wa miaka 13.

Nne, Kwamba kwanini muhanga hakutoa taarifa za tukio mapema, mahakama inasema kuwa tukio lililomtokea huyu binti halikuwa la kibinadamu na alikuwa ameathirika kisaikolojia pamoja na hayo alilazwa kwa zaidi ya mwezi mmoja akipatiwa matibabu

Tano mapingamizi juu ya maelezo ya onyo ya mrufani wa tatu hata kama maelezo hayo yatatolewa kwenye ushahidi bado kuna ushahidi wa kutosha kuwatia hatiani warufani.

Mahakama ya rufani ilionelea pia iseme yafuatayo

One observation to make is that the offence which was committed was a serious one, not only degrading the dignity of the complainant but it also exposed the complainant to a risk of diseases. Under the circumstances we order each of the appellants to pay the complainant a compensation of T.shillings 200,000/= (two hundred thousand)

Rufaa ya warufani ilitupiliwa mbali lakini kwa sasa warufani hawa wako pale sengerema wakifurahia maisha baada ya kumaliza kutumikia kifungo chao.