

RWANDA / JUDGMENT

Re IBAMBE

RLR V.1-2026

COURT

Supreme Court

DECIDED

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RS/INCONST/SPEC00002/2024/SC

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Re IBAMBE

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Text

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Re IBAMBE [Rwanda SUPREME COURT – RS/INCONST/SPEC00002/2024/SC (Mukantaganzwa, P.J., Hitiyaremye, Cyanzayire, Muhumuza and Kazungu, J.) June 05, 2025] The Constitution – Freedom of the press – It is an inviolable right, but it must not infringe upon other rights, including the citizen’s right to honor and dignity. The Constitution – Human rights and freedoms – Use of technology – By enacting Law N0 60/2018 of 22/08/2018 on prevention and punishment of cybercrimes, the legislator intended to protect human rights in the use of technology in particular, and it is within this framework that Article 39 of the same law provides for the punishment of the offence of publishing rumours that may make a person lose their credibility through a computer or computer system. Law governing technology – Cybercrimes – The offence of publication of rumours through a computer or a computer system – The offence of publication of rumours that may make a person lose their credibility through a computer or a computer system is constituted by the following elements: - the existence of an act of publishing information; - the fact that the person who published the rumours as aware that the information was not true;

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- the fact that such act was carried out using a computer or a computer system; - the fact that the published rumours may incite fear, insurrection or violence amongst the population or that may make a person lose their credibility. Facts: Ibambe filed a petition before the Supreme Court, seeking to declare article 39 of Law N0 60/2018 of 22/08/2018 on prevention and punishment of cybercrimes, which provides that... “any person who, knowingly and through a computer or a computer system, publishes rumours that may make a person lose their credibility, commits an offence”, inconsistent with article 38 of the Constitution which provides that freedom of press, of expression and of access to information are recognized and guaranteed by the State. Freedom of expression and freedom of access to information shall not prejudice public order, good morals, the protection of youth and children, the right of every citizen to honour and dignity and protection of personal and family privacy and that, conditions for exercising and respect for freedom of press, of expression and of access to information are determined by law. He adds that article 39 undermines freedom of the press, of expression, and of access to information because it is used to criminally prosecute Rwandans, especially journalists, for performing their daily work of reporting news. The Petitioner argues that the fact that article 39 considers the act of publishing rumours that may make a person lose their credibility as a criminal offense, infringes on the

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freedom of expression guaranteed by article 38 of the Constitution. It also appears as to punish the crime of defamation in criminal procedure while the Supreme Court has declared it unconstitutional; therefore, publishing rumours that may make a person lose their credibility should be addressed through the civil procedure so that individuals are not deterred from expressing their opinions for fear of being imprisoned under this law. The petitioner further argues that treating the act of publishing rumours that may make a person lose their credibility as a criminal offense infringes on the freedom of expression, because the purpose is to protect an individual's reputation rather than the public interest, as it has no clear impact on the society or the public in general. It undermines the right to express opinions and freedom of expressing opinions of others. He concludes by stating that publishing rumours that may make a person lose their credibility forms defamation, and punishing it as a criminal offense contradicts the policy adopted by the Government of Rwanda to remove defamation from the list of criminal offenses, as had been provided under the article 233 of the Law N0 68/2018 of 30/08/2018 determining offenses and penalties in general. The State Attorney in this case argues that the article 39 that the Petitioner seeks to be repealed does not contradict article 38 of the Constitution; instead, the provisions of this article implement the rights guaranteed under article 38 of the Constitution, as it prevents and punishes anyone who, knowingly and through a computer or a computer system, publishes rumours that may incite fear,

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insurrection or violence amongst the population or that may make a person lose their credibility. The State Attorney explains that article 233 of the Law determining offenses and penalties in general, as amended, punished offenses committed only against a leader or leaders, whereas the article 39 which should be repealed punishes the act of publishing rumours against any person, with its consequences including inciting fear, insurrection or violence amongst the population or making a person lose their credibility. He further explains that this article does not prohibit Rwandans in general, and journalists in particular, from exercising freedom of expression; rather, it requires them to be careful about what they publish, as no one has the freedom to knowingly publish rumours that causes the harmful effects described in that article. Therefore, he argues that if the petitioner's request was granted and the article was repealed, the freedom of expression and the right to access for information could be exercised in a way that would violate public order, good morals, the protection of youth and children, the right to dignity and respect of the citizen, and that of the privacy of personal and family life. Therefore, he requests the Supreme Court to declare that article 39 of Law N0 60/2018 of 22/08/2018 mentioned above does not contradict article 38 of the Constitution, and that the petition is unfounded. Held: 1. Freedom of the press is a right that must not be violated, but it must not infringe on other rights, including the citizen's right to dignity and respect.

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2. The offense of publication of rumours that may make a person lose their credibility through a computer or a computer system is constituted by the following elements: the existence of the act of publishing information; the fact that the person who published rumours was aware that the information was not true; the fact that such act was carried out using a computer or a computer system; and the fact that the rumours published may incite fear, insurrection or violence amongst the population or that may make a person lose their credibility.
3. By enacting the Law N0 60/2018 of 22/08/2018 on prevention and punishment of cybercrimes, the legislator intended to protect human rights in the use of technology in particular, and it is within this framework that Article 39 of the same law provides for the punishment of the offence of publishing rumours that may cause a person to lose credibility through a computer or computer system. The petition seeking to declare that a legal provision is contrary to the Constitution of the Republic of Rwanda, is unfounded. Statutes and Statutory instruments referred to: The Constitution of the Republic of Rwanda of 2003 revised to date, articles 13 and 38. Universal Declaration of Human Rights of 1948 that Rwanda has ratified on September 18, 1962, article 19. International Covenant on Civil and Political Rights (ICCPR) that Rwanda has ratified in 1975, article 19.

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African Charter on Human and Peoples' Rights of June 27, 1981, article 9. Law N° 60/2018 of 22/08/2018 on prevention and punishment of cybercrimes, article 39. Law N° 68/2018 of 30/08/2018 determining offenses and penalties in general, article 233. The Kenyan Computer Misuse and Cybercrimes Act of 31/12/2022, article 23. Case laws referred to: RS/INCONST/SPEC 00003/2021/SC, Re Byansi Samuel Baker, rendered by Supreme Court on 25/03/2022. RS/INCONST/SPEC00002/2018/SC, Re Mugisha Richard, rendered by Supreme Court on 24/04/2019. The African Court on Human and Peoples' Rights, Lohe Issa Konate v. Burukina Faso rendered on 05/12/2014. OKUTA, Jacqueline Okuta & another v. Attorney General & 2 others, Kenya High Court [2017], eKLR. G.R. No 256700. April 25, 2023] People of the Philippines, petitioner, vs. Jomerito S. Soliman, Respondent. Authors quoted: Sunstein, Cass R. Liars: Falsehoods and free speech in an age of deception. Oxford University Press, 2021, page 46, 95, 171 & 172.

Judgment**Page 7****I. BACKGROUND OF THE CASE**

Ibambe Jean Paul filed a petition before the Supreme Court seeking to declare article 39 of Law N0 60/2018 of 22/08/2018 on prevention and punishment of cybercrimes inconsistent with article 38 of the Constitution of the Republic of Rwanda, the Constitution in this instant case.

He explains that the reason for filing this petition is that the article 39 of the Law N0 60/2018 of 22/08/2018 mentioned above, violates the freedom of press to express opinions and the right to access to information, as it is used to prosecute Rwandans, especially journalists, because of their daily work of publishing information; therefore, it should be repealed in order to comply with the provisions of article 38 of the Constitution.

The State Attorney submits that the article 39 of the Law N0 60/2018 of 22/08/2018 mentioned above, is not inconsistent with article 38 of the Constitution; rather, the provisions of that article implement what is enshrined in article 38 of the Constitution. The hearing was held in public on 05/05/2025, Ibambe Jean Paul was assisted by Counsel Gakunzi Valerie and Counsel Mukashema Marie Louise, while the Government of Rwanda was represented by Counsel Habumuremyi Prosper. In that hearing, the Court first examined the issue regarding the interest that Ibambe Jean Paul has in the case.

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- Regarding the interest that Ibambe Jean Paul has in this case

Having found that both parties agreed that the petitioner has the interest in the case, in a decision made at the bench, the Court declared that, in order to promote the law and protect the rights of those concerned with law, Ibambe Jean Paul has interest because the article 39 of the Law N0 60/2018 of 22/08/2018 mentioned above, concerns all citizens in general. This is one of the reasons recognized by the Court as a basis for examining the issue of the petitioner's interest on the unconstitutionality petition¹.

Regarding the merits of the case, the parties argued on the issue of whether the article 39 of the Law N0 60/2018 of 22/08/2018 mentioned above, is inconsistent with the article 38 of the Constitution. II. ANALYSIS OF THE LEGAL ISSUE OF THE CASE - Whether the article 39 of the Law N0 60/2018 of 22/08/2018 on prevention and punishment of cybercrimes is inconsistent with article 38 of the Constitution of the Republic of Rwanda.

Ibambe Jean Paul and his legal counsels argue that the article 39 of the Law N0 60/2018 of 22/08/2018 above

¹ Interlocutory judgment rendered on 16/12/2022, Judgment RS/INCONST/SPEC00001/2022, Murangwa Edward, §17, p.10.

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mentioned which provides that any person who, knowingly and through a computer or a computer system, publishes rumours that may incite fear, insurrection or violence amongst the population or that may make a person lose their credibility, commits an offence. Upon conviction, he/she is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years and a fine of not less than one million Rwandan francs (FRW 1,000,000) and not more than three million Rwandan francs (FRW 3,000,000), is inconsistent with the article 38 of the Constitution, which provides that freedom of press, of expression and of access to information are recognized and guaranteed by the State. However, freedom of expression and freedom of access to information shall not prejudice public order, good morals, the protection of youth and children, the right of every citizen to honour and dignity and protection of personal and family privacy. Furthermore, conditions for exercising and respect for freedom of press, of expression and of access to information are determined by law.

They explain that the fact that the article 39 of the Law N0 60/2018 of 22/08/2018 above-mentioned, considers the act of publishing rumours that may make a person lose their credibility as a criminal offense, violates freedom of expression provided for by article 38 of the Constitution also appear as criminalizing the crime of defamation in a criminal way, whereas in paragraph 65 of the

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RS/INCONST/SPEC00002/2018/SC decided on 24/04/2019 in the case of Mugisha Richard, the Supreme Court held that criminalizing the crime of defamation is unconstitutional. Therefore, the publication

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of rumours that may have a person lose their credibility should be addressed under civil law, so that individuals are not discouraged from expressing their opinions for fear of imprisonment under this law.

They further explain that considering the act of publishing rumours that may have a person lose their credibility as a criminal offense, infringes on freedom of expression, because the purpose is to protect a person's credibility rather than the public interest, given that it has no clear effects on society or the general public; they add that this undermines the right to freedom of expression and the freedom to express individuals' opinions.

They further explain that publishing information that may have a person lose their credibility amounts to defamation; therefore, criminalizing it contradicts the policy adopted by the Government of Rwanda, which removed defamation from the list of criminal offenses as reflected in the 2011 Media Policy, so that it would instead be handled under civil law in order to avoid restricting the right to freedom of expression, including that of the media.

They mention that the article 19 of the Universal Declaration of Human Rights of 1948, to which Rwanda acceded on September 18, 1962, together with article 19 of the International Covenant on Civil and Political Rights (ICCPR), which Rwanda ratified in 1975, provide for the full right to freedom of expression. Although this right is not absolute, as explained in the United Nations Human Rights Committee's "General Comment n0 34", those provisions clearly set out how freedom of expression must

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be respected in building democratic principles based society. They argue that, when considering these interpretations, criminally punishing a person for publishing rumours that may have a person lose their credibility constitutes an excessive restriction on freedom of expression.

They also mention that in January 2021, when Rwanda was given recommendations during third Universal Periodic Review (UPR) on Human Rights, Rwanda accepted to implement the recommendations received from other states, including the recommendation to amend laws so as to better safeguard freedom of expression in the country; they mention, as an example, the recommendation made by Italy, which called for amending legal provisions that restrict people's freedom of expression and assembly, association as well as protecting journalists and media operators against harassment and intimidation². They argue that Rwanda's commitment to implement this and other recommendations can be considered as an acknowledgment that

article 39 of Law N0 60/2018 of 22/08/2018 mentioned above, undermines freedom of expression, despite the fact that such freedom is guaranteed by the Constitution.

They further state that there are judicial decisions taken by other courts which demonstrate that defamation should not be treated as a criminal offense, and that

2 Revise all the provisions that undermine freedom of expression as well as freedom of assembly and association and effectively protect journalists and media operators against harassment and intimidation.

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criminalizing it, undermines the right to freedom of expression. The examples provided include the African Court on Human and Peoples' Rights, in the case of *Lohe Issa Konate v. Burkina Faso*, decided on 05/12/2014, where the Court clearly stated that criminalizing defamation undermines freedom of expression; and the High Court of Kenya, in the case of *Jacqueline Okuta & another v. Attorney General & 2 others* [2017] eKLR, which held that Article 194 of the Penal Code criminalizing defamation was unconstitutional as it violates the right to freedom of expression. The Court concluded that criminalizing defamation with the purpose of protecting a person's credibility constitutes disproportionate and unjustifiable protection, since there are civil remedies available to address any harm caused to a person's honor or credibility.

They conclude by requesting the Supreme Court to declare that article 39 of Law N0 60/2018 of 22/08/2018 mentioned above, in its first paragraph which provides that any person who, knowingly through a computer or a computer system publishes rumours that may make a person lose their credibility, commits an offense, is inconsistent with article 38 of the Constitution, and to order that it should be repealed.

The State Attorney mentions that article 38 of the Constitution provides for the following two key elements: i. It prohibits the exercise of freedom of press, of expression, and access to information in a manner that prejudices public order and good morals, endangers the protection of youth and

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children, or infringes on a citizen's right to honor and dignity, and the right to personal and family privacy; ii. It provides that the exercise and respect of that freedom are determined by the law.

He explains that the article 39 of the Law N0 60/2018 of 22/08/2018 mentioned above implements article 38 of the Constitution because it prevents and punishes any person who, knowingly and through a computer or a computer system, publishes rumours that may incite fear, insurrection or violence amongst the population or that may make a person lose their credibility.

He submits that Ibambe Jean Paul requests the repeal of the article 39 of the Law N0 60/2018 of 22/08/2018 mentioned above, based on the decision of the Supreme Court in Mugisha Richard's case RS/INCONST/SPEC00002/2018/SC decided on 24/04/2019, in its paragraph 101, where this Court held that article 233 of Law N0 68/2018 of 30/08/2018 determining offenses and penalties in general is inconsistent with the article 38 of the Constitution, which is inappropriate as these two legal provisions govern different matters.

He explains that the article 233 of the Law N0 68/2018 of 30/08/2018 determining offenses and penalties in general, intended to prevent and punish the offense of humiliation of national authorities of a public service in the performance or in connection with the performance of

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his/her duties, verbally, by gestures or threats, in writings or cartoons, while the article 39 of the Law N0 60/2018 of 22/08/2018 mentioned above, is aimed at preventing and punishing the offense of publishing rumours through a computer or a computer system, and the perpetrator intends to incite fear, insurrection or violence amongst the population or that may make a person lose their credibility.

He further explains that the article 233 of the Law determining offenses and penalties in general as amended to-date, only punished offense committed against a national authority or national authorities, while the article 39 of the Law N0 60/2018 of 22/08/2018 mentioned above, provides for the offense of publishing rumours about any person, with its consequences which include inciting fear, insurrection or violence amongst the population or make a person lose their credibility.

He further explains that the article 39 of the Law N0 60/2018 of 22/08/2018 mentioned above, does not prohibit Rwandan citizens in general, or journalists in particular, from freedom of opinions; rather, it requires them to exercise caution in what they publish, since no one has the freedom to knowingly publish rumours that may have harmful consequences as outlined in that provision; therefore, the fact in Mugisha Richard's case RS/INCONST/SPEC00002/2018/SC decided on 24/04/2019, the Supreme Court upheld the repeal of the article 233 of the Law determining offenses and Penalties in general, does not constitute a basis for repealing the article 39 of the Law N0 60/2018 of 22/08/2018 mentioned

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above, since the two provisions govern different matters and repealing it would mean that freedom of press, of expression, and access to information would be exercised in a manner that prejudices public order and good morals, endangers the protection of youth and children, or infringes on a citizen's right to honor and dignity, and the right to personal and family privacy.

He further explains that the Government of Rwanda determines that the fact that courts in some countries have ruled that defamation should not be treated as a criminal offense does not mean that the article 39 of the Law N0 60/2018 of 22/08/2018 mentioned above, is in contradiction with

the Constitution, since there are also other countries whose laws criminalize defamation, such as Canada, which prescribes imprisonment of not more than five years (Criminal Code of Canada: Section 300), Singapore, which prescribes imprisonment of not more than two years (Penal Code of Singapore: article 500), and Belgium, which prescribes imprisonment of not more than one year (Penal Code: article 444).

He concludes by stating that, based on the foregoing elucidations, the Government of Rwanda requests the Supreme Court to declare that the article 39 of the Law N0 60/2018 of 22/08/2018 mentioned above, is not inconsistent with article 38 of the Constitution and that the petition filed by Ibambe Jean Paul, is unfounded. DETERMINATION OF THE COURT

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Jean Paul Ibambe states that the article 39 of the Law N0 60/2018 of 22/08/2018 mentioned above, in the last subparagraph of its first paragraph, provides the following: ... “or may make a person lose their credibility”, should be repealed because it is inconsistent with article 38 of the Constitution which guarantees freedom of expression.

The Court finds that although Jean Paul Ibambe filed a claim challenging the entirety of the article 39 of the Law N0 60/2018 of 22/08/2018 mentioned above, during the pre-trial conference of 06/02/2025, he and his counsels clarified that the provision they consider to be unconstitutional is the subparagraph of the first paragraph which states that ... “any person who knowingly, through a computer or a computer system, publishes rumours that may have a person lose their credibility, commits an offense”; therefore, it is that subparagraph which should be examined to determine whether it contradicts article 38 of the Constitution.

Article 38 of the Constitution provides that “Freedom of press, of expression and of access to information are recognized and guaranteed by the State. Freedom of expression and freedom of access to information shall not prejudice public order, good morals, the protection of youth and children, the right of every citizen to honour and dignity and protection of personal and family privacy. Conditions for exercising and respect for freedom of press, of expression and of access to information are determined by law”.

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The provisions of article 38 of the Constitution have been explained in various cases decided by the Supreme Court, including the case RS/SPEC00001/2018/SC decided on 24/04/2019, wherein the party was Mugisha Richard. In that case, the Court explained that freedom of expression consists of expressing one’s opinions without fear, as well as the right to seek, receive, and disseminate information and ideas everywhere. It further held that since freedom of press, of expression, and the right to access to information are guaranteed by the Constitution, any law or provision thereof that undermines those freedoms, is unconstitutional³. The Court reiterated the same interpretation in case RS/INCONST/SPEC00003/2021/SC decided on 25/03/2022, wherein the party was Byansi Samuel Baker⁴.

The right guaranteed under the article 38 of the Constitution is also provided for in the following International Conventions ratified by Rwanda : a. Article 19 of the Universal Declaration of Human Rights provides that “everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart

3 See Judgment RS/SPEC00001/2018/SC rendered by the Supreme Court on 24/04/2019, Mugisha Richard, paragraph 65 4 See Judgment RS/INCONST/SPEC00003/2021/SC rendered on 25/03/2022, Byansi Samuel Baker, paragraph 36.

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information and ideas through any media and regardless of frontiers⁵. b. Article 196, paragraph 2 and 3 of the International Covenant on Civil and Political Rights provides for the following: i. “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. ii. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: for respect of the rights or reputations

5 Universal Declaration of Human Rights. (1948) UN General Assembly Resolution 302.2, article 19 states that: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. 6 International Covenant on Civil and Political Rights, article 19, Al. 2 & 3 states that: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: a) for respect of the rights or reputations of others”.

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of others; for the protection of national security or of public order or of public health or morals. c. The African Charter on Human and Peoples’ Rights, in its article 97, paragraphs 1 and 2, provides for the following: i. “Every individual shall have the right to receive information”. ii. “Every individual shall have the right to express and disseminate his opinions within the law”. The Court finds that, both in the Constitution and in the International Treaties mentioned, freedom of press is an inviolable right. However, in all these treaties, a limitation has been provided to the effect that this freedom must not infringe upon other rights, including the citizen’s right to dignity and honor. This was further emphasized by the United Nations Human Rights Committee in 2011, it clarified that the exercise of freedom of expression and the right to access to information must not undermine public order or the citizen’s right to dignity and

honor⁸.

7 African (Banjul) Charter On Human and Peoples' Rights (Adopted 27 June 1981, OAU Doc.CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986): article 9, al. 1 & 2 states that: "Every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law". 8 General Comment No 34, adopted by the UN Human Rights Committee in 2011, in its article 9, paragraph 3, Paragraph 3 expressly states that: "the exercise of the right to freedom of expression carries with it special duties and responsibilities. For this reason, two limitative areas of restrictions on the right are permitted, which may relate either to respect of the rights or reputations of others

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Among the grounds relied upon by Ibambe Jean Paul in claiming that the subparagraph of first paragraph of the article 39 of the Law N0 60/2018 of 22/08/2018 mentioned above is inconsistent with the Constitution, is the case RS/INCONST/SPEC00002/2018/SC decided by the Supreme Court on 24/04/2019 wherein the party was Mugisha Richard in its paragraph 101, the Court held that the article 233 of the Law N0 68/2018 of 30/08/2018 determining offenses and penalties in general as amended, which provided that "any person who, verbally, by gestures or threats, in writings or cartoons, humiliates one of national authorities or persons in charge of public service referred to in that article, commits an offense", contradicts the article 38 of the Constitution, as it infringed upon freedom of expression.

Before analyzing the submission of the claimant against the article 39 of the Law N0 60/2018 of 22/08/2018 mentioned above, the Court finds that it is necessary to first clarify the distinction between the offense of humiliation of national authorities and persons in charge of public service, and the offense of publication of rumours that may make a person lose their credibility through a computer or a computer system.

The offense of humiliation of national authorities and persons in charge of public service, which had been provided for under the article 233 of the Law N0 68/2018 of 30/08/2018 determining offenses and penalties in general repealed by the

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or to the protection of national security or of public order (ordre public) or of public health or morals".

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RS/INCONST/SPEC00002/2018/SC, consisted of acts of verbally, by gestures or threats, in writings or cartoons, humiliates a member of Parliament when exercising his/her mandate, a member of the Cabinet, security officers or any other person in charge of a public service in the performance or in connection with the performance of his/her duties.

The offense of publication of rumours, as provided under the article 39 of the Law N0 60/2018 of 22/08/2018 mentioned above, consists of any acts of, knowingly and through a computer or a computer system, publishing rumours that may incite fear, insurrection or violence amongst the population or that may make a person lose their credibility.

When jointly considering those articles, the Court finds that the offense of humiliation of national authorities and persons in charge of public service and the offense of publication of rumours that may incite fear, insurrection or violence amongst the population or that may make a person lose their credibility, differ from their constituent elements in the following way: a. The offense of humiliation of national authorities and persons in charge of public service was composed of the following:

- i. The existence of an act of humiliation; ii. The fact that the act was committed verbally, by gestures or threats, writings or cartoons; iii. The fact that the act was performed against members of Parliament, members of the

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Government, security officers, or any other person in charge of public service in the performance or in connection with the performance of his/her duties. b. The offense of publication of rumours consists of the following: i. The existence of the act of publication of rumours; ii. The fact that the perpetrator was aware that the published information was false; iii. The fact that such act was performed through computer or computer system; iv. The fact that the published rumours may incite fear, insurrection or violence amongst the population or that may make a person lose their credibility.

In further examining the distinction between the offense of humiliation of national authorities and persons in charge of public service and the offense of publication of rumours that may make a person lose their credibility through a computer or a computer system, it is necessary to consider the reason for enacting the Law N0 60/2018 of 22/08/2018 above mentioned and the intended purpose.

As indicated in the report of the meeting of the Parliamentary Committee on Education, Technology, Culture and Youth held on 7 August 2018, which examined the draft Law on Cybercrimes, the Minister in charge of Information, Communication and Technology

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explained that the rationale behind the preparation of this draft, was that, as the Country continues to develop, the use of the internet and other advanced technologies keeps increasing, which in turn results in the emergence of new forms of cyberattacks. He further noted that the development in using digital platforms has led to an increase in cybercrimes, including unauthorized access to information, intellectual property theft, and illegal acquisition of national financial or political information, as well as other unlawful acts.

The Minister also elucidated that, since there are no limits or borders between countries in technology, there is no specific or shared mechanism to manage technological infrastructures. The Minister added that, in order to take measures to prevent and incapacitate those acts, while protecting human rights in the use of technology, each institution must establish its own measures to ensure its security.

The members of the Commission asked why the crimes and penalties provided for in that draft law were not included in Law N0 24/2016 of 18/06/2016 governing Information and Communication Technologies, instead of drafting a new law. The Minister in charge of Information Communication and Technology explained that this⁹ was due to the fact that crimes committed through the use of technology are increasing at an extraordinary rate, with

⁹ See the report of the meeting of the Chamber of Deputies' Committee on Education, Technology, Culture and Youth, held on May 7, 2018, which examined the Draft Law on Cybercrimes, on pages 2 and 3.

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many emerging crimes. The Minister further explained that the speed at which the world is adopting new technologies has led to a rise in cybercrimes, and even existing crimes are being transformed in their commission; therefore, the new law would help to prevent and prosecute cybercrimes¹⁰.

The members of the Commission also indicated that the draft law should have included a new article 39 containing the concept related to the publication of rumours, which was not clearly reflected in the former article 41; they also determined the manner in which that article should be drafted¹¹.

Based on the explanations provided above, the Court finds that the Law N0 60/2018 of 22/08/2018 mentioned above was enacted with the primary objective of protecting human rights in the use of technology; and that is the reason it criminalizes the publication of rumours that may make a person lose their credibility, through a computer or a computer system.

Punishing the offense of publication of rumours that may make a person lose their credibility, through a computer or computer system, is not unique to Rwanda because even in Kenya, the Computer Misuse and Cybercrimes Act of 31/12/2022, in its article 23, provides that a person who, knowingly publishes information that is false in print, broadcast, data or over a computer system, that is calculated or results in panic, chaos, or violence

¹⁰ See the report of May 7, 2018, page 4. ¹¹ See the report of May 7, 2018, page 69.

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among citizens of the Republic, or which is likely to discredit the reputation of any person, commits an offence and shall on conviction, be liable to a fine not exceeding five million shillings (5,000,000 Ksh), or to imprisonment for a term not exceeding ten years⁽¹⁰⁾, or to both¹².

In the case of the State of the Philippines v. Jemerito S. Soliman, the Supreme Court of the Philippines rendered a decision regarding the penalties to be imposed on those convicted of publishing rumours through technological means, particularly defamation. The Court held that the offense of defamation committed through information and communication technology should be punished under the Cybercrime Prevention Act, and that a person convicted of this offense must be punished by a penalty higher than that provided for ordinary defamation. This means that the law created a special treatment for defamation committed through technological means¹³.

The offense of publication of rumours that may make a person lose their credibility, through a computer

¹² The Computer Misuse and Cybercrimes Act, 2018, article 23. ¹³ [G.R. No. 256700. April 25, 2023] People of the Philippines, Petitioner, vs. Jomerito s. soliman, respondent, “the Supreme Court of the Philippines has directly addressed criminal liability for online publication of false information in the context of online libel. The Court affirmed that online libel, libel committed through information and communication technologies is subject to criminal penalties under the Cybercrime Prevention Act, may impose either imprisonment or a fine as a penalty, aligning with the Revised Penal Code as amended. The penalty for online libel is one degree higher than for traditional libel, reflecting the seriousness with which the law treats the online dissemination of false and defamatory information”.

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or computer system, is also reiterated by the legal scholar Cass R. Sunstein, who states that those who publish rumours that can cause serious consequences, either aiming to make some individuals lose their credibility or affecting their personal privacy by false accusations, should deserve criminal sanctions if they publish the information knowing that it is false or without first verifying its accuracy. He emphasizes that for the publication of rumours to be considered a crime, the following elements must be established:

- a. Evidence proving that the information consists of rumours;
- b. Demonstration of serious consequences resulting from its publication¹⁴.

He further states that anyone who publishes information intended for various individuals on social media should understand the way in which it is published, since immediately such information, including rumours, can be spread to hundreds, thousands, or even millions of people by a simple press of a button¹⁵.

14 Sunstein, Cass R. *Liars: Falsehoods and free speech in an age of deception*. Oxford University Press, 2021, page 171 & 172, “For the most harmful and demonstrably false rumors, those destroying reputations and livelihoods through provably false claims about specific individual’s criminal sanctions may be appropriate when speakers know the information is false or act with reckless indifference to its falsity”. He emphasizes that this approach requires proof of actual malice and demonstrable serious harm, a high but appropriate bar for criminal punishment”. 15 Ibid., p. 95, “Any discussion of social fragmentation and online behavior requires an understanding of social cascades—above all

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The scholar further states that the research has shown that correcting rumours deliberately published about a person often does not eliminate the impact suffered; rather, it leads to those who saw or heard the rumours continue believing the rumours published about that person¹⁶.

The Court finds that the examples above presented show that, in order to protect a person’s dignity and honour, various countries criminalize the publication of rumours that may make a person lose their credibility, with the aim of respecting, protecting, and safeguarding them¹⁷.

Based on the foregoing explanations, the Court finds that the article 39 of the Law N0 60/2018 of 22/08/2018 above mentioned, is not inconsistent with the article 38 of the Constitution, because the publication of rumours that may make a person lose their credibility through a computer or a computer system infringes upon a citizen’s right to dignity and honour. Thus, the submission of Ibambe Jean Paul that punishing this

because they become more likely when information, including false information, can be spread to hundreds, thousands, or even millions by the simple press of a button”. ¹⁶ Ibid., page 46, “Experimental studies show that corrections often fail to eliminate the effects of previously received misinformation...In fact, corrections sometimes increase people's commitments to false statements”. ¹⁷ See article 13 of the Constitution, which states that the human person is sacred and inviolable. The State has the obligation to have respect for, protect and defend the human person.

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offense infringes on the freedom of press, express opinions, and access to information, is unfounded. III. DECISION OF THE COURT

Holds that the petition filed by Ibambe Jean Paul seeking to declare a subparagraph of article 39 of Law N0 60/2018 of 22/08/2018 on prevention and punishment of cybercrimes, which provides for the publication of rumours that may make a person lose their credibility through a computer or a computer system, inconsistent with article 38 of the Constitution of the Republic of Rwanda, is unfounded.

Holds that the subparagraph of article 39 of Law N0 60/2018 of 22/08/2018 on prevention and punishment of cybercrimes, which provides for the publication of rumours that may make a person lose their credibility through a computer or a computer system, is not inconsistent with the article 38 of the Constitution of the Republic of Rwanda

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