

RWANDA / JUDGMENT

UBUSHINJACYAHA v NTIRANDEKURA

RPAA 00347/2025/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v NTIRANDEKURA

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Text

Page 1

UBUSHINJACYAHA v NTIRANDEKURA [Rwanda URUKIKO RW'UBUJURIRE - RPAA 00347/2025/CA (Kanyange, P.J.) 29 Nzeri 2025] Amategeko agenga imiburanishirize y'imanza – Imanza nshinjabyaha – Ubujurire – Gutanga ingingo y'ubujurire - Kujurira bikorwa mu gihe giteganyijwe cy'iminsi mirongo itatu (30), hagaragazwa ibinengwa urubanza rujuririrwa, ibigomba gukosorwa, impamvu ari amakosa n'uburyo yakosorwa; mu gihe ingingo y'ubujurire itanzwe nyuma y'igihe giteganywa n'itegeko, iyo mpamvu y'ubujurire ntigomba kwakirwa ngo isuzumwe mu gihe bigaragara ko ituzuzwa cyangwa ngo isobanure ingingo y'ubujurire yatanze hubahirijwe ibihe. Incamake y'ikibazo: Ntirandekura yasambanyije umwana w'umukobwa wiswe I.C w'imyaka 16, arangije aramutorokana bajya kuba kure y'iwabo. Nyuma y'igihe gito, yaje guta uwo mukobwa na we asubira iwabo abimenyesha inzego z'umutekano, Ntirandekura atangira gukurikiranwa. Ubushinjacyaha bwamureze mu Rukiko Rwisumbuye rwa Gasabo icyaha cyo gusambanya umwana byakurikiwe no kubana nk'umugabo n'umugore, aburana yemera icyaha avuga ko uwo mukobwa na nyina bamubwiye ko afite imyaka 19. Urukiko rwasanze uregwa ahamwe n'icyaha ashinjwa, rumukatira igihano cy'igifungo cy'imyaka 20, hashingiwe ku kwemera kwe n'imvugo z'abatangabuhamya. Ku wa 04/05/2021, uregwa yajuririye icyo cyemezo mu Rukiko Rukuru avuga

ko atishimiye imikirize y'urwo rubanza, ko ibindi bisobanuro azabitanga mu mwanzuro azohereza, iyo myanzuro ayitanga ku wa 01/11/2021 no ku wa 20/02/2023. Urukiko Rukuru rwasanze ubujurire butagomba kwakirwa kuko bwatanzwe nyuma y'igihe giteganywa n'amategeko. Uregwa na none yajuririye icyo cyemezo mu Rukiko rw'Ubujurire, hasuzumwa ikibazo cyo kumenya niba Urukiko Rukuru rwarirengagije imbogamizi (covid 19) yatumye Ntirandekura Théophile adatangira impamvu z'ubujurire ku gihe. Asobanura ko yaburanye mu bihe bya Covid aho bitari byoroshye kubona kopi y'urubanza kuko byasabaga kuyisomerwa, ababikeneye bakagomba gutegereza, aho agereweho nibwo yatanze imyanzuro y'inyongera isobanura iyari yatanze mbere. Ubushinjacyaha busobanura ko uregwa yarengeje ibihe byo kujurira kuko urubanza yajuririraga rwaciwe ku wa 16/04/2021, kopi yarwo ishyirwa muri IECMS ku wa 24/04/2021, ajurira ku wa 04/05/2021 mu gihe giteganywa n'amategeko ariko ntiyatanga impamvu z'ubujurire ahubwo azitanga bwa mbere ku wa 01/11/2021 asaba kugabanyirizwa igihano, naho ku wa 20/02/2023 atanga undi mwanzuro asaba kugirwa umweme. Incamake y'icyemezo: Kujurira bikorwa mu gihe giteganyijwe cy'iminsi mironko itatu (30), hagaragazwa ibinengwa urubanza rujuririrwa, ibigomba gukosorwa, impamvu ari amakosa n'uburyo yakosorwa; mu gihe ingingo y'ubujurire itanzwe nyuma y'igihe giteganywa n'itegeko, iyo mpamvu y'ubujurire ntigomba kwakirwa ngo isuzumwe mu gihe bigaragara ko ituzuzwa cyangwa ngo isobanure ingingo y'ubujurire yatanze hubahirijwe ibihe. Ubujurire, ntabwo bwakiriwe.

Page 2

Nta mategeko yashingiweho Imanza zifashishijwe: RCOMAA 00071/2017/SC, Mbuto Aimable na BRD Ltd. rwaciwe n'Urukiko rw'Ikirenga ku wa 26/10/2018; RPAA 00159/2024/CA, Ubushinjacyaha na Habimana Valens rwaciwe n'Urukiko rw'Ubujurire ku wa 17/04/2025. Urubanza I. IMITERERE Y'URUBANZA

- [1] Ntirandekura Théophile akurikiranweho icyaha cyo gusambanya umwana w'imyaka 16 wahawe izina rya I.C mu manza zabanje, byakurikiwe no kubana nawe nk'umugabo n'umugore, uyu mwana akaba yaravuze ko batangiye kubana kuva ku wa 27/04/2020 bagatandukana ku wa 05/07/2020 ubwo yamusigaga mu Ruhango, bimenyekanye atangira gukurikiranywa n'inzego z'iperereza. [2] Nyuma y'iperereza Ubushinjacyaha bwareze Ntirandekura Théophile mu Rukiko Rwisumbuye rwa Gasabo icyaha cyo gusambanya umwana byakurikiwe no kubana nk'umugore n'umugabo, bushingiye ku kuba yaremeye icyaha, ku imvugo z'abatangabumya no kuri raporo y'ubuyobozi bw'inzego z'ibanze, bumusabira igifungo cya burundu. [3] Ntirandekura Théophile yaburanye yemera icyaha anasaba imbabazi, avuga ariko ko ajya kubana na I.C, we na nyina bamubwiye ko afite imyaka cumi n'icyenda (19). [4] Urukiko rwaciye urubanza n° RP 01064/2020/TGI/GSBO ku wa 16/04/2021, rusanga Ntirandekura Théophile yarakoze icyaha akurikiranweho kuko yacyemeye kandi bigashimangirwa na I.C umushinja, abatangabuhamya hamwe na raporo y'ubuyobozi bw'inzego z'ibanze, rusanga kandi ibyo kuba nyina wa I.C yari yamubwiye ko afite imyaka 19 nta shingiro bifite, kuko uyu yabihakanye mu Bugenzacyaha kandi akaba ari nawe wafashe iya mbere ajya kumurega, ko n'ubuyobozi bw'inzego z'ibanze bumaze kubimenya bwababwiye ko yabanye na I.C ataruzuzwa imyaka y'ubukure ariko ahitamo

kumutorokana amujyana mu Ruhango. Ku birebana n'igihano, rwasanze kuba yaremeye icyaha bikorohereza ubutabera mu kumenya ukuri byamubera impamvu nyoroshyacyaha, rumuhanisha igifungo cy'imyaka 20. [5] Ntirandekura Théophile yajuririye urwo rubanza mu ibaruwa yakiriwe mu buyobozi bw'Igororero abarizwamo ku wa 04/05/2021, avuga ko atishimiye imikirize y'urubanza rwa mbere, ko ibindi azabitanga mu mwanzuro azohereza, iyo myanzuro ayitanga ku wa 01/11/2021 no ku wa 20/02/2023. [6] Ubushinjacyaha bwatanze inzitizi yo kutakira ubwo bujuriye kuko bwatanzwe impitagihe, naho Ntirandekura Théophile avuga ko byatewe n'ibihe bya covid ko kandi nta bundi bushobozi yari afite.

Page 3

- [7] Urukiko rwaciye urubanza n° RPA 00822/2021/HC/KIG ku wa 10/03/2025, rushingira ku murongo watanze mu rubanza N° RCOMAA 00071/2017/CS rwaciye n'Urukiko rw'Ikirenga ku wa 26/10/2018 haburana Mbuto Aimable na BRD uvuga ko ingingo iyo ariyo yose itanzwe nyuma y'ibihe ntarengwa byo kujurira, uretse iyuzuza cyangwa isobanura iyatanze mu bihe byemewe byo kujurira, itagomba kwakirwa, rusanga ubujuriye bwa Ntirandekura Théophile butakwagirwa, ko ibyo avuga ko yatinze kujurira kubera covid nta kuri kurimo, kuko yandika umwanzuro wa mbere nta cyari kumubuza kugaragaza impamvu z'ubujuriye. Rwasanze kandi n'ubwo urubanza rujuririrwa rwashizwe muri IECMS ku wa 24/04/2021, Ntirandekura Théophile yaragombaga kumenya ko umunsi wa nyuma wo gutanga impamvu z'ubujuriye bwe wari ku wa 23/05/2021, rwemeza ko ubujuriye bwe butakiriwe. [8] Ntirandekura Théophile yajuriye mu Rukiko rw'Ubugurire, urubanza ruhabwa N° RPAA 00866/2024/CA, iburanisha ribera mu ruhamu ku wa 09/09/2025 Ntirandekura Théophile yunganiye na Me Munini Patrick, Ubushinjacyaha buhagarariye na Gakwerere Javan, Umushinjacyaha ku rwego rw'Igihugu. [9] Mu myanzuro y'ubujuriye no mu miburanire, Ntirandekura Théophile n'umwunganira bavuga ko yajurijwe n'uko Urukiko rwirengagije imbogamizi (covid 19) yatumye adatangira impamvu z'ubujuriye ku gihe. [10] Uhagararariye Ubushinjacyaha avuga ko iyo mpamvu nta shingiro ifite, kuko Ntirandekura Théophile yajuriye mu gihe giteganywa n'amategeko na kopi y'urubanza iri muri dosiye (IECMS), ko ntacyari kumubuza gutanga impamvu z'ubujuriye bwe ku gihe. [11] Impaka kuri iyi ngingo zishingiye ku kumenya niba Urukiko Rukuru rwarirengagije imbogamizi (covid 19) yatumye Ntirandekura Théophile adatangira impamvu z'ubujuriye bwe ku gihe. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba Urukiko Rukuru rwarirengagije imbogamizi (covid 19) yatumye Ntirandekura Théophile adatangira impamvu z'ubujuriye ku gihe [12] Ntirandekura Théophile n'umwunganira bavuga ko yaburanye mu Rukiko Rwisumbuye ari mu bihe bya covid 19 aburanira kuri skype ari mu Igororero, asomerwa ku wa 16/04/2021 bakiri mu bihe bya covid, ajurira ku wa 04/05/2021 agaragaza ko azohereza umwanzuro nyuma kubera ko gusoma dosiye bitari byoroshye bitewe n'ubwinshi bw'abantu babaga biyandikishije bagendera ku rutonde, ko aho yagereweho aribwo yakoze umwanzuro, ko rero ibyo bitari kumubera inzitizi yo kutakira ubujuriye bwe mu gihe byatewe na covid kandi atari umwihariko kuri we gusa. [13] Mu rwego rw'amategeko, bashingira ku ngingo ya 278 y'Itegeko n°22/2028 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza

z'imbonezamubano,iz'ubucuruzi, iz'umurimo

Page 4

n'iz'ubutegetsil, n'ingingo ya 262 y'Itegeko n°027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha², ngo kuko covid ari impamvu ikomeye kandi idasanzwe igomba gutuma ikibazo cy'umuntu wari ufunze wagize imbogamizi zo kutagaragaza impamvu z'ubujurire ku gihe kitabwaho. [14] Uhagarariye Ubushinjacyaha avuga ko ubujurire bwa Ntirandekura Théophile nta shingiro bufite, kuko urubanza yajuririraga rwaciwe ku wa 16/04/2021, kopi yarwo ishyirwa muri IECMS ku wa 24/04/2021, ajurira ku wa 04/05/2021 mu gihe giteganywa n'amategeko ariko ntiyatanga impamvu z'ubujurire ahubwo azitanga bwa mbere ku wa 01/11/2021 asaba kugabanyirizwa igihano, naho ku wa 20/02/2023 atanga undi mwanzuro asaba kugirwa umwere. [15] Asanga rero kuba urubanza rwarasomwe ku wa 16/04/2021 kopi igashyirwa muri IECMS ku wa 24/04/2021 akajurira ku wa 04/05/2021, bigaragaza ko ingamba zo kwirinda covid zitamubujije kumenya imikirize y'urubanza mu bihe biteganywa n'amategeko, kuko yamenye ko yahanishijwe igifungo cy'imyaka 20, izo nagamba rero zikaba zitari kumubuza no kumenya ko kopi yageze muri dosiye kugira ngo atange impamvu z'ubujurire mu gihe giteganywa n'amategeko, cyane cyane ko yajuriye kopi yaramaze gushyirwa muri IECMS. UKO URUKIKO RUBIBONA [16] Ikibazo kijyanye n'igihe impamvu z'ubujurire zigomba gutangirwa cyatanzweho umurongo mu rubanza rubanziriza urundi mu rubanza N° RCOMAA 00071/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 26/10/2018, haburana Mbuto Aimable na BRD Ltd. Muri urwo rubanza, Urukiko rw'Ikirenga rwasobanuye ko kujurira bikorwa mu gihe giteganyijwe cy'iminsi mirongo itatu (30), hagaragazwa ibinengwa urubanza rujuririrwa, ibigomba gukosorwa, impamvu ari amakosa n'uburyo yakosorwa; ko mu gihe ingingo y'ubujurire itanzwe nyuma y'igihe giteganywa n'itegeko, iyo mpamvu y'ubujurire itagomba kwakirwa ngo isuzumwe mu gihe bigaragara ko ituzuzwa cyangwa ngo isobanure ingingo y'ubujurire yatanzwe hubahirijwe ibihe. Uyu murongo washingiweho mu zindi manza uru Rukiko rwaciye, harimo urubanza n° RPAA 00159/2024/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 17/04/2025 haburana Ubushinjacyaha na Habimana Valens. [17] Nk'uko dosiye ibigaragaza, urubanza NoRP 01064/2020/TGI/GSBO Ntirandekura Théophile yajuririye mu Rukiko Rukuru, rwaburanishijwe ku wa 18/03/2021, ababuranyi bamenyeshwa ko ruzasomwa ku wa 16/04/2021, kopi yarwo ishyirwa muri dosiye (IECMS) ku wa 24/04/2021, naho Ntirandekura Théophile yandika ibaruwa y'ubujurire ku wa 04/05/2021 yakirwa uwo munsu mu Buyobozi bw'Igororero abarizwamo. [18] Bigaragara ko mu ibaruwa ye y'ubujurire imaze kuvugwa yakoze mu gihe giteganywa n'amategeko, yavugaga ko ajuririra urubanza rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 16/04/2021 rukamuhanisha igifungo cy'imyaka 20 akaba atarishimiye imikirize y'urwo rubanza, ko ibindi azabishyira mu mwanzuro azohereza. Nk'uko dosiye ibigaragaza, uwo mwanzuro

1 Iteganya ko igihe umuburanyi yakerewe kwiambaza inzira z'ubujurire bitewe n'impamvu zikomeye zitunguranye kandi zidaturutse ku bushake bwe, igihe cyo kujurira cyongerwa kugeza igihe izo mpamvu zirangiriye. 2 Iteganya ko nta gihe cyo kujurira gishobora kongerwa bidatwe n'impamvu zikomeye kandi zidasanzwe, kugeza igihe zirangiriye

Page 5

yawanditse ku wa 01/11/2021 wakirwa mu Buyobozi bw'Igororero abarizwamo uwo muni, yandika undi mwanzuro ku wa 20/02/2023 nawo Ubuyobozi bw'Igororero buwakira uwo muni, avuga ko uvuguruza uwo yatanze ku wa 01/11/2021. [19] Nk'uko byibukijwe mu miterere y'uru rubanza, Urukiko Rukuru ntirwahaye agaciro imiburanire ya Ntirandekura Théophile y'uko yatinze gutanga impamvu z'ubujurire atinze bitewe na covid 19, kuko rwasanze ubwo yandikaga ibaruwa y'ubujurire ntacyari kumubuza gutanga izo mpamvu, rusobanura ko kuba kopi yarashyizwe muri IECMS ku wa 24/04/2021, yagombye kuba yaratanze impamvu ze z'ubujurire bitarenze ku wa 23/05/2021 aho kuba nyuma y'imyaka ibiri. [20] N'ubwo mu bujurire bwa kabiri Ntirandekura Théophile agarura impamvu yaburanishije mu Rukiko Rukuru y'uko gutanga impamvu z'ubujurire atinze byatewe n'ibihe bya covid, Urukiko rw'Ubuja rurasanga ntacyo anenga ibisobanuro Urukiko rwatanze, kuko n'ubwo nta mpaka zihari z'uko Igihugu cyigeze kuba muri ibyo bihe, aho imirimo imwe n'imwe itakomeje gukorwa uko yakorwaga mbere, ariko rukaba rurasanga impamvu atari yo yatumye Ntirandekura Théophile adatangira ku gihe impamvu z'ubujurire bwe, kuko n'ubwo hari mu bihe bya covid nk'uko abivugaga, yashoboye gutanga ibaruwa y'ubujurire ndetse yakirwa n'ababishinzwe umunsi yandikiweho, ndetse ibikubiye muri iyo baruwa byumvikanisha ko yamenye ibyavuye mu rubanza yajuririraga, kuko yavuze igihe rwaciriwe n'igihano yahawe, kandi icyo yasabaga mu mwanzuro yatanze ku wa 01/11/2021 akaba ari uko icyo gihano cyagabanywa, bivuze ko icyo mpamvu yashoboraga no kuyitanga ajurira. [21] Byongeye kandi, bigaragara ko ubwo yatangaga ibaruwa y'ubujurire ku wa 04/05/2021, kopi y'urubanza yajuririraga yari yaramaze gushyirwa muri IECMS (24/04/2021), kandi mu ibaruwa y'ubujurire ntiyavuze impamvu atagaragaje icyo anenga urubanza yajuririye usibye kuvuga gusa ko ibindi bazabibona mu myanzuro azohereza. [22] Hashingiwe ku bimaze gusobanurwa, Urukiko rw'Ubuja rurasanga nka kosa Urukiko Rukuru rwakoze mu kwemeza ko Ntirandekura Théophile yatanze impamvu z'ubujurire atinze, uretse ko zitatanze nyuma y'imyaka ibiri nk'uko rwabivuze kuko rwabishingiye ku mwanzuro yatanze bwa kabiri ku wa 20/02/2023, mu gihe hari uwo yatanze ku wa 01/11/2021 ariko nawo ukaba yaratanze impitagihe, bityo ubujurire bukaba nta shingiro bufite, bivuze ko hagumye igifungo cy'imyaka 20 yahanishijwe n'Urukiko Rwisumbuye rwa Gasabo III. ICYEMEZO CY'URUKIKO [23] Rwemeje ko ubujurire bwatanze na Ntirandekura Théophile nta shingiro bufite; [24] Rwemeje ko imikirize y'urubanza No RPA 00822/2021/HC/KIG rwaciye n'Urukiko Rukuru ku wa 10/03/2025 idahindutse, bivuze ko hagumye igifungo cy'imyaka 20 Ntirandekura Théophile yahanishijwe n'Urukiko Rwisumbuye rwa Gasabo.

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