

RWANDA / JUDGMENT

UBUSHINJACYAHA v. MURAGIJIMANA

RPAA 00027/2023/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA v. MURAGIJIMANA

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Text

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UBUSHINJACYAHA v. MURAGIJIMANA [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00027/2023/CA (Kanyange, P.J.) 24 Mutarama 2025] Amategeko agenga imanza z'inshinjabyaha – Ukutaryozwa icyaha – Uburwayi bwo mu mutwe – Uburwayi bwo mu mutwe butuma hatabaho uburyozwacyaha ni igihe ukurikiranywe afite uburwayi bwo mu mutwe uko bwaba bumeze kose, kuba ubwo burwayi butuma atakaza ubwenge bwe, kuba ubwo burwayi yari abufite mu gihe yakoraga ibikorwa akurikiranyweho. Incamake y'ikibazo: Muragijimana Eric yakurikiranweho n'Ubushinjacyaha icyaha cyo gusambanya umwana w'imyaka 4, bumuregera Urukiko Rwisumbuye rwa Musanze busaba ko ahamwa n'icyaha agahinishwa igihano cy'igifungo cya burundu. Nyuma yuko Muragijimana aburanye ahakana icyaha, Urukiko Rwisumbuye rwa Musanze rwaciye urubanza rwemeza ko ahamwa n'icyaha, rumuhanisha igihano cy'igifungo cya burundu. Muragijimana yajuririye mu Rukiko Rukuru, Urugereko rwa Musanze avuga ko yemera icyaha akurikiranweho, ko ku rwego rwa mbere hari abamushutse bituma agihakana ariko ko amaze kubona ahanishijwe igifungo cya burundu yahisemo kucyemera no kuvugisha ukuri, maze bikaba bashingirwaho akagabanyirizwa igihano. Urukiko Rukuru Urugereko rwa Musanze rwaciye urubanza rwemeza ko ubujurire bwe nta shingiro bufite, rugumishaho igifungo cya

burundu yahanishijwe ku rwego rwa mbere rushingiye ku kuba yarasambanyije umwana uri munsu y'inyaka 14 kandi itegeko riteganyako ko ukoze icyo cyaha ahanishwa igihano cy'igifungo cya burundu. Muragijimana yajuririye mu Rukiko rw'Ubujurire, mu iburanisha ry'urwo rubanza umwunganira avugako Muragijimana ashobora kuba afite ikibazo cyo mu mutwe, asaba ko yasuzumwa na muganga ubifitiye ububasha kugira ngo yemeze niba koko afite ikibazo cyo mu mutwe. Urukiko rwemeje ko Muragijimana asuzumwa na muganga wo mu bitaro bivura indwara zo mu mutwe by'I Ndera, Mu isubukurwa ry'urubanza, Muganga wo mu bitaro bivura indwara zo mu mutwe by'I Ndera yatanze raporo igaragaza ko afite ikibazo cya depression psychotique ndetse abisobanurira Urukiko, Urukiko narwo rukora iperereza ry'inyongera nyuma yuko rubisabwe n'Ubushinjacyaha. Uwunganira Muragijimana yasabye Urukiko ko uwo yunganira ataryozwa icyaha akurikiranweho kuko yagikoze afite uburwayi bwo mu mutwe nk'uko biteganywa n'ingingo ya 85 N° 68/2018 ryo ku wa 30/08/2018 riteganyako ibyaha n'ibihano muri rusange, bityo rukemeza ko igifungo cya burundu yari yahanishijwe kivuyeho. Ubushinjacyaha buvugako hashingiwe ku byagaragajwe na raporo ya muganga n'ibisobanuro muganga yatanze hamwe n'ibyagaragajwe n'iperereza ry'inyongera, Muragijimana ataryozwa icyaha yakoze kuko yagikoze afite uburwayi bwo mu mutwe. Incamake y'icyemezo: Uburwayi bwo mu mutwe butuma hatabaho uburyozwacyaha ni igihe ukurikiranywe afite uburwayi bwo mu mutwe uko bwaba bumeze kose, kuba ubwo burwayi butuma atakaza ubwenge bwe, kuba ubwo burwayi yari abufite mu gihe yakoraga ibikorwa akurikiranyweho. Umuntu ufite uburwayi bwo mu mutwe butuma ataryozwa icyaha ni uwatakaje

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ubushobozi bwo kumva ibyo akora cyangwa ubwo kwiyobora mu bikorwa bye, ariko uburwayi bwo mu mutwe butera ihungabana ariko budatuma umuntu atakaza ubushobozi bwo gushaka no kwigenzura butaba impamvu yo kudakurikiranwa ngo ahanirwe icyaha yakoze. Muragijimana ntagomba kuryozwa icyaha cyo gusambanya umwana kuko afite uburwayi bwo mu mutwe. Igihano cy'igifungo cya burundu yahanishijwe mu manza za mbere kivanyweho. Amategeko yashingiweho: Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyako ibyaha n'ibihano muri rusange, ingingo ya 85 Imanza zifashishijwe: RPA 0216/12/CS; Ubushinjacyaha Vs RUTEMBESA Modeste rwaciye n'Urukiko rw'Ikirenga ku wa 12/10/2018. Urubanza I. IMITERERE Y'URUBANZA [1] Muragijimana Eric yaketsweho gusambanya umwana w'inyaka ine (4) wahawe izina rya U.R mu manza za mbere ubwo ku wa 13/06/2021 yari yajyanye n'abandi bana gutashya inkwi, bimenyekanye atangira gukurikiranwa. [2] Iperereza rirangiye, Ubushinjacyaha bwamureze mu Rukiko Rwisumbuye rwa Rubavu icyaha cyo gusambanya umwana, buvugako ubwo uwo mwana yari kumwe n'abandi bagiye gutashya inkwi, Muragijimana Eric yababwiye ngo baze abahe umutsima n'amata ariko barabyanga, ahita asimukira U.R amujyana mu gihuru aramusambanya, busaba Urukiko ko rwamuhamya icyo cyaha rukamuhamisha igifungo cya burundu. [3] Mu kwiregura Muragijimana yahakanye icyaha, avugako yacyemeye igihe cy'iperereza agira ngo bazamubabarire. [4] Urukiko rwaciye urubanza RP 00359/2021/TGI/RBV ku wa 30/06/2021, rusanga hari ibimenyetso bimuhamya icyaha akurikiranweho bigizwe n'imvugo z'umwana wasambanyijwe, imvugo za Muragijimana mu nzego z'iperereza aho yemeye icyaha,

ubuhamya bwa Mukandutiye Bernadette na raporo ya muganga igaragaza ko uwo mwana yasambanyijwe, maze rwemeza ahamwa n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cya burundu. [5] Muragijimana Eric yajuriye mu Rukiko Rukuru, Urugereko rwa Musanze avuga ko yemera icyaha akurikiranweho, ko ku rwego rwa mbere hari abamushutse bituma agihakana ariko ko amaze kubona ahanishijwe igifungo cya burundu yahisemo kucyemera no kuvugisha ukuri, maze bikaba bashingirwaho akagabanyirizwa igihano.

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[6] Ubushinjacyaha bwashubije ko ubujurire bwa Muragijimana Eric budakwiye guhabwa agaciro, kuko yaburanye ku rwego rwa mbere ahakana icyaha ariko Urukiko rugaragaza ibimenyetso bikimushinja, ko rero nta kosa rwakoze mu kumuhanisha igifungo cya burundu kuko nta mpamvu nyoroshyacyaha yigeze agaragaza ngo ruzirengagize. [7] Urukiko rwaciye urubanza RPA 00753/2021/HC/MUS ku wa 18/10/2022, rusanga hashingiwe kubyo Itegeko riteganyako usambanyije umwana utagejeje ku myaka cumi n'ine (14) ahanishwa igifungo cya burundu ko kandi kidashobora kugabanywa¹, ibyo Muragijimana Eric asaba atabyemererwa n'Itegeko, maze rwemeza ko ubujurire bwe nta shingiro bufite, rugumishaho igifungo cya burundu yahanishijwe ku rwego rwa mbere. [8] Muragijimana Eric yatanze ubujurire bwa kabiri mu Rukiko rw'Ubujurire, urubanza rwandikwa kuri RPAA 00027/2023/CA, ruhambwa itariki yo kuburanishwa yo ku wa 07/03/2024, uwo munsiruburanishwa yunganiwe na Me Rugeyo Jean, Ubushinjacyaha buhagarariye na Gakwerere Javan, Umushinjacyaha ku rwego rw'Igihugu. [9] Muri iryo buranisha, Me Rugeyo Jean yagaragaje impungenge z'uko uwo yunganira ashobora kuba afite ikibazo cyo mu mutwe hashingiwe kubyo avuga no kuba yaramubwiye ko yageze muri Gereza bakamuha imiti imubaza kuvugavuga, ko rero yasuzumwaga na muganga ubifitiye ububasha kugira ngo yemeze niba koko afite ikibazo cyo mu mutwe, uhagarariye Ubushinjacyaha nawe avuga ko n'ubwo icyo kibazo ntaho Muragijimana yigeze akivugaho, mu nyungu z'ubutabera hakubahirizwa icyifuzo cy'umwunganira, maze Urukiko rufata icyemezo ko Muragijimana Eric asuzumwaga na muganga wo mubataro bivura indwara zo mu mutwe. [10] Urubanza rwongeye kuburanishwa ku wa 17/11/2024, Urukiko rwumva ibisobanuro bya muganga wo ku Bitaro bivura indwara zo mu mutwe by'i Ndera ku birebana na raporo yakoze n'ababuranyi bahabwaga umwanya wo kugira icyo babivugaho, ariko biba ngombwa ko hakorwa iperereza ry'inyongera nk'uko byifujwe n'Ubushinjacyaha rigamije kuzuza ibyo muganga atashoboye kumenya, bituma urubanza rwongera kuburanishwa ku wa 16/01/2025 kugira ngo Ubushinjacyaha busobanure ibyavuye muri iryo perereza. [11] Muri uru rubanza hakaba hagomba gusuzumwaga niba, hashingiwe kuri raporo ya muganga wasuzumye Muragijimana Eric no ku byagaragajwe n'iperereza ry'inyongera, atagomba kuryozwa icyaha cyo gusambanya umwana yahamijwe n'inkiko zabanje. II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO

Kumenya niba Muragijimana Eric atagomba kuryozwa icyaha cyo gusambanya umwana yahamijwe n'inkiko za mbere [12] Me Rugeyo Jean avuga ko hashingiwe ku byagaragajwe na raporo ya muganga no ku bisobanuro muganga yatangiye mu Rukiko ndetse n'ibyavuye mu iperereza ry'inyongera, Muragijimana Eric ataryozwa icyaha akurikiranweho kuko yagikoze afite uburwayi bwo mu

1 Ingingo ya 4 y'itegeko N°69/2019 ryo ku wa 08/11/2019 rihindura itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange

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mutwe nk'uko biteganywa n'ingingo ya 85 N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, Urukiko rukemeza ko igifungo cya burundu yari yahanishijwe kivuyeho. Avuga kandi ko nubwo muganga yasobanuye ko mu gihe yafata imiti neza yaba muri sosiyete nta kibazo ateje, asanga kuba iperereza ryaragaragaje ko umuntu wo mu muryango we washoboye kuboneka ari sekuru nawe ushobora kuba akuze, bivuze ko atashobora kumukurikirana kugira ngo afate imiti neza, ko ahubwo asanga yakwitabwaho nibitaro bivura indwara zo mu mutwe kugeza igihe bazabona ko akwiye kubana n'abandi. [13] Uhagarariye Ubushinjacyaha nawe avuga ko hashingiwe ku byagaragajwe na raporo ya muganga n'ibisobanuro muganga yatanze hamwe n'ibyagaragajwe n'iperereza ry'inyongera, Muragijimana Eric ataryozwa icyaha yakoze kuko yagikoze afite uburwayi bwo mu mutwe. Nawe avuga ko hari impungenge z'uko yasubira muri sosiyete, ko ashigikiye igitekerezo cy'uko yakurikiranwa ari mu bitaro. UKO URUKIKO RUBIBONA [14] Ku byerekeye impamvu zituma hatabaho uburyozwacyaha, ingingo ya 85 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange iteganya ko : "Nta buryozwacyaha bubaho iyo 1° ushinjwa ari umwana utarageza ku myaka cumi n'ine (14); 2° ushinjwa yari afite uburwayi bwo mu mutwe mu gihe yakoraga icyaha. Uwitesheje ubwenge yabishatse mu gihe cyo gukora icyaha ariyozwa icyaha yakoze n'ubwo yaba yaritesheje ubwenge atagambiriye gukora icyaha". [15] Ku birebana n'uburwayi bwo mu mutwe butuma hatabaho uburyozwacyaha, mu rubanza RPA 0216/12/CS rwaciye ku wa 12/10/20182, Urukiko rw'Ikirenga rwasobanuye ko uburwayi bwo mu mutwe butuma hatabaho uburyozwacyaha ari igihe ukurikiranywe afite uburwayi bwo mu mutwe uko bwaba bumeze kose, kuba ubwo burwayi butuma atakaza ubwenge bwe, kuba ubwo burwayi yari abufite mu gihe yakoraga ibikorwa akurikiranyweho, ko rero umuntu ufite uburwayi bwo mu mutwe butuma ataryozwa icyaha ari uwatakaje ubushobozi bwo kumva ibyo akora cyangwa ubwo kwiyobora mu bikorwa bye, ariko ko uburwayi bwo mu mutwe butera ihungabana ariko budatuma umuntu atakaza ubushobozi bwo gushaka no kwigenzura butaba impamvu yo kudakurikiranwa ngo ahanirwe icyaha yakoze. [16] Nk'uko byavuzwe haruguru, uru Rukiko rwasabye ko Muragijimana Eric asuzumwa na muganga wo mu bitaro bivura indwara zo mu mutwe mu rwego rwo kumenya niba yaba afite uburwayi bwo mu mutwe. Raporo yakozwe n'ibitaro bivura indwara zo mu mutwe by'i Ndera yagaragaje ko Muragijimana afite uburwayi bwa depression psychotique, muganga wamusuzumye witwa Ntirenganya Schadrack akaba yarasobanuriye Urukiko ko isuzuma ryagaragaje ko afite uburwayi bwo mu mutwe bw'ubwoko bubiri, agahinda (dépression) n'uburwayi bwo mu mutwe bweruye; ko uburwayi bw'agahinda bugaragazwa n'ibimenyetso birimo kwigunga, kutagira icyo yitaho,

kwiya, kudashaka kwegera abandi, naho uburwayi bwo mu mutwe bukagaragazwa no kwivugisha nk'aho hari abo bavugana, isuku itari ku kigero nk'icy'abandi, kubona abantu nk'aho bashaka kumugirira nabi, kuvuga ibintu bitari ku murongo, kudatekereza neza.

2 Haburana Ubushinjacyaha na RUTEMBESA Modeste

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[17] Yasobanuye ko ibyo bimenyetso ari byo byatumye hemezwa ko afite *dépression psychotique*, anavuga ko ubwo burwayi bushobora gukomoka ku ruhererekane rwo mu miryango, ko bibazo umuntu yahuye nabyo, ku mihindagurikire y'imisemburo y'ubwonko cyangwa ibiyobyabwenge ariko ko byo ntabwo basanganye Muragijimana Eric. Yasobanuye kandi ko ubufite ubwo burwayi atamenya ingaruka z'ibyo akora kuko hari n'igihe yumva amajwi amubwira ibyo agomba gukora, naho ku birebana n'igihe yaba amaranye ubwo burwayi, avuga ko nubwo batamenya igihe bwamufatiye, imyitwarire ye igaragaza ko yari abusanganwe ariko umuryango we ntubimenye, anavuga ko afashe imiti neza yaba muri sosiyete nta kibazo. [18] Naho mu iperereza ry'inyongera ryakozwe n'Ubushinjacyaha, habajijwe uwitwa Mvukiyehe Evariste asobanura ko ari sekuru wa Muragijimana, wasobanuye ko nyuma y'urupfu rw'umuhungu we akaba se wa Muragijimana, nyina yamutaye afite nk'amezi atatu arererwa aho kwa sekuru, anavuga ko amaze kwigira hejuru yatangiye kujya yigunga ndetse bakajya bamubura bakaza gusanga yaraye mu kibara, ko babonaga afite ikibazo abanyamasengesho bakamusengera. Ibyo Mvuyekure yasobanuye byanemejwe n'uwitwa Imanirikumpa Anastase akaba n'umukuru w'Umudugudu, kuko nawe yasobanuye ko nyina wa Muragijimana yamutaye akiri uruhinja, ko amaze kuba ingimbi yatangiye kujya arara mu kibara, ko nyirakuru yamusengeraga kuko bwibwiraga ko ari amadayimoni, ko byageze aho bakamubura burundu nyuma bakaza kumva yo afunzwe. [19] Hashingiwe kuri raporo ya muganga wasuzumye Muragijimana Eric no ku bisobanuro yatanze igihe cy'iburanisha, Urukiko rurasanga byumvikansha ko afite uburwayi bwo mu mutwe, ubwo burwayi kandi nkuko muganga yabisobanuye bukaba butuma atamenya ingaruka z'ibyo akora. Nubwo kandi muganga yavuze ko batashoboye kumenya igihe ubwo burwayi bwatangiriye ngo Urukiko rumenye niba yari abufite icyaha gikorwa, Urukiko rurasanga ibyagaragajwe n'iperereza ry'inyongera byumvikanisha ko na mbere yo gukora icyaha Muragijimana yari afite imyitwarire y'umuntu ufite ikibazo, anafite ibimenyetso nk'ibyo muganga yavuze ko biranga ufite uburwayi bwo mu mutwe nko kwigunga, bityo hahujwe ibyo raporo yagaragaje, ibisobanuro bya muganga n'ibyavuye mu iperereza ry'inyongera, Muragijimana akaba yarakoze icyaha afite uburwayi bwo mu mutwe. [20] Urukiko rurasanga rero, hashingiwe ku ngingo ya 85 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru no ku rubanza RPA 0216/12/CS rwavuzwe mu haruguru (igika cya 15), Muragijimana Eric ataryozwa icyaha cyo gusambanya umwana yagihamijwe mu manza za mbere, bityo igihano yahawe kikaba kivanyweho. [21] Urukiko rurasanga kandi kuba uburwayi Muragijimana Eric afite butuma atamenya ingaruka z'ibyo akora, no kuba muganga yarasobanuye ko afashe imiti neza yaba muri sosiyete nta kibazo, byumvikana ko umuryango we ugomba kumuba hafi, ariko ntacyakwemeza Urukiko ko yabona

umukurikiranira hafi, haba mu rwego rwo kuba atagira ibindi bikorwa yakora byakwangiriza abandi cyangwa mu rwego rwo gukurikirana ko afata imiti neza, harebwe ko umubyeyi wagombye kumwitaho yamutaye, bikanagaragara ko nta wundi wamwitagaho kuko na sekuru yavuze ko hashize igihe baramubuze, bityo kubera izo mpamvu akaba akwiye kuba yitabwaho n'ibitaro bivura indwara zo mu mutwe kugeza igihe cyose hataramenyakana niba hari abo mu muryango we bashobora kumwitaho.

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III. ICYEMEZO CY'URUKIKO [22] Rwemeje ko Muragijimana Eric atagomba kuryozwa icyaha cyo gusambanya umwana yari akurikiranyweho, kuko afite uburwayi bwo mu mutwe; [23] Rwemeje ko igihano cy'igifungo cya burundu yahanishijwe mu manza za mbere kivanyweho; [24] Rutegetse Ubushinjacyaha kumushyikiriza ibitaro bivura indwara zo mu mutwe kugira ngo abe ari byo bimukurikirana igihe cyose hataramenyakana niba hari abo mu muryango we bashobora kumwitaho no kumuba hafi; [25] Ruvuze ko amagarama y'urubanza aherera ku isannduku ya Leta.

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