

RWANDA / JUDGMENT

UBUSHINJACYAHA vs. HABINEZA OBED

RPAA 00292/2023/CA

COURT

Court of Appeal

DECIDED

29 November 2024

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UBUSHINJACYAHA vs. HABINEZA OBED

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Text

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UBUSHINJACYAHA vs. HABINEZA OBED [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00292/2023/CA (Mukandamage, P.J.) 29 Ugushyingo 2024] Amategeko agenga imanza nshinjabyaha – icyaha cyo gusambanya umwana w'imyaka cumi n'itanu (15) y'amavuko – Kugabanyirizwa ibihano mu bujurire – Mu rwego rw'ibirego nshinjabyaha, iyo abaregwa nta kindi banenga urubanza rwajuririwe, uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo Ubujurire bufite ishingiro. Incamake y'ikibazo: Habineza Obed ufite imyaka makumyabiri (20) y'amavuko aregwa kuba mu bihe bitandukanye uhereye mu mwaka wa 2018, yarasambanyije umwana witwa N. V. w'imyaka cumi n'itandatu (16) y'amavuko amutera inda babana nk'umugabo n'umugore, ariko ahita amwirukana amaze kubyara. Nyuma yaho murumuna wa N. V. witwa N. H. w'imyaka cumi n'itanu (15) y'amavuko yagiye kwa muganga basanga nawe atwite, afite n'indwara zandurira mu mibonano mpuzabitsina, umwana avuga ko inda yayitewe na Habineza Obed, hanyuma uyu ashyikirizwa Ubugenzacyaha. Nyuma y'iperereza, Ubushinjacyaha bwatanze ikirego mu Rukiko Rwisumbuye rwa Karongi, burega Habineza Obed icyaha cyo gusambanya abana babiri (2) bavukana, busaba ko ahamwa n'icyo

cyaha, maze agahanishwa igifungo cya burundu. Habineza Obed yaburanye yemera ko yasambanyije uwitwa N. V. babyarana umwana, naho ko N. H. atigeze amusambanya, ariko nyuma yaho aza kwemera ko bombi yabasambanyije amaze gusomerwa raporo y'Abahanga ku ipimwa rya ADN. Nyuma yaho yahakanye nanone raporo ya ADN avuga ko atayemera, asaba ko yakongera agapimwa. Urukiko Rwisumbuye rwa Karongi rwasanze Habineza Obed adahamwa n'icyaha cyo gusambanya N. V. w'imyaka cumi n'itandatu (16) kubera ko babanye adasobanukiwe imyaka ye, ariko ko hari ibimenyetso bigaragaza ko yasambanyije umwana N. H. (murumuna wa N. V.), hanyuma rumuhamya icyaha cyo gusambanya N. H. akamutera inda, rumuhanisha igifungo cy'imyaka makumyabiri (20). Habineza Obed yajuririye Urukiko Rukuru, Urugereko rwa Rusizi avuga ko yemera icyaha, asaba imbabazi no kugabanyirizwa igihano yahawe. Uhagarariye Ubushinjacyaha yavuze ko Habineza Obed yagabanyirijwe igihano, kuko yahawe igihano gito itegeko riteganyiriza icyaha yakoze. Urukiko Rukuru, Urugereko rwa Rusizi nyuma yisesengura rwasanze ubujurire bwa Habineza Obed bufite ishingiro, maze rushingiye ku mpamvu y'uko yemera icyaha akagisabira imbabazi no kuba ari ubwa mbere akurikiranwe mu butabera, rumugabanyiriza igihano, rumuhanisha igifungo cy'imyaka cumi n'itanu (15).

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Habineza Obed yajuririye mu Rukiko rw'Ubujurire avuga ko Urukiko Rukuru, Urugereko rwa Rusizi rwamugabanyirije igihano kigera ku myaka cumi n'itanu (15) y'igifungo, rushingiye ku mpamvu y'uko yemeye icyaha no kuba ari ubwa mbere yari agikoze, bityo agasaba ko cyakongera kugabanywa hashingiwe ku ngingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyira ibyaha n'ibihano muri rusange, hanyuma agahanishwa igifungo cy'imyaka icumi (10). Uhagarariye Ubushinjacyaha avuga ko impamvu Habineza Obed atanga asaba kongera kugabanyirizwa igihano zaburanyweho mu bujurire bwe bwa mbere mu Rukiko Rukuru, Urugereko rwa Rusizi, kandi ko Urukiko rwemeye kukigabanya, bityo urubanza rwajuririwe rukaba rudakwiraye guhindurwa, kuko igihano yahawe cy'igifungo cy'imyaka cumi n'itanu (15) gikwiranye n'uburemere bw'icyaha yakoze, kikaba kidakwiye kugabanywa, cyane cyane ko aburana ku rwego rwa mbere yahakanye icyaha. Incamake y'icyemezo: 1. Mu rwego rw'ibirego nshinjabyaha, iyo abaregwa nta kindi banenga urubanza rwajuririwe, uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo Ubujurire bufite ishingiro.

2. Urukiko rw'Ubujurire rwasanze icyaha Habineza Obed yakoze cyo gusambanya umwana w'imyaka cumi n'itanu (15) akanamutera inda yagikoze akiri muto afite imyaka makumyabiri (20) y'amavuko aribwo akiva mu bwana, iyo akaba ari impamvu nyoroshyacyaha yiyongera ku zashingiweho n'urukiko rwabanje, zirebewe hamwe zikaba zatuma yongera kugabanyirizwa igihano, bityo agahanishwa igifungo cy'imyaka cumi (10). Amategeko yashingiweho: Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganyira ibyaha n'ibihano muri rusange, ingingo ya 49 Imanza zifashishijwe: Urubanza RPA 00060/2021/CA rw'Ubushinjacyaha, Nsabimana Callixte alias Sankara na bagenzi be Imanza zifashishijwe, rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022; Urubanza RPAA 00496/2022/CA rw'

Ubushinjacyaha na Niyomugisha Martin, rwaciwe n'Urukiko rw'Ubujurire ku wa 30/05/2024. Urubanza I. IMITERERE Y'URUBANZA [1] Habineza Obed bita Mutuyimana aregwa kuba, mu bihe bitandukanye uhareye mu mwaka wa 2018, yarasambanyije umwana witwa N. V. w'imyaka cumi n'itandatu (16) y'amavuko amutera inda babana nk'umugabo n'umugore, ariko ahita amwirukana, N. V. abyara umwana amwita Uwase Emelyne. Nyuma ku wa 09/04/2019, murumuna wa N. V. witwa N. H. w'imyaka cumi n'itanu (15) y'amavuko yagiye kwa muganga basanga nawe atwite, afite n'indwara zandurira mu mibonano mpuzabitsina, umwana avuga ko inda yayitewe na Habineza Obed, hanyuma uyu ashyikirizwa Ubugenzacyaha.

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- [2] Nyuma y'iperereza, Ubushinjacyaha bwatanze ikirego mu Rukiko Rwisumbuye rwa Karongi, burega Habineza Obed icyaha cyo gusambanya abana babiri (2), busaba ko ahamwa n'icyo cyaha, agahanishwa igifungo cya burundu giteganywa n'ingingo ya 133 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange. [3] Habineza Obed yaburanye yemera ko yasambanyije uwitwa N. V. babyarana umwana, naho ko N. H. atigeze amusambanya, aza kwemera ko bombi yabasambanyije amaze gusomerwa raporo y'Abahanga ku ipimwa rya ADN, ariko nyuma yisubiraho avuga ko raporo ya ADN yakorewe kuri we n'umwana N. H. atayemera, asaba ko yakongera agapimwa. [4] Mu rubanza RP 00289/2019/TGI/KNG rwaciwe ku wa 11/06/2020, Urukiko Rwisumbuye rwa Karongi rwasanze Habineza Obed adahamwa n'icyaha cyo gusambanya N. V., kubera ko babanye adasobanukiwe imyaka ye, ariko ko hari ibimenyetso bigaragaza ko yasambanyije umwana N. H. (murumuna wa N. V.), birimo imvugo z'uwo mwana na raporo y'ipimwa rya ADN yakozwe ku bipimo byafashwe hagati ye n'umwana wabyawe na N. H. yagaraje ko bafitanye isano, hanyuma rumuhamya icyaha cyo gusambanya N. H. akamutera inda, rumuhanisha igifungo cy'imyaka makumyabiri (20). [5] Habineza Obed yajuririye Urukiko Rukuru, Urugereko rwa Rusizi avuga ko yemera icyaha, asaba imbabazi no kugabanyirizwa igihano yahawe. Uhagarariye Ubushinjacyaha yavuze ko Habineza Obed yagabanyirijwe igihano, kuko yahawe igihano gito itegeko riteganyiriza icyaha yakoze. [6] Mu rubanza RPA 00276/2020/HC/RSZ rwaciwe ku wa 20/04/2023, Urukiko Rukuru, Urugereko rwa Rusizi rwasanze ubujurire bwa Habineza Obed bufite ishingiro, maze rushingiye ku mpamvu y'uko yemera icyaha akagisabira imbabazi no kuba ari ubwa mbere akurikiranwe mu butabera, rumugabanyiriza igihano, rumuhanisha igifungo cy'imyaka cumi n'itanu (15). [7] Habineza Obed yajuririye Urukiko rw'Ubujurire, urubanza ruhabwa RPAA 00292/2023/CA, ruburanishwa mu ruhamwe ku wa 11/11/2024, Habineza Obed yunganiwe na Me Rwimo Clotilde, naho Ubushinjacyaha buhagarariwe na Bunyoye Grâce, Umushinjacyaha ku rwego rw'Igihugu. [8] Mu myanzuro no mu miburanire, Habineza Obed avuga ko yaburanye yemera icyaha, kandi ko bwari ubwa mbere akurikiranwe mu butabera, agasaba ko igihano yahawe cyakongera kugabanywa. Uhagarariye Ubushinjacyaha avuga ko igihano Habineza Obed yahawe gihwanye n'uburemere bw'icyaha yakoze, ko rero kitakongera kugabanywa. [9] Ikibazo kigomba gusuzumwa muri uru rubanza ni icyo kumenya niba igihano Habineza

Obed yahawe n'Urukiko rukuru, Urugereko rwa Rusizi cyakongera kugabanywa. II.
ISESENGURA RY'IKIBAZO KIGIZE URUBANZA: Kumenya niba igihano Habineza Obed yahawe n'Urukiko Rukuru, Urugereko rwa Rusizi cyakongera kugabanywa [10] Habineza Obed n'umwunganira bavuga ko Urukiko Rukuru, Urugereko rwa Rusizi rwamugabanyirije igihano kigera ku myaka cumi n'itanu (15) y'igifungo, rushingiye ku mpamvu

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y'uko yemeye icyaha no kuba ari ubwa mbere yari agikoze, bagasaba ko cyakongera kugabanywa hashingiwe ku ngingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, hanyuma agahanishwa igifungo cy'imyaka icumi (10). [11] Uhagarariye Ubushinjacyaha avuga ko impamvu Habineza Obed atanga asaba kongera kugabanyirizwa igihano zaburanyweho mu bujurire bwe bwa mbere mu Rukiko Rukuru, Urugereko rwa Rusizi, kandi ko Urukiko rwemeye kukigabanya. [12] Uhagarariye Ubushinjacyaha avuga kandi ko ibyakozwe n'Umucamanza wo mu bujurire bwa mbere bikwiye kandi bikurikije amategeko, kuko Habineza Obed atabashije kugaragara inenge cyangwa amakosa arimo, bityo urubanza rwajuririwe rukaba rudakwiriye guhindurwa, kuko igihano yahawe cy'igifungo cy'imyaka cumi n'itanu (15) gikwiranye n'uburemere bw'icyaha yakoze, kikaba kidakwiye kugabanywa, cyane cyane ko aburana ku rwego rwa mbere yahakanye icyaha. UKO URUKIKO RUBIBONA [13] Ku bijyanye no kugabanyirizwa igihano mu gihe ariyo mpamvu y'ubujurire yonyine, byatanzweho umurongo mu rubanza RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022 haburana Ubushinjacyaha, Nsabimana Callixte alias Sankara na bagenzi be, uwo murongo ukaba uvuga ko mu rwego rw'ibirego nshinjabyaha, iyo abaregwa nta kindi banenga urubanza rwajuririwe, uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo hakurikijwe ibiteganywa n'ingingo ya 49 y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, ariko ko mu bujurire, Umucamanza agomba kuzirikana ko yemerewe gusa guhindura igihano cyatanzwe n'Umucamanza wo mu rukiko rubanza, ari uko amaze kugaragaza ko urwo rukiko rwaba rwarakoresheje nabi itegeko cyangwa ubushishozi bwawo mu gutanga icyo gihano. Uyu murongo wakurikijwe mu manza zitandukanye zakurikiyeho zaciwe n'uru Rukiko, harimo n'urubanza RPAA 00490/2023/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 27/09/2024, haburana Ubushinjacyaha na Ngarukiye Samuel. [14] Mu bika bikurikira harasuzumwa niba mu guhanisha Habineza Obed igifungo cy'imyaka cumi n'itanu (15) ku cyaha cyo gusambanya umwana w'imyaka cumi n'itanu (15) y'amavuko akamutera inda, urukiko rwabanje rwaba rwarakoresheje nabi itegeko cyangwa ubushishozi bwawo ku buryo icyo gihano cyagabanywa. [15] Bigaragara mu manza zabanje ko, aburana ku rwego rwa mbere, Habineza Obed yagiye yivuguriza yemera icyaha ubundi akagihakana, Urukiko Rwisumbuye rwa Karongi rushingiye ku bimenyetso rwashyikirijwe n'Ubushinjacyaha rumuhamya icyaha cyo gusambanya umwana w'imyaka cumi n'itanu (15) y'amavuko akamutera inda, rumuhanisha igifungo cy'imyaka makumyabiri (20). Mu bujurire Habineza Obed yemeye icyaha asaba kugabanyirizwa igihano, Urukiko Rukuru, Urugereko rwa Rusizi rwasanze Habineza Obed yaremeye icyaha kandi

ari ubwa mbere agikoze, rumugabanyiriza igihano kigera ku gifungo cy'imyaka cumi n'itanu (15).

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[16] Urukiko rw'Ubujurire rurasanga icyaha Habineza Obed yakoze cyo gusambanya umwana w'imyaka cumi n'itanu (15) akanamutera inda cyaragize ingaruka zikomeye ku mwana wagikorewe, kuko cyatumye agira inshingano za kibyezi kandi nawe akiri umwana ukeneye kurerwa, ariko icyo cyaha yagikoze akiri muto afite imyaka makumyabiri (20) y'amavuko aribwo akiva mu bwana, iyo akaba ari impamvu nyoroshyacyaha yiyongera ku zashingiweho n'urukiko rwabanje, zirebwe hamwe zikaba zatumye yongera kugabanyirizwa igihano. [17] Urukiko rw'Ubujurire rurasanga, mu kugabanya igihano, Habineza Obed yahawe, hashingirwa ku ngingo ya 2 (b) y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 rigena ibyaha n'ibihano muri rusange no ku zindi manza zaciwe n'uru Rukiko hashingiwe kuri iryo tegeko, harimo urubanza RPAA 00496/2022/CA rwaciwe ku wa 30/05/2024, haburana Ubushinjacyaha na Niyomugisha Martin warezwe icyaha cyo gusambanya umwana w'imyaka cumi n'ine (14) y'amavuko akamutera inda, agikora we afite makumyabiri (20) y'amavuko agabanyirizwa igihano ahanishwa igifungo cy'imyaka icumi (10) kubera ko yakoze icyaha akiri mu myaka y'ubuto, kandi ari ubwa mbere akurikiranwe mu butabera mu buryo buzwi, bityo Habineza Obed akaba agomba guhanishwa igifungo cy'imyaka cumi (10) nk'icyo Niyomugisha Martin yahawe. [18] Urukiko rw'Ubujurire rurasanga rero, hashingiwe ku ngingo ya 2 (b) y'Itegeko N° 59/2023 ryo ku wa 04/12/2023, urubanza rwatanze umurongo byavuzwe haruguru, no ku bisobanuro bimaze gutangwa, ubujurire bwa Habineza Obed bugamije kugabanyisha igihano yahawe n'Urukiko Rukuru, urugereko rwa Rusizi bufite ishingiro, urubanza yajurirye rukaba rugomba guhinduka gusa ku bijyanye n'igihano. III. ICYEMEZO CY'URUKIKO [19] Rwemeje ko ubujurire bwatanzwe na Habineza Obed bugamije kugabanyisha igihano bufite ishingiro; [20] Rwemeje ko urubanza RPA 00276/2020/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi ku wa 20/04/2023 ruhindutse gusa kubijyanye n'igihano; [21] Rutegetse ko Habineza Obed ahanishijwe igifungo cy'imyaka icumi (10) ku cyaha cyo gusambanya umwana w'imyaka cumi n'itanu (15) ; [22] Ruvuze ko amagarama y'urubanza aherereye ku Isanduku ya Leta, kuko Habineza Obed yajurirye afunze, akaba asonewe kuyatanga.

1 Iyo ngingo iteganya ibikurikira: "Iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano ku buryo bukurikira: ... (b) igifungo kimara igihe kizwi kiva ku mezi 6 kuzamura gishobora kugabanywa, ariko ntikijye munsu ya kimwe cya kabiri (½) cy'igihano gito giteganyirijwe icyaha; (...)" .

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