

RWANDA / JUDGMENT

UBUSHINJACYAHA v. HATEGEKIMANA

RPAA 00886/2024/CA

COURT

Court of Appeal

DECIDED

30 October 2025

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UBUSHINJACYAHA v. HATEGEKIMANA

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Text

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UBUSHINJACYAHA v. HATEGEKIMANA [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00886/2024/CA (Rukundakuvuga, P.J.) 30 Ukwakira 2025] Amategeko agenga imanza z'inshinjabyaha – Gusambanya umwana – Ibikorwa bigize icyaha cyo gusambanya umwana – Igikorwa cyo gukora ku gitsina cy'umwana ugamije ishimishamubiri ubwabyo bigize icyaha cyo gusambanya umwana. Amategeko agenga imanza z'inshinjabyaha – Ibimenyetso – Raporo ya Muganga – Raporo ya muganga igaragaza ko akarangabusugi k'umwana wasambanyijwe ari kazima, si ikimenyetso kihagije kigaragaza ko hatabayeho igikorwa cyo kumusambanya. Incamake y'ikibazo: Hategekimana Damascene yakurikiranyweho n'Ubushinjacyaha icyaha cyo gusambanya umwana, bumuregera Urukiko Rwisumbuye rwa Ngoma busaba ko ahamwa n'icyaha, agahinishwa igifungo cya burundu. Urwo Rukiko rwaciye urubanza rwemeza ko Hategekimana ahamwa n'icyaha, rumuhanisha igifungo cya burundu rushingiye ku mvugo z'umwana wasambanyijwe, iz'umubyeyi we hamwe n'iz'uregwa wemereye mu Bugenzacyaha ko yafashe umwana akamukorakora mu gitsina agamije kwishimisha. Hakizimana ntiyishimiye icyo cyemezo cy'Urukiko, ajuririra mu Rukiko Rukuru, Urugereko rwa Rwamagana avuga ko nta cyaha yakoze, ndetse akavuga ko yaciriwe urubanza hatagendewe kuri raporo ya muganga kandi ko

n'ibyo yemeye byashingiweho yabivuze abitewe no gukubitwa. Urukiko Rukuru, Urugereko rwaciye urubanza rwemeza ko ubujurire nta shingiro bufite, ariko rumugabanyiriza igihano, rumuhanisha igifungo cy'imyaka cumi n'itanu (15) gisimbura icya burundu yari yahawe. Hategekimana yajuririyeye kandi mu Rukiko rw'Ubujurire avuga ko Urukiko Rukuru, Urugereko rwa Rwamagana rwakomeje kumuhamba icyaha hashingiwe ku bimenyetso birimo gushidikanya no kugenekereza bikabije. Mu miburanire ye akavugaga ko mu Bugenzacyaha yemeye icyaha kubera inkoni, ndetse akongeraho ko ibimenyetso birimo raporo ya muganga bitagaragaza ko umwana yasambanyijwe. Ku rundi ruhande Ubushinjacyaha buvugaga ko nta gushidikanya kugaragara mu bimenyetso byashingiweho kuko icyo yakoze ari ukwishimisha bishingiye ku gitsina aho yakorakoraga n'intoki ze ku gitsina cy'umwana wahohotewe. Buvugaga kandi ko uregwa atemeye icyaha mu bugenzacyaha, ahubwo yemeye ko yakorakoye umwana wahohotewe koresheje intoki mu gitsinda. Naho ibyuko yemeye icyaha kubera inkoni ibyo akaba adashobora kubigaragariza ibimenyetso. Incamake y'icyemezo: 1. Igikorwa cyo gukora ku gitsina cy'umwana ugamije ishimishamubiri ubwabyo bigize icyaha cyo gusambanya umwana.

2. Raporo ya muganga igaragaza ko akarangabusugi k'umwana wasambanyijwe ari kazima, si ikimenyetso kihagije kigaragaza ko hatabayeho igikorwa cyo kumusambanya.

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Ubujurire nta shingiro bufite.

Amategeko yashingiweho: Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, Ingingo ya 14. Imanza zifashishijwe: RS/INJUST/RP 00003/2019/SC; Ubushinjacyaha vs Niyonsaba Eric rwaciye n'Urukiko rw'Ikirenga ku wa 28/01/2022. RPAA 00055/2024/CA; Ubushinjacyaha vs Manizabayo Patrick rwaciye n'Urukiko rw'Ubujurire ku wa 28/03/2025. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 05/11/2019 mu gihe cya saa 18h00, mu Mudugudu wa Kampigika, Akagari ka Akinyambo, Umurenge wa Muyumbu, Akarere ka Rwamagana, umwana witwaga U.K.C.1 w'imyaka 4, yavuye mu rugo rwa Nsanzabera Jean Pierre, aho uwitwaga Hategekimana Damascène yakoraga, arira kandi atabasha kugenda neza avugaga ko Hategekimana Damascène yamugiyeye hejuru akamukora ku kanyoni akamubabaza. Hategekimana Damascène bamubajije uko byagenze asobanura ko koko yamugiyeye hejuru umwana akarira, agahita amuvaho akamuterura maze akamukoresha intoki mu gitsina ko ariko atigeze amwinjizamo icye gitsina. Bombi bajanywe kwa muganga ariko bageze ku ivuriro Hategekimana Damascène ariruka, aracika. Yakomeje gushakishwa ku wa 12/11/2019 afatirwa Nyabugogo ahita ashidikirizwa inzego zibishinzwe atangira gukurikiranwa. [2] Nyuma y'iperereza, Ubushinjacyaha bwamuregeye Urukiko Rwisumbuye rwa Ngoma bumukurikiranyeho icyaha cyo gusambanya umwana, bumusabira igifungo cya burundu. Hategekimana Damascène yaburanye ahakana icyaha avugaga ko ibyo yemeye mbere yabitewe n'inkoni. [3] Mu rubanza RP 01119/2019/TGI/NGOMA, rwaciye ku wa 30/03/2021, Urukiko Rwisumbuye rwa Ngoma rwahamije Hategekimana Damascène icyaha, rumuhanisha igifungo cya burundu rushingiye ku mvugo z'umwana wasambanyijwe, iz'umubyeyi we hamwe n'iz'uregwa wemereye mu Bugenzacyaha ko yafashe umwana wiswe U.K.C.

akamukorakora mu gitsina agamije kwishimisha. [4] Hategekimana Damascène ntiyishimiye imikirize y'urubanza ajuririra Urukiko Rukuru/urugereko rwa Rwamagana avuga ko umwana w'umukobwa bamurega gusambanya yamusanze aho yakoreraga ariko ko ntacyo yamukozeho. Avuga ko n'ubwo uwo mwana yajyanywe kwa muganga, uregwa yasabye ko bamwereka raporo ya muganga ntibayimwereka.

1 Izina ryahawe umwana wahohotewe ku bw'umutekano we

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Akavuga ko asanga yaraciriwe urubanza hatagendewe kuri raporo ya muganga kandi ko n'ibyo yemeye byashingiweho yabivuze abitewe no gukubitwa. [5] Mu rubanza RPA 00472/2021/HC/RWG, rwaciwe ku wa 19/08/2024, Urukiko Rukuru/Urugereko rwa Rwamagana rwasanze ubujurire bwe nta shingiro bufite kuko ibyo aburanisha bitavuguruza ibimenyetso byashingiweho buhamuhamya icyaha. icyakora urwo Rukiko rushingiye ku mpamvu nyoroshyacyaha no ku itegeko rishya riteganywa ibyaha n'ibihano muri rusange rwamugabanyirije igihano rumuhanisha igifungo cy'inyaka cumi n'itanu (15) gisimbura icya burundu yari yahawe. [6] Hategekimana Damascène yongeye kujurira mu Rukiko rw'Ubujurire, urubanza rwe ruhabwa RPAA 00886/2024/CA, iburanisha mu ruhamye rishyirwa ku wa 07/10/2025. Uwo munsu ugeze Hategekimana Damascène yitabye ariko atunganiwe, urubanza rwimurirwa ku wa 09/10/2025, maze kuri iyo taliki bwo yitaba yunganiwe na Me Ngenzi Justin, naho Ubushinjacyaha buhagarariwe na Butera Oscar, Umushinjacyaha ku rwego rw'Igihugu. [7] Mu bujurire bwe, Hategekimana Damascène avuga ko Urukiko Rukuru/Urugereko rwa Rwamagana rwakomeje kumuhamya icyaha hashingiwe ku bimenyetso birimo gushidikanya no kugenekereza bikabije. [8] Uhagarariye Ubushinjacyaha avuga ko impamvu z'ubujurire za Hategekimana Damascène nta shingiro zifite kuko ibimenyetso byashingiweho mu kumuhamya icyaha nta gushidikanya cyangwa kugenekereza kugaragamo. [9] Muri uru rubanza harasuzumwa ikibazo cyo kumenya niba hari ugushindikanya kugaragara mu bimenyetso byashingiweho n'Urukiko mu kwemeza ko Hategekimana Damascène ahamwe n'icyaha cyo gusambanya U.K.C. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA kumenya niba hari ugushindikanya kugaragara mu bimenyetso byashingiweho n'Urukiko mu kwemeza ko Hategekimana Damascène ahamwe n'icyaha cyo gusambanya U.K.C. [10] Hategekimana Damascène avuga ko yahamijwe icyaha hashingiwe ku bimenyetso birimo gushidikanya no kugenekereza bikabije kuko Ubushinjacyaha bwamureze gusambanya U.K.C. buvuga ko yinjije igitsina cye mu cy'umwana mu gihe raporo ya muganga yo yaje igaragaza ko umwana atasambanyijwe. Avuga ko Urukiko rwasanze nta bimenyetso bishyigikira ibyo Ubushinjacyaha buvuga rurahindura rumushinja kumusambanya mu buryo bwo kumwishimishaho akoresheje intoki. Avuga ko nyamara ibyo aregwa yabihimbiwe na Ngirababyeyi Thadée se wa U.K.C. kubera amakimbirane bafitanye ashingiye ku kuba yaratanze amakuru ko imbwa ze ari zo zanduje inzu ya shebuja Nsanzabera Peter bigatuma acibwa amafaranga ibihumbi mirongo itatu (30 000 Frw) nawe akavuga ko bitazacira aho. Uregwa avuga ko yakomeje gusaba ko habazwa abazi iby'ayo makimbirane barimo Uwizeyimana ufite tel: 0787481192, Bayingana Jean Claude na Shebuja Nsanzabera Peter, ufite tel: 0788436874, ariko ntibyakorwa.

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[11] Akomeza avuga ko ibivugwa ko yatorotse igihe yari ajoyanwe kwa muganga atari ukuri kuko atigeze atoroka, ahubwo ko yajyanywe agapimwa muganga agasanga nta kimenyetso, akagarurwa mu rugo aho yakoraga. Avuga ko yaje kuhava bukeye kuko yabonaga atangiye kugambanirwa, ahitamo kujya iwabo. Uregwa anenga ubuhamya bwashingiweho bw'abavuze ko abazwa yemeye icyaha kuko abo bose ari inshuti magara z'umurega. Akavuga ko ndetse n'ubuhamya bw'umwana U.K.C w'imyaka ine, butagombaga gushingirwaho kuko bitumvikana uburyo umwana nk'uwo yashobora kubara inkuru y'uko yasambanyijwe kandi no gusambanywa ubwabyo atazi ibyo ari byo. [12] Me Ngenzi Justin, umwunganira nawe ashimangira imvugo z'uwo yunganira, akavuga ko mu gika cya 10 cy'urubanza rujuririrwa Urukiko rwanze guha agaciro iby'uko Hategekimana Damascène yemeye icyaha mu Bugenzacyaha abitewe n'inkoni, nyamara ibimenyetso bigaragaza ko yakubiswe atarashoboye kubibona bitewe n'uko afunzwe, akaba nta buryo bwo gukusanya ibimenyetso nka video recorder cyangwa telephone yashoboraga kubona aho afungiwe. Asobanura ko bitewe n'uburemere bw'iki kibazo, hari ibihugu byashyizeho umurongo ko mu gihe ufunzwe avuze ko yemeye icyaha ku gahato, ubushinjacyaha ari bwo buba bufite inshingano yo kugaragariza Urukiko (burden of proof) ku buryo budashidikanywaho (beyond reasonable doubt) ko uko kwemera kutakozwe ku gahato 2 . Akavuga ko rero no muri uru rubanza, Ubushinjacyaha ari bwo bwari bukwiriye kugaragaza ko nta gahato ako ari ko kose uregwa yashyizwemo kugira ngo yemere icyaha, bitaba ibyo imvugo ye yemera icyaha ntishingirweho. [13] Me Ngenzi Justin avuga kandi ko n'ubuhamya bwashingiweho bugaragaramo gushidikanya gukabije, kuko se w'umwana Ngirababyeyi Thadée yavuze ko umwana akimara kuvuga ko uregwa yamukorakoye, ngo nyina yamujyanye mu nzu akamureba mu gitsina, agasanga yasambanyijwe, nyamara ibyo akaba ari ibinyoma kuko na raporo ya muganga yagaragaje ko umwana atasambanyijwe. Yongeraho ko mu rubanza RPAA 00754/2021/CA, Urukiko rw'Ubujurire rwasobanuye ko Urukiko ari rwo rusuzuma ireme ry'ubuhamya rushingiye ku bumenyi bw'ababutanga n'uburyo basobanura ibyo biboneye cyangwa bumvise, rukabigereranya n'ibindi bimenyetso. Akavuga ko asanga mu rubanza rwajuririwe nta bindi bimenyetso byigeze bitangwa ngo bibe byagereranywa n'imvugo z'abatangabuhamya, kuko kwemera icyaha k'uregwa ko bagaragaje ko kutagombaga gushingirwaho, hakaba nta na raporo ya muganga igaragaza ko umwana yasambanyijwe ndetse n'imvugo z'abatangabuhamya zikaba zirimo gushidikanya. Asoza asaba Urukiko kugira Hategekimana Damascène umwere kuko ibimenyetso byashingiweho bitagaragaza nta shiti ko yakozwe icyaha cyo gusambanya umwana.

2 Avuga ko byavuzwe muri aya magambo 'In England and Wales, section 76 of the Police and Criminal Evidence Act 1984 provides that where there are representations to the court that a confession was or may have been obtained by oppression or in consequence of anything said or done (...) to render the confession unreliable, notwithstanding that the confession may be true, the confession is to be excluded. The burden of proof rests on the prosecution to prove "beyond a reasonable doubt" (i.e. the criminal standard) that it was not obtained in such a way. Oppression includes "torture, inhuman or degrading treatment and the use or threat of violence (whether or

not amounting to torture)”, as well as other inappropriate interviewing practices. In practice this means that if confession is challenged by the defence or by the court (of its own volition), the court must not allow the confession to be given in evidence unless the prosecution can prove that it was not obtained by “oppression”. This is usually done by calling the interviewing officer to give evidence that procedures were followed, there was no ill-treatment, and to produce the tape recording of the interview. (byakuwe muri ‘Nonadmission of evidence obtained by torture and ill treatment: procedures and practices, p.10, UNCAT Exclusionary rule tool 8/2020).

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[14] Uhagarariye ubushinjacyaha avuga ko nta gushidikanya kugaragara mu bimenyetso byashingiweho kuko mu kurega Hategekimana Damascène Ubushinjacyaha bwagaragaje ko icyo yakoze ari ukwishimisha bishingiye ku gitsina aho yakorakoraga n’intoki ze ku gitsina cy’umwana wahohotewe (biragaragara mu mikorere y’icyaha mu nyandiko itanga ikirego). Asobanura ko ubuhamya bwatanzwe bugaragaraza ko Hategekimana Damascène ababajijwe yemeye ko yakorakoye uwo umwana ku gitsina kandi n’umwana wahohotewe akaba yarabwiye ababyeyi be ko umuhungu ukorera kwa Pierre (Hategekimana Damascène) yamugiye hejuru akamukora ku kanyoni (ku gitsina). Uhagarariye Ubushinjacyaha avuga ko ibyo ari byo Hategekimana Damascène yemereye Ubugenzacyaha, ubwo yabazwaga agatangira ahakana icyaha ariko akaza kwiyemerera ko yakorakoye umwana wahohotewe ku gitsina akoresheje intoki. [15] Uhagarariye Ubushinjacyaha avuga ko Hategekimana Damascène abazwa mu Bugenzacyaha, ubwe yiyemereye kandi ko yatorotse akimara gukora icyaha ubwo bari bageze mu marembo yo kwa muganga (reba igisubizo cya 06 mu mpera mu nyandikomvugo ye abazwa mu Bugenzacyaha), abatangabuhamya babajijwe bari bamujyanye kwa muganga barabivuze kandi n’Ubugenzacyaha bwarabigaragaje mu nyandiko isoza iperereza ry’ibanze, akavuga ko rero Hategekimana Damascène n’Umwunganira mu mategeko batabasha kuvuguruza ibisobanuro byatanzwe n’Umucamanza wo mu bujurire ku rwego rwa mbere (mu bika bya 09-11 by’urubanza rujuririrwa), bityo urubanza rwajuririwe rukaba rudakwiriye guhindurwa. [16] Ku bijyanye n’ibyavuzwe na Me Ngenzi Justin ko Ubushinjacyaha ari bwo bufite inshingano yo kugaragaza ko nta gahato Hategekimana Damascène yashyizweho kugira ngo yemere icyaha, asobanura ko Hategekimana Damascène atemeye icyaha abazwa mu Bugenzacyaha, icyo yakoze ari uko ubwe yisobanura yavuze ko yakorakoye umwana wahohotewe ku gitsina akoresheje intoki. Yongeraho ko amategeko y’u Rwanda ateganya ko buri muburanyi ari we ufite inshingano zo gutanga ibimenyetso bishyigikira ibyo avuga. Akemeza ko bidakwiye ko avuga ko itegeko rikoreshewa mu Bwongereza riteganya ibitandukanye n’amategeko y’u Rwanda ryasabirwa gukurikizwa mu Rwanda. Asoza asaba Urukiko rw’Ubujurire kubona ko ibivugwa na Hategekimana Damascène ko yakubiswe nta bimenyetso yabitangiye, bityo ibyo avuga bikaba nta shingiro bifite. UKO URUKIKO RUBIBONA [17] Muri uru rubanza impaka zishingiye ku kumenya niba hari ugushidikanya kugaragara mu bimenyetso byashingiweho n’inkiko zabanje zihamya uregwa icyaha, bigizwe n’ubuhamya bwatanzwe, imvugo z’uregwa n’iz’umwana wahohotewe. [18] Urukiko Rwisumbuye rwa Ngoma n’Urukiko Rukuru/

Urugereko rwa Rwamagana zahamije Hategekimana Damascène icyaha zishingiye ku mvugo z'umwana wahohotewe, iz'abatangabuhamya Ryamungu Cassien, Ngirababyeyi Thadée na Nsanzabera Jean Pierre (shebuja w'uregwa) no ku mvugo z'uregwa mu Bugenzacyaha. Uru Rukiko rurasuzuma niba hari gushidikanya cyangwa inenge bigaragara muri ibyo bimenyetso ku buryo bitagombaga gushingirwaho, inkiko zimuhamya icyaha aregwa cyo gusambanya umwana w'imyaka ine. [19] Mu gutanga ikirego Ngirababyeyi Thadée yasobanuye ko umwana we yavuye kwa Nsanzabera Thadée avuga ko umukozi waho yamukoreye ku kanyoni akamubabaza, ndetse na nyina w'umwana yamugenzura akabona ko umwana yasambanyijwe. Avuga ko yahise ajya kwa

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Nsanzabera Jean Pierre, agasanga aryamye mu cyumba cye, akabwira umukozi ngo nabyutse Shebuja kuko amushaka, bakicara muri salon agatekerereza nyiri urugo ibibaye, bakemeranywa ko bagomba kujyana umwana kwa muganga. Yavuze ko bahamagaye umuturanyi ngo abafashe muri icyo kibazo; yaza bakabaza umukozi niba yababwiza ukuri aho kugirango bahamagare commander wa polisi, umukozi akabemerera kuvugisha ukuri, ndetse akabasaba ko yabaha telefoni n'amafaranga azahembwa uko kwezi ariko bakamubabarira. Uwo mukozi yababwiye ko Bebe yaje akamufata akamujyana mu cyumba, akamwereka filimi, bakaza kuryama akamujya hejuru ariko umwana akababara agataka, ko yagerageje ku muja hejuru inshuro ebyiri yabona akomeje kubabara, akamuterura agakoresha urutoki mu gitsina cye. Se w'umwana kandi yavuze ko bagiye kwa muganga ariko bagera ku marembo y'ibitaro akabacika akagenda. [20] Mu ibazwa ry'umutangabuhamya Nsanzabera Thadée, shebuja w'uregwa we yavuze ko se w'umwana yamusanze iwe avuga ko umukozi we yamusambanyirije umwana, babaza umukozi akabemerera ko yamuryamye hejuru bakina, akamukoza ikiganza ku gitsina hejuru y'ikabutura, avuga ko yabajije umwana akamubwira ngo cya Kadogo cyamukoreye ku kanyoni. Yasobanuye ko uwo mukozi yapfukanye agasaba imbabazi avuga ko nta kindi yakoze uretse gukora hejuru y'ikabutura, ababyeyi bavuga ko badashobora kumubabarira kuko iki cyaha kitababarirwa. Avuga ko bahise bamujyana kuri centre de santé, ariko bageze mu marembo ya centre de sante Damascène aracika ariruka arabasiga. [21] Izi mvugo z'aba batangabuhamya zose zihuriza ku kuba, igikorwa uregwa yemereye imbere yabo ari icyo gukora ku gitsina cy'umwana akoresheje intoki, ndetse n'umwana akaba ariko yabivuze. Bahuriza kandi ku kuba ubwo bajyaga kwa muganga, uregwa yarabacitse agatoroka. Uretse se w'umwana wongeyeho ko uregwa mbere yo gukora ku gitsina cy'umwana yabanje kugerageza ku muja hejuru, umwana yataka undi akabireka, ibindi byose abatangabuhamya batanzeho ubuhamya birahura neza. [22] Mu ibabazwa ry'uregwa ryo ku wa 12/11/20219 mu Bugenzacyaha, yahakanye icyaha. Abajijwe icyo ashingiraho agihakana mu gihe yakemereye imbere y'ababyeyi b'umwana na shebuja asubiza ko atigeze akemera, ko yemeye ko yari mu cyumba n'umwana bakina Billard akajya amukinisha. Ku kibazo cya 6 yabajijwe uko yamukinishaga asubiza ko yamukirigitaga akajya akora ku gitsina ke kuko yari yambaye ikariso n'ijipo ; abajijwe impamvu yamukinishije avuga ko atari yabigambiriye ari ibyaje ako kanya. [23] Ingingo ya 14 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange iteganyaga ko umuntu

ukorera ku mwana kimwe mu bikorwa bishingiye ku gitsina bikurikira, aba akoze icyaha: (a) gushyira igitsina cy'umuntu mu gitsina, mu kibuno cyangwa mu kanwa by'umwana; (b) gushyira urungu urwo ari rwo rwose rw'umubiri w'umuntu mu gitsina cyangwa mu kibuno cy'umwana; (c) gukora ikindi gikorwa cyose ku mubiri w'umwana hagamijwe ishimishamubiri. Mu manza zitandukanye zaciwe n'uru Rukiko rusobanura iby'iyi ngingo, rwemeje ko igikorwa cyo gukora ku gitsina cy'umwana ugamije ishimishamubiri ubwabyo bigize icyaha cyo gusambanya umwana, uruheruka muri uwo mujyo akaba ari urubanza RPAA 00055/2024/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 28/03/2025, Ubushinjacyaha buburana na Manizabayo Patrick (igika cya 18). Muri urwo rubanza, urukiko rwemeje ko ukoreye ku mwana kimwe mu bikorwa biteganywa n'ingingo ya 14 y'itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko n° 68/2018 ryo ku wa 30/08/2018 aba akoze

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icyaha cyo gusambanya umwana kandi nta rwitwazo na rumwe rushobora gusobanura icyatumye umuntu asambanya umwana ku buryo byamuviramo kudahanwa. [24] Muri uru rubanza, uru Rukiko rurasanga ibyo Hategekimana Damascène avuga ko yakoze ku gitsina cy'umwana ngo mu buryo bwo kumukinisha nk'uko yabyemereye imbere y'Ubugenzacyaha ndetse akabyemerera n'imbere y'abatangabuhamya bavuzwe mu gika cya 19 na 20 cy'uru rubanza, nta kindi byari bigamije uretse ishimishamubiri we, kuko imyanya y'ibanga nta kindi cyatuma ikinishwa cyangwa ikorerwaho umukino runaka uretse irari cyangwa ishimishamubiri rigamije kuvubura ubushake mpuzabitsina. Kubera izo mpamvu ibisobanuro bye kuri iyi ngingo by'uko ngo yamukinishije nta kindi agambiriyeye, ngo ari ibyaje ako kanya, bikaba nta shingiro bifite. [25] Naho ibyo yireguza avuga ko yakubiswe n'abatangabuhamya kugira ngo agire ibyo abemerera, ndetse no mu bugenzacyaha akaba yarakomeje kwemera igikorwa cyo gukora ku gitsina cy'umwana ngo kuko yabajijwe ari kumwe n'ababyeyi b'umwana, uru Rukiko rusanga ibyo nta shingiro bifite kuko ibyo gukubitwa nta bimenyetso abatangira uretse kubivuga gusa, naho ibyo kuba mu Bugenzacyaha yarabajijwe hari abamushinja, akaba atari impamvu ifatika yatuma yemerera imbere y'inzego z'ubutabera ibikorwa bigize icyaha atakoze. Ibyo avuga ko umwana w'imyaka ine atari kumenya gusambanywa icyo ari cyo, na byo nta shingiro bifite, kuko mu mvugo zose zagarutswaho, icyo umwana yabwiye ababyeyi be ari uko Hategekimana yamukoze ku kanyoni, bihura n'uburyo we yivugira ko yamukoze ku gitsina hejuru y'ikabutura. [26] Ku bijyanye n'ibyo umwunganizi we avuga ubushinjacyaha ari bwo bufite inshingano yo kugaragaza niba ukwemera icyaha k'uregwa kutarabonetse hakoreshejwe ihohotera, uru Rukiko rurasanga uretse no kuba mu ibazwa ry'uregwa ibikorwa yemeye atarabyemeye agamije kwemera icyaha ahubwo yarabivuze agamije kumvikanisha ko nta gikorwa cyo gusambanya umwana yakoze, ariko kandi nk'uko ingingo ya 4 y'itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso ibiteganywa, ufite icyo yireguza cyangwa aburanisha niwe ufite inshingano yo kukigaragaza; bityo inkiko zo mu Rwanda zikaba nta nshingano zifite yo kugendera ku bivugwa mu mategeko y'ahandi, igihe rufite amategeko abiteganywa ukundi. [27] Ku byo uregwa aburanisha ko hari abatangabuhamya be bataabajijwe nyamara bazi ikibazo yari afitanye n'umuryango w'umwana umushinja cyo kuba se w'umwana yaraciwe amafaranga uregwa ariwe utanze amakuru y'uko

imbwa ze ari zo zanduje kwa Nsanzabera Jean Pierre (Shebuja), bityo akaba ariyo mpamvu amuhimbira icyaha; Urukiko rurasanga hashingiwe ku buryo abatangabuhamya babajijwe basobanuye uko ibintu byagenze, muri abo hakaba harimo na Shebuja Nsanzabera Jean Pierre, uregwa yifuza ko yakongera kubazwa ndetse n'uburyo uregwa ubwe yasobanuye ibyabaye, Urukiko rusanga kubaza abo batangabuhamya ntacyo byahindura ku bimenyetso byashingiweho byasobanuwe mu bika bibanziriza iki kuko ibyo gukinisha igitsina cy'umwana yiyemereye ndetse akabihuriraho n'ababajijwe bose bitahinyuzwa n'ibyo we yita kumwihimuraho kwaba kwarakozwe na se w'umwana umushinja.

3 Iyo ngingo ya 4 y'iryo tegeko igira iti: «Urega cyangwa utanze ikibazo agaragaza ikimenyetso cy'ibyo aregera cyangwa asaba. Uwiregura agaragaza ikimenyetso gishyigikira ukwiregura kwe. Icyakora, umucamanza cyangwa ukemura ikibazo ashobora gutegeka umuburanyi cyangwa umwe mu bafitanye ikibazo cyangwa undi muntu gutanga cyangwa kwerekana ikimenyetso afite».

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[28] Ku birebana no kuba raporo ya muganga yo itarigeze igaragaza ko umwana yasambanyijwe kuko muganga yemeje ko akarangabusugi k'umwana ari kazima, ndetse ko imyanya ndangagitsina ye ari mizima(normal), urukiko rusanga nabyo ntacyo byamararira uregwa kuko icyaha kimuhama nk'uko byasobanuwe mu bika bibanziriza iki ari ugukora ku gitsina cy'umwana hagamijwe ishimishamubiri ; ibi kandi bikaba bidasaba ko habaho byanze bikunze kwinjiza igitsina cye mu cy'umwana ku buryo bigira ingaruka ku karangabusugi. Byongeye kandi, ibyo kwangirika cyangwa kutangirika kw'akarangabusugi nk'ikimenyetso cy'uko habayeho gusambanywa, Urukiko rw'Ikirenga rwabitanzeho umurongo mu rubanza RS/INJUST/RP 00003/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 28/01/2022 haburana Ubushinjacyaha na Niyonsaba Eric. Muri urwo rubanza, urwo Rukiko rwasobanuye ko kuba raporo ya muganga igaragaza ko akarangabusugi k'umwana wasambanyijwe ari kazima atari ikimenyetso kihagije kigaragaza ko hatabayeho igikorwa cyo kumusambanya. Uwo murongo niwo ugikikoreshwa mu manza nyinshi zaciwe n'uru rukiko, uruheruka muri zo, akaba ari urubanza RPAA 00591/2024/CA rwaciwe ku wa 26/02/2025 haburana Ubushinjacyaha na Akoyiremeye Celine (igika cya 23). [29] Urukiko rw'Ubujurire rushingiye kuri ibi bisobanuro rurasanga nta kosa urubanza rwajuririwe rwakoze mu kwemeza ko Hategekimana Damascène ahamwe n'icyaha cyo gusambanya U. K. C w'imyaka 4. Bityo Ubujurire bwe bukaba nta shingiro bufite. III. ICYEMEZO CY'URUKIKO [30] Rwemeje ko Ubujurire bwa Hategekimana Damascène nta shingiro bufite; [31] Rwemeje ko imikirize y'urubanza RPA 00472/2021/HC/RWG rwaciwe n'Urukiko Rukuru/Urugereko rwa Rwamagana ku wa 19/08/2024, idahindutse. [32] Rwemeje ko igihano cy'igifungo cy'imyaka cumi n'itanu (15) Hategekimana Damascène yahanishijwe n'Urukiko Rukuru/Urugereko rwa Rwamagana kigumye; [33] Rutegetse ko Hategekimana Damascène asonewe gutanga amagarama y'urubanza kuko aburana afunze.

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