

RWANDA / JUDGMENT

UBUSHINJACYAHA vs IMANIRANKUNDA

RPAA 00298/2023/CA

COURT

Court of Appeal

DECIDED

21 February 2025

CASE / FILE NUMBER

RPAA 00298/2023/CA

Source: amategeko.gov.rw · Research copy typeset by Esheria. Not court-issued or certified.

UBUSHINJACYAHA vs IMANIRANKUNDA

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2025-02-21
- Case/document no.: RPAA 00298/2023/CA
- Collection: Court of Appeal

Text

Page 1

UBUSHINJACYAHA vs IMANIRANKUNDA [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00298/2023/CA (Mukandamage P.J.) 21 Gashyantare 2025] Amategeko yerekeye ibimenyetso – Ibimenyetso mu manza nshinjabyaha – Mu manza nshinjabyaha, ibimenyetso byose bishobora gushingirwaho mu gihe bigaragaza ukuri kw'ibyabaye (principe de la liberté de la preuve en matière pénale), ababuranyi bakaba barahawe uburyo bwo kuhaba ngo banyomozanye, Urukiko nirwo rwemeza ko ibyo bimenyetso bishobora kwemerwa. Amategeko yerekeye imiburanishirize y'imanza – Guhamagarwa mu rubanza – Guhamagarwa mu rubanza rujuririrwa kimwe no mu rubanza rwo gusubirishamo urubanza ku mpamvu z'akarengane k'utarabisabye cyangwa utarajuriye, biba bigamije gusa guha abahamagajwe muri ubwo buryo umwanya wo gufasha Urukiko kubona umucyo uhagije ku ngingo ziburanwa igihe bibaye ngombwa no kubaha uburyo bwo kurinda uburenganzira bwabo, ariko bakaba ntacyo bakwiye kurwungukiramo cyangwa kuruhomberamo bihungabanya ibyemezo bibareba bafatiwe mu rubanza rujuririrwa/rusubirishwamo ku mpamvu z'akarengane. Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Karongi, Ubushinjacyaha burega Imanirankunda icyaha cyo gusambanya umwana, buvuga ko yasambanyije umwana witwa I. J. w'imyaka ine (4) y'amavuko, bivugwa ko yamujyanye inyuma

y'inzu, amushukisha kumuha ubunyobwa. Nyina w'umwana yuririye ku kirego cy'Ubushinjacyaha, yatanze ikirego cy'indishyi mu izina ry'umwana we I. J., asaba indishyi zingana na miliyoni icumi z'amafaranga y'u Rwanda (10.000.000 Frw). Urwo Rukiko rwaciye urubanza rusanga hari ibimenyetso bigaragaza ko uregwa yakoze icyaha cyo gusambanya umwana, maze rumuhanisha igifungo cya burundu. Ku kirego cy'indishyi, urukiko rwamutegetse guha uwaziregeye ibihumbi mirongo itanu by'amafaranga y'u Rwanda (50.000 Frw) yatanze akurikirana dosiye y'umwana we. Imanirankunda yajuririye Urukiko Rukuru, Urugereko rwa Rusizi avuga ko yahamijwe icyaha atakoze, ko Urukiko Rwisumbuye rwa Karongi rwashingiye ku mvugo z'umwana, rwirengagiza ko ntawamubonye amusambanya, kandi ko igihe bavuga ko yamusambanyirije yari mu rugo arimo gukorera inka isuku, anavuga ko atajyanwe kwa muganga ngo bamupime, asaba ko hakorwa iperereza kugirango abashe kurenganurwa. Uwaregeraga indishyi nawe yavuze ko indishyi yagenewe ari nkeya kandi icyaha cyaragize ingaruka ku mwana, kuko abandi bana bamuserereza bavuga ngo ni umugore, bikaba byaramuteye ihungabana. Urwo Rukiko narwo rwaciye urubanza rusanga ubujurire bwe nta shingiro bufite ariko kuba ari ubwa mbere akoze icyaha no kuba nta ngaruka mbi cyagize ku mwana rumugabanyiriza igihano kigera ku myaka cumi n'itanu (15) y'igifungo, anategukwa gutanga indishyi zingana n'ibihumbi magana abiri na mirongo itanu by'amafaranga y'u Rwanda (250.000 Frw). Uregwa nanone yajuririye mu Rukiko rw'Ubujurire, avuga ko yahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho, ko imvugo ze mu Bugenzacyaha zitagombaga gushingirwaho ahamwa icyo cyaha, kuko mu rukiko rwabanje yasobanuye ko ibyo yemeye yabitewe n'iterabwoba ndetse n'ibikorwa bibabaza umubiri yakorewe, hakaba nta kindi kimenyetso kizunganira. Akomeza anenga ubuhamya bwatanzwe kuko ngo abatangabuhamya ibyo bavuze babibwiwe n'umwana na nyina kandi uyu nawe akaba ataramubonye asambanya umwana we, ahubwo ibyo yavuze ari ibyo yabwiwe n'umwana. Ubushinjacyaha bwo buburana buvuga ko impamvu z'ubujurire zatanze na Imanirankunda nta shingiro zifite, kubera ko ibimenyetso byatanzwe nta gushidikanya kubirimo. Buvuga ko nta bimenyetso Imanirankunda yabashije gutanga bihamya ko yakubiswe kugirango yemere icyaha mu nzego z'iperereza, agasobanura n'uburyo yagikoze, kandi ko ibyo yavuze bihura n'ibyo umwana yabwiye ababyeyi be. Ubushinjacyaha bukomeza buvuga ko nta tegeko ribuza Urukiko gushingira ku buhamya bwatanzwe n'ababwiwe amakuru n'uwahohotewe, ko niba umwana wasambanyijwe yarabwiye nyina ibyamubayeho, uyu akabyereka abandi, abo bantu bagatanga ubuhamya, ntacyabuza ko bushingirwaho.

Page 2

Incamake y'icyemezo: 1. Mu manza nshinjabyaha, ibimenyetso byose bishobora gushingirwaho mu gihe bigaragaza ukuri kw'ibyabaye (principe de la liberté de la preuve en matière pénale), abaturanyi bakaba barahawe uburyo bwo kuhaba ngo banyomozanye, Urukiko nirwo rwemeza ko ibyo bimenyetso bishobora kwemerwa.

2. Uguhamagarwa mu rubanza rujuririrwa kimwe no mu rubanza rwo gusubirishamo urubanza ku mpamvu z'akarengane k'utarabisabye cyangwa utarajuriye, biba bigamije gusa guha abahamagajwe muri ubwo buryo umwana wo gufasha Urukiko kubona umucyo

uhagije ku ngingo ziburanwa igihe bibaye ngombwa no kubaha uburyo bwo kurinda uburenganzira bwabo, ariko bakaba ntacyo bakwiye kurwungukiramo cyangwa kuruhomberamo bihungabanya ibyemezo bibareba bafatiwe mu rubanza rujuririrwa/rusubirishwamo ku mpamvu z'akarengane. Amategeko yashingiweho: Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 133. Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, Ingingo ya 111. Imanza zifashishijwe:

Ubushinjacyaha vs Ndayishimiye Jean Damascène, RPAA 00692/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 20/01/2023. Ubushinjacyaha vs Baziramwabo Fabien, RPAA 00206/2023/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 30/01/2025. NFCS Ltd vs NEXTGEN DEVELOPERS Ltd & Gasirikare Evariste, RCOMAA 00114/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 15/09/2023. Ubushinjacyaha vs Sinamenye Daniel, RPAA 00499/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 28/12/2023.

Ubujurire nta shingiro bufite. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 06/06/2019, Imanirankunda Ernest bita Nkunda yarezwe mu Bugenzacyaha ko yasambanyije umwana witwa I. J. w'imyaka ine (4) y'amavuko, bivugwa ko yamujyanye inyuma y'inzu, amushukisha kumuha ubunyobwa, hanyuma umwana abwira se Senyenzi Jean Damascène uko byagenze. [2] Nyuma y'iperereza, Ubushinjacyaha bwatanze ikirego mu Rukiko Rwisumbuye rwa Karongi burega Imanirankunda Ernest icyaha cyo gusambanya umwana, busaba ko kimuhama agahanishwa igifungo cya burundu giteganywa n'ingingo ya 133 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange. [3] Nyirahagenimana Espérance, yuririye ku kirego cy'Ubushinjacyaha, yatanze ikirego cy'indishyi mu izina ry'umwana we I. J., asaba indishyi zingana na miliyoni icumi z'amafaranga y'u Rwanda (10.000.000 Frw), hakubiyemo indishyi z'akababaro n'ibindi byose yatakaje akurikirana urubanza. [4] Imanirankunda Ernest yaburanye ahakana icyaha aregwa, avuga ko ntawigeze amubona asambanya umwana, ko ibyo yemeye mu nzego z'iperereza yabitewe n'inkoni yakubiswe, akaba yarazivuje ariko nta bimenyetso afite. Naho ku ndwara yagaragaye ko umwana arwaye, Imanirankunda Ernest yavuze ko

Page 3

umwana ashobora kuba yarayitewe na nyina, kuko bizwi ko arwaye trichomonase, avuga kandi ko abamushinja bafite ibyo bapfa mu miryango byatumye bamushinja icyaha atakoze. Ku kirego cy'indishyi Imanirankunda Ernest yavuze ko ntazo agomba gutanga kuko nta cyaha yakoze. [5] Mu rubanza n° RP 00309/2020/TGI/KNG rwaciwe ku wa 30/09/2020, Urukiko Rwisumbuye rwa Karongi rwasanze ibimenyetso byatanzwe n'Ubushinjacyaha bigaragaza ko Imanirankunda Ernest yakoze icyaha cyo gusambanya umwana, birimo imvugo ze mu Bugenzacyaha, ubuhamya bwatanzwe na Nikuze Valentine, ubwa Mukashyaka Thamar, imvugo ya Senyenzi Jean Damascène, se w'umwana, raporo ya Muganga n'icyemezo cy'amavuko kigaragaza ko umwana yasambanyijwe afite imyaka ine (4) y'amavuko, maze rumuhanisha igifungo cya burundu. Ku kirego cy'indishyi, urukiko rwategetse Imanirankunda Ernest guha Nyirahagenimana Espérance ibihumbi mirongo itanu by'amafaranga y'u Rwanda (50.000 Frw) yatanze akurikirana dosiye y'umwana we. [6] Imanirankunda Ernest yajuririye Urukiko Rukuru, Urugereko rwa Rusizi avuga

ko yahamijwe icyaha atakoze, ko Urukiko Rwisumbuye rwa Karongi rwashingiye ku mvugo z'umwana, rwirengagiza ko ntawamubonye amusambanya, kandi ko igihe bavuga ko yamusambanyirije yari mu rugo arimo gukorera inka isuku, anavuga ko atajyanwe kwa muganga ngo amupime, asaba ko hakorwa iperereza kugirango abashe kurenganurwa. Uhagarariye Ubushinjacyaha yavuze ko ubujurire bwa Imanirankunda Ernest nta shingiro bufite, kuko atabashije kuvuguruza ibimenyetso byashingiweho n'urukiko rumuhamya icyaha. [7] Nyirahagenimana Espérance yavuze ko indishyi yagenewe ari nkeya, kandi icyaha cyaragize ingaruka ku mwana, kuko abandi bana bamuserereza bavuga ngo ni umugore, bikaba byaramuteye ihungabana. [8] Mu rubanza n° RPA 00323/2020/HC/RSZ rwaciwe ku wa 15/05/2023, Urukiko Rukuru, Urugereko rwa Rusizi rwasanze ubujurire bwatanzwe na Imanirankunda Ernest nta shingiro bufite, kuko imvugo ze mu Bugenzacyaha ari ikimenyetso kimushinja, ariko rusanga nta kigaragaza ko hari ikindi cyaha yigeze gukurikiranwaho, kandi icyaha yakoze nta ngaruka mbi cyagize ku mwana, hanyuma rumugabanyiriza igihano kigera ku myaka cumi n'itanu (15) y'igifungo, anategukwa gutanga indishyi zingana n'ibihumbi magana abiri na mirongo itanu by'amafaranga y'u Rwanda (250.000 Frw). [9] Imanirankunda Ernest yajuririye Urukiko rw'Ubujurire, urubanza ruhabwa n° RPAA 00298/2023/CA, ruburanishwa mu ruhame ku wa 02/12/2024, Imanirankunda Ernest yunganiwe na Me Mukakalisa Jeanne d'Arc, naho Ubushinjacyaha buhagarariye na Rudatinya Nyangezi Gaspard, Umushinjacyaha ku rwego rw'Igihugu, habanza gusuzumwa niba impamvu z'ubujurire Imanirankunda Ernest yatanze zakwakirwa. [10] Mu rubanza rubanziriza urundi rwaciwe ku wa 20/12/2024, Urukiko rw'Ubujurire rwemeje kwakira impamvu z'ubujurire zatanze na Imanirankunda Ernest, rutegeka Ubwanditsi bw'Urukiko guhamagaza mu rubanza Nyirahagenimana Espérance waregeye indishyi utari warahamagawe. Iburanisha ryapfunduwe ku wa 05/02/2025, Imanirankunda Ernest yunganiwe na Me Umugwaneza Diane, Ubushinjacyaha buhagarariye na Uwizeye Jean Marie, Umushinjacyaha ku rwego rw'Igihugu, naho Nyirahagenimana Espérance ahagarariye na Me Sebazungu A. Catherine. [11] Mu myanzuro no mu miburanire, Imanirankunda Ernest avuga ko yahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho, agasaba ko yagirwa umwere. Uhagarariye Ubushinjacyaha avuga ko ubujurire bwatanzwe na Imanirankunda Ernest nta shingiro bufite, kubera ko ibimenyetso byashingiweho n'urukiko rumuhamya icyaha bidashidikanywaho kandi byuzuzanya. [12] Nyirahagenimana Espérance nawe avuga ko yagenewe amafaranga y'indishyi n'ay'ikurikiranarubanza make, agasaba ko yakongerwa.

Page 4

[13] Ibibazo bigomba gusuzumwa muri uru rubanza ni ibi bikurikira:

- kumenya niba Imanirankunda Ernest yarahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho;
- kumenya niba amafaranga y'indishyi n'ay'ikurikiranarubanza yagenewe Nyirahagenimana Espérance yakongerwa. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

- a. Kumenya niba Imanirankunda Ernest yarahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho. [14] Imanirankunda Ernest n'umwunganira bavuga ko yahamijwe icyaha cyo gusambanya umwana w'imyaka ine (4) y'amavuko hashingiwe ku bimenyetso bishidikanywaho. Bavuga ko imvugo za Imanirankunda Ernest mu Bugenzacyaha zitagombaga gushingirwaho ahamwa icyo cyaha, kuko mu rukiko rwabanje yasobanuye ko ibyo yemeye yabitewe n'iterabwoba ndetse n'ibikorwa bibabaza umubiri yakorewe, hakaba nta kindi kimenyetso kizunganira. Bavuga na none ko mu rubanza n° RPAA 0066/15/CS rwaciwe ku wa 04/01/2019 haburana Ubushinjacyaha na Dusabimana Jeannette, urubanza n° RPA 0229/10/CS rwaciwe ku wa 19/09/2014 haburana Ubushinjacyaha na Nyiransabimana Espérance n'urubanza n° RPA 0042/14/CS rwaciwe ku wa 02/06/2017 haburana Ubushinjacyaha na Nikuze Chantal, Urukiko rw'Ikirenga rwatanze umurongo uvuga ko kwemera icyaha mu nzego z'iperereza kudashobora kuba ikimenyetso cyonyine gishobora gutuma uregwa ahamwa n'icyaha mu gihe nta kindi kimenyetso gifatika kicyunganira. [15] Imanirankunda Ernest n'umwunganira basanga kandi ubuhamya bwatanze na Nikuze Valentine n'ubwa Mukashyaka Thamar nabwo butaragombaga gushingirwaho nk'ibimenyetso bimuhamya icyaha, kuko muri bo ntawamubonye asambanya umwana, ahubwo ibyo bavuze ari ibyo babwiwe n'umwana na nyina, uyu nawe akaba ataramubonye asambanya umwana we, ahubwo ibyo yavuze ari ibyo yabwiwe n'umwana. [16] Imanirankunda Ernest n'umwunganira banavugaga ko Urukiko Rukuru, Urugereko rwa Rusizi rwateye urujijo mu gusobanura raporo ya Muganga, kuko mu gika cya 29 cy'urubanza rujuzirirwa, rwagaragaje ko Muganga wasuzumye umwana yemeje ko yakorewe ihohoterwa rishingiye ku gitsina, naho mu gika cya 34 ruvugaga ko Muganga yemeje ko yasanze ibice bigize igitsina cy'uwo mwana nta kibazo bifite. Ikindi bavugaga nuko ntaho Muganga yagaragaje ko ibyakorewe umwana ari Imanirankunda Ernest wabikoze, akaba nawe rero yaragomba gupimwa kugirango hagaragare ukuri. [17] Imanirankunda Ernest n'umwunganira basoma bavugaga ko Urukiko Rukuru, Urugereko rwa Rusizi rwafashe icyemezo rwirengagije ibiteganywa mu ngingo ya 4 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, n'ingingo ya 107 y'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha¹, kuko rwaciye urubanza mu buryo bugenekereje, ko

1 Ingingo ya 107 iteganyaga ko "Ubushinjacyaha, uwakorewe icyaha cyangwa se abamufiteho burenganzira iyo baregeye indishyi z'akababaro cyangwa biregeye umuburanyi, ni bo bagomba gutanga ibimenyetso byemeza icyaha. Ukurikiranyweho icyaha afatwa nk'umwere igihe cyose urubanza rutaramwemeza icyaha burundu. Iyo icyaha cye kitaragaragazwa, ushinjwa ntagomba gutanga ibimenyetso byo kwiregura. Icyakora, iyo icyaha cyabonewe ibimenyetso bikigaragaza, ugukurikiranyweho cyangwa umwunganira ashobora kwerekana impamvu zose yireguza, zerekana ko ikirego kitakwemerwa, zihamya ko icyo aregwa atari icyaha cyangwa se ko ari umwere n'izindi mpamvu zose zivuguruza izimuhamya icyo cyaha. Uretse igihe itegeko ribiteganyaga ukundi, ku byerekeranye n'itangwa ry'ibimenyetso hakurikizwa itegeko rijyanye n'itangwa ry'ibimenyetso."

Page 5

rero hashingirwa ku ngingo ya 1112 y'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru akagirwa umwere kubera gushidikanya. [18] Uhagarariye Ubushinjacyaha avuga ko impamvu z'ubujurire zatanze na Imanirankunda Ernest nta shingiro zifite, kubera ko ibimenyetso byatanze nta gushidikanya kubirimo. Avuga ko nta bimenyetso Imanirankunda Ernest yabashije gutanga bihamya ko yakubiswe kugirango yemere icyaha mu nzego z'iperereza, agasobanura n'uburyo yagikoze, kandi ko ibyo yavuze bihura n'ibyo umwana yabwiye ababyeyi be. [19] Uhagarariye Ubushinjacyaha avuga ko nta tegeko ribuza Urukiko gushingira ku bihamya bwatanze n'ababwiye amakuru n'uwahohotewe, ko niba umwana wasambanyijwe yarabwiye nyina ibyamubayeho, uyu akabyereka abandi, abo bantu bagatanga ubuhamya, ntacyabuza ko bushingirwaho igihe cyose bwasesenguwe n'Urukiko, nk'uko byemejwe mu rubanza n° RPAA 00754/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 24/04/2023, haburana Ubushinjacyaha na Iradukunda Jean Marie Vianney, ko kuba umutangabuhamya afitanye isano n'uwahohotewe cyangwa ari uwahohotewe ubwe, ubwabyo bidatesha agaciro ubuhamya kandi ko urukiko arirwo rusuzuma ireme ry'ubuhamya rushingiye ku bumenyi bw'ababutanga n'uburyo basobanura ibyo biboneye cyangwa bumvise, rukabigereranya n'ibindi bimenyetso; uyumurongo ukaba warakomeje kugenderwaho mu manza zitandukanye zaciwe n'urwo Rukiko. [20] Uhagarariye Ubushinjacyaha avuga ko ibirebana nuko Imanirankunda Ernest atapimishijwe, bitatesha agaciro ibindi bimenyetso, kuko Muganaga yasuzumye umwana agasanga yasambanyijwe, ibyo bikaba bihagije kuko nta wundi muntu umwana yerekanye, kandi nawe ubwe akaba yaratangiye yemera icyaha anasobanura neza uburyo yagikoze. UKO URUKIKO RUBIBONA [21] Impaka muri uru rubanza zishingiye ku kumenya niba Imanirankunda Ernest yarahamijwe icyaha cyo gusambanya umwana w'imyaka ine (4) y'amavuko hashingiwe ku bimenyetso bishidikanywaho. [22] Kubyerekeranye n'ibimenyetso mu manza n'itangwa ryabyo, mu rubanza n° RPAA 00692/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 20/01/2023, haburana Ubushinjacyaha na Ndayishimiye Jean Damascène, hasesenguwe ingingo ya 119 y'Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo³, harebwe cyane cyane ku mwihariko w'imanza nshinjabyaha, maze urukiko rusobanura ko mu manza nshinjabyaha, ibimenyetso byose bishobora gushingirwaho mu gihe bigaragaza ukuri kw'ibyabaye (principe de la liberté de la preuve en matière pénale), ababuranyi bakaba barahawe uburyo bwo kuhaba ngo banyomozanye, kandi ko Urukiko arirwo rwemeza ko ibyo bimenyetso bishobora kwemerwa. Iri hame ryashingiweho mu zindi manza zakurikiyeho zaciwe n'uru rukiko, harimo n'urubanza n° RPAA 00206/2023/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 30/01/2025, haburana Ubushinjacyaha na Baziramwabo Fabien bita Museveni. [23] Nk'uko bigaragara mu rubanza n° RPA 00323/2020/HC/RSZ rwajuririwe, Urukiko Rukuru/Urugereko rwa Rusizi rwahamije Imanirankunda Ernest icyaha cyo gusambanya umwana w'imyaka ine (4) y'amavuko rushingiwe ku bimenyetso birimo imvugo ze mu Bugenzacyaha yemera icyaha agasobanura n'uburyo yagikoze, imvugo za Senyenzi Jean Damascène wavuze ko umwana we yamubwiye ko Imanirankunda Ernest yamusambanyije, ubuhamya bwatanze na Nikuze Valentine n'ubwa Mukashyaka Thamar barebye ku gitsina cy'umwana bakabona ko hariho udusebe na raporo ya

2 Iyo ngingo iteganya ko: “Gushidikanya birengera ushinjwa. Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze.” 3 Iyo ngingo ihura n’ingingo ya 87 y’Itegeko n° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso.

Page 6

Mugangawasuzumye umwana⁴, rumuhanisha igifungo cy’imyaka cumi n’itanu (15), runamutegeka gutanga indishyi k’uwaziregeye zingana n’ibihumbi magana abiri na mirongo itanu by’amafaranga y’u Rwanda (250.000 Frw) [24] Urukiko rw’Ubujurire rurasanga, nk’uko Urukiko Rukuru/Urugereko rwa Rusizi rwabibonye, ibyo Imanirankunda Ernest avuga ko ibyo yemeye bitari bikwiye gushingirwaho ahamwa n’icyaha cyo gusambanya umwana nta shingiro bifite, kubera ko ibyo yavuze bihura n’ibyo se w’umwana Senyenzi Jean Damascène avuga ko yabwiwe n’umwana we, kandi no kuri uru rwego, nta kimenyetso yabashije kurugaragariza cy’uko yakubiswe agahatirwa kwemera ibyo atakoze. [25] Urukiko rw’Ubujurire rurasanga kandi ukwemera icyaha mu nzego z’ikurikiranacyaha kwa Imanirankunda Ernest gushyigikiwe na raporo ya Muganga igaragaza ko yasuzumye umwana agasanga afite amaraso yipfunditse n’udukomere ku migoma mito no ku rwinjiriro rw’igitsina (hyperhémie au niveau des petites lèvres et vestibule + plaie), byumvikana rero ko ibyo umwana yabwiye ababyeyi be ko Imanirankunda Ernest yamusambanyije bifite ishingiro. [26] Urukiko rw’Ubujurire rurasanga na none kuba Imanirankunda Ernest avuga ko ubuhamya bwa Nikuze Valentine n’ubwa Mukashyaka Tamar butari bukwiye gushingirwaho n’urukiko rwabanje rumuhamya icyaha, kubera ko ibyo bavuze ari ibyo babwiwe atari ibyo biboneye nta shingiro bifite, kuko ibyo Nikuze Valentine yavuze ari ibyo yumvanye umwana ndetse we na Mukashyaka Tamar bakaba bararebye igitsina cy’umwana bagasanga yakomeretse ndetse habyimbye, ibyo rero babonye bikaba bihura n’ibyagaragajwe na Muganga wasuzumye umwana nk’uko byagarutswaho haruguru. [27] Kubyo Imanirankunda Ernest avuga ko Urukiko Rukuru, Urugereko rwa Rusizi rwateje urujijo mu gusesengura raporo ya Muganga, Urukiko rw’Ubujurire rurasanga nta shingiro bifite, kuko iyo raporo yagaragaje ko hari ibice by’igitsina byagaragayeho amaraso yipfunditse n’udukomere (hyperhémie au niveau des petites lèvres et vestibule + plaie), ibindi bice birimo akarangabusugi nta kibazo byagize, kandi si ihame ko umwana wasambanyijwe akarangabusugi kavaho⁵. Naho ibyo Imanirankunda Ernest avuga ko we atasuzumwe na Muganga, ntabwo byari kubuza urukiko rwabanje gusuzuma ibindi bimenyetso byatanzwe n’Ubushinjacyaha ngo bihabwe agaciro bikwiye hagamijwe kugaragaza ukuri ku cyaha akurikiranyweho. [28] Urukiko rw’Ubujurire rurasanga rero ibimenyetso byashingiweho n’Urukiko Rukuru/Urugereko rwa Rusizi byuzuzanya kandi bidashidikanywaho, bikaba bigaragaza ko Imanirankunda Ernest yakoze icyaha cyo gusambanya umwana w’imyaka ine (4) y’amavuko, bityo ubujurire bwe nta shingiro bufite. b. Kumenya niba amafaranga y’indishyi n’ay’ikurikiranarubanza yagenewe NYIRAHAGENIMANA Espérance yakongerwa [29] Uhagarariye Nyirahagenimana Espérance avuga ko Imanirankunda Ernest akomeje kumusiragiza mu nkiko azi neza ko icyaha aregwa yagikoze, agasaba ko indishyi yari yagenewe zingana n’ibihumbi magana abiri na mirongo itanu y’amafaranga y’u Rwanda (250.000 Frw) zakongerwa, maze akagenerwa miliyoni zirindwi z’amafaranga y’u Rwanda

(7.000.0000 Frw) y'indishyi z'akababaro na miliyoni imwe y'amafaranga y'u Rwanda (1.000.000 Frw) y'ikurikiranarubanza, kubera uburemere bw'icyaha yabakoreye n'ibihombo yabateje ubwo bakurikiranaga urubanza.

4 Reba ibika kuva ku cya 26 kugeza ku gika cya 29 by'urubanza rujuririrwa. 5 Ingingo ya 133 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, nk'uko ryahinduwe kugeza ubu iteganya ibikurikira: "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 urugingo 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.(...)".

Page 7

[30] Imanirankunda Ernest n'umwunganira bavuga ko indishyi z'akababaro Nyirahagenimana Espérance asaba atazihabwa, kuko atigeze azijuririra, naho amafaranga y'ikurikiranarubanza akaba atagaragaza uburyo yayakoresheje. UKO URUKIKO RUBIBONA [31] Mu rubanza rubanziriza urundi mu rubanza n° RCOMAA 00114/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 15/09/2023, haburana NFCS Ltd na NEXTGEN DEVELOPERS Ltd na Gasirikare Evariste, hatanzwe umurongo kubirebana n'uburenganzira bw'umuburanyi utarajuriye, ariko wahamagajwe mu rubanza ruri ku rwego rw'ubujurire bitewe n'uko yarubayemo umuburanyi ku rwego rwa mbere, maze hemezwa ko uguhamagarwa mu rubanza rujuririrwa kimwe no mu rubanza rwo gusubirishamo urubanza ku mpamvu z'akarengane k'utarabisabye cyangwa utarajuriye, biba bigamije gusa guha abahamagajwe muri ubwo buryo umwana wo gufasha Urukiko kubona umucyo uhagije ku ngingo ziburanwa igihe bibaye ngombwa no kubaha uburyo bwo kurinda uburenganzira bwabo, ariko bakaba ntacyo bakwiye kurwungukiramo cyangwakuruhomberamo bihungabanya ibyemezo bibareba bafatiwe mu rubanza rujuririrwa/rusubirishwamo ku mpamvu z'akarengane. Uyu murongo wakurikijwe mu manza zitandukanye zakurikiyeho zaciwe n'Urukiko rw'Ubujurire, harimo n'urubanza n° RPAA 00499/2022/CA rwaciwe ku wa 28/12/2023, haburana Ubushinjacyaha na Sinamenye Daniel n'abandi. [32] Nk'uko bigaragara muri dosiye y'urubanza, Imanirankunda Ernest yarezwe n'Ubushinjacyaha icyaha cyo gusambanya umwana, Nyirahagenimana Espérance yuririye ku kirego cy'Ubushinjacyaha atanga ikirego cy'indishyi, Urukiko Rwisumbuye rwa Karongi rumuhamya icyaha, rumutegeka guha Nyirahagenimana Espérance ibihumbi mirongo itanu by'amafaranga y'u Rwanda (50.000 Frw) y'ikurikiranarubanza. Mu bujurire, Imanirankunda Ernest na Nyirahagenimana Espérance barajuriye, imanza zabo zirahuzwa, Urukiko Rukuru/Urugereko rwa Rusizi rukomeza kumuhamya icyaha, rumutegeka gutanga indishyi z'akababaro zingana n'ibihumbi magana abiri by'amafaranga y'u Rwanda (200.000 Frw) ziyongera ku bihumbi mirongo itanu by'amafaranga y'u Rwanda (50.000 Frw) y'ikurikiranarubanza yagenwe ku rwego rwabanje. [33] Urukiko rw'Ubujurire rurasanga kuri uru rwego Nyirahagenimana Espérance atarajuriye, ahubwo yatumijwe mu rubanza nk'uwabaye umuburanyi kuva rutangira kuburanishwa, bityo hashingiwe ku murongo

wagaragajwe haruguru, indishyi asaba ziyongera kuzo yahawe mbere ntiyazigenerwa. [34] Urukiko rw'Ubujurire rurasanga ariko, kubera ko Nyirahagenimana Espérance yahamagajwe n'Urukiko kuza gukurikirana urubanza rwe bikaba ngombwa ko ashaka Avoka wo kumuhagararira agomba kwishyura kandi nawe agakurikirana urubanza, yagenerwa amafaranga y'igihembo cya Avoka n'ay'ikurikirananarubanza⁶ angana n'ibihumbi magana arindwi by'amafaranga y'u Rwanda (700.000 Frw) akubiyemo ibihumbi magana atanu by'amafaranga y'u Rwanda (500.000 Frw) y'igihembo cya Avoka n'ibihumbi magana abiri by'amafaranga y'u Rwanda (200.000 Frw) agenwe mu bushishozi, y'ibyo yakoresheje kugirango yitabire iburanisha muri uru Rukiko, ayo mafaranga akaba yiyongera ku bihumbi magana abiri na mirongo itanu by'amafaranga y'u Rwanda (250.000 Frw) yagenewe n'inkiko zabanje, yose hamwe akaba ibihumbi magana cyenda na mirongo itanu by'amafaranga y'u Rwanda (950.000 Frw). [35] Urukiko rw'Ubujurire rurasanga rero ubujurire bwa Imanirankunda Ernest nta shingiro bufite, naho ubujurire bwuririye ku bundi bwa Nyirahagenimana Espérance bufite ishingiro kuri bimwe, bityo urubanza rwajuririwe rukaba rugomba guhinduka gusa ku bijyanye n'amafaranga y'igihembo cya Avoka

6 Ingingo ya 111 y'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi riteganya ko "Ikirego cy'amafaranga y'ikurikirananarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikirananarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyi ikirego cy'iremezo cyaba kitakiriwe."

Page 8

n'ay'ikurikirananarubanza Imanirankunda Ernest agomba guha uwaregeye indishyi yiyongera ku yari yagenwe n'inkiko zabanje. III. ICYEMEZO CY'URUKIKO [36] Rwemeje ko ubujurire bwatanzwe na Imanirankunda Ernest nta shingiro bufite; [37] Rwemeje ko urubanza n° RPA 00323/2020/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi ku wa 15/05/2023 ruhindutse kuri bimwe ; [38] Rutegetse ko igihano cy'igifungo cy'imyaka cumi n'itanu (15) Imanirankunda Ernest yahawe ku cyaha cyo gusambanya umwana w'imyaka ine (4) y'amavuko kigumyeho; [39] Rutegetse Imanirankunda Ernest kwishyura Nyirahagenimana Espérance ibihumbi magana cyenda na mirongo itanu by'amafaranga y'u Rwanda (950.000 Frw) akubiyemo indishyi z'akababaro, ikurikirananarubanza n'igihembo cya Avoka nk'uko yasobanuwe haruguru; [40] Ruvuze ko amagarama y'urubanza aherereye ku Isanduku ya Leta, kuko Imanirankunda Ernest yajuriye afunze, akaba asonewe kuyatanga.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.amategeko.gov.rw/view/doc/9496/9973>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/Evidenceincriminalcases-court-of-appeal-2025--6a3ea5233b1caa9129818aeb>

Prepared on 11 October 2026 · Esheria