

RWANDA / JUDGMENT

UBUSHINJACYAHA v. MANZI

RPAA 00168/2020/CA

COURT

Court of Appeal

DECIDED

24 April 2022

CASE / FILE NUMBER

RPAA 00168/2020/CA

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UBUSHINJACYAHA v. MANZI

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- Date: 2022-04-24
- Case/document no.: RPAA 00168/2020/CA
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Text

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UBUSHINJACYAHA v. MANZI [Rwanda URUKIKO RW'UBUJURIRE –N° RPAA 00168/2020/CA - (MUKAMURENZI), 24 Mata 2022] Amategeko agenga imanza z'inshinjabyaha, – Ukwemera icyaha – ukwemera icyaha gufatwa nk'impamvu nyoroshyacyaha kugatuma umucamanza ashobora kugabanya igihano; ni ugukozwe n'ushinjwa mbere yo gukurikiranwa cyatangwa mu ntangiriro z'iburanisha ku rwego rwa mbere kandi akabikora mu buryo budashidikanywaho. Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyagatare, Ubushinjacyaha bukurikiranyeho MANZI icyaha cyo gusambanya umwana witwa w'imyaka itatu (3) y'amavuko. Busobanura ko ku wa 5/11/2018 saa mbiri z'ijoro, yasambanyije uwo mwana amusanze aho yari aryamye. MANZI yaburanye ahakana icyaha, akavuga ko bamubeshyera kugira ngo batamuha amafaranga ye yakoreye mu gihe yamaze akora mu rugo uwo mwana yabagamo. Urwo Rukiko rwemeje ko MANZI ahamwe n'icyaha akurikiranweho, rumuhanisha igifungo cya burundu. MANZI yajuririye Urukiko Rukuru, urugereko rwa Rwamagana avuga ko yahamijwe icyaha atakoze, ko nyina w'uwo mwana yamufungishije kugira ngo atamwishyura 24.000 Frw yakoreye, cyane ko abamushinja, ari bene wabo na mama w'uwo mwana. Urukiko rwajuririwe, rwasanze ubujurire bwa MANZI nta nshingiro bufite, ruhamishaho urubanza rwajuririwe. MANZI yongeye

kujuririra Urukiko rw'Ubujurire, avuga ko yemera icyaha mu buryo budashidikanywaho, asaba Urukiko guca inkoni izamba rukamugabanyiriza igihano. Uhagarariye Ubushinjacyaha avuga ko mu bujurire bwe ntacyo MANZI anenga urubanza ajuririra, kuko rwasuzumye ibyo yarusabye byo kugirwa umwere, rusanga nta shingiro bifite, ko kuba mu bujurire bwa kabiri yemera icyaha, bitashingirwaho agabanyirizwa igihano kuko ukwemera icyaha gufatwa nk'impamvu nyoroshyacyaha, ari ugukozwe mbere yo gukurikiranwa cyangwa gukoze mu ntangiriro z'iburanisha ku rwego rwa mbere. Incamake y'icyemezo. Ukwemera icyaha gufatwa nk'impamvu nyoroshyacyaha kugatuma umucamanza ashobora kugabanya igihano; ni ugukozwe n'ushinjwa mbere yo gukurikiranwa cyangwa mu ntangiriro z'iburanisha ku rwego rwa mbere. Ubujurire nta nshingiro bufite. Amategeko yashingiweho: Itegeko n° 027/2019 ryo ku wa 19/9/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha. Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyaye ibyaha n'ibihano muri Imanza zashingiweho: RPAA 00074/2020/CA, ubushinjacyaha v Bisubireho rwaciwe n'Urukiko rw'Ubujurire ku wa 21/01/2022. RPAA 00135/2020/CA, Ubushinjacyaha v Ndayizewe rwaciwe n'Urukiko rw'Ubujurire ku wa 28/01/2022.

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Nta nyandiko z'abahanga Urubanza I. IMITERERE Y'URUBANZA [1] Ubushinjacyaha bwazeze MANZI Fred mu Rukiko Rwisumbuye rwa Nyagatare, bumukurikiranyeho icyaha cyo gusambanya umwana witwa w'imyaka itatu (3) y'amavuko. Busobanura ko ku wa 5/11/2018 saa mbiri z'ijoro, yasambanyije uwo mwana amusanze aho yari aryamye. MANZI Fred yaburanye ahakana icyaha, akavuga bamubeshyera kugira ngo batamuhemba 24.000 Frw yakoreye mu gihe yamaze akora mu rugo uwo mwana yabagamo. [2] Mu rubanza n° RP 00565/2018/TGI/NYG rwaciwe n'Urukiko Rwisumbuye rwa Nyagatare ku wa 07/12/2018, Urukiko rushingiye ku bimenyetso birimo imvugo za MANZI Fred yemera icyaha ubwo yabazwaga mu Bugenzacyaha no ku z'abandi babajijwe mu iperereza, rwasanze MANZI Fred ahamwe n'icyaha cyo gusambanya umwana ufite imyaka itatu (3) y'amavuko, rumuhanisha igifungo cya burundu. [3] MANZI Fred yajuririra Urukiko Rukuru, urugereko rwa Rwamagana avuga ko yahamijwe icyaha atakoze, ko nyina w'uwo mwana yamufungishije kugira ngo atamwishyura 24.000 Frw yakoreye. [4] Mu rubanza n° RPA 00009/2019/HC/RWG rwaciwe n'Urukiko Rukuru urugereko rwa Rwamagana ku wa 24/10/2019, Urukiko rwasanze ubujurire bwa MANZI Fred nta nshingiro bufite ruhamishaho urubanza rwajuririwe. [5] MANZI Fred yongeye kujuririra Urukiko rw'Ubujurire, avuga ko yemera icyaha mu buryo budashidikanywaho, asaba Urukiko guca inkoni izamba rukamugabanyiriza igihano. Uhagarariye ubushinjacyaha, avuga ko ubujurire bwe butahabwa inshingiro, kuko ukwemera icyaha nk'impamvu nyoroshyacyaha, ari ugukozwe mbere yo gukurikiranwa cyangwa gukoze mu ntangiriro z'iburanisha ku rwego rwa mbere nk'uko amategeko abiteganyaye. [6] Urubanza rwaburanishirijwe mu ruhamwe ku wa 08/04/2022, MANZI Fred yunganiye na Me RWABIGWI Augustin, Ubushinjacyaha buhagarariye na BUNYOYE Grâce, Umushinjacyaha ku rwego rw'Igihugu. Iburanisha ripfundikiye ababuranyi bamenyeshejwe ko urubanza ruzasomwa ku wa 22/04/2022, akaba ari wo munsu rusomwe. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO Kumenya niba MANZI Fred yagabanyirizwa igihano kubera kwemera icyaha ku rwego rw'ubujurire [7] MANZI Fred avuga ko impamvu yajuririra ari uko

aburana mu Rukiko Rukuru, yemeraga icyaha, asaba kugabanyirizwa igihano ariko ntibyakorwa. Avuga ko yemera icyaha yakoze, ko icyamuteye kugikora, ari uko yari yanyweye inzoga asanga umwana aho yari aryamye, yikinishiriza ku gitsina cye ararangiza. ariko kuko atari azi ametegeko, yumvaga ko ibyo yakoze atari icyaha, ariyo mpamvu mu

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iburanisha yagihakanye, ko icyatumye acyemera akimara gufatwa, n'uko bamubwiraga ko nacyemera agabanyirizwa ibihano. [8] Me RWABIGWI Augustin umwunganira, avuga ko MANZI Fred yemeye icyaha mu rwego rw'iperereza, ageze mu Rukiko Rwisumbuye ndetse no mu Rukiko Rukuru, urugereko rwa Rwamagana aburana asa nk'uwemera icyaha ariko ntabisobanure neza kubera kutamenya amategeko kuko yikinishije akarangiriza ku mwana, ko ku bwe yumvagakl nta cyaha yakoze. Akomeza avuga ko ubu yasobanukiwe gusambanya umwana icyo aricyo ariyo mpamvu kuri uru rwego yemera icyaha, ko asaba imbabazi kuko ibyo yakoze yabitewe no kudasobanukirwa no kubera ubusinzi. [9] Uhagarariye Ubushinjacyaha avuga ko mu bujurire bwe ntacyo MANZI Fred anenga urubanza ajuririra, kuko rwasuzumye ibyo yarusabye byo kugirwa umwere, rusanga nta shingiro bifite, ko atanarunenga kuba rutaramugabanyirije igihano kandi ntabyo yarusabye. Ko kuba mu bujurire bwa kabiri yemera icyaha, bitashingirwaho agabanyirizwa igihano kuko ukwemera icyaha gufatwa nk'impamvu nyoroshyacyaha ari ugukozwe mu bihe biteganywa n'ingingo ya 59 y'itegeko n°68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange ivuga ko ukwemera icyaha kuba impamvu nyoroshyacyaha iyo gukoze mbere yo gukurikiranwa cyangwa bikozwe mu ntangiriro z'iburanisha ku rwego rwa mbere. UKO URUKIKO RUBIBONA [10] Ingingo ya 183, igika cya mbere, uduce twa 5° na 6° y'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganywa ko ujurira agomba kugaragaza urutonde rw'inenge z'urubanza zisabirwa gukosorwa n'ibindi bibazo bigomba gusuzumwa, akanatanga ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragaza amakosa yakozwe n'uburyo agomba gukosorwa hashingiwe ku mategeko n'ibimenyetso n'igisabwa urukiko. [11] Ingingo ya 59 agace ka 1o n'aka 3o y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange ivuga ko : "Umucamanza ashobora kugabanya ibihano nk'iyi: 1° ushinjwa, mbere yo gukurikiranwa, yemeye icyaha akagisabira imbabazi uwo yakoreye icyaha n'umuryango nyarwanda mu buryo budashidikanywa, akicuza kandi akishyura ibyo yangije nk'uko bari babimutegerejeho; 3° mu ntangiriro z'iburanisha ku rwego rwa mbere, ushinjwa yireze akemera icyaha mu buryo budashidikanywa". [12] Ingingo ya 183, agace ka 5 n'aka 6 y'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ivuzwe haruguru yumvikanisha neza ko ujuriye agomba kugaragaza amakosa Urukiko rwabanje rwaba rwarakoze, agasobanura impamvu ari amakosa, agatanga n'uburyo agomba gukosorwa, bivuze ko uwajuriye afite ishingano yo kugaragaza ukwibeshya kwakozwe n'Urukiko rubanza gushingiye ku mategeko cyangwa ku byabaye kwatumye urubanza rujuririrwa rucibwa nabi cyangwa kwatuma ruta agaciro. Ibi bikaba bisobanura ko mu gihe uwajuriye atagaragaje inenga z'urubanza cyangwa amakosa yakozwe n'uburyo agomba gukosorwa nta shingiro ubujurire bwe buba bufite. [13] MANZI Fred, mu bujurire bwe muri uru Rukiko, anenga igihano yahanishijwe avuga ko hirengagijwe ugutakamba kwe, akanasaba uru Rukiko kumugabanyiriza igihano kuko yemera

icyaha mu buryo budashidikanywaho akaba anagisabira imbabazi.

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[14] Dosiye y'urubanza igaragaza ko MANZI Fred abazwa mu Bugenzacyaha yemeye ko yasambanyije umwana ufite imyaka itatu (3), abisabira imbabazi avuga ko yabitewe n'inzoga yari yanyoye, asobanura ko yageze aho yari aryamye, yikinishiriza ku bibero bye, ko atigeze akoza igitsina cye mu cy'umwana, ko yakozaga ku ruhande, ararangiza. Abazwa mu Bushinjacyaha nabwo yavuze ko yemera icyaha akagisabira imbabazi. [15] MANZI Fred yiregura ku rwego rwa mbere mu Rukiko Rwisumbuye yahakanye icyaha, avuga ko abeshyerwa kubera ko umurega ashaka kumwambura amafaranga yakoreye. Urukiko Rwisumbuye rwamuhamije icyaha cyo gusambanya umwana. MANZI Fred yajuririye Urukiko Rukuru, urugereko rwa Rwamagana avuga ko yahamijwe icyaha arengana, ko nyina w'uwo mwana yamufungishije kuko yari yamwishyuye amafaranga yakoreye. Mu iburanisha ry'urubanza ku bujurire, umucamanza amusomeye ibyo yavuze abazwa ahita avuga ko asaba imbabazi ko acyemera ko yabitewe n'inzoga. [16] Urukiko rusanga ibyo avuga ko Urukiko Rukuru, urugereko rwa Rwamagana rutitaye ku bisobanuro yarugaragarije, rugatesha agaciro ugutakamba kwe rukamuhana rwihanukiriye, nta shingiro bifite kuko nk'uko inyandiko y'ubujurire bwe ibigaragaza ndetse n'inyandiko y'iburanisha muri urwo Rukiko, bitagaragaza ko hari aho yarutakambiye kuko yari yajuririye avuga ko yahamijwe icyaha kandi ntacyo yakoze, ibyo kwemera icyaha no gusaba imbabazi abivuga ari uko umucamanza amwibukije ibyo yavuze abazwa kandi nabyo abivuga asa n'uwikiza kuko atasobanuye ku buryo budashidikanywaho uburyo yagikoze. [17] Kuba rero umucamanza ntacyo yavuze kuri uko kwemera icyaha yakoreye mu iburanisha ngo anabishingireho amugabanyiriza igihano akaba atari inenge y'urubanza yatuma hemezwa ko umucamanza yirengagije ukwemera icyaha kwe kuko uburyo n'igihe yabikoreye bigaragaza ko atemeye icyaha abikuye ku mutima, uretse ko nabyo ntacyo byari kumumarira mu gihe nta nenge z'urubanza yajuririye yagaragazaga. [18] Urukiko rw'Uburire rusanga kwemera icyaha mu buryo bweruye MANZI Fred yarabikoze mu ibaruwa n'imyanzuro yageje kuri uru Rukiko mu bujurire bwa kabiri ndetse akanabishingiraho asaba kugabanyirizwa igihano. Rusanga kuba MANZI Fred yarageze kuri uru rwego rw'ubujurire akavuga ko noneho yahisemo kwemera icyaha cyo gusambanya umwana no kugisabira imbabazi kugira ngo agabanyirizwe ibihano, uko kwemera icyaha kutafatwa nk'impamvu y'ubujurire kuko ntacyo mu by'ukuri anenga imikirize y'urubanza rwamuhamije icyo cyaha yajuririye nk'uko biteganywa n'ingingo ya 183, agace ka 5° n'aka 6°, y'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru. [19] Kuba kwemera icyaha mu rwego rw'ubujurire bidafatwa nk'impamvu y'ubujurire, byasobanuwe mu manza zaciwe n'Urukiko rw'Uburire zirimo urubanza RPAA 00135/2020/CA NDAYIZEYE William aburana n'Ubushinjacyaha rwaciwe ku wa 28/01/2022 n'urubanza RPAA 00074/2020/CA BISUBIREHO Egide aburana n'Ubushinjacyaha rwaciwe ku wa 22/01/2022. [20] Urukiko rugasanga uko kwemera icyaha yakoze kuri uru rwego rw'ubujurire, kutashingirwaho ngo agabanyirizwe igihano kuko nk'uko biteganywa n'ingingo ya 59 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 ryavuzwe ukwemera icyaha

gufatwa nk'impamvu nyoroshyacyaha kugatuma umucamanza ashobora kugabanya igihano ari ugukozwe n'ushinjwa mbere yo gukurikiranwa no mu ntangiriro z'iburanisha ku rwego rwa mbere kandi akabikora mu buryo budashidikanywaho.

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III. CYEMEZO CY'URUKIKO [21] Rwemeje ko ubujurire bwa MANZI Fred nta shingiro bufite. [22] Rwemeje ko urubanza n° RPA 00009/2019/HC/RWG rwaciwe n'Urukiko Rukuru, urugereko rwa Rwamagana kuwa 24/10/2019 rudahindutse. [23]

[23] Remeje ko igifungo cya burundu MANZI Fred yahanishijwe kigumyeho. [24]

[24] Rutegetse ko MANZI Fred asonerwa amagarama y'urubanza kuko aburana afunzwe.

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Prepared on 12 October 2026 · Esheria