

RWANDA / JUDGMENT

UBUSHINJACYAHA v. BAJYAGAHE

RPAA 0205/ 10/ CS

COURT

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UBUSHINJACYAHA v. BAJYAGAHE

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UBUSHINJACYAHA v. BAJYAGAHE [Rwanda URUKIKO RW'IKIRENGA – RPAA 0205/ 10/ CS – (Kayitesi R., P.J., Mukandamage na Rugabirwa, J.) 11 Gashyantare 2014] Amategeko mpanabyaha – Gusambanya umwana – Ubuhamya buvuguruzanya – Uko raporo ya muganga ifatwa mu kugaragaza ko habaye ugusambanywa igihe igaragaza ko bitabaye vuba aho icyaha cyakozwemo.– Ugushidikanya mu manza nshinjabyaha –Iitegeko n° 30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 165. Incamake y'ikibazo: Uwajuriye yahamijwe n'Urukiko Rwisumbuye rwa Gasabo icyah cyo gusambanya umwana w'imyaka 12 y'amavuko maze rumuhanisha igifungo cya burundu. ruvuga ko kuvuga ko hari ubundi buryo umuntu yakoresha akagaragara nk'ugasambanyijwe kandi bitarabayeho ngo no kuba raporo ya muganga itagaragaza ko ari we wakoze icyo cyaha nta shin giro bifite kuko nta bimenyetso yatangaga. Urukiko kandi rwashingiye ku buhamya bw'uwitwa Yves ndetse n'izumwana na nyina. Yajuririye mu Rukiko Rukuru rwemeza kimwe n'Urukiko rwarubanjirije. Ntiyanyuzwe maze ajuririra mu Rukiko rw'Ikirenga avuga ko Inkiko zibanza zashingiye ku buhamya bw'umwana umushinja ndetse n'ubwaYves kandi atari byo kuko ari nyina waboheje kuvuga uko kuko bari bafitanye ibibazo. Yongeraho ko na raporo ya muganga itatangiye igihe n'abatangabuhamya

bagombaga kumushinjura bakaba batarigeze babazwa. Mu nkiko zose yahakanye icyaha. Yasabye Urukiko rw'Ikirenga gukora iperereza ryimbitse ku byaha yari akurikiranyweho. Incamake y'icyemezo: Uwajuriye avuga ko Urukiko rwamuhamije icyaha rushingiye ku buhamya bw'abatangabuhamya babeshya ko bamubonye akora icyaha harimo ubwa Yves wabwiye nyina w'umwana ko yababonye basambana hafi y'idirishya ryo muri salon. Uwajuriye we ahamya ko atigeze ahura nawe mu gihe kivugwa ko icyaha cyakozwemo. Akomeza avuga kandi ko Urukiko nta perereza rwakoze ngo rubaze n'abatangabuhamya bamushinjura harimo abari aho muri icyo gihe. Arangiza avuga ko kandi raporo ya muganga itatangiye igihe kandi ikaba itanagaragaza ko ariwe mu by'ukuri wasambanyije uwo mwana. Mugorewera Julienne, nyina w'umwana wahohotewe avuga ko umwana we yasambanyijwe n'uwayuriye amusanze mu rugo. Avuga ko ibyo yabibwiye n'uwitwa Rose nawe abibwiye na Yves, umuturanyi, wamufatiye mu cyuho. Umwana bikekwa ko yasambanyijwe avuga ko uwajuriye yamusambanyirije aho bamena ibishingwe bikaba byari bibaye inshuro incuro 6. Raporo ya muganga yo ikagaragaza ko umwana nta karangabusugi yari agifite ikanerekana ariko ko nta kigaragaza ko yasambanyijwe mu gihe cya vuba. Urukiko rwarasesenguye rusanga hari ugushidikanya ku byaha uwajuriye yaregwaga kuko uwamenyesheje umubyeyi w'umwana ko umwana we yasambanyijwe atigeze abazwa haba mu bugenzacyaha cyangwa mu bushinjacyaha ndetse runamutumije yanga kwitaba. Rwanze rero gushingira ku mvugo z'umwana na nyina ngo rwemeze ko uwo mwana yasambanyijwe n'uwayuriye dore ko na raporo ya muganga yagaragazaga ko n'ubwo uwo mwana nta karangabusugi yari agifite byagaragaye ko nta cyagaragazaga ko yasambanyijwe vuba aho. Bityo

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urukiko rwahinduye umwere uwajuriye. kuko igihe habayeho ukuvuguruzanya k'ubuhamya bitera ugushidikanya kandi gushidikanya birengera ushinjwa. . Ubujurire bufite ishingiro. Rwemeje ko uwajuriye ari umwere. Urubanza rwajuririye ruvanyweho Amagarama y'urubanza ku isanduku ya Leta Amategeko yashingiweho Ingingo ya 165 y'itegeko n° 30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya Nta rubanza rwifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA [1] BAJYAGAHE Léonidas yahamijwe n'Urukiko Rwisumbuye rwa Gasabo icyaha cyo gusambanya umwana witwa NDACYAYISHIMA Consolée w'imyaka 12 y'amavuko, ahanishwa igifungo cya burundu. Yajuririye Urukiko Rukuru, rwemeza ko nta gihindutse ku rubanza yajuririye, rusobanura ko ibyo yavugaga ko hari ubundi buryo umuntu ashobora gukoresha akagaragara nk'ugasambanyijwe kandi bitabayeho, ko ndetse ko na raporo ya muganga itagaragaza ko ari we wakoze icyo cyaha, nta shingiro bifite kuko atabitangira ibimenyetso. [2] Urukiko rwavuze kandi ko BAJYAGAHE atagaragaje ibimenyetso bishimangira imvugo ze z'uko umwana ndetse na nyina bamubeshyera, cyane cyane ko imvugo zabo na raporo ya muganga atari byo byonyine byashingiweho mu kumuhamya icyaha, ahubwo hanashingiye ku buhamya bwa Yves wamufatiye mu cyuho, akaba ntacyo abunenga. [3] BAJYAGAHE yajuririye na none Urukiko rw'Ikirenga avuga ko urukiko rwashingiye ku mvugo y'umwana umushinja n'ibyo

Yves yavuze ko yabonye amusambanya kandi atari byo, ahubwo ari ibyo nyina MUGOREWERA Julienne yababwiye kumushinja kuko bafite icyo bapfa, ko ndetse na raporo ya muganga yashingiweho kandi itarahise ikorwa ako kanya. Avuga kandi ko abatangabuhamya bamushinjura batabajijwe, ko rero hakwiye iperereza ryimbitse.

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- [4] Iburanisha ry'urubanza ryabaye mu ruhame tariki ya 14/10/2013 no kuwa 06/01/2014, BAJYAGAHE Léonidas yunganiwe na Me NKURUNZIZA Straton, Ubushinjacyaha buhagarariwe na MUTAYOBA Alphonse, umushinjacyaha ku rwego rw'Igihugu. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO Kumenya niba hari ibimenyetso bidashidikanywaho Urukiko Rukuru rwashingiyeho ruhamya icyaha BAJYAGAHE Léonidas.
- [5] BAJYAGAHE n'umwunganira bavuga ko urukiko rwamuhamije icyaha rushingiye ku mvugo z'abatangabuhamya kandi bavuga ko batamubonye asambanya umwana NDACYAYISHIMA Consolée, ko uwitwa Yves batigeze babonana umunsi icyaha bavuga ko cyabayeho, uwo mwana nawe akaba atazi ibyo avuga kuko afite uburwayi bwo mu mutwe, ko rero ibyo bavuze byose ari ibyo nyina w'umwana yababwirije kuvuga kubera ko bapfuye ko yashatse ko amwibira ibyo yari ashinzwe kurinda akamwangira, ibyo kandi bikaba byarabaye no ku bakozi yari asimbuye kuko nabo yabibishije bagafatwa bakirukanwa. Bavuga na none ko bidasobanutse impamvu uwo mudamu yanze ko bajya gusobanura ikibazo mu buyobozi igihe yari amaze kukibwira abaturanyi, agahitamo kuregera Ubugenzacyaha. [6] Bavuga kandi ko nta perereza urukiko rwakoze ngo rubaze abatangabuhamya bamushinjura barimo abayobozi bo ku Kagari yagiye kuregera abantu bamusebya ko yafashe umwana barimo GASONGO na NSENGIYUMVA, bashoboraga kwemeza ko atakora icyaha ngo yishyikirize ubuyobozi, n'abitwa Evelyn na Rose bari aho mu rugo bakaba bari kwemeza ko batamubonye asambanya umwana. [7] Ku byerekeye raporo yakozwe na muganga, BAJYAGAHE n'umwunganira bavuga ko urukiko rutagombaga kuyishingiraho kuko itabonetse ku gihe kuko yagombaga guhita ikorwa icyaha kikiba badategereje ko bucya, ko kandi itanagaragaza ko ari we wasambanyije uwo mwana. [8] Ku kibazo cyo kumenya icyo BAJYAGAHE apfa na Yves umushinja ko yamubonye asambanya umwana, yasubije ko nta kintu bapfaga kuko nta hantu yahuriraga nawe, ko gusa yakoreshejwe na nyina w'umwana kubera ibyo bapfaga. Me NKURUNZIZA yongeraho ko kuba BAJYAGAHE yari agiye mu rugo kwa MUGOREWERA Julienne kumwishyuza amafaranga 30.000 yari amurimo, nabyo byaba intandaro yo kumufungisha kugira ngo atazagaruka kumwishyuza. [9] Uhagarariye Ubushinjacyaha avuga ko kuba MUGOREWERA Julienne nyina w'umwana yararegeye Ubugenzacyaha nta kosa yakoze kuko aribwo bushinzwe gukurikirana icyaha, ko kandi icyaha nk'iki cy'ubugome kitari gukemurirwa mu buyobozi. [10] Asobanura ko BAJYAGAHE yahawe uburyo bwose bwo kwisobanura, ko mu Bugenzacyaha yavuze ko ntacyo apfa na nyina w'umwana, ko ndetse yajyaga amutuma kumurangurira ibyo acuruza. Avuga ko nta perereza rindi rikwiye gukorwa kubera ko BAJYAGAHE yari mu rugo iwabo w'umwana mu mugoroba icyaha cyakorewemo.

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[11] Ku bijyanye n'ibimenyetso, Umushinjacyaha avuga ko umwana yabajijwe akavuga ko BAJYAGAHE amaze kumusambanya incuro esheshatu (6), muganga yamupima agasanga nta karangabusugi akigira, ibyo Yves yavuze nabyo akaba ari ibyo yiboneye, abandi babajijwe nabo bakavuga ko ari ibyo bumvise, bityo ibimenyetso byashingiweho n'urukiko bikaba bihagije. [12] Ku byerekeye abatangabuhamy bamushinjura, Umushinjacyaha avuga ko mu nkiko zombi BAJYAGAHE yaburaniyemo ntaho yigeze asaba ko babazwa ngo byirengagizwe, ibyo avuga ubu akaba ari ugushakisha gusa. [13] Ku birebana na raporo ya muganga, Umushinjacyaha avuga ko ntacyari kubuza urukiko kuyishingiraho kuko yakozwe mu gihe cyihuse kuko icyaha cyakozwe kuwa 17/07/2007, bahita bajyana umwana kwa muganga, raporo itangwa kuwa 18/07/2007. Uko urukiko rubibona [14] Ingingo ya 165 y'itegeko n° 30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha 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". [15] Mu ibazwe rye mu Bugenzacyaha MUGOREWERA Julienne yavuze ko umwana we NDACYAYISHIMA wari ufite imyaka 12 y'amavuko yasambanyijwe na BAJYAGAHE tariki ya 17/07/2007 mu gihe cya saa kumi n'ebiri n'igice amusanze mu rugo, ibyo akaba yarabibwiwe n'umwana w'umukobwa witwa Rose, nawe abibwiwe na Yves w'umuturanyi wamufashe amusambanya. Yavuze kandi ko umwana yamubwiye ko BAJYAGAHE yahengeraga umukozi we agiye akaza bakirirwana bagasambana, Yves we amubwira ko yabonye icyaha gikorwa ubwo yari aje mu rugo abona NDACYAYISHIMA ari kumwe na BAJYAGAHE ahantu hafi y'idirishya ryo kuri "salon" basambana, ko ariko nta nduru yavugije, ko ahubwo umwana yamusabye kutabivuga. [16] NDACYAYISHIMA nawe yarabajijwe avuga ko BAJYAGAHE yamuhaye "bonbons" amusambanyiriza aho bamena ibishingwe, ko yamusambanije inshuro esheshatu, akaba yaramusambanyirizaga muri WC yo mu rugo, muri "douche", mu gikari naho bamena ibishingwe, mu gihe umukozi yabaga ari mu nzu, akaba ataravuzaga induru kuko babaga bavugije radio cyane ku buryo induru itakumvikana. [17] Urukiko rurasanga hari umutangabuhamy w'ingenzi witwa Yves bivugwa ko ariwe wabonye icyaha gikorwa ariko akaba atarabajijwe mu Bugenzacyaha no mu Bushinjacyaha, n'urukiko rumutumije yanga kwitaba, rukaba rero rutashingira kuri izo mvugo z'umwana na nyina ngo rwemeze koko ko BAJYAGAHE yasambanije NDACYAYISHIMA, kubera ko zirimo ukwivuguruza ku byerekeye imikorere y'icyaha n'uburyo cyakozwemo, kandi harimo ibintu bitumvikana cyane mu buhamya bw'umwana. [18] Byongeye kandi, raporo yakozwe na Muganga wasuzumye NDACYAYISHIMA tariki ya 18/07/2007 umunsi ukurikira uwo bivugwa ko yasambanyirijweho, igaragaza ko akarangabusugi ke kangiritse, ko ariko nta cyerekana ko uwo mwana yasambanyijwe mu gihe

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cya vuba (l'examen génital montre des signes de déflorations anciens (cote 41), hymen déjà défloré, mais aucune trace de lésions fraîches de violence sexuelle). [19] Hashigiwe ku ngingo y'itegeko yavuzwe haruguru no kubimaze kuvugwa, urukiko rurasanga hari ugushidikanya ku cyaha BAJYAGAHE Léonidas ashinjwa, akaba agomba kugirwa umwere, bityo n'urubanza yajuririye RPA 0548/08/HC/Kig rwaciwe n'Urukiko Rukuru tariki ya 04/06/2010 rukaba ruhindutse kuri byose. III. ICYEMEZO CY'URUKIKO [20] Rwemeje ko ubujurire bwa BAJYAGAHE Léonidas bufite ishingiro. [21] Rwemeje ko ari umwere ku cyaha akurikiranweho cyo gusambanya umwana utarageza ku myaka 14 y'amavuko. [22] Rwemeje ko urubanza RPA 0548/08/HC/Kig rwaciwe n'Urukiko Rukuru tariki ya 04/06/2010 ruhindutse kuri byose [23] Rutegetse ko amagarama y'uru rubanza aherera ku isanduku ya Leta.

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