

RWANDA / JUDGMENT

UBUSHINJACYAHA vs. BAKUNDUKIZE

RPAA 00394/2024/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA vs. BAKUNDUKIZE

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Text

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UBUSHINJACYAHA vs. BAKUNDUKIZE [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00394/2024/CA (Kanyange, P.J.), 13 Ukuboza 2024] Amategeko agenga imanza nshinjabyaha – Gusambanya umwana w'imyaka cumi n'irindwi (17) – Kwemera icyaha bwa mbere mu bujurire bwa kabiri – Kugabanyirizwa igihano – Kwemera icyaha bwa mbere mu bujurire ntibyagira akamaro uregwa kuko ntacyo aba anenga urubanza yajuririye ahubwo aba azanye ingingo nshya ataburanishije mu nkiko zibanza kandi Umucamanza w'ubujurire afite gusa inshingano yo gukosora amakosa yaba yarakozwe n'izo nkiko. Amategeko agenga imanza nshinjabyaha – Kugabanyirizwa igihano – Umucamanza afite nanone uburenganzira bwo gusuzuma impamvu nyoroshyacyaha, n'ubwo uregwa yakoze icyaha kiremereye kandi kigayitse, harebwe ko ari ubwa mbere akurikiranwe mu nkiko mu buryo buzwi, harebwe kandi imyaka yari afite igaragaza ko akora icyaha yari akiri uruburiko yahabwa amahirwe yo kwikosora akazasubira mu buzima busanzwe nyuma yo kugororwa. Incamake y'ikibazo: Uwitwa Bakundukize w'imyaka makumyabiri n'itanu y'amavuko (25) yakurikiranyweho icyaha cyo gusambanya umwana w'umukobwa w'imyaka cumi n'irindwi (17). Nyuma y'iperereza, Ubushinjacyaha bwamureze mu Rukiko Rwisumbuye rwa Karongi icyaha cyo gusambanya umwana bushingiye ku mvugo z'uwo mwana, n'iza bandi

batangabuhamy no kuri raporo ya muganga igaragaza ko umwana yasambanyijwe, maze bumusabira igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25). Bakundukize yaburanye ahakana icyaha, avuga ko ahubwo uwo mwana yahoraga amusaba ko babana akabyanga akaba yarashatse kumwihimuraho. Urukiko rwaciye urubanza, maze rwemeza ko Bakundukize yarakoze icyaha akurikiranweho rushingiye kuri raporo ya muganga no ku mvugo z'abatangabuhamy, bityo ahamwa n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25). Bakundukize yajuriye mu Rukiko Rukuru, Urugereko rwa Rusizi nanone ahakana icyaha ashinjwa, avuga ko Urukiko Rwisumbuye rwamuhamije icyaha nta bimenyetso simusiga rushingiyeho. Ubushinjacyaha bwashubije ko ubujurire bwa Bakundukize nta shingiro bufite, kuko nawe yemera ko I.F yageze aho yacururizaga nk'uko byanemejwe n'umutangabuhamy wahamubonye hakaba n'abandi batangabuhamy bavuze ko bamusanze ku muryango w'aho yacururizaga imyenda ye iriho amaraso, na raporo ya muganga ikaba yagaragaje ko akarangabusugi ke kari kangiritse. Urukiko rwaciye urubanza, maze rusanga impamvu z'ubujurire bwa Bakundukize nta shingiro zifite, bityo ko imikirize y'urubanza rwajuririwe idahindutse, ruhamishaho igifungo cy'imyaka makumyabiri n'itanu (25) yahanishijwe ku rwego rwa mbere. Bakundukize yatanze ubujurire bwa kabiri mu Rukiko rw'Ubujurire noneho yemera icyaha aregwa, asaba kugabanyirizwa ibihano kuko ubu yemera icyaha akanagisabira imbabazi, avuga kandi impamvu mbere atacyemeye byatewe n'uko yari atarajijuka, kandi ko Urukiko rw'Ikirenga rwemeje ko igihe cyose uregwa yemera icyaha mu buryo budashidikanywaho agabanyirizwa igihano,

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Uhagarariye ubushinjacyaha avuga ko kwemera icyaha nk'impamvu y'ubujurire bidakwiye kwemerwa kuko yaba ari ingingo nshya azanye mu bujurire atigeze aburanisha mu bujurire bwa mbere kuko kwemera icyaha nk'impamvu nyoroshyacyaha byemerwa gusa mu ntangiriro z'iburanisha ku rwego rwa mbere kandi bigakorwa mu buryo budashidikanywaho. Incamake y'icyemezo: 1. Kwemera icyaha bwa mbere mu bujurire ntibyangira akamaro uregwa kuko ntacyo aba anenga urubanza yajuririye ahubwo aba azanye ingingo nshya ataburanishije mu nkiko zibanza kandi Umucamanza w'ubujurire afite gusa inshingano yo gukosora amakosa yaba yarakozwe n'izo nkiko. 2. Umucamanza afite nanone uburenganzira bwo gusuzuma impamvu nyoroshyacyaha, n'ubwo uregwa yakoze icyaha kiremereye kandi kigayitse, harebwe ko ari ubwa mbere akurikiranwe mu nkiko mu buryo buzwi, harebwe kandi imyaka yari afite igaragaza ko akora icyaha yari akiri urubiruko yababwira amahirwe yo kwikosora akazasubira mu buzima busanzwe nyuma yo kugororwa. Ubujurire nta shingiro. Nta mategeko yashingiyeho. Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu, n'ingingo ya 59 Imanza zifashishijwe: Urubanza RPAA 00495/2021/CA rw' Ubushinjacyaha na Ndayigumije Eric rwaciye n'Urukiko rw'Ubujurire ku wa 22/03/2024; Urubanza RPAA 00544/2023/CA rw' Ubushinjacyaha na Muvunyi Jean Claude Alias Ntambara, rwaciye n'Urukiko rw'Ubujurire ku wa 25/09/2024. Urubanza I. IMITERERE Y'URUBANZA [1] Bakundukize akurikiranyweho icyaha cyo gusambanya umwana w'umukobwa w'imyaka cumi n'irindwi (17) wiswe I.F muri uru rubanza1, Ubushinjacyaha bukavuga ko cyakozwe ku wa 01/06/2020 ubwo

uwo mwana yavaga kwa muganga akajya kugura amata n'amandazi muri boutique ya Bakundukize, arangije kubifata amusunikira mu cyumba aramusambanya, bimenyekanye atangira gukurikiranwa. [2] Nyuma y'iperereza, Ubushinjacyaha bwamureze mu Rukiko Rwisumbuye rwa Karongi icyaha cyo gusambanya umwana bushingiye ku mvugo z'uwo mwana, ku mutangabuhamya uvuga ko yasize uwo mwana muri boutique ya Bakundukize nyuma akumva ko yamusambanyije, ku

1 Mu rwego rwo kumurinda kuko ari umwana

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bandi batangabuhamya bavuze ko basanze uwo mwana yicaye imbere y'umuryango wa boutique ya Bakundukize akababwira ko yamusambanyije kandi bakabona ijipo ye iriho, no kuri raporo ya muganga igaragaza ko umwana yasambanyijwe, bumusabira igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25). [3] Bakundukize yaburanye ahakana icyaha, avuga ko atari gusambanya uwo mwana ngo habure umuntu ubyumva kandi hari habaye isoko, ko yemera ko yaje iwe kuhanywa amata arangije aragenda, ko ahubwo yahoraga amusaba ko babana akabyanga akaba yarashatse kumwihimuraho. [4] Urukiko rwaciye urubanza RP 00302/2020/TGI/KNG ku wa 27/01/2022, rusanga Bakundukize yarakoze icyaha akurikiranweho kuko ashinjwa n'umukobwa yasambanyije wasobanuye uko yageze muri boutique ye n'uko yamusambanyije, Bakundukize nawe akaba yemera ko uwo mukobwa yahageze bakagirana ibiganiro by'uko yamugira umugore, hakaba n'umutangabuhamya witwa Nyirambabazi Rachel waravuze ko yasize uwo mukobwa kuri boutique ya Bakundukize nyuma akumva ko yamusambanyije, hakaba n'abandi batangabuhamya, Nsabayezu Jacques na Bankundiye Stephanie, bavuze ko basanze uwo mukobwa yicaye imbere y'umuryango wa boutique ya Bakundukize akababwira ko yamusambanyije bakanabona ijipo yari yambaye iriho, na raporo ya muganga ikaba igaragaza ko uwo mukobwa yasambanyije koko. [5] Urukiko rushingiye kuri ibyo bimenyetso rwemeje ko Bakundukize ahamwe n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25). [6] Bakundukize yajuriye mu Rukiko Rukuru, Urugereko rwa Rusizi avuga ko Urukiko Rwisumbuye rwamuhamije icyaha nta bimenyetso simusiga rushingiyeho ahubwo rubogamira ku ruhande rurega ngo kuko atari gusambanya umwana ngo habure umuntu umubona amusunikira mu cyumba bavuga ko yamusambanyirijemo, ko n'abatangabuhamya bavuze ibyo batahagazeho naho imvugo y'uwo mukobwa ikaba yari gushingirwaho ari uko hari ibindi bimenyetso biyishyigikira. [7] Ubushinjacyaha bwasubije ko ubujurire bwa Bakundukize nta shingiro bufite, kuko nawe yemera ko I.F yageze aho yacururizaga nk'uko byanemejwe n'umutangabuhamya wahamubonye hakaba n'abandi batangabuhamya bavuze ko bamusanze ku muryango w'aho yacururizaga imyenda ye iriho amaraso, na raporo ya muganga ikaba yagaragaje ko akarangabusugi ke kari kangiritse. [8] Urukiko rwaciye urubanza RPA 00036/2022/HC/RSZ ku wa 09/05/2024, rusanga impamvu z'ubujurire bwa Bakundukize nta shingiro zifite, kuko hahujwe imvugo za I.F wavuze ko yamusambanyirije muri boutique ye, imvugo z'umutangabuhamya wavuze ko yasize uwo mukobwa muri icyo boutique ari kumwe na Bakundukize hamwe n'imvugo z'abatangabuhamya bavuze ko bamusanze ahakorewe icyaha yanze kuhava kandi umwenda yari yambaye uriho amaraso, byerekana ko nta wundi wamuhohoteye utari Bakundukize,

bigashimangirwa na raporo ya muganga yagaragaje ko yamwangije mu buryo bukabije, ko rero nta kosa riri mu rubanza rwajuririwe. Rwemeje rero ko ubujurire bwe nta shingiro bufite, ko imikirize y'urubanza rwajuririwe idahindutse, ruhamishaho igifungo cy'imyaka makumyabiri n'itanu (25) yahanishijwe ku rwego rwa mbere.

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[9] Bakundukize yatanze ubujurire bwa kabiri mu Rukiko rw'Ubugurire, urubanza rwandikwa kuri RPAA 00394/2024/CA, ruhabwa itariki yo kuburanishwa yo ku wa 05/12/2024, uwo muni ruburanishwa yunganiwe na Me Ruturwa Rumande Eson, Ubushinjacyaha buhagarariwe na Bunyoye Grâce, Umushinjacyaha ku rwego rw'Igihugu. [10] Mu myanzuro y'ubujurire no mu miburanire, Bakundukize n'umwunganira bavuga ko ubujurire bwe bugamije gusaba kugabanyirizwa ibihano kuko ubu yemera icyaha akanagisabira imbabazi. [11] Uhagarariye ubushinjacyaha avuga ko kwemera icyaha nk'impamvu y'ubujurire bidakwiye kwemerwa kuko yaba ari ingingo nshya azanye mu bujurire nk'uko byatanzweho umurongo n'uru Rukiko. [12] Ikibazo kigomba gusuzumwa muri uru rubanza ni ukumenya niba ukwemera icyaha Bakundukize akoreye mu bujurire kwashingirwaho akagabanyirizwa igihano. II. II ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba ukwemera icyaha Bakundukize akoreye mu bujurire kwashingirwaho akagabanyirizwa igihano [13] Bakundukize n'umwunganira bavuga ko yajurijwe n'uko Urukiko Rukuru rwamuhanishije igihano kirekire, akaba asaba ko cyagabanywa kuko ubu noneho yemera icyaha akakicuza, ko impamvu mbere atacyemeye byatewe n'uko yari atarajijuka, ko n'Urukiko rw'Ikirenga rwemeje ko igihe cyose uregwa yemera icyaha mu buryo budashidikanywaho agabanyirizwa igihano², ko n'imirongo yatanze nyuma itabuza umuntu kuvugisha ukuri, naho ku birebana n'amategeko hakavugaga ko hashingirwa ku ngingo ya 59 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange hamwe n'ingingo ya 2 y'iryo tegeko. [14] Uhagarariye Ubushinjacyaha avuga ko impamvu y'ubujurire bwa Bakundukize itahabwa agaciro kuko kwemera icyaha mu bujurire ntacyo byamumarira, ko imikirize y'urubanza ajuririra igaragaza ko mu Rukiko Rukuru yari yajuriye anenga ibimenyetso byashingiweho ku rwego rwa mbere ariko urwo Rukiko rusanga ubujurire bwe nta shingiro bufite, ko rero kuba avuga ko aje kwemera icyaha muri uru Rukiko bitakwemerwa kuko ari ingingo nshya atigeze aburanisha mu bujurire bwa mbere nk'uko byatanzweho umurongo n'uru Rukiko mu rubanza RPAA 00048/2020/CA rwaciye ku wa 26/05/2022, haburana Ubushinjacyaha na Bimenyimana Jean Paul; ko n'iby'uko hashingirwa ku ngingo ya 59 y'Itegeko riteganyaga ibyaha n'ibihano muri rusange nabyo nta shingiro ryabyo, kuko kwemera icyaha nk'impamvu nyoroshyacyaha byemerwa gusa mu ntangiriro z'iburanisha ku rwego rwa mbere kandi bigakorwa mu buryo budashidikanywaho. UKO URUKIKO RUBIBONA

² Avuga ko byemejwe mu rubanza RPAA 0015/11/CS rwaciye ku wa 12/07/2013.

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[15] Ikibazo cyo kumenya niba ukwemera icyaha bwa mbere mu bujurire byagirira akamaro uregwa, cyatanzweho umurongo n'Urukiko rw'Ubujurire mu rubanza RPAA 00048/2020/CA rwaciwe ku wa 26/05/2022 haburana Ubushinjacyaha na Bimenyimana Jean Paul wakurikijwe no mu zindi zaciwe vuba harimo urubanza RPAA 00544/2023/CA rwaciwe ku wa 25/09/2024 haburana Ubushinjacyaha na Muvunyi Jean Claude Alias Ntambara, uwo murongo ukaba uvuga ko kwemera icyaha bwa mbere mu bujurire bitagirira akamaro uregwa kuko ntacyo aba anenga urubanza yajuririyeho ahubwo aba azanye ingingo nshya ataburanishije mu nkiko zibanza kandi Umucamanza w'ubujurire afite gusa inshingano yo gukosora amakosa yaba yarakozwe n'izo nkiko. [16] Ku bijyanye n'uru rubanza, Bakundukize abazwa mu nzego z'iperereza yahakanye icyaha akurikiranyweho, akomeza kugihakana aburana mu Rukiko Rwisumbuye ndetse no mu Rukiko Rukuru akomeza guhakana avuga ko Urukiko rwa mbere rwamuhamije icyaha nta bimenyetso simusiga rushingiyeho, urwo Rukiko rusanga ariko ubujurire bwe nta shingiro bwahabwa kuko hari ibimenyetso bimuhamya icyaha akurikiranweho byashingiweho mu kukimuhamya. [17] Urukiko rw'ubujurire rusanga hashingiwe ku murongo watanze mu rubanza rwavuzwe mu gika cya 15 cy'uru rubanza, ukwemera icyaha Bakundukize yakoreye mu bujurire bwa mbere y'uru Rukiko kutashingirwaho nk'impamvu yatuma agabanyirizwa igihano nk'uko abisaba. [18] Urukiko rusanga kandi ibyo avuga ko hashingirwa ku murongo watanze n'Urukiko rw'Ikirenga mu rubanza RPAA 0015/11/CS rwaciwe ku wa 12/07/2013, rukemeza ko igihe cyose uregwa aburana yemera icyaha agabanyirizwa ibihano, nabyo ntibyaba impamvu ituma agabanyirizwa igihano, kuko hashingiwe ku biteganywa n'ingingo ya 59 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaye ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu, ukwemera icyaha gushobora gushingirwaho nk'impamvu nyoroshyacyaha ni ugukozwe mu ntangiriro y'iburanisha ku rwego rwa mbere, kandi nk'uko byemejwe mu rubanza RPAA 00048/2020/CA rwaciwe n'uru Rukiko ku wa 26/05/20223, umurongo wari uriho ntukomeza gukurikizwa mu gihe wari ushingiye ku Itegeko ryavuyeho cyangwa ryahinduwe, bivuze ko umurongo wo mu rubanza Bakundukize ashingiraho utakomeza gukurikizwa kuko wari ushingiye ku Itegeko ryahinduwe. [19] Urukiko rurasanga ariko n'ubwo ubujurire bushingiye ku kwemera icyaha kwa Bakundukize nta shingiro bufite, bitabuza ko hasuzumwa ibirebana n'igihano kugira ngo harebwe niba icyo yahawe gikwiranye n'uburemere bw'icyaha yakoze. Koko rero, n'ubwo icyaha Bakundukize yakoze kiremereye ndetse kigayitse, ariko na none igifungo cy'imyaka makumyabiri n'itanu (25) yahawe kiremereye cyane harebwe ko ari ubwa mbere akurikiranwe mu nkiko mu buryo buzwi, ndetse harebwe imyaka yari afite igaragaza ko yari akiri uruburiko afite imyaka makumyabiri nitanu (25), akaba rero yahanwa ariko akanahabwa amahirwe yo kwikosora akazasubira mu buzima busanzwe nyuma yo kugororwa, bityo igihano yahawe kikaba cyagabanywa. [20] Ku birebana n'igihano Bakundukize yahabwa, harashingirwa ku zindi manza uru Rukiko ruheruka guca ku bantu barezwe icyaha gisa n'icyo akurikiranyweho, harimo urubanza RPAA

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00495/2021/CA rwaciwe ku wa 22/03/2024 haburana Ubushinjacyaha na Ndayigumije Eric wasambanyije umwana w'imyaka cumi n'irindwi (17) we afite imyaka 23, Urukiko rwamugabanyirije igihano rushingiye ku kuba yarakoze icyaha ari umusore w'imyaka 23 y'amavuko no kuba bwari ubwa mbere ahamijwe icyaha n'inkiko ku buryo buzwi rumugabanyiriza igihano kugeza ku gifungo cy'imyaka cumi n'itatu (13), bityo kuba no kuri Bakundukize ari ubwa mbere akurikiranweho icyaha mu buryo buzwi kandi akaba yarakoze icyaha ari ku kigero kidatandukanye cyane n'icya Ndayigumije Eric, bagabanyirizwa ibihano mu buryo bumwe mu rwego rwo gutanga ubutabera busa ku bibazo bisa, nawe agahanishwa igifungo y'imyaka cumi n'itatu (13). III. ICYEMEZO CY'URUKIKO [21] Rwemeje ko ubujurire bwa Bakundukize nta shingiro bufite; [22] Rwemeje ko imikirize y'urubanza RPA 00036/2022/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi ku wa 09/05/2024 ihindutse gusa ku birebana n'igihano; [23] Ruhanishije Bakundukize igifungo cy'imyaka cumi n'itatu (13); [24] Rwemeje ko amagarama y'urubanza aherera ku Isanduku ya Leta kuko Bakundukize yajuriye afunze, akaba basonewe kuyatanga.

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