

RWANDA / JUDGMENT

UBUSHINJACYAHA v. BAMUREKE

RPAA 00832/2024/CA

COURT

Court of Appeal

DECIDED

17 April 2025

CASE / FILE NUMBER

RPAA 00832/2024/CA

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UBUSHINJACYAHA v. BAMUREKE

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- Date: 2025-04-17
- Case/document no.: RPAA 00832/2024/CA
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Text

Page 1

UBUSHINJACYAHA v. BAMUREKE [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00832/2024/CA (Rutazana, P.J.) 17 Mata 2025] Amategeko agenga imanza z'inshinjabyaha – Kugabanya igihano iyo hari impamvu nyoroshyacyaha – Iyo hari impamvu nyoroshyacyaha zemejwe n'Umucamanza igihano cy'igifungo cya burundu gishobora kugabanywa ariko ntikijye muni y'igifungo cy'inyaka 15. Incamake y'ikibazo: Bamureke Fred yakurikiranyweho n'Ubushinjacyaha icyaha cy'ubwicanyi buturutse ku bushake nyuma yuko uyu yishe Manirakiza Isdore basangiraga inzoga. Ubushinjacyaha nyuma yo gukora iperereza, bwamuregeye Urukiko Rwisumbuye rwa Ngoma busaba ko icyaha cy'ubwicanyi buturutse ku bushake kimuhama, agahanishwa igihano cy'igifungo cya burundu. Urukiko Rwisumbuye rwa Ngoma rwaciye urubanza rwemeza ko Bamureke ahamwe n'icyaha rumuhanisha igihano cy'igifungo cya burundu. Bamureke yajuririye mu Rukiko Rukuru, Urugereko rwa Rwamagana asaba kugabanyirizwa igihano kuko yaburanye yemera icyaha kandi akaba ari ubwa mbere akurikiranyweho icyaha mu buryo buzwi. Urukiko Rukuru Urugereko rwa Rwamagana, rwaciye urubanza rwemeza ko ahanishwa igihano cy'igifungo cy'inyaka 15. Yajuririye mu Rukiko rw'Ubujuje asaba kongera kugabanyirizwa igihano, akabishingira kandi ku rubanza RPAA 00269/2022/CA rwaciye n'Urukiko rw'Ubujuje

ku wa 12/05/2023, aho uregwa wahamijwe icyaha cy'ubucuruzi bw'ibyobyabwenge bwo mu bwoko bw'urumogi yahanishijwe igifungo cy'imyaka itanu kuko yari yacyicujije bihagije. Ku rundi ruhande, Ubushinjacyaha buvuga ko Bamureke yagabanyirijwe ku buryo buhagije kandi yahawe igihano gito giteganywa n'itegeko, busaba ko atakongera kugabanyirizwa, bityo ubujurire bwe bukaba budakwiye guhabwa igishingiro. Incamake y'icyemezo: Iyo hari impamvu nyoroshyacyaha zemejwe n'Umucamanza igihano cy'igifungo cya burundu gishobora kugabanywa ariko ntikijye muni y'igifungo cy'imyaka 15. Ubujurire nta shingiro bufite. Urubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ntiruhindutse mu ngingo zarwo zose. Amategeko yashingiweho: Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, Ingingo ya 107. Itegeko N°59/2023 ryo kuwa 04/12/2023 rihindura Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 2.

Page 2

Imanza zifashishijwe: RPAA 00048/2020/CA; Ubushinjacyaha vs Bimenyimana Jean Paul rwaciwe n'Urukiko rw'Ubujurire ku wa 26/05/2022; RPAA 00367/2020/CA; Ubushinjacyaha vs Twagirumukiza Innocent Réponse rwaciwe n'Urukiko rw'Ubujurire ku wa 22/12/2023; RPAA 00052/2024/CA; Ubushinjacyaha vs Bihoyiki Jean rwaciwe n'Urukiko rw'Ubujurire ku wa 19/12/2024. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 08/09/2019 bari mu Mudugudu wa Toneru, Akagari ka Rwayikona, Umurenge wa Mushikiri mu Karere ka Kirehe, Bamureke Fred na Manirakiza Isidore biriwe basangira inzoga, bigeze mu masaha ya saa kumi n'ebiri z'umugoroba (18h) ubwo bari mu kabari k'uwitwa Mutangana JMV, barashyamiyana ndetse bararwana, Bamureke Fred akubita Manirakiza ingumi n'imigiri mu mbavu anamutura hasi amukandagira mu nda, ajyanwa kwa muganga ariko bigeze mu masaha ya saa saba arapfa. Bamureke Fred yahise afatwa atangira gukurikiranwa, iperereza rirangiye Ubushinjacyaha bumurega mu Rukiko Rwisumbuye rwa Ngoma bumushinja icyaha cy'ubwicanyi buturutse ku bushake, busaba ko kimuhama agahanishwa igifungo cya burundu. [2] Bamureke Fred yaburanye yemera icyaha ashinjwa, asobanura ko yasangiye na Manirakiza inzoga hanyuma baza gushwana bapfuye akabido bari baguriyemo inzoga, Manirakiza afata Bamureke Fred amaguru yitura hasi, uyu nawe amurusha umujinya aramusunika agwa hasi bamusukira amazi ariko biranga, hanyuma yumvise bavuga ko yapfuye agira ubwoba arahunga. [3] Mu rubanza RP 00918/2020/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 28/01/2021, rushingiye ku mvugo za Bamureke Fred wemera ko yakubise Manirakiza akamwica, imvugo z'abatangabuhama babibonye barimo Ndagijimana Jean Claude, Mvuyekure Faustin na Maniraguha Denis bemeza ko Bamureke Fred yakubise Manirakiza umutego aragwa hanyuma amukubita ingumi n'imigiri mu nda ahita ahwera bamusukira amazi ariko biranga, rwemeje ko harebwe aho Bamureke Fred yakubise nyakwigendera ndetse n'ubugome n'imbaraga yabikoranye, ahamwa n'icyaha ashinjwa cy'ubwicanyi buturutse ku bushake, rumuhanisha igifungo cya burundu. [4] Bamureke Fred yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana, asaba kugabanyirizwa igihano kuko yaburanye yemera icyaha kandi akaba ari ubwa mbere akurikiranyweho icyaha mu buryo buzwi. [5] Uhagarariye Ubushinjacyaha yaburanye avuga ko ubujurire bwa Bamureke Fred nta shingiro bufite, ko ariko kuko mu gihe ubujurire bwe bwari butarasuzumwa hasohotse Itegeko rishya

rihindura iryari risanzweho riteganya ibyaha n'ibihano muri rusange mu buryo bwongerera Bamureke Fred amahirwe yo kugabanirizwa igihano, yahanishwa igihano cy'igifungo kiri mu mbibi z'ibiteganywa n'iryo tegeko, kitari muni y'igifungo cy'imyaka 15.

Page 3

[6] Mu rubanza RPA 00282/2021/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 30/07/2024, rwasanze kuba Bamureke Fred yaremeye icyaha ku rwego rwa mbere kandi akaba ari ubwa mbere akurikiranyweho icyaha mu buryo buzwi byamubera impamvu nyoroshyacyaha yashingirwaho agabanyirizwa igihano, maze rushingiye ku ngingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, rwemeza ko Bamureke Fred ahanishwa igifungo cy'imyaka 15. [7] Bamureke Fred yongeye kujurira mu Rukiko rw'Ubujurire, urubanza rwandikwa kuri RPAA 00832/2024/CA ruburanishwa mu ruhame ku wa 03/04/2025, yunganiwe na Me Micomyiza Lilian, naho Ubushinjacyaha buhagarariwe na Sibomana Stanislas, Umushinjacyaha ku rwego rw'Igihugu. [8] Mu bujurire bwe Bamureke Fred n'umwunganira basaba Urukiko kumugabanyiriza igihano ku buryo burushijeho rushingiye ku kuba yemera icyaha mu buryo budashidikanywaho, kuba ari ubwa mbere akurikiranyweho icyaha mu buryo buzwi no kuba yaragikoze ari bwo akiva mu bwana. Babwiye kandi Urukiko ko ibijyanye n'ubusembure buturuka ku businzi Bamureke Fred yari yavuze mu myanzuro ye y'ubujurire batakibiburanisha. [9] Uhagarariye Ubushinjacyaha avuga ko ntacyo Bamureke Fred anenga urubanza rujuririrwa kuko yagabanyirijwe igihano mu buryo buhagije kikaba kidashobora kongera kugabanywa, bityo ubujurire bwe bukaba nta shingiro bufite. [10] Urukiko rurasuzuma ikibazo cyo kumenya niba igifungo cy'imyaka 15 Bamureke Fred yahanishijwe kubera icyaha cy'ubwicanyi yahamijwe gishobora kongera kugabanywa. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

Kumenya niba igifungo cy'imyaka 15 Bamureke Fred yahanishijwe kubera icyaha cy'ubwicanyi yahamijwe cyakongera kugabanywa.

- [11] Bamureke Fred na Me Micomyiza Lilian umwunganira bavuga ko ubujurire bwe bugamije gusaba Urukiko kumugabanyiriza igihano ku buryo burushijeho, rushingiye ku mpamvu nyoroshyacyaha zikurikira:
- Kuba yaremeye icyaha mu buryo budashidikanywaho kuva agifatwa kandi akaba acyicuza kuko yagikoze atabigambiriye ahubwo yabitewe n'ubusinzi;
 - Kuba ari ubwa mbere akurikiranyweho icyaha mu buryo buzwi bityo akaba atararenga ihaniro;

- Kuba yarakoze icyaha aribwo akiva mu bwana kuko yari afite imyaka 20, akaba yari ataragira ubushishozi buhagije bwo kwirinda gukora icyaha. [12] Basobanura ko basaba ko Bamureke Fred agabanyirizwa igihano bashingiye ku biteganywa mu ngingo ya 59 y'Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha nibihano muri

Page 4

rusange nk'uko ryahinduwe kugeza ubu, ingingo ya 2 y'Itegeko N° 059/2023 ryo kuwa 04/12/2023 rihindura Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, no ku murongo watanzwe mu rubanza RPAA 00269/2022/CA rwaciwe n'Urukiko rw'Ubujurire kuwa 12/05/2023, aho uregwa wahamijwe icyaha cy'ubucuruzi bw'ibyobyabwenge bwo mu bwoko bw'urumogi yahanishijwe igifungo cy'imyaka itanu kuko yari yacyicujije bihagije. [13] Uhagarariye Ubushinjacyaha avuga ko mu bujurire bwa Bamureke Fred ntacyo anenga urubanza yajurirye, kuko mu Rukiko Rukuru, Urugereko rwa Rwamagana yari yajuriye asaba kugabanyirizwa igihano arabihabwa, ahanishwa igihano gito giteganywa n'itegeko, kikaba rero kidashobora kongera kugabanywa hashingiwe ku murongo watanzwe n'Urukiko rw'Ikirenga mu rubanza RPA 0129/10/CS rwaciwe kuwa 07/03/2014 haburana Ubushinjacyaha na Mpitabakana, unashingirwaho n'Urukiko rw'Ubujurire mu manza1 zinyuranye rwaciye, w'uko uregwa atongera kugabanyirizwa ibihano iyo mu bujurire urukiko rusanga yarabigabanyirijwe bihagije, harebwe uburemere bw'icyaha n'uburyo icyaha cyakozwemo. UKO URUKIKO RUBIBONA [14] Impaka kuri iyi ngingo zishingiye ku kumenya niba igihano cy'igifungo cy'imyaka 15 Bamureke Fred yahanishijwe kubera icyaha cy'ubwicanyi buturutse ku bushake yahamijwe gishobora kongera kugabanywa. [15] Ingingo ya 107, igika cya 2, y'Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu, iteganya ko icyaha cy'ubwicanyi buturutse ku bushake gihanishwa igifungo cya burundu. Ibijyanye no kuba igifungo cya burundu cyagabanywa kubera impamvu nyoroshyacyaha byavugwaga muri iri tegeko byaje guhindurwa mu ngingo ya 2 (a) y'Itegeko N°59/2023 ryo kuwa 04/12/2023 rihindura Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, iteganya ko iyo umucamanza yemeje impamvu nyoroshyacyaha igifungo cya burundu gishobora kugabanywa ariko ntikijye munsu y'igihano cy'igifungo cy'imyaka 15. [16] Izi ngingo zombi zisomewe hamwe zumvikanisha ko iyo hari impamvu nyoroshyacyaha zemejwe n'Umucamanza igihano cy'igifungo cya burundu gishobora kugabanywa ariko ntikijye munsu y'igifungo cy'imyaka 15. [17] Nk'uko kandi byemejwe mu rubanza RPAA 00048/2020/CA rwaciwe n'uru Rukiko kuwa 26/05/2022 haburana Ubushinjacyaha na Bimenyimana Jean Paul (mu bika bya 25-26), umurongo wari uriho ntushobora gukurikizwa mu gihe itegeko wari ushingiyeho ryavuyeho cyangwa ryahinduwe. Urukiko rw'Ubujurire rushingiye kuri uyu murongo, mu manza rwaciye nyuma y'uko Itegeko N° 059/2023 ryo kuwa 04/12/2023 rihindura Itegeko N° 68/2018 ryo kuwa 30/08/2018

1 Izo manza zaciwe n'Urukiko rw'Ubujurire BAMUREKE Fred n'umwunganira bavuga ko zashingiye kuri uwo murongo ni urubanza N° RPAA 00494/2024/CA rwaciwe ku wa 25/09/2024 haburana Ubushinjacyaha na NTAWIHEBA Jean de Dieu bahimba Afande Gaturi (igika cya 28) n'urubanza N° RPA 00071/2018/CA rwaciwe ku wa 07/06/2019 haburana Ubushinjacyaha na NDORIMANA Emmanuel n'abandi (igika cya 14).

Page 5

riteganya ibyaha n'ibihano muri rusange ryavuzwe haruguru ritangajwe mu Igazeti ya Leta, rwemeje ko ibijyanye no kugabanya igihano kikajya muni y'igihano gito giteganywa n'itegeko (minimum) bitagikurikizwa kuko byavanyweho n'iryo Tegeko ryashyizeho uburyo bushya bwo kugabanya ibihano (reba nk'urubanza RPAA 00367/2020/CA rwaciwe ku wa 22/12/2023 haburana ubushinjacyaha na Twagirumukiza Innocent Réponse mu gika cya 19 n'izindi zaciwe nyuma yarwo, mu ziheruka gucibwa harimo urubanza RPAA 00052/2024/CA rwaciwe ku wa 19/12/2024 haburana Ubushinjacyaha na Bihoyiki Jean mu igika cya 14). [18] Nk'uko bigaragara mu gika cya 7 cy'urubanza rujuririrwa, Urukiko Rukuru, Urugereko rwa Rwamagana rushingiye ku biteganyijwe mu ngingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 riteganya ibyaha n'ibihano muri rusange yavuzwe haruguru, rwagabanyirije Bamureke Fred igihano ahanishwa igifungo cy'imyaka 15 rushingiye ku mpamvu nyoroshyacyaha z'uko yemeye icyaha kandi akaba ari ubwa mbere akurikiranyweho icyaha mu buryo buzwi. [19] Urukiko rw'Ubujurire rushingiye ku bisobanuro byatanze mu gika cya 16 cy'uru rubanza no ku murongo wavuzwe mu gika cya 17 nacyo cy'uru rubanza, watanze n'Urukiko rw'Ikirenga mu rubanza RPAA 00048/2020/CA ukanashingirwaho n'uru Rukiko mu manza zinyuranye rwaciye, rurasanga igihano cy'igifungo Bamureke Fred yahanishijwe ari cyo gito gishoboka ku cyaha cy'ubwicanyi yahamijwe, kikaba rero kidashobora kongera kugabanywa ngo kijye muni y'imyaka 15; bityo ubujurire bwe bukaba nta shingiro bufite. Ibi binahura n'ibyemejwe mu zindi manza zaciwe n'uru Rukiko ku baregwa bahamijwe icyaha cy'ubwicanyi bagahanishwa igifungo cy'imyaka 15, bakajuririra uru Rukiko basaba kugabanyirizwa igihano, mu ziheruka gucibwa harimo nk' urubanza RPAA 00914/2024/CA haburana Ubushinjacyaha na Muneza Jean Bosco, rwaciwe ku wa 27/03/2025 (ibika bya 19-21). III. ICYEMEZO CY'URUKIKO [20] Rwemeje ko ubujurire bwa Bamureke Fred nta shingiro bufite. [21] Rwemeje ko urubanza RPA00282/2021/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 30/07/2024 rudahindutse mu ngingo zarwo zose. [22] Rwemeje ko igihano cy'igifungo cy'imyaka cumi n'itanu (15) Bamureke Fred yahanishijwe kigumyeho. [23] Rutegetse ko Bamureke Fred asonewe amagarama y'urubanza kuko aburana afunze.

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Prepared on 11 October 2026 · Esheria