

RWANDA / JUDGMENT

UBUSHINJACYAHA v. BAMUREKE

RPAA 00832/2024/CA

COURT

Court of Appeal

DECIDED

17 April 2025

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UBUSHINJACYAHA v. BAMUREKE

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Text

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UBUSHINJACYAHA v. BAMUREKE [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00832/2024/CA (Rutazana, P.J.) 17 Mata 2025] Amategeko agenga ibyaha n'ibihano – icyaha cy'ubwicanyi buturutse ku bushake – Gusaba kugabanyirizwa ibihano – 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 yishe Manirakiza amukubise imigyeri mu mbavu. Iperereza rirangiye, Ubushinjacyaha bumurega mu Rukiko Rwisumbuye rwa Ngoma bumushinja icyaha cy'ubwicanyi buturutse ku bushake, busaba ko kimuhama maze agahanishwa igifungo cya burundu. Uregwa yaburanye yemera icyaha. Urukiko Rwisumbuye rwa Ngoma rushingiye ku mvugo z'uregwa hamwe n'iz'abatangabuhamya, rwemeje ko ahamwa n'icyaha ashinjwa cy'ubwicanyi buturutse ku bushake, maze rumuhanisha igifungo cya burundu kuko rwasanze yakoranye icyaha n'ubugome. 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. Uhagarariye Ubushinjacyaha aavuga ko ubujurire nta shingiro bufite, kuko mu gihe ubujurire bwe bwari butarasuzumwa hasohotse Itegeko rishya rihindura iryari risanzweho riteganywa ibyaha n'ibihano muri rusange

mu buryo bwongerera uregwa amahirwe yo kugabanirizwa igihano, maze agahanishwa igihano cy'igifungo kiri mu mbibi z'ibiteganywa n'iryo tegeko, kitari muni y'igifungo cy'imyaka 15. Urukiko Rukuru, Urugereko rwa Rwamagana, rwasanze kuba Bamureke Fred yaremeye icyaha kuva ku rwego rwa mbere, akaba kandi ari ubwa mbere akurikiranyweho icyaha mu buryo buzwi, byamubera impamvu nyoroshyacyaha yashingirwaho agabanyirizwa igihano, maze rwemeza ko ahanishwa igifungo cy'imyaka 15. Bamureke yongeye kujurira mu Rukiko rw'Ubujurire, asaba Urukiko kumugabanyiriza igihano ku buryo burushijeho ashingiye ku kuba yemera icyaha mu buryo budashidikanywaho, akaba kandi ari ubwa mbere akurikiranywe mu buryo buzwi no kuba yaragikoze ari bwo akiva mu bwana. Uhagarariye Ubushinjacyaha avuga ko kuba uregwa yagabanyirijwe igihano mu buryo buhagije, atakongera kugabanyirizwa. Urukiko rw'Ubujurire rwemeje ko igihano cy'igifungo uregwa 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. 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.

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Ubujurire nta shingiro bufite.

Amategeko yashingiweho: Itegeko N°59/2023 ryo kuwa 04/12/2023 rihindura Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, ingingo ya 2. Imanza zifashishijwe: Urubanza RPAA 00048/2020/CA rw'Ubushinjacyaha na Bimenyimana Jean Paul, rwaciwe n'Urukiko rw'Ubujurire, ku wa 26/05/2022; Urubanza RPAA 00367/2020/CA rw'ubushinjacyaha na Twagirumukiza Innocent Réponse; rwaciwe n'Urukiko rw'Ubujurire ku wa 22/12/2023; Urubanza RPAA 00052/2024/CA rw'Ubushinjacyaha na Bihoyiki Jean, rwaciwe n'Urukiko rw'Ubujurire ku wa 19/12/2024; Urubanza RPAA 00914/2024/CA rw'Ubushinjacyaha na Muneza Jean Bosco, rwaciwe n'Urukiko rw'Ubujurire, ku wa 27/03/2025.

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, barashyamirana 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, invugo z'abatangabuhamya babibonye barimo Ndagijimana Jean Claude, Mvuyekure Faustin na Maniraguha Denis bemeza ko Bamureke Fred yakubise Manirakiza umutego aragwa hanyuma amukubita ingumi n'imigeri 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.

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[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 riteganywa 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 munsu y'igifungo cy'inyaka 15. [6] Mu rubanza RPA 00282/2021/HC/RWG rwaciye n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 30/07/2024, rwasanze kuba Bamureke Fred yaremeye icyaha kuwa 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 riteganywa ibyaha n'ibihano muri rusange, rwemeza ko Bamureke Fred ahanishwa igifungo cy'inyaka 15. [7] Bamureke Fred yongeye kujurira mu Rukiko rw'Ubujujire, urubanza rwandikwa kuri RPAA 00832/2024/CA ruburanishwa mu ruhamye ku wa 03/04/2025, yunganiye na Me Micomyiza Lilian, naho Ubushinjacyaha buhagarariye na Sibomana Stanislas, Umushinjacyaha ku rwego rw'Igihugu. [8] Mu bujujire 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 bata kibiburanisha. [9] Uhagarariye Ubushinjacyaha avuga ko ntacyo Bamureke Fred anenga urubanza rujuriyirwa 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'inyaka 15 Bamureke Fred yahanishijwe kubera icyaha cy'ubwicanyi yahamijwe gishobora kongera kugabanywa. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba igifungo cy'inyaka 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;

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- 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 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 yajuririywe, 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 00129/10/CS rwaciwe kuwa 07/03/2014 haburana Ubushinjacyaha na Mpitabakana, unashingirwaho n'Urukiko rw'Ubujurire mu manza 1 Izinyuranye 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.

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

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[16] Izi ngingo zombi zisomewe hamwe zumvikanisha ko iyo hari impamvu nyoroshyacyaha zemejwe n'Umucamanza igihano cy'igifungo cya burundu gishobora kugabanywa ariko ntikijye muni y'igifungo cy'imyaka 15. [17] Nk'uko kandi byemejwe mu rubanza RPAA 00048/2020/CA rwaciwe n'uru Rukiko ku wa 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 ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaga 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 riteganyaga 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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