

RWANDA / JUDGMENT

UBUHSINJYACYAHA v BIMENYIMANA**RPA0041/10/CS**

COURT

Supreme Court

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4 April 2014

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UBUHSINJYACYAHA v BIMENYIMANA

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UBUSHINJYACYAHA v. BIMENYIMANA [Rwanda URUKIKO RW'IKIRENGA – RPA0041/10/CS (Mutashya, P.J., Kanyange na Hitiyaremye, J.) 4 Mata 2014] Amategeko yerekeye imiburanishirize y'imanza nshinjabyaha – Alibi – Gushidikanya mu manza nshinjabyaha.– Kuba Ubushinjacyaha butarabashije kugaragaza ko ushinjwa yari ahantu habiri hatandukanye ku masaha amwe bituma habaho gushidikanya kandi gushidikanya birengera ushinjwa, bityo rero, agomba kugirwa umwere – Itegeko n°30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 85 na 165. Incamake y'ikibazo: Bimenyimana Jean Claude yakurikiranywe n'Ubushinjacyaha ashinjawa icyaha cy'ubwicanyi, kurema umutwe w'abagizi ba nabi no ubujura bwitwaje intwari byakozwe igihe bateraga kwa Uhagaze Vincent bitwaje imbunda bakahica abana 2. Mu ku mushinja, Ubushinjacyaha bwashingiye ku buhamya bw'abana 2 bemeje ko mu bateye iwabo bamenyemo Bimenyimana Jean Claude. Urukiko Rukuru Urugereko rwa Nyanza rwaregewe rwahamije Bimenyimana Jean Claude wenyine ibyo byaha rumuhanisha igifungo cy'imyaka 20. Yajuririye mu Rukiko rw'Ikirenga avuga ko yahamijwe icyaha atakoze, kuba hatarabajijwe abatangabuhamya bamushinjura mu gihe Ubushinjacyaha bwo buvuga ko ibyaha yahamijwe yabikoze koko. Ruhereye ku miterere y'urubanza ubwarwo

ndetse no ku miburanire ya BIMENYIMANA Jean- Claude n'umwunganira, rukiko rwasanze ari ngombwa ko hahamagazwa abatangabuhamya harimo uwari umukoresha we, undi mukozi wakoraga mu kabari k'uwo mukoresha akaba kandi yarararanaga n'ushinjwa ku gitanda kimwe n'abandi babiri. Incamake y'ikibazo: Kuba hari abatangabuhamya bemeje bararanye n'ushinjwa mu ijoro Uhagaze yatewemo (Uhagaze) kandi nawe ubwe akaba yemeza mu ibazwa rye ko nta n'umwe yamenye mu bamuteye mu gihe undi mu batangabuhamya avuga ko yamenye Bimenyimana Jean Claude nyamara bese bari aho icyaha cyabereye, bigaragariza Urukiko ko Ubushinjacyaha butashoboye kwerekana ku buryo budashidikanywaho uruhare rw'ushinjwa mu ikorwa rya byo bikubitiye ku kuba kuva aho ibyaha byabereye n'ahemejwe n'abatangabuhamya ko ushinjwa yari ari icyaha gikorwa hatagendwa mu gihe kiri munsu y'amasaha abiri bukaba butaragaragaje ko Bimenyimana Jean Claude yari ari ahantu habiri icyarimwe. Bityo rero, kuba Ubushinjacyaha butarashoboye kuvuguruza ubuhamya bwatanze n'abatangabuhamya babajijwe n'Urukiko bwerekana ko Bimenyimana Jean-Claude ku isaha n'itariki icyaha cyabereyeho atari mu rugo (alibi), n'abatangabuhamya bushingiraho, imvugo zabo zikaba zivuguruzanya, bitera Urukiko gushidikanya ku ruhare yaba yaragize mu ikorwa ry'ibyaha akurikiranweho, bityo icyaha akurikiranweho akaba agomba kukigirwaho umwere kubera gushidikanya. Ubujurire bufite ishingiye. Ibyaha aregwa ntibimuhama. Agizwe umwere. Agomba guhita arekurwa. Urubanza rwajuririwe ruvanyweho mu ngingo zarwo zozse

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Amagarama y'urubanza ahereye ku isanduku ya leta. Amategeko yashingiweho: Itegeko n°30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 85 na 165. Nta manza zifashishijwe. I.IMITERERE Y'URUBANZA [1] Bimenyimana Jean -Claude yakurikiranywe n'Ubushinjacyaha ku byaha byavuzwe haruguru buvuga ko kuwa 08/02/2008 afatanyije na Hakizimana, Ndizeye Aime, Ntamavukiro, Sebazungu na Sendegeya bateye kwa Uhagaze Vincent bitwaje imbunda, bakahica abana babiri aribo Hakizimana wari ufite imyaka irindwi na Nirere wari ufite imyaka 11 y'amavuko, bakahiba ibintu binyuranye. [2] Bushingiye ku buhamya bw'abana 2 bari muri urwo rugo aribo Niyodusenga Clémentine na Nigwize Jacqueline bemeje ko mu bateye iwabo bamenyemo Bimenyimana Jean-Claude, Ubushinjacyaha bwaregeye Urukiko Rukuru, Urugereko rwa Nyanza, rwemeza ko ibyaha byo kurema umutwe w'abagizi ba nabi, ubwicanyi n'ubujura bwitwaje intwari bihama Bimenyimana Jean-Claude wenyine ko abandira bitahama, rumuhanisha igifungo cy'imyaka 20. [3] Bimenyimana Jean- Claude yajuririye mu Rukiko rw'Ikirenga avuga ko yahamijwe icyaha atakoze, ko hatabajijwe abatangabuhamya bamushinjura ahubwo hakabazwa abamushinja gusa, naho Ubushinjacyaha bwo bukavuga ko icyaha Bimenyimanajean- Claude yahamijwe yagikoze koko. [4] Iburanisha ry'urubanza ryashyizwe kuwa 04/11/2013 Bimenyimana Jean- Claude yitabye yunganiye na Me Nkusi Dismas naho Ubushinjacyaha buhagarariye na Ntawangundi Béatrice. [5] Urukiko ruherereye ku miterere y'urubanza ubwarwo ndetse no ku miburanire ya Bimenyimana Jean- Claude n'umwunganira, rwasanze ari ngombwa ko hahamagazwa abatangabuhamya barimo Twahirwa Fabien wari umukoresha we, Nzabakurana Jean de Dieu nawe wari umukozi wa Twahirwa Fabien amukorera mu kabare akaba yarararanaga na Bimenyimana Jean- Claude ku gitanda kimwe, Niyodusenga

Clémentine na Nigwize Jacqueline, urubanza rwimurirwa kuwa 16/12/2013. [6] Kubera kutaboneka kw'abatangabuhamya, urubanza rwagiye rwimurwa kugeza ubwo rushyiriwe kuwa 03/03/2014 uwo munsu ababuranyi baritaba, Bimenyimana Jean-Claude yunganiwe na Me Nzayirama Félix, Ubushinjacyaha buhagarariwe na Munyaneza Nkwaya Eric, mu batangabuhamya bifujwe n'Urukiko hitabye Twahirwa Fabien na Nzabakurana Jean de Dieu, urukiko rufata icyemezo cyo kuba aribo rubaza. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

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Kumenya niba Bimenyimana Jean- Claude yarahamijwe ibyaha akurikiranyweho nta bimenyetso bifatika kandi bidashidikanywaho bihari. [7] Bimenyimana Jean-Claude avuga ko impamvu yatumye ajurira ari uko Urukiko Rukuru rwamuhamije ibyaha atakoze kandi nta n'ibimenyetso bifatika rushingiyeho, ko kuvuga ko Nigwize Jacqueline yumvise ijwi rye nta shingiro bikwiye guhabwa kubera ko abantu bashobora guhuza ijwi, ko rero hari hakwiye kubazwa Twahirwa Fabien yakoreraga akagaragaza aho yari ari Uhagaze aterwa. Avuga ko kubera ko aho yari atuye n'ahatewe hari intera ndende ugereranyije ushobora kugenda amasaha abiri, ntibyakumvikana ukuntu saa yineyaba yari mu rugo aho yakoraga, akanajya gutera kwa Uhagaze saa tanu, isaha Ubushinjacyaha buvuga ko ariyo Uhagaze yatereweho . [8] Akomeza avuga ko iryo joro yari kumwe na Nzabakurana Jean de Dieu bakorana kandi uyu akaba atarigeze abazwa nyamara ariwe bararanye kugeza mu gitondo, ko kwa Uhagaze yigeze kugerayo rimwe agiye gutiraye uburoso ariko igihe baterwa atigeze ahagera. [9] Me Nkusi Dismas wunganira Bimenyimana Jean- Claude avuga ko kuva aho Bimenyimanajean- Claude yari ari kugera ahatewe, hari urugendo rurerure atari gukora mu isaha imwe gusa ngo bishoboke. Avuga ko Jacqueline ashobora koko kuba yari asanzwe ari Bimenyimana Jean- Claude, ariko kuvuga ko yumvise ijwi rye bidahagije kubera ko abantu bashobora kugira ijwi risa. Akomeza avuga ko imvugo ya Niyodusenga Clémentine yuko yamubonye mu bateye ahongaho, nta gaciro yababwira kuko atari kuba amutunze itoroshi mu maso kandi ninjoro nkuko abivugaga, ngo ashobore kumubona. [10] Uhagarariye Ubushinjacyaha avuga ko impamvu z'ubujurire za Bimenyimana Jean- Claude nta shingiro zifite kubera ko Nigwize Jacqueline na Niyodusenga Clémentine bamwumvise bakaba kandi bari basanzwe bamuzi, akaba atagaragaza icyo bapfaga cyatuma bamubeshyera, ko n'ubwo mu Rukiko Rukuru atigeze asaba ko Twahirwa Fabien yakoreraga yabazwa uretse ko Urukiko rusanze ari ngombwa rwamuhamagaza akabazwa, ndetse na bariya bana bibaye ngombwa nabo bakongera bakabazwa bakemeza ibyo bavuze. [11] Ku kibazo cy'intera iri hagati y'aho yabaga n'ahabereye icyaha, uhagarariye Ubushinjacyaha avuga ko atari ikibazo kuko Bimenyimana Jean- Claude ariwe uzi uburyo yabikoze akahagera, icy'ingenzi ni uko hari abamubonye kandi bakaba baramushinje, ko rero urubanza rwaciye n'Urukiko Rukuru, Urugereko rwa Nyanza rutagombye guhinduka. UKO URUKIKO RUBIBONA [12] Mu buhamya bwatanze na Twahirwa Fabien wari umukoresha wa Bimenyimana Jean- Claude, nyuma yo kurahira ko avugisha ukuri imbere y'Urukiko rw'Ikirenga, yabwiye Urukiko ko Bimenyimana Jean- Claude yari umukozi we mu rugo kuwa muri 2006 kugeza 2008 icyo gihe akaba yakoreraga mu Karere ka Gisagara ashinzwe ubuhinzi bw'amakawa. Avugako Bimenyimanajean- Claude afatwa, yari yaraye mu rugo akabyuka mu gitondo amutuma

amakara bakamufata bamubwira ko hari ikibazo cyaraye kibaye bakamufatana n'abandi bantu batanu. [13] Yakomeje avuga ko yemeza ko ku wa gatanu ari nabwo Uhagaze yatewe Bimenyimana Jean- Claude yaraye iwe,ko yatashye nko mu ma saa yine z'ijoro kubera ko yatinze mu kabare, ko yavuganye nawe mbere y'uko aryama, mu gitondo nka saa kumi n'imwe akabyuka amutuma kujya kugura amakara kugira ngo ateke abone uko ajya ku kazi ariye, ko kandi yararanaga na Nzabakurana Jean de Dieu nawe wamukoreraga mu kabare. Yavuze kandi ko icyo yahagararaho,ari uko kugera saa tanu z'ijoro Bimenyimanajean-

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Claude yari ahari na mu gitondo saa kumi n'imwe akaba yari ahari kuko aribwo yamutumye, ko kuba ashobora kuba yaragiye hagati ya saa tanu na saa kumi n'imwe za mu gitondo, byabazwa Nzabakurana Jean de Dieu bararanaga, ko kandi kuva iwe kugera ahatewe udashobora kuhava nka saa sita z'ijoro ngo saa kumi n'imwe ube wagarutse keretse ufite Moto. [14] Twahirwa Fabien yongeye kuvuga ko nyuma y'uko kwa Uhagaze haterwa, yabonanye na Nigwize Jacqueline akamubwira ko iwabo hibwe, uyu akaba yaracumbikaga mu gipangu kimwe nawe kubera ko yigaga kuri collège ya Kigembe akaba atarashoboraga gutaha iwabo kuko hari kure, ko icyo gihe yamubwiye ko hari abantu batangiye kuza kubasaba imbabazi bavuga ko bari baziko bari buterweariko ntibabibabwira, ko kandi bumva Bimenyimana Jean- Claude arengana. [15] Umutangabuhamya witwa Nzabakurana Jean de Dieu akaba ari we wararanaga na Bimenyimana Jean-Claude, nyuma yo kurahira ko avugisha ukuri,nawe yabwiye Urukiko ko Bimenyimana Jean-Claude amuzi kukobombi bakoreraga Twahirwa Fabien, ko yumvise ko kwa Uhagaze hatewe hakicwa abana babiri. Yavuze ko icyo yibuka ari uko iryo joro yaryamye hamwe na Bimenyimana Jean- Claude nkuko byari bisanzwe ariko ko atibuka isaha baryamiyeho,ko mu Gitondobimenyimana Jean- Claude yazindutse ajya gushaka amakara. [16] Mu buhamya bwe, Uhagaze watewe yavuze ko yatewe n'abantu bitwaje imbunda bakica abana babiri babarashe, ko ariko muri ayo mabandi nta n'umwe yamenyemo, ko kandi icyo gihe bamutwaye ibintu binyuranye birimo ivarisi y'imyenda y'umwana, amafaranga,ibishyimbo, igare n'ibindi. [17] Uwitwa Nzabakurana Jean de Dieu we mu buhamya bwe yatanze ubwo yabazwaga imbere y'ubugenzacyaha, yemeje ko ku wa gatanu Bimenyimana Jean- Claude yaraye mu rugo ko kandi bararanye, ko igihe ataharaye cyonyine ari ku cyumweru kubera ko umukoresha we yari yatashye, ko ku wa gatanu bararanye akazinduka ajya kugura amakara nk'uko Twahirwa Fabien yari abimusabye, ubu buhamya bukaba buhura neza n'ibyo yavugiye imbere y'uru rukiko ku wa 03/03/2014 ubwo yari yaje gutanga ubuhamya. [18] Urukiko rurasanga ubuhamya bwatanzwe na TWAHIRWA Fabien na Nzabakurana Jean de Dieu, bombi bemeza ko mu ijoro Uhagaze aterwamo bararanye na Bimenyimana Jean- Claude mu nzu,buvuguruza ibyo Nigwize Jacqueline na Niyodusenga Clémentine bavuze ko ; Bimenyimanajean- Claudeya ri mu babateye, cyane cyane ko na Uhagaze watewe yasobanuye mu ibazwa rye ko mu bamuteye nta numwe yamenyemo mu gihe Niyodusenga Clémentine we, avuga ko yamenyemo Bimenyimanajean- Claude, kandi bose bari aho icyaha cyakorewe. [19]

Urukiko rurasanga Ubushinjacyaha butarabashije kwerekana ku buryo budashidikanywaho (au delà de tout doute raisonnable) uruhare Bimenyimana Jean- Claude yaba yaragize mu byaha byakorewe kwa Uhagaze, bukaba nta n'ibimenyetso butanga bivuguruza ubuhamya bwatanzwe na Twahirwa Fabien na Nzabakurana Jean de Dieu bemeje ko iryo joro nko mu ma saa tanu bari kumwe na Bimenyimana Jean- Claude, ko kandi kuva aho bari bari kugera ahakorewe icyaha hari intera ndende ku buryo atabasha kuhagenda igihe kitari muni y'amasaha abiri ku maguru, bukaba butarabashije kwerekana uko Bimenyimana Jean- Claude yashoboraga kuba ahantu habiri icyarimwe ku masaha amwe.

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[20] Ingingo ya 85 y'Itegeko N°30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko «Ubushinjacyaha, uwakorewe icyaha cyangwa se abamufiteho uburenganzira iyo baregeye indishyi z'akababaro cyangwa biregeye umuburanyi, ni bo bagomba gutanga ibimenyetso byemeza icyaha», naho ingingo ya 165 y'iryo tegeko igateganya ko "ugushidikanya 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". [21] Urukiko rurasanga, kuba Ubushinjacyaha butarashoboye kuvuguruza ubuhamya bwatanzwe n'abatangabuhamya babajijwe n'Urukiko bwerekana ko Bimenyimana Jean- Claude ku isaha n'itariki icyaha cyabereyeho yari mu rugo aho yakoreraga (alibi), n'abatangabuhamya bushingiraho, imvugo zabo zikaba zivuguruzanya, bitera Urukiko gushidikanya ku ruhare Bimenyimana Jean- Claude yaba yaragize mu ikorwa ry'ibyaha akurikiranweho, bityo icyaha akurikiranweho akaba agomba kukigirwaho umweme kubera gushidikanya. III. ICYEMEZO CY'URUKIKO [22] Rwemeje ko ubujurire bwa BIMENYIMANA Jean-Claude bufite ishingiro; [23] Rwemeje ko ibyaha byo kurema umutwe w'abagizi ba nabi, ubujura bwitwaje intwari n'ubwicanyi bidahama BIMENYIMANA Jean-Claude [24] Rutegetse ko agizwe umweme; [25] Rutegetse ko BIMENYIMANA Jean-Claude ahita arekurwa urubanza rukimara gusomwa; [26] Rwemeje ko imikirize y'urubanza N°RPA0052/08/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 14/01/2010 ihindutse mu ngingo zarwo zose. [27] Rutegetse ko amagarama y'urubanza aherera ku isanduku ya Let

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