

RWANDA / JUDGMENT

UBUSHINJACYAHA v Sezikeye Francois

RPAA 00371/2020/CA

COURT

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UBUSHINJACYAHA v Sezikeye Francois

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Text

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UBUSHINJACYAHA v. SEZIKEYE [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00371/2020/CA (Gakwaya, P.J.) 15 Ukuboza 2022] Amategeko agenga ibimenyetso – Inshingano yo gutanga ibimenyetso bihamya uregwa icyaha (Actori incumbit probatio) – N'ubwo ihame ry'amategeko nshinjabyaha risobanura ko Ubushinjacyaha aribwo bufite inshingano yo gutanga ibimenyetso bihamya uregwa icyaha (Actori incumbit probatio), ariko ku bijyanye n'uregwa uburanisha ko atari aho icyaha cyakorewe niwe ugira inshingano yo kugaragaza ko atashoboraga gukora icyaha aregwa, kuko atari aho cyakorewe igihe cyakorwaga, icyo gihe Ubushinjacyaha nabwo bufite inshingano yo kugaragaza nta shiti ko ariwe wakoze icyaha aregwa, bugaragaza ibimenyetso bidashidikanywaho, kandi bunagaragaza ko ibyo aburanisha atari ukuri kuko yari ahari igihe icyaha cyakorwaga, bivuze ko n'ubwo uregwa atabasha kugaragaza ibimenyetso bishimangira ko atari ahari, bidasobanuye byanze bikunze ko ariwe wakoze icyo cyaha. Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyamagabe Ubushinjacyaha bukurikiranyeho Sezikeye n'umuhungu we Kalisa icyaha cy'ubujura bwitwaje intwari, ubwinjiracyaha mu cyaha cy'ubwicanyi n'ubufatanyacyaha muri ibyo byaha, buvuga ko umukecuru witwa Kankunzi bakundaga kwita Nyirantuyahaga, yasanze iwe mu rugo yateraguye ibyuma mu mutwe no mu

misaya, abajijwe avuga ko ari Sezikeye na Kalisa bamuteye ibyuma, barangije bamwambura amafaranga ibihumbi ijana na mirongo itanu (150. 000 Frw). Abaregwa baburanye bahakana ibyaha bavuga ibyabaye batari mu gace batuyemo, ko ababashinja ibyo byaha bababeshyera. Urwo Rukiko rwaciye urubanza maze rwemeza ko abaregwa bahamwa n'icyaha cy'ubujura bwitwaje intwaro n'ubwinjiracyaha mu cyaha cy'ubwicanyi, rubahanisha igifungo cya burundu. Sezikeye na Kalisa ntibishimiye imikirize y'urubanza, bajuririra Urukiko Rukuru, Urugereko rwa Nyanza banenga Urukiko Rwisumbuye rwa Nyamagabe kuba rwarashingiye ku byavuzwe na Kankunzi wakorewe icyaha, kandi we ubwe yarivugiye ko bari basanzwe bafitanye amakimbirane, runashingira ku mvugo z'abatangabuhamya batigeze bababona bakora icyaha. Banenze kandi ko urwo Rukiko rwirengagije ibisobanuro baruhaye ko igihe icyaha cyakorwaga batari bari hafi y'aho cyakorewe, banavuga ko batagombaga guhanirwa icyaha cy'ubwicanyi kuko nta muntu bishe, ko kandi batari guhanirwa ubujura bwitwaje intwaro hatagaragajwe izo ntware, basaba ko inyito y'ibyaha ikwiye guhinduka. Urwo Rukiko narwo rwaciye urubanza nuko rwemeza ko imikirize y'urubanza rwajuririwe ihindutse gusa ku bijyanye n'igihano, ruhanisha buri wese igifungo cy'imyaka makumyabiri n'itanu (25). Sezikeye ntiyishimiye imikirize y'urubanza, ajuririra Urukiko rw'Ubujurire avuga ko urukiko rwamuhamije ibyaha rwirengagije ibisobanuro yaruhaye by'uko igihe icyaha cyakorwaga atari ari aho cyabereye no kuba rwaramuhamije ibyaha rushingiye ku bimenyetso by'imvugo z'abatangabuhamya birimo ugushidikanya, kandi ko Ubushinjacyaha n'uwakorewe icyaha banyuranya ku masaha ibyaha byakorweho asaba uru Rukiko kumugira umwere. Ubushinjacyaha bwo buvuga ko kuba Sezikeye avuga ko Ubushinjacyaha n'uwakorewe icyaha banyuranya ku masaha ibyaha byakorweho, bikaba bigaragaza ko nta ruhare yagize mu ikorwa ryabyo, nta shingiro bikwiye guhabwa, kuko mu nyandiko-mvugo y'ibazwa rya Kankunzi ryo ku

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wa 2/5/2022, avuga ko yatewe ku wa 30/4/2022 saa 15h00 (saa cyenda), ko ibyo Sezikeye François aburanisha bijyanye na sinarimpari (Alibi), ko amasaha ibyaha byakorweho atari ari aho byabereye nta bimenyetso abitangira. Incamake y'icyemezo: 1. N'ubwo ihame ry'amategako nshinjabyaha risobanura ko Ubushinjacyaha aribwo bufite inshingano yo gutanga ibimenyetso bihamya uregwa icyaha (Actori incumbit probatio), ariko ku bijyanye n'uregwa uburanisha ko atari aho icyaha cyakorewe niwe ugira inshingano yo kugaragaza ko atashoboraga gukora icyaha aregwa, kuko atari ari aho cyakorewe igihe cyakorwaga, icyo gihe Ubushinjacyaha nabwo bufite inshingano yo kugaragaza nta shiti ko ariwe wakoze icyaha aregwa, bugaragaza ibimenyetso bidashidikanywaho, kandi bunagaragaza ko ibyo aburanisha atari ukuri kuko yari ahari igihe icyaha cyakorwaga, bivuze ko n'ubwo uregwa atabasha kugaragaza ibimenyetso bishimangira ko Atari ahari, bidasobanuye byanze bikunze ko ariwe wakoze icyo cyaha. Ubujurire bufite inshingiro. Amategako yashingiweho: Itegeko N° 027/2019 ryo ku wa 19/9/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 111. Itegeko N° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3, 62, 65 n'ya 119. Imanza zifashishijwe: Ubushinjacyaha v. Kamuhanda, ICTR-99-54A, Jugement en appel, 19 September 2005, para. 38. Ubushinjacyaha v. Zigiranyirazo, ICTR-01-73-A, Appeal Judgement, 16 November 2009, para. 17.

Inyandiko z'abahanga: Henry Bosly et Damien Vandermeersch, Droit de la procédure pénale, 4^{eme} édition, p. 1316. Urubanza I. IMITERERE Y'URUBANZA [1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyamagabe Ubushinjacyaha bukurikiranyeho Sezikeye François n'umuhungu we Kalisa Jean-Pierre icyaha cy'ubujura bwitwaje intwaro, ubwinjiracyaha mu cyaha cy'ubwicanyi n'ubufatanyacyaha muri ibyo byaha, busobanura ko ku itariki ya 30/4/2018 mu saa cyenda z'amanywa (15h00), mu Mudugudu w'Uwicurangiro, Akagari ka Mukungu, Umurenge wa Kitabi, Akarere ka Nyamagabe, umukecuru witwa Kankunzi Félicité bakunda kwita Nyirantuyahaga, yasanze iwe mu rugo yateraguwe ibyuma mu mutwe no mu misaya, abajijwe avuga ko ari Sezikeye François na Kalisa

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JeanPierre bamuteye ibyuma, barangije bamwambura amafaranga ibihumbi ijana na mirongo itanu (150. 000 Frw). [2] Sezikeye François na Kalisa Jean-Pierre baburanye bahakana ibyaha baregwa, bavuga ko nta ruhare bagize mu guteragura Kankunzi Félicité ibyuma, kubera ko byabaye batari mu gace batuyemo, ko ababashinja ibyo byaha bababeshyera. [3] Mu rubanza n° RP 00088/2018/TGI/NYBE rwaciwe n'Urukiko Rwisumbuye rwa Nyamagabe ku wa 27/9/2018, rwasanze n'ubwo Sezikeye François na Kalisa Jean-Pierre baburanye bahakana ibyaha baregwa, bemera ko bari basanganywe amakimbirane na Kankunzi Félicité, hakaniyongeraho ko abashinja ko aribo bamuteye ibyuma, n'imvugo z'abatangabuhamya Uwizeyimana Euphrasie na Nyirandimubanzi Marie bavuze ko bigeze kumva Kalisa Jean-Pierre ari mu kabari k'uwitwa Théoneste avuga ko azica Kankunzi Félicité, rwemeza kosezikeye François na Kalisa Jean-Pierre bahamwa n'icyaha cy'ubujura bwitwaje intwaro n'ubwinjiracyaha mu cyaha cy'ubwicanyi, rubahanisha igifungo cya burundu. [4] Sezikeye François na Kalisa Jean-Pierre ntibishimiye imikirize y'urubanza, bajuririra Urukiko Rukuru, Urugereko rwa Nyanza banenga Urukiko Rwisumbuye rwa Nyamagabe kuba rwarashingiye ku byavuzwe na Kankunzi Félicité wakorewe icyaha, kandi we ubwe yarivugiyemo ko bari basanzwe bafitanye amakimbirane, runashingira ku mvugo z'abatangabuhamya batigeze bababona bakora icyaha. Banenze kandi Urukiko Rwisumbuye rwa Nyamagabe ko rwirengagije ibisobanuro baruhaye ko igihe icyaha cyakorwaga batari bari hafi y'aho cyakorwaga, banavugaga ko batagombaga guhanirwa icyaha cy'ubwicanyi kuko nta muntu bishe, ko kandi batari guhanirwa ubujura bwitwaje intwaro hatagaragajwe ize intwaro, basaba ko inyito y'ibyaha ikwiye guhinduka. [5] Mu rubanza no RPA 00584/2019/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 24/10/2019, rwemeje ko ubujurire bwa Sezikeye François na Kalisa Jean-Pierre nta shingiro bufite, ko ariko imikirize y'urubanza rwajuririye ihindutse gusa ku bijyanye n'igihano, ruhanisha buri wese igifungo cy'imyaka makumyabiri n'itanu (25). [6] Sezikeye François ntivyishimiye imikirize y'urubanza, ajuririra Urukiko rw'Ubujurire ku wa 6/11/2019, avuga ko anenga Urukiko Rukuru, Urugereko rwa Nyanza kuba rwaramuhamije ibyaha rwirengagije ibisobanuro yaruhaye by'uko igihe icyaha cyakorwaga atari aho cyabereye no kuba rwaramuhamije ibyaha rushingiye ku bimenyetso by'imvugo z'abatangabuhamya birimo ugushidikanya, asaba uru Rukiko kumugira umwere. [7] Urubanza rwaburanishijwe ku wa 9/11/2022 no ku wa 16/11/2022, Sezikeye François yunganirwa na Me Ndayisabye Alex, Ubushinjacyaha buhagarariwe na Harindintwari Côme, Umushinjacyaha ku

rwego rw'Igihugu. IBIBAZO BIGIZE URUBANZA N' ISESENGURA RYABYO II.1. Kumenya niba Urukiko Rukuru, Urugereko rwa Nyanza rwarahamije Sezikeye François ibyaha kandi igihe byakorwaga atari ari aho byabereye.

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[8] Sezikeye François anenga Urukiko Rukuru, Urugereko rwa Nyanza kuba rwaramuhamije kugira uruhare mu byaha Kankunzi Félicité yakorewe, byo kuba yaratemwe ndetse akamburwa amafaranga ibihumbi ijana na mirongo itanu (150.000 Frw), kandi amasaha byakoreweho atari ahari, kuko yari yiriwe mu Mudugudu wa Gatare, Akagari ka Mukungu, arimo kubaza inzugi z'uwitwa Habimana, guhera saa kumi n'ebiri (6h00) za mu gitondo kugeza saa cyenda n'igice (15h30) akaza kugera mu rugo saa kumi n'igice (16h30), mu gihe Kankunzi Félicité avuga ko yatewe mu ma saa ine (10h00) zo ku manywa, naho Ubushinjacyaha bukavuga ko ibyaha byakozwe saa cyenda (15h00) z'anyuranywa, ko uko kunyuranywa ku masaha hagati y'uwakorewe icyaha n'Ubushinjacyaha, ubwabyo bigaragaza ko nta ruhare yagize mu ikorwa ry'ibyaha yahamijwe. [9] Ubushinjacyaha buvuga ko kuba Sezikeye François avuga ko Ubushinjacyaha n'uwakorewe icyaha banyuranywa ku masaha ibyaha byakorwaho, bikaba bigaragaza ko nta ruhare yagize mu ikorwa ryabyo, nta shingiro bikwiye guhabwa, kuko mu nyandiko-mvugo y'ibazwa rya Kankunzi Félicité ryo ku wa 2/5/2022, avuga ko yatewe ku wa 30/4/2022 saa 15h00 (saa cyenda), ko ibyo Sezikeye François aburanisha bijyanye na sinarimpari (Alibi), ko amasaha ibyaha byakoreweho atari ari aho byabereye, uretse no kuba nta bimenyetso abitangira, atari byo, kuko mu myiregurire ye imbere y'Urukiko yavuze ko uwo munsu guhera saa kumi n'ebiri (6h00) zo ku manywa kugeza saa cyenda n'igice (15h30) yari yiriwe mu Mudugudu wa Gatare, Akagari ka Mukungu abaza inzugi za Habimana, nyamara abazwa mu Bugenzacyaha yaravuze ko yavuye muri ako kazi saa cyenda n'iminota mirongo ine (15h40), agera mu rugo saa kumi (16h00), ko usibye no kuba anyuranywa ku gihe yagereye mu rugo, uru Rukiko rukwiye kuzabona ko igihe cya saa cyenda (15h00), Kankunzi Félicité yatereweho, akajombagurwa ibyuma, Sezikeye François yari ari aho icyaha cyakorewe, kuko mu ibazwa rye ryo mu Bugenzacyaha ku wa 1/5/2018, yavuze ko kuva iwe kugera kwa Kankunzi Félicité, hagati y'inzu zabo hari metero eshanu (5m), ko byumvikana ko nta cyari kuba kwa Kankunzi Félicité ntikimenyekane kwa Sezikeye François. UKO URUKIKO RUBIBONA [10] Ingingo ya 3 y'itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko "Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana (...)" [11] Isesengura ry'ingingo ya 3 y' Itegeko n° 15/2004 ryo ku wa 12/6/2004 ryavuzwe haruguru, yumvikanisha ko ukuri ku ibyo umuntu aburanisha kugaragazwa n'ibimenyetso abitangira, bivuze ko bitabaye ibyo, ibyo avuga nta gaciro biba bifite. [12] N'ubwo ihame ry'amategako nshinjabyaha risobanura ko Ubushinjacyaha aribwo bufite inshingano yo gutanga ibimenyetso bihamya uregwa icyaha (Actori incumbit probatio), ariko ku bijyanye n'uregwa uburanisha Sinari mpari (Alibi) niwe ugira inshingano yo kugaragaza ko atashoboraga gukora icyaha aregwa, kuko atari ari aho cyakorewe igihe cyakorwaga, icyo gihe Ubushinjacyaha nabwo bufite inshingano yo kugaragaza nta shiti ko ariwe wakoze icyaha aregwa, bugaragaza ibimenyetso

bidashidikanywaho, kandi bunagaragaza ko ibyo aburanisha atari ukuri kuko yari ahari igihe icyaha cyakorwaga, bivuze ko n'ubwo uregwa atabasha kugaragaza ibimenyetso bishimangira iyo Sinari mpari aburanisha, bidasobanuye byanze bikunze ko ariwe

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yakoze icyo cyaha. Ibi ni nako byemejwe mu manza zitandukanye zaciwe n'Urukiko Mpuzamahanga rwashyirweho u Rwanda (TPIR), nko mu rubanza n° ICTR-99-54A rwa Kamuhanda Jean de Dieu¹ no mu rubanza n° ICTR-01-73-A Zigiranyirazo Protais². [13] Dosiye y'urubanza igaragaza inyandiko-mvugo y'ibazwa rya Kankunzi Félicité ku wa 2/5/2018, aho Umugenzacyaha yamubajije amusanze aho yari arwariye mu bitaro bya Kigeme, asobanura ko ku wa 30/4/2018 saa yine (10h00) ari mu rugo rwe mu Mudugudu wa Bususuruke, Akagali ka Kagano, Umurenge wa Kitabi, yatewe n'abantu bamujombagura ibyuma mu mutwe no ku matwi, barimo Kalisa JeanPierre wafatanyije na se Sezikeye François kumutera ibyuma. [14] Dosiye y'urubanza igaragaza inyandiko-mvugo y'ibazwa rya Sezikeye François mu Bugenzacyaha ku wa 1/5/2018, aho yisobanuye avuga ko igihe ibyaha byakorwaga atari ahari, kuko kuva mu gitongo kugeza saa cyenda na mirongo ine (15h40) z'amanywa yari mu kazi mu Mudugudu wa Gatara, agera mu rugo saa kumi (16h00). [15] Nk'uko bigaragara mu gace ka cumi n'icyenda (19) k'urubanza rujuririrwa, Urukiko Rukuru, Urugereko rwa Nyanza rwagaragaje ko uretse kuba Sezikeye François avuga ko igihe ibyaha byakorwaga atari ahari, ariko nta kimenyetso abitangira. [16] Mu mwanzuro w'ubujurire bwa Sezikeye François anenga kuba Urukiko Rukuru, Urugereko rwa Nyanza rwaramuhamije icyaha rwirengagije ko yarugaragariye ko igihe icyaha cyakorwaga atari ahari kuva mu gitondo kugeza saa kumi (16h00). [17] Urukiko rw'Ubujurire rurasanga kuba Kankunzi Félicité n'Ubushinjacyaha badahuriza ku isaha imwe yakoreweho ibyaha, nk'uko Sezikeye François nawe atemeza neza isaha yagereyeho mu rugo avuye aho yari yiriwe, bidasobanura byanze bikunze ko atari ari aho icyaha cyakorewe nk'uko abivuga, kuko bitamuvanaho inshingano ye yo kubigaragaza kandi yifashishije ibimenyetso bifatika bibyemeza, kuko ariwe ubiburanisha, akerekana ko koko kuva mu gitondo kugeza saa kumi (16h00) cyangwa saa kumi n'igice (16h30) nk'uko abivuga, atari ahari, kuko uretse kuvuga gusa ko umunsi wose yari mu wundi Mudugudu akoraye akazi, nta muntu agaragaza wemeza ko yahamubonye cyangwa bari kumwe icyo gihe cyose kandi ko atigeze ahava ngo agire ahandi hantu ajya, kugeza igihe yagereye mu rugo icyaha cyamaze kuba, bityo rero nta makosa Urukiko Rukuru, Urugereko rwa Nyanza rwakoze yo kudaha agaciro izo mvugo ze, kuko nta bimenyetso yarugaragarizaga nk'uko n'ubu ntabwo agaragaza. [18] Kubera izo mpamvu, Urukiko rw'Ubujurire rurasanga iyi ngingo y'ubujurire ya Sezikeye François nta shingiro ifite. 1 Case n° ICTR-99-54A Kamuhanda Jean de Dieu Jugement en appel, 19 September 2005, para. 38 : « Lorsqu'un accusé invoque un alibi, c'est au Procureur qu'il incombe d'établir, sous tous les aspects, sa culpabilité au-delà de tout doute raisonnable. De fait, le Procureur doit prouver que « l'accusé était présent et qu'il a commis les crimes qui lui sont imputés et discréditer son alibi. Si l'alibi est vraisemblable, il sera retenu » 2 Case n° ICTR-01-73-A Zigiranyirazo Protais, Appeal Judgement, 16 November 2009, para. 17 : “ L'alibi ne constitue pas une défense au sens propre du terme. En invoquant un alibi, l'accusé nie simplement qu'il était en mesure de commettre le crime dont il est accusé. L'accusé n'a pas la

charge de prouver son alibi au-delà du doute raisonnable. Il doit plutôt simplement produire les éléments de preuve tendant à démontrer qu'il n'était pas présent au moment du crime allégué ou, autrement dit, présenter des éléments de preuve susceptibles de soulever un doute raisonnable dans la cause de l'accusation." Si l'alibi est raisonnablement susceptible d'être vrai, il doit être accepté "

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II.2. Kumenya niba Urukiko Rukuru, Urugereko rwa Nyanza rwarahamije Sezikeye François ibyaha aregwa rushingiye ku mvugo z'uwakorewe icyaha no ku mvugo z'abatangabuhamya zirimo ugushidikanya, rwikirengagiza ubuhamya bwa Karekezi Jean Damascène. [19] Sezikeye François avuga ko Urukiko Rukuru, Urugereko rwa Nyanza rutari rukwiye gushingira ku mvugo z'abatangabuhamya rumuhamya ibyaha by'ubwinjiracyaha mu gushaka kwica Kankunzi Félicité n'ubujura bwitwaje intwari, kuko nta n'umwe mu babajijwe wigeze wemeza ko yamubonye abikora. [20] Me Ndayisabye Alex, wunganira Sezikeye François, avuga ko Urukiko Rukuru, Urugereko rwa Nyanza ntaho rwigeze rugaragaza imvugo z'umutangabuhamya witwa Karekezi Jean Damascène akaba ari n'uwo mu muryango wa Kankunzi Félicité, wabajijwe mu iperereza ryakozwe n'Urukiko ku wa 4/10/2019, agasobanura ko mu ma saa kumi (16h00), umwana wabanaga na Kankunzi Félicité yasohotse mu nzu avuga ko mukecuru yakomeretse, akomererejwe n'amacupa. Akomeza avuga ko Urukiko rwabajije uwo mutangabuhamya impamvu hafashwe Sezikeye François na Kalisa Jean-Pierre, akavuga ko ari uko mukecuru yabavugiyeye kwa muganga, kandi akaba yari asanzwe afite icyo apfa na Kalisa Jean-Pierre, kuko hari ibiti umuhungu wa Kankunzi Félicité yari yagurishije batabyumvikanyeho, Kalisa Jean-Pierre aje kubitema atumwe n'uwaru wabiguze, baratongana, ko n'ubwo mukecuru yavuze abo bantu, ariko nta kimenyetse gifatika babonye cyemeza ko aribo bamutemye, ko ndetse na nyuma y'uko bafungwa bakomeje gushakisha amakuru ariko bakayabura, ko abo bantu barengana. Me Ndayisabye Alex akavuga ko rero ubwo buhamya bwa Karekezi Jean Damascène buvuguruzaga iby'Urukiko rwashingiyeho mu gika cya munani (8) cy'urubanza rujuririrwa, aho rwemeje ko imvugo za Kankunzi Félicité zishinje Sezikeye François zagombaga gushingirwaho, kuko yasobanuye ibyamubayeho, abisubiramo neza, kandi akaba yari asanzwe aza abamukoreye icyaha kuko baturanye, ko atari kubibeshyaho, mu gihe nyuma uwo mukecuru yongeye kubazwa niba yemeze ko Kalisa Jean-Pierre na Sezikeye François aribo bamutemye, akavuga ko akeka ko ari bo ashingiyeye ku magambo birirwaga bavuga, ko ibyo byerekana ko nawe ashidikanya ku bamukomerereje kuko atabashije kubamenya. [21] Me Ndayisabye Alex akomeza avuga ko Urukiko Rukuru, Urugereko rwa Nyanza rutari rukwiye gushingira ku mvugo z'umutangabuhamya Nyirandimubanzi Marie kuko zirimo ugushidikanya, aho mu iperereza Urukiko rwakoze yavuze ko baturujwe n'umwana w'umwuzukuru ubana n'uwo mukecuru, wari usanze avirirana amarasobaraza bamutegera moto imujyana kwa muganga, ko ariko atazi abamukomerereje, naho ku bijyanye no kuba hari aho yabajijwe akavuga ko yumvise Kalisa Jean-Pierre avuga ko azica Kankunzi Félicité, akaba yarabihakanye akavuga ko ntabwo yavuze, ko icyo yabonye ari uko baturuye bagasanga avirirana, ko rero izi mvugo ze zivuguruzaga ibyo yari yavuze abazwa mbere, Urukiko rukaba ntaho rwari guhera ruvuga ko ibyo yavuze mbere aribo

by'ukuri kuko ng'ibyo yavuze bwa kabiri nta kimenyetso yabitangiye, kandi nk'umutangabuhamya nta nshingano afite zo gutanga ibimenyetso kuko atari umuburanyi, ko ahubwo byagombaga kugaragariza Urukiko ko imvugo ze zirimo ugushidikanya ku buhamya yatanze, ndetse bikerwerekako ko ibyo yavuze mu iperereza binavuguruza ibyo umutangabuhamya Uwizeyimana Euphrasie yavuze, kuko uyu nawe raporo y'iperereza yerekana ko Urukiko rwashatse kongera kumubaza akanga, kuberako yari yamenye ko agiye kongera kubazwa ku kibazo cya Sezikeye François na Kalisa Jean-Pierre, akavuga ko

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ibyo yavuze mbere yabihatiwe akiruka, nk'uko byagarutsweho n'uwitwa Hishamunda Sezirahiga muri icyo raporo y'iperereza. [22] Ubushinjacyaha buvuga ko imvugo z'abatangabuhamya Karekezi Jean Damascène na Nyirandimubanzi Marie zishinjura Sezikeye François nta gaciro zikwiye guhabwa, kuko ari abaturanyi kandi bakaba ari abo mu muryango umwe, ibyo bavuga bikaba ari ugushaka kurwana kuri Sezikeye François gusa, ko ndetse ahubwo bigaragara ko Karekezi Jean Damascène afite amakuru ahagije ku byabaye ariko agashaka kubihunga, kuko Kankunzi Félicité avuye muri coma yavuze ko Kalisa Jean-Pierre ariwe wamuteye icyuma, Sezikeye François akaza amukurikiye, akaba yarabibonye n'amaso ye, ndetse akaba nta kibazo afitanye na Sezikeye François ku buryo yari kumuhimbira. UKO URUKIKO RUBIBONA [23] Ingingo ya 62 y'Itegeko N° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko "Ubuhamya ari ibivugwa mu rukiko bivuzwe n'umuntu wabibonye cyangwa wabyumvise ubwe ku byerekeye ikiburanwa". [24] Ingingo ya 65 y'iryo Tegeko ivuga ko "Urukiko ari rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa. Ntirwitsitsa ku mubare w'abatangabuhamya, rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivugaga uko byagenze nta cyo bihimbira". [25] Ingingo ya 119, igika cya kabiri (2), y'iryo Tegeko iteganya ko "Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose biregura cyangwa biregura ari byo kandi ko bishobora kwemerwa". [26] Ingingo ya 111 y'Itegeko N° 027/2019 ryo ku wa 19/9/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko "Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze". [27] Dosiye y'urubanza igaragaza inyandiko-mvugo y'ibazwa rya Kankunzi Félicité ku wa 2/5/2018, aho Umugenzacyaha yamubajije amusanze aho yari arwariye mu bitaro bya Kigeme, asobanura ko hari abantu bamusanze iwe mu rugo bamujombagura ibyuma, harimo uwitwa Sezikeye François n'umuhungu we Kalisa Jean-Pierre, ko uyu yamusanze yicaye mu nzu arimo guhata ibijumba, aramuhamagara, aramutuka, aramufata amukuramo amafaranga ibihumbi 150.000 Frw, amuteragura ibyuma na se araza barafatanyaga. Yakomeje asobanura ko umwana witwa Hafashimana David ariwe wagiye kubwira Nyirandimubanzi Marie ko yitemye, aza kumureba, ko ariko ibi yabimenye nyuma kuko yari ameze nk'uwapfuye. [28] Dosiye na none igaragaza inyandiko-mvugo y'ibazwa ry'umutangabuhamya witwa Uwizeyimana Euphrasie wabajijwe mu Bugenzacyaha ku wa 5/5/2018, avugaga ko Kankunzi Félicité aterwa ibyuma atari ahari, ko ariko hari amakuru abifiteho, ko Sezikeye François na Kalisa Jean-Pierre aribo batemye Kankunzi Félicité, kuko Kalisa Jean-

Pierre yahoraga avuga ko azamwica, ko ukwezi gutaha amafaranga afata muri VUP atazayarya, ibyo akabivugira mu kabare aho yanyweraga inzoga, ko ariko ibya Sezikeye François ntacyo abiziho.

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[29] Muri dosiye hari inyandiko-mvugo y'ibazwa ry'umutangabuhamya Nyirandimubanzi Marie yo ku wa 5/5/2018 abazwa mu Bugenzacyaha, wavuze ko yahurujwe n'akana kitwa Rukara (umwuzukuru wa Kankunzi Félicité), kabwiye umwana we witwa Hafashimana David ko Kankunzi Félicité yitemye, Nyirandimubanzi Marie agiye kureba asanga adashobora kuvuga, bamutemye mu mutwe, ku gutwi no ku ntoki, hafatwa Sezikeye François na Kalisa Jean-Pierre kuko aribo bari basanzwe bafitanye amakimbirane ashingiye ku ishyamba rya Kankunzi Félicité ryari ryaragurishijwe n'umuhungu we batabyumvikanyeho, arariburana ararigaraza, ko kandi Kalisa Jean-Pierre yari yaravugiye mu kabare k'uwitwa Théoneste ko azamwica, ndetse ko mu gihe batabaraga nta muntu wo kwa Sezikeye François wigeze abafasha kandi baturanye inzu ku yindi, ko ahubwo we n'umugore we bigiriye kunywa inzoga. [30] Nk'uko bigaragara mu gace ka munani (8) n'aka cumi (10) tw'urubanza rujukurirwa, Urukiko Rukuru, Urugereko rwa Nyanza rwemeje ko imvugo za Kankunzi Félicité zikwiye gukomeza gushingirwaho, kuko yasobanuye ibyamubayeho, abisubiramo neza, kandi abamukoreye icyaha bakaba ari abantu yari asanzwe azi kuko baturanye, ko atari kubibeshyaho, cyane ko n'igihe yabazwaga n'Urukiko mu iperereza rwakoreye aho icyaha cyakorewe yongeye gusubiramo neza uko yakorewe icyaha, ntacyo ahindura ku byo yari yaravuze mbere. Ibi bigashimangira ko ibyo yavuze ari ukuri. Naho mu gika cya cumi na kane (14) cy'urwo rubanza, ku bijyanye n'izo mvugo z'abatangabuhamya Uwizeyimana Euphrasie na Nyirandimubanzi Marie rwasobanuye ko kuba bwarashingiweho nta kosa ryakozwe, ko kuba Nyirandimubanzi Marie yarabajijwe akavuguruza ibyo yari yavuze mbere, akavuga ko atigeze ashinja abaregwa, ukwo kwivuguruza kwe nta gaciro kwahabwa, mu gihe cyose atabashije kugaragaza icyaba cyaramuteye gutanga ubuhamya bushinja abaregwa ku rwego rwa mbere, izo mvugo akazihurizaho na Uwizeyimana Euphrasie, ko hakwibazwa ukuntu abantu babiri batabarijwe hamwe bari kuvuga ibintu bitari ukuri bakabihurizaho. [31] Dosiye igaragaza inyandiko-mvugo y'ibyavuye mu iperereza ryo ku wa 4/10/2019 ryakozwe n'Urukiko Rukuru, Urugereko rwa Nyanza ahabereye icyaha, aho Kankunzi Félicité yavuze ko Kalisa Jean-Pierre yinjiye iwe akamubwira ngo "ongerera uvuge se", ise nawe ahita aza, Kalisa Jean-Pierre aramuniga, bamukubita icyuma mu mutwe ata ubwenge, ko akeka ko aribo babikoze kubera amagambo birirwaga bavuga. Muri iyo nyandiko-mvugo, Nyirandimubanzi Marie yarabajijwe avuga ko baturujwe n'umwuzukuru wa Kankunzi Félicité aho bari ku muhanda, baraza basanga avirirana amaraso, ko ariko abamutemye batabamenye, bumva bivugwa n'uwo mukecuru gusa, ndetse ko iby'uko yumvise Kalisa JeanPierre avugira mu kabare anyweramo inzoga ko azica Kankunzi Félicité ntabwo yumvise, kuko we atanywa inzoga, akaba atajya ajya muri ako kabare, kuko we anywa umusururu, kandi kwa Théonetse bakaba bapima ikigage, ko uretse kuba ahanyura gusa ariko atarakandagiramo, ko kandi n'i Nyamagabe yabibajijwe akabihakana, ndetse ko

atigeze avuga ko Sezikeye François na Kalisa JeanPierre aribo batemye Kankunzi Félicité. Muri iyi nyandiko-mvugo, Urukiko Rukuru, Urugereko rwa Nyanza rwagaragaje ko rwashatse kuvugana na Uwizeyimana Euphrasie aranga, bamuhamagaye ariruka, ngo kuko yari yamenye ko agiye kongera kubazwa ku bya Sezikeye François, kandi ngo ibyo yari yavuze mbere akaba yari yabihatiwe, ibyo bikaba byaravuzwe n'uwitwa Hishamunda Sezirahiga. [32] Mu mwanzuro w'ubujurire bashyikirije Urukiko rw'Ubujurire, Sezikeye François n'umwunganira mu mategeko, bagaragaza ko Urukiko Rukuru, Urugereko rwa Nyanza rutari

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rukwiye gushingira ku bimenyetso bigizwe n'imvugo z'uregwa no ku mvugo z'abatangabuhamya, rumuhamya icyaha, kuko zirimo gushidikanya. [33] Isesengura ry'ingingo ya 65 y'Itegeko N° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ryumvikanisha ko Urukiko rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa, rukita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze nta cyo bihimbira. [34] Urukiko rw'Ubujurire rurasanga nk'uko byagaragajwe mu duce dutandukanye tw'uru rubanza, abatangabuhamya babajijwe baragaragaje kwivuguruza mu mvugo mu bihe bitadukanye babajijwemo, ibi bikaba bituma ibyo bavuze biteza urujijo ku kumenya niba koko bazi neza ibyabaye, kuko nta mpamvu ifatika igaragara ituma bahuzagurika mubyo bavuze, bityo Urukiko Rukuru, Urugereko rwa Nyanza rukaba rutari rukwiye guha agaciro izo mvugo zonyine ngo ruzishingireho nk'ikimenyetso simusiga gihamya Sezikeye François icyaha, nta bindi bidashidikanywaho bihari byo kuzishyigikira, kuko na Kankunzi Félicité ubwe abazwa bwa mbere yemeje neza ko yiboneye Sezikeye François na Kalisa Jean-Pierre bamutera ibyuma, nyuma akavuga ko akeka ko aribo kubera amagambo bagendaga bavuga. [35] Isesengura ry'ingingo ya 111 y'Itegeko N° 027/2019 ryo ku wa 19/9/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, yumvikanisha ko iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze³, kuba rero ibimenyetso byashingiweho n'inkiko bidahamya ku buryo budashidikanywaho ko koko Sezikeye François yagize uruhare mu ikorwa ry'ibyaha Kankunzi Félicité yakorewe, hakwiye kwemezwa ko ibyo byaha bitagombaga kumuhama, bityo ubujurire bwe bukaba bufite ishingiro, urubanza ajuririra rukaba rugomba guhinduka kuri byose. III. ICYEMEZO CY'URUKIKO [36] Rwemeje ko ubujurire bwatanzwe na Sezikeye François bufite ishingiro. [37] Rwemeje ko Sezikeye François adahamwa n'ubufatanyacyaha mu byaha by'ubujura bwitwaje intwari n'ubwinjiracyaha bw'ubwicanyi yarezwe. [38] Rwemeje ko urubanza n° RPA 00584/2018/HC/NYZ rwaciye n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 24/10/2019, ruhindutse kuri byose. [39] Rutegetse ko Sezikeye François ahita afungurwa urubanza rukimara gusomwa. [40] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta. 3 Une personne ne peut être déclarée coupable au terme du procès, que si l'accusation a apporté la preuve au-delà de tout doute raisonnable de la culpabilité de l'accusé", Henry Bosly et Damien Vandermeersch, Droit de la procédure pénale, 4 e édition, p. 1316

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