

RWANDA / JUDGMENT

UBUSHINJACYAHA vs. NIYONIZEYE

RPAA 00370/2024/CA –

COURT

Court of Appeal

DECIDED

13 December 2024

CASE / FILE NUMBER

RPAA 00370/2024/CA –

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UBUSHINJACYAHA vs. NIYONIZEYE

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- Date: 2024-12-13
- Case/document no.: RPAA 00370/2024/CA –
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Text

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UBUSHINJACYAHA vs. NIYONIZEYE [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00370/2024/CA – (Kanyange, P.J.), 13 Ukuboza 2024] Amategeko agenga imanza nshinjabyaha – icyaha cyo gusanbanya umwana w'imyaka itanu y'amavuko (5) – Kugabanyirizwa igihano – Mu rwego rw'ibirego nshinjabyaha, iyo abaregwa nta kindi banenga urubanza rwajuririwe, uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo. Incamake y'ikibazo: Niyonizeye David w'imyaka makumyabiri (20) y'amavuko yakurikiranyweho icyaha cyo gusasambanya umwana w'umukobwa w'imyaka itanu (5) wahawe izina rya I.G mu manza zabanje, abajijwe mu Bushinjacyaha no mu Bugenzacyaha yemera icyaha. Nyuma y'iperereza, Ubushinjacyaha bwareze Niyonizeye David mu Rukiko Rwisumbuye rwa Ngoma icyaha cyo gusanbanya umwana, bushingiye ku kuba yaracyemeye agifatwa, ubuyobozi bukabikorera raporo, maze bumusabira igifungo cya burundu. Mu Rukiko, Niyonizeye yaburanye ahakana icyaha, avuga ko ibyo yemeye mbere bwatewe n'uko yakubiswe. Urukiko rwaciye urubanza, maze rusanga Niyonizeye David yarakoze icyaha akurikiranweho kuko yacyemeye agifatwa ubuyobozi bukabikorera raporo, no mu Bugenzacyaha akacyemera agasobanura uko

yagikoze, bityo kuba mu Bugezacyaha atemeye icyaha atari byo kuko ibyo yemeye biri mu nyandikomvugo yashyizeho umukono. Urukiko rushingiye kuri izo mpamvu, rwemeje ko uwarezwe ahamwa n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cya burundu y'umwihariko. Niyonizeye David yajuriye mu Rukiko Rukuru, Urugereko rwa Rwamagana yemera icyaha noneho, avuga ko yajurijwe n'uko Urukiko rwa mbere rwamuhanishije ibihano birebire kandi yaremeye icyaha mu nzego zose akagisabira imbabazi, ko akomeje kucyemera no gusaba imbabazi kandi akaba ari ubwa mbere akurikiranwe mu nkiko. Ubushinjacyaha bwashubije ko n'ubwo Niyonizeye David yakozwe icyaha kiremereye, akwiye kugabanyirizwa igihano kuko yemeye icyaha mu buryo budashidikanywa anagisabira imbabazi. Urukiko rwaciye urubanza, rusanga n'ubwo Niyonizeye David yaburanye mu Rukiko Rwisumbuye ahakaba icyaha, yarisubiyeho ageze mu Rukiko Rukuru yongera kucyemera nk'uko yari yacyemeye mu nzego z'iperereza, akaba kandi ari ubwa mbere akurikiranweho icyaha, bityo ko izo mpamvu zatumye igihano yahawe kigabanywa, maze rwemeza ko ubujurire bwe bufite ishingiro, maze rumuhanisha igifungo cy'imyaka cumi n'itanu (15). Niyonizeye yatanze ubujurire bwa kabiri mu Rukiko rw'Ubugurire, avuga ko ubujurire bwe bugamije gusaba kongera kugabanyirizwa igifungo cy'imyaka cumi n'itanu (15) yahanishijwe, asaba kongera kugabanyirizwa igihano kugeza ku myaka icumi (10), hashingiwe ku kuba yaremeye icyaha mu nzego zose, agasaba imbabazi, bityo ko ibyo byamubera impamvu nyoroshyacyaha.

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Ubushinjacyaha buvuga ko impamvu y'ubujurire bw'urega itahabwa agaciro kuko ntacyo anenga uburyo Urukiko Rukuru rwamugabanyirije igihano ku buryo yasaba ko cyongera kugabanywa. Incamake y'icyemezo: Mu rwego rw'ibirego nshinjabyaha, iyo abaregwa nta kindi banenga urubanza rwajuririwe, uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo. Ubujurire nta shingiro. Amategeko yashingiweho: Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganyira ibyaha n'ibihano muri rusange, ingingo ya 49; Itegeko Ngenga N° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 78. Imanza zifashishijwe: Urubanza RPA 00060/2021/CA rw' Ubushinjacyaha na Nsabimana Callixte alias Sankara na bagenzi be, rwaciwe n'Urukiko rw'Ubugurire ku wa 04/04/2022; Urubanza RPAA 00518/2023/CA, rw' Ubushinjacyaha na Nizeyimana Martin, rwaciwe n'Urukiko rw'Ubugurire ku wa 27/09/2024. Urubanza I. IMITERERE Y'URUBANZA [1] Niyonizeye David akurikiranyweho icyaha cyo gusasambanya umwana w'umukobwa w'imyaka itanu (5) wahawe izina rya I.G mu manza zabanje, Ubushinjacyaha bukavuga ko yagikoze ku wa 09/04/2017 ubwo yamujyanaga mu nzu y'iwabo (wa Niyonizeye) akamuvanamo imyenda akamusambanya, bimenyekana ubwo iwabo w'uwo mwana bamukarabyaga akababwira ko ababara mu gitsina, avuga ko ari Niyonizeye David wamusambanyije nawe abajijwe arabyemera, ashidikirizwa Ubugenzacyaha naho yemera icyaha. [2] Nyuma y'iperereza, Ubushinjacyaha bwareze Niyonizeye David mu Rukiko Rwisumbuye rwa Ngoma icyaha cyo gusambanya umwana, bushingiye ku kuba yaracyemeye agifatwa ubuyobozi bukabikorera raporo, bumusabira igifungo cya burundu. [3] Niyonizeye David yaburanye ahakana icyaha, avuga ko raporo ya muganga ariyo yakwemeza niba uwo

mwana yarasambanyijwe ko kandi ibyo yemeye mbere bwatwe n'uko yakubiswe. [4] Urukiko rwaciye urubanza RP 00146/2017/TGI/NGOMA ku wa 04/05/2017, rusanga Niyonizeye David yakoze icyaha akurikiranweho kuko yacyemeye agifatwa ubuyobozi bukabikorera raporo, no mu Bugenzacyaha akacyemera agasobanura uko yagikoze, ko n'ibyo avuga ko mu Bugezacyaha atemeye icyaha atari byo kuko ibyo yemeye biri mu nyandikomvugo

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yashyizeho umukono, hakaba n'abatangabuhamya bavuze ko bahamagawe n'ababyeyi b'umwana bababwirako yasambanyijwe kandi na Niyonizeye akabyemera, ko kandi kuba yaremeye icyaha, raporo ya muganga itaba impamvu yo kugihakana kuko atari cyo kimenyetso kamara kigaragaza ko umwana yasambanyijwe mu gihe hari ibindi bikigaragaza. Urukiko rushingiye kuri izo mpamvu, rwemeje ko Niyonizeye David ahamwa n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cya burundu y'umwihariko. [5] Niyonizeye David yajuriye mu Rukiko Rukuru, Urugereko rwa Rwamagana avuga ko yajurijwe n'uko Urukiko rwa mbere rwamuhanishije ibihano birebire kandi yaremeye icyaha mu nzego zose akagisabira imbabazi, ko akomeje kucyemera no gusaba imbabazi kandi akaba ari ubwa mbere akurikiranwe mu nkiko. [6] Ubushinjacyaha bwashyizeho ko n'ubwo Niyonizeye David yakozwe icyaha kiremereye, akwiye kugabanyirizwa igihano kuko yemeye icyaha mu buryo budashidikanywa anagisabira imbabazi. [7] Urukiko rwaciye urubanza RPA 00302/2017/HC/RWG ku wa 21/07/2017, rusanga n'ubwo Niyonizeye David yaburanye mu Rukiko Rwisumbuye ahakaba icyaha, yarisubiyeho ageze mu Rukiko Rukuru yongera kucyemera nk'uko yari yacyemeye mu nzego z'iperereza, akaba kandi ari ubwa mbere akurikiranweho icyaha, ko rero izo mpamvu zatuma igihano yahawe kigabanywa hashingiwe ku ngingo ya 78, igika cya 1, y'Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga icyaha gikorwa11, maze rwemeza ko ubujurire bwe bufite ishingiro, ko imikuriza y'urubanza rwajuririye ihindutse ku birebana n'igihano, rumuhanisha igifungo cy'inyuma cumi n'itanu (15). [8] Niyonizeye David yatanze ubujurire bwa kabiri mu Rukiko rw'Ubujurire, urubanza rwandikwa kuri RPAA 00370/2024/CA, ruhambwa itariki yo kuburanishwa yo ku wa 05/12/2024, uwo munsu ruburanishwa yunganiye na Me Rwabigwi Augustin, Ubushinjacyaha buhagarariye na Bunyoye Grâce, Umushinjacyaha ku rwego rw'Igihugu. [9] Mu myanzuro y'ubujurire no mu miburanire, Niyonizeye David n'umwunganira bavugaga ko ubujurire bwe bugamije gusaba kongera kugabanyirizwa igifungo cy'inyuma cumi n'itanu (15) yahanishijwe. [10] Uhagarariye ubushinjacyaha avugaga ko impamvu y'ubujurire bwa Niyonizeye David itahabwa agaciro kuko ntacyo anenga uburyo Urukiko Rukuru rwamugabanyirije igihano ku buryo yasaba cyongera kugabanywa. [11] Ikibazo kigomba gusuzumwa muri uru rubanza ni ukumenya niba igihano cy'inyuma cumi n'itanu (15) Niyonizeye David yahanishijwe cyakongera kugabanywa I. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

1 Iyo hari impamvu zoroshya uburemere bw'icyaha, igihano cyo gufungwa burundu cyangwa cya burundu y'umwihariko gisimbuzwa igihago cy'igifungo kitari munsu y'inyuma icumi (10)

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Kumenya niba igihano cy'igifungo cy'imyaka cumi n'itanu (15) Niyonizeye David yahanishijwe cyakongera kugabanywa [12] Niyonizeye David n'umwunganira bavuga ko yajurijwe n'uko Urukiko Rukuru rwamuhaniye igifungo cy'imyaka cumi n'itanu (15) kandi yaremeye icyaha akanagisabira imbabazi, ko atigeze arushya inzego z'ubutabera kuva yafatwa n'ubu akaba atakamba asaba imbabazi, akaba ari nabwo bwa mbere aguye mu cyaha. [13] Niyonizeye David asobanura ko mu kumugabanyiriza igihano, Urukiko Rukuru rwashingiye ku ngingo ya 78 y'Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga icyaha gikorwa, ivuga ko iyo hari impamvu nyoroshyacyaha igifungo cya burundu cyangwa cya burundu cy'umwihariko gisimbuzwa igifungo kitari muni y'imyaka icumi (10), ko rero Urukiko rwari kumugabanyiriza igihano kugeza ku myaka icumi (10). [14] Uhagarariye ubushinjacyaha avuga ko impamvu y'ubujurire bwa Niyonizeye David itagomba guhabwa agaciro kuko ntacyo anenga uburyo yagabanyirijwe igihano kandi afite inshingano zo kugaragaza niba urukiko rwarakoresheje nabi ububasha rwari rufite mu kumugabanyiriza igihano, cyangwa se ukwibeshye kwakozwe ku rwego rwa mbere, ko kandi igihano yahanishijwe ari cyo gito giteganywa n'itegeko iyo hari impamvu nyoroshyacyaha nk'uko biteganywa n'ingingo ya 2 (a) y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaye ibyaha n'ibihano muri rusange, kandi ikibazo cyo kumenya aho Urukiko rwageze mu kugabanyira ibihano cyakemurira mu manza zitandukanye harimo urubanza RPAA 00387/2020/CA rwaciye ku wa 22/12/2023 haburana Ubushinjacyaha na Rusanganwa Sylvestre (igika cya 37). UKO URUKIKO RUBIBONA [15] Ingingo ya ya 78, igika cya 1, y'Itegeko Ngenga no 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga ubwo Niyonizeye yakoraga icyaha akurikiranweho ari nayo yashingiweho agabanyirizwa igihano, ivuga ko iyo hari impamvu zoroshya uburemere bw'icyaha, igihano cyo gufungwa burundu cyangwa cya burundu cy'umwihariko gisimbuzwa igihano cy'igifungo kitari muni y'imyaka icumi (10)". [16] Ikibazo cyo kugabanyirizwa igihano mu gihe ariyo mpamvu y'ubujurire, cyatanze umurongo mu rubanza RPA 00060/2021/CA rwaciye n'Urukiko rw'Ubujurire ku wa 04/04/2022 haburana Ubushinjacyaha na Nsabimana Callixte alias Sankara na bagenzi be. Muri urwo rubanza Urukiko rw'Ubujurire rwasobanuye ko mu rwego rw'ibirego nshinyabwaho iyo abaregwa nta kindi banenga urubanza rwajuririye, uretse kuvuga gusa ko batagabanyirijwe bihagije, buri umucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo hakurikijwe ibiteganywa n'ingingo ya 49 y'Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganyaye ibyaha n'ibihano muri rusange, ariko ko mu bujurire, Umucamanza agomba kuzirikana ko yemerewe gusa guhindura igihano cyatanze n'Umucamanza wo mu Rukiko rubanza, ari uko amaze kugaragaza ko urwo Rukiko rwaba rwarakoresheje nabi itegeko cyangwa ubushishozi bwawo mu gutanga icyo gihano. Uyu murongo ukaba warakurikijwe no mu manza zaciye vuba, nk'urubanza RPAA 00518/2023/CA, rwaciye n'Urukiko rw'Ubujurire ku wa 27/09/2024 haburana Ubushinjacyaha na Nizeyimana Martin.

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[17] Hashingiwe ku murongo wo muri urwo rubanza, harasuzumwa niba Urukiko rwarakoresheje nabi itegeko cyangwa ubushishozi bwarwo mu kugabanyiriza igihano Niyonizeye David kugeza ku gifungo cy'imyaka cumi n'itanu (15). [18] Nk'uko byavuzwe mu miterere y'uru rubanza, Niyonizeye David yajuriye mu Rukiko Rukuru avuga ko yahanishijwe ibihano birebire kandi yaremeye icyaha mu nzego zose akagisabira imbabazi kandi akaba ari n'ubwa mbere akurikiranwe mu nkiko, urwo Rukiko rusanga kuba yarisubiyeho ageze mu bujurire akongera kwemera icyaha nk'uko yari yacyemeye mu nzego z'iperereza, akaba kandi ari ubwa mbere akurikiranweho icyaha, ari impamvu zatuma igihano yahawe kigabanywa hashingiwe ku ngingo ya 78, igika cya 1, y'Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga icyaha gikorwa. [19] Urukiko rw'Ubujurire rurasanga kuba Urukiko Rukuru rwabonye ko hari impamvu nyoroshyacyaha rugashingira ku ngingo ya 78 y'Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru rukagabanya igifungo cya burundu Niyonizeye David yari yahanishijwe ku rwego rwa mbere kikagezwa ku gifungo cy'imyaka cumi n'itanu (15), nta kosa rwakoze, kuko ingingo rwashingiyeho itategekeka umucamanza kugabanya igihano kugeza ku myaka icumi (10) nk'uko Niyonizeye ashaka kubyumikanisha ahubwo Itegeko ryamuhaye ububasha bwo kugena igihano gikwiye arebye impamvu nyoroshyacyaha zihari, mu bushishozi bwe akaba yarasanze igihano cy'imyaka cumi n'itanu (15) ari cyo gikwiye, kandi uru Rukiko rukaba rutabona ko habayeho gukoresha nabi ubushishozi bwe harebwe cyane cyane uburemere bw'icyaha Niyonizeye yakoze bugaragazwa cyane cyane n'imyaka umwana yasambanyije yari afite (imyaka itanu) mu gihe we yari afite imyaka makumyabiri (20), bityo ubujurire bwe bukaba nta shingiro bufite, hakaba hagumyeho imikirize y'urubanza rwajuririwe. III. ICYEMEZO CY'URUKIKO [20] Rwemeje ko ubujurire bwa Niyonizeye David nta shingiro bufite; [21] Rwemeje ko hagumyeho imikirize y'urubanza RPA 00302/2017/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 21/07/2017, rwamuhanishije igifungo cy'imyaka cumi n'itanu (15); [22] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta kuko Niyonizeye David yajuriye afunze, akaba asonewe kuyatanga.

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