

RWANDA / JUDGMENT

UBUSHINJACYAHA v. MBARIMOMBAZI

RPAA 0211/ 10/ CS

COURT

Supreme Court

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UBUSHINJACYAHA v. MBARIMOMBAZI

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Text

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UBUSHINJACYAHA v. MBARIMOMBAZI [Rwanda URUKIKO RW'IKIRENGA – RPAA 0211/ 10/ CS (Nyirinkwaya, P.J., Hatangimbabazi na Hitiyaremye, J.) 4 Mata 2014] Amategeko mpanabyaha – Gusambanya umwana – Kunanirwa kuvuguruza imvugo z'uwireguza (alibi) – Ishidikanya rirengerashinjiye – Itegeko n° 13/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabya, ingingo ya 165. Incamake y'ikibazo: Nyiransengimana Alphonsine yashyikirije ikirego Ubugenzacyaha avuga ko uwajuriye yamusambanyirije umwana wari ufite imyaka 6. Nyuma Ubushinjacyaha bwamureze mu Rukiko Rwisumbuye rwa Karongi. Rwaciye urubanza maze rwemeza ko ahamwa n'icyaha yari akurikiranyweho Yahanishijwe igifungo cya burundu n'ihazabu y'amafaranfa 100 000 rushingiye kuri raporo ya muganga ndetse n'ubuhamya bwa nyina n'umwana wasambanyijwe. Yajuririye Urukiko Rukuru narwo rwemeza ko nta gihindutse ku mikirize y'urubanza rwemeza ko ingingo ze z'ubujurire nta shingiro zifite. Ntiyishimiye imikirize y'urubanza maze ajuririra mu Rukiko rw'Ikirenga avuga ko umurega hari icyo bapfa ndetse ko yanasabye Urukiko gukora iperereza ntirurikore. Incamake y'icyemezo: Ubushinjacyaha bwananiwe kuvuguruza imyiregurire y'uajuriye bugaragariza urukiko aho uwajuriye yaba yarahuriye n'umwana ngo hemezwe ko ibimenyetso muganga yasanze ku gitsina

cy'umwana byaba byaratewe n'uwajuriye cyane cyane ko yagaragaje ko icyaha gikorwa atari ahari bikemezwa kandi n'abatangabuhamya banyuranye bagaragaza ko ku masaha icyaha cyabereyeho yari kumwe nabo. Ikindi kandi n'uko nyina w'umwana avuga ko icyaha cyabereye kwa Nsengimana nyirarume w'umwana wasambanyijwe hari akana gato k'imyaka 4 nyamara nyirurugo we akavuga ko muri icyo gihe nta muntu wari mu rugo. Urukiko rero rwasanze ibimenyetso byari byatanzwe bitera gushidikanya bityo uwaregwaga agirwa umwere. Ubujurire bufite ishingiro. Uwajuriye agizwe umwere. Urubanza rwajuririwe ruhindutse kuri byose Amagarama y'urubanza aherereye ku isanduku ya Leta Amategeko yashingiweho Itegeko n° 13/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabya, ingingo ya 165. Nta manza zifashishijwe Inyandiko z'abahanga Henry Bosly et Damien Vandermeersch, Droit de la procédure pénale, 4e édition, p. 1316, 5

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Urubanza I. IMITERERE Y'URUBANZA. [1] Ku itariki ya 15/1/2007 umubyeyi witwa NYIRANSENGIMANA Alphonsine yashyikirije ubugenzacyaha ikirego avuga ko MBARIMOMBAZI Jean Pierreyasambanyije umwana we witwa UWAMAHORO Chantalw'imyaka itandatu (6) ariko MBARIMOMBAZI we akavuga ko amubeshyera. Nyuma y'iperereza Ubushinjacyaha bwakoze dosiye buyishyikiriza Urukiko Rwisumbuye rwa Karongi maze ku itariki ya 23/5/2007 rwemeza ko MBARIMOMBAZI Jean Pierre ahamwe n'icyaha rumuhanisha gufungwa burundu n'ihazabu y'amafaranga ibihumbi ijana (100 000) rushingiye kuri raporo ya muganga no ku mvugo y'umwana wasambanyijwe ndetse no ku batangabuhamya b'uregwa batashoboye kwerekana ko biriranwe na MBARIMOMBAZI umunsi wose. [2] MBARIMOMBAZI ntiyishimiye imikirize y'urubanza arujuririra mu Rukiko Rukuru, Urugereko rwa Rusizi, mazeku itariki ya 31/3/2010 rwemezako urubanza rujuririrwa rudahindutse. Icyo cyemezo Urukiko rwagishingiye ku kuba ingingo ze z'ubujurire nta shingiro zifite. [3] Iki cyemezo na cyo MBARIMOMBAZI ntiyacyishimiye maze akijuririra mu Rukiko rw'Ikirenga avuga ko umurega hari icyo bapfa ndetse ko yanasabye Urukiko gukora iperereza ntirurikore. [4] Iburanisha ryabaye ku itariki 3/3/2014 abaturanyi bose bahari, uregwa yunganiwe na Me MURENZI Eugène, naho Ubushinjacyaha buhagarariwe na MUNYANEZA NKWAYA Eric, Umushinjacyaha ku Rwego rw'Igihugu. II. ISESENGURA CY'IKIBAZO KIGIZE URUBANZA. Kureba niba hari ibimenyetso bihagije bishinja MBARIMOMBAZI Jean Pierre icyaha. [5] Mu iburanisha MBARIMOMBAZI Jean Pierre yahawe ijamba avuga ko impamvu yatumye ajurira ari uko Urukiko rwamukatiye kandi arengana kuko rwirengagije ibimenyetso yaruhaye bimurenganura rukanga no kubaza abatangabuhamya bagombaga kumushinjura ari bo NGIRABATWARE Onesphore akaba ari na nyirarume wa nyina w'umwana bavuga ko yasambanyije, na MUKAZANA Jacqueline. [6] Akomeza avuga ko ku munsi icyaha cyabereyeho yageze kwa NGIRABATWARE ari na ho bavuga ko icyaha cyabereye akahava ajya mu bukwe kwa HITIMANA. Yongeraho ko yavuye kwa HITIMANA ari hamwe na MUKAZANA Jacqueline agahita ajya gutaha ubundi bukwe akararayo, agarutse yumva bari kuvuga ngo yafashe umwana wo kwa NYIRANSENGIMANA Alphonsine, agiye ku Murenge ahita afungwa bamubwira ngo niba arengana bazamurenganura. [7] Ku birebana na raporo ya muganga, MBARIMOMBAZI avuga ko bitumvikana ukuntu umwana yari yangiritse bigeze n'aho muganga yasanze ava

amaraso mu gitsina ariko nyina

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akaba atari yaragiye kumuvuza bigategereza ku itariki ya 13/1/2007 mu gihe nyina avuga ko umwana yasambanyijwe ku itariki ya 10/1/2007 kandi bari baturanye no kwa muganga. Arangiza avuga ko umurega amubeshyera bapfa ko yigeze gushaka kumurongora nyuma bigapfa biturutse ku makimbirane yari mu miryango yabo, ko yamuhimbiye kugira ngo atarongora umukobwa yashakaga gutwara, akaba asaba Urukiko kumurenganura. [8] Me MURENZI Eugène wunganira MBARIMOMBAZI Jean Pierre avuga ko uwo yunganira yakatiwe nta perereza ribaye, ko Urukiko rwashingiye ku mvugo ya nyina w'umwana gusa, ko n'invugo y'umwana igaragara muri dosiye ari ibyo yatekewemo na nyina amaze kumukubita kuko umwana w'imyaka itandatu (6) atashoboraga kuvuga igitsina cy'umugabo uko cyitwa. Akomeza avuga ko inyandiko ziri muri dosiye zigaragaza uburyo MBARIMOMBAZI yakoresheje igihe cye cyose umunsi bavuga uwo mwana yasambanyirijweho nk'uko bivugwa na NGIRABATWARE, nyirarume wa nyina w'umwana, wemeje ko MBARIMOMBAZI yageze iwe akahava agiye mu bukwe, na MUKAZANA wabajijwe akavuga ko yatahanye na MBARIMOMBAZI akagaragaza n'igihe batahiye. [9] Me MURENZI Eugène avuga kandi ko bishoboka ko umwana yangijwe nk'uko na muganga yabigaragaje ariko akaba nta kimenyetso cyerekana ko yangijwe na MBARIMOMBAZI kuko yashoboraga no kwangizwa n'ikindi, akavuga ko ari impungenge zigirwa n'umubyeyi iyo abonye umwana we yangijwe aba ashaka byanze bikunze kubona uwamwangije. Arangiza avuga ko invugo z'ababajijwe ku ruhande rw'abashinje uwo yunganirira ziteye urujijjo, akaba asaba Urukiko kubisuzuma akagirwa umwere kubera gushidikanya, Urukiko rwabibona ukundi rukamugabanyiriza igihano kubera ko ari bwo bwa mbere yaba yakoze icyaha. [10] Uhagarariye Ubushinjacyaha we avuga ko abatangabuhamya NGIRABATWARE Onesphore na MUKAZANA Jacqueline uregwa avuga ko Urukiko rutababajije kandi baragombaga kumurenganura, babajijwe ariko invugo zabo zikaba zitamurengera. Arangiza avuga ko impamvu ze z'ubujurire mu Rukiko rw'Ikirenga ari na zo yari yatanze mu Rukiko Rukuru ariko zikaba zitarahawe agaciro, akarangiza asaba ko n'uru Rukiko rutaziha agaciro. III. UKO URUKIKO RUBIBONA [11] Inyandiko ziri muri dosiye zirerekana ko ku itarikiya 15/1/2007 NYIRANSENGIMANA Alphonsine yatanze ikirego mu bugenzacyaha avuga ko ku itarikiya 10/1/2007 MBARIMOMBAZI Jean Pierre yasambanyije umwana we witwa UWAMAHORO Chantal w'imyaka itandatu (6) nk'uko yabitangarijwe n'uwo mwana. Izo nyandiko kandi zerekana ko ku itariki ya 13/1/2007 umwana yajyanwe kwa muganga, raporo ikaza ivuga ko umwana yahohotewe kuko yagaragazaga ko ku gitsina cye havaga amaraso. [12] Urukiko rurasanga ikimenyetso kiri muri dosiye ku bijyanye n'uwahohoteye umwana ari invugo ya nyina w'umwana atanga ikirego. Urukiko rurasanga ariko nanone Ubushinjacyaha butarashoboye kuvuguruza imyiregurire ya MBARIMOMBAZI Jean Pierre bugaragariza Urukiko aho uwo muni yaba yarahuriye n'umwana ngo rwemeze ko ibimenyetso muganga yasanze ku gitsina cy'umwana byatewe na MBARIMOMBAZI cyane cyane ko uyu avuga ko kuri uwo muni icyaha cyabereyeho yiriwe mu bukwe, ibi bikemezwa n'umutangabuhamya NGIRABATWARE yanyuzeho agiye muri ubwo bukwe n'undi witwa MUKAZANA batahanye

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mu ma saa kumi, isaha bivugwa ko icyaha cyabereye, bityo ibimenyetso bitangwa n'Ubushinjacyaha bikaba bitera gushidikanya. [13] Urukiko rurasanga kandi, kuba NYIRANSENGIMANAarega avuga ko icyaha cyo guhohotera umwana we cyakorewe kwa NGIRABATWARE hari akandi kana k'imyaka ine (4), uyu NGIRABATWARE akaba ari na nyirarume, ariko we akaba avugako umunsi icyaha cyabereyeho nta muntu wari mu rugo rwe, ko hari hakinze kuko n'abana bari bajyanye mu bukwe, ko we uko abibona uwo mwana atahohotewe na MBARIMOMBAZI kuko yatahanye na MUKAZANA, na byo bitera gushidikanya. [14] Ingingo ya 165 y'itegeko n° 13/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabya ivuga ko gushidikanya birengera ushinjwa, igakomeza igira iti: "Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze". Ibi bishimangirwa n'abahanga mu mategeko yerekeye imiburanishirize y'imanza z'inshinjabyaha na bo bavuga ko nta muntu ugomba kwemezwa ko ahamwe n'icyaha nyuma y'urubanza atari uko ubushinjacyaha bugaragaje ibimenyetso bidatera ugushidikanya uko ari ko kose (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). 1 [15] Ku birebana n'uru rubanza, Urukiko rurasanga hashingiwe ku myiregurire ya MBARIMOMBAZI Jean Pierre, ibimenyetso byose byatanze muri uru rubanza bitera gushidikanya, bityo uregwa akaba agomba kugirwa umwere. IV. ICYEMEZO CY'URUKIKO. [16] Rwemejeko ubujurirebwaMBARIMOMBAZI Jean Pierrebuteishirizwa ; [17] RwemejekoMBARIMOMBAZI Jean Pierreahamagurirwehoicyahakuberagushidikanya ; [18] Rwemeje ko imikirize y'urubanza RPA 0091/07/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi, ku itariki ya 31/3/2010 ihindutse kuri byose ; [19] Rutegetse ko MBARIMOMBAZI Jean Pierre ahita arekurwa urubanza rukimara gusomwa; [20] Ruvuze ko amagarama y'urubanza aherera ku isanduku ya Leta.

1Henry Bosly et Damien Vandermeersch, Droit de la procédure pénale, 4e édition, p. 1316, 5

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