

RWANDA / JUDGMENT

UBUSHINJACYAHA v. TUGIRINSHUTI

RPAA 00098/2023/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA v. TUGIRINSHUTI

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Text

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UBUSHINJACYAHA v. TUGIRINSHUTI [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00098/2023/CA (Mukamurenzi, P.J.) 26 Mata 2024] Amategeko agenga imiburanishirize y'imanza z'Inshinjabyaha – Ibimenyetso mu manza Nshinjabyaha – Mu manza Nshinjabyaha ibimenyetso byose bishobora gushingirwaho mu gihe bigaragaza ukuri kw'ibyabaye (principe de la liberté de la preuve en matière pénale). Amategeko agenga imiburanishirize y'imanza z'Inshinjabyaha – Kubanya ibihano niyo ubujurire budafite ishingiro – Mu gihe hari impamvu nyoroshyacyaha zirimo kuba uwakoze icyaha ari ubwa mbere akurikiranywe mu butabera, Nta cyabuza Urukiko kugabanya igihano kabone nubwo ubujurire bwaba budafite ishingiro. Incamake y'ikibazo: Ubushinjacyaha bwareze Tugirinshuti mu Rukiko Rwisumbuye rwa Rusizi ku cyaha bwari bumukuriyeho cyo gusambanya umwana ufite imyaka 8, busaba ko ahamwa n'icyaha agahanishwa igihano cy'igifungu cya burundu. Urwo Rukiko rwaciye urubanza rwemeza ko Tugirinshuti ahamwa n'icyaha, rumuhanisha igifungu cya burundu. Tugirinshuti yajuririye mu Rukiko Rukuru Urugereko rwa Rusizi avuga ko yahanishijwe ibihano bihanitse kandi atemera icyaha. Urwo Rukiko ruca urubanza rwemeza ko ubujurire bwe nta shingiro bufite, ko hagumaho imikirize y'urubanza rujuririrwa. Yajuririye mu Rukiko rw'Ubujuire avuga ko yahamijwe icyaha

hashingiwe ku bintu bidafite gihamya kuko ntawamubonye akora kuri uwo mwana no kuba iperereza yasabye ritarakozwe kandi ari ryo ryari kugaragaza uburyo yagambaniwe na se umubyara akoresheje uwo mwana. Ku rundi ruhande ubushinjacyaha buvuga ko Tugirimana atabasha kuvuguruza ibimenyetso byashingiweho bimuhamya icyaha cyo gusambanya umwana, busaba ko hagumaho imikirize y'urubanza rwajuririwe. Incamake y'icyemezo: 1. Mu manza Nshinjabyaha ibimenyetso byose bishobora gushingirwaho mu gihe bigaragaza ukuri kw'ibyabaye (principe de la liberté de la preuve en matière pénale), ababuranyi bakaba bahabwa uburyo bwo kuhaba ngo banyomozanye, kandi Urukiko rukaba arirwo rwemeza ko ibyo bimenyetso bishobora kwemerwa.

2. Mu gihe hari impamvu nyoroshyacyaha zirimo kuba uwakoze icyaha ari ubwa mbere akurikiranywe mu butabera, Nta cyabuza Urukiko kugabanya igihano kabone nubwo ubujurire bwaba budafite ishingiro. Ubujurire nta shingiro bufite. Urubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi ruhindutse gusa ku byerekeranye n'igihano. Nta mategeko yashingiweho

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Imanza zifashishijwe: RPAA 00692/2021/CA; Ubushinjacyaha vs Ndayishimiye Jean Damascène rwaciwe n'Urukiko rw'Ubujurire ku wa 20/01/2023. RPAA 00370/2022/CA; Ubushinjacyaha vs Mushimiyimana Jean Bosco rwaciwe n'Urukiko rw'Ubujurire ku wa 22/03/2024. RPAA 0117/07/CS rwaciwe ku wa 17/09/2010 haburana Ubushinjacyaha na Clpl Ngabonziza Faustin na Sgt Biziyaremye Jean Baptiste RPAA 00527/2022/CA haburana Ubushinjacyaha na Nsengiyumva Emmanuel rwaciwe ku wa 22/02/2024 Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 26/11/2019, Tugirinshuti Alexis bahimba Kamugi ari mu Karere ka Rusizi, umurenge wa Gihundwe, Akagali ka Shagasha, Umudugudu wa Shagasha yafashwe acyekwaho gusambanya umwana w'imyaka umunani (8) y'amavuko wahawe izina rya N.Ch.. Uyu mwana abazwa mu Bugenzacyaha yavuze ukuntu Tugirinshuti Alexis yamutumye kumurahurira umuriro, arawubura, agarutse kubimubwira amusanga mu gikoni amubaza niba yambaye ikariso, azamura ijipo ye asanga ntayo yambaye ahita afata urutoki rwe rurerure arumushyira mu gitsina, arababara ahita arira ajya kubibwira sekuru witwa Tabaro Jean. Uyu yagize impungenge ko yaba yamusambanyije, ajya kubibwira umujyanama w'ubuzima, abimenyesha ku kagari, bohereza abashinzwe umutekano baramufata. [2] Iperereza rirangiye, Ubushinjacyaha bwamuregeye Urukiko Rwisumbuye rwa Rusizi bumukurikiranyeho icyaha cyo gusambanya umwana, busaba ko cyamuhama, agahanishwa igifungo cya burundu. [3] Tugirinshuti Alexis bahimba Kamugi yaburanye ahakana icyaha avuga ko atasambanyije uwo mwana ko ari akagambane yagiriwe na se bitewe n'uko ahora avuga ko atamubyara, asaba kurenganurwa. [4] Mu rubanza RP 00022/2020/TGI/RSZ rwaciwe ku wa 28/07/2020, Urukiko Rwisumbuye rwa Rusizi rwasanze hari ibimenyetso bigaragaza ko Tugirinshuti Alexis bahimba Kamugi yakoze icyaha aregwa ari byo : - Kuba Tugirinshuti Alexis bahimba Kamugi yaranzwe no kwivuguruza mu mvugo ze; - imvugo z'umwana N.Ch. usobanura ko Tugirinshuti Alexis bahimba Kamugi yamushyize urutoki mu gitsina; - imvugo za Tabaro Jean; - icyemezo cya muganga wasuzumye uwo mwana akemeza ko afite udukumere mu gitsina ndetse ko habayeho n'ihungabana ry'imyanya ndangagitsina.

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Urukiko rushingiye kuri ibyo bimenyetso rwemeje ko Tugirishuti Alexis bahimba Kamugi ahamwa n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cya burundu. [5] Tugirinshuti Alexis bahimba Kamugi yajuririye imikirize y'urwo rubanza mu Rukiko Rukuru, Urugereko rwa Rusizi, avuga ko impamvu yajuriye ari ibihano bihambaye yahanishijwe kandi atemera icyaha, asaba Urukiko gushishoza kuko uwamushinje ari se ujya avuga ko atamubyara kandi bene umwana bo batamushinja, ko abiterwa n'uko yabonye avuye i Kigali akeka ko aje kumusaba umunani. Asaba ko yahanagurwaho icyaha akagirwa umwere. [6] Uhagarariye Ubushinjacyaha yavuze ko Tugirinshuti Alexis bahimba Kamugi atabasha kuvuguruza ibimenyetso byashingiweho bimuhamya icyaha cyo gusambanya umwana birimo kuba ashinjwa na se Tabaro Jean, kuba umwana yaravuze ko yamukojejemo urutoki mu gitsina kuko atari yambaye ikariso no kuba raporo ya muganga yaragaragaje ko umwana yasambanyijwe, asaba ko hagumaho imikirize y'urubanza rwajuririwe. [7] Mu rubanza RPA 00257/2020/HC/RSZ, rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi ku wa 12/01/2023, Urukiko rwasanze nk'uko Urukiko Rwisumbuye rwabibonye, ibyo avuga ko yahimbiwe icyaha na se uvuga ko atamubyara, nta kimenyetso yabigaragariye, ko n'iperereza asaba atagaraza uko ryakorwa n'uwo ryakorwaho mu gihe abazwa yemeye ko yari kumwe n'umwana kandi umwana akamuvaho asanga sekuru Tabaro Jean ari nawe se, ko na raporo ya muganga yagaragaje ko umwana yasambanyijwe kuko yari afite udukomere ku gitsina, rwemeza ko ubujurire bwe nta shingiro, ko hagumaho imikirize y'urubanza rwajuririwe. [8] Tugirinshuti Alexis bahimba Kamugi yajuririye imikirize y'urwo rubanza mu Rukiko rw'Ubujurire, urubanza ruhabwa RPAA 00098/2023/CA, ruburanishwa mu ruhamye ku itariki ya 08/04/2024, Tugirinshuti Alexis bahimba Kamugi yunganiwe na Me Muhimanyi Philippe naho Ubushinjacyaha buhagarariye na Niyonkuru Françoise, Umushinjacyaha ku rwego rw'Igihugu. [9] Mu myanzuro y'ubujurire no mu miburanire Tugirinshuti Alexis bahimba Kamugi n'umwunganira bavuga ko icyo banenga urubanza rwaciwe n'Urukiko Rukuru ari uko yahamijwe icyaha hashingiwe ku bintu bidafite gihamya kuko ntawamubonye akora kuri uwo mwana no kuba iperereza yasabye ritarakozwe kandi ari ryo ryari kugaragaza uburyo yagambaniwe na se umubyara akoresheje uwo mwana. [10] Uhagarariye Ubushinjacyaha avuga ko impamvu z'ubujurire za Tugirinshuti Alexis bahimba Kamugi zidafite ishingiro kuko atabasha kuvuguruza ibimenyetso byashingiweho bimuhamya icyaha, ko n'iperereza asaba atari ngombwa kuko mu miburanire ye atigeze agaragaza ko mu rugo hari abandi bantu ngo babazwe. [11] Izo mpaka zigaragaza ko hagomba gusuzumwa niba Tugirinshuti Alexis bahimba Kamugi yarahamijwe icyaha atakoze hashingiwe ku bintu bidafatika hirengagijwe ko ashinjwa na se umubeshyera kubera amakimbirane bafitanye.

II. ISESENGURWA RY' IKIBAZO KIGIZE URUBANZA

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Kumenya niba niba Tugirinshuti Alexis bahimba Kamugi yarahamijwe icyaha atakoze hashingiwe ku bintu bidafatika hirengagijwe ko ashinjwa na se umubeshyera kubera amakimbirane bafitanye. [12] Tugirinshuti Alexis bahimba Kamugi n'umwunganira bavuga ko

icyo banenga urubanza yajuririye ari uko Urukiko Rukuru Urugereko rwa Rusizi rwamuhamije icyaha rushingiye ku bintu bidafite gihamya kuko ntawamubonye akora kuri uwo mwana, ntihanakorwa n'iperereza yasabye ryari kugaragaza uburyo yagambaniwe na se umubyara akoresheje uwo mwana. Basobanura ko se umubyara Tabaro Jean ari we umushinja wenyine kandi amubeshyera agamije kumufungisha kubera amakimbirane bahora bagirana, akanavuga ko atamubara mu bana be, ko basaba urukiko kubisuzuma akarenganurwa kuko kuba umwana yarahungiyeye kuri sekuru ntahungire kuri nyina umubyara bigaragaza ko ari ibyo yari yateguye kuko nta n'ibindi bimenyetso byagaragajwe bihamya ko yakozwe icyaha aregwa. [13] Uhagarariye Ubushinjacyaha avuga ko impamvu z'ubujurire za Tugirinshuti Alexis bahimba Kamugi zidafite ishingiro kuko atabasha kuvuguruza ibimenyetso byashingiweho bihamya ko yakozwe icyaha aregwa, naho ibyo avuga ko ashinjwa na se wenyine amubeshyera kubera amakimbirane bafitanye nabyo nta shingiro bifite, kuko nta kimenyetso kigaragaza ko hari ibyo bapfa, cyangwa ngo kigaragaze ko amubeshyera yifashishije uwo mwana, kandi kuba umwana yarahise ajya kubwira sekuru ko Tugirinshuti amukoze mu gitsina byatewe n'uko ari we yagezeho bwa mbere wari muri urwo rugo maze nawe agira amakenga y'uko yamusambanyije, ajya kubibwira abanyabuzima. [14] Yongeraho ko ku byerekeranye n'iperereza yasabye ko rikorwa, Urukiko Rukuru rwabisuzumye rusanga atagaragaje uko ryakorwa n'abo ryakorwaho, mu gihe bigaragara ko yari kumwe n'umwana kandi umwana akamuvaho arira, akajya kubwira sekuru ibyo amukoze. Uko Urukiko rubibona [15] Impaka ziri muri uru rubanza zishingiye ku kumenya niba Tugirinshuti Alexis bahimba Kamugi yarahamijwe icyaha cyo gusambanya umwana w'imyaka umunani (8) hashingiwe ku buhamya bw'ubuhimbano, ntihanakorwa iperereza yasabye kandi ari ryo ryari kugaragaza akagambane yagiriwe n'umubyeyi we. [16] Ku birebana n'ibimenyetso mu manza nshinjabyaha, urubanza RPAA 00692/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 20/01/2023, haburana Ubushinjacyaha na Ndayishimiye Jean Damascène, rwasesenguye ingingo ya 119 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, harebwe cyane cyane ku mwihariko w'imanza nshinjabyaha, maze rusobanura ko muri izo manza, ibimenyetso byose bishobora gushingirwaho mu gihe bigaragaza ukuri kw'ibyabaye (principe de la liberté de la preuve en matière pénale), ababuranyi bakaba barahawe uburyo bwo kuhaba ngo banyomozanye, kandi Urukiko rukaba arirwo rwemeza ko ibyo bimenyetso bishobora kwemerwa. Iri hame ryashingiweho mu zindi manza zakurikiyeho zaciwe n'uru rukiko, harimo n'urubanza RPAA 00370/2022/CA rwaciwe ku wa 22/03/2024, haburana Ubushinjacyaha na Mushimiyimana Jean Bosco.

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[17] Tugirinshuti Alexis aburana ku rwego rwa mbere yireguye avuga ko yagambaniwe na se uhora abwira nyina ko atamushaka ngo kuko atamubyara, yongera kubigarura mu bujurire, Urukiko Rukuru rwabisuzuma, maze mu gika cya 13 cy'urubanza rujuririrwa ruvuga ko nk'uko Urukiko rwisumbuye rwabonye ko nta kimenyetso yabitangiye, ko no ku rwego rw'ubujurire ntacyo yabashije kugaragaza naho mu gika cya 14, Urukiko rugaragaza ko iperereza yasabye ko rikorwa ku rwango afitiwe na se atagaragaza uko ryakorwa n'abo ryakorwaho mu gihe bigaragara ko yari kumwe n'umwana kandi umwana akamuvaho arira.

[18] Urukiko rw'Ubujurire rusanga rero ibyo Tugirinshuti Alexis bahimba Kamugi avuga mu bujurire bwe ko Urukiko Rukuru Urugereko rwa Rusizi rwamuhamije icyaha rushingiye ku bintu bidafatika kuko ntawamubonye akora kuri uwo mwana, ntihanakorwa n'iperereza yasabye ryari kugaragaza uburyo yagambaniwe na se umubyara akoresheje uwo mwana, nta shingiro bifite kubera ko imyiregurire ye ijyanye no kuba se umubyara amubeshyera n'uko yamugambaniye yasuzumwe n'inkiko zibanza zigaragaza ko nta kimenyetso yabitangiye. [19] Urukiko rusanga no kuri uru rwego rw'ubujurire, uretse gusubira muri iyo miburanire nabwo nta kimenyetso atanga kigaragaza ko se umubyara amushinja amubeshyera n'uko yamugambaniye akoresheje umwuzukuru we agamije kumufungisha. Kuba nta perereza ryakozwe ku makimbirane bafitanye, uru Rukiko ntirubibonamo inenge kuko, nk'uko byatanzweho umurongo n'Urukiko rw'Ikirenga mu rubanza RPAA 0117/07/CS rwaciwe ku wa 17/09/2010 haburana Ubushinjacyaha na Clpl Ngabonziza Faustin na Sgt Biziyaremye Jean Baptiste¹, n'iyi baba bafite ibyo bapfa, ntibyari gutuma atabazwa ngo agaragaze icyo azi ku ikorwa ry'icyaha, icy'ingenzi ni uko imvugo ye itapfa kwemerwa cyangwa ngo ihakanwe itabanje gusuzumwa n'Urukiko. [20] Urukiko rusanga nk'uko Tabaro Jean se wa Tugirinshuti Alexis bita Kamugi yabisobanuye mu ibazwa rye, yari mu rugo aryamye, umwuzukuru we amusanga mu buriri abona arimo kurira amubwira ko Ngirinshuti amuhamagaye ngo amusange mu gikoni amukoraho amwambuye ubusa asanga atambaye ikariso agira impungenge ko yaba amusambanyije, ahita ajya kubibwira umujyanama w'ubuzima nawe abimenyesha ku kagari, abashinzwe umutekano baza kumufata, yanavuze ko icyo gihe nta wundi muntu wari uhari. [21] Izo mvugo za Tabaro Jean zigaragaza ko umwana ariwe wagiye kubwira sekuru ibyo Tugirinshuti yamukoreye ndetse n'umwana nawe abazwa akaba yarasobanuye uko byagenze avuga uko yamwicajye ku ntebe avuga ngo reka arebe ko yambaye ikariso maze azamura ijipo ye asanze ntayo yambaye afata urutoki rwe rurerure arumujomba mu gitsina arababara ahita arira aramureka maze ajya kubibwira sekuru. Kuba yaramushyize urutoki mu gitsina nk'uko umwana abivuga bishimangirwa na raporo ya muganga igaragaza ko mu isuzuma ryakozwe rigaragaza ko igitsina cy'umwana cyahungabanyijwe kandi kirimo n'udukomere. Ku by'ibyo ibyo Tugirinshuti Alexis avuga ko se Tabaro Jean amushinja amubeshyera nta shingiro bifite kuko uretse n'imvugo ze hari imvugo z'umwana zunganirwa na raporo ya muganga. [22] Hashingiwe ku bimaze gusobanurwa, Urukiko rw'Ubujurire rusanga ibimenyetso byashingiweho n'Urukiko Rukuru, urugereko rwa Rusizi byuzuzanya kandi bidashikanywaho,

1 Reba igika cya 8 cy'urwo rubanza.

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bityo ubujurire bwa Tugirinshuti Alexis bahimba Kamugi bukaba nta shingiro bufite kuko atabashije kubivuguruza. [23] Urukiko rw'Ubujurire rusanga ariko n'ubwo bigaragara ko yakoze icyaha gifite uburemere ku mwana ufite imyaka 8, hari impamvu nyoroshyacyaha zashoboraga kwitabwaho akagabanyirizwa igifungo cya burundu yahanishijwe kubera ko ari ubwa mbere akurikiranyweho icyaha mu Nkiko ku buryo buzwi, hakanarebwa n'imikorere y'icyaha nk'uko biteganywa n'ingingo ya 49 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano

muri rusange. [24] Urukiko rukaba rusanga hari izindi manza ruheruka guca ku bantu baregwa icyaha gisa n'icyo Tugirinshuti Alexis bahimba Kamugi yahamijwe, muri zo hari nk'urubanza RPAA 00527/2022/CA haburana Ubushinjacyaha na Nsengiyumva Emmanuel rwaciwe ku wa 22/02/2024. Muri urwo rubanza, Urukiko rw'Ubujurire rwagabanyirije Nsengiyumva Emmanuel igihano ku cyaha cyo gusambanya umwana w'imyaka 8, rushingiye ku kuba ari ubwa mbere akurikiranyweho icyaha mu buryo buzwi, rumuhanisha igifungo cy'imyaka cumi n'icyenda (19) gisimbura igifungo cya burundu yahanishijwe n'inkiko zibanza. [25] Kubera izo mpamvu, mu rwego rwo gutanga ubutabera busa ku bibazo bisa, kuba ibyo Tugirinshuti Alexis bahimba Kamugi akurikiranyweho bisa n'ibya Nsengiyumva Emmanuel, Urukiko rw'Ubujurire rusanga akwiye guhabwa igihano kiri mu kigero kimwe n'icya Nsengiyumva Emmanuel kuko nawe ari ubwa mbere akurikiranyweho icyaha mu Nkiko mu buryo buzwi, bityo Tugirinshuti akaba agomba guhanishwa igifungo cy'imyaka cumi n'icyenda (19) gisimbura igifungo cya burundu yahawe mu rubanza rujuririrwa.

III. ICYEMEZO CY'URUKIKO [26] Rwemeje ko ubujurire bwa Tugirinshuti Alexis bahimba Kamugi nta shingiro bufite; [27] Rwemeje ko urubanza RPA 00257/2020/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi, ku wa 12/01/2023, ruhindutse gusa ku byerekeranye n'igihano ; [28] Ruhanishije Tugirinshuti Alexis bahimba Kamugi igifungo cy'imyaka cumi n'icyenda (19); [29] Rutegetse ko asonerwa amagarama y'urubanza kuko aburana afunzwe.

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