

RWANDA / JUDGMENT

UBUSHINJACYAHA v. GATETE

RPAA 00196/2024/CA

COURT

Court of Appeal

DECIDED

28 April 2025

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UBUSHINJACYAHA v. GATETE

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Text

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UBUSHINJACYAHA v. GATETE [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00196/2024/CA (Nyirandabaruta, P.J.) 28 Mata 2025] Amategeko agenga imanza z'inshinjabyaha – Ubwinjiracyaha bw'icyaha cyo kwica – Gukubita no gukomeretsa birimo umugambo wo kwica – Kumenya niba uwakubise undi ku bushake yari afite umugambi wo kumwica cyangwa niba yari agamije gusa kumukubita cyangwa kumukomeretsa, bisuzumirwa mu cyakoreshejwe (intwaro ishobora kwica) mu kumukubita no ku gice cy'umubiri cyakubiswe (mu cyico). Incamake y'ikibazo: Gatete Wellars yakurikiranyweho n'Ubushinjacyaha icyaha cy'ubwinjiracyaha mu cyaha cy'ubwicanyi yari ashatswe gukorera nyina amunigishije ikiziriko. Bwamuregeye Urukiko Rwisumbuye rwa Gicumbi, Uregwa aburana ahakana icyaha, Urwo Rukiko mu gufata icyemezo rwemeza ko ahamwa n'icyaha, rumuhanisha igifungo cy'imyaka 25. Gatete yajuririye mu Rukiko Rukuru avuga ko Urukiko Rwisumbuye rwa Gicumbi rwamuhamije icyaha rushingiye ku mvugo z'abatangabuhamya na raporo y'inze z'ibanze bitagaragaza ukuri. Urwo Rukiko ruca urubanza rwemeza ko nta shingiro bufite, ariko rusanga nta cyabuza ko agabanyirizwa igihano, hagamijwe gutanga igihano gihwanye n'uburemere bw'icyaha kabone n'ubwo impamvu z'ubujurire zaba zitahawe ishingiro, rumuhanisha igifungo cy'imyaka 15. Gatete atishimiye icyemezo cy'Urukiko

Rukuru, yajuririye mu Rukiko rw'Ubujurire avuga ko ashaka kuvugisha ukuri akemera icyaha kugira ngo agabanyirizwe igihano, asaba ko Urukiko ruhindura inyito y'icyaha yahamijwe cy'ubwinjiracyaha mu bwicanyi, agahanirwa icyaha cyo gukubita no gukomeretsa, agahanishwa igihano kitarenze umwaka n'ihazabu itarenze amafaranga ibihumbi magana atatu (300,000Frw). Ku rundi ruhande, Ubushinjacyaha buvuga ko kuba uregwa yahindurirwa inyito y'icyaha agahanwa hashingiye ku cyaha cyo gukubita cyangwa gukomeretsa ku bushake umubyeyi we nta shingiro bifite, kuko ibikorwa yakoze bigize ubwinjiracyaha mu bwicanyi nk'uko Urukiko Rukuru rwabimuhamije. Bukavuga ko ku bijyanye no kugabanya igihano, ntacyabuza Urukiko kumugabanyiriza igihano hagamijwe gutanga igihano gihwanye n'uburemere bw'icyaha kabone nubwo impamvu z'ubujurire zaba zitahawe ishingiro, busaba ko yagabanyirizwa igihano yahawe, agahanishwa igifungo cy'inyaka cumi n'ibiri (12) n'amezi atandatu (6) kuko nta ngaruka zikomeye ibikorwa bye byateje Incamake y'icyemezo: Kumenya niba uwakubise undi ku bushake yari afite umugambi wo kumwica cyangwa niba yari agamije gusa kumukubita cyangwa kumukomeretsa, bisuzumirwa mu cyakoreshejwe (intwari ishobora kwica) mu kumukubita no ku gice cy'umubiri cyakubiswe (mu cyico). Ubujurire nta shingiro bufite. Urubanza ruhindutse gusa ku bijyanye n'igihano.

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Nta mategeko yashingiweho

Imanza zifashishijwe: RPAA 0110/10/CS; Ubushinjacyaha vs Uwamurengeye rwaciwe n'Urukiko rw'Ikirenga ku wa 31/01/2014, RS/INJUST/RP 00007/2022/CA; Ubushinjacyaha vs Nturanyenabo Jean Chrysostome rwaciwe n'Urukiko rw'Ubujurire ku wa 24/11/2023. Urubanza I. IMITERERE Y'URUBANZA [1] Tariki ya 29/09/2019, saa sita z'ijoro, Gatete Wellars ari mu Mudugudu wa Karege, Akagali ka Karege, Umurenge wa Bukure, Akarere ka Gicumbi, yatashye avuye kunywa inzoga, akomangira nyina Mukarwirahira, atinze gufungura yica idirishya yinjira mu nzu, nyuma asohokamo ajya ku kiraro cy'inka, afata ikiziriko cy'inyana ajya kukinigisha nyina, abazukuru b'uwo mukecuru bajya gutabaza abaturanyi baraza baramumukiza. [2] Ubushinjacyaha bwareze Gatete Wellars mu Rukiko Rwisumbuye rwa Gicumbi maze uyu aburana ahakana icyaha, avuga ko mu gihe nyina yari yatinze kumufungurira yanyuze mu idirishya ry'icyumba amugwa hejuru arakomereka. Urwo Rukiko rwaciye urubanza rubanza RP 00631/2019/TGI/GIC ku wa 01/10/2020, rushingiye ku mvugo z'abatangabuhamya ndetse na raporo y'ubuyobozi bw'Ibanze, ruhamya Gatete Wellars Ubwinjiracyaha mu bwicanyi, rumuhanisha igifungo cy'inyaka makumyabiri n'itanu (25). [3] Gatete Wellars yajuririye Urukiko Rukuru avuga ko Urukiko Rwisumbuye rwa Gicumbi rwamuhamije icyaha rushingiye ku mvugo z'abatangabuhamya na raporo y'inze z'ibanze bitagaragaza ukuri, Ubushinjacyaha buvuga ko ubujurire bwe nta shingiro bufite kubera ko nta bimenyetso aheraho ahakana icyaha. Urukiko Rukuru rushingiye ku murongo watanze n'Urukiko rw'Ubujurire mu rubanza RPAA 00024/2020/CA, rwemeje ko uwajuriye agomba gutanga ibimenyetso bituma imvugo z'abatangabuhamya zigaragara ko zidahuza n'ukuri, rwasanze imvugo z'abatangabuhamya zihuje n'uko Gatete Wellars yemera ko yishe idirishya akinjira agakomeretsa nyina, n'amafoto ya nyina agaragaza uko yakomerekejwe na raporo y'Umuyobozi w'Umudugudu, byose bihuza n'igikorwa cyabaye, rwemeza ko nta kuntu rwatesha

agaciro invugo z'abatangabuhama kubera ko zihuza n'ukuri ku byabaye. [4] Mu rubanza RPA01078/2020/HC/KIG, rwaciwe n'Urukiko Rukuru ku wa 29/02/2024, rwemeje ko ubujurire bwa Gatete Wellars nta shingiro bufite, ariko rusanga nta cyabuza ko agabanyirizwa igihano, hagamijwe gutanga ihano gihwanye n'uburemere bw'icyaha kabone n'ubwo impamvu z'ubujurire zaba zitahawe ishingiro, rushingiye ku murongo watanze mu rubanza RPAA 00045/2022/CA; rushingiye ku ngingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, iteganya ko igihano cy'igifungo cya burundu gishobora kugabanywa ariko ntikijye munsu y'igihano cy'igifungo cy'inyaka cumi n'itanu (15), ruhanisha Gatete Wellars igifungo cy'inyaka

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cumi n'itanu (15) ku mpamvu nyoroshyacyaha y'uko nyina avuga ko nta kindi kibi Gatete Wellars yari asanzwe akora, bityo ko icyo ari cyo gihano gikwiye. [5] Gatete Wellars yajuririye Urukiko rw'Ubujurire, ubujurire bwe bwandikwa kuri RPAA 00196/2024/CA, ruburanishwa mu ruhamu ku itariki ya 01/04/2025, Gatete Wellars yunganiwe na Me Ruberwa Ngarukiye Silas, naho Ubushinjacyaha buhagarariye na Habimana Jean Cabin, Umushinjacyaha ku rwego rw'Igihugu. [6] Mu mwanzuro w'ubujurire bwa Gatete Wellars wo ku wa 18/03/2024, avuga ko ashaka kuvugisha ukuri akemera icyaha kugira ngo agabanyirizwe igihano. Asobanura ko icyaha yakoze yagitewe n'ubusinzi kuko atigeze agambirira kwica nyina. [7] Mu miburanire ye no mu mwanzuro wo ku wa 05/03/2025 wa Me Ruberwa Silas umwunganira, basaba ko Urukiko ruhindura inyito y'icyaha Gatete Wellars yahamijwe cy'ubwinjiracyaha mu bwicanyi, agahanirwa icyaha cyo gukubita no gukomeretsa, agahanishwa igihano kitarenze umwaka n'ihazabu itarenze amafaranga ibihumbi magana atatu (300,000Frw). [8] Uhagarariye Ubushinjacyaha avuga ko kuba Gatete Wellars yahindurirwa inyito y'icyaha agahanwa hashingiye ku cyaha cyo gukubita cyangwa gukomeretsa ku bushake umubyeyi we nta shingiro bifite, kuko ibikorwa yakoze bigize ubwinjiracyaha mu bwicanyi nk'uko Urukiko Rukuru rwabimuhamije. [9] Ku bijyanye no kuba yagabanyirizwa igihano, avuga ko Gatete Wellars yagabanyirizwa igihano yahawe, agahanishwa igifungo cy'inyaka cumi n'ibiri (12) n'amezi atandatu (6) kuko nta ngaruka zikomeye ibikorwa bye byateje, bityo ko nta cyabuza Urukiko kumugabanyiriza igihano hagamijwe gutanga igihano gihwanye n'uburemere bw'icyaha kabone n'ubwo impamvu z'ubujurire ze zitahabwa ishingiro. [10] Urukiko ruherereye kuri izo mpaka rurasuzuma ingingo zikurikira:

1. Kumenya niba inyito y'icyaha Gatete Wellars yahamijwe ikwiye guhinduka gukubita no gukomeretsa.
2. Kumenya niba Gatete Wellars yagabanyirizwa igihano. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA
1. Kumenya niba inyito y'icyaha Gatete Wellars yahamijwe ikwiye guhinduka gukubita no gukomeretsa [11] Mu we mwanzuro w'ubujurire, Gatete Wellars yavuze ko ashaka kuvugisha ukuri, akemera icyaha kugira ngo agabanyirizwe igihano; asobanura ko ku wa 29/09/2019 yatashye yasinze ageze mu rugo asanga nyina aryamye, yanga kumukingurira, aca mu idirishya yinjira mu nzu, nyina aramutonganya bya kibyezi, agira umujinya afata ikiziriko,

akimukubita mu ijosi. Akomeza avuga ko nyina agiye kumurega mu nzego z'ibanze ko yakimunigishije ashaka kumwica, nyamara ko atigeze agambirira kumwica, ahubwo ibyo yakoze yabitewe n'ubusinzi.

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- [12] Mu miburanire ye Gatete Wellars n'Avoka umwunganira bavuga ko icyaha gikwiye kumuhama ari icyo gukubita no gukomeretsa, bakanenga Urukiko Rukuru kuba rwaragaragaje (gika cya 15 cy'urubanza rujuririrwa) uburyo Gatete Wellars yinjiye mu nzu amennye idirishya kubera ko yasinze, kubera ko yari yakomangiye nyina ntamukingurire, maze yinjirana uburakari aramuniga, bakavuga ko nta kigaragaza ko Gatete Wellars yari agambiriye kumwica kuko ntawakumiriye ubwo bwicanyi. [13] Bashingiye ku ngingo ya 21 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange¹, basaba ko icyaha Gatete Wellars yahamijwe cy'ubwinjiracyaha mu bwicanyi gihinduka kuko ntaho Ubushinjacyaha bugaragaza uburyo umugambi w'ubwicanyi waburiywemo. [14] Bavuga ko iyo Urukiko rubonye ko rugomba guhindura inyito y'icyaha ruyihindura, kubera iyo mpamvu, bagasaba ko inyito y'icyo cyaha yahinduka gukubita no gukomeretsa, icyaha giteganwa n'ingingo ya 11 y'Itegeko No 59/2023 ryo ku wa 04/12/2023 rihindura itegeko No 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange²³, Gatete Wellars agahabwa igihano kitarenze umwaka n'ihazabu itarenze amafaranga ibihumbi magana atatu (300,000Frw). [15] Uhagarariye Ubushinjacyaha avuga ko Gatete Wellars yajuriye avuga ko agiye kwemera acyaha aregwa akanagisabira imbabazi, agasaba kugabanyirizwa igihano; ko ibyo uwunganira Gatete Wellars avuga n'ibyo yashyize mu mwanzuro we w'inyongera, bitandukanye n'ibyo uwo yunganira yajuriye avuga. [16] Avuga ko kuba Gatete Wellars yahindurirwa inyito y'icyaha, agahanwa hashingiye ku cyaha cyo gukubita cyangwa gukomeretsa ku bushake umubyeyi we, nta shingiro bifite kuko ibikorwa yakoze bigize ubwinjiracyaha cy'ubwicanyi nk'uko Urukiko Rukuru rwabimuhamije. Avuga ko abuzukuru ba mukecuru (nyina wa Gatete Wellars) bahamije ko Gatete Wellars yaciye mu idirishya azana ikiziriko, aniga uwo mukecuru, abo buzukuru baratabaza, abatabaye baje basanga Gatete Wellars afite ikiziriko arimo kuniga nyina, ko ibyo byahamijwe na Musabyimana wari mubatabaye, hari na Rukundo na Umulisa Aimable biyumviye Gatete Wellars avuga ko aje kwica nyina. [17] Avuga ko ikimenyetso cy'ubushake bwo kwica cyerekana ubushake bwihariye bwo kwica birimo: intwaro yakoreshejwe, uburyo yakoreshejwe, ahantu yakubiswe, imimerere by'uwakorewe icyaha n'uwakimukoreye, uburyo uwakoze ibikorwa bigize icyaha yari abishishikariye n'amagambo yavugaga, n'ibyagaragaye mu gusuzumwa k'umurambo bikozwe n'abahanga bifite akamaro k'ingenzi cyane mu gushyira ahagaragara ubushake bwo kwica nk'uko byasobanuwe na KINT (KINT Robert, Manuel de droit Rwandais; Droit spécial; 1993, pp.71-72); ko umugozi Gatete Wellars yanigishije nyina mu ijosi, byari byoroshye ko amuheza umwuka,

1 Iteganya ko “Ubwinjiracyaha buhanirwa iyo umugambi wo gukora icyaha wagaragajwe n'igikorwa kimwe cyangwa byinshi biboneka, bidashidikanwa by'intangiriro z'icyaha biganisha kugikorwa byacyo, nyuma bigahagarikwa kugera ku icyifuzo cyangwa bikazitirwa n'impamvu zidakomoka k'ubushake bwa nyiri ugukora icyaha”. 2 Iteganya ko "Gukubita cyangwa gukomeretsa k'ubushake ko ahanishwa igihano kitari muni y'amezi 6 ariko kitarenze umwaka n'ihazabu ya 3 ,000Frw ariko atarenze 300,000 Frw.”

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hakiyongeraho n'amagambo yavugaga kuva akica idirishya kugeza amunigisha umugozi avuga ko amwica. UKO URUKIKO RUBIBONA [18] Nubwo Gatete Wellars yajuriye avuga ko yemera icyaha, mu bisobanuro atanga mu mwanzuro we avuga ko atigeze agambirira kwica nyina, mu miburanire ye akavuga ko icyaha yemera ari icyo kumukubita no kumukomeretsa, bivuze ko atemera icyaha akurikiranyweho. Ubushinjacyaha bwo buvuga ko ibikorwa Gatete Wellars yakoze bigize ubwinjiracyaha mu bwicanyi nk'uko Urukiko Rukuru rwabimuhamije; ipfundo ry'ikibazo akaba ari ugusuzuma niba icyaha Gatete Wellars yakoze ari icyo gukubita no gukomeretsa ariko akaba yarahamijwe icy'ubwinjiracyaha cy'ubwicanyi. [19] Ibijyanye no gutandukanya icyaha cy'ubwicanyi n'icyaha cyo gukubita no gukomeretsa byatanzweho umurongo mu rubanza RPAA 0110/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 31/01/2014 haburana Ubushinjacyaha na Uwamurengeye (Reba Icyegeranyo cy'ibyemezo by'inkiko RLR V1-2014 p.133-140), aho Rwemeje ko kumenya niba uwakubise undi ku bushake yari afite umugambi wo kumwica cyangwa niba yari agamije gusa kumukubita cyangwa kumukomeretsa, bisuzumirwa mu cyakoreshejwe (intwari ishobora kwica) mu kumukubita no ku gice cy'umubiri cyakubiswe (mu cyico). Uyu murongo wakomeje gukoreshwa no mu zindi manza nyinshi kugeza ubu4. [20] Naho kubijyanye n'ubwinjiracyaha bw'ubwicanyi, Urukiko rw'Ubujuje mu rubanza RS/INJUST/RP 00007/2022/CA, rwaciwe ku wa 24/11/2023 haburana Ubushinjacyaha na Nturyenabo Jean Chrysostome (igika cya 60 na 65), rwatanze umurongo ko haba ubwinjiracyaha bw'ubwicanyi iyo mu buryo budashidikanywa bigaragara ko uregwa yari yatangiye gushyira mu bikorwa ubushake bwo kwambura umuntu ubuzima, nko gushyira umuntu wo kumwica, bikaburizwamo ku mpamvu zitamuturutseho, zidakomoka ku bushake bwe. [21] Mu rubanza rujurirwa (igika cya 15), Urukiko Rukuru rwahamije Gatete Wellars ubwinjiracyaha cy'ubwicanyi rubishingiye ku kuba avuga ko yakinguye nyina ntamukingurira, maze akica idirishya aho nyina yararaga, ndetse na nyina wa Gatete Wellars agahamya ko yamunize, bigashimangirwa n'abana bari kumwe nawe n'abantu baturuye, rwanzura ko ibyemejwe n'Urukiko Rwisumbuye ko Gatete Wellars ahamwa n'ubwinjiracyaha cy'ubwicanyi bifite ishingiro. [22] Urukiko Rwisumbuye rwa Gicumbi mu rubanza RP 00631/2019/TGI/GIC rwaciwe ku wa 01/10/2020, (igika cya 12-14), rushingiye ku mvugo ya Gatete Wellars, iya nyina ari we Mukarwirahira n'iz'abana babanaga aribo Rukundo Chance na Umulisa Aimable bashinja Gatete Wellars kuba yarashatse kwica nyirakuru ndetse n'abandi batangabuhamya, rwasanze nyuma yo gushyira kwica Mukarwirahira harafashwe amafoto agaragaza ko uyu yakomeretse mu ijosi, ndetse ko raporo yakozwe n'inze z'ibanze nayo igaragaza ko Gatete Wellars yashatse kwica nyina Mukarwirahira, ubwo yamunigishaga ikiziriko mu ijosi, nyuma yo kumubwira ko agiye kumwica.

4 Urubanza N° RPAA 00252/2024/CA, rwaciwe n’Urukiko rw’Ubujurire ku wa 14/02/2025 Ubushinjacyaha buburana na DUSHIMIMANA Vincent (igika cya 13); Urubanza N° RPAA 00130/2024/CA, rwaciwe n’Urukiko rw’Ubujurire ku wa 27/02/2025 Ubushinjacyaha buburana na NIBAYAVUGE Jean d’Amour (igika cya 15) n’izindi.

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[23] Mu nyandikomvugo ya Mukarwirahira Anastasie, abazwa mu Bugenzacyaha ku wa 02/10/2019, yavuze ko Gatete Wellars ku wa 27/9/2019 saa 00h00, yaje arahamagara atinda kumukingurira, ajya ku idirishya ryo ku cyumba cya Mukarwirahira Anastasie ararisenya, yinjiramo akingura inzugi, ajya mu gikari mu kiraro azitura inyana, azana umugozi wayo awumunigisha mu ijosi, amubwira ko amwica. Mukarwirahira Anastasie yakomeje avuga ko Gatete Wellars yari yasize adakinze inzugi, abwira abuzukuru babanaga ko nihagira uza guhurura amwica kandi ko yari afite agasuka k’agafuni, bityo abana baragenda bahuruza abaturanyi, yumvise haje abantu umugozi awukuramo arawujugunya⁵. [24] Umurisa Aimable na Rukundo alias Chance mu nyandikomvugo y’ibazwa ryabo nk’abatangabuhamya ku wa 02/10/2019, bavuze ko bumvise nyirakuru Mukarwirahira Anastasie ataka ngo nibamutabare, naho Gatete Wellars avuga ngo “uyu munsu ndakwica”, bagiye mu cyumba basanga Gatete aniga uwo mukecuru n’ikamba mu ijosi, bajya gutabaza abaturanyi barimo Alphonsine na Musabyemariya n’abandi, bagarutse basanga ikamba yarimukuyemo yarihishe⁶. Musabyemariya we yavuze ko baje gutabara basanga, uwo mukecuru Mukarwirahira Anastasie aryamye ku gitanda, avuga gacye ko atabasha kuvuga neza kuko Gatete Wellars yari amunigishije ikiziriko kandi ko yasanze yakomeretse gato mu ijosi⁷. [25] Ibimaze kuvugwa bihujwe n’imvugo ya Gatete Wellars mu Rukiko rw’Ubujurire, bigaragaraza ko Gatete Wellars yakoresheje ikiziriko yashyize nyina Mukarwirahira Anastasie mu ijosi arakimunigisha amubwira ko amwica, akaba yarabujijwe kumwica n’uko yumvise haje abazukuru b’uwo mukecuru batabaza abaturanyi, maze umugozi (ikiziriko) awumukuramo; bagarutse hamwe n’abo bari batabaje, basanga uwo mugenzi Gatete Wellars yawujugunye. [26] Harebwe intwari (ikiziriko) Gatete Wellars yakoresheje aniga nyina (Umukecuru wari ufite imyaka 76 igihe yakorerwaga icyaha⁸), n’igice cy’umubiri iyo ntware yakoreshejweho (ijosi), hashingiwe ku murongo watanze mu manza zavuzwe haruguru zirimo urubanza RPAA 0110/10/CS rwaciwe n’Urukiko rw’Ikirenga ku wa 31/01/2014 haburana Ubushinjacyaha na Uwamurengeye, n’urubanza RS/INJUST/RP 00007/2022/CA rwaciwe n’Urukiko rw’Ubujurire ku wa 24/11/2023 haburana Ubushinjacyaha na Nturanenabo Jean Chrysostome (igika cya 60 na 65), Uru Rukiko rurasanga nk’uko Urukiko Rukuru rwabimuhamije, ibikorwa Gatete Wellars yakoze bigize ubwinjiracyaha cy’ubwicanyi, ubujurire bwe ku bugamije guhindurirwa inyito y’icyo cyaha bukaba nta shigiro bufite.

2. Kumenya niba Gatete Wellars yagabanyirizwa igihano [27] Mu mwanzuro we w'ubujurire Gatete Wellars avuga ko ashaka kuvugisha ukuri akemera icyaha kugira ngo agabanyirizwe igihano. Agasobanura ko ku wa 29/09/2019 yatashye yasinze ageze mu rugo, asanga nyina aryamye, yanga kumukingurira, aca mu idirishya yinjira mu nzu, nyina aramutonganya bya kibyezi, agira umujinya afata ikiziriko, akimukubita mu ijosi. Akomeza

5 Investigation Case: 00141/BF/BUKUR SB/NORT/GICU/2019, DOC/IOD 0004. 6 Idem, DOC/IOD 0002. 7 Ibid. 8 Reba inyandikomvugo y'urega, Investigation Case: 00141/BF/BUKUR SB/NORT/GICU/2019, DOC/IOD 0004.

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avuga ko nyina agiye kumurega mu nzego z'ibanze ko yakimunigishije ashaka kumwica, nyamara ko atigeze agambirira kumwica, ahubwo ibyo yakoze yabitewe n'ubusinzi. [28] Muri uwo mwanzuro we w'ubujurire, Gatete Wellars asaba Urukiko kumugabanyiriza igihano, rushingiye ku ngingo ya 49 n'ya 59 z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange iteganyaga impamvu nyoroshyacyaha zirimo kuba yemera icyaha, akakicuza, akagisabira imbabazi ndetse akaba nta ngaruka zikomeye cyateje. [29] Mu miburanire ye Gatete Wellars kimwe nk'umwunganira bavugaga ko icyaha yemera, ari icyo gukubita no gukomeretsa. [30] Uhagarariye Ubushinjacyaha avugaga ko Gatete Wellars nta hantu yigeze yemera icyaha aregwa, ahubwo yaburanye agihaka, ko mu Rukiko rw'Ubujurire ariho honyine yajuriye avugaga ko yemera icyaha kandi agiye kuvugisha ukuri. [31] Avugaga ko Gatete Wellars yagabanyirizwa igihano hashingiwe ko nta ngaruka zikomeye ibikorwa bya byateje, ko hashingiye ku ngingo ya 21 y'Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, n'ingingo ya 2, (b), y'itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, Gatete Wellars yahanishwa igihano cy'igifungo cy'inyuma cumi n'ibiri (12) n'amezi atandatu (6). UKO URUKIKO RUBIBONA [32] Muri uru rubanza harasuzumwaga niba hari impamvu nyoroshyacyaha zatumaga Gatete Wellars agabanyirizwa igihano. [33] Ibijyanye no kwemera icyaha kugirira uregwa akamaro, uru Rukiko rwabitanzeho umurongo mu rubanza RPA 00060/2021/CA rwaciye ku wa 04/04/2022, haburana Ubushinjacyaha na Nsabimana Callixte alias Sankara n'abandi, (igika cya 136), ko "Ukwemera icyaha kugira agaciro gashobora gutuma uregwa agabanyirizwa igihano iyo gukoze byibura mbere y'uko iburanisha ku rwego rwa mbere ripfundikirwa, kudashidikanywaho, kuba uwemera agaragaza ko yumva uburemere bw'ibikorwa yemera n'ingaruka zabyo, abyicuza, abisabira imbabazi no kuba yiteguye gusubiza ibyo yangije uko abitegerejweho." Uyu murongo ni nawo wakoreshwe mu manza nyinshi zirimo urubanza RPAA 00048/2020/CA rw'Ubushinjacyaha na Bimenyimana Jean Paul rwaciye n'Urukiko rw'Ubujurire ku wa 26/05/2022 (igika cya 24), n'izindi nyinshi. [34] Ku bireba Gatete Wellars, ku rwego rwa mbere, mu rubanza RP 00631/2019/TGI/GIC rwaciye n'Urukiko Rwisumbuye rwa Gicumbi ku wa 01/10/2020, yaburanye ahakana icyo cyaha cy'Ubwinjiracyaha mu bwicanyi, avugaga ko icyatumye nyina ajya kumurega amubeshyera ko yashatse kumuniga, byatewe n'uko yagiye kumugurishiriza amata amaze gufata amafaranga

9 Urubanza No RPAA 00048/2020/CA haburana Ubushinjacyaha na BIMENYIMANA Jean Paul rwaciwe n'Urukiko rw'Ubujurire ku wa 26/05/2022 (igika cya 24); Urubanza N° RPAA 00734/2021/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 29/05/2024 Ubushinjacyaha buburana na NSENGIYUMVA Emmanuel (igika cya 19), etc.

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aranywera yose birakaza nyina; avuga ko mushiki we umushinja ko yashatse kwica nyina atari ahari.¹⁰ Gatete Wellars amaze guhamwa n'icyaha, yajuririye Urukiko Rukuru nabwo atemera icyaha, avuga ko Urukiko Rwisumbuye rwamuhamije icyaha rushingiye ku mvugo z'abatangabuhamya na raporo y'inzego z'ibanze bitagaragaza ukuri, ko ikiziriko bivugwa ko yanigishaga nyina batacyerekanye, n'abatabaye batasanze arimo kuniga nyina.¹¹ [35] Mu Rukiko rw'Ubujurire Gatete Wellars avuga ko ashaka kuvugisha ukuri akemera icyaha kugira ngo agabanyirizwe igihano. Ibi bisobanuye ko mbere yahakanaga icyaha yaregwaga cy'ubwinjiracyaha mu bwicanyi, noneho akaba yari ajuriye bwa kabiri kugira ngo acyemere, ari ko nabwo icyaha yemera kikaba icyo gukubita no gukomeretsa; bivuze ko n'ubundi yakomeje guhakana icyaha ashinjwa cy'Ubwinjiracyaha mu bwicanyi. [36] Rurasanga kuva agitangira kuburana kugeza ubu, Gatete Wellars atemera icyaha akurikiranweho ngo akicuze, ahubwo yemera icyaha cyo gukubita no gukomeretsa nyina kandi atakiregwa, bityo kwemera icyaha ataregwa kukaba nta shingiro gufite. Rurasanga kandi n'iyi aza kuba yemera icyaha aregwa cy'Ubwinjiracyaha mu bwicanyi, nta kamaro byari kumugirira kuri uru rwego kuko nk'uko byatanze umurongo wavuzwe haruguru mu rubanza RPA 00060/2021/CA rwaciwe n'uru Rukiko ku wa 04/04/2022, ukwemera icyaha kugira uregwa kwatuma agabanyirizwa igihano, ari ugukozwe byibura mbere y'uko iburanisha ku rwego rwa mbere ripfundikirwa. [37] Ku byerekeranye n'izindi mpamvu Gatete Wellars ashingiraho asaba kugabanyirizwa igihano zirimo kuba ubwinjiracyaha cy'ubwicanyi nta ngaruka cyateje nyina kandi ko uwo mubyeyi we amusabira imbabazi, Urukiko rw'Ubujurire rurasanga ibyo bigabanya uburemere bw'icyaha, bikaba ari impamvu nyoroshyacyaha, bityo mu rwego rwo guhuza icyaha n'uburemere bwacyo Gatete Wellars akaba akwiye kugabyirizwa igihano. [38] Ingingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, agace ka (b) iteganya ko iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano ku buryo bukurikira: "igifungo kimara igihe kizwi kiva ku mezi atandatu (6) kuzamura gishobora kugabanywa, ariko ntikijye munsu ya kimwe cya kabiri cy'igihano gito giteganyirijwe icyaha cyakozwe." [39] Ingingo ya 107 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ivuga ko "Umuntu wica undi abishaka, aba akoze icyaha. Iyo abihamijwe n'urukiko, ahanishwa igihano cy'igifungo cya burundu". Ingingo ya 21 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, mu gika cya 3 ivuga "Ku cyaha gihanishwa igifungo cya burundu, ubwinjiracyaha buhanishwa igihano cy'igifungo kingana n'imyaka makumyabiri n'itanu (25)."

10 Urubanza No RP 00631/2019/TGI/GIC rwaciwe n'Urukiko Rwisumbuye rwa Gicumbi ku wa 01/10/2020, haburana Ubushinjacyaha na GATETE Wellars, igika cya 9. 11 Urubanza No RPA01078/2020/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 29/02/2024, haburana Ubushinjacyaha na GATETE Wellars, igika cya 10.

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[40] Urukiko rushingiye ku ngingo ya 21 n'ya 107 zimaze kuvugwa, rurasanga igihano Gatete Wellars akwiye cy'ubwinjiracyaha cy'ubwicanyi ari igifungo kingana n'imyaka makumyabiri n'itanu (25). Hashingiwe kandi ku ngingo ya 2 y'Itegeko N° 059/2023 yavuzwe haruguru, rurasanga ku mpamvu y'uko ubwinjiracyaha yakoze nta ngaruka zikomeye zateje nyina yari agiye kwica, ndetse uyu akaba namusabira guhabwa imbabazi, igihano kimaze kuvugwa Gatete Wellars yari akwiye guhabwa, gikwiye kugabanywa kugeza kuri kimwe cya kabiri (1/2) cy'igifungo cy'imyaka makumyabiri n'itanu (25), bityo Gatete Wellars akaba ahanishijwe igifungo cy'imyaka cumi n'ibiri (12) n'amezi atandatu (6).

III. ICYEMEZO CY'URUKIKO [41] Rwemeje ko ubujurire bwa Gatete Wellars nta shingiro bufite. [42] Rwemeje ko urubanza RPA01078/2020/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 29/02/2024 ruhindutse gusa kubijyanye n'igihano. [43] Ruhanishije Gatete Wellars igifungo cy'imyaka cumi n'ibiri (12) n'amezi atandatu (6) muri gereza. [44] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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