

RWANDA / JUDGMENT

UBUSHINJACYAHA v. HABIMANA

RLR V:1-2018

COURT

Supreme Court

DECIDED

8 April 2016

CASE / FILE NUMBER

RPAA 0084/12/CS

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UBUSHINJACYAHA v. HABIMANA

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- Date: 2016-04-08
- Case/document no.: RPAA 0084/12/CS
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Text

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UBUSHINJACYAHA v. HABIMANA [Rwanda URUKIKO RW'IKIRENGA – RPAA 0084/12/CS (Hatangimbabazi, PJ, Kalimunda na Gakwaya, J.) 8/4/2016] Amategeko Mpanabyaha – Impamvu nyoroshyacyaha – Ukwemera icyaha bidashidikanwaho, kugwa mu cyaha bwa mbere ndetse n'inyungu z'umwana wavutse kuwasambanyije, bishobora kuba impamvu nyoroshyacyaha – Itegeko-Teka n° 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, ingingo ya 21. Incamake y'ikibazo: Uregwa yakurikiranywe mu cyahoze ari Urukiko rwa Mbere rw'Iremezo rwa Kigali ku cyaha cyo gusambanya umwana w'imyaka 14 y'amavuko bimuviramo no gutwita. Yaburanye ahakana icyaha ariko urukiko rumuhamya icyaha, rumuhanisha igifungo cy'imyaka makumyabiri (20 ans). Ntiyishimiye imikirize y'urwo rubanza, ajuririra mu Rukiko Rukuru yemera icyaha aregwa, anagisabira imbabazi, asaba ko yagabanyirizwa ibihano narwo rwemeza ko ubujurire bwe nta shingiro bufite, runemeza ko imikirize y'urubanza rwa mbere idahindutse. Yajuririye mu Rukiko rw'Ikirenga asaba kugabanyirizwa ibihano hashingiwe ku kuba ubu yemera icyaha, anagisabira imbabazi. Asobanura ko yemeye icyaha mu Rukiko Rukuru ariko rurabyirengagiza ntirwamugabanyiriza igihano. Ubushinjacyaha buvuga ko Urukiko Rukuru rutahaye agaciro ubujurire bwa Habimana Xavier kuko yari yarenze imbibi z'icyajuririwe

hakurikijwe ibiteganywa n'ingingo ya 177 y'Itegeko n° 13/2004 ryo ku wa 17/5/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha cyakoreshwaga icyo gihe, ariko ku nyungu z'umwana, bukaba busaba uru Rukiko kumuha ibyo asaba kugira ngo umwana adakomeza kuba igitambo (victime) cy'ibyakozwe n'ababyeyi be. Incamake y'icyemezo: Kuba ukwemera icyaha kwe kudashidikanwaho, akanasaba imbabazi ku cyaha yakoze, kandi ari ubwa mbere agwa mu cyaha, ndetse no ku nyungu z'umwana yabyaranye n'uwo yasambanyije, byamubera impamvu nyoroshyacyaha, bityo rukaba rusanga byatuma agabanyirizwa igihano yakatiwe n'Inkiko zabanje, agahanishwa igifungo cy'imyaka cumi n'itatu (13 ans) aho kuba igifungo cy'imyaka makumyabiri (20 ans). Ubujurire bufite ishingiro. Imikirize y'urubanza rwajuririwe ihindutse kubirebana n'igihano. Uregwa agomba guhita arekurwa kuko yarangije igihano. Amagarama aherereye ku isanduku ya Leta. Amategeko yashingiweho: Itegeko N° 13/2004 ryo ku wa 17/5/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 177 Itegeko-Teka N° 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, ingingo za 82 na 83. Nta manza zifashishijwe.

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Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu cyahoze ari Urukiko rwa Mbere rw'Iremezo rwa Kigali, Ubushinjacyaha bukurikiranyeho Habimana Xavier icyaha cyo gusambanya umwana w'umukobwa witwa D.B. w'imyaka 14 y'amavuko bimuviramo no gutwita. Habimana Xavier yaburanye ahakana icyaha. [2] Ku wa 29/07/2003, urwo Rukiko rwaciye urubanza n° RP 41.056/Kig, rwemeza ko Habimana Xavier ahamwe n'icyaha, rumuhanisha igifungo cy'imyaka makumyabiri (20 ans). [3] Habimana Xavier ntiyishimiye imikirize y'urwo rubanza, ajuririra mu Rukiko Rukuru yemera icyaha aregwa, anagisabira imbabazi, asaba ko yagabanyirizwa ibihano. Ku wa 27/1/2011, urwo Rukiko rwaciye urubanza n° RPA 0668/06/HC/KIG, rwemeza ko ubujurire bwa Habimana Xavier nta shingiro bufite, runemeza ko imikirize y'urubanza rwa mbere idahindutse. [4] Habimana Xavier ntiyishimiye imikirize y'urwo rubanza, ajuririra mu Rukiko rw'Ikirenga asaba kugabanyirizwa ibihano hashingiwe ku kuba ubu yemera icyaha, anagisabira imbabazi. Asobanura ko yemeye icyaha mu Rukiko Rukuru ariko rurabyirengagiza ntirwamugabanyiriza igihano. [5] Urubanza rwaburanishijwe mu ruhamwe ku wa 7/3/2016, Habimana Xavier yunganiwe na Me Kamanzi Tchuma, naho Ubushinjacyaha buhagarariwe na Munyaneza Nkwaya Eric, Umushinjacyaha ku rwego rwa rw'Igihugu. II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO Kumenya niba Habimana Xavier yagabanyirizwa igihano yakatiwe n'Inkiko zibanze [6] Habimana Xavier avuga ko yajuriye kugira ngo atakambe, asabe uru Rukiko rumugabanyirize igihano yakatiwe. Asobanura ko kuva mu Rukiko Rukuru yaburanye yemera icyaha, ko yasabye umuryango wa Dusabimana Béata imbabazi kandi ko afitanye na Dusabimana Béata umwana w'imyaka cumi n'itanu. Asoza asaba uru Rukiko kumugirira imbabazi, agahanishwa igifungo kingana n'imyaka amaze muri gereza, akajya gufasha uwo mwana, ubu urerwa na nyirakuru kuko nyina yagiye i Bugande, amazeyo nk'imyaka umunani. [7] Me Kamanzi Tchuma avuga ko Habimana Xavier yahanishijwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali igifungo cy'imyaka makumyabiri (20 ans), nyamara ataremeraga icyaha aregwa, ariko mu Rukiko Rukuru aho yemeye icyaha, rukaba rwaranze

kumugabanyiriza icyo gihano, bityo hashingiwe ku ngingo ya 35 y'Itegeko n° 30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, akaba asaba uru Rukiko kumugabanyiriza igihano cy'igifungo cy'imyaka makumyabiri yakatiwe kugeza ku gifungo cy'imyaka amaze afunzwe. [8] Ubushinjacyaha buvuga ko Urukiko Rukuru rutahaye agaciro ubujurire bwa Habimana Xavier kuko yari yarenze imbibi z'icyajuririwe hakurikijwe ibiteganywa n'ingingo ya 177 y'Itegeko n° 13/2004 ryo ku wa 17/5/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha

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cyakoreshwaga icyo gihe, ariko ku nyungu z'umwana, bukaba busaba uru Rukiko kumuha ibyo asaba kugira ngo umwana adakomeza kuba igitambo (victime) cy'ibyakozwe n'ababyeyi be. UKO URUKIKO RUBIBONA [9] Ingingo ya 82 y'Itegeko-Teka n° 21/77 ryo ku wa 18/8/1977 rishyiraho Igitabo cy'amategeko ahana yakoreshwaga igihe icyaha cyakorwaga iteganya ko "Juji ubwe aha agaciro impamvu zigabanya ubugizi bwa nabi bw'uwakoze icyaha, ari izakibabanjirije, ari izagiherekeje cyangwa izagikurikiye". [10] Ingingo ya 83 y'Itegeko-Teka n° 21/77 ryo ku wa 18/8/1977 ryavuzwe haruguru iteganya ko "Iyo hariho impamvu zoroshya icyaha, ibihano birahindurwa cyangwa bikagabanywa kuri ubu buryo: [...] igihano cyo gufungwa cy'igihe cy'imyaka itanu kugeza kuli makumyabiri cyangwa kirengeje imyaka makumyabiri gishobora kugabanywa kugeza ku gifungo cy'umwaka umwe". [11] Urukiko rw'Ikirenga rurasanga nk'uko bigaragara mu gace ka gatanu k'urubanza rwaciwe n'Urukiko Rukuru, urwo Rukiko rwanze kugabanyiriza Habimana Xavier igihano yakatiwe mu rwego rwa mbere kuko mu nyandiko y'ubujurire bwe yavugaga ko Urukiko rwa Mbere rw'Iremezo rwa Kigali rwirengagije ibimenyetso byose yari yatanze byerekana ko ari umwere, rumuhamya icyaha, agahanishwa igihano cy'igifungo cy'imyaka makumyabiri ariko mu iburanisha akaza kwemera icyaha aregwa, anasobanura uburyo yagikoze, bityo hashingiwe ku ngingo ya 177 y'Itegeko n° 13/2004 ryo ku wa 17/5/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakoreshwaga icyo gihe, rwemeza ko ukwemera icyaha kwe kutagaragaza inenge iri mu rubanza rwajuririwe nk'impamvu y'ubujurire ahubwo kwari ukugirango agabanyirizwe igihano gusa. [12] Urukiko rw'Ikirenga rurasanga Habimana Xavier yaraburanye muri uru Rukiko akomeza kwemera icyaha aregwa, akagisabira imbabazi, akanasaba kugabanyirizwa igihano yakatiwe kugirango abashe kwita ku mwana yabyaranye na D.B yasambanyije. Rurasanga kandi nk'uko dosiye y'urubanza ibigaragaza, ari ubwa mbere Habimana Xavier akora icyaha. [13] Urukiko rw'Ikirenga rurasanga rero kuba ukwemera icyaha kwe kudashidikanwaho, akanasaba imbabazi ku cyaha yakoze, kandi ari ubwa mbere agwa mu cyaha, ndetse no ku nyungu z'umwana yabyaranye na D.B yasambanyije, byamubera impamvu nyoroshyacyaha, bityo rukaba rusanga byatuma agabanyirizwa igihano yakatiwe n'Inkiko zabanje, agahanishwa igifungo cy'imyaka cumi n'itatu (13 ans) aho kuba igifungo cy'imyaka makumyabiri (20 ans). [14] Urukiko rw'Ikirenga rurasanga kuba Habimana Xavier yarafunzwe ku wa 15/10/2002 nk'uko bigaragara mu nyandiko-mvugo y'ifungwa rye, agomba kurekurwa uru rubanza rukimara gusomwa kuko yarangije igifungo cy'imyaka cumi n'itatu (13 ans) yakatiwe n'uru Rukiko. III. ICYEMEZO CY'URUKIKO [15] Rwemeje ko ubujurire bwa Habimana Xavier bufite ishingiro;

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[16] Ruhanishije Habimana Xavier igifungo cy'imyaka cumi n'itatu (13 ans) aho kuba igifungo cy'imyaka makumyabiri (20 ans) yari yakatiwe n'Inkiko zabanje; [17] Rutegetse ko ahita afungurwa uru rubanza rukimara gusoma; [18] Rutegetse ko amagarama y'uru rubanza aherera ku Isanduku ya Leta.

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Prepared on 13 October 2026 · Esheria