

RWANDA / JUDGMENT

## UBUSHINJACYAHA VS HAVUGIMANA

RS/REV/RP00074/2024/CA

COURT

Court of Appeal

DECIDED

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## UBUSHINJACYAHA VS HAVUGIMANA

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## Text

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UBUSHINJACYAHA VS HAVUGIMANA [Rwanda URUKIKO RW'UBUJURIRE – RS/REV/RP00074/2024/CA (Kamere, P.J.) 25 Nyakanga 2025] Amategeko yerekeye imiburanishirize y'imanza nshinjabyaha – Gusubirishamo urubanza ingingo nshya – Ikimenyetso gishya – Urubanza rwaciwe burundu rusubirishwamo ingingo nshya mu mezi abiri kuva igihe impamvu ituma urwo rubanza rusabirwa gusubirwamo yabonekeye. Bityo, iyo ikimenyetso usaba gusubirishamo ingingo nshya ashingiraho ari urubanza rwari ruhari mu gihe urubanza asubirishamo ingingo nshya rwacibwaga, kandi ntatange ibimenyetso bigaragaza ko atashoboraga kurubona, kubara ibyo bihe biteganyijwe n'amategeko ntibishoboka n'ikirego cye nticyakirwa. Incamake y'ikibazo: Uru rubanza rwatangiye Ubushinjacyaha burega Havugimana mu Rukiko Rwisumbuye rwa Huye icyaha cyo gusambanya abana cumi na babiri (abahungu 10 n'abakobwa 2) bavuga ko yabasambanyaga mu kibuno, busaba kwemeza ko ahamwa n'icyo cyaha agahanishwa igifungo cya burundu Havugimana yaburanye ahakana icyaha agasaba kurenganurwa, asobanura ko atarongora abana kandi bangana n'uwe, ko ibyo bamurega ari ukumubeshyera bagamije kumusebya kuko yashatse umugore ukuze. Urukiko mu rubanza RP00378/2019/TGI/HYE, rumaze kubona ko hari imvugo z'abatangabuhamya, raporo zakozwe na

muganga, imvugo z'abana basambanyijwe n'ibyemezo byabo by'amavuko, rwamuhamije icyaha cyo gusambanya abana, rumuhanisha igifungo cya burundu. Havugimana yajuririye mu Rukiko Rukuru, Urugereko rwa Nyanza, avuga ko Urukiko Rukuru rwasuzuma akarengane yagiriwe mu rubanza rujuririrwa, Ubushinjacyaha buvuga ko ubujurire bwe nta shingiro bufite. Urukiko mu rubanza RPA00311/2020/HC/NYZ, rwemeje ko nta gihindutse ku rubanza rujuririrwa. Havugimana yongeye kujiririra urwo rubanza mu Rukiko rw'Ubujurire, asaba kugirwa umwere, kuko yahamijwe icyaha hashingiwe ku bimenyetso bishidikanywaho, birimo ubuhamya buvuguruzanya, na raporo za muganga zigaragaza ko kuri bamwe mu bana yapimye nta bimenyetso by'ihohotera yabonye, naho ku bandi akagaragaza ko harimo gukuka ko baba barahohotewe. Ubushinjacyaha bwo bwavuze ko impamvu z'ubujurire zatanze na Havugimana zidakwiye guhabwa ishingiro kuko atabashije kuvuguruza ibimenyetso byashingiweho n'Urukiko Rukuru, busaba kugumishaho imikirize y'urubanza rwajuririwe Urukiko mu rubanza RPAA00265/2022/CA, rwemeje ko ubujurire bwe nta shingiro bufite kuko atabasha kuvuguruza ibimenyetso byashingiweho n'Urukiko mu rubanza rujuririrwa, rumuhamya icyaha akurikiranyweho. Maze rwemeza ko ubujurire bwe nta shingiro bufite, ko nta gihindutse ku rubanza rwajuririwe. Havugimana yatanze ikirego cyo gusubirishamo ingingo nshya urubanza RPAA00265/2022/CA, habanje gusuzumwa inzitizi yo kutakira ikirego, ku birebana n'igihe cyatangiyemo ugereranyije n'igihe icyiswe ingingo nshya cyamenyewe cyangwa se cyakabaye cyaramenyewe n'uwagitanze nk'ikimenyetso gishya. Urukiko mu rubanza RS/REV/RP 00074/2024/CA rwemeje ko ikirego kitakiriwe kuko cyatanze mu buryo bunyuranyije n'Amategeko. Incamake y'icyemezo: Urubanza rwaciwe burundu rusubirishwamo ingingo nshya mu mezi abiri kuva igihe impamvu ituma urwo rubanza rusabirwa gusubirwamo yabonekeye. Bityo, iyo ikimenyetso usaba gusubirishamo ingingo nshya ashingiraho ari urubanza rwari ruhari mu gihe urubanza asubirishamo

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ingingo nshya rwacibwaga, kandi ntatange ibimenyetso bigaragaza ko atashoboraga kurubona, kubara ibyo bihe biteganyijwe n'amategeko ntibishoboka n'ikirego cye nticyakirwa. Ikirego cyo gusubirishamo urubanza ingingo nshya nticyakiriwe. Amategeko yashingiweho: Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kugeza ubu, Ingingo ya 197 igika cya 1, agace ka 50, igika cya 2 n'icya 3, ingingo ya 200 Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Ubushinjacyaha bwareze Havugimana Anastase mu Rukiko Rwisumbuye rwa Huye icyaha cyo gusambanya abana bagera kuri cumi na babiri (abahungu 10 n'abakobwa 2) bavuga ko yabasambanyaga mu kibuno, busaba kwemeza ko ahamwe n'icyo cyaha no gutegeka ko ahanishwa igifungo cya burundu. [2] Havugimana Anastase yaburanye ahakana icyaha agasaba kurenganurwa, asobanura atarongora abana kandi bangana n'uwe, ko ibyo bamurega ari ukumubeshyera bagamije kumusebya kuko yashatse umugore ukuze. [3] Mu guca urubanza RP00378/2019/TGI/HYE ku wa 24/02/2020, Urukiko Rwisumbuye rwa Huye, rumaze kubona ko hari imvugo z'abatangabuhamya, raporo zakozwe na muganga, imvugo z'abana basambanyijwe n'ibyemezo byabo by'amavuko, rwamuhamije icyaha cyo gusambanya abana, rumuhanisha igifungo cya burundu. [4]

Havugimana Anastase yajuririye mu Rukiko Rukuru, Urugereko rwa Nyanza, mu rubanza RPA00311/2020/HC/NYZ rwaciye ku wa 29/04/2022 rugumishaho icyo gihano. Ajuririra urwo rubanza mu Rukiko rw'Ubujurire, ikirego gihabwa nimeru RPAA00265/2022/CA, aho we n'umwunganizi we bavuze ko yajuriye asaba kugirwa umwere, bashingiye ku mpamvu y'uko yahamijwe icyaha hashingiwe ku bimenyetso bishidikanywaho, birimo ubuhamya buvuguruzanya kandi burimo urujijo, na raporo za muganga zigaragaza ko kuri bamwe mu bana yapimye nta bimenyetso by'ihohotera yabonye, naho ku bandi akagaragaza ko harimo gukeka ko baba barahohotewe. Ubushinjacyaha bwo bwavuze ko impamvu z'ubujurire zatanze na Havugimana Anastase zidakwiye guhabwa ishingiro kuko atabashije kuvuguruza ibimenyetso byashyingiweho n'Urukiko Rukuru kandi akaba nta nenge yagaragaje mu rubanza yajuririye, busoza busaba kugumishaho imikirize y'urubanza rwajuririye. [5] Mu guca urubanza RPAA00265/2022/CA ku wa 29/12/2023, Urukiko rw'Ubujurire rwasesenguye ikibazo cyo kumenya niba Havugimana Anastase yahamijwe icyaha cyo gusambanya abana nta bimenyetso bidashidikanywaho bikimuhamya, mu bika bya 20-31 by'urubanza, maze rusanga nta

1 Ingingo ya 133 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu iteganya ibi bikurikira: "Umuntu ukorera ku mwana kimwe mu bikorwa bishingiye ku gitsina bikurikira, aba akoze icyaha: gushyira igitsina cy'umuntu mu gitsina, mu kibuno cyangwa mu kanwa by'umwana; gushyira urugingo urwo ari rwo rwose rw'umubiri w'umuntu mu gitsina cyangwa mu kibuno cy'umwana; gukora ikindi gikorwa cyose ku mubiri w'umwana hagamijwe ishimishamubiri. Iyo abihamijwe n'urukiko, ahanishwa igifungo kitari muni y'imyaka makumyabiri

(20) ariko kitarenze imyaka makumyabiri n'itanu (25)". Agace ka 3 k'ingingo yavuzwe haruguru kagateganya ko "Iyo gusambanya umwana byakorewe ku mwana uri muni y'imyaka 14 igihano kiba igifungo cya burundu".

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bimenyetso yatanze bivuguruza ibyashyingiweho ahamya n'icyaha cyo gusambanya abana, rwemeza ko ubujurire bwe nta shingiro bufite, ko nta gihindutse ku rubanza rwajuririye. [6] Ku wa 25/11/2024, Havugimana Anastase yatanze muri uru Rukiko ikirego cyo gusubirishamo ingingo nshya urubanza RPAA00265/2022/CA rwaciye ku wa 29/12/2023 maze cyandikwa kuri RS/REV/RP00074/2024/CA. Iburanisha ry'urubanza ryashyizwe ku wa 09/07/2025, ruburanishwa Havugimana Anastase yunganiye na Me Munyansanga Amina Gisele, naho Ubushinjacyaha buhagarariye na PN Ntawangundi Béatrice, hasuzumwa niba ikirego cyo gusubirishamo ingingo nshya urubanza RPAA00265/2022/CA rwaciye ku wa 29/12/2023 cyaratanze mu buryo bukurikije amategeko ku birebana n'igihe cyatangiyemo ugereranyije n'igihe icyiswe ingingo nshya cyamenyewe cyangwa se cyakabaye cyamenyewe n'uwagitanze nk'ikimenyetso gishya. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO Kumenya niba HAVUGIMANA Anastase yatanze ikirego cyo gusubirishamo urubanza RPAA 00265/2022/CA mu bihe bidakurikije amategeko [7] Ubushinjacyaha buvuga ko Havugimana Anastase mu mitangirwe y'ikirego atagaragaza igihe yabonye urubanza ashingiraho asubirishamo urubanza ingingo nshya, ko icyo

yita ikimenyetso gishya yagitanze ibihe biteganywa n'amategeko byararenze kuko urubanza rwe rwaciwe urwo yita ikimenyetso gishya rwaramaze gucibwa, bivuze ko ngo yagombye kuba yari yararubonye yararubonye. Kuko urubanza rwe n'Ubushinjacyaha rwaciwe kuri 29/12/2023 naho urwo yashingiyeho asubirishamo urubanza ingingo nshya rukaba rwari rwaraciwe mbere ku wa 22/09/2023, asubirishamo urubanza rwe ku wa 25/11/2024 (hafi nyuma y'umwaka urwe ruciwe) kandi ingingo ya 203 ya CPP iteganya ko igihe ntarengwa cyo kuregera gusubirishamo urubanza ingingo nshya rwaciwe burundu ari amezi abiri (2) kuva igihe impamvu ituma urwo rubanza rusabirwa gusubirwamo yabonekeye. Ubushinjacyaha busaba Urukiko kutakira ikirego cya Havugimana Anastase cyo gusubirishamo ingingo nshya kuko kidakurikije amategeko no gutegeka ko hagumaho imikirize y'urubanza rwaciwe n'Urukiko rw' Ubujurire. [8] Mu myanzuro yatanze Havugimana Anastase avuga ko ashingira ku biteganywa n'ingingo kuva kuri 194 kugeza 202 z'Itegeko No 027/2029 ryo ku wa 18/09/2019 ryerekeye imiburanishirize y'imanza nshinjabyaha. Asobanura ko urubanza RPAA00712/2021/CA rwaciwe ku wa 22/09/2023 ashingiraho nk'ingingo nshya asubirishamo urubanza rwe yarumenye mu kwa 11/2024, aho bari muri gereza basomye mu bitabo by'imanza bakabona ko hari urwo rubanza, akabwirwa n'uwamukoreye imyanzuro (juridique muri gereza) ko ibyo bintu byamugirira akamaro, bigatuma na we ahabwa igihano gito. Ibyo bikaba ngo ari byo byatumye ku wa 25/11/2024 atanga iki kirego cyanditswe kuri RS/REV/RP 00074/2024/CA, bityo agasaba Urukiko kwakira ugusubirishamo ingingo nshya urubanza RPAA00265/2022/CA rwaciwe ku wa 29/12/2023, rukanaha ishingiro ikirego cye maze akagabanyirizwa ibihano ku cyaha noneho ubu yemera kuri uru rwego, ngo bigakorwa nk'uko Nshimyumukiza Euphron na we yagabanyirijwe mu rubanza rwe yagaragaje nk'ikimenyetso gishya. [9] Me Munyansanga Amina Gisele wunganira Havugimana Anastase avuga ko ibihe by'amezi abiri byubahirijwe mu gutanga ikirego, hashingiwe ku gihe ikimenyetso Havugimana Anastase yakimenyeye.

2 Ingingo ya 203 y'Itegeko no 027/2029 ryo ku wa 18/09/2019 ryerekeye imiburanishirize y'imanza nshinjabyaha nk'uko ryavugururwe kugeza ubu mu Itegeko rishya no 058/2023 ryo ku wa 04/12/2023 iteganya ibi bikurikira: "Igihe ntarengwa cyo kuregera gusubirishamo urubanza ingingo nshya rwaciwe burundu ni amezi abiri (2) kuva igihe impamvu ituma urwo rubanza rusabirwa gusubirwamo yabonekeye".

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UKO URUKIKO RUBIBONA [10] Impaka muri uru rubanza zishingiye ku kumenya niba ikirego cyo gusubirishwamo ingingo nshya urubanza RPAA00265/2022/CA rwaciwe ku wa 29/12/2023 cyatanzwe na Havugimana Anastase yaragitanze mu bihe bidakurikikije amategeko, kikaba kitakwakirwa. [11] Ingingo ya 197 igika cya 1, agace ka 5o, igika cya 2 n'icya 3 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kugeza ubu iteganya ibi bikurikira: "Urubanza rushobora gusubirishwamo ingingo nshya, 5° iyo kuva aho urubanza ruciriwe, habonetse ikimenyetso gishya kimara impaka kigaragaza neza akarengane katewe n'urubanza rusabirwa gusubirwamo; Ikimenyetso gishya kivugwa mu gace ka 5o k'igika cya mbere cy'iyi ngingo, ni ikimenyetso umuburanyi atashoboraga kumenya ko cyaba gihari, akakibona nyuma cyangwa akaba atarabashaga kukigeraho igihe

yaburanaga. Ikimenyetso n'iyi ari gishya gihabwa agaciro gusa iyo gishobora kuvuguruzwa ibyari byashingiweho mu ica ry'urubanza rusabirwa gusubirishwamo ingingo nshya". [12] Ingingo ya 200 y'iryo tegeko iteganya ibi bikurikira: "Urukiko rwaregewe gusubirishamo urubanza ingingo nshya rubanza gusuzuma ibijyanye n'iyakirwa ry'ikirego, rukabifataho icyemezo. Iyo ikirego cyo gusubiramo urubanza kitakiriwe, urubanza rwa mbere rugumana agaciro karwo". Naho ingingo ya 203 yaryo yo igateganya ibi bikurikira: "Igihe ntarengwa cyo kuregera gusubirishamo urubanza ingingo nshya rwaciwe burundu ni amezi abiri (2) kuva igihe impamvu ituma urwo rubanza rusabirwa gusubirwamo yabonekeye". [13] Urukiko rurasanga icyo Havugimana Anastase yita ikimenyetso gishya ari urubanza rwari rwaramaze gucibwa mbere y'uko Urukiko rw'Ubuujurire ruca urwo asubirishamo ingingo nshya, bivuze ko yashoboraga kurubona akarukoresha akirimo kuburana niba yarabonaga yarushingiraho Urukiko rukagira ukundi rubona gutandukanye n'uko rwabibonye. Bityo hatitawe ku byo Havugimana Anastase avuga ko yamenye icyo yita ikimenyetso gishya mu kwa 11/2024, ari muri gereza ngo abisomye mu bitabo by'imanza, kuko nta n'ikimenyetso abigaragariza, Urukiko rukaba rusanga ibihe by'amezi abiri itegeko riteganya ko bibarwa urubanza rusubirishwamo rwaramaze gucibwa burundu, nta kuntu byabarwa ku bijyanye n'inyandiko yariho kandi umuburanyi yashoboraga kugeraho na mbere y'uko urubanza rwe rucibwa. Kuba iki kirego cyaratanzwe ku wa 25/11/2024, gishingiye ku cyiswe ikimenyetso gishya cyariho kandi gishobora kubonwa na Havugimana Anastase kuva cyatangira kubaho ku wa 22/09/2023, bikaba bigaragarira buri wese ko cyatanzwe ibyo bihe byaramaze kurenga bikabije; kikaba kitagomba kwakirwa. III. ICYEMEZO CY'URUKIKO [14] Rwemeje ko ikirego cya Havugimana Anastase cyo gusubirishamo ingingo nshya urubanza RPAA00265/2022/CA rwaciwe n'Urukiko rw'Ubuujurire ku wa 29/12/2023 kitakiriwe. [15] Rutegetse ko amagarama y'uru rubanza aherera ku Isanduku ya Leta kuko Havugimana Anastase yaburanye afunzwe.

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