

RWANDA / JUDGMENT

UBUSHINJACYAHA v KAMATARI

RPAA 00431/2023/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA v KAMATARI

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Text

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UBUSHINJACYAHA v KAMATARI [Rwanda – URUKIKO RW'UBUJURIRE - RPAA 00431/2023/CA (Rukundakuvuga, P.J.) 20 Gicurasi 2025] Amategeko agenga imanza z'inshinjabyaha – Uburyozwacyaha – Uburwayi bwo mu mutwe - Umuntu ufite uburwayi bwo mu mutwe butuma utaryozwa icyaha ari uwatakaje ubushobozi bwo kumva ibyo akora cyangwa ubwo kwiyobora mu bikorwa bye. Incamake y'ikibazo: Kamatari yaketsweho gusambanya umwana we w'imyaka itatu biturutse ku makuru yatanze n'uwo mwana, hashakishwa ibimenyetso ndetse na Kamatari abajijwe yemera ko yasambanyije uwo mwana anasobanura n'uko yabikoze. Ubushinjacyaha bwamureze mu Rukiko Rwisumbuye rwa Musanze, urwo rukiko narwo rushingiye ku kwemera icyaha kwe ubwo yabazwagwa n'ubugenzacyaha ndetse no ku mvugo z'akana kamubonye abikora kakabibwira nyina, rwamuhamije icyaha cyo gusambanya umwana, rumuhanisha igihano cy'igifungo cy'imyaka makumbyabiri (20). Uregwa yajuririye icyo cyemezo avuga noneho ko yahamijwe icyaha atakoze kuko n'uwo mwana yajyanywe gupimishwa ariko ariko bigaragaza ko nta cyabaye. Urukiko Rukuru rwasanze ubujurire nta shingiro bufite, rwemeza ko nta gihindutse ku cyemezo kijuririrwa. Uregwa ntiyanyuzwe n'icyo cyemezo akijuririra mu Rukiko rw'Ubujurire, ubujurire bwe burakirwa mu iburanisha urukiko rusanga Kamatari agaragaza ibimenyetso ko

ashobora kuba afite ikibazo mu mitekerereze, rusaba ko yajyanwa kwa muganga agapimwa ko nta burwayi afite ndetse n'ubushinjacyaha busabwa kongera gukora iperereza kuri icyo kibazo. Mu iburanisha, nyuma y'iryo perereza, hasuzumwe ikibazo cyo kumenya niba Kamatari Jean afite ubushobozi mu mitekerereze ku buryo yaryozwa icyaha ashinjwa. Uwunganira uregwa asobanura ko uwo yunganira afite ikibazo cyo mu mutwe nk'uko bishimangirwa na raporo ya muganga ndetse na raporo yakozwe n'Ubushinjacyaha zose zigaragaza ko Kamatari Jean adafite ubushobozi bwo gutekereza no gukemura ibibazo. Ubushinjacyaha nabwo bushimangira ko uregwa afite uburwayi bwo mu mutwe buvukanwa bityo akaba adakwiye kuryozwa icyaha akurikiranyeho. Incamake y'icyemezo: Umuntu ufite uburwayi bwo mu mutwe butuma utaryozwa icyaha ari uwatakaje ubushobozi bwo kumva ibyo akora cyangwa ubwo kwiyobora mu bikorwa bye. Uregwa ntagomba gukurikiranwa kuko afite ikibazo cyo mu mutwe. Amategeko yashingiweho: Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 85; Imanza zifashishijwe:

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RPA 0216/12/CS, Ubushinjacyaha buburana na Rutembesa Modeste, rwaciwe n'Urukiko rw'Ikirenga ku wa 12/10/2018. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 01/03/2020, ku makuru yatanze n'umwana wa Kamatari Jean, uyu Kamatari Jean yaketsweho gusambanya umwana witwa A. N.1 w'imyaka itatu (3) y'amavuko. Mu iperereza, Kamatari Jean yemeye ibyo ashinjwa maze Ubushinjacyaha bumuregera Urukiko Rwisumbuye rwa Musanze bumukurikiranyeho icyaha cyo gusambanya umwana. [2] Mu rubanza N°RP 00181/2020/TGI/MUS, rwaciwe ku wa 18/02/2021, Urukiko Rwisumbuye rwa Musanze rumuhamya icyaha, rumuhanisha igifungo cy'imyaka makumyabiri

(20) rushingiye ku bikurikira: - Imvugo za Kamatari Jean mu nzego z'ibanze ndetse no mu Bugenzacyaha yemera icyaha akanasobanura uko yagikoze; - No ku mvugo y'akana ke kamubonye asambanya A.N. kakabibwira nyina. [3] Kamatari Jean yajuririye mu Rukiko Rukuru/Urugereko rwa Musanze, avuga ko atigeze asambanya uwo mwana, ko Urukiko rwirengagije akarengane n'urugomo yakorewe, ko ndetse n'umwana ashinjwa gusambanya yajyanywe kwa muganga ariko ibisubizo ntibyagaragaza ko hari icyo yabaye. [4] Mu rubanza RPA 00340/2021/HC/MUS, rwaciwe ku wa 13/07/2023, Urukiko Rukuru/Urugereko rwa Musanze, rwasanze ibimenyetso byashingiweho bimuhamya icyaha koko kandi raporo ya muganga nayo ishimangira ibyo bimenyetso, rwemeza ko imikirize y'urubanza rwajuririwe idahindutse, Kamatari Jean akomeza guhanishwa igifungo cy'imyaka 20. [5] Kamatari Jean yajuririye mu Rukiko rw'Ubujurire, urubanza rwe ruhabwa no RPAA 00431/2023/CA, iburanisha mu ruhame rishyirwa ku wa 15/01/2025. Uwo munsu ugeze, Kamatari Jean yitaba yunganiye na Me Rwahama Zacharie, naho ubushinjacyaha buhagarariye na Ninahazwa Roselyne, Umushinjacyaha ku rwego rw'Igihugu. [6] Muri iryo buranisha Kamatari Jean yagaragaje ibimenyetso ko ashobora kuba afite ikibazo cy'imitekerereze, hemezwa ko abanza gupimishwa kugira ngo abaganga bemeze ikigero cy'imitekerereze ye. Iburanisha ryasubukuye kuwa 10/03/2025, Urukiko rumaze kumva icyo impande zombi zivugaga kuri raporo ya muganga yagaragaje ko Kamatari Jean afite ikibazo cy'imitekerereze, rusanga hari

andi makuru akenewe ku buzima bwa Kamatari Jean, hemezwa ko Ubushinjacyaha bubanza gukora iperereza ryimbitse ku mibereho ye, aho atuye. [7] Ubushinjacyaha burangije iperereza, bwashyize raporo muri dosiye, iburanisha risubukurwa kuwa 07/05/2025, Kamatari Jean yitaba yunganiwe na Me Rwahama Zacharie naho Ubushinjacyaha buhagarariwe na Uwanziga Lydie, Umushinjacyaha ku rwego rw'Igihugu.

1 Iri ni izina uwakorewe icyaha yahawe mu rwego rwo kurinda umutekano

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[8] Muri uru rubanza harasuzumwa ikibazo cyo kumenya niba Kamatari Jean afite ubushobozi mu mitekerereze ku buryo yaryozwa icyaha ashinjwa. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba Kamatari Jean afite ubushobozi mu mitekerereze ku buryo yaryozwa icyaha ashinjwa. [9] Me Rwahama Zacharie wunganira Kamatari Jean avuga ko raporo ya Muganga na raporo y'iperereza ryakozwe n'Ubushinjacyaha ku mibereho ya Kamatari Jean aho atuye, zose zasabwe n'Urukiko, zigaragaza ko uwo yunganira adafite ubushobozi bwo gutekereza no gukemura ibibazo; ko adashobora gukurikiranya ibitekerezo bye; ko n'ubusanzwe atifata nk'umuntu mukuru kuko yikinira n'abana kandi ariko yavutse n'abaturanyi be bazi neza ko atuzuye neza; ibyo byose bikaba bigaragaza ko atiyumvisha neza ububi bw'ibyo ashinjwa n'ingaruka zabyo; bityo akaba adakwiye kuryozwa icyaha aregwa, ahubwo akwiye kurekurwa. [10] Uhagarariye Ubushinjacyaha avuga ko raporo ya muganga yagaragaje ko Kamatari Jean afite uburwayi bwo mu mutwe buvukanwa; raporo y'iperereza ryakozwe n'Ubushinjacyaha ku mibereho ye aho atuye hakabazwa uwitwa Mpendubundi Frodouard, uturanye nawe akaba ari n'umukuru w'umudugudu, nayo igaragaza ko Kamatari Jean atuzuye neza mu mutwe, afite ikibazo k'imatekerereze. Avuga ko hashingiwe kuri izo raporo zombi no ku ngingo ya 85 y'itegeko riteganywa ibyaha n'ibaha n'ibihano muri rusange iteganywa ko ushinjwa ataryozwa icyaha iyo afite ikibazo cy'uburwayi bwo mu mutwe, Ubushinjacyaha busanga Kamatari Jean adakwiye kuryozwa icyaha akurikiranweho kubera ubwo burwayi afite. UKO URUKIKO RUBIBONA [11] Muri uru rubanza impande zombi zemeranya ko Kamatari Jean afite uburwayi bwo mu mutwe bukwije gutuma ataryozwa ibikorwa ashinjwa. [12] Ingingo ya 85 (2) y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange iteganywa ko: « hatabaho uburyozwacyaha iyo ushinjwa yari afite uburwayi bwo mu mutwe mu gihe yakoraga icyaha; ...». Mu gusobanura iyi ngingo, Urukiko rw'Ikirenga mu rubanza N° RPA 0216/12/CS rwaciye ku wa 12/10/2018, Ubushinjacyaha buburana na Rutembesa Modeste, rwasobanuye ko umuntu ufite uburwayi bwo mu mutwe butuma utaryozwa icyaha ari uwatakaje ubushobozi bwo kumva ibyo akora cyangwa ubwo kwiyobora mu bikorwa bye. [13] Raporo yakozwa na muganga witwa Ntirenganya Schadrack wo mu bitaro by'indwara zo mu mutwe bya Ndera yo kuwa 7/2/2025 igaragaza ko Kamatari Jean afite imbogamizi mu gukemura ibibazo (difficulté à résoudre les problèmes), agorwa no kwisanga mu muryango no gutegeka gahunda (trouble de l'adaptation sociale et de planification). Agaragaza ibimenyetso by'ihungabana mu myumvire (les signes comme le trouble de concentration), kugorwa no gutekereza mu buryo butomoye (du mal à penser logiquement), ndetse no kugira ibibazo

byo kwibagirwa (et les déficits de la mémoire), ... Muganga asoza raporo ye avuga ko Kamatari Jean afite ikibazo cyo kudakura neza k'ubushobozi bwo gutekereza; gufata ibyemezo; kwibuka no gukomeza kwibanda ku kintu runaka, kandi ko ubwo bumuga bwo mu mutwe butangira kugaragara umuntu akiri muto.

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[14] Mu iperereza ryakozwe n'ubushinjacyaha kuwa 30/04/2025 hagambiriwe kumenya uko Kamatari abayeho mu buzima bwe n'uburyo abanye n'umuryango, habajijwe uwitwa Mpendubundi Frodouard, uturanye na Kamatari Jean akaba n'umukuru w'umudugudu. Uyu yavuze ko Kamatari Jean atuzeye neza mu mutwe, asobanura ko n'ubwo afite umugore n'abana, ariko ubona umugore ariwe ukora ibintu byose, akamenya byose. Yasobanuye ko ubona ibitekerezo bye bitari ku kigero cy'imyaka ye, kandi ko uko ari ko yavutse, abantu bakaba baramwakiriye gutyo. Ku bijyane no kumenya niba ashobora kumenya ko yakoze amakosa, uwabajijwe yasobanuye ko ashobora gukora amakosa atayagambiriye, ariko yabwirwa ko ari amakosa akayasabira imbabazi, ariko ko nta wakwizera ko aba atakongera kuyakora kuko nyine atuzuye, akora ibyo atatekereje. [15] Urukiko rurasanga, hashingiwe ku biteganywa n'ingingo ya 85 (2) y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange nk'uko byasobanuwe mu rubanza N° RPA 0216/12/CS rwavuzwe haruguru mu gika cya 12, no ku byagaragajwe na raporo ya muganga ndetse na raporo y'iperereza ryakozwe n'Ubushinjacyaha, Kamatari Jean adakwiye kuryozwa icyaha ashinjwa, kuko afite uburwayi bwo mu mutwe butuma atagira ubushobozi bwo kumenya uburemere bw'ibyo aregwa n'ingaruka byateje, kandi kumuhana bikaba ntacyo byamara kuko ubumuga bwe buhoraho kandi bukaba budakira. III. ICYEMEZO CY'URUKIKO [16] Rwemeje ko Kamatari Jean atagomba kuryozwa icyaha cyo gusambanya umwana akurikiranyweho n'Ubushinjacyaha kuko afite uburwayi bwo mu mutwe; [17] Rwemeje ko urubanza N°RPA 00340/2021/HC/MUS, rwaciwe n'Urukiko Rukuru/ Urugereko rwa Musanze, ku wa 13/07/2023 ruhindutse mu ngingo zarwo zose; [18] Rwemeje ko igihano cy'igifungo cy'imyaka 20 yahawe mu rubanza N° RPA 00340/2021/HC/MUS, rwaciwe n'Urukiko Rukuru/Urugereko rwa Musanze kivanweho; ahubwo akaba agomba guhita arekurwa uru rubanza rukimara gusomwa; [19] Rutegetse ko amagarama y'urubanza aherera ku isanduku ya leta.

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