

RWANDA / JUDGMENT

UBUSHINJACYAHA vs KANAMUGIRE

RPAA 00385/2024/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA vs KANAMUGIRE

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Text

Page 1

UBUSHINJACYAHA vs KANAMUGIRE [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00385/2024/CA (Rugabirwa, P.J.) 29 Ugushyingo 2024] Amategeko yerekeye imanza nshinjabyaha – Kugabanyirizwa igihano bitewe no kwemera icyaha – Ukwemera icyaha kugirira uregwa akamaro ni ugukozwe mu ntangiriro y'iburanisha mu rwego rwa mbere. Incamake y'ikibazo: Ubushinjacyaha bwakurikiranyeho KANAMUGIRE Wiliam icyaha cy'ubwinjiracyaha bw'ubwicanyi mu Rukiko Rwisumbuye rwa Muhanga kuko yateze umumotari bagera mu nzira agashaka kumwica amunigishije umugozi mu ijosi, ariko bikamunanira atageze ku ntego. Maze urwo Rukiko rumukatira igifungo cy'imyaka 25. Uregwa yajuriye urwo rubanza mu Rukiko Rukuru, ahakana icyaha cy'ubwinjiracyaha bw'ubwicanyi yahamijwe, avuga ko akwiye guhamwa n'icyaha cyo gukubita no gukomeretsa ku bushake akagabanyirizwa ibihano yahawe hashingiwe ku bimenyetso bitari iby'ukuri. Urwo Rukiko rwasanze nta bimenyetso bivuguruzwa ibyashingiweho rwemeza ko urubanza rujuririrwa rudahindutse. Uregwa yajuririye Urukiko rw'Ubujurire avuga ko akwiye guhindurirwa inyito agahamwa n'icyaha cyo gukubita no gukomeretsa ku bushake, agahanishwa ibihano bito. Ubushinjacyaha bwo bukavuga ko atagabanyirizwa ibihano kubera ko atemera icyaha cy'ubwinjiracyaha bw'ubwicanyi yakoze

kandi yaracyemereye mu Nzego z'iperereza no ku rwego rwa mbere. Incamake y'icyemezo: Uregwa ntiyagabanyirizwa ibihano hashingiwe ku mpamvu nyoroshyacyaha y'uko yemeye icyaha anagisabira imbabazi nk'uko abivuga, kubera ko atigeze yemera icyaha cy'ubwinjiracyaha bw'ubwicanyi mu Rukiko Rukuru n'imbere y'Urukiko rw'Ubujurire kuko ukwemera icyaha kugirira uregwa akamaro ari ugukozwe mu ntangiriro y'iburanisha mu rwego rwa mbere. Kuba ariko uregwa ari ubwa mbere akoze icyaha cy'ubwinjiracyaha bw'ubwicanyi ku buryo buzwi, kandi icyo cyaha kikaba cyarateje ingaruka nkeya, bikwiye kumubera impamvu ituma agabanyirizwa igihano, agahanishwa igifungo cy'imyaka cumi n'ibiri (12) n'amezi atandatu (6), aho kuba cy'imyaka 25 yari yahawe mbere, bityo imikirize y'urubanza rwajuririwe ikaba igomba guhinduka ku birebana n'ibihano gusa. Amategeko yakoreshejwe: Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 21. 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, ingingo ya 2. Imanza zifashishijwe: Ubushinjacyaha vs BIMENYIMANA Jean Paul, RPAA 00048/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 26/05/2022. Ubushinjacyaha vs NDAYISABA Paul, RPAA 00691/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 18/11/2022, haburana. Ubujurire bufite ishingiro ku birebana n'igabanyagihano. Imikirize y'urubanza rwaciwe n'Urukiko Rukuru, ihindutse gusa ku birebana n'igihano uregwa ahanishijwe.

Page 2

Urubanza I. IMITERERE Y'URUBANZA [1] Ubushinjacyaha bwakurikiranyeho KANAMUGIRE Wiliam icyaha cy'ubwinjiracyaha bw'ubwicanyi kubera ko ku wa 07/10/2020 hagati ya saa kumi n'ebyiri na saa moya z'ijoro (18h00-19h00) yateze umumotari witwa NIYITANGA Pacifique amusaba kumukura ku Mugonero akamujyana ahitwa Kamiranzovu ariko bageze mu nzira ashaka kumwica amunigishije umugozi mu ijosi, ariko undi ashyira intoki ze hagati y'ijosi n'umugozi, barawurwanira bigeza aho KANAMUGIRE William ashyira imbaraga, NIYITANGA Pacifique avuza induru yatumye KANAMUGIRE Wiliam yirukira mu gishanga akicyambaye casque ya moto, maze NIYITANGA Pacifique yegura moto, aragenda ageze ahari abantu abasobanurira ibyamubayeho, arangije yikomereza urugendo, ageze kuri kaburimbo bamuhamagara bamubwira ko bafashe ya casque, asubiyeyo asanga ari iye anasanga n'uware uyambaye ariwe wamunize. KANAMUGIRE William yaburanye yemera icyaha anagisabira imbabazi. [2] Urukiko Rwisumbuye rwa Muhanga rwaregawe, rushingiye ku mvugo ze n'iz'abatangabuhamya batandukanye bamushinja barimo UWASE Claudette na HITIMANA Valens, ku mafoto agaragaza aho KANAMUGIRE William yagiye akatisha NIYITANGA Pacifique ahantu hitaruye hatanatuwe hafi y'igishanga kugira ngo aze kubona uko amwambura moto ye ntacyo yikanga, kuri raporo y'Inzego z'Ibanze z'aho KANAMUGIRE Wiliam avuka igaragaza ko yari asanzwe yitwara nabi kuko yabujije abaturage amahwemo abambura ibyabo, no kuri raporo ya muganga igaragaza ko NIYITANGA Pacifique yanigishijwe umugozi mu ijosi; rwaciye urubanza n° RP 01027/2020/TGI/MHG ku wa 29/10/2020, rwemeza ko KANAMUGIRE Wiliam ahamwa n'icyaha cy'ubwinjiracyaha mu cyaha cy'ubwicanyi, rumuhanisha igifungo cy'imyaka 25. [3] KANAMUGIRE Wiliam yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Nyanza, ahakana icyaha cy'ubwinjiracyaha bw'ubwicanyi yahamijwe, ko ahubwo akwiye guhamwa

n'icyaha cyo gukubita no gukomeretsa ku bushake akagabanyirizwa ibihano yahawe hashingiwe ku bimenyetso bitari iby'ukuri. [4] Uhagarariye Ubushinjacyaha avuga ko KANAMUGIRE Wlliam akwiye guhamwa n'icyaha cy'ubwinjiracyaha bw'ubwicanyi yemereye mu Bugenzacyaha, mu Bushinjacyaha no mu Rukiko Rwisumbuye, aho kuba icyaha cyo gukubita no gukomeretsa ku bushake. [5] Urukiko Rukuru rwasanze KANAMUGIRE Wlliam ahamwa n'icyaha cy'ubwinjiracya mu bwicanyi, aho kuba icyaha cyo gukubita no gukomeretsa ku bushake, kuko nta bimenyetso yatanze bivuguruza ibyashingiweho n'Urukiko rwabanje rumuhamya icyaha ashinjwa, ruca urubanza n° RPA 01125/2020/HC/NYZ ku wa 25/04/2024, rwemeza ko urubanza rwajuririwe rudahindutse, ko igifungo cy'imyaka 25 yahanishijwe kigumye. [6] KANAMUGIRE William yajuririye na none urwo rubanza mu Rukiko rw'Ubujurire, ubujurire bwe buhabwa n° RPAA 00385/2024/CA, urubanza ruburanishwa mu ruhamye ku wa 18/11/2024, KANAMUGIRE William yunganiwe na Me RUGANZA Bin SEBA, naho Ubushinjacyaha buhagarariye na RUDATINYA Gaspard, Umushinjacyaha ku rwego rw'Igihugu. [7] Mu mwanzuro w'ubujurire no mu miburanire ye, KANAMUGIRE William n'umwunganira bavuga ko akwiye guhindurirwa inyito agahamwa n'icyaha cyo gukubita no gukomeretsa ku bushake, agahanishwa ibihano bito hashingiye 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 riteganyaga ibyaha n'ibihano muri rusange, aho kuba icyaha cy'ubwinjiracyaha bw'ubwicanyi yahamijwe nta bimenyetso, kuko hatagaragajwe umugozi yari agiye

Page 3

kwicisha umumotari, no kuba harashingiwe kuri raporo ya muganga igaragaza ko NIYITANGA Pacifique yanigishijwe umugozi mu ijosi kandi nta vuriro yigeze yivurizaho. [8] Uhagarariye Ubushinjacyaha avuga ko KANAMUGIRE Wlliam atagabanyirizwa ibihano kubera ko atemera icyaha cy'ubwinjiracyaha bw'ubwicanyi yakoze kandi yaracyemereye mu Nzego z'iperereza no ku rwego rwa mbere, bityo ko atahamwa icyaha cyo gukubita no gukomeretsa ku bushake nk'uko abivugaga. [9] Urukiko ruherereye kuri izo mpaka, rurasanga ikibazo gikwiye gusuzumwa muri uru rubanza ari icyo kumenya niba Urukiko Rukuru rwarakoze ikosa ryo kumuhamya icyaha cy'ubwinjiracyaha bw'ubwicanyi, no kumenya niba hari impamvu yatuma agabanyirizwa ibihano. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba Urukiko Rukuru rwarakoze ikosa ryo guhamya KANAMUGIRE William icyaha cy'ubwinjiracyaha bw'ubwicanyi, no kumenya niba hari impamvu yatuma agabanyirizwa ibihano. [10] KANAMUGIRE William n'umwunganira bavuga ko atakoze icyaha cy'ubwinjiracyaha bw'ubwicanyi nk'uko byemejwe n'Urukiko Rukuru kubera ko atigeze agambirira kwica NIYITANGA Pacifique amunigishije umugozi w'urukweto kuko atari amuzi, kandi ko uwo mugenzi utigeze ugaragazwa, ko ahubwo yakoze icyaha cyo gukubita no gukomeretsa ku bushake, kubera ko yamunigishije umugozi w'ijaketi yari yambaye mu ijosi baragundagurana, bitura hasi, ko kubera ko NIYITANGA Pacifique yamurushaga imbaraga, uregwa yakomeje casque ye ariruka, bityo ko akwiye kugabanyirizwa ibihano kubera ko yemere iki cyaha akanagisabira imbabazi, agahanishwa igifungo cy'amezi atandatu (6) n'ihazabu ingana n'ibihumbi magana arindwi na mirongo itanu (750.000 Frw) hashingiwe 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 riteganyaga ibyaha n'ibihano muri rusange. [11]

Uhagarariye Ubushinjacyaha avuga ko KANAMUGIRE Wlliam atagabanyirizwa ibihano kubera ko atemera icyaha cy'ubwinjiracyaha bw'ubwicanyi yahamijwe n'Urukiko Rukuru hashingiwe ku bimenyetso atavugurujye birimo kuba yaracyemereye mu Nzego z'iperereza no ku rwego rwa mbere, aho yemeye ko yanigishije umumotari umugozi w'urukweto ukomeye bitewe n'uko batumvikanaga ku biciro yamwishyuzaga, ariko ko atahamwa icyaha cyo gukubita no gukomeretsa ku bushake nk'uko abivugaga. [12] Asobanura ko KANAMUGIRE Wlliam yabanje kurindagiza umumotari akamucisha hirya no hino amujijisha kugira ngo ze kubona uko amwica akamwambura moto ye, noneho bageze mu gashyamba kari karimo umwijima amunigisha uwo muguzi mu ijosi, ariko ko atabigazeho kubera ko undi yirwanyeho anavuzwa induru yatumye KANAMUGIRE Wlliam ahungana casque, ndetse ko umutangabuhamya witwa HITIMANA yabonye aho umugozi wanyuze mu ijosi rya NIYITANGA Pacifique nk'uko byanemejwe na raporo ya muganga igaragaza ko NIYITANGA Pacifique yanigishijwe umugozi mu ijosi. Asaba ko imikirize y'urubanza rujuririrwa itahinduka, maze KANAMUGIRE Wlliam agahanishwa igifungo cy'imyaka 25 yahawe mbere. UKO URUKIKO RUBIBONA [13] Ingingo ya 21, igika cya 2, y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, iteganyaga ko "Ubwinjiracyaha burahanirwa n'ubwo icyari kigambiriwe kitashoboraga kugerwaho bitewe n'impamvu nyir'ugukora icyaha atashoboye kumenya". Naho igika cya 3 cy'iyi ngingo kigateganyaga ko "Ubwinjiracyaha bw'icyaha cy'ubugome cyangwa icyaha gikomeye buhanishwa kimwe

Page 4

cya kabiri (1/2) cy'igihano giteganyirijwe icyo cyaha. Ku cyaha gihanishwa igifungo cya burundu, ubwinjiracyaha buhanishwa igihano cy'igifungo kingana n'imyaka makumyabiri n'itanu (25)". [14] Naho ingingo ya 2 y'Itegeko n° 059/2023 ryo ku wa 04/12/2023 ryavuzwe haruguru, igateganyaga ko "Ingingo ya 60 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, ihinduwe ku buryo bukurikira: "Iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano ku buryo bukurikira: (b) igifungo kimara igihe kizwi kiva ku mezi 6 kuzamura gishobora kugabanywa, ariko ntikijye munsu ya kimwe cya kabiri cy'igihano gito giteganyirijwe icyaha cyakozwe". [15] Inyandiko-mvugo ziri muri dosiye zigaragaza ko mu Bugenzacyaha, mu Bushinjacyaha, ndetse no mu rubanza n° RP 01027/2020/TGI/MHG rwaciwe n'Urukiko Rwisumbuye rwa Muhanga ku wa 29/10/2020, mu gika cyarwo cya 2, KANAMUGIRE Wlliam yemeye icyaha cy'ubwinjiracyaha bw'ubwicanyi anagisabira imbabazi, asobanura ko yanigishije NIYITANGA Pacifique umugozi ukomeye w'urukweto nk'uko yabivugiyemo mu Bushinjacyaha ngo abitewe n'uko nta mafaranga yari afite yo kumwishyura urugendo. [16] Raporo y'umuhanga ukorera kuri Kigali Forensic Laboratory igaragaza kandi ko NIYITANGA Pacifique yanigishijwe umugozi ndetse ko azamara iminsi 20 ntacyo abasha kwikorera. [17] Hari na none umutangabuhamya witwa HITIMANA Valens wasobanuye ko yahuye na NIYITANGA Pacifique wamubwiye ko hari uwari ugiye kumwicira mu gishanga, ndetse ko yanibonye aho umugozi yanigishijwe wari waciye igisebe mu ijosi, kandi ko NIYITANGA Pacifique akimara gutaha, RUKUNDO yahise amuzanira KANAMUGIRE amubwira ko afashe igisambo gifite casque ya moto. [18] Umutangabuhamya witwa UWASE Claudette wemeje ko igihe yari kuri boutique yabonye KANAMUGIRE William afite casque mu ntoki ashaka kugura icyuma cyo guhatisha ibyo guteka,

ageze ku muhanda bahita bamufata. [19] Amafoto ari muri dosiye agaragaza ko KANAMUGIRE William yakomezaga gukatisha NIYITANGA Pacifique mu gishanga ahantu hitaruye abantu n'ingo, bigaragara ko uregwa yashakishaga aho amwicira ku buryo atabona ubutabazi agamije kumutwara ikinyabiziga (moto) cye kuko raporo y'Ubuyobozi bw'Ibanze yakozwe n'Akagari ka Kiruhura igaragaza ko KANAMUGIRE William azi gutwara moto n'ubwo yari asanzwe aba mu bana b'inzererezi. [20] Urukiko rw'Ubujurire rurasanga, kuba KANAMUGIRE William yarakomeje kujijisha NIYITANGA Pacifique amukatisha hirya no hino ahantu hatandukanye amubeshya ko yayobye, bagera mu gishanga hatari abantu, aho NIYITANGA Pacifique atashoboraga kubona ubutabazi, agafata umugozi ukomeye w'urukweto (ushobora kwica) akawumunigisha mu ijosi (mu cyico) nk'uko byashimangiwe na raporo ya muganga iri muri dosiye, ndetse n'ubuhamya bwa HITIMANA Valens wemeje ko yiboneye aho uwo mugosi waciye NIYITANGA Pacifique igisebe mu ijosi, ariko KANAMUGIRE William akaba atarageze ku mugambi we mubisha wo kumwica kugira ngo amutwara moto dore ko raporo y'Ubuyobozi bw'Ibanze igaragaza ko azi kuyitwara, kubera ko NIYITANGA Pacifique yamurwanyije agashyira intoki ze hagati y'umugozi n'ijosi rye, akabona uburyo ahumeka no kuvuza induru yatumye KANAMUGIRE William yiruka agahungana casque ya moto yari yambaye yatumye afatwa nk'uko byemejwe na HITIMANA Valens na UWASE Claudette, bigaragara ko KANAMUGIRE William yakozwe icyaha cy'ubwinjiracyaha bw'ubwicanyi nk'uko byemejwe n'Urukiko Rukuru, aho kuba icyaha cyo gukubita no gukomeretsa nk'uko abivuga. [21] Urukiko rw'Ubujurire rurasanga ibivugwa na KANAMUGIRE William ko atahamwa n'icyaha cy'ubwinjiracyaha bw'ubwicanyi kubera ko umugozi NIYITANGA Pacifique yanigishijwe utagaragaje bitewe n'uko utafatiriwe nta shingiro bifite, kuko mu Bushinjacyaha yiyemereye nta gahato ashyizweho ko yamunigishije umugozi ukomeye w'urukweto, kandi iyo mvugo ye ikwiye guhabwa agaciro, kuko ihuje

Page 5

n'ubuhamya bwatanzwe na HITIMANA Valens wemeje ko yiboneye aho uwo mugosi waciye NIYITANGA Pacifique igisebe mu ijosi nk'uko byanashimangiwe na raporo ya muganga nk'uko byasobanuwe haruguru. [22] Urukiko rw'Ubujurire rurasanga KANAMUGIRE William atagabanyirizwa ibihano hashingiwe ku mpamvu nyoroshyacyaha y'uko yemeye icyaha anagisabira imbabazi nk'uko abivuga, kubera ko atigeze yemera icyaha cy'ubwinjiracyaha bw'ubwicanyi mu Rukiko Rukuru n'imbere y'uru Rukiko nk'uko byatanzweho umurongo mu rubanza n° RPAA 00048/2020/CA rw'Ubushinjacyaha na BIMENYIMANA Jean Paul rwaciwe ku wa 26/05/2022, aho uru Rukiko rwemeje ko ukwemera icyaha kugirira uregwa akamaro ari ugukozwe mu ntangiriro y'iburanisha mu rwego rwa mbere. [23] Urukiko rw'Ubujurire rurasanga ariko hashingiwe ku ngingo ya 49 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, iteganya ko Umucamanza atanga igihano akurikije ingaruka icyaha cyateye n'imibereho bwite y'uwo icyaha, ndetse no ku ngingo ya 2 y'Itegeko n° 059/2023 ryo ku wa 04/12/2023 ryavuzwe haruguru, Urukiko rw'Ubujurire rurasanga kuba ari ubwa mbere KANAMUGIRE William akoze icyaha cy'ubwinjiracyaha bw'ubwicanyi ku buryo buzwi, kandi icyo cyaha kikaba cyarateje ingaruka nkeya nk'uko byatanzweho umurongo mu manza zitandukanye zaciwe n'uru Rukiko harimo urubanza n° RPAA 00691/2021/CA rwaciwe ku wa 18/11/2022 haburana Ubushinjacyaha

na NDAYISABA Paul, mu gika cyarwo cya 2, kuko NIYITANGA Pacifique yavuwe agakira igisebe yari afite mu ijosi yari yatewe n'uko yari yanigishijwe umugozi, bikwiye kubera KANAMUGIRE William impamvu ituma agabanyirizwa igihano, agahanishwa igifungo cy'imyaka cumi n'ibiri (12) n'amezi atandatu (6), aho kuba cy'imyaka 25 yari yahawe mbere, bityo imikirize y'urubanza rwajuririwe ikaba igomba guhinduka ku birebana n'ibihano gusa. III. ICYEMEZO CY'URUKIKO [24] Rwemeje ko ubujurire bwa KANAMUGIRE William bufite ishingiro ku birebana n'igabanyagihano. [25] Ruvuze ko imikirize y'urubanza n° RPA 01125/2020/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, ku wa 25/04/2024, ihindutse gusa ku birebana n'igihano KANAMUGIRE William ahanishijwe. [26] Ruhanishije KANAMUGIRE William igifungo cy'imyaka cumi n'ibiri (12) n'amezi atandatu (6). [27] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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