

RWANDA / JUDGMENT

UBUSHINJACYAHA v MANIZABAYO

RPAA 00055/2024/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v MANIZABAYO

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Text

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UBUSHINJACYAHA v MANIZABAYO [Rwanda URUKIKO RW'UBUJURIRE - RPAA 00055/2024/CA (Rukundakuvuga, P.J) 28 Werurwe 2025] Amategeko agenga imanza nshinjabyaha – icyaha cyo gusambanya umwana – Ku cyaha cyo gusambanya umwana, nta rwitwazo na rumwe rushobora gusobanura icyatumye umuntu asambanya umwana ku buryo byamuviramo kudahanwa. Amategeko agenga imanza nshinjabyaha – Igihano – Nubwo inyungu z'umwana no kunyurwa k'uwakorewe icyaha ari ibitekerezo by'ingenzi mu gusuzuma ibihano, ntibishobora kuba impamvu yo kugabanya igihano cy'uregwa zituma umucamanza asohoka mu mbibi zateganyijwe. Ibihano bigomba gutangwa mu buryo bukwiriye, buhura n'uburemere bw'icyaha, mu mbibi z'ibihano byateganyijwe n'itegeko. Incamake y'ikibazo: Muri uru rubanza uregwa yajuririye Urukiko Rw'Ubujurire nyuma yuko ahamijwe n'inkiko icyaha cyo gusambanya umwana byakurikiwe no kubana nk'umugore n'umugabo. Mu bujurire bwe uregwa asaba Urukiko kumugabanyiriza igihano ashingiye ku kuba ngo yaraguye mu cyaha abitewe n'umukobwa wamubeshye ko ari mukuru nawe akagira ubuteshuke, ntabanze gushishoza ngo abigenzure neza. Avuga ko igihano yahawe kitari mu nyungu z'ubutabera agasaba Urukiko gushingira ku zindi manza zisa n'urwe zagabanyije igihano ku buryo buhagije zikajya muni y'ibihano

biteganywa n'itegeko. Igihe cy'iburana abifashijwe n'umwunganira, yaburanye avuga ko n'ubwo ibimenyetso byashatswe n'Ubushinjacyaha bubisabwe n'Urukiko byakuyeho impaka ku myaka nyakuri y'umwana, ko adakwiye guhanirwa icyaha kuko atashoboraga kumenya ko uwo babanaga ari umwana ko, icyaha cyo gusambanya umwana kitari mu cyiciro cy'ibyaha bishobora guhanirwa hatabayeho ubushake bwo gukora icyaha; ko kugira ngo uwagikoze abihanirwe haba hagomba kugaragazwa ko uregwa yagize ubushake bwo gusambanya umwana abizi neza ko ataruzuzwa imyaka y'ubukure ko rero iyo habaye kwibeshya ku myaka, icyo gihe uwasambanyije umwana aba akwiye kugirwa umwere. Yongeraho ko akuriwe ho uburyozwacyaha ari bwo umugore we (uwahohotewe muri uru rubanza) yaba ahawe ubutabera (victim satisfaction) ndetse hakanarengerwa uburenganzira bw'umwana (interest of the child) babyaranye. Ubushinjacyaha bwo buburana buvuga ko ingingo z'ubujurire zisaba ko uregwa yagirwa umwere zazanwe n'umwunganizi w'uregwa impitagihe zikaba zitari zikwiye kwakirwa ngo zisuzumwe; ko kandi n'iyi zasuzumwa nta n'ishingiro zifite. Ko uregwa atagomba kwitwaza ko atari azi imyaka y'umukobwa kuko kubimenya byari inshingano ze, ko rero mu gihe yagize uburangare agomba kubihanirwa. Busobanura kandi ko ibyo avuga ko bidakwiye guhana uregwa mu gihe bitari mu nyungu z'umwana (child interest) cyangwa iz'uwahohotewe (victim satisfaction) nta shingiro bifite kuko atari byo umushingamategeko yari agamije (ratio legis) ateganya ko gusambanya umwana ari icyahaibitekere hatitawe ku cyatumye abikora. Ku kibazo kirebana no kumenya niba hari impamvu zituma Manizabayo ataryozwa icyaha akurikiranyweho, Urukiko rw'Ubujurire rwasanze ibijyanye no gukuraho uburyozwacyaha byaratanzwe impitagihe kandi bikaba bituzuzwa impamvu y'Ubujurire ya Manizabayo Patrick wasabye kugabanyirizwa igihano yahanishijwe n'Urukiko Rukuru/Urugereko rwa Rwamagana, usibye nibyo kandi rwagaragaje ko nta rwitwazo na rumwe rushobora gusobanura icyatumye

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umuntu asambanya umwana ku buryo byamuviramo kudahanwa. Naho ku byerekeye kumenya niba ashobora kugabanyirizwa igihano kurushaho ndetse kigasubikwa, Urukiko rwasanze impamvu zihariye uregwa atanga (victim satisfaction na interest of the child) zidakwiye kwitiranywa n'impamvu nyoroshyacyaha kandi zitanashobora kuba impamvu yo kugabanya igihano cy'uregwa zituma umucamanza asohoka mu mbibi zateganyijwe. Incamake y'icyemezo:

1. Ku cyaha cyo gusambanya umwana, nta rwitwazo na rumwe rushobora gusobanura icyatumye umuntu asambanya umwana ku buryo byamuviramo kudahanwa. Bityo kuvuga ko Manizabayo(uregwa) yibeshye ku myaka y'umukobwa hashingiwe ku byo umukobwa ubwe yivugira ko ari mukuru kandi ko yigeze gushaka undi mugabo mbere yo kubana na Manizabayo, akaba adakwiye guhanirwa kubana nawe, nta shingiro bifite.

2. Nubwo inyungu z'umwana no kunyurwa k'uwakorewe icyaha ari ibitekerezo by'ingenzi mu gusuzuma ibihano, ntibishobora kuba impamvu yo kugabanya igihano cy'uregwa zituma umucamanza asohoka mu mbibi zateganyijwe. Ibihano bigomba gutangwa mu buryo bukwiriye, buhura n'uburemere bw'icyaha, mu mbibi z'ibihano byateganyijwe n'itegeko. Ubujurire nta shingiro bufite. Amategeko yashingiweho: Ingingo ya 3 n'ya 14 y'itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaye

ibyaha n'ibihano muri rusange. Imanza zifashishijwe: Ubushinjacyaha vs Harerimana Joseph, RPAA 00727/2024/CA, rwaciwe n'Urukiko Rw'Ubujurire ku wa 14/03/2025. Eliud Waweru Wambui v Republic [2019] eKLR, rwaciwe n'Urukiko rw'Ubujurire rwa Kenya; accessed on 26th March 2025: <http://kenyalaw.org/caselaw/cases/view/256195/> . R v G [2008] UKHL 37, [2009] 1 AC 92, [2008] 3 WLR 776 rwaciwe na House of Lords y'Ubwongereza; accessed on 26th March 2025: <https://publications.parliament.uk/pa/ld200708/ldjudgmt/jd080618/rvg-1.htm> . Urubanza I. IMITERERE Y'URUBANZA [1] Manizabayo Patrick, ari mu Mudugudu wa Rutoma, Akagari ka Curazo, Umurenge wa Gatore, Akarere ka Kirehe, Intara y'Iburasirazuba, yaketsweho gusambanya M. A1, wavutse tariki ya 01/01/2001, bakanabana nk'umugabo n'umugore kuva tariki ya 04/10/2016 kugeza ubwo yafatwaga ku wa 07/09/2019. Nyuma y'iperereza, Ubushinjacyaha bwamureze mu Rukiko Rwisumbuye rwa Ngoma bumukurikiranyeho icyaha cyo gusambanya umwana byakurikiwe no kubana nawe nk'umugabo n'umugore, busaba ko ahamwa n'icyo cyaha, agahanishwa igifungo

1 Izina ahawe rigizwe n'inyuguti zibanza z'amazina ye kubera umutekano we

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cya burundu. Manizabayo Patrick yemeye ko yabanye na M. A nk'umugabo n'umugore ariko ko atari azi ko ari umwana kuko yari avuye ku wundi mugabo. [2] Mu rubanza no RP 00905/2020/TGI/NGOMA rwaciwe ku wa 28/01/2021 Urukiko Rwisumbuye rwa Ngoma rushingiye ku kwemera icyaha kwa Manizabayo Patrick, imvugo z'abatangabuhamya bamushinja; Raporo ya muganga; Raporo yo mu nzego z'ibanze, icyemezo cy'amavuko kigaragaza ko M.A yavutse ku wa 01/01/2001, urukiko rwemeje ko Manizabayo Patrick ahamwa n'icyaha cyo gusambanya umwana M.A byakurikiwe no kubana nk'umugore n'umugabo, rumuhanisha igifungo cya burundu. [3] Manizabayo Patrick ntiyanyuzwe n'imikirize y'urubanza maze ajuririra Urukiko Rukuru Urugereko rwa Rwamagana, asaba Urukiko gushingira ku kuba yaraburanye yemera icyaha, ari bwo bwa mbere akurikiranyeho icyaha no kuba nta ngaruka zikomeye cyateje, maze rukamugabanyiriza igihano ndetse kigasubikwa akajya kwita ku rugo rwe. [4] Mu rubanza RPA 00239/2021/HC/RWG rwaciwe kuwa 16/01/2024 Urukiko Rukuru/Urugereko rwa Rwamagana rushingiye ku ngingo ya 2 n'ya 3 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, rwemeje ko ubujurire bwa Manizabayo Patrick bufite ishingiro kuri bimwe, ko imikirize y'urubanza no RP 00905/2019/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 28/01/2021 ihindutse ku gihano Manizabayo Patrick yahanishijwe mbere, rumuhanisha igifungo cy'imyaka cumi n'itanu (15). [5] Manizabayo Patrick yongeye kujurira mu Rukiko rw'Ubujurire, urubanza rwe ruhabwa no RPAA 00055/2024/CA, iburanisha mu ruhamye rishyirwa ku wa 06/02/2025. Uwo munsu ugeze Manizabayo Patrick yitaba yunganiwe na Me Evode Kayitana, naho Ubushinjacyaha buhagarariwe na Butera Oscar, Umushinjacyaha ku rwego rw'Igihugu. [6] Manizabayo Patrick avuga ko yajuriye kugira ngo atakambire Urukiko rumugabanyirize igihano kuko iki cyaha yakiguyemo abitewe n'umukobwa wamubeshye ko ari mukuru nawe akagira ubuteshuke, ntabanze gushishoza ngo abigenzure neza. Avuga ko igihano yahawe kitari mu nyungu z'ubutabera agasaba Urukiko gushingira ku zindi manza zisa n'urwe zagabanyije igihano ku buryo

buhagije zikajya munsu y'ibihano biteganywa n'itegeko. [7] Me Kayitana Evode umwunganira mu mwanzuro we w'inyongera wo kuwa 26/11/2024 ashingiye ku mvugo za M.A mu Bugenzacyaha wemeje ko yabanye na Manizabayo Patrick ari mukuru, ko ndetse mbere yo kubana nawe yari yarigeze gushaka undi mugabo bakanabyarana, Me Kayitana evode avuga ko icyemezo cy'amavuko cyashingiweho atari ikimenyetso ntakuka kigaragaza imyaka ya M.A kuko kivuguruzanya n'invugo za nyiracyo, ko rero Ubushinjacyaha bwagombaga gukora iperereza ry'inyongera kugira hamenyekane imyaka nyakuri ye. kuba bitarakozwe bikaba bikwiye kurengera uregwa. Avuga kandi ko n'iyi imyaka ye y'amavuko yaba yari munsu ya 18 igihe yakoranaga imibonano mpuzabitsina na Manizabayo Patrick icyaha cyitari kumuhamya kuko atari azi ko uwo babanaga ari umwana. [8] Uhagarariye Ubushinjacyaha avuga ko igihano Manizabayo Patrick yahawe ari cyo gito gishoboka, bityo kikaba kidashobora kongera kugabanywa, ko kandi nta gushidikanya kuri ku byashingiweho byose ahamya n'icyaha kwatuma agirwa umwere.

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- [9] Mu iburanisha Urukiko rwategetse Ubushinjacyaha gukora irindi perereza kugira ngo hasuzumwe ukuri kw'ibivugwa n'uregwa ku myaka ya M.A. Nyuma y'iperereza Ubushinjacyaha butanga ibimenyetso byose bigaragaza ko umukobwa yavutse mu mwaka 2001, uregwa nawe yemera ko nta mpaka zikiri ku myaka y'uwakorewe icyaha. Icyakora we n'umwunganizi we bavugaga ko n'ubwo umukobwa yari ataruzuzwa imyaka y'ubukure bidakuraho ko uregwa yibeshye ku myaka y'umukobwa akaba adakwiye kuryozwa iki cyaha kuko nta mugambi wo gusambanya umwana yari afite. Basaba Urukiko ko mu gihe rwabibona ukundi rwamugabanyiriza igihano ndetse kigasubikwa. [10] Urukiko rurasanga hagomba gusuzumwa ibibazo bikurikira:
- a. kumenya niba hari impamvu zituma Manizabayo Patrick ataryozwa icyaha akurikiranyweho;
 - b. kumenya niba Manizabayo Patrick ashobora kugabanyirizwa igihano kurushaho ndetse kigasubikwa. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA
 - a. Kumenya niba hari impamvu zituma Manizabayo Patrick ataryozwa icyaha akurikiranyweho [11] Me Kayitana Evode avuga ko n'ubwo ibimenyetso byashatswe n'Ubushinjacyaha bubisabwe n'Urukiko byakuyeho impaka ku myaka nyakuri ya M.A, hashingiwe ku ngingo ya 86(1), (3o) y'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyahaiteganywa ko nta buryozwacyaha bubaho iyo « umuntu akoze icyaha kubera kwibeshya bidashidikanywaho « ku gikorwa ».... iyo uko kwibeshya gukuraho burundu ubushake bwo gukora icyaha », ibyo yise mistake of facts, iki cyaha Manizabayo Patrick adakwiye kugihanirwa kuko atashoboraga kumenya ko uwo babanaga ari umwana. [12] Me Kayitana Evode avuga ko ibi avuga ari nako byemejwe mu manza: RP 00445/2018/TGI/MUS, aho urukiko rwasanze ibisabwa kugira ngo icyaha kibe cyarakozwe bituzuye rutegeka ko Bikorimana abaye umwere (para 13 & 14), no mu rubanza n° RPA 00119/2019/HC/MUS, narwo hemejwemo ko Bikorimana Xavier adahamya n'icyaha cyo gusambanya umwana (para 14) hashingiwe ku kuba atari azi imyaka y'umukobwa. Asobanura ko n'ubwo izi ari

imanza zaciwe n'inkiko zo hasi, Urukiko rw'Ubujurire rutabujijwe kuzishingiraho mu rwego rwo gusobanura icyemezo cyarwo (persuasive precedent). [13] Me Kayitana Evode avuga ko, icyaha cyo gusambanya umwana kitari mu cyiciro cy'ibyaha bishobora guhanirwa hatabayeho ubushake bwo gukora icyaha nk'uko biteganywa n'ingingo ya 83 y'itegeko ryavuzwe haruguru; ko kugira ngo uwagikoze abihanirwe haba hagomba kugaragazwa ko uregwa yagize ubushake bwo gusambanya umwana abizi neza ko ataruzuzwa imyaka y'ubukure ko rero iyo habaye kwibeshya ku myaka, icyo gihe uwasambanyije umwana aba akwiye kugirwa umwere. Yongeraho ko Manizabayo Patrick akuriwe ho uburyozwacyaha ari bwo umugore we (uwahohotewe muri uru rubanza) yaba ahawe ubutabera (victim satisfaction) ndetse hakanarengerwa uburenganzira bw'umwana (interest of the child) babyaranye. Yibutsa ko mu ibazwa rye ryo ku wa 10/09/2019, M.A yagaragaje ko yifuza ko umugabo we arekurwa, anavuga ko arengana, bikaba bigaragaza ko ifungwa rye rimubangamiye cyane, kuko ubu abayeho

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wenyine mu bukene bukabije. Asanga guhana Manizabayo Patrick, bitari mu nyungu z'uwahohotewe, n'ubwo yitwa ko ari we wakorewe icyaha. [14] Uhagarariye Ubushinjacyaha avuga ko ingingo z'ubujurire zisaba ko uregwa yagirwa umwere zazanwe n'umwunganizi w'uregwa impitagihe zikaba zitari zikwiye kwakirwa ngo zisuzumwe; ko kandi n'iyi zasuzumwaga nta n'ishingiro zifite. Avuga ko Manizabayo Patrick atagomba kwitwaza ko atari azi imyaka y'umukobwa kuko kubimenya byari inshingano ze, ko rero mu gihe yagize uburangare agomba kubihanirwa. Asobanura ko ibyo avuga ko bidakwiye guhana uregwa mu gihe bitari mu nyungu z'umwana (child interest) cyangwa iz'uwahohotewe (victim satisfaction) nta shingiro bifite kuko atari byoumushingamategeko yari agamije (ratio legis), ateganya ko gusambanya umwana nk'uko biteganywa mu ngingo ya 14 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 ubwabyo, hatitawe ku cyatumye abikora, ari icyaha. UKO URUKIKO RUBIBONA [15] Kuri iki kibazo impaka zishingiye ku kumenya niba ibyerekeye kuvanirwaho uburyozwacyaha ari impamvu yatanze impitagihe, ikaba idakwiye gusuzumwa. [16] Impaka ku byerekeye iyakirwa ry'impamvu z'ubujurire zitanze nyuma y'ibihe by'ubujurire biteganywa n'amategeko zakemuwe mu rubanza N° RCOMAA 00071/2017/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 26/10/2018 haburana Mbuto Aimable na BRD. Uyu murongo niwo wakomeje gukurikizwa, urubanza ruheruka muri uwo mujyo akaba ari urubanza N° RPAA 00354/2023/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 24/01/2025, haburana Ubushinjacyaha na Bizirema Athanase bita Rukara (igika cya 16). Muri izo manza zose, umurongo watanze kuri icyo kibazo, ni uko ingingo iyo ariyo yose itanzwe nyuma y'ibihe ntarengwa byo kujurira, uretse iyuzuzwa cyangwa isobanura iyatanze mu bihe byemewe byo kujurira, itagomba kwakirwa. [17] Muri uru rubanza, bigaragara ko ibijyanye no kugira uregwa umwere byasabwe n'umwunganizi we Me Kayitana Evode mu mwanzuro we w'inyongera yatanze kuwa 26/11/2024, mu gihe urubanza rujuririrwa rwaciwe kuwa 16/01/20242 kandi bikaba bitagamiye kuzuzwa cyangwa gusobanura kurushaho impamvu z'ubujurire zatanze na Manizabayo Patrick kuko we yari yajuriye asaba kugabanyirizwa igihano gusa, cyane cyane ko

yemeraga ko yagize ubushishozi buke mu kumenya imyaka nyakuri y'uwo babanaga. Ibi rero byumvikanisha ko ibijyanye no gukuraho uburyozwacyaha bituzuzwa impamvu y'Ubujurire ya Manizabayo Patrick wasabye kugabanyirizwa igihano yahanishijwe n'Urukiko Rukuru/Urugereko rwa Rwamanaga, bikaba rero bidakwiye kwakirwa. [18] Uretse no kuba byaraje impitagihe kandi, Urukiko rusanga ibyo kuvuga ko Manizabayo Patrick yibeshye ku myaka y'umukobwa hashingiwe ku byo umukobwa ubwe yivugira ko ari mukuru kandi ko yigeze gushaka undi mugabo mbere yo kubana na Manizabayo Parick, akaba adakwiye guhanirwa kubana nawe, nta shingiro bifite. Koko rero, nk'uko biteganywa mu ngingo ya 14 y'itegeko n° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko n° 68/2018 ryo ku wa

2 Ni ukuvuga ko iyo ngingo y'ubujurire yatanze hashize amezi agera ku icumi urubanza ruciwe, mu gihe itegeko riteganywa ko kujurira bikorwa mu kwezi kumwe urubanza rucuwe.

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30/08/2018 riteganywa ibyaha n'ibihano muri rusange ukoreye ku mwana kimwe mu bikorwa biteganywa n'iyi ngingo aba akoze icyaha cyo gusambanya umwana³. Muri make ukurikije imyandikire y'iyi ngingo nta rwitwazo na rumwe yemera ku cyo ari cyo cyose mu bikorwa ivuga cyakorwa ku mwana, ahubwo kugikora gusa bihinduka icyaha, hatitawe ku mpamvu zabitera. Ibi kandi si umwihariko w'u Rwanda kuko hari n'ibindi bihugu byemera "strict liability" ku cyaha cyo gusambanya umwana; hakaba hari n'imanza zigaragaza ko mu bihe nk'ibyo nta rwitwazo na rumwe rushobora gusobanura icyatumye umuntu asambanya umwana ku buryo byamuviramo kudahanwa⁴.

- b. kumenya niba Manizabayo Patrick ashobora kugabanyirizwa igihano kurushaho ndetse kigasubikwa. [19] Manizabayo Patrick asaba kugabanyirizwa igihano cy'igifungo cy'imyaka cumi n'itanu
- (15) yahanishijwe, hashingiwe ku manza⁵ zisa n'urwe z'abagabanyirijwe kugera muni y'igihano gito giteganywa n'itegeko. Me Kayitana Evode umwunganira, we avuga ko n'ubwo itegeko rishya⁶ ryashyizeho ikigero ntarengwa cyo kugabanya igihano hashingiwe ku mpamvu nyoroshyacyaha, ku bireba Manizabayo Patrick we impamvu bashingiraho basaba ko yagabanyirizwa igihano ndetse kikaba cyasubikwa atari impamvu nyoroshyacyaha zisanzwe ahubwo ari inyungu z'uwakorewe icyaha (victim satisfaction) ndetse n'inyungu z'umwana (child interest) wavutse biturutse kuri icyo cyaha. Avuga ko ku bijyanye n'izi mpamvu nta cyabuza urukiko kugabanya igihano kugera muni y'icyateganyijwe n'amategeko. [20] Uhagarariye Ubushinjacyaha avuga ko Manizabayo Patrick adashobora gusaba kugabanyirizwa ibihano kuko ibihano yahanishijwe ari byo bito bishoboka kandi n'imanza yagaragaje mu mwanzuro we zikaba zidashobora gushingirwaho kuko umurongo wari uzirimo wahinduwe n'itegeko. UKO URUKIKO RUBIBONA [21] Urukiko rurasanga nta mpaka zikiri ku bijyanye no gushingira ku manza zaciwe mbere y'uko itegeko ririhwaga ubu risohoka, kuko Me Kayitana Evode n'uwo yunganira bemera ko itegeko rishya ryashyizeho ikigero ntarengwa cyo kugabanya igihano hashingiwe ku mpamvu nyoroshyacyaha. Impaka ahubwo ziri ku kuba impamvu batanga (victim satisfaction na interest of the child)

zidakwiye kwitiranywa n'impamvu nyoroshyacyaha ahubwo ari impamvu zihariye, zo

3 Ibyo bikorwa ni ibi: (a) gushyira igitsina cy'umuntu mu gitsina, mu kibuno cyangwa mu kanwa by'umwana; (b) gushyira urugingo urwo ari rwo rwose rw'umubiri w'umuntu mu gitsina cyangwa mu kibuno cy'umwana; (c) gukora ikindi gikorwa cyose ku mubiri w'umwana hagamijwe ishimishamubiri. 4 Reba urubanza Eliud Waweru Wambui v Republic [2019] eKLR, rwaciwe n'Urukiko rw'Ubujurire rwa Kenya; accessed on 26th March 2025: <http://kenyalaw.org/caselaw/cases/view/256195/>; cyangwa urubanza R v G [2008] UKHL 37, [2009] 1 AC 92, [2008] 3 WLR 776 rwaciwe na House of Lords y'Ubwongereza; accessed on 26th March 2025: <https://publications.parliament.uk/pa/ld200708/ldjudgmt/jd080618/rvg-1.htm>. 5 Avuga mo urubanza RPA 00248/2020/HC/RWG rwaciwe ku wa 20/02/2023 haburana Ubushinjacyaha na HABUMUGISHA Cléophas; Urubanza RPAA 00427/2020/HC/RGW rwaciwe ku wa 27/09/2023 haburana Ubushinjacyaha na HABAKURAMA Samuel n'Urubanza RPAA 00744/2021/CA rwaciwe ku wa 02/06/2023 haburana Ubushinjacyaha na MUGIRANEZA Eustache. 6 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 mu ngingo yaryo ya kabiri ryateganyije ko icyaha gitaganyirizwa igihano cy'igifungo cya burundu gishobora kugabanywa ariko ntikijye muni y'igifungo cy'imyaka cumi n'itanu (15 ans)

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zikaba zikwiye guha umucamanza uburenganzira bwo gusohoka mu mbibi z'ikigero ntarengwa cyashyizweho n'umushingamategeko. [22] Ingingo ya 49 y'Itegeko N° 68/2018 riteganya ibyaha n'ibihano muri rusange iteganya ko Umucamanza atanga igihano akurikije uburemere bw'icyaha, ingaruka icyaha cyateye, impamvu zatumye agikora, uko uwagikoze yari asanzwe yitwara, imibereho ye bwite n'uburyo icyaha cyakozwemo. Iyo hari impurirane z'impamvu zashingirwaho, umucamanza agomba kwita ku rutonde rukurikira mu kugena igihano: 1° impamvu nkomezacyaha; 2° impamvu nyoroshyacyaha. [23] Ibyo iyi ngingo ivuga bigaragaza ko ibyo umucamanza ashingiraho atanga igihano bishobora gushyirwa mu byiciro bibiri gusa: impamvu nyoroshyacyaha n'impamvu nkomeza cyaha. Urukiko rurasanga impamvu Me Kayitana Evode atanga ashaka kumvikanisha ko hari impamvu zihariye ziteganyijwe muri iyo ngingo zishobora gushingirwaho mu gutanga igihano nta shingiro bifite. Mu yandi magambo, n'ubwo inyungu z'umwana no kunyurwa k'uwakorewe icyaha ari ibitekerezo by'ingenzi mu gusuzuma ibihano, ntibishobora kuba impamvu yo kugabanya igihano cy'uregwa zituma umucamanza asohoke mu mbibi zateganyijwe. Ibihano bigomba gutangwamu buryo bukwiriye, buhura n'uburemere bw'icyaha, mu mbibi z'ibihano byateganyijwe n'itegeko. [24] Ku kibazo cyo kumenya niba umuntu wahamijwe icyaha cyo gusambanya umwana bigakurikirwa no kubana na we nk'umugore n'umugabo ashobora kugabanyirizwa igihano ku buryo kijya muni y'igifungo cy'imyaka cumi n'itanu (15) hashingiwe ku mpamvu nyoroshyacyaha cyakemuwe mu manza zitandukanye zaciwe n'uru Rukiko kuwa aho 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 risohokeye; uruheruka akaba ari urubanza N° RPAA 00727/2024/CA, rwaciwe ku wa 14/03/2025 Ubushinjacyaha buburana na Harerimana Joseph. Muri izo manza, Urukiko rw'Ubujurire rwashimangiye ko uwahamijwe icyaha cyo gusambanya umwana byakurikiwe no kubana nawe

nk'umugore n'umugabo adashobora kugabanyirizwa igihano hashingiwe ku mpamvu nyoroshyacyaha ku buryo kijya munsu y'igifungo cy'imyaka cumi n'itanu (15), kuko aricyo gihano gito gishoboka kuri icyo cyaha. [25] Muri uru rubanza Manizabayo Patrick yahamijwe icyaha cyo gusambanya umwana byakurikiwe no kubana nawe nk'umugore n'umugabo ahanishwa igifungo cy'imyaka cumi n'itanu, kandi nk'uko byasobanuwe ibyo ntibigibwa impaka. Hashingiwe rero ku murongo watanze ku kibazo nk'icyo nk'uko byasobanuwe mu gika kibanziriza iki, Uru Rukiko rurasanga icyo gihano kidashobora kongera kugabanywa. Rurasanga kandi kidashobora no gusubikwa kuko kirengeje igifungo cy'imyaka itanu kandi nk'uko biteganywa n'ingino ya 3 y'itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange gusubika igihano nk'icyo ntibishoboka. III. ICYEMEZO CY'URUKIKO [26] Rwemeje ko Ubujurire bwa Manizabayo Patrick nta shingiro bufite; [27] Rwemeje ko imikirize y'urubanza RPA 00239/2021/HC/RWG rwaciwe n'Urukiko Rukuru Urugereko rwa Rwamagana kuwa 16/01/2024 idahindutse;

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[28] Rwemeje ko igihano cy'igifungo cy'imyaka cumi n'itanu (15), Manizabayo Patrick yahanishijwe n'Urukiko Rukuru Urugereko rwa Rwamagana kigumyeho; [29] Rutegetse ko Manizabayo Patrick asonewe gutanga amagarama y'urubanza kuko aburana afunze.

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