

RWANDA / JUDGMENT

UBUSHINJACYAHA vs MBONIGABA

RPAA 00430/2023/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA vs MBONIGABA

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Text

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UBUSHINJACYAHA vs MBONIGABA [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00430/2023/CA (Kamere, P.J.) 30 Nyakanga 2025] Amategeko yerekeye ibimenyetso – Imanza nshinjabyaha – Kwemera icyaha – ukwemera icyaha ni kimwe mu bimenyetso bishobora gutuma umucamanza yemeza ko uregwa yakoze icyaha, ariko si ikimenyetso kamara mu gihe kitunganiwe n'ibindi bimenyetso. Bityo, nti gushobora gufatwa nk'ikimenyetso ubwacyo cyihagije mu kwemeza ko uregwa yakoze icyaha akurikiranyweho, ahubwo gifatwa nk'ikimenyetso cyoroshye iyo kitunganiwe. Incamake y'ikibazo: Uru rubanza rwatangiye Ubushinjacyaha burega Mbonigaba mu rukiko Rwisumbuye rwa Ngoma bumukurikiranyeho icyaha cyo gusambanya umwana, Ubushinjacyaha buvuga ko tariki ya 22/08/2020 yasambanyirije mu miyenzi umwana M.V ufite imyaka cumi n'umwe (11). Mbonigaba yireguye ahakana icyaha, avuga ko kucyemera mu nzego z'iperereza yabitewe n'umugabo bari bafunganywe wamugiriye inama yo kwemera icyaha kugira ngo azarekurwe, asaba kugirwa umwere. Urukiko mu rubanza RP00842/2020/TGI/NGOMA, rushingiye ku kwemera icyaha kwe mu nzego z'iperereza no ku mvugo z'abatangabuhamya, rwamuhamije icyaha cyo gusambanya umwana utarageza ku myaka 14 y'amavuko, rumuhanisha igihano cy'igifungo cya burundu. Mbonigaba ntiyishimiye imikirize y'urubanza ajuririra Urukiko

Rukuru, Urugereko rwa Rwamagana, avuga ko yemera icyaha akaba atakamba kugira ngo agabanyirizwe igihano. Mu iburanisha, aburana Avuga ko atakoze icyaha ashinjwa, ko ahubwo uwamureze yanze kumwishyura igihembo kuko yamukoreraga, bituma afata inkoko ye arayitahana mu rwego rwo kwiyishyura, bucyeye bamufata bamurega icyaha cyo gusambanya umwana. Asoza asaba kurenganurwa. Ubushinjacyaha buvuga ko Mbonigaba nta nenge yigeze agaragaza urubanza yajurirye rwaba rufite, bityo ko impamvu ze z'ubujurire zidakwiye guhabwa ishingiro. Buvuga kandi ko adakwiye kugabanyirizwa igihano kubera impamvu nyoroshyacyaha, kuko atakoresheje ayo mahirwe Ubushinjacyaha bwavuze ko atakoresheje ayo mahirwe mbere. busaba kwemeza ko urubanza rujurirwa rudahindutse. Urukiko mu rubanza RPA00706/2020/HC/RWG, rushingiye ku kuba uregwa yariyemereye icyaha no ku mvugo z'abatangabuhamya rwamuhamije icyaha ariko rumugabanyiriza igihano kuko ari ubwambere mu buryo buzwi akurikiranywe, rushingiye no ku myaka ye, rumugabanyiriza igihano, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri (20 ans). Mbonigaba yongeye kujuririra icyo cyemezo mu Rukiko rw'Ubujujire, avuga ko Urukiko rwamuhamije icyaha rugenekereje, rutagaragaje raporo yo kwa muganga, ntirwaha agaciro ibyo yarubwiye ku cyo yapfaga n'uwamureze ko yamusambanyirije umwana. asaba Urukiko rw'Ubujujire kumurenganura, rukamugira umwere kuko nta kimenyetso kamarampaka gihari ko yasambanyije umwana. Avuga ko Urukiko rwamuhamije icyaha rushingiye gusa ku kuba yaremeye icyaha mu iperereza no ku batangabuhamya nyamara batabonye icyaha gikorwa. Ubushinjacyaha buvuga ko Urukiko rutagenekereje mu guhamya Mbonigaba icyaha cyo gusambanya umwana, kuko atabasha kuvuguruza ibimenyetso byashingiweho n'Urukiko Rukuru rumuhamya icyaha. Urukiko mu rubanza RPAA00430/2023/CA rwemeje ko ubujurire bwa Mbonigaba bufite ishingiro, ko ibimenyetso byashingiweho n'Urukiko Rukuru rumuhamya icyaha cyo gusambanya umwana biteye gushidikanya, bityo rwemeza ko ari umwere kuri icyo cyaha. Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga rero ubujurire bwa Mbonigaba Dadi bufite ishingiro kubera ko nta bimenyetso bifatika kandi bidashidikanywaho bihamya ko yakoze icyaha cyo gusambanya umwana.

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Incamacye y'icyemezo: ukwemera icyaha ni kimwe mu bimenyetso bishobora gutuma umucamanza yemeza ko uregwa yakoze icyaha, ariko si ikimenyetso kamara mu gihe kitunganiwe n'ibindi bimenyetso. Bityo, nti gushobora gufatwa nk'ikimenyetso ubwacyo cyihagije mu kwemeza ko uregwa yakoze icyaha akurikiranyweho, ahubwo gifatwa nk'ikimenyetso cyoroshye iyo kitunganiwe. Ubujujire bufite ishingiro. Amategeko yashingiweho: Ingingo ya 111 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha Ingingo ya 14 y'Itegeko No 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko No 68/2018 ryo ku wa 30/08/2018 riteganyira ibyaha n'ibihano muri rusange. Imanza zifashishijwe: Urubanza RPAA 00053/2019/CA, haburana Ubushinjacyaha na Mukeshimana Vincent rwaciwe n'Urukiko rw'Ubujujire ku wa 27/04/2020 Urubanza RPA0042/14/CS, haburana Ubushinjacyaha na Ndungutse Déo rwaciwe ku wa 02/06/2017 ibika 27-28 Urubanza. I. IMITERERE Y'URUBANZA [1] Mbonigaba Dadi yakurikiranweho icyaha cyo gusambanya umwana¹, Ubushinjacyaha buvuga ko

tariki ya 22/08/2020 yasambanyirije mu miyenzi umwana M.V2 ufite imyaka cumi n'umwe (11) y'amavuko, bumuregera Urukiko Rwisumbuye rwa Ngoma mu rubanza RP00842/2020/TGI/NGOMA. [2] Mbonigaba Dadi aregerwa inkiko icyo cyaha Ubushinjacyaha bwashingiye ku kuba yaremereye mu Bugenzacyaha no mu Bushinjacyaha ko yasambanyije M.V nyuma yo kumuha amafaranga magana abiri (200) y'u Rwanda, kuba ashinjwa na Mukamana Anyisia wemeza ko yabajije M.V icyo yabaye akamubwira ko yasambanyijwe na Mbonigaba Dadi, kuba ashinjwa na Ingabire Angélique na Gashirabake Eric bemeza ko M.V yababwiye ko yamusambanyirije mu musarane, kuba hari ikarita y'ubwisungane mu kwivuza igaragaza ko M.V yavutse mu 2009 akaba yarasambanyijwe ari umwana. [3] Mbonigaba Dadi yireguye ahakana icyaha aregwa, akavuga ko kucyemera mu bikorwa by'iperereza yabitewe n'umugabo bari bafunganywe wamugiriye inama yo kwemera icyaha kugira ngo azarekurwe, asaba kurenganurwa no kugirwa umwere. [4] Mu guca urubanza RP00842/2020/TGI/NGOMA ku wa 16/10/2020, Urukiko rumaze kubona ko Mbonigaba Dadi aburana ahakana icyaha aregwa, ko ariko abazwa mu Bugenzacyaha no mu Bushinjacyaha, yemeraga ko yasambanyije M.V, ko mbere yo kumusambanya yamuhaye amafaranga magana abiri (200) y'u Rwanda, ibyo bigahura no kuba Mukamana Anyisie, Ingabire Angélique na Gashirabake Eric bemeza ko basanze M.V arimo kurira, bamubajije icyo yabaye akababwira ko Mbonigaba Dadi amaze kumusambanya, ko yamucunze agiye kuri toilette akamusangayo

1 Iyo ngingo ya 14 y'iryo Tegeko ikaba 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. 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”. 2 Reba umwirondoro wuzuye muri dosiye.

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akamutsindagira mu miyenzi, rushingiye kuri uku kwiyeemerera icyaha n'izo mvugo z'abatangabuhamya, rwamuhamije icyaha cyo gusambanya umwana utarageza ku myaka 14 y'amavuko, rumuhanisha igihano cy'igifungo cya burundu. [5] Mbonigaba Dadi ntiyishimiye imikirize y'urubanza ajuririra Urukiko Rukuru, Urugereko rwa Rwamagana, ubujurire bwe buhabwa RPA00706/2020/HC/RWG, avuga ko yemera icyaha akaba atakamba kugira ngo agabanyirizwe igihano. Mu iburanisha ry'urubanza Mbonigaba Dadi yavuze ko atakoze icyaha ashinjwa, ko ahubwo uwamureze yanze kumwishyura igihembo kuko yamukoreraga, bituma afata inkoko ye arayitahana mu rwego rwo kwiyishyura, bucyeye bwaho bamufata bamurega icyaha cyo gusambanya umwana. Yasabye kurenganurwa. [6] Ubushinjacyaha bwireguye buvuga ko Mbonigaba Dadi yaburanye ahakana icyaha kandi akomeje kugihakana, akaba nta nenge yigeze agaragaza urubanza yajuririre rwaba rufite, nubwo mu ibazwa rye no mu nyandiko ye y'ubujurire yacyemeye, bityo ko impamvu ze z'ubujurire zidakwiye guhabwa ishingiro. Naho ku byo kugabanyirizwa igihano kubera impamvu nyoroshyacyaha, Ubushinjacyaha bwavuze ko atakoresheje ayo mahirwe, busaba kwemeza ko icyemezo Mbonigaba Dadi yafatiwe kidahinduka.

[7] Mu guca urubanza RPA00706/2020/HC/RWG ku wa 07/09/2023, Urukiko Rukuru, Urugereko rwa Rwamagana, rumaze kubona ko impaka muri uru rubanza ari ukumenya niba imiburanire ya Mbonigaba Dadi imbere y'uru Rukiko ivuguruza ibyashyingiweho mu kumuhamya icyaha no kumenya niba yagabanyirizwa igihano kuri urwo rwego no kubona ko Mbonigaba Dadi nubwo yivugurujye imbere y'uru Rukiko avuguruza imyanzuro ye y' ubujurire ihura n'imvugo ze mu ibazwa rye mu Bugenzacyaha no mu Bushinjacyaha aho yemeye agasobanura uko yakozwe icyaha bikamubera ikimenyetso gishimangira ubuhamya bwatanze mu kumuhamya icyaha, bikaba bitamuhira amahirwe yo gufatwa nk'impamvu nyoroshyacyaha ituma agabanyirizwa igihano, nyamara hitawe ku myaka ye no kuba ari ubwa mbere akora icyaha ndetse no kuba nta ngaruka zikomeye zabaye ku wakorewe icyaha, Urukiko rwasanze igihano yahanishijwe kiremereye, rurakimugabanyiriza, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri (20 ans). [8] Mbonigaba Dadi yongeye kujuririra icyo cyemezo mu Rukiko rw'Ubujurire, ubujurire bwe bwandikwa kuri RPAA00430/2023/CA. Iburanisha ry'urubanza ryashyizwe ku wa 09/07/2025, ruburanishwa Mbonigaba Dadi yunganiwe na Me Ndikumwenayo Silas, naho Ubushinjacyaha buhagarariye na PN Ntawangundi Béatrice, hasuzumwa niba hari ugushidikanya ko Mbonigaba Dadi yaba yarakozwe icyaha cyo gusambanya umwana yahamijwe n'inkiko zabanje, bityo akaba yagirwa umwere kuri icyo cyaha; urubanza rurapfundikirwa Urukiko rutangaza ko ruzasomwa ku wa 25/07/2025, uwo munsu isomwa ry'urubanza ryimurirwa ku wa 30/07/2025 kugira ngo umucamanza abone umwana uhagije wo kubasha kurangiza kuruca no kurwandika. [9] Mu myanzuro Mbonigaba Dadi yatanze ajurira atarabasha kubona umu Avoka umwunganira avuga ko Urukiko rwamuhamije icyaha rugenekereje, rutagaragaje raporo yo kwa muganga, ntirwaha agaciro ibyo yarubwiye ku cyo yapfaga n'uwamureze ko yamusambanyirije umwana. Ashingiye ku biteganywa n'ingingo ya 4 n'ya 11 CPP asaba Urukiko rw'Ubujurire kurenganurwa, rukamugira umwere kuko nta kimenyetso kamarampaka gihari ko yasambanyije umwana. [10] Me Ndikumwenayo Silas wunganira Mbonigaba Dadi kuri iyo mpamvu y'ubujurire, yo kuba Mbonigaba Dadi yarahamijwe icyaha hashingiwe gusa ku kwemera kwe mu iperereza, avuga ko Urukiko Rwisumbuye rwa Ngoma n'Urukiko Rukuru, Urugereko rwa Rwamagana zahamije icyaha Mbonigaba Dadi zishingiye gusa ku kuba yaremeye icyaha mu iperereza no ku batangabuhamya nyamara abatangabuhamya bose bavugwa nta n'umwe wemera ko yiboneye ibyo amushinja, ahubwo bose bavugaga ko basanze umwana ari kurira avuga ko Mbonigaba Dadi yamusambanyije.

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[11] Uhagarariye Ubushinjacyaha we avuga ko Urukiko rutagenekereje mu guhamya Mbonidaga Dadi icyaha cyo gusambanya umwana, kuko rwashingiye ku kwemera mu ibazwa rye mu Bugenzacyaha n'imbere y'Ubushinjacyaha, aho yemeye ko yasambanyije M.V, ko mbere yo kumusambanya yamuhaye amafaranga magana abiri y'u Rwanda, ibyo bigahura no kuba Mukamana Anyisie, Ingabire Angélique na Gashirabake Eric bemeza ko basanze M.V arimo kurira, ko bamubajije icyo yabaye akababwira ko, Mbonigaba Dadi amaze kumusambanya, ko yamucunze agiye kuri toilette akamusangayo akamutsindagira mu miyenzi. [12] Impaka muri uru rubanza ziragaragaza ko ikibazo kigomba gusuzumwa ari ukumenya niba hari ugushidikanya guhari kwatuma Mbonigaba Dadi adahamwa n'icyaha cyo gusambanya

umwana yahamijwe n'inkiko zabanje n'ingaruka zabyo. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba hari ibimenyetso byemeza nta shiti ko Mbonigaba Dadi yakoze icyaha cyo gusambanya umwana [13] Mbonigaba Dadi na Me Ndikumwenayo Silas umwunganira bavuga ko Mbonigaba Dadi yahamijwe icyaha hashingiwe ku kugenekereza, haherewe gusa ku kwemera icyaha kwe mu iperereza, ko Urukiko Rwisumbuye rwa Ngoma n'Urukiko Rukuru, Urugereko rwa Rwamagana zamuhamije icyaha zishingiye gusa ku kuba yaremeye icyaha mu iperereza ngo ndetse hari n'abatangabuhamya nyamara abatangabuhamya bose bavugwa nta n'umwe wemera ko yabibonye ahubwo bose bavuga ko basanze umwana ari kurira avuga ko Mbonigaba yamusambanyije. Mbonigaba Dadi asaba ko yarenganurwa kuko nta cyaha yakoze, kandi ibyo yavuze bitigeze bihabwa agaciro. [14] Mbonigaba Dadi asobanura ko amakimbirane yari afitanye n'uwitwa Dael, se w'umwana uvugwa ko yasambanyijwe, bakoranaga mu kirombe cy'amabuye y'agaciro, bapfa amafaranga atamuhembye akihemba inkoko ye, ikibazo cyo kuba yari kubatanga mu butabera kubera gucuruza urumogi, ari byo byatumye bahita bamufungisha, ndetse ko na nyuma y'uko afunzwe Dael nawe yaje gufatwa ubu akaba afungiwe ibijyanye n'urumogi. Avuga ko uwari kumutangira ubuhamya mu rubanza bwamushinjura ari muramu we witwa Kodo, ariko ko nawe yatinye gutanga amakuru n'ubuhamya. [15] Me Ndikumwenayo Silas avuga ko Mbonigaba Dadi ari bwo agitangira kunganirwa na Avoka, ko yemera icyaha mu iperereza no mu Bushinjacyaha, mu nkiko akagihakana atari yunganiwe. Ko Mbonigaba Dadi utazi gusoma no kwandika, abo bari bafunganwe muri kasho n'umugenzacyaha bamugiriye inama ko ngo ubwo ari ubwa mbere akurikiranwe yemeye icyaha yarekurwa cyangwa akagabanyirizwa igihano, ariko ntiyamenya ingaruka z'icyaha cy'ubugome yari yemeye muri ubwo buryo kandi nta gisobanutse kigaragaza ko yagikoze n'uburyo yagikozemo, ari nayo mpamvu yageze mu nkiko zose akagihakana. Naho ku kuba mu myanzuro ye yo kujiririra Urukiko Rukuru igaragaza ko Mbonigaba Dadi yemeraga icyaha ariko mu iburanisha akongera kugihakana, umwunganira avuga ko muri gereza iriya myanzuro ngo itegurwa n'abitwa aba juridiques, bakaba banabafatira icyemezo babonye kopi, ku buryo ukuri kuyikubiyemo cyane cyane kubirebana n'uregwa utazi gusoma no kwandika kukaba kwakemangwa, ko kuri ubwo bujuriye bwatanzwe Mbonigaba Dadi we yabwiye umu juridique ngo amujuririre ahakana, ariko ntiyasobanukirwa uko yanditse avuga ko yemera icyaha kandi ntacyo yakoze. Asaba kurenganurwa, naho umwunganira agasaba Urukiko ko ku bakurikiranwa bafunzwe kandi ari injiji, hakagombye guhabwa agaciro ibyo baburana bavuga kuruta ibyo baba barandikiwe n'abo bari kumwe aho bafungiwe nubwo baba barabishyizeho igikumwe. [16] Me Ndikumwenayo Silas akomeza asobanura kuri iki cyaha cyo gusambanya umwana cyahamijwe Mbonigaba Dadi ko harimo ikibazo cyo gushidikanya kuko abatangabuhamya ari abantu b'inshuti za nyina w'umwana bari bavanye mu kibina, kandi hari umwe wavuze ngo babonye amasohoro mu ikariso y'umwana byibura Ubushinjacyaha bukaba bwari guhera aho bukora iperereza ryimbitse

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uwasambanyijwe n'ukekwaho kumusambanya bagapimwa bikagaragaza niba icyaha cyarakozwe na Mbonigaba koko. Anavuga ko Mbonigaba Dadi yasobanuye ikibazo yari afitanye na se w'umwana yari abereye umukozi na we amubereyemo 50.000Frw, aho kumwishyura agahigira kuzamufungisha, byagezweho bakoresheje uwo mwana we. [17] Avuga kandi ko kuri uyu muntu utazi gusoma no kwandikwa wemeye icyaha atunganiwe, byari mu nshingano z'Ubushinjacyaha zo gushaka ibindi bimenyetso bidashidikanwaho bushingiraho, atari abo batangabuhamya bashidikanywaho bahuriye mu kibina wenda na nyina w'umwana ayobora, atanga jurisprudences z'urubanza RPAA0066/15/CS rwaciwe ku wa 24/01/2019 n'urubanza RPAA00053/2019/CA rwaciwe ku wa 27/04/2020 mu bika byarwo 20-22, ahatanzwe umurongo ko bene uko kwemera icyaha mu iperereza gusa bitahabwa ishingiro iyo bidaherekejwe n'ibindi bimenyetso, kandi ibyatanzwe bishidikanywaho. Naho ku kibazo cya raporo ya muganga, avuga ko bajyanyeyo gusa umwana muganga agasanga umwana nta kibazo yagize, ariko ko hatapimwe ayo masohoro umutangabuhamya yavuze ko yamubonyeho ngo nibura ahuzwe na Mbonigaba Dadi bavuga ko yasambanyije umwana ku wa 22/08/2020, ariko agatangira gukurikiranwa ku wa 24/08/2020. [18] Me Ndikumwenayo Silas asobanura ko inkiko zabanje zirengagije umurongo w'Urukiko rw'Ikirenga wafashwe mu rubanza RPAA0057/15/CS rwaciwe ku wa 11 Gicurasi 2018 mu bika bya 26 na 27 aho urwo Rukiko rwafashe umurongo ugira uti : "Kuba uregwa yemera icyaha byonyine si ikimenyetso gihagije kugira ngo byemerwe ko ukuri kwabonetse ahubwo kigomba guherekezwa n'ibindi bimenyetso bihujwe n'ikiburanwa". Inkiko zabanje rero ngo ntizagombaga gushingira ku kuba Mbonigaba Dadi yaremeye icyaha gusa ahubwo zagombaga gusaba ko Ubushinjacyaha bwazana ibindi bimenyetso bibishyigikira. [19] Me Ndikumwenayo Silas akomeza asobanura ko Umutangabuhamya witwa Ingabire Angélique yabwiye Ubugenziyacyaha mu kibazo cya 3 ko mu ikariso uwo mwana yari yambaye hasanzwemo amasohoro, Ubugenziyacyaha bwakabaye bwarategetse ko hakorwa isuzuma rya gihanga hakamenyekana ayo masohoro niba ari aya Mbonigaba Dadi wakekwaga, ko ukuntu ayo makuru nta handi yongeye kuvugwa na byo biteye urujijo. Ko kuba Mbonigaba avuga ikibazo yari asanganwe na se w'uwo mwana nyamara ntihakorwe iperereza kuri ayo makuru ngo harebwe niba ataba abyihishe inyuma na byo ari ibyo kwibazaho. Ko ibyo byose bihujwe n'ibiteganywa n'ingingo ya 111 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha³, ibimenyetso byashingiweho n'inkiko bigaragaramo gushidikanya. Bityo Mbonigaba Dadi akaba agomba kuba umwere. [20] Me Ndikumwenayo Silas asobanura ko kuri icyo cyaha cyo gusambanya umwana Mbonigaba Dadi yahamijwe harimo ugushidikanya kubera izi mpamvu zikurikira : Muri dosiye y'urubanza hagaragamo raporo ya muganga wasuzumye umwana ariko ikanagagaraza ko imyanya y'ibanga y'uyu mwana nta kibazo yagize haba imbere n'inyuma. Nyamara Mbonigaba Dadi yagiye asaba kenshi ko yapimwa na we akagaragarizwa aho yaba ahurizwa n'icyo cyaha aregwa niba koko umwana yarapimwe na we yakabaye yarapimwe akerekwa aho baturira n'uwo mwana. Umutangabuhamya Angélique avuga ko hari amasohoro yasanze ku ikariso y'umwana Musengimana Virginie yakabaye yarafashwe nk'ibimenyetso bya mbere. Ikindi Inkiko zirengagije ni ukuntu icyaha urega yavuze ko cyabaye ku wa 22/08/2020 nyamara akajya gutanga ikirego kuri RIB ku wa 24/08/2020 ibi na byo bikagaragaza gushidikanya

ku ishingiro ry'aya makuru yatanzwe impitagiye gutya. Ikindi giteye gushidikanya ni imyaka ya M.V aho inkiko zabanje zashingiye ku ikarita yo kwivuza (mutuelle de santé) zivuga ko yari afite imyaka 11 nyamara ikarita yo kwa muganga atari yo

3 Iyi ngingo ya 111 ivuga ko gushidikanya birengera uregwa.

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igomba kugaragaza imyaka y'umuntu kubera ko imyaka y'umuntu igaragazwa n'inyandiko y'ivuka itanzwe n'inzego za Leta zibifitiye ububasha. Ko rero kugeza ubu imyaka ya M.V itazwi kuko nta kimenyetso kidashidikanywaho cyatanzwe kiyigaragaragaza. [21] Mu gusoza Me Ndikumwenayo Silas avuga ko asanga inkiko zabanje zaragiye zihamya icyaha Mbonigaba Dadi icyaha zirengagije umurongo watanzwe n'Urukiko rw'Ikirenga uvuga ko kwemera icyaha bidahagije ngo byememerwe ko ukuri kwabonetse ahubwo uko kwemera icyaha bigomba guherekezwa n'ibindi bimenyetso, zikabona ko nta cyaha cyo gusambanya yakoze. [22] Mbonigaba Dadi n'umwunganizi we barasaba Urukiko rw'Ubujurire kwakira ubujurire bwa Mbonigaba Dadi no kwemeza ko bufite ishingiro ; kwemeza ko Mbonigaba Dadi udahamwa n'icyaha agomba guhita arekurwa ; kwemeza ko urubanza RPA00706/2020/HC/RWG rwaciwe n'Urukiko Rukuru Urugereko rwa Rwamagana ku wa 07/09/2023 ruhindutse mu ngingo zarwo zose. [23] Ntawangundi Béatrice, Umushinjacyaha ku rwego rw'igihugu uhagarariye Ubushinjacyaha yiregura kuri ubu bujurire avuga ko asanga Urukiko rutaragenekereje mu guhamya Mbonigaba Dadi icyaha cyo gusambanya umwana, kuko rwashingiye ku kwemera mu ibazwa rye mu Bugenzacyaha n'imbere y'Ubushinjacyaha, aho yemeye ko yasambanyije M.V, ko mbere yo kumusambanya yamuhaye amafaranga magana abiri y'u Rwanda. Ibyo bigahura no kuba Mukamana Anyisie, Ingabire Angélique na Gashirabake Eric bemeza ko basanze M.V arimo kurira, ko bamubajije icyo yabaye akababwira ko Mbonigaba Dadi amaze kumusambanya, ko yamucunze agiye kuri toilette akamusangayo akamutsindagira mu miyenzi. [24] Uhagarariye Ubushinjacyaha asobanura ko kuba raporo ya muganga yaragaragaje ko hymen y'umwana ari intact bitavuze ko umwana atasambanyijwe ngo kuko uburyo icyaha cyakozwemo ari uko Mbonigaba yafashe igitsina cye akagishyira mu cy'umwana, kiba kinini cyanga kwinjiramo agikuramo, bikaba ngo bihura na raporo ya muganga nk'uko byatanzweho umurongo uhuriweho n'izindi manza ugira uti: "Kuba umwana yasanganwa akarangabusugi kazima, ubwabyo byonyine si ikimenyetso cy'uko hatabayeho igikorwa cyo kumusambanya4". [25] Asobanura kandi ko n'ubwo Mbonigaba Dadi avuga ko uwamureze bapfuye amafaranga y'igihembo cye atamuhaye na we akamutwara inkoko, amukurikiye bukeye avuga ko yamusambanyirije umwana, Ubushinjacyaha busanga ibi nta bimenyetso abifitiye, ko mu gika cya 8 cy'urubanza aburana mu Rukiko Rwisumbuye , Mbonigaba Dadi yireguye avuga ko impamvu yemeye icyaha ari uko hari umugabo bari bafunganye witwa Twahirwa yatekerereje icyo afungiyeye akamubwira ko agomba kugenda akemera icyaha, ko ari bwo azarekurwa, ko kandi ari ubwa mbere yari afashwe. [26] Ubushinjacyaha buvuga kandi ko busanga Mbonigaba atarahamijwe icyaha hashingiwe ku kwemera icyaha gusa, kandi ukwemera icyaha mu nzego z'iperereza, umucamanza mu mizi ari we uha agaciro izo mvugo ze nk'uko byatanzweho umurongo mu rubanza RPAA00188/2024/CA rwaciwe ku wa 28/11/2024 hagati y'Ubushinjacyaha na Muhimpundu Jean Paul mu gika cya 19. Ko izo mvugo ze zo mu iperereza kuvuga ngo yahatiwe

kucyemera atakubiswe ari umuntu muzima udafite uburwayi bwo mu mutwe, ari ko gaciro kazo umucamanza yasuzumye, kuko yabisobanuraga neza uko yabikoze, nta ntete. Ko kandi mu Rukiko Rukuru Mbonigaba Dadi yatanze imyanzuro avuga ko yemera icyaha, uretse ko no mu iburanisha yavuze ko aburana ahakana icyaha. Ikindi kandi Ubushinjacyaha buvuga ko harimo n'invugo z'abatangabuhamya babonye umwana arira bamubaza icyo yabaye akavuga ko ari Mbonigaba wamusambanije⁵; ko raporo ya muganga ari ikimenyetso kiza cyiyongera ku bindi. Naho ku kuba

4 Reba urubanza N° RPAA 00400/2024/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 29/01/2025 Ubushinjacyaha buburana na RUKUNDO Jean Claude (igika cya 38). 5 Umutangabuhamya INGABIRE Angélique avuga ko basanze umwana arimo kurira noneho bamubajije icyo yabaye avuga icyo yabaye avuga ko ari MBONIGABA umusambanyije aho yamusanze kuri toilette akamutsindagira mu miyenzi.

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Mbonigaba Dadi atarapimwe ku masohoro yabonwe ku mwana, Ubushinjacyaha buvuga ko byatewe n'uburyo yasambanyije uwo mwana w'imyaka 11, ko yamuteruye akamushyira mu maguru, akabona igitsina cye kidakwira mu cye akabireka, ari yo mpamvu we yibwira ko ahari atamusambanyije. [27] Ubushinjacyaha buvuga kandi ko busanga kurega nyuma y'iminsi ibiri icyaha kibaye atari ugutanga amakuru impitagihe kuko icyihutiwe ari ukujyana umwana kwa muganga kuri iyo tariki ya 22 icyaha cyakoreweho, kandi icyaha kikaba kitarashaje. Naho ku birebana n'imyaka y'umwana, buvuga ko mu nzego zose zanyuzwemo ntaho Mbonigaba Dadi yigeze ahakana ko uwo yasambanyije ari umwana kugira ngo bikorweho iperereza. Bityo Ubushinjacyaha busaba uru Rukiko kwemeza ko impamvu z'ubujurire za Mbonigaba Dadi nta shingiro zifite no gutegeka ko imikirize y'urubanza rwaciwe n'Urukiko Rukuru idahindutse. UKO URUKIKO RUBIBONA [28] Ingingo ya 111 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ibi bikurikira : “Gushidikanya birengera ushinjwa. Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze”. [29] Nk'uko bigaragarira mu bika bya 8-12 by'urubanza rujuririrwa RPA00706/2020/HC/RWG rwaciwe ku wa 11/06/2024, Urukiko Rukuru Urugereko rwa Rwamagana, rwahamije Mbonigaba Gad icyaha cyo gusambanya umwana hashingiwe ku kwiyeemerera icyaha n'invugo z'abatangabuhamya⁶ bagaragara mu gika cya 14 cy'urubanza RP00842/2020/TGI/NGOMA rwaciwe ku wa 16/10/2020 ku rwego rwa mbere bakurikira: Mukamana Anysie, Ingabire Angélique na Gashirabake Eric⁷. [30] Urukiko rw'Ubujurire rubona ko mu Bugenzacyaha Mbonigaba Dadi abazwa ku wa 24/08/2020, yemeye ko umwana yamusabye 200 ngo na we amuhe icyo yifuzza, bicara ku rubaraza amukoze ku ikariso undi ararira, ashatse kwigendera ngo uwo mwana aramugarura ; ko yagerageje gushyira igitsina cye mu cy'umwana akabona bitashoboka akigendera, kuko uwitwa Donko wari wamutumye kuvunjisha amafaranga yamuhamagaraga, ikindi kandi ngo se w'umwana yahoraga amuhiga ko yamwibiye inkoko. Mu mvugo ze mu Bushinjacyaha zo ku wa 08/09/2020 (izo mvugo ntiyazishyizeho umukono) kuva ku kibazo cya 2 kugeza ku cya gatanu yahakanye icyaha, asobanura uko byagenze kugeza uwo mwana amusaba

200Frw ngo yo kwiyogoshesha, undi akayamuha, Donko agahita amuhamagara, akigendera, kuri icyo kibazo cya 5, aho yabajijwe ngo ko “muganga yemeje ko yamusambanyije bizagende bite?”, undi agasubiza ko yazabihanirwa n’amategeko. [31] Urukiko rw’Ubujurire rubona ko abatangabuhamya babajijwe mu Bugenzacyaha, aribo Mukamanana Anysie nyina w’umwana ari na we wareze, na Ingabire Angélique, babazwa ku wa 24/06/2020 no ku wa 26/08/2020, imvugo za bo ari zimwe, bazisobanura mu buryo bumwe, kuko bombi bari bavanye mu kibina bagasanga umwana arira, bamubariza hamwe icyo yabaye agasubiza ko ari Mbonigaba Dadi, ku kuba hari ikimenyetso kidasanzwe ku mwana, nyina Mukamana avuga ko atabyitayeho, mu gihe Ingabire we avuga ko barebye mu ikariso ye bakabonamo amasohoro. Naho ku

Umutangabuhamya GASHIRABAKE Eric avuga ko yatabajwe na Mukamana amubwira ko umwana we asambanyijwe na MBONIGABA noneho babajije uwo mwana arabibemerera ababwira ko yamusambanyije agiye kuri toilette 6 Urukiko rwabivuze muri aya magambo mu gika cya 12: “Nanone Mbonigaba Dadi n’ubwo yivugurujye imbere y’uru Rukiko avuguruzaga imyanzuro ye y’ubujurire ihura n’imvugo ze mu ibazwa rye mu Bugenzacyaha no mu Bushinjacyaha aho yemeye agasobanura uko yakozwe icyaha bikamubera ikimenyetso gishimangira ubuhamya bwatanzwe mu kumuhamya icyaha, bikaba bitamuha amahirwe yo gufatwa nk’impamvu nyoroshyacyaha ituma agabanyirizwa igihano, nyamara hitawe ku myaka ye no kuba ari ubwa mbere akora icyaha ndetse no kuba nta ngaruka zikomeye zabaye k’uwakorewe icyaha, uru Rukiko rusanga igihano yahanishijwe kiremereye, akaba agomba kukigabanyirizwa”. 7 Abo batangabuhamya bemeje ko basanze M.V arimo kurira, ko bamubajije icyo yabaye akababwira ko MBONIGABA Dadi amaze kumusambanya, ko yamucunze agiye kuri toilette akamusangayo akamutsindagira mu miyenzi.

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kibazo cy’undi mutangabuhamya Gashirabake Eric wabajijwe Mukamana Anysie avuga ko ari we wabimubwiye kandi na we mu ibazwa rye yemeza ko ari nyina w’umwana wabimubwiye. [32] Urukiko rw’Ubujurire rubona ko rapport ya muganga Dr Tuyizere Egide w’ibitaro bya Rwamagana wasuzumye umwana bivugwa ko yahohotewe abisabwe n’Ubugenzacyaha buhagarariwe na OPJ Habimana Phillipe ku wa 22/08/2020 yagaragaje ko nta kibazo cyo gusambanya uwo mwana cyigeze kibaho, ariko gukurikirana Mbonigaba Dadi bitangira ku wa 24/08/2020, ariho Mukamana Anysie yagejeje ikirego kuri RIB, nyamara ari bo batanze inyandiko yo gupimisha umwana ku wa 22/08/2020 nk’uko bimaze kugaragazwa. [33] Ingingo ya 14 y’Itegeko No 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko No 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n’ibihano muri rusange iteganyaga 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”. [34] Urukiko rw’Ubujurire rusanga ubuhamya bwa Mukamanana Anysie ari nawe nyina w’umwana n’ubwa Ingabire Angélique, bugaragaza ko basobanura mu buryo bumwe, kuko bombi bari bavanye mu kibina bagasanga umwana arira, bamubaza icyo yabaye akabasubiza ko ari Mbonigaba Dadi, ko yamucunze agiye kuri toilette

akamusangayo akamutsindagira mu miyenzi, ko nyina Mukamana atigeze yita kureba ku kindi cyaba cyarabaye ku mwana we, mu gihe Ingabire we bari kumwe avuga ko barebye mu ikariso ye bakabonamo amasohoro, ari yo mpamvu bagiye kumupimisha bikiba. Mu ibazwa rya Mbonigaba Dadi yemera guhanirwa icyaha mu gihe ibisubizo bya muganga byaba bigize icyo bigaragaraza bimushinja, ariko aho bibonekeye bikaza bitagaragaza ugusambanywa k'umwana. Urukiko rukaba rusanga imvugo z'abo batangabuhamya bavuze gusa ibyo ngo babibwiwe n'umwana bigoye kwemeza nta shiti ko zashingirwaho Mbonigaba Dadi ahamwa n'icyaha cyo gusambanya umwana uvugwa muri uru rubanza. [35] Urukiko rw'Ubujurire rusanga nanone ukwemera kwa Mbonigaba Dadi mu Bugenzacyaha icyaha cyo gusambanya umwana ariko ku gisubizo cya 11 abajijwe niba hari icyo apfa n'umwana umushinja kumusambanya, akahavugira ko ikibazo afite ari uko se w'umwana yahoraga amuhiga ko yamwibiye inkoko, kandi agakomeza guhakana icyaha kuva mu Bushinjacyaha kugeza muri uru Rukiko rw'Ubujurire, nyamara Urukiko Rukuru rugashingira kuri izo mvugo ze mu ibazwa rye mu Bugenzacyaha no mu Bushinjacyaha aho yemeye agasobanura uko yakoze icyaha bikamubera ikimenyetso gishimangira mu kumubamya icyaha kuko nta kimenyetso yagaragarizaga Urukiko ukuri kw'ibyo avuga, ko yacyemeye abigirwemo inama n'uwo bari bafunganwe Twahirwa ndetse n'Umugenzacyaha. Urukiko rukaba rutarasesenguye mu buryo buhagije izo mvugo ngo ruzihuze na rapport ya muganga yo ku wa 22/08/2020 umunsi icyaha cyakoreweho, ruzihuza kandi n'ibiteganywa n'ingingo ya 14 y'Itegeko ryavuzwe hejuru ; rudasabye Ubushinjacyaha ibindi bimenyetso bizishyigikira kuko uko kwemera konyine kudahagije. [36] Urukiko rw'Ubujurire rurasanga rero bitari bikwiye ko izo mvugo zonyine z'uwo yemera icyaha mu Bugenzacyaha zishingirwaho nk'uko byafashweho umurongo n'uru Rukiko mu rubanza RPAA00053/2019/CA rwaciye ku wa 27/04/2020 hagati ya Mukeshimana Vincent wemeye icyaha mu Bugenzacyaha no ku rwego rwa mbere, aho mu bika byarwo 18-228, rwabonye ko ari Ubushinjacyaha

8 Aho mu gika cya 19-20 Urukiko rwavuze ko n'ubwo mu rubanza rujuririrwa Urukiko Rukuru rwavuze ko MUKESHIMANA Vincent yaburanye yemera icyaha, imbere yarwo yavuze ko yajuriye agamije gusaba ko yahanishwa igifungo cy'imyaka icumi (10), ariko asobanura ko "nta cyaha yakoze ko uwo mugore bari bafitanye amakimbirane" abajijwe niba ibyo bishatse kuvuga ko nta cyaha yakoze asubiza ko "icyaha atacyemera, ko yacyemeye kuko yakubitwaga... [ko] imyanzuro ijurira bayimukoreye, ko atariwe wayikoze", aho gucukumbura iyi miburanire, Urukiko rufata ko yemeye icyaha ku rwego rwa mbere, bituma rwemeza ko icyaha kimuhama. Rusanga kuba Mukeshimana Vincent yaremeye icyaha mu

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butegetswe gushaka ibimenyetso, na rwo rugendeye ku murongo wari wafashwe n'Urukiko rw'Ikirenga, kuri iki kibazo nko mu rubanza RPA0042/14/CS rwaciye ku wa 02/06/2017, haburana Ubushinjacyaha na Ndungutse Déo mu bika 27-28 byarwo9; rwasanze "ukwemera icyaha ari kimwe mu bimenyetso bishobora gutuma umucamanza yemeza ko uregwa yakoze icyaha, ariko ko atari ikimenyetso kamara mu gihe kitunganiwe n'ibindi bimenyetso, kukaba rero kudashobora gufatwa nk'ikimenyetso ubwacyo cyihagije mu kwemeza ko uregwa yakoze icyaha akurikiranyweho ko ahubwo gifatwa nk'ikimenyetso cyoroshye iyo kitunganiwe nk'uko abahanga

Michel Franchimont, Ann Jacobs na Adrien Masset mu gitabo cyabo cyitwa Manuel de procédure pénale, babivuga ku rupapuro rwa 1174”. Kuri uru rubanza uko kwemera icyaha kwa Mbonigaba Dadi mu iperereza gusa, bikaba bitahabwa ishingiro bidaherekejwe n’ibindi bimenyetso, kandi ibyatanzwe Urukiko rwamaze kugaragaza mu gika kibanziriza iki ko ibimenyetso by’abatangabuhanya byatanzwe n’Ubushinjacyaha bishidikanywaho. [37] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga rero ubujurire bwa Mbonigaba Dadi bufite ishingiro kubera ko nta bimenyetso bifatika kandi bidashidikanywaho bihamya ko yakoze icyaha cyo gusambanya umwana, hashingiwe ku biteganywa n’ingingo ya 111 y’Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y’imanza z’inshinjabyaha yibukijwe haruguru, icyaha yahamijwe n’Urukiko Rukuru kikaba kitamuhama. III. ICYEMEZO CY’URUKIKO [38] Rwemeje ko ubujurire bwa Mbonigaba Dadi bufite ishingiro. [39] Rwemeje ko Mbonigaba Dadi adahamwa n’icyaha cyo gusambanya umwana yari akurikiranweho muri uru rubanza. [40] Rwemeje ko imikirize y’urubanza RPA00706/2020/HC/RWG rwaciwe n’Urukiko Rukuru Urugereko rwa Rwamagana, ku wa 07/09/2023 ihindutse mu ngingo zarwo zose. [41] Rutegetse ko Mbonigaba Dadi ahita afungurwa urubanza rukimara gusomwa. [42] Ruvuze ko amagarama y’uru rubanza aherera ku Isanduku ya Leta.

nzego z’iperereza ndetse n’imbere y’Urukiko Rwisumbuye rwa Gicumbi ubwabyo ntibiyahagije ngo hemezwe ko ahamwa n’icyaha, Ubushinjacyaha bufite inshingano zo gushaka ibimenyetso. 9 Aho Urukiko rwasanze kuba NDUNGUTSE Déo yaremeye icyaha mu Bugenzacyaha ariko akagihakana imbere y’Ubushinjacyaha, n’imbere y’Inkiko yaburaniyemo, n’ubwo ntacyagaragariye Urukiko ko yashyizweho agahato kugira ngo yemere, kuba yisubiyeho agahakana icyaha, ari inshingano y’Ubushinjacyaha yo gutanga ibindi bimenyetso bishyigikira imvugo za NDUNGUTSE Déo mu Bugenzacyaha.

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