

RWANDA / JUDGMENT

UBUSHINJACYAHA v. BIMENYIMANA

RPAA 00048/2020/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA v. BIMENYIMANA

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Text

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UBUSHINJACYAHA v. BIMENYIMANA [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00048/2020/CA (Nyirandabaruta, P.J.) 26 Gicurasi 2022] Amategeko nshinjabyaha – Impamvu nyoroshyacyaha – Kwemera icyaha – Kwemera icyaha bwa mbere mu bujurire ntibishobora kubera ubikora impamvu nyoroshyacyaha kuko binyuranye nibiteganywa mu ngingo ya 59 y'itegeko no 68/2018 riteganywa ibyaha n'ibihano muri rusange. Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Musanze, Ubushinjacyaha bukurikiranye uregwa ku byaha binyuranye, icy'ubwinjiracyaha bwo gusambanya umuntu mukuru ku gahato, icyo gukubita no gukomeretsa umuntu ku bushake ku buryo bubabaje n'icyo kwangiza imyanya ndangagitsina. Urwo Rukiko rwaciye urubanza rwemeza ko uregwa ahamwe n'icyaha cyo gukubita no gukomeretsa umuntu ku bushake ku buryo bubabaje n'icyaha cyo kwangiza imyanya ndangagitsina, rumuhanisha igifungo cya burundu. Uregwa ntiyishimiye imikirize y'urwo rubanza, arujuririra mu Rukiko Rukuru, Urugereko rwa Musanze avuga ko yahawe ibihano bikakaye, asaba ko yagabanyirizwa igihano kuko yemera ko yakubise uwakorewe icyaha(victim) akamukomeretsa ariko nta giti yamushyizemo. Urwo Rukiko narwo rwaciye urubanza nuko rwemeza ko imikirize y'urubanza rwajuririwe idahindutse. Uregwa yarongeye ajuririra Urukiko rw'Ubujuje, avuga ko noneho

(kuri uru rwego)yajuriye kugira ngo yemere icyaha kandi asabe imbabazi kuko yafashe uwakorewe icyaha(victim) agashaka kumusambanya abitewe n'inzoga, yabyanga akamukubita hasi, ko mu nzego zose yahakanye icyaha bitewe n'abo bari bafunganwe bamugiriye inama yo kugihakana, ariko akaza gusobanukirwa n'ububi bwacyo, ariyo mpamvu asaba ubutabera imbabazi. Ubushinjacyaha bwo buvuga ko ntacyo uregwa anenga urubanza yajuririye kuko Urukiko rwasuzumye icyo yarusabye (kugirwa umwere ku cyaha cyo kwangiza imyanya ndangagitsina) ari nacyo cyatumye ahanishwa igifungo cya burundu, rugasanga nta shingiro bifite kuko hari ibimenyetso bikimuhamya, rukanasobanura ko adakwiriye kugabanyirizwa igihano kuko ibyaha yahamijwe yabikoranye ubugome bukabije. Incamake y'icyemezo: 1. Kwemera icyaha bwa mbere mu bujurire ntibishobora kubera ubikora impamvu nyoroshyacyaha kuko binyuranye nibiteganywa mu ngingo ya 59 y'itegeko No 68/2018 riteganya ibyaha n'ibihano muri rusange. Ubujurire nta shingiro bufite. Amategeko yashingiweho: Itegeko N° 68/2018 ryo ku wa 30/08/2018 nk'uko ryahinduwe n'Itegeko N° 69/2019 ryo ku wa 08/11/2019 riteganya ibyaha n'ibihano muri rusange, Ingingo ya 59 n'ya 114. Itegeko N°30/2018 ryo ku wa 02/06/2018, rigena ububasha bw'inkiko, Ingingo ya 52, igika cya mbere. Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, Ingingo ya 183,5o na 6o.

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Imanza zifashishijwe: Ubushinjacyaha v. Munyagishari, RPA/GEN 00004/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 7/5/2021. Ubushinjacyaha v. Habiyakare, RPAA 00013/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 31/12/2021 Ubushinjacyaha v. Rusesabagina n'abandi, RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022.

Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Musanze, Ubushinjacyaha bukurikiranyeho Bimenyimana Jean Paul ibyaha yakoze mu ijoro ryo kuwa 18/09/2018, icy'ubwinjiracyaha cyo gusambanya umuntu mukuru ku gahato, icyo gukubita no gukomeretsa umuntu ku bushake ku buryo bubabaje n'icyo kwangiza imyanya ndangagitsina ya Nyirakabanza Séraphine. [2] Urukiko Rwisumbuye rwa Musanze rwaciye urubanza n° RP 00464/2018/TGI/MUS kuwa 07/11/2018, rwemeza ko Bimenyimana Jean Paul ahamwa n'icyaha cyo gukubita no gukomeretsa umuntu ku bushake ku buryo bubabaje n'icyaha cyo kwangiza imyanya ndangagitsina, rumuhanisha igifungo cya burundu. [3] Bimenyimana Jean-Paul ntiyishimiye imikirize y'urwo rubanza, arujuririra mu Rukiko Rukuru, Urugereko rwa Musanze avuga ko yahawe ibihano bikakaye, asaba ko yagabanyirizwa igihano kuko yemera ko yakubise Nyirakabanza Séraphine akamukomeretsa ariko nta giti yamushyizemo. [4] Mu rubanza n° RPA 00563/2018/HC/MUS rwaciwe ku wa 11/04/2019, Urukiko Rukuru, Urugereko rwa Musanze rushingiye ku mvugo ya Nyirakabanza Séraphine, ku buhamya bwa Rwemeza Félicien, ubw'Umunyamabanga Nshingwabikorwa w'Akagari ka Kirebe, bose bemeza ko Bimenyimana Jean Paul ariwe wahohotereye Nyirakabanza Séraphine no kuri raporo ya muganga, Dr Nkinzingabo Rusangiza Evariste yo ku wa 28/09/2018, igaragaza uko Nyirakabanza Séraphine yageze kwa muganga ameze, rwemeje ko ubujurire bwatanzwe na Bimenyimana Jean Paul nta shingiro bufite, ko imikirize y'urubanza n°RP 00464/2018/TGI/MUS rwaciwe n'Urukiko Rwisumbuye rwa Musanze kuwa 07/11/2018, idahindutse. [5] Bimenyimana Jean Paul yarongeye

arujuririra mu Rukiko rw'Ubujurire, avuga ko yemera icyaha cyo kuba yarafashe Nyirakabanza Séraphine abitewe n'inzoga, asaba imbabzi. [6] Iburanisha mu ruhamye ryabaye ku wa 06/04/2022, Bimenyimana Jean Paul yunganiwe na Me Nyirabera Josephine naho Ubushinjacyaha buhagarariwe na Rudatinya Nyangezi Gaspard, Umushinjacyaha ku Rwego rw'Igihugu. IKIBAZO KIRI MU RUBANZA N' ISESENGURWA RYACYO

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Kumenya niba ukwemera icyaha kwa Bimenyimana Jean Paul gukorewe bwa mbere mu Rukiko rw'Ubujurire kwamubera impamvu ituma agabanyirizwa ibihano. [7] Bimenyimana Jean Paul avuga ko yajuriye kugira ngo yemere icyaha kandi asabe imbabazi kuko yafashe Nyirakabanza Séraphine agashaka kumusambanya abitewe n'inzoga, yabyanga akamukubita hasi, ko mu nzego zose yahakanye icyaha bitewe n'abo bari bafunganwe bamugiriye inama yo kugihakana, ariko akaza gusobanukirwa n'ububi bwacyo, ariyo mpamvu asaba ubutabera imbabazi, Ubushinjacyaha ndetse n'uwo yahemukiye, kuko yagize umwanya wo gutekereza ku cyaha yakoze n'ububi bwacyo akaba yarakizinutswe burundu, akaba yifuza kugabanyirizwa ibihano kuko yemera icyaha akagisabira imbabazi. [8] Me Nyirabera Josephine wunganira Bimenyimana Jean Paul avuga ko uwo yunganira yajurirye yemera icyaha ndetse agisabira n'imbabazi anagaragaza ko yagikoresheje n'ubusinzi agakorera ibyamfurambi Nyirakabanza Séraphine akaba amusaba imbabazi ndetse anazisaba umuryango nyarwanda kuko amaze kubona isomo ryamuteye kuzinukwa icyaha. Ko Urukiko rwazita ku myaka ya Bimenyimana Jean Paul maze rukabona ko atararenga ihaniro ku buryo yahanishwa igihano cya burundu. [9] Me Nyirabera Josephine akomeza asaba Urukiko gushingira ku ngingo za 49, 58, 59 na 60 z'Itegeko riteganyaye ibyaha n'ibihano muri rusange, maze rukemeza ko kwihana no kwemera icyaha kwa Bimenyimana Jean Paul ari impamvu nyoroshyacyaha, rukamugabanyiriza ibihano rubishingiye ku rubanza rw'icyitegererezo N° RPAA 0124/09/CS rwaciwe n'Urukiko rw'Ikirenga haburana Ubushinjacyaha na Twizeyimana Isai, hakanashingirwa ku ngingo ya 35 y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganyaye ko ibihano yahanishwa bishobora kugabanywamo kabiri kuko yemera icyaha. [10] Avuga kandi ko mu kugenera uwo yunganira ibihano Urukiko rwazita ku myaka ye rukabona ko mu ntego z'igihano harimo gukosora no kwigisha, ko kuba Bimenyimana Jean Paul yarakoze icyaha afite imyaka 19, kumuhanisha gufungwa burundu bitaba ari byiza, ahubwo ko yahabwa ibihano nsimburagifungo cy'imirimo ifitiye Igihugu akamaro aho kugira ngo abere igihugu umutwaro igihe cyose azaba afunze, ko n'ubwo yakoranye icyaha ubugome bukabije, kuba Urukiko Rukuru, rwaramuhanishije gufungwa burundu, rwitaye gusa ku buremere bw'icyaha ntirwite ku myaka uwakoze icyaha yari afite, ko ibyo bikwiriye gukosorwa, kandi ko n'imanza zose Ubushinjacyaha bwavuze, nta na rumwe bwagaragaje rwemeje ko hari igihe ushinjwa aba atacyemerewe kwemera icyaha. [11] Uhagarariye Ubushinjacyaha avuga ko nk'uko bigaragara mu gika cya 5 n'icya 8 by'urubanza rujuririrwa, Bimenyimana Jean Paul yaburanye ahakana yivuye inyuma icyaha cyo kwangiza imyanya ndangagitsina ya Nyirakabanza Séraphine, agasaba guhanirwa gusa icyaha yemera cyo kumukubita no kumukomeretsa, kuko yavugaga ko nta giti yamushinze mu gitsina; ko Urukiko rwabonye ko impamvu ze z'ubujurire nta shingiro zifite kuko hari ibimenyetso bimuhamya icyaha cyo kwangiza imyanya ndangagitsina ya

Nyirakabanza Séraphine bigizwe n'invugo za Nyirakabanza Séraphine wasobanuye uburyo yamusabye ko basambana akabyanga, akamukubita agafata igisongo (igiti) akakimujomba mu gitsina, invugo yashimangiwe n'iy'umutangabuhamya ndetse na raporo ya muganga, kandi ibyo Urukiko Rukuru, Urugereko rwa Musanze rukaba rwarabigarutseho mu gika cya 9 n'icya 10.

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[12] Yakomeje avuga ko Bimenyimana Jean Paul ntacyo anenga urubanza yajuririye kuko Urukiko rwasuzumye icyo yarusabye (kugirwa umwere ku cyaha cyo kwangiza imyanya ndangagitsina) ari nacyo cyatumye ahanishwa igifungo cya burundu, rugasanga nta shingiro bifite kuko hari ibimenyetso bikimuhamya, rusobanura (mu gika cya 11 cy'urubanza) ko adakwiriye kugabanyirizwa igihano kuko ibyaha yahamijwe yakoreye Nyirakabanza Séraphine yabikoranye ubugome bukabije. [13] Uhagarariye Ubushinjacyaha avuga ko icyemezo cy'Urukiko cyo kutagabanyiriza Bimenyimana Jean Paul igihano kubera ubugome yakoranye ibyaha aregwa gihura n'umurongo watanze n'Urukiko rw'Ikirenga mu rubanza n° RPAA0021/14/CS-RPAA0022/14/CS rwaciye ku wa 13 Ukwakira 2017, aho urwo Rukiko rwemeje ko igihe icyaha cyakoranywe ubugome bukabije byaba impamvu yo kutagabanyirizwa igihano, rukabivuga muri aya magambo: «nubwo Ntabanganyimana yemera icyaha aregwa, ntiyagabanyirizwa igihano bitewe n'ubugome bukabije yakoranye icyaha, kuko umucamanza adategetswe kukigabanya kuwemeye icyaha mu gihe asanze cyarakoranywe ubugome bukabije». [14] Uhagarariye Ubushinjacyaha avuga kandi ko ingingo ya 35 y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha rya 2013 yavuzwe n'uwunganira Bimenyimana Jean Paul nubwo itagikoreshwa kuko itegeko ry'imiburanire rihita rishyirwa mu bikorwa ako kanya (la loi de la procédure est d'application immédiate), kandi ubu hakaba hari itegeko rishya ry'imiburanishirize y'imanza z'inshinjabyaha ryatangajwe mu mwaka wa 2019, ingingo yaryo ya 65 (yasimbuye iya 35) isobanura uburyo uwafatiwe mu cyuho aburanishwa, igika cyayo cya 5 kigasobanura uburyo ushinjwa akurikiranwa akanaburanishwa, ndetse umucamanza akaba ashobora kugabanya ibihano, kandi bigakorwa ku rwego rwa mbere, ko rero kuba mu Rukiko Rwisumbuye no mu Rukiko Rukuru Bimenyimana Jean Paul yaraburanye ahakana icyaha, izo nkiko zitari kumugabanyiriza igihano zishingiye ku ngingo ya 65 yavuzwe haruguru. [15] Uhagarariye Ubushinjacyaha avuga nanone ko amategeko agenda atera imbere, ko imanza uwunganira Bimenyimana Jean Paul avuga zemeje ko nta gihe ntarengwa cyo kwemera icyaha, nyuma yazo Urukiko rw'Ubujurire rwaciye urundi rubanza n° RPA/GEN 00004/2019/CA ku wa 7/5/2021, Ubushinjacyaha buburana na Munyagishari Bernard, rukemeza ko impamvu y'ubujurire ya Bernard Munyagishari yo kwemera icyaha mu bujurire yaragihakanye ku rwego rwa mbere idakwiye kwakirwa kuko kuba yari afite ubwo burenganzira bwo kwemera icyaha agitangira gukurikiranwa ntabukoreshe, bigaragaza ko yahisemo kureka burundu inzira yo kuburana yemera icyaha, rukemeza ko rutagomba kuburanisha ubwo bujurire bwe bwo kwemera icyaha bwa mbere mu rwego rw'ubujurire kuko Urukiko rw'Ubujurire rusuzuma inenge uwajuriye yagaragaje, zishingiye ku mategeko cyangwa ku mikorere y'icyaha. [16] Avuga ko kugira ngo ukwemera icyaha kwe kube impamvu nyoroshyacyaha,

ingingo ya 591 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange

1 Umucamanza ashobora kugabanya ibihano nk'iyi: 1° ushinjwa, mbere yo gukurikiranwa, yemeye icyaha akagisabira imbabazi uwo yakoreye icyaha n'umuryango nyarwanda mu buryo budashidikanywa, akicuza kandi akishyura ibyo yangije nk'uko bari babimutegerejeho; 2° ushinjwa yishyikirije urwego rw'ubutabera rubifitiye ububasha, mbere y'uko akurikiranwa cyangwa se mu gihe hatangiye ibikorwa by'ikurikirana; 3° mu ntangiriro z'iburanisha ku rwego rwa mbere, ushinjwa yireze akemera icyaha mu buryo budashidikanywa; 4° icyaha cyakozwe nta ngaruka zikomeye cyateje.

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rikurikizwa ubu, ivuga ko ukwemera icyaha kuba impamvu nyoroshyacyaha iyo gukoze mbere yo gukurikiranwa cyangwa bikozwe mu ntangiriro z'iburanisha ku rwego rwa mbere. Ko kuba Bimenyimana Jean Paul atagaragaje impamvu nyoroshyacyaha yo kwemera icyaha mu bihe biteganywa n'amategeko yivukije ayo mahirwe, cyane ko atagaragaza impamvu idasanzwe yabimubujije, kuko kuvuga ko abo bari bafunganye aribo bamugiriye inama ko kuburana ahakana icyaha ashinjwa nta shingiro bifite, kuko atari bo bazi uburenganzira bwe n'inyungu ze kumurusha, asaba Urukiko rw'Ubujurire kwemeza ko nta bubasha rufite bwo kuburanisha bwa mbere ukwirega no kwemera icyaha kwe. [17] Yakomeje avuga ko hari n'izindi manza z'Urukiko rw'Ikirenga zemeje ko nubwo ushinjwa yaba yemera icyaha atagabanyirizwa kubera ubugome yakoranye icyaha, nk'urubanza n°RPA 0282/08/CS rwaciwe ku wa 12/03/2010 rwemeje ko kugabanya cyangwa kutagabanya igihano atari itegeko, ko umucamanza ashobora kugabanya cyangwa ntagabanye bitewe n'uburemere bw'icyaha; Urubanza n° RPAA 0021/2014/CS -RPAA 0022/14/CS rwaciwe ku wa 13/10/2017, rwemeje ko nubwo Ntabanganyimana yemera icyaha atagabanyirizwa ibihano bitewe n'ubugome yakoranye icyaha, kandi ibyo bikaba byaranemejwe mu rubanza N°RPA 0282/08/CS rwo kuwa 12/03/2010, aho Urukiko rwemeje ko kugabanya igihano cyangwa kutakigabanyiriza umuburanyi wemeye icyaha atari itegeko ku mucamanza kabone n'iyi yasanga uko kwemera kuzuye; ko mu gihe yasanga hari impamvu iryo gabanyagihano ridakwiye, ashobora kutagabanya igihano; ko harebwe ubugome Bimenyimana Jean Paul yakoranye icyaha, akurikiranyweho ntawavuga ko akwiye kugabanyirizwa mu gihe yateye uwahohotewe igisongo mu gitsina kikagera muri cm 32. [18] Ku bijyanye n'imyaka ya Bimenyimana Jean Paul umwunganira avuga ko nayo ikwiriye kwitabwaho mu kumugabanyiriza ibihano, Umushinjacyaha avuga ko bigaragara ko yari mukuru, ko kandi n'abandi bagiye bakora icyaha bafite imyaka y'ubukure bagiye bahanwa. Naho ku bijyanye no kuba yahanishwa gukora imirimo nsimbura gifungo ifitiye Igihugu akamaro, avuga ko Gereza ya Musanze ifite ubutaka bugari bwa hegitari hafi esheshatu zihingwa hakanororerwa, ko Bimenyimana Jean Paul abishatse yasaba guhinga cyangwa akajya yahirira inka, agakorera Igihugu aho ngaho. UKO URUKIKO RUBIBONA [19] Ingingo ya 114 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 nk'uko ryahinduwe n'Itegeko n° 69/2019 ryo ku wa 08/11/2019 riteganya ibyaha n'ibihano muri rusange, iteganya ko: «Umuntu wese wangiza imyanya ndangagitsina y'undi muntu aba akoze icyaha. Iyo abihamijwe n'urukiko, ahanishwa igifungo cya burundu». [20] Ingingo ya 52, igika cya mbere,

y'Itegeko N°30/2018 ryo ku wa 02/06/2018, rigena ububasha bw'inkiko iteganya ko: „Urukiko rw'Ubujurire rufite ububasha bwo kuburanisha mu rwego rw'ubujurire bwa mbere, imanza zaciwe mu rwego rwa mbere n'Urukiko Rukuru, Urukiko Rukuru rw'Ubucuruzi n'Urukiko Rukuru rwa Gisirikare“. Mu gika cyayo cya kabiri, iyo ngingo ya 52 iteganya ko: „Urukiko rw'Ubujurire rufite kandi ububasha bwo kuburanisha mu rwego rw'ubujurire bwa kabiri imanza zaciwe n'Urukiko Rukuru, Urukiko Rukuru rw'Ubucuruzi n'Urukiko Rukuru rwa Gisirikare, iyo izo manza:..... Naho mu gika cya gatandatu iyo ngingo igira iti: „Imanza zaciwe n'Urukiko rw'Ubujurire ntizijuririrwa“.

2 icyegeranyo cy'ibyemezo by'Inkiko, n°8, p.15

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[21] Ingingo ya 183,50 na 60, y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinyabwaho iteganya ko: “Ubujurire bukorwa mu buryo bw'umwanzuro utanga ikirego, ugaragaza ibi bikurikira: 5° urutonde rw'inenge z'urubanza zisabirwa gukosorwa n'ibindi bibazo bigomba gusuzumwa; 6° ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragaza amakosa yakozwe n'uburyo agomba gukosorwa hashingiwe ku mategeko n'ibimenyetso n'igisabwa urukiko,.....”. [22] Ingingo ya 59 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe n'Itegeko n° 69/2019 ryo ku wa 08/11/2019, iteganya ko: „Umucamanza ashobora kugabanya ibihano nk'iyi: 1° ushinjwa mbere yo gukurikiranwa, yemeye icyaha akagisabira imbabazi uwo yakoreye icyaha n'umuryango nyarwanda mu buryo budashidikanywa, akicuza kandi akishyura ibyo yangije nk'uko bari babimutegerejeho; 2° ushinjwa yishyikirije urwego rw'ubutabera rubifitiye ububasha, mbere y'uko akurikiranwa cyangwa se mu gihe hatangiye ibikorwa by'ikurikirana; 3° mu ntangiriro z'iburanisha ku rwego rwa mbere, ushinjwa yireze akemera icyaha mu buryo budashidikanywa; 4° icyaha cyakozwe nta ngaruka zikomeye cyateje“,.... [23] Mu rubanza n° RPA 00563/2018/HC/MUS rujuririrwa, Urukiko Rukuru, Urugereko rwa Musanze, rwasanze (igika cya 10) uretse ubuhamya bwa Nyirakabanza Séraphine, raporo ya muganga yo ku wa 28/09/2018, yakozwe na Dr Nkinzingabo Rusangiza Evariste, isobanura ko Nyirakabanza Séraphine yageze kwa muganga agenda mu buryo bugoranye (*difficulté de marcher*), yuzuyeho amaraso ku myenda ye yose, abyimbye ku gahanga, hari igiti gishinze mu gitsina cye kugeza kuri 32cm kandi ko byabasabye kumutera ikinya kimusinziriza (*anesthésie générale*) kugira ngo babone uko bamukuramo icyo giti, ko rushingiye ku ngingo ya 49 y'Itegeko n°68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, rutamugabanyiriza igihano yahawe, ko urubanza yajuririye rutagomba guhinduka. [24] Ku bijyanye no kumenya niba ukwemera icyaha Bimenyimana Jean Paul akoreye bwa mbere muri uru Rukiko rw'Ubujurire kwamubera impamvu nyoroshyacyaha yaherwaho agabanyirizwa igihano, mu rubanza no RPA/GEN 00004/2019/CA rwaciwe ku wa 7/5/2021, haburana Ubushinjacyaha na Munyagishari Bernard, mu rubanza no RPAA 00013/2020/CA rw'Ubushinjacyaha na Habiya Olivier, urubanza no RPA 00006/2021/CA rw'Ubushinjacyaha na Rusesabagina Paul, Nsabimana Callixt alias Sankara n'abandi, zose zaciwe n'uru Rukiko n'izindi, Urukiko rw'Ubujurire rwemeje ko ukwemera

icyaha gushobora kugirira ushinjwa akamaro ari ugukozwe nibura igihe iburanisha ku rwego rwa mbere ritarapfundikirwa. Muri izo manza, uru Rukiko rwavuze ko ushinjwa uvuga ko yemera icyaha mu bujurire yaragihakanye ku rwego rwa mbere bidakwiye kwakirwa kuko yari afite uburenganzira bwo kwemera icyaha agitangira gukurikiranwa ntabukoreshe, bigaragaza ko yahisemo kureka burundu inzira yo kuburana yemera icyaha, rusanga rutagomba kuburanisha ukwemera icyaha bwa mbere mu rwego rw'ubujurire kuko Urukiko rw'Ubujurire rusuzuma inenge (ziri mu rubanza rujuririrwa) uwajuriye yagaragaje, zishingiye ku mategeko cyangwa ku mikorere y'icyaha. Ibi nibyo kandi bihura n'ibiteganywa mu ngingo ya 52, igika cya mbere, y'Itegeko N°30/2018 ryo ku wa 02/06/2018, rigena ububasha bw'inkiko ndetse n'ingingo ya 183,50 na 60, y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, zagaragajwe haruguru, zerekana ko Urukiko rw'Ubujurire rusuzuma inenge zagaragajwe mu rubanza, ibyo kwemera icyaha agasaba imbabazi no kugabanyirizwa ibihano, Bimenyimana Jean Paul akaba atabizanye

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imbere y'Urukiko nk'inenge z'Urubanza yajuririye, ahubwo ashaka kubiburana bwa mbere, bikaba bitari mu bubasha bw'uru Rukiko. [25] Ku byo Bimenyimana Jean Paul na Avoka umwunganira bavuga ko yagabanyirizwa ibihano hashingiye ku murongo watanze n'Urukiko rw'Ikirenga w'uko nta gihe ntarengwa cyo kuba umuntu yakwigarura ngo yemere icyaha, bagatanga urugero ho urubanza n° RPAA 0124/09/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 01/06/2012, haburana Ubushinjacyaha na Twizeyimana Isai, aho rwemeje ko kuba Twizeyimana Isai agaragaza ko yagaruye umutima ageze mu Rukiko rw'Ikirenga akemera icyaha mu buryo budashidikanywaho byamubera impamvu zo kumugabanyiriza igihano n'ubwo yabanje kurushya inkiko agihakana... Urukiko rw'Ubujurire rurasanga uwo murongo warabayeho koko, ndetse warakoreshejwe no mu zindi manza nko mu rubanza n° RPA 0282/08/2008 rw'Ubushinjacyaha na Nyirangondo Virginie rwaciwe n'Urukiko rw'Ikirenga ku wa 12/03/2010, aho rwemeje ko kuba yaremeye icyaha atinze ubwabyo bitaba impamvu yatuma atagabanyirizwa igihano kuko nta gihe ntarengwa cyo kuba umuntu yagarura agatima ngo yemere icyaha, ko ahubwo kutakigabanyirizwa byashingira ku bugome bukabije yakoranye icyo cyaha, mu rubanza n°RPA 0246/09/CS rwaciwe ku wa 14/12/2012, Ubushinjacyaha buburana na Mukankusi Victoire3 n'izindi. Rurasanga ariko nyuma y'uko uwo murongo ufashwe, Itegeko n°68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange ryahinduwe n'Itegeko n° 69/2019 ryo ku wa 08/11/2019 rigena ibyaha n'ibihano muri rusange, ryarashimangiye mu ngingo yaryo ya 59, 30, ko kwemera icyaha gushobora gufatwa nk'impamvu nyoroshyacyaha yashingirwaho ushinjwa agabanyirizwa ibihano ari ugukozwe mu ntangiriro z'iburanisha ku rwego rwa mbere, iyo ushinjwa yireze akemera icyaha mu buryo budashidikanywaho. [26] Urukiko rurasanga rero umurongo wari waratanze n'Urukiko rw'Ikirenga w'uko kwemera icyaha bwa mbere mu bujurire ubwabyo bitaba impamvu yo kutagabanyirizwa ushinjwa igihano yahawe kuko nta gihe ntarengwa cyo kuba yakwigarura ngo yemere icyaha, mu gihe acyemera ku buryo budashidikanywaho, uwo murongo waravanyweho n'Itegeko n°68/2018 ryo ku wa 30/08/2018

nk'uko ryahinduwe n'Itegeko n° 69/2019 ryo ku wa 08/11/2019 riteganya ibyaha n'ibihano muri rusange, riteganya ku buryo busobanutse neza (sans équivoque) ko ukwemera icyaha gushobora gushingirwaho nk'impamvu nyoroshyacyaha ari ugukozwe mu ntangiriro y'iburanisha ku rwego rwa mbere. Ni nayo mpamvu Urukiko rw'Ubujurire, rwahawe nyinshi mu nshingano zahoze ari iz'Urukiko rw'Ikirenga mbere y'uko Urukiko rw'Ubujurire rushyirwaho, ubu rwaretse uwo murongo wari waratanzwe n'Urukiko rw'Ikirenga rugakurikiza ibyo Itegeko riteganya, kuko umurongo uwo ariwo wose watangwa n'Urukiko utagomba kunyuranya n'itegeko. Byumvikana ko kudakurikiza uwo murongo atari ukuwirengagiza, ahubwo ni uko wavanyweho n'itegeko; hanarebwa ububasha bw'Uru Rukiko rugasanga rudafite ububasha bwo kuburanisha ibijyanye no kwemera icyaha bikozwe bwa mbere mu bujurire, bityo iby'uko Bimenyimana Jean Paul yagabanyirizwa ibihano hashingiwe ku kwemera icyaha kwe yifuza gukora bwa mbere mu bujurire bikaba bidashoboka ku mpamvu zasobanuwe. [27] Ku bijyanye n'uko Bimenyimana Jean Paul yagabanyirizwa ibihano hitawe ku myaka yari afite ubwo yakoraga icyaha, Urukiko rurasanga nk'uko bigaragara muri dosiye, Bimenyimana Jean Paul yaravutse ku wa 01/01/1999, akora icyaha akurikiranyweho ku wa 28/09/2018, afite imyaka

3 Urubanza n° RPA 0246/09/CS, rwaciwe ku wa 14/12/2012 n'Urukiko rw'Ikirenga, icyegeranyo cy'ibyemezo by'inkiko, Igitabo cya kabiri 2013, n° 17 cyasohotse muri Mata, 2013

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19, bivuze ko yari afite imyaka uwakoze icyaha aba ashobora kugikurikiranwaho nk'umuntu mukuru⁴. Urukiko rurasanga nk'uko byagiye byemezwa mu zindi manza zaciwe n'uru Rukiko⁵, bishoboka ko umucamanza yagabanyiriza ushinjwa igihano ashingiye no ku kigero yari arimo, nko kuba bigaragara ko ari bwo akiva mu bwana n'ubwo kubw'itegeko aba yujuje imyaka y'ubukure, ariko ibyo ntibishobora kurebwa byonyine, hejuru y'ibyo ushinjwa agomba kuba byibura yaremeye icyaha ku buryo budashidikanywaho kuva agitangira gukurikiranwa cyangwa agitangira kuburanishwa ku rwego rwa mbere, ibyo akaba atariko bimeze kuri Bimenyimana Jean Paul kuko yakomeje guhakana yivuye inyuma icyaha cyo kwangiza imyanya ndangagitsina, ikindi akaba yaragikoranye ubugome bukabije, bityo kuba yakoze icyaha afite imyaka mike ari bwo akiva mu bugimbi, ubwabyo byonyine bikaba bidahagije ku buryo byashingirwaho agabanyirizwa, ibyo Me Nyirabera Josephine asaba ko uwo yunganira yagabanyirizwa igihano hitawe ko igihe yakoraga icyaha yari muto ikaba nta ishingiro bifite. [28] Kubwo uwunganira Bimenyimana Jean Paul avuga ko yahabwa igihano cy'imirimo y'inyungu rusange, aho fugungwa burundu kuko mubyo igihano kigamije harimo no gukosora, Urukiko rw'Ubujurire, rurasanga nubwo icyo gihano giteganywa mu ngingo ya 35 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 nk'uko ryahinduwe n'Itegeko n° 69/2019 ryo ku wa 08/11/2019 riteganya ibyaha n'ibihano muri rusange, igika cya 4 cy'iyi ngingo, giteganya ko Iteka rya Perezida ariryo rigena uburyo bwo gukora igihano cy'imirimo y'inyungu rusange, bityo kuba iryo Teka ritarajyaho, ntaho Urukiko rwahera rugena icyo gihano, kuko nta buryo cyashyirwa mu bikorwa. [29] Urukiko rw'Ubujurire rushingiye ku bisobanuro byose byatanzwe, rurasanga nta kigomba guhinduka ku rubanza ° RPA 00563/2018/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 11/04/2019, igihano cyo gufungwa burundu Bimenyimana Jean Paul yahawe kikaba kigomba kugumaho. III.

ICYEMEZO CY'URUKIKO [30] Rwemeje ko ubujurire bwa Bimenyimana Jean Paul nta shingiro bufite; [31] Rwemeje ko urubanza n° RPA 00563/2018/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 11/04/2019, rudahindutse; [32] Rutegetse ko amagarama y'urubanza aherera ku isanduku ya Leta, kuko Bimenyimana Jean Paul afunze.

4 Reba ingingo ya 2,8° y'Itegeko N°68/2018 ryo ku wa 30/08/2018, nk'uko ryahinduwe n'Itegeko N° 69/2019 ryo ku wa 08/11/2019 riteganya ibyaha n'ibihano muri rusange, iteganya ko ... umwana: umuntu utarageza ku myaka cumi n'umunani (18) y'amavuko. 5 Urubanza no RPAA 00013/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 31/12/2021, haburana Habiyakare Olivier n'Ubushinjacyaha.

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