

RWANDA / JUDGMENT

UBUSHINJACYAHA v MUKANDAMAGE

RPAA 00538/2025/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v MUKANDAMAGE

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Text

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UBUSHINJACYAHA v MUKANDAMAGE [Rwanda URUKIKO RW'UBUJURIRE - RPAA 00538/2025/CA (Gakwaya, P.J.) 30 Ukuboza 2025] Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Inyito y'icyaha – Inkiko ziburanisha ibikorwa bigize icyaha, ntiziburanisha inyito y'icyaha yemejwe n'Ubushinjacyaha cyangwa n'Inkiko zabanje, bivuze ko Inkiko zifite inshingano yo guha ibikorwa bigize icyaha inyito ikwiye iteganywa n'amategeko, ko ntizitegetswe gukurikiza inyito y'icyaha yatanzwe n'Ubushinjacyaha. Incamake y'ikibazo: Ubushinjacyaha bwareze Mukandamage mu Rukiko Rwisumbuye rwa Ngoma icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi nyuma yuko afashwe na police afite udupfunyika dutatu (3) tw'urumogi yari asigaranye kurwo yari arimo gucuruza, avuga ko ari urwo yari yazaniwe n'umuhungu we. Urwo Rukiko rwaciye urubanza rwemeza ko ahamwa no kubika no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, rumuhanisha igihano cy'igifungo cy'imyaka cumi n'icyenda (19) n'amezi atandatu (6), ko ariko rurebye imibereho ye rubona ntaho yakura ihazabu. Mukandamage yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana asaba kugabanyirizwa igihano kuko yaburanye yemera icyaha, kandi akaba ari ubwa mbere akurikiranywe mu Nkiko. Urwo Rukiko narwo rwaciye urubanza rwemeza ko hari impamvu nyoroshyacyaha zikwiye gutuma

Mukandamage yongera kugabanyirizwa igihano, rumuhanisha igihano cy'igifungo cy'imyaka 15, ko kandi igihano cy'ihazabu atagihawe kuko no mu Rukiko Rwisumbuye atagihawe kandi Ubushinjacyaha bukaba butarabijuririye. Mukandamage yajuririye Urukiko rw'Ubujurire avuga ko anenga Urukiko Rukuru kuba yararusabye kumugabanyiriza igihano kuko yaburanye yemera icyaha agisabira imbabazi kuva mu ntangiriro, ariko rukaba rwaramuhanishije igihano kirekire cy'igifungo cy'imyaka cumi n'itanu (15), kandi yarafatanywe udupfunyika dutatu (3) tw'urumogi twonyine, bari bamurangiyemo umuti w'inzoka, ko atarucuruzaga. Ubushinjacyaha bwo buvuga ko ibisabwa na Mukandamage byo guhindurirwa inyito y'icyaha kuko ngo yemera icyaha cyo gufatanwa urumogi, agasaba no kugabanyirizwa igihano, nta shingiro bifite kuko kuva iperereza ritangiye, ndetse no mu kuburana urubanza mu Rukiko Rukuru yemeye icyaha cyo gucuruza urumogi, ko rero impamvu agaragaza mu bujurire atarizo zaburanyweho, bityo ko ubujurire bwe nta shingiro bwahabwa. Incamake y'icyemezo: Inkiko ziburanisha ibikorwa bigize icyaha, ntiziburanisha inyito y'icyaha yemejwe n'Ubushinjacyaha cyangwa n'Inkiko zabanje, bivuze ko Inkiko zifite inshingano yo guha ibikorwa bigize icyaha inyito ikwiye iteganywa n'amategeko, ko ntizitegetswe gukurikiza inyito y'icyaha yatanze n'Ubushinjacyaha. Ubujurire nta shingiro bufite. Imanza zifashishijwe: Ubushinjacyaha vs Nsabimana alias Sankara n'Abandi, RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 4/4/2022.

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Ubushinjacyaha vs Habanabakize, RPAA 00241/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 30/11/2022. Inyandiko z'abahanga: Général Likulia Bolongo, Droit pénal spécial zaïrois, Tome I, 2e édition, L.G.D.J., Paris, 1985, P.20. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 21/2/2022, Mukandamage Immaculée yafashwe na police afite udupfunyika dutatu

- (3) tw'urumogi yari asigaranye kurwo yari arimo gucuruza, avuga ko ari urwo yari yazaniwe n'umuhungu we witwa Munyentwari François ari udupfunyika dutandatu (6). [2] Iperereza rirangiye, Ubushinjacyaha bwareze Mukandamage Immaculée mu Rukiko Rwisumbuye rwa Ngoma icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, busaba ko cyamuhama agahanishwa igihano cy'igifungo cya burundu n'ihazabu y'amafaranga y'u Rwanda miliyoni mirongo itatu (30.000.000 Frw). [3] Mukandamage Immaculée yaburanye yemera icyaha, avuga ko yari amaze icyumweru acuruza urumogi yari yazaniwe n'umuhungu we ari udupfunyika dutandatu (6) ngo arugurishe k'uwitwa Rasta kamwe kamwe kuri 250 Frw, akuremo amafaranga yo kugura umunyu no kwishyura abahinzi, asaba imbabazi avuga ko yabitewe n'ubukene. [4] Mu rubanza no RP 00265/2022/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 31/3/2022, rushingiye ku kwemera icyaha kwa Mukandamage Immaculée no ku buhamya bwa Uwingabire Veneranda umushinja, rwemeje ko ahamwe no kubika no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, rumuhanisha igihano cy'igifungo cy'imyaka cumi n'icyenda (19) n'amezi atandatu (6), ko ariko rurebye imibereho ye rubona ntaho yakura ihazabu. [5] Mukandamage Immaculée yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana asaba kugabanyirizwa igihano kuko yaburanye yemera icyaha, kandi akaba ari ubwa mbere akurikiranywe mu Nkiko. [6] Mu rubanza no RPA 00619/2022/HC/RWG, rwaciwe n'Urukiko Rukuru, Urugereko rwa

Rwamagana ku wa 15/5/2025, rushingiye ku ngingo ya 60 y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, nk'uko yahinduwe n'iya 21 (a) y'Itegeko n° 059/2023 ryo ku wa 4/12/2023, kuba kuva mu ntangiriro yaraburanye yemera icyaha cyo gucuruza urumogi ku buryo budashidikanywaho no kuba ari ubwa mbere akurikiranywe mu Nkiko, rwemeje ko ari impamvu nyoroshyacyaha zikwiye gutuma Mukandamage Immaculée yongerera kugabanyirizwa igihano, rumuhanisha igifungo cy'imyaka 15, ko ariko igihano cy'ihazabu

1 Iteganya ko: “Iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano cy'igifungo cya burundu ariko ntikijye munsu y'igihano cy'igifungo cy'imyaka 15, naho ihazabu ikaba ishobora kugabanywa kugeza kuri $\frac{1}{4}$ y'ihazabu ntoya iteganywa n'itegeko”

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atagihawe kuko no mu Rukiko Rwisumbuye atagihawe kandi Ubushinjacyaha bukaba butarabijurirye. [7] Ku wa 23/5/2025, Mukandamage Immaculée yajurirye Urukiko rw'Ubujurire avuga ko anenga Urukiko Rukuru kuba yararusabye kumugabanyiriza igihano kuko yaburanye yemera icyaha agisabira imbabazi kuva mu ntangiriro, ariko rukaba rwaramuhanishije igihano kirekire cy'igifungo cy'imyaka cumi n'itanu (15), kandi yarafatanywe udupfunyika dutatu (3) tw'urumogi twonyine, bari bamurangiyemo umuti w'inzoka, ko atarucuruzaga ko ndetse nta n'ikibigaragaza kuko nta n'umuhungu agira urumuzanira, nta n'umuntu bagaragaje yarugurishijeho, akaba asaba uru Rukiko kumuhindurira inyito y'icyaha, agahamwa n'icyaha cyo gufatanwa urumogi. Yongeraho ko yasabye gusubikirwa igihano akaba atarabihawe kandi ashaje, ndetse akaba afite abana babiri (2) b'imfubyi yareraga yasize mu rugo bonyine. [8]

Ubushinjacyaha buvuga ko ibisabwa na Mukandamage Immaculée byo guhindurirwa inyito y'icyaha kuko ngo yemera icyaha cyo gufatanwa urumogi, agasaba no kugabanyirizwa igihano, nta shingiro bifite kuko kuva iperereza ritangiye, ndetse no mu kuburana urubanza mu Rukiko Rukuru yemeye icyaha cyo gucuruza urumogi, ndetse hari n'umutangabuhamya umushinja, ko rero impamvu agaragaza mu bujurire atarizo zaburanyweho, bityo ko ubujurire bwe nta shingiro bwahabwa. [9] Urubanza rwahawe no RPAA 00538/2025/CA, ruburanishwa ku wa 16/12/2025, Mukandamage Immaculée yunganiwe na Me Byiringiro Kalisa. [10] Harebwe imyanzuro n'imiburanire y'ababuranyi, ikibazo kizasuzumwa muri uru rubanza ni ukumenya niba inyito y'icyaha Mukandamage Immaculée yahamijwe ikwiye guhinduka, agahamwa n'icyaha cyo gufatanwa urumogi no kumenya niba harakozwe amakosa yo kutamusubikira igihano kandi ashaje no ku mpamvu z'uko yasize abana birera mu rugo. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO Kumenya niba inyito y'icyaha Mukandamage Immaculée yahamijwe ikwiye guhinduka agahamwa n'icyaha cyo gufatanwa urumogi [11] Mukandamage Immaculée na Me Byiringiro Kalisa umwunganira, bavuga ko yaburanye yemera ko yafatanywe udupfunyika dutatu (3) tw'urumogi rwo kwinywera yivura mu nda kuko yari arwaye, ko atarucuruzaga kuko n'abaje kumusaka bagiye mu nzu ye bagashakamo urundi bakarubura, ko rero ibyo bigaragara ko iperereza ryakozwe ridahagije kuko nta muntu waba yarabajijwe ngo yemeze ko asanzwe azi ko arucuruza, ko ahubwo ibimenyetso byashingiweho ahamwa no kurucuruza bishidikanywaho n'ingano y'urwo yafatanywe ikaba ari ntoya cyane nabyo bigaragaza ko nta mugambi wo

kurucuruza yari afite, basaba ko yahamwa no gufatanwa urumogi yari agamije kurunywa kandi akagabanyirizwa igihano. [12] Me Byiringiro Kalisa akomeza avuga ko Mukandamage Immaculée yari akwiye kugabanyirizwa igihano ku buryo buhagije, hashingiwe ku mpamvu nyoroshyacyaha yagaragazaga, ko ndetse kuba yarakomeje kugaragaza ko yumva uburemere bw'icyaha yakoze akakicuza abikuye ku mutima, nta cyari kubuza ko yongera kugabanyirizwa igihano ku buryo

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buhagije; ko rero ashingiye ku ngingo ya 60 y'Itegeko no 68/2018 ryo ku wa 30/8/2018 nk'uko ryahinduwe n'Itegeko no 59/2023 ryo ku wa 4/12/2023 riteganya ibyaha n'ibihano muri rusange, mu ngingo yaryo ya 2, iteganya ko iyo hari impamvu nyoroshyacyaha igihano gishobora kugabanywa kugera kuri ½ cy'igihano gito giteganyirijwe icyaha, uru Rukiko rwamuha amahirwe akongera kugabanyirizwa igihano, kuko nta n'ingaruka zikomeye icyaha yakoze cyateje. Asoza avuga ko mbere na mbere basaba ko inyito y'icyaha yahinduka agahamwa no gufatanwa no kunywa urumogi, rwabibona ukundi, hakemezwa ko urubanza yajuririye ruhindutse ku birebana n'igihano. [13] Ubushinjacyaha buvuga ko Mukandamage Immaculée yafashwe akekwa gucuruza urumogi biturutse ku makuru Abayobozi bari bahawe y'uko arucuruza, ndetse ubwe mu iperereza no mu Nkiko kugeza aburana urubanza ajuririra yemeraga ko yacuruzaga urumogi aruzaniwe n'umuhungu we ngo akuremo amafaranga y'umunyu n'ay'abahinzi, ko ibyo avuga muri uru Rukiko asaba guhindurirwa inyito y'icyaha ari ubwa mbere abivuze, kandi ko kuba umuburanyi yahindura imvugo igihe aburana urubanza mu mizi, bidatesha agaciro ukwemera icyaha kwe, hashingiwe ku murongo2 wafashwe mu manza zitandukanye uvuga ko guhakana icyaha umuburanyi yemeye mu iperereza ubwabyo bidatesha ukwemera kwe agaciro, kuko Umucamanza afite ububasha bwo gusuzumana ubushishozi no guha agaciro izo mvugo z'uregwa wemeye icyaha harebwe ibikorwa aregwa, igihe asanga uko kwemera kudashidikanywaho akabiha agaciro ashingiye ku mutimanama we (intime conviction), ko rero basaba uru Rukiko kwemeza ko urubanza rujuririrwa rugumana agaciro karwo. UKO URUKIKO RUBIBONA [14] Impaka muri uru rubanza zishingiye ku kumenya niba inyito y'icyaha cyo gucuruza urumogi Mukandamage Immaculée yahamijwe yahinduka, agahamwa no kurufatanwa agamije kurwinywera kuko aribyo yemera nk'uko bigaragazwa n'ingano ntoya y'udupfunyika 3 twarwo yasanganywe. [15] Nk'uko byemejwe mu rubanza no RPAA 00241/2022/CA3 rwaciwe n'Urukiko rw'Ubujurire ku wa 30/11/2022, ihame ry'amategeko nshinjabyaha ryemeza ko Inkiko ziburanisha ibikorwa bigize icyaha, zitaburanisha inyito y'icyaha yemejwe n'Ubushinjacyaha cyangwa n'Inkiko zabanje, ibi bivuze ko Inkiko zifite inshingano yo guha ibikorwa bigize icyaha inyito ikwiye iteganya n'amategeko, ko zidategetswe gukurikiza inyito y'icyaha yatanze n'Ubushinjacyaha, bisobanura na none ko inyito y'icyaha ishobora guhinduka igihe cyose Urukiko rutarafata icyemezo ndakuka4.

2 urubanza no. RPAA 00480/2023/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 26/2/2025 haburana Ubushinjacyaha na Twizeyimana Jean de Dieu (igika cya 18). 3 Reba urubanza no RPAA 00241/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 30/11/2022, haburana Ubushinjacyaha na Habanabakize Sulaiman. 4 "Aussi longtemps que la décision judiciaire n'est pas encore devenue irrévocable, toute qualification est susceptible de modification. En effet, le parquet n'est pas lié

par la qualification retenue par l'officier de police judiciaire ou par la partie lésée dans sa plainte. De même la juridiction de jugement étant saisie de faits, elle peut souverainement modifier la qualification qui lui est proposée par l'officier du ministère public ou par la partie civile en cas de citation directe”, Général Likulia Bolongo, Droit pénal spécial zaïrois, Tome I, 2e édition, L.G.D.J., Paris, 1985, P.20.

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[16] Nk'uko bigaragara mu gace ka 2, aka 7 n'aka 11 tw'urubanza rujuririrwa, Urukiko Rukuru rwagaragaje ko ku rwego rwa mbere, Urukiko Rwisumbuye rwa Ngoma rwahamije Mukandamage Immaculée icyaha cyo gucuruza urumogi rushingiye ku kuba yarabyemeye mu iperereza, ku mvugo z'umutangabuhamya Uwingabire Veneranda wemeje ko yari ahari igihe abapolisi hamwe n'umuntu wari uje kugura urumogi, bamufatanaga udupfunyika 3 twarwo no kuba hari inyandikomvugo irufatira uregwa yashyizeho umukono. Rwasobanuye ko mu myanzuro ye yo kujurira yagaragaje ko nta kindi anenga urubanza uretse gusaba kugabanyirizwa igihano, ko kandi yanireguye avuga ko kuba yaracuruye urumogi bitari akamenyero, ahubwo yabitewe n'ubukene no kuba yarashakagamo amafaranga yo kugura umunyu n'ayo kwishyura abahinzi, asaba imbabazi ko atazongera kurucuruza. Rwemeje rero ko kuba aburana yemera icyaha no kuba ari ubwa mbere akoze icyaha bizwi, nta cyabuza ko yakongera kugabanyirizwa igihano ku buryo buhagije, rushingiye ku ngingo ya 60 y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, nk'uko yahinduwe n'iya 25 (a) y'Itegeko n° 059/2023 ryo ku wa 4/12/2023, rumuhanisha igihano cy'igifungo cy'imyaka cumi n'itanu (15), rwemeza kandi ko nta gihano cy'ihazabu ahanishijwe kuko no ku rwego rubanza, ntacyo yahawe kandi Ubushinjacyaha bukaba butarabijyuririye. [17] Nk'uko bigaragara Mukandamage Immaculée abazwa mu Bugenzacyaha ku wa 21/2/2022, yasobanuye ko umuhungu we witwa Munyentwari François yaje kumusura amuzanira udupfunyika 6 tw'urumogi ngo arucuruze azabonemo amafaranga yo guhemba umukozi uzamuterera ibishyimbo, ahita abona abakiriya barimo n'uwitwa Rasta amugurishaho tubiri (2) n'undi mugabo atibuka. Yasobanuye kandi ko uwo muhungu we amuha utwo dupfunyika yari azi neza ko ari urumogi yamuzaniye, uretse ko atari azi ko kurucuruza ari icyaha kubera ko atavaga mu rugo, ahubwo abaruguraga bamusangaga mu rugo, ko kandi yatangiye kurucuruza guhera ku wa 15/2/2022. [18] Urukiko rw'Ubujurire rurasanga mu bujurire bwa kabiri, Mukandamage Immaculée avuga ko yagombaga guhamwa n'icyaha cyo gufatanwa urumogi kuko atigeze arucuruza, ahubwo yarufatanywe ari urwe rwo kunya, nk'uko n'ingano y'udupfunyika 3 yafatanywe ibigaragaraza, nyamara nk'uko bigaragara mu duce tubanziriza, yasobanuye mu buryo bwumvikana mu magambo ye bwite igihe yatangiriye gucuruza urumogi, uko n'uko yarucuruzaga, ndetse na bamwe mu bakiriya yarugurishijeho, bityo rero kuba kuri uru rwego abihakana ashingiye ku kuba yarafatanywe ingano ntoya y'urumogi, nyamara bigaragara neza ko ari urwo yari yasigaranye kurwo yari asanzwe acuruza bikaba ataribyo byerekana cyangwa bihamya ko ari urwo yinyweraga nk'uko abivuga ubu, bivuze ko ibikorwa yemeye kuva mu ntangiriro bishimangira ko nta makosa Urukiko Rukuru rwakoze rumuhamya kandi rumuhanira icyaha cyo gucuruza urumogi,

n'ubwo mu bujurire nta kindi yanengaga uretse gusaba kugabanyirizwa igihano gusa. [19] Urukiko rw'Ubujurire rurasanga hagendewe rero ku bikorwa Mukandamage Immaculée yakoze kandi yemeye, icyaha kigomba gukomeza kumuhama ari icyo gucuruza urumogi, byumvikanisha ko impamvu ye y'ubujurire kuri iyi ngingo nta shingiro ifite.

“ Le juge d'appel et le (.....) procèdent également de la même manière. Car ni l'un ni l'autre n'est lié par la qualification du premier juge. Ils doivent à leur tour examiner l'exactitude de la première qualification”, Général Likulia Bolongo, op.cit., P.21. 5 Iteganya ko: “Iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano cy'igifungo cya burundu ariko ntikijye munsu y'igihano cy'igifungo cy'imyaka 15, naho ihazabu ikaba ishobora kugabanywa kugeza kuri ¼ y'ihazabu ntoya iteganywa n'itegeko”

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2. Kumenya niba Urukiko Rukuru rwarakoze amakosa yo kudasubikira Mukandamage Immaculée igihano kandi ashaje yaranasize abana mu rugo birera [20] Mukandamage Immaculée avuga ko anenga Urukiko Rukuru kuba rutaramusubikiye igihano kandi yararugaragarije ko ashaje, ndetse akaba yarasize abana mu rugo birera, asaba uru Rukiko gukosora ayo makosa. [21] Ubushinjacyaha bwashyize ko urubanza rwajuririwe rugumana agaciro mu ngingo zarwo zose. UKO URUKIKO RUBIBONA [22] Impaka kuri iki kibazo zishingiye ku kumenya niba Urukiko Rukuru rwarakoze amakosa yo kudasubikira Mukandamage Immaculée igihano cy'igifungo cy'imyaka 15 rwamuhanishije. [23] Nk'uko byemejwe mu rubanza n° RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 4/4/2022, haburana Ubushinjacyaha na Nsabimana Callixte bakunze kwita Sankara na bagenzi be, isubikagihano rishingira ku gihano cy'igifungo kitarengeje imyaka itanu (5) cyemejwe n'Urukiko. [24] Urukiko rw'Ubujurire rurasanga nk'uko byagarutseweho mu gace ka 16 k'uru rubanza bigaragara ko Mukandamage Immaculée yahanishijwe igihano cy'igifungo cy'imyaka 15, ibyo rero birebwe hamwe n'umurongo uru Rukiko rwatanze ugaragara mu gace kabanziriza aka, byumvikanisha ko ibyo asaba byo gusubikirwa igihano bidashoboka kuko icyo yahawe kirengeje igifungo cy'imyaka itanu (5), bityo iyi ngingo ye y'ubujurire nta shingiro ifite. [25] Hashingiwe ku byagaragajwe haruguru byose, Urukiko rw'Ubujurire rurasanga ubujurire bwatanze na Mukandamage Immaculée nta shingiro bufite. III. ICYEMEZO CY'URUKIKO [26] Rwemeje ko ubujurire bwatanze na Mukandamage Immaculée nta shingiro bufite; [27] Rwemeje ko nta gihindutse ku mikirize y'urubanza n° RPA 00619/2022/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 15/5/2025. [28] Rwemeje ko igihano cy'igifungo cy'imyaka cumi n'itanu (15) yahanishijwe kigumyeho; [29] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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