

RWANDA / JUDGMENT

UBUSHINJACYAHA v MUKANTWARI

RPAA 00448/2025/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v MUKANTWARI

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Text

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UBUSHINJACYAHA v MUKANTWARI [Rwanda URUKIKO RW'UBUJURIRE - RPAA 00448/2025/CA (Gakwaya, P.J.) 30 Ukuboza 2025] Amategeko agenga imanza nshinjabyaha – Inyito y'icyaha – 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 yatanzwe n'Ubushinjacyaha. Amategeko agenga ibimenyetso – Ibimenyetso mu manza nshinjabyaha – Imvugo z'uregwa – Kuba uregwa yagera imbere y'Urukiko agahindura imvugo, agahakana icyaha yari yaremeye mu nzego z'iperereza, ntibivuze ko ibyo avugira mu Rukiko agihakana ari byo bigomba kwemerwa, ahubwo Umucamanza afite ubushobozi bwo gushishoza no gusesengura akoresheje umutimanama we, agaciro aha iryo hinduramvugo. Incamake y'ikibazo: Ubushinjacyaha bwareze Mukantwari mu Rukiko Rwisumbuye rwa Ngoma icyaha cyo gutunda no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi nyuma yuko afashwe afite ikilo kimwe n'inusu (1,5kg) cy'urumogi, agiye kurugurisha k'uwitwa Bukuru utuye i Nyarubuye, iyo akaba ari inshuro ya kabiri yari arumushyiriye ngo arugure. Urwo Urukiko rwaciye urubanza rwemeza ko ahamwa n'icyaha cyo gutunda no

gucuruza urumogi, ariko kuko ari ubwa mbere akurikiranyweho icyaha bizwi, rwemeza ko bikwiye kumubera impamvu nyoroshyacyaha ituma agabanyirizwa igihano, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri n'ibihumbi magana atanu (20.500.000 Frw). Mukantwari yajuririyeye Urukiko Rukuru, Urugereko rwa Rwamagana asaba kugabanyirizwa ibihano kubera ko yakoze icyaha abitewe n'ubukene, ko urwo rumogi yaruhawe n'umuntu ngo arumujyanire amuhembe amafaranga ibihumbi icumi (10.000 Frw), yasabye kandi ko igihano yahanishwa cyasubikwa kubera ko yasize abana atazi uko babayeho. Urwo Rukjiko narwo rwaciye urubanza rusanga hari impamvu zkwiyeye gutuma agabanyirizwa ibihano nuko rumuhanisha igihano cy'igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw). Mukantwari nanone yarajuririyeye noneho mu Rukiko rw'Ubujurire avuga ko akomeje gutakamba asaba kongera kugabanyirizwa igihano kuko kuva mu ntangiriro yemeye icyaha ku buryo budashidikanywaho, agaragariza Urukiko ko yasize abana badafite gikurikirana ariko rumuhanisha igihano kiremereye, ko ndetse n'ubu akomeje kwemera ko yafatanywe urumogi yari atwaje Bukuru, akaba nta mugambi mubisha yari afite ahubwo ari uko yari yabuze ibyo agaburira abana be, ibi bisobanuro bikaba bitarahawe agaciro, ariyo mpamvu asaba uru Rukiko kubishingiraho rukamuhanisha igihano gito gishoboka, ndetse agakurirwaho ihazabu kuko nayo Urukiko rwanze kuyimukuriraho kandi yararugaragariye ko ntaho yayikura. Mu iburanisha, yavuze ko ubujurire bwe bushingiye ku gusaba guhindurirwa inyito y'icyaha kuko atigeze yemera ko yacurujye urumogi, ahubwo ko urwo yafatanywe rutari urwe rwari urwa Bukuru wari urumuhaye ngo arumujyanire iwe, ko rero icyaha cyari gikwiye kumuhama ari ugufatanwa urumogi.

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Ubushinjacyaha bwo buvuga ko uregwa yahamijwe icyaha cyo gutunda no gucuruza urumogi kubera ko mu Bugenzacyaha yacyemeye agasobanura uko yagikoze, ko kuba yarahinduye imvugo agiye kuburana mu mizi, nta gaciro byahabwa. Incamake y'icyemezo: 1. Ihame ry'amategoko 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'amategoko, ko zidategatswe gukurikiza inyito y'icyaha yatanze n'Ubushinjacyaha.

2. Kuba uregwa yagera imbere y'Urukiko agahindura imvugo, agahakana icyaha yari yaremeye mu nzego z'iperereza, ntibivuze ko ibyo avugira mu Rukiko agihakana ari byo bigomba kwemerwa, ahubwo Umucamanza afite ubushobozi bwo gushishoza no gusesengura akoresheje umutimanama we, agaciro aha iryo hinduramvugo. Ubujurire nta shingiro bufite. Imanza zifashishijwe: Ubushinjacyaha vs Sgt. Ntaganira n'abandi, RPA 0010/06/CS-RPA 0011/06/CS-RPA 0012/06/06/CS rwaciye n'Urukiko rw'Ikirenga ku wa 18/7/2008. Ubushinjacyaha vs Nsanzamahoro, RPAA 00319/2022/CA rwo ku wa 17/11/2023. Ubushinjacyaha vs Habanabakize, RPAA 00241/2022/CA rwaciye 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 24/11/2021, MUKANTWARI Immaculée yafashwe afite ikilo kimwe n'inusu (1,5kg) cy'urumogi, agiye kurugurisha k'uwitwa Bukuru utuye i Nyarubuye, iyo akaba ari inshuro ya kabiri yari arumushyiriye ngo arugure. [2] Iperereza rirangiye, Ubushinjacyaha bwareze MUKANTWARI Immaculée mu Rukiko Rwisumbuye rwa Ngoma icyaha cyo gutunda no 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] MUKANTWARI Immaculée yaburanye ahakana icyaha, avuga ko urumogi yafatanywe rutari urwe, ahubwo ko hari uwari urumuhaye ngo arumutwaze.

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- [4] Mu rubanza no RP 01659/2021/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 15/12/2021, rushingiye ku kuba abazwa mu Bugenzacyaha, MUKANTWARI Immaculée yaravuze ko akura urumogi muri Tanzaniya akaruzana kururanguza mu Rwanda, urwo yafatanywe akaba yari yarugurishije Bukuru, amusaba kurumugereza iwe i Nyarubuye, ko ari inshuro ya kabiri yari arumugurishije, ariko urwo baguze mbere akaba yarakwitwariye, kuba hari umutangabuhamya HAKIZIMANA Janvier watanze amakuru yatumye uregwa afatwa, rushingiye kandi kuri raporo y'inzego z'ibanze, rwemeje ko ahamwa n'icyaha cyo gutunda no gucuruza urumogi, ariko kuko ari ubwa mbere akurikiranyweho icyaha bizwi, rwemeza ko bikwiye kumubera impamvu nyoroshyacyaha ituma agabanyirizwa igihano, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri n'ibihumbi magana atanu (20.500.000 Frw). [5] MUKANTWARI Immaculée yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana asaba kugabanyirizwa ibihano kubera ko yakozwe icyaha abitewe n'ubukene, ko urwo rumogi yaruhawe n'umuntu ngo arumujyanire amuhembe amafaranga ibihumbi icumi (10.000 Frw), yasabye kandi ko igihano yahanishwa cyasubikwa kubera ko yasize abana atazi uko babayeho. [6] Mu rubanza no RPA 00058/2022/HC/KIG rwaciwe n'Urukiko Rukuru, ku wa 14/4/2022, rushingiye ku mpamvu nyoroshyacyaha zo kuba ari ubwa mbere MUKANTWARI Immaculée akoze icyaha, kuba urumogi yafatanywe rwarafatiriwe no kuba yarasobanuye ko yishoye mu bikorwa byo kurucuruza kubera ubukene, akwiye kugabanyirizwa igihano, ahanishwa igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw). [7] Ku wa 30/4/2025, MUKANTWARI Immaculée yajuririye Urukiko rw'Ubujurire avuga ko akomeje gutakamba asaba kongera kugabanyirizwa igihano kuko kuva mu ntangiriro yemeye icyaha ku buryo budashidikanywaho, agaragariza Urukiko ko yasize abana badafite gikurikirana ariko rumuhanisha igihano kiremereye, ko ndetse n'ubu akomeje kwemera ko yafatanywe urumogi yari atwaje Bukuru, akaba nta mugambi mubisha yari afite ahubwo ari uko yari yabuze ibyo agaburira abana be, ibi bisobanuro bikaba bitarahawe agaciro, ariyo mpamvu asaba uru Rukiko kubishingiraho rukamuhanisha igihano gito gishoboka, ndetse agakurirwaho ihazabu kuko nayo Urukiko rwanze kuyimukuriraho kandi yarakuragariye ko ntaho yayikura. [8] Ubushinjacyaha buvuga ko kuba MUKANTWARI Immaculée yahamijwe icyaha cyo gutunda no gucuruza urumogi kubera ko mu Bugenzacyaha yacyemeye agasobanura uko yagikoze¹, kuba yarahinduye

imvugo agiye kuburana mu mizi, nta gaciro byahabwa, 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

1 Mu Bugenzacyaha yaracyemeye avuga ko urumogi yafatanywe rwari urwa Bukuru kuko yari yarumugurishije akamusaba kuruvana iwe Gatore akarumugereza Nyarubuye kuko ariho atuye, avuga ko ubwa mbere bagura yarwitwariye, urwa kabiri akamusaba kurumugereza iwe, abajijwe impamvu ahakana ko urwo rumogi atari urwe avuga ko ari uko yari yamaze kururanguza, akomeza avuga ko urumogi acuruza arukura Tanzania hanyuma akaruranguza. 2 Zurubanza 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).

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aregwa, igihe asanga uko kwemera kudashidikanywaho akabiha agaciro, ashingiye ku mutimanama we (intime conviction). [9] Urubanza rwahawe no RPAA 00448/2025/CA, ruburanishwa ku wa 16/12/2025, MUKANTWARI Immaculée yunganiwe na Me BYIRINGIRO KALISA, Ubushinjacyaha buhagarariwe na BUNYOYE Grâce, Umushinjacyaha ku rwego rw'Igihugu. [10] Mu iburanisha, MUKANTWARI Immaculée yavuze ko ubujurire bwe bushingiye ku gusaba guhindurirwa inyito y'icyaha kuko atakoze kandi atigeze yemera ko yacurujwe urumogi, ahubwo ko urwo yafatanywe rutari urwe rwari urwa Bukuru wari urumuhaye ngo arumujyanire iwe, ko rero icyaha cyari gikwiye kumuhama ari ugufatanwa urumogi, akaba asaba uru Rukiko kuba aricyo rumuhanira. [11] Harebwe imiburanire y'ababuranyi, ikibazo kigomba gusumwa mu rubanza ni ukumenya niba inyito y'icyaha MUKANTWARI Immaculée yahamijwe yo gutunda no gucuruza urumogi ikwiye guhinduka, agahamwa no gufatanwa urumogi. II. IKIBAZO KIGIZE URUBANZA N'ISUZUMWA RYACYO Kumenya niba inyito y'icyaha MUKANTWARI Immaculée yahamijwe cyo gutunda no gucuruza urumogi ikwiye guhinduka, agahamwa n'icyaha cyo gufatanwa urumogi [12] MUKANTWARI Immaculée avuga ko atigeze yemera ko yacurujwe urumogi kuko urwo yafatanywe rutari urwe ahubwo rwari urwa Bukuru yari amuhaye ngo arumutwaze arumugereze iwe mu rugo i Nyarubuye, amuhembe amafaranga 10.000 Frw, ko rero asaba uru Rukiko guhindura inyito y'icyaha yahamijwe cyo gutunda no gucuruza urumogi, agahamwa n'icyaha cyo kuba yararufatanywe. [13] Me BYIRINGIRO KALISA, wunganira MUKANTWARI Immaculée, avuga ko kuva mu ntangiriro yemeye icyaha ku buryo budashidikanywaho agaragaza impamvu yamuteye gucuruza urumogi ko ari ubukene yari afite, ko rero Urukiko rwagombaga kubishingiraho bifatiwe hamwe n'ingingo 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 riteganywa ibyaha n'ibihano muri rusange, mu ngingo yaryo ya 2 (a), rukamugabanyiriza igihano ku buryo buhagije, agahabwa igihano kiri muni y'igito giteganywa n'Itegeko, kuko icyaha yakoze nta ngaruka cyateje muri sosiyete, ko kandi imirongo itandukanye yafashwe n'Inkiko itavanaho ubwisanzure n'ubushishozi bw'Urukiko mu gutanga igihano. [14] Ubushinjacyaha buvuga ko kuva ku ikubitiro MUKANTWARI Immaculée yemeye ko yacuruzaga urumogi, ndetse ko yari inshuro

ya kabiri yari arugurishije kwa Bukuru, uretse ko inshuro ya kabiri afatwa aribwo yari yamusabye kurumujyanira mu rugo, ku nshuro ya mbere akaba yari yarwitwariye, ko rero imvugo ze zo mu iperereza zikwiye kugumana agaciro kazo agakomeza guhamwa n'icyaha yahamijwe cyo gutunda no gucuruza urumogi, kandi hakemezwa ko nta gihindutse ku mikirize y'urubanza yajuririye.

UKO URUKIKO RUBIBONA

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[15] Impaka muri uru rubanza zishingiye ku kumenya niba inyito y'icyaha MUKANTWARI Immaculée yahamijwe ikwiye guhinduka, agahamwa no gufatanwa urumogi aho kuba kurutunda no kurucuruza. [16] 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. [17] Nk'uko byemejwe mu rubanza no RPA 0010/06/CS-RPA 0011/06/CS-RPA 0012/06/06/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 18/7/2008, haburana Ubushinjacyaha na Sgt. NTAGANIRA Eugène na bagenzi be, kuba uregwa yagera imbere y'Urukiko agahindura imvugo, agahakana icyaha yari yaremeye mu nzego z'iperereza, ntibivuze ko ibyo avugira mu Rukiko agihakana ari byo bigomba kwemerwa, ahubwo Umucamanza afite ubushobozi bwo gushishoza no gusesengura akoresheje umutimanama we, agaciro aha iryo hinduramvugo; uwo murongo kandi wongeye gushingirwaho mu manza zitandukanye zaciwe n'Urukiko rw'Ubujurire nk'urubanza n° RPAA 00319/2022/CA rwo ku wa 17/11/2023, haburana Ubushinjacyaha na NSANZAMAHORO Dominique. [18] Mu gace ka 8 k'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko kuba MUKANTWARI Immaculée yarajuriye asaba kugabanyirizwa ibihano, kandi akaba ari ubwa mbere akoze icyaha icyo ari cyo cyose no kuba urumogi yafatanwe rwarafatiriwe, ndetse no kuba avuga ko yishoye muri icyo cyaha kubera ubukene, 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, rwemeje ko akwiye kugabanyirizwa igihano, rumuhanisha igifungo cy'imyaka 15 n'ihazabu ya miliyoni eshanu 5.000.000 Frw, ko ariko icyo gihano atagisubikirwa kuko kiri hejuru y'imyaka itanu (5)6. [19] Nk'uko bigaragara MUKANTWARI Immaculée abazwa mu Bugenzacyaha yavuze ko impamvu atemera icyaha cyo gucuruza urumogi ari uko urwo yafatanywe rutari urwe, ahubwo

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. “ 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” 6 Nk’uko ingingo ya 3, agace kayo ka mbere, y’Itegeko n° 059/2023 ryo ku wa 4/12/2023 riteganyaye ibyaha n’ibihano muri rusange, ibiteganyaye.

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yari arushyiriyeho Bukuru wari bubimuhemebere 10.000 Frw, ko uyu yaje iwe kurumuguraho amusaba ko yarumugereza iwe mu rugo i Nyarubuye, iyo ikaba ari inshuro ya kabiri yari aje kurumuguraho, ko ndetse ateranyije inshuro zombi baruguze yari amaze kumugurishaho ibilo bibiri (2kg), ariko ku nshuro ya mbere akaba yararwitwariye, yavuze kandi ko urwo agurisha ubusanzwe aruvana muri Tanzanie, kandi ko abizi ko gucuruza urumogi ari icyaha kibi. [20] Urukiko rw’Ubujurire rurasanga imiburanire ya MUKANTWARI Immaculée kuri uru rwego rw’ubujurire bwa kabiri, irebwe hamwe n’imirongo yagaragajwe haruguru, yumvikanisha ko kuba yarageze mu Rukiko agahindura imvugo ahakana ibikorwa yari yemeye ku rwego rw’iperereza, ataribyo byaba impamvu yo gutuma inyito y’icyaha yahamijwe ihinduka, kuko mu bushishozi n’umutimanama, isuzuma ry’ibyo yemeye mu Bugenzacyaha bigaragaza ko ari ukuri kandi bifite agaciro k’ikimenyetso kidashidikanywaho gihamya ko yakoraga ubucuruzi bw’urumogi, bityo ubujurire bwe bushingiye ku gusaba guhindura inyito y’icyaha nta shingiro bufite. [21] Hashingiye ku byagaragajwe haruguru byose, Urukiko rw’Ubujurire rurasanga ubujurire bwatanze na MUKANTWARI Immaculée nta shingiro bufite. III. ICYEMEZO CY’URUKIKO [22] Rwemeje ko ubujurire bwatanze na MUKANTWARI Immaculée nta shingiro bufite; [23] Rwemeje ko nta gihindutse ku mikirize y’urubanza n°RPA 00058/2022/HC/RWG rwaciye n’Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 14/4/2025; [24] Rwemeje ko igihano cy’igifungo cy’imyaka cumi n’itanu (15) n’ihazabu y’amafaranga y’u Rwanda miliyoni eshanu (5000.000 Frw) yahanishijwe kigumye; [25] Rutegetse ko amagarama y’urubanza aherera ku Isanduku ya Leta.

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