

RWANDA / JUDGMENT

UBUSHINJACYAHA v. MUKESHIMANA

RPAA00226/2024/CA

COURT

Court of Appeal

DECIDED

30 January 2025

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UBUSHINJACYAHA v. MUKESHIMANA

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Text

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UBUSHINJACYAHA v. MUKESHIMANA [Rwanda URUKIKO RW'UBUJURIRE – RPAA00226/2024/CA (Rugabirwa, P.J.) 30 Mutarama 2025] Amategeko agenga ibyaha n'ibihano – icyaha cy'ubwicanyi – kugabanyirizwa ibihano – Uregwa akwiye kongera kugabanyirizwa ibihano mu gihe atabigabanyirijwe bihagije mu rubanza rujuririrwa. Incamake y'ikibazo: Ubushinjacyaha bwakurikiranyeho Mukeshimana Solange icyaha cy'ubwicanyi, aho yagiye mu rugo rwa Hagenimana Théoneste atwara umwana we witwa Nyiramahirwe Christine w'imyaka 5 amujyana mu ishyamba, bagezeyo afata umuhoro yari afite amutema mu ijosi ahita apfa. Uregwa yaburanye yemera icyaha anagisabira imbabazi. Urukiko Rwisumbuye rwa Karongi rwaregewe, rushingiye ku kwemera icyaha kwa Mukeshimana Solange, ku mvugo z'abatangabuhamya bamushinja icyaha ijosi, rwaciye urubanza maze rwemeza ko uregwa ahamwa icyaha cy'ubwicanyi, rumuhanisha igifungo cy'imyaka 25, rumugabanyirije ibihano kubera ko yemeye icyaha kuva mu Nzego z'iperereza anagisabira imbabazi. Mukeshimana Solange yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Rusizi, asaba kongera kumugabanyiriza ibihano birebire yahanishijwe ku rwego rwa mbere kandi yaraburanye yemera icyaha, anagisabira imbabazi, no kuba aribwo bwa mbere agikoze. Ubushinjacyaha buvuga ko Mukeshimana Solange atakongera

kugabanyirizwa ibihano kubera uburemere bw'icyaha cy'ubwicanyi yakoze no kuba yarahawe igihano gito. Urwo Rukiko rushingiye ku buremere bw'icyaha cyakozwe n'uregwa wambuye ubuzima umwana w'imyaka 5, akamwica amukereye ijosi, rwaciye urubanza, maze rwemeza ko urubanza rwajuririwe rudahindutse, bityo ko igifungo cy'imyaka 25 yahawe kigumyeho. Mukeshimana Solange ntiyishimiye imikirize y'urubanza maze ajurira mu Rukiko rw'Ubujurire, avuga ko akwiye kongera kugabanyirizwa ibihano kubera ko yemeye icyaha akanagisabira imbabazi no kuba ari ubwa mbere akoze icyaha kuko yari asanzwe abana neza na nyakwigendera n'ababyeyi be, asaba ko yahanishwa igihano cy'imyaka 15 aho kuba igifungo cy'imyaka 25 yahawe mbere. Ubushinjacyaha buvuga ko uregwa atakongera kugabanyirizwa ibihano kubera ko umucamanaza adategetswe kumugabanyiriza igihano kabone n'yo hari impamvu nyoroshyacyaha, ko ahubwo akena igihano mu bushishizi bwe harebwe imikorere y'icyaha uregwa akurikiranyweho n'ingaruka cyateje. Incamake y'icyemezo: Uregwa akwiye kongera kugabanyirizwa ibihano mu gihe atabigabanyirijwe bihagije mu rubanza rujuririrwa. Ubujurire bufite ishingiro ku birebana n'igabanyagihano.

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Amategeko yashingiweho: Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyira ibyaha n'ibihano muri rusange, ingingo ya 2. Imanza zifashishijwe: Urubanza RPAA 00406/2020/CA, rw' Ubushinjacyaha na Nahayo Ignace, rwaciye n'Urukiko rw'Ubujurire ku wa 22/10/2021; Urubanza RPAA 00773/2021/CA rw' Ubushinjacyaha na Musonera Marc, rwaciye n'Urukiko rw'Ubujurire ku wa 28/03/2024. Urubanza I. IMITERERE Y'URUBANZA [1] Ubushinjacyaha bwakurikiranyeho Mukeshimana Solange icyaha cy'ubwicanyi kubera ko ku wa 21/12/2020, mu gihe cya saa tatu n'igice za mugitondo (9h30'), yagiye mu rugo rwa Hagenimana Théoneste atwara umwana we witwa Nyiramahirwe Christine w'imyaka 5 amujyana mu ishyamba ryo mu Bwikurure avuga ko agiye gutashya inkwi, bagezeyo afata umuhoro yari afite amutema mu ijosi ahita apfa Mukeshimana Christine yaburanye yemera icyaha anagisabira imbabazi. [2] Urukiko Rwisumbuye rwa Karongi rwaregwe, rushingiye ku kwemera icyaha kwa Mukeshimana Solange, ku mvugo z'abatangabuhamya bamushinja icyaha barimo Hagenimana Théoneste se wa nyakwigendera wemeje ko Mukeshimana Solange yaje mu rugo iwe akamutwarira umwana we w'imyaka 5 witwa Nyiramahirwe Christine akamwica amukereye ijosi, ku ifoto ya nyakwigendera igaragaza uko yari amaze guterwa icyuma mu ijosi, ku muhoro wicishijwe nyakwigendera wafatiriwe no kuri raporo ya muganga igaragaza ko Nyiramahirwe Christine yatewe icyuma mu ijosi, rwaciye urubanza RP 00035/2021/TGI/KNG ku wa 30/05/2022, rwemeza ko Mukeshimana Solange ahamwe icyaha cy'ubwicanyi, rumuhanisha igifungo cy'imyaka 25, rumugabanyirije ibihano kubera ko yemeye icyaha kuva mu Nzego z'iperereza anagisabira imbabazi. [3] Mukeshimana Solange yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Rusizi, arusaba kongera kumugabanyiriza ibihano birebire yahanishijwe ku rwego rwa mbere kandi yaraburanye yemera icyaha, anagisabira imbabazi, no kuba aribwo bwa mbere agikoze. [4] Naho uhagarariye Ubushinjacyaha avuga ko Mukeshimana Solange atakongera kugabanyirizwa ibihano kubera uburemere bw'icyaha cy'ubwicanyi yakoze no kuba yarahawe igihano gito. Urwo Rukiko rushingiye ku buremere bw'icyaha cyakozwe na

Mukeshimana Solange wambuye ubuzima umwana w'imyaka 5, akamwica amukereye ijosi, rwaciye urubanza RPA 00243/2022/HC/RSZ ku wa 27/03/2024, rwemeza ko urubanza rwajuririwe rudahindutse, ko igifungo cy'imyaka 25 Mukeshimana Solange yahanishijwe kigumyeho. [5] Mukeshimana Solange yajuririye urwo rubanza mu Rukiko rw'Ubujurire, ubujurire bwe buhabwa RPAA 00226/2024/CA, urubanza ruburanishwa mu ruhame ku wa 09/01/2025,

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Mukeshimana Solange yunganiwe na Me Munyankindi Jean Pierre, naho Ubushinjacyaha buhagarariwe na Bunyoye Grâce, Umushinjacyaha ku rwego rw'Igihugu. [6] Mu mwanzuro w'ubujurire no mu miburanire, Mukeshimana Solange n'umwunganira bavuga ko akwiye kongera kugabanyirizwa ibihano kubera ko yemeye icyaha akanagisabira imbabazi. [7] Naho uhagarariye Ubushinjacyaha avuga ko Mukeshimana Solange atakongera kugabanyirizwa kubera ko igifungo cy'imyaka 25 yahawe gikwiranye n'uburemere bw'icyaha yakoze. [8] Urukiko ruhareye kuri izo mpaka, rurasanga ikibazo gikwiye gusuzumwa muri uru rubanza ari icyo kumenya niba Mukeshimana Solange yakongera kugabanyirizwa ibihano kubera ko yemera icyaha akanagisabira imbabazi. II.ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba Mukeshimana Solange yakongera kugabanyirizwa ibihano kubera ko yemera icyaha akanagisabira imbabazi. [9] Mukeshimana Solange n'umwunganira bavuga ko akwiye kongera kugabanyirizwa ibihano kubera ko yemeye icyaha akanagisabira imbabazi kuba ari ubwa mbere akoze icyaha kuko yari asanzwe abana neza na nyakwigendera n'ababyeyi be, ko ahubwo yabitewe na Nyabingi yo mu muryango wabo n'ubwo nta bimenyetso babifitiye. Basaba ko yahanishwa igihano cy'imyaka 15 nk'uko biteganywa n'ingingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018, aho kuba igifungo cy'imyaka 25 yahawe mbere. [10] Uhagarariye Ubushinjacyaha avuga ko Mukeshimana Solange atakongera kugabanyirizwa ibihano kubera ko umucamanaza adategetswe kumugabanyiriza igihano kabone n'iyo hari impamvu nyoroshyacyaha, ko ahubwo akena igihano mu bushishizi bwe harebwe imikorere y'icyaha uregwa akurikiranyweho n'ingaruka cyateje nk'uko byasobanuwe n'Urukiko Rukuru mu bika bya 16 na 18 by'urubanza rujuririrwa, aho rwasobanuye ko uregwa atakongera kugabanyirizwa ibihano harebwe uburemere bw'icyaha yakoze n'ubugome bukabije yagikoranye. Avuga kandi ko Mukeshimana Solange atishe umwana abitewe na nyabingi, kuko nta kindi kintu yagaragarije uru Rukiko kidasanzwe cyamubagaho cyatumye yica umwana w'imyaka 5 w'inzirakarengane. UKO URUKIKO RUBIBONA [11] Ingingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, iteganya ko "ingingo ya 60 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ihinduwe ku buryo bukurikira: «Iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano ku buryo bukurikira: (a) igifungo cya burundu gishobora kugabanywa ariko ntikijye muni y'igihano cy'igifungo cy'imyaka 15".

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[12] Ikibazo cy'uko uregwa akwiye kongera kugabanyirizwa ibihano mu gihe atabigabanyirijwe bihagije mu rubanza rujuririrwa cyatanzweho umurongo mu rubanza RPAA 00406/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 22/10/2021, haburana Ubushinjacyaha na Nahayo Ignace. Uwo murongo ninawo wagiye ushingirwaho mu manza nyinshi zaciwe n'uru Rukiko nk'urubanza RPAA 00773/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 28/03/2024 haburana Ubushinjacyaha na Musonera Marc (igika cya 20). [13] Nk'uko bigaragarira mu giha cya 19 cy'urubanza rujuririrwa muri uru Rukiko, Urukiko Rukuru, Urugereko rwa Rusizi, rwemeje ko igifungo cy'imyaka 25, Mukeshimana Solange yahanishijwe ku rwego rwa mbere kigumyehe kubera uburemere bw'icyaha cy'ubwicanyi yakoreye umwana w'imyaka 5. [14] Urukiko rw'Ubujurire rurasanga, kuba Mukeshimana Solange yaremeye icyaha kuwa ku rwego rwa mbere kugera muri uru Rukiko akanagisabira imbabazi akanacyicuza, kuba ari ubwa mbere agikoze afite imyaka 24 y'amavuko, bikwiye kumubera impamvu nyoroshyacyaha ituma agabanyirizwa igihano, agahanishwa igifungo cy'imyaka makumyabiri (20), aho kuba imyaka 25, kugira ngo bimuheshe amahirwe yo kwikosora no gusubira mu muryango nyarwanda maze azagire icyo yimarira bityo imikirize y'urubanza rujuririrwa ikaba igomba guhinduka gusa ku birebana n'igihano uregwa ahanishijwe. III. ICYEMEZO CY'URUKIKO [15] Rwemeje ko ubujurire bwa Mukeshimana Solange bufite ishingiro ku birebana n'igabanyagihano. [16] Ruvuze ko imikirize y'urubanza RPA 00243/2022/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi, ku wa 27/03/2024 ihindutse gusa ku birebana n'igihano Mukeshimana Solange ahanishijwe. [17] Ruhanishije Mukeshimana Solange igifungo cy'imyaka makumyabiri (20). [18] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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