

RWANDA / JUDGMENT

UBUSHINJACYAHA v. MURINZI N'UNDI

RPAA0148/11/CS

COURT

Supreme Court

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UBUSHINJACYAHA v. MURINZI N'UNDI

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Text

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UBUSHINJACYAHA v. MURINZI N'UNDI [Rwanda URUKIKO RW'IKIRENGA – RPAA0148/11/CS (Hatangimbabazi, P.J., Karimunda M. na Gakwaya, J.) 27 Ugushyingo 2015] Amategeko mpanabyaha – Kugabanyirizwa igihano – Kuba yemera icyaha ni impamvu nyoroshyacyaha kandi kuba yarahanishijwe imyaka 10 y'igifungo ku rwego rubanza, kiri muni y'igiteganywa n'amategeko, none ubu hakaba hari itegeko riteganywa igihano cyoroheje byumvikanisha ko ari ryo rigomba gukurikizwa kandi n'igihano kigatangwa kiri muni y'icyo iryo tegeko riteganywa – Itegeko-Ngenga No 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 304 (2) Itegeko-Teka No 21/77 ryo kuwa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, ingingo za 21, 24, 82, 83 na 403 (2). Amategeko eyrekeye ibimenyetso – Ibimenyetso bishinja – Kutagaragaza ko hari icyo ushinjwa yaba apha n'umushinja bakurikiranywe hamwe kandi akanivuguruzwa kenshi mu mvugo ze ni ikigaraza ko ibyo ashinjwa yabikoze. Amategeko mpanabyaha – Ubujura bwitwaje intwari – Si ngombwa ko uwakorewe icyaha abona intwari cyangwa ngo ushaka kuyikoreshe ayifatanwe. Ahubwo kuba we cyangwa abicishije mu bandi yari afite ubushobozi n'umugambi wo gutunga, kugenzura no gukoreshe iyo ntware cyangwa kuyikangisha abantu biba bihagije Amategeko mpanabyaha – Gugabanya igihano – Gusubira

inyuma kw'amategeko mu nyungu z'ushinjwa – Agomba guhabwa igabanyagihano rishingiye ku ryakozwe n'urukiko rubanza agahanishwa imyaka itanu n'amezi icumi hashingiwe ku itegeko ryasohotse nyuma y'ikorwa ry'icyaha kuko ari ryo riteganywa igihano cyoroheje ugereranyije n'iryakurikizwaga nubwo yaruhije ubutabera – Itegeko Ngenga no 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 304 n'Itegeko Teka No 21/77 ryo kuwa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, ingingo ya 403. Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko Rwisumbuyete rwa Gicumbi, Murinzi Olivier, Ndayambaje Augustin Olivier na Niyodusenga Philippe baregwa ubwinjiracyaha mu bujura bwitwaje intwaro. Uretse Ndayambaje Augustin Olivier rwasanze ari umwere, Urukiko rwasanze abandira mu baregwa bahamwa n'icyaha rubahanisha igifungo cy'imyaka 10. Ntibishimiye imikirize y'urubanza maze bajurira mu Rukiko Rukuru nuko rwemeza ko nta gihindutse ku mikirize y'urubanza rujuririrwa. Murinzi Olivier na Niyodusenga Philippe ntibishimiye imikirize y'urubanza maze bajurira mu Rukiko rw'Ikirenga. Murinzi yemeraga icyaha asaba kugabanyirizwa igihano naho Niyodusenga Philippe avuga ko yahaniwe icyaha atakoze. Ubushinjacyaha bwavuze ko n'ubwo Murinzi yemeye icyaha akanagisabira imbabazi adakwiye kongera kugabanyirizwa igihano kuko yagoye ubutabera agihakana kandi abizi neza ko yagikoze. Ku byerekeye Niyodusenga, bwavuze ko yemeye ko yasinye ku masezerano mu izina ritari irye kandi abibona bityo imiburanire ye akaba ari igamije guhunga icyaha.

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Incamake y'icyemezo: 1. Kuba yarahamwe n'icyaha cy'ubujura bwitwaje intwaro cyahanishwaga igifungo kiri hagati y'imyaka 15 na 20 ariko Urukiko rwabanje rukamuhanisha igifungo cy'imyaka 10 kiri muni y'igitegenyijwe n'amategeko, byumvikanyishye ko yagabanyirijwe igihano. Kuba ariko nyuma harasohotse itegeko ritegenywa ibihano byoroheje, imyaka 6-8, agomba guhanwa iri ryo rikurikijwe byakubitira kuba ubu noneho yemera icyaha kandi bigomba kumubera impamvu nyoroshyacyaha, agahanishwa imyaka 5 nacyo kiri muni y'igitegenywa n'amategeko.

2. Kuba atagaragaza ko hari icyo apfa n'wo bashinjwa hamwe wamushinje ahubwo akemeza ko bari basanzwe baziranye cyane, kuba kandi yivuguruzaga mu mvugo ze bigaragaza ahubwo ko bari afite umugambi umwe wo gukora icyaha bahamirijwe ubwinjiracyaha.
3. Ibigize ubwinjiracyaha buhanwa biruzuye kuko kuba bari imbere ya Bank bari bagiye kwiba batagereje imbunda, bigaragaza ko umugambi wabo bari barangije kuwunoza aho bari banatangiye kuwushyira mu bikorwa binjira mu ruzitiro rwa Banki. Kuba bataribye rero, bikaba bitarabaturutseho dore ko atari ngombwa ko uwakorewe icyayaha aba yabonye iyo ntware cyangwa ngo uwashakaga kiyikoreshe ayifatanwe; ahubwo kuba mu gihe runaka we ku giti cye cyangwa abinyujije mu bandi yari afite ubushobozi n'umugambi wo gutunga, kugenzura no gukoreshe iyo ntware biba bihagije. Ninako bigenda kandi kuwakangishije abantu ko afite intwaro nyamara ntayo afite. Bityo kuba nta gushidikanya ko iyo mbunda yari gukoreshwa muri ubwo bujura iyo butaza kuburizwamo, bituma bahamwa n'ubwo buwinjiracyaha.

4. N'ubwo yaburanye agora ubutabera ahakana icyaha kandi azi ko yagikoze, ntibyamubuza kungukira mu igabanyagihano ryakozwe n'Urukiko rubanza hakanakurikizwa itegeko riteganywa ibihano byoroheje ryasohotse nyuma yo gukora icyaha. Ubujurire bwa Murinzi Olivier bufite ishingiro kuri bimwe; Ubujurire bwa Niyodusenga Philippe nta shingiro bufite; Urubanza bajuririye ruhindutse gusa kubirebana n'ibihano; Murinzi Olivier ahanishijwe igifungo cy'imyaka itanu Niyodusenga Philippe ahanishijwe imyaka itanu n'amezi 10 y'igifungo; Bagomba guhita barekurwa; Amagarama y'urubanza aherereye ku isanduku ya leta. Amateko yashingiweho: Itegeko-Ngenga No 02/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 304. Itegeko-Teka no 21/77 ryo kuwa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, ingingo za 21, 24, 82, 83 na 403 (2). Imanza zifashishijwe Plaintiff-Appellee v. Elisha Rawlings, No. 02-4177, United States Court of Appeals, Seventh Circuit, 3/09/ 2003. State of North Carolina v. Anthony Jarret, No COA03-1248, North Carolina Court of Appeals, filed 7 December 2004.

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Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gicumbi, Ubushinjacyaha burega Murinzi Olivier, Ndayambaje Augustin Olivier na Niyodusenga Philippe icyaha cy'ubwinjiracyaha mu bujura bwitwaje intwari. Mu rubanza no RP 0085/09/TGI/GIC rwaciye ku wa 28/07/2009, Urwo Rukiko rwasanze Ndayambaje Augustin Olivier ari umwera naho Murinzi Olivier na Niyodusenga Philippe bahamwe n'icyaha bakurikiranweho nuko ruhanisha buri wese igifungo cy'imyaka icumi (10 ans). [2] Murinzi Olivier na Niyodusenga Philippe ntibishimiye iki cyemezo, bakijuririra mu Rukiko Rukuru. Ubushinjacyaha nabwo bwajuririye icyemezo cyafashwe kuri Ndayambaje Augustin Olivier. Nyuma yo guhuriza hamwe ubujurire bwose mu rubanza no RPA 0984/09/HC/KIG rwaciye ku wa 11/03/2011, Urukiko Rukuru rwasanze ubujurire bwab'abaregwa n'ubw'Ubushinjacyaha nta shingiro bufite, rwemeza ko nta gihindutse ku mikirize y'urubanza rwajuririye. [3] Murinzi Olivier na Niyodusenga Philippe bajuririye iki cyemezo mu Rukiko rw'Ikirenga. [4] Iburanisha mu ruhamwe ryabaye ku wa 26/10/2015, Murinzi Olivier yitabye kandi yunganiwe na Me Ndengeyingoma Louise, Niyodusenga Philippe nawe ahari kandi yunganiwe na Me Twagirayezu Christophe naho Ubushinjacyaha buhagarariye na Niyonkuru Françoise, Umushinjacyaha ku rwego rw'Igihugu. II. IBIBAZO BIGIZE URU RUBANZA N'ISESENGURA RYABYO II.1. Kumenya niba hari impamvu zatumye MURINZI Olivier agabanyirizwa igihano [5] Murinzi Olivier avugako mbere yaburanye ahakana icyaha ariko ubu yemera ko yahuriye na Niyodusenga Philippe muri «Expo 2008» akamubwira ko hari umugore ufite amafaranga kandi ko babonye imbunda bayakuraye, aribwo Murinzi Olivier yasabye Ndayambaje Augustin (bigeze kwigana) kumushakira imbunda, bigeze mu kwezi kwa gatatu 2009, Ndayambaje Augustin amubwira ko imbunda yabonetse kandi ko bazayihabwaga na Gahunde Emmanuel, wari umu «INTERSEC» kuri Banki y'Abaturage ya Kibari i Byumba. Murinzi Olivier asobanura ko yajyanye na Niyodusenga Philippe gushakira imbunda kubera ko, nk'uwahozze ari «Local Defence», niwe wari uzi iby'imbunda, ariko ko bageze i Byumba Gahunde Emmanuel akabanza kubasinyisha amasezerano y'uko baziye igarura kandi bakumvikana ko abafasha kubanza kwiba Banki y'Abaturage ya Kibari i Byumba, hanyuma akababwira ko agiye

kuyizana ariko akaza kugaruka ntayo afite ahubwo ari kumwe n'abagabo babiri babafashe, ari nabwo batangiye guhakana icyaha. [6] Asoza avuga ko ibyo baburanishije mbere ko bajyanywe i Byumba no kwishyura Gahunde Emmanuel amafaranga yari abarimo ari ibinyoma kuko bombi bari bazi neza ko bagiye kuzana imbunda, kandi ko bwari ubwa kabiri Niyodusenga Philippe agiyeyo kubera ko yabanje

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kujyanayo na Ndayambaje Augustin, akaba asaba imbabazi z'icyaha yakoze kandi atakambira uru Rukiko ngo rwongere rumugabanyirize igihano ashobore gucumbukura amashuri yacikishije. [7] Me Ndengeyingoma Louise wunganira Murinzi Olivier avuga ko uwo yunganira yemera icyaha kandi agisabira imbabazi, akaba asaba uru Rukiko kwakira iyo mpamvu nyoroshacyaha rugaca inkoni izamba akagabanyirizwa igihano hashingiwe ku ngingo ya 82 n'ya 83 y'Itegeko- Teka no 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana yakoreshwaga icyaha gikorwa. [8] Uhagarariye Ubushinjacyaha avuga ko nubwo Murinzi Olivier yemeye icyaha, agasobanura neza imikorere yacyo kandi akagisabira imbabazi, kuba yarabanje kugora ubutabera agihakana kandi azi neza ko yagikoze bikwiye gutuma atongera kugabanyirizwa igihano, bityo imikirize y'urubanza rwajuririwe ikagumaho. UKO URUKIKO RUBIBONA [9] Ingingo ya 403 bis y'Itegeko- Teka NO 21/77 ryo kuwa 18/08/1977 rishyiraho igitabo cy'amategeko ahana yakoreshwaga icyaha gikorwa ivuga ko « ubujura buzahanishwa igifungo kuva ku myaka 15 kugeza kuri 20 iyo umujura yari afite intwaro igaragara cyangwa ihishe, n'iyi yaba atayifite ariko iyo ntwaro iboneka hafi y'aho icyaha cyakorewe.» [10] Ingingo ya 304, igika cya 2 y'Itegeko-Ngenga NO 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana rikoreshe ubu ivuga ko « Iyo umujura yitwaje intwaro ... igaragara cyangwa ihishe cyangwa se iyo intwaro yari afite ibonetse hafi y'aho icyaha cyakorewe ahanishwa igifungo kuva ku myaka itandatu (6) kugeza ku myaka munani (8). » Naho ingingo ya 8 y'iri Tegeko-Ngenga iteganya ko « Mu gihe hari amategeko abiri ahana, rimwe ryariho mu gihe icyaha cyakorwaga, irindi ryaratangajwe kuva icyaha gikozwe, ariko urubanza rutaracibwa burundu, itegeko rishya ni ryo ryonyine rigomba gukurikizwa iyo riteganya igihano cyoroheje.» [11] Ingingo ya 82 y'Itegeko-Teka NO 21/77 ryo ku wa 18/08/1977 ryavuzwe haruguru ryakurikizwaga icyaha gikorwa, iteganya ko umucamanza ariwe uha agaciro impamvu zigabanywa ubugizi bwa nabi bw'uwo icyaha, ari izakibanjirije, ari izagiherekeje cyangwa izagikurikiye, yaba azemeje akagomba kubisobanurira impamvu, naho iya 83 y'iryo Tegeko-Teka rimaze kuvugwa igateganya ko iyo hari impamvu nyoroshyacyaha, igihano cy'igifungo kuva ku myaka itanu kugeza ku myaka makumyabiri cyangwa kirengeje imyaka makumyabiri gishobora kugabanywa kugeza ku gifungo cy'umwaka umwe. [12] Abazwa mu Bugenzacyaha, umutangabuhamya Ndayambaje Augustin Olivier yavuze ko Murinzi Olivier ariwe wamusabye ko yamushakira imbunda azifashisha yiba ibihumbi mirongo ine by'amadolari ya Amerika (40.000 USD) afatanyije n'undi muntu yise «Type» (cote 12), Gahunde Emmanuel nawe yemeje mu Bugenzacyaha no mu Bushinjacyaha ko iyo mbunda yari kubanza gukoreshwa mu bujura bwa Banki y'Abaturage ya Kibari i Byumba, hagakurikiraho kuyibisha ku Kicukiro (cotes 19, 22 na 30), aricyo cyatumye Murinzi Olivier na Niyodusenga Philippe bazana kuyishaka bagafatirwa imbere imbere ya Banki bayitegereje (cote 31).

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[13] Dosiye y'urubanza igaragaza ko, uretse imbere y'uru Rukiko, Murinzi Olivier yahakanye imvugo z'abatangabuhamya mu nzego zose z'ubutabera avuga ko atigeze atuma Ndayambaje Augustin Olivier kumushakira imbunda kandi ko uwo mugambi atigeze awuganiraho na Gahunde Emmanuel, ko yajyanywe i Byumba no kwishyuza Gahunde Emmanuel amafaranga 30.000 Frw yari amurimo, yahagera amafaranga akabura, bakamuha «appareil» y'ubwubatsi kugira ngo azayigurishe yiyishyure asigaye ayasubize, ko yari kumwe na Niyodusenga Philippe wabeshye amazina akiyita Niyonkuru Patrick uretse ko atazi icyari cyajyanye Niyodusenga Philippe i Byumba (cotes 4-6, 63, 67-68), bityo kuba yemeye icyaha aregwa, agasobanura imikorere yacyo, akagisabira imbabazi kandi imvugo ye ihura n'iy'abatangabuhamya bavuzwe haruguru, bigaragaza ko nta gushidikanya guhari ko icyaha cy'ubwinjiracyaha mu bujura bwitwaje intwaro kimuhama. [14] Dosiye y'urubanza igaragaza kandi ko Murinzi Olivier yahanishijwe igifungo cy'imyaka icumi (10 ans) hashingiwe ku ngingo ya 21, 24 n'ya 403 bis y'itegeko-Teka no 21/77 ryo ku wa 18/08/1977 ryavuzwe haruguru ryakoreshwaga icyaha gikorwa, iteganya ko ubujura bukoreshweje intwaro buhanishwa igifungo kuva ku myaka 15 kugeza kuri 20 (cote 76), kuba Murinzi Olivier yarahanishijwe igifungo kiri muni y'igiteganywa n'Itegeko byumvikanisha ko yagabanyirijwe igihano. Cyakora kuwa aho Murinzi Olivier ahaniwe, hasohotse Itegeko-Ngenga NO 01/2012/OL ryo ku wa 02/05/2015 ryavuzwe haruguru ryaje riteganya ko icyaha cy'ubujura bwitwaje intwaro gihanishwa igifungo kuva ku myaka itandatu (6) kugeza ku myaka munani (8), bisobanuye ko Itegeko rishya ariryo rikwiye gukurikizwa Murinzi Olivier ahanwa kubera ko riri mu nyungu ze. [15] Urukiko rurasanga hamwe n'uko mu nkiko zibanza Murinzi Olivier yahanishijwe igifungo kigabanyije, kuba yongeye kwemera icyaha akagisabira imbabazi, kandi avuga ko acyicuza bikwiye gutuma yongera kugabanyirizwa igihano, agahanishwa igifungo kiri muni y'igiteganywa n'Itegeko, bityo akaba ahanishijwe igifungo cy'imyaka itanu gitangira kubakwa uhereye ku wa 16/03/2009 ubwo yafunzwe by'agateganyo n'Ubugenzacyaha, bivuze ko agomba kurekurwa uru rubanza rukimara gusomwa kubera ko yarangije igihano. II.2. Kumenya niba hari ibimenyetso bihamya NIYODUSENGA Philippe icyaha akurikiranweho kandi niba hari impamvu zatumye agabanyirizwa igihano mu gihe icyaha aregwa cyaba kimuhama. [16] Niyodusenga Philippe avuga ko yajurijwe n'uko yahaniwe icyaha atakoze, asobanura ko yagiye i Byumba aherekeje Murinzi Olivier kwishyuza amafaranga yakoreye kugira ngo nawe amwishyure, bagezeyo abona avugana n'ushinzwe umutekano kuri Banki y'Abaturage ya Byumba inshuro ebyiri ariko ko atazi ibyo bavugaga, nyuma yaho ajya kumugurira ibiryo muri «Restaurant», bigeze mu ma saa munani basinya amasezerano avuga ko uwo mugabo ushinze umutekano agiye kubaha «appareil» izagurishwa kugira ngo biyishyure, asobanura ko yasinye mu izina ritari irye abibona kandi abizi, nyuma y'ayo masezerano bafatwa babazwa imbunda ariko we yisobanura avuga ko icyo yasinyiye ari «appareil», ko igitera Murinzi Olivier guhindura imvugo akemera icyaha kitabaye ari uko amaze iminsi muri Gereza, ukwemera icyaha kwe kukaba ari amatakirangoyi kandi akaba amushinja ibinyoma kugirango adahanwa wenyine. [17] Abajijwe niba bwari ubwa mbere ajya i Byumba, asubiza ko yigeze guherekeza

Ndayambaje Augustin agiye kureba incuti ye y'umukobwa wari «Secrétaire» kuri Banki y'Abaturage ya Byumba, ko icyo gihe baraye k'umuhungu wari ufite gahunda na Ndayambaje Augustin Olivier ariko ko atigeze amenya iyo gahunda iyo ariyo, ku kibazo cyo

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kumenya niba yari asanzwe aziranye na Gahunde Emmanuel asobanura ko bwari ubwa mbere amubonye, naho k'ucyo kumenye niba yarishuye iyo «appareil» yasinyiye, asubiza ko nta n'ifaranga yayitanzeho. Asoza asaba uru Rukiko guha agaciro imiburanire ye yo guhakana icyaha akagirwa umwere kubera ko yahaniwe icyaha atakoze. [18] Me Twagirayezu Christophe wunganira Niyodusenga Philippe avuga ko iby'uko uwo yunganira ari we wari gushaka imbunda nta shingiro bifite kubera ko imishikirano yo gushaka imbunda yabaye hagati ya Murinzi Olivier na Ndayambaje Augustin Olivier, bigaragaza ko ajya i Byumba, Niyodusenga Philippe atari azi ibyo agiyemo, kandi ko umugambi wo gushaka imbunda no kwiba Banki wateguwe na Ndayambaje Augustin Olivier na Gahunde Emmanuel, bari bazi iyo Banki ya Kibari i Byumba, umwe nk'uwigeze kuhaba umukozi undi nk'uhashinzwe umutekano, naho Murinzi Olivier na Niyodusenga Philippe bakaba batari bahazi kubera ko bahaherukaga bahakora akazi k'ubufundi. Akomeza avuga ko iby'amafaranga 80.000 Frw avugwa ko yatanze kuri «appareil» Niyodusenga Philippe yasinyiye nta byabaye kubera ko yabimubajije akabihakana none akaba yongeye kubihakana imbere y'uru Rukiko. [19] Asoza avuga ko umugambi wo kwiba wateguwe ariko ntiwagerwaho bivuze ko ibigize ubwinjiracyaha mu bujura bukoreshaje intwari Niyodusenga Philippe aregwa bituzuye, Urukiko rukaba rukwiye kwemeza ko nta cyaha cyabayeho, rugatega ko uwo yunganira ari umwere akarekurwa; ariko ko mu gihe Urukiko rwabibona ukundi, rwahana Niyodusenga Philippe rushingiye ku Itegeko rishya¹ kubera ko ariryo riteganywa ibihano byoroheje ugereranyije n'iriyariho icyaha gikorwa, kandi kubera ko ari ubwa mbere Niyodusenga Philippe yakurikiranwa n'inkiko bizwi akagabanyirizwa igihano kugeza ku gifungo kingana n'igihe amaze muri Gereza. [20] Ubushinjacyaha buvuga ko Niyodusenga Philippe yiyemerera ko yasinye mu izina ritari irye kandi abibona, kandi kugeza ubu ntacyo agaragaza yaba apfa na Ndayambaje Augustin umushinja, bivuze ko ko imiburanire ye igamije guhunga icyaha no kujijisha Urukiko, iyi miburanire ikaba ishimangirwa n'invugo ya Me Twagirayezu Christophe umwunganira uvuga ko Niyodusenga Philippe ari umwere ariko agasaba asaba uru Rukiko kumuhana rushingiye ku Itegeko rishya kubera ko ariryo rigana ibihano byoroheje ugereranyije n'iriyariho akora icyaha akurikiranweho, bikaba bitumvikana uko yaba ari mwere akamusabira ibihano, bityo uru Rukiko rukaba rukwiye kwemeza ko Niyodusenga Philippe akomeje kurushya ubutabera, rugatega ko imikirize y'urubanza rwajuririwe igumye. UKO URUKIKO RUBIBONA [21] Ingingo ya 403 bis y'Itegeko-Teka no 21/77 ryo kuwa 18/08/1977 rishyiraho igitabo cy'amategako ahana yakoresheye icyaha gikorwa ivuga ko «ubujura buzahanishwa igifungo kuva ku myaka 15 kugeza kuri 20 iyo umujura yari afite intwari igaragara cyangwa ihishe, n'iyi yaba atayifite ariko iyo ntwaro iboneka hafi y'aho icyaha cyakorewe.» [22] Ingingo ya 304, igika cya 2 y'Itegeko Ngenga no 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategako ahana rikoresheye ubu ivuga ko «Iyo umujura yitwaje intwari ... igaragara cyangwa ihishe cyangwa se iyo intwari yari afite ibonetse hafi y'aho icyaha cyakorewe ahanishwa igifungo kuva ku myaka

itandatu (6) kugeza ku myaka munani (8).» Naho 1 Itegeko-Ngenga No 02/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana.

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ingingo ya 8 y'iri Tegeko-Ngenga iteganya ko « Mu gihe hari amategeko abiri ahana, rimwe ryariho mu gihe icyaha cyakorwaga, irindi ryaratangajwe kuva icyaha gikozwe, ariko urubanza rutaracibwa burundu, itegeko rishya ni ryo ryonyine rigomba gukurikizwa iyo riteganya igihano cyoroheje.» [23] Umutangabuhamya Ndayambaje Augustin Olivier yemeza ko Murinzi Olivier yamubwiye ko hari undi muntu yise «Type» uzamufasha mu mugambi we wo kwiba, Gahunde Emmanuel nawe akaba avuga ko Murinzi Olivier yaje gufata imbunda ari kumwe na Niyodusenga Philippe, ko yabasinyishije amasezerano Niyodusenga Philippe agasinya yiyita Niyonkuru Patrick, Murinzi Olivier nawe akaba yemera ko yajyanye na Niyodusenga Philippe bagiye gufata imbunda bari kuzakoresha mu bujura kandi ko icyatumye amwitwaza ari uko ariwe wari uzi gukoresha imbunda kubera ko yahoze ari Local Defence. [24] Urukiko rurasanga Niyodusenga Philippe atagaragaza ko hari icyo apfa na Ndayambaje Augustin Olivier cyatuma amuhimbira icyaha atakoze, ahubwo avuga ko baziranye cyane kuburyo yamuherekezaga i Byumba gusura umukobwa w'incuti ye bakarara k'umuhungu wari ufite gahunda na Ndayambaje Augustin ariko we atazi iyo gahunda, naho kuri Gahunde Emmanuel asobanura ko bwari ubwa mbere amubonye, bivuze ko Gahunde Emmanuel atari kumugerekaho ibyo atakoze bataziranye kandi nta n'icyo bapfa, ahandi kandi ntagaragaza icyari kimujyanye i Byumba kubera ko bibaye ari ugufata amafaranga Murinzi Olivier yari guhabwa na Gahunde Emmanuel, nk'uko abivuga, ntibyasabaga ko zaandi Murinzi Olivier yarashoboraga kuyamusangisha i Kigali, imvugo ye ikaba yuzuyemo kwivuguruza bigaragaza ko ahunga icyaha. [25] Urukiko rurasanga kandi uku kwivuguruza kugaragarira naho Niyodusenga Philippe avuga ko nta mafaranga yatanze kucyo bise «appareil» mu masezerano, nyamara muri dosiye abazwa n'Umugenzacyaha niba iyo appareil yari yayiguze, yarasubije ati :« Najyaga kuyigurisha nkamuzanira amafaranga, ariko hagati aho nari namuhaye ibihumbi mirongo inani (80.000 Frw) » (cote 8), ntagaragaze ariko impamvu we wari Local Defence yagiye kugurisha iyo « appareil » avuga ko yari iy'ubwubatsi aho kugira ngo bikorwe na Murinzi Olivier wize iby'ubwubatsi, ntasobanura ku kiguzi cy'iyi «appareil» kandi avuga ko bataziranye kandi ko we ku giti cye nta mwenda yari amurimo, cyangwa ngo avuge icyatumye asinya mw'izina rya NIYONKURU Patrick abibona niba bitari uburyo bwo kujijisha kugira ngo abatwaye iyo mbunda batazamenyekana, iyi mvugo irimo ibinyoma, kwivuguruza no kuyobya uburari ikaba ishimangira ko imyiregurire ye igamije guhunga ubwinjiracyaha mu cyaha cy'ubujura bwitwaje intwari yakoze nyamara yari afite umugambi umwe na Murinzi Olivier ukaburizwamo. [26] Byongeye kandi, ibyo Me Twagirayezu Christophe wunganira Niyodusenga Philippe avuga ko ibigize ubwinjiracyaha buhanwa n'Itegeko bituzuye nabyo nta shingiro bifite kubera ko, Gahunde Emmanuel yasobanuye ko saa kumi n'ebyiri na mirongo ine (18h40) aribwo Murinzi Olivier na Niyodusenga Philippe bafatiwe imbere ya Banki y'Abaturage baturutse mu gikari cyayo ahagana ahavugurwaga (chantier) aho bari bategerereje guhabwa imbunda kugira ngo bashyire mu bikorwa umugambi wabo wo gutera abakozi ba Banki muri ayo masaha ya «control»(cote 31), iyi mvugo ikaba yemezwa n'Inyandiko-

Mvugo y'ifunga igaragaza ko yakozwe saa moya n'igice z'ijoro (19h30) (cotes 24 na 25) ndetse na Murinzi Olivier (cote 5), byumvikana umugambi wo kwiba bari barangije kuwunoza, ndetse batangira no kuwushyira mu gikorwa binjira mu ruzitiro rwa Banki bakajya mu gikari cyayo aho bari bategerereje igikoresho

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cya nyuma cyari kubibafashamo, kuba bataribye bikaba bitarabaturutseho, ahubwo batunguwe no kubona uwo batumye imbunda agarukanye n'abashinzwe umutekano babafashe, bityo mu gihe ntagushidikanya guhari ko iyo mbunda yari gukoreshwa muri ubwo bujura bwaburijwemo, icyaha cy'ubwinjiracyaha mu bujura bwitwaje intwaro kikaba kibahama. [27] Urukiko rurasanga Itegeko riteganyako ubujura bwitwaje intwaro bubaho iyo umujura yari afite intwaro igaragara cyangwa ihishe cyangwa iyo intwaro yabonetse hafi y'aho icyaha cyakorewe, bisobanuye ko atari ngombwa ko buri gihe uwakorewe icyaha aba yabonye iyo ntware kugira ngo ibigize icyaha byuzure, kubera ko igihe iyo ntware ihishe cyangwa yatoraguwe hafi yaho icyaha cyabereye, uwakorewe icyaha ashobora kuba atayibonye ariko ntibivanaho ko inyito y'icyaha iguma ari ubujura bwitwaje intwaro, bivuze ko mu gihe ibimenyetso bigaragaza ko bafatwa nta kindi Niyodusenga Philippe na Murinzi Olivier bari bategerereje mu gikari cya Banki uretse imbunda bashakaga gukoresha mu kwiba iyo Banki, icyaha bagomba gukurikiranwaho ari ubwinjiracyaha mu bujura bwitwaje intwaro. [28] Uyu murongo ni nawo ugenderwaho n'Inkiko z'ahandi nk'aho Urukiko rw'Ubujurire rwa Seventh Circuit muri Amerika rwavuze ko kumenya niba umujura yari yitwaje intwaro bidasaba kuyimufatana mu ntoki, mu mufuka, munsu y'umusego cyangwa mu kabati, ko ahubwo bihagije kuba mu gihe runaka we ku giti cye cyangwa abinyujije mu bandi yari afite ubushobozi n'umugambi wo gutunga, kugenzura no gukoresha iyo ntware,2 naho Urukiko rwa Leta ya Carolina ya Ruguru rukavuga ko uregwa ubujura bwitwaje intwaro ashobora guhamwa n'icyaha kandi nta ntware yafatanywe nk'igihe yakangishije abantu ko hari intware afite kandi ntayo afite, nabyo bishimangira ko icyaha Murinzi Olivier na Niyodusenga Philippe bakurikiranweho kigomba kuguma ari ubwinjiracyaha mu bujura bwitwaje intwaro.3 [29] Ku kibazo cyo kumenya niba Niyodusenga Philippe yagabanyirizwa igihano, Urukiko rurasanga ingingo ya 304, igika cya 2 y'Itegeko Ngenga no 01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru ihanisha icyaha cy'ubujura bwitwaje intwaro igifungo kuva ku myaka itandatu (6) kugeza ku myaka munani (8), bivuze ko iyi ngingo ariyo ikwiye gukurikizwa mu guhana Niyodusenga Philippe kubera ko ariyo imuteganyiriza igihano cyoroheje ugereranyije n'ingingo ya 403 bis y'Itegeko-Teka no 21/77 ryo ku wa 18/08/1977 ryavuzwe harugu ryakoreshwaga icyo icyaha gikorwa igiteganyiriza igihano cy'igifungo kuva ku myaka 15 kugeza kuri 20, bityo Niyodusenga akaba akwiye guhanishwa igifungo cy'imyaka umunani (8 ans). [30] Urukiko rurasanga cyakora n'ubwo Niyodusenga Philippe yaburanye agora ubutabera, ahakana icyaha nyamara azi ko hari ibimenyetso bikimuhamya, bitabuza ko yungukira mu kuba yaragabanyirijwe igihano n'Inkiko zibanza akongera kugabanyirizwa igihano, agahanishwa igifungo cy'imyaka itanu n'amezi icumi (5 ans et dix mois), bivuze ko akwiye kurekurwa uru 2 "To decide whether a person who has a felony record possesses a gun... it is not enough to ask whether the gun is in his hand or his pocket or even under his pillow or in his desk drawer... To

fix the outer limits of the concept of possession in the criminal law, courts employ the notion of "constructive possession", [i.e.], the power and the intention at a given time to exercise dominion and control over the firearm, either directly or through others." Plaintiff-Appellee v. Elisha Rawlings, No. 02-4177, United States Court of Appeals, Seventh Circuit, 3/09/ 2003. 3 "An armed robbery defendant could be found guilty without finding that he actually possessed a firearm... the threatened use of a firearm is sufficient to sustain a conviction..." Reba State of North Carolina v. Anthony Jarret, No COA03-1248, North Carolina Court of Appeals, filed 7 December 2004.

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rubanza rukimara gusomwa kubera ko igihano cye gitangira kubarwa uherye ku wa 12/03/2009 ubwo yafatwaga. III. ICYEMEZO CY'URUKIKO [31] Rwemeje ko ubujurire bwa Murinzi Olivier bufite ishingiro kuri bimwe ; [32] Rwemeje ko ubujurire bwa Niyodusenga Philippe nta shingiro bufite; [33] [33]. Ruvuze ko kuri Murinzi Olivier na Niyodusenga Philippe urubanza no RPA 0984/09/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 11/03/2011 ruhindutse gusa kubirebana n'igihano; [34] Ruhanishije Murinzi Olivier igifungo cy'imyaka itanu y'igifungo; [35] Ruhanishije Niyodusenga Philippe igifungo cy'imyaka itanu n'amezi icumi ; [36] Rutegetse ko Murinzi Olivier na Niyodusenga Philippe barekurwa uru rubanza rukimara gusomwa kubera ko barangije ibihano bakatiwe n'Urukiko ; [37] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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