

RWANDA / JUDGMENT

UBUSHINJACYAHA v MUSHINZIMANA

RP 00004/2025/CA

COURT

Court of Appeal

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11 August 2025

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UBUSHINJACYAHA v MUSHINZIMANA

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Text

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UBUSHINJACYAHA v MUSHINZIMANA [Rwanda URUKIKO RW'UBUJURIRE - RP 00004/2025/CA (Mukandamage, P.J) 11 Kanama 2025] Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Ifungura ry'agateganyo – Umuntu waciriwe urubanza rugategeka ko afungwa ashobora gufungurwa by'agateganyo n'urukiko yajuririye iyo agaragaje impamvu zikomeye kandi zidasanzwe. Incamake y'ikibazo: Ubushinjacyaha bwakurikiranye Mushinzimana mu Rukiko Rwisumbuye rwa Gasabo bumurega icyaha cyo gusambanya umwana we witwa N. T. w'imyaka cumi n'itatu

- (13) y'amavuko. Uregwa yaburanye ahakana icyaha, ko ibyo yemeye mu Bugenzacyaha no mu Bushinjacyaha yabitewe n'uko, ubwo yari ku Murenge, yabwiwe ko niyemera icyaha azagabanyirizwa igihano. Urwo Rukiko rwaciye urubanza rwemeza ko uregwa ahamwa n' icyaha cyo gusambanya umwana w'imyaka cumi n'itatu (13) y'amavuko, rumuhanisha igihano cy'igifungo cya burundu. Mushinzimana yajuririye Urukiko Rukuru yemera icyaha yari yahakanye ku rwego rwa mbere, asaba kugabanyirizwa igihano ariko urwo Rukiko rusanga adakwiye kugabanyirizwa igihano, kuko atemera icyaha ku buryo bwuzuye, rwemeza ko urubanza yajuririye rudahindutse. Nyuma yanajuririye Urukiko rw'Ubujuje

avuga ko atagabanyirijwe igihano kandi hari impamvu nyoroshyacyaha zari gutuma kigabanywa, asaba ko kigabanywa, ariko mu iburanisha arabihindura ahakana icyaha, asaba kugirwa umwere. Urukiko rw'Ubujurire rwemeje ko ubujurire bwe nta shingiro bufite ku birebana n'ingingo yo gusaba kugabanyirizwa ibihano, rwemeza kutakira ingingo y'ubujurire igamije guhakana icyaha kuko yatanze nyuma y'ibihe byo kujurira. Mushinzimana yasubirishijemo ingingo nshya urwo rubanza rwaciwe n'Urukiko rw'Ubujurire, nuko mu gihe urwo rubanza rutaraburanishwa, atanga ikirego cyihutirwa asaba gufungurwa by'agateganyo, avuga ko asaba gufungurwa by'agateganyo kugira ngo abashe kwivuka neza uburwayi bwa kanseri yarwaye ageze mu igororero. Ubushinjacyaha bwo buvuka ko hari abaganga bamukurikiranye aho ari mu Igororero, ko nta mpamvu ihari yatuma afungurwa by'agateganyo, kandi ko afunguwe ashobora gutoroka ubutabera. Incamake y'icyemezo: Umuntu waciriwe urubanza rugatega ko afungwa ashobora gufungurwa by'agateganyo n'urukiko yajurirye iyo agaragaje impamvu zikomeye kandi zidasanzwe. Ikirego nta shingiro gifite. Amategako yashingiweho: Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, Ingingo ya 187. Nta manza zifashishijwe.

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Urubanza I. IMITERERE Y'URUBANZA [1] Tuyizere Jacqueline yareze Mushinzimana Daniel mu Bugenzacyaha, avuga ko ku mugoroba wo ku wa 08/01/2019 ari mu Mudugudu w'Amajyambere, Akagari ka Musezero, Umurenge wa Gisozi, Akarere ka Gasabo, yasambanyije umwana we witwa N. T. w'imyaka cumi n'itatu (13) y'amavuko. Mushinzimana Daniel yashyikirijwe Ubugenzacyaha atangira gukurikiranwa. [2] Nyuma y'iperereza, Ubushinjacyaha bwareze Mushinzimana Daniel mu Rukiko Rwisumbuye rwa Gasabo icyaha cyo gusambanya umwana. Mushinzimana Daniel yaburanye ahakana icyaha, avuga ko abamushinja bamubeshyera, ahubwo ko ari umwana wamusabye ko basambana aramwangira. Yavuze ko ibyo yemeye mu Bugenzacyaha no mu Bushinjacyaha yabitewe n'uko, ubwo yari ku Murenge, yabwiwe ko niyemera icyaha azagabanyirizwa igihano, asaba kugirwa umwere. [3] Mu rubanza n° RP 00079/2019/TGI/GSBO rwaciwe ku wa 30/01/2019, Urukiko Rwisumbuye rwa Gasabo rwasanze ibimenyetso byatanze n'Ubushinjacyaha bigaragaza ko Mushinzimana Daniel yakoze icyaha cyo gusambanya umwana w'imyaka cumi n'itatu (13) y'amavuko, rumuhanisha igifungo cya burundu. [4] Mushinzimana Daniel yajurirye Urukiko Rukuru yemera icyaha yari yahakanye ku rwego rwa mbere, asaba kugabanyirizwa igihano. Ubushinjacyaha bwabaye ko Mushinzimana Daniel atagabanyirizwa ibihano, kuko atemera icyaha ku buryo bwuzuye. [5] Mu rubanza n° RPA 00608/2019/HC/KIG rwaciwe ku wa 23/01/2020, Urukiko Rukuru rwasanze Mushinzimana Daniel adakwiye kugabanyirizwa igihano, kuko atemera icyaha ku buryo bwuzuye, rwemeza ko urubanza yajurirye rudahindutse. [6] Mushinzimana Daniel yajurirye Urukiko rw'Ubujurire avuga ko atagabanyirijwe igihano kandi hari impamvu nyoroshyacyaha zari gutuma kigabanywa, asaba ko kigabanywa, ariko mu iburanisha arabihindura ahakana icyaha, asaba kugirwa umwere. Uhagarariye Ubushinjacyaha yavuze ko ingingo z'ubujurire Mushinzimana Daniel yatanze nyuma zitakwakirwa, kuko zatanze impitagihe, ariko ko mu gihe zaba zakiriwe zitahabwa ishingiro,

kuko hari ibimenyetso byerekana ko yakoze icyaha. [7] Mu rubanza n° RPAA 00386/2020/CA rwaciwe ku wa 11/06/2021, Urukiko rw'Ubujurire rwasanze ubujurire bwatanzwe na Mushinzimana Daniel nta shingiro bufite ku birebana n'ingingo yo gusaba kugabanyirizwa ibihano, rwemeza kutakira ingingo y'ubujurire igamije guhakana icyaha kuko yatanze nyuma y'ibihe byo kujurira biteganywa n'amategeko. [8] Mushinzimana Daniel yasubirishijemo urubanza n° RPAA 00386/2020/CA ingingo nshya, urubanza ruhabwa n° RS/REV/RP 00036/2024/CA. Mu gihe urwo rubanza rutaraburanishwa, Mushinzimana Daniel yatanze ikirego cyihutirwa asaba gufungurwa by'agateganyo, urubanza ruhabwa n° RP 00004/2025/CA. Iburanisha mu ruhame ryabaye ku wa 06/08/2025, Mushinzimana

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Daniel yunganiwe na Me Shema Gérard, naho Ubushinjacyaha buhagarariwe na Habineza Jean Damascène, Umushinjacyaha ku rwego rw'Igihugu. [9] Mu myanzuro no mu miburanire, Mushinzimana Daniel avuga ko asaba gufungurwa by'agateganyo kugira ngo abashe kwivuzana neza uburwayi bwa kanseri yarwaye ageze mu igororero. Uhagarariye Ubushinjacyaha avuga ko nk'uko Mushinzimana Daniel yabigaragaje, hari abaganga bamukurikiranye aho ari mu Igororero, ko nta mpamvu ihari yatuma afungurwa by'agateganyo, kandi ko afunguwe ashobora gucika ubutabera. [10] Urukiko rurasuzuma ikibazo cyo kumenya niba hari impamvu zikomeye kandi zidasanzwe zatuma Mushinzimana Daniel afungurwa by'agateganyo. II. ISESENGURWA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba hari impamvu zikomeye kandi zidasanzwe zatuma Mushinzimana Daniel afungurwa by'agateganyo [11] Mushinzimana na Me Shema Gérard umwunganira bavuga ko nyuma yo gufungwa yarwaye kanseri y'ukuguru nk'uko inyandiko zo kwa muganga yatanze zibigaragaza, agasaba gufungurwa by'agateganyo, kugira ngo akurikiranwe n'umuryango we, cyane cyane ko ubuzima mu Igororero bumugoye atabasha kubona ubuvuzi bukwiye. [12] Mushinzimana na Me Shema Gérard umwunganira bavuga kandi ko aramutse afunguwe by'agateganyo byamufasha kwivuzana mu bitaro by'i Butaro, kuko Muganga wamukurikiranye yamubwiye ko ariho agomba kujya kwivuriza, kandi agahabwa indyo yihariye. Bavuga ko ibyo yabisabye Igororero abarizwamo bamusaba gutegereza, ariko ko nyuma yo gutegereza igihe ntagikorwa, yahisemo gutanga iki kirego. [13] Mushinzimana na Me Shema Gérard umwunganira bavuga na none ko mu gihe yaba afunguwe by'agateganyo yategekwe ibyo yakubahiriza nk'uko biteganywa n'ingingo ya 80 y'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, kandi ko atabasha gutoroka kubera uburwayi bw'akaguru afite. [14] Uhagarariye Ubushinjacyaha avuga ko mu bisobanuro Mushinzimana Daniel atanga agaragaza ko nyuma y'aho afunguwe yaje gusangwamo uburwayi bwa kanseri, ariko ko mu mpapuro yatanze ntaho iyo kanseri ivugwa mu buryo bugaragarira buri wese. Avuga kandi ko bitumvikana impamvu atasabye gufungurwa by'agateganyo mbere hose, agategereza urubanza rumaze kuburanishwa mu nkiko zose akabona kwibuka kubisaba, nyamara avuga ko uburwayi afite bwabonetse akimara gufungwa. [15] Uhagarariye Ubushinjacyaha avuga na none ko Mushinzimana Daniel agaragaza ko akurikiranwa n'abaganga batandukanye mu mavuriro ya Leta atandukanye, bivuze ko yitaweho muri ubwo burwayi bwe, akaba nta bundi bufasha budasanzwe yabuze agaragaza ko yabonerwa n'umuryango we kurusha

ubwo ahabwa na Leta. Avuga ko mu rubanza n° RPA 00001/2019/CA rwaciwe ku wa 12/07/2019, haburana Ubushinjacyaha, Colonel Byabagamba na bagenzi be, basabye Urukiko rw'Ubujurire bagombaga kuburaniramo urubanza mu mizi, ko bafungurwa by'agateganyo bakaburana bari hanze, kuko bafite ikibazo cy'uburwayi, ko kandi batishimiye

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uburyo bavuzwa kubera ko databonana n'abaganga igihe babishakiye ndetse ko na Gereza itabemerera gukoresha ubwishingizi bw'indwara bari basanganywe bwa MMI, hanyuma Urukiko rw'Ubujurire rusanga nta mpamvu yari gutuma bafungurwa by'agateganyo mu gihe ubuyobozi bwa Gereza bukurikira hafi ubuzima bwabo, hakaba n'umuganga ubasura hafi buri muni areba ibibazo bafite, byaba ngombwa akabasabira rendez-vous ku muganga w'inzobere bifuzwa kwivurizaho. [16] Uhagarariye Ubushinjacyaha avuga kandi ko mu rubanza n° RPAA 00386/2020/CA Mushinzimana Daniel yahamijwe icyaha kiremereye akanahabwa igihano kiruta ibindi (n'ubwo yasubirishijemo urubanza ingingo nshya), ari ikintu gikomeye ku buryo hari impungenge ko aramutse arekuwe ashobora no kuba yacika, kubera gutinya kurangiza igihano yazahabwa mu gihe urubanza rwe rwaba rudahindutse. UKO URUKIKO RUBIBONA [17] Impaka muri uru rubanza zishingiye ku kumenya niba hari impamvu zikomeye kandi zidasanzwe Mushinzimana Daniel agaragaza zatuma afungurwa by'agateganyo mu gihe ategereje kuburana urubanza n° RS/REV/RP 00036/2024/CA rusubirishamo ingingo nshya urubanza n° n° RPAA 00386/2020/CA rwaciwe n'Urukiko rw'Ubujurire. [18] Ingingo ya 187 y'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ibikurikira: "Uregwa wari ufunze mbere yo gucirwa urubanza rwategetse ko afungwa, akomeza gufungwa n'ubwo yaba yarajuriye. Icyakora urukiko rushobora kumufungura by'agateganyo iyo arugaragariye impamvu zikomeye kandi zidasanzwe mu buryo bw'ikirego cyihutirwa". [19] Ingingo imaze kuvugwa yumvikanisha ko umuntu waciriwe urubanza rugategeka ko afungwa ashobora gufungurwa by'agateganyo n'urukiko yajuririye iyo agaragaje impamvu zikomeye kandi zidasanzwe. [20] Nk'uko bigaragara muri dosiye, Mushinzimana Daniel yahamijwe n'Urukiko rw'Ubujurire icyaha cyo gusambanya umwana ahanishwa igifungo cya burundu, hanyuma asubirishamo urwo rubanza ingingo nshya. Asaba ko yafungurwa by'agateganyo kugira ngo umuryango we ubashe kumwitaho kandi umuvuze mu bitaro by'i Butaro uburwayi bwa kanseri avuga ko afite mu kaguru yarwaye amaze gufungwa, kukoyasabye Igororero kumuvuza bakamusubiza ko yaba ategereje, ariko ntabwo igisubizo. [21] Impapuro Mushinzimana Daniel yashyize muri dosiye ashingiraho asaba gufungurwa by'agateganyo zigaraza amatariki atandukanye hagati y'umwaka wa 2019 n'uwa 2022, aho yakurikiranwe n'abaganga bo ku bitaro bya Muhima n'ibya CHUK indwara zitandukanye zikurikira:

- a) ku wa 13/08/2019, Mushinzimana Daniel yivuye mu Bitaro bya Muhima, ariko n'ubwo muganga yabonaga ko atari afite ikibazo gikomeye, yamwohereje mu Bitaro bya CHUK kugira ngo bamusuzume kurushaho, yakirwa muri servisi ikurikirana iby'insimburangingo z'umubiri (Orthopedics), afite ikibazo cy'insimburangingo y'igufwa rya ruseke (umurundi) y'iburyo n'igisebe kimaze umwaka kizana amashyira, byaje nyuma yo kubagwa iryo gufwa mu mwaka wa

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2018. Insimburangingo y'igice cya ruseke yari afite yavanywemo kuko yari ifite ikibazo, maze asigara avurwa igisebe, bamuha imiti, bamusaba kujya kwipfukisha mu bitaro bimwegereye;
- b) ku wa 11/05/2021, Mushinzimana Daniel yivuye mu Bitaro bya CHUK uburwayi bwo mu muhogo bwo kutabasha kumira, bamukuramo agakoresho bashyizemo kugira ngo kamufashe kagize ikibazo, ariko asigarana ibibazo byo kuba yabasha kurya, nyuma yo gucishwa mu cyuma gipima mu muhogo, ibisubizo byagaragaje ko nta kanseri yo mu muhogo afite;
- c) ku wa 21/08/2021, Mushinzimana Daniel yoherejwe mu Bitaro bya CHUK muri servisi ivura indwara z'amatwi, amazuru n'umuhogo kugira ngo barebe niba hari indwara yatewe n'ikoranabuhanga ryakoreshejwe mu kumuvura, banasanga afite ikibazo cya prostate ariko kitari kanseri kidakanganye, bategeka ko akomeza gukurikiranirwa hafi. [22] Urukiko rw'Ubujurire rurasanga ibyo Mushinzimana Daniel avuga ko arwaye kanseri y'ukuguru, ko yafungurwa by'agateganyo kugira ngo abashe kujya kwivuriza mu Bitaro by'i Butaro yitabwaho n'umuryango we nta shingiro bifite, kuko impapuro zose yivurijeho yatanze nta na hamwe hagaragara ko afite ubwo burwayi, kandi zigaragaza ko yivuye igisebe yari afite ku kaguru mu mwaka wa 2019, hakaba nta rupapuro agaragaza yahawe n'Umuganga ubifitiye ububasha rumwohereza mu Bitaro by'i Butaro bivura kanseri. [23] Urukiko rw'Ubujurire rurasanga kandi n'ibyo avuga ko Igororero ritamuhaye uburyo bwo kwivuza uburwayi bwa kanseri y'akaguru arwaye nta shingiro bifite, kuko bigaragara ko igihe cyose yari afite uburwayi yitaweho akavurirwa mu bitaro bya Leta. [24] Urukiko rw'Ubujurire rurasanga rero nta mpamvu ikomeye kandi idasanzwe Mushinzimana Daniel agaragaza yatuma afungurwa by'agateganyo, akaba agomba gukomeza kuba afunze mu gihe urubanza n° RS/REV/RP 00036/2024/CA rusubirishamo ingingo nshya urubanza n° RPAA 00386/2020/CA rwaciwe n'Urukiko rw'Ubujurire rutaraburanishwa. III. ICYEMEZO CY'URUKIKO [25] Rwemeje ko ikirego cyatanze na Mushinzimana Daniel gisaba gufungurwa by'agategano nta shingiro gifite; [26] Rwemeje ko Mushinzimana Daniel akomeza kuba afunze mu gihe urubanza n° RS/REV/RP 00036/2024/CA rusubirishamo ingingo nshya urubanza n° RPAA 00386/2020/CA rwaciwe n'Urukiko rw'Ubujurire rutaraburanishwa.

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