

RWANDA / JUDGMENT

**UBUSHINJACYAHA v.
MVUYEKURE_126791_kn**

RLR V.4 - 2015

COURT

Supreme Court

DECIDED

7 November 2014

CASE / FILE NUMBER

RPAA 0133/10/CS

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UBUSHINJACYAHA v. MVUYEKURE_126791_kn

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1 UBUSHINJACYAHA v. MVUYEKURE [Rwanda URUKIKO RW'IKIRENGA – RPAA 0133/10/CS (Nyirinkwaya, P.J. Kayitesi R. na Hitiyaremye, J.) 7 Ugushyingo 2014] Amategeko yerekeye ibimenyetso – Imvugo y'umwana utarageza ku myaka cumi n'ine – Imvugo y'umwana utarageza ku myaka cumi n'ine igomba kunganirwa n'ibindi bimenyetso – Itegeko n°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 63. Amategeko mpanabyaha – Uburenganzira bwo kwiregura – Uburenganzira bwo kwiregura ni ihame ry'ingenzi mu manza nshinjabyaha – Itegeko n° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 150. Incamake y'ikibazo: Uregwa yakurikiranyweho icyaha cyo gusambanya umwana. Mu Rukiko Rwisumbuye rwa Rubavu aho urubanza rwatangiriye, yaburanye ahakana icyaha, asaba ko umwana yapimishwa SIDA hakarebwa niba yaranduye kuko we ayirwaye akaba atari kubura kumwanduza iyo amusambanya harebwe raporo ya muganga igaragaza ko umwana yari yakomeretse afite n'amaraso ku gitsina. Urwo rukiko rwaciye urubanza rwemeza ko uregwa yasambanyije uwo mwana w'imyaka 3, ko

kuba uyu atarapimishijwe ngo harebwe niba yaranduye SIDA bitavanaho ibindi bimenyetso byatanzwe bimuhamya icyaha, rumuhanisha igifungo cy'imyaka 25 n'ihazabu ya 100.000Frw, rumugabanyirije igihano kuko afite ubwandu bwa SIDA. Uregwa yajuririye urwo rubanza mu Rukiko Rukuru Urugereko rwa Musanze, aho yakomeje guhakana icyaha no gusaba ko umwana yapimishwa hakagaragazwa niba yaranduye SIDA. Urukiko rwaciye urubanza rwemeza ko bitari ngombwa gupimisha umwana kuko icyaha gikurikiranywe atari ukumwanduza SIDA ahubwo ari ukumusambanya, ndetse kwandura SIDA akaba atari ihame igihe umuntu uyirwaye asambanye n'utayirwaye, bivuze ko n'ubwo umwana yaba ataranduye bitaba bisobanura ko atasambanyijwe. Yongeye kujuririra Urukiko rw'Ikirenga avuga ko yahamijwe icyaha hadashingiwe ku bimenyetso bidashidikanywaho kandi hirengagijwe ibimenyetso byamurenganura. Uhagarariye Ubushinjacyaha avuga ko ingingo y'ubujurire ishingiyeye ku kuba umwana atarapimishijwe SIDA nta shingiro ifite kuko nk'uko byasobanuwe mu Rukiko Rukuru icyaha aregwa atari icyo kwandura umwana SIDA ahubwo ari icyo kumusambanya, hakaba hari ibimenyetso byatanzwe bigaragaza ko yamusambanyije, ndetse akaba atari ihame ko umuntu urwaye SIDA ayanduza uwo asambanyije. Incamake y'icyemezo: 1. Kuba ikimenyetso gishinja uregwa ari imvugo ya U.D wari ufite imyaka 3 y'amavuko igihe yasambanywaga kuko nta kindi Ubushinjacyaha bwagendeyeho bumukurikirana usibye imvugo ye n'inkiko zabanje nazo zikaba nta kindi zashingiyeho zimuhamya icyaha kuko ababajijwe bose basubiramo ibyo yababwiye, ntibyubahirije ibiteganywa n'amategeko, ko imvugo y'umwana utarageza ku myaka 14 igomba kunganirwa n'ibindi bimenyetso.

2. Uregwa yarahamijwe icyaha hadashingiwe ku bimenyetso bidashidikanywaho kandi hatubahirijwe uburenganzira bwo kwiregura, ihame mu manza z'inshinjabyaha, bityo agomba kugirwa umwere. Ubujurire bufite ishingiro.

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2 Uregwa agizwe umwere, akaba agomba guhita arekurwa. Amagarama ahererereye ku isanduku ya Leta. Amategeko yashingiweho: Itegeko n° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 150. Itegeko n°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 63. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Kuwa 10/12/2006, uwitwa Nyirabageni Vestine yatanze ikirego mu Bugenzacyaha avuga ko Mvuyekure Faustin yasambanyije umwana we w'imyaka 3 y'amavuko witwa U.D. [2] Mu Rukiko Rwisumbuye rwa Rubavu aho urubanza rwatangiriye Mvuyekure Faustin yaburanye ahakana icyaha, asaba ko umwana yapimishwa SIDA hakarebwa niba yaranduye kuko we ayirwaye akaba atari kubura kumwanduza iyo amusambanya harebwe raporo ya muganga igaragaza ko umwana yari yakomeretse afite n'amaraso ku gitsina. [3] Urwo rukiko rwaciye urubanza kuwa 06/08/2008 rwemeza ko Mvuyekure Faustin yasambanyije Uwimana Dina w'imyaka 3, kuba uyu atarapimishijwe ngo harebwe niba yaranduye SIDA bikaba bitavanaho ibindi bimenyetso byatanzwe bimuhamya icyaha, rumuhanisha igifungo cy'imyaka 25 n'ihazabu ya 100.000Frw, rumugabanyirije igihano kuko afite ubwandu bwa SIDA. [4] Mvuyekure Faustin yajuririye urwo rubanza mu Rukiko Rukuru Urugereko rwa Musanze. Muri urwo rukiko yakomeje guhakana icyaha no gusaba ko umwana yapimishwa hakagaragazwa niba yaranduye

SIDA. Urukiko rwacyiye urubanza kuwa 08/04/2010, rwemeza ko bitari ngombwa gupimisha umwana kuko icyaha gikurikiranywe atari ukumwanduza SIDA ahubwo ari ukumusambanya, ndetse kwandura SIDA akaba atari ihame igihe umuntu uyirwaye asambanye n'utayirwaye, bivuze ko n'ubwo umwana yaba ataranduye bitaba bisobanura ko atasambanyijwe. [5] Rwemeje kandi ko imikirize y'urubanza rwa mbere idahindutse rushingiye ku mvugo z'abatangabuhamya babajijwe ubwo rwakoraga iperereza aho icyaha cyabereye bagaragaje ko bahurujwe na nyina w'umwana ku mugoroba w'umunsi icyaha cyakoreweho, barebye umwana basanga afite amaraso ku gitsina, bamubajije ababwira ko ari Mvuyekure Faustin wamushyize ikintu mu gitsina. [6] Mvuyekure Faustin yajuririye na none urwo rubanza mu Rukiko rw'Ikirenga avuga ko yahamijwe icyaha hadashingiye ku bimenyetso bidashidikanywaho kandi hirengagijwe ibimenyetso byamurenganura. [7] Urubanza rwaburanishijwe mu ruhamwe kuwa 24/02/2014, Mvuyekure Faustin yunganiye na Me Ndaruhutse Ubushinjacyaha buhagarariye na Ntawangundi Beatrice,

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3 ababyeyi b'umwana Nyirabageni na Rwajekare batarashoboye kuboneka kubera ko babuze aho babarizwaga igihe Nyirabageni yatangaga ikirego mu Bugenzacyaha. [8] Urubanza rwongeye kuburanishwa mu ruhamwe kuwa 29/09/2014 Mvuyekure Faustin yunganiye na Me Ndaruhutse Janvier, Ubushinjacyaha buhagarariye na Ntawangundi Beatrice, ababyeyi b'umwana Nyirabageni na Rwajekare batarashoboye kuboneka kubera ko babuze aho babarizwaga igihe Nyirabageni yatangaga ikirego mu Bugenzacyaha. II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO Kumenya niba Mvuyekure Faustin yarahamijwe icyaha hadashingiye ku bimenyetso bidashidikanywaho. [9] Mvuyekure Faustin avuga ko yahamijwe icyaha nta bimenyetso simusiga Urukiko rushingiyeho kuko yerekana inyandiko za Muganga zigaragaza ko abana n'ubwandu bwa sida akaba yarasabye ko umwana apimishwa kugira ngo hagaragazwe niba yaranduye SIDA kuko iyo amusambanya nta kuntu atari kumwanduza harebwe raporo ya muganga wamupimye ivuga ko yari yakomeretse afite amaraso ku gitsina. [10] Mvuyekure Faustin avuga kandi ko mu Rukiko Rukuru yatanze abatangabuhamya bo kumushinjura aribo Ziragora, Sebahinzi, Mama Mukayisenga na Nsigayehe ntibabazwa. [11] Me Ndaruhutse Janvier umwunganira avuga ko badahakana ko umwana yasambanyijwe ariko ko Ubushinjacyaha butagaragaje uko bubihuza na Mvuyekure Faustin berekana aho icyaha cyakorewe n'igihe cyakorewe, kuba yarahaye umwana "biscuits" akaba atari ikimenyetso cy'icyaha akurikiranyweho kuko yazihaye abana bose bari bahari harimo n'abe. [12] Uhagarariye Ubushinjacyaha avuga ko ingingo y'ubujurire ishingiyeye ku kuba umwana atarapimishijwe SIDA nta shingiro ifite kuko nk'uko byasobanuwe mu Rukiko Rukuru icyaha Mvuyekure Faustin aregwa atari icyo kwandura umwana SIDA ahubwo ari icyo kumusambanya, hakaba hari ibimenyetso byatanze bigaragaza ko yamusambanyije, ndetse akaba atari ihame ko umuntu urwaye SIDA ayanduza uwo asambanyije. [13] Uhagarariye Ubushinjacyaha avuga kandi ko ingingo y'ubujurire ishingiyeye ku batangabuhamya batahamagawe nayo nta shingiro ifite kuko Urukiko rutagendera ku bwinshi bw'abatangabuhamya, ndetse ko rwikoreye iperereza ryimbitse rubisabwe na Mvuyekure Faustin, rubaza abo rwasanze ari ngombwa bose batuye aho icyaha cyakorewe, biza kugaragara ko ababajijwe aho kumushinjura ahubwo bamushinja, abo avuga Urukiko rukaba

rwarasanze atari ngombwa kubabaza ngo rugere ku kuri rwashakaga kugeraho. UKO URUKIKO RUBIBONA [14] Muganga wasuzumye U.D yagaragaje muri raporo ye ko yari afite ibikomere biva amaraso ku gitsina (lésions traumatiques) kandi ko akarangabusugi ke kacitse (déchirure totale de l’hymen), yemeza ko yasambanyijwe, ikibazo akaba ari icyo kumenya niba hari ibimenyetso bidashidikanywaho bigaragaza ko uwakoze icyo cyaha ari Mvuyekure Faustin.

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4 [15] Ku bijyanye rero n’uwamusambanyije, nyina w’umwana Nyirabageni Vestine ubwo yatangaga ikirego mu Bugenzacyaha yavuze ko umwana yamubwiye ko ari Mvuyekure Faustin wamusambanyije. Abaturanyi babajijwe igihe Urukiko Rukuru rwakoraga iperereza nabo bemeje ko bahurujwe na nyina w’umwana, bahageze babaza umwana abasobanurira ko ari Mvuyekure Faustin wamushyize ikintu mu gitsina. [16] Urukiko rusanga ariko dosiye yakozwe n’inzego zibishinzwe n’iperereza ryakozwe n’Urukiko bitagaragaza uwaba yarabonye umwana yinjira mu nzu kwa Mvuyekure Faustin cyangwa ahandi yaba yaramusambanyirije, aho abandi bana bari bari muri icyo gihe kuko Nyirabageni yavuze mu Bugenzacyaha ko D. yari hamwe na gasaza ke kitwa Niyobuhungiro naho Mvuyekure Faustin akavuga ko yamubonye ari kumwe n’abandi bana barimo n’abe, uko uwo mwana yavuye kwa Mvuyekure Faustin niba ariho yasambanyirijwe, uwaba yaramubonye cyangwa yaramwumvise arira n’ibindi byari gufasha kumenya ukuri kw’ibyabaye. [17] Urukiko rusanga kuba ikimenyetso gishinja Mvuyekure Faustin gihagaze gusa ku mvugo ya U.D wari ufite imyaka 3 y’amavuko igihe yasambanywaga kuko nta kindi Ubushinjacyaha bwagendeyeho bukurikirana Mvuyekure Faustin usibye imvugo ye n’inkiko zabanje nazo zikaba nta kindi zashingiyeho zimuhamya icyaha kuko ababajijwe bose basubiramo ibyo yababwiye, bitubahirije ingingo ya 63 y’itegeko n°15/2004ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo ivuga ko imvugo y’umwana utarageza ku myaka 14 igomba kunganirwa n’ibindi bimenyetso. [18] Dosiye igaragaza nanone ko guhera mu Bugenzacyaha byavuzwe ko Mvuyekure Faustin abana n’ubwandu bwa SIDA, bikaba byaranatangiye ibimenyetso, Urukiko rukaba rusanga bitumvikana ko Uwimana Dina atapimishijwe ngo harebwe niba nawe yaranduye SIDA kuko nubwo atari ihame ko umuntu uyirwaye ayanduza uwo asambanyije, U.D yari afite amahirwe make yo kutayandura ukurikije uburyo yakomerekejwe n’uwamusambanyije, bikaba bidahagije kuvuga ko icyaha cyo kwanduza nkana SIDA atari cyo gikurikiranywe kuko usibye n’uko umwana wahohotewe agomba gufashwa kubona ubutabera hakurikiranwa ibyaha aba yakorewe, iyo ikizamini kiza cyerekana ko atanduye cyashoboraga gufasha Mvuyekure Faustin mu myiregurire ye. [19] Urukiko rusanga rero kuba Mvuyekure Faustin yarahamijwe icyaha icyo kizamini kidakozwe (ubu kikaba kitagishoboye gukorwa kuko Uwimana n’ababyeyi be babuze) bikaba byaramuvukije uburenganzira bwo kwiregura kandi ari ihame ry’ingenzi mu manza z’inshinjabyaha nk’uko bisobanurwa mu ngingo ya 150 y’itegeko n° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y’imanza z’inshinjabyaha. [20] Hashingiwe ku bisobanuro bimaze gutangwa, uru rukiko rusanga Mvuyekure Faustin yarahamijwe icyaha hadashingiwe ku bimenyetso bidashidikanywaho kandi hatubahirijwe amahame agenga imanza z’inshinjabyaha, bityo akaba agomba kugirwa umwere.

III. ICYEMEZO CY’URUKIKO [21] Rwemeje ko ubujurire bwa Mvuyekure Faustin bufite ishingiro;

[22] Rwemeje ko urubanza rwaciwe n'Urukiko Rukuru Urugereko rwa Musanze ruhindutse kuri byose;

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5 [23] Rwemeje ko Mvuyekure Faustin agizwe umwere akaba agomba kurekurwa uru rubanza rukimara gusomwa; [24] Rutegetse ko amagarama y'urubanza aherera ku isanduku ya Leta.

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