

RWANDA / JUDGMENT

UBUSHINJACYAHA vs. NDAGIJIMANA

RPAA 00375/2023/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA vs. NDAGIJIMANA

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Text

Page 1

UBUSHINJACYAHA vs. NDAGIJIMANA [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00375/2023/CA (Mukandamage, P.J.), 29 Ugushyingo 2024] Amategeko agenga imanza nshinjabyaha – Impamvu z'ubujurire – Ibihe by'ubujurire ku muburanyi wajuririye atarabona kopi y'urubanza – Impamvu z'ubujurire cyangwa inenge ziri mu rubanza rujuririrwa zigomba gutangwa mu bihe by'ubujurire biteganyijwe n'Itegeko, mu gihe kopi y'urubanza rujuririrwa yari ihari, cyangwa zigatangwa nyuma yo kubona kopi y'urubanza itari ihari igihe umuburanyi yatangaga ubujurire. Ku muburanyi wajuririye atarabona kopi y'urubanza, impamvu z'ubujurire cyangwa inenge ziri mu rubanza rujuririrwa zigomba gutangwa mu bihe by'ubujurire biteganyijwe n'Itegeko ariko ibihe by'ubujurire bikabarwa kuva abonye iyo kopi y'urubanza, kuko ari bwo aba ashobora kumenya icyo anenga urubanza yajuririye, ni ukuvuga ko kuva amaze kubona kopi y'urubanza aba afite igihe cy'iminsi mirongo itatu (30) kugira ngo ageze ku Rukiko inenge z'urubanza ajuririra. Incamake y'ikibazo: Ndagijimana Elie yarezwe mu Bugenzacyaha ko yasambanyije umwana witwa I. B. w'imyaka irindwi (7) y'amavuko, uwo mwana avuga ko yamusanze mu rugo ari wenyine amusaba ko bajyana akamugurira irindazi, bageze ku murima w'ibigori aramusambanya. Nyuma y'iperereza, Ubushinjacyaha bwatanze ikirego mu Rukiko Rwisumbuye

rwa Rubavu burega Ndagijimana Elie icyaha cyo gusambanya umwana, busaba ko ahamwa n'icyo cyaha, agahanishwa igifungo cya burundu. Ndagijimana Elie yaburanye ahakana icyaha, avuga ko umwana umushinja amubeshyera, ko atigeze agera iwabo, kandi ko hari ugushidikanya ku bimenyetso byatanze n'Ubushinjacyaha. Urukiko Rwisumbuye rwa Rubavu rwasanze hari ibimenyetso bigaragaza ko Ndagijimana Elie yasambanyije umwana, birimo imvugo z'umwana wahohotewe wasobanuye uko byagenze kugirango bigere ubwo asambanywa, raporo ya Muganga wasuzumye umwana igaragaza ko yasambanyijwe hamwe n'ibindi bimenyetso bitandukanye, bityo rumuhanisha igifungo cya burundu. Ndagijimana ntiyishimiye imikirize y'urubanza maze ajurira mu Rukiko Rukuru, Urugereko rwa Musanze avuga ko yahamijwe icyaha atigeze akora, ko abamushinja bavugaga ko umwana yasambanyijwe ku wa 15/03/2020, ayanwa kwa Muganga ku wa 20/03/2020, kandi igihe bivugwa yamusambanyirijeho yari mu kazi, ko ibyo umwana yavuze yabibwirijwe n'ababyeyi be. Uhagarariye Ubushinjacyaha yavuze ko ibimenyetso Urukiko Rwisumbuye rwa Rubavu rwashingiyeho ruhamya Ndagijimana Elie icyaha bigaragaza ko yagikoze, asaba ko hagumaho imikirize y'urubanza rwajuririwe. Urukiko Rukuru, Urugereko rwa Musanze rwasanze nta bimenyetso Ndagijimana Elie agaragariza bivuguruzwa ibyashyingiweho ku rwego rwabanje mu kumuhamya icyaha cyo gusambanya umwana,

Page 2

ariko rubyibwirije rumugabanyiriza igihano rumuhanisha igifungo cy'imyaka cumi n'itanu (15), rushingiye ku mpamvu y'uko bwari ubwa mbere akurikiranwe mu butabera. Ndagijimana Elie yajuririye nanone mu Rukiko rw'Ubujurire, avuga ko atishimiye imikirize y'urubanza ajuririra, ko ajuriye kugirango ahabwe ubutabera buboneye kuko yahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho. Uhagarariye Ubushinjacyaha yatanze inzitizi yo kutakira ubujurire bwatanze na Ndagijimana Elie, kuko yatanze impamvu z'ubujurire nyuma y'ibihe by'ubujurire, avuga ko mu gihe ubujurire bwe bwaba bwakiriwe nta shingiro bwahabwa, kuko impamvu yatanze arizo zasuzumwe mu bujurire bwa mbere. Uhagarariye Ubushinjacyaha akomeza avuga ko Ndagijimana ataragaragaje inenge cyangwa amakosa biri mu rubanza n'ibisobanuro kuri buri nenge n'amakosa agomba gukosorwa mu bihe by'ubujurire biteganywa n'Itegeko, avuga kandi ko umuburanyi wajurije atarabona kopi y'urubanza, agomba gutanga imyanzuro y'ubujurire nibura mu gihe cy'iminsi mirongo itatu (30) nyuma y'uko kopi ishyizwe muri IECMS. Ndagijimana yiregura avuga ko urubanza RPA 00617/2021/HC/MUS rwaciwe ku wa 07/09/2023, Ndagijimana Elie ajurira ku wa 11/09/2023, ariko impamvu z'ubujurire azishyira muri dosiye ku wa 11/10/2023, kuko kopi y'urubanza yayibonye bitinze, kandi ko nta muntu yari afite wo kumufasha kuyibona byihuse kuko afunze, asaba ko umwanzuro w'inyongera yatanze wahabwa agaciro n'ubwo watanze impitagihe, kubera ko atari gusobanura impamvu z'ubujurire atarabona kopi y'urubanza. Incamake y'icyemezo: Impamvu z'ubujurire cyangwa inenge ziri mu rubanza rujuririrwa zigomba gutangwa mu bihe by'ubujurire biteganyijwe n'Itegeko, mu gihe kopi y'urubanza rujuririrwa yari ihari, cyangwa zigatangwa nyuma yo kubona kopi y'urubanza itari ihari igihe umuburanyi yatangaga ubujurire. Ku muburanyi wajuririye atarabona kopi y'urubanza, impamvu z'ubujurire cyangwa inenge ziri mu rubanza rujuririrwa zigomba gutangwa mu bihe by'ubujurire biteganyijwe n'Itegeko ariko ibihe by'ubujurire bikababwira kuva abonye iyo

kopi y'urubanza, kuko ari bwo aba ashobora kumenya icyo anenga urubanza yajuririye, ni ukuvuga ko kuva amaze kubona kopi y'urubanza aba afite igihe cy'iminsi mirongo itatu (30) kugira ngo ageze ku Rukiko inenge z'urubanza ajuririra. Inzitizi yatanze n'Ubushinjacyaha ifite ishingiro. Amategako yashingiweho: Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo za 181-183. Imanza zifashishijwe: Urubanza RPA 00047/2021/CA, rw' Ubushinjacyaha na Rtd Maj Habibu Mudathiru alias Mussa na bagenzi be, rwaciwe n'Urukiko rw'Ubujurire ku wa 09/06/2023; Urubanza RPAA 00208/2023/CA rw'Ubushinjacyaha na Kabanda Sadi, rwaciwe ku wa 25/06/2024.

Page 3

Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 21/03/2020, Ndagijimana Elie yarezwe mu Bugenzacyaha ko ku wa 15/03/2020 yasambanyije umwana witwa I. B. w'imyaka irindwi (7) y'amavuko, uwo mwana avuga ko Ndagijimana Elie yamusanze mu rugo ari wenyine amusaba ko bajyana akamugurira irindazi, bageze ku murima w'ibigori aramusambanya. [2] Nyuma y'iperereza, Ubushinjacyaha bwatanze ikirego mu Rukiko Rwisumbuye rwa Rubavu burega Ndagijimana Elie icyaha cyo gusambanya umwana, busaba ko ahamwa n'icyo cyaha, agahanishwa igifungo cya burundu giteganywa n'ingingo ya 133 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange. [3] Ndagijimana Elie yaburanye ahakana icyaha, avuga ko umwana umushinja amubeshyera, ko atigeze agera iwabo, kandi ko hari ugushidikanya ku bimenyetso byatanze n'Ubushinjacyaha. [4] Mu rubanza RP 00229/2020/TGI/RBV rwaciwe ku wa 25/06/2021, Urukiko Rwisumbuye rwa Rubavu rwasanze hari ibimenyetso bigaragaza ko Ndagijimana Elie yasambanyije umwana, birimo imvugo z'umwana wahohotewe wasobanuye uko byagenze kugirango bigere ubwo asambanywa, raporo ya Muganga wasuzumye umwana igaragaza ko yasambanyijwe, ubuhamya bwa Nyirandikubwimana Vestine na raporo y'inzeho z'ibanze yo ku wa 20/03/2020. Naho ku byo Ndagijimana Elie yavugaga ko umwana amubeshyera kubera inzangano, ko umwana yakomeretse barimo kumukarabya, ko raporo itagaragaje ko ariwe wamusambanyije, urukiko rwasanze nta gaciro byahabwa, kuko nta bimenyetso abitangira, hanyuma rumuhanisha igifungo cya burundu. [5] Ndagijimana Elie yajuririye Urukiko Rukuru, Urugereko rwa Musanze avuga ko yahamijwe icyaha atigeze akora, ko abamushinja bavuga ko umwana yasambanyijwe ku wa 15/03/2020, ayanwa kwa Muganga ku wa 20/03/2020, ko igihe bivugwa yamusambanyirijeho yari mu kazi, ko ibyo umwana yavuze yabibwirijwe n'ababyeyi be. Uhagarariye Ubushinjacyaha yavuze ko ibimenyetso Urukiko Rwisumbuye rwa Rubavu rwashingiyeho ruhamya Ndagijimana Elie icyaha bigaragaza ko yagikoze, asaba ko hagumaho imikirize y'urubanza rwajuririwe. [6] Mu rubanza RPA 00617/2021/HC/MUS rwaciwe ku wa 07/09/2023, Urukiko Rukuru, Urugereko rwa Musanze rwasanze nta bimenyetso Ndagijimana Elie agaragariza bivuguruza ibyashingiweho ku rwego rwabanje mu kumuhamya icyaha cyo gusambanya umwana, ariko rubyibwirije rumugabanyiriza igihano rumuhanisha igifungo cy'imyaka cumi n'itanu (15), rushingiye ku mpamvu y'uko bwari ubwa mbere akurikiranwe mu butabera. [7] Ndagijimana Elie yajuririye Urukiko rw'Ubujurire, urubanza ruhabwa RPAA 00375/2023/CA, ruburanishwa mu ruhamwe ku wa 11/11/2024, Ndagijimana Elie yunganiwe na Me Rwimo Clotilde, naho Ubushinjacyaha buhagarariwe na

Bunyoye Grâce, Umushinjacyaha ku rwego rw'Igihugu. [8] Mu myanzuro no mu miburanire, Ndagijimana Elie avuga ko atishimiye imikirize y'urubanza ajuririra, ko ajuriye kugirango ahabwe ubutabera buboneye, ariko ko impamvu z'ubujurire azazitanga mu mwanzuro w'inyongera amaze kubona kopi y'urubanza. Mu mwanzuro

Page 4

w'inyongera, Ndagijimana Elie avuga ko yahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho. [9] Uhagarariye Ubushinjacyaha yatanze inzitizi yo kutakira ubujurire bwatanzwe na Ndagijimana Elie, kuko impamvu z'ubujurire zatanze nyuma y'ibihe by'ubujurire. Avuga ko mu gihe ubujurire bwe bwaba bwakiriwe nta shingiro bwahabwa, kuko impamvu yatanze arizo zasuzumwe mu bujurire bwa mbere. [10] Ikibazo kigomba kubanza gusuzumwa muri uru rubanza ni icyo kumenya niba impamvu z'ubujurire zatanze na Ndagijimana Elie zidakwiye kwakirwa. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA Kumenya niba impamvu z'ubujurire zatanze na Ndagijimana Elie zidakwiye kwakirwa [11] Uhagarariye Ubushinjacyaha avuga ko Ndagijimana Elie atubahirije ibihe byo kujurira n'ibisabwa biteganywa n'ingingo za 181-183 z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha zivuga ko umuburanyi wifuza kujurira atanga ubujurire mu minsi itarenze mirongo itatu (30), kandi ko ubujurire bukorwa mu buryo bw'umwanzuro utegurwa hakurikijwe ibiteganywa n'amategeko ugashyirwa muri IECMS hakurikijwe inzira yagenwe. [12] Uhagarariye Ubushinjacyaha avuga ko urubanza rujuririrwa rwaciwe ku wa 07/09/2023, kopi yarwo ishyirwa muri IECMS ku itariki ya 10/09/2023, maze Ndagijimana Elie ajurira ku itariki ya 11/09/2023 avuga ko impamvu z'ubujurire ze azazigeza ku rukiko mu mwanzuro w'inyongera amaze kubona kopi y'urubanza, hanyuma ku wa 11/10/2023 yohereza umwanzuro w'inyongera agaragaza impamvu z'ubujurire, n'umwunganira mu mategeko atanga umwanzuro ku wa 21/05/2024. [13] Uhagarariye Ubushinjacyaha akomeza avuga ko kuba ku itariki ya 11/09/2023, Ndagijimana Elie ataragaragaje inenge cyangwa amakosa biri mu rubanza n'ibisobanuro kuri buri nenge n'amakosa agomba gukosorwa, akabitanga mu mwanzuro w'inyongera ku wa 11/10/2023 bishimangira ko atubahirije ibiteganywa n'ingingo ya 183 yavuzwe haruguru, ibyo kandi bikaba bihura n'ibyemejwe mu rubanza RPAA 00524/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 26/01/2024 haburana Ubushinjacyaha na Harerimana Emmanuel, aho rwasanze ko umuburanyi agomba gutanga impamvu z'ubujurire cyangwa kugaragaza inenge ziri mu rubanza rujuririrwa mu bihe by'ubujurire biteganywa n'Itegeko. Umuburanyi wajuriye atarabona kopi y'urubanza, agomba gutanga imyanzuro y'ubujurire nibura mu gihe cy'iminsi mirongo itatu (30) nyuma y'uko kopi ishyizwe muri IECMS. [14] Uhagarariye Ubushinjacyaha avuga na none ko umwanzuro wakozwe n'umwunganira mu mategeko Ndagijimana Elie washyizwe muri IECMS ku itariki ya 21/05/2024 nawo watanzwe impitagihe, kuko wakozwe hashize igihe kirenga amezi arindwi (07) nyuma y'ibihe byemewe byo kujurira byarangiye ku itariki ya 09/10/2023, ibyo bikaba bihuye n'ibyemejwe n'urukiko rw'Ubujurire mu rubanza RPAA 00559/2021/CA rwaciwe ku itariki ya 27/01/2023, haburana Ubushinjacyaha na Nabibwiyimana Emmanuel, aho rwemeje ko imyanzuro yatanze impitagihe

Page 5

itanuzuzwa iyatanzwe ku gihe idakwiye kwakirwa ngo isuzumwe, akanzura avuga ko ubujurire bwa Ndagijimana Elie budakwiye kwakirwa ngo busuzumwe. [15] Ndagijimana Elie n'umwunganira bavugaga ko urubanza RPA 00617/2021/HC/MUS rwaciye ku wa 07/09/2023, Ndagijimana Elie ajurira ku wa 11/09/2023, ariko impamvu z'ubujurire azishyira muri dosiye ku wa 11/10/2023, kuko kopi y'urubanza yayibonye bitinze, kandi ko nta muntu yari afite wo kumufasha kuyibona byihuse kuko afunze. Umwunganira asaba ko umwanzuro w'inyongera yatanze wahabwa agaciro n'ubwo watanzwe impitagihe, kubera ko Ndagijimana Elie atari gusobanura impamvu z'ubujurire atarabona kopi y'urubanza. UKO URUKIKO RUBIBONA [16] Ibijyanye n'iyakirwa ry'impamvu z'ubujurire byasobanurwe mu rubanza rubanziriza urundi mu rubanza RPA 00047/2021/CA rwaciye n'Urukiko rw'Ubujurire ku wa 09/06/2023, haburana Ubushinjacyaha na Rtd Maj Habibu Mudathiru alias Mussa na bagenzi be, hatangwa umurongo uvuga ko impamvu z'ubujurire cyangwa inenge ziri mu rubanza rujuriyirwa zigomba gutangwa mu bihe by'ubujurire biteganyijwe n'Itegeko, mu gihe kopi y'urubanza rujuriyirwa yari ihari, cyangwa zigatangwa nyuma yo kubona kopi y'urubanza itari ihari igihe umuburanyi yatangaga ubujurire, ko rero impamvu z'ubujurire zigomba gutangwa mu bihe by'ubujurire biteganywa n'Itegeko, ibyo bihe ari nabyo bigomba kubahirizwa ku muburanyi wajuriye atarabona kopi y'urubanza, ariko bikababwira kuva abonye icyo kopi, kuko ari bwo aba ashobora kumenya icyo anenga urubanza yajuririyeho. Ni ukuvugaga ko kuva amaze kubona kopi y'urubanza aba afite igihe cy'iminsi mirongo itatu (30) kugira ngo ageze ku Rukiko inenge z'urubanza ajuririra. Uyu murongo washingiweho mu zindi manza uru Rukiko rwaciye, harimo n'urubanza RPAA 00208/2023/CA rwaciye ku wa 25/06/2024 haburana Ubushinjacyaha na Kabanda Sadi. [17] Dosiye y'urubanza igaragaza ko urubanza RPA 00617/2021/HC/MUS rujuriyirwa rwaciye n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 07/09/2023, kopi yarwo ishyirwa muri IECMS ku wa 10/09/2023, Ndagijimana Elie ajurira ku wa 11/09/2023, mu mwanzuro w'ubujurire avugaga ko atishimiye imikiriye y'urubanza, ariko ko impamvu ashingiraho ubujurire bwe azatanga mu mwanzuro w'inyongera amaze kubona kopi y'urubanza. Ku wa 11/10/2023 Ndagijimana Elie nibwo yatanze impamvu z'ubujurire n'ibisobanuro kuri buri ngingo, n'umwunganira atanga ibisobanuro by'inyongera mu mwanzuro washyizwe muri IECMS ku wa 21/05/2024. [18] Urukiko rw'Ubujurire rurasanga ajurira ku wa 11/09/2023, Ndagijimana Elie yurubahirije iminsi mirongo itatu (30) iteganywa n'ingingo ya 180 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha¹, ariko ntiyagaragaza ingingo z'ubujurire nk'uko biteganywa n'ingingo ya 1832 y'iryo tegeko ryavuzwe haruguru, ahubwo

1 ingingo ya 181 iteganyaga ko kujurira bikorwa mu gihe kitarenga iminsi mirongo itatu (30) uhagaze ku itariki urubanza rwaciriweho ku muburanyi wari uhari cyangwa ahagarariwe igihe urubanza rwacibwaga, icyo gihe gikurikizwa kandi ku muburanyi wamenyeshajwe mu buryo bwemewe n'amategeko, umunsi urubanza rwacibwaho ntaze cyangwa ngo yohereze umuhagararira. Kujurira bikorwa mu gihe cy'iminsi mirongo itatu (30) uhagaze ku itariki urubanza rwamenyeshajwe umuburanyi utari uhari igihe rwasomwaga.

2 Iyo ngingo iteganya ibikurikira: “Ubujurire bukorwa mu buryo bw’umwanzuro utanga ikirego, ugaragaza ibi bikurikira: (...) 5° urutonde rw’inenge z’urubanza zisabirwa gukosorwa n’ibindi bibazo bigomba gusuzumwa; 6°

Page 6

yazitanze mu wundi mwanzuro ku wa 11/10/2023, kandi umunsi wa nyuma w’ubujurire wari itariki ya 10/10/2023 uhaye igihe kopi yashyiriwe muri IECMS, bikaba bigaragara ko ingingo z’ubujurire yazitanze nyuma y’ibihe by’ubujurire. [19] Urukiko rw’Ubujurire rurasanga kandi ibyo Ndagijimana Elie n’umwunganira bavuga ko yatinze kubona kopi y’urubanza, ko kandi nta muntu yari afite wamufasha kuyibona nta shingiro bifite, kubera ko atagaragaza ko yaba yariyambaje Ubwanditsi bwa Gereza agororerwamo ntibubimufashemo. [20] Urukiko rw’Ubujurire rurasanga rero, Ndagijimana Elie yarajuriye yubahirije ibihe biteganywa n’itegeko, ariko ingingo z’ubujurire azitanga nyuma y’ibihe byo kujurira, bityo zikaba zitagomba kwakirwa ngo zisuzumwe, urubanza yajuririyeyo rukaba rutagomba guhinduka. III. ICYEMEZO CY’URUKIKO [21] Rwemeje ko inzitizi yatanze n’Ubushinjacyaha ifite ishingiro; [22] Rwemeje ko impamvu z’ubujurire zatanze na Ndagijimana Elie zitakirwa kubera ko zatanze nyuma y’ibihe by’ubujurire biteganywa n’amategeko; [23] Rwemeje ko urubanza rwajuririyeyo RPA 00617/2021/HC/MUS rwaciye n’Urukiko Rukuru, Urugereko rwa Musanze ku wa 07/09/2023 rugumanye agaciro mu ngingo zarwo zose; [24] Rutegetse ko igihano cy’igifungo cy’imyaka cumi n’itanu (15), Ndagijimana Elie yahanishijwe muri urwo rubanza ku cyaha cyo gusambanya umwana w’imyaka irindwi (7) y’amavuko kigumye; [25] Ruvuze ko amagarama y’urubanza aherereye ku Isanduku ya Leta, kuko Ndagijimana Elie yajuriye afunze, akaba asonewe kuyatanga.

ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragara amakosa yakozwe n’uburyo agomba gukosorwa hashingiwe ku mategeko n’ibimenyetso n’igisabwa urukiko; (...).”

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