

RWANDA / JUDGMENT

UBUSHINJACYAHA v. NDAGIJIMANA

RPAA 0149/12/CS

COURT

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UBUSHINJACYAHA v. NDAGIJIMANA

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Text

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UBUSHINJACYAHA v. NDAGIJIMANA [Rwanda URUKIKO RW'IKIRENGA – RPAA 0149/12/CS (Mukanyundo, PJ, Rugabirwa na Nyirandabaruta, J.) 15/7/2016] Amategeko agenga imiburanishirize y'imanza nshinjabyaha – ukwemera icyaha – ukwemera icyaha kwakorewe mu nzego z'iperereza uregwa yagera imbere y'Urukiko akagihakana – Bisuzumwa n' umucamanza uburanisha urubanza mu mizi, mu bushishozi bwe no mu busesenguzi bwe akoresheje umutimanama we akareba ukuri kuri mu mvugo zihakanywe na nyirazo n'agaciro yaziha, akurikije uburyo icyaha cyakozwemo amaze no kuzigereranya n'ibindi bimenyetso biri muri dosiye – Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso n'itangwa ryabyo, ingingo ya 119. Amategeko Mpanabyaha – Gusambanya umwana – imibonano yose mpuzabitsina cyangwa ishingiyeye ku bitsina ikorewe umwana uko yaba ikozwe kose, n'icyaba cyarakoreshejwe cyose, ni icyaha cyo gusambanya umwana – Itegeko n° 27/2001 ryo ku wa 28/04/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa, Ingingo ya 33. Amategeko Mpanabyaha – Igabanyagihano – Juji ubwe aha agaciro impamvu zigabanya ubugizi bwa nabi bw'uwakoze icyaha, ali izakibanjalije, ali izagiherekeje cyangwa izagakulikiye. Itegeko -Teka N°21/77 rishyiraho Igitabo Cy'amategeko Ahana, ingingo za 82 na 83. Incamake y'ikibazo: Uregwa

yakurikiranywe ku cyaha cyo gufata umwana w'imyaka itanu y'amavuko. Urukiko Rwisumbuye rwa Rusizi rwaregawe rwamuhamije icyaha rumuhanisha igifungo cya burundu n'ihazabu ya 100.000 Frw. Yajuririye Urukiko Rukuru, Urugereko rwa Rusizi, rwemeza ko ubujurire bwe nta shingiro bufite. Yajuririye Urukiko rw'Ikirenga, avuga ko Urukiko rwamuhamije icyaha rugendeye ko yari yemeye icyaha mu Bugenzacyaha, kandi ubwarwo rwaremeje ko yakubiswe nk'uko yabiburanishije, aho guha agaciro raporo ya muganga imurenganura, cyangwa ngo hakorwe iperereza yasabye. Ubushinjacyaha bwo buvuga ko ntaho Urukiko rwemeje ko yakubiswe, kandi ko icyemezo cya Muganga atari kamara, kuko kiba kigomba gushimangirwa n'ibindi bimenyetso. Incamake y'icyemezo: 1. Imvugo uregwa yavugiye mu nzego z'iperereza zigomba guhabwa agaciro kubera ko zihuza n'iza nyina w'umwana umurega.

2. Nk'uko uregwa yiyemereye ko yagerageje kwinjiza igitsina cye mu cy'umwana abonye byanze akabireka, byumvikana neza ko yakoreye uriya mwana imibonano mpuzabitsina nk'uko biteganywa n'amategeko.
3. Kuba aribwo bwa mbere uregwa aguye mu cyaha kandi akaba yaragikoze ageze mu myaka y'ubugimbi aho ibitekerezo kenshi biyoborwa n'irari ry'umubiri, byamubera impamvu yo kugabanyirizwa ibihano, bityo igihano cya burundu yahawe gisimbujwe igifungo cy'imyaka 20. Ubujurire nta shingiro bufite. Uregwa ahanishijwe igifungo cy'imyaka 20. Amagarama aherereye ku isanduku ya Leta.

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Amategeko yashingiweho: Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso n'itangwa ryabyo, ingingo ya 119 Itegeko n° 27/2001 ryo ku wa 28/04/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa, Ingingo ya 33. Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza mbonezamubano; iz'ubucuruzi, iz'umurimo, n'iz'ubutegetsi, ingingo ya 9 Itegeko-Teka N°21/77 Igitabo Cy'amategeko Ahana, ingingo za 82 na 83. Imanza zifashishijwe: Urubanza RPAA 0029/10/CS, MP c Ufitimana Fidèle na Ndagijimana Faustin, rwaciwe ku wa 8/7/2011, urubanza RPA 0041/06/CS, MP c Mukashema Anne Marie na bagenzi be, rwaciwe ku wa 9/4/2010. Inyandiko z'abahanga: Michel FRANCHIMONT, Ann JACOBS, Adrien MASSET, Manuel de procédure pénale, 4ème édition, Bruxelles, 2012, p1177 I.IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rusizi, Ubushinjacyaha burega Ndagijimana Innocent, icyaha cyo gusambanya umwana w'imyaka 5 y'amavuko witwa Y. L. Busobanura ko yafashe uwo mwana akamujyana mu nzu, akamusambanya, abana bari hanzu akaba aribo babivuze nyuma y'uko uwo mwana asohotse arira. Urwo Rukiko rwamuhamije icyaha aregwa, rumuhanisha igifungo cya burundu n'ihazabu ya 100.000 Frw. [2] Ndagijimana yajuririye Urukiko Rukuru, Urugereko rwa Rusizi, rwemeza ko ubujurire bwe nta shingiro bufite. [3] Ndagijimana Innocent yajuririye Urukiko rw'Ikirenga, avuga ko Urukiko rwamuhamije icyaha rugendeye ko yari yemeye icyaha mu Bugenzacyaha, kandi ubwarwo rwaremeje ko yakubiswe nk'uko yabiburanishije, aho guha agaciro raporo ya muganga imurenganura, cyangwa ngo hakorwe iperereza yasabye. [4] Iburanisha ry'urubanza ryabaye mu ruhame ku wa 13/06/2016, Ndagijimana Innocent yunganiwe na Me Kavuyekure

Dieudonné, naho Ubushinjacyaha buhagarariwe na Uwombonye Hirwa Sudi, Umushinjacyaha ku rwego rw'Igihugu. II. IKIBAZO KIRI MU RUBANZA N'ISESENGURA RYACYO Kumenya niba hari ibimenyetso bihamya Ndagijimana Innocent icyaha aregwa

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[5] Ndagijimana avuga ko Urukiko rwamuhamije icyaha rushingiye ko yari yemeye icyaha mu Bugenzacyaha, kandi ubwarwo rwaremeje ko yakubiswe nk'uko yabiburanishije, ko mu ibazwa rye yemeye icyaha kubera inkoni, ko ndetse yeretse Urukiko inkovu, ariko ntirwabiha agaciro, kandi ko ntacyo rwavuze ku cyemezo cya muganga kimukuraho icyaha kandi aricyo kimenyetso kamarampaka ku muntu wasambanyijwe, ndetse ko yasabye ko hakorwa iperereza ntirikorwe, kandi nyina w'uwo mwana yari kubazwa icyamuteye kujya kuri Polisi gusaba ko Ndagijimana afungurwa, ndetse n'icyamuteye kujya gusaba imbabazi ababyeyi ba Ndagijimana. [6] Akomeza avuga ko ibyo kuba nyina w'umwana yaraje kumushinjura kuri Polisi asaba ko yafungurwa nta kimenyetso abifitiye usibye kuba yarabisomye muri dosiye yo mu Rukiko Rwisumbuye, ko ari Polisi yabishyizemo. Kandi ko niba Umushinjacyaha yarasabye umubyeyi kujyana umwana kwa muganga kugira ngo harebwe ko yasambanyijwe, Muganga ntashobore kubigaragaza, ntaho bashingira bemeza ko yasambanyijwe. [7] Kavuyekure wunganira Ndagijimana, avuga ko ingingo z'ubujurire z'uwo yunganira zishingiye ku mpamvu ebyiri; ko iya mbere irebana no kuba Urukiko rwarirengagije ko raporo ya muganga ivuga ko adashobora kwemeza cyangwa ngo ahakane ko umwana yafashwe ku ngufu. Naho impamvu ya kabiri ikaba ari uko nyina w'umwana yavuze ko umwana afatwa atari ahari, ko yamujyanye kwa muganga agira ngo bemeze ko umwana yafashwe koko, ariyo mpamvu ibyo raporo ivuga bigomba gusuzumwa n'Urukiko hashingiwe ko hahanwa icyaha rwagaragarijwe kandi cyatangiwe ibimenyetso, ko igihe cyose hatagaragajwe igikorwa nyirizina cyakorewe ku gitsina cy'umwana, uregwa yagirwa umwere; kuko atari ibyo, umwana wese ukoze ku wundi mwana byajya byitwa kumusambanya. [8] Uhagarariye Ubushinjacyaha avuga ko ntaho Urukiko rwemeje ko yakubiswe, ahubwo ko kopi y'urubanza iragaragaza ko rwemeje ko atakubiswe, kandi ko yemeranya na Ndagijimana n'umwunganira ko icyemezo cya Muganga atari kamara, kiba kigomba gushimangirwa n'ibindi bimenyetso, ko muri uru rubanza raporo ya muganga ishimangirwa n'ibyo nyirubwite yivugiye aho yavuze ko yashatse gushyira igitsina cye mu cy'umwana bikamunanira, ibyo bikaba bihura n'ibiteganywa n'ingingo ya 33 y'Itegeko n° 27/2001 ryo ku wa 28/04/2001 ryerekeye uburenganzira bw'Umwana n'uburyo bwo kumurinda ihohoterwa. Yongeraho ko kuba Muganga yaravuze ko atakwemeza cyangwa ngo ahakane ko umwana yasambanyijwe, bitashingirwaho mu kugira umwere Ndagijimana kuko ubwe yivugiye ko yashyize igitsina cye mu cy'umwana bikanga kuko yari muto. [9] Akomeza avuga ko Ndagijimana yivuguruza, kuko hamwe avuga ko bamukubise, naho mu nama y'abacamanza akaba yaravuze ko bamwandikiye ibyo atavuze, mu gihe bizwi ko nyuma yo gukorera uregwa inyandikomvugo y'ibazwa, abihabwa, akabisoma, nyuma akabishyiraho umukono, biba bisobanuye ko abyemera. Avuga ko imvugo ye y'uko yakubiswe ari uburyo bwo guhunga icyaha, ahubwo ko yagombye kugaragaza inenge ku manza zombi zaciwe

mbere. UKO URUKIKO RUBIBONA [10] Ku birebana n'ibimenyetso mu manza nshinjabyaha, ingingo ya 119y'itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso n'itangwa ryabyo iteganya ko :«mu manza nshinjabyaha ibimenyetso mu manza bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe

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n'amategeko, ababuranyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye», naho ingingo ya 65 y'iryo tegeko igateganya ko: "Urukiko ni rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa....». [11] Ingingo ya 33 y'Itegeko n° 27/2001 ryo ku wa 28/04/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa, iteganya ko: "Ku bw'iri tegeko, imibonano yose mpuzabitsina cyangwa ishingiyeye ku bitsina ikorewe umwana uko yaba ikozwe kose, n'icyaba cyarakoreshejwe cyose, ni icyaha cyo gusambanya umwana". [12] Inyandikomvugo zo mu Bugenzacyaha no mu Bushinjacyaha ziri mu dosiye zigaragaza ko Ndagijimana Innocent yemeye icyaha akavuga n'uburyo yagikoze muri aya magambo: "nari nasomye ku kayoga, umwana yari yaje iwacu, noneho twikingirana mu nzu, nsasa agace, mushyiraho muryama hejuru, mushyiramo igitsina cyanjye cyanga kujyamo, abana bari hanze bahondagura urugi ndamureka". Naho mu Rukiko aburana ku ifungwa ry'ateganyo, avuga ko ibyo yakoze yabitewe n'inzoga; ariko aburana urubanza mu mizi mu Rukiko Rwisumbuye, mu Rukiko Rukuru n'imbere y'uru Rukiko, ahakana icyaha avuga ko yacyemejwe n'inkoni yakubiswe ubwo yabazwaga mu Bugenzacyaha, akongeraho ko na raporo ya muganga imushinjura kuko igaragaza ko umwana atasambanyijwe. [13] Dosiye igaragaza kandi ko hejuru y'imvugo za Ndagijimana zivuzwe haruguru, hari izindi mvugo zitandukanye nazo yagiye avuga mu nzego z'ubutabera urubanza rwe rwanyuzemo kuko nko mu Bugenzacyaha yemeye icyaha avuga uko yagikoze, mu Bushinjacyaha avuga ko yagiye kubikora akibuka ko ari icyaha akabireka, mu Rukiko aburana ku ifungwa ry'ateganyo avuga ko yabikoze ariko ko yabitewe n'inzoga, mu nkiko zombi zibanza aburana urubanza mu mizi ahakana icyaha avuga ko yacyemejwe n'inkoni yakubiswe mu Bugenzacyaha, kandi ko nyina w'umwana bafitanye inzangano, ariko ageze muri uru Rukiko ahindura imvugo avuga ko nyina w'umwana yashatse kumufunguza no kwiyunga n'ababyeyi be abasaba imbabazi. [14] Urukiko rurasanga uko guhinduranya imvugo kwa Ndagijimana nta kindi kugamije uretse gushaka guhunga icyaha, mu gihe hari ibimenyetso bikimushinja birimo ibyo yivugiye yemera icyaha mu ibazwa rye kandi ize mvugo ze zikaba zihura n'iz'abatangabuhamya Ntabudakeba Spéciose, Kayigi Juvénal na Nyirabusoro Pétronille bbamushinja icyaha, zigahura na none n'ibyo nyina w'umwana yasobanuye atanga ikirego. [15] Ku birebana n'agaciro gahabwa ukwemera icyaha kwakorewe mu nzego z'iperereza ariko uregwa yagera imbere y'Urukiko akagihakana, Urukiko rusanga nk'uko icyo kibazo cyagiye gikemurwa mu manza zaciwe n'uru Rukiko¹, kuba uregwa ahinduye imvugo ageze imbere y'urukiko ubwabyo atari impamvu ihagije yatuma ibyo yavuze mu nzego z'iperereza biteshwa agaciro mu gihe adatanga ibimenyetso bigaragaza ko yacyemeye kubera ko yari akubiranywe cyangwa ashyizweho agahato adashobora kwigobotora; ahubwo ko ikibazo nk'iki kiri mu bubasha bw'umucamanza uburanisha urubanza mu mizi, mu bushishozi bwe no mu busesenguzi bwe akoresheje umutimanama we akareba

ukuri kuri mu mvugo zihakanywe na nyirazo n'agaciro yaziha, akurikije uburyo icyaha cyakozwemo amaze no kuzigereranya n'ibindi bimenyetso biri muri dosiye. Ibi kandi bigashimangirwa n'abahanga mu by'amategeko yerekeye 1 Urubanza RPAA 0029/10/CS, MP c Ufitimana Fidèle na Ndagijimana Faustin, rwaciwe ku wa 8/7/2011, n'urubanza RPA 0041/06/CS, MP c Mukashema Anne Marie na bagenzi be, rwaciwe ku wa 9/4/2010.

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imiburanishirize y'imanza z'inshinyabyaha nka Michel FRANCHIMONT, Anne JACOBS na bagenzi be, aho bavuga ko Umucamanza mu bushishozi bwe ariwe uha agaciro ukwemera k'umuburanyi yakoreye mu rwego rw'iperereza, kabone n'ubwo nyuma yaba yarageze imbere y'Urukiko ibyo yari yemeye akabihakana². [16] Urukiko rurasanga rero imvugo Ndagijimana yavugiye mu nzego z'iperereza zigomba guhabwa agaciro kubera ko zihuza n'iza nyina w'umwana umurega nk'uko nawe yabyumvanye abana bamufashe asambanya uwo mwana, bivuze ko guhakanira mu Rukiko ibyo yari yemeye mu ibazwa rye, ari uburyo bwo guhunga icyaha no kugerageza amahirwe gusa. Byongeye kandi bikaba bitumvikana ukuntu umuntu urimo gukubitwa inkoni akorerwa ibibabaza umubiri, usibye ko nta n'ibimenyetso abitangira, imvugo ze zihura n'iz'abatangabuhamya babajijwe ndetse n'iza nyina w'umwana watanze ikirego mu gusobanura uko icyaha cyakozwe niba yemeza ko ntacyabayeho. [17] Ku birebana n'ingingo y'ubujurire ya Ndagijimana y'uko Urukiko Rukuru rwanze gukora iperereza kugira nyina w'umwana wasambanyijwe abazwe icyamuteye kumufunguza kuri Polisi, n'icyamuteye kujya gusaba imbabazi ababyeyi be, Urukiko rurasanga muri dosiye nta nyandiko ibigaragaza irimo ndetse n'iyi mvugo akaba ari ubwa mbere ayiburanisha kuva yafatwa, ko rero hashingiwe ku biteganywa n'ingingo ya 9 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza mbonezamubano; iz'ubucuruzi, iz'umurimo, n'iz'ubutegetsi, iyi mpamvu y'ubujurire nta shingiro ifite kubera ko ibyo aburanisha nta bimenyetso abitangira. Naho ku birebana n'ibyo Ndagijimana avuga ko nyina w'umwana bafitanye inzangano, Urukiko rusanga iyi ngingo ivuguruzanya n'iyi hejuru yayo aho avuga ko yaje kumufunguza, bikaba bitumvikana ukuntu uyu mubyeyi yabikora bafitanye inzangano koko, ko ahubwo uku guhinduranya imvugo kwa Ndagijimana, kugamije guhunga icyaha. [18] Naho ku birebana n'imiburanire ya Ndagijimana y'uko raporo ya muganga itamushinja kuko itagaragaza ko umwana yasambanyijwe, Urukiko rurasanga isesengura ridahura n'ibikubiye muri iyi raporo kuko muganga avuga ko akarangabusugi ke n'ubwo kakiriho ariko ko hari icyagakozeho (Hymen présent mais non intact), bityo akaba ntaho ishinjura Ndagijimana nk'uko abiburanisha, ko ahubwo ibivugwa muri raporo bihura n'ibyo yivugiye ko yashatse kwinjiza igitsina cye mu cy'umwana bikanga, ariyo mpamvu muganga yasanze akarangabusugi kakozweho n'ikintu n'ubwo kakiriho, bityo, hashingiwe ku ngingo ya 119 n'ya 65 z'itegeko n° 15/2004 ryo ku wa 12/06/2004, ryavuzwe haruguru, akaba nta gushidikanya ko icyaha cyakozwe. [19] Urukiko rurasanga kuba Ndagijimana mu ibazwa rye yaremeye ko yagerageje kwinjiza igitsina cye mu cy'umwana abonye byanze akabireka, byumvikana neza ko yakoreye uriya mwana imibonano mpuzabitsina nk'uko biteganywa n'ingingo ya 33 y'Itegeko n° 27/2001 ryo ku wa 28/04/2001, ryavuzwe haruguru, bityo icyaha cyo guhohotera umwana akurikiranyweho kikaba kimuhama kuko hari ibimenyetso bikimushinja byasobanuwe haruguru. 2 Michel

Franchimont, Ann Jacobs, Adrien Masset, Manuel de procédure pénale, 4ème édition, Bruxelles, 2012, p1177: «Quant à la force probante de l'aveu, le juge du fond apprécie souverainement la sincérité d'un aveu fait par le prévenu au cours de l'instruction préparatoire, même quand cet aveu a été ultérieurement rétracté devant le tribunal. L'aveu en matière répressive peut toujours être rétracté par son auteur, le principe de l'intime conviction laissant le juge libre d'apprécier la valeur de la rétractation comme la portée de l'aveu lui-même».

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[20] Urukiko rurasanga ariko, kuba Ndagijimana Innocent aribwo bwa mbere agwa mu cyaha kandi akaba yaragikoze ageze mu myaka y'ubugimbi aho ibitekerezo kenshi biyoborwa n'irari ry'umubiri, byamubera impamvu yo kugabanyirizwa ibihano, hashingiwe ku ngingo ya 82 y'Igitabo cy'amategeko ahana ibyaha cyakurikizwaga icyaha gikorwa, ko rero hashingiwe na none ku ngingo ya 83 y'Igitabo kimaze kuvugwa, igihano cy'igifungo cya burundu n'ihazabu ya 100.000 Frw yahawe n'inkiko zabanje gisimbujwe igifungo cy'imyaka makumyabiri (20). III. ICYEMEZO CY'URUKIKO [21] Rwemeje ko ubujurire bwa Ndagijimana Innocent nta shingiro bufite. [22] Ruhanishije Ndagijimana Innocent igifungo cy'imyaka makumyabiri (20). [23] Rwemeje ko imikirize y' urubanza n° RPA 0295/08/HC/RSZ rwaciwe ku wa 04/04/2012, n'Urukiko Rukuru, Urugereko rwa Rusizi, ihindutse gusa ku birebana n'igihano. [24] Rutegetse ko amagarama y'uru rubanza aherera ku Isanduku ya Leta kuko uregwa afunzwe.

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