

RWANDA / JUDGMENT

UBUSHINJACYAHA v NDAYAMBAJE

RPAA 00646/2021/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v NDAYAMBAJE

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Text

Page 1

UBUSHINJACYAHA v NDAYAMBAJE [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00646/2021/CA (Umugwaneza, P.J.) 30 Gicurasi 2023] Amategeko agenga imanza nshinjabyaha – Igabanyagihano – Nta cyabuza Urukiko kugabanyiriza igihano uregwa, hagamijwe gutanga igihano gihwanye n'uburemere bw'icyaha cyakozwe kabone n'ubwo iby'igihano byaba bitaburanyweho n'impamvu z'ubujurire zitahawe ishingiro. Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rubavu, uregwa akurikiranywe ku kuba yarasambanyije umwana witwa U. A. w'imyaka cumi n'itandatu (16) y'amavuko bimuviramo kumererwa nabi ku buryo atabashaga kugenda, bamujyanye kwa Muganga basanga yasambanyijwe afite udukomere ku myanya ndanga gitsina. Uregwa yaburanye ahakana icyaha ko adashobora gusambanya uwo mwana kuko amubereye se wabo. Urwo Rukiko rwaciye urubanza rwemeza ko uregwa ahamwa n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cy'imyaka makumyabiri n'umwe (21). Uregwa yajuririye imikirize y'urubanza mu Rukiko Rukuru, Urugereko rwa Musanze avuga ko Urukiko rubanza rwamuhamije icyaha cyo gusambanya umwana rwirengagije ko abatangabuhamya bamushinja bafitanye isano na nyina w'umwana bavuga ko yasambanyije no kuba uwo mwana yarajyanywe gusuzumwa nyuma y'iminsi itanu (5) harebwe igihe bavuga ko yasambanyirijwe

n'igihe yasuzumiwe na Muganga naho we akaba atarasuzumwe. Urwo Rukiko rwasanze adashobora kuvuguruza ibimenyetso bimuhamya icyaha byashingiweho ku rwego rwa mbere, rwemeza ko ubujurire bwe nta shingiro bufite, ko urubanza yajuririye rudahindutse. Yarongeye nanone ajuririra Urukiko rw'Ubujurire avuga ko yahamijwe icyaha atakoze hashingiwe ku bimenyetso bishidikanywaho, bityo ko Urukiko rwazabona ko nta cyaha yakoze akagirwa umwere kuko nta bimenyetso Ubushinjacyaha bwigeze bugaragaza byemeza nta shiti ko ari we wasambanyije U.A. Ubushinjacyaha bwo bwaburanye buvuga ko abatangabuhamya bemeza ko babonye umwana agenda nabi bamubaza icyo yabaye avuga ko ari Ndayambaje (uregwa) wamusambanyije ndetse ko ari inshuro ya kane (4), ko uyu mwana nta wundi muntu yigeze avuga usibye uregwa, bityo ko hashingiwe ku biteganywa n'ingingo ya 62 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ubuhamya bwatanzwe bukwiye gushingirwaho. Incamake y'icyemezo: Nta cyabuza Urukiko kugabanyiriza igihano uregwa, hagamijwe gutanga igihano gihwanye n'uburemere bw'icyaha cyakozwe kabone n'ubwo iby'igihano byaba bitaburanyweho n'impamvu z'ubujurire zitahawe ishingiro. Urubanza ruhindutse ku birebana n'ibihano gusa. Amategeko yashingiweho: Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, Ingingo ya 48.

Page 2

Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, Ingingo ya 65 n'ya 119. Imanza zifashishijwe: RPAA 0117/07/CS, Ubushinjacyaha v Sgt Biziyaremye na Cpl Ngabonziza rwaciwe n'Urukiko rw'Ikirenga ku wa 17/07/2010. RPA/GEN 00004/2020/CA, Ubushinjacyaha vs. Birindabago rwaciwe n'Urukiko rw'Ubujurire ku wa 08/04/2022. RPAA 00141/2022/CA, Ubushinjacyaha v Ntegamaherezo Ryamukuru rwaciwe n'Urukiko rw'Ubujurire ku wa 31/05/2023. RPAA 00120/2020/CA, ubushinjacyaha v Gahigi rwaciwe n'Urukiko rw'Ubujurire ku wa 26/05/2023. RPAA 0118/11/CS, Ubushinjacyaha v Ngurinzira rwaciwe n'Urukiko rw'Ikirenga ku wa 13/11/2015. (icyegeranyo cy'ibyemezo by'inkiko Vol [2017] 1 RLR). RPAA 00039/2021/CA, Ubushinjacyaha v Shakabatenda rwaciwe n'Urukiko rw'Ubujurire ku wa 02/07/2021. RPAA 00189/2021/CA, Ubushinjacyaha v Bakunzibake rwaciwe n'Urukiko rw'Ubujurire ku wa 28/10/2022. Inyandiko z'abahanga: Etienne Vergès, Géraldine Vial, Oliviedr Leclerc, Droit de la prevue, Presse Universitaires de France, Reille, 75014 Paris, 1ère édition, 2015. P.574. Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rubavu, Ubushinjacyaha burega Ndayambaje Emmanuel kuba tariki 09/12/2018, yarasambanyije umwana witwa U.A. w'imyaka cumi n'itandatu (16) y'amavuko bimuviramo kumererwa nabi ku buryo atabashaga kugenda, bamujyanye kwa Muganga basanga yasambanyijwe afite udukomere ku myanya ndanga gitsina. [2] Ndayambaje Emmanuel yaburanye ahakana icyaha avuga ko itariki bavuga ko ariho yasambanyije uwo mwana, yari mu rugo iwabo, imiryango yabo ihari, ndetse ko adashobora gusambanya uwo mwana kuko amubereye se wabo. [3] Mu rubanza N° RP 00032/2019/TGI/RBV rwaciwe ku wa 27/12/2019, Urukiko Rwisumbuye rwa Rubavu rwemeje ko Ndayambaje Emmanuel ahamwa n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cy'imyaka makumyabiri n'umwe (21). [4] Mu gufata icyemezo, Urukiko rwashingiye ku mvugo z'umwana wahohotewe ariwe U.A. wemeje ko

Ndayambaje Emmanuel yamusambanyije inshuro enye (4), bigashimangirwa na raporo ya Muganga igaragaza ko U.A. yasambanyijwe ku buryo igitsina cye kigaragaza guhungabana ndetse kiriho udukomere, bigaragaza ko yasambanyijwe hakoreshejwe imbaraga, kandi ko hari indwara zandurira mu mibonano mpuzabitsina zamugaragayeho, ndetse abatangabuhamya

Page 3

bajyanye uyu mwana kwa Muganga bakaba bemeza ko bamujyanye ari kubabara iyasha ry'akaguru k'iburyo atari gushobora gutambuka. [5] Ndayambaje Emmanuel yajuririye imikirize y'urubanza mu Rukiko Rukuru, Urugereko rwa Musanze avuga ko Urukiko rubanza rwamuhamije icyaha cyo gusambanya umwana rwirengagije ko abatangabuhamya bamushinja bafitanye isano na nyina w'umwana bavuga ko yasambanyije no kuba uwo mwana yarajyanywe gusuzumwa nyuma y'iminsi itanu (5) harebwe igihe bavuga ko yasambanyirijwe n'igihe yasuzumiwe na Muganga naho we akaba atarasuzumwe. Asaba Urukiko kubona ko yabeshyewe na Se w'umwana agamije kumwihimuraho kubera ko ari mu bantu bamufatiye mu ishyamba ry'Ibirunga atema ibiti, acibwa amande angana n'amafaranga y'u Rwanda ibihumbi ijana na mirongo itandatu (160.000 Frw). [6] Mu rubanza N° RPA 00153/2020/HC/MUS rwaciwe ku wa 25/06/2021, Urukiko Rukuru, Urugereko rwa Musanze, rwasanze Ndayambaje Emmanuel adashobora kuvuguruza ibimenyetso bimuhamya icyaha byashingiweho ku rwego rwa mbere, rwemeza ko ubujurire bwe nta shingiro bufite, ko urubanza yajuririye rudahindutse. [7] Ndayambaje Emmanuel yajuririye Urukiko rw'Ubujurire avuga ko yahamijwe icyaha atakoze hashingiwe ku bimenyetso bishidikanywaho, bityo ko Urukiko rwazabona ko nta cyaha yakoze akagirwa umwere kuko nta bimenyetso Ubushinjacyaha bwigeze bugaragaza byemeza nta shiti ko ari we wasambanyije U.A. [8] Ubushinjacyaha buvuga ko hari ibimenyetso bihagije byerekana ko Ndayambaje Emmanuel yakoze icyaha aregwa ; busaba kwemeza ko ubujurire bwe nta shingiro bufite hakagumaho imikirize y'urubanza yajuririye. [9] Urubanza rwaburanishijwe mu ruhamye ku wa 04/04/2023 no ku wa 09/05/2023, Ndayambaje Emmanuel yunganiwe na Me Umugwaneza Dianne, Ubushinjacyaha buhagarariwe na Ntawangundi Béatrice (mu iburanisha ryo ku wa 04/04/2023) na Ninahazwa Roselyne (mu iburanisha ryo ku wa 09/05/2023), Abashinjacyaha ku rwego rw'Igihugu. Mu iburanisha ryo ku wa 09/05/2023, hatangajwe ko urubanza ruzasomwa ku wa 29/05/2023, ariko kubera ko iyandikwa ryarwo ryari ritarangira, rwimurirwa ku matariki atandukanye harimo 30/05/2023, 29/06/2023 na 30/06/2023 ari nawo munsu rusomweho. I. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO Kumenya niba Ndayambaje Emmanuel yarahamijwe icyaha hashingiwe ku bimenyetso bishidikanywaho [10] Ndayambaje Emmanuel avuga ko yahamijwe icyaha atakoze hashingiwe ku bimenyetso bishidikanywaho bigizwe na raporo ya Muganga ndetse n'ubuhamya bwa Manishimwe Florence n'ubwa Muhoza Clemence. [11] Ku bijyanye na raporo ya Muganga, Ndayambaje Emmanuel avuga ko inyuranyije n'itariki umwana avuga ko yasambanyirijweho ndetse n'itariki we yafatiweho, ko bavuga ko umwana yasambanyijwe tariki 09/12/2018, we akaba yarafashwe tariki 13/12/18 umwana apimwa tariki 14/12/2018, akaba yibaza uburyo umwana yasambanyijwe hagarashira icyo gihe cyose atarajyanwa

Page 4

kwa Muganga ngo barebe niba koko yarasambanyijwe. Ko umwana yakabaye yarajyanwe kwa Muganga gupimwa ku itariki bavuga yasambanyirijweho nawe ubwe bakamupima hamwe n'uwo mwana ngo bigaragare koko ko ariwe wamusambanyije, cyane ko atamusambanya kuko amubereye se wabo, ko rero kuba ibyo bitarakozwe umwana agapimwa nyuma y'igihe bavuga ko yasambanyirijweho kandi bakamupima wenyine, iyo raporo ya Muganga idakwiye guhabwa agaciro. [12] Ku bijyanye n'ubuhamya, Ndayambaje Emmanuel avuga ko mukumuhamya icyaha cyo gusambanya umwana Urukiko rubanza rwashingiye ku buhamya bwa Manishimwe Florence n'ubwa Muhoza Clemence nyamara nta n'umwe muribo wemeza ko yigeze amubona asambanya uwo mwana. Avuga kandi ko abo batangabuhamya bafitanye isano na nyina w'umwana bivugwa ko yasambanyije, ko Manishimwe Florence ari umugore wa musaza wa nyina w'uwo mwana ndetse akaba atanatuye aho icyaha cyabereye, ko atuye nko mu biro metero bitatu (3 km) uvuye aho icyaha cyabereye, naho Muhoza Clemence akaba mu byara wa nyina w'uwo mwana, ko bose ari abantu bo mu muryango umwe bishyize hamwe baramushinja bamubeshyera kubera amakimbirane bafitanye yo mu muryango akomoka ku igabana ry'imitungo. [13] Me Umugwaneza Dianne avuga ko umwana bivugwa ko yasambanyijwe na Ndayambaje Emmanuel yakabaye yarajyanwe kwa Muganga gupimwa bakimara kubona ko yasambanyijwe, ko kuba baramujanyeyo nyuma, bagasanga yarasambanyijwe, ibyo bitabazwa Ndayambaje Emmanuel kuko igihe bavuga ko yamusambanyije ataricyo gihe yapimwe. Avuga kandi ko muri raporo ya Muganga bavuga ko umwana yari afite udukumere ku gitsina kandi afite ihungabana ku myanya ndangagitsina, ariko ko nta kigaragaza ko iryo hungabana n'utwo dukumere byatewe no gusambanywa na Ndayambaje Emmanuel, ibyo akabishingira ku gihe cyanyuzemo kuva igihe bavuga ko umwana yasambanyirijwe n'igihe yajyaniwe kwa Muganga gupimwa no ku kuba Ndayambaje Emmanuel atarapimwe ADN ngo bigaragare ko ariwe wamusambanyije, ko kuba bitarakozwe bigaragaza ko hashingiye ku kugenekereza kandi bibujijwe mu manza nshinjabyaha. [14] Me Umugwaneza Dianne akomeza avuga ko abatangabuhamya Manishimwe Florence na Umuhiza Clemence bose nta n'umwe uvugaga ko yigeze abona Ndayambaje Emmanuel asambanya U.A., ko Umuhiza Clemence avuga ibyo yabwiwe na Ruzindana André ariwe se w'umwana, nabwo akavugaga ko yabimubwiye ku wa gatatu umwana yarasambanyijwe ku cyumweru. ko Manishimwe Florence nawe ntaho avugaga ko yabonye Ndayambaje Emmanuel asambanya uwo mwana. Bityo ko kuba ubuhamya bwabo bwarashingiweho, binyuranye n'ibiteganywa n'ingingo ya 62 y'Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo igaragaza neza umutangabuhamya uwo ariwe ko ari utanga ubuhamya mu Rukiko ku byo yabonye cyangwa yumvishe ku birebana n'ikiburanwa, ibyo bigahura n'ibyo Ndayambaje Emmanuel avugaga ko harimo gushidikanya kandi kurengera ushinjwa. [15] Ubushinjacyaha buvugaga ko ingingo z'ubujurire za Ndayambaje Emmanuel nta shingizo zifite. Ku bijyanye na raporo ya Muganga, buvugaga ko umwana yasambanyijwe tariki 09/12/2018, ajyanwa kwa Muganga tariki 13/12/2018, raporo ya Muganga isinywa tariki 14/12/2018, ko kuba umwana atarahise ajyanwa kwa Muganga icyaha kikimara kuba, byatewe n'uko yagize ubwoba bwo kubivugaga abivugaga ari uko babonye agenda nabi bamubajije impamvu avugaga ko yasambanyijwe na Ndayambaje Emmanuel nk'uko byemezwa n'ubuhamya bwa Manishimwe

Florence n'ubwa Muhoza Clemence.

Page 5

[16] Ku bijyanye n'ubuhamya, Ubushinjacyaha buvuga ko abatangabuhamya Manishimwe Florence na Muhoza Clemence bemeza ko babonye umwana U.A. agenda nabi bamubaza icyo yabaye avuga ko ari Ndayambaje Emmanuel wamusambanyije ndetse ko ari inshuro ya kane (4), ko uyu mwana nta wundi muntu yigeze avuga usibye Ndayambaje Emmanuel gusa, bityo ko hashingiwe ku bateganywa n'ingingo ya 62 y'Itegeko N° 15/2004 ryavuzwe haruguru, ubuhamya bwabo bukwiye gushingirwaho kuko bavuze ibyo babwiwe n'umwana wasambanyijwe bamaze kubona ko atarimo kugenda neza, ko kuvuga ko nta n'umwe muri abo batangabuhamya wabonye Ndayambaje Emmanuel asambanya uwo mwana, nta shingiro bikwiye guhabwa kuko n'ubwo batabibonye ariko babibwiwe. [17] Ku bijyanye no kuvuga ko abatangabuhamya bafitanye amasano n'umwana wasambanyijwe, Ubushinjacyaha buvuga ko ibyo bitabuza ko ubuhamya bwabo bwakirwa, ko icy'ingenzi ari ukumenya niba ibyo bavuga byagira icyo bifasha Urukiko ku bijyanye n'ikiburanwa. Ko hashingiwe ku ngingo ya 65 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryavuzwe haruguru, Urukiko arirwo rwazapima ko ibivugwa n'abatangabuhamya bikwiye guhabwa ishingiro, cyane ko Ndayambaje Emmanuel uvuga ko bafitanye amakimbirane yo mu muryango, abivuga mu magambo gusa ntagaragaze byibuze inyandiko z'aho yabareze mu nzego z'ibanze ku buryo byaba impamvu yo kumwihimuraho, kandi ko n'ubwo ayo makimbirane yaba ahari, Urukiko arirwo rwazabisuzuma rukareba niba ibyo bavuga bifite ishingiro, bityo ko ubujurire bwe nta shingiro bufite. [18] U.A. yahamagajwe mu Rukiko kugira ngo agire ibyo asobanura ku byamubayeho, avuga ko Ndayambaje Emmanuel ari se wabo koko kandi ko baturanye inzu ku yindi, ko yatangiye kumusambanya afite imyaka cumi n'itanu (15), akamutera ubwoba ko nabivuga azamwica kuko yigeze kuba umusirikari. Asobanura ko Ndayambaje Emmanuel amusambanya ku nshuro ya mbere, yari yaraye iwe umugore we yagiye kwa Muganga ku byara, habaye nijoro Ndayambaje Emmanuel amusanga aho aryamye amushukisha amafaranga 100 Frw amusambanya arabiceceka kuko yumvaga bimuteye ikimwaro ariko akumva ababara, ko Ndayambaje Emmanuel yongeye kumusambanya ku nshuro ya 2 ari ku manywa amutera ubwoba ko nabivuga azamwica ariko yumvise ababara mu mbavu akeka ko bizavamo ikindi kintu abibwira nyina bamujyana kwa Muganga. Akanavuga ko umugore wa Ndayambaje Emmanuel ariwe wamufashije kujya kwa Muganga kuko ababyeyi be nta bari bahari. [19] Ku bivugwa na U.A., Ndayambaje Emmanuel avuga ko ibyo avugiye mu Rukiko bitandukanye n'ibiri muri dosiye kuko avuze ko yamusambanyije incuro ebyiri (2), ariko ko muri dosiye yavuze ko yamusambanyije incuro eshatu (3) ubundi akavuga inshuro enye (4). Avuga kandi ko aribyo koko U.A. yaraye iwe inshuro ebyiri (2) arikumwe na musaza we baje gushaka aho barara kuko inzu yabo ari ntoya, ariko ko atigeze aharara umugore we yagiye kubyara, ko yabaga ahari, bityo ko nta kuntu yari kumusambanya. Ko n'igihe U.A. avuga ko yamusambanyije ari kumanywa nabyo ari ukumubeshyera kuko icyo gihe yari yagiye kureba umupira wa APR na RAYON Sport, ko byose ari ukumubeshyera bitewe n'amakimbirane afitanye n'ababyeyi b'uyu

mwana bakaba aribo bamubwiye ngo amubeshyere. Avuga kandi ko kuvuga ko umugore we ariwe wajyanye U.A. kwa Muganga nabyo atari byo kuko dosiye igaragaza ko uwamujyanye kwa

1 Ivuga ko “Ubuhamya ni ibivugwa mu rukiko bivuzwe n’umuntu wabibonye cyangwa wabyumvise ubwe ku byerekeye ikiburanwa”

Page 6

Muganga ari Mushimiyimana Florence, ko umugore we nawe iyo aba yaramujyanye kwa Muganga nawe yari kuvugwa muri dosiye. [20] Ubushinjacyaha buvuga ko hashingiwe ku ngingo ya 48 y’Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y’imanza z’inshinjabyaha² no ku ngingo ya 65 y’Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo³, busanga uburyo umwana asobanura ko Ndayambaje Emmanuel yamusambanyije akajyanwa kwa Muganga atangiye kumererwa nabi, Ndayambaje Emmanuel akaba atabasha kugaragaza ibimenyetso by’amakimbirane avuga afitanye n’ababyeyi b’uyu mwana, akaba atabasha no kuvuguriza ibimenyetso bimuhamya icyaha, ubujurire budakwiye guhabwa ishingiro, hakagumaho urubanza rwajuririwe. [21] Ubujurire bwa Ndayambaje Emmanuel bugamije kunenga Urukiko Rukuru, Urugereko rwa Musanze ko rwamuhamijwe icyaha hashingiwe ku bimenyetso bishidikanywaho bigizwe n’imvugo z’uwakorewe icyaha, imvugo z’abatangabuhamya na raporo ya Muganga. [22] Ingingo ya 48 y’Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y’imanza z’inshinjabyahaivuga ko « Umuntu wese wagize uruhare mu ikorwa ry’icyaha cyangwa uwakorewe icyaha ashobora kumvwa nk’umutangabuhamya ». [23] Ingingo ya 65 y’Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo ivuga ko ivuga ko « Urukiko ni rwo rwonyine rupima ko imikirize y’abatangabuhamya ihuye n’ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa. Ntirwitsitsa ku mubare w’abatangabuhamya. Rwita cyane cyane ku bumenyi bwabo bw’ibyabaye, no ku buryo babivuga uko byagenze nta cyo bihimbira ». [24] Naho ingingo ya 119 y’iryo tegeko, iteganya ko « Mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose z’ibyabaye n’ibyemejwe n’amategeko, ababuranyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye. Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura ari byo kandi ko bishobora kwemerwa ». [25] Kopi y’urubanza rujuririrwa, mu gika cya 12, igaragaza ko Urukiko Rukuru, Urugereko rwa Musanze rwasesenguye ibimenyetso byatanzwe n’Ubushinjacyaha birimo ubuhamya bwa U.A. wakorewe icyaha, ushinja Ndayambabje Emmanuel ko yamusambanyije inshuro zigera kuri enye (4), ubuhamya bwa Manishimwe Florence n’ubwa Muhoza Clemence bemeza ko uyu mwana yababwiye ko Ndayambaje Emmanuel yamusambanyije na raporo ya Muganga yo ku wa 14/12/2018 yemeza ko umwana U.A. yasambanyijwe ko yari afite udukomere ku gitsina n’ihungabana ku myanya ndangagitsina, ibi bimenyetso ari nabyo byashingiweho n’Urukiko Rwisumbuye rwa Rubavu; rusanga byemeza nta shiti ko Ndayambaje Emmanuel ariwe wasambanyije U.A.

2 Iteganya ko “Umuntu wese wagize uruhare mu ikorwa ry’icyaha cyangwa uwakorewe icyaha ashobora kumvwa nk’umutangabuhamya”. 3 Iteganya ko “Urukiko ni rwo rwonyine rupima ko imikirize y’abatangabuhamya ihuye n’ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa. Ntirwitsitsa ku mubare w’abatangabuhamya. Rwita cyane cyane ku bumenyi bwabo bw’ibyabaye, no ku buryo babivuga uko byagenze nta cyo bihimbira”.

Page 7

- [26] Urukiko rw’Ubujurire rurasanga Ndayambaje Emmanuel anenga ubuhamya bwa Manishimwe Florence n’ubwa Muhoza Clemence ko bahamya ibyo babwiwe kuko nta n’umwe muribo uvuga ko yamubonye asambanya U.A. kandi ko bafitanye amasano na nyina wa U.A. bakaba bamubeshyera kubera amakimbirane afitanye n’ababyeyi b’uwo mwana. Urukiko rw’Ubujurire rurasanga ikindi Ndayambaje Emmanuel anenga ku bijyanye n’ubuhamya, ari ukuba abatangabuhamya badahuza n’uwakorewe icyaha ku bijyanye n’inshuro yamusambanyije, aho bamwe bavuga ko yamusambanyije inshuro 4, abandi bakavuga inshuro 3, naho uwakorewe icyaha akavuga ko yamusambanyije inshuro 2. [27] Urukiko rw’Ubujurire rurasanga ikindi Ndayambaje Emmanuel anenga ari raporo ya Muganga, aho ayinenga ko yatinze gukorwa ugereranyije n’igihe bavuga ko icyaha cyakorewe kuko bavuga ko umwana yasambanyijwe tariki 9/12/2018, ajyanwa kwa Muganga gupimwa tariki 14/12/2018, akaba yibaza uburyo umwana yasambanyijwe hagashira icyo gihe cyose atarajyanwa kwa Muganga, ko umwana yagombaga kupimwa icyaha kikimara kuba kandi nawe agapimwa kugira ngo bigaragare ko ariwe wamusambanyije. [28] Dosiye y’urubanza igaragaza ko ku wa 15/12/2018, Mushimiyina Florence yavugiye mu Bugenzacyaha ko U.A. yarwariye ku rusengeri araremba, bahita bamujyana kwa Muganga, bagezeyo mu ijoro bajya kumukarabya (kumwuhagira), bakora ku iyasha agataka, bamubajije impamvu ari gutaka abanza kubahisha, bakomeza kumwiringa, ageze aho ababwira ko ari Ndayambaje Emmanuel wamusambanyije tariki 09/12/2018 kandi ko yari inshuro ya kane (4) amusambanya. [29] Dosiye y’urubanza igaragaza kandi ko kuri iyo tariki, Muhoza Clemence nawe yavugiye mu Bugenzacyaha ko yagiye kureba U.A. kwa Muganga ahageze asanga Mushimiyimana Florence ari kumwuhagira, yamukora munsu y’amatako umwana agataka, bamubajije impamvu ababwira ko ari Ndayambaje Emmanuel wamusambanyije tariki 09/12/2018 kandi ko yari inshuro ya kane
- (4) amusambanya, ko yari yatinye kubivuga. [30] Dosiye y’urubanza igaragaza na none ko Ruzindana Adré (se wa U.A.) atanga ikirego mu Bugenzacyaha ku wa 13/12/2018, yavuze ko kugira ngo bamenye ko U.A. yasambanyijwe, byatangiye arwaye atabasha kugenda cyangwa kwiterura afite umuriro mwinshi ndetse no gucibwamo, babanza kugira ngo yaravunitse bamushakira ubwungo, bikomeje bamujyana ku bantu basenge, nyuma nibwo abaturanyi babonye yarembye bamujyana kwa Muganga, bamugejejeyo bagiye kumwuhagira arataka, bamubajije impamvu ababwira ko Ndayambaje Emmanuel yamusambanyije ku cyumweru tariki 09/12/2018, abo baturanyi barabibabwira, abajije uyu mwana we inshuro Ndayambaje Emmanuel yamusambanyije avuga ko ari inshuro 3. [31] Hari kandi raporo ya Muganga yo ku wa 14/12/2018, igaragaza ko U.A. yasambanyijwe, ko icyo gihe yari afite ihungabana

n'udukomere ku myanya ndangagitsina byatewe no gusambanywa ndetse ko yari anarwaye indwara zandurira mu mibonano mpuzabitsina. [32] Urukiko rw'Ubujurire rurasanga ubuhamya bwa Mushimiyimana Florence, ubwa Muhoza Clemence n'ubwa se w'umwana wahohotewe ariwe Ruzindana André bwose buhuriza ku kuba uyu mwana U.A. yarababwiye ko yasambanyijwe na Ndayambaje Emmanuel kandi n'ubwo badahuza ku nshuro yasambanyijwe kuko Mushimiyimana Florence na Muhoza Clemence bavugaga inshuro 4, naho Ruzindana André akavugaga inshuro 3, U.A. we akavugaga ko yasambanyijwe inshuro

Page 8

2, ariko kandi bigaragara ko bose bahuriza ku kuba yarababwiye ko yamusambanyije inshuro irenze imwe kandi ubwanyuma akaba yamusambanije tariki 09/05/2018. Urukiko rw'Ubujurire rurasanga Urukiko rubanza nta kosa rwakoze mugushingira ku buhamya bumaze kuvugwa haruguru ndetse na raporo ya Muganga kuko ari ibimenyetso byemeza nta shiti ko Ndayambaje Emmanuel yasambanyije U.A. [33] Urukiko rw'Ubujurire rurasanga kuba Mushimiyimana Florence na Muhoza Clemence badahuza na Ruzindana André ndetse na U.A. ku bijyanye n'inshuro uyu yasambanyijwe, ibyo bitaba impamvu ituma ubuhamya bwabo buteshwa agaciro kuko nk'uko byatanzweho umurongo n'Urukiko rw'Ikirenga mu rubanza N° RPAA 0117/07/CS4 ndetse n'Urukiko rw'Ubujurire mu rubanza n° RPA/GEN 00004/2020/CA5, ukuvuguruzanya kw'abatangabuhamya ku tuntu duto mu rubanza, bidatesha agaciro ireme (substance) ry'ubuhamya batanga. Uyu murongo wanashingiweho no muzindi manza zaciwe n'uru Rukiko zirimo urubanza N° RPAA 00141/2022/CA6. [34] Urukiko rurasanga kudahuza kw'abatangabuhamya bamaze kuvugwa haruguru ndetse n'uwakorewe icyaha ku bijyanye n'inshuro yasambanyijwe, ntacyo bihindura ku ireme ry'ubuhamya bwabo bwo kuba U.A. ntawundi yababwiye ko yamusambanyije usibye Ndayambaje Emmanuel kandi ko yamusambanyije birenze inshuro imwe ndetse ko kunshuro ya nyuma yamusambanyije tariki 09/12/2018. Byongeye kandi bikaba binashimangirwa na raporo ya Muganga yemeza ko uyu mwana yasambanyijwe. [35] Ibijyanye n'imiburanire ya Ndayambaje Emmanuel y'uko ubuhamya bwa Mushimiyimana Florence na Muhoza Clemence butagombaga gushingirwaho kuko bafitanye amasano na nyina w'umwana wakorewe icyaha, Urukiko rw'Ubujurire rurasanga ibi yarabigaragaje mu Rukiko Rukuru, Urugereko rwa Musanze, ntibyahabwa ishingiro kuko ubwo buhamya buhura n'ibyo umwana wasambanyijwe avugaga. [36] Urukiko rw'Ubujurire rushingiye ku murongo watanzwe n'Urukiko rw'Ikirenga mu rubanza N° RPAA0118/11/CS7, aho rwemeje ko kuba umutangabuhamya afitanye isano n'uwahohotewe cyangwa ari uwahohotewe ubwe, ubwabyo bidatesha agaciro ubuhamya. Ko Urukiko arirwo rusuzuma ireme ry'ubuhamya rushingiye ku bumenyi bw'ababutanga n'uburyo basobanura ibyo biboneye cyangwa bumvise, rukabigereranya n'ibindi bimenyetso; rurasanga kuba abatangabuhamya Mushimiyimana Florence na Muhoza Clemence baba bafitanye isano na nyina w'umwana wahohotewe, bitari kubuza ko ubuhamya bwabo busuzumwa bugahabwa agaciro mugihe bushyigikiwe na raporo ya Muganga igaragaza ko U.A. yasambanyijwe.

4 Reba igika cya 14 cy'urubanza N° RPAA 0117/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 17/07/2010 haburana Ubushinjacyaha na Sgt Biziyaremye na Cpl Ngabonziza. 5 Reba igika cya 125 cy'urubanza N° RPA/GEN 00004/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 08/04/2022 haburana Ubushinjacyaha na Birindabago Jean Paul. 6 Reba igika cya 33 cy'urubanza N° RPAA 00141/2022/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 31/05/2023 haburana Ubushinjacyaha na Ntegamaherezo Ryamukuru 7 Reba igika cya 17 cy'urubanza N° RPAA 00120/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 26/05/2023 haburana ubushinjacyaha na Gahigi Anastase. 8 Reba igika cya 13 cy'urubanza N° RPAA 0118/11/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 13/11/2015 haburana Ubushinjacyaha na Ngurinzira.

Page 9

[37] Ku bijyanye no kuvuga ko ubuhamya bwa Mushimiyimana Florence na Muhoza Clemence butagombaga gushingirwaho kuko badahamya ibyo biboneye cyangwa biyumviye ubwabo biba, ahubwo bahamya ibyo babwiwe n'uwakorewe icyaha; Urukiko rw'Ubujurire rurasanga nabyo nta shingiro bifite kuko nk'uko byemezwa n'abahanga mu mategeko, Etienne Vergès, Géraldine Vial na Oliviedr Leclerc mu gitabo cyabo bise «Droit de la prevue»; bashingiye ku rubanza rwaciwe n'Urukiko Rusesa imanza rwo mu Bufaransa, bavuga ko Ubuhamya buziguze ni ukuvuga ubuhamya butanzwe n'umutangabuhamya uvuga ibyo yabwiwe n'undi muntu ariko uzwi, bushobora kwemerwa, ko Umucamanza uburanisha urubanza mu mizi ariwe ufite ububasha bwo gusuzuma ireme ryabwo mu bushishozi bwe akemeza ko bukwiye kwemerwa cyangwa guhakanya⁹. Ibi binahura n'ibiteganywa mu ngingo ya 65 y'Itegeko N° 15/2004 ryavuzwe haruguru. [38] Urukiko rw'Ubujurire rurasanga, kuba Urukiko rubanza rwarashingiye ku buhamya bwa Mushimiyimana Florence na Muhoza Clemence bahamya ibyo babwiwe na U.A. ko Ndayambaje Emmanuel yamusambanyije, nta kosa rwakoze kuko ibyo bahamya bihura n'ibyo U.A. nawe yavugiyemo imbere y'Urukiko aho ntawundi yigeze avuga ko yamusambanyije usibye Ndayambaje Emmanuel, akanavuga ko yamusambanyije inshuro zirenze imwe kandi ko ku nshuro yanyuma yamusambanyije tariki 09/12/2018, ibi bikaba binashimangirwa na raporo ya Muganga igaragaza ko U.A. yasambanyijwe. [39] Ku bijyanye no kuvuga ko raporo ya Muganga itagombaga guhabwa agaciro kuko yakozwe nyuma y'igihe icyaha cyakorewe kandi Ndayambaje Emmanuel we akaba atarapimwe; Urukiko rw'Ubujurire rurasanga nabyo nta shingiro bifite kuko nk'uko U.A. abivuga, icyaha kikimara kuba atahise avuga ibyamubayeho kuko yatinyaga ko nabivuga Ndayambaje Emmanuel yamugirira nabi, akomeza kubihisha abivuga nyuma y'iminsi 4 asambanyijwe ku nshuro ya nyuma, ari uko abari bamujyanye kwa Muganga kuko babonaga arwaye atabasha kugenda no guterura akaguru, bikubitiyeho ko igihe barimo bamwuhagira bakoraga ku mayasha agataka cyane, bituma bamubaza icyo yabaye abona kubabwira ko asambanyijwe na Ndayambaje Emmanuel, babibwiye Muganga aramusuzuma asanga koko yarasambanyijwe. [40] Naho kuvuga ko Muganga atigeze apima Ndayambaje Emmanuel ngo bigaragare ko ariwe wasambanyije U.A., Urukiko rurasanga bitamuhaganuraho icyaha kuko Muganga yakoze ibyo yari yasabwe gukora aribyo gusuzuma ko umwana yasambanyijwe ariko akaba atari afite inshingano yoguhuza ihohoterwa ryakozwe n'ubarikozwe. Ibi bikaba

byarasabwe Urukiko ngo rubikore rushingiye kubimenyetso n'ibindi byose byabaye bijyanye n'imikorere y'icyaha. Bityo iyi raporo ya Muganga nayo ikaba nta rujijo iteye ku kumenya ko Ndayambaje Emmanuel ariwe wasambanyije umwana U.A. kuko yahujwe n'ibindi bimenyetso bigizwe n'ubuhamwa b'uwahohotewe ariwe U.A. n'ubw'abatangabuhambya Manishimwe Florence na Muhoza Clemence.

9 Urubanza bashingiyeho ni: Cass.civ.2, 18 janv.1957, Bull. Civ. II, N° 65 et Cass.civ. 1, 27 févr. 1979, CCP, 1979, IV, 161. Muri icyo gitabo bagize bati: "Pour autant, la Cour de cassation admet le témoignage dit indirect, c'est-à-dire celui d'une personne qui affirme connaître un fait par l'intermédiaire d'une autre personne, précisément identifiée. La cour s'en remet au pouvoir souverain l'appréciation des juges du fond pour décider de la force probante qu'il convient d'accorder à ces témoignages au regard de leur possible manque de fiabilité". Etienne Vergès, Géraldine Vial, Olivier Leclerc, Droit de la preuve, Presse Universitaires de France, Reille, 75014 Paris, 1ère édition, 2015. P.574.

Page 10

[41] Ku bijyanye n'amakimbirane Ndayambaje Emmanuel avuga ari mu muryango wabo, Urukiko rw'Ubujurire rurasanga uretse ku bivuga mu magambo gusa, nta bimenyetso bifatika biyagaragaza ku buryo yaba yarabaye ishingiro ryo kumubeshyera bakamugerekaho icyaha cyo gusambanya U.A. Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rw'Ubujurire rurasanga ubujurire bwa Ndayambaje Emmanuel nta shingiro bufite, bityo akaba akwiye gukomeza guhamwa n'icyaha cyo gusambanya umwana no kugihanirwa. [42] Ku birebana n'ibihano, Urukiko rw'Ubujurire rurasanga n'ubwo ubujurire bwa Ndayambaje Emmanuel ku bijyanye n'imikorere y'icyaha nta shingiro bufite, byumvikanisha ko yari akwiye gukomeza guhanishwa igihano yahanishijwe n'Urukiko Rukuru, Urugereko rwa Musanze mu rubanza rujuririrwa, ariko na none nta cyabuza Urukiko kugabanyiriza igihano uregwa, hagamijwe gutanga igihano gihwanye n'uburemere bw'icyaha cyakozwe kabone n'ubwo iby'igihano byaba bitaburanyweho n'impamvu z'ubujurire zitahawe ishingiro nk'uko byatanzweho umurongo mu manza nyinshi zaciwe n'uru Rukiko harimo urubanza N° RPAA 00039/2021/CA10 n'urubanza N° RPAA 00189/2021/CA11. [43] Harebwe kuba Ndayambaje Emmanuel yarasambanyije umwana abereye sewabo, yakabaye afata iyambere mukumutoza imico myiza n'uburere mbonezabupfura, akaba ariwe umushora mu ngeso mbi z'ubusambanyi, kugeza ubu akaba adashaka kwicuza no kwemera icyaha, Urukiko rw'Ubujurire rurasanga byakabaye bishingirwaho agahanishwa igihano kiremereye giteganywa n'Itegeko, ariko kuko ari ubwa mbere yakurikiranwaho icyaha mu buryo buzwi, hakaba nta kigaragaza ko yari asanzwe afite imyitwarire mibi, Urukiko rurasanga igifungo cy'imyaka makumyabiri n'umwe (21) yahanishijwe n'Urukiko rubanza kirebwe hamwe n'uburemere bw'icyaha ari kirekire cyane, kikaba gikwiye kugabanywa kikaba igifungo cy'imyaka makumyabiri (20). III. ICYEMEZO CY'URUKIKO [44] Rwemeje ko ubujurire bwatanze na Ndayambaje Emmanuel nta shingiro bufite; [45] Rwemeje ko Ndayambaje Emmanuel ahamwa n'icyaha cyo gusambanya U.A; [46] Rwemeje ko imikirize y'urubanza N° RPA 00153/2020/HC/MUS, rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 25/06/2021, ihindutse gusa

kubijyanye n'igihano yahanishijwe ; [47] Ruhanishije Ndayambaje Emmanuel igihano cy'igifungo cy'imyaka makumyabiri (20); [48] Ruvuze ko amagarama y'urubanza aherera ku Isanduku ya Leta.

10 Reba urubanza n° RPAA 00039/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 02/07/2021 haburana Ubushinjacyaha na Shakabatenda Jean de Dieu. 11 Reba urubanza n°RPAA 00189/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 28/10/2022 baburana ubushinjacyaha na Bakunzibake Emmanuel

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