

RWANDA / JUDGMENT

NDAYAMBAJE v. UBUSHINJACYAHA

RPAA 00172/2025/CA

COURT

Court of Appeal

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NDAYAMBAJE v. UBUSHINJACYAHA

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Text

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NDAYAMBAJE v. UBUSHINJACYAHA [Rwanda URUKIKO RW'UBUJURIRE- RPAA 00172/2025/CA (Kanyange, P.J.), 28 Ugushyingo 2025] Amategeko agenga imiburanishirize y'imanza nshinjabyaha – icyaha cyo gusambanya umwana – Gushidikanywa kw'ibimenyetso – Kugira ngo Umucamanza afate icyemezo gihamya icyaha, agomba kuba afite ibimenyetso bihamya nta gushidikanya (preuves à conviction au-delà de tout doute raisonnable) ko ushinjwa ariwe wakoze icyaha, Umucamanza agomba gusesengurana ubushishozi uruhurirane rw'ibimenyetso, agahamya ushinjwa icyaha mu gihe gusa asanga nta wundi mwanzuro wagerwaho n'isesengura yakoze uretse iryo gusanisha uwakoze icyaha n'icyaha cyakozwe. Incamake y'ikibazo: Uwitwa Nyiraminani Marie Jeanne yatanze ikirego mu Bugenzacyaha avuga ko mu bihe bitandukanye mu mwaka wa 2020 umugabo we Ndayambaje Emmanuel yasambanyije umwana wabo w'umukobwa w'imyaka 12 witwa N.B., bituma uregwa atangira gukurikiranwa. Nyuma y'iperereza, Ubushinjacyaha bwamureze mu Rukiko Rwisumbuye rwa Gasabo icyaha cyo gusambanya umwana, bushingiye ku mvugo za N.B, iza nyina n'iz'umutangabuhamya no kuri raporo ya muganga, bumusabira igifungo cya burundu. Uregwa yaburanye ahakana icyaha. Urukiko rwaciye urubanza, maze rusanga hari ibimenyetso bitandukanye bihamya Uregwa icyaha

akurikiranweho cyo gusambanya umwana we, ariko kuba atarangije uwo mwana uretse kumutera indwara nayo yakize (*trichomonas vaginalis*) byamubera impamvu nyoroshyacyaha, maze rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25). Ndayambaje yajuriye mu Rukiko Rukuru avuga ko yahamijwe icyaha atakoze, kandi ko ibimenyetso Ubushinjacyaha bwatanze bivuguruzanya, asaba uru rukiko gushingira kuri raporo ya muganga kuko imurenganura. Ubushinjacyaha bwashubije buvuga ko ubujurire bwe nta shingiro bufite, kuko ibimenyetso byashingiweho bimuhamya icyaha. Urukiko Rukuru rwaciye urubanza maze rwemeza ko Ndayambaje ahamijwe icyaha hashingiwe ku bimenyetso bitandukanye, rwemeza kandi ko kuba raporo ya muganga igaragaza ko umwana agifite akarangabusugi atari ikimenyetso cy'uko atasambanyijwe nta shingiro bifite kuko umwana yasanganwe indwara yandurira mu mibonano mpuzabitsina, bityo ko raporo ya muganga itamushinjura nkuko uregwa abivuga, maze hagumaho igifungo cy'imyaka 25 Ndayambaje yahanishijwe. Ndayambaje Emmanuel yajuririyemo Urukiko rw'Ubujurire. Uwo munsu Urukiko rwasabye Ubushinjacyaha gukora iperereza bukabaza abatangabuhamya batandukanye, mu myanzuro y'ubujurire no mu miburanire, Ndayambaje n'umwunganira bavuga ko Urukiko rwamuhamije icyaha rwirengagije ko umunsu bivugwa icyaha cyakoreweho atari ahari, ko rwirengagije amakimbirane uregwa yari asanzwe afitanye n'umugore we, kandi ko rwashingiye kuri raporo ya muganga kandi itagaragaza ko N.B. yasambanyijwe, bityo asaba kugirwa umwere.

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Uhagarariye Ubushinjacyaha avuga ko izo mpamvu z'ubujurire nta shingiro zifite, kuko uregwa yahawe umwanya wo kwisobanura ku bimenyetso bimushinja icyaha, avuga ko n'ubwo uregwa avuga ko uwo munsu yaba ataririwe mu rugo, ariko yaratahaye, kandi ko raporo ya muganga igaragaza ko umwana yasambanyijwe. Uhagarariye Ubushinjacyaha avuga kandi ko itegeko ritakoreshejwe nabi nkuko Ndayambaje avuga kuko yahawe umwanya wo kwisobanura ku bimenyetso bimushinja icyaha, birimo n'imvugo z'umugore we, bityo ko Urukiko nta makosa rwakoze kuko arirwo ruha agaciro ibikubiye mu buhamya bwatanze n'ababajijwe. Incamake y'icyemezo: Kugira ngo Umucamanza afate icyemezo gihamya icyaha, agomba kuba afite ibimenyetso bihamya nta gushidikanya (*preuves à conviction au-delà de tout doute raisonnable*) ko ushinjwa ariwe wakoze icyaha, Umucamanza agomba gusesengurana ubushishozi uruhurirane rw'ibimenyetso, agahamya ushinjwa icyaha mu gihe gusa asanga nta wundi mwanzuro wagerwaho n'isesengura yakoze uretse iryo gusanisha uwakoze icyaha n'icyaha cyakozwe. Ubujurire bufite ishingiro. Uregwa agizwe umwere akaba agomba kurekurwa. Amategeko yashingiweho: Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 111. Imanza zifashishijwe: Urubanza RPAA 00737/2021/CA, rw' Ubushinjacyaha na Uwayisaba Habimana Antoine , rwaciye n'urukiko rw'ubujurire ku wa 16/12/2022; Urubanza RPAA 01340/2024/CA rw' Ubushinjacyaha na Bizimana Aloys, rwaciye n'urukiko rw'Ubujurire ku wa 30/10/2025. Urubanza I. IMITERERE Y'URUBANZA [1] Nyiraminani Marie Jeanne yatanze ikirego mu Bugenzacyaha avuga ko mu bihe bitandukanye mu mwaka wa 2020 umugabo we Ndayambaje Emmanuel yasambanyije umwana wabo w'umukobwa w'imyaka 12 witwa N.B.1, ko yabimenye ku wa 22/05/2020 ubwo yinjiraga mu nzu agasanga umwana

ahagaze imbere y'igitanda aho se yari aryamye arimo gushyira ukuboko mu ijipo ye amubwira ngo namwegere yumve uko ibintu bimeze, amwikanze ahita abwira uwo mwana ngo asohoke, nyuma aza kumubwira ko igihe cyose yabaga ari kumwe na se bari bonyine yamusambanyaga, bituma Ndayambaje Emmanuel atangira gukurikiranwa.

1 Yahawe iri zina kuko ari umwana

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[2] Nyuma y'iperereza, Ubushinjacyaha bwamureze mu Rukiko Rwisumbuye rwa Gasabo icyaha cyo gusambanya umwana, bushingiye ku mvugo za N.B. iza nyina n'iz'umutangabuhamya no kuri raporo ya muganga, bumusabira igifungo cya burundu. [3] Ndayambaje Emmanuel yireguye avuga ko atemera icyaha, ko ari akagambane k'umugore we gashingiye ku kuba yarabyaranye n'undi mugabo, ko kandi iby'uko yamubonye ashya ukuboko mu ijipo y'umwana atari ukuri kuko yari yajyanye na Twagirayezu gusakara inzu i Nyamata, naho ibyo umutangabuhamya yavuze akaba yarabibwiwe n'umugore we. [4] Urukiko rwaciye urubanza RP 00813/2020/TGI/GSBO ku wa 05/11/2021, rusanga hari ibimenyetso bihamya Ndayambaje Emmanuel icyaha akurikiranweho bigizwe n'imvugo za N.B. wasobanuye ko se yamusambanyirije mu gihuru inshuro eshanu, amusambanyiriza no mu rugo ubwo yari yakubise nyina akagenda, ko kandi kubibwira nyina byatewe n'uko yari yamusanze ahagaze imbere y'igitanda se yari aryamye, amaze kuzamura ijipo ngo akore ku gitsina nyina ahita yinjira; imvugo za nyina w'umwana wasobanuye ko yasanze umugabo we arimo gushyira akaboko mu ijipo y'umwana amukora ku gitsina, imvugo z'umutangabuhamya Mupfasoni Odette (umujyanama w'ubuzima) wavuze ko yabajije N.B. akamwemerera ko se yamusambanyije na raporo ya muganga igaragaza ko N.B. yanduye indwara zandurira mu mibonano mpuzabitsina. Rwasanze kuba Ndayambaje Emmanuel atarangije uwo mwana uretse kumutera indwara nayo yakize (*trichomonas vaginalis*) byamubera impamvu nyoroshyacyaha, rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25). [5] Ndayambaje Emmanuel yajuriye mu Rukiko Rukuru avuga ko yahamijwe icyaha atakoze, ko ibimenyetso Ubushinjacyaha bwatanze bivuguruzanya, ko ahubwo hashingirwa kuri raporo ya muganga kuko imurenganura. [6] Ubushinjacyaha bwashubije ko ubujurire bwe nta shingiro bufite, kuko ibimenyetso byashingiweho bimuhamya icyaha, birimo imvugo za N.B. umushinja kumusambanya n'imvugo za nyina, ko kandi raporo ya muganga itamushinjura kuko igaragaza ko umwana yasambanyijwe bitewe n'uko yasanganywe indwara zandurira mu mibonano mpuzabitsina. [7] Urukiko rwaciye urubanza RPA 01857/2021/HC/KIG ku wa 09/01/2025, rusanga Ndayambaje yarahamijwe icyaha hashingiwe ku bimenyetso birimo imvugo z'umwana wasambanyijwe, imvugo za nyina n'iz'umutangabuhamya umwana yabibwiye, ko ntacyo anenga urubanza yajuririye kuko n'ibyo avuga ko icyaha gikorwa yari i Nyamata aho yari yabonye ikiraka cyo gusakara inzu, nta kimenyetso abigaragariza, mu gihe umwana we yasobanuye uko byagenze akanavuga ko yamusambanyije inshuro nyinshi. Rwasanze kandi iby'uko ari akagambane k'umugore we nta shingiro bifite kuko atagaragaza ikibazo bagiranye n'urwego yagishyikirije. [8] Rwasanze kandi kuba raporo ya muganga igaragaza ko umwana agifite akarangabusugi atari

ikimenyetso cy'uko atasambanyijwe harebwe ibiteganywa n'ingingo ya 133 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange; ko kuba umwana yaravuze ko se yagiye asunika buhoro buhoro amubwira ko ntacyo aba, nyuma akumva ibintu by'ibizi bimumenetseho, no kuba yarasanganwe indwara yandurira mu mibonano mpuzabitsina, bivuze ko iyo raporo itamushinjura, ko kandi ibyo avuga ko umwana ashobora kuba yaranduriye

2 Gukora ikindi gikorwa cyose ku mubiri w'umwana hagamijwe ishimishamubiri

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iyo ndwara kuri toilettes nta shingiro bifite, kuko umwana yavuze ibyo yamukoreye. Rwemeje rero ko hagumaho igifungo cy'imyaka 25 Ndayambaje Emmanuel yahanishijwe. [9] Ndayambaje Emmanuel yajuririye Urukiko rw'Ubujurire, urubanza rwandikwa kuri RPAA 00172/2025/CA, ruhabwa itariki yo kuburanishwa yo ku wa 07/10/2025, uwo munsu ruburanishwa yunganiwe na Me Micomyiza Lilian, Ubushinjacyaha buhagarariye na Sibomana Stanislas Umushinjacyaha ku rwego rw'Igihugu. Uwo munsu Urukiko rwasabye Ubushinjacyaha gukora iperereza bukabaza abatangabuhama barimo Ndayisenga Pascal, Umukuru w'Umudugudu wa Kayenzi witwa Obed, Uwimana Jean Pierre na Ndayizeye Arani, naho N.B. na nyina bagahamagazwa n'Urukiko. Rwongeye kuburanishwa ku wa 19/11/2025, N.B. na nyina batitabye kuko batabonetse, Ubushinjacyaha busobanura ibyavuye mu iperereza bwakoze, Ndayambaje Emmanuel n'umwunganira bahabwa umwanya wo kugira icyo babivugaho. [10] Mu myanzuro y'ubujurire no mu miburanire, Ndayambaje Emmanuel n'umwunganira bavuga ko Urukiko rwamuhamije icyaha rwirengagije ko umunsu bivugwa icyaha cyakoreweho atari ahari, runirengagiza amakimbarane asanzwe afitanye n'umugore we, ntirwamuhuza na Nyiraminani Marie Jeanne umurega ngo banyomozanye, runashingira kuri raporo ya muganga kandi itagaragaza ko N.B. yasambanyijwe. [11] Uhagararariye Ubushinjacyaha avuga ko izo mpamvu z'ubujurire nta shingiro zifite, kuko yahawe umwanya wo kwisobanura ku bimenyetso bimushinja icyaha, birimo n'imvugo za Nyiraminani Marie Jeanne, ko kandi n'ubwo uwo munsu yaba ataririwe mu rugo, ariko yatashye, ko n'iby'amakimbarane avuga nta bimenyetso yabitangiye, kandi ko raporo ya muganga igaragaza ko umwana yasambanyijwe. [12] Muri uru rubanza ikigomba gusuzumwa ni ukumenya niba hari ibimenyetso Urukiko rwirengagije bigatuma Ndayambaje Emmanuel ahamwa n'icyaha atakoze, no kumenya niba rwarashingiye kuri raporo ya muganga kandi itagaragaza ko umwana yasambanyijwe. II. ISESENGURA RY'IKIBAZO KIRI MU RUBANZA Kumenya niba hari ibimenyetso Urukiko rwirengagije bigatuma Ndayambaje Emmanuel ahamwa n'icyaha atakoze, no kumenya niba rwarashingiye kuri raporo ya muganga kandi itagaragaza ko umwana yasambanyijwe [13] Ndayambaje n'umwunganira bavuga ko Urukiko rwakoresheje mu buryo butari bwo ingingo ya 87 y'Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso, kuko atahujwe na Nyiraminani Marie Jeanne umurega ngo banyomozanye kandi yarabisabye kuva mu Bugenzacyaha ntibikorwe, ko rero uru Rukiko rwamutumiza mu rwego rwo kugaragaza ukuri. Banavuga ko hirengagijwe ko umunsu bavuga icyaha cyakorewe atari ahari kuko yari yabonye ikiraka cyo gusakara inzu i Nyamata, kandi ko yabitangiye ibimenyetso ntibytabwaho, bityo ko Urukiko rwakora iperereza ryaho atuye rukamenya ukuri.

3 Iyo ngingo iteganya ko: “mu rubanza nshinjabyaha, ikimenyetso gishingira ku mpamvu zose z’ibyabaye n’ibyemejwe n’amategeko, ababuranyi bapfa kuba barahawe umwanya wo kubijyaho impaka”.

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[14] Bavuga ko kandi Urukiko rwirengagije ibisobanuro n’ibimenyetso yatanze bigaragaza amakimbirane yari asanzwe afitanye na Nyiraminani Marie Jeanne (babanaga batarasezeranye) ashingiye ku kuba yarabyaranye n’undi mugabo no kuba yaramubwiye ko akeka ko hari undi mugabo witwa Pierre basambanaga, amurega ashaka kumwihimuraho kuko batumvikanaga, ko rero Urukiko rwirengagije gukora iperereza yasabye kuri ayo makimbirane, runirengagiza ibiteganywa n’ingingo ya 4 y’Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso⁴⁵. [15] Bakomeza bavuga ko Urukiko rwirengagije ko yaba imvugo z’umwana, iza nyina n’ubuhamya bwa Umupfasoni Odette, byose bikomoka kuri nyina w’umwana hakiyongeraho n’ibyo bibazo by’amakimbirane yagaragaje, ubwabyo bikaba bitera gushidikanya, kandi ko Nyiraminani Marie Jeanne abazwa yavuze ko atazi igihe umwana yasambanyirijwe ariko uwo yahaye amakuru witwa Umupfasoni Odette we mu ibazwa rye akavuga ko yabwiye na Nyiraminani Marie Jeanne ko yasambanyijwe ku itariki ya 26/05/2020, hakaba rero harimo kuvuguruzanya gukabije, n’imvugo z’umwana zikaba zishingiye ku marangamutima ya nyina. [16] Ku bijyanye na raporo ya muganga, bavuga ko yashingiweho kandi igaragaza ko umwana atasambanyijwe, akaba rero akwiye kugirwa umwere dore ko n’indwara ya trichomonus yasanze umwana nta kigaragaza ko ari we wayimwanduje kuko atapimwe kandi mu mwanzuro wa muganga yagaragaje ko ibizamini byakozwe nta kidasanzwe cyagaragaye kugeza no ku karangabusugi ke, ko kandi iyo ndwara idaterwa no gusambanywa gusa, ko ahubwo ari nyina wamwoheje kuko atari gusambanya umwana inshuro 5 ngo raporo ya muganga igaragaze ko umwana agifite akarangabusugi kandi ko atigeze akomereka. [17] Ku byavuzwe n’ababajijwe mu iperereza ryakozwe n’Ubushinjacyaha, Ndayambaje Emmanuel n’umwunganira bavuga ko iyo yabaga yagiranye ibibazo n’umugore we, Ndayisenga Pascal ari we wazaga kubikemura, kandi ko amakimbirane yari afitanye n’umugore we yari asanzwe kuko yagayaga umushahara w’umugabo we akajya mu buraya, kandi ko ayo makimbirane no mu nzego z’iperereza yayagaragaje, uretse ko atayashyize mu buyobozi kuko yumvaga ko kuba umwana yaravukiye iwe, ari uwe, bityo ko imvugo ya Ndayisenga Pascal yazashingirwaho kuko ariwe wari uzi icyo kibazo. [18] Basaza bavuga ko hashingirwa ku ngingo ya 111 y’Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y’imanza z’inshinjabyaha, iteganya ko gushidikanya birengera uregwa n’ingingo ya 4 n’iya 6 z’Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso⁵⁶, Ndayambaje Emmanuel akagirwa umwere. [19] Uhagarariye Ubushinjacyaha avuga ko ingingo ya 87 y’Itegeko N° 062/2024 ryo ku wa 20/06/2024 ryavuzwe haruguru itakoreshejwe nabi kuko Ndayambaje Emmanuel yahawe umwanya wo kwisobanura ku bimenyetso bimushinja icyaha, birimo n’imvugo z’umugore we, akaba rero atari ngombwa ko atumizwa kuko ivuguruzanya hagati yabo atari ngombwa kubera ko

4 Iyo ngingo iteganya ko: "Uwiregura agaragaza ikimenyetso gishyigikira ukwiregura kwe". 5 Ingingo ya 4 y'iryo tegeko iteganya ko: "(1) Urega cyangwa utanze ikibazo agaragaza ikimenyetso cy'ibyo aregera cyangwa asaba. Uwiregura agaragaza ikimenyetso gishyigikira ukwiregura kwe", naho ingingo ya 6 y'iryo tegeko iteganya ko: "Urwego rufite ububasha rufata icyemezo ku byo rwashyikirijwe hakurikijwe ubwoko bw'ibimenyetso bihujwe na kamere y'ikiburanwa cyangwa y'ikibazo kiri mu mpaka".

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n'ubwo yamenyekanishije icyaha, atari we urega ahubwo hareze Ubushinjacyaha, ko rero Urukiko nta makosa rwakoze kuko arirwo ruha agaciro ibikubiye mu buhamya bwatanzwe n'ababajijwe⁶⁷. [20] Naho ku bivugwa na Ndayambaje Emmanuel ko atari ahari umunsi bivugwa ko icyaha cyakozwe, Uhagarariye Ubushinjacyaha avuga ko nta shingiro bifite, kuko n'iyi yari kuba yagiye mu kazi nk'uko abivuga, bitavuze ko uwo munsi atashyeye iwe, kuko gushyira intoki mu ijipo y'umwana we bitamaze umunsi wose, bityo ko atari ngombwa gukora iperereza asaba kuko atagaragaza uwo yari yagiye gukoraho akazi, kandi n'iyi ahaba atakwemeza ko yagiye gukora akahaguma ntatahe mu rugo rwe. [21] Uhagarariye Ubushinjacyaha avuga kandi ko ibivugwa na Ndayambaje Emmanuel ko yari afitanye amakimbirane n'umugore we bigatuma amugambanira nta shingiro bifite, kuko nta kibazo na kimwe yagaragaje baba baragiranye ngo avuye n'urwego yagishikirije, iperereza asaba akaba atari ngombwa kuko atabashije kugaragaza abo ryakorwaho (uwabyaranye n'umugore we ndetse n'umwana babyaranye uwo ariwe), cyane ko ubwo yabazwaga mu Bugenzacyaha yavugaga ko bapfa ko yamubajije umugabo washakaga kumusambanya akahukana, ageze mu Rukiko aba ariho azana iby'uko bapfa ko yabyaranye n'undi mugabo ariko akaba atabitangira ibimenyetso. [22] Ku bijyanye na raporo ya muganga bavugaga ko igaragaza ko N.B. atasambanyijwe, uhagarariye Ubushinjacyaha avuga ko raporo ya muganga ari kimwe mu bimenyetso bishingirwaho hemezwa ko umwana yasambanyijwe ariko atariyo nshinganwa, kuko icyaha cyo gusambanya umwana gikorwa mu buryo butandukanye nk'uko biteganywa n'ingingo ya 14 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange⁷⁸, ibyo rero umwana yavuze ko se yagiye asunika buhoro buhoro, akumva ibintu by'ibizi bimumenekaho, bihura n'iyi ngingo, na nyina w'umwana akaba yaravuze ko yamubonye yamushyize intoki mu ijipo; no kuba ataratakaje akarangabusugi cyangwa ngo akomereke bikaba bitavuze ko atamusambanyije hakoreshejwe uburyo bwo kumukozaho igitsina akamurangirizaho kuko umwana avuga ko yamumenyeho ibintu by'ibizi. [23] Ku birebana n'ibyavuzwe n'ababajijwe mu iperereza, uhagarariye Ubushinjacyaha avuga ko umutangabuhamya witwa Ndayisenga yavuze ko aziranye na Ndayambaje Emmanuel, ko yamenyaga ikibazo cye ariwe ukimubwiye, ariko ko ntaho yigeze aburana n'umugore we, na Ndayizera aba ariko abivuga naho uwitwa Uwimana Jean Pierre we avuga ko icyo azi ari uko babanaga mu makimbirane ashingiye ku bukene. Asoza avuga ko asanga umugore atari kugereka icyaha ku mugabo we kandi ariwe wari utunze urugo, ahubwo ikibazo cyari gihari ari ubukene kubera bana benshi.

6 Babishingira ku ngingo ya 53 y'Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso iteganya ko: “Urwego rufite ububasha rusuzuma ukwemerwa cyangwa ukutemerwa n'agaciro by'ikimenyetso gishingiye ku buhamya. Ntirwita ku mubare w'abatangabuhamya, ahubwo rwita cyane ku bumenyi bw'ibyabaye no ku budakemwa bw'ubuhamya batanga”.

7 Iyo ngingo mu gace ka b n'igika cya (3) iteganya ko: « (1) « Umuntu ukorera ku mwana kimwe mu bikorwa bishingiye ku gitsina bikurikira, aba akoze icyaha: [...] (b)gushyira urugingo urwo ari rwo rwose rw'umubiri w'umuntu mu gitsina cyangwa mu kibuno cy'umwana; [...] (3) gukora ikindi gikorwa cyose ku mubiri w'umwana hagamijwe ishimishamubiri. Iyo gusambanya umwana byakorewe ku mwana uri muni y'imyaka 14 igihano kiba igifungo cya burundu.

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UKO URUKIKO RUBIBONA [24] Kumenya niba hari ibimenyetso Urukiko rwirengagije bigatuma Ndayambaje Emmanuel ahamwa n'icyaha atakoze, no kumenya niba rwarashingiye kuri raporo ya muganga kandi itagaragaza ko umwana yasambanyijwe. [25] Ku bijyanye n'ibishingirwaho ngo hemezwe ko uregwa ahamwa n'icyaha byasobanuwe n'Urukiko rw'Ubujurire mu manza zitandukanye harimo urubanza RPAA 00737/2021/CA89, no mu zindi manza zaciwe nyuma yarwo harimo urubanza RPAA 01340/2024/CA9, muri izo manza Urukiko rukaba rwaremeje ko kugira ngo Umucamanza afate icyemezo gihamya icyaha, agomba kuba afite ibimenyetso bihamya nta gushidikanya (preuves à conviction au-delà de tout doute raisonnable) ko ushinjwa ariwe wakoze icyaha, ko Umucamanza agomba gusesengurana ubushishozi uruhurirane rw'ibimenyetso, agahamya ushinjwa icyaha mu gihe gusa asanga nta wundi mwanzuro wagerwaho n'isesengura yakoze uretse iryo gusanisha uwakoze icyaha n'icyaha cyakozwe. [26] Nk'uko urubanza rujuririrwa rubigaragaza, Ndayambaje Emmanuel yahamijwe icyaha cyo gusambanya umwana hashingiwe ku mvugo z'uwo mwana wasambanyijwe, iza nyina n'ubuhamya bwa Umupfasoni Odette wavuze ibyo yabwiwe n'uwo mwana, rusobanura ko raporo ya muganga itamushinjura kuko hashingiwe ku byo amategeko ateganya kuba agifite akarangabusugi atari ikimenyetso cy'uko atasambanyijwe, ko n'ibyo avuga ko icyaha gikorwa atari ahari nta kimenyetso abigaragariza, kandi ko umwana yavuze ko yamusambanyije inshuro nyinshi, ko n'iby'akagambane k'umugore we nta shingiro bifite kuko atagaragaza ikibazo bagiranye n'urwego yagishyikirije. [27] Ku birebana n'imvugo za N.B., mu nyandikomvugo yakoreye mu Bugenzacyaha, yasobanuye uburyo se yamusambanyaga, ko bari bagiye guhaha bageze ku gihuru se aryama hasi we amuryamisha imbere, amubwira gushyira akaguru k'ibumoso hejuru y'itako rye aramubwira ngo areke akoze igitsina ku gitsina cye, arongerama amubwira ngo areke asunike ntababara nabyo arabikora asunika buhoro buhoro ageze aho abikora cyane, maze umwana yumva ibintu by'ibizi biraje amuhanaguza igitambaro yari yifubitse, ko yari amaze kumusambanyiriza mu gihuru inshuro 5, ku nshuro ya nyuma amusambanyiriza mu nzu nijoro nyina yagiye se yamukubise, amushyira ku buriri amwambura imyenda aramusambanya, ko kandi yari yaramubujije kubivuga, kugirango abibwire nyina bikaba byaratewe n'uko yamutumye inyanya mu nzu, ageze yo se aramuhamagara ngo amusange aho yari ariyanye ahagarara imbere y'igitanda aramubwira ngo azane arebe uko bya bindi bimeze, atangiye kuzamura ijipo ngo akore ku gitsina cye nyina aba arinjije arabireka. [28] Ku birebana n'imvugo za nyina w'umwana,

abazwa mu Bugenzacyaha yavuze ko mu bihe bitandukanye umugabo we Ndayambaje Emmanuel yasambanyije umwana wabo, abimenya ku wa 22/05/2020 asanze uwo mwana ahagaze hafi y'igitanda aho se yari aryamye arimo gushyira ukuboko mu ijipo ye amubwira ngo amwegere yumve uko bimeze, amwikanze arabireka,

8 Reba urubanza RPAA 00737/2021/CA rwaciwe ku wa 16/12/2022, haburana Ubushinjacyaha na Uwayisaba Habimana Antoine igika cya 16-17. 9 Reba urubanza N° RPAA 01340/2024/CA rwaciwe ku wa 30/10/2025, haburana Ubushinjacyaha na Bizimana Aloys igika cya 25.

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barangije imirimo yicaza umwana amubaza neza ibyo yabonye arimo na se, amubwira ko iyo bari bonyine amwicaza ku bibero agashyira igitsina mu cye yarangiza agafata akenda akamuhanagura, anamubwira ko yakundaga kumusambanya bagiye guhaha, akamwicaza mu gihuru kiri hafi y'aho baca, kandi ko yabimukoreye inshuro nyinshi, ko amaze kubyumva yananiwe kubyakira ajya kugisha inama umujyanama w'ubuzima, ari nawe watanze amakuru Ndayambaje Emmanuel agafatwa. [29] Naho mu nyandikomvugo ya Mupfasoni Odette yakoreye mu Bugenzacyaha, yavuze ko ku wa 26/05/2020 nyina wa N.B. yaje kumureba azanye n'umugabo we, amusaba ko baganira biherereye akamugira inama, amubwira ko umugabo we yasambanyije umwana wabo w'imyaka 12, ko umwana we yabimubwiye ku wa 22/05/2020, icyo gihe ngo akaba yari yicaje abana be b'abakobwa abaganiriza ababwira ko ari bibi ko umukobwa w'umwangavu bamusambanya, N.B. ahita amubwira ko we bamusambanyije, bituma amujyana hanze amubaza uwamuhohoteye, avuga ko ari se, ko yamubwiye ko nabivuga azamutema naho natabivuga azamugurira ikanzu nziza, asaba nyina w'uwo mwana kumumwoherereza ngo amwibarize, umwana ahageze aramubaza, amwemerera ko se yamusambanyije inshuro zigeze kuri 6, ko inshuro ya mbere bagiye guhaha bageze ku gihuru se aravuga ngo naze amubwire, ahita amwambura imyenda aramusambanya, inshuro ya kabiri ngo nyina yari yagiye guhinga aramufata aramukikira maze aramusambanya, inshuro ya 3 biba nyina yarahukanye bikomeza gutyo no ku zindi inshuro. [30] Mu bimenyetso byashingiweho hari kandi raporo ya muganga igaragaza ko akarangabusugi k'uwo mwana kari kagihari (hymen present), mu gitsina cye hajyamo urutoki rumwe ruto (1 little finger), kandi ko yari afite uburwayi (trichomonas vaginalis), mu mwanzuro we muganga akaba yaragaragaje ko isuzuma ry'imyanya ndangagitsina ye ryagaragaje ko nta kidasanzwe ryagaragaje. [31] Muri dosiye harimo kandi inyandikomvugo y'umutangabuhamya Ndayisenga Pascal wabajijwe n'Ubushinjacyaha ku wa 31/10/2025, avuga ko yakoranye na Ndayambaje Emmanuel akazi k'ubwubatsi, akaba yari n'inshuti ye, ko Ndayambaje Emmanuel n'umugore we bakiba i Ntunga aho babanje kuba bahoranaga amakimbirane ku buryo mu Mudugudu bari batuyemo bari barabarambiwe, ko bijya gutangira byaturutse ku nzu yabo Ndayambaje Emmanuel yagurishije akajya i Bugande, agaruka umugore we yarimukiye mu Bugesera barongera barasubirana, ariko bagirana ikibazo cy'umwana wavutse umugabo ntiyamwemera avuga ko yamubyaranye n'umugabo witwa Pierre bari baturanye, ariko ko icyo kibazo nta buyobozi bakibwiye kuko we yabimenye nk'inshuti y'umuryango, kandi ko bakiganiriye ntibyangyura umugore wa Ndayambaje kuko uwo mugabo yahoraga amushinja ko asambana na Pierre bigatuma mu rugo hahora umwiryane. [32] Undi utangabuhamya

wabajijwe n'Ubushinjacyaha witwa Ndayizeye Arani, yavuze ko yakoranaga na Ndayambaje Emmanuel akazi k'ubufundi, ko hari umwana umugore wa Ndayambaje yabyaye akavuga ko atari uwe, ariko ko uwo avuga ko bamubyaranye atamuzi, ko yajyaga yumva Ndayambaje avugira kuri telefone ko afitanye amakimbirane n'umugore we kubera ko yabyaye umwana utari uwe. Undi mutangabuhamya nawe witwa Uwimana Jean Pierre, avuga ko Ndayambaje n'umugore bari bafite ubwumvikane buke bushingiye ku bukenene ndetse n'abana benshi kandi ko Ndayambaje atari azwi nabi ahubwo yitwaraga neza, ku buryo bumvise ibyo aregwa batunguwe, anavuga ko iby'uko umugore we yaba yarabyaye umwana utari uwa Ndayambaje yabyumvise bivugwa mu mvugo za gifundi ariko ko nta makuru arambuye abifiteho.

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[33] Ku bivugwa na Ndayambaje Emmanuel n'umwunganira ko Urukiko rwakoresheje nabi amategeko kuko atahujwe n'umugore we Nyiraminani Marie Jeanne ngo banyomozanye, Urukiko rw'Ubujurire rurasanga kuba batarahujwe ngo banyomozanye atari inenge ku rubanza rujuririrwa kuko nk'uko bigaragara mu myanzuro ye no mu miburanire mu rubanza rujuririrwa ntaho yasabye ko yahamagazwa ngo Urukiko rubyirengagize, ndetse no muri uru Rukiko umugore we akaba yarahamagajwe ariko ntiyaboneka, ikindi kandi imvugo ze zikaba zikubiye mu nyandikomvugo ye yakorewe mu Bugenzacyaha kandi Ndayambaje Emmanuel akaba yarahawe umwanya wo kwiregura ku byo aregwa no ku bimenyetso byashingiweho mu nkinko zabanje. [34] Ku birebana n'amakimbirane Ndayambaje Emmanuel avuga ko yari afitanye n'umugore we, bigaragara ko yagiye avuga ko ayo makimbirane ashigiye ku kuba yaramuciye inyuma akabyarana n'undi mugabo, kandi ko yakekaga ko hari undi mugabo witwa Pierre basambanaga, akavuga rero ko ayo makimbirane ari yo yatumye amurega ashaka kumwihimuraho. [35] Urukiko rw'Ubujurire rurasanga n'ubwo mu rubanza rujuririrwa Urukiko rwavuze ko nta bimenyetso Ndayambaje Emmanuel yatanze by'ayo makimbirane, abatangabuhamya babajijwe n'Ubushinjacyaha mu iperereza ryatagetswe n'uru Rukiko, bagaragaje ko bazi iby'ayo makimbirane kuko bavuze ko bahorana ubwumvikane buke bushingiye ku mwana umugore yari yarabyaye Ndayambaje Emmanuel akavuga ko atari uwe, bityo ibyo bavuga ko yari afitanye amakimbirane n'umugore we bikaba bifite ishingiro, ariko kuba bari bafite ibyo bapfa n'umugore we bikaba bitashingirwaho byonyine ngo hemezwe ko atakoze icyaha cyo gusambanya umwana, ahubwo hakwiye gusesengurwa n'ibindi bimenyetso byashingiweho kugirango hasuzumwe niba byemeza nta gushidikanya ko yakoze icyaha akurikiranweho. [36] Ku birebana n'ibindi bimenyetso byashingiweho, Ndayambaje Emmanuel n'umwunganira banenga ko imvugo za N.B. iza nyina, n'iza Umupfasoni Odette zitera gushidikanya kandi ko zivuguruzanya ku bijyanye n'igihe icyaha cyakorewe. [37] Ku bijyanye no kuba imvugo za N.B., iza nyina, n'iza Umupfasoni Odette zitagombaga gushingirwaho kuko zishidikanywaho kandi zikaba zivuguruzanya, Urukiko rw'Ubujurire rurasanga nk'uko imvugo zabo zibigaragaza, umwana na nyina badahuza n'umutangabuhamya Umupfasoni Odette ku bijyanye n'uburyo icyaha cyamenyekanye, kuko umwana avuga ko nyina yabimenye ari uko amusanze ahagaze imbere y'igitanda se aryamye arimo kumukora mu ijipo, na nyina akaba ariko yabisobanuye,

mu gihe umutangabuhamya babibwiye avuga ko nyina wa N.B. yabimenye ari uko yicaje abakobwa be akabaganiriza ababwira ko gusambanya abana b'abangavu atari byiza, N.B. akamubwira ko we yasambanyijwe, nyina yamwihererana akamubwira ko se amaze kumusambanya inshuro nyinshi. Na none kandi, ntibasobanura mu buryo bumwe inshuro umwana yasambanyijwe, kuko Umupfasoni avuga ko hari igihe se yamusambanyije nyina yagiye guhinga mu gihe umwana na nyina ntaho babivuze, kuko umwana avuga ko se yamusambanyirije mu gihuru inshuro 5 naho inshuro ya nyuma amusambanyiriza mu nzu ubwo nyina yari yaragiye. Ikindi kandi Umupfasoni akaba avuga ko umwana yamubwiye ko ubwo se yamusambanyaga nyina adahari yari inshuro ya 3, mu gihe umwana yavuze ko se amusambanya nyina adahari ari ku nshuro ya nyuma bivuze ko ari ku nshuro ya 6. Uko kutavuga ibintu kimwe bikaba rero bituma imvugo zabo zitakwizerwa mu kugaragaza ukuri kw'ibyabaye. [38] Ku bijyanye na raporo ya muganga, yaragaragaje ko umwana agifite akarangabusugi ko n'ibindi byasuzumwe ku gitsina cye nta kidasanzwe byagaragaje. Urukiko rurasanga rero ibyo

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raporo yagaragaje birebwe hamwe n'imvugo z'uwo mwana wavuze ko se yamusambanyije inshuro 6, ko yabanje kumubwira ngo areke akoze igitsina cye ku cy'uwo mwana, akabikora, akongera akamubwira ngo areke asunike ntababara ngo agasunika buhoro buhoro yageraho akabikora cyane, akumva ibintu by'ibizi bije, nyina nawe akavuga ko umwana yamubwiye ko iyo yabaga ari kumwe na se bonyine se yamwicazaga ku bibero agashyira igitsina mu cye, izo mvugo zikaba zumvikanisha ko se yasambanyaga uwo mwana yashyize igitsina mu cye kandi kugeza arangije icyo gikorwa, ibyo ariko bikaba bitera gushidikanya kuko ibyo umwana yavuze ko yakorerwaga bitari kuba ngo muganga abure kugira icyo abona kidasanzwe ku gitsine cye, cyane cyane ko yasanze n'akarangabusugi ari kazima. [39] Urukiko rw'Ubujurire rurasanga kandi kuba muganga yarasanze umwana afite uburwayi (trichomonas vaginalis), bitashyingirwaho hemezwa ko byatewe n'uko Ndayambaje Emmanuel yamusambanyije, kuko nawe atapimwe ngo bigaragare ko nawe afite ubwo burwayi, n'ibindi bimenyetso byakabaye bishyigikira iyi raporo bikaba bishidikanywaho nk'uko byagaragajwe haruguru. [40] Hashingiwe ku byasobanuwe, Urukiko rw'Ubujurire rurasanga ibimenyetso byose byashingiweho n'Urukiko Rukuru mu guhamya Ndayambaje Emmanuel icyaha nk'uko byasesenguwe haruguru, bidahamya mu buryo budashidikanywaho ko yakoze icyaha cyo gusambanya umwana, bityo hashingiwe ku murongo watanze mu manza zavuzwe haruguru no ku ngingo ya 111 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ivuga ko gushidikanya birengera ushinjwa, ko iyo urubanza rwakurikiranwe mu buryo bwose ntihagire ibimenyetso nyakuri biboneka byemeza abacamanza ko ushinjwa yakoze icyaha koko bagomba kwemeza ko atsinze, Ndayambaje Emmanuel agizwe umwere kubera gushidikanya, bivuze ko imikirize y'urubanza rwajuririwe ihindutse. III. ICYEMEZO CY'URUKIKO [41] Rwemeje ko ubujurire bwa Ndayambaje Emmanuel bufite ishingiro; [42] Rwemeje ko urubanza RPA 01857/2021/HC/KIG rwaciye n'Urukiko Rukuru ku wa 09/01/2025, ruhindutse; [43] Rwemeje ko Ndayambaje Emmanuel adahamwa n'icyaha cyo gusambanya umwana yari akurikiranweho, akaba agomba

kurekurwa.

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