

RWANDA / JUDGMENT

UBUSHINJACYAHA v NDAYIZEYE

RPAA 01404/2024/CA

COURT

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UBUSHINJACYAHA v NDAYIZEYE

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Text

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UBUSHINJACYAHA v NDAYIZEYE [Rwanda URUKIKO RW'UBUJURIRE - RPAA 01404/2024/CA (Kaliwabo, P.J.) 29 Mutarama 2026] Amategeko agenga ibimenyetso – Ibimenyetso mu manza nshinjabyaha –Ibimenyetso bishingiye ku buhamya – Nubwo bitabujijwe ko ushinjwa atanga ubuhamya ku muntu bashinjwa hamwe, ubwo buhamya bugomba kuba busobanutse ku buryo burambuye kandi bugashyigikirwa n'ibindi bimenyetso bifite ireme. Amategeko agenga ibimenyetso – Ibimenyetso mu manza nshinjabyaha –Ibimenyetso bishingiye ku buhamya – Byaba ari ukugenekereza mu guhamya umuntu icyaha hashingiwe ku kuba atarashoboye kugaragaza icyo apfa n'abamushinja icyaha kuko ireme ry'ubuhamya rigomba kugaragarira mu buryo ibivugwa bihuje n'ukuri kw'ibyabaye kandi bikaboneka ko utanga ubuhamya asobanura neza ibyo yabonye cyangwa yumvise ku buryo butuma umucamanza yemera nta shiti ko ibivuzwe bigize ikimenyetso gishinja. Incamake y'ikibazo: Uru rubanza rwabayeho nyuma yuko hari uwitwa Nshimiyimana na Ishimwe bafatanywe buri wese agapfunyika ka heroine, babajijwe aho bayigura basubiza ko bayigurishwa na Ndayizeye (uregwa muri uru rubanza). Bivugwa ko polisi yifashishije uwitwa Hagenimana, agahamagara uregwa kugira ngo amuzanire udupfunyika 3 twa heroine. Mu gukurikirana icyo cyaha abafatanywe iyo heroine bo bemeragara icyaha naho

Ndayizeye akagihakana avuga ko abatangabuhama bamubeshyera, ko yahamagawe n'uwitwa Hagenimana amuzaniye telefoni yo kugura kandi ko nta biyobyabwenge nsdetse n'inshinge yigeze afatanwa. Ku rwego rubanza, Urukiko rwahamije Ndayizeye icyaha cyo kugurisha ibiyobyabwenge byo mu bwoko bwa heroine, rumuhanisha igifungo cya burundu no gutanga ihazabu y'amafaranga 20.000.000, naho abandi bahamwa n'icyaha cyo kunywa ibiyobyabwenge bihambaye, bo rubahanisha buri wese igifungo cy'umwaka. Ndayizeye yajuririye Urukiko Rukuru anenga ko Urukiko Rwisumbuye rwamuhamije icyaha cyo kugurisha ibiyobyabwenge bya Heroine hagendewe ku mvugo z'ibinyoma za Nshimiyimana na Ishimwe, ko yari asanzwe asangira nabo "heroine" nyamara we akaza kubireka, ko n'imvugo ya'uwitwa Hagenimana yashingiweho ari ikinyoma kigamije kumwihimuraho kubera ko yigeze kumushinja ubujura. Urwo Rukiko narwo rwaciye urubanza rwemeza ko ubujurire bwe budafite ishingiro hashingiwe ku kuba nta ibimenyetso atanga bitavuguruzwa ibyashingiweho ahamwa n' icyaha kuko heroine yayifatanywe ndetse abayiguraga iwe baramushinja, ko kuba avuga ko hari ibyo bapfa nta shingiro byahabwa kuko nta bimenyetso abitangira. Icyakora, hashingiwe ku zindi mpamvu yagabanyirijwe igihano ahanishwa igihano cy'igifungo cy'imyaka 15 n'ihazabu y'amafaranga 5.000.000. Ndayizeye yajuririye Urukiko rw'Ubujurire avuga ko Urukiko Rukuru rwamuhamije icyaha rushingiye ku buhamya butavugisha ukuri ndetse ko na "pv de constat" ifatwa nk'ikimenyetso atayemera, ko, iyo Urukiko ruyisesengura neza rwari kubona ko nta kintu yafatanywe, ko n'inshinge bavuga ko yafatanywe atazi aho abapolisi bazivanye, ariyo mpamvu yanze no gusinya iyi raporo.

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Iyo miburanire ye yatumye Urukiko Rw'Ubujurire rusuzuma ikibazo cyo kumenya niba Urukiko rwaramuhamije icyaha cyo kugurisha ibiyobyabwenge nta bimenyetso bishingiweho bikimuhama. Incamake y'icyemezo: 1. Nubwo bitabujijwe ko ushinjwa atanga ubuhamya ku muntu bashinjwa hamwe, ubwo buhamya bugomba kuba busobanutse ku buryo burambuye kandi bugashyigikirwa n'ibindi bimenyetso bifite ireme. Bityo ntibihagije gushingira ku mvugo y'uwitwa Nshimiyimana na Ishimwe ivuga ko heroine bafatanwe bayiguze na Ndayizeye, kuko nta kindi kimenyetso gihuza heroine bafatanwe na Ndayizeye bavuga ko yayibahaye.

2. Byaba ari ukugenekereza mu guhamya umuntu icyaha hashingiwe ku kuba atarashoboye kugaragaza icyo apfa n'abamushinja icyaha kuko ireme ry'ubuhamya rigomba kugaragarira mu buryo ibivugwa bihuje n'ukuri kw'ibyabaye kandi bikaboneka ko utanga ubuhamya asobanura neza ibyo yabonye cyangwa yumvise ku buryo butuma umucamanza yemera nta shiti ko ibivuzwe bigize ikimenyetso gishinja. Ubujurire bufite ishingiro. Amategeko yashingiweho: Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, Ingingo ya 107 n'iya 111. Imanza zifashishijwe: Ubushinjacyaha vs Dusengimana Ferdinand, RPAA 0001/14/CS rwaciye n'Urukiko rw'Ikirenga ku wa 17/11/2017. Inyandiko z'abahanga: Henry Bosly et Damien Vandermeersch, Droit de la procédure pénale, 4e édition, p. 1316.

Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 17/10/2020, abitwa Nshimiyimana Isaac na Ishimwe Appolinaire bafatanwe, buri wese agapfunyika ka heroine, babajijwe aho bayigura basubiza ko bayigurishwa na Ndayizeye Patrick. Bivugwa ko polisi yifashishije uwitwa Hagenimana Christian, agahamagara Ndayizeye kugira ngo amuzanire udupfunyika 3 twa heroine, uyu ngo akaba yarayizanye ariko yikanze abapolisi arayijugunya, afatanwa inshinge 2 zo kwitwera ibiyobyabwenge.

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[2] Nshimiyimana na Ishimwe bafashwe bemera icyaha cyo kunywa ibiyobyabwenge naho Ndayizeye ahakana icyaha, avuga ko abatangabuhamya bamubeshyera, ko yahamagawe na Hagenimana amuzaniye telefoni yo kugura kandi ko nta biyobyabwenge yigeze afatanwa ndetse ngo n'inshinge zivugwa akaba atari we wazifatanwe, ariyo mpamvu yanze gusinya inyandiko- mvugo y'ifatira ryazo. [3] Nyuma y'iperereza, Ubushinjacyaha bwareze Nshimiyimana Isaac na Ishimwe Appolinaire icyaha cyo kunywa ibiyobyabwenge byo mu bwoko bwa heroine, icyaha nabo bemera, naho Ndayizeye aregwa icyaha cyo kugurisha ibiyobyabwenge, aburana ahakana icyaha. [4] Mu rubanza N° RP 01371/2020/TGI/GSBO rwaciwe ku wa 29/04/2021, Urukiko Rwisumbuye rwa Gasabo rwahamije Nshimiyimana Isaac na Ishimwe Appolinaire icyaha cyo kunywa ibiyobyabwenge bihambaye, ruhanisha buri wese igifungo cy'umwaka 1. Urukiko rwahamije kandi Ndayizeye Patrick icyaha cyo kugurisha ibiyobyabwenge byo mu bwoko bwa heroine, rumuhanisha igifungo cya burundu no gutanga ihazabu y'amafaranga 20.000.000; iki cyaha rukaba rwarakimuhamije rushingiye ku buhamya bwa Nshimiyimana na Ishimwe ndetse n'ubwa Hagenimana, rushingira kandi ku nyandiko-mvugo y'ifatira ry'inshinge zo kwitwera ibiyobyabwenge. [5] Ndayizeye Patrick yajuririye Urukiko Rukuru anenga ko Urukiko Rwisumbuye rwamuhamije icyaha cyo kugurisha ibiyobyabwenge bya Heroine hagendewe ku mvugo z'ibinyoma za Nshimiyimana Isaac na Ishimwe Appolinaire, ko yari asanzwe asangira nabo "heroine" nyamara we akaza kubireka, ko n'imvugo ya Hagenimana yashingiweho ari ikinyoma kigamije kumwihimuraho kubera ko yigeze kumushinja ubujura, ko kandi nta nshinge yafatanwe ariyo mpamvu yanze kuzisinyira, asaba kurenganurwa. [6] Mu rubanza N° RPA 00768/2021/HC/KIG rwaciwe kuwa 12/12/2024, Urukiko Rukuru rwasanze Ndayizeye atashoboye gutanga ibimenyetso bishyigikira imvugo ye yuko afite icyo apfa n'abatangabuhamya bamushinja ko ari we wabagurishaga heroine, ko kandi nawe yafatanwe heroine, bityo ko ingingo ye yo guhakana icyaha nta shingiro ifite. Rwasanze kandi, nubwo impamvu yajuririshije nta shingiro zihawe, nta cyabuza ko agabanyirizwa ibihano hashingiwe ku kuba ari ubwa mbere akurikiranwe mu butabera ku buryo buzwi, kuba icyaha yakoze kitaragize ingaruka zikomeye, kandi ingano yafatanywe ya heroine ari nto, bityo ko igifungo cy'imyaka 15 n'ihazabu y'amafaranga 5.000.000 aricyo gikwiranye n'uburemere bw'icyaha ashinjwa, ibi bihano rukaba rwarabishingiye ku ngingo ya 2 (a na d) 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 rusange. [7] Ndayizeye Patrick yajuririye Urukiko rw'Ubujurire, Urubanza ruhabwa n° RPAA 01404/2024/CA, iburanisha ribera mu ruhamye kuwa 13/1/2026, Ndayizeye Patrick yunganiwe na Me

Maniraguha Viateur naho Ubushinjacyaha buhagarariwe na Dr Bideri Diogène, Umushinjacyaha ku rwego rw'Igihugu. [8] Mu myanzuro y'Ubujurire, Ndayizeye Patrick, yunganiwe na Me Maniraguha Viateur, avuga ko Urukiko Rukuru rwamuhamije icyaha rushingiye ku buhamya butavugisha ukuri ndetse ko na “pv de constat” ifatwa nk'ikimenyetso atayemera.

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- [9] Ubushinjacyaha bwashubije buvuga ko impamvu z'ubujurire za Ndayizeye Patrick nta shingiro zifite kuko mu kumuhamya icyaha Urukiko rwashingiye ku mvugo y'abamushinja ko yabagurishije heroine kandi hafashwe n'inshinge bakoreshaga mu kwitera icyo kiyobyabwenge, akaba nta kimenyetso yatanze kivuguruza ibyatanzwe ari nabyo byashingiweho ahamwa n'icyaha. [10] Urukiko rurasuzuma niba Urukiko Rukuru rwarahamije Ndayizeye Patrick icyaha nta bimenyetso simusiga bishingiweho n'igihano yahanishwa. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA Kumenya niba Urukiko Rukuru rwarahamije Ndayizeye Patrick icyaha nta bimenyetso simusiga bishingiweho n'igihano yahanishwa [11] Ndayizeye Patrick yunganiwe na Me Maniraguha Viateur yajuriye anenga Urukiko Rukuru ko rwamuhamije icyaha rushingiye ku mvugo z'abamushinja ibinyoma kubera ko bari basanzwe basangira ibiyobyabwenge hanyuma we akaza kubireka, ko imvugo ya Maniraguha Chritian igamije kumwihimuraho kuko yigeze kumufatisha yibye muri boutique, ko yamuhamagariye ikibazo cya telefoni bagombaga kugura ariko Ubushinjacyaha bukamushinja ko yari aje kugurisha “heroine” kandi ntayo bamufatanye. Ndayizeye avuga kandi ko, iyo Urukiko rusesengura neza “Rapport de constat”, rwari kubona ko nta kintu yafatanwe, ko n'inshinge bavuga ko yafatanwe atazi aho abapolisi bazivanye, ariyo mpamvu yanze no gusinya iyi raporo, bityo ikaba idashobora gufatwaho ikimenyetso. [12] Me Maniraguha Viateur avuga ko Urukiko rwirengagije ihame rivuga ko Ubushinjacyaha bufite inshingano yo gutanga ibimenyetso simusiga bishinje icyaha (beyond reasonable doubt), nyamara ngo ibyatanzwe muri uru rubanza bikaba byuzuye ugushidikanya, ariyo mpamvu ushinjwa agomba kugirwa umwere. [13] Ubushinjacyaha bwashubije buvuga ko impamvu z'ubujurire za Ndayizeye Patrick nta shingiro zifite kuko Urukiko rwamuhamije icyaha rushingiye ku mvugo y'abamushinja ko yabagurishije Heroine kandi hafashwe n'inshinge bakoreshaga mu kwitera icyo kiyobyabwenge, akaba nta kimenyetso yatanze kivuguruza ibyatanzwe ari nabyo byashingiweho ahamwa n'icyaha. Bityo ko ntaho yahera avugako Urukiko rwamuhamije icyaha rugenekereje, kuko rwakoze isesengura ry'ibimenyetso byatanzwe n'Ubushinjacyaha, rugaragaza neza icyo rwashingiyeho rumuhamya icyaha. Busaba ko hahamishwaho imikirize y'urubanza rwajuririwe mu ngingo zarwo zose. UKO URUKIKO RUBIBONA [14] Ikibazo kiri muri uru rubanza ni ukumenya niba Urukiko rwarahamije Ndayizeye Patrick icyaha cyo kugurisha ibiyobyabwenge nta bimenyetso bishingiweho bikimuhamya. [15] Ingingo ya 107 y'Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, mu gika cyayo cya 1 n'icya 2 igira iti: “Ubushinjacyaha, uwakorewe icyaha cyangwa se abamufiteho uburenganzira iyo baregeye indishyi z'akababaro cyangwa biregeye umuburanyi, ni bo bagomba gutanga

ibimenyetso byemeza icyaha. Ukurikiranyweho

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icyaha afatwa nk'umwere igihe cyose urubanza rutaramwemeza icyaha burundu. Iyo icyaha cye kitaragaragazwa, ushinjwa ntagomba gutanga ibimenyetso byo kwiregura. [16] Mu rubanza N° 0001/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 17/11/2017 haburana Ubushinjacyaha na Dusengimana Ferdinand, rubishingiye ku nyandiko z'abahanga mu mategeko¹, rwashimangiye ihame ry'uko nta muntu ugomba kwemezwa ko ahamwe n'icyaha atari uko Ubushinjacyaha bugaragaje ibimenyetso bidatera ugushidikanya uko ari ko kose.² [17] Inyandiko itanga ikirego ku rwego rwa mbere igaragaza ko Nshimiyimana na Ishimwe ari bo bafatanwe ikiyobyabwenge cya "heroine", babajijwe aho bagikura bavuga ko ari Ndayizeye wabibagurishije. Iyi nyandiko igaragaza kandi ko, Hagenimana ufatwa nk'uwatanze amakuru, ari we wifashishijwe mu guhamagara Ndayizeye kugira ngo azane ibiyobyabwenge, Ubushinjacyaha bukavuga ko mu gihe yabonaga abapolisi, ibiyobyabwenge yabijugunye, ku buryo bitigeze biboneka. Kuri ibi bimenyetso by'imvugo z'abatangabuhamya, Ubushinjacyaha bwatanze ikimenyetso cya "rapport de constat" ivuga ko Ndayizeye afatanwe inshinge zo kwitera ibiyobyabwenge ariko uyu akaba yaranze kuyishyiraho umukono avuga ko ntazo yafatanwe. [18] Ndayizeye yajuririye Urukiko Rukuru avuga ko atemera ubuhamya bwa Nshimiyimana n'ubwa Ishimwe bashinjwa hamwe kuko nta kigaragaza ko ibiyobyabwenge bafatanwe babiguzwe iwe nk'uko babivugaga, anenga ko imvugo yabo idafite ikiyishyigikira. Yajurije kandi anenga ko Urukiko rwakoze ikosa ryo gushingira ku buhamya bwa Hagenimana uvuga ko yari amuhamagaye ngo amuzanire ibiyobyabwenge, nyamara ntabyo yafatanwe kandi ko amubeshyera kubwo kumwihimuraho. Yanenze na rapport de constat kuko ibiyivugwamo atabyemera, ariyo mpamvu yanze kuyishyiraho umukono kuko inshinge ziyivugwamo atari we wazifatanwe. [19] Urukiko rurasanga, mu mwanya wo gusuzuma uko Urukiko Rukuru rwasesenguye ibimenyetso ushinjwa anenga, rwasubije ubujurire bwe mu gika kimwe rukumbi, gihiniye muri aya magambo "Rusanga ibimenyetso Ndayizeye atanga bitavuguruzwa ibyashyingiweho bamuhamya icyaha kuko heroine yarayifatanywe ndetse abayiguraga iwe baramushinja kuba avuga ko hari ibyo bapfa nta shingiro byahabwa kuko nta bimenyetso abitangira"³. [20] Urukiko rurasanga ibyakozwe n'Urukiko Rukuru, uretse no kuba rudasobanura impamvu rwashingiyeho mu guca urubanza (absence de motivation), rwahamije n'ibidahuje na dosiye kuko n'Ubushinjacyaha butemeza ko hari ikiyobyabwenge Ndayizeye yafatanwe, ahubwo bukaba bwaraburanye buvuga ko yabonye abapolisi akabijugunya ku buryo bitigeze bigaragara. [21] Nubwo bitabujijwe ko ushinjwa atanga ubuhamya ku muntu bashinjwa hamwe, nyamara kandi, ubwo buhamya bugomba kuba busobanutse ku buryo burambuye kandi bugashyigikirwa n'ibindi bimenyetso bifite ireme. Urukiko rurasanga bidahagije gushingira ku mvugo ya Nshimiyimana na Ishimwe ivuga ko heroine bafatanwe bayiguzwe na Ndayizeye, kuko nta kindi kimenyetso gihuza heroine bafatanwe na Ndayizeye bavuga ko yayibahaye.

1 Henry Bosly et Damien Vandermeersch, Droit de la procédure pénale, 4e édition, p. 1316, 5” Une personne ne peut être déclarée coupable au terme du procès que si l’accusation a apporté la preuve au-delà de tout doute raisonnable de la culpabilité de l’accusé” 2 Reba igika cya 18 cy’urubanza RPAA 0001/14/CS rwaciwe n’Urukiko rw’Ikirenga ku wa 17/11/2017 haburana Ubushinjacyaha na Dusengimana Ferdinand. 3 Reba igika cya 10 cy’urubanza rujuririrwa

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[22] Rurasanga, ubuhamya bwa Hagenimana bushingiye ku kuba hari amakuru yari afite ko Ndayizeye yaba acuruza ibiyobyabwenge, aya makuru akaba yari kuba impamo iyo koko aza gufatanwa ibiyobyabwenge nk’uko avuga ko yamuhamagaye ngo abimuzanire, ariko mu kumufata bakaba barasanze ntabyo afite. Kuba Ubugenzacyaha bwaravuze ko ibiyobyabwenge yabitaye ndetse babishaka aho abitaye ntibabibone, ubwabyo biburizamo ireme ry’imvugo ya Hagenimana ko yamuhamagaye amusaba kumuzanira udupfunyika 3 twa heroine, kuko ntacyarwemeza ko aribyo bavuganye, mu gihe ushinjwa we avuga ko baganiriye ibijyanye na telefoni baguraga. [23] Urukiko rurasanga, byaba ari ukugenekereza mu guhamya umuntu icyaha hashingiwe ku kuba atarashoboye kugaragaza icyo apfa n’abamushinja icyaha, kuko ireme ry’ubuhamya rigomba kugaragarira mu buryo ibivugwa bihuje n’ukuri kw’ibyabaye kandi bikaboneka ko utanga ubuhamya asobanura neza ibyo yabonye cyangwa yumvise ku buryo butuma umucamanza yemera nta shiti ko ibivuzwe bigize ikimenyetso gishinja. [24] Urukiko rurasanga raporo y’ibyabaye igaragaza ko Ndayizeye afatanwe inshinge 2 zo kwitera ibiyobyabwenge ariko iyi raporo ushinjwa akaba yaranze kuyishyiraho umukono avuga ko atazifatanwe, nanone hakaba nta kindi kimenyetso gihuza izi nshinge na Ndayizeye uretse imvugo z’abamufashe. [25] Urukiko rurasanga, nk’uko byatanzweho umurongo n’Urukiko rw’Ikirenga mu manza zavuzwe haruguru, ushinjwa adashobora guhamya n’icyaha mu gihe cyose ibimenyetso by’ubushinjacyaha bigifite icyaho cyo gushidikanya. Ku birebana n’uru rubanza, icyaho kiboneka mu kuba Nshimiyimana na Ishimwe aribo bafatanwe ibiyobyabwenge, imvugo zabo ko babiguzwe na Ndayizeye zikaba zidafite ikindi kizishyigikira ngo zemerwe nk’ukuri. Ikindi nuko, nta gihamba ko inshinge zivugwa mu nyandiko-mvugo y’ibyabaye, ari iza Ndayizeye mu gihe yayihakanye rugikubita kandi nta n’undi muntu udafite aho ahuriye n’urubanza wabonye koko Ndayizeye afatanwa inshinge zivugwa. [26] Urukiko, rushingiye ku ngingo ya 111 y’Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y’imanza z’inshinjabyaha, igira iti: “Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze”, rushingiye no kubyasobanuwe mu bika bibanziriza iki, rurasanga Ndayizeye Patrick akwiye kugirwa umwere ku cyaha cyo kugurisha ibiyobyabwenge kubwo gushidikanya ku bimenyetso byatanzwe. III. ICYEMEZO CY’URUKIKO [27] Rwemeje ko ubujurire bwa Ndayizeye Patrick bufite ishingiro; [28] Rwemeje ko urubanza N° RPA 00768/2021/HC/KIG rwaciwe n’Urukiko Rukuru kuwa 12/12/2024, ruhindutse mu ngingo zarwo zose; [29] Rwemeje ko Ndayizeye Patrick agizwe umwere ku cyaha cyo kugurisha ibiyobyabwenge ashinjwa; [30] Rwemeje ko Ndayizeye

Patrick ahita arekurwa uru rubanza rukimara gusomwa.

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