

RWANDA / JUDGMENT

UBUSHINJACYAHA v. NIYONIZERA

RPAA 00037/2024/CA

COURT

Court of Appeal

DECIDED

24 January 2025

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RPAA 00037/2024/CA

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UBUSHINJACYAHA v. NIYONIZERA

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Text

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UBUSHINJACYAHA v. NIYONIZERA [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00037/2024/CA (Kanyange, P.J.) 24 Mutarama 2025] Amategeko agenga imanza z'inshinjabyaha – Gusambanya umwana – Gusambanya byakurikiwe no kubana nk'umugabo n'umugore – Kugabanya igihano iyo hari impamvu nyoroshyacyaha – igihano cyagabanywa ku buryo kitajya muni y'igifungo cy'inyaka cumi n'itanu (15). Incamake y'ikibazo: Niyonizera Antoine yakurikiranyweho n'Ubushinjacyaha icyaha cyo gusambanya umwana bigakurikirwa no kubana nawe nk'umugore n'umugabo, bumuregera Urukiko Rwisumbuye rwa Ngoma busaba ko ahamwa n'icyaha agahanishwa igihano cy'igifungo cya burundu. Urwo Rukiko rwaciye urubanza rwemeza ko Niyonizera ahamwa n'icyaha rumuhanisha igifungo cy'inyaka 25. Niyonizera yajuririye mu Rukiko Rukuru Urugereko rwa Rwamagana asaba kugabanyirizwa igihano yahawe kuko yaburanye ku rwego rwa mbere yemera icyaha kandi akaba akomeje kucyemera, ndetse nta ngaruka zikomeye icyaha cyateye, asaba kandi ko yasubikirwa ibihano. Urukiko Rukuru Urugereko rwa Rwamagana rwaciye urubanza rwemeza ko ko ubujurire bwe bufite ishingiro kuri bimwe, ko imikirize y'urubanza rwa mbere ihindutse ku birebana n'igihano yari yahanishijwe, rumuhanisha igifungo cy'inyaka cumi n'itanu (15). Niyonizera yajuririye mu Rukiko rw'ubujurire

asaba kongera kugabanyirizwa igihano cy'imyaka 15 yahawe. Ku rundi ruhande Ubushinjacyaha buvuga ko Urukiko Rukuru rwamugabanyirije igihano mu buryo buhagije rumuhanisha igihano gito giteganywa n'itegeko, akaba atagaragaza inenge iri mu rubanza ajuririra. Incamake y'ikibazo: icyaha cyo gusambanya umwana byakurikiwe no kubana nk'umugabo cyangwa umugore gihanishwa igifungo cya burundu, ariko haba habonetse impamvu nyoroshyacyaha zemejwe n'umucamanza, igihano kikaba cyagabanywa ku buryo kitajya munsu y'igifungo cy'imyaka cumi n'itanu (15). Ubujurire nta shingiro bufite. Amategeko yashingiweho: Itegeko N°69/2019 ryo ku wa 08/11/2019 ihindura ingingo ya 133 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaye ibyaha n'ibihano muri rusange, ingingo ya 4; Itegeko N° 59/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaye ibyaha n'ibihano muri rusange, ingingo ya 2, (a). Nta manza zifashishijwe

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Urubanza I. IMITERERE Y'URUBANZA [1] Niyonizera Antoine yasambanyije umwana w'umukobwa w'imyaka cumi n'irindwi (17) wiswe I.F mu manza za mbere bikurikirwa no kubana nk'umugabo n'umugore, bimenyekana bamaranye ibyumweru bibiri maze atangira gukurikiranwa n'inzego z'iperereza. [2] Iperereza rirangiye, Ubushinjacyaha bwamureze mu Rukiko Rwisumbuye rwa Ngoma icyaha cyo gusambanya umwana byakurikiwe no kubana nk'umugabo n'umugore, bumusabira guhanishwa igifungo cya burundu [3] Niyonizera Antoine yireguye avuga ko yemera icyaha, asobanura ko uwo mukobwa yamusanze mu ishyamba aho yari aragiye avuga ko agiye kwiyahura ngo kuko iwabo bamutoteza ko kandi atasubiraye, ahita afata icyemezo cyo kumugira umugore kuko bari basanzwe bakundana no kugira ngo arengere ubuzima bwe, ko kandi yamubajije imyaka akamubwira ko afite cumi n'umunani (18), asaba ko igihano yasabiwe cyagabanywa. [4] Urukiko rwaciye urubanza RP 01046/2020/TGI/NGOMA ku wa 11/12/2020, rusanga hari ibimenyetso byemeza ko Niyonizera Antoine yakozwe icyaha akurikiranweho bigizwe no kuba nawe yaracyiyemereye, imvugo za I.F wavuze ko Niyonizera Antoine yari umugabo we babanaga, imvugo z'abatangabuhamya bemeje ko babanaga nk'umugabo n'umugore na raporo ya muganga igaragaza ko uwo mwana yatakaje akarangabusugi. Rwasanze ariko kuba yarakozwe icyaha akiri muto byamubera impamvu nyoroshyacyaha, maze rwemeza ko ahamwe n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25). [5] Niyonizera Antoine yajuriye mu Rukiko Rukuru, Urugereko rwa Rwamagana asaba kugabanyirizwa igihano yahawe kuko yaburanye ku rwego rwa mbere yemera icyaha kandi akaba akomeje kucyemera, ko kandi nta ngaruka zikomeye cyateje kuko I.F yasubiye mu ishuri ndetse akaba ari bwo bwa mbere aguye mu cyaha, asaba kandi ko igihano yahabwa cyasubikwa. [6] Ubushinjacyaha bwashubije ko izo mpamvu z'ubujurire bwa Niyonizera Antoine zitahabwa agaciro, kuko yagabanyirijwe igihano mu buryo buhagije, ko n'igihano yahawe kitasubikwa. [7] Urukiko rwaciye urubanza RPA 00215/2021/HC/RWG ku wa 28/12/2023, rusanga nubwo Niyonizera Antoine yagabanyirijwe igihano ku rwego rwa mbere agahanishwa igifungo cy'imyaka 25, cyakongera kikagabanywa hashingiwe ku kuba icyaha yakozwe nta ngaruka zikomeye cyateje, rusanga kandi impamvu irebana no gusubikirwa igihano itasuzumwa kuko yatanze nyuma y'ibihe byemewe byo kujurira, rwemeza rero ko ubujurire

bwe bufite ishingiyo kuri bimwe, ko imikirize y'urubanza rwa mbere ihindutse ku birebana n'igihano yari yahanishijwe, rumuhanisha igifungo cy'imyaka cumi n'itanu (15). [8] Nyonizera Antoine yatanze ubujurire bwa kabiri mu Rukiko rw'Ubugurire, urubanza rwandikwa kuri RPAA 00037/2024/CA, ruhabwa itariki yo kuburanishwa yo ku wa 09/01/2025,

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uwo munsu ruburanishwa yunganiwe na Me Rugeyo Jean, Ubushinjacyaha buhagarariwe na Butera Oscar, Umushinjacyaha ku rwego rw'Igihugu. [9] Mu myanzuro y'ubujurire no mu miburanire, Nyonizera Antoine n'umwunganira bavuga ko ubujurire bwe bugamije gusaba kongera kugabanyirizwa igihano cy'imyaka cumi n'itanu (15) yahawe. [10] Uhagarariye Ubushinjacyaha avuga iyo mpamvu y'ubujurire nta shingiro ifite, kuko Urukiko Rukuru rwamugabanyirije igihano mu buryo buhagije rumuhanisha igihano gito giteganywa n'itegeko, akaba atagaragaza inenge iri mu rubanza ajuririra. [11] Ikibazo kigomba gusuzumwa muri uru rubanza ni ukumenya niba igihano Nyonizera Antoine yahanishijwe cyakongera kugabanywa. II. ISESENGURA RY'IKIBAZO KIRI MU RUBANZA

Kumenya niba igihano Nyonizera Antoine yahanishijwe cyakongera kugabanywa. [12] Mu myanzuro y'ubujurire no mu miburanire, Nyonizera Antoine n'umwunganira bavuga ko ubujurire bwe bugamije gusaba kongera kugabanyirizwa igifungo cy'imyaka cumi n'itanu (15) yahanishijwe agahabwa igihano gito gishoboka, kuko yemeye icyaha anasaba imbabazi, akaba yari asanzwe yitwara neza ko kandi atari agamije kugirira nabi I.F ndetse bakaba bari mu kigero kimwe kuko yari afite imyaka cumi n'umunani (18) naho uwo mukobwa afite cumi n'irindwi (17). [13] Mu kugabanya icyo gihano, Nyonizera Antoine avuga ko hakurikizwa imirongo iri mu manza zitandukanye, harimo urubanza RS/INCONST/SPEC 00003/2019/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 4/12/2019 haburana Kabasinga Florida na Leta y'u Rwanda, urubanza RPAA

00032/2019/CA Ubushinjacyaha bwaburanyemo na Nzafashwanimana Jean de Dieu rwaciwe n'Urukiko rw'ubujurire ku wa 28/02/2020, n'urubanza RPAA 00550/2021/CA urwo Rukiko rwaciye ku wa 17/02/2023 haburana Ubushinjacyaha na Habineza Frederic wagabanyirijwe igihano kikava ku myaka makumyabiri (20) kikagezwa ku myaka itanu (05), ko kandi iyo mirongo yakurikizwaga ubwo yajuriraga. [14] Uhagarariye Ubushinjacyaha avuga ko impamvu y'ubujurire bwa Nyonizera Antoine nta shingiro ifite kuko asaba kongera kugabanyirizwa igihano ashingiye ku mpamvu yari yatanze mbere kandi Umucamanza wo mu bujurire bwa mbere akaba yaramugabanyirije mu buryo bukwiye kandi bukurikije amategeko. [15] Avuga kandi ko imirongo yo mu manza Nyonizera avuga zaciwe n'Urukiko rw'Ikirenga hamwe n'Urukiko rw'Ubugurire itakurikizwa, kuko itegeko yari ishingiyeho ryahindutse nk'uko byatanzweho umurongo n'uru Rukiko, ko n'ibyo avuga ko yajuriye iyo mirongo igikurikizwa atari byo, kuko yajuriye mu kwezi kwa 01/2024 kandi itegeko rihindura iryo iyo mirongo yari ishingiyeho ryarasohotse mu kwezi kwa 12/2023, ko rero hagumaho imikirize y'urubanza rwajuririwe.

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UKO URUKIKO RUBIBONA [16] Impaka ziri muri uru rubanza zishingiye ku kumenya niba igifungo cy'imyaka cumi n'itanu

- (15) Urukiko Rukuru rwahanishije Niyonizera Antoine cyakongera kugabanywa. [17] Ingingo ya 4 y'Itegeko N°69/2019 ryo ku wa 08/11/2019 ihindura ingingo ya 133 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, mu gika cyayo cya gatandatu, iteganya ko iyo umuntu mukuru asambanyije umwana bigakurikirwa no kumugira umugabo cyangwa umugore, igihano kiba igifungo cya burundu kidashobora kugabanywa kubera impamvu nyoroshyacyaha. Iyi ngingo ariko igomba kureberwa hamwe n'ingingo ya 2, (a) y'Itegeko N° 59/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, kuko ivuga ko iyo umucamanza yemeje impamvu nyoroshyacyaha, igifungo cya burundu gishobora kugabanywa ariko ntikijye muni y'igihano cy'igifungo cy'imyaka 15. [18] Izi ngingo zisomewe hamwe zumvikanisha ko icyaha cyo gusambanya umwana byakurikiwe no kubana nk'umugabo cyangwa umugore gihanishwa igifungo cya burundu, ariko haba habonetse impamvu nyoroshyacyaha zemejwe n'umucamanza, igihano kikaba cyagabanywa ku buryo kitajya muni y'igifungo cy'imyaka cumi n'itanu (15). [19] Imikirize y'urubanza Niyonizera Antoine yajuririye igaragaza ko Urukiko Rukuru rwamugabanyirije igifungo cy'imyaka makumyabiri n'itanu (25) yari yahanishijwe ku rwego rwa mbere, rumuhanisha igifungo cy'imyaka cumi n'itanu (15) rushingiye ku mpamvu nyoroshyacyaha rwagaragaje. [20] Urukiko rw'Ubujurire rurasanga harebwe uburyo ibihano bishobora kugabanywa iyo hari impamvu nyoroshyacyaha nk'uko byasobanuwe haruguru, hakanarebwa igihano cy'imyaka cumi n'itanu (15) Niyonizera Antoine yahanishijwe nyuma yo kumugabanyiriza, ibyo asaba ko icyo gihano cyakongera kikagabanywa bitashoboka kuko yagabanyirijwe igihano mu buryo buhagije kandi bukurikije ibyo Itegeko riteganya, icyo yahawe kandi kikaba ari cyo gito gishobora gutangwa hakurijwe ibiteganywa n'ingingo ya 2 y'itegeko N° 59/2023 ryo ku wa 04/12/2023 ryavuzwe haruguru. [21] Urukiko rurasanga kandi imirongo yo mu manza Niyonizera Antoine yagaragaje mu mwanzuro we itashingirwaho, kuko yari ishingiyeho ku Itegeko ryahinduwe nk'uko byasobanuwe n'uru Rukiko mu rubanza RPAA 00048/2020/CA rwaciye ku wa 26/05/2022 haburana Ubushinjacyaha na Bimenyimana Jean Paul, n'ibyo avuga ko ajurira iyo mirongo yari igikurikizwa, usibye kuba bitahindura ibyemejwe mu rubanza rumaze kuvugwa, binagaragara ko ubwo yajuriraga itegeko iyo mirongo yari ishingiyeho ryari ryarahindutse. [22] Hashingiwe ku bimaze gusobanurwa, Urukiko rurasanga igifungo cy'imyaka cumi n'itanu
- (15) Niyonizera Antoine yahanishijwe kitakongera kugabanywa, bityo hakaba hagumyeho imikirize y'urubanza rwajuririwe.

III. ICYEMEZO CY'URUKIKO

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[23] Rwemeje ko ubujurire bwa Niyonizera Antoine nta shingiro bufite; [24] Rwemeje ko imikirize y'urubanza RPA 00215/2021/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 28/12/2023, rwamuhanishije igifungo cy'imyaka cumi n'itanu (15), idahindutse; [25] Rutegetse ko amagarama y'urubanza aherereye ku isanduku ya Leta, kuko Niyonizera Antoine afunze, akaba asonewe kuyatanga.

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