

RWANDA / JUDGMENT

UBUSHINJACYAHA v NSHIMIRIMANA

RPAA 01374/2024/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v NSHIMIRIMANA

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Text

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UBUSHINJACYAHA v NSHIMIRIMANA [Rwanda URUKIKO RW'UBUJURIRE - RPAA 01374/2024/CA (Mukamurenzi, P.J.) 29 Nzeri 2025] Amategeko agenga ibimenyetso – Imanza z'inshinjabyaha – Ibimenyetso bihamya nta gushidikanya - 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 ari we 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. Incamake y'ikibazo: Ku wa 24/01/2020 saa tanu z'amanywa, abanyerondo bafashe Nshimirimana bavuga ko acuruza urumogi ngo bamufatana udupfunyika 3 bavuga ko yadutaye ubwo yirikuga bakamwirukaho hanyuma bakadutoragura mu nzira aho yagiye arujugunya. Ubushinjacyaha bwamureze mu Rukiko Rwisumbuye rwa Nyarugenge icyaha cyo kubika no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, aburana ahakana avuga ko bamubeshyera kuko atigeze afatanwa urumogi cyangwa ngo hagaragazwe abo yaba yararugurishije. Urukiko rushingiye ku mvugo z'abanyerondo bamufashe ndetse n'inyandiko y'ifatira ry'urumogi, rwasanze ahamwa n'icyaha ashinjwa rumuhanisha igifungo cy'imyaka 25

n'ihazabu ya 20.000.000 Frw. Uregwa yajuririye icyo cyemezo mu Rukiko Rukuru ariko ubujurire bwe ntibwahabwa ishingiro, ajurira bwa kabiri mu Rukiko rw'Ubujurire, hasuzumwa ikibazo cyo kumenya niba hari ibimenyetso bidashidikanywaho bigaragaza ko Nshimirimana Emmanuel yakoze icyaha aregwa. Uyu asobanura ko adacuruzaga urumogi kandi ko ntarwo yigeze afatanwa dore ko abavuga ko bamubonye arucuruza batagaragaza abo yarugurishije kandi n'urwo bavugaga ngo yajugunye mu musarani ntibagaragaza ingano yarwo bityo agasanga ibyo bitera ugushidikanya mu kwemeza ko koko urumogi rwafashwe ari we barufatanye. Ubushinjacyaha buvugaga ko nabwo bubona ko ibimenyetso biri muri dosiye bitera gushidikanya ku kwemeza ko uregwa yaba yarafatanwe urumogi cyangwa se yaba yaracuruzaga urumogi bityo uko gushidikanya kukaba kurengera uregwa. 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 ari we 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. Ubujurire, bufite ishingiro. Nta mategeko yashingiweho.

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Imanza zifashishijwe: RPAA 00737/2021/CA, Ubushinjacyaha na Uwayisaba habimana Antoine rwaciwe n'Urukiko rw'Ubujurire ku wa 16/12/2022; RPAA 00156/2025/CA, Nshimiyimana Jean de Dieu, rwaciwe n'Urukiko rw'Ubujurire ku wa 25/04/2025. Urubanza I. IMITERERE Y'URUBANZA

- [1] Ku wa 24/01/2020 saa tanu z'amanywa, Nshimirimana Emmanuel yafashwe n'abanyerondo bavugaga ko arimo gucuruza urumogi, arabarwanya ariruka bamwirukaho, aho yanyuze bahatoragura udupfunyika 3 tw'urumogi, aza gufatwa n'abaturage ashyikirizwa inzego zibishinzwe atangira gukurikiranwa. [2] Iperereza rirangiye, Ubushinjacyaha bwareze Nshimirimana Emmanuel mu Rukiko Rwisumbuye rwa Gasabo bumukurikiranyeho icyaha cyo kubika no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, aburana ahakana icyaha avugaga ko bamubeshyera, asaba ko ibyavuzwe n'Ubushinjacyaha biteshwa agaciro kuko urumogi bamushinja gucuruza ntarwo bamufatanye cyangwa ngo bagaragaze abo yaruhaye, asaba kugirwa umwere. [3] Mu rubanza No RP 00318/2020/TGI/NYGE rwaciwe ku wa 05/02/2020, Urukiko rwahamije Nshimirimana Emmanuel icyaha cyo kubika no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, rumuhanisha igifungo cy'imyaka 25 n'ihazabu ya 20.000.000 Frw. Mu gufata icyemezo, Urukiko rwashingiye ku mvugo zo mu Bugenzacyaha z'abatangabuhamya Mwigezo Jean Paul, Ndayisenga Jean Marie Vianney na Nshimiyimana Joseph, bamushinje ko bamufashe afite urumogi yarimo agurisha, ku nyandikomvugo y'ifatira ry'urumogi Nshimirimana Emmanuel yafatanywe yanze gusinyaho na raporo y'ubuyobozi bw'inzego z'ibanze igaragaza ko Nshimirimana Emmanuel asanzwe anywa urumogi akanarucuruza. [4] Nshimirimana Emmanuel yajuririye urwo rubanza mu Rukiko Rukuru avugaga ko yahamijwe icyaha cyo gucuruza urumogi ataragikoze, kuko yafatiwe ku kabare agiye kwishyuza no kugurisha ihene ze, hakaba hataranagaragajwe umuguzi bari kumwe, ko hanirengagijwe gukora iperereza ryimbitse kuri we ngo rurihuze n'icyaha cyakozwe. Avugaga kandi ko Urukiko rwirengagijwe ingingo ya 111 n° 027/2019 ryo ku wa

19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ivuga ko gushidikanya birengera ushinjwa kuko ibimenyetso byashingiweho mu kumuhamya icyaha bishidikanywaho akaba agomba kugirwa umwere. [5] Mu rubanza No RPA 00267/2021/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 05/12/2024, Urukiko rwasanze ubujurire bwa Nshimirimana Emmanuel nta shingiro bufite, kuko nubwo ahakana icyaha hari ibimenyetso bikimuhamya atabashije kuvuguruza birimo imvugo z'abatangabuhamya Mwigezo Jean Paul na Sinzabakwira Elysé bari abanyerondo bemeza ko bamubonye acuruza urumogi, bajya kumufata akabarwanya akiruka akaza gufatwa n'abaturage, imvugo z'umutangabuhamya Ndayisenga Jean Marie Vianney, udupfunyika 3 tw'urumogi twafatiriwe, amafaranga 17.200 Frw yari amaze gucuruza na raporo z'inzego z'ibanze. Rwemeza

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ko ubujurire bwe nta shingiro bufite, ko nta gihindutse ku gihano yahanishijwe n'Urukiko Rwisumbuye. [6] Nshimirimana Emmanuel ntiyishimiye imikirize y'urubanza ajuririra Urukiko rw'Ubujurire, urubanza ruhabwa n° RPAA 01374/2024/CA, ruburanishwa mu ruhame ku wa 05/09/2025, Nshimirimana Emmanuel yunganiwe na Me Nyiramata Bernadette, naho Ubushinjacyaha buhagarariwe na Habineza Jean Damascène, Umushinjacyaha ku rwego rw'Igihugu. [7] Mu myanzuro y'ubujurire no mu miburanire, Nshimirimana Emmanuel n'umwunganira bavuga ko banenga urubanza rwaciwe n'Urukiko Rukuru rwamuhamije icyaha cyo gucuruza ibiyobyabwenge nta gikorwa kigize icyaha kigaragajwe yakoze cyangwa abaguzi, ko imvugo z'abatangabuhamya zitari zikwiye kuba ikimenyetso kuko batavugishije ukuri. Banavuga ko n'Umushinjacyaha yasabye ko yagirwa umwere kubera ugushidikanya birirengagizwa. [8] Uhagarariye Ubushinjacyaha avuga ko nawe asanga hari ugushidikanya ku bijyanye n'ibimenyetso byashingiweho hemezwa ko Nshimirimana Emmanuel yakoze icyaha cyo gucuruza ibiyobyabwenge by'urumogi, kuko bavuga ko yafatiwe mu cyuho ari kugurisha urumogi, ariko nta muguzi wagaragajwe, nta n'umuntu wigeze abazwa cyangwa ngo avugwe amazina ko yari mu gikorwa cyo kumugurira urumogi, nta n'urumogi yafatanwe, kuko udupfunyika 3 bavuga twafatiriwe, twatoraguwe mu nzira yiruka, ngo urundi aruta mu musarani mu gipangu yanyuzeho yiruka ariko rukaba rutagaragaye. Anavuga ko iby'uko hari ugushidikanya ku bimenyetso bari barabigaragaje mu Rukiko Rukuru. Asaba ko Urukiko rw'Ubujurire rwakwemeza ko ubujurire bwe bufite ishingiro. [9] Ikibazo gisuzumwa ni icyo kumenya niba hari bimenyetso bidashidikanywaho bigaragaza ko Nshimirimana Emmanuel yakoze icyaha aregwa.

II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

Kumenya niba hari ibimenyetso bidashidikanywaho bigaragaza ko Nshimirimana Emmanuel yakoze icyaha aregwa [10] Nshimirimana Emmanuel n'umwunganira bavuga ko icyo banenga urubanza rwaciwe n'Urukiko Rukuru ari uko rwamuhamije icyaha cyo gucuruza ibiyobyabwenge nta bimenyetso bifatika bishingiweho. Basobanura ko Urukiko Rukuru rutagaragaje igikorwa cy'ubucuruzi yakoze, kuko mu mvugo z'abatangabuhamya babajijwe bese bemeza ko bamusanze mu kabari arimo acuruza urumogi, ariko hakaba haterekanwa umuguzi wafatiwe aho yaba yararugurishije; ko we nta rumogi yafatanywe, ko urwo bavuga ko yataye mu musarani

hatagaragajwe ingano yarwo. [11] Bakomeza bavuga ko raporo y'inzezo z'ibanze yashingiweho igaragaza ko yabaye umunyerondo muri Nyarugunga, nyamara hari indi raporo y'umurenge wa Nyarugunga yakozwe ku wa 21/11/2022, iyitesha agaciro kuko igaragaza ko atigeze akora akazi k'ironde muri uwo

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murenge. Bavuga kandi ko atuye mu Murenge wa Rukumberi mu Karere ka Ngoma, ko ubwo yafatwaga yari ategereje manager w'akabari ngo amwishyure, aje no kugurisha ihene ze. [12] Banavuga ko yaburanye agaragaza ko ari umwere, ndetse no mu iburanisha mu Rukiko Rukuru, uhagarariye Ubushinjacyaha yagaragaje ko nta bimenyetso bihamya ko yacurujwe urumogi, ariko Urukiko Rukuru rurabyirengagiza; basaba ko uru Rukiko rwabisuzuma rukamuhanagura icyaha, akarekurwa agasubira mu muryango nyarwanda. [13] Uhagarariye Ubushinjacyaha avuga ko bishoboka ko Nshimirimana Emmanuel yaba yaragiye mu bikorwa byo gucuruza urumogi ariko nta bimenyetso kuko abatangabuhamya bagaragaza ko yafatiwe mu cyuho ariko ntihagaragazwe ikimenyetso cy'ibyo yafatanywe, n'urumogi udupfunyika 3 bavuga ko batoye mu nzira akaba ntacyemeza ko rwari urwe cyangwa ko rwakwitwa ko yarucuruzaga, kimwe n'urwo bavuga ko yataye mu musarani, kuko narwo rutagaragajwe cyangwa se ngo bagaragaze ko batabashije kurubona. [14] Avuga ko harebwe uko dosiye iteye, basanga hari ugushidikanya gukomeye ku bimenyetso bishingirwaho hemezwa ko Nshimirimana yakoze icyaha aregwa, uko gushidikanya kukaba kumurengera cyane ko n'ibyo bavuga ko yaba yirigeze gukurikiranwaho icyaha nk'iki mu mwaka wa 2019 nta rubanza rukimuhamya rwigeze ruboneka, ibi kandi Ubushinjacyaha bukaba bwari bwanabigaragariye Urukiko Rukuru nk'uko bigaragara mu nyandikomvugo y'iburanisha ryo ku wa 16/10/2024.

UKO URUKIKO RUBIBONA

[15] Impaka kuri iki kibazo zishingiye ku kumenya niba hari ibimenyetso bidashidikanywaho bigaragaza ko Nshimirimana Emmanuel yakoze icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi aregwa. [16] Ku bijyanye n'ibishingirwaho ngo hemezwe ko uregwa ahamwa n'icyaha, byatanzweho umurongo n'Urukiko rw'Ubujurire mu manza zitandukanye harimo urubanza N° RPAA 00737/2021/CA rwaciwe ku wa 16/12/2022, haburana Ubushinjacyaha na Uwayisaba Habimana Antoine¹, wanashingiweho no mu rubanza ruheruka N° RPAA 00156/2025/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 25/04/2025, haburana Nshimiyimana Jean de Dieu². Muri izo manza uru Rukiko 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 ari we 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".

1 Reba igika cya 16 n'icya 17 by'urubanza RPAA 00737/2021/CA rwaciwe n'Urukiko rw'Ubujuje ku wa 16/12/2022, haburana Ubushinjacyaha na Uwayisaba Habimana Antoine. 2 Reba igika cya 20 cy'urwo rubanza

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- [17] Nk'uko urubanza rujuririrwa rubigaragaza, Urukiko Rukuru rwemeje ko Nshimirimana Emmanuel ahamwe n'icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi kubera ko atabashije kuvuguruza ibimenyetso byashingiweho ku rwego rwa mbere ari byo imvugo z'abatangabuhamya Mwigeso Jean Paul, Sinzabakwira Elysé na Ndayisenga Jean Marie Vianney bemeza ko ku wa 24/01/2020 bamubonye mu kabari arimo acuruza urumogi, bajya kumufata akabarwanya, udupfunyika 3 tw'urumogi twafatiriwe, amafaranga 17.200 Frw yari amaze gucuruza, raporo y'Umudugudu w'Umucyo yo ku wa 28/02/2019 ihamya ko asanzwe acuruza urumogi, akanarunywa na raporo ivuga ko ku wa 25/02/2019 Nshimirimana Emmanuel yahuye n'irondo ninjoro riramufata ribona aho yataye bule 18 z'urumogi muri ruhurura, ko irondo ryigeze kumufata afite urumogi ararirwanya akoresheje icyuma.
- [18] Imvugo zashingiweho zigaragaza ko Mwigeso Jean Paul abazwa mu Bugenzacyaha yavuze ko ubwo yari mu nzira ataha yabonye Nshimirimana Emmanuel ari kumwe n'abana b'abanyeshuli bambaye uniform, akura mu mufuka akuramo udupfunyika tubiri tw'urumogi, ahamagara umuyobozi wabo ushinze umutekano amubwira ko arimo gucuruza urumogi, aramubwira ngo akomeze amucunge, aramukurikira aho yari agiye ku kabari, bamwoherereza undi munyerondo witwa Sinzabakwira Elysé, bagiye kumufata arabarwanya, arabacika bamwirukaho agenda anyanyagiza urumogi asimbuka ibipangu, afatwa n'abaturage, ko udupfunyika bamufatanye ari dutatu, yanavuze ko asanzwe acuruza urumogi.
- [19] Sinzabakwira Elysé we abazwa mu Bugenzacyaha, yavuze ko Nshimirimana Emmanuel asanzwe acuruza urumogi, ko atari n'ubwa mbere abifungirwe, ko ubwo umuyobozi wabo KARANGWA yabatumaga kujya kumufata ari kumwe na mugenzi we Mwigeso Jean Paul, bamugezeho aho yari mu kabari arabarwanya ashaka kumukubita icupa bararifata aca n'ipantaro ye, arabasunika ariruka agenda asimbuka ibipangu anajugunya urumogi yari afite.
- [20] Ndayisenga Jean Marie Vianney yavuze ko abaturage bavuye ko Nshimirimana asanzwe acuruza urumogi, ko yamubonye aza yiruka agwa mu gipangu cyabo ahata urumogi udupfunyika 3, ajya mu musarani atamo urundi yari afite, akomeza kugenda yiruka. Naho Nshimiyimana Joseph abazwa yavuze ko bamubonye yiruka aha ku kabari kari hafi y'Urukiko rwa Gisirikare agenda ajugunya ibintu barebye basanga ni urumogi, ko ariko urwo babashije kubona ari udupfunyika 3 gusa urundi yagendaga arujugunya asimbuka ibipangu by'abaturage.

[21] Urukiko rw'Ubujurire rusesenguye izi mvugo rurasanga Mwigezo Jean Paul ari we uvuga ko yabonye Nshimirimna Emmanuel agurisha urumogi, ariko, uretse kuvuga ko yamubonye mu nzira ari kumwe n'abana b'abanyeshuli bambaye uniform, agakora mu mufuko, agakuramo udupfunyika 2, ntabwo avuga ko yamubonye atubahereza, nta n'ubwo avuga ko yakurikiranye abo banyeshuri ngo amenye ko abahaye urumogi koko. Nk'uko babivuga, Mwigezo Jean Paul na Sinzabakwira bagiye gufatira Nshimirimana Emmanuel mu kabari arabarwanya, arabacika agenda ajugunya urumogi asimbuka ibipangu. Aba bombi ntabwo bavuga ko aho mu kabari hari umuntu basanze bari kumwe, ahubwo bavuga ko yashatse kubakubita icupa yarimo anyweramo bararifata.

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- [22] Urukiko rurasanga nk'uko babivuga, hari urumogi batoye hasi udupfunyika 3 bakavuga ko ari Nshimirimana Emmanuel warutaye agenda yiruka, ariko uburyo bavuga yarutayemo birimo urujijo kuko Ndayisenga avuga ko yarutaye mu gipangu cyabo, ndetse akajya no mu musarani akajugunyamo urundi, ntagaragaza icyamubwiye ko yarujugunyemo, n'uburyo yagiye mu musarani ntahafatirwe kandi yari akurikiwe n'abanyerondo bashakaga kumufata.
- [23] Nshimiyimana Joseph we avuga ko bamubonye agenda yiruka ajugunya ibintu barebye basanga ari urumogi, bakabasha kubona udupfunyika 3, ko urundi yagendaga arujugunya asimbuka ibipangu, ariko ntavuge impamvu urwo rundi rutabonetse kandi barabonaga agenda arujugunya, naho Mwigezo akavuga ko hari urumogi yajugunye batabonye, ariko bamufatanye udupfunyika 3 turi mu ishashi, uyu nawe ntasobanura niba aribo barumwatse cyangwa niba bararutuye aho yarujugunye.
- [24] Urukiko rw'Ubujurire rurasanga n'ibyo ababajijwe bahuriza ko Nshimirimana Emmanuel acuruza urumogi, nta kimenyetso gifatika kigaragaza ko umunsi afatwa yarucuruje koko, kuko amafaranga 17.200 Frw bavuga ko yari amaze kugurisha urumogi yagaragajwe mu nyandikomvugo y'ifatira, hatagaragazwa umuntu wemeza ko yarumugurishije n'ingano y'urwo yagurishije, ku buryo hakwemezwa ku buryo budashidikanywaho ko ayo mafaranga yari ayakuye mu kugurisha urumogi.
- [25] Urukiko rw'Ubujurira rurasanga raporo z'inze z'ibanze zashingiweho n'Urukiko Rukuru zarakozwe ku wa 28/02/2019 no ku wa 25/02/2019, ariko hakaba hatagarajwe aho zihurira n'ibikorwa Nshimirimana Emmanuel aregwa gukora umunsi afatwa ku wa 24/01/2020.
- [26] Urukiko rw'Ubujurire rurasanga rero nta kimenyetso kidashidikanywaho cyagaragajwe n'Ubushinjacyaha gihamya ko Nshimirimana Emmanuel yakoze icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, bityo nk'uko biteganywa n'ingingo ya 111 y'Itegeko no y'Itegeko n° 027/2019 ryerekeye imiburanishirize y'imanza nshinjabya nk'uko ryahinduwe kuba ibimenyetso bishidikanywaho bikaba bigomba kumurengera.

[27] Hashingiwe ku bimaze gusobanurwa no ku murongo watanzwe n'Urukiko rw'Ubujurire wavuzwe haruguru, Urukiko rw'Ubujurire rurasanga rero Ubujurire bwa Nshimirimana Emmanuel bufite ishingiro kuko Urukiko Rukuru rwakoze ikosa ryo kumuhamya icyaha cyo gucuruza urumogi, nta bimenyetso bishingiweho bihamya ku buryo budashidikanywaho ko yagikoze. Bityo, urubanza yajuririye rukaba ruhindutse mu ngingo zarwo zose.

III. ICYEMEZO CY'URUKIKO

[28] Rwemeje ko ubujurire bwa Nshimirimana Emmanuel bufite ishingiro;

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[29] Rwemeje ko urubanza No RPA 00267/2021/HC/KIG, rwaciwe n'Urukiko Rukuru ku wa 15/11/2024 ruhindutse mu ngingo zarwo zose; [30] Rwemeje ko Nshimirimana Emmanuel adahamwa n'icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi yari akurikiranweho [31] Rwemeje ko ahita arekurwa urubanza rukimara gusomwa.

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