

RWANDA / JUDGMENT

UBUSHINJACYAHA v. NSHIMIYIMANA

RLR V.1 - 2015

COURT

Supreme Court

DECIDED

8 November 2013

CASE / FILE NUMBER

RPAA0034/10/CS

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UBUSHINJACYAHA v. NSHIMIYIMANA

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- Date: 2013-11-08
- Case/document no.: RPAA0034/10/CS
- Collection: Supreme Court

Text

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UBUSHINJACYAHA v. NSHIMIYIMANA [Rwanda URUKIKO RW'IKIRENGA – RPAA0034/10/CS (Mutashya, P.J., Kanyange na Hitiyaremye, J.) 08 Ugushyingo 2013] Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Ibimenyetso bidashidikanywaho – Iyo nta bimenyetso bidashidikanywaho bihamya ko ushinjwa ariwe yakoze icyaha ashinjwa bituma agirwa umwere – Itegeko n°13/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabya, ingingo ya 165. Amategeko agenga ibimenyetso – Ubuhamya – Kuba abatangabuhamya bavuga mu buryo butandukanye ibintu bemeza ko baboneye igihe kimwe, ntibyashingirwaho ngo hemezwe nta shiti ko uregwa ahamwa n'icyaha aregwa – Itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 62 n'iya 65. Incamake y'ikibazo: Nshimiyimana Samuel yashinjwe icyaha cyo gusambanya umwana ufite umwaka umwe n' igice. Mu kumushinja icyaha, Ubushinjacyaha bushingira ku mvugo z' abatangabuhamya, no ku cyemezo cya muganga cyemeza ko ku mwinjiriro w'igitsina hatukuraga bikabije. Urukiko Rwisumbuye rwa sMuhanga rwamuhamije icyaha, rumukatira igifungo cy'imyaka cumi n' itanu n' ihazabu y' amafaranga y' amanyarwanda ibihumbi ijana (100.000 Frw). Uregwa yajuririye icyo cyemezo mu Rukiko Rukuru, urugereko rwa Nyanza, narwo ruhamishaho urubanza rwajuririwe.

Nshimiyimana Samuel yajuririye Urukiko rw'Ikirenga, avuga ko Urukiko rubanza rwamuhamije icyaha rushingiye ku mvugo z'abatangabuhamya bemeza ko yiriranwe n'umwana kandi bataramubonye akora icyaha, no kuri raporo ya muganga yemeza ko umwana yangijwe koko, ariko ikaba idashobora kwemeza ko uregwa ari we wamwangije. Uhagarariye Ubushinjacyaha avuga ko ku bijyanye n'abatangabuhamya, Urukiko rwashingiye ku mvugo zabo kuko bavuze ibintu uko babizi, naho ku birebana na raporo ya muganga, avuga ko nta gushidikanya kuyirimo, kuko yerekanye ibyo yabonye ku gitsina cy'umwana, ko kandi raporo ya muganga atari yo yonyine Urukiko rwashingiyeho. Incamake y'icyemezo: 1. Kuba abatangabuhamya bavugaga mu buryo butandukanye ibintu bemeza ko babonye igihe kimwe, ntibyashingirwaho ngo hemezwe nta shiti ko uregwa ahamwe n'icyaha aregwa, cyane cyane ko batanavugaga ko bamubonye akora icyaha cyangwa se ngo babe barabyumvanye abamubonye. Urukiko nirwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa.

2. Mu manza nshinjabyaha, gushidikanya birengera ushinjwa. Mu gihe mu rubanza nshinjabyaha nta kimenyetso kidashidikanywaho cyerekana ko ushinjwa yakoze icyaha, agirwa umwere. Ubujurire bufite ishingiro. Ushinjwa agizwe umwere akaba agomba guhita arekurwa. Amagarama aherereye ku isanduku ya Leta.

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Amategako yashingiweho: Itegeko N°13/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabya, ingingo ya 165. Itegeko n° 15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 62, 65 na 98. Nta manza zifashishijwe. Inyandiko z'abahanga: H. Bosly et D. Vandermeersch, Droit de la procédure pénale, 4e édition, p. 1316, 5 Urubanza I. IMITERERE Y'URUBANZA [1] Ku itariki ya 20/5/2003 umwana w'umukobwa w'umwaka umwe n'igice witwaga N.B yagiye kwa Gatete aho Nshimiyimana Samuel yakoreraga, nyuma nyina aza kumushakayo Nshimiyimana Samuel aza amuteruye asinzira aramumuha aramuhaka. U.F ari we nyina w'umwana, avuga ko ku mugoroba yagiye kumwuhagira akoze ku gitsina umwana avuza induru, ngo arebye abonaho udusebe ndetse ngo n'amasohoro yari akirimo. Ubwo yahise akeka ko yasambanyijwe na Nshimiyimana Samuel maze ajya kuri polisi gutanga ikirego, iperereza rirakorwa Ubushinjacyaha bushyikiriza dosiye Urukiko Rwisumbuye rwa Muhanga. [2] Urukiko Rwisumbuye rwa Muhanga rwahamije uregwa icyaha maze ku itariki ya 3/10/2008 rumukatira igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga y'amanyarwanda ibihumbi ijana (100.000 rwf). [3] Mu gufata iki cyemezo, Urukiko rwashingiye ku kuba uregwa yariyemereye ko uwo munsu yiriranywe n'umwana, ibi bikaba byaremejwe n'abatangabuhamya, no ku cyemezo cya muganga cyagaragazaga ko umwana yangijwe mu myanya ndangagitsina ye. [4] Uregwa ntiyishimiye imikirize y'urubanza arujuririra mu Rukiko Rukuru, Urugereko rwa Nyanza, na rwo ruhamishaho urubanza rwajuririye. Mu gufata iki cyemezo, Urukiko rwashingiye ku batangabuhamya bari baratanze n'Ubushinjacyaha, no kuri raporo ya muganga igaragaza ko umwana yangijwe mu myanya ndangagitsina ye. [5] Nshimiyimana Samuel yajuririye mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rwamurenganyije rukamuhamya icyaha rushingiye ku mvugo z'abatangabuhamya bemeza ko

yiriranwe n'umwana kandi bataramubonye akora icyaha, no kuri raporo ya muganga yemeza ko umwana yangijwe koko, ariko ikaba idashobora kwemeza ko uregwa ari we wamwangije. [6] Iburanisha ry'urubanza ryabaye mu ruhame ku itariki ya 9/10/2013 ababuranyi bose bahari, Nshimiyimana Samuel uregwa yunganiwe na Me Mukwende M. Olivier, na ho Ubushinjacyaha buhagarariwe na Ntawangundi Béatrice, Umushinjacyaha ku Rwego rw'Igihugu.

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II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO Kureba niba ibimenyetso byashingiweho n'Urukiko Rukuru byari bihagije mu buryo budashidikanywaho kugira ngo Nshimiyimana Samuel ahamwe n'icyaha aregwa. [7] Nshimiyimana Samuel avuga ko impamvu zatumye ajurira ari uko Urukiko rwamuhamije icyaha rushingiye ku mvugo z'abamushinja, umubyeyi w'umwana n'umukobwa we, nabo kandi bakaba batavugaga ko bamubonye asambanya umwana, uretse kuvuga gusa ngo bamubonye amushokanye. Akomeza avuga ko mu bandi batangabuhamya babajijwe nta n'umwe umushinja uretse kuvuga ibyo babwiwe na nyina w'umwana. Avuga ko U.F amubeshyera kubera amakimbirane yari afitanye n'umukoresha we. Avuga kandi ko yari afite inyungu zo kumubeshyera ngo kubera ko yamugurizaga ku mafaranga yabaga yarengeje ku yo nyirabuja yabaga yamutumye ku twenda yamucururizaga akamwishyura nabi, ndetse rimwe na rimwe bakabipfa. [8] Ku birebana na raporo ya muganga, Nshimiyimana avuga ko iyo raporo igaragaza ko igitsina cy'umwana cyari kibyimbye, akibaza niba kubyimba kw'igitsina cy'umwana gushobora guterwa no gusambanywa gusa, cyane cyane ko na muganga ashidikanya niba harabeyeho "viol". Avuga ko kuba muganga yaragaragaje ko ku gitsina cye hari hatonyotse, bivuze ko yari yababaye cyane, bityo akaba yari gutaka Gatete babanaga akaba yari kubyumva kuko yari aryamye. [9] Me Mukwende wunganira Nshimiyimana avuga ko yibaza impamvu yatumye U.F yarabonye umwana we yangijwe ntiyihutire kumutwara kwa muganga agategereza iminsi ibiri (2). [10] Uhagarariye Ubushinjacyaha avuga ko ku bijyanye n'abatangabuhamya, Urukiko rwashingiye ku mvugo zabo kuko bavuze ibintu uko babizi. Akomeza avuga ko hashingiwe ku ngingo ya 65 y'Itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, urukiko ari rwo rupima ko imikirize y'abatangabuhamya ikwiye kwemerwa cyangwa guhakanwa. [11] Uhagarariye Ubushinjacyaha avuga ko ku birebana na raporo ya muganga, nta gushidikanya kuyirimo, kuko muganga yerekanye ibyo yabonye ku gitsina cy'umwana, ko kandi raporo ya muganga atari yo yonyine Urukiko rwashingiyeho. UKO URUKIKO RUBIBONA [12] Mu guhamya Nshimiyimana Samuel icyaha, Urukiko Rukuru rwashingiye ku mvugo z'abatangabuhamya. Abo batangabuhamya akaba ari nyina w'umwana bivugwa ko yasambanyijwe, na U.G, uyu akaba ari umukobwa w'urega. Urukiko rwashingiye kandi kuri raporo ya muganga yavugaga ko igitsina cy'umwana cyagaragazaga ibimenyetso byo gusambanywa ku ngufu.

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[13] Ku byerekeranye n'ibimenyetso bishingiye ku batangabuhamya, ingingo ya 62 y'itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko Ubuhamya ari ibivugwa mu rukiko bivuzwe n'umuntu wabibonye cyangwa wabyumvise

ubwe ku byerekeye ikiburanwa. Ingingo ya 65 y'iryo tegeko ivuga kandi ko Urukiko ari 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 ntacyo bihimbira. [14] Ku birebana n'uru rubanza, urukiko rurasanga mu batangabuhamya babajijwe, abashinja Nshimiyimana Samuel ari U.F, umubyeyi w'umwana bivugwa ko yasambanyijwe, avuga ko ku munsu ibyo biba mu gihe cya nimugoroba, yabajije aho umwana we ari bamubwira ko ari kumwe na Nshimiyimana Samuel yisubirira mu nzu. Akomeza avuga ko nyuma yahamagaye Samuel ngo amuzane, amusohokana amuteruye asinzira. Ngo nyuma yaje kumukarabya akoze ku gitsina umwana avuza induru, arebye abona hariho udusebe n'amasohoro, ngo ahita ajya kubyereka kwa shebuja wa Samuel ari we Gatete. Undi wabajijwe ni U.G, uyu akaba ari umukobwa w' U.F, we uvuga ko bashatse umwana hose bakamubura, nyina ngo atangiye kumutuka babona Samuel amusohokanye kwa Gatete amuteruye. Akomeza avuga ko ku mugoroba ari bwo nyina yabonye ko umwana we yangiritse ubwo yamwuhagiraga akajya kubibwira kwa nyirabuja wa Samuel. Ibi ariko bikaba bitandukanye n'ibyo nyina avuga ko yahamagaye Samuel ngo amuzane (kuko yari azi neza ko ari ho ari). [15] Urukiko rukaba rusanga ibyatangajwe n'abo batangabuhamya, bavuga mu buryo butandukanye ibintu bemeza ko babonye igihe kimwe, rutabishingiraho ngo rwemeze nta shiti ko Nshimiyimana Samuel ahamwa n'icyaha aregwa cyane cyane ko batanavugaga ko bamubonye akora icyaha cyangwa se ngo babe barabyumvanye abamubonye, binakubitiyeho ko na Gatete, shebuja wa Nshimiyimana, avuga ko yari yahiriwe, ariko akaba atarabonye amwangiza. [16] Urukiko rurasanga kandi, kuba Gatete n'umugore we Uwizeye mu buhamya bwabo bavugaga ko U.F yaje iwabo mu gitondo avugaga ko umwana we yahohotewe n'umukozi wabo, U.F mu ibazwa rye akavugaga ko yagiye muri uwo mugoroba akimara kubona ko umwana we yangijwe, uko kudahuza ku gihe U.F avugaga yamenyekanishirijeho iyangizwa ry'umwana we, bitera gushidikanya ku cyangije umwana. [17] Ku birebana na raporo ya muganga, iragaragaza ko ku mwinjiriro w'igitsina hatukuraga bikabije (rougeur exagérée de la vulve autour de l'orifice vaginal). Urukiko rukaba rusanga uko kuba haraturaga bitavugaga ko uriya mwana yari yangijwe bishingiye ku gitsina (violence sexuelle) byanze bikunze kandi ko byari byakozwe na Nshimiyimana, cyane cyane ko iyo aza guhohotera uyu mwana mu buryo bukabije nk'ubugaragazwa na muganga, umwana yari kurira umubyeyi we akamwumva dore ko icyo gihe yari mu nzu iri mu gipangu kimwe n'icyo uwo mwana yari arimo, ndetse na Gatete akaba yari kubyumva kuko uwo munsu avugaga ko yiriwe mu rugo. [18] Kubera iyi mpamvu, rushingiye ku ngingo ya 98 y'itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ivuga ko Urukiko rudakurikiza byanze bikunze ibitekerezo by'abahanga mu gihe binyuranye n'imyumvire y'abacamanza,

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Urukiko rukaba rusanga rutashingira kuri iyo raporo ngo rwemeze ko ibimenyetso muganga yasanze ku gitsina cy'umwana byatewe na Nshimiyimana Samuel. [19] Urukiko rurasanga kandi hari ugushidikanya mu kumenya niba uko gutukura kw'igitsina N.B yari akumaranye iminsi ibiri (2) koko, dore ko umubyeyi we avuga ko icyaha cyakozwe ku wa 20/5/2003, ariko nyamara agatwara umwana kwa muganga ku itariki ya 22/5/2003 ari na bwo raporo yakozwe. Urukiko rukibaza nanone impamvu uwo mubyeyi yamaranye umwana we icyo gihe cyose kandi yarabonaga ameze nabi ntamutware kwa muganga. [20] Ingingo ya 165 y'itegeko N°13/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabya ivuga ko gushidikanya birengera ushinjwa, igakomeza 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". Ku birebana n'uru rubanza, Urukiko rurasanga hashingiwe ku myiregurire ya Nshimiyimana Samuel, ibimenyetso byose byatanzwe muri uru rubanza bitera gushidikanya, bityo akaba agomba kugirwa umweme. [21] Abahanga mu mategeko yerekeye imiburanishirize y'imanza z'inshinjabyaha na bo bavuga ko nta muntu ugomba kwemezwa ko ahamwe n'icyaha nyuma y'urubanza atari uko ubushinjacyaha bugaragaje ibimenyetso bidatera ugushidikanya uko ari ko kose (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)1. III. ICYEMEZO CY'URUKIKO. [22] Rwemeje ko ubujurire bwa Nshimiyimana Samuel bufite ishingiro. [23] Rwemeje ko Nshimiyimana Samuel ahanaguweho icyaha kubera gushidikanya. [24] Rwemeje ko imikirize y'urubanza RPA 0219/08/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, ihindutse muri byose. [25] Rutegetse ko Nshimiyimana Samuel ahita arekurwa urubanza rukimara gusomwa. [26] Ruvuze ko amagarama y'urubanza aherera ku isanduku ya Leta. 1 Henry Bosly et Damien Vandermeersch, Droit de la procédure pénale, 4e édition, p. 1316, 5.

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Prepared on 10 October 2026 · Esheria