

RWANDA / JUDGMENT

UBUSHINJACYAHA v. NTAKIRUTIMANA

RPAA 00203/2021/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA v. NTAKIRUTIMANA

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Text

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UBUSHINJACYAHA v. NTAKIRUTIMANA [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00203/2021/CA (Rugabirwa, P.J.) 30 Mutarama 2025] Amategeko agenga ibyaha n'ibihano – icyaha cy'ubwinjiracyaha bw'ubwicanyi – Ukwemera icyaha – Ukwemera icyaha kugira agaciro gashobora gutuma uregwa agabanyirizwa igihano iyo gukozwe byibura mbere y'uko iburanisha ku rwego rwa mbere ripfundikirwa, kudashidikanywaho, kuba uwemera agaragaza ko yumva uburemere bw'ibikorwa yemera n'ingaruka zabyo, abyicuza, abisabira imbabazi no kuba yiteguye gusubiza ibyo yangije uko abitegerejweho. Incamake y'ikibazo: Ubushinjacyaha bwakurikiranyeho Ntakirutimana Aboubakar icyaha cy'ubwinjiracyaha bw'ubwicanyi, kubera ko yategeye Musabyimana Théogène mu bigori biri ku nzira anyuraho ataha, amutera icyuma mu ijosi aramukomeretsa ashaka kumwica, bitewe ngo n'uko bapfuye amafaranga magana atanu (500 Frw) bagombaga kugabana buri wese agatwara magana abiri na mirongo itanu (250 Frw). Ntakirutimana Aboubakar yaburanye ahakana icyaha cy'ubwinjiracyaha bw'ubwicanyi, akemera gusa ko barwanye bapfa amafaranga magana atanu (500 Frw), asaba ko yagabanyirizwa ibihano, agahanishwa igifungo cy'imyaka 5. Urukiko Rwisumbuye rwa Nyagatare rwaregewe, rushingiye ku mvugo ya Musabyimana Théogène wakorewe icyaha, no kuri raporo ya muganga igaragaza ko

yatewe icyuma mu ijosi, rwaciye urubanza, maze rwemeza ko uwarezwe ahamwa n'icyaha cy'ubwinjiracyaha bw'ubwicanyi, maze rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25). Ntakirutimana Aboubakar yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Rwamagana, avuga ko akwiye kugabanyirizwa ibihano kubera ko yemera icyaha cyo gukubita no gukomeretsa, aho kuba icyaha cy'ubwinjiracyaha bw'ubwicanyi yahamijwe, akanagisabira imbabazi, kandi ko ari ubwa mbere agikoze. Naho uhagarariye Ubushinjacyaha avuga ko imikirize y'urubanza rujuririrwa itahinduka, kuko uwarezwe yakoze icyaha cy'ubwinjiracyaha bw'ubwicanyi, aho kuba icyo gukubita no gukomeretsa nk'uko abivuga. Urukiko Rukuru, rushingiye ku mvugo y'uwarezwe icyaha, no ku mvugo z'uwarezwe yavugiyemo mu Bugenzacyaha, aho yemeye ko ariwe wamuteye icyuma, rwasanze yarakoze icyaha cy'ubwinjiracyaha bw'ubwicanyi, kuko yamuteye icyuma mu ijosi kikamukomeretsa agamije kumwica, maze rwemeza ko urubanza rwajuririye ruhamanye agaciro karwo. Ntakirutimana Aboubakar yajuririye na none urwo rubanza mu Rukiko rw'Ubujurire, avuga ko akwiye kugabanyirizwa ibihano kubera ko yemera icyaha cyo gukubita no gukomeretsa, akanagisabira imbabazi, no kuba ari ubwa mbere agikoze, aho kuba icyaha cy'ubwinjiracyaha bw'ubwicanyi yahamijwe n'Urukiko Rukuru, ariko mu mwanzuro w'inyongera, Ntakirutimana Aboubakar yongera avuga ko akwiye kugabanyirizwa ibihano kubera ko yemera icyaha cy'ubwinjiracyaha bw'ubwicanyi mu buryo budashidikanywaho akanagisabira imbabazi.

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Ubushinjacyaha buvuga ko Ntakirutimana Aboubakar atagabanyirizwa ibihano hashingiwe ku kwemera icyaha akoreye bwa mbere mu bujurire, ko ahubwo ari ingingo nshya ahazanye kubera ko atigeze yemera icyaha mu manza zabanje hashingiwe ku murongo wemejwe uvuga ko kwemera icyaha bwa mbere mu bujurire, ntibigirira akamaro uregwa kuko ujurira aba azanye ingingo nshya ataburanishije mu nkiko zibanza kandi umucamanza w'ubujurire afite gusa inshingano yo gukosora amakosa yaba yarakozwe n'izo nkiko. Incamake y'icyemezo: 1. Ukwemera icyaha kugira agaciro gashobora gutuma uregwa agabanyirizwa igihano iyo gukoze byibura mbere y'uko iburanisha ku rwego rwa mbere ripfundikirwa, kudashidikanywaho, kuba uwemera agaragaza ko yumva uburemere bw'ibikorwa yemera n'ingaruka zabyo, abyicuza, abisabira imbabazi no kuba yiteguye gusubiza ibyo yangije uko abitegerejweho.

2. Kuba ari ubwa mbere uregwa akurikiranyweho icyaha ku buryo bizwi, no kubera ingaruka nkeya zatewe n'icyaha yakoze kuko uwari wakomerekejwe n'icyuma yatewe mu ijosi yakize, bikwiye kumubera impamvu nyoroshyacyaha zituma agabanyirizwa igihano, agahanishwa igifungo cy'imyaka cumi n'ibiri (12) n'amezi atandatu (6). . Ubujurire bufite ishingiro ku birebana n'igabanyagihano. Amategeko yashingiweho: 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, ingingo ya 2; Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 21 niya 49. Imanza zifashishijwe: Urubanza RPA 00060/2021/CA rwaciye n'Urukiko rw'Ubujurire ku wa 04/04/2022 haburana Ubushinjacyaha na Nsabimana na bagenzi be; Urubanza RPAA 00610/2022/CA rwaciye n'uru Rukiko ku wa 25/09/2024 Ubushinjacyaha buburana na Nahimana Christophe; Urubanza RPAA 00048/2020/CA

rw'Ubushinjacyaha na Bimenyimana Jean Paul, rwaciwe n'Urukiko rw'Ubujurire ku wa 26/05/2022; Urubanza RPAA 00691/2021/CA rw' Ubushinjacyaha na Ndayisaba Paul, rwaciwe n'Urukiko rw'Ubujurire ku wa 18/11/2022.

Urubanza I.IMITERERE Y'URUBANZA [1] Ubushinjacyaha bwakurikiranyeho Ntakirutimana Aboubakar icyaha cy'ubwinjiracyaha bw'ubwicanyi, kubera ko ku wa 04/11/2018, mu gihe cya saa kumi n'ebiri z'umugoroba (18h00'), yategeye Musabyimana Théogène mu bigori biri ku nzira anyuraho ataha, amutera icyuma mu ijosi aramukomeretsa ashaka kumwica, bitewe ngo n'uko bapfuye amafaranga magana

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atanu (500 Frw) bagombaga kugabana buri wese agatwara magana abiri na mirongo itanu (250 Frw) . [2] Ntakirutimana Aboubakar yaburanye ahakana icyaha cy'ubwinjiracyaha bw'ubwicanyi, akemera gusa ko barwanye bapfa amafaranga magana atanu (500 Frw) bari bakoreye bagomba kugabana, bakabakiza agataha. Asaba ko yagabanyirizwa ibihano, agahanishwa igifungo cy'imyaka 5. [3] Urukiko Rwisumbuye rwa Nyagatare rwaregewe, rushingiye ku mvugo ya Musabyimana Théogène wakorewe icyaha, no kuri raporo ya muganga igaragaza ko Musabyimana Théogène yatewe icyuma mu ijosi, ndetse no ku mvugo z'abatangabuhamya bamushinja barimo Muragijimana Flavien, rwaciye urubanza RP 00568/2018/TGI/NYG ku wa 04/12/2018, rwemeza ko Ntakirutimana Aboubakar ahamwe n'icyaha cy'ubwinjiracyaha bw'ubwicanyi, rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25). [4] Ntakirutimana Aboubakar yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Rwamagana, avuga ko akwiye kugabanyirizwa ibihano kubera ko yemera icyaha cyo gukubita no gukomeretsa, akanagisabira imbabazi, no kuba ari ubwa mbere agikoze, aho kuba icyaha cy'ubwinjiracyaha bw'ubwicanyi yahamijwe. Naho uhagarariye Ubushinjacyaha avuga ko imikiriye y'urubanza rujuririrwa itahinduka, kuko Ntakirutimana Aboubakar yakoze icyaha cy'ubwinjiracyaha bw'ubwicanyi, aho kuba icyo gukubita no gukomeretsa nk'uko abivugaga. [5] Urukiko Rukuru, rushingiye ku mvugo ya Musabyimana Théogène wakorewe icyaha, ku mvugo za Ntakirutimana Aboubakar yavugiyemo mu Bugenzacyaha, aho yemeye ko ariwe wateye icyuma Musabyimana Théogène mu ijosi kikamukomeretsa nk'uko byashimangiwe na raporo ya muganga nk'uko anabishinje n'abatangabuhamya batandukanye, rwasanze Ntakirutimana Aboubakar yarakoze icyaha cy'ubwinjiracyaha bw'ubwicanyi, kuko yateye Musabyimana Théogène icyuma mu ijosi kikamukomeretsa agamije kumwica, agatashyira n'uko abatangabuhamya batabaye agahita yiruka, rwaciye urubanza RPA 00050/2019/HC/RW ku wa 30/11/2020, rwemeza ko urubanza rwajuririye ruhamanye agaciro karwo. [6] Ntakirutimana Aboubakar yajuririye na none urwo rubanza mu Rukiko rw'Ubujurire, ubujurire bwe buhabwa RPAA 00203/2021/CA, urubanza rwaburanishijwe mu ruhamye ku wa 09/01/2025, Ntakirutimana Aboubakar yunganiwe na Me Yaramba Athanase naho Ubushinjacyaha buhagarariye na Bunyoye Grâce, Umushinjacyaha ku rwego rw'Igihugu. [7] Mu mwanzuro w'ubujurire no mu miburanire, Ntakirutimana Aboubakar n'umwunganira, bavugaga ko akwiye kugabanyirizwa ibihano kubera ko yemera icyaha cyo gukubita no gukomeretsa, akanagisabira imbabazi, no kuba ari ubwa mbere agikoze, aho kuba icyaha cy'ubwinjiracyaha bw'ubwicanyi yahamijwe n'Urukiko Rukuru. Naho mu mwanzuro w'inyongera

wo ku wa 04/08/2021, Ntakirutimana Aboubakar avuga ko akwiye kugabanyirizwa ibihano kubera ko yemera icyaha cy'ubwinjiracyaha bw'ubwicanyi mu buryo budashidikanywaho akanagisabira imbabazi. [8] Naho uhagarariye Ubushinjacyaha avuga ko Ntakirutimana Aboubakar atagabanyirizwa ibihano hashingiwe ku kwemera icyaha akoreye bwa mbere mu bujurire, ko ahubwo ari ingingo nshya ahazanye kubera ko atigeze yemera icyaha mu manza zabanje.

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[9] Urukiko ruherereye kuri izo mpaka, rurasanga ikibazo gikwiye gusuzumwa muri uru rubanza ari icyo kumenya niba Ntakirutimana Aboubakar akwiye kugabanyirizwa ibihano kubera ko yemera icyaha akanagisabira imbabazi. II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO Kumenya niba Ntakirutimana Aboubakar akwiye kugabanyirizwa ibihano kubera ko yemera icyaha akanagisabira imbabazi. [10] Ntakirutimana Aboubakar n'umwunganira bavugaga ko akwiye kugabanyirizwa ibihano kubera ko noneho yemera icyaha cy'ubwinjiracyaha bw'ubwicanyi akanagisabira imbabazi nk'uko yanazisabye akanazihabwa na Musabyimana Théogène yakoreye icyaha akazimuha kuko yamusuye ku Igororero afungiyemo, kuba ari ubwa mbere aguye mu cyaha, kuba yarakoze icyaha akiri muto kuko yakoze icyaha afite imyaka 23 y'amavuko, no kuba nta ngaruka zikomeye icyaha cyateje. [11] Basobanura ko kuba Ntakirutimana Aboubakar yaremeye icyaha aregwa mu Nzego z'iperereza ariko yagera mu Rukiko Rwisumbuye, no mu Rukiko Rukuru, ndetse no mu mwanzuro wa mbere ajurira muri uru Rukiko akagihakana byatewe n'uko atari yunganiwe na Avoka kugira ngo abashe gutandukanya icyaha cy'ubwinjiracyaha bw'ubwicanyi n'icyo gukubita no gukomeretsa, ariko aho aboneye Avoka umwunganira n'aho agaruriye agatima impembero akemera icyaha aregwa, akwiye kugabanyirizwa ibihano agahanishwa igifungo cy'imyaka 5 hashingiye ku rubanza RPAA 0282/08/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 12/3/2010, haburana Ubushinjacyaha na Nyirangondo Virginie, aho Urukiko rw'Ikirenga rwemeje ko nta gihe ntarengwa cyagenwe n'itegeko cyo kuba mu manza nshinjabyaha umuntu yagarura umutima akemera icyaha, ndetse no ku manza zaciwe n'Urukiko rw'Ubujurire zirimo urubanza RPAA 00032/2019/CA, haburana Ubushinjacyaha na Nzabafashwanimana Jean de Dieu rwaciwe ku wa 28/02/2020, aho Urukiko rw'Ubujurire rwagabanyirijwe uregwa igihano rukajya munsu y'igihano giteganywa n'Itegeko. [12] Uhagarariye Ubushinjacyaha avuga ko Ntakirutimana Aboubakar atagabanyirizwa ibihano kubera ko atemeye icyaha cy'ubwinjiracyaha bw'ubwicanyi ku rwego rwa mbere, bivuze ko ukwemera icyaha akoreye bwa mbere muri uru Rukiko kutatuma agabanyirizwa ibihano nk'uko byatanzweho umurongo n'uru Rukiko mu manza nyinshi harimo nk'urubanza RPAA 00757/2021/CA rwaciwe ku wa 26/01/2024 haburana Ubushinjacyaha na Bihoyiki Célestin (igika cya 20), aho hemejwe ko "kwemera icyaha bwa mbere mu bujurire, ntibigirira akamaro uregwa kuko ujurira aba azanye ingingo nshya ataburanishije mu nkiko zibanza kandi umucamanza w'ubujurire afite gusa inshingano yo gukosora amakosa yaba yarakozwe n'izo nkiko". UKO URUKIKO RUBIBONA [13] Ingingo ya 21, igika cya 2, y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, iteganya ko "Ubwinjiracyaha burahanirwa n'ubwo icyari kigambiriwe kitashoboraga kugerwaho bitewe n'impamvu

nyir'ugukora icyaha atashoboye kumenya". Naho igika cya 3 cy'iyi ngingo kigateganyako ko "Ubwinjiracyaha bw'icyaha cy'ubugome cyangwa icyaha gikomeye buhanishwa kimwe cya kabiri (1/2) cy'igihano giteganyirijwe icyo cyaha. Ku

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cyaha gihanishwa igifungo cya burundu, ubwinjiracyaha buhanishwa igihano cy'igifungo kingana n'inyaka makumyabiri n'itanu (25)". [14] Naho ingingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyako ibyaha n'ibihano muri rusange igateganyako ko "Ingingo ya 60 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyako ibyaha n'ibihano muri rusange, ihinduwe ku buryo bukurikira: "Iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano ku buryo bukurikira: (b) igifungo kimara igihe kizwi kiva ku mezi 6 kuzamura gishobora kugabanywa, ariko ntikijye muni ya kimwe cya kabiri cy'igihano gito giteganyirijwe icyaha cyakozwe". [15] Nk'uko byatanze umurongo mu rubanza RPA 00060/2021/CA rwaciye n'Urukiko rw'Ubujurire ku wa 04/04/2022 haburana Ubushinjacyaha na Nsabimana na bagenzi be, "ukwemera icyaha kugira agaciro gashobora gutuma uregwa agabanyirizwa igihano iyo gukoze byibura mbere y'uko iburanisha ku rwego rwa mbere ripfundikirwa, kudashidikanywaho, kuba uwemera agaragaza ko yumva uburemere bw'ibikorwa yemera n'ingaruka zabyo, abiyicuza, abisabira imbabazi no kuba yiteguye gusubiza ibyo yangije uko abitegerejweho". Uyu murongo ninawo wagiye ushingirwaho mu zindi manza zaciye n'uru Rukiko nk'urubanza RPAA 00610/2022/CA rwaciye n'uru Rukiko ku wa 25/09/2024 Ubushinjacyaha buburana na Nahimana Christophe (igika cya 11). [16] Na none mu rubanza RPAA 00048/2020/CA rwaciye ku wa 26/05/2022 haburana Ubushinjacyaha na Bimenyimana Jean Paul, uru Rukiko rwatanze umurongo uvuga ko: "Kwemera icyaha bwa mbere mu bujurire, ntibigira akamaro uregwa kuko ujurira aba azanye ingingo nshya ataburanishije mu nkiko zibanza kandi umucamanza w'ubujurire afite gusa inshingano yo gukosora amakosa yaba yarakozwe n'izo nkiko". Uyu murongo ninawo wagiye ushingirwaho mu zindi manza zaciye n'uru Rukiko nk'urubanza RPAA 00016/2023/CA, rwaciye n'Urukiko rw'Ubujurire ku wa 28/03/2024 haburana Ubushinjacyaha na Ndayikeza Ananias (igika cya 16) n'urubanza RPA 00047/2021/CA, rwaciye n'Urukiko rw'Ubujurire ku wa 14/03/2024, Ubushinjacyaha buburana na Maj (Rtd) Mudathiru Habib alias Mussa na bagenzi be (igika cya 260). [17] Nk'uko bigaragarira mu gika cya 3 n'icya 6 cy'urubanza RP 00568/2018/TGI/NYG rwaciye n'Urukiko Rwisumbuye rwa Nyagatare ku wa 04/12/2018, Ntakirutimana Aboubakar atigeze yemera icyaha cy'ubwinjiracyaha bw'ubwicanyi yarezwe, ariko urwo Rukiko rwakimuhamije hashingiwe ku bimenyetso biri muri dosiye byavuzwe haruguru, birimo kuba yarateye Musabyimana Théogène icyuma mu ijosi ashaka kumwica, ariko ku bw'amahirwe ntiyapfa. Na none Ntakirutimana Aboubakar ageze mu Rukiko Rukuru, yahakanye icyaha cy'ubwinjiracyaha bw'ubwicanyi, avuga ko ahubwo yakurikiranywaho icyaha cyo gukubita no gukomeretsa, ariko urwo Rukiko rwemeza ko yakoze icyaha cy'ubwinjiracyaha bw'ubwicanyi, nyamara ageze imbere y'uru Rukiko avuga ko noneho yemera icyaha cy'ubwinjiracyaha bw'ubwicanyi akanagisabira imbabazi. [18] Hashingiwe ku bisobanuwe mu gika kibanziriza iki, Urukiko rw'Ubujurire rurasanga Ntakirutimana Aboubakar atagabanyirizwa ibihano hashingiwe ku mpamvu nyoroshyacyaha y'uko yemereye icyaha

cy'ubwinjiracyaha bw'ubwicanyi akanagisabira imbabazi imbere y'uru Rukiko, kuko atigeze ayemera icyo cyaha ku buryo budashidikanywaho ku rwego rwa mbere ngo

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anagisabire imbabazi nk'uko byatanzweho umurongo mu rubanza RPA 00060/2021/CA rw'Ubushinjacyaha na Nsabimana na bagenzi be, ndetse no mu rubanza RPAA 00610/2022/CA rw'Ubushinjacyaha na Nahimana Christophe zavuzwe haruguru. [19] Urukiko rw'Ubujurire rurasanga ahubwo, kuba ari ubwa mbere Ntakirutimana Aboubakar akurikiranyweho icyaha ku buryo bizwi, no kubera ingaruka nkeya zatewe n'icyaha yakoze nk'uko biteganywa n'ingingo ya 49 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko byatanzweho umurongo mu manza zitandukanye zaciwe n'uru Rukiko harimo urubanza RPAA 00691/2021/CA rwaciwe ku wa 18/11/2022 haburana Ubushinjacyaha na Ndayisaba Paul, mu gika cyarwo cya 291, kuko Musabyimana Théogène wari wakomerekejwe n'icyuma yatewe mu ijosi yakize, bikwiye kumubera impamvu nyoroshyacyaha zituma agabanyirizwa igihano, agahanishwa igifungo cy'imyaka cumi n'ibiri (12) n'amezi atandatu (6), hashingiwe ku ngingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 ryavuzwe haruguru, aho kuba cy'imyaka 25 yari yahawe mbere, bityo imikirize y'urubanza rwajuririwe ikaba igomba guhinduka ku birebana n'ibihano gusa. III. ICYEMEZO CY'URUKIKO [20] Rwemeje ko ubujurire bwa Ntakirutimana Aboubakar bufite ishingiro ku birebana n'igabanyagihano. [21] Ruvuze ko urubanza RPA 00050/2019/HC/RW rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, ku wa 30/11/2020, ruhindutse gusa ku birebana n'igihano Ntakirutimana Aboubakar ahanishijwe. [22] Ruhanishije Ntakirutimana Aboubakar igifungo cy'imyaka cumi n'ibiri (12) n'amezi atandatu (6). [23] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

1Hari kandi urubanza RPAA 00441/2021/CA rwaciwe ku wa 21 /10/2022 haburana Ubushinjacyaha na Nkubana Samuel, mu gika cya 23, ndetse n'urubanza RPAA 00044/2020/CA rwaciwe ku wa 22/04/2022, haburana Ubushinjacyaha na Tuyishime Emeline, mu gika cya 19.

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