

RWANDA / JUDGMENT

UBUSHINJACYAHA v. MBABAJENDE N'ABANDI

RLR V.2-2016

COURT

Supreme Court

DECIDED

11 December 2015

CASE / FILE NUMBER

RPA0148/11/CS

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UBUSHINJACYAHA v. MBABAJENDE N'ABANDI

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- Date: 2015-12-11
- Case/document no.: RPA0148/11/CS
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Text

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UBUSHINJACYAHA v. MBABAJENDE N'ABANDI [Rwanda URUKIKO RW'IKIRENGA – RPA0148/11/CS (Mukamulisa P.J., Munyangeri na Hitiyaremye, J.) 11 Ukuboza 2015] Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Icyaha gikomeye – Ubusaze bw'ikirego cy'ikurikiranacyaha – Kuba harabayeho ibikorwa by'iperereza, ndetse n'Urukiko rukaba rwararegewe mu gihe giteganywa n'amategeko ariko ntihagire igikorwa na kimwe cy'ikurikiranacyaha kigeze kiba ngo gihagarike ubusaze, ntibihagarika ubusaze bw'ikirego cy'ikurikiranacyaha – Itegeko N°30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 2(1&2), iya 5, iya 7(1) n'iya 8(1&2). Incamake y'ikibazo: Kubera urupfu rw'abana babiri ba Samunane rwabaye ku wa 5/1/1993, Nyirandegeya yaketswe ko ariwe wamuroze. Abitwa Hategekimana Dismas, Mbabajende Jean Baptiste, Turikunkiko Jean Claude, Uwizenyumuremyi Claude, Sebahire Lucien, Ruzindana Augustin n'abandi bagenzi babo bahise bafata umugambi wo kujya kumwica, bagabayo igitero bambaye ibyatsi kugira ngo biyoberanye, bageze iwe baramuhondagura, bakomereza kuri Mukamusoni no ku mukobwa we Mukansanga

kuko bavugaga ko bafatanyaga kuroga, bose barabakubita kugeza bapfuye, uwitwa Mukandanga na we icyo gihe baramukubise bamusiga ari intere ariko ku bw'amahirwe ntiyapfa. Nyuma yo gutangira iperereza, ubushinjacyaha bwakurikiranye abantu batandukanye harimo n'abajuriye muri uru rubanza, babajijwe bamwe bahakana icyaha abandi baracyemera. Ku wa 11/11/1993, hatanzwe ikirego mu Rukiko rwa Mbere rw'Iremezo rwa Byumba mu ibaruwa N° I/0097/RMP15076/GTBO/MF ariko urubanza ntirwaburanishwa kugeza ubwo habayeho ivugururwa ry'inze z'ubutabera mu 2004, rwoherezwa mu Rukiko Rukuru ku itariki ya 13/10/2004, nyuma ku itariki ya 24/7/2009 urwo rukiko rufata icyemezo ruvuga ko nta bubasha bushingiye ku ifasi rufite, rutegeka ko rwoherezwa mu Rukiko Rukuru, Urugereko rwa Rwamagana ngo abe ari rwo ruruburanisha. Urukiko Rukuru, Urugereko rwa Rwamagana, rwahamije icyaha abajuriye muri uru rubanza urushingiye ku kuba mu maperereza yakozwe ndetse n'imbere y'urukiko, baremeye icyaha, maze ruhanisha buri wese igifungo cy'imyaka makumyabiri (20); runemeza ko habayeho ubuzime bw'ikirego cy'ikurikiranacyaha kuri bamwe kuko bitabye Imana. Ntuyenabo Simon na bagenzi be, bajurirye iki cyemezo mu Rukiko rw'Ikirenga bavuga ko batagombaga kuburanishwa kubera ko habayeho ubusaze bw'ikirego cy'ikurikiranacyaha naho ku birebana n'imizi y'urubanza, bavuga ko hatagaragajwe icyishe ba nyakwigendera, ko umucamanza yaciriye urubanza ku cyo ataregewe (statuer ultra petita), ko kandi atabagabanyirije igihano kandi bari baburanye bemera icyaha. Ubushinjacyaha bwo buvuga ko nta busaze bwabayeho kuko ikirego cyageze mu Rukiko Rukuru ruvuye mu Rukiko rwa Mbere rw'Iremezo. Urukiko rw'Ikirenga rwasuzumye ingingo y'ubujurire irebana n'ubusaze bw'ikirego cy'ikurikiranacyaha. Incamake y'icyemezo: Kuba harabayeho ibikorwa by'iperereza, ndetse n'Urukiko rukaba rwararegewe mu gihe giteganywa n'amategeko ariko ntihagire igikorwa na kimwe cy'ikurikiranacyaha kigeze kiba ngo gihagarike ubusaze, ntibihagarika ubusaze bw'ikirego cy'ikurikiranacyaha. Bityo Urukiko Rukuru, Urugereko rwa Rwamagana, rukaba rutari rukwiye kuba rwarakiriye iki ikirego ngo rugisuzume, akaba ariyo mpamvu uru rukiko

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rutesheje agaciro urubanza rwaciye n'urwo rukiko kuri iki kirego kuko habayeho ubusaze bw'ikirego cy'ikurikiranacyaha. Inzitizi yatanze n'abajuriye ifite ishingiye. Habayeho ubusaze bw'ikirego cy'ikurikiranacyaha. Urubanza rwajurirwe ruteshejwe agaciro. Amagarama aherereye ku isanduku ya Leta. Amategeko yashingiweho: Itegeko N° 30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishiriza y'imanza z'inshinyabwaho, ingingo ya 2(1&2), iya 5, iya 7(1) n'ya 8(1&2). Nta manza zifashishijwe. Inyandiko z'abahanga: Henri Bosly et Damien Vandermeersch, *Droit de la procédure pénale*, Ed. 2005, p.209 in fine. Michel Franchimont et alii, *Manuel de procédure pénale*, 2 e Edition Larcier, 2006, p.109. Serge Guinchard et Jacques Buisson, *Procédure Pénale*, 3ème édition, p. 619, para. 1162. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 5/1/1993 uwitwa Samunane yapfushije abana babiri (2), maze hakekwa ko barozwe na Nyirandegeya. Abitwa Hategekimana Dismas, Mbabajende Jean Baptiste, Turikunkiko Jean Claude, Uwizeyumuremyi Claude, Sebahire Lucien, Ruzindana Augustin n'abandi bagenzi babo bahise bafata umugambi wo kujya kumwica, bagabaye igitero bambaye ibyatsi kugira ngo biyoberanye, bageze iwe baramuhondagura, bakomereza kuri Mukamusoni no ku mukobwa we

Mukansanga kuko bavugaga ko bafatanyaga kuroga, bose barabakubita kugeza bapfuye, uwitwa Mukandanga na we icyo gihe baramukubise bamusiga ari intere ariko ku bw'amahirwe ntiyapfa. [2] Iperereza ryahise ritangira, hakurikiranwa Hategekimana Dismas, mbabajende Jean Baptiste, turikunkiko Jean Claude, Sebahire Lucien, Nzamwita Félicien, Ruzindana Augustin, Uwizeyumuremyi Claude, Ngiruwonsanga Alphonse, Bizimana Théogène, Harerimana Faustin, Harerimana Théogène, Ntuyenabo Simon na Kamuhanda Théoneste, babajijwe bamwe bahakana icyaha abandi baracyemera. [3] Nyuma y'iperereza, Ubushinjacyaha bwabaregeye Urukiko rwa Mbere rw'Iremezo rwa Byumba ku wa 11/11/1993 mu ibaruwa N° I/0097/RMP15076/GTBO/MF, urubanza ntirwaburanishwa kugeza ubwo habayeho ivugururwa ry'inzeho z'ubutabera mu 2004, rwoherezwa mu Rukiko Rukuru ku itariki ya 13/10/2004, nyuma ku itariki ya 24/7/2009 urwo rukiko rufata icyemezo N° RP0038/05/HC/KIG ruvuga ko nta bubasha bushingiye ku ifasi rufite, rutegeka ko rwoherezwa mu Rukiko Rukuru, Urugereko rwa Rwamagana ngo abe ari rwo ruruburanisha.

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[4] Ku itariki ya 6/5/2011, Urukiko Rukuru, Urugereko rwa Rwamagana, rwemeje ko Mbabajende Jean Baptiste, Nzamwita Félicien, Uwizeyumuremyi Claude, Ntuyenabo Simon na Kamuhanda Théoneste bahamwe n'icyaha cy'ubuhotozi bwakorewe ba nyakwigendera Nyirandegeya, Mukamusoni na Mukansanga, rushingiye ku kuba mu maperereza yakozwe ndetse n'imbere y'urukiko, baremeye icyaha, maze ruhanisha buri wese igifungo cy'imyaka makumyabiri (20); naho kuri Hategekimana Dismas, Turikunkiko Jean Claude, Sebahire Lucien, Ruzindana Augustin, Ngiruwonsanga Alphonse, Bizimana Théogène, Harerimana Faustin na Harerimana Théogène, rwemeza ko habayeho ubuzime bw'ikirego cy'ikurikiranacyaha kuko bitabye Imana. [5] Iki cyemezo nticyashimishije Ntuyenabo Simon na bagenzi be, bakijuririra mu Rukiko rw'Ikirenga bavuga ko batagombaga kuburanishwa kubera ko habayeho ubusaze bw'ikirego cy'ikurikiranacyaha, ku birebana n'imizi y'urubanza, bavuga ko hatagaragajwe icyishe ba nyakwigendera, ko umucamanza yaciriye urubanza ku cyo ataregawe (statuer ultra petita), ko kandi atabagabanyirije igihano kandi bari baburanye bemera icyaha. [6] Iburanisha ry'urubanza ryabaye mu ruhame ku itariki ya 26/10/2015, hitabye Ntuyenabo Simon na Kamuhanda Théoneste bunganiwe na Me Ndutiye Yussuf, Nzamwita Félicien na Uwizeyumuremyi Claude batitabye ariko barahamagajwe mu buryo bukurikije amategeko, naho Mbabajende Jean Baptiste umuhesha w'inkiko yagaragaje ko yitabye Imana nk'uko byemejwe n'Ubuyobozi bw'Akagari ka Nyamirama, Ubushinjacyaha buhagarariwe na Mutayoba Alphonse, Umushinjacyaha ku Rwego rw'Igihugu, maze kuri uwo munsu, hagibwa impaka kuri imwe mu ngingo z'ubujurire irebana n'ubusaze bw'ikirego cy'ikurikiranacyaha (prescription de l'action publique). II. IKIBAZO KIRI MU RUBANZA N'ISESENGURA RYACYO. Kumenya niba harabayeho ubusaze bw'ikirego cy'ikurikiranacyaha ku cyaha Ntuyenabo Simon na bagenzi be bakurikiranyweho n'Ubushinjacyaha. [7] Me Ndutiye Yussuf avuga ko ikirego cy'ikurikiranacyaha ku cyaha Ntuyenabo Simon na bagenzi be bakurikiranyweho cyashaje kubera ko yakozwe ku itariki ya 5/1/1993, inyandiko isoza iperereza igakorwa ku itariki ya 28/09/1993. Avuga ko, n'ubwo handitswe ibaruwa ku wa

11/11/1993 yohereza dosiye mu Rukiko rwa Mbere rw'Iremezo rwa Byumba, ntakigaragaza ko yakiriwe, ko ahubwo ikigaragara ari uko dosiye yageze mu Rukiko Rukuru mu mwaka wa 2005, hashize imyaka cumi n'ibiri (12) yose nta kintu kiyikozweho, akavuga ko habayeho ubusaze bw'ikirego cy'ikurikiranacyaha hashingiwe ku ngingo ya 111 y'Itegeko-Teka N°21/77 ryo ku wa 18 Kanama 1977 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga icyo gihe, agasanga rero ikirego mu Rukiko Rukuru kitaragombaga gusuzumwa. [8] Uhagarariye Ubushinjacyaha avuga ko, nk'uko n'uwunganira abaregwa abiyemerera, icyaha cyakozwe ku itariki ya 5/1/1993, dosiye irakorwa ishyikirizwa Urukiko rwa Mbere rw'Iremezo rwa Byumba ku itariki ya 11/11/1993, ko rero icyo gihe nta busaze bw'ikirego cy'ikurikiranacyaha bwari bwakaba. Avuga ko dosiye yagaragaye mu Rukiko Rukuru mu mwaka wa 2005 yari ivuye mu Rukiko rwa Mbere rw'Iremezo rwa Byumba, ko itari ivuye mu Bushinjacyaha, ko ahubwo ikigaragara ari uko dosiye yatinze mu rukiko. Arangiza avuga ko, hakurikijwe ingingo abajuriye baburanisha, nta busaze bw'ikirego cy'ikurikiranacyaha

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bwabayeho kubera ko Ubushinjacyaha bwaregeye Urukiko mu gihe giteganywa n'amategeko. UKO URUKIKO RUBIBONA [9] Ingingo ya 5 y'Itegeko N°30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha igira iti: "Uretse icyaha cya jenocide, ibyaha byibasiye inyokomuntu n'ibyaha by'intambara bidasaza, ikirego cy'ikurikiranacyaha ku bindi byaha bisaza mu gihe cy'imyaka icumi (10) yuzuye ku byaha by'ubugome; mu gihe cy'imyaka itatu

- (3) ku byaha bikomeye; mu gihe cy'umwaka umwe (1) wuzuye ku byaha byoroheje". [10] Ingingo ya 7, igika cya mbere, y'iryo tegeko igateganya ko "Ubusaze bw'ikirego cy'ikurikiranacyaha buhagarikwa n'ibikorwa by'iperereza cyangwa by'ikurikiranacyaha, iyo bikozwe mu bihe biteganyijwe n'ingingo ya 5 y'iri tegeko". [11] Naho ingingo ya 2, agace ka mbere n'aka 2, y'iryo Tegeko igasobanura ko "Igikorwa cy'iperereza ari igikorwa cyose kigamije gushakisha ibyaha, gukusanya ibimenyetso byaba ibishinja cyangwa ibishinjura kimwe n'igikorwa kigamije gusuzuma niba ushinjwa agomba gukurikiranwa cyangwa kudakurikiranwa ; naho igikorwa cy'ikurikiranacyaha cyo akaba ari igikorwa kigamije kuregera urukiko, guhamagaza ababuranyi no kwitaba urukiko, gutegura iburanisha ry'urubanza, kuburana kimwe no kwiyambaza inzira z'ubujurire". [12] Ingingo ya 8, igika cya mbere n'icya 2, y'Itegeko ryavuzwe haruguru, iteganya ko "Ubusaze bw'ikirego cy'ikurikiranacyaha busubikwa igihe cyose iperereza cyangwa ikurikiranacyaha ribujijwe n'inkomyi ntarengwa, iturutse ku itegeko cyangwa ku nzitizi itagobotorwa. Iyo inzitizi ivuyeho, ubusaze bwari bwarasubitswe bukomeza kubarwa guhera ku munsu iyo nzitizi yaviriye". [13] Ku birebana n'uru rubanza, inyandiko ziri muri dosiye zigaragaza ko icyaha abaregwa bakurikiranweho cyakozwe ku itariki ya 5/1/1993, nyuma y'iperereza Ubushinjacyaha buregera Urukiko rwa Mbere rw'Iremezo rwa Byumba ku itariki ya 11/11/1993, dosiye yandikwa mu bitabo ku itariki ya 17/01/1994. Izo nyandiko zigaragaza kandi ko ikindi gikorwa cyakozwe kuri iyo dosiye cyabaye ku itariki ya 13/10/2004 ubwo dosiye yoherezwaga mu Rukiko Rukuru kugira ngo abe ari ho iburanishirizwa. [14] Hashingiwe ku mategeko no ku bikubiye muri dosiye nk'uko bimaze gusobanurwa haruguru, Urukiko rurasanga ubusaze bw'ikirego

cy'ikurikiranacyaha Ubushinjacyaha bwatanze mu Rukiko rwa Mbere rw'Iremezo rwa Byumba ku itariki ya 11/11/1993 bwarahagaritswe (interruption) no kucyandika mu bitabo by'ibirego byakozwe ku itariki ya 17/01/1994 nk'uko byagaragajwe haruguru, bityo icyo kirego kikaba cyaragombaga gusaza ku itariki ya 16/01/2004, ni ukuvuga mu gihe cy'imyaka icumi (10) uhareye ku munsu ubanziriza uwo igikorwa cya nyuma cyabereyeho. [15] Ku bivugwa n'Ubushinjacyaha ko nta buzime bw'ikirego cy'ikurikiranacyaha bwabayeho bushingira ku kuba harabayeho ibikorwa by'iperereza, ndetse n'Urukiko rukaba rwararegewe mu gihe giteganywa n'amategeko, Urukiko rw'Ikirenga rurasanga ibyo nta shingiro byahabwa, kuko kuva Urukiko rwaregerwa, nta gikorwa na kimwe mu biteganyijwe n'ingingo ya 2, agace ka mbere n'aka 2, y'Itegeko ryibukijwe haruguru, kigeze kiba ngo gihagarike ubusaze. Ibi kandi bikaba bihura n'ibyemezwa n'abahanga mu mategeko bavugaga ko ku birebana n'ubusaze bw'ikirego cy'ikurikiranacyaha, bidahagije kuregera urukiko mu

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gihe cyateganyijwe gusa, ko ari ngombwa ko icyo kirego kiburanishwa kitarasaza. (Il ne suffit pas que l'action publique soit introduite devant le juge pénal en temps utile, encore faut-il qu'elle soit jugée dans les délais de prescription)¹. [16] Undi muhanga na we akavugaga ko ubusaze bw'ikirego cy'ikurikiranacyaha umuntu amenya niba bwarabayeho cyangwa se butarabayeho ku munsu w'icibwa ry'urubanza. Akavugaga ko urubanza rwaciwe burundu kandi ababuranyi bombi bahari rurangiza ibirebana n'ubusaze bw'ikirego cy'ikurikiranacyaha, mu gihe urwo rubanza rutasabiwe iseswa (C'est au jour du jugement qu'il faut apprécier si la prescription est ou non acquise. Ainsi, le jugement qui statue définitivement et contradictoirement sur l'action publique met fin à celle-ci, en l'absence de cassation)². [17] Isesengura ry'ibivugwa n'abo bahanga, ndetse n'ibiteganywa n'ingingo ya 2, agace ka mbere n'aka 2, y'Itegeko ryavuzwe, iteganya ibikorwa bihagarika ubusaze bw'ikirego cy'ikurikiranacyaha, rigaragaza ko ntacyabuza ko ikirego cy'ikurikiranacyaha gisazira mu rukiko mu gihe kitaburanishijwe hatarabaho ubusaze bwacyo, cyane cyane ko no mu bikorwa bihagarika ubusaze bw'icyo kirego harimo n'ibikorwa mu rukiko nk'uko bivugwa muri icyo ngingo ndetse n'abahanga mu mategeko³. [18] Urukiko rw'Ikirenga rurasanga nyamara ariko, jenoside yakorewe abatutsi mu Rwanda kuva ku itariki ya 07/04/1994 yarasubitse ubusaze bw'ikirego cy'ikurikiranacyaha (a suspendu la prescription de l'action publique), iryo subika rikaba kandi rigomba kubara kugeza igihe Urukiko rwa Mbere rw'Iremezo rwa Byumba rwari rwararegewe rwasubukuriye imirimo yarwo nyuma y'ihagarikwa rya jenoside, ni ukuvuga ku itariki ya 10/11/1994 nk'uko bigaragazwa n'igitabo cyandikwamo ibirego Ubwanditsi bw'urwo Rukiko bwashyikirije Urukiko rw'Ikirenga. [19] Ibivugwa mu gika kibanziriza iki, Urukiko rw'Ikirenga rurabishingira ku ngingo ya 8, igika cya mbere n'icya 2, y'Itegeko ryagarutsweho haruguru, ibiyikubiyemo bikaba bihura n'ibivugwa n'abahanga mu mategeko bemeza ko impamvu zituma habaho isubika ry'ubusaze bw'ikirego cy'ikurikiranacyaha zishobora guturuka ku mbogamizi zitunguranye zikomoka ku mpamvu zitigobotorwa zituma urega adashobora kugira icyo akora. Muri izo mpamvu bavugamo intambara, imyuzure cyangwa ibindi biza, ndetse n'igihe uregwa yaba yarahungiyemo mu mahanga, ni ngombwa gutegereza ko yoherezwa kugira ngo akurikiranwe (Les causes de suspension de la prescription peuvent aussi résulter de tous

obstacles de fait, constitutifs de force majeure ou de circonstance insurmontable, empêchant la partie poursuivante d'agir. Ainsi pourrait-il en aller de la guerre ou d'une inondation ou d'une catastrophe, mais aussi du fait que la personne impliquée s'était réfugiée à l'étranger, il faut attendre que l'extradition sollicitée ait été accordée par l'Etat requis pour entrer en voie de poursuite)⁴. [20] Urukiko rw'Ikirenga rurasanga, kuva ikirego cyanditswe mu gitabo cy'ibirego ku itariki ya 17/01/1994, icyo kirego cyaragombaga gusaza ku itariki ya 17/01/2004, icyo gihe ariko kikaba kigomba kongerwaho igihe ubusaze bwashubitswemo nk'uko byasobanuwe mu gika cya 18 cy'uru rubanza, ni ukuvuga kuva ku itariki ya 7/04/1994 kugeza ku itariki ya 10/11/1994 bihwaye n'amezi arindwi (7) n'iminsi ine (4), bivuze ko ubusaze bw'icyo kirego bwabaye ku itariki ya 4/7/2004, bityo igikorwa cyongeye gukorwa kuri iyo dosiye ku itariki 1 Michel Franchimont et alii, Manuel de procédure pénale, 2e Edition Larcier, 2006, p.109. 2Henri Bosly et Damien Vandermeersch, Droit de la procédure pénale, Ed. 2005, p.209 in fine 3 Idem, pp.212-216. 4 Serge Guinchard et Jacques Buisson, Procédure Pénale, 3ème édition, p.619, para.1162.

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ya 13/10/2004 cyo kuyohereza mu Rukiko Rukuru kikaba cyarabaye ikirego cyaramaze gusaza. [21] Hashingiwe ku bisobanuro byose byatanzwe haruguru, Urukiko rw'Ikirenga rukaba rusanga Urukiko Rukuru, Urugereko rwa Rwamagana, rutari rukwiye kuba rwarakiriye ngo rusuzume iki kirego, akaba ari yo mpamvu uru rukiko rutesheje agaciro urubanza rwaciwe n'urwo rukiko kuri iki kirego. III. ICYEMEZO CY'URUKIKO [22] Rwemeje ko inzitizi yatanze na Ntuyenabo Simon na Kamuhanda Théoneste ku byerekeye ubusaze bw'ikirego cy'ikurikiranacyaha ifite ishingiro; [23] Rwemeje ko habayeho ubusaze bw'ikirego cy'ikurikiranacyaha; [24] Ruvuze ko urubanza RP0043/09/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, ku wa 6/5/2011 ruvanyweho; [25] Ruvuze ko amagarama y'ibyakozwe muri uru rubanza aherera ku Isanduku ya Leta.

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