

RWANDA / JUDGMENT

UBUSHINJACYAHA v NYIRAHIRWA

PAA 00419/2020/CA

COURT

Court of Appeal

DECIDED

21 March 2022

CASE / FILE NUMBER

PAA 00419/2020/CA

Source: amategeko.gov.rw · Research copy typeset by Esheria. Not court-issued or certified.

UBUSHINJACYAHA v NYIRAHIRWA

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2022-03-21
- Case/document no.: PAA 00419/2020/CA
- Collection: Court of Appeal

Text

Page 1

UBUSHINJACYAHA v NYIRAHIRWA [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00419/2020/CA (Nyirandabaruta, P.J.) 21 Werurwe 2022] Amategeko Mpanabyaha – Igihano – Impamvu nkomezacyaha – Ubugome bukabije bwakoranywe icyaha butuma hatabaho kugabanya igihano. Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Muhanga Ubushinjacyaha bukurikiranye uregwa buvuga ko ku wa 05/11/2018 yagiye ku ga centre ka Rutongo, agenda asize Se umubyara witwa Munyabirambo aryamye, agarutse ajya ahantu uyu musaza yari aryamye amubaza impamvu atamuhaye umunani, amusubije ko yarangije kuwumuha uregwa ahita afata umuhini (ikibando) atangira kukimuhondagura mu mutwe kugeza apfuye. Urwo Rukiko rwaciye urubanza rwemeza ko uregwa ahamwa n'icyaha cy'ubwicanyi, rumuhanisha gufungwa burundu kubera ubugome bukabije yakoranye icyaha. Uregwa yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Nyanza, avuga ko asaba kugabanyirizwa igihano kuko abona yarahawe igihano kiremereye kandi yaraburanye yemera icyaha. Urwo Rukiko rwaciye urubanza rwemeza ko imikirize y'urubanza rwajuririwe igumyeheho, kuko nk'uko Urukiko Rwisumbuye rwabibonye, nta kwicuza kwigeze kugaragara mu kwemera icyaha kwe, kuko n'igihe yaburanaga mu bujurire yasaga n'ushaka kumvikanisha ko yishe se umubyara

kubera amakosa yari yamukoreye bikamutera kumwica. Rwasanze kandi adakwiye kugabanyirizwa ibihano bitewe n'Ubugome bukabije yakoranye icyaha. Uregwa yarongeye arujuririra mu Rukiko rw'Ubujurire, avuga ko yaburanye yemera icyaha ariko ntagabanyirizwe ibihano, asaba kugabanyirizwa ibihano hashingiwe ku ngingo ya 76 y'Itegeko Ngenga n° 01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana no ku rubanza n° RS/INCONST/SPEC00003/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 04/12/2019. Ubushinjacyaha bwo buvuga ko impamvu z'ubujurire nta shingiro zifite, kuko nk'uko byemejwe n'Urukiko Rukuru, n'ubwo yemeye icyaha cyo kwica umubyeyi we, atigeze agaragaza ko acyicuza (igika cya 6 cy'urubanza rujuririrwa), ibyo bikaba bigaragazwa n'uburyo agenda ahinduranya imvugo mu nzego zitandukanye kubirebana n'uburyo yishe se umubyara ndetse mu mvugo zimwe akagerageza guhunga icyaha. Incamake y'icyemezo: 1. Igihe icyaha cyakoranywe ubugome bukabije byaba impamvu yo kutagabanyirizwa igihano, bityo kuba uregwa yarishe se, akamwica ari we wari ushinze kumwitaho, nta n'imbaraga afite zo kumurwanya cyangwa kuba yakwirwanaho, bigaragaza ubugome yakoranye icyaha, ikaba ari impamvu ituma atagabanyirizwa ibihano. Ubujurire nta shingiro bufite. Amategeko yashingiweho: Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe n'Itegeko N° 69/2019 ryo ku wa 08/11/2019, Ingingo ya 40 n'ya 59.

Page 2

Imanza zifashishijwe: Ubushinjacyaha v. Uzabakiriko n'abandi, RPAA 0021/14/CS-RPAA0022/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 13/10/2017 Ubushinjacyaha v. Nzabandora n'undi, RPAA 0038/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 09/02/2018 Ubushinjacyaha v. Baziriragira, RPA 00132//2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 30/04/2021 Urubanza I. IMITERERE Y'URUBANZA [1] Ubushinjacyaha bwatanze ikirego mu Rukiko Rwisumbuye rwa Muhanga buvuga ko ku wa 05/11/2018 Nyirahirwa Immaculée yagiye ku ga centre ka Rutongo, agenda asize Se umubyara witwa Munyabirambo Ezechiel aryamye, agarutse ajya ahantu uyu musaza yari aryamye amubaza impamvu atamuhaye umunani, amusubije ko yarangije kuwumuha Nyirahirwa Immaculée yahise afata umuhini (ikibando) atangira kukimuhondagura mu mutwe kugeza apfuye. Mu Bugenzacyaha, mu Bushinjacyaha, n'imbere y'Urukiko yemeye ko ari we wamwishe anabisabira imbabazi. [2] Mu rubanza n° RP 00598/2018/TGI/MHG rwaciwe ku wa 26/11/2019, Urukiko Rwisumbuye rwa Muhanga rwemeje ko Nyirahirwa Immaculée ahamwa n'icyaha cy'ubwicanyi, rumuhanisha gufungwa burundu kubera ubugome bukabije yakoranye icyaha. [3] Nyirahirwa Immaculée yajuririye icyo gihano mu Rukiko Rukuru, Urugereko rwa Nyanza, avuga ko asaba kugabanyirizwa igihano kuko abona yarahawe igihano kiremereye kandi yaraburanye yemera icyaha. [4] Mu rubanza n° RPA 00175/2019/HC/NYZ, Urukiko Rukuru, Urugereko rwa Nyanza, rwemeje ko ubujurire bwa Nyirahirwa Immaculée nta shingiro bufite, ko imikirize y'urubanza n° RP 00598/2018/TGI/MHG rwaciwe n'Urukiko Rwisumbuye rwa Muhanga kuwa 26/11/2019, igumyeho, kuko nk'uko urwo Rukiko rwabibonye, nta kwicuza kwiyeze kugaragara mu kwemera icyaha kwe, kuko n'igihe yaburanaga mu bujurire yasaga n'ushaka kumvikanisha ko yishe se umubyara kubera amakosa yari yamukoreye bikamutera kumwica. Rwasanze kandi adakwiye kugabanyirizwa ibihano bitewe n'Ubugome bukabije yakoranye

icyaha. [5] Nyirahirwa Immaculée ntiyishimiye imikirize y'urubanza, arujuririra mu Rukiko rw'Ubujuje, avuga ko yaburanye yemera icyaha ariko ntagabanyirizwe ibihano, asaba kugabanyirizwa ibihano hashingiwe ku ngingo ya 76 y'Itegeko Ngenga n° 01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana no ku rubanza n° RS/INCONST/SPEC00003/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 04/12/2019. [6] Iburanisha ryabereye mu ruhame ku wa 01/03/2022, Nyirahirwa Immaculée yunganiwe na Me Mukwende Milimo Olivier naho Ubushinjacyaha buhagarariwe na Habarurema Jean Pierre Umushinjacyaha ku rwego rw'Igihugu.

Page 3

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO Kumenya niba NYIRAHIRWA Immaculée yaremeye icyaha ntagabanyirizwe ibihano kandi niba yagabanyirizwa kuri uru rwego. [7] Nyirahirwa Immaculée avuga ko impamvu zamuteye kujurira ari uko mu Rukiko Rukuru yemeye icyaha mu buryo budashidikanywaho ariko ntirumugabanyirize ibihano, akaba asaba ko yabigabanyirizwa. Avuga ko ariwe wari urwaje Se, ariko Se wabo witwa Nyirinkindi Fran ois cyakaba yarafite umugambi wo kwigarurira imitungo Se yari afite, ariko akabona bidashoboka kuko Nyirahirwa Immaculée yabanaga na Se bigatuma batumvikana; ko muri uko kutumvikana ariho havuye umugambi wo kumukoresha icyaha, kuko yagiye mu kabari bamugurira inzoga baroze, amaze kuyinywa amera nk'umusazi, kuko yageze mu rugo akumva abantu, agakeka ko baje kumugirira nabi bitewe n'uko abana ba musaza we bazaga kumukubita, akaba yarafashe inkoni yinjira mu nzu atangira kwirwanaho akubita ikintu ahuye nacyo cyose, arinabwo yaje gukubita Se agahita apfa kuko yabonye ibisimba byinjira mu nzu bijya aho se ariyemeye agakubita kenshi azi ko ari ibisimba ahuragura naho ari se. Avuga kandi ko yagiye kuryama kuko atazi icyo yakoze, abyutse mu gitondo agaruye ubwenge abona ko ari Se yishe, ahita ashakisha uburyo yashyingurwamo ndetse afata n'umumotari ajya gutabaza abandi bagize umuryango, akaba yicuza icyo cyaha yakoze akagisabira imbabazi, kuko atagombaga kwica Se kandi yari amaze igihe ariwe umurwaje. Avuga ko kuba yarahinduranyije imvugo byatewe n'ihungabana yagize. [8] Me Mukwende Milimo Olivier umwunganira avuga ko ukwicuza kwa Nyirahirwa Immaculée kwasuzumwa neza kuko atari kumarana na Se imyaka itatu irenga ngo noneho abyuke amwica, ko nubwo yishe Se nta mugambi yari afite wo kumwica, ahubwo ko yari asanganywe amakimbirane n'abantu bafitanye isano na se. [9] Me Mukwende Milimo Olivier, akomeza avuga ko Nyirahirwa Immaculée yajuririye uru Rukiko arusaba guca inkoni izamba rukamugabanyiriza ibihano rushingiye ku ngingo ya 76 z'Itegeko Ngenga n° 01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana no ku rubanza n° RS/INCONST/SPEC00003/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 04/12/2019, rwemeje ko mu gihe hari impamvu nyoroshyacyaha (birimo no kwemera icyaha), ariko urukiko rukavuga ko rutemerewe kujya muni y'igihano gito ntarengwa giteganyijwe, binyuranyije n'ingingo ya 49 y'Itegeko n°68/2018 ryo kuwa 30/08/2018 riteganyira ibyaha n'ibihano muri rusange. [10] Avuga ko iyo usesenguye iyo ngingo ya 49 imaze kuvugwa, usanga umucamanza mbere y'uko ahanisha Nyirahirwa Immaculée igihano cya burundu, yaragombaga kubanza gusesengura iyo ngingo, agatanga igihano akurikije uburemere bw'icyaha, ingaruka icyaha cyateye, impamvu zatumye agikora, uko uwagikoze yari asanzwe

yitwara, imibereho ye bwite n'uburyo icyaha cyakozwemo, akaba ariyo mpamvu atakambira Urukiko arusaba guca inkoni izamba, Nyirahirwa Immaculée akagabanyirizwa ibihano kuko yemera icyaha mu buryo budashidikanywaho, akagisabira imbabazi ndetse akanicuza. [11] Uhagarariye Ubushinjacyaha avuga ko ukurikije imvugo ya Nyirahirwa Immaculée na Me Mukwende Milimo Olivier umwunganira, y'uko Urukiko rutamugabanyirije ibihano kandi yaremeye icyaha, akanacyicuza, n'ibyo avuga ko atishe se yabigambiriye kuko yari yateshejwe

Page 4

ubwenge n'abamuhaye inzoga, yakagombye kubitangira ibimenyetso nk'uko biteganywa n'ingingo ya 3 y'Itegeko ry'ibimenyetso mu manza n'itangwa ryabyo. [12] Avuga ko impamvu Nyirahirwa Immaculée atanga nta shingiro zifite, kuko nk'uko byemejwe n'Urukiko Rukuru, n'ubwo yemeye icyaha cyo kwica umubyeyi we, atigeze agaragaza ko acyicuza (igika cya 6 cy'urubanza rujuririrwa), ibyo bikaba bigaragazwa n'uburyo agenda ahinduranya imvugo mu nzego zitandukanye kubirebana n'uburyo yishe se umubyara ndetse mu mvugo zimwe akagerageza guhunga icyaha. [13] Buvuga ko ubwo Nyirahirwa Immaculée yabazwaga mu Bugenzacyaha ku wa 11/11/2018, yasobanuye uko yishe se umubyara n'impamvu yabimuteye avuga ko ku wa 05/11/2018 aribwo yagiye ku isoko gushaka ubugari bwo kurya, ataha yanyoye agacupa ageze mu rugo aho se arara amubaza impamvu nta munani yamuhaye, aramusubiza ngo ese ntiyawumuhaye ; ko ubwo yahise ashaka ubuhiri abumukubita mu mutwe, akomeza kumukubita, abonye amaraso avuye ari menshi ashaka amazi aramwoza (ku kibazo n'igisubizo cya 5), naho ku bibazo n'ibisubizo bya 3 na 10, Nyirahirwa Immaculée yasobanuye ko yishe se kuko yari yaramurambiwe, arambiwe kumukorera isuku iyo yabaga yikozeho umwanda ndetse agasobanura ko yashakaga n'imitungo ye; ko ikindi yasobanuye muri ibyo bibazo n'ibisubizo ari uko akimara kwica se yashatse guhisha ibimenyetso agafata urwembe akamwogosha. [14] Uhagarariye Ubushinjacyaha akomeza avuga ko mu ibazwa rye mu Bushinjacyaha ryo ku wa 12/11/2022, Nyirahirwa Immaculée yongeye gusobanura uko yishe se, avuga ko yamukubise ikibando inshuro nyinshi ahantu hatandukanye (mu mutwe, ku maboko no ku maguru) kandi agaragaza ko yamuhoye ko yamusabaga ishimwe kuko ariwe wamwitagaho ntarimuhe; ko ageze mu Rukiko Rwisumbuye yabanje kuburana avuga ko atishe se ku bushake kuko yari yataye ubwenge biturutse ku byo bari bamushyiriye mu nzoga amukubita inshuro nyinshi ariko atazi ko ariwe arimo gukubita, anavuga ko aho amenyeye ko ariwe yakubise yagiye kumutabariza ngo bamujyane kwa muganga ariko yagaruka agasanga yapfuye; ko muri iryo buranisha Urukiko rwamubajije ikimenyetso cy'uko yishe se yataye ubwenge akavuga ko ibyo abivuyeho agiye kuvugisha ukuri, maze asobanura uko yicishije se umuhini amujijije ko atamuhaye ishimwe ry'uko yamurwaje (inyandikomvugo y'iburanisha yo ku wa 23/11/2018). [15] Yakomeje avuga ko mu mwanzuro we w'ubujurire mu Rukiko Rukuru wo ku 19/02/2019, Nyirahirwa Immaculée yongeye guhindura imvugo, avuga ko ubwo yabazaga se ishimwe ry'uko yamurwaje ngo se yamukubise inkoni maze nawe ahita agira umujinya amukubita ku nzu arangirika mu mutwe ndetse akomeza kumukubita inkoni, arara ava amaraso bukeye arapfa. Akomeza avuga ko asaba imbabazi kuko atigeze agira ubushake bwo kumujyana kwa muganga cyangwa ngo ahuruze abaturanyi bamufashe kumujyana kwa muganga ; ko iyo miburanire ya Nyirahirwa Immaculée

ari yo yagarutsweho n'Urukiko Rukuru mu gika cya 6 cy'urubanza rujuririrwa aho rwavuze ko yaburanye asa n'ushaka kumvikanisha ko yishe se umubyara kubera amakosa yari yamukoreye. [16] Uhagarariye Ubushinjacyaha yerekana na none ko muri uru Rukiko rw'Ubujurire, Nyirahirwa Immaculée mu gusobanura imikorere y'icyaha yazanye imvugo nshya atigeze avuga mu nkiko zibanza yuko yishe se atabigambiriye ahubwo yabitewe n'ibyo bari bamushyiriye mu nzoga byatumye ata ubwenge ku buryo atashye yabonaga ibisimba byinjira mu rugo, yinjiye kimwe gishaka kumurya afata inkoni aragikubita, kinjira aho se yari ari, maze akomeza

Page 5

kugikubita inkoni nyinshi, ariko nyuma aza kubona ko ari se yakubitaga, ngo bikaba biboneka ko ari ibyo bari bamuterereje, ko nk'uko bigaragara muri izo mvugo ze zose, Nyirahirwa Immaculée yagiye ahindagura imvugo ku mikorere y'icyaha avuga ko yemera, bivuze ko atigeze agaragaza kwicuza icyaha yakoze ariyo mpamvu busanga ukwemera icyaha kwe kudakwiye kumubera impamvu nyoroshyacyaha. [17] Avuga ko ibijyanye no "kwicuza" gukwiye kugaragara mu kwemera icyaha kugira ngo kube impamvu nyoroshyacyaha byasobanuwe na ICTY mu rubanza IT-95-9-T1, aho mu gika cya 1066 Urukiko rwemeje ibi bikurikira: "In order to accept remorse as a mitigating factor, a Trial Chamber must be satisfied that the expressed remorse is sincere", tugenekereje mu Kinyarwanda bivuze ko ukwicuza kwemerwa nk'impamvu nyoroshyacyaha, iyo urukiko runyuzwe no kwicuza bivuye ku mutima; ko na none mu rubanza IT-01-42-A2 mu gika cya 365, Urukiko rwagaragaje ibikwiye kuranga uko kwicuza muri aya mgambo: "In order to be a factor in mitigation, the remorse expressed by an accused must be genuine and sincere (kugira ngo kugire uruhare mu kugabanyirizwa ibihano, kwicuza k'ushinjwa kugomba kuba ari ukuri kandi kivuye ku mutima). [18] Ubushinjacyaha busoza buvuga ko nk'uko byanemejwe mu rubanza n° RPA 0034/08/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 28/05/2010, haburana Ubushinjacyaha na Mushimirwa Antoine, kwemera icyaha kudafatwa nk'ukwemera kudashidikanywaho mu gihe uregwa yanzwe no guhindagura imvugo mu nzego z'ikurikiranacyaha zitandukanye; ko mu gika cya 8 cy'urwo rubanza, Urukiko rw'Ikirenga rwavuze ko kuba Mushimirwa Antoine yaraburanye ahakana icyaha nyamara yari yaracyemereye mu nzego z'iperereza, nta kosa Urukiko Rukuru rwakoze kuba rutaramugabanyirije igihano kuko atigeze yemera icyaha mu buryo budashidikanywaho. UKO URUKIKO RUBIBONA [19] Ingingo ya 40 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ritaganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe n'Itegeko N° 69/2019 ryo ku wa 08/11/2019, iteganya ko "Umucamanza atanga igihano akurikije uburemere bw'icyaha, ingaruka icyaha cyateye, impamvu zatumye agikora, uko uwagikoze yari asanzwe yitwara, imibereho ye bwite n'uburyo icyaha cyakozwemo". [20] Ingingo ya 59 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, iteganya ko "Umucamanza ashobora kugabanya ibihano nk'iyi 3° mu ntangiriro z'iburanisha ku rwego rwa mbere, ushinjwa yireze akemera icyaha mu buryo budashidikanywa ; 4° icyaha cyakozwe nta ngaruka zikomeye cyateje" (....). [21] Mu rubanza n° RPAA 0021/14/CS-RPAA0022/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 13/10/2017, haburana Ubushinjacyaha na Uzabakiriko n'abandi basaba kugabanyirizwa ibihano, urwo Rukiko rwemeje ko kugabanya cyangwa kutagabanya igihano, bikorwa hakurikijwe ibiteganywa n'amategeko no mu bushishozi bw'Urukiko, kuko nta tegeko

ritegeka umucamanza byanze bikunze kugabanya igihano ahubwo ari uburenganzira itegeko ryamuhaye 1 ICTY: Case N° IT-95-9-T, Prosecutor v. Blagoje SIMIĆ, Miroslav TADIĆ and Simo ZARIĆ, Judgment of 17 October 2003, para.1066. 2 ICTY: Case N° IT-01-42-A, Prosecutor v. Pavle STRUGAR, Judgement of 17 Kujy 2008, para. 365

Page 6

bwo kuba yagabanya ibihano, ...akaba yabigabanya cyangwa ntabigabanye bitewe n'ibindi abona bijyanye n'icyaha cyabaye, birimo nko kuba icyaha cyarakoranywe ubugome n'ibindi³. [22] Mu rubanza n° RPAA 0038/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 09/02/2018, Ubushinjacyaha buburana na Nzabandora Damien na Tuyizere Ignace, Urukiko rwasanze ku bijyanye n'igabanyagihano Nzabandora Damien na Tuyizere Ignace basaba bashingiye ku mpamvu y'uko bemera icyaha, badakwiye kurihabwa kuko icyaha bashinjwa bagikoranye ubugome bukabije, bakaba barishe nyakwigendera urupfu rubi, usibye n'uko umucamanza adategetswe byanze bikunze kugabanya igihano, ahubwo afite uburenganzira bwo kureba niba yabigabanya cyangwa ntabikore hakurikijwe ibintu binyuranye birimo uko icyaha cyakozwe n'uburemere bwacyo, imyitwarire isanzwe iranga uregwa n'ibindi⁴. [23] Mu rubanza N° RPA 00132//2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 30/04/2021 haburana Ubushinjacyaha na Baziriragira Claudine wasabaga kongera kugabanyirizwa ibihano, Urukiko rwasanze atakongera kugabanyirizwa kubera uburemere bw'icyaha yakoze cyo gusambanya abana babiri b'abahungu, kandi ari umudamu ufite abana, ndetse ko yanagikoranye ubugome bukabije kuko yasambanyije abo bana kandi azi neza ko afite ubwandu bwa SIDA, iyi ikaba ari indwara yica, nk'uko byasobanuwe mu gika cya 15 cy'urubanza rujuririrwa⁵. [24] Amategeko n'imirongo yatanze mu manza byagaragajwe haruguru, byerekana ko umucamanza adategetswe byanze bikunze kugabanya igihano ashingiye gusa ku kwemera icyaha k'ushinjwa, ko ahubwo mu bushishozi bwe, ashingiye ku mategeko no ku bindi abona bikwiye kwitabwaho mu kugenera ushinjwa igihano, nk'ibijyanye no kuba yicuza, uburyo icyaha cyakozwemo, uburemere bwacyo n'ibindi. By'umwihariko, ntaha agaciro ukwemera icyaha k'ushinjwa mu gihe bigaragara ko icyaha yakoze yagikoranye ubugome bukabije, cyangwa se ngo bibe ngombwa ko yongera kugabanya ibihano mu gihe asanzwe byaragabanyijwe. [25] Ku bijyanye n'uru rubanza, dosiye igaragaza ko mu rubanza n° RPA 00175/2019/HC/NYZ rujuririrwa, igika cya 4, Nyirahirwa Immaculée yajuriye urubanza no RP 00598/2018/TGI/MHG rwaciwe n'Urukiko Rwisumbuye rwa Muhanga, avuga ko yaburanye yemera icyaha akanasaba imbabazi, ariko ko urwo Rukiko rwabirenzeho rukamuha igihano kiremereye kandi ataragoye ubutabera, kuko yemera ko ariwe wishe se umubyara afite imyaka 90, akaba ataramwangaga kuko yari amaze igihe amurwaje. [26] Urukiko Rukuru rwasuzumye niba uburyo Nyirahirwa Immaculée yemeyemo icyaha bwatuma agabanyirizwa ibihano, rusanga (igika cya 6) kugira ngo uregwa agabanyirizwe igihano ari uko mu kwemera icyaha kwe haba hagaragaramo kwicuza, ariko ko nk'uko n'Urukiko Rwisumbuye rwa Muhanga rwabibonye nta kwicuza kwigeze kugaragara mu kwemera icyaha kwe, kuko n'igihe yaburanaga mu bujurire, yasaga n'ushaka kumvikanisha ko yishe se umubyara kubera amakosa yamukoreye, rwanzura ko kwemera icyaha kwe kutashingirwaho agabanyirizwa igihano, kandi ko n'icyaha akurikiranyweho yagikoranye ubugome. 3 Urubanza PAA 0021/14/CSRPAA0022/14/CS rwaciwe ku wa 13 Ukwakira 2017

haburana Ubushinjacyaha na UZABAKIRIKO et ctrs, icyegeranyo cy'ibyemezo by'Inkiko, V.4 -2018, Ukwakira 2018, paji. ya 133, igika cya 14. 4 Reba urubanza No RPAA 0038/14/CS rwaciwe ku wa 09/02/2018 igika cya 21, haburana Ubushinjacyaha na NZABANDORA Damien ndetse na TUYIZERE Ignace. 5 Reba urubanza N° RPA 00132//2020/CA rwaciwe ku wa 30/04/2021 n'Urukiko rw'Ubujurire haburana Ubushinjacyaha na BAZIRIRAGIRA Claudine, igika cya 15.

Page 7

[27] Ku bijyanye no kuba Urukiko Rukuru, Urugereko rwa Nyanza rutaragabanyirije ibihano Nyirahirwa Immaculée kandi yaraburanye yemera icyaha, Urukiko rurasanga nk'uko byagaragajwe haruguru, nta kosa urwo Rukiko rwakoze, kuko rwasanze icyaha yaragikoranye ubugome kandi nta no kukicuza bimuranga ahubwo agishakira ibisobanuro. Ikindi, icyemezo rwafashe kijyanye n'umurongo wafashwe n'Urukiko rw'Ikirenga ndetse n'uru Rukiko mu manza zitandukanye izo nkiko zaciye harimo n'izagaragajwe haruguru, wo kutagabanyiriza ibihano ushinjwa mu gihe bigaragaye ko icyaha yakoze yagikoranye ubugome bukabije cyangwa atacyicuza. [28] Ku bijyanye no kuba Nyirahirwa Immaculée yagabanyirizwa ibihano kuri uru rwego kuko akomeje kwemera icyaha, Urukiko rurasanga nk'uko n'Urukiko Rukuru rwabibonye kandi byagaragajwe haruguru mu miburanire ye, Nyirahirwa Immaculée n'ubwo yemera kuba ariwe wishe se, atemera ubushake bwo gukora icyaha (intention criminelle) kuko n'ubwo nta bimenyetso abitangira, rimwe avuga ko yakubise Se umuhini mu mutwe yataye ubwenge kubera inzoga iroze yanyoye, ubundi akavuga ko yamukubise aziko ari igisimba ubundi ko atari azi icyo arimo gukubita ngo kuko yari yatewe yitabara, akaba adashaka kuvugisha ukuri ku buryo yishe Se n'icyabimuteye, nyamara nk'uko biri mu nyandikomvugo ze zanibukijwe n'Ubushinjacyaha, ndetse yanabivugiye imbere y'uru Rukiko n'ubwo ahinduranya imvugo kenshi mu rwego rwo kujijisha Urukiko, bigaragara ko Nyirahirwa Immaculée yababajwe n'uko Se atamuha ishimwe ry'uko ariwe umwitaho kandi yari amaze no kurambirwa kumwitaho, akaba ariyo mpamvu yatumye amwica, ukwemera icyaha kwe kukaba kutashingirwaho nk'impamvu nyoroshyacyaha yatuma agabanyirizwa ibihano kuko kutafatwa nk'ukudashidikanywaho. Rurasanga kandi harebwe ko Se yari akuze kuko Nyirahirwa Immaculée ubwe avuga ko yari afite imyaka 90, akamwica ari we wari ushinze kumwitaho, nta n'imbaraga afite zo kumurwanya cyangwa kuba yakwirwanaho, bigaragaza ubugome Nyirahirwa Immaculée yakoranye icyaha, nayo ikaba ari impamvu ituma atagabanyirizwa ibihano kuri uru rwego. [29] Urukiko rurasanga atari ngombwa gusuzuma ibijyanye no kuba Nyirahirwa Immaculée yahanishwa igihano kiri muni y'igihano gito itegeko riteganyiriza icyaha akurikiranyweho hashingiwe ku rubanza n° RS/INCONST/SPEC00003/2019/SC, nk'uko abisaba, kuko rwasanze uretse no kuba yahabwa igihano kiri muni y'igiteganywa n'itegeko, adakwiye no kugabanyirizwa igihano na busa. III. ICYEMEZO CY'URUKIKO [30] Rwemeje ko ubujurire bwatanzwe na NYIRAHIRWA Immaculée nta shingiro bufite ; [31] Rwemeje ko urubanza n° RPA 00175/2019/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 19/12/2019, rudahindutse ; [32] Ruvuze ko amagagarama y'urubanza aherera ku isanduku ya Leta.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.amategeko.gov.rw/view/doc/7961/8240>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/nyirahirwa-immacul%C3%A9-mitigatingfactors-court-of-appeal-2022--6a3ea5223b1caa91298185ff>

Prepared on 13 October 2026 · Esheria