

RWANDA / JUDGMENT

UBUSHINJACYAHA v. NZAMWITA**RS/INJUST/RP 00001/2022/HC/RSZ****COURT**

High Court

DECIDED

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UBUSHINJACYAHA v. NZAMWITA

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Text**Page 1**

UBUSHINJACYAHA v. NZAMWITA [Rwanda URUKIKO RUKURU URUGEREKO RWA RUSIZI – RS/INJUST/RP 00001/2022/HC/RSZ (Habimana, P.J.) 24 Ugushyingo 2022] Amategeko agenga imiburanishirize y’i manza nshinjabyaha – Ibimenyetso – Ubuhamya – Ubuhamya bw’uwakorewe icyaha – Nta cyabuza uwahohotewe gutanga ibisobanuro bijyanye n’icyaha yakorewe, ahubwo Urukiko rufite ububasha bwo kubicukumbura kugira ngo rumenye niba ibyo avuga ari ukuri cyangwa atari ukuri. Incamake y’ikibazo: Uru rubanza rwatangiriye mu rukiko rw’Ibanze rwa Kagano, uregwa akurikiranywe ku cyaha cyo gukubita no gukomeretsa undi ku bushake. Urwo Rukiko rwaciye urubanza rwemeza ko uregwa ahamwa n’icyaha rumuhanisha igihano cy’igifungo cy’imyaka itanu n’ihazabu y’amafaranga 1.000.000Frw. Uregwa yajuririye Urukiko Rwisumbuye rwa Rusizi maze urwo Rukiko narwo ruca urubanza rwemeza ko uregwa adahamwa n’icyaha. Nyuma y’icyo cyemezo, Ubushinjacyaha bwifashije inzira yo gusubirishamo urubanza ku mpamvu z’akarengane, maze nyuma yo kwemezwa na Perezida w’Urukiko rw’Ikirenga hategekwa ko rusubirwamo rukaburanishirizwa mu Rukiko Rukuru, Urugereko rwa Rusizi. Mu Rukiko Rukuru, Urugereko rwa Rusizi, Ubushinjacyaha bwagaragaje ko butishimiye uburyo ibimenyetso byose bishinje uregwa byateshejwe agaciro kubera ubuhamya bw’umuntu umwe

w'indarikwa wabarijwe mu rukiko witwa Nyiransanabandi. Buvuga ko mu bimenyetso byirengagijwe harimo imvugo z'abatangabuhamya na raporo y'inzego z'ibanze. Uregwa we yaburanye avuga ko mpamvu Ubushinjacyaha bushingiraho busaba ko yahanwa ntaho bubihera kuko n'ibimenyetso bushingiraho birimo ugushidikanya. Ko ibimenyetso byatanzwe bishingiye ku batangabuhamya ariko ntabwo bahuza imvugo. Yongeraho kandi ko ubuhamya bwatanzwe n'uwahohotewe butahabwa agaciro cyane karenze ubw'abandi batangabuhamya kubera ko no mu ibazwa rye atabanza kurahira kimwe n'ushinjwa. Incamake y'icyemezo: Ku bijyanye no kuba uwakorewe icyaha yakumvwa nk'umutangabuhamya, nta cyabuza uwahohotewe gutanga ibisobanuro bijyanye n'icyaha yakorewe, ahubwo Urukiko rufite ububasha bwo kuzicukumbura kugira ngo rumenye niba ibyo avuga ari ukuri cyangwa atari ukuri. Ikirego cy'Ubushinjacyaha cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro; Uregwa ahamwa n'icyaha cyo gukubita no gukomeretsa undi ku bushake; Uregwa ahanishijwe igihano cy'igifungo cy'imyaka itatu (3) n'ihazabu y'amafaranga 500.000 Frw. Amategeko yashingiweho: Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye Imiburanishirize y'Imanza z'Inshinjabyaha, Ingingo ya 48.

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Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, Ingingo ya 121 igika cya 2. Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye Ibimenyetso mu manza n'Itangwa ryabyo, ingingo ya 65. Imanza zifashishijwe: RPA 0065/12/CS; Ubushinjacyaha v. Nsengiyumva, rwaciwe n'Urukiko Rw'ikirenga ku wa 13/04/2017. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 03/10/2020 ahagana saa 19h zishyira saa 21h z'ijoro mu Rwanda, uwitwa Mukakayibanda Julienne yagiye mu centre yahitwa mu Itaba afite umunzane umuhungu we witwa Byiringiro usanzwe ufite ubumuga bwo mu mutwe yari yakuye muri iyo centre k'uwitwa Uwimana Sylvere, mu kuhagera nibwo uwitwa Nzamwita Anaclet na Tuyiringire Faustin bamufataga baramukubita, abaturage baturuye bahamukura atabasha kugenda bamujyana mu rugo bucya ajyanwa ku bitaro bya Kibogora ari naho yashyiriweho igisima ahabwa n'imbago. Nzamwita Anaclet yahise afatwa ashidikirizwa ubugenzacyaha, amaze gukorera dosiye ishyikirizwa Ubushinjacyaha bwaje guhita bumuregera Urukiko rw'Ibanze icyaha cyo gukubita no gukomeretsa undi ku bushake. [2] Mu rubanza RP 00268/2020/TB/KAG rwaciwe n'Urukiko rw'Ibanze rwa Kagano, Nzamwita Anaclet yahamijwe icyaha cyo gukubita no gukomeretsa undi ku bushake ahanishwa igifungo cy'imyaka itanu n'ihazabu y'amafaranga 1.000.000Frw. Yahise ajurira mu rukiko Rwisumbuye maze mu rubanza RPA 00144/2021/TGI/RSZ hemezwa ko adahamwa n'icyaha aregwa maze agirwa umwere. Ubushinjacyaha bwahise buregera akarengane kari mu rubanza, maze nyuma yo kwemezwa na Perezida w'Urukiko rw'ikirenga hategekwa ko rusubirwamo rukaburanishirizwa mu Rukiko Rukuru, Urugereko rwa Rusizi. [3] Ubushinjacyaha bwagaragaje ko butishimiye uburyo ibimenyetso byose bishinje Nzamwita Anaclet byateshejwe agaciro kubera ubuhamya bw'umuntu umwe wabarijwe mu rukiko witwa Nyiransanabandi Alphonsine. [4] Ku ruhande rwa Nzamwita Anaclet asobanura ko ibimenyetso byatanzwe n'ubushinjacyaha byagaragayemo ugushidikanya kwinshi, akaba ariyo mpamvu byabaye ngombwa ko urukiko rwibariza umutangabuhamya wari aho Mukakayibanda Julienne yakubitiwe akerekana ko nta ruhare we yabigizemo, bityo akaba

ngo yarenganurwa akagirwa umwere. [5] Nyuma yo kumva ibisobanuro by'impende zombi Urukiko rwahise rusuzuma ikibazo gikurikira: -Kumenya niba ibimenyetso byose byatanzwe n'Ubushinjacyaha bishidikanywaho kuburyo byashingirwaho Nzamwita Anaclet agirwa umwere.

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-Ibijyanye n'igihano cyahabwa NZAMWITA Anaclet II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

- a) Kumenya niba ibimenyetso byose byatanzwe n'Ubushinjacyaha bishidikanywaho kuburyo byashingirwaho Nzamwita Anaclet agirwa umwere. [6] Ubushinjacyaha buhagarariwe na PN RUKAKA Gallican bwashobanuye ko impamvu bwahisemo gusubirishamo urubanza RPA 00144/2021/TGI/RSZ kubera impamvu z'akarengane byatewe n'uko Urukiko Rwisumbuye rwagize umwere Nzamwita Anaclet rushingiye ku mvugo y'umutangabuhamya w'indarikwa witwa Nyiransanabandi Alphonsine wazanwe mu Rukiko kuwa 08/11/2021 nyuma y'umwaka wose aba ku musozi umwe na Nzamwita Anaclet. Maze Urukiko rubihahira rutesha agaciro ibimenyetso byatanzwe n'Ubushinjacyaha birimo imvugo z'abatangabuhamya na raporo y'inzego z'ibanze. Urukiko Rwisumbuye rwa Rusizi rwavuze ko ku birebana na raporo y'inzego z'ibanze yashingiweho n'Urukiko rw'ibanze rwa Kagano, ko abakoze iyo raporo batageze ahabereye icyaha ngo babe bavugaga ibyo babonye, ko ahubwo bahawe amakuru. [7] Ubushinjacyaha bwagaragaje ko impamvu zashingiweho n'Urukiko Rwisumbuye rwa Rusizi ruhanaguraho icyaha Nzamwita Anaclet, mu by'ukuri nazo ubwazo zivuguruzanya, aho rwagaragazaga ko ubuhamya bwa Nyiransanabandi Alphonsine ari bwo bwakwizerwa ko buhaye n'ikiburanwa, nyamara iyo rusesengura neza ubwo buhamya rwari gusanga ahubwo nta kindi yakoze uretse kuyobya Urukiko. Icyo mbere ni uko ubuhamya bwe budahuye n'ibyabaye: Kuko abatangabuhamya barimo Mbanjineza Thomas basobanuye neza intandaro y'uku gukubitwa kwa Mukakayibanda no kuvunwa amaguru bikozwe na Nzabamwita Anaclet na Tuyiringire Faustin. Uko abisobanura akabihuriraho na Nyitanteziyayo Belancila. Icyo bahuriraho n'uko Byiringiro, umuhungu wa Mukakayibanda yagiye aho Uwimana Sylvere na Nyiranteziyayo Belancilla bacururiza akaka biscuits na ama unites akabihabwa ariko ntiyishyure ahubwo agatera amahane, agatwara n'umunzani wabo. Ko uwo munzani waje kugarurwa na Mukakayibanda, ariko yawusubiza benewo bakawanga. Aha Nyiranteziyayo avugaga ko impamvu yawanze ari uko Uwimana ngo yari yajyanye urufunguzo atari kubona aho awushyira. Ibi akaba atari byo. Kuko n'iyi atari guhita awubika kuwakira nta kibazo cyarimo, nta n'amahane byari gukurura cyane ko n'uware wawutwaye bose bamuzi ko afite ikibazo cy'uburwayi bwo mu mutwe. Ahubwo Nzamwita na Tuyiringire babyuririyeho bihimura kuri Mukakayibanda Julienne. [8] Ubushinjacyaha bwashobanuye kandi ko aho Mukakayibanda yazaniye umunazani, Nyiransanabandi atigera ahagarukaho mu buhamya bwe, kandi ariho yaje gukubitirwa, aho Nzamwita yavugaga ko abasazi bagomba gukubitwa bagapfa, Mukakayibanda amushyirira ko nawe ashobora kurwaza ibyo bisazi kuko nabo atari ibyo bihamagariye. Aha akaba ariho umutangabuhamya Mbanjineza asobanura ko ari Nzamwita yahise amukubita inkoni inshuro 3, imwe muri zo akayimukubita mu ivi, undi akagwa hasi akamwakuranwaho na Tuyiringire abatabaye

bakahamukura ari intere arimo ataka ko bamwishe. [9] Ubushinjacyaha bwagaragaje ko ibijyanye n'uruhare rwa Nzamwita Anaclet, Nyiransanabandi Alphonsine mu buhamya bwe abihunga kandi avuga ko yari ahari, bityo bukaba nta gaciro bwahabwa. Ahubwo harebwa ubuhamya bwatanzwe na Mbanjineza Thomas wanasobanuye n'ibindi bikorwa bibi biranga umubyeyi we Nzamwita Anaclet kandi ubuhamya

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bwe bukaba bwuzuzanya n'ubwa Mukakayibanda Julienne wahohotewe, aho bagaragaza ko ari Nzamwita wabanje kuzana inkoni ashaka kwihimwihimuraho kubera ubuhamya yatanze mu gihe Nzamwita yashakaga gutana n'umugore we. Ibyo bikomezwa na none na Muhigirwa Sarathiel wabonanye iyo nkoni Nzamwita ubwo yari aje kwihisha muri annexe ye. Hari kandi Umutangabuhamya Nyiranzeyimana, ubuhamya bwe buza bwuzuzanya ubwa Mbanjineza Thomas, ubwa Muhigirwa Sarathiel ndetse na rapport y' inzego z' ibanze. [10] Ku ruhande rwa Nzamwita Anaclet yunganiwe na Me Ndikumana Elisee yasobanuye ko impamvu Ubushinjacyaha bushingiraho busaba ko yahanwa ntaho bubihira kuko n'ibimenyetso bushingiraho birimo ugushidikanya. Ibimenyetso byatanzwe n'ubushinjacyaha bishingiye ku batangabuhamya ariko ntabwo bahuza imvugo. Ibyo ngo bigaragarira ku kuba abo batangabuhamya bavugaga ko ibyabaye bari bahari, ariko ntibabisobanure kimwe. Akaba ariyo mpamvu Nyiransanabandi Alphonsine ubuhamya bwe bwashingiweho agirwa umwere nyuma yo gusanga raporo y'inzego z'ibanze, uwayanditse atigeze agera ahabereye icyaha. Yayikoze agendeye ku makuru yabwiwe. Icyo akaba atari ikimenyetso cyashinje Nzamwita Anaclet. Me Ndikumana Elisee yasabye ko ubuhamya bwatanzwe n'uwahohotewe butahabwa agaciro cyane karenze ubw'abandi batangabuhamya kubera ko no mu ibazwa rye atabanza kurahira kimwe n'ushinjwa. Ubuhamya bwabo bwakagombye gufatwa kimwe kugeza igihe bwunganiwe n'ibindi bimenyetso bidashidikanywaho Ubushinjacyaha butashoboye kwerekana. Ubuhamya bwerekana kandi ko Nzamwita yashikuje Byiringiro umunzani akanya kuwuhisha, ibyo bikaba bitandukanye n'uko yamukubise, bwerekana kandi ko Tuyiringire Faustin ariwe wasohokanye ikibando akagikubita Mukakayibanda ndetse n'igitenge yari yambaye kikagwa, yajya kumukubita inkoni ya kabiri Nyiransanabandi Alphonsine agahita ayifatira hejuru. Ubuhamya bwe rero bukaba bukwiye guhabwa agaciro kubera ko ariwe byibuze ubasha kugaragaza uko ibintu byagenze neza kuko yari ahibereye. [11] Nzamwita Anaclet yabajijwe icyo ku ruhande rwe yaba azi ku ikubitwa rya Mukakayibanda kuko bigaragara ko yemera ko hari ibyo yiboneye, maze asubiza ko ari mu rugo iwe mu gihe cya saa mbiri z'ijoro, yahamagawe n'uwitwa Sylvere ukodesha inzu ye, amubwira ko abantu bari kumusenyeraho inzu, ahita ajyayo mu minota nk'itanu. Ngo yageze aho Tuyiringire faustin yacururizaga ahasanga umugore we n'uwitwa Phocas, Mukakayibanda amubonye ari kumwe n'umuhungu we baravugaga ngo dore na Nzamwita araje, yahise ababwira ngo basubireyo ikibazo cyabo bazagisuzume bukeye, maze baramwumvira igikorwa cyo gukubita kitarabaho. Batangiye kumusobanurira ikibazo ngo nibwo yashikuje umunzani Byiringiro ariruka ariko undi amwirukankaho, muri uko guhunga ahita yumva induru ko Mukakayibanda Julienne akubiswe, ariko nawe ahita ajya kwihisha kwa Muhigirwa Sarathiel ari naho uyu mutangabuhamya avugaga ko ibyo yumvise yabyumvuse ariyambye iwe. UKO URUKIKO RUBIBONA [12] Ingingo ya 48 y'itegeko n°

027/2019 ryo ku wa 19/09/2019 ryerekeye Imiburanishirize y’Imanza z’Inshinjabyaha ivuga ko umuntu wese wagize uruhare mu ikorwa ry’icyaha cyangwa uwakorewe icyaha ashobora kumvwa nk’umutangabuhamya. Kubw’iyi ngingo umuntu wese bitewe n’umwanya ahagazemo (Qualite) yaba kuba ari mu bagize uruhare mu ikorwa ry’icyaha cyangwa se akaba ariwe wakorewe icyaha, itegeko ryemera kuba yabazwa nk’umutangabuhamya. Ikiba gisigaye akaba ari ugusesengurana ubushishozi ubuhamya bwatanzwe kugira ngo

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havanwemo ukuri bwaba bufite cyangwa se ikinyoma bwaba buhishe hagendewe ku biteganywa n’ingingo ya 65 y’Itegeko n°15/2004 ryo ku wa 12/06/2004 ryerekeye Ibimenyetso mu manza n’Itangwa ryabyo, igateganya ko Urukiko ari rwo rwonyine rupima ko imikirize y’abatangabuhamya ihuye n’ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa ; ko rutitsitsa ku mubare w’abatangabuhamya, ahubwo rwita ku bumenyi bwabo bw’ibyabaye, no ku buryo babivuga uko byagenze ntacyo bihimbira. [13] Iki kibazo kijyanye no kuba uwaba akekweho uruhare mu ikorwa ry’icyaha cyangwa se uwakorewe icyaha yakumvwa nk’umutangabuhamya akaba ataribwo bwa mbere gisuzumwe imbere y’inkiko kuko cyanasobanuwe bihagije n’Urukiko rw’Ikirenga mu rubanza RPA 0065/12/CS rwaciwe 13/04/2017 Ubushinjacyaha buburana na Nsengiyumva Dismas maze mu gika cyarwo cya [22] Urukiko rw’Ikirenga rusobanura ko ibivugwa na Nsengiyumva Dismas ko imvugo za Ugirashebuja Jean umushinja zitahabwa agaciro kubera ko zatanzwe n’uwahohotewe, kandi ko yamubeshyeye nta shingiro bifite, kubera ko Itegeko n° 13/2004 ryo ku wa 17/05/2004 rigenga imiburanishirize y’imanza z’inshinjabyaha, ndetse n’Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo atabuzwa uwahohotewe gutanga ibisobanuro bijyanye n’icyaha yakorewe, ko ahubwo ari Urukiko rufite ububasha bwo kuzicukumbura kugira ngo rumenye niba ibyo avuga ari ukuri cyangwa atari ukuri nk’uko biteganywa n’ingingo ya 65 y’Itegeko n° 15/2004 ryo ku wa 12/06/2004 yasobanuwe haruguru. [14] Muri uru rubanza Mukakayibanda Julienne wakubiswe asanzwe ari umubyeyi mukuru wavutse mu mwaka wa 1965. Mu gutanga ikirego yasobanuye ko yakubiswe n’abantu asanzwe azi neza kuko baturanye, avuga ko ari Nzamwita Anaclet na Tuyiringire Faustin, abajijwe icyo bapfaga asobanura ko byashoboka ko ari inzigo yari afitiwe na Nzamwita Anaclet bitewe n’ubuhamya bumushinja yamutangiyeye ubwo yari ari mu rubanza rw’ubutane n’umugore we. [15] Iperereza rigaragaza kandi ko habajijwe abantu batandukanye bafite icyo baba bazi kuri iki cyaha barimo Nyiransanabandi Alphonsine, Mbanjineza Thomas, Nyitantezirayayo Belancila, Muhigirwa Sarathiel na Nyiranzeyimana, bose bakaba baturizwa ku kuba koko mu ijoro ryo kuwa 03/10/2020 Mukakayibanda Julienne yarakubiswe akavunwa akaguru kugeza aho ajyanwa mu bitaro bakamushyiraho igisima, ariko bamwe muri bo babazwa uwaba warabigizemo uruhare bagashinja Tuyiringire Faustin utarabashije guhita afatwa ariko bagera kuri Nzamwita Anaclet ntiyagire icyo bamutangazaho. Muri abo batangabuhamya harimo uwitwaga Mbanjineza Thomas akaba n’umuhungu wa Nzamwita Anaclet we wemeza ko yari yibereye aho icyaha cyakorewe, maze nyuma yo guterana amagambo hagati ya Mukakayibanda Julienne na se wamutukaga ko ari abasazi, Nzamwita Anaclet na Tuyiringire Faustin batangira kumukubita abonye bamurembeje ahita amutabariza ahamagara

umukuru w'umudugudu. Ibi ni nabyo bigarukwaho na Nyiranzeyimana Speciose wahageze nyuma atabaye akanagerageza guterura Mukakayibanda Julienne utarabashaka guhagarara, aho yasobanuye ko yasanze bavuga ko akubiswe na Nzamwita Anaclet na Tuyiringire Faustin. [16] Urukiko rurasanga ubuhamya bwatanzwe na Mukakayibanda Julienne wahohotewe bugomba guhabwa agaciro kubera ko bugaragaza ukuri kw'ibyo yakorewe, kandi ibisobanuro yatanze bikaba byuzuzwa neza n'imvugo z'abandi batangabuhamya bavuzwe haruguru. Kuba rero hari ibyo abatangabuhamya banyuranyaho kubyerekeranye n'igihe n'uburyo icyaha cyakozwemo, ibyo ubwabyo ntibihagije ngo bifatwe nko gushidikanya ku cyaha cyabaye. Icyari gikenewe kugaragzwa muri uru rubanza ni ukwerekana ko habayeho gukubitwa no gukomeretswa kwa

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Mukakayibanda Julienne, ndetse hakanerekanwa uwaba yarabigizemo uruhare wese, ibyo hakaba nta wundi wabimenya neza kuruta uwakorewe icyaha kandi azi neza abakimukorewe, waje kuzuzwa n'abandi batangabuhamya bari bahari icyaha kiba, bityo Nzamwita Anaclet akaba agomba guhanirwa icyaha cyo gukubita no gukomeretsa.

- b) Ibijyanye n'igihano cyahabwa Nzamwita Anaclet [17] Ingingo ya 121 al.2 y'itegeko N°68/2018 ryo kuwa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu ivuga ko “uhamijwe n'urukiko icyaha cyo gukubita cyangwa gukomeretsa undi ku bushake ahanishwa igifungo kitari munsi y'imyaka itatu (3) ariko kitarenze imyaka itanu (5) n'ihazabu y'amafaranga y'u Rwanda atari munsi y'ibihumbi magana atanu (500.000 Frw) ariko atarenze miliyoni imwe (1.000.000 Frw). [18] Urukiko rurasanga Nzamwita Anaclet agomba guhanwa hakurikijwe ibiteganywa n'iyi ngingo, bityo akaba ahanishijwe igifungo cy'imyaka itatu (3) n'ihazabu y'amafaranga y'u Rwanda ibihumbi magana atanu (500.000 Frw). III. ICYEMEZO CY'URUKIKO [19] Rwemeje ko ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane cy'Ubushinjacyaha gifite ishingiro; [20] Rwemeje urubanza RPA 00144/2021/TGI/RSZ rwaciwe kuwa 25/11/2021 n'Urukiko Rwisumbuye rwa Rusizi ihindutse mu ngingo zayo zose; [21] [Rwemeje ko Nzamwita Anaclet ahamwa n'icyaha cyo gukubita no gukomeretsa undi ku bushake; [22] Ruhanishije Nzamwita Anaclet igifungo cy'imyaka itatu (3) n'ihazabu y'amafaranga 500.000Frw; [23] Rumutegetse kandi gutanga amagarama y'urubanza angana n'amafaranga 70.000Frw atayatangira ku neza kandi mu gihe giteganywa n'amategeko akazavanwa mu byo ku ngufu za Leta.

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