

RWANDA / JUDGMENT

UBUSHINJACYAHA vs RAFIKI

RPAA 00653/2024/CA

COURT

Court of Appeal

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UBUSHINJACYAHA vs RAFIKI

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Text

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UBUSHINJACYAHA vs RAFIKI [Rwanda URUKIKO RW'IKIRENGA – RPAA00651/2024/CA (Rukundakuvuga, P.J.) 30 Nzeli 2025] Amategeko agenga Ibimenyetso – Ibimenyetso mu manza nshinjabyaha – Urukiko rwajuririwe nirwo ruba rugomba kugenzura ibimenyetso byashingiweho mu rubanza rujuririrwa, rukabiha agaciro rubisesenguriye hamwe n'ibyo ababuranyi (impande zombi) barugaragariye ; byaba birimo gushidikanya rugafata icyemezo kirengera uregwa. Incamake y'ikibazo: uru rubanza rwatangiye Ubushinjacyaha burega Rafiki mu Rukiko Rwisumbuye rwa Rusizi, bumukurikiranyeho icyaha cyo gusambanya umwana witwa A. E w'imyaka cumi n'irindwi(17) , bumusabira igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25). Rafiki yaburanye ahakana icyaha. Urukiko mu rubanza RP00226/2021/TGI/RSZ, rushingiye ku mvugo z'abatangabuhamya, kuri raporo ya muganga igaragaza ko A.E yasambanyijwe ndetse no ku cyemezo cy'amavuko kigaragaza ko yari akiri umwana, rwemeza ko icyaha kimuhama, rumuhanisha igifungo cy'imyaka 22. Rafiki ntiyishimiye imikirize y'urubanza, ajuririra Urukiko Rukuru/Urugereko rwa Rusizi avuga ko yahamijwe icyaha atakoze kandi ko abatangabuhamya bamushinja atabazi, abe bakaba batarabajijwe; avuga ko iyo abamushinja baba baramubonye asambanya umwana koko, hatari gushira amezi atatu atarafatwa ngo akurikiranwe; avuga kandi

ko atari kumusambanyiriza muri alimentation kandi nawe afite inzu. Asaba kurenganurwa. Ubushinjacyaha buvuga ko ubujurire bwe nta shingiro bufite. Urukiko mu rubanza RPA00065/2022/HC/RSZ, rwasanze Rafiki atavuguruza ibimenyetso byashingiweho mu rubanza rujuririrwa byemeza nta shiti ko icyaha ashinjwa kimuhama, rwemeza ko ubujurire bwe nta shingiro bufite ariko rumugabanyiriza igihano, ahanishwa igifungo cy'imyaka cumi n'umunani (18). Rafiki ntiyishimiye imikirize y'urubanza, yongera kujuririra Urukiko rw'Ubujurire, avuga ko yahamijwe icyaha atakoze, ko Inkiko zabanje zashingiye ku bimenyetso bitari ukuri kandi ibye bimushinjura bititaweho. Ubushinjacyaha buvuga ko impamvu z'ubujurire za Rafiki nta shingiro zifite. Mu iburanisha Urukiko rwasanze hari ibikirimu urujijo ku mikorere y'icyaha, rutegeka ko mbere y'uko urubanza rucibwa ubushinjacyaha hamwe n'uwunganira uregwa basubira aho icyaha cyakorewe bakabaza abatangabuhamya bavugwa ko batabajijwe n'abandi bari bahari ubwo icyaha cyakorwaga. Nyuma y'iperereza ry'inyongera, iburanisha ryarasubukuwe abuburanyi basobanurira urukiko ko basanga ibimenyetso byari byashingiweho uregwa ahamwa n'icyaha bihabanye n'ibyavuye mu iperereza. Urukiko mu rubanza RPAA00651/2024/CA rwasanz ubuhamya bwashingiweho n'Urukiko Rukuru budafite ireme ndetse ko na raporo ya muganga yakozwe nyuma y'iminsi icyenda(9) icyaha gikozwe igaragaza ko nta karangabusugi agifite, bitahita bihuzwa na Rafiki mu gihe nta kindi kimenyetso kigaragaza nta shiti ko ariwe byaba byaraturutseho. Ubujurire bufite ishingiro. Rafiki ni umwere ku cyaha cyo gusambanya umwana. Incamacye y'icyemezo: Urukiko rwajuririwe nirwo ruba rugomba kugenzura ibimenyetso byashingiweho mu rubanza rujuririrwa, rukabiha agaciro rubisesenguriye hamwe n'ibyo ababuranyi (impande zombi) barugaragarije; byaba birimo gushidikanya rugafata icyemezo kirengera uregwa. Nta mategeko yashingiweho.

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Imanza zifashshijwe: Urubanza RPA0084/10/CS, haburana ubushinjacyaha na GATERA rwaciwe n'Urukiko rw'Ikirenga ku wa 9/05/2014, Vol [2015] 4 RL. Urubanza RPAA00340/2022/CA, haburana Ubushinjacyaha na NDIZIHIWE Fabrice n'undi rwaciwe n'Urukiko rw'Ubujurire ku wa 20/12/2024. Urubanza. I. IMITERERE Y'URUBANZA [1] Ku wa 15/03/2021, A. E1 w'imyaka 17 y'amavuko, yatanze ikirego mu Bugenzacyaha avuga ko arega Rafiki Elie ko ku wa 07/03/2021 bari mu Mugugudu wa Rubyiruko, Akagali ka Rushyarara, Umurenge wa Karambi, Akarere ka Nyamasheke, Intara y'Iburengerazuba, yamusambanyije ubwo yari agiye kumwaka amafaranga ya telephone ye yari yamugurishirije, aho kuyamuhera aho amusanze amubwira kumusanga mu nzu kwa Shumbusho (quantine). A. E yinjiye mu cyumba aho yari ari, babanza kurwana ariko amurusha imbaraga, aramusambanya. Nyuma y'iperereza, Ubushinjacyaha bwareze Rafiki Elie mu Rukiko Rwisumbuye rwa Rusizi, bumukurikiranyeho icyaha cyo gusambanya umwana, bumusabira igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25). Rafiki Elie yaburanye ahakana icyaha. [2] Mu rubanza RP00226/2021/TGI/RSZ, rwaciwe ku wa 04/02/2022, Urukiko Rwisumbuye rwa Rusizi, rwasanze hari abatangabuhamya bamushinja barimo Mushimiyimana Erneste wavuze ko A.E akimara gusambanywa yabibabwiye; umutangabuhamya Ingabire Alphonsine wavuze ko yamutiye igitege ajya gukaraba kuko yashokaga amaraso ku maguru, n'umutangabuhamya Ndikubwimana Esidirasi wahamije ko yumvise abantu bagundagurana mu

cyumba agakubita urugi maze agasanga Rafiki amuri hejuru ari kumusambanya. Rwasanze kandi hari raporo ya muganga igaragaza ko A.E yasambanyijwe n'icyemezo cy'amavuko kigaragaza ko yari akiri umwana, rwemeza ko icyaha kimuhama maze rumuhanisha igifungo cy'imyaka 22. [3] Rafiki Elie ntiyishimiye imikirize y'urubanza, ajuririra Urukiko Rukuru/Urugereko rwa Rusizi avuga ko yahamijwe icyaha atakoze kandi ko abatangabuhamya bamushinja atabazi, abe bakaba batarabajijwe ; ko iyo baba baramubonye asambanya umwana koko hatari gushira amezi atatu atarafatwa ngo akurikiranwe; ko ndetse bitari gushoboka ko amusambanyiriza muri alimentation kandi nawe afite inzu. Asaba kurenganurwa. [4] Mu rubanza RPA00065/2022/HC/RSZ, rwaciwe ku wa 10/07/2024, Urukiko Rukuru/Urugereko rwa Rusizi rwasanze ibimenyetso byashingiweho mu rubanza rujuririrwa byemeza nta shiti ko icyaha ashinjwa kimuhama ariko rumugabanyiriza igihano, ahanishwa igifungo cy'imyaka cumi n'umunani (18). [5] Rafiki Elie ntiyishimiye imikirize y'urubanza, maze yongera kujuririra Urukiko rw'Ubujurire, urubanza rwe ruhabwa RPAA00651/2024/CA. Iburanisha mu ruhamye ryashyizwe ku wa 10/03/2025 uwo munsu ugeze, Rafiki Elie yitaba yunganiwe na Me Ndwaniye Pierre Claver, naho Ubushinjacyaha buhagarariwe na Ninahazwa Roselyne, Umushinjacyaha ku Rwego rw'Igihugu; [6] Mu bujurire bwe, Rafiki Elie yavuze ko yahamijwe icyaha atakoze, ko hashingiwe ku bimenyetso bitari ukuri kandi ibye bikaba bitaritaweho. Me Ndwaniye Pierre Claver, umwunganira we mu mwanzuro w'inyongera yasabye ko yagabanyirizwa igihano.

1 Izina ryahahawe umwana ku bw'umutekano we

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[7] Uhagarariye Ubushinjacyaha yavuze ko impamvu z'ubujurire za Rafiki Elie nta shingiro zifite, ko kandi n'impamvu y'ubujurire yatanze n'umwunganizi we itakwagirwa kuko yatanze nyuma y'ibihe byo kujurira. [8] Mu iburanisha, Me Ndwaniye Pierre Claver yisubiyeho avuga ko nawe asanga uwo yunganira nta cyaha yakoze, ko ibiri mu mwanzuro we w'inyongera atakibishingiyeho, ko atari yasomye dosiye neza kubera kuyihabwa bitinze. Urubanza rwaraburanishijwe rurapfundikirwa hategekwa ko ruzasomwa kuwa 28/03/2025, ariko uwo munsu ntirwasomwa kuko Urukiko rwasanze hari ibikirimo urujijo ku mikorere y'icyaha, rutegeka ko mbere y'uko urubanza rucibwa ubushinjacyaha hamwe n'umwunganira uregwa basubira aho icyaha cyakorewe bakabaza abatangabuhamya bavugwa ko batabajijwe n'abandi bari bahari ubwo icyaha cyakorwaga. [9] Nyuma y'iperereza ry'inyongera, iburanisha ryarasubukuwe ku wa 09/09/2025, abuburanyi (impande zombi) basobanurira urukiko ko basanga ibimenyetso byari byashingiweho uregwa ahamwa n'icyaha bihabanye n'ibyavuye mu iperereza. [10] Muri uru rubanza harasuzumwa niba hari inenge zigaragara mu bimenyetso byashingiweho n'Urukiko Rukuru/Urugereko rwa Rusizi mu guhamya Rafiki Elie icyaha cyo gusambanya umwana. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba hari inenge zigaragara mu bimenyetso byashingiwe n'Urukiko Rukuru/Urugereko rwa Rusizi mu guhamya Rafiki Elie icyaha cyo gusambanya umwana. [11] Rafiki Elie na Me Ndwaniye Pierre Claver umwunganira bavugaga ko uregwa atigeze asambanya A.E, ko ikibazo bagiranye ari icya telephone, ko abatangabuhamya bamushinja kumusambanya we atabazi ndetse batari bahari ubwo bashyamiranaga kubera iyo telefoni. Basobanura ko

mu iperereza ry'inyongera ryategetswe n'uru Rukiko, ababajijwe kandi bari bahibereye ubwo aba bombi bashyamiranaga, bose bemeje ko Rafiki Elie atigeze asambanya A.E, ndetse ko banahamije ko n'umukobwa ubwe yabajijwe akavuga ko ibyo nta byabayeho, ahubwo ababyeyi be aribo bazanye ibyo gusambanywa nyuma yo kumva ko umukobwa wabo yarwaniye muri centre. Basaba ko hashingirwa ku Ngingo ya 1112 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishiriza y'imanza nshinjabyaha akarenganurwa. [12] Uhagarariye Ubushinjacyaha yavuze ko mu iperereza ry'inyongera habajijwe abatangabuhamya Emmanuel Ntakiyimana wari umuyobozi w'inzego z'ibanze igihe ikibazo cyabaga, na Mushimiyimana Alfred nawe wacururizaga aho kuri centre, bose bahamya ko ibivugwa ko Rafiki Elie yasambanyije A.E atari ukuri kuko nta byigeze bibaho, ko ahubwo bapfuye amafaranga umukobwa atahaye Rafiki Elie kandi yamukoreye telephone nawe akayimwima. Avuga ko ibyo byatumye ababyeyi b'umukobwa barakara ngo umukobwa wabo yasebye, bahita bamuhimbira icyaha ashinjwa. Yavuze ko ababajijwe basobanuye ko icyo kibazo cya telephone bo bari bamaze kugikemura, ko batazi uko Rafiki Elie yarezwe icyaha cyo gusambanya A.E, ko ahubwo babyumvise bagatungurwa, babaza umukobwa akababwira ko ibyo bitigeze bibaho ko ari ababyeyi be babiteye, ko Rafiki Elie yarenganurwa kuko arengana. [13] Uhagarariye Ubushinjacyaha yongeyeho ko iyo hasesenguwe imvugo zari zashingiweho mu rubanza rujurirwa zashinjaga Rafiki Elie, usanga atari ukuri kuko bose ntawemeza ko yamubonye ari kumusambanya, ko nk'umudamu witwa Alphonsine we atigeze ahamya ko yabyibonye n'amaso ye uretse kuvuga ko yabonye A.E amucaho ariko ko yamubajije icyo abaye akamwihorera, ntagire icyo amubwira. Uhagarariye Ubushinjacyaha akavuga ko rero asanga ibyo bimenyetso byashingiweho atari

2 Iyo ngingo iteganya ko: « Gushidikanya birengera ushinjwa. Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze».

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ibimenyetso bishobora guhamya ko Rafiki Elie yasambanyije umwana uvugwa, bityo ko urukiko rwazashingira ku Ngingo ya 1083 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha rukabifataho icyemezo. UKO URUKIKO RUBIBONA [14] Muri uru rubanza impaka zishingiye ku kumenya niba Rafiki Elie akwiye guhamwa n'icyaha igihe ibimenyetso Urukiko Rukuru/Urugereko rwa Rusizi rwari rwashingiyeho bivuguruzwa n'ibyo impande zombi (ubushinjacyaha n'uregwa) zemeranyaho nyuma y'iperereza zakoze. [15] Mu manza zitandukanye zaciye n'uru Rukiko, hemejwe ko Urukiko rwajuririwe arirwo ruba rugomba kugenzura ibimenyetso byashingiweho mu rubanza rujurirwa, rukabiha agaciro rubisesenguriye hamwe n'ibyo ababuranyi (impande zombi) barugaragariye 4 ; byaba birimo gushidikanya rugafata icyemezo kirengera uregwa. [16] Mu guhamya Rafiki Elie icyaha, Urukiko Rukuru/Urugereko rwa Rusizi rwashingiye ku bimenyetso bivugwa mu gika cya 12 na 13 by'urubanza RPA00065/2022/HC/RSZ rujurirwa, birimo imvugo z'abatangabumya Ndikubwimana Esdras ushinja Rafiki Elie ko yamubonye asambanya umwana A.E ndetse na Ingabire Alphonsine nawe wemeza ko A.E yasohotse mu nzu kwa Shumbusho abantu barimo bamushungera bavuga

ko yasambanye maze amutiza igitenge ngo yambare kuko yari yavundaguritse ndetse ngo akaba yaravaga amaraso, ashoka ku maguru, bigahuzwa n'ibyo umwana A.E watanze ikirego avuga ko Rafiki yamusambanyije babanje kugundagurana akamurusha ingufu. [17] Nk'uko byagarutsewe haruguru Rafiki Elie yaburanye avuga ko abo batangabuhamya batazwi muri centre akoreramo, ko ndetse nta n'abari bahari igihe agirana ikibazo cya Telephone na A.E. [18] Mu iperereza ry'inyongera ryategetswe n'uru Rukiko, Ubushinjacyaha buri kumwe na Me Ndwanaye Pierre Claver wunganira Rafiki bwabajije abatangabuhamya batandukanye barimo Ntakiyimana Emmanuel, umwe mu bayobozi ba centre na Mushimiyimana Alfred wakoreraga kuri centre aho Rafiki nawe yakoreraga, hagati yabo hakaba hari haciyemo umuryango umwe. Aba basobanuye ko A.E yaje gukoresha Telephone kwa Rafiki hanyuma arayimukorera, ariko umukobwa abura ubwishyu, undi nawe yanga kuyimuha, amakimbirane atangirira aho, abantu benshi barahurura. Bavuze ko bishoboka ko byageze ku babyeyi b'umukobwa, bakumva umwana wabo yasebye, akaba ari byo byaba byaratumye babeshyera Rafiki ko yamusambanyije. Bavuga kandi ko ubuyobozi bwa centre bwinjiye mu kibazo k'iyi telefoni bukagikemura bikarangira ndetse ko bakira icyo kibazo ibyo gusambanywa ntabyavuzwe. Ntakiyimana Emmanuel yabajijwe niba nk'uwari Umuyobozi wa centre we atarabonye ibyabonywe n'umutangabuhamya Ingabire Alphonsine wavuze ko yabonye A.E asohoka kwa Shumbusho yahindanye avirirana amaraso ku maguru, asubiza ko ibyo ntabyabayeho ko iyo biba bari kubishyikiriza inzego zibishinzwe. [19] Usibye ibyavuye mu iperereza ry'inyongera kandi, muri dosiye hari inyandiko mvugo y'ibazwa mu Bugenzacyaha ryo ku wa 05/06/2021 rya Shumbusho Jean Bosco, nyiri quantine bivugwa ko icyaha cyakorewemo (uyu yarezwe nk'umufatanyacyaha, ariko ageze mu Bushinjacyaha ararekurwa). Mu ibazwa rye yasobanuye ko nta cyumba agira kirimo umucanga nk'uko byavuzwe n'uwahohotewe kandi

3 Ingingo ya 108 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, agace kayo ka 2 kavuga ko: «Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose bishinja cyangwa bishinjura ari byo kandi bishobora kwemerwa». 4 Ibi byemejwe mu rubanza RPA0084/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 9/05/2014 haburana bushinjacyaha na GATERA, Vol [2015] 4 RL. Uyu murongo kandi wakomeje kugenderwaho mu manza zitandukanye zirimo n'urubanza N° RPAA 00340/2022/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 20/12/2024 Ubushinjacyaha buburana na NDIZIHIWE Fabrice n'undi (igika cya 39).

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ko aho akorera nta gitanda kiba muri icyo cyumba. Yasobanuye ko Elie Rafiki na A.E binjiye mu nzu ye baje kunywa icyayi, uwo mwana amusaba kubakopa, undi aranga amubwira ko atazongera gukopa icyayi. Bahise batambuka bajya aho banywera icyayi, uwo mwana aramubwira ngo nazane icyayi n'amandazi baramwishyura, arabibaha barangije barishyura barasohoka. Yasobanuye kandi ko ibyo byabaye ku wa 07/03/2021, bigeze ku wa 13/03/2021 yumva umugore we amubwira ko bamutanzeho umuhamya ko hari umuntu bafatiye mu nzu iwe, baramusambanya, aza kumenya ko ari uwo mukobwa bavuga A.E. Shumbusho kandi yahakanye ibikorwa byose bijyanye n'isambanywa rya A.E mu nzu ye. [20] Uru Rukiko rurasanga ibivugwa n'abatangabuhamya babajijwe mu iperereza ry'inyongera bihuriza n'imiburanire ya Rafiki Elie ku

kuba we n'umukobwa ashinjwa gusambanya baragiranye ikibazo cya telefoni, ariko ko nta kibazo kijyanye no gusambanywa bagiranye. Rurasanga kandi nk'uko byagarutsweho haruguru Shumbusho Jean Bosco waregwaga kuba ari umufatanyacyaha, kuko uwo mukobwa yasambanyirijwe mu nzu ye, mu mabazwa ye yarahakanye ko uwo mukobwa yasambanyirijwe mu nzu ye, ndetse bigaragara ko ageze mu Bushinjacyaha yarekuwe kuko nta bimenyetso byagaragazaga ko ari ko byagenze koko. [21] Uru rukiko rushingiye kuri ibi ndetse no kuba A.E yarajyanwe kwa muganga ku wa 16/03/2021 mu gihe bivugwa ko yasambanyijwe ku wa 07/03/2021, ni ukuvuga nyuma y'iminsi 9, byumvikana ko kuba muganga yaragaragaje ko nta karangabusugi agifite bigoye guhita bihuzwa na Rafiki Elie mu gihe nta kindi kimenyetso kigaragaza nta shiti ko ariwe byaba byaraturutseho. [22] Kuba rero Urukiko Rukuru/Urugereko rwa Rusizi rwarahuje raporo ya muganga ivugwa mu gika kibanziriza iki n'ubuhamya budafite ireme nk'uko byagaragajwe, rukabiheraho rukemeza ko Rafiki Elie ahamwa n'icyaha, uru Rukiko rusanga ari inenge ikomeye ituma urwo rubanza rugomba guhinduka, akagirwa umwere. III. ICYEMEZO CY'URUKIKO [23] Rwemeje ko Ubujurire bwa Rafiki Elie bufite ishingiro; [24] Rwemeje ko urubanza RPA00065/2022/HC/RSZ, rwaciwe n'Urukiko Rukuru Urugereko rwa Rusizi, ku wa 10/07/2024 ruhindutse mu ngingo zarwo zose; [25] Rwemeje ko Rafiki Elie adahamwa n'icyaha cyo gusambanya A.E; [26] Rutegetse ko Rafiki Elie ahita arekurwa uru rubanza rukimara gusomwa. [27] Rutegetse ko amagarama y'urubanza aherera ku isanduku ya Leta kuko Rafiki Elie ari umwere.

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