

RWANDA / JUDGMENT

UBUSHINJACYAHA v SHUMBUSHO

RPAA 00345/2024/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v SHUMBUSHO

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Text

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UBUSHINJACYAHA v SHUMBUSHO [Rwanda URUKIKO RW'UBUJURIRE - RPAA 00345/2024/CA (Rugabirwa, P.J.) 20 Ukuboza 2024] Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Igabanya gihano – Kutongera kugabanyirizwa ibihano - Uregwa ntabwo yongera kugabanyirizwa ibihano, iyo mu bujuri Urukiko rusanze yarabigabanyirijwe bihagije, harebwe uburemere bw'icyaha n'uburyo cyakozwemo. Incamake y'ikibazo: Ku wa 30/11/2019, Turikunkiko yugamye imvura kwa Rosine bita Vedaste ngo amutwara indorerwamo hanyuma haba amakimbirane, Turamyumukiza, Shumbusho na Rukundo bafasha Rosine gukubita Turikunkiko biza kumuviramo gupfa. Ubushinjacyaha bwabareze mu Rukiko Rwisumbuye rwa Huye icyaha cy'ubwicanyi bubasabira igihano cy'igifungo cya burundu. Shumbusho yaburanye yemera ko yakubise umutego nyakwigendera naho Rosine akamukubita itafari mu musaya no mu mpyiko hanyuma barahunga. Urukiko rwasanze Turamyumukiza ahamwa n'icyaha cyo gukubita no gukomeretsa ku bushake, rumuhanisha igifungo cy'imyaka 4 n'ihazabu ya 500.000 Frw, rwemeza kandi ko Shumbusho na Rukundo bahamwa n'ubufatanyacyaha bw'icyaha cy'ubwicanyi, rubahanisha igifungo cya burundu kuri buri wese. Shumbusho yajuririye icyo cyemezo mu Rukiko Rukuru asaba kugabanyirizwa igihano na we agahanishwa igifungo cy'imyaka ine kuko

atigeze yica nyakwigendera ahubwo yamukubise umutego Rosine akamukubita itafari ryamwishe. Urukiko rushingiye ko Shumbusho yemera uruhare rwe mu rupfu rwa Turikunkiko, rwamugabanyirije igihano rumuhanisha igifungo cy'imyaka 15. Uregwa ntiyanyuzwe, atanga ubujurire bwe mu Rukiko rw'Ubujurire hasuzumwa ikibazo cyo kumenya niba Shumbusho yakongera kugabanyirizwa ibihano kubera ko yemeye icyaha akanagisabira imbabazi. Shumbusho asobanura ko akwiye kongera kugabanyirizwa ibihano kubera ko yemera icyaha cy'ubwicanyi akanagisabira imbabazi, kuko yatanze inkunga ya ngombwa kugira ngo mugenzi we amwice, kuba ari ubwa mbere akoze icyaha, no kuba yarakoze icyaha akiri muto kuko yari afite imyaka 19 y'amavuko. Ubushinjacyaha buvuga ko uregwa atakongera kugabanyirizwa ibihano hashingiwe ku kwemera icyaha, kuko atacyemeye mbere hose, ko ahubwo acyemeye impitagihe, kuko acyemereye bwa mbere muri uru Rukiko bityo igifungo cy'imyaka 15 yahawe cyagumaho. Incamake y'icyemezo: Uregwa ntabwo yongera kugabanyirizwa ibihano, iyo mu bujurire Urukiko rusanze yarabigabanyirijwe bihagije, harebwe uburemere bw'icyaha n'uburyo cyakozwemo. Ubujurire nta shingiro bufite. Amategeko yashingiweho: Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 2.

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Imanza zifashishijwe: RPA 0129/10/CS, Ubushinjacyaha na Mpitabakana rwaciwe n'Urukiko rw'Ikirenga ku wa 7/03/2014; RPAA 00424/2022/CA, Ubushinjacyaha na Ngiruwonsanga Ibrahim rwaciwe n'Urukiko rw'Ubujurire ku wa 25/09/2024. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 30/11/2019, Turamyumukiza Cassien alias Cyiza, Shumbusho Samuel alias Gice na Rukundo Jean Paul baketsweho kwica uwitwa Turikunkiko Juma kuko bugamye k'uwitwa Rosine amutwara lunette ze, batangira imirwano, abaregwa nabo bafasha Rosine gukubita Turikunkiko Juma biza kumuviramo urupfu. [2] Nyuma y'iperereza, Ubushinjacyaha bwabareze mu Rukiko Rwisumbuye rwa Huye bubakurikiranyeho icyaha cy'ubwicanyi, bubasabira igifungo cya burundu kuri buri wese. Shumbusho Samuel alias Gice yaburanye yemera ko yakubise umutego Turikunkiko Juma, naho Rosine amukubita itafari inshuro 3 mu musaya n'inshuro ya 4 mu mbyiko babonye ategutse bahita biruka barahunga. [3] Urukiko Rwisumbuye rwa Huye rwaregwe, rushingiye ku mvugo z'abaregwa bashinjanya kugira uruhare mu ikubitwa rya nyakwigendera Turikunkiko Juma kugeza apfuye, ku mvugo z'abatangabuhamya barimo Sindukubwabo Aloys wari utetse amazi mu gikoni aho intonganya n'imirwano byabanje no kuri raporo ya muganga igaragaza ko Turikunkiko Juma yishwe n'ububabare yagize ku mubiri, ndetse n'ibikomere byo mu mutwe, rwaciye urubanza n° RP 00023/2020/TGI/HYE ku wa 10/12/2020, rwemeza ko Turamyumukiza Cassien alias Cyiza adahamwa n'icyaha cy'ubwicanyi, ahubwo ahamwa n'icyaha cyo gukubita no gukomeretsa ku bushake, rumuhanisha igifungo cy'imyaka 4 n'ihazabu ya 500.000 Frw, rwemeza kandi ko Shumbusho Samuel alias Gice na Rukundo Jean Paul bahamwa n'ubufatanyacyaha bw'icyaha cy'ubwicanyi, rubahanisha igifungo cya burundu kuri buri wese. [4] Shumbusho Samuel alias Gice yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Nyanza, asaba kugabanyirizwa igihano kuko abo bafatanije gukora icyaha babigabanyirijwe bahanishwa igifungo cy'imyaka 4, kandi ko yakubise Turikunkiko Juma umutego, naho Rosine amutera ibuye

ryamwishe. Naho uhagarariye Ubushinjacyaha avuga ko ubujurire bwe nta shingiro bufitte kubera ko ibyo avuga atari ko byagenze, ko ahubwo uko byagenze ari uko imirwano yabaye mu byiciro bibiri kuko babanje gukubita nyakwigendera arabahunga bamwirukaho, muri uko kumwirukaho, Shumbusho Samuel amukubita umutego agwa hasi, maze Védaste amukubita amabuye yamuviriyemo gupfa. [5] Urukiko Rukuru rushingiye ku kuba Shumbusho Samuel yemera ko yakubise umutego nyakwigendera Turikunkiko Juma akagwa hasi bigatuma Védaste bita Rosine amukubita itafari ryamuviriyemo gupfa, ibyo byerekana ko Shumbusho Samuel yagize uruhare mu rupfu rwa Turikunkiko Juma, ko kuba yemera uruhare rwe mu ikorwa rw'icyaha, no kuba aribwo bwa mbere aguye mu cyaha, akwiriye kugabanyirizwa ibihano, ruca urubanza N° RPA 01110/2020/HC/NYZ

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ku wa 03/05/2024, rwemeza ko imikirize y'urubanza rwajuririwe ihindutse ku bijyanye n'ibihano, ruhanisha Shumbusho Samuel alias Gice igifungo cy'imyaka 15. [6] Shumbusho Samuel yajuririye urwo rubanza mu Rukiko rw'Ubujurire, ubujurire bwe buhabwa N° RPAA 00345/2024/CA, urubanza ruburanishwa mu ruhamwe ku wa 10/12/2024, Shumbusho Samuel yunganiwe na Me Ruganza Bin SEBA, naho Ubushinjacyaha buhagarariwe na Ntawangundi Béatrice, Umushinjacyaha ku rwego rw'Igihugu. [7] Mu mwanzuro w'ubujurire no mu miburanire, Shumbusho Samuel n'umwunganira bavuga ko atakoze icyaha cy'ubufatanyacyaha bw'ubwicanyi, ko ahubwo yakoze icyaha cyo gukubita no gukomeretsa kubera ko yakubise Turikunkiko Juma umutego akagwa hasi, asaba ko yakongera kugabanyirizwa igihano kuko yemera icyaha cyo gukubita no gukomeretsa akanagisabira imbabazi. [8] Ariko ku munsu w'iburanisha ry'urubanza, Shumbusho Samuel n'umwunganira bavuga ko batakiburanishije ibijyanye no guhindurirwa inyito y'icyaha, ko ahubwo akwiye kongera kugabanyirizwa ibihano kubera ko yemera icyaha cy'ubwicanyi akanagisabira imbabazi, kuko yatanze inkunga ya ngombwa kugira ngo mugenzi we amwice, kuba ari ubwa mbere akoze icyaha, no kuba yarakoze icyaha akiri muto kuko yari afite imyaka 19 y'amavuko. [9] Naho uhagarariye Ubushinjacyaha avuga ko Shumbusho Samuel atakongera kugabanyirizwa ibihano hashingiye ku kwemera icyaha, kuko atacyemeye mbere hose, ko ahubwo acyemeye impitagihe, kuko acyemereye bwa mbere muri uru Rukiko. Asaba ko igifungo cy'imyaka 15 yahawe cyagumaho, kuko gikwiranye n'uburemere bw'icyaha yakoze, kandi ko atagaragaza inenge ziri mu rubanza rujuririrwa. [10] Urukiko ruherereye kuri izo mpaka, rurasanga ikibazo gikwiye gusuzumwa muri uru rubanza ari icyo kumenya niba Shumbusho Samuel yakongera kugabanyirizwa ibihano kubera ko yemeye icyaha akanagisabira imbabazi. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba Shumbusho Samuel alias Gice yakongera kugabanyirizwa ibihano kubera ko yemeye icyaha akanagisabira imbabazi [11] Shumbusho Samuel n'umwunganira bavuga ko atakiburanishije ibijyanye no guhindurirwa inyito y'icyaha, ko ahubwo akwiye kongera kugabanyirizwa ibihano kubera ko yemera icyaha cy'ubwicanyi kuko yemera ko yatanze inkunga ya ngombwa kugira ngo mugenzi we Turikunkiko Juma yicwe, kuko yamukubise umutego agwa hasi, bituma Rosine amukubita itafari inshuro 3 mu musaya n'inshuro ya 4 mu mbyiko bimuviramo gupfa, kuba ari ubwa mbere akoze icyaha, no kuba yaragikoze akiri muto kuko yari afite imyaka 19 y'amavuko, agahanishwa igifungo kitari

munsi y'imyaka 15 nk'uko biteganywa n'ingingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, iteganywa ko iyo hari mpamvu nyoroshyacyaha, uwari guhanishwa igifungu cya burundu, ahanishwa igifungu kitari munsi y'imyaka 15.

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[12] Uhagarariye Ubushinjacyaha avuga ko Shumbusho Samuel atakongera kugabanyirizwa ibihano hashingiwe ku mpamvu z'uko yemeye icyaha akanagisabira imbabazi, kuba ari ubwa mbere akoze icyaha, no kuba yaragikoze akiri muto afite imyaka 19 y'amavuko, kuko yemereye icyaha bwa mbere muri uru Rukiko, kubera ko yagihakanye mu manza zaciwe mbere, no kuba izo mpamvu ashingiraho zituzuzwa cyangwa ngo zisobanure izatanzwe mu bihe by'ubujurire byemewe n'amategeko. [13] Avuga ko ahubwo igifungu cy'imyaka 15 yahawe cyagumaho, kuko uretse no kuba gikwiranye n'uburemere bw'icyaha yakoze, atagaragaza inenge ziri mu rubanza rujuririrwa nk'uko biteganywa n'ingingo ya 181, igika cya mbere, ndetse n'ingingo ya 183, agace ka 5 n'aka 6, y'Itegeko N°027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'ianza nshinjabyaha. UKO URUKIKO RUBIBONA [14] Ingingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko n° 68/2018 ryo kuwa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, iteganywa ko "Iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanywa igihano ku buryo bukurikira: (a) igifungu cya burundu gishobora kugabanywa ariko ntikijye munsi y'igihano cy'igifungu cy'imyaka 15". [15] Ikibazo cy'uko uregwa atongera kugabanyirizwa ibihano, iyo mu bujurire Urukiko rusanga yarabigabanyirijwe bihagije, harebwe uburemere bw'icyaha n'uburyo icyaha cyakozwemo, cyatanzweho umurongo mu rubanza N° RPA 0129/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 7/03/2014, haburana Ubushinjacyaha na MPITABAKANA, hatanzwe umurongo w'uko uregwa atongera kugabanyirizwa ibihano, iyo mu bujurire Urukiko rusanga yarabigabanyirijwe bihagije, harebwe uburemere bw'icyaha n'uburyo icyaha cyakozwemo. Uyu murongo ninawo wagiye ushingirwaho mu zindi manza zaciwe n'uru Rukiko nk'urubanza N° RPAA 00424/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 25/09/2024 haburana Ubushinjacyaha na NGIRUWONSANGA Ibrahim (igika cya 18). [16] Nk'uko bigaragarira mu bika bya 17 na 18 by'urubanza rwajuririwe muri uru Rukiko, Urukiko Rukuru rwasanze Shumbusho Samuel alias Gice yemera uruhare yagize mu rupfu rwa Turikunkiko Juma, kuko yemeye ko yakubise umutego nyakwigendera akagwa hasi bigatuma uwitwa Védatsé Rosine amukubita itafari ryamuviriyemo urupfu, bityo ko kuba uregwa yemera urwo ruhare rwe mu ikorwa ry'icyaha, no kuba aribwo bwa mbere aguye mu cyaha, rwamugabanyirije ibihano hashingiwe kuri izo mpamvu nyoroshyacyaha, rumuhanisha igifungu cy'imyaka 15 hashingiwe ku ngingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 ryavuzwe haruguru. [17] Hashingiwe ku ngingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 ryavuzwe haruguru, no ku murongo watanzwe mu rubanza N° RPA 0129/10/CS rwavuzwe haruguru, Urukiko rw'Ubujurire rurasanga Shumbusho Samuel alias Gice atakongera kugabanyirizwa ibihano hashingiwe ku mpamvu z'uko yemeye icyaha, kuba ari ubwa mbere agikoze afite imyaka 19 y'amavuko nk'uko abivuga, kubera ko Urukiko Rukuru

rwakimugabanyirije bihagije, rumuhanisha igifungo cy'imyaka 15, aho kuba igifungo cya burundu, hashingiwe ku mpamvu nyoroshyacyaha z'uko yemeye icyaha anagisabira imbabazi, no kuba ari ubwa mbere agikoze icyaha, bityo igifungo cy'imyaka 15 kigomba kugumaho harebwe uburemere bw'icyaha

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cy'ubufatanyacyaha bw'ubwicanyi yahamijwe, bivuze ko imikirize y'urubanza rujuririrwa itagomba guhinduka ku birebana n'igihano. III. ICYEMEZO CY'URUKIKO [18] Rwemeje ko ubujurire bwa Shumbusho Samuel alias Gice nta shingiro bufite. [19] Ruvuze ko imikirize y'urubanza N° RPA 01110/2020/HC/NYZ, rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, ku wa 03/05/2024, idahindutse, ko igifungo cy'imyaka cumi n'itanu (15) Shumbusho Samuel alias Gice yahanishijwe kigumyeho. [20] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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