

RWANDA / JUDGMENT

UBUSHINJACYAHA v. NZAJYIBWAMI

RPAA 0101/09/CS

COURT

Supreme Court

DECIDED

9 March 2012

CASE / FILE NUMBER

RPAA 0101/09/CS

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UBUSHINJACYAHA v. NZAJYIBWAMI

- Source: Amategeko
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- Date: 2012-03-09
- Case/document no.: RPAA 0101/09/CS
- Collection: Supreme Court

Text

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UBUSHINJACYAHA v. NZAJYIBWAMI [Rwanda URUKIKO RW'IKIRENGA – RPAA 0101/09/CS (Zainabo, P.J., Mukanyundo na Mukamulisa, J.) 09 Werurwe 2012] Amategeko agenga imanza nshinjabyaha – Iperereza – Urukiko ntirutegetswe byanze bikunze gukora iperereza cyangwa se kubaza abatangabuhamya buri gihe cyose uko umuburanyi abisabye mu gihe rwumva rwanyuzwe n'ibimenyetso rwashyikirijwe kandi n'ababuranyi bose bahawe umwanya uhagije wo kubyisobanuraho. Amategeko agenga imanza nshinjabyaha – Iperereza – Nta kimenyetso kamara mu guca urubanza umucamanza ategetswe kubona mbere y'uko afata icyemezo, ahubwo afata icyemezo akurikije umutimanama n'ubushishozi bye (intime conviction) ; kandi Urukiko nirwo ruhamya ku buryo butavuguruzwa ko ibimenyetso byose bishinja cyangwa bishinjura aribyo kandi bishobora kwemerwa. Amategeko agenga imanza nshinjabyaha – Agaciro k'ubuhamya – Agaciro k'ubuhamya ntigashingira ku babutanga cyangwa umubare wabo,

ahubwo gashingira ku kuri gukubiye muri ubwo buhamya. Ubuhamya bw'abantu ntibwateshwa agaciro n'uko bafitanye amasano hagati yabo, cyangwa se bafite inyungu mu rubanza, kuko agaciro kabwo kadashingiye ku babutanga ahubwo gashingiye ku kuri gukubiye muri ubwo buhamya,

ako gaciro kakemezwa n'Urukiko nyuma yo gusesengura imvugo z'abatangabuhamya. Incamake y'ikibazo: Urukiko Rwisumbuye rwa Gicumbi rwaciye urubanza rwemeza ko Nzajyibwami Emmanuel alias Kadogo ahamwe n'icyaha cyo gusambanya umwana w'umukobwa ufite imyaka 9 y'amavuko witwa Uwase Diane, rumuhanisha igifungo cya burundu. Nzajyibwami ntiyishimiye imikirize y'urubanza maze

ajurira mu Rukiko Rukuru, narwo rwemeza ko ubujurire bwe nta shingiro bufite, ariko rumugabanyiriza igihano yari yahawe gishyirwa ku myaka makumyabiri y'igifungo kubera ko ari ubwa mbere yari akurikiranyweho icyaha n'inkiko. Nzajyibwami yajuririye nanone mu Rukiko rw'Ikirenga, avuga ko Urukiko Rukuru rwamuhanishije igifungo cy'imyaka 20 ku cyaha atakoze ; ko rwaciye urubanza rudakoze iperereza ngo rubaze abatangabuhamya

bari aho yari ari igihe icyaha cyakorwaga ; ko rwaciye urubanza rugendeye ku buhamya bw'abamurega gusa no ku buhamya bw'umuntu bafitanye urwango, ko kandi rwaciye urubanza rugenekereje kubera ko nta bimenyetso bimuhamya icyaha bigaragara. Avuga

kandi ko Urukiko rwirengagije gusuzuma ibijyanye na raporo ya Muganga kuko abona muri dosiye harimo raporo za muganga ebyiri, kandi zivuguruzanya, bityo akaba atanemera n'uburyo zakozwe.

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Nzajyibwami avuga ko Urukiko rwaciye urubanza rugendeye ku buhamya budahagije kuko rutakoze iperereza ngo rubaze abatangabuhamya bari biranywe nawe ku muni icyaha cyakozweho.

Uhagarariye Ubushinjacyaha avuga ko ibijyanye no kubaza abatangabuhamya bamushinjura nta shingiro byahabwa kubera ko atigeze abisaba Urukiko Rukuru ngo abyangirwe, ko kandi icyaha cyo gusambanya ku gahato kidakorerwa ku mugaragaro ku buryo abantu benshi babona gikorwa ngo bibe ngombwa ko habazwa abantu benshi. Nzajyibwami avuga kandi ko Urukiko rwaciye urubanza rugenekereje kubera ko nta bimenyetso bifatika biri muri dosiye, asaba ko

ubuhamya bwatanzwe n'uwitwa Mukundwa Flavia nta gaciro bugomba guhabwa kubera ko bari bafitanye ibibazo, kandi ko ubuhamya bumushinja bwatanzwe n'umuryango umwe gusa w'abamurega. Uhagarariye Ubushinjacyaha avuga kandi ko Urukiko rutagenekereje, ko rwaciye urubanza rushingiye ku mvugo z'abatangabuhamya barimo uwahohotewe ubwe, nyina w'umwana wahohotewe na Mukundwa Flavia umuturanyi wari utuye mu gipangu kimwe na Nzajyibwami, rushingira nanone kuri raporo yakozwe n'umuganga ubifitiye ububasha. Nzajyibwami avuga ko raporo ya Muganga atayemera

kubera ko

muri dosiye y'urubanza

hagaragaramo raporo ebyiri zivuguruzanya kandi zakozwe ku matariki atandukanye, akavuga ko rero zigomba guteshwa agaciro. Uhagarariye Ubushinjacyaha asubiza ibyo Nzajyibwami avuga, kuri raporo za muganga, avuga ko

atari ko bimeze,

ko ahubwo ari

imwe yanditse ku mpapuro ebyiri kuko iva kuri cote ya 18 ikagera kuri cote ya 19, kandi ko kuba raporo ya Muganga yakwandikwa ku mpapuro ebyiri bitatuma iteshwa agaciro. Incamake y'icyemezo: 1.Urukiko ntirutegetswe byanze bikunze gukora iperereza cyangwa se kubaza abatangabuhamya buri gihe cyose uko umuburanyi abisabye mu gihe rwumva rwanyuzwe n'ibimenyetso rwashyikirijwe kandi n'ababuranyi bose bahawe umwanya uhagije wo kubyisobanuraho. 2.Nta kimenyetso kamara mu guca urubanza umucamanza ategetswe kubona mbere y'uko afata icyemezo, ahubwo afata icyemezo akurikije umutimanama n'ubushishozi bye (intime conviction) ; kandi Urukiko nirwo ruhamya ku buryo butavuguruzwa ko ibimenyetso byose bishinja cyangwa bishinjura aribyo kandi bishobora kwemerwa.

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3. Agaciro k'ubuhamya ntigashingira ku babutanga cyangwa umubare wabo,

ahubwo gashingira ku kuri gukubiye muri ubwo buhamya. Ubuhamya bw'abantu ntibwateshwa agaciro n'uko bafitanye amasano hagati yabo, cyangwa se bafite inyungu mu rubanza, kuko agaciro kabwo kadashingiye ku babutanga ahubwo gashingiye ku kuri gukubiye muri ubwo buhamya,

ako gaciro kakemezwa n'Urukiko nyuma yo gusesengura imvugo z'abatangabuhamya. Ubujurire nta shingiro bufite; Amategeko yashingiweho: Itegeko N°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 65. Imanza zifashishijwe: Urubanza RPAA 0059/08/CS rwaburanwaga hagati y'Ubushinjacyaha na Nshimiyimana Alexis na bagenzi be, rwaciye n'Urukiko rw'Ikirenga kuwa 19/11/2010 Urubanza I.IMITERERE Y'URUBANZA [1] Urukiko Rwisumbuye rwa Gicumbi rwaciye urubanza rwemeza ko Nzajyibwami Emmanuel alias Kadogo ahamya n'icyaha

cyo gusambanya umwana w'umukobwa ufite imyaka 9 y'amavuko witwa Uwase Diane, rumuhanisha igifungo cya burundu n'ihazabu y'amafaranga ibihumbi ijana (100.000 frws). Nzajyibwami Emmanuel alias Kadogo yajuririye Urukiko Rukuru, rwemeza ko ubujurire bwa Nzajyibwami nta shingiro bufite, ariko rumugabanyiriza igihano yari yahawe gishyirwa ku myaka makumyabiri y'igifungo kubera ko ari ubwa mbere yari akurikiranyweho icyaha n'inkiko. [2] Nzajyibwami yajuririye urubanza mu Rukiko rw'Ikirenga, avuga ko Urukiko Rukuru rwamuhanishije igifungo cy'imyaka 20 ku cyaha atakoze ; ko rwaciye urubanza rudakoze

iperereza ngo rubaze abatangabuhamya

bari aho yari ari igihe icyaha cyakorwaga ; ko rwaciye urubanza rugendeye ku buhamya bw'abamurega gusa no ku buhamya bw'uwitwa Mukundwa Flavia nyamara bafitanye urwango, ko kandi rwaciye urubanza rugenekereje kubera ko nta bimenyetso bimuhamya icyaha bigaragara. Avuga kandi ko Urukiko rwirengagije gusuzuma ibijyanye na raporo ya Muganga kuko abona muri dosiye harimo raporo za muganga ebyiri, kandi zivuguruzanya, akaba atanemera n'uburyo zakozwe. [3] Iburanisha ry'urubanza ryabaye kuwa 06/02/2012, uwo munsu ababuranyi bose baritaba, Nzajyibwami yiburanira, Ubushinjacyaha buhagarariwe na Ntawangundi Béatrice.

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II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO 1.Kumenya niba hari iperereza Nzajyibwami yasabye no kumenya niba iryo perereza ryari ngombwa [4] Nzajyibwami avuga ko Urukiko rutakoze iperereza ngo rubaze abatangabuhamya bari biriranywe nawe ku

munsu icyaha cyakozweho, akavuga ko uwo munsu icyaha gikorwa yari afite abashyitsi bamusuye bavuye i Butare, ko rero Urukiko rwagombaga kubahamagara bakabazwa cyangwa se hagakorwa iperereza aho batuye

maze bakamurenganura. Avuga ko aho kubabaza, Urukiko rwaciye urubanza rugendeye ku buhamya budahagije maze rumuhamya icyaha atakoze. [5] Mu gusubiza impamvu z'ubujurire za Nzajyibwami, uhagarariye Ubushinjacyaha avuga ko ibijyanye no kubaza abatangabuhamya bamushinjura nta shingiro byahabwa kubera ko atigeze abisaba Urukiko Rukuru ngo abyangirwe, ko kandi icyaha cyo gusambanya ku gahato kidakorwa ku mugaragaro ku buryo abantu benshi babona gikorwa ngo bibe ngombwa ko habazwa abantu benshi . Asoza avuga ko Urukiko rutari gukora iperereza mu gihe rwumvaga rwanyuzwe n'ibimenyetso

rwashyikirijwe, kandi n'uregwa akaba yarahawe umwanya uhagije wo kubyireguraho. [6] Urukiko rurasanga nta hantu na hamwe mu miburanire ye mu nkiko zabanje, Nzajyibwami yigeze asaba ko hatumizwa abandi

batangabuhamya biyongera ku babajijwe n'Urukiko ngo umucamanza abyirengagize, akaba rero adashobora kubigira impamvu yo kunenga urubanza rwaciye kandi yari afite uburenganzira busesuye bwo kubisaba urukiko ariko ntabikore . [7] Urukiko rurasanga urubanza rwaraciye hashingiwe ku bimenyetso birimo imvugo z'abatangabuhamya

bari aho icyaha cyabereye kandi na Nzajyibwami akaba yarahawe umwanya uhagije wo kuzisobanuraho, bityo kuba atarasabye ko hagira abandi batangabuhamya babazwa,

akaba adashobora kubyitwaza ngo asabe ko urubanza rwaciwe ruvanywaho . [8] Ku bijyanye no kumenya niba iperereza ryari ngombwa, Urukiko rusanga uretse no kuba Nzajyibwami atarasabye ko rikorwa ngo Urukiko Rukuru rubyange, nta kimenyetso kamara mu guca urubanza umucamanza ategetswe kubona mbere y'uko afata icyemezo, ahubwo afata icyemezo akurikije umutimanama n'ubushishozi bye (« intime conviction ») ; kandi Urukiko nirwo ruhamya ku buryo butavuguruzwa ko ibimenyetso

byose bishinja cyangwa bishinjura

aribyoye

kandi bishobora kwemerwa nk'uko

bivugwa

mu ngingo ya 45 y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha. Ibi

bikanahura n'ibyemezwa n'abahanga mu mategeko nka Michel Franchimont, Ann JACOBS na Adrien

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MASSET mu gitabo cyabo cyitwa Manuel de procédure pénale, p.10281. Na none ingingo ya 65 y'Itegeko N°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ivuga ko Urukiko arirwo rwonyine rupima ko imikirize

y'abatangabuhamya ihura n'ikiburanwa, ko kandi rutititsa ku mubare w'abatangabuhamya. [9] Hashingiwe ku bimaze kuvugwa mu gika kibanziriza iki, Urukiko rusanga rudategetswe byanze bikunze gukora iperereza cyangwa se kubaza abatangabuhamya buri gihe cyose uko umuburanyi abisabye mu gihe rwumva rwanyuzwe n'ibimenyetso rwashyikirijwe kandi n'ababuranyi

bose bahawe umwanya uhagije wo kubyisobanuraho. [10] Ibyo Nzajyibwami avuga ko hatabajijwe abatangabuhamya bose yifuzaga ko babazwa no kuba hatarakozwe iperereza aho icyaha cyakorewe bikaba rero nta shingiro bifite. 2.Kumenya niba Nzajyibwami yarahamijwe icyaha kandi nta bimenyetso [11] Nzajyibwami avuga ko Urukiko rwaciye urubanza rugenekereje kubera ko nta bimenyetso bifatika biri muri dosiye, akavuga ko

ubuhamya bwatanzwe n'uwitwa Mukundwa

Flavia nta gaciro bugomba guhabwa kubera ko bari bafitanye ibibazo, akanongeraho ko ubuhamya bumushinja bwatanzwe n'umuryango umwe gusa w'abamurega. [12] Uhagarariye Ubushinjacyaha avuga ko Urukiko rutagenekereje, ko rwaciye urubanza rushingiye ku mvugo z'abatangabuhamya barimo uwahohotewe ubwe, nyina w'umwana wahohotewe na Mukundwa Flavia umuturanyi wari utuye mu gipangu kimwe na Nzajyibwami, rushingira nanone kuri raporo yakozwe n'umuganga ubifitiye ububasha. [13] Urukiko rw'Ikirenga rurasanga urubanza rwaraciye hashingiwe ku bimenyetso bigizwe n'imvugo za Mukundwa Flavia wari uturanye na Nzajyibwami mu gipangu kimwe, imvugo z'umwana wahohotewe, ubuhamya bwa nyina

w'umwana

ndetse n'icyemezo cya Muganga wemeje ko uwo mwana yasambanyijwe. Nzajyibwami akaba atarashoboye kwerekana urwango avuga ko yari afitanye na Mukundwa Flavia ku buryo yamubeshyera; bityo ibyo asaba ko ubuhamya bwa Mukundwa Flavia bwateshwa agaciro, bikaba nta shingiro bifite. [14] Urukiko rusanga ibyo Nzajyibwami avuga

ko ubuhamya bwatanzwe n'abantu baturuka mu muryango umwe gusa w'abamurega,

nabyo nta shingiro bifite kuko agaciro k'ubuhamya kadashingira ku babutanga cyangwa umubare wabo, ahubwo gashingira ku kuri gukubiye muri ubwo buhamya

1 Le juge forme sa conviction librement sans être tenu par telle preuve plutôt que telle autre. Il interroge sa conscience et décide en fonction de son « intime conviction », Michel Franchimont et alii «Manuel de Procédure pénale, 2 édition, édition Larcier, Rue des Minimes, 39.B-1000 Bruxelles .

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nk'uko bivugwa mu ngingo ya 65 y'itegeko N°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo yamaze kuvugwa 2. [15] Ibimaze kuvugwa mu gika kibanziriza iki bikaba ari nabyo byemejwe n'Urukiko rw'Ikirenga mu rubanza RPAA 0059/08/CS rwaciwe kuwa 19/11/2010 rwaburanwaga hagati y'Ubushinjacyaha na Nshimiyimana Alexis na bagenzi be, aho rwemeje ko ubuhamya bw'abantu butateshwa agaciro n'uko bafitanye amasano hagati yabo , cyangwa se bafite inyungu mu rubanza, kuko agaciro kabwo kadashingiye ku babutanga ahubwo gashingiye ku kuri gukubiye muri ubwo buhamya,

ako gaciro kakemezwa n'Urukiko nyuma yo gusesengura

imvugo z'abatangabuhamya;

bityo ingingo y'ubujurire ishingiye ku rwango hagati ya Nzajyibwami na Mukundwa Flavia atabashije kwerekana n'iby'uko yashinjwe n' abo mu muryango umwe gusa w'abamurega ikaba nta shingiro ifite. 3.Ibijyanye no kumenya niba muri uru rubanza hagaragaramo raporo za muganga ebyiri kandi zivuguruzanya [16] Nzajyibwami avuga ko raporo ya Muganga atayemera kubera ko muri dosiye y'urubanza

hagaragaramo raporo ebyiri zivuguruzanya kandi zakozwe ku matariki atandukanye, akavuga ko rero zigomba guteshwa agaciro. [17] Uhagarariye Ubushinjacyaha asubiza ibyo Nzajyibwami avuga, kuri raporo za muganga, avuga ko atari ko bimeze, ko ahubwo ari imwe yanditse ku mpapuro ebyiri kuko iva kuri cote ya 18 ikagera kuri cote ya 19, kandi ko kuba raporo ya Muganga yakwandikwa ku mpapuro ebyiri bitatuma iteshwa agaciro. [18] Urukiko rurasanga muri dosiye harimo urupapuro rwa « réquisition à expert » yakozwe kuwa 28/07/2007 n'umugenzacyaha Muhoza, ikaba yarasabaga muganga gusuzuma umwana Uwase Diane, kuri cote ya 18-19 hakaba hari raporo ya muganga yakozwe kuwa 28/07/2007 nk'uko byari byasabwe n'uwo mugenzacyaha,

naho kuri côte ya 16 hakaba hari indi « réquisition à expert » yakozwe kuwa 30/07/2007 yasabaga muganga gusuzuma Nzajyibwami. [19] Urukiko rurasanga rero izi nyandiko za « réquisition à expert » uko ari ebyiri zarasabaga ibintu bitandukanye ariko byose bigamije kugaragaza ukuri muri uru rubanza,

kandi zikaba zitavuguruzanya na raporo ya Muganga yakozwe kuwa 28/07/2007 ari nayo yagaragaje ko Uwase Diane yasambanyijwe ; bityo ibyo Nzajyibwami avuga bikaba nta shingiro bifite kubera ko aterekana indi raporo ya muganga iri muri dosiye uretse imaze kuvugwa. III. ICYEMEZO CY'URUKIKO

2 “Ntirwitsitsa ku mubare w’abatangabuhamya . Rwita cyane cyane ku bumenyi bwabo bw’ibyabaye no ku buryo babivuga uko byagenze ntacyo bihimbira “.

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- [20] Rwemeye kwakira ubujurire bwa Nzajyibwami Emmanuel alias Kadogo kuko bwatanzwe mu buryo no mu nzira bikurikije amategeko. [21]Rwemeje ko ubwo bujurire nta shingiro bufite.
- [22] Rwemeje ko imikirize y’urubanza RPA 0479/08/HC/Kig rwaciwe n’Urukiko Rukuru kuwa 20/05/2009 idahindutse. [23] Rutegetse Nzajyibwami Emmanuel alias Kadogo gutanga amagarama y’urubanza angana na 21.750 Frws atayatanga mu minsi umunani ikurikira isomwa ry’urubanza, ayo mafaranga agakurwa mu bye ku ngufu za Leta.

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