

RWANDA / JUDGMENT

UBUSHINJACYAHA vs BARIHAFI

RPAA00903/2024/CA

COURT

Court of Appeal

DECIDED

29 May 2025

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UBUSHINJACYAHA vs BARIHAFI

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Text

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UBUSHINJACYAHA vs BARIHAFI [Rwanda URUKIKO RW'UBUJURIRE – RPAA00903/2024/CA (Kanyange, P.J.) 29 Gicurasi 2025] Amategeko agenga ibimenyetso – ibimenyetso mu manza nshinjabyaha – kugira ngo Umucamanza afate icyemezo gihamya icyaha, agomba kuba afite ibimenyetso bihamya nta gushidikanya (preuves à conviction au-delà de tout doute raisonnable) ko ushinjwa ariwe wakoze icyaha. Amategeko agenga ibimenyetso – ibimenyetso mu manza nshinjabyaha – Raporo ya muganga – Raporo ya muganga igaragaza ko owahohotewe afite Akarangabusugi gafite umwenge ntisobanuye byanze bikunze ko yasambanyijwe kuko umwenge mu karangabusugi ari ibisanzwe wagenewe kunyuramo imihango. Incamake y'ikibazo: Uru rubanza rwatangiye Ubushinjacyaha burega Barihafi mu Rukiko Rwisumbuye rwa Ngoma bumukurikiranyeho icyaha cyo gusambanya umwana witwa T.I.P wimyaka irindwi (7) wo mu rugo yakoragamo, Busaba Urukiko kumuhamya icyaha areagwa bumusabira igifungo cya burundu. Barihafi yaburanye ahakaba icyaha, avuga ko yageretsweho icyaha n'iwabo wa T.I.P kubera amafaranga y'amezi umunani bari bamurimo, kandi ko yemeye icyaha bitewe n'inkoni yakubiswe na DASSO. Urukiko mu rubanza RP01039/2019/TGI/NGOMA, rushingiye ku Barihafi yemera ko yabaga iwabo wa T.I.P bikanemezwa na raporo y'ubuyobozi, ku mvugo

z'abatangabuhama, kuri raporo ya muganga wasuzumye T.I.P igaragaza ko akarangabusugi ke katobotse; Rwemeje ko Barihafi ahamwa n'icyaha aregwa ariko kuko yakozwe icyaha akiri muto no kuba ari ubwa mbere ahamijwe icyaha, rumugabanyiriza igihano rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25). Ruvuga ko ibyo uregwa aburanisha nta shingiro bifite ahubwo ari uburyo bwo guhunga icyaha. Barihafi yajuriye mu Rukiko Rukuru, Urugereko rwa Rwamagana avuga ko yahamijwe icyaha cyo gusambanya umwana kandi cyarahimbwe kubera amafaranga shebuja yari amurimo ko kandi hatitawe ku myiregurire ye. Ubushinjacyaha bwashubije ko ubujurire bwa Barihafi nta shingiro bufite, kuko agifatwa yemeye icyaha nubwo nyuma yagihakanye, kandi hakaba hari n'ibimenyetso bimuhamya icyaha ashinjwa. Buvuga ariko ko yagabanyirizwa igihano agahanishwa igifungo cy'imyaka cumi n'itanu (15). Urukiko mu rubanza RPA00463/2021/HC/RWG, rwemeje ko impamvu z'ubujurire bwa Barihafi nta shingiro zifite, kuko ibyo aburanisha atabatangira ibimenyetso. rwemeza ko ariko agabanyirizwa igihano rumuhanisha igifungo cy'imyaka cumi n'itandatu (16). Barihafi yatanze ubujurire bwa kabiri mu Rukiko rw'Ubujurire avuga ko Urukiko rwamuhamije icyaha rwirengagije ko yakigeretsweho kubera amafaranga bari bamurimo, kandi ko kwemera icyaha yabitewe no gukubitwa, avuga kandi ko ibindi bimenyetso byashingiweho bishidikanywaho. Uhagarariye Ubushinjacyaha avuga ko impamvu z'ubujurire za Barihafi nta shingiro zifite, kuko atazatangira ibimenyetso kandi ko ibimenyetso byashingiweho mu rubanza rujuririrwa bidashidikanywaho. Urukiko mu rubanza RPAA00903/2024/CA, rwemeje ko Barihafi ari umwere, kuko yahamijwe icyaha mu rubanza rujuririrwa hashingiwe ku bimenyetso bishidikanywaho. Rwemeza ko urubanza rujuririrwa ruhinduka. Incamake y'icyemezo: 1. kugira ngo Umucamanza afate icyemezo gihamya icyaha, agomba kuba afite ibimenyetso bihamya nta gushidikanya (preuves à conviction au-delà de tout doute raisonnable) ko ushinjwa ariwe wakoze icyaha. Bityo, Umucamanza agomba gusesengurana ubushishozi uruhurirane

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rw'ibimenyetso, agahamya ushinjwa icyaha mu gihe gusa asanga nta wundi mwanzuro wagarwaho n'isesengura yakozwe uretse iryo gusanisha uwakoze icyaha n'icyaha cyakozwe. 2. Raporo ya muganga igaragaza ko owahohotewe afite Akarangabusugi gafite umwenge ntisobanuye byanze bikunze ko yasambanyijwe kuko umwenge mu karangabusugi ari ibisanzwe wagenewe kunyuramo imihango. Bityo, kugirango Urukiko ruhamye uregwa icyaha cyo gusambanya umwana raporo ya muganga igomba gushimangirwan'ibindi bimenyetso byabonetse mu gitsina cy'uwahohotewe. Ubujurire bufite ishingiro. Amategeko yashigiweho: Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kugeza ubu, ingingo ya 111 Imanza zifashishijwe: Urubanza RPAA00737/2021/CA, haburana Ubushinjacyaha na Uwayisaba Habimana Antoine rwaciwe n'Urukiko rw'Ubujurire ku wa 16/12/2022, igika cya 16-17. Urubanza RPAA00156/2025/CA, haburana Ubushinjacyaha na Nshimiyimana Jean de Dieu rwaciwe n'Urukiko rw'Ubujurire ku wa 25/04/2025, igika cya 20. Urubanza. I. IMITERERE Y'URUBANZA [1] Barihafi Devis wakoraga akazi ko mu rugo kwa Tuyisenge Christine yaketsweho gusambanya umwana wo muri urwo rugo w'imyaka irindwi (7) wahawe izina rya T.I.P mu manza zabanje 1, amusanze mu cyumba aryamamo kuwa 08/10/2019,

bimenyekana ari uko umubyeyi we wari wagiye gucuruza yasangaga aryamye agaramye ariko atiyoroshe neza amubonaho amasohoro ku gitsina, amubajije amubwira ko ari Barihafi Devis wamusambanyije, ahita afatwa iperereza rihita ritangira. [2] Nyuma y'iperereza, Ubushinjacyaha bwamureze mu Rukiko Rwisumbuye rwa Ngoma bumukurikiranyeho icyaha cyo gusambanya umwana, bushingiye ku bimenyetso birimo imvugo za nyina w'uwo mwana wavuze ko yabemereye ko yamusambanyije, imvugo z'abatangabuhamya nabo bavuze ko yabemereye ko yamusambanyije no kuri raporo ya muganga, bumusabira igifungo cya burundu. [3] Barihafi Devis yaburanye ahakaba icyaha, avuga ko yageretsweho icyaha n'iwabo wa T.I.P kubera amafaranga y'amezi umunani bari bamurimo, ko no kuba yaremeye icyaha byatewe n'inkoni yakubiswe na DASSO, ko kandi atasigaranaga n'abana mu rugo kuko yajyanaga na nyirabuja gucuruza. [4] Urukiko rwaciye urubanza RP01039/2019/TGI/NGOMA ku wa 05/03/2021, rusanga nubwo BARIHAFI Devis ahakana icyaha akurikiranweho hari ibimenyetso byemeza ko yagikoze bigizwe : No kuba yemera ko yabaga iwabo wa T.I.P bikanemezwa na raporo y'ubuyobozi bw'Umudugudu wa Nyarurembo ; Ubuhamya bwa nyina wa T.I.P wasobanuye ko yatashye agasanga umwana aryamye atiyoroshe neza akanamubonaho amasohoro, yamubaza uwamusambanyije akavuga ko ari Barihafi Devis;

1 Yahawe iri zina kuko ari umwana

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Ubuhamya bwa Nyirimana Innocent na Twagirihirwe Théoneste basobanuye ko Barihafi Devis yabemereye ko yasambanyije T.I.P, bigahura n'ibyo nyina w'umwana yavuze ko mu gitsina cye harimo amasohoro ; Raporo ya muganga wasuzumye T.I.P igaragaza ko akarangabusugi ke katobotse ; Rwasanze ibivugwa na Barihafi Devis ko yemeye icyaha kubera gukubitwa na DASSO ndetse no kuba yarageretsweho icyaha kugira ngo bamwambure amafaranga yabishyuzaga nta shingiro bifite kuko ntacyo abishingiraho, ko ahubwo iyo mvugo igamije guhunga icyaha, rusanga ariko kuba yakoze icyaha akiri muto no kuba ari ubwa mbere ahamijwe icyaha byamubera impamvu nyoroshyacyaha, rumugabanyiriza igihano rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25). [5] Barihafi Devis yajuriye mu Rukiko Rukuru, Urugereko rwa Rwamagana avuga ko yahamijwe icyaha cyo gusambanya umwana kandi cyarahimbwe kubera amafaranga shebuja yari amurimo agera ku bihumbi mirongo inani (80.000Frw) yamwishyuzaga akanga kumwishyura, ko kandi hatitawe ku myiregurire ye. [6] Ubushinjacyaha bwashubije ko ubujurire bwa Barihafi Devis nta shingiro bufite, kuko agifatwa yemeye icyaha nubwo nyuma yagihakanye, akaba kandi ashinjwa n'abatangabuhamya na raporo ya muganga, ariko ko yagabanyirizwa igihano agahanishwa igifungo cy'imyaka cumi n'itanu (15). [7] Urukiko rwaciye urubanza RPA00463/2021/HC/RWG ku wa 19/08/2024, rusanga impamvu z'ubujurire bwa Barihafi Devis nta shingiro zifite, kuko ibyo avuga ko bamubeshyeye kubera amafaranga iwabo w'umwana bari bamurimo nta cyemeza ko ari ukuri kuko iyo mvugo idashyigikiwe n'ibimenyetso, akaba kandi yemera ko yasigaranye na T.I.P, nyina agasanga yasambanyijwe umwana akamubwira ko yasambanyijwe na Barihafi, kandi ibyo umwana yavuze bigashimangirwa n'ubuhamya bwa Nyirimana Innocent (Dasso) n'ubwa Twagirihirwe Théoneste bavuze ko bagiye kumufata akemera ko yasambanyije uwo mwana, ibyo yemeye bikaba kandi bishimangirwa na

raporo ya muganga yagaragaje ko akarangabusugi k'umwana katobowe, akaba atarashoboye kuvuguruza ibyo bimenyetso. [8] Rwasanze kandi ibyo avuga ko nta kigaragaza ko ari we watoboye akarangabusugi k'umwana nta shingiro bifite, kuko raporo ya muganga yabigaragaje yiyongera ku bindi bimenyetso birimo kuba yaremeye ko yiriranwe n'uwo mwana, uyu akamushinja ko yamusambanyije n'abamufashe bakavuga ko yemeye icyaha. Rwasanze na none ibyo avuga ko imyiregurire ye ititaweho nta shingiro bifite, kuko iby'uko bamubeshyera kubera amafaranga bari bamurimo bidakuraho ibimenyetso byagaragajwe kandi nta n'ikimenyetso abitangira. Ku birebana n'igihano, rwasanze kuba nta kindi cyaha yigeze ahanirwa igihano yahawe cyagabanywa², rumuhanisha igifungo cy'imyaka cumi n'itandatu (16). [9] Barihafi Devis yatanze ubujurire bwa kabiri mu Rukiko rw'Ubujurire, urubanza rwandikwa kuri RPAA00903/2024/CA, ruhabwa itariki yo kuburanishwa yo ku wa 08/05/2025, uwo muni ruburanishwa yunganiwe na Me Ilimubuhanga Jean de Dieu, Ubushinjacyaha buhagarariwe na Habimana Jean Cabin, Umushinjacyaha ku rwego rw'Igihugu. [10] Mu myanzuro w'ubujurire no mu miburanire, Barihafi Devis n'umwunganira bavuga ko Urukiko rwamuhamije icyaha rwirengagije ko yakigeretsweho kubera amafaranga bari bamurimo, rwirengagiza kandi ko ibyo yemereye abatangabuhamya byatewe no gukubitwa, naho ibindi bimenyetso byashingiweho bikaba bishidikanywaho.

2 Hashingiwe ku ngingo ya 2, agace ka a, y'Itegeko N°059/2023 ryo ku wa 04/12/2023 ihindura ingingo ya 60 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange.

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[11] Uhagarariye Ubushinjacyaha avuga ko izo mpamvu nta shingiro zifite, kuko ikibazo cy'amafaranga avuga ko yari afitiwe n'ababyeyi ba TIP, usibye kuba atarabivuze agifatwa ahubwo akakivuga ageze mu iburanisha, inkiko zarasanze nta kimenyetso abitangira, ko no kuba avuga ko yemeye icyaha kubera gukubitwa nta kimenyetso abigaragariza, naho ibindi bimenyetso avuga bikaba bidashidikanywaho. [12] Ikibazo kigomba gusuzumwa muri uru rubanza ni ukumenya niba Urukiko rwarahamije Barihafi Devis icyaha cyo gusambanya umwana rushingiye ku bimenyetso bishidikanywaho, rukanirengagiza impamvu yatumye aregwa icyo cyaha. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba Urukiko rwarahamije Barihafi Devis icyaha cyo gusambanya umwana rushingiye ku bimenyetso bishidikanywaho, rukanirengagiza impamvu yatumye aregwa icyo cyaha [13] Barihafi Devis n'umwunganira bavuga ko Uruko rwirengagije ko yabeshyewe ko yasambanyije TIP kubera amafaranga bari bamurimo y'amazi ane anga n'ibihumbi mirongo inani (80.000Frw), akaba atarabashije kugaragaza ikimenyetso cyayo nk'uko Urukiko rwabivuze kuko nta masezerano y'akazi yari afite, akaba asaba ko Urukiko rwakora iperereza k'uwo yakoreraga (Ndababonye) kugira ngo hamenyekane iby'ayo mafaranga bari bamurimo, ko n'Ubushinjacyaha bwari kumubaza akagaragaza ko yamuhembye, ko rero kuba bitarakozwe bigaragaza ko ibyo avuga ko atahembwe ari ukuri. [14] Bavuga kandi ko Urukiko rwashingiye ku buhamya bw'abantu bamufashe kandi kuba yarabemereye ko yasambanyije T.I.P byaratewe n'uko yakubiswe kandi akaba yarafashwe nijoro agashyirwaho igitutu, se w'uwo mwana akaba yari yicaranye umuhoro, abashinzwe umutekano bavuga ko natemera icyaha bamukubita, ko kandi

abamufashe bamuraranye ntibahite bamushyikiriza RIB kandi iri hafi, akaba ariyo mpamvu yahakanye icyaha ageze mu nzego z'iperereza ndetse no mu Rukiko, ko rero nubwo atemeye mu nzego z'ipererezaahubwo yemeyeimbere ya ba DASSO kugira ngo aramire amagara ye, n'iyi aza kuba yaremeye mu nzego z'iperereza, uko kwemera kutari guhabwa agaciro kudashyigiwe n'ibindi bimenyetso nk'uko byatanzweho umurongo mu rubanza RPAA0066/15/CS rwaciye ku wa 04/01/2019 haburana Ubushinjacyaha na Dusabimana.³ [15] Bavuga kandi ko ikindi kimenyetso byashingiweho kandi gishidikanywaho kigizwe n'imvugo za nyina wa T.I.P, wavuze ko yagiye gucuruza asize akinze aho abana bari baryamye mu nzu nini n'umugabo we aryamye ndetse uwo mwana aryamye n'abandi bana babiri, hakaba hakwibaza uko yari kumusambanya ngo abo bana bandi ntibabyumve. Na none kandi, ngo nyina w'uwo mwana yavuze ko Barihafi yemeye ko yamusambanyije inshiro ebyiri mu gihe Nyirimana bari kumwe yavuze ko yamye ko yamusambanyije inshuro imwe, ko hari ubwo yigeze gushaka kumusambanya bikanga. Bavuga kandi ko kuba umubyeyi wa T.I.P yaravuze ko yabonye amasohoro mu gitsina cy'uwo mwana, byaragombaga guyumya Barihafi apimwa hakarebwa niba hari uturemangingo(DNA) twe duhura n'ayo masohoro. [16] Banavuga ko Urukiko Rukuru rwashingiye ku kuba akarangabusugi k'uwo mwana karangiritse rwirengagije ko gashobora kwangirika ku mpamvu zitandukanye, zirimo imikino ndetse hakaba n'abana bavuka batadufite nk'uko ubuhanga (science) bwabigaragaje. Byongeye kandi akarangabusugi ntikari kwangirizwa no gusambanywa ngo muganga abe atarabonye ibindi bimenyetso, ko rero kuba ako karangabusugi karangiritse bitatwe n'igikorwa cyo gusambanywa kuko nta gikomere mugangayabonye kandi umwana yarasuzumwe ku munsu ukurikira uwo bavuga ko icyaha cyakozweho.

3 Umurongo wafashwe uvuga ko imvugo zavugiye mu nzego z'iperereza igihe uwazivuze ageze imbere y'urukiko akazihindura urukiko rudakwiye kuzishingiraho ahubwo ko biha inshingano Ubushinjacyaha bwo gutanga ibindi bimenyetso bizishyigikira.

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[17] Uhagarariye Ubushinjacyaha avuga ko impamvu y'ubujurire irebana n'uko Barihafi Devis yageretsweho icyaha n'umukoresha we washakaga kumwambura (80.000frw) nta shingiro ifite, kuko usibye kuba icyo kibazo atarakivuze mu Bugenzacyaha ahubwo akakivuga igihe cy'iburanisha, inkiko zaragisuzumye zisanga nta kimenyetso abitangira, ko ndetse avuga ko ayo mafaranga ari ay'amezi ane bari bamurimo nyamara abazwa yaravuze ko yari ahamaze amazi atatu gusa, bivuze ko ibyo avuga atari ukuri, ko kandi Ubushinjacyaha budafite inshingano yo kugaragaza ikimenyetso cy'uko yahawe ayo mafaranga kuko atari bwo bwazamuye icyo kibazo. Avuga kandi ko n'ibirebana n'iperereza Barihafi asaba ko ryakorwa ku wamukoreshaga nta shingiro bifite, kuko Urukiko rudategetswe gushaka ikimenyetso runaka ngo n'uko gisabwe n'umuburanyi, mu gihe ibyo rufite rusanga bihagije mu guca urubanza. [18] Ku birebana n'uko yemeye icyaha kubera gukubitwa, uhagarariye Ubushinjacyaha avuga ko nabyo nta shingiro bifite, kuko usibye kuba nta kimenyetso abitangira, binagaragara ko mu Bugenzacyaha yavuze ko abamufashe bamukubise mu gihe imbere y'uru Rukiko avuga ko bamuteye ubwoba kuko se w'umwana yari afite umuhoro

kandi ibyo bidashoboka muri iki gihugu, bivuze ko ibyo avuga atari ukuri. Byongeye kandi Urukiko nirwo ruha agaciro ubuhamy bwatanzwe iyo asanga buhura n'ukuri. [19] Ku birebana na raporo ya muganga, avuga ko ibivugwa na Barihafi ko hari izindi mpamvu zishobora gutuma akarangabusugi kangirika nta shingiro bifite, kuko atagaragaza iyo mpamvu iyo ariyo, ko ahubwo kangiritse bitewe n'igikorwa cyo gusambanywa, ko kandi iyo raporo ishimangirwa n'ibindi bimenyetso birimo imvugo za nyina w'umwana n'iz'abatangabuhamy yemereye ko yasambanyije TIP. [20] Avuga kandi ko nta gushidikanya ku mvugo za nyina w'umwana n'iza Nyirimana, kuko Nyirimana yavuze ko Barihafi yemeye ko yashatse gusambanya TIP ku nshuro ya mbere bikanga naho ku nshuro ya kabiri akamusambanya yinjije igitsina cye mu cy'umwana, bikanahura n'ibyavuzwe na nyina w'uwo mwana, ko kandi nyina atavuze ko yasize akingiranye abana ahubwo yavuze ko yasize abaryamishije, no no kuba akimara kubona ibyabaye ku mwana yarahise ahamagara umugabo we, bigaragaza no nawe atari ahari. UKO URUKIKO RUBIBONA [21] Impaka muri uru rubanza zishingiye ku kumenya niba Barihafi Denis yarahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho, hanirengagijwe impamvu yatumye aregwa icyo cyaha. [22] Ku bijyanye n'ibishingirwaho hemezwa ko uregwa ahamwa n'icyaha byatanzweho umurongo n'Urukiko rw'Ubujurire mu manza zitandukanye harimo urubanza RPAA00737/2021/CA4, no mu zindi manza zaciwe nyuma yarwo harimo urubanza RPAA00156/2025/CA5, muri izo manza Urukiko rukaba rwaremeje ko: "kugira ngo Umucamanza afate icyemezo gihamya icyaha, agomba kuba afite ibimenyetso bihamya nta gushidikanya (preuves à conviction au-delà de tout doute raisonnable) ko ushinjwa ariwe wakoze icyaha, ko Umucamanza agomba gusesengurana ubushishozi uruhurirane rw'ibimenyetso, agahamya ushinjwa icyaha mu gihe gusa asanga nta wundi mwanzuro wagerwaho n'isesengura yakoze uretse iryo gusanisha uwakoze icyaha n'icyaha cyakozwe".

4 Reba Urubanza RPAA00737/2021/CA rwaciwe ku wa 16/12/2022, haburana Ubushinjacyaha na Uwayisaba Habimana Antoine (igika cya 16-17). 5 Reba urubanza RPAA00156/2025/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 25/04/2025, haburana Ubushinjacyaha na Nshimiyimana Jean de Dieu (igika cya 20).

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[23] Kugira ngo Urukiko Rukuru rwemeze ko Barihafi Devis ahamwa n'icyaha cyo gusambanya umwana nk'uko yari yagihamijwe n'Urukiko Rwisumbuye rwa Ngoma, rwabishingiye ku kuba ataravugurujwe ibimenyetso byashingiweho kuri urwo rwego, bigizwe no kuba yemera ko yasigaranye na T.I.P, nyina w'uwo mwana akavuga ko yasanze yasambanyijwe akamubwira ko ari Barihafi Devis wamusambanyije, imvugo z'uwo mwana zigashimangirwa n'ubuhamya bwa Nyirimana Innocent (Dasso) n'ubwa Twagirihirwe Théoneste bavuze ko bagiye kumufata akemera ko yasambanyije uwo mwana, ibyo yemeye bikaba kandi bishimangirwa na raporo ya muganga yagaragaje ko akarangabusugi ke katobowe. Rwasanze kandi iby'uko bamubeshyera kubera amafaranga bari bamurimo bidakuraho ibimenyetso byagaragajwe kandi ko nta n'ikimenyetso abitangira. [24] Ku birebana n'uko Urukiko

rwirengagije ko Barihafi Devis yageretsweho icyaha cyo gusambanya T.I.P abeshyewe kubera amafaranga iwabo bari bamurimo, Urukiko rurasanga icyo kibazo yarakiburanishije kuva ku rwego rwa mbere ariko inkiko zisanga nta shingiro gifite kuko atagaragaza ibimenyetso by'ibyo avuga, n'imbere y'uru Rukiko, usibye kugarura icyo kibazo, nta kimenyetso cy'uko koko yari aberewemo amafaranga yatumye abeshyerwa ko yasambanyije T.I.P, ndetse nawe akaba avuga ko nta kimenyetso afite kuko nta masezerano yari afite, bivuze ko n'uru Rukiko ntaho rwashingira rwemeza ko intandaro yo kuregwa ari ayo mafaranga, abuhwo hakaba harebwa niba koko ibimenyetso byashingiweho ahamwa n'icyaha bishidikanywaho. [25] Ku birebana n'imvugo za nyina w'umwana zashingiweho, mu kirego yatanze mu Bugenzacyaha yasobanuye ko yageze mu rugo muma saa tatu n'igice (21h 30) avuye gucuruza, mbere yo kuryama ajya kureba abana abona batiyoroshe, agiye kuborosa asanga T.I.P yasambanyijwe ku gitsina hariho amasohoro, aramuhagurira akeka ko ari ubundi burwayi ariko atekereza ko haba hari ikibazo ahita ahamagara se w'umwana amubwira asanze umwana asa naho yasambanyijwe, bahita babyutsa Barihafi Devis, bamubajije avuga ko ariwe wasambanyije T.I. P kandi ko ari incuro ya 2 amusambanya, bahita bahamagara abashinzwe umutekano haza utitwa Innocent (Dasso) , nawe amwemerera ko yamusambanyije ko kandi ari inshuro ya kabiri, bahita bamujyana ku kigo nderabuzima babapima sida nyuma babohereza ku bitaro bya Masaka. [26] Urukiko rurasanga ibyo nyina w'umwana yasobanuye, byumvikanisha ko yaketse ko umwana we yasambanyije abishingiye ku masohoro avuga ko yabonye ku gitsina cye, iby'ayo masohoro ariko bikaba bitarigeze bigaragazwa na raporo ya muganga. Byongeye kandi, bitandukanye n'ibyemejwe n'Urukiko Rukuru6, muri iyo nyandikomvugo ntaho yavuze ko yabajije umwana akamubwira ko yasambanyijwe na Barihafi Devis kandi nta n'ahandi uwo mwana yabajijwe, ahubwo byumvikana ko habayeho gukuka ko uwo mwana yasambanyijwe bitewe n'ibyo nyina avuga ko yabonye ku gitsina cye (amasohoro), hanakemuka Barihafi Devis wakoraga muri urwo rugo, hakaba rero hagomba gusuzumwa niba hari ibimenyetso bimushinja icyo cyaha yaketsweho. [27] Ku birebana n'ubuhamya bwa Nyirimana Innocent bwashingiweho nk'ikimenyetso kimushinja, yasobanuye ko yahamagawe na Ndababonye amubwira ko Barihafi Devis yamusambanyirije umwana, ahageze abibaza Barihafi Devis amubwira ko ubwa mbere yabigerageje akabyihorera ariko ko ubwa kabiri byakunze akamusambanya, nyina w'umwana nawe amubwira ko yasanze umwana ariyambaye agaramye atiyoroshe ariho amasohoro ku gitsina, bahita bajyana uwo mwana na Barihafi Devis ku kigo nderabuzima, Barihafi Devis bamuraza ku Murenge, bukeye bamushikiriza RIB . [28] Naho mu buhamya bwa Twagirihiwe Théoneste nabwo bwashingiweho, yasobanuye ko yahamagawe na mugenzi we (w'umu Dasso) amubwira ko umwana wa Ndababonye yasambanyijwe, ahita agenda asanga Barihafi Devis bamugejeje ku Murenge, amubajije ibyo yakozwe amubwira ko yashatse gusambanya umwana ariko ko yakozaga ku ruhande, ko atigeze yinjiza imbere, we n'uwo mwana bahita babajyana kwa muganga, Barihafi Devis bamurarana ku Murenge bukeye bamushyikiriza RIB.

6 Rwavuze ko umwana yamubwiye ko yasambanyijwe na Barihafi

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[29] Ku birebana n'ubwo buhamya, Barihafi Devis nawe ntahakana ko yemereye ababutanze ko yasambanyije T.I.P, akavuga gusa ko yemeye kubera gukubitwa. Nubwo ibyo kuba yarakubiswe Urukiko rutabyemera gutyo ntacyo rubishingiyeho, bigaragara ariko ko atahwemye kubivuga kuva mu Bugenzacyaha, bityo mu rwego rwo kumenya niba koko ibyo yemereye abamufashe byaratewe n'inkoni yakubiswe, harebwa niba nta bindi bimenyetso bibishimangira. [30] Bigaragara ko mu bindi bimenyetso byashingiyeho, harimo raporo ya muganga, igaragaza ko T.I.P yasuzumwe ku munsu wakurikiye uwo bivugwa ko yasambanyijweho, ikaba yaragaragaje ko ibice by'imyanya ndangagitsina nta kibazo (bifite Labia majora :normal; labia minora:normal; vestibule:normal; fourchette:normal; perineum:normal), ikanavuga ko nta kintu cyavaga mu gitsina cy'umwana (discharge:absent), ko akarangabusugi gatoboye (hymen perforé) ko kandi mugitsina hashobora kujyamo urutoki rumwe (vagina:1 doigt), mu mwanzuro, raporo ikavuga ko nta hungabana ryabayeho rishingiye ku gitsina cyangwa ku mubiri, ko akarangabusugi gatoboye ko no mu gitsina hashobora kujyamo urutoki rumwe (vagina: 1 doigt)7. [31] Urukiko rurasanga ibyagaragajwe n'iyi raporo, bitezwa mu buryo budashidikanywaho ko T.I.P yasambanyijwe, kuko kuba ivuga ko akarangabusugi gatoboye, nta cyemeza ko ari ingaruka zo gusambanywa, cyane cyane ko mu rundi rubanza uru Rukiko rwaciye ruja gusa n'uru kuko naho raporo yari yagaragaje ko akarangabusugi gafite umwenge naho mu gitsina hashobora kujyamo intoki ebyiri, ibindi byose ari ibisanzwe (normal), muganga w'indwara z'abagore yarasobanuriye Ubushinjacyaha ko umwana w'umukobwa avukana akarangabusugi gafite umwenge muto ingano yawo igashobora gutandukana bitewe n'umwana, ko uwo mwenge ariwo imihango iba izacamo (...), bivuze ko hashingiwe kuri ibyo bisobanuro, ntacyakwemeza ko kuba muganga yarasanze akarangabusugi ka T.I.P gatoboye ari ingaruka zo gusambanywa mu gihe nta kindi kintu kidasanzwe yabonye ku myanya ndangagitsine ye cyatuma hemezwa ko atari umwenge n'ubusanzwe akarangabusugi kaba gafite nk'uko muganga ubisobanukiye yabisobanuye, kandi uko kuba akarangabusugi gatobotse nibyo byashingiyeho mu manza za mbere hemezwa ko ari ikimenyetso gishimangira ko Barihafi yasambanyije uwo mwana. Na none kandi kuba mu bindi byagaragajwe na raporo harimo ko mu gitsina hashoboraga kujyamo urutoki rumwe, bitaba ikimenyetso cyemeza mu buryo budashidikanywaho ko ari ingaruka zo gusambanywa mu gihe nta kindi muganga yabonye ku gitsina cy'umwana kandi yarasuzumwe ku munsu wakurikiyeho. [32] Urukiko rurasanga rero, kuba nta kimenyetso gishimangira ibyo abatangabuhamya bavuze ko Harihafi Devis yabemereye, hari ugushidikanya ku kuri kwabyo, cyane cyane ko yakomeje kuvuga ko yakubiswe nubwo nta kimenyetso yabigaragariye, akanabihuza n'uko abamufashe bamuranyeho aho kumugeza kuri RIB kandi nabo bakaba baravuze ko bamuraje ku Murenge, bityo hashingiwe ku mirongo yatanze mu manza zavuzwe haruguru no ku ngingo ya 111 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kugeza ubu ivuga ko gushidikanya birengera ushinjwa, ko iyo urubanza rwakurikiranwe mu buryo bwose ntihagire ibimenyetso nyakuri biboneka byemeza abacamanza ko ushinjwa yakoze icyaha

koko, bagomba kwemeza ko atsinze, ibimenyetso byashingiweho bitemeza ku buryo budashidikanywa ko Barihafi Devis yakoze icyaha akurikiranweho, akaba agihanaguweho kubera gushidikanya. III. ICYEMEZO CY'URUKIKO [33] Rwemeje ko ubujurire bwa Barihafi Devis bufite ishingiro ; [34] Rwemeje ko urubanza RPA00463/2021/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 19/08/2024 ruhindutse ;

7 Pas de lésion vulvo vaginale, pas de lésion corporelle, hymen perforé, vagin admettant 1 doigt

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[35] Rwemeje ko Barihafi Devis adahamwa n'icyaha cyo gusambanya umwana yari akurikiranweho, akaba agomba kurekurwa ; [36] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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