

RWANDA / JUDGMENT

UBUSHINJACYAHA v. TUYAMBAZE

RPA 0087/12/CS

COURT

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UBUSHINJACYAHA v. TUYAMBAZE

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Text

Page 1

UBUSHINJACYAHA v. TUYAMBAZE [Rwanda URUKIKO RW'IKIRENGA – RPA 0087/12/CS (Hatangimbabazi, PJ, Karimunda na Gakwaya, J.) 8/4/2016] Amategeko Mpanabyaha – Kwihekura – Kujugunya umwana ukivuka ahantu ubizi neza ko ari bupfe ni ukwihekura, bitandukanye no guta umwana ahantu hihishe – Itegeko no 27/2001 ryo ku wa 28/04/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa, ingingo ya 44 na Itegeko-Teka no 21/77 ryo ku wa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 314. Amategeko Mpanabyaha – Impamvu nyoroshyacyaha – Imibereho bwite y'uwakoze icyaha ishobora kumubera impamvu zigabanya ububi bw'icyaha yakoze – Itegeko-Teka no 21/77 ryo ku wa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 77. Incamake y'ikibazo: Uregwa yakurikiranywe mu Rukiko Rukuru, Urugereko rwa Rusizi rukorera i Karongi, kukuba yarabyaye umwana muzima, akamuta mu musarani. Uregwa nawe yaburanye yemera icyaha. Urukiko rwamuhamije icyaha, rumuhanisha igihano kigabanyije cy'imyaka makumyabiri (20) kuko yemera icyaha akanagisabira imbabazi. Ntiyishimiye icyo cyemezo akijuririra mu Rukiko rw'Ikirenga avuga ko yaburanye yemera icyaha kandi agisabira imbabazi mu nzego zose z'ubutabera ariko ntiyagabanyirizwa igihano bihagije. Iburanisha rigitangira, uwunganira uregwa yasabye urukiko

kubanza gusuzuma ikibazo cy'inyito y'icyaha kuko asanga uwo yunganira yarahaniwe kwihekura nyamara icyo yakoze ari uguhisha uruhinja yari amaze kubyara kuko urwo ruhinja rwaguye mu nzira barujyanye kwa muganga. Uhagarariye Ubushinjacyaha avuga ko uregwa atataye umwana ku musarane ahubwo yamutaye mu musarane. Asobanura ko mu musarane atari ahantu hihishe havugwa mu Itegeko kuko ari ahantu h'umwanda, ari nawo waguye nabi urwo ruhinja biruviramo urupfu. Incamake y'icyemezo: 1. Igikorwa cyo guta uruhinja rukivuka mu musarane uregwa akurikiranweho gitandukanye n'icyo guta umwana ahantu hihishe ubundi gikorwa n'ababyeyi cyangwa abishingizi b'umwana bashaka guhunga inshingano zabo za kibyeyi ariko batagamije kwica uwo umwana. Kuba uregwa yarajugunye uruhinja rwe mu musarane azi ruzima, bigaragaza ubushake yari afite bwo kurwica, kuko yifuzaga ko hatagira umenya ko yabyaye, abikora azi ko ruribwicwe n'umwanda agira ngo nabyo ntibizamenyekane.

2. N'ubwo uregwa yakoze icyaha kiremereye, imibereho igoye yagiye anyuramo ikwiye kwiyongera ku kuba ari ubwa mbere yakurikiranwa n'Inkiko bizwi no kuba kuva yatangira gukurikiranwa n'inzego z'ubutabera yaremeye icyaha kandi akagisabira imbabazi, bikamubera impamvu nyoroshyacyaha, igihano cy'imyaka makumyabiri yakatiwe n'Urukiko Rukuru, Urugereko rwa Rusizi rukorera i Karongi kigasimbuzwa igihano cy'imyaka itanu (5 ans). Ubujurire bufite ishingiro. Imikirize y'urubanza rwajuririwe ihindutse kubirebana n'igihano. Uregwa agomba guhita arekurwa kuko yarangije igihano. Amagarama aherereye ku isanduku ya Leta.

Page 2

Amategeko yashingiweho: Itegeko no 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, Ingingo ya 119. Itegeko no 27/2001 ryo ku wa 28/04/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa, ingingo ya 44. Itegeko-Teka no 21/77 ryo ku wa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana, ingingo za 77,82,83 na 314. Nta manza zifashishijwe. Inyandiko z'abahanga: CR Snyman, Criminal Law, Durban: Lexis-Nexis, 2008, at p. 454. Jonathan Burchell, Principles of Criminal Law, Cape Town: Juta, 2005, at p. 673. Urubanza IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rukuru, Urugereko rwa Rusizi rukorera i Karongi Tuyambaze Emérance aregwa kuba ku wa 08/11/2010, mu gihe cya saa kumi n'imwe za mugitondo ubwo yari agiye kwikorera ibitoki ku Murama, yarageze mu nzira atangira kuribwa mu nda, asubira iwabo mu rugo ahita abyara umwana muzima, amuta mu musarani. Uregwa yaburanye yemera icyaha. [2] Mu rubanza no RP 0004/10/HC/RSZk rwaciye ku wa 28/11/2011, Urukiko rwasanze mu nzego zose z'ubutabera yanyuzemo n'imbere y'Urukiko yaravuze ko yatewe inda n'umugabo wamufatiranye n'ubukene, amusabye kumufasha akabyanga, ko ubwo yari mu nzira umwana yavutse ntarire akagira ngo n'inda ivuyemo, akamuta mu musarani, imvugo ye kandi ikaba ihura n'iya Nzigiyimana Théogène na Nyirabutondwe Agnès bahamya ko bumvise umwana aririra mu musarani, raporo ya muganga nayo ikaba yemeza ko Tuyambaze Emérance yari amaze igihe gito abyaye, rwemeza ko ibyo bimenyetso bihagije kumuhamya icyaha, ahanishwa igihano kigabanyije cy'imyaka makumyabiri (20) kuko yemera icyaha akanagisabira imbabazi. [3] Tuyambaze Emérance ntiyishimiye icyo cyemezo ajuririra mu Rukiko rw'Ikirenga avuga ko yaburanye yemera icyaha kandi agisabira imbabazi mu nzego zose

z'ubutabera ariko ntiyagabanyirizwa igihano bihagije. [4] Iburanisha mu ruhame ryabaye ku wa 07/03/2016, Tuyambaze Emérance ahari kandi yunganiwe na Me Rwigema Vincent, naho Ubushinjacyaha buhagarariwe na Munyaneza Nkwaya Eric, Umushinjacyaha ku rwego rw'Igihugu. [5] Iburanisha rigitangira, Me Rwigema Vincent yasabye uru Rukiko kubanza gusuzuma ikibazo cy'inyito y'icyaha kuko asanga uwo yunganira yarahaniwe kwihekura nyamara icyo yakoze ari uguhisha uruhinja yari amaze kubyara kuko urwo ruhinja rwaguye mu nzira barujyanye kwa muganga.

Page 3

IBIBAZO BIGIZE URU RUBANZA N'ISESENGURA RYABYO II.1. Kumenya inyito y'icyaha Tuyambaze Emérance akurikiranweho. [6] Tuyambaze Emérance n'umwunganira bavuga ko umunsi icyaha gikorwa Tuyambaze Emérance yari yagiye kwikorera ibitoki, atungurwa no kubyara, agira ubwoba bwinshi atinya ko Se abimenya kuko yahoraga amubwira ko azamukubita ishoka, yigira inama mbi yo guta uwo mwana mu musarane, ariko nyuma aza kugira akanyabugabo abibwira Se, Se wabo, n'umukecuru nyiri umusarane yatayemo umwana, bamuvanamo ari muzima, baramwoza, agwa mu nzira bamujyanye kwa muganga, bigaragaza ko atigeze aniga uwo mwana ahubwo yamutaye ahantu hihishe. Basoza bavuga ko Urukiko Rukuru, Urugereko rwa Rusizi rukorera i Karongi rwakoze amakosa ruvuga ko icyaha cyakozwe ari ukwihekura mu gihe ari uguta umwana ahantu hihishe, akaba asaba uru Rukiko gukosora ayo makosa, Tuyambaze Emérance agahanirwa guta umwana ahantu hihishe hashingiwe ku ngingo ya 44 y'Itegeko no 27/2001 ryo ku wa 28/04/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa. [7] Uhagarariye Ubushinjacyaha avuga ko Tuyambaze Emérance na Me Rwigema Vincent bashaka kuvugisha ingingo ya 44 y'Itegeko no 27/2001 ryo ku wa 28/04/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa ibyo itavugaga kuko Tuyambaze Emérance atataye umwana ku musarane ahubwo yamutaye mu musarane. Asobanura ko mu musarane atari ahantu hihishe havugwa mu Itegeko kuko ari ahantu h'umwanda, ari nawo waguye nabi urwo ruhinja biruviramo urupfu, bityo ingingo y'amategako igomba gukoreshwa ikaba ari iya 314 y'Itegeko-Teka no 21/77 ryo ku wa 18/08/1977 rishyiraho Igitabo cy'amategako ahana ryakoreshwaga icyaha gikorwa aho kuba iya 44 y'Itegeko no 27/2001 ryo ku wa 28/04/2001 ryavuzwe haruguru. UKO URUKIKO RUBIBONA [8] Ingingo ya 44 y'Itegeko no 27/2001 ryo ku wa 28/04/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa iteganya ko "Azahanishwa igifungo kuva ku myaka itanu kugeza kuri cumi n'itanu n'ihazabu y'amafaranga kuva ku bihumbi mirongo itanu kugeza ku bihumbi magana abiri, umubyeyi cyangwa umwishingizi uzaba yataye umwana ahantu hihishe, akaza kuboneka." [9] Ingingo ya 314 y'Itegeko-Teka no 21/77 ryo ku wa 18/08/1977 rishyiraho Igitabo cy'amategako ahana ryakoreshwaga icyaha gikorwa iteganya ko "byitwa uguhekura, ubwicanyi cyangwa ubuhotozi bugiriwe uruhinja mw'ivuka ryarwo cyangwa rukimara kuvuka; kubyita ubwicanyi cyangwa ubuhotozi bizaterwa n'uburyo byakozwe." [10] Dosiye y'urubanza igaragaza ko abazwa mu Bugenzacyaha no mu Bushinjacyaha, Tuyambaze Emérance yavuze ko uwo munsi ahagana mu saa kumi n'imwe za mugitondo yabyariye mu nzira agiye kwikorera ibitoki, abonye umwana atarize agira ngo yapfuye, amujugunya mu musarane wo kwa Nyirabutondwe Agnès (cotes 5-11,

17-18). Ageze imbere y'uru Rukiko, Tuyambaze Emérance yavuze ko yajugunye uruhinja rwe mu musarane azi ko ari ruzima. Nzigiymana Théogène nawe avuga ko ari mu baturujwe na Nyirabutondwe Agnès wababwiye ko yumvise uruhunja ruririra mu musarane we, bahageze barawusenyiye, baruvanamo rugihumeka, bararwuhagira, ariko rupfa bakiri mu nzira barujyana kwa muganga i Murunda (cotes 8-9). Naho raporo ya muganga yakozwe ku wa 09/11/2010 ivuga ko umwana atitaweho akivuka, kandi ko hari udukoko mu mukondo no mu kanwa bigaragaza ko

Page 4

umwana yishwe no kuba yarashyizwe ahantu hari umwanda ("Cordon ombilical lié. Dans la bouche comme dans le moignon ombilic, des nombreuses larves d'insectes sont observées montrant que le bébé est décédé après avoir été déposé dans un milieu infect ») (cote 12). [11] Urukiko rurasanga igikorwa cyo guta uruhinja rukivuka mu musarane Tuyambaze Emérance akurikiranweho gitandukanye n'icyo guta umwana ahantu hihishe ubundi gikorwa n'ababyeyi cyangwa abishingizi b'umwana bashaka guhunga inshingano zabo za kibyeyi ariko batagamije kwica uwo umwana. Abahanga mu mategeko bakaba bavuga ko icyo cyaha cyo guta abana ahantu hihishe ubundi cyitwa crimen expositionis infantis kandi akenshi gikorwa n'ababyeyi baba bifuzako abana babo batoragurwa n'abagiraneza kandi bakabata aho bashobora kubabona,¹ bitandukanye n'ibyo Tuyambaze Emérance yakoze. [12] Urukiko rurasanga, ku birebana n'uru rubanza, Tuyambaze Emérance, nk'uko abyivugira kandi byemejwe n'abatangabuhamya ndetse na raporo ya muganga, yarajugunye uruhinja rwe mu musarane azi ruzima, arinabyo bigaragaza ubushake yari afite bwo kumwica, kuko yifuzaga ko hatagira umenya ko yabyaye abitewe n'ubwoba yaterwaga na Se wahoraga umubwira ko azamukubita ishoka, ajugunya uwo mwana mu musarane mu rukerera azi ko ari bwicwe n'umwanda agira ngo nabyo ntibizamenyekane. Rurasanga abahanga mu mategeko bavuga ko guta umwana ahantu ugamije ko apfa, byitwa ukwihekura, ari nacyo cyaha Tuyambaze Emérance yakoze,² bityo hakaba nta makosa Urukiko Rukuru, Urugereko rwa Rusizi rukerera i Karongi rwakoze rwemeza ko icyaha Tuyambaze Emérance yakoze ari ukwihekura. I.2. Kumenya niba Tuyambaze Emérance yakongera kugabanyirizwa igihano. [13] Tuyambaze Emérance avuga ko yatwaye inda ari mu mibereho mibi cyane kuko nyina yari yaramutaye ahunze amahane ya Se, uyu agahora amubwira ko azamukubita ishoka, aza gutwara inda ayitewe n'umugabo yajyaga gucaho incuro kugirango abone uko atunga barumuna be yareraga. Asobanura ko yatunguwe no gutwara inda ndetse ko naho yakoreye icyaha atahateguye, akaba yemera ko yakoze amahano kuko umwana yamutaye mu musarane ari muzima kandi ko yiyambuye indangagaciro z'umunyarwandakazi, akaba abisabira imbabazi kuko amaze kumenya ububi bw'icyaha yakoze, atakambira uru Rukiko ngo ruce inkoni izamba agabanyirizwe igihano kugeza nibura ku gihe amaze muri Gereza. [14] Me Rwigema Vincent avuga ko uwo yunganira yakoze icyaha afite imyaka 17, ariko Sibomana Célestin wamuteye inda akoresha ubushobozi yari afite muri ako gace k'iwabo kuko yari umucuruzi, inzego z'ibanze zitanga icyangombwa kigaragaza ko yatewe inda afite imyaka 18 kugirango uwayimuteye adakurikiranwaho gusambanya umwana utarageza ku myaka y'ubukure. Asobanura ko ubwo buriganya aribwo bwatumye Urukiko Rukuru, Urugereko rwa Rusizi rukorera i Karongi ruhana Tuyambaze Emérance nk'umuntu mukuru nyamara igihano cyo

hejuru yari guhabwa mbere y'uko kigabanywa kubera impamvu nyoroshyacyaha ari igifungo cy'imyaka 20, akaba asaba uru Rukiko gushingira ku kuba uwo yunganira yarakoze icyaha afite imyaka 17, yemera icyaha mu buryo budashidikanywaho, agisabira imbabazi kandi ari we wareraga barumuna be, akongera kugabanyirizwa igihano hashingiwe ku ngingo ya 77 n'ya 83 z'Itegeko-Teka no 21/77 ryo ku wa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana ryakoreshwaga icyaha gikorwa. 1 "Crimen expositionis infantis [include] cases where someone abandoned a child in order to avoid parental responsibility but without the intention to kill, in a place where it was likely to be found." CR Snyman, Criminal Law, Durban: Lexis-Nexis, 2008, at p. 454. 2 "Infanticide is the killing of newly born child. [It includes] abandoning a child with the expectation that it would die." Jonathan Burchell, Principles of Criminal Law, Cape Town: Juta, 2005, at p. 673.

Page 5

[15] Uhagarariye Ubushinjacyaha avuga ko kuri "cote" ya 25 ya dosiye hari icyemezo cy'amavuko cya Tuyambaze Emérance cyerekana ko yavutse ku wa 23/08/1992, akora icyaha ku wa 08/11/2010, bivuze ko yagikoze afite imyaka 18 y'amavuko. Asobanura kandi ko hashingiwe ku buremere bw'icyaha cyakozwe Tuyambaze Emérance yagombaga guhanishwa igifungo cya burundu, ariko kuko yaburanye yemera icyaha anasaba imbabazi, imiburanire ye ihabwa agaciro, agabanyirizwa igihano kugeza ku gifungo cy'imyaka 20, bisobanuye ko nta yindi mpamvu ihari yatuma yongera kugabanyirizwa kuko yagabanyirijwe igihano bihagije. UKO URUKIKO RUBIBONA [16] Ingingo ya 119 y'Itegeko no 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko "Mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye. Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura ari byo kandi ko bishobora kwemerwa." [17] Ingingo ya 82 y'Itegeko-Teka n° 21/77 ryo ku wa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana ibyaha ryakurikizwaga icyaha gikorwa, iteganya ko umucamanza ariwe uha agaciro impamvu zigabanya ubugizi bwa nabi bw'uwakoze icyaha, ari izakibanjirije, ari izagiherekeje cyangwa izagikurikiye, yaba azemeje akagomba kubisobanurira impamvu, ingingo ya 83, agace ka kabiri y'iryo TegekoTeka igateganya ko iyo hari impamvu nyoroshyacyaha, igihano cyo gufungwa burundu gisimbuzwa igihano cy'igifungo cy'igihe kitari muni y'imyaka ibiri. [18] Ku birebana no kumenya niba Tuyambaze Emérance yarahanwe nk'umuntu mukuru kandi yarakoze icyaha afite imyaka 17, Urukiko rurasanga muri dosiye y'urubanza harimo inyandiko yitwa "Attestation d'identité complète" na "Attestation de naissance" byakozwe n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Musasa ku wa 26/11/2010 zigaragaza ko Tuyambaze Emérance yavutse ku wa 23/08/1992, naho icyaha gikorwa ku wa 08/11/2010, bisobanuye ko akora icyaha, Tuyambaze Emérance yari yarujije imyaka 18, kandi uretse kubivuga gusa, Tuyambaze Emérance na Me Rwigema Vincent umwunganira, ntibagaragaza icyo bashingiraho bavuga ko Tuyambaze Emérance yari afite imyaka 17 icyaha gikorwa, bityo akaba nta makosa Urukiko Rukuru, Urugereko rwa Rusizi rukorera i Karongi rwakoze

rumuhana nk'umuntu mukuru. [19] Naho ku kibazo cyo kumenya niba ukwemera icyaha kwe kudashidikanywaho kuburyo byamubera impamvu nyoroshyacyaha, Tuyambaze Emérance avuga ko yatewe inda na Sibomana Célestin, abonye atwite ara mwigarika, umunsi icyaha gikorwa abyara umwana muzima ariko atinya ko Se wahoraga amubwira ko azamukubita ishoka abimenya, uruhinja aruta mu musarane wa Nyirabutondwe Agnès, iyo mvugo ikaba ihura n'iya Nzigiyimana Théogène, Nyirabutondwe Agnès ndetse n'ibyemezwana raporo ya muganga ko umwana yavutse ari muzima, agatabwa mu musarane, akaza gupfa bamujyanye kwa muganga yishwe n'imyanda yari yamugiye mu kanwa no mu mukondo, byose bigaragaza ko asobanura neza imikorere y'icyaha, bityo ukwemera icyaha kwe kukaba kudashidikanywaho. [20] Urukiko rurasanga nubwo Tuyambaze Emérance yakoze icyaha cy'ubugome ajugunya umwana yabyaye mu musarane akaza kwicwa n'imyanda, kuba yari umwana w'umukobwa w'imyaka cumi n'umunani gusa icyaha gikorwa, akaba yari yaratereranywe na nyina wamusize we na bavandimwe be bakiri bato ahunze amahane ya Se, kuba yarahoraga atotezwa na Se wamubwiraga ko azamukubita ishoka, ndetse agahohoterwa na Sibomana

Page 6

Célestin wari umugabo ukuze yajyaga gucaho incuro kugirango abone amaramuko n'uko abeshaho abavandimwe be, bigaragaza ko iyi mibereho iri mu byatumye yishora mu busambanyi bwamuviriyemo gutwita inda atateganyije ndetse no kwihekura, bityo bikaba bikwiye kwiyoungera ku kuba ari ubwa mbere yakurikiranwa n'Inkiko bizwi no kuba kuva yatangira gukurikiranwa n'inzego z'ubutabera yaremeye icyaha kandi akagisabira imbabazi, bikamubera impamvu nyoroshyacyaha, igihano cy'imyaka makumyabiri yakatiwe n'Urukiko Rukuru, Urugereko rwa Rusizi rukorera i Karongi kigasimbuzwa igihano cy'imyaka itanu (5 ans) hashingiwe ku ngingo ya 82 n'iya 83 y'Itegeko-Teka no 21/77 ryo ku wa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana ibyaha ryakurikizwaga icyaha gikorwa. [21] Urukiko rurasanga kandi kuba Tuyambaze Emérance yarafashwe ku wa 08/11/2010, bisobanuye ko igihano cy'imyaka itanu akatiwe n'Urukiko yakirangije, bityo akaba akwiye guhita arekurwa. III. ICYEMEZO CY'URUKIKO [22] Rwemeje ko ubujurire bwa Tuyambaze Emérance bufite ishingiro; [23] Ruhanishije Tuyambaze Emérance igifungo cy'imyaka itanu (5 ans); [24] Ruvuze ko imikirize y'urubanza no RP 0004/10/HC/RSZk rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi ku wa 28/11/2011 ihindutse ku birebana n'igihano; [25] Rutegetse ko Tuyambaze Emérance arekurwa uru rubanza rukimara gusomwa kuko yarangije igihano; [26] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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