

RWANDA / JUDGMENT

UBUSHINJACYAHA v TWAGIRIMANA

RPAA 00485/2025/CA

COURT

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UBUSHINJACYAHA v TWAGIRIMANA

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Text

Page 1

UBUSHINJACYAHA v TWAGIRIMANA [Rwanda URUKIKO RW'UBUJURIRE - RPAA 00485/2025/CA (Kanyange, P.J.) 17 Ukwakira 2025] Amategeko agenga imanza z'inshinjabyaha – Gusambanya umwana - Ukoreye ku mwana kimwe mu bikorwa biteganywa n'ingingo ya 133 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe, aba akoze icyaha cyo gusambanya umwana kandi nta rwitwazo na rumwe rushobora gusobanura icyatumye umuntu asambanya umwana ku buryo byamuviramo kudahanwa Incamake y'ikibazo: Mu bihe bitandukanye, Twagirimana yagiye asambanya umwana w'umukobwa w'imyaka 17 wahawe izina rya I.E, aza kumutera inda, abyaye amujyana iwe babana nk'umugabo n'umugore. Bimenyekanye, yatangiye gukurikiranwa, Ubushinjacyaha bumurega mu Rukiko Rwisumbuye rwa Gasabo icyaha cyo gusambanya umwana byakurikiwe no kubana nk'umugabo n'umugore. Uregwa yaburanye yemera icyaha avuga ko yabitewe n'uko uwo mukobwa yamubwiraga ko akuze. Urukiko rushingiye ku kwemera kwe ndetse no ku bindi bimenyetso, rwasanze uregwa ahamwa n'icyaha ashinjwa rumukatira igihano cy'igifungo cy'imyaka 15. Uregwa yajuririye icyo cyemezo mu Rukiko Rukuru avuga ko yakoze icyo cyaha atabigambiriye kuko yari azi ko uwo mukobwa ari mukuru, urukiko ruza gusanga ubujurire bwe nta shingiro bufite. Twagirimana yatanze ubujurire

bwa kabiri mu Rukiko rw'Ubujurire, hasuzumwa ikibazo cyo kumenya niba urukiko rwarirengagije ko nta bushake bwo gukora icyaha Twagirimana Athanase yari afite. Uyu asobanura ko nta bushake yigeze agira bwo gukora icyaha yahamijwe kuko yabanye na I.E azi ko ari mukuru bityo akaba yigaya kuko atagenzuye ngo amenye neza niba ibyo yabwiwe ari ukuri, akaba asaba kongera kugabanyirizwa igihano. Ubushinjacyaha buvuga ko hashingiwe kubyo dosiye igaragaza, I.E yavutse mu mwaka wa 2006 asambanywa mu mwaka wa 2022 afite imyaka 16, ni ukuvuga ataruzuzwa imyaka y'ubukure, Twagirimana akaba yari afite inshingano yo kugenzura imyaka ye, ko ndetse uwo mwana abazwa mu Bugenzacyaha yavuze ko Twagirimana yari azi ko ataruzuzwa imyaka y'ubukure. Incamake y'icyemezo: Ukoreye ku mwana kimwe mu bikorwa biteganywa n'ingingo ya 133 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange nk'uko ryahinduwe, aba akoze icyaha cyo gusambanya umwana kandi nta rwitwazo na rumwe rushobora gusobanura icyatumye umuntu asambanya umwana ku buryo byamuviramo kudahanwa. Ubujurire, nta shingiro bufite. Amategeko yashingiweho: Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, ingingo ya 83.

Page 2

Imanza zifashishijwe: RPAA 00055/2024/CA, Ubushinjacyaha na Manizabayo Patrick rwaciwe n'Urukiko rw'Ubujurire ku wa 28/03/2025. Urubanza I. IMITERERE Y'URUBANZA

- [1] Twagirimana Athanase yasambanyije mu bihe bitandukanye umwana w'umukobwa w'imyaka cumi n'irindwi (17) wahawe izina rya I.E1 muri uru rubanza anamutera inda, abyara mu kwezi kwa 06/2023 bahita batangira kubana nk'umugore n'umugabo, bimenyekana hashize amezi abiri babana, Twagirimana Athanase atangira gukurikirwanwa. [2] Nyuma y'iperereza, Ubushinjacyaha bwamureze mu Rukiko Rwisumbuye rwa Gasabo icyaha cyo gusambanya umwana byakurikiwe no kubana nk'umugore n'umugabo, bushingiye ku mvugo za I.E, iz'abatangabuhamya n'icyemezo cy'amavuko cya I.E kigaragaza ko yari afite imyaka 17, bumusabira igifungo cya burundu. [3] Twagirimana Athanase yaburanye yemera icyaha, avuga ariko ko yabitewe n'uko I.E yamubwiraga ko akuze, asaba kugabanyirizwa igihano. [4] Urukiko rwaciye urubanza N° RP 001049/2023/TGI/GSBO ku wa 11/12/2023, rusanga Twagirimana Athanase yarakoze icyaha akurikiranweho kuko yacyemeye mu nzego z'iperereza no mu Rukiko, akanashinjwa na I.E hamwe n'inshuti ye yabibwiye, hakaba n'icyemezo cy'amavugo kigaragaza ko yasambanyijwe akiri umwana, ariko rumugabanyiriza igihano kubera ko ari ubwa mbere akurikiranwe mu nkiko no kuba yaremeye icyaha kandi akaba atari mukuru cyane kuko yari afite imyaka 20, rumuhanisha igifungo cy'imyaka 15. [5] Twagirimana Athanase yajuriye mu Rukiko Rukuru avuga ko Urukiko Rwisumbuye rutahaye agaciro impamvu nyoroshyacyaha bituma rumuhanisha igifungo cy'imyaka 15 kandi yaragaragaje ko ari ubwa mbere akoze icyaha ndetse umwana n'umugore we bakaba babayeho nabi, naho mu mwanzuro w'inyongera avuga ko asaba kugabanyirizwa igihano kubera ko habayeho ubusembure kuko I.E yamubwiye ko akuze, ko rero yakoze icyaha atabigambiriye, akaba yahanishwa igifungo cy'imyaka 2 isubitse. [6] Ubushinjacyaha bwasubije ko impamvu z'ubujurire bwa Twagirimana Athanase nta shingiro zifite, kuko nta kimenyetso atanga kivuguruza ibyashingiweho n'Urukiko Rwisumbuye, ko

kandi rwitaye ku mpamvu nyoroshyacyaha kuko yahanishijwe igifungo cy'imyaka 15 mu gihe yashoboraga guhanishwa igifungo cya burundu. [7] Urukiko rwaciye urubanza N° RPA 01649/2023/HC/KIG ku wa 27/03/2025, rusanga Urukiko Rwisumbuye rwarashingiye ku mpamvu nyoroshyacyaha rugabanyiriza igihano

1 Yahawe iri zina kuko ari umwana

Page 3

Twagirimana kandi icyo yahawe kikaba ari cyo gito itegeko riteganywa ku muburanyi wagombaga guhanishwa igifungo cya burundu nk'uko biteganywa n'ingingo ya 2 y'Itegeko N°059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange. Rwasanze kandi ibyo aburanisha ko yasembuwe n'uwo yasambanyije ngo kuko yamubeshye ko ari mukuru nta shingiro bifite, kuko nk'umuntu mukuru yari afite inshingano zo kugenzura niba uwo bagiye gukorana imibonano mpuzabitsina ari mukuru. [8] Rwasanze kandi atahanwa nk'uwakoze icyaha cyo gusambanya umwana gusa ngo kuko batabanye nk'umugabo n'umugore, kuko kuva mu Bugenzacyaha kugeza mu Rukiko yemeye ko bakoranaga imibonano mpuzabitsina aza kumutera inda nyuma babana nk'umugabo n'umugore, ko kandi n'ubwo I.E yavugiye mu Rukiko ko yamubeshye ko akuze ko kandi ko batabanye nk'umugabo n'umugore, bitahabwa agaciro kuko bivuguruzwa n'imvugo za Twagirimana Athanase mu Bugenzacyaha, bityo ko igihano yahanishijwe n'Urukiko Rwisumbuye rwa Gasabo kigumyeho. Rwasanze kandi isubikagihano asaba atarihabwa kuko igihano ahawe kirenze imyaka itanu. [9] Twagirimana Athanase yongeye ajurira mu Rukiko rw'Ubujurire, urubanza rwandikwa kuri N° RPAA 00485/2025/CA, iburanisha ribera mu ruhamye ku wa 07/10/2025 yunganiwe na Me Shema T. Gerald, Ubushinjacyaha buhagarariye na Sibomana Stanislas Umushinjacyaha ku rwego rw'Igihugu. [10] Mu myanzuro y'ubujurire no mu miburanire, Twagirimana Athanase n'umwunganira bavuga ko ubujurire bwe bugamije kugaragaza ko Urukiko rwamuhamije icyaha rwirengagije ko nta bushake bwo gukora icyaha yari afite, ngo bishingirweho agabanyirizwe igihano. [11] Uhagararariye Ubushinjacyaha avuga ko iyo mpamvu nta shingiro ifite, kuko kuvuga ko nta bushake bwo gukora icyaha Twagirimana Athanase yari afite nta shingiro bifite, kuko uko icyaha cyaba gikozwe kose itegeko rirengera umwana wasambanyijwe. [12] Ikibazo kigomba gusuzumwa muri uru rubanza ni ukumenya niba Urukiko rwarirengagije ko nta bushake bwo gukora icyaha Twagirimana Athanase yari afite. II. ISESENGURA RY'IKIBAZO KIRI MU RUBANZA

Kumenya niba Urukiko rwarirengagije ko nta bushake bwo gukora icyaha Twagirimana Athanase yari afite. [13] Twagirimana Athanase n'umwunganira bavuga ko Urukiko rwamuhamije icyaha rufashe ibintu uko bitagenze, kuko harebwe ibikorwa bigaragazwa na dosiye, ntaho rwari gushingira rumuhamya icyaha cyo gusambanya umwana, ahubwo rwari kumuhamya icyaha cyo gusambanya umwana bidaturutse ku bushake. [14] Basobanura ko I.E yamubeshye ko ari mukuru ariko ko nta bushake yari afite bwo gukora icyaha ko kandi atari agambiriye kumugirira nabi, akaba yigaya kuko atagenzuye ngo amenye imyaka ye, ko rero byasuzumwa nk'impamvu nyoroshyacyaha akagabanyirizwa igihano.

Page 4

- [15] Uhagarariye Ubushinjacyaha avuga ko iyo mpamvu y'ubujurire nta shingiro ifite, kuko hashingiwe kubyo dosiye igaragaza, I.E yavutse mu mwaka wa 2006 asambanywa mu mwana wa 2022 afite imyaka 16, ni ukuvuga ataruzuzwa imyaka y'ubukure, Twagirimana Athanase akaba yari afite inshingano yo kugenzura imyaka ye, ko ndetse uwo mwana abazwa mu Bugenzacyaha yavuze ko Twagirimana yari azi ko ataruzuzwa imyaka y'ubukure. [16] Avuga kandi ko ibivugwa na Twagirimana Athanase ko yakozwe icyaha nta bushake bitahabwa agaciro kuko Itegeko rirengera umwana, ko uko byaba byakozwe kose bidakuraho ko yasambanyijwe, ko no kuba yaba yari avuye mu rundi rugo ari amagambo gusa adashyigikiwe n'ikimenyetso, mu gihe hari ibimenyetso by'uko ari Twagirimana Athanase wamusambanyije, ko rero kuba ntacyo anenga urubanza rwajuririwe, rugomba kugumana agaciro. UKO URUKIKO RUBIBONA
- [17] Impaka kuri iyi ngingo ishingiyeye ku kumenya niba Urukiko rwarirengagije ko nta bushake bwo gukora icyaha Twagirimana Athanase yagize. [18] Ingingo ya 83, igika cya kabiri, y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, iteganya ko umuntu ukora icyaha abishaka ari we uhanwa. [19] Naho ikibazo cy'uregwa witwaza impamvu zatumye asambanywa umwana, cyatanzweho umurongo n'Urukiko rw'Ubujurire mu rubanza N° RPAA 00055/2024/CA rwaciye ku wa 28/03/2025 haburana Ubushinjacyaha na Manizabayo Patrick, uvuga ko ukoreye ku mwana kimwe mu bikorwa biteganywa n'ingingo ya 133 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe2, aba akoze icyaha cyo gusambanywa umwana kandi nta rwitwazo na rumwe rushobora gusobanura icyatumye umuntu asambanywa umwana ku buryo byamuviramo kudahanwa. [20] Nk'uko dosiye ibigaragaza, inkiko zabanje zemeje ko I.E yasambanyijwe akiri umwana zishingiye ku cyemezo cy'amavuko kigaragaza ko yavutse ku wa 28/04/2006, no kuba Twagirimana Athanase kuva mu nzego z'iperereza kugeza mu Rukiko yaremeye ko yakoranaga imibonano mpuzabitsina n'uwo mwana aza no kumutera inda nyuma babana nk'umugabo n'umugore, na I.E akaba amushinja ko basambanye bakanabana akiri umwana. [21] Ku bivugwa na NTwagirimana Athanase ko yasambanyije I.E. nta bushake afite bwo gukora icyaha bitewe n'uko yamubeshye ko akuze, Urukiko rurasanga nta shingiro byahabwa, kuko hashingiwe ku murongo watanzwe mu rubanza rwavuzwe mu gika cya 19 cy'uru rubanza, kuba yarasambanyije I.E akiri umwana, bivuze ko yakozwe icyaha giteganwa n'ingingo ya 133 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, akaba rero ntacyo yakwitwaza cyatuma adahanwa, nko kuba avuga ko yamubeshye imyaka, usibye ko I.E. abazwa mu Bugenzacyaha yemeje ko babanye abizi neza ko ari umwana.

2 Gushyira igitsina cy'umuntu mu gitsina, mu kibuno cyangwa mu kanwa by'umwana; gushyira urugingo urwo ari rwo rwose rw'umubiri w'umuntu mu gitsina cyangwa mu kibuno cy'umwana; gukora ikindi gikorwa cyose ku mubiri w'umwana hagamijwe ishimishamubiri

Page 5

[22] Urukiko rurasanga rero usibye no kuba uwakoze icyaha nta bushake atagabanyirizwa igihano nk'uko Twagirimana abivuga ahubwo muri icyo gihe adahanwa nk'uko ingingo ya 83 yavuzwe haruguru ibiteganywa, ubujurire bwe bugamije kugaragaza ko yakozwe icyaha nta bushake afite bwo kugikora, nta shingiro bufite, bityo hakaba hagumyeho imikirize y'urubanza rwajuririwe, n'igifungo cy'imyaka 15 yahanishijwe, cyane cyane ko aricyo gito Urukiko rwashoboraga gutanga harebwe ibiteganywa n'ingingo ya 2 (a) y'Itegeko N°059/2023 ryo ku wa 04/12/2023 ryavuzwe haruguru3.

III. ICYEMEZO CY' URUKIKO

[23] Rwemeje ko ubujurire bwatanzwe na Twagirimana Athanase nta shingiro bufite; [24] Rwemeje ko urubanza urubanza N° RPA 01649/2023/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 27/03/2025 rugumanye agaciro mu ngingo zarwo zose; [25] Rutegetse ko igifungo cy'imyaka cumi n'itanu (15) Twagirimana Athanase yahanishijwe kigumyeho.

3 Iteganya ko igifungo cya burundu gishobora kugabanywa ariko ntikijye muni y'igihano cy'igifungo cy'imyaka 15.

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