

RWANDA / JUDGMENT

UBUSHINJACYAHA v. IRATUZI SIYO

RPAA01216/2024/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v. IRATUZI SIYO

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Text

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UBUSHINJACYAHA v. IRATUZI SIYO [Rwanda URUKIKO RW'UBUJURIRE – RPAA01216/2024/CA (Umugwaneza, J. P.) 30 Ukwakira 2025] Amategeko agenga ibimenyetso – Ubuhamya – Ubuhamya butanzwe n'uregwa – Ubuhamya butanzwe n'uregwa ntibubuzwa gushingirwaho n'uko nta bindi bimenyetso bibushyigikiye cyangwa n'uko nawe aregwa muri dosiye imwe n'uwo ashinja, mu gihe mu gusuzuma agaciro k'ubuhamya hitabwa ku ireme ryabwo n'ubumenyi bw'uwabutanze ku bijyanye n'ikigibwaho impaka. Incamake y'ikibazo: Ubushinjacyaha bwareze Iratuzi Siyo na Nyirambarushimana mu Rukiko Rwisumbuye rwa Nyagatare, bubakurikiranyeho icyaha cyo gukora ibikorwa byerekeranye n'ibiyobyabwenge cyangwa urusobe rw'imiti ikoreshe nkabyo mu buryo bunyuranyije n'amategeko. Nyirambarushimana yaburanye yemera icyaha, avuga ko udupfunyika 38 tw'urumogi na garama 250 z'urumogi rw'ibyatsi yafatanywe, yaruhawe na Iratuzi Siyo ngo arucuruze, maze bazagabane amafaranga avuyemo. Naho Iratuzi Siyo yaburanye ahakana icyaha aregwa avuga ko nta rumogi yigeze aha Nyirambarushimana. Urukiko rwisumbuye rwasanze Iratuzi Siyo ahamwe n'icyaha aregwa, rushingiye ku kuba ashinjwa na Nyirambarushimana, kuko ari ikimenyetso kidashidikanywaho kimuhamya icyaha cyo gucuruza ibiyobyabwenge, rumuhanisha igifungo cy'imyaka 25 n'ihazabu ya 21.000.000Frw. Kuri

Nyirambarushimana, Urukiko rwasanze ahamwa n'icyaha cyo gufatanwa ibiyobyabwenge (urumogi), kuko nta kimenyetso kigaragaza ko yari yagatangiyeye igikorwa cyo kurucuruza, maze ahanishwa igifungo cy'umwaka umwe (1). Iratuzi Siyo yajuririye icyo cyemezo mu Rukiko Rukuru, urugereko rwa Rwamagana avuga ko yahamijwe icyaha atakoze, ko Urukiko rwashingiye gusa ku mvugo ya Nyirambarushimana bareganwa hamwe, akaba ariwe wafatanwe urwo rumogi ashinjwa, kandi ko nta kigaragaza ko ibyo avuga ari ukuri koko. Ubushinjacyaha bwavuze ko nta cyabuza ko ubuhamya bw'uregwa buhabwa agaciro. Urukiko Rukuru rwaciye urubanza rwemeza ko ubwo bujurire nta shingiro bufite, kuko ubuhamya bwa Nyirambarushimana ari ukuri, kuko yasobanuye neza uko ibintu byagenze. Rwemeje ko ahamwa n'icyaha cyo gucuruza ibiyobyabwenge, rumuhanisha igifungo cy'imyaka 15 n'ihazabu ya 5,000,000Frw, kuko rwasanze akwiye kugabanyirizwa igahano hashingiye ku buremere bw'icyaha yakoze. Iratuzi Siyo ntiyishimiye icyo cyemezo, yakijuririye muri uru Rukiko rw'Ubujurire avuga ko yahamijwe icyaha cyo gucuruza ibiyobyabwenge nta bimenyetso bikimuhamya bishingiweho, asaba ko yarenganurwa akagirwa umwere. Asobanura ko usibye imvugo ya Nyirambarushimana wamubeshyeye ko ariwe wamuhaye urumogi ngo arumucururize, ko ubuhamya bwe butahabwa agaciro kuko bareganwaga hamwe, kandi ko nta kimenyetso ubushinjacyaha bwagaragaje kimushinja kandi aribwo bufite inshingano zo kugaragaza ibimenyetso byemeza icyaha. Ubushinjacyaha buvuga ko ubuhamya bw'ushinja Uregwa ko ariwe wamuhaye urumogi ngo ajye arumucururiza hanyuma bagabane inyungu agafatwa atarabitangira, bugaragaza isano riri hagati y'Uregwa n'icyaha cyo gucuruza ibiyobyabwenge. Buvuga kandi ko kuba Nyirambarushimana yarareganwaga hamwe n'Uregwa, bitatuma ubuhamya bwe buteshwa agaciro, kuko uregwa atabujijwe gutanga ubuhamya, nk'uko biteganywa n'Itegeko rigenga imiburanishirize y'imanza nshinjabyaha. Ubwo buhamya bukaba ari ikimenyetso kidashidikanywaho gihamya Uregwa gukora icyaha aregwa, dore ko ari imbere y'Ubushinjacyaha yemeye ko yari asanzwe aziranye na Nyirambarushimana kandi ko ntacyo bapfa. Incamake y'icyemezo: Ubuhamya bwa Nyirambarushimana Christine bufite ireme, nta mpamvu yatuma budashingirwaho, kuko butari kubuzwa gushingirwaho n'uko budashyigikiwe n'ibindi bimenyetso

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cyangwa n'uko nawe aregwa hamwe na Iratuzi Siyo, kuko ibyo ataribwo byitabwaho mugusuzuma agaciro gahabwa ubuhamya, ahubwo hitabwa ku ireme ryabwo n'ubumenyi bw'uwabutanze ku bijyanye n'ikigibwaho impaka. Ubujurire nta shingiro bufite. Amategeko yashingiweho: Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso, ingingo ya 53. Itegeko N° 27/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 11 n'iya 48. Imanza zifashishijwe: RPAA/GEN00001/2022/CA, Ubushinjacyaha na Munyakyanza Jean de Dieu rwaciye n'Urukiko rw'Ubujurire ku wa 29/05/2025. RPAA00386/2021/CA, Ubushinjacyaha na Kayinamura Télésphore alias Maso n'abandi rwaciye n'Urukiko rw'Ubujurire ku wa 03/07/2024. Urubanza I. IMITERERE Y'URUBANZA [1] Ku itariki ya 09/06/2021, mu Mudugudu wa Gikunyu, Akagari ka Nyagatabire, Umurenge wa Musheru, Akarere ka Nyagatare, uwitwa Nyirambarushimana Christine yafatanwe udupfunyika 38 tw'urumogi n'urundi rw'ibyatsi rungana na garama 250, avuga ko yaruhawe na Iratuzi Siyo Sosthène ngo arucuruze bazagabane

inyungu, aba bombi barafashwe bashyikirizwa Ubugenzacyaha batangira gukurikiranwa. [2] Ubushinjacyaha bwabareze mu Rukiko Rwisumbuye rwa Nyagatare, icyaha cyo gukora ibikorwa byerekeranye n'ibiyobyabwenge cyangwa urusobe rw'imiti ikoreshwa nkabyo mu buryo bunyuranyije n'amategeko. Nyirambarushimana Christine yaburanye yemera ko yafatanwe urumogi yari yahawe na Iratuzi Siyo Sosthène ngo ajye arucuruza bagabane inyungu, ariko ko atari yakarucuruje. Naho Iratuzi Siyo Sosthène yaburanye ahakana icyaha aregwa akavuga ko nta rumogi yigeze aha Nyirambarushimana Christine. [3] Mu rubanza RP00967/2021/TGI/NYG rwaciwe ku wa 21/07/2021, Urukiko Rwisumbuye rwa Nyagatare rwasanze kuri Iratuzi Siyo Sosthène, kuba ashinjwa na Nyirambarushimana Christine ko ariwe wamuhaye urumogi ngo ajye arumucururiza bazagabane inyungu, ari ikimenyetso kidashidikanywaho kimuhamya icyaha cyo gucuruza ibiyobyabwenge, rwemeza ko ahamwa n'icyaha cyo gucuruza ibiyobyabwenge by'urumogi, ahanishwa igifungo cy'imyaka 25 n'ihazabu ya 21.000.000Frw. [4] Kuri Nyirambarushimana Christine, Urukiko rushingiye ku kuba yemera ko yafatanwe urumogi ariko atari yarucuruza, umutangabuhamya PC Nsabayezu Théophile umushinja nawe akaba ntaho agaragaza ko yari yagatangiyeye igikorwa cyo kurucuruza, rwemeje ko ahamwa n'icyaha cyo gufatanwa ibiyobyabwenge (urumogi), ahanishwa igifungo cy'umwaka umwe (1). [5] Iratuzi Siyo Sosthène ntianyuzwe n'icyo cyemezo, ajuririra Urukiko Rukuru, Urugereko rwa Rwamagana, avuga ko yahamijwe icyaha cyo gucuruza ibiyobyabwenge nta bimenyetso bikimuhamya bishingiweho uretse imvugo ya Nyirambarushimana Christine baregwa hamwe ari nawe wafatanwe urumogi ashinjwa, ko ataba umutangabuhamya kandi nawe akurikiranyweho icyaha, byongeye kandi nta n'ikigaragaza ko ibyo avuga ari ukuri.

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[6] Ubushinjacyaha bwavuze ko, bitabujijwe ko ubuhamya bw'uregwa buhabwa agaciro bukaba bwashingirwaho mu gufata icyemezo. [7] Mu rubanza RPA01622/2021/HC/RWG rwaciwe ku wa 30/10/2024, Urukiko Rukuru, Urugereko rwa Rwamagana rwasanze mu buhamya bwe Nyirambarushimana Christine asobanura neza uko ibintu byagenze, akagaragaza uwamuhaye urumogi ko ari Iratuzi Siyo Sosthène, akagaragaza uko babonye kandi Iratuzi Siyo Sosthène nawe akaba adahakana ko bahuraga, byumvikana ko bari baziranye kandi ntacyo bapfa, rusanga nta cyari gutuma budashingirwaho kuko ari ukuri, Iratuzi Siyo Sosthène akaba atabasha kubuvuguriza. Rwemeza ko ubujurire bwe nta shingiro bufite. Rusanga ariko akwiriye kugabanyirizwa igihano kigahuzwa n'uburemere bw'icyaha yakoze, ahanishwa igifungo cy'imyaka 15 n'ihazabu ya 5.000.000Frw. [8] Iratuzi Siyo Sosthène yajuririye Urukiko rw'Ubujurire, urubanza ruhabwa RPAA01216/2024/CA, ruburanishwa mu ruhame ku wa 14/10/2025, yunganiwe na Me Uwimana Thadée, Ubushinjacyaha buhagarariye na Bideri Diogène, Umushinjacyaha ku rwego rw'Igihugu. [9] Mu myanzuro y'ubujurire no mu miburanire yabo, Iratuzi Siyo Sosthène n'umwunganira bavugaga ko yahamijwe icyaha cyo gucuruza ibiyobyabwenge nta bimenyetso bikimuhamya bishingiweho, bagasaba ko yarenganurwa akagirwa umwere. [10] Ubushinjacyaha buvugaga ko ubujurire bwa Iratuzi Siyo Sosthène nta shingiro bufite kuko ashinjwa na Nyirambarushimana Christine ko yamuhaye urumogi ngo ajye arumucururiza hanyuma

bazagabane inyungu, afatwa ataratangira kurugurisha. [11] Hakurikijwe iyo miburanire, muri uru rubanza harasuzumwa ikibazo cyo kumenya niba Iratuzi Siyo Sosthène yarahamijwe icyaha cyo gucuruza ibiyobyabwenge nta bimenyetso bikimuhamya bishingiweho. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba Iratuzi Siyo Sosthène yarahamijwe icyaha cyo gucuruza ibiyobyabwenge nta bimenyetso bikimuhamya bishingiweho [12] Iratuzi Siyo Sosthène n'umwunganira bavuga ko, yahamijwe icyaha cyo gucuruza ibiyobyabwenge nta bimenyetso bikimuhamya bishingiweho bagasaba ko yarenganurwa akagirwa umwere. Basobanura ko bizwi neza ko urumogi Iratuzi Siyo Sosthène aregwa atariwe warufatanwe ahubwo rwafatanwe Nyirambarushimana Christine ari nawe washyize umukono ku nyandiko y'ifatira ryarwo nk'uko ibimenyetso byose bibigaragaza, amaze gufatwa avuga ko urumogi yaruhawe na Iratuzi Siyo Sosthène ngo arumucururize, nyamara amubeshyera kugira ngo bagabane ingaruka z'icyaha, Urukiko rugendera kuri iyo mvugo ya Nyirambarushimana Christine ruhamya icyaha Iratuzi nta kindi kimenyetso kidashidikanywaho kigaragaza ihuririro rye n'ibyo biyobyabwenge, rwirengajije ihame ry'uko umuntu wese ufatanwe umutungo utimukanwa aba ariwe nyirawo. [13] Iratuzi Siyo Sosthène n'umwunganira bakomeza bavuga ko, usibye imvugo ya Nyirambarushimana Christine wabeshyeye Iratuzi Siyo Sosthène ko ariwe wamuhaye urumogi ngo arumucururize, nta kimenyetso ubushinjacyaha bwagaragaje kimushinja kandi aribwo bufite inshingano zo kugaragaza ibimenyetso byemeza icyaha, ko hashingiwe ku murongo watanze mu rubanza RPAA00386/2021/CA rwaciye n'Urukiko rw'Ubujurire ku wa 03/07/2024 haburana Ubushinjacyaha na Kayinamura Télésphore alias Maso n'abandi, ubuhamya bwa Nyirambarushimana Christine nta shingiro bukwiye guhabwa kuko budashyigikiwe n'ibindi bimenyetso.

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- [14] Ubushinjacyaha buvuga ko hashingiwe ku buhamya bwa Nyirambarushimana Christine ushinja Iratuzi Siyo Sosthène ko ariwe wamuhaye urumogi ngo ajye arumucururiza hanyuma bagabane inyungu akaza gufatwa atarabitangira, hari isano hagati ya Iratuzi Siyo Sosthène n'igikorwa cyo gucuruza urumogi. Ko ubwo buhamya ari ikimenyetso kidashidikanywaho gihamya Iratuzi Siyo Sosthène icyaha cyo gucuruza ibiyobyabwenge, dore ko imbere y'Ubushinjacyaha yemeye ko yari asanzwe aziranye na Nyirambarushimana Christine kandi ko ntacyo bapfa. [15] Ubushinjacyaha buvuga kandi ko kuba Nyirambarushimana Christine yarakurikiranywe mu rubanza hamwe na Iratuzi Siyo Sosthène bitatesha agaciro ubuhamya bwe kuko uregwa atabujijwe gutanga ubuhamya nk'uko biteganywa mu ngingo ya 48 y'Itegeko N° 27/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ivuga ko: «umuntu wese wagize uruhare mu ikorwa ry'icyaha cyangwa uwakorewe icyaha ashobora kumvwa nk'umutangabuhamya», cyane cyane ko Nyirambarushimana Christine muri ubwo buhamya bwe asobanura neza uko byagenze uwamuhaye urwo rumogi n'uko babonanye, kandi Iratuzi Siyo Sosthène akaba atabihakana ko bahuraga, byumvikana ko bari baziranye kandi ntacyo bapfa. UKO URUKIKO RUBIBONA [16] Ikibazo kiri muri uru rubanza gishingiye ku kumenya niba imvugo ya

Nyirambarushimana Christine wari ukuriranywe hamwe na Iratuzi Siyo Sosthène itaragombaga guhabwa ishingiro mu gihe idashyigikiwe n'ibindi bimenyetso. [17] Ikibazo nk'iki cyasesenguwe mu rubanza RPAA/GEN00001/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 29/05/2025, habura Ubushinjacyaha na Munyakayanza Jean de Dieu, igika cya 16. Muri urwo rubanza Urukiko rushingiye ku ngingo ya 481 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryavugururwe kugeza ubu n'ingingo ya 532 y'Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso, rwemeza ko urwego rubifitiye ububasha (n'Urukiko rurimo) arirwo rusuzuma mu bushishozi bwawo agaciro gakwiye guhabwa ikimenyetso gishingiye ku buhamya, rutitaye ko ari ubw'umuntu umwe, ahubwo rwitaye ku bumenyi bafite ku byabaye no ku budakemwa bw'ibyo bavuga, kabone n'iyi bwaba ari ubw'uwakorewe icyaha cyangwa umwe mu bagize uruhare mu ikorwa ryacyo. Ko kuba ubuhamya bwaba bwaratanzwe n'umuntu umwe cyangwa bukaba bwaratanzwe n'uwagize uruhare mu ikorwa ry'icyaha, ibyo ubwabyo bitaba impamvu ituma budashingirwaho, ahubwo busuzumanwa ubushishozi, byagaragara ko bufite ireme, ko uwabutanze azi ukuri ku byabaye, ko ntacyo yihimbira, bugashingirwaho mugafata icyemezo. [18] Imikirize y'urubanza rujuririrwa igaragaza ko Iratuzi Siyo Sosthène yahamijwe icyaha cyo gucuruza ibiyobyabwenge hashingiwe ku mvugo ya Nyirambarushimana Christine wafatanwe udupfunyika 38 tw'urumogi n'urundi rungana n'amagarama 250, akemeza ko yaruhawe na Iratuzi Siyo Sosthène ngo arucuruze bazagabane inyungu. [19] Dosiye y'uru rubanza igaragaza ko Nyirambarushimana Christine ari ibere y'Ubugenzacyaha ku wa 09/06/2021, yavuze ko atari asanzwe acuruza urumogi, ko yashutswe n'uwitwa Siyo ukunda kuba aho bita muri kabiri, ko ariwe wamuzaniye urumogi rungana n'udupfunyika 38 n'urundi rungana n'amagarama 250 ngo arucuruze bazagabane inyungu afatwa atari yatangira kurucuruza. Nyirambarushimana Christine ageze imbere y'Ubushinjacyaha ndetse no mu iburanisha mu Rukiko

1Ivuga ko umuntu wese wagize uruhare mu ikorwa ry'icyaha cyangwa uwakorewe icyaha ashobora kumvwa nk'umutangabuhamya. 2Ivuga ko urwego rufite ububasha rusuzuma ukwemerwa cyangwa ukutemerwa n'agaciro by'ikimenyetso gishingiye ku buhamya. Ntirwita ku mubare w'abatangabuhamya, ahubwo rwita cyane ku bumenyi bw'ibyabaye no ku budakemwa bw'ubuhamya batanga.

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Rwisumbuye rwa Nyagatare, naho yakomeje gushinja Iratuzi Siyo Sosthène ko ariwe wamuhaye urumogi yafatanwe rungana n'udupfunyika 38 na garama 250, ko yarumuhaye ngo arucuruze bazagabane inyungu. [20] Iratuzi Siyo Sosthène abazwa mu Bugenzacyaha ku wa 15/06/2021 no mu Bushinjacyaha ku wa 17/06/2021, yahakanye icyaha, ariko yemera ko izina Siyo ari irye ry'irihimbano kandi ko azi Nyirambarushimana Christine, ko ajya amunyuraho aho aba muri kabiri, ko amuzi no mu Mudugudu wa Gikunyu muri Nyagatabire, kandi ko ntacyo bapfa cyatuma amubeshyera, ariko ko nta rumogi yamuhaye. [21] Urukiko rw'Ubujurire rurasanga, kuba Nyirambarushimana Christine abazwa mu Bugenzacyaha nta wundi muntu yavuze ko yamuhaye urumogi ngo arucuruze uretse Siyo, akavuga ko yarumuhaye ngo arucuruze bazagabane inyungu,

Iratuzi nawe mu mabazwa ye akaba yaremeye ko izina Siyo ari irye kandi ko aziranye na Nyiransabimana Christine, ko nta n'icyo bapfa ku buryo yamubeshyera, ibyo bigaragaza neza ko ibyo Nyirambarushimana Christine avuga ari ukuri, bityo ubuhamya bwe bukaba butari kubuzwa gushingirwaho n'uko budashyigikiwe n'ibindi bimenyetso cyangwa n'uko nawe aregwa muri iyi dosiye kuko nk'uko byasobanuwe haruguru, ibyo ataribyo byitabwaho mugusuzuma agaciro gahabwa ubuhamya, ahubwo hitabwa ku ireme ryabwo n'ubumenyi bw'uwabutanze ku bijyanye n'ikigibwaho impaka. [22] Ku bijyanye n'imiburanire ya Iratuzi Siyo Sosthène n'umwunganira y'uko hashingiwe ku rubanza RPAA00386/2021/CA, ubuhamya bwa Nyirambarushimana Christine nta shingiro bukwiye guhabwa kuko budashyigikiwe n'ibindi bimenyetso, Urukiko rw'Ubujurire rurasanga iyo miburanire nta shingiro ifite kuko muri urwo rubanza ntaho Urukiko rwemeje ko kugira ngo ubuhamya bw'umuntu mukuru buhabwe agaciro bugomba kuba bushyigikiwe n'ibindi bimenyetso, ahubwo icyo rwemeje mu gika cya 29 ni uko ihame ku birebana n'ubuhamya ari uko umutangabuhamya avuga mu Rukiko ibyo yiboneye cyangwa ibyo yumvise mu buryo butaziguye, ko Urukiko rwonyine rusuzuma mu bushishozi icyizere cyangwa ireme ubuhamya bukwiye guhabwa. Kandi nk'uko byagarutsweho mu bika bibanziriza iki, Urukiko mu gusuzuma ubuhamya bwa Nyirambarushimana Christine, rwasanze bufite ireme, nta mpamvu n'imwe ihari yatuma budashyirwaho. [23] Kubera impamvu zose zagaragajwe haruguru, Urukiko rw'Ubujurire rurasanga ubujurire bwa Iratuzi Siyo Sosthène nta shingiro bufite, urubanza yajurirye rukaba rudahindutse. III. ICYEMEZO CY'URUKIKO [24] Rwemeje ko ubujurire bwatanzwe na Iratuzi Siyo Sosthène nta shingiro bufite. [25] Rwemeje ko imikirize y'urubanza RPA01622/2021/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 30/10/2024, idahindutse. [26] Rwemeje ko igihano cy'igifungo cy'imyaka 15 n'ihazabu ya 5.000.000 Frw Iratuzi Siyo Sosthène yahanishijwe muri urwo rubanza kigumyeho.

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