

RWANDA / JUDGMENT

UBUSHINJACYAHA v MANZI

RPAA 00114/2023/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v MANZI

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Text

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UBUSHINJACYAHA v MANZI [Rwanda URUKIKO RW'UBUJURIRE - RPAA 00114/2023/CA (Ndahayo, P.J) 20 Ukuboza 2024] Amategeko agenga ibimenyetso n'itangwa ryabyo – Ibimenyetso mu manza nshinjabyaha – Abatangabuhamya – Nubwo abatangabuhamya babajijwe baba bafite icyo bapfa n'abaregwa, ibyo ntibyafatwa nk'umuziro kuribo utuma batabazwa, icy'ingenzi ni uko imvugo yabo itapfa kwemerwa cyangwa ngo ihakanwe itabanje gusuzumwa n'Urukiko. Amategeko agenga ibimenyetso n'itangwa ryabyo – Ibimenyetso mu manza nshinjabyaha – Abatangabuhamya – Mu rukiko umutangabuhamya avuga ibyo yiboneye cyangwa ibyo yumvise mu buryo butaziguye, ariko urukiko ni rwo rwonyine rusuzuma mu bushishozi bwarwo icyizere cyangwa ireme bukwiye guhabwa. Harebwe ububasha bw'Urukiko bwo gusuzuma mu bwigenge no mu bushishozi bwarwo ibimenyetso byose rwashyikirijwe, n'intego y'amategeko y'ibimenyetso (objectif du droit de la preuve) yo gushakisha ukuri, inkiko zemera ibimenyetso biziguye (preuve indirecte) cyangwa ibimenyetso bishingiye ku mabwire (preuve par ouï-dire) iyo bishyigikiwe n'ibindi bimenyetso bituma byizerwa. Amategeko agenga imanza nshinjabyaha – Igisobanuro cy'amagambo – Gucuruza – Gukwirakwiza ibiyobyabwenge – Amagambo arebana no gufatanwa (avugwa mu gika cya mbere cy'ingingo ya 263), gukora, guhinga, guhindura, gutunda, kubika

(avugwa mu gika cya 3 cy'iyi ngingo) agomba kumvikana hakurikijwe ingano y'ibiyobyabwenge n'ikigiye gukoreshwa ibiyobyabwenge uregwa yarafatanwe, yakoze, yahinze, yahinduye, yatunze, yabitse maze byagaragara ko kuri buri gikorwa muri ibyo ikigamijwe ari ukubikoresha ku giti cye (simple drug possession) uregwa agahabwa ibihano bito ariko byagaragara ko ingano y'ibiyobyabwenge yafatanwe ari nini bikaba byashingirwaho hemezwa ko ataribyo gukoresha ku giti cye ahubwo ikigamijwe ari ugucuruza cyangwa gukwirakwiza (drugs trafficking/drug distribution) ibiyobyabwenge uregwa agahabwa igihano kiremereye. Incamake y'ikibazo: Ku wa 10/12/2019, MANZI Godefrey yafatanwe urumogi boules 17 arimo kurucuruza, akaba yarafashwe nyuma y'amakuru yatanze n'abaturage ko mu rugo rwabo ariho hacururizwa urumogi, bamusangana n'uwitwa RUKUNDO Elia alias GEEN P wemeye ko yanywaga urumogi.

Ubushinjacyaha bwamukurikanyeho icyaha cyo gucuruza urumogi, aburana yemera icyaha cyo kunywa urumogi ariko ahakana ko arucuruza. Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko ahamwe n'icyaha cyo gucuruza ibiyobyabwenge bihambaye, rumuhanisha igihano cy'igifungo cy'imyaka 25 n'ihazabu ya 20.000.000 Frw. MANZI Godefrey yajuririyemo mu Rukiko Rukuru avuga ko yahamijwe icyaha cyo gucuruza urumogi kandi ntacyo yakoze ndetse ngo ibimenyetso urukiko rwashingiyeho rukimuhamya birimo gushidikanya, kuko icyo yemera ari uko yarufatanywe boules 17 kandi ko zari izo kunywa, we ubwe. Urwo Rukiko rwaciye urubanza rwemeza ko ubujurire bwe ntashingiro bufite, ko ntahindutse ku rubanza ajuririra. Yongeye kujuririra Urukiko rw'Ubuujurire avuga ko Urukiko Rukuru rwamuhamije icyaha cyo gucuruza urumogi kandi nta bimenyetso bikimuhamya rwashingiyeho, ku bijyanye n'imvugo z'abatangabuhamya zashingiweho akazinenga kuba zirimo gushidikanya, kuko Alphonse (boy) wagiye kuzana aba polisi kugirango bamufate, bari bashwanye kubera ko yari yamwangiye ko

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barusangirira mu rugo nk'uko bisanzwe, naho raporo y'inze z'ibanze yakozwe, bakavugaga ko itari gushingirwaho ahamwe n'icyaha, kuko yakozwe igihe byari bimaze kuvugwa ko yafatanwe urumogi, ikaba itari kugira agaciro mu gihe itakozwe mbere y'uko afatwa ngo igaragaze ko acuruza urumogi yenda akaba yari yarabuze ngo afatwe. Incamake y'icyemezo: Ku bijyanye no kuba Godefrey n'umwunganira bavugaga ko NIYONKURU Alphonse yazanye abapolisi kumufatira mu cyuho bari kunywa urumogi na RUKUNDO Elia, kubera ko yari yanze ko barusangirira mu nzu kandi hari abashyitsi bigatuma bashwana, ubwabyo ntabwo byakwambura agaciro ubuhamya kuko nubwo abatangabuhamya babajijwe baba bafite icyo bapfa n'abaregwa, ibyo ntibyafatwa nk'umuziro kuribo utuma batabazwa, icy'ingenzi ni uko imvugo yabo itapfa kwemerwa cyangwa ngo ihakanwe itabanye gusuzumwa n'Urukiko. Harebwe ububasha bw'Urukiko bwo gusuzuma mu bwigenge no mu bushishozi bwarwo ibimenyetso byose rwashyikirijwe, n'itegeko y'amategeko y'ibimenyetso (objectif du droit de la preuve) yo gushakisha ukuri, inkiko zemera ibimenyetso biziguye (preuve indirecte) cyangwa ibimenyetso bishingiye ku mabwire (preuve par ouï-dire) iyo bishyigikiwe n'ibindi bimenyetso bituma byizerwa. Ku bijyanye na raporo y'inze z'ibanze nayo MANZI Godefrey n'umwunganira banenga kubera ko yakozwe uwo munsu aho kuba yarakozwe mbere y'uko afatwa, Urukiko rurasanga nta shingiro bifite kuko igifite agaciro atari igihe yakorewe ahubwo ari ibyanditsemo kandi ntagaragaza ko ibiyikubiyemo

atari ukuri cyangwa ko bamubeshyera. Uru rukiko rwasesenguye ingingo ya 263 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko yahinduwe kugeza ubu, rusobanura ko amagambo arebana no gufatanwa (avugwa mu gika cya mbere cyayo), gukora, guhinga, guhindura, gutunda, kubika (avugwa mu gika cya 3 cy'iyi ngingo) agomba kumvikana hakurikijwe ingano y'ibiyobyabwenge n'ikigiye gukoreshwa ibiyobyabwenge uregwa yafatanwe, yakoze, yahinze, yahinduye, yatunze, yabitse, maze byagaragara ko kuri buri gikorwa muri ibyo ikigamijwe ari ukubikoresha ku giti cye (simple drug possession), uregwa agahabwa ibihano bito, ariko byagaragara ko ingano y'ibiyobyabwenge yafatanwe ari nini bikaba byashingirwaho hemezwa ko atari ibyo gukoresha ku giti cye, ahubwo ikigamijwe ari ugucuruza cyangwa gukwirakwiza ibiyobyabwenge, maze agahabwa igihano kiremereye. Urukiko rurasanga nyuma yo gusesengura ibimenyetso byose byatanze n'ubushinjacyaha, bigaragaza ko MANZI Godefrey atanywaga urumogi gusa nk'uko yavuze ko boules 17 yafatanwe rwari urumogi rwo kunywa, ahubwo yanarucuruje, ariyo mpamvu inyito y'icyaha yahamijwe itagomba guhinduka, n'ubujurire bwe bukaba nta shingiro bufite. Ubujurire nta shingiro bufite. Nta mategeko yashingiweho Imanza zifashishijwe: RPAA 00408/2020/CA, Ubushinjacyaha na NIYITEGEKA Augustin, rwaciye n'Urukiko rw'Ubujurire ku wa 27/06/2022; RPAA/Gén 00002/2018/CA, Ubushinjacyaha buburana na TWAHIRWA François, rwaciye n'Urukiko rw'Ubujurire ku wa 25/7/2023; RPAA 0117/07/CS, Cpl NGABONZIZA Faustin na Sgt BIZIYAREMYE Jean Baptiste, rwaciye n'Urukiko rw'Ikirenga ku wa 17/09/2010;

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RPAA 00098/2023/CA, Ubushinjacyaha na TUGIRINSHUTI Alexis bahimba Kamugi, rwaciye n'Urukiko rw'Ubujurire ku wa 26/04/2024; RPAA 00147/2023/CA, Ubushinjacyaha na Ntuyenabo Asman, rwaciye n'Urukiko rw'Ubujurire ku wa 26/06/2024; RPAA 00497/2022/CA, Ubushinjacyaha na Dukundane James, rwaciye n'Urukiko rw'Ubujurire ku wa 27/6/2024. Urubanza IMITERERE Y'URUBANZA [1] Ku wa 10/12/2019, mu mudugudu wa Beninka, Akagari ka Rubirizi, Umurenge wa Kanombe uwitwa MANZI Godefrey yafatanwe urumogi boules 17 arimo kurucuruza, akaba yarafashwe nyuma y'amakuru yatanze n'abaturage ko mu rugo rwabo ariho hacururizwa urumogi, bityo polisi ikora operation baramufata iwe bamusangana n'uwitwa RUKUNDO Elia alias GEEN P wemeye ko yanywaga urumogi. MANZI Godefrey na RUKUNDO Elia alias GEEN P ubushinjacyaha bwabakurikiranyeho icyaha cyo gucuruza ibiyobyabwenge bubasabira igihano cy'igifungo cya burundu n'ihazabu ya 20.000.000 Frw. [2] MANZI Godefrey yaburanye yemera icyaha cyo kunywa urumogi ariko ahakana ko arucuruza. RUKUNDO Elia alias GEEN P yaburanishijwe atitabye kandi yari asanzwe azi urubanza kuko yasubikishije urubanza ndetse n'umwunganizi we akaba yarigeze gusubikisha urubanza. [3] Mu rubanza No RP 01662/2019/TGI/NYGE rwaciye ku wa 16/04/2021, Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko MANZI Godefrey ahamwe n'icyaha cyo gucuruza ibiyobyabwenge bihambaye, rwemeje ko RUKUNDO Elia alias GEEN P ahamwe n'icyaha cyo kunywa ibiyobyabwenge, rwahanisha MANZI Godefrey igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25 ans) n'ihazabu ya 20.000.000 Frw, ruhanisha RUKUNDO Elia alias GEEN P igihano cy'igifungo cy'umwaka (1an). [4] MANZI Godefrey ntiyishimiye imikirize y'uru rubanza maze arujuririra mu Rukiko Rukuru avuga ko

atishimiye imikirize yarwo kuko yahamijwe icyaha cyo gucuruza urumogi kandi ntacyo yakoze ndetse ngo ibimenyetso urukiko rwashingiyeho rukimuhamya birimo gushidikanya, kuko icyo yemera ari uko yarufatanywe, afatanwa boules 17 kandi ko zari izo kunywa, we ubwe. [5] Uhagarariye Ubushinjacyaha we yavuze ko ingingo z'ubujurire bwa MANZI Godefrey, nta shingiro zifite, kuko atabasha kugaragaza inenge ziri mu cyemezo cy'Urukiko Rwisumbuye kandi ko rwasobanuye neza impamvu rumuhamya icyaha cyo gucuruza urumogi mu gika cya 7 cy'urubanza rujuririrwa, bugasozza buvuga ko ibyo MANZI yemera by'uko agura urumogi kuri 500 Frw akaruha abarumurutumye kuri 700 Frw cyangwa ku 1.000 Frw kuko yongeraho itike yamujyanye ajya kurugura, ko ibyo yemera nyine ariko gucuruza, bityo ko icyemezo cy'urukiko Rwisumbuye cyahamaho kuko nta nenge yagaragaje gifite. [6] Mu rubanza No RPA 00763/2021/HC/KIG rwaciwe 29/12/2022, Urukiko Rukuru rwemeje ko ubujurire bwa MANZI Godefrey nta shingiro bufite; rwemeje urubanza No RP

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01662/2019/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa NYARUGENGE ku wa 16/04/2021 rudahindutse; rwemeje ko MANZI Godefrey ahamwa n'icyaha cyo gucuruza ibiyobyabwenge akaba agomba gukomeza guhanishwa igifungo cy'imyaka makumyabiri n'itanu (25 ans) n'ihazabu ya miliyoni makumyabiri (20.000.000 Frw); [7] Urukiko Rukuru rwashingiye icyemezo cyarwo ku kuba ibikorwa byo kugura kuri 500 Frw akarubaha yongeyeho ayo yita itike ari ubucuruzi, kuko niba ajya kugurira rimwe utubure 17 kuri 500 Frw (bivuga ko yishyura 8.500 Frw) yarangiza buri wese akamuhera kuri 1.000 Frw akaba 17.000 Frw kandi itike iva KANOMBE igera Giporoso itarenza 2.000 Frw, nuko hari inyungu akuramo, ko rero ari ubucuruzi. No kuba kandi MANZI yiyemerera ibyo byose agasobanura uko agura urwo rumogi akarushyiriza, akaba adasobanura impamvu ariwe batuma ntibigire kurugura, ndetse akaba yarafashwe n'ubundi ari kurugurisha abandi bantu kandi bo batarumutumye, kandi ko atabashije kuvuguriza izo mvugo zabo. [8] MANZI Godefrey ntiyishimiye uru rubanza yongera kurujuririra mu Rukiko rw'Ubujurire, urubanza ruhabwa No RPAA 00114/2023/CA, ruburanishwa ku wa 05/12/2024, MANZI Godefrey yunganiwe na Me MANISHIMWE Antoine, Ubushinjacyaha bwitabye buhagarariye na PN NKUSI Faustin Umushinjacyaha ku rwego rw'Igihugu. [9] Mu myanzuro ya MANZI Godefrey n'umwunganizi we bavugaga ko yahamijwe icyaha cyo gucuruza ibiyobyabwenge kandi nta bimenyetso bidashidikanywaho bibigaragaza kuko we icyo yakoze ari ukurunywa gusa, basaba ko yagirwa umwere. [10] Uhagarariye Ubushinjacyaha avugaga ko, Ubujurire bwa MANZI Godefrey nta shingiro bufite kuko atabasha kugaragaza inenge cyangwa amakosa ari mu rubanza kugira ngo akosorwe, ariko ko mu kumuhana yagabanyirizwa ibihano, Urukiko rukamuhanisha igifungo cy'imyaka 15 n'ihazabu ya 5000. 000 Frw. [11] Urukiko ruherereye kuri izi mpaka rusanga ikibazo kigomba gusuzumwa ari ikijyanye no: Kumenya niba inyito y'icyaha MANZI Godefrey yahamijwe yahinduka, agahamwa n'icyaha cyo kunywa urumogi, aho kuba icyaha cyo gucuruza urumogi, agahanishwa igihano gito. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba inyito y'icyaha MANZI Godefrey yahamijwe yahinduka, agahamwa n'icyaha cyo kunywa urumogi, aho kuba icyaha cyo gucuruza urumogi, agahanishwa igihano gito. [12] MANZI Godefrey na Me MANISHIMWE Antoine umwunganira bavugaga ko Urukiko Rukuru rwamuhamije icyaha cyo

gucuruza urumogi kandi nta bimenyetso bikimuhamya rwashingiyeho, uretse kuba rwaravuze ko ikimuhamya kurucuruza ari uko yaruranguraga 500 Frw bakamuha 700 Frw cyangwa 1000 Frw, kandi atari byo, kuko ubwo yabazwaga muri RIB niba urumogi ari urwe yabyemeye avuga ko ari urwo kunywa, ibindi yababwiye akaba ari amakuru, ajyanye n'uko ibiciro biba bitandukanye bitewe n'aho agurira, ariko ko yatunguwe no kumva baramwandikiye ibyo atavuze, bavuga ko acuruza urumogi, kandi we yemera icyaha cyo kunywa ariko atemera icyo gucuruza, kuko ayo mafaranga ari ababaga bamutumye bakamuha ticket, bityo ayo mafaranga akaba ari ayo yakoresheje babaga bamusubiza.

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[13] Bakomeza basobanura ko ayo mafaranga yababwiye ko ari ticket yabaga yakoresheje kuko inshuro nyinshi abarimo RUKUNDO Elia alias GREEN P (umuhanzi) n'abandi bamutumaga kuko ari nabo barusangiraga, kandi batari kujyayo buri umwe ku giti cye kuko byari gutuma bafatisha aho barukura, kandi nawe yagendaga na moto cyangwa voiture kugira ngo adafatwa. [14] Ku bijyanye n'imvugo z'abatangabuhamya zashingiweho MANZI Godefrey na Me MANISHIMWE Antoine umwunganira bazinze kuba zirimo gushidikanya, kuko uretse Alphonse (boy) wagiye kuzana aba polisi kugirango bamufate, kubera ko yari yamusabye kwishyura umu motar 1000 Frw no kuba yari yamwangiye ko barusangirira mu rugo nk'uko bisanzwe, bagahita bamufatira mu cyuho kuko yari aziko bari kumwe na GREEN P, nta wundi muntu bagaragaje ko yigeze arugurisha. Bongeraho ko MANZI Godefrey atabaga iwabo, ahubwo yabaga kwa nyina hakaba umupolisi w'umwinjira wa nyina witwa Olivier ariwe wakoresheje Alphonse. [15] Bakaba barasabye Urukiko kuzita ku bibazo uwitwa NIYONKURU Alphonse yabajijwe n'ibyo yasobanuye, rukabihuza n'ibyo MANZI Godefrey yavuze, kuko ruzasanga nta hantu na hamwe yigeze avuga ko MANZI arucuruza uretse ibyo yavuze kubera bari bashwanye, bikaba bigaragaza ko yandikiwe ibyo atavuze. bakomeza bavuga ko PV de constant yakozwe n'abapolisi bavuze ko umwe yaje yigize umuguzi, atayemera kuko ibyo yagaragaje ko yaranguraga akagenda agurisha atariko kuri ahubwo ngo we yemeye kuba yarafatanwe udupfunyika 17, agasobanura ko ari utwo kunywa bikaba rero bitafatwa ko yacuruzaga urumogi batagaragaje uwo yarucurujeho, ngo bavuge igiciro, kuko n'uwo mupolisi bavuga wari yaje yigize umuguzi, ntaho bagaragaza yamuhereye amafaranga, no mu ifatira ntayo bafatiriyeho. [16] Me MANISHIMWE Antoine kandi na MANZI Godefrey yunganira banenga raporo y'inze z'ibanze, bavuga ko, itari gushingirwaho MANZI Godefrey ahamwe n'icyaha, kuko yakozwe igihe byari bimaze kuvugwa ko yafatanwe urumogi, akaba asanga itari kugira agaciro mu gihe itakozwe mbere y'uko afatwa igaragaza ko acuruza urumogi yenda akaba yari yarabuze ngo afatwe, naho kuba umuntu yafatwa noneho Ubuyobozi b'Umudugudu bugakora raporo, icyo atari ikimenyetso kidashidikanywaho cyerekana ko yacuruzaga urumogi, mu gihe hatagaragazwa raporo zamukorewe mbere y'uko agwa mu cyaha akurikiranyweho. [17] Bashingiye ku kuba Urukiko ruregerwa ibikorwa rutaregerwa icyaha, no kuba ibyo MANZI Godefrey yakozwe yarabikoze ari kumwe na RUKUNDO Elie alias GREEN P wakurikiranwe kandi agahanirwa icyaha cyo kunywa urumogi, basaba Urukiko rw'Ubujurire kuzahindura inyito y'icyaha

agahanirwa icyaha cyo kurunywa aho kuba kurucuruza, hanagendewe ku murongo watanze mu manza zitandukanye zaciwe n'uru Rukiko zirimo urubanza No RPAA 00026/2020/CA1 rwaciwe ku wa 25/6/2021, no ku biteganywa n'ingingo ya 111 na 107 z'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryahinduwe n'Itegeko n° 058/2023 ryo ku wa 04/12/2023, rukemeza ko nta bimenyetso bidashidikanywaho byatanze n'Ubushinjacyaha byemeza ko MANZI Godefrey acuruza urumogi, kuko ibyo rwatanze birimo gushidikanya birengera uregwa, akagirwa umwere.

1 Urubanza rwatanze umurongo uvuga ko "kuba umuntu yafatanwe udupfunyika nk'umunani (8), bidahagije kwemeza ko yari agamije kutugirisha mu gihe ubushinjacyaha butagaragaza, aho yarugurijwe cyangwa ikiguzi yavanye muri uko kurugurisha, ariyo mpamvu muri bene ibyo bihe, hakwiye kwemeza ko uwafatanwe udupfunyika tw'urumogi adakwiye gufatwa nk'uwari ugiye kuducuruza".

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[18] Basoza imyiregurire yabo ariko basaba Urukiko ko nirubibona ukundi rwazashingira ngingo za 49,59 na 60 z'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange ryahinduwe n'Itegeko n° 059/2023 ryo ku wa 04/12/2023, no ku ngingo ya 2 yitegeko ng 059/2023 059/2023 ryo ku wa 04/12/2023 04/12/2023 rihindura Itegeko ne 68/2018 ryo ku wa 30/08/2018 30/08/2018 riteganywa ibyaha n'ibihano muri rusange (b) iteganywa ko "igifungo kimara igihe kizwi kiva ku mezi 6 kuzamura gishobora kugabanywa, ariko ntikijye muni ya kimwe cya kabiri cy'igihano gito giteganyirijwe icyaha cyakozwe...."rukamuhanisha igihano kiri hasi kubera impamvu nyoroshyacyaha zirimo; kuba ari ubwa mbere akurikiranwe n'inkiko bizwi; kureba imyaka yari arimo ubwo yakoraga icyaha, kuba amaze kumva ingaruka zo gukora icyaha ndetse ko icyaha yakozwe nta ngaruka cyateje muri rubanda. [19] Uhagarariye Ubushinjacyaha avuga ko hashingiwe ku biteganywa n'ingingo ya 183 igika cya mbere agace ka 5 na 6 y'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryahinduwe n'Itegeko n° 058/2023 ryo ku wa 04/12/2023, ivuga ko Iyo umuntu ajurira agomba kugaragaza inenge cyangwa amakosa yaba yarakozwe n'urwo Rukiko ari mu rubanza kugira ngo akosorwe, asanga MANZI Godefrey n'umwunganira batabasha kugaragaza inenge n'amakosa byakosorwa kugira ngo habe hafatwa ikindi cyemezo, hagomba kwemezwa ko yakozwe icyaha cyo gucuruza urumogi. [20] Akomeza avuga ko kandi ku kibazo cy'uko nta bimenyetso bihari byahamye MANZI Godefrey icyaha cyo gucuruza urumogi kuko urwo yafatanywe rwari urwo kunywa kandi akaba yarasanganywe n'umuntu barimo barusangira, nta shingiro bifite, kuko ubwo MANZI yabazwaga mu bugenzacyaha (ibisubizo bya 6-7) yemeye ko yajya agura urumogi kuri 500 agapfunyika kamwe, akarusubiza kuri 700 cyangwa 1000 ku gapfunyika kamwe; kandi ko amaze imyaka 2 anywa urumogi, arucuruza, akavuga abo basanzwe barusangira, ibi bikagaragaza ubucuruza yakoraga n'ubwo abihakana, ko kandi ari nabyo byagarutseho n'Urukiko Rukuru, mu gika cya 9 cy'urubanza yajuririyeyeho; aho umucamanza yabisobanuye mu buryo bwumvikana, ashimangira ibyari byemejwe n'Urukiko Rwisumbuye. Bityo, ibyo we n'umwunganira bavugaga ko ari ibiciro yavugaga gusa atanga amakuru, bigatuma bamwandikira ibyo atavuze atari

ukuri. [21] Uhagarariye Ubushinjacyaha kandi avuga ko hashingiwe no ku murongo watanze mu byemezo by'inkiko harimo n'urubanza RPA 0010/06/CS - RPA 0011/06/CS - RPA 0012/06/CS, rwaciwe ku wa 18/07/2008, rw'Ubushinjacyaha na Sgt NTAGANIRA na bagenzi be) rwemeje ko "Umucamanza ntategetswe gushingira ku mvugo ihakana icyaha mu Rukiko nyamara ushinjwa yaracyemeye mu nzego z'ikurikiranacyaha. Umucamanza ashobora gushingira ku mvugo yavugiye mu nzego z'ikurikiranacyaha iyo asanze arizo zihuje n'ukuri kw'ibyabaye kandi zifite ibindi bimenyetso bizunganira, no ku rubanza No RPAA 00436/2020/CA rwaciwe ku wa 28/06/2022 rw'Ubushinjacyaha na AHIMPEREYE NDEZE François), uvuga ko "Umuntu atagirwa umucuruzi w'ibiyobyabwenge no kuba hari abaguzi babonetse aho acuririza, ahubwo igihe cyose afite ibicuruzwa kandi yiteguye kubiha umuntu wese umugana ashaka ibyo agurisha, aba ari umucuruzi w'ibiyobyabwenge". [22] Ku byerekeye kudaha agaciro raporo yakozwe n'umudugudu MANZI Godefrey n'umwunganira bavuga ko itari gushingirwaho kubera ko yakozwe nyuma y'uko afatwa, Uhagarariye Ubushinjacyaha avuga ko iyo atari inenge ahubwo yanakorwa nyuma y'uko icyaha gikorwa kuko hanaje ibindi uyu munsu bifite icyo byafasha mu gutanga ubutabera bitateshwa

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agaciro, asaba ko byose byasuzumwa hakemwezwaga ko MANZI Godefrey ahamwe n'icyaha cyo gucuruza urumogi aho kuba kunywa urumogi, imikirize y'icyaha ikagumaho. [23] Ku bijyanye n'igihano ariko, Uhagarariye Ubushinjacyaha, avuga MANZI Godefrey nk'umuntu wari uhanwe bwa mbere n'urukiko; hashingiwe ku ngingo ya 602 y'Itegeko n°68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, yaje gusimbuzwa ingingo ya 23 y'Itegeko n°059/2023 ryo ku wa 04/12/2023 rihindura Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange; iteganyaga ko igifungo cya burundu gishobora kugabanywa ariko ntikijye munsu y'igihano cy'igifungo cy'imyaka 15; Ubushinjacyaha busanga nta cyabuza urukiko rwajuririwe ko rwakongera kumugabanyiriza ibihano hashingiwe kuri iyo ngingo; agahanishwa igifungo cy'imyaka 15 n'ihazabu ya 5000 000 Frw, rukemeza ko ubujurire bwatanze na MANZI Godefrey bufite ishingiye kuri bimwe, ko ahanishijwe igifungo cy'imyaka 15 n'ihazabu ya 5000.000 Frw. UKO URUKIKO RUBIBONA [24] Muri uru rubanza, impaka zishingiye ku kumenya niba inyito y'icyaha MANZI Godefrey yahamijwe yahinduka, agahamwe n'icyaha cyo kunywa urumogi, aho kuba icyaha cyo gucuruza urumogi, agahanishwa igihano gito. [25] Mu gusesengura hakwifashishwa ibyemejwe mu rubanza N° RPAA 00408/2020/CA 4 rwaciwe n'Urukiko rw'Ubujurire ku wa 27/06/2022 haburana Ubushinjacyaha na NIYITEGEKA Augustin, uru rukiko rwasesenguye ingingo ya 263 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange nk'uko yahinduwe kugeza ubu, rusobanura ko amagambo arebana no gufatanwa (avugwa mu gika cya mbere cyayo), gukora, guhinga, guhindura, gutunda, kubika (avugwa mu gika cya 3 cy'inyo ngingo) agomba kumvikana hakurikijwe ingano y'ibiyobyabwenge n'ikigiye gukoreshwa ibiyobyabwenge uregwa yafatanwe, yakoze, yahinze, yahinduye, yatunze, yabitse, maze byagaragara ko kuri buri gikorwa muri ibyo ikigamijwe ari ukubikoresha ku giti cye (simple drug possession), uregwa agahabwa ibihano bito, ariko byagaragara ko ingano y'ibiyobyabwenge yafatanwe ari nini bikaba byashingirwaho hemezwa ko atari ibyo gukoresha ku giti cye, ahubwo

ikigamijwe ari ugucuruza cyangwa gukwirakwiza ibiyobyabwenge, maze agahabwa igihano kiremereye. [26] Dosiye y'urubanza igaragaza ko ku wa 10/12/2019, MANZI Godefrey abazwa mu bugenzacyaha yahakanye icyaha cyo gucuruza urumogi, yemera ko boules 17 ari urwo kunywa, ndetse asobanura ko urumogi yaruguraga mu giporoso kuri 500 Frw, yaruzana bagenzi be bakamusubiza 700 Frw cyangwa 1.000 Frw, kuko aba yakozе urugendo ajya kuruzana. [27] Dosiye igaragaza kandi inyandikomvugo y'ibazwa ry'umutangabuhamya witwa NIYONKURU Alphonse mu bugenzacyaha ku wa 12/12/2019, yasobanuye ko baturanye na

2 yateganyaga ko "Iyo hari impamvu zigabanya ububi bw'icyaha, ibihano bishobora kugabanywa ku buryo bukurikira: 1° haseguriwe ibiteganywa mu ngingo ya 107 igihano cyo gufungwa burundu gishobora kugabanywa ariko ntikijye muni y'imyaka makumyabiri n'itanu (25)". 3 Reba ingingo ya 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 riteganyaye ibyaha n'ibihano muri rusange 4 Reba urubanza N° RPAA 00408/2020/CA rwaciye n'Urukiko rw'Ubujurire ku wa 27/06/2022 haburana Ubushinjacyaha na NIYITEGEKA Augustin (igika cya 14-18).

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MANZI Godefrey akaba azi neza ko acuruza urumogi kandi amaze igihe kingana n'umwaka n'igice arucuruza, ko mu rugo rwabo ari indiri y'ibiyobyabwenge, kandi ko yarugurishaga abandi bantu, akaba yarabibwiye abapolisi, akaza kumugurira akamuha boule imwe akamuha 2.000 Frw n'umu polisi akamuha indi boule ariko agafatwa ay'umupolisi atarayakira. [28] Dosiye igaragaza na none inyandikomvugo yo ku wa 10/12/2019 y'ibyangonywe n'abapolisi (PV de constant) CIP Nelson KAJYOGI na CP TURATSINZE Antoine, bageze aho MANZI Godefrey yacururizaga urumogi mu Mudugudu wa Beninka, Akagari ka Rubirizi, Umurenge wa Kanombe, Akarere ka Kicukiro, Umujyi wa Kigali, isobanura ko bamenye amakuru ko MANZI Godefrey acuruza urumogi bakajyaye nk'abaguzi bakamuha 1.000 Frw akabaha boule imwe indi akayihira NIYONKURU Alphonse, bakaba kandi baramusatse bakamusangana udupfunyika 17, banamusangana na RUKUNDO Elia Alias GREEN P, kandi MANZI akaba yaremeye ko amaze umwaka n'igice anywa urumogi. [29] Dosiye igaragaza inyandikomvugo y'ifatira ry'urumogi boules 17 n'amafaranga 1.000 Frw yari amaze guhabwa MANZI Godefrey, ndetse hakaba n'inyandiko yo ku wa 12/12/2019 isubiza NIYONKURU Alphonse amafaranga 1000 Frw yari yahaye MANZI Godefrey. [30] Urukiko Rukuru rwahamije MANZI Godefrey icyaha cyo gucuruza urumogi rushingiye ku kuba n'ubwo MANZI n'umwunganira bavugaga ko udupfunyika 17 yafatanywe ari utwo kunywa gusa, ko kuba arugura 500 Frw akaruha abamutumye kuri 700 Frw cyangwa ku 1.000 Frw, aruko aba yaruguze mu Giporoso kandi ko aba yakoresheje tike, ko baba bari kuyimusubiza, rusanga ibyo bikorwa byo kugura kuri 500 Frw akarubaha yongeyeho ayo yita itike ari ubucuruzi, kuko niba ajya kugurira rimwe utubure 17 kuri 500 Frw (bivugaga ko yishyura 8.500 Frw) yarangiza buri wese akamuhera kuri 1.000 Frw akaba 17.000 Frw kandi itike iva KANOMBE igera Giporoso itarenze 2.000 Frw kandi ko kuba yiyemerera ibyo byose agasobanura uko agura urwo rumogi akarusubiza, akaba adasobanura impamvu ariwe batuma ntibigire kurugura, ndetse akaba yarafashwe n'ubundi ari kurugurisha abandi bantu kandi bo batarumutumye, ari uko hari inyungu yakuragamo, ko rero ari ubucuruzi. [31] Ku byerekeye uru rubanza, Urukiko

rurasanga nk'uko byasobanuwe mu rubanza N° RPAA/Gén 00002/2018/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 25/7/2023 Ubushinjacyaha buburana na TWAHIRWA François (igika cya 68), Urukiko rw'Ubujurire rwatanze umurongo uvuga ko: "Harebwe ububasha bw'Urukiko bwo gusuzuma mu bwigenge no mu bushishozi bwarwo ibimenyetso byose rwashyikirijwe, n'itege y'amategako y'ibimenyetso (objectif du droit de la preuve) yo gushakisha ukuri, inkiko zemera ibimenyetso biziguye (preuve indirecte) cyangwa ibimenyetso bishingiye ku mabwire (preuve par ouï-dire) iyo bishyigikiwe n'ibindi bimenyetso bituma byizerwa." [32] Urukiko rurasanga kuba MANZI Godefrey n'umwunganira bavuga ko atacuruzaga urumogi ahubwo yarunywaga gusa, ko kandi amafaranga yahabwaga 700 Frw cyangwa 1000 Frw, ari ticket bamusubizaga kubera ko babaga bamutumye, ariyo mpamvu ibyo yasobanuye mu bugenzacyaha ari amakuru yatangaga, urukiko rusanga nta shingiro bifite kuko ubwo buryo bwo kugura urumogi kuri 500 Frw agasubizwa 700 Frw cyangwa 1.000 Frw, ntabwo ashobora kuvuga ko ari ticket yahabwaga bihabwe ishingiro kuko adasobanura uburyo buri boule yayihabwagaho ticket yo kujya kuyizana ahubwo harimo inyungu ari nayo ituma byitwa ubucuruzi.

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[33] Ku bijyanye no kuba MANZI Godefrey n'umwunganira banenga imvugo z'umutangabuhamya witwa NIYONKURU Alphonse, kubera ko ntaho yamushinje ko acuruza urumogi, kandi ko harimo kuvuguruzanya no gushidikanya, nta shingiro bifite kuko yasobanuye neza ko ariwe wagiye kuzana abapolisi nyuma yo kuba azi neza ko MANZI Godefrey amaze umwaka n'igice acuruza urumogi, ndetse ko yasatswe agafatanwa boules 17, iyi nyandiko mvugo rero ikaba nta gushidikanya cyangwa kwivuguruza kurimo nk'uko MANZI N'umwunganira bashaka kumbyumvikanisha. [34] Ku bijyanye no kuba Godefrey n'umwunganira bavuga ko NIYONKURU Alphonse yazanye abapolisi kumufatira mu cyuho bari kunywa urumogi na RUKUNDO Elia, kubera ko yari yanze ko barusangirira mu nzu kandi hari abashyitsi bigatuma bashwana, ubwabyo ntabwo byakwambura agaciro ubuhamya batanze hashingiwe ku murongo wafashwe ku bijyanye n'ababuranyi bavuga ko bafite icyo bapfa n'atangabuhamya byatanzweho umurongo mu manza zaciwe n'urukiko rw'Ikirenga hamwe n'Urukiko rw'Ubujurire mu manza zitandukanye zirimo nk'urubanza N° RPAA 0117/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 17/09/2010 haburana Cpl NGABONZIZA Faustin na Sgt BIZIYAREMYE Jean Baptiste (igika cya 8), n'urubanza N° RPAA 00098/2023/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 26/04/2024 Ubushinjacyaha buburana na TUGIRINSHUTI Alexis bahimba Kamugi (igika cya 19). Izo manza zose zihuriza ku murongo uvuga ko "Nubwo abatangabuhamya babajijwe baba bafite icyo bapfa n'abaregwa, ibyo ntibyafatwa nk'umuziro kuribo utuma batabazwa, icy'ingenzi ni uko imvugo yabo itapfa kwemerwa cyangwa ngo ihakanwe itabanje gusuzumwa n'Urukiko". [35] Ku bijyanye na raporo y'inzege z'ibanze nayo MANZI Godefrey n'umwunganira banenga kubera ko yakozwe uwo munsu aho kuba yarakozwe mbere y'uko afatwa, Urukiko rurasanga nta shingiro bifite kuko igifite agaciro atari igihe yakorewe ahubwo ari ibyanditsemo kandi ntagaragaza ko ibiyikubiyemo atari ukuri cyangwa ko bamubeshyera. Bityo, nk'uko byasobanuwe mu rubanza No RPAA/ Gén 00002/2018/CA rwavuzwe haruguru, urukiko rurasanga nyuma yo gusesengura

ibimenyetso byose byatanzwe n'ubushinjacyaha, bigaragaza ko MANZI Godefrey atanywaga urumogi gusa nk'uko yavuze ko boules 17 yafatanwe rwari urumogi rwo kunywa, ahubwo yanarucuruje, ariyo mpamvu inyito y'icyaha yahamijwe itagomba guhinduka, n'ubujurire bwe bukaba nta shingiro bufite. [36] Ku byerekeranye n'igihano MANZI Godefrey akwiye guhabwa, Urukiko rurasanga n'ubwo ubujurire bwe nta shingiro bufite, ariko mu rwego rwo gutanga ibihano bisa ku bibazo bisa, nta cyarubuza gusuzuma ibirebana n'igihano yahawe ngo harebwe niba gikwiranye n'uburemere bw'icyaha yakoze, rukaba rwakongera rukamugabanyiriza igihano mu gihe rwasanga ataragabanyirijwe bihagije hashingiwe ku ngingo ya 49 y'Itegeko n° 68/2018 ryavuzwe haruguru, n'ya 2 y'Itegeko n° 59/2023 ryo ku wa 04/12/2023 naryo ryavuzwe, iteganya ko mu gihe hari impamvu nyoroshyacyaha, igihano cy'igifungo gishobora kugabanywa ariko ntikijye muni y'igifungo cy'imyaka 15 ndetse n'igihano cy'ihazabu kikaba gishobora kugabanywa kugeza kuri ¼ cyayo. [37] Urukiko rw'Ubujurire rwaciye imanza zitandukanye ku bibazo bimeze nk'iki harimo nk'urubanza N° RPAA 00147/2023/CA, rwaciye ku wa 26/06/2024 haburana Ubushinjacyaha v. NTUYENABO Asman, aho Urukiko rwamugabanyirije igihano rushingiye ku mpamvu nyoroshyacyaha zirimo bwari ubwa mbere akurikiranyweho icyaha no kuba yarafatanwe ingano nto y'urumogi, ahanishwa igifungo cy'imyaka 15 n'ihazabu ya 5.000.000 Frw aho kuba igifungo

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cya burundu yahanishijwe n'inkiko zibanza ku cyaha cyo kubika ibiyobyabwenge byo mu bwoko bw'urumogi udupfunyika 14. [38] Hari kandi urubanza N° RPAA 00497/2022/CA rwaciye ku wa 27/6/2024 haburana UBUSHINJACYAHA v. DUKUNDANE James, aho Urukiko rwamugabanyirije igihano rushingiye ku mpamvu nyoroshyacyaha zirimo kuba yarafatanwe ingano nto y'urumogi ndetse no kuba aribwo bwa mbere yari ahamijwe icyaha n'inkiko, nta n'izindi mpamvu zagaragajwe zongera ububi bw'icyaha, rumuhanisha igihano cy'igifungo cy'imyaka 17 n'ihazabu ya 5.000.000 Frw aho kuba igifungo cy'imyaka 25 n'ihazabu ya 20.001.000 Frw ku cyaha cyo gufatanywa ibiyobyawenge byo mu bwoko bw'urumogi ½ kg. [39] Ku byerekeranye n'igihano MANZI Godefrey agomba guhabwa, Urukiko rw'Ubujurire rurasanga igihano cyo gufungwa imyaka makumyabiri n'itanu (25 ans) yahanishijwe gikabije kuba kinini ugereranyije n'ingano y'ibiyobyabwenge uyu yafatanywe boules 17, kandi ari ubwa mbere akurikiranwe n'inkiko bizwi, no kuba nta ngaruka cyangwa izindi mpamvu zagaragajwe zongera ububi bw'icyaha, akaba akwiye guhanishwa igifungo cy'imyaka cumi n'itanu (15 ans) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw). III. ICYEMEZO CY'URUKIKO [40] Rwemeje ko ubujurire bwa MANZI Godefrey nta shingiro bufite; [41] Rwemeje ko imikirize y'urubanza RPA 00763/2021/HC/KIG, rwaciye n'Urukiko Rukuru, ku wa 29/12/2022, ihindutse ku bijyanye n'igihano; [42] Rutegetse ko MZANZI Godefry ahanishwa igifungo cy'imyaka cumi n'itanu (15 ans) n'ihazabu y'amafaranga y'u Rwanda n'ihazabu ya miliyoni eshanu (5.000.000 Frw); [43] Ruvuze ko MANZI Godefrey asonewe kwishyura amagarama y'urubanza kubera ko afunzwe.

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