

RWANDA / JUDGMENT

UBUSHINJACYAHA v MUGABO

RPAA 00234/2022/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v MUGABO

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Text

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UBUSHINJACYAHA v MUGABO [Rwanda URUKIKO RW'UBUJURIRE - RPAA 00234/2022/CA (Rukundakuvuga, P.J.) 28 Gicurasi 2025] Amategeko agenga imanza z'inshinjabyaha – Ibihano – Igabanyagihano – Nubwo ubujurire butahabwa ishingiro, ntacyabuza Urukiko kugabanyiriza uwahamwe n'icyaha igihano agahabwa ikijyanye n'uburemere bw'icyaha yakoze kigasaniswa n'icyahawe abandi bahamwe n'icyaha mu buryo bujya gusa n'ubwe. Incamake y'ikibazo: Ubwo Mugabo yari yasigaranye n'umwana w'umukobwa w'imyaka cumi n'ine (14) wabaga mu rugo rwe, yaje kumusambanya, umugore we witwa Nyirabizeyimana atashye, uwo mwana amubwiye ibyamubayeho, aramukubita. Yagiye ku bibwira inzego z'ibanze zifata Mugabo na Nyirabizeyimana bashyikirizwa ubugenzacyaha, hahuzwa ibimenyetso baregwa mu Rukiko rw'Ibanze rwa Gasabo. Ubushinjacyaha bukurikirana Mugabo Faustin ku cyaha cyo gusambanya umwana naho Nyirabizeyimana we agakurikiranwa ku cyaha cyo gukubita no gukomeretsa. Urukiko rwasanze abaregwa bahamwa n'ibyaha baregwa ruhanisha Mugabo igifungo cya burundu hashingiwe ku bimenyetso bigizwe n'imvugo y'umwana wasambanyijwe, raporo ya muganga ndetse na raporo yakozwe n'ubuyobozi bw'inzego z'ibanze. Uregwa yajuririye icyo cyemezo mu Rukiko Rukuru avuga ko yahamijwe icyaha kandi nta bimenyetso

bidashidikanywaho Bihari. Urukiko rwasanze ubujurire bwe nta shingiro bufite rwemeza ko nta gihindutse ku rubanza rujuririrwa. Uregwa ntiyishimiye icyo cyemezo akijurirra mu Rukiko rw'Ubugurire. Muri uru rukiko hasuzumwe ikibazo cyo kumenya niba hari inenge ziri mu bimenyetso Urukiko rwashingiyeho ruhamya Mugabo Faustin, icyaha cyo gusambanya umwana. Uregwa asobanura ko yahamijwe icyaha kandi ntabimenyetso bidashidikanwaho bihamya ko ari we wagikoze kuko uwo mwana yari yiriranwe n'undi mugabo bakaba ari inama bagiye yo kumushyiraho icyaha kuko ngo yari yakubiswe n'umugore we bakabikora mu buryo bwo kubihimuraho. Akomeza avuga ko kandi urukiko rutigeze rubaza abatangabuhamya yatanze. Ubushinjacya buvuga ko uregwa atavuguruzwa ibimenyetso inkiko zabanje zashingiye ahubwo ko arangwa no kugenda avuga imvugo zitandukanye kuko ibyo yavuze ubwo yabazwaga atari byo avuga ubu dore ko n'abo batangabuhamya avuga atigeze abagaragaza mu bugenzacyaha ngo babazwe bityo bikaba bishoboka ko ibyo bavuga ari ibyo yababwiye. Incamake y'icyemezo: Nubwo ubujurire butahabwa ishingiro, ntacyabuza Urukiko kugabanyiriza uwahamwe n'icyaha igihano agahabwa ikijyanye n'uburemere bw'icyaha yakoze kigasaniswa n'icyahawe abandi bahamwe n'icyaha mu buryo bujya gusa n'ubwe. Ubujurire nta shingiro bufite. Nta mategeko yashingiyeho

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Imanza zifashishijwe: RPAA 00278/2024/CA, Ubushinjacyaha v Turikumwe Marc, rwaciwe n'Urukiko rw'Ubugurire ku wa 21/02/2025. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 03/08/2018 umwana witwa I.M wavutse 2004 (yari afite imyaka 14) wabaga kwa Mugabo Faustin Alias Sonia (w'imyaka 25), yavuze ko ubwo bari basigaye mu rugo bonyine, umugore we Nyirabizeyimana Immaculée yagiye mu kazi yahengereye uwo mwana ari mu cyumba yararagamo amusangaye aramusambanya. Aho Nyirabizeyimana Immaculée atahiye umwana abimubwiye aramukingirana aramuhondagura. Inzego z'ibanze zashyikirije Mugabo Faustin Alias Sonia na Nyirabizeyimana Immaculée ubugenzacyaha batangira gukurikiranwa. [2] Nyuma y'iperereza, Ubushinjacyaha bwabaregeye Urukiko Rwisumbuye rwa Gasabo. Mugabo Faustin Alias Sonia bumukurikiranyeho icyaha cyo gusambanya umwana bumusabira igifungo cya burundu, naho Nyirabizeyimana Immaculée bumukurikiranaho icyaha cyo gukubita no gukomeretsa I.M basaba ko yahanishwa igihano cy'igifungo cy'imyaka 3 n'ihazabu y'amafaranga y'u Rwanda 300 000frw. Bose baburanye bahakana icyaha. [3] Mu rubanza No RP00645/2018/TGI/GSBO, rwaciwe ku wa 27/05/2019, Urukiko Rwisumbuye rwa Gasabo rwasanze bahamwe n'ibyaha baregwa ruhanisha Mugabo Faustin Alias Sonia igifungo cya burundu rushingiye ku mpamvu zikurikira:

- Raporo yakozwe n'ubuyobozi bw'Akagali ka Bisenga isobanura ikibazo,
- Imvugo za I.M. wahohotewe usobanura ibyamubayeho,
- na expertise ya muganga wasuzumye I.M wemeje ko yari afite ibikomere ku gitsina anafite ibikomere ku kinganza cye cy'ibumoso.

- [4] Mugabo Faustin alias Sonia yajuririrye Urukiko Rukuru avuga ko mu kumuhamya icyaha habayemo kugenekereza kuko n'ubwo umwana yaba yarasambanyijwe nta kimenyetso na kimwe cyashingiweho ngo hemezwe ko ari we wamusambanije, ko Ubuhamya bw'umwana bushidikanywaho ndeste bukanavuguruzanya n'ubw'umutangabuhamya witwa Ntayomba Jean Bosco, kandi umucamanza akaba ataremeye kubaza abatangabuhamya bashinjura bagizwe na Ntakirutimana Daniel, Uwankijije Jean Bosco na Ndagijimana J. De Dieu. [5] Mu rubanza RPA 01088/2019/HC/KIG rwaciwe ku wa 21/03/2022, Urukiko Rukuru rwasanze impamvu z'ubujurire za Mugabo Faustin Alias Sonia nta shingiro zifite, kuko Urukiko rubanza mu kumuhamya icyaha rwashingiye ku bimenyetso bidashidikanywaho birimo raporo ya muganga igaragza ko umwana yasambanyijwe ndetse afite n'ibisebe ku gitsina no ku kiganza bigashimangirwa n'imvugo z'umwana wahohotewe umushinja kumusambanya, akaba ntacyo bapfa kandi akaba atari muto cyane ku buryo yananirwa kuvuga ibyamubayeho. Urukiko rwemeza ko akomeza guhanishwa igifungo cya burundu.

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- [6] Mugabo Faustin Alias Sonia yongeye kujurira mu Rukiko rw'Ubururire, urubanza rwe ruhabwa no RPAA 00234/2022/CA, iburanisha mu ruhamye rishyirwa ku wa 14 Gicurasi 2025. Uwo munsu ugeze Mugabo Faustin Alias Sonia yitaba yunganiwe na Me Gashayija Mathieu, naho Ubushinjacyaha buhagarariwe na Bideri Diogène, Umushinjacyaha ku rwego rw'Igihugu. [7] Mu bujurire bwe, Mugabo Faustin Alias Sonia avuga ko Inkiko zibanza zamuhamije icyaha nta bimenyetso bidashidikanywaho bishingiweho, kandi hatabajijwe abatangabuhamya yatanze bashinjura bemeza ko yari kumwe nabo kuva mu gitondo kare banyonga. Asaba ko yarenganurwa kuko harimo gushidikanya kandi bikaba birengera ushinjwa. [8] Uhagarariye Ubushinjacyaha avuga ko impamvu z'ubujurire za Mugabo Faustin Alias Sonia nta shingiro zifite kuko n'ubwo ahakana ibimenyetso byose byashingiweho n'inkiko zombi mu kumuhamya icyaha cyo gusambanya umwana, adashobora kubivuguruzwa. [9] Muri uru rubanza harasuzumwa niba hari inenge ziri mu bimenyetso Urukiko rwashingiyeho ruhamya Mugabo Faustin Alias Sonia, icyaha cyo gusambanya umwana

II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

Kumenya niba hari inenge ziri mu bimenyetso Urukiko rwashingiyeho ruhamya Mugabo Faustin Alias Sonia, icyaha cyo gusambanya umwana

- [10] Mugabo Faustin, uzwi ku izina rya Sonia, avuga ko yahamijwe icyaha nta bimenyetso simusiga bikimuhamya. Yemeza ko umwana wasambanyijwe yari yiriranwe n'undi mugabo, bikaba bishoboka ko ari we wamuhimbiye icyaha agamije kuyobya uburari. Asobanura ko udusebe twabonetse ku ntoki z'uwo mwana twatwe n'inkoni yakubiswe n'umugore we, Nyirabizeyimana Immaculée, amuhora kuba yari yazereranye umwana muto. Avuga ko raporo ya muganga itari ikwiriye kugenderwaho kuko nta gihamya igaragaza ko ari we wasambanyije uwo mwana koko, ndetse ko n'akarangabusugi gashobora kuba karavanyweho no kujya ku igare. Anenga kandi ko urukiko rwirengagije kumva abatangabuhamya barimo:

Ntakirutimana Daniel, Uwankijije Jean Bosco, na Ndagijimana, b'abanyonzi bamukuye mu buriri mu gitondo saa kumi n'imwe ubwo bajyaga mu kazi. Ibi bikaba bitandukanye n'ibyatangajwe n'umwana, wavuze ko yasambanyijwe hagati ya saa kumi n'ebiri na saa moya za mu gitondo. [11] Mugabo Faustin Alias Sonia avuga ko umutangabuhamya Ntayomba Jean Bosco wabajijwe bafite ibyo bapfa, akaba ariwe washutse uwo mwana ngo amushinje ko yamusambanyije bihurirana n'uko uwo mwana yashakaga kubihimuraho, we n'umugore we kuko nawe yari yamukubise amuhora kuzererana umwana. [12] Me Gashayija Mathieu yongeraho ko raporo ya muganga atari ikimenyetso cyari gushingirwaho kuko muganga atigeze agaragaza niba akarangabusugi karavuyeho vuba cyangwa hashize igihe kinini kavuyeho, ko kandi kuba hari ibisebe ku gitsina cye bidasobanuye ko yasambanyijwe kuko ashobora no kwikomeretsa yishima. Avuga ko n'ubwo umwana ariwe

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wivugiye ko yasambanyijwe, ariko ko hari izindi mpamvu ashobora kumubeshyera, kuko ntawamenya ibyo mu miryango. [13] Uhagarariye Ubushinjacyaha avuga ko impamvu z'ubujurire za Mugabo Faustin Alias Sonia nta shingiro zifite kuko ibimenyetso byose byashingiweho n'inkiko zombi mu kumuhamya icyaha cyo gusambanya umwana byerekana ko yagikoze kandi ibyo bimenyetso byose nta na kimwe yigeze abasha kuvuguruzwa. Akavuga ko atagombye kuvuga ko yageretsweho icyaha cyakozwe n'undi mugabo, mu gihe adashobora kwerekana uwo mugabo n'uburyo ariwe wasambanyije uwo mwana. Ku bijyanye na raporo ya muganga, uhagarariye ubushinjacyaha avuga ko uregwa atakwitwaza ko itagaragaza aho ahurira n'icyaha kuko muganga we yakozwe inshingano ze zo gusuzuma uwakorewe icyaha, nk'uko yari yabisabwe, habaho guhuza ibikubiye muri raporo n'ibindi bimenyetso, maze bigaragaza ko Mugabo Faustin ari we wasambanyije I.M, bityo iyo raporo ikaba atariyo yashingiweho yonyine. [14] Uhagarariye Ubushinjacyaha avuga ko ibyo uregwa asobanura ko umwana yakubiswe n'umugore we amuziza ko yajyanye abana kuzerera, ibi ari uburyo bwo guhunga icyaha ahuriyeho na Nyirabizeyimana Immacule umugore we. Naho ibyo avuga ko Urukiko rutumvise abatangabuhamya we ubwe yitangiraga, yemeza ko ari uko rwabonye atari ngombwa kubabaza cyane ko hatari kwizerwa ibyo yabashyizemo kuvuga mu gihe batari barabajijwe ahandi hose, kandi ko Urukiko ari rwo rureba niba ari ngombwa kubaza abatangabuhamya cyangwa atari ngombwa, rukaba rutitsitsa ku mubare wabo nk'uko byatanzweho umurongo mu rubanza RPAA0118/11/CS1. Yongeraho ku ku byerekeye igihano, n'ubwo Urukiko rushobora kugabanya igihano rubyibwirije, ko Mugabo Faustin we atakigabanyirizwa kubera uburyo yagikozemo.

UKO URUKIKO RUBIBONA [15] Impaka muri uru rubanza zishingiye ku kumemba niba hari ugushidikanya kugaragara mu bimenyetso byashingiweho mu guhamya Mugabo Faustin Alias Sonia icyaha no kumenya niba byari ngombwa kubaza abatangabuhamya avuga birengagijwe. [16] Mu guhamya Mugabo Faustin Alias Sonia icyaha hashingiwe ku mvugo z'umwana wahohotewe, kuri Raporo yakozwe n'ubuyobozi bw'Akagali ka Bisenga isobanura ikibazo, imvugo za Ntayomba Jean Bosco wasanze umwana arimo kurira ko yakubiswe na Nyirabizeyimana Immacule hakaba n'Imvugo za I.M. wahohotewe aho asobanura ibyamubayeho, hakiyongeraho na raporo ya muganga wasuzumye umwana wemeje ko yari afite ibikomere ku gitsina anafite

ibikomere ku kiganza cye cy'ibumoso. [17] Mugabo Faustin Alias Sonia mu ibazwa rye mu Bugenzacyaha yabajijwe niba mu gihe cya saa-kumi n'imwe za mu gitondo igihe kivugwa uwo mwana yasambanyirijwe yari iwe aryamanye n'umugore we, asubiza ko yari aryamye wenyine naho umugore we Nyirabizeyimana Immaculée ari mu rugo arimo gukubura. Yavuze kandi ko uyu mwana ashinjwa gusambanya ari uwa murumuna w'umugore we wari amaze icyumweru aba mu rugo rwe. Abajijwe uwo yatekereza ko yaba yarasambanyije uwo mwana mu gihe byagaragara ko yasambanyijwe, yasubije ko ntawe

1 Urubanza RPAA0118/11/CS rwaciwe ku wa 13/11/2015 haburana Ubushinjacyaha na Ngurinzira, (igika cya 13 Vol [2017] 1 RLR).

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yamenya, bazagenekereza nk'Urukiko bakabifataho umwanzuro. Ku bijyanye no kumenya impamvu umugore we yakubise uwo mwana yavuze ko yamuhoye ko yari yajyanye umwana mu ishyamba. Umugore we abazwa mu Bugenzacyaha yavuze ko uwo mwana ari mwene wabo mu miryango kuko umuryango wabo ari munini ariko ababajijwe izina rya nyina w'umwana arariyoberwa. Yabajijwe impamvu yamukubise avuga ko yamuhoye ko umwana we w'umukobwa yakuruye agapipi ka musaza we abareba ntiyagira icyo akora, abajijwe niba hari uwamubonye amukubita, avuga ko hari umugabo waje kureba ariko ko ari umugenzi wigenderaga atamenye izina rye. Uyu mugore kandi yavuze ko ibyo byabaye atashye kuko atari ari mu rugo. Umwana we abazwa yavuze ko urwo rugo yari yararuzanywemo nk'umukozi kugira ngo ajye abafasha umwana ariko ko atabihemberwaga. Yasobanuye ibyo yakorewe avuga uburyo yasambanyijwe umugore adahari ndetse anasobanura adategwa ibyo yabanje kuvugana na Mugabo Faustin Alias Sonia. [18] Uru Rukiko rurasanga imvugo Mugabo Faustin yavugiye mu Bugenzacyaha zidahura n'izo avugira muri Uru rukiko ko yari yagiye mu kazi k'ubunyonzi; ndetse n'abatangabuhamya avuga batabajijwe, bigaragara ko atigeze abakomozaho mu Bugenzacyaha, bityo akaba atanenga inkiko kuba zitarabumvise. Ibyo avuga kandi ko hari undi mugabo wari wiriranywe n'uyu mwana ku buryo bishoboka ko ari we wamugiriye inama yo kumugerekaho icyaha nabyo si byo kuko atigeze abisobanura atyo mu Bugenzacyaha. Bigaragara kandi ko imvugo ze mu Bugenzacyaha zidahura n'iz'umugore we kuko yavuze ko umugorewe yakubise uyu mwana kuko yari yajyanye umwana mu ishyamba, mu gihe nyamara umugore we avuga ko yamukubitiye kuba yarabereye umwana w'umukobwa akurura agapipi ka musaza we byumvikana ko izi mpamvu bavuga ari izo bahimba. Bigaragara kandi ko mu rwego rwo kumvikanisha ko atashoboraga guhohoterwa uwo mwana we n'umugore we bahimbye isano bafitanye n'uyu mwana, nyamara mu by'ukuri ntacyo bapfana kuko umwana abihakana, naho umugore uvuga ko afite icyo apfana na nyina w'umwana akaba atarabishije no kumenya izina rye. [19] Uru Rukiko rurasanga guhinduranya imvugo kwa Mugabo Faustin Alias Sonia ndetse no kutazihuza n'umugore nk'uko byagaragajwe mu gika kibanziriza iki, bihujwe na raporo ya muganga yagaragaje ko umwana yari afite ibimenyetso by'ihohoterwa mu gitsina no ku mubiri we, ari ibimenyetso bigaragaza ko icyaha aregwa yagikoze koko. Bityo, ubu bujurire bukaba nta shingiro bufite nta kosa Urukiko Rukuru rwakoze mu isesengura ryarwo. [20] Uru Rukiko rurasanga ariko n'ubwo Ubujurire bwe nta shingiro bufite, ntacyabuza Urukiko kumugabanyiriza igihano agahabwa ikijyanye n'uburemere bw'icyaha yakoze kuko igihano

cy'igifungo cya burundu yahanishijwe gihanitse ugereranyije n'igihabwa abandi bakoze icyaha mu buryo bujya gusa n'ubwe nk'uko byatanzweho umurongo mu manza zinyuranye zaciwe n'uru Rukiko, uruheruka muri uwo mujyo akaba ari urubanza RPAA 00278/2024/CA rwaciwe ku wa 21/02/2025, Ubushinjacyaha buburana na Turikumwe Marc. [21] Mugabo Faustin Alias Sonia ahamwa n'icyaha cyo gusambanya umwana w'imyaka 14, icyaha yakoze afite imyaka 25 akaba ari ubwa mbere akurikiranwe mu nkiko mu buryo buzwi. Mu rwego rwo gutanga ubutabera bumwe ku bakoze ibyaha bimwe kandi mu buryo bumwe, Uru Rurukiko rurasanga mu rubanza RPAA 00278/2024/CA rwaciwe ku wa 21/02/2025, Ubushinjacyaha buburana na Turikumwe Marc wari ufite imyaka 25 ubwo yakoraga icyaha cyo gusambanya umwana w'imyaka 15, Urukiko rushingiye ku kuba ari ubwa mbere uyu yari akurikiranweho icyaha mu buryo buzwi, yaragabanyirijwe igihano agahanishwa igifungo cy'imyaka 14, gisimbura igifungo cy'imyaka 20 yari yarahanishijwe n'inkiko zibanza.

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[22] Uru Rukiko rurasanga Mugabo Faustin Alias Sonia nawe yarakoze icyaha afite imyaka 25, asambanya umwana w'imyaka 14 kandi ari ubwa mbere akurikiranweho icyaha mu buryo buzwi, bityo nawe akaba agomba guhanishwa igifungo cy'imyaka 14.

III. ICYEMEZO CY'URUKIKO

[23] Rwemeje ko ubujurire bwa Mugabo Faustin alias Sonia nta shingiro bufite;

[24] Rwemeje ko urubanza RPA 01088/2019/HC/KIG, rwaciwe n'Urukiko Rukuru ku wa 21/03/2022, ruhindutse gusa ku bijyanye n'ibihano Mugabo Faustin alias Sonia yahanishijwe;

[25] Ruhanishije Mugabo Faustin alias Sonia igihano cy'igifungo cy'imyaka 14, gisimbura igifungo cya burundu yari yarahawe mu manza zabanje.

[26] Rutegetse ko Mugabo Faustin alias Sonia asonewe amagarama y'urubanza kuko aburana afunze.

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