

RWANDA / JUDGMENT

UBUSHINJACYAHA v. MUTABAZI

RPAA 00394/2025/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA v. MUTABAZI

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Text

Page 1

UBUSHINJACYAHA v. MUTABAZI [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00394/2025/CA (Mukamurenzi, P.J.) 21 Ugushyingo 2025] Amategeko agenga ibimenyetso – Ibimenyetso mu manza Nshinjabyaha – Principe de la liberté de preuves en matière pénale – Mu manza nshinjabyaha, ibimenyetso byose iyo byagiweho impaka bishobora gushingirwaho mu kwemeza ko uregwa yakoze icyaha (principe de la liberté de la preuve en matière pénale) kandi ibyo bimenyetso bishobora no kuba imvugo z'abatangabuhamya, urukiko rukaba arirwo rusuzuma niba ibyo bavuga byakwemerwa cyangwa ntibyemerwe. Amategeko agemga imanza z'inshinjabyaha – Gucuruza ibiyobyabwenge – Umucuruzi w'ibiyobyabwenge – Umuntu ntagirwa umucuruzi w'ibiyobyabwenge no kuba hari abaguzi babonetse aho acururiza, ahubwo igihe cyose afite ibicuruzwa kandi yiteguye kubiha umuntu wese umugana ashaka ibyo agurisha, aba ari umucuruzi w'ibiyobyabwenge. Incamake y'ikibazo: Mutabazi yakurikiranyweho n'Ubushinjacyaha icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi nyuma yaho afitanywe udupfunyika 74 tw'urumogi, bumuregera Urukiko Rwisumbuye rwa Nyarugenge, aburana ahakana icyaha ahubwo yemera ko yafatanywe ibiyobyabwenge. Urwo Rukiko rwaciye urubanza rwemeza ko uregwa ahamwa n'icyaha cyo gucuruza ibiyobyabwenge, rumuhanisha

igifungo cy'imyaka igifungo cy'imyaka 25 n'ihazabu ya 21.000.000 Frw. Mutabazi yajuririye mu Rukiko Rukuru avuga ko yahamijwe n'Urukiko Rwisumbuye rwa Nyarugenge icyaha cyo gucuruza ibiyobyabwenge kandi yaraburanye yemera ko yafatanwe ibiyobyabwenge byo mu bwoko bw'urumogi. Asaba ko inyito y'icyaha yahindurwa agahanirwa icyaha cyo gufatanwa urumogi. Urukiko Rukuru rwaciye urubanza rwemeza ko ahamwa n'icyaha, gusa rumugabanyiriza rushingiye ku mpamvu nyoroshyacyaha, rumuhanisha igifungo cy'imyaka 15 n'ihazabu ya 5.000.000 Frw. Mutabazi yajuririye mu Rukiko rw'Ubujurire anenga Urukiko Rukuru kuba rwaramuhamije icyaha cyo gucuruza urumogi hashingiwe ku bimenyetso bishidikanywaho kandi bigenekereje, ko ahubwo ibikorwa yakoze bigize icyaha cyo gufatanwa ibiyobyabwenge gusa kuko hatagaragajwe umuntu wafatanwe urumogi yamugurishije cyangwa amafaranga yavanye muri ubwo bucuruzi. Ku rundi ruhande Ubushinjacyaha buvuga ko ubusabe bw'uregwa bwo guhindura inyito y'icyaha nta shingiro bwahabwa kuko iyo mpamvu y'ubujurire n'Urukiko Rukuru rwayisuzumye runayifataho umwanzuro. Asaba ko hagumaho igifungo cy'imyaka 15 yahanishijwe kubera guhamwa n'icyaha cyo gucuruza urumogi. Incamake y'icyemezo: 1. Mu manza nshinjabyaha, ibimenyetso byose iyo byagiweho impaka bishobora gushingirwaho mu kwemeza ko uregwa yakoze icyaha (principe de la liberté de la preuve en matière pénale) kandi ibyo bimenyetso bishobora no kuba imvugo z'abatangabuhamya, urukiko rukaba arirwo rusuzuma niba ibyo bavuga byakwemerwa cyangwa ntibyemerwe.

Page 2

2. Umuntu ntagirwa umucuruzi w'ibiyobyabwenge no kuba hari abaguzi babonetse aho acururiza, ahubwo igihe cyose afite ibicuruzwa kandi yiteguye kubiha umuntu wese umugana ashaka ibyo agurisha, aba ari umucuruzi w'ibiyobyabwenge. Ubujurire nta shingiro bufite. Nta mategeko yashingiweho Imanza zifashishijwe: RPAA 00692/2021/CA; Ubushinjacyaha vs Ndayishimiye Jean Damascène rwaciwe n'Urukiko rw'Ubujurire ku wa 20/01/2023; RPAA 01288/2024/CA; Ubushinjacyaha vs Turikumwe Gilbert rwaciwe n'Urukiko rw'Ubujurire ku wa 18/07/2025; RPAA 00436/2020/CA; Ubushinjacyaha vs Ahimpereye Ndeze François rwaciwe n'Urukiko rw'Ubujurire ku wa 28/06/2022; RPAA 00224/2024/CA; Ubushinjacyaha vs Nyirandimubanzi Florida n'undi rwaciwe n'Urukiko rw'Ubujurire ku wa 30/05/2025. Urubanza I. IMITERERE Y'URUBANZA [1] Abakozi bo mu ishami rya Polisi rishinzwe kurwanya ibiyobyabwenge bari bafite amakuru bahawe n'abaturage ko Mutabazi Augustin akora ibikorwa by'ubucuruzi bw'ibiyobyabwenge, maze ku wa 29/05/2020 bamufatira mu cyuho aho yari mu Mudugudu wa Gakoni, Akagali ka Nyabugogo acuruza ibiyobyabwenge byo mu bwoko bw'urumogi, bamusangana udupfunyika 74. [2] Ubushinjacyaha bwareze Mutabazi Augustin mu Rukiko Rwisumbuye rwa Nyarugenge bumukurikiranyeho icyaha cyo kugurisha ibiyobyabwenge byo mu bwoko bw'urumogi, aburana agihakana avuga ko icyo yemera ari uko yafatanywe urwo rumogi ariko atarucuruje, asaba ko yahanirwa icyaha yemera, akanasubikirwa igihano. [3] Mu rubanza RP 00921/2020/TGI/NYGE rwaciwe ku wa 06/01/2022, Urukiko rwemeje ko Mutabazi Augustin ahamwa n'icyaha aregwa rushingiye ku mvugo z'abatangabuhamya bamushinja Habarurema Samuel na Munyamahoro Emmanuel bagiye kumufata bigize abaguzi, kuri raporo

y'ubuyobozi bw'Umudugudu wa Gakoni yo ku wa 30/5/2020 maze rumuhanisha igifungo cy'imyaka 25 n'ihazabu ya 21.000.000 Frw. [4] Mutabazi Augustin yajuririye urwo rubanza mu Rukiko Rukuru, avuga ko yaburanye yemera ko yafatanywe urumogi atari ukurucuruza, ariko Urukiko rumuhamya icyaha rugendeye ku bimenyetso by'Ubushinjacyaha kandi nta bushake yari afite bwo gukora icyaha, ko ahubwo ari uko yari yarapanze gufatisha uwitwa Bizimana wari warafungishije mubyara we, maze aba ariwe ufatwa kandi nta cyaha yakoze. Asaba ko inyito y'icyaha yahindurwa agahanirwa icyaha cyo gufatanwa urumogi.

Page 3

- [5] Uhagarariye Ubushinjacyaha yavuze ko Mutabazi Augustin yafatiwe mu cyuho aje gucuruza urumogi, ko uwitwa Bizimana avuga atigeze amuvuga ku rwego rwa mbere ahubwo yavugaga uwitwa Original, ko kuba ibyo avuga nta bimenyetso abitangira, hagomba kugumaho imikirize y'urubanza rwajuririwe. [6] Mu rubanza RPA 00216/2022/HC/KIG rwaciwe ku wa 19/03/2025 n'Urukiko Rukuru, rwasanze hari ibimenyetso bimuhamya icyaha cyo kugurisha ibiyobyabwenge birimo imvugo z'abatangabuhamya Habarurema Samuel na Munyamahoro Emmanuel, raporo y'ubuyobozi bw'Umudugudu wa Gakoni yo ku wa 30/5/2020 ndetse n'inyandikomvugo y'ibyabonywe (pv de constat) yo ku wa 29/5/2021 atabashije kuvuguruzwa. Icyakora urwo Rukiko rwamugabanyirije igihano rushingiye ku mpamvu nyoroshyacyaha yo kuba ari ubwa mbere akoze icyaha mu buryo buzwi no kuba yari akiri mu myaka mito y'urubyiruko, rumuhanisha igifungo cy'imyaka 15 n'ihazabu ya 5.000.000 Frw. [7] Mutabazi Augustin yajuririye urwo rubanza mu Rukiko rw'Ubujurire, urubanza ruhabwa RPAA 00394/2025/CA, iburanisha ribera mu ruhame ku wa 11/11/2025, Mutabazi Augustin yunganiwe na Me Musasangohe Illuminée, naho Ubushinjacyaha buhagarariye na Uwizeye Jean Marie. [8] Mu myanzuro y'ubujurire no mu miburanire, Mutabazi Augustin n'umwunganira bavuga ko banenga Urukiko Rukuru kuba rwaramuhamije icyaha cyo gucuruza urumogi hashingiye ku bimenyetso bishidikanywaho kandi bigenekereje, ko ahubwo ibikorwa yakoze bigize icyaha cyo gufatanwa ibiyobyabwenge gusa kuko hatagaragajwe umuntu wafatanwe urumogi yamugurishije cyangwa amafaranga yavanye muri ubwo bucuruzi. [9] Uhagarariye Ubushinjacyaha avuga ko ibyo Mutabazi Augustin n'umwunganira basaba ko inyito y'icyaha yahinduka, nta shingiro byahabwa kuko iyo mpamvu y'ubujurire n'Urukiko Rukuru rwayisuzumye runayifataho umwanzuro, ko n'umurongo watanze mu rubanza RPAA 00436/2020/CA rwaciwe ku wa 28/06/2022, haburana ubushinjacyaha na Ndeze François usobanura neza umucuruzi w'ibiyobyabwenge uwo ari we. Asaba ko hagumaho igifungo cy'imyaka 15 yahanishijwe kubera guhamwa n'icyaha cyo gucuruza urumogi. [10] Mu rubanza harasuzumwa ikibazo cyo kumenya niba hari ikosa ryakozwe n'Urukiko Rukuru mu kwemeza ko Mutabazi Augustin yakoze icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi aho kuba icyo kubifatanwa. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba hari ikosa ryakozwe n'Urukiko Rukuru mu kwemeza ko Mutabazi Augustin yakoze icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi aho kuba icyo kurufatanwa. [11] Mutabazi Augustin n'umwunganira bavuga ko icyo banenga urubanza

rwaciwe n'Urukiko Rukuru ari ukuba rwaraciwe hashingiwe ku mvugo z'abatangabuhamya bigize abaguzi bamutega umutego wo kumusunikira gukora icyaha, ariko uretse gufatanwa urumogi, ntacyo rwashingiyeho rwemeza ko arucuruza, kuko nta gikorwa cyo gucuruza cyagaragajwe, umuntu wafatanwe urumogi yamugurishije cyangwa se amafaranga yavuye muri ubwo bucuruzi.

Page 4

- [12] Bakomeza bavuga ko ibikorwa yakoze bigize icyaha cyo gufatanwa ibiyobyabwenge byo mu bwoko bw'urumogi, ko gukeka icyo yari kubikoresha ari ukugenekereza, kandi n'amakuru y'uko acuruza urumogi abatangabuhamya bavuga ko bari bafite, atari ikimenyetso kidashidikanywaho kigaragaza ko yakoze icyaha aregwa, kuko nta muturage ubimushinja, nta n'uwavuze ko amuzi. Basobanura ko kugira ngo afatanwe urumogi byatewe n'uko yacuranye umugambi n'abapolisi bamushinja kugira ngo umucuruzi w'urumogi witwa Original afatwe, ariko atazi ko bafitanye umubano, ajya kurumugurira barangije aba ari we bafata, ko asaba ko hakitabwa ku magambo avuga. [13] Uhagarariye Ubushinjacyaha avuga ko ibyo Mutabazi Augustin n'umwunganira bavuga ko nta bimenyetso bigaragaza ko yakoze icyaha cyo gucuruza ibiyobyabwenge, ko icyo yakoze ari ugufatanwa urumogi nta shingiro bifite, kuko abatangabuhamya Habarurema Samuel na Munyamahoro Emmanuel bagaragaje ko bamuhaye komande y'urumogi, araruzana ngo barugure, ndetse na raporo y'umudugudu wa Gakoni nayo yagaragaje ko basanzwe bamuzi muri ibyo bikorwa. [14] Uhagarariye Ubushinjacyaha anavuga ko ibyo bavuga ko Mutabazi atari umucuruzi w'ibiyobyabwenge kuko nta muguzi cyangwa amafaranga byagaragajwe nta shingiro bifite, kuko icyo kibazo Urukiko rw'Ubujurire rwagitanzeho umurongo mu rubanza RPAA 00436/2020/CA rwaciwe ku wa 28/06/2022, haburana ubushinjacyaha na Ahimpereye Ndeze François, aho rwasobanuye umucuruzi w'ibiyobyabwenge uwo ari we, ko ibivugwa muri urwo rubanza bihura n'ibyo Mutabazi aregwa. Asaba ko hagumaho igifungo cy'imyaka 15 Mutabazi Augustin yahanishijwe mu rubanza rujuririrwa kuko atabasha kuvuguriza ibimenyetso byashingiweho bimuhamya icyaha. UKO URUKIKO RUBIBONA [15] Impaka mu rubanza zishingiye ku kumenya niba Mutabazi Augustin yarahamijwe icyaha cyo gucuruza ibiyobyabwenge by'urumogi hirengagijwe ko icyo yakoze ari icyaha cyo gufatanwa ibiyobyabwenge byo mu bwoko bw'urumogi. [16] Ibyerekeye ibimenyetso mu manza nshinjabyaha, Urukiko rw'Ubujurire rwabitanzeho umurongo mu rubanza RPAA 00692/2021/CA rwaciwe ku wa 20/01/2023 haburana Ubushinjacyaha na Ndayishimiye Jean Damascène. Muri urwo rubanza Urukiko rw'Ubujurire rwasobanuye ko mu manza nshinjabyaha, ibimenyetso byose iyo byagiweho impaka bishobora gushingirwaho mu kwemeza ko uregwa yakoze icyaha (principe de la liberté de la preuve en matière pénale) kandi ibyo bimenyetso bishobora no kuba imvugo z'abatangabuhamya, urukiko rukaba arirwo rusuzuma niba ibyo bavuga byakwemerwa cyangwa ntibyemerwe. Uyu murongo wakurikijwe no mu zindi manza zaciwe n'uru Rukiko, mu ziheruka harimo n'urubanza RPAA 01288/2024/CA rwaciwe ku wa 18/07/2025 haburana Ubushinjacyaha na Turikumwe Gilbert 2. [17] Naho ku byerekeye ibishingirwaho mu kwemeza ko uregwa ari umucuruzi w'ibiyobyabwenge,

Urukiko rw'Ubujurire rwabitanzeho umurongo mu rubanza RPAA

1 Reba igika cya 18 cy'urwo rubanza. 2 Reba igika cya 29 cy'urwo rubanza.

Page 5

00436/2020/CA rwaciwe ku wa 28/06/2022 haburana Ubushinjacyaha na Ahimpereye Ndeze François. Muri urwo rubanza Urukiko rw'Ubujurire rwasobanuye ko umuntu atagirwa umucuruzi w'ibiyobyabwenge no kuba hari abaguzi babonetse aho acururiza, ahubwo igihe cyose afite ibicuruzwa kandi yiteguye kubihira umuntu wese umugana ashaka ibyo agurisha, aba ari umucuruzi w'ibiyobyabwenge. Uyu murongo wagendeweho no mu zindi manza zaciwe n'uru Rukiko zirimo n'urubanza RPAA 00224/2024/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 30/05/2025 haburana Ubushinjacyaha na Nyirandimubanzi Florida n'undi. [18] Nk'uko urubanza rujuririrwa rubigaragaza, Urukiko Rukuru rwasesenguye imiburanire ya Mutabazi Augustin ku bijyanye no guhindura inyito y'icyaha aho yasabaga guhanirwa icyaha cyo gufatanwa ibiyobyabwenge byo mu bwoko bw'urumogi, nta hanirwe icyaha cyo kubicuruzwa, rusanga nta shingiro ifite kuko hari ibimenyetso bimushinja atabashije kuvuguruza bigizwe n'imvugo z'abatangabuhamya Habarurema Samuel na Munyamahoro Emmanuel babazwa mu Bugenzacyaha, basobanuye ko nyuma yo guhabwa amakuru ko acuruza urumogi, bamuhamagaye bamubwira ko bakeneye urumogi rwo kugura, ababwira ko afite udupfunyika 74, bavugana aho baturirira, aza arufite bahita barumufatana, raporo y'ubuyobozi bw'Umudugudu wa Gakoni ivuga ko Mutabazi Augustin yafatanywe urumogi n'uko hariho amakuru y'uko asanzwe arucuruza, ndetse n'iyandikomvugo y'ibyabonywe (pv de constat) . [19] Urukiko rw'Ubujurire rurasanga ibyo Mutabazi Augustin n'umwunganira bavuga ko mu kumuhamya icyaha cyo gucuruza urumogi habayemo kugenekereza ngo kuko nta gikorwa cy'ubucuruzi, nta muntu yahaye urumogi cyangwa amafaranga yakuyemo byagaragajwe nta shingiro bifite, kuko abatangabuhamya Habarurema Samuel na Munyamahoro Emmanuel bemeza ko bamuhamagaye ngo abazanire urumogi rwo kugura, afatwa ubwo yari abashyiriyeye udupfunyika 74, kandi nawe mu miburanire ye yemera ko urwo rumogi yarufatanywe, uretse ko avuga ko yashakaga gufatisha uwitwaga Original wacuruzaga urumogi, ariko nta kimenyetso abigaragariza. [20] Urukiko rurasanga hari ibimenyetso bidashidikanywaho bihamya ko Mutabazi Augustin yakozwe icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, kuko uretse n'ibyo bimenyetso bishimangira ko ko acuruza urumogi nk'uko bisobanurwa mu murongo watanze mu rubanza RPAA 00436/2020/CA rwavuzweho haruguru, ingano nini y'urumogi udupfunyika 74 yafatanywe nayo ubwayo ishimangira ko rwari urwo kugurisha 3. Ibi bikaba bigaragaza ko nta kugenekereza guhari ku byerekeye icyaha cyo gucuruza ibiyobyabwenge yahamijwe, bityo ibyo avuga ko icyo yakozwe ari ugufatanwa urumogi bikaba nta shingiro bifite. [21] Hashingiwe ku bimaze gusobanurwa, uru Rukiko rurasanga ubujurire bwa Mutabazi Augustin bugamije gusaba ko inyito y'icyaha cyo gucuruza ibiyobyabwenge yahamijwe ihindurwa agahanirwa gufatanwa urumogi nta shingiro bufite, kuko hari ibimenyetso byavuzwe bihamya ko yakozwe icyaha cyo gucuruza urumogi atabashije kuvuguruza; bityo urubanza rwaciwe n'Urukiko Rukuru rukaba rugumanye agaciro karwo. III. ICYEMEZO CY'URUKIKO [22] Rwemeje ko ubujurire bwa Mutabazi Augustin nta shingiro bufite;

3 Reba ibyasobanuwe mu rubanza N° RPAA 00408/2020/CA rwaciye n'Urukiko rw'Ubujurire ku wa 27/06/2022 haburana Ubushinjacyaha na NIYITEGEKA Augustin mu gika cya 14 kugeza ku cya 18.

Page 6

[23] Rwemeje ko urubanza RPA 00216/2022/HC/KIG rwaciye n'Urukiko Rukuru ku wa 19/03/2025 rudahindutse; [24] Rwemeje ko igihano cy'igifungo cy'imyaka 15 n'ihazabu ya 5.000.000 Frw yahanishijwe mu rubanza rujuririrwa kidahindutse.

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