

RWANDA / JUDGMENT

UBUSHINJACYAHA v. MWEREKANDE

RPAA 00734/2024/CA

COURT

Court of Appeal

DECIDED

28 March 2025

CASE / FILE NUMBER

RPAA 00734/2024/CA

Source: amategeko.gov.rw · Research copy typeset by Esheria. Not court-issued or certified.

UBUSHINJACYAHA v. MWEREKANDE

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2025-03-28
- Case/document no.: RPAA 00734/2024/CA
- Collection: Court of Appeal

Text

Page 1

UBUSHINJACYAHA v. MWEREKANDE [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00734/2024/CA (Gakwaya, P.J.) 28 Werurwe 2025] Amategeko agenga imanza nshinjabyaha – Ubujurire – Impamvu nyoroshyacyaha – Iyo uregwa nta kindi anenga urubanza yajuririye, uretse kuvuga gusa ko atagabanyirijwe igihano bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha n'ingaruka zacyo, cyakora mu bujurire Umucamanza akaba agomba kuzirikana ko yemerewe gusa guhindura igihano cyatanze n'Umucamanza wo mu Rukiko rubanza ari uko amaze kugaragaza ko urwo Rukiko rwaba rwarakoresheje nabi Itegeko cyangwa ubushishozi bwarwo mu gutanga igihano. Incamake y'ikibazo: Ubushinjacyaha bwakurikiranye Mwerekande mu Rukiko Rwisumbuye rwa Nyagatare rumurega icyaha cyo gufatanwa no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi nyuma yuko afatanywe udupfundiye mirongo icyenda na kamwe (91) tw'urumogi n'urundi ruseye rungana n'ikilo (1kg), yaruhishe mu nzu ye mu buriri ariyemamo, agifatwa yahise yemera ko arunywa kandi arugurisha. Urwo Rukiko rwaciye urubanza rwemeza ko uregwa ahamwe n'icyaha cyo kubika no gufatanwa ibiyobyabwenge byo mu bwoko bw'urumogi, rumuhanisha igihano cy'igifungo cya burundu n'ihazabu y'amafaranga y'u Rwanda miliyoni mirongo itatu (30.000.000

Frw). Mwerekande yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana, avuga ko yaburanye ahakana icyaha mu rubanza rwabanje ariko mu bujurire yiyemeje kucyemera asaba kugabanyirizwa igihano. Urwo Rukiko narwo rwaciye urubanza rwemeza ko ukwemera icyaha kwa Mwerekande ku rwego rw'ubujurire atari inenge, ko igihano yahawe cyagabanywa, agahabwa igihwanye n'uburemere bw'icyaha yahamijwe, ahanishwa igihano cy'igifungo cy'imyaka cumi n'itandatu (16) n'ihazabu y'amafaranga y'u Rwanda miliyoni esheshatu (6.000.000 Frw). Mwerekande yajuririye Urukiko rw'Ubujurire avuga ko igihano yahawe n'Urukiko Rukuru ari kirekire, kandi yemera icyaha, ndetse na mbere yo kugwa mu cyaha yari asanzwe yitwara neza, ko mu rwego rwo gutanga ubutabera bubonye, asaba uru Rukiko kongera kumugabanyiriza igihano. Ubushinjacyaha buvuga ko impamvu y'ubujurire ya Mwerekande ishingiyeye ku kwemera icyaha no gusaba kongera kugabanyirizwa igihano kuri uru rwego rw'ubujurire, igaragaza ko ntacyo anenga urubanza yajuririye, kandi inshingano ye ari ukugaragaza amakosa yakozwe n'uko yakosorwa, ko kuba atari byo yakozwe bivuze ko yemeranya n'icyemezo cyafashwe. Buvuga kandi ko ariko Urukiko rw'Ubujurire rubibonye ukundi rwamuvaniraho umwaka umwe gusa, agahanishwa igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw). Incamake y'icyemezo: Iyo uregwa nta kindi anenga urubanza yajuririye, uretse kuvuga gusa ko atagabanyirijwe igihano bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha n'ingaruka zacyo, cyakora mu bujurire Umucamanza akaba agomba kuzirikana ko yemerewe gusa guhindura igihano cyatanze n'Umucamanza wo mu Rukiko rubanza ari uko amaze kugaragaza ko urwo Rukiko

Page 2

rwaba rwarakoresheje nabi Itegeko cyangwa ubushishozi bwarwo mu gutanga igihano. Bityo kuba Mwerekande atagaragaza amakosa Urukiko Rukuru, Urugereko rwa Rwamagana rwaba rwarakozwe mu kumugabanyiriza igihano, cyangwa ngo rube rwarakoresheje nabi Itegeko cyangwa ubushishozi bwarwo mu kwemeza icyo gihano, bivuze ko adakwiye kongera kukigabanyirizwa. Ubujurire nta shingiro bufite. Amategeko yashingiweho: 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, ingingo ya 2. Imanza zifashishijwe: Ubushinjacyaha vs Nsabimana alias Sankara n'abandi, RPA 00060/2021/CA rwaciye n'Urukiko rw'Ubujurire ku wa 4/4/2022. Ubushinjacyaha vs Ndayishimiye alias Shema RPAA 00194/2021/CA rwaciye ku wa 22/7/2022. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 31/8/2021, Mwerekande David ari iwe mu Mudugudu wa Kiyogori, Akagari k'Akabuga, Umurenge wa Kiramuruzi, Akarere ka Gatsibo, yafatanywe udupfunyika mirongo icyenda na kamwe (91) tw'urumogi n'urundi ruseye rungana n'ikilo (1kg), yaruhishe mu nzu ye mu buriri ariyemamo, agifatwa ahita yemera ko arunywa kandi arugurisha. [2] Iperereza rirangiye, Ubushinjacyaha bwareze Mwerekande David mu Rukiko Rwisumbuye rwa Nyagatare icyaha cyo gufatanwa no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, busaba ko cyamuhama, agahanishwa igihano cy'igifungo cya burundu n'ihazabu y'amafaranga y'u Rwanda miliyoni mirongo itatu (30.000.000 Frw). [3] Mwerekande David yaburanye yemera ko yafatanywe urumogi, ariko ahakana ko arugurisha, asobanura ko urwo

yafatanywe rwari urwo guha ihene. [4] Mu rubanza no RP 01319/2021/TGI/NYG rwaciwe n'Urukiko Rwisumbuye rwa Nyagatare ku wa 20/10/2021, rushingiye ku kuba Mwerekande David abazwa mu Bugenzacyaha no mu Bushinjacyaha yaremeye ko urumogi udupfunyika mirongo cyenda na kamwe (91) n'akandi k'agafu yafatanywe, yari yaruguze amafaranga ibihumbi icyenda (9.000 Frw), afatwa amaze kugurishaho urw'amafaranga magana ane (400 Frw), ku mvugo z'umutangabuhamya Twagirayezu Cyprien (Umuyobozi w'Akagali akaba n'umuturanyi) wari umufiteho amakuru y'uko acuruza urumogi, nk'uko bigaragara muri raporo y'Ubuyobozi bw'Umurenge, ku mvugo z'umugore we Musabimana Claire wemeza ko bamufatanye urumogi mu gafuka, ku nyandikomvugo irufatira yashyizeho umukono, rwemeje ko ahamwa n'icyaha cyo kubika no gufatanwa ibiyobyabwenge byo mu bwoko bw'urumogi, rumuhanisha igihano cy'igifungo cya burundu n'ihazabu y'amafaranga y'u Rwanda miliyoni mirongo itatu (30.000.000 Frw).

Page 3

[5] Mwerekande David yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana, avuga ko n'ubwo mu Rukiko Rwisumbuye rwa Nyagatare yaburanye ahakana icyaha, mu bujurire yiyemeje kucyemera, asaba kugabanyirizwa igihano. [6] Mu rubanza no RPA 01466/2021/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 28/6/2024, rushingiye ku murongo watanze n'Urukiko rw'Ubujurire mu rubanza no RPAA 00048/2021/CA1 rwaciwe ku wa 22/7/2022, haburana Ubushinjacyaha na Munyemana Eric alias Nyinya, rwasobanuye ko ukwemera icyaha kwa Mwerekande David ku rwego rw'ubujurire atari inenge, ko ariko igihano yahawe cyagabanywa, agahabwa igihwanye n'uburemere bw'icyaha yahamijwe, hagendewe na none ku murongo watanze n'Urukiko rw'Ubujurire mu rubanza no RPAA 00194/2021/CA2 rwaciwe ku wa 22/7/2022, haburana Ubushinjacyaha na Ndayishimiye Emmanuel alias Shema, runashingiye kandi ku kuba ari ubwa mbere akurikiranywe mu butabera mu buryo buzwi, rwemeje ko bikwiye kumubera impamvu nyoroshyacyaha³, rumugabanyiriza igihano, ahabwa igihano cy'igifungo cy'imyaka cumi n'itandatu (16) n'ihazabu y'amafaranga y'u Rwanda miliyoni esheshatu (6.000.000 Frw). [7] Ku wa 9/7/2024, Mwerekande David yajuririye Urukiko rw'Ubujurire avuga ko igihano yahawe n'Urukiko Rukuru ari kirekire, kandi yemera icyaha, ndetse na mbere yo kugwa mu cyaha yari asanzwe yitwara neza, ko mu rwego rwo gutanga ubutabera buboneye, asaba uru Rukiko kongera kumugabanyiriza igihano. [8] Ubushinjacyaha buvuga ko n'ubwo Mwerekande David asaba kugabanyirizwa igihano, nyamara yagabanyirijwe bihagije, ndetse ahabwa igikwiranye n'icyaha yakoze, bityo ko ubujurire bwe nta shingiro bukwiye guhabwa. [9] Urubanza rwahawe no RPAA 00743/2024/CA, ruburanishwa ku wa 10/3/2025, Mwerekande David yunganiwe na Me Micomyiza Liliane, Ubushinjacyaha buhagararariwe na Habimana Jean Cabin, Umushinjacyaha ku rwego rw'Igihugu. [10] Harebwe imyanzuro n'imiburanire y'ababuranyi, ikibazo kigomba gusuzumwa muri uru rubanza ni ukumenya niba Mwerekande David yakongera kugabanyirizwa igihano kubera impamvu nyoroshyacyaha agaragaza. II.IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

1 “Kwemera icyaha bwa mbere mu bujirire, ntibigirira akamaro uregwa kuko ujurira aba azanye ingingo nshya ataburanishije mu nkiko zibanza kandi umucamanza w’ubujirire afite gusa inshingano yo gukosora amakosa yaba yarakozwe n’izo Nkiko”. 2 Rwagaragaje ko no mu gihe urukiko rusanze impamvu z’ubujirire zidafite ishingiro, uregwa ashobora kugabanyirizwa igihano hitawe ku mahame ateganywa n’ingingo ya 49 y’Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganywa ibyaha n’ibihano muri rusange iteganywa ko «Umucamanza atanga igihano akurikije uburemere bw’icyaha, ingaruka icyaha cyateye, impamvu zatumye agikora, uko uwagikoze yari asanzwe yitwara, imibereho ye bwite n’uburyo icyaha cyakozwemo». 3 Rushingiye ku ngingo ya 2 y’Itegeko n° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganywa ibyaha n’ibihano muri rusange, iteganywa ko iyo umucamanza yemeje impamvu nyoroshyacyaha, igihano cy’igifungo cya burundu gishobora kugabanywa ariko ntikijye munsu y’imyaka cumi n’itanu (15), igihano cy’igifungo kimara igihe kizwi kiva ku mezi atandatu kuzamura gishobora kugabanywa ariko ntikijye munsu ya kimwe cya kabiri cy’igihano gito giteganyirijwe icyaha cyakozwe, igihano cy’ihazabu nacyo gishobora kugabanywa kugeza kuri ¼ cy’igihano cy’ihazabu gito giteganyirijwe icyaha cyakozwe”.

Page 4

Kumenya niba Mwerekande David yakongera kugabanyirizwa igihano kubera impamvu nyoroshyacyaha agaragaza [11] Mwerekande David avuga ko Urukiko Rukuru, Urugereko rwa Rwamagana rwamuhanishije igihano kinini, kandi yaraburanye yemera icyaha, akaba asaba uru Rukiko kumugabanyiriza igihano kuko afite abana batoya biga umugore we yataye, akaba asaba imbabazi kugira ngo ajye kubareba. [12] Me Micomyiza Liliane, wunganira Mwerekande David, avuga ko hashingiwe ku kuba agifatwa yaremeye icyaha mu buryo budashidikanywaho, kuba ari ubwa mbere yari akurikiranywe mu nkiko akaba yari asanzwe yitwara neza mu buzima busanzwe no kuba icyaha yakozwe nta ngaruka mbi cyateje kuko yafashwe ntawe yari yaha urumogi, uru Rukiko rwakongera rukamugabanyiriza igihano agahabwa igifungo cy’imyaka cumi n’itanu (15). [13] Ubushinjacyaha buvuga ko impamvu y’ubujirire ya Mwerekande David ishingiyeye ku kwemera icyaha no gusaba kongera kugabanyirizwa igihano kuri uru rwego rw’ubujirire, igaragaza ko ntacyo anenga urubanza yajuririye, kandi inshingano ye ari ukugaragaza amakosa yakozwe n’uko yakosorwa, ko kuba atari byo yakozwe bivuze ko yemeranya n’icyemezo cyafashwe, bukaba busaba uru Rukiko kuzabona ko nta kosa Urukiko Rukuru, Urugereko rwa Rwamagana rwaciye urubanza rwajuririwe rwakozwe, kuko hatagaragajwe niba rwaba rwarakoresheje nabi Itegeko cyangwa ubushishozi bwarwo mu gutanga igihano, ko kandi kongera kumugabanyiriza igihano bidashoboka kuko yakigabanyirijwe bihagije kandi ahabwa igikwiranye n’icyaha yakozwe. Buvuga kandi ko ariko Urukiko rw’Ubujirire rubibonye ukundi rwamuvaniraho umwaka umwe gusa, agahanishwa igifungo cy’imyaka cumi n’itanu (15) n’ihazabu y’amafaranga y’u Rwanda miliyoni eshanu (5.000.000 Frw), nk’uko ingingo ya 60 y’Itegeko n° 68/2018 ryo ku wa 30/8/2018 yahinduwe n’ingingo ya 2 y’Itegeko n° 059/2023 ryo ku wa 4/12/2023 riteganywa ibyaha n’ibihano muri rusange, ibiteganywa. UKO URUKIKO RUBIBONA [14] Impaka kuri iki kibazo zishingiye ku kumenya niba Mwerekande David akwiye kongera kugabanyirizwa igihano hashingiwe ku mpamvu nyoroshyacyaha agaragaza. [15] Nk’uko byemejwe mu rubanza n° RPA 00060/2021/CA

rwaciwe n'Urukiko rw'Ubujurire ku wa 4/4/2022, haburana Ubushinjacyaha na Nsabimana Callixte alias Sankara na bagenzi be 4, iyo uregwa nta kindi anenga urubanza yajuririye, uretse kuvuga gusa ko atagabanyirijwe igihano bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha n'ingaruka zacyo (.....), cyakora mu bujurire Umucamanza akaba agomba kuzirikana ko yemerewe gusa guhindura igihano cyatanzwe n'Umucamanza wo mu Rukiko rubanza ari uko amaze kugaragaza ko urwo Rukiko rwaba rwarakoresheje nabi Itegeko cyangwa ubushishozi bwarwo mu gutanga igihano. [16] Mu gace ka munani (8) n'aka cyenda (9) tw'urubanza rujuririrwa, Urukiko Rukuru, Urugereko rwa Rwamagana rushingiye ku ngingo ya 60 y'Itegeko n° 68/2018 ryo ku wa 30/8/2018

4 Reba urubanza n° RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 4/4/2022, haburana Ubushinjacyaha na NSABIMANA Callixte na bagenzi be, mu gika cya 252 na 254.

Page 5

nk'uko yahinduwe n'ingingo ya 2, agace ka (a)5 y'Itegeko no 059/2023 ryo ku wa 4/12/2023 riteganya ibyaha n'ibihano muri rusange no ku murongo wafashwe n'Urukiko rw'Ubujurire mu rubanza no RPAA 00194/2021/CA rwaciwe ku wa 22/7/2022, haburana Ubushinjacyaha na Ndayishimiye Emmanuel alias Shema, rwemeje ko igihano Mwerekande David yahanishijwe cyagabanywa kikajyana n'uburemere bw'icyaha yakoze, ko ndetse kuba ari ubwa mbere akurikiranywe mu butabera mu buryo buzwi, nayo ari impamvu ituma igihano cy'igifungo cya burundu n'ihazabu y'amafaranga y'u Rwanda miliyoni mirongo itatu (30.000.000 Frw) yahanishijwe ku rwego rubanza, kigabanywa, rumuhanisha igifungo cy'imyaka cumi n'itandatu

(16) n'ihazabu y'amafaranga y'u Rwanda miliyoni esheshatu (6.000.000 Frw). [17] Urukiko rw'Ubujurire rurasanga hagendewe ku byagaragajwe mu myanzuro n'imiburanire, uretse no kuba Mwerekande David n'umwunganira batagaragaza amakosa Urukiko Rukuru, Urugereko rwa Rwamagana rwaba rwarakoze mu kumugabanyiriza igihano cy'igifungo cya burundu n'ihazabu yakatiwe ku rwego rwa mbere, cyangwa kuba rwaba rwarakoresheje nabi Itegeko cyangwa ubushishozi bwarwo mu kwemeza icyo gihano, igihano yahanishijwe cy'igifungo cy'imyaka cumi n'itandatu (16) n'ihazabu y'amafaranga y'u Rwanda miliyoni esheshatu (6.000.000 Frw) gihagije kandi gikwiranye n'imigendekere y'uko yakoze icyaha yahamijwe, bivuze ko adakwiye kongera kukigabanyirizwa nk'uko yabyifuzaga. [18] Hagendewe ku byasobanuwe haruguru byose, Urukiko rw'Ubujurire rurasanga ubujurire bwa Mwerekande David nta shingiro bufite. III. ICYEMEZO CY'URUKIKO [19] Rwemeje ko ubujurire bwatanzwe na Mwerekande David nta shingiro bufite. [20] Rwemeje ko nta gihindutse ku rubanza n° RPA 01466/2021/HC/RWG, rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 28/6/2024, rwajuririwe. [21] Rwemeje ko igihano cy'igifungo cy'imyaka cumi n'itandatu (16) n'ihazabu y'amafaranga y'u Rwanda miliyoni esheshatu (6.000.000 Frw) Mwerekande David yahanishijwe, kigumyeho. [22] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

5 “Iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano ku buryo bukurikira: igifungo cya burundu gishobora kugabanywa ariko ntikijye muni y’igihano cy’igifungo cy’imyaka 15”.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.amategeko.gov.rw/view/doc/9870/10371>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/ubushinjacyaha-v-mwerekande-2025>

Prepared on 9 October 2026 · Esheria