

RWANDA / JUDGMENT

UBUSHINJACYAHA v. NGEZENUBWO

RPAA 00809/2024/CA

COURT

Court of Appeal

DECIDED

27 March 2025

CASE / FILE NUMBER

RPAA 00809/2024/CA

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UBUSHINJACYAHA v. NGEZENUBWO

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- Date: 2025-03-27
- Case/document no.: RPAA 00809/2024/CA
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Text

Page 1

UBUSHINJACYAHA v. NGEZENUBWO [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00809/2024/CA (Rutazana, P.J.) 27 Werurwe 2025] Amategeko agenga imanza z'inshinjabyaha – Gucuruza ibiyobyabwenge – Umuntu ntagirwa umucuruzi no kuba hari abaguzi babonetse aho acururiza, ahubwo igihe cyose afite ibicuruzwa kandi yiteguye kubiha umuntu wese umugana ashaka ibyo agurisha, aba ari umucuruzi. Amategeko agenga imanza z'inshinjabyaha – Kugabanya igihano iyo hari impamvu nyoroshyacyaha – Umucamanza, ashobora kugabanya igihano cy'igifungo cya burundu n'icy'ihazabu, ariko ku bireba igihano cy'igifungo cya burundu akaba atemerewe kujya muni y'igifungo cy'inyaka 15 naho ku bireba igihano cy'ihazabu akaba atemerewe kujya muni ya kimwe cya kane cy'igihano cy'ihazabu gito giteganyirijwe icyaha cyakozwe. Incamake y'ikibazo: Ngezenubwo yakurikiranyweho n'Ubushinjacyaha icyaha cyo kubika no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi nyuma yuko afatanywe udupfunyika 115 n'urundi rudapfunyitse rungana n'ibiro 2 n'amagarama 550; iperereza rirangiye, bumuregera Urukiko Rwisumbuye rwa Karongi busaba ko ahamwa n'icyaha, agahanishwa igihano cy'igifungo cy'inyaka 25 n'ihazabu ingana na 20.000.000 FRW. Urukiko Rwisumbuye rwa Karongi rwaciye urubanza rwemeza ko Ngezenubwo ahamwa n'ibyaha byo kubika no gucuruza ibiyobyabawenge

byo mu bwoko bw'urumogi, rumuhanisha igifungo cy'imyaka 20 n'ihazabu ingana na 20.000.000 FRW. Ngezenubwo yajuririye mu Rukiko Rukuru, Urugereko rwa Rusizi avuga ko yahanishijwe ibihano biremereye ndetse asaba ko inyito y'icyaha ihinduka agahanirwa icyaha cyo gufatanwa urumogi. Urukiko Rukuru, Urugereko rwa Rusizi rwaciye urubanza rwemeza ko inyito y'icyaha itagomba guhinduka, ndetse ko atagomba kugabanyirizwa igihano. Ngezenubwo yajuririye mu Rukiko rw'Ubujurire avuga ko inyito y'icyaha yahamijwe igomba guhinduka kikaba icyaha cyo gufatanwa urumogi kuko yemeye ko yarufatanywe ariko ko atigeze arucuruza ahubwo ari we witangiye amakuru bigatuma baza gusaka bakarubona. Asaba kandi kugabanyirizwa igihano ndetse ihazabu igasubikwa kuko atishoboye akaba atabona icyo ayishyura. Ku rundi ruhande, Ubushinjacyaha buvuga ko yafashwe n'ishami rya Polisi rishinzwe kurwanya ibiyobyabwenge rifatanyije n'inzego z'ibanze, ibyo bikaba bitandukanye n'ibyo Ngezenubwo avugako ko yitangiye amakuru ko abitse urumogi. Busaba ko ibihano yahanishijwe byagabanywa hashingiwe ku mpamvu y'uko ari ubwa mbere aguye mu cyaha, agahanishwa igifungo cy'imyaka 15 n'ihazabu ingana na 5.000.000 FRW. Incamake y'icyemezo: 1. Umuntu ntagirwa umucuruzi no kuba hari abaguzi babonetse aho acururiza, ahubwo igihe cyose afite ibicuruzwa kandi yiteguye kubiha umuntu wese umugana ashaka ibyo agurisha, aba ari umucuruzi.

2. Iyo hari impamvu nyoroshyacyaha zemejwe n'umucamanza, ashobora kugabanya igihano cy'igifungo cya burundu n'icy'ihazabu, ariko ku bireba igihano cy'igifungo cya burundu akaba

Page 2

atemerewe kujya muni y'igifungo cy'imyaka 15 naho ku bireba igihano cy'ihazabu akaba atemerewe kujya muni ya kimwe cya kane cy'igihano cy'ihazabu gito giteganyirijwe icyaha cyakozwe. Ubujurire nta shingiro bufite. Urubanza rwaciye n'Urukiko Rukuru, Urugereko rwa Rusizi ruhindutse gusa ku birebana n'igihano. Amategeko yashingiweho: Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, Ingingo ya 263. Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 riteganya ibyaha n'ibihano muri rusange, Ingingo ya 11. Imanza zifashishijwe: RPAA 00436/2020/CA; Ubushinjacyaha vs Ahimpereye Ndeze François rwaciye n'Urukiko rw'Ubujurire ku wa 28/6/2022; RPA 00060/2021/CA; Ubushinjacyaha vs Nsabimana Callixte alias Sankara na bagenzi be rwaciye n'Urukiko rw'Ubujurire ku wa 04/04/2022. Urubanza I. IMITERERE Y'URUBANZA [1] Nyuma y'uko hari umuturage watanze amakuru y'uko uwitwa Ngezenubwo Dany yaba acuruza urumogi, ku wa 23/05/2023 mu masaha ya saa yine n'iminota makumyabiri n'itanu (10h25min) Polisi ifatanyije n'Inzego z'Ibanze bakoze igikorwa cy'isaka mu mu Mudugudu wa Karengye, Akagari ka Kigarama, Umurenge wa Gishyita mu Karere ka Karongi, maze Ngezenubwo Dany afatanwa urumogi rungana n'udupfundiye 115, n'urundi rudapfundiye rungana n'ibiro 2 n'amagarama 550, yari yahishe ahantu hatandukanye (mu nzu iwabo no mwobo w'umugarane utaratangira gukoreshwa, n'urundi rwari rutabye mu nsina kwa murumuna we). [2] Ngezenubwo Dany yahise afatwa ashidikirizwa inzego z'iperereza, rirangiye Ubushinjacyaha bumurega mu Rukiko Rwisumbuye rwa Karongi bumukurikiranyeho icyaha kubika no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, busaba Urukiko kwemeza ko kimuhama agahanishwa igihano cy'igifungo cy'imyaka 25 n'ihazabu ingana na

20.000.000 FRW. Ngezenubwo Dany yaburanye yemera ko ibyo aregwa yabikoraga kandi ko urumogi yaruzaniwe n'umukongomani ngo arumucururize, agapfunyika kamwe akaba yari kukagurisha 300FRW agatwara 50FRW asigaye akayaha uwo mukongomani, ariko ko amaze kubwirwa ko bitemewe yabiretse akaba asaba imbabazi kuko ibyo yakoraga atari abizi. [3] Mu rubanza RP 00352/2023/TGI/KNG rwaciwe n'Urukiko Rwisumbuye rwa Karongi kuwa 24/08/2023 rwemeje ko Ngezenubwo Dany ahamwa n'ibyaha byo kubika no gucuruza ibiyobyabawenge byo mu bwoko bw'urumogi, rumuhanisha igifungo cy'imyaka 20 n'ihazabu ingana na 20.000.000 FRW. Ibyo Urukiko rwabyemeje rushingiye ku kuba hari Inyandikomvugo

Page 3

y'isaka igaragaza kwa Ngezenubwo Dany asatswe, Inyandikomvugo y'ifatira ry'urumogi rungana n'udupfunyika 115 n'urundi rupima ibiro 2 n'amagarama 550 Ngezenubwo Dany yashyizeho umukono yemeza ko ariwe wafatanywe urwo rumogi; kuba yaremeye icyaha akanagisabira imbabazi, kuba hari abatangabuhamya barimo Twagirayezu Zacharie, Harindintwari Azarie, Ingabire Françoise na Undimpaye Edith bemeje ko yacuruzaga urumogi yitwaje ko afite ubumuga, no kuba yarafatanywe ingano nini y'urumogi. [4] Ngezenubwo Dany yajuririyeye Urukiko Rukuru, Urugereko rwa Rusizi, avuga ko yahanishijwe ibihano biremereye kandi yaragaragaje ko urwo rumogi rutari urwe ahubwo yari yararuhawe n'umushi kugira ngo arumucururize ariko ntibyahabwa agaciro. Asaba ko inyito y'icyaha ihinduka agahanirwa icyaha cyo gufatanwa urumogi, kandi agahabwa isubikagihano kugira ngo abone uko ajya kwivuka ubumuga afite. [5] Mu rubanza RPA 00167/2023/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi kuwa 17/07/2024, rwemeje ko inyito y'icyaha Ngezenubwo Dany yahamijwe itagomba guhinduka, rushingiye ku Nyandikomvugo y'ifatira igaragaza ko yemeye ko yafatanywe urumogi rungana n'udupfunyika 115 n'urundi rungana n'ibiro 2 n'amagarama 550 bikanashimangirwa n'imvugo z'abatangabuhamya no kuba urwo rumogi yafatanywe ari rwinshi. Urukiko kandi rushingiye ku buremere bw'icyaha yahamijwe, ingaruka kigira ku muryango nyarwanda n'ingano y'abanyarwanda bari kwangizwa n'urwo rumogi rwari rugiyeye gukwirakwizwa ku bwo kurucuruza, rwemeje ko adakwiriyeye kugabanyirizwa igihano n'isubikagihano asaba akaba atarihabwa kuko yahanishijwe igifungo kirenze imyaka itanu. [6] Ngezenubwo Dany yongeye kujurira Urukiko rw'Ubujurire, urubanza ruhabwa RPAA 00809/2024/CA, ruburanishwa mu ruhame kuwa 13/03/2025 yunganiwe na Me Ruberwa N. Silas, naho Ubushinjacyaha buhagarariye na Uwizeye Jean Marie, Umushinjacyaha ku rwego rw'Igihugu. [7] Mu bujurire bwe Ngezenubwo Dany avuga akomeza kuvuga ko inyito y'icyaha yahamijwe igomba guhinduka kikaba icyaha cyo gufatanwa urumogi kuko yemeye ko yarufatanywe ariko ko atigeze arucuruza ahubwo ari we witangiye amakuru bigatuma baza gusaka bakarubona. Asaba kandi kugabanyirizwa igihano ndetse ihazabu igasubikwa kuko atishoboye akaba atabona icyo ayishyura. [8] Uhagarariye Ubushinjacyaha avuga ko ubujurire bwa Ngezenubwo Dany nta shingiro bufite ku bijyanye no guhindura inyito y'icyaha kuko atari we witangiye amakuru ahubwo yafashwe mu gikorwa cyo gusaka kandi akaba yarahamijwe icyaha cyo gucuruza ibiyobyabwenge hashigiwe ku ngano nini y'ibyo yafatanywe ; avuga ariko ko yagabanyirizwa igihano kuko ari ubwa mbere akurikiranyweho icyaha. [9] Urukiko rurasuzuma ibibazo bikurikira bigize urubanza : - Kumenya

niba inyito y'icyaha Ngezenubwo Dany ashinjwa ikwiriye guhinduka agahanirwa icyaha cyo gufatanwa urumogi ; - Kumenya niba Ngezenubwo Dany ashobora kugabanyirizwa igihano kandi igihano cy'ihazabu kigasubikwa.

Page 4

II. ISESENGURA RY' IBIBAZO BIGIZE URUBANZA

Kumenya niba inyito y'icyaha Ngezenubwo Dany ashinjwa ikwiriye guhinduka agahanirwa icyaha cyo gufatanwa urumogi [10] Mu myanzuro no miburanire ya Ngezenubwo Dany n'umwunganira bavuga ko Urukiko Rukuru, Urugereko rwa Rusizi rwamuhamije icyaha cyo gucuruza urumogi kandi hashingiwe ku biteganywa mu ngingo ya 9 y'Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ibigize icyo cyaha bituzuye. Basobanura ko n'ubwo yafatanywe urumogi, umugambi yari afite wo kurucuruza atigeze awushyira mu bikorwa kuko nyuma y'uko aruhawe n'umushi ngo aje arumucururiza bagabane amafaranga avuyemo, atigeze arucuruza kuko byamwanze mu nda agatuma mukuru we ku Buyobozi bw'Umudugudu kugira ngo ababwire ko abitse urumogi, aribwo bazaga gusaka iwe bakaruhasanga. Bavuga ko ibi ari nako yabisobanuye mu ibazwa rye mu Bugenzacyaha no mu Bushinjacyaha ndetse n'imbere y'Inkiko, bikanemezwa n'abamufashe kimwe n'abatangabuhamya babajijwe, kandi bigashyigikirwa n'inyandiko y'Ubuyobozi bw'Umudugudu yashyize muri dosiye muri systeme ku wa 19/03/2025. [11] Ngezenubwo Dany n'umwunganira bakomeza basobanura ko kugira ngo ibigize icyaha cyo gucuruza ibiyobyabwenge bibe byuzuye hagomba kuba hari ugurisha, umuguzi, n'ingurane y'ikigurishwa, kandi n'Ubuyobozi bw'Umudugudu bukaba bwaragombaga kuba bufite amakuru y'uko arucuruza ; ko rero bidahagije kugira umugambi mubisha ariko ntushyirwe mu bikorwa ; basoba basaba ko Ngezenubwo Dany ahanirwa icyaha cyo gufatanwa ibiyobyabwenge. [12] Uhagarariye Ubushinjacyaha avuga ko impamvu y'ubujurire bwa Ngezenubwo Dany y'uko inyito y'icyaha ashinjwa ikwiriye guhinduka nta shingiro ifite kuko mu rubanza rujuririrwa Urukiko rwemeje ko yabitse akanacuruza ibiyobyabwenge rushingiye ku kuba yarafatiwe mu gikorwa cyo gusaka cyakozwe n'Ishami rya Polisi rishinzwe kurwanya ibiyobyabwenge rifatanyije n'Inzego z'ibanze, kandi akaba yarasinyiye ko afatanywe urumogi rungana n'udupfunyika 115 n'urundi rungana n'ibiro 2 n'amagarama 550, bityo ibyo avuga ko ariwe witangiye amakuru y'uko abitse urumogi bikaba atari ukuri, n'inyandiko y'Ubuyobozi avuga ko ibigaragaza ikaba itashingirwaho kuko ayiburanishije bwa mbere kuri uru rwego. [13] Uhagarariye Ubushinjacyaha avuga ko hashingiwe ku ngingo ya 2, agace (a) na (d) y'Itegeko No 059/2023 ryo kuwa 04/12/2023 N° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ibihano Ngezenubwo Dany yahanishijwe byagabanywa hashingiwe ku mpamvu y'uko ari ubwa mbere aguye mu cyaha, agahanishwa igifungo cy'imyaka 15 n'ihazabu ingana na 5.000.000 FRW. UKO URUKIKO RUBIBONA [14] Impaka kuri iyi ngingo zishingiye ku kumenya niba inyito y'icyaha Ngezenubwo Dany ashinjwa ikwiriye guhinduka kikaba icyaha cyo gufatanywa urumogi. [15] Ingingo ya 263 y'Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu iteganya ko "Umuntu wese ukora, uHINGA, uhindura, utunda, ubika, uha undi, ugurisha mu gihugu ibiyobyabwenge cyangwa urusobe rw'imiti

Page 5

ikoreshwa nka byo mu buryo bunyuranije n'amategeko, aba akoze icyaha. Iyo abihamijwe n'urukiko ahanishwa : 1° igifungo cya burundu n'ihazabu y'amafaranga y'u Rwanda arenze miliyoni makumyabiri (20.000.000 FRW) ariko atarenze miliyoni mirongo itatu (30.000.000 FRW) ku byerekeye ibiyobyabwenge bihambaye". [16] Ibijyanye no kumenya ibishingirwaho kugira ngo hemezwe ko ibikorwa uregwa yakoze bigize icyaha cyo kugurisha ibiyobyabwenge byasobanuwe mu rubanza RPAA 00408/2020/CA rwaciwe ku wa 27/06/2022 haburana Ubushinjacyaha na Niyitegeka Augustin. Muri urwo rubanza Urukiko rw'Ubujurire rwasobanuye ko mu kwemeza niba ibiyobyabwenge uregwa yafatanywe atari ibyo kwikoreshereza ku giti cye (simple drug possession) ahubwo ari ibyo gucuruza cyangwa gukwirakwiza (drugs trafficking/drug distribution), hashingirwa ku bimenyetso bikurikira: kuba uregwa yafatanwa iminzani yabugenewe mu gupima, amasashe yifashishwa mu gufunyikamo ibiyobyabwenge, amafaranga menshi bafatiye aho hantu, ahakoreshwa nk'ububiko, ubwinshi bw'ibiyobyabwenge basanze aho hantu, urujya n'uruza rw'abantu ahafatiwe ibiyobyabwenge, abatangabuhamya bemeza ko uwo muntu asanzwe acuruza ibiyobyabwenge, (...). Ibi bisobanuro byongeye kugarukwaho mu manza zitandukanye zaciwe n'uru Rukiko, mu ziheruka gucibwa harimo nk'urubanza RPAA 00386/2024/CA rwaciwe ku wa 29/01/2025 haburana Ubushinjacyaha na Nshimiyimana Sumayire (igika cya 15), n'urubanza RPAA 00343/2021/CA rwaciwe ku wa 24/02/2023 haburana Ubushinjacyaha na Uwemeyimana Joséph. [17] Nk'uko kandi byasobanuwe mu rubanza RPAA 00436/2020/CA rwaciwe ku wa 28/6/2022 haburana Ubushinjacyaha na Ahimpereye Ndeze François (igika cya 24), umuntu ntagirwa umucuruzi no kuba hari abaguzi babonetse aho acururiza, ahubwo igihe cyose afite ibicuruzwa kandi yiteguye kubihira umuntu wese umugana ashaka ibyo agurisha, aba ari umucuruzi. [18] Nk'uko bigaragara mu bika bya 14-16 by'urubanza rujuririrwa, Urukiko rwemeje ko inyito y'icyaha Ngezenubwo Dany yahamijwe itagomba guhinduka rushingiye ku ngano y'urumogi yafatanywe rungana n'udupfunyika 115 n'urundi rupima ibiro 2 n'amagarama 550 kandi akaba yaremeye ko urwo rumogi yarufatanywe nk'uko bigaragazwa n'Inyandiko mvugo y'ifatira yashyizeho umukono bikanashimangirwa n'imvugo z'abatangabuhamya bamushinja. [19] Dosiye y'urubanza igaragaza kandi ko Ngezenubwo Dany abazwa mu Bugenzacyaha yemeye icyaha avuga ko urumogi yafatanywe yari yaruzaniwe n'umu kongomani atazi amazina ku wa gatatu w'icyumweru kibanziriza icyo yafatiwemo, bumvikana ko arumucururiza agapfunyika kamwe akajya akagurisha 300 FRW, we (Ngezenubwo Dany) agatwara 50 FRW asigaye akayaha uwo mu kongomani; yasobanuye kandi ko uwo mukongomani akimara kumuzanira urwo rumogi yahise ajya kuruhisha ahantu hatandukanye (mu cyumba babikamo ibikoresho iwabo, mu mwobo w'umusarani wari utaratangira gukoreshwa no mu nsina zo kwa mukuru we) kandi ko yafashwe yamaze kugurishaho udupfunyika tubiri. [20] Dosiye kandi igaragaza ko hari abatangabuhamya bemeza ko Ngezenubwo Dany yari asanzwe acuruza urumogi, barimo uwitwa Azariya Harindintwari mu ibazwa rye mu Bugenzacyaha wavuze ko Ngezenubwo Dany yari asanzwe acuruza urumogi kandi ko agifatwa yemeye ko arucuruza, na Ingabire Françoise wari n'Umuyobozi w'Umudugudu, mu ibazwa rye mu Bugenzacyaha wavuze ko bari basanzwe bazi ko Ngezenubwo Dany acuruza urumogi kandi ko bari barabikoreye raporo bakayishyikiriza Ubuyobozi bw'Akagari n'Umurenge, ndetse ko

Page 6

nk'Umuyobozi w'Umudugudu yakomeje kubikurikirana akanamugira inama ariko akanga kubireka. [21] Dosiye inagaragaza ko no mu Rukiko Rwisumbuye rwa Karongi Ngezenubwo Dany yireguye avuga ko yemera icyaha, ko nk'uko Ubushinjacyaha bwabivuze yabikoraga, yongera gusobanura ko urumogi yafatanywe yari yaruzaniwe n'umushi kandi ko bari bumvikanye ko azajya arumucururiza agapfunyika kamwe akakagurisha kuri 300 FRW akamubikira 250 FRW nawe 50 FRW, ko ariko nyuma yaje kubwirwa ko gucuruza urumogi ari bibi arabireka, ko asaba imbabazi kuko yakoraga ibyo atazi [22] Urukiko rw'Ubujurire rurasanga nk'uko Urukiko Rukuru rwabibonye kandi bikaba binahuje n'umurongo wavuzwe haruguru (igika cya 16), ibimenyetso bikurikira bigaragaza nta shiti ko Ngezenubwo Dany yacuruzaga urumogi : - Kuba yarafatanywe ingano nini y'urumogi nk'uko yagaragajwe haruguru (udupfunyika 115 n'urundi rupima ibiro 2 n'amagarama 550) yararuhishe ahantu hatandukanye, kandi nawe akaba yemera ko yarufatanywe koko ; - Kuba mu Bugenzacyaha agifatwa yaravuze ko yemera icyaha akanasobanura ko urwo rumogi yaruhawe n'umukongomani ngo arumucururize bakumvikana ko agapfunyika kamwe yari kukagurisha 300 FRW hanyuma agatwara 50 FRW asigaye akayaha uwo mu kongomani, akanemera ko yafashwe amaze kugurishaho udupfunyika tubiri ; - Kuba hari abatangabuhamya (bagaragajwe haruguru) bamushinja ko yari asanzwe agurisha urumogi ; - Kuba no mu Rukiko ku rwego rwa mbere yaraburanye avuga ko yemera icyaha, ko ibyo aregwa abyemera ko yabikoze ariko ko yaje kubireka amaze kumenya ko ari bibi.

[23] Urukiko rw'ubujurire rurasanga imyiregurire ya Ngezenubwo Dany y'uko atigeze acuruza urwo rumogi ahubwo ko ari we watanze amakuru y'uko arufite kuko yari amaze kumenya ko bitemewe, nta shingiro yahabwa kuko uretse no kuba ikimenyetso abishingiraho ari inyandiko yakozwe nyuma y'imyaka hafi ibiri ibikorwa akurikiranyweho bibaye (mu kwezi kwa 1/2025), ibiyikubiyemo bitatesha agaciro ibimenyetso bimaze kugaragazwa haruguru. [24] Urukiko rurasanga kandi imyiregurire ye y'uko atahamwa n'icyaha cyo gucuruza urumogi mu gihe hatagaragazwa umuguzi n'ikiguzi cyarwo nabyo bitatesha agaciro ibimenyetso byagaragajwe haruguru, hanashingiwe ku murongo wavuzwe haruguru (igika cya 17) w'uko umuntu atagirwa umucuruzi no kuba hari abaguzi babonetse ko ahubwo igihe cyose afite ibicuruzwa kandi yiteguye kubiha umuntu wese umugana ashaka ibyo agurisha, aba ari umucuruzi; ibi kandi ku bireba Ngezenubwo Dany bikaba bidashidikanywaho harebwe ingano y'urumogi yafatanywe kandi akaba yariyemereye ko yari yamaze kurugurishaho udupfunyika tubiri. [25] Hashingiwe ku bisobanuro byose byatanzwe haruguru, inyito y'icyaha Ngezenubwo Dany ashinjwa ikaba itagomba guhinduka.

Page 7

Kumenya niba Ngezenubwo Dany ashobora kugabanyirizwa igihano akanasubikirwa ihazabu. [26] Ngezenubwo Dany asaba kugabanyirizwa igihano hashingiwe ku kuba ari ubwa mbere akurikiranyweho icyaha kandi akaba yarakiguyemo abitewe no gushaka imibereho kuko abana n'ubumuga akaba nta yindi mirimo yari ashoboye gukora, kandi icyaha yakoze kikaba nta ngaruka zikomeye cyateje. Asaba guhanishwa igifungo kingana na ½ cy'igihano gito

kigiteganyijwe n'itegeko n'igihano cy'ihazabu kingana na ¼ cy'ihazabu ntoya kandi igasubika kuko ari umukene akaba atabona uko ayishyura. Avuga ko ibi abisaba ashingiye ku mironko yafashwe n'uru Rukiko mu manza zinyuranye rwaciye, yemerera umucamanza kuba yagabanya igihano kikajya munsu y'igihano gito gishoboka ; atanga ingero z'imanza zikurikira : urubanza RPAA 00096/2021/CA haburana Ubushinjacyaha na Mugema Patrick, urubanza RPAA 00573/2021/CA haburana Ubushinjacyaha na Ndayisenga Jérémie n'urubanza RPAA 00145/2021/CA haburana Shirimpaka Jean Claude. [27] Uhagarariye ubushinjacyaha avuga ko nawe asanga Ngezenubwo Dany yagabanyirizwa igihano hashingiwe ku mpamvu y'uko ari ubwa mbere akurikiranyweho icyaha, agahanishwa igifungo cy'imyaka 15 n'ihazabu ingana na 5.000.000 FRW hashingiwe ku biteganywa mu ngingo ya 2, agace ka (a) n'aka (d) 2, y'Itegeko N°059/2023 ryo kuwa 04/12/2023 N° 68/2018 ryo kuwa 30/08/2018 riteganyira ibyaha n'ibihano muri rusange. UKO URUKIKO RUBIBONA [28] Impaka kuri iyi ngingo zishingiye ku kumenya niba Ngezenubwo Dany ashobora kugabanyirizwa igihano kikagezwa munsu y'igihano gito giteganywa n'itegeko, kandi igihano cy'ihazabu kigasubikwa. [29] Icyaha Ngezenubwo Dany yahamijwe gihanishwa igifungo cya burundu n'ihazabu itari munsu ya 20.000.000 FRW ariko itarenze 30.000.000 FRW, hashingiwe ku biteganywa mu ngingo ya 11, agace ka 1°, y'Itegeko N° 69/2019 ryo kuwa 08/11/2019 rihindura Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganyira ibyaha n'ibihano muri rusange, no ku Iteka rya Minisitiri N° 001/MoH/2019 ryo kuwa 04/03/2019 rigena urutonde rw'ibiyobyabwenge n'ibyiciro byabyo, Umugereka wa mbere. [30] Ibijyanye n'uburyo bwo kugabanya ibihano byateganywaga mu Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganyira ibyaha n'ibihano muri rusange ariko byaje guhindurwa n'ingingo ya 2 y'Itegeko N° 059/2023 ryo kuwa 04/12/2023 rihindura Itegeko N° 68/2018 rimaze kuvugwa, iteganyira ibikurikira: "Iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano ku buryo bukurikira: ... (a) igifungo cya burundu gishobora kugabanywa ariko ntikijye munsu y'igihano cy'igifungo cy'imyaka 15" ... (d) igihano cy'ihazabu gishobora kugabanywa kugeza kuri kimwe cya kane cy'igihano cy'ihazabu gito giteganyirijwe icyaha cyakozwe. [31] Ibiteganyijwe mu ngingo ya 11 y'Itegeko N° 69/2019 ryo kuwa 08/11/2019 n'iya 2, mu duce twa (a) na (d), y'Itegeko N° 059/2023 ryo kuwa 04/12/2023 zimaze kuvugwa haruguru

1 Muri uyu Mugereka wa mbere w'Iteka rya Minisitiri N° 001/MoH/2019 ryo kuwa 04/03/2019 rigena urutonde rw'ibiyobyabwenge n'ibyiciro byabyo, urumogi ruri mu cyiciro cy'ibiyobyabwenge bihambaye.

Page 8

birebawe hamwe, byumvikanisha ko iyo hari impamvu nyoroshyacyaha zemejwe n'umucamanza, ashobora kugabanya igihano cy'igifungo cya burundu n'icy'ihazabu, ariko ku bireba igihano cy'igifungo cya burundu akaba atemerewe kujya munsu y'igifungo cy'imyaka 15 naho ku bireba igihano cy'ihazabu akaba atemerewe kujya munsu ya kimwe cya kane cy'igihano cy'ihazabu gito giteganyirijwe icyaha cyakozwe. [32] Nk'uko byemejwe mu rubanza RPA 00060/2021/CA rwaciye kuwa 04/04/2022 haburana Ubushinjacyaha na Nsabimana Callixte alias Sankara na bagenzi be (mu gika cya 252 na 254) ukanakomeza gukurikizwa mu zindi manza 2 zaciye n'uru Rukiko, ko iyo uregwa nta kindi anenga urubanza yajuririye, uretse gusa kuvuga 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. [33] Mu rubanza rujuririrwa Ngezenubwo Dany yahanishijwe igifungo cy'imyaka 20 n'ihazabu ingana na 20.000.000 FRW. Urukiko rw'Ubujurire rurasanga kuba ari ubwa mbere Ngezenubwo Dany ahamijwe icyaha mu buryo buzwi birebwe hamwe n'imibereho ye bwite y'uko abana n'ubumuga ku buryo atabasha guhaguruka cyangwa kugenda atitwaje ibibando bibiri bikaba bigoye ko yagira icyo abasha kwikorera mu buzima busanzwe, n'ubwo iyi mibereho ye bwite atari impamvu imukuraho uburyozwacyaha, byamubera impamvu nyoroshyacyaha ituma igihano yahanishijwe cyongera kugabanywa biruseho, agahanishwa igifungo cy'imyaka 15 n'ihazabu ya 5.000.000 FRW. [34] Ku bijyanye n'imanza Ngezwenubwo Dany n'umwunganira bashingiraho basaba ko agabanyirizwa igihano kugeza muni y'igihano gito gitaganyijwe n'Itegeko, Urukiko rw'Ubujurire rurasanga nta mpamvu ihari yo kubisuzuma, kuko hashingiwe ku byasobanuwe haruguru (igika cya 31) harebwe ibiteganywa n'ingingo ya 2, agace ka (a) n'aka (d) y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 ihindura ingingo ya 60 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaye ibyaha n'ibihano muri rusange, ubushake bw'Umushingamategeko ari uko mu gihe hari impamvu nyoroshyacyaha zemejwe n'Umucamanza atemerewe kugabanya igihano cy'igifungo cya burundu kugeza muni y'igifungo cy'imyaka 15 naho ku bireba igihano cy'ihazabu akaba atemerewe kujya muni ya kimwe cya kane cy'igihano cy'ihazabu gito giteganyirijwe icyaha cyakozwe; kuba rero Ngezwenubwo Dany ahanishijwe igihano gito giteganyijwe n'Itegeko, bivuze ko kidashobora kongera kugabanywa. [35] Urukiko rw'Ubujurire rurasanga kandi isubikagihano ry'ihazabu Ngezenubwo Dany asaba atarihabwa hashingiwe ku buremere bw'icyaha yahanishijwe cyo kubika no gucuza ibiyobyabwenge kimwe n'ingaruka iki cyaha gifite ku muryango nyarwanda kandi akaba ahanishijwe igihano gito gishoboka. III. ICYEMEZO CY 'URUKIKO

2 Mu ziheruka gucibwa harimo urubanza N° RPAA 00280/2024/CA rwaciwe ku wa 28/01/2025 haburana Ubushinjacyaha na UWAMAHORO Vestine (igika cya 15 n'icya 19).

Page 9

[36] Rwemeje ko ubujurire bwa Ngezenubwo Dany nta shingiro bufite. [37] Rwemeje ko urubanza RPA 00167/2023/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi ku wa 17/07/2024 ruhindutse gusa ku birebana n'igihano Ngezenubwo Dany ahanishijwe. [38] Ruhanishije Ngezenubwo Dany igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 FRW). [39] Rutegetse ko Ngezenubwo Dany asonewe amagarama y'urubanza kuko aburana afunze.

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Prepared on 11 October 2026 · Esheria