

RWANDA / JUDGMENT

UBUSHINJACYAHA v. NTIRENGANYA

RPAA 00735/2024/CA

COURT

Court of Appeal

DECIDED

28 March 2025

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UBUSHINJACYAHA v. NTIRENGANYA

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Text

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UBUSHINJACYAHA v. NTIRENGANYA [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00735/2024/CA (Gakwaya, P.J.) 28 Werurwe 2025 Amategeko agenga imanza nshinjabyaha – Igihano – 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 bujuriye 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. Amategeko agenga imanza z'inshinjabyaha – Isubikagihano – Urukiko rushobora gutegeka ihagarika ry'irangizarubanza ku gihano cyose cyangwa igice cyacyo, haba igihano cy'iremezo (igifungo, ihazabu n'imirimo y'inyungu rusange) cyangwa igihano cy'ingereka, iyo rwakatiye ukurikiranywaho icyaha igihano cy'igifungo kitarenze imyaka itanu (5). Incamacye y'ikibazo: Ubushinjacyaha bwareze Ntirenganya mu Rukiko Rwisumbuye rwa Nyagatare icyaha cyo guhinga ibiyobyabwenge byo mu bwoko bw'urumogi. Urwo Rukiko rushingiye ku kuba Ntirenganya yaremeye ko igiti cyari mumurima we ariwe waginginze, hashingiwe kandi kumvugo y'umutangabuhamya, rwemeje ko ahamwa n'icyaha

cyo guhinga urumogi, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri n'imwe (21.000.000 Frw). Ntirenganya yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana, avuga ko yemera icyaha agisabira imbabazi, ko asaba kugabanyirizwa ibihano no kubisubikirwa. Urwo Rukiko rwaciye urubanza rwemeza ko kwemera icyaha bwa mbere mu bujurire bitagirira umumaro uregwa, kuba Ntirenganya nawe aburana mu Rukiko Rwisumbuye yarahakanye icyaha akaza kucyemera bwa mbere mu bujurire, iyo ngingo yo kwemera icyaha itamubera impamvu nyoroshyacyaha ituma agabanyirizwa ibihano. Ntirenganya yajuririye Urukiko rw'Ubujurire arusaba kumugabanyiriza igihano kubera ko yemera ku buryo budashidikanywaho ko yahinze igiti kimwe cy'urumogi, hakaba nta ngaruka zikomeye icyaha yakoze cyateje kuko yafashwe ntawe araruha, asaba kandi gukurirwaho ihazabu kuko nta bwishyu yabona. Ubushinjacyaha bwo buburana buvuga ko impamvu y'ubujurire ya Ntirenganya ari ukwemera icyaha no gusaba kugabanyirizwa ibihano ku rwego rw'ubujurire, bigaragaza ko ntacyo anenga urubanza rwaciye, ko bivuze ko yemeranya n'icyemezo cyafashwe ko rero hakwemezwako nta gihindutse ku mikirize y'urubanza rwajuririye. Incamake y'icyemezo: 1. 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

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cyatanzwe n'Umucamanza wo mu Rukiko rubanza ari uko amaze kugaragaza ko urwo Rukiko rwaba rwarakoresheje nabi itegeko cyangwa ubushishozi bwawo mu gutanga igihano.

2. Urukiko rushobora gutegeka ihagarika ry'irangizarubanza ku gihano cyose cyangwa igice cyacyo, haba igihano cy'iremezo (igifungo, ihazabu n'imirimo y'inyungu rusange) cyangwa igihano cy'ingereka, iyo rwakatiye ukurikiranywaho icyaha igihano cy'igifungo kitarenze imyaka itanu (5). Ubujurire bwatanzwe nta shingiro bufite; Urubanza ruhindutse ku bijyanye n'ihazabu uregwa yari yahanishijwe. Amategeko yashingiweho: Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganyaga ibyaha n'ibihano muri rusange, nk'uko ryahinduwe kugeza ubu, mungingo ya 60, agace ka (a). 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 Nshimiyimana, RPAA 00305/2024/CA rwaciye Urukiko rw'Ubujurire ku wa 31/1/2025. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 23/3/2019, Ntirenganya Ildéphonse yafatanywe urumogi igiti kimwe yari yahinze iwe, akaba yari yanagisaruye agiye kurugurisha uwitwa Mugiraneza, afatwa na Dasso Njamahoro Emile ajya kumwereka aho yaruhinze, umugore we yumvise ko bamufashe, igiti arakirandura agita mu musarane baba ariho bagikura. [2] Iperereza rirangiye, Ubushinjacyaha bwareze Ntirenganya Ildéphonse mu Rukiko Rwisumbuye rwa Nyagatare icyaha cyo guhinga ibiyobyabwenge byo mu bwoko bw'urumogi, busaba ko cyamuhama, agahanishwa igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri n'imwe (21.000.000 Frw) [3] Ntirenganya Ildéphonse yaburanye ahakana icyaha, avuga ko yafashwe

avuye kurinda umuceri, asanga abagabo barimo uwitwa Mugiraneza bafite amababi mabisi basoromye ku giti cyari mu murima we, batangira kumushinja ko yahinze urumogi. Avuga ariko ko Mugiraneza ariwe wateye icyo giti mu murima we, ko kuba cyaratoraguwe muri WC ye, ari abo bamufashe bagitayemo. [4] Mu rubanza no RP 00489/2019/TGI/NYG rwaciwe n'Urukiko Rwisumbuye rwa Nyagatare ku wa 5/11/2021, rushingiye ku kuba Ntirenganya Ildéphonse abazwa mu Bugenzacyaha yaremeye ko icyo giti ariwe wagihinze mu kwezi kwa mbere, akaba yarafashwe

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amaze gusaruraho urwo yari agiye kugurisha Mugiraneza na Hakimu ku mafaranga ibihumbi bibiri (2.000 Frw), ku buhamya bwa Njamahoro Emile wamufatanye amababi y'urumogi agiye kurugurisha, rwemeje ko ahamwa n'icyaha cyo guhinga urumogi, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri n'imwe (21.000.000 Frw) kuko ari ubwa mbere akoze icyaha. [5] Ntirenganya Ildéphonse yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana, avuga ko yemera icyaha agisabira imbabazi, ko asaba kugabanyirizwa ibihano no kubisubikirwa. [6] Mu rubanza no RPA 01392/2021/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 27/6/2024, rushingiye ku murongo watanze n'Urukiko rw'Ubujurire mu rubanza no RPAA 00028/2020/CA rwaciwe ku wa 27/10/2021, haburana Ubushinjacyaha na Niyonagize Amos, rwemeje ko kwemera icyaha bwa mbere mu bujurire bitagirira umumaro uregwa, kuba Ntirenganya Ildéphonse nawe aburana mu Rukiko Rwisumbuye yarahakanye icyaha akaza kucyemera bwa mbere mu bujurire, iyo ngingo yo kwemera icyaha itamubera impamvu nyoroshyacyaha ituma agabanyirizwa ibihano. [7] Rushingiye na none ku murongo watanze mu rubanza no RPAA 00486/2021/CA1 rwaciwe ku wa 27/1/2021, Urukiko Rukuru rwemeje ko kuba Ntirenganya Ildéphonse nta kindi cyaha kizwi yigeze akurikiranweho, kuba icyaha yakoze cyo guhinga ibiyobyabwenge byo mu bwoko bw'urumogi nta ngaruka zikomeye cyagize, runashingiye ku Itegeko no 059/2023 ryo ku wa 4/12/2023 rihindura Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganyaga ibyaha n'ibihano muri rusange, rwemeje ko nta cyatuma atagabanyirizwa ibihano, rumuhanisha igihano cy'igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga miliyoni icumi (10.000.000 Frw). [8] Ku wa 8/7/2024, Ntirenganya Ildéphonse yajuririye Urukiko rw'Ubujurire arusaba kumugabanyiriza igihano kubera ko yemera ku buryo budashidikanywaho ko yahinze igiti kimwe cy'urumogi, kuba ari ubwa mbere akoze icyaha, kuba nta ngaruka zikomeye icyaha yakoze cyateje kuko yafashwe ntawe araruha, ko kandi asaba gukurirwaho ihazabu kuko nta bwishyu yabona. [9] Ubushinjacyaha buvuga ko bushingiye ku ngingo ya 183 y'Itegeko n° 027/2019 ryo ku wa 19/9/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, kuba impamvu y'ubujurire ya Ntirenganya Ildéphonse ari ukwemera icyaha no gusaba kugabanyirizwa ibihano ku rwego rw'ubujurire, bigaragaza ko ntacyo anenga urubanza rwaciwe, ko bivuze ko yemeranya n'icyemezo cyafashwe. [10] Urubanza rwahawe no RPAA 00735/2024/CA ruburanishwa ku wa 10/3/2025, Ntirenganya Ildéphonse yunganiwe na Me Micomyiza Liliane, Ubushinjacyaha buhagarariwe na Habimana Jean Cabin, Umushinjacyaha ku rwego rw'Igihugu. [11] Harebwe imyanzuro n'imiburanire y'ababuranyi, ikibazo kigomba gusuzumwa muri uru rubanza ni ukumenya niba Ntirenganya

Ildéphonse yakongera kugabanyirizwa igihano kubera impamvu nyoroshyacyaha agaragaza.

1 “Rwemeje ko iyo abaregwa nta kindi banenga urubanza rwajuririwe uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n’uburemere bw’icyaha ndetse n’ingaruka zacyo”.

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II. IKIBAZO KIGIZE URUBANZA N’ISESENGURA RYACYO Kumenya niba Ntirenganya Ildéphonse yakongera kugabanyirizwa igihano cy’igifungo kubera impamvu nyoroshyacyaha agaragaza no gusonerwa ihazabu [12] Ntirenganya Ildéphonse avuga ko yemera ko hari igiti cy’urumogi kimejeje mu isambu ye, akora ikosa ryo kukireka ntayakirandura, afatwa yasoromyeho amababi yo guha ihene, ariko ubundi we akaba atarigeze anywa urumogi kuva yabaho ko kandi atari kuba arucuruza ngo abe yarahinze igiti kimwe, ko icyo yemera ari uko yaruhinze, akarufatanwa, akaba atakambira uru Rukiko arusaba kongera kumugabanyiriza igihano kubera ko ifungwa rye ryagize ingaruka ku muryango we. [13] Me Micomyiza Liliane, wunganira Ntirenganya Ildéphonse, avuga ko atajuriye agamije kugira icyo anenga urubanza cyangwa se amakosa Urukiko Rukuru rwaba rwarakoze, ko icyo asaba gusa uru Rukiko ari ukureba imikorere y’icyaha n’uburyo acyemera, maze rugashyira mu gaciro rukongera kumugabanyiriza igihano. [14] Ubushinjacyaha buvuga ko nk’uko uwunganira Ntirenganya Ildéphonse abivuga, ntacyo anenga urubanza yajuririye, bivuze ko yemeranya n’Urukiko ku cyaha cyo guhinga urumogi rwamuhamije, hatitawe kucyo yari agamije kurukoresha nyuma, ko kandi hashingiwe ku ngingo ya 60 y’Itegeko n° 68/2018 ryo ku wa 30/8/2018 nk’uko yahinduwe n’ingingo ya 2 y’Itegeko n° 059/2023 ryo ku wa 4/12/2023 riteganyaho ibyaha n’ibihano muri rusange, ibyo asaba byo kongera kugabanyirizwa igihano, ntaho uru Rukiko rwabihereye rubimuhira kuko icyo yahanishijwe aricyo gito gishoboka giteganywa n’Itegeko, ko rero hakwemezwa nta gihindutse ku mikirize y’urubanza rwajuririwe. UKO URUKIKO RUBIBONA [15] Impaka kuri iki kibazo zishingiye ku kumenya niba Ntirenganya Ildéphonse akwiye kongera kugabanyirizwa igihano cy’igifungo no gusonerwa ihazabu. [16] 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 be2, 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 bwawo mu gutanga igihano. [17] Nk’uko byemejwe mu rubanza n° RPAA 00305/2024/CA rwaciwe ku wa 31/1/2025, Urukiko rw’Ubujurire, rusobanura impamvu y’isubika gihano, rushobora gutegeka ihagarika ry’irangizarubanza ku gihano cyose cyangwa igice cyacyo, haba igihano cy’iremezo (igifungo,

2 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. 3 Reba agace ka 16 k’urwo rubanza hagati y’Ubushinjacyaha na NSHIMIYIMANA Evariste

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ihazabu n'imirimo y'inyungu rusange) cyangwa igihano cy'ingereka, iyo rwakatiye ukurikiranywaho icyaha igihano cy'igifungo kitarenze imyaka itanu (5). [18] Mu gace ka cumi (10) k'urubanza rujuririrwa, Urukiko Rukuru, Urugereko rwa Rwamagana rwabanje kugaragaza ko kuba ku rwego rwa mbere Ntirenganya Ildéphonse yaraburanye ahakana icyaha akaza kucyemera bwa mbere ku rwego rw'ubujurire, nta kamaro byamugirira harebwe umurongo wafashwe n'Urukiko rw'Ubujurire kuri icyo kibazo, naho mu gace ka cumi na gatanu (15), rwemeza ko kuba nta kindi cyaha kizwi yigeze akurikiranweho, kuba icyaha yakoze cyo guhinga ibiyobyabwenge byo mu bwoko bw'urumogi nta ngaruka zikomeye cyagize, nta cyatuma atagabanyirizwa ibihano, maze rushingiye ku ngingo ya 60 y'Itegeko no 68/2018 ryo ku wa 30/8/2018 nk'uko yahinduwe n'ingingo ya 2, agace kayo ka (a) na (d), y'Itegeko no 59/2023 ryo ku wa 4/12/2023 riteganywa ibyaha n'ibihano muri rusange, rumugabanyiriza igihano kiva ku gihano cy'igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu y'amafaranga miliyoni makumyabiri n'imwe (21000000 Frw) yari yahanishijwe ku rwego rwa mbere, rumuhanisha igihano cy'igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga miliyoni icumi (10.000.000 Frw). [19] Urukiko rw'Ubujurire rurasanga uretse no kuba imbere y'uru Rukiko Ntirenganya Ildéphonse yarongeye kwisubiraho agahakana icyaha cyo guhinga urumogi yahamijwe ku rwego rwa mbere, urwo Rukiko rwari rwashingiye ku kuba agifatwa yari yasobanuye ko ariwe waruhinze, avuga igihe yaruhingiye n'uburyo yafashwe amaze gusoromaho urwo yari agiye kugurishaho abantu, mu bujurire aza abyemera n'ubwo nta kamaro byari bikimufitiye, ariko bikaba bitarabujye Urukiko yajuririye kumugabanyiriza igihano, kuri uru rwego rw'ubujurire bwa kabiri n'ubwo asaba kongera kugabanyirizwa igihano cy'igifungo kubera impamvu agaragaza, nta mpamvu yo gusuzuma ishingiro ry'izo mpamvu nyoroshacyaha yazamuye kuko harebwe ibiteganywa n'ingingo ya 60, agace ka (a), y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganywa ibyaha n'ibihano muri rusange, nk'uko ryahinduwe kugeza ubu, ku bushake bw'Umushingamategeko byateganyijwe ko uwakoze icyaha gihanishwa igihano cy'igifungo cya burundu, igihe hemejwe impamvu nyoroshyacyaha adashobora kugabanyirizwa igihano cy'igifungo kiri munsu y'imyaka cumi itanu (15), kuba rero Urukiko rwaciye urubanza ajuririra, mu kumugabanayiriza igihano, aricyo yahanishijwe, akaba adakwiye kukigabanyirizwa kuko yahawe igihano gito giteganywa n'Itegeko. [20] Ku bijyanye no kuba Ntirenganya Ildéphonse asaba ko yasonerwa gutanga ihazabu yahanishijwe, uru Rukiko rurasanga, ibyo asaba nta gaciro byahabwa kuko Umushingamategeko yateganyije ko uwahamijwe icyaha cyo guhinga ibiyobyabwenge, ahanishwa ibihano byombi ni ukuvuga igifungo n'ihazabu. Rurasanga ariko mu bushishozi bwarwo yayigabanyirizwa, agahabwa ikwiranye n'uburyo yakozemo icyaha yahamijwe, agahanishwa ihazabu ingana n'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw), aho kuba amafaranga y'u Rwanda miliyoni icumi (10.000.000 Frw) [21] Hagendewe ku byasobanuwe haruguru byose, Urukiko rw'Ubujurire rurasanga ubujurire bwa Ntirenganya Ildéphonse nta shingiro bufite, ariko urubanza rwajuririwe rukaba ruhindutse ku bijyanye n'ihazabu yari yahanishijwe. III. ICYEMEZO CY'URUKIKO

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[22] Rwemeje ko ubujurire bwatanzwe na Ntirenganya Ildéphonse nta shingiro bufite. [23] Rwemeje ko urubanza n° RPA 01392/2021/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 27/6/2024, rwajuririwe, ruhindindutse ku birebana n'igihano cy'ihazabu Ntirenganya Ildéphonse yahanishijwe. [24] Rwemeje ko Ntirenganya Ildéphonse ahanishwa igihano cy'igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw). [25] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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