

RWANDA / JUDGMENT

UBUSHINJACYAHA v TURIKUMWE

RPAA 01288/2024/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA v TURIKUMWE

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Text

Page 1

UBUSHINJACYAHA v TURIKUMWE [Rwanda URUKIKO RW'UBUJURIRE - RPAA 01288/2024/CA (Mukandamage, P.J) 18 Nyakanga 2025] Amategeko agenga ibimenyetso – Ibimenyetso mu manza nshinjabya – Mu manza nshinjabyaha ibimenyetso byose bishobora gushingirwaho mu gihe bigaragaza ukuri kw'ibyabaye (principe de la liberté de la preuve en matière pénale) ababuranyi bakaba barahawe uburyo bwo kuhaba ngo banyomozanye, kandi Urukiko nirwo rwemeza ko ibyo bimenyetso bishobora kwemerwa. Incamake y'ikibazo: Ubushinjacyaha bwakurikiranye uregwa mu Rukiko Rwisumbuye rwa Gicumbi, bumukurikiranyeho icyaha cyo gusambanya umwana buvuga ko yasambanyije umwana witwa U. A. w'imyaka umunani (8) y'amavuko, icyo cyaha akaba yaragikoze ubwo uwo mwana yari agiye kuvoma nuko uregwa atuma uwo bari kumwe, maze aboneraho kwinjiza umwana mu nzu aramusambanya, biza kumenyekana nyuma ari uko hari abana babibwiye nyina ko umwana arwaye mu gitsina, birebwe basanga yarangiritse ajyanwa kwa Muganga. Urwo Rukiko rwaciye urubanza rusanga hari ibimenyetso bigaragaza ko yakoze icyaha maze rumuhanisha igihano cy'igifungo cy'imyaka cumi n'itanu (15) rumugabanyirije kuko ari ubwa mbere yari akurikiranwe mu butabera. Uregwa yajuririye Urukiko Rukuru avuga ko yahamijwe icyaha atakoze hirengagijwe ibisobanuro yatanze, ko

ahubwo hashingiwe ku bimenyetso bishidikanywaho. Urwo Rukiko narwo rwaciye urubanza rwemeza ko nta gihindutse ku rubanza rwajuririwe. Uregwa yarongeye arajurira noneho mu Rukiko rw'Ubujurire avuga ko yahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho kandi bivuguruzanya, agasaba kugirwa umwere. Ko harebwe igihe kivugwa ko icyaha cyakorewe, hashize igihe kirekire kirenga iby'umweru bibiri (2) atarafatwa, ko hari kuvuguruzanya ku munsu icyaha cyakozweho bikaba rero bitera gushidikanya. Anavuga kandi ko ubuhamya bwatanzwe n'umwana witwa Hagenimana w'imyaka umunani (8) y'amavuko butari bukwiye gushingirwaho nk'ikimenyetso kimuhamya icyaha. Ubushinjacyaha bwo buburana buvuga ko ubujurire bwatanzwe nta shingiro bufite kuko uregwa atabasha kuvuguruza ibimenyetso byashingiweho n'urukiko rumuhamya icyaha cyo gusambanya umwana. Bunavuga ko kuba umwana atamenya umunsu yasambanyirijweho bidakuraho ko yakorewe icyaha, ko kandi Hagenimana bari kumwe atari azi icyo gusambana aricyo, ariko yavuze ibyabaye uwo munsu. Incamake y'icyemezo: Mu manza nshinjabyaha, ibimenyetso byose bishobora gushingirwaho mu gihe bigaragaza ukuri kw'ibyabaye (principe de la liberté de la preuve en matière pénale) ababuranyi bakaba barahawe uburyo bwo kuhaba ngo banyomozanye, kandi Urukiko nirwo rwemeza ko ibyo bimenyetso bishobora kwemerwa. Ubujurire nta shingiro bufite. Amategeko yakoreshejwe:

Page 2

Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso, Ingingo ya 87. Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 119. Imanza zifashishijwe: Ubushinjacyaha vs Ndayishimiye, RPAA 00692/2021/CA rwaciye n'Urukiko rw'Ubujurire ku wa 20/01/2023. Ubushinjacyaha vs Gatesi, RPAA 00198/2024/CA rwaciye n'Urukiko rw'Ubujurire ku wa 17/04/2025. Ubushinjacyaha vs Birindabagabo, RPA/GEN 00004/2020/CA rwaciye n'Urukiko rw'Ubujurire ku wa 08/04/2022.

Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 07/07/2023, Mukeshimana Solange yareze Turikumwe Gilbert mu Bugenzacyaha, avuga ko ku wa 24/06/2023 yasambanyije arera witwa U. A. w'imyaka umunani (8) y'amavuko, icyo cyaha akaba yaragikoze ubwo uwo mwana na Hagenimana Emmanuel bari bagiye kuvoma bakanyura ku biraro, hanyuma Turikumwe Gilbert agahamagara Hagenimana Emmanuel akamutuma kumuzanira umwambi, maze aboneraho kwinjiza umwana mu nzu aramusambanya, biza kumenyekana nyuma ari uko abana Simbi na Fiona babwiye Mukeshimana Solange ko umwana arwaye mu gitsina, nawe arebye agasanga yarangiritse amujyana kwa Muganga. [2] Nyuma y'iperereza, Ubushinjacyaha bwatanze ikirego mu Rukiko Rwisumbuye rwa Gicumbi burega Turikumwe Gilbert icyaha cyo gusambanya umwana, busaba ko ahamwa n'icyo cyaha, agahanishwa igifungo cya burundu giteganywa n'ingingo ya 133 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, nk'uko ryahinduwe kugeza ubu. [3] Turikumwe Gilbert yaburanye ahakana icyaha, avuga ko aherukana n'uwo mwana aregwa gusambanya bagiye kuvoma, ariko ko atariwe wamusambanyije, ko nyina w'umwana amubeshyera kubera ikibazo cy'amafaranga bafitanye. [4] Mu rubanza n° RP 00545/2023/TGI/GIC rwaciye ku wa 25/01/2025, Urukiko Rwisumbuye rwa Gicumbi rwasanze hari ibimenyetso bigaragaza ko Turikumwe Gilbert yakozwe icyaha cyo

gusambanya umwana, birimo imvugo za Mukeshimana Solange, ubuhamya bwa Hagenimana Emmanuel, icyemezo cy'amavuko kigaragaza ko umwana yavutse ku wa 04/07/2015 na raporo ya Muganga. Kubyo Turikumwe Gilbert yavugaga ko afite ibyo apfa na nyina w'umwana, urukiko rwasanze nta kimenyetso yabitangiye, ko kandi abazwa mu Bugenzacyaha yemeye ko yajyanye n'umwana mu nzu agatuma Hagenimana Emmanuel kumuzanira umwambi, maze rumuhanisha igifungo cy'imyaka cumi n'itanu (15) rumugabanyirije kuko ari ubwa mbere yari akurikiranwe mu butabera. [5] Turikumwe Gilbert yajuririye Urukiko Rukuru avuga ko yahamijwe icyaha atakoze hirengagijwe ibisobanuro yatanze, ahubwo hashingiwe ku bimenyetso bishidikanywaho.

Page 3

Uhagarariye Ubushinjacyaha yavuze ko ibimenyetso bishingirwaho bimuhamya icyaha, asaba ko igihano Turikumwe Gilbert yahawe mu rukiko rwabanje cyagumaho. [6] Mu rubanza n° RPA 00229/2024/HC/KIG rwaciwe ku wa 29/10/2024, Urukiko Rukuru rwasanze ubujurire bwatanzwe na Turikumwe Gilbert nta shingiro bufit kuko hari abatangabuhamya bamushinja, ndetse na raporo ya Muganga ikaba yaragaragaje ko umwana nta karangabusugi agifite, rwemeza ko nta gihindutse ku rubanza yajuririye. [7] Turikumwe Gilbert yajuririye Urukiko rw'Ubujurire, urubanza ruhabwa n° RPAA 01288/2024/CA, ruburanishwa mu ruhamye ku wa 07/07/2025, Turikumwe Gilbert yunganiwe na Me Uwimabera Béata, naho Ubushinjacyaha buhagarariye na Uwizeye Jean Marie, Umushinjacyaha ku rwego rw'Igihugu. [8] Mu myanzuro no mu miburanire, Turikumwe Gilbert avuga ko yahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho kandi bivuguruzanya, agasaba kugirwa umwere. Uhagarariye Ubushinjacyaha avuga ko ubujurire bwatanzwe na Turikumwe Gilbert nta shingiro bufite, kuko atabashije kuvuguruza ibimenyetso byashingiweho ahamya icyaha cyo gusambanya umwana. [9] Ikibazo kigomba gusuzumwa muri uru rubanza ni icyo kumenya niba TURIKUMWE Gilbert yarahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho. II. ISESENGURWA RY'IBIBAZO BIGIZE URUBANZA Kumenya niba Turikumwe Gilbert yarahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho [10] Turikumwe Gilbert n'umwunganira bavuga ko yahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho. Bavuga ko harebwe igihe kivugwa ko icyaha cyakorewe, hashize igihe kirekire kirenga iby'umweru bibiri (2) atarafatwa. Bavuga kandi ko Hagenimana Emmanuel avuga ko umwana yasambanyijwe ari ku wa kane, nyamara ku itariki ya 24/06/2023 ivugwa na Mukeshimana Solange hari ku cyumweru, naho raporo y'inze z'ibanze ikavuga ko umunsi icyaha cyakoreweho utazwi, uko kuvuguruzanya ku munsi icyaha cyakozweho bikaba rero bitera gushidikanya. [11] Turikumwe Gilbert n'umwunganira bavuga na none ko ubuhamya bwatanzwe na Hagenimana Emmanuel w'imyaka umunani (8) y'amavuko butari bukwiye gushingirwaho nk'ikimenyetso kimihamya icyaha, kuko butunganiwe n'ibindi bimenyetso, kandi ingingo ya 51, agace ka 2, y'Itegeko n° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso iteganya ko umwana utagejeje ku myaka 14 yemerewe gutanga ubuhamya imbere y'urwego rufite ububasha atarahiye iyo abasha kubara inkuru y'uko ibintu byagenze, ariko ko ubuhamya bwe bugomba kunganirwa n'ibindi bimenyetso. Basanga kandi ibyo Hagenimana Emmanuel yavuze ari ibyo yabwirijwe na nyina w'umwana, kuko bafitanye amakimbirane, kandi ko yivuguruza, kuko yabajijwe niba

aheruka kubona Turikumwe Gilbert ari kumwe n'umwana, asubiza ko adaheruka kubabona, yongerera kuvuga kandi ko buri munsu agera aho Turikumwe Gilbert aba ku kiraro cya Mutagwera.

Page 4

- [12] Uhagarariye Ubushinjacyaha avuga ko ubujurire bwatanzwe na Turikumwe Gilbert nta shingiro bufite, kuko atabasha kuvuguruza ibimenyetso byashingiweho n'urukiko rumuhamya icyaha cyo gusambanya umwana. Avuga ko bigaragara ko Turikumwe Gilbert yatumye Hagenimana Emmanuel umwambi ahantu kure agamije gusambanya umwana, kandi ko mu kugaruka uyu mwana yasanze inzu ifunze kandi yari yasize hafunguye, bityo imvugo za Hagenimana Emmanuel zikaba rero zitateshwa agaciro, kuko yavuze ibyo yabonye. [13] Uhagarariye Ubushinjacyaha akomeza avuga ko kuba umwana atamenya umunsu yasambanyirijweho bidakuraho ko yakorewe icyaha, ko kandi Hagenimana Emmanuel bari kumwe atari azi icyo gusambana aricyo, ariko yavuze ibyabaye uwo munsu. Asoza asaba ko igihano cy'igifungo cy'imyaka cumi n'itanu (15) Turikumwe Gilbert yahawe cyagumaho. UKO URUKIKO RUBIBONA [14] Impaka muri uru rubanza zishingiye ku kumenya niba Turikumwe Gilbert yarahamijwe icyaha cyo gusambanya umwana w'imyaka umunani (8) y'amavuko hashingiwe ku bimenyetso bishidikanywaho. [15] Kubyerekeranye n'ibimenyetso mu manza n'itangwa ryabyo, mu rubanza n° RPAA 00692/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 20/01/2023, haburana Ubushinjacyaha na Ndayishimiye Jean Damascène, hasesenguwe ingingo ya 119 y'Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo¹, harebwe cyane cyane ku mwihariko w'imanza nshinjabyaha, maze urukiko rusobanura ko mu manza nshinjabyaha, ibimenyetso byose bishobora gushingirwaho mu gihe bigaragaza ukuri kw'ibyabaye (principe de la liberté de la preuve en matière pénale) ababuranyi bakaba barahawe uburyo bwo kuhaba ngo banyomozanye, kandi ko Urukiko arirwo rwemeza ko ibyo bimenyetso bishobora kwemerwa. Iri hame ryashingiweho mu zindi manza zakurikiyeho zaciwe n'uru rukiko, harimo n'urubanza n° RPAA 00198/2024/CA rwaciwe ku wa 17/04/2025, haburana Ubushinjacyaha na Gatesi Hasina. [16] Nk'uko bigaragara mu rubanza n° RPA 00229/2024/HC/KIG rwaciwe ku wa 29/10/2024, Urukiko Rukuru rwahamije Turikumwe Gilbert icyaha cyo gusambanya umwana, rumuhanisha igifungo cy'imyaka cumi n'itanu (15), rushingiyeku bimenyetso bikurikira:
- imvugo za Mukeshimana Solange urega Turikumwe Gilbert ko yasambanyije umwana, ko yumvise abana SIMBI na Fiona bavuga ko uwo mwana arwaye ku bintu, abajije umwana aramwereka asanga igitsina cyaratemye ndetse kibyimbye, na nyina nyirakuru w'umwana amubwira ko yabonye amashyira ku buriri bw'umwana, hanyuma amujyanye kwa Muganga bamubwira ko umwana yasambanyijwe n'umuntu mukuru, umwana avuga ko ari Turikumwe Gilbert wo kwa Mukarihamye wamusambanyije, anamusobanurira ko byabaye ari kumwe na Hagenimana Emmanuel, amaze kumutuma kumuzanira umwambi wo kunywa itabi haruguru mu mpinga barasigarana, ko yarize Turikumwe Gilbert akamubwira guceceka ko ari bumuhe igiceri cy'amafaranga ijana (100 Frw), amubuza kuzabivuga, ko azajya amuha amafaranga.

- ubuhamya bwatanzwe na Hagenimana Emmanuel wavuze ko ku wa kane bavuye kuvoma bageze ku kiraro cyo kwa Mutagwera, maze Turikumwe Gilbert ahamagara umwana U. A., naho we

1 Iyo ngingo ihura n'ingingo ya 87 y'Itegeko n° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso.

Page 5

amutuma kuzana umwambi iwabo mu rugo, agarutse asanga bikingiranye mu nzu, ahamagaye Turikumwe Gilbert aramwihorera, ariko hashize akanya arakingura amuha ubudodo, naho U. A. amuha igiceri cy'amafaranga ijana. Yabajije niba azi ikibazo umwana U. A. yagize, asubiza ko yamweretse ku gitsina cye akabona hajemo ibintu bimeze nk'amashyira;

- raporo yakozwe ku wa 06/07/2023 na Dr Muguyeneza Fidélité wo ku bitaro bya Byumba igaragaza ko ku rwinjiro rw'igitsina cy'umwana U. A. hatukura kandi afite uburwayi bwa Condylomas ndetse kuvamo ibisa nk'umweru bifite binuka, ko kandi nta karangabusugi agifite, (labia majora: red with severe condylomas, labia minoria red and intact, whitish foul smelling discharge, conclusion: genital warts – Condylomas, may be sexually transmitted or not, hymen was not intact but some people don't have).
- icyemezo cy'amavuko cyatanzwe n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Bukure ku wa 12/07/2023, kigaragaza ko umwana yavutse ku wa 04/07/2015. [17] Urukiko rw'Ubujurire rurasanga ibyo Turikumwe Gilbert avuga ko hari ugushidikanya ku munsu icyaha aregwa cyabereye, aho Hagenimana Emmanuel yavuze ko cyabaye ari ku wa kane, Mukeshimana Solange akavuga ko cyabaye ku wa 24/06/2023 ari ku cyumweru, bitaba impamvu ituma ubuhamya batanze buteshwa agaciro, kuko umwana akimara gusambanywa atahise abivuga kuko Turikumwe Gilbert yamubujije kubivuga, ahubwo byamenyekanye ari uko agejejwe kwa Muganga, bityo kumenya umunsi nyir'izina icyaha cyakorewe bikaba bitari koroha. [18] Urukiko rw'Ubujurire ruributsa kandi ko mu rubanza n° RPA/GEN 00004/2020/CA rwaciwe ku wa 08/04/2022, haburana Ubushinjacyaha na Birindabagabo Jean Paul, byasobanuwe ko ukuvuguruzanya kw'abatangabuhamya ku tuntu duto duto bidahindura ireme ry'ibyo bavuze. Uyu murongo washingiweho mu manza zitandukanye zakurikiyeho zaciwe n'uru Rukiko, harimo urubanza n° RPAA 00546/2024/CA rwaciwe ku wa 19/03/2025, haburana Ubushinjacyaha na Mbihonge Jean. [19] Urukiko rw'Ubujurire rurasanga kandi ibyo Turikumwe Gilbert avuga ko ubuhamya bwatanzwe na Hagenimana Emmanuel butari bukwiye gushingirwaho kuko yabutanze ari umwana nta shingiro bifite, kubera ko nk'uko ingingo ya 51, agace ka (2), y'Itegeko n° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso ibiteganyaga, Hagenimana Emmanuel yavuze ibyo yabonye umunsi icyaha kiba, kandi ibyo yavuze bishyigikiwe n'imvugo za Mukeshimana Solange uvuga ibyo yabwiwe n'umwana nyuma y'uko Muganga amumenyesheje ko umwana yasambanyijwe, ndetse na raporo ya Muganga igaragaza ko umwana yasambanyijwe kandi afite uburwayi. Nk'uko kandi urukiko rwabanje rwabibonye, no kuri uru rwego nta kimenyetso Turikumwe Gilbert atanga kigaragaza amakimbirane avuga ko afitanye na Mukeshimana Solange

yatumye amubwiriza ibyo amushinja kandi atarabikoze. [20] Urukiko rw'Ubujurire rurasanga na none ibyo Turikumwe Gilbert avuga ko Hagenimana Emmanuel yivugurujye nta kuri kurimo, kuko yasobanuye neza ibyabaye ubwo yari kumwe n'umwana wahohotewe bageze ku biraro aho Turikumwe Gilbert akorera, anavuga ko iyo agiye

2 Iyo ngingo iteganya ko “(2) Umwana utagejeje ku myaka 14 kimwe n'umuntu mukuru udafite ubushobozi yemerewe gutanga ubuhamya imbere y'urwego rufite ububasha atarahiye iyo abasha kubara inkuru y'uko ibintu byagenze, ariko ubuhamya bwe bugomba kunganirwa n'ibindi bimenyetso.”

Page 6

kuvoma ahagera, byumvikana neza ko buri gihe iyo ahageze ahabona Turikumwe Gilbert n'umwana. [21] Urukiko rw'Ubujurire rurasanga rero ibimenyetso byashingiweho n'Urukiko Rukuru mu guhamya Turikumwe Gilbert icyaha cyo gusambanya umwana w'imyaka umunani (8) y'amavuko byuzuzanya kandi bidashidikanywaho, ubujurire bwe bukaba nta shingiro bufite. [22] Urukiko rw'Ubujurire rurasanga kandi kuba ubujurire bwatanzwe na Turikumwe Gilbert nta shingiro bufite, hagomba kugumaho imikirize y'urubanza yajuririye, cyane cyane ko igihano cy'igifungo cy'imyaka cumi n'itanu (15) ku cyaha cyo gusambanya umwana w'imyaka umunani

(8) y'amavuko, we afite imyaka makumyabiri (20) y'amavuko cyagabanyijwe kubera ko ari ubwa mbere akurikiranwe mu nkiko ku buryo buzwi, kivuye ku gihano cy'igifungo cya burundu. III. ICYEMEZO CY'URUKIKO [23] Rwemeje ko ubujurire bwatanzwe na Turikumwe Gilbert nta shingiro bufite; [24] Rwemeje ko urubanza n° RPA 00229/2024/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 29/10/2024 rugumanye agaciro mu ngingo zarwo zose; [25] Rutegetse ko igihano cy'igifungo cy'imyaka cumi n'itanu (15) Turikumwe Gilbert yahawe muri urwo rubanza ku cyaha cyo gusambanya umwana w'imyaka umunani (8) y'amavuko kigumyeho.

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