

RWANDA / JUDGMENT

UBUSHINJACYAHA v. TUYISHIME

RPAA 00245/2024/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA v. TUYISHIME

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Text

Page 1

UBUSHINJACYAHA v. TUYISHIME [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00245/2024/CA (Gakwaya, P.J.) 28 Werurwe 2025] Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Ubujurire – Ntibihagije k'uwajuriye kuvuga gusa ko mu rubanza rujuririrwa harimo ukwibeshya gushingiye ku ngingo y'Itegeko cyangwa hagaragaramo amakosa y'amategeko, agomba no kugaragaza ibisobanuro mu mategeko bishimangira ibyo avuga, akanagaragaza uko kwibeshya gutuma icyemezo cyafashwe cyateshwa agaciro Incamake y' ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gicumbi, Ubushinjacyaha burega Tuyishime n'undi witwa Ntezurundi, icyaha cyo gutunda no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi. Tuyishime yaburanye yemera ko yafatanywe urumogi, ariko ahakana ko atarucuruza ahubwo ko yarutoraguye ahantu yari abonye umuntu arimo kuruhisha, ashinjura Ntezurundi avuga ko yamubeshyeye kuko bari bamwijeje ko navuga uwarumuhaye bamufungura. Urwo Rukiko rwaciye urubanza rwemeza ko Tuyishime ahamwa n'icyaha cyo gutunda no gucuruza ibiyobyabwenge rumuhanisha igihano cy'igifungo cya burundu n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri (20.000.000 Frw), naho kuri Ntezurundi rusanga nta cyaha kimuhama. Tuyishime yajuririye Urukiko Rukuru, avuga ko Urukiko rwamuhamije icyaha cyo

gucuruza ibiyobyabwenge nta bimenyetso bidashidikanywaho rushingiye byemeza ko arucuruza, asaba ko inyito y'icyaha yahindurwa agahamywa icyaha cyo gufatanwa urumogi kuko yemera ko yafatanywe udupfunyika makumyabiri na dutandatu (26), anasaba ko yagabanyirizwa igihano ku cyaha cyo gufatanywa ibiyobyabwenge, bikanasubikwa kubera ko aribwo bwa mbere akurikiranywe mu Nkiko. Urwo Rukiko narwo rwaciye urubanza rwemeza ko urubanza yajuririye ruhindutse ku birebana n'igihano rumugabanyiriza igihano kuko ari ubwa mbere akurikiranywe mu Nkiko, rumuhanisha igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw), Tuyishime, nanone yajuririye Urukiko rw'Ubujurire avuga ko inyito y'icyaha yahinduka, agahamwa n'icyaha cyo gufatanwa urumogi harebwe ingano ntoya y'urwo yafatanywe kandi akaba anemera ko yarufatanywe, aho kuba kurutunda no kurucuruza. Ubushinjacyaha bwo buburana buvuga ko n'ubwo ari uburenganzira bwa Tuyishime gusaba ko inyito y'icyaha yahinduka mu gihe cyose urubanza rutarapfundikirwa, ariko ko atari inenge kuko Urukiko rwamuhamije gutunda no gucuruza urumogi rubishingiye ku bimenyetso bigaragaza ibikorwa yakoze, atabasha kuvuguruza, busaba uru Rukiko kwemeza ko nta kosa Urukiko Rukuru rwakoze Incamacye y'ikemezo: Ntibihagije k'uwajuriye kuvuga gusa ko mu rubanza rujuririrwa harimo ukwibeshya gushingiye ku ngingo y'Itegeko cyangwa hagaragaramo amakosa y'amategeko, agomba no kugaragaza ibisobanuro mu mategeko bishimangira ibyo avuga, akanagaragaza uko kwibeshya gutuma icyemezo cyafashwe cyateshwa agaciro.

Page 2

Ubujurire nta shingiro bufite. Amategeko yashingiweho: Ingingo ya 263 y'Itegeko No 60/2018 ryo ku wa 30/8/2018 yahinduwe n'ingingo ya 11 y'Itegeko No 69/2019 ryo ku wa 8/11/2019 riteganyaye ibyaha n'ibihano muri rusange. Imanza zifashishijwe: Ubushinjacyaha vs Mugimba Jean Baptiste, RPA/Gen 00001/2022/CA rwaciye n'Urukiko rw'Ubujurire ku wa 14/2/2025. Ubushinjacyaha vs Niyitegeka Augustin alias Niyirema RPAA 00408/2020/CA rwaciye n'Urukiko rw'Ubujurire ku wa 27/6/2022. Ubushinjacyaha vs Munyangishari RPA/Gen 00004/2019/CA rwaciye rwaciye n'Urukiko rw'Ubujurire ku wa 7/5/2021.

Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 18/9/2020, Tuyishime Didier ari mu Mudugudu wa Gacurabwenge, Akagari ka Gacurabwenge, Umurenge wa Byumba, Akarere ka Gicumbi, yafashwe n'abasirikare bari ku irondo afite udupfunyika makumyabiri na dutandatu (26) tw'urumogi arimo kurucuruza, abajijwe yemera ko urwo rumogi yari urufite, ko ariko ari uwitwa Bimenyande warurumutumye ngo arugurisha. [2] Iperereza rirangiye, Ubushinjacyaha bwareze Tuyishime Didier n'undi witwa Ntezurundi Jean-Claude alias Kibondo mu Rukiko Rwisumbuye rwa Gicumbi icyaha cyo gutunda no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, busaba ko cyabahama, bagahanishwa igihano cy'igifungo cya burundu n'ihazabu y'amafaranga y'u Rwanda miliyoni mirongo itatu (30.000.000 Frw). [3] Tuyishime Didier yaburanye yemera ko yafatanywe urumogi, ariko ahakana ko atarucuruza ahubwo ko yarutoraguye ahantu yari abonye umuntu arimo kuruhisha ari kumwe na Bimenyande, ashinjura Ntezurundi Jean-Claude alias Kibondo avuga ko yamubeshyeye kuko bari bamwijeje ko navuga uwarumuhaye bamufungura. [4] Mu rubanza no RP 00616/2020/TGI/GIC rwaciye n'Urukiko Rwisumbuye rwa Gicumbi ku wa

21/10/2020, rushingiye ku kuba Tuyishime Didier yafatanywe udupfunyika makumyabiri na dutandatu (26) tw'urumogi, nk'uko inyandikomvugo irufatira ibigaragaza kandi imbere y'Urukiko akaba yarabyiyemereye avuga ko urwo rumogi rwari urwo gucuruza, rwemeje ko ahamwa n'icyaha cyo gutunda no gucuruza ibiyobyabwenge, rumuhanisha igihano cy'igifungo cya burundu n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri (20.000.000 Frw), rwemeza ko Ntezurundi Jean-Claude alias Kibondo nta cyaha kimuhama.

Page 3

[5] Tuyishime Didier yajuririye Urukiko Rukuru, avuga ko Urukiko Rwisumbuye rwa Gicumbi rwamuhamije icyaha cyo gucuruza ibiyobyabwenge nta bimenyetso bidashidikanywaho rushingiye byemeza ko arucuruza, asaba ko inyinto y'icyaha yahindurwa agahamya icyaha cyo gufatanwa urumogi kuko yemera ko yafatanywe udupfunyika makumyabiri na dutandatu (26), anasaba ko yagabanyirizwa igihano ku cyaha cyo gufatanwa ibiyobyabwenge, bikanasubikwa kubera ko aribwo bwa mbere akurikiranywe mu Nkiko. [6] Mu rubanza no RPA 01138/2020/HC/KIG rwaciwe n'Urukiko Rukuru, ku wa 28/3/2024, rushingiye ku kuba Tuyishime Didier abazwa mu nzego z'iperereza yaremeye ko yafatanywe udupfunyika makumyabiri na dutandatu (26) tw'urumogi yari asigaranye muri mirongo itatu na dutandatu (36) twose yari afite mbere y'uko agurishaho, kuba hari inyandikomvugo irufatira, kuba umutangabuhamya w'umupolisi wo mu ishami rishinzwe kurwanya ibiyobyabwenge yaravuze ko bahawe amakuru n'abasirikare bari ku irondo babamenyesha ko bamufashe acuruza urumogi, kuba uregwa aburana ku rwego rwa mbere yarasobanuye ko yumvikanye na Bimenyande ko nabona urugura azamuhamagara, kandi igihe yafatwaga akaba ariwe yari agiye kureba arumushyiriye ngo arugurisha, rwemeje ko ahamwa no gutunda no gucuruza urumogi, rwemeza ko urubanza yajuririye ruhindutse ku birebana n'igihano rumugabanyiriza igihano kuko ari ubwa mbere akurikiranywe mu Nkiko, rumuhanisha igifungo cy'inyaka cumi n'itanu (15) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw), rusobanura ko ibijyanye n'isubikagihano yasabye atabihawe kuko yahawe igihano cy'igifungo kirengeje imyaka itanu (5). [7] Ku wa 8/4/2024, Me Mutabazi Jackson, wunganira Tuyishime Didier, yajuririye Urukiko rw'Ubujuje avuga ko inyito y'icyaha yahinduka, agahamwa n'icyaha cyo gufatanwa urumogi harebwe ingano ntoya y'urwo yafatanywe kandi akaba anemera ko yarufatanywe, aho kuba kurutunda no kurucuruza. [8] Ubushinjacyaha buvuga ko n'ubwo ari uburenganzira bwa Tuyishime Didier gusaba ko inyito y'icyaha yahinduka mu gihe cyose urubanza rutarapfundikirwa, ariko ko atari inenge kuko Urukiko rwamuhamije gutunda no gucuruza urumogi rubishingiye ku bimenyetso bigaragaza ibikorwa yakoze, atabasha kuvuguruza, ko busaba uru Rukiko kwemeza ko nta kosa Urukiko Rukuru rwakoze. [9] Urubanza rwahawe no RPAA 00245/2022/CA, ruburanishwa ku wa 10/3/2025, Tuyishime Didier yunganiwe na Me Mutabazi Jackson, Ubushinjacyaha buhagarariye 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 ibikorwa TUYISHIME Didier yakoze bigize icyaha cyo gufatanwa ibiyobyabwenge byo mu bwoko bw'urumogi, akaba ari nabyo

yagombaga guhanirwa, aho kuba kurutunda no kurucuruza. II. IKIBAZO KIGIZE URUBANZA N’ISESENGURA RYACYO Kumenya niba ibikorwa Tuyishime Didier yakoze bigize icyaha cyo gufatanwa ibiyobyabwenge byo mu bwoko bw’urumogi, aho kuba kurutunda no kurucuruza

Page 4

[11] Tuyishime Didier avuga ko ibyaha byo gutunda no gucuruza urumogi ataribyo yakoze, ko icyo yemera ari uko yafatanywe udupfunyika makumyabiri na dutandatu (26) tw’urumogi, kandi ko nta muntu n’umwe basanze arimo kurucuruzaho, nta n’amafaranga yaba yari yarucurujemo bamusanganye, ko rero asaba guhanirwa icyaha yemera kandi asabira imbabazi cyo gufatanwa urumogi rwe yinyweraga kuko harebwe no ku ngano yarwo atari akwiye guhamwa no kurucuruza. [12] Me Mutabazi Jackson asaba ko inyito y’icyaha Tuyishime Didier yahamijwe yahinduka agahamwa n’icyaha cyo kurufatanwa nk’uko abyemera, hanarebwe ku ngano ntoya y’urumogi yafatanywe, ibyo akaba abishingira ku murongo watanze n’uru Rukiko mu rubanza no RPAA 00358/2021/CA1 rwaciwe ku wa 17/2/2023, haburana Ubushinjacyaha na Minani Florent no ku rubanza no RPAA 00200/2020/CA2 rwaciwe ku wa 27/7/2022, haburana Ubushinjacyaha na Hakizimana Eric, ko Urukiko Rukuru rutagombaga gushingira ku dupfunyika makumyabiri na dutandatu (26) Tuyishime Didier yafatanywe ngo rwemeze ko ahamwa n’icyaha cyo kurutunda no kurucuruza, kuko byanatumiye habaho guhanirwa icyaha atakoze ugereranyije n’ingano y’urwo yafatanywe, kandi nta n’uwo yarugurishije cyangwa ngo hagaragazwe abo yaruhaye, bisobanuye ko ari urwo yari kuzakoresha ku giti cye, cyane ko yemera ko yakundaga kurunywa rwaramubase, akaba rero agomba guhamwa n’icyaha cyo kurufatanwa, agahanishwa igihano cy’igifungo cy’umwaka umwe (1). [13] Ubushinjacyaha buvuga ko kuba mu Rukiko Rukuru, Tuyishime Didier yaraburanye asaba ko yahamwa n’icyaha cyo gufatanwa urumogi, urwo Rukiko rugasanga nta shingiro bifite, kuba atarishimiye uburyo rwasesenguye imyiregurire ye, kabone n’ubwo ari uburenganzira bwe bwo gusaba ko inyito y’icyaha yahinduka mu gihe cyose urubanza rutapfundikirwa, ibyo bitakwitwa ko ari inenge iri mu rubanza kuko rwashingiye ku bimenyetso byatanze n’Ubushinjacyaha birimo no kuba ubwe yariyemereye icyaha cyo gucuruza urumogi ubwo yabazwaga mu Bugenzacyaha, rubihuza n’ibindi bimenyetso, runashingira ku manza zitandukanye rugaragaza ko ibikorwa yakoze bigize icyaha cyo kugurisha urumogi. Busoza busaba Urukiko rw’Ubujurire kuzabona ko nta kosa Urukiko Rukuru rwakoze mu kumuhamya icyo cyaha.

UKO URUKIKO RUBIBONA [14] Impaka kuri iki kibazo zishingiye ku kumenya niba Urukiko Rukuru rwarakoze amakosa yo kwemeza ko ibikorwa Tuyishime Didier yakoze bihura n’inyito yo gutunda no gucuruza urumogi ari nabyo rwamuhaniye, aho kumuhamya icyaha cyo kurufatanwa gusa.

1 “Amagambo arebana no gufatanwa (avugwa mu gika cya mbere cy’ingingo ya 263 y’itegeko No 68/2018 ryo kuwa 30/08/2018 rishyiraho ibyaha n’ibihano muri rusange) kimwe n’amagambo yo gukora, guhinga, guhindura, gutunda, kubika (avugwa mu gika cya gatatu cy’iyo ngingo) agomba kumvikana hakurikijwe ingano y’ibiyobyabwenge n’ikigiye gukoreshwa ibyo biyobyabwenge

uregwa yafatanywe, yakoze, yahinze, yahinduye, yatunze cyangwa yabitse maze byagaragara ko kuri buri gikorwa muribyo, ikigamijwe ari ukubikoresha ku giti cye uregwa agahabwa ibihano bito ariko byagaragara ko ingano yafatanywe ari nini bikaba byashingirwaho hemezwa ko Atari ibyo gukoresha ku giti cye ahubwo ikigamijwe ari ubucuruza cyangwa kubikwirakwiza uregwa agahabwa igihano kiremereye”. 2 “Iyo nta bimenyetso bigaragaza ko uregwa wafatanywe ingano nto y’ibiyobyabwenge yahinze yari agamije kubikwirakwiza no kubigurisha, afatwa nk’uwari ugamije kubyikoreshereza (simple drug possession) aho kubicuruzza no kubikwirakwiza (drug trafficking/drug distribution) agahabwa ibihano bito”.

Page 5

- [15] Nk’uko byemejwe mu rubanza no RPA/Gen 00001/2022/CA3 narwo rushingiye ku rubanza no RPA/Gen 00004/2019/CA rwaciwe ku wa 7/5/2021, haburana Ubushinjacyaha na Bernard Munyangishari, ntibihagije k’uwajuriye kuvuga gusa ko mu rubanza rujuririrwa harimo ukwibeshya gushingiye ku ngingo y’Itegeko cyangwa hagaragaramo amakosa y’amategeko, agomba no kugaragaza ibisobanuro mu mategeko bishimangira ibyo avuga, akanagaragaza uko kwibeshya gutuma icyemezo cyafashwe cyateshwa agaciro. Ku birebana n’ukwibeshya gushingiye ku byabaye, Urukiko, mu bujurire, ruhindura icyemezo cyafashwe gusa mu gihe uwajuriye yagaragaje ko isuzuma ryakozwe n’Urukiko rwabanje ku bijyanye n’ibikorwa bigize icyaha ryatumye urubanza rucibwa nabi, bivuze ko mu bujurire, uwajuriye adashobora kugaruka (gusubira) gusa ku ngingo ze yaburanishije ku rwego rwa mbere, kandi zitarahawe ishingiro, atagaragaza amakosa Urukiko rwabanje rwaba rwarakoze ruzitesha agaciro n’uko ayo makosa agomba gukosorwa. [16] Nk’uko bigaragara guhera ku gace ka cumi na kabiri (12) kugeza ku ka cumi n’umunani
- (18) tw’urubanza rujuririrwa, Urukiko Rukuru, mu gusubiza Tuyishime Didier waburanishaga ko ku rwego rwa mbere yahamijwe gucuruza urumogi kandi yaragombaga guhamwa no kurufatanwa, rushingiye ku murongo watanze n’Urukiko rw’Ubujurire mu rubanza no RPAA 00408/2020/CA4 , rwasesenguraga ingingo ya 263 y’Itegeko no 60/2018 ryo ku wa 30/8/2018 yahinduwe n’ingingo ya 11 y’Itegeko no 69/2019 ryo ku wa 8/11/2019 riteganyaho ibyaha n’ibihano muri rusange, rwasobanuye uko amagambo atandukanye arimo no gufatanwa, kunywa no gucuruza (....) avugwa muri icyo ngingo akwiye kumvikana harebwe icyo Umushingamategeko yashatse kuvuga no guhana, maze urwo Rukiko narwo rurebye ibikorwa Tuyishime Didier yakoze bigaragazwa no kuba abazwa mu Bugenzacyaha no mu Bushinjacyaha yaremeye ko yafatanywe udupfunyika makumyabiri na dutandatu (26) tw’urumogi yari ashiriyeye uwitwa Bimenyande wari urumutumye ngo arugurisha, kuba imvugo z’umutangabuhamya w’umupolisi wo mu ishami rishinzwe kurwanya ibiyobyabwenge avugako bahawe amakuru n’abasirikare bari ku irondo y’uko bafashe Tuyishime Didier arimo gucuruza urumogi kandi ko hari n’udupfunyika twarwo makumyabiri na dutandatu (26) bamufatanye, kuba mu miburanire ye ku rwego rwa mbere yaremeye ko yafashwe ashiriyeye Bimenyande urumogi ngo barugurisha nk’uko bari barabyumvikanye, rwemeje ko yafashwe aje gucuruza urumogi kuko ubwe yemera ko yari arujyanye ngo barugurisha kandi abizi neza ko arirwo ajyanye, anemera ko mu dupfunyika

mirongo itatu na dutandatu (36) yari yafite, yafatanywe makumyabiri na dutandatu (26) gusa urundi rwaramaze kugurishwa, ko rero ibijyanye n'ingano avuga ko ari ntoya atari byo bikwiye kugenderwaho hemezwa ko yarufatanywe gusa kuko urwo yari afite yari yiteguye kurukwirakwiza (kurugurisha), ko kandi atabasha kuvuguruza ibimenyetso byose byashingiweho bigaragara ko acuruza urumogi, rwemeza ko icyo cyaha aricyo kiguma kumuhama. [17] Ku wa 18/9/2020, Tuyishime Didier abazwa mu Bugenzacyaha yavuze ko urumogi yafatanywe yari aruhawe na Bimenyande ngo arumufashe, amuhamagaye ngo aruzane arugurisha k'ubwo yashakaga kuruha, aje bahita bamufata. [18] Mu nyandikomvugo y'iburanisha mu Rukiko Rwisumbuye rwa Gicumbi yo ku wa 14/10/2020, Tuyishime Didier yavuze ko urumogi yafatanywe rwari udupfundiye mirongo itatu

3 Reba urubanza no RPA/Gen 00001/2022/CA rwaciye ku wa 14/2/2025, haburana Ubushinjacyaha na MUGIMBA Jean Baptiste, mu gika cyarwo cya 67. 4 Urubanza no RPAA 00408/2020/CA rwaciye n'Urukiko rw'Ubujurire ku wa 27/6/2022, haburana Ubushinjacyaha na Niyitegeka Augustin alias Niyirema.

Page 6

na dutandatu (36) yatoraguye, Bimenyande amusabaho cumi na dutanu (15), aramubwira ngo nabona uwatugura azamuhamagare atuzane, aragenda ageze imbere Bimenyande ahita amuhamagara ngo ni agaruke, aje bahita bamufata. [19] Urukiko rw'Ubujurire rurasanga n'ubwo ku rwego rwose, aho urubanza rwaba rugeze mu gihe rutaracibwa burundu inyito y'icyaha ishobora guhinduka, bigaragara ko Tuyishime Didier ku rwego rw'ubujurire bwa mbere, ndetse n'ubwa kabiri aribyo yaburanishije, nyamara birebwe hamwe n'umurongo watanze n'uru Rukiko nk'uko wagarutswaho haruguru mu gihe uwajuriye atagaragaza ko mu bisobanuro Urukiko Rukuru rwatanze mu rubanza rujuririrwa haba harabayeho ukwibeshya gushingiye ku ngingo y'Itegeko cyangwa nk'uko ibintu byagenze, byatumye rwemeza ko ibikorwa yakoze bigize icyaha rwamuhamije kandi ataribyo, hemezwa ko ubujurire nta shingiro bufite, kuba rero na Tuyishime Didier uretse kuba asubiramo ingingo yaburanishije gusa zitahawe ishingiro ariko akaba ntacyo anenga ibisubizo yahawe, hanarebwe uko mu nzego zitandukanye nk'uko nabyo byagarutswaho yagiye yisobanura, bigaragaza ko koko yafashwe ari mu bikorwa byo gucuruza urumogi, Urukiko rw'Ubujurire rero rukaba ntaho rwahera ruhindura icyemezo cyafashwe, mu gihe atagaragaza ko mu gusuzuma ibikorwa bigize icyaha, byaba byarakozwe nabi ku buryo byatumye urubanza rwe rucibwa nabi. [20] Kubera ibisobanuro byose bitanzwe haruguru, Urukiko rw'Ubujurire rurasanga ubujurire bwatanze na Tuyishime Didier bushingiye ku gusaba guhindurirwa inyito y'icyaha cyo gucuruza urumogi yahamijwe, agahamwa no kurufatanwa gusa kuko arunywa, nta shingiro ifite. III. ICYEMEZO CY'URUKIKO [21] Rwemeje ko ubujurire bwatanze na Tuyishime Didier nta shingiro bufite. [22] Rwemeje ko nta gihindutse ku rubanza n° RPA 01138/2020/HC/KIG rwaciye n'Urukiko Rukuru ku wa 28/3/2024, rwajuririye. [23] Rwemeje ko igihano cy'igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw) Tuyishime Didier yahanishijwe, kigumye. [24] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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