

RWANDA / JUDGMENT

UBUSHINJACYAHA v. TWAGIRANYAGASANI

RPA 0403/13/HC/NYA

COURT

High Court

DECIDED

24 December 2013

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UBUSHINJACYAHA v. TWAGIRANYAGASANI

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UBUSHINJACYAHA v. TWAGIRANYAGASANI [Rwanda URUKIKO RUKURU – RPA 0403/13/HC/NYA (Kamanzi, P.J.) 24 Ukuboza 2013]

Amategeko yerekeye imiburanishirize y’imanza z’inshinjabyaha – Kwemera icyaha – Kugabanyirizwa igihano.– Nubwo yemera icyaha, ntiyagabanyirizwa igihano kuko atari ubwa mbere akora ibyaha –.Itegeko Ngenga no.01/2012 ryo kuwa 02/05/2012 rishyiraho igitabo cy’amategeko ahana ibyaha mu Rwanda, ingingo za 13 Itegeko no.30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y’imanza z’inshinjabyaha, ingingo ya 33, 35, Itegeko no.15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo, ingingo ya 110 Incamake y’ikibazo: Twagiranyagasani Augustin yakurikiranyweho icyaha cy’ingengabitekerezo ya jenocide. Urukiko Rwisumbuye rwa Huye rwamuhamije icyaha maze rumuhanisha igifungo cy’imyaka itandatu y’igifungo n’ihazabu y’amafaranga 300 000 Rwf. Ntiyishimiye iki gihano maze akijuririra mu Rukiko Rukuru yemera icyaha anasaba imbabazi. Ubushinjacyaha buvuga ko ibyo asaba yabikorewe bityo urukiko rukaba rudakwiye gukomeza kumugabanyiriza igihano. Incamake

y'icyemezo: Ukwemera icyaha no gusaba imbabzi bikoze n'ushinjwa bigomba kumugirira akamaro. Ariko rero, n'ubwo yemera icyaha

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akanagisabira imbabazi, igihano yaha ntikigoma kugabanuka hashingiwe ku kuba atari ubwa mbere afunzwe kubera ibyaha bya jenocide akaba yaranigeze kwihekura aho yahushije nyina ashaka kumukubita ikintu mu mutwe agakubita umwana agahita yitaba Imana ibyo kandi byiyongera ku rwango afitiye abatutsi nk'uko bigaragazwa n'imvugo y'umugore we wamureze mu bugenzacyaha amurega ko amuziza kuba umutustikazi. Ubujurire nta shingiro bufite. Icyaha ashinjwa kiramuhama. Twagiranyagasani Augustin aratsinzwe. Igihano yahawe n'urukiko rubanza kigumye. Urubanza rujuririrwa rugumye. Amagarama y'urubanza aherereye ku isanduku ya leta. Amategeko yashingiweho Itegeko Ngenga no.01/2012 ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ibyaha mu Rwanda, ingingo ya 135. Itegeko no.30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 33 na 35. Itegeko no.15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 110

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Urubanza IMITERERE Y'URUBANZA [1] Twagiranyagasani Augustin, akurikiranyweho n'ubushinjacyaha icyaha cy'Ingengabitekerezo ya Genocide aho yaba yarabwiye RUBANGISA Celestin wari uvuye gushingura abe bazize Genocide amusanze mu kabari ka MUKAREMERA aramubwira ngo: "Dore ibyo bwihaye iyo iki gihe kigeze aha nti buba bugishaka

ko

hari

umuhutu

ugomba kubaho...arongera aramubwirango ubundi weho bagusigiraga iki" undi amubwiye ko azamurega aramubwirango azagende amurege ngo nta nyoko y'umututsi azasaba imbabazi ngo aho igitanda cye yagisize arahazi" RUBANGISA Celestin abimenyesha Police, iperereza ritangira gutyo; [2] Uru rubanza rwatangiriye mu rukiko rwisumbuye rwa Huye mu kirego rukizwa kuwa 17/09/2013 ruhanisha TWAGIRANYAGASANI Augustin igihano cy'igifungo cy'imyaka itandatu (6years) n'ihazabu y'amafaranga ibihumbi magana atatu(300.000frw); [3] TWAGIRANYAGASANI Augustin ntiyishimiye igihano yahawe akijuririra uru rukiko ubujurire bwe busuzumirwa mu ruhame kuwa 05/12/2013 yiburanira, ubushinjacyaha buhagarariwe na MUGABO Deo

Lambert,

mwiburanisha TWAGIRANYAGASANI Augustin yemeye icyaha anasaba imbabazi avuga ko yavunze ngo weho bagusigiye iki naho ubushinjacyaha bwo buvugako ibyo

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asaba yarabikorewe asaba urukiko kutakira ubujurire bwe ngo kuko ibyo asaba yabikorewe hakagumaho ibihano yahawe; [4] Nyuma yo kumva impande zombi, iburanishwa ryarapfundikiwe urukiko rumenyesha ababuranyi ko urubanza ruzasomwa kuwa 24/12/2013 saa yine za mugitondo; ISESENGURA RY'IBIBAZO BIGIZE URUBANZA Kubirebana no kwemera icyaha no gusaba imbabazi [5] Mu gusuzuma niba kwemera icyaha no gusaba imbabazi kwa TWAGIRANYAGASANI Augustin kwamugirira inyungu, urukiko rubona kuva yafatwa mu bugenzacyaha kugera mu rukiko baranzwe no kwemera icyaha no gusaba imbabazi, ingingo ya 35 y'itegeko no.30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha(CPP) Iteganyaga ko: "Iyo ucyekwaho gukora icyaha aciyemereye mu buryo budashidikanywa, hubahirizwa mu kumukurikirana ibiteganywa n'ingingo ya 33 y'iri tegeko mu gika cyayo cya 2 n'icya 3, kandi umucamanza waregewe urwo rubanza ashobora kugabanya ibihano byari biteganyijwe kugeza kuri kimwe cya kabiri ½ cyabyo" [6] Ibi bikaba bivuze ko kwemera icyaha no gusaba imbabazi kwe kugomba kumugirira akamaro kuko yemeye icyaha yakoze kubwende bwe kandi nkuko

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bamwe mubahanga mu by'amategeko babivuga ku kibazo nkiki, aho uwitwa Tomas de Torquemada, the first Spanish Grand Inquisitor, mugitabo The Magical Maze by Ian Stewart page ya 87 aravugaga ati: "A confession was a complete proof of guilty..., Hinging on confessional evidence, have in the last few years been over turned because of severe doubts that the confessions were genuine" [7] Uyu we akaba ahamya ko kwemera icyaha bitavuze ko byanze bikunze ariweho wagikoze, naho uwitwa Matthew mu kwanzura kuri iki kibazo akavugaga ati: "One of Matthews' most surprising conclusions is that there are circumstances under which the existence of a confession adds weight to the view that the accused is innocent rather than guilty" He calls this discovery the 'interrogator's fallacy'. The idea offers a general reason for mistrusting confessions in some cases, unless they are supported by appropriate corroborative evidence: [8] Hano kuba ari TWAGIRANYAGASANI Augustin wavuze ariya magambo yavuzwe haruguru nta muntu n'umwe ubihakana kuburyo bidakenyereye ibindi bimenyetso cyane ko hari n'abatangabuhamya barimo KAGAMBIRWA, RUBANGURA Joseph n'abandi bemeza ko bumvishije avugaga aya magambo; [9] Ingingo ya 135 y'itegeko Ngenga no.01/2012 ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ibyaha

mu

Rwanda

kubirebana

n'icyaha cy'ingengabitekerezo ya Genocide n'ibyaha bifatanyeho isano nayo, ivangura no gukurura amacakubiri iteganywa

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ibihano ku muntu wese ukoze iki cyaha, ariko kuko urukiko rwemera ihame ry'uko umuntu wese uguye mu cyaha bwa mbere, atagomba guhabwa ibihano byanyuma biteganijwe n'itegeko ku cyaha cyakozwe (maximum sentence) kuko nyuma y'uko umucamanza asuzumye imyiregurire y'ushinjwa ku cyaha cyakozwe, anareba ibihano biteganyirijwe icyo cyaha, kandi aha abahanga mu by'amategeko bakavuga ko umucamanza asuzuma impamvu zikomeza icyaha cyangwa se impamvu nyorosha cyaha, kandi ko ushinjwa agomba guhabwa uburenganzira bwo kugaragaza impamvu nyorosha cyaha, hatitawe kuburemere bw'icyaha, hano uwitwa Anniken U.Davenport mu gitabo cye BASIC CRIMINAL LAW aravugaga ati: "A bifurcated trial, in which the jury first decides whether the defendant is guilty, and a sentencing stage, at which the jury determines punishment after hearing evidence of aggravating or mitigating circumstances. The condemned prisoner must be given an opportunity to present mitigating factors in his defence, no matter how heinous his crime"; [10] Kubera ko TWAGIRANYAGASANI Augustin, agomba guhabwa umwanya wo kwicuza ku cyaha yakoze no kureba ko asubira mu muryango akaba umuntu muzima, azira amakemwa, urukiko rubona agomba guhabwa umwanya wo gutekereza ku cyaha yakoze; [11] Ingingo ya 110 y'itegeko no.15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ivuga ko: "Ukwiyeemerera mu rubanza

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n'amagambo umuburanyi cyangwa umuhagarariye avugira mu rukiko agira ibyo yemera. Ayo magambo atsindisha uwayavuze..." 3 [12] N'ubwo TWAGIRANYAGASANI Augustin yaburanye yemera icyaha akanagisabira imbabazi, uru rukiko yajuriruye rubona ibihano yahawe bitagomba gukomeza kugabanuka kuko atari ubwa mbere kuko yafunzwe imyaka irenga cumi n'itatu (13 years) kubera ibyaha bya genocide yakoreye Abatutsi kandi na mbere yo gukora iyo Genocide yabanje kwica umwana we aho yahushije nyina ashaka kumukubita ikintu mu mutwe aramuhusha akubita umwana yari ahetse ahita yitaba imana (cote ya 8-10) ibi byose byiyongereyeho n'urwango afitiye abatutsi nkuko bigaragazwa n'inyandiko mvugo ya KAMURERA Marie (umugore we) igihe yamuregaga mu bugenzacyaha amuhora kuba ari Umututsi kazi bituma ibihano yahawe by'igifungo cy'imyaka itandatu n'ihazabu y'amafaranga ibihumbi magana atatu (300.000frw) bidahinduka; ICYEMEZO CY'URUKIKO [13] RWEMEYE kwakira ubujurire bwatanzwe na TWAGIRANYAGASANI Augustin rubusuzumye rusanga nta shingiro bufite; [14] RWEMEJE ko icyaha cy'Ingengabitekerezo ya Genocide TWAGIRANYAGASANI Augustin ashinjwa kimuhama;

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[15] RUKIJIJE

ko

TWAGIRANYAGASANI Augustin atsinzwe ; [16] RUHAMIJEHO igihano cy'igifungo cy'imyaka itandatu(6years) n'ihazabu y'amafaranga ibihumbi magana atatu (300.000frw)
TWAGIRANYAGASANI Augustin yahawe mu rubanza yajuririye ; [17] RWEMEJE ko urubanza RP 0195/13/TGI/HYE rwaciwe kuwa 17/09/2013 n'urukiko rwisumbuye rwa Huye rudahindutse; [18] Amagarama y'urubanza angana n'amafaranga ibihumbi 4050frw ahereye kuri leta kuko TWAGIRANYAGASANI Augustin wari kuyatanga ari mu basonerwa gutanga amagarama ku bw'itegeko ;

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