

RWANDA / JUDGMENT

UBUSHINJACYAHA v. UWURUKUNDO

RPAA 00390/2023/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v. UWURUKUNDO

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Text

Page 1

UBUSHINJACYAHA v. UWURUKUNDO [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00390/2023/CA (Kaliwabo, P.J.) 12 Ukuboza 2024] Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Uwajuriye afite inshingano yo kugaragaza ukwibeshya kwakozwe n'Urukiko rubanza gushingiye ku mategeko cyangwa ku byabaye kwatumye urubanza rujuririrwa rucibwa nabi cyangwa kwatuma ruta agaciro. Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Kugabanya ibihano – Principe de la proportionnalité de la peine à l'infraction – Nta kibuzwa umucamanza wo ku rwego rw'ubujurire kugabanyiriza igihano uwajuriye, mu gihe cyose asanga icyo yahawe ku rwego rwa mbere kiremereye ugereranyije n'imikorere y'icyaha, kabone n'iyi ku rwego rubanza yaba yaragabanyirijwe. Incamake y'ikibazo: Uwurukundo yakurikiranyweho n'ubushinjacyaha icyaha cyo korohereza umuntu gukoresha ibiyobyabwenge nyuma yuko afatanywe udupfunyika 132 tw'urumogi adukuye i Rwamagana atuzaniye abaguzi i Kigali agafatirwa i Nyabugogo. Ubushinjacyaha bwamuregeye Urukiko Rwisumbuye rwa Nyarugenge ku cyaha cyo korohereza umuntu gukoresha ibiyobyabwenge nyuma yuko yemera kuba umuhuza ku muntu washakaga urumogi. Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko ahamwe n'icyaha cyo gufatanwa no kugurisha ibiyobyabwenge byo mu bwoko bw'urumogi, rumuhanisha igifungo

cy'imyaka 25 n'ihazabu ya 20.000.000 Frw. Uwurukundo yajuririye mu Rukiko Rukuru avuga ko yahanishijwe ibihano biremereye kandi we yari umuhuza hagati y'ugurisha urumogi n'urugura, asaba kugabanyirizwa ibihano. Urukiko Rukuru rwaciye urubanza rwemeza ko impamvu z'ubujurire Uwurukundo atanga zidafite ishingiro, rumugumisha ku gifungo cy'imyaka 25 n'ihazabu ya 20.000.000Frw yahanishijwe ku rwego rwa mbere. Yajuririye mu Rukiko rw'Ubujaire avuga ko Urukiko rwamugumishije ku gihano kiremereye yahanishijwe ku rwego rwa mbere, rutitaye ku mpamvu nyoroshyacyaha yarushyikirije. Asaba kugabanyirizwa ibihano. Ubushinjacyaha ku rundi ruhande, buvuga ko Uwurukundo yafashwe agurisha ibiyobyabwenge kandi akaba ari nacyo cyaha yahaniwe, ko impamvu ze z'ubujurire zifite ishingiro gusa ku biyanye no kugabanyirizwa ibihano, bumusabira igifungo cy'imyaka 15 n'izahabu ya 5.000.000Frw. Incamake y'icyemezo: 1. Uwajuriye afite inshingano yo kugaragaza ukwibeshya kwakozwe n'Urukiko rubanza gushingiye ku mategeko cyangwa ku byabaye kwatumye urubanza rujuririrwa rucibwa nabi cyangwa kwatuma ruta agaciro. Iyo atabikoze, ubwo bujaire burakirwa, urukiko rukemeza ko nta shingiro bufite.

2. Nta kibuzwa umucamanza wo ku rwego rw'ubujurire kugabanyiriza igihano uwajuriye, mu gihe cyose asanga icyo yahawe ku rwego rwa mbere kiremereye ugereranyije n'imikorere y'icyaha,

Page 2

kabone n'iyi ku rwego rubanza yaba yaragabanyirijwe; ibi bikaba ari mu rwego rwo guhuza igihano n'uburemere bw'icyaha (Principe de la proportionnalité de la peine à l'infraction)". Urubanza rwaciye n'Urukiko Rukuru ruhindutse gusa ku birebana n'ibihano. Amategeko yashingiweho: Itegeko N° 69/2019 ryo kuwa 08/11/2019 rihindura Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, Ingingo ya 11 Itegeko N° 059/2023 ryo kuwa 04/12/2023 rihindura itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, Ingingo ya 2 Imanza zifashishijwe: RPAA 00194/2021/CA; Ubushinjacyaha vs Ndayishimiye Emmanuel alias Shema rwaciye n'Urukiko rw'Ubujaire kuwa 22/07/2022. RPAA 00406/2020/CA; Ubushinjacyaha vs Nahayo Ignace rwaciye n'Urukiko rw'Ubujaire kuwa 22/10/2021. RPAA 00497/2022/CA; Ubushinjacyaha vs Dukundane James rwaciye n'urukiko rw'Ubujaire kuwa 27/6/2024. Urubanza I. IMITERERE Y'URUBANZA [1] Kuwa 10/12/2019, inzego z'umutekano zafatiye Uwurukundo Claire na Bahuwihaye Moses i Nyabugogo, bafatwa bakekwaho kuba bari mu gikorwa cyo kugurisha ibiyobyabwenge bari bavanye i Rwamagana. Uwurukundo Claire yafatanwe udupfunyika 132 tw'urumogi, basatse telefoni ya Bahuwihaye Moses barikumwe, basangamo ubutumwa bugufi yari yandikiye umuguzi w'uru rumogi, amubwira ko atebukana amafaranga kuko bahageze. Ubushinjacyaha bwabaregeye Urukiko Rwisumbuye rwa Nyarugenge bubakurikiranyeho icyaha cyo korohereza umuntu gukoresha ibiyobyabwenge¹. [2] Mu rubanza RP 01565/2019/TGI/NYGE rwaciye kuwa 05/02/2020, Urukiko Rwisumbuye rwa Nyarugenge, rushingiye ku mikorere y'icyaha igaragaza ko Uwurukundo yavanye urumogi (udupfunyika 132) i Rwamagana aruzaniye umuguzi i Kigali kandi akaba yari ategereje guhabwa ikiguzi cyarwo, Urukiko rwamuhamije icyaha cyo gufatanwa no kugurisha ibiyobyabwenge byo mu bwoko bw'urumogi, rumuhanisha igifungo cy'imyaka 25 n'ihazabu ya

20.000.00Frw. Ku birebana na Bahuwihaye, Urukiko rwashingiye ku mvugo imushinjura ya Uwurukundo no kuba nta kindi kimenyetso kimusanisha n'ibiyobyabwenge byafashwe, rumugira umwere ku cyaha aregwa. [3] Uwurukundo Claire yajuririye Urukiko Rukuru avuga ko yahamijwe icyaha cyo gucuruza ibiyobyabwenge bituma ahanishwa igihano kiremereye nyamara we yari umuhuza hagati ya

1 Iki nicyo cyaha Ubushinjacyaha bwamukurikiranyeho kuko UWURUKUNDO yavugaga ko yemera kuba yarabayeho umuhuza ku muntu washakaga urumogi.

Page 3

Gasongo wazanye urumogi na Mugisha wagombaga kurugura, ko Gasongo yabonye abashinzwe umutekano agahunga bityo akaba ari we urufatanwa bityo ko yagombaga guhanirwa icyaha cyo korohereza undi muntu kubona ibiyobyabwenge, asaba kugabanyirizwa ibihano kugira ngo asange abana be bakiri bato. [4] Ubushinjacyaha buvuga ko impamvu ze z'ubujurire zidafite ishingiro kuko nta nenge ziri mu rubanza ajuririra, busaba ko atongera kugabanyirizwa ibihano kuko Urukiko Rwisumbuye rwamugabanyirije bihagije. [5] Mu rubanza RPA 00343/2020/HC/KIG rwaciye ku wa 27/04/2023, Urukiko Rukuru nyuma yo gusesengura impamvu z'ubujurire za Uwurukundo Claire, rwasanze nta shingiro zifite, rumugumisha ku gifungo cy'imyaka 25 n'ihazabu ya 20.000.000Frw yahanishijwe ku rwego rwa mbere. [6] Uwurukundo Claire yajuririye Urukiko rw'Ubujurire kuri RPAA 00390/2023/CA, ruburanishwa mu ruhamwe kuwa 3/12/2024 yunganiye na Me Ruganza Bin Seba naho Ubushinjacyaha buhagarariye na Uwizeye Jean Marie Vianney, Umushinjacyaha ku rwego rw'Igihugu. [7] Mu mwanzuro we w'ubujurire wo ku wa 15/05/2023, Uwurukundo Claire avuga ko mu rubanza rujuririrwa Urukiko rwamugumishije ku gihano kiremereye yahanishijwe ku rwego rwa mbere, rutitaye ku mpamvu nyoroshyacyaha yarushyikirije. [8] Me Ruganza Bin Seba umwunganira, mu mwanzuro w'inyongera, avuga ko Uwurukundo Claire agifatwa yahise yemera uruhare rwe rwo guhuza abagura n'abagurisha ibiyobyabwenge, iyi ikaba ari impamvu nyoroshyacyaha yagombye gutuma agabanyirizwa ibihano, asaba ko yahanishwa igifungo cy'imyaka 15 n'ihazabu ya 5.000.000 Frw hashingiwe kubiteganywa n'amategeko cyane mu ngingo ya 2 agace ka (a) na (d) y'Itegeko N° 059/2023 ryo kuwa 4/12/2023 rihindura itegeko No 68/2018 ryo kuwa 30/8/2018 riteganyaye ibyaha n'ibihano muri rusange. [9] Ubushinjacyaha buvuga ko Uwurukundo yafashwe agurisha ibiyobyabwenge akaba ari nacyo cyaha yahaniye, ko impamvu ze z'ubujurire zifite ishingiro gusa ku bijyanye no kugabanyirizwa ibihano, bumusabira igifungo cy'imyaka 15 n'ihazabu ya 5.000.000Frw. [10] Urukiko ruherereye kuri izo mpaka, rurasuzuma niba Urukiko rwarirengagije impamvu nyoroshyacyaha Uwurukundo Claire yarugaragariye, rukamuhanisha igihano kiremereye no kumenya niba yagabanyirizwa ibihano kuri uru rwego. II. ISESENGURWA RY' URUBANZA

A. Kumenya niba Urukiko rwarirengagije impamvu nyoroshyacyaha Uwurukundo Claire yarugaragariye, rukamuhanisha igihano kiremereye [11] Mu mwanzuro we wo ku wa 15/05/2023, Uwurukundo Claire yajuririye anenga ko Urukiko Rukuru rwamuhamishije ku gihano kiremereye yahanishijwe n'Urukiko Rwisumbuye

Page 4

rwirengagije impamvu nyoroshyacyaha yarugaragarije. Me Ruganza Bin Seba umwunganira, mu mwanzuro we w'inyongera, yavuze ko Urukiko rwirengagije ko Uwurukundo Claire agifatwa yahise yemera uruhare rwe rwo guhuza abagura n'abagurisha ibiyobyabwenge, ibi akaba ari impamvu nyoroshyacyaha bityo asaba Urukiko kumugabanyiriza ibihano agahabwa igifungo cy'imyaka 15 n'ihazabu ya 5.000.000 Frw hashingiwe kubiteganywa n'ingingo 2 agace ka (a) na (d) y'itegeko N° 059/2023 ryo kuwa 4/12/2023 rihindura itegeko No 68/2018 ryo kuwa 30/8/2018 riteganyanya ibyaha n'ibihano muri rusange. [12] Mu miburanire ye, Uwurukundo Claire avuga ko yemeye uruhare rwe rwo guhuza umuguzi w'ibiyobyabwenge n'umuntu ubifite, bityo ko yagombaga kugabanyirizwa ibihano. [13] Ubushinjacyaha buvuga ko icyaha cyo korohereza undi muntu kubona ibiyobyabwenge Uwurukundo avuga ko yemera ataricyo yahamijwe, ko ahubwo yahamijwe icyaha cyo gucuruza ibiyobyabwenge kandi ko aricyo yakoze. Uko Urukiko rubibona [14] Ikibazo kirebana n'inshingano y'uwajuriye mu kugaragaza amakosa yakozwe mu rubanza rujuririrwa cyakemuwe n'uru Rukiko mu rubanza RPAA 00194/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 22/07/2022 haburana Ubushinjacyaha na Ndayishimiye Emmanuel alias Shema (igika cya 18), aho rwemeje ko uwajuriye afite inshingano yo kugaragaza ukwibeshya kwakozwe n'Urukiko rubanza gushingiye ku mategeko cyangwa ku byabaye kwatumye urubanza rujuririrwa rucibwa nabi cyangwa kwatuma ruta agaciro. Iyo atabikoze, ubwo bujurire burakirwa, urukiko rukemeza ko nta shingiro bufite. [15] Uwurukundo Claire yarezwe icyaha cyo korohereza undi muntu kubona ibiyobyabwenge, Urukiko Rwisumbuye rwa Nyarugenge rubisesenguye, rusanga icyaha yakoze ari icyo gufatanwa no kugurisha ibiyobyabwenge byo mu bwoko bw'urumogi, aba ari nacyo rumuhanira². Mu bujurire bwe Uwurukundo yakomeje kuburanisha ingingo y'uko yafatanwe urumogi rwa Gasongo wabonye abashinzwe umutekano akiruka, ko inshingano ye yari iyo guhuza Gasongo na Mugisha wagombaga kugura ibiyobyabwenge, bityo ko aricyo cyaha agomba guhanirwa. Urukiko Rukuru rwasanze nta kosa riri mu isesengura ryakozwe n'Urukiko Rwisumbuye ndetse ko n'igihano Uwurukundo yahanishijwe gikurikije amategeko, ruhamishaho icyo gihano. [16] Urukiko rurasanga, icyo Uwurukundo yita impamvu nyoroshyacyaha yirengagijwe n'Urukiko Rukuru, ari imiburanire ye yari igamije guhanirwa icyaha cyoroheje cyo korohereza undi kubona ibiyobyabwenge mu mwanya w'icyaha cyo kugurisha ibiyobyabwenge. Rurasanga iyi ngingo irebana n'inyito y'icyaha idashobora kwitiranywa n'impamvu nyoroshyacyaha, Urukiko rukaba rufite ububasha bwo kugena inyito ikwiranye n'imikorere y'icyaha hashingiwe ku mategeko abigenga nk'uko byatanzweho umurongo n'Urukiko rw'Ikirenga mu rubanza RPAA 0117/07/CS rwaciye ku wa 17/09/2010, haburana Ubushinjacyaha na Cpl Ngabonziza Faustin na Sgt Biziyaremye Jean Baptiste. [17] Kuba Urukiko rwarahamije Uwurukundo icyaha cyo gufatanwa no kugurisha ibiyobyabwenge rushingiye ku kuba ari we wafatanwe udupfunyika 132 tw'urumogi yavanye i 2 Reba igika cya 11 cy'urubanza RP 01565/2019/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge.

Page 5

Rwamagana aje kurugurisha i Kigali kandi hakaboneka ubutumwa bugufi kuri telefoni bwerekana ko yari ategereje amafaranga agura urumogi yafatanwe, rurasanga ubujurire bwe bwaragombaga gushingira ku ngingo yo kwerekana amakosa yakozwe n'Urukiko mu kumuhamya icyaha cyo kugurisha ibiyobyabwenge mu mwanya wo kuvuga ko uruhare rwe yemera ari impamvu nyoroshyacyaha yagombaga gutuma agabanyirizwa ibihano. [18] Urukiko rurasanga, kuri iyi ngingo Uwurukundo atarashoboye kugaragaza inenge yakozwe n'Urukiko mu kumuhamya icyaha cyo gufatanwa no kugurisha ibiyobyabwenge n'uburyo yakosorwa, bityo ubujurire bwe kuri iyi ngingo bukaba nta shingiro bufite.

B. Ku birebana n'ibihano [19] Uwurukundo n'umwunganira bavuga ko uyu yari akwiye guhanirwa kuba umuntu worohereza undi kubona ibiyobyabwenge aho guhanirwa kubicuruza, ko Urukiko rwamugabanyiriza igihano. Ubwunganizi bwashyize Urukiko kugabanya igihano hakurikijwe ingingo ya 2, agace kayo ka (a) na (d) y'Itegeko N° 059/2023 ryo kuwa 4/12/2023 rihindura itegeko No 68/2018 ryo kuwa 30/8/2018 riteganyaho ibyaha n'ibihano muri rusange. [20] Ubushinjacyaha buvuga ko, nubwo Uwurukundo aburana ahakana icyaha cyo gucuruza ibiyobyabwenge kandi cyaratangiwe ibimenyetso bihagije, nyamara kandi ko igihano yahawe gikabije kuremera ugereranyije n'ingano y'ibiyobyabwenge yafatanwe (udupfunyika 132) ndetse no kuba aribwo bwa mbere akurikiranwe n'inkiko ku buryo buzwi, bityo ko yahanishwa igifungo cy'imyaka 15 no gutanga ihazabu y'amafaranga miliyoni eshanu (5.000.000Frw), hakurikijwe ingingo ya 2 y'Itegeko N° 059/2023 ryo kuwa 04/12/2023 rihindura itegeko N° 68/2018 ryo kuwa 30/8/2018 riteganyaho ibyaha n'ibihano muri rusange. [21] Ku birebana n'igabanyagihano ku rwego rw'ubujurire, Urukiko rw'Ubujurire rwabitanzeho umurongo mu rubanza RPAA 00406/2020/CA rwacye kuwa 22/10/2021, haburana Ubushinjacyaha na Nahayo Ignace aho rwemeje ko nta kibuzwa umucamanza wo ku rwego rw'ubujurire kugabanyiriza igihano uwajuriye, mu gihe cyose asanga icyo yahawe ku rwego rwa mbere kiremereye ugereranyije n'imikorere y'icyaha, kabone n'yo ku rwego rubanza yaba yaragabanyirijwe; ibi bikaba ari mu rwego rwo guhuza igihano n'uburemere bw'icyaha (Principe de la proportionnalité de la peine à l'infraction)", ibi kandi bikaba bihuza n'ibivugwa mu ngingo ya 49 y'Itegeko N° 68/2018 ryavuzwe haruguru. [22] Ingingo ya 11 y'Itegeko N° 69/2019 ryo kuwa 08/11/2019 rihindura itegeko N° 68/2018 ryo kuwa 30/8/2018 riteganyaho ibyaha n'ibihano muri rusange, iteganyaho ko umuntu uhamwe n'icyaha cyo gutunda cyanga gucuruza ibiyobyabwenge bihambaye ahanishwa igifungo cya burundu no gutanga ihazabu y'amafaranga atari munsi ya 20.000.000 ariko itarenze amafaranga 30.000.000.

3 Iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano cy'igifungo cya burundu ariko ntikijye munsi y'igihano cy'igifungo cy'imyaka 15.

Page 6

[23] Ingingo ya 2 y' itegeko N° 059/2023 ryo kuwa 04/12/2023 rihindura itegeko N° 68/2018 ryo kuwa 30/8/2018 riteganyaho ibyaha n'ibihano muri rusange iteganyaho ko : "Iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano ku buryo bukurikira: ... (a) igifungo cya burundu gishobora kugabanywa ariko ntikijye munsi y'igihano cy'igifungo

cy'imyaka 15 , (...) naho igihano cy'ihazabu kikaba gishobora kugabanywa kugeza kuri 1/4 cyayo". [24] Urukiko rurasanga, nubwo Uwurukundo yaburanye ahakana icyaha cyo gucuruza ibiyobyabwenge kandi hari ibimenyetso bikimushinja, nyamara kandi mu kumugabanyiriza igihano Urukiko Rukuru ntirwashyize mu gaciro ingano y'ibiyobyabwenge Uwurukundo yafatanwe ngo ruyihuze n'igihano rwagennye, ariyo mpamvu kuri uru rwego akwiye kugabanyirizwa biruseho. [25] Mu rubanza RPAA 00497/2022/CA rwaciwe n'uru Rukiko ku wa 27/6/2024, Dukundane James wahamwe n'icyaha cyo gucuruza ibiyobyabwenge bingana na ½ Kg (± 250 boules) kandi akaba yaraburanye ahakana icyaha, yahanishijwe igifungo cy'imyaka 17 no gutanga ihazabu y'amafaranga 5.000.000. [26] Mu rwego rwo gusanisha imihanire ku bantu bakoze icyaha ku buryo bumwe, rurasanga, Uwurukundo uhamwa n'icyaha cyo gufatanwa no kugurisha ibiyobyabwenge bingana n'udupfunyika 132 nawe agomba kugabanyirizwa ibihano, agahanishwa igifungo cy'imyaka cumi n'irindwi (17 ans) no gutanga ihazabu y'amafaranga 5.000.000 mu mwanya w'igifungo cy'imyaka 25 n'ihazabu y'amafaranga 20.001.000 yahanishijwe mu rubanza rujuririrwa. III. ICYEMEZO CY'URUKIKO [27] Rwemeje ko urubanza RPA 00343/2020/HC/KIG rwaciwe n'Urukiko Rukuru, ku wa 27/04/2023, ruhindutse gusa ku birebana n'ibihano. [28] Rwemeje ko Uwurukundo Claire ahanishwa igifungo cy'imyaka cumi n'irindwi (17ans) no gutanga ihazabu y'amafaranga miliyoni eshanu (5.000.000) ku cyaha cyo gufatanwa no kugurisha ibiyobyabwenge kimuhama. [29] Rutegetse ko Uwurukundo Claire asonerwa amagarama y'urubanza kuko aburana afunzwe.

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