

RWANDA / JUDGMENT

UBUSHINJACYAHA vs BIKORIMANA

RPAA 00054/2024/CA

COURT

Court of Appeal

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UBUSHINJACYAHA vs BIKORIMANA

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Text

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UBUSHINJACYAHA vs BIKORIMANA [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00054/2024/CA (Rukundakuvuga, P.J.) 19 Ukuboza 2024] Amategeko mpanabyaha – impamvu nyoroshyacyaha – kugabanyirizwa igihano – igihano gito – Ntabwo umucamamanza mu gutanga ibihano yemerewe kujya munsu y'igihano gito giteganyijwe n'Itegeko. Incamake y'ikibazo: Uru rubanza rwatangiye ubushinjacyaha burega Bikorimana mu Rukiko Rwisumbuye rwa Ngoma icyaha cyo Gusambanya umwana byakurikiwe no kubana nk'umugabo cyangwa umugore, ubwo yajyaga kwa Bikorimana uyu amukingirana mu nzu aramusambanya. Nyuma babana nk'umugabo n'umugore, amutera n'inda ariko ntiyamwitaho biba ngombwa ko atanga ikirego mu bugenzacyaha bwakoze iperereza, rirangiye rishyikiriza dosiye bushinjacyaha. Bikorimana yaburanye yemera ko yaryamanye na B.C., bigakurikirwa no kubana nk'umugore n'umugabo. Urukiko mu rubanza RP01113/2020/TGI/NGOMA rushingiye ku kwemera icyaha kwa Bikorimana, imvugo z'abatangabuhamya, raporo ya muganga, raporo yo mu nzego z'ibanze, ndetse n'icyemezo cy'amavuko cya B.C. rwemeje ko Bikorimana ahamwe n'icyaha cyo gusambanya umwana B.C., byakurikiwe no kubana nawe nk'umugore n'umugabo. rumuhanisha igihano cy'igifungo cya burundu. Bikorimana yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana, asaba

kugabanyirizwa igihano. Avuga ko yaburanye yemera icyaha. Yavuze kandi ko ari ubwa mbere yari akurikiranyweho icyaha, kandi ko icyaha yakoze kitagize ingaruka zikomeme, agasaba ko ibyo byafatwa nk'impamvu nyoroshyacyaha zishobora gutuma agabanyirizwa igihano. Urukiko mu rubanza RPA00225/2021/HC/RWG rushingiye ku Kwemera icyaha k'uregwa, Kuba ari ubwa mbere akurikiranyweho icyaha, rwemeje ko agabanyirizwa igihano agahanishwa igihano cy'igifungo cy'imyaka cumi n'itanu (15). Bikorimana ntiyishimiye imikirize y'urwo rubanza ajurira mu Rukiko rw'Ubujurire, asaba ko hashingirwa ku mpamvu nyoroshyacyaha zemejwe mu rubanza ajuririra, akongera kugabanyirizwa igihano ndetse kikanasubikwa, akajya kwita ku muryango we. Ubushinjacyaha buvuga ko ibyo Bikorimana asaba bidafite ishingiro kuko Urukiko Rukuru rwamuhanishije igifungo cy'imyaka 15, ari nacyo gihano gito gishoboka hashingiwe ku mategeko. Urukiko mu rubanza RPAA00054/2024/CA, rwemeje ko Bikorimana atakongera kugabanyirizwa igihano kuko yagabanyirijwe mu buryo buhagije mu rubanza rujuririrwa. Incamake y'icyemezo: Ibijyanye no kugabanya igihano kikajya munsu y'igito giteganywa n'itegeko byavanyweho n'Itegeko N° 59/2023 ryo ku wa 04/12/2023 rihindura ingingo ya 60 y'itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange ryashyizeho uburyo bushya bwo kugabanya ibihano. Bityo, ntabwo umucamamanza mu gutanga ibihano yemerewe kujya munsu y'igihano gito giteganyijwe n'Itegeko. Ubujurire nta shingiro bufite. Amategeko yashingiweho: Itegeko N°69/2019 ryo ku wa 08/11/2019 ihindura ingingo y'133 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, igika cya 6 Itegeko N° 59/2023 ryo ku wa 04/12/2023 rihindura ingingo ya 60 y'itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange

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Nta manza zifashishijwe. Urubanza II. IMITERERE Y'URUBANZA [1] Ku wa 29/07/2020, B.C.1, wavutse tariki ya 01/01/2003, yagiye kwa Bikorimana Jean Paul mu Mudugudu w'Agatare, Akagari ka Nyange, Umurenge wa Mugesera, Akarere ka Ngoma, Intara y'Iburasirazuba, agiye gutirura umupira w'imbeho yari yaramutije. Agezeyo, Bikorimana Jean Paul yamukingiranye mu nzu aramusambanya. Nyuma y'aho, amubwira ko yabaye umugore we, B.C. abanza kubyangana ariko nyuma aza kubyemera. Hagiye iminsi, Bikorimana Jean Paul yamuteye inda, ariko ntiyamwitaho. B.C. yaje kumurega kuko yanze kumugurira mituweli ngo abashe kujya kwipimisha. Ubushinjacyaha bwatangiye iperereza, rirangiye Ubushinjacyaha buregera Urukiko Rwisumbuye rwa Ngoma. Bikorimana Jean Paul yaburanye yemera ko yaryamanye na B.C., bigakurikirwa no kubana nk'umugore n'umugabo. [2] Mu rubanza RP01113/2020/TGI/NGOMA rwaciye n'Urukiko Rwisumbuye rwa Ngoma ku wa 29/12/2020, urukiko rushingiye ku kwemera icyaha kwa Bikorimana Jean Paul, imvugo z'abatangabuhamya bamushinje barimo na B.C. wakorewe icyaha, raporo ya muganga, raporo yo mu nzego z'ibanze, ndetse n'icyemezo cy'amavuko cya B.C. kigaragaza ko yavutse tariki ya 01/01/2003, rwemeje ko Bikorimana Jean Paul ahamwe n'icyaha cyo gusambanya umwana B.C., byakurikiwe no kubana nawe nk'umugore n'umugabo. Urukiko rwamuhanishije igihano cy'igifungo cya burundu. [3] Bikorimana Jean Paul yajuririye Urukiko Rukuru, Urugerekere rwa Rwamagana, asaba kugabanyirizwa igihano. Yasobanuye ko yaburanye yemera icyaha ndetse agisabira imbabazi. Yavuze kandi ko ari ubwa mbere yari akurikiranyweho

icyaha, kandi ko icyaha yakoze kitagize ingaruka zikomeye, agasaba ko ibyo byafatwa nk'impamvu nyoroshyacyaha zishobora gutuma agabanyirizwa igihano. [4] Mu rubanza RPA00225/2021/HC/RWG rwaciwe ku wa 16/01/2024 n'Urukiko Rukuru/Urugereko rwa Rwamagana, rwemeje impamvu nyoroshyacyaha zirimo: Kwemera icyaha no kugisabira imbabazi; Kuba ari ubwa mbere yari akurikiranyweho icyaha; Kuba nta myitwarire mibi yari asanzwe azwiho muri sosiyete. Rushingiye ku ngingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023, rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018, ivuga ko umucamanza ashobora kugabanya igihano cya burundu kikagera ku gifungo cy'imyaka 15 igihe hari impamvu nyoroshyacyaha, Urukiko rwemeje ko igihano cya burundu cyari cyahanishijwe Bikorimana Jean Paul kigabanywa kigashyirwa ku gifungo cy'imyaka 15. [5] Bikorimana Jean Paul ntiyishimiye imikirize y'urubanza ajurira mu Rukiko rw'Ubujurire, urubanza rwe ruhabwa RPAA00054/2024/CA. Iburanisha mu ruhamye ryashyizwe ku wa 03 Ukuboza 2024, uwo muni ugeze Bikorimana Jean Paul yitaba atunganiwe kuko umwunganizi we atitabye, urubanza rwimurirwa kuwa 09 Ukuboza 2024 kugirango ashakirwe undi mwunganizi. Ku wa 09 Ukuboza 2024, Bikorimana Jean Paul yitabye yunganiwe na Me Niyonsenga Vincent naho Ubushinjacyaha buhagarariwe na Butera Oscar, Umushinjacyaha ku Rwego rw'Igihugu.

1 Iri ni izina uwahohotewe yahawe mu rwego rwo kumurindira umutekano

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[6] Mu bujurire bwe, Bikorimana Jean Paul asaba ko hashingirwa ku mpamvu nyoroshyacyaha zemejwe mu rubanza ajuririra, akongera kugabanyirizwa igihano ndetse kikanasubikwa, akajya kwita ku muryango we. [7] Ubushinjacyaha buvuga ko ibyo Bikorimana Jean Paul asaba bidafite ishingiro kuko Urukiko Rukuru/Urugereko rwa Rwamagana rwamuhanishije igifungo cy'imyaka 15, ari nacyo gihano gito gishoboka hashingiwe ku mategeko mashya. [8] Urukiko rusanga ikibazo gikwiye gusuzumwa ari ukumenya niba Bikorimana Jean Paul ashobora kongera kugabanyirizwa igihano. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA Kumenya niba Bikorimana Jean Paul ashobora kongera kugabanyirizwa igihano. [9] Bikorimana Jean Paul avuga ko yemera icyaha, akacyicuza kandi akaba ataragoye ubutabera kuva mu Bugenzacyaha kugeza ubu. Asaba urukiko kugabanya igihano yahawe n'Urukiko Rukuru/Urugereko rwa Rwamagana, ndetse rukanagisubika kugira ngo abashe kwita ku muryango we. Me Niyonsenga Vincent umwunganira asaba urukiko gushingira ku ngingo ya 49 na 58 z'itegeko riteganyaga ibyaha n'ibihano muri rusange, rukita ku mpamvu nyoroshyacyaha, rukabona ko impamvu umucamanza agabanya igihano ari uko aba yarebye uburemere bw'icyaha. Avuga ko n'ubwo itegeko rishya rivuga ko igihano kitagabanywa kugera muni y'imyaka 15, impamvu itegeko ryemeye ko umuntu yongera akajurira, ntayindi uretse kuba kuri urwo rwego naho umucamanza aba ashobora kongera kureba uburemere bw'icyaha akaba yagabanya igihano. [10] Ubushinjacyaha bwo buvuga ko ubujurire bwa Bikorimana Jean Paul nta shingiro bufite kuko igihano cye cyamaze kugabanywa n'Urukiko Rukuru/Urugereko rwa Rwamagana hashingiwe ku Itegeko N° 59/2023 ryo ku wa 04/12/2023, rihindura Itegeko N° 68/2018, kivanwa ku gifungo cya burundu yari yahawe ku rwego rwa mbere kigera ku myaka cumi n'itanu (15). Urukiko rukaba

rudashobora kujya muni yacyo. Ubushinjacyaha buvuga ko Urukiko rwazashingira ku rubanza RPAA00233/2023/CA rwo ku wa 19/04/2024, Ubushinjacyaha buburana na Safari Jean Claude kuko ari rwo ruhuza n'itegeko rishya riteganywa ibyaha n'ibihano muri rusange kuko nawe yari yagabanyirijwe igihano kigera ku myaka 15, Urukiko rwemeza ko igabanyagihano ryakozwe rijyanye n'ibyo amategeko ateganywa. UKO URUKIKO RUBIBONA [11] Impaka muri uru rubanza zishingiye ku kumenya niba hari aho Urukiko rwahera rwongera kugabanyiriza Bikorimana Jean Paul igihano. [12] Ingingo ya 4 y'Itegeko N°69/2019 ryo ku wa 08/11/2019 ihindura ingingo y'133 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange mu gika cyayo cya gatandatu iteganywa ko Iyo umuntu mukuru asambanyije umwana bigakurikirwa no kumugira umugabo cyangwa umugore, igihano kiba igifungo cya burundu kidashobora kugabanywa kubera impamvu nyoroshyacyaha. Iyi ngingo ariko yaje guhindurwa n'Ingingo ya 2, (a) y'itegeko N° 59/2023 ryo ku wa 04/12/2023 rihindura ingingo ya 60 y'itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, kuko iyi ngingo yo igateganywa ko "Iyo umucamanza yemeje impamvu nyoroshyacyaha, igifungo cya burundu gishobora kugabanywa ariko ntikijye muni y'igihano cy'igifungo cy'imyaka 15". [13] Izi ngingo zisomewe hamwe, zumvikanisha ko icyaha cyo gusambanya umwana, cyakurikiwe no kubana nawe nk'umugabo cyangwa umugore, gihanishwa igifungo cya burundu, ariko haba habonetse

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impamvu nyoroshyacyaha zemejwe n'umucamanza, igihano kikaba cyagabanywa ku buryo kitajya muni y'igifungo cy'imyaka cumi n'itanu. [14] Mu rubanza rwa Bikorimana Jean Paul, Urukiko Rukuru/Urugereko rwa Rwamagana rwamuhanishije igifungo cy'imyaka 15, gihwanye n'igihano gito gishoboka mu buryo bwemewe n'amategeko; ariko Bikorimana Jean Paul na Me Niyonsenga Vincent umwunganira bagasaba Urukiko rw'Ubujurire kutita ku byo ubushinjacyaha buvuga bushimangira icyemezo cy'Urukiko Rukuru, maze ahubwo rugashingira ku ngingo ya 492 n'ya 583 z'Itegeko N°69/2019 ryo ku wa 08/11/2019 rihindura ingingo ya 133 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, rukongera rukamugabanyiriza igihano kuko impamvu umuntu wahawe igihano kigejeje ku gifungo cy'imyaka 15 yemererwa kongera kujurira ari ukugira ngo umucamanza yongere asuzume impamvu nyoroshyacyaha atange igihano kijyanye n'uburemere bw'icyaha. [15] Urukiko rw'Ubujurire rurasanga ibyo ariko nta shingiro bifite, kuko icyo ingingo ya 49 ivuga ari ibyerekeye icyo umucamanza ashingiraho mu gutanga igihano ndetse n'uko abyitwaramo iyo hari impurirane z'impamvu zashingirwaho. Naho ingingo ya 58 yo ikavuga ibijyanye no kwemeza impamvu nyoroshyacyaha no kubisobanura mu cyemezo. Izi ngingo zombi zikaba zikoreshwa umucamanza akena icyo ashingiraho mu gutanga igihano, naho ingingo yavuzwe mu gika cya 12 yo igateganywa aho umucamanza agarukira mu gutanga icyo igihano. Mu yandi magambo, izi ngingo ntizishobora gushingirwaho zonyine ngo zihe umucamanza uburenganzira bwo gutanga igihano kiri muni y'icyateganyijwe n'itegeko, kuko uburenganzira ziha umucamanza bugomba kureberwa gusa mu mbizi z'ibihano biteganywa n'itegeko. III. ICYEMEZO CY'URUKIKO [16] Rwemeje ko ubujurire bwa Bikorimana Jean Paul nta

shingiro bufite; [17] Rwemeje ko urubanza RPA00225/2021/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, ku wa 16/01/2024, rudahindutse mu ngingo zarwo zose; [18] Rutegetse ko Bikorimana Jean Paul asonewe amagarama y'urubanza kuko aburana afunze.

2 Iyi ngingo ivuga ko Umucamanza atanga igihano akurikije uburemere bw'icyaha, ingaruka icyaha cyateye, impamvu zatumye agikora, uko uwagikoze yari asanzwe yitwara, imibereho ye bwite n'uburyo icyaha cyakozwemo. Iyo hari impurirane z'impamvu zashingirwaho, umucamanza agomba kwita ku rutonde rukurikira mu kugena igihano: 1° impamvu nkomezacyaha; 2° impamvu nyoroshyacyaha 3 Iyi ngingo iteganya ko Umucamanza ubwe ari we ugena niba impamvu nyoroshyacyaha zemezwa n'umucamanza zahabwa agaciro. Kwemeza impamvu nyoroshyacyaha bigomba gusobanurwa mu cyemezo cy'urukiko.

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