

RWANDA / JUDGMENT

UBUSHINJACYAHA vs GIHANA NYAMIHANA

RPAA00539/2022/CA

COURT

Court of Appeal

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UBUSHINJACYAHA vs GIHANA NYAMIHANA

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Text

Page 1

UBUSHINJACYAHA vs GIHANA NYAMIHANA [Rwanda URUKIKO RW'UBUJURIRE – RPAA00539/2022/CA (Mukamurenzi, P.J.) 20 Mutarama 2025] Amategeko agenga ibimenyetso – Imanza nshinjabyaha – icyaha cyo gukwirakwiza cyangwa gucuruza ibiyobyabwenge – Mu kwemeza niba ibiyobyabwenge uregwa afatanwe atari ibyo kwikoreshereza ku giti cye (simple drug possession) ahubwo ari ibyo gucuruza cyangwa gukwirakwiza (drugs trafficking / drug distribution), hashingirwa ku bimenyetso bikurikira: gufatanwa iminzani yabugenewe mu gupima, amasashe yifashishwa mu gupfunyikamo ibiyobyabwenge, amafaranga menshi bafatiye aho hantu, ahakoreshwa nk'ububiko, ubwinshi bw'ibiyobyabwenge basanze aho hantu, urujya n'uruza rw'abantu ahafatiwe ibiyobyabwenge, abatangabuhamy bemeza ko uwo muntu asanzwe acuruza ibiyobyabwenge. Amategeko Mpanabyaha – Inyito y'icyaha – Umucamanza aregerwa ibikorwa bigize icyaha ntaregerwa inyito y'icyaha. Incamake y'ikibazo: Uru rubanza rwatangiye Ubushinjacyaha burega Gihana Nyamihana mu Rukiko Rwisumbuye rwa Nyarugenge, na Iyamuremye icyaha cyo kubika, kunywa no gucuruza ibiyobyabwenge byo mu bwoko

bw'urumogi, naho Mbarushimana bumukurikiranyeho Ubufatanyacyahaku cyaha cyo kubika, kunywa no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, busaba ko bibahama buri wese agahanishwa igifungo cya burundu. Gihana Nyamihana yaburanye ahakana icyaha avuga ko Iyamuremye amushinja kuko ariwe wamutanze. Iyamuremye we aburana yemera icyaha agasobanura ko gucuruza urumogi yabitewe n'ibibazo yagize umugore we amaze kwitaba Imana, naho Mbarushimana aburana ahakana icyaha, avuga ko urumogi bafatiye iwe rwari rwahashyizwe na Gihana Nyamihana. Urukiko mu rubanza RP00716/2019/TGI/NYGE rwasanze hari ibimenyetso bigaragaza ko Gihana Nyamihana ahamwa n'icyaha icyaha aregwa, rumuhanisha igifungo cya burundu no gutanga ihazabu y'amafaranga y'u Rwanda ingana na miliyoni makumyabiri (20.000.000Frw). Urukiko rwemeje kandi ko Iyamuremye ahamwa n'icyaha cyo kunywa no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi kuko abiyemerera mu buryo budashidikanywaho, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu ingana na miliyoni makumyabiri (20.000.000Frw). Rwemeza kandi ko Mbarushimana adahamwa n'icyaha yarezwe. Gihana Nyamihana yajuririyeye imikirize y'urwo rubanza mu Rukiko Rukuru avuga ko yahamijwe icyaha kandi nta rumogi yafatanwe, ko Urukiko Rwisumbuye rwashingiye ku nyandikomvugo y'Ubugenzacyaha yuzuyemo ibinyoma, naho Iyamuremye we ajurira asaba kugabanyirizwa ibihano. Uhagarariye Ubushinjacyaha yavuze ko ubujurire bwabo budakwiye guhabwa ishingiro. Urukiko mu rubanza RPA00062/2020/HC/KIG rwemeje ko ubujurire bwa Iyamuremye bufite ishingiro kuri bimwe, rwemeza ko agabanyirijwe igihano kubera ko yaburanye yemera icyaha, rumuhanisha igifungo cy'imyaka icumi (10) n'ihazabu ya miliyoni eshanu (5 000 000Frw), naho ubwa Gihana Nyamihana nta shingiro bufite. Gihana Nyamihana yongeye kujuririra Urukiko rw'Ubujurire avuga ko umucamanza wo mu rukiko Rukuru yongeye kumuhamya icyaha ashingiyeye ku kugenekereza kandi binyuranye n'Amategako, ko ajurirye kubera ko atishimiye imikirize yose y'urubanza n'igihano yahawe. Avuga kandi ko inkiko zafashe ibintu uko bitari, zihindura imiterere y'urubanza zemeza ko yafatanwe urumogi kandi ntarwo yafatanwe. Ubushinjacyaha, buvuga ko ubujurire bwa Gihana Nyamihana nta shingiro bufite kuko atavuguruzwa ibimenyetso byashingiweho n'Urukiko Rukuru rumuhamya icyaha. Ubushinjacyaha bwavuze kandi ko bushingiyeye ku buhamya bwa Iyamuremye Gihana Nyamihana, Urukiko rw'Ubujurire rwamuhamya icyaha cyo kunywa no gufatanwa urumogi, agahanishwa igifungo cy'imyaka ibiri (2 ans).

Page 2

Urukiko mu rubanza RPAA00539/2022/CA rwemeje ko Gihana Nyamihana ahamwa n'icyaha cyo gufatanwa no kunywa ibiyobyabwenge by'urumogi, rumuhanisha igihano cy'igifungo cy'imyaka ibiri (2). Incamake y'icyemezo: 1. Mu kwemeza niba ibiyobyabwenge uregwa afatanwe atari ibyo kwikoreshereza ku giti cye (simple drug possession) ahubwo ari ibyo gucuruza cyangwa gukwirakwiza (drugs trafficking / drug distribution), hashingirwa ku bimenyetso bikurikira: gufatanwa iminzani yabugenewe mu gupima, amasashe yifashishwa mu gupfunyikamo ibiyobyabwenge, amafaranga menshi bafatiye aho hantu, ahakoreshwa nk'ububiko, ubwinshi bw'ibiyobyabwenge basanze aho hantu, urujya n'uruza rw'abantu ahafatiwe ibiyobyabwenge, abatangabuhamya bemeza ko uwo muntu asanzwe acuruza

ibiyobyabwenge. 2.Umucamanza aregerwa ibikorwa bigize icyaha ntaregerwa inyito y'icyaha. Bityo, Guhindura inyito y'icyaha ni uburenganzira n'inshingano umucamanza afite mu gihe cyose asanga ibikorwa uregwa akurikiranyweho bidahuye n'inyito byahawe n'Inkiko zabanje. Amategeko yashingiweho: Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 263, yahinduwe n'ingingo ya 11 y'Itegeko N° 69/2019 ryo ku wa 08/11/2019, Imanza zifashishijwe: Urubanza RS/INJUST/PEN 00004/2017/CS haburana Ubushinjacyaha vs Mukaruyange Athanasie rwaciwe n'Urukiko rw'Ikirenga ku wa 23/02/2018, Urubanza RPAA00408/2020/CA, haburana Ubushinjacyaha na Niyitegeka Augustin alias Niyirema rwaciwe n'Urukiko rw'Ubujurire ku wa 27/06/2022 Urubanza RPAA00116/2021/CA, haburana ubushinjacyaha na Ntihakabose Innocent rwaciwe n'Urukiko rw'Ubujurire ku wa 25/06/2024 Urubanza I. IMITERERE Y'URUBANZA [1] Gihana Nyamihana yaketsweho gucuruza urumogi, afatwa n'abashinzwe kurwanya ibiyobyabwenge, ajya kubereka aho yakoreraga siporo ku witwa Mbarushimana Théoneste bita Malayika, barahasaka bahasanga udupfunyika cumi n'icyenda (19) tw'urumogi ruhisha inyuma y'urugi. Uyu abajijwe uwarushyize asubiza ko ari Gihana Nyamihana kuko yari amaze kumenya ko ashakishwa. Inyandikomvugo y'ibiyabonywe (PV de constat) yakozwe ku wa 06/05/2019, igaragaza ko Gihana Nyamihana yahise yemera ko urwo rumogi ari urwe, ko yari yaguriye Iyamuremye Octave udupfunyika 20, n'uko kamwe yari amaze kugasangira na Malayika. uwo munsu Iyamuremye Octave nawe yarashakishijwe arafatwa, bamusangana urumogi udupfunyika ijana na mirongo icyenda na dutatu (193), yemera ko acuruza urumogi, ko anarusangira na Gihana Nyamihana, kandi ko hari urwo yamuhaye ajya kunywera mu rugo. [2] Iperereza rirangiye, Ubushinjacyaha bwabaregeye Urukiko Rwisumbuye rwa Nyarugenge, Gihana Nyamihana na Iyamuremye Octave bubakurikiranyeho icyaha cyo kubika, kunywa no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, naho Mbarushimana Théoneste alias Malayika bumukurikiranyeho Ubufatanyacyaha ku cyaha cyo kubika, kunywa no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, busaba ko bibahama buri wese agahanishwa igifungo cya burundu, urumogi rwafatirirwe rugatwikwa. [3] Gihana Nyamihana yaburanye ahaka icyaha avuga ko Iyamuremye Octave amushinja kuko ariwe wamutanze. Iyamuremye Octave we aburana yemera icyaha agasobanura ko gucuruza urumogi yabitewe

Page 3

n'ibibazo yagize umugore we amaze kwitaba Imana, naho Mbarushimana Théoneste alias Malaika aburana ahakana icyaha, avuga ko urumogi bafatiye iwe rwari rwahashyizwe na Gihana Nyamihana. [4] Mu rubanza RP00716/2019/TGI/NYGE rwaciwe ku wa 28/06/2019, Urukiko Rwisumbuye rwa Nyarugenge rwasanze hari ibimenyetso bigaragaza ko Gihana Nyamihana yakoze icyaha aregwa ari byo : Kuba ashinjwa na Iyamuremye Octave ko ari we wamugurishije urumogi yafatanwe ; Inyandikomvugo y'ifatira ry'udupfunyika 19 tw'urumogi yari yahishe kwa Mbarushimana Théoneste bita Malayika ; Inyandikomvugo y'umutangabuhamya Nshimiyimana Amani ; Kuba Gihana Nyamihana atarabashije kuvuguruza inyandikomvugo y'ibiyabonywe, igaragaza ko yemeye ko yari yaguze udupfunyika 20 tw'urumogi, kamwe akaba yari yakanyoye. Urukiko rushingiye kuri ibyo bimenyetso, rwemeje ko Gihana Nyamihana ahamwa n'icyaha cyo kunywa no gutunda ibiyobyabwenge byo mu bwoko bw'urumogi, rumuhanisha igifungo cya

burundu no gutanga ihazabu y'amafaranga y'u Rwanda ingana na miliyoni makumyabiri (20.000.000Frw). [5] Urukiko Rwisumbuye rwa Nyarugenge rwanasanze Iyamuremye Octave we asobanura uburyo yanyoye kandi agacuruza urumogi, aho yarukuraga n'abo yarugurishaga, rwemeza ko ahamwa n'icyaha cyo kunywa no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu ingana na miliyoni makumyabiri (20.000.000Frw). Kuri Mbarushimana Théoneste, Urukiko rusanga nta bimenyetso bitangwa n'Ubushinjacyaha bigaragaza ko yakozwe icyaha aregwa, rwemeza ko Mbarushimana Théoneste alias Malayika adahamwa n'ibyaha yarezwe. [6] Gihana Nyamihana yajuririye imikirize y'urubanza mu Rukiko Rukuru avuga ko yahamijwe icyaha kandi nta rumogi yafatanwe, ko Urukiko Rwisumbuye rwashingiye ku nyandikomvugo y'Ubugenjacyaha yuzuyemo ibinyoma, naho Iyamuremye Octave we ajurira asaba kugabanyirizwa ibihano. Uhagarariye Ubushinjacyaha yavuze ko ubujurire bwabo budakwiye guhabwa ishingiro. [7] Mu rubanza RPA00062/2020/HC/KIG rwaciwe ku wa 23/09/2022, Urukiko Rukuru rwemeje ko ubujurire bwa Iyamuremye Octave bufite ishingiro kuri bimwe, naho ubwa Gihana Nyamihana nta shingiro bufite, rwemeza ko igihano Gihana Nyamihana yahanishijwe n'Urukiko Rwisumbuye kigumyeho, runemeza ko Iyamuremye Octave agabanyirijwe igihano kubera ko yaburanye yemera icyaha, rumuhanisha igifungo cy'imyaka icumi (10) n'ihazabu ya miliyoni eshanu (5 000 000Frw). [8] Gihana Nyamihana yajuririye imikirize y'urwo rubanza mu Rukiko rw'Ubujurire, urubanza ruhabwa RPAA00539/2022/CA, ruburanishwa mu ruhame ku itariki ya 05/12/2024, Gihana Nyamihana yunganiwe na Me Ngamije Eric, naho Ubushinjacyaha buhagarariwe na Rudatinya Gaspard, Umushinjacyaha ku rwego rw'Igihugu. Ababuranyi bamenyeshwa ko ruzasomwa ku wa 20/12/2024 ariko uwo munsu hasomwa urubanza rubanziriza urundi rubanza rutegeka ko iburanisha ripfundurwa kugira ngo Urukiko rugire ibyo rubaza ababuranyi ku byerekeye inyito y'ibyaha biregwa Gihana Nyamihana. Urubanza rwaburanishijwe ku wa 08/01/2025, uregwa n'umwunganira bahari naho Ubushinjacyaha buhagarariwe na Rukaka Gallican, Umushinjacyaha ku rwego rw'Igihugu. [9] Mu mwanzuro w'ubujurire, Gihana Nyamihana avuga ko yatangajwe n'uko umucamanza yongeye kumuhamya icyaha ashingiyeye ku kugenekereza kandi binyuranye n'ingingo ya 4 y'Itegeko No 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, ko ajurije kubera ko atishimiye imikirize yose y'urubanza n'igihano yahawe. Mu mwanzuro y'inyongera yavuze ko inkiko zafashe ibintu uko bitari, zihindura imiterere y'urubanza zemeza ko yafatanwe urumogi kandi ntarwo yafatanwe.

Page 4

[10] Me Ngamije Eric umwunganira avuga ko mu guhamya Gihana Nyamihana icyaha, Urukiko rwagenekereje kubirebana n'ibikorwa bigize icyaha akurikiranyweho n'amatariki atandukanye byakoreweho bigatuma rumuhamya icyaha cyo kunywa no gutunda urumogi hashingiye ku bimenyetso bishidikanywaho ndetse bigenekereje kuko ibikorwa yaba yarakoze bidahuye n'inyito y'ibyaha byamuhamye. Anavuga ko n'ubwo uwo yunganira atemera icyaha, asanga yarahanishijwe igihano igifungo cya burundu kiremereye kuko kidahuye uburemere n'icyaha akekwa gukora n'ingaruka cyaba cyarateje, ko asaba Urukiko ruramutse rubibonye ukundi rugasanga hari icyaha yakozwe rwamugabanyiriza

igihano, rushingiye ku rubanza RPAA00151/2023/CA rwaciwe n'uru Rukiko ku wa 26/04/2024 haburaba Ubushinjacyaha na Nyirandikubwimana Médiatrice no ku rubanza RPAA00039/2021/CA rwo ku wa 02/07/2021 haburana Ubushinjacyaha na Shakabatenda Jean de Dieu, maze Gihana Nyamihana agahanishwa igihano gihwanye n'uburemere bw'icyaha yaba yarakoze. [11] Mu mwanzuro w' Ubushinjacyaha, buvuga ko ubujurire bwa Gihana Nyamihana nta shingiro bufite kuko kuba ubwe hari inyandiko y'ibyabonywe yashyizeho umukono, hakaba inyandiko mvugo y'ifatira (yakozwe n'inzego zibifiye ububasha) n'ubwo yanze kuyisinyaho, ubuhamya bwa Iyamuremye Octave, wemera icyaha, amushinja ko urumogi yafatanwe yari arukuye iwe agiye kurunywa nk'uko yari asanzwe abigenza, ndetse n'ubuhamya bwa Mbarushimana Théoneste alias Malayika umushinja kuba ari we wahishe udupfunyika 19 tw'urumogi mu rugo iwe, bitateshwa agaciro no kuba abihakana, ahubwo yagombye kuba atanga ibimenyetso bye bivuguruza ibyo bimenyetso. [12] Ubushinjacyaha bwavuze kandi ko ikigaragara ari uko kuva Gihana Nyamihana yafatwa, mu byo yabanje kwemera nk'uko byasobanuwe mu nyandiko mvugo y'ibyabonywe (Pv de constat), harimo kunywa urumogi, ari nabyo byatumye bamusangana udupfunyika 19 aho kuba 20, bihura n'ibisobanuro byatanze na Iyamuremye Octave wavuze ko yari asanzwe asangira urumogi na Gihana Nyamihana nk'abantu bakoranye muri MTN n'uko urumogi yafatanwe rwari urwo yari agiye kunywa, bigaragaza ko inyito y'icyaha yagombye kumuhama ari iyo kunywa no gufatanwa urumogi, agahanishwa igifungo cy'imyaka ibiri (2 ans). [13] Mu iburanisha ry'urubanza, Uhagarariye ubushinjacyaha yavuze ko atagendera ku myanzuro yatanze mbere, kuko asanga hari ibimenyetso bitandukanye bigaragaza ko Gihana Nyamihana yakozwe icyaha aregwa cyo gutunda urumogi no kurunywa. [14] Urukiko rushingiye kuri izo mpaka, rusanga ikibazo kigomba gusuzumwa muri uru rubanza ari icyo kumenya niba Gihana Nyamihana yarahanishijwe igifungo cya burundu nta bimenyetso bidashidikanywaho bigaragaza ko yakozwe icyaha cyo kunywa urumogi n'icyo gutunda urumogi. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba Gihana Nyamihana yarahanishijwe igifungo cya burundu nta bimenyetso bidashidikanywaho bigaragaza ko yakozwe icyaha cyo kunywa urumogi n'icyo gutunda urumogi. [15] Gihana Nyamihana n'umwunganira bavuga ko banenga urubanza rwaciwe n'Urukiko Rukuru rwongeye kumuhamya icyaha ku buryo bugenekereje kandi binyuranye n'ingingo ya 4 y'Itegeko no 68/2018 riteganyira ibyaha n'ibihano muri rusange, ko ajurira kuko atishimiye imikirize y'urubanza n'igihano cy'igifungo cya burundu yahanishijwe, bakaba basaba ko gisuzumwa kuko atemera ibikorwa bigize icyaha gikomokaho, kuko uburyo inkiko zabifashe atari ko byagenze. Bakomeza basobanura ko we nta rumogi yafatanwe, nta n'urwo anywa, ko n'uwitwa Claude bavuga ko yari arushyiriye, atabajijwe ngo abyemeze, bakaba batanahamya ko mu nzu ya Mbarushimana Théoneste bahasanze urumogi ruvugwa, ahubwo uyu yemeye ko baruhasanze, anemera kurumushinja bitewe n'ibyo yabwiwe kuvuga ubwo yari afungiyeho ahitwa kwa Kabuga bashakira kumushyiraho icyaha kubera ko yanze gushinja Iyamuremye Octave no kuvuga abantu agururishaho urumogi. Banavugaga ko P.V de constat yayisinyishijwe ku mbaraga, kuko mu zindi nyandikomvugo atigeze yemera icyaha.

Page 5

[16] Me Ngamiye Eric yongeraho ko mu nyungu z'ubutabera, n'ubwo uwo yunganira atemera ko yafatanwe urumogi, we asanga kugira ngo ahabwe igihano cy'igifungo cya burundu byaratewe n'inyito y'icyaha yahawe ibikorwa aregwa yo gutunda urumogi no kurunywa, ko rero asaba Urukiko kongera kuyisuzuma kuko urebye udupfunyika 19 tuvugwa ko yafatanwe n'ibimenyetso bigizwe n'imvugo z'abamushinja, bitagaragaza ko urumogi rwafatiriwe rwari rugiyе gukwirakwizwa, kubera ko Iyamuremye abazwa yavuze ko urumogi Gihana Nyamihana yakuye iwe yari agiye kurukoresha, PV de constat nayo ikagaragaza ko mu rumogi yafatanwe yari amaze kunywamo agapfunyika kamwe. Asoza asaba ko hashingirwa ku mironko yatanze n'uru Rukiko nk'uwo mu rubanza rw'Ubushinjacyaha na Butera Gédéon, uyu akaba yari yafatanwe udupfunyika 21 ariko Urukiko rwemeza ko adakwiye guhamwa n'icyaha cyo gutunda ibiyobyabwenge by'urumogi ; ko no kuri Gihana Nyamihana rwakwemeza ko adahamwa n'icyaha cyo gutunda urumogi, ahubwo ahamwa n'icyaha cyo gufatanwa no kunywa urumogi. [17] Uhagarariye Ubushinjacyaha avuga ko igihano cy'igifungo cya burundu Gihana Nyamihana yagihawe mu bushishozi bw'inkiko zombi zibanza, kuko ashinjwa na Mbarushimana Théoneste bita Malayika uvuga ko amaze kumenya ko ashakishwa yagiye iwe ahajugunya urumogi, kandi ko ubwo yari amaze gufatwa ariwe wajyanye abashinzwe umutekano kwa Malayika bararubashyiraye, anabajijwe niba ari urwe arabyemera, anasinya ku nyandiko y'ibiyabonywe yemeza ko arufatanwe, kandi na Iyamuremye Octave amushinja kurucuruza, bigaragaza ko yarutunze agamije kurucuruza kuko yaruvanye kwa Iyamuremye arujyana kwa Malayika. [18] Uhagarariye Ubushinjacyaha akomeza asobanura ko ibimenyetso bushingiraho ari uko Gihana Nyamihana yafatanwe udupfunyika 19 tw'urumogi yari yasize kwa Malayika, nyuma yo kururungura kwa Iyamuremye Octave, kandi ubwo yafatwaga akaba yaravuze ko yari arushyiriyе uwitwa Claude, ko ibyo bishimangira ko nta kosa ryakozwe n'Urukiko Rukuru mu kumuhamya icyaha cyo gutunda ibiyobyabwenge cy'urumogi. [19] Anavuga ko ibikubiye mu mwanzuro w'Ubushinjacyaha by'uko inyito y'icyaha yahinduka agahanirwa icyaha cyo gufatanwa no kunywa urumogi, asanga bitashingirwaho kuko nyuma yo gusoma dosiye y'urubanza, yasanze agomba kugumana imiburanire y'Ubushinjacyaha kuva dosiye itangira kuko hari ibimenyetso bigaragaza ko yakozе ibyaha bumukurikiranyeho birimo kuba Iyamuremye Octave abazwa yaravuze ko Gihana yazaga kurungura urumogi kandi ko urungura aba agiye gucuruza, akaba asanga ahubwo ku ruhande rwe inyito y'icyaha yahinduka iyo gucuruza urumogi, ariko mukumuhana akaba yagabanyirizwa kubera ingano y'urumogi yafatanwe naho ibiri mu mwanzuro byo bikaba bidahura n'ibiri muri dosiye. UKO URUKIKO RUBIBONA [20] Impaka kuri iyi ngingo zishingiye ku kumenya niba Gihana Nyamihana ataragombaga guhanishwa igifungo cya burundu kuko nta bimenyetso bihamya ko yafashwe atunze urumogi agamije kurukwirakwiza, ahubwo bigaragaza ko urwo yafatanwe rwari urwo kunywa. [21] Ibyerekeranye n'ibimenyetso by'ibyaha birebana no gukora no gukuresha ibiyobyabwenge biteganywa n'ingingo ya 263 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange yahinduwe n'ingingo ya 11 y'Itegeko N° 69/2019 ryo ku wa 08/11/2019, byasobanuwe mu rubanza RPAA00408/2020/CA rwaciye ku wa 27/06/2022

haburana Ubushinjacyaha na Niyitegeka Augustin alias Niyirema. Muri urwo rubanza Urukiko rw'Ubujurire rwasobanuye ko mu kwemeza niba ibiyobyabwenge uregwa afatanwe atari ibyo kwikoreshereza ku giti cye (simple drug possession) ahubwo ari ibyo gucuruza cyangwa gukwirakwiza (drugs trafficking / drug distribution), hashingirwa ku bimenyetso bikurikira: gufatanwa iminzani yabugenewe mu gupima, amasashe yifashishwa mu gupfunyikamo ibiyobyabwenge, amafaranga menshi bafatiye aho hantu, ahakoresha nk'ububiko, ubwinshi bw'ibiyobyabwenge basanze aho hantu, urujya n'uruza rw'abantu ahafatiwe ibiyobyabwenge,

Page 6

abatangabuhamya bemeza ko uwo muntu asanzwe acuruza ibiyobyabwenge, (...)1. Uyu murongo wagendewehe mu manza zitandukanye zaciwe n'uru Rukiko, mu ziheruka harimo nk'urubanza RPAA00420/2023/CA rwaciwe ku wa 20/12/2024 haburana Ubushinjacyaha na Zaninka Clémentine. [22] Mu bika bikurikiye harasuzuma niba Urukiko Rukuru rwarakoze ikosa ryo guhanisha Gihana Nyamihana igifungo cya burundu nta bimenyetso bidashidikanywaho bimuhamya icyaha cyo gutunda no kunywa ibiyobyabwenge byo mu bwoko bw'urumogi. [23] Mu rubanza rujuririrwa, Urukiko Rukuru rwasanze ubujurire bwa Gihana Nyamihana nta shingiro bufite, kuko atabashije kugaragaza ibimenyetso bivuguruza ibyashingiweho n'Urukiko Rwisumbuye bimuhamya icyaha birimo kuba mu Bugenzacyaha yaremeye ko yafatanwe urumogi, kuba umukozi w'urwego rushinzwe kurwanya ibiyobyabwenge yaremeje ko basanganye Gihana Nyamihana urumogi no kuba Iyamuremye Octave na Mbarushimana Théoneste alias Malaika bamushinja. Rwemeza ko igihano cy'igifungo cya burundu no gutanga ihazabu ingana na miliyoni makumyabiri (20.000.000Frw) yahanishijwe n'Urukiko Rwisumbuye bigumyehe. [24] Mu bujurire bwe, Gihana Nyamihana anenga imikirize y'urwo rubanza n'igihano yahawe, agaragaza ko atagombaga guhamwa n'icyaha cyo gutunda urumogi kuko nta rumogi yafatanwe, akaba atanarunywa. [25] Dosiye y'urubanza igaragaza ko Gihana Nyamihana abazwa mu Bugenzacyaha no mu Bushinjacyaha yahakanye ibyaha akurikiranyweho, avuga ko urumogi rwafatiwe kwa Mbarushimana Théoneste alias Malayika atari urwe, ko yahajyaga agiye gukora siporo, ko yerekanye Iyamuremye Octave kubera ko Polisi yari imumubajije ariko ko atari azi icyo imushakira, naho kuba uyu amushinja biterwa n'uko yamurakariye avuga ko yamufungishije. [26] Muri dosiye harimo inyandikomvugo yo mu Bugenzacyaha ya Mbarushimana Théoneste alias Malayika aho yavuze ko udupfunyika 19 tw'urumogi abashinzwe umutekano basanze iwe ari Gihana wari watuzanye, kandi ko nawe babimubajije yamera ko ari urwe, ajya no kwerekana uwari watumuhaye. [27] Naho abazwa mu Bushinjacyaha, Mbarushimana Théoneste alias Malayika yavuze ko udupfunyika 19 tw'urumogi rwafatiwe mu nzu ye akeka ko ari utwa Gihana kuko yinjiye mu nzu ye adahari, agarutse bamubwira ko ahavuye, ko n'abashinzwe umutekano bamufatiye aho hafi bumvise avugira kuri telefone ko arushyiriye uwitwa Claude, ababonye ahita aruterera mu nzu ye baruhafatira gutyo, ko icyamubwiye ko yari arushyiriye Claude ari uko yabonye abashinzwe umutekano bamuzana bamukubita bavuga ko yari aje kurujugunya iwe, Gihana ahita yemera ko ari we waruhataye n'uko yari arushyiriye Claude, ajya no kwerekana Iyamuremye Octave wari warumuhaye. [28] Muri dosiye harimo kandi inyandikomvugo ya

Iyamuremye Octave abazwa mu Bugenzacyaha akavuga ko yari amaze umwaka acuruza urumogi, ko uwitwa Gihana Nyamihana yavuye iwe kurangura udupfunyika 30 tw'urumogi, agarukana n'abapolisi bambaye imyenda isanzwe amubwira ko amuzaniye abakiliya barangura urumogi rwinshi, maze arubazaniye bahita bamufata, bamusangana udupfunyika 193. Yanavuze ko Gihana yamuhamagaye baraganira, azana urumogi bararusangira, atashye amuha urwo ajya kunywera mu rugo iwe, ko ari bwo yafashwe. Abazwa mu Bushinjacyaha yavuze ko Gihana Nyamihana atarangura urumogi iwe, ko ahubwo bajyaga bahura bakarusangira, ko yamuhaye udupfunyika 20 two kunywera mu rugo iwe kandi ko yatumuhereye ubuntu kuko yari yamuganyiyeye ko afite ikibazo cy'ubukene. [29] Muri dosiye hanarimo inyandikomvugo y'ibyabonywe (PV de constat) yakozwe n'umukozi w'ishami rishinzwe kurwanya ibiyobyabwenge (ANU), Cpl Nasingizwe J.M. Vianney havugwamo ko Gihana Nyamihana yafashwe afite udupfunyika 19 tw'urumogi yaruhishe ku mugabo witwa Malayika,

1Reba igika cya 18 cy'urwo rubanza.

Page 7

bamubajije aho arukura avuga ko aruzanirwa na Iyamuremye Octave, ko akimara gufatwa yemeye ko ari urwe ko yari yazanye amabure 20, kamwe akaba yakanyoye hamwe na Malayika; ikaba yarashyizweho umukono na Gihana Nyamihana nk'uwafashwe n'umutangabuhamya Nshimiyimana Amani. Inyandikomvugo y'ifatira ry'urumogi udupfunyika 19 yo Gihana Nyamihana akaba atarayishyizeho umukono, kuko yanze gusinya. [30] Urukiko rw'Ubujurire rusesenguye ibyo bimenyetso, rusanga ibyo Gihana Nyamihana avuga ko nta rumogi yafatanwe nta shingiro bifite, kuko, n'ubwo atafatiwe mu nzira arutwaye, Mbarushimana Théoneste bita Malayika asobanura uburyo udupfunyika 19 tw'urumogi abashinzwe umutekano basanze mu nzu ye twahashyizwe na Gihana Nyamihana, akanasobanura ko bamaze kurubona uyu yemeye ko ari urwe, ndetse ajya kwerekana uwarumuhaye ari we Iyamuremye Octave. Uyu nawe abazwa mu Bushinjacyaha akaba yarasobanuye ko yahaye Gihana Nyamihana udupfunyika 20 tw'urumogi two kwinywera mu rugo. Ibi bikaba bihura n'ibiri mu nyandiko y'ibyabonywe (PV de constat) Gihana Nyamihana yashyizeho umukono. Kuba atarashyize umukono ku nyandiko y'ifatira bikaba bitatesha agaciro ibindi bimenyetso bigaragaza ko yafatanwe urumogi. [31] Ku byerekeye icyaha cyo gutunda ibiyobyabwenge by'urumogi, Urukiko rw'Ubujurire rusanga nta kimenyetso kidashidikanywaho cyatanzwe kigaragaza ko urumogi rungana n'udupfunyika 19, Gihana Nyamihana yafatanwe yari agamije kurukwirakwiza cyangwa kurugurisha, kuko mu mvugo za Iyamuremye Octave avuga ko urumogi yamuhaye rwari urwo kunywa, ko banarusangiraga, inyandiko y'ibyabonywe (PV de constat) nayo igaragaza ko mu dupfunyika 20 yari yakuye kwa Iyamuremye Octave yari amaze kunywamo agapfunyika kamwe agasangiye na Malayika, akaba yari asigaranye udupfunyika 19, ndetse hakaba nta kimenyetso gifatika kigaragaza ko yari arushyiriyeye uwitwa Claude nk'uko uhagarariye Ubushinjacyaha abivuga, kuko imvugo za Mbarushimana Théoneste abishingiraho zigaragaramo gucyeka, kandi uwo uvugwa ko yari arushyiriyeye akaba atarabajijwe. Naho ibivugwa n'uhagarariye Ubushinjacyaha ko mu mvugo za Iyamuremye Octave yavuze ko Gihana yamuranguyeho urumogi, kandi ko kurangura byumvikanisha ko ikiba kigamijwe ari ugucuruza, nabyo uru Rukiko rusanga atari ikimenyetso

gifatika kigaragaza ko yaruguze, akarutwara agamije kurucuruza. [32] Urukiko rw'Ubujurire runasanga mu isesengura ry'urubanza rujuririrwa, uretse kuba Urukiko Rukuru rwarafatiye hamwe ibimenyetso rukemeza ko Gihana Nyamihana ahamwa n'icyaha kuko atabashije kuvuguruza ibyashyingiweho n'Urukiko Rwisumbuye, ntirwagaragaje mu buryo busobanutse aho rushingira rwemeza ko ahamwa n'icyaha cyo gutunda urumogi, mu gihe, nk'uko bigaragara mu gika cya 9 kugeza ku cya 10 by'isesengura ry'urubanza rwaciwe n'Urukiko Rwisumbuye, ibimeyetso urwo Rukiko rwagaragaje bihurizaho ku kuba yaraguze udupfunyika 20 kwa Iyamuremye Octave two kunywa n'uko yari amaze kunywaho agapfunyika kamwe, akaba yari asigaranye 19. [33] Mu rubanza RS/INJUST/PEN00004/2017/CS rwaciwe ku wa 23/02/2018 haburana Ubushinjacyaha na Mukaruyange Athanasie, Urukiko rw'Ikirenga rwatanze umurongo uvuga ko guhindura inyito y'icyaha ari uburenganzira n'inshingano umucamanza afite mu gihe cyose asanga ibikorwa uregwa akurikiranyweho bidahuye n'inyito byahawe n'Inkiko zabanje, kuko umucamanza aregerwa ibikorwa bigize icyaha ataregerwa inyito y'icyaha. Mu manza zitandukanye zaciwe n'uru Rukiko uyu murongo ukaba waragendeweho; mu ziheruka hakaba harimo nk'urubanza RPAA00116/2021/CA rwaciwe ku wa 25/06/2024 haburana ubushinjacyaha na Ntihabose Innocent. Hashingiye kuri uwo murongo, ndetse no kuwatanzwe mu rubanza RPAA00408/2020/CA wibukijwe mu gika cya 21 cy'uru rubanza, uru Rukiko rurasanga Gihana Nyamihana ataragombaga guhamwa n'icyaha cyo gutunda urumogi, kuko yafatanwe ingano nto y'urumogi rungana n'udupfunyika 19, kandi hakaba nta kimenyetso kidashidikanywaho kigaragaza ko yari agamije kurugurisha cyangwa kurukwirakwiza, ahubwo ibikorwa yakoze bigize icyaha cyo gufatanwa no kunywa ibiyobyabwenge by'urumogi. [34] Urukiko rw'Ubujurire rurasanga rero ubujurire bwa Gihana Nyamihana bufite ishingiro ku byerekeranye no kuba yarahamijwe icyaha cyo gutunda ibiyobyabwenge by'urumogi bigatuma Urukiko Rukuru rumuhanisha igifungo cya burundu n'ihazabu ya 20.000.000Frw, kandi, nk'uko byasobanuwe mu

Page 8

gika kibanziriza iki, nta bimenyetso bihamya ko yagikoze. Bityo kuba icyo cyaha kitamuhama akaba agomba guhabwa ibihano byateganyirijwe ibyaha bifitiwe ibimenyetso ari byo gufatanwa no kurunywa ibiyobyabwenge by'urumogi kuko ari byo bimuhama. [35] Hashingiye ku bimaze gusobanurwa, no ku biteganywa n'ingingo ya 263, igika cya mbere n'icya kabiri, y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu2, Urukiko rw'Ubujurire rurasanga Gihana Nyamihana agomba guhanishwa igifungo cy'imyaka ibiri (2) kubera guhamwa n'icyaha cyo gufatanwa no kunywa ibiyobyabwenge byo mu bwoko bw'urumogi [36] Urukiko rw'Ubujurire rurasanga kuba Gihana Nyamihana yarafashwe agafungwa ku wa 06/05/2019, agomba kurekurwa uru rubanza rukimara gusomwa kuko yarangije igihano cy'igifungo cy'imyaka ibiri (2) ahanishijwe. III. ICYEMEZO CY'URUKIKO [37] Rwemeje ko ubujurire bwa Gihana Nyamihana bufite ishingiro kuri bimwe; [38] Rwemeje ko urubanza RPA00062/2020/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 23/09/2022 ruhindutse kuri bimwe; [39] Rwemeje ko Gihana Nyamihana ahamwa n'icyaha cyo gufatanwa ibiyobyabwenge byo mu bwoko bw'urumogi n'icyo kubinywa; [40] Rumuhanishije igifungo cy'imyaka ibiri (2); [41] Rutegetse ko ahita arekurwa urubanza rukimara gusomwa kuko yarangije igihano ahawe; [42] Rutegetse

asonerwa amagarama y'urubanza kuko yaburanye afunzwe.

2 Iyo ngingo iteganya ko “umuntu wese ufatanwa, urya, unywa, witera, uhumeka cyangwa wisiga mu buryo ubwo aribwo bwose ibiyobyabwenge cyangwa urusobe rw'imiti ikoreshwa nka byo, aba akoze icyaha. Iyo abihamijwe, ahanishwa igifungo kitari muni y'umwaka umwe (1) ariko kitarenze imyaka ibiri (2) cyangwa imirimo y'inyungu rusange”.

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