

RWANDA / JUDGMENT

UBUSHINJACYAHA vs. IRADUKUNDA

RPAA 00410/2022/CA

COURT

Court of Appeal

DECIDED

20 December 2024

CASE / FILE NUMBER

RPAA 00410/2022/CA

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UBUSHINJACYAHA vs. IRADUKUNDA

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- Date: 2024-12-20
- Case/document no.: RPAA 00410/2022/CA
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Text

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UBUSHINJACYAHA vs. IRADUKUNDA [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00410/2022/CA Kanyange, P.J.,) 20 Ukuboza 2024] Amategeko agenga imanza nshinjabyaha – Gusamabanya umwana w'imyaka irindwi(7) y'amavuko – Kugabanyirizwa igihano – Mu rwego rw'ibirego nshinjabyaha, iyo abaregwa nta kindi banenga urubanza rwajuririwe, uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo. Incamake y'ikibazo: Iradukunda Jean d'Amour w'imyaka imyaka cumi n'icyenda (19), y'amavuko, yaketsweho gusambanya umwana w'imyaka irindwi (7) wiswe I.S.S muri uru rubanza. Iperereza rirangiye, Ubushinjacyaha bwamureze icyaha cyo gusambanya umwana mu Rukiko Rwisumbuye rwa Nyagatare bushingiye ku bimenyetso bigizwe n'imvugo z'uwo mwana, ku mvugo z'abatangabuhamya no kuri raporo ya muganga, bumusabira guhanishwa igifungo cya burundu. Iradukunda Jean d'Amour yaburanye yemera ko yasambanyije uwo mwana amushukishije igiceri cy'ijana (100 Frw). Urukiko rwaciye urubanza rusanga hari ibimenyetso byemeza ko Iradukunda Jean d'Amour yasambanyije I.S.S, maze rumuhanisha igifungo cya burundu. Iradukunda Jean d'Amour ntiyishimiye imikirize y'urubanza bituma ajurira mu Rukiko Rukuru, Urugereko rwa

Rwamagana asaba kugabanyirizwa igihano ngo kuko yemera ko yakoze mu gitsina cy'umwana aregwa gusambanya kandi akaba ari ubwa mbere akoze icyaha, maze agasubizwa muri sosiyete. Ubushinjacyaha nabwo buvuga ko ibyo asaba yabyemererwa, igihano yahanishijwe kikagabanywa kikagezwa ku gifungo cy'imyaka makumyabiri n'itanu (25). Urukiko Rukuru, Urugereko rwa Rwamagana rwasanze kuba akomeje kwemera icyaha no gusaba imbabazi, kuba ari ubwa mbere akurikiranwe mu butabera no kuba nta ngaruka zikomeye cyane icyaha cyateje, byamubera impamvu nyoroshyacyaha icyo gihano kikagabanywa, bityo ko imikirize y'urubanza rwajuririwe ihindutse ku birebana n'igihano gusa, maze rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25). Iradukunda Jean d'Amour ntiyishimiye imikirize y'urubanza, maze ajurira bwa kabiri mu Rukiko rw'Ubujurire asaba kongera kugabanyirizwa igihano hashingiwe ku mpamvu nyoroshyacyaha zigizwe no kuba ari ubwa mbere akurikiranweho icyaha, kuba yaremeye icyaha kandi akaba yaragikoze akiri muto kuko yari afite imyaka cumi n'icyenda (19), kuba nta ngaruka zikomeye cyateje Uhagarariye Ubushinjacyaha avuga ko nubwo Urukiko rwajuririwe rushobora kongera kugabanyiriza uregwa igihano yahawe, icyo Iradukunda Jean d'Amour yahanishijwe kitakongera kugabanywa harebwe uburemere bw'icyaha yakoze bugaragarira mu kuba yarasambanyije umwana muto cyane w'imyaka irindwi (7) akarangabusugi ke karangirika, bivuze ko icyaha cyamugizeho ingaruka zikomeye, bityo ko hagumaha igifungo cy'imyaka makumyabiri n'itanu

(25) yahanishijwe.

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Incamake y'icyemezo: Mu rwego rw'ibirego nshinjabyaha, iyo abaregwa nta kindi banenga urubanza rwajuririwe, uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo. Ubujurire bufite ishingiye. Amategeko yashingiweho: Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 49. Imanza zifashishijwe: Urubanza RPA 00060/2021/CA rw'Ubushinjacyaha na Nsabimana Callixte alias Sankara na bagenzi be, rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022 Urubanza RPAA 00447/2021/CA rw'Ubushinjacyaha na Niyonkuru Jean Bosco, rwaciwe n'urukiko rw'ubujurire, ku wa 28/02/2024 Urubanza I.IMITERERE Y'URUBANZA [1] Iradukunda Jean d'Amour yaketsweho gusambanya umwana w'imyaka irindwi (7) wiswe I.S.S1 muri uru rubanza, Ubushinjacyaha bumurega buvuga ko yamusambanyije ku wa 23/06/2019 amushukishije amafaranga ijana (100), atangira gukurikiranwa n'inzego z'iperereza. [2] Iperereza rirangiye, Ubushinjacyaha bwamureze icyaha cyo gusambanya umwana mu Rukiko Rwisumbuye rwa Nyagatare bushingiye ku bimenyetso bigizwe n'invugo z'uwo mwana, ku mvugo z'abatangabuhamya no kuri raporo ya muganga, bumusabira guhanishwa igifungo cya burundu. [3] Iradukunda Jean d'Amour yaburanye yemera ko yasambanyije uwo mwana amushukishije igiceri cy'ijana (100 Frw). [4] Urukiko rwaciye urubanza RP 00911/2019/TGI/NYG ku wa 23/07/2019, rusanga hari ibimenyetso byemeza ko Iradukunda Jean d'Amour yasambanyije I.S.S bigizwe n'invugo z'abatangabuhamya, raporo ya muganga no kuba nawe yemera ko yamusambanyije, rumuhanisha igifungo cya burundu. [5] Iradukunda Jean d'Amour yajuriye mu Rukiko Rukuru, Urugereko rwa Rwamagana

asaba kugabanyirizwa igihano ngo kuko yemera ko yakoze mu gitsina cy'umwana aregwa gusambanya kandi akaba ari ubwa mbere akoze icyaha, agasubizwa muri sosiyete, Ubushinjacyaha nabwo

1 Izina ryahinwe kuko ari umwana

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buvuga ko ibyo asaba yabyemererwa, igihano yahanishijwe kikagabanywa kikagezwa ku gifungo cy'imyaka makumyabiri n'itanu (25). [6] Urukiko rwaciye urubanza RPA 00753/2019/HC/RWG ku wa 29/06/2022, rusanga n'ubwo ku rwego rwa mbere Iradukunda Jean d'Amour yaburanye yemera icyaha ariko ntagaragaze igikorwa nyakuri yakoze kigize icyo cyaha, n'icyo yemera cyo kuba yarashyize intoki mu gitsina cy'umwana kigize icyaha cyo gusambanya umwana, ko ariko Urukiko rwa mbere rutahaye agaciro impamvu nyoroshyacyaha bituma rumuhanisha igifungo ya burundu. [7] Urukiko rwasanze kuba akomeje kwemera icyaha no gusaba imbabazi, kuba ari ubwa mbere akurikiranwe mu butabera no kuba nta ngaruka zikomeye cyane icyaha cyateje, byamubera impamvu nyoroshyacyaha icyo gihano kikagabanywa, ko ariko kitasubikwa kuko n'ubwo nta mpamvu ashingiraho abisaba, igihano ahawe kitashobora gusubikwa, maze rwemeza ko ubujurire bwe bufite ishingiro kuri bimwe, ko imikirize y'urubanza rwajuririwe ihindutse ku birebana n'igihano gusa, rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25). [8] Iradukunda Jean d'Amour ntiyishimiye imikirize y'urrwo rubanza ajurira bwa kabiri mu Rukiko rw'Ubujurire, urubanza rwandikwa kuri RPAA 00410/2022/CA, ruhabwa itariki yo kuburanishwa yo ku wa 10/12/2024, uwo munsu ruburanishwa yunganiwe na Me Rwabigwi Augustin, Ubushinjacyaha buhagarariwe na Bunyoye Grâce, Umushinjacyaha ku rwego rw'Igihugu. [9] Mu myanzuro y'ubujurire no mu miburanire, Iradukunda Jean d'Amour n'umwunganira basaba ko igihano yahawe cyakongera kugabanywa hashingiwe ku mpamvu nyoroshyacyaha zirimo kuba ari ubwa mbere akurikiranweho icyaha, kuba yaremeye icyaha, kandi akaba yaragikoze akiri muto, kuba nta ngaruka zikomeye cyateje no kuba yari asanzwe yitwara neza [10] Uhagarariye Ubushinjacyaha avuga ko nubwo Urukiko rwajuririwe rushobora kongera kuganyiriza uregwa igihano yahawe, bikakorwa kuri Iradukunda Jean d'Amour harebwe uburemere bw'icyaha yakoze. [11] Ikibazo kigomba gusuzumwa muri uru rubanza ni ukumenya niba igihano Iradukunda Jean d'Amour yahanishijwe cyakongera kugabanywa. II. ISESENGURA RY'IKIBAZO KIRI MU RUBANZA Kumenya niba igihano Iradukunda Jean d'Amour yahanishijwe cyakongera kugabanywa [12] Iradukunda Jean d'Amour n'umwunganira bavuga ko ubujurire bwe bugamije gusaba kongera kugabanyirizwa igihano hashingiwe ku mpamvu nyoroshyacyaha zigizwe no kuba ari ubwa mbere akurikiranweho icyaha, kuba yaremeye icyaha kandi akaba yaragikoze akiri muto kuko yari afite imyaka cumi n'icyenda (19), kuba nta ngaruka zikomeye cyateje no kuba yari asanzwe yitwara neza ahubwo hakaba hatarabayeho gushishoza neza. [13] Uhagarariye Ubushinjacyaha avuga ko nubwo Urukiko rwajuririwe rushobora kongera kugabanyiriza uregwa igihano yahawe, icyo Iradukunda Jean d'Amour yahanishijwe kitakongera kugabanywa harebwe uburemere bw'icyaha yakoze bugaragarira mu kuba yarasambanyije umwana muto cyane w'imyaka irindwi (7) akarangabusugi ke karangirika, bivuze ko icyaha

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cyamugizeho ingaruka zikomeye, ko rero hagumaha igifungo cy'imyaka makumyabiri n'itanu

- (25) yahanishijwe. UKO URUKIKO RUBIBONA [14] Impaka muri uru rubanza zishingiye ku kumenya niba Iradukunda Jean d'Amour yakongera kugabanyirizwa igifungo cy'imyaka makumyabiri n'itanu (25) yahanishijwe. [15] Ikibazo cyo kugabanyirizwa igihano mu gihe ariyo mpamvu y'ubujurire, cyatanzweho umurongo mu rubanza RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022 haburana Ubushinjacyaha na Nsabimana Callixte alias Sankara na bagenzi be. Muri urwo rubanza Urukiko rw'Ubujurire rwasobanuye ko mu rwego rw'ibirego nshinjabyaha iyo abaregwa nta kindi banenga urubanza rwajuririwe, uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo hakurikijwe ibiteganywa n'ingingo ya 49 y'Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganywa ibyaha n'ibihano muri rusange, ariko ko mu bujurire, Umucamanza agomba kuzirikana ko yemerewe gusa guhindura igihano cyatanzwe n'Umucamanza wo mu Rukiko rubanza, ari uko amaze kugaragaza ko urwo Rukiko rwaba rwarakoresheje nabi itegeko cyangwa ubushishozi bwawo mu gutanga icyo gihano. Uyu murongo ukaba warakurikijwe no mu manza zaciwe vuba, nk'urubanza RPAA 00518/2023/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 27/09/2024 haburana Ubushinjacyaha na Nizeyimana Martin. [16] Ku birebana na Iradukunda Jean d'Amour, Urukiko Rukuru, Urugereko rwa Rwamagana rwamugabanyirije igihano rubishingiye ku kuba yarakomeje kwemera icyaha no gusaba imbabazi, kuba ari ubwa mbere akurikiranwe mu butabera no kuba nta ngaruka zikomeye cyane icyaha cyateje, ahanishwa igifungo cy'imyaka 25. [17] Urukiko rw'Ubujurire rurasanga n'ubwo igihano cyagabanyijwe hashingiye ku mpamvu nyoroshyacyaha zimaze kuvugwa, Urukiko rutaritaye no ku kuba Iradukunda yarakoze icyaha aribwo akiva mu bwana kuko yari afite imyaka 19, bivuze ko yari agifite imitekerereze y'abo mu kigero cy'abana kirangwa no kudashishoza neza, bityo iyi mpamvu nayo ikaba ikwiye gushingirwaho igihano yahawe kikongera kugabanywa. [18] Mu kugabanya icyo gihano, Urukiko rurashingira ku zindi manza zaciwe ku bantu barezwe icyaha nk'icyo Iradukunda Jean d'Amour akurikiranyweho, harimo urubanza RPAA 00447/2021/CA rwaciwe ku wa 28/02/2024 haburana Ubushinjacyaha na Niyonkuru Jean Bosco nawe wakoze icyaha afite imyaka cumi n'icyenda (19) nk'iyi Iradukunda yari afite, agasambanya umwana uri mu kigero kimwe n'icy'uwo Iradukunda yasambanyije kuko yari afite imyaka itanu (5), Urukiko rukaba rwaramugabanyirije igihano rushingiye ku kuba ari ubwa mbere akurikiranweho icyaha mu buryo buzwi no kuba aribwo yari akiva mu bwana rumuhanisha igifungo cy'imyaka cumi n'itandatu (16), ariko kuba ku birebana na Iradukunda Jean d'Amour hiyongeraho ko yemeye icyaha akanagisabira imbabazi mu buryo budashidikanywaho, atahanwa kimwe na Niyonkuru Jean d'Amour ahubwo akwiye guhanishwa igifungo cy'imyaka cumi n'itanu (15), bivuze ko urubanza rwajuririwe ruhindutse ku byerekeye igihano yari yahanishijwe. III. ICYEMEZO
- CY'URUKIKO

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[19] Rwemeje ko ubujurire bwa Iradukunda Jean d'Amour bugamije kugabanyirizwa igihano bufite ishingiro; [20] Rwemeje ko imikirize y'urubanza RPA 00753/2019/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 29/06/2022, ihindutse ku bijyanye n'igihano Iradukunda Jean d'Amour yari yahanishijwe; [21] Ruhanishije Iradukunda Jean d'Amour igifungo cy'imyaka cumi n'itanu (15) mu mwanya w'igifungo cy'imyaka makumyabiri n'itanu (25) yari yahanishijwe; [22] Rutegetse ko amagarama y'urubanza aherereye ku isanduku ya Leta kuko Iradukunda Jean d'Amour yajuriye afunze, akaba asonewe kuyatanga.

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Prepared on 10 October 2026 · Esheria