

RWANDA / JUDGMENT

UBUSHINJACYAHA vs NSENGIYUMVA

RPAA 00389/2023/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA vs NSENGIYUMVA

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Text

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UBUSHINJACYAHA vs NSENGIYUMVA [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00389/2023/CA (Kanyange, P.J.) 29 Gicurasi 2025] Amategeko yerekeye imiburanishirize y'imanza mpanabyaha – ibimenyetso – isesengura ry'ibimenyetso – kugira ngo Umucamanza afate icyemezo gihamya icyaha, agomba kuba afite ibimenyetso bihamya nta gushidikanya (preuves à conviction au-delà de tout doute raisonnable) ko ushinjwa ariwe wakoze icyaha, ko Umucamanza agomba gusesengurana ubushishozi uruhurirane rw'ibimenyetso, agahamya ushinjwa icyaha mu gihe gusa asanga nta wundi mwanzuro wagerwaho n'isesengura yakoze uretse iryo gusanisha uwakoze icyaha n'icyaha cyakozwe. Incamake y'ikibazo: Uru rubanza rwatangiye ubushinjacyaha burega Nsengiyumva mu Rukiko Rwisumbuye rwa Nyagatare bumukurikiranyeho icyaha cyo gusambanya umwana witwa U.D ufite imyaka 13, busaba Urukiko kumuhamya icyaha, bumusabira igifungo cya burundu. Nsengiyumva yaburanye ahakana icyaha, avuga ko abamushinja bamubeshyeye kuko bakekaga ko abiba, avuga kandi ko nta na raporo ya muganga iri muri dosiye igaragaza ko yakoze icyo cyaha. Urukiko mu rubanza RP0073/2019/TGI/NYG, rushingiye ku bimenyetso bigizwe n'imvugo z'abatangabuhamya na raporo y'ubuyobozi, rwemeza ko uregwa, ahamwa n'icyaha cyo gusambanya umwa, rumuhanisha igifungo cy'imyaka

makumyabiri nitanu (25) kuko ari ubwa mbere akurikiranywe mu nkiko mu buryo buzwi. Rwasanze kandi nubwo raporo ya muganga ivuga ko hari hashize igihe akarangabusugi k'uwo mwana kangiritse (fissures anciennes) ikanavuga ko nta bimenyetso bya vuba byagaragaye by'uho yasambanyijwe, nta mpamvu yagaragaje yatumye abyita ko ari ibya cyera, mu gihe hari ibindi bimenyetso bimushinja icyaha aregwa kandi ko agikoze vuba. Nsengiyumva yajuriye mu Rukiko Rukuru, Urugereko rwa Rwamagana avuga ko yahamijwe icyaha atakoze, kandi ko yasabye ko hagaragazwa raporo ya muganga ariko ntigaragazwe. Ubushinjacyaha bwashubije ko izo mpamvu z'ubujurire nta shingiro zifite, kuko Nsengiyumva yahamijwe icyaha hashingiwe ku mvugo z'abatangabuhamya, buvuga ko kuba raporo ya muganga igaragaza ko nta bimenyetso bya vuba by'uho uwo mwana yasambanyijwe bikaba bidakuraho ko bamumukuye hejuru arimo kumusambanya. Urukiko mu urubanza RPA00781/2020/HC/RWG, rushingiye ku mvugo z'abatangabuhamya, rwemeje ko ubujurire bwa Nsengiyumva nta shingiro bufite ariko ko igihano yahawe mu rubanza rujuririrwa cyakongera kugabanywa kuko yakoze icyaha aribwo akiva mu bwana kuko yari afite imyaka cumi n'umunani (18). Rwavuze kandi ko nubwo raporo ya muganga ivuga ko U.D atari afite ibimenyetso bya vuba byo gusambanywa, bitavuze byanze bikunze ko atasambanyijwe, kuko hari ibindi bimenyetso bigaragaza ko Nsengiyumva yakoze icyaha yahamijwe n'Urukiko mu rubanza rujuririrwa. Nsengiyumva yatanze ubujurire bwa kabiri mu Rukiko rw'Ubujurire, avuga ko yahamijwe icyaha cyo gusambanya umwana hatagaragajwe ibimenyetso simusiga bikimushinja. Ubushinjacyaha buvuga ko ibyo Nsengiyumva ashingiraho ubujurire bwe nta shingiro bifite, ko ahubwo bigaragara ko yazanye mu bujurire bwa kabiri ibyo yaburanishije mu manza za mbere kandi byarafashweho icyemezo, akaba atabivuguruza. Urukiko mu rubanza RPAA00389/2023/CA, rwasanze mbere yo gufata icyemezo kuri ubwo bujurire, Ubushinjacyaha bwakora iperereza ry'inyongera ku bantu babajijwe igihe cy'iperereza. Mu rubanza mu mizi, Urukiko rwemeje ko Nsengiyumva adahamwa n'icyaha cyo gusambanya U.D kuko ibimenyetso byashingiweho mu rubanza rujuririrwa birimo gushidikanya. Incamake y'icyemezo: kugira ngo Umucamanza afate icyemezo gihamya icyaha, agomba kuba afite ibimenyetso bihamya nta gushidikanya (preuves à conviction au-delà de tout doute raisonnable) ko

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ushinjwa ariwe wakoze icyaha, ko Umucamanza agomba gusesengurana ubushishozi uruhurirane rw'ibimenyetso, agahamya ushinjwa icyaha mu gihe gusa asanga nta wundi mwanzuro wagerwaho n'isesengura yakoze uretse iryo gusanisha uwakoze icyaha n'icyaha cyakozwe. Ubujurire bufite ishingiro. Amategeko yashingiweho: Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kugeza ubu, Ingingo ya 111 Imanza zifashishijwe: Urubanza RPAA00737/2021/CA haburana Ubushinjacyaha na Uwayisaba Habimana Antoine rwaciwe n'Urukiko rw'Ubujurire ku wa 16/12/2022, igika cya 16-17. Urubanza RPAA00249/2023/CA, haburana Ubushinjacyaha na Bazimaziki Gratien rwaciwe n'Urukiko rw'Ubujurire ku wa 20/12/2024, igika cya 15. Urubanza. I. IMITERERE Y'URUBANZA [1] Nsengiyumva Sam yaketsweho gusambanya umwana w'imyaka cumi n'itatu (13) wiswe U.D mu manza zabanje, wavuze ko ku wa 05/12/20181 yagiye kugura umunyu ku isoko rya Bugaragara

ahura n'umusore amugurira irindazi, amubwira ko agiye kumwereka aho agura umunyu aribwo yamukuruye amujyana mu bishyimbo amukuramo imyenda aramusambanya, bimenyekanye atangira gukorwaho iperereza kuri icyo cyaha. [2] Nyuma y'iperereza, Ubushinjacyaha bwamureze mu Rukiko Rwisumbuye rwa Nyagatare bumukurikiranyeho icyaha cyo gusambanya umwana, bushingiye ku mvugo z'uwo mwana, kuri raporo ya muganga no ku mvugo z'abatangabuhamya, bumusabira igifungo cya burundu. [3] Nsengiyumva Sam yaburanye ahakana icyaha, avuga ko abamushinja bamubeshyeye bitewe n'uko bakekaga ko abiba, ko nta na raporo ya muganga iri muri dosiye igaragaza ko yakozwe icyo cyaha. [4] Urukiko rwaciye urubanza RP0073/2019/TGI/NYG ku wa 06/11/2020, rusanga nubwo Nsengiyumva Sam avuga ko abamushinja bamubeshyeye bitewe n'uko bakekaga ko abiba ubundi ngo kuko bamubonye yasinze bagakeka ko yasambanyije uwo mwana, hari ibimenyetso bidashidikwanywaho bigaragaza ko yakozwe icyaha akurikiranweho bigizwe n'imvugo y'umwana wasambanijwe wasobanuye ko yamubwiye ko agiye kumwereka aho agurira umunyu akanamugurira irindazi, ariko bikarangira amukuririyemo mu bishyimbo aho yamusambanyirije, hakaba na raporo y'ubuyobozi hamwe n'ubuhamya bw'abasanze uwo mwana ataka ndetse n'ubuhamya bw'uwo yahingukiyeho yambaye ubusa. [5] Rwasanze kandi nubwo raporo ya muganga ivuga ko hari hashize igihe akarangabusugi k'uwo mwana kangiritse (fissures anciennes) ikanavuga ko nta bimenyetso bya vuba byagaragaye by'uko yasambanyijwe, nta mpamvu yagaragaye yatumye abyita ko ari ibya cyera, mu gihe hari ibindi bimenyetso birimo ubuhamya byemeza ko aribwo umwana yari agisambanywa, rusanga kandi uwo mwana atarasambanyije ku wa 07/12/2028 nk'uko bivugwa mu nyandiko itanga ikirego ahubwo ko yasambanyijwe ku wa 05/12/2028 agasuzumwa ku wa 06/12/2028. Naho ku birebana n'igihano, rwasanze kuba ari ubwa mbere Nsengiyumva Sam aguye mu cyaha kandi akaba asanzwe yitwara neza akanemera

1 Inyandikomvugo imenyeshya n'inyandiko itanga ikirego zivugako icyaha cyakozwe ku wa 07/12/2018

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ko yahuye na U.D, byamubera impamvu nyoroshyacyaha ntahanishwe igifungo cya burundu yasabiwe, maze rwemeza ko ahamwe n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cy'imyaka makumyabiri nitanu (25). [6] Nsengiyumva Sam yajuriye mu Rukiko Rukuru, Urugereko rwa Rwamagana avuga ko yahamijwe icyaha atakoze, ko umwana ashinjwa gusambanya yamunyuzeho amubwira ko ari gushaka akazi akakamurangira, nyuma bamufata bavugako yamusambanyije, ko kandi yasabye ko hagaragazwa raporo ya muganga ariko ntigaragazwe. [7] Ubushinjacyaha bwashubije ko izo mpamvu z'ubujurire nta shingiro zifite, kuko Nsengiyumva Sam yahamijwe icyaha hashingiye ku mvugo z'umwana yasambanyije no kuba hari abatangabuhamya bamumusanzeho, naho kuba raporo ya muganga igaragaza ko nta bimenyetso bya vuba by'uko uwo mwana yasambanyijwe bikaba bidakuraho ko bamumukuye hejuru arimo kumusambanya. [8] Urukiko rwaciye urubanza RPA00781/2020/HC/RWG ku wa 12/09/2023, rusanga n'ubwo Nsengiyumva Sam ahakana ko atasambanyije U.D, yemera ko bahuye akamurangira aho ajya gukora akazi ko mu rugo, bigahuzwa no kuba uwo mwana amushinja ko yamusambanyirije mu bishyimbo, bikuzuzanya no kuba Shumbusho Samuel yemeza ko ariwe

wamumukuye hejuru arimo kumusambanya, naho Mukanzamurambaho Charlotte akemeza ko uwo mwana yamugezeho yambaye ubusa amubwira ko asambanyijwe na Nsengiyumva Sam, ibyo bimenyetso bikaba bihagije kandi bigaragaza nta shiti ko Nsengiyumva Sam yasambanyije U.D. Rwasanze kandi nubwo raporo ya muganga ivuga ko U.D atari afite ibimenyetso bya vuba byo gusambanywa, bitavuze byanze bikunze ko atasambanyijwe, kuko hari ibindi bimenyetso bigaragaza ko Nsengiyumva Sam yakoze icyaha yahamijwe n'Urukiko rwa mbere. [9] Naho ku birebana n'igihano, rwasanze nubwo yagabanyirijwe igihano agahanishwa igifungo cy'imyaka 25, hari indi mpamvu yashoboraga kwitabwaho kikagabanywa kurushaho, ishingiyeye ku kuba yarakoze icyaha akiva mu bwana kuko yari afite imyaka cumi n'umunani (18) y'amavuko, bityo igihano yahawe kikaba cyagabanywa nk'uko Urukiko rw'Ubujurire rwabikoze kuri Uwizeyimana Jean Claude² wari ufite imyaka 20 agasambanya umwana w'imyaka cumi n'umwe (11), maze rwemeza ko imikirize y'urubanza rwajuririrwe ihindutse ku birebana n'igihano Nsengiyumva Samu yari yahanishijwe, rumuhanisha igifungo cy'imyaka cumi n'itanu (15). [10] Nsengiyumva Sam yatanze ubujurire bwa kabiri mu Rukiko rw'Ubujurire, urubanza rwandikwa kuri RPAA00389/2023/CA, ruhabwa itariki yo kuburanishwa yo ku wa 04/03/2025, uwo muni ruburanishwa yunganiwe na Me Ingenzi Jean Felix, Ubushinjacyaha buhagarariwe na Mukunzi Faustin, Umushinjacyaha ku rwego rw'Igihugu. Urukiko rwasanze ariko mbere yo gufata icyemezo kuri ubwo bujurire, Ubushinjacyaha bwakora iperereza ry'inyongera ku bantu babajijwe igihe cy'iperereza, kuko inyandikomvugo ziri muri dosiye zidatuma Urukiko rumenya neza imikorere y'icyaha Nsengiyumva akurikiranweho, bituma urubanza rwongera kuburanishwa ku wa 24.04.2025 yunganiwe nka mbere naho Ubushinjacyaha buhagarariwe na Sibomana Stanislas, Umushinjacyaha ku rwego rw'Ibiguhu. [11] Mu myanzuro y'ubujurire no mu miburanire, Nsengiyumva Sam n'umwunganira bavuga ko yahamijwe icyaha cyo gusambanya umwana hatagaragajwe ibimenyetso simusiga bikimushinja. [12] Uhagarariye Ubushinjacyaha avuga ko ibyo Nsengiyumva ashingiraho ubujurire bwe nta shingiro bifite, ko ahubwo bigaragara ko yazanye mu bujurire bwa kabiri ibyo yaburanishije mu manza za mbere kandi byarafashweho icyemezo, akaba atabivuguruza. [13] Muri uru rubanza harasuzumwa niba Urukiko rwarahamije icyaha Nsengiyumva hatagaragajwe ibimenyetso simusiga bikimushinja.

2 Mu rubanza RPAA 00564/2021/CA rwaciwe ku wa 24/02/2023

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II. ISESENGURA RY'IKIBAZO KIRI MU RUBANZA Kumenya niba Urukiko rwarahamije icyaha Nsengiyumva hatagaragajwe ibimenyetso simusiga bikimushinja [14] Nsengiyumva Sam n'umwunganira bavuga ko yahamijwe icyaha cyo gusambanya umwana kandi nta bimenyetso simusiga bikimuhamya Urukiko rugaragaje, kuko umwana ashinjwa gusambanya batari baziranye ahubwo bahujwe gusa no kuba yaramubajije akazi akamujyana ku mugore wari umaze iminsi ashaka umukozi, akaba rero atari gusambanya umuntu bataganiriye cyangwa ngo bajyane iwabo. [15] Bavuga kandi ko Urukiko rwirengagije raporo ya muganga yagaragaje ko akarangabusugi k'umwana ari kazima nta n'ikibazo afite ku gitsina, akaba yibaza impamvu akomeje gufungirwa icyaha kitabayeho, cyane cyane ko mu gika cya 22 cy'urubanza rujuririrwa, Urukiko Rukuru narwo rwavuze ko iyo raporo yagaragaje ko umwana atari afite ibimenyetso bya

vuba byo gusambanywa, nyamara uwo mwana abazwa akaba yaravuze ko Nsengyumva yamusambanyije mu gihe raporo ivuga ko atasambanyijwe, bikaba rero bigaragza ko yageretsweho icyaha atakoze, akaba rero agomba kugirwa umwere nk'uko byanemejwe n'Urukiko rw'Ikirenga mu rubanza RPAA0057/15/CS rwaciwe ku wa 11/05/2018 haburana ubushinjacyaha na Ndikubwayo Emmanuel, aho Urukiko rwavuze ko Ubushinjacyaha butashoboye kugaragaza ibimenyetso simusiga bihuje n'imikorere y'icyaha ku buryo budashidikanywa igaragaza ko nta kimenyetso. [16] Bavuga na none ko yahamijwe icyaha hashingiwe ku mvugo z'abatangabuhamya zivuguruzanya, kuko Karangani yavuze ko umwana we yasambanyirijwe mu masaka mu gihe uwo mwana hamwe na nyina bavuze ko yasambanyirijwe mu bishyimbo, bivuze ko ibyo bavuze atari ukuri. [17] Uhagarariye Ubushinjacyaha avuga ko izo mpamvu nta shingiro zifite, ko ahubwo bigaragara ko ibyo Nsengyumva Sam agaruye mu bujurire bwa kabiri ari nabyo yaburanishije mu manza za mbere kandi bikaba byarafashweho icyemezo, akaba atabivuguruza nk'uko biteganywa n'ingingo ya 107 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ivuga ko iyo icyaha cyabonewe ibimenyetso bikigaragaza, ugikurikiranweho cyanwaga umwunganira ashobora kwerekana impamvu zose yireguza zerekana ko ikirego kitakwemerwa, zihamya ko icyo aregwa atari icyaha cyangwa se ko ari umwere n'izindi mpamvu zose zivuguruza izimuhamya icyo cyaha. [18] Ku birebana na raporo ya muganga, avuga ko kuba muganga yaravuze ko nta bimenyetso bigaragaza ko umwana yasambanyijwe bidakuraho ko yasambanyijwe kuko iyo raporo ari ikimenyetso nk'ibindi, ko kandi atari ngombwa ko buri gie gusambanya umwana bisiga ibimenyetso bigaragara, kuko gusambanya umwana bitavuze buri gihe gushyira igitsina mu cy'umwana kuko Itegeko rivuga n'ikindi gikorwa cyose gikorewe ku mubiri we hagamijwe ishimishyamubiri. Byongeye kandi, hari ibindi bimenyetso byemeza ko yamusambanyije birimo umuhamwa bw'uhamumuvanye hejuru arimo amusambanya, n'ubuhamya bw'uwabonye uwo mwana yambaye ubusa avuga ko Nsengyumva amaze kumusambanya. [19] Avuga kandi ko nta kwivuguruza kuri mu buhamya bwashingiweho, kuko kuba hari uwavuze ko umwana yasambanyirijwe mu bishyimbo undi akavuga mu masaka, ari utuntu duto tutatesha agaciro ubwo buhamya, cyane cyane ko ibishyimbo bishobora guhinganwa n'amasaka, ko ahubwo bigaragara ko Nsengyumva atabasha kuvuguruza ubuhamya bw'uhamukuye hejuru y'uwo mwana n'uhamubonye yambaye ubusa avuga ko amaze gusambanywa na Nsengyumva Sam. UKO URUKIKO RUBIBONA

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[20] Ku bijyanye n'ibishingirwaho ngo hemezwe ko uregwa ahamwa n'icyaha byasobanuwe n'Urukiko rw'Uburire mu manza zitandukanye harimo urubanza RPAA00737/2021/CA3, no mu zindi manza zaciwe nyuma yarwo harimo urubanza RPAA00249/2023/CA4, muri izo manza Urukiko rukaba rwaremeje ko kugira ngo Umucamanza afate icyemezo gihamya icyaha, agomba kuba afite ibimenyetso bihamya nta gushidikanya (preuves à conviction au-delà de tout doute raisonnable) ko ushinjwa ariwe wakoze icyaha, ko Umucamanza agomba gusesengurana ubushishozi uruhurirane rw'ibimenyetso, agahamya ushinjwa icyaha mu gihe gusa asanga nta wundi mwanzuro wagerwaho n'isesengura yakoze uretse iryo gusanisha uwakoze icyaha n'icyaha cyakozwe. [21] Imikirize y'urubanza rwajuririwe kimwe

n'urwarubanjirije, igaragaza ko mu kwemeza ko Nsengiyumva Sam yasambanyije umwana wahawe izina rya U.D, inkiko zarabishingiye ku kuba yemera ko yahuye n'uwo mwana, uyu akavuga ko yamusambanyije ubwo yari agiye kumwereka aho agurira umunyu amaze no kumugurira irindazi, hakaba n'ubuhamya bwa Shumbusho Samuel wavuze ko yamukuye hejuru y'uwo mwana arimo kumusambanya, n'ubwa Mukanzamurambaho Charlotte wavuze ko uwo mwana yamugezeho atambaye avuga ko Nsengiyumva yamusambanyije. [22] Ku birebana n'umwana wasambanyijwe, mu nyandikomvugo yo mu Bugenzacyaha, nubwo atabajijwe uburyo icyaha cyakozwe mu buryo burambuye, yasobanuye ko ku wa 05/12/2028 ubwo yari agiye ku isoko rya Bugaragara yahuye n'umusore amugurira irindazi amubwira ko agiye kumwereka aho agura umunyu, ahita amukurura amujyana mu bishyimbo amukuramo imyenda amujya hejuru aramusambanya. [23] Uwitwa Shumbusho Samuel nawe mu nyandikomvugo yakorewe mu Bugenzacyaha, yasobanuye ko ku wa 05/12/2018 yumvise umwana atakira mu masaka agiye kureba asanga Nsengiyumva amuri hejuru, ahita amumukuraho aramujyana ashaka ubuyobozi buramufata. Naho mu nyandikomvugo yakozwe igihe cy'iperereza ry'inyongera ryategetswe n'uru Rukiko, yasobanuye mu buryo burambuye uburyo yafashe Nsengiyumva Sam asambanya umwana, avuga ko yageze ku kimoteri aho yari asanzwe atwara ibishingwe akumva umwana atakira mu masaka hafi y'icyo kimoteri, agiye kureba asanga ari Nsengiyumva uri hejuru y'umwana arimo kumusambanya, amukubise amaso ahita amuvaho aragenda (...); ko yasanze uwo mwana amuzi akamujyana mu isoko afite agakabutura mu ntoki hejuru yambaye agakanzu, bageze mu isoko uwitwa Charlotte ajyana uwo mwana mu nzu aramwambika, abayobozi bahita bajyana uwo mwana kuri RIB, anabwira abari aho ko asambanyijwe na Nsengiyumva anababwira aho azamukiye bajya kumushaka baramufata (...). Yanasobanuye ko ubwo yabonaga Nsengiyumva ari hejuru y'uwo mwana, yari yamanuye ipantaro yayigejeje mu mavi, ko ndetse yabanye kwanga kumuvaho, amubwiye ko amukubita abona kumuvaho aragenda. [24] Naho mu nyandikomvugo uwitwa Mukanzamurambaho Charlotte yakoreye mu Bugenzacyaha, yasobanuye ko U.D yamugezeho atambaye ababwira ko Nsengiyumva Sam yamusambanyirije mu bishyimbo n'ibigori. Naho igihe cy'iperereza ry'inyongera ryategetswe n'uru Rukiko, uwo mutangabuhamya yasobanuye ko ubwo yakoraga mu isoko rya Bugaragara, yabonye abantu bashoreye umwana afite ikabutura mu ntoki, bavuga ko yafashwe ku ngufu na Nsengiyumva, ko bamumukuyeho ahantu hari ibisambu bakunda guhingamo amasaka, ko bitewe nuko uwo mwana yari yambaye agakanzu gato kagera hafi y'ikibuno asa nk'aho yambaye ubusa, yahise amujyana mu nzu amwambika ikabutura yari afite, nyuma bamujyana kuri RIB we asigara aho, ko nyuma y'iminsi ibiri aribwo se w'uwo mwana yaje kumureba ajya gutanga ubuhamya (..).

3 Reba Urubanza RPAA00737/2021/CA rwaciwe ku wa 16/12/2022, haburana Ubushinjacyaha na Uwayisaba Habimana Antoine igika cya 16-17. 4 Reba urubanza RPAA00249/2023/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 20/12/2024, haburana Bazimaziki Gratien (igika cya 15).

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[25] Muri dosiye kandi harimo raporo ya muganga igaragaza ko U.D yasuzumwe ku wa 06/12/2018, mubyo yagaragaje hakaba ko hari hashize igihe akarangabusugi ke kangiritse (fissures anciennes de l'hymen à 7h et à 13h), naho mu mwanzuro ivuga ko nta kimenyetso cy'uko uwo mwana yasambanyijwe mu gihe cya vuba (la victime ne présente pas de signes de viol récent). Iyo yapororo igaragaza kandi ko U.D afite ikibazo cyo mu mutwe, ko atamenya ibibera iruhande rwe (débilité mentale ; ignorant ce qui se passe autour d'elle) [26] Nk'uko kandi dosiye ibigaragaza, Nsengiyumva Sam yahakanye icyaha kuva agifatwa akomeza no kugihakana mu nkiko zose yaburaniyemo. Ku birebana n'uko yemeye ko yahuye na U.D nka kimwe mu byashingiweho hemezwa ko yamusambanyije, bigaragara ko mu nyandikomvugo ze mu nzego z'iperereza yaremeye koko ko yahuye n'uwo mwana ku wa 07/12/2018 amusaba kumurangira akazi, amujyana ku mugore wari umaze iminsi ashaka umukozi ariko ntiyakamuha bahita batandukana aragenda, Urukiko rukaba rusanga ariko kuba yarahuye n'uwo mwana ubwabyo atari ikimenyetso cy'uko yamusambanyije, ahubwo harebwa niba hari ibimenyetso bigaragaza ko muri uko guhura aribwo yamusambanyije. [27] Ku birebana n'uko uwo mwana yavuze ko yamusambanyije nyuma yo kumubwira ko agiye kumwereka aho agurira umunyu, Urukiko rurasanga hashingiwe kubyo muganga wamusuzumye yaragaragaje bijyana n'ikigero cy'imitekerereze ye, ndetse n'umubyeyi we akaba yaremeje ko afite uburwayi bwatumaga aha mu rugo akarorongotana akanavuga ko atazi aho uwo mwana aherereye, hakwibazwa niba koko yarashoboraga kumenya ibyamubayeho ku buryo byafatwa ko ibikubiye mu nyandikomvugo yakoreshejwe n'umugenzacyaha ari ukuri kudashidikanywaho, cyane cyane ko yabajijwe ari wenyine, hakaba rero hagomba kurebwa niba ibindi bimenyetso byashingiweho byemeza ku buryo budashidikanywaho ko uwo mwana yasambanyijwe koko na Nsengiyumva. [28] Mu bindi bimenyetso byashingiweho harimo ubuhamya bwa Shumbusho Samuel uvuga ko ari we wasanze Nsengiyumva asambanya uwo mwana. Urukiko rurasanga ariko isesengura ry'ubwo buhamya rigaragaza ibintu bitera gushidikanya ku birebana n'imikorere y'icyaha Nsengiyumva akurikiranweho, guterwa n'uko mu nyandikomvugo Shumbusho yakoreye mu Bugenzacyaha, yaravuze ko yamusanze kuri uwo mwana ahita amumukuraho aramujyana ashaka ubuyobozi buramufata, mu gihe mu iperereza ry'inyongera yavuze ko Nsengiyumva yamukubise amaso agahita aha kuri uwo mwana akagenda, ko ndetse yabanje kwanga kumuvaho amubwiye ko amukubita abona kumuvaho ahita agenda, izi mvugo zikaba zitera gushidikanya kuko zitavugaga mu buryo bumwe icyo Nsengiyumva yakozwe nyuma yo gufatwa asambanya uwo mwana, niba yarahise ahunga cyangwa niba Shumbusho yaramufashe akamushyikiriza ubuyobozi, dore ko ari nabyo byakumvikana kuko avugaga ko yamuguye gitumo ari hejuru y'uwo mwana akanabanza kwanga kumuvaho. [29] Naho ku birebana n'umutangabuhamya witwaga Mukanzamurambaho Charlotte, bigaragara ko yashingiweho nk'umuntu wabwiwe na U.D ko yasambanyijwe na Nsengiyumva ko ndetse ariyo mpamvu yabagezeho yambaye ubusa, Uru Rukiko rugasanga ariko kuba uwo mwana atari afite ubushobozi buhagije bwo kumenya ibyamubayeho nk'uko raporo ya muganga ibivugaga, hakwibazwa niba koko yarashoboraga kubwira Mukanzamurambaho ko yasambanyijwe akanamubwira uwabikoze.

Byongeye kandi, inyandikomvugo uwo mutangabuhamya yakoreye mu Bugenzacyaha yumvikanisha ko uwo mwana yamugezeho nta mwenda yambaye⁶, ibi bikaba bitandukanye n'ibyo yavuze igihe cy'iperereza ry'inyongera kuko ho yavuze ko yabonye abantu bashoreye uwo mwana afite ikabutura mu ntoki, bavuga ko yafashwe ku ngufu na Nsengiyumva. Izi mvugo zombi zikaba zitera gushidikanya ku birebana n'uburyo yamenyemo iby'isambanywa ry'uwo mwana, kuko inyandikomvugo ya mbere yumvikanisha ko yabibwiwe n'uwo mwana wamugezeho atambaye naho iya kabiri ikumvikanisha ko yabyumvanye abantu bari bamushoreye ko kandi yari yambaye agakanzu gato afite n'ikabutura mu ntoki.

5 Yabivuze ubwo yabazwaga mu iperereza ry'inyongera 6 Yavuze ko yaje yambaye ubusa, atambaye

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[30] Nubwo kandi iby'uko uwo mwana yari yambaye agakanzu gato anafite ikabutura mu ntoki byanavuzwe na Shumbusho igihe cy'iperereza ry'inyongera (mu gihe mu nyandikomvugo yo mu Bugenzacyaha ntabwo yari yavuze), hakwibazwa niba umuntu mukuru yari gushorera umwana avuga ko yasanze basambanya atwaye ikabutura mu ntoki, cyangwa niba yari kumubwira akabanza kuyambara. [31] Urukiko rurasanga rero, ibyagaragajwe haruguru bitera gushidikanya ku mikorere y'icyaha Nsengiyumva akurikiranweho, uko gushidikanya kugashimangirwa n'uko raporo ya muganga wasuzumye umwana ku munsu wakurikiyeho, yagaragaje ko nta kimenyetso cy'uko yasambanyijwe mu gihe cya vuba, ko kandi hari hashize igihe akarangabusugi kangiritse, mu gihe hahujwe imvugo y'uwo mwana n'iy'umutangabuhamya uvuga ko yasanze asambanywa, hatari kubura ikimenyetso kigaragaza ko yasambanyijwe. Naho ibyemejwe n'Urukiko Rukuru ko nubwo nta bimenyetso bya vuba byo gusambanywa byagarageye bitavanaho ko yasambanyijwe ngo kuko hari ibindi bimenyetso bigaragaza ko yasambanyijwe, Urukiko rurasanga byagaragajwe ko ibindi bimenyetso byashingiweho bidahamya ku buryo budashidikanywa ko Nsengiyumva yafashwe asambanya U.D. [32] Ku bindi Nsengiyumva anenga bishingiye ku hantu bavuze ko yasambanyirije uwo mwana, Urukiko rurasanga atari ngombwa kubisuzuma, kuko byagaragajwe ko ibimenyetso byashingiweho bitera gushidikanya ku mikorere y'icyaha akurikiranweho, bityo, hashingiwe ku mirongo yatanze mu manza zavuzwe haruguru no ku ngingo ya 111 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kugeza ubu ivuga ko gushidikanya birengera ushinjwa, ko iyo urubanza rwakurikiranwe mu buryo bwose ntihagire ibimenyetso nyakuri biboneka byemeza abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze, kuba ibimenyetso byashingiweho ku birebana na Nsengiyumva Sam bitemeza mu buryo budashidikanywaho ko yakoze icyaha akurikiranweho, agomba kugihanagurwaho kubera gushidikanya. III. ICYEMEZO CY'URUKIKO [33] Rwemeje ko ubujurire bwa Nsengiyumva Sam bufite ishingiro ; [34] Rwemeje ko urubanza RPA00781/2020/HC/RWG rwaciye n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 12/09/2023 ruhindutse ; [35] Rwemeje ko Nsengiyumva Sam adahamya n'icyaha cyo gusambanya umwana yari akurikiranyweho akaba agomba kurekurwa ; [36] Rutegetse ko amagarama y'urubanza

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