

RWANDA / JUDGMENT

UBUSHINJACYAHA vs. RWAKIBIBI

RPAA 00113/2024/CA

COURT

Court of Appeal

DECIDED

29 November 2024

CASE / FILE NUMBER

RPAA 00113/2024/CA

Source: amategeko.gov.rw · Research copy typeset by Esheria. Not court-issued or certified.

UBUSHINJACYAHA vs. RWAKIBIBI

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2024-11-29
- Case/document no.: RPAA 00113/2024/CA
- Collection: Court of Appeal

Text

Page 1

UBUSHINJACYAHA vs. RWAKIBIBI [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00113/2024/CA (Mukandamage, P.J.), 29 Ugushyingo 2024] Amategeko agenga imanza nshinjabyaha – Imyanzuro y'inyongera ku mpamvu z'ubujurire – Iyakirwa ry'impamvu z'ubujurire zitanzwe hatubahirijwe ibihe by'ubujurire – Ingingo y'ubujurire itanzwe nyuma y'igihe giteganywa n'itegeko ntiyakirwa ngo isuzumwe mu gihe bigaragara ko ituzuzwa cyangwa ngo isobanure ingingo y'ubujurire yatanzwe hubahirijwe ibihe. Amategeko agenga imanza znshinjabyaha – Ibimenyetso – Gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho – Mu manza nshinjabyaha, ibimenyetso byose bishobora gushingirwaho mu gihe bigaragaza ukuri kw'ibyabaye (principe de la liberté de la preuve en matière pénale), ababuranyi bagahabwa uburyo bwo kuhaba ngo banyomozanye, Urukiko nirwo rwemeza ko ibyo bimenyetso bishobora kwemerwa. Incamake y'ikibazo: Nsengimana Charles yareze Rwakibibi Théophile mu Bugenzacyaha, avuga ko ku wa 11/09/2022 saa moya z'ijoro yasambanyije umwana we witwa N. A. J. w'imyaka cumi n'ibiri (12) y'amavuko, umwana nawe avuga ko yanuye amashuka ya Rwakibibi Théophile ayajyana mu nzu ye, agezemo aramufungirana, maze aramusambanya. Rwakibibi Théophile yarafashwe ashirikizwa Ubugenzacyaha. Nyuma y'iperereza, Ubushinjacyaha bwatanze ikirego mu Rukiko

Rwisumbuye rwa Gasabo burega Rwakibibi Théophile ubwinjiracyaha mu cyaha cyo gusambanya umwana, busaba ko ahamwa n'icyo cyaha, agahanishwa igifungo cy'imyaka makumyabiri n'itanu (25) giteganywa n'ingingo ya 21 n'ya 133 z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange. Rwakibibi Théophile yaburanye ahakana icyaha, avuga ko yavuye ku kazi ananiwe araryama, umwana amuhamagara amuzaniye amashuka ahita agenda, avuga ko ibyo yemeye mu Bugenzacyaha yabitewe n'igitutu yashyizweho. Urukiko Rwisumbuye rwa Gasabo rwasanze ibimenyetso byatanze n'Ubushinjacyaha bushinja Rwakibibi Théophile icyaha cy'ubwinjiracyaha mu cyaha cyo gusambanya umwana, birimo imvugo ze mu Bugenzacyaha yemera ko yakuyemo umwana imyenda akagerageza kwinjiza igitsina cye mu cy'umwana umutima ukamurya akabireka, imvugo z'umwana wahohotewe n'icyemezo cy'amavuko kigaragaza ko umwana yasambanyijwe afite imyaka cumi n'ibiri (12) y'amavuko, bigaragaza ko yakoze icyaha cyo gusambanya umwana, ko ibyo avuga ko yemeye icyaha kubera ko yokejwe igitutu nta shingiro bifite, kuko nta bimenyetso yabitangiye, bityo rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25). Rwakibibi Théophile yajuririyeye Urukiko Rukuru avuga ko yahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho, harimo imvugo ze mu iperereza, nyamara yaragaraje ko ibyo yavuze yabitewe n'igitutu yashyizweho, kutubahiriza uburenganzira bwe kuko yabajijwe saa sita y'ijoro adahawe uburenganzira bwo kunganirwa.

Page 2

Urukiko Rukuru rwasanze imvugo za Rwakibibi Théophile mu Bugenzacyaha no mu Bushinjacyaha zihura n'ibyo umwana wahohotewe yavuze, ubuhamya bwatanze butandukanye hamwe na raporo ya Muganga yaragaragaje ko umwana atasambanyijwe. Nubwo raporo ya muganga yagaragaje ko umwana atasambanyijwe, Urukiko Rukuru rwasanze bitakuraho ko icyaha cyakozwe, kuko itegeko riteganywa ko gusambanya umwana harimo n'ibikorwa byose byakorwa hagamijwe ishimishamubiri. Rwakibibi yajuririyeye nanone Urukiko rw'Ubujurire, avuga ko yahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho, bityo akaba asaba kugirwa umwere. Uhagarariye Ubushinjacyaha yatanze inzitizi yo kutakira ubujurire bwa Rwakibibi Théophile kubera ko yatanze impamvu z'ubujurire mu mwanzuro w'inyongera watanze impitagihe, kuko iminsi mirongo itatu (30) iteganywa ku bujurire yari yararenzeho amezi ane (04) n'iminsi cumi n'itandatu (16) uhariye igihe kopi y'urubanza yagiriye muri IECMS, bityo ko udakwiye kwakirwa ngo usuzumwe. Rwakibibi Théophile, nawe yiregura avuga ko ibyo Ubushinjacyaha buvuga nta shingiro bifite kuko ikiburanwa kigaragara mu mwanzuro watanze hubahirijwe ibihe by'ubujurire wuzuzwa n'umwanzuro w'inyongera, bityo akaba asaba ko imyanzuro yombi isuzumwa. Rwakibibi n'umwunganira bavugaga ko Urukiko Rukuru rwamuhamije icyaha cyo gusambanya umwana, kandi ntacyo yakoze, rushingiye ku bimenyetso bishidikanywaho. Uhagarariye Ubushinjacyaha avuga ko nta gushidikanya kuri mu bimenyetso bishinja Rwakibibi. Incamake y'icyemezo: 1. Ingingo y'ubujurire itanzwe nyuma y'igihe giteganywa n'itegeko ntiyakirwa ngo isuzumwe mu gihe bigaragara ko ituzuzwa cyangwa ngo isobanure ingingo y'ubujurire yatanze hubahirijwe ibihe.

2. Mu manza nshinjabyaha, ibimenyetso byose bishobora gushingirwaho mu gihe bigaragaza ukuri kw'ibyabaye (principe de la liberté de la preuve en matière pénale), ababuranyi bagahabwa uburyo bwo kuhaba ngo banyomozanye, Urukiko rukemezwa ko ibyo bimenyetso bishobora kwemerwa. Ubujurire nta shingiro. Amategako yashingiweho: Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 119. Imanza zifashishijwe: Urubanza RCOMAA 00071/2017/SC rwa Mbuto Aimable na BRD Ltd, rwaciwe n'Urukiko rw'Ikirenga ku wa 26/10/2018; Urubanza RPAA 00087/2023/CA, rw'Ubushinjacyaha na Uwiringiyimana Nzitonda, rwaciwe n'Urukiko rw'Ubujurire ku wa 27/09/2024; Urubanza RPAA 00274/2023/CA, rw'Ubushinjacyaha na Maniragaba Oscar, rwaciwe n'Urukiko rw'Ubujurire ku wa 20/09/2024;

Page 3

Urubanza RPAA 00406/2020/CA, rw'Ubushinjacyaha na Nahayo Ignace; rwaciwe n'Urukiko rw'Ubujurire ku wa 22/10/2021; Urubanza RPAA 00158/2023/CA rw'Ubushinjacyaha na Nsabimana Faustin, rwaciwe n'Urukiko rw'Ubujurire ku wa 28/06/2024. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 13/09/2022, Nsengimana Charles yareze Rwakibibi Théophile mu Bugenzacyaha, avuga ko ku wa 11/09/2022 saa moya z'ijoro yasambanyije umwana we witwa N. A. J. w'imyaka cumi n'ibiri (12) y'amavuko, umwana nawe avuga ko yanuye amashuka ya Rwakibibi Théophile ayajyana mu nzu ye, agezemo aramufungirana, maze aramusambanya. Rwakibibi Théophile yarafashwe ashyikirizwa Ubugenzacyaha. [2] Nyuma y'iperereza, Ubushinjacyaha bwatanze ikirego mu Rukiko Rwisumbuye rwa Gasabo burega Rwakibibi Théophile ubwinjiracyaha mu cyaha cyo gusambanya umwana, busaba ko ahamwa n'icyo cyaha, agahanishwa igifungo cy'imyaka makumyabiri n'itanu (25) giteganywa n'ingingo ya 21 n'iya 133 z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange. [3] Rwakibibi Théophile yaburanye ahakana icyaha, avuga ko yavuye ku kazi ananiwe araryama, umwana amuhamagara amuzaniye amashuka ahita agenda, ko ibyo yemeye mu Bugenzacyaha yabitewe n'igitutu yashyizweho. [4] Mu rubanza RP 00951/2022/TGI/GSBO rwaciwe ku wa 17/10/2022, Urukiko Rwisumbuye rwa Gasabo rwasanze ibimenyetso byatanzwe n'Ubushinjacyaha bushinja Rwakibibi Théophile icyaha cy'ubwinjiracyaha mu cyaha cyo gusambanya umwana, birimo imvugo ze mu Bugenzacyaha yemera ko yakuyemo umwana imyenda akagerageza kwinjiza igitsina cye mu cy'umwana umutima ukamurya akabireka, imvugo z'umwana wahohotewe n'icyemezo cy'amavuko kigaragaza ko umwana yasambanyijwe afite imyaka cumi n'ibiri (12) y'amavuko, bigaragaza ko yakoze icyaha cyo gusambanya umwana, ko ibyo avuga ko yemeye icyaha kubera ko yokejwe igitutu nta shingiro bifite, kuko nta bimenyetso yabitangiye, hanyuma rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25). [5] Rwakibibi Théophile yajuririye Urukiko Rukuru avuga ko yahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho, harimo imvugo ze mu iperereza, nyamara yaragaraje ko ibyo yavuze yabitewe n'igitutu yashyizweho, kutubahiriza uburenganzira bwe kuko yabajijwe saa sita y'ijoro adahawe uburenganzira bwo kunganirwa, akumvishwa ko niyemera icyaha bamurekura, bituma yemera icyaha atakoze, imvugo zashingiweho zivuguruzanya, cyane cyane ko iz'umwana bivugwa ko yahohoteye yazitanze ari muni y'imyaka cumi n'ine (14) y'amavuko kandi nta bimenyetso

bizunganiye. [6] Uhagarariye Ubushinjacyaha yireguye avuga ko ubujurire bwa Rwakibibi Théophile nta shingiro bufite, kuko ibisobanuro atanga bitagaragaza ugushidikanya kuri mu bimenyetso bwatanze. Yavuze ko kuba Rwakibibi Théophile yarafungiranwe mu nzu na se w'umwana byari ukugirango adacika abashinzwe umutekano, akaba rero atagaragaza igitutu yashyizweho icyo aricyo, ko umwana wahohotewe yasobanuye uko byose byagenze, kandi ko gusambanya umwana

Page 4

atari ukwinjiza igitsina mu cye, kuko kumukoraho gusa bihagije, na Rwakibibi Théophile akaba yaremeye ko yari agiye kumusambanya yumva bidakunda arabireka. [7] Mu rubanza RPA 01635/2022/HC/KIG rwaciye ku wa 28/12/2023, Urukiko Rukuru rwasanze imvugo za Rwakibibi Théophile mu Bugenzacyaha no mu Bushinjacyaha zihura n'ibyo umwana wahohotewe yavuze, bigahura kandi n'ubuhamya bwatanze na Ingabire Rosine n'ubwa Nsengimana Charles, se w'umwana na raporo y'inze z'ibanze. Kubirebana n'uko raporo ya Muganga yaragaragaje ko umwana atasambanyijwe, Urukiko Rukuru rwasanze bitakuraho ko icyaha cyakozwe, kuko itegeko riteganywa ko gusambanya umwana harimo n'ibikorwa byose byakorwa hagamiywe ishimishamubiri, naho ku byo kuba Rwakibibi Théophile yarashyizweho igitutu mu iperereza, rwasanze nta bimenyetso abigaragariza. Urukiko Rukuru rwasanze na none imvugo z'umwana zifite ibindi bimenyetso bizunganiye, naho ibyo kuba uregwa atarahawe uburenganzira bwe abazwa mu Bugenzacyaha rwasanze nabyo nta shingiro bifite, kubera ko atangira kubazwa yamenyeshejwe uburenganzira bwe, kandi ko yabajijwe niba arunganirwa, agasubiza ko yisubiriza, hanyuma rwemeza ko nta gihundutse ku mikirize y'urubanza rwajuririye. [8] Rwakibibi Théophile yajuririye Urukiko rw'Ubujujire, urubanza ruhabwa RPAA 00113/2024/CA, ruburanishwa mu ruhamwe ku wa 11/11/2024, Rwakibibi Théophile yunganiye na Me Nsanzineza Aimable, naho Ubushinjacyaha buhagarariye na Bunyoye Grâce, Umushinjacyaha ku rwego rw'Igihugu. [9] Mu myanzuro no mu miburanire, Rwakibibi Théophile avuga ko yahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho, agasaba kugirwa umwere. Uhagarariye Ubushinjacyaha yatanze inzitizi yo kutakira ubujurire bwa Rwakibibi Théophile kubera ko yatanze impamvu z'ubujurire mu mwanzuro w'inyongera watanze impitagihe, izo mpamvu z'ubujurire zikaba zituzuye cyangwa se ngo zisobanure izatanzwe mu gihe giteganywa n'amategeko. Avuga ko mu gihe ubujurire bwa Rwakibibi Théophile bwaba bwakiriwe butahabwa ishingiro, kuko impamvu z'ubujurire atanga zasuzumwe mu bujujire bwa mbere. [10] Ibibazo bigomba gusuzumwa muri uru rubanza ni ibi bikurikira:

- kumenya niba impamvu z'ubujurire za Rwakibibi Théophile zitagomba kwakirwa;
- kumenya niba Rwakibibi Jacques yarahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA
- a. Kumenya niba impamvu z'ubujurire za Rwakibibi Théophile zitagomba kwakirwa [11] Uhagarariye Ubushinjacyaha avuga ko ubujurire bwa Rwakibibi Théophile budakwiye kwakirwa, kuko atubahirije ibiteganywa n'ingingo za 181 - 183 z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, kubera ko urubanza

ajuririra rwaciwe n'Urukiko Rukuru ku wa 28/12/2023, kopi yarwo ishyirwa muri IECMS ku wa 04/01/2024, ajurira ku itariki ya 08/01/2024 avuga ko yahamijwe icyaha atigeze akora kandi ko hari ibimenyetso n'ibisobanuro byirengagijwe, ariko ko ibisobanuro birambuye azabigeza ku rukiko mu mwanzuro w'inyongera.

Page 5

- [12] Uhagarariye Ubushinjacyaha avuga ko ku itariki ya 18/06/2024, Rwakibibi Théophile yohereje umwanzuro w'inyongera agaragaza impamvu ze z'ubujurire ebyiri, harimo ivuga ko Urukiko Rukuru rwashingiye ku bimenyetso bishidikanywaho, kuko bidatanga ukuri n'iyi kuba urukiko rwashingiye ku mvugo ze zo mu Bugenzacyaha yahatiwe kuvuga agifatwa, izo mpamvu zikaba zitandukanye n'izo yakomojeho mu bujurire bwe bwo ku wa 08/01/2024.
- [13] Uhagarariye Ubushinjacyaha akomeza avuga ko iminsi mirongo itatu (30) iteganywa ku bujurire yari yararenzeho amezi ane (04) n'iminsi cumi n'itandatu (16) uhereye igihe kopi y'urubanza yagiriye muri IECMS, ko rero Rwakibibi Théophile atajuriye ku gihe nk'uko ingingo ya 183 ivugwa haruguru ibiteganywa, ibyo bikaba bihuye n'ibyemejwe mu rubanza RPAA 00524/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 26/01/2024, haburana Ubushinjacyaha na Harerimana Emmanuel, aho rwasobanuye ko umuburanyi agomba gutanga impamvu z'ubujurire cyangwa kugaragaza inenge ziri mu rubanza rujuririrwa mu bihe by'ubujurire biteganywa n'Itegeko. Umuburanyi wajuriye atarabona kopi y'urubanza, agomba gutanga imyanzuro y'ubujurire nibura mu gihe cy'iminsi 30 nyuma y'uko kopi ishyizwe muri IECMS.
- [14] Uhagarariye Ubushinjacyaha avuga na none ko umwanzuro wakozwe n'uwunganira Rwakibibi Théophile washyizwe muri IECMS ku itariki ya 02/07/2024 watanze impitagihe, kuko wakozwe hashize amezi atanu (05) nyuma y'ibihe byemewe byo kujurira byarangiye ku itariki ya 02/02/2024, ukaba udakwiye kwakirwa ngo usuzumwe, nk'uko byatanzweho umurongo mu rubanza RPAA 00559/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 27/01/2023, haburana Ubushinjacyaha na Nabibwiyimana Emmanuel, uvuga ko imyanzuro yatanze impitagihe itanzwe ku gihe, idakwiye kwakirwa ngo isuzumwe.
- [15] Me Nsanzineza Aimable, wunganira Rwakibibi Théophile, avuga ko ibyo Ubushinjacyaha buvuga nta shingiro bifite, kuko Rwakibibi Théophile yamenyesheje urukiko ko ajuriye mu bihe biteganywa n'amategeko, Umwanditsi Mukuru yakira ubwo bujurire nk'uko bigaragazwa n'icyemezo cye, ko kuba yaranditse ko umwanzuro w'inyongera azawushira muri IECMS igihe azaba yabonye kopi y'urubanza nta kosa ryabayeho, kuko bigaragara ko impamvu z'ubujurire yatanze zuzuzwa kandi zisobanura izo yari yatanze ku wa 04/01/2024, Ubushinjacyaha bukaba butagaragaza itandukaniro nyaryo riri mu mpamvu ze z'ubujurire.
- [16] Uwunganira Rwakibibi Théophile avuga ko ikiburanwa kigaragara mu mwanzuro watanze hubahirijwe ibihe by'ubujurire wuzuzwa n'umwanzuro w'inyongera, imyanzuro yombi rero ikaba igomba gusuzumwa, nk'uko byasobanuwe mu rubanza RADA 0012/07/CS rwaciwe ku wa 27/03/2009, haburana Leta y'u Rwanda na Nkongoli John. UKO URUKIKO RUBIBONA
- [17] Ikibazo kijyanye n'iyakirwa ry'impamvu z'ubujurire zitanze hatubahirijwe ibihe by'ubujurire cyasesenguwe mu rubanza rubanziriza urundi mu rubanza RCOMAA 00071/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 26/10/2018, haburana Mbuto

Aimable na BRD Ltd, hanyuma urwo Rukiko rusobanura ko kujurira bikorwa mu gihe giteganyijwe cy'iminsi mirongo itatu (30), hagaragazwa ibinengwa urubanza rujuririrwa, ibigomba gukosorwa n'impamvu ari amakosa n'uburyo yakosorwa, ko mu gihe ingingo y'ubujurire itanzwe nyuma y'igihe giteganywa n'itegeko, iyo mpamvu y'ubujurire itagomba kwakirwa ngo isuzumwe mu gihe bigaragara ko ituzuzwa cyangwa ngo isobanure ingingo y'ubujurire yatanze hubahirijwe

Page 6

ibihe. Uyu murongo wakurikijwe n'Urukiko rw'Ubujurire mu manza zitandukanye zakurikiyeho, harimo n'urubanza RPAA 00087/2023/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 27/09/2024 haburana Ubushinjacyaha na Uwiringiyimana Nzitonda. [18] Nk'uko dosiye y'urubanza ibigaragaza, Rwakibibi Théophile yajuririyeho Urukiko rw'Ubujurire ku wa 04/01/2024, avuga ko yahamijwe icyaha atigeze akora, ko hari ibimenyetso n'ibisobanuro byirengagijwe, hanyuma mu mwanzuro w'inyongera wo ku wa 18/06/2024 atanga ibisobanuro ku ngingo z'ubujurire avuga ko yahamijwe icyaha hashingiwe ku bimenyetso bishidikanywaho kandi bitarimo ukuri. [19] Urukiko rw'Ubujurire rurasanga ibyo Rwakibibi Théophile yavuze mu mwanzuro w'inyongera anenga ibimenyetso byashingiweho mu kumuhamya icyaha, harimo imvugo ze yavugiyeho mu Bugenzacyaha n'imvugo z'umwana aregwa gusambanya atari ingingo nshya z'ubujurire yatanze nyuma y'ibihe y'ubujurire, ahubwo ni ibisobanuro by'inyongera ku mpamvu z'ubujurire yatanze mu gihe cyo kujurira giteganywa n'itegeko. [20] Urukiko rw'Ubujurire rurasanga rero, hashingiwe ku murongo watanze mu rubanza rwavuzwe haruguru, nta cyabuza ko impamvu z'ubujurire zatanze na Rwakibibi Théophile zakirwa ngo zisuzumwe, bityo inzitizi yatanze n'Ubushinjacyaha nta shingiro ifite. b.Kumenya niba Rwakibibi Jacques yarahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho [21] Rwakibibi Théophile n'umwunganira bavuga ko Urukiko Rukuru rwamuhamije icyaha cyo gusambanya umwana, kandi ntacyo yakoze, rushingiye ku bimenyetso bishidikanywaho birimo imvugo ze mu Bugenzacyaha yemera ko yasambanyije umwana, kandi yarabyemeye kubera itotezwa n'igitutu yashyizweho na se w'umwana, kuko yamufungiranye mu nzu kuva saa moya kugeza saa tanu, amuhatira kwemera ibyo amutegetse, ariko yemera azi neza ko raporo ya Muganga izagaragaza ukuri, hanyuma ageze mu Rukiko ku rwego rwa mbere aburana ahakana icyaha. [22] Rwakibibi Théophile n'umwunganira bavuga kandi ko uko kwemera icyaha kwe nta bindi bimenyetso bigushyigikira, ko rero nk'uko byemejwe kandi bigatangwaho umurongo mu rubanza RPAA 00055/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 31/10/2022, haburana Ubushinjacyaha na Niyonzima Adrien, ko kwemera icyaha mu nzego zabanje atari impamvu yihagije yo kwemeza ko umuntu ahamwe n'icyaha, bityo ko kwemera kwa Rwakibibi Théophile atari ikimenyetso cyagombaga gushingirwaho n'urukiko rumuhamya icyaha cyo gusambanya umwana. [23] Rwakibibi Théophile n'umwunganira bavuga na none ko ibyo umwana yavuze ko bwari ku nshuro ya kabiri (2) amusambanyije, agahamya ko Rwakibibi Théophile yinjizaga igitsina mu cye bitafatwa nk'ukuri, kuko nta kindi kimenyetso gishyigikiye iyo mvugo, kuko na Muganga wasuzumye umwana yagaragaje ko nta kintu na kimwe yabonye kigaragaza ko uwo mwana yasambanyijwe, ariko ko Ubushinjacyaha bwabishingiyeho bumurega ubwinjiracyaha mu cyaha

cyo gusambanya umwana. [24] Uhagarariye Ubushinjacyaha avuga ko ibyo Rwakibibi Théophile avuga ko ibyo yavuze mu Bugenzacyaha yabitewe n'itotezwa nta shingiro bifite, kuko ntacyo anenga ibisobanuro

Page 7

byatanzwe n'Umucamanza waburanishije ubujurire bwe bwa mbere, kuko icyo mpamvu yayiburanishije, ariko Umucamanza agaragaza ko nta kimenyetso kigaragaza ko icyo gitutu cyabayeho, cyane cyane ko uko kwemera guhura n'imvugo y'umwana wakorewe icyaha, imvugo ya se watanze ikirego, iy'umutangabuhamya Ingabire Rosine na raporo y'ubuyobozi bw'Umudugudu. [25] Uhagarariye Ubushinjacyaha avuga na none ko ibyo Rwakibibi Théophile asobanura nk'inenge mu mwanzuro we w'inyongera abishingira ku kirego cy'Ubushinjacyaha, ariko ntacyo anenga ku bisobanuro byatanzwe n'Umucamanza waburanishije ubujurire bwe bwa mbere, kandi ko Urukiko rwasanze ibimenyetso biri muri dosiye bihamya ko Rwakibibi Théophile yakozwe icyaha cyo gusambanya umwana nk'uko byemejwe n'Urukiko Rwisumbuye rwa Gasabo mu rubanza yari yajuririye. [26] Uhagarariye Ubushinjacyaha asaza avuga ko nta gushidikanya kuri mu bimenyetso bishinje Rwakibibi Théophile, kuko kuba yarakozwe icyaha cyo gusambanya umwana nk'uko byanasobanuwe neza n'Umucamanza waburanishije ubujurire bwa mbere, bitandukanye n'ibivugwa n'umwunganira mu mategeko, kandi ko ibyo Rwakibibi Théophile yemeye abazwa atari byo byonyine byashingiweho mu kumuhamya icyaha nk'uko byagarutseho mu bika bya 25

- 30 by'urubanza rujuriyirwa. UKO URUKIKO RUBIBONA [27] Impaka kuri iyi ngingo y'ubujurire zishingiye ku kumenya niba Rwakibibi Théophile yarahamijwe icyaha cyo gusambanya umwana w'imyaka cumi n'ibiri (12) y'amavuko hashingiwe ku bimenyetso bishidikanywaho n'ibisobanuro yatanze. [28] Ku byerekeranye n'ibimenyetso mu manza n'itangwa ryabyo, mu rubanza RPAA 00692/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 20/01/2023, haburana Ubushinjacyaha na Ndayishimiye Jean Damascène, hasesenguwe ingingo ya 119 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, harebwe cyane cyane ku mwiheriko w'imanza nshinjabyaha, maze urukiko rusobanura ko mu manza nshinjabyaha, ibimenyetso byose bishobora gushingirwaho mu gihe bigaragaza ukuri kw'ibyabaye (principe de la liberté de la preuve en matière pénale) ababuranyi bakaba barahawe uburyo bwo kuhaba ngo banyomozanye, kandi ko Urukiko arirwo rwemeza ko ibyo bimenyetso bishobora kwemerwa. Iri hame ryashingiweho mu zindi manza zakurikiyeho zaciwe n'uru rukiko, harimo n'urubanza RPAA 00274/2023/CA rwaciwe ku wa 20/09/2024, haburana Ubushinjacyaha na Maniragaba Oscar. [29] Nk'uko bigaragara ko mu rubanza RPA 01635/2022/HC/KIG rwaciwe ku wa 28/12/2023, Urukiko Rukuru rwahamije Rwakibibi Théophile icyaha cyo gusambanya umwana w'imyaka cumi n'ibiri (12) y'amavuko rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25), rushingiye ku bimenyetso bikurikira:
- imvugo za Rwakibibi Théophile, aho mu Bugenzacyaha aho yasobanuye ko imvura yari itangiye kugwa, umwana amwanurira amashuka ayamuzanira mu nzu, amukuramo

1 Iyo ngingo ihura n'ingingo ya 87 y'Itegeko n° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso

Page 8

ipantaro, afata igitsina cye agikoza ku cy'umwana, yumvise se w'umwana arimo kubaririza aho umwana ari, ahita asohoka ajya ku bwihereho bahuye amwemerera ko umwana yageze iwe amuzaniye amashuka, ko ari ubwa mbere yari agerageje kumusambanya. Mu Bushinjacyaha, Rwakibibi Théophile yavuze ko icyaha cyari kigiye kuba, kuko umwana yinjiye mu nzu ye amuzaniye amashuka yari yanuye, amaze kuyashyira ku ntebe aramuhobera, amusoma ku munwa, ahita yumva se arimo kumuhamagara aramurekura ajya ku bwihereho, avuyeyo ahura na se w'umwana, amubajije niba yari kumwe n'umwana we, arabihakana, abajije umwana amusubiza ko yari kwa tonto, abasaba kumubwiro ibyo bari barimo. Ku byo yavugiye mu Bugenzacyaha ko yakuyemo umwana ipantaro, Rwakibibi Théophile yarabihakanye, ariko ko yemera ko yari agiye kumusamanya, abisabira imbabazi;

- imvugo z'umwana wahohotewe wavuze ko yanuye amashuka ya Rwakibibi Théophile uba mu gipangu cy'iwabo, yinjiye mu nzu ahita azimya itara, amukuramo ipantaro nawe ariyambura, afata igitsina cye agishyira ku cye atangiye gusunika, yumva se arimo kumuhamagara, ahita abyihorera, acana itara afata papier hygiénique, asohoka mu nzu ajya ku bwihereho, amusiga mu nzu, ko mama Kenny ariwe wamubonye asohotse muri iyo nzu, kandi ko byari ku nshuro ya kabiri yari abimukoreye, ikindi gihe akaba yaramusambanyirije mu bwogero;
- imvugo za Nsengimana Charles, se w'umwana wavuze ko yageze mu rugo abajije abana aho mushiki wabo yagiye, bamubwira ko batabizi, agiye kumushakira ku irembo, Rwakibibi Théophile yumvise ko arimo gushakisha umwana ahita amufungurira arasohoka, ko mama Kenny ariwe wamubwiye ko umwana yabonetse, hanyuma Rwakibibi Théophile wari umugezeho avuye ku bwihereho amujyana mu nzu atangira kumusaba imbabazi avuga ko yamwangirije umwana ariko ko nta ndwara yamuteye;
- ubuhamya bwatanzwe na Ingabire Rosine wavuze ko Nsengimana Charles yashakishaga umwana we, aza kumubona umwana asohotse mu nzu Rwakibibi Théophile yabagamo yirukanka cyane, abibwira se w'umwana ko amubonye, ko uwo mwana na Rwakibibi Théophile babanje guhakana ko bari kumwe, bagiyemo mu nzu abona kwemera ko yamusambanyije asaba imbabazi avuga ko atazongera;
- raporo yakozwe na Komite y'umudugudu ku wa 12/09/2023, ivuga ko Nsengimana Charles yabahamagaye mu ijoro akababwira ko Rwakibibi Théophile wari ucumbitse mu mazu ye yasambanyije umwana we. [30] Urukiko rw'Ubuujurire rurasanga ibyo Rwakibibi Théophile avuga ko imvugo ze mu Bugenzacyaha zagarutsewe haruguru zitari zikwiye gushingirwaho ahamwe n'icyaha cyo gusambanya umwana kuko yashyizweho igitutu n'itotezwa nta shingiro bifite, kubera ko nk'uko urukiko rwabanye rwabibonye, no kuri uru rwego nta kimenyetso abitangira. Byongeye kandi n'ibyo yemereye mu Bushinjacyaha ko umwana yamuzaniye amashuka mu nzu akamuhobera akamusoma yakumva se arimo kumuhamagara akamureka

nabyo bigize ishimishamubiri rikorewe ku mwana bikaba bigize icyaha cyo gusambanya umwana gihanwa n'amategeko². Izo mvugo za

2 Ingingo ya 133 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, nk'uko ryahinduwe kugeza ubu iteganya ibikurikira: "Umuntu ukorera ku mwana kimwe mu bikorwa bishingiye ku gitsina bikurikira, aba akoze icyaha: (a) gushyira igitsina cy'umuntu mu gitsina, mu kibuno cyangwa mu kanwa by'umwana;

(b) gushyira urungiro urwo ari rwo rwose rw'umubiri w'umuntu mu gitsina cyangwa mu kibuno cy'umwana; (c) gukora ikindi gikorwa cyose ku mubiri w'umwana hagamijwe ishimishamubiri.(...)"

Page 9

Rwakibibi Théophile mu nzego z'iperereza zirahura kandi n'ibyo umwana amushinja ko yamusambanyije, n'invugo ya se Nsengimana Charles n'ubuhamya bwa Ingabire Rosine bavuze ko agifatwa yabemereye ko yasambanyije umwana agasaba imbabazi. [31] Urukiko rw'Ubujurire rurasanga kandi ibyo Rwakibibi Théophile avuga ko umwana yavuze ko bwari ku nshuro ya kabiri (2) amusambanyije, agahamya ko Rwakibibi Théophile yinjizaga igitsina mu cye bitafatwa nk'ukuri, kuko nta kindi kimenyetso kibishyigikiye nta shingiro bifite, kubera ko icyaha akurikiranweho ni icyabaye ku wa 11/09/2022, kandi nk'uko byasobanuwe haruguru yacyemeye mu Bugenzacyaha no mu Bushinjacyaha. [32] Urukiko rw'Ubujurire rurasanga kandi raporo ya Muganga ari ikimenyetso kigomba gusuzumwa hamwe n'ibindi, muri uru rubanza bikaba bigaragara ko harebwe uko icyaha cyakozwe ntacyo Muganga yashobora kubona ku mwana harebwe ko Rwakibibi Théophile yafatiwe mu cyuho atarageza ubwo yangiza umwana nk'uko nawe abisobanura, akaba ari nayo mpamvu Ubushinjacyaha bwari bwamureze ubwinjiracyaha mu cyaha cyo gusambanya umwana, ariko Urukiko rwabanje rugasanga ibikorwa yakoze ku mwana bigize icyaha cyo kumusambanya. [33] Urukiko rw'Ubujurire rurasanga rero ibimenyetso byashingiweho n'Urukiko Rukuru mu guhamya Rwakibibi Théophile icyaha cyo gusambanya umwana bidashidikanywaho, bikaba bigaragara ko icyo cyaha yagikoze, bityo ubujurire bwe nta shingiro bufite. [34] Urukiko rw'Ubujurire rurasanga ariko, n'ubwo ubujurire bwa Rwakibibi Théophile nta shingiro bufite, igihano yahawe cy'imyaka makumyabiri n'itanu (25) cyagabanywa mu rwego rwo guhuza igihano n'uburemere bw'icyaha cyakozwe nk'uko byatanzweho umurongo mu rubanza RPAA 00406/2020/CA rwaciwe ku wa 22/10/2021, haburana Ubushinjacyaha na Nahayo Ignace wakurikijwe no mu manza zitandukanye zaciwe n'uru Rukiko, harimo n'urubanza RPAA 00158/2023/CA rwaciwe ku wa 28/06/2024, haburana Ubushinjacyaha na Nsabimana Faustin. [35] Urukiko rw'Ubujurire rurasanga mu manza rwaciye harimo urubanza RPAA 00609/2022/CA rwaciwe ku wa 27/09/2024, haburana Ubushinjacyaha na Ndayambaje Jean Bosco wasambanyije umwana w'imyaka cumi n'ibiri (12) y'amavuko we afite mirongo ine n'ibiri

(42) y'amavuko, aburana ahakana icyaha, hanyuma ahanishwa igifungo cya burundu, Urukiko rw'ubujurire rubyibwirije rumugabanyiriza icyo gihano kubera ko ari ubwa mbere akurikiranwe mu butabera mu buryo buzwi, rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25). [36] Urukiko rw'Ubujurire rurasanga icyaha Rwakibibi Théophile yakoze cyo

gusambanya umwana w'imyaka cumi n'ibiri (12) y'amavuko utarageza ku myaka cumi n'ine (14) y'amavuko, we ari mukuru afite hafi imyaka mirongo itatu n'umwe (31) y'amavuko, ari icyaha gikomeye kuko gihanishwa igifungo cya burundu, ariko bigaragara ko ari ubwa mbere akurikiranwe mu butabera ku buryo buzwi, kandi Ubushinjacyaha ntibugaragaza ko yari asanzwe afite imyitwarire mibi, na raporo ya Muganga igaragaza ko icyo cyaha yakoze kitangije umwana ku mubiri ku buryo bugaragara, kuko agifite akarangabusugi, ibyo byose bikaba byamubera impamvu nyoroshyacyaha yatuma agabanyirizwa igihano yahawe, maze aho guhanishwa igifungo cy'imyaka makumyabiri n'itanu (25) nk'icyo Ndayambaje Jean Bosco yahawe mu rubanza rwavuzwe haruguru, agahanishwa icy'imyaka cumi n'icyenda (19), kuko Ndayambaje Jean Bosco we yangije umwana

Page 10

mu myanya ndangagitsina amutera ibisebe ku buryo yatakaje akarangabusugi nk'uko Muganga yabibonye, kandi ari umugabo mukuru wubatse. [37] Hashingiwe ku ngingo ya 133 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, ku mirongo yatanze mu manza zavuzwe haruguru, n'ibisobanuro bimaze gutangwa, Urukiko rw'Ubujurire rurasanga ubujurire bwatanze na Rwakibibi Théophile nta shingiro bufite, urubanza yajuririye rukaba rugomba guhinduka gusa ku bijyanye n'igihano. III. ICYEMEZO CY'URUKIKO [38] Rwemeje ko ubujurire bwatanze na Rwakibibi Théophile nta shingiro bufite; [39] Rwemeje ko urubanza RPA 01635/2022/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 28/12/2023 ruhindutse gusa ku bijyanye n'igihano; [40] Rutegetse ko Rwakibibi Théophile ahanishijwe igifungo cy'imyaka cumi n'icyenda (19) ku cyaha cyo gusambanya umwana w'imyaka cumi n'ibiri (12) y'amavuko; [41] Ruvuze ko amagarama y'urubanza aherereye ku Isanduku ya Leta, kuko Rwakibibi Théophile yajuriye afunze, akaba asonewe kuyatanga.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.amategeko.gov.rw/view/doc/8647/9001>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/ubushinjacyaha-vs-rwakibibi-2024>

Prepared on 10 October 2026 · Esheria