

RWANDA / JUDGMENT

UBUSHINJACYAHA vs TWIZERIMANA

RPAA00596/2024/CA

COURT

Court of Appeal

DECIDED

30 July 2025

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RPAA00596/2024/CA

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UBUSHINJACYAHA vs TWIZERIMANA

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Text

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UBUSHINJACYAHA vs TWIZERIMANA [Rwanda URUKIKO RW'UBUJURIRE – RPAA00596/2024/CA (Kamere, P.J.) 30 Nyakanga 2025] Amageko yerekeye imiburanishirize y'imanza nshinjabyaha – Imikorere y'icyaha – Gushidikanya – Gushidikanya birengera ushinjwa. Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze. Incamake y'ikibazo: Uru rubanza rwatangiye Ubushinjacyaha burega Twizerimana icyaha cyo guta cyangwa gutererana umwana n'icyaha cyo gusambanya umwana bushingiye ku kuba Irakoze Delphine yaramushinje ko babanye nk'umugabo n'umugore, bakabyarana umwana wiswe Ineza Keliya, nyina w'umwana akamushyira se aho yabaga i Kigali akamumusigira kugira ngo amwiteho, ariko nyuma uwo mwana akaba yaraburiwe irengero. Ubushinjacyaha bwanareze Irakoze, bumukurikiranyeho icyaha cyo guta umwana hashingiye ku kuba yaragarutse mu Karere ka Burera aho yamubyariye atabasha kugaragaza aho yamushyize. Iperereza ku ibura ry'uwo mwana ni ryo ryatumye bigaragara ko Irakoze yabyaye akiri umwana, avuga ko uwamusambanyije ari Twizerimana. Twizerimana yaburanye ahakana icyaha, avuga ko atigeze aryamana na Irakoze Delphine kandi ko n'ibimenyetso byo kwa Muganga bya Kigali Forensic Laboratory (KFL)

byagaragaje ko nta sano y'amaraso afitanye n'uwo mwana. Urukiko Rwisumbuye rwa Musanze mu rubanza RP/MIN00011/2024/TGI/MUS, rushingiye ku kuba mvugo z'abatangabuhamya batandukanye bagaragajwe n'ubushinjacyaha bashinja Twizerimana ko yabanaga na Irakoze, rwemeje ko Twizerimana ahamwa n'icyaha cyo gusambanya umwana, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri (20 ans). Twizerimana ntiyishimiye imikirize y'urubanza ayijuririra mu Rukiko Rukuru, Urugereko rwa Musanze, avuga ko ku rwego rwa mbere Urukiko rwatesheje agaciro raporo y'abahanga yagaragaje ko umwana Irakoze yabyaye nta sano bafitanye, rumuhamya icyaha rushingiye ku mvugo z'abatangabuhamya batavugisha ukuri. Ubushinjacyaha bwavuze ko icyaha Twizerimana yarezwe ari icyo gusambanya umwana atari icyo gutera umwana inda, ko ibyo aba batangabuhamya bavuze nta nenge bifite. Urukiko Rukuru, Urugereko rwa Musanze, mu rubanza RPA/MIN 00017/2024/HC/MUS, rumaze kubona ko ikimenyetso cya raporo ya Rwanda Forensic Laboratory kigaragaza ko umwana Irakoze Delphine yabyaye nta sano afitanye na Twizerimana Théoneste mu rubanza nk'uru atari ikimenyetso kimushinjura, rushingiye no ku mvugo z'abatangabuhamya, rwemeje ko icyaha cyo gusambanya umwana wari ufite imyaka 17, Twizerimana ashinjwa kimuhama, rwemeza ko imikirize y'urubanza rujurirwa idahindutse. Twizerimana yongeye kujuririra urwo rubanza mu Rukiko rw'Ubujurire, avuga ko Urukiko Rukuru rwashingiye ku bimenyetso bishidikanywaho. Ubushinjacyaha buvuga ko ubujurire bwe nta shingiro bufite kuko atabasha kuvuguruza ibimenyetso byashingiweho n'Urukiko Rukuru. Urukiko mu rubanza RPAA 00596/2024/CA, rwemeje ko ubujurire bwa Twizerimana bufite Ishingiro, ko agomba guhanagurwaho icyaha yari akurikiranweho n'Ubushinjacyaha cyo gusambanya umwana kuko hari ugushidikanya ku bijyanye n'ibimenyetso byashingiweho ahamywa icyaha mu rubanza rujuririrwa. Incamake y'icyemezo: Gushidikanya birengera ushinjwa. Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze.

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Ubujurire bufite ishingiro. Amategeko yashingiweho: Ingingo ya 111 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha. Nta manza zifashishijwe. Urubanza. I. IMITERERE Y'URUBANZA [1] Ubushinjacyaha bwaketseho Twizerimana Théoneste icyaha cyo guta cyangwa gutererana umwana, icyaha giteganywa kandi kigahanishwa ingingo ya 36 y'Itegeko N°71/2018 ryo ku wa 31/08/2018 ryerekeye kurengera umwana, n'icyaha cyo gusambanya umwana giteganywa kandi kigahanishwa ingingo ya 14 y'Itegeko No 69/2019 ryo ku wa 08/11/2019 rihindura Itegeko no 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, bushingiye ku kuba Irakoze Delphine yaramushinje ko babanye nk'umugabo n'umugore, bakabyarana umwana wiswe Ineza Keliya, nyina w'umwana akamushyira se aho yabaga i Kigali akanamumusigira kugira ngo amwiteho, ariko nyuma uwo mwana akaba yaraburiwe irengero. Irakoze Delphine na we yakurikiranwe n'Ubushinjacyaha ku cyaha cyo guta umwana hashingiwe ku kuba yaragarutse mu Karere ka Burera aho yamubyariye atabasha kugaragaza aho yamushyize kuko rimwe yavugaga ko ari i Nyamasheke, ubundi akavuga ko ari i Kigali ku buryo habayeho no gucyeka ko yaba yaramwishe. Iperereza ku ibura ry'uwo mwana ni ryo ryatumye haboneka ko

Irakoze Delphine yabyaye akiri umwana, mu guperereza ku waba yaramusambanyije akiri umwana, avuga ko uwamusambanyije ari Twizerimana Théoneste, biba intandaro yo kuba muri uru rubanza uyu yararezwe icyaha cyo gusambanya umwana. [2] Mu rubanza kw'ifungwa n'ifungurwa, Ubushinjacyaha bwareze Irakoze Delphine na Twizerimana Théoneste icyaha cyo guta cyangwa gutererana umwana kuri bombi, n'icyaha cyo gusambanya umwana kuri Twizerimana Théoneste, mu cyemezo cyafatiwe Twizerimana Théoneste wahakanaga ko nta mwana yabyaranye na Irakoze kandi ko nta n'umwana yamuhaye, Urukiko rwabonye ko n'ubwo ahakana ko nta mwana yabyaranye na Irakoze Delphine hari umutangabuhamya witwa Habimana Jean Paul wabajijwe akavuga ko azi Twizerimana Théoneste kandi ko amuzi hamwe na Irakoze Delphine aho mu wa 2020 mu gihe cya "Guma mu rugo" uyu mukobwa Irakoze Delphine yazaga kumusura akarara akazongera akagenda, bakaba baranabyaranye umwana w'umukobwa. [3] Mu bisobanuro byahawe Urukiko Rwisumbuye rwa Musanze ku rwego rwa mbere mu rubanza RP/MIN00011/2024/TGI/MUS, Ubushinjacyaha bwavuze ko bwaregeye Urukiko Irakoze Delphine icyaha cyo guta umwana buvuga ko yabyaye umwana akamuta, naho Twizerimana Théoneste bumukurikiranaho icyaha cyo gusambanya umwana, kuko atera inda akanabyarana na Irakoze Delphine, uyu yari ataruzuzwa imyaka 18 y'amavuko, bushingiye ku mvugo z'abatangabuhamya, raporo y'inzego z'ibanze n'imvugo za Irakoze Delphine ubwe. [4] Kuva mu Rukiko Rwisumbuye Twizerimana Théoneste yaburanye ahakana icyaha, avuga ko atigeze aryamana na Irakoze Delphine kandi ko n'Ubushinjacyaha nta bimenyetso bubigaragariza uretse kuba yarabyaye umwana, kandi ko n'ibimenyetso byo kwa Muganga bya Kigali Forensic Laboratory (KFL) byagaragaje ko nta sano y'amaraso afitanye n'uwo mwana wabyawe na Irakoze Delphine, bityo ko Irakoze Delphine n'abatangabuhamya babajijwe bamubeshyera, batavugisha ukuri.

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- [5] Ku wa 21/03/2024, Urukiko Rwisumbuye rwa Musanze rwaciye urubanza RP/MIN00011/2024/TGI/MUS, rumaze kubona ko Ubushinjacyaha buvuga ko "nubwo Twizerimana Théoneste ahakana ko atigeze asambanya Irakoze Delphine ko ndetse nta n'umwana babyaranye ariko abishinjwa na Irakoze Delphine1 ndetse n'abapangayi babanaga mu bipangu bitandukanye mu Mujyi wa Kigali2 no kubona ko Twizerimana adahakana ko atabaye mu gipangu cya Kantamati n'ubwo umwana wavutse KFL yagaragaje ko ntaho ahuriye na Twizerimana; rwemeje ko Twizerimana Théoneste ahamwe n'icyaha cyo gusambanya umwana, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri (20 ans). [6] Twizerimana Théoneste ntiyishimiye imikirize y'urubanza ayijuririra mu Rukiko Rukuru, Urugereko rwa Musanze, avuga ko ku rwego rwa mbere Urukiko rwatesheje agaciro raporo y'abahanga yagaragaje ko umwana Irakoze Delphine yabyaye nta sano bafitanye, ko rwamuhamije icyaha rushingiye ku buhamya bwa Irakoze Delphine umurega kandi ubuhamya bwe budashingiye ku kuri, ko rwashingiye ku buhamya bw'abatangabuhamya kandi bafite icyo bapfa, ndetse ko Urukiko rwashingiye ku cyemezo cy'amavuko ku birebana n'imyaka y'umwana uvugwa ko yasambanyijwe aho gushingira kuri acte de naissance. [7] Ubushinjacyaha bwavuze ko icyaha Twizerimana Théoneste yarezwe ari icyo gusambanya umwana atari icyo gutera umwana inda, ko kuba Irakoze Delphine yarabajijwe agatanga

ubuhamya biteganywa n'amategako cyane cyane ingingo ya 48 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha³, ko ibyo aba batangabuhamya bavuze nta nenge bifite kuko atari bo bashatse Irakoze Delphine ngo aze abe muri icyo gipangu kugira ngo bazabone icyo bamuhimbira kandi ko ibyo bavuze bihura n'ibyo Irakoze Delphine yavuze kuko bahabanye, ko kuba batahuza ukwezi n'umwaka baba barabaniye atari byo bikuraho ko babanye kuko muri bo nta n'umwe wari ushishikajwe no kumenya ukwezi n'umwaka batangiriyeho kubana kuko bitari mu nshingano zabo. [8] Ubushinjacyaha bwavuze kandi ko icyo abatangabuhamya baturijeho ari uko babanye muri icyo gipangu nk'umugore n'umugabo mu gihe cy'ukwezi, kandi nyuma Irakoze Delphine akazana umwana avuga ko amuzaniye se Twizerimana Théoneste. [9] Ku kibazo cy'uko Urukiko rutari gushingira ku cyemezo cy'amavuko cya Irakoze Delphine cyemeje ko yasambanyijwe akiri umwana, Ubushinjacyaha bwavuze ko nta shingiro bifite kubera ko Twizerimana Théoneste atagaragaza ikindi kimenyetso cyaba kivuguruza icyo bwo bwatanze. [10] Ku wa 11/06/2024, Urukiko Rukuru, Urugereko rwa Musanze, rwaciye urubanza RPA/MIN00017/2024/HC/MUS, rumaze kubona ko ikimenyetso cya raporo ya Rwanda Forensic Laboratory kigaragaza ko umwana Irakoze Delphine yabyaye nta sano afitanye na Twizerimana Théoneste mu rubanza nk'uru atari ikimenyetso kimushinjura, kuko icyaha ari ugusambanya umwana kandi Urukiko Rwisumbuye rukaba rwaragaragaje ibimenyetso byashingiweho bimuhamya icyaha cyo gusambanya umwana, rwemeje ko iyi mpamvu ye y'ubujurire ishingiyeye ku kuba atari we se w'umwana wavutse nta shingiro ifite. [11] Ku kibazo cy'uko Urukiko rwaba rwaramamije Twizerimana Theoneste icyaha rushingiye ku buhamya bwa Irakoze Delphine umurega kandi ubuhamya bwe budashingiye ku kuri, Urukiko Rukuru

1 Uregwa Irakoze Delphine ashinja Twizerimana Theoneste ko yamusambanyije akamutera inda bakabyarana umwana witwa Ineza Kelia nyuma y'aho akamumushyira ngo amwiteho akigendera akaba atazi aho yashyize uwo mwana kugeza na n'ubu cyane ko hari abantu babonaga ajya gusambana na we ndetse bakanabona ajyayo ahetse umwana akamumusigira. 2

Abatangabuhamya Niyonsaba Esther, Habimana Jean Paul, Uwantege Salon na Gatabazi, bose bashinja Twizerimana Theoneste ko bamubonanaga na Irakoze Delphine mu bipangu bitandukanye babanyemo ku Karambo guhera Muri 2019 mu gihe cya COVID-19 kugeza muri 2021, babona Irakoze Delphine ahetse umwana avuga ko ari uwo yabyaranye na Twizerimana Theoneste. 3 Ingingo ya 48 y'iryo Tegeko iteganya ibi bikurikira : “Umuntu wese wagize uruhare mu ikorwa ry'icyaha cyangwa uwakorewe icyaha ashobora kumvwa nk'umutangabuhamya”.

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rwasanze ubuhamya bwa Irakoze Delphine bwarashimangiwe n'imvugo z'abatangabuhamya bemeje ko yabanye na Twizerimana Théoneste nk'umugabo n'umugore aho bacumbikaga hamwe mu gipangu, ko ibyo kuvuga ko yavuze ko babyaranye yari amatakirangoyi, bityo rusanga ntacyo bihindura ku kuba yaramusambanyije, kuko ari cyo cyaha yarezwe. [12] Ku birebana n'impamvu y'ubujurire y'uko Urukiko ngo rwashingiye ku buhamya bw'abatangabuhamya kandi bafite icyo bapfa na Twizerimana Theoneste, ndetse bavuguruzanya, Urukiko Rukuru rwashingiye ku byo

Urukiko rw'Ikirenga rwatanzeho umurongo mu rubanza RPAA0117/07/CS Ubushinjacyaha buburana na Cpl Ngabonziza Faustin na Sgt Biziyaremye Jean Baptiste, rusanga ireme ridahinduka abatangabuhamya babajijwe baturijeho ari uko Twizerimana Théoneste yabanye na Irakoze Delphine nk'umugore n'umugabo kandi bakabana mu gipangu cya Kantamage Violette, bityo rusanga byumvikana ko iyo mpamvu y'ubujurire ishingiyeye ku batangabuhamya bavuguruzanya nayo nta shingiro ifite. [13] Ku birebana n'impamvu y'ubujurire y'uko Urukiko rwashingiye ku cyemezo cy'amavuko aho gushingira kuri acte de naissance, Urukiko Rukuru rwahuje icyo kibazo n'urubanza RPAA0043/15/CS rwaciye n'Urukiko rw'Ikirenga ku wa 06/10/2017 Ubushinjacyaha buburana na Muhirwa Etienne, rusanga ibivugwa na Twizerimana Théoneste n'umwunganizi we nta shingiro byahabwa, kuko icyo cyemezo cy'amavuko n'iyi kitaba gishingiye kuri "registre de naissance", ikiboneka ari uko cyatanze n'inzego zibifitiye ububasha. [14] Nyuma y'iryo sesengura, Urukiko Rukuru Urugereko rwa Musanze rwemeje ko icyaha cyo gusambanya umwana wari ufite imyaka 17 y'amavuko Twizerimana Théoneste ashinjwa kimuhama, rwemeza ko imikiriye y'urubanza RP/MIN00011/2024/TGI/MUS rwaciye ku wa 21/03/2024 n'Urukiko Rwisumbuye rwa Musanze idahindutse mu ngingo zarwo zose, ko igihano cy'igifungo cy'inyaka makumyabiri (20 ans) yakatiye mu rubanza rujuririrwa kibarwa uherye igihe yafungirwaho by'agateganyo ku wa 01/12/2023 kigumye. [15] Twizerimana Théoneste yajuririyeye urwo rubanza mu Rukiko rw'Ubujurire, ubujurire bwe buhabwa RPAA00596/2024/CA. Iburanisha ry'urubanza ryashyizwe ku wa 09/07/2025, ruburanishwa Twizerimana Théoneste yunganiye na Me Munyansanga Amina Giselle, naho Ubushinjacyaha buhagarariye na PN Ntawangundi Béatrice, hasuzumwa niba hari ibimenyetso byemeza nta shiti ko Twizerimana Théoneste yakozwe icyaha cyo gusambanya umwana Irakoze Delphine; bityo urubanza rurapfundikirwa Urukiko rutangaza ko ruzasomwa ku wa 25/07/2025, uwo munsu isomwa ry'urubanza ryimurirwa ku wa 30/07/2025 kugira ngo umucamanza abone umwana uhagije wo kubasha kurangiza kuruka no kurwandika. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba hari ibimenyetso byemeza nta shiti ko TWIZERIMANA Théoneste yakozwe icyaha ashinjwa cyo gusambanya umwana IRAKOZE Delphine [16] Mu mwanzuro we w'ubujurire Twizerimana Theoneste avuye ku mu micire y'urubanza RPA/MIN00017/2024/HC/MUS anenga kuba Urukiko rwariyengagije gusesengura bihagije inkomoko y'ikurikiracyaha ku cyaha aregwa cyo gusambanya umwana, abona nk'ikibazo mu gihe cy'urubanza kuko byari gutuma hatahurwa amayeri yakoreshejwe mu kumushinja icyaha, Urukiko rukaba rwaragendeye gusa ku bimenyetso by'Ubushinjacyaha bihamya, cyane cyane ku buhamya butera gushidikanya, bituma rufata icyemezo kidahuje n'ukuri, rutabanye guhuza ibikorwa bigize icyaha n'ibimenyetso, ubushake bwo gukora icyaha n'itegeko. [17] Asobanura ko yarezwe muri uru rubanza kuko Irakoze Delphine wataye umwana yitwaje ibinyoma mu gihe yakurikiranwaga ku cyaha cyo gutanga no gutererana umwana akibeshyera ko yamushyize iwe ngo

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kuko ari we se, Ubugenzacyaha bwakurikirana bugasanga yaratewe inda akiri umwana muto, nyamara umwana yaboneka ahandi hatari kuri Twizerimana Theoneste, akaba yarapimwe ariko hakanzurwa ko ntaho umwana ahuriye na Twizerimana Theoneste. Bityo akavuye ko ibi byose

Urukiko Rukuru iyo rutirengagiza kubisesengura rutari kumuhamya icyaha atakoze, yatangiye gukurikiranwaho hashingiwe ku kuba yarakekwaga ko ari we se w'umwana wabyawe na Irakoze Delphine. [18] Twizerimana Théoneste asobanura kandi ko ibimenyetso n'ubuhamya bw'abatangabuhamya b'Ubushinjacyaha byashingiweho ahamwa icyaha cyo gusambanya umwana, bidahura na kamere y'ikiburanwa ari cyo gusambanya umwana, ngo kuko hagendewe ku bikorwa bigaragazwa n'itegeko rihana icyo cyaha, cyane cyane ingingo ya 14 y'Itegeko No 59/2023 ryo ku wa 04/12/2023 rihindura Itegeko No 68/2018 ryo ku wa 30/08/2018 riteganywa ibihano muri rusange⁴, nta mutangabuhamya wahamije kumubona muri ibyo bikorwa bigize icyaha, ndetse ngo na Irakoze Delphine wamubeshyeye akaba ntabyo yahamije uretse gusa kumubeshyera ko ari we se w'umwana yabyaye, keretse ngo yaba yaribeshye ku mazina ahubwo aho yari yarasize umwana akaba ariho bamusambanyije bakanamutera inda yavutsemo uwo mwana, ari na we muzi w'ikibazo nkomoko y'urubanza. Akabona ko nyuma y'uko Urukiko rubonye ko Irakoze Delphine yamubeshyeye ko ari we se w'umwana, n'izindi mvugo ze zose zimushinja zitagombaga gufatwaho ukuri ngo rumuhamye icyaha. [19] Ku birebana n'umutangabuhamya Kantamati Violette ugaragazwa mu gika cya 16 n'icya 22 by'urubanza rujuzirirwa ko ari we nyir'igipangu ngo Twizerimana Théoneste yabanagamo na Irakoze Delphine nk'umugabo n'umugore, Twizerimana Théoneste avuga ko uyu mutangabuhamya yigaragariye ko atari asanzwe ari uwo mukobwa Irakoze Delphine, kuko ngo yamumenye induru zivuze ubwo yari aje kumutekaho imitwe ko yamuteye inda, kandi ko n'inzego z'ibanze ntaho zigaragaza ko zamenye uwo mukobwa abana na we mbere y'uko havuka ikibazo cyo kumubeshyera ko yamuteye inda. [20] Avuga kandi ko abatangabuhamya bavugaga ko babanye mu bipangu bitandukanye batagaragaza ibyo bipangu ibyo ari byo, cyane cyane ko mu gipangu cyo kwa Kantamati Violette ari ho yabanye n'umwe mu batangabuhamya bamushinja, ariko ko inyandikomvugo y'ibazwa ry'uwo mutangabuhamya itagaragaza ko yamubonye akora icyaha cyo gusambanya umwana cyangwa se ngo ibe hari aho yagaragaza nk'ifoto ye n'uwo mukobwa baba barasanze aho yabaga, ngo ibe yabagaragaza nibura bari mu bikorwa bigize icyaha. Asoza asaba Urukiko rw'Ubujurire kumugira umwere ku cyaha yahamijwe mu rubanza rujuzirirwa kuko ntacyo yigeze akora. [21] Me Munyansanga Amina Giselle wunganira Twizerimana Théoneste avugaga ko Ubushinjacyaha mu kurega Twizerimana Théoneste gusambanya Irakoze Delphine bwagendeye ku kuba ngo yamuteye inda yavutsemo Ineza Kellia, nyamara nyuma uwo mwana apimishijwe ADN ibyemezwaga

4 Ingingo ya 133 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange ihinduwe ku buryo bukurikira : (1) « Umuntu ukorera ku mwana kimwe mu bikorwa bishingiye ku gitsina bukurikira, 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. (2) Umuntu uhamijwe n'urukiko gukora kimwe mu bikorwa bivugwa mu gika cya (1) cy'iyi ingingo ahanishwa igifungo kitari munsi y'imyaka 20 ariko kitarenze imyaka 25. (3) Iyo gusambanya umwana byakorewe ku mwana uri munsi y'imyaka 14 igihano kiba igifungo cya burundu. (4) Iyo gusambanya umwana byakorewe ku mwana ufite cyangwa urengeje imyaka 14 byamuteye indwara idakira cyangwa ubumuga, igihano kiba

igifungo cya burundu. (5) Iyo umuntu mukuru asambanyije umwana bigakurikirwa no kumugira umugabo cyangwa umugore, igihano kiba igifungo cya burundu. (6) Iyo umwana ufite imyaka 14 ariko atarageza ku myaka 18 asambanyije umwana ufite imyaka 14 ariko utarageza ku myaka 18 akoresheje kiboko, ibikangisho, uburiganya cyangwa abikoze ku bw'intege nke z'uwakorewe icyaha, cyangwa yamuhaye ibintu bimuca intege, ahanwa hakurikijwe ibiteganywa mu ngingo ya 54 y'iri tegeko. (7) Icyaha cyo gusambanya umwana ntigisaza. »

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bidashidikanywaho ko uwo mwana atari uwe, ariko Urukiko rubirengaho rumuhamya icyaha. Avuga kandi ko kuba umucamanza w'Urukiko Rukuru mu kumuhamya icyaha rwarashingiye ku mvugo z'abantu bavuga ko babonaga uwo Delphine aje gusura Twizerimana, nka Nkuzwenimana uvuga ko Delphine yari umugore wa Twizerimana ndetse ko yanamuteye inda nyamara byaragaragaye ko iyo nda itari iye, bivuze ko iyo mvugo mu biyigize byose itagombaga gufatwaho ukuri kimwe n'izindi mvugo zimeze nkayo za Habimana na Jean Paul. Naho ku mvugo ya Kantamati Violette wari nyir'igipangu uvuga ko yamenye ko Twizerimana abana na Delphine ari uko uyu avugije induru mu ijoro akamutabariza, hakibazwa impamvu Twizerimana yaba atararezwe icyo gihe ndetse ntihakorwe rapport y'inzeho z'ibanze. [22] Me Munyansanga Amina Giselle avuga kandi ko asanga icyaha cyo gusambanya kitashingirwa ku mvugo, ahubwo cyashingirwa ku bimenyetso bifatika, aho kuba ku kugenekereza. Bityo asaba ko Twizerimana Théoneste agirwa umwere kubera ugushidikanya nk'uko biteganywa mu ngingo ya 111 y'Itegeko mpanabyaha (CP). [23] Ntawangundi Béatrice, Umushingacyaha ku rwego rw'Igihugu, uhagarariye Ubushinjacyaha, avuga ko Ubushinjacyaha busanga Twizerimana atararezwe icyaha cyo gutera inda ahubwo ko yarezwe icyo gusambanya umwana, bityo ko kuba byaragaragajwe ko adafitanye isano n'umwana kuri Irakoze Delphine bitavuze ko atamusambanyije nk'uko Urukiko Rukuru rwabisobanuye mu gika cya 7- 8 cy'urubanza rujuririrwa, hashingiwe ku kuba Irakoze Delphine n'abandi batangabuhamya babajijwe baramushinje ko uwasambanyijwe akiri umwana babanye mu nzu nk'umugabo n'umugore. Abatangabuhamya babajijwe mu Bugenzacyaha ari bo Nkundimana Lazaro wabanaga na Twizerimana mu gipangu kimwe, ubwo yabazwaga mu Bugenzacyaha yavuze ko Twizerimana Théoneste yabanye na Irakoze Delphine mu nzu nk'umugore n'umugabo, ko babanye nk'ukwezi kumwe, Umutangabuhamya witwa Habimana Jean Paul na we yavuze ko yajyaga abona Irakoze Delphine aza gusura Twizerimana Théoneste, ko babanyeho nk'ukwezi, umutangabuhamya witwa Uwantege Shalon avuga ko yibarije Twizerimana Théoneste akamubwira ko uwo mwana yabyaranye na Irakoze ari uwe ko amwemera, umutangabuhamya witwa Kantamati Violette yavuze ko Twizerimana Théoneste yakodeshaga mu gipangu cye, ko nyuma baje kumva induru mu ijoro, basohotse basanga ni umukobwa uri kuvuga ko Twizerimana yamuteye inda akaba ari kumwirukana, ko aribwo bamenye ko Twizerimana na Irakoze babanaga aho muri icyo nzu, ariko ko babanaga rwihishwa. Lazaro wavuze ko Twizerimana yabanye na Irakoze nk'umugore n'umugabo yongeyeho ko kuba yaravuze ko yamuteye inda ari uko yumvaga ko ari inkurikizi zo kubana nk'umugore n'umugabo. [24] Uhagarariye Ubushinjacyaha avuga kandi ko ibyo avuga abishingira ku murongo watanze5 ugira uti: "Nubwo abatangabuhamya babajijwe baba bafite icyo bapfa n'abaregwa, ibyo

ntibyafatwa nk'umuziro kuri bo utuma batabazwa, icy'ingenzi ni uko imvugo yabo itapfa kwemerwa cyangwa ngo ihakanwe itabanje gusuzumwa n'Urukiko". Asobanura aha ko abatangabuhamya bose babajijwe bumvaga ko iyo nda Delphine yabyaye yari iya Twizerimana kuko babanaga nk'umugabo n'umugore. [25] Atanga kandi undi murongo ngo uhuriweho n'izindi manza ugira uti: "Mu manza nshinjabyaha, ibimenyetso byose, iyo byagiweho impaka bishobora gushingirwaho mu kwemeza ko uregwa yakoze icyaha (principe de la liberté de la preuve en matière pénale) kandi ibyo ibimenyetso bishobora no kuba imvugo z'abatangabuhamya, Urukiko rukaba ari rwo rusuzuma niba ibyo bavuga byakwemerwa cyangwa ntibyemerwe". [26] Avuga kandi ko icyemezo cy'amavuko (attestation de naissance) cyatanze ku wa 14/11/2023 n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Nemba kigaragaza ko Irakoze Delphine yavutse

5 Reba Urubanza N° RPAA 00098/2023/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 26/04/2024 Ubushinjacyaha buburana na TUGIRINSHUTI Alexis bahimba Kamugi (igika cya 19). 6 Reba Urubanza N° RPAA 00420/2023/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 20/12/2024 Ubushinjacyaha buburana na ZANINKA Clémentine (igika cya 18).

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ku wa 30/07/2006, Twizerimana akaba ngo adashobora gusobanura impamvu Irakoze yamushinje icyi cyaha ngo abivuguruze anavuguruze n'ubuhamya bw'abatangabuhamya kuko ngo batapfuye kumushinja gusa kandi ko batabigiyeho inama hagati yabo. [27] Kubera izo mpamvu Ubushinjacyaha burasaba Urukiko rw'Ubujurire kwemeza ko impamvu z'ubujurire za Twizerimana Théoneste nta shingiro zifite no gutegeka ko imikirize y'urubanza rwaciwe n'Urukiko Rukuru idahindutse. UKO URUKIKO RUBIBONA [28] Impaka muri uru rubanza zishingiye ku kumenya niba hari ugushidikanya ko Twizerimana Théoneste yaba yarakoze icyaha cyo gusambanya umwana Irakoze Delphine ku buryo yagirwa umwere kuri cyo. [29] Twizerimana Théoneste n'umwunganira Me Munyansanga Amina Giselle ku mpamvu z'ubujurire, bavuga ko Ubushinjacyaha mu kurega Twizerimana Théoneste gusambanya Irakoze Delphine ari uko yamuteye inda yavutsemo Ineza Kellia, bombi batereranye kuko atabonekaga, nyamara aho abonekeye aho yari yarashyizwe bigizwemo uruhare na nyina Irakoze Delphine wenyine naho Twizerimana Théoneste nta ruhare yabigizemo, uwo mwana yapimishijwe ADN, abahanga bemeza ko uwo mwana atari uwa Twizerimana Théoneste, Urukiko rureka gushingira ku kimenyetso cy'ivuka ry'umwana Ineza Kellia nk'igihamya nta shiti ko Twizerimana yasambanyije Irakoze Delphine akiri umwana, ahubwo rushingira ku mvugo n'ubuhamya bw'uwo Twizerimana na Irakoze bigeze kubana nk'umugore n'umugabo mu gipangu kimwe mbere y'uho havuka Ineza Kellia. [30] Ingingo ya 111 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ibi bikurikira : "Gushidikanya birengera ushinjwa. Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze". [31] Nk'uko bigaragarira mu bika bya 22- 27 by'urubanza rujuririrwa RPA/MIN00017/2024/HC/MUS rwaciwe ku wa 11/06/2024, Urukiko Rukuru Urugereko rwa Musanze, rwahamije Twizerimana Théoneste icyaha cyo gusambanya umwana hashingiwe ku mvugo z'abatangabuhamya bakurikira :

Nkundimana Lazaro, Habimana Jean Paul, Uwantege Shalom, Kantamati Violette na Irakoze Delphine uvugwa ko yasambanyijwe. [32] Irakoze Delphine uvugwa kuba umwana wasambanyijwe afite imyaka 17, Urukiko rwavuze ko yasobanuye uko yabanye na Twizerimana Théoneste nk'umugore n'umugabo, ariko mu ibazwa rya Irakoze Delphine ku wa 04/12/2023 yabanje gusobanura uko byagenze, avuga ko akimara kumenyana na Théoneste bagiye basurana bakaryamana nta gakingirizo, ajya kwisuzumisha wenyine asanga atwite, undi atabyemeye basubiranayo, bavuye kwa muganga ngo bajya iwe mu rugo kwa Twizerimana Théoneste, maze atumaho Lazaro amuganiriza uko byagenze, ngo arongerera arara aho ataha bukeye, bakomeza kujya baganirira kuri telefone, inda igeze mu mezi atatu amusaba kumusura, aho yabaga mu Mudugudu wa Murambi (Hari muri Covid). Nanone ku kibazo cya 3 n'icya 4 avuga ko babanye mu gihe cy'amezi atatu mu gipangu cyo kwa Ruzagiriza Jovite. Mu nyandiko isoza iperereza kuri Irakoze Delphine yo ku wa 16/10/2023 ku cyaha cyo kutabasha kugaragaza umwana aho aherereye, ndetse akaba yarahawe umwanya w'iminsi itatu akabura umwana, yemeye icyaha avuga ko umwana ntawe, nta n'uwo yagaragaza kuko se w'umwana atazi iyo ari kandi yamuteye inda akiri umwana. [33] Umutangabuhamya Nkundimana Lazaro, imvugo ze Urukiko rwazishingiyeho ngo kuko ari we wabanaga na Twizerimana Théoneste mu gipangu kimwe, ubwo yabazwaga mu Bugenzacyaha akaba yaravuze ko Twizerimana Théoneste yabanye na Irakoze Delphine mu nzu nk'umugore n'umugabo, ko

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babanye nk'ukwezi kumwe, ko nyuma bagiye gupimisha Irakoze bagasanga atwite. Nyamara mu ibazwa rye mu Bugenzacyaha yavuze ko Twizerimana Théoneste na Irakoze babanye muri icyo gipangu mu kwa 12/2020 kugeza mu mezi ya mbere ya 2021, muri 2021 Irakoze yavuze ko atwite we na Twizerimana uko ari batatu bagiye kumusuzumisha kuri dispensaire yo kwa mama Maska, basanga afite inda y'ukwezi kumwe, ngo bahita bataka Twizerimana Théoneste wari wacecetse cyane kubera ibyo yabonye, ko amenye ko ari umwana we, nyuma ngo yaje gucunga Irakoze hari aho yagiye adahari, arimuka, Irakoze ngo ajya kurega, azana n'abasirikari. Nyamara Irakoze Delphine yavuze ko yagiye kwisuzumisha wenyine asanga atwite, Twizerimana atabyemeye basubiranayo, bavuye kwa muganga ngo bajya iwe mu rugo kwa Twizerimana Théoneste, maze atumaho Lazaro amuganiriza uko byagenze, ngo arongerera arara aho ataha bukeye, bakomeza kujya baganirira gusa kuri telephone. [34] Imvugo z'umutangabuhamya witwa Habimana Jean Paul na we Urukiko rwazihaye agaciro aho yavuze ko yajyaga abona Irakoze Delphine aza gusura Twizerimana Théoneste, ko babanye nk'ukwezi. Mu gihe yabazwaga ku wa 02/12/2023 mu Bugenzacyaha yavuze ko Irakoze yazaga gusura Twizerimana Théoneste, bakaryamana ubundi agataha (muri guma mu rugo 2020) akaza kumutera inda, yongera kumubona mu ntangiriro za 2022 ahetse umwana mwiza cyane, ko n'aho babaga ahazi neza yaherekana (nk'ukwezi), ko yakundaga kubabona hari n'umwana. [35] Imvugo z'umutangabuhamya witwa Uwantege Shalom na we Urukiko rwazishingiyeho aho yavuze ko yibarije Twizerimana Théoneste akamubwira ko uwo mwana yabyaranye na Irakoze ari uwe ko amwemera. Mu gihe mu ibazwa rye mu Bugenzacyaha ku wa 02/12/2023 we yavuze ko yamenye Twizerimana Théoneste na Irakoze muri 2022, ahetse umwana we ngo undi yaramutaye akimukira ahandi, ko yibarije Twizerimana

Théoneste akamubwira ko uwana ari uwe, adashobora kugaragaza igihe, aho yimukiye n'uburyo yabimubwiye n'aho babanaga mbere yo kumuta. [36] Undi mutangabuhamya ni uwitwa Kantamati Violette, imvugo ze zahawe agaciro n'Urukiko aho yavuze ko Twizerimana Théoneste yakodeshaga mu gipangu cye, ko nyuma baje kumva induru mu ijoro, basohotse basanga ni umukobwa uri kuvuga ko Twizerimana Théoneste yamuteye inda akaba ari kumwirukana, ko aribwo bamenye ko Twizerimana Théoneste na Irakoze babanaga aho muri iyo nzu, ariko ko babanaga rwihishwa. Naho mu ibazwa rye n'Ubugenzacyaha, avuga ko Twizerimana Théoneste yamukodesheje inzu muri 2019, bigeze muri 2020, mu ijoro yumva induru y'umukobwa avuga ko Budda yamuteye inda none ngo yamwirukanye bamaranye igihe cy'ukwezi, ariko Twizerimana Théoneste we abihakana. Nyamara uyu mutangabuhamya ntagaraza icyakozwe muri icyo gipangu cye, aho bigaragariye ko harimo umwana wahohotewe kandi hari ubuyobozi bwahurujwe. [37] Urukiko rusanga ubuhamya bwa Nkundimana Lazaro bwavuzwe haruguru atari ikimenyetso kigaragaza ku buryo budashidikanywaho ko Twizerimana Théoneste na Irakoze Delphine babanye nk'umugabo n'umugore mu gipangu cyo kwa Kantamati Violette na we yari acumbitsemo, kuko bimwe mu bikubiyemo bivuguruzwa n'uvugwa ko yasambanyijwe, uvuga ko yazaga gusura Twizerimana Théoneste agataha aho yari atuye i Murambi, bakajya bavugana iby'ubucuti bwabo kuri telefone, akaba ari we wijyana gupimisha inda, yabazwa mu Bugenzacyaha akavuga ko atazi se w'umwana aho ari n'ibindi..., bikaba bigoye kwemeza nta shiti ko Twizerimana Théoneste yigeze asambanyiriza Irakoze Delphine muri icyo gipangu yari acumbitsemo. [38] Urukiko rusanga ubuhamya bwa Kantamati Violette bwavuzwe haruguru, nka nyir'igipangu ngo Twizerimana Théoneste na Irakoze Delphine babanagamo rwihishwa kugeza bataranye inda 2019-2020 nabwo atari ikimenyetso kigaragaza iyo mibanire, ivuguruzwa n'ibyavuzwe n'uwahohotewe bimaze kuvugwa mu gika kibanziriza iki. Ikindi Irakoze Delphine avuga ko yagiye muri icyo gipangu ashyiriye umwana se (wavutse 01/10/2021) agasanga umugore wa Twizerimana Théoneste wasezeranye na we ku wa 31/03/2022 arimo aba akenyeye na "essuie-main" ye, kandi na Twizerimana Théoneste yemeza ko yabaye muri icyo gipangu mu kwezi kwa 02/2021- 03/2021 acuruza mitiyu i Kicukiro/ Gatenga ubundi akimukira hafi y'akazi yari abonye i Gisozi.

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[39] Urukiko rusanga kandi ubuhamya bwa Habimana Jean Paul bwavuzwe haruguru, atari ikimenyetso kigaragaza ko Twizerimana Théoneste yasambanyije Irakoze Delphine mu gihe yamubonaga agiye kumusura, kuko icyo yahamyaga mu buhamya bwe ari uko babyaranye umwana w'umukobwa mwiza cyane mu gihe babanaga nk'umugabo n'umugore ahantu azi ariko atagaragaza mu buhamya. Kuba rero ADN yaragaragaje nta ko sano iri hagati ya Twizerimana Théoneste n'uwo mwana Irakoze Delphine yabyaye, bigoye kwemeza ko babanaga cyangwa se basuranaga bagakora imibonano mpuzabitsina. [40] Urukiko rusanga kandi ubuhamya bwa Uwantege Shalom bwavuzwe haruguru atari ikimenyetso kigaragaza ko Twizerimana Théoneste yemeraga umwana Irakoze Delphine yabyaye mu gihe abandi babajijwe ku mibanire yabo no guterana inda bahamije ko Twizerimana Théoneste yabihakanaga (Kantamati Violette) ndetse na Irakoze Delphine wavugaga ko atazi iyo se

w'umwana we aba nk'uko byagaragajwe hejuru, bikaba bigoye kwemeza nta shiti uko kwemera cyangwa ugusambanywa kwa Irakoze Delphine n'uwahamijwe icyo cyaha. [41] Urukiko rusanga nanone kuba Irakoze Delphine wavuze ko Twizerimana Théoneste ari we se w'umwana yabyaye, akamusambanya akiri umwana mu gihe babanaga nk'umugabo n'umugore bigatuma bombi bakurikiranwaho icyaha cyo guta cyangwa gutererana umwana n'icyaha cyo gusambanya umwana kuri Twizerimana Théoneste , maze mu rubanza RPA/Min 00011/2024/TGI/MUS [mu gika cya 9 cyarwo] Irakoze Delphine akiregura avuga ko icyaha aregwa cyo guta umwana acyemera, akagisabira imbabazi, ko yafashe umwana akamurambika ahantu habera imurikagurisha, akagenda, kubera ko nta bushobozi yari afite, ko yafashwe haciye umwaka, ariko ko atazi niba baramutoraguye, ariko ko yiregura kubera amatakirangoyi yavuze ko yamusigiye Twizerimana Théoneste ariko ko yabeshyaga. Izi mvugo zo kwiregura kwe zigomba guhabwa agaciro mu kurengera uregwa, kuko zigaragaza ko no kuba mu bamusambanyije akiri umwana bishidikanywaho. Kuba urukiko Rukuru, Urugereko rwa Musanze rwaragendeye ku mvugo za Irakoze Delphine zitavugisha ukuri n'iz'abo batangabuhamya Nkundimana Lazaro, Habimana Jean Paul, Uwantege Shalom na Kantamati Violette na zo zivuguruzanya hagati yabo ndetse n'uvugwa ko yahohoteye, rugahamya Twizerimana Théoneste icyaha cyo gusambanya umwana, bitari bikwiye ahubwo rwari kumugira umwere kuri cyo kuko ibyo bimenyetso bishidikanywaho. [42] Urukiko rusanga rero, Twizerimana Théoneste agomba guhanagurwaho icyaha yari akurikiranweho n'Ubushinjacyaha ku bwo gushidikanya ku bijyanye n'ibimenyetso byatanzwe nk'uko biteganywa n'ingingo ya 111 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, nk'uko yibukijwe haruguru. III. ICYEMEZO CY'URUKIKO [43] Rwemeje ko ubujurire bwa Twizerimana Théoneste bufite ishingiro. [44] Rwemeje ko Twizerimana Théoneste adahamwa n'icyaha cyo gusambanya umwana yarezwe muri uru rubanza. [45] Rwemeje ko imikirize y'urubanza RPA/MIN 00017/2024/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, ku wa 11/06/2024 ihindutse mu ngingo zarwo zose. [46] Rutegetse ko Twizerimana Théoneste ahita afungurwa urubanza rukimara gusomwa. [47] Ruvuze ko amagarama y'uru rubanza aherera ku Isanduku ya Leta.

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