

RWANDA / JUDGMENT

UBUSHINJACYAHA vs USENGIMANA

RPAA 00300/2023/CA

COURT

Court of Appeal

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UBUSHINJACYAHA vs USENGIMANA

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Text

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UBUSHINJACYAHA vs USENGIMANA [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00300/2023/CA (Kanyange, P.J.) 23 Gicurasi 2025] Amategeko yerekeye imiburanishirize y'imanza z'inshinjabyaha – kujurira – ibihe by'uburire – Umuburanyi wari uhari cyangwa ahagarariwe igihe urubanza rwacibwaga ndetse n'uwamenyeshejwe mu buryo bwemewe n'amategeko umunsi urubanza ruzacibwaho ntaze cyangwa ngo yohereze umuhagararira, bagomba kujurira mu gihe kitarenze iminsi 30 uhaye ku itariki urubanza rwaciriweho. Amategeko yerekeye imiburanishirize y'imanza z'inshinjabyaha – kujurira – ibihe by'uburire – impamvu ikomeye kandi itunguranye ituma umuburanyi atajurira ku gihe – Ibihe bya COVID - 19 n' impamvu ikomeye kandi idasanzwe ibuza umuburanyi kujurira mu gihe ntarengwa giteganyijwe n'amategeko ku buryo atafatwa nk'uwatinze kujurira, ahubwo yongererwa ibihe yagombaga kujuririramo Incamake y'ikibazo: uru rubanza rwatangiye Ubushinjacyaha burega Usengimana mu Rukiko Rwisumbuye rwa Rusizi bumukurikiranyeho icyaha cyo gusambanya umwana witwa I.R w'imyaka itandatu (6). Busaba Urukiko kumuhamba icyaha, bumusabira igihano cy'igifungo cya burundu. Usengimana yireguye ahakana icyaha, avuga ko n'ibyo yemereye mu Bushinjacyaha byatewe n'abantu bamushutse batuma yemera icyaha atakoze, asaba ko yarenganurwa. Urukiko mu rubanza RP00329/2020/TGI/

RSZ, rushingiye ku ku kwemera icyaha k'uregwa, na raporo ya muganga igaragaza ko I.R yakomeretse ku gitsina ndetse ko atabasha kugenda neza, rwemeza ko ahamwa n'icyaha cyo gusambanya umwana utarageza imyaka cumi n'ine (14), rumuhanisha igihano cya burundu. Usengimana yajuriye mu Rukiko Rukuru, Urugereko rwa Rusizi habanza gusuzumwa inzitizi yo kutakira ikirego kuko Usengimana avuga ko yajuriye ku gihe kuko uhereye igihe yamenyesherejwe imikirize y'urubanza kugeza igihe yajuriye atarengeje iminsi mirongo itatu iteganyijwe n'amategeko, naho Ubushinjacyaha bukavuga ko yajuriye igihe giteganyijwe n'amategeko cyararenze. Urukiko mu rubanza RPAA00305/2020/HC/RSZ, rwemeje ko yajuriye akererewe kuko yarengeje igihe cy'iminsi mirongo itatu giteganyijwe n'amategeko, kuko yamenyeshejwe umunsi w'isomwa ry'urubanza kandi rurasomwa, iminsi mirongo itatu iteganyijwe n'amategeko ikaba igomba kubarwa uhareye icyo gihe. rwemeza ko ubujurire bwe butakiriwe. Usengimana yatanze ubujurire bwa kabiri mu Rukiko rw'Ubugurire, avuga ko Urukiko Rukuru rwanze kwakira ubujurire bwe ngo kuko bwatanze bukererewe, kandi byaratewe n'uko hari mu gihe cya Covid 19. Ubushinjacyaha buvuga ko iyo mpamvu nta shingiro ifite kuko usibye kuba ibirebana na covid atarabiburanishije mu Rukiko Rukuru, kuba yari ari muri gereza nta cyari gutuma atajurira ku gihe. Urukiko mu rubanza RPAA00300/2023/CA, rwemeje ko ubujurire bwa Usengimana bufite ishingiro kuko kutajurira mu gihe giteganyijwe n'amategeko byatewe n'impamvu ikomeye kandi itunguranye itaramuturutseho. Rwemeza ko urubanza rujuririrwa ruvuyeho ko Urukiko Rukuru rugomba kwakira ubujurire bwe rukabuburanisha. Incamake y'icyemezo:1. Umuburanyi wari uhari cyangwa ahagarariwe igihe urubanza rwacibwaga ndetse n'uwamenyeshejwe mu buryo bwemewe n'amategeko umunsi urubanza ruzacibwaho ntaze cyangwa ngo yohereze umuhagararira, bagomba kujurira mu gihe kitarenze iminsi 30 uhareye ku itariki urubanza rwaciriweho.

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2.Ibihe bya COVID - 19 n' impamvu ikomeye kandi idasanzwe ibuza umuburanyi kujurira mu gihe ntarengwa giteganyijwe n'amategeko ku buryo atafatwa nk'uwatinze kujurira, ahubwo yongererwa ibihe yagombaga kujuririramo. Amategeko yashingiweho: Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinyabyaha, Ingingo ya 181, 193 Imanza zifashishijwe: Urubanza RPAA0022/14/CS, haburana Ubushinjacyaha na Bogere Barige rwaciwe n'Urukiko rw'Ikirenga ku wa 23/03/2018 Urubanza RPAA00055/2023/CA haburana Ubushinjacyaha na Niyonizeye Pacifique, rwaciwe n'Urukiko rw'Ubugurire ku wa 22/03/2024 Urubanza RPAA00274/2023/CA, haburana Ubushinjacyaha na Maniragaba Oscar rwaciwe n'urukiko rw'Ubugurire ku wa 20/09/2024 Urubanza RPAA00326/2023/CA, haburana Ubushinjacyaha na Nduwimana Abdul rwaciwe n'Urukiko rw'Ubugurire ku wa 22/04/2025 I. IMITERERE Y'URUBANZA [1] Usengimana Jonas yaketsweho gusambanya umwana w'imyaka itandatu (6) wiswe I.R1 muri uru rubanza, bimenyekana ubwo umubyeyi we yabonaga ko yicara akababara yamubaza icyo yabaye akavuga ko Usengimana Jonas yamujiyanye mu cyumba abamo akamusambanya akamubwira ko amuha amafaranga ijana, nyina abimenyesha inzego zibishinzwe, iperereza rihita ritangira. [2] Nyuma y'iperereza, Ubushinjacyaha bwamureze mu Rukiko Rwisumbuye rwa Rusizi bumukurikiranyeho icyaha cyo gusambanya umwana,

bushingiye ku bimenyetso birimo imvugo ze mu Bushinjacyaha aho yemeye ko yasambanyije I.R, imvugo z'abatangabuhama n'icyemezo cy'amavuko kigaragaza ko I.R ari umwana, bumusabira igifungo cya burundu. [3] Usengimana Jonas yireguye ahakana icyaha, avuga ko n'ibyo yemereye mu Bushinjacyaha byatewe n'abantu bamushutse batuma yemera icyaha atakoze, asaba ko yarenganurwa. [4] Urukiko rwaciye urubanza RP00329/2020/TGI/RSZ ku wa 23/07/2020, rusanga nubwo Usengimana Jonas ahakana icyaha akurikiranweho, hari ibimenyetso bikimuhama atabasha kuvuguruzwa bigizwe n'imvugo ye mu Bushinjacyaha aho yemeye icyaha agasobanura ko ubwo yari mu rugo imvura ihise yafashe I.R amujyana mu cyumba aramusambanya anasobanura uko yamusambanyije, ibyo yavuze bikaba bihura n'ibyagaragajwe na raporo ya muganga kuko muganga yasanze yarakomeretse ku gitsina ko ndetse atabashaga kugenga neza, rushingiye kuri ibyo bimenyetso rwemeza ko ahamwe n'icyaha cyo gusambanya umwana utarageza ku myaka 14, rumuhanisha igifungo cya burundu. [5] Usengimana Jonas yajuriye mu Rukiko Rukuru, Urugereko rwa Rusizi avuga ko yajuriye ku wa 22/09/2020 kuko aribwo yamenyeshejwe urubanza rwaciye ku wa 23/07/2020, Ubushinjacyaha busaba ko habanza gusuzumwa niba ubujurire bwaratanze mu gihe giteganywa n'amategeko. [6] Urukiko rwaciye urubanza RPA00305/2020/HC/RSZ ku wa 22/05/2023, rusanga Usengimana Jonas yaraburanye ku rwego rwa mbere anamenyeshwa ko urubanza ruzasomwa ku wa 23/07/2020 kandi uwo munsu urubanza ruzasomwa, ko kuba yarajuriye ku wa 22/09/2020, bivuze ko ubujurire bwe

1 Yahawe iri zina kuko ari umwana

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butubahirije igihe cy'iminsi 30 ibarwa kuva urubanza rusomwe, maze rwemeza ko ubujurire bwe butakiriwe. [7] Usengimana Jonas yatanze ubujurire bwa kabiri mu Rukiko rw'Ubujurire, urubanza rwandikwa kuri RPAA00300/2023/CA, ruhabwa itariki yo kuburanishwa yo ku wa 03/04/2025, uwo munsu ruburanishwa yunganiwe na Me Ndwanaye Pierre Claver, Ubushinjacyaha buhagarariwe na Niyonkuru Françoise, Umushinjacyaha ku rwego rw'Igihugu. [8] Mu myanzuro y'ubujurire no mu miburanire, Usengimana Jonas n'umwunganira bavuye ko Urukiko Rukuru rwanze kwakira ubujurire bwe ngo kuko bwatanze bukererewe, kandi byaratewe n'uko hari mu gihe cya Covid 19, hari ingamba zikomeye zo kwirinda. [9] Uhagarariye ubushinjacyaha we avuye ko iyo mpamvu nta shingiro ifite kuko usibye kuba ibirebana na covid atabuburanishije mu Rukiko Rukuru, kuba yari ari muri gereza nta cyari gutuma atajurira ku gihe. [10] Nyuma yo kumwamba imiburanire y'impane zombi, Urukiko rwafashe icyemezo mu rubanza rubanziriza urundi rwo ku wa 22/04/2025, rusaba Igorororero rya Rusizi kurusobanurira niba hari imbogamizi Usengimana Jonas yahuye nazo zatewe no kuba igororero ryari mu kato kuva igihe urubanza yajurirye rwaciye kugeza atanze ubujurire ku wa 22/09/2020. Byatumye urubanza rwongera kuburanishwa ku wa 08/05/2025, Usengimana yunganiwe nka mbere naho Ubushinjacyaha buhagarariwe na Habimana Jean Cabin, Umushinjacyaha ku rwego rw'Igihugu, bahabwa umwana wo kuvuka ku bikubiye mu ibaruwa yanditswe n'Umuyobozi w'Igororero rya Rusizi. [11] Ikibazo kigomba gusuzumwa muri uru rubanza ni ukumenya niba kutajurira ku gihe kwa Usengimana byaratewe na covid ku buryo ubujurire bwe bwagombaga kwakirwa mu Rukiko Rukuru. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba

kutajurira ku gihe kwa Usengimana byaratewe n'icyorezo cya covid 19 ku buryo ubujurire bwe bwagombaga kwakirwa mu Rukiko Rukuru. [12] Usengimana Jonas n'umwunganira bavuga ko Urukiko Rukuru rwanze kwakira ubujurire bwe ngo kuko bwatanzwe bukererewe, kandi byaratewe n'uko hari mu gihe cya Covid 19, hari ingamba zikomeye zo kwirinda, abantu bari mu kato kubera ingamba zari zarashyizweho mu rwego rwo kwirinda icyo cyorezo, ko igihe ubuyobozi bwamumenyeshereje imikirize y'urubanza ku wa 22/09/2020, aribwo yihutiye kujurira. [13] Bavuga kandi ko imiburanire yabo ishimangirwa n'ibikubiye mu ibaruwa y'Igororero afungiyemo kuko Umuyobozi waryo yemeje ko ryari mu kato katewe na COVID 19, kandi ko aho abagororwa bafungirwa hatandukanye n'aho ubwanditsi bwa gereza bukorera, ko ubwanditsi bwa gereza bukorera hanze y'igipangu cya gereza, mu gihe aribwo bwagombaga kumutangira ikirego, ko rero urubanza rwajuririwe rugomba guteshwa agaciro. [14] Uhagarariye Ubushinjacyaha avuga ko impamvu y'ubujurire bwa Usengimana Jonas nta shingiro ifite, kuko yaburanye afungiyemuri gereza amenyeshwa umunsi urubanza ruzasomerwa, akaba ntacyo yakoze kigaragaza ko yasabye kumenyeshwa icyemezo cyafashwe ku rubanza rwe ngo gereza imuhakanire, ko ikibazo cyegitandukanye n'umuntu waburanye afungiyemuri kasho akajyanwa muri gereza nyuma. Avuga kandi ko ikibazo cy'uko yabujijwe kujurira ku gihe kubera ibihe bya covid ataricyo yaburanishije mu Rukiko Rukuru, kandi ko kuba yari muri gereza ntacyari gutuma atajurira ku gihe cyangwa ngo abe yarabikurikiranye ku buyobozi bwa gereza cyangwa akabisaba Urukiko.

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- [15] Ku birebana n'ibyanditswe n'Umuyobozi w'Igororero rya Rusizi, uhagarariye Ubushinjacyaha avuga n'ubwo mu ibaruwa yanditse avuga ko kuwa ku wa 20/07/2020 kugeza ku wa 22/09/2020 igororero ryari mu kato katewe na COVID 19, ntaho bavuze ko ako kato kari kubuza Usengimana Jonas kujurira ku gihe, ngo basobanure imbogamizi yagize nk'uko Urukiko rwari rwabisabye, bakaba batarasobanuye niba ako kato kari gutuma atajurira ku gihe cyangwa ngo bagaragaze ko abakozi batakoraga, cyane cyane ko n'ubundi yajuriye ako kato kagihari kuko ibaruwa ivuga ko bakagiyemo kuwa mu kwezi kwa 07/2020 kugeza mu kwezi kwa 10/2020, mu gihe Usengimana yajuriye ku wa 22/09/2020. Avuga kandi ko Igororero rikorera ahantu hamwe n'ubwo hari inzu zitandukanye, ku buryo umugororwa yashoboraga kujya ku buyobozi bwaryo agatanga ubujurire bwe. UKO URUKIKO RUBIBONA [16] Ingingo ya 181 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko : "Kujurira bikorwa mu gihe kitarenze iminsi mirongoitatu (30) uhareye ku itariki urubanza rwaciriweho ku muburanyi wari uhari ahagarariye igihe urubanza rwacibwaga. Icyo gihe gikurikizwa kandi ku muburanyi wamenyeshwe mu buryo bwemewe n'amategeko, umunsi urubanza ruzacibwaho ntaze cyangwa ngo yohereze umuhagararira. Kujurira bikorwa mu gihe cy'iminsi mirongo itatu (30) uhareye ku itariki urubanza rwamenyeshwe umuburanyi utari uhari igihe rwasomwaga". [17] Ku birebana n'igihe ubujurire bugomba gukorerwa, Urukiko rw'Ikirenga rwabitanzeho umurongo mu rubanza RPA0022/14/CS rwaciwe ku wa 23/03/2018 haburana Ubushinjacyaha na Bogere Barige wakurikijwe no mu zindi manza harimo urubanza RPAA00055/2023/CA rwaciwe ku wa 22/03/2024 haburana Ubushinjacyaha na Niyonizewe

Pacifique, uwo murongo ukaba uvuga ko umuburanyi wari uhari cyangwa ahagarariwe igihe urubanza rwacibwaga ndetse n'uwamenyeshejwe mu buryo bwemewe n'amategeko umunsi urubanza ruzacibwaho ntaze cyangwa ngo yohereze umuhagararira, bagomba kujurira mu gihe kitarenze iminsi 30 uhereye ku itariki urubanza rwaciriweho. [18] Nk'uko dosiye ibigaragaza, Usengimana Jonas yaburanye mu Rukiko Rwisumbuye rwa Rusizi ku wa 24/06/2020 (kuri skype), amenyeshwa ko urubanza ruzasomwa ku wa 23/07/2020 kandi uwo munsi rurasomwa, ajurira mu Rukiko Rukuru, Urugereko rwa Rusizi ku wa 22/09/2020. [19] Bigaragara kandi ko mu Rukiko Rukuru, Usengimana Jonas yaburanye avuga ko yajuriye atinze kuko aribwo yamenyeshejwe urubanza, imbere y'uru Rukiko avuga ko uko kujurira atinze byatewe n'icyorezo cya covid kuko bari mu kato, naho Ubushinjacyaha bukavuga ko nta mbogamizi yagaragajwe yari gutuma atajurira ku gihe. [20] Mu rwego rwo gushaka kumenya niba koko hari imbogamizi Usengimana Jonas yahuye nazo zituruka ku kuba igororero ryari mu kato, Urukiko rwasabye Igororero abarizwamo, mu ibaruwa Umuyobozi w'iryo gororero yandikiye umwanditsi mukuru w'uru Rukiko ku wa 28/04/2025, yasobanuye ko kuva ku wa 20/07/2025 kugeza ku wa 02/10/2025 muri iryo gororero gari akato katewe no kuba imibare y'abanduye covid 19 yari yiyongereye. [21] Ibikubiye mu ibaruwa y'Umuyobozi w'Igororero rya Rusizi byumvikanisha ko n'igihe urubanza Usengimana yajuririyemo mu Rukiko Rukuru rwacibwaga, muri iryo gororero hari akato, bikanashimangirwa n'uko yaburanye hakoreshejwe uburyo bw'ikoranabuhanga (skype), bityo nubwo muri icyo baruwa hatasobanuwe uko akazi kakorwaga, byumvikana ko imirimo itakorwaga nk'uko yari isanzwe ikorwa ku buryo umugororwa yashoboraga gusaba serivise asanzwe ahabwa nk'uko byari bisanzwe, kandi nk'uko byagiye binagaragara ahandi, byumvikana ko no mu Igororero rya Rusizi abakozi batashoboraga kuza ku kazi uko bisanzwe kandi ari bo bashinzwe gufasha abagororwa gutanga ibirego, naho kuba Usengimana yarajuriye mu Igororero hakiri akato, byumvikana ko igihe yabonye umufasha aribwo yashoboye kujurira.

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- [22] Nubwo rero hakurikijwe ibiteganywa n'ingingo ya 181 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru bikanashimangirwa n'umurongo watanze mu rubanza rwavuzwe, igihe cyo kujurira kuri Usengimana Jonas cyagombaga kubara kuhera igihe urubanza rwaciriweho bitewe n'uko yamenyeshejwe umunsi urubanza ruzasomerwaho kabone n'ubwo atari kwitaba kuri uwo munsi, kuba byagaragajwe haruguru ko habayeho imbogamizi zatewe n'icyorezo cya covid 19, bivuze ko kujurira acyererewe bitamuturutseho. Iby'uko ibihe bya COVID - 19 ari impamvu ikomeye kandi idasanzwe ibuza umuburanyi kujurira mu gihe, byanemejwe mu rundi rubanza rwaciye n'uru Rukiko haburana Ubushinjacyaha na Maniragaba Oscar, aho Urukiko rwasobanuye ko impamvu ya guma mu rugo kubera ibihe bya COVID - 19 ari impamvu ikomeye kandi idasanzwe ibuza umuburanyi kujurira mu gihe ntarengwa giteganyijwe n'amategeko ku buryo atafatwa nk'uwatinze kujurira, ahubwo yongererwa ibihe yagombaga kujuririramo. [23] Hashingiye ku byasobanuwe, Urukiko rurasanga kuba Usengimana Jonas yarajuriye mu Rukiko Rukuru igihe giteganywa n'amategeko cy'iminsi (30) cyararenze bitewe n'impamvu y'icyorezo cya

Covid-19 cyari aho yari afungiyeye, atari impamvu yamuturutseho, bityo ubujurire bwe bukaba bwaragombaga kwakirwa. [24] Urukiko rurasanga rero hashingiwe ku biteganywa n'ingingo ya 193, igika cya mbere, y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha³, no ku byemejwe mu zindi manza ku kibazo nk'iki harimo urubanza RPAA00326/2023/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 22/04/2025 haburana Ubushinjacyaha na Nduwimana Abdul⁴, kuba ubujurire bwa Usengimana Jonas bwaragombaga kwakirwa mu Rukiko Rukuru, Urugereko rwa Rusizi, urubanza urwo rukiko rwaciwe rwanga kwakira ubwo bujurire ruvanweho, dosiye igasubizwa muri urwo Rukuru kugira ngo ruburanishe ubujurire Usengimana yari yaratanze. III. ICYEMEZO CY'URUKIKO [25] Rwemeje ko ubujurire bwa Usengimana Jonas bufite ishingiye; [26] Rwemeje ko ubujurire yatanze mu Rukiko Rukuru, Urugereko rwa Rusizi bwagombaga kwakirwa; [27] Rwemeje ko urubanza RPA00305/2020/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi ku wa 22/05/2023, ruvanweho [28] Rwemeje ko amagarama y'urubanza aherera ku Isanduku ya Leta.

2 Urubanza no RPAA 00274/2023/CA rwaciwe ku wa 20/09/2024 3 Iyo urukiko rwajuririwe rusanze urubanza rwari rwaregewe mu buryo bukurikije amategeko urukiko rwaruciye ku rwego rubanza rukavuga ko rutakiriwe kandi rwaragombaga kwakirwa, Urukiko rwajuririwe rurarwakira, rukagaragaza ko rwagombaga kwakirwa ku rwego rwa mbere; rukarutesha agaciro maze rukarusubiza urukiko rwari rwaruciye kugira ngo ruruburanishe mu mizi, nta yindi ngwate y'amagarama itanzwe". 4 Nyuma yo gusanga ubujurire bwe bwaragombaga kwakirwa mu Rukiko Rukuru, Urugereko rwa Rusizi, rwemeje ko urubanza urwo Rukiko rwaciye rwo kutakira ubwo bujurire ruvanweho, ko ikirego cye gisubira muri urwo Rukiko kugira ngo urubanza ruburanishwe mu mizi.

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