

RWANDA / JUDGMENT

UWAMWEZI v KABASINGA N'UNDI

RS/INJUST/RC 00006/2019/SC

COURT

Supreme Court

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UWAMWEZI v KABASINGA N'UNDI

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Text

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UWAMWEZI v KABASINGA N'UNDI [Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00006/2019/SC– (Cyanzayire, P.J., Nyirinkwaya na Hitiyaremye, J.) 03 Ukuboza 2021] Amategeko agenga ibimenyetso – Ibimenyetso bishingiye ku bumenyi n'ubuhanga – Ikimenyetso cya ADN – Mu nyungu z'ubutabera, urukiko rwagombye kwifashisha ibimenyetso bishingiye ku bumenyi igihe bishoboka kugirango rushobore kugaragaza ukuri. Incamake y'ikibazo: Kabasinga yareze mu Rukiko rw'Ibanze rwa Kacyiru asaba kwemeza ko abana be Keza na Gatesi babyawe na Gashagaza wapfuye ariko uru rukiko rwemeza ko ikirego cye nta shingiro gifite kuberako nta bimenyetso bidashidikanywaho yarugaragarije. Yajuririye mu Rukiko Rwisumbuye rwa Gasabo avuga ko hari ibimenyetso byirengagijwe, hakaba hari n'abavandimwe ba Nyakwigendera bashobora guhamya ko abo bana ariwe bababyaranye. Uru rukiko rwemeje ko abo bana babiri yababyaranye na gashagaza rushingiye k'ubuhanga bwatanzwe n'umwe mu bavandimwe be. Uwamwezi, umugore w'isezerano wa Nyakwigendera, yatambamiye urwo rubanza asaba ko hakorwa ADN, nk'ikimenyetso kidashidikanywaho, hakemezwa niba abana Keza na Gatesi barabyawe n'umugabo we. Urukiko rwemeje ko imikirize y'urubanza rwatambamiwe igumyeho kubera ko Urega atabashije kuvuguruza ibimenyetso byashingiweho mbere hemezwa ko abo

bana ari aba Gashagaza. Ibi byatumye asaba ko urubanza yatambamiye rusubirishwamo ku mpamvu z'akarengane maze biremezwa, Urukiko rw'Ikirenga ruruburanisha mu ruhame, rubanza gusuzuma ikibazo kijyanye no kumenya niba Keza na Gatesi ari bene Gashagaza. Urukiko rwafashe icyemezo cyo guha Rwanda Forensic Laboratory inshingano zo gufata ibizamini bya ADN, hagereranywa Keza na Gatesi n'umubiri wa Gashagaza nkuko byifujwe n'ababuranyi bombi. Raporo y'ibyo bizamini yoherejwe n'urwo Rwego, yagaragaje nta gushidikanya ko Gashagaza ari we Se wa Gatesi na Keza. Yerekanye ko isano iri hagati ya Gashagaza na Gatesi (The calculated probability of paternity) iri ku kigero cya 99,9999459472% naho iri hagati ye na Keza ikaba iri ku kigero cya 99,999991864 %. Bityo, ababuranyi bombi bakaba baremeye ibyagaragajwe niyo raporo. Incamake y'icyemezo: Mu nyungu z'ubutabera, urukiko rwagombye kwifashisha ibimenyetso bishingiye ku bumenyi igihe bishoboka kugirango rushobore kugaragaza ukuri. Bityo, abana Keza Reina na Gatesi Renita babyawe na Gashagaza hashingiwe ku kizamini cya ADN cyakozwe n'abahanga. Ikirego gisaba gusubirishamo ku mpamvu z'akarengane, nta shingiro gifite. Gatesi na Keza babyawe na Gashagaza. Amategako yashingiweho: Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 273. Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango, ingingo ya 282. Itegeko No 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 76. Imanza zifashishijwe: Gahire Athanase na Mukarushakiro Gloriose, Bagenzi Théogène, Higiro James, RS/INJUST/RC 00008/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 12/11/2021.

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Road Solutions Pavement Products v Mailco Ltd, RS/INJUST/RCOM 00002/2020/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 25/09/2020. Prime Insurance Ltd v Kansime James, RS/INJUST/RCOM 00005/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 12/06/2020. Akisanti Ayubu v Tuyishimire Yves, RS/INJUST/RC 00021/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 22/11/2019. Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik, (2014) 2 SCC 576 rwaciwe n'Urukiko rw'Ikirenga rwo mu Buhinde. KK Security v Harerimana Enos n'abandi, RSOCAA 0006/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 11/01/2008. Urubanza I. IMITERERE Y'URUBANZA [1] Urubanza rwatangiriye mu Rukiko rw'Ibanze rwa Kacyiru, Kabasinga Hélène uhagarariye abana be Keza Reina na Gatesi Renita, asaba Urukiko kwemeza ko abo bana babyawe na Gashagaza Jérôme wapfuye. Urukiko rwaciye urubanza RC 00934/2016/TB/KCY ku wa 20/02/2017, rwemeza ko ikirego cyeye nta shingiro gifite, kuko nta bimenyetso bidashidikanywaho agaragaza by'uko abo bana babyawe na Gashagaza Jérôme koko. [2] Kabasinga Hélène yajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Gasabo, avuga ko hari ibimenyetso byirengagijwe byerekana ko yabyaranye abo bana na Gashagaza Jérôme, birimo icyemezo cy'amavuko cyatanze n'Umurenge wa Kimironko, ifishi yo kwa muganga y'ikingira n'inyandiko z'inzira (passports) z'abana. Yavuze kandi ko hari abavandimwe ba Gashagaza Jérôme bashobora kubihamya, aribo Kayihura Canisius na Mukantaganda Judith. [3] Ubujurire bwanditswe kuri RCA 00053/2017/TGI/GSBO, urubanza rucibwa ku wa 16/05/2017, Urukiko rwemeza ko abana Keza Reina na Gatesi Renita babyawe na Gashagaza Jérôme. Urukiko rwashingiye ku mvugo z'umutangabuhamya

Mukantaganda Judith uvukana na Gashagaza Jérôme, wemeje ko Kabasinga Hélène yabyaranye na Gashagaza Jérôme abana 2, uwa mbere akaba yaravutse atarashaka umugore w'isezerano, undi avuka yaramaze gushaka, akaba yarabarihiraga amashuri mbere y'uko apfa. [4] Uwamwezi Sandrine, umugore w'isezerano wa Gashagaza Jérôme, yatambamiye urubanza RCA 00053/2017/TGI/GSBO asaba Urukiko ko hakorwa ADN, kugirango rushingire ku bimenyetso bidashidikanywaho, rwemeze niba abana Keza Reina na Gatesi Renita barabyawe na Gashagaza Jérôme. [5] Urubanza rwanditswe kuri RCA 00109/2017/TGI/GSBO. Mbere y'uko rucibwa, Urukiko rwafashe icyemezo ku wa 30/05/2018 rusaba Rwanda Forensic Laboratory gufata amaraso ya Keza Reina, Gatesi Renita, Gashagaza Orian, na Kayihura Canisius, kugirango hakorwe ikizamini cya ADN, hamenyekane niba Keza Reina na Gatesi Renita barabyawe na Gashagaza Jérôme. [6] Ku wa 30/07/2018, Rwanda Forensic Laboratory yanditse itanga inama ko kugirango hatangwe umwanzuro udashidikanywaho, hafatwa ibimenyetso kuri Keza Reina, Gatesi Renita, Kayihura Canisius, Gashagaza Orian, Mukantaganda Judith, Uwamwezi Sandrine, na Kabasinga Hélène. Ku wa 17/09/2018, Urukiko Rwisumbuye rwa Gasabo rwemeje ko hakurikizwa inama zatanze, Rwanda Forensic Laboratory igafata ibipimo ku bamaze kuvugwa. Nyuma y'icyo cyemezo, Rwanda Forensic Laboratory na Uwamwezi Sandrine bamenyesheje Urukiko ko Kayihura Canisius

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yanze gutanga ibizamini ku munsu yari atagerejweho hamwe n'abandi. Uwamwezi Sandrine yasabye Urukiko ko rwahatira abagomba gutanga ibyo bizamini kujya kubitanga. [7] Urubanza rwakomeje hadakozwe ikizamini cya ADN, rucibwa ku wa 15/03/2019, Urukiko rwemeza ko imikirize y'urubanza RCA 00053/2017/TGI/GSBO rwatambamiye igumye. Rwasobanuye ko Uwamwezi Sandrine watambamiye urubanza atabashije kuvuguruza ibimenyetso byashingiweho hemezwa ko Keza Reina na Gatesi Renita ari abana ba Gashagaza Jérôme. Ibyo bimenyetso bikaba ari imvugo za Kayihura Canisius na Mukantaganda Judith bavukana na Gashagaza Jérôme, amabaruwa anyuranye Gashagaza Jérôme yanditse asaba inyandiko z'inzira z'abana kandi yemera ko ari abe, inyandiko zatanze n'Umurenge, n'inyandiko z'inzira z'abo bana. [8] Uwamwezi Sandrine yandikiye Perezida w'Urukiko Rukuru, amusaba ko urubanza RCA 00109/2017/TGI/GSBO rwaciye n'Urukiko Rwisumbuye rwa Gasabo ku wa 15/03/2019 rwasubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko Rukuru amaze kubisuzuma, yagejeje raporo kuri Perezida w'Urukiko rw'Ikirenga agaragaza ko urwo rubanza rukwiye gusubirwamo. Perezida w'Urukiko rw'Ikirenga nawe amaze kubisuzuma, yemeje ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, arwohereza mu Bwanditsi bw'Urukiko kugirango rwandikwe mu bitabo ruzaburanishwe, rwandikwa kuri RS/INJUST/RC 00006/2019/SC. [9] Urubanza rwahamagawe ku wa 22/06/2020, iburanisha ribera mu ruhamwe, Uwamwezi Sandrine ahagarariwe na Me Mukamazimpaka Hilarie, naho Kabasinga Hélène atitabye ariko yarahamagawe mu buryo bukurikije amategeko. Iburanisha ntirapfundikiwe kubera ko Urukiko rwategetse ko hakorwa ibizamini bya ADN nk'uko ababuranyi babyifuje, hagatabururwa umubiri wa Gashagaza Jérôme, ukagereranywa n'abana bivugwa ko ari abe muri uru rubanza; amafaranga azakoreshwa kuri icyo gikorwa akagabanwa ku buryo bungana hagati y'ababuranyi. Ku wa 29/06/2020, Urukiko rwafashe

icyemezo cyo guha Rwanda Forensic Laboratory inshingano zo gufata ibizamini bya ADN, hagereranywa Keza Reina na Gatesi Renita n'umubiri wa Gashagaza Jérôme. [10] Ku wa 14/07/2020, Me Mitsindo Tom mu izina rya Kabasinga Hélène yandikiye Urukiko arumenyesha ko yigariitse Me Kabarega Ngabo Robert wari usanzwe amuburanira, avuga ko yakoze ibinyuranye n'ibyo bari bumvikanye. Iburanisha ku bwigarike ryabaye ku wa 07/10/2020, icyemezo gisomwa ku wa 23/10/2020, Urukiko rwemeza ko nta shingiro gufite, ko ibikorwa byakozwe mu rubanza RS/INJUST/RC 00006/2019/SC guhera mu nama ntegururubanza bigumanye agaciro kabyo. Rwemeje kandi ko ibyategetswe mu iburanisha ryo ku wa 22/06/2020 bikomeza kubahirizwa. [11] Urubanza rwongeye guhamagarwa ku wa 14/04/2021, Gatesi Renita yaruhamagawemo kubera ko yari amaze kugira imyaka y'ubukure, yunganiwe na Me Niyibizi Diogène. Urubanza ntirwaburanishijwe kuri iyo tariki, kubera ko abaregwa batari bashyize mu bikorwa icyemezo cy'Urukiko cyo ku wa 22/06/2020. [12] Ku wa 10/09/2021, Rwanda Forensic Laboratory yohereje raporo y'ibizamini bya ADN, igaragaza ko nta gushidikanya ko Gashagaza Jérôme ari we Se wa Gatesi Renita na Keza Reina. [13] Ababuranyi bongeye kwitaba Urukiko ku wa 17/11/2021, Uwamwezi Sandrine ahagarariwe na Me Uzabakiriho Irené, Kabasinga Hélène na Gatesi Renita bahagarariwe na Me Niyibizi Diogène, bavuga ko bemera ibyagaragajwe na raporo ya Rwanda Forensic Laboratory. Urubanza rwarapfundikiwe, ababuranyi bamenyeshwa ko ruzasomwa ku wa 03/12/2021. [14] Ibibazo byasuzumwe mu rubanza ni ukumenya niba Keza Reina na Gatesi Renita ari bene Gashagaza Jérôme, n' ibirebana n'indishyi zasabwe na Kabasinga Hélène na Gatesi Renita nyuma yo kubona raporo ya Rwanda Forensic Laboratory.

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II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba Keza Reina na Gatesi Renita ari bene Gashagaza Jérôme [15] Nyuma y'uko Rwanda Forensic Laboratory itanze raporo y'ibizamini bya ADN, Uwamwezi Sandrine n'abamuburanira bavuze ko yemera ibyagaragajwe n'iyi raporo, ko ukuri kugiye ahagaragara, akaba yemera ko Keza Reina na Gatesi Renita ari abana ba Gashagaza Jérôme. [16] Kabasinga Hélène, Gatesi Renita n'ubaburanira bavuga ko ibyagaragajwe na raporo ya Rwanda Forensic Laboratory ari ntamakemwa, ko kandi ari nabyo bavugaga kuva urubanza rugitangira, basaba ko Keza Reina na Gatesi Renita bandikwa mu bitabo by'irangamimerere nk'abana ba Gashagaza Jérôme. UKO URUKIKO RUBIBONA [17] Ingingo ya 282 y'Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango iteganya impamvu zituma ikirego cy'umwana ushaka se cyemerwa, muri izo mpamvu hakaba harimo kuba byemejwe n'ibipimo bya ADN cyangwa ibindi bimenyetso bibonetse bikoreshejwe ikoranabuhanga. Naho ingingo ya 76 y'Itegeko No 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo igateganya ko ubuhamya bw'ababana ari ubugamiye guha urukiko ibisobanuro bishingiye ku bumenyi kimwe n'umwanzuro urenze ubumenyi busanzwe bw'umucamanza mu kazi ke bitewe n'uko ibiburanwa bishingiye ku buhanga bwihariye. [18] Mu rubanza RS/INJUST/RC 00021/2018/SC rwaciye n'uru Rukiko ku wa 22/11/2019, hashingiwe ku ngingo zimaze kuvugwa no ku byemezo byafashwe n'izindi nkiko, hasobanuwe ko Urukiko rwagombye kwifashisha ibimenyetso bishingiye ku bumenyi igihe

bishoboka kugirango rushobore kugaragaza ukuri, mu nyungu z'ubutabera. [19] Muri uru rubanza, Urukiko rwasabye Laboratwari y'u Rwanda y'ibimenyetso bishingiye ku bumenyi n'ubuhanga bikoreshwa mu butabera (Rwanda Forensic Laboratory), gukora ikizamini cya ADN hakagaragazwa niba abana Keza Reina na Gatesi Renita barabyawe na Gashagaza Jérôme. Raporo yakozwe n'uru rwego ku wa 06/09/2021 igashyikirizwa Urukiko, igaragaza ko isano iri hagati ya Gashagaza Jérôme na Gatesi Renita (The calculated probability of paternity) iri ku kigero cya 99,9999459472%. Raporo igaragaza kandi ko isano iri hagati ya Gashagaza Jérôme na Keza Reina iri ku kigero cya 99,999991864 %. [20] Urukiko rushingiye ku byagaragajwe n'ikizamini cya ADN cyakozwe n'abahanga, rurasanga nta gushidikanya ko abana Keza Reina na Gatesi Renita babyawe na Gashagaza Jérôme.

2. Kumenya niba indishyi zisabwa na Kabasinga Hélène na Gatesi Renita bazihabwa [21] Me Niyibizi Diogène avuga ko mu mwanya wa Kabasinga Hélène asaba indishyi zikurikira: - 2.000.000 Frw y'igihembo cy'Avoka - 1.000.000 Frw y'ikurikiranarubanza - 2.000.000 Frw y'indishyi z'akababaro

1 Ni urubanza haburanagamo Akisanti Ayubu na Tuyishimire Yves. 2 The interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left bank upon presumptions, unless science has no answer to the facts in issue"; Urubanza Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik, (2014)2 SCC 576, rwaciwe n'Urukiko rw'Ikirenga rwo mu Buhinde.

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- 433.517 Frw yatanze hishyurwa ibisabwa kugira ngo hakorwe ikizamini cya ADN, yose hamwe akaba ari 5.433.517 Frw. [22] Avuga kandi ko mu mwanya wa Gatesi Renita asaba indishyi zikurikira: - 1.000.000 Frw y'igihembo cy'Avoka - 500.000 Frw y'ikurikiranarubanza - 1.000.000 Frw y'indishyi z'akababaro, yose hamwe akaba ari 2.500.000 Frw. [23] Uburanira Uwamwezi Sandrine avuga ko amafaranga y'ikurikiranarubanza, igihembo cy'Avoka n'indishyi z'akababaro bisabwa na Kabasinga Hélène na Gatesi Renita bitahabwa ishingiro, kuko yasabye ko hakorwa ikizamini cya ADN kugirango ababuranyi bese bamenye ukuri, akaba nta kosa yakoze bashingiraho ubusabe bwabo. Avuga kandi ko batagaragaza ishingiro ry'akababaro basabira indishyi kuko ADN yerekanye ko abana ari aba Gashagaza Jérôme, ari nabyo bashakaga. Yongeraho ko Kabasinga Hélène na Gatesi Renita batasaba bombi amafaranga y'ikurikiranarubanza kandi urubanza ari rumwe. [24] Ku byerekeye amafaranga y'ibikorwa byo gutaburura no gupima umubiri wa Gashagaza Jérôme, uburanira Uwamwezi Sandrine avuga ko ababuranyi bese bakwiye kuyagabana kuko bese bemeraga ko hakorwa ikizamini cya ADN. UKO URUKIKO RUBIBONA [25] Urukiko rurasanga indishyi z'akababaro zisabwa na Kabasinga Hélène na Gatesi Renita batazihabwa kuko ataribo basabye ko urubanza rusubirwamo ku mpamvu z'akarengane³. Ku bijyanye n'amafaranga y'igihembo cy'Avoka, Urukiko rurasanga bayagenerwa hamwe kuko Avoka yababuraniye bombi mu rubanza rumwe basangiyemo inyungu⁴; bakagenerwa mu bushishozi bwarwo 500.000 Frw kuko ayo basabye ari menshi. [26] Urukiko rurasanga Kabasinga Hélène na Gatesi Renita

buri wese yagenerwa amafaranga y'ikurikiranarubanza kuko byabaye ngombwa ko buri wese akurikirana urubanza, harimo no kwitabira amaburanisha. icyakora, kuko ayo basaba ari menshi kandi bakaba batayatangira ibisobanuro, Urukiko rurayagena mu bushishozi bwawo, Kabasinga Hélène akaba agenewe 200.000 Frw, naho Gatesi Renita akaba agenewe 100.000 Frw. [27] Urukiko rurasanga kandi 433.517 Frw Kabasinga Hélène yatanze yishyura ibyari bikenewe kugirango hakorwe ikizamini cya ADN agomba kuyasubizwa na Uwamwezi Sandrine watsinzwe urubanza, hashingiwe ku biteganywa n'ingingo ya 273 igika cya 3 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu. III. ICYEMEZO CY'URUKIKO

3 Reba urubanza RS/INJUST/RCOM 00005/2018/SC rwaciwe ku wa 12/06/2020, haburana Prime Insurance Ltd na Kansime James; urubanza RS/INJUST/RCOM 00002/2020/SC rwo ku wa 25/09/2020 haburana Road Solutions Pavement Products na Mailco Ltd; urubanza RS/INJUST/RC 00008/2019/SC rwo ku wa 12/11/2021 haburana Gahire Athanase na Mukarushakiro Glorioso, Bagenzi Théogène, Higiro James n'izindi. 4 Uyu murongo wemejwe mu rubanza No R.SOC.AA 0006/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 11/01/2008, haburana KK Security na Harerimana Enos n'abandi, para 30. 5 Urukiko rushobora mu gihe bibaye ngombwa gusaba ababuranyi gutanga amafaranga akenewe mu guhamba inzobere cyangwa umusemuzi. Utsinze urubanza yishyurwa n'uwatsinzwe amafaranga yatanze ku nzobere no ku musemuzi.

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[28] Rwemeje ko ikirego cyatanze na Uwamwezi Sandrine gisaba gusubirishamo, ku mpamvu z'akarengane, urubanza RCA 00109/2017/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 15/03/2019, nta shingiro gifite. [29] Rwemeje ko imikirize y'urubanza RCA 00109/2017/TGI/GSBO rumaze kuvugwa, igumye. [30] Rwemeje ko abana Keza Reina na Gatesi Renita ari bene Gashagaza Jérôme. [31] Rutegetse Uwamwezi Sandrine kwishyura Kabasinga Hélène na Gatesi Renita bombi amafaranga 500.000 y'igihembo cy'Avoka. [32] Rutegetse Uwamwezi Sandrine kwishyura Gatesi Renita amafaranga 100.000 y'ikurikiranarubanza. [33] Rutegetse Uwamwezi Sandrine kwishyura Kabasinga Hélène amafaranga 200.000 y'ikurikiranarubanza no kumusubiza amafaranga 433.517 yatanze yishyura ibyari bikenewe kugirango hakorwe ikizamini cya ADN.

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