

RWANDA / JUDGMENT

UBUSHINJACYAHA v. UWIMPUHWE

RPAA 00525/2023/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA v. UWIMPUHWE

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Text

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UBUSHINJACYAHA v. UWIMPUHWE [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00525/2023/CA (Tugireyezu, P.J.) 22 Gicurasi 2025] Amategeko agenga imanza z'inshinjabyaha – Ibimenyetso – Raporo ya muganga – Raporo ya Muganga si ikimenyetso kamara mu kwemeza ko umwana atasambanyijwe mu gihe hari ibindi bimenyetso bigaragaza ko icyaha cyakozwe. Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Kwemera icyaha – Agaciro k'imvugo y'uwiyemerera icyaha mu iperereza – Umucamanza uburanisha urubanza mu mizi niwe ureba agaciro imvugo y'uwiyemerera icyaha mu rwego rw'iperereza ifite, kabone n'iyonyirayo yageze imbere y'Urukiko akayihindura. Incamake y'ikibazo: Ubushinjacyaha bwakurikiranyeho Uwimpuhwe icyaha cyo gusambanya umwana w'imyaka 11 y'amavuko, nyuma y'iperereza bumuregera Urukiko rwisumbuye rwa Ngoma busaba ko ahamwa n'icyaha, agahinishwa igihano cy'igifungo cya burundu. Urukiko rwisumbuye rwa Ngoma rwaciye urubanza rwemeza ko Uwimpuhwe ahamwa n'icyaha, rumuhanisha igifungo cy'imyaka 25. Uwimpuhwe yajuririye mu Rukiko Rukuru, Urugereko rwa Rwamagana avuga ko Urukiko rwisumbuye rwa Ngoma rwamuhamije icyaha rwirengagije ibimenyetso birimo raporo ya muganga we avuga ko yagaragazaga ko umwana atasambanyijwe, ko yemeye icyaha mu bugenzacyaha ku gahato,

n'ibindi. Urukiko Rukuru, Urugereko rwa Rwamagana rwaciye urubanza rwemeza ko nta bimenyetso Uwimpuhwe agaragaza bivuguruzwa iby'ubushinjacyaha, icyakora kuko yari bwo agikurikiranwa bwa mbere mu butabera, ndetse yakoze icyaha aribwo akiva mu bwana, rumuhanisha igihano cy'igifungo cy'imyaka 15 aho kuba 25 yahanishijwe ku rwego rwa mbere. Uwimpuhwe yajuririye mu Rukiko rw'Ubujurire avuga ko Urukiko rwamuhamije icyaha cyo gusambanya umwana nta bimenyetso bidashidikanywaho bikimuhamya bishingiweho kuko rwashingiye ku kuba yaremeye icyaha mu Bugenzacyaha nyamara yararusobanuriye ko yacyemejwe n'inkoni. Avuga ko Urukiko rwashingiye ku buhamya bwa Ishimwe Jean Claude nyamara yararugaragarije ko uwo mwana amubeshyera ashaka kumwihimuraho kuko yamufatiraga mu makosa kenshi ndetse uretse no kuba amubeshyera ubuhamya yatanze bw'uko bamubonye bakazamura imyenda budakwiye guhabwa ishingiro kuko kuzamura imyenda bitavuze ko umuntu yasambanyaga undi. Avuga kandi ko raporo y'ubuyobozi itari ikwiye gushingirwaho nk'ikimenyetso kimushinja kuko itavugisha ukuri ahubwo ishingiyeye ku makuru bahawe n'umuryango yabagamo umushinja kandi ikaba yarakozwe n'inshuti magara z'abamushinja. Ku rundi ruhande ubushinjacyaha buvuga ko impamvu z'ubujurire zatanze na Uwimpuhwe nta shingiro zifite, ko hari ibimenyetso bigaragaza nta shiti ko yakoze icyaha cyo gusambanya umwana, birimo no kuba yariyemereye icyaha mu nzego z'iperereza, Ubuhamya bwa Ishimwe Claude ushinja uregwa ko yasanze arimo gusambanya umwana; Raporo y'inzezo z'ibanze isobanura uko ikibazo cyagenze ndetse n'imvugo ya nyina w'umwana usobanura ko amaze kumenya ko uregwa asambanya uwo mwana w'umuhungu mu kibuno, yababajije bose barabimwemerera. Buvuga kandi ko ibyo uregwa avuga ko yameye icyaha mu Bugenzacyaha

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kubera inkoni nta shingiro bifite, kuko yemeye icyaha nta gahato kandi ibyo yemeye bikaba bihuye n'ibyo umwana na nyina n'umutangabuhamya bamushinja, bikanashimangirwa na raporo y'inzezo z'ibanze. Incamake y'icyemezo: 1. Raporo ya Muganga si ikimenyetso kamara mu kwemeza ko umwana atasambanyijwe mu gihe hari ibindi bimenyetso bigaragaza ko icyaha cyakozwe; ahubwo gishobora kuba kimwe mu bimenyetso ariko ataricyo nshinganwa Urukiko rushingiraho kugira ngo ruce urubanza cyane cyane mu gihe uwakoze icyaha abiyemerera kandi agasobanura inzira zose yanyuzemo kugira ngo abigereho; N'iyi "expertise médicale" yaba ihari, ntiboha umucamanza ku buryo agomba kuyigenderaho byanze bikunze ndetse n'iyi Ubushinjacyaha butabashije kuyibona ntibibuza ibindi bimenyetso bwatanze gusuzumwa ngo bihabwe agaciro bikwiye guhabwa.

2. Umucamanza uburanisha urubanza mu mizi niwe ureba agaciro imvugo y'uwiemerera icyaha mu rwego rw'iperereza ifite, kabone n'iyi nyirayo yageze imbere y'Urukiko akayihindura. Ubujurire nta shingiro bufite. Nta mategeko yashingiweho

Imanza zifashishijwe: RPAA 00086/2020/CA; Ubushinjacyaha vs HABAKURAMA Modeste rwaciye n'Urukiko rw'Ubujurire ku wa 22/02/2022, RPAA 00591/2022/CA; Ubushinjacyaha vs NSHIMIYIMANA Eric rwaciye n'Urukiko rw'Ubujurire ku wa 25/01/2024, RPAA 00212/2022/CA; Ubushinjacyaha vs UWAJYIWABO Nzabandora Mayonde rwaciye n'Urukiko rw'Ubujurire ku wa

21/03/2024, RPA 0010/ 06/CS - RPA 0011/06/CS - RPA 0012/06/CS; Ubushinjacyaha vs Sgt NTAGANIRA na bagenzi be rwaciwe n'Urukiko rw'Ikirenga ku wa /07/2008, RPAA 0029/13/CS; Ubushinjacyaha vs HABIMANA Aimable alias Gahinja rwaciwe n'Urukiko rw'Ikirenga ku wa 10/02/2017, RPAA 00091/2021/CA; Ubushinjacyaha vs HAKIZIMANA Gilbert rwaciwe n'Urukiko rw'Ubujurire ku wa 19/07/2022, RPAA 00202/2021/CA; Ubushinjacyaha vs NSENGIMANA Alphonse bita GATERA rwaciwe n'Urukiko rw'Ubujurire ku wa 22/07/2022. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 29/06/2020, Uwimpuhwe Claude, yafashwe akekwa ko arimo gusambanya mu kibuno umwana w'umuhungu witwa M.C w'imyaka 11 y'amavuko nyuma yo kumushukisha kumuha amafaranga yo kugura amandazi na bombo, aza gufatwa ashyikirizwa Ubugenzacyaha kugira ngo bukore iperereza.

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- [2] Iperereza rirangiye, Ubushinjacyaha bwatanze ikirego mu Rukiko Rwisumbuye rwa Ngoma bukurikiranyeho Uwimpuhwe Claude icyaha cyo gusambanya umwana, busaba ko ahamwa n'icyo cyaha, agahanishwa igifungo cya burundu. [3] Uwimpuhwe Claude yireguye ahakana icyaha aregwa, avuga ko Ishimwe Claude umushinja amubeshyera, ko imvugo ya Ishimwe Claude ndetse na nyina wabo Mukundente Cyiza Claudine nazo atezemera kuko yari afite ibyo yapfaga na Ishimwe Claude witwaraga nabi mu rugo kuko yarererwaga muri urwo rugo, akaba yaragiraga ingeso y'ubujura aho yafataga ibintu byo mu rugo akabigurisha hanyuma Uwimpuhwe Claude agatanga amakuru kuri nyinawabo, akaba ariyo mpamvu Ishimwe Claude amushyiraho icyo cyaha kugira ngo atamubangamira. [4] Mu rubanza RP 00747/2020/ TGI/NGOMA rwaciwe ku wa 14/09/2021, Urukiko Rwisumbuye rwa Ngoma rwasanze hari ibimenyetso byemeza ko uregwa yakoze icyaha, birimo :
- Kuba Uwimpuhwe Claude abazwa mu Bugenzacyaha yariyemereye ko yasambanyije umwana M.C inshuro eshanu (5) mu kibuno ;
 - Imvugo z'Umutangabuhamya Ishimwe Claude umushinja ko yasanze arimo gusambanya umwana mu kibuno kuko bari mu cyumba bahagaze naho uregwa ari inyuma y'uwo mwana maze bamubonye bazamura imyenda ;
 - Imvugo ya Mukundente Cyiza Claudine, umubyeyi w'uwahohotewe, wemeje ko amaze kumenya amakuru y'uwo M.C asanzwe asambanywa n'uregwa, yahamagaye Uwimpuhwe Claude n'umwana wahohotewe ababaza ko basambanaga, barabimwemerera ndetse bamubwira ko basanzwe basambana umwana ntabivuge kuko uregwa yajyaga amuha amafaranga akaguramo amandazi na bombo bituma uwo mwana atabibwira ababyeyi; - Raporo y'ubuyobozi bw'inzego z'ibanze aho bugaragaza ko ku itariki ya 29/6/2020 uregwa yafashwe arimo gusambanya umwana M.C w'imyaka 11 y'amavuko, ko abana n'uwo yakoreye icyo cyaha kuko ababyeyi b'uwo mwana aribo bamurera kandi ko yabemereye ko asanzwe akora icyo cyaha; Urukiko rushingiye kuri ibyo bimenyetso rwemeje ko Uwimpuhwe Claude ahamwa n'icyaha cyo gusambanya umwana w'imyaka 11 y'amavuko, ariko rushingiye ku kuba uregwa akiri umusore ufite imbaraga zakorera igihugu no kuba aribwo bwa mbere akatiwe yahabwa igifungo gituma agororwa agahabwa amahirwe yo

gusubira mu muryango nyarwanda, maze rumugabanyiriza igihano rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25). [5] Uwimpuhwe Claude ntiyishimiye imikirize y'urubanza, ajuririra mu Rukiko Rukuru, Urugereko rwa Rwamagana avuga ko yahamijwe icyaha hirengagijwe raporo ya muganga igaragaza ko M.C atasambanyijwe, ko abatangabuhamya bamushinja bavuga ibyo batahagazeho, naho ku birebana no kuba yaremereye icyaha mu Bugenzacyaha, avuga ko byatewe n'uko ubuzima bwe bwari buri mu kaga, agasaba kurenganurwa no kugirwa umwere. [6] Uhagarariye Ubushinjacyaha yaburanye avuga ko Uwimpuhwe Claude yahamijwe icyaha cyo gusambanya umwana M.C hashingiwe ku kuba yaracyemeye mu ibazwa rye mu

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Bugenzacyaha no kuba ashinjwa na Ishimwe Claude wababonye, agasaba ko ubujurire bwe butahabwa ishingiro. [7] Mu rubanza RPA 01142/2021/HC/RWG rwaciwe ku wa 27/11/2023, Urukiko Rukuru, Urugereko rwa Rwamagana rwasanze Uwimpuhwe Claude n'umwunganira batavuguruzwa ibimenyetso byashingiweho n'Urukiko Rwisumbuye rwa Ngoma, kimwe n'ibyaburanishijwe n'Ubushinjacyaha, kandi ko birugaragariza ko uregwa yakoze icyaha cyo gusambanya umwana M.C wari ufite imyaka cumi n'umwe (11) y'amavuko. Ariko rushingiye ku kuba Uwimpuhwe Claude ari ubwa mbere yari akurikiranweho icyaha ku buryo buzwi no kuba yarakoze icyaha akiva mu buto kuko yari afite imyaka cumi n'icyenda (19) y'amavuko, ruvuga ko bikwiye gufatwa nk'impamvu nyoroshiyacyaha zituma agabanyirizwa igihano, maze rumuhanisha igifungo cy'imyaka cumi n'itanu (15) aho kuba igifungo cy'imyaka makumyabiri n'itanu (25) yahanishijwe mbere. [8] Uwimpuhwe Claude ntiyishimiye imikirize y'urubanza, ajuririra mu Rukiko rw'Ubujurire, urubanza ruhabwa RPAA 00525/2023/CA, iburanishwa rishyirwa ku wa 08/05/2025, Uwimpuhwe Claude yunganiwe na Me Sebazungu A. Catherine naho Ubushinjacyaha buhagarariwe na Mbaragijimana Desire, Umushinjacyaha ku rwego rw'Igihugu. [9] Mu mwanzuro w'ubujurire no mu miburanire yabo, Uwimpuhwe Claude n'umwunganira bavuga ko urukiko rwamuhamije icyaha cyo gusambanya umwana nta bimenyetso bidashidikanywaho bikimuhamya bishingiweho kuko rwashingiye ku kuba yaremeye icyaha mu Bugenzacyaha nyamara yararusobanuriye ko yacyemejwe n'inkoni. Bakomeza basobanura ko urukiko rwashingiye ku buhamya bwa Ishimwe Jean Claude nyamara yararugaragariye ko uwo mwana amubeshyera ashaka kumwihimuraho kuko yamufatiraga mu makosa kenshi ndetse uretse no kuba amubeshyera ubuhamya yatanze bw'uko bamubonye bakazamura imyenda budakwiye guhabwa ishingiro kuko kuzamura imyenda bitavuze ko umuntu yasambanyaga undi. Bavuga kandi ko raporo y'ubuyobozi itari ikwiye gushingirwaho nk'ikimenyetso kimushinja kuko itavugisha ukuri ahubwo ishingiyeye ku makuru bahawe n'umuryango yabagamo umushinja kandi ikaba yarakozwe n'inshuti magara z'abamushinja. [10] Uwimpuhwe Claude n'umwunganira bavuga ko urukiko rwirengagije ikimenyetso kamarampaka kigizwe na raporo ya muganga cyerekanye mu buryo busesuye ko M.C atigeze asambanywa, ko rero iyo raporo ivuguruzwa ubuhamya bwose bwatanzwe ikanagaragaza ko ari ibinyoma. [11] Uhagarariye Ubushinjacyaha avuga ko impamvu z'ubujurire zitangwa na Uwimpuhwe Claude n'umwunganira z'uko urukiko rwamuhamije icyaha cyo gusambanya umwana nta bimenyetso bidashidikanywaho

bikimuhamya bishingiweho nta shingiro zifite kuko hari ibimenyetso bigaragaza nta shiti ko Uwimpuhwe Claude yakoze icyaha cyo gusambanya umwana, birimo no kuba yariyemereye icyaha mu nzego z'iperereza, Ubuhamya bwa Ishimwe Claude ushinja uregwa ko yasanze arimo gusambanya umwana MC mu kibuno; Raporo y'inzezo z'ibanze isobanura uko ikibazo cyagenze ndetse n'imvugo ya nyina w'umwana usobanura ko amaze kumenya ko uregwa asambanya uwo mwana w'umuhungu mu kibuno, yababajije bose barabimwemerera.

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- [12] Uhagarariye Ubushinjacyaha asobanura ko kuba Uwimpuhwe Claude avuga ko yemeye icyaha mu nzego z'iperereza kubera inkoni, nta shingiro bikwiye guhabwa kuko uregwa atigeze akubitwa, ahubwo yemeye icyaha yakoze nta gahato na cyane ko uburyo yasobanuye uburyo yakozemo icyaha mu Bugenzacyaha bihura neza n'ibyo umwana na nyina n'umutangabuhamya bamushinja, bikanashimangirwa na raporo y'inzezo z'ibanze. [13] Ku birebana no kuba Uwimpuhwe Claude avuga ko yahamijwe icyaha cyo gusambanya umwana M.C kandi raporo ya muganga igaragaza ko uwo mwana atasambanyijwe, Uhagarariye Ubushinjacyaha avuga ko nta shingiro bikwiye guhabwa kubera ko raporo ataricyo kimenyetso kamarampaka cyemeza nta shiti ko habayeho gusambanya umwana.
- [14] Hakurikijwe ibivugwa na buri ruhande, Urukiko rurasanga ikibazo gikwiye gusuzumwa ari : Kumenya niba Uwimpuhwe Claude yarahamijwe icyaha nta bimenyetso bidashidikanywaho bikimuhamya. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO Kumenya niba Uwimpuhwe Claude yarahamijwe icyaha nta bimenyetso bidashidikanywaho bikimuhamya [15] Uwimpuhwe Claude n'umwunganira bavuga ko urukiko rwamuhamije icyaha cyo gusambanya umwana nta bimenyetso bidashidikanywaho bikimuhamya bishingiweho kuko rwashingiye ku kuba yaremeye icyaha mu Bugenzacyaha nyamara yararusobanuriye ko yacyemejwe n'inkoni. Bakomeza basobanura ko urukiko rwashingiye ku buhamya bwa Ishimwe Jean Claude nyamara yararugaragariye ko uwo mwana amubeshyera ashaka kumwihimuraho kuko yamufatiraga mu makosa kenshi ndetse uretse no kuba amubeshyera ubuhamya yatanze bw'uko bamubonye bakazamura imyenda budakwiye guhabwa ishingiro kuko kuzamura imyenda bitavuze ko umuntu yasambanyaga undi. Bavuga kandi ko raporo y'ubuyobozi itari ikwiye gushingirwaho nk'ikimenyetso kimushinja kuko itavugisha ukuri ahubwo ishingiyeye ku makuru bahawe n'umuryango yabagamo umushinja kandi ikaba yarakozwe n'inshuti magara z'abamushinja. [16] Uwimpuhwe Claude n'umwunganira bavuga ko urukiko rwirengagije ikimenyetso kamarampaka kigizwe na raporo ya muganga cyerekanye mu buryo busesuye ko M.C atigeze asambanywa, ko rero iyo raporo ivuguruza ubuhamya bwose bwatanzwe ikanagaragaza ko ari ibinyoma. [17] Uhagarariye Ubushinjacyaha avuga ko impamvu z'ubujurire zitangwa na Uwimpuhwe Claude n'umwunganira z'uko urukiko rwamuhamije icyaha cyo gusambanya umwana nta bimenyetso bidashidikanywaho bikimuhamya bishingiweho nta shingiro zifite kuko hari ibimenyetso bigaragaza nta shiti ko Uwimpuhwe Claude yakoze icyaha cyo gusambanya umwana, birimo no kuba yariyemereye icyaha mu nzego z'iperereza, Ubuhamya bwa Ishimwe Claude ushinja uregwa ko yasanze arimo gusambanya umwana MC mu kibuno;

Raporo y'inzego z'ibanze isobanura uko ikibazo cyagenze ndetse n'imvugo ya nyina w'umwana usobanura ko amaze kumenya ko uregwa asambanya uwo mwana w'umuhungu mu kibuno, yababajije bose barabimwemerera.

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- [18] Uhagarariye Ubushinjacyaha asobanura ko kuba Uwimpuhwe Claude avuga ko yemeye icyaha mu nzego z'iperereza kubera inkoni, nta shingiro bikwiye guhabwa kuko uregwa atigeze akubitwa, ahubwo yemeye icyaha yakoze nta gahato na cyane ko uburyo yasobanuye uburyo yakozemo icyaha mu Bugenzacyaha bihura neza n'ibyo umwana na nyina n'umutangabuhama bamushinja, bikanashimangirwa na raporo y'inzego z'ibanze. [19] Ku birebana no kuba Uwimpuhwe Claude avuga ko yahamijwe icyaha cyo gusambanya umwana M.C kandi raporo ya muganga igaragaza ko uwo mwana atasambanyijwe, uhagarariye Ubushinjacyaha avuga ko nta shingiro bikwiye guhabwa kubera ko raporo ataricyo kimenyetso kamarampaka cyemeza nta shiti ko habayeho gusambanya umwana UKO URUKIKO RUBIBONA [20] Impaka kuri iyi ngingo zishingiye ku kumenya niba kuba raporo ya Muganga itagaragaza ko umwana M.C yasambanyijwe byatuma Uwimpuhwe Claude uregwa agirwa umwere ndetse bikaba byatesha agaciro ibindi bimenyetso. [21] Ku birebana n'agaciro gahabwa Raporo ya Muganga, Urukiko rw'Ubujurire mu manza zitandukanye1 rwasobanuye ko raporo ya Muganga atari ikimenyetso kamara mu kwemeza ko umwana atasambanyijwe mu gihe hari ibindi bimenyetso bigaragaza ko icyaha cyakozwe, ko ahubwo gishobora kuba kimwe mu bimenyetso ariko ataricyo nshinganwa Urukiko rushingiraho kugira ngo ruce urubanza cyane cyane mu gihe uwakoze icyaha abiyemerera kandi agasobanura inzira zose yanyuzemo kugira ngo abigereho, ko n'iyi "expertise médicale" yaba ihari itabwo umucamanza ku buryo agomba kuyigenderaho byanze bikunze ndetse ko n'iyi nta raporo ya Muganga Ubushinjacyaha bwabashije kubona, bitabuza ibindi bimeyetso bwatanze gusuzumwa ngo bihabwe agaciro bikwiye guhabwa. [22] Dosiye y'urubanza igaragaza raporo ya Muganga ku isuzuma ryakorewe M.C aho igaragaza ko, nta gukomereka cyangwa kuva amaraso kwagaragaye mu kibuno ndetse ko n'igitsina cye kitangiritse. [23] Dosiye igaragaza inyandikomvugo y'ibazwa rya Uwimpuhwe Claude abazwa mu Bugenzacyaha ku wa 30/06/2020. Muri iyi nyandikomvugo, Uwimpuhwe Claude yemeye icyaha cyo gusambanya M.C ndetse anagisabira imbabazi, asobanura ko yamusambanyaga mu kibuno, akarangiriza mu matakoko ye ndetse ko yari amaze kumusambanya inshuro eshanu (5). Yasobanuye kandi ko ibyo gusambana yabyigishijwe na mubyara we bita Kadogo, ko aho yatandukaniye na Kadogo ariho yatangiye gusambanya M.C. Uwimpuhwe Claude yasobanuye ko ubwo bafatwaga bari bavanye ku isoko na M.C, bageze mu rugo, basanga tantine ari kureba Film, binjira mu cyumba atangira kumusambanya, Uwimpuhwe Claude we arabyuka ajya koga, avuyeyo asanga umwana yababwiye bahamagaye abanyerondo bahita bamufata. Dosiye igaragaza ko Uwimpuhwe Claude yageze mu Bushinjacyaha noneho ahindura imvugo, avuga ko nta cyaha yakoze, ko ari

1Reba Urubanza n° RPAA 00086/2020/CA rwaciwe n’Urukiko rw’Ubujurire ku wa 22/02/2022, haburana Ubushinjacyaha na HABAKURAMA Modeste (igika cya 33), urubanza n° RPAA 00591/2022/CA rwaciwe ku wa 25/01/2024, haburana Ubushinjacyaha na NSHIMIYIMANA Eric (igika cya 26) no mu zindi manza zitandukanye zakurikiyeho, harimo n’urubanza N° RPAA 00212/2022/CA rwaciwe ku wa 21/03/2024 haburana Ubushinjacyaha na UWAJYIWABO Nzabandora Mayonde (igika cya 22)

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umwana babanaga muri urwo rugo witwa Ishimwe wamubeshyeye kuko yajyaga akora amakosa akamurega, ariko abajijwe niba hari icyo apfa na nyina w’umwana wasambanyijwe umushinja, avuga ko ntacyo bapfa. Uko guhakana icyaha, ninako Uwimpuhwe Claude yakomeje kuva mu Rukiko Rwisumbuye kugeza ubu. [24] Dosiye y’urubanza igaragaza inyandikomvugo ya Ishimwe Claude, ari nawe watanze amakuru ko Uwimpuhwe Claude yasambanyije M.C, aho yasobanuye ko abantu bari basanzwe bavuga ko Uwimpuhwe Claude ari umutinganyi ariko ntabyiteho, ko ku wa 29/06/2020, yabuze Uwimpuhwe Claude na M.C, maze atangira kubashaka kuko yumvaga batavuga agiye mu cyumba cy’abana, baramwikanga bahita bazamura imyenda, maze abaza M.C ibyo bari barimo amubwira ko Uwimpuhwe Claude yari arimo kumusambanya mu kibuno, ko yari yamwemerereye kumuha 350 Frw, ahita ajya kubibwira nyina wa M.C. maze nyina w’umwana abaza, umwana uko byagenze nawe amusubiriramo ko babikoze, ahamagaye Uwimpuhwe Claude nawe amwemerera ko babikoze ndetse ko babikoze inshuro 5, maze nyina w’umwana ahamagara abantu bo mu muryango, bafata umwanzuro wo kujyana Uwimpuhwe Claude mu buyobozi. Ishimwe Claude kandi yasobanuye ko ubwo Uwimpuhwe Claude yafatwaga yababwiye ko ibyo yabyigishijwe na mubyara we wajyaga amusambanya mu kibuno. [25] Dosiye igaragaza inyandikomvugo ya Mukundente Cyiza Claudine, nyina wa M.C, atanga ikirego muri RIB, yasobanuye ko Ishimwe yamubwiye ko yagiye mu cyumba asanga Uwimpuhwe Claude ari gusambanya M.C mu kibuno, ko yabajije M.C nawe arabimwemerera ndetse na Uwimpuhwe Claude amubajije amwemerera ko amaze ibyumweru bibiri amusambanya kandi ko bamaze kubikora inshuro 5, ndetse amubwira ko impamvu abikora nawe bajyaga babimukorera. Mu gusoza avuga ko yajyanye kwa muganga M.C asanga ari muzima, ko rero yumva yababarira Uwimpuhwe Claude kuko ariwe wamureraga kandi iwabo bakaba ari abakene. [26] Dosiye igaragaza kandi raporo yakozwe n’Akagari ka Sibagire, yiswe “Raporo yo gufata ku ngufu” aho igaragaza ko Uwimpuhwe Claude yasambanyije M.C, ko ndetse nawe abyemera ndetse ko atari ubwa mbere babikoze. [27] Nk’uko bigaragara mu gika cya 25, icya 27 n’icya 28 by’urubanza rujuririrwa, Urukiko Rukuru rwagaragaje ko kuba Uwimpuhwe Claude avuga ko yahamijwe icyaha cyo gusambanya umwana M.C kandi raporo ya muganga igaragaza ko uwo mwana atasambanyijwe, nta shingiro bikwiye guhabwa kubera ataricyo kimenyetso kamarampaka cyemeza nta shiti ko habayeho gusambanya umwana. Rwasobanyuye kandi ko kuba Uwimpuhwe Claude mu ibazwa rye mu Bugenzacyaha, yaremeye ko yasambanyije mu kibuno M.C inshuro eshanu (5) akarangiriza mu matako ye. Iyi mvugo ye ikaba yunganirwa no kuba Ishimwe Claude yemeza ko yamufashe ari inyuma ya M.C, bagahita bazamura imyenda yabo, bigahura no kuba Mukundente Cyiza Claudine yemeza ko nawe yamwemerereye ko yasambanyije umwana we nk’uko

bikubiye no muri raporo yo mu Kagari ka Sibagire, bityo ko ukwemera icyaha kwe kunganiwe n'ubwo buhamya bukwiye guhabwa agaciro nk'uko byashingiweho ku rwego rubanza. [28] Urukiko rw'Ubujurire rurasanga kuba Uwimpuhwe Claude avuga ko akwiye kuba umwere kuko raporo ya muganga igaragaza ko uwo mwana atasambanyijwe ndetse ko iyo raporo ivuguruz ubuhamya bwose bwatanzwe ikanagaragaza ko ari ibinyoma, nta shingiro bikwiye guhabwa kuko nk'uko byasobanuwe haruguru, raporo ya Muganga atari ikimenyetso kamara mu kwemeza ko umwana yasambanyijwe mu gihe hari ibindi bimenyetso bigaragaza ko icyaha cyakozwe, ko

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ahubwo gishobora kuba kimwe mu bimenyetso ariko ataricyo nshinganwa Urukiko rushingiraho kugira ngo ruce urubanza cyane cyane mu gihe uwakoze icyaha abiyemerera kandi agasobanura inzira zose yanyuzemo kugira ngo abigereho, ko n'iyi "expertise médicale" yaba ihari itaboha umucamanza ku buryo agomba kuyigenderaho byanze bikunze ndetse ko n'iyi nta raporo ya Muganga Ubushinjacyaha bwabashije kubona, bitabuza ibindi bimenyetso bwatanze gusuzumwa ngo bihabwe agaciro bikwiye guhabwa, bityo rero kuba muri uru rubanza raporo ya Muganga ku isuzuma ryakorewe M.C igaragaza ko, nta gukomereka cyangwa kuva amaraso kwagaragaye mu kibuno ndetse ko n'igitsina cye kitangiritse, bikaba atari ikimenyetso cyashingirwaho n'uru rukiko rwemeza ko Uwimpuhwe Claude atasambanyije M.C ahubwo hakaba hakwiye gusuzumwa ibindi bimenyetso kugira ngo hamenyekane ukuri kw'ibyabaye. [29] Urukiko rw'Ubujurire rurasanga, nk'uko Urukiko Rukuru rwabibonye, kuba abazwa mu Bugenzacyaha, Uwimpuhwe Claude yariyemereye icyaha ndetse agasobanura uburyo yagikozemo, kandi uko kwemera kwe kukaba guhura neza neza n'uburyo agishinjamwo n'abatangabuhamya barimo Ishimwe Claude ndetse na Mukundente Cyiza Claudine, nyina wa M.C umwana wasambanyijwe, aho bahuriza ku kuba Uwimpuhwe Claude agifatwa yariyemereye ko yasambanyije M.C mu kibuno, ko atari ubwa mbere babikoze ahubwo amusambanyije inshuro 5, ko Uwimpuhwe Claude yababwiye ko yabikoze kuko nawe yabikorewe ndetse bikaba bishimangirwa na Raporo y'inzego z'Ibanze, rusanga ibyo bimenyetso byerekana nta shiti ko Uwimpuhwe Claude yasambanyije M.C na cyane ko yaba Uwimpuhwe Claude cyangwa umwunganira nta wabashije kubivuguruz. [30] Ku birebana no kuba Uwimpuhwe Claude n'umwunganira bavugaga ko yemeye icyaha kubera inkoni yakubitwaga, Urukiko rw'Ubujurire rurasanga iyi miburanire ye nta shingiro yababwira kuko uretse kuvugaga ko yakubiswe nta bimenyetso abigaragarisha, kandi nk'uko byasobanuwe mu gika kibanziriza iki, ibyo yemereye mu Bugenzacyaha bikwiye guhabwa ishingiro kuko bihuye neza neza n'uburyo abamushinja babimushinjamo, kuba rero abihindura bikaba bitabuza urukiko kubishingiraho kuko nk'uko byemejwe mu manza zitandukanye n'Urukiko rw'Ikirenga²³ n'Urukiko rw'Ubujurire⁴, umucamanza uburanisha urubanza mu mizi niwe ureba agaciro imvugo y'uwiyemerera icyaha mu rwego rw'iperereza ifite, kabone n'iyi nyirayo yageze imbere y'Urukiko akayihindura. [31] Ku birebana n'ibivugwa na Uwimpuhwe Claude n'umwunganira ko urukiko rwashingiye ku buhamya bwa Ishimwe Jean Claude nyamara yararugaragarije ko uwo mwana amubeshyera ashaka kumwihimuraho kuko yamufatiraga mu makosa kenshi, Urukiko rw'Ubujurire rurasanga iyi miburanire yabo nayo nta shingiro yababwira kuko uretse kuvugaga mu magambo ko amubeshyera ndetse ko bafitanye urwango nta bimenyetso abigaragarisha. Urukiko

rurasanga kandi Ubuhamya bwa Ishimwe Claude bukwiye gushingirwaho kuko ibyo yavuze bihura n'ibyo Uwimpuhwe Claude ubwe yiyemereye mu nzego z'iperereza ndetse bukanahura n'ubwa Mukundente Cyiza

2 Urubanza N° RPA 0010/ 06/CS - RPA 0011/06/CS - RPA 0012/06/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 3 /07/2008, haburana Ubushinjacyaha na Sgt NTAGANIRA na bagenzi be (igika cya 46) n'Urubanza N° RPAA 0029/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 10/02/2017 haburana Ubushinjacyaha na HABIMANA Aimable alias Gahinja (igika cya 16) 4 Urubanza N° N° RPAA 00091/2021/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 19/07/2022 haburana Ubushinjacyaha na HAKIZIMANA Gilbert (igika cya 24) n'urubanza N° RPAA 00202/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 22/07/2022 haburana NSENGIMANA Alphonse bita GATERA (igika cya 16)

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Claudine nyina w'umwana wasambanyijwe kandi nk'uko ubwo Uwimpuhwe Claude yabazwaga mu Bushinjacyaha yemeje ko we ntacyo bapfa, kuba rero Uwimpuhwe Claude atagaragaza ko hari icyo bapfaga cyari gutuma yemeza ko yasambanyije M.C bikaba byumvikana ko n'ibyo ISHIMWE Claude yamushinje ari ukuri, bityo rero kuba Urukiko rukuru rwaraburanishije kuri ubwo buhamya, ababuranyi bakabujyaho impaka ariko Uwimpuhwe Claude ntabashe kubuvuguruza byumvikana ko nta cyari kubuza Urukiko kubushingiraho. [32] Hashingiwe ku bisobanuro bimaze gutangwa haruguru, Urukiko rurasanga ingingo ya Uwimpuhwe Claude ivuga ko urukiko rwamuhamije icyaha cyo gusambanya umwana nta bimenyetso bidashidikanywaho bikimuhamya bishingiweho nta shingiro ifite. III. ICYEMEZO CY'URUKIKO [33] Rwemeje ko ubujurire bwa Uwimpuhwe Claude nta shingiro bufite ; [34] Rwemeje ko imikirize y'urubanza RPA 01142/2021/HC/RWG, rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 27/11/2023 idahindutse mu ngingo zarwo zose ; [35] Rwemeje ko igihano cy'igifungo cy'imyaka cumi n'itanu (15) yahanishijwe mbere kigumyeheho ; [36] Rutegetse ko Uwimpuhwe Claude asonewe amagarama y'urubanza kuko aburana afunze.

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