

RWANDA / JUDGMENT

UBUSHINJACYAHA v. UWIRAGIYE

RPAA 00496/2023/CA

COURT

Court of Appeal

DECIDED

28 March 2025

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UBUSHINJACYAHA v. UWIRAGIYE

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Text

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UBUSHINJACYAHA v. UWIRAGIYE [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00496/2023/CA (Umugwaneza, P.J.), 28 Werurwe 2025] Amategeko agenga ibyaha n'ibihano muri rusange – icyaha cyo gufatanwa, gutunda no kugurisha ibiyobyabwenge byo mu bwoko bw'urumogi – Umuntu ufite uburwayi bwo mu mutwe butuma ataryozwa icyaha – Uburwayi bwo mu mutwe butuma hatabaho uburyozwacyaha ni igihe ukurikiranywe afite uburwayi bwo mu mutwe uko bwaba bumeze kose, kuba ubwo burwayi butuma atakaza ubwenge bwe, kuba ubwo burwayi yari abufite mu gihe yakoraga ibikorwa akurikiranyweho. Umuntu ufite uburwayi bwo mu mutwe butuma ataryozwa icyaha ni uwatakaje ubushobozi bwo kumva ibyo akora cyangwa ubwo kwiyobora mu bikorwa bye, ariko uburwayi bwo mu mutwe butera ihungabana ariko budatuma umuntu atakaza ubushobozi bwo gushaka no kwigenzura si impamvu yo kudakurikiranwa ngo ahanirwe icyaha yakoze. Amategeko agenga ibyaha n'ibihano muri rusange – Guhindura inyito y'icyaha – Guhindura inyito y'icyaha ni uburenganzira n'inshingano umucamanza afite mu gihe cyose asanga ibikorwa uregwa akurikiranyweho bidahuye n'inyito byahawe n'inkiko zabanje, hakurikijwe ihame ry'uko umucamanza aregerwa ibikorwa bigize icyaha ataregerwa inyito yacyo. Incamake y'ikibazo: Ubushinjacyaha bwareze uwitwa Uwirigaye Janvier alias Sharif mu Rukiko

Rwisumbuye rwa Ngoma, bumukurikiranyeho icyaha cyo gufatanwa, gutunda no kugurisha ibiyobyabwenge byo mu bwoko bw'urumogi, ariko yaburanye ahakana icyaha aregwa. Urukiko Rwisumbuye rwa Ngoma rushingiye ku buhamya butandukanye, rwemeje ko Uwiragiye Janvier alias Sharif ahamwe n'icyaha cyo gufatanwa no gutunda ibiyobyabwenge byo mu bwoko bw'urumogi, rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25ans) n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri n'imwe (21.000.000 Frw). Uwiragiye Janvier alias Sharif yajuririye nanone mu Rukiko Rukuru, Urugereko rwa Rwamagana, avuga ko yahamijwe icyaha cyo gufatanwa no gutunda ibiyobyabwenge byo mu bwoko bw'urumogi nta bimenyetso bikimuhamya bishingiweho. Ubushinjacyaha bwavuze ko Uwiragiye Janvier alias Sharif yafatiwe mu cyaho. Urukiko Rukuru, Urugereko rwa Rwamagana rwemeje ko ubujurire nta shingiro bufite kuko uregwa atabasha kuvuguruza ibimenyetso byashingiweho n'Urukiko Rwisumbuye bimuhamya icyaha aregwa, ariko kuko rwasanze igihano yahawe ari kirekire, rwemeje ko akwiye kugabanyirizwa igihano maze agahanishwa igifungo cy'imyaka cumi n'itanu (15 ans) n'ihazabu y'amafaranga y'u Rwanda miliyoni cumi (10.000.000 Frw). Uwiragiye Janvier alias Sharif yajuririye Urukiko rw'Ubujurire, avuga ko yemera icyaha aregwa akagisabira imbabazi, bityo agasaba kongera kugabanyirizwa igihano. Uwunganira uregwa mu mategeko nawe avuga ko hari raporo ya muganga w'ibitaro bya CARAES Ndera igaragaza ko uregwa afite ibisigisi by'ibiyobyabwenge mu mubiri we, kandi ko afite ibibazo byo mu mutwe, ndetse ko agifata imiti kugeza, bityo ko adakwiye kuryozwa iki cyaha aregwa cyo gufatanwa, gutunda no kugurisha ibiyobyabwenge byo mu bwoko bw'urumogi.

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Uregwa avuga kandi ko asaba uru rukiko guhindura inyito y'icyaha aregwa maze agakurikiranwaho icyaha cyo gufatanwa no kunywa ibiyobyabwenge aho kuba icyo gufatanwa, gutunda no kugurisha ibiyobyabwenge byo mu bwoko bw'urumogi kuko yafatanwe urumogi rwo kunywa, ariko ko atarutunze ngo aruvane mu rugo arujyane ahandi hantu. Ubushinjacyaha buvuga ko raporo ya muganga w'inzobero mu ndwara zo mu mutwe yagaragaje ko Uwiragiye Janvier alias Sharif nta burwayi bwo mu mutwe afite ahubwo ko afite ingaruka zo gukoresha ibiyobyabwenge, bityo ko nta cyabuza ko yaryozwa icyaha yakoze hakurikijwe ihame rivuga ko nta witesha ubwenge kugira ngo akore icyaha. Urukiko rw'Ubujurire rwemeje ko inyito y'icyaha Uregwa yahamijwe ikwiye guhinduka, kikaba gufatanwa no kunywa ibiyobyabwenge (urumogi) akaba aricyo ahanirwa aho kuba icyo gutunda ibiyobyabwenge yahamijwe, bityo akaba ahanishije igifungo cy'imyaka ibiri (2), aho kuba igifungo cy'imyaka cumi n'itanu (15). Incamake y'icyemezo: 1. Uburwayi bwo mu mutwe butuma hatabaho uburyozwacyaha ni igihe ukurikiranywe afite uburwayi bwo mu mutwe uko bwaba bumeze kose, kuba ubwo burwayi butuma atakaza ubwenge bwe, kuba ubwo burwayi yari abufite mu gihe yakoraga ibikorwa akurikiranyweho. Umuntu ufite uburwayi bwo mu mutwe butuma ataryozwa icyaha ni uwatakaje ubushobozi bwo kumva ibyo akora cyangwa ubwo kwiyobora mu bikorwa bye, ariko uburwayi bwo mu mutwe butera ihungabana ariko budatuma umuntu atakaza ubushobozi bwo gushaka no kwigenzura si impamvu yo kudakurikiranwa ngo ahanirwe icyaha yakoze.

2. Guhindura inyito y'icyaha ni uburenganzira n'inshingano umucamanza afite mu gihe cyose asanga ibikorwa uregwa akurikiranyweho bidahuye n'inyito byahawe n'inkiko zabanje, hakurikijwe ihame ry'uko umucamanza aregerwa ibikorwa bigize icyaha ataregerwa inyito yacyo. Ubujurire bufite ishingiro kuri bimwe. Amategeko yashingiweho: Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 85 niya 263. Imanza zifashishijwe: Urubanza RPA 0216/12/CS rw' Ubushinjacyaha na Rutembesa Modeste, rwaciwe Urukiko rw'Ikirenga ku wa 12/10/2018; Urubanza RPAA 00027/2023/CA, rw' Ubushinjacyaha na Muragijimana Eric, rwaciwe n'Urukiko rw'Ubujurire ku wa 24/01/2025; Urubanza RS/INJUST/Pen 00004/2017/CS rw'Ubushinjacyaha na Mukaruyange Athanasie; rwaciwe n'Urukiko rw'Ikirenga ku wa 23/02/2018; Urubanza RPAA 00390/2024/CA, rw'Ubushinjacyaha na Dushimimana Emmanuel, rwaciwe n'Urukiko rw'Ubujurire ku wa 30/01/2025. Urubanza

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I. IMITERERE Y'URUBANZA [1] Ubushinjacyaha bwareze Uwirigaye Janvier alias Sharif mu Rukiko Rwisumbuye rwa Ngoma, bumukurikiranyeho icyaha cyo gufatanwa, gutunda no kugurisha ibiyobyabwenge byo mu bwoko bw'urumogi, buvuga ko tariki ya 18/12/2019 ubwo yari atwawe kuri moto n'umu motari witwa Muhoza Jules, bahagaritswe n'abapolisi maze Uwirigaye Janvier alias Sharif ahita ajugunya hasi urumogi rungana n'udupfunyika 25, ahita afatwa ashvikirizwa inzego z'Ubuzungacyaha. [2] Uwirigaye Janvier alias Sharif yaburanye ahakana icyaha aregwa, akavuga ko atariwe wafatanwe urumogi, ko uwafashwe ari uwitwa Nizeyimana Jean de Dieu, ko ibyo aregwa ari akagambane yagiriwe, asaba kurenganurwa. [3] Mu rubanza RP 01214/2019/TGI/NGOMA rwaciwe ku wa 07/02/202, Urukiko Rwisumbuye rwa Ngoma rushingiye k'ubuhamya bwa Muhoza Jules wari utwaye Uwirigaye Janvier alias Sharif kuri moto agatanga amakuru ko avuye kugura urumogi agafatwa mu gihe amaze gufatwa telefone ye igahamara n'umuntu wamubwiye ko ashaka udupfunyika 2 tw'urumogi, n'ubuhamya bwa Nahayo Faustin wamufatanye urumogi, rwemeje ko Uwirigaye Janvier alias Sharif ahamwe n'icyaha cyo gufatanwa no gutunda ibiyobyabwenge byo mu bwoko bw'urumogi, rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25 ans) n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri n'imwe (21.000.000 Frw). [4] Uwirigaye Janvier alias Sharif yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Rwamagana, avuga ko yahamijwe icyaha cyo gufatanwa no gutunda ibiyobyabwenge byo mu bwoko bw'urumogi nta bimenyetso bikimuhamya bishingiweho. Ubushinjacyaha bwavuze ko kwanga kwemera icyaha kwa Uwirigaye Janvier alias Sharif ntacyo byamumarira kuko yafatiwe mu cyuho agikora. [5] Mu rubanza RPA 00182/2020/HC/RWG rwaciwe ku wa 25/10/2023, Urukiko Rukuru, Urugereko rwa Rwamagana rwemeje ko ubujurire bwa Uwirigaye Janvier alias Sharif nta shingiro bufite kuko atabasha kuvuguruza ibimenyetso byashingiweho n'Urukiko Rwisumbuye bimuhamya icyaha, bivuze ko atabashije kugaragaza inenge cyangwa amakosa yaba ari mu rubanza ajuririra nk'uko biteganywa n'amategeko. Rwasanze ariko igihano yahawe kirebwe hamwe n'uburemere bw'icyaha yakoze ari kirekire, kikaba gikwiye kugabanywa, ahanishwa igifungo cy'imyaka cumi n'itanu (15 ans) n'ihazabu y'amafaranga y'u Rwanda miliyoni cumi (10.000.000 Frw). [6] Uwirigaye Janvier alias

Sharif yajuririye Urukiko rw'Ubugurire, urubanza ruhabwa RPAA 00496/2023/CA, kubera impamvu zitandukanye zagiye zimenyeshwa ababuranyi, iburanisha ryarwo ryagiye ryimurirwa ku matariki atandukanye kugeza ku ya 11/03/2025, uwo munsu ruburanishwa Uwiragiye Janvier alias Sharif yunganiwe na Me Mugabo Sharif Yusufu naho Ubushinjacyaha buhagarariwe na Uwizeye Jean Marie, Umushinjacyaha ku rwego rw'Igihugu. [7] Uwiragiye Janvier alias Sharif yajuriye avuga ko yemera icyaha aregwa akagisabira imbabazi, akavuga ko icyaha yagitewe n'imibero mibi yari abayeho n'uburwayi bwo mu mutwe yari afite, asaba ko byakwitabwaho akagabanyirizwa igihano.

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[8] Mu iburanisha ryo ku wa 10/12/2024, uwunganira Uwiragiye Janvier alias Sharif kimwe n'uhagarariye Ubushinjacyaha bifuje ko iburanisha ryaba rihagaze kugira ngo Uwiragiye Janvier alias Sharif abanze asuzumwe n'inzobere mu ndwara zo mutwe hamenyekane niba yarakoze icyaha afite uburwayi bwo mu mutwe, Urukiko rusanga hashingiwe ku cyifuzo cy'impande zombi Uwiragiye Janvier alias Sharif yabanza agasuzumwa na muganga w'indwara zo mu mutwe, cyane cyane ko icyo kibazo cy'uburwayi yanakivuze mu Rukiko Rukuru, Urugereko rwa Rwamagana, ariko ntirwagira icyo rubivugaho. [9] Nyuma y'uko Uwiragiye Janvier alias Sharif asuzumwe na muganga w'inzobere mu ndwara zo mutwe agatanga raporo igaragaza ko nta bimenyetso by'uburwayi bwo mu mutwe afite, ahubwo ko yigeze gukoresha ibintu byangiza umubiri nk'urumogi, mu iburanisha ryo ku wa 11/03/2024, Uwiragiye Janvier alias Sharif n'umwunganira bavuze ko yakozwe icyaha afite uburwayi bwo mumutwe anafata imiti, bityo ko adakwiye kukiryoza. Ariko ko Urukiko rubibonye ukundi rwamuhanyiriza icyaha cyo gufatanwa no kunywa ibiyobyabwenge kuko yafashwe avuye kugura urumogi rwo kumywa. [10] Ubushinjacyaha buvuga ko hakurikijwe ihame rivuga ko ntawitesha ubwenge kugira ngo akore icyaha, nta cyabuza ko Uwiragiye Janvier alias Sharif aryoze icyaha yakozwe. Avuga kandi ko inyito y'icyaha Uwiragiye Janvier alias Sharif yahamijwe idakwiye guhinduka kuko nawe yiyemerera ko yafashwe avuye kugura urumogi aruvanye mu Murenge umwe arujyanye mu wundi Murenge, naho ku bijyanye no kugabanyirizwa ibihano, bukavuga ko igifungo cy'imyaka cumi n'itanu (15) Uwiragiye Janvier alias Sharif yakatiwe kidakwiye kugabanywa kuko aricyo gito ntarengwa giteganywa n'amategeko, ko ihazabu ariyo yagabanywa kugeza kuri miliyoni eshanu (5.000.000 Frw). [11] Hakurikijwe izo mpaka, muri uru rubanza harasuzumwa ibibazo bikurikira:

- a. Kumenya niba Uwiragiye Janvier alias Sharif atagomba kuryozwa icyaha cyo gutunda ibiyobyabwenge yahamijwe n'Urukiko Rukuru, Urugereko rwa Rwamagana;
- b. Kumenya niba inyito y'icyaha Uwiragiye Janvier alias Sharif ashinjwa ikwiriye guhinduka;
- c. Kumenya niba Uwiragiye Janvier alias Sharif yagabanyirizwa igihano.
- a. Kumenya niba Uwiragiye Janvier alias Sharif atagomba kuryozwa icyaha cyo gutunda ibiyobyabwenge yahamijwe n'Urukiko Rukuru, Urugereko rwa Rwamagana. [12] Uwiragiye Janvier alias Sharif avuga ko n'ubwo raporo ya muganga yatanze n'ibitaro bya CARAES

Ndera igaragaza ko nta burwayi bwo mu mutwe afite, ariko ko akora icyaha yari abufite nk'uko bigaragaza na raporo ya muganga wamusuzumye mbere y'uko atangira kuburana wanamuhaye imiti n'ubu akaba akiyinywa, cyane cyane ko na raporo ya muganga w'ibitaro bya CARAES Ndera nayo yagaragaje ko anywa ibiyobyabwenge, bivuze ko ubwenge bwe bwayobye, ko rero ibyo Urukiko rudakwiye kubyirengagiza. [13] Me Mugabo Sharif Yusufu avuga ko raporo ya muganga w'ibitaro bya CARAES Ndera igaragaza ko Uwiragiye Janvier alias Sharif afite ibisigisigi by'ibiyobyabwenge mu mubiri we, hakaba n'indi raporo ya muganga yo ku wa 29/01/2020 igaragaza ko Uwiragiye Janvier alias Sharif afite ibibazo byo mu mutwe, ndetse amuha imiti agifata kugeza ubu kandi aho afungiyeye

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atagifata ibiyobyabwenge, ko rero adakwiye kuryozwa iki cyaha nk'uko byatanzweho umurongo mu manza zaciwe n'Urukiko rw'Ubujurire mu kwezi kw'Ugushyirwa 2023, uvuga ko: Uburwayi bwo mu mutwe butuma hatabaho uburyozwacyaha ni igihe ukurikiranywe aba afite uburwayi bwo mu mutwe uko bwaba bumeze kose, kuba ubwo burwayi butuma atakaza ubwenge bwe, kuba ubwo burwayi yari abufite mu gihe yakoraga ibikorwa akurikiranyweho, butuma atakaza ubushobozi bwo kumva ibyo akora cyangwa ubwo kwiyobora mu bikorwa bye. Uburwayi bwo mu mutwe butera ihungabana ariko budatuma umuntu atakaza ubushobozi bwo gushaka no kwigenzura ntibwaba impamvu yo kudakurikiranwa ngo ahanirwe icyaha yakoze. [14]

Ubushinjacyaha buvuga ko raporo ya muganga w'inzobero mu ndwara zo mu mutwe yagaragaje ko Uwiragiye Janvier alias Sharif nta burwayi bwo mu mutwe afite ahubwo ko afite ingaruka zogukoresha ibiyobyabwenge, bityo ko hakurikijwe ihame rivuga ko nta witesha ubwenge kugira ngo akore icyaha, ntacyabuza ko yaryowa icyaha yakoze. UKO URUKIKO RUBIBONA [15] Ku bijyanye n'impamvu zituma hatabaho uburyozwacyaha, ingingo ya 85 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu ivuga ko: "Nta buryozwacyaha bubaho icyo: 1° ushinjwa ari umwana utarageze ku myaka cumi n'ine (14); 2° ushinjwa yari afite uburwayi bwo mu mutwe mu gihe yakoraga icyaha. Uwitesheje ubwenge yabishatse mu gihe cyo gukora icyaha ariyozwa icyaha yakoze n'ubwo yaba yaritesheje ubwenge atagambiriye gukora icyaha". [16] Ibirebana n'uburwayi bwo mu mutwe butuma hatabaho uburyozwacyaha, byatanzweho umurongo n'Urukiko rw'Ikirenga mu rubanza RPA 0216/12/CS rwaciwe ku wa 12/10/2018 haburana Ubushinjacyaha na Rutembesa Modeste. Muri urwo rubanza, Urukiko rw'Ikirenga rwasobanuye ko uburwayi bwo mu mutwe butuma hatabaho uburyozwacyaha ari igihe ukurikiranywe afite uburwayi bwo mu mutwe uko bwaba bumeze kose, kuba ubwo burwayi butuma atakaza ubwenge bwe, kuba ubwo burwayi yari abufite mu gihe yakoraga ibikorwa akurikiranyweho, ko umuntu ufite uburwayi bwo mu mutwe butuma ataryozwa icyaha ari uwatakaje ubushobozi bwo kumva ibyo akora cyangwa ubwo kwiyobora mu bikorwa bye, ariko ko uburwayi bwo mu mutwe butera ihungabana ariko budatuma umuntu atakaza ubushobozi bwo gushaka no kwigenzura butaba impamvu yo kudakurikiranwa ngo ahanirwe icyaha yakoze. Uyu murongo washingiyeho n'Uru Rukiko mu manza zitandukanye rwaciye harimo urubanza RPAA 00027/2023/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 24/01/2025, haburana Ubushinjacyaha na Muragijimana Eric, n'izindi nyinshi. [17] Nk'uko

byavuzwe haruguru, uru Rukiko rwasabye ko Uwiragiye Janvier alias Sharif asuzumwa na muganga wo mu bitaro bivura indwara zo mu mutwe mu rwego rwo kumenya niba yaba afite uburwayi bwo mu mutwe. Raporo yakozwe n'ibitaro bivura indwara zo mu mutwe by'i Ndera (CARAES Ndera) yo ku wa 07/02/2025 yagaragaje ko Uwiragiye Janvier alias Sharif nta bimenyetso by'uburwayi bwo mu mutwe afite, ahubwo ko yigeze gukoresha ibintu byangiza umubiri nk'urumogi (Monsieur Uwiragiye Janvier ne manifeste pa des symptômes en faveur d'une maladie mentale, mais il a des antécédents d'abus d'abus des substances psychoactives comme le cannabis).

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[18] Dosiye igaragaza na "Fiche de reference" ya Uwiragiye Janvier alias Sharif yatanze n'Ikigo Nderabuzima cya Kibungo ku wa 29/01/2020, igaragaza ko Uwiragiye Janvier alias Sharif azwiho kuba ari mu bantu bafite ikibazo cyo mu mutwe basanzwe bakurikiranwa na Mugesera. Iyo fishi inagaragaza ko yoherejwe ku Bitaro bya Kibungo muri serivisi z'ubuzima bwo mu mutwe kugira ngo asuzumwe anakurikiranwe biruseho. [19] Urukiko rw'Ubujurire rushingiye ku ngingo ya 85 y'Itegeko N°68/2018 ryavuzwe haruguru, no ku rubanza RPA 0216/12/CS rwibukijwe mu gika cya 16 cy'uru rubanza, rukabihuza na raporo yatanze na muganga w'inzobere mu kuvura indwara zo mu mutwe wo mu bitaro bya CARAES Ndera, rusanga ntaho rwahera rwemeza ko Uwiragiye Janvier alias Sharif yakozwe icyaha yahamijwe afite uburwayi bwo mu mutwe ku buryo adakwiye kukiryoza kuko muganga w'inzobere mu kuvura uburwayi bwo mu mutwe yagaragaje ko nta burwayi bwo mu mutwe afite, ko ahubwo afite ibimenyetso by'uko yigeze gukoresha ibintu byangiza umubiri nk'urumogi. [20] Ku bijyanye n'imiburanire ya Uwiragiye Janvier alias Sharif n'umwunganira y'uko n'ubwo raporo ya muganga yatanze n'ibitaro bya CARAES Ndera igaragaza ko nta burwayi bwo mu mutwe afite, ariko ko akora icyaha yari abufite nk'uko bigaragazwa na raporo ya muganga yo ku wa 29/01/2020, Urukiko rw'Ubujurire rurasanga nta shingiro ifite kuko icyo Uwiragiye Janvier alias Sharif n'umwunganira bita raporo igaragaza ko yakozwe icyaha afite uburwayi bwo mu mutwe ari "fiche de reference" (bakunze kwita transfere) yakozwe na muganga w'Ikigonderabuzima cya Kibungo wabonye ko Uwiragiye Janvier alias Sharif afite ikibazo by'uburwayi bwo mu mutwe akamwohereza ku Bitaro byisumbuyeho ngo asuzumwe anakurikiranwe biruseho, yagezwe ku bitaro bifite ubushobozi buri hejuru bifite n'abaganga b'inzobere mu gusuzuma no kuvura indwara zo mu mutwe aribyo bya CARAES Ndera n'ubwo bwose atari byo yari yoherejweho, bagasanga nta bimenyetso by'uburwayi bwo mu mutwe agaragaza, ahubwo afite ibimenyetso by'uko yarakoresheje ibiyobyabwenge by'urumogi. [21] Urukiko rw'Ubujurire rukaba rusanga ibyo muganga wo ku Kigonderabuzima cya Kibungo yabonye by'uko Uwiragiye Janvier alias Sharif afite ikibazo cyo mu mutwe, bihujwe n'ibyo muganga wa CARAES Ndera yabonye by'uko Uwiragiye Janvier alias Sharif afite ibimenyetso by'uko yakoresheje ibiyobyabwenge by'urumogi, ibyo bigaragaza neza ko Uwiragiye Janvier nta bundi burwayi bwo mu mutwe yari afite igihe yakoraga icyaha ahubwo ibibazo yari afite byo mu mutwe byaterwaga n'ikoresha ry'ibiyobyabwenge by'urumogi kandi nk'uko biteganywa n'ingingo ya 85 y'Itegeko N° 30/2028 yavuzwe haruguru, uwitesheje ubwenge yabishatse mu gihe cyo gukora icyaha ariyozwa icyaha yakozwe n'ubwo

yaba yaritesheje ubwenge atagambiriye gukora icyaha. Muyandi magambo kuba Uwiragiye Janvier alias Sharif yaranywaga urumogi bigatuma ata ubwenge agakora ibyaha bifitanye isano n'ikoreshwa ritemewe ry'ibiyobyabwenge, ntiyabyitwaza ngo avuge ko ataryozwa ibyaha yakoze, cyane cyane ko icyaha akurikiranyweho ari ikoreshwa ritemewe ry'ibiyobyabwenge. Kubera izo mpamvu zose zimaze gusobanurwa, Uwiragiye Janvier alias Sharif akaba agomba kuryozwa ibikorwa yakoze.

- b. Kumenya niba inyito y'icyaha Uwiragiye Janvier alias Sharif ashinjwa ikwiriye guhinduka. [22] Uwiragiye Janvier alias Sharif n'umwunganira bavuga ko yafatanwe urumogi rwo kunywa avuye kurugura arujyanye mu rugo, ariko ko atarutunze ngo aruvane mu rugo arujyane ahandi hantu, ahubwo yafashwe aribwo akiva kurugura nk'uko byemezwa n'imvugo z'abatangabuhamya

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n'abapolisi bamufashe, bityo ko yakurikiranwaho icyaha cyo gufatanwa no kunywa ibiyobyabwenge. [23] Ubushinjacyaha buvuga ko gutunda ari ukuvana ikintu ahantu ukijyana ahandi, ko rero kuba Uwiragiye Janvier alias Sharif yaba yaratunze urumogi aruvana murugo arujyana ahandi hantu cyangwa yaba yararutunze aruvana ahandi hantu arujyana murugo byose byitwa gutunda, ari naho havuye ijamba gukwirakwiza, bityo ko inyito y'icyaha idakwiye guhinduka kuko Uwiragiye Janvier alias Sharif yaguze urumogi aruvana mu Murenge umwe arujyana mu wundi Murenge. UKO URUKIKO RUBIBONA [24] Impaka kuri iyi ngingo zishingiye ku kumenya niba hakurikijwe ibimenyetso biri muri dosiye, inyito y'icyaha Uwiragiye Janvier alias Sharif yahamijwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ikwiriye guhinduka kikaba gufatanwa no kunywa ibiyobyabwenge, gihanishwa ingingo ya 263, igika cya mbere y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange¹, ariyo yabaye iya 11 mu Itegeko N° 69/2019 ryo ku wa 08/11/2019, aho kuba icyaha cyo gutunda ibiyobyabwenge gihanishwa ingingo ya 263 igika cya 3.

- [25] Ku bijyanye n'ibimenyetso mu manza nshinjabyaha, ingingo ya 87 y'Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso ivuga ko: "Mu rubanza nshinjabyaha, ikimenyetso gishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe umwanya wo kubijyaho impaka". [26] Ibyerekeranye n'ibimenyetso by'ibyaha birebana no gukora no gukuresha ibiyobyabwenge biteganywa n'ingingo ya 263 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange yahinduwe n'ingingo ya 11 y'Itegeko N° 69/2019 ryo ku wa 08/11/2019, byasobanuwe mu rubanza RPAA 00408/2020/CA rwaciwe ku wa 27/06/2022 haburana Ubushinjacyaha na Niyitegeka Augustin alias Niyirema². Muri urwo rubanza Urukiko rw'Ubujurire rwasobanuye ko "Amagambo arebana no gufatanwa (avugwa mu gika cya mbere cy'ingingo ya 263), gukora, guhinga, guhindura, gutunda, kubika (avugwa mu gika cya 3 cy'iyi ngingo) agomba kumvikana hakurikijwe ingano y'ibiyobyabwenge n'ikigiye gukoreshwa ibiyobyabwenge uregwa yafatanwe, yakoze, yahinze, yahinduye, yatunze, yabitse maze byagaragara ko kuri buri gikorwa muri ibyo ikigamijwe ari ukubikoresha ku giti cye (simple drug possession) uregwa agahabwa ibihano

bito ariko byagaragara ko ingano y'ibiyobyabwenge yafatanwe ari nini bikaba byashingirwaho hemezwa ko ataribyo gukoresha ku giti cye ahubwo

1 Igika cya mbere cy'ingingo ya 263 y'Itegeko N° 068/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange cyasimbujwe igika cya mbere cy'ingingo ya 11 y'Itegeko N° 69/2019 ryo ku wa 08/11/2019 rihindura itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, kivuga ko: “Umuntu wese ufatanwa, urya, unywa, witera, uhumeka cyangwa wisiga mu buryo ubwo aribwo bwose ibiyobyabwenge cyangwa urusobe rw'imiti ikoresheka nka byo, aba akoze icyaha”. Igika cyayo cya kabiri giteganya ko “Umuntu wese uhamijwe n'urukiko gukora ibikorwa bivugwa mu gika cya mbere cy'iyi ngingo, ahanishwa igifungo kitari muni y'umwaka umwe (1) ariko kitarenze imyaka ibiri (2) cyangwa imirimo y'inyungu rusange”.

3 Reba igika cya 14 – 18 4 Reba igika cya 21

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ikigamijwe ari ugucuruza cyangwa gukwirakwiza (drugs trafficking/drug distribution) ibiyobyabwenge uregwa agahabwa igihano kiremereye. Uyu murongo wagenywe mu manza zitandukanye zaciye n'uru Rukiko, harimo nk'urubanza RPAA 00539/2022/CA rwaciye ku wa 20/01/2025 haburana Ubushinjacyaha na Gihana Nyamihana⁴ [27] Ku birebana na Uwiragiye Janvier alias Sharif, inyandiko zitandukanye ziri muri dosiye y'uru rubanza zigaragaza ko ku wa 18/12/2019, yafatanwe udupfunyika 25 tw'urumogi atangira gukurikiranwaho icyaha cyo gufatanwa, gutunda no kunywa ibiyobyabwenge. Uwiragiye Janvier alias Sharif abazwa mu Bugenzacyaha ku wa 18/12/2019 yemeye ko yafatanwe urumogi, ariko avuga ko rwari urwo kunywa, ko amaze umwaka akoresheka urumogi. Baramubajije bati ese ko twakiriye telefone N° 0783225482 akatubwira ko ashaka ko umuha udupfunyika 2 tw'urumogi nturucuruza? yasubije agira ati: “ntabwo nducuruza rwose, uwo muntu dukorana akazi k'ubugeni”. [28] Dosiye y'uru rubanza igaragaza ko Uwiragiye Janvier alias Sharif abazwa mu Bushinjacyaha ku wa 30/12/2019, yahakanye ko nta rumogi yafatanwe, asobanura ko abapolisi bamuhagaritse bamubaza aho aya n'aho ajya yambaye siripa, bikubitana n'uko nta byangombwa yari afite bamwambika amapingu bamujyana kuri station ya polisi, bahamugejeje atungurwa no kubona ari kubazwa ku biyobyabwenge. [29] Muri dosiye y'uru rubanza hagaragara kandi ubuhamya bwa Muhoza Jules, wemeza ko tariki 18/12/2019 yatwaye Uwiragiye Janvier alias Sharif kuri moto amujyana Kabarondo bagezeyo Uwiragiye agura udupfunyika 25 tw'urumogi, abibonye ahita ahamagara umupolisi arabimubwira, uwo mupolisi abibwira abapolisi bari mu muhanda mu gihe barimo bagaruka barabahagarika baramufata. Yakomeje avuga ko Uwiragiye Janvier alias Sharif anywa akanacuruza urumogi kuko icyo gihe bamaze kumufata hari abantu bamuhamagaye bamubwira ko bakeneye udupfunyika 2 tw'urumogi. Hari na none ubuhamya bwa Mutarambirwa wemeza ko Uwiragiye Janvier alias Sharif amaze amaze 2 anywana akanacuruza urumogi, ko aho abimenyeye yabibwiye Dass witwa Berchimas. [30] Muri dosiye y'uru rubanza hagaragara kandi ubuhamya bwa Nahayo Faustin wemeza ko tariki ya 18/12/2019 bari mu kazi, bahawe amakuru ko Uwiragiye Janvier alias Sharif atwawe kuri moto kandi afite urumogi, moto ibagezeho barayihagarika Uwiragiye ahita ajugunya urumogi hasi, bararufata nawe baramufata bamushyikiriza

Ubugenzacyaha, yakomeje avuga ko batabashije kumenya niba urwo rumogi rwari urwo kunywa cyangwa gucuruza kuko yanze kubibabwira. N'ubuhamya bwa Bizimana Abdoukalimu, wemeza ko Uwiragiye Janvier alias Sharif azwiho kunywa ibiyobyabwenge, ko amaze nk'amezi 3 abinywa, ariko ko atazi niba abicuruza. [31] Hashingiwe ku ngingo ya 87 y'Itegeko N° 062/2024 yibukijwe mu gika cya 25 cy'uru rubanza, nyuma yo gusesengura imvugo z'abatangabuhamya ndetse n'imvugo ya Uwiragiye Janvier alias Sharif byagaragajwe mu bika bibanziriza iki, Urukiko rw'Ubujurire rurasanga icyo bahurizaho bose kidashidikanywaho ari uko ku itariki ya 18/12/2019, Uwiragiye Janvier alias Sharif yafatanwe udupfunyika 25 tw'urumogi avuye ku rugura Kabarondo. Naho ibyo kuvuga ko Uwiragiye Janvier alias Sharif acuruza ibiyobyabwenge byemezwa na Muhoza Jules ndetse na Mutarambirwa, Urukiko rw'Ubujurire rurasanga izo mvugo zidahagije ngo hemezwe ko Uwiragiye Janvier alias Sharif acuruza ibiyobyabwenge kuko muribo nta wemeza ko yigeze amubona abigurisha, cyane cyane ko nka Muhoza Jules avuga ko icyo gihe bamaze gufata Uwiragiye hari abantu bamuhamagaye kuri telefone bamubwira ko bakeneye udupfunyika 2

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tw'urumogi, iyi mvugo itahabwa ishingiro kuko umwe mu bapolisi bafashe Uwiragiye ariwe Nahayo Faustin we ntabyo avuga, ahubwo avuga ko batigeze bamenya niba urwo rumogi rwari urwo kunywa cyangwa gucuruza kuko Uwiragiye yanze kubibabwira. Aha rero Urukiko rurasanga bitumvikana uburyo nk'umupolisi wari ufashe umunyacyaha, yabuze gufata telefone ye ngo ayigenzure, abe yamenya niba hari abantu bamuhamagaye bamusaba urumogi, bikamenywa n'umuturage usanzwe. [32] Hashinwe ku murongo watanze mu rubanza RPAA 00408/2020/CA rwibikujwe mu gika cya 26 cy'uru rubanza, Urukiko rw'Ubujurire rurasanga udupfunyika 25 tw'urumogi Uwiragiye Janvier alias Sharif yafatanywe ari ingano ntoya kandi nta n'ibindi bimenyetso byemeza ko rwari urwo gucuruza, bityo rukaba rukwiye gufatwa ko rwari urwo kwikoreshereza ku giti cye (simple drug possession) arunywa nk'uko abiyemerera, bikaba rero bihuye n'icyaha cyo gufatanwa no kunywa ibiyobyabwenge byo mu bwoko bw'urumogi giteganywa n'ingingo ya 11, igika cya mbere y'Itegeko N° 69/2019 ryo ku wa 08/11/2019 rwavuzwe haruguru, aho kuba icyaha cyo gutunda ibiyobyabwenge yari yahamijwe n'Urukiko Rukuru. [33] Nk'uko byatanzweho umurongo mu rubanza RS/INJUST/Pen 00004/2017/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 23/02/2018, haburana Ubushinjacyaha na Mukaruyange Athanasie, guhindura inyito y'icyaha ni uburenganzira n'inshingano umucamanza afite mu gihe cyose asanga ibikorwa uregwa akurikiranyweho bidahuye n'inyito byahawe n'inkiko zabanje, hakurikijwe ihame ry'uko umucamanza aregerwa ibikorwa bigize icyaha ataregerwa inyito yacyo. Uwo murongo ni nawo wakomeje gukurikizwa mu zindi manza zaciwe n'uru Rukiko harimo urubanza RPAA 00390/2024/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 30/01/2025 Ubushinjacyaha buburana na Dushimimana Emmanuel (igika cya 17). [34] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rw'Ubujurire rurasanga inyito y'icyaha Uwiragiye Janvier alias Sharif yahamijwe ikwiye guhinduka, kikaba gufatanwa no kunywa ibiyobyabwenge (urumogi) akaba aricyo ahanirwa aho kuba icyo gutunda ibiyobyabwenge yahamijwe n'Urukiko Rukuru, Urugereko rwa Rwamgana, bityo akaba ahanishije igifungo cy'imyaka ibiri (2), aho kuba igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw) yari yahanishijwe n'Urukiko

Rukuru, Urugereko rwa Rwamagana. [35] Urukiko rw'Ubujurire rurasanga, nk'uko bigaragazwa n'inyandiko y'ifunga yafatiweho, kuba Uwiragiye Janvier alias Shalif yarafashwe agafungwa ku wa 18/12/2019, agomba kurekurwa uru rubanza rukimara gusomwa kuko yarangije igihano cy'igifungo cy'imyaka ibiri (2) akatiwe n'uru Rukiko. [36] Urukiko rw'Ubujurire rurasanga atari ngombwa kwirirwa rusuzuma ingingo irebana no kugabanya igihano Uwiragiye Janvier alias Sharif yashyize mu ngingo ze z'ubujurire kuko byagaragaye ko yarangije igihano yakatiwe n'uru rukiko. III. ICYEMEZO CY'URUKIKO [37] Rwemeje ko ubujurire bwatanzwe na Uwiragiye Janvier alias Sharif bufite ishingiro kuri bimwe;

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[38] Rwemeje ko imikirize y'urubanza RPA00182/2020/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 25/10/2023, ihindutse mu ngingo zarwo rwose; [39] Rwemeje ko Uwiragiye Janvier alias Sharif ahamwa n'icyaha cyo gufatanwa no kunywa ibiyobyabwenge byo mu bwoko bw'urumogi; [40] Ruhanishije Uwiragiye Janvier alias Sharif igifungo cy'imyaka ibiri (2); [41] Rutegetse ko Uwiragiye Janvier alias Sharif ahita arekurwa uru rubanza rukimara gusomwa kuko yarangije igihano cy'igifungo cy'imyaka ibiri (2) yakatiwe n'uru Rukiko.

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