

RWANDA / JUDGMENT

UBUSHINJACYAHA v VANJIRI

RPAA 01407/2024/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v VANJIRI

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Text

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UBUSHINJACYAHA v VANJIRI [Rwanda URUKIKO RW'UBUJURIRE - RPAA 01407/2024/CA (Mukandamage, P.J) 20 Kanama 2025] Amategeko agenga imanza nshinjabyaha – Ubujurire – Igihano – Mu rwego rw'ibirego nshinjabyaha, iyo abaregwa nta kindi banenga urubanza rwajuririwe uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo – Mu gihe hari impamvu nyoroshyacyaha zemejwe n'umucamanza, igihano cy'igifungo cya burundu gishobora kugabanywa, ariko ntikijye muni y'igifungo cy'inyuma 15. Incamake y'ikibazo: Ubushinjacyaha bwakurikiranye uwitwa Vanjiri mu Rukiko Rwisumbuye rwa Gasabo bumurega icyaha cy'ubwicanyi buvuga ko yishe umugore we Nirere Veneranda amukubise ishoka mu musaya inshuro eshatu (3), abana babyumvise baratabaza, abatabaye basanga Vanjiri akiri mu nzu, arafatwa atangira gukurikiranwa. Uregwa yaburanye yemera ko yishe umugore we, amwicishije ishoka, avuga ko yabitewe n'uburwayi bwo mu mutwe (ibisazi) asanzwe arwara, ko kandi yari afite amakuru ko umugore we amuca inyuma. Urwo Rukiko rwaciye urubanza rusanga hari ibimenyetso bigaragaza ko yakoze icyaha cyo kwica umugore we, birimo imvugo ze yemera ko yatemye umugore we kugeza apfuye, rumuhanisha

igihano cy'igifungo cya burundu. Vanjiri yajuririye Urukiko Rukuru avuga ko yari asanzwe yitwara neza, ko ibyo yakoze yabitewe n'imyuka mibi abantu bamuteje, asaba kugabanyirizwa igihano cy'igifungo cya burundu yahawe n'Urukiko Rwisumbuye rwa Gasabo kugirango azabashe kurera abana be. Urwo Rukiko narwo rwaciye urubanza rusanga yagabanyirizwa igihano kuko yemera icyaha kandi ari ubwa mbere akurikiranwe mu butabera, rumuhanisha igihano cy'igifungo cy'imyaka 15. Vanjiri yarongeye arajurira noneho mu Rukiko rw'Ubujurire avuga ko Urukiko Rukuru rwamugabanyirije igihano ariko ku buryo budahagije, agasaba ko cyakongera kugabanywa kuko yaburanye yemera icyaha, kandi afite abana bakiri bato bakeneye kurerwa nawe. Ubushinjacyaha bwo buvuga ko Vanjiri atakongera kugabanyirizwa igihano, ko hashingiwe ku biteganywa n'ingingo ya 2 (a) y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganyaye ibyaha n'ibihano muri rusange, Vanjiri yagabanyirijwe igihano ku buryo buhagije. Incamake y'icyemezo: 1. Mu rwego rw'ibirego nshinyabwaho, iyo abaregwa nta kindi banenga urubanza rwajuririwe uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo. 2. Mu gihe hari impamvu nyoroshyacyaha zemejwe n'umucamanza, igihano cy'igifungo cya burundu gishobora kugabanywa, ariko ntikijye munsu y'igifungo cy'imyaka 15. Ubujurire nta shingiro bufite.

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Imanza zifashishijwe: Ubushinjacyaha vs Nsabimana alias Sankara n'abandi, RPA 00060/2021/CA rwaciye n'Urukiko rw'Ubujurire ku wa 04/04/2022. Ubushinjacyaha vs Ngamije, RPAA 00048/2024/CA, rwaciye n'Urukiko rw'Ubujurire ku wa 25/04/2025. Ubushinjacyaha vs Shumbusho Evase, RPAA 00466/2024/CA rwaciye n'Urukiko rw'Ubujurire ku wa 24/01/2025.

Urubanza I. IMITERERE Y'URUBANZA [1] Mu ijoro ryo ku wa 23/04/2021, Vanjiri Thadée yishe umugore we Nirere Veneranda amukubise ishoka mu musaya inshuro eshatu (3), abana babyumvise baratabaza, abatabaye basanga VANJIRI Thaddée akiri mu nzu, baramufata bamushyikiriza Ubugenzacyaha. [2] Nyuma y'iperereza, Ubushinjacyaha bwareze Vanjiri Thaddée mu Rukiko Rwisumbuye rwa Gasabo icyaha cy'ubwicanyi, busaba ko ahamwa n'icyo cyaha, agahanishwa igifungo cya burundu. Vanjiri Thadée yaburanye yemera ko yishe umugore we, amwicishije ishoka, avuga ko yabitewe n'uburwayi bwo mu mutwe (ibisazi) asanzwe arwara, ko kandi yari afite amakuru ko umugore we amuca inyuma. [3] Mu rubanza N° RP 00706/2021/TGI/GSBO rwaciye ku wa 18/04/2023, Urukiko Rwisumbuye rwa Gasabo rwasanze hari ibimenyetso bigaragaza ko Vanjiri Thaddée yakoze icyaha cyo kwica umugore we, birimo imvugo ze yemera ko yatemye umugore we kugeza apfuye. Ku byerekeye uburwayi bwo mu mutwe, Urukiko rwasanze raporo ya Muganga igaragaza ko nta kibazo Vanjiri Thaddée afite, maze rumuhanisha igifungo cya burundu. [4] Vanjiri Thaddée yajuririye Urukiko Rukuru avuga ko yari asanzwe yitwara neza, ko ibyo yakoze yabitewe n'imyuka mibi abantu bamuteje, asaba kugabanyirizwa igihano cy'igifungo cya burundu yahawe n'Urukiko Rwisumbuye rwa Gasabo kugirango azabashe kurera abana be. Uhagarariye Ubushinjacyaha yavuze ko Vanjiri Thadée adakwiye kugabanyirizwa igihano, kubera uburemere bw'icyaha yakoze. [5] Mu rubanza N° RPA 00815/2023/HC/KIG rwaciye ku wa 15/11/2024, Urukiko Rukuru rwasanze Vanjiri Thaddée yagabanyirizwa

igihano kuko yemera icyaha kandi ari ubwa mbere akurikiranwe mu butabera, rumuhanisha igifungo cy'inyaka 15. [6] Vanjiri Thadée yajuririye Urukiko rw'Ubujurire, urubanza ruhabwa N° RPAA 01407/2024/CA. Iburanisha ryabereye mu ruhamwe ku wa 13/08/2025 Vanjiri Thaddée yunganiwe na Me Munini Patrick, naho Ubushinjacyaha buhagarariwe na Bunyoye Grâce, Umushinjacyaha ku rwego rw'Igihugu. [7] Mu myanzuro no mu miburanire, Vanjiri Thaddée avuga ko atagabanyirijwe igihano ku buryo buhagije, agasaba ko cyakongera kugabanywa kugirango abashe kujya kwita ku bana be.

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Uhagarariye Ubushinjacyaha avuga ko Vanjiri Thaddée yagabanyirijwe igihano ku buryo buhagije, ko kitakongera kugabanywa. [8] Ikibazo kigomba gusuzumwa muri uru rubanza ni icyo kumenya niba igihano Vanjiri Thaddée yahawe n'Urukiko RUKURU cyakongera kugabanywa. II. ISESENGURWA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba igihano Vanjiri Thaddée yahawe cyakongera kugabanywa [9] Vanjiri Thaddée na Munini Patrick umwunganira bavuga ko Urukiko Rukuru rwamugabanyirije igihano ariko ku buryo budahagije, bagasaba ko cyakongera kugabanywa kuko yaburanye yemera icyaha, kandi afite abana bakiri bato bakeneye kurerwa nawe. [10] Vanjiri Thadée na Munini Patrick umwunganira bavuga kandi ko mu kugabanya igihano hashingirwa ku ngingo ya 59 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange no ku murongo watanze mu rubanza n° RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022, haburana Ubushinjacyaha, Nsabimana Callixte na bagenzi be, aho rwasobanuye ko mu rwego rw'ibirego nshinjabyaha iyo uregwa nta kindi anenga urubanza rwajuririwe urete kuvuga gusa ko atagabanyirijwe igihano, buri Mucamanza ku rwego urwo ari rwose yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo hakurikjwe ibiteganywa n'ingingo ya 49 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, nk'uko ryahinduwe. [11] Uhagarariye Ubushinjacyaha avuga ko hashingiwe ku biteganywa n'ingingo ya 2 (a) y'Itegeko n° 059/2023 ryo ku wa 04/12/2023 rihindura itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, Vanjiri Thaddée yagabanyirijwe igihano ku buryo buhagije. [12] Uhagarariye Ubushinjacyaha avuga kandi ko urubanza Vanjiri Thaddée n'umwunganira basaba ko rwashingirwaho mu kugabanya igihano, rushobora kwifashishwa gusa igihe bigishoboka ko habaho kugabanya igihano. Avuga ko ibyo kutongera kugabanyirizwa igihano iyo cyagabanyijwe bihagije byatanzweho umurongo mu manza zitandukanye zaciwe n'Urukiko rw'Ubujurire, muri izo manza hakaba harimo urubanza n° RPAA 00317/2024/CA rwaciwe ku wa 27/01/2025, haburana Ubushinjacyaha na Tuyizere Mustafa. UKO URUKIKO RUBIBONA [13] Impaka kuri iki kibazo zishingiye ku kumenya niba igihano Vanjiri Thadée yahawe n'Urukiko Rukuru cyakongera kugabanywa. [14] Ku byerekeye kugabanya igihano, mu rubanza n° RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022 haburana Ubushinjacyaha, Nsabimana Callixte bakunda kwita Sankara na bagenzi be, hatanzwe umurongo uvuga ko mu rwego rw'ibirego nshinjabyaha, iyo abaregwa nta kindi banenga urubanza rwajuririwe uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga

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igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo hakurikijwe ibiteganywa n'ingingo ya 49 y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, ariko ko mu bujurire, Umucamanza agomba kuzirikana ko yemerewe gusa guhindura igihano cyatanzwe n'Umucamanza wo mu rukiko rubanza, ari uko amaze kugaragaza ko urwo rukiko rwaba rwarakoresheje nabi itegeko cyangwa ubushishozi bwawo mu gutanga icyo gihano. Uyu murongo wagiye ukurukizwa mu manza zitandukanye zaciwe n'uru rukiko, harimo urubanza N° RPAA 00048/2024/CA, rwaciwe ku wa 25/04/2025, Ubushinjacyaha buburana na Ngamije Augustin. [15] Na none mu rubanza n° RPAA 00466/2024/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 24/01/2025, haburana Ubushinjacyaha na Shumbusho Evase rwasobanuye ko mu gihe hari impamvu nyoroshyacyaha zemejwe n'umucamanza, igihano cy'igifungo cya burundu gishobora kugabanywa, ariko ntikijye munsu y'igifungo cy'imyaka 15. [16] Izi manza zirebwe hamwe, byumvikana ko mu gihe hari impamvu nyoroshyacyaha, uregwa wahamijwe icyaha cy'ubwicanyi gihanishwa igifungo cya burundu, mu bushishozi bw'urukiko rwajuririwe, rurebye uburemere bw'icyaha n'ingaruka zacyo, rushobora kugabanywa icyo gihano ariko ntikijye munsu y'igifungo cy'imyaka 15. [17] Nk'uko bigaragara mu dosiye y'urubanza, Vanjiri Thadée yajuriye asaba kugabanyirizwa igihano cy'igifungo cya burundu yahawe ku rwego rwa mbere, Urukiko Rukuru rushingiye ku mpamvu nyoroshyacyaha no ku biteganywa n'ingingo ya 2, agace ka (a), y'Itegeko n° 059/2023 ryo ku wa 04/12/2023 rihindura ingingo ya 60 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, rumuhanisha igifungo cy'imyaka 15. [18] Urukiko rw'Ubujurire rurasanga igihano cy'igifungo cy'imyaka 15 Vanjiri Thaddée yahawe n'Urukiko Rukuru kitakongera kugabanywa, kuko aricyo gito giteganywa n'Itegeko ku cyaha yahamijwe cyo kwica umugore we, mu gihe impamvu nyoroshyacyaha zahawe ishingiro. [19] Urukiko rw'Ubujurire rurasanga rero ubujurire bwatanzwe na Vanjiri Thaddée nta shingiro bufite, urubanza yajuririye rukaba rugomba kugumana agaciro mu ngingo zarwo zose. III. ICYEMEZO CY'URUKIKO [20] Rwemeje ko ubujurire bwatanzwe na Vanjiri Thadée nta shingiro bufite; [21] Rwemeje ko urubanza N° RPA 00815/2023/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 15/11/2024 rugumanye agaciro mu ngingo zarwo zose. [22] Rutegetse ko igihano cy'igifungo cy'imyaka 15 Vanjiri Thaddée yahawe ku cyaha cy'ubwicanyi kigumyeho.

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