

RWANDA / JUDGMENT

UBUSHINJACYAHA v GAHIGI

RPA 0101/13/HC/NYA

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UBUSHINJACYAHA v GAHIGI

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Text

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UBUSHINJACYAHA v. GAHIGI [Rwanda URUKIKO RUKURU – RPA 0101/13/HC/NYA, (Manirakiza, P.J.), 20 04 2014] Amategeko yerekeye imiburanishirize y’imanza nshinjabyaha – Ubujurire – Ntacyatuma ubujurire butakirwa hitwajwe ko nta myanzuro uwajuriye yatanze igihe yabikoze urubanza rugisomwa kuko itegeko ritabiteganyaga nk’impamvu ituma ikirego kitakirwa, Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize

y’imanza

z’imbonezamubano iz’ubucuruzi, iz’umurimo n’iz’ubutegets, ingingo ya 1, 2, 18. Amategeko yerekeye ibimenyetso – Ubuhamya bw’uwabonye icyaha gikorwa ntibwateshwa agaciro, igihe uregwa avuga ko uwamubonye yabyumvise nyamara we ntaho abivuga cyangwa ngo uregwa abigaragarize urukiko ukundi. Itegeko no 15/2004 ryo kuwa 12/06/2004 ry’ibimenyetso mu manza n’itangwa ryabyo, ingingo ya 65. Amategeko yerekeye uburenganzira bw’umwana – Ibihano umwana yahawe ntibyakongerwa hashingiwe ku kuba yaracyemeye akagisabira imbabazi kandi yari n’umunyeshuri. Icyo Didace nawe yahawe nticyakongerwa kuko ari cy’iremezo. Incamake y’ikibazo: Mu rubanza RP min 0023/12/tgi/mhg Urukiko Rwisumbuye rwa Muhanga rwahamije

Gahigi Didace na mugenzi we wari ukiri

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umwana icyaha cyo gukubita no gukomeretsa byateye ubunanirwe buhoraho bw'umubiri no gutakaza igice kimwe cyawo. Rwahanishije uwo mwana ukwezi kumwe kw'igifungo gisubitse mu guhe kingana n'ukwezi naho Gahigi Didace ahanishwa ihazabu ingana n'ibihumbi ijana (100 000. Frw). Gahigi Didace ndetse n'Ubushinjacyaha bajuririye Urukiko Rukuru Urugereko rwa Nyanza. Ku munsu w'iburanisha Gahigi yavuze ko yahamijwe icyaha atakoze. Ku ruhande rw'umwana, we yavuze ko icyaha acyemera ndetse n'igihano cyacyo. Uwunganira Gahigi Didace we yavuze ko uwo yunganira yahamijwe icyaha atakoze ndetse n'ubujurire bw'ubushinjacyaha bukaba budaherekejwe n'imyanzuro asaba ko byasuzumwa. Ubushinjacyaha bwo bwashabaga ko ibihano byahawe abaregwa byakongerwa kuko ari bito. Incamake y'icyemezo: 1. Nta mpamvu zatumye ubujurire bw'Ubushinjacyaha butakwirira hitwaje ko nta myanzuro bwatanze kuko itangwa ku wundi muburanyi ndetse no ku rukiko kugirango hamenyekane impamvu z'ubujurire. Byongeye kandi ubushinjacyaha bwabikoze mbere y'iburanisha.

2. Ntiyavugaga ko ubuhamya bwa Safari Oscar nta gaciro bwahabwa kuko ngo ibyo avugaga ari ibyo yumvise mu gihe we yemeza ko yabyibonye n'amaso kandi n'ingingo z'ubuhamya bwe zikaba zisobanuye mu byo zemeza.
3. Ibihano Gahigi n'umwana bareganwaga hamwe ntibyakongerwa kuko habayeho kwita ku kuba umwe mu

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baregwa yaburanye ari umwana, yemera icyaha, agisabira imbabazi ndetse ari n'umunyeshuri. Naho Gahigi Didace we ntaho bigaragara ko yahawe igihano gito kuko atigeze agabanyirizwa ahubwo yahawe igihano cy'ifatizo. Ubujurire nta shingiro bufite. Ubujurire bw'ubushinjacyaha nta shingiro bufite. Urubanza rwajuririye ntiruhindutse. Mu magarama y'urubanza uko yategetswe, Gahigi Didace agomba kwishyuramo 12. 700. Amategeko yashingiweho: Itegeko ngenga no 01/2012/ol ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 148. Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize

y'imanza

z'imbonezamubano iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, ingingo ya 1, 2, 18. Itegeko no 15/2004 ryo ku wa 12/06/2004 ryibimenyetso mu manza n'itangwa ryabyo, ingingo ya 65. Nta manza zifashishijwe. Urubanza I.IMITERERE Y'URUBANZA

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- [1] Mu rubanza RPmin 0023/12/tgi/mhg Gahigi Didace na Ngabirano Dagash baregwa icyaha cyo gukubita no gukomeretsa bigambiriye kandi byateye ubunanirwe buhoraho bw'umubiri no gutakaza igice cy'umubiri, urukiko rwisumbuye rwa Muhanga rwemeje ko icyo cyaha gihama Ngabirano Dagash Hanis ndetse na Gahigi Didace maze ruhanisha Ngabirano

Dagash igihano cy'igifungo cy'ukwezi kumwe n'igice gisubitswe mu kwezi kumwe naho Gahigi Didace ahanishwa igihano cy'ihazabu y'amafaranga ibihumbi ijana(100000Frw) [2] Yaba Gahigi Didace, yaba ubushinjacyaha barajuriye maze ku munsu w'iburanisha wo ku wa 12/12/2013 no ku wa 15/05/2014;Gahigi Didace avuga ko yahamijwe icyaha atakoze. Ngabirano avuga ko icyaha yahamijwe yacyemeraga, ko n'igihano yahawe acyemera. Me Karima avuga ko Gahigi yahamijwe icyaha atakoze naho Ngabirano ko yaburanye yemera icyaha, ko urukiko rwazabiha agaciro. Ko ku bijyanye n'ubujurire

bw'ubushinjacyaha

butaherekejwe n'imyanzuro ko asaba ko byasuzumwa.Ubushinjacyaha buvuga ko bwajuriye kubera ko abaregwa bahawe ibihano bito,ko byakongerwa. [3] Muri uru rubanza harasuzumwa kuba ubushinjacyaha bwarajuriye ntibuhite butanga umwanzuro byaba impamvu yo kutakira ubujurire, hasuzumwe niba icyaha Gahigi Didace yahamijwe ataragikoze,hasuzumwe niba ibihano byahawe abaregwa bikwiye kongerwa.

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II.IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO a.Ku kibazo cyo kumenya niba ubushinjacyaha bwarajuriye ntibuhite butanga umwanzuro byaba impamvu yo kutakira ubujurire. [4] Me Karima wunganira abaregwa avuga ko ubushinjacyaha bwajuriye urubanza rugisomwa ariko ntibwatanga umwanzuro w'ubujurire kandi ubujurire buherekezwa n'umwanzuro. Ko rero babifata nko kutajurira mu gihe Ubushinjacyaha buvuga ko habaho gusuzuma ibyavuzwe. [5] Hagendewe ku ngingo ya 1 'itegeko ryerekeye imiburanishirize y'imanza mbonezamubano ivuga ko itegeko

rigenga

imiburanishirize

y'imanza mbonezamubano ari ryo rigenga indi miburanishirize iyo nta mategeko abigenga, urukiko rusanga kuba mu mpamvu zituma ikirego kitakirwa ziteganywa mu ngingo ya 2,18 z'itegeko no 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza mbonezamubano ntahateganyijwe kudatanga umwanzuro; nta mpamvu zatumye ubujurire bw'ubushinjacyaha butakirwa dore ko umwanzuro utangwa ku wundi muburanyi ndetse no ku rukiko mu rwego rwo kumenyesha impamvu z'ubujurire, ibyo ubushinjacyaha bukaba bwarabikoze mbere yuko iburanisha rikorwa.

b. Ku kibazo cyo kumenya niba icyaha Gahigi Didace yahamijwe ataragikoze.

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[6] Mu bujurire bwe Gahigi Didace avuga ko yajuriye kubera ko urukiko rwamuhamije icyaha atakoze, ko rwashingiye ku mvugo z'abantu batari kumwe nyamara abo bari kumwe ntibabazwa, ko rero yahamijwe icyaha nta bimenyetso. Avuga ko icyaha cyakozwe na Ngabirano Dagash waje amutabara, ko kandi Nzigamasabo Venant yakubiswe inkoni kandi

ko we ntayo yari afite, byongeye ko atari kumukubitira imbere y'iwe kandi nta kibazo bari basanganywe. Abajijwe abo bari kumwe birengagijwe kubazwa avuga ko hari nka Muhamadi naho Safari wabajijwe avuga ko yumvise, ubundi akavuga ko yabonye. Harerimana we avuga ko yasanze umuntu yakomeretse, ko ariko atemeza ko ari we wamukomerekeje. [7] Me Karima avuga ko Gahigi Didace yahamijwe icyaha cyo gukubita kubera ko Ngabirano wakubise Nzigamasabo Venant yarimo amutabara, ko ariko we atigeze akubita. Avuga ko abatangabuhamya bose babajijwe ari abahageze icyaha cyarangije gukorwa. Ubushinjacyaha buvuga ko raporo ya muganga igaragaza Nzigamasabo yakubiswe, ko Gahigi mu bujire bwe atavuguruza ibimenyetso byashingiweho. [8] Nubwo Gahigi Didace avuga ko yahamijwe icyaha atakoze, ntahakana ko mu bageze mbere aho Nzigamasabo Venant yakubitiwe harimo Safari Oscar. Kuba Oscar Safari ubwo yabazwaga mu bugenzacyaha yaremeje ko Nzigamasabo Venant yakubiswe na Ngabirano na Gahigi Didace ndetse ko ubwo yahageraga yasanze barwana Ngabirano na Gahigi bose bafite

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inkoni bakubita Nzigamasabo Venant, urukiko rusanga ntaho Gahigi Didace ndetse n'umwunganira bahera bavuga ko Gahigi Didace yahamijwe icyaha atakoze. Kuvuga ko Safari Oscar ibyo avuga ari ibyo yumvise, urukiko rusanga nta gaciro byahabwa kubera ko Safari Oscar ubwo yabazwaga ntaho yigeze avuga ko ibyo avuga ari ibyo yumvise ko ahubwo agaragaza ko ibyo avuga yabyibonye n'amaso. Kuba rero mu bujire bwa Gahigi Didace nta kundi avuguruza ubuhamya bwa Safari Oscar, urukiko rusanga ubuhamya bwe bukwiye guhabwa agaciro dore ko ingingo z'ubuhamya bwe zisobanuye mu byo zemeza nkuko biteganywa n'ingingo ya 65 y'itegeko no 15/2004 ryo ku wa 12/06/2004 ry'ibimenyetso mu manza n'itangwa ryabyo.

- c. Ku kibazo cyo kumenya niba ibihano byahawe abaregwa bikwiye kongerwa [9] Ubushinjacyaha mu bujire bwabo bavuga ko abaregwa bahawe ibihano bito, ko basaba ko byakongerwa. Me Karima Etienne avuga ko ibihano bya Gahigi Didace uretse no kuba bito bitari binakwiye kuko nta cyaha yakozwe. Kuri Ngabirano Dagash ko yaburanye yemera icyaha, asaba imbabazi, ko urukiko rwabiha agaciro agahabwa amahirwe yo gukosoka, akagumana ibihano yahawe. [10] Mu rubanza rujurirwa Gahigi Didace yahamijwe icyaha cyo gukubita no gukomeretsa ahanishwa igihano cy'ihazabu y'amafaranga ibihumbi ijana(100000Frw) naho Ngabirano Dagash nawe amaze guhamwa n'icyo cyaha yahanishijwe igihano cy'igifungo cy'ukwezi kumwe n'igice gisubitswe mu

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kwezi kumwe. Kuba ingingo ya 148 y'itege ngenga no 01/2012/ol ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana iteganya igihano cy'igifungo kuva ku mezi atandatu kugeza ku myaka ibiri n'ihazabu y'amafaranga ibihumbi ijana(100000Frw) kugeza ku bihumbi Magana atanu(500000Frw) cyangwa kimwe gusa muri ibyo bihano ku muntu ukubita agakomeretsa undi abishaka, Gahigi Didace akaba yarahamishijwe igihano

cy'ihazabu

y'amafaranga

ibihumbi ijana(100000Frw) naho Ngabirano agahanishwa igihano cy'ukwezi kumwe n'igice gisubitswe;urukiko rusanga ibihano bahawe mu rukiko rubanza harasobanuwe impamvu zashingiweho aho Ngabirano yagabanyirijwe ibihano ndetse akabisubikirwa kubera ko yaburanye ari umwana, yemera icyaha, agisabira imbabazi ndetse ari n'umunyeshuli naho Gahigi Didace we igihano yahawe ntaho bigaragara ko ari gito kuko nta naho yigeze agabanyirizwa ahubwo yahawe igihano cy'ifatizo. [11] Kuba rero ubushinjacyaha busaba ko ibihano byakongerwa ngo kuko abaregwa bahawe ibihano bito, urukiko rusanga bitahabwa agaciro kubera ko ubushinjacyaha budasobanura impamvu zashingirwaho byongerwa bityo ibihano abaregwa bahawe mu rukiko rubanza bikaba bitagomba guhindurwa. III.ICYEMEZO CY'URUKIKO [12] Rwemeje ko ubujurire bwa Gahigi Didace nta shingiro buhawe.

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[13] Rwemeje ko ubujurire bw'ubushinjacyaha nta shingiro buhawe. [14] Rwemeje

ko

urubanza

RPMIn 0023/12/TGI/MHG rwaciwe ku wa 22/01/2013 rudahinduka mu ngingo zarwo zose. [15] Rutegetse ko mu magarama y'urubanza uko ari amafaranga ibihumbi makumyabiri na bitanu magana ane mirongo itanu(25450Frw),Gahigi Didace atangamo amafaranga ibihumbi cumi na bibiri magana arindwi makumyabiri n'atanu(12725Frw), atayatanga agakurwa mu bye ku ngufu za Leta.

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