

RWANDA / JUDGMENT

UBUSHINJACYAHA v NIYIGENA

RPA 0120/11/CS

COURT

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UBUSHINJACYAHA v NIYIGENA

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Text

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UBUSHINJACYAHA v. NIYIGENA [Rwanda URUKIKO RW'IKIRENGA – RPA 0120/11/CS (Nyirinkwaya, P.J., Havugiyaremye naMukamulisa, J.) 5 Mata 2013] Amategeko mpanabyaha – Ubwinjiracyaha mu bwicanyi – Kuba harakoreshejwe igikoresho gishobora kwica kigakoreshya kandi mu gukomeretsa hafi y'icyico hagaragara nko mukico bigaragaza ko nta kindi cyari kigambiriwe kitari ukwica – Itegeko-teka n0 21/77 z'itegeko teka no 21/77 ryo kuwa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, Ingingo ya 22 na 311. Amategeko mpanabyaha – ubusembure – Byitwa ubusembure iyo igikorwa uwasembuwe yakorewe kimurenganya kandi icye kigahita gisubirizaho ako kanya hatabayeho gutegura icyo agiye gukora bitewe n'uko uwasembuwe yakubiswe cyangwa yakorewe igikorwa kimurenganya – Itegeko-teka n0 21/77 z'itegeko teka no 21/77 ryo kuwa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, Ingingo ya 79 Incamake y'ikibazo: Ubushinjacyaha bwareze Niyigena Issa bumushinja kuba yakomerekeje Nsekanabo mu bitugu ashaka kumwica kuko yari amwishyuye amafaranga yari amurimo bikamubabaza kuko nawe yavugaga ko yayamwibye. Byatumye asubira iwe mu rugo maze azana icyuma amusanga iwe amutungura arimo koga akura icyuma mu mufuka ashaka kukimutera barakirwanira Niyigena ashaka kukimutemesha ku ijosi ariko abantu bahita batabara

barakimwaka umugambi we atarawugeraho. Ushijwa we avuga ko yashakaga kumukanga ngo amuhe telephone ye yari yamwatse. Urukiko Rukuru Urugereko rwa Rwamagana rwamuhamije ubwinjiracyaha mu bwicanyi ahanishwa igifungo cy'imyaka makumyabiri agabanyirijwe kuko bwari ubwa mbere ahamwa n'icyaha. Yajuririye mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rwamuhamije icyaha atakoze. Yavuze ko ahubwo yemera gukubita no gukomeretsa kuko yari yasembuwe na Nsekanabo wari umutwariye telefone. Umushinjacyaha we avuga ko ikigaragaza ko ushinjwa yari agambiriye kwica ari uko yavuye mu rugo akava iwe yitwaje icyuma no kuba yarakomerekeje Nsekanabo mu bitugu aganisha mu kico kandi no kuba hari abatangabuhamya batarahiye bitabuza ko imvugo zabo zitabwaho kuko zihuye n'ukuri. Incamake y'icyemezo: 1. Kuba icyakoreshejwe ari igikoresho gishobora kwica, kikaba cyarakoreshejwe mu gukomeretsa mu bitugu hafi y'ijosi, mu kico; byumvikanisha ko icyari kigambiriwe ari ukwica bikabuzwa n'uko icyari kigambiriwe cyahagaritwe n'uko uwo yari agiye kwica yamurwanyije kandi agatabarwa. Bityo, ahamwa n'ubwinjiracyaha mu bwicanyi aho kuba gukubita no gukomeretsa.

2. Ntihabayeho ubusembure kuko atabanje gukubitwa cyangwa guhutazwa bikomeye kuko kwamburwa telefone, n'ubwo byaba byarabayeho, ntibyafatwa nko guhutazwa bikomeye dore ko yafashe umwanya wo kujya iwe kuzana icyuma arangije ajya kwa Nsekanabo kukimutera; bigaragaza ko yafashe umwanya wo kubitekerezaho. Ahubwo, byitwa ubusembure iyo igikorwa uwasembuwe yakorewe kimurenganya kandi icye kigahita gisubirizaho ako kanya hatabayeho gutegura icyo agiye gukora.

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Ubujurire nta shingiro bufite. Urubanza rujuririrwa ntiruhindutse Amagarama y'urubanza aherereye ku isanduku ya Leta. Amategeko yashingiweho: Itegeko-teka n0 21/77 z'itegeko teka no 21/77 ryo kuwa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, Ingingo ya 22, 79 na 311. Imanza zifashishijwe Ubushinjacyaha v Kabango Habimana Saïdi, RPA 0246/08/cs, Rwaciwe n'Urukiko rw'Ikirenga ku wa 11 Nzeli 2009. Ubushinjacyaha v Pte Senzira Jean Claude, RPA 0150/08/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 30 Mata 2010 Urubanza I. IMITERERE Y'URUBANZA [1] Ubushinjacyaha buvuga ko Niyigena yakomerekeje umuturanyi we Nsekanabo mu bitugu ashaka kumwica kubera ko uyu yari yamwishyuye 135.000frw yari amurimo bikamubabaza kuko yavugaga ko nawe bayamwibye, maze ajya iwe mu rugo kuzana icyuma, akomeza ajya kwa Nsekanabo, amutungura arimo koga, akura icyuma mu mufuka ashaka kukimutera, barakirwanira Niyigena ashaka kukimutemesha ijosi ariko abantu bahita batabara bamwaka icyuma umugambi we utaragerwaho mu bitugu. Niyigena Issa we avuga ko yashakaga gusa gukanga Nsekanabo kugira ngo amusubize telefone ye yari yafatiriye, ariko aho kugira ubwoba yahise ahubwo amurwanya bituma amukomeretsa. [2] Urukiko Rukuru urugereko rwa Rwamagana rwaciye urubanza kuwa 13/05/2010, rwemeza ko Niyigena Issa ahamwa n'icyaha cy'ubwinjiracyaha mu bwicanyi, rumuhanisha igifungo cy'imyaka 20, harimo kugabanyirizwa kuko ari ubwa mbere ahamwa n'icyaha. [3] Niyigena Issa yajuririye urubanza mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rwamuhamije icyaha atakoze, ko icyaha yemera ari icyo gukubita no gukomeretsa kubera ko yari yasembuwe na Nsekanabo wari wamutwariye telefone. Urubanza rwaburanishijwe mu ruhame kuwa 04/03/2013, Niyigena yunganiwe na Me

Nkubayingonga, Ubushinjacyaha buhagarariwe na PN Ntawangundi Béatrice. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA:

- a. Kumenya niba Niyigena Issa yarakoze icyaha cyo gukubita no gukomeretsa agahanirwa icy'ubwinjiracyaha mu bwicanyi. [4] Niyigena Issa avuga ko yakomerekeje Nsekanabo kubera ko barwaniye icyuma yari aje kumukangisha ngo amuhe telefoni ye, ko Urukiko Rukuru rwamuhamije icyaha cy'ubwinjiracyaha mu bwicanyi rushingiye ku buhamya bwa Rugumire, Gatare na Kayitare bugaragaza gusa uko babonye ibintu.

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- [5] Yongeraho ko ubuhamya bwa Rugumire na Gatare by'umwihariko butagombaga kwitabwaho kuko bari abakozi ba Nsekanabo, bukaba budakurikije amategeko kuko mbere y'uko babazwa nta hagaragara ko barahiye ko bagiye kuvugisha ukuri nk'uko amategeko abiteganyaga. [6] Uhagarariye Ubushinjacyaha avuga ko ubushake bwo kwica bugaragazwa n'uko Niyigena yavuye iwe yitwaje icyuma no kuba yarakomerekeje Nsekanabo mu bitugu aganisha mu cyico. Avuga kandi ko kuba Rugumire na Gatare batararahiye bitabuza ko imvugo zabo zitabwaho kuko zihuye n'ikiburanwa. [7] Ingingo ya 22 y'itegeko-teka no 21/77 z'itegeko teka no 21/77 ryo kuwa 18/08/1977 rishyiraho igitabo cy'amategeko ahana ibyaha ryariho igihe ibikorwa bikurikiranywe byakorwaga iteganyaga ko "ubwinjiracyaha buhanwa naho icyari cyagenderewe cyaba kitashoboye kugerwaho bitewe n'impamvu nyiricyaha atashoboye kumenya, naho ingingo ya 311 y'iryo tegeko ikavugaga ko "kwica umuntu ubishaka byitwa ubwicanyi bihanishwa igifungo cya burundu". [8] Ku bijyanye no kumenya niba Niyigena adahamwe n'icyaha cy'ubwinjiracyaha mu bwicanyi nk'uko abivugaga, Urukiko rusanga kuba byonyine icyakoreshejwe ari icyuma kizwi nk'igikoreshe gishobora kwica, hakabaho gukomeretsa mu bitugu hafi y'ijosi nk'ahantu hagaragara ko ari mu cyico, byumvikanisha ko icyari kigambiriwe ari ukwica uwakomerekejwe, nyir'ugukora icyaha akaba yarabujijwe kugera ku ntego n'uko Nsekanabo yamurwanyije n'abantu bakamutabara. [9] Hashingiwe kuri ibyo bisobanuro, urukiko rusanga Niyigena Issa ahamwe n'icyaha cy'ubwinjiracyaha mu bwicanyi aho guhamwe n'icyaha cyo gukubita no gukomeretsa.
- b. Kumenya niba Niyigena Issa yagabanyirizwa ibihano hashingiwe ku busembure. [10] Niyigena Issa avuga ko yasembuwe kubera ko Nsekanabo nawe yari yamwatse telefone ye, akaba asaba ko ubwo busembure bwakwitabwaho hashingiwe ku biteganywa n'amategeko. [11] Ubushinjacyaha bwo buvugaga ko umwanya Niyigena yafashe ajya kuzana icyuma no kugaruka kugitera Nsekanabo bigaragaza ko nta gusemburwa kwabayeho. [12] Ingingo ya 79 y'itegeko-teka no 21/77 ryo kuwa 18/08/1977 rishyiraho igitabo cy'amategeko ahana ibyaha ryavuzwe haruguru iteganyaga ko "ibyaha by'ubugome n'ibikomeye, bitubya, iyo ababikoze basembuwe bakubitwa cyangwa bahutazwa bikomeye". [13] Urukiko rusanga ibyo Niyigena avugaga ko yasembuwe mbere yo gukora icyaha nta shingiro byahabwaga kuko atagaragazaga ko yabanye gukubitwa cyangwa guhutazwa bikomeye, kwamburwa telefoni nubwo byaba byarabayeho nk'uko abivugaga bikaba bitafatwaga nko guhutazwa bikomeye. [14] Urukiko rusanga kandi nk'uko rwabyemeje mu zindi manza, ubusembure bwemerwaga iyo igikorwa

uvuga ko yasembuwe yakorewe cyakozwe kimurenganya¹, n'igikorwa cy'ugasembuwe kikaba igisubirizaho ako kanya (instantanéité) ubusembure, hatabayemo gufata igihe cyo gutegura icyo agiye gukora², ibi rero akaba atariko byagenze kuri Niyigena kuko uretse no kuba atari yakubiswe cyangwa yahutajwe bikomeye, yanafashe umwanya wo

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kujya iwe kuzana icyuma arangije ajya kwa Nsekanabo kukimutera, bikaba bigaragara ko yafashe umwanya wo kubitekerezaho. [15] Hashingiwe ku bisobanuro byatanzwe, Urukiko rusanga nta mpamvu yatuma urubanza rwajuririwe ruhinduka. III. ICYEMEZO CY'URUKIKO: [16] Rwemeje ko ubujurire bwatanzwe na Niyigena Issa nta shingiro bufite. [17] Rwemeje ko urubanza RP 0072/08/HC/RWG rwaciye n'Urukiko Rukuru rudahindutse. [18] Ruvuze ko amagarama y'urubanza aherera ku isanduku ya Leta.

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