

RWANDA / JUDGMENT

Re BIBERABAGABO

RS/RECUS/RC 00002/2021/CA

COURT

Court of Appeal

DECIDED

16 June 2021

CASE / FILE NUMBER

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Re BIBERABAGABO

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Text

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Re BIBERABAGABO [Rwanda URUKIKO RW'UBUJURIRE – RS/RECUS/RC 00002/2021/CA (Rukundakuvuga, P.J.) 16 Kamena 2021] Amategeko agenga imiburanishirize y'imanza mbonezamubano – Kwihana umucamanza – Ikibazo cy'ubucuti cyangwa urwango hagati y'umuburanyi n'umucamanza ntabwo ari impamvu umuburanyi yibwira cyangwa ashobora kwitekerereza ashingiye ku buryo abona iburanisha ryagenze. Incamake y'ikibazo: Uru rubanza ruturuka ku iburanisha ry'urubanza RCAA00002/2020/CA aho Biberabagabo yihannye umucamanza Kamere waburanishaga urwo rubanza, ngo kuko yafashije uwo baburanaga gushaka guhimba ikimenyetso kimutsindisha; iburanisha rihita risubikwa kugirango atange ikirego cyo kwihana. Biberabagabo yatanze ikirego cy'ubwihane asobanura mu buryo amategeko abiteganyaga avuga ko umucamanza yafashije umwe mu baburanyi be guhimba ikimenyetso kimutsindisha, ngo umucamanza arivuguruza, ngo umucamanza aramwibasira avuga kandi ko atanga umurongo ku ruhande ashaka kubogamiraho. Urukiko rwemeje ko ikirego cy'ubwihane cyatanze na Biberabagabo nta shingiro gifite. Incamake y'icyemezo: Ikibazo cy'ubucuti cyangwa urwango hagati y'umuburanyi n'umucamanza ntabwo ari impamvu umuburanyi yibwira cyangwa ashobora kwitekerereza ashingiye ku buryo abona iburanisha ryagenze. ahubwo

zigomba kuba ari impamvu zishingiye ku bimenyetso bifatika bisanzwe biriho na mbere y'urubanza bigaragaza ubusabane bukomeye hagati y'umucamanza n'umuburanyi. Amategeko yashingiweho: Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, ingingo ya 103. Imanza zifashishijwe: Urubanza RS/RECUS/RCOM 00002/2019/SC Muzima Rutikanga rwaciwe n'Urukiko rw'Ikirenga kuwa 15/11/2019 Urubanza I. IMITERERE Y'URUBANZA

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[1] Mu iburanisha ryo kuwa 31/05/2021 ry'urubanza RCAA00002/2020/CA ruburanwamo Ndatinya Vedaste, Biberabagabo Jean Bosco yihannye umucamanza Kamere Emmanuel waburanishaga urwo rubanza, ngo kuko yafashije umwe mu baburanyi gushaka guhimba ikimenyetso kimutsindisha; iburanisha rihita risubikwa ngo arangize imihango y'ubwihane nk'uko iteganywa n'amategeko. [2] Kuwa 31/05/2021 saa 18h57, Biberabagabo Jean Bosco yohereje ikirego cy'ubwihane asobanuramo impamvu zikurikira: Umucamanza yafashije umwe mu baburanyi gushaka guhimba ikimenyetso gitsindisha Biberabagabo Jean Bosco, aho yafashe icyemezo ko hapimwa ikimenyetso muri Forensic Laboratory kuko ngo aricyo cyari kamarampaka, birangira icyo kimeyetso kidapimwe kuko Forensic laboratory yasanze atari umwimerere (original); akemeza ko ibyo Forensic Laboratory yabonye n'umucamanza yari abizi ahubwo akaba yarabirenzeho ashaka gufasha urundi ruhande. Nyuma y'aho bigaragariye ko ikimenyetso kidashobora gupimwa ngo umucamanza yirivugurujye avuga ko azashingira ku bindi bimenyetso; uko kwivuguruza kukaba kugaragaza kubogama bituma atakaza icyizere ko umucamanza yamuha ubutabera. Umucamanza ngo aramwibasira akamucyocya akanamwotsa igitutu ngo kuko na nyuma y'ubwihane yamusabye gusobanura ubwihane bwe ndetse ngo akanasaba n'umwunganizi we gusomera abari mu iburanisha amategeko agenga ubwihane nk'aho mu rubanza ari mu ishuli. Asoza avuga ko iburanisha, Umucamanza Kamere Emmanuel abanza gutanga igisubizo nyuma akagenda abaza ababuranyi ngo nibagire icyo bakivugaho, ndetse akagenda anagaruka ku magambo atari mu iburanisha, ibyo bikaba bigaragaza ko aba yabanje gutanga umurongo ku ruhande ashaka kubogamiraho. [3] Biberabagabo Jean Bosco avuga ko impamvu z'ubwihane azishingira ku ngingo ya 103, 4°-5o y'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi iteganywa ko "umucamanza ashobora kwihanwa iyo umwe mu baburanyi agaragaje ko umucamanza afitanye ubucuti bwihariye n'undi mu baburanyi cyangwa kuva aho urubanza rutangiriyeye, yarigeze kwakirwa mu buryo bwihariye n'umwe mu baburanyi ku mafaranga ye, cyangwa yaremeye impano ahawe n'umuburanyi", cyangwa "iyo we ubwe yigeze kugira icyo avuga cyangwa agatanga inama kuri urwo rubanza mbere y'uko ruburanishwa". [4] Urubanza rwaburanishijwe mu nama y'abacamanza kuwa 16/06/2021, rusuzuma ingingo zatanzwe na Biberabagabo Jean Bosco nk'uko zasobanuwe haruguru.

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II. ISESENGURA RY'IMPAMVU Z'UBWIHANE [5] Urukiko rusanga ingingo Biberabagabo Jean Bosco ashingiraho atanga ubwihane igaragaza ko ubwihane atanga bushingiye ku bucuti bwihariye umucamanza yaba afitanye n'umwe mu baburanyi cyangwa se umucamanza yarigeze kwakirwa mu buryo bwihariye n'umwe mu baburanyi cyangwa yaremeye impano y'umwe mu baburanyi, cyangwa "iyo we ubwe yigeze kugira icyo avuga cyangwa agatanga inama kuri urwo rubanza mbere y'uko ruburanishwa"; nyamara mu bisobanuro bye akibanda ku buryo umucamanza yayoboye iburanisha. [6] Urukiko rusanga ikibazo cy'ubucuti cyangwa urwango hagati y'umuburanyi n'umucamanza bivugwa mu ngingo ya 103 yavuzwe haruguru, atari impamvu umuburanyi yibwira cyangwa ashobora kwitekerereza ashingiye ku buryo abona iburanisha ryagenze, ahubwo zigomba kuba ari impamvu zishingiye ku bimenyetso bifatika bisanzwe biriho na mbere y'urubanza bigaragaza ubusabane bukomeye hagati y'umucamanza n'umuburanyi. Ibyo ni nako byasobanuwe n'Urukiko rw'Ikirenga mu rubanza RS/RECUS/RCOM 00002/2019/SC cyane cyane mu gika cya

231. Muri urwo rubanza Urukiko rw'Ikirenga rwasanze impamvu z'ubwihane bw'umucamanza nk'uko ziteganywa n'itegeko atari impamvu zituruka mu buryo urubanza rwaburanishijwe, ahubwo ari impamvu zishingiye ku byo umuburanyi yamenye mu mibanire cyangwa mu isano umucamanza asanzwe afitanye n'umuburanyi cyangwa azi ku rubanza, bishobora kugaragazwa bidashingiye ku miburanishirize y'urubanza. Urukiko rw'Ikirenga rwasanze kandi impamvu nk'izo zigomba kuba zifitiwe ibimenyetso bigaragara bidashingiye ku kugenekereza : "ngo ubwo umucamanza agize atya, nta yindi mpamvu yabimutera uretse iyi." [7] Muri uru rubanza nta kimenyetso na kimwe Biberabagabo Jean Bosco yagaragaje gishimangira umubano w'ubucuti hagati y'umucamanza Kamere Emmanuel n'umwe mu baburanyi, cyangwa hari ukwakirwa kwihariye kwabayeho kwakorewe umucamanza n'umwe mu baburanyi cyangwa impano yaba yarahawe, uretse ibyo yitekerereje ahereye ku buryo urubanza rwayobowe nk'uko byasobanuwe mu gika cya 2 cy'uru rubanza. [8] Urukiko rushingiye kuri ibyo bisobanuro, rurasanga ubwihane Biberabagabo Jean Bosco nta shingiro bufite. III. ICYEMEZO CY'URUKIKO [9] Rwemeje ko ikirego cy'ubwihane cyatanze na Biberabagabo Jean Bosco mu rubanza RCAA00002/2020/CA nta shingiro gifite ; [10] Rwemeje ko Umucamanza Kamere Emmanuel ugize inteko iburanisha urubanza RCAA00002/2020/CA arugumamo; 1 Reba urubanza RS/RECUS/RCOM 00002/2019/SC rwa MUZIMA RUTIKANGA rwaciwe kuwa 15/11/2019

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