

RWANDA / JUDGMENT

Re BIZIMANA

RLR V. 2-2023

COURT

Supreme Court

DECIDED

27 July 2022

CASE / FILE NUMBER

RS/INJUST/RAD 00002/2021/SC

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Re BIZIMANA

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Text

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Re BIZIMANA [Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RAD 00002/2021/SC – (Cyanzayire, P.J., Hitiyaremye na Karimunda, J.) 27 Nyakanga 2022] Amategeko agenga imanza z'ubutegetsi – Irangiza ry'urubanza – Inyandikompesha – Umwanzuro w'ubuhuza – Ni inyandiko y'ubwumvikane iriho umukono w'impande zombi n'ubwunzi yakorewe hanze y'urukiko, igasoza urubanza nta y'indi mihango ikozwe bityo, hakarangizwa ibikubiye muri uwo mwanzuro. Incamake y'ikibazo: Bizimana yaregeye Urukiko Rwisumbuye rwa Nyarugenge mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe, asaba gusubizwa uburenganzira bwe kubera icyemezo cyafashwe ku butaka yaguze cyo kubucamo umuhanda atabizi, ahasigaye hagateganyirizwa ubusitani, aho abimenyeye yandikira Akarere ka Kicukiro atakamba asaba ko icyo cyemezo gikurwaho ariko ntiyasubizwa. Urukiko rwemeje kutakira ikirego cye, rusobanura ko ibyo yaregeye bidakwiye kuregerwa mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe, kuko ikirego cy'ubwo bwoko gitangwa gusa ndetse kikakirwa iyo ari ibibazo bigaragara ko nta mpaka biteje ku buryo byaba ngombwa ko undi muburanyi ahamagarwa. Urega yajuririyemo Urukiko Rukuru ariko rwemeza ko ubujurire bwe budafite ishingiro rushingiye ku mpamvu zimwe n'izatanze n'Urukiko rubanza, rwongeraho kuba uregwa atarasubijwe ku

butakambe bwe bitavuze ko afite uburenganzira ku mutungo we. Ibi byatumye asaba ko urubanza rwe rusubirishwamo ku mpamvu z'akarengane, maze ruburanishwa mu ruhame impande zombi zifitenye ikibazo zihari. Aba bombi baje kwemera ko ikibazo cyabo gikemurwa mu nzira y'ubuhuza kuko aribwo buryo bwiza bwo gukemura impaka bafitanye. Incamake y'icyemezo: Umwanzuro w'ubuhuza ni inyandiko y'ubwumvikane iriho umukono w'impande zombi n'ubwunzi yakorewe hanze y'urukiko, igasozwa urubanza nta y'indi mihingo ikozwe bityo, hakarangizwa ibikubiye muri uwo mwanzuro. Amategeko yashingiweho: Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 9, 178 n'ya 241. Nta manza zifashishijwe. I. IMITERERE Y'URUBANZA [1] Ku wa 24/03/2017, Bizimana Jacques yaguze ikibanza na Batamuriza Yvonne ku mafaranga 4 550 000 gifite UPI: 1/03/01/1981 giherereye mu Mudugudu wa Kimena Akagari

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abimenyeye akandikira Akarere ka Kicukiro atakamba asaba ko icyemezo gikurwaho ariko ntasubizwe. [2] Byatumye aregera Urukiko Rwisumbuye rwa Nyarugenge mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe, asaba gusubizwa uburenganzira bwe, urubanza rwandikwa kuri RAD 00208/2018/TGI/NYGE, rucibwa ku wa 06/12/2018. Urukiko rwemeje kutakira ikirego cye, rusobanura ko ibyo Bizimana Jacques yaregeye bidakwiye kuregerwa mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe, kuko ikirego cy'ubwo bwoko gitangwa gusa ndetse kikakirwa iyo ari ibibazo bigaragara ko nta mpaka biteje ku buryo byaba ngombwa ko undi muburanyi ahamagarwa. Rwasobanuye kandi ko ibiteganywa mu ngingo ya 178, igika cya 5, y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, bitatuma ikirego cyakirwa igihe cyose bigaragara ko hari impaka kandi nta kiramirwa cyihuse kigaragarizwa urukiko. [3] Bizimana Jacques yajuririye urwo rubanza mu Rukiko Rukuru, rwandikwa kuri RADA 00011/2019/HC/KIG, rucibwa ku wa 12/03/2019, hemezwa ko ubujurire bwe budafite ishingiro. Urukiko rwashingiye ku mpamvu zimwe n'izatanze n'Urukiko rubanza, rwongeraho ko kuba uregwa atarasubijwe ku butakambe bwe bitavuze ko afite uburenganzira ku mutungo we, ahubwo bimuha uburenganzira bwo kuregera inkiko kugirango ikibazo cye gisuzumwe. [4] Nyuma y'uko urwo rubanza ruciwe, Bizimana Jacques yandikiye Perezida w'Urukiko rw'Ubuujurire asaba ko rusubirwamo ku mpamvu z'akarengane, amaze kubisuzuma akora raporo igaragaza ko urubanza rukwiye gusubirwamo, ayohereza Perezida w'Urukiko rw'Ikirenga. Mu cyemezo nimeron 0202/CJ/2021 cyo ku wa 10/08/2021, Perezida w'Urukiko rw'Ikirenga yasabye ko urubanza rwandikwa mu bitabo by'ibirego rukongera kuburanishwa; rwandikwa kuri RS/INJUST/RAD 00002/2021/SC, ababuranyi bamenyeshwa ko ruzaburanishwa ku wa 16/11/2021. [5] Iburanisha ry'urubanza ryabereye mu ruhame, Bizimana Jacques yunganiwe na Me Manirafasha Jean Paul, Umujyi wa Kigali wahamagajwe mu rubanza uburanirwa na Me Safari Vianney. Hashingiye ku ngingo ya 9, igika cya 3, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ababuranyi babajijwe niba ikibazo bafite kitakemuka mu nzira y'ubuhuza, bemera ko aribwo buryo bwiza bwo gukemura impaka bafitanye, bumvikana ko uzababera umuhuza ari Me Kavaruganda Julien. 1

Ingingo ya 178, igika cya 3, ya CPCCSA iteganya ko umuyobozi utakambiwe agomba gusubiza ubwo butakambe mu gihe cy'ukwezi kumwe (1) kubarwa uherye umunsi yabuboneyeho. Iyo adasubije, ubutakambe bufatwa nk'aho bufite ishingiro. Igika cya 5 cy'iyi ngingo giteganya ko iyo nta gisubizo yahawe kandi atasubijwe uburenganzira bwe, ashobora gusaba urukiko ruburanisha imanza z'ubutegetsi gutegeka ko uburenganzira bwe bwubahirizwa. icyo kirego gitangwa mu gihe kitarenze ukwezi kumwe (1) mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe.

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- [6] Me Kavaruganda Julien yashyikirijwe icyemezo cy'Urukiko cyo ku wa 22/11/2021 kimushyiraho nk'umuhuza mu rubanza RS/INJUST/RC 00002/2021/SC, ahabwa igihe cyo kugeza ku wa 31/12/2021 kugirango abe yashyikirije raporo abo bireba bese. Urubanza rwongeye gushyirwa kuri gahunda y'iburanisha ku wa 13/01/2022, ariko ntirwaburanishwa kuko ku wa 12/01/2022 Umuhuza yanditse asaba kongererwa igihe, agahabwa nibura kugeza ku wa 28/02/2022 kugirango abe yamaze gutanga raporo. [7] Ku wa 21/06/2022, Umuhuza yashyikirije Urukiko raporo y'ibyavuye mu buhuza yo ku wa 17/06/2022, igaragaza ko impaka ababuranyi bari bafitanye zirebana n'ubutaka bubaruye kuri UPI: 1/03/01/1981, buherereye mu Mudugudu wa Kimena, Akagari ka Karembure, Umurenge wa Gahanga, Akarere ka Kicukiro, Umujyi wa Kigali, zarangiye abo bireba bese bumvikanye. [8] Iburanisha ryo kwemeza umwanzuro w'ubuhuza ryabaye ku wa 27/07/2022, abari mu rubanza bese bitabye, Bizimana Jacques yunganiwe na Me Manirafasha Jean Paul, naho Umujyi wa Kigali wahamagajwe mu rubanza uburanirwa na Me Shema Gérard. Urukiko rwamenyesheje abari mu rubanza ko rwabonye inyandiko y'ubwumvikane impande zose zemeranyijweho, bavuga ko impaka bari bafitanye zakemutse burundu kandi ko nta gisigaye gusuzumwa, barusaba kwemeza umwanzuro w'ubuhuza. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO
1. Kumenya niba umwanzuro w'ubuhuza wakwemezwa [9] Hashingiwe ku mwanzuro w'ubuhuza wo ku wa 17/06/2022, ugaragaza ko abari mu rubanza bese bemeranyijwe ku bibazo bari barushyikirije, Urukiko rurasanga uru rubanza rugomba gusozwa nta yindi mihango, bityo hakazarangizwa ibikubiye muri uwo mwanzuro nk'uko biteganywa n'ingingo ya 241, 7° y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi. Iyo ngingo iteganya ko inyandiko y'ubwumvikane iriho umukono w'impande zombi n'ubwunzi byakorewe hanze y'urukiko ari inyandikompesha. III. ICYEMEZO CY'URUKIKO [10] Rwemeje ko ikirego Urukiko rwari rwashyikirijwe mu rubanza RS/INJUST/RAD 000002/2021/SC, gikemuwe nk'uko ababuranyi babyemeranyijweho mu mwanzuro w'ubuhuza wo ku wa 17/06/2022 uri ku mugereka w'uru rubanza. [11] Rutegetse ko umwanzuro w'ubuhuza urangizwa uko wanditse.

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