

RWANDA / JUDGMENT

BAREGEYA v. UMUJYI WA KIGALI n'abandi

RADA0012/11/SC

COURT

Supreme Court

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BAREGEYA v. UMUJYI WA KIGALI n'abandi

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Text

Page 1

BAREGEYA v. UMUJYI WA KIGALI n'abandi [Rwanda URUKIKO RW'IKIRENGA – SC2013 – RADA0012/11/SC (Kanyange, P.J., Rugabirwa, Mukandamage, J.) Nzeri 27, 2013] Amategeko y'ubutegetsi – Gukuraho icyemezo cy'ubutegetsi – Agacyiro k'ikirego cy'indishyi mu gihe icyemezo cyaregewe kitavanyweho. Amategeko y'ibimenyetso – Ibimenyetso – Umuburanyi agomba kugaragaza ukuri kw'ibyo aburana. Incamake y'icyibazo: Uwajuriye avuga ko yaguze ibibanza bibiri n'uwitwa Gasarabwe Jean Baptiste ariko, uregwa wa mbere i akamwambura igice kimwe cyo kuri ibyo bibanzaa gihereza uregwa wa gatatu Yaregeye Urukiko Rukuru asaba gukuraho icyemezo cy'Uregwa wa mbere kivuga ko we na Tesire Jeanne hamwe n'uregwa wa gatatu buri wese ahabwa ikibanza kimwe. Uregwa wa gatatu we avuga ko ikibanza yakihawe na Mutemberezi wari uhafite isambu akaba yaracyandikishije mu mwaka wa 2000 anatererwa imbago (bornes) Urukiko rwemeje ko nta shingiro gifite, kuko ikarita iri mu dosiye n'ibyagaragariye urukiko igihe cy'iperereza byerekana ko ikibanza buri wese yita icye gifite numero 7, kandi uwajuriye avuga ko ibibanza yaguze bifite numero 8VB na 9VB, bikaba bitadukanye naho yerekana, n'inyandiko yerekana yaguriyeho zitagaragaza aho ibibanza biri, n'ibipimo byabyo. Urukiko Rukuru rwavuze ko, nimba harabaye amakosa abaregwa aribo

uwambere n'uwakabiri bemerewe kuyakosora. Yajuririye u' Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rutitaye ku bimenyetso yatanze, n'ingingo z'amategeko., akaba asaba n'indishyi. Incamake y'icyemezo: Ikibanza kiburanwa gifite numero 7 ,uregwa wa gatatu avuga ko yahawe na Mutembereza ikibanza mw'isambu ye, ,bigashimagirwa n'ibaruwa iri muri dosiye,Mutembereza yamwandikiye kuwa 31/08/1998 amubwira ko amuhaye ikibanza mu isambu ye.Uwajuriye agaragaza amasezerano y'ubugure yakoranye na Gasarambwe Jean Baptiste a vuga ko amugurishije ibibanza bibiri bifite numero 8VB na 9VB, ingano yabyo ikaba idahura n'ingano y'ibibanza bibiri byatanzwe mu mushinga wa TTP(metero 60 m kuri 40 m), rurasanga icyo cyemezo ntaho cyarenganiye Buregeya, ahubwo cyarakemuye ikibazo cyatewe na Gasarabwe wagurishije ibibanza nta kigaragaza uburenganzira yari abifiteho. , ntabwo ari ngombwa gusuzuma ibirebana n'indishyi, kubera nta kosa ryakozwe ryatuma icyemezo kivanwaho . Ubujurire nta shingiro bufite. Imikirize y'urubanza idahindutse. Amagarama ahereye k'uwajuriye Nta mategeko yashingiweho:

Page 2

Nta manza z'ifashishijwe:

Judgment

IMITERERE Y`URUBANZA [1] Buregeya Pascal avuga ko yaguze ibibanza bibiri n'uwitwa Gasarabwe Jean Baptiste anahabwa ibyangombwa byabyo, ngo ariko nyuma Umujyi wa Kigali umwambura igice kimwe cyo kuri ibyo bibanza. [2] Yaregeye Urukiko Rukuru asaba gukuraho icyemezo cy'Umujyi wa Kigali gikubiye mu ibaruwa n° 31361/07.01.06/09 yo kuwa 26/08/2009 kivuga ko we na Rukiriza Félicien na Tesire Jeanne buri wese ahabwa ikibanza kimwe kingana na metero 30 kuri 20, ko rero icyo cyemezo kimugenera ikibanza kimwe kandi ibibanza afitiye ibyangombwa ari bibiri. [3] Rukiriza we yaburanye avuga ko ikibanza Buregeya aburana atari icye kuko yagihawe na Mutemberezi wari uhafite isambu, akaba yaracyandikishije mu mwaka wa 2000 anatererwa imbago (bornes). [4] Urukiko Rukuru rwemeje ko ikirego cya Buregeya nta shingiro gifite, ko nta mpamvu icyemezo cy'Umujyi wa Kigali cyavanwaho rubishingiye ko ikarita iri muri dosiye n'ibyagaragariye urukiko igihe cy'iperereza, byerekana ko ikibanza Buregeya na Rukiriza buri wese yita icye gifite numero 7 naho icya Tesire kikagira numero 6 kandi Buregeya avuga ko ibibanza yaguze bifite numero 8VB na 9VB, bikaba bitandukanye n'aho yerekana, ko atandukira akerekana ibibanza by'abandi bifite numero zitandukanye n'izo avuga ko yaguze. [5] Urukiko rwasobanuye ko ibyo biterwa n'uko inyandiko Buregeya yerekana ko yaguriyeho nazo ubwazo ziteza urujijo kuko zitagaragaza neza aho ibibanza biri, n'ibipimo avuga ko ibyo bibanza bifite (43 m kuri 38 m) bitandukanye n'iby'ibibanza byatanzwe mu mushinga wa TTP (metero 20 kuri 30). Rwasobanuye kandi ko niba hari ibyangombwa Buregeya yahawe ku kibanza aburana, haba harabaye amakosa Umujyi wa Kigali n'Akarere ka Gasabo bemerewe gukosora kuko nta mpamvu yahabwa ikibanza adafitiye uburenganzira. [6] Buregeya yajuririye urwo rubanza mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rutitaye ku bimenyetso yatanze, runirengagiza ibiteganywa n'ingingo ya 29 igika cya kabiri y'Itegeko Nshinga, ingingo ya 5 y'Itegeko rigena imikoreshereze n'imicungire y'ubutaka hamwe n'ingingo ya 147 CPCCSA. Asaba guhabwa indishyi zingana na

497.255.000 Frw. [7] Urubanza rwaburanishijwe mu ruhame kuwa 23/07/2013, Buregeya yunganiwe na Me Nubumwe Jean Bosco, Umujyi wa Kigali hamwe n'Akarere ka Gasabo bihagarariwe na Me Rubango Epimaque, Rukiriza ahagarariwe na Me Nizeyimana Boniface. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

Page 3

Kumenya niba harirengagijwe ibimenyetso n'ingingo z'amategeko bigaragaza ko ikibanza kiburanwa ari icya Buregeya. [8] Buregeya n'umwunganira bavuga ko ibimenyetso byirengagijwe n'urukiko bigaragaza ko ikibanza cyahawe Rukiriza ari icye bigizwe n'uruhushya rwo kubaka, fiche cadastrale, amasezerano y'ubukode burambye hagati ye na Leta, icyemezo cy'iyandikisha ry'ubukode bw'igihe kirekire, amasezerano y'ubugure yakoranye na Gasarabwe wari warahahawe n'umushinga TTP nyuma yo kwishyura ibikorwa byarimo, Umujyi wa Kigali ukaba warafashe igice cy'icyo kibanza ugiha Rukiriza. [9] Bavuga ko Urukiko rwemeje ko ikibanza kiburanwa gifite numero 7 ari icya Rukiriza ngo nk'uko byemejwe n'abatangabuhamya kandi nyamara byari ibibanza bibiri bifite numero 8VB na 9VB nk'uko bigaragazwa n'impapuro Gasarabwe yishyuriyeho igihe cya "expropriation", ko no mu ibaruwa Umujyi wa Kigali wanditse kuwa 09/02/2009 hakemurwa ikibazo cya Tesire, wavuze ko ikibanza cye gifite numero 7 VB naho Buregeya akagira 8 VB na 9VB, ko igice bashaka kumwambura ari 8VB kuko ahana imbibi na Tesire. [10] Basanga urukiko rwarashingiye ku makuru atariyo ko kandi abatangabuhamya babajijwe ndetse n'umucamanza wigereye ku kiburanwa batashobora kumenya ibyerekeye numero z'ibibanza kuko byamenywa n'umuhanga. [11] Bakomeza bavuga ko mu gufata icyemzeo cyambura Buregeya ikibanza cye, Urukiko rwirengagije ibiteganywa n'ingingo ya 29 igika cya kabiri y'Itegeko Nshinga iteganya ko umutungo w'umuntu utavogerwa, hamwe n'ingingo ya 5 y'Itegeko Ngenga n° 08/2005 rigena imikoreshereze n'imicungire y'ubutaka ivuga ko umuntu ufite ubutaka yabonye ku buryo bw'umuco cyangwa yahawe n'ubuyobozi bubifitiye ububasha cyangwa se yarabuguze, yemerewe kubutunga ku buryo bw'ubukode burambye. [12] Uburanira Umujyi wa Kigali n'Akarere ka Gasabo asubiza ko Urukiko rwasuzumye ibimenyetso Buregeya yatanze rugaragaza impamvu rutabihaye agaciro runabihuza n'ibyo rwiboneye mu iperereza rwakoze hamwe n'ubuhamya bwahatangiye. Akomeza avuga ko ibimenyetso byaburanishijwe byari bigizwe n'inyandiko Gasarabwe yishyuriyeho hamwe n'amasezerano y'ubugure kandi izo nyandiko atarizo ziha umuntu uburenganzira ku butaka, ko n'amasezerano y'ubugure atamuha ubwo burenganzira kuko Gasarabwe yagurishije ibyo adafitiye uburenganzira. [13] Ku birebana n'uruhushya rwo kubaka na "fiche cadastrale" Buregeya avuga ko bititaweho, Me Rubango avuga ko metero ziriho zidahura na 60 m kuri 40 m z'ibibanza bibiri byo muri TTP ko kandi muri uwo mushinga nta muntu wahabwaga ibibanza biriri, naho ku birebana n'ibaruwa yanditswe n'Umujyi wa Kigali kuwa 09/02/2009, avuga ko asanga ari ikosa ryakozwe bitewe no kutagera ku kiburanwa, ko ariko aho ryabonekeye ryakosowe. [14] Ku byerekeranye n'ingingo z'amategeko uwajuriye avuga ko zirengagijwe, Me Rubango avuga ko izo ngingo zitareba Buregeya kuko umutungo aregera atari uwe, ko n'uburenganzira buteganywa n'izo ngingo burebana na nyiri umutungo butamureba.

Page 4

[15] Rukiriza nawe avuga ko ikibanza kiburanwa yagihawe na Mutemberezi nyiri isambu yakaswemo ibibanza mu mushinga wa TTP, ko hakaswe ibibanza bitandatu by'abakozi bo muri KIE bakagarukira ku cye, nyuma aza kujya kwivuza hanze y'igihugu agarutse asanga ikibanza cye baragitwaye, akaba asanga rero nta bibanza bibiri Gasarabwe yahawe mu mushinga wa TTP ku buryo yari kubigurisha. [16] Me Nizeyimana nawe avuga ko impamvu z'ubujurire za Buregeya nta shingiro zifite kuko ibyangombwa avuga ko yari yarahawe, Umujyi wa Kigali ufite uburenganzira bwo gutanga ibibanza wasanze harabaye amakosa urayakosora, ko kandi mu iperereza urukiko rwakoze buri muntu yagiye ku kibanza cye biza kugaragara ko ikibanza kiri kuri numero 6 ari icya Tesire, ikiri kuri numero ya 7 kikaba ari icya Rukiriza, numero 8 na 9 hakaba kwa Buregeya. UKO URUKIKO RUBIBONA [17] Ikibanza kiburanwa muri uru rubanza ni icyahozze mu isambu ya Mutemberezi yaje kuvanwaho igice kimwe gikatwamo ibibanza byinshi mu mushinga wa TTP byahawe abaturage kugira ngo babone amacumbi nk'uko bisobanuwe mu ibaruwa Umuyobozi w'Umujyi wa Kigali yandikiye nyiri isambu mu mwaka wa 2001. [18] Rukiriza nawe avuga ko yari yarahawe na Mutemberezi ikibanza mu isambu yakaswemo ibindi mu mushinga wa TTP, iyo mvugo igashimangirwa n'ibaruwa iri muri dosiye Mutemberezi yamwandikiye kuwa 31/08/1998 amubwira ko amuhaye ikibanza mu isambu ye gifite metero 40 kuri 30. [19] Ku rundi ruhande, Buregeya agaragaza amasezerano y'ubugure yakoranye na Gasarabwe Jean Baptiste avuga ko uyu amugurishije ibibanza bibiri bifite numero 8VB na 9VB Ikibanza kiburanwa muri uru rubanza ni icyahozze mu isambu ya Mutemberezi yaje kuvanwaho igice kimwe gikatwamo ibibanza byinshi mu mushinga wa TTP byahawe abaturage kugira ngo babone amacumbi nk'uko bisobanuwe mu ibaruwa Umuyobozi w'Umujyi wa Kigali yandikiye nyiri isambu mu mwaka wa 2001. [20] Rukiriza nawe avuga ko yari yarahawe na Mutemberezi ikibanza mu isambu yakaswemo ibindi mu mushinga wa TTP, iyo mvugo igashimangirwa n'ibaruwa iri muri dosiye Mutemberezi yamwandikiye kuwa 31/08/1998 amubwira ko amuhaye ikibanza mu isambu ye gifite metero 40 kuri 30. [21] Ku rundi ruhande, Buregeya agaragaza amasezerano y'ubugure yakoranye na Gasarabwe Jean Baptiste avuga ko uyu amugurishije ibibanza bibiri bifite numero 8VB na 9VB, n'inyemezabwishyu (reçus) z'uko yari yarishyuye ibikorwa byari muri ibyo bibanza, ko yanishyuye "bornes" n'imihanda, nyuma y'aho Buregeya anahabwa ibyangombwa n'Umujyi wa Kigali, ko yanishyuye "bornes" n'imihanda, nyuma y'aho Buregeya anahabwa ibyangombwa n'Umujyi wa Kigali. [22] Usibye izo nyemezabwishyu (reçus) bigaragara ko zanditseho Gasarabwe, nta kindi kimenyetso cyashyikirijwe urukiko kigaragaza ko Gasarabwe yari yarahawe koko ibibanza mu mushinga wa TTP ngo kinagaragaze uburenganzira yari afite bwo kuba yabigurisha, cyane cyane ko nk'uko Urukiko Rukuru rwabisobanuye, ingano yabyo idahura n'ingano y'ibibanza bibiri

Page 5

byatanzwe muri uwo mushinga, akaba kandi ari nta mpamvu yagaragajwe yari gutuma Gasarabwe ahabwa ibibanza bibiri mu mushinga wari ugamije gusaranganya ibibanza ku baturage badafite amacumbi nk'uko byavuzwe haruguru, ndetse na Mugabo Casimir wari

ushinzwe imiturire muri Kacyiru icyo gihe akaba yarasobanuriye urukiko ko ihame ryari uko umuntu ahabwa ikibanza kimwe keretse ku muntu washakaga kubaka inzu nini. [23] Byongeye kandi, muri dosiye hari ikarita igaragaza ibibanza byatanzwe na numero byahawe, ababajijwe mu iperereza Urukiko Rukuru rwakoze bakaba baragaragaje ko hari inzu y'uwitwa Mabumba Oswald iri mu kibanza gifite numero ya 5, kigakurikirwa n'icya Tesire nawe wahawe muri TTP gifite numero ya 6. Ntabwo rero Buregeya yavugaga ko ari we uhana imbibi na Tesire mu gihe ibibanza avugaga ko yaguzwe bifite numero 8VB na 9VB. [24] Kuba rero Umujyi wa Kigali, ushingiye ku mwanzuro wafashwe n'inteko y'Akagari mu rwego rwo gukemura ikibazo cyaterwaga n'ibyo bibanza, waremeje ko Buregeya, Rukiriza na Tesire buri wese ahabwa ikibanza kimwe gifite metero 20 kuri 30, ko ibyangombwa bahawe mbere biseswa hagakorwa ibishya, Urukiko rurasanga icyo cyemezo ntaho cyarenganiye Buregeya, ahubwo cyarakemuye ikibazo cyatewe na Gasarabwe wagurishije ibibanza nta kigaragaza uburenganzira yari abifiteho kandi bigaragaza ibipimo bidahura n'ibyatanze mu mushingwa wa TTP. [25] Urukiko rurasanga rero ingingo y'ubujurire ya Buregeya y'uko hirengagijwe ibimenyetso yatanze bigizwe n'ibyangombwa yari yarahawe n'Umujyi wa Kigali nta shingiro ifite mu gihe byagaragajwe ko byari byatanze hatitawe ku burenganzira bw'abandi baturage, bityo n'impamvu y'ubujurire y'uko hatitawe ku burenganzira ku mutungo buvugwa mu ngingo z'amategako avugaga ko zirengagijwe ikaba nta shingiro ifite. [26] Mu gihe rero nta kosa ryakozwe ryatuma icyemezo cyaregawe kivanwaho, Urukiko rusanga atari ngombwa gusuzuma ibirebana n'indishyi Buregeya asaba kuko ntaho zishingiye. ICYEMEZO CY'URUKIKO [27] Rwemeje ko ubujurire bwa Buregeya Pascal nta shingiro bufite. [28] Rwemeje ko imikirize y'urubanza rwajuririwe idahindutse. [29] Rutegetse Buregeya Pascal gutanga amagarama y'urubanza angana na 21.530 Frw, atayatangira mu gihe cy'iminsi umunani, ayo mafaranga akavanwa mu byo ku ngufu za Leta.

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