

RWANDA / JUDGMENT

Re BYANSI (ADD)

RLR V.4-2022

COURT

Supreme Court

DECIDED

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RS/INCONST/SPEC 00002/2021/SC

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Re BYANSI (ADD)

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Text

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Re BYANSI (ADD) [Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/SPEC 00002/2021/SC – (Ntezilyayo, P.J., Nyirinkwaya, Cyanzayire, Muhumuza na Karimunda, J.) 24 Ukuboza 2021] Itegeko Nshinga – Ikirego gisaba kwemeza ko ingingo z'itegeko zinyuranye n'Itegeko Nshinga – Inyungu z'utanga ikirego – Inyungu mu kirego kigyanze n'Itegeko Nshinga igomba kumvikana mu buryo bwagutse, ikareberwa mu burenganzira bw'abasaba ko ingingo z'Itegeko runaka zivaho kuko zituma icyari kigamijwe n'Itegeko Nshinga – Uwatanze ikirego afite inshingano zo kugaragaza umwihariko w'inyungu we ku giti cye aharanira mu rubanza. Amategeko agenga itangazamakuru – Umwuga w'ubunyamakuru – Inshingano z'umunyamakuru – Umunyamakuru akora umwuga we wo gutara amakuru agamije kwigisha rubanda, guteza imbere ibikorwa bifitiye rubanda akamaro no guteza imbere umwuga w'itangazamakuru aharanira ubwisanzure bwawo – Itegeko N° 02/2013 ryo ku wa 08/02/2013 rigenga itangazamakuru, ingingo ya 5 n'ya 8. Incamake y'ikibazo: Byansi yatanze ikirego mu Rukiko rw'Ikirenga asaba kwemeza ko ingingo ya 156, iya 157, iya 194, iya 218 n'ya 251 z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange zinyuranye n'ingingo ya 15 ndetse n'ya 38 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2015. Avuga ko nk'umunyamakuru w'umwuga izo ingingo

zimubangamiye mu kazi ke kandi zibangamiye ubwisanzure bw'itangazamakuru nk'uko buteganywa n'Itegeko Nshinga. Uhagarariye Leta bavuga ko izo ngingo zitanyuranye n'Itegeko Nshinga kubera ko hari ibikorwa by'umunyamakuru nk'umuntu usanzwe n'ibikorwa bye nk'umunyamakuru, bivuze ko ubuzima bwe bwose ataba ari mu bikorwa by'itangazamakuru, bityo ibyo abandi bantu basanzwe bakora nawe akaba ashobora kubikora ndetse n'ibyo bakwiye kubazwa nawe akaba yabibazwa. Muri uru rubanza habanje gusuzumwa niba Uwatanze ikirego abifitemo inyungu, aho avuga ko izo ngingo zavuzwe haruguru zibangamiye akazi ke k'umunyamakuru ukora inkuru zicukumbuye, bivuze ko afite inyungu ku giti cye akagira n'inyungu rusange zo gutanga ikirego kuko ubwisanzure bwo gutanga amakuru bufite aho buhurira n'inyungu rusange bitewe n'uko ashobora kudatangaza inkuru atinya gukurikiranwa n'ingingo mpanabyaha aregera. Muri uru rubanza, Uhagarariye Leta avuga Urega afite inyungu zo gutanga iki kirego, hashingiwe k'umwuga w'itangazamakuru akora no ku biteganywa n'ingingo ya 38 y'Itegeko Nshinga n'ya 72 y'Itegeko No 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko. Incamake y'icyemezo: 1. Inyungu mu kirego kigyanze n'Itegeko Nshinga igomba kumvikana mu buryo bwagutse, ikareberwa mu burenganzira bw'abasaba ko ingingo z'Itegeko runaka zivaho kuko zituma icyari kigamijwe n'Itegeko Nshinga.

2. Uwatanze ikirego afite inshingano zo kugaragaza umwihariko w'inyungu we ku giti cye aharanira mu rubanza.
3. Umunyamakuru akora umwuga we wo gutara amakuru agamije kwigisha rubanda, guteza imbere ibikorwa bifitiye rubanda akamaro no guteza imbere umwuga w'itangazamakuru aharanira ubwisanzure bwawo. Urega afite inyungu mu rubanza. Iburanisha ry'urubanza rizakomeza. Amategeko yashingiweho:

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Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2015, ingingo ya 15 n'ya 38. Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano, ingingo ya 156, 157, 194, 218 n'ya 251. Itegeko No 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 72. Itegeko N° 02/2013 ryo ku wa 08/02/2013 rigenga itangazamakuru, ingingo ya 5 n'ya 8. Imanza zifashishijwe: Re Byansi Samuel Baker, RS/INCONST/SPEC 0003/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 10/12/2021. Re Mugisha Richard, RS/INCONST/SPEC 00002/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 18/01/2019. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 02/05/2021, Byansi Samuel Baker yatanze ikirego mu Rukiko rw'Ikirenga arusaba kwemeza ko ingingo ya 156, iya 157, iya 194, iya 218 n'ya 251 z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange zinyuranye n'ingingo ya 15 ndetse n'ya 38 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2015. [2] Asobanura ko asanzwe ari umunyamakuru w'umwuga ufite ikarita y'akazi numero 17/726-1, ko yibanda cyane ku nkuru zicukumbuye (investigative journalism) ndetse n'izo hanze y'igihugu kuva mu mwaka wa 2015 kugeza ubu, ko nyuma yaho Itegeko No 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange ritangajwe mu Igazeti ya Leta, yasanze ingingo ya 156, iya 157, iya 194, iya 218 n'ya 251 z'iryo Tegeko zimubangamiye mu kazi ke kandi zibangamiye ubwisanzure

bw'itangazamakuru nk'uko buteganywa n'ingingo ya 15 n'ya 38 z'Itegeko Nshinga rya Repubulika y'u Rwanda. [3] By'umwihariko avuga ko: - ingingo ya 156 ibuza gutangaza ifoto, amajwi cyangwa amashusho ba nyirabyo batabitangiye uruhushya, nyamara hari amafoto, amajwi cyangwa amashusho bifatirwa ahantu hahuriye abantu benshi ku buryo bitakoroha kubona uruhushya rwa buri wese mbere yo gutangaza ifoto, amajwi cyangwa amashusho. - ingingo ya 157 ibuza gutangaza amagambo, amafoto n'amashusho byahinduwe nyamara mu gihe cyo gukora inkuru, umunyamakuru nk'umunyamwuga ashobora kubihindura kugira ngo inkuru yumvikane vuba kandi inyure abayumva. Asobanura ko hari igihe inkuru ishobora kuba ishingiyeye ku guhindura amashusho cyangwa amafoto, aribwo buryo bwitwa caricature kandi ko nk'ikinyamakuru cyitwa Charlie Hebdo kimaze imyaka 200 gikora gusa inkuru za caricature. - ingingo ya 194 ibuza umuntu wese gukwiza amakuru atariyo cyangwa icengezamatwara bigamije kwangisha rubanda cyangwa amahanga Leta y'u Rwanda. Avuga ko kuba muri iyi ngingo hakoresheye interero umuntu wese bihonyanga uburenganzira bw'umunyamakuru kubera ko afatwa nk'undi wese kandi afite inshingano yihariye yo gutangaza ibitekerezo bishobora kutakirwa kimwe n'abantu bese, ubundi akaba yatangaza inkuru yabwiye n'umuntu utamubwije ukuri. Byongeye kandi, kuba iyo ngingo idatanga ibisobanuro by'ijambo icengezamatwara bishobora gutuma buri rukiko rurisobanura uko rubyumva, umunyamakuru akabirenganiramo.

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- ingingo ya 218 ibuza gusebya cyangwa gutuka abakuru b'ibihugu by'amahanga cyangwa abahagarariye ibihugu byabo cyangwa imiryango mpuzamahanga mu Rwanda mu gihe bari mu kazi, ibi bikaba birimo ivangura ry'abo ingingo irengera ndetse ikaba ibangamiye ubwisanzure bwo gutara no gutangaza amakuru n'ubwo gutanga ibitekerezo. - ingingo ya 251 ihana umuntu wamenye akarengane k'undi, wamenye ikorwa ry'icyaha cy'ubugome cyangwa gikomeye ntabimenyeshe inzego zibishinzwe cyangwa uwanze gutanga ubuhamya mu nzego z'ubutabera, nyamara kandi umunyamakuru afite inshingano zo kutavuga aho yakuye amakuru, kubihanirwa bikaba bibangamiye uburenganzira bwo gutanga ibitekerezo. [4] Me Mbonigaba Eulade na Me Habumuremyi Prosper, bahagarariye Leta y'u Rwanda bavugaga ko ingingo ya 156, iya 157, iya 194, iya 218 n'ya 251 z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ritangaza ibyaha n'ibihano muri rusange zitanyuranye n'ingingo ya 15 ndetse n'ya 38 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2015 kubera ko hari ibikorwa by'umunyamakuru nk'umuntu usanzwe n'ibikorwa bye nk'umunyamakuru, bivuze ko ubuzima bwe bwose ataba ari mu bikorwa by'itangazamakuru, bityo ibyo abandi bantu basanzwe bakora nawe akaba ashobora kubikora ndetse n'ibyo bakwiye kubazwa nawe akaba yabibazwa. [5] Iburanisha mu ruhame ryabaye ku wa 13/12/2021, Byansi Samuel Baker yunganiye na Me Gakunzi Musore Valéry na Me Ruramira Bizimana Zébédée, naho Leta y'u Rwanda iburanirwa na Me Mbonigaba Eulade ndetse na Me Habumuremyi Prosper. Habanje gusuzumwa ikibazo cyo kumenya niba Byansi Samuel Baker afite inyungu mu rubanza.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

1. Kumenya niba Byansi Samuel Baker afite inyungu muri uru rubanza [6] Byansi Samuel Baker na Me Gakunzi Musore Valéry na Me Ruramira Bizimana Zébédée bamwunganira bavuga ko afite uburenganzira bwo kurengera inyungu ze kuko nk'umunyamakuru w'umwuga, ingingo aregera kuba zinyuranyije n'Itegeko Nshinga zimubangamira mu kazi ke ka buri munsu. Basobanura ko uretse kuba ingingo aregera zimubangamiye ku giti cye, zibangamiye na rubanda (société) bitewe n'uko inkuru zikorwa mu nyungu rusange. Basobanura ko umurongo watanze n'uru Rukiko mu rubanza rwa Me Mugisha Richard,¹ ari uko inyungu y'umuburanyi igomba kumvikana mu buryo bwagutse, hakitabwa no ku nyungu rusange urega afite mu gusaba ko ingingo z'Itegeko zemezwa ko zinyuranyije n'Itegeko Nshinga, kuko muri urwo rubanza ikirego cyari cyatanze n'umunyamategeko, uru Rukiko rusanga atari ngombwa ko ategereza ko itegeko riregerwa ribanza kumugiraho ingaruka mbere y'uko ariregera. [7] Bavuga ko Byansi Samuel Baker, nk'umunyamakuru, asanga ingingo ya 156, iya 157, iya 194, iya 218 n'ya 251 z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganye ibyaha n'ibihano muri rusange zibangamiye akazi ke k'umunyamakuru ukora inkuru zicukumbuye, bivuze ko afite inyungu ku giti cye akagira n'inyungu rusange zo gutanga ikirego kuko ubwisanzure bwo gutanga amakuru bufitse aho buhurira n'inyungu rusange bitewe n'uko ashobora kudatangaza inkuru atinya gukurikiranwa n'ingingo mpanabyaha aregera. [8] Me Mbonigaba Eulade na Me Habumuremyi Prosper, bahagarariye Intumwa Nkuru ya Leta, bavuga ko hashingiwe ku mwuga w'itangazamakuru Byansi Samuel Baker akora no ku biteganywa n'ingingo ya 38 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2015 n'ya 72 y'Itegeko No 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, bigaragara ko Byansi Samuel Baker afite inyungu muri uru rubanza.

1 Reba urubanza RS/INCONST/SPEC 00002/2018/SC rwaciye n'Urukiko rw'Ikirenga ku wa 18/01/2019.

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UKO URUKIKO RUBIBONA [9] Ingingo ya 72 y'Itegeko No 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko umuntu ku giti cye, ikigo cyangwa umuryango ufite ubuzimagatozi bashobora kuregera Urukiko rw'Ikirenga basaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga iyo babifitemo inyungu. [...] [10] Ingingo ya 38, igika cya mbere, y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2015 igira iti: ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru buremewe kandi bwubahirizwa na Leta. [11] Ingingo ya 5 y'Itegeko N° 02/2013 ryo ku wa 08/02/2013 rigenga itangazamakuru ivuga ko umunyamakuru afite inshingano z'ingenzi zikurikira: 1° kumenyesha amakuru; 2° kwigisha abaturage no guteza imbere imyidagaduro; 3° guharanira ubwisanzure mu gutangaza amakuru, mu kuyasesengura no mu kugira icyo ayo makuru avugwaho. Naho ingingo ya 8, igika cya gatatu y'iryo Tegeko iteganya ko buri munyamakuru afite ubwisanzure bwo kugaragaza ibitekerezo; ubwo burenganzira bukubiyemo ubwisanzure bwo gutara, kwakira, gutanga no gutangaza amakuru n'ibitekerezo hakoreshejwe uburyo bunyuranye bw'itangazamakuru. [12] Iyo izi ngingo z'amategeko zisomewe hamwe zumvikanisha ko umunyamakuru akora umwuga we wo gutara amakuru agamije kwigisha rubanda, guteza imbere

ibikorwa bifitiye rubanda akamaro no guteza imbere umwuga w'itangazamakuru aharanira ubwisanzure bwawo. Itegeko rikaba rivuga ko ubwisanzure bugomba kumvikana nk'uburyo umunyamakuru agaragaza ibitekerezo ndetse n'uburyo atara, yakira, atanga kandi atangaza amakuru n'ibitekerezo hakoreshejwe uburyo bunyuranye bw'itangazamakuru. Bivuze ko hashingiwe ku biteganywa n'ingingo ya 72 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko yibukijwe haruguru umunyamakuru afite inyungu zo kugaragaza ko hari Itegeko ryaje rinyuranya n'uburenganzira cyangwa inshingano ahabwa n'ibisanzwe bimuteganyirizwa n'Itegeko Nshinga ndetse n'andi mategeko.

[13] Ku bijyanye n'aho inyungu z'utanga ikirego gisaba kwemeza ko ingingo z'Itegeko runaka zinyuranye n'Itegeko Nshinga ziva zikagera, uru Rukiko rwabisuzumye mu manza zitandukanye harimo n'urwa Me Mugisha Richard, aho rwasanze nubwo ari ngombwa gukumira ibirego bitangwa n'abagamije kwimenyekanisha, kumenyekanisha ibikorwa byabo cyangwa guheshwa uburenganzira bugenewe abandi ndetse akaba ari ngombwa gusigasira amikoro make y'inkiko hirindwa kurangarira mu bibazo bidahari, ku bireba ibirego bijyanye n'Itegeko Nshinga inyungu igomba kumvikana mu buryo bwagutse, ikareberwa mu burenganzira bw'abasaba ko ingingo z'Itegeko runaka zivaho kuko zituma icyari kigamijwe n'Itegeko Nshinga kitagerwaho nyamara kigomba kurengerwa.² [14] Urukiko rurasanga uyu murongo ariwo wagarutsweho mu rubanza rwa Byansi Samuel Baker rwaciwe ku wa 10/12/2021, ariko Urukiko rwongeraho ko mu rwego rwo kwirinda ibirego bitari ngombwa bishobora kubangamira imikorere y'inkiko, uwatanze ikirego afite inshingano zo kugaragaza umwihariko w'inyungu we ku giti cye aharanira mu rubanza.³ Ku bireba uru rubanza, bikaba bigaragarira Urukiko ko Byansi Samuel Baker nk'umunyamakuru ukorera imirimo ye mu Rwanda afite inyungu bwite muri uru rubanza kuko ibivugwa mu ngingo asaba ko Urukiko rwemeza ko zinyuranyije n'Itegeko Nshinga bireba ku buryo bw'umwihariko umurimo wo gutangaza amakuru. Ikindi kandi, Itegeko riteganyaye ibyaha n'ibihano muri rusange rireba buri wese uri ku butaka bw'u Rwanda harimo n'abanyamakuru, bityo ingingo zaryo avuga ko zikwiye kuvaho kuko zinyuranye n'Itegeko Nshinga zikaba zishobora kumubangamira ubu cyangwa mu bihe bizaza.

² Reba urubanza RS/INCONST/SPEC 00002/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 18/01/2019, ibika bya 19'22. ³ Reba urubanza RS/INCONST/SPEC 0003/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 10/12/2021, igika cya 16.

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[15] Urukiko rurasanga rero ingingo ya 156, iya 157, iya 194, iya 218 n'iya 251 z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaye ibyaha n'ibihano muri rusange zifite aho zihuriye n'inshingano z'abanyamakuru, bikaba byumvikana ko mu gihe Urukiko rwasanga koko zinyuranyije n'ingingo ya 15 n'iya 38 z'Itegeko Nshinga nk'uko Byansi Samuel Baker n'abamwunganira babivuga, icyo cyemezo cyaba kimufitiye akamaro, bityo akaba afite inyungu yo gutanga ikirego gisaba kuvanaho ingingo z'Itegeko avuga ko zimwambura uburenganzira ahabwa n'Itegeko Nshinga. III. ICYEMEZO CY'URUKIKO [16] Rwemeje ko

Byansi Samuel Baker afite inyungu muri uru rubanza yo kuregera kwemeza ko ingingo ya 156, iya 157, iya 194, iya 218 n'iya 251 z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyanye ibyaha n'ibihano muri rusange zinyuranye n'ingingo ya 15 n'iya 38 z'Itegeko Nshinga. [17] Rwemeje ko iburanisha ry'uru rubanza rizakomeza ku wa 14/02/2022.

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