

RWANDA / JUDGMENT

CAF ISONGA v. UWIMABERA

RCOMAA 0026/14/CS

COURT

Supreme Court

DECIDED

20 November 2014

CASE / FILE NUMBER

RCOMAA 0026/14/CS

Source: amategeko.gov.rw · Research copy typeset by Esheria. Not court-issued or certified.

CAF ISONGA v. UWIMABERA

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2014-11-20
- Case/document no.: RCOMAA 0026/14/CS
- Collection: Supreme Court

Text

Page 1

CAF ISONGA v. UWIMABERA [Rwanda URUKIKO RW'IKIRENGA – RCOMAA 0026/14/CS (Mutashya, P.J., Nyirinkwaya na Gakwaya, J.) 21 Ugushyingo 2014] Amategeko agenga ububasha bw'Urukiko rw'Ikirenga – Ikimenyetso cyagiweho impaka mu Rukiko – Kutabyitiranya n'ikimenyetso cyaburanyweho kigatangwa urubanza rwarapfundikiwe – Nta muburanyi wasaba ko ubujurire bwe bwakwagirwa mu Rukiko rw'Ikirenga ashingira ko yatanze ikimenyetso nyuma y'ipfundira ry'urubanza ntihabeho isubukura ryarwo kandi impaka zarabaye hagasigara kugishyikiriza Urukiko – Itegeko Ngenga no 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'urukiko rw'ikirenga, igingo ya 28 igika cya 2 agace ka 3. Amategeko agenga ububasha bw'Urukiko rw'Ikirenga – Ububasha bushingiye ku gaciro k'ikiburanwa – Igena ry'ububasha bw'Urukiko rw'Ikirenga mu bujurire bwa kabiri hashingiwe ku gaciro k'ikiburanwa – Iyo nta ndishyi zagenwe ku rwego rw'ubujurire bwa mbere cyangwa ngo umucamanza ku rwego rwa mbere afate icyemezo ku gaciro k'icyiburanwa, ububasha bw'Urukiko rw'Ikirenga bushingiye ku kiburanwa bureberwa ku kiburanwa cy'iremezo – Itegeko Ngenga no 03/12/2012 OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 28 agace ka 7. Amategeko agenga ububasha bw'Urukiko rw'Ikirenga – Kwakira ubujurire –

Kutitiranya urwego Urukiko rwaciriyeho urubanza – Nta muburanyi wakwitwaza ko kuba inzitizi itarakiriwe ku rwego rw’ubujurire yaba impamvu yo kuyijurira mu Rukiko rw’Ikirenga nkaho yari yaciwe ku rwego rwa mbere n’urukiko Rukiko rw’Ubucuruzi kuko aba ari ukwitiranya urwego Urukiko ruciriyeho urubanza. Incamake y’ikibazo: Kuva 2006, Uwimabera yari umushoramari muri CAF ISONGA yashoyemo imigabane 10 ihwanye na 6.500.000 frw. Nyuma y’umwaka umwe yongeyemo andi angana na 630.850 frw. Avuga ko mu 2012 yirukanywe mu buryo bunyuranyijwe n’amategeko mu bashoramari ba CAF ISONGA ntiyanasubizwa imigabane ye. Uwimabera yaregeye Urukiko rw’Ubucuruzi rwa Huye asaba guhabwa 77.365.608 frw. Urukiko rwemeje ko yirukanywe mu buryo bunyuranye n’amategeko rutegeka CAF ISONGA kumusubiza 21.108.321 frw. CAF ISONGA yajuririye Urukiko Rukuru rw’Ubucuruzi maze rwemeza kutakira ubujurire bwayo ngo kuko bwaje butinze. CAF ISONGA yarongeye ijuririra Urukiko rw’Ikirenga ivuga ko ishingira ubujurire bwayo ku kuba Urukiko Rukuru rw’Ubucuruzi rwashingiye icyemezo cyarwo ku rubanza rwaciwe n’Urukiko rw’Ikirenga rwatanzwe nyuma yo gupfundikira urubanza kandi hatarabayeho gusubukura iburanisha. Ishingira kandi ubujurire bwayo ku gaciro k’ikiburanwa kangana cyangwa karengaje 50.000.000 frw. Mbere y’iburanishwa ry’urubanza mu mizi ababuranira Uwimabera batanze inzitizi yo kutakira ubujurire bwa CAF ISONGA bavuga ko urubanza ruvugwa rwaciwe n’Urukiko rw’Ikirenga CAF ISONGA ubwayo yitangiye rwaburanweho usibye ko yazanye kopi y’urubanza itariho cashe y’Urukiko bituma ijya kuyitezaho cashe, iyizana urubanza rwarapfundikiwe.

Page 2

Bavuga kandi ko ubujurire bwa CAF ISONGA butashingira ku gaciro k’ikiburanwa kuko katemejwe n’umucamanza, Urukiko Rukuru rw’Ubucuruzi rukaba nta ndishyi rwagennye ndetse n’izagenwe n’Urukiko rw’Ubucuruzi zikaba zitageze kuri 50.000.000 frw. Incamake y’icyemezo : 1. Urukiko rw’Ikirenga ruburanisha mu bujurire bwa kabiri imanza zaciwe hashingiye ku kimenyetso, inyandiko cyangwa imyanzuro byatanzwe nyuma yo gupfundikira urubanza kandi hatarabayeho gusubukura iburanisha. Urukiko rurasanga urubanza urubanza RADA 0012/12/CS rwatanzweho “jurisprudence” rwaragiweho impaka n’impande zombi mu gihe cy’iburanisha. Bityo ubujurire bwa CAF ISONGA bukaba butakwagirwa ngo busuzumwe.

2. Agaciro k’ikiburanwa kagaragazwa n’ikirego cy’iremezo, inyungu, ibitarishyuriwe igihe, indishyi z’akababaro, amafaranga yakoreshejwe n’ibindi byose by’umugereka byongerwa iyo bikomoka ku mpamvu yabayeho mbere yo kurega. Kuba ubujurire bwa CAF ISONGA butarasuzumwe mu mizi mu Rukiko Rukuru rw’Ubucuruzi ngo habe hagenwa indishyi cyangwa hafatwa icyemezo ku gaciro k’ikiburanwa, hakaba nta n’impaka kuri ako gaciro kagiweho mu rwego rwa mbere ngo umucamanza abe yakagena kuko nta muburanyi wari wakabyukije, ndetse n’indishyi zagenwe kuri urwo rwego zikaba zitageze kuri 50.000.000 frw. Urukiko rushingiye ku kirego cyatanzwe mu Rukiko rw’Ubucuruzi gifite agaciro ka 77.365.608 frw, rusanga ubujurire bwa CAF ISONGA buri mu bubasha bw’Urukiko rw’Ikirenga.

3. Ibivugwa ko ubujurire bwa CAF ISONGA bukwiye kwakirwa, hashingiwe ku bubasha bw'Urukiko rw'Ikirenga bwo kuburanisha mu bujurire imanza zaciwe n'Urukiko Rukuru rw'Ubucuruzi mu rwego rwa mbere; ntibikwiye gutangwa nk'ingingo y'ubujurire kuko ari ukwitiranya urwego urukiko rwacyiye urubanza n'impamvu rwashingiyeho ruruca. Inzitizi y'iburabubasha nta shingiro ifite; Amagarama abaye asubitswe. Amategeko yashingiyeho: Itegeko Ngenga no 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'urukiko rw'ikirenga, ingingo ya 28 igika cya 2 agace ka 3 n'agace ka 7. Itegeko Ngenga no 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'Inkiko, ingingo ya 109. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Uwimabera Anastasie avuga ko yari umushoramari (actionnaire) muri CAF ISONGA kuva 2006, akaba yarashoyemo imigabane 10 ihwanye na 6.500.000 Frw, nyuma y'umwaka yongeramo andi angana na 640.850 Frw. Avuga kandi ko kuwa 11/12/2012 yirukanywe mu bashoramari ba CAF ISONGA mu buryo bunyuranyije n'amategeko ariko ntiyasubizwa

Page 3

imigabane ye, akaba ariyo mpamvu yaregeye Urukiko rw'Ubucuruzi rwa Huye asaba guhabwa amafaranga yavuzwe haruguru, yose hamwe angana na 77.365.608 Frw. [2] Urwo Rukiko rwacyiye urubanza RCOM 0328/13/TC/HYE kuwa 13/12/2013 rwemeza ko Uwimabera Anastasie yirukanywe mu buryo bunyuranyije n'amategeko rutegeka CAF ISONGA kumusubiza amafaranga y'imigabane yashoye muri iyo sosiyete ifite agaciro ka 6.500.000 Frw na 640.850 Frw, inyungu z'ayo mafaranga zibariwe ku rugero rwa 18% zingana na 9.360.000 Frw (6.500.000 Frw x 18% x 8 ans) na 807.471 Frw (640.000 Frw x 18% x 7 ans), indishyi z'akababaro zingana na 3.000.000 Frw, amafaranga y'ikurikirana rubanza n'igihembo cy'avoka angana na 800.000 Frw, yose hamwe akaba 21.108.321 Frw, ikanamusubiza n'amagarama y'urubanza. [3] CAF ISONGA yajuririye Urukiko Rukuru rw'Ubucuruzi kuwa 13/01/2014 maze ruca urubanza RCOM A 0030/14/HCC kuwa 11/04/2014, rwemeza kutakira ubwo bujurire ngo kuko bwaje butinze. [4] Mu gusobanura icyemezo cyarwo rwavuze ko ntaho bivugwa mu ngingo ya 371 y'itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi irebana n'ibihe byagenwe mu mezi no mu myaka ko ibyo bihe byongerwa iyo umunsi wa nyuma uhuye n'ikiruhuko nk'uko bivuzwe mu ngingo ya 370 y'iryo tegeko ku byerekeye ibihe bibarwa mu masaha no mu minsi. [5] Rwavuze kandi ko urubanza rwaciye n'Urukiko rw'Ikirenga n° RADA 001/12/CS CAF ISONGA ishingiraho yemeza ko ibihe byongerwa iyo umunsi wa nyuma uhuye n'ikiruhuko itafatwa nk'umurongo ngenderwaho (jurisprudence) kuko ubaho iyo hari imanza nyinshi zikemura ikibazo kimwe cy'amategeko kandi CAF ISONGA ikaba nta zindi manza yatanze zirebana n'icyo kibazo. [6] CAF ISONGA yajuririye Urukiko rw'Ikirenga kuwa 25/04/2014, urubanza ruburanishwa mu ruhamwe kuwa 14/10/2014, CAF ISONGA ihagarariwe na Me Ndagijimana Emmanuel hamwe na Me Shema Gakuba, Uwimabera Anastasie yunganiwe na Me Munyemana Gatsimbanyi Pascal hamwe na Me Idahemuka Tharcisse, ababuranyi bajya impaka ku nzitizi y'iburabubasha yari yabyukijwe n'abunganira Uwimabera Anastasie. II. IKIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

- a) Kumenya niba ubujurire bwa CAF ISONGA butari mu bubasha bw'Urukiko rw'Ikirenga hashingiwe ku kimenyetso cyatanzwe nyuma y'ipfundikira ry'urubanza kandi hatarabayeho gusubukura iburanisha. [7] Me Munyemana Gatsimbanyi Pascal na Me Udahemuka Tharcisse baburanira Uwimabera Anastasie bavuga ko CAF ISONGA itashingira ubujurire bwayo ku kuba Urukiko Rukuru rw'Ubucuruzi rwarashingiye icyemezo cyarwo kuri "juriprudence" yatanzwe nyuma yo gupfundikira urubanza kandi hatabayeho gusubukura iburanisha nk'uko bivugwa mu ngingo ya 28, igika cya kabiri agace ka 3 y'itegeko ryerekeye ububasha bw'Urukiko rw'Ikirenga kuko icyo "jurisprudence" ivugwa yatanzwe na CAF ISONGA kandi yaburanweho mu rubanza, usibye ko

Page 4

bari bazanye kopi y'urubanza itariho cashe y'urukiko, umucamanza ababaza aho bayikuye bituma bajya kuyitezaho cashe, bayizana urubanza rwarapfundikiwe. [8] Me Ndagijimana na Me Shema Gakuba baburanira CAF ISONGA bavuga ko ubujurire bwa CAF ISONGA buri mu bubasha bw'Urukiko rw'Ikirenga nk'uko biteganywa n'ingingo ya 28 agace ka 3 y'itegeko ryerekeye ububasha bw'urukiko kuko umucamanza mu guca urubanza yashingiye kuri "juriprudence" (urubanza RADA 0012/12/CS) CAF ISONGA yatanze nyuma y'ipfundikira ry'urubanza atongeye gusubukura iburanisha kugirango ababuranyi babivugeho binagibweho impaka. UKO URUKIKO RUBIBONA [9] Ingingo ya 28 y'Itegeko Ngenga n° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga mu gika cyayo cya 2 agace ka 3 iteganya ko Urukiko rw'Ikirenga ruburanisha mu bujurire bwa kabiri imanza zaciwe hashingiwe ku kimenyetso, inyandiko cyangwa imyanzuro byatanzwe nyuma yo gupfundikira urubanza kandi hatarabayeho gusubukura iburanisha. [10] Ku bijyanye n'uru rubanza, inyandiko ababuranira CAF ISONGA bavuga ko yashingiweho mu icibwa ry'urubanza rujuririrwa kandi yaratanzwe nyuma y'ipfundikirwa ni urubanza n°RADA 0012/12/CS ruteye cashe CAF ISONGA yatanzeho ikimenyetso cy'umurongo ngenderwaho w'Urukiko rw'Ikirenga ku bijyanye no kumenya niba ibihe byo kujurira bibarwa mu mezi no mu myaka byongerwa iyo umunsi wa nyuma w'ubujurire uhuye n'umunsi w'ikiruhuko. [11] Urukiko rusanga ariko ukurikije ibivugwa mu bice bya 5 na 6 by'urubanza rujuririrwa urwo rubanza n°RADA 0012/12/CS rwatanzweho "juriprudence" rwaragiweho impaka n'impande zombi igihe cy'iburanisha, bityo ubujurire bwa CAF ISONGA bukaba butakwagirwa ngo busuzumwe hashingiwe ku ngingo ya 28, igika cya 2 agace ka 3 y'itegeko ryavuzwe ryerekeye ububasha bw'Urukiko rw'Ikirenga.

- b) Kumenya niba ubujurire bwa CAF ISONGA butari mu bubasha bw'Urukiko rw'Ikirenga hashingiwe ku gaciro k'iburanwa. [12] Me Munyemana Gatsimbanyi Pascal na Me Udahemuka Tharcisse baburanira Uwimabera Anastasie bavuga ko CAF ISONGA itashingira ubujurire bwayo ku gaciro k'iburanwa kangana cyangwa karengaje 50.000.000 Frw nk'uko bivugwa mu ngingo ya 28, igika cya 2, agace ka 7 y'Itegeko ryerekeye ububasha bw'Urukiko rw'Ikirenga kuko agaciro kavugwa muri icyo ngingo ari akemejwe n'umucamanza, Urukiko Rukuru rw'Ubucuruzi rukaba nta ndishyi rwagennye, n'izagenwe n'Urukiko rw'Ubucuruzi zikaba zitageze kuri ako gaciro. [13] Bavuga kandi ko CAF ISONGA itashingira ubujurire bwayo ku ngingo ya 28 igika kibanziriza icya nyuma ivuga ko mu zindi manza ububasha

bw'Urukiko rw'Ikirenga bushingira ku gaciro k'ikiburanwa cyangwa ku gaciro k'icyo amasezerano ashingiyeho hubahirijwe ibivugwa mu gace ka 7 k'igika cya 2 cy'iyi ngingo kuko inkomoko y'ikiburanwa ari imigabane muri CAF ISONGA ifite agaciro ka 6.500.000Frw, indishyi zemejwe n'umucamanza wa mbere zikaba zitageze kuri 50.000.000 Frw.

Page 5

- [14] Me Ndagijimana uburanira CAF ISONGA Ltd avuga ko ubujurire bwayo buri mu bubasha bw'Urukiko rw'Ikirenga hashingiwe kuri icyo ngingo ya 28 igika cya 2, agace ka 7 n'igika kibanziriza icya nyuma kuko mu kirego cye Uwimabera Anastasie yasabaga amafaranga arenga 50.000.000 Frw. [15] Avuga kandi ko agaciro k'ikiburanwa kagenwa n'umucamanza iyo habaye impaka, ariko ko nta mpaka zabaye kuko icyaregerwaga ari imigabane, inyungu ku migabane n'indishyi z'akababaro. [16] Me Shema Gakuba nawe avuga ko icyemezo cyo kutakira ubujurire bwa CAF ISONGA ngo kubera ko iminsi yo kujurira yarenze cyafatiwe bwa mbere mu Rukiko Rukuru rw'Ubucuruzi, ubujurire kuri icyo cyemezo bukaba rero buri ku rwego rwa mbere kubera ko ikibazo kitigeze gisuzumwa mu Rukiko rw'Ubucuruzi, bukaba buri mu bubasha bw'Urukiko rw'Ikirenga kuko uru rukiko rufite ububasha bwo kuburanisha mu bujurire imanza zaciwe n'Urukiko Rukuru rw'Ubucuruzi mu rwego rwa mbere. UKO URUKIKO RUBIBONA [17] Urukiko rusanga ibivugwa na Me Shema Gakuba ko ubujurire bwa CAF ISONGA bukwiye kwakirwa hashingiwe ku bubasha bw'Urukiko rw'Ikirenga bwo kuburanisha mu bujurire imanza zaciwe n'Urukiko Rukuru rw'Ubucuruzi mu rwego rwa mbere ngo kuko ikibazo rwaciriyeho urubanza kijyanye n'uburyo ibihe by'ubujurire bibarwa cyasuzumwe bwa mbere imbere y'urwo rukiko, usibye ko bivuguruza imiburanire ya mugenzi we ushingira ubujurire bwa CAF ISONGA ku bubasha bw'Urukiko rw'Ikirenga bwo kuburanisha imanza zaciwe n'Urukiko Rukuru rw'Ubucuruzi mu rwego rwa kabiri, bitari bikwiye no gutangwa nk'ingingo y'ubujurire kuko ari ukwitiranya urwego urukiko rwaciriyeho urubanza n'impamvu rwashingiyeho ruca urubanza. [18] Ku bijyanye rero n'ububasha bw'Urukiko rw'Ikirenga mu bujurire bwa kabiri, ingingo ya 28 y'Itegeko Ngenga n° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, mu gika cyayo cya 2 agace ka 7, ivuga ko ruburanisha imanza zagenwemo indishyi zingana nibura na 50.000.000 Frw cyangwa se zifite agaciro k'ikiburanwa kagenwe n'umucamanza igihe habaye impaka kangana nibura n'ayo mafaranga, naho mu gace kabanziriza akanyuma ikavuga ko mu zindi manza, ububasha bw'Urukiko rw'Ikirenga bugenwa hashingiwe ku mubare w'amafaranga, ku gaciro k'ikiburanwa no ku gaciro k'icyo amasezerano ashingiyeho hubahirijwe ibivugwa mu gace ka 7. [19] Ku bijyanye n'uru rubanza, birumvikana ko ububasha bw'Urukiko rw'Ikirenga butareberwa ku ndishyi zagenwe mu Rukiko Rukuru rw'Ubucuruzi cyangwa ku gaciro k'ikiburanwa kagenwe n'umucamanza kuko ubujurire bwa CAF ISONGA butasuzumwe mu mizi mu Rukiko Rukuru rw'Ubucuruzi ngo habe hagenwa indishyi cyangwa hafatwa icyemezo ku gaciro k'ikiburanwa, hakaba nta n'impaka kuri ako gaciro kagiweho mu rwego rwa mbere imbere y'Urukiko rw'Ubucuruzi ngo umucamanza abe yakagena kuko nta muburanyi wari wazibyukije, ndetse n'indishyi zagenwe kuri urwo rwego zikaba zitageze

kuri 50.000.000 Frw. [20] Ku bijyanye n'ibivugwa mu ngingo ya 28 agace kabanziriza aka nyuma, Urukiko rusanga bigomba kureberwa hamwe n'ingingo ya 109 y'Itegeko Ngenga n° 51/2008 ryo ku wa

Page 6

09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko ivuga ko agaciro k'ikiburanwa kagaragazwa n'ikiburanwa cy'iremezo, inyungu, ibitishyuriwe igihe, indishyi z'akababaro, amafaranga yakoreshejwe n'ibindi byose by'umugereka byongerwa iyo bikomoka ku mpamvu yabayeho mbere yo kurega, bityo hagasuzumwa niba ibigize ikiburanwa muri uru rubanza bifite agaciro kangana nibura na 50.000.000 Frw. [21] Rushingiye rero ku kirego cyatanzwe na Uwimabera Anastasie mu Rukiko rw'Ubucuruza, Urukiko rusanga agaciro k'ikiburanwa kagizwe n'ikiburanwa cy'iremezo aricyo imigabane yashoye muri CAF ISONGA, hiyongereyeho inyungu n'indishyi yasabaga, byose hamwe bikaba bifite agaciro ka 77.365.608 Frw, hakaba hagomba kwemeza ko ubujurire bwa CAF ISONGA buri mu bubasha bw'uru rukiko kuko agaciro k'ikiburanwa karenze 50.000.000 Frw. III. ICYEMEZO CY'URUKIKO [22] Rwemeje ko inzitizi y'iburabubasha yatanze na Uwimabera Anastasie nta shingiro ifite; [23] Ruvuze ko iburanisha rizakomeza kuwa 13/01/2015; [24] Ruvuze ko amagarama y'urubanza abaye asubitswe.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.amategeko.gov.rw/view/doc/7414/7691>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/caf-isonga-v-uwimabera-anastasie-jurisdictionofsupremecourt-supreme-court-2014>

Prepared on 12 October 2026 · Esheria