

RWANDA / JUDGMENT

UBUSHINJACYAHA v. TWAGIRAYEZU

RPA0038/10/CS

COURT

Supreme Court

DECIDED

21 March 2014

CASE / FILE NUMBER

RPA0038/10/CS

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UBUSHINJACYAHA v. TWAGIRAYEZU

- Source: Amategeko
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- Date: 2014-03-21
- Case/document no.: RPA0038/10/CS
- Collection: Supreme Court

Text

Page 1

UBUSHINJACYAHA v. TWAGIRAYEZU [Rwanda URUKIKO RW' IKIRENGA-- RPA0038/10/CS (Mutashya, P.J., Kanyange na Hitiyaremye, J.) 21 Werurwe, 2014] Indishyi– Indishyi zikomoka ku cyaha – Igenwa ry'indishyi mbonezamusaruro zitasabwe mu izina ry' abo bireba bose – Ntawatanga ikirego ku giti cye, asabira indishyi umuryango wose – Indishyi zitangwa n'uwagabanyirijwe igihano mu gihe zagenwe mu buryo bw'imbumbe – Igabanywa ry'indishyi zitanzwe mu buryo bw'imbumbe mu gihe uzisabwa atazijuririye – Kuba uwajuriye yarahawe igihano gito kuri mugenzi we, ntibyaba impamvu ituma acibwa indishyi nke mugihe igabanwa ry'igihano ritashingiye ku ruhare ruto yaba yaragize mu cyaha Incamake y'ikibazo: Twagirayezu na mugenzi we bakurikiranywe mu Rukiko Rukuru, urugereko rwa Nyanza, ku cyaha cy'ubuhotozi. Urukiko rwabahamije icyaha ruhanisha uwajuriye igifungo cy'imyaka cumi (10) naho mugenzi we ahanishwa igihano cyo gufungwa burundu, runabategeka gufatanya gutanga indishyi mbonezamusaruro n'indishyi mpozamarira zingana na miliyoni eshanu n'ibihumbi ijana na mirongo ine na bitanu nk'uko zasabwe na Ngendahimana waregeraga indishyi. Twagirayezu yajuririye urwo rubanza avuga ko Urukiko rwafashe ibintu uko bitari, ko kandi yireze akemera icyaha agasaba n'imbabazi, ariko akaba yarahawe igihano kirekire. Ku birebana n'indishyi,

akavuga ko yaciwe indishyi z'ikirenga atashobora kubona, ko kandi amafaranga avugwa ko bambuye nyakwigendera ari ikinyoma. Mu iburanisha, yavuze ko aretse ubujurire yari yatanze kubirebana n igihano kubera ko yakirangije, ariko ko ubujurire ' ku ndishyi bwo abukomeje. Incamake y'icyemezo: 1. Amafaranga ibihumbi ijana na mirongo ine na bitanu (145.000Frw) ajyanye n'ibyo Ngendahimana yakoresheje mu rupfu rwa murumuna we ndetse n'ay'ikurikiranarubanza uwajuriye ntayahakana cyangwa ngo yerekane ko akabije kuba menshi, bityo akaba agomba kwishyurwa uko yakabaye.

2. Ku bijyanye n'indishyi mbonezamusaruro, Ngendahimana Jean Marie Vianney yatanze ikirego ku giti cye, bityo rero akaba atazisabira umuryango we wose, kandi ku bimureba, nta bimenyetso yatanze bigaragaza ko Munyeshuri wishwe yari afite inshingano zihariye zo kumwitaho ku buryo yagenerwa indishyi z'ibyo yaba yaratakaje kubera kumubura.
3. Ku bijyanye n'indishyi mpozamarira, Ngendahimana Jean Marie Vianney akwiye kuzigenerwa kubera umuvandimwe we wishwe ku bw'amaherere nk'uko dosiye ibigaragaza, ariko kubera ko miliyoni eshanu (5.000.000Frw) asaba ari umurenge, Urukiko rukaba rugomba kuzigena mu bushishozi bw'urwego rw'ubushyamba ku gahinda yatewe n'iyicwa rya Munyeshuri n'uburyo yishwemo; bityo akaba akwiye kugenerwa miliyoni ebyiri (2.000.000 Frw) agenwe mu bushishozi bw'Urukiko.
4. Indishyi zigomba gutangwa n'abahamwe n'icyaha bafatanyije mu buryo bw'imbumbe (in solidum) kuko n ubwo hari utarajuriye kuko bakoze icyaha bafatanyije, hakaba ' hatatandukanywa uruhare rwa buri wese.
5. Kuba uwajuriye yarahawe igihano gito kuri mugenzi we, ntibyaba impamvu ituma acibwa indishyi nke kuko igabanywa ry'igihano ritashingiye ku ruhare ruto yaba yaragize mu cyaha ahubwo ryashingiye ku kuba yaracyemeye.

Page 2

Ubujujire bufite ishingiro. Abaregwa bagomba gufatanya gutanga ndishyi; Urubanza rwajuririwe ruhindutse ku bijyanye n'indishyi zigomba kwishyurwa n'abahamwe n'icyaha Amagarama ahererereye ku isanduku ya Leta . Nta tegeko ryashingiweho. Nta rubanza rwifashishijwe. Inyandiko z'abahanga zifashishijwe: -M.D. Dalloz, Aine, Répertoire méthodique et alphabétique de législation, de doctrine et de jurisprudence, Tome Quatrième, Paris, Bureau de la Jurisprudence Générale du Royaume, 1846, p. 91, para. 593. -Serge Guinchard, Droit et Pratique de Procédure Civile, Dalloz, 1999, p. 1144. Para. 5915 Urubanza IMITERERE Y'URUBANZA MURI MAKE [1] Twagirayezu Pontien na Ngendahayo Jean de Dieu bakurikiranywe n'Ubushinjacyaha mu Rukiko Rukuru, urugereko rwa Nyanza, bubashinje kuba ku wa 17/08/2009 barahotoye uwitwa Munyeshuri bahuriye ku kabare umurambo bakawusiga ku muhanda. [2] Urukiko Rukuru rwaregwe rwaciye urubanza rwemeza ko Twagirayezu Pontien na Ngendahayo Jean de Dieu bahamwa n'icyaha rushingiye ku kuba Twagirayezu Pontien agifatwa yaremeye icyaha agashinja Ngendahayo akavuga ko bamukubise bagataha batazi ko yapfuye. Urukiko rwahanishije Twagirayezu Pontien igifungo cy'imyaka cumi (10) naho Ngendahayo Jean de Dieu rumuhanisha

igihano cyo gufungwa burundu, rubatega gufatanya guha Ngendahimana indishyi z'akababaro zingana 5.145.000.000Frw. [3] Twagirayezu yajuririyeye urwo rubanza avuga ko Urukiko rwafashe ibintu uko bitari, ko kandi yireze akemera icyaha agasaba n'imbabazi, ariko akaba yarahawe igihano kirekire. [4] Ku birebana n'indishyi, Twagirayezu avuga ko yaciwe indishyi z'ikirenga atashobora kubona, ko kandi amafaranga avugwa ko bambuye nyakwigendera ari ikinyoma. [5] Urubanza rwaburanishijwe mu ruhamwe ku itariki ya 30/10/2013 Twagirayezu yitabye yunganiwe na Me Munyaneza Labani, Ubushinjacyaha buhagarariwe na Mutayoba Alphonse, umushinjacyaha ku Rwego rw'Igihugu, naho uregera indishyi ahagarariwe na Me Mulinzi Jean de Dieu. [6] Twagirayezu ahawe ijamba yahise abwira Urukiko ko ku birebana n'igihano, ubujurire yari yatanze aburetse kubera ko yakirangije, ariko ubujurire ku ndishyi bwo abukomeje. [7] Urukiko rw'Ikirenga rwafashwe icyemezo ku bijyanye no kureka ubujurire bujyanye n'ikurikiranacyaha ku wa 29/11/2013 rwemeza ko bifite ishingiro, ko ubujurire ku byerekeye

Page 3

ikurikiranacyaha yemerewe kubureka, ko urubanza rukomeza ku bijyanye n'indishyi gusa, rutegeka ko iburanisha ku ndishyi rizakomeza ku wa 06/01/2014, kuri iyi tariki urubanza ntirwaburanishwa rwimurirwa ku wa 17/02/2014. [8] Iburanisha ry'urubanza ryabaye mu ruhamwe ku wa 17/02/2014 Twagirayezu Pontien yitabye yunganiwe na Me Mwizerwa Alexis, Ngendahimana uregera indishyi yunganiwe na Me Uwera Jean d'Arc naho Ubushinjacyaha buhagarariwe na Niyonkuru Françoise, Umushinjacyaha ku rwego rw'Igihugu. IKIBAZO KIGIZE URUBANZA N'ISESENGURARYACYO. Kureba niba indishyi Twagirayezu Pontien yaciwe ari umurenge. [9] Me Mwizerwa Alexis wunganira Twagirayezu yatangiye asaba ko na Ngendahayo Jean de Dieu na we watsindiwe indishyi yahamagazwa muri uru rubanza nk'uko bari baranabishyize ubushize, nyuma yo gusubizwa ko Urukiko rutafashe icyemezo ko ahamagazwa, avuga ko baburana ibibareba. [10] Me Mwizerwa Alexis avuga ko indishyi zatanze n'urukiko ari umurenge kandi nta bisobanuro rwazitangiye, ko rwakoze ikosa ryo kutagaragaza uruhare rwa buri wese, dore ko n'ibihano bahawe bitandukanye, rukaba rwarazitanze mu buryo bw'imbumbe rutanarebye imibereho ya nyakwigendera ngo rumenye ibyo yinjizaga mbere yo gupfa, akavuga ko Urukiko rutanarebye niba koko Twagirayezu yabona amafaranga yaciwe, ko rero urukiko rwatega ko azishyura ½ cy'indishyi ruzatega, agasaba Urukiko kuzashingira ku ngingo ya 258 y'igitabo cya gatatu cy'urwunge rw'amatega y'imbonezamubano (CC LIII) ngo kuko Urukiko rwa mbere rutari rwasobanuye ishingiro ry'indishyi rwatanze. [11] Mu gusobanura impamvu Twagirayezu agomba kwishyura ½ cy'indishyi zizagenwa n'urukiko, Me Mwizerwa Alexis avuga ko n'ubwo umucamanza ashobora kuba yarashatse ko indishyi zishyurwa ku buryo bw'imbumbe (in solidum), ko mu cyemezo cy'e atigeze abitegeka cyangwa ngo agaragaze uruhare rwa buri muntu, ko mu gihe ibihano bahawe bitandukanye n'indishyi zari gutandukanywa, ko kandi batari gufatanya (in solidum) mu gihe nta masezerano y'umwenda ahari, ko rero Urukiko rugomba kugaragaza uruhare rwa buri wese hanyuma uruhare rwa Twagirayezu Pontien rukagabanywa kubera ko aribyo yajuririyeye uwo bari bafatanyije akaba atarajuriye. [12] Me Uwera Jean d'Arc uburanira Ngendahimana Vianney uregera indishyi muri uru rubanza, avuga ko umucamanza waciye urubanza mu Rukiko Rukuru yafatiye hamwe indishyi kubera ko bafatanyije icyaha, kandi

Twagirayezu Pontien akaba yaraburanye yemera icyaha naho Ngendahayo Jean de Dieu akaba yaratorotse ataranaburanye, agasaba ko buri wese yatanga 50%, ko gusa ikibazo gihari ari uko undi yatorotse kumubona bikaba bizatera ikibazo, ko kandi we abona indishyi atari nyinshi urebye ubugome bakoranye icyaha bakica umuntu wari ukiri muto cyane w'imyaka makumyabiri n'ine (24) y'amavuko, ko n'ubwo nta kiguzi cy'umuntu cyaboneka ugereranyije na miliyoni cumi n'imwe (11.000.000 Rwf) bari basabye, umucamanza agatanga 5.145.000 Rwf atari menshi ugereranyije n'agahinda yateye abasigaye, ko ahubwo yakagombye kongerwa. [13] Uhagarariye Ubushinjacyaha avuga ko kubera ko ikiburanwa ari indishyi, ntacyo yabivugaho.

Page 4

UKO URUKIKO RUBIBONA. [14] Inyandiko ziri muri dosiye ziragaragaza ko Urukiko Rukuru, Urugereko rwa Nyanza, rwahamije icyaha cy'ubuhotozi, Twagirayezu Pontien na Ngendahayo Jean de Dieu rubahanisha gufungwa imyakaka icumi (10) kuri Twagirayezu n'igifungo cya burundu kuri mugenzi we, rubatega no gufatanya kwishyura Ngendahimana Jean Marie Vianney indishyi zihwanye na miliyoni eshanu n'ibihumbi ijana na mirongo ine na bitanu (5 145 000 Frw) agizwe n'ibihumbi ijana na mirongo ine na bitanu (145 000 Frw) yatanze mu gupimisha umurambo no kuwushyungura hamwe n'ay'ikurikiranarubanza, na miliyoni eshanu (5 000 000 Frw) y'indishyi. [15] Urukiko rurasanga amafaranga ibihumbi ijana na mirongo ine na bitanu (145.000 Frw) ajyanye n'ibyo Ngendahimana yakoresheje mu rupfu rwa murumuna we ndetse n'ay'ikurikiranarubanza Twagirayezu Pontien atayahakana cyangwa ngo yerekane ko akabije kuba menshi, bityo ayo mafaranga akaba agomba kwishyurwa uko yakabaye. [16] Urukiko rurasanga, ku bijyanye n'indishyi mbonezamusaruro, Ngendahimana Jean Marie Vianney yatanze ikirego ku giti cye, bityo rero akaba atazisabira umuryango we wose, kandi ku bimureba, nta bimenyetso yatanze bigaragaza ko Munyeshuri wishwe yari afite inshingano zihariye zo kumwitaho ku buryo yagenerwa indishyi z'ibyo yaba yaratakaje kubera kumubura. [17] Ku bijyanye n'indishyi mpozamarira, Urukiko rusanga Ngendahimana Jean Marie Vianney akwiye kuzigenerwa kubera umuvandimwe we wishwe ku bw'amaherere nk'uko dosiye ibigaragaza, ariko kubera ko miliyoni eshanu (5.000.000 Frw) asaba ari umurengera, Urukiko rukaba rugomba kuzigena mu bushishozi bw'urwego rwataye ku gahinda yatewe n'iyicwa rya Munyeshuri n'uburyo yishwemo; bityo akaba akwiye kugenerwa miliyoni ebyiri (2.000.000 Rwf) agenwe mu bushishozi bw'Urukiko. [18] Ku birebana n'uburyo izo ndishyi zigomba kwishyurwa, Urukiko rurasanga zigomba gutangwa n'ababamwe n'icyaha bafatanyije mu buryo bw'imbumbe (in solidum) ari bo Twagirayezu Pontien na Ngendahayo Jean de Dieu n'ubwo we atajuriye kuko bakoze icyaha bafatanyije, hakaba hatatandukanywa uruhare rwa buri wese. Kuba Twagirayezu yarahawe igihano gito kuri Ngendahayo Jean de Dieu, ntibyaba impamvu ituma acibwa indishyi nke kuko igabanwa ry'igihano ritashyigirye ku ruhare ruto yaba yaragize mu cyaha ahubwo ryashyigirye ku kuba yaracyemeye. [19] Kuba bagomba gufatanya kwishyura indishyi zigenwe mu bujuriye kandi Ngendahayo Jean de Dieu we atarajuriye, Urukiko rurabishingira ku byemejwe n'ababamwe mu mategeko bavugako kuri rusange, ubujuriye bukoze n'urubanza rumwe bugirira akamaro n'urundi urubanza mu zihuriye ku mwenda udashobora kugabanywa; ni ukuvuga mu gihe cyose bidashoboka kurangiza urubanza rureba

uruhande rutajuriye n'urubanza rwaciwe mu nyungu z'uruhande rwajuriye [...]. (En général, l'appel interjeté par l'une des parties profite aux autres dans les matières indivisibles, c'est-à-dire toutes les fois qu'il y a impossibilité absolue d'exécuter et le jugement rendu contre la partie non appelante et le jugement rendu en faveur de celle qui a appelé[...])¹ 1 M.D. Dalloz, Ainé, Répertoire méthodique et alphabétique de législation, de doctrine et de jurisprudence, Tome Quatrième, Paris, Bureau de la Jurisprudence Générale du Royaume, 1846, p. 91, para. 593.

Page 5

[20] Iki gitekerezo kandi kigarukwaho n'undi muhanga mu mategeko aho asobanura itegeko ry'imiburanishishirize y'imanza z'imbonezamubano ryo mu Bufaransa, akavuga ko ukutagabanywa k'umwenda ku birebana n'ubujurire kugira ingaruka zihariye, ko mu gushyira mu bikorwa ibiteganywa n'ingingo ya 553 y'itegeko rimaze kuvugwa, mu gihe hari umwenda udashobora kugabanywa uhuriweho n'abantu benshi, ubujurire bw'umwe bugira ingaruka no ku bandi n'ubwo baba bataraje mu rubanza. (L'indivisibilité, s'agissant de l'appel, a des effets très particuliers. En application de l'article 553 NCPC, un appel d'une partie produit effet à l'égard des autres, même si elles ne se sont pas jointes à l'instance). 2 II ICYEMEZO CY'URUKIKO [21] Rwemeje ko ubujurire bwa Twagirayezu Pontien bufite ishingiro; [22] Rutegetse Twagirayezu Pontien na Ngendahayo Jean de Dieu guha Ngendahimana Jean Marie Vianney bafatanyije indishyi zihwanye na miliyoni ebyiri n'ibihumbi ijana na mirongo ine na bitanu (2 145 000 Frw); [23] Rwemeje ko urubanza n° RP0106/08/HC/NYA rwaciwe ku wa 18/12/2009 ruhindutse ku bijyanye n'indishyi zigomba kwishyurwa n'abahamwe n'icyaha; [24] Rutegetse ko amagarama y'urubanza aherera ku isanduku ya Leta. 2 Serge Guinchard, Droit et Pratique de Procédure Civile, Dalloz, 1999, p. 1144. Para. 5915

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