

RWANDA / JUDGMENT

UBUSHINJACYAHA v UWASE

RPA 549/13/HC/KIG

COURT

High Court

DECIDED

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UBUSHINJACYAHA v UWASE

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Text

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UBUSHINJACYAHA v. UWASE [Rwanda URUKIKO RUKURU – RPA 549/13/HC/KIG (Murekatete, P.J.) 21 Werurwe 20014] Amategeko mpanabyaha – Gusambanya umwana – Kugabanyirizwa igihano. – Isubikagihano – Ntiyagabanyirizwa

igihano

igihe

yagombaga guhanishwa igifungo cya burundu nyamara agahanishwa imyaka icumi y'igifungo mu gihe yagombaga guhanishwa icya burundu cy'umwihariko, ntiyasaba ko igihano yahawe gisubikwa kuko kirenze imyaka itanu amategeko ateganya, Itegeko ngenga n°01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 78 na 85. Incakake y'ikibazo: Uwase Clementine yarezwe n'Ubushinjacyaha mu Rukiko rwisumbuye rwa Nyarugenge. Kubera gusambanya umwana w'amezi icyenda. Rwamuhamije icyaha ahanisha imyaka 10 y'igifungo no gutanga ihazabu ihwanye n'ibihumbi ijana. Yajuririye mu Rukiko Rukuru avuga ko yemeye icyaha kandi ko agifatwa bamubwiye ko niyemera icyaha

bazamufungura.

Yasabye

Urukiko kumugaragariza no kumusubikira igihano. Uhagarariye Ubushinjacyaha avuga ko Uwase Clementine yiyemereye icyaha ku rwego rwa mbere nta gahato ashyizweho. Akavuga ko kandi impamvu atanga mu bujurire zidasobanutse bityo zikaba zitahabwa agaciro. Yarangije asaba ko igihano yahawe ku rwego rwa mbere cyagumaho kuko cyagabanyijwe bihagijwe.

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Incamake y'icyemezo: Mu miburanire ye ahakana icyaha nyamara mu Rukiko Rwisumbuye rwaregewe ku rwego rwa mbere yemeye icyaha anasobanura uburyo yagikoze aho ngo yumvise mu mubiri ahindutse nuko akagarama akiryamishaho umwana w'umuhungu mu buryo bwo kumukoresha imibonano mpuzabitsina. Ntiyagabanyirizwa ibihano rero igihe yiyemereye icyaha nta gahato ashyizweho agahanishwa imyaka icumi y'igifungo mu gihe yagombaga gufungwa burundu bw'umwihariko. Ntiyasubikirwa igihanom kandi mu gihe atujuje ibisabwa n'ingingo ya 85 y'itegeko ngenga n°01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana kuko igihano yahawe kirengeje imyaka itanu y'igifungo. Ubujurire nta shingiro bufite. Urubanza rujuririrwa ntiruhindutse mu ngingo zose. Uwajuriye asonewe amagara y'urubanza. Amategeko yashyirahwe Itegeko ngenga n°01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 78 na 85. Nta manza zifashishijwe Urubanza I. IMITERERE Y'URUBANZA

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[1] Urukiko Rwisumbuye rwa Nyarugenge rwakijije uru rubanza ku rwego rwa mbere Uwase Clementine aregwa n'ubushinjacyaha icyaha cyo gusambanya umwana w'umuhungu w'amezi icyenda y'amavuko. Rwemeza ko icyo cyaha kimuhama, rumuhanisha igihano cy'igifungo cy'imyaka icumi no gutanga ihazabu y'amafaranga ibihumbi ijana. [2] Muri uru rukiko, Uwase Clémentine yajuriye asaba imbabazi akavuga ko icyaha yacyemeye kuberako akimara gufungwa bamubwiye ko niyemera bamufungura. Agasaba ko urukiko rwamugabanyiriza igihano kuko yahawe kinini kikanasubikwa. [3] Uhagarariye ubushinjacyaha avuga ko impamvu z'ubujurire zitangwa na Uwase Clementine nta shingiro zifite kuko ubwo yaburanaga ku rwego rwambere yasbanutye uko yakoe icyaha, ko ibyo avuga ko yacyemejwe no kugirango afungurwe bitakwitabwaho. Asaba ko ibihano yahawe byagumishwaho kandi ntahabwe isubikagihano. [4] Ikibazo gisuzumwa ni ukumenya niba imbabazi, kugabanyirizwa no gusubikirwa ibihano bisabwa na Uwase Clementine byahabwa ishingiro. II. ISESENGURA RY'IBIBAZO BY'URUBANZA Ku byerekeranye n'imbabazi no kugabanyirizwa igihano bisabwa n'uwajuriye

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[5] Uwase Clementine avuga ko asaba imbabazi akagabanyirizwa igihano, akavuga ko icyaha aregwa atagikoze ko yacyemejwe no kuba ubwo yafatwaga yaragiriwe inama yo kwemera icyaha kugirango afungurwe. Mu gusobanura icyo asabira imbabazi avuga ko yarambuye igitenge ku buriri aryamishaho umwana nyimna aje asanga ari kurira ahita ahamagara abaturage. [6] Uhagarariye ubushinjacyaha avuga ko Uwase clementine aburana mu rwego rwa mbere yemeye icyaha nta gahatyo ashyizweho agisabira imbabazi aho yasobanuye ko yisambanyishije uwo mwana yareraga. Ko impamvu atanga mu bujurire bwe zidasobanutse ari nayo mpamvu zitahabwa ishingiro. Urukiko rukuru rukemeza ko hagumaho igihano yakatiwe ku rwego rwa mbere kuko rwakigabanyije mu buryo buhagije. [7] Urukiko rurasanga nk'uko bigaragarira mu rubanza rujuririrwa ku gace ka 7, Uwajuriye yabwiye urukiko ko uko bisobanuwe n'ubushinjacyaha bwamushinje ariko byagenze yongeraho ko yumvise umubiri we uhindutse yisambanisha ako kana k'agahungu mu gihe kingana n'isaha. Ubushinjacyaha nk'uko bigaragara mu gika cya 4 n'icya 5 cy'urubanza rujuririrwa bwashobanuye ukuntu Uwase yarambuye igitenge ku buriri akagarama hanyuma akambura akana k'agahungu k'amezi icyenda yareraga akakiryamishaho mu rwego rwo kugakoresha imibonano mpuzabitsina. N'ubwo rero muri uru rukiko Uwase yashatse guhunga ibyo yemeye ku rwego rwa mbere avuga ko atemera icyaha ngo ko yacyemejwe no kuba yarabisabwe abwirwa ko bamufungura nyitiyabashije kugaragaza ko

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ubwo yaburanaga hari igitugu yashyizweho cyatumye yemera icyaha. Ukuba rero asaba kugabanyirizwa igihano akaba ntabyo yahabwa kuko igika cya 11 cy'urubanza rujuririrwa urukiko rwabanye rwagabanyije ibihano rushingiye ku kwemera icyaha kwe igihano kikaba cyaravanwe kuri burundu y'umwihariko gishyirwa ku gihano gito giteganywa n'itegeko mu igabanyagihano nk'uko ingingo ya 78 y'itegeko ngenga rishyiraho igitabo cy'amatege ko ahana ibiteganywa. Bityo ubujurire bwe nta shingiro bufite. Ku byerekeranye n'imbabazi no gusubikirwa igihano bisabwa n'uwajuriye [8] Uwase Clementine yasabye isubikagihano, ubushinjacyaha bukavuga ko ntaryo yahabwa. [9] Urukiko rurasanga ingingo ya 85 y'itegeko ngenga n°01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana iteganywa ko isubikagihano ari icyemezo

cy'umucamanza

gihagarika irangizarubanza ku gihano cy'igifungo kitarengeje imyaka itanu (5) iyo uwagikatiwe atigeze ahanishwa mbere mu rubanza rwabaye ndakuka igihano cy'igifungo cyangwa igihano nsimburagifungo cy'imirimu ifitiye igihugu akamaro kirenze amezi atandatu (6). Hakurikijwe ibimaze kuvugwa isubikagihano Uwase clementine asaba ntaryo yahabwa kuko atujuje ibisabwa n'iyo ngingo mu gihe igihano yakatiwe kirengeje igifungo cy'imyaka itanu. Iyo mpamvu y'ijurira nayo nta shingiro ifite.

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III. ICYEMEZO CY'URUKIKO [10] Rwemeje ko ubujurire bwa Uwase Clémentine nta shingiro bufite. [11] Rwemeje ko urubanza RP 0283/13/TGI/NYGE rudahindutse mu ngingo zose. [12] Rutegetse ko Uwase Clementine asonewe amagarama yose y'urubanza kuko yajuriye afunze.

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