

RWANDA / JUDGMENT

UBUSHINJACYAHA v MUPENZI

RPAA 00196/2025/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v MUPENZI

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Text

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UBUSHINJACYAHA v MUPENZI [Rwanda URUKIKO RW'UBUJURIRE - RPAA 00196/2025/CA (Kaliwabo, P.J.) 29 Mutarama 2026] Amategeko yerekeye imanza nshinjabyaha – Igihano – Impamvu nyoroshyacyaha – Uregwa ntiyakongera kugabanyirizwa ibihano, iyo mu bujurire Urukiko rusanga yarabigabanyirijwe bihagije, harebwe uburemere bw'icyaha n'uburyo icyaha cyakozwemo. Incamake y'ikibazo: Ubushinjacyaha bwakurikiranye Mupenzi mu Rukiko Rwisumbuye rwa Nyarugenge ku cyaha cyo kugurisha ibiyobyabwenge byo mu bwoko bw'urumogi, yareganywe kandi n'abitwa Hitimana na Muhire bo bakurikiranywe ku cyaha cyo kurufatanwa no kurunywa. Mupenzi yaburanye ahakana icyaha, naho abandi Urukiko ntirwashobora kumva imyiregurire yabo kuko batari bitabiriye iburanisha. Utrwo Rukiko rwaciye urubanza ruhamya Mupenzi icyaha cyo kugurisha ibiyobyabwenge byo mu bwoko bw'urumogi, rumuhanisha igihano cy'igifungo cy'imyaka 25 no gutanga ihazabu ya 20.000.000Frw naho Hitimana na Muhire rubahamya icyo gufatanwa ibiyobyabwenge by'urumogi, rubahanisha igihano cy'igifungo cy'imyaka ibiri (2) kuri buri wese. Mupenzi yajuririye Urukiko Rukuru anenga urukiko Rwisumbuye ko rwamuhamije icyaha cyo gucuruza urumogi nta bimenyetso rushingiyeho. Mu gusobanura uburyo yafashwe, avuga ko hari mu gihe cya COVID, ari gucuruza

agataro, ko yabonye abagabo 2 biruka bavuga ko abapolisi baje nawe agenda agiye kureba ahita afatwa, agerekwaho urumogi abo bagabo bari bafatanywe rungana n'udupfunyika icumi (10 boules); asaba kurenganurwa kuko urumogi ashinjwa atari urwe. Urwo Rukikk rwaciye urubanza rusanga nta kosa ryakozwe mu gusesengura ibi bimenyetso byashingiwe ariko rugaragaza ko hari impamvu zikwiye gutuma agabanyirizwa igihano nuko rumuhanisha igihano cy'igifungo cy'imyaka 16 n'ihazabu ya 5.000.000frw. Mupenzi yajuririye Urukiko rw'Ubujurire anenga Urukiko Rukuru rwamuhamije icyaha rushingiye ku bimenyetso bidafatika kandi bigenekereje na cyane ko banyiri icyaha bahise barekurwa batabajijwe ngo bagaragaze ukuri kuri we. Ubushinjacyaha bwo buvuga ko ubujurire bwa Mupenzi nta shingiro bufite kuko atabasha kuvuguruza ibimenyetso byashingiweho ahamwa n'icyaha cyo gucuruza ibiyobyabwenge by'urumogi, busaba ko hahamishwaho imikirize y'urubanza yajuririye mu ngingo zarwo zose kuko yahanishijwe igihano gikwiranye n'uburemere bw'icyaha yakoze. Incamake y'icyemezo: 1. Uregwa ntiyakongera kugabanyirizwa ibihano, iyo mu bujurire Urukiko rusanga yarabigabanyirijwe bihagije, harebwe uburemere bw'icyaha n'uburyo icyaha cyakozwemo. Ubujurire nta shingiro bufite. Amategako yashingiweho: Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso, Ingingo ya 87. Imanza zifashishijwe:

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Ubushinjacyaha vs Mpitabakana, RPA 0129/10/CS, rwaciye n'Urukiko rw'Ikirenga ku wa 07/03/2014. Ubushinjacyaha vs Nkurunziza, RPAA 01172/2024/CA rwaciye n'Urukiko rw'Ubujurire ku wa 15/10/2025. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 11/9/2020, abashinzwe umutekano bagiye mu rugo rwa Mupenzi Mutesi Farida, bivugwa ko bamusatse bakamusangana udupfunyika 10 tw'urumogi kandi ko yari amaze kugurusha utundi dupfunyika 3 abitwa Hitimana Jean Bosco na Muhire Felix. [2] Nyuma y'iperereza, Ubushinjacyaha bwaregeye Urukiko Rwisumbuye rwa Nyarugenge Mupenzi Umutesi Farida bumushinja icyaha cyo kugurisha ibiyobyabwenge naho, Hitimana Jean bosco na Muhire Felix bubashinja icyaha cyo kurufatanwa no kurunywa. Mupenzi Umutesi Farida yaburanye ahakana icyaha, ko n'ibyo bavuga ko yemeye mu Bugenzacyaha ari ibyo bamuhimbira. Urukiko ntirwashoboye kumva imyiregurire ya Hitimana Jean Bosco na Muhire Félix kuko batari bitabiriye iburanisha. [3] Mu rubanza N° RP01441/2020/TGI/NYGE rwaciye ku wa 29/10/2021, Urukiko Rwisumbuye rwa Nyarugenge, rushingiye ku kwemera kw'abaregwa imbere y'Ubugenzacyaha n'Ubushinjacyaha, ku mvugo z'abatangabuhamya babashinja, kuri raporo y'inzego z'ibanze no ku nyandiko-mvugo y'ifatira ry'ibiyobyabwenge bashyizeho umukono, rwahamije Mupenzi Umutesi Farida icyaha cyo kugurisha ibiyobyabwenge byo mu bwoko bw'urumogi, rumuhanisha igifungo cy'imyaka 25 no gutanga ihazabu ya 20.000.000Frw naho Hitimana Jean Bosco na Muhire Félix rubahamya icyo gufatanwa ibiyobyabwenge by'urumogi, rubahanisha igifungo cy'imyaka ibiri (2) kuri buri wese. [4] Mupenzi Umutesi Farida yajuririye Urukiko Rukuru anenga urukiko Rwisumbuye ko rwamuhamije icyaha cyo gucuruza urumogi nta bimenyetso rushingiyeho. Mu gusobanura uburyo yafashwe, avuga ko hari mu gihe cya COVID, ari gucuruza agataro, ko yabonye abagabo 2 biruka bavuga ko abapolisi baje nawe agenda agiye kureba ahita afatwa, agerekwaho urumogi abo bagabo bari bafatanywe rungana n'udupfunyika icumi (10 boules); asaba kurenganurwa kuko

urumogi ashinjwa atari urwe. [5] Ubushinjacyaha bwashubijwe buvuka ko ubujurire bwa Mupenzi Umutesi Farida nta shingiro bufite kuko atabasha kuvuguruza ibimenyetso byashingiweho ahamwa n'icyaha cyo gucuruza ibiyobyabwenge by'urumogi, busaba ko hahamishwaho imikirize y'urubanza yajuririye mu ngingo zarwo zose. [6] Mu rubanza N° RPA 01601/2021/HC/KIG rwaciwe n'Urukiko Rukuru kuwa 12/2/2024, Urukiko rwasanze ibimenyetso byashingiweho Mupenzi Umutesi Farida ahamwa n'icyaha cyo kugurisha ibiyobyabwenge harimo n'imvugo ye yakoreye mu Bugenzacyaha yemera icyaha ndetse n'imvugo z'abatangabuhamya bamushinja, rusanga nta kosa ryakozwe mu gusesengura ibi bimenyetso. Rwasanze nyamara, hitawe ku kuba ari ubwa mbere Mupenzi akurikiranywe bizwi

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mu butabera, kuba yarafatanywe ingano nto y'urumogi (10 boules) ariko kandi hitawe ku kuba aburana ahakana icyaha cyatangiye ibimenyetso, ibihano yahanishijwe bikwiye kugabanywa kugeza ku gifungo cy'imyaka 16 n'ihazabu ya 5.000.000frw. [7] Mupenzi Umutesi Farida yajuririye Urukiko rw'Ubujurire, Urubanza ruhabwa n° RPAA 00196/2025/CA, iburanisha ribera mu ruhamwe ku wa 7/1/2026, Mupenzi Umutesi Farida yunganiwe na Me Uwimabera Béata naho Ubushinjacyaha buhagarariwe na Uwizeye Jean Marie, Umushinjacyaha ku rwego rw'Igihugu. [8] Mu myanzuro y'ubujurire, Mupenzi Umutesi Farida anenga Urukiko Rukuru rwamuhamije icyaha rushingiye ku bimenyetso bidafatika kandi bigenekereje na cyane ko banyiri icyaha bahise barekurwa batabajijwe ngo bagaragaze ukuri kuri we. Asaba kurenganurwa akagirwa umwere kuko icyaha ashinjwa ntaho ahuriye nacyo. [9] Uhagarariye Ubushinjacyaha avuga ko ubujurire bwa Mupenzi Umutesi Farida nta shingiro bufite kuko atabasha kuvuguruza ibimenyetso byashingiweho ahamwa n'icyaha cyo gucuruza ibiyobyabwenge by'urumogi, busaba ko hahamishwaho imikirize y'urubanza yajuririye mu ngingo zarwo zose kuko yahanishijwe igihano gikwiranye n'uburemere bw'icyaha yakoze. [10] Urukiko rurasuzuma niba Mupenzi Umutesi Farida yarahamijwe icyaha hashingiwe ku bimenyetso bigenekereje n'igihano yahanishwa. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

- a) Kumenya niba Mupenzi Umutesi Farida yarahamijwe icyaha hashingiwe ku bimenyetso bigenekereje n'igihano yahanishwa. [11] Mupenzi Umutesi Farida yajuririye Urukiko rw'Ubujurire anenga Urukiko Rukuru ko rwamuhamije icyaha cyo kugurisha ibiyobyabwenge rushingiye ku bimenyetso bigenekereje, ko abantu bazanye ibiyobyabwenge ashinjwa bafashwe ariko bakarekurwa ku buryo budasobanutse, ko hirengagijwe ingingo ya 83 ry'itegeko no 68/018 ryo ku wa 30/08/2018 ryerekeye ibyaha n'ibihano muri rusange iteganya ko icyaha kiryoza nyiracyo. Asaba kurenganurwa agasanga abana 4 yasize mu nzu y'inkodeshanyo batagira kirengera. [12] Me Uwimabera Béata avuga ko Mupenzi Umutesi Farida yahaniwe icyaha atakoze, asaba urukiko rw'ubujurire gusesengurana ubushishozi ibimenyetso by'ubushinjacyaha rukabona ko nta na hamwe hemezwa ko Mupenzi Umutesi Farida yari asanzwe acuruza urumogi kuko na raporo y'inzeho z'ibanze yashingiye ku kuba urumogi rwarafatiwe kwa Mupenzi Umutesi, aba bayobozi bakaba batemeza ko basanzwe bamuzi nk'umuntu ucuruza urumogi. Akomeza avuga ko mu bimenyetso Urukiko rwashingiyeho harimo ko ibiyobyabwenge babisanze mu

mwenda w'intebe za Mupenzi Umutesi, nyamara we ubwe avuga ko nta n'intebe agira mu nzu. [13] Uhagarariye Ubushinjacyaha avuga ko ubujurire bwa Mupenzi Umutesi Farida nta shingiro bufite kuko atabasha kuvuguruza ibimenyetso byashingiweho birimo n'imvugo ye yavugiye mu Bugenzacyaha asobanura ko impamvu yamuteye gucuruza ibiyobyabwenge arugushaka ibyo kurya ndetse n'inyandiko mvugo yashyizeho umukono yemeza ko udupfunyika 10 tw'urumogi dufatiriwe ari utwe. Ubushinjacyaha bwabaye ko ku birebana n'ibihnao nta cyabuza Urukiko

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kugabanyiriza Mupenzi Umutesi ibihano kugeza ku gifungo cy'imyaka 15 no gutanga ihazabu ya 5.000.000Frw hakurikijwe ibiteganywa n'ingingo ya 2 y'Itegeko No 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko No 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange. UKO URUKIKO RUBIBONA [14] Ikibazo kiri muri uru rubanza ni ukumenya niba Urukiko rwarahamije Mupenzi Umutesi Farida icyaha cyo kugurisha ibiyobyabwenge nta bimenyetso bishingiweho. [15] Ingingo ya 87 y'Itegeko n° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso iteganya ko mu rubanza nshinjabyaha, ikimenyetso gishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe umwanya wo kubijyaho impaka. [16] Mu guhamya Mupenzi icyaha cyo kugurisha ibiyobyabwenge, Urukiko rwashingiye ku kuba:

- yarabajijwe mu Bugenzacyaha agasobanura ko urumogi yacurujwe yaruhawe n'umuntu atavuga izina kugirango nawe abone ibyo aya, akanemera ko bamusanganye udupfunyika icumi (10 boules) tw'urumogi, agasoza asaba imbabazi;
- Hitimana Jean Bosco yarafatiwe kwa Mupenzi amaze kugura udupfunyika 2 tw'urumogi atwishyuye amafranga Magana atanu (500frw), ndetse na Muhire Felix agafatanwa agapfunyika1;
- Umutangabuhamya witwa Uwase Nadia wavuze ko yari asanzwe azi ko Mupenzi acuruza agataro ariko ko yabonye bamufatana udupfunyika 10 tw'urumogi, kandi ko yafashwe amaze kugurisha urumogi abasore 2 nabo barufatanwe;
- hari raporo y'inzego z'ibanze yemeza ko Mupenzi yafatanwe udupfunyika 10 tw'urumogi kandi ko muri urwo rugo hafatiwe n'abasore babiri aribo Hitimana wafatanwe udupfunyika 2 na Muhire wafatanwe agapfunyika 1, kandi ko bose bari baruguze na Mupenzi Umutesi Frida;
- inyandiko mvugo y'ibyabaye (PV de constat) igaragaza ko Mupenzi Umutesi Farida yafashwe acuruza urumogi kandi mu kumusaka hakaboneka udupfunyika 10 tw'urumogi mu mwenda w'intebe zo mu rugo rwe, ndetse n'abo yarucurujeho aribo Hitimana na Muhire bakaba bararufatanwe;
- inyandikomvugo y'ifatira (pv de saisie) Mupenzi Umutesi yashyizeho umukono yemeza ko udupfunyika 10 tw'urumogi afatanwe ari utwe. [17] Urukiko rurasanga ibimenyetso bivuzwe mu gika kibanziriza iki bifite ireme kandi bisobanuwe ku buryo bwumvikana,

by'umwihariko akaba adashobora kuvuguruza imvugo yavugiye mu Bugenzacyaha yemera ko udupfunyika 10 tw'urumogi afatanwe ari utwe kandi ko arucuruza kugira ngo abone ibyo kurya, iyi mvugo ye ikaba ishyigikirwa n'imvugo z'abatangabuhamya biboneye ibyo yafatanwe, bityo imiburanire ye ihakana imvugo ye ivuga ko yahamijwe icyaha kidafite ibimenyetso ikaba idafite ishingiro.

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[18] Ku birebana n'ibihano, kuba mu kugabanya ibihano Urukiko Rukuru rwarashyize mu gaciro ingingo yo kuba Mupenzi Umutesi Farida yaraburanye ahakana icyaha ku nzego zose, Urukiko rurasanga nta kosa rwakoze kuko isesengura rwakoze rihuje n'ukuri kw'imiburanire y'ushinjwa nk'uko byasobanuwe haruguru, bityo kuba rwaramugabanyirije ibihano kugeza ku gifungo cy'imyaka 16 n'ihazabu y'amafaranga 5.000.000 bikaba bifite impamvu ifatika kandi ibi bihano bikaba biri mu rugero rukwiranye n'uburemere bw'icyaha yakoze ndetse n'imiburanire yahisemo. [19] Urukiko rurasanga, mu rubanza rufitanye isano n'urwa Mupenzi Umutesi Farida, igihano cy'igifungo cy'imyaka 16 n'ihazabu y'amafaranga 5.000.000 ari cyo uru Rukiko rwahanishije Nkurunziza Léonard wahamijwe icyaha cyo kugurisha udupfunyika 11 tw'urumogi mu rubanza N° RPAA 01172/2024/CA rwaciwe ku wa 15/10/2025, akagabanyirizwa ibihano kubera ko ari ubwa mbere ahamwe n'icyaha no kuba yarafatanwe ingano nto y'ibiyobyabwenge, kandi nawe yaraburanye ahakana icyaha nubwo hari ibimenyetso bihagije bikimushinja. [20] Urukiko rurasanga, nk'uko byatanze umurongo n'Urukiko rw'Ikirenga mu rubanza N° RPA 0129/10/CS rwaciwe ku wa 7/03/2014, haburana Ubushinjacyaha na Mpitabakana, uregwa atakwongera kugabanyirizwa ibihano, iyo mu bujurire Urukiko rusanga yarabigabanyirijwe bihagije, harebwe uburemere bw'icyaha n'uburyo icyaha cyakozwemo, kandi ntacyo runenga urubanza rwajuririwe1; ibivuzwe muri iki gika bikaba bireba na Mupenzi Umutesi Farida wagabanyirijwe ibihano ku buryo buhagije ku rwego rw'Urukiko Rukuru kabone n'ubwo yaranze no kuburana ahakana icyaha. [21] Hashingiwe ku ngingo ya 87 y'Itegeko n° 062/2024 ryo ku wa 20/06/2024 ryavuzwe haruguru, no ku bisobanuro bitanzwe mu bika bibanziriza iki, Urukiko rurasanga ubujurire bwa Mupenzi bugamije kugirwa umwere nta shingiro bufite, icyemezo yajuririye kikaba kigumanye agaciro mu ngingo zacyo zose. III. ICYEMEZO CY'URUKIKO [22] Rwemeje ko ubujurire bwa Mupenzi Umutesi Farida nta shingiro bufite; [23] Rwemeje ko imikirize y'urubanza N° RPA 01601/2021/HC/KIG rwaciwe n'Urukiko Rukuru, urugereko rwa Nyanza kuwa 12/02/2024, igumye mu ngingo zarwo zose; [24] Rwemeje ko Mupenzi Umutesi Farida ahamishwa ku gihano cy'igifungo cy'imyaka cumi n'itandatu (16ans) no gutanga ihazabu y'amafaranga miliyoni eshanu (5.000.000frw) kubw'icyaha cyo kugurisha ibiyobyabwenge bihambaye byo mu bwoko bw'urumogi yahamijwe; [25] Rutegetse ko Mupenzi Umutesi Farida asonerwa amagarama y'urubanza kuko yaburanye afunzwe.

1 icyegeranyo cy'ibyemezo by'Inkiko, V.2 [2014] RLR

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