

RWANDA / JUDGMENT

DUKUNDE v. URWEGO RW'UMUVUNYI**RADA001/11/CS****COURT**

Supreme Court

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DUKUNDE v. URWEGO RW'UMUVUNYI

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Text**Page 1**

DUKUNDE v. URWEGO RW'UMUVUNYI [Rwanda URUKIKO RW'IKIRENGA – 2014SC – RADA001/11/CS (Mutasha, P.J., Rugabirwa na Gakwaya, J.) 2 Gicurasi 2014] Amategeko y'imiburanishirize – Urubanza rw'ubutegetsi – Inshingano y'urega yukugaragaza ibimenyetso by'ibo aregera. Iyo abibuze, uwarezwe aratsinda – .Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 9. Amategeko y'imiburanishirize – Uburenganzira bw'uwabaye umuburanyi mu rubanza ku rwego rwa mbere bwu kujurira iyo abifitemo inyungu, – Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 162 agace 1. Incamake y'ikibazo: Uwajuriye yandikiye Uregwa amusaba kumufasha kubona imirima yatsindiye mu manza RC 375/87/Kig na RC 12.145/87/kig, amusubiza ko ibyo asaba guhabwa abisanganywe kandi ntawe ubimuteraho, ko ahubwo ashaka kujijisha yongera ku butaka bwe ubwa Leta. Ntiyanyuzwe n'igisubizo arega mu Rukiko Rukuru avuga ko uregwa yitambitse ngo atabona uko akurikirana imitungo ye yambuwe igihe yari afunzwe, asaba ndetse ko ibyangijwe byose babimuriha, urwo rukiko rwemeze ko ikirego cye nta shingiro gifite Ntiyishimiye imikirize y'urubanza, ajurira mu Rukiko rw'Ikirenga,

avuga ko Urukiko Rukuru rwirengagije ko ubwo butaka abukura ku babyeyi be, ko rutageze ku kiburanwa ngo rubaze n'abatangabuhamya nk'uko yari yabisabye, ko rutahaye agaciro ibimenyetso yarushyikirije ndetse no kuba rwarashingiye ku ibaruwa y'Umuvunyi nk'aho ari kamarampaka yasimbura imanza yarugaragarije. Nu regwa yatanze ubujurire bwuririye ku bundi asaba urega gutegekwa kwishyura indishyi kubera gukomeza kurushora mu manza nta mpamvu. Held: 1. Urega agomba kugaragaza ibimenyetso by'ibo aregera. Iyo abibuze, uwarezwe aratsinda. Naho uvuga ko icyo yategekwa gukora cyagaragajwe n'ibimenyetso atagitegetswe kugikora, agomba kugaragaza impamvu zakimukuyeho. Iyo abiburiye ibimenyetso, uwo baburana aramutsinda. Uwajuriye nta bimenyetso atanga bigaragaza ko Umuyobozi w'Akagali ka Gikingo yanditse koko ibyo avuga, ko ni Uregwa wahaye iyo mirima abo baburanaga ndetse ko ubu abo baburanaga aribo bayifite, kandi n'umwunganira nawe ari yemerera ko nta bimenyetso afite bigaragaza ko aho hantu hafitwe n'ababuranaga n'urega. 2. Umuntu wese wabaye umuburanyi mu rubanza ku rwego rwa mbere ashobora kurujuririra iyo abifitemo inyungu, keretse iyo amategeko abigena ukundi. Uwajuriye afite uburenganzira bwo kujuririra urubanza rwaciwe mu rwego rwa mbere, kuko yabonaga ko abifitemo inyungu, ubujurire buririye ku bundi bw'uregwa nta shingiro bifite. Ubujurire nta shingiro bufite. Ubujurire bwuririye ku bundi nta shingiro bufite. Imikirize y'urubanza RAD 0063/09/HC/KIG idahindutse .

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Amagarama y'urubanza aherereye ku wajuriye. Amategeko yashingiweho: .Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, ingingo ya 9. Itegeko n° 15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3 agace 1. Nta manza zifashishizwe: Urubanza IMITERERE Y'URUBANZA [1] DUKUNDE Herménelgide yandikiye Urwego rw'Umuvunyi arusaba kumufasha kubona imirima yatsindiye mu manza RC 375/87/Kig na RC 12.145/87/kig, aho yaburanaga na GATEGAMBEBA kuko Ubuyobozi bumwambura uburenganzira ku gice cy'iyi mirima. Urwego rw'Umuvunyi rwamusubije kuwa 11/8/2008, rumubwira ko ibyo asaba guhabwa abisanganywe kandi ntawe ubimuteraho, ko ahubwo ashaka kujijisha yongera ku butaka bwe ubwa Leta. [2] DUKUNDE Herménelgide, ntiyanyuzwe n'igisubizo cy'Urwego rw'Umuvunyi, arurega mu Rukiko Rukuru avuga ko rwitambitse ngo atabona uko akurikirana imitungo ye yambuwe igihe yari afunzwe, asaba ndetse ko ibyangijwe byose babimuriha kandi ko bifite agaciro ka 1.000.000.000 Frw. [3] Urukiko Rukuru rwaciye urubanza RAD 0063/09/KIG kuwa 21/3/2011, rwemeza ko ikirego cya DUKUNDE Herménelgide nta shingiro gifite. [4] DUKUNDE Herménelgide ntiyishimiye imikirize y'uru rubanza, arujuririra kuwa 18/4/2011 mu Rukiko rw'Ikirenga, avuga ko Urukiko Rukuru rwirengagije ko ubwo butaka abukura ku babyeyi be, ko rutageze ku kiburanwa ngo rubaze n'abatangabuhamya nk'uko yari yabisabye, ko rutahaye agaciro ibimenyetso yarushyikirije ndetse no kuba rwarashingiye ku ibaruwa y'Umuvunyi nk'aho ari kamarampaka yasimbura imanza yarugaragarije. Nanone, Urwego rw'Umuvunyi rwatanze ubujurire bwuririye ku bundi rusaba ko DUKUNDE Herménelgide ategukwa kurwishyura indishyi kubera gukomeza kurushora mu manza nta mpamvu. [5] Iburanisha mu ruhamye ryabaye kuwa 25/3/2014, DUKUNDE Herménelgide, yunganiwe na Me UWIMANA Chany, naho Urwego

rw'Umuvunyi, ruburanirwa na Me RUBANGO Epimague, Intumwa ya Leta. Mu gihe cy'iburanisha, DUKUNDE Herménelgide yasobanuye ko anenga urubanza yajuririyeko kuko rwirengajije ko ibaruwa yo kuwa 11/8/2008 y'Urwego rw'Umuvunyi yatumye atabona ibyo yatsindiye mu rubanza RC 375/87/Kig- RC 12.145/87/kig

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. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba ibaruwa yo kuwa 11/8/2008 y'Urwego rw'Umuvunyi yaba yaratumye imanza DUKUNDE Herménelgide avuga ritarangizwa [6] DUKUNDE Herménelgide avuga ko Urwego rw'Umuvunyi rwamubangamiye kuko rwanditse ibaruwa kuwa 11/8/2008 ruvuga ko Ubuyobozi bwatanze imirima yatsindiye mu rubanza RC 375/87 rwaciwe n'Urukiko rwa Kanto ya Rulindo na RC 12145/87 rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali. Asobanura ko Urwego rw'Umuvunyi rwavugurujye ibyemezo by'Inkiko, rumwabura imirima, ruyiha GATEGAMBEBA, nyamara Leta ivuga ko itigeze imwambura imirima ye. Asobanura kandi ko izo manza zari zararangijwe ariko Urwego rw'Umuvunyi rusubira inyuma, ruha iyo mirima abo baburanaga kugeza aho Umuyobozi w'Akagali ka Gikingo yanditse avuga ko nta kindi yakora kubera ibaruwa y'Urwego rw'Umuvunyi, bityo akaba asaba ko iyo baruwa yateshwa agaciro, imanza yatsindiye zikarangizwa. [7] Me UWIMANA Chany, wunganira DUKUNDE Herménelgide, avuga ko DUKUNDE Herménelgide yaburanye imanza RC 375/87 na RC 12145/87, arazitsinda kandi ibyo yaburanaga arabihabwa. Asobanura ko nyuma haje gusohoka Itegeko Ngenga n° 04/2005 ryo kuwa 8/4/2005 rigenga uburyo bwo kurengera, kubungabunga no guteza imbere ibidukikije mu Rwanda riteganyako abegereye ibishanga n'inzuzi bagomba gusiga metero 10 kuko ari iza Leta. Akomeza asobanura ko DUKUNDE Herménelgide avuga ko nyuma yo gukuraho izo metero 10, Urwego rw'Umuvunyi rwahaye GATEGAMBEBA ahasigaye yatsindiye mu manza zavuzwe haruguru, ariko mu bimenyetso yamuhaye nta na kimwe kigaragaza ko ari GATEGAMBEBA uhafite ubu. [8] Me RUBANGO Epimague, uburanira Urwego rw'Umuvunyi, avuga ko mu ibaruwa y'Urwego rw'Umuvunyi ivugwa na DUKUNDE Herménelgide, ntahagaragara ko ibyo yaburanaga mu manza avuga byahawe GATEGAMBEBA, ahubwo ikigaragaramo ni uko ibyo yatsindiye muri izo manza, ariwe ubitunze. UKO URUKIKO RUBIBONA [9] Ingingo ya 9 y'Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganyako "urega agomba kugaragaza ibimenyetso by'ibo aregera. Iyo abibuze, uwarezwe aratsinda. Naho uvuga ko icyo yategekwe gukora cyagaragajwe n'ibimenyetso atagitegetswe kugikora, agomba kugaragaza impamvu zakimukuyeho. Iyo abiburiye ibimenyetso, uwo baburana aramutsinda". [10] Ingingo ya 3, agace ka 1 y'Itegeko n° 15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganyako "buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana". [11] Ku byerekeye ibaruwa y'Urwego rw'Umuvunyi yo kuwa 11/8/2008 ivugwa na DUKUNDE Herménelgide, Urukiko rw'Ikirenga rurasanga muri iyo baruwa, Umuvunyi Mukuru yarasubizaga ibaruwa yanditswe na DUKUNDE Herménelgide, aho yasobanuraga ko ubuyobozi bumwambura uburenganzira ku gice cy'isambu yari yatsindiye kigaragazwa n'igishushanyo n° 2

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cyo mu rubanza RC 357/87. Rurasanga kandi muri iyo baruwa, Umuvunyi Mukuru yibutsa DUKUNDE Herménelgide ko igihe yafatanyaga n'intumwa y'Urwego rw'Umuvunyi gukurikirana ikibazo cye kuwa 31/7/2008, aho isambu iherereye mu Mudugudu wa Kabingo, basanze iyo sambu asanzwe ayitunze kandi nta n'umuntu uyimuburanya, ndetse amwibutsa ko icyagaragaye mu bisobanuro byatanze mu gihe cy'iperereza, ari uko ashaka guhuguza ubutaka bwa Leta adafiteho uburenganzira ashingiye ku byuho bibiri bigaragara iyo umuntu ageze aho isambu iherereye. [12] Urukiko rurasanga nta hantu nahamwe muri iyo baruwa Umuvunyi Mukuru avuga ko DUKUNDE Herménelgide adakwiye gutunga isambu ye, ahubwo amubwira ko ariwe uyitunze, bityo ibisobanuro bya DUKUNDE Herménelgide by'uko ari ibaruwa y'Umuvunyi Mukuru yatumye Umuyobozi w'Akagali ka Gikingo yandika avuga ko nta kindi yakora kubera ibaruwa y'Urwego rw'Umuvunyi, nta shingiro bifite. [13] Uretse n'ibyo kandi, Urukiko rw'Ikirenga rurasanga DUKUNDE Herménelgide adatanga ibimenyetso bigaragaza ko Umuyobozi w'Akagali ka Gikingo yanditse koko ibyo avuga, ko ni Urwego rw'Umuvunyi rwahaye iyo mirima abo baburanaga ndetse ko ubu abo baburanaga aribo bayifite. Byongeye kandi n'umwunganira nawe yiyemerera ko nta bimenyetso afite bigaragaza ko aho hantu hafitwe n'ababuranaga na DUKUNDE Herménelgide. [14] Kubera izo mpamvu zose, Urukiko rw'Ikirenga rurasanga impamvu y'ubujurire bwa DUKUNDE Herménelgide nta shingiro ifite, bityo hashingiwe ku ngingo ya 9 y'Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryavuzwe haruguru n'ingingo ya 3, agace ka 1 y'Itegeko n° 15/2004 ryo kuwa 12/6/2004 ryavuzwe haruguru, nta mpamvu yo gutegeka ko imanza DUKUNDE Herménelgide yatsindiye zirangizwa kuko ibaruwa y'Umuvunyi Mukuru ivugwa, itagaragaza ko Urwego rw'Umuvunyi arirwo rwatumye DUKUNDE Herménelgide atabona imirima avuga, ahubwo iragaragaza ko iyo mirima iri mu maboko ye. Kumenya niba Urwego rw'Umuvunyi rukwiye guhabwa indishyi rusaba [15] Me RUBANGO Epimague avuga ko Urwego rw'Umuvunyi rusaba ko Urukiko rwategeka DUKUNDE Herménelgide kurwishyura 2.000.000 Frw kubera gukomeza kurubuza amahwemo ajurira nta mpamvu, iteshagihe n'iteshamutwe kandi atabuze kuba yarega uwo bafitanye ikibazo. [16] Me UWIMANA Chany avuga ko hashingiwe ku ngingo ya 162 y'Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, DUKUNDE Herménelgide atacibwa ayo mafaranga kubera ko kujurira ari uburenganzira yemererwa n'Itegeko, bityo akaba asanga nta kosa yakoze ryatuma ayacibwa, keretse yarajuririyeye urubanza rutajuririrwa cyangwa yarajuriye mu rwego rwo gutinza urubanza. UKO URUKIKO RUBIBONA [17] Ingingo ya 162, agace ka 1, y'Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi

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iteganyako ko “umuntu wese wabaye umuburanyi mu rubanza ku rwego rwa mbere ashobora kurujuririra iyo abifitemo inyungu, keretse iyo amategako abigena ukundi”. [18] Hashingiwe ku ngingo ya 162, agace ka 1, y'Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryavuzwe haruguru, Urukiko rw'Ikirenga rurasanga DUKUNDE Herménelgide yari afite uburenganzira bwo kujuririra urubanza rwaciye mu rwego rwa mbere n'Urukiko Rukuru n'ubwo ubujurire bwe nta shingiro

bufite kuko yabonaga ko abifitemo inyungu, bityo ibisabwa n'Urwego rw'Umuvunyi bikaba nta shingiro bifite. III. ICYEMEZO CY'URUKIKO [19] Rwemeje ko ubujurire bwa DUKUNDE Herménelgide nta shingiro bufite. [20] Rwemeje ko ubujurire bwuririye ku bundi bw'Urwego rw'Umuvunyi nta shingiro bufite. [21] Rwemeje ko imikirize y'urubanza RAD 0063/09/HC/KIG rwaciwe n'Urukiko Rukuru kuwa 25/4/2011 idahindutse. [22] Rutegetse DUKUNDE Herménelgide kwishyura amagarama y'uru rubanza angana n'amafaranga 24.900.

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