

RWANDA / JUDGMENT

UBUSHINJACYAHA v. FAYIRARA**V.2[2014]RLR****COURT**

Supreme Court

DECIDED

18 October 2013

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UBUSHINJACYAHA v. FAYIRARA

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UBUSHINJACYAHA v. FAYIRARA [Rwanda URUKIKO RW'IKIRENGA – RS/REV/PEN0016/10/CS – (Kayitesi Zainabo PJ., Mugenzi na Munyangeri J.) – 18 Ukwakira2013] Amategeko yerekeye imiburanishirize nshinjabyaha – Agaciro k'ikimenyetso gishingirwaho mu gusubirishamo urubanza ingingo nshya mu gihe umuburanyi ukiburanisha yari akizi – Itegeko no 13/2004 ryo kuwa 15/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha,180.. Incamake y'ikibazo: Urukiko Rwisumbuye rwa Rusizi rwahamije uwajuriye icyaha cyo kwigana ibimenyetso by'amafaranga y'u Rwanda no kuyakwirakwiza rumuhanishwa igifungo cy'imyaka 10.Yajuririye Urukiko rukuru avuga ko Urukiko Rwisumbuye rutahaye agaciro imvugo ye ahubwo rugashingira ku bamushinja gusa. Urukiko rwasanze nta shingiro ikirego cye gifite. Nyuma yajuriye mu rukiko rw'Ikirenga nyamara narwo rushimangira ibyo Urukiko Rukuru rwari rwemeje . Yaje kuregera Urukiko rw'Ikirenga nanone asaba gusubirishamo urwo urubanza ingingo nshya aho umucamanza w'ibanzirizasuzuma yasanze urega atemerewe gukoresha iyi nzira. Yajuririye icyo cyemezo nabwo avuga ko hari inyemezabwishyu atigeze aburanisha kuko yari yarayibuze. Incamake y'icyemezo: Mu gihe Ikimenyetso ushinjwa yari azi ko gihari ntakigaragarize urukiko cyangwa ngo agaragaze impamvu atakigaragaza ntabwo gifatwa nk'ikimenyetso gishya cyatuma

habaho gusubirishamo urubanza ingingo nshya. Kubera izi mpamvu Urukiko rwanze kwakira ikirego cy'uwajuriye gisaba gusubirishamo urubanza ingingo nshya. Ubujurire ku cyemezo cy'ibanzirizasuzuma nta shingiro bufite Amategeko yashingiweho Itegeko no 13/2004 ryo kuwa 15/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha,180.. Nta rubanza rwifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rusizi, FAYIRARA Ananias aregwa gufatanyaga na MUNYANEZA Joseph na KAZUNGU kwigana ibimenyetso by'amafaranga y'u Rwanda no kuyakwirakwiza mu baturage bakoresheje uburyo bwo kuyabavunjira. Urukiko Rwisumbuye rwasanze FAYIRARA yarafatanyaga n'Abanyekongo

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atahatse kuvuga amazina gukora ayo mafaranga nyuma akayaha MUNYANEZA Joseph ngo ajye kuyagurisha, rumuhanisha igifungo cy'imyaka 10. [2] FAYIRARA yajuririye Urukiko Rukuru, Urugereko rwa Rusizi, avuga ko Urukiko Rwisumbuye rutahaye agaciro imvugo ye, ahubwo rwamuhamije icyaha rushingiye ku mvugo z'ushinja gusa. Urukiko Rukuru rwasanze ubujurire bwa FAYIRARA nta shingiro bufite rwemeza ko nta gihindutse ku mikirize y'urubanza rwajuririye. [3] FAYIRARA yajuririye icyo cyemezo mu Rukiko rw'Ikirenga avuga ko yahaniwe icyaha cyakozwe na MUNYANEZA Joseph, ko atazi muri Congo ndetse nabo banyekongo bavugwa muri dosiye bataziranye. Mu rubanza N° RPAA0103/08/CS/, Urukiko rwasanze ubujurire bwa FAYIRARA nta shingiro bufite, rwemeza ko nta gihindutse ku mikirize y'inkiko za mbere. [4] FAYIRARA yaregeye gusubirishamo urwo rubanza ingingo nshya mu Rukiko rw'Ikirenga, ikirego cye cyandikwa kuri No RS/REV/PEN0039/09/CS-RPAA0103/08/CS/, umucamanza w'ibanzirizasuzuma agisuzumye asanga atagaragaza aho ubushya bw'ibimenyetso yatanze buherereye, afata icyemezo No RP 0410/09/ Pré-ex/CS cyo kuwa 26/10/2009 ko atemerewe isubirishamo ry'urubanza ingingo nshya kuko nta mpamvu abitangira yemewe n'amategeko. [5] FAYIRARA yajuririye icyo cyemezo cy'ibanzirizasuzuma muri uru Rukiko, ubujurire bwe bwandikwa kuri RS/REV/PEN 0016/10/CS. Urubanza rwaburanishijwe mu ruhamwe kuwa 02/10/2013, FAYIRARA yitabye kandi yunganiwe na Me KAYITARE Dieudonné, naho Ubushinjacyaha buhagarariye na MUKURARINDA Alain. IKIBAZO KIGIZE URUBANZA N'UKO URUKIKO RUBIBONA -Kumenya niba inyemezabuguzi (Risi/recu) FAYIRARA yagaragaje nyuma y'urubanza yafatwa nk'ikimenyetso gishya [6] FAYIRARA Ananias avuga ko Umucamanza w'ibanzirizasuzuma yanze kwakira ikirego cye kuko atahaye agaciro ikimenyetso ashingiraho asaba gusubirishamo urubanza rwe ingingo nshya, cyerekeranye n'inyemezabuguzi (Risi/recu) yagiranye na MUNYANEZA Joseph igaragaza ko imashini ivugwa muri dosiye atari iyo kwigana amafaranga ahubwo ari iyo kudoda, ko iyo nyemezabuguzi atigeze ayiburanisha mbere kubera ko yari yarayibuze, ngo nubwo yari azi ko iriho ntiyari kuburanisha ikimenyetso adashobora kugaragariza Urukiko. [7] Avuga ko iyo mpamvu ikwiye gutuma yemererwa gusubirishamo urubanza rwe ingingo nshya hashingiwe ku ngingo ya 180, agace ka 4 y'Itegeko No 13/2004 ryo kuwa 17/5/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakoreshejwe igihe yatangiye ikirego. Naho Me KAYITARE Dieudonné umwunganira yongeraho ko icyo asaba Urukiko ari

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ukurenganura FAYIRARA ruha agaciro nyemezabuguzi yagiranye n'uwamuhaye akazi, ko kuva FAYIRARA yemeza ko iyo nyemezabuguzi ari umwimerere, Urukiko rwabifata nk'ukuri. [8] Uhagarariye Ubushinjacyaha avuga ko ubushya bw'inyemezabuguzi FAYIRARA yashyikirije umucamanza ubwo yasabaga ko urubanza rusubirishwamo ingingo nshya nta shingiro bufite kubera ko iyo nyemezabuguzi ari we wayikoranye n'uwo avuga wamuhaye akazi, ko aburana mbere yari azi ko iyo nyemezabuguzi iriho, ko nubwo atashoboraga kuyigaragariza Urukiko yakagombye kuba yaravuze ko iriho kugirango izashakishwe ishyikirizwe Urukiko, ko mu gihe atagaragaza ko itari izwi igihe yaburanaga, nta cyabuza ko yaba yarayihimbye nyuma y'icibwa ry'urubanza, akagerageza guhuza ibyo yaburanishije n'igipapuro yanditse; asoza avuga ko asanga icyemezo cy'umucamanza w'ibanzirizasuzuma nta nenge gifite. UKO URUKIKO RUBIBONA [9] Kubyerekeye impamvu zigomba gushingirwaho kugirango ikirego cyakirwe, ingingo ya 180 y'Itegeko No 13/2004 ryo kuwa 15/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakoreshwaga igihe ikirego cyatanzwe, iteganya ko : "Gusubirishamo urubanza rw'inshinjabyaha rwaciwe burundu ingingo nshya bishobora gusabwa ku nyungu z'umuntu wese wahamijwe icyaha cy'ubugome cyangwa gikomeye iyo : 1° umuntu amaze gucibwa urubanza rw'uko yicanye, hanyuma hakaboneka ibimenyetso bihagije byemeza ko uwo bakeka ko yishwe atapfuye; 2° bamaze gucira umuntu urubanza ku cyaha yashinjawaga, hakaboneka urundi rubanza nk'urwo rwahanywe undi muntu kuri icyo cyaha izo manza zombi zivuguruzanya kandi zigaragaza ko umwe mu bakatiwe yarenganye; 3° umwe mu batangabuhamya yahaniwe kuba yarabeshyeye uwahanwe kandi urubanza rumuhana rwaramaze gucibwa; 4° n'iyi bamaze guca urubanza, hakaboneka ibimenyetso bitagaragaye mbere byerekana ko uwakatiwe yatsinzwe azize akarengane". [10] Urukiko rurasanga icyemezo cy'ibanzirizasuma No RP 0410/09/Pré-ex/CS cyo kuwa 26/10/2009 kigaragaza ko impamvu zatanze na FAYIRARA yamenye nyuma y'icibwa ry'urubanza, yita nshya, umucamanza yashingiyeho afata icyemezo ari : 1) Ko amafaranga aregwa yatanze n'uwitwa Bellancille wayashyiriye iwabo ayakuye k'uwo bita KAYIRANGA,

2) Ko ayo mafaranga yakorewe ahitwa mu Mwaga k'uwo bita KARINDA Antoine wari wahawe akazi na KAYIRANGA, 3) Ko inyito y'icyaha aregwa yahinduwe hakabaho no guhindagura amagambo kubyo yavuze bakamwandikira ibyo bashatse, 4) Ko hari umutangabuhamya usobanura uburyo umugambi wo kumufungisha wakozwe n'abawuteguye. [11] Urukiko rurasanga na none mu idosiye y'urubanza hari ibaruwa yo kuwa 26/07/2009, FAYIRARA yandikiye Urukiko rw'Ikirenga asaba gusubirishamo urubanza rwe ingingo nshya, avugamo ko, mu mpamvu ashingiraho ikirego cye harimo kuba "hari na risi (recu) yabonetse

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atari akibuka ko yaba yari igihari"; iyo nyemezabuguzi (risi /recu) FAYIRARA yagiranye na MUNYANEZA Joseph, yometswe kuri iyo barwa (cote 1, urupapuro rwa 4.). Biragaragara ko umucamanza atayisuzumye bitewe nuko na nyirubwite atayigarutseho mu myanzuro ye ndetse no mu nyandiko yo kuwa 10/03/2010 yandikiye Urukiko yongera kurusaba. gusubirishamo urubanza ingingo nshya (cote 1, 2, 3). Ariko kandi niyo umucamanza aza kuyisuzuma yari

gusanga atari ikimenyetso gishya, kuko nkuko FAYIRARA abiyemerera ubwe, yari azi ko iyo nyemezabuguzi (risi /recu) ihari, gusa akaba atarayiburanishije mu nkiko zibanza kuko atari kuyibona, ibi bikaba bishimangira ko iyo nyemezabuguzi (risi /recu) atari ikimenyetso gishya kuko, ikindi ni uko abahanga mu mategeko bavuga ko ikirego gisaba gusubirishamo urubanza ingingo nshya kitakirwa, iyo uregwa yarafite inyemezabuguzi igihe cy'iburanisha, kandi ntanashobore kugaragariza Urukiko impamvu ndakumirwa zamubujije kugaragariza Urukiko ko iyo nyemezabuguzi yariho,1 bityo ikimenyetso cyatanzwe na FAYIRARA kikaba kitashingirwaho ngo yemererwe isubirishamo ry'urubanza ingingo nshya. ICYEMEZO CY'URUKIKO [12] [12].Rwemeje ko ubujurire bwa FAYIRARA Ananias ku cyemezo cy'ibanzirizasuma No RP 0410/09/ Pré-ex/CS cyo kuwa 26/10/2009 nta shingiro bufite. [13] [13].Rwemeje ko icyemezo cy'ibanzirizasuma No RP 0410/09/Pré-ex/CS cyo kuwa 26/10/2009 kidahindutse.

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