

RWANDA / JUDGMENT

UBUSHINJACYAHA v. LA BRIGITTE

RPA 1043/12/HC/KIG

COURT

High Court

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UBUSHINJACYAHA v. LA BRIGITTE

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Text

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UBUSHINJACYAHA v. LA BRIGITTE [Rwanda URUKIKO RUKURU –RPA 1043/12/HC/KIG (Uwamariya, P.J) 21/03/2014] Amategeko mpanabyaha – Inyandiko mpimbano – Kwiya umuyobozi w’ikintu kandi utariwe – Gusimbuza umuntu undi ku bwo kwiya icyo utaricyo ni icyaha cy’inyandiko mpimbano – Itegeko ngenga no 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cyamategeko ahana, Ingingo ya 609 Incamake y’ikibazo: La Brigitte Serianz Razic yakurikiranyweho icyaha cyo guhimba inyandiko naho Coperative la Reine na Kamodoka baregera indishyi ariko uwarezwe urukiko rumugira umwere kuri icyo cyaha. Ubushinjacyaha ntibwishimiye imikirize y’urubanza maze bujiririra Urukiko Rukuru buvuga ko Urukiko rubanza, mu guca urubanza rwashingiye ku itegeko ritari ryo, kuba ibisobanuro rwatanze bidahuye, kuba harabaye ukwivuguruzanya k’umucamanza mu isesengura yakoze n’icyemezo yafashe, no kuba yaravuze ko hari ugushidikanya hanyuma akanzura avuga ko nta bimenyetso bityo bugasaba ko yahanishwa ibihano bwamusabiye. Kumunsi w’iburanisha, La Brigitte na Kamodoka ntibitabye urukiko maze rucibwa badahari ariko ikirego cya Kamodoka kirasibwa. Incamake y’icyemezo:..Ku byerekeye ibikorwa bigize icyaha Brigitte Serianz Rakic akurikiranweho kuko yiyise General Manager, nta kuvuguruzanya kuri hagati y’ingingo ya 609 no 01/2012/OL ryo kuwa 02/05/2012

rishyiraho igitabo cyamategeko ahana yakoreshejwe mu rubanza mu gusesengura ibikorwa bigize icyaha, n'ingingo ya 202 y'itegeko teka no 21/77, ibi bikaba bihura no gukora icyaha cy'inyandiko mpimbano usimbuza abantu abandi mu gifaransa byitwa 'supposition de personne' kuko kuri iyo nyandiko yiyanditseho nka General Manager kandi atari we. Uregwa ntiyakurikiranwa hashingiwe ku ngingo ya 614 y'iri tegeko ngenga no 01/2012/OL, kuko ataregwa gukoresha inyandiko mpimbano, ahubwo aregwa kwiytirira icyo ataricyo mu ibaruwa yandikiye Urukiko Rwisumbuye rwa Nyarugenge. Mu guhana iki cyaha hakaba hagomba gukurikizwa ingingo ya 609 y'iri tegeko ngenga ryavuzwe kuko ariryo riteganywa igihano cyoroheje Kuba umucamanza yaravuze ko inyandiko barega Brigitte Serianz Rakic atari mpimbano kuko ntacyo yakuyeho cyangwa ngo yongereho kitari cyo, ntibisobanura ko urubanza rudasobanuye, bityo ibyo ubushinjacyaha buvuga nta shingiro bifite. Nta kuvuguruzanya mu isesengura ry'urubanza n'icyemezo cyafashwe kuko mu isesengura ry'urubanza ntaho umucamanza yigeze yemeza ko ibikorwa Brigitte Serianz Rakic yakoze bigize icyaha cy'inyandiko mpimbano (faux intellectuel). Nta tandukanirizo riri hagati yo gushidikanya no kubura ibimenyetso kuko ubushinjacyaha bugomba gutanga ibimenyetso byemeza umucamanza nta gushidikanya ko umuntu yakoze icyaha. Niba ubushinjacyaha butanze ikimenyetso ariko ntikibashe kwemeza umucamanza ko ushinjwa yakoze icyaha, agashidikanya cyangwa se akabona kidashinje, ingaruka ni imwe nuko

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ushinjwa agirwa umwere. Bityo nta kuvuguruzanya hagati yo gushidikanya no kubura ibimenyetso. Ubujurire bufite ishingiro. Uwarezwe ahamwe n'icyaha cy'inyandiko mpimbano, Urubanza rwajuririwe rurahindutse, Ahanishijwe igifungo cy'umwaka umwe ariko usubitse. Amagarama y'urubanza aherereye k'uregwa. AMATEGEKO YASHINGIWEHO: Itegeko ngenga no 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cyamategeko ahana, Ingingo ya 609, 77 40, 78 30, 85. Itegeko-teka n°21/77 ryo wa 18 kanama 1977 rishyiraho igitabo cy'amategeko ahana, Ingingo ya 202 Nta manza zifashishijwe. URUBANZA I.IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa GASABO La Brigitte Serianz Razic aregwa icyaha cyo guhimba inyandiko. Muri uru rubanza Cooperative La Reine na KAMODOKA NDOLI Samuel baruregeyemo indishyi. Urukiko rwagize La Brigitte Serianz Razic umwere kuri icyo cyaha, runemeza ko ari nta ndishyi zigomba gutanga kubera ko ushinjwa yabaye umwere. [2] Ubushinjacyaha na Kamodoka Ndoli Samuel ntibishimiye imikirize y'urubanza barujuririra mu Rukiko Rukuru. Ubujurire bw'ubushinjacyaha bwanditswe kuri RPA 1043/12/HC/KIG, naho ubwa Kamodoka Ndoli Samuel bwandikwa kuri RPA 1044/12/HC/KIG. La Brigitte Serianz Rakic na Kamodoka Ndoli Samuel ntibitabye, urukiko ruburanisha ubujurire bw'ubushinjacyaha La Brigitte Seranz Razic adahari kuko yahamagawe ahatazwi mu buryo bukurikije amategeko, naho ubujurire bwa Kamodoka Ndoli Samuel burasibwa hashingiwe ku ngingo ya 186 igika cya 5 y'itegeko N° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha kubera ko atabukurikiranye.

[3] Ubushinjacyaha busobanura ko impamvu bwajuriye aruko urukiko mu guca urubanza rwashingiye ku itegeko ritari ryo kuko rwashingiye ku ngino ya 609 aho gushingira ku ngingo ya 614 y'itegeko ngenga no 01/2012 ryo kuwa 02/5/2012 rishyiraho igitabo

cy'ametegeko ahana mu gace kayo ka mbere n'aka gatatu, indi mpamvu akaba ari uko urukiko rwaciye urubanza nta mpamvu rushingiyeho kuko rwashingiye ku itegeko ritari ryo n'ibisobanuro rutanze ntibyahura, icya gatatu akaba ari ukwivuguruzanya k'umucamanza mu isesengura yakoze n'icyemezo yafashe, no kuba yaravuze ko hari ugushidikanya hanyuma akanzura avuga ko nta bimenyetso, ibyo

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akaba yaragombaga kubisobanura. Burasaba ko imikirize y'urubanza yahinduka, ushinjwa agahanishwa igifungo cy'imyaka itanu nkuko byari byasabwe mu Rukiko Rwisumbuye.

- Ikigomba gusuzumwa muri uru rubanza, nukumenya niba urukiko Rwisumbuye mu guca urubanza umucamanza yarashingiye ku ngingo itariyo, kumenya niba urubanza rwajuririrwe rudasobanuye, kumenya niba hari ukuvuguruzanya mu isesengura ry'urubanza n'icyemezo cyafashwe no kumenya niba hari ukuvuguruzanya hagati yo gushidikanya no kubura ibimenyatso. II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO
 - kumenya niba urukiko Rwisumbuye mu guca urubanza umucamanza yarashingiye ku ngingo itariyo.
- [4] Ubushinjacyaha busobanura ko mu ica ry'urubanza umucamanza yashingiye ku ngingo ya 609 y'igitabo gishya cy'amategeko ahana aba ari nayo asesengura bimutera kwibeshya, kandi ahubwo urebye ibikorwa bigize icyaha bihura n'ingingo ya 614 agace ka mbere n'aka gatatu. Buvuga ko agace ka mbere k'iyi ngingo kavuga ko umuntu wese wandika inyandiko ivuga ibintu uko bitari, aka gatatu kakavuga ko ukoresha abizi inyandiko itavugisha ukuri cyangwa yahinduwe ahanishwa igifungo kirenze imyaka itanu kugeza ku myaka irindwi n'ihazabu y'amafaranga y'u Rwanda ibihumbi 500.000 kugeza kuri 2.000.000 frws. Buvuga ko busanga iyi ngingo ariyo yari gukoreshwa nubwo bwari bwashingiye ku ngingo ya 202 na 204 y'itegeko rihana ryariho igihe icyaha cyakorwaga. Buvuga ko nubwo bwatanze ikirego itegeko rishya rigahita risohoka bitari kubuza umucamanza gushingira ku itegeko nyaryo kuko umucamanza aregerwa ibikorwa bigize icyaha ataregerwa inyito y'icyaha nkuko n'Urukiko rw'Ikirenga rwabyemeje mu rubanza RPA 0158/05/CS rwa BIZIMUNGU Pasteur na bagenzi be rwaciye kuwa 17/02/2006. [3] Urukiko rurasanga mu Rukiko Rwisumbuye rwa Gasabo Brigitte Serianz Rakic yarakurikiranweho icyaha cy'inyandiko mpimbano, akaba yaragikoze ubwo yandikiraga urukiko Rwisumbuye rwa Nyarugenge arusaba ko urubanza RCOM 0267/06/TGI/NYGE rwakwimurirwa ku yindi tariki, ayandika nk'umuyobozi wa Societe "HEMMA" d.o.o. (General Manager) kandi atakiri umuyobozi wayo.
- [6] Urukiko rurasanga mu ibazwa rya Brigitte Serianz Rakic n'ubushinjacyaha kuwa 23/5/2012 yaremeye ko yakoze amakosa yo kwandikira urukiko Rwisumbuye rwa Nyarugenge, agasinya nk'Umuyobozi Mukuru (General Manager) wa HEMMA, ariko iyo baruwa akaba yarayanditse atakiri umuyobozi mukuru wa HEMMA, ngo bitewe nuko yari afite ububasha bwihariye bwo gukurikirana urubanza rwari hagati ya Murenzi na HEMMA kubera ko urwo rubanza rwari rwaratangiye akiri umuyobozi mukuru.

- [7] Ingingo ya 202 y'itegeko-teka n°21/77 ryo wa 18 kanama 1977 rishyiraho igitabo cy'amategeko ahana ibyaha mu Rwanda yakurikizwaga igihe icyaha cyakorwaga iteganya ko "Azahanishwa igifungo kuva ku myaka itanu kugeza kw'icumi n'ihazabu y'amafaranga atarenga ibihumbi ijana, uzaba yahimbye inyandiko, ari ugushyiraho sinyatire itariyo, ari mu konona inyandiko cyangwa amasinye, ari mu isimbuza ry'abantu abandi, ari mu mihimbire

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y'amasezerano, y'imiterere y'ingingo, y'igitegetswe gukorwa mu masezerano cyangwa icyarangije cyangwa ari ukwongera ibindi mu byo abantu barangije kwemeranya, ari ukwongeramo cyangwa guhindura ingingo z'amasezerano, imvugo cyangwa ibikorwa, ibyo byari bigamije gusuzuma no guhamya.

- [8] Urukiko rurasanga ibikorwa Brigitte Serianz Rakic yakoze biteganywa n'iyi ngingo kuko yiyise ko ahagarariye sosiyete HEMMA kandi atakiri umuyobozi wayo (supposition de personne), ibi akaba yarabiyemereye ubwo yabazwaga mu bushinjacyaha.
- [9] Ingingo ya 609 y'itegeko ngenga no 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cyamategeko ahana ivuga ko umuntu wese uhimba cyangwa uhindura mu buryo ubwo aribwo bwose inyandiko, ashyiraho umukono cyangwa igikumwe bitaribyo, yonona inyandiko cyangwa imikono, asimbuza abantu abandi, ahimba amasezerano, imiterere n'ingingo zayo, igitegetswe gukorwa cyangwa icyarangije kwemeranywa, ahanishwa igifungo kirenze imyaka itanu kugeza ku myaka irindwi, n'ihazabu y'amafaranga y'u Rwanda kuva ku bihumbi magana atatu kugeza kuri miriyoni eshatu. Urukiko rurebye imiterere y'iyi ngingo ya 609 yakoreshejwe mu rubanza mu gusesengura ibikorwa bigize icyaha, n'ingingo ya 202 y'itegeko teka no 21/77 yavuzwe haruguru, urukiko rurasanga nta kuvuguruzanya kuzirimo ku byerekeye ibikorwa bigize icyaha Brigitte Serianz Rakic akurikiranweho kuko yiyise General Manager, ibi bikaba bihura no gukora icyaha cy'inyandiko mpimbano usimbuza abantu abandi mu gifaransa byitwa 'supposition de personne' kuko kuri iyo nyandiko yiyanditseho nka General Manager kandi atari we. Ibyo ubushinjacyaha buvugaga rero ko hari gukoreshwa ingingo ya 614 y'iri tegeko ngenga, urukiko rurasanga ari nta shingiro bifite kuko ataregwa gukoresha inyandiko mpimbano, icyo aregwa akaba aruko yiyitiriyeye icyo ataricyo mu ibaruwa yandikiye Urukiko Rwisumbuye rwa Nyarugenge.
- [10] Urukiko rurasanga mu guhana iki cyaha hagomba gukurikizwa ingingo ya 609 y'iri tegeko ngenga ryavuzwe kuko ariryo riteganywa igihano cyoroheje, ibyo urukiko rukabishingira ku ngingo ya 8 n'ya 765 y'iri tegeko ngenga, Brigitte Serianz Rakic akaba yagombaga guhanishwa igifungo cy'imyaka itandatu.
- [11] Ingingo ya 76 y'itegeko ngenga no 01/2012/OL ryo kuwa 052/5/2012 rishyiraho igitabo cy'amategeko ahana ivuga ko umucamanza ubwe aha agaciro impamvu nyoroshyacyaha, ari izakibanjiririje, ari izagiherekeje cyangwa izagikurikiye. Iyo ngingo kandi iteganya ko kwemeza impamvu zoroshya uburemere bw'icyaha bigomba gusobanurwa. Urukiko

rushingiye ku biteganywa n'iyi ngingo, rurasanga uburyo Brigitte yakozemo iki cyaha uburemere bwacyo bwakoroshywa kuko yari yarahawe n'uri General Manager wa HEMMA Rakic Tomislav uburenganzira bwo kuyihagarira mu rukiko I Kigali mu rubanza iyi sosiyete ifitanye na Jean Murenzi kugeza rurangiye, ubu burenganzira akaba yarabuhawe kuwa 19/2/2006, gusa akaba atakigirwaho umwere kuko atariwe wari General Manager ahubwo yari intumwa ye. Kubera izi mpamvu rero, urukiko rushingiye ku ngingo ya 77 agaka ka 4 ndetse n'ingingo ya 78 agaka ka 3o iki gihano kikaba kigomba kugabanywa kigashyirwa ku mwaka umwe, ariko hashingiwe ku ngingo ya 85 y'itegeko ngenga no 01/2012/OL ryavuzwe, uyu mwaka nawo ukaba ugomba gusubikwa mu gihe cy'umwaka kuko ushinjwa aribwo bwa mbere akoze icyaha.

- kumenya niba urubanza rwajuririwe rudasobanuye

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[12] Ubushinjacyaha buvuga ko bwemeza ko urukiko ruca urubanza nta mpamvu rwashingiyeho kuko iyo umucamanza aciye urubanza ashingiye ku itegeko ritariyoye n'ibisobanura atanga ntaho biba bihuriye n'ikibazo agomba gukemura, n'impamvu yatanga zikaba zidasobanura ibyo yakagombye gusobanura, bityo mu gufata ibyemezo bikaba bisobanura ko nta mpamvu yatanze.

[13] Urukiko rurasanga ingingo ya 609 y'itegeko ngenga no 01/2012/OL ryavuzwe umucamanza yakoresheje asobanura icyaha cy'inyandiko mpimbano ariyo yari ikwiriye mu gusobanura inyito y'iki cyaha. Kuba umucamanza yaravuze ko inyandiko barega Brigitte Serianz Rakic atari mpimbano kuko ntacyo yakuyeho cyangwa ngo yongereho kitari cyo, ntibisobanura ko urubanza rudasobanuye, bityo ibyo ubushinjacyaha buvuga nta shingiro bifite.

- kumenya niba hari ukuvuguruzanya mu isesengura ry'urubanza n'icyemezo cyafashwe

[14] Ubushinjacyaha busobanura ko mu iburanisha bwo n'abaregera indishyi babwiye umucamanza ko inyandiko mpimbano barega la Brigitte ari faux intellectuel kugira ngo atagwa mu mutego wo gukoresha ingingo ya 609 y'itegeko ngenga rihana rishya kuko iyo ngingo yo ihana faux matériel, mu gusesengura umucamanza akaba yarifashishije inyandiko z'abahanga agasobanura ko 'faux intellectuel est la rédaction d'un document dont les énonciations sont contraire à la vérité, qui affirme des faits qui sont inexistantes, le faux intellectuel se caractérise par les mensonges ou des omissions'. Akarangiza avuga ko ibyo Brigitte yanditse ibiyirimo n'ibyo yasabaga ari nta binyoma birimo. Bavuga ko bashingiye ku bisobanuro bisanzwe, ibinyoma ari ibintu bitavugaga ukuri, Brigitte akaba yaranditse avuga ko ari General Manager, icyo cyonyine akaba ari cyo cyagombaga gusuzumwa urukiko rwasanga koko yari General Manager akaba atsinze.

[15] Urukiko rurasanga ari nta kuvuguruzanya mu isesengura ry'urubanza n'icyemezo cyafashwe kuko mu isesengura ry'urubanza ntaho umucamanza yigeze yemeza ko ibikorwa Brigitte Serianz Rakic yakoze bigize icyaha cy'inyandiko mpimbano (faux intellectuel).

- kumenya niba hari ukuvuguruzanya hagati yo gushidikanya no kubura ibimenyetso.
- [16] Ubushinjacyaha busobanura ko mu cyemezo umucamanza yafashe yagishingiye ku mpamvu yo gushidikanya arangije yanzura avuga nta bimenyetso kandi ibyo ari ibintu bibiri bitandukanye. Buvuga ko iyo umucamanza avuga ko hariho gushidikanya yagombye kuba yarerekanye ingingo zishidikanywaho izo arizo cyangwa se akerekana ko nta bimenyetso bihari ariko ntabibumbire mu kebo kamwe.
- [17] Ingingo ya 165 y'itegeko ngenga nO 01/2012/OL ryo kuwa 02/5/2012 rishyiraho igitabo cy'amategeko ahana igira iti : « Gushidikanya birengera ushinjwa. Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze ». Hakurikijwe ibyo iyi ngingo ivuga nta tandukanirizo riri hagati yo gushidikanya no kubura ibimenyetso kuko ubushinjacyaha bugomba gutanga ibimenyetso yemeza umucamanza nta gushidikanya ko umuntu yakoze icyaha. Niba ubushinjacyaha butanze ikimenyetso ariko ntikibashe kwemeza umucamanza ko ushinjwa yakoze icyaha, agashidikanya cyangwa se akabona kidashinja, ingaruka ni imwe nuko ushinjwa agirwa umwere. Urukiko rushingiye kuri iyi ngingo ndetse no

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ku bisobanura bitanzwe, rurasanga ari nta kuvuguruzanya hagari yo gushidikanya no kubura ibimenyetso, bityo iby'ubushinjacyaha buvuga bikaba ari nta shingiro bifite. III. ICYEMEZO CY'URUKIKO

- [18] Rwemeje ko ubujurire bwubushinjacyaha bufite ishingiro.
- [19] Rwemeje ko icyaha cy'inyandiko mpimbano gihama Brigitte Serianz Rakic
- [20] Rwemeje ko imikirize y'urubanza RP 0301/12/TGI/GSBO rwajuririwe ihindutse.
- [21] Ruhanishije Brigitte Serianz Rakic igifungo cy'umwaka umwe gisubitse mu gihe cy'umwaka umwe.
- [22] Rutegetse ko amagarama y'urubanza ahererezwa kuri Brigitte Serianz Rakic.

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