

RWANDA / JUDGMENT

Re. GABIRO

RS/RECUS/RP 00002/2019/SC

COURT

Supreme Court

DECIDED

15 October 2019

CASE / FILE NUMBER

RS/RECUS/RP 00002/2019/SC

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Re. GABIRO

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- Section: Decisions (Judgements)
- Date: 2019-10-15
- Case/document no.: RS/RECUS/RP 00002/2019/SC
- Collection: Supreme Court

Text

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Re. GABIRO [Rwanda URUKIKO RW'IKIRENGA – RS/RECUS/RP 00002/2019/SC (Rugege, P.J., Nyirinkwaya na Rukundakuvuga, J.) 15 Ukwakira 2019] Amategeko agenga imiburanishirize y'imanza zasabiwe gusubirishamurubanza ku mpamvu z'akarengane – Kwihana umucamanza – Ibyemezo bifatwa mu rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane mbere y'iyandikwa ry'ikirego bigomba gufatwa nk'irengayobora, bityo abafashe ibyemezo by'ubuyobozi ku karengane kavugwa n'umuburanyi ku rubanza rwabaye ndakuka, mbere y'uko ikibazo cye gishyikirizwa Urukiko kikandikwa nk'ikirego ntibibabuza kugira uruhare mu ica ry'imanza z'akarengane. Incamake y'ikibazo: Ku wa 07/10/2019 mu iburanisha ry'urubanza RS/INJUST/RP 0006/2017/CS rwo gusubirishamo ku mpamvu z'akarengane urubanza RPA 0209/15/HC/RWG, uwitwa Gabiro David yihannye umucamanza Cyanzayire Aloysie, umwe mu bacamanza 5 bagize inteko iburanisha, avuga ko yafashe icyemezo muri uru rubanza asobanura ko impamvu amwihana ari ukubera ko yafashe umwanzuro ku kibazo kiburanishwa kuko ubwo yari Umuvunyi Mukuru yandikiye Perezida w'Urukiko rw'Ikirenga, amusaba ko urubanza RPA 0209/15/HC/RWG rwasubirwamo ku mpamvu z'akarengane, akaba asanga ubu nyuma yo kuba umucamanza atavuguruza umurongo yafashe kuri icyo kibazo. Incamake y'icyemezo: 1. Ibyemezo bifatwa mu

rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane mbere y'iyandikwa ry'ikirego bigomba gufatwa nk'irengayobora, bityo abafashe ibyemezo by'ubuyobozi ku karengane kavugwa n'umuburanyi ku rubanza rwabaye ndakuka, mbere y'uko ikibazo cye gishyikirizwa Urukiko kikandikwa nk'ikirego ntibibabuza kugira uruhare mu ica ry'imanza z'akarengane.

2. Kubera umwihariko w'Urukiko rw'Ikirenga, nk'Urukiko rukuriye izindi nkiko zigize Urwego rw'Ubucamanza, bityo rukaba n'umurinzi w'ikirenga w'uburenganzira n'ubwisanzure bwa muntu, ntawe ukwiye kugira impungenge ko umucamanza umwe mu bacamanza 5 bagize inteko ariwe watuma urubanza rucibwa mu buryo bubogamye; cyane ko mu rwego rwo kubahiriza inshingano zarwo, Urukiko rw'Ikirenga rwiyeje guca imanza mu nteko yaguye itaboneka mu zindi nkiko, kugira ngo ibyemezo rufata bye kwitirirwa uwo ariwe wese mu bacamanza barugize, ahubwo bibe ibyemezo by'Urukiko rw'Ikirenga muri rusange Ubwihane ntibwakiriwe. Amategeko yashingiweho: Itegeko N° 22/2018 y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ingingo ya 103,5o. Nta manza zifashishijwe.

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Urubanza I. IMITERERE Y'URUBANZA [1] Mu rubanza RS/INJUST/RP 0006/2017/CS rwo gusubirishamo ku mpamvu z'akarengane urubanza RPA 0209/15/HC/RWG, uwitwa Gabiro David yihanye umucamanza Cyanzayire Aloysie, umwe mu bacamanza 5 bagize inteko iburanisha, avuga ko yafashe icyemezo muri uru rubanza. [2] Ubwihane bwakorewe mu iburanisha ryo ku wa 07/10/2019, iburanisha rirahagarara kugirango uwatanze icyo kirego yandike ubwihane bwe hashingiwe ku biteganywa n'ingingo ya 106 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. [3] Mu mwanzuro yagejeje kuri uru rukiko ku wa 07/10/2019, Gabiro David asobanura ko impamvu yihana umucamanza Cyanzayire Aloysie ari ukubera ko yafashe umwanzuro ku kibazo kiburanishwa kuko ubwo yari Umuvunyi Mukuru yandikiye Perezida w'Urukiko rw'Ikirenga, amugira inama ko urubanza RPA 0209/15/HC/RWG rwasubirwamo ku mpamvu z'akarengane, akaba asanga ubu yabaye umucamanza atavuguruza umurongo yafashe kuri icyo kibazo. [4] Ikibazo cyo kumenya niba ubwihane bwakozwe na Gabiro David bwakwakirwa cyasuzumiwe mu Nama y'Abacamanza ku wa 09/10/2019. UKO URUKIKO RUBIBONA [5] Nk'uko biteganywa n'ingingo ya 103,5o y'Itegeko N° 22/2018 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, "Umucamanza bashobora kumwihana iyo yigeze kugira icyo avuga cyangwa agatanga inama kuri urwo rubanza mbere y'uko ruburanishwa". [6] icyakora, Urukiko rw'Ikirenga rusanga iyi ngingo itagamije guheza abafashe ibyemezo by'ubuyobozi ku karengane kavugwa n'umuburanyi ku rubanza rwabaye ndakuka, mbere y'uko ikibazo cye gishyikirizwa Urukiko kikandikwa nk'ikirego, kubera impamvu zikurikira:

- a. Inzira yo gusubirishamo urubanza ku mpamvu z'akarengane ni inzira y'ubujurire yihariye yahaye abayobozi banyuranye barimo Umuvunyi Mukuru ndetse n'abandi basanzwe bafite umurimo w'ubucamanza uburenganzira bwo kubanza gusuzuma niba hashobora kuba

harabaye akarengane mu rubanza, mbere y'uko ikibazo cye gishyikirizwa Urukiko kikandikwa nk'ikirego. Ni muri urwo rwego Perezida w'Urukiko rw'Ikirenga afite uburenganzira bwo kwemeza ko urubanza rusubirwamo ku mpamvu z'akarengane, kandi akaba adashobora kubuzwa kuburanisha bene izi manza kuko nk'umuyobozi w'Urwego rw'Ubucamanza adashobora guhezwa kugira uruhare mu manza zishinzwe by'umwihariko gukosora amakosa yakozwe n'inkiko zo hasi no gutanga umurongo zigenderaho ku bibazo bisa n'ibyo rwakemuye.

- b. Uretse n'ibyo kandi, n'abayobozi b'inkiko zose ziburanisha mu bujurire, bahawe ububasha bwo gusuzuma ko urubanza rwasubirishwamo ku mpamvu z'akarengane

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mbere y'uko bashyikiriza Perezida w'Urukiko rw'Ikirenga raporo ngo agene Urukiko ruzaruburanisha, bikaba bitumvikana ko abo bose babuzwa guca imanza z'akarengane kandi muri zo ariho bahamagariwe by'umwihariko nk'abayobozi kwereka inkiko zo hasi imicire y'imanza iboneye, bityo zikaboneraho kwirinda amakosa.

- c. Inama itangwa n'Umuvunyi Mukuru n'ugusaba ko urubanza rwakongera gusuzumwa kugira ngo urukiko rufate icyemezo ko koko habaye akarengane cyangwa ko nta karengane. Urukiko ntirugomba gukurikiza ibitekerezo byatanze n'Umuvunyi. [7] Urukiko rukaba rusanga icyifuzo cy'umushingamategeko atari ukubuza uwiyeze kuba Umuvunyi Mukuru cyangwa abo bayobozi b'inkiko bese kugira uruhare mu ica ry'imanza z'akarengane. Rusanga ahubwo ibyemezo bifatwa mu rwego rwo gusubirishamo urubanza mbere y'iyandikwa ry'ikirego bigomba gufatwa nk'irengayobora ku nama zivugwa mu gace ka gatanu k'ingingo ya 103 y'Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu. [8] Urukiko rurasanga kandi, kubera umwihariko w'Urukiko rw'Ikirenga, nk'Urukiko rukuriye izindi nkiko zigize Urwego rw'Ubucamanza, bityo rukaba n'umurinzi w'ikirenga w'uburenganzira n'ubwisanzure bwa muntu, ntawe ukwiye kugira impungenge ko umucamanza umwe mu bacamanza 5 bagize inteko ariwe watuma urubanza rucibwa mu buryo bubogamye; cyane ko mu rwego rwo kubahiriza inshingano zarwo, Urukiko rw'Ikirenga rwiyeze guca imanza mu nteko yaguye itaboneka mu zindi nkiko, kugira ngo ibyemezo rufata by'ukwirirwa uwo ariwe wese mu bacamanza barugize, ahubwo bibe ibyemezo by'Urukiko rw'Ikirenga muri rusange. [9] Urukiko rurasanga rero, hashingiwe ku bisobanuro bimaze kuvugwa, ubwihane bwakozwe na Gabiro David budakwiye kwakirwa kuko ibyo ashingiraho yihana umucamanza nta shingiro bifite. II. ICYEMEZO CY'URUKIKO [10] Rwemeje ko ubwihane bwakozwe na Gabiro David butakiriwe.

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Prepared on 14 October 2026 · Esheria