

RWANDA / JUDGMENT

GAHIGA v. GAHIGA

RCOMA 00005/2024/CA

COURT

Court of Appeal

DECIDED

22 November 2024

CASE / FILE NUMBER

RCOMA 00005/2024/CA

Source: amategeko.gov.rw · Research copy typeset by Esheria. Not court-issued or certified.

GAHIGA v. GAHIGA

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2024-11-22
- Case/document no.: RCOMA 00005/2024/CA
- Collection: Court of Appeal

Text

Page 1

GAHIGA v. GAHIGA [Rwanda URUKIKO RW'UBUJURIRE – RCOMA 00005/2024/CA (Kamere, P.J.) 22 Ugushyingo 2024] Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Ibimenyetso – Kuba umuburanyi hari ibyo asaba Urukiko ubwabyo ntibihagije kugira ngo abitsindire, ahubwo agomba no kubigaragariza ibimenyetso. Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko rw'ubucuruzi ruburanishiriza imanza z'ubucuruzi n'iz'imari ku rwego rwa mbere, ku cyicaro cyarwo I GOMA (RDC), Ange Gahiga arega mukuru we Gahiga Karitesa Ngezi Marie Therese ko yanze kumwishyurira amashuri kandi papa wabo yari amaze gupfa. Urwo Rukiko rwaciye urubanza rutegeka Gahiga Karitesa Ngezi Marie Therese kwishyura Gahiga Ange amafaranga angana na 1.030.053 \$ ngo kuko atamwishyuriye amashuri mu gihe umubyeyi wabo (Papa) yari amaze gupfa. Gahiga Karitesa yajuririye urwo rubanza mu Rukiko rw'Ubujurire rwa Goma, ruca urubanza rwemeza ko urubanza rujuririrwa rukuweho mu ngingo zarwo zose. Ange Gahiga atanga ikirego mu cour d'Appel de Goma cyo gusubirishamo urubanza ingingo nshya, urwo Rukiko ntirwacyakira kubera ko kinyuranyije n'Itegeko Nshinga rya RDC. Gahiga Karitesa Ngezi Marie Therese yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi asaba ko imanza zaciwe n'Urukiko rw'Ubujurire rwa Goma zarangirizwa mu Rwanda, atanga ikirego arega Ange Gahiga,

mu iburanisha izo manza zombi zihurizwa hamwe, urwo Rukiko rwemeza ko ikirego cyatanzwe na Ngezi Karitesa Marie Therese gifite ishingiro, imanza zaciwe na Cour d'Appel de Goma zemerewe kurangizwa mu Rwanda. Ange Gahiga yajuririye mu Rukiko rw'Ubujurire avuga ko imanza Urukiko Rukuru rw'Ubucuruzi rwategetse ko zirangirizwa mu Rwanda zitari zaba itegeko kuko zakuweho n'urundi rubanza RCEA 082. Akavuga ko rero zitujuje ibisabwa kugirango zirangirizwe mu Rwanda. Gahiga Karitesa Ngezi Marie Therese ku rundi ruhande avuga ko ubujurire bwa Gahiga Ange budakwiye guhabwa ishingiro kuko uretse gusa kuba urega avuga ko imanza RCEA 002 na RCEA 006/002 zakuweho n'urubanza RCEA 082, atabigaragariza ikimenyetso Urukiko rwashingiraho ruha ishingiro ubujurire bwe. Incamake y'icyemezo: Kuba umuburanyi hari ibyo asaba Urukiko ubwabyo ntibihagije kugira ngo abitsindire, ahubwo agomba no kubigaragariza ibimenyetso. Ubujurire nta shingiro bufite. Amagaramaahwanye n'ibyakozwe mu rubanza. Amategeko yashingiweho: Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso, ingingo ya 4

Page 2

Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12 Nta manza zifashishijwe

Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 29/06/2016, Gahiga Ange yaregeye urukiko rw'Ubucuruzi aho ruburanishiriza imanza z'ubucuruzi n'iz'imari ku rwego rwa mbere, ku cyicarwo I GOMA (RDC). Ange Gahiga yaregaga Ngenzi Gahiga Marie-Therese na HOLIDAY CONGO SARL yahoze yitwa HOLIDAY CONGO SPRL ifite icyicarwo cyayo muri Boulevard Kanyamuhanga, i GOMA, haregerwa ibijyanye no kuba ataramwishyuriye amashuri kandi papa wabo yari amaze gupfa. [2] Mu rubanza RCE 240/2016 rwaburanishijwe Gahiga Karitesa Ngezi Marie Therese adahari, urukiko rwamutegetse kwishyura murumuna we Ange Gahiga 1.030.053 \$ ngo kuko atamwishyuriye amashuri mu gihe umubyeyi wabo (Papa) yari amaze gupfa. [3] Gahiga Karitesa Ngezi Marie Therese yajuririye Urukiko rw'Ubujurire rwa Goma (COUR D'APPEL DU NORD-KIVU/GOMA), ubujurire bwe buhabwa numero RCEA002, rucibwa ku wa 01/03/2021 rwemeza ko urubanza RCE 240/2016 ruvanweho mu ngingo zarwo zose. [4] Ange Gahiga yatanze ikirego cyo gusubirishamo urubanza RCEA 002 muri COUR D'APPEL DU NORD-KIVU/GOMA (opposition), urubanza ruhabwa numero RCEA 006/002/OPP, Urubanza rucibwa kuwa 11/05/2023, Urukiko rwemeza ko icyo kirego cyatanzwe na Ange Gahiga kitakiriwe kuko kinyuranye n'Itegeko Nshinga rya RDC. [5] Ngezi Marie-Theresa Karitesa Gahiga yatanze ikirego mu Rukiko Rukuru rw'ubucuruzi asaba ko rwakwemeza ko urubanza RCEA 002 rwaciwe Kuwa 01/03/2021 na "COUR D'APPEL DU NORD-KIVU/GOMA rwarangirizwa mu Rwanda (exequatur)", ikirego cye cyandikwa kuri RCOM 00020/2023/HCC. Ngezi Karitesa Gahiga Marie Therese nawe yatanze ikirego muri urwo Rukiko arega Ange Gahiga, ikirego cye gihabwa RCOM 00027/2023/HCC, asaba ko n'urubanza RCEA 006/002 OPP rwaciwe ku wa 11/05/2023 n'Urukiko rw'Ubujurire rwa Nord Kivu muri RDC (COUR D'APPEL DU NORD-KIVU/GOMA) narwo rwarangirizwa mu Rwanda. [6] Mu iburanisha ryo kuwa 15/04/2024 Urukiko Rukuru rw'Ubucuruzi rwasanze izi manza zombi (RCOM 00020/2023/HCC na RCOM 00027/2023/HCC) zifite aho zihuriye kuko ibiziburanwamo bifitanye

isano n'ababuranyi bakaba ari bamwe, maze rwemeza ko zihuzwa zikaburanishirizwa hamwe mu iburanisha ryashyizwe kuwa 29/04/2024. [7] Mu rubanza RCOM 00020/2023/HCC & RCOM 00027/2023/HCC rwaciwe kuwa 30/5/2024, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ikirego cyatanzwe na Ngezi MarieTherese Karitesa Gahiga cyakiriwe kandi ko gifite ishingiro, rwemeza ko imanza RCEA 002 na RCEA 006/002 zaburanywe hagati ya Ngezi Marie-Therese Karitesa Gahiga na Ange Gahiga muri

Page 3

Repubulika Iharanira Demokarasi ya Congo (COUR D'APPEL DU NORDKIVU/GOMA) zemerewe kurangirizwa mu gihugu cy'u Rwanda, kandi rutegeka ko amagarama yatanzwe aguma mu Isanduku ya Leta. [8] Gahiga Ange yajuririye urwo rubanza muri uru Rukiko rw'Ubujurire, ubujurire bwandikwa kuri RCOMA 00005/2024/CA, avuga ko n'ubwo Urukiko Rukuru rw'Ubucuruzi rwemeje ko imanza RCEA 002 na RCEA 006/002 zarangirizwa mu Rwanda ngo zitari zaba itegeko kuko ngo zakuweho n'urubanza RCEA 082 ; bityo ko ngo uko kuba zitari zaba itegeko bituma zituzuzwa ibisabwa n'itegeko kugira ngo exequatur yazo yemezwe. [9] Ngezi Marie-Therese Karitesa Gahiga yasubije avuga ko ubujurire bwa Gahiga Ange nta shingiro bufite kuko imanza RCEA 002 na RCEA 006/002 Urukiko rw'ubucuruzi rwemeje ko zirangirizwa mu Rwanda zarangije kuba itegeko kuko zitajuririwe, ko kandi kuba Gahiga avuga ko zakuweho n'urubanza RCEA 082 nabyo nta shingiro byahabwa kuko atagaragariza Urukiko urwo rubanza. Asaba Urukiko rw'Ubujurire kwemeza ko nta gihindutse ku mikirize y'urubanza rujurirwa, ko imanza RCEA 002 na RCEA 006/002 zemerewe kurangirizwa mu Rwanda kuko zujuje ibisabwa. [10] Hashingiwe kuri izo mpaka hagati y'impande zombi, no ku kuba mu iburanisha ryo ku wa 20/11/2024 ababuranira Ngezi Marie-Therese Karitesa Gahiga baravuze ko baretse gukurikirana ibirebana n'indishyi bari barasabye mu myanzuro yabo yanditse, Urukiko rurasuzuma gusa ikibazo cyo kumenya niba mu rubanza rujurirwa Urukiko Rukuru rw'Ubucuruzi rwaremeje ko imanza RCEA 002 na RCEA 006/002 zirangirizwa mu Rwanda rwirengagije ikimenyetso kigaragaza ko zakuweho. II. ISESENGURA RY'IKIBAZO KIGIZE URU RUBANZA Kumenya niba mu rubanza rujurirwa Urukiko Rukuru rw'Ubucuruzi rwaremeje ko imanza RCEA 002 na RCEA 006/002 zirangirizwa mu Rwanda rwirengagije ikimenyetso kigaragaza ko zakuweho [11] Mu myanzuro ye itanga ubu bujurire, Me Kiloha Olivier uburanira Ange Gahiga avuga ko n'ubwo Urukiko Rukuru rw'Ubucuruzi rwemeje ko imanza RCEA 002 na RCEA 006/002 zarangirizwa mu Rwanda ngo zitari zaba itegeko kuko ngo zakuweho n'urubanza RCEA 082 ; bityo ko ngo uko kuba zitari zaba itegeko bituma zituzuzwa ibisabwa n'itegeko kugira ngo exequatur yazo yemezwe. Asaba Urukiko guhindura imikirize y'urubanza rwajuririwe rukemeza ko zitarangirizwa mu Rwanda. [12] Me Gabiro David na Me Kwizera Bernard baburanira Ngezi Marie-Therese Karitesa Gahiga biregura bavuga ko ubujurire bwa Gahiga Ange nta shingiro bufite kuko uretse gusa kuba avuga ko imanza RCEA 002 na RCEA 006/002 zakuweho n'urubanza RCEA 082 atagaragariza Urukiko urwo rubanza nk'ikimenyetso rwashingiraho ruha ishingiro ubujurire bwe. Asaba Urukiko rw'Ubujurire kwemeza ko nta gihindutse ku mikirize y'urubanza rujurirwa, ko imanza RCEA 002 na RCEA 006/002 zemerewe kurangirizwa mu Rwanda kuko zujuje ibisabwa. UKO URUKIKO RUBIBONA

Page 4

[13] Ingingo ya 4, igika cya (1) y'Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso iteganya ko : “Urega cyangwa utanze ikibazo agaragaza ikimenyetso cy'ibyo aregera cyangwa asaba”. Ingingo ya 12, igika cya mbere y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu iteganya ibikurikira: “Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda”. [14] Izi ngingo z'itegeko zimaze kwibutswa haruguru, iyo zisesenguriwe hamwe zigaragaza ihame rimenyerewe mu manza nyinshi ry'uko bidahagije ko umuburanyi agira ibyo asaba Urukiko kugira ngo abitsindire, ko ahubwo agomba no kubigaragariza ibimenyetso, yaramuka atabitangiye ibimenyetso Urukiko rukemeza ko adatsindiye ibyo yaregeye, uwarezwe akaba amutsinze gutyo. [15] Dosiye igaragaza ko mu rubanza rwajuririwe rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, urwo Rukiko rwasesenguye ibisabwa kugira ngo urubanza rwaciriwe mu mahanga rwemererwe kurangirizwa mu Rwanda, maze rusanga imanza RCEA 002 na RCEA 006/002 zemerewe kurangirizwa mu Rwanda kuko zujuje ibisabwa. [16] Urukiko rurasanga Ange Gahiga yarajuririye uru Rukiko rw'Ubujurire arusaba guhindura icyemezo cyavuzwe haruguru cy'Urukiko Rukuru rw'Ubucuruzi kuko mu byo itegeko risaba kugira ngo urubanza rwaciriwe mu mahanga rwemererwe kurangirizwa mu Rwanda hagomba kubamo no kuba urwo rubanza rwabaye itegeko, ngo imanza RCEA 002 na RCEA 006/002 zo zikaba zarabyemerewe kandi zitarabaye itegeko, ngo kuko zavanyweho n'urubanza RCEA 082. [17] Hashingiwe ku biteganywa n'ingingo z'amategeko zirebana n'itangwa ry'ibimenyetso n'ingaruka zo kutabitanga nk'uko zimaze kwibutswa haruguru, uru Rukiko rurasanga uretse kuvuga gusa ko imanza zemerewe kurangirizwa mu Rwanda zavanyweho n'urubanza RCEA 082, nta na hamwe Ange Gahiga yigeze atanga ikimenyetso cy'urwo rubanza RCEA 082 kugira ngo Urukiko rubone aho ruhera rusuzuma uburyo rwaba rwaravanyeho izo manza. Bityo ubu bujurire bwa Ange Gahiga bukaba nta shingiro bwahabwa kuko atabashije kugaragaza ikimenyetso cy'ibyo aregera. Imikirize y'urubanza rwajuririwe ikaba ntacyo igomba guhindukaho. III. ICYEMEZO CY'URUKIKO [18] Rwemeje ko ubujurire bwa Gahiga Ange nta shingiro bufite. [19] Rwemeje ko nta gihindutse ku mikirize y'urubanza RCOM 00020/2023/HCC & RCOM 00027/2023/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 30/05/2024. [20] Ruvuze ko amafaranga y'amagarama y'urubanza yatanzwe na Ange Gahiga ajurira ahwanye n'ibyarukozwemo.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.amategeko.gov.rw/view/doc/8626/8971>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/gahiga-ange-v-gahiga-karitesa-ngezi-marie-therese-burdenofproof-court-of-appeal-2024>

Prepared on 14 October 2026 · Esheria