

RWANDA / JUDGMENT

UBUSHINJACYAHA v HABONIMANA

RPA 0484/12/HC/NYA

COURT

High Court

DECIDED

28 August 2013

CASE / FILE NUMBER

RPA 0484/12/HC/NYA

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UBUSHINJACYAHA v HABONIMANA

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Text

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UBUSHINJACYAHA v. HABONIMANA [Rwanda URUKIKO RUKURU – RPA 0484/12/HC/NYA (Kamanzi, P.J.) 28 Kamena 2013] Amategeko yerekeye ibimenyetso –Kubura ibimenyetso bihagije bishinja – Gushidikanya birengera ushinjwa.– Kutagaragariza urukiko ko amagambo yavuzwe n’ushinjwa yari yerekeye imibiri y’Abatutsi bazize genocide yagaragaraga mu kiganiro cyacaga kuri televiziyo ndetse ntibugaragaze CD y’icyo kiganiro bituma habaho gushidikanya kandi kurengera ushinjwa. Incamake y’ikibazo: Habonimana Faustin yarezwe n’Ubushinjacyaha mu Rukiko Rwisumbuye rwa Huye ashinjwa ingengabitekerezo ya jenocide. Rwamuhamije icyaha rumuhanisha igifungo cy’imyaka 15 ndetse n’ihazabu ingana na 400 000Frw. Yajuririye iki cyemezo avuga ko amagambo yavuze ari uko abari mu kabari babyinaga bari muri business ko hari umuntu wari uhanyuze yibaza niba abantu bahongaho icyunamo kitabareba ngo kuko barimo kubyina ngo amubwira ko bariya ari business barimo ko kandi television itarimo ibiganiro ko bari bashyizemo CD ko yahanyuze nka saa sita avuye guhinga yinjiramo nk’ushinzwe umutekano ajya kubaza impamvu babyina ateguka ko bazimya television. Ubushinjacyaha bwo bwavuze ko ariya magambo yayavugiye mu kabari. Ubushinjacyaha bwo buvuga ko ariya magambo yayavugiye mu kabari kandi

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iyi aza kuba afite imyumvire mizima atari kuba yari mukabari ariya masaha. Incamake y'icyemezo: Mu guca urubanza urukiko rukurikiza ibimenyetso bihuje na kamere y'ikiburanwa. Kuba ubushinjacyaha butarabashije kugaragaza ko ari imibiri y'Abatutsi yarimo igaragara kuri tereviziyo ushinjwa yise business no kuba kandi ukwemera k'ushinjwa ko yavuze ariya magambo atari icyaha ubwacyo ahubwo icyaha kikaba ari ukureba imibiri y'abazize jenocide nk'ikiganiro cyarimo gihita kuri tereviziyo akabyita business bituma habaho gushidikanya bitewe n'uko Ubushinjacyaha butabashije kugaragaza CD y'ikiganiro cyariho gicishwa kuri television hagati ya saa sita z'anywa na saa munani z'anywa kugirango harebwe niba koko ikiganiro cyari kuri televiziyo aricyo kiswe ngo bari muri business zabo kugirango byitwe ingebitekerezo ya jenocide. Ubujurire bufite ishingiro. Ushinjinjwa ntahamwa n'icyaha Urubanza rwajuririwe rurahindutse mu ngingo zose. Habonimana Faustin agomba guhita afungurwa. Amategeko yashingiweho: Itegeko no.15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 4 na 65. Itegeko no.13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nkuko ryavugururwe kugeza ubu, 44 na 153.

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Itegeko no.18/2008 ryo kuwa 23/07/2008 rihana icyaha cy'ingengabitekerezo ya Genocide, ingingo ya 2. Nta manza zifashishijwe Authors Cited J. M.Scheb, Criminal law and procedure, Urubanza I. IMITERERE Y'URUBANZA [1] HABONIMANA Faustin ashinjwa kuba mu gihe yari arimo asangira n'uwitwa RUDAKUBANA Asman barimo bareba ikiganiro kuri televiziyo y'u Rwanda kijyanye n'icyunamo ngo berekana amasuduku ashyinguwemo

imibiri

y'abazize

Genocide yarihanukiriye akavuga ngo: "Biriya byose birimo bica kuri television abona ari business bibereyemo" Uwari iruhande rwe witwa TUYISENGE Faustin amubaza niba hari abantu abonye bagura cyangwa bagurisha kuri television ngo agira ubwoba arasohoka babimenyesha inzego z'umutekano atangira gukurikiranwa gutyo; [2] Uru rubanza rwaburanishijwe mu rwego rwa mbere n'urukiko rwisumbuye rwa Huye mu rubanza RP 0204/12/TGI/Huye rukizwa kuwa 28/06/2012 ruhanisha HABONIMANA Faustin igifungo cy'imyaka cumi n'itanu (15 ans)n'ihazabu y'amafaranga ibihumbi magana ane(400.000frw) ;

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[3] HABONIMANA Faustin ntiyishimiye iki cyemezo akijuririra uru rukiko urubanza mu rwego rw'ubujurire ruburanishwa mu ruhame kuwa 14/03/2013 HABONIMANA Faustin

yiburanira

naho ubushinjacyaha buhagarariwe na MUGABO Déo Lambert umushinjacyaha ku rwego rw'igihugu; [4] Mu

gusobanura

impamvu

z'ubujurire HABONIMANA Faustin avuga ko ibyo yavuze n'ubu asubiramo ari uko abari mu kabari babyinaga bari muri business ko hari umuntu wari uhanyuze yibaza ntiba abantu bahongaho icyunamo kitabareba ngo kuko barimo kubyina ngo amubwira ko bariya ari business barimo ko kandi television itarimo ibiganiro ko bari bashyizemo CD ko yahanyuze nka saa sita avuye guhinga yinjiramo nkushinzwe umutekano ajya kubaza impamvu babyina ateguka ko bazimya television; [5] Ubushinjacyaha mu kugira icyo buvuga ku mpamvu z'ubujurire buvuga ko ririya jambo yemeye ko yarivugiye mu kabari ko iyo aza kuba afite imyumvire mizima atari kuba ari mu kabari ariya masaha kandi ko nta bimenyetso yatanze by'icyo apfa n'abamushinja kandi ko yemera ko yavuze ibyo bamushinja; II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA [6] Harebwe urubanza rwajuririwe urukiko rwisumbuye rwa Huye mu guhamya HABONIMANA Faustin icyaha cy'ingengabitekerezo ya Genocide rwashingiye ku buhamya bwa TUYISENGE Faustin,

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RUDAKUBANA Asman na BIGIRIMANA Jacques no kuba uyu HABONIMANA Faustin yaba yaremeye ko yavuze ijamba ngo bari muri "business" zabo; [7] Uru rukiko rwajuririwe rubona ubuhamya bwashingiweho mu guhamya icyaha HABONIMANA Faustin budahagije kuko nta kigaragaza ko yavuze aya magambo agamije gupfobya Genocide yakorewe Abatutsi kuko nawe yemera ko yavuze aya magambo ariko akavuga ko nta biganiryo birebana na Genocide byarimo gutambuka kuri television icyo gihe ko ahubwo harimo CD abagore barimo kubyina, uru rukiko rero rukaba rutabifata nkaho kuvuga ngo bari muri business zabo bigaragaza ko yabivuze ashingiye ku kiganiryo cyatambukaga kirebana na Genocide yakorewe abatutsi nkuko biteganywa n'ingingo ya 65 y'itegeko no.15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganywa ko: "Urukiko nirwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa..." [8] Urukiko rusubiye kubyo ubushinjacyaha busabwa n'amategeko y'URwanda nkuko biteganywa n'ingingo ya 44 igika cya mbere n'icya kabiri by'itegeko no.13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nkuko ryavugururwe

kugeza

ubu,

iteganywa

ko: "Ubushinjacyaha cyangwa uwagiriwe nabi cyangwa se abamufiteho uburenganzira, iyo baregeye indishyi z'akababaro cyangwa biregeye umuburanyi, nibo bagomba

gutanga

ibimenyetso

byemeza

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icyaha.Ushinjwa agenzerezwa nk'utarangwaho icyaha igihe cyose urubanza rutarakimwemeza burundu.Iyo icyaha cye kitaragaragazwa,ushinjwa nta gomba gutanga ibimenyetso byo kwiregura,” [9] Ibi mu mategeko bikaba bivuze ko ubushinjacyaha bugomba kugaragaza uruhare rwa HABONIMANA Faustin mu gupfobya Genocide kuko bufite ishingano zo kugaragaza ko ariya magambo yayavuze ashingiye kukiganiro cyari kuri television kuko uru rukiko rutashingira kukuba yarayavuze mu cyunamo (09/04/2012) ngo rwemeze ko ari imibiri y’Abatutsi bishwe muri Genocide yo muri 1994 yarebye kuri televiziyo akabyita business, ibi bigakorwa ubushinjacyaha bugaragaza igikorwa nyirizina aricyo “Physical act”bikunze kwitwa the actus reus(wrongful act), hamwe n’umugambi aribyo the intent or state of mind bikunze kwitwa mens rea (guilty mind) nkuko bamwe mu bahaga mu by’amategeko babivuga, JOHN M.Scheb mu gitabo cye Criminal law and procedure,iyo asobanura ibigize icyaha cyangwa abitwa abakoze icyaha, avuga ko ubushinjacyaha busabwa kugaragaza ko hari icyaha cyakozwe koko kandi gikorwa nyiri ukugikora yabigambiriye, kandi agamije gukora icyaha, aho yavuze ati:“To establish that a defendant is guilty of a crime,the prosecution must prove that the defendant committed some legally proscribed act or failed to act when the law required certain action.It is also essential to prove that such act or failure to act occurred with a simultaneous criminal intent.”

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[10] Mu bindi bimenyetso byashingiweho n’urukiko mu rubanza rwajuririwe nkuko byavuzwe haruguru harimo kuba HABONIMANA Faustin yaba yaremeye ko yavuze ko bari muri business zabo aha uru rukiko rukaba rubona rutabifata nkaho ari ikimenyetso gishinja kuko icyaha atari ukuvuga ijamba ngo bari muri business zabo, icyaha n’ukureba imibiri y’abazize Genocide nk’ikiganiro cyarimo guhita kuri televiziyo y’uRwanda(TVR) akabyita business harebwe ibiteganywa n’ingingo ya 2 y’itegeko no.18/2008 ryo kuwa 23/07/2008 rihana icyaha cy’ingengabitekerezo ya Genocide

kubirebana

n’igisobanuro “cy’ingengabitekerezo ya Genocide” n’ingingo ya 3 y’iritegeko

kubirebana

n’ibiranga

icyaha cy’ingengabitekerezo ya Genocide; [11] Kubirebana n’ikiganiro cyaba cyaranyuraga kuri televiziyo igihe ijamba bari muri business zabo ryavugwaga, uru rukiko rwasabye ubushinjacyaha kuwa 05/04/2013 kuzana CD yariho icyo kiganiro cyarimo gutambuka cyangwa guhitishwa kuri Televiziyo y’uRwanda (TVR) kuwa 09/04/2012 hagati ya saa sita na saa saba

z'amanwa, ubushinjacyaha nti bwakizina buvuga ko ikiganiro kizaboneka mu byumweru bibiri, urubanza rwimurirwa kuwa 18/6/2013 nanone ubushinjacyaha nti bwayizana, mugihe iki kiganiro kidashobora kuboneka ngo uru rukiko rwajuririwe rugihuze n'ijambo bari muri business zabo ntaho rwahera rwemeza ko aya magambo aganisha ku ngengabitekerezo ya Genocide, ibi n'ubwo byashingiweho n'umucamanza waburanishije uru rubanza mu rwego rubanza, aho yashingiye ku buhamya

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bwa RUDAKUBANA Asman (cote 12-13) na TUYISENGE Faustin (cote 9-10) wavuze ko yabibwiwe na RUDAKUBANA uru rukiko rwajuririwe ntirubibona nk'ikimenyetso gishinja, mu gihe iki kiganiro kitagaragazwa kuko amagambo ubwayo adahuje na kamere y'ikiburanwa, kuko ikiburanwa ari ingengabitekerezo ya Genocide bivuze ko aya magambo agomba guhuzwa n'ikiganiro cyahitaga kuri televiziyo y'Urwanda, ibi bivuze ko uru rukiko rudashobora na rimwe kubishingiraho nkuko biteganywa n'ingingo ya 4 y'itegeko no.15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko: "Urukiko ruca urubanza rwaregewe hakurikijwe ibimenyetso bihuje na kamere y'ikiburanwa"; [12] Kubera izi mpamvu zose rwagaragaje haruguru, bituma habaho gushidikanya, gushidikanya kw'urukiko kukaba guterwa n'uko ubushinjacyaha butashoboye kugaragaza CD y'ikiganiro cyarimo guhitishwa kuri televiziyo y'URwanda kuwa 09/04/2012 hagati ya saa sita z'amanwa na saa munani z'amanwa kugirango harebwe niba koko ikiganiro cyari kuri televiziyo aricyo kiswe ngo bari muri business zabo kugirango byitwe ingengabitekerezo ya Genocide, nkuko biteganywa n'ingingo ya 153 y'itegeko no.13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'ianza z'inshinjabyaha nkuko

ryavuguruwe

kugeza ubu, iteganya

ko: "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";

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[13] Ibi bikaba bivuze ko HABONIMANA Faustin agizwe umwere, imikirize y'urubanza RP 0204/12/TGI/HUYE rwaciwe kuwa 28/06/2012 n'urukiko rwisumbuye rwa Huye ikaba ivanyweho mu ngingo zose; III .ICYEMEZO CY'URUKIKO [14] RWEMEYE kwakira ubujurire bwatanzwe na HABONIMANA Faustin kuko bwaje mu nzira zikurikije amategako kandi rubusuzumye rusanga bufite ishingiro; [15] RWEMEJE ko icyaha cy'ingengabitekerezo ya Genocide HABONIMANA Faustin ashinjwa kitamuhama; [16] RWEMEJE ko imikirize y'urubanza RP 0204/12/TGI/HUYE rwaciwe kuwa 28/06/2012 n'urukiko rwisumbuye rwa

Huye ihindutse mu ngingo zose; [17] RUKIJIJE ko HABONIMANA Faustin atsinze;
RUTEGETSE ko HABONIMANA Faustin ahita arekurwa agataha uru rubanza rukimara
gusomwa;

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