

RWANDA / JUDGMENT

UBUSHINJACYAHA v. HABINEZA

RPA 00029/2022/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v. HABINEZA

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Text

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UBUSHINJACYAHA v. HABINEZA [Rwanda URUKIKO RW'UBUJURIRE – RPA 00029/2022/CA (Gakwaya, P.J.) 23 Gashyantare 2024] Amategeko yerekeye imiburanishirize y'imanza nshinjabyaha – Kwakira ikirego – Icyaha cyo kurema umutwe w'ingabo utemewe cyangwa kuwujyamo – Umushinjacyaha Mukuru niwe ubwe (prérogative personnelle) utanga uruhushya rwo gukora iperereza no gukurikirana icyaha cyo kurema umutwe w'ingabo utemewe, aho kuba ibiro by'Umushinjacyaha Mukuru. Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rukuru Ubushinjacyaha bukurikiranye Habineza ku cyaha cyo kurema umutwe w'ingabo utemewe cyangwa kuwujyamo nyuma yuko ashishikarijwe kujya mu mutwe w'ingabo utemewe yizezwa ko azajya ahembwa amafaranga menshi nuko arabyemera. Urwo Rukiko rwaciye rushingiye ku kuba uregwa yaremeye icyaha mu Bugenzacyaha, rwemeza ko uregwa ahamwa n'icyaha cyo kurema umutwe w'ingabo utemewe cyangwa kuwujyamo, rumuhanisha igifungo cy'imyaka cumi n'itanu (15). Uregwa yajuririye Urukiko Rw'Ubujurire avuga ko atishimiye imikirize y'urubanza, ko mu Rukiko Rukuru yahakanye icyaha aregwa cyo kurema umutwe w'ingabo utemewe cyangwa kuwujyamo, bituma ahanishwa igihano cy'igifungo cy'imyaka cumi n'itanu (15) nk'aho nta na hamwe mu nzego z'ubutabera yigeze yemera icyaha n'ubwo yageze

imbere y'Urukiko akagihakana kubera abajyanama babi bamushutse, ko ariko mu Bugenzacyaha yari yacyemeye, Urukiko rukaba rwaragombaga kubishingiraho rukamugabanyiriza igihano. Avuga kandi ko kuri uru rwego agirango agaragaze ukuri ku cyaha yakoze anagisabire imbabazi kandi asabe kugabanyirizwa igihano. Bigeze mu iburana uregwa yazamuye inzitizi avuga ko agomba kurekurwa kuko ikirego cy'Ubushinjacyaha bumurega icyaha cyo kurema umutwe w'ingabo utemewe cyangwa kuwujyamo cyatanzwe mu buryo bunyuranije n'amategeko, ko nubwo yemera icyaha, kuba nta ruhushya rwatanzwe n'Umushinjacyaha mukuru nk'uko biteganywa n'amategeko, urubanza rukwiye guteshwa agaciro, akagirwa umwere kuko yakurikiranywe bidakurikije amategeko. Ubushinjacyaha bwo bwaburanye buvuga ko impamvu atanga nk'inzitizi nta shingiro zifite kuko uwatanze iki kirego ari ibiro by'Umushinjacyaha Mukuru. Incamake y'icyemezo: 1. Umushinjacyaha Mukuru niwe ubwe (prérogative personnelle) utanga uruhushya rwo gukora iperereza no gukurikirana icyaha cyo kurema umutwe w'ingabo utemewe cyangwa kuwujyamo, aho kuba ibiro by'Umushinjacyaha Mukuru, Bityo ikirego cy'Ubushinjacyaha nticagombaga gusuzumwa mu mizi mu gihe Umushinjacyaha Mukuru ku giti cye atatanze uruhushya rwo gukora iperereza no gukurikirana Habineza Olivier ku cyaha cyo kurema umutwe w'ingabo utemewe cyangwa kuwujyamo akaba agomba kurekurwa uru rubanza. Ubujurire bufite ushingiro, Ibyakozwe byose muri iyi dosiye biteshejwe agaciro kandi uregwa agomba kurekurwa. Amategeko yashingiweho:

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Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganyira ibyaha n'ibihano muri rusange, Ingingo ya 200, igika cya nyuma. Itegeko N° 014/2018 ryo ku wa 4/4/2018 rigena imitunganyirize, imikorere n'ububasha by'Ubushinjacyaha Bukuru n'Ubushinjacyaha bwa Gisirikare, Ingingo ya 6 n'ya 7. Itegeko N° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, Ingingo ya 158, igika cya mbere. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Mu kwezi kwa 11/2019, Habineza Olivier yashishikarijwe n'uwitwa Gasana Aaron ukomoka mu Murenge wa Rukumberi, Akarere ka Ngoma, kujya mu gisirikare cya Kayumba Nyamwasa kirwanya Leta y'u Rwanda, amubwira ko kizajya kimuhemba amafaranga menshi, Habineza Olivier arabyemera, ahabwa akazi ko gushakisha urubyiruko bazajyana muri icyo gisirikare gikorera mu gihugu cy'u Burundi, bimenyekana bivuzwe n'uwitwa Ahimana John yasabye kujya muri iki gisirikare akabyanga agatanga amakuru mu nzego z'umutekano, Habineza Olivier arafatwa iperereza rirakorwa, akurikiranwaho icyaha cyo kurema umutwe w'ingabo utemewe cyangwa kuwujyamo. [2] Iperereza rirangiye, Ubushinjacyaha bwareze Habineza Olivier mu Rukiko Rukuru icyaha cyo kurema umutwe w'ingabo utemewe cyangwa kuwujyamo, busaba ko cyamuhama, agahanishwa igihano cy'igifungo cy'imyaka cumi n'itanu (15), hashingiwe ku ngingo ya 200 y'Itegeko no 68/2018 ryo ku wa 30/8/2018 riteganyira ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu. [3] Habineza Olivier yaburanye ahakana icyaha avuga ko ibyo yemeye mu Bugenzacyaha yabyemejwe n'inkoni yakubitiwe mu kigo cya gisirikare, ko ndetse n'imbere y'Urukiko rw'Ibanze rwa Nyamata aburana ku ifunga n'ifungurwa ry'agateganyo yemeye icyaha kuko yakekaga ko yakongera gukubitwa kuko yari hafi y'icyo kigo cya gisirikare. [4] Mu rubanza no RP 00008/2020/

HC/KIG rwaciwe n'Urukiko Rukuru ku wa 28/10/2021, rushingiye ku kuba Habineza Olivier yaremeye icyaha mu Bugenzacyaha aho yavuze ko yashishikarijwe n'uwitwa Gasana Aaron kujya mu mutwe w'ingabo wari ugamije kuzakuraho Ubutegetsi bw'u Rwanda, amwizeza kujya ahembwa amafaranga menshi, nawe akemera kuwujyamo. Rwemeje ko Habineza Olivier ahamwa n'icyaha cyo kurema umutwe w'ingabo utemewe cyangwa kuwujyamo, rumuhanisha igifungo cy'imyaka cumi n'itanu (15). [5] Habineza Olivier yajuririye uru Rukiko ku wa 1/11/2021, avuga ko atishimiye imikirize y'urubanza, ko ibindi bisobanuro azabitanga mu mwanzuro w'inyongera, aza kuwukora ku wa 19/9/2022 avuga ko mu Rukiko Rukuru yahakanye icyaha aregwa cyo kurema umutwe w'ingabo utemewe cyangwa kuwujyamo, bituma ahanishwa igihano cy'igifungo cy'imyaka cumi n'itanu

- (15) nk'aho nta na hamwe mu nzego z'ubutabera yigeze yemera icyaha n'ubwo yageze imbere y'Urukiko akagihakana kubera abajyanama babi bw'abamushutse, ko ariko mu Bugenzacyaha yari

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yacyemeye, Urukiko rukaba rwaragombaga kubishingiraho rukamugabanyiriza igihano. Akaba ariyo mpamvu ajuririye uru Rukiko kugira ngo agaragaze ukuri ku cyaha yakoze anagisabire imbabazi kandi asabe kugabanyirizwa igihano. [6] Ubushinjacyaha buvuga ko ubujurire bwa Habineza Olivier butahabwa ishingiro kuko ingingo ashingiraho ajurira yo kwemera icyaha ari nshya, akaba atarigeze ayiburanisha ku rwego rwa mbere ngo igibweho impaka. [7] Urubanza rwahawe no RPA 00029/2022/CA, ruburanishwa ku wa 6/2/2024 Habineza Olivier yunganiwe na Me Ruganza Bin Seba, Ubushinjacyaha buhagarariwe na Habineza Damascène, Umushinjacyaha ku rwego rw'Igihugu. Mu iburanisha, Me Ruganza Bin Seba yazamuye inzitizi avuga ko uregwa agomba kurekurwa kuko ikirego cy'Ubushinjacyaha bumurega icyaha cyo kurema umutwe w'ingabo utemewe cyangwa kuwujyamo cyatanzwe mu buryo bunyuranije n'amategeko. [8] Ikibazo kigomba gusuzumwa ni ukumenya niba ikirego cy'Ubushinjacyaha cyaratanzwe mu buryo bunyuranyije n'amategeko ku buryo uregwa Habineza Olivier agomba kurekurwa. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA Kumenya niba ikirego cy'Ubushinjacyaha cyaratanzwe mu buryo bunyuranyije n'amategeko ku buryo uregwa Habineza Olivier agomba kurekurwa [9] Me Ruganza Bin Seba, wunganira Habineza Olivier, mu mwanzuro we, avuga ko ashingiye ku mwanzuro w'uwo yunganira wo ku wa 19/9/2022 aho yemeye icyaha yahakanaga mu Rukiko rwabanje, n'ubwo atayobewe ko hari umurongo uvuga ko uko kwemera icyaha kuri uru rwego rw'ubujurire ntacyo bimarira uregwa, hakwitabwa kukumugabanyiriza igihano cy'igifungo cy'imyaka cumi n'itanu (15) yakatiwe, agahabwa igifungo cy'imyaka itanu (5) [10] Mu iburanisha, Me Ruganza Bin Seba, wunganira Habineza Olivier, yavuze ko ashingiye ku biteganywa n'ingingo ya 200, igika cya nyuma, y'Itegeko no 68/2018 ryo ku wa 30/8/2018 riteganywa ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu, iteganywa ko ibyaha byo kurema umutwe w'ingabo utemewe, cyangwa kuwujyamo no gushishikariza abandi kuwujyamo (...), bikurikiranwa biregwe cyangwa bitangiwe uruhushya n'Umushinjacyaha Mukuru cyangwa Umushinjacyaha Mukuru wa Gisirikare bitewe n'uwakoze icyaha, ko ibivugwamo ari ndemyagihugu, uruhushya rw'Umushinjacyaha Mukuru rukaba rutangwa guhera mu nzego z'iperereza, ko n'ubwo Habineza

Olivier yemera icyaha, kuba nta ruhushya rwatanzwe nk'uko biteganywa n'amategeko, urubanza rukwiye guteshwa agaciro, Habineza Olivier akagirwa umwere kuko yakurikiranywe bidakurikije amategeko. [11] Ubushinjacyaha buvuga ko ibivugwa na Habineza Olivier nta shingiro bifite kuko uwatanze iki kirego ari ibiro by'Umushinjacyaha Mukuru.

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UKO URUKIKO RUBIBONA [12] Ingingo ya 200, igika cya nyuma, y'Itegeko no 68/2018 ryo ku wa 30/8/2018 riteganyaye ibyaha n'ibihano muri rusange iteganyaye ko "Ibyaha bivugwa mu gika cya mbere n'icya kabiri (2) by'iyi ngingo (Kurema umutwe w'ingabo utemewe cyangwa kuwujyamo) bikurikiranwa biregwe cyangwa bitangiwe uruhushya n'Umushinjacyaha Mukuru cyangwa Umushinjacyaha Mukuru rwa Gisirikare bitewe n'uwakoze icyaha". [13] Isuzuma ry'igika cya nyuma cy'ingingo ya 200 y'Itegeko no 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru ryumvikanisha ko Ubugenzacyaha cyangwa Umushinjacyaha uwari we wese asaba Umushinjacyaha Mukuru uruhushya rwo gutangiza iperereza ku muntu wese ukekwa kuba yarakoze icyaha cyo kurema umutwe w'ingabo utemewe cyangwa wawugiyemo, bivuze ko ku birebana n'umuturage usanzwe ukekwa kuba yaragikoze, uruhushya rutangwa n'Umushinjacyaha Mukuru ku giti cye, ku birebana n'umusirikare rugatangwa n'Umushinjacyaha Mukuru wa Gisirikare ku giti cye, mu gihe bidashoboka rugatangwa n'ababungirije ku giti cyabo. [14] Urukiko rw'Ubujurire rurasanga muri dosiye, nta kintu kigaragaza ko Ubugenzacyaha bwashyize uruhushya Umushinjacyaha Mukuru kugira ngo butangire gukora iperereza kuri Habineza Olivier ukekwa icyaha cyo kujya mu mutwe w'ingabo utemewe no gushishikariza abandi kuwujyamo. Rurasanga kandi iperereza ryatangijwe n'Umugenzacyaha wo kuri station y'urwego rw'Ubugenzacyaha rwa Nyamata, yohereza Ubushinjacyaha dosiye ku wa 2/2/2020, Ubushinjacyaha Bukuru buza gutanga ikirego ku wa 11/3/2020. [15] Urukiko rw'Ubujurire rurasanga ibivugwa n'Ubushinjacyaha ko ikirego cyatanzwe mu buryo bwemewe n'amategeko kuko cyatanzwe n'ibiro by'Umushinjacyaha Mukuru, bitahabwa agaciro kuko nk'uko byagaragajwe haruguru, ku bushake bw'Umushingamategeko budashidikanywaho yashatse ko Umushinjacyaha Mukuru ariwe ubwe (prérogative personnelle) utanga uruhushya rwo gukora iperereza no gukurikirana icyaha cyo kurema umutwe w'ingabo utemewe, aho kuba ibiro by'Umushinjacyaha Mukuru¹. [16] Hashingiwe ku byavuzwe haruguru, Urukiko rw'Ubujurire rurasanga ikirego cyatanzwe ku rwego rwa mbere kitaragombaga gusuzumwa mu mizi mu gihe Umushinjacyaha Mukuru ku giti cye atatanze uruhushya rwo gukora iperereza no gukurikirana Habineza Olivier ku cyaha cyo kurema umutwe w'ingabo utemewe cyangwa kuwujyamo. [17] Kubera izo mpamvu zose, Urukiko rw'Ubujurire rurasanga icyo kirego cyaratanze mu buryo bunyuranyije n'amategeko, bityo rero ibyakozwe byose bikaba bigomba guteshwa agaciro, Habineza Olivier akaba agomba kurekurwa uru rubanza rukimara gusomwa, Ubushinjacyaha bukubahiriza ibiteganywa n'Umushingamategeko².

¹ Hashingiwe ku ngingo ya 6 n'ya 7 z'Itegeko n° 014/2018 ryo ku wa 4/4/2018 rigena imitunganyirize, imikorere n'ububasha by'Ubushinjacyaha Bukuru n'Ubushinjacyaha bwa Gisirikare, ibiro by'Umushinjacyaha Mukuru ni imwe mu nzego zigize Ubushinjacyaha Bukuru, bigizwe n'Umushinjacyaha Mukuru, Umushinjacyaha Mukuru Wungirije n'Abashinjacyaha

nibura makumyabiri na bane (24) bo ku rwego rw'Igihugu. 2 Ingingo ya 158, igika cya mbere, y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu iteganya ko " Iyo Urukiko rwajuririwe rusanze urubanza rwararegewe mu rwego rwa mbere mu buryo budakurikije amategeko cyangwa rwararegeye urukiko rudafite ububasha, nyamara urwo rukiko rukaba rwarafashe icyemezo cyo kurwakira kandi rutaragombaga kurwakira, urukiko rwajuririrwe rwakira ubwo bujurire, rukagaragaza ko urwo rubanza rwajuririwe rwari rwararegewe urukiko rwa mbere

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III. ICYEMEZO CY'URUKIKO [18] Rwemeje ko ubujurire bwa Habineza Olivier bufite ishingiro; [19] Rwemeje ko ikirego cy'Ubushinjacyaha ku rwego rwa mbere burega Habineza Olivier cyatanze mu buryo bunyuranyije n'amategeko; [20] Rwemeje ko ibyakozwe byose muri iyi dosiye biteshejwe agaciro; [21] Rwemeje ko Habineza Olivier agomba kurekurwa uru rubanza rukimara gusomwa; [22] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

mu buryo bunyuranyije n'amategeko, rugatesha agaciro ibyemezo byose byashingiye kuri iyo kosa; ubifitemo inyungu akaba yakongera agatanga ikirego bundi bushya".

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