

RWANDA / JUDGMENT

UBUSHINJACYAHA v. HAKIZIMANA N'ABANDI

RLR V.2 - 2015

COURT

High Court

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UBUSHINJACYAHA v. HAKIZIMANA N'ABANDI

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Text**Page 1**

UBUSHINJACYAHA v. HAKIZIMANA N'ABANDI [Rwanda URUKIKO RUKURU – RPA 0735/13/HC/KIG, RPA 0750/13/HC/KIG, RPA 0766/13/HC/KIG (Uwamariya P J.) 13 Kamena 2014] Amategeko Mpanabyaha – Impurirane y'ibyaha – Itangwa ry'igihano – Mu gihe cy'impurirane y'ibyaha hatangwa igihano kirushije ibindi gukomera – Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo 84. Amategeko Mpanabyaha – Igabanyagihano rishingiye ku butoya – Iyo uwakoze icyaha agabanyirijwe ibihano kubera ko ari umwana, ibihano agomba guhanishwa ntibigomba kurenga icya kabiri cy'ibihano yagombaga guhanishwa iyo aza kuba afite imyaka 18. Amategeko Mpanabyaha – Isubikabihano – Ibihano ntibishobora gusubikwa mugihe igihano cy'iremezo kiri hejuru y'imyaka itanu. Incamake y'ikibazo: Hakizimana, Rugero na Mugirwanake na bagenzi babo batajuriye bakurikiranywe mu Rukiko Rwisumbuye rwa Nyarugenge ku bwinjiracyaha bwo kunyereza umutungo wa Leta n'ubufatanyacyaha muri icyo cyaha, ubujura budakoresheje kiboko cyangwa ibikangisho n'ubufatanyacyaha muri icyo cyaha no guhimba inyandiko no kuyikoresha n'ubufatanyacyaha

muri icyo cyaha. Rwahanishije Hakizimana Pascal igifungo cy'imyaka itanu n'ihazabu 1.710.000Frw, Rugero Etienne igihano cy'igifungo cy'imyaka icumi n'ihazabu y'amafaranga 4.255.000Frw naho Mugirwanake Zawadi ahanishwa igifungo cy'imyaka ibiri n'ihazabu ya 1.710.000Frw. Ntibishimiye imikirize y'urubanza barujuririra mu Rukuko Rukuru. Mugirwanake n'umwunganizi we basobanura ko yajuriye asaba ko yagabanyirizwa ibihano kubera ko yaburanye yemera icyaha akagisabira imbabazi, akaba kandi asaba ko yasubikirwa igifungo kubera impamvu z'uburwayi, ikindi akaba ari umwana bityo akaba yasohoka akajya kwitabwaho. Hakizimana we avuga ko yajuririyeye ibihano bikakaye yahawe kandi yaraburanye akemera icyaha, naho Rugero we asobanura ko yajuririyeye kuba urukiko rwaramutandukanyije n'abo bafatanyije icyaha rukamuha igihano gikakaye kurusha abandi, umucamanza akaba atarahaye agaciro imyiregurire ye akaba asaba ko yagabanyirizwa igifungo akanasubikirwa. Ubushinjacyaha bwiregura buvuga ko ibihano bahawe atari birebire hagereranyijwe n'ibyaha bakoze kandi Mugirwanake we akaba yaragabanyirijwe ibihano kubera ko ari umwana ndetse no kuba yemera icyaha, naho Rugero we akaba atari kugabanyirizwa ibihano kuko atari ubwa mbere akoze iki cyaha. Incamake y'icyemezo: 1. Ibyaha Mugirwanake Zawadi akuriranyweho bigize impurirane y'ibyaha. Mu byaha yakoze igihanishwa igihano kirushije ibindi gukomera ni icyaha cyo kunyereza umutungo wa Leta. Kubera ko ari umwana, ibihano agomba guhanishwa ntibigomba kurenga icya kabiri cy' ibihano yagombaga guhanishwa iyo aza kuba afite imyaka 18. Kuba rero yari guhanishwa igifungo cy'imyaka icumi n'ihazabu y'amafaranga miliyoni n'ibihumbi magana ane, akaba agomba guhanishwa igifungo cy'imyaka itanu n'ihazabu y'amafaranga ibihumbi magana arindwi. Kuba na none hari impamvu nyoroshyacyaha, urukiko Rukuru rukaba rubona igifungo cy'imyaka ibiri yahanishijwe gikwiranye n'icyaha yakoze.

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2. Kuba Mugirwanake akunda kurwaragurika nk'uko yabigaragarije ibimenyetso kandi akaba ari nabwo bwa mbere akoze icyaha, igihano cy'imyaka ibiri yahawe cyasubikwaho amezi atandatu mu gihe cy'umwaka, undi mwaka n'igice bisigaye akabirangiriza muri gereza.
3. Kuba Hakizimana Pascal yaragombaga guhanishwa igifungo cy'imyaka icumi urukiko rubanza rukamuhanisha igifungo cy'imyaka itanu, urukiko rurasanga yarahawe igihano gito ntarengwa Urukiko rudashobora kujya muni k'ugabanyirijwe kubera impamvu nyoroshyacyaha, bityo kikaba kidashobora guhinduka. Ku byerekeye isubikagihano, n'ubwo itegeko ryemera ko iki gihano gishobora gusubikwa kuko kitarenze imyaka itanu, urukiko rurasanga gusubika iki gifungo byafatwa na rubanda nko gushyigikira abiba cyangwa abagerageza kwiba no kwangiza ibyo bagezeho, bityo iki gifungo akaba agomba kukirangiriza muri gereza. 4. N'ubwo Rugero yagaragaye mu Rukiko rubanza nk'umutangabuhamya akavuga ko abamushinja ari inama bamugiriye kugira ngo bamugambanire ariko nyuma akaza kwemera icyaha, urukiko rurasanga bitashyigikira mu kumugabanyiriza ibihano kuko n'iyi atemera ntihari kubura ibimenyetso bimushinja. Kuba ibi byaha akurikiranyweho bigize impurirane z'ibyaha, igihano ntarengwa ku rwego rwo hejuru ku cyaha cy'inyandiko mpimbano akaba ari imyaka irindwi naho ku cyaha cyo kunyereza umutungo wa Leta kikaba imyaka icumi, urukiko Rwisumbuye rukaba

rwaramuhanishije igifungo cy'imyaka icumi. Urukiko rurasanga ataravanguwe muribagenzi be nk'uko abivuga ahubwo yarahanwe mu buryo bukurikije amategeko. Ku isubikagifungo, kubw'itegeko, igihano Rugero ahanishijwe ntigishobora gusubikwa kuko kiri hejuru y'imyaka itanu. Ubujurire bwa Mugirwanake bufite ishingiro kuri bimwe. Ahanishijwe igifungo cy'imyaka ibiri n'ihazabu ya (700.000), umwaka n'amezi 6 akaba agomba kubirangiriza muri gereza, naho amezi atandatu agasubikwa mu gihe cy'umwaka. Ubujurire bwa Hakizimana nta shingiro bufite. Ubujurire bwa Rugero nta shingiro bufite. Nta gihindutse ku bihano Hakizimana na Rugero bari barahanishijwe. Amagarama y'urubanza ahererejwe ku isanduku ya Leta. Amategeko yashingiweho: Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy' amategeko ahana, ingingo ya 78 n'ya 84 Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA. [1] Mu rubanza RP 0086/13/TGI/NYGE urukiko Rwisumbuye rwa Nyarugenge rwahamije Ndayambaje Pierre, Nyandwi Dismas Mugirwanake Zawadi, Hakizamungu André na Rugero Etienne ubwinjiracyaha bwo kunyereza umutungo wa Leta n'ubufatanyacyaha muri icyo cyaha, ubujura budakoresheje kiboko cyangwa ibikangisho n'ubufatanyacyaha muri icyo cyaha no guhimba inyandiko no kuyikoresha n'ubufatanyacyaha muri icyo cyaha. Rwahanishije Ndayambaje Pierre, Nyandwi Dismas, Hakizamungu André na Hakizimana Pascal igihano cy'igifungo cy'imyaka itanu n'ihazabu 1.710.000Frw buri wese, ruhanisha

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Rugero Etienne igihano cy'igifungo cy'imyaka icumi n'ihazabu y'amafaranga 4.255.000Frw naho Mugirwanake Zawadi ahanishwa igifungo cy'imyaka ibiri n'ihazabu y'amafaranga 1.710.000. [2] Hakizimana Pascal, Rugero Etienne na Mugirwanake Zawadi ntibishimiye imikirize y'urubanza barujuririra mu Rukuko Rukuru. Mugirwanake n'umwunganizi we basobanura ko yajuriye asaba ko yagabanyirizwa ibihano kubera ko yaburanye yemera icyaha akagisabira imbabazi, akaba kandi asaba ko yasubikirwa igifungo kubera impamvu z'uburwayi, ikindi akaba ari umwana bityo akaba yasohoka akajya kwitabwaho. Hakizimana we avuga ko yajuririye ibihano bikakaye yahawe kandi yaraburanye akemera icyaha, naho Rugero we asobanura ko yajuririye kuba urukiko rwaramutandukanyije n'abo bafatanyije icyaha rukamuha igihano gikakaye kurusha abandi, umucamanza akaba atarahaye agaciro imyiregurire ye akaba asaba ko yagabanyirizwa igifungo akanasubikirwa. [3] Kuri Hakizimana na Mugirwanake, Ubushinjacyaha bwiregura buvuga ko ibihano bahawe atari birebire hagereranyijwe n'ibyaha bakoze kandi Mugirwanake we akaba yaragabanyirijwe ibihano kubera ko ari umwana ndetse no kuba yemera icyaha, naho Rugero we akaba atari kugabanyirizwa ibihano kuko atari ubwa mbere akoze iki cyaha. Ikigomba gusuzumwa muri uru rubanza, ni ukumenya niba Mugirwanake Zawadi yakongera kugabanyirizwa ibihano akanasubikirwa igifungo, kumenya niba Hakizimana Pascal yagabanyirizwa ibihano, no kumenya niba Rugero yagabanyirizwa ibihano akanasubikirwa igifungo. II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO Kumenya niba Mugirwanake Zawadi yakongera kugabanyirizwa ibihano akanasubikirwa igifungo. [4] Mugirwanake Zawadi n'umwunganizi we basobanura ko yajuriye kubera ibihano birebire yahawe. Avuga ko akomeza gutakamba nubwo urukiko rwamugabanyirije akaba asaba ko rwakongera kumugabanyiriza

ibihano akanasubikirwa igifungo kubera ubuzima arimo muri gereza, kuko yafashwe n'uburwayi busaba ko buri gihe aterwa amaraso. Barasaba urukiko kandi ko mugufata icyemezo hazitabwa ku itegeko rirenger umwana no kumurinda, akaba yasubizwa mu muryango akajya kwitabwaho. [5] Ubushinjacyaha buvuga ko ibihano yahawe atari birebire ugereranyije n'icyaha cyakozwe, akaba yaragabanyirijwe hitaweho ko ari umwana, gusaba ko yakongera kugabanyirizwa akaba atari inenge bubona mu rubanza, naho ku kibazo cy'uburwayi gereza ikaba yamworohereza kugira ngo abashe kwivuza. Buvuga ko ibyo kuba ari umwana urukiko rutabyirengagije akaba ari nayo mpamvu yahanishijwe ibihano bito ugereranije n'abandi bafatanyije gukora icyaha. Ku isubikagihano, buvuga ko umucamanza adategetswe kuritanga. [6] Urukiko rurasanga ibyaha Mugirwanake Zawadi akuriranweho bigize impurirane y'ibyaha nk'uko n'ubundi byabonywe n'umucamanza w'urukiko Rwisumbuye. Muri ibi byaha igihanishwa igihano kirushije ibindi gukomera ni icyaha cyo kunyereza umutungo wa

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Leta, gihanishwa igifungo kuva ku myaka 7 kugeza ku icumi n'ihazabu y'amafaranga kuva ku nshuro ebyiri kugeza kuri eshanu z'agaciro k'umutungo warigishijwe cyangwa wononwe. [7] Urukiko rurasanga kuba Mugirwanake Zawadi yari guhanishwa igifungo kimara igihe n'ihazabu, akaba agomba kugabanyirizwa ibihano kubera ko ari umwana, ibihano agomba guhanishwa ntibigomba kurenga icya kabiri cy'ibihano yagombaga guhanishwa iyo aza kuba afite imyaka 18. Kuba Mugirwanake Zawadi ahamwe n'ubufatanyacyaha mu cyaha cy'ubwinjiracyaha mu kunyereza umutungo wa Leta, icy'ubujura bworoheje n'icyo guhimba inyandiko no kuyikoresha, urukiko rurasanga yari guhanishwa igifungo cy'imyaka icumi n'ihazabu yikubye inshuro eshanu amafaranga yashakaga kwiba, ni ukuvuga 1.400.000Frw hashingiwe ku biteganywa n'ingingo ya 84 y'iri tegeko ngenga rishyiraho igitabo cy'amategeko ahana. Kuba ariko Mugirwanake ari umwana, ibi bihano bigomba kugabanywa kabiri, agahanishwa igifungo cy'imyaka itanu n'ihazabu y'amafaranga ibihumbi magana arindwi (700.000Frw). Kuba na none hari impamvu nyoroshyacyaha, urukiko rurasanga mu kumugabanyiriza ibihano hagomba gukurikizwa agace ka kane k'ingingo ya 78 y'iri tegeko ngenga. Akaba ashobora kuba yagabanyirizwa igifungo kugeza ku mezi abiri. Aha itegeko rivuga igihano gito umucamanza atagomba kujya muni ariko ntirivuga igihano kirekire atagomba kujya hejuru, byumvikana ko kuba Mugirwanake Zawadi yarahanishijwe igifungo cy'imyaka ibiri bikurikije itegeko kandi urukiko Rukuru rukaba rubona icyo gihano gikwiranye n'icyaha yakoze. [8] Kuba ariko Mugirwanake akunda kurwaragura nkuko yabigaragarije ibimenyetso, kandi akaba ari nabwo bwa mbere akoze icyaha, urukiko rurasanga iyi myaka ibiri y'igifungo yasubikwaho amezi atandatu mu gihe cy'umwaka, undi mwaka n'igice bisigaye akabirangiriza muri gereza. Kumenya niba Hakizimana Pascal yagabanyirizwa ibihano [9] Hakizimana asobanura ko yajuriye ibihano bikakaye yahawe kandi yaraburanye yemera icyaha akagaragaza uko cyakozwe n'abagikoze, akaba asaba ko yagabanyirizwa ibihano akanasubikirwa. [10] Ubushinjacyaha buvuga ko Hakizimana atahawe igihano gikomeye kubera icyaha yakoze, bukaba bubona yaragabanyirijwe bihagije kandi akaba ari nta tegeko ryirengagijwe, naho isubikagihano akaba ari nta mpamvu yaryo. [11] Kuba Hakizimana Pascal yaragombaga guhanishwa igifungo cy'imyaka icumi urukiko rukamuhanisha igifungo cy'imyaka

itanu urukiko rurasanga yarahawe igihano gito ntarengwa Urukiko rudashobora kujya muni k'ugabanyirijwe kubera impamvu nyoroshyacyaha, bityo kikaba kidashobora guhinduka. [12] Ku byerekeye isubikagihano, nubwo itegeko ryemera ko iki gihano gishobora gusubikwa kuko kitarenze imyaka itanu², urukiko rurasanga gusubika iki gifungo byafatwa na rubanda nko gushyigikira abiba cyangwa abagerageza kwiba no kwangiza ibyo bagezeho, bityo iki gifungo Hakizimana akaba agomba kukirangiriza muri gereza.

1Reba ingingo ya 325 y'Itegeko Ngenga no 01/2012/OL ryo kuwa 02/5/2012 rishyiraho igitabo cy'ametegeko ahana. 2 Ingingo ya 85 igika cya mbere y'itegeko ngenga no 01/2012/OL ryo kuwa 02/5/2012 rishyiraho igitabo cy'ametegeko ahana igira iti: "Muri iri Tegeko Ngenga, isubikagihano ni icyemezo cy'umucamanza gihagarika irangizarubanza ku gihano cy'igifungo kitarengeje imyaka itanu (5) iyo uwagikatiwe atigeze ahanishwa mbere mu rubanza rwabaye ndakuka igihano cy'igifungo cyangwa igihano nsimburagifungo cy'imirimo ifitiye igihugu akamaro kirenze amezi atandatu (6)".

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Kumenya niba Rugero yagabanyirizwa ibihano akanasubikirwa igifungo. [13] Rugero asobanura ko yajuririye ibihano bikomeye yahawe umucamanza akaba yaramutandukanije n'abo bareganwa ku buryo bukabije akaba atarahaye agaciro imyiregurire ye n'ibimenyetso yatanze. Avuga ko yemeye icyaha agasobanura uko byagenze, kandi n'uwazanye sheki akaba yarabyemeye. Yemera ko izo sheke yatanze ariwe wazisinyeho yigana amasinye yari kuri fotokopi ya sheki abashinzwe gucunga konti ya mituele ya Kayenzi bari bishyuriyeho. Arasaba urukiko ko rwamugirira impuhwe rukamugabanyiriza ibihano, rukanamusubikira igifungo kuko amaze gufungwa umudamu we yakoze impanuka akitaba imana none abana bane yasize baka bandagaye. [14] Ubushanjacyaha buvuga ko Rugero yahanishijwe igifungo cy'imyaka icumi kubera ko yaburanye atemera icyaha, ikindi ubushinjacyaha bukaba butari bwamukurikiranye. Buvuga ko nubwo ari byiza ko avugishije ukuri atagabanyirizwa ibihano kuko atari ubwa mbere akurikiranweho icyaha. [15] N'ubwo mu rukiko rwaciye urubanza rwajuririwe mu iburanisha ryo kuwa 24/7/2013 Rugero yari yitabye nk'umutangabuhamyi akavuga ko abamushinja ari inama bamugiriyemo kugira ngo bamugambanire ariko kuwa 25/7/2014 yakwitaba akemera icyaha, urukiko rurasanga bitashingirwaho mu kumugabanyiriza ibihano kuko n'iyi atemera ntihari kubura ibimenyetso bimushinja. Ikindi hakurikijwe uburyo iki cyaha cyakozwe nk'uko bisobanurwa n'abo yagiye aha izi cheques bigaragaza neza ko yari ashirutse ubwoba muri iki gikorwa nk'aho yari akimenyereye kuko abo yahaye izi cheque, iyo kuri banki imwe bayabimaga kubera gushidikanya ku masinye yababwiraga kujya ku yindi. Ikindi kigagaza ko yari afite akamenyero muri iki cyaha n'ukuntu kuri Union des Banques Populaires bari bamaze kubima amafaranga Rugero agahamaga asaba amasinye nk'uko bisobanurwa na Hakizimana Pascal akabikora azi neza ko ari nawe wasinye izo cheque abyihimbiye. [16] Kuba ibi byaha byakozwe bigize impurirane z'ibyaha nk'uko n'Urukiko Rwisumbuye rwabibonye igihano ntarengwa ku rwego rwo hejuru ku cyaha cy'inyandiko mpimbano akaba ari imyaka irindwi naho ku cyaha cyo kunyereza umutungo wa Leta kikaba imyaka icumi, urukiko Rwisumbuye rukaba rwaramuhanishije igifungo cy'imyaka icumi, urukiko rurasanga ataravanguwe muribagenzi be nk'uko abivuga ahubwo yarahanwe mu buryo

bukurikije amategeko kuko nk'uko biteganywa n'ingingo ya 84 y'Itegeko Ngenga no01/2012/OL ryo kuwa 02/5/2012 rishyiraho igitabo cy'amategeko ahana, "Iyo ku gikorwa kimwe gusa cyangwa byinshi, uwakoze icyaha yari guhanishwa ibihano byinshi byo gufungwa cyangwa by'ihazabu, umucamanza amuhanisha igihano kiruta ibindi yongera igihe cyangwa umubare bitewe n'uburyo ibyaha byakozwe ariko ntarenze urugero ntarengwa wongeyeho icya kabiri (1/2) cy'icyo gihano kirushije ibindi gukomera". Iyi ngingo igaragaza ko kuri iki gifungo cy'imyaka icumi umucamanza yashoboraga kongeraho indi myaka itanu. Kubera rero impamvu zasobanuwe, urukiko rurasanga iki gihano kitagabanywa kikaba kigomba kuguma uko kiri. [17] Ku isubikagifungo, kubwo itegeko, igihano Rugero ahanishijwe ntigishobora gusubikwa kuko kiri hejuru y'imyaka itanu. III. ICYEMEZO CY'URUKIKO [18] Rwemeje ko ubujurire bwa Mugirwanake Zawadi bufite ishingiro kuri bimwe, ko ubwa Hakizimana Pascal na Rugero Etienne budafite ishingiro.

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[19] Rwemeje ko ibihano bihindutse kuri Mugirwanake Zawadi, akaba agomba guhanishwa igifungo cy'imyaka ibiri n'ihazabu y'amafaranga ibihumbi magana arindwi (700.000), kuri iki gifungo, umwaka umwe n'amezi atandatu akaba agomba kubirangiriza muri gereza, naho amezi atandatu agasubikwa mu gihe cy'umwaka. [20] Rwemeje ko nta gihindutse ku bihano Hakizimana Pascal na Rugero Etienne bari bahanishijwe. [21] Rutegetse ko amagarama y'urubanza ahererezwa ku isanduku ya Leta kuko Hakizimana Pascal na Rugero Etienne bajuriye ari abafungwa.

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