

RWANDA / JUDGMENT

UBUSHINJACYAHA v. HALERIMANA

RPAA 0046/12/CS

COURT

Supreme Court

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UBUSHINJACYAHA v. HALERIMANA

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Text**Page 1**

UBUSHINJACYAHA v. HALERIMANA [Rwanda URUKIKO RW'IKIRENGA – RPAA 0046/12/CS (Mugenzi, PJ, Nyirandabaruta na Gakwaya, J.) 15/7/2016] Amategeko agenga ibimenyetso – Agaciro ka raporo y'umuhanga mu gihe uwayikoze atarahiye – Mu gihe iyo raporo itabanjirijwe n'indahiro iteganywa n'amategeko, ni inenge ikomeye, ituma itagomba gufatwa nk'ikimenyetso cyashingirwaho mu rubanza – Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso n'itangwa ryabyo, ingingo ya 93(uyu murongo warahinduwe hari imanza zaciwe zinyuranyije nawo nk'urubanza rwa Murenzi v Mutabazi n'undi, RS/INJUST/RC 00009/2021/SC, RLR. V.1-2024) Amategeko agenga ibimenyetso – Ubuhamya butanzwe n'utaragira imyaka cumi n'ine – Bugomba gushyigikirwa n'ibindi bimenyetso – Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso n'itangwa ryabyo, ingingo ya 63 Incamake y'ikibazo: Uregwa yakurikiranywe mu Rukiko Rwisumbuye rwa Musanze, kucyaha cyo gusambanya umwana w'imyaka umunani (8) y'amavuko. Urukiko rwamuhamije icyaha rumuhanisha igifungo cya burundu, ajuririra Urukiko Rukuru, Urugereko rwa Musanze, uru narwo rwemeza ko imikirize y'urubanza rwaciwe n'Urukiko Rwisumbuye rwa Musanze idahindutse. Yajuririye mu Urukiko rw'Ikirenga, avuga ko yahamijwe icyaha hashingiwe ku bimenyetso bifite inenge, ko abatangabuhamya bamushinje

bafitanye isano ya bugufi n'uwahohotewe, naho raporo ya muganga ikaba itagaragaza ko uwayikoze yarahiye, ndetse itanerekana ko yamwanduje SIDA. Ubushinjacyaha buvuga ko umucamanza wa mbere yavuze impamvu atatesha icyemezo cya muganga agaciro, ko kuba icyo cyemezo cya muganga kitagaragaraho indahiro bitagitesha agaciro mu gihe hari ibindi bimenyetso birimo imvugo z'abatangabuhama babajijwe zihuza n'ibikubiye muri icyo cyemezo. Incamake y'icyemezo: 1. Kuba kuri raporo hatagaragaraho indahiro ya muganga wayikoze, ni inenge ikomeye, ituma itagomba gufatwa nk'ikimenyetso cyashingirwaho muri uru rubanza. 2. Nta bindi bimenyetso bidashidikanwaho Ubushinjacyaha bwerekanye bishyigikira ibyo abana batanze ubuhama batarengeje imyaka 14 bavuze, kuko byagaragaye ko icyemezo cya muganga cyagombaga kubwunganira nta gaciro gifite, bityo imvugo y'uregwa y'uko ubuhama bw'abana babajijwe butagombaga gushingirwaho bwonyine nk'ikimenyetso kimushinja ngo zishingirweho hemezwa ko icyaha aregwa kimuhama ikaba ifite ishingiro, bityo n'ubujurire bwe bukaba bufite ishingiro. Ubujurire bufite ishingiro. Uregwa agizwe umwere, agomba guhita arekurwa. Amagarama aherereye ku isanduku ya Leta. Amategako yashingiweho: Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso n'itangwa ryabyo, ingingo za 63 na 93 Nta manza zifashishijwe. Urubanza

Page 2

I. IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Musanze, Ubushinjacyaha bukurikiranyeho Harelimana Fulgence kuba yarasambanyije umwana witwa Mundanikure Angélique w'imyaka umunani (8) y'amavuko, mu rubanza No RP 0170/09/TGI/MUS, rumuhama icyaha rumuhanisha igifungo cya burundu, ajuririra Urukiko Rukuru, Urugereko rwa Musanze, uru narwo ruca urubanza ku wa 23/12/2011, rwemeza ko imikirize y'urubanza No RP 0179/09/TGI/MUS rwaciye n'Urukiko Rwisumbuye rwa Musanze idahindutse. [2] Harelimana yajuririye mu Urukiko rw'Ikirenga, avuga ko yahamijwe icyaha hashingiwe ku bimenyetso bifite inenge, ko abatangabuhama bamushinje bafitanye isano ya bugufi n'uwahohotewe, naho raporo ya muganga ikaba itagaragaza ko uwayikoze yarahiye, ndetse itanerekana ko yamwanduje SIDA. [3] Urubanza rwaburanishijwe mu ruhame ku wa 14/03/2016, Harelimana Fulgence yunganiye na Me Kananiye Théoneste na Me Bikotwa Bruce, naho Ubushinjacyaha buhagarariye na Higaniro Hermogène, Umushinjacyaha ku rwego rw'Igihugu. Uwo munsu iburanisha ryarapfundikiwe ababuranyi bamenyeshwa ko bazasomerwa ku wa 15/04/2016, ubwo rwihereraga ngo ruruce rusanga ari ngombwa kubanza guhamagaza Dr Mukamana Anne Marie wasuzumye Mundanikure kugira ngo agire ibyo arusobanurira kuri raporo yakoze amaze kurahirira imbere y'Urukiko, rwemeza ko iburanisha rizongera gufungurwa ku wa 13/06/2016, yahamagajwe. [4] Kuri uwo munsu iburanisha ryarapfunduwe, ruhamagaye urubanza rusanga Harerimana Fulgence yitabye yunganiye na Me Kananiye Théoneste na Me Bikotwa Bruce, naho Ubushinjacyaha buhagarariye na Uwombonye Hirwa Sudi, Umushinjacyaha ku rwego rw'Igihugu, naho Dr Mukamana Anne Marie atabonetse, kubera ko Minisitiri y'Ubuzima yari umukoresha we igihe yasuzumaga Mundanikure akanakora raporo nk'umuhanga, yabwiye Urukiko ko atakiri umukozi wayo, ko yasezeye ku kazi mu mwaka wa 2012 akajya Nairobi muri Kenya, naho akaza kuhava akajya mu Gihugu cy'Ububiligi. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO Muri uru rubanza

harasuzumwa niba raporo ya muganga yashingiweho hacibwa urubanza ifite inenge, hanasuzumwe ibijyanye n'agaciro kahabwa ubuhamya bwatanzwe na Serugendo na Nsabagani. A. Kumenya niba raporo ya muganga yashingiweho hacibwa urubanza No RPA 0402/10/HC/MUS ifite inenge. [5] Me Kananiye Théoneste avuga ko asanga raporo ya muganga yakozwe idakurikije ibiteganywa n'ingingo ya 93 igika cya 2 y'Itegeko No 15/2004 ryo ku wa 12/06/2004, ryerekeye ibimenyetso mu manza n'itangwa ryabo, iteganya ko iyo muganga atarahiye raporo iteshwa agaciro, umucamanza wa mbere akaba yarabirenzeho akayishingiraho mu guca urubanza. [6] Me Kananiye Théoneste na Me Bikotwa Bruce bunganira Harerimana Fulgence bavuga ko ibimenyetso byose umucamanza yashingiyeho bifite inenge, ko Umushinjacyaha avuga ko ubuhamya bwunganirwa na raporo ya muganga kandi ifite inenge. Basobanuye ko raporo ya muganga itakozwe mu buryo bwubahirije amategeko, ko n'iyi Dr Mukamana Anne Marie aza kuboneka akarahirira imbere y'Urukiko bitari gukuraho ko raporo yakozwe mu buryo butubahirije amategeko, ko icyo bagaragaza ari uko nta bimenyetso bihari bidashidikanywaho byerekana ko Harerimana Fulgence bunganira yahohoteye umwana aregwa, basaba Urukiko kwemeza ko Urukiko Rukuru rwamuhamije

Page 3

icyaha rushingiye ku buhamya bw'abana butunganiwe n'ibindi bimenyetso, ko rwashingira ku ingingo ya 153 Itegeko n° 13/2004 ryo ku wa 17/5/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha rukemeza ko ari umwere nk'uko mu rubanza RPAA 0133/10/CS rw'Ubushinjacyaha na Mvuyekure rwemeje ko ibimenyetso bimushinja bishidikanywaho rukamugira umwere. [7] Uhagarariye Ubushinjacyaha avuga ko umucamanza wa mbere yavuze impamvu atatesha icyemezo cya muganga agaciro, ko kuba icyo cyemezo cya muganga kitagaragaraho indahiro bitagitesha agaciro mu gihe hari ibindi bimenyetso birimo invugo z'abatangabuhamya babajijwe zihuza n'ibikubiye muri icyo cyemezo, ibyo bikaba ari ibimenyetso biza bishyigikira icyo cyemezo, ko asanga nta kibazo mu gihe umucamanza yavuze ko hari ibindi bimenyetso. Asoza avuga ko Urukiko ruzashingira ku byavuzwe mu rubanza n'impande zombi rugaca urubanza rukurikije amategeko. UKO URUKIKO RUBIBONA [8] Ingingo ya 93 Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko «Raporo ishyirwaho umukono n'abahanga bose. Umukono w'abahanga kugira ngo utaba impfabusa ubanzirizwa n'indahiro mu nyandiko iteye itya: « Jyewe ndahiye ko nakoze umurimo nashinzwe ntacyo nirengagije, nywukora uko ugomba gukorwa nta buhemu. Niba ntawukoze uko bikwiye nzabihanirwe n'amategeko». [9] Dosiye y'urubanza igaragaza kuri "kote 21, ko raporo ya muganga yo ku wa 6/4/2009 itagaragaraho indahiro y'umuganga wayikoze. [10] Urukiko rusanga kuba kuri raporo hatagaragaraho indahiro ya muganga Mukamana Anne Marie wayikoze, iyo ari inenge ikomeye, ituma itagomba gufatwa nk'ikimenyetso cyashingirwaho muri uru rubanza. B. Kumenya niba ubuhamya bwatanzwe na Nsabagasani na Serugendo butaragombaga gushingirwaho nk'ikimenyetso [11] Harelimana Fulgence n'abamwunganira Me Kananiye Théoneste bavuga ko abatangabuhamya babajijwe bafitanye amasano ya bugufi n'uwahohotewe ndetse amakuru batanze akaba ari ayo babwiwe batarayahagazeho kandi akaba ari abana, ko n'ubwo amategeko atabibuza, ariko ubuhamya batanze batabuhagazeho, akaba

asaba ko hasuzumwa ubuhamya bwa Serugendo kuko nawe avuga ibyo atahagazeho, ko kuba uwahohotewe yari afite imyaka umunani nawe ashobora kuvuga ibidasobanutse. [12] Uhagarariye Ubushinjacyaha avuga ko ubuhamya bwatanzwe n'abana n'ubwo batabuhagazeho butateshwa agaciro kuko bushyigikiwe n'ibindi bimenyetso birimo Raporo ya muganga. UKO URUKIKO RUBIBONA [13] Ingingo ya 63 y'Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo igira iti: "Uwo ari we wese ashobora kumvwa nk'umutangabuhamya mu rukiko keretse abantu badafite ubushobozi bwo kuba abatangabuhamya mu nkiko. Abana batarengeje imyaka 14 kimwe n'abantu bakuru badafite ubushobozi bemerewe gutanga ubuhamya mu nkiko batarahiye iyo babasha kubara inkuru y'uko byagenze ariko ubuhamya bwabo bugomba kunganirwa n'ibindi bimenyetso".

Page 4

[14] Dosiye y'urubanza igaragaza kuri kote ya 11 ko habajijwe umutangabuhamya witwa Nsabagasani wavutse mu mwaka wa 1996 akavuga ko M.A yavuye kwa Kidandi avuga ko apfuye, yamubaza ikimwishe akavuga ko ari Kidandi wamubwiye ko baja kuryama ko amuha amafaranga makumyabiri n'ikijumba, ko M. A yamweretse ayo mafaranga akanayaguramo igisheke, ko kandi abimubwira hari Alice na Nyiramwiza babonye agura icyo gisheke, ko yamubonye avayo mu ma saa cyenda, akanamubwira ko Kidandi yamwicayeho kandi ko hari n'umwana witwa Théobald. Kuri kote ya 13-45 habajijwe umutangabuhamya witwa Serugendo wavutse mu mwaka wa 1995 wavuze ko yabonye M. A ava kwa Kidandi ari gutitira bamubajije icyo yabaye ababwira ko ari Kidandi wa muteruye akamushira ku buriri akamuha amafaranga makumyabiri (20 Frw) akamwicaraho ko kandi abivugaho hari Jeanette, Alice na Bose, ko avuye kwa Kidandi yahise azitura ihene ajya kuragira kandi ko kwa Kidandi nta wundi muntu wariyo. [15] Dosiye igaragaza na none kuri kote ya 16 ko ku wa 8/4/2009 habajijwe uwitwa Niyonzima Jean Claude wavutse mu mwaka wa 1993 wavuze ko yavuye kubwirwa amanota akajya kuragira na Kidandi na Tuyisingize mu ma saa munani, ko intama zahuriye iwabo bakajyana kuragira kandi ko basanze kwa Kidandi umwana witwa Théobald. Kuri kote ya 17 habajijwe umutangabuhamya witwa Tuyisingize Jean wavutse mu mwaka wa 1995 wavuze ko bavuye kubwirwa amanota bakajya kureba Kidandi kugirango bajyane kuragira bagasangayo umwana witwa Théobald ariko bakaba batarigeze bagera mu nzu. [16] Urukiko rurasanga Nsabagasani atanga ubuhamya yari afite imyaka 13 y'amavuko naho Serugendo yari afite imyaka cumi n'ine y'amavuko (14 ans). Rurasanga nk'uko byavuzwe haruguru, abana batarengeje imyaka 14 bemerewe gutanga ubuhamya mu Nkiko ariko ubuhamya bwabo bukaba bugomba kunganirwa n'ibindi bimenyetso. [17] Urukiko rurasanga nyamara, nta bindi bimenyetso bidashidikanwaho Ubushinjacyaha bwerekanye bishyigikira ibyo abo bana bavuze, kuko byagaragaye ko icyemezo cya muganga cyagombaga kubwunganira nta gaciro gifite, bityo imvugo ya Harelimana y'uko ubuhamya bw'abana babajijwe butagombaga gushingirwaho bwonyine nk'ikimenyetso kimushinja ngo zishingirweho hemezwa ko icyaha aregwa kimuhama ikaba ifite ishingiro, bityo n'ubujurire bwe bukaba bufite ishingiro. ICYEMEZO CY'URUKIKO [18] Rwemeje ko Ubujurire bwatanzwe na Harelimana Fulgence bufite ishingiro; [19] Ruvuze ko

urubanza RPA 0402/10/HC/MUS rwaciwe n'Urukiko Rukuru, urugereko rwa Musanze ruhindutse kuri byose; [20] Rwemeje ko Harelimana Fulgence adahamwa n'icyaha akurikiranweho; [21] Rutegetse ko Harerimana Fulgence ahita arekurwa urubanza rukimara gusomwa. [22] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta;

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