

RWANDA / JUDGMENT

UBUSHINJACYAHA v. HATEGEKIMANA

RPAA 00365/2023/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v. HATEGEKIMANA

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Text

Page 1

UBUSHINJACYAHA v. HATEGEKIMANA [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00365/2023/CA (Rukundakuvuga, P.J.) 21 Gashyantare 2025] Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Kongera kugabanya igihano – Iyo abaregwa nta kindi banenga urubanza rwajuririwe uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo ari rwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo. Incamake y'ikibazo: Hategekimana yakurikiranyweho n'Ubushinjacyaha icyaha cyo gusambanya umwana wavutse 2006 bumuregera Urukiko Rwisumbuye rwa Ngoma bumukurikiranyeho icyaha cyo gusambanya umwana. Uregwa aburana yemera icyaha ndetse agisabira imbabazi. Urwo Rukiko rwemeje ko Hategekimana ahamwa n'icyaha, rumuhanisha igihano cy'igifungo cya burundu. Hategekimana ashimiye icyo cyemezo yajuririye Urukiko Rukuru Urugereko rwa Rwamagana avuga ko yahanishijwe igihano kirekire kandi yaraburanye yemera icyaha akabisabira imbabazi ndetse asaba ko yagabanyirizwa igihano. Urukiko Rukuru Urugereko rwa Rwamagana rwaciye urubanza rumuhanisha igihano cy'igifungo cy'imyaka 25. Atakicyishimiye ajuririra mu Rukiko rw'Ubujujire asaba kongera kugabanyirizwa igihano. Ubushinjacyaha kuri iyi mpamvu y'ubujurire bwa kabiri yatanzwe na Hategekimana

buvuga ko impamvu ashingiraho asaba kongera kugabanyirizwa ari nazo yatanze mu Rukiko Rukuru Urugereko rwa Rwamagana bityo zidakwiye guhabwa ishingiro kuko ntacyo anenga urubanza rwajuririwe. Incamake y'icyemezo: Iyo abaregwa nta kindi banenga urubanza rwajuririwe uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo ari rwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo. Ubujurire bufite ishingiro kuri bimwe. Nta mategeko yashingiweho

Imanza zifashishijwe: RPA 00060/2021/CA; Ubushinjacyaha vs Nsabimana Callixte alias Sankara na bagenzi be rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022; RPAA 00230/2023/CA, Ubushinjacyaha vs Haramajyambere Siméon rwaciwe n'Urukiko rw'Ubujurire ku wa 20/12/2024.

Urubanza

Page 2

I. IMITERERE Y'URUBANZA [1] Ku wa 12/09/2020 mu gihe cya saa moya z'umugoroba, Hategekimana Raphaël, ari mu Mudugudu wa Mushirarungu, Akagari ka Bukora, Umurenge wa Nyamugali, Akarere ka Kirehe, Intara y'Iburasirazuba, yaketsweho gusambanya N. S 1 wavutse 2006. Nyuma y'iperereza, Ubushinjacyaha bwamureze mu Rukiko Rwisumbuye rwa Ngoma, bumukurikiranyeho icyaha cyo gusambanya umwana, aburana acyemera anagisabira imbabazi. [2] Mu rubanza RP 00879/2019/TGI/Ngoma rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 27/10/2020, Urukiko rushingiye ku kwemera icyaha kwa Hategekimana Raphaël ; imvugo z'abatangabuhamya bamushinja; Raporo ya muganga n'ifishi y'amavuko ya N.S igaragaza ko yavutse ku wa 06/08/2006, rwamuhamije icyaha cyo gusambanya umwana, rumuhanisha igifungo cya burundu. [3] Hategekimana Raphaël yajuririye Urukiko Rukuru/Urugereko rwa Rwamagana, avuga ko yahawe igihano kirekire kandi yaraburanye yemera icyaha agisabira imbabazi, asaba kukigabanyirizwa. [4] Mu rubanza RPA 00783/2020/HC/RWG rwaciwe n'Urukiko Rukuru/Urugereko wa Rwamagana kuwa 16/08/2023, rwagabanyirije Hategekimana Raphaël igihano, rumuhanisha igihano cy'igifungo cy'imyaka 25, rushingiye ku rubanza RPAA 00487/2021/CA rwaciwe ku wa 17/02/2022, haburana Ubushinjacyaha na Zikamabahari Edouard, wagabanyirijwe igihano cy'igifungo cya burundu yari yarahawe n'Urukiko Rwisumbuye hashingiwe ku kuba yaricuzaga icyaha yakoze, kuba atari asanganywe imyitwarire mibi kandi akaba ari ubwa mbere yari ahamwe n'icyaha, maze rukamuhanisha igifungo cy'imyaka 25. [5] Hategekimana Raphaël ntiyishimiye imikirize y'urubanza ajurira mu Rukiko rw'Ubujurire, urubanza rwe ruhabwa RPAA 00365/2023/CA. Iburanisha mu ruhamye ryashyizwe ku wa 06 Gashyantare 2025, uwo munsu ugeze Hategekimana Raphaël yitaba yunganiwe na Me Uwitonze Jean Marie Vianney, naho Ubushinjacyaha buhagarariwe na Butera Oscar, Umushinjacyaha ku rwego rw'Igihugu. [6] Mu bujurire bwe, Hategekimana Raphaël asaba kongera kugabanyirizwa igihano hashingiwe ku mpamvu nyoroshyacyaha no ku manza zindi zisa n'urwe ndetse n'ibiteganywa n'Itegeko N° 059/2023 ryo ku wa 04/12/2023, rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyanya ibyaha n'ibihano muri rusange. [7] Ubushinjacyaha buvuga ko impamvu Hategekimana Raphaël atanga ari nazo yaburanishije mu Rukiko Rukuru/Urugereko rwa Rwamagana, zikanaherwaho agabanyirizwa igihano. Kuri uru rwego, Ubushinjacyaha busanga izo mpamvu zidakwiye kongera

guhabwa ishingiro kuko atagaragaza icyo anenga icyemezo cy'Urukiko Rukuru/Urugereko rwa Rwamagana. [8] Urukiko rurasanga muri uru rubanza, ikibazo kigomba gusuzumwa ari ukumenya niba Hategekimana Raphaël akwiye kongera kugabanyirizwa igihano.

1 Iri ni izina yahawe rigizwe n'inyuguti zibanza z'amazina ye kubera umutekano we.

Page 3

II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

- a. kumenya niba Hategekimana Raphaël akwiye kongera kugabanyirizwa igihano [9] Hategekimana Raphaël na Me Uwitonze Jean Marie Vianney, umwunganira, bavuga ko n'ubwo Urukiko Rukuru/Urugereko rwa Rwamagana rwagabanyije igihano kikava ku gifungo cya burundu kikagera ku myaka 25, icyo gihano kigikabije kumuremerera. Bavuga ko yaburanye yemera icyaha akagisabira imbabazi kandi akaba akicuza kuko yagikoreshejwe n'inzoga yari yanyoye. Bashingira ku rubanza RS/Incost/Spec 0003/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 04/12/2019 rwemeje ko kubuza urukiko kugabanya igihano mu gihe hari impamvu nyoroshyacyaha binyuranyije n'ihame ry'Ubutabera, ko hagomba kurebwa uburemere bw'icyaha, uburyo icyaha cyakozwe n'uko uwagikoze yari asanzwe yitwara, imibereho ye ndetse n'urwego yagikozemo, bagasaba Urukiko kumugabanyiriza igihano kurushaho. [10] Hategekimana Raphaël n'umwunganizi we basaba Urukiko rw'Ubujurire gushingira ku murongo watanze n'Urukiko rw'ikirenga ndetse n'Urukiko rw'ubujurire uvuga ko “nta cyabuza Urukiko rwajuririwe kongera kugabanya igihano mu gihe rusanga igihano cyatanze n'Urukiko rubanza kitaragabanyijwe mu buryo buhagije ubirebeye hamwe n'uburemere bw'icyaha cyakozwe”. Basaba Urukiko gushingira ku biteganywa n'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaye ibyaha n'ibihano muri rusange, hakanashingirwa ku buryo ibihano bigabanywa maze Hategekimana Raphaël akaba yahanishwa igihano cy'igifungo cy'imyaka 15. Bavuga ibi bisimbura ibiri mu myanzuro batanze bajurira, basaba ko yahanishwa igifungo cy'imyaka 3 hashingiwe ku rubanza RPA 00161/2019/HC/RWG rwaciwe ku wa 21/01/2021, kuko basanze urwo rubanza rwaraciwe itegeko ritarahinduka. [11] Ubushinjacyaha buvuga ko impamvu Hategekimana Raphael atanga zo kugabanyirizwa igihano zisa n'izo yatanze aburana mu bujurire bwe bwa mbere mu Rukiko Rukuru/Urugereko rwa Rwamagana. Muri urwo rubanza Urukiko rwemeje ko Hategekimana Raphael agabanyirizwa igihano kikajya ku gifungo cy'imyaka 25 mu rwego rwo gutanga igihano gisa n'icya abandi bakoze icyaha mu buryo bumwe n'ubwe, ku mpamvu z'uko yemera icyaha, akaba ari ubwa mbere yari akurikiranwe. Buvuga ko Hategekimana Raphael atigeze abasha kuvuguruza ibisobanuro byatanze n'Umucamanza wo mu bujurire ku rwego rwa mbere, ko icyo yakoze ari ukongera gusaba kugabanyirizwa igihano ashingiye ku mpamvu yari yatanze mbere. Ubushinjacyaha buvuga ko busanga ibyakozwe n'Umucamanza wo mu bujurire bwa mbere bikwiye kandi bikurikije amategeko, nta nenge cyangwa ikosa birimo, bityo urubanza rwajuririwe rukaba rudakwiriyeho guhindurwa. UKO URUKIKO RUBIBONA [12] Muri uru rubanza, impaka zishingiye ku kumenya niba

Hategekimana Raphaël ashobora kongera kugabanyirizwaho igihano cy'igifungo cy'imyaka 25 yahanishijwe mu rubanza rujuririrwa, mu gihe nta kindi anenga imikirize y'urubanza.

[13] Ikibazo nk'iki cyatanzweho umurongo mu rubanza RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022 haburana Ubushinjacyaha na Nsabimana Callixte alias Sankara na bagenzi be mu gika cya 252-254, uwo murongo niwo wakomeje gukurikizwa mu

Page 4

manza zakurikiyeho, uruheruka akaba ari urubanza RPAA 00230/2023/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 20/12/2024 haburana Ubushinjacyaha na Haramajyambere Siméon (igika cya 14). Muri izo manza, Urukiko rw'Ubujurire rwavuze ko iyo abaregwa nta kindi banenga urubanza rwajuririwe uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo ari rwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo. [14] Mu rubanza rujuririrwa, Urukiko Rukuru/Urugereko rwa Rwamagana rwasobanuye impamvu y'igihano Hategekimana Raphael ahawe rugaragaza ihuriro riri hagati y'urubanza rwe n'urubanza RPAA 00487/2021/CA rwaciwe ku wa 17/02/2022, haburana Ubushinjacyaha na Zikamabahari Edouard wagabanyirijwe kuko yicuzaga icyaha yakoze, kandi atari asanganwe imyitwarire mibi, akaba ari ubwa mbere yari ahamwe n'icyaha, Urukiko rumuhanisha igifungo cy'imyaka 25 aho kuba igifungo cya burundu yahawe n'Inkiko zibanza ku cyaha cyo gusambanya umwana w'imyaka 11. [15] Urukiko rw'Ubujurire rurasanga ariko imyaka y'uwasambanyijwe, Urukiko Rukuru rwashingiyeho ruha Hategekimana Raphael igihano atari yo y'ukuri kuko n'ubwo nta cyemezo cy'amavuko cyagaragajwe ndetse n'umunyamabanga nshingwabikorwa w'Umurenge wa Nyamugali akavuga ko ntaho yahera yemeza igihe umwana yavukiye, ifishi y'ubuzima bw'umwana N.S igaragaza ko yavutse ku wa 06/08/2006, icyaha yakorewe kikaba cyarabaye ku wa 12/09/2020, byumvikana ko icyo gihe yari afite imyaka 14. [16] Ingingo ya 14 agace ka 2 y'itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange iteganya ko Umuntu uhamijwe n'urukiko icyaha cyo gusambanya umwana ahanishwa igifungo kitari munsu y'imyaka 20 ariko kitarenze imyaka 25. Naho ingingo ya 2 agace ka (b) y'iryo tegeko igateganya ko iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano ku buryo igifungo kimara igihe kizwi kiva ku mezi 6 kuzamura gishobora kugabanywa, ariko ntikijye munsu ya kimwe cya kabiri cy'igihano gito giteganyirijwe icyaha cyakozwe; [17] Urukiko rw'Ubujurire rurasanga Hategekimana Raphaël w'imyaka 58 wasambanyije umwana w'imyaka 14, kuva mu Rukiko Rwisumbuye yaraburanye yemera icyaha kandi akagaragaza ko acyicuza, akaba ari n'ubwa mbere ahamijwe icyaha kandi akaba nta myitwarire mibi yari asanzwe azwiho. Kubera izo mpamvu, uru rukiko rurasanga ashobora kugabanyirizwa igihano, ariko kuko yasambanyije umwana ari mukuru bihagije ndetse hagati ye n'uwo yasambanyije hakaba harimo ikinyuranyo kinini cyane (kigera ku myaka 44), agomba guhabwa igihano kingana n'igifungo cy'imyaka cumi n'irindwi (17) gisimbura igifungo cy'imyaka makumyabiri n'itanu (25) yari yahawe n'Urukiko Rukuru. III. ICYEMEZO CY'URUKIKO [18] Rwemeje ko Ubujurire bwa Hategekimana Raphael bufite ishingiro kuri bimwe; [19] Rwemeje ko imikirize y'urubanza RPA 00783/2020/HC/RWG rwaciwe n'urukiko

Rukuru/Urugereko wa Rwamagana kuwa 16/08/2023 ihindutse gusa ku bijyanye n'igihano ; [20]
Ruhanishije Hategekimana Raphael igihano cy'igifungo cy'imyaka cumi n'irindwi (17) ;

Page 5

[21] Rutegetse ko Hategekimana Raphael asonewe gutanga amagarama y'urubanza kuko aburana afunze.

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