

RWANDA / JUDGMENT

UBUSHINJACYAHA v. UWAMALIYA N'UNDI

RP 00004/2021/HC/HCCIC

COURT

High Court

DECIDED

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UBUSHINJACYAHA v. UWAMALIYA N'UNDI

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Text

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UBUSHINJACYAHA v. UWAMALIYA N'UNDI [Rwanda URUKIKO RUKURU/HCCIC – RP 00004/2021/HC/HCCIC (Ngabire, P.J., Karangwa na Nshimiyimana J.) 28 Ukuboza 2022] Amategeko yerekeye ububasha bw'inkiko – icyaha cyo gucuruza abantu – Kuba icyaha cyo gucuruza abantu kitari mu byaha mpuzamahanga biteganywa n'itegeko, kandi mu bikorwa bikigize hakaba nta na kimwe cyakorewe hanze y'u Rwanda ku buryo cyafatwa nk'icyaha cyambuka imbibi, Urukiko Rukuru Urugereko ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi ntirufite ububasha bwo kuburanisha urwo rubanza. Incamake y'ikibazo: Uru rubanza rwaciye n'Urukiko Rukuru, Urugereko Rwihariye ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibi, Ubushinjacyaha bukurikiranye abaregwa ku cyaha cyo gucuruza abantu n'icyo gusambanya umwana buvuga ko uwitwa Uwamaliya alias Keza akora uburaya muri Centre ya Nkanika, ko yikodeshereje inzu akoreramo uburaya nuko aza kuyibanamo n'umwana witwa N.D. akajya amuha abamusambanya agamije kumubonamo inyungu y'amafaranga; busobanura ko abamusambanije ari benshi. Mu iburanisha, urukiko rubyibwirije rwazamuye inzitizi irebana n'ububasha bwarwo.

Ubushinjacyaha bwo buvuga ko ku birebana n'inzitizi y'ububasha bw'urukiko, Urugereko Rwihariye rw'Urukiko Rukuru ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibi rufite ububasha bwo kuburasha ibyaha rwaregewe kuko mu byaregewe harimo ugucuruza abantu kandi amateguko akaba aha Urukiko Rukuru urugereko ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibi ububasha. Incamake y'icyemezo: 1. Kuba icyaha cyo gucuruza abantu kitari mu byaha mpuzamahanga biteganywa n'itegeko, kandi mu bikorwa bikigize hakaba nta na kimwe cyakorewe hanze y'u Rwanda ku buryo cyafatwa nk'icyaha cyambuka imbibi, Urukiko Rukuru Urugereko ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi ntirufite ububasha bwo kuburanisha urwo rubanza. Uru Rukiko ntirufite ububasha bwo kuburanisha uru rubanza ku rwego rwa mbere; Uru rubanza rwoherejwe mu Rukiko Rwisumbuye rwa Gasabo. Amateguko yashingiweho: Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, igika cya kabiri, ingingo ya 29 n'ya 42. Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, Ingingo ya 14. Imanza zifashishijwe: Ubushinjacyaha v. Murindahabi, RP 00025/2019/HC/HCCIC rwaciwe n' Urugereko Rwihariye rw'Urukiko Rukuru ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibe ku wa 23/12/2019

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Urubanza I. IMITERERE Y'URUBANZA [1] Ubushinjacyaha bwaregeye Urukiko Rukuru, urugereko ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibi Uwamaliya Vestine na Twahirwa Honore icyaha cyo gucuruza abantu n'icyo gusambanya umwana. Buvuga ko Uwamaliya Vestine alias Keza akora uburaya muri Centre ya Nkanika, mu mudugudu wa Karambo mu kagari ka Gakamba, mu murenge wa Mayange, mu karere ka Bugesera mu Ntara y'Iburasirazuba yikodeshereje inzu akoreramo uburaya yaje kuyibanamo n'umwana witwa N. D. akajya amuha abamusambanya agamije kumubonamo inyungu y'amafaranga; busobanura ko abamusambanije ari benshi, ariko ko yibukamo uwitwa Tumusifu utuye muri ako ga Centre. Buvuga kandi ko tariki ya 30/8/2019 musaza we Habumugisha Egide yagiye kwa Uwamaliya Vestine gushaka Nyinawumuntu asanga Uwamaliya yamwohereje kwa Twahirwa Honore kumusambanya ajya kumureberayo bagerageza kumwihisha ariko k'ubufatanye n'abandi babafatira hafi aho. [2] Mu iburanisha urukiko rubyibwirije rwazamuye inzitizi irebana n'ububasha bwarwo maze Ubushinjacyaha buvuga ko urubanza ruri mu bubasha bw'uru rukiko kuko hakurikiranywe icyaha cyo gucuruza abantu. [3] Urubanza rwaburashijwe Uwamaliya Vestine na Twahirwa Honore batitabye urukiko. [4] Ikigomba gusuzumwa ni ukumenya niba Urugereko rwihariye rw'Urukiko Rukuru ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibi rufite ububasha bwo kuburanisha uru rubanza. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO Ku byerekeranye no kumenya niba Urugereko rwihariye rw'Urukiko Rukuru ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibi rufite ububasha bwo kuburanisha uru rubanza. [5] Ubushinjacyaha bwavuze ko Urugereko Rwihariye rw'Urukiko Rukuru ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibi rufite ububasha bwo kuburasha ibyaha bwaregewe kuko mu byaregewe harimo ugucuruza abantu kandi amateguko akaba aha Urukiko Rukuru urugereko ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibi ububasha. Asobanura ko ububasha bw'urukiko bushingira ku ngingo ya 42 y'itegeko rigena ububasha

bw'inkiko mu gace ka kabiri ahavugwa gucuruza abantu kuko Uwamariya yafataga abana akabashora mu busambanyi akaba ariwe wishyurwa, ibyo akaba aribyo biha urukiko ububasha. UKO URUKIKO RUBIBONA

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[6] Urukiko rubona ingingo ya 42 y'Itegeko n°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, igika cya kabiri, iteganya ko Urugereko Rwihariye rw'Urukiko Rukuru ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibi rufite kandi ububasha bwo kuburanisha umuntu wese, harimo n'abanyamahanga, imiryango cyangwa amashyirahamwe bitari ibya Leta byo mu Rwanda cyangwa mu mahanga, bikurikiranyweho kuba byarakoreye mu ifasi y'u Rwanda cyangwa mu mahanga ibyaha byo mu rwego mpuzamahanga cyangwa birenga imipaka y'ibihugu bikurikira : 1° ibyaha by'iterabwoba, ibyaha byo gufatira abantu ho ingwate ; 2° ibyaha byo gucuruza abantu ; 3° ibyaha by'ubucakara n'ibindi byaha bifitanye isano nabyo n'ibyaha bifitanye isano na yo; 4° icyaha cy'iyicarubozo, ibikorwa by'indengakamere cyangwa bitesha agaciro ubumuntu ; 5° icyaha cya jenocide uretse ibyaha bya jenocide yakorewe Abatutsi n'ibyaha byibasiye inyokomuntu byakozwe hagati y'itariki ya mbere Ukwakira 1990 n'ya 31 Ukuboza 1994 ; 6° ibyaha byibasiye inyokomuntu ; 7° ibyaha by'intambara ; 8° guhakana cyangwa gupfobya jenocide, (...). [7] Urukiko rusanga muri iyo ngingo havugwamo ibyaha by'ubwoko bubiri biburanishwa n'Urugereko Rwihariye rw'Urukiko Rukuru, aribyo ibyaha mpuzamahanga n'ibyambuka imbibi. Amategeko ateganya ko ibyaha mpuzamahanga ni icyaha giteganywa gutyo n'Amategeko Mpuzamahanga akaba ari icyaha cya jenocide; icyaha cyibasira inyokomuntu; n'ibyaha by'intambara; 1 naho icyaha cyambuka imbibi iyo kimwe mu bikorwa bikigize gikorewe hanzu y'imipaka y'u Rwanda. 2 [8] Urukiko rusesenguye ikirego cyatanze n'Ubushinjacyaha rubona mu byaha rukurikiranyeho Uwamaliya Vestine na Twahirwa Honore harimo icyaha cyo gucuruza abantu, kandi hashingiwe kubivuzwe haruguru, icyaha cyo gucuruza abantu ntikiboneka mu byaha mpuzamahanga byavuzwe haruguru. Birumvikana ko hakwiye kurebwa niba mu bikorwa bivugwa n'ubushinjacyaha ko bigize icyaha cyo gucuruza abantu byaregowe urukiko harimo igikorwa cyangwa ibikorwa byakorewe hanzu y'imipaka y'Urwanda. [9] Ubushinjacyaha bwaregeye urukiko buvuye ko Uwamaliya Vestine alias Keza yakodesheje inzu akoreramo uburaya muri Centre ya Nkanika, mu mudugudu wa Karambo mu Kagari ka Gakamba, mu Murenge wa Mayange, mu Karere ka Bugesera mu Ntara y'Iburasirazuba yaje kuyibanamo n'umwana witwa N. D. akajya amuha abamusambanya agamije kumubonamo inyungu y'amafranga; mu bamusambanije yibukamo uwitwa Tumusifu utuye muri ako ga Centre; kandi ko tariki ya 30/8/2019 musaza we Habumugisha Egide yagiye kwa Nyinawumuntu asanga Uwamaliya yamwohereje kwa Twahirwa Honore kumusambanya. [10] Urukiko rurasanga ibikorwa bivuzwe haruguru, byose nta na kimwe cyakorewe hanzu y'U Rwanda; kuko inzu yakodeshejwe na Uwamaliya Vestine aho akorera uburaya iri mu Rwanda, ugusambanya Nyinawumuntu byakorewe mu Rwanda, n'uburyo Uwamaliya Vestine yakiragamo ibiguzi byakorewe mu Rwanda. [11] Urukiko rusanga harebwe kubisobanurwa haruguru, kuba

icyaha cyo gucuruza abantu rwaregewe kitari mu byaha mpuzamahanga biteganywa n'itegeko, kandi mu bikorwa bikigize nta na kimwe cyakorewe hanze y'u Rwanda ku buryo cyafatwa nk'icyaha cyambuka imbibi, rusanga uru rugereko ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi ntaho 1 Ingingo ya 14 igika cya 2 y'itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange. 2 Ingingo ya 14 igika cya 3 y'itegeko n° 68/2018 rivuzwe haruguru.

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rwahera ruburanisha uru rubanza. Ibi kandi byanemejwe mu zindi manza zaciwe n'uru rukiko harimo urubanza RP 00025/2019/HC/HCCIC3 rw'Ubushinjacyaha na Murindahabi Samuel, aho urwo rubanza rwohererejwe urukiko rufite ububasha bwo kuburanisha icyaha cyo gucuruza abantu kuko ibikorwa biregerwa nta cyigeze gikorerwa hanze y'u Rwanda. [12] Urukiko rubona, ahubwo, uru rubanza rugomba koherezwa mu Rukiko Rwisumbuye rwa Gasabo rufite ububasha bwo ku ruburanisha ku rwego rwa mbere, harebwe ko ibyaha biregerwa bihanishwa igifungo kirenga imyaka itanu, 4 ikindi kandi ibikorwa biregerwa bikaba byarakorewe mu Murenge wa Mayange mu Karere ka Bugesera, akaba ari mu ifasi y'Urukiko rwisumbuye rwa Gasabo. III. ICYEMEZO CY'URUKIKO [13] Rwemeje ko uru Rugereko rwihariye rw'Urukiko Rukuru rudafite ububasha bwo kuburanisha uru rubanza ku rwego rwa mbere ; [14] Rwemeje kandi rutegetse ko uru rubanza rwohererezwa mu Rukiko Rwisumbuye rwa Gasabo ; [15] Rutegetse ko amagarama y'urubanza abaye asubitswe. 3 Urubanza RP 00025/2019/HC/HCCIC rw'Ubushinjacyaha na Murindahabi Samuel, rwaciwe kuwa 23/12/2019 n' Urugereko Rwiheriye rw'Urukiko Rukuru ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibe. 4 Ingingo ya 29 igika cya mbere, agace ka 10 y'itegeko n°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganywa ko Inkiko Zisumbuye ziburanisha ku rwego rwa mbere ibyaha ibyaha bihanishwa igihano cy'igifungo kirengeje imyaka itanu (5) keretse ibyaha iri tegeko ryahariye izindi nkiko [...].

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