

RWANDA / JUDGMENT

UBUSHINJACYAHA v. IRADUKUNDA

RPAA 00188/2023/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA v. IRADUKUNDA

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Text

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UBUSHINJACYAHA v. IRADUKUNDA [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00188/2023/CA (Mukamurenzi, P.J.) 11 Ugushyingo 2025] Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Ubujurire – Kujurira bikorwa mu gihe giteganyijwe cy'iminsi mirongo itatu (30), hagaragazwa ibinengwa urubanza rujuririrwa, ibigomba gukosorwa n'impamvu ari amakosa n'uburyo yakosorwa, ko mu gihe ingingo y'ubujurire itanzwe nyuma y'igihe giteganywa n'itegeko, iyo mpamvu y'ubujurire itagomba kwakirwa ngo isuzumwe mu gihe bigaragara ko ituzuza cyangwa ngo isobanure ingingo y'ubujurire yatanzwe hubahirijwe ibihe. Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Ubujurire – Gutanga imoamvu z'ubujurire – Umuburanyi agomba gutanga impamvu z'ubujurire cyangwa kugaragaza inenge ziri mu rubanza rujuririrwa mu bihe by'ubujurire biteganywa n'itegeko. Umuburanyi wajuriye atarabona kopi y'urubanza, agomba gutanga imyanzuro y'ubujurire nibura mu gihe cy'iminsi 30 nyuma y'uko kopi ishyizwe muri IECMS. Incamake y'ikibazo: Uwitwa Iradukunda Jules yakurikiranyweho n'Ubushinjacyaha icyaha cyo kubika ibiyobyabwenge byo mu bwoko bw'urumogi, nyuma yuko afatanywe udupfunyika 90 tw'urumogi. Bwamuregeye Urukiko Rwisumbuye rwa Rubavu, uregwa aburana yemera ko anywa urumogi, ariko atarucuruza. Urwo Rukiko rwaciye urubanza rwemeza

ko uregwa ahamwa n'icyaha cyo kunywa no gucuruza urumugi, rumuhanisha igifungo cy'imyaka 25 n'ihazabu ya 20.100.000 Frw, rumugabanyirije igihano kuko ari ubwa mbere afatiwe mu cyaha. Uregwa atishimiye icyo cyemezo yajuririyeye mu Rukiko Rukuru, Urugereko rwa Musanze asaba ko yahanirwa icyaha cyo kunywa urumogi aho kurucuruza. Urwo Rukiko mu guca urubanza rwemeza ko ubujurire bwe nta shingiro bufite, icyakora rumugabanyirije igihano, rumuhanisha igifungo cy'imyaka 15 n'ukwezi 1 n'ihazabu ya 20.100.000 Frw. Uregwa yajuririyeye kandi mu Rukiko rw'Ubujurire kuwa 15/03/2023 avuga ko kugira ngo ahabwe ubutabera buboneye, ko ariko ku bijyanye n'impamvu ubujurire bushingiyeho, azazigeza ku Rukiko mu mwanzuro w'inyongera yamaze kubona kopi y'urubanza. Kuwa 29/05/2023 yatanze umwanzuro w'inyongera anenga Urukiko Rukuru urugereko rwa Musanze kuba rwaraciye urubanza rugenekereje ndetse rukanabogama, rumuhamya igikorwa kigize icyaha atakoze, rwirengagije impamvu zose z'ibyabaye n'ibyemejwe n'amategeko. Umwunganira nawe yatanze umwanzuro w'inyongera kuwa 22/09/2025. Urukiko rw'Ubujurire rubyibwirije rwazamuye inzitizi yo kumenya niba impamvu z'ubujurire zatanzwe n'uregwa kuwa 29/05/2023 n'iz'umwunganira zatanzwe kuwa 22/09/2025 zakwakirwa zigasuzumwa. Mu iburanisha ry'urubanza, uregwa avuga ko inyandiko ijurira yakozwe mu gihe avuga ko impamvu z'ubujurire azazigaragaza yabonye kopi y'urubanza, azitanga hashize amezi abiri, ko mu mpamvu zari zatumye ajurira yagaragaje ari uko yari yaburanye asaba guhindurirwa inyito y'icyaha.

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Ku ruhande rw'Ubushinjacyaha buvuga ko ubujurire bw'uregwa butubahirije ibiteganywa n'ingingo ya 181 na 183 z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, kuko urubanza rujuriirwa rwaciye ku wa 09/03/2023, ajurira mu gihe ku wa 15/03/2023 avuga ko azagaragaza impamvu z'ubujurire abonye kopi y'urubanza, ariko inashyizwemo ntiyihutira gukora umwanzuro, kuko yawohereje hashize amezi 2 kopi ishyizwe muri dosiye, bityo ubujurire bwe bukaba budakwiye kwakirwa ngo busuzumwe kuko yarengeje ibihe byo kujurira Incamake y'ikibazo: 1. Kujurira bikorwa mu gihe giteganyijwe cy'iminsi mirongo itatu (30), hagaragazwa ibinengwa urubanza rujuriirwa, ibigomba gukosorwa n'impamvu ari amakosa n'uburyo yakosorwa, ko mu gihe ingingo y'ubujurire itanzwe nyuma y'igihe giteganywa n'itegeko, iyo mpamvu y'ubujurire itagomba kwakirwa ngo isuzumwe mu gihe bigaragara ko ituzuzwa cyangwa ngo isobanure ingingo y'ubujurire yatanzwe hubahirijwe ibihe.

2. Umuburanyi agomba gutanga impamvu z'ubujurire cyangwa kugaragaza inenge ziri mu rubanza rujuriirwa mu bihe by'ubujurire biteganywa n'Itegeko. Umuburanyi wajuriye atarabona kopi y'urubanza, agomba gutanga imyanzuro y'ubujurire nibura mu gihe cy'iminsi 30 nyuma y'uko kopi ishyizwe muri IECMS. Impamvu z'ubujurire zatanzwe impitagihe. Nta mategeko yashingiweho Imanza zifashishijwe: RCOMAA 00071/2017/SC; Mbuto Aimable vs BRD Ltd rwaciye n'Urukiko rw'Ikirenga ku wa 26/10/2018; RPAA 00047/2021/CA; Ubushinjacyaha vs Maj. (Rtd) MUDATHIRU Habib alias Mussa na bagenzi be rwaciye n'Urukiko rw'Ubujurire ku wa 9/6/2023; RPAA 00436/2023/CA; Ubushinjacyaha vs Rukundo Elia rwaciye n'Urukiko rw'Ubujurire ku wa 28/05/2025. Urubanza I. IMITERERE Y'URUBANZA [1] Ishami rya police rishinzwe kurwanya ibiyobyabwenge (ANU) ryahawe

amakuru ko Iradukunda Jules acuruza urumogi, maze ku wa 23/09/2021 bajya aho atuye bahasanga udupfunyika 90 tw'urumogi, abajijwe aho arukura avuga ko aruhabwa n'uwitwa SADI utuye ahitwa mu Makoro. [2] Iperereza rirangiye, Ubushinjacyaha bwareze Iradukunda Jules mu Rukiko Rwisumbuye rwa Rubavu bumukurikiranyeho icyaha cyo kubika ibiyobyabwenge byo mu bwoko bw'urumogi, aburana ahakana icyaha avuga ko icyo yemera ari uko arunywa, ko n'udupfunyika 90 yafatanywe rwari urumogi rwo kunywa.

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- [3] Mu rubanza RP 00656/2021/TGI/RBV rwaciwe ku wa 20/10/2021, Urukiko rwemeje ko Iradukunda Jules ahamwe n'icyaha cyo kunywa no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi rushingiye ku kuba abazwa mu Bugenzacyaha yaremeye ko urumogi yafatanywe yarurunguye amafaranga 35.000 Frw, aguze agapfunyika kamwe ku mafaranga 300, ku mvugo z'abatangabuhamya Nasingizwe Jean Marie Vianney na Gakuru Fabien no kuri raporo y'inzeho z'ibanze, maze rumuhanisha igifungo cy'imyaka 25 n'ihazabu ya 20.100.000 Frw, rumugabanyirije igihano kuko ari ubwa mbere afatiwe mu cyaha,. [4] Iradukunda Jules yajuririye imikirize y'urubanza mu Rukiko Rukuru, urugereko rwa Musanze asaba ko yahanirwa icyaha cyo kunywa urumogi aho kuba icyo kurunywa no kurucuruza, anavuga ko ibimenyetso byashingiweho n'Urukiko byashatswe mu buryo bunyuranyije n'amategako. Uhagarariye Ubushinjacyaha yavuze ko urumogi yafatanywe rwari urwo gucuruza kuko mu gusobanura aho arukura yakoresheje imvugo y'uko yaruranguraga, bigahura n'ibyavuzwe n'abatangabuhamya bagaragaje ko asanzwe azwiho gucuruza urumogi ndetse n'amakuru yatanze n'inzeho zibanze, kandi byose bikaba byuzuzanya, bityo inyito y'icyaha ikaba itahinduka. Yanavuze ko ibyo gusaka nabyo byubahirije amategako kuko byakozwe inzego z'ibanze zihari. [5] Mu rubanza RPA 00955/2021/HC/MUS rwaciwe ku wa 09/03/2023, Urukiko Rukuru, urugereko rwa Musanze rwemeje ko ubujurire bwa Iradukunda Jules nta shingiro bufite, kuko yahamijwe icyaha aregwa hashingiwe ku kuba abazwa mu iperereza yariyemereye ko urumogi yafatanywe ari urwo yaranguye, imvugo ze zihura n'iz'abatangabuhamya bamushinja, raporo y'inzeho z'ibanze ndetse no kuba yarafatanywe ingano nini y'urumogi, ko nta n'ikosa ryakozwe mu isaka kuko ryakozwe hari ubuyobozi, maze rwemeza ko inyito y'icyaha idahinduka. Icyakora urwo Rukiko rwamugabanyirije igihano cy'igifungo, rumuhanisha igifungo cy'imyaka 15 n'ukwezi 1 n'ihazabu ya 20.100.000 Frw. [6] Iradukunda Jules yajuririye urwo rubanza mu Rukiko rw'Ubujurire, urubanza ruhabwa RPAA 00188/2023/CA, iburanisha ribera mu ruhame ku wa 06/11/2025, Iradukunda Jules yunganiwe na Me Munyansanga Amina Gisèle, naho Ubushinjacyaha buhagarariye na Ntawangundi Béatrice. [7] Ku wa 15/03/2023, Iradukunda Jules yandikiye Urukiko rw'Ubujurire avuga ko ajuriye kubera ko atishimiye imikirize y'urubanza RPA 00955/2021/HC/MUS rwaciwe n'Urukiko Rukuru, urugereko rwa Musanze kugira ngo ahabwe ubutabera buboneye, ko ariko ku bijyanye n'impamvu ubujurire bushingiyeho, azazigeza ku Rukiko mu mwanzuro w'inyongera yamaze kubona kopi y'urubanza. [8] Ku wa 29/05/2023, yohereje umwanzuro w'inyongera avuga ko anenga Urukiko Rukuru urugereko rwa Musanze kuba rwaraciye urubanza rugenekereje ndetse

rukanabogama, rumuhamya igikorwa kigize icyaha atakoze, rwirengagije impamvu zose z'ibyabaye n'ibyemejwe n'amategeko. [9] Ku wa 22/09/2025, Me Munyansanga Amina Gisèle umwunganira nawe yatanze umwanzuro w'inyongera avuga ko Urukiko rwagenekereje ruvuga ko ijambo kurangura bivuga kugurisha kandi atari byo, ko hari raporo z'ubuyobozi bw'ibanze 2 zivuga imyitwarire itandukanye ya Iradukunda Jules kuko iyakozwe nyuma ivuga ko yari afite imyitwarire myiza itandukanye

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n'iyakozwe agifatwa, kandi uretse ubuhamya bw'abapolisi bamufashe nta mutangabuhamya uvuga ko yamugurishije urumogi. [10] Uhagarariye Ubushinjacyaha avuga ko ubujurire bwa Iradukunda Jules nta shingiro bufite, kuko abazwa mu Bugenzacyaha yavuze ko urumogi yafatanywe yarurunguye amafaranga 35.000 Frw, ko iyo mvugo yo kurangura igaragaza ko yagombaga kujya kurucuruza kugira ngo abone inyungu, ko hanashingiwe ku ngano y'urumogi yafatanwe (udupfunyika 90), imvugo z'abatangabuhamya bagiye kumusaka bagendeye ku makuru bari barahawe ko acuruzwa urumogi na raporo y'inzeho z'ibanze. [11] Mu rubanza harasuzumwa ikibazo cyo kumenya niba impamvu z'ubujurire Iradukunda Jules yatanze mu mwanzuro w'inyongera wo ku wa 29/05/2023 n'izatanzwe n'umwunganira zakwakirwa zigasuzumwa. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba impamvu z'ubujurire Iradukunda Jules yatanze mu mwanzuro w'inyongera wo ku wa 29/05/2023 n'izatanzwe n'umwunganira zakwakirwa zigasuzumwa. [12] Mu ibaruwa y'ubujurire yo ku wa 15/03/2023, Iradukunda Jules yavuze ko atishimiye imikirize y'urubanza RPA 00955/2021/HC/MUS rwaciwe n'Urukiko Rukuru urugereko rwa Musanze, ko impamvu ubujurire bwe bushingiyeho azazigeza ku Rukiko mu mwanzuro w'inyongera yamaze kubona kopi y'urubanza. [13] Ku wa 29/05/2023 yashyize muri dosiye umwanzuro w'inyongera avuga ko anenga Urukiko Rukuru urugereko rwa Musanze kuba rwaraciye urubanza rugenekereje ndetse kubera kubogama rumuhamya igikorwa kigize icyaha atakoze, rwirengagije impamvu zose z'ibyabaye n'ibyemejwe n'amategeko. [14] Ku wa 22/09/2025, Me Munyansanga Amina Gisèle umwunganira nawe yatanze umwanzuro w'inyongera avuga ko Urukiko rwagenekereje ruvuga ko ijambo kurangura bivuga kugurisha kandi atari byo, ko hari raporo z'ubuyobozi bw'ibanze 2 zivuga imyitwarire itandukanye ya Iradukunda Jules kuko iyakozwe nyuma ivuga ko yari afite imyitwarire myiza itandukanye n'iyakozwe agifatwa, kandi uretse ubuhamya bw'abapolisi bamufashe nta mutangabuhamya uvuga ko yamugurishije urumogi. [15] Mu iburanisha ry'urubanza, Iradukunda Jules yasobanuye ko impamvu atagaragaje impamvu z'ubujurire ubwo yajuriraga ari uko muri gereza babamenyesha gusa icyemezo cy'urukiko, ko kugira ngo abone kopi y'urubanza yagombye kwifashisha abo mu muryango we kuko atari kugaragaza impamvu z'ubujurire adafite kopi y'urubanza, ko ariko mu ibaruwa y'ubujurire yo ku wa 15/03/2023, mu gika cya 1, yashakaga kugaragaza ko icyasuzumwa ari uguhindurirwa inyito y'icyaha n'ubwo byari bikiri mu gateganyo, kuko iyo bajurira bataba basobanukiwe uko bagomba kwandika.

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[16] Umwunganira avuga ko inyandiko ijurira yakozwe mu gihe avuga ko impamvu z'ubujurire azazigaragaza yabonye kopi y'urubanza, azitanga hashize amezi abiri, ko mu mpamvu zari zatumye ajurira yagaragaje ari uko yari yaburanye asaba guhindurirwa inyito y'icyaha. [17] Uhagarariye Ubushinjacyaha avuga ko ubujurire bwa Iradukunda Jules butubahirije ibiteganywa n'ingingo ya 181 na 183 z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, kuko urubanza rujuririrwa rwaciwe ku wa 09/03/2023, ajurira mu gihe ku wa 15/03/2023 avuga ko azagaragaza impamvu z'ubujurire abonye kopi y'urubanza, ariko inashyizwemo ntiyihutira gukora umwanzuro, kuko yawohereje hashize amezi 2 kopi ishyizwe muri dosiye, bityo ubujurire bwe bukaba budakwiye kwakirwa ngo busuzumwe kuko yarengeje ibihe byo kujurira. UKO URUKIKO RUBIBONA [18] Muri uru urubanza impaka zishingiye ku kumenya niba ingingo z'ubujurire Iradukunda Jules n'umwunganira batanze ibihe by'ubujurire byarareze zasuzumwa. [19] Ikibazo kijyanye n'iyakirwa ry'impamvu z'ubujurire zitanzwe hatubahirijwe ibihe by'ubujurire cyasesenguwe mu rubanza rubanziriza urundi mu rubanza RCOMAA 00071/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 26/10/2018, haburana Mbuto Aimable na BRD Ltd, hanyuma urwo Rukiko rusobanura ko kujurira bikorwa mu gihe giteganyijwe cy'iminsi mirongo itatu (30), hagaragazwa ibinengwa urubanza rujuririrwa, ibigomba gukosorwa n'impamvu ari amakosa n'uburyo yakosorwa, ko mu gihe ingingo y'ubujurire itanzwe nyuma y'igihe giteganywa n'itegeko, iyo mpamvu y'ubujurire itagomba kwakirwa ngo isuzumwe mu gihe bigaragara ko ituzuzwa cyangwa ngo isobanure ingingo y'ubujurire yatanze hubahirijwe ibihe. [20] Naho ikibazo cyerekeye umuburanyi watanze ubujurire atarabona kopi y'urubanza, cyatanzweho umurongo n'Urukiko rw'Ubujurire mu rubanza rubanziriza urundi RPAA 00047/2021/CA rwaciwe ku wa 9/6/2023, haburana Ubushinjacyaha na Maj. (Rtd) MUDATHIRU Habib alias Mussa na bagenzi be washingiweho n'izindi manza zirimo n'urubanza RPAA 00436/2023/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 28/05/2025, haburana Ubushinjacyaha na Rukundo Elia. Muri izo manza, Urukiko rw'Ubujurire rwasobanuye ko umuburanyi agomba gutanga impamvu z'ubujurire cyangwa kugaragaza inenge ziri mu rubanza rujuririrwa mu bihe by'ubujurire biteganywa n'itegeko. Umuburanyi wajuriye atarabona kopi y'urubanza, agomba gutanga imyanzuro y'ubujurire nibura mu gihe cy'iminsi 30 nyuma y'uko kopi ishyizwe muri IECMS. [21] Dosiye y'urubanza RPA 00955/2021/HC/MUS rujuririrwa igaragaza ko Urukiko Rukuru, urugereko rwa Musanze rwaruburanishije ku wa 09/02/2023, ababuranyi bose bahari, iburanisha ripfundikiwe bamenyeshwa ko ruzasomwa ku wa 09/03/2023 saa munani n'igice. Umunsi ababuranyi bamenyeshejwe ugeze rurasomwa, kopi y'urubanza ishyirwa muri IECMS ku wa 11/03/2023. [22] Urukiko rw'Ubujurire rurasanga Iradukunda Jules abinyujije ku buyobozi bwa Gereza ya Rubavu ku wa 15/03/2023 yarajuririye urwo rubanza yubahirije ibihe byo kujurira nk'uko biteganywa n'ingingo ya 181, igika cya 1 y'Itegeko N°027/2019 ryo ku wa 19/09/2019 ryerekeye

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imiburanishirize y'imanza nshinjabyaha nk'uko ryahinduwe 1 , ariko ntiyatanga impamvu ubujurire bwe bushingiyeho avuga ko azazigeza ku Rukiko mu mwanzuro w'inyongera amaze kubona kopi y'urubanza. [23] Urukiko rw'Ubujurire rurasanga ibijyanye n'inenge z'urubanza ajuririra n'ibisobanuro biziherekeje, Iradukunda Jules yarabigaragaje mu mwanzuro w'inyongera yatanze ku wa 29/05/2023 hashize iminsi 80 urubanza rusomwe, ndetse n'umwunganira atanga indi myanzuro ku wa 22/09/2023, nyamara igihe yatangaga ubujurire ku wa 15/03/2023, bigaragara ko kopi y'urubanza yari muri IECMS kuko yashyizwemo ku kuwa 11/03/2023. [24] Urukiko rw'Ubujurire rurasanga ibyo Iradukunda Jules avuga ko mu gika cya 1 cy'iyi baruwa y'ubujurire yashakaga kugaragaza ko Urukiko rw'Ubujurire rwasuzuma inyito y'icyaha nta shingiro bifite, kuko muri icyo gika ntacyo agaragaza anenge urubanza ajuririra, ahubwo asobanura uko urubanza rwagenze mu Rukiko Rukuru, urugereko rwa Musanze, ko yari yasabye guhindurirwa inyito y'icyaha, akanavuga igihano yahawe muri urwo rubanza. Urukiko ruranasanga atagaragaza ko yigeze asaba ubuyobozi bwa gereza afungiyemo kumuha umwanya wo gusoma kopi y'urubanza rwe ntawuhabwe. [25] Hashingiwe rero ku murongo wavuzwe haruguru watanze mu rubanza RCOMAA 00071/2017/SC n'uwatanzwe mu rubanza RPAA 00047/2021/CA, Urukiko rw'Ubujurire rurasanga ingingo z'ubujurire Iradukunda Jules yatanze n'izatanze n'umwunganira zitagomba kwakirwa ngo zisuzumwe kuko zatanze ibihe by'ubujurire byararangiyeye. Ku bw'ibyo hakaba hagomba kugumaho imikirize y'urubanza yajuririye kuko atagaragaje impamvu ubujurire bwe bushingiyeho mu gihe giteganywa n'amategeko. III. ICYEMEZO CY'URUKIKO [26] Rwemeje ko impamvu z'ubujurire zatanze na Iradukunda Jules n'umwunganira zitakiriwe kuko zatanze impitagihe; [27] Rwemeje ko urubanza RPA 00955/2021/HC/MUS rwaciwe n'Urukiko Rukuru, urugereko rwa Musanze ku wa 09/03/2023 rugumanye agaciro mu ngingo zarwo zose; [28] Rwemeje ko igifungo cy'imyaka 15 n'ukwezi 1, n'ihazabu ya 20.100.000 Frw, Iradukunda Jules yahanishijwe kigumye.

1 Iteganya ko igihe cyo kujurira ari iminsi 30 ibarwa kuva ku munsu urubanza rwaciriweho ku muburanyi wari uhari cyangwa ahagarariwe igihe urubanza rwacibwaga.

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