

RWANDA / JUDGMENT

UBUSHINJACYAHA v. ISHIMWE

RDP 00002/2025/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA v. ISHIMWE

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Text

Page 1

UBUSHINJACYAHA v. ISHIMWE [Rwanda URUKIKO RW'UBUJURIRE – RDP 00002/2025/CA (Munyangeri, P.J.) 25 Nyakanga 2025] Gusubirishamo urubanza ku mpamvu z'akarengane – Inkurikizi zo kwemererwa gusubirishamo urubanza ku mpamvu z'akarengane ku muburanyi ufunze – Umuburanyi ufunze wemerewe ko urubanza rwe rusubirwamo ku mpamvu z'akarengane, arekurwa bitabaye ngombwa kubisaba Urukiko. Incamake y'ikibazo: Ishimwe yakurikiranyweho n'Ubushinjacyaha icyaha cyo gusambanya umwana bigakurikirwa no kubana na we nk'umugore n'umugabo, bumuregera Urukiko Rwisumbuye rwa Nyagatare. Urwo Rukiko rwaciye urubanza rwemeza ko uregwa ahamwa n'icyaha rumuhanisha igifungo cy'imyaka 10. Ishimwe yajuririye mu Rukiko Rukuru, Urugereko rwa Rwamagana, Urwo Rukiko rwemeza ko ubujurire bwe nta shingiro bufite, hagumyeho imikirize y'urubanza rwajuririwe. Yatanze ikirego kandi muri uru Rukiko asubirishamo urubanza ingingo nshya, urwo Rukiko rwemeza ko ikirego cye kitakiriwe ngo kiburanishwe mu mizi. Ishimwe yasabye ko urubanza rusubirwamo ku mpamvu z'akarengane yandikira Perezida w'Urukiko rw'Ubujurire, nawe yandikira Perezida w'Urukiko rw'Ikirenga, yemeza ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, rwohererezwa Urukiko rw'Ubujurire kugirango ruruburanishe. Ishimwe yatanze ikirego

kihutirwa asaba gufungurwa by'agateganyo mu gihe urubanza rutaraburanishwa. Ku rundi ruhande Ubushinjacyaha buvuga ko ikirego kidakwiye guhabwa ishingiro. Incamake y'icyemezo: Umuburanyi ufunze wemerewe ko urubanza rwe rusubirwamo ku mpamvu z'akarengane, arekurwa bitabaye ngombwa kubisaba Urukiko. Ikirego gifite ishingiro. Amategeko yashingiweho: Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, Ingingo ya 64 Imanza zifashishijwe: RP 00003/2018/SC; Ubushinjacyaha vs Niyitegeka Emmanuel rwaciwe n'Urukiko rw'Ikirenga ku wa 29/10/2018, RP 00002/2022/CA; Ubushinjacyaha vs BADO Bede rwaciwe n'Urukiko rw'Ubujurire ku wa 07/10/2022, RP 00003/2024/CA; Ubushinjacyaha vs Nsengimana Didace rwaciwe n'Urukiko rw'Ubujurire ku wa 10/05/2024,

Page 2

RP/ECON 00001/2024/CA; Ubushinjacyaha vs Ndagijimana Emmanuel n'abandi rwaciwe n'Urukiko rw'Ubujurire ku wa 16/08/2024. RP 00009/2024/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 25/11/2024 haburana Ubushinjacyaha na Nsabimana Marcel

Urubanza I. IMITERERE Y'URUBANZA [1] Ubushinjacyaha bwareze Ishimwe Eric buvuga ko mu mwaka wa 2014 yasambanyije umwana w'imyaka 16 y'amavuko witwa Mukandayisenga Angelique akurikizaho kubana na we nk'umugore n'umugabo. Ishimwe Eric yireguye avuga ko uwo mukobwa yari afite imyaka y'ubukure. [2] Mu rubanza RP 00628/2018/TGI/NYG rwaciwe n'Urukiko Rwisumbuye rwa Nyagatare ku wa 04/01/2019, urwo Rukiko rwemeje ko Ishimwe Eric ahamwa n'icyaha cyo gusambanya umwana, rumuhanisha igifungo cy'imyaka icumi (10). [3] Ishimwe Eric yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Rwamagana. Mu rubanza RPA 00094/2019/HC/RWG rwaciwe ku wa 05/05/2020, urwo Rukiko rwemeje ko ubujurire bwe nta shingiro bufite, hagumaho imikirize y'urubanza rwajuririwe. [4] Ishimwe Eric yongeye kuregera urwo Rukiko, asaba ko urubanza RPA 00094/2019/HC/RWG rusubirishwamo ingingo nshya. Mu rubanza RS/REV/RP 00001/2023/HC/RWG rwaciwe ku wa 28/12/2023, urwo Rukiko rwemeje ko ikirego yatanze kitakiriwe ngo kiburanishwe mu mizi. [5] Ishimwe Eric yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urubanza RS/REV/RP 00001/2023/HC/RWG rusubirwamo ku mpamvu z'akarengane, abikorera raporo ayishyikiriza Perezida w'Urukiko rw'Ikirenga, uyu yemeza ko rusubirwamo ku mpamvu z'akarengane kandi ko rwoherezwa Urukiko rw'Ubujurire kugira ngo abe ari rwo ruruburanisha, maze rwandikwa kuri RS/INJUST/ RP 00005/2024/CA. [6] Ku wa 25/05/2025, Ishimwe Eric yanditse inyandiko itanga ikirego cyihutirwa asaba gufungurwa by'agateganyo mu gihe urwo rubanza rutaraburanishwa, ikirego cye cyandikwa kuri RDP 00002/2025/CA, nyuma y'imihango ntegururubanza yose hemezwa ko ruzaburanishwa ku wa 18/07/2025. [7] Uwo muni ababuranyi bitabye Urukiko, Ishimwe Eric yunganiye na Me Sezabungu Catherine, Ubushinjacyaha buhagarariye na Sibomana Stanislas, Umushinjacyaha ku rwego rw'Igihugu. [8] Mu myanzuro no mu miburanire, Ishimwe Eric n'umwunganira bavuga ko batanze ikirego cyihutirwa gisaba ko afungurwa by'agateganyo bashingiye ku ngingo ya 185 y'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi,

Page 3

iz'umurimo n'iz'ubutegetsi, ku ngingo ya 64 y'itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, no ku manza zitandukanye zaciwe n'Urukiko rw'Ikirenga ndetse n'Urukiko rw'Ubujurire. [9] Uhagarariye Ubushinjacyaha avuga ko ubusabe bwa Ishimwe Eric nta shingiro bukwiye guhabwa. [10] Nyuma y'izo mpaka, harasuzumwa ikibazo cyo kumenya niba Ishimwe Eric yafungurwa by'agateganyo mu gihe hategerejwe ko urubanza RS/INJUST/RP 00005/2024/CA ruburanishwa. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba Ishimwe Eric yafungurwa by'agateganyo mu gihe hategerejwe ko urubanza RS/INJUST/RP 00005/2024/CA ruburanishwa [11] Ishimwe Eric n'umwunganira bavuga ko kuba haremejwe ko urubanza RS/REV/RP 00001/2023/HC/RWG rusubirwamo ku mpamvu z'akarengane, basanga akwiye gufungurwa by'agateganyo mu gihe urubanza RS/INJUST/RP 00005/2024/CA ruri mu Rukiko rw'Ubujurire rutaraburanishwa nk'uko biteganywa n'ingingo ya 185 y'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ndetse n'ingingo ya 64 y'itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, kandi ko hari imanza zatanze umurongo ku kibazo nk'iki harimo urubanza RP 00002/2022/CA rwaciwe ku wa 07/10/2022 haburana Ubushinjacyaha na Bado Bede n'urubanza RP 00003/2023/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 06/10/2023 haburana Ubushinjacyaha na Hitimana Hubert, urubanza RP 00003/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 02/06/2018 haburana Ubushinjacyaha na Niyitegeka Emmanuel, RP/ECON 00004/2023/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 29/11/2023 haburana Ubushinjacyaha na Bimenyimana Samuel, zagiye zemeza ko abari bafunze bemerewe ko imanza zabo zisubirwamo ku mpamvu z'akarengane bafungurwa mu gihe imanza zisubirishwamo ku mpamvu z'akarengane zitaraburanishwa. [12] Uhagarariye Ubushinjacyaha avuga ko ibyo Ishimwe Eric n'umwunganira bavuga atari Urwego ahagarariye rwo rubibona. Asobanura ko ingingo ya 64 y'itegeko rigena ububasha bw'inkiko bavuga ko bashingiyeho batanga ikirego cyihutirwa gisaba gufungurwa by'agateganyo ivuga ibintu bibiri harimo imihango no kurangiza urubanza, akaba asanga nta mihango yo kurangiza urubanza irimo gukorwa, ko ahubwo urubanza RS/REV/RP 00001/2023/HC/RWAG ruzasubirwamo ku mpamvu z'akarengane rwamaze kuba itegeko, Ishimwe Eric akaba arimo kurangiza igihano yahanishijwe kandi ko kuba yaremerewe ko urubanza rusubirwamo ku mpamvu z'akarengane, bidasobanuye ko byanze bikunze azatsinda kuko hari izindi manza zagiye zisubirishwamo ku mpamvu z'akarengane inkiko zagiye zemeza ko nta karengane kabayemo harimo urubanza RS/INJUST/RP 00001/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 13/04/2017 haburana Ubushinjacyaha na Bahirwe Geoffrey na Mukagatoya Marie waregeraga indishyi, aho urwo Rukiko rwangiye Bahirwe Geoffrey gufungurwa by'agateganyo kuko atabashije kugaragaza ubwihutirwe, ndetse rukanemeza ko ikirego cye cyo gusubirishamo urubanza ingingo nshya nta shingiro gifite, agakomeza guhamwa n'icyaha cyo gukora no gukoresha inyandiko mpimbano.

Page 4

[13] Akomeza avuga ko ingingo ya 9 y'Amabwiriza N° 001/2021 yo ku wa 15/03/2021 ya Perezida w'Urukiko rw'Ikirenga agenga itangazwa ry'imanza mu cyegeranyo cy'ibyemezo by'inkiko ivuga ko imanza zatangajwe mu cyegeranyo cy'ibyemezo by'inkiko ari zo zifite agaciro

gasumba ak'izindi manza zaciwe n'inkiko ziri ku rwego rumwe ku bibazo bisa. Bityo ko asanga Urukiko rudategetswe kugendera ku murongo uri mu rubanza RP 00003/2018/SC rwavuzwe na Ishimwe Eric n'umwunganira, kuko muri urwo rubanza, Niyitegeka Emmanuel we yaburanye adafunze, imanza yaburanye zimaze kuba ndakuka arafatwa arafungwa kugira ngo harangizwe ibihano yari yakatiwe, mu gihe Ishimwe Eric we yafunzwe by'agateganyo agitangira gukurikiranwa, ko rero ibyo byumvikanisha ko nta muhango wo kurangiza urubanza wigeze ukorerwa Ishimwe Eric, we na Niyitegeka Emmanuel bakaba batari muri conditions zimwe ku buryo urwo rubanza rwakwifashishwa mu rubanza rwa Ishimwe Eric. [14] Asoza asaba uru Rukiko kwemeza ko Ishimwe Eric akomeza gufungwa mu gihe ategereje kuburana urubanza RS/INJUST/RP 00005/2024/CA. Uko Urukiko rubibona [15] Impaka kuri iyi ngingo zishingiye ku kumenya inkurikizi ziba ku muburanyi ufunze wemerewe ko urubanza rwe rusubirwamo ku mpamvu z'akarengane. [16] Ingingo ya 64 y'itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ibikurikira: "Gusaba ko urubanza rwaciwe ku rwego rwa nyuma rusubirwamo ku mpamvu z'akarengane ntibihagarika irangiza ryarwo. icyakora, iyo Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rwongera kuburanishwa ku mpamvu z'akarengane ariko rutararangizwa, irangizwa ryarwo rihita rihagarara kabone n'iyi imihango yo kururangiza yaba yaratangiye." [17] Igice cya 2 cy'iyi ngingo y'itegeko yumvikanisha ko mu gihe Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rwongera kuburanishwa ku mpamvu z'akarengane, irangizwa ryarwo rihita rihagarara kabone n'iyi imihango yo kururangiza yaba yaratangiye. [18] Impaka nk'izi kandi zafashweho umurongo mu manza zitandukanye harimo urubanza RP 00003/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 29/10/2018 haburana Ubushinjacyaha na Niyitegeka Emmanuel ndetse no mu manza zitandukanye zaciwe n'Urukiko rw'Ubujurire zirimo urubanza RP 00002/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 07/10/2022 haburana Ubushinjacyaha na BADO Bede; RP 00003/2024/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 10/05/2024 haburana Ubushinjacyaha na Nsengimana Didace; RP/ECON 00001/2024/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 16/08/2024 haburana Ubushinjacyaha na Ndagijimana Emmanuel n'abandi, uruheruka akaba ari urubanza RP 00009/2024/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 25/11/2024 haburana Ubushinjacyaha na Nsabimana Marcel. Muri izo manza zose, inkiko zatanze umurongo uvuga ko "umuburanyi ufunze wemerewe ko urubanza rwe rusubirwamo ku mpamvu z'akarengane, arekurwa bitabaye ngombwa kubisaba Urukiko." [19] No muri uru rubanza, Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza RS/REV/RP 00001/2023/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana rusubirwamo ku mpamvu z'akarengane, bikaba byaremejwe mu gihe Ishimwe Eric afunzwe arangiza igihano cy'imyaka icumi (10) yahanishijwe mu rubanza RPA 00094/2019/HC/RWG rwaciwe n'Urukiko

Page 5

Rukuru, Urugereko rwa Rwamagana ku wa 05/05/2020, bikaba byumvikanisha ko na we arebwa n'ingingo ya 64 y'itegeko rigena ububasha bw'inkiko ryavuzwe haruguru ndetse n'umurongo wafashwe n'Urukiko rw'Ikirenga n'uru Rukiko mu manza zitandukanye zagaragajwe. [20] Ku

bijyanye no kuba uhagarariye Ubushinjacyaha avuga ko mu rubanza RS/REV/INJUST/RP 00001/2017/SC, Urukiko rw'Ikirenga rwanze ko Bahirwe Geoffrey afungurwa by'agateganyo ko rero n'uru Rukiko rwagendera muri uwo murongo ntirwemerere Ishimwe Eric gufungurwa by'agateganyo, uru Rukiko rurasanga nta shingiro bifite kuko nk'uko bigaragara urwo rubanza rwaciwe ku wa 13/04/2017 mbere y'itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, kandi uwo murongo ukaba utakwifashishwa mu gihe hari imanza zaciwe nyuma yarwo zatanze umurongo bigaragara ko uhindura uwafashwe muri urwo rubanza. [21] Ku bijyanye no kuba uhagarariye Ubushinjacyaha avuga ko uru Rukiko rudakwiye kwifashisha umurongo wafashwe mu rubanza RP 00003/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 29/10/2018 ngo kubera ko Niyitegeka Emmanuel atari muri conditions zimwe na Ishimwe Eric, uru Rukiko rurasanga nta shingiro bifite kuko mu ngingo ya 64 y'itegeko rigena ububasha bw'inkiko ryavuzwe haruguru, Umushingamategeko ataragaragaje imanza zigomba guhagarikirwa irangizwa ryazo n'izitagomba kurihagarikirwa mu gihe Perezida w'Urukiko rw'Ikirenga yemeje ko zisubirwamo ku mpamvu z'akarengane, Niyitegeka Emmanuel kandi na we akaba yari yarasabye gufungurwa by'agateganyo ashingiye ku kuba Perezida w'Urukiko rw'Ikirenga yaremeje ko urubanza rwe rusubirwamo ku mpamvu z'akarengane, aho ku kuba yarakurikiranwe adafunze, akaza gufungwa urubanza rwamuhamije icyaha rumaze gucirwa ku rwego rwa nyuma. [22] Hashingiwe ku bisobanuro byatanzwe haruguru, Urukiko rw'Ubujurire rurasanga Ishimwe Eric agomba guhabwa uburenganzira bwo kuba afunguwe mu gihe ategereje ko urubanza RS/INJUST/RP 00005/2024/CA ruburanishwa. III. ICYEMEZO CY'URUKIKO [23] Rwemeje ko ikirego cyihutirwa cya Ishimwe Eric gisaba gufungurwa by'agateganyo mu gihe urubanza RS/INJUST/RP 00005/2024/CA rutaraburanishwa, gifite ishingiro. [24] Rutegetse ko Ishimwe Eric afungurwa mu gihe urubanza RS/INJUST/RP 00005/2024/CA rutaraburanishwa. [25] Ruvuze ko nta magarama atangwa muri uru rubanza.

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