

RWANDA / JUDGMENT

UBUSHINJACYAHA v. KAMONYO

RPA0073/09/CS

COURT

Supreme Court

DECIDED

1 November 2013

CASE / FILE NUMBER

RPA0073/09/CS

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UBUSHINJACYAHA v. KAMONYO

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- Date: 2013-11-01
- Case/document no.: RPA0073/09/CS
- Collection: Supreme Court

Text

Page 1

UBUSHINJACYAHA v. KAMONYO [Rwanda URUKIKO RW'IKIRENGA – 2013SC – RPA0073/09/CS (Kayitesi Rusera, P.J., Mukandamage na Rugabirwa, J.) 1 Ugushyingo, 2013] Amategeko mpanabyaha – Ingaruka zo kwangirwa gushaka umwunganizi mu mategeko ku rubanza rwaciwe –Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4 Kamena, 2003 nk'uko ryavuguruwe kugeza ubu, ingingo ya 18. Amategeko mpanabyaha –Ubugambanyi bwakomotseho kwica abantu – Impamvu nyoroshyacyaha ishingiye ku myitwarire myiza– Itegeko-Teka no 21/77 ryo kuwa 18 Kanama 1977 rishyiraho igitabo cy'amategeko ahana, ingingo ya 168 Incamake y'ikibazo: Uwajuriye yakurikiranyweho icyaha cyo guhungabanya umudendezo w'igihugu hashingiwe ko yakoranaga n'abacengezi. Urukiko Rukuru, Urugereko rwa Musanze rwemeza ko uwajuriye ahamwa n'icyaha cyo guhungabanya umudendezo w'igihugu, rumuhanisha igifungo cy'imyaka unani, rusobanurako agabanyirijwe kubera ko yemeye ko yakoranaga n'abacengezi abatekera. Yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rwirengagije ko yemeye icyaha ko yashakiraga abacengezi ibibatunga, ko abamushinje babikoze kubera ubwoba kandi ko yaburanye atunganiwe. Incamake y'icyemezo: 1. Kunganirwa ni uburenganzira budahungabanywa mu bihe byose, ahantu hose, mu nzego zose z'ubutegetsi, iz'ubucamanza

n'izindi zose zifata ibyemezo. Inkurikizi yo kutubahiriza iri hame ni uko ibyemezo biba byafashwe ubwo burenganzira butubahirijwe, biteshwa agaciro. Bityo kuba uwajuriye yarabuvukijwe ni inenge ituma urubanza rwajuririwe ruteshwa agaciro, urubanza rukaburanwa bundi bundi bushya.

2. Kuba hari ibimenyetso byemeza ko uwajuriye yagize uruhare runini mu bikorwa by'abacengezi akora malisiti y'abagomba kwica, kubagambanira ajya kwerekana aho batuye bakicwa kandi ntakigaragaza ko yari ashyizweho agahato katigobotorwa, kuko hari abaturage bandi batitabiriye ibikorwa by'abacengezi nk'uko we yabigenje, ibi bigize icyaha cy'ubugambanyi bwakomotseho kwica abantu
3. Uwajuriye agomba guhanishwa igifungo cya burundu, ariko kubera ko nta myitwarire mibi yagaragarijwe urukiko ko uwarezwe yari asanzwe afite mbere yuko akora icyaha, byamubera impamvu nyoroshyacyaha bityo agahanishwa igifungo cy'imyaka umunani(8) habariwemo n'iyi yamaze afunzwe. Ubujurire bufite ishingiro kuri bimwe;. Urubanza rwajuririwe ruvanyweho; Kamonyo ahamwa n'icyaha cy'ubugambanyi bwakomotseho kwica abantu, Ahanishijwe igifungo cy'imyaka umunani(8) habariwemo n'iyi yamaze afunzwe Amagarama y'urubanza aherereye ku isanduka ya Leta.

Page 2

Amategako yashingiweho: Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4 Kamena, 2003 nk'uko ryavugururwe kugeza ubu, ingingo ya 18. Itegeko-Teka No 21/77 ryo kuwa 18 Kanama 1977 rishyiraho igitabo cy'amategako ahana, ingingo ya 168 Imanza zifashishijwe: Ubushinjacyaha v. Pte HABUFITE Vincent, RPA0043/09/CS rwaciye n'Urukiko rw'Ikirenga ku wa 18/11/2011. Cour Europeenne des droit de l'homme , arret du 04/11/2010 entre Kartrish c.France, etc... URUBANZA I.IMITERERE Y'URUBANZA [1] Kamonyo yafashwe n'inzego z'umutekano akekweho gukorana n'abacengezi. Mu ibazwa rye mu Bugenzacyaha, kuwa 07/09/1999 yahakanye ko yakoranaga nabo ariko ngo mu rwego rwo kwigura, yemera gusa ko yabashakiraga ibibatunga. [2] Nyuma y'iperereza, Ubushinjacyaha bwaregeye Urukiko Rukuru, Urugereko rwa Musanze, ruca urubanza RP 0349/06/HC/MUS kuwa 17/04/2009, rwemeza ko KAMONYO ahamwa n'icyaha cyo guhungabanya umudendeko w'igihugu, rumuhanisha igifungo cy'imyaka umunani (8), rusobanura ko agabanyirijwe ibihano kubera ko yemeye ko yakoranaga n'abacengezi abatekera [3] KAMONYO yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rwirengagije ko yemeye ko yashakiraga abacengezi ibibatunga mu rwego rwo kwigura, ko n'abamushinje nabo babikoze kubera ubwoba, ko ndetse yaburanye atunganiwe. Iburanisha ryashyizwe kuwa 08/07/2013, uwo munsu urubanza rurasubikwa kugira ngo ahamagazwe ahatazwi, kuko Ubwanditsi bwabuze aho atuye [4] Iburanisha ryimuriwe kuwa 07/10/2013, uwo munsu urubanza ruburanishwa mu ruhame, Kamonyo atitabye ariko yarahamagawe mu buryo bukurikije amategako, bituma Me Nyamunanage Atticus atamwunganira, Ubushinjacyaha buhagarariwe na PN Mutayoba Alphonse, Urukiko rufata icyemezo cyo kumuburanisha adahari (par défaut). II. ISESENGURA RY'IBIBAZO BIGIZE URU RUBANZA

1. Kumenya ingaruka ku rubanza Kamonyo yahatiwe kuburana atunganiwe kandi yarasabye guhabwa igihe cyo gushaka avoka ntabyemererwe. [5] Kamonyo avuga ko yasabye kunganirwa kuko yumvaga anarwaye, ariko urukiko rumuhatira kuburana atunganiwe, akaba asanga ari inenge ifite uburemere ku rubanza yaciriwe.

Page 3

- [6] Umushinjacyaha avuga ko iyo nenge itabazwa Urukiko kuko iyo ashaka kunganirwa yari gushaka umwunganira, ko kandi kuba atarunganiwe ntacyo byamutwaye kuko yiburaniye neza kandi adategwa [7] Ingingo ya 18, igika cya gatatu, y'Itegeko Nshinga rya Repubulika y'u Rwanda ivuga ko ``Kumenyeshwa imiterere n'impamvu z'icyaha ukurikiranyweho, kwiregura no kunganirwa ni uburenganzira budahungabanywa mu bihe byose, ahantu hose, mu nzego zose z'ubutegetsi, iz'ubucamanza n'izindi zose zifata ibyemezo``. [8] Urukiko rusanga koko mu iburanisha mu Rukiko Rukuru, kuwa 26/03/2009 (cote ya 95), Kamonyo yarasabye kunganirwa, Urukiko rukavuga ko rutemeye icyifuzo cye kuko yagombye kuba yarashatse mbere uzamwunganira. [9] Urukiko rusanga rero n'ubwo nta tegeko ryihariye ritegeka ko umuburanyi agomba kuburana yunganiwe mu nzego zose, uretse mu Rukiko rw'Ikirenga nk'uko biteganyijwe ubu mu ngingo ya 42 y'Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, kunganirwa ni uburenganzira bw'umuburanyi igihe cyose abyifuje, buteganywa n'Itegeko Nshinga mu ngingo yaryo ya 18 ivuzwe haruguru. Inkurikizi yo kutubahiriza iri hame ni uko ibyemezo biba byafashwe ubwo burenganzira butubahirijwe, biteshwa agaciro. Kuba Kamonyo yarabuvukijwe akaba ari inenge ituma urubanza yaciriwe rujuririrwa, ruteshwa agaciro, uru Rukiko rugasuzuma bundi bushya imiburanire ye. [10] Ibi bihuye kandi n'ibyemejwe mu rubanza N° RPA 0043/09/CS rwaciwe n'Urukiko rw'Ikirenga, aho rwemeje ko igihano cyo kutubahiriza iryo hame riteganyijwe mu Itegeko- Nshinga ari uko ibyemezo biba byarafashwe, biteshwa agaciro, Urukiko rw'Ikirenga rukaba rwarakuyeho urubanza rwari rwaciwe n'Urukiko Rukuru rwa Gisirikare kubera ko uregwa yari yaraburanishijwe adahawe umwanya wo gushaka umwunganira, ahubwo agahatirwa kuburana atunganiwe mu gihe uburenganzira bwo kunganirwa ari uburenganzira ndahungabanywa yemererwa n'Itegeko-Nshinga mu ngingo yaryo ya 18 imaze kuvugwa. Mu gufata icyo cyemezo, uru Rukiko rukaba narwo rwaragendeye ku murongo wafashwe mu zindi manza2.
2. Kumenya niba hari ibimenyetso bihamya Kamonyo Faustin ibyaha akurikiranyweho. [11] Mu myanzuro Kamonyo yashyikirije uru Rukiko, avuga ko Urukiko rwirengagije ko yemeye ko yatekeye abacengezi agira ngo akize ubuzima bwe, akavuga kandi ko Urukiko rutashishoje ngo rumenye ko imvugo z'abatangabuhamyamba bamushinja nabo birwanagaho kubera ubwoba batewe. [12] Avuga ko kuba rero yarahatiwe gutekera abacengezi akabikora, byagombye kuba impamvu ikuraho uburyozwe bw'icyaha nk'uko biteganywa n'ingingo ya 70 y'Igitabo cya kabiri cy'amategeko ahana ibyaha cyakoreshwaga icyo gihe. [13] Umushinjacyaha avuga ko adatsimbaraye ku gikorwa cya Kamonyo uburanishwa adahari cy'uko yatekeraga abacengezi, ko ahubwo icyo akurikiranyweho ari ukuba yarabateraga ingabo 1 Ubushinjacyaha v.Pte HABUFITE Vincent, RPA0043/09/CS rwaciwe n'Urukiko

rw'Ikirenga ku wa 18/11/2011 2 Cour Europeenne des droits de l'homme ,arret du 04/11/2010
Kartrish c. France etc,...

Page 4

mu bitugu abafasha kwica abo bitaga abakada b'inkotanyi. Avuga ko ariwe wagenda arangira abacengezi aho abo bantu baherereye, kuko ari ahantu batari bazi. [14] Umushinjacyaha asobanura ko abatangabuhamya babajijwe bose, bahuriza ku kuba Kamonyo ari we washyiraga abantu ku ma lisiti, akaba ari nawe wasinyiraga abagomba kwicwa, kuba avuga ko abo batangabuhamya babivuze kubera ubwoba batewe, bikaba atari byo kuko nta mpamvu ari we bahurizaho wenyine mu gihe nabo bemera ko bakoranye n'abacengezi Uko Urukiko rubibona [15] Ingingo ya 168 y'Igitabo cy'amategeko ahana cyakoreshwaga icyo gihe ivuga ko ``Icyaha kigamije kuyogoza igihugu, kwica bitsemba imbaga cyangwa gusahura kizahanishwa igifungo kuva ku myaka cumi n'itanu kugeza kuri makumyabiri. Ubugambanyi bugamije ibyaha bivuzwe ku gika cya mbere, buzahanishwa igifungo kuva ku myaka cumi kugeza kuri cumi n'itanu, niba hari icyakozwe gitegurira imikorere y'icyo cyaha, naho bitagenze bityo, buzahanishwa igifungo kuva ku myaka itanu kugeza kw'icumi. Niba icyaha cy'imigambi mibi cyangwa ubwo bugambanyi byarakomotseho kwica abantu, ushinjwa icyaha azakatirwa igihano cyo kwicwa. [16] Dosiye igaragaza ko mu ibazwa rye mu Bugenzacyaha kuwa 07/09/1999, Kamonyo yahakanye ko yakoranaga n'abacengezi, ariko ko yemera ko yabashakiraga ibiryo mu rwego rwo kwigura ngo batamwica. Mu Bushinjacyaha yabajijwe niba yarakoreye abacengezi asubiza ati: ``nibyo rwose`` (cote 22), ariko ahakana ko nta ruhare yagize mu rupfu rw'abishwe, ko ahubwo ngo yajyaga yumva ko hari abantu runaka baraye bishwe. [17] Mu buhamya buri muri dosiye, abatangabuhamya batandukanye bashinja Kamonyo ko yagendanaga n'abacengezi bica abantu, abandi bakabaka amafaranga, barimo Tuyishime Innocent wavuze ko Kamonyo yazanye n'abandi batatu bafite lisiti y'abagomba kwicwa ndetse umubyeyi we akaba nawe yarishwe muri abo, nyuma bagasahura ibye. Uwitwa Ntawigenga Edouard (kote 1 mu Bushinjacyaha) yavuze ko Kamonyo yabakoreshaga inama abasaba kujya mu gicengezi, ko kandi bafatanyije kwica abantu, barimo Nyirabyanze, Ndamiyehe batanzwe na Kamonyo ubwe. Uwitwa Ngayaboshya (kote ya 4) avuga ko Kamonyo yakoreshaga inama zo gushakira abacengezi ibiryo. Uwitwa Ntawiringiyuwe P.Célestin (kote ya 8) yavuze ko mbere y'uko Munyawera apfa, Kamonyo yari yamubwiye ko ari kuri lisiti y'abagomba gupfa. Rabiyo Alphonse (kote ya 12) yavuze ko Nyirabyanze yishwe nijoro kandi abamwishe basinyiwe na Komite ya Kamonyo. [18] Urukiko rusanga ibyo Kamonyo avuga ko abamushinja nabo biguraga, nta shingiro byahabwa kuko nta bimenyetso atanga byerekana ko batewe ubwoba cyangwa bashyizweho agahato mu Bushinjacyaha cyangwa mu Bugenzacyaha. [19] Urukiko rurasanga ibimenyetso biri muri dosiye bigizwe n'imvugo z'uregwa ubwe ndetse n'iz'abatangabuhamya, bigaragaza ku buryo budashidikanywaho ko Kamonyo yagize uruhare runini mu bikorwa by'abacengezi akora amalisti y'abagomba kwicwa, kubagambanira ajya kwereka abacengezi aho batuye bakabica, kandi ntakigaragaza ko yari ashyizweho agahato katigobotorwa, kuko hari abandi baturage bagenzi be batitabiriye ibikorwa bibi by'abacengezi

Page 5

nk`uko we yabigenje, bityo akaba ahamwa n`icyaha cy`ubugambanyi cyakomotseho kwica abantu, cyahanishwaga igihano cyo kwicwa cyasimbuwe n`igifungo cya burundu. [20] Urukiko rusanga rero ari icyo cyaha Kamonyo agomba guhanirwa, agahanishwa igifungo cya burundu, ariko kubera ko nta myitwarire mibi rwagaragarijwe ko Kamonyo yari asanzwe afite mbere y`uko akora icyaha, bikaba byamubera impamvu nyoroshyacyaha, bityo agahanishwa igifungo cy`imyaka 8 habariwemo n`iyo yamaze afunzwe. III.ICYEMEZO CY`URUKIKO [21] Rwemeje ko ubujurire bwa Kamonyo Faustin bufite ishingiro kuri bimwe. [22] Rwemeje ko urubanza RP 0349/06/HC/MUS rwaciwe kuwa kuwa 17/04/2009 rwajuririwe ruvanyweho; [23] Rwemeje ko Kamonyo Faustin ahamwa n`icyaha cy`ubugambanyi bwakomotseho kwica abantu; [24] Rwemeje ko ahanishijwe igifungo cy`imyaka umunani (8) habariwemo imyaka amaze afunzwe nk`uko byasobanuwe; [25] Rwemeje ko ahanishijwe igifungo cy`imyaka umunani (8) habariwemo imyaka amaze afunzwe nk`uko byasobanuwe; [26] Ruvuze ko amagarama y`urubanza aherera ku isanduka ya Leta.

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