

RWANDA / JUDGMENT

KAYINAMURA v. MWIZA2

RC 0002/13/CS

COURT

Supreme Court

DECIDED

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KAYINAMURA v. MWIZA2

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Text

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1 KAYINAMURA v. MWIZA (2) [Rwanda URUKIKO RW'IKIRENGA – RC 0002/13/CS (Kanyange, P.J., Mukandamage na Rugabirwa, J.) 17 Nzeri 2013] Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Ikirego cyihutirwa – Ikirego kiregera kwiregura – Indishyi zo gutinza urubanza – Mu gihe ibisabwa mu kirego cyihutirwa ntaho bihuriye n'urubanza rw'iremezo gishamikiye, icyo ikirego ntikigomba kwakirwa ngo gisuzumwe kuko kiba kinyuranije n'ibiteganywa n'amategeko – Ikirego kiregera kwiregura kigamije gusaba indishyi z'akababaro, ntigikwiye kwakirwa ngo gisuzumwe kuko ikirego cy'ibanze cyari gishingiyeho kitakiriwe – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, Ingingo ya 316. Incamake y'ikibazo: Mu rubanza RCOM A 0028/10/CS Kayinamura Fidèle yaburanye na Mwiza Mutagoma, Urukiko rw'Ikirenga rwamutegetsemo kumwishyura amafaranga 16.765.000Frw akomoka ku gihombo yamuteye amuvana mu nzu yacururizagamo iherereye ku Kimironko. Mu rwego rwo kurangiza urwo rubanza, Umuhesha w'Inkiko yatangiye imihango yo kururangiza agurisha inzu ya Kayinamura. Ashingiye ku rubanza RCAA 0001/12/CS rwari rutegereje kuburanishwa mu Rukiko rw'Ikirenga, nk'ubujurire bw'urubanza rwaciwe n'Urukiko Rukuru rwari rwategetse ko Mwiza Mutagoma

yishyura Kayinamura 24.830.000Frw y'ubukode bw'inzu ye yacururizagamo atishyuye; Ashingiye kandi ku kuba hakiriho urubanza RPA 0069/13/Kig rukiburanishwa n'Urukiko Rukuru rujuririra urubanza Urukiko Rwisumbuye rwa Gasabo rwemejemo ko 16.765.000Frw Mwiza amuryoza azishyurwa na Mbabajimana; Kayinamura yatanze ikirego cyihutirwa asaba ko amafaranga 16.765.000Frw yavuzwe haruguru, yafatirwa aho kwishyurwa Mwiza akabikwa kuri konti y'Urukiko rw'Ikirenga kandi ifatira Mwiza yatangije rikaba rikwiye gutegereza izo manza zombi zigacibwa kugirango habeho guhwanya imyenda kuko aramutse yishyuye Mwiza ayo mafaranga, kandi nawe hari andi menshi amubereyemo, afite impungenge ko Mwiza atazabona aho akura ubwishyu kuko nta mutungo afite ndetse nta n'akazi agira. Ku bijyanye n'ubwihutirwe, Kayinamura avuga ko mu gihe urubanza RCAA 0001/12/CS rutaracibwa ngo habeho guhwanya imyenda, Mwiza arimo kwihutira kurangiza urubanza RCOMA 0028/10/CS, umuhesha w'inkiko akaba arimo guteza cyamunara inzu ya Kayinamura. Mwiza Mutagoma n'umwunganira bavuga ko ikirego cya Kayinamura kidakwiye kwakirwa kubera ko cyamaze gufatwaho icyemezo mu rundi rubanza yatanze muri uru rukiko ashingiye na none ku rubanza RCAA 0001/12/CS, Urukiko rw'Ikirenga rukemeza ko urubanza RCOMA 0028/10/CS rwabaye itegeko rugomba kurangizwa, naho urundi rugategereza gucibwa kuko rukiri mu rukiko naho ku ngingo ijyanye n'uko yabura ubwishyu, akavuga ko Kayinamura ajijisha urukiko ngo rukore ibyo yifuza bityo akagaragaza ko atunze inzu, akagira n'umushahara wa 800.000 ahembwa ku kwezi. Bavuga kandi ko nta bwihutirwe buhari bwatuma Kayinamura asaba icyemezo cy'agateganyo cyihutirwa, kuko imihango ya cyamunara imaze amezi arenga atandatu, bagasanga ahubwo yarareze ashakisha gusa amananiza yo kutarangiza urubanza yatsinzwe

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- 2 ndetse baboneraho gusaba ko Kayinamura yatanga indishyi z'akababaro z'amafaranga 5.000.000Frw kubera gukomeza gutinza urubanza agamije kutamwishyura. Incamake y'icyemezo:
1. Ibisabwa mu kirego cyihutirwa ko amafaranga 16.765.000Frw urega agomba kwishyura uregwa harangizwa urubanza rwaciwe burundu afatirwa by'agateganyo, ntaho bihuriye n'urubanza rw'iremezo, bityo ikirego kikaba kitagomba kwakirwa ngo gisuzumwe kuko kinyuraniye n'ibiteganywa n'amategeko.
 2. Ikirego kiregera kwiregura kigamije gusaba indishyi z'akababaro, ntigikwiye kwakirwa ngo gisuzumwe kuko ikirego cyihutirwa cyari gishingiyeho kitakiriwe. Ikirego cyihutirwa nticyakiriwe; Ikirego kiregera kwiregura nticyakiriwe. Amategeko yashingiweho: Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, Ingingo ya 316. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Kayinamura Fidèle yaburanye na Mwiza Mutagoma urubanza RCOM A 0028/10/CS, Urukiko rw'Ikirenga rumutegeka kumwishyura amafaranga 16.765.000Frw, akomoka ku gihombo yamuteye amuvana mu nzu yacururizagamo iherereye ku Kimironko, umuhesha w'inkiko atangiza imihango yo kururangiza agurisha inzu ya Kayinamura, ku buryo cyamunara ya mbere yabaye tariki ya 15/7/2013. [2] Kayinamura yatanze ikirego cyihutirwa avuga ko agishingiye ku rubanza RCAA 0001/12/CS ruri muri uru rukiko rutegereje kuburanishwa, muri urwo rubanza, Urukiko Rukuru rukaba rwari

rwategetse ko Mwiza Mutagoma yishyura Kayinamura 24.830.000Frw y'ubukode bw'inzu ye yacururizagamo atishyuye, akaba rero asaba ko amafaranga 16.765.000Frw yavuzwe haruguru, yafatirwa aho kwishyurwa Mwiza akabikwa kuri konti y'Urukiko rw'Ikirenga. [3] Avuga kandi ko hari n'urubanza RPA 0069/13/Kig ruburanishwa n'Urukiko Rukuru, Urukiko Rwisumbuye rwa Gasabo rukaba rwarategetse ko amafaranga 16.765.000Frw Mwiza amwishyura, agomba kwishyurwa n'uwitwa Mbabajimana Jean Bosco wahimbye inyandiko yamuhaye kugira ngo ayiregeshe Kayinamura ko yamuteje igihombo amuvana mu nzu yacururizagamo, iryo fatira asaba rero rikaba ryategereza izo manza zombi, kugirango habeho guhwanya imyenda. [4] Urubanza rwaburanishijwe mu ruhamye tariki ya 10/09/2013, Kayinamura Fidèle aburanirwa na Me Rutabingwa Athanase na Me Mugeni Anita, Mwiza Mutagoma yunganiwe na Me Mutabazi Innocent.

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3 II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO: Kumenya niba ikirego cyihutirwa cya Kayinamura cyakwagirwa [5] Ababuranira Kayinamura bavuga ko, nk'uko biteganywa n'ingingo za 316 na 320 CPCCSA, ikirego cyihutirwa yatanze gishingiye ku rubanza RCAA 0001/12/CS ruri mu Rukiko rw'Ikirenga rutaraburanishwa, akaba asaba Urukiko gutegeka ko amafaranga 16.765.000 Mwiza amwishyura mu rubanza RCOMA 0028/10/CS rwaciwe n'Urukiko rw'Ikirenga, aba afatiriwe agashyirwa kuri konti y'Urukiko rw'Ikirenga mu gihe urwo rubanza RCAA 0001/12/CS Mwiza nawe yatsindiwemo 24.830.000Frw agomba guha Kayinamura, hamwe n'urubanza RPA 0069/13/Kig ruburanishwa n'Urukiko Rukuru uwitwa Mbabajimana Jean Bosco yategetswemo kuba ariwe ugomba kwishyura 16.765.000Frw, zitaraburanishwa burundu, kuko impamvu izo manza zikomokaho ari imwe, hakazabaho guhwanya iyo myenda, maze umwenda wa 16.765.000 ukishyurwa n'ugomba kuwishyura nk'uko byemejwe n'urukiko. [6] Basobanura ko muri izo manza zose Kayinamura arengana, bakaba basanga kugirango habeho imigendekere myiza y'ubutabera ibyo asaba yabihabwa kuko aramutse yishyuye Mwiza ayo mafaranga, kandi nawe hari andi menshi amubereyemo, afite impungenge ko Mwiza atazabona aho akura ubwishyu kuko nta mutungo afite ndetse nta n'akazi agira. [7] Ku byerekeranye n'ubwihutirwe buhari, bavuga ko mu gihe urubanza RCAA 0001/12/CS rutaracibwa ngo habeho guhwanya imyenda, Mwiza arimo kwihutira kurangiza urubanza RCOMA 0028/10/CS, umuhesha w'inkiko akaba arimo guteza cyamunara inzu ya Kayinamura. [8] Mwiza Mutagoma n'umwunganira bavuga ko ikirego cya Kayinamura kidakwiye kwakirwa kubera ko cyamaze gufatwaho icyemezo mu rundi rubanza yatanze muri uru rukiko ashingiye na none ku rubanza RCAA 0001/12/CS, Urukiko rw'Ikirenga rukemeza ko urubanza RCOMA 0028/10/CS rwabaye itegeko rugomba kurangizwa, naho urundi rugategereza gucibwa kuko rukiri mu rukiko. [9] Bavuga kandi ko nta bwihutirwe buhari bwatuma Kayinamura asaba icyemezo cy'ateganyo cyihutirwa, kuko imihango ya cyamunara imaze amezi arenga atandatu, bagasanga ahubwo yarareze ashakisha gusa amananiza yo kutarangiza urubanza yatsindiwe, icyifuzo cyabo kikaba ko urubanza RCAA 0001/12/CS rwaburanishwa maze ukuri kukajya ahagaragara. Ku byerekeranye n'ibyo Kayinamura avuga ko nta mitungo Mwiza afite yazakuramo ubwishyu aramutse amutsinze, ko ndetse nta n'icyo akora kizwi, bavuga ko ari ukujijisha urukiko ngo rukore ibyo yifuza kuko Mwiza atunze inzu, akagira

n'umushahara wa 800.000 ahembwa ku kwezi. [10] Basaba ko Kayinamura yatanga indishyi z'akababaro z'amafaranga 5.000.000Frw kubera ko akomeje gutinza urubanza kugira ngo atamwishyura kandi yaramutsinze. UKO URUKIKO RUBIBONA

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4 [11] Ingingo ya 316 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, iteganya ko "iyo hari ikirego cy'iremezo, ariko hagomba kugira icyemezwa by'agateganyo mu buryo bwihutirwa ku rubanza rwaregewe urukiko rutaraburanishwa, ikirego cyihutirwa gishyikirizwa umucamanza ushinzwe kurangiza impaka zihutirwa w'aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara". [12] Urukiko rurasanga, n'ubwo muri uru rukiko hari urubanza rutaraburanishwa rufite n° RCAA 0001/12/CS, Kayinamura aburana na Mwiza Mutagoma amafaranga y'ubukode bw'inzu ye yacururizagamo, ibyo asaba mu kirego cyihutirwa ko amafaranga 16.765.000Frw agomba kwishyura Mwiza harangizwa urubanza RCOMA 0028/10/CS rwaciwe burundu afatirwa by'agateganyo, ntaho bihuriye n'urwo rubanza, bityo icyo kirego kikaba kitagomba kwakirwa ngo gisuzumwe kuko kinyuraniye n'ibiteganywa n'ingingo y'itegeko yavuzwe haruguru. [13] Ku byerekeranye n'ikirego cyatanzwe na Mwiza Mutagoma kigamije gusaba Kayinamura indishyi z'akababaro, urukiko rurasanga nacyo kidakwiye kwakirwa ngo gisuzumwe kuko ikirego cyihutirwa cyari gishingiyeho kitakiriwe. III. ICYEMEZO CY'URUKIKO [14] Rwemeje kutakira ikirego cyihutirwa cyatanzwe na Kayinamura Fidèle kuko kidakurikije amategeko. [15] Rwemeje kutakira ikirego cya Mwiza Mutagoma gishingiye ku kirego cyihutirwa cya Kayinamura kuko nacyo kitakiriwe.

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