

RWANDA / JUDGMENT

KAYITARE N'UNDI vs. AKARERE KA NYAGATARE

RADA 00007/2022/HC/RWG

COURT

High Court

DECIDED

14 November 2023

CASE / FILE NUMBER

RADA 00007/2022/HC/RWG

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KAYITARE N'UNDI vs. AKARERE KA NYAGATARE

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- Date: 2023-11-14
- Case/document no.: RADA 00007/2022/HC/RWG
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Text

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KAYITARE N'UNDI vs. AKARERE KA NYAGATARE [Rwanda URUKIKO RUKURU – RADA 00007/2022/HC/RWG – (Nyirabagande, J. P.) 14 Ukuboza 2023] Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Gutambamira urubanza – Kugubokesha umuburanyi – Umuburanyi agobokesha ku gahato uwo yifuza ko aburana kugira ngo atazatambamira urubanza, akabigaragaza mu mwanzuro utanga ikirego cyangwa wo kwiregura kandi bikamenyeshwa nyir'ukugobokeshwa, bigasuzumwa n'umucamanza, akabyemeza mu iburanisha iyo hari impamvu yihariye. Incamake y'ikibazo: Kayitare na Burakari bareze Akarere ka Nyagatare kuba karabimuye mu mitungo yabo ariko ntibishyurwa kubera ko ibyangombwa by'ubutaka bwabo batari bakabihawe. Akarere kavuga ko ibikorwa byakorewe kuri ubwo butaka ni iby'umushinga RSSP (RAB) bityo, kakaba kataragombaga kuregwa. Urukiko Rwisumbuye rwemeje ko ikirego cy'Abarega nta shingiro gifite kuko batagaragaje uruhare rw'Akarere mu itunganywa ry'igishanga. Ibi byatumye bajuririra Urukiko Rukuru, urugereko rwa Rwamagana maze hasuzumwa ikibazo cyo kumenya niba ari Akarere kagombaga kuregwa, hakagobokeshwa MINAGRI nyiri umushinga

RSSP. Kuri icyo kibazo, Abarega bavuga ko mu rubanza rujuririrwa, urukiko rwirengagije imiburanire yabo, nti rwagobokeshwa MINAGRI nka nyirumushinga wo gutunganya igishanga cya Muvumba 8. Ikindi ni uko ibyo bikorwa byangije ubutaka bwabo ntibishyurwa, nyamara abandi baturage barishyuye abandi bari basigaye bakishyurwa n'Akarere mu bwumvikane. Uregwa avuga ko atari we wagombaga kuregwa kuko nta ruhare yagize mu itunganywa ry'icyo gishanga ndetse nta nubwo ariwe wishyuye abaturage bangirijwe n'ibyo bikorwa. Bityo, akaba asaba ko hagobokeshwa MINAGRI kuko nayo idahakana ko ibyo bikorwa ari ibyayo. Incamake y'icyemezo: Umuburanyi agobokeshwa ku gahato uwo yifuza ko aburana kugira ngo atazatambamira urubanza, akabigaragaza mu mwanzuro utanga ikirego cyangwa wo kwiregura kandi bikamenyeshwa nyir'ukugobokeshwa, bigasuzumwa n'umucamanza, akabyemeza mu iburanisha iyo hari impamvu yihariye. Ikirego cy'ubujurire nta shingiro gifite. Amategeko yashingiweho: Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 115. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Mu myaka ya 2014, igishanga cya Muvumba 8 cyatunganyijwe n'umushinga RSSP ubarizwa muri MINAGRI watunganyije igishanga, abahafite ubutaka bwakoreshejwe bahabwa ingurane, ariko Kayitare na Burakari ntibishyurwa kubera ko ibyangombwa by'ubutaka bwabo batari bakabihawe.

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Batanze ikirego barega Akarere ka Nyagatare basaba kwishyurwa 12.856.800 Frw kuri Kayitare y'agaciro k'ubutaka bubaruye kuri UPI 5/02/12/04/169 na 9.828.600 Frw ku butaka bwa Burakari bubaruye kuri UPI 5/02/12/04/167 nk'uko kagaragajwe n'umugenagaciro. Uhagarariye Akarere ka Nyagatare avuga ko ibyo bikorwa ari iby'umushinga wa RSSP (RAB) ko rero katagombaga kuregwa. [2] Mu rubanza RAD 00001/2021/TGI/NYG rwaciye ku wa 24/06/2022, Urukiko Rwisumbuye rwa Nyagatare rwemeje ko ikirego cya Kayitare Wellars n'icya Burakari Didace nta shingiro bifite, ko ndishyi zikwiye. Rusobanura ko abaregwa batagaragaza uruhare rw'Akarere mu itunganywa ry'igishanga. [3] Kayitare Wellars na Burakari Didace bajuririye Urukiko Rukuru, Urugereko rwa Rwamagana bavuga ko Urukiko rwanze hagobokeshwa MINAGRI (RSSP) kandi ari yo yatunganyije icyo gishanga ikishyura abaturage bangirijwe n'iyi mirimo. Uhagarariye Akarere ka Nyagatare avuga hagombaga kuregwa MINAGRI (RSSP) yatunganyije igishanga, cyane ko mu mishyikirano yabaye, abaregwa batemeye ingurane. Urukiko rurasuzuma niba ibikorwa byangije ubutaka ari ibya MINAGRI (RSSP), hari kuregwa Akarere ka Nyagatare, MINAGRI ikagobokeshwa. [4] Ikirego cyahawe RADA 00007/2022/HC/RWG, urubanza rwaburanishijwe mu ruhamwe ku wa 27/11/2023, Kayitare Wellars na Burakari Didace bunganiwe na Me Mulindangabo Nkusi Dismas, Akarere ka Nyagatare gahagarariwe na Me Rutembesa Phocas. [5] Ikibazo gisuzumwa mu rubanza ni iki gikurikira: kumenya niba ibikorwa byangije ubutaka ari ibya MINAGRI (RSSP), hari kuregwa Akarere ka Nyagatare, MINAGRI ikagobokeshwa. II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO

1. Kumenya niba ibikorwa byangije ubutaka ari ibya MINAGRI (RSSP), hari kuregwa Akarere ka Nyagatare, MINAGRI ikagobokeshwa [6] Me Mulindangabo Nkusi Dismas uhagarariye Kayitare Wellars na Burakari Didace avuga ko mu rubanza rujuririrwa, Urukiko rwirengagije

imiburanire yabo, aho basabye ko hagobokeshwa MINAGRI kubera ko ibikorwa byo gutunganya igishanga cya Muvumba 8 cyakozwe n'umushinga RSSP ubarizwa muri MINAGRI, ubutaka bwabo burangizwa ariko ntibishyurwa kubera ko ibyangombwa by'umutungo batari bakabihawe; mu gihe ariko abandi baturage bishyuwe, abasigaye bishyurwa n'Akarere ku bwumvikane. [7] Me Rutembesa Phocas uhagarariye Akarere ka Nyagatare avuga ko Akarere atari ko kakoze imirimo yo gutunganya igishanga, nk'uko n'abarega babivuga, imirimo yo gutunganya igishanga yakozwe n'umushinga RSSP wa MINAGRI, akaba ari MINAGRI yagombaga kuregwa kuko Akarere nta ruhare kagize mu mirimo yakozwe cyangwa mu kwishyura abaturage. Avuga ko aho kurega utagombaga kuregwa, bagasaba kugobokeshwa MINAGRI, iyi ni yo yagombaga kuregwa kuko na yo idahakana iyo mirimo yo gutunganya igishanga cya Muvumba 8. UKO URUKIKO RUBIBONA [8] Ingingo ya 115 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko kugobokeshwa ku gahato umuburanyi mu rubanza bisabwa n'umuburanyi ushaka ko umuntu utari mu rubanza aruzanwamo kugira ngo na we aburane, hato atazatambamira imikirize yarwo. Umuburanyi ushaka kugobokeshwa undi muntu mu rubanza abigaragaza mu mwanzuro utanga ikirego cyangwa wo

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kwiregura, akabimenyesha ugobokeshwa. icyakora, iyo habonetse impamvu yihariye ituma kugobokeshwa biba mu gihe cy'iburanisha, umucamanza ashobora kubisuzuma akabifataho icyemezo. [9] Iyi ngingo yumvikanisha ko umuburanyi agobokeshwa ku gahato uwo yifuza ko aburane kugira ngo atazatambamira urwo rubanza, akabikora bikagaragazwa mu mwanzuro utanga ikirego cyangwa wo kwiregura kandi bikamenyeshwa nyir'ukugobokeshwa; bishobora gusuzumwa n'umucamanza akabyemeza mu iburanisha iyo hari impamvu yihariye. [10] Hashingiwe ku bisobanuwe haruguru, Urukiko rusanga nta mpamvu yihariye yatuma MINAGRI igobokeshwa ku rwego rw'ubujurire, kubera ko abarega batagaragaza icyatuma MINAGRI izatambamira icyemezo cyafatwa muri uru rubanza kuko kitayibangamira, cyane ko itafatirwa icyemezo kandi itari umuburanyi mu rubanza. [11] Urukiko rusanga kandi nk'uko byasobanuwe mu rubanza rujuririrwa, bikaba binemeranywaho n'ababuranyi bombi, ibikorwa byo gutunganya igishanga, Muvumba 8 byakozwe n'umushinga wa MINAGRI (RSSP), ni na yo yishyuye ubutaka bw'abaturage bwangijwe; iyi rero ikaba ari iyo yagombaga kuregwa, kuko ari yo yagira ibyo iryozwa. [12] Urukiko rusanga kandi kuba abaregwa batagaragaza Uruhare rw'Akarere ka Nyagatare mu itunganywa ry'igishanga no mu iyangirika ry'ubutaka bwabo, byumvikanisha ko katagombaga kuregwa mu gihe ntacyo Kayitare na Burakari bagaragaza kabangirije ngo babe babiryoza, kandi uregwa ni uwangirije undi, uyu amusaba kugira ibyo yishyura. [13] Urukiko rusanga n'ubwo Akarere ka Nyagatare kari kemeye kujya mu mishyikirano hamwe n'abakozi ba MINAGRI, nk'Umuyobozi ureberera abaturage, hakaba hari hifujwe ko abarega bahabwa ingurane y'ubutaka ahatandukanye n'ahangijwe mu rwego re'imishyikirano; abarega ntibabyemere; nta kindi Akarere ka Nyagatare kategekwa. Ahubwo ababifitemo inyungu, barega mu buryo bukurikije amategeko. [14] Ku byerekeranye n'indishyi zisabwa n'Uhagarariye Akarere

ka Nyagatare, Urukiko rusanga harebwe imiterere ya dosiye, izo ndishyi zidakwiye kuko Akarere na ko kemeranya n'ababuranyi ko hari uburenganzira bagombaga guhabwa, kandi na ko kari kemeye kugira ibyo kigomwa kagatanga ubutaka, kandi byari kuba byarashobotse iyo Akarere gashyikirana na MINAGRI /RSSP imirimo igikorwa, mu rwego rwo gukemurira abaturage bako ikibazo, ntibyari kugera mu nkiko. III. ICYEMEZO CY'URUKIKO [15] Rwemeje ko ikirego cy'ubujurire cyatanzwe Kayitare Wellars na Burakari Didace nta shingiro gifite. [16] Rwemeje ko Akarere ka Nyagatare katagombaga kuregwa muri uru rubanza. [17] Rwemeje ko nta mpamvu yatuma MINAGRI (RSSP) igobokeshwa muri uru rubanza. [18] Rutegetse ko amafaranga ibihumbi mirongo ine (40.000 Frw) Kayitare Wellars na Burakari Didace batanze barega ahwanye n'ibyakoze.

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Prepared on 10 October 2026 · Esheria