

RWANDA / JUDGMENT

UBUSHI JACYAHA v MATABARO

RPA 0046/12/CS

COURT

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UBUSHI JACYAHA v MATABARO

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Text

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UBUSHINJACYAHA v. MATABARO [Rwanda URUKIKO RW'IKIRENGA – RPA 0046/12/CS (Mugenzi, P.J., Kayitesi na Karimunda, J.) 29 Mutarama 2016] Amategeko mpanabyaha – Gutega igico – Ubwinjiracyaha mu buhotozi – Kuba yaramutegeye iwe ku irembo bigaragaza ko yateze igico kandi bituma icyaha kimuhama kiba ubwinjiracyaha mu buhotozi aho kuba ubwinjiracyaha mu bwicanyi – Itegeko-Ngenga no 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, ingingo za 139 na 140 Amategeko mpanabyaha – Ubwicanyi – Ubuhotozi – Ubuhotozi ntibukiba mu itegeko rishya rihanaibyaha, ahubwo ibyari bibugize ni impamvu nkomezacyaha ku byaha byibasira ubuzima n'ubusugire bya muntu. Amategeko mpanabyaha – Kugena igihano – Impamvu zikomeza ububi bw'icyaha yakoze zirahagije ngo ahbwe igifungo cya burundu; ariko kuba hari n'izoroshya ububi bw'icyo cyaha, zituma agomba kugabanyirizwa igihano Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko Rukuru, Urugereko rwa Rusizi, Matabaro Pierre Célestin ashinjwa gutemagura Mukankundiye Cestine ahantu hatandukanye kandi mu kico. Yaburanye atemera inyito y'icyaha ariko yemera ko ari we wamutemaguye kandi binemezwa n'abatangabuhamya batandukanye batabaye bigatuma umugambi we utagerwaho dore ko yari yateze igico. Urukiko rwamuhamije ubwinjiracyaha mu bwicanyi ahanishwa gufungwa burundu

- nyunma yo kutagabanyirizwa igihano kuko ngo yaburanaga atemera icyaha mu buryo budashidikanywaho. Yajuririye Urukiko rw'Ikirengaasaba kugabanyirizwa igihano ashingiye ku kuba hari imvugo z'abatangabuhamya zitagomba guhabwa agaciro kuko hari ibyo bapfaga kuba raporo ya muganga yagaragaje ko atigeze agira ububabare bukabije akaba ari n'ubwa mbere akoze icyaha. Mu iburanisha yaburanye noneho yemera icyaha anasaba kugabanyirizwa igihano. Umushinjacyaha we yavuze ko nta mpamvu yo kugabanyirizwa igihano kuko atagombaga kwitwaza ko uwakorewe icyaha yamutemeye umugore ngo nawe narangiza yihanire kandi yari yaranabihaniwe. Yasabye kugumishaho imikirize y'urubanza rujuririrwa. Incamake y'icyemezo:
1. Ushinjwa yateze igico kuko yabanje kuneka aho uwakorewe icyaha yari ari, ibyo yakoraga n'amasaha ye yo gutaha ubundi amugenda imbere amutegera iwe ku irembo; bivuze ko icyaha gihama kimuhama ari ubwinjiracyaha mu buhotozi aho kuba ubwinjiracyaha mu bwicanyi.
 2. Agomba guhanirwa ubwinjiracyaha mu bwicanyi butegewe igico kuko inyito "ubuhotozi" butakigaragara mu itegeko rishya ahubwo ibyari birigize, kugambirira ubwicanyi no gutega igico, byakomeje kuba impamvu nkomezacyaha ku byaha byibasira ubuzima n'ubusugire bya muntu.
 3. Kuba ayarakoze icyaha cy'ubugome kandi kikaba cyaragize ingaruka zikomeye ku wagikorewe kuko yatemwe mu kico bikamusigira ibikovu agomba kubana na byo ni impamvu zihagije kugirango igihano cya burundu kigumeho. Ariko, kuba yaratangiye yemera icyaha

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nu'ubwo yasanga n'ugihunga, kuba na nubu acyemera akavuga uko yagikoze akabisabira imbabazi, kuba ari ubwa mbere akoze icyaha kandi yarasanzwe yitwara neza nk'uko bivugwa n'abatangabuhamya, ni impamvu nyoroshyacyaha zituma agomba agomba guhanishwa gufungwa imyaka 20 aho kuba burundu. Ubujurire bufite ishingiro; Urubanza rwajuririye ruhindutse gusa ku bihano; Ahanishijwe imyaka 20 y'igifungo; Amagarama y'urubanza aherereye ku isanduku ya Leta. Amategeko yashingiweho: Itegeko-Ngenga no 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, ingingo za 139 na 140 Itegeko -Teka no 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, ingingo za 21, 82 na 83. Itegeko-Ngenga n°31/2007 ryo ku wa 25/07/2007 rikuraho igihano cyo kwicwa. Nta manza zifashishijwe Urubanza I.LIMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rukuru, Urugereko rwa Rusizi, Matabaro Pierre Célestin aregwa kuba ku wa 15/09/2004 yaratemaguye Mukankundiye Vestine imihoro igera kuri ine ahantu hatandukanye mu mutwe, mu gikanu no hejuru y'ibere. Uregwa yaburanye atemera inyito y'icyaha ariko avuga ko yemera ko ari we watemye Mukankundiye Vestine. [2] Mu rubanza no RP 0021/08/HC/RSZ rwaciye ku wa 04/08/2011, Urukiko rwasanze Matabaro Pierre Célestin yemera ko yatemye Mukankundiye Vestine, n'abatangabuhamya bemeza ko bumvise Mukankundiye Vestine ataka ko yishwe na Matabaro Pierre Célestin, batabara bagasanga yatemaguwe mu mutwe, mu gikanu no hejuru y'ibere, rwemeza ko habayeho gutega igico hagamiye kumwica kuko yabanje gutegerwa imbere y'iwe ndetse n'ahatemwe hose akaba ari mu cyico, kuba MATABARO Pierre Célestin atarageze ku mugambi wo kumwica bikaba byaratewe

n'abatabaye, bityo ko ahamwa n'icyaha kandi ko adakwiye kugabanyirizwa ibihano kuko atemera icyaha mu buryo budashidikanwaho, ahanishwa igifungo cya burundu. [3] Matabaro Pierre Célestin yajuririye icyo cyemezo mu Rukiko rw'Ikirenga avuga ko imvugo za Rimenyande na Ntabanganyimana zitagombaga guhabwa agaciro mu gihe hari ibyo bapfa, ko raporo ya Muganga igaragaza ko uwahohotewe atigeze agira ububabare bukabije, kandi ko ari ubwa mbere akoze icyaha kuko yari asanzwe yitwara neza muri rubanda, ko ibyo byose byirengagijwe agahabwa igihano kirekire, akaba yifuza kugabanyirizwa igihano.

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[4] Iburanisha ryabereye mu ruhamwe ku wa 29/12/2015, Matabaro Pierre Célestin ahari kandi yunganiwe na Me Mugabonabandi Jean Maurice, naho Ubushinjacyaha buhagarariwe na MUTAYOBA Alphonse, Umushinjacyaha ku rwego rw'Igihugu. [5] Iburanisha rigitangira, Matabaro Pierre Célestin yamenyesheje Urukiko ko yahinduye ingingo ze z'ubujurire akaba yifuza kwemera icyaha mu buryo budashidikanywaho, ko agisabira imbabazi kandi atakamba asaba kugabanyirizwa igihano. II.IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO Kumenya niba hari impamvu zatuma MATABARO Pierre Célestin agabanyirizwa igihano. [6] Matabaro Pierre Célestin avuga ko mbere yaburanye aterura ngo yemere icyaha kuko yashakaga kugihunga, ariko ko ubu yemera ko ari we watemye Mukankundiye Vestine imihoro itatu agamiye kumwica, amuziza kuba nawe yarigeze gutema umugore we ndetse akaza no kubifungirwa, cyakora ko nta cyari gutuma amutega igico kandi baturanye kuko atari kumushaka ngo amubure, ahubwo ko bahuriye mu nzira avuye gutema ibiti akumva ashaka kumwihimuraho abitewe n'uburakari n'inzoga yari yanyoye, kandi ko kuba Mukankundiye Vestine atarapfuye ari uko abantu batabaye, ariko ko ibyo byose abyicuza kandi abisabira imbabazi, akaba asaba uru Rukiko guca inkoni izamba akagabanyirizwa igihano kuko igihe amaze muri Gereza cyatumye agororoka. [7] Me Mugabonabandi Jean Maurice umwunganira avuga ko Mukankundiye Vestine ari muramukazi wa Matabaro Pierre Célestin, ko baturanye, akaba atari kumutega igico kandi ataramubuze, ko kandi Mukankundiye Vestine yigeze gutema umugore wa Matabaro Pierre Célestin mu mutwe, byumvikanisha ko nubwo ubusembure butari ubw'ako kanya bwari buhari, ko uwo mujinya hamwe n'inzoga aribyo byatumye Matabaro Pierre Célestin atema Mukankundiye Vestine, kuba yongeye kwivugira ko uwahohotewe yakijijwe n'Imana yakinze akaboko, bigaragaza ko ukwemera kwe kwuzuye, akaba asaba uru Rukiko gushingira ku ngingo ya 83 n'ya 83 z'Itegeko-Teka no 21/77 ryo ku wa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana ryakoreshwaga igihe icyaha cyakorwaga, Matabaro Pierre Célestin akagabanyirizwa igihano. [8] Uhagarariye Ubushinjacyaha avuga ko Matabaro Pierre Célestin atakwitwaza inzika y'uko Mukankundiye Vestine yigeze kumutemera umugore ngo yihanire, cyane ko Mukankundiye Vestine yari yaranabihaniwe, ko kugeza ubu ntacyo Matabaro Pierre Célestin agaragaza cyaba cyarakozwe n'uwahohotewe kugira ngo amutemagure kariya kagene, byumvikanisha ko yari yamuteze igico nk'uko byemezwa na Niyonsenga Daphrose usobanura ko Matabaro Pierre Célestin yabacyeyeho atwaye ibiti hashize akanya bumva Mukankundiye Vestine atatse avuga ko yishwe na Matabaro Pierre Célestin, bityo ukwemera icyaha kwe kukaba kutuzuye,

akaba asaba ko imikirize y'urubanza rwaciwe n'Urukiko Rukuru yahamishwaho. UKO URUKIKO RUBIBONA [9] Ingingo ya 21 y'Itegeko-Teka no 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga icyaha gikorwa, iteganya ko «ubwinjiracyaha buhanirwa

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iyi imigambi yo gukora icyaha yagaragajwe n'ibikorwa biboneka, bidashidikanywa by'intangiriro y'icyaha, bigenewe kugitsotsoba, bigahagarikwa gusa cyangwa bikabuzwa kugera ku cyifuzo, bikazitirwa gusa n'impamvu zikomoka ku bwende bwa nyiri icyaha.» [10] Ingingo ya 82 y'Itegeko-Teka no 21/77 ryo ku wa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana ibyaha ryakurikizwaga icyaha gikorwa, iteganya ko umucamanza ariwe uha agaciro impamvu zigabanya ubugizi bwa nabi bw'uwakoze icyaha, ari izakibanjirije, ari izagiherekeje cyangwa izagikurikiye, yaba azemeje akagomba kubisobanurira impamvu, naho ingingo ya 83, agace ka kabiri y'iryo Tegeko-Teka igateganya ko iyo hari impamvu nyoroshyacyaha, igihano cyo gufungwa burundu gisimbuzwa igihano cy'igifungo cy'igihe kitari munsu y'imyaka ibiri. [11] Dosiye y'urubanza igaragaza ko mu Bugenzacyaha, mu Bushinjacyaha ndetse no mw'iburanisha mu mizi y'urubanza Matabaro Pierre Célestin yavuze ko aho Mukankundiye Vestine afunguriwe yaguriye abantu ngo bazamwice, kandi ko yagambaniye umuhungu we w'imfura ngo bamukubite bigatuma ahunga, ko uwo munsu icyaha gikorwa yamututse ko ari imbwa yiratira ubusa kandi yihisha abayobozi, ibyo bitutsi akaba aribyo byamuteye umujinya watumye amutema ariko ko atabigambiriye cyangwa ngo amutege igico (cotes 6,10,11,24 na 30); Ntabanganyimana Mvugerihamwe na Rimenyabake Védaste nabo bemeza ko bumvise umuntu atura igiti, atangira gutema, babanza gukeka ko ari uwo mutumba ari gutema ariko bumvise umuntu atateze ko yishwe na Matabaro Pierre Célestin barahurura ababonye yirukira mu rutoki (cotes 2-3), Niyonsenga Daforoza we asobanura ko Matabaro Pierre Célestin yabanyuzeho ari kumwe na Mukankundiye Vestine, ariko Bamaze gutandukana yumva Mukankundiye Vestine atabaza ko Matabaro Pierre Célestin amwishe (cote 4). [12] [12]. Abazwa mu Bugenzacyaha, Nyirabahinde, nyina wa Matabaro Pierre Célestin, nawe yasobanuye ko Matabaro Pierre Célestin yamunyuzeho incuro ebyiri ari kuganira na Mukankundiye Vestine, ariko ko we yahise ajya kuryama, naho Mukankundiye Vestine amanuka ataha iwe, akigera mu buriri yumva umukobwa wa Mukankundiye Vestine aje abatabaza avuga ko Matabaro Pierre Célestin atemye nyina (cote 5). [13] Urukiko rurasanga nubwo Matabaro Pierre Célestin ahakana ko atateze igico, ashaka kumvikanisha ko icyaha yakozwe ari ubwinjiracyaha mu bwicanyi aho kuba ubwinjiracyaha mu buhotozi, invugo ya Niyodusenga Daforoza na Nyirabahinde igaragaza ko Matabaro Pierre Célestin yabanje kuneka aho Mukankundiye Vestine aherereye, ibyo yakoraga, n'amasaha ye yo gutaha, ari nacyo cyatumye amunyuraho incuro eshatu zose, ku nshuro ya nyuma akamenya ko atashye kandi ko ari wenyine, akamutegera imbere y'iwe akamutema, bisobanuye ko yamutanze imbere kugirango amutegerereze iwe amwice, ku birebana n'uru rubanza, uko kumutegerereza iwe akaba aricyo kigize gutega igico nk'uko biteganywa n'ingingo ya 139 y'Itegeko-Ngenga no 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana¹, bigaragaza ko icyaha gihama Matabaro Pierre Célestin ari ubwinjiracyaha mu buhotozi aho kuba ubwinjiracyaha mu bwicanyi nk'uko abivuga. 1«Gutega

igico bivuga gutegera umuntu ahantu hamwe cyangwa henshi, mu gihe kinini cyangwa gito, ushaka kumwica cyangwa kumugirira nabi.»

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[14] Urukiko rurasanga, guhera igihe umushingamategeko yavanyeho igihano cyo kwicwa kugeza aho Itegeko-Ngenga no 01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru risohokeye, ubuhotozi n'ubwicanyi byarahanishwaga igifungo cya burundu, na nubu iki gihano akaba aricyo gihanishwa uwahamwe n'icyaha cy'ubwicanyi hashingiwe ku ngingo ya 140 y'iryo Tegeko-Ngenga, bivuze ko ntacyo Itegeko rishya ryungura Matabaro Pierre Célestin ku birebena n'igihano, cyakora inyito "ubuhotozi" ntigaragara mu Itegeko rishya, ahubwo ibyari biyigize aribyo kugambirira ubwicanyi no gutega igico byakomeje kuba impamvu nkomezacyaha z'ibyaha byibasira ubuzima cyangwa ubusugire bya muntu (infractions attentatoires à la personne humaine) harimo n'ubwicanyi, bityo kubera ko inyito « ubuhotozi » itakiri mu Itegeko, Matabaro Pierre Célestin akaba akwiye guhanirwa ubwinjiracyaha mu bwicanyi bwategewe igico. [15] Naho ku byerekeye kugabanyirizwa igihano, Urukiko rurasanga Matabaro Pierre Célestin yarakoze icyaha cy'ubugome kandi cyagize ingaruka kuri Mukankundiye Vestine kuko yatemwe mu cyico kandi akaba agomba kubana n'inkovu z'ibiguma byatewe na Matabaro Pierre Célestin uvuga ko yamuzizaga inzika y'uko nawe yamutemeye umugore akongeraho no kumutuka, iza mpamvu zikaba ubwazo zihagije kugirango Matabaro Pierre Célestin akomeze ahanishwe igifungo cya burundu yakatiwe n'Urukiko Rukuru, ariko kubera ko yemeye icyaha agitangira gukurikiranwa n'inze z'ubutabera, nubwo yageze mu Rukiko Rukuru akacyemera ateruye ahubwo akisobanura aha n'ugihunga, kuba yongeye kwemera icyaha, akagaragaza imikorere yacyo, akagisabira imbabazi kandi akaba yivugira ko igihe amaze muri Gereza cyatumye agororoka, byiyongera kukuba ari ubwa mbere yakurikiranwa n'inkiko bizwi kandi n'abatangabuhamya bavuga ko yari asanzwe yitwara neza, bikwiye kumubera impamvu nyoroshyacyaha, akongera guhabwa amahirwe yo kuba mu muryango Nyarwanda. [16] Urukiko rurasanga hashingiwe ku bimaze gusobanurwa mu gika kibanziriza iki, igihano cy'igifungo cya burundu Matabaro Pierre Célestin yakatiwe gikwiye gusimbuzwa igifungo cy'imyaka makumyabiri (20 ans). III.ICYEMEZO CY'URUKIKO [17] Rwemeje ko ubujurire bwa Matabaro Pierre Célestin bufite ishingiro; [18] Ruvuze ko urubanza N° RP 0021/08/HC/RSZ rwaciye n'Urukiko Rukuru, Urugereko rwa Rusizi ku wa 04/08/2011 ruhindutse gusa ku byerekeranye n'igihano; [19] Ruhaniye Matabaro Pierre Célestin igifungo cy'imyaka makumyabiri (20 ans); [20] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta. 2 Itegeko-Ngenga n°31/2007 ryo ku wa 25/07/2007 rikuraho igihano cyo kwicwa.

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