

RWANDA / JUDGMENT

Re MUGIRANEZA

RS/RECT/RC 00001/2024/CA

COURT

Court of Appeal

DECIDED

29 September 2024

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Re MUGIRANEZA

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Text

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Re MUGIRANEZA [Rwanda URUKIKO RW'UBUJURIRE - RS/RECT/RC 00001/2024/CA (Gakwaya P.J, Tugireyezu, Kaliwabo, J.) 29 Nzeri 2024] Amategeko agenga imibiruanishirize y'imanza – Gukosora urubanza - Ibirego bisaba gukosora urubanza biba bigamije gukosoza amakosa y'imyandikire Urukiko rwakoze rwandika urwo rubanza, ni ukuvuga icyo rwibeshyeho mu kwandika urwo rubanza. Incamake y'ikibazo: Uru rubanza rukomoka ku rubanza RCAA 00029/2018/CA rw'izungura ry'imitungo yasizwe na Ngoboka aho abana be basabaga kumuzungura. Urukiko rwemeje ko abana bakomoka ku mugore bari bashyingingiranwe witwa Nikuze bagabana ½, ikindi ½ kikagabana abana bose ba Ngoboka Jean. Mugiraneza, umwe mu bana be, umwirondoro we waje kwandikwa nabi kuko muri urwo rubanza handitswe ko ari mwene Ngoboka Jean na Mwanayire Jeanne d'Arc kandi atari byo. Yaje gutanga ikirego mu Rukiko rw'Ubujuire asaba gukosoza urwo rubanza. Urukiko rwakiriye icyo kirego maze rusuzuma ikibazo cyo kumenya niba hari ikosa ry'imyandikire rikwiye gukosorwa riri mu rubanza N° RCAA 00029/2018/CA rwaciwe ku wa 16/07/202. Mugiraneza asobanura ko mu rubanza rw'izungura habayemo kwibeshya mu kwandika umwirondo we kuko handitswe ko ari mwene Ngoboka Jean na Mwanayire Jeanne d'Arc aho kwandika ko ari mwene Ngoboka Jean na Nikuze

Ancille ari we nyina umubyara. Ibyo bituma atabasha kugabana ku mitungo izagabanwa n'abana babyawe na Nikuze Ancille kandi no ku ruhande rw'abana babyawe na Mwanayire Jeanne d'Arc akaba atabasha kugabanayo kuko batavukana. Incamake y'icyemezo: Ibirego bisaba gukosora urubanza biba bigamije gukosoza amakosa y'imyandikire Urukiko rwakoze rwandika urwo rubanza, ni ukuvuga icyo rwibeshyeho mu kwandika urwo rubanza bityo, ibuvugwa na Mugiraneza nta shingiro bifite kuko umwirondoro asaba gukosora yawukoresheje kuva urubanza rutangira mu Rukiko Rwisumbuye rwa Nyarugenge, akaba nta kosa Urukiko rw'Ubujurire rwakoze mu kwandika umwirondoro we. Ikirego cyatanze nta shingiro gifite. Amategeko yashyirahwe: Itegeko N° 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 140. Imanza zifashishijwe: RS/RECT/RC 00004/2021/SC, Uzamushaka Consolée v d'Office, rwaciwe n'Urukiko rw'Ikirenga ku wa 11/02/2022. Urubanza

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I. IMITERERE Y'URUBANZA [1] Ku wa 16/07/2021, Urukiko rw'Ubujurire rwaciye urubanza No RCAA 00029/2018/CA rujyanye n'ikibazo cy'izungura ku mitungo Ngoboka Jean yasize. Muri urwo rubanza, ku birebana n'imitungo iriho, Urukiko rwategetse ko umutungo ubaruwe kuri UPI: 2124 ugizwe n'ishyamba rihereye kuri mont Kigali, Ngoboka Jean yahahanye na Nikuze Ancille ugomba kugabanywamo kabiri, kimwe cya kabiri ($\frac{1}{2}$) kigahabwa abana ba Nikuze Ancille nk'uruhare rwa nyina naho kimwe cya kabiri kindi ($\frac{1}{2}$) kikagabanywa ku buryo bungana abana ba Ngoboka Jean bese maze Ngoga Jean Paul wapfuye agahagararirwa n'abazungura be naho imitungo igizwe na UPI: 1/03/09/03/308 uherereye mu Mujyi wa Kigali, Akarere ka Kicukiro, Umurenge wa Niboye, Akagari ka Nyakabanda, Umudugudu w'Inyarurembo, UPI: 1/01/01/06/108 na UPI: 1/01/01/06/109 iherereye mu Mujyi wa Kigali, Akarere ka Nyarugenge, Umurenge wa Gitega, Akagari ka Kora yanditse kuri Ngoboka Jean wenyine rutegeka ko igabanwa ku buryo bungana n'abana bese bamukomokaho bakiraho, naho Ngoga Jean-Paul wapfuye agahagararirwa n'abazungura be. [2] Nyuma y'icibwa ry'urubanza, Mugiraneza Eric umwe mu bana ba Ngoboka Jean yatanze ikirego gitanzwe n'umuburanyi umwe mu Rukiko rw'Ubujurire asaba ko urwo rubanza rwakosorwa ku birebana n'imyirondoro ye ahanditse ko ari mwene Ngoboka Jean na Mwanayire Jeanne d'Arc hakandikwa ko ari mwene Ngoboka Jean na Nikuze Ancille wari umugore w'isezerano kuko Nikuze Ancille ariwe nyina umubyara. [3] Mugiraneza Eric asobanura ko kuba yarahawe umwirondoro wa nyina utamubyara bituma bigorana ko yagabana ku mitungo urukiko rwageneye Nikuze Ancille ndetse ko n'abana bavuka kuri Mwanayire Jeanne d'Arc betemera kugabana nawe kuko bazi neza ko batavukana kuri nyina. [4] Icyo kirego cyasuzumwe n'Inteko y'Urukiko ku wa 26/09/2024 mu nama y'abacamanza, uwo munsu rwemeza ko icyemezo kizamenyeshwa ababuranyi ku wa 27/09/2024. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

Kumenya niba hari ikosa ry'imyandikire riri mu rubanza N° RCAA 00029/2018/CA rwaciwe ku wa 16/07/2021 rikwiye gukosorwa [5] Mu kirego cye, Mugiraneza Eric asaba ko urwo rubanza N° RCAA 00029/2018/CA rwakosorwa ku birebana n'imyirondoro ye ahanditse ko ari mwene Ngoboka Jean na Mwanayire Jeanne d'Arc hakandikwa ko ari mwene Ngoboka Jean na Nikuze

Ancille wari umugore w'isezerano, kuko Nikuze Ancille ariwe nyina umubyara. [6] Mugiraneza Eric asobanura ko kuba yarahawe umwirondoro wa nyina utamubyara bituma bigorana ko yagabana ku mitungo Urukiko rwageneye Nikuze Ancille, ndetse ko n'abana bavuka kuri Mwanayire Jeanne d'Arc batemera kugabana nawe kuko bazi neza ko batavukana kuri nyina. UKO URUKIKO RUBIBONA

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[7] Ingingo ya 140, mu gika cyayo cya mbere, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko " (...). Urubanza rukosora urundi, rukosora gusa amakosa y'imyandikire". [8] Ku birebana n'ibikorwa mu gukosora urubanza, Urukiko rw'Ikirenga rwabitanzeho umurongo mu rubanza N° RS/RECT/RC 00004/2021/SC rwaciwe ku wa 11/02/2022 rwa Uzamushaka Consolée. Muri urwo rubanza, Urukiko rwasobanuye ko gukosora urubanza bivugwa mu ngingo ya 140 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru byumvikanisha ko ibirego bisaba gukosora urubanza biba bigamije gukosoza amakosa y'imyandikire Urukiko rwakoze rwandika urwo rubanza, ni ukuvuga icyo rwibeshyeho mu kwandika urwo rubanza. [9] Dosiye y'urubanza igaragaza ko urubanza rusabirwa gukosorwa rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge mu rubanza N° RC 0125/14/TGI/NYGE rwaciwe ku wa 13/01/2015, rujuririrwa mu Rukiko Rukuru mu rubanza N° RCA 0060/15/HC/KIG rwaciwe ku wa 24/03/2016, rujuririrwa bwa kabiri mu Rukiko rw'Ubujurire mu rubanza N° RCAA 00029/2018/CA ari narwo rusabirwa gukosorwa. Dosiye igaragaza kandi muri izo manza zose, haba aregwa 1bwa mbere no mu bujurire ubwa mbere2 n'ubwa kabiri, amahamagara3 yose agaragaza ko yahamagarwaga kuri uwo mwirondoro kandi akaba ntaho yigeze avuga ko hari ikosa rigaragara mu myirondoro ye ndetse no mu maburanisha yose4, kandi aho hose ntaho yaba we cyangwa abo baburana bigeze bagaragaza ko muri iyo myirondoro harimo ikosa ngo basabe ko byakosorwa. [10] Urukiko rw'Ubujurire rurasanga kuva uru rubanza rwatangira ku rwego rwa mbere mu Rukiko Rwisumbuye rwa Nyarugenge kugera mu Rukiko rw'Ubujurire yaba Mugiraneza Eric cyangwa Avoka we batarigeze bavuga ikibazo cy'umwirondoro wa Mugiraneza Eric cyangwa ngo habe harasabwe ko uwo mwirondoro ukosorwa mu gihe cy'iburanisha ku buryo uru Rukiko rwari kubiharaho rwandika mu rubanza N° RCAA 00029/2018/CA rusabirwa gukosorwa. [11] Urukiko rw'Ubujurire rurasanga rero kuba umwirondoro wa Mugiraneza Eric wagaragarijwe Inkiko zose werekana ko Mugiraneza Eric ari mwene Ngoboka Jean na Mwanayire Jeanne d'Arc kandi yaba Mugiraneza Eric cyangwa Avoka we bakaba batarigeze bagaragaza ko iyo myirondoro irimo ikosa, byumvikanisha ko nta kosa ry'imyandikire Urukiko rwakoze kuko nta wundi mwirondoro rweretswe ntiruwandike ngo maze bibe byaba impamvu ishingirwaho ivugwa ko uwanditswe mu rubanza wagaragayemo ikosa. [12] Hashingiwe kuri ibyo bisobanuro, Urukiko rw'Ubujurire rurasanga nk'uko byasobanuwe haruguru mu gukosora urubanza hakosorwa amakosa y'imyandikire Urukiko rwakoze rwandika urwo rubanza cyangwa icyo rwibeshyeho mu kwandika urwo rubanza, ariko muri uru rubanza byumvikana ko nta kosa rwakoze rigomba gukosorwa mu rubanza N° RCAA

00029/2018/CA ku bijyanye n'umwirondoro wa Mugiraneza Eric kuko bigaragara neza ko nta kwibeshya mu myandikire kwabayeho handikwa ko ari mwene Ngoboka Jean na Mwanayire Jeanne d'Arc.

1 Reba inyandiko itanga ikirego yo ku wa 27/01/2014 ku rupapuro rwa 2 2 Reba umwanzuro utanga ubujurire, urupaouro rwa mbere 3 Reba ihamagara ryo ku wa 25/02/2014 no ku wa 29/04/2014 ahamagarwa mu Rukiko Rwisumbuye, iyo ku wa ku wa 29/04/2015 ahamagarwa mu Rukiko Rukuru n'iyi 03/05/2019 ahamagarwa mu Rukiko rw'Ubujurire 4 Reba inyandikomvugo y'iburanisha ryo ku wa 15/02/2020

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III. ICYEMEZO CY'URUKIKO [13] Rwemeje ko ikirego cyatanzwe na Mugiraneza Eric kigamije gukosoza urubanza no RCAA 00029/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 16/07/2021 nta shingiro gifite; [14] Rwemeje ko nta kosa ry'imyandikire riri mu rubanza No RCAA 00029/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 16/07/2021 ku bijyanye n'umwirondoro wa Mugiraneza Eric.

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