

RWANDA / JUDGMENT

MUKAMUSONI V. LETA Y'U RWANDA N'ABANDI

RAD 0003/15/CS

COURT

Supreme Court

DECIDED

27 July 2015

CASE / FILE NUMBER

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MUKAMUSONI V. LETA Y'U RWANDA N'ABANDI

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Text

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MUKAMUSONI V. LETA Y'U RWANDA N'ABANDI [Rwanda URUKIKO RW'IKIRENGA – RAD 0003/15/CS (Mukanyundo P.J., Rugabirwa na Ngagi, J.) 27 nyakanga, 2015] Amategeko agenga imiburanishirize y'imanza mbonezamubano – kureka ikirego – kwemererwa kureka ikirego – Kureka ikirego ni ukwiyambura ububasha bwo kuburana. Bijyana no kwiwambura uburenganzira umuntu yari afite bwo gukomeza gukurikirana icyo kirego. Ukwemera k'undi muburanyisingombwa – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, ingingo 26 . Incamake y'ikibazo: Mukamusoni yategetswe kwishyura Nteserurwa indishyi bituma umuhesha w'inkiko w'umwuga witwa Kagaju ateza cyamunara inzu ya Mukamusoni mu kurangizwa urubanza n° RPA 8787/KIG. Mukamusoni yareze Kagaju na Leta y'Urwanda mu Rukiko Rukuru asaba ko iyo cyamunara yaseswa kubera ko yakozwe mu buryo bunyuranyije n'amategeko maze rwemeje iyo cyamunara igumana agaciro kayo. Mukamusoni yajuririye urwo rubanza mu Rukiko rw'Ikirenga maze narwo rwemeza ko cyamunara y'inzu ya Mukamusoni igumanye agaciro, hanyuma

rutegeka Leta y'Urwanda kwishyura Mukamusoni amafaranga yishyujwe kabiri hamwe nayasigaye ku giciro cy'inzu ye ndetse runategeka Mukamusoni Kwishyura Kamali indishyi. Mukamusoni yatanze ikirego nanone muri uru Rukiko asaba gusubirishamo urubanza ingingo nshya ariko hagati aho yahise atanga ikirego kihutirwa asaba guhagarika irangizwa ry'urubanza n° RADA 0030/12/CS mu gihe urubanza n° RS/REV/AD 0002/15/CS rutaracibwa burundu, kubera ko atagomba gusohorwa mu nzu ye kuko adafite ahandi aba. Mukamusoni yanditse ibaruwa avuga ko aretse ikirego cyihutirwa yari yaratanze muri uru Rukiko kubera ko urubanza n° RADA 0030/12/CS yasabaga ko rutarangizwa rwarangijwe, hanyuma agasohorwa mu nzu yasabaga ko yaba agumyemo mu gihe urubanza rusabirwa gusubirishwamo ingingo nshya rutaracibwa. Incamake y'icyemezo: Kureka ikirego ni ukwiyambura ububasha bwo kuburana. Bijyana no kwiyambura uburenganzira umuntu yari afite bwo gukomeza gukurikirana icyo kirego. Ukwemerak'undimuburanyisingombwa, bityo rero Mukamusoni yemerewe kureka ikirego kihutirwa yari yatanze kubera ko nta nyungu zokugukurikirana agifite. Ikirego kiraretswe. Amagarama y'urubanza aherereye ku isanduku ya Leta. 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 26

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Nta rubanza rwifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Mu rwego rwo kurangiza urubanza n° RPA 8787/KIG, Mukamusoni Béatrice yategetswe mo kwishyura Ntiserurwa Christophe indishyi zingana na 3.690.000Frw, Umuhesha w'Inkiko w'Umwuga witwa Kagaju Alphonse yateje cyamunara inzu ye kuwa 21/06/2002. [2] Mukamusoni Béatrice yareze Kagaju Alphonse na Leta y'u Rwanda nk'umukoresha we mu Rukiko Rukuru asaba ko iyo cyamunara yaseswa kubera ko yakozwe mu buryo bunyuranyije n'amategeko, urwo Rukiko rwaciye urubanza n° RAD 0078/09/HC/KIG, rwemeza ko iyo cyamunara igumanye agaciro kayo. [3] Mukamusoni Béatrice yajuririye urwo rubanza mu Rukiko rw'Ikirenga, ruca urubanza n° RADA 0030/12/CS kuwa 10/10/2014, rwemeza ko cyamunara yabaye tariki ya 21/06/2002 y'inzu ya Mukamusoni Béatrice iri mu kibanza n° 112 kiri mu Kagari ka Nyagatovu, Umurenge wa Kimironko, Akarere ka Gasabo, Umujyi wa Kigali igumanye agaciro, rutegeka Leta y'u Rwanda kwishyura Mukamusoni Béatrice 147.600Frw yishyujwe kabiri na 1.560.000 Frw yasigaye ku giciro cy'inzu ye, yose hamwe akaba 1.707.600Frw, rutegeka Mukamusoni Béatrice kwishyura Kamali Emmanuel indishyi zingana na 1.800.000Frw. [4] Mukamusoni yatanze ikirego muri uru Rukiko asaba gusubirishamo ingingo nshya urubanza RADA 0030/12/CS rwavuzwe haruguru, icyo kirego cyandikwa kuri n° RS/REV/AD 0002/15/CS. [5] Mukamusoni Béatrice yatanze kandi muri uru Rukiko ikirego cyihutirwa gishamikiye ku kirego cy'iremezo n° RS/REV/AD 0002/15/CS asaba Urukiko gufata icyemezo gihagarika irangizwa ry'urubanza RADA 0030/12/CS mu gihe urubanza n° RS/REV/AD 0002/15/CS rutaracibwa burundu, icyo kirego cyandikwa kuri RAD 0003/15/CS. [6] Mu mwanzuro we, Mukamusoni Béatrice asobanura ko impamvu nyamukuru ashingiraho asaba uru Rukiko guhagarika irangizwa ry'urubanza n° RADA 0030/12/CS rwavuzwe haruguru, mu gihe urubanza n° RS/REV/AD 0002/15/CS rutaracibwaburundu, ari uko atagomba gusohorwa mu nzu ye kuko adafite ahandi aba. [7] Kuwa 16/07/2015, Me Mbonypaye Elias uburanira Mukamusoni Béatrice

yanditse ibaruwa avuga ko aretse ikirego cyihutirwa yari yatanze muri uru Rukiko kikandikwa kuri n° RAD 0003/15/CS kubera ko urubanza n° RADA 0030/12/CS rwarangijwe, maze asohorwa mu nzu yasabaga ko yaba agumyemo mu gihe urubanza rusabirwa gusubirishwamo ingingo nshya rutaracibwa. [8] Urubanza rwaburanishijwe mu ruhamwe kuwa 21/07/2015, Mukamusoni Béatrice ahagarariwe na Me Mbonyimpaye Elias, naho abandi baburanyi bose batitabye ariko barahamagawe mu buryo bukurikije amategeko.

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II. IKIBAZO KIRI MURI URU RUBANZA N'ISESENGURWA RYACYO: Kumenya niba Mukamusoni Béatrice yakwemererwa kureka ikirego. [9] Me Mbonyimpaye Elias uburanira Mukamusoni Béatrice avuga ko ashingiye ku ngingo ya 26 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 umuburanyi aretse ikirego ukwemera k'undi muburanyiatari ngombwa, aretse ikirego cyihutirwa yari yatanze muri uru Rukiko kuri n° RAD 0003/15/CS, kubera ko atagifite inyungu zo kugukurikirana bitewe n'uko yarangije gusohorwa mu nzu ye yasabaga ko yagumamo mu gihe urubanza rusabirwa gusubirishwamo ingingo nshya rutaracibwa burundu nk'uko yanabisobanuye mu ibaruwa ye yo kuwa 16/07/2015 yashyikirije Urukiko rw'ikirenga kuwa 16/07/2015. UKO URUKIKO RUBIBONA [10] Ingingo ya 26 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, iteganya "Kureka ikirego ni ukwiyambura ububasha bwo kuburana. Bijyana no kwiyambura uburenganzira umuntu yari afite bwo gukomeza gukurikirana icyo kirego. Ukwemera k'undi muburanyi singombwa". [11] Urukiko rurasanga mu miburanire ye imbere y'uru Rukiko no mu ibaruwa ye yo kuwa 16/07/2015, Mukamusoni Béatrice yiyemerera ko aretse ikirego cyihutirwa yari yatanze muri uru Rukiko kuri n° RAD 0003/15/CS, kubera ko atagifite inyungu zokugukurikirana kuko yarangije gusohorwa mu nzu ye, kandi impamvu yari yatumye atanga icyo kirego kwari ukugira ngo atazasohorwa muri iyo nzu mu gihe urubanza n° RADA 0030/12/CS rwaciwe n'uru Rukiko kuwa 10/10/2014, rusabirwa gusubirishwamo ingingo nshya rutaracibwa burundu. [12] Hashingiwe ku ngingo ya 26 y'Itegeko ryavuzwe haruguru no mu bikubiye mu ibaruwa ye yo kuwa 16/07/2015 yavuzwe haruguru, Urukiko rurasanga Mukamusoni Béatrice akwiye kwemererwa kureka ikirego cye cyihutirwa cyanditse kuri n° RAD 0003/15/CS kuko yakiretse mu buryo bukurikije amategeko. III. ICYEMEZO CY'URUKIKO [13] Rwemeye ukureka ikirego cyihutirwa cyatanzwe na Mukamusoni Béatrice cyanditse kuri n° RAD 0003/15/CS kuko kwakozwe mu buryo buteganywa n'amategeko. [14] Rutegetse ko amagarama y'uru rubanza aherera ku Isanduku ya Leta.

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