

RWANDA / JUDGMENT

MUKESHIMANA N'ABANDI v. RWANDA SOCIAL BOARD (RSSB)

RADA 0040/12/CS

COURT

Supreme Court

DECIDED

16 September 2014

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MUKESHIMANA N'ABANDI v. RWANDA SOCIAL BOARD (RSSB)

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Text

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MUKESHIMANA N'ABANDI v. Rwanda Social Board (RSSB) [Rwanda URUKIKO RW'IKIRENGA – RADA 0040/12/CS (Mutashya, P.J., Gatete G na Gakwaya, J.) 16 Nzeri, 2014] Amategeko agenga imiburanyishirize y'imanza z'ubutegetsi – Gutakambira icyemezo cy'ubutegetsi – Gutakamba gukorwa mu gihe urega asaba ko icyemezo yafatiwe n'ubutegetsi cyavanwaho kugira ngo asubirane uburenganzira yavukijwe n'icyo cyemezo cy'ubutegetsi – Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 339 . Amategeko agenga imiburanyishirize y'imanza z'ubutegetsi – Niba ikirego gisaba gukosora no kwongeramo imitungo itabazwe mu kwimurwa ku bw'inyungu rusange mbere yuko kiregerwa mu nkiko kigomba kubanza gutakambwira – Bene icyo kirego ntikigomba kubanza gutakambirwa kuko atari ikirego gisaba kukuraho icyemezo cy'ubutegetsi ahubwo n'ikirego kijyanye n'ishyirwa mu bikorwa ry'icyo cyemezo. Amategeko agenga imiburanishirije z'imanza z'ubutegetsi – Ubujurire – Guhindura icyemezo cyajuririwe – Urukiko rufite ububasha bwo kuburanisha urubanza mu mizi – Urukiko rwajuririwe iyo ruhinduye

icyemezo cyajuririwe, ruburanisha urwo rubanza mu mizi yarwo keretse iyo ruruhinduye ku mpamvu y'uko rwaregawe mu buryo budakurikije amategeko cyangwa ku mpamvu y'iburabubasha.- Itegeko n 21/2012 ryo kuwa 14/6/2012 ryerekeye ° imiburanishirize y'imanza z'imbonezamubano, iz'umurimo, iz'ubucuruzi, n'iz'ubutegetsi, ngingo ya 171 Incamake y'ikibazo: Mukeshimana na Uwayezu ntibumvikanye na RSSB ku bijyanye n'uburyo imitungo yabo yabazwe ubwo bimurwaga ku butaka ubwahoze ari ubwa Uwayezu ku bw'inyungu rusange bakavuga ko mu kubara agaciro k'imitungo ya Mukeshimana bumvikanye ku mazu ane ariko ntibumvikana ku ya gatanu kubera ko hari ibyo bari batabariye agaciro. Nyuma yaho Mukeshimana na Uwayezu baregeye Urukiko Rukuru basaba ko ibarurwa ry'imitungo ryakorwa neza, ku buryo ibikorwa byose biri muri icyo kibanza byabarirwa agaciro banasaba ko agaciro k'ubutaka n'ibimera byandikwa kuri Uwayezu akabyishyurwa ukwabyo. Urwo Rukiko rwemeje ko ikirego kitakiriwe kubera ko icyemezo cyafashwe na RSSB cyo kubimura ari icyo butegetsi cyagombaga kubanza kutakambwirwa. Abareze ntibishimiye imikirize y'urubanza bajurira mu Rukiko rw'Ikirenga bavuga ko nta cyemezo cy'ubutegetsi basabaga kvanaho kubera ko ibyo banengaga, ari ibyakozwe na sosiyete Teledevelopment iyahawe isoko na RSSB, hakaba nta cyemezo cya RSSB basabaga ko kivaho. RSSB ivuga ko Mukeshimana ya yandikiye ibaruha iyisaba gukosora kuwa 13 Nzeri 2009 ntiyamusubiza atanga ikirego nyuma y'amezi atandatu ateganyijwe n'ingingo ya 339 y'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi yakoreshwaga icyo gihe bityo ikirego cye kikaba kitari kwakirwa

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Incamake y'icyemezo: Gutakamba gukorwa mu gihe urega asaba ko icyemezo yafatiwe n'ubutegetsi cyavanwaho kugira ngo asubirane uburenganzira yavukijwe n'icyo cyemezo cy'ubutegetsi. Ikirego gisaba gukosora no kwongeramo imitungo itabazwe mu kwimurwa ku bw'inyungu rusange ntikigomba kubanza gutakambirwa kuko atari ikirego gisaba kukuraho icyemezo cy'ubutegetsi cy'ukwimuka ku bw'inyungu rusange ahubwo n'ikirego kijyanye n'ishyirwa mu bikorwa ry'icyo cyemezo. Urukiko rwajuririwe iyo ruhinduye icyemezo cyajuririwe, ruburanisha urwo rubanza mu mizi yarwo keretse iyo ruruhinduye ku mpamvu y'uko rwaregawe mu buryo budakurikije amategeko cyangwa ku mpamvu y'iburabubasha.. Ubujurire bufite ishingiro. Urubanza rwajuririwe ruhindutse ; Iburanishwa ry'urubanza mu mizi yarwo rizasubukurwa; Amagarama y'urubanza asubitswe. Amategeko yashingiweho: Itegeko n 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, ° iz'umurimo, iz'ubucuruzi, n'iz'ubutegetsi, ngingo ya 171 Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 339 Imanza zifashishijwe: Urubanza n° RADA 0041/11/CS hagati ya EWSA na NDAHAYO Jérémie, rwaciwe n'Urukiko rw'Ikirenga kuwa 13/09/2013. URUBANZA I. IMITERERE Y'URUBANZA MURI MAKE [1] Inkomoko y'uru rubanza ni ukutumvikana kwabayeho hagati ya RSSB, MUKESHIMANA Alphonse na UWAYEZU Venantie ku bijyanye n'uburyo imitungo yari aho MUKESHIMANA Alphonse yari atuye yabazwe mu rwego rwo kumurwa ku bw'inyungu rusange(Expropriation pour cause d'intérêt général), kubera ko aho hantu mu murenge wa Gacuriro hari hamaze guhabwa RSSB kugira ngo ihubake amazu ajyanye n'icyerekezo cy'Umujyi

wa Kigali, iyo mitungo ikaba yari ku butaka bwa UWAYEZU Vénantie. [2] MUKESHIMANA Alphonse avuga ko mu kumubarira agaciro k'imitungo ye, yumvikanye na RSSB ku mazu ane yari mu kibanza cye ariko ntibumvikana ku nzu ya gatanu kubera ko hari ibyo batabariye agaciro kandi bigomba kubarurwa. [3] MUKESHIMANA Alphonse na UWAYEZU Vénantie baregeye Urukiko Rukuru basaba ko ibarurwa ry'imitungo ryakorwa neza, ibikorwa biri muri icyo kibanza byose bikabarirwa agaciro. Muri uru rubanza hagobokeshwejwemo UMUTESI Pélégie washakanye na MUKESHIMANA Alphonse ariko ntiyitaba urubanza ruburanishwa adahari.

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[4] Urukiko Rukuru rwaciye urubanza rwemeza ko ikirego cya MUKESHIMANA Alphonse na UWAYEZU Vénantie kitakiriwe, kubera ko rwasanze icyemezo cyafashwe na RSSB cyo kwimura MUKESHIMANA Alphonse aho yari atuye, ari icyemezo cyafashwe n'ubutegets, kugira ngo kiregerwe mu nkiko kikaba cyaragombaga kubanza gutakambirwa imbere y'umutegets wagifashe. [5] MUKESHIMANA Alphonse na UWAYEZU Vénantie bajuririyemo urwo rubanza mu Rukiko rw' Ikirenga bavuga ko umucamanza yanyuranyije n'ibiteganywa n'ingingo ya 339 y'itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegets ryakoreshwaga igihe ikirego cyatangwaga, no kuba umucamanza yaragendeye ku magambo akemeza ko ibaruwa yo kuwa 13/09/2009 yari igamije gutakamba kandi yari igamije gukosora ibyabazwe nabi na rwiyezamezimirimo washyizweho na RSSB . [6] Imburanisha ry'urubanza ryabereye mu ruhamwe kuwa 15/04/2014, MUKESHIMANA Alphonse yitabye yunganiye na Me MBONIMPAYE Elias ari nawe uburanira UWAYEZU Vénantie naho RSSB iburanirwa na MUJAWABERA Yvonne. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO Kumenya niba ikirego kijyanye no gusaba gukosora uburyo imitungo yabazwe no kongeramo imitungo itarabazwe ari icyemezo cyeruye cy'ubutegets cyagombaga kuregerwa hakurikijwe ibiteganywa n'ingingo ya 339 y'itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegets ryakoreshwaga igihe ikirego cyatangwaga. [7] Mu myanzuro y'ubujurire mu Rukiko rw'Ikirenga, Me MBONIMPAYE Elias uburanira MUKESHIMANA Alphonse na UWAYEZU Vénantie avuga ko impamvu yatumye abo yunganira bajurira, ari uko umucamanza yirengagije ibiteganywa n'ingingo ya 339 ryavuzwe haruguru kubera ko ibyo banengaga, ari ibyakozwe na "Teledevelopment" yahawe isoko na RSSB (ex CSR), ko nta cyemezo cya RSSB basabaga ko kivaho, ko kandi umucamanza atagaragaje icyemezo cyafashwe n'ubuyobozi bwa RSSB cyari gutakambirwa akaba yaragendeye ku cyemezo kitariho atigeze anagaragaza mu rubanza yaciye. [8] Me MBONIMPAYE Elias akomeza avuga ko umucamanza yashingiye ku magambo yavuzwe na MUKESHIMANA Alphonse gusa wemeza ko ibaruwa yanditse ku wa 13/09/2009 yari igamije gutakamba, nyamara yari igamije gusaba gukosora ibyakozwe nabi na "Teledevelopment" yahawe isoko na RSSB, akaba yarirengangije amabaruwa yanditswe na RSSB imwe yo mu kwa 09/2009 aho yavugaga ko yohereje agaciro k'imitungo yose ku Karere uretse iyo MUKESHIMANA Alphonse atarasinyira, n'iyi muri 2010 aho bavugaga ko bohoreje agaciro k'imitungo yose ku Karere kandi MUKESHIMANA Alphonse atarasinya, iyi ya nyuma ikaba

yaravugurujye iyo RSSB (ex CSR) yiyandikiye mbere yemera ko izategereza MUKESHIMANA Alphonse akabanza gusinya. [9] Mu iburanisha ry'urubanza, Me MBONIMPAYE Elias wunganira MUKESHIMANA Alphonse, avuga ko ibyo aburanira baregera byakozwe na "Teledevelopment" yari yarahawe akazi na RSSB bikaba atari icyemezo cy'ubutegetsi ko ibyo iyi sosiyete yakoze nta

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mpaka byabyaye haba ku ruhande rwa RSSB cyangwa ku ruhande rwa MUKESHIMANA Alphonse, yongeraho ko iyo usomye neza ingingo ya 339 t'itegeko ryavuzwe haruguru, usanga ivuga amezi 8 mbere y'uko ikirego gishyikirizwa inkiko kubera ko hari amezi 2 yo gutegereza igisubizo, hakaba n'andi mezi 6 yo kuregera inkiko, MUKESHIMANA Alphonse akaba yari yarangije inshingano ze kubera ko yaregeye Urukiko Rwisumbuye rwa Gasabo ayo mezi atarashira urebye inyandiko itanga ikirego. [10] Me MBONIMPAYE Elias akomeza avuga ko, kuba "procédure" itaragenze neza, abo yunganira batagombye kubirenganiramo, ko bo bagenda mu murongo wo gutakamba bakaba babona ari icyemezo cy'ubutegetsi kuko cyafashwe na RSSB yo yimuye abaturage. Akomeza avuga ko ikirego batanze mu Rukiko Rukuru atari gishya kubera ko ikiburanwa cyari kimwe, umucamanza akaba yaremeje ko ibyo MUKESHIMANA Alphonse asaba n'ibyo RSSB yasabaga bitakiriwe kubera ko byabangamira imizi y'urubanza aheraho yemeza ko nta bubasha afite, MUKESHIMANA Alphonse akaba rero atari kongera gutakamba ikigomba gusuzumwa kikaba ari ikijyanye no kumenya niba ataratakambye, itegeko rikaba ritavugaga niba igihe ikirego kitakiriwe urega yongera gutakamba. [11] Me MUJAWABEGA Yvonne uburanira RSSB mu gusubiza imyanzuro y'ubujurire ya MUKESHIMANA Alphonse na UWAYEZU Vénantie, avuga ko impamvu z'ubujurire za MUKESHIMANA Alphonse na UWAYEZU Vénantie nta shingiro zifite kubera ko kuwa 13/09/2009 MUKESHIMANA Alphonse yandikiye RSSB (ex CSR) iyisaba gukosora, RSSB (CSR) ibona iyo baruwa kuwa 14/09/2009 ntiyasubiza ahubwo yandikira Akarere igasaba kongera kubarura ibitari byabaruwe, MUKESHIMANA Alphonse atanga ikirego nyuma y'amezi atandatu ateganyijwe n'ingingo ya 339 y'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi yakoresheje icyo gihe, bityo ikirego cye kikaba kitari kwakirwa. [12] Me MUJAWABEGA Yvonne akomeza avuga ko ikirego yatanze mu Rukiko Rwisumbuye rwa Gasabo nticyakirwa atagomba kucyitiranya n'icyo yatanze mu Rukiko Rukuru ari nacyo cyajuririwe hano kikaba ari nacyo kitubahirije ibihe biteganywa n'amategeko. Avuga ko ku bijyanye n'ibyo MUKESHIMANA Alphonse yasabaga ko bikosorwa, ubu byose byabazwe amafaranga akaba yaroherejwe ku Karere ka Gasabo ndetse nawe akaba yaremeye agaciro, ko nta nyungu agifite muri uru rubanza nk'uko biteganywa n'ingingo ya 2 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Ko kuberekeranye n'ibihe byo gutanga ikirego, itariki igomba guherwaho mu kubibara ikaba ari kuwa 18/10/2010 ari nawo munsu Urukiko Rukuru rwararegeweho. UKO URUKIKO RUBIBONA [13] Ingingo ya 339 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakoresheje igihe ikirego cyatangwaga, ari nayo yaje kuba iya 336 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 «Ikirego gisaba gukuraho icyemezo cy'umuyobozi cyakirwa iyo cyerekeye icyemezo cy'umuyobozi cyaba cyeruye cyangwa kiteruye», naho igika cyayo cya 2

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kigateganya ko “mbere yo gutanga ikirego, unenga icyemezo cy'umuyobozi agomba kubanza gutakambira umuyobozi ufite ububasha bwisumbuye k'uwafashe icyemezo kinengwa”. [14] Hasesenguwe ibyateganywaga n'iyi ngingo, Urukiko rurasanga gutakamba gukorwa mu gihe urega asaba ko icyemezo yafatiwe n'ubutegets cyavanwaho kugira ngo asubirane uburenganzira yavukijwe n'icyo cyemezo nk'uko byemejwe mu rubanza n° RADA 0041/11/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 13/09/2013 hagati ya EWSA na NDAHAYO Jérémie. [15] Ku birebana n'uru rubanza, inyandiko zirugize zigaragaza ko MUKESHIMANA Alphonse na UWAYEZU Vénantie baregeye Urukiko Rukuru basaba ko hagira ibikosorwa mu rwego rwo gushyira mu bikorwa icyemezo cyo kubimura, aho basabaga ibintu bibiri: Gukosora no kongeramo ibitarabazwe mu rwego rwo kubimura ku nyungu rusange (Expropriation pour cause d'utilité publique), no gusaba ko agaciro k'ubutaka n'ibimera byandikwa kuri UWAYEZU Vénantie akabyishyurwa ukwabyo. [16] Urukiko rurasanga kandi inyandiko yo kuwa 13/09/2009 Urukiko Rukuru rwise inyandiko itakamba, MUKESHIMANA Alphonse yarayandikiye Umuyobozi wa RSSB amugaragariza ibibazo afitanye n'umugore we UMUTESI Pélégie asaba ko atahabwa amafaranga ajyanye na “expropriation” kubera ko yari akiburana nawe mu Nkiko, ikindi yasabaga muri iyi nyandiko kikaba kwari ugusaba ikosorwa ry'amadosiye ku mibarirwe y'agaciro k'imitungo igomba kwishyurwa. [17] Urukiko rurasanga haba mu nyandiko MUKESHIMANA Alphonse yandikiye Umuyobozi wa RSSB kuwa 13/09/2009, haba mu nyandiko itanga ikirego mu Rukiko Rukuru yo kuwa 26/10/2010, nta na hamwe MUKESHIMANA Alphonse na UWAYEZU Vénantie bigeze basaba gukuraho icyemezo cyafashwe n'ubutegets cyo kubimura ku bw'inyungu rusange kugira ngo basubirane uburenganzira ku mutungo wabo, ko ahubwo icyo basabaga ari ikijyanye n'ishyirwa mu bikorwa ryacyo bavugaga ko ritabanyuze, bityo ikirego cyabo kikaba cyaragombaga kwakirwa kuko batari bategetswe gutakamba hakurikijwe ibyateganywaga n'ingingo ya 339 y'Itegeko ryavuzwe haruguru. [18] Ingingo ya 171 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 «Urukiko rwajuririwe iyo ruhinduye icyemezo cyajuririwe, ruburanisha urwo rubanza mu mizi yarwo keretse iyo ruruhinduye ku mpamvu y'uko rwaregawe mu buryo budakurikije amategeko cyangwa ku mpamvu y'iburabubasha». [19] Hashingiwe ku biteganywa n'ingingo ya 171 y'Itegeko rimaze kuvugwa mu gika kibanziriza, Urukiko rurasanga uru rubanza rugomba kuburanishwa mu mizi yarwo hakurikijwe ibiteganywa n'iyi ngingo, bityo ababuranyi bakaba bagomba kongera guhamagazwa bagasobanura ikirego cyabo. III. ICYEMEZO CY'URUKIKO [20] Rwemeje ko ubujurire bwa MUKESHIMANA Alphonse na UWAYEZU Vénantie bufite ishingiro;

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[21] Rwemeje ko urubanza n° RAD 0172/10/HC/KIG rwaciwe kuwa 29/06/2012 ruhindutse mu ngingo zarwo zose; [22] Rwemeje ko iburanishwa ry'urubanza mu mizi yarwo rizasubukurwa ku itariki ababuranyi bazamenyeshwa n'ubwanditsi; [23] Rutegetse ko amagarama y'urubanza asubitswe.

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