

RWANDA / JUDGMENT

UBUSHINJACYAHA v. MPITABAKANA_109805_kn

RPA0129/10/CS

COURT

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Text

Page 1

UBUSHINJACYAHA v. MPITABAKANA [Rwanda URUKIKO RW' IKIRENGA – RPA0129/10/CS (Nyirinkwaya, P.J., Havugiyaremye na Mukamulisa, J.) 7 Werurwe 2014] Amategeko mpanabyaha – Ubwicanyi – Byitwa ubwicanyi iyo bigaragaye ko umuntu yishe undi abishaka – Itegeko-Teka n° 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana ibyaha mu Rwanda cyakoreshwaga igihe icyaha cyakorwaga, ingingo ya 311. Amategeko mpanabyaha – Kugabanyirizwa ibihano – Ntawakwitwaza ingaruka mbi z'icyaha yakoze ngo asabe kugabanyirizwa ibihano. Amategeko mpanabyaha – Kugabanyirizwa ibihano – kwishyikiriza inzego za polisi nyuma yo gukora icyaha bifatwa nk' impamvu nyoroshyacyaha – Impamvu nyoroshyacyaha zitaweho n'inkiko zibanza ntizongera gushingirwaho mu kugabanya ibihano. Incamake y' ikibazo: Mpitabakana yishyikirije ubugenzacyaha avuga ko aje kwirega kuko yishe umugore we. Muganga wasabwe na Polisi gusuzuma umurambo we yanditse muri raporo ye ko yasanze yarakubiswe ku mutwe, ariko cyane cyane ku nda, akaba yarishwe n'uko gukubitwa kandi atwite inda y'amezi 7. Urukiko Rukuru, Urugereko rwa Rusizi, rwaciye urubanza ku rwego

rwa mbere rwemeje ko icyaha cy'ubwicanyi uwajuriye aregwa kimuhama, rumuhanisha igifungo cy'imyaka 20, rumugabanyirije kuko yemeye icyaha, akaba yaranishyikirije Polisi icyaha kikimara gukorwa. Yajuririye mu Rukiko rw'Ikirenga, avuga ko Urukiko Rukuru rwemeje ko yishe umugore we abishaka kandi ari impanuka yagize, ndetse ko rwamuhanishije igihano kiremereye kandi yemera icyaha, akaba atararuhije ubutabera. Ubushinjacyaha buvuga ko ibyo uregwa avuga nta shingiro bifite kuko gukubita umugeri umugore utwite ubwabyo bishobora kumwica. Buvuga kandi ko ikindi bushingiraho buvuga ko yamwishe abishaka ari uko mbere yo kumukubita yabanje gufunga urugi kugira ngo hatagira utabara, dore ko n'abatabaye bagerajeje kumena urwo rugi bikabananira, ngo kandi ibyo guhohotera nyakwigendera yari yarabigize akamenyero, ndetse ngo n'umugore wa mbere nicyo cyatumye batandukana. Incamake y' icyemezo: 1. Hakurikijwe ibimenyetso biri muri dosiye, nko gukubita umugeri kunda y' umugore utwite inda y'amezi arindwi akanga kumujyana kwa muganga, gukubita umwana agahunga no gukinga urugi ngo hatagira utabara, bigaragaza nta gushidikanya ko uregwa yishe umugore we abishaka

2. Kuba uregwa yarishyikirije Polisi icyaha kigikorwa no kuba hari ibyo yagaragaje ku ruhare rwe mu rupfu rwa nyakwigendera, n'ubwo hari ibyo atavugishaho ukuri, byorohereje ubutabera, ariko ibyo byitaweho n'urukiko rubanza kuko yahanishijwe igifungo cy'imyaka 20 mu gihe yari guhanishwa igifungo cya burundu.
3. Ku bijyanye n'ibyo uregwa asaba ko yagabanyirizwa igihano akajya kurera imfubyi umugore we yasize, Urukiko rusanga ariwe ubwe wabagize imfubyi, akaba atakwitwaza ingaruka mbi z'icyaha yakoze ngo agabanyirizwe igihano. Ubujurire nta shingiro bufite. Nta gihindutse ku mikirize y' urubanza rwajuririwe. Amagarama ahererejwe ku isanduku ya Leta.

Page 2

Amategeko yashingiweho: Itegeko ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 140 n'ya 142. Itegeko-Teka n° 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana ibyaha mu Rwanda, ingingo ya 311. Nta rubanza rwifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Kuwa 01/09/2008, saa kumi n'ebiri za mugitondo, Mpitabakana yishyikirije Ubugenzacyaha avuga ko aje kwirega kuko yishe umugore we Yaduhaye Asinati. Muganga wasabwe na Polisi gusuzuma umurambo we yanditse muri raporo ye ko yasanze yarakubiswe ku mutwe, ariko cuyyane cyane ku nda, akaba yarishwe n'uko gukubitwa kandi atwite inda y'amezi 7. [2] Mu Bugenzacyaha Mpitabakana yasobanuye ko yakubise umugore we urushyi n'umugeri ubwo bari mu nzira bataha, akaba yaramukubise amuziza ko amusanganye n'undi mugabo, agwira inda, aramwegura, umugore we apfa bageze mu rugo. Naho mu Rukiko Rukuru yasobanuye ko barwaniye mu nzu bapfuye ko umugore we yari yamusanze mu kabare, akaba atari yatetse, ndetse yamututse, yamuciriye mu maso, yanamukubise urushyi, umugore we yitura hasi, amukubita umugeri mu mugongo, ariko ntiyahita apfa kuko baryamye bavugana amubwira ngo amujyane kwa muganga, kubera gusinda ntiyabyitaho kugeza apfuye. [3] Urukiko Rukuru, Urugereko rwa Rusizi, rwaciye urubanza ku rwego rwa mbere rwemeje kuwa 10/03/2010 ko icyaha cy'ubwicanyi Mpitabakana aregwa

kimuhama, rumuhanisha igifungo cy'imyaka 20, rumugabanyirije kuko yemeye icyaha, akaba yaranishyikirije Polisi icyaha kikimara gukorwa. [4] Mpitabakana yajuririye urwo rubanza mu Rukiko rw'Ikirenga, avuga ko Urukiko Rukuru rwemeje ko yishe umugore we abishaka kandi ari impanuka yagize, ndetse ko rwamuhanishije igihano kiremereye kandi yemera icyaha, akaba atararuhije ubutabera. [5] Urubanza rwaburanishijwe mu ruhamwe kuwa 27/01/2014, Mpitabakana yunganiwe na Me Mwizerwa Grace hamwe na Me Nsengimana Elie, Ubushinjacyaha buhagarariwe na Higaniro Hermogène, Umushinjacyaha ku rwego rw'igihugu. II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO Kumenya niba Mpitabakana yarishe umugore we atabishaka. [6] Mpitabakana avuga ko atishe umugore we abishaka nk'uko byemejwe n'Urukiko Rukuru, ahubwo ko ari impanuka yamugwiririyeye kuko yamukubise akageri mu mugongo bapfuye ko yasanze atatetse, umugore we yikubita hasi, amusabye ngo amujyane kwa

Page 3

muganga aramwihorera, yigira kuryama, hashize umwanya umugore we aza kuryama ari muzima, ariko yongeye kumukoraho asanga yapfuye ari nabwo yahitaga yijyana kuri Polisi. Yongeraho ko kubera umujinya yari yabanje gukubita agashyi umwana wari uhari ariruka. [7] Abamwunganira bavuga ko ikigaragaza ko Mpitabakana yagize impanuka ari uko yakubise umugore we umugeri, akaba atarigeze afata ikindi kintu ngo akimukubite, nk'umuhoro cyangwa ikindi gikoreshe cyica. [8] Ubushinjacyaha buvuga ko ibyo Mpitabakana n'abamwunganira bavuga ko yishe umugore we atabishaka nta shingiro bifite kuko gukubita umugeri umugore utwite ubwabyo bishobora kumwica. Buvuga kandi ko ikindi bushingiraho buvuga ko yamwishe abishaka ari uko mbere yo kumukubita yabanje gufunga urugi kugira ngo hatagira utabara, dore ko n'abatabaye bagerageje kumena urwo rugi bikabananira. [9] Ubushinjacyaha bwongeraho ko ibyo guhohotera nyakwigendera Mpitabakana yari yarabigize akamenyero, ndetse ko n'umugore wa mbere aricyo cyatumye batandukana nk'uko byemezwa n'umuvandimwe we Bariyanga Masomo. [10] Urukiko rurasanga Mpitabakana yarishe umugore we abishaka kubera impamvu zikurikira: Kuba yemera ko yabanje gukubita umwana akiruka ni ikigaragaza ko yangaga ko umwana abona icyo yashakaga gukora kuko adasobanura icyo yari kuba ahora uwo mwana. Kuba yarakubise umugeri mu nda umugore utwite inda y'amezi 7 nk'uko byemezwa na Muganga. Kuba yemera ko umugore we yamusabye kumujyana kwa muganga akanga. Kuba imvugo z'abatangabuhamya babajijwe aribo Bariyanga Masomo (cote 3) na Nyiraruzindaro Domitile (cote ya 9) zigaragaza ko yishe nyakwigendera yikingiranye, n'abashakaga gutabara bakabura uko binjira, ahubwo Mpitabakana akajya avuza ijerikani avuga ko yatewe. Kuba mu ibazwa rye yaranzwe no guhinduranya imvugo: muri Polisi yavuze ko yakubise umugore we urushyi bari mu nzira bataha amuhoye ko yamusanganye n'undi mugabo, yitura hasi, aramwegura barataha, apfa nyuma bageze mu rugo; mu Rukiko Rukuru yavuze ko yamukubitiye mu nzu amuhoye ko atatetse, ariko ko umugore we atahise apfa kuko baryamye bavugana amubwira ngo amujyane kwa muganga, kubera gusinda ntiyabyitaho kugeza apfuye; naho imbere y'uru rukiko yavuze ko umugore we yaje kuryama ari muzima, ariko yongeye kumukoraho asanga yapfuye; uko guhindagura imvugo bikaba bigaragaza ko ashaka guhisha ukuri. [11] Urukiko rusanga rero hashingiwe ku mpamvu zasobanuwe, nta gushidikanya ko Mpitabakana yishe umugore we

Yaduhaye Asinati abishaka n'ubwo we abihakana. Kumenya niba Mpitabakana akwiye kongera kugabanyirizwa igihano. [12] Mpitabakana asaba ko yagabanyirizwa igihano kugira ngo ajye kurera imfubyi ebyiri yasigaranye. Abamwunganira nabo basaba ko urukiko rwamugabanyiriza rushingiye ku ngingo za 35 y'itegeko rigenga imiburanishirize y'imanza nshinjabyaha ryariho igihe icyaha cyakorwaga, n'ingingo ya 82 na 83,2° z'igitabo cy'amategeko ahana cyariho icyo gihe kuko yemera icyaha akanagisabira imbabazi.

Page 4

[13] Ubushinjacyaha buvuga ko umuntu wese ufunze hari inshingano abuzwa kuzuza, ko iya aza kuba afitiye impuhwe abana be aba yaririzwe gukora icyaha. Buvuga kandi ko Mpitabakana yagabanyirijwe bihagije mu rwego rwa mbere. [14] Icyaha cy'ubwicanyi Mpitabakana yahamijwe gihanishwa igihano cy'igifungo cya burundu nk'uko bivugwa mu ngingo ya 311 z'igitabo cy'amategeko ahana cyakurikizwaga igihe icyaha cyakorwaga. Ni nacyo gihano giteganyijwe mu ngingo ya 140 n'ya 142 z'Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo gishya cy' amategeko ahana. [15] Urukiko rusanga koko kuba Mpitabakana yarishyikirije Polisi icyaha kigikorwa no kuba hari ibyo yagaragaje ku ruhare rwe mu rupfu rwa nyakwigendera nubwo hari ibyo atavugishaho ukuri, byarorohereje ubutabera, ariko ibyo bikaba byaritaweho n'urukiko rubanza kuko yahanishijwe igifungo cy'imyaka 20 mu gihe yari guhanishwa igifungo cya burundu. [16] Ku bijyanye n'ibyo asaba ko yagabanyirizwa igihano akajya kurera imfubyi umugore we yasize, Urukiko rusanga ariwe ubwe wabagize imfubyi, akaba atakwitwaza ingaruka mbi z'icyaha yakoze ngo agabanyirizwe igihano. [17] Hashingiye kuri ibyo bisobanuro, Urukiko rusanga ubujurire bwa Mpitabakana nta shingiro bugomba guhabwa, bityo n'urubanza rwajuririwe rukaba rutagomba guhinduka. III. ICYEMEZO CY'URUKIKO [18] Rwemeje ko ubujurire bwa Mpitabakana nta shingiro bufite. [19] Ruvuze ko imikirize y'urubanza rwajuririwe RP 0087/08/HC/RSZ rwamuhanishije igifungo cy'imyaka makumyabiri (20) idahindutse. [20] Rutegetse ko amagarama y'urubanza aherera ku isanduku ya Leta kuko uwajurire afunze.

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