

RWANDA / JUDGMENT

UBUSHINJACYAHA v. MUTEMBEREZI

RPAA 0004/11/CS

COURT

Supreme Court

DECIDED

18 March 2016

CASE / FILE NUMBER

RPAA 0004/11/CS

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UBUSHINJACYAHA v. MUTEMBEREZI

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2016-03-18
- Case/document no.: RPAA 0004/11/CS
- Collection: Supreme Court

Text

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UBUSHINJACYAHA v. MUTEMBEREZI [Rwanda URUKIKO RW'IKIRENGA – RPAA 0004/11/CS (Hatangimbabazi, PJ, Karimunda na Gatete, J.) 18/3/2016] Amategeko agenga imiburanishirize y' imanza nshinjabyaha – Kwiymbaza inzira ebyiri z'ubujurire – Ntibyemewe mugihe inzira ya mbere itaraba itegeko. Iyo bikozwe, inzira ya nyuma iteshwa agaciro ibintu bigasubira uko byahoze mbere – Itegeko N° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y' imanza z' inshinjabyaha, ingingo ya 192. Amategeko agenga imiburanishirize y' imanza nshinjabyaha – Gusiba urubanza – Mugihe uwajuriye atitabye Urukiko nta mpamvu, ikirego cye gisibwa mu bitabo by' Urukiko – Itegeko N° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y' imanza z' inshinjabyaha, ingingo ya 186. Incamake y' ikibazo: Uregwa yakurikiranywe mu Rukiko Rwisumbuye rwa Gasabo ku cyaha cyo gusambanya umwana wari ufite imyaka 11 y' amavuko yari abereye umurezi, kuko yari yarashakanye na nyina w'uwo mwana. Urwo Rukiko rwemeje ko ahamwa n' icyaha akurikiranyweho, rumuhanisha igifungo cya burundu n' ihazabu ingana na frw 100.000. Yajuririye Urukiko Rukuru, rwemeza ko ubujurire bwe butakiriwe kuko yabutanze yararengeje igihe cy' iminsi 30 iteganywa n' amategeko. yajuririye Urukiko rw' Ikirenga avuga ko Urukiko Rukuru rwamurenganyije kuko rwemeje ko yajuriye akerekerewe, nyamara yaraburanye

kuwa 12/05/2009, abwirwa ko azasomerwa kuwa 22/05/2009 ariko kuri iyo tariki ntiyajya gusomerwa kubera impamvu zitamuturutseho, aza gusomerwa mu Bukarani bwa Gereza yari afungiyemo, kuwa 17/08/2009 ahita ajurira uwo munsu yamenyesherejweho imikirize y'urubanza; ku bw'izompamvu akaba yumva atavutswa uburenganzira bwe kugira ngo arenganurwe. Mu gihe cyo kuburana uregwa ntiyabonetse, biza kugaragara ko uregwa yarekuwe n'urubanza RP 0048/13/TGI/GSBO rusubirishamo ingingo nshya Incamake y'icyemezo: 1. Mu gihe uregwa yasubirishijemo ingingo nshya urubanza rutaraba itegeko nk'uko biteganywa n'amategeko, ni impamvu ituma urubanza rusubirishamo ingingo nshya ruvanwaho, ndetse akaguma mu mimerere yararimo mu gihe yajuririraga icyemezo cyari cyamufatiwe.

2. Mu gihe uwajuriye adakurikiranye ubujurire bwe hagashira igihe kinini ndetse bikagaragara ko ihamagarwa rye ryakurikije amategeko ariko ntaboneke, ubujurire bwe busibwa mu bitabo by'urukiko. Ubujurire busibwe mu bitabo by'Urukiko. Amagarama aherereye kuwajuriye. Amategeko yashingiweho: Itegeko N° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 192 na 186.

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Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA. [1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Mutemberezi Silas aregwa kuba yarasambanyije umwana witwa Mukamusoni wari ufite imyaka 11 y'amavuko yari abereye umurezi, kuko nyina w'uwo mwana witwa Kibukayire yashakanye na Mutemberezi. Kuwa 22/05/2009, urwo Rukiko rwemeje ko Mutemberezi ahamwa n'icyaha akurikiranyweho, rumuhanisha igifungo cya burundu n'ihazabu ingana na frw 100.000. [2] Mutemberezi yajuririye Urukiko Rukuru, kuwa 19/11/2010 rwemeza ko ubujurire bwe butakiriwe kuko yabutanze yararengeje igihe cy'iminsi 30 iteganywa n'amategeko, kuko yasomewe urubanza kuwa 22/05/2009 akajurira ku itariki ya 17/08/2009. [3] Mutemberezi yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rwamurenganyije kuko rwemeje ko yajuriye akererewe, nyamara yaraburanye kuwa 12/05/2009, abwirwa ko azasomerwa kuwa 22/05/2009 ariko kuri iyo tariki ntiyajya gusomerwa kubera impamvu zitamuturutseho, aza gusomerwa mu Bukarani bwa Gereza yari afungiyemo, kuwa 17/08/2009 ahita ajurira uwo munsu yamenyesherejweho imikirize y'urubanza; ku bw'izompamvu akaba yumva atavutswa uburenganzira bwe kugira ngo arenganurwe. [4] Iburanisha ry'uru rubanza ryashyizwe kuwa 01/06/2015, uwo munsu rirasubikwa kubera ko Mutemberezi atitabye, ku nyandiko imuhamagara umunyamategeko wa Gereza (legal officer) akaba yaranditse ko yatashye atakibarizwa muri Gereza ya Gasabo, Urukiko rusaba Ubushinjacyaha kurugezaho amakuru nyayo ku uwo bukurikiranye mu nkiko [5] Ku itariki ya 16/06/2015, uru Rukiko rwakiriye ibaruwa n° 669/D11/A/ONP/ASB y'Umushinjacyaha Mukuru igaragaza ko Mutemberezi yarekuwe urubanza RP 0048/13/TGI/GSBO rusubirishamo ingingo nshya urubanza RP 0330/07/TGI/GSBO rumaze kumugira umwere. [6] Iburanisha mu ruhame ryasubukwe kuwa 07/09/2015, Mutemberezi atitabye ariko hari Me Uwimana Channy wari wagenwe n'Urugaga rwa ba Avoka, naho Ubushinjacyaha buhagarariwe na Niyonkuru Françoise, Umushinjacyaha ku rwego rw'Igihugu. [7] Kuwa 02/10/2015, Urukiko rw'Ikirenga rwafashe icyemezo cy'uko imikirize y'urubanza RP 0048/13/TGI/GSBO rwaciwe kuwa 25/10/2013 iteshejwe agaciro mu ngingo zose kubera ko nyuma yo gutsindwa

urubanza mu Rukiko Rwisumbuye rwa Gasabo, Mutemberezi yajuririye Urukiko Rukuru, ubujurire bwe ntibwakirwa kubera ko yajuriye nyuma y'ibihe amategako ateganya, yongera kujuririra uru Rukiko kuwa 02/12/2010. Mu gihe ubujurire bwe butarasuzumwa, asubirishamo ingingo nshya urubanza rwaciwe n'Urukiko Rwisumbuye rwa Gasabo, kandi nyamara urwo rubanza rwari rutaraba itegeko nk'uko ingingo ya 192 y'Itegeko n° 30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ibiteganya; ko bityo inzira y'ubujurire yari yahisemo ariyo yagombaga gukomeza, akaba ariyo mpamvu

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urubanza RP 0048/13/TGI/GSBO rwaciwe kuwa 25/10/2013 rusubirishamo ingingo nshya urubanza RP 0330/07/TGI/GSBO rugomba kuanwaho, urubanza rukaburanishwa Mutemberezi afunze nk'uko byari bimeze igihe yajuririraga icyemezo cyari cyamufatiwe. [8] Urukiko rwategutse ko Mutemberezi Silas ahita afatwa agafungwa hakubahirizwa icyemezo cy'urubanza RP 0330/07/TGI/GSBO, runateguka ko iburanisha ry'urubanza rizasubukurwa ku itariki ya 30/11/2015. [9] Kuwa 30/11/2015, iburanisha ryasubukuye Mutemberezi Silas atitabye, yagombaga kunganirwa na Me Uwimana Channy, Ubushinjacyaha bugaragaza ko atarafatwa nkuko Urukiko rwabitegetse, kuko aho atuye hatazwi, busaba ko ahamagazwa nk'umuntu ufite aho atuye hatazwi nkuko amategako abiteganya, maze iburanisha ryimurirwa kuwa 15/02/2016. [10] Kuri iyo tariki, iburanisha ryasubukuye Mutemberezi Silas na none atitabye, ariko bigaragara ko yahamagajwe ahatazwi nkuko amategako abiteganya; Niyonkuru Françoise uhagarariye Ubushinjacyaha asaba ko ubujurire bwe busibwa mu gitabo cy'ibirego. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO Kumenya niba ikirego cy'ubujurire bwa Mutemberezi Silas cyasibwa. [11] Uhagarariye Ubushinjacyaha avuga ko kuba Mutemberezi Silas ariwe wajuriye ariko ntiyitabe kandi yarahamagajwe mu buryo bwemewe n'amategako, asanga ubujurire bwe busibwa nkuko amategako abiteganya. Uko Urukiko rubibona. [12] Ingingo ya 186, igika cya gatanu cy'Itegeko n°30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko ikirego cy'ubujurire gishobora no gusibwa iyo uwajuriye atitabye urukiko nta mpamvu cyangwa se ikirego cye kimaze amezi atandatu(6)ataraza gusaba ko kiburanishwa. [13] Urukiko rusanga, kuba Mutemberezi yarahamagajwe muri Gereza ya Gasabo aho yari afungirwe, Ubuyobozi bwayo bukagaragaza ko yatashye, akongera agahamagazwa aho yari atuye, bikagaragara ko atahazwi, na none agahamagazwa ahatazwi nkuko amategako abiteganya ntiyitabe urukiko nta mpamvu igaragara, bikaba bigaragara kandi ko hashize igihe kirekire urubanza rudakurikiranwa ngo ruburanishwe, ikirego cye gikwiye gusibwa mu gitabo cy'ibirego kuko ihamagarwa rye ryakurikije amategako nk'uko ingingo yavuzwe haruguru ibisobanura. III. ICYEMEZO CY'URUKIKO. [14] Rwemeje ko ikirego cy'ubujurire bwa Mutemberezi Silas gisibwe mu gitabo cy'ibirego; [15] Rutegetse Mutemberezi Silas kwishyura amagarama y'uru rubanza angana na frw 100.000.

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Prepared on 9 October 2026 · Esheria