

RWANDA / JUDGMENT

UBUSHINJACYAHA V. MWISENEZA

RPAA0181/ 10/CS

COURT

Supreme Court

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UBUSHINJACYAHA V. MWISENEZA

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Text

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UBUSHINJACYAHA V. MWISENEZA [Rwanda URUKIKO RW'IKIRENGA – 2014SC – RPAA0181/ 10/ CS (Mukanyundo, P.J., Gatete na Mukayisire, J.) 21 Werurwe 2014] Amategeko mpanabyaha – Gusambanya umwana utarageza ku myaka 14 – Gukora icyaha akiri umwana – Kwemera icyaha mu Rukiko rw'ubujurire kandi mu Nkiko zibanza yaragihakanye– Kugabanyirizwa ibihano – Itegeko-Teka n° 21/77 ryokuwa 18/08/1977, ingingo ya 82 na 83. Inamake y'icyemezo: Uwajuriuye yakurikiranywe n'Ubushinjacyaha ku cyaha cyo kuba yarasambanyije abana babiri (2) umwe ufite imyaka itandatu (6) undi irindwi(7). Urukiko rwasanze icyaha kimuhama maze rumuhanisha igifungo cy'imyaka 10 n'ihazabu ingana 100 000

- f. Yajuririye mu Rukiko Rukuru rwemeza ko urubanza rwari rwajuririwe rudahindutse kuko yari yemeye icyaha kuva mu Bugenzacyaha, mu Bushinjacyaha no mu Rukiko kandi ibyo bikaba byarahuraga 'imvugo z'abatangabuhamya babajijwe. Yajuririye mu Rukiko rw'Ikirenga avuga ko nta cyemezo cya Muganga cyahereweho bamuhamya icyaha, ndetse n'abatangabuhamya babajijwe bakaba baribafite ibyo bapfaga. Mu gihe cy'iburanisha ariko mu Rukiko rw'Ikirenga yatesheje agaciro imyanzuro ye maze avuga ko yemera icyaha akanagisabira imbabazi.. Incamake y'icyemezo: Uwajuriye yemeye icyaha atinze kuko

yacyemeye mu bujurire ageze mu Rukiko rw'Ikirenga. Ubushinjacyaha bwo bwavuze ko atakongera kugabanyirizwa ibihano kuko yaruhije ubutabera. Urukiko ariko rwasanze rutakwanga kumugabanyiriza igihano kuko uwajuriye yari yiyemeje kuvugisha ukuri no gusaba imbabazi. Urukiko kandi rwasanze uwajuriye yarakoze icyaha afite imyaka 14 gusa bityo akaba agomba guhabwa amahirwe yo gusubira mu buzima busanzwe agategura ejo hazaza he. Ubujurire bufite ishingiro. Uwajuriye ahanishijwe imyaka umunani y'igifungo. Urunbanza rwajuririwe ruhundutse ku bijyanye n'igihano gusa. Amategeko yashingiweho Itegeko-Teka n° 21/77 ryokuwa 18/08/1977 rishyiraho igitabo cy'amategeko ahana ibyaha, ingingo ya 82 na 83.

Nta manza zifashishijwe .

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Urubanza I. IMITERERE Y'URUBANZA. [1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rubavu, Ubushinjacyaha bukurikiranye MWISENEZA kucyaha cyo gusambanya umwana witwa MUKASHEMA wari ufite imyaka itandatu, n'undi witwa TUYISHIME wari ufite imyaka irindwiye amavuko. MWISENEZA yaburanye yemera icyaha maze kuwa 23/08/2007, Urukiko Rwisumbuye rwa Rubavu rwemeza ko MWISENEZA ahamwe n'icyaha cyo gusambanya abo bana, rumuhanisha igifungo cy'imyaka 10 n'ihazabuy'amafaranga ibihumbijana (100.000frw). [2] MWISENEZA yajuririye Urukiko Rukuru, Urugereko rwa Musanze, rwemeza ko imikirize y'urubanza rwajuririwe idahindutse mu ngingo zarwo zose kubera ko yemeye icyaha mu Bugenzacyaha, mu Bushinjacyaha ndetse no mu Rukiko, imvugo ze zikaba zihura ndetse n'iz'abatangabuhamya babajijwe. [3] MWISENEZA yajuririye Urukiko rw'Ikirenga avuga ko ntacyemeze cya muganga Urukiko rwashingiweho rumuhamya icyaha, ko ndetse rwashingiye kumvugo z'abatangabuhamya bafite ibyo bapfa, ariko kumunsi w'iburanisha ku itariki ya 17/02/2014 atesha agaciro imyanzuro yari yatanze avuga ko yemera icyaha akagisabira imbabazi. Mu iburanisha yari yunganiwe na Me Gasana Jean Baptiste, naho Ubushinjacyaha buhagarariwe na Munyaneza Nkwaya Eric, Umushinjacyaha ku rwego rw'Igihugu. II. ISESENGURA RY'IKIBAZO KIRI MU RUBANZA. Ikibazo cyo kumenya niba Mwiseneza yagabanyirizwa ibihano. [4] MWISENEZA avuga ko nyuma yo kubitekerezaho, ubu yemera icyaha akanagisabira imbabazi. Asobanura ko ku itariki ya 10/07/2005, ubwo yari avuye ku ishuri, yanyuze aho abana b'abanyeshuri benshi bakiniraga, baza kugenda asigarana n'abitwa TUYISHIME na MUKASHEMA yemera ko yasambanyije. Avuga ko amaze gukurikiranwa n'inzego z'iperereza, yagiye agira imvugo zivuguruzanya abitewe n'abandi bana bari bafunganywe bamubwiraga ko niyemera icyaha azahabwa ibihano biremereye, bityo umunsi umwe akemera icyaha ubundi akagihakana, ariko ubu akaba agisabira imbabazi, ko kandi yamenye ingaruka zacyo akaba acyicuza. [5] Umwunganira avuga ko ubu noneho MWISENEZA yemera icyaha akanagisabira imbabazi kuburyo budashidikanywaho, akaba asaba Urukiko ko rwabiha agaciro, rugashingira kuri izo mpamvu nyoroshyacyaha zuko yemera icyaha kandi akaba yaragikoze akiri muto, akagabanyirizwa ibihano hashingiwe ku biteganywa n'ingingo ya 35 y'Itegeko n° 30/2013 ryo kuwa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ndetse n'iza 76 na 78 z'Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana.

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- [6] Uwunganira Mwiseneza kandi asanga ukwemera icyaha kwe atinze bitamuvutsa amahirwe yo kubabarirwa kubera ko uru Rukiko hari ibyemezo rwafashe mu manza zisa n'uru rukagabanya ibihano. [7] .Uhagarariye Ubushinjacyaha avuga ko MWISENEZA yaburanye atemera icyaha ariko ubu akaba acyemera anavuga uburyo yagikoze. Asanga ariko yaragabanyirijwe ibihano mu Rukiko Rwisumbuye kuko yahanishijwe igifungo cy'imyaka icumi (10), akaba atakongera kugabanyirizwa kuko yabanje kurushya ubutabera. Asanga nanone kuba ubu yemera icyaha agasaba imbabazi ari amaburakindi kuko aburana ku rwego rwa nyuma, akaba ariyo mpamvu ibihanoyariyahawebyahamaho. Uko Urukiko rubibona: [8]
8. Urukiko rusanga ku ikubitiro MWISENEZA yari yarahakanye icyaha mu nkiko yabanje kuburaniramo, ariko ubu akaba acyemera kuburyo budashidikanywaho, kuko anasobanura uburyo yagikoze, akaba kandi acyicuza akagisabira imbabazi. [9] Nubwo uhagarariye Ubushinjacyaha avuga ko MWISENEZA adakwiye kwongera kugabanyirizwa ibihano kubera ko yabigabanyirijwe n'Inkiko zabanje, kandi kubwe akaba asanga ari amaburakindi kuko aburana ku rwego rwa nyuma, Urukiko rurasanga, kuba uregwa yemeye icyaha atinze, bitamubuza kugabanyirizwa igihano kubera ko aba yiyemeje noneho kuvugisha ukuri akaba asaba n'imbabazi. [10] Kuba kandi MWISENEZA yarakoze icyaha afite imyaka 14 gusa, akwiye guhabwa amahirwe yo gusubira mu buzima busanzwe, kugirango ategure ejo hazaza, bityo hashingiwe kubiteganyw an'ingingo za 82 na 83 z'Itegeko-Teka n° 21/77 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana ryakurikizwaga igihe yakoraga icyaha, akagabanyirizwa ibihano kuko yemera icyaha akanagisabira imbabazi ku buryo budashidikanywaho, agahanishwa igifungo cy'imyaka umunani (8). III. ICYEMEZO CY'URUKIKO.
11. Rwemeje ko ubujurire bwa MWISENEZA bufite ishingiro;
12. Rumuhanishije igifungo cy'imyaka umunani (8);
13. Ruvuzeko imikirize y'urubanza rwajuririwe RPA min 0002/07/HC/MUS ihindutse ku byerekeye ibihano.

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