

RWANDA / JUDGMENT

UBUSHINJACYAHA v NDAYISENGA

RPAA 00628/2024/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v NDAYISENGA

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Text

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UBUSHINJACYAHA v NDAYISENGA [Rwanda URUKIKO RW'UBUJURIRE - RPAA 00628/2024/CA (Gakwaya, P.J.) 30 Ukuboza 2025] Amategeko agenga imanza nshinjabyaha – Igihano – Mu gihe ujurira yahawe igihano cy'igifungo cy'imyaka cumi n'itanu (15), ku cyaha gihanishwa igihano cy'igifungo cya burundu, nta mpamvu yo gusuzuma ishingiro ry'impamvu nyoroshacyaha azamura kuko ku bushake bw'Umushingamategeko, n'ubwo hakwemezwa impamvu nyoroshyacyaha, icyaha giteganyirijwe igihano cy'igifungo cya burundu, ntigishobora kugabanywa ngo kijye muni y'igihano cy'igifungo cy'imyaka cumi itanu (15). Incamake y'ikibazo: Ubushinjacyaha bwareze Ndayisenga mu Rukiko Rwisumbuye rwa Nyarugenge icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi nyuma yuko afashwe na polisi ishami rishinzwe kurwanya ibiyobyabwenge afite udupfunyika makumyabiri n'icyenda (29) tw'urumogi, yazanirwaga n'uwitwa Olivier utuye i Gikondo, akarurangura akarucuruza. Urwo Rukiko rwaciye urubanza rwemeza ko uregwa ahamwa n'icyaha cyo gufatanwa no gucuruza urumogi, rumuhanisha igihano cy'igifungo cya burundu n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri n'eshanu (25.000.000 Frw). Ndayisenga yajuririye Urukiko Rukuru, avuga ko yahanishijwe ibihano birebire kandi kuva mu ntangiriro yaremeraga icyaha akaba atarigeze

agora ubutabera, kandi ko gufungwa byamugizeho ingaruka zikomeye kubera ko yari akiri muto ariko ko amaze kugororoka akaba asaba imbabazi no kugabanyirizwa ibihano. Urwo Rukiko rwaciye urubanza, rwo rwemeza ko hari impamvu nyoroshyacyaha zagombaga gutuma Ndayisenga agabanyirizwa igihano, nko kuba ari ubwa mbere akurikiranyweho icyaha ku buryo buzwi, kuba ingano y'urumogi yafatanywe ari nto cyane no kuba byarahise bifatirwa hagategekwa ko bitwikwa, rumuhanisha igihano cy'igifungo cy'imyaka 15 n'ihazabu y'amafaranga y'u Rwanda miliyoni ebyiri (2.000.000 Frw). Ndayisenga yajuririye Urukiko rw'Ubujurire avuga ko akomeje gutakamba asaba kongera kugabanyirizwa igihano kuko ari ubwa mbere akurikiranywe mu Nkiko, ko yemera icyaha ku buryo budashidikanywaho, agisabira imbabazi, ko nta ngaruka zikomeye cyateje. Ubushinjacyaha bwo buvuga ko Ndayisenga nta kindi anenga urubanza uretse gusaba kugabanyirizwa igihano kandi icyo yahanishijwe aricyo gito cya nyuma Urukiko rutajya muni. Busaba uru Rukiko kwemeza ko nta gihindutse ku mikirize y'urwo rubanza. Incamake y'icyemezo: Mu gihe ujurira yahawe igihano cy'igifungo cy'imyaka cumi n'itanu (15), ku cyaha gihanishwa igihano cy'igifungo cya burundu, nta mpamvu yo gusuzuma ishingiro ry'impamvu nyoroshyacyaha azamurira kuko ku bushake bw'Umushingamategeko, n'ubwo hakwemezwa impamvu nyoroshyacyaha, icyaha giteganyirijwe igihano cy'igifungo cya burundu, ntigishobora kugabanywa ngo kije muni y'igihano cy'igifungo cy'imyaka cumi itanu (15). Ubujurire nta shingiro bufite. Amategeko yashingiweho:

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Ingingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 4/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange. Imanza zifashishijwe: Ubushinjacyaha vs Nsabimana alias Sankara n'Abandi, RPA 00060/2021/CA rwaciye n'Urukiko rw'Ubujurire ku wa 4/4/2022. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 15/10/2019, Ndayisenga Samuel yafashwe na polisi ishami rishinzwe kurwanya ibiyobyabwenge afite udupfunyika makumyabiri n'icyenda (29) tw'urumogi, yazanirwaga n'uwitwa Olivier utuye i Gikondo, akarurangura akarucuruza, akaba yarafashwe ari i Gahanga yerekeza i Kinyinya agiye kurugurisha k'uwitwa Barafinda. [2] Iperereza rirangiye, Ubushinjacyaha bwareze Ndayisenga Samuel mu Rukiko Rwisumbuye rwa Nyarugenge icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, busaba ko cyamuhama agahanishwa igihano cy'igifungo cya burundu n'ihazabu ya mafaranga y'u Rwanda miliyoni makumyabiri n'eshanu (25.000.000 Frw). [3] Ndayisenga Samuel yaburanye yemera ko anywa urumogi gusa, ariko ko atarucuruza, ko ibyo yemeye mu iperereza by'uko arucuruza yabitwe n'igihunga. [4] Mu rubanza no RP 001447/2019/TGI/NYGE rwaciye n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 30/10/2020, rushingiye ku mvugo z'umutangabuhamya Ntibashirakahe Onesme, ku nyandikomvugo y'ibyabonywe n'Umugenzacyaha, ku nyandikomvugo y'ibyafatiriwe, ku kwemera icyaha cyo gucuruza ibiyobyabwenge Ndayisenga Samuel yakoreye mu Bugenzacyaha no mu Bushinjacyaha, rwemeje ko ahamwe n'icyaha cyo gufatanwa no gucuruza urumogi, rumuhanisha igihano cy'igifungo cya burundu n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri n'eshanu (25.000.000 Frw). [5] Ndayisenga Samuel yajuririye Urukiko Rukuru, avuga ko yahanishijwe ibihano birebire kandi kuva mu ntangiriro yaremeraga icyaha akaba atarigeze agora ubutabera, kandi ko gufungwa byamugizeho

ingaruka zikomeye kubera ko yari akiri muto ariko ko amaze kugororoka akaba asaba imbabazi no kugabanyirizwa ibihano. [6] Mu rubanza no RPA 01217/2020/HC/KIG rwaciwe n'Urukiko Rukuru, ku wa 21/5/2024, rushingiye ku ngingo ya 60 y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, nk'uko yahinduwe n'iya 21 (a) y'Itegeko n° 059/2023 ryo ku wa 4/12/2023 no ku ngingo ya 49 y'iryo Tegeko, rwemeje ko hari impamvu nyoroshyacyaha zagombaga gutuma Ndayisenga Samuel agabanyirizwa igihano, nko kuba ari ubwa mbere akurikiranyweho icyaha ku

1 iteganya ko: "Iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano cy'igifungo cya burundu ariko ntikijye muni y'igihano cy'igifungo cy'imyaka 15, naho ihazabu ikaba ishobora kugabanywa kugeza kuri ¼ y'ihazabu ntoya iteganywa n'itegeko".

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buryo buzwi, kuba ingano y'urumogi yafatanywe ari nto cyane no kuba byarahise bifatirwa hagategakwe ko bitwikwa, rumuhanisha igihano cy'igifungo cy'imyaka 15 n'ihazabu y'amafaranga y'u Rwanda miliyoni ebyiri (2.000.000 Frw). [7] Ku wa 27/5/2024, Ndayisenga Samuel yajurirye Urukiko rw'Ubujurire avuga ko akomeje gutakamba asaba kongera kugabanyirizwa igihano kuko ari ubwa mbere akurikiranywe mu Nkiko, ko yemera icyaha ku buryo budashidikanywaho, agisabira imbabazi, ko nta ngaruka zikomeye cyateje kandi ko yamaze kugororoka, akaba aramutse agabanyirijwe igihano agataha, atazongera kwishora muri ibyo bikorwa. [8] Ubushinjacyaha buvuga ko Ndayisenga Samuel nta kindi anenga urubanza uretse gusaba kugabanyirizwa igihano kandi icyo yahanishijwe aricyo gito cya nyuma Urukiko rutajya muni, hakurikijwe ibiteganywa n'ingingo ya 60 y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 nk'uko yahinduwe n'ingingo ya 2 y'Itegeko n° 059/2023 ryo ku wa 4/12/2023 riteganya ibyaha n'ibihano muri rusange n'umurongo wafashwe mu manza2 zitandukanye zaciwe n'Urukiko rw'Ubujurire uvuga ko iyo hari impamvu nyoroshyacyaha, icyaha gihanishwa igifungo cya burundu n'ihazabu, gishobora kugabanywa ariko ntikijye muni y'imyaka 15 n'ihazabu ntijye muni ya ¼ y'ihazabu nto iteganyijwe, busaba uru Rukiko kwemeza ko nta gihindutse ku mikirize yurwo rubanza. [9] Urubanza rwahawe no RPAA 00628/2024/CA, ruburanishwa ku wa 16/12/2025, Ndayisenga Samuel yunganiwe na Me Ruberwa N. Silas, Ubushinjacyaha buhagarariwe na Bunyoye Grâce, Umushinjacyaha ku rwego rw'Igihugu. [10] Harebwe imyanzuro n'imiburanire y'ababuranyi ikibazo kigomba gusuzumwa muri uru rubanza kikaba ari ukumenya niba Ndayisenga Samuel akwiye kongera kugabanyirizwa igihano. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO Kumenya niba Ndayisenga Samuel akwiye kongera kugabanyirizwa igihano [11] Ndayisenga Samuel avuga ko akomeje gutakambira uru Rukiko yajurirye arusaba ko mu bubasha ruhabwa n'amategako rwaca inkoni izamba rukongera kumugabanyiriza igihano kuko igihe cy'imyaka irindwi (7) amaze afunzwe yamaze kugororoka. [12] Me Ruberwa N. Silas, umwunganira, yongeraho ko Urukiko Rukuru rwagombaga kumuhana rushingiye ku ngingo ya 60 y'Itegeko no 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano kuko ariryo ryari kumworohereza agahanishwa igihano gito kiri muni y'icyo yahawe hashingiwe ku ngingo ya 2 y'Itegeko no 059/2023 ryo ku wa 4/12/2023 riteganya ibyaha n'ibihano muri rusange ryaje nyuma y'uko akora icyaha, ko rero hakurikijwe ihame ry'impurirane z'amategako ahana, rimwe ryariho

icyaha gikorwa n'iryasohotse mu Igazeti ya Leta, nyuma y'uko gikorwa, hakurikizwa iritanga igihano gito, nk'uko byanatanzweho umurongo n'Urukiko rw'Ubujurire mu manza zitandukanye, rugendeye kuri iryo hame hemezwa ko Itegeko ryorohereza uregwa ariryo rikurikizwa, kandi rushingiye kuri iyo ngingo rwemeza kandi ko mu bwigenge bw'umucamanza n'umutima nama we, ntacyamubuza kongera kugabanyiriza uregwa igihano.

2 urubanza no. RPAA 00885/2024/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 16/5/2025 haburana Ubushinjacyaha na Nshimiyimana Eric (igika cya 18).

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[13] Ubushinjacyaha buvuga ko uretse kuba asaba kongera kugabanyirizwa igihano, nta kindi Ndayisenga Samuel anenga urubanza, ko kandi ibivugwa n'umwunganizi we by'uko hari gushingirwa ku ngingo ya 60 y'Itegeko ryavuzwe haruguru, nta shingiro bifite kuko mu gace ka 13 k'urubanza rujuririrwa, Urukiko rwagaragaje ko ingingo ya 60 y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 yahinduwe n'ingingo ya 2 y'Itegeko n° 059/2023 ryo ku wa 4/12/2023 riteganywa ibyaha n'ibihano muri rusange, ko rero imirongo yose yari ishingiyeye ku ngingo ya 60 yavuyeho³, bukaba bubona nta makosa Urukiko rwakoze, bityo ko hakwiye kwemezwa ko nta gihindutse ku mikirize y'urubanza rwajuririye. UKO URUKIKO RUBIBONA [14] Impaka kuri iki kibazo zishingiye ku kumenya niba Ndayisenga Samuel akwiye kongera kugabanyirizwa igihano agahabwa ikiri muni y'igifungo cy'inyaka cumi n'itanu (15) n'ihazabu y'amafaranga y'u Rwanda miliyoni ebyiri (2.000.000 Frw) yahanishijwe. [15] Nk'uko kandi byemejwe mu rubanza n° RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 4/4/2022, haburana Ubushinjacyaha na Nsabimana Callixte bakunze kwita Sankara na bagenzi be⁴, iyo uregwa nta kindi anenga urubanza yajuririye, uretse kuvuga gusa ko atagabanyirijwe igihano bihagije, buri umucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha n'ingaruka zacyo (.....), cyakora mu bujurire Umucamanza akaba agomba kuzirikana ko yemerewe gusa guhindura igihano cyatanze n'Umucamanza wo mu Rukiko rubanza ari uko amaze kugaragaza ko urwo Rukiko rwaba rwarakoresheje nabi Itegeko cyangwa ubushishozi bwawo mu gutanga igihano. [16] Nk'uko byemejwe mu rubanza no RPAA 01059/2024/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 26/2/2025 no mu rubanza n° RPAA 00729/2024/CA rwaciwe ku wa 28/3/2025, harebwe ibiteganywa n'ingingo ya 60, agace ka (a), y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganywa ibyaha n'ibihano muri rusange, nk'uko ryahinduwe kugeza ubu, ku bushake bw'Umushingamategeko byateganyijwe ko uwakoze icyaha gihanishwa igihano cy'igifungo cya burundu, igihe hemejwe impamvu nyoroshyacyaha, adashobora kugabanyirizwa igihano cy'igifungo kiri muni y'inyaka cumi itanu (15), kuko aricyo gihano gito giteganywa n'Itegeko. [17] Nk'uko bigaragara mu gace ka cumi na gatatu (13) na ka cumi na kane (14) tw'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko rushingiye ku murongo watanze n'Urukiko rw'Ubujurire mu rubanza no RPAA 00157/2022/CA⁵, rwemeje ko rudashobora gushingira ku mirongo yatanze mu rubanza no RS/INCONST/SPEC 00003/2019/SC n'urubanza no RPAA 00032/2019/CA, kimwe n'izindi manza zagendeye muri uyu murongo, kuko zaciwe hakurikijwe ingingo ya 60 y'Itegeko n° 68/2018 ryo ku wa

30/8/2018 riteganya ibyaha n'ibihano muri rusange yahinduwe n'ingingo ya 2 y'Itegeko n° 059/2023 ryo ku wa 4/12/2023, ari nayo igomba gukurikizwa, rwemeje ko n'ubwo icyaha cyo gucuruza ibiyobyabwenge Ndayisenga Samuel

3 Urubanza no RPAA 00834/2024/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 28/5/2025 haburana Ubushinjacyaha na Habumugisha Alexis (igika cya 32). 4 Reba urubanza n° RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 4/4/2022, haburana Ubushinjacyaha na Nsabimana Callixte na bagenzi be, mu gika cya 252 na 254. 5 rwaciwe ku wa 22/12/2023, haburana Ubushinjacyaha na Munyaribanje Vicent. narwo rwashingiye ku murongo wafashwe mu rubanza n° RPAA 00048/2020/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 26/05/2022 haburana Ubushinjacyaha na Bimenyimana

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yahamijwe gihanishwa igifungo cya burundu n'ihazabu ishobora kugera ku mafaranga 30.000.000, ko ariko hari impamvu zari gutuma agabanyirizwa igihano, nko kuba ari ubwa mbere akurikiranyweho icyaha ku buryo buzwi no kuba ingano y'ibiyobyabwenge yafatanywe (udupfunyika 29) ari ntoya cyane kandi bikaba byarahise bifatwa hagategekwa ko bitwikwa, rumugabanyiriza igihano cy'igifungo cy'imyaka 25 yari yahawe ku rwego rwa mbere, rumuhanisha igihano cy'igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga miliyoni ebyiri (2.000.000 Frw). [18] Urukiko rw'Ubujurire rurasanga ibivugwa na Ndayisenga Samuel ko mu kumuhana, Urukiko Rukuru rwakoze ikosa ryo gushingira ku Itegeko n° 059/2023 ryo ku wa 4/12/2023, aho gushingira ku Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, ryakoreshwaga ubwo yakoraga icyaha aregwa, kuko ari ryo riteganya igihano cyoreheje, bitahabwa agaciro kuko ku birebana n'igabanyagihano, ingingo ya 60 y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 nk'uko yari yanditswe yateganyaga ko iyo hari impamvu zigabanywa ububi bw'icyaha, igihano cyo gufungwa burundu gishobora kugabanywa ariko ntikije munsu y'imyaka makumyabiri n'itanu (25), mu gihe iyo ingingo ya 60 nk'uko yahinduwe n'Itegeko n° 059/2023 ryo ku wa 4/12/2023, iteganya ko icyo gihe, igifungo cya burundu gishobora kugabanywa ariko ntikijye munsu y'igihano cy'igifungo cy'imyaka cumi n'itanu (15), bivuze ko ingingo ya 60 nk'uko yahinduwe mu mwaka wa 2023 ari yo imworohereza. [19] Urukiko rw'Ubujurire rurasanga kandi ubusabe bwa Ndayisenga Samuel bwo kongera kugabanyirizwa igihano cy'igifungo kugeza munsu y'igihano gito giteganywa n'Itegeko ashingiye ku mpamvu nyoroshyacyaha agaragaza no ku murongo watanzwe mu manza zitandukanye zaciwe n'uru Rukiko, nta gaciro bukwiye guhabwa kuko hashingiwe ku murongo wagaragajwe haruguru, mu gihe igihano cy'igifungo yahawe, ni ukuvuga igifungo cy'imyaka cumi n'itanu (15), aricyo gito Itegeko riteganya, nta mpamvu yo gusuzuma niba impamvu nyoroshyacyaha agaragaza zashingirwaho akongera kugabanyirizwa igihano cy'igifungo yahawe, kubera ko harebwe ibiteganywa n'ingingo ya 60, agace ka (a), y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, nk'uko ryahinduwe kugeza ubu, ku bushake bw'Umushingamategeko byateganyijwe ko uwakoze icyaha gihanishwa igihano cy'igifungo cya burundu n'ihazabu y'amafaranga y'u Rwanda arenza miliyoni makumyabiri (20.000.000 Frw) ariko atarenze miliyoni mirongo itatu (30.000.000 Frw), igihe hemejwe impamvu nyoroshyacyaha, adashobora kugabanyirizwa igihano cy'igifungo kiri

munsi y'imyaka cumi itanu (15), kubera ko uretse n'ibyo, hanarebwe imigendekere yacyo rusanga gikwiranye n'icyaha yakoze, bityo ubujurire bwe nta shingiro bufite. [20] Kubera izo mpamvu zose, Urukiko rw'Ubugurire rurasanga ubujurire bwa Ndayisenga Samuel nta shingiro bufite. III. ICYEMEZO CY'URUKIKO [21] Rwemeje ko ubujurire bwatanzwe na Ndayisenga Samuel nta shingiro bufite; [22] Rwemeje ko nta gihindutse ku mikirize y'urubanza n° RPA 01217/2020/HC/KIG rwaciwe n'Urukiko Rukuru, ku wa 21/5/2024;

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[23] Rwemeje ko igihano cy'igifungo cy'imyaka cumi n'itanu (15) n'ihazabu y'amafaranga y'u Rwanda miliyoni ebyiri (2.000.000 Frw) yahanishijwe kigumyeho.

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