

RWANDA / JUDGMENT

UBUSHINJACYAHA v. NDINDIRIYIMANA**RPAA 0278/10/CS****COURT**

Supreme Court

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UBUSHINJACYAHA v. NDINDIRIYIMANA

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UBUSHINJACYAHA v. NDINDIRIYIMANA [Rwanda URUKIKO RW'IKIRENGA – RPAA 0278/10/CS (Zayinabo, P.J., Mukandamage na Gatete, J.) 12 Ukuboza 2014] Amategeko yerekeye ibimenyetso – Ibimenyetso bishinja – Ukwemera kwe kwashimangiwe n'imvugo za mugenzi we ko yibye amafaranga mu modoka y'umuntu atazi bigaragaza ko ahamwa n'icyaha cy'ubujura buciye icyuho akaba agomba guhanishwa imyaka 2 y'igifungo yikubye kabiri aho guhaniswa imyaka 15 kubera itegeko rishya ritegenyaye ibihano byoroheje – Itegeko Ngenga N° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo za 298, 300 na 301 n' Itegeko-teka N° 21/77 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 400 Amategeko agenga ibimenyetso – Ibimenyetso bishinja – Ntiyahamwa n'icyaha igihe nta bimenyetso bihari bigaragaza ko cyabayeho. Incamake y'ikibazo: Ndindiriyimana Augustin n'Uwitwa Barawigirira Alias Ngemba barezwe mu Rukiko Rwisumbuye rwa Musanze bashinjwa kurema umutwe w'abagizi ba nabi n'icy'ubujura bukoresha kiboko. Bahamijwe ibi byaha maze bahanishwa igifungo cy'imyaka 15 Bajuriye mu Rukiko Rukuru, Urugerekorwa Musanze rwemeza ko icyemezo cy'Urukiko Rwisumbuye rwa Musanze kigumye ruvuga ko n'ubwo bemeye ko bakoze ubujura bworoheje, kuba barakomerekeje bituma ubwo bujura butaba ubworoheje.

Ndindiriyimana Augustin yajuriye mu Rukiko rw'Ikirenga avuga ko Urukiko rwirengagije ibimenyetso yarushyikirije. Mu iburanisha ariko yavuze ko yemera icyaha ariko ko atemera icyaha cyo kurema umutwe w'abagizi ba nabi. Incamake y'icyemezo: 1. Kuba yaremeye mu Bugenzacyaha ko ari umwe mu bajura biba bakoze mu mifuka bikaba byemezwa n'umutangabuhamya wamushinje ko yamukoze mu mufuka akaba kandi yariyemereye ko yibye amafaranga mu modoka y'umuntu atazi bikemezwa na mugenzi we bashinjawaga hamwe bigaragaza ko ahamwa n'ubujura buciye icyuho.

2. Imyaka 15 yari yahanishijwe igomba kugabanywa hakurikijwe itegeko rishya ritegenya ibihano byoroheje agahanishwa imyaka 2 ikubwe kabiri.
3. Agomba guhanagurwaho icyaha cyo kurema umutwe w'abagizi ba nabi kubera ko nta kimenyetso kigaragaza ko uwo mutwe wabayeho. Ubujurire bufite ishingiro kuri bimwe; Ahamwa gusa n'ubujura buciye icyuho, ntahamwa no kurema umutwe w'abagizi ba nabi; Agomba guhita afungurwa; Amagarama y'urubanza agerereye ku isanduku ya Leta. Amategeko yashingiweho

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Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana,, ingingo ya 298, 300 na 301 Itegeko-teka n° 21/77 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 400 Nta manza zifashishijwe Urubanza I. IMITERERE Y'URUBANZA [1] Ndindiriyimana Augustin n'uwitwa Barawigirira alias Ngemba baregewe Urukiko Rwisumbuye rwa Musanze, bakurikiranyweho n'Ubushinjacyaha icyaha cyo kurema umutwe w'abagizi ba nabi n'icy'ubujura bukoresha kiboko, buvuga ko bari mu gaco k'abantu batatu, bibye Nayituriki Viateur bamukoze mu mufuka yabafata bakamukeba n'urwembe, nyuma bakamena ibirahuri by'imodoka y'uwitwa Karemera bakibamo amafaranga 180.000. Urukiko rwabahamije ibi byaha bahanishwa igifungo cy'imyaka cumi n'itanu (15). [2] Ndindiriyimana na Barawigirira bajuririyeye Urukiko Rukuru Urugereko rwa Musanze, rwemeza ko icyemezo cy'Urukiko Rwisumbuye rwa Musanze kigumye, kubera ko n'ubwo bemeye ko bakora ubujura bworoheje bwo gukora mu mufuka, kuba barakomerekeje uwo bibye bituma ubwo bujura butaba ubworoheje, ko ndetse bavuga ko bazi abandi bajura bakavuga n'umubare wabo bigaragara ko bakoze umutwe w'abagizi ba nabi. [3] Ndindiriyimana Augustin yajuririyeye mu Rukiko rw'Ikirenga avuga ko urukiko rwirengagije ibimenyetso yarushyikirije, rumuhanira ibyaha atagizemo uruhare, ariko igihe cy'iburanisha avuga ko yemera icyaha cy'uko yibye amafaranga mu modoka y'umuntu atazi, ko icyo atemera ari icyo kurema umutwe w'abagizi ba nabi. [4] Iburanisha ry'urubanza ryabaye mu ruhamye tariki ya 17/11/2014, Ndindiriyimana Augustin yunganiye na Me Kayitare Serge, naho Ubushinjacyaha buhagarariye na Mutayoba Alphonse, Umushinjacyaha ku rwego rw'Igihugu. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO. Kumenya niba ibikorwa NDINDIRIYIMANA yemera ko yakozwe bigize icyaha by'ubujura bworoheje, niba kandi bitagize icyaha cyo kurema umutwe w'abagizi ba nabi. [5] Ndindiriyimana avuga ko asaba imbabazi kubera ko yibye amafaranga mu modoka y'umuntu atazi akayagabana na bagenzi be, ko ariko atigeze aba mu mutwe w'abagizi ba nabi. [6] Me Kayitare umwunganira avuga ko icyaha

Ndindiriyimana yemera ari icy'ubujura, ko ariko nta bwumvikane yagiranye n'abandi ngo bareme umutwe w'abagizi ba nabi, ndetse n'Ubushinjacyaha bukaba nta kimenyetso bwabitangiye. Asanga kuba urukiko rubanza

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rwaravuze ko Ndindiriyimana azi abandi bajura, bitashingirwaho ngo ahamwe n'icyaha cyo kurema umutwe w'abagizi ba nabi, agasaba ko urukiko rwakimuhanaguraho. [7] Uhagarariye Ubushinjacyaha avuga ko ashingiye ku mvugo za Ndindiriyimana asanga nta mutwe w'abagizi ba nabi wigeze ubaho, kuko buri wese mu bajura bagenzi be yibaga ukwe, ko rero yahanagurwaho icyaha cyo kurema umutwe w'abagizi ba nabi. [8] Ku byerekeye icyaha cy'ubujura bukomeye Ndindiriyimana yahaniwe, asanga nabwo yahanirwa ubujura buciye icyuho kuko yibye amennye ikirahuri cy'imodoka, hagakurikizwa ibiteganywa n'ingingo ya 765 y'Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, maze agahanishwa ingingo ya 301 yaryo kuko ariyo iteganya ibihano byoroheje kuri icyo cyaha, bigereranyijwe n'ibiteganywa mu ngingo ya 401 y'Itegeko- teka n° 21/77 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana ryakurikizwaga igihe icyaha cyakorwaga, agahanishwa igifungo cy'imyaka 2 x 2 gihwanye n'imyaka ine (4). Uko Urukiko rubibona : [9] Ingingo ya 300 y'Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana iteganya ko « umuntu wese ukora ubujura budakoreshejwe kiboko cyangwa ibikangisho ahanishwa igifungo kuva ku mezi atandatu (6) kugeza ku myaka ibiri (2) n'ihazabu y'amafaranga y'u Rwanda yikubye inshuro ebyiri (2) kugeza kuri eshanu (5) z'agaciro k'ibyibwe cyangwa kimwe gusa muri ibyo bihano ». Naho ingingo ya 301, 1° ikavuga ko igihano ntarengwa giteganyijwe mu ngingo ya 300 y'iri tegeko ngenga cyikuba kabiri iyo ubujura bukoreshwe guca icyuho, kurira cyangwa imfunguzo zitari iza nyira zo. [10] Urukiko rurasanga izo ngingo ari zo zikwiye gukurikizwa muri uru rubanza kuko ziteganya ibihano bito ku byateganywaga n'ingingo ya 400 agace ka mbere, y'Itegeko-teka n° 21/77 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana ryakurikizwaga igihe icyaha cyakorwaga, ku cyaha cy'ubujura buciye icyuho bigeza ku myaka icumi (10) y'igifungo. [11] Mu Bugenzacyaha, Ndindiriyimana yemeye ko ari mu bajura biba bakoze mu mifuka y'abantu mu Mujyi wa Musanze, ibyo bikaba bihura n'imvugo ya Nayituriki Viateur wamushinje ko yari mu bajura bamukoze mu mufuka, uwitwa Mbabazi akamukeba ku kaguru, ko ndetse bibye amafaranga 180.000 mu modoka ya Karemera bamaze kumena ikirahure. [12] Muri uru rukiko, Ndindiriyimana yemera ko yibye amafaranga mu modoka y'umuntu atazi, ibyo akaba yaranabishijwaga na mugenzi we Barawigirira bari bakurikiranywe hamwe mu rukiko rubanza. [13] Hashingiwe kuri izo mvugo, Urukiko rurasanga Ndindiriyimana ahamwe n'icyaha cy'ubujura buciye icyuho giteganywa n'ingingo z'igitabo cy'amategeko ahana zavuzwe haruguru, bityo igihano yahawe cy'imyaka 15 kikaba kigomba kugabanywa kubera itegeko 1 Ingingo ya 298 y'Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ivuga ko « guca icyuho ni : 1° uguhata, konona, kumena, gucukura, gusenya uruzitiro, urukuta, amadirishya, inzugi n'igisenge by'inzu n'inyubako izo ari zo zose ; 2° ibikorwa bivuzwe haruguru bikozwe ku modoka, ku bwato, indege cyangwa gariyamoshi ; 3° ugukingura ku gahato utubati cyangwa ibintu byose bikinze, bibikwamo ibintu ibyo ari byo byose n'aho icyo cyuho cyaba

kitaciriwe aho ibintu byari biri

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rishya riteganya ibihano byoroheje agahanishwa igifungo cy'imyaka 2 ikubwe kabiri, ikaba imyaka ine (4). [14] Ku byerekeye icyaha cyo kurema umutwe w'abagizi ba nabi, urukiko rurasanga, nk'uko n'Ubushinjacyaha bubivuga, nta kimenyetso kigaragaza ko uwo mutwe wabayeho, bityo NDINDIRIYIMANA akaba agomba kugihanagurwaho [15] Urukiko rurasanga na none inyandiko mvugo y'ifunga yo kuwa 12/11/2008 igaragaza ko NDINDIRIYIMANA yafunzwe uwo munsu, bikaba rero bigaragara ko igihe amaze afunze kirenze icyo agomba gufungwa, akaba rero agomba gufungurwa urubanza rukimara gusomwa. III. ICYEMEZO CY'URUKIKO [16] Rwemeje ko ubujurire bwa Ndindiriyimana Augustin bufite ishingiro kuri bimwe. [17] Rwemeje ko Ndindiriyimana Augustin ahamwe gusa n'icyaha cy'ubujura buciye icyuho, ko adahamwe n'icyo kurema umutwe w'abagizi ba nabi. [18] Rutegetse ko Ndindiriyimana Augustin ahanishijwe igifungo cy'imyaka ine (4). [19] Rutegetse ko ahita afungurwa urubanza rukimara gusomwa kuko yarangije icyo gihano. [20] Rutegetse ko amagarama y'urubanza aherera ku isanduku ya Leta.

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