

RWANDA / JUDGMENT

NGENDAHIMANA v KAMBANDA

RS/INJUST/RC 00002/2021/HC/RWG

COURT

High Court

DECIDED

9 February 2023

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NGENDAHIMANA v KAMBANDA

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Text

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NGENDAHIMANA v KAMBANDA [Rwanda URUKIKO RUKURU– RS/INJUST/RC 00002/2021/HC/RWG (Sibomana P.J.) 09 Gashyantare 2023] Itegegeko rigenga ibimenyetso – Raporo y’umuhanga – Ikimetso cy’ikoranabuhanga – Ntabwo Urukiko rwakwirengagiza ikimenyetso cy’abahanga kandi cyasuzumanywe ikoranabuhanga. Incamake y’ikibazo: Uru rubanza, rwatangiye Kambanda arega Ngendahimana mu Rukiko rw’Ibanze rwa Kirehe, Urukiko mu rubanza RC00053/2018/TB/KRH rwemeje ko ikirego cya Kambanda nta shingiro gifite ndetse rumutegeka ko agomba kwishyura Ngendahimana amafaranga 4 187 490Frw akamuha n’indishyi. Rutegeka ko azasubirana iyo sambu ari uko amaze kwishyura uwo mwenda wa SACCO. Kambanda ntiyishimiye imikirize y’urwo rubanza arujuririra mu Rukiko Rwisumbuye rwa Ngoma avuga ko impamvu yajuriye ari uko urukiko rwahinduye ikiburanwa avuga ko yahaye Ngendahimana 4 187 490Frw akaba ayahakana kandi hari abatangabuhamya basinye ku masezerano yo kuyamuha nyuma bakaza kubihakana akaba yasabye urukiko kwemeza ko yamuhaye rukemeza ko agomba gusubirana isambu n’urutoki rwe, asaba ko rwamuca indishyi zinyuranye. Urukiko Rwisumbuye mu rubanza RCA00036/2019/TGI/NGOMA, rwemeje ko ikirego cy’ubujurire cya Kambanda gifite ishingiro, rwemeza ko imikirize y’urubanza rujuriyirwa ivanweho mu ngingo zarwyo zose. Ngendahimana

yasubirishijemo urubanza ku mpamvu z'akarengane, urubanza ruhabwa Urukiko Rukuru urugereko rwa Rwamgana, avuga ko Umucamanza mu gufata icyemezo yirengagije ibimenyetso byatanze, avuga ko icyateje icyibazo yari amasezerano ababuranyi batavugaho rumwe kubera ko Ngendahimana asobanura ko ari amahimbano naho Kambanda we akavuga ko bagiranye ayo masezerano, bituma iyo nyandiko y'amasezerano ijyanwa gupimwa muri Rwanda Forensic Laboratory, RFL yemeje ko imikono iriho atari iya Ngendahimana ariko ngo umucamanza yirengagije iyo nyandiko. Ngendahimana asaba ko Urukiko rwakuraho urubanza rwamurenganyije ndetse akanagenerwa indishyi. Kambanda we yatanze inzitizi yo kutakira ikirego ngo kuko Ngendahimana yari gusubirishamo urubanza ingingo nshya aho gusubirishamo urubanza ku mpamvu z'akarengane ariko Urukiko rubisuzumye rusanga iyo nzitizi nta shingiro ifite. Mu rubanza mu mizi Urukiko rwasuzumye ikibazo cyo Kumenya niba Urukiko Rwisumbuye rwa Ngoma rwarakoze ikosa ryo gushingira ku masezerano aho gushingira ku nyandiko ya Rwanda Forensic Laboratory, (RFL) igaragaza ko amasezerano ari amahimbano byafatwa nk'akarengane maze rwemeza mu rubanza ko Urukiko Rwisumbuye rwirengagije ikimenyetso kuko nta mpamvu yagaragajwe yatumye inyandiko y'abahanga idashingirwaho kandi abatangabuhamya babajijwe na bo ubwabo bavuga ko batabonye Kambanda aha Ngendahimana ayo mafaranga, bityo rwemeza ko urubanza urubanza RCA0036/2019/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ruhindutse mu ngingo zarwo zose kuko rurimo akarengane. Incamake y'icyemezo: Ntabwo Urukiko rwakwirengagiza ikimenyetso cy'abahanga kandi cyasuzumanywe ikoranabuhanga. Bityo, Iyo ikimenyetso nkicyo cyasobanuwe na Rwanda Forensic Laboratory kirengagijwe urubanza rudashobora kujuririrwa, urwo rubanza rusubirishwamo ku mpamvu z'akarengane iryo kosa rigakosorwa. Gusubirishamo urubanza ku mpamvu z'akarengane bifite ishingiro. Amategeko yashingiweho: Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, Ingingo ya 55, 63 Nta manza zifashishijwe.

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Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza, rwatangiriye mu Rukiko rw'Ibanze rwa Kirehe rufite RC00053/2018/TB/KRH hagati ya Kambanda Tharcisse (waregaga) na Ngendahimana Fabien (waregwaga), muri urwo rubanza Urukiko rw'ibanze rwa Kirehe rwafashe icyemezo ko ikirego cya Kambanda Tharcisse nta shingiro gifite ndetse rumutegeka ko agomba kwishyura Ngendahimana Fabien amafaranga 4 187 490Frw akamuha n'indishyi zinyuranye zo kumushora mu manza n'igihembo cy'avoka akazasubirana iyo sambu ari uko amaze kwishyura uwo mwenda wa Sacco. [2] Kambanda Tharcisse ntiyishimiye imikirize y'urubanza RC00053/2018/TB/KRH maze ajuririra

Urukiko

Rwisumbuye

rwa

Ngoma

urubanza

ruhabwa

nimero RCA00036/2019/TGI/NGOMA avuga ko impamvu ashingiraho ubujurire bwe ari uko urukiko rwahinduye ikiburanwa avuga ko yahaye Ngendahimana Fabien amafaranga 4 187 490 akaba ayahakana kandi hari abatangabuhamya basinye ku masezerano yo kuyamuha nyuma bakaza kubihakana akaba yasabye urukiko kwemeza ko yamuhaye ayo mafaranga rukemeza ko agomba gusubirana isambu n'urutoki rwe, asaba ko rwamuca indishyi zinyuranye. [3] Urukiko Rwisumbuye rwa Ngoma rwemeje ko ikirego cy'ubujurire cya Kambanda Tharcisse gifite ishingiro, rwemeza ko imikirize y'urubanza RC00053/2018/TB/KRH rwaciwe n'Urukiko rw'Ibanze rwa Kirehe kuwa 28/02/2018 ivanweho mu ngingo zayo zose. Ngendahimana Fabien avuga ko Umucamanza mu gufata icyemezo yirengagije ibimenyetso byatanze kuko icyateje icyibazo yari amasezerano ababuranyi batavugaho rumwe kubera ko Ngendahimana Fabien avuga ko ari amahimbano naho Kambanda Tharcisse we avuga ko bagiranye ayo masezerano, byaje kuba ngombwa ko iyo nyandiko y'amasezerano ijyanwa gupimwa muri Rwanda Forensic Laboratory, RFL yemeje ko imikono iriho atari iya Ngendahimana Fabien ariko ngo umucamanza yirengagije iyo nyandiko, akaba ariyo mpamvu Ngendahimana Fabien yasubirishijemo urubanza ku mpamvu z'akarengane kuko Kambanda Tharcisse yahamijwe icyaha cyo guhimba ayo masezerano ndetse acibwa n'indishyi. [4] Ngendahimana Fabien mu mwanzuro we yasabye ko Urukiko rwakuraho urubanza rwamurenganyije ndetse akanagenerwa indishyi zo gukurikirana urubanza gusa ngo kuko ibindi yari yasabye mbere yabigenewe mu rubanza nshinjabyaha. Kambanda Tharcisse we yatanze inzitizi yo kutakira ikirego ngo kuko Ngendahimana Fabien yari gusubirishamo urubanza ingingo nshya aho gusubirishamo urubanza ku mpamvu z'akarengane ariko Urukiko rubisuzumye rusanga iyo nzitizi nta shingiro ifite. [5] Muri uru rubanza hakaba hakwiye gusuzumwa ibibazo bijyanye no kumenya niba kuba Urukiko Rwisumbuye rwa Ngoma rwarashingiye ku masezerano aho gushingira ku nyandiko ya Rwanda Forensic Laboratory, (RFL) igaragaza ko amasezerano ari amahimbano byafatwa nk'akarengane no kumenya niba hari indishyi zikwiye gutangwa muri uru rubanza. II. ISESENGURA RY'IKIBAZO Kumenya niba kuba Urukiko Rwisumbuye rwa Ngoma rwarashingiye ku masezerano aho gushingira ku nyandiko ya Rwanda Forensic Laboratory, (RFL) igaragaza ko amasezerano ari amahimbano byafatwa nk'akarengane [6] Ngendahimana Fabien yaburanye avuga ko urubanza RCA0036/2019/TGI/NGOMA rwamurenganyije kuko umucamanza yashingiye ku masezerano yahimbwe na Kambanda Tharcisse agaragaza ko yamuhaye amafaranga kugirango ajye kwishyura umwenda wa Sacco yafashe mu mwanya we agiye kugura urutoki kandi ayo masezerano atarabayeho. Ngendahimana Fabien akomeza avuga ko Urukiko rwashingiye kuri ayo masezerano y'amahimbano kandi hari raporo yakozwe n'impuguke ndetse yari yarasabwe n'Urukiko igaragaza ko ayo masezerano ari amahimbano ndetse ko n'umukono uriho atari uwabitirirwa kuyisinya kandi ngo iyo nyandiko Kambanda Tharcisse yaje kuyiregashwa mu manza Nshinjabyaha maze arabihanirwa ndetse

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acibwa n'indishyi ngo akaba ariyo mpamvu mu rubanza rw'akarengane atagisaba indishyi kuko ngo zagenwe mu rubanza rwabaye itegeko. [7] Kambanda Tharcisse n'umwunganizi we Me Gasana bavuga ko nta mpamvu yo gusubirishamo urubanza ku mpamvu z'akarengane kuko umucamanza waburanishije urubanza Nshinjabyaha yari yabirangije kandi ngo ikibishimangira ari uko nawe yabajijwe icyo yifuza akavuga ko ari 600 000Frw y'ikurikiranarubanza gusa kandi ngo ntibumva impamvu asaba ayo mafaranga kandi ariwe watanze ikirego mu rukiko. Kambanda Tharcisse n'umwunganizi we bavuga ko Ngendahimana Fabien yiyemerera ko yagurishije urwo rutoki kandi ngo nta cyemezo cy'Urukiko kimwemerera kugurisha isambu ya Kambanda Tharcisse maze basaba ko ubwo bugure bubaye buhari bwateshwa agaciro kandi ngo bo bakaba batabwemera kuko mbere yabanje kwiyererera mu rukiko ko urwo rutoki rugihari. [8] Ngendahimana Fabien we kuri iyi ngingo avuga ko ubwo baguraga iyo sambu byakozwe mu mazina ye kandi ngo akaba yarabonye Kambanda Tharcisse adashaka kwishyura maze ngo arahagurisha kugirango inyungu zidakomeza kwiyongera kandi ngo yamaze kuhagurisha n'uko ngo bikimwanditseho kuko mutation yari itarakorwa. [9] Ingingo ya 63 y'itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko: "Iyo Urukiko rw'Ikirenga cyangwa urundi rukiko Perezida w'Urukiko rw'Ikirenga akena rushyikirijwe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, rurusuzuma mu mizi bundi bushya abarubayemo ababuranyi bose bahamagajwe." [10] Ingingo ya 55 (2) y'itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko Urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirwamo ku mpamvu z'akarengane kubera imwe mu mpamvu Zikurikira : (...) 2° "iyi mu icibwa ry'urubanza hirengagijwe amategeko cyangwa ibimenyetso bigaragarira buri wese". [11] Urukiko rumaze gusesengura rurasanga kuba mu rubanza RCA00036/2019/TGI/NGOMA urupapuro rwa 5 igika cya 16 urukiko rwavuze ko ibivugwa na Kambanda Tharcisse ko yahaye Ngendahimana Fabien amafaranga yo kwishyura umwenda ko ari ukuri kubera ko ikimenyetso kigaragaza ko yahaye Ngendahimana Fabien 4 187 490frw ngo aje kwishyura umwenda yari yaramufatiye muri SACCO ya Musaza kandi ngo hari raporo y'inzeho z'ibanze aho babajije abatangabuhamya basinye ku masezerano yabaye hagati ya Kambanda Tharcisse na Ngendahimana Fabien barimo Mfashingabo Lucien, Ndayabo Felicien na Munezero Jean Pierre bemeza ko basinye ayo masezerano kuwa 13/03/2018 ariko bakaba ngo barasinye ariko batabonye Kambanda Tharcisse aha Ngendahimana Fabien ayo mafaranga 4 187 490Frw urukiko ruvuga ko basinyiye ibyo bizera ko ari ukuri ariko Urukiko rurasanga ibyashyigirwaho n'Urukiko Rwisumbuye nta shingiro bifite kuko hari raporo yatanze n'umuhanga wa KFL, yagaragaje ko umukono uri ku masezerano yo guha Ngendahimana Fabien amafaranga 4 187 490Frw yagombaga kwishyurwa Sacco ku mwenda wari usigaye, KFL ikaba yaragaragaje ko uwo mukono witiriwe Ngendahimana Fabien atari uwe. [12] Urukiko rushingiye ku isesengurwa rwakozwe haruguru, rurasanga harabaye kwirengagiza ikimenyetso kuko nta mpamvu yagaragajwe yatumye inyandiko y'abahanga idashingirwaho kandi abatangabuhamya babajijwe na bo ubwabo bavuga ko batabonye Kambanda Tharcisse aha Ngendahimana Fabien amafaranga, bityo rukaba rusanga urubanza RCA0036/2019/TGI/NGOMA rwaciwe kuwa 22/10/2020 n'Urukiko Rwisumbuye rwa Ngoma ruhindutse mu ngingo zarwo zose kuko rurimo akarengane. [13] Urukiko rurasanga kandi kuba Ngendahimana Fabien

yaragurishije umutungo wari mu mazina ye nta nenge irimo kuko yagirango yishyure mu gihe Kambanda Tharcisse yari yanze kwishyura kandi yarakoze uburiganya bwo guhimba amasezerano y'uko yamaze kwishyura. Rurasanga kandi kuba Ngendahimana Fabien yararegeye Urukiko ku mpamvu z'akarengane nta nenge irimo kuko urubanza RCA0036/2019/TGI/NGOMA rurimo akarengane rutari kuvaho ataruregeye. Kumenya niba hari indishyi zikwiye gutangwa muri uru rubanza

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[14] Ngendahimana Fabien avuga ko asaba amafaranga angana na 280,000Frw agizwe n'itike y'urugendo =10,000*14=140,000Frw, ifunguro =5000*14=70,000frw, icumbi = 5000*14 =70,000Frw. Kambanda Tharcisse we avuga ko batumva impamvu asaba ayo mafaranga kandi ariwe watanze ikirego mu rukiko. [15] Urukiko rurasanga kuba Ngendahimana Fabien hari indishyi yagenewe mu rubanza nshinjabyaha, nta mpamvu yo kongera ku mugenera indishyi kuko uzicibwa ari umwe kandi n'impamvu ikaba ari imwe n'ubwo imanza zitandukanye. Bityo ikirego cy'indishyi kikaba nta shingiro gihawe. III. ICYEMEZO CY'URUKIKO [16] Rwemeje ko ikirego cya Ngendahimana FABIEN gifite ishingiro kuri bimwe. [17] Rwemeje ko urubanza RCA0036/2019/TGI/NGOMA rwaciwe kuwa 22/10/2020 n'Urukiko Rwisumbuye rwa Ngoma ruhindutse mu ngingo zarwo zose. [18] Rutegetse ko ingwate y'amagarama yatanzwe muri uru rubanza, ihwanye n'ibyakoze kuri uru rubanza.

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