

RWANDA / JUDGMENT

UBUSHINJACYAHA vs. NIYONZIMA

RPAA 00423/2023/CA

COURT

Court of Appeal

DECIDED

20 December 2024

CASE / FILE NUMBER

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UBUSHINJACYAHA vs. NIYONZIMA

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Text

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UBUSHINJACYAHA vs. NIYONZIMA [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00423/2023/CA (Mukandamage, P.J.), 20 Ukuboza 2024] Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Kwakira ubujurire – Ibihe by'Ubujurire – Kujurira bikorwa mu gihe giteganyijwe cy'iminsi mirongo itatu (30), hagaragazwa ibinengwa urubanza rujuririrwa, ibigomba gukosorwa n'impamvu ari amakosa n'uburyo yakosorwa. Mu gihe ingingo y'ubujurire itanzwe nyuma y'igihe giteganywa n'itegeko, iyo mpamvu y'ubujurire ntigomba kwakirwa ngo isuzumwe mu gihe bigaragara ko ituzuzwa cyangwa ngo isobanure ingingo y'ubujurire yatanze hubahirijwe ibihe. Incamake y'ikibazo: Niyonzima Pacifique bita Gashuhe yarezwe mu Bugenzacyaha na Mutezinka Solange, avuga ko yasambanyije umwana we witwa U. D. w'imyaka icumi (10) y'amavuko, Nyuma y'iperereza, Ubushinjacyaha bwatanze ikirego mu Rukiko Rwisumbuye rwa Rubavu burega Niyonzima Pacifique icyaha cyo gusambanya umwana, busaba ko kimuhama, agahanishwa igifungo cya burundu. Niyonzima Pacifique yaburanye ahakana icyaha aregwa. Urukiko Rwisumbuye rwa Rubavu rwasanze hari ibimenyetso bigaragaza ko Niyonzima Pacifique yakoze icyaha cyo gusambanya umwana, birimo imvugo z'umwana wasambanyijwe umushinja, ubuhamya bwatanze, hamwe na raporo ya Muganga igaragaza ko umwana yasambanyijwe,

maze rumuhanisha igifungo cya burundu. Niyonzima Pacifique yajuririye Urukiko Rukuru, Urugereko rwa Musanze, yemera icyaha, asaba kugabanyirizwa igihano yahawe. Uhagarariye Ubushinjacyaha yavuze ko n'ubwo mu rukiko rwabanje uregwa yaburanye ahakana icyaha, harebwa ko ari ubwa mbere aguye mu cyaha, akagabanyirizwa igihano yahawe cyo gufungwa burundu. Urukiko Rukuru, Urugereko rwa Musanze rwasanze Niyonzima Pacifique yaraburanye ahakana icyaha ku rwego rwa mbere, ageze mu bujurire aracyemera, uko kwemera icyaha kukaba kutamubera impamvu nyoroshyacyaha, ariko rumugabanyiriza igihano kuko ari ubwa mbere akurikiranwe mu butabera ku buryo buzwi, rumuhanisha igifungo cy'imyaka cumi n'itanu (15). Niyonzima Pacifique yajuririye Urukiko rw'Ubujurire, avuga ko Urukiko Rukuru, Urugereko rwa Musanze rutamugabanyirije igihano ku buryo buhagije, agasaba kongera kugabanyirizwa igihano. Mbere yo kwinjira mu mizi y'urubanza, habanje gusuzumwa inzitizi yabyukijwe n'Urukiko yo kumenya niba impamvu z'ubujurire zatanze na Niyonzima Pacifique nyuma y'ibihe byo kujurira zikwiye kwakirwa. Niyonzima yiregura avuga ko urubanza yajuririye rumaze gucibwa n'Urukiko Rukuru, Urugereko rwa Musanze, igororero ryamumenyesheje icyemezo ariko ntiyahabwa kopi, ayibajije umugororwa mugenzi we ufasha abagororwa bashaka kujurira kugirango ategure umwanzuro

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w'ubujurire, amusubiza ko kopi azayibona amaze kubona inyandiko y'ihamagara yo kuburana mu Rukiko rw'Ubujurire. Ubushinjacyaha buvuga ko Niyonzima Pacifique atateguye neza umwanzuro w'ubujurire, bityo ko harebwa ko mu bujurire bwa mbere yasabye kugabanyirizwa igihano, n'ubwo nta bisobanuro bihagije yabitanzeho. Incamake y'icyemezo: Kujurira bikorwa mu gihe giteganyijwe cy'iminsi mirongo itatu (30), hagaragazwa ibinengwa urubanza rujuririrwa, ibigomba gukosorwa n'impamvu ari amakosa n'uburyo yakosorwa. Mu gihe ingingo y'ubujurire itanzwe nyuma y'igihe giteganywa n'itegeko, iyo mpamvu y'ubujurire ntigomba kwakirwa ngo isuzumwe mu gihe bigaragara ko ituzuzwa cyangwa ngo isobanure ingingo y'ubujurire yatanze hubahirijwe ibihe. Impamvu z'Ubujurire zatanze n'uregwa ntizakiriwe; Urubanza rwajuririye rugumanye agaciro mu ngingo zarwo zose. Amategeko yashingiweho: Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 181. Imanza zifashishijwe: Urubanza RPAA 00247/2023/CA rw' Ubushinjacyaha na Harerimana Gaspard, rwaciwe n'Urukiko rw'Ubujurire ku wa 28/11/2024; Urubanza RCOMAA 00071/2017/SC, rwa Mbuto Aimable na BRD Ltd, rwaciwe n'Urukiko rw'Ikirenga ku wa 26/10/2018. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 08/12/2019 Niyonzima Pacifique bita Gashuhe yarezwe mu Bugenzacyaha na Mutezinka Solange ko yasambanyije umwana we witwa U. D. w'imyaka icumi (10) y'amavuko, avuga ko yabimenye ubwo uwo mwana yarimo yiyuhagira amubwira ko ababara mu gitsina, yasoba hakaza amaraso, kandi ko ari Gashuhe wamusambanyije. [2] Nyuma y'iperereza, Ubushinjacyaha bwatanze ikirego mu Rukiko Rwisumbuye rwa Rubavu burega Niyonzima Pacifique icyaha cyo gusambanya umwana, busaba ko kimuhama, agahanishwa igifungo cya burundu giteganywa n'ingingo ya 133 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange. [3] Niyonzima Pacifique yaburanye ahakana icyaha aregwa, avuga ko tariki 05/12/2019 yiriranwe na Vétérinaire, ko uyu yabajijwe akemeza ko

birirwanye, kandi ko abamushinja bavuga ko yakoze icyaha ku wa 05/12/2019, ariko bajya gupimisha umwana ku wa 08/12/2019, kandi kuva icyo gihe nta hantu yigeze ajya, hanyuma bapima umwana gusa we bakamureka. [4] Mu rubanza RP 00012/2020/TGI/RBV rwaciwe ku wa 19/02/2021, Urukiko Rwisumbuye rwa Rubavu rwasanze hari ibimenyetso bigaragaza ko Niyonzima Pacifique yakoze icyaha cyo

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gusambanya umwana, birimo imvugo z'umwana wasambanyijwe umushinja, ubuhamya bwatanzwe na Manishimwe Clémentine n'ubwatanzwe na Nkurunziza Noheri, raporo ya Muganga yo ku wa 06/12/2019 igaragaza ko umwana yasambanyijwe na raporo y'inzego z'ibanze, maze rumuhanisha igifungo cya burundu. [5] Niyonzima Pacifique yajuririye Urukiko Rukuru, Urugereko rwa Musanze avuga ko yemera icyaha, asaba kugabanyirizwa igihano yahawe. Uhagarariye Ubushinjacyaha yavuze ko n'ubwo mu rukiko rwabanje Niyonzima Pacifique yaburanye ahakana icyaha, harebwa ko ari ubwa mbere aguye mu cyaha, akagabanyirizwa igihano yahawe cyo gufungwa burundu. [6] Mu rubanza RPAA 00226/2021/HC/MUS rwaciwe ku wa 30/06/2023, Urukiko Rukuru, Urugereko rwa Musanze rwasanze Niyonzima Pacifique yaraburanye ahakana icyaha ku rwego rwa mbere, ageze mu bujurire aracyemera, uko kwemera icyaha kukaba kutamubera impamvu nyoroshyacyaha, ariko rumugabanyiriza igihano kuko ari ubwa mbere akurikiranwe mu butabera ku buryo buzwi, rumuhanisha igifungo cy'imyaka cumi n'itanu (15). [7] Niyonzima Pacifique yajuririye Urukiko rw'Ubujurire, urubanza ruhabwa RPAA 00423/2023/CA, ruburanishwa mu ruhame ku wa 04/12/2024, Niyonzima Pacifique yunganiwe na Me Murera Valérie, naho Ubushinjacyaha buhagarariwe na Habineza Jean Damascène, Umushinjacyaha ku rwego rw'Igihugu. [8] Mu myanzuro ye Niyonzima Pacifique avuga ko Urukiko Rukuru, Urugereko rwa Musanze rutamugabanyirije igihano ku buryo buhagije, agasaba ko cyagabanywa. Uhagarariye Ubushinjacyaha avuga ko ubujurire bwa Niyonzima Pacifique nta shingiro bufite, ko igihano yahawe n'Urukiko Rukuru, Urugereko rwa Musanze kidakwiraye guhinduka. [9] Mbere yo kwinjira mu mizi y'urubanza, habanje gusuzumwa ikibazo cyabyukijwe n'Urukiko cyo kumenya niba impamvu z'ubujurire zatanzwe na Niyonzima Pacifique nyuma y'ibihe byo kujurira zikwiye kwakirwa, ababuranyi bakiburanaho. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

Kumenya niba impamvu z'ubujurire Niyonzima Pacifique yatanze nyuma y'ibihe byo kujurira zikwiye kwakirwa [10] Niyonzima Pacifique n'umwunganira bavuga ko urubanza yajuririye rumaze gucibwa n'Urukiko Rukuru, Urugereko rwa Musanze, Igororero ryamumenyesheje icyemezo ariko ntiyahabwa kopi, ayibajije umugororwa mugenzi we ufasha abagororwa bashaka kujurira kugirango ategure umwanzuro w'ubujurire, amusubiza ko kopi azayibona amaze kubona inyandiko y'ihamagara yo kuburana mu Rukiko rw'Ubujurire. [11] Niyonzima Pacifique n'umwunganira bavuga na none ko ku rupapuro rwa kabiri (2) rw'ibaruwa y'ubujurire, mu gice cy'imiterere y'ikibazo yasabye guhabwa ubutabera buboneye, kuko atishimiye urubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, bikaba byumvikanisha ko atishimiye igihano yahawe.

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[12] Uhagarariye Ubushinjacyaha avuga ko bigaragara ko Niyonzima Pacifique atateguye neza umwanzuro w'ubujurire, ariko ko harebwa ko mu bujurire bwa mbere yasabye kugabanyirizwa igihano, n'ubwo nta bisobanuro bihagije yabitanzeho. UKO URUKIKO RUBIBONA [13] Ikibazo kijyanye n'iyakirwa ry'impamvu z'ubujurire zitanzwe hatubahirijwe ibihe by'ubujurire cyasesenguye mu rubanza rubanziriza urundi mu rubanza RCOMAA 00071/2017/SC rwaciye n'Urukiko rw'Ikirenga ku wa 26/10/2018, haburana Mbuto Aimable na BRD Ltd, hanyuma urwo Rukiko rusobanura ko kujurira bikorwa mu gihe giteganyijwe cy'iminsi mirongo itatu (30), hagaragazwa ibinengwa urubanza rujuririrwa, ibigomba gukosorwa n'impamvu ari amakosa n'uburyo yakosorwa, ko mu gihe ingingo y'ubujurire itanzwe nyuma y'igihe giteganywa n'itegeko, iyo mpamvu y'ubujurire itagomba kwakirwa ngo isuzumwe mu gihe bigaragara ko ituzuzwa cyangwa ngo isobanure ingingo y'ubujurire yatanze hubahirijwe ibihe. Uyu murongo washingiweho mu zindi manza uru Rukiko rwaciye, harimo n'urubanza RPAA 00247/2023/CA rwaciye ku wa 28/11/2024 haburana Ubushinjacyaha na Harerimana Gaspard. [14] Dosiye y'urubanza igaragaza ko urubanza rujuririrwa RPA 00226/2021/HC/MUS rwaciye n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 30/06/2023, kuri uwo munsu kopi yarwo ishyirwa muri dosiye (muri IECMS), Niyonzima Pacifique ajurira ku wa 26/07/2023, mu mwanzuro w'ubujurire avuga ko atishimiye imikurizwe y'urubanza rwaciye n'Urukiko Rukuru, Urugereko rwa Musanze, ko ajuriye kugirango ahabwe ubutabera bubonye, ariko ko impamvu z'ubujurire azatitanga mu mwanzuro w'inyongera amaze kubona kopi y'urubanza rujuririrwa. Ku wa 22/07/2024, mu mwanzuro washyizwe muri dosiye, Me Murera Valérie wunganira Niyonzima Pacifique, ni we watanze impamvu z'ubujurire n'ibisobanuro kuri buri ingingo y'ubujurire. [15] Urukiko rw'Ubujurire rurasanga Niyonzima Pacifique yarajuriye yubahirije ibihe by'ubujurire biteganywa n'ingingo ya 181 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha¹, ariko ntiyagaragaza ingingo z'ubujurire nk'uko ingingo ya 183, agace ka 5 n'aka 62, y'Itegeko ryavuzwe haruguru ibiteganywa, kuko zatanzwe mu mwanzuro w'inyongera wo ku wa 22/07/2024, ni ukuvuga nyuma y'umwaka umwe (1) n'iminsi makumyabiri n'ibiri (22), urubanza rusomwe ndetse na kopi yarwo ishyizwe muri dosiye, kandi iyo myanzuro ntiyuzuzwa cyangwa se ngo isobanure impamvu z'ubujurire zatanzwe mu gihe, kuko ntacyo yagaragaje ko anenga urubanza yajuririye.

1 ingingo ya 181 iteganya ibikurikira: “kujurira bikorwa mu gihe kitarenga iminsi mirongo itatu (30) uhereye ku itariki urubanza rwaciriweho ku muburanyi wari uhari cyangwa ahagarariye igihe urubanza rwacibwaga, icyo gihe gikurikizwa kandi ku muburanyi wamenyeshejwe mu buryo bwemewe n'amategeko, umunsu urubanza ruzacibwaho ntaze cyangwa ngo yohereze umuhagararira. Kujurira bikorwa mu gihe cy'iminsi mirongo itatu (30) uhereye ku itariki urubanza rwamenyesherejwe umuburanyi utari uhari igihe rwasomwaga.”

2 Iyo ngingo iteganya ibikurikira: “Ubujurire bukorwa mu buryo bw’umwanzuro utanga ikirego, ugaragaza ibi bikurikira: (...) 5° urutonde rw’inenge z’urubanza zisabirwa gukosorwa n’ibindi bibazo bigomba gusuzumwa; 6° ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragaza amakosa yakozwe n’uburyo agomba gukosorwa hashingiwe ku mategeko n’ibimenyetso n’igisabwa urukiko; (...)”

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[16] Urukiko rw’Ubujurire rurasanga na none ibyo Niyonzima Pacifique avuga ko yasabye kopi y’urubanza umugororwa ushinze gufasha abandi kujurira akamubwira ko azayibona ari uko abonye inyandiko imuhamagaza kujya kuburana, nta shingiro byahabwa, kuko atabasha kugaragaza ko yasabye Ubwanditsi bw’Igororero ubufasha kugira ngo abone iyo kopi y’urubanza ngo bwange kumufasha, nyamara bigaragara ko aribwo yari yanyujijeho ibaruwa ajurira ku wa 26/07/2023 bukamufasha kuyigeza ku rukiko yajuririye. [17] Urukiko rw’Ubujurire, rushingiye ku ngingo z’amategeko zavuzwe haruguru, ku rubanza rwatanze umurongo no ku bimaze gusobanurwa, rurasanga impamvu z’ubujurire za Niyonzima Pacifique zitagomba kwakirwa ngo zisuzumwe, kuko zatanze nyuma y’ibihe byo kujurira biteganywa n’amategeko, urubanza yajuririye rukaba rugomba kuguma agaciro mu ngingo zarwo zose. III. ICYEMEZO CY’URUKIKO [18] Rwemeje ko impamvu z’ubujurire zatanze na Niyonzima Pacifique zitakiriwe, kubera ko zatanze nyuma y’ibihe by’ubujurire biteganywa n’amategeko; [19] Rwemeje ko urubanza RPA 00226/2021/HC/MUS rwaciye n’Urukiko Rukuru, Urugereko rwa Musanze ku wa 30/06/2023 rugumanye agaciro mu ngingo zarwo zose ; [20] Rutegetse ko igihano cy’igifungo cy’imyaka cumi n’itanu (15) Niyonzima Pacifique yahanishijwe muri urwo rubanza ku cyaha cyo gusambanya umwana w’imyaka icumi (10) y’amavuko kigumyeho ; [21] Ruvuze ko amagarama y’urubanza aherereye ku Isanduku ya Leta, kuko Niyonzima Pacifique yajuririye afunze, akaba asonewe kuyatanga.

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