

RWANDA / JUDGMENT

Re NSABIMANA

RLR V.1-2026

COURT

Supreme Court

DECIDED

17 October 2025

CASE / FILE NUMBER

RS/INCONST/SPEC00002/2025/SC

Source: amategeko.gov.rw · Research copy typeset by Esheria. Not court-issued or certified.

Re NSABIMANA

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2025-10-17
- Case/document no.: RS/INCONST/SPEC00002/2025/SC
- Collection: Supreme Court

Text

Page 1

Re NSABIMANA [Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/SPEC00002/2025/SC (Mukantaganzwa, P.J., Hitiyaremye, Mukamulisa, Kazungu na Kalihangabo, J.) 17 Ukwakira 2025] Itegeko Nshinga – Ihame ryo kureshya imbere y'amategeko – Mu gihe itegeko ritandukanyije abantu cyangwa rikabashyira mu byiciro, ntibytwa ivangura, iyo bikoze bifite impamvu zumvikana kandi zishingiye ku ntego ifite ireme. Itegeko Nshinga – Ihame ryo kureshya imbere y'amategeko – Kuba abaregwa ibyaha bya Jenoside baburanishijwe bwa mbere mu Rukiko rw'Ibanze batemererwa ubujurire bwa kabiri mu Rukiko Rukuru, ariko ababuraniye bwa mbere mu Rukiko Rwisumbuye baregwa ibyaha bya jenoside cyangwa ibyaha bisanzwe bemererwa ubujurire bwa kabiri mu Rukiko rw'Ubugurire, ntibyafatwa nko kutabareshyashya imbere y'amategeko, mu gihe batari mu cyiciro kimwe. Incamake y'ikibazo: Nsabimana yatanze ikirego muri uru Rukiko rw'Ikirenga avuga ko ibiteganyijwe mu ngingo ya 41 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko bibangamiye uburenganzira bwe kandi bikaba binyuranyije n'ingingo ya 15 y'Itegeko Nshinga ya Repubulika y'u Rwanda. Asobanura ko umuburanyi warezwe bwa mbere mu Rukiko Rwisumbuye ashobora kujurira bwa kabiri mu Rukiko rw'Ubugurire hitawe ku gihano yahawe kingana nibura n'imyaka 15, nk'uko biteganyijwe

muri iryo Tegeko, ariko undi muburanyi warezwe bwa mbere mu Rukiko rw'Ibanze ntiyemerewe kujuririra bwa kabiri mu Rukiko Rukuru, hatitawe ku gihano yahawe, kabone n'ubwo cyaba kingana cyangwa kirenze imyaka 15. Urega avuga ko ibyo bigaragaza ko abo baburanyi bombi batareshya imbere y'amategeko, akaba ariyo mpamvu asaba uru Rukiko gusuzuma iyo ngingo ya 41 y'Itegeko No 30/2018 ryavuzwe haruguru rukemeza ko yavanwaho cyangwa ko yahindurwa, ikongerwamo igika cyemerera Urukiko Rukuru kuburanisha ubujurire bwa kabiri ku manza zagenwemo igihano cy'igifungo kingana nibura n'imyaka 15. Mbere y'uko icyo kibazo cy'Urega gisuzumwa, uru Rukiko rw'Ikirenga rwabanje gusuzuma niba Urega afite inyungu yo kurega muri uru rubanza, maze rusanga ayifite kuko iyo ngingo y'itegeko aregera ireba abaturage muri rusange, ku buryo ishobora kugira ingaruka ku burenganzira bwabo, nawe arimo. Mu mizi y'uru rubanza Urega yagaragaje ko uregwa icyaha cya Jenocide waburanishijwe n'Urukiko rw'Ibanze akaba adafite amahirwe yo kuba yajurira ku nshuro ya kabiri, mu gihe abari ku rwego rw'abayobozi baregwa ibyaha bya jenocide cyangwa abaregwa ibyaha bisanzwe baburanishijwe bwa mbere n'Urukiko Rwisumbuye, bo bashobora kujurira kugera no mu Rukiko rw'Ubugurire. Asanga umuturage wo hasi wahamijwe ibyaha bya Jenocide asa n'uwakumiriwe ku mahirwe yo kuba yakwemererwa ubujurire bwa kabiri, kubera ko iyo ngingo ya 41 aregera idatanga uburenganzira bumwe ku baregwa bashyizwe mu byiciro bitandukanye, nyamara hari aho ibyaha abayobozi bakoze biba ari bimwe n'ibyakozwe n'abo ku rwego rwo hasi, ndetse ibihano bahabwa kenshi bikaba bidasumbana. Urega asoza asaba ko uru Rukiko rwasuzumana ubushishozi iki kibazo cye, rukagitangaho umurongo, kuko abantu bose bareshya imbere y'amategeko kandi akaba agomba kubarengera ku buryo bumwe nk'uko biteganywa n'ingingo ya 15 y'Itegeko Nshinga. Uhagarariye Leta y'u Rwanda muri uru rubanza avuga ko ari byiza kubanza gusobanura itandukaniro ry'ibyaha bisanzwe n'ibyaha bya Jenocide yakorewe Abatutsi mu 1994, bifatwa nk'ibyaha byihariye. Agaragaza ko amateka y'imihaniye y'ibi byaha yerekana ko kuva byatangira gukurikiranwa no guhanwa, byagiye bihabwa umwihariko, bikaba bitarigeze bikurikiranwa cyangwa ngo bihanwe mu buryo bumwe n'ibyaha bisanzwe, ko kandi ibyo nta kibazo biteye. Uhagarariye Leta avuga kandi ko akenshi ibyaha byihariye (specific offences) bihabwa umwihariko bigashyirirwaho n'amategeko yihariye abigenga, ko imwe mu mpamvu ibyaha bya jenocide byahawe

Page 2

umwihariko, ari ukuba bikenera kuburanishirizwa aho byakorewe, ukurikiranwe akagezwa imbere y'abaturage batuye ahakorewe icyaha. Muri icyo gihe, guca urubanza n'ubwo bikorwa n'umucamanza, umuryango nyarwanda ugira icyo uvuga ku cyaha cyakozwe, bityo umutwaro wo guca urwo rubanza ukagabanuka ku mucamanza, kuko ubutabera buba bwatangiwe imbere y'abaturage banabigizemo uruhare. Ibi bikaba aribyo bituma bitaba ngombwa ko habaho ubujurire bwa kabiri. Uhagarariye Leta y'u Rwanda akomeza avuga ko kuba hatemerwa ubujurire bwa kabiri mu Rukiko Rukuru ku bantu baregwa ibyaha bya Jenocide baburanishijwe bwa mbere mu Rukiko rw'Ibanze, bitafatwa nko kunyuranya n'Itegeko Nshinga, hagendewe ku kugereranya ibi byaha n'ibyaha bisanzwe mu gihe biri mu byiciro bitandukanye, cyangwa ngo abe yakwemeza ko abantu bafashwe mu buryo butangana imbere y'amategeko. Uhagarariye Leta y'u Rwanda

asoza avuga ko ingingo ya 41 y'Itegeko No 30/2018 ryavuzwe haruguru itanyuranyije n'ingingo ya 15 y'Itegeko Nshinga, kuko Umushingamategeko atibeshye cyangwa se ngo abe yaribagiwe nk'uko urega abivuga, ahubwo yashatse gutandukanya imikurikiranire n'imihanire y'ibyiciro by'abakoze ibyaha bya Jenocide yakorewe Abatutsi mu 1994. Incamake y'icyemezo: 1. Agamije guca umuco wo kudahana no kwihutisha imanza za Jenocide zashoboraga gutwara igihe kirekire cyane iyo ziburanishwa mu buryo busanzwe, Umushingamategeko yaremye ibyiciro cyangwa inzego mu baregwa ibyaha bya jenocide yakorewe Abatutsi mu 1994, hakurikijwe uruhare uregwa yagize n'urwego rw'ubuyobozi yarimo mu gihe icyaha cyakorwaga. Ibi bikaba atari ukunyuranya n'ihame ryo kureshya imbere y'amategeko, ahubwo ni impamvu zumvikana kandi zishingiye ku ntego ifite ireme.

2. Kuba abaregwa ibyaha bya Jenocide baburanishijwe bwa mbere mu Rukiko rw'Ibanze batemererwa ubujurire bwa kabiri mu Rukiko Rukuru, ariko ababuraniye bwa mbere mu Rukiko Rwisumbuye baregwa ibyaha bya jenocide cyangwa ibyaha bisanzwe bemererwa ubujurire bwa kabiri mu Rukiko rw'Ubugurire, ntibyafatwa nko kutabareshesha imbere y'amategeko, mu gihe batari mu cyiciro kimwe. Ikirego gisaba kwemeza ko ingingo y'Itegeko inyuranyije n'Itegeko Nshinga nta shingiro gifite. Amategeko yashingiweho: Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2023, ingingo ya 15. Itegeko Ngenga N° 16/2004 ryo ku wa 19/6/2004 rigena imiterere, ububasha n'imikorere by'Inkiko Gacaca zishinzwe gukurikirana no gucira imanza abakoze ibyaha bya jenocide n'ibindi byaha byibasiye inyokomuntu byakozwe kuva tariki ya 1 Ukwakira 1990, ingingo ya 51. Itegeko Ngenga N° 40/2000 ryo ku wa 26/1/2001 rigena imitunganyirize y'ikurikirana ry'ibyaha bigize icyaha cy'itsembabwoko n'itsembatsemba cyangwa ibyaha byibasiye inyokomuntu byakozwe hagati y'itariki ya mbere Ukwakira 1990 n'ya 31 Ukuboza 1994, ingingo ya 51 n'ya 52. Itegeko Ngenga N° 08/96 ryo ku wa 30 Kanama 1996 rigena imitunganyirize y'ikurikirana ry'ibyaha bigize icyaha cy'itsembabwoko n'itsembatsemba cyangwa ibyaha byibasiye inyokomuntu byakozwe kuva tariki ya 1 Ukwakira 1990, ingingo ya 2. Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 26, 29, 41, 52 n'ya 72. Imanza zifashishijwe: RS/INCONST/SPEC00005/2022/SC, Re Ndayisabye Alexis, rwaciwe n'Urukiko rw'Ikirenga ku wa 28/07/2023. RS/INCONST/SPEC00002/2022/SC, Re Kamanzi Anaclet, rwaciwe n'Urukiko rw'Ikirenga ku wa 31/03/2023. RS/INCONST/SPEC00004/2021/SC, Re Ngendahayo Kabuye rwaciwe n'Urukiko rw'Ikirenga ku wa 10/02/2023.

Page 3

RS/INCOST/SPEC00001/2022/SC, Re Murangwa Edouard rwaciwe n'Urukiko rw'Ikirenga ku wa 16/12/2022. RS/INCONST/SPEC 00001/ 2019/SC, Re Murangwa Edouard rwaciwe 'Urukiko rw'Ikirenga ku wa 29/11/2019. RS/SPEC/0001/16/CS, Re Akagera Business Group Ltd rwaciwe n'Urukiko rw'Ikirenga ku wa 23/09/2016. RS/INCONST/PEN0001/13/CS, Re Bimenyimana André rwaciwe n'Urukiko rw'Ikirenga ku wa 04/10/2013. Urubanza I. IMITERERE Y'URUBANZA [1] Nsabimana Ildephonse bakunze kwita Ntabarimfasha, Nsabimana Ildephonse muri uru rubanza, yatanze ikirego mu Rukiko rw'Ikirenga, arusaba kwemeza ko ingingo ya 41 y'Itegeko N° 30/2018

ryo ku wa 02/06/2018 rigena ububasha bw'inkiko¹ nk'uko ryahinduwe inyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda² (Itegeko Nshinga muri uru rubanza), cyandikwa kuri RS/INCONST/SPEC00002/2025/SC. [2] Nsabimana Ildephonse na Me Kwizera Bernard hamwe na Me Dushimire Jeannette bamwunganira basobanura ko ibikubiye mu ngingo ya 41 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rimaze kuvugwa bibangamiye uburenganzira bwe kandi ko binyuranyije n'ingingo ya 15 y'Itegeko Nshinga. Ibyo babishingira ku mpamvu yuko umuburanyi warezwe bwa mbere mu Rukiko Rwisumbuye ashobora kujurira bwa kabiri mu Rukiko rw'Ubujurire hitawe ku gihano yahawe kingana nibura n'imyaka 15 nk'uko biteganywa mu ngingo ya 52 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru, nyamara undi muburanyi warezwe bwa mbere mu Rukiko rw'Ibanze, rimwe na rimwe wanahawe amabwiriza n'uregwa bwa mbere mu Rukiko Rwisumbuye, akaba atemerewe kujuririra bwa kabiri mu Rukiko Rukuru, hatitawe ku gihano yahawe, kabone nubwo cyaba kingana cyangwa kirenze imyaka 15. [3] Bavuga ko ibimaze gusobanurwa bigaragaza ko abo baburanyi bombi batareshya imbere y'amategeko, akaba ariyo mpamvu mu iburanisha ryo ku wa 10/06/2024 ryabereye mu Rukiko Rukuru, Urugereko rwiheriye ruburanisha ibyaha byo ku rwego mpuzamahanga n'ibyambuka imbibi, basabye kandi bemererwa n'urwo Rukiko ko iburanisha risubikwa, kugira ngo icyo kibazo bagishyikirize Urukiko rw'Ikirenga ngo rubanze rugisuzume kandi rugihe umurongo hashingiwe ku ngingo ya 72, igika cya 1 n'icya 2, y'Itegeko No 30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru³. [4] Nsabimana Ildephonse n'abamwunganira bavuga ko basaba Urukiko rw'Ikirenga gusuzuma ingingo ya 41 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 yavuzwe haruguru, rukemeza ko yavanwaho cyangwa ko yahindurwa, ikongerwamo igika cyemerera Urukiko Rukuru kuburanisha ubujurire bwa kabiri ku manza zagenwemo igihano cy'igifungo kingana nibura n'imyaka 15 nk'uko byateganyijwe mu ngingo ya 52 y'itegeko ryavuzwe haruguru.

1Iteganya ko Urukiko Rukuru ruburanisha mu bujurire bwa kabiri, imanza z'inshinjabyaha zaciwe mu bujurire bwa mbere n'Urukiko Rwisumbuye mu gihe izo manza: 1° zashingiye ku itegeko ritariho cyangwa zaciwe n'urukiko rutabifitiye ububasha; 2° zatanzwemo igihano kidateganyijwe n'amategeko; 3° zaciwe hashingiwe ku kimenyetso, inyandiko cyangwa imyanzuro byatanzwe nyuma yo gupfundikira iburanisha kandi hatabayeho gusubukura iburanisha; 4° zaciwe n'inteko itujuje umubare ugenwe; 5° zasomwe n'umucamanza utaraziburanishije; 6° zitaburanishijwe mu ruhamwe kandi nta muhezo wategetswe. 2Iyo ngingo iteganya ko abantu bose bararashya imbere y'amategeko. Amategeko abarengera ku buryo bungana. 3Iyo ngingo iteganya ko umuntu ku giti cye, ikigo cyangwa umuryango ufite ubuzimagatozi bashobora kuregera Urukiko rw'Ikirenga basaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga iyo babifitemo inyungu.

Page 4

- [5] Me Cyubahiro Fiat uhagarariye Leta y'u Rwanda avuga ko ingingo ya 41 y'Itegeko No 30/2018 ryo ku wa 02/06/2018 imaze kuvugwa ntaho inyuranyije n'ingingo ya 15 y'Itegeko Nshinga kuko iha abantu bose bireba uburenganzira bungana ku bujurire bwa kabiri mu Rukiko Rukuru mu gihe habayeho amakosa y'imiburanishirize. [6] Iburanisha ryabereye mu ruhamwe ku wa 15/09/2025, Nsabimana Ildephonse ahagarariwe na Me Kwizera Bernard

hamwe na Me Dushimire Jeannette, naho Leta y'u Rwanda ihagarariye na Me Cyubahiro Fiat. Urukiko rwabanje gusuzuma ikibazo cyo kumenya niba Nsabimana Ildephonse afite inyungu mu rubanza. Kumenya niba Nsabimana Ildephonse afite inyungu yo kurega muri uru rubanza [7] Urukiko rumaze kumva abahagarariye Nsabimana Ildephonse n'uhagarariye Leta bemeranya ko urega afite inyungu mu rubanza, mu cyemezo rwafatiye mu ntebe, rwemeje ko Nsabimana Ildephonse afite inyungu mu rubanza kuko ingingo y'itegeko aregera ireba abaturage muri rusange, ku buryo ishobora kugira ingaruka ku burenganzira bwabo, nawe arimo; iyi ikaba ari imwe mu mpamvu zemejwe n'Urukiko rw'Ikirenga⁴, zishingirwaho mu gusuzuma ikibazo cy'inyungu y'uregera itegeko kuba rinyuranyije n'Itegeko Nshinga. [8] Ku birebana n'imizi y'urubanza, ababuranyi bagiye impaka ku kibazo cyo kumenya niba ingingo ya 41 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko nk'uko ryahinduwe inyuranyije n'ingingo ya 15 y'Itegeko Nshinga. II.

ISESENGURA RY'IKIBIBAZO KIGIZE URUBANZA Kumenya niba ingingo ya 41 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko nk'uko ryahinduwe inyuranyije n'ingingo ya 15 y'Itegeko Nshinga [9] Me Kwizera Bernard hamwe na Me Dushimire Jeannette bahagarariye Nsabimana Ildephonse, bavuga ko impamvu yaregeye ko ingingo ya 41 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko nk'uko ryahinduwe inyuranyije n'ingingo ya 15 y'Itegeko Nshinga, ari uko ububasha bw'Urukiko Rukuru bwo kuburanisha imanza z'inshinjabyaha ku rwego rw'ubujurire bwa kabiri bushingiye kuri iyo ingingo ya 41, nyamara ikaba itarateganyijwe ko ababuranyiye bwa mbere mu Rukiko rw'Ibanze bahanishijwe igifungo cy'imyaka 15 gusubiza hejuru, bafite uburenganzira bwo kujuririra bwa 2 mu Rukiko Rukuru nk'uko biteganyijwe mu ngingo ya 52 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rimaze kuvugwa haruguru⁵. [10] Bakomeza bavuga ko mu ngingo ya 26 y'Itegeko rimaze kuvugwa, hateganyijwe ko Urukiko rw'Ibanze ruburanisha ibyaha bihanishwa igifungo kitarengeje imyaka 5 uretse ibyahariwe izindi nkiko, nyamara ko bigaragara ko Umushingamategeko yibagiye ko mu bubasha bw'Urukiko rw'Ibanze, hashyizwemo n'ubwo kuburanisha ibyaha bya Jenocide yakorewe Abatutsi bihanishwa igifungo cy'imyaka 5 ndetse kikaba gishobora kugera no ku gifungo cya burundu. [11] Basobanura ko ibyaha bya Jenocide byagiye biregwa abahoze ari abayobozi, bijya gusa n'ibyarezwe abari abaturage basanzwe, ariko ko mu kubaregera inkiko, hashingirwa kuri qualité y'ubuyobozi, uregwa icyaha cya Jenocide waburanishijwe n'Urukiko rw'Ibanze akaba adafite amahirwe

4Urubanza rubanziriza urundi mu rubanza RS/INCOST/SPEC00001/2022/SC rwo ku wa 16/12/2022 haburana Murangwa Edouard, p.10, igika cya 10. 5Iyo ngingo iteganyije ko Urukiko rw'Ubujurire rufite kandi ububasha bwo kuburanisha mu rwego rw'ubujurire bwa kabiri imanza zaciye n'Urukiko Rukuru, Urukiko Rukuru rw'Ubucuruzi n'Urukiko Rukuru rwa Gisirikare, iyo izo manza: ... 9° zagenwemo igifungo kingana nibura n'imyaka cumi n'itanu (15). Mu manza nshinjabyaha igihano cy'igifungo cyagenwe ni cyo cyonyine gishingirwaho mu kugena ububasha bw'Urukiko rw'Ubujurire

Page 5

yo kuba yajurira ku nshuro ya kabiri, mu gihe abari ku rwego rw'abayobozi cyangwa abaregwa ibyaha bisanzwe baburanishijwe bwa mbere n'Urukiko Rwisumbuye⁶, bo bashobora kujurira kugera no mu Rukiko rw'Ubujurire. Basanga umuturage wo hasi wahamijwe ibyaha bya Jenocide asa n'uwakumiriwe ku mahirwe yo kuba yakwemererwa ubujurire bwa kabiri, kubera ko ingingo ya 41 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru idatanga uburenganzira bumwe ku baregwa bashyizwe mu byiciro bitandukanye, nyamara hari aho ibyaha abayobozi bakoze biba ari bimwe n'ibyakozwe n'abo ku rwego rwo hasi, ndetse ibihano bahabwa kenshi bikaba bidasumbana. [12] Me Kwizera Bernard hamwe na Me Dushimire Jeannette bavuga kandi ko mu rubanza RS/INCONST/SPEC00005/2022/SC rwaciwe ku wa 28/07/2023, haburana Ndayisabye Alexis, rwagarutsweho n'Intumwa ya Leta mu myanzuro ye, uwari uhagarariye Leta icyo gihe na we yemeraga ko mu ngingo ya 41 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru, hagaragaramo ikibazo, ndetse akanemera ko byakosorwa, ariko akagaragaza ku rundi ruhande ko hashingiwe ku cyaregwe n'icyasabwe, kvanaho iyo ngingo ntacyo byari kumarira urega, ari nayo mpamvu ikirego cyari cyatanze kitasuzumwe. Bongeraho ko uru rubanza rutandukanye n'urumaze kuvugwa haruguru, kuko nubwo ikiregerwa ari kimwe, uburyo bwo kwiregura atari bumwe, bitewe nuko icyaregwe muri uru rubanza ari uko ingingo ya 41 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru inyuranyije n'ingingo ya 15 y'Itegeko Nshinga, kuko abantu bari mu cyiciro iki n'iki, bakwiriye kurengerwa mu buryo bumwe, hatitawe ku rukiko buri wese aburaniramo. [13] Basoza bavuga ko ubwo abantu bose bareshya imbere y'amategeko kandi akaba agomba kubarengera ku buryo bumwe nk'uko biteganywa n'ingingo ya 15 y'Itegeko Nshinga, basaba Urukiko rw'Ikirenga gusuzumana ubushishozi ikibazo Nsabimana Ildephonse yarushyikirije, rukagitangaho umurongo, cyane cyane ko rufite ububasha bwo gukuraho cyangwa guhindura ingingo z'amategeko iyo rusanze zinyuranyije n'Itegeko Nshinga n'andi mategeko. [14] Me Cyubahiro Fiat uhagarariye Leta y'u Rwanda, avuga ko ari byiza kubanza gusobanura itandukaniro ry'ibyaha bisanzwe (droit commun) n'ibyaha bya Jenocide yakorewe Abatutsi mu 1994, bifatwa nk'ibyaha byihariye (specific offences). Asobanura ko amateka y'imihaniye y'ibi byaha yerekana ko kuva byatangira gukurikiranwa no guhanwa, byagiye bihabwa umwihariko, bikaba bitarigeze bikurikiranwa cyangwa ngo bihanwe mu buryo bumwe n'ibyaha bisanzwe (droit commun), ko kandi ibyo nta kibazo biteye. [15] Akomeza avuga ko akenshi ibyaha byihariye (specific offences) bihabwa umwihariko bigashyirirwaho n'amategeko yihariye abigenga. Asobanura ko imwe mu mpamvu byahawe umwihariko, ari ukuba bikenera kuburanishirizwa aho yakorewe, ukurikiranwe akagezwa imbere y'abaturage batuye ahakorewe icyaha, ko muri icyo gihe, guca urubanza n'ubwo bikorwa n'umucamanza, umuryango nyarwanda ugira icyo uvuga ku cyaha cyakozwe (justice de proximité), bityo umutwaro wo guca urwo rubanza ukagabanuka ku mucamanza kuko ubutabera buba bwatangiye imbere y'abaturage banabigizemo uruhare. Avuga ko ibi bituma bitaba ngombwa ko habaho ubujurire bwa kabiri. [16] Me Cyubahiro Fiat avuga kandi ko kuba hatemerwa ubujurire bwa kabiri mu Rukiko Rukuru ku bantu baregwa ibyaha bya Jenocide yakorewe Abatutsi mu 1994 baburanishijwe bwa mbere mu Rukiko rw'Ibanze, bitafatwa nko kunyuranya n'Itegeko Nshinga, hagendewe ku igereranywa rikorwa hagati y'ibyo byaha n'ibyaha

bisanzwe, ko rero bidakwiye ko umuntu agereranya ibyaha biri mu byiciro

6 Ingingo ya 29 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko nkuko ryavuguruwe, iteganya ko Inkiko Zisumbuye ziburanisha ku rwego rwa mbere ibyaha bikurikira: ... 2° ibyaha bya jenocide yakorewe Abatutsi n'ibyaha byibasiye inyokomuntu byakozwe mu Rwanda hagati y'itariki ya mbere Ukwakira 1990 n'ya 31 Ukuboza 1994 n'aba bakurikira: a) umuntu wakoze ibyaha cyangwa ibikorwa by'ubufatanyacyaha bimushyira mu bacuze umugambi, abawuteguye, abawushishikarije abandi, abagenzuye n'abayoboze jenocide cyangwa ibindi byaha byibasiye inyokomuntu, hamwe n'ibitso bye; b) umuntu wari icyo gihe mu nzego z'ubuyobozi mu rwego rw'Igihugu cyangwa urwa Perefegitura n'ibitso bye.

Page 6

bitandukanye kandi biburanishwa n'inkiko zitari ku rwego rumwe, ngo abe yakwemeza ko abantu bafashwe mu buryo butangana imbere y'amategeko. [17] Ashingiye kuri ibyo bisobanuro, asanga ingingo ya 15 y'Itegeko Nshinga yarakoreshejwe n'urega mu mwanya utari uwayo cyangwa ayiha ibisobanuro bitari byo, kuko ntaho Itegeko rigena ububasha bw'inkiko ryafashe abantu bakurikiranyweho ibyaha bisanzwe n'abakurikiranyweho ibyaha bya Jenocide yakorewe Abatutsi mu 1994 mu buryo butandukanye, kubera ko, nk'uko yabisobanuye haruguru, ibyo byaha biri mu byiciro bitandukanye kandi bikaba biburanishwa n'inkiko zitari ku rwego rumwe. [18] Yongeraho ko abakurikiranyweho ibyaha bya Jenocide yakorewe Abatutsi mu 1994 baburanishwa n'Inkiko z'Ibanze ku rwego rwa mbere ari abatari abayobozi, naho abari abayobozi bakaba aribo baburanishwa ku rwego rwa mbere n'Inkiko Zisumbuye. [19] Me Cyubahiro Fiat avuga kandi ko ibyaha bya Jenocide byahawe umwihariko nk'uko byashimangiwe mu rubanza RS/INCONST/SPEC00002/2022/SC rwaciwe ku wa 31/03/2023, haburana Kamanzi Anaclet wari waregeye gukuraho ingingo ya 197 y'Itegeko rigena imiburanishirize y'imanza z'inshinjabyaha. Avuga ko muri urwo rubanza, Urukiko rwasanze kuba abantu bashyirwa mu byiciro bitandukanye hagamijwe impamvu yemewe, bidakwiriye gufatwa nko kutareshyeshya abantu imbere y'amategeko. Asanga rero kuba ingingo ya 41 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 nk'uko ryahinduwe yaragennye ko ababuraniye mu Rukiko rw'Ibanze batemerewe ubujurire bwa 2, bitafatwa nko kutareshyeshya abaturage imbere y'amategeko ndetse ko bidasobanuye kubavangura. [20] Asobanura kandi ko ikibazo kijyanye no kumenya niba ingingo ya 41 y'Itegeko rigena ububasha bw'inkiko inyuranyije n'ingingo ya 15 y'Itegeko Nshinga cyasuzumwe mu rubanza RS/INCONST/SPEC00005/2022/SC rwaciwe ku wa 28/07/2023, haburana Ndayisabye Alexis, Urukiko rw'Ikirenga rukaba rwaragifasheho icyemezo, ko rero icyo kibazo kitagombye kongera kugarurwa cyane cyane ko muri urwo rubanza, Ndayisabye Alexis yemeye ko ingingo ya 41 yavuzwe haruguru itanyuranyije n'Itegeko Nshinga, ko ahubwo hakosorwa imyandikire y'iyi ingingo gusa. [21] Asoza avuga ko Umushingamategeko atibeshye cyangwa se ngo abe yaribagiwe nk'uko urega abivuga, ahubwo yashatse gutandukanya ibyiciro by'abakoze ibyaha bya Jenocide yakorewe Abatutsi mu 1994, ko rero ingingo ya 41 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko nk'uko ryahinduwe, ntaho inyuranyije n'ingingo ya 15 y'Itegeko Nshinga. UKO URUKIKO RUBIBONA [22] Ikibazo gisuzumwa muri uru rubanza ni icyo kumenya niba ingingo ya 41 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko nk'uko

ryahinduwe, inyuranyije n'ingingo ya 15 y'Itegeko Nshinga. [23] Nk'uko byasobanuwe haruguru, urega avuga ko kuba abaregwa ibyaha bya Jenocide yakorewe Abatutsi baburanira bwa mbere mu Nkiko z'Ibanze, bakaba batemerewe kujurira bwa kabiri mu Rukuru Rukuru iyo bahanishijwe nibura igifungo cy'imyaka 15 nk'uko bigenda ku baburanira bwa mbere mu Rukiko Rwisumbuye bo bemerewe kujurira bwa kabiri mu Rukiko rw'Ubujurire ko binyuranye n'ihame ryo kureshya imbere y'amategeko riteganywa mu ngingo ya 15 y'Itegeko Nshinga. [24] Mu rubanza RS/SPEC/0001/16/CS rwaciwe ku wa 23/09/2016, haburana Akagera Business Group Ltd, uru Rukiko rwasobanuye ko ibikubiye mu ngingo ya 15 y'Itegeko Nshinga bivuga ko hatagomba kubaho ivangura rituma abantu batangerwa mu buryo bumwe cyangwa kutagira uburenganzira aho bakwiye kubugira. Rwagaragaje ariko ko kureshya imbere y'amategeko no kutavangura bitavuga ko gutandukanya abantu ubwabyo mu bihe byose ari ivangura, ko ahubwo gutandukanya abantu cyangwa ibyiciro by'abantu bishobora kuba ngombwa bitewe n'ikigambiriwe, hari impamvu zumvikana zishingiye

Page 7

ku ntego ifite ireme. Umurongo wemejwe muri urwo rubanza washimangiwe mu manza zitandukanye zaciwe nyuma n'uru Rukiko⁷. [25] Ibyemejwe n'uru Rukiko mu manza zinyuranye, bigaragaza ko nubwo ingingo ya 15 y'Itegeko Nshinga ishyiraho ihame ryo kureshya imbere y'amategeko, hari ubwo Leta itandukanya abantu cyangwa ikabashyira mu byiciro, kandi ntibwitwe ivangura, iyo ibikoze ifite impamvu zumvikana kandi zishingiye ku ntego ifite ireme. [26] Ku bijyanye n'uru rubanza, nk'uko byasobanuwe haruguru, Nsabimana Ildephonse ari mu cyiciro cy'abaregwa baburanira bwa mbere mu Rukiko rw'Ibanze⁸. Ubushinjacyaha bwamureze mu Rukiko rw'Ibanze rwa Gisenyi ubufatanyacyaha muri Jenocide yakorewe Abatutsi, urwo Rukiko rwemeza ko kimuhama, rumuhanisha igifungo cya burundu, ajuririye mu Rukiko Rwisumbuye rwa Rubavu, ruhamishaho igihano yahawe ku rwego rubanza. Yajuririye bwa kabiri mu Rukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibe, mu gihe ubujurire bwe bwari butarasuzumwa, arusaba ko iburanisha riba rihagaze kugira ngo atange ikirego muri uru Rukiko, asaba ko ingingo ya 41 y'Itegeko N^o 30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru yakurwaho kuko inyuranyije n'ya 15 y'Itegeko Nshinga, cyangwa se igahindurwa nk'uko byasobanuwe haruguru. [27] Ku bijyanye n'ishyirwaho ry'ibyiciro by'abaregwa ibyaha bya Jenocide yakorewe Abatutsi mu 1994, Itegeko Ngenga N^o 08/96 ryo ku wa 30 Kanama 1996 rigena imitunganyirize y'ikurikirana ry'ibyaha bigize icyaha cy'itsembabwoko n'itsembatsemba cyangwa ibyaha byibasiye inyokomuntu byakozwe kuva tariki ya 1 Ukwakira 1990 ryashyize abaregwa mu nzego enye⁹. Nyuma y'uko hagiyeho Itegeko Ngenga N^o 40/2000 ryo ku wa 26/1/2001 rigena imitunganyirize y'ikurikirana ry'ibyaha bigize icyaha cy'itsembabwoko n'itsembatsemba cyangwa ibyaha byibasiye inyokomuntu byakozwe hagati y'itariki ya mbere Ukwakira 1990 n'ya 31 Ukuboza 1994, inzego z'abaregwa zakomeje kuba enye¹⁰ ariko ziravugurwa¹¹. Hakurikiyeho Itegeko Ngenga N^o 16/2004 ryo ku wa 19/6/2004 rigena imiterere, ububasha n'imikorere by'Inkiko Gacaca zishinzwe gukurikirana no gucira imanza abakoze ibyaha bya jenocide n'ibindi byaha byibasiye inyokomuntu byakozwe kuva tariki ya 1 Ukwakira 1990, naryo rishyira abaregwa mu nzego, ariko ziravugururwa¹².

7Ingero: Urubanza RS/INCONST/SPEC00001/2019/SC, rwaciwe ku wa 29/11/2019, haburana Murangwa Edward, igika cya 34; n'urubanza No RS/INCONST/SPEC00004/2021/SC, rwaciwe n'Urukiko rw'Ikirenga ku wa 10/02/2023, haburana Ngendahayo Kabuye, igika cya 58. 8Ingingo ya 26 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko nkuko ryavugururwe, iteganya ko Inkiko z'Ibanze ziburanisha ibyaha bya Jenocide yakorewe Abatutsi n'ibyaha byibasiye inyokomuntu byakozwe mu Rwanda hagati y'itariki ya mbere Ukwakira 1990 n'ya 31 Ukuboza 1994 bikurikira: a) ibikorwa by'iyicarubozo; b) ubwicanyi; c) ibikorwa byo gusambanya ku gahato cyangwa kwangiza imyanya ndangagitsina; d) ibikorwa by'ubushinyaguzi ku murambo; e) ibikorwa byo kugirira nabi abandi bikabije bikabaviramo gupfa; f) ibikorwa byo gukomeretsa umuntu cyangwa kumugirira nabi bikabije hagambiriwe kumwica kabone n'ubwo umugambi wo kwica utagezweho; g) ibindi byaha byakorewe abantu bitagambiriye kwica; h) ibindi byaha byakozwe n'umuntu wari mu nzego z'ubuyobozi ku rwego rwa superefegitura cyangwa urwa Komini, mu mashyamba ya politiki, mu gipolisi cya Komini cyangwa mu mitwe yitwara gisirikari, akaba yarakoze ibyo byaha cyangwa akoshya abandi kubikora hamwe n'ibitso bye. 9Ingingo ya 2 y'iryo Tegeko Ngenga. 10Ingingo ya 51 n'ya 52 z'iryo Tegeko Ngenga. 11Raporo y'ibikorwa by'Inkiko Gacaca in <https://justice-survivors.com>, 2012, p.42: ku bijyanye n'inzego z'abaregwa, iri Tegeko ryagumanye inzego z'abaregwa uko zari zimeze ariko rishyira mu bubasha bw'Inkiko Gacaca inzego eshatu kuko urwa mbere rwagumye mu bubasha bw'Inkiko zisanze. Ku baregwa bo mu rwego rwa mbere, abayobozi ku rwego rwa Selire na Segiteri iri Tegeko ryateganyije ko bazajya bashyirwa mu rwego hashingiwe ku byaha bakurikiranyweho aho gushingira ku nshingano z'ubuyobozi bari bafite. Ryateganyije kandi icyaha cyo gusambanya ku gahato kitari giteganyijwe mu itegeko rya 1996.... 12Ingingo ya 51: inzego z'abaregwa zabaye eshatu.

Page 8

[28] By'umwihariko ku birebana n'Inkiko Gacaca, mu rubanza rwa Kamanzi Anaclet,¹³ rwanashimangiye ibyemejwe mu rundi rubanza rwa Bimenyimana André¹⁴, uru Rukiko rwasobanuye ko ubwo Umushingamategeko yashyiragaho icyiciro cyihariye cy'abaregwa ibyaha bya Jenocide yakorewe Abatutsi n'uburyo bw'imiburanishirize bwihariye ugereranyije n'icyiciro cy'abakurikiranyweho ibyaha bisanzwe, mu byo yari agamije harimo guca umuco wo kudahana no kwihutisha imanza za Jenocide zashoboraga gutwara igihe kirekire cyane iyo ziburanishwa mu buryo busanzwe. [29] Nk'uko byagaragajwe haruguru, kugira ngo Umushingamategeko agere ku ntego yari agamije, muri icyo cyiciro cy'abaregwa ibyaha bya Jenocide, yaremyemo ibindi byiciro cyangwa inzego, hakurikijwe uruhare uregwa yagize n'urwego rw'ubuyobozi yarimo mu gihe icyaha cyakorwaga. [30] Aho Inkiko Gacaca ziviriye¹⁵, imanza zose ziregwamo abakoze ibyaha bya Jenocide yakorewe Abatutsi zagiye mu bubasha bw'inkiko zisanze. Muri urwo rwego, abari mu nzego z'ubuyobozi mu rwego rw'Igihugu cyangwa urwa Perefegeitura n'ibitso byabo, n'abakoze ibyaha cyangwa ibikorwa by'ubufatanyacyaha bibashyira mu bacuze umugambi, abawuteguye, abawushishikariye abandi, abagenzuye n'abayoboye Jenocide cyangwa ibindi byaha byibasiye inyokomuntu, hamwe n'ibitso byabo, baburanishwa n'Inkiko Zisumbuye nk'uko biteganywa mu ngingo ya 29 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 ryamaze

kuvugwa. Abasigaye bose baburanishwa n'Inkiko z'Ibanze hashingiwe ku ngingo ya 26 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 yavuzwe haruguru. [31] Urukiko rurasanga, kuba Inkiko zimaze kuvugwa zitari ku rwego rumwe, n'inzego cyangwa ibyiciro by'abaregwa ibyaha bya Jenocide yakorewe Abatutsi ziburanisha bikaba bitandukanye, bituma ibivugwa na Nsabimana Ildephonse n'abamwunganira ko ingingo ya 41 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru, isumbanya ababuranyi, nta shingiro bikwiye guhabwa. Ikibazo cyaba kuri iyo ngingo mu gihe yaba idafata kimwe abarezwe bwa mbere mu Rukiko rw'Ibanze, bamwe ikabemerera kujurira bwa kabiri mu Rukiko Rukuru, abandi ntibabyemererwe nyamara bari mu cyiciro kimwe, kandi siko bimeze muri uru rubaza. [32] Hashingiwe ku bisobanuro byose byatanze haruguru, Urukiko rurasanga ingingo ya 41 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko nk'uko ryahinduwe, itanyuranyije n'ingingo ya 15 y'Itegeko Nshinga. III. ICYEMEZO CY'URUKIKO [33] Rwemeje ko ikirego cyatanze na Nsabimana Ildephonse bakunze kwita Ntabarimfasha, gisaba kwemeza ko ingingo ya 41 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko nk'uko ryahinduwe, inyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda, nta shingiro giftie. [34] Rwemeje ko ingingo ya 41 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko nk'uko ryahinduwe, itanyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda.

13Urubanza RS/Inconst/SPEC00002/2022/SC rwaciwe ku wa 31/03/2023, igika cya 48. 14Urubanza RS/Inconst/Pen 0001/13/CS rwaciwe ku wa 04/10/2013, igika cya 17. 15Zavanyweho n'Itegeko Ngenga N° 04/2012/OL ryo ku wa 15/06/2012 rikuraho Inkiko Gacaca, rikanagena uburyo bwo gukemura ibibazo byari mu bubasha bwazo.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.amategeko.gov.rw/view/doc/10276/10818>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/nsabimana-ildephonse-v-republic-of-rwanda-equalitybeforethelaw-supreme-court-2025>

Prepared on 13 October 2026 · Esheria