

RWANDA / JUDGMENT

UBUSHINJACYAHA vs NSABIMANA

RP 00009/2024/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA vs NSABIMANA

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Text

Page 1

UBUSHINJACYAHA vs NSABIMANA [Rwanda URUKIKO RW'UBUJURIRE – RP 00009/2024/CA (Rugabirwa, P.J.) 25 Ugushyingo 2024] Amategeko yerekeye imiburanishirize y'imanza nshinjabyaha – Gusubirishamo urubanza ku mpamvu z'akarengane – Urubanza Perezida w'Urukiko rw'Ikirenga yemeje ko rusubirwamo – Iyo ufunzwe mu rwego rwo kurangiza urubanza mpanabyaha, asabye ko urubanza rwamufunze rusubirwamo ku mpamvu z'akarengane, akabyemererwa, ntakibuza ko yaba afunguwe mu gihe ategereje ko urubanza rwamufunze rusubirwamo kuko imanza zose Perezida w'Urukiko rw'Ikirenga yemeje ko zigomba kongera kuburanishwa ku mpamvu z'akarengane, irangizwa ryazo rihita rihagarara kabone n'iyi imihango yo kururangiza yaba yaratangiye. Incamake y'ikibazo: Mu rubanza no RP 01571/2020/TGI/NYGE, Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko NSABIMANA Marcel ahamwa n'icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi (boules 158), rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu ya miliyoni icumi (10.000.000 Frw) hashingiwe ku kuba yaraburanye yemera icyaha anagisabira imbabazi. Mu bujurire mu Rukiko Rukuru, rwaciye urubanza No RPA 00465/2021/HC/KIG, rwemeza ko ubujurire bw'uregwa butakiriwe kubera ko yarengeje igihe cyo kujurira nta mpamvu. Uwuregwa yanditse asaba ko

urubanza rwaciwe n'Urukiko Rukuru rusubirwamo ku mpamvu z'akarengane, bihabwa ishingiro, icyo kirego cyandikwa kuri No RS/INJUST/RP 00001/2024/CA. Maze hagati aho, uwuregwa atanga ikirego cyihutirwa asaba ko yafungurwa by'agateganyo mu gihe urubanza rutaraburanishwa, hashingiwe ku ngingo ya 64, igika cya 2, y'Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko, iteganya ko iyo Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rwongera kuburanishwa ku mpamvu z'akarengane ariko rutararangizwa, irangizwa ryarwo rihita rihagarara. Ubushinjacyaha bwo bukavuga ko kubera ko urubanza rwe rutaciwe mu mizi, ko ahubwo ubujurire bwe butakiriwe kubera ko bwakererewe. Incamake y'icyemezo: Umushingamategeko ntiyagaragaje imanza zigomba guhagarikirwa irangizwa ryazo n'izitagomba kurihagarikirwa mu gihe Perezida w'Urukiko rw'Ikirenga yemeje ko zirimo akarengane, ahubwo yateganyije ko imanza zose Perezida w'Urukiko rw'Ikirenga yemeje ko zigomba kongera kuburanishwa ku mpamvu z'akarengane, irangizwa ryazo rihita rihagarara kabone n'iyi imihango yo kururangiza yaba yaratangiye, bivuze ko uwuregwa nawe bimureba. Akaba akwiye guhabwa uburenganzira bwo kuba afunguwe mu gihe ategereje ko urubanza No RPA 00465/2021/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 27/09/2023, rusubirwamo ku mpamvu z'akarengane. Amategeko yakoreshejwe: Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 64. Imanza zifashishijwe: RP 00003/2018/SC, Ubushinjacyaha vs NIYITEGEKA Emmanuel rwaciwe n'Urukiko rw'Ikirenga ku wa 29/10/2018. RP 00002/2022/CA, Ubushinjacyaha vs BADO Bede rwaciwe n'Urukiko rw'Ubujurire ku wa 07/10/2022. Ikirego gisaba gufungurwa by'agateganyo mu gihe ategereje ko urubanza rwaciwe n'Urukiko Rukuru rusubirwamo ku mpamvu z'akarengane gifite ishingiro; Uwarezwe afungurwe mu gihe ategereje icyemezo kizafatwa mu rubanza.

Page 2

Urubanza I. IMITERERE Y'URUBANZA [1] Mu rubanza no RP 01571/2020/TGI/NYGE rwaciwe ku wa 27/01/2021, Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko NSABIMANA Marcel ahamwa n'icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi (boules 158), rumuhanisha igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu ya miliyoni icumi (10.000.000 Frw) hashingiwe cyane cyane ku kuba yaraburanye yemera icyaha anagisabira imbabazi. [2] NSABIMANA Marcel yajuririye urwo rubanza mu Rukiko Rukuru arusaba kumugabanyiriza ibihano yahawe kubera ko yemera icyaha akanagisabira imbabazi. Naho Ubushinjacyaha butanga inzitizi yo kutakira ubujurire bwe kubera ko yarengeje ibihe byo kujurira, kuko urubanza rwaciwe kuwa 21/01/2021, arujurira kuwa 21/03/2021. Urwo Rukiko rwaciye urubanza No RPA 00465/2021/HC/KIG ku wa 27/09/2023, rwemeza ko ubujurire bwa NSABIMANA Marcel butakiriwe kubera ko yarengeje igihe cyo kujurira nta mpamvu, bityo ko imikirize y'urubanza rujuririrwa idahindutse, ko igifungo cy'imyaka 25 n'ihazabu ya miliyoni icumi (10.000.000 Frw) bigumyeho. [3] Ku wa 13/08/2024, NSABIMANA Marcel yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza No RPA 00465/2021/HC/KIG rusubirwamo ku mpamvu z'akarengane kubera ko habaye kwirengagiza ibimenyetso ku buryo bugaragarira buri wese, maze afata icyemezo No 061/CJ/2024 cyo ku wa 08/05/2024, yemeza ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, ategeka ko urwo rubanza rwoherezwa mu Rukiko rw'Ubujurire kugira ngo ruruburanishe; icyo kirego

cyandikwa kuri No RS/INJUST/RP 00001/2024/CA. [4] Hagati aho, NSABIMANA Marcel yatanze ikirego cyihutirwa muri uru Rukiko asaba ko yafungurwa by'agateganyo mu gihe urubanza No RS/INJUST/RP 00001/2024/CA rutaraburanishwa, icyo kirego cyandikwa kuri No RP 00009/2024/CA iburanisha ryarwo rishyirwa ku wa 19/11/2024. [5] Uwo munsu ugeze, urubanza rwaburanishijwe mu ruhamwe NSABIMANA Marcel yunganiwe na Me NKUNDIMPAYE Ismael, naho Ubushinjacyaha buhagarariwe na NINAHAZWA Roselyne, Umushinjacyaha ku rwego rw'Igihugu. [6] Mu myanzuro ye, NSABIMANA Marcel n'umwunganira bavuga ko akwiye gufungurwa by'agateganyo akaburana ari hanze hashingiwe ku ngingo ya 64, igika cya 2, y'Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko, iteganya ko iyo Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rwongera kuburanishwa ku mpamvu z'akarengane ariko rutararangizwa, irangizwa ryarwo rihita rihagarara nk'uko byatanzweho umurongo mu manza zaciwe w'Urukiko rw'Ikirenga ndetse n'uru Rukiko zirimo urubanza No RP 00003/2018/SC haburana Ubushinjacyaha na NIYITEGEKA Emmanuel rwaciwe n'Urukiko rw'Ikirenga ku wa 29/10/2018, ndetse n'urubanza No RP 00002/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 07/10/2022 haburana Ubushinjacyaha na BADO Bede. [7] Naho uhagarariye Ubushinjacyaha avuga ko NSABIMANA Marcel atafungurwa by'agateganyo, kuko hashingiwe ku ngingo ya 188 y'Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinyabwaho, iteganya ko urubanza rwajuririwe ruburanishwa gusa mu mbizi z'icyajuririwe, uretse ko akarengane ke agashingira ku rubanza rwanze kwakira ubujurire bwe (procédure), ubujurire bwe buramutse bwakiriwe, yazaburana gusa ibijyanye no kugabanyirizwa ibihano gusa, bityo ko atafungurwa by'agateganyo hashingiwe ku ngingo ya 64, igika cya 2, y'Itegeko n°30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru no ku murongo watanzwe mu manza zavuzwe haruguru, urebana n'abaregwa bahanishijwe ibihano mu manza zaciwe mu mizi.

Page 3

[8] Urukiko ruherereye kuri izo mpaka, rurasanga ikibazo gikwiye gusuzumwa muri uru rubanza ari kumenya niba NSABIMANA Marcel yafungurwa by'agateganyo mu gihe urubanza rwe rusubirwamo ku mpamvu z'akarengane rutaraburanishwa. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba NSABIMANA Marcel akwiye gufungurwa mu gihe hategerejwe ko urubanza rwe rusubirwamo ku mpamvu z'akarengane. [9] Mu myanzuro ye, NSABIMANA Marcel n'umwunganira bavuga ko hashingiwe ku ngingo ya 64, igika cya 2, y'Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko, iteganya ko iyo Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rwongera kuburanishwa ku mpamvu z'akarengane ariko rutararangizwa, irangizwa ryarwo rihita rihagarara kabone n'iyi imihango yo kururangiza yaba yaratangiye nk'uko byatanzweho umurongo mu manza zaciwe n'Urukiko rw'Ikirenga zirimo urubanza No RP 00003/2018/SC haburana Ubushinjacyaha na NIYITEGEKA Emmanuel, ndetse n'izaciwe n'uru Rukiko zirimo urubanza No RP 00002/2022/CA rwaciwe ku wa 07/10/2022 haburana Ubushinjacyaha na BADO Bede, NSABIMANA Marcel akwiye gufungurwa by'agateganyo akaburana ari hanze, kuko Igororero rya Nyarugenge ritakomeza kurangiza urubanza No RPA 00465/2021/HC/KIG kandi rutakiriho bitewe n'icyemezo No 061/CJ/2024 cyafashwe na Perezida w'Urukiko

rw'Ikirenga ku wa 08/05/2024 cyemeje ko rukwiye gusubirwamo ku mpamvu z'akarengane. [10] Bavuga kandi ko ibivugwa n'uhagarariye Ubushinjacyaha by'uko NSABIMANA Marcel atafungurwa mu gihe agitegereje ko urubanza rwe ruburanishwa kubera ko akarengane ke agashingira ku rubanza rwanze kwakira ubujurire bwe (procédure), aho kugashingira ku manza zatanzwemo ibihano zaciwe mu mizi nk'uko byemejwe mu manza zatanze umurongo zavuzwe haruguru nta shingiro bifite, kuko atari yajuririye imigendekere y'ianza (procédure), ko ahubwo yari yarajuririye urubanza no RP 01571/2020/TGI/NYGE rwaciwe mu mizi rukamuhanisha igifungo cy'imyaka 25 n'ihazabu ya miliyoni icumi (10.000.000 Frw), ariko ko Urukiko Rukuru rwemeje ko yakererewe kujurira, ruhamishaho ibyo bihano, rumwima amahirwe yo kurugaragariza impamvu ze z'ubujurire, rwirengagije ko atashoboye kubona uko ajurira bitewe n'uko hari mu gihe cya COVID-19, no kuba yaramaze igihe kirenga ukwezi kose afunguye kuri Station ya RIB ya Rwezamenyo, ariko ko yagejejwe ku Igororero rya Nyarugenge yahise ajurira, uretse ko ubujurire bwe butakiriwe kubera impamvu yasobanuwe haruguru bikamutera akarengane. [11] Uhagarariye Ubushinjacyaha avuga ko NSABIMANA Marcel atafungurwa hashingiwe ku ngingo ya 64, igika cya 2, y'Itegeko n° 30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru, no ku murongo watanze mu manza zaciwe n'Urukiko rw'Ikirenga n'uru Rukiko zavuzwe haruguru zirimo urubanza N° RP 00003/2018/SC haburana Ubushinjacyaha na NIYITEGEKA Emmanuel, kuko izo manza zaciwe mu mizi, maze abaziregwamo bakatirwa ibihano binyuranye, bityo ko iyo muri bene izo manza Perezida w'Urukiko rw'Ikirenga yemeje ko zongera kuburanishwa ku mpamvu z'akarengane, zishobora guhindurwa bigatuma abaziregwamo bashobora kugirwa abere cyangwa guhamwa n'ibyaha baregwa, ariko ko zitashyingirwaho mu rubanza rwa NSABIMANA Marcel, aho icyaburanwe mu Rukiko Rukuru kijyanye n'iyakirwa ry'ubujurire bwe, maze rwemeza ko ubujurire bwe butakiriwe kuko batanzwe bukererewe. [12] Avuga kandi ko n'ubwo urubanza rwa NSABIMANA Marcel ruzongera kuburanishwa ku mpamvu z'akarengane nk'uko byemejwe na Perezida w'Urukiko rw'Ikirenga, ruzaburanishwa gusa mu mbizi z'icyajuririwe nk'uko biteganywa n'ingingo ya 188 y'Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'ianza z'inshinjabyaha, ni ukuvuga ku bijyanye no kumenya niba ubujurire bwe bushobora kwakirwa cyangwa kutakirwa, ndetse ko mu gihe bwakiriwe ashobora kuzagabanyirizwa ibihano gusa, aho kugirwa umwere kubera ko yaburanye yemera icyaha akanagisabira imbabazi, bityo ko akwiye gukomeza gufungwa mu rwego rwo kurangiza ibihano, kuko aramutse afunguwe ashobora gucika Ubutabera agatoroka.

Page 4

UKO URUKIKO RUBIBONA [13] Mu rubanza RP 00003/2018/SC rwaciwe ku wa 29/10/2018, haburana Ubushinjacyaha na NIYITEGEKA Emmanuel, Urukiko rw'Ikirenga rwasesenguye ingingo ya 64, igika cya 2, y'Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko¹, rusanga Umushingamategeko yarashatse ko, mu gihe ugusaba ko urubanza rusubirwamo ku mpamvu z'akarengane byamaze kwemerwa na Perezida w'Urukiko rw'Ikirenga, agatega ko rwongera kuburanishwa, hatabaho irangizwa ryarwo, ndetse n'iyi ryaba ryaratangiye rigomba

guhagarara. [14] Urukiko rurasanga nyuma yaho mu rubanza no RP 01571/2020/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 27/1/2021, NSABIMANA Marcel yarakatiwe igifungo cy'imyaka 25 n'ihazabu ya miliyoni icumi (10.000.000 Frw) kubera icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi (boules 158) yakoze, ubu akaba afunze mu rwego rwo kurangiza ibyo bihano, yajuririye Urukiko Rukuru, maze mu rubanza No RPA 00465/2021/HC/KIG rwaciye ku wa 27/09/2023, rwemeza ko ubujurire bwe butakiriwe, kuko bwatanzwe bukererewe, bityo ko ibihano yahawe ku rwego rwa mbere bigumye, ariko mu cyemezo No 061/CJ/2024 cyo ku wa 08/05/2024, Perezida w'Urukiko rw'Ikirenga yemeza ko urwo rubanza No RPA 00465/2021/HC/KIG rusubirwamo ku mpamvu z'akarengane. [15] Urukiko rurasanga ibivugwa n'Ubushinjacyaha by'uko NSABIMANA Marcel atarebwa n'ingingo ya 64 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru, ndetse n'umurongo watanze mu rubanza RP 00003/2018/SC rwaciwe ku wa 29/10/2018 rwa NIYITEGEKA Emmanuel n'Ubushinjacyaha, no mu zindi manza zavuzwe haruguru zirimo urubanza No RP 00002/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 07/10/2022 haburana Ubushinjacyaha na BADO Bede, kubera ko urubanza rwe No RPA 00465/2021/HC/KIG rutaciwe mu mizi, ko ahubwo ubujurire bwe butakiriwe kubera ko bwakererewe nta shingiro bifite, kubera ko mu ngingo ya 64, igika cya 2, y'Itegeko n° 30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru, Umushingamategeko atagaragaje imanza zigomba guhagarikirwa irangizwa ryazo n'izitagomba kurihagarikirwa mu gihe Perezida w'Urukiko rw'Ikirenga yemeje ko zirimo akarengane, ko ahubwo yateganyije ko imanza zose Perezida w'Urukiko rw'Ikirenga yemeje ko zigomba kongera kuburanishwa ku mpamvu z'akarengane, irangizwa ryazo rihita rihagarara kabone n'iyo imihango yo kururangiza yaba yaratangiye, bivuze ko NSABIMANA Marcel nawe arebwa n'ingingo ya 64 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru, ndetse n'umurongo watanze mu manza zavuzwe muri iki gika. [16] Hashingiye ku bisobanuwe haruguru, Urukiko rurasanga NSABIMANA Marcel akwiye guhabwa uburenganzira bwo kuba afunguwe mu gihe ategereje ko urubanza No RPA 00465/2021/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 27/09/2023, rusubirwamo ku mpamvu z'akarengane. III. ICYEMEZO CY'URUKIKO [17] Rwemeje ko ikirego cya NSABIMANA Marcel gisaba gufungurwa by'agateganyo mu gihe ategereje ko urubanza No RPA 00465/2021/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 27/09/2023 rusubirwamo ku mpamvu z'akarengane gifite ishingiro. [18] Rutegetse ko NSABIMANA Marcel afungurwa mu gihe ategereje icyemezo kizafatwa mu rubanza RS/INJUST/ RP 00001/2024/CA. [19] Ruvuze ko nta magarama atangwa muri uru rubanza.

1 Ingingo ya 64, igika cya 2 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko itegamye ko: "Gusaba ko urubanza rwaciwe ku rwego rwa nyuma rusubirishwamo ku mpamvu z'akarengane ntibihagarika irangiza ry'urubanza. Icyakora, iyo Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rwongera kuburanishwa ku mpamvu z'akarengane ariko rutararangizwa, irangizwa ryarwo rihita rihagarara kabone n'iyo imihango yo kururangiza yaba yaratangiye."

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