

RWANDA / JUDGMENT

## UBUSHINJACYAHA v NTAGOZERA

RP 00047/2024/HC/KIG

COURT

High Court

DECIDED

13 November 2024

CASE / FILE NUMBER

RP 00047/2024/HC/KIG

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## UBUSHINJACYAHA v NTAGOZERA

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2024-11-13
- Case/document no.: RP 00047/2024/HC/KIG
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## Text

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UBUSHINJACYAHA v NTAGOZERA [Rwanda URUKIKO RUKURU - RP 00047/2024/HC/KIG (UWAMARIYA, P.J.) 13 Ugushyingo 2024] Amategeko agenga imiburanishirize y'imanza z'inshinjabya – Kutitabira iburanisha - kubyutsa urubanza - Umuburanyi wajuriye utaritabiriye iburanisha, urubanza rwe rugasibwa, ntabwo asubirishamo urubanza, ahubwo ararubyutsa, iyo arusubirishijemo, ikirego cye nticyakirwa. Incamake y'ikibazo: Ntagozera yakurikiranyeho n'ubushinjacyaha icyaha cyo gukubita no gukomeretsa ku bushake uwitwa Munyakayanza. Yarezwe mu Rukiko Rwisumbuye rwa Nyarugenge, uwahohotewe na we aregera indishyi. Uregwa, ntiyitabye iburanisha, urubanza ruburanishwa adahari, Urukiko rusanga ahamwa n'icyaha aregwa, rumuhanisha igihano cy'igifungo cy'imyaka itanu n'amezi abiri muri gereza no gutanga ihazabu ya 3.000.000F. Uregwa yasubirishijemo urwo rubanza, ariko impamvu ze ntizahabwa ishingiro, ajuririra Urukiko Rukuru. Umunsi w'iburanisha, Ntagozera ntiyitabye, bituma ubujurire bwe busibwa. Uyu yaje gusaba gusubirishamo urwo rubanza, hemezwa ko rusubirwamo ariko umunsi w'iburanisha ntiyaboneka kandi nta mapamvu yameneyesheje urukiko yatumye atitaba ariko akaba ayari yanditse mu IECMS ko yamaze kwiyinga na Munyakayanza bakemeranywa ku ndishyi amuha ndetse akaba yaramaze no kuzimuha.

Ubushinjacyaha kwasabye ko kuba atitabye kandi yaramenyeshwe umunsi w'iburanisha, urubanza rugomba kuburanishwa adahari. Urukiko rwasuzumye ikibazo cyo kumenya niba ikirego cyasibwe kubera ibura ry'umuburanyi, uwo muburanyi ashobora gusubirishamo urubanza rwasibwemo icyo kirego. Ubushinjacyaha buvuga ko ko iki kirego cyatanzwe mu buryo bunyuranyije n'amategeko kuko yasubirishijemo urubanza kandi yaragomba kurubutsa bityo ikirego cyatanzwe na Ntagozera cyo gusubirishamo urubanza kikaba kitagomba kwakirwa. Incamake y'icyemezo: Uwajuriye utaritabiriye iburanisha, urubanza rwe rugasibwa, ntabwo asubirishamo urubanza, ahubwo ararubutsa, iyo arusubirishijemo, ikirego cye nticyakirwa. Ikirego cyo gusubirishamo urubanza, nticyakiriwe. Amategeko yashingiweho: Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 54, 142. Nta manza zifashishijwe. Urubanza IMITERERE Y'URUBANZA.

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[1] Mu rubanza RP 00161/2020/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo, Ntagozera Innocent yakurikiranweho n'ubushinjacyaha icyaha cyo gukubita cyangwa gukomeretsa ku bushake. Muri uru rubanza, uwitwa Munyakayanza Athanase yaruregeyemo indishyi. Ku munsi w'iburanisha Ntagozera ntiyitabye kandi yarahamagawe mu buryo bukurikije amategeko, urubanza ruburanishwa adahari, rucibwa ku wa 14/01/2022, Urukiko rwemeza ko ikirego cy'ubushinjacyaha gifite ishingiro, rwemeza ko Ntagozera ahamwa n'icyaha cyo gukubita no gukomeretsa ku bushake, rumuhanisha igifungo cy'imyaka itanu n'amezi abiri muri gereza no gutanga ihazabu ya 3.000.000F. Rwemeje kandi ko ikirego cy'indishyi cyatanzwe na Athanase Munyakayanza gifite ishingiro kuri bimwe, rutegeka ko Innocent Ntagozera agomba guha Athanase Munyakayanza indishyi z'akababaro zingana 650.000F, rutegeka kandi ko Ntagozera Innocent agomba gutanga amagarama y'urubanza Athanase Munyakayanza yatanze ku kirego cy'indishyi angana 20.000 Frw. [2] Uru rubanza Ntagozera Innocent yarusubirishijemo, ikirego gihabwa No RP 00567/2022/TGI/GSBO, ariko impamvu yatanze zamubujije kwitaba ntizahabwa ishingiro, ugusubirishamo urubanza kwe ntikwakirwa. [3] Uru rubanza yarujuririye mu Rukiko Rukuru, ubujurire bwandikwa kuri RPA 01372/2023/HC/KIG, ku munsi w'iburanisha Ntagozera Innocent ntiyitaba, ubushinjacyaha n'uhagarariye uregera indishyi basaba ko urubanza rusibwa, mu cyemezo Urukiko Rukuru rwafashe ku wa 29/04/2024 rwemeza ko urubanza RPA 01372/2023/HC/KIG ku kirego cy'ubujurire bwa Ntagozera Innocent gisibwe, rwemeza ko urubanza RP 00567/2022/TGI/GSBO rwajuririwe rugumyehe, rwemeza ko Ntagozera Innocent aha Munyakayanza Athanase igihembo cy'avoka gihwanye n'amafaranga ibihumbi magana atanu [500.000frw] yatanze kuri avoka. [4] Uru rubanza RPA 01372/2023/HC/KIG rwasibwe, Ntagozera Innocent yarusubirishijemo, ikirego gihabwa No RP 00047/2024/HC/KIG. Iburanisha ry'urubanza rwashyizwe ku wa 14/10/2024, uwo munsi umenyeshwa ababuranyi, ariko ugeze, urukiko rusanga Ntagozera Innocent atitabye nta n'impamvu yamenyesheje urukiko yatumye atarwitaba, gusa harimo inyandiko igaragaza ko we na Munyakayanza Athanase bamaze kwiwunga akaba yamwishyuye 870.000 frw yakoresheje mu manza,

ubushinjacyaha bwari bwitabye, buhagarariwe na Habimana Donath, umushinjacyaha ku rwego rw'igihugu. [5] Ku ibura rya Ntagozera Innocent, ubushinjacya bwavuze ko kuba atitabye kandi yaramenyeshwe mu buryo bukurikije amategeko, urubanza rwaburanishwa adahari hashingiwe ku biteganywa n'ingingo ya 55 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, bunavuga ko ikirego cye kitagomba kwakirwa ngo gisuzumwe kuko gisubirishamo urubanza rwasibwe. [6] Muri uru rubanza, harasuzumwa niba ikirego cyasibwe kubera ibura ry'umuburanyi, uwo muburanyi ashobora gusubirishamo urubanza rwasibwemo icyo kirego.

## II . ISESENGURA RY'IKIBAZO KIGIZE URUBANZA.

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Kumenya niba ikirego cyasibwe kubera ibura ry'umuburanyi, uwo muburanyi ashobora gusubirishamo urubanza rwasibwemo icyo kirego [7] Mu rubanza RPA 01372/2023/HC/KIG rusubirishwamo, ku munsu w'iburanisha Ntagozera Innocent wajuriye ntiyitabye, ubushinjacyaha n'uhagarariye uregera indishyi basaba ko urubanza rusibwa, mu cyemezo Urukiko Rukuru rwafashe ku wa 29/04/2024 rwemeza ko urubanza RPA 01372/2023/HC/KIG ku kirego cy'ubujurire bwa Ntagozera Innocent gisibwe, rwemeza ko urubanza RP 00567/2022/TGI/GSBO rwajuririwe rugumye, rwemeza ko Ntagozera Innocent aha Munyakayanza Athanase igihembo cy'avoka gihwanye n'ibihumbi magana atanu [500.000frw] yatanze kuri avoka. [8] Uru rubanza Ntagozera Innocent yarusubirishjemo, ikirego gihabwa No RP 00047/2024/HC/KIG. Iburanisha ry'urubanza rwashyizwe ku wa 14/10/2024, uwo munsu umenyeshwa ababuranyi, ariko ugeze, urukiko rusanga Ntagozera Innocent atitabye nta n'impamvu yamenyesheje urukiko yatumye atarwitaba, ubushinjacyaha buvuga ko iki kirego cyatanzwe mu buryo bunyuranyije n'amategeko kuko yasubirishjemo urubanza kandi yaragomba kurubutsa.

### UKO URUKIKO RUBIBONA

[9] Ingingo ya 54 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko iyo urega atitabye urukiko nta mpamvu, uregwa ashobora gusaba ko urubanza rusibwa cyangwa agasaba ko ruburanishwa mu mizi yarwo, urubanza ruciwe rukazafatwa nk'aho rwaburanishijwe ababuranyi bahari, keretse iyo urukiko, ku nyungu z'ubutabera kandi mu buryo buteganywa n'iri tegeko, rusanze ari ngombwa ko urubanza rwimurirwa ku yindi tariki kugira ngo urega yongere ahamagazwe. Iyo urubanza rusibwe, icyo cyemezo kiba kivanyeho urubanza n'amagarama yatanzwe yose agaherera k'urega. Naho iya ya 55 iteganya ko iyo urubanza rwasibwe mu bitabo by'urukiko, mu rwego urwo ari rwo rwose, ku mpamvu z'ushaka kurubutsa, icyo kibazo cye nticyakirwa atabanje kugaragaza impamvu idasanze kandi ikomeye yamubujije kuza kuruburana mbere. Kurubutsa bikorwa mu gihe cy'iminsi cumi n'itanu (15) kuva umunsu urubanza rwasibwemo. [10] Urukiko rubona ko urubanza Ntagozera Innocent yasubirishjemo (opposition), rwasibwe mu bitabo by'urukiko. Nyamara nkuko ingingo ya 54 yavuzwe haruguru ibiteganywa, iyo urubanza rusibwe, icyo cyemezo kiba

kivanyeho urubanza n'amagarama yatanzwe yose agaherera k'urega. [11] Ingingo ya 142 iteganya ko gusubirishamo urubanza bigamije ko urubanza rwaciwe uregwa adahari rwongera kuburanishwa. Urukiko rukabona ko urubanza rwasibwe kuko Ntagozera ari we waregaga akaba ataritabye urukiko. [12] Urukiko rubona ko kuba urubanza rwarasibwe, Ntagozera yari kurubyutsa aho kurusubirishamo, kuko kubyutsa urubanza bigenewe umuburanyi wareze maze kubera ukutitaba urukiko urubanza rugasibwa, naho gusubirishamo urubanza bikaba bigenewe umuburanyi warezwe ku munsu w'iburanisha ntiyitabe urubanza rugacibwa adahari.

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[13] Urukiko rushingiye kuri iri sesengura rimaze gukora, rurasanga ikirego cyo gusubirishamo urubanza rwasibwe Ntagozera Innocent yatanze kitagomba kwakirwa ngo gisuzumwe kuko cyatanzwe mu buryo bunyuranyije n'amategeko.

### III. ICYEMEZO CY'URUKIKO.

[14] Rwemeje ko ikirego cya Ntagozera Innocent yatanze cyo gusubirishamo urubanza kitakiriwe. [15] Rutegetse ko amafaranga ibihumbi mirongo ine (40.000 frw) Ntagozera Innocent yatanzeho ingwate y'igarama arega aheze mu isanduku ya Leta.

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Prepared on 10 October 2026 · Esheria