

RWANDA / JUDGMENT

UBUSHINJACYAHA v NTAKIYIMANA

RPA 0182/09/CS

COURT

Supreme Court

DECIDED

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UBUSHINJACYAHA v NTAKIYIMANA

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Text

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UBUSHINJACYAHA v. NTAKIYIMANA [Rwanda URUKIKO RW'IKIRENGA – RPA 0182/09/CS (Mugenzi J.P., Hatangimbabazi na Munyangeri J.) 11 Ukwakira 2013] Amategeko mpanabyaha – Ubwicamubyeyi – Kwemera icyaha – Kugabanyirizwa igihano – Kugabanya igihano bikorwa mu bushishozi bw'urukiko – Itegeko n° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 35. Incamake y'ikibazo: Uwajuriye yahamijwe icyaha cy'ubwicamubyeyi n'Urukiko Rukuru Urugereko rwa Rusizi rumuhanisha igifungo cy'imyaka 20. Yajuririye mu Rukiko rw'Ikirenga ahakana icyaha ariko mu iburanisha avuga ko atagishingiye ku myanzuro yatanze ko ahubwo asaba imbabazi no kugabanyirizwa igihano. Ubushinjacyaha bwo bwavuze ko ibisobanuro bya Ntakyimana noneho bigaragaza ko yemera icyaha bityo rukaba rwamugabanyiriza igihano n'ubwo rutabitegetwe. Incamake y'icyemezo: Mu bushishozi bw'Urukiko, n'ubwo Ukekwa icyaha yacyiyemerera mu buryo budashidikanywaho, umucamanza ashobora kutamugabanyiriza igihano kubera ubugome icyaha cyakoranywe no kuba yarabanje kugorana mu kucyemera bityo Urukiko rwanze kuganyiriza igihano uwajuriye. Ubujurire nta shingiro bufite. Urubanza rwajuririwe ntiruhindutse. Amagarama y'urubanza yahererejwe ku isanduku ya Leta. Amategeko yashingiweho. Itegeko n° 30/2013 ryo kuwa

24/5/2013 ryerekeye imiburanishirize y'ianza z'inshinjabyaha, ingingo ya 35. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Urukiko Rukuru, Urugereko rwa Rusizi rwahamije Ntakyimana Jean icyaha cy'ubwica-mubyeyi, rumuhanisha igifungo cy'imyaka 20, mu rubanza Ubushinjacyaha bwari bwamurezemo kuba kuwa 17/04/2001 yarajyanye na se Zibonukuri mu ishyamba gushaka ibiti, akamwiciiraye, umurambo ukaza gutahurwa muri iryo shyamba. [2] Ntakyimana yajuririye Urukiko rw'Ikirenga, aburana ku wa 25/09/2013, yunganiwe na Me Busogi Kadari Suzane naho Ubushinjacyaha buhagarariwe na Higaniro Hermogène. [3] Ntakyimana avuga ko atagishingiye ku myanzuro yari yatanze ajurira, aho yahakanaga icyaha, ko noneho aje kwemera icyaha no gusaba imbabazi, akaba yanagabanyirizwa ibihano.

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II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO Kumenya niba ukwemera icyaha kwa Ntakyimana kwatuma agabanyirizwa ibihano. [4] Ntakyimana avuga ko nyuma yo guhakana mu Rukiko Rukuru icyaha cyo kuba yarishe se, noneho acyemera akaba anagisabira imbabazi, ukwo kwemera icyaha no gusaba imbabazi akaba yarabikuye mu nyigisho zagezwaga ku bagororwa muri Gereza aho yari afungirwe, ariho yahereye yiyemeza gusaba imbabazi Umuryango we n'Umuryango Nyarwanda, anasaba Urukiko kumworohera ibihano. [5] Ku bijyanye n'imikorere y'icyaha, avuga ko se bari babanye neza, aza kumwiyambaza ngo amufashe kubaka inzu, mu gihe barimo bubaka, umudamu we atuka umukecuru, bituma ise amuca umutobe ndetse amwambura n'umurima yari yamuhaye amubwira ko azawumusubiza ari uko atanze uwo mutobe. [6] Asobanura ko mu gihe we na se bari bagiye mu ishyamba gushaka ibiti, baganiriye kuri icyo kibazo, maze abaza se igihe azamusubiriza umurima yamwatse, amusubiza ko azahasubizwa ari uko atanze umutobe yaciwe, icyo gisubizo kimutera umujinya bituma barwana ariko ariwe se umusembuye, ise agiye kumukubita umupanga aramutanga amurusha imbaraga arawumwaka aramwica. [7] Ku kibazo cyo kumenya niba umugambi wo kwica se atarawuvanye mu rugo, akaba ariyo mpamvu yabujije umwana washakaga kujyana nabo mu ishyamba, asubiza ko uwo mugambi yawuvanye mu rugo koko kubera umurima se yari yanze kumuha. [8] Me KADALI umwunganira avuga ko kuba Ntakyimana asobanura ibyamubayeho ntacyo asize, akaba amaze imyaka 12 muri gereza yaricujije bihagije icyaha yakoze, byagombye gutuma Urukiko ruca inkoni izamba akaba yafungurwa. [9] Uhagarariye Ubushinjacyaha avuga ko ibisobanuro bya Ntakyimana bigaragaza ko yemera icyaha, Urukiko rukaba rwamuha imbabazi asaba n'ubwo rutabitegetswe. [10] Ingingo ya 35 y'Itegeko n° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'ianza z'inshinjabyaha, iteganya ko iyo ukekwa gukora icyaha acyiyemereye mu buryo budashidikanywa, ashobora kugabanyirizwa ibihano byari biteganyijwe kugeza kuri ½ cyabyo, iyo yari guhabwa igihano cyo gufungwa burundu, agashobora kugabanyirizwa kugera ku gifungo cy'imyaka makumyabiri (20). [11] Iyo ngingo y'Itegeko yumvikanisha ko Urukiko rudategetswe kugabanya igihano byanze bikunze ku wemera icyaha akagisabira imbabazi, ko ahubwo ari ububasha umucamanza ahabwa, akaba rero abukoresha asuzuma impamvu zinyuranye zatumaga agabanya ibihano cyangwa ntabigabanye. [12] Ku byerekeye Ntakyimana, usibye ko yanagabanyirijwe ibihano ku buryo buhagije mu Rukiko Rukuru n'ubwo impamvu yabaye iy'uko bwari ubwa mbere akurukiranyweho icyaha, bigaragara

ko no kwemera icyaha cye muri uru Rukiko byaturutse kure, kuko mu iburanisha yabanje kuvuga ko yishe se biturutse ku mirwano bagiranye ari se umusembuye nk'uko bigaragara haruguru mu gace ka 6 k'uru rubanza.

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[13] Ibyo biniyongeraho ku ubugome Ntakiyimana yakoranye icyaha cyo kwica se umubyara amaze gucura umugambi wo kujya kumutemagurira mu ishyamba, butuma adakwiye kwongera kugabanyirizwa ibihano n'ubwo noneho yemera icyaha III. ICYEMEZO CY'URUKIKO [14] Rwemeje ko ubujurire bwa Muhayimana Justin nta shingiro bufite. [15] Rwemeje ko urubanza Muhayimana Justin yajuririye rudahindutse. [16] Rutegetse ko amagarama y'urubanza ahererera ku Isanduku ya Leta kuko uwajuriye utsinzwe afunze.

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