

RWANDA / JUDGMENT

NYIRANSABIMANA v UWINEZA N'ABANDI

RSA/RS/REV/RC 00001/2024/CA

COURT

Court of Appeal

DECIDED

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NYIRANSABIMANA v UWINEZA N'ABANDI

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Text

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NYIRANSABIMANA v UWINEZA N'ABANDI [Rwanda URUKIKO RW'UBUJURIRE - RSA/RS/REV/RC 00001/2024/CA (Munyangeri, P.J.) 23 Gicurasi 2025] Amategeko agenga ububasha bw'inkiko – Gusubirishamo urubanza - Imanza zaciwe ku mpamvu z'akarengane - Nta nzira y'ubujurire n'imwe yemerewe gukoreshwa ku manza zaciwe hasubirishwamo urubanza ku mpamvu z'akarengane yaba ubujurire busanzwe cyangwa ubujurire budasanzwe, harimo no gutambamira urubanza (Tierce opposition). Incamake y'ikibazo: Uwineza yabanye mu buryo budakurikije amategeko na Ntezirizaza babyarana abana babiri (2) ariko ntibakomeza kubana. Uwineza yatanze ikirego mu Rukiko rw'Ibanze rwa Gatumba asaba ko yagabana na Ntezirizaza imitungo bashakanye. Urukiko rwasanze ikirego cye gifite ishingiro kuri bimwe rutegeka ko imitungo imwe bayigabana mu buryo bungana. Urega ntiyanyuzwe, ajuririra icyo cyemezo mu Rukiko Rukuru Uurgereko rwa Musanze avuga ko hari indi mitungo yashakanye n'uregwa igomba kugabanywa ariko urukiko rukaba rwarabyirengagije kuko rutacukumbuye ngo rumenye igihe nyakuri yatandukaniye n'urega ndetse rukaba rwarirengagije inyandiko y'ubugure igaragaza umwenda bafitiye uwitwa Yamfashije. Urukiko rwemeje ko urubanza rujuririrwa rudahindutse uretse indezo y'abana yiyongereyeho igomba kujya itangwa n'uregwa. Uwineza ntiyishimiye

imikirize agana inzira z'akarengane, urubanza rwongera kuburanishwa n'Urukiko Rukuru uruegereko rwa Musanze aho urega yasobanuye ko akarengane ke gashingiye ku kuba urukiko rutacukumbuye ngo rumenye igihe ikibanza kiri muri centre ya Kagano kirimo n'inzu cyaguriwe, kuba rutarageneye abana inzu yo kubamo ndetse n'umwenda bafitiye uwitwa Yamfashije. Urukiko rwemeje ko ikirego gifite ishingiro kuri bimwe, ko inzu eshatu (3) ziri mu kibanza cyo muri centre ya Kagano zigabanywa ku buryo bungana, ko ibindi bidahindutse. Uwitwa Nyiransabimana yatanze ikirego cyo gutambamira urwo rubanza ariko nticyakirwa, akijuririra mu Rukiko rw'Ubujurire, hasuzumwa ikibazo cyo kumenya kumenya niba ikirego cyo gutambamira imikirize y'urubanza N° RS/INJUST/RC 00013/2020/HC/MUS, cyaragombaga kwakirwa. Urega asobanura ko yatunguwe no guhabwa inyandiko y'umuhesha w'inkiko imusohora mu nzu ye bwite ndetse no kuba yari afite inyungu mu rubanza rwaburanywe kuri uwo mutungo kuko yawuguze akaba atararutumiwemo. Uwineza avuga ko Urukiko Rukuru nta bubasha rufite bwo kuburanisha ikirego cyo gutambamira urubanza rwaciye hasubirishwamo urubanza ku mpamvu z'akarengane, kuko ruba rwaraciye ku rwego rwa nyuma bityo akaba nta makossa ari mu rubanza rujuririrwa. Incamake y'icyemezo: Nta nzira y'ubujurire n'imwe yemerewe gukoreshwa ku manza zaciye hasubirishwamo urubanza ku mpamvu z'akarengane yaba ubujurire busanzwe cyangwa ubujurire budasanzwe, harimo no gutambamira urubanza (Tierce opposition). Ubujurire nta shingiro bufite.

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Amategeko yashingiweho: Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 53; Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, 111, 161, 162. Imanza zifashishijwe: RSA/RECT/RC 00002/2023/CA, Torero Boniface na Twagiramungu Vincent, rwaciye n'Urukiko rw'Ubujurire ku wa 19/10/2023. Urubanza I. IMITERERE Y'URUBANZA [1] Uwineza Jacqueline yabanye na Ntezirizaza Théogène mu buryo budakurikije amategeko kuva mu mwaka wa 2008, babyarana abana babiri (2). Baje kudakomeza kubana, atanga ikirego mu Rukiko rw'Ibanze rwa Gatumba, asaba ko bagabana imitungo bahahanye bagafatanyaga no kwishyura ideni bafashe bagura ikibanza cy'aho bita Kagano, asaba n'indishyi zinyuranye. [2] Ntezirizaza Théogène yaburanye avuga ko imitungo yemera ko bagabana ari ishyamba rya Gasumo hashingiye ku nyandiko yo ku wa 31/03/2012, n'isambu bahawe na Muyange iri aho bita Rukararanka, ko inzu babagamo batayigabana kuko Uwineza Jacqueline yasanze yarayubatswe mu mwaka wa 2001. Ku nzu iri mu isambu ya Kagano, Ntezirizaza Théogène yavuze ko ikibanza yubatswe yakiguze ku wa 02/01/2014, agatangira kucyubaka ku wa 17/01/2014 umugore yaragiye iwabo, ariko akaba atanemera inyandiko yo ku wa 15/12/2016 ngo kuko yafashe YAMFASHIJE na IYAMUREMYE wahamugurishije barimo kuyihimba, icyo kibazo kikaba cyarasuzumwe n'ubuyobozi nk'uko bigaragara mu nyandiko yo ku wa 19/12/2016. [3] Mu rubanza N° RC 00016/2017/TB/GA rwaciye n'Urukiko rw'Ibanze rwa Gatumba ku wa 12/12/2017, urwo Rukiko rushingiye ku ngingo ya 39 y'itegeko N° 59/2008 ryo ku wa 10/09/2008 rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, ku ngingo ya 63 y'itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ku ngingo ya 3 y'itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza

n'itangwa ryabyo, no ku ngingo ya 34 y'Amabwiriza N° 01/2014 agena ibihembo mbonera by'Abavoka, rwemeje ko: - ikirego cya Uwineza Jacqueline gifite ishingiro kuri bimwe; - indishyi zo gukurikirana urubanza zasabwe n'ababuranyi nta shingiro zifite; - isambu igomba kugabanwa n'ababuranyi bombi ari ishyamba riri ku Gasumo, isambu iri Rukararanka bahawe na Muyange n'isambu y'aho inzu babagamo yubatse; - amasambu ya Gasumo n'iya Rukararanka kimwe n'iy'aho inzu babagamo yubatse azagabanywa ku buryo bungana nk'uko byasobanuwe mu gika cya 17 cy'urubanza; - Ntezirizaza Théogène aha Uwineza Jacqueline amafaranga ibihumbi magana abiri na mirongo itanu (250,000 Frw) y'igihembo cya Avoka n'amafaranga ibihumbi cumi na bibiri na magana atanu (12,500 Frw) y'igarama yaregesheje, yose hamweakaba

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amafaranga ibihumbi magana abiri na mirongo itandatu na bibiri na magana atanu (262,500 Frw). [4] Uwineza Jacqueline yajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Rubavu, avuga ko Urukiko rw'Ibanze rwa Gatumba rwirengagije igihe nyakuri yatandukaniye na Ntezirizaza Théogène, no kuba rutaracukumbuye inyandiko z'ubugure bagaragariye umwenda bafitiye mukuru we witwa Yamfashije n'inzu babagamo. [5] Ntezirizaza Théogène yireguye avuga ko umutungo Urukiko rw'Ibanze rwa Gatumba rwabagabanyije ari wo bashakanye, ko nta mwenda bafitiye Yamfashije, ko ahubwo umwenda yemera ko utishyuwe ari uwo yafashe kugira ngo Uwineza Jacqueline acuruze. [6] Mu rubanza N° RCA 00003/2018/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa Rubavu ku wa 09/07/2019, urwo Rukiko rushingiye ku ngingo ya 12 y'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, rwemeje ko: - ubujurire bwa Uwineza Jacqueline, bufite ishingiro kuri bimwe; - urubanza RC 00016/2017/TB/GA rwaciwe n'Urukiko rw'Ibanze rwa Gatumba ku wa 21/12/2017 rudahindutse, uretse indezo ya 20,000 Frw Ntezirizaza Théogène agomba guha abana yabyaranye na Uwineza Jacqueline uko ari babiri, agakomeza kubarihira ubwisungane mu kwivuzwa (mutuelle de santé), amashuri no kubagurira imyenda y'ishuri nk'uko yabivugiyemo mu Rukiko; - ingwate y'amagarama yatanze Uwineza Jacqueline arega, ihwanye n'ibyakozwe mu rubanza. [7] Uwineza Jacqueline ntiyishimiye imikirize y'urwo rubanza, yandikira Perezida w'Urukiko Rukuru, Urugereko rwa Musanze, asaba ko urubanza N° RCA 00003/2018/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa Rubavu ku wa 09/07/2019 rusubirishwamo ku mpamvu z'akarengane, uyu abikorera raporo Perezida w'Urukiko rw'Ikirenga, yemeza ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, kandi ko rwoherezwa mu Rukiko Rukuru, Urugereko rwa Musanze kugira ngo ruruburanishe, rwageze muri urwo Rukiko rwandikwa kuri N° RS/ INJUST/RC 00013/2020/HC/MUS. [8] Uwineza Jacqueline yasobanuye ko akarengane ke gashingiye ku kuba mu gufata icyemezo, Urukiko Rwisumbuye rwa Rubavu rutaracukumbuye ngo rusesengure inyandiko yo ku wa 10/11/2012 n'iyi ku wa 04/07/2012, zigaragaza igihe baguriye ikibanza cyo muri centre ya Kagano, bituma rwemeza ko umutungo uri aho bita ku Kagano ugizwe n'inzu utagabanywa kandi barafatanyije kuyubaka, kuba rwarirengagije uburenganzira bw'abana bigatuma rutabagenera inzu barererwamo, no kuba rutarahaye agaciro umwenda bahawe na Yamfashije. Yasoje asaba indishyi zitandukanye. [9] Mu rubanza N° RS/INJUST/RC 00001/2023/HC/MUS rwaciwe n'Urukiko

Rukuru, Urugereko rwa Musanze ku wa 11/11/2021, urwo Rukiko rushingiye ku ngingo ya 33 y’itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo, ku ngingo ya 244 n’iya 273 z’itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n’umuryango, ku

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ngingo ya 12 n’iya 111 z’itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, rwemeje ko: - ikirego cyatanzwe na Uwineza Jacqueline gisubirishamo urubanza N° RCA 00003/2018/TGI/RBV rwaciwe n’Urukiko Rwisumbuye rwa Rubavu ku wa 09/07/2019 ku mpamvu z’akarengane, gifite ishingiro kuri bimwe; - akarengane kagaragara mu rubanza RCA 00003/2018/TGI/RBV ku birebana gusa n’amazu atatu ari mu kibanza cyo muri centre ya Kagano ataragabanyijwe Ntezirizaza Théogène na Uwineza Jacqueline; - amazu atatu ari mu kibanza cyo muri centre ya Kagano, Ntezirizaza Théogène azayagabana na Uwineza Jacqueline ku buryo bungana, igabana ritashoboka bakagurisha bakazagabana ku buryo bungana amafaranga azavamo; - nk’uko Urukiko Rwisumbuye rwa Rubavu rwabyemeje, Ntezirizaza Théogène agomba kwishyura 20,000 Frw y’indezo ya buri kwezi, akabishyurira “mutuelle de santé”, akajya abagurira imyenda kandi akabishyurira n’amashuri, amafaranga agahabwa Uwineza Jacqueline ubana n’abana; - nk’uko byemejwe, ishyamba riri aho bita Gasumo, isambu iri aho bita Rukararanka bahawe na Muyange n’isambu y’aho inzu babagamo yubatswe babigabana ku buryo bungana, ariko Ntezirizaza Théogène akazaherezwa aho iyo nzu iri kuko yashakanye na Uwineza Jacqueline ayifite; - Ntezirizaza Théogène aha Uwineza Jacqueline amafaranga yari yategetswe mu manza zibanza angana n’ibihumbi magana abiri na mirongo itandatu na bibiri na magana atanu (262,500 Frw), hakiyongeraho igihembo cya Avoka 500,000 Frw, indishyi zo kumusiragiza zingana na 300,000 Frw, yose hamwe akaba amafaranga miliyoni imwe, ibihumbi mirongo itandatu na bibiri na magana atanu (1,062,500 Frw); - Ntezirizaza Théogène yishyura amafaranga ibihumbi mirongo ine (40,000 Frw) ashirirwa mu Isanduku ya Leta, y’ibyakoreshejwe mu rubanza. [10] Nyuma y’icibwa ry’urubanza N° RS/INJUST/RC 00013/2020/HC/MUS, Nyiransabimana Jacqueline yatanze ikirego cyo kurutambamira, ikirego cyo cyandikwa kuri N° RS/REV/RC 00001/2023/HC/MUS. Abaregwa muri urwo rubanza ari Uwineza Jacqueline na Ntezirizaza Théogène, hagobokeshwa ku gahato abitwa Mukabadege Epiphane na Nsanzumuhire Boniface. Urwo rubanza rwaburanishijwe mu ruhamwe ku wa 04/01/2024, Nyiransabimana Jacqueline yunganiwe na Me NSABIMANA Jean Damascène, Uwineza Jacqueline yunganiwe na Me DUSHIMIRE Jeannette, Mukabadege Epiphane na Nsanzumuhire Boniface bunganiwe na Me DUSENGEYEZU Pascal naho Ntezirizaza Théogène yiburanira. [11] Uwineza Jacqueline n’umwunganira bashingiye ku ngingo ya 53, igika cya 4 y’itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’inkiko, babyukije inzitizi y’iburabubasha bw’Urukiko, basobanura ko Urukiko Rukuru, Urugereko rwa Musanze nta bubasha, ndetse n’ubushobozi rufite bwo kwakira ikirego cyo gutambamira urubanza rwaciwe ku rwego rwo gusubirishamo urubanza ku mpamvu z’akarengane, kuko ruba rwaraciwe ku rwego rwa mbere n’urwa nyuma kandi ko nta yindi nzira y’ubujurire, yaba isanzwe cyangwa idasanzwe yemewe, harimo n’iyo gutambamira urubanza.

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- [12] Nyiransabimana Jacqueline n'umwunganira bireguye kuri iyo nzitizi basaba Urukiko kwemeza ko ikirego cye kigomba kwakirwa kikaburanishwa mu mizi. Basobanuye ko ibiteganywa n'ingingo ya 53 y'itegeko rigena ububasha bw'inkiko bireba gusa ababaye ababuranyi mu rubanza rutambamirwa, ko ariko abatararubayemo ababuranyi bafite uburenganzira bwo kurutambamira, kandi ko hashingiwe ku ngingo ya 161 n'ya 162 z'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, bigaragara ko imanza zidatambamirwa ari imanza zaciwe n'Urukiko rw'Ubujurire n'izaciwe n'Urukiko rw'Ikirenga zonyine. [13] Mukabadege Epiphane na Nsanzumuhire Boniface n'ubunganira bavuze ko kuba Uwineza Jacqueline yarabagobokesheje mu rubanza kandi azi ko ruzaburanishwa mu mizi, Urukiko rukwiye kwemeza ko ikirego cyakiriwe, rukamutegeka kubaha indishyi basabye mu myanzuro yabo. [14] Mu rubanza N° RS/REV/RC 00001/2023/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 25/01/2024, urwo Rukiko rushingiye ku ngingo ya 53 y'itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ku ngingo ya 161(4) n'ya 111 z'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, rwemeje ko:
- Ikirego cya Nyiransabimana Jacqueline cyo gutambamira urubanza RS/INJUST/RC 00013/2020/HC/MUS kitakiriwe; - indishyi zasabwe na Mukabadege Epiphane na Nsanzumuhire Boniface nta shingiro zifite; - Nyiransabimana Jacqueline aha Uwineza Jacqueline indishyi z'ikurikiranarubanza n'ingendo zingana n'amafaranga ibihumbi mirongo itanu (50,000 Frw) n'amafaranga ibihumbi magana atanu (500,000 Frw) y'igihembo cya Avoka; - ingwate y'amagarama yatanzwe na Nyiransabimana Jacqueline ihwana n'imirimo yakozwe mu rubanza.
- [15] Ku wa 29/01/2024, Nyiransabimana Jacqueline yajuririye urwo rubanza mu Rukiko rw'Ubujurire, ubujurire bwe bwandikwa kuri N° RSA/REV/RC 00001/2024/CA, maze nyuma y'imihango ntegarurubanza yose, hemezwa ko ruzaburanishwa ku wa 02/04/2025. [16] Uwo muni hitabye Nyiransabimana Jacqueline ahagarariwe na Me AHISHAKIYE Callixte, Uwineza Jacqueline ahagarariwe na Me DUSHIMIRE Jeannette, Nsanzumuhire Boniface ahagarariwe na Me Tugirimana Vincent, Ntezirizaza Théogène yarahamagawe ahatazwi, naho Mukabadege Epiphane atitabye, akaba yari yaraye ashyize muri dosiye y'urubanza inyandiko yandikiwe n'umuganga w'ikigo nderabuzima ku wa 01/04/2025, amwohereza kwivuriza mu bitaro bya Kabaya, aheraho asaba ko iburanisha ryimurirwa ku wundi muni. [17] Iburanisha ryimuriwe ku wa 15/04/2025, Mukabadege Epiphane asabwa kuba yashatse Avoka ugomba kuzamuhagararira cyangwa kumwunganira uwo muni. Uwo muni iburanisha

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ry'urubanza ryimuriwe ku wa 24/04/2025 kubera ko umucamanza wagombaga kuburanisha yari yarwaye. [18] Ku wa 24/04/2025, Nyiransabimana Jacqueline, Uwineza Jacqueline na Nsanzumuhire Boniface bitabye Urukiko bahagarariwe nka mbere, Ntezirizaza Théogène atitabye, Mukabadege Epiphane atitabye atanoherewe uwo kumuhagararira, nta n'impamvu yatanze yamubujije. Ababuranyi bitabye Urukiko basabye ko urubanza ruburanishwa Ntezirizaza Théogène adahari kuko yahamagawe ahatazwi, naho kuri Mukabadege Epiphane hagashingirwa ku myanzuro yashyize muri dosiye. [19] Mu myanzuro no mu miburanire, uhagarariye Nyiransabimana Jacqueline asaba uru Rukiko gusuzuma niba Urukiko Rukuru, Urugereko rwa Musanze rwari rufite ububasha bwo kuburanisha ikirego gitambamira urubanza N° RS/INJUST/RC 00013/2020/HC/MUS ku bwo kuba uru rubanza ngo rwaraciwe nk'aho ruciwe n'Urukiko rw'Ikirenga. Asaba Urukiko rw'Ubujurire kuzasesengura ibiteganywa n'ingingo ya 161 n'ya 162 z'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegets, rwasanga urubanza N° RS/INJUST/RC00013/2020/HC/MUS rukwiye gutambamirwa, rukarwoherereza Urukiko Rukuru, Urugereko rwa Musanze rukaruburanisha. Asoza asaba indishyi zitandukanye. [20] Uhagarariye Uwineza Jacqueline yiregura avuga ko hashingiwe ku biteganywa n'ingingo ya 53, igika cya 4 y'itegeko rigena ububasha bw'inkiko, Urukiko Rukuru, Urugereko rwa Musanze nta bubasha rwari rufite bwo kuburanisha ikirego cyo gutambamira urubanza N° RS/INJUST/RC 00013/2020/HC/MUS. Asobanura ko Umushingamategeko yashatse kuvuga ko inzira z'ubujurire zaba izisanzwe cyangwa izidasanzwe zirimo no gutambamira urubanza nta n'imwe ikwiye gukurikizwa. Avuga ko imanza zemerewe gutambamirwa ari izaciwe ku buryo busanzwe hashingiwe ku ngingo za 160 na 162 z'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegets. Asoza asaba uru Rukiko gutegeka Nyiransabimana Jacqueline kumuha indishyi zitandukanye. [21] Uhagarariye Nsanzumuhire Boniface avuga ko kuba Nyiransabimana Jacqueline atarabaye umuburanyi mu rubanza N° RS/INJUST/RC00013/2020/HC/MUS, rukaba rwaratwaye umutungo we utimukanwa ugizwe n'ubutaka bubaruye kuri UPI:3/05/13/02/7083 yaguze na Nsanzumuhire Boniface, uyu nawe akaba yarabuguze na Ntezirizaza Théogène mu buryo bwemewe n'amategeko, afite uburenganzira bwo gutambamira imikirize y'urwo rubanza kuko arufitemo inyungu hashingiwe ku ngingo ya 161 n'ya 162 z'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegets. Asoza asaba uru Rukiko gutesha agaciro imikirize y'urubanza N° RS/REV/RC 00001/2023/HC/MUS rwaciwe ku wa 25/01/2023, rukarusubiza Urukiko Rukuru, Urugereko rwa Musanze kugira ngo ruruburanishe hadatanze indi ngwate y'amagarama, no gutegeka Uwineza Jacqueline na Nyiransabimana Jacqueline guha uwo ahagarariye indishyi zitandukanye. [22] Me Mberabagabo Balinda Richard wateguye imyanzuro ya Mukabadege Epiphane yavuze ko kuba Nyiransabimana Jacqueline atarabaye umuburanyi mu rubanza N° RS/INJUST/RC00013/2020/HC/MUS, rukaba rwaratwaye umutungo we utimukanwa ugizwe n'ubutaka bubaruye kuri UPI:3/05/13/02/7083 yaguze na Nsanzumuhire Boniface, uyu nawe akaba yarabuguze na Ntezirizaza Théogène mu buryo bwemewe n'amategeko, afite uburenganzira

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bwo gutambamira imikirize y'urwo rubanza kuko arufitemo inyungu hashingiwe ku ngingo ya 161 n'ya 162 z'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Asoza asaba uru Rukiko gutesha agaciro imikirize y'urubanza N° RS/REV/RC 00001/2023/HC/MUS rwaciwe ku wa 25/01/2023, rukarusubiza Urukiko Rukuru, Urugereko rwa Musanze kugira ngo ruruburanishe hadatanzwe indi ngwate y'amagarama, no gutegeka Uwineza Jacqueline na Nyiransabimana Jacqueline guha uwo ahagarariye indishyi zitandukanye. [23] Nyuma y'izo mpaka, harasuzumwa ibibazo bikurikira: a. Kumenya niba ikirego cyo gutambamira imikirize y'urubanza N° RS/INJUST/RC 00013/2020/HC/MUS, cyaragombaga kwakirwa; b. Ibyerekeye ishingiro ry'amafaranga ababuranyi basaba II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. 1. Kumenya niba ikirego cyo gutambamira imikirize y'urubanza N° RS/INJUST/RC 00013/2020/HC/MUS, cyaragombaga kwakirwa [24] Uhagarariye Nyiransabimana Jacqueline avuga ko Urukiko Rukuru, Urugereko rwa Musanze rwagombaga kwakira ikirego cy'uwo ahagarariye gitambamira imikirize y'urubanza N° RS/INJUST/RC 00013/2020/HC/MUS kuko hashingiwe ku biteganywa n'ingingo ya 161 (4) y'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, imanza zaciwe n'Urukiko rw'Ubujuje cyangwa n'Urukiko rw'Ikirenga, ari zo zonyine zitemerewe gutambamirwa, ko asanga ibyo Urukiko Rukuru, Urugereko rwa Musanze rwasobanuye ko kuba Perezida w'Urukiko rw'Ikirenga yararuhaye ububasha bwo kuburanisha urubanza rusubirishwamo ku mpamvu z'akarengane bifatwa nk'aho rwaciwe n'Urukiko rw'Ikirenga, atariko we abibona. [25] Asobanura ko Urukiko Rukuru, Urugereko rwa Musanze, rwagombaga kwakira ikirego cya Nyiransabimana Jacqueline kubera izindi mpamvu zikurikira: - Kuba ku wa 01/06/2023, yaratunguwe no guhabwa inyandiko y'umuhesha w'inkiko w'umwuga Me MANIGABE Gilbert amutegeka gusohoka mu nzu ye bwite, kugira ngo ayihe uwitwa Uwineza Jacqueline mu rwego rwo kurangiza urubanza N° RS/INJUST/RC 00013/2020/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa MUSANZE ku wa 11/11/2021; - Kuba yari afite inyungu mu rubanza N° RS/INJUST/RC 00013/2020/HC/MUS kuko umutungo ufite UPI: 3/05/13/02/7083 ugizwe n'inzu waburanywe muri urwo rubanza atarutumiwemo kandi wari uwe akomora ku masezerano y'ubugure yo ku wa 16/09/2021 aho yawuguze n'uwitwa Nsanzumuhire Boniface. [26] Uhagarariye Uwineza Jacqueline yiregura avuga ko Urukiko Rukuru, Urugereko rwa Musanze nta bubasha rwari rufite bwo kuburanisha ikirego cyo gutambamira urubanza rwaciwe hasubirishwamo urubanza ku mpamvu z'akarengane, kuko ruba rwaraciwe ku rwego rwa nyuma, nk'uko biteganywa n'ingingo ya 53, igika cya 4 y'itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko.

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[27] Akomeza avuga ko Urukiko rw'Ubujurire rudakwiye kwakira ubujurire bwa Nyiransabimana Jacqueline, kuko Umushingamategeko yashatse kuvuga ko inzira z'ubujurire zose zaba izisanzwe cyangwa izidasanzwe nta n'imwe ikwiye kwiambazwa, kandi ko imanza zemerewe gutambamirwa ari izaciwe ku buryo busanzwe hashingiwe ku ngingo ya 161 n'ya 162 z'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi kandi ko asanga ku byo itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi riteganywa ko imanza zaciwe n'Urukiko rw'Ikirenga n'Urukiko rw'Ubujurire zidatambamirwa, hakwiyongeraho ko n'imanza zaciwe mu rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane, nta nzira z'ubujurire zizikorera, zaba izisanzwe cyangwa izidasanzwe. [28] Kuri iyi ngingo, asaza avuga ko iyo urega abona ko itegeko rifite ikibazo ku birebana no gutambamira urubanza, aba yaratanze ikirego cyo gusaba ko ingingo zinyuranyije n'Itegeko Nshinga zivanwaho, aho gutambamira urubanza rudashobora gutambamirwa. [29] Uhagarariye Nsanzumuhire Boniface asaba uru Rukiko ko mu kumenya niba Urukiko Rukuru, Urugereko rwa Musanze rwaragombaga kwakira ikirego cya Nyiransabimana Jacqueline cyo gutambamira imikuriza y'urubanza N° RS/INJUST/RC0013/2020/HC/MUS rwatwaye umutungo we yaguze na Nsanzumuhire Boniface na we wari warawuguze na Ntezirizaza Théogène, rwazashingira ku biteganywa n'ingingo ya 161 n'ya 162 z'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. [30] Asaba kandi uru Rukiko kuzasuzuma niba ingingo ya 53 y'itegeko rigena ububasha bw'inkiko itabuza umuntu utarabaye umuburanyi mu rubanza kandi arufitemo inyungu, ububasha bwo gukurikirana uburenganzira bwe buteganywa n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda. Kuri iyi ngingo, asaza avuga ko bitumvikana buryo ki umucamanza yaha agaciro ibiteganywa n'itegeko rigena ububasha bw'inkiko aho kwita ku biteganywa n'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, nyamara hakurikijwe ubusumbane bw'amategeko buteganywa n'Itegeko Nshinga rya Repubulika y'u Rwanda (hiérarchie des normes), ayo mategeko yombi ari ku rwego rumwe. [31] Mu myanzuro ye, Me Mberabagabo Balinda Richard wari uhagarariye Mukabadege Epiphanyie yireguye kuri iyi ngingo y'ubujurire asaba uru Rukiko ko mu kumenya niba Urukiko Rukuru, Urugereko rwa Musanze rwaragombaga kwakira ikirego cya Nyiransabimana Jacqueline cyo gutambamira imikuriza y'urubanza N° RS/INJUST/RC0013/2020/HC/MUS rwatwaye umutungo we yaguze na Nsanzumuhire Boniface na we wari warawuguze na Ntezirizaza Théogène, rwazashingira ku biteganywa n'ingingo ya 161 n'ya 162 z'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Uko Urukiko rubibona [32] Impaka kuri iyi ngingo zishingiye ku kumenya niba urubanza rwaciwe mu rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane rushobora gutambamirwa, ku buryo Urukiko

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Rukuru, Urugereko rwa Musanze rwagombaga kwakira ikirego cyatanze na Nyiransabimana Jacqueline atambamira urubanza N° RS/INJUST/RC 00013/2020/HC/MUS. [33] Ingingo ya 53 y’itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’inkiko iteganya ibikurikira: “Imanza zasubiwemo ku mpamvu z’akarengane ntizishobora kongera kujuririrwa.” Mu rurimo rw’igifaransa, ibikubiye muri iyo ngingo bivugwa muri aya magambo: “Les jugements ayant fait l’objet de révision pour motifs d’injustice ne peuvent pas faire l’objet de nouveaux recours.” [34] Nk’uko byasobanuwe mu rubanza N° RSA/RECT/RC 00002/2023/CA rwaciwe n’Urukiko rw’Ubujurire ku wa 19/10/2023 haburana Torero Boniface na Twagiramungu Vincent¹, iyi ngingo yumvikanisha ko imanza zaciwe hasubirishwamo urubanza ku mpamvu z’akarengane zidashobora kujuririrwa kandi n’ubwo ikinyarwanda cy’iyi ngingo havugwa kujuririrwa, mu gifaransa humvikanisha neza ko bene izo manza zidashobora kongera gukorerwa inzira z’ubujurire izo ari zo zose. Mu magambo make, nta nzira y’ubujurire n’imwe yemerewe gukoreshwa kuri bene izo manza, yaba ubujurire busanzwe cyangwa ubujurire budasanzwe, harimo no gutambamira urubanza (Tierce opposition). [35] Ingingo ya 161, igika cya 3 n’icya 4 y’itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, iteganya ko “Hatambamirwa urubanza rwafashwemo icyemezo mu mizi kandi rutagishoboye kujuririrwa. Imanza zaciwe n’Urukiko rw’Ubujurire cyangwa urw’Ikirenga ntizitambamirwa.” Naho ingingo ya 162 y’iryo tegeko igateganya ko “Umuntu utareze cyangwa ngo aregwe mu rubanza arufitemo inyungu, ashobora gutambamira urwo rubanza rumurenganya ashaka ko rusubirwamo iyo ari we cyangwa ari n’abo ahagarariye, nta warutumiwemo.” [36] Izi ngingo zombi z’itegeko ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi zifatiwe hamwe, zumvikanisha ko umuntu wemerewe gutambamira urubanza ari utararurezemo cyangwa ngo aruregwemo ariko akaba abona hari inyungu ze zabangamiwe kandi ko urwo rubanza rugomba kuba rwafashwemo icyemezo mu mizi, rutanagishoboye kujuririrwa. [37] Nk’uko byasobanuwe haruguru, Nyiransabimana Jacqueline yatambamiye urubanza N° RS/INJUST/RC 00013/2020/HC/MUS rwaciwe n’Urukiko Rukuru, Urugereko rwa Musanze ku wa 11/11/2021 ariko ikirego cye nticyakirwa ku mpamvu z’uko urubanza yatambamiraga rudashobora gukorerwa inzira y’ubujurire iyo ari yo yose. Nk’uko ingingo y’itegeko ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi yavuzwe haruguru ibiteganya, urubanza rutambamirwa rugomba kuba rwafashwemo icyemezo mu mizi kandi rutanagishoboye kujuririrwa. [38] Urukiko rw’Ubujurire rurasanga uretse no kuba urubanza Nyiransabimana Jacqueline yatambamiye rwaba rutagishoboye kujuririrwa, ahubwo rutajuririrwa kuko itegeko riteganya ko nta nzira n’imwe y’ubujurire yaba isanzwe cyangwa idasanzwe ikorerwa ku rubanza rwaciwe hasubirishwamo urubanza ku mpamvu z’akarengane, bityo, Urukiko Rukuru, Urugereko rwa

1 Reba urubanza N° RSA/RECT/RC 00001/2023/CA rwo ku wa 19/10/2023, igika cya 13.

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Musanze rukaba nta kosa rwakoze mu kutakira ikirego cyatanzwe mu rubanza N° RS/REV RC 00001/2023/HC/MUS cyatambamiraga urubanza N° RS/INJUST/RC 00013/2020/HC/MUS. [39] Ku bijyanye no kuba Urukiko Rukuru, Urugereko rwa Musanze rwarasobanuye ko kuba Perezida w'Urukiko rw'Ikirenga yararuhaye ububasha bwo kuburanisha urubanza rusubirishwamo ku mpamvu z'akarengane bifatwa nk'aho urubanza N° RS/INJUST/RC 00013/2020/HC/MUS rwaciwe n'Urukiko rw'Ikirenga, akaba ari ho ruhera ruvuga ko rudashobora gutambamirwa, uru Rukiko rurasanga ibyo bisobanuro nta shingiro bikwiye guhabwa, kuko kuba Urukiko rwahabwa ububasha bwo kuburanisha urubanza runaka, bidakuraho ko ari rwo rwaruciye ku buryo rwaba rwaraciwe n'Urukiko Rukuru, Urugereko rwa Musanze ngo havugwe ko rwaciwe n'Urukiko rw'Ikirenga kandi nta Rukiko rucira urubanza mu bubasha bw'urundi, ahubwo ibiteganywa n'ingingo ya 53 y'itegeko rigena ububasha bw'inkiko byagaragajwe haruguru bikaba byihagije ubwabyo kugira ngo hasobaurwe ko icyemezo cyafashwe mu rubanza rwo gusubirishamo urubanza ku mpamvu z'akarengane, kitemerewe inzira y'ubujurire iyo ari yo yose, ni ukuvuga ubujurire busanzwe n'ubudasanzwe, inzira yo gutambamira urubanza ikaba ibarizwa mu nzira z'ubujurire zidasanzwe. [40] Ku bijyanye no kuba uhagarariye Nsanzumuhire Boniface avuga ko Urukiko rutagombaga gufata ibiteganywa n'itegeko rigena ububasha bw'inkiko ngo rubisumbishe ibiteganywa n'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi kandi ayo mategeko yombi ari ku rwego rumwe, Urukiko rurasanga nta shingiro bifite kuko nk'uko byasobanuwe haruguru, gusubirishamo urubanza ku mpamvu z'akarengane ni inzira idasanzwe, itegeko rigena ububasha bw'inkiko rikaba riteganywa ko nta yindi nzira y'ubujurire igomba gukorerwa ku rubanza rwaciwe muri ubwo buryo, itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi naryo rigateganywa ko hatambamirwa urubanza rutagishoboye kujuririrwa, bikaba byumvikanisha rero ko niba urubanza rudashobora gukorerwaho inzira n'imwe y'ubujurire, rutazigera rugira igihe cyo kuba rutagishoboye kujuririrwa. Bityo ku birebana n'uru rubanza, ayo mategeko yombi akaba yuzuzanya, nta na rimwe rivuguruza irindi. [41] Urukiko rushingiye ku ngingo z'amategeko zavuzwe haruguru n'ibisobanuro byatanzwe, rurasanga ikirego cyo gutambamira urubanza rwaciwe hasubirishwamo urubanza ku mpamvu z'akarengane, kitaragombaga kwakirwa koko. Kubera izo mpamvu, ubujurire bwatanzwe na Nyiransabimana Jacqueline bukaba nta shingiro bufite.

2. 2. Ibyerekeye ishingiro ry'amafaranga ababuranyi basaba [42] Uhagarariye Nyiransabimana Jacqueline asaba uru Rukiko gutegeka Uwineza Jacqueline guha uwo ahagarariye amafaranga ibihumbi magana atanu (500,000 Frw) y'ikurikiranarubanza, amafaranga miliyoni imwe (1,000,000 Frw) y'igihembo cya Avoka no kumusubiza amafaranga ibihumbi mirongo itanu (50,000 Frw) y'ingwate y'amagarama yatanze ajurira. Ku mafaranga Uwineza Jacqueline asaba, avuga ko nta shingiro afite kuko uwo ahagarariye yareze aharanira uburenganzira bwe. [43] Uhagarariye Uwineza Jacqueline asaba uru Rukiko gutegeka Nyiransabimana Jacqueline guha uwo ahagarariye amafaranga miliyoni eshatu (3,000,000 Frw) y'indishyi z'akababaro kubera kumushora mu manza ntabone ibyo yatsindiye, amafaranga ibihumbi magana atanu (500,000 Frw) y'ikurikiranarubanza n'amafaranga

miliyoni imwe (1,000,000 Frw) y'igihembo cya Avoka. Ku

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mafaranga Nsanzumuhire Boniface na Mukabadege Epiphane basaba, avuga ko nta shingiro akwiye guhabwa kubera ko baje mu rubanza uwo ahagarariye yaramaze gutsindira umutungo we. [44] Uhagarariye Nsanzumuhire Boniface asaba uru Rukiko gutegeka Uwineza Jacqueline guha uwo ahagarariye amafaranga miliyoni imwe (1,000,000 Frw) y'indishyi z'akababaro, amafaranga ibihumbi magana abiri (200,000 Frw) y'ikurikiranarubanza n'amafaranga ibihumbi magana atanu (500,000 Frw) y'igihembo cya Avoka. [45] Mu myanzuro ye, uwari uhagarariye Mukabadege Epiphane yasabye Urukiko gutegeka Uwineza Jacqueline guha abo ahagarariye amafaranga miliyoni imwe (1,000,000 Frw) y'indishyi z'akababaro, amafaranga ibihumbi magana abiri (200,000 Frw) y'ikurikiranarubanza n'amafaranga ibihumbi magana atanu (500,000 Frw) y'igihembo cya Avoka. Uko Urukiko rubibona [46] Ingingo ya 111 y'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikaburanishwa n'iyi ikirego cy'iremezo cyaba kitakiriwe." [47] Uru Rukiko rurasanga amafaranga Nyiransabimana Jacqueline asaba adakwiye kuyahabwa kubera ko ubujurire bwe nta shingiro bwahawe. Rurasanga ahubwo Nyiransabimana Jacqueline agomba guha Uwineza Jacqueline amafaranga ibihumbi magana abiri (200,000 Frw) y'ikurikiranarubanza n'amafaranga ibihumbi magana atanu (500,000 Frw) y'igihembo cya Avoka kuri uru rwego, akaba agenwe mu bushishozi bwarwo kuko ayo asaba ari menshi, naho ayo asaba y'indishyi z'akababaro akaba atagomba kuahabwa kuko adasobanura ishingiro ryayo. [48] Ku birebana n'amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka Nsanzumuhire Boniface na Mukabadege Epiphane basaba ko Uwineza Jacqueline abaha, uru Rukiko rurasanga nta kosa yabakoreye ryatuma ategakwa kugira ibyo abaha. III. ICYEMEZO CY'URUKIKO [49] Rwemeje ko ubujurire bwatanzwe na Nyiransabimana Jacqueline, nta shingiro bufite. [50] Rwemeje ko urubanza N° RS/REV/RC 00001/2023/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 25/01/2023, rudahindutse. [51] Rutegetse Nyiransabimana Jacqueline guha Uwineza Jacqueline amafaranga ibihumbi magana abiri (200,000 Frw) y'ikurikiranarubanza n'amafaranga ibihumbi magana atanu (500,000 Frw) y'igihembo cya Avoka kuri uru rwego. [52] Ruvuze ko amafaranga y'ingwate y'amagarama Nyiransabimana Jacqueline yatanze ajurira, ahwanye n'ibyakozwe mu rubanza.

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