

RWANDA / JUDGMENT

UBUSHINJACYAHA v. PFAKUBAHA

RPA 0252/12/CS

COURT

Supreme Court

DECIDED

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UBUSHINJACYAHA v. PFAKUBAHA

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Text

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UBUSHINJACYAHA v. PFAKUBAHA [Rwanda URUKIKO RW'IKIRENGA – RPA 0252/12/CS (Nyirinkwaya, Kayitesi na Mukandamage, J.) 8/7/2016] Amategeko Mpanabyaha – Ubwinjiracyaha bw'ubwicanyi – Ntawakwireguza ko ibyo yakoze Atari ubwinjiracyaha bw'ubwicanyi, mu gihe kuba uwahohotewe atarapfuye bitamuturutseho –Itegeko - Teka n° 21/1977 ryo kuwa 18/08/1977 rishyiraho Igitabo cy' Amategeko ahana, ingingo ya 21 Amategeko Mpanabyaha – Ubusinzi – si impamvu nyoroshyacyaha – Itegeko n° 21/1977 ryo kuwa 18/08/1977 rishyiraho Igitabo cy' Amategeko ahana, ingingo ya 70 Amategeko Mpanabyaha – Kwemera icyaha ku buryo butuzuye – Mugihe uregwa atemera icyaha ku buryo budashidikanywaho, ntibyaherwaho ngo agabanyirizwe ibihano – Itegeko - Teka n° 21/77 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 82. Incamake y'ikibazo: Ubushinjacyaha bwareze uregwa mu Rukiko Rukuru, urugereko rwa Rusizi, kuba yaratemaguye mu mutwe umugore we agamije kumwica. Urukiko rwaciye urubanza, rumuhamya icyaha cy'ubwinjiracyaha bwo kwica uwo bashyingiranywe, rumuhanisha igifungo cy'imyaka cumi (10) rumugabanyirije igihano rushingiye ko ari ubwa mbere ahaniwe icyaha mu buryo buzwi. Yajuriye mu Rukiko rw'Ikirenga, avuga ko inyito Urukiko rwahaye icyaha yakoze cy'ubwinjiracyaha bwo kwica uwo

bashyingiranywe atariyo, ko ahubwo rwagombaga kumuhanya icyaha cyo gukubita no gukomeretsa. Avuga kandi ko Urukiko rutamugabanyirije igihano bihagije, ko rwamuhaye igihano gihanitse cy'igifungo cy'imyaka icumi (10) kandi yaremeye icyaha agisabira imbabazi kuva mu Bugenzacyaha kugeza mu nkiko. Ubushinjacyaha buvuga ko iyo ngingo y'ubujurire nta shingiro ifite kuko uregwa atasunikishije umugore we umuhoro nk'uko abivuga ahubwo yamutemaguye mu mutwe no ku gikanu, bigaragara ko yagambiriye kumwica kubera ko yamuteze igico amutema, ko yamutemye mu cyico kandi akoresheje igikoresho cyica, ko rero icyaha cy'ubwinjiracyaha bw'ubuhotozi yahamijwe n'Urukiko Rukuru kitagomba guhindurwa n'Urukiko rw'ubujurire. Incamake y'icyemezo:1. Kuba Nyirarekeraho atarapfuye si impuhwe uregwa yamugiriye (bitamuturutseho), ahubwo umugambi we warahagaritswe n'abantu batabajwe n'umwana wabo, bityo akaba ahamwa n'ubwinjiracyaha bwo kwica uwo bashyingiranywe, nk'uko Urukiko Rukuru rwa Rusizi rwabyemeje, aho kuba icyaha cyo gukubita no gukomeretsa nk'uko abiburanisha. Ubujurire bwe nta shingiro ryabwo. 2.Uretse no kutemera icyaha mu buryo bwuzuye budashidikanywaho, uregwa ntiyemera icyaha yakoze kuko icyo yemera kuva agifatwa kugera no mu bujurire ari ugukubita no gukomeretsa umugore we, byongeye kandi akaba yarakoranye icyaha ubugome bukabije bwo gushaka kwica umugore we cyane cyane akoresheje uburyo bwa kinyamanswa amutemegura hose, bityo igabanyagihano asaba akaba atagomba kuryemererwa.

3. Gusinda ntibigomba gufatwa nk'impamvu nyoroshyacyaha yatuma uregwa agabanyirizwa igihano kabone n'iyi yaba yemera icyaha mu buryo budashidikanywaho. Ubujurire nta shingiro. Urubanza rwajuririwe rugumyeho.

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Amagarama aherereye ku isanduku ya Leta. Amategeko yashingiweho: Itegeko - Ngenga n⁰ 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'Amategeko ahana, ingingo ya 142. Itegeko n⁰ 59/2008 ryo kuwa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, ingingo ya 25 Itegeko - Teko n⁰ 21/77 ryo kuwa 18/06/1977 rishyiraho Igitabo cy'amategeko ahana, ingingo za 21,82 na 70. Imanza zifashishijwe: RPA 0150/08/CS rwaciye kuwa 30/04/2010 Ubushinjacyaha burega Pte SENZIRA Jean Claude Inyandiko z'abahanga: [Http:// www.catie.ca/enpif/summer](http://www.catie.ca/enpif/summer) Urubanza I.IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rukuru, Urugereko rwa Rusizi, Ubushinjacyaha burega Pfakubaha Pascal kuba yaratemaguye mu mutwe umugore we witwa Nyirarekeraho Consolée agamije kumwica, ubwo yarashyiriye inka ubwatsi. Urukiko rwaciye urubanza kuwa 23/06/2012, rwemeza ko Pfakubaha Pascal ahamwa n'ubwinjiracyaha bwo kwica uwo bashyingiranywe, rumuhanisha igifungo cy'imyaka cumi (10) rumugabanyirije igihano rushingiye ko ari ubwa mbere ahaniwe icyaha mu buryo buzwi. [2] Pfakubaha Pascal yajuriye Urukiko rw'Ikirenga kuwa 02/09/2012, avuga ko inyito Urukiko rwahaye icyaha yakoze cy'ubwinjiracyaha bwo kwica uwo bashyingiranywe atariyo, ko ahubwo rwagombaga kumuhanya icyaha cyo gukubita no gukomeretsa. Avuga kandi ko Urukiko rutamugabanyirije igihano bihagije, ko rwamuhaye igihano gihanitse cy'igifungo cy'imyaka icumi (10) kandi yaremeye icyaha agisabira imbabazi kuva mu Bugenzacyaha kugeza mu nkiko. [3] Urubanza rwaburanishijwe mu ruhame kuwa 30/05/2016, Pfakubaha Pascal yunganiwe na Me

Rwabigwi Augustin naho Ubushinjacyaha buhagarariwe na Niyonkuru Françoise, Umushinjacyaha ku Rwego rw'Igihugu. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA Kumenya inyito y'icyaha Pfakubaha Pascal akwiye gukurikiranwaho. [4] Pfakubaha Pascal avuga ko yajurijwe no kuba ataragambiriye kwica umugore we ariko Urukiko rukamuhamya ubwinjiracyaha bw'ubuhotozi. Asobanura ko umuhungu we Ntuyahaga Alfred yamutemye ku kaboko ari kumwe n'umugore we Nyirarekeraho, maze ahita afata umuhoro arawuzunguza kugira ngo ashobore guhunga ariko ufata umugore we,

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umusharura ku jisho, ko rero Urukiko rwa mbere rwagombaga kumuhamya icyaha cyo gukubita no gukomeretsa, ko asaba ko uru Rukiko rw'ubujurire rwabikosora. [5] Me Rwabigwi Augustin umwunganira avuga ko icyaha Pfakubaha Pascal yakoze ari ugukubita no gukomeretsa aho kuba ubwinjiracyaha bw'ubuhotozi, ko rero mu bujurire aricyo cyaha Urukiko rwamuhamya. [6] Uhagarariye Ubushinjacyaha avuga ko iyo ngingo y'ubujurire nta shingiro ifite kuko Pfakubaha Pascal atasunikishije umugore we umuhoro nk'uko abivuga ahubwo yamutemaguye mu mutwe no ku gikanu, bigaragara ko yagambiriye kumwica kubera ko yamuteze igico amutema, ko yamutemye mu cyico kandi akoresheje igikoresho cyica, ko rero icyaha cy'ubwinjiracyaha bw'ubuhotozi yahamijwe n'Urukiko Rukuru kitagomba guhindurwa n'Urukiko rw'ubujurire. UKO URUKIKO RUBIBONA [7] Ku byerekeye icyaha cyo kwica uwo bashyingiranywe, ingingo ya 25 y'Itegeko n° 59/2008 ryo kuwa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina igira iti: "Bitabangamiye ibiteganywa n'Igitabo cy'Amategeko Ahana Ibyaha, azahanishwa igifungo cya burundu, umuntu wese wishe uwo bashyingiranywe". [8] Naho ingingo ya 21 y'Itegeko n° 21/1977 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'Amategeko ahana ibyaha cyakoreshwaga igihe icyaha cyakorwaga iteganya ko "ubwinjiracyaha buhanirwa iyo umugambi wo gukora icyaha wagaragajwe n'ibikorwa biboneka, bidashidikanywa by'intangiriro y'icyaha, bigenewe kugitsotsoba, bigahagarikwa gusa cyangwa bikabuzwa kugera ku cyifuzo, bikazitirwa gusa n'impamvu zidakomoka ku bwende bwa nyiri ugukora icyaha". [9] N'ubwo mu miburanire ye, Pfakubaha Pascal avuga ko yatemye Nyirarekeraho atabishaka, mu ibazwa rye mu Bugenzacyaha yiyemereye ko yubikiriye umugore we amutema mu mutwe ngo kuko we n'umuhungu we Ntuyahaga bahoraga bamuhohotera. Iyi mvugo ye ikaba ihura n'ubuhamya bw'abantu batandukanye bamwiyumviye yigamba kuzica umugore we. [10] Dosiye y'urubanza igaragaza imvugo z'abatangabuhamya zishinja Pfakubaha Pascal kuba yarashatse kwica umugore we, muri abo batangabuhamya abitwa Mukarurangwa Costasie na Munyeshongore Jean Nepomuscène bemeza ko ubwo bavunuraga inzoga, Pfakubaha Pascal yababwiye ko ashaka ko mu Mudugudu wa Mpinga na Gikundamvura bazamara icyumweru badahinga kuko ashaka kuzica umuntu, uwitwa Vestine yamubaza uwo azica akamubwira ko azica umugore we byanze bikunze (Cote ya 9, 10, 11, 12, 13 na 14), izo mvugo zabo zikaba ari ikimenyetso kigaragaza ko Pfakubaha Pascal yagize umugambi wo kwica umugore we Nyirarekeraho Consolée. [11] Bigaragara nanone ko mu buhamya bwa Ntuyahaga Elias avuga ko ku wa 25/07/2010 yumvise induru, atabaye asanga Se Pfakubaha Pascal amaze gutema nyina mu musaya hasadutse no mu bitugu, ko kandi bari babanye nabi ahora amubwira ko azamwica, imvugo ye ihura kandi

n'imvugo z'abatangabuhamy bavuzwe haruguru bemeza ko batabajwe na Ntuyahaga, bagera mu rugo bagasanga Nyirarekeraho yatemwe mu mutwe hejuru y'ugutwi, umubiri wose wahindutse amaraso, iruhande rwe hari umuhoro wuzuye amaraso, ko kandi Pfakubaha Pascal yamuteze ku kiraro ashyiriye amatungo ubwatsi.

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- [12] Hashingiwe ku ngingo z'amategeko zivuzwe haruguru n'ubuhamy bw'abantu batandukanye byagaragajwe haruguru, Urukiko rurasanga Pfakubaha Pascal yaracuze umugambi wo kwica umugore we kuko yabanje kubyigamba ndetse igihe cyo kumwica abanza kumutegera ku kiraro aho yagombaga kuzanira inyana ubwatsi, Nyirarekeraho ahageze Pfakubaha ahita amutemagura akoresheje umuhoro, igikoresho gishobora kwica, kandi atema mu kico kuko yamutemye mu mutwe nk'uko bigaragazwa n'icyemezo cyatanzwe na Muganga Pombe Raphael wasuzumye Nyirarekeraho Consolée ku wa 25/07/2010, yemeza ko afite igisebe kinini kiva amaraso mu mutwe hafi y'ugutwi, ku ijosi no ku ntoki (large plaie hémorragique de la face, cou et mains et qu'il ya lieu de craindre une fracture de l'os pariétal gauche et du rachis de cerveau). [13] Urukiko rusanga kuba Nyirarekeraho atarapfuye atari impuhwe umugabo we Pfakubaha yamugiriye (bitamuturutseho), ahubwo umugambi we warahagaritswe n'abantu batabajwe n'umwana wabo Ntuyahaga Elias nk'uko byagaragajwe haruguru, bityo akaba ahamwa n'ubwinjiracyaha bwo kwica uwo bashyingiranywe, nk'uko Urukiko Rukuru rwa Rusizi rwabyemeje, aho kuba icyaha cyo gukubita no gukomeretsa nk'uko abiburanisha. Ubujurire bwe nta shingiro ryabwo. [14] Urukiko rurasanga ariko Urukiko Rukuru, Urugereko rwa Rusizi rutaragombaga gushingira ku ngingo ya 142 y'Itegeko ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'Amategeko ahana kandi icyaha cyarakozwe ritarajyaho kandi kitari giteganijwe mu Itegeko Teka n° 21/77 ryavuzwe haruguru ryakurikizwaga Pfakubaha Pascal akora icyaha, ahubwo rwari gushingira ku ngingo ya 25 y'Itegeko n° 59/2008 ryavuzwe haruguru.
2. Kumenya niba Pfakubaha Pascal yakongera kugabanyirizwa igihano. [15] Pfakubaha Pascal avuga ko asaba Urukiko kongera kumugabanyiriza igihano kuko yemeye icyaha kuwa mu Bugenzacyaha kugeza mu Rukiko, asaba n'imbabazi ariko rumuhanisha igihano gihanitse cy'imyaka icumi (10), ko kandi n'umugore we yamubabariye, amusura muri gereza n'ibyo yakoze akaba yarabitewe n'inzoga. [16] Me Rwabigwi Augustin umwunganira avuga ko asaba Urukiko kubabarira Pfakubaha Pascal rukongera kumugabanyiriza igihano kuko yemera icyaha aregwa asobanura ko yagitewe n'ubusinzi kandi nta kindi cyaha yigeze akora, akaba afitanye umubano mwiza n'umugore we bigaragazwa no kuba amusura kuri gereza. [17] Uhagarariye Ubushinjacyaha avuga ko Pfakubaha Pascal atagomba kongera kugabanyirizwa igihano kuko Urukiko Rukuru rwamugabanyirije rushingiye ko ari ubwa mbere akoze icyaha, ko kandi imbabazi asaba zuzuyemo uburyarya kuko ahunga umugambi wo gukora icyaha, ko rero hagumaho imikirize y'urubanza rwajuririwe. UKO URUKIKO RUBIBONA [18] Ingingo ya 82 y'Itegeko - Teka n° 21/77 ryo kuwa 18/06/1977 rishyiraho Igitabo cy'amategeko ahana iteganya ko "Juji ubwe aha agaciho impamvu zigabanya ububi bw'icyaha, ari izakibanjirije cyangwa izagikurikiye" naho ingingo ya 83 agace ka 2 y'iryo Tegeko ikavuga ko

" iyo hariho impamvu zoroshya icyaha, ibihano birahindurwa cyangwa bikagabanywa kuri ubu buryo: igihano cya burundu gisimbuzwa igihano cy'igifungo cy'igihe kitari munsu y'imyaka ibiri".

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[19] Bigaragara ko mu rubanza RP 0032/10/HC/RSZ rwaciwe n'Urukiko Rukuru ku wa 23/06/2012, rwashingiye kuba ari ubwa mbere Pfakubaha Pascal akurikiranyweho icyaha, aho kumuhanisha igifungo cya burundu rumuhanisha igifungo cy'imyaka icumi (10) rushingiye ku ngingo ya 82 na 83 zavuzwe haruguru. [20] Ku birebana n'igabanyagihano risabwa n'uregwa, Urukiko rurasanga uretse no kutemera icyaha mu buryo bwuzuye budashidikanywaho, Pfakubaha Pascal atemera icyaha yakoze kuko icyo yemera kuva agifatwa kugera no mu bujurire ari ugukubita no gukomeretsa umugore we, byongeye kandi akaba yarakoranye icyaha ubugome bukabije bwo gushaka kwica umugore we cyane cyane akoresheje uburyo bwa kinyamanswa amutemegura hose, bityo igabanyagihano asaba akaba atagomba kuryemererwa. [21] Naho kwitwaza ko yakoze icyaha kubera ubusinzi, Urukiko rurasanga gusinda bitagomba gufatwa nk'impamvu nyoroshyacyaha yatuma agabanyirizwa igihano kabone n' iyo yaba yemera icyaha mu buryo budashidikanywaho, hashingiwe ku biteganywa n'ingingo ya 70 igika cya 2 y'Itegeko Teka ryavuzwe haruguru iteganya ko "uwitesheje ubwenge yabishatse mu gihe cyo gukora icyaha ariyozwa icyaha yakoze naho yaba atabigiriye ubushake bwo gukora icyaha."Uyu kandi niwo murongo Urukiko rw'Ikirenga rwafashe mu rubanza RPA 0150/08/CS rwaciwe ku wa 30/04/2010 Ubushinjacyaha burega Pte Senzira Jean Claude icyaha cy'ubuhotozi, aho rwemeje ko kuba uregwa yarabanje kwitesha ubwenge mbere yo gukora icyaha bitafatwa nk'impamvu yoroshya ububi bw'icyaha aregwa.1 [22] Hashingiwe ku mategeko n'bisobanuro byavuzwe haruguru, Urukiko rusanga ubujurire bwa Pfakubaha Pascal nta shingiro bufite. III. ICYEMEZO CY'URUKIKO [23] Rwemeje ko ubujurire bwa Pfakubaha Pascal nta shingiro bufite; [24] Rwemeje ko imikirize y'urubanza RP 0032/10/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi ku wa 23/06/2012 igumye; [25] Rutegetse ko amagarama y'uru rubanza aherera ku isanduku ya Leta. 1 urubanza RPA 0150/08/CS rwaciwe ku wa 30/04/2010, Ubushinjacyaha burega Pte SENZIRA Jean Claude icyaha cy'ubuhotozi, Igitabo cya kane 2010 n° 7, urupapuro rwa 20 kugeza kuri 28

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