

RWANDA / JUDGMENT

UBUSHINJACYAHA v. UWAYO N'ABANDI

RP 00003/2022/HC/HCCIC

COURT

High Court

DECIDED

1 December 2022

CASE / FILE NUMBER

RP 00003/2022/HC/HCCIC

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UBUSHINJACYAHA v. UWAYO N'ABANDI

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Text**Page 1**

UBUSHINJACYAHA v. UWAYO N'ABANDI [Rwanda URUKIKO RUKURU/HCCIC – RP 00003/2022/HC/HCCIC (Muhima, P.J., Nsanzimana na Nshimiyimana J.) 01 Ukuboza 2022] Amategeko yerekeye imiburanishirize y'imanza nshinjabyaha – Ifunga ry'agateganyo – Iyo igihe uregwa afunzwe by'agateganyo amaze kiruta igihe cy'igifungo cyo hejuru giteganywa n'itegeko ku cyaha akurikiranyweho, agomba kurekurwa akaburana adafunze. Incamake y'ikibazo: Uru rubanza rwaciwe n'Urukiko Rukuru, Urugereko Rwihariye ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibi, Ubushinjacyaha bukurikiranye abaregwa ku cyaha cyo kutamenyekanisha icyaha cy'ubugome cyangwa gikomeye, baje gutanga ikirego basaba gufungurwa bakaburana urubanza mu mizi badafunze kubera ko igihe bamaze bafunzwe by'agateganyo kirenze igihano ntarengwa giteganyirijwe icyaha baregwa. Ubushinjacyaha buvuga ko icyifuzo cyabo ko bafungurwa bifite ishingiro kuko igihano kinini giteganyirijwe icyaha baregwa ari igifungo cy'umwaka umwe ariko uwo mwaka ukaba wararenze ukurikije igihe bafungiwe; bityo bakaba basaba ko bafungurwa ariko urukiko rukabatega kujya bitaba Ubushinjacyaha ku rwego rw'igihugu rukorera i Nyanza nibura rimwe mu kwezi, buri wese akanategakwa kutarenga akarere atuyemo no gushyikiriza ibyangombwa bye urwego rwagenwa n'urukiko. Incamake

y'icyemezo: 1. Iyo igihe uregwa afunzwe by'agateganyo amaze kiruta igihe cy'igifungo cyo hejuru giteganywa n'itegeko ku cyaha akurikiranyweho, agomba kurekurwa akaburana adafunze, bityo abaregwa bagomba guhita barekurwa bakazaburana badafunze. Inzitizi yo kuburana urubanza abaregwa badafunzwe ifite ishingiro. Amategeko yashingiweho: Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, Ingingo ya 96. Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganyira ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu, n'Ingingo ya 243. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Uwayo Faida Ibrahim, Nikuze Afissa, Muhawenimana Eric Adri na Mousa Ally Nizzar baregwa icyaha cyo kutamenyekanisha icyaha cy'ubugome cyangwa gikomeye basaba gufungurwa bakaburana urubanza mu mizi badafunze kubera ko igihe bamaze bafunzwe by'agateganyo kirenze igihano ntarengwa giteganyirijwe icyaha baregwa.

Page 2

[2] Ubushinjacyaha buvuga ko abaregwa barekurwa by'agateganyo ariko urukiko rukagira ibyo rubatega kubahiriza mu gihe bataraburana urubanza mu mizi. [3] Ikibazo kigomba gusuzumwa akaba ari ukumenya niba Uwayo Faida Ibrahim, Nikuze Afissa, Muhawenimana Eric Adri na Mousa Ally Nizzar bafungurwa bakaburana urubanza mu mizi badafunze. IKIBAZO KIRI MU RUBANZA N' ISESENGURWA RYACYO Kumenya niba Uwayo Faida Ibrahim, Nikuze Afissa, Muhawenimana Eric Adri na Mousa Ally Nizzar bafungurwa bakaburana urubanza mu mizi badafunze [4] Uwayo Faida Ibrahim, Nikuze Afissa, Muhawenimana Eric Adri na Mousa Ally Nizzar basaba bafungurwa bakaburana urubanza mu mizi badafunze kuko basanga igihe bamaze bafunzwe by'agateganyo kirenze igihano ntarengwa giteganyirijwe icyaha baregwa cyo kutamenyekanisha icyaha cy'ubugome cyangwa gikomeye. [5] Uwayo Faida Ibrahim avuga ko yafunzwe kuwa 02/9/2021, Mousa Ally Nizzar na Muhawenimana Eric Adri bo bakavugaga ko bafunzwe kuwa 03/09/2021 naho Nikuze Afisa we akavugaga ko yafunzwe kuwa 22/09/2021. [6] Ubushinjacyaha buvuga ko koko abaregwa bafunzwe ku matariki bavugaga ndetse ko n'icyifuzo cyabo ko bafungurwa bifite ishingiro kuko igihano kinini giteganyirijwe icyaha baregwa ari igifungo cy'umwaka umwe ariko uwo mwaka ukaba wararenze ukurikije igihe bafungurwa; bityo bakaba basaba ko bafungurwa ariko urukiko rukabatega kujya bitaba Ubushinjacyaha ku rwego rw'igihugu rukorera i Nyanza nibura rimwe mu kwezi, buri wese akanategakwa kutarenga akarere atuyemo no gushyikiriza ibyangombwa bye urwego rwagenwa n'urukiko. UKO URUKIKO RUBIBONA [7] Ingingo ya 96 y'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha mu gika cya kabiri iteganyira ko "Ukurikiranyweho icyaha ufunzwe by'agateganyo ashobora gusaba urukiko yarezwemo urubanza remezo gukuraho icyemezo kimufunga cyangwa ko afungurwa by'agateganyo" naho mu gika cya mbere igateganyira ko mu gihe urukiko rwaregewe urubanza mu mizi, igifungo cy'agateganyo kidashobora kurenga igihe cy'igifungo cyo hejuru giteganywa n'itegeko ku cyaha akurikiranyweho, ko iyo icyo gihe kirangiye ataraburana urubanza, uwari ufunze arekurwa akaburana adafunze." [8] Rusanga igihe Uwayo Faida Ibrahim, Nikuze Afissa, Muhawenimana Eric Adri na Mousa Ally Nizzar bamaze bafunzwe kirenga umwaka kuko

bose bafunzwe by'agateganyo mu kwezi kwa Nzeri 2021 kandi icyo gihe bamaze bafunzwe kikaba kiruta igihe ntarengwa cy'igihano cy'umwaka umwe giteganyirijwe icyaha cyo kutamenyekanisha icyaha cy'ubugome cyangwa gikomeye giteganywa kandi kigahanishwa n'ingingo ya 243 y'Itegeko N°68/2018 ryo

Page 3

ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu1 . Bityo, harebwe igihe abaregwa bamaze bafunzwe by'agateganyo n'ibiteganywa n'ingingo ya 96 y'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryavuzwe hejuru, rusanga Uwayo Faida Ibrahim, Nikuze Afissa, Muhawenimana Eric Adri na Mousa Ally Nizzar bagomba kurekurwa bakaburana badafunze. [9] Rusanga rero ibisabwa n'Ubushinjacyaha ko abaregwa bagomba kugira ibyo bategekwa kubahiriza nta shingiro bifite kuko, hakurikijwe ibiteganywa n'ingingo ya 96 y'itegeko ryavuzwe hejuru, iyo igihe cy'igifungo cy'agateganyo cyarenze igihecy'igifungo cyo hejuru giteganywa n'itegeko ku cyaha uregwa akurikiranyweho, uregwa arekurwa akaburana adafunze ; bityo akaba nta mpamvu y'uko abaregwa bagira ibyo bategekwa. III. ICYEMEZO CY'URUKIKO [10] Rwemeje ko inzitizi yatanze na Uwayo Faida Ibrahim, Nikuze Afissa, Muhawenimana Eric Adri na Moussa Ally Nizzar ifite ishingiro. [11] Rutegeste ko Uwayo Faida Ibrahim, Nikuze Afissa, Muhawenimana Eric Adri na Moussa Ally Nizzar barekurwa bakazaburana urubanza mu mizi badafunze. 1 ngingo ya 243 y' Itegeko n°68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange iteganywa ko: "Umuntu wese umenya ko icyaha cy'ubugome cyangwa gikomeye kigiye gukorwa cyangwa cyakozwe ntahite abimenyesha kandi abishoboye inzego zishinzwe umutekano, iz'ubutabera cyangwa iz'ubuyobozi kandi byari kukibuza gukorwa cyangwa kugabanya ingaruka zacyo, aba akoze icyaha. Iyo abihamijwe n'urukiko, ahanishwa igifungo kitari muni y'amezi atandatu (6) ariko kitarenze umwaka umwe (1) n'ihazabu y'amafaranga y'u Rwanda atari muni y'ibihumbi ijana (100.000 FRW) ariko atarenze ibihumbi magana atatu (300.000 FRW).

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