

RWANDA / JUDGMENT

UBUSHINJACYAHA V. MUTABARUKA

RPA 0088/ 10/CS

COURT

Supreme Court

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Text

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UBUSHINJACYAHA V. MUTABARUKA [Rwanda URUKIKO RW'IKIRENGA – 2014SC – RPA 0088/ 10/ CS (Mukanyundo, P.J., Gatete na Mukamulisa, J.) 3Werurwe 2014] Amategeko mpanabyaha – Uko igihano gihitwamo igihe hari itegeko rihana ryakuweho – Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ibyaha, Ingingo ya 8 na 765. Amategeko mpanabyaha – Gukubita no gukomeretsa – Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ibyaha, ingingo ya 148.n'Itegeko-Teka n° 21/1977 ryo kuwa 18/08/1977 rishyirahoIgitabo cy'amategeko ahana ibyaha, ingongo ya 318 Amategeko mpanabyaha – Ubujura buciye icyuho – Itegeko Ngenga n°01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ibyaha, ingingo ya 303.n'Itegeko-Teka n° 21/1977 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana ibyaha, ingingo ya 403 Incamake y'ikibazo: Ubushinjacyaha bwakurikiranye Mutabaruka na bagenzi be ku byaha byo kuba bitwaje imbunda barakoze icyaha cyo kwica, gukubita no gukomeretsa, ubujura bwitwaje intwaro. Urukiko Rukuru rwemeje ko Mutabaruka adahamwa n'icyaha cy'ubwicanyi ahubwo ko ahamwa n'icyaha cyo gukubita no gukomeretsa hamwe n'ubujura buciye icyuho maze kubera ko ibyaha yari yakoze bigize impurirane mbonezamugambi, rumuhanisha igifungo cy'imyaka 10 Yajuririye Urukiko

rw'Ikirenga avuga ko Urukiko rwamuhamije icyaha cyo gukubita no gukomeretsa kandi rutarigeze rukuburanisha kuko yaburanye gusa ku bijyanye n'ubujura bwitwaje intwari n'ubuhotozi, abigirwaho umwere kubera ko Urukiko rwasanze abeshyerwa, bityo rero akaba adashobora guhanirwa icyaha ataburanye. Incamake y'icyemezo: Uwajuriye yireguye ahakana icyaha avuga ko yahamijwe ibyaha atakoze kuko hatagaragajwe igihe icyaha cyakorewe ndetse ibyo bikaba byarabaye adahari kuko yakoreraga i Kigali. Umwunganira yasabye ko hakurikizwa ibiteganywa n'ingingo ya 303 y'Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ibyaha igihe Urukiko rwaba rusanze uwajuriye ahamwa n'ibyaha aregwa. Ibi kandi yashimangiye n'Ubushinjacya arikobuvuga ko uguhakana ibyaha kwe kutahabwa agaciro bushingiye ku buhamya bwa Mukeshimana. Kutabasha kuvuguruzwa ibimenyetso bimushinja bituma ibyo bimenyetso bihabwa agaciro n'Urukiko. Kuba Mutabaruka yarananiye kugaragaza aho yari ari igihe ibyaha yashinzwaga byakorwaga byatumye urukiko rudaha agaciro imyiregurire ye ko igihe icyaha cyakorwaga Atari ahari. Iyo itegeko ryakuweho kandi urubanza ruburanishwa rurishingiyeho iryakuweho, iriteganywa ibihano bito niryo rikurikizwa. Bityo Urukiko rwakurikije ingingo ya 303 y'Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ibyaha kuko ari ryo ryateganyaga igihano gito aho gukurikiza ingingo ya 318 y'Itegeko-Teka n° 21/1977 ryo kuwa

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18/08/1977 rishyiraho Igitabo cy'amategeko ahana ibyaha ryakurikizwaga igihe icyaha cyakorwaga hashingiwe ku ngingo ya 8 na 765 y'iryo tegeko ngenga ryavuzwe. Kuko uwajuriye yakoze ibyaha bigize impurirane y'ibyaha Urukiko rwa rwamuhanishije igihano giteganyirijwe icyaha gikomeye kurusha ibindi mu byo yari yakoze maze ahanishwa igifungo cy'imyaka 7. iteganywa. Ubujurire nta shingiro bufite. Urubanza rwajuririwe ruhindutse gusa ku bijyanye n'ibihano. Uwajuriye ahanishijwe imyaka 7 y'igifungo. Amategeko yashingiweho: Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ibyaha, Ingingo ya 8, 765, 303 na 148. Itegeko-Teka n° 21/1977 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana ibyaha ingingo ya 403, 318 na Nta rubanza rwashingiweho. Urubanza I. IMITERERE Y'URUBANZA MURI MAKE [1] Ubushinjacyaha bwakurikiranye Mutabaruka na bagenzi be bubarega kuba bitwaje imbunda bari bahawe n'uwitwaga Tugirimana Oreste bita Mado, barateye ahitwa I Gafumba bahica Seminega na Rugema Phocas babarashe, bakomeretsa Harerimana, Kalinijabo Sixbert na Mpayimana Viateur, ko kandi mu kabari ka Harerimana Gaspard bahibye 120.000Frw baranamusahura, ndetse ko nyuma bateye no kwa Mukeshimana Joseph baramukubita we n'umugore we barabakomeretsa banahabwa 40.000 Frw. Ubushinjacyaha bunavugaga ko Mutabaruka Vincent yahise atoroka nyuma y'ibyo byaha, abandira barafatwa banamushinja ko bafatanyije, aho afatiwe nawe ashidikizwa Urukiko Rukuru, Urugereko rwa Nyanza kugira ngo aburanishwe. [2] Urukiko rwaregwe rwaciye urubanza kuwa 29/01/2010 rwemeza ko Mutabaruka Vincent adahamwa n'icyaha cy'ubwicanyi ahubwo ko ahamwa n'icyaha cyo gukubita no gukomeretsa hamwe n'icyaha cy'ubujura buciye icyuho; kubera ko ibyaha yakoze bigize impurirane mbonezamugambi, rumuhanisha igifungo cy'imyaka 10. [3] Mutabaruka Vincent yajuririye urubanza mu Rukiko rw'Ikirenga avuga ko impamvu yatumye ajurira ari uko

Urukiko rwamuhamije icyaha cyo gukubita no gukomeretsa kandi rutarigeze rukiburanisha kuko yaburanye gusa ku bijyanye n'ubujura bwitwaje intwaro n'ubuhotozi, abigirwaho umwere kubera ko Urukiko rwasanze abeshyerwa, ko rero adashobora guhanirwa icyaha ataburanye.

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[4] Iburanisha ry'urubanza ryabaye kuwa 13/01/2014 no kuwa 03/03/2014 Mutabaruka yunganiwe na Me Bimenyimana Emmanuel, Ubushinjacyaha buhagarariwe na Niyonkuru Françoise, Umushinjacyaha ku rwego rw'Igihugu. II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYABYO Kumenya niba Mutabaruka yarahamijwe icyaha atakoze [5] Iburanisha ritangiye, Me Bimenyimana Emmanuel yabanje kuvuga ko nyuma yo With respect to the kubyumvikanaho n'uwo yunganira, ingingo y'ubujurre ijyanye no kuba Mutabaruka yarahamijwe ibyaha ataburanye atakiyishingiyeho kubera ko yajuriye atarabona kopi y'urubanza yajuririye n'inyandiko mvugo y'iburanisha, ariko aho abiboneye asanga ibyaha yahamijwe yarabiburanyeho. [6] Ku bijyanye n'ibyaha aregwa, Mutabaruka avuga ko atishimiye kuba yarahamijwe ibyaha atakoze kuko Mukeshimana wamushinje kuba yaramukubise akanamukomeretsa ndetse akamwiba, atavugisha ukuri kuko atagaragaje igihe ibyo byaha yabikoreye, kandi ko ku munsu icyaha cyakoreweho atabaga iwabo kuko yakoraga i Kigali. [7] Me Bimenyimana Emmanuel avuga ko uwo yunganira atemera icyaha kuko atari aho cyakorewe, ariko ko Urukiko ruramutse rusanze kimuhama, mu gihe cyo kugena igihano, aho gushingira ku Gitabo cy'amategeko ahana ibyaha cyakurikizwaga igihe icyaha cyakorwaga, rwazashingira ku ngingo ya 302 y'Igitabo gishya cy'amategeko ahana ibyaha kuko ariyo iteganya igihano cyoroshye cy'imyaka itanu y'igifungo. [8] Uhagarariye Ubushinjacyaha avuga ko imyiregurire ya Mutabaruka y'uko atari aho ibyaha byakorewe nta shingiro bufite, kuko yashinje na Maniraguha wasobanuye ko igihe bakoraga ibyaha baregwa, bari kumwe na Hassan, ndetse ko Mutabaruka yanashinje na Mukeshimana Joseph wemeje ko yamubonye mu bamuteye. [9] Akomeza avuga ko ku bijyanye n'ibihano, Urukiko rwazasuzuma ibyasabwe n'uwunganira Mutabaruka byerekeye itegeko rigomba gukurikizwa. [10] Ingingo ya 65 y'itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga ko urukiko arirwo rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa. Ntirwitsitsa ku mubare w'abatangabuhamya, rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo bavuga uko byagenze ntacyo bahimba. [11] Urukiko rusanga ku rwego rubanza, Mutabaruka yarahamijwe icyaha cyo kwiba kwa Mukeshimana wemeje ko yamumenye mu bamuteye bakamukomeretsa ndetse bakanakubita umugore we. [12] Urukiko rusanga mu nyandiko mvugo ye mu Bugenzacyaha, Mukeshimana yarasobanuye ko abantu bamwibye bakanamukomeretsa we n'umugore we, babanje gukubita ibuye ku rugi maze rugwa imbere, binjira mu nzu, anavuga ko abinjije mu cyumba bakamwaka amafaranga ndetse bagatwara n'ibindi bintu bari bane, kandi ko muri abo yabashije kumenya gusa Mutabaruka kuko yamumuritse itoroshi igihe yuriraga urwego ageze hejuru y'urugi ahunga

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kubera ko abantu bari bumvise induru bari batangiye guhurura, iyo mvugo yanashingiweho n'Urukiko rubanza ikaba igomba guhabwa agaciro cyane cyane ko Mutabaruka atabashije kugaragaza ikintu gishya cyatuma ubuhamya bwa Mukeshimana buteshwa agaciro, ndetse ngo anerekane ko hari icyo baba bapfa ku buryo mu bantu bose bamuteye ari we gusa yashinje, bityo imyiregurire ye y'uko atari aho icyaha cyakorewe nyamara atanabitangira ibimenyetso ikaba nta shingiro ifite. [13] Ku bijyanye n'ibihano, ku cyaha cy'ubujura buciye icyuho Mutabaruka yahamijwe n'Urukiko Rukuru, yahanishijwe igifungo cy'imyaka icumi hashingiwe ku ngingo ya 4031 y'Itegeko-Teka n° 21/1977 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana ibyaha cyakurikizwaga igihe icyaha cyakorwaga, icyo cyaha ubu kikaba gihanwa n'ingingo ya 303 y'Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ibyaha iteganya igihano cy'igifungo cyo kuva ku myaka irindwi kugeza ku myaka icumi, bityo iyi ngingo ya 303 akaba ari yo igomba gukurikizwa mu guhana Mutabarukakubera ko ariyo iteganya ibihano byoroheje ugereranyije n'iya 403 y'Igitabo cy'amategeko ahana cyakurikizwaga. [14] Urukiko Rukuru rwahamije kandi Mutabaruka icyaha cyo gukubita no gukomeretsa cyateganywaga n'ingingo ya 318 y'Itegeko-Teka n° 21/1977 ryo kuwa 18/08/1977 ryamaze kuvugwa, rumuhanisha igifungo cy'umwaka umwe; maze ku byaha byombi yahamijwe ahanishwa igifungo cy'imyaka 10 kuko ari cyo yahanishishijwe ku cyaha kirushije ibindi gukomera kubera ko hari impurirane mbonezamugambi. [15] Hashingiwe ku ngingo ya 83 n'iya 7654 z'Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 ryavuzwe haruguru, Urukiko rurasanga icyaha cy'ubujura buciye icyuho Mutabaruka yahamijwe gikwiye guhanwa hakurikijwe ibihano biteganywa n'ingingo ya 303 y'Itegeko rimaze kuvugwa, kuko ariyo iteganya ibihano byoroheje, bityo Mutabaruka akaba agomba guhanishwa igifungo cy'imyaka irindwi kuri icyo cyaha. [16] Hakurikijwe kandi ibimaze kuvugwa mu gika kibanziriza iki, Urukiko rusanga icyaha cyo gukubita no gukomeretsa Mutabaruka yahamijwe gikwiye gukomeza guhanwa hashingiwe ku ngingo ya 318 y'Itegeko-Teka n° 21/1977 ryo kuwa 18/08/1977 ryavuzwe haruguru kuko ariyo iteganya igihano cyoroheje ugereranyije n'ingingo ya 148 y'Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 ryamaze kuvugwa. 1 Yahanishaga icyo cyaha igifungo cyo kuva ku myaka icumi kugeza kuri cumi n'itanu 2 Iyo ngingo yateganyaga kuri icyo cyaha igifungo kuva ku kwezi kumwe kugeza ku mwaka umwe n'ihazabu y'amafaranga kuva kuri magana atanu kugeza ku bihumbi bibiri, cyangwa kimwe gusa muri ibyo bihano. Icyo cyaha ubu giteganywa kandi kigahanishwa ingingo ya 148 iteganya igihano cy'igifungo kuva ku mezi atandatu kugeza ku myaka ibiri. 3 Iyi ngingo ivuga ko "Mu gihe hari amategeko abiri ahana, rimwe ryariho mu gihe icyaha cyakorwaga, irindi ryaratangajwe kuva icyaha gikozwe, ariko urubanza rutaracibwa burundu, itegeko rishya ni ryo ryonyine rigomba gukurikizwa iyo riteganya igihano cyoroheje". 4 Iyi ngingo nayo ivuga ko "...icyaha cyakozwe mbere y'uko iri Tegeko Ngenga ritangazwa mu Igazeti ya Leta ya Repubulika y'u Rwanda gihanwa hakurikijwe itegeko ryakigengaga keretse mu gihe iri Tegeko Ngenga riteganya ibihano byoroheje".

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[17] Nk'uko nanone byasobanuwe, ibyaha bihama Mutabaruka bigize impurirane mbonezamugambi, bityo nk'uko Urukiko Rukuru rwabyemeje, akaba agomba guhanishwa igihano yahanishijwe ku cyaha gikomeye kurusha ibindi, ni ukuvuga igifungo cy'imyaka irindwi(7) kijyanye n'icyaha yahamijwe cy'ubujura buciye icyuho. III. ICYEMEZO CY'URUKIKO [18] Rwemeje ko ubujurire bwa Mutabaruka Viscent bita Hassan nta shingiro bufite ; [19] Rwemeje ko urubanza RP 0090/08/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza kuwa 29/01/2010 ruhindutse gusa ku bijyanye n'igihano Mutabaruka Vincent yari yahawe; [20] Ruhanishije Mutabaruka Vincent bita Hassan igifungo cy'imyaka irindwi (7).

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