

RWANDA / JUDGMENT

Re RUTAGARAMA

RS/RECT/RC 00001/2019/SC

COURT

Supreme Court

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Re RUTAGARAMA

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Text

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Re RUTAGARAMA [Rwanda URUKIKO RW'IKIRENGA – RS/RECT/RC 00001/2019/SC – (Cyanzayire, P.J., Hitiyaremye na Rukundakuvuga, J.) 31 Gicurasi 2019] Amategeko agenga imiburanishirize y'imanza mbonezamubano – Gusaba gukosora urubanza – Ibihe byo gusaba gukosora urubanza – Gusaba gukosora urubanza ntibikwiye kubangamirwa n'ibihe by'ukwezi kumwe, mu gihe mu rubanza harimo amakosa y'imyandikire ashobora kubangamira irangizwa ryarwo. Incamake y'ikibazo: Urukiko rw'Ikirenga rwaciye urubanza ku rwego rw'ubujurire hagati ya Rutagarama na Nzabonimana, ku rubanza rwari rwaciye n'Urukiko Rukuru, Urugereko rwa Rwamagana ku kirego kijyanye n'indishyi z'akababaro uyu Rutagarama n'Abagenzi baregeraga, hashingiwe ku rubanza nshinjabyaha rwaciye n'Urukiko rwitwa “La Cour d'Assises de l'Arrondissement Administratif de Bruxelles”. Nyuma y'uko Urukiko rw'Ikirenga rwemeje ko ubujurire bwa Nzabonimana nta shingiro bufite, ko ntagihindutse ku mikirize y'urubanza rwaciye n'Urukiko Rukuru, Rutagarama yatanze ikirego avuga ko muri urwo rubanza rwajuririwe hagaragamo amakosa mu myirondoro ye, akaba atarakosowe mu rubanza rwaciye n'Urukiko rw'Ikirenga bikaba byaratumye Banki itamuha amafaranga yatsindiye bityo, akaba asaba ko yakosorwa. Iburanisha ryashyizweho ribera mu nama y'abacamanza hasuzumwa inyandiko zikubiyemo

ibisobanuro by'ikirego, bitabaye ngombwa guhamagara ababuranyi nkuko amategeko abiteganywa. Urukiko rwasanze Urega yatanze ikirego nyuma y'imyaka itatu urubanza rusabirwa gukosorwa ruciwe, mu gihe ibihe biteganywa n'itegeko ari ukwezi kumwe. Ibi byatumye, muri uru rubanza, hasuzumwe ikibazo kijyanye n'ibihe byo gutanga ikirego gisaba gukosora urubanza no kumenya niba mu rubanza Rutagarama na bagenzi be baburanye na Nzabonimana harimo amakosa y'imyandikire akeneye gukosorwa. Ku kibazo kijyanye n'ibihe byo gukosora urubanza, Urukiko ruvuga ko gusaba gukosora urubanza bigomba gukorwa mu gihe kitarenze ukwezi nkuko itegeko rigenga imiburanishirize y'imanza mbonezamubano, ubucuruzi, umurimo n'ubutegetsi ribiteganywa mu ngingo yaryo ya

140. Rusobanura ko Umushingamategeko ashiraho ibyo, byari ugukumira ko hagira umuburanyi ubona ko yarengeje ibihe byo kujuririra urubanza, akifashisha inzira yo kurukosora cyangwa kurubanza, kugirango ibyo bihe byo kujurira bizatangire kubarwa uhereye ku munsu urubanza ku kirego cyo gukoza cyangwa gusobanura ruciriweho. Ntabwo igitekerezo cye cyari uko urubanza rugaragamo amakosa, arugumamo, ku buryo byatera ikibazo mu kururangiza, cyangwa ntirwumvikane ku bakenera kurwifashisha ku mpamvu zinyuranye. Bivuze ko umuburanyi agaragaza ko mu rubanza rwaciwe harimo amakosa y'imyandikire ku buryo kuyarekeramo byatera ibibazo mu kururangiza, gusuzuma ishingiro ry'icyo kirego bidakwiye kubangamirwa n'igihe cy'ukwezi kumwe. Ku kibazo kijyanye no kumenya niba mu rubanza yaburanyemo na Nzabonimana harimo amakosa y'imyandikire, Rutagarama avuga ko ku rupapuro rwa 45 n'urwa 80 z'urwo rubanza harimo amakosa mu mwirondoro we. Asobanura ko, nk'uko indangamuntu ye ibigaragaza, yitwa Rutagarama Eliseus aho kuba Elise, akaba yaravutse mu 1971 aho kuba mu 1970. Avuga kandi ko amazina ya Se umubyara ari Ngabonziza Silas, Urukiko rukaba rwaranditse Ngabonziza gusa. Asaba ko ayo makosa agaragara mu rubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, akosorwa.

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Incamake y'icyemezo: Gusaba gukosora urubanza ntibikwiye kubangamirwa n'ibihe by'ukwezi kumwe, mu gihe mu rubanza harimo amakosa y'imyandikire ashobora kubangamira irangizwa ryarwo. Bityo, amakosa Rutagarama Eliseus avuga ko yakozwe yatumye urubanza rutarangizwa ku bimureba, Urukiko rusanga ikirego yatanze cyakwagirwa hagasuzumwa ishingiro ryacyo. Ikirego gisaba gukosora urubanza cyakiriwe, kandi gifite ishingiro. Amategeko yashingiweho: Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'Imanza z'Imbonezamubano, iz'Ubucuruzi, iz'Umurimo n'iz'Ubutegetsi, ingingo ya 140, 141 n'ya 190. Nta manza zifashishijwe. I. IMITERERE Y'URUBANZA [1] Ku wa 13/11/2015, Urukiko rw'Ikirenga rwaciye urubanza RCAA 0007/15/CS ku bujurire bw'urubanza RCA 0055/14/HC/RWG rwaciye n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 19/12/2014, haburana Nzabonimana Etienne na Rutagarama Eliseus na bagenzi be baregeraga indishyi z'akababaro, hashingiwe ku rubanza nshinjabyaha 04961 rwaciwe n'Urukiko rwitwa "La Cour d'Assises de l'Arrondissement Administratif de Bruxelles" ku wa 29/06/2005. Urukiko rw'Ikirenga rwemeje ko ubujurire bwa Nzabonimana Etienne nta shingiro bufite, ko nta gihindutse ku mikirize y'urubanza RCA 0055/14/

HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 19/12/2014. [2] Nyuma y'aho urubanza ruciriwe, Rutagarama Eliseus yatanze ikirego mu Rukiko rw'Ikirenga ku wa 01/03/2019, avuga ko mu rubanza RCA 0055/14/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 19/12/2014, hagaragayemo amakosa mu myirondoro ye, ayo makosa akaba atarakosowe mu rubanza RCAA 0007/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 13/11/2015, bikaba byaratumye Banki itamuha amafaranga yatsindiye. Asaba ko Urukiko rw'Ikirenga rwakosora ayo makosa yagaragaye. [3] Iburanisha ry'urubanza ryashyizwe ku wa 20/05/2019, ribera mu nama y'Abacamanza, hasuzumwa inyandiko zikubiyemo ibisobanuro by'ikirego, bitabaye ngombwa guhamagara ababuranyi nk'uko biteganywa n'ingingo ya 140, igika cya mbere¹ irebwe hamwe n'ingingo ya 190, igika cya kabiri² z'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'Imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Mu gusuzuma inyandiko rwashyikirijwe, Urukiko rwasanze Rutagarama Eliseus yatanze ikirego nyuma y'imyaka itatu urubanza rusabirwa gukosorwa ruciwe, mu igihe ibihe biteganywa n'itegeko ari ukwezi kumwe.

1 Ikirego gikosora cyangwa gisobanura urubanza kiburanishwa nk'inyandiko nsobanurakirego itanzwe n'umuranyi umwe. Urubanza rukosora urundi, rukosora gusa amakosa y'imyandikire. 2 Umucamanza washyikirijwe ikirego, aragisuzuma, yasanga ari ngombwa ko ahamagaza uwagitanze n'abandi bose abona ko bashobora kuza muri icyo kibazo akabahamagaza. Agomba kubumva mu gihe kitarenze iminsi ibiri (2) ikirego gitanzwe.

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- [4] Muri uru rubanza, harasuzumwa ibibazo bibiri: ikibazo kijyanye n'ibihe byo gutanga ikirego gisaba gukosora urubanza, n'ikibazo cyo kumenya niba hari amakosa yakozwe ajyanye n'imyandikire akeneye gukosorwa. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA
1. Gusuzuma ikibazo kijyanye n'ibihe byo gutanga ikirego gisaba gukosora urubanza [5] Ingingo ya 140, igika cya gatatu, y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko gusaba gukosora cyangwa gusobanura urubanza bikorwa mu gihe cy'ukwezi kumwe uhereye igihe umuburanyi yamenyeye imikuriza y'urubanza. [6] Urukiko rurasanga icyari kigenderewe n'umushingamategeko ashiraho ibi bihe byo gusaba gukosora cyangwa gusobanura urubanza, byari ugukumira ko hagira umuburanyi ubona ko yarengeje ibihe byo kujuririra urubanza, akifashisha inzira yo kurukosora cyangwa kurubanza, kugirango ibyo bihe byo kujurira bizatangire kuburwa uhereye ku munsu urubanza ku kirego cyo gukoza cyangwa gusobanura ruciriweho. Ntabwo igitekerezo cyari uko urubanza rugaragamo amakosa, arugumamo, ku buryo byatera ikibazo mu kururanga, cyangwa ntirwumvikane ku bakenera kurwifashisha ku mpamvu zinyuranye. [7] Ibi ni nabyo byasobanuwe mu cyemezo cya Perezida w'Urukiko rw'Ikirenga numero 0020/2018 kirebana n'itakamba ry'umuburanyi Musefano Juven, ku cyemezo numero 015/2018/CIV/GCS cyari cyafashwe n'Ubwanditsi bw'Urukiko ku iyakirwa ry'ikirego gikosoza urubanza RCAA 00022/2017/SC. Muri icyo cyemezo, Perezida w'Urukiko rw'Ikirenga yasobanuye ko icyo

umushingamategeko yari agamije avuga ko gukosoza urubanza bikorwa mu gihe cy'ukwezi, ari ugukumira abashobora gutinza imanza bitwaje ko igihe cyo kujurira kizabarwa hagendewe ku itariki urubanza rukosora urundi ruciriwe, ku buryo hari ababuranyi babyitwaza bagatanga ibirego byo gukosoza imanza impitagihe bagamije gusiragiza bagenzi babo cyangwa guhagarikisha irangizwa ry'imanza mu buryo buziguye. [8] Ashingiye ku gika cya gatanu cy'ingingo ya 140 yavuzwe haruguru, giteganywa ko iyo urubanza rw'iremezo rwarengeje igihe cyo kujuririrwa, kurukosora cyangwa kurusobanura bishobora gutuma rujuririrwa, mu gihe ubujurire bushingiye gusa ku cyemezo cyafashwe ku byerekeye ikosorwa cyangwa isobanura ry'urubanza, Perezida w'Urukiko rw'Ikirenga asobanura nanone ko niba iyi ngingo iteganywa ko urubanza rwarengeje igihe cyo kujuririrwa rushobora gukosorwa, kandi mu manza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, igihe cyo kujurira ari ukwezi kumwe, bivuze ko gusaba gukosora urubanza bishobora kuba nyuma y'icyo gihe cy'ukwezi kumwe. Avuga ko iyi ngingo igomba gusobanurwa mu buryo bufasha ababuranyi, igihe cyose ikosa rituma urubanza rudashobora kurangizwa rigaragariye, rikaba ryakosorwa. [9] Hashingiye ku bisobanuro bimaze gutangwa, birumvikana ko mu gihe umuburanyi agaragaza ko mu rubanza rwaciwe harimo amakosa y'imyandikire ku buryo kuyarekeramo byatera ibibazo mu kururangiza, gusuzuma ishingiro ry'icyo kirego bidakwiye kubangamirwa n'igihe cy'ukwezi kumwe giteganywa mu gika cya gatatu cy'ingingo ya 140 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru. [10] Muri uru rubanza rusabirwa gukosorwa, Rutagarama Eliseus agaragaza ko harimo amakosa mu myandikire y'izina rye n'iry'umubyeyi we, ndetse no ku bireba igihe yavukiye,

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bikaba byaratumye rutarangizwa ku bimureba. Urubanza RCAA 0007/15/CS rwaciwe n'Urukiko rw'Ikirenga rusabirwa gukosorwa, rwaciwe ku wa 13/11/2015, naho ikirego gisaba ko rukosorwa kikaba cyaratanze ku wa 01/03/2019, bivuga ko igihe cy'ukwezi kumwe giteganywa mu gika cya gatatu cy'ingingo ya 140 yavuzwe haruguru cyamaze kurenga. [11] Hashingiye ariko ku bisobanuro byatanze, mu gihe amakosa Rutagarama Eliseus avuga ko yakozwe yatumye urubanza rutarangizwa ku bimureba, Urukiko rurasanga ikirego yatanze cyakwagirwa hagasuzumwa ishingiro ryacyo.

2. Kumenya niba mu rubanza Rutagarama Eliseus na bagenzi be baburanye na Nzabonimana Etienne harimo amakosa y'imyandikire akeneye gukosorwa [12] Rutagarama Eliseus avuga ko amakosa asaba ko akosorwa, yagaragaye mu rubanza RCA 0055/14/HC/RWG rwajuririwe mu Rukiko rw'Ikirenga, ari aya akurikira: - Ku rupapuro rwa 45 rwa kopi y'urubanza, ahanditse Rutagarama Eliseus, mwene Ngabonziza na Muterampundu, wavutse mu 1970, byakosorwa hakandikwa: Rutagarama Eliseus, mwene Ngabonziza Silas na Muterampundu, wavutse mu 1971. - Ku rupapuro rwa 80 rwa kopi y'urubanza, ahanditse Rutagarama Elise, mwene Ngabonziza Silas, wagenewe indishyi zingana na 2.000.000 Frw, byakosorwa hakandikwa Rutagarama Eliseus, mwene Ngabonziza Silas, wagenewe 2.000.000 Frw. [13] Rutagarama Eliseus asobanura ko, nk'uko indangamuntu ye ibigaragaza, yitwa Rutagarama Eliseus aho kuba Elise, akaba yaravutse mu 1971 aho kuba mu 1970. Avuga kandi ko amazina

ya Se umubyara ari Ngabonziza Silas, Urukiko rukaba rwaranditse Ngabonziza gusa. Asaba ko ayo makosa agaragara mu rubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, akosorwa ashingiye ku ngingo ya 141 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'Imanza z'Imbonezamubano, iz'Ubucuruzi, iz'Umurimo n'iz'Ubutegetsi³. UKO URUKIKO RUBIBONA [14] Ingingo ya 141 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'Imanza z'Imbonezamubano, iz'Ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko uwifuza ko urubanza rukosorwa cyangwa rusobanurwa kandi rwarajuririwe, abigaragaza mu mwanzuro, Urukiko rwajuririwe rukabisuzumira hamwe n'izindi ngingo z'ubujurire. Icyo gihe, Urukiko rwo hasi ruba rutagifite ububasha bwo gukosora ayo makosa. [15] Ibiteganyijwe muri iyi ngingo, birumvikana mu gihe urubanza rwajuririwe rwakiriwe rugasuzumwa mu mizi yarwo, kuko icyo gihe urubanza rwaciwe n'urukiko rwajuririwe ari narwo rurangizwa. Ibi bikaba byatandukanywa n'igihe urubanza rwajuririwe rutakiriwe ngo rusuzumwe mu mizi yarwo, kuko haba hazarangizwa urwo rwajuririwe. [16] Iyi ngingo kandi yumvikanamo ko uwajuriye usaba ko urubanza rukosorwa abigaragaza mu mwanzuro, bigasuzumirwa hamwe n'izindi ngingo z'ubujurire. Hakwibazwa ariko uko bigenda igihe atabigaragaje mu mwanzuro ngo bisuzumirwe hamwe n'izindi ngingo z'ubujurire,

3 Uwifuza ko urubanza rukosorwa cyangwa rusobanurwa kandi rwarajuririwe, abigaragaza mu mwanzuro, Urukiko rwajuririwe rukabisuzumira hamwe n'izindi ngingo z'ubujurire. Muri icyo gihe Urukiko rwo hasi ntiruba rugifite ububasha bwo gukosora ayo makosa.

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ahubwo akabiregera nyuma urubanza rwaramaze gucibwa, kandi asaba gukosora urubanza rwari rwarajuririwe. Icyo gihe, Urukiko rwajuririwe nirwo rufite ububasha bwo gukosora, kubera ko, n'iyi rwemeje ko hagumaho imikirize y'urubanza rwari rwaciwe n'Urukiko rubanza ari nayo irimo amakosa asabwa gukosorwa, iyo mikirize ruba ruyigize icyarwo. [17] Muri uru rubanza, Rutagarama Eliseus yareze asaba ko hakosorwa amakosa yagaragaye mu rubanza RCA 0055/14/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, rukajuririrwa mu Rukiko rw'Ikirenga. Hakurikijwe ibisobanuro bimaze gutangwa haruguru, Urukiko rw'Ikirenga nirwo rufite ububasha bwo gusuzuma icyo kirego, cyane cyane ko rwakiriye ikirego cy'ubujurire, rukemeza ko hagumaho imikirize y'urubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana. [18] Ingingo ya 140 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'Imanza z'Imbonezamubano, iz'Ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya mu gika cya mbere ko urubanza rukosora urundi, rukosora gusa amakosa y'imyandikire. [19] Ku bijyanye n'uru rubanza, Urukiko rurasanga mu nyandiko rwashyikirijwe, harimo indangamuntu ifite numero 1 1971 8 0060712 2 92, igaragaza ko uwatanze ikirego yitwa Rutagarama Eliseus, wavutse ku wa 01/10/1971. Mu rubanza rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 25/04/2014, mu myirondoro y'abarega, hagaragaramo Rutagarama Eliseus(urupapuro rwa 34 mwene Ngabonziza, wavutse 1970; naho ku rupapuro rwa 97, hakagaragaramo Rutagarama Elise mwene Ngabonziza Silas. Mu rubanza rwaciwe mu bujurire n'Urukiko Rukuru, Urugereko rwa Rwamagana, rukemeza ko hagumaho imikirize y'urubanza rwaciwe n'Urukiko Rwisumbuye rwa

Ngoma, hamwe hagaragaramo Rutagarama Eliseus (urupapuro rwa 45) mwene Ngabonziza, wavutse mu 1970, ahandi akaba ari Rutagarama Elise mwene Ngabonziza Silas (urupapuro rwa 80) [20] Urukiko rurasanga kandi, ku rupapuro rwa 27 rw'urubanza RCAA 0007/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 13/11/2015, haranditswe ko Se wa Rutagarama Eliseus ari Ngabonziza gusa, irindi zina rya Silas rikaba ritarashyizweho. Ikigaragara muri izi manza zose kuva mu Rukiko Rwisumbuye kugera mu Rukiko rw'Ikirenga, ni uko umwirondoro wa Rutagarama wagiye ushyirwamo amakosa, hamwe hakandikwa ko irindi zina rye ari Eliseus, ahandi hakandikwa Elise. Bigaragara kandi ko mu manza zose handitswe ko yavutse mu 1970, kandi kopi y'indangamuntu yashyikirije Urukiko igaragaza ko yavutse mu 1971. Ku bijyanye n'amazina ya se, Urukiko rurasanga hamwe haragiye handikwa Ngabonziza, ahandi hakandikwa Ngabonziza Silas, bikaba bigaragara ko habayemo kwibeshya. [21] Urukiko rurasanga rero, hashingiwe ku bisobanuro bimaze gutangwa, harabaye amakosa y'imyandikire mu mwirondoro wa Rutagarama Eliseus, mu manza zaciwe kuva mu Rukiko Rwisumbuye rwa Ngoma kugera mu Rukiko rw'Ikirenga, bikaba bikwiye gukosorwa, umwirondoro we ukaba: Rutagarama Eliseus, mwene Ngabonziza Silas na Muterampundu, wavutse mu 1971. III. ICYEMEZO CY'URUKIKO [22] Rwemeje ko ikirego gisaba gukosora urubanza cyatanzwe na Rutagarama Eliseus cyakiriwe, kandi ko gifite ishingiro.

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[23] Rwemeje ko mu manza zaciwe n'Urukiko Rwisumbuye rwa Ngoma, Urukiko Rukuru, Urugereko rwa Rwamagana, n'urwaciwe n'Urukiko rw'Ikirenga ku wa 13/11/2015, umwirondoro wa Rutagarama Eliseus ari: Rutagarama Eliseus, mwene Ngabonziza Silas na Muterampundu, wavutse mu 1971.

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