

RWANDA / JUDGMENT

TWAYIGIRA v. AKIMANA

RCAA 00012/2019/HC/KIG

COURT

High Court

DECIDED

8 May 2020

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RCAA 00012/2019/HC/KIG

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TWAYIGIRA v. AKIMANA

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Text

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TWAYIGIRA v. AKIMANA [Rwanda URUKIKO RUKURU – RCAA 00012/2019/HC/KIG (Kadigwa, P.J., Nzabonimpa na Rugema, J.) 08 Gicurasi 2020] Amategeko agenga ububasha bw’Inkiko – Ubujurire – Ubujurire bwa kabiri – Mu kwakira ubujurire bwa kabiri si ngombwa ko icyaregawe nyirizina kiba ari ubwishyu bw’amafaranga angana nibura na 50.000.000 frw, ahubwo n’ingano y’indishyi ziba zagenwe mu rubanza rujuririrwa zingana cyangwa zirenze ako gaciro yagenderwaho. Incamake y’ikibazo: Akimana yareze Twayigira mu Rukiko rw’ibanze rwa Gasabo asaba ubutane, urwo Rukiko rwemeza ko batandukana, rutegeka ko imitungo bashakanye bayigabana mu buryo bungana, rutegeka kandi ko abana barerwa na nyina, ise akabafasha hakurikijwe ibikubiye mu nyandiko bise iyo kwikiranura, kandi buri wese yiyishyurira umwenda waba umwerekeyeho. Twayigira ntiyishimiye icyo cyemezo, ajuririra mu Rukiko rwisumbuye rwa Gasabo avuga ko urukiko rwemeje ko ubutane butanzwe bitewe n’uko kubana bitagishoboka kubera ko Twayigira ahoza ku nkeke Akimana Pelagie, amuca inyuma, kandi nta bimenyetso byagaragajwe bibihamya. Urukiko Rwisumbuye rwa Gasabo rwaciye urubanza rwemeza ko ubujurire bwe nta shingiro bufite ndetse rutegeka ko nta gihindutse ku rubanza rujuririrwa. Twayigira kandi yajuririye mu Rukiko Rukuru, Akimana atanga inzitizi yo kutakira ikirego avuga ko Twayigira yatsinzwe mu

Nkiko zombi kubera impamvu zimwe. Twayigira avuga ko ubujurire bwa kabiri bugomba kwakirwa kuko ikiburanwa kirengeje agaciro ka 50.000.000 frw abishingira ku ngingo ya 46 igika cya 1 agace ka 60 y'itegeko No 30/2018 ryo kuwa 02/06/2018 rigena ububasha bw'inkiko iteganya ko Urukiko Rukuru ruburanisha imanza zaciwe n'Urukiko Rwisumbuye mu bujurire bwa kabiri iyo izo manza zagenwemo n'urukiko indishyi zingana nibura na miliyoni mirongo itanu z'amafaranga y'u Rwanda (50.000.000 FRW) cyangwa zifite agaciro kagenwe n'umucamanza mu gihe habaye impaka, kangana na miliyoni mirongo itanu z'amafaranga y'u Rwanda (50.000.000 FRW). Akimana avuga ko icyaburanwe ari ubutane atari amafaranga ndetse ubutane bukaba ngo butarigeze bushyirwa mu gaciro k'amafaranga. Avuga kandi ko bene ibi birego by'ubutane agaciro k'imitungo ababuranyi baba barashakanye katitabwaho ari nacyo gituma bitangirira iteka mu rukiko rwa mbere rw'iremezo, ngo bitabaye ibyo urubanza rw'ubutane rwajya rutangirira mu Rukiko rufite ububasha bwo kuburanisha imanza zirimo agaciro k'imitungo igomba kugabanwa. Incamake y'icyemezo: Kugirango ubujurire bwa kabiri bwakirwe si ngombwa ko icyaregewe nyirizina kiba ari ubwishyu bw'amafaranga angana nibura na 50.000.000 frw, ahubwo n'ingano y'indishyi ziba zagenwe mu rubanza rujuririrwa zingana cyangwa zirenze ako gaciro yagenderwaho. Inzitizi nta shingiro ifite. Amategeko yashingiweho:

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Itegeko No 30/2018 ryo kuwa 02/06/2018 rigena ububasha, ingingo ya 46, igika cya 1 agace ka 60. Nta manza zifashishijwe

Urubanza IMITERERE Y'URUBANZA [1] Mu rubanza RC 00240/2018/TB/GAS rwaciwe n'urukiko rw'ibanze rwa GASABO ku wa 22/11/2018, Akimana Pélégie niwe wareze Twayigira Joseph bari barashakanye mu buryo bukurikije amategeko asaba ubutane, urukiko rwemeza ko batandukana, rutegeka ko imitungo bashakanye bayigabana mu buryo bungana, ko ariko iyo bari bamaze kuvuga icyerekezo cyayo mu masezerano bise ayo kwikiranura yo kuwa 21/09/2015, uko babyumvikanye akaba aribyo bigomba gukurikizwa. Urukiko rwategetse kandi ko abana barerwa na nyina, ise akabafasha hakurikijwe ibikubiye mu nyandiko bise iyo kwikiranura, kandi buri wese yiyishyurira umwenda waba umwerekeyeho, rutegeka ko nta ndishyi zitangwa. [2] Twayigira Joseph ntiyanyuzwe n'imikirize y'urubanza arujuririra mu Rukiko Rwisumbuye rwa Gasabo kuri RCA 00003/2019/TGI/GSBO, yinubira ko ku rwego rwa mbere urukiko rwemeje ko ubutane butanzwe bitewe n'uko kubana bitagishoboka kubera ko Twayigira ahoza ku nkeke Akimana Pelagie, amuca inyuma, kandi nta bimenyetso byagagajwe bibihamya. Avuga ko kandi urukiko rwemeje ko bagabana imitungo igaragara ku rutonde rwavuye kumubitsi w'impapuro mpamo ariko ngo havuyemo igaragara kunyandiko yo ku itariki ya 21/09/2015 kandi iyo nyandiko ngo yarakozwe afunzwe, rumutegeka n'inshingano ku bana rudakurikije ubushobozi bwe. [3] Mu gufata icyemezo urukiko rwategetse ko urubanza rwajuririwe ruhindutse gusa ku bijyanye no kuba Twayigira Joseph azajya yishyura amafaranga ajyanye n'amashuri y'abana batatu aribo Umuhiza Benita, Shema Brown na Nishimwe Bernice naho Akimana Pelagie akishyurira umwana Twayigira Bruce. Na none Twayigira Joseph ntiyanyuzwe n'imikirize y'uru rubanza arujuririra muri uru Rukiko ariko umuburanyi we atanga inzitizi yo kutakira ikirego avuga ko ari ubujurire bwa kabiri bukaba ngo butagomba kwakirwa kuko amaze gutsindwa mu nkiko ebyiri

kandi ku mpamvu zimwe, ashingira iyo nzitizi ku ngingo ya 46 igika cya 2 y'itegeko No 30/2018 ryo kuwa 02/06/2018 rigena ububasha bw'inkiko, iyi nzitizi ikaba ariyo igomba kubanza gusuzumwa. ISESENGURA RY'INZITIZI YATANZWE MURI URU RUBANZA Ese ubujurire bwatanzwe na Twayigira Joseph bwakwirwa? [4] Uburanira Twayigira Joseph avuga ko ubujurire bwa kabiri bugomba kwakirwa kuko ikiburanwa kirengeje agaciro ka 50.000.000 frw abishingira ku ngingo ya 46 igika cya 1 agace ka 60 y'itegeko No 30/2018 ryo kuwa 02/06/2018 rigena ububasha bw'inkiko iteganya ko Urukiko

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Rukuru ruburanisha imanza zaciwe n'Urukiko Rwisumbuye mu bujurire bwa kabiri iyo izo manza zagenwemo n'urukiko indishyi zingana nibura na miliyoni mirongo itanu z'amafaranga y'u Rwanda (50.000.000 FRW) cyangwa zifite agaciro kagenwe n'umucamanza mu gihe habaye impaka, kangana na miliyoni mirongo itanu z'amafaranga y'u Rwanda (50.000.000 FRW). [5] Uburanira Akimana Pelagie avuga ko ku rwego rwa mbere no ku rwego rw'ubujurire icyaburanwe ari ubutane atari amafaranga, ubutane bukaba ngo butarigeze bushyirwa mu gaciro k'amafaranga, bityo ngo ingingo ya 46 igika cya 1 agace ka 60 y'itegeko No 30/2018 ryo kuwa 02/06/2018 rigena ububasha bw'inkiko ntiyamurengera, asaba ko ubujurire bwa Twayigira Joseph butakirwa. [6] Uburanira Akimana Pelagie asobanura kandi ko indi mpamvu ituma ubujurire butagomba kwakira ari uko muri bene ibi birego by'ubutane agaciro k'imitungo ababuranyi baba barashakanye katitabwaho ari nacyo gituma bitangirira iteka mu rukiko rwa mbere rw'iremezo, ngo bitabaye ibyo urubanza rw'ubutane rwajya rutangirira mu rubanza rufite ububasha bwo kuburanisha imanza zirimo agaciro k'imitungo igomba kugabanwa. [7] Uburanira Twayigira Joseph yongeye kuvuga ko n'ubwo ikiburanwa ari ubutane ngo sibwo bwonyine kuko iteka bujyana n'igabana ry'imitungo, nk'uko expertises z'iyi mitungo zibigaragaza ikaba irenze agaciro ka 50.000.000 frw. Akomeza asobanura ko iteka nta kirego cy'ubutane kiba kidakurikiwe n'igabana ry'imitungo ndetse n'uzasigarana abana. Uko uru Rukiko rubibona [8] Ku bijyanye n'iki kibazo uru Rukiko rusanga ingingo ya 46 igika cya 1 agace ka 60 y'itegeko No 30/2018 ryo kuwa 02/06/2018 uburanira Twayigira Joseph yishingirizaho rigena ububasha bw'inkiko iteganya ko "Urukiko Rukuru ruburanisha kandi imanza z'imbonezamubano zajuririwe, zaciwe mu rwego rwa kabiri n'Urukiko Rwisumbuye, mu gihe izo manza: zagenwemo n'urukiko indishyi zingana nibura agaciro kangana na miliyoni mirongo itanu z'amafaranga y'u Rwanda (50.000.000 FRW) cyangwa zifite agaciro kagenwe n'umucamanza mu gihe habaye impaka, kangana na miliyoni mirongo itanu z'amafaranga y'u Rwanda (50.000.000 FRW). [9] Isesengura ry'iyi ngingo uru Rukiko rubona rigaragaza ko kugirango ubujurire bwa kabiri bwakirwe atari ngombwa ko icyaregewe nyirizina kiba ari ubwishyu bw'amafaranga angana nibura na 50.000.000 frw, ahubwo n'ingano y'indishyi ziba zagenwe mu rubanza rujuririrwa zingana cyangwa zirenze ako gaciro yagenderwaho. Ibyo bisobanuye ko ikirego nyirizina gishobora kuba atari gusaba indishyi z'amafaranga, icyaregewe atari amafaranga, ariko bitewe n'icyemezo urukiko ruba rwafashe ku cyaregewe umwe mu baburanyi agacibwa indishyi zingana nibura na miliyoni mirongo itanu z'amafaranga y'u Rwanda (50.000.000 FRW) bityo iyo nayo yaba impamvu yo kwakira ubujurire bwa kabiri. [10] Rushingiye ku ngingo ya 46 igika cya 1 agace ka 60 y'itegeko No 30/2018 ryo kuwa

02/06/2018 nk'uko risesenguwe haruguru, uru Rukiko rusanga agaciro k'urubanza kavugwa muri iryo tegeko ari ingano y'umutungo icyemezo cy'urukiko cyaganishaho (valeur du litige), bitandukanye n'uko ikiregerwa cyaba ari umubare w'amafaranga. Ibyo bisobanuye ko ikiregerwa kibaye ari amafaranga cyangwa ikindi kitari amafaranga ariko indishyi zigishingiyeho zibasha kungana nibura na 50.000.000 frw, byaba biri mu byemerewe kujuririra mu Rukiko rukuru

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hashingiwe ku ngingo ya 46 y'itegeko igika cya 1 agace ka 60 y'itegeko No 30/2018 rimaze kuvugwa. [11] Ku bireba uru rubanza, uru Rukiko rusanga koko icyaregewe ari ubutane, ariko mu ngaruka z'icyemezo cy'urukiko gitanga ubutane habamo ko ababuranyi bagomba kugabana imitungo ifite agaciro karenga miliyoni mirongo itanu z'amafaranga y'u Rwanda (50.000.000 FRW) nk'uko zagaragajwe n'igenagaciro ryakorewe imitungo igomba kugabanwa riri muri dosiye y'urubanza kandi ababuranyi badafiteho impaka, bityo ubujurire bwa kabiri kuri bene iki kirego bukaba bugomba kwakirwa hashingiwe ku ngingo ya 46 y'itegeko igika cya 1 agace ka 60 y'itegeko No 30/2018 ryavuzwe haruguru. ICYEMEZO CY'URUKIKO [12] Urukiko Rukuru Rwemeje ko inzitizi yo kutakira ikirego yatanzwe na Akimana Pélagie nta shingiro ifite; Rutegetse ko uru rubanza ruri mu bubasha bw'uru Rukiko bwo kuruburanisha; Rutegetse ko iburanisha ry'uru rubanza rikomeza rukazaburanishwa kuwa 18/06/2020.

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