

RWANDA / JUDGMENT

UBUSHINJACYAHA v. TWIZERANE

RPAA 00181/2024

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA v. TWIZERANE

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Text

Page 1

UBUSHINJACYAHA v. TWIZERANE [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00181/2024 (Rutazana, P.J.) 25 Mata 2025] Amategeko agenga ibyaha n'ibihano – icyaha cyo gukubita cyangwa gukomeretsa ku buryo bubabaje byateye urupfu – Ukwemera icyaha mu bujurire – Ukwemera icyaha kugira agaciro gashobora gutuma uregwa agabanyirizwa igihano iyo gukoze byibura mbere y'uko iburanisha ku rwego rwa mbere ripfundikirwa, kudashidikanywaho, kuba uwemera icyaha agaragaza ko yumva uburemere bw'ibikorwa yemera n'ingaruka zabyo. Amategeko agenga ibyaha n'ibihano – icyaha cyo gukubita cyangwa gukomeretsa ku buryo bubabaje byateye urupfu – Kugabanyirizwa igihano – Ntacyabuza Urukiko kugabanyiriza igihano uregwa, hagamiye gutanga igihano gihwanye n'uburemere bw'icyaha kabone n'ubwo impamvu z'ubujurire zaba zitahawe ishingiro. Incamake y'ikibazo: Twizerane Alphonse n'umubyeyi we (Se) witwaga Muganga Abraham bakeketsweho kuba, bafatanyije barakubise Nyirampumbya Génèreuse nyuma bikamuviramo gupfa, bituma bafatwa batangira gukurikriyanwa. Nyuma y'iperereza Ubushinjacyaha bwabareze bombi mu Rukiko Rwisumbuye rwa Muhanga bubakurikiranyeho icyaha cyo gukubita cyangwa gukomeretsa ku buryo bubabaje byateye urupfu, busaba ko buri wese ahanishwa igifungo cy'imyaka 20. Urukiko Rwisumbuye rwa

Muhanga rushingiye ku bimenyetso bigizwe n'imvugo z'abatangabuhamya rwemeje ko abaregwa bombi bahamwa n'icyaha cyo gukubita cyangwa gukomeretsa byateye urupfu cyakorewe Nyirampumbya Génèreuse, maze rubahanisha igifungo cy'imyaka cumi n'irindwi 17 n'ihazabu ingana na 5.000.000Frw kuri buri wese. Muganga Abraham na Twizerane Alphonse bajurirye Urukiko Rukuru, Urugereko rwa Nyanza, rwemeza ko habayeho izima ry'ikirego cy'ikurikiranacyaha ku bireba Muganga Abraham kuko yapfuye, naho kuri Twizerane Alphonse rwemeza ko nta gihindutse ku rubanza yajurirye, rutegeka ko akomeza guhanishwa igifungo cy'imyaka 17 n'ihazabu ingana na 5.000.000Frw. Twizerane Alphonse yongeye kujurira mu Rukiko rw'Ubujurire, avuga ko mbere yaburanaga ahakana icyaha ariko ko ubu aje kucyemera, agasaba imbabazi, anasaba kugabanyirizwa igihano, bityo agahanishwa igihano cy'imyaka icumi (10). Uhagarariye Ubushinjacyaha avuga ko ubujurire bwa Twizerane Alphonse nta shingiro bufite kuko ukwemera icyaha akoze bwa mbere mu bujurire kudashobora gushingirwaho agabanyirizwa igihano. Urukiko rw'Ubujurire rurasanga hatirengagijwe ko icyaha Twizerane Alphonse yakoze kiremereye kuko yakubise umuntu bikamuvutsa ubuzima, kuba nta kindi cyaha yahamijwe n'inkiko mu buryo buzwi byamubera impamvu nyoroshyacyaha, bityo ko yahanishwa igifungo cy'imyaka 12 n'ihazabu ingana na 3.000.000Frw

Page 2

Incamake y'icyemezo: 1. Ukwemera icyaha kugira agaciro gashobora gutuma uregwa agabanyirizwa igihano iyo gukozwe byibura mbere y'uko iburanisha ku rwego rwa mbere ripfundikirwa, kudashidikanywaho, kuba uwemera icyaha agaragaza ko yumva uburemere bw'ibikorwa yemera n'ingaruka zabyo.

2. Ntacyabuza Urukiko kugabanyiriza igihano uregwa, hagamiye gutanga igihano gihwanye n'uburemere bw'icyaha kabone n'ubwo impamvu z'ubujurire zaba zitahawe ishingiro. Ubujurire nta shingiro bufite. Amategeko yashingiweho: Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 2. Imanza zifashishijwe: Urubanza RPAA 00039/2021/CA rw'Ubushinjacyaha na Shakabatenda Jean de Dieu, rwaciwe n'Urukiko rw'Ubujurire ku wa 02/07/2021; Urubanza RPA 00060/2021/CA rw'Ubushinjacyaha na Nsabimana Callixte Alias Sankara n'abandi, rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022; Urubanza RPA 0343/10/CS rw'Ubushinjacyaha na Mpiranya Boniface, rwaciwe n'Urukiko rw'Ubujurire, ku wa 27/02/2015; Urubanza RPAA 00234/2024/CA rw'Ubushinjacyaha na Hatungimana Jean Claude & Rucogoza Donath, rwaciwe n'Urukiko rw'Ubujurire ku wa 20/01/2025; Urubanza RPAA 00312/2023/CA haburana Ubushinjacyaha na Biziyaremye Faustin (igika cya 22), rwaciwe n'Urukiko rw'Ubujurire ku wa 18/03/2025.

Urubanza I. IMITERERE Y'URUBANZA [1] Twizerane Alphonse n'umubyeyi we (Se) witwaga Muganga Abraham bakeketsweho kuba, ku wa 25/11/2019 ahagana saa munani z'amanya, bafatanyije barakubise Nyirampumbya Génèreuse nyuma bikamuviramo gupfa, bituma bafatwa batangira gukurikiranwa. [2] Nyuma y'iperereza Ubushinjacyaha bwabareze bombi mu Rukiko Rwisumbuye rwa Muhanga bubakurikiranyeho icyaha cyo gukubita cyangwa gukomeretsa ku

buryo bubabaje byateye urupfu, busaba ko buri wese ahanishwa igifungo cy'imyaka 20 n'ihazabu ingana na 7.000.000 Frw. [3] Mu rubanza RP 01010/2019/TGI/MHG rwaciwe n'Urukiko Rwisumbuye rwa Muhanga ku wa 28/9/2020 rwemeje ko abaregwa bombi bahamwa n'icyaha cyo gukubita cyangwa gukomeretsa byateye urupfu cyakorewe Nyirampumbya Génèreuse, rubahanisha igifungo cy'imyaka cumi n'irindwi 17 n'ihazabu ingana na 5.000.000Frw kuri buri wese.

Page 3

- [4] Ibyo Urukiko wabyemeje rushingiye ku bimenyetso bigizwe n'imvugo z'abatangabuhamya barimo Ngirente Jean Damascène, Gakuru Damascène na Macumu Fabien bemeza ko abaregwa bafatanyije gukubita nyakwigendera, Raporo y'Ubuyobozi bw'Umudugudu wa Kigwende nayo igaragaza ko abaregwa bakubise nyakwigendera bikamuviramo gupfa, n'imvugo za Muganga Abraham mu Bugenzacyaha aho yemeye ko akanasobanura ko yakubise nyakwigendera kuko yamusanze kwa nyina kandi ubuyobozi bwaramubujije kujya mu ngo z'abaturage kuko aroga. [5] Muganga Abraham na Twizerane Alphonse bajuririye Urukiko Rukuru, Urugereko rwa Nyanza, mu rubanza RPA 00902/2020/HC/NYZ rwaciwe n'urwo Rukiko ku wa 31/01/2024 rwemeza ko habayeho izima ry'ikirego cy'ikurikiranacyaha ku bireba Muganga Abraham kuko yapfuye, naho kuri Twizerane Alphonse rwemeza ko nta gihindutse ku rubanza yajuririye, rutegeka ko akomeza guhanishwa igifungo cy'imyaka 17 n'ihazabu ingana na 5.000.000 Frw. [6] Twizerane Alphonse yongeye kujurira mu Rukiko rw'Ubujurire, urubanza ruhabwa RPAA 00181/2024/CA, ruburanishwa mu ruhame ku wa 08/04/2024 Twizerane Alphonse yunganiwe na Me Sebazungu Cathérine naho Ubushinjacyaha buhagarariwe na Butera Oscar, Umushinjacyaha ku rwego rw'igihugu. [7] Mu bujurire bwe Twizerane Alphonse avuga ko mbere yaburanaga ahakana icyaha ariko ko ubu aje kucyemera, gusaba imbabazi no gusaba kugabanyirizwa igihano, kandi agahanwa hakurikijwe ibiteganywa n'ingingo ya 11, igika cya 6 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange. [8] Uhagarariye Ubushinjacyaha avuga ko ubujurire bwa Twizerane Alphonse nta shingiro bufite kuko uretse no kuba ukwemera icyaha akoze bwa mbere mu bujurire kudashobora gushingirwaho agabanyirizwa igihano, icyo yahanishijwe kiri mu mbibi z'ibiteganywa n'ingingo ya 11 y'Itegeko N° 059/2023 ryavuzwe haruguru kikaba rero kidakwiye kongera kugabanywa. [9] Hahingiwe ku mpaka zimaze kugaragazwa, Urukiko rurasuzuma niba Twizerane Alphonse akwiye kugabanyirizwa igihano hashingiwe ku kwemera icyaha akoze bwa mbere kuri uru rwego rw'ubujurire. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba Twizerane Alphonse akwiye kugabanyirizwa igihano hashingiwe ku kwemera icyaha akoze bwa mbere kuri uru rwego rw'ubujuraire.
- [10] Twizerane Alphonse n Me Sebazungu Cathérine umwunganira bavuga ko mu nkiko zabanje yaburanaga ahakana icyaha ashinjwa kuko yagikoze afatanyije n'umubyeyi we (Se), hanyuma bamaze gufungwa uyu mubyeyi we amusaba kugihakana kugira ngo badafungwa bombi bityo hazabashe kuboneka uzajya agemurira undi; ko ariko ubu acyemera akanagisabira imbabazi. Twizerane Alphonse asobanura ko bakubise nyakwigendera ubwo bari

bamusanze mu rugo kwa nyirakuru bagakeka ko yari aje kuroga inkono kuko ubuyobozi bwari bwaramubujije kujya mu ngo z'abaturage ngo kuko yarogaga.

Page 4

[11] Twizerane Alphonse n'umwunganira basaba urukiko gushingira ku kuba noneho yemera icyaha no kuba ari ubwa mbere akurikiranywe mu nkiko mu buryo buzwi, rukamugabanyirizwa igihano, agahanishwa igifungo cy'imyaka 10 bityo akazashobora gusubira mu muryango no kugira icyo yimarira. [12] Uhagarariye Ubushinjacyaha avuga ko ukwemera icyaha Twizerane Alphonse akoze bwa mbere ku rwego rw'ubujurire kutashingirwaho agabanyirizwa igihano hashingiwe ku murongo watanzwe mu manza zinyuranye zaciwe n'uru Rukiko. Avuga kandi ko igihano yahanishijwe kiri mu mbizi z'ibiteganywa n'ingingo ya 11 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, kikaba kidakwiriye kogerwa kugabanywa. UKO URUKIKO RUBIBONA [13] Ingingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange (iyi ngingo ihindura iya 60 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange) iteganywa ko "Iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanywa igihano ku buryo bukurikira: (b) igifungo kimara igihe kizwi kiva ku mezi 6 kuzamura gishobora kugabanywa, ariko ntikijye munsu ya kimwe cya kabiri cy'igihano gito giteganyirijwe icyaha cyakozwe";(d) igihano cy'ihazabu gishobora kugabanywa kugeza kuri kimwe cya kane cy'igihano cy'ihazabu gito giteganyirijwe icyaha cyakozwe....." [14] Ibijyanye no kwemera icyaha gushobora gushingirwaho uregwa agabanyirizwa igihano byatanzweho umurongo mu rubanza RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022 haburana Ubushinjacyaha na Nsabimana Callixte Alias Sankara n'abandi, aho rwasobanuye ko "ukwemera icyaha kugira agaciro gashobora gutuma uregwa agabanyirizwa igihano iyo gukoze byibura mbere y'uko iburanisha ku rwego rwa mbere ripfundikirwa, kudashidikanywaho, kuba uwemera agaragaza ko yumva uburemere bw'ibikorwa yemera n'ingaruka zabyo,...."1. Uyu murongo kandi waje ushimangira ibyari byaremejwe n'Urukiko rw'Ikirenga mu rubanza RPA 0343/10/CS2 rwaciwe ku wa 27/02/2015 haburana Ubushinjacyaha na Mpiranya Boniface (igika cya 13). Wanakomeje gushingirwaho mu manza zaciwe n'Urukiko rw'Ubujurire, mu ziheruka gucibwa harimo nk'urubanza RPAA 00234/2024/CA rwaciwe ku wa 20/01/2025 haburana Ubushinjacyaha na Hatungimana Jean Claude & Rucogoza Donath (ibika bya 26-27), n'urubanza RPAA 00312/2023/CA rwaciwe ku wa 18/03/2025 haburana Ubushinjacyaha na Biziyaremye Faustin (igika cya 22). [15] Ku birebana n'uru rubanza, dosiye igaragaza ko mu Rukiko Rwisumbuye rwa Muhanga no mu Rukiko Rukuru, Urugereko rwa Nyanza Twizerane Alphonse yaburanye avuga ko icyaha ashinjwa cyo gukubita Nyirampumbya Génèreuse bikamuviramo urupfu atacyemera, ariko izo nkiko

1 Reba igika cya 136 cy'urubanza RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022 haburana Ubushinjacyaha na Nsabimana Callixte alias Sankara n'abandi.

2 Muri urwo rubanza Urukiko rw'Ikirenga rwasobanuye ko ukwemera icyaha gushobora kugirira inyungu uwagukoze ku buryo ashobora kugabanyirizwa igihano yari guhabwa, ari ugukozwe ku buryo budashidikanywaho, ntacyo ashaka gukinga Urukiko cyangwa ngo agire icyo agoreka ku bwende.

Page 5

zombi zishingiye ku bimenyetso bitandukanye byatanzwe n'Ubushinjacyaha (byavuzwe haruguru mu gika cya 4 cy'uru rubanza) zemeza ko icyo cyaha kimuhama; kuba rero kuri uru rwego rw'ubujurire bwa kabiri yarajuriye avuga ko noneho aje kucyemera bikaba bitamubera impamvu yashingirwaho agabanyirizwa igihano hashingiwe ku murongo wagaragajwe mu gika kibanziriza iki, kuko atigeze acyemera ku buryo budashidikanywaho mbere y'uko iburanisha ku rwego rwa mbere ripfundikirwa; bityo ubujurire bwe kuri iyi ngigo bukaba nta shingiro bufite. [16] Urukiko rurasanga ariko nta kirubuza gusuzuma niba igihano yahanishijwe gihuye n'uburemere bw'icyaha yahamijwe, hashingiwe ku murongo watanzwe mu rubanza RPAA 00039/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 02/07/2021 haburana Ubushinjacyaha na Shakabatenda Jean de Dieu, aho rwasobanuye ko "Ntacyabuzwa Urukiko kugabanyiriza igihano uregwa, hagamije gutanga igihano gihwanye n'uburemere bw'icyaha kabone n'ubwo impamvu z'ubujurire zaba zitahawe ishingiro." [17] Urukiko rw'Ubujurire rurasanga hatirengagijwe ko icyaha Twizerane Alphonse yakoze kiremereye kuko yakubise umuntu bikamuvutsa ubuzima, kuba nta kindi cyaha yahamijwe n'inkiko mu buryo buzwi byamubera impamvu nyoroshyacyaha, agahanishwa igifungo cy'inyaka 12 n'ihazabu ingana na 3.000.000Frw hashingiwe ku biteganywa mu ngingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 ryavuzwe haruguru. III. ICYEMEZO CY'URUKIKO [18] Rwemeje ko ubujurire bwa Twizerane Alphonse nta shingiro bufite. [19] Rwemeje ko urubanza RPA 00902/2020/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 31/01/2024 ruhindutse gusa ku bijyanye n'igihano Twizerane Alphonse ahanishijwe. [20] Ruhanishije Twizerane Alphonse igihano cy'igifungo cy'inyaka cumi n'ibiri (12) n'ihazabu ingana n'amafaranga y'u Rwanda miliyoni eshatu (3.000.000 Frw). [21] Rutegetse ko Twizerane Alphonse asonewe amagarama y'urubanza kuko aburana afunze.

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