

RWANDA / JUDGMENT

UBUSHINJACYAHA v. JYAMUBANDI

RPAA 00729/2024/CA

COURT

Court of Appeal

DECIDED

28 March 2025

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UBUSHINJACYAHA v. JYAMUBANDI

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Text

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UBUSHINJACYAHA v. JYAMUBANDI [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00729/2024/CA (Gakwaya P.J., J.) 28 Werurwe 2025] Amategeko agenga imanza nshinjabyaha – Ubujurire – Impamvu nyoroshyacyaha – Iyo uregwa nta kindi anenga urubanza yajuririye, uretse kuvuga gusa ko atagabanyirijwe igihano bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha n'ingaruka zacyo, cyakora mu bujurire Umucamanza akaba agomba kuzirikana ko yemerewe gusa guhindura igihano cyatanzwe n'Umucamanza wo mu Rukiko rubanza ari uko amaze kugaragaza ko urwo Rukiko rwaba rwarakoresheje nabi Itegeko cyangwa ubushishozi bwarwo mu gutanga igihano. Incamake y'ikibazo: Ubushunjacyaha bwakurikiranye Jyamubandi mu Rukiko rwisumbuye rwa Ngoma, bumurega icyaha cyo gucuruza ibiyobyabwenge byo mubwoko bw'urumogi, nyuma yuko afatiwe iwe mu rugo arimo gucuruza urumogi, bamusangana udupfunyika makumyabiri na kamwe (21). Urwo Rukiko rwaciye urubanza rwemeza ko ahamwa n'icyaha cyo kugurisha urumogi, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri n'imwe (21.000.000 Frw). Jyamubandi yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana, avuga ko yaburanye yemera icyaha kandi ari n'ubwa mbere

akurikiranywe mu butabera, ariko Urukiko rwabanje rumuhanisha igihano kirekire, asaba kukigabanyirizwa. Urwo Rukiko narwo rwaciye urubanza rusanga hari impamvu zituma igihano yahanishijwe ku rwego rubanza cyongera kugabanywa, rumuhanisha igihano cy'igifungo cy'imyaka cumi n'itanu(15) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw). Jyamubandi nanone yajuririye Urukiko rw'Ubujurire, avuga ko Urukiko Rukuru, Urugereko rwa Rwamagana rutahaye agaciro ukwemera icyaha kwe kudashidikanywaho ngo rumugabanyirize igihano, asaba uru Rukiko kumugabanyiriza igihano, agahanishwa igihano cy'igifungo cy'imyaka icumi (10). Ko kuva mu ntangiriro agifatwa, yemeye icyaha asaba imbabazi, agaragariza Urukiko ko atigeze agora inzego z'Ubutabera, arusaba kumugabanyiriza igihano, ariko ntibyakwitabwaho rumuha igihano kinini. Ubushinjacyaha bwo buburana buvuga ko kuba impamvu y'ubujurire ya Jyamubandi ari ukwemera icyaha no gusaba kugabanyirizwa ibihano ku rwego rw'ubujurire, bigaragaza ko ntacyo anenga urubanza rwaciye, ko bivuze ko yemeranya n'icyemezo cyafashwe. Incamacye y'icyemezo: Iyo uregwa nta kindi anenga urubanza yajuririye, uretse kuvuga gusa ko atagabanyirijwe igihano bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha n'ingaruka zacyo, cyakora mu bujurire Umucamanza akaba agomba kuzirikana ko yemerewe gusa guhindura igihano cyatanze n'Umucamanza wo mu Rukiko rubanza ari uko amaze kugaragaza ko urwo Rukiko rwaba rwarakoresheje nabi Itegeko cyangwa ubushishozi bw'urwo mu gutanga igihano. Harebwe ibiteganywa n'itegeko, Jyamubandi ntashobora kongera kugabanyirizwa igihano kuko uwakoze icyaha gihanishwa igihano cy'igifungo cya burundu, igihe hemejwe impamvu nyoroshyacyaha

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adashobora kugabanyirizwa igihano cy'igifungo ngo kijye muni y'imyaka cumi itanu (15), kuba rero aricyo gihano Urukiko rwaciye urubanza ajuririra rwamuhaye, bivuze ko adakwiye kongera kukigabanyirizwa. 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 riteganyaye ibyaha n'ibihano muri rusange, ingingo ya 2. Imanza zifashishijwe: Ubushinjacyaha vs Nsabimana alias Sankara n'abandi, RPA 00060/2021/CA rwaciye n'Urukiko rw'Ubujurire ku wa 4/4/2022. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 2/2/2021, Jyamubandi Vincent yafatiwe iwe mu rugo mu Mudugudu wa Kamwiru, Akagali ka Rugese, Umurenge wa Rurenge, Akarere ka Ngoma arimo gucuruza urumogi, bamusangana udupfunyika makumyabiri na kamwe (21). [2] Iperereza rirangiye, Ubushinjacyaha bwareze Jyamubandi Vincent mu Rukiko Rwisumbuye rwa Ngoma icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, busaba ko cyamuhama, agahanishwa igihano cy'igifungo cya burundu n'ihazabu y'amafaranga y'u Rwanda miliyoni mirongo itatu (30.000.000 Frw). [3] Jyamubandi Vincent yaburanye yemera icyaha, avuga ko urumogi yafatanwe yari arimo kurugurisha uwitwa Musilikare, abisabira imbabazi. [4] Mu rubanza no RP 00184/2021/TGI/NGM rwaciye n'Urukiko Rwisumbuye rwa Ngoma ku wa 23/4/2021, rushingiye ku mvugo z'abatangabuhamya hamwe n'iz'Abayobozi b'Akagali bose baturiza ku kuba Jyamubandi Vincent yarafatanywe udupfunyika makumyabiri na kamwe

(21) tw'urumogi rwo kugurisha, nawe akaba abyemera, rwemeje ko ahamwa n'icyaha cyo kugurisha urumogi, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu y'amafaranga y'u Rwanda miliyoni makumyabiri n'imwe (21.000.000 Frw). [5] Jyamubandi Vincent yajuririyeye Urukiko Rukuru, Urugereko rwa Rwamagana, avuga ko yaburanye yemera icyaha kandi ari n'ubwa mbere akurikiranywe mu butabera, ariko Urukiko rwabanje rumuhanisha igihano kirekire, asaba kukigabanyirizwa igihano. [6] Mu rubanza no RPA 00817/2021/HC/RWG rwaciye n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 28/6/2024, rushingiye ku murongo watanze n'Urukiko rw'Ubujurire mu

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rubanza no RPA 00060/2021/CA1 rwaciye ku wa 4/4/2022, haburana Ubushinjacyaha na Nsabimana Callixte alias Sankara na bagenzi be no ku ngingo ya 2 y'Itegeko n° 059/2023 ryo ku wa 4/12/2023 rihindura Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganyaga ibyaha n'ibihano muri rusange, rwemeje ko mu rwego rwo guhuza igihano n'uburemere bw'icyaha, kuba ari ubwa mbere Jyamubandi Vincent akurikiranywe mu buryo buzwi mu butabera no kuba nta ngaruka zikomeye icyaha yakoze cyagize, bikwiye kumubera impamvu zituma igihano yahanishijwe ku rwego rubanza cyongera kugabanywa, rumuhanisha igihano cy'igifungo cy'imyaka cumi n'itanu(15) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5. 000.000 Frw). [7] Ku wa 19/7/2024, Jyamubandi Vincent yajuririyeye Urukiko rw'Ubujurire, avuga ko Urukiko Rukuru, Urugereko rwa Rwamagana rutahaye agaciro ukwemera icyaha kwe kudashidikanywaho ngo rumugabanyirize igihano, asaba uru Rukiko kumugabanyiriza igihano, agahanishwa igihano cy'igifungo cy'imyaka icumi (10). [8] Ubushinjacyaha buvuye ku bushingiye ku ngingo ya 183 y'Itegeko n° 027/2019 ryo ku wa 19/9/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, kuba impamvu y'ubujurire ya Jyamubandi Vincent ari ukwemera icyaha no gusaba kugabanyirizwa ibihano ku rwego rw'ubujurire, bigaragaza ko ntacyo anenga urubanza rwaciye, ko bivuze ko yemeranyaga n'icyemezo cyafashwe. [9] Urubanza rwahawe no RPAA 00729/2024/CA, ruburanishwa ku wa 10/3/2025, Jyamubandi Vincent yunganiye na Me Micomyiza Liliane, Ubushinjacyaha buhagararariye na Habimana Jean Cabin, Umushinjacyaha ku rwego rw'Igihugu. [10] Harebwe imyanzuro n'imiburanire y'abaturanyi, ikibazo kigomba gusuzumwa muri uru rubanza ni ukumenya niba Jyamubandi Vincent yakongera kugabanyirizwa igihano kubera impamvu nyoroshyacyaha agaragaza. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO Kumenya niba JYAMUBANDI Vincent yakongera kugabanyirizwa igihano kubera impamvu nyoroshyacyaha agaragaza [11] Jyamubandi Vincent avuga ko kuva mu ntangiriro agifatwa, yemeye icyaha asaba imbabazi, agaragariza Urukiko ko atigeze agera inzego z'Ububabera, arusaba kumugabanyiriza igihano, ariko ntibyakwitabwaho rumuha igihano kinini, akaba ariyo mpamvu atakambira Urukiko rw'Ubujurire arusaba guca inkoni izamba rukamugabanyiriza igihano akajya kureba abana be, ko kandi ibiyobyabwenge byamuhungabanyije mu mutwe no mu mibereho ye bwite. [12] Me Micomyiza Liliane, wunganira Jyamubandi Vincent, avuga ko hashingiye ku kuba agifatwa yaremeye icyaha mu buryo budashidikanywaho, kuba ari ubwa mbere yari akurikiranywe mu Nkiko, akaba yari asanzwe yitwara neza mu buzima busanzwe no kuba icyaha yakoze nta ngaruka mbi cyateje kuko

yafashwe ntawe yari yaha urumogi, nta cyabuza uru Rukiko kongera

1 “iyo abaregwa nta kindi banenga urubanza rwajuririwe, uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n’uburemere bw’icyaha ndetse n’ingaruka zacyo (...)”.

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kumuha amahirwe yo kumugabanyiriza igihano kuko atakamba asaba imbabazi kandi agaragaza kwicuza gukomeye. [13] Ubushinjacyaha buvuga ko bushingiye ku ngingo ya 60 y’Itegeko n° 68/2018 ryo ku wa 30/8/2018 nk’uko yahinduwe n’ingingo ya 2 y’Itegeko n° 059/2023 ryo ku wa 4/12/2023 riteganya ibyaha n’ibihano muri rusange, ntaho uru Rukiko rwahera rwongera kugabanyiriza Jyamubandi Vincent igihano kuko icyo yahanishijwe aricyo gito gishoboka giteganywa n’Itegeko, busaba ko hategekwa ko nta gihindutse ku mikirize y’urubanza ajuririra. UKO URUKIKO RUBIBONA [14] Impaka kuri iki kibazo zishingiye ku kumenya niba Jyamubandi Vincent akwiye kongera kugabanyirizwa igihano hashingiye ku mpamvu nyoroshyacyaha agaragaza. [15] Nk’uko byemejwe mu rubanza n° RPA 00060/2021/CA rwaciwe n’Urukiko rw’Ubujurire ku wa 4/4/2022, haburana Ubushinjacyaha na Nsabimana Callixte alias Sankara na bagenzi be2 , iyo uregwa nta kindi anenga urubanza yajuririye, uretse kuvuga gusa ko atagabanyirijwe igihano bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n’uburemere bw’icyaha n’ingaruka zacyo (.....), cyakora mu bujurire Umucamanza akaba agomba kuzirikana ko yemerewe gusa guhindura igihano cyatanzwe n’Umucamanza wo mu Rukiko rubanza ari uko amaze kugaragaza ko urwo Rukiko rwaba rwarakoresheje nabi Itegeko cyangwa ubushishozi bwarwo mu gutanga igihano. [16] Mu gace ka karindwi (7) k’urubanza rujuririrwa, Urukiko Rukuru, Urugereko rwa Rwamagana rushingiye ku ngingo ya 60 y’Itegeko n° 68/2018 ryo ku wa 30/8/2018 nk’uko yahinduwe n’ingingo ya 2 (a)3 y’Itegeko no 059/2023 ryo ku wa 4/12/2023 riteganya ibyaha n’ibihano muri rusange, rwemeje ko mu rwego rwo guhuza igihano n’uburemere bw’icyaha, kuba ari ubwa mbere Jyamubandi Vincent akurikiranywe mu buryo buzwi mu butabera no kuba nta ngaruka zikomeye icyaha yakoze cyagize, ari impamvu zituma igihano cy’igifungo cy’imyaka makumyabiri n’itanu (25) n’ihazabu y’amafaranga y’u Rwanda miliyoni makumyabiri n’imwe (21.000.000 Frw) yahanishijwe ku rwego rubanza cyongera kugabanywa, rumuhanisha igifungo cy’imyaka cumi n’itanu (15) n’ihazabu y’amafaranga miliyoni eshanu (5.000.000 Frw). [17] Urukiko rw’Ubujurire rurasanga uretse no kuba Jyamubandi Vincent n’umwunganira batagaragaza amakosa Urukiko Rukuru, Urugereko rwa Rwamagana rwaba rwarakoze mu kumugabanyiriza igihano yakatiwe ku rwego rwa mbere, cyangwa kuba rwaba rwarakoresheje nabi Itegeko cyangwa ubushishozi bwarwo mu kwemeza icyo gihano, ariko kuri uru rwego rw’ubujurire bwa kabiri nta n’impamvu yo gusuzuma ishingiro ry’impamvu nyoroshyacyaha agaragaza zirimo kuba yemera icyaha, kuba ari ubwa mbere akoze icyaha no kuba ingaruka icyaha yakoze zateye ari ntoya, kuko harebwe ibiteganywa n’ingingo ya 60, agace ka (a), y’Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n’ibihano muri rusange, nk’uko ryahinduwe kugeza ubu, ku bushake bw’Umushingamategeko byateganyijwe ko uwakoze icyaha gihanishwa igihano

2 Reba urubanza n° RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 4/4/2022, haburana Ubushinjacyaha na NSABIMANA Callixte na bagenzi be, mu gika cya 252 na 254. 3“Iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano ku buryo bukurikira: igifungo cya burundu gishobora kugabanywa ariko ntikijye muni y'igihano cy'igifungo cy'inyaka 15”.

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cy'igifungo cya burundu, igihe hemejwe impamvu nyoroshyacyaha adashobora kugabanyirizwa igihano cy'igifungo kiri muni y'inyaka cumi itanu (15), kuba rero aricyo gihano Urukiko rwaciye urubanza ajuririra rwamuhaye, bivuze ko adakwiye kongera kukigabanyirizwa nk'uko yabyifuzaga kuko yahawe igihano gito giteganywa n'Itegeko. [18] Hagendewe ku byasobanuwe haruguru byose, Urukiko rw'Ubujurire rurasanga ubujurire bwa Jyamubandi Vincent nta shingiro bufite.

III. ICYEMEZO CY'URUKIKO [19] Rwemeje ko ubujurire bwatanzwe na Jyamubandi Vincent nta shingiro bufite; [20] Rwemeje ko nta gihindutse ku rubanza no RPA 00817/2021/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 28/6/2024; [21] Rwemeje ko igihano cy'igifungo cy'inyaka cumi n'itanu (15) n'ihazabu y'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 Frw) Jyamubandi Vincent yahanishijwe, kigumyeho; [22] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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