

RWANDA / JUDGMENT

UBUSHINJACYAHA v. TUYISENGE RURINDA

RPAA 01341/2024/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v. TUYISENGE RURINDA

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Text

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UBUSHINJACYAHA v. TUYISENGE RURINDA [Rwanda URUKIKO RW'UBUJURIRE – RPAA 01341/2024/CA (Rutazana, P.J.), 17 Nyakanga 2025] Amategeko agenga ibyaha n'ibihano – icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi – Kongera kugabanyirizwa ibihano – Iyo hari impamvu nyoroshyacyaha zemejwe n'umucamanza, ashobora kugabanya igihano cy'igifungo cya burundu n'icy'ihazabu, ariko ku bireba igihano cy'igifungo cya burundu akaba atemerewe kujya muni y'igifungo cy'imyaka 15 naho ku bireba igihano cy'ihazabu akaba atemerewe kujya muni ya kimwe cya kane cy'igihano cy'ihazabu gito giteganyirijwe icyaha cyakozwe. Incamake y'ikibazo: Tuyisenge Rurinda Emmanuel yafashwe afite udupfunyika 48 tw'urumogi n'urundi rudapfunyitse rungana n'irobo, ahita afatwa ashyikirizwa inzego z'ikurikiranacyaha. Iperereza rirangiye Ubushinjacyaha bwamureze mu Rukiko Rwisumbuye rwa Muhanga bumukurikiranyeho icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, busaba ko kimuhama agahanishwa igifungo cy'imyaka 25 n'ihazabu ingana na 30.000.000Frw. Urukiko Rwisumbuye rwa Muhanga rushingiye ku bimenyetso bitandukanye, rwemeje ko

Tuyisenge Rurinda Emmanuel ahamwa n'icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, maze rumuhanisha igifungo cya burundu n'ihazabu ingana na 20.000.000Frw. Tuyisenge Rurinda Emmanuel yajuririye Urukiko Rukuru, Urugereko rwa Nyanza asaba kugabanyirizwa igihano kandi kigasubikwa. Uhagarariye ubushinjacyaha yaburanye avuga ko nawe asanga hashingiwe ku mbibi zigenwa n'Itegeko rishya riteganywa ibyaha n'ibihano muri rusange ryariho icyo gihe, igihano Tuyisenge Rurinda Emmanuel yahanishijwe cyagabanywa agahanishwa igifungo cy' imyaka 15 n'ihazabu ingana na 5.000.000Frw. Urukiko Rukuru, Urugereko rwa Nyanza rwasanze mu rwego rwo guhuza igihano uregwa yahanishijwe n'uburemere bw'icyaha yakoze, gikwiriye kugabanywa hashingiwe ku mpamvu nyoroshyacyaha y'uko ari ubwa mbere akurikiranyweho icyaha mu buryo buzwi; maze rumuhanisha igifungo cy'imyaka 15 n'ihazabu ingana na 5.000.000Frw; ariko isubikagihano asaba akaba adakwiriye kuribabwa kuko igihano cy'igifungo ahanishijwe kirenze imyaka 5. Tuyisenge Rurinda Emmanuel yongeye kujurira mu Rukiko rw'Ubujurire, asaba Kongera kugabanyirizwa igihano kuko yemera icyaha akanagisabira imbabazi kandi akaba atazongera kugikora. Uhagarariye Ubushinjacyaha avuga ko ubujurire bwa Tuyisenge Rurinda Emmanuel nta shingiro bufite, kuko igihano yahanishijwe ari cyo gito giteganywa n'Itegeko ku cyaha yahamijwe cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, kikaba rero kidashobora kongera kugabanywa.

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Uru Rukiko rwasuzumye niba igihano Tuyisenge Rurinda Emmanuel yahanishijwe mu rubanza rujuririrwa gishobora kongera kugabanywa. Incamake y'icyemezo: Iyo hari impamvu nyoroshyacyaha zemejwe n'umucamanza, ashobora kugabanywa igihano cy'igifungo cya burundu n'icy'ihazabu, ariko ku bireba igihano cy'igifungo cya burundu akaba atemerewe kujya muni y'igifungo cy'imyaka 15 naho ku bireba igihano cy'ihazabu akaba atemerewe kujya muni ya kimwe cya kane cy'igihano cy'ihazabu gito giteganyirijwe icyaha cyakozwe. Ubujurire nta shingiro. Amategeko yashingiweho: Itegeko N° 69/2019 ryo ku wa 08/11/2019 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, ingingo ya 11. Imanza zifashishijwe: Urubanza RPAA 00097/2024/CA rw' Ubushinjacyaha na Twagirumukiza Sibomana, rwaciwe n'Urukiko rw'Ubujurire, ku wa 20/12/2024; Urubanza RPAA 00099/2024/CA rw'Ubushinjacyaha na Manizabayo Gilbert Alias Nkurunziza Jean Pierre, rwaciwe n'Urukiko rw'Ubujurire ku wa 16/12/2024; Urubanza RPA 0129/10/CS rw'Ubushinjacyaha na Mpitabakana, rwaciwe n'Urukiko rw'Ubujurire ku wa 7/3/2014; Urubanza RPAA 00572/2022/CA rw'Ubushinjacyaha na Ndayishimiye, rwaciwe n'Urukiko rw'Ubujurire ku wa 23/2/2024; Urubanza RPAA 00579/2022/CA rw'Ubushinjacyaha na Habumugisha, rwaciwe n'Urukiko rw'Ubujurire ku wa 28/2/2024.

Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 28/12/2020 mu gihe cya saa tatu za mu gitondo, mu nzu ya Tuyisenge Rurinda Emmanuel iherereye mu Mudugudu wa Kanzu, Akagari ka Gishwero, Umurenge wa Mwendo mu Karere ka Ruhango hafatiwe udupfunyika 48 tw'urumogi n'urundi rudapfunyitse rungana n'irobo, ahita afatwa ashyikirizwa inzego z'ikurikiranacyaha. [2] Iperereza rirangiye Ubushinjacyaha bwamureze mu Rukiko Rwisumbuye rwa Muhanga bumukurikiranyeho icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, busaba ko

kimuhama agahanishwa igifungo cy'imyaka 25 n'ihazabu ingana na 30.000.000Frw. [3] Tuyisenge Rurinda Emmanuel yaburanye yemera ko yafatanywe urumogi rwavuzwe haruguru ariko avuga ko atarucuruza, asobanura ko yari yaruhawe n'uwitwa Munyengango kugira ngo arushyire uwitwa Jean Pierre, kandi ko uwo Munyengango yari yamwemereye kumwishyura 2.000Frw ariko afatwa atararumushyira.

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- [4] Mu rubanza RP 00072/2021/TGI/MHG rwaciwe n'Urukiko Rwisumbuye rwa Muhanga kuwa 22/01/2021 rwemeje ko Tuyisenge Rurinda Emmanuel ahamwa n' icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi rumuhanisha igifungo cya burundu n'ihazabu ingana na 20.000.000Frw. Ibyo Urukiko rwabyemeje rushingiye ku bimenyetso bikurikira:
- Inyandikomvugo y'ifatira ry'udupfunyika 48 tw'urumogi n'urundi rudapfunyitse rungana n'irobo, Tuyisenge Rurinda Emmanuel yashyizeho umukono yemeza ko ariwe warufatanywe iwe mu nzu;
 - Imvugo ya Tuyisenge Rurinda Emmanuel mu Bugenzacyaha, aho yemeye icyaha nta gahato ashyizweho, agasobanura ko urumogi yafatanywe yari yaruhawe na Munyengango Aimable kugira ngo aje arumucururiza agapfunyika kamwe akaba yaragombaga kukagurisha 200Frw, kandi ko yari yaramwemereye ko azamuhemba;
 - Imvugo y'umutangabuhamya witwa Munyaburanga Charles wemeza ko urumogi rwavuzwe haruguru rwafatiwe mu rugo kwa Tuyisenge Rurinda Emmanuel kandi ko uyu yemeye ko ari urwe yahawe n'umuntu ngo aje arumucururiza. [5] Tuyisenge Rurinda Emmanuel yajuririye Urukiko Rukuru, Urugereko rwa Nyanza asaba kugabanyirizwa igihano kandi kigasubikwa. [6] Uhagarariye ubushinjacyaha yaburanye avuga ko nawe asanga hashingiwe ku mbibi zigenwa n'Itegeko rishya riteganywa ibyaha n'ibihano muri rusange ryariho icyo gihe, igihano Tuyisenge Rurinda Emmanuel yahanishijwe cyagabanywa agahanishwa igifungo cy' imyaka 15 n' ihazabu ingana na 5.000.000Frw. [7] Mu rubanza RPA 00226/2021/ HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 21/11/2024, rushingiye ku biteganywa mu ngingo 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, rwasanze mu rwego rwo guhuza igihano Tuyisenge Rurinda Emmanuel yahanishijwe n'uburemere bw' icyaha yakoze, gikwiriye kugabanywa hashingiwe ku mpamvu nyoroshyacyaha y'uko ari ubwa mbere akurikiranyweho icyaha mu buryo buzwi; maze rumuhanisha igifungo cy'imyaka 15 n'ihazabu ingana na 5.000.000Frw; ariko isubikagihano asaba akaba adakwiriye kurihabwa kuko igihano cy'igifungo ahanishijwe kirenze imyaka 5. [8] Tuyisenge Rurinda Emmanuel yongeye kujurira mu Rukiko rw'Ubujurire, urubanza rwandikwa kuri RPAA 01341/2024/CA, ruburanishwa mu ruhamwe kuwa 08/07/2025 yunganiwe na Me Sebazungu Cathérine, naho Ubushinjacyaha buhagarariye na Bunyoye Gráce, Umushinjacyaha ku rwego rw'Igihugu. [9] Mu bujurire bwe Tuyisenge Rurinda Emmanuel asaba Kongera kugabanyirizwa igihano kuko yemera icyaha akanagisabira imbabazi kandi akaba atazongera kugikora. [10] Uhagarariye Ubushinjacyaha avuga ko ubujurire bwa Tuyisenge Rurinda Emmanuel nta

shingiro bufite, kuko igihano yahanishijwe ari cyo gito giteganywa n'Itegeko ku cyaha yahamijwe cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, kikaba rero kidashobora kongera kugabanywa.

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[11] Hashingiwe ku mpaka zagaragajwe haruguru, Urukiko rurasuzuma niba igihano Tuyisenge Rurinda Emmanuel yahanishijwe mu rubanza rujuririrwa gishobora kongera kugabanywa. II. ISESENGURA RY' IKIBAZO KIGIZE URUBANZA Kumenya niba igihano Tuyisenge Rurinda Emmanuel yahanishijwe mu rubanza rujuririrwa gishobora kongera kugabanywa [12] Tuyisenge Rurinda Emmanuel avuga ko ubujirre bwe bugamije gusaba ko igihano yahanishijwe cyongerwa kugabanywa kuko yaburanye yemera icyaha anagisabira imbabazi bityo akaba ataragoye ubutabera, kandi akaba atazongerwa gukora icyaha; asobanura ko nk'umuntu ukiri urubyiruko aramutse afunzwe mu gihe kingana n'imyaka 15 yakatiwe yazayirangiza ashaje ntacyo agishoboye kwimarira. [13] Me Sebazungu Cathérine umwunganira avuga ko ibyo Tuyisenge Rurinda Emmanuel asaba byasuzumwa mu busishozi bw'Urukiko kuko we asanga igihano yahanishijwe mu rubanza rujuririrwa gikurikije amategeko. [14] Uhagarariye Ubushinjacyaha avuga ko mu rubanza rujuririrwa Tuyisenge Rurinda Emmanuel yagabanyirijwe igihano ku buryo buhagije, hashingiwe ku biteganywa mu ngingo ya 2, agace ka (a) n'aka (d) y'Itegeko N° 059/2023 ryo ku wa 4/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganywa ibyaha n'ibihano muri rusange, no ku murongo uhuriweho n'imanza1 zaciwe n'Urukiko rw'Ikirenga n'urw'Ubujurire, w'uko uregwa atongerwa kugabanyirizwa igihano iyo mu bujurire Urukiko rusanga cyaragabanyijwe ku buryo buhagije harebwe uburemere bw'icyaha n'uburyo cyakozwemo.

UKO URUKIKO RUBIBONA [15] Impaka muri uru rubanza zishingiye ku kumenya niba igihano cy'igifungo cy'imyaka 15 n'ihazabu ingana na 5.000.000Frw Tuyisenge Rurinda Emmanuel yahanishijwe mu rubanza rujuririrwa kubera icyaha cyo gucuruza ibiyobyabwenge bwo mu bwoko bw'urumogi yahamijwe, gishobora kongera kugabanywa. [16] Icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi gihanishwa igifungo cya burundu hashingiwe ku biteganywa mu ngingo ya 11 y'Itegeko N° 69/2019 ryo ku wa 08/11/2019 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, iteganywa ko umuntu uhamwe n'icyaha cyo gucuruza ibiyobyabwenge bihambaye2

1 Uhagarariye Ubushinjacyaha avuga ko uwo mu rubanza watanze n' Urukiko rw'Ikirenga mu rubanza RPA 0129/10/CS rwaciwe ku wa 7/3/2014 haburana Ubushinjacyaha na Mpitabakana unakomeza gukurikizwa mu zindi manza zaciwe n'Urukiko rw'Ubujurire, nk' urubanza RPAA 00572/2022/CA rwaciwe ku wa 23/2/2024 haburana Ubushinjacyaha na Ndayishimiye Théophile (igika cya 16) n'urubanza RPAA 00579/2022/CA rwaciwe ku wa 28/2/2024 haburana Ubushinjacyaha na Habumugisha Alphonse (igika cya 14).

2 Hashingiwe ku Mugereka wa mbere w'Itekarya Minisitiri N° 001/MoH/2019 ryo ku wa 04/03/2019 rigena urutonde rw'ibiyobyabwenge n'ibyiciro byabyo, urumogi ruri mu cyiciro cy'ibiyobyabwenge bihambaye.

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ahanishwa igifungo cya burundu n'ihazabu itari muni ya 20.000.000Frw ariko itarenze 30.000.000Frw. [17] 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 riteganya ibyaha n'ibihano muri rusange iteganya ibikurikira: "Iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano ku buryo bukurikira: ... (a) igifungo cya burundu gishobora kugabanywa ariko ntikijye muni y'igihano cy'igifungo cy'inyaka 15" ... (d) igihano cy'ihazabu gishobora kugabanywa kugeza kuri kimwe cya kane cy'igihano cy'ihazabu gito giteganyirijwe icyaha cyakozwe". [18] Ibiteganyijwe mu ngingo ya 11 y'Itegeko N° 69/2019 ryo ku wa 08/11/2019 n'ya 2, mu duce twa (a) na (d), y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 zimaze kuvugwa haruguru birebwe hamwe, byumvikanisha ko iyo hari impamvu nyoroshyacyaha zemejwe n'umucamanza, ashobora kugabanya igihano cy'igifungo cya burundu n'icy'ihazabu, ariko ku bireba igihano cy'igifungo cya burundu akaba atemerewe kujya muni y'igifungo cy'inyaka 15 naho ku bireba igihano cy'ihazabu akaba atemerewe kujya muni ya kimwe cya kane cy'igihano cy'ihazabu gito giteganyirijwe icyaha cyakozwe. [19] Urukiko rw'Ubujurire kandi rushingiye kuri iyo ngingo ya 2 y'Itegeko ryavuzwe haruguru, mu manza zitandukanye rwaciye ku bantu bahamwe n'ibyaha birimo gucuruza, kubika no gutunda ibiyobyabwenge byo mu bwoko bw'urumogi biteganywa kandi bigahanwa n'ingingo ya 263, igika cya gatatu, y'Itegeko riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu3, rwemeje ko abaregwa badashobora kugabanyirizwa igihano ku buryo kijya muni y'igifungo cy'inyaka cumi n'itanu (15) n'ihazabu ya miliyoni eshanu (5.000.000Frw)4. Muri zimwe mu manza ziherutse gucibwa hashingiwe kuri uwo murongo harimo nk'urubanza RPAA 00436/2024/CA rwaciye ku wa 21/01/2025 haburana Ubushinjacyaha na Bikorimana Jean Baptiste (igika cya 15) n'urubanza RPAA 00295/2024/CA rwaciye kuwa 28/01/2025 haburana Ubushinjacyaha na Iradukunda Diane (igika cya 15). [20] Nk'uko bigaragara mu rubanza rujurirwa (mu gika cya 12), Urukiko Rukuru rwasanze mu rwego rwo guhuza igihano Tuyisenge Rurinda Emmanuel n'uburemere bw' icyaha yakozwe, igihano yahanishijwe gikwiriye kugabanywa hashingiwe ku mpamvu nyoroshyacyaha y'uko ari ubwa mbere akurikiranyweho icyaha mu buryo buzwi; maze igihano yari yahanishijwe kivanwa ku gifungo cy'inyaka 25 n'ihazabu ingana na 20.000.000Frw kigezwa ku gifungo cy'inyaka 15 n'ihazabu ingana na 5.000.000Frw.

3 Ingingo ya 11, igika cya gatatu, y'Itegeko N° 69/2019 ryo ku wa 08/11/2019 ihindura ingingo ya 263 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange iteganya ibikurikira: "Umuntu wese ukora, uhinga, uhindura, utunda, ubika, uha undi, ugurisha mu gihugu ibiyobyabwenge cyangwa urusobe rw'imiti ikoreshe nka byo mu buryo bunyuranyije n'amategeko, aba akoze icyaha. Iyo abihamijwe n'urukiko ahanishwa: (1o) igifungo cya burundu n'ihazabu y'amafaranga y'u Rwanda arenze miliyoni makumyabiri (20.000.000 Frw) ariko atarenze miliyoni mirongo itatu (30.000.000 Frw) ku byerekeye ibiyobyabwenge bihambaye".

4 Reba urubanza RPAA 00097/2024/CA rwaciwe ku wa 20/12/2024 haburana Ubushinjacyaha na Twagirumukiza Sibomana Athanase, igika cya 17, urubanza RPAA 00099/2024/CA rwaciwe ku wa 16/12/2024 haburana Ubushinjacyaha na Manizabayo Gilbert Alias Nkurunziza Jean Pierre, igika cya 19 n'izindi.

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[21] Urukiko rw'Ubujurire rurasanga hashingiwe ku byasobanuwe haruguru (igika cya 18), igihano cy'igifungo cy'imyaka 15 n'ihazabu ingana na 5.000.000Frw Tuyisenge Rurinda Emmanuel yahanishijwe mu rubanza rujuririrwa ari cyo gito gishoboka ku cyaha yahamijwe cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, kikaba rero kidashobora kongera kugabanywa. [22] Hashingiwe ku bisobanuro byose byatanzwe mu bika bibanziriza iki, Urukiko rw'Ubujurire rurasanga nta kosa Tuyisenge Rurinda Emmanuel yagaragaje ryakozwe mu rubanza yajuririye, bityo ubujurire bwe bukaba nta shingiro bufite. III. ICYEMEZO CY'URUKIKO [23] Rwemeje ko ubujurire bwa Tuyisenge Rurinda Emmanuel nta shingiro bufite. [24] Rwemeje ko urubanza RPA 00226/2021/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 24/11/2020 rudahindutse mu ngingo zarwo zose. [25] Rwemeje ko igihano cy'igifungo cy'imyaka cumi n'itanu (15) n'ihazabu ingana n'amafaranga y'u Rwanda miliyoni eshanu (5.000.000Frw) Tuyisenge Rurinda Emmanuel yahanishijwe kigumyeho. [26] Rutegetse ko Tuyisenge Rurinda Emmanuel asonewe amagarama kuko aburana afunze.

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