

RWANDA / JUDGMENT

UBUSHINJACYAHA vs. MUBERUKA

RPA A 0083/12/CS

COURT

Supreme Court

DECIDED

17 June 2016

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RPA A 0083/12/CS

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UBUSHINJACYAHA vs. MUBERUKA

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Text

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UBUSHINJACYAHA vs. MUBERUKA [Rwanda URUKIKO RW'IKIRENGA – RPA A 0083/12/CS (Mukanyundo, P.J., Rugabirwa na Nyirandabaruta, J.) 17 Kamena 2016] Amategeko agenga imanza nshinjabyaha – Igabanyagihano – Gusaba kongera kugabanyirizwa igihano mu bujurire – Impamvu zashingiweho n'Urukiko rubanza zigabanya igihano ntizakongera gushingirwaho mu bujurire iyo nta gishya usaba kugabanyirizwa agaragaza cyaherwaho kuko ibyo asaba yamaze kubihabwa n'umucamanza wa mbere. Incamake y'ikibazo: Ubushinjacyaha bwareze Muberuka Gratien mu Rukiko Rwisumbuye rwa Nyagatare bumukurikiranaho icyaha cyo gusambanya umwana witwa Uwineza Solange w'imyaka 15, urwo Rukiko rwemeza ko ahamwa n'icyaha aregwa, rumuhanisha igifungo cy'imyaka makumyabiri (20 ans). Muberuka yajuririye icyo gihano mu Rukiko Rukuru, Urugereko rwa Rwamagana, rumugabanyiriza igihano kuko yageze imbere yarwo akemera icyaha n'ubwo mbere hose atari yaracyemeye, rumuhanisha igifungo cy'imyaka cumi (10). Muberuka yarongeye ajurira mu Rukiko rw'Ikirenga, avuga ko igishya azanye mu bujurire nuko akomeje kwemera icyaha akaba akomeje gusaba imbabazi no kongera kugabanyirizwa ibihano, bityo ko Urukiko rw'Ikirenga rukwiye guca inkoni izamba rukamugabanyiriza ibihano kubera ko nubwo yakoze icyaha atari ingeso yari asanganywe, kandi

ko agabanyirijwe igihano atakongera gukora icyaha. Uwunganira Muberuka nawe avuga ko uwo aburanira yemeye icyaha mu buryo budashikanywaho ariko ntagabanyirizwe ibihano ngo ahanishwe igihano gito gishoboka, bityo akaba asaba ko hashingirwa ku ngingo ya 78, igika cya 2 y'Itegeko Ngenga N° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ibyaha, uwo yunganira akongera akagabanyirizwa igihano, kubera ko umucamanza ashobora kugabanya kugeza ku myaka itanu (5). Uhagarariye Ubushinjacyaha avuga ko Muberuka Gratien atakongera kugabanyirizwa igihano kuko umucamanza adategetswe byanze bikunze kugabanya igihano, ko ahubwo itegeko riteganyaga ko ashobora kukigabanya mu gihe asanze bikwiye, bityo ko asanga urubanza rwajuririye rudakwiye guhinduka kubera ko yagabanyirijwe ku buryo buhagije. Incamake y'icyemezo: Impamvu zashingiweho n'Urukiko rubanza zigabanya igihano ntizakongera gushingirwaho mu bujurire iyo nta gishya usaba kugabanyirizwa agaragaza cyaherwaho kuko ibyo asaba yamaze kubihabwa n'umucamanza wa mbere. Ubujurire nta shingiro bufite; Amagarama y'urubanza aherereye ku isanduku ya Leta. Amategeko yashingiweho:

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Itegeko N° 27/2001 ryo kuwa 28/04/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa, ingingo ya 34. Imanza zifashishijwe:

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Urubanza RPA0129/10/CS, rw' Ubushinjacyaha na Mpitabakana, rwaciwe n'Urukiko rw'Ikirenga kuwa 7/03/2014, Icyegeranyo cy'ibyemezo by'inkiko, (Law Report, V. 2 – 2014), Ukwakira, 2014;

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Urubanza RPA 0036/15/CS rw' Ubushinjacyaha na DDUNGU Hasifa, rwaciwe n'Urukiko rw'Ikirenga kuwa 23/10/2015.

Urubanza I.IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyagatare, Ubushinjacyaha bukurikiranyeho Muberuka Gratien icyaha cyo gusambanya umwana witwaga Uwineza Solange w'imyaka 15, mu rubanza RP 0394/010/TGI/NYG rwaciwe kuwa 21/01/2011, urwo Rukiko rwemeza ko ahamwe n'icyaha aregwa, rumuhanisha igifungo cy'imyaka makumyabiri (20 ans). Muberuka Gratien yajuririye icyo gihano mu Rukiko Rukuru, Urugereko rwa Rwamagana, rumugabanyiriza igihano kuko yageze imbere yarwo akemera icyaha n'ubwo mbere hose atari yaracyemeye, rumuhanisha igifungo cy'imyaka cumi (10). [2] Muberuka Gratien yarongeye ajurira mu Rukiko rw'Ikirenga, avuga ko akomeje kwemera icyaha akaba akomeje gusaba imbabazi no kongera kugabanyirizwa ibihano. [3] Iburanisha ryabereye mu ruhame kuwa 16/5/2016, Muberuka Gratien yitabye yunganiwe na Me Karamira Jacques, naho Ubushinjacyaha buhagarariye na Uwombonye Hirwa Sudi, Umushinjacyaha ku rwego rw'Igihugu. II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO. Kumenya niba Muberuka Gratien akwiye kongera kugabanyirizwa ibihano [4] Muberuka Gratien avuga ko igishya azanye mu bujurire bwe ari uko akomeje kwemera icyaha akaba asaba imbabazi, anerekana uburyo

yakoze icyaha akurikiranyweho, ko Urukiko rw'Ikirenga rukwiye guca inkoni izamba rukamugabanyiriza ibihano kubera ko nubwo yakoze icyaha atari ingeso yari asanganywe, kandi ko agabanyirijwe igihano atakongera gukora icyaha. [5] Me Karamira Jacques umwunganira avuga ko Muberuka Gratien yemeye icyaha mu buryo budashikanywaho ariko ntagabanyirizwe ibihano ngo ahanishwe igihano gito gishoboka, asaba ko hashingirwa ku ngingo ya 78, igika cya 2 y'Itegeko Ngenga N° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ibyaha, uwo yunganira akongera akagabanyirizwa igihano, kubera ko umucamanza ashobora kugabanya kugeza ku myaka itanu (5). [6] Uhagarariye Ubushinjacyaha avuga ko Muberuka Gratien atakongera kugabanyirizwa igihano kuko umucamanza adategetswe byanze bikunze kugabanya igihano, ko ahubwo itegeko riteganyaga ko ashobora kukigabanya mu gihe asanze bikwiye, akaba asanga urubanza rwajuririwe rudakwiye guhinduka kubera ko yagabanyirijwe ku buryo buhagije, kuko umucamanza wa mbere yamuhanishije igifungo cy'imyaka makumyabiri (20 ans), naho uw'Urukiko Rukuru amuhanisha igifungo cy'imyaka icumi (10 ans). UKO URUKIKO RUBIBONA

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[7] Ingingo ya 34 y'Itegeko N° 27/2001 ryo ku wa 28/04/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa, iteganyaga ko azahanishwa igifungo kuva ku myaka makumyabiri kugeza kuri makumyabiri n'itanu n'ihazabu y'amafaranga kuva ku bihumbi ijana kugeza ku bihumbi magana atanu, umuntu wese uzaba yasambanyije umwana ufite hagati y'imyaka 14 na 18 y'amavuko. Azahanishwa igifungo cya burundu n'ihazabu y'amafaranga kuva ku bihumbi ijana kugeza ku bihumbi magana abiri umuntu wese uzaba yasambanyije umwana utarageza ku myaka cumi n'ine y'amavuko. [8] Ku byerekeye igabanyagihano Muberuka Gratien asaba, Urukiko rurasanga iryo gabanyagihano ritareberwa mu ngingo ya 78 y'Itegeko ngenga N° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana nk'uko umwunganira abisaba, ahubwo harebwa ingingo ya 82 n'ya 83 z'Itegeko N° 21/77 ryo kuwa 18/08/1977 rishyiraho igitabo cy'amategeko ahana cyakurikizwaga ubwo icyaha Muberuka Gratien akurikiranyweho cyakorwaga. Iya 82 iteganyaga ko umucamanza ari we uha agaciro impamvu zigabanyaga ubugizi bwa nabi bw'uwakoze icyaha, iza kibanjirije cyangwa izagikurikiye, yaba azemeje akagomba kubisobanurira impamvu, naho iya 83 iteganyaga uburyo ibihano bigabanyaga iyo umucamanza asanze hari impamvu nyoroshyacyaha. [9] Dosiye igaragaza ko mu rubanza RPA 0040/11/HC/RWG rwaciye n'Urukiko Rukuru, Urugreko rwa Rwamagana (urupapuro rwa 2, gace ka 7), Urukiko rwashingiye ku ngingo ya 35 y'Itegeko N° 13/2004 ryo kuwa 17/5/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, rwemeza ko Muberuka Gratien akwiye guhanishwa ½ cy'igihano yari ateganyirijwe kuko yemeye icyaha (urupapuro rwa 2 agace ka 6), rumuhanisha igifungo cy'imyaka 10 n'ihazabu y'amafaranga ibihumbi mirongo itanu (50. 000 frw). [10] Urukiko rurasanga nk'uko byasobanuwe haruguru, Muberuka Gratien yaragabanyirijwe ibihano hashingiwe ku kwemera icyaha kwe, aho guhanishwa igifungo cy'imyaka makumyabiri n'itanu, nk'uko byateganywaga n'Itegeko ryavuzwe haruguru, ahanishwa igihano cy'igifungo cy'imyaka 10. [11] Urukiko rusanga kuba

impamvu Muberuka Gratien aheraho asaba igabanyagihano, arizo zahereweho agabanyirizwa mu Rukiko Rukuru, izo mpamvu zitakongera gushingirwaho ngo yongere agabanyirizwe, kubera ko nta gishya agaragaza mu bujurire cyaherwaho yongera kugabanirizwa ibihano kuko ibyo asaba yabihawe n'umucamanza wa mbere. Ibyo bihura kandi n'ibyemejwe mu manza nyinshi zaciwe n'uru Rukiko, nko mu rubanza RPA 0129/10/CS na RPA 0036/15/CS zaciwe n'uru Rukiko, aho abashinjwa basabye kongera kugabanyirizwa ibihano ariko ntibabihabwe¹. [12] Urukiko rurasanga uretse n'ibyo, Muberuka Gratien yarahanishijwe igifungo cy'imyaka icumi (10 ans) icyo gihano kigereranyijwe n'icyaha yakoze cyo gusambanya umwana, bigaragara ko urukiko rwamuhanishije igihano gito gishoboka, bityo ubujurire bwe bukaba nta shingiro bufite.

1- Urubanza RPA0129/10/CS, rwaciwe kuwa 7/03/2014 haburana Ubushinjacyaha na Mpitabakana , icyegeranyo cy'ibyemezo by'inkiko, (Law Report , V. 2 – 2014) , Ukwakira , 2014; Urubanza no RPA 0036/15/CS rwaciwe ku wa 23/10/2015 haburana Ubushinjacyaha na DDUNGU Hasifa.

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III. ICYEMEZO CY'URUKIKO. [13] Rwemeje ko ubujurire bwa Muberuka Gratien nta shingiro bufite. [14] Rwemeje ko urubanza RPA 0040/11/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 29/12/2011, rudahindutse. [15] Rutegetse ko amagarama y'urubanza aherera ku isanduku ya Leta kubera ko Muberuka Gratien afunze.

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