

RWANDA / JUDGMENT

UBUSHINJACYAHA v. UMUTONIWASE

RPAA00786/2024/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA v. UMUTONIWASE

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Text

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UBUSHINJACYAHA v. UMUTONIWASE [Rwanda URUKIKO RW'UBUJURIRE – RPAA00786/2024/CA (Mukandamage P.J.) 28 Werurwe 2025] Amategeko agenga imanza nshinjabyaha – Ubujurire – Ibihe by'ubujurire – Umuburanyi wari uhari cyangwa ahagarariwe igihe urubanza rwacibwaga ndetse n'umuburanyi wamenyeshejwe mu buryo bwemewe n'amategeko umunsi urubanza ruzacibwaho ntaze cyangwa ngo yohereze umuhagararira, agomba kujurira mu gihe kitarenga iminsi mirongo itatu (30) uhareye ku itariki urubanza rwaciriweho. Incamake y'Ikibazo: Umutoniwase yakurikiranywe mu Rukiko Rwisumbuye rwa Ngoma aregwa gusambanya umwana w'umuhungu witwa A. B w'imyaka cumi n'umwe (11) y'amavuko wo mu rugo yakoragamo akazi ko mu rugo. Urwo Rukiko rwaciye urubanza rusanga hari ibimenyetso bigaragaza ko yakoze icyaha cyo gusambanya umwana, birimo imvugo ze yemera icyaha, imvugo za nyina w'umwana, raporo y'Ubuyobozi bw'aho icyaha cyakorewe n'icyemezo cy'amavuko kigaragaza ko umwana yasambanyijwe afite imyaka cumi n'umwe (11) y'amavuko, maze rumuhanisha igihano cy'igifungo cya burundu. Uregwa yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana avuga ko yemera icyaha, asaba kugabanyirizwa igihano, ariko mu mwanzuro w'inyongera avuga ko yahamijwe icyaha cyo gusambanya umwana kandi ntacyo yakoze, ko ibyo yemeye mu nzego

z'iperereza byatewe n'uko yakubiswe n'Umuyobozi w'Umudugudu amutegeka kubyemera, aburana mu Rukiko Rwisumbuye rwa Ngoma agifite ubwoba, bityo asaba kurenganurwa. Urwo Rukiko narwo rwaciye urubanza, rwemeza ko impamvu y'ubujurire isaba kugirwa umwere yatanzwe impitagihe, kandi ko hari ibimenyetso bimuhamya icyaha yarezwe, hanyuma rwemeza ko akomeza guhanishwa igihano cy'igifungo cya burundu, kubera ko atagaragaza kwicuza. Uregwa yajuririye nanone Urukiko rw'Ubujurire avuga ko hakwiringagizwa imiburanire ye mu Rukiko Rukuru, Urugereko rwa Rwamagana, kuko yemeye icyaha mu nzego z'ikurikiranacyaha, aburana acyemera ku rwego rwa mbere, agasaba ko hashingirwa kuri uko kwemera no kuba ari ubwa mbere akurikiranwe mu butabera, hanyuma akagabanyirizwa igihano. Ubushinjacyaha bwo bwaburanye butanga inzitizi yo kutakira ubujurire, buvuga ko budakwiye kwakirwa ngo busuzumwe kuko bwatanzwe impitagiye, kuko urubanza rujuririrwa rwaciye ku wa 27/06/2024, kopi yarwo ishyirwa muri IECMS ku wa 01/07/2024, hanyuma Umutoniwase ajurira ku wa 09/08/2024, uwo munsu Igororero abarizwamo rishyiraho umukono na kashe, bikaba rero bigaragara ko yajuriye iminsi mirongo itatu (30) iteganywa n'itegeko yararenze, kandi ntiyagaragaza niba hari imbogamizi yaba yarahuye nazo zatumye ajurira akerewe. Kuri iyi nzitizi uregwa yayireguyeho avuga ko yamenyeshejwe imikirize y'urubanza ku wa 05/08/2024, ajurira ku wa 09/08/2024 ni ukuvuga nyuma y'iminsi ine (4) amenyeshejwe imikirize y'urubanza, kuko atamenye igihe urubanza rwasomewe, kandi ko nta buryo yari afite bwo kuba yamenya ko kopi yarwo yashyizwe muri dosiye (IECMS) bitewe n'uko afunzwe, agasaba ko ubujurire bwe bwakwagirwa.

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Incamake y'Ikemezo: Umuburanyi wari uhari cyangwa ahagarariwe igihe urubanza rwacibwaga ndetse n'umuburanyi wamenyeshejwe mu buryo bwemewe n'amategeko umunsi urubanza ruzacibwaho ntaze cyangwa ngo yohereze umuhagararira, agomba kujurira mu gihe kitarenga iminsi mirongo itatu (30) uhareye ku itariki urubanza rwaciriweho. Ubujurire ntibwakiriwe. Amategeko yashingiweho: Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha Ingingo ya 181. Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 134.

Imanza zifashishijwe: Ubushinjacyaha v. Bogere Barige, RPA 0022/14/CS rwaciye n'Urukiko rw'Ikirenga ku wa 23/03/2018. Ubushinjacyaha vs Habyarimana Pierre, RPAA 00530/2023/CA rwaciye n'Urukiko rw'Ubujurire ku wa 29/01/2025. Urubanza I.IMITERERE Y'URURUBANZA [1] Ku wa 08/08/2021, Umutoniwase Diane yasambanyije umwana w'umuhungu witwa A. B w'imyaka cumi n'umwe (11) y'amavuko wo mu rugo rwa Iranzi Solange aho yakoraga akazi ko mu rugo, bivugwa ko uwo munsu yasanze umwana mu cyumba cy'abana, amukuramo ikabutura, nawe akuramo ikariso azamura ijipo, aryama hejuru ye afata igitsina cy'umwana agishyira mu cye, abigira gatatu, yikanze nyina w'umwana ahita amuvaho, hanyuma ashyikirizwa Ubugenzacyaha. [2] Nyuma y'iperereza, Ubushinjacyaha bwatanze ikirego mu Rukiko Rwisumbuye rwa Ngoma burega Umutoniwase Diane icyaha cyo gusambanya umwana, bumusabira igihano cy'igifungo cya burundu giteganywa n'ingingo ya 133 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganywa

ibyaha n'ibihano muri rusange. [3] Umutoniwase Diane yaburanye yemera icyaha asaba n'imbabazi, avuga ko yavuye koga ajyana n'umwana mu cyumba, yicara ku buriri umwana araryama, amubaza niba yabasha gukora umuti, amushyiriza ku aramutse amuhaye yabishobora, hanyuma aramusambanya. [4] Mu rubanza n° RP 01160/2021/TGI/NGOMA rwaciwe ku wa 03/09/2021, Urukiko Rwisumbuye rwa Ngoma rwasanze hari ibimenyetso bigaragaza ko Umutoniwase Diane yakozwe icyaha cyo gusambanya umwana, birimo imvugo ze yemera icyaha, imvugo za nyina w'umwana, raporo y'Ubuyobozi bw'aho icyaha cyakorewe n'icyemezo cy'amavuko kigaragaza ko umwana yasambanyijwe afite imyaka cumi n'umwe (11) y'amavuko, rumuhanisha igifungo cya burundu.

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[5] Umutoniwase Diane yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana avuga ko yemera icyaha, asaba kugabanyirizwa igihano, mu mwanzuro w'inyongera avuga ko yahamijwe icyaha cyo gusambanya umwana kandi ntacyo yakozwe, ko ibyo yemeye mu nzego z'iperereza byatewe n'uko yakubiswe n'Umuyobozi w'Umudugudu amutegeka kubyemera, aburana mu Rukiko Rwisumbuye rwa Ngoma agifite ubwoba, asaba kurenganurwa. Uhagarariye Ubushinjacyaha yavuze ko, aburana ku rwego rwa mbere, Umutoniwase Diane yemeye icyaha asobanura uburyo yagikoze, ko rero ubujurire yatanze ahakana icyaha butahabwa ishingiro. [6] Mu rubanza n° RPA 01136/2021/HC/RWG rwaciwe ku wa 27/06/2024, Urukiko Rukuru, Urugereko rwa Rwamagana rwasanze impamvu y'ubujurire isaba kugirwa umwere ku cyaha Umutoniwase Diane yarezwe yaratanze impitagihe, kandi ko hari ibimenyetso bimuhamya icyaha yarezwe, hanyuma rwemeza ko akomeza guhanishwa igifungo cya burundu, kubera ko atagaragaza ukwicuza. [7] Umutoniwase Diane yajuririye Urukiko rw'Ubujurire, urubanza ruhabwa n° RPAA 00786/2024/CA, ruburanishwa mu ruhame ku wa 05/03/2025, Umutoniwase Diane yunganiwe na Me Nyiramata Bernadette, naho Ubushinjacyaha buhagarariye na Niyonkuru Françoise, Umushinjacyaha ku rwego rw'Igihugu. [8] Mu myanzuro no mu miburanire, Umutoniwase Diane avuga ko hakwirengagizwa imiburanire ye mu Rukiko Rukuru, Urugereko rwa Rwamagana, kuko yemeye icyaha mu nzego z'ikurikiranacyaha, aburana acyemera ku rwego rwa mbere, agasaba ko hashingirwa kuri uko kwemera no kuba ari ubwa mbere akurikiranwe mu butabera, hanyuma akagabanyirizwa igihano. Uhagarariye Ubushinjacyaha avuga ko ubujurire bwatanze na Umutoniwase Diane butakwagirwa kubera ko atubahirije ibihe by'ubujurire biteganywa n'amategeko, ariko ko mu gihe bwaba bwakiriwe atagabanyirizwa igihano, kuko yakozwe icyaha gikomeye cyo gusambanya umwana. [9] Ikibazo kigomba kubanza gusuzumwa ni icyo kumenya niba ubujurire bwatanze na Umutoniwase Diane butagomba kwakirwa. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba ubujurire bwatanze na Umutoniwase Diane butagomba kwakirwa [10] Uhagarariye Ubushinjacyaha avuga ko urubanza rujuririrwa rwaciwe ku wa 27/06/2024, kopi yarwo ishyirwa muri IECMS ku wa 01/07/2024, hanyuma Umutoniwase Diane yandika ajurira ku wa 09/08/2024, uwo munsu Igororero abarizwamo rishyiraho umukono na kashe, bikaba rero bigaragara ko yajurije iminsi mirongo itatu (30) iteganywa n'itegeko yararenze, kandi

ntiyagaragaza niba hari imbogamizi yaba yarahuye nazo zatumye ajurira akererwe, agasaba ko ubujurire bwe butakwiye kwakirwa ngo busuzumwe. [11] umutoniwase Diane n'umwunganira bavuga ko yamenyeshejwe imikirize y'urubanza ku wa 05/08/2024, ajurira ku wa 09/08/2024 ni ukuvuga nyuma y'iminsi ine (4) amenyeshejwe imikirize y'urubanza, kuko atamenye igihe urubanza rwasomewe, kandi ko nta buryo yari afite bwo kuba yamenya ko kopi yarwo yashyizwe muri dosiye (IECMS) bitewe n'uko afunzwe, bagasaba ko ubujurire bwe bwakwagirwa

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UKO URUKIKO RUBIBONA [12] Ku birebana n'igihe ubujurire bugomba gukorerwa, Urukiko rw'Ikirenga rwabitanzeho umurongo mu rubanza RPA 0022/14/CS rwaciye ku wa 23/03/2018 haburana Ubushinjacyaha na Bogere Barige, uwo murongo ukaba uvuga ko umuburanyi wari uhari cyangwa ahagarariwe igihe urubanza rwacibwaga ndetse n'umuburanyi wamenyeshejwe mu buryo bwemewe n'amategeko umunsi urubanza ruzacibwaho ntaze cyangwa ngo yohereze umuhagararira, bagomba kujurira mu gihe kitarenga iminsi mirongo itatu (30)1 uhereye ku itariki urubanza rwaciriweho. Uyu murongo wakurikijwe mu manza zaciye n'Urukiko rw'Ubujurire, muri zo hakaba harimo urubanza RPAA 00530/2023/CA ku wa 29/01/2025, haburana Ubushinjacyaha na Habyarimana Pierre [13] Nk'uko bigaragara muri dosiye, Umutoniwase Diane yaburanye mu Rukiko Rukuru, Urugereko rwa Rwamagana ku wa 14/05/2024, amenyeshwa ko urubanza ruzasomwa ku wa 13/06/2024 saa saba (13h00'), uwo munsu ugeze, saa tatu (9h00') isomwa ry'urubanza ryimurirwa ku wa 27/06/2024 saa munani (14h00') kubera ko umucamanza yari mu kiruhuko cy'umwaka. Ku wa 27/06/2024 urubanza rwarasomwe, inyandikomvugo y'isomwa ishyirwa muri dosiye (IECMS) uwo munsu, kopi y'urubanza ishyirwa muri dosiye (IECMS) ku wa 01/07/2024, hanyuma Umutoniwase Diane ajurira ku wa 09/08/2024. [14] Urukiko rw'Ubujurire rurasanga rero Umutoniwase Diane yarajuriye akerewe ku wa 09/08/2024, kuko yabikoze hashize iminsi mirongo itatu n'icyenda (39) uhereye igihe kopi y'urubanza ishyizwe muri dosiye (IECMS), ubujurire bwe buka butagomba kwakirwa. [15] Urukiko rw'Ubujurire rurasanga kandi ibyo Umutoniwase Diane avuga ko yamenyeshejwe imikirize y'urubanza ku wa 05/08/2024 nta kibigaragaza, kandi ntiyakwitwaza ko atamenye igihe urubanza rwasomewe, kuko igihe yaburanaga yamenyeshejwe igihe urubanza ruzasomerwa2. Byongeye kandi ntagaragaza ko kuva urubanza rusomwe hari icyo yakoze kugirango ahabwe kopi yarwo. [16] . Hashingiwe ku ngingo z'amategeko zavuzwe haruguru, urubanza rwatanze umurongo no ku byasobanuwe haruguru, Urukiko rw'Ubujurire rurasanga Umutoniwase Diane yarajuriye akerewe, hakaba hagomba kugumaho imikirize y'urubanza yajuririye. III. ICYEMEZO CY'URUKIKO

1 Ingingo ya 181 y'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ibikurikira: "Kujurira bikorwa mu gihe kitarenga iminsi mirongo itatu (30) uhereye ku itariki urubanza rwaciriweho ku muburanyi wari uhari cyangwa ahagarariwe igihe urubanza rwacibwaga, icyo gihe gikurikizwa kandi ku muburanyi wamenyeshejwe mu buryo bwemewe n'amategeko, umunsi urubanza ruzacibwaho ntaze cyangwa ngo yohereze umuhagararira. Kujurira bikorwa mu gihe cy'iminsi mirongo itatu (30) uhereye ku itariki urubanza rwamenyesherejwe umuburanyi utari uhari igihe rwasomwaga" 2 Ingingo ya 134, igika

cya 3 n'icya 4, y'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ari naryo rigenga imiburanishirize y'izindi manza mu gihe nta yandi mategeko agenga iyo miburanishirize nk'uko biteganywa mu ngingo yaryo ya mbere, iteganya ibikurikira: "Iyo ku munsu w'isomwa ry'urubanza hari umuburanyi utitabye kandi yari yaramenyeshwe igihe ruzasomerwa, isomwa ryarwo rigasubikwa, ntibiba ngombwa ko yongera kumenyeshwa umunsi isomwa ryarwo ryimuriweho.

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[17] Rwemeje ko ubujurire bwatanzwe na Umutoniwase Diane butakiriwe kubera ko bwatanzwe bukerewe; [18] Rwemeje ko urubanza RPA 01136/2021/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 27/06/2024 rugumanye agaciro mu ngingo zarwo zose; [19] Rwemeje ko igifungo cya burundu Umutoniwase Diane yahanishijwe ku cyaha cyo gusambanya umwana w'imyaka cumi n'umwe (11) y'amavuko kigumye [20] Ruvuze ko amagarama y'urubanza aherereye mu isanduku ya Leta, kuko Umutoniwase Diane yajuriye afunze, akaba asonewe kuyatanga

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