

RWANDA / JUDGMENT

UWIMANA vs SHYIRAMBERE

RCA00006/2024/CA

COURT

Court of Appeal

DECIDED

27 September 2024

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UWIMANA vs SHYIRAMBERE

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Text

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UWIMANA v SHYIRAMBERE [Rwanda URUKIKO RW'UBUJURIRE – RCA00006/2024/CA (Kamere P.J.) 27 Nzeli 2024] Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Ubujurire – Ikirego cyihutirwa – Iyo uwajuriye atagaragaza inenge anenga urubanza ajuririra ngo asabe ko Urukiko rwajuririwe ruhindura cyangwa rukuraho icyemezo yajuririye, ikirego cye nta shingiro kiba gifite. Incamake y'ikibazo: Uru rubanza rwatangiye Uwimana arega Shyirambere n'Ubushinjacyaha mu Rukiko Rwisumbuye rwa Nyarugenge uasaba guhabwa indishyi no kugarura urugi. Urukiko mu rubanza RC00550/2023/TGI/NYGE, rwemeje ko ikirego cya Uwimana ku bireba Ubushinjacyaha kitakiriwe, naho ku bireba Shyirambere rwemeza ko ikirego nta shingiro gifite. Uwimana ntiyishimiye imikirize y'urubanza arujurira mu Rukiko Rukuru, gihabwa RCA00126/2023/HC/KIG. Mu gihe ubwo bujurire bwari butaraburanishwa, yatanze muri urwo rukiko ikirego kihutirwa kibushamikiyeho, gihabwa RC00020/2024/HC/KIG. iburanisha ryabaye uregwa adahari kuko yari yarahamagajwe mu buryo bukurikije amategeko. Uwimana mu gusobanura ikirego cyihutirwa, yavuze ko icyo arega Shyirambere ari uko yamusohoye mu mazu ye, we n'abana be, mu buryo bunyuranyije n'amategeko, maze asoza asaba Urukiko gutegeka Shyirambere kumusubiza imitungo ye, Shyirambere yiregura avuga ko Urukiko rutaha agaciro

ikirego kihutirwa cyatanzwe na Uwimana kuko atigeze amwambura imitungo ye nk'uko abivuga, ahubwo ko yayiguze muri cyamunara mu buryo bwemewe n'amategeko. Muri urwo rubanza Urukiko Rukuru rwasuzumye ikibazo kimwe gusa cyo kumenya niba ikirego cyihutirwa cyatanzwe N'uwimana cyujuje ibisabwa ku buryo cyakwagirwa kigasuzumwa. Urukiko rumaze kubona ko ikiregerwa mu rubanza rw'iremezo RCA00206/2023/HC/KIG ari indishyi no kugarura urugi, naho mu kirego cyihutirwa ikiregerwa kikaba ugutegeka Shyirambere Zacharie gusubiza Uwimana umutungo we ubaruye kuri UPI: 1/03/06/03/123 kuko yawubonye mu buryo bunyuranyije n'amategeko, Urukiko rwasanze ikirego kihutirwa cya Uwimana nta sano gfitanye n'urubanza rw'iremezo rwavuzwe haruguru kuko ikiregerwa mu kirego cy'iremezo gihabanye n'ikiregerwa mu kirego cyihutirwa, mu gihe ikiregerwa mu kirego cyihutirwa kiba kigomba kuba gfitanye isano n'ikirego cy'iremezo, bituma rwemeza ko icyo kirego cye kidashobora kwakirwa ngo gisuzumwe. Uwimana yajuririye urwo rubanza mu Rukiko rw'Ubujurire, avuga ko mu rubanza rujuririrwa hirengagijwe ibimenyetso, amategeko, umuco, n'amahame mpuzamahanga agenga uburenganzira bwa muntu, URukiko rw'Ubujurire gutesha agaciro icyemezo ajuririra. Shyirambere yiregura kuri ubu bujurire avuga ko iki kirego cy'ubujurire nta shingiro gifite, akabvuga ko ntaho ikiregerwa mu kirego cyihutirwa gihuriye n'ikirego cy'iremezo. Urukiko mu rubanza RCA00006/2024/CA rwemeje ko ubujurire bwa Uwimana nta shingiro bufite. Incamake y'icyemezo: Iyo uwajuriye atagaragaza inenge anenga urubanza ajuririra ngo asabe ko Urukiko rwajuririwe guhindura cyangwa gukuraho icyemezo yajuririye, ikirego cye nta shingiro kiba gifite. Bityo, iyo umuburanyi atanze ikirego kihutirwa nticyakirwe ngo gisuzumwe n'Urukiko aba agomba kujurira icyo cyemezo agaragaza amakosa yakozwe n'Urukiko rw'abanje agomba gukosorwa mu bujurire icyo kirego cyikacyirwa, iyo atabikoze atyo icyo kirego nta shingiro kiba gifite.

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Ubujurire nta shingiro bufite.

Amategeko yashingiweho: Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 150 , 157 , 158 na 185 Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Uwimana Catherine yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge gihabwa no RC00550/2023/TGI/NYGE, abaregwa ari Shyirambere Zacharie n'Ubushinjacyaha, ikiregerwa ari ukuregera indishyi no kugarura urugi. Urukiko rwemeje ko ikirego Uwimana Cathérine arega Ubushinjacyaha ku rwego Rwisumbuye rwa Nyarugenge kitakiriwe, rwemeza ko ikirego Uwimana Catherine arega Shyirambere Zacharie nta shingiro gifite, kandi ko amafaranga y'ingwate y'amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza. [2] Uwimana Catherine ntiyishimiye imikirize y'urubanza ajurira mu Rukiko Rukuru, ikirego cye gihabwa RCA00126/2023/HC/KIG. Mu gihe ubwo bujurire bwe bwari butaraburanishwa, Uwimana Catherine yatanze muri urwo rukiko ikirego kihutirwa kibushamikiyeho, gihabwa RC00020/2024/HC/KIG. Iburanisha mu ruhame ry'urwo rubanza ryabaye ku wa 11/7/2024, Uwimana Catherine yitabye kandi yiburanira, naho Shyirambere Zacharie atitabye, iburanisha riba uregwa adahari kuko yari yarahamagajwe mu buryo bukurikije amategeko. Mu gusobanura ikirego cye cyihutirwa, Uwimana Catherine yavuze ko icyo arega

Shyirambere Zacharie ari uko yamusohoye mu mazu ye, we n'abana be, mu buryo bunyuranyije n'amategeko, maze asoza asaba Urukiko gutegeka Shyirambere Zacharie kumusubiza imitungo ye, cyane ko na cyamunara ivugwa yatejwe umutungo we ntayo azi, atayemera. Mu myanzuro yanditse yakozwe na Shyirambere Zacharie yashingiweho n'Urukiko yasabye Urukiko kudaha agaciro ikirego kihutirwa cyatanzwe na Uwimana Catherine kuko atigeze amwambura imitungo ye nk'uko abivuga, ahubwo ko yayiguze muri cyamunara mu buryo bwemewe n'amategeko, ubwo Uwimana Catherine yari amaze gutandukana n'umugabo we mu buryo bwemewe n'amategeko maze Urukiko rugategeka ko umutungo bari basangiye ugurishwa maze Uwimana Catherine n'umugabo we bakagabana amafaranga azavamo. [3] Muri urwo rubanza Urukiko Rukuru rwasuzumye ikibazo kimwe gusa cyo kumenya niba ikirego cyihutirwa cyatanzwe N'uwimana Catherine cyujuje ibisabwa ku buryo cyakwagirwa kigasuzumwa. Urukiko rumaze kubona ko ikiregerwa mu rubanza rw'iremezo RCA00206/2023/HC/KIG ari indishyi no kugarura urugi, naho mu kirego cyihutirwa ikiregerwa kikaba ugutegeka Shyirambere Zacharie gusubiza Uwimana Cathérine umutungo we ubaruye kuri UPI: 1/03/06/03/123 kuko yawubonye mu buryo bunyuranyije n'amategeko, rwashingiye ku biteganywa n'ingingo ya 185 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, rusanga ikirego kihutirwa cyatanzwe na Uwimana Cathérine nta sano iteganyijwe n'iyi ngingo y'itegeko gifitanye n'urubanza rw'iremezo rwavuzwe haruguru kuko ikiregerwa mu kirego cy'iremezo gihabanye n'ikiregerwa mu

1 Iyo ngingo ya 185 ikaba iteganya ibi bikurira: "Iyo hari ikirego cy'iremezo, ariko hagomba kugira icyemeza by'ateganyo mu buryo bwihuta ku rubanza rwaregwe urukiko rutaraburanishwa, ikirego cyihutirwa gishyikirizwa umucamanza ushinze kurangiza impaka zihutirwa w'aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara".

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kirego cyihutirwa, mu gihe ikiregerwa mu kirego cyihutirwa kiba kigomba kuba gifitanye isano n'ikirego cy'iremezo, bituma rwemeza ko icyo kirego cya Uwimana Cathérine kidashobora kwakirwa ngo gisuzumwe kuko kitubahirije ibisabwa n'itegeko kugira ngo cyitwe ikirego cyihutirwa. [4] Uwimana Cathérine yajuririye urwo rubanza muri uru Rukiko rw'Ubujurire, mu bujurire bwe akavugamo byinshi byerekeranye n'akababaro yatewe no gusohorwa mu nzu we n'abana be, ko ngo hirengagijwe ibimenyetso, amategeko n'ingingo zayo, umuco, n'amahame mpuzamahanga agenga uburenganzira bwa muntu, bityo asaba uru Rukiko rw'Ubujurire gutesha agaciro icyemezo ajuririra cy'Urukiko Rukuru n'imyanzuro yacyo. [5] Muri rusange Shyirambere Zacharie yiregura kuri ubu bujurire avuga ko iki kirego cy'ubujurire nta shingiro gifite, aho ashimangira impamvu Urukiko Rukuru rwashingiyeho icyemezo cyarwo yo kuba ntaho ikiregerwa mu kirego cyihutirwa gihuriye n'ikirego cy'iremezo. [6] Iburanisha ry'urubanza ryashyizwe ku wa 18/09/2024, uwo muni risubikwa kugira ngo Uwimana Cathérine wari witabye atazi ko agomba guhagararirwa cyangwa se kunganirwa n'umu Avoka abanze amushake. Mu iburanisha ryasubukuwe ku wa 25/09/2024, urubanza rwaburanishijwe Uwimana Cathérine yunganiwe na Me Kamagaju Béatrice, naho Shyirambere Zacharie yunganiwe na Me Kalinda Stephen. Isomwa ry'urubanza ryashyizwe ku wa mbere tariki ya 30/09/2024, ariko kubera indi

mirimo y'Urukiko umucamanza yasabwe kujyamo bitunguranye guhera ku wa 29/09/2024 gukomeza no mu kwezi k'Ukwakira kose ku buryo ku itariki isomwa ry'urubanza ryari ryashyizweho umucamanza atashoboraga kuboneka, kandi iki kirego cyaratanzwe nk'ikihutirwa, isomwa ryarwo ryimuriwe mbere gato gashoboka ku wa gatanu tariki 27/09/2024. [7] Nyuma yo kubona ibikubiye mu myanzuro yanditse y'ababuranyi no kumva ibisobanuro byabo mu gihe cy'iburanisha, Urukiko rusanga ikibazo kigomba gusuzumwa ari ukumenya niba hari inenge zifite ishingiro Uwimana Catherine yagaragaje mu rubanza rwajuririwe zaba zaratumye Urukiko Rukuru rwaremeje ko ikirego cyihutirwa yatanze kitagomba kwakirwa kandi nyamara cyari cyujuje ibisabwa n'amategeko kugira ngo cyakirwe. II. IKIBAZO KIGIZE URU RUBANZA N'ISESENGURA RYACYO Kumenya niba hari inenge UWIMANA Catherine yagaragaje mu rubanza rwajuririwe zaba zaratumye Urukiko Rukuru rwaremeje ko ikirego cyihutirwa yatanze kitagomba kwakirwa kandi nyamara cyari cyujuje ibisabwa n'amategeko kugira ngo cyakirwe [8] Uwimana Cathérine avuga ko iki cyari ikirego cyihuse (REFERE) cyagombaga kuburanishwa mu minsi itanu (5) kuva Urukiko rwakiriye ikirego tariki 09/06/2024 ariko ko bitigeze byubahirizwa ikirego kikageza ku wa 26/07/2024, bityo ko hishwe nkana amategeko, we n'abana be bose bakaharenganira batagira ibibatunga, batagira aho baba kandi abana bari mu bizamini. [9] Avuga ko we n'abana be basohowe mu nzu ku wa 28/02/2024 mu buryo bunyuranyije n'amategeko, nta rubanza ruhari rwabaye itegeko rurangizwa kuko urubanza RCA00028/2024/TGI/NYGE yari yarujuririye mu Rukiko Rukuru rwa Kigali, icyemezo cy'Urukiko kitarafatwa kuko cyafashwe ku wa 29/02/2024 baramaze gusohorwa mu nzu, naho imyanzuro yarwo ayihabwa tariki 09/04/2024. [10] Ku kibazo cy'ikirego cyihutirwa yatanze mu Rukiko Rukuru cyanditswe kuri RC00020/2024/HC/KIG, Uwimana Cathérine avuga ko ikibazo afite ari uko Urukiko Rukuru rwavuze ko ikirego cy'iremezo ari RCA00126/2023/HC/KIG mu gihe we afitiye assignation (ihamagara) urubanza RCA00206/2024/HC/KIG, bityo ko imyanzuro yafashwemo yateshwa agaciro

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kuko Urukiko rwashingiye ku rubanza rutari rwo, akanasaba ko urwo Rukiko rutahabwa ububasha bwo kuzaburanisha urwo rubanza rw'iremezo. [11] Uwimana Cathérine avuga kandi ko nta nteguza yahawe mu gihe cyo gusohorwa mu nzu, kuko ngo ntawasohora umuntu utategujwe, ndetse ko ntawigeze atuma Me Mugabe Emmanuel kurangiza imanza, kandi ngo imanza z'imitungo n'iyi nzu irimo zikiri mu Rukiko kuri nimeru RCA00135/2024/HC/KIG ruzaburanishwa mu mizi tariki 05/09/2024. [12] Shyirambere Zacharie uregwa, mu kwiregura avuga ko Uwimana Cathérine adatanga impamvu yatuma Urukiko rw'Ubujurire rukuraho icyemezo cyafashwe n'Urukiko Rukuru, ko ikirego cye cyihutirwa ntaho gihuriye n'urubanza rw'iremezo, bityo asaba Urukiko rw'Ubujurire kwemeza ko ikirego cya Uwimana Cathérine nta shingiro gifite. UKO URUKIKO RUBIBONA [13] Mu gihe icyemezo mu rubanza rwajuririwe ari ukuba Urukiko Rukuru rwaremeje kutakira ikirego cya Uwimana Catherine, ubujurire bw'uyu bwakabaye bugamije gusaba ko Urukiko rw'Ubujurire rwemeza ko ikirego kitakiriwe kandi cyari cyujuje ibisabwa kugira ngo cyakirwe, maze Urukiko rugategeka ko urubanza rusubizwa mu Rukiko Rukuru rukakira ikirego nta yindi ngwate y'amagarama Uwimana Catherine yongeye gutanga2. Ibi rero bisaba ko mu bujurire bwe Uwimana Catherine agaragaza inenge ku mpamvu zashingiweho

n'Urukiko Rukuru rufata icyemezo cyo kutakira ikirego cye cyihutirwa. Ikibazo mu by'ukuri kigomba gusuzumwa kikaba ari icyo kureba niba uwajuriye yaragaragaje izo nenge noneho Urukiko rugasuzuma ishingiro ryazo. [14] Ingingo ya 150 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ku birebana n'ibigomba kuba bikubiye mu mwanzuro w'ubujurire, iteganya ibikurikira: "Ubujurire bukorwa mu buryo bw'umwanzuro utanga ikirego, ugaragaza ibi bikurikira: 1° umwirondoro wuzuye w'ujurira n'uw'uregwa mu bujurire; 2° urubanza rujuririwe n'urukiko rwaruciye; 3° urukiko rwajuririwe; 4° imiterere y'ikibazo mu ncamake; 5° urutonde rw'ingenze z'urubanza zisabirwa gukorsorwa n'ibindi bibazo bigomba gusuzumwa; 6° ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragaza amakosa yakozwe n'uburyo agomba gukorsorwa hashingiwe ku mategeko n'ibimenyetso n'igisabwa urukiko; 7° ibisobanuro ku birego by'inyongera mu gihe ibyo birego bihari". [15] Isesengura ry'iyi ngingo y'Itegeko, cyane cyane mu duce twayo twa 5o,6o na 7o, rigaragaza ko kugira ngo Urukiko rwajuririwe rubashe gusesengura neza ubujurire rwashyikirijwe mu buryo buganisha ku byemezo itegeko riteganywa ko ari byo byonyine bishoboka ku rubanza rw'ubujurire³, uwajuriye mu mwanzuro we w'ubujurire aba agomba kugaragariza urukiko urutonde rw'amakosa anenga kuba yarakozwe mu rubanza rujuririrwa, agasobanura uko abona buri kosa ryakozwe n'uko yifuza ko ryakorsorwa hashingiwe ku mategeko n'ibimenyetso ahuza n'icyo asaba Urukiko rwajuririwe cyo guhindura cyangwa se gutesha agaciro urubanza yajuririye.

2 Ibi niko biteganywa n'ingingo ya 158, igika cya 2 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, aho igira iti: "Nyamara, iyo Urukiko rwajuririwe rusanze urubanza rwari rwaregwe mu buryo bukurikije amategeko urukiko rwaruciye ku rwego rubanza rukavuga ko rutakiriwe kandi rwaragombaga kwakirwa, Urukiko rwajuririwe rurarwakira, rukagaragaza ko rwagombaga kwakirwa ku rwego rwa mbere; rukarutesha agaciro maze rukarusubiza Urukiko rwari rwaruciye kugira ngo ruruburanishe mu mizi, nta yindi ngwate y'amagarama itanzwe". 3 Reba ingingo ya 157 y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru ku birebana n'ibyemezo Urukiko rushobora gufata ku rubanza rwajuririwe, iteganya ibikurikira: "Urukiko rwajuririwe rushobora guhindura urubanza rwajuririwe mu ngingo zarwo zose cyangwa zimwe muri zo, kwemeza uko rwari rwaciye cyangwa kurutesha agaciro".

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[16] Dosiye y'urubanza igaragaza ko mu gika cya 12 n'icya 13 by'urubanza rwajuririwe Urukiko Rukuru rwemeje kutakira ikirego cyihutirwa cya Uwimana Catherine rubishingiye ku gisobanuro cy'ikirego kihutirwa gitenganywa n'ingingo ya 185 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru⁴, maze rusanga ikirego cyihutirwa cya Uwimana Catherine nta sano giftanye n'urubanza rw'iremezo ku buryo cyafatwa nk'ikirushamikiyeho kugira ngo cyibe cyakwemererwa gufatwamo ibyemezo mu buryo bwihuse kandi bw'agateganyo byazagarukwaho ku buryo bwa burundu mu icibwa ry'urubanza rw'iremezo. Mu yandi magambo Urukiko Rukuru rwasanze ikirego Uwimana Catherine yari yise icyihutirwa ari ikirego cyigenga kandi cyihagije ku kuba cyari gutangwa ukwacyo kitagombye gushamikira ku kirego cy'iremezo cyari gisanze cyararegwe urwo Rukiko ku

rwego rw'ubujurire. [17] Urukiko rurasanga mu gihe mu kujuririra icyemezo cyo kutakira ikirego cyihutirwa Uwimana Catherine yasabwaga gukora umwanzuro ugaragaza ukanasobanura inenge ziri mu rubanza rwajuririwe, agamije guhinduza cyangwa se gukuzaho icyemezo cyajuririwe cyo kutakira ikirego cye cyihutirwa, nta nenge yigeze agaragaza muri ubwo buryo, ahubwo yivugiye gusa byinshi bitarebana n'iyakirwa ry'ikirego cye cyihutirwa, yibanda ku kugaragaza amarangamutima yatewe no kuba yarasohowe mu nzu we n'abana be, maze agasozza agaragaza ko asaba Urukiko rw'Ubugurire kumusubiza mu nzu yakuwemo we n'abana be, aho kugaragaza uburyo Urukiko rwahindura cyangwa se rukavanaho icyemezo yajuririye cyo kuba Urukiko Rukuru rwaremeje kutakira ikirego cye cyihutirwa. [18] Urukiko rurasanga kandi ibyagaragajwe na Uwimana Catherine by'uko ikirego cyihutirwa yashyikirije Urukiko Rukuru kitaburanishijwe mu gihe gito giteganywa n'itegeko n'ikosa ngo ryakozwe mu kwandika numero y'urubanza rw'iremezo cyari gishamikiyeho, bidashobora gufatwa nk'impamvu z'ubujurire zasuzumirwa ishingiro kuko uwajuririye atagaragaza icyo kubisuzuma byabasha guhindura ku cyemezo cyajuririwe cyo kutakira ikirego cye. [19] Hashingiwe ku bimaze gusobanurwa haruguru no ku ngingo z'Itegeko zibukijwe, Urukiko rurasanga ubujurire bwa Uwimana Catherine nta shingiro bufite kuko butagaragaza icyo anenga ku cyemezo yajuririye cyo kutakira ikirego cye ku rwego rubanza, imikirize y'urubanza RC00020/2024/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 26/07/2024 ikaba ntacyo igomba guhindukaho. III.ICYEMEZO CY'URUKIKO [20] Rwemeje ko ubujurire bwatanzwe na Uwimana Cathérine nta shingiro bufite. [21] Rutegetse ko nta gihindutse ku mikirize y'urubanza RC00020/2024/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 26/07/2024. [22] Ruvuze ko amafaranga y'amagarama y'uru rubanza aherera ku Isanduku ya Leta kuko Uwimana Cathérine asonewe gutanga amagarama y'urubanza.

4 Iyi ngingo yanibukijwe n'Urukiko rubanza mu rubanza rwajuririwe iteganya ibikurikira: “Iyo hari ikirego cy'iremezo, ariko hagomba kugira icyemezwa by'agateganyo mu buryo bwihuta ku rubanza rwaregewe urukiko rutaraburanishwa, ikirego cyihutirwa gishyikirizwa umucamanza ushinze kurangiza impaka zihutirwa w'aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara”.

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