

RWANDA / JUDGMENT

YAMURAGIYE v GATABAZI

RCA 000189/2022/HC/KIG

COURT

High Court

DECIDED

19 February 2024

CASE / FILE NUMBER

RCA 000189/2022/HC/KIG

Source: amategeko.gov.rw · Research copy typeset by Esheria. Not court-issued or certified.

YAMURAGIYE v GATABAZI

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2024-02-19
- Case/document no.: RCA 000189/2022/HC/KIG
- Collection: High Court

Text

Page 1

YAMURAGIYE v GATABAZI [Rwanda URUKIKO RUKURU - RCA 000189/2022/HC/KIG (Nkusi, P.J.) 19 Gashyantare 2024] Amategeko agenga imanza z'imbonezamubano – Ubutaka – Uwagurishije wabuze ngo hakorwe ihererekanya – Mu gihe uwagurishije ataboneka ngo hakorwe ihererekanya mutungo w'ubutaka, Urukiko rusuzuma niba ubugure bwujuje ibisabwa n'amategeko rukemeza ko ihererekanya mutungo ryakorerwa uwaguze. Incamake y'ikibazo: Yamuragiye yumvikanye na Gatabazi ko baguze ubutaka burimo inzu ku mafaranga miriyoni cumi n'eshanu, amwishyura amafaranga miriyoni cumi n'enyere andi asigaye bumvikana ko azayamuha bakora ihererekanya mutungo. Gatabazi yaje kubura kuko Yamuragiye yamushatse mu gihe kingana n'imyaka ine yose ngo amwishyure amafaranga yasigaye maze bakore ihererekanya mutungo ariko aramubura kuko ngo yari yaragiye mu bihugu byo hanze. Ayo mafaranga yaje kuyishyura umugore we babyaranye ariko ngo batari barashakanye mu buryo bwemewe n'amategeko. Abonye amubuze burundu, yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko rwatega ko yakorerwa ihererekanya mutungo, urukiko rusanga ikirego cye nta shingiro gifite kuko atubahirije amasezerano ngo yishyure amafaranga yasigaye k'uwo bayakoranye ahubwo akayishyura undi no kuba ayo masezerano atarakrewe imbere ya noteri. Urega yatanze ubujurire

mu Rukiko Rukuru maze urwo rukiko rusuzuma ikibazo cyo kumenya kumenya niba ibimenyetso byatanzwe na Yamuragiye bihagije kugira ngo akorerwe ihinduranyamutungo (mutation) ku butaka bubarizwa kuri UPI:1/01/01/04/390. Urubanza rwaburanishijwe urega atitabye kuko yahamagajwe ahatazwi nkuko no mu rukiko rwabanje byagenze, hanyuma ntiyaboneka. Yamuragiye avuga ko yagiranye amasezerano y'ubugure bw'umutungo utimukanwa na Gatabazi bumvikana ko amuha igice kimwe cy'amafaranga haguzwe, ikindi gice akazakimuha bakora ihererekanya mutungo. Akomeza avuga ko nyuma yashatse Gatabazi ngo amwishyure aramubura kuko ngo yamushatse mu gihe cy'imyaka igera kuri ine bituma cya gice cy'amafaranga angana na miriyoni imwe ayishyura umugore we bari barashakanye mu buryo butemewe n'amategeko bakabyarana umwana yageneraga indezo yategetswe n'urukiko. Akaba yarishyuye ayo mafaranga mu rwego rwo kurangiza urubanza rwategekaga Gatabazi gutanga indezo. Bityo rero urega asaba ko urukiko rwategeka ko akorerwa ihererekanya mutungo w'ubutaka yaguze. Incamake y'icyemezo: Mu gihe uwagurishije ataboneka ngo hakorerwe ihererekanya mutungo w'ubutaka, Urukiko rusuzuma niba ubugure bwujuje ibisabwa n'amategeko rukemeza ko ihererekanya mutungo ryakorerwa uwaguze bityo ibivugwa n'urega bikaba bifite ishingiro akaba akwiye gukorera ihererekanya mutungo. Ubujurire bufite ishingiro. Amategeko yashingiwe: Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 4.

Page 2

Nta manza zifashishijwe Urubanza I. IMITERERE Y'URUBANZA

- [1] Uru rubanza rwerekeye gusaba ko akorerwa ihererekanyamutungo ku butaka yaguze . Yamuragiye Alphonsine yareze Gatabazi Jean Pierre mu Rukiko Rwisumbuye rwa Nyarugenge, ko baguze ubutaka bufite numero UPI:1/01/01/04/390 buherereye mu Karere ka Nyarugenge, Umurenge wa Gitega, Akagari ka Kigarama, Umudugudu w'Umucyo akaba yarabuze ngo amukorere ihererekanyamutungo kuko hashize igihe kingana n'imyaka ine (4) baguze kandi akaba atakiri mu gihugu. Yamuragiye Alphonsine akomeza asobanura ko n'amafaranga miliyoni imwe (1.000.000Frw) yari yarasigayemo Gatabazi Jean Pierre yayahaye umugore we, kuko yari yaramutambamiye. [2] Mu iburanisha Gatabazi Jean Pierre ntiyabonetse ngo yisobanure ariko kuko yari yahamagajwe ahatazwi urubanza ruburanishwa adahari Yamuragiye asaba ko urukiko rwategeka ko akorerwa mutation kuko ngo yarangije kwishyura. [3] Urukiko Rwisumbuye rwemeje ko ikirego cya Yamuragiye Alphonsine nta shingiro gifite ngo kuko mu masezerano yabaye kuwa 03/06/2016 hagati ya Yamuragiye Alphonsine na Gatabazi Jean Pierre atubahirijwe kuko bari barumvikanye ko azamukorera mutation amaze kumuha miliyoni (1.000.000) amusigayemo, ayo mafaranga akaba yarayishyuye umugore batasezeranye kandi atariwe bagiranye amasezerano. Ibyo kuba byiyongereyeho ko amasezerano batarayakoreye imbere ya noteri, urukiko rwasanze biteye impaka muri uru rubanza. Urukiko rwemeje ko nta hinduranyamutungo k'ubutaka bufite numero UPI:1/01/01/04/390 rigomba gukorwa. Rwategetse ko amagarama angana n'ibyakozwe. [4] Yamuragiye Alphonsine ntiyishimiye imikirize y'uru rubanza, arajurira avuga ko yashakishije Gatabazi Jean Pierre kugira ngo amukorere mutation na we amwishyure ariko birangira amubuza ndetse n'urukiko rukaba rwaramuburanishije adahari

nyuma yo kumuhamagaza akabura kubera ko nta yandi mahitamo yari agifite nyuma yo kubura uwo baguze yatanze ikirego mu rukiko asaba urukiko gutegeka ko akorerwa mutation. Yamuragiye Alphonsine avuga ko gutesha agaciro ikirego hashingiwe ko amasezerano atabereye imbere ya noteri no kuba amafaranga yari asigaye yarishyuwe umugore babyaranye bitari bikwiye kumubuza uburenganzira bwo gukorerwa mutation. [5] Urukiko rurasazuma niba ibimenyetso byatanzwe na Yamuragiye Alphonsine bihagije kugira ngo akorerwe ihinduranyamutungo (mutation) ku butaka bubarizwa kuri UPI:1/01/01/04/390.

Page 3

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

Kumenya niba ibimenyetso byatanzwe na Yamuragiye Alphonsine bihagije kugira ngo akorerwe ihinduranyamutungo (mutation) ku butaka bubarizwa kuri UPI:1/01/01/04/390 [6] Yamuragiye Alphonsine yunganiwe na Sematungo Clement yajuriye avuga ko tariki ya 03/06/2016 yakoranye na Gatabazi Jean Pierre amasezerano y'ubugure bw'umutungo utimukanwa ubaruye kuri UPI:1/01/01/04/390 uherereye mu Karere ka Nyarugenge, Umurenge wa Gitega, Akagari ka Kigarama, Umudugudu w'Umucyo. Nk'uko ngo bikubiye mu masezerano bakoranye impande zombi zumvikanye ko ikiguzi cy'umutungo ugurishwa ari amafaranga miliyoni cumi n'eshanu y'u Rwanda (15,000,000frw). Yamuragiye Alphonsine ngo yahise yishyura amafaranga angana na miliyoni cumi n'enye (14,000,000frw) bumvikana ko asigaye angana na miliyoni imwe (1,000,000frw) Yamuragiye Alphonsine azayishyura ari uko akorewe ihererekanya ry'umutungo (Mutation). Ikibazo kikaba ngo cyarabaye ko Yamuragiye Alphonsine yategereje Gatabazi Jean Pierre ko aza akamukorera mutation agaheba ndetse yamushakisha akamubura kugeza atanze ikirego mu rukiko asaba ko urukiko rwategeka ko akorerwa mutation; [7] Yamuragiye Alphonsine anenga ko mu rubanza ajuririra kuri page ya 2 mu gika cya 6 na 7 urukiko rwanze ko akorerwa mutation rushingiye ko amasezerano yabaye kuwa 03/06/2016 hagati ya Yamuragiye Alphonsine na Gatabazi Jean Pierre bari barumvikanye ko azamukorera mutation amaze kumuha miliyoni amushyiramo, kandi bakaba batarayakoreye imbere ya noteri, kandi ibyo bumvikanye mu masezerano atari byo byubahirijwe, kuko amafaranga yamushyiramo yayishyuye umugore batasezeranye kandi atariwe bagiranye amasezerano, bikaba biteye impaka muri uru rubanza. [8] Yamuragiye Alphonsine yumva ibi umucamanza yasesenguye ndetse akaba aribyo yashingiyeho atesha agaciro ikirego cye bigomba guteshwa agaciro mu rwego rw'ubujurire kubera ko bagaragaje ko Yamuragiye Alphonsine yashakishije Gatabazi Jean Pierre kugira ngo amukorere mutation na we amwishyure ariko bikarangira amubuza ndetse n'urukiko rukaba rwaramuburanishije adahari nyuma yo kumuhamagaza akabura. Yamuragiye Alphonsine asanga kuba amasezerano atabereye imbere ya noteri no kuba amafaranga yari asigaye yarishyuwe umugore babyaranye ariko utarasezeranye na Gatabazi Jean Pierre bitari bikwiye kubuza Yamuragiye Alphonsine uburenganzira bwo gukorerwa mutation, ibyo avuga akaba abishingira kubiteganywa n'ingingo ya 64 y'itegeko ry'amasezerano aho ivuga ko Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. [9] Yamuragiye Alphonsine ashingira ku manza zaciwe n'urukiko rw'ikirenga aho rwatanze umurongo ku manza zishingiye ku

masezerano y'ubugure kubaguze batarakorera ihererekanya mutungo ngo wandikwe kuwawuguze, hari urubanza rwaciwe n'Urukiko rw'Ikirenga RS/REV/INJUST/CIV0004/15/CS kuwa 11/09/2015 aho rwavuze ko kuva igihe impande zagiranye amasezerano y'ubugure zimaze kumvikana ku kigurishwa n'ikiguzi cyacyo, ubugure buba buriho, kabone n'ubwo ikigurishwa cyaba kitaratangwa cyangwa se ikiguzi kitarishyurwa. [10] Yamuragiye Alphonsine arasaba urukiko rujurirwe gutegeka ko akorerwa mutation ku mutungo yaguze kuko ku ruhande rwe yashoje inshingano zamurebaga mu masezerano, ikindi

Page 4

urukiko rwavuze ko ibisobanuro by'iyi ngingo ari na byo byagarutseho mu rubanza N° RCAA 0003/13/CS aho Urukiko rw'Ikirenga rushingiye ku bisobanuro byatanze n'umuhanga Laurent Collon, mu gitabo cyeye cyitwa Vente d'immeuble, rwemeje ko igura riba ryuzuye mu gihe abagiranye amasezerano yubugure bumvikanye ku kigurishwa n'igiciro cyacyo kabone n'ubwo bo ubwabo bashobora kwiyongeramo izindi nshingano (urubanza N°RCAA0003/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 31/01/2014 hagati ya Nteziryayo Eric na Rutabayiro Eric, ibi ngo biboneka no mu rubanza RCAA 00035/2018/CA; [11] Yamuragiye Alphonsine ashingiye ku biteganywa n'ingingo ya 17 y'itegeko no 27/2021 ryo kuwa 10/06/2021 rigenga ubutaka ivugako umuntu afite inshingano yo kwandikisha ubutaka atunze ibivugwa n'iyi ngingo abihuje n'ibiteganywa n'ingingo ya 18 mu gika cyayo cya 2 ndetse n'ibiteganywa n'ingingo ya 22 y'itegeko No 27/2021 ryo kuwa 10/06/2021 rigenga ubutaka, Yamuragiye Alphonsine arasaba urukiko ruregwe mu rwego rw'ubujurire gutegeka ko Yamuragiye Alphonsine akorerwa ihererekanya ry'umutungo (mutation).

UKO URUKIKO RUBIBONA

[12] Ingingo ya 4 igika cya mbere (1) y'itegeko N° 15/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo yavuzwe hejuru iteganya ko Urukiko ruca urubanza rwaregwe hakurikijwe ibimenyetso bihujwe na kamere y'ikiburanwa. Urukiko rurasanga iyi ngingo isobanuye ko hasuzumwa ibimenyesto bihujwe n'ikiburanwa ari cyo kumenya niba ibimenyetso byatanze na Yamuragiye Alphonsine byashingirwaho mu kwemeza ko umutungo UPI:1/01/01/04/390 uherereye mu Karere ka Nyarugenge, Umurenge wa Gitega, Akagari ka Kigarama, Umudugudu w'Umucyo umwandikwaho; [13] Mu gusuzuma ibimenyetso byatanze na Yamuragiye Alphonsine rwasanze birimo amasezerano y'ubugure yo ku itariki 03/06/2016 aho Gatabazi Jean Pierre yemezaga ko agurishije urupangu rwe na Yamuragiye Alphonsine ku mafaranga miliyoni cumi n'eshanu (15.000.000Frw) akaba yarahise amwishyura miliyoni cumi n'enye (14.000.000Frw akamusigaramo miliyoni imwe (1.000.000Frw yari kuzamwishyura amaze kumukorera mutation. Harimo kandi inyandiko yakorewe kwa notaire ku itariki 06/10/2020 aho Yamuragiye Alphonsine yishyuye umugore witwaga Uwizye Marie Claire wari uhagarariye umwana we Iradukunda Mahoro Sandra amafaranga miliyoni imwe (1.000.000Frw) yari asigayemo Gatabazi Jean Pierre ku bugure bw'umutungo wavuzwe hejuru ; [14] Urukiko rushingiye kuri ibi bimenyetso bigizwe n'amasezerano atandukanye rurasanga Yamuragiye Alphonsine yarishyuye yose hamwe

amafaranga miliyoni cumi n'eshanu (15.000.000Frw) zari zikubiye mu masezerano. Bityo Yamuragiye Alphonsine akaba yarujuje inshingano zo kwishyura, akaba akwiriye gukorerwa ihererekanya ku mutungo yaguze; [15] Kuba amasezerano ya mbere y'ubugure hagati ya Yamuragiye Alphonsine na Gatabazi atarakorewe kwa notaire, urukiko rurasanga bitaba impamvu yo kudahabwa agaciro kuko hari abatangabuhamya bayasinyemo barimo Umuyobozi w'umudugudu n'ushinzwe umutekano. Ikindi

Page 5

kandi ni Yamuragiye Alphonsine utunze uyu mutungo yishyurwa amafaranga y'ubukode hashize imyaka irenga itanu (5). Ibi bikaba byizeza urukiko ko aya masezerano yabayeho. [16] Kuba ubwishyu bwari busigaye bwa miliyoni imwe (1.000.000Frw) bwarahawe undi muntu utari Gatabazi Jean Pierre, urukiko rurasanga nabyo bitavuze ko Yamuragiye Alphonsine atujuje inshingano, kubera impamvu ebyiri : iya mbere ni uko Gatabazi Jean Pierre atabonekaga ngo ahabwe ubwishyu bwe akore mutation, iyindi mpamvu ni uko Uwizeye Marie Claire wishyuwe yari ahagarariye umwana we Iradukunda Mahoro Sandra yabyaranye na Gatabazi Jean Pierre, kandi hari urubanza RC 00001/2017/TB/KAGRM rwaciwe n'Urukiko rw'Ibanze rwa Kagarama kuwa 22/12/2017 rwemeje Gatabazi Jean Pierre gutanga indezo y'amafaranga ibihumbi ijana (100.000Frw) buri kwezi. Kuba Yamuragiye Alphonsine yarishyuye Uwizeye Marie Claire urukiko rusanga yari ari kurangiza inshingano Gatabazi Jean Pierre yategetswe n'Urukiko;

III. ICYEMEZO CY'URUKIKO

- [17] Rwemeye kwakira ubujurire bwa Yamuragiye Alphonsine rubusuzumye rusanga bufite ishingiro;
- [18] Rwemeje ko imikirize y'urubanza RC 00163/2021/TGI/NYGE rwaciwe n'urukiko Rwisumbuye rwa Nyarugenge kuwa 31/03/2023 ihindutse;
- [19] Rutegetse ko Yamuragiye Alphonsine akorerwa ihererekanyamutungo (mutation) ku butaka bufite numero UPI:1/01/01/04/390 buherereye mu Mujyi wa Kigali, Akarere ka Nyarugenge, Umurenge wa Gitega, Akagari ka Kigarama, Umudugudu w'Umucyo bukandikwa kuri Yamuragiye Alphonsine;
- [20] Rwemeje ko ingwate y'amafaranga yatanze na Yamuragiye Alphonsine ari kujurira ihwanye n'ibyakozwe muri uru rubanza.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.amategeko.gov.rw/view/doc/5829/6060>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/yamuragiye-alphonsine-v-gatabazi-jean-pierre-landtransfer-high-court-2024>

Prepared on 13 October 2026 · Esheria