

RWANDA / JUDGMENT

ZIHINJISHI v. SIBOMANA

RC 00026/2019/TGI/NYGE

COURT

Intermediate Court

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ZIHINJISHI v. SIBOMANA

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Text

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ZIHINJISHI v. SIBOMANA [Rwanda URUKIKO RWISUMBUYE RWA NYARUGENGE – RC 00026/2019/TGI/NYGE (NYIRANSABIMANA, P.J.) 20 Kamena 2019] Amategeko akumira ihohoterwa rishingiye ku gitsina – Kugabana imitungo hagati y’ababanye nk’umugire n’umugabo batarashyingiranywe – umugabo n’umugore babana mu buryo budakurikije amategeko bafite uburenganzira bungana ku mutungo bashakanye. Incamake y’ikibazo: Zihinjishi na Sibomana babanye nk’umugore n’umugabo batarashyingiranywe kuva mu mwaka wa 1999, baza kurekeraho kubana bitewe n’amakimbirane yarangwaga hagati yabo. Zihinjishi yaregeye Urukiko Rwisumbuye rwa Nyarugenge asaba ko agabana na Sibomana imitungo bahahanye, ngo kubera ko barekeyeho kubana kubera imyitwarire itandukanye y’umugabo. Mu miburanire ye, Sibomana avuga ko badakwiye kugabana kubera ko atamwirukanye ndetse umugore ariwe wanze ko bashakana mu buryo bukurikije amategeko. Incamake y’icyemezo: Umugabo n’umugore babana mu buryo budakurikije amategeko bafite uburenganzira bungana ku mutungo bashakanye. Mu gihe umwe aretse kubana n’undi cyangwa batandukanye bitewe n’impamvu iyo ariyo yose, uwo mutungo bawugabana ku buryo bungana. Ikirego gifite ishingiro. Amategeko yashyingiweho: Itegeko No 59/2008 yo kuwa 10/9/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose

rishingiye ku gitsina, ingingo ya 39, igika cya 2. Nta manza zifashishijwe. Nta nyandiko z'abahanga zakoreshejwe: Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza Zihinjishi avuga ko yabanye na Sibomana Edouard mu gihe cy'imyaka 19; akaba asaba urukiko gutegeka ko bagabana imitungo bashakanye muri icyo gihe; urukiko rukanamutegeka kugira icyo azajya aha abana cyo kubatunga.

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[2] Sibomana Edouard akavuga ko yemera koko ko babanye muri icyo gihe cy'imyaka 19, ariko atemera ko bagabana imitungo avuga, kuko yagiye atamwirukanye. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA A. Ku bijyanye no kumenya niba Zihinjishi Solange na Sibomana Edouard bagabanywa imitungo bahahanye [3] Zihinjishi avuga ko yabanye na Sibomana Edouard nk'abashakanye mu buryo buhoraho kuva 1999, kugeza 2018, ntibigera basezerana imbere y'amategeko, kandi kuva babanye batigeze bagira amahoro mu rugo, batoraga mu makimbirane, ibi biri no mu byatumye badasezerana, kuko yabonaga gusezerana nawe ari ugusezerana n'umuruho. Batoraga bahagaze, inzego z'ibanze na Polisi ari zo zibizi, kugera ubwo yaje saa cyenda z'ijoro, atema urugi, ashaka Zihinjishi Solange ngo amuteme, bitewe, n'uko yamubazaga imishahara ye yahembwe avuye mu butumwa, ntahahire urugo, ntiyishyurira n'abana amashuri, no kumuhoza ku nkeke. Akaba yari umusirikari; baramusezerera kuja kubera zabukuru, amafaranga yahawe, mu rugo batigeze bamenya irengero ryayo, amubajije amubwira ko ngo ntayo yamutumye amumena ijisho, inzego z'umutekano n'iz'ibanze zibasaba ko baba ahantu hatandukanye mu nyungu z'umutekano wa buri wese. [4] Zihinjishi agakomeza avuga ko Sibomana yavugaga ko kubyara umwana w'umuhungu ukamubanza mbere, ngo ari uguhomba, ko ngo iyo atamurusha intege, aba yaramaze kumusoza, bivuze ko umuhungu we yamubereye imbogamizi, bituma atagera ku mugambi we wo kwica Zihinjishi Solange. Ko yamutanye abana kuva tariki ya mbere z'ukwezi kwa mbere 2018 kugeza ubu, asobanura ko avuye Darefur ari bwo yashatse kumwica, ku buryo abayobozi b'inzego z'ibanze babizi; n'abaturanyi batabaraga, bakubitwaga, akaba yaravuye mu rugo n'abana; ari bo birwanaho; Sibomana Edouard akaba ataritaye no ku bana babyaranye yabaye katabirora; agasobanura ko abana bafitanye ari batatu aribo: Ivan Tumushime, wavutse 2010 afite imyaka 8, Gatete Mobarak wavutse mu 2004, afite imyaka 14 na Kwizera Pacifique wavutse mu 2000, akaba afite imyaka 18. [5] Zihinjishi agasaba urukiko kubagabanya imitungo bahahanye igizwe n'ikibanza kirimo inzu gifite UPI 1/03/10/01/357 giherereye mu mudugudu wa Kabagengwa, mu kagali ka Kamashashi, mu murenge wa Nyarugunga, mu karere ka Kicukiro, Umujyi wa Kigali; ikibanza kirimo inzu na annexe gifite UPI 1/03//10/01//3211 giherereye mu mudugudu wa Mukoni, akagari ka Kamashashi mu murenge wa Nyarugunga, mu karere ka Kicukiro, Umujyi wa Kigali; inka n' iyayo, ni ukuvuga nyina n' ikimasa. Ibikoresho byo mu rugo, n'ibikoresho byo mu gikoni bigizwe na: igitanda na matela double, matela simple 2, intebe 6 zo muri salon, ameza 2, intebe za plastiki 6, n'amakesi 10 n'amacupa yayo, frigo, akabati. [6] Sibomana Edouard akavuga ko ari byo koko babanye imyaka 19; ariko ibyo Zihinjishi asaba ntabwo yahabwa kuko yagiye atamwirukanye; ko iyo imitungo avuga n'ubundi aho ari, ari

imwe muri yo. Ko mu mwanzuro we yivugiye ko ari we wanze ko basezerana mu buryo bukurikije amategeko. Ibikoresho byo mu rugo; nk'umuntu wahukananye abana bose, nta na kimwe yasize usibye intabe n'akabati byamunaniye kubitwara. Ibibanza bibiri birimo n'inzu byo bihari, inka ari yo yashatse ikomotse kuyo yamukoye yanga ko basezerana; igitanda na matela double avuga yabijyanye, yatwaye na matelas simple ebyiri; yasize amakese atanu (5); frigo

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yapfuye. Kandi yumva atabigabana na we kuko atamwirukanye. Akumva imitungo batayigabana kandi yararangije kuyigabanya, agatwara ibikoresho bari bafite, akamusiga iheruheru, akavuga ko yatwara iyo nzu arimo n'ibikoresho yatwaye, na we akagumana iyo arimo n'udukoresho duke yasizemo. Uko urukiko rubibona [7] Ingingo ya 39a2 y'itegeko no 59/2008 yo kuwa 10/9/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina riteganywa ko:” Mu gihe umwe mu babanaga nk'umugore n'umugabo batashyiringanywe mu buryo buteganywa n'amategeko yabanaga n'abagore cyangwa n'abagabo benshi, ashatse gushyiringirwa n'umwe muri bo, abanza kugabana ku buryo bungana na buri wese mu bo babanaga, umutungo bari bafitanye cyangwa bahahanye mbere y'uko ashyingirwa”. Urukiko rurasanga Sibomana Edouard n'ubwo anyuzamo akavuga ko atamwirukanye, ariko adahakana ko bagaban imitungo bafitanye aho avuga ko umugore yagumana imitungo afite. Ariko ibyo avuga bitakwitabwaho kuko itegeko riteganywa ko ari ukugabana ku buryo bungana imitungo bafitanye. [8] Urukiko rurasanga rero imitungo igizwe na n'ibibanza kirimo inzu gifite UPI 1/ 03/10/01/357 giherereye mu mudugudu wa Kabagengwa, mu kagali ka Kamashashi, mu murenge wa Nyarugunga, mu Karere ka Kicukiro, Umujyi wa Kigali; n'ibibanza kirimo inzu na annexe gifite UPI 1/03//10/01//3211 giherereye mu mudugudu wa Mukoni, akagari ka Kamashashi; mu murenge wa Nyarugunga, mu karere ka Kicukiro mu ntara y'Umujyi wa Kigali; inka n' iyayo, intebe zo muri salon n'akabati, amacaisse atanu na frigo yapfuye, ameza imwe, bikagurishwa, amafaranga avuyemo bakayagabana ku buryo bungana; ku bijyanye n'ibikoresho byo mu rugo, batabyemeranwaho kandi na Zihinjishi nta kimenyatso abigaragariza, urukiko rukaba ntaho rwahera rubibaganya. Kandi iki cyemezo gihora ari icy'agateganyo, igihe cyo habonetse ikimenyatso cy'und mutungo, ubifitemo inyungu muri bo atabura kuwuregera. [9] Urukiko rurasanga ibivugwa na Sibomana ko batagabana imitungo kuko atigeze amwirukana, ibi avuga ari ukwirengagiza ko nta masezerano y'ubushyiringanywa n'ubusanzwe bafitanye, igihe cyose rero hagize ushaka kwigendera, nta kimukumira. B.Ku bijyanye no kumenya niba Sibomana Edouard yategekwe kugira icyo atanga nk'uruhare rwe mu gutunga abana. [10] Zihinjishi avuga ko Sibomana Eduard yabaye katabirora ku bijyanye n'uburere bw'abana be, bahitamo gusanga nyina; ari na we ubamenya kuri byose, bityo basaba urukiko kumutegeka gutanga buri kwezi ibihumbi 50.000 Frw yo kunganira Zihinjishi Solange, cyane ko Sibomana Eduard, abona buri kwezi amafaranga ya Pansion bityo akaba asabwa kuzuza inshingano za kibyezi. Ariko mu kuburana akisubiraho avuga ko ibyo gutunga abana ashatse yabireka kuko n'ubundi ari we wari usanzwe ubatunga yabamutanye, ariko bakagabana indi mitungo. [11] Sibomana akavuga ko ibyo yakabaye atungisha abana; ari Zihinjishi ubyicyayemo ariko amashuri ayishyura. Mu iburana akavuga ko niba abana

baramunaniye, yabamuha kuko afite undi mwana yamusanganye, byongeye abatungishije umutungo we.

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Uko urukiko rubibona [12] Igika cya 3 cy'ingingo ya 39 y'itegeko rivuze hejuru iteganya ko:” igabana ry’umutungo rivugwa mu gika cya 2 cy’iyi ngingo ntirivutsa abana babyaranye uburenganzira bahabwa n’amategeko”. Urukiko rugasanga rero n’ubwo Zihinjishi na Sibomana bagabanye imitungo, ibi bidakuraho inshingano za kibyezi bombi bafite ku bana babo. Bityo rero n’ubwo abana bari kwa Zihinjishi, ariko Sibomana akomeza kubabera ise, akuzuza n’inshingano zo kubarera, kubarihira amashuri, kubavuzza, kubambika n’ibindi. III. icyemezo cy’urukiko [13] Rwemeye kwakira ikirego cyatanze na Zihinjishi Solange kuko cyaje mu buryo n’inziye bikurikije amategeko, rugisuzumye rusanga gifite ishingiro. [14] Rwemeje ko imitungo Zihinjishi Solange na Sibomana Edouard bashakanye mu gihe cy’imyaka 19 bayigabana ku buryo bungana, bityo ikibanza kirimo inzu gifite UPI 1/ 03/10/01/357 gihereye mu mudugudu wa Kabagengwa, mu kagali ka Kamashashi, mu murenge wa Nyarugunga, mu karere ka Kicukiro, Umujyi wa Kigali; n’ikibanza kirimo inzu na annexe gifite UPI 1/03//10/01//3211 gihereye mu mudugudu wa Mukoni, akagari ka Kamashashi, mu murenge wa Nyarugunga, mu karere ka Kicukiro; Umujyi wa Kigali; inka n’ iyayo, intebe zo muri salon n’akabati, amacaisse atanu na frigo yapfuye, ameza imwe, bikagurishwa, amafaranga avuyemo Zihinjishi Solange na Sibomana Edouard bakayagabana ku buryo bungana. [15] Rwemeje ko abana bakomeza kubana na nyina Zihinjishi Solange, ariko bidakuraho ububasha bwa kibyezi ise abafiteho. [16] Rutegetse ko nta ndishyi zatangwa muri uru rubanza kuko ntawazisabye.

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