



**REPUBLIC OF RWANDA**  
SUPREME COURT  
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# ICYEGERANYO CY'IBYEMEZO BY'INKIKO

Icyegeranyo V. 3 - 2023  
Nyakanga, 2023



## RWANDA LAW REPORTS

Law Reports V. 3 - 2023  
July, 2023





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# **ABAGIZE KOMITE Y'UBWANDITSI**

## **I. ITSINDA RY'ABANYAMATEGEKO BATEGUYE IMANZA**

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KAVUTSE M. Claude

KUBWIMANA Jean Claude

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- Prof. Dr. NGAGI M. Alphonse** : Perezida wa Komite,  
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rw'Ubujurire
- Dr. MUHIRE G. Yves** : Visi Perezida wa Komite,  
Umwari mu  
Kaminuza y'u Rwanda
- NSENGIYUMVA Jean Claude** : Umwanditsi wa Komite,  
Umugenzuzi w'Inkiko
- RUKUNDAKUVUGA F. Regis** : Perezida w'Urukiko  
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- Dr. KARIMUNDA M. Aimé** : Umucamanza mu Rukiko  
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- NDAHAYO Xavier** : Perezida w'Urukiko Rukuru
- RUTAZANA Angeline** : Umugenzuzi Mukuru w'Inkiko
- KALIWABO Charles** : Umucamanza w'  
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- Dr. SEZIRAHIGA Yves** : Umuyobozi wa ILPD
- BURAYOBERA UMUZAYIRE  
Bibiane** : Visi Perezida wa Komisiyo  
y'u Rwanda ishinze  
Ivugururwa ry'Amategeko

- BWIZA N. Blanche** : Umugenzuzi w'Inkiko
- KIBUKA Jean Luc** : Umucamanza w'Urukiko  
Rukuru rw'Ubucuruzi
- HABARUREMA Jean Pierre** : Umushinjacyaha ku  
Rwego rw'Igihugu
- BUNYOYE Grace** : Umushinjacyaha ku  
Rwego rw'Igihugu
- KABIBI Specioza** : Intumwa ya Leta
- MUREREREHE Saouda** : Umucamanza mu Rukiko  
Rukuru
- Lt. col. MADUDU A. Charles** : Umucamanza mu Rukiko  
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- Dr. NSHIMIYIMANA Didace** : Perezida w'Urukiko  
Rwisumbuye
- GIRANEZA Clémentine** : Umucamanza mu Rukiko  
Rwisumbuye
- Dr MBONIGABA Callixte** : Umwarimu muri INES  
- Ruhengeri

- BAGABO Faustin** : Avoka mu Rugaga  
rw'Abavoka
- Dr ZIKAMABAHARI Jean de Dieu** : Umwarimu muri University  
Of Kigali
- Dr. SHEMA Pierre** : Umwarimu muri ULK
- KARAKE Canisius** : Umwarimu muri UNILAK
- HABIMANA Pie** : Avoka mu Rugaga rw'Abavoka
- UMUTESI Vestine** : Umucamanza mu Rukiko  
rw'Ubucuruzi
- YANKURIJE Dorothée** : Perezida w'Urukiko  
rw'Ibanze



## IRIBURIRO

Basomyi bacu,

Tunejewe no kubagezaho icyegeranyo cy'Ibyemezo by'Inkiko, Volime 3 [2023]. Nk'uko mubizi, tubahitiramo imanza zikubiyemo bimwe mu bisubizo by'ibibazo muhura nabyo kenshi, haba mu mirimo yanyu ndetse no mu buzima bwa buri muni.

Muri iyi numero murasangamo imanza umunani (8) zikurikira: imanza ebyiri (2) zerekeranye n'ibirego bisaba kwemeza ko Itegeko rinyuranye n'Itegeko Nshinga, urubanza rumwe (1) rw'imbenezamubano, urubanza rumwe (1) rw'ubucuruzi, n'imanza enye (4) zerekeranye n'imiburamunishirize y'imanza.

Nk'uko mumaze kubimenyera imanza ziri muri iki cyegeranyo ziboneka no ku rubuga rwa murandasi rw'Urukiko rw'Ikirenga: <http://decisia.lexum.com/rlr/kn/nav.do>.

Dr NTEZILYAYO Faustin  
Perezida w'Urukiko rw'Ikirenga akaba na  
Perezida w'Inama Nkuru y'Ubucamanza



## **IBIKUBIYE MURI IKI CYEGERANYO**

Iki Cyegeranyo gikubiyemo imanza zaciwe n’Urukiko rw’Ikirenga, n’Urukiko rw’Ubujurire.

### **INYITO**

Imanza ziri muri iyi volime zikoreshwa muri ubu buryo:

**[2023] 3 RLR**



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*Urubanza Umutesi Kaberuka Espérance na I&M Rwanda Ltd;  
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## AMAGAMBO MPINE

- 1. Amategeko agenga amasezerano** – Kugurisha ikintu cy’undi  
– Inkurikizi zo kugurisha ikintu cy’undi – Umuguzi uvukijwe ibyo yaguze asubizwa n’uwamugurishije agaciro kabyo ku munsu abivukijweho, ni ukuvuga ku munsu icyemezo kiwumuvutsa cyafatiweho; ibyo kandi ntibivanaho ko ashobora gusaba uwamugurishije indishyi zo kuba atarubahirije inshingano ze zo kwishingira ko adahungabanywa mu burenganzira yari afite ku mutungo yaguze cyangwa gusaba ko nyir’umutungo nyakuri, uwusubiranye, yishyura agaciro k’ibyongereweho n’uwari uwutunze.

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- 2. Amategeko agenga imanza mbonezamubano** – Amasezerano y’ubugure – Umutungo utimukanwa – Kuregera kugaruza umutungo wagurishijwe n’utari nyirawo – Iyo ikibazo gisuzumwa gikomoka ku masezerano y’ubugure bw’umutungo utimukanwa, nyir’umutungo afite uburenganzira bwo kuwukurikirana kuwo awusanganye, atabanje gusaba ko amasezerano y’ubugure yabaye hagati y’uwo awusanganye n’uwawugurishije ateshwa agaciro kuko nta ruhare aba yaragize muri ayo masezerano

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- 3. Amategeko agenga imanza z'ubucuruzi** – Inguzanyo ya banki – Inyungu – Inyungu ku nguzanyo banki ziha abakiliya bazo zikomeza kubarwa kugeza umwenda wose wishyuwe zipfa kutarenga umwenda shingiro wagaragajwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa  
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Amasezerano y'inguzanyo – Gusesa amasezerano y'inguzanyo (résiliation du contrat) ntabwo bikuraho inshingano y'uwahawe umwenda ko igihe cyose atarishyura inyungu zikomeza kubarwa hubahirizwa ihame ry'uko inyungu zitagomba kurenga umwenda shingiro usigaye kwishyurwa (in duplum rule)

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- 4. Amategeko agenga imiburanishirize y'imanza zasabiwe gusubirishwamo ku mpamvu z'akarengane** – Gusubirishamo urubanza ku mpamvu z'akarengane –

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Imbibi z’ikiburanwa – Ibitari mu mbibi z’icyaburanyweho urubanza rugitangira ntibisuzumwa mu rubanza rusubirishwamo ku mpamvu z’akarengane.

**NSENGIYUMVA v BANKI YA KIGALI PLC (BK).....**

**5. Amategeko agenga imiburanishirije y'imanza z'imbonezamubano** – Gutsindwa ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe – Amakosa yo gukoporora ijambo ku rindi inyandiko z'ababuranyi cyangwa ibisobanuro biri mu rundi rubanza (judicial plagiarism) – Ubujurire bwa kabiri – Iyo Urukiko rwajuririwe rukoporoye imyanzuro y'ababuranyi uko yakabaye cyangwa imikirize y'urubanza rwajuririwe ntirunagaragaze aho rwabikuye, ni amakosa yo kwiyitirira cyangwa gukoporora iby'abandi (judicial plagiarism) – Ntibyafatwa ko umuntu yatsinzwe ku mpamvu zimwe mu gihe urukiko rwajuririwe rwakoporoye ijambo ku rindi icyemezo cy'urukiko rubanza kandi ntaho rwabanje kuvuga ko rwemeranya narwo – icyakora gukoporora ijambo ku rindi ntibyakwitiranywa n'impamvu (motivation par référence), kuko yo ibanzirizwa no gusuzuma niba ababuranyi nta bisobanuro bishya batanze mu myanzuro y'ubujurire hanyuma Urukiko rukemeranywa n'impamvu zatanze mu rubanza rwajuririwe mu gihe zisa n'izo Urukiko rwajuririwe rwashingiraho

**TWAGIRAYEZU N'ABANDI v TWAGIRAYEZU N'UNDI (ADD).....163**

**6. Amategeko agenga imiburanishirize z'imanza z'ubucuruzi** – Ibarwa ry'ibihe byo gutanga ibirego bisaba guhagarika cyangwa gutesha agaciro cyamunara ku mitungo igurishwa hashingiwe ku cyemezo cyo kugurisha ingwate cyatanze n'umwanditsi mukuru – Ingingo ya 260, igika cya 6, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu – Ibihe bivugwa mu gika cya 6 cy'ingingo ya 260 bireba by'umwihariko ibirego bisaba guhagarika cyangwa gutesha agaciro

cyamunara ku mitungo igurishwa hashingiwe ku cyemezo cyo kugurisha ingwate cyatanzwe n’Umwanditsi Mukuru – Ibihe bivugwa mu gika cya 6 bitandukanye n’ibihe bivugwa mu gika cya 4, bijyanye no gusaba gutesha agaciro cyamunara ku mitungo igurishwa hadashingiwe ku cyemezo cyatanzwe n’Umwanditsi Mukuru

**SIKUBWABO v RWANDA DEVELOPMENT BOARD (RDB) N’ABANDI (ADD 1).....95**

Ububasha bw’inkiko – Ubusobekerane bw’imanza – Ingingo za 94, 98, 100 z’Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’inkiko – Ibiteganyijwe mu ngingo ya 100 y’ Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’inkiko ku bireba uburegeke, ni nabyo byakoreshwa ku bireba ubusobekerane.

**SIKUBWABO v RWANDA DEVELOPMENT BOARD (RDB) N’ABANDI (ADD 2).....141**

Ububasha bw’inkiko – Ubusobekerane bw’imanza – Mu gihe hari ubusobekerane bw’imanza ziburanishwa mu nkiko zitandukanye zitari ku rwego rumwe, urukiko ruri ku rwego rwo hasi nirwo rugomba koherereza urubanza ururi ku rwego rwo hejuru – Umuburanyi usaba ko imanza zihuzwa, ashidikiriza ubusabe bwe urukiko ruri ku rwego rwo hasi rugomba koherereza urubanza.

**SIKUBWABO v RWANDA DEVELOPMENT BOARD (RDB) N’ABANDI (ADD 2).....141**

7. **Amategeko agenga umuryango** – Izungura – Itangira ry’izungura – Izungura ry’abashyingiranywe bakavanga umutungo ritangira ari uko bombi bapfuye cyangwa uwapfakaye yongeye gushyingirwa –Uburenganzira bw’abazungura busobanuka neza iyo izungura ritangiye,

hakamenyekana abazungura nyakuri n'uburyo bazakurikirana.

**Re NGENDA HAYO KABUYE (Fond).....11**

**8. Gusubirishamo urubanza ku mpamvu z'akarengane –**

Uwemerewe gusubirishamo ku mpamvu z'akarengane. – Inzira y'akarengane ni inzira idasanzwe yemerewe umuburanyi warenganyijwe ku buryo bugaragarira buri wese, abisabye mu buryo no mu nzira biteganywa n'amategeko, byemejwe n'inzego zibifitiye ububasha zimaze kubisuzuma, binyuranye nibikorwa muzindi nzira z'ubujurire. Ababuranyi bataciye muri izo nzira ntibashobora guhabwa uburenganzira bwo kuririra ku isubirwamo ryasabwe n'abandi rikemerwa, ngo bagire ibyo basaba ko bihinduka ku rubanza batasabye ko rusubirwamo kuko ubwo burenganzira baba barabwibujije

**UBUSHINJACYAHA v MAGARA N'ABANDI.....115**

Guhindura icyemezo cyafatiwe abatarasabye gusubirishamo ku mpamvu z'akarengane. – Icyemezo cyafatiwe abatarasabye gusubirishamo ku mpamvu z'akarengane, bakuririra ku busabe bw'abandi, gishobora guhinduka gusa iyo urukiko rusanze hari ubusobekerane ku byerekeye imikorere y'icyaha bahuriyeho n'abasabye gusubirishamo ku mpamvu z'akarengane, ku buryo icyemezo cyafatirwa abareze cyabagiraho ingaruka mu buryo bubafitiye inyungu

**UBUSHINJACYAHA v MAGARA N'ABANDI.....115**

Ihinduka ry'icyemezo cya Perezida w'Urukiko rw'Ikirenga – Kuba Perezida yemeje ko urubanza rusubirwamo ku mpamvu z'akarengane, ntibibuza inteko iburanisha gusuzuma ibibazo bidasanzwe, byumvikana nk'ibibazo ndemyagihugu, ikabifataho icyemezo

**UBUSHINJACYAHA v MAGARA N’ABANDI.....115**

Imbibi z’ikiburanwa –Imbibi z’ikiburanwa mu rubanza rwasabiwe gusubirwamo ku mpamvu z’akarengane, zigenwa n’icyaburanywe mu rwego rwa mbere, icyaburanywe mu rubanza rusabirwa gusubirwamo ku mpamvu z’akarengane, n’imyanzuro y’abasabye ko urubanza rusubirwamo bamaze kubyemererwa na Perezida w’Urukiko rw’Ikirenga

**UBUSHINJACYAHA v MAGARA N’ABANDI.....115**

- 9. Itegeko Nshinga** – Amategeko anyuranyije n’Itegeko Nshinga – Inyungu zo gutanga ikirego – Nubwo inyungu mu birego bijyanye n’Itegeko Nshinga igomba kumvikana mu buryo bwagutse ariko uwatanze ikirego afite n’inshingano zo kugaragaza umwihariko w’inyungu we ku giti cye aharanira mu rubanza – Avoka nk’ umunyamwuga mu mategeko ashobora gutanga ikirego gisaba kwemeza ko itegeko rinyuranyije n’Itegeko Nshinga akabikora atari kubwe ahubwo mu nyungu z’ubutabera.

**Re NGENDAHAYO KABUYE (ADD).....1**

Ikirego kigamije kvanaho itegeko cyangwa ingingo inyuranyije n’Itegeko Nshinga – Inshuti y’urukiko – Usaba kuba inshuti y’urukiko agomba kuba adasubiramo gusa imvugo z’ababuranyi ahubwo agomba kuba afite ubunararibonye buhagije hamwe no kuba akora ubushakashatsi ku bibazo bijyanye n’ikirimo kuburanwa.

**Re NGENDAHAYO KABUYE (Fond).....11**

Ihame ryo kureshya imbere y’amategeko n’iryo kutavangura – Kuba uwapfakaye adakwiye kugereranywa n’abandi bazungura, ntibyakitwa ko ari ivangura cyangwa kutareshya imbere y’amategeko kuko aba yabuze

uwo bari bafatanyije urugo, basangiye inshingano zarwo, akaba agomba kuzikomeza wenyine ndetse akaba yaragize uruhare mu gushaka umutungo, mu gihe abandi nta ruhare baba barabigizemo

**Re NGENDAHAYO KABUYE (Fond).....11**

Uburenganzira ku mutungo – Uburenganzira umuntu afite ku mutungo bugomba kubahwa na buri wese, nyiri umutungo akaba awugiraho uburenganzira busesuye, kandi akaba ari ntawe ushobora kuwumuvutsa keretse ku mpamvu z'inyungu rusange kandi hubahirijwe amategeko – Ntawakwemeza ko afite uburenganzira ku mutungo atarabona kubera ko ubwo burenganzira bujyanye n'ibintu umuntu atunze, atari byo yizera kuzabona mu gihe kizaza.

**Re NGENDAHAYO KABUYE (Fond).....11**





**IBIREGO BYIHARIYE**



**IBIREGO BISABA KWEMEZA KO  
ITEGEKO RINYURANYE N'ITEGEKO  
NSHINGA**



## Re NGENDAHAYO KABUYE (ADD)

[Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/SPEC 00004/2021/SC (Mukamulisa, P.J., Cyanzayire, Nyirinkwaya, Muhumuza na Karimunda, J., 18 Gashyantare 2022)]

*Itegeko Nshinga – Amategeko anyuranyije n'Itegeko Nshinga – Inyungu zo gutanga ikirego – Nubwo inyungu mu birego bijyanye n'Itegeko Nshinga igomba kumvikana mu buryo bwagutse ariko uwatanze ikirego afite n'inshingano zo kugaragaza umwihariko w'inyungu we ku giti cye aharanira mu rubanza – Avoka nk'umunyamwuga mu mategeko ashobora gutanga ikirego gisaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga akabikora atari kubwe ahubwo mu nyungu z'ubutabera.*

**Incamake y'ikibazo:** Me Ngendahayo Kabuye yatanze ikirego asaba kwemeza ko ingingo ya 8 igika cya 2, iya 52, igika cya 3, iya 75 n'iya 76 (1o) z'Itegeko n° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura zinyuranyije n'ingingo ya 15, iya 18 n'iya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015, kubera ko uwapfakaye ahabwa uburenganzira bwo kwikubira umutungo wenyine yitwaje ko yasezeranye ivangamutungo rusange, hakirengagizwa uburenganzira bw'abandi bazungura b'uwapfuye cyane cyane abana batabyawe n'uwapfakaye.

Avuga ko impamvu asanga izo ngingo zifite ikibazo ari uko byagaragaye ko iyo umwe mu bashyingiranywe apfuye, hakaboneka abandi bana abo babyeyi badahuriyeho ndetse n'abandi bazungura muri rusange, umubyeyi usigaye yishingikiriza izo ngingo maze akikubira imitungo wenyine

akigizayo abo bazungura cyane cyane iyo atabafiteho inshingano zo kubarera, hakaba n'igihe aba afite izo nshingano ariko ntazuzuze nk'uko bikwiriye bigateza amakimbirane mu muryango ndetse hakavuka imanza za hato na hato.

Ababuranyi babanze kujya impaka ku kibazo cyo kumenya niba urega afite inyungu zo gutanga ikirego, aho avuga ko nka Avoka afite inshingano zo guteza imbere amategeko kandi nk'umunyarwanda, abona ingingo aregera zibangamiye sosiyete n'ubwo we ku giti cye zitaramugiraho ingaruka, ariko ko hari abantu batandukanye bagiye bahura n'ibibazo bizishingiyeho bigateza amakimbirane, cyane cyane ko ibyo bihura n'ibyemejwe n'Urukiko rw'Ikirenga mu rubanza no RS/INCONST/SPEC 00002/2018/SC.

Leta y'u Rwanda nayo ivuga ko ikurikije umurongo watanzwe n'Urukiko rw'Ikirenga mu rubanza no RS/INCONST/SPEC 00002/2018/SC, isanga urega afite inyungu zo gutanga ikirego.

**Incamake y'icyemezo:** 1. Nubwo inyungu mu birego bijyanye n'Itegeko Nshinga igomba kumvikana mu buryo bwagutse ariko uwatanze ikirego afite n'inshingano zo kugaragaza umwihariko w'inyungu we ku giti cye aharanira mu rubanza.

2. Avoka nk' umunyamwuga mu mategeko ashobora gutanga ikirego gisaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga akabikora atari kubwe ahubwo mu nyungu z'ubutabera

**Urega afite inyungu yo gutanga ikirego gisaba kwemeza ko ingingo z'itegeko zinyuranyije n'Itegeko Nshinga. Iburanisha ry'urubanza rizakomeza mu mizi.**

**Amategeko yashingiweho:**

Itegeko n°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 72.

**Imanza zifashishijwe:**

Urubanza Ishyaka Riharanira Demokarasi no Kurengera Ibidukikije mu Rwanda (DGPR) v. Leta y'u Rwanda RS/SPEC/0002/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 09/09/2015

Urubanza Re MUGISHA; N° RS/INCONST/SPEC 00002/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 18/01/2019.

Re BYANSI N° RS/INCONST/SPEC 00002/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 24/12/2021,

Re Byansi Samuel Baker, RS/INCONST/SPEC 0003/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 10/12/2021

## Urubanza

### I. IMITERERE Y'URUBANZA

[1] Me Ngendahayo Kabuye yatanze ikirego mu Rukiko rw'Ikirenga asaba kwemeza ko ingingo ya 8 igika cya 2, iya 52, igika cya 3, iya 75 n'iya 76 (1o) z'Itegeko n° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura zinyuranyije n'ingingo ya 15, iya 18 n'iya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015, kubera ko uwafakaye ahabwa uburenganzira bwo kwikubira umutungo wenyine yitwaje ko yasezeranye ivangamutungo rusange,

hakirengagizwa uburenganzira bw'abandi bazungura b'uwapfuye cyane cyane abana batabyawe n'uwapfakaye.

[2] Izo ngingo 4 urega asaba Urukiko rw'Ikirenga kwemeza ko zinyuranije n'itegeko Nshinga, ziteye zitya:

- Ingingo ya 8 igika cya 2 iteganya ko” Iyo uburyo bw’ivangamutungo rusange ku bashakanye busheshwe kubera urupfu rw’umwe mu bari barashyingiranywe, umutungo wegukanwa n’uwapfakaye kugeza igihe izungura rikorewe”;
- Iya 52, igika cya 3 iteganya ko “izungura ry’abashyingiranywe ritangira ari uko bombi bapfuye cyangwa umwe yongeye gushyingirwa, keretse iyo itegeko ribiteganya ukundi”;
- Iya 75 igateganya ko “Uwapfakaye afite uburenganzira bwo kugira uruhare mu izungura ry’umutungo wasizwe n’uwo bari barashyingiranywe; Uwapfakaye uhamagawe mu izungura, azungurana mu buryo bungana n’abazungura bo ku rwego rwa mbere”;
- N’ingingo ya 76 (1<sup>o</sup>) iteganya ko “Abashyingiranywe bafitanye amasezerano y’ivangamutungo rusange bazungurwa mu buryo bukurikira: iyo umwe apfuye usigaye yegukana umutungo wose akubahiriza inshingano yo kurera abana babo n’ab’uwapfuye bemewe n’amategeko”.

[3] Me Ngendahayo Kabuye avuga ko akurikije ibiteganywa n’izo ngingo zisobanuwe haruguru, abona zinyuranije n’ingingo

ya 15, iya 18 n'ya 34 z'itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015<sup>1</sup>, kuko zibangamiye ishyirwa mu bikorwa ry'izindi ngingo z'itegeko zirebana no kuzungura ndetse n'andi mategeko arebana n'uburenganzira ku mutungo. Avuga ko impamvu asanga izo ngingo zifite ikibazo ari uko byagaragaye ko iyo umwe mu bashyingiranywe apfuye, hakaboneka abandi bana abo babyeyi badahuriyeho ndetse n'abandi bazungura muri rusange, umubyeyi usigaye yishingikiriza izo ngingo maze akikubira imitungo wenyine akigizayo abo bazungura cyane cyane iyo atabafiteho inshingano zo kubarera, hakaba n'igihe aba afite izo nshingano ariko ntazuzuze nk'uko bikwiriye bigateza amakimbirane mu muryango ndetse hakavuka imanza za hato na hato.

[4] Avuga kandi ko mu manza zitandukanye abo bazungura bagiye batsindwa, umupfakazi akikubira umutungo wenyine, kandi ihame ari uko abantu bareshya imbere y'amategeko, ndetse Leta akaba ariyo igomba kurengera abana, bakagira uburenganzira ku mutungo wasizwe n'umubyeyi wabo no gukumira amakimbirane mu muryango.

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<sup>1</sup> Ingingo ya 15 iteganya ko "abantu bose bareshya imbere y'amategeko kandi barengerwa ku buryo bungana", iya 18 yo ikavuga ko "umuryango ari wo shingiro kamere ry'imbaga y'Abanyarwanda, urengerwa na Leta". Mu gika cya gatatu ikavuga ko "Leta ishyiraho amategeko n'inzego bikwiye bishinzwe kurengera umuryango, by'umwihariko umwana na nyina, kugira ngo umuryango ugire ubwisanzure", naho iya 34 igateganya ko "buri muntu afite uburenganzira ku mutungo bwite, waba uwe ku giti cye cyangwa uwo asangiye n'abandi. Umutungo bwite, uw'umuntu ku giti cye cyangwa uwo asangiye n'abandi utavogerwa. Uburenganzira ku mutungo ntibuhungabanywa keretse ku mpamvu z'inyungu rusange kandi hakurikijwe ibiteganywa n'amategeko",

[5] Iburanisha ry'uru rubanza ryabaye ku wa 13/01/2022, Me Ngedahayo Kabuye, yunganiwe na Me Umulisa Kayigamba Alice afatanyije na Me Serugo Jean Baptiste, naho Leta y'u Rwanda ihagarariwe n'intumwa zayo, Me Kayitesi Petronille hamwe na Me Ntwali Emile.

[6] Iburanisha ritangiye Urukiko rwabanje gufata icyemezo ku busabe rwashyikirijwe n'Umuryango Nyarwanda uharanira uburenganzira bw'umwana n'umugore (HAGURUKA) uhagarariwe na Umuhoza Ninette, ukaba warasabye kwemererwa kuba inshuti y'Urukiko (Amicus Curiae) muri uru rubanza. Urukiko rwasanze nta kintu gishya kivugwa n'uwo Muryango gitandukanye n'ibyagaragajwe n'umwe mu baburanyi cyatuma wemererwa kuba inshuti y'Urukiko kugira ngo uzarwunganire mu guca urubanza. Rwabishingiye ku murongo rwatanze ku kibazo nk'iki, aho rwasobanuye ko kugira ngo umuntu cyangwa umuryango bemererwa kuba Inshuti y'Urukiko, hagomba kuba hari icyo bagaragaza ko barwunganira kandi gitandukanye n'ibivugwa n'ababuranyi<sup>2</sup>. Rwanzuye ko Umuryango HAGURUKA utemerewe kuba Inshuti y'Urukiko muri uru rubanza.

[7] Iburanisha ryarakomeje, ababuranyi bajya impaka ku kibazo cyo kumenya niba Me Ngedahayo Kabuye afite inyungu zo gutanga ikirego kirebana no kwemeza ko ingingo ya 8 igika cya 2, iya 52 igika cya 3, iya 75 n'iya 76 (1°) z'Itegeko n° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe impano n'izungura zinyuranyije n'ingingo ya 15, iya 18 n'iya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda.

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<sup>2</sup> Reba urubanza RS/SPEC/0002/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 09/09/2015 haburana Democratic Green Party of Rwanda, igika cya 5.

## **II. IKIBAZO KIGIZE URUBANZA N’ISESENGURA RYACYO**

### **Kumenya niba Me Ngendahayo Kabuye afite inyungu zo gutanga ikirego**

[8] Me Ngendahayo Kabuye yahawe umwanya wo gusobanura inyungu afite muri uru rubanza, avuga ko nka Avoka afite inshingano zo guteza imbere amategeko kandi nk’umunyarwanda, abona ingingo aregera zibangamiye sosiyete n’ubwo we ku giti cye zitaramugiraho ingaruka, ariko ko hari abantu batandukanye bagiye bahura n’ibibazo bizishingiyeho bigateza amakimbirane. Abishingiraho avuga ko afite inyungu yo gusaba ko ingingo z’itegeko ryavuzwe haruguru zihindurwa, cyane cyane ko ibyo avuga bihura n’ibyemejwe n’Urukiko rw’Ikirenga mu rubanza no RS/INCONST/SPEC 00002/2018/SC, aho mu gika cya 26 rwavuze ko inyungu ya Avoka ireberwa ku mwuga we kandi ko itagarukira k’uwatanze ikirego gusa ahubwo ko ireba abarebwa n’itegeko bese.

[9] Me Kayitesi Petronille na Me Ntwali Emile bahagarariye Leta y’u Rwanda nabo bavuze ko bakurikije umurongo watanzwe n’Urukiko rw’Ikirenga mu rubanza no RS/INCONST/SPEC 00002/2018/SC, mu gika cya 30 n’icya 31, babona Me Ngendahayo Kabuye afite inyungu zo gutanga ikirego.

## **UKO URUKIKO RUBIBONA**

[10] Ingingo ya 72 igika cya mbere y’Itegeko n°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’inkiko iteganya ko: “Umuntu ku giti cye, ikigo cyangwa umuryango ufite ubuzimagatozi

bashobora kuregera Urukiko rw'Ikirenga basaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga iyo babifitemo inyungu .

[11] Ikibazo cy'inyungu z'utanga ikirego gisaba kwemeza ko ingingo z'Itegeko runaka zinyuranye n'Itegeko Nshinga uru Rukiko rwagisuzumye mu manza zitandukanye harimo n'urwa Me Mugisha Richard rwanagarutsweho n'ababuranyi bombi mu iburanisha, aho rwasanze inyungu mu rubanza zigamije kwerekana ko uwatanze ikirego hari uburenganzira ashaka guheshwa n'icyemezo cy'Urukiko, cyangwa akaba ashaka ko Urukiko hari ibyo rwemeza bimufitiye akamaro. Rwanasobanuye ko urega asabwa kuba afite inyungu mu kirego yatanze kugira ngo bikumire abashobora gutanga ibirego bagamije kwimenyekanisha cyangwa kumenyekanisha ibikorwa byabo ndetse n'abashobora gushaka guheshwa uburenganzira bugenewe abandi<sup>3</sup>.

[12] Urukiko rw'Ikirenga rwakomeje ruvuga ko ku bireba ibirego bijyanye n'Itegeko Nshinga, inyungu igomba kumvikana mu buryo bwagutse, cyane cyane mu gihugu nk'u Rwanda kikiri mu nzira y'iterambere aho abaturage batarasobanukirwa uburenganzira bwabo bagenerwa n'Itegeko Nshinga, bakaba bakeneye gufashwa kubugeraho hifashishijwe inkiko<sup>4</sup>.

[13] Uyu murongo ni nawo wagarutsweho mu manza za BYANSI Samuel Baker, ariko Urukiko rwongeraho ko mu rwego rwo kwirinda ibirego bitari ngombwa bishobora kubangamira imikorere y'inkiko, uwatanze ikirego afite inshingano zo

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<sup>3</sup> Reba urubanza n° RS/INCONST/SPEC 00002/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 18/01/2019, igika cya 19.

<sup>4</sup> Reba urubanza n° RS/INCONST/SPEC 00002/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 18/01/2019, igika cya 21.

kugaragaza umwihariko w'inyungu we ku giti cye aharanira mu rubanza<sup>5</sup>, akerekana inyungu bwite afite cyangwa yavutswa mu buryo butaziguye n'itegeko asaba ko ryakurwaho<sup>6</sup>.

[14] Muri uru rubanza, Me NGENDAHAYO KABUYE, asaba Urukiko rw'Ikirenga kwemeza ko ingingo zavuzwe haruguru hari uburenganzira zishobora kuba zibangamiye burimo ubwo kuba abana basizwe n'umwe mu bashakanye babuzwa uburenganzira ku mutungo n'umubyeyi utarababyaye, bakavutswa uburenganzira bwo kuzungura umubyeyi wabo akimara kwitaba Imana, ndetse hakaba hari ubwo umwe mu bashakanye wasigaye atubahiriza inshingano zo kwita kuri abo bana, ko ibyo bigaragaza ko abo bantu batareshya imbere y'amategeko, kandi itegeko riteganywa ko bagomba kureshya .

[15] Urukiko rushingiye ku kuba Itegeko n°27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura ari itegeko rireba umuntu wese uba muri sosiyete nyarwanda, kubera ko ishyingiranwa, izungura ndetse n'uburenganzira ku mutungo ntawe bikumira, bivuze ko buri munyarwanda wese ashobora kurikoresha kandi rigakurikizwa na buri wese mu byo ryateganyije, bikaba byumvikana ko uretse kuba iryo tegeko rireba abanyarwanda muri rusange, rinareba Me NGENDAHAYO KABUYE watanze iki kirego.

[16] Urukiko rusanga rero Me NGENDAHAYO KABUYE afite inyungu zo gusaba kwemeza ko zimwe mu ngingo z'itegeko

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<sup>5</sup> Reba urubanza n° RS/INCONST/SPEC 0002/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 24/12/2021, igika cya 14.

<sup>6</sup>Reba urubanza n° RS/INCONST/SPEC 0003/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 10/12/2021, igika cya 14.

ryerekeye imicungire y'umutungo w'abashyingiranywe impano n'izungura zinyuranyije n'Itegeko Nshinga nk'umwe mu bo rireba kuko nawe ashobora kuryifashisha kabone n'ubwo yaba atarahura n'ikibazo ngo zimubangamire.

[17] Byongeye kandi, Urukiko rusanga Me NGEHAYO KABUYE nka Avoka ufite uruhare muri sosiyete rwo guteza imbere amategeko, afite inyungu zo gutanga ikirego gisaba kwemeza ko zimwe mu ngingo z'Itegeko n°27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe impano n'izungura zinyuranyije n'itegeko Nshinga kabone n'ubwo byaba bigaragara ko nta nyungu zihariye agifitemo. Uyu murongo ni nawo wemejwe mu rubanza rwa MUGISHA Richard.<sup>7</sup>

### III. ICYEMEZO CY'URUKIKO

[18] Rwemeje ko Me Ngendahayo Kabuye afite inyungu yo gutanga ikirego gisaba kwemeza ko ingingo z'itegeko zinyuranyije n'Itegeko Nshinga.

[19] Rutegetse ko iburanisha ry'urubanza rizasubukurwa kuwa 12/04/2022 saa mbili n'igice za mu gitondo.

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<sup>7</sup> Reba urubanza n° RS/INCONST/SPEC 00002/2018/SC rwavuzwe haruguru.

## **Re NGENDA HAYO KABUYE (Fond)**

[Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/SPEC 00004/2021/SC – (Mukamulisa, P.J., Cyanzayire, Nyirinkwaya, Hitiyaremye na Karimunda, J.) 10 Gashyantare 2023]

*Itegeko Nshinga – Ikirego kigamije kuvanaho itegeko cyangwa ingingo inyuranyije n'Itegeko Nshinga – Inshuti y'urukiko – Usaba kuba inshuti y'urukiko agomba kuba adasubiramo gusa imvugo z'abaturanyi ahubwo agomba kuba afite ubunararibonye buhagije hamwe no kuba akora ubushakashatsi ku bibazo bijyanye n'ikirimo kuburanwa.*

*Itegeko Nshinga – Ihame ryo kureshya imbere y'amategeko n'iryo kutavangura – Kuba uwapfakaye adakwiye kugereranywa n'abandi bazungura, ntibyakwitwa ko ari ivangura cyangwa kutareshya imbere y'amategeko kuko aba yabuze uwo bari bafatanyije urugo, basangiye inshingano zarwo, akaba agomba kukomeza wenyine ndetse akaba yaragize uruhare mu gushaka umutungo, mu gihe abandi nta ruhare baba barabigizemo.*

*Itegeko Nshinga – Uburenganzira ku mutungo – Uburenganzira umuntu afite ku mutungo bugomba kubahwa na buri wese, nyiri umutungo akaba awugiraho uburenganzira busesuye, kandi akaba ari ntawe ushobora kuwumuvutsa keretse ku mpamvu z'inyungu rusange kandi hubahirijwe amategeko – Ntawakwemeza ko afite uburenganzira ku mutungo atarabona kubera ko ubwo burenganzira bujyanye n'ibintu umuntu atunze, atari byo yizera kuzabona mu gihe kizaza.*

*Amategeko agenga umuryango – Izungura – Itangira ry'izungura – Izungura ry'abashyingiranywe bakavanga umutungo ritangira ari uko bombi bapfuye cyangwa uwapfakaye yongeye*

*gushyingirwa –Uburenganzira bw'abazungura busobanuka neza iyo izungura ritangiye, hakamenyekana abazungura nyakuri n'uburyo bazakurikirana.*

**Incamake y'ikibazo:** Me Ngendahayo Kabuye yatanze ikirego mu Rukiko rw'Ikirenga arusaba kwemeza ko ingingo ya 8, igika cya 2, iya 52, igika cya 3, iya 75 n'iya 76 (1<sup>o</sup>) z'Itegeko N<sup>o</sup> 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura zinyuranyije n'ingingo ya 15, iya 18 n'iya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 nk'uko ryavugururwe mu 2015 kubera ko iyo umwe mu bashyingiranywe apfuye, hakaboneka abandi bana abo babyeyi badahuriyeho ndetse n'abandi bazungura muri rusange, umubyeyi usigaye yishingikiriza izo ngingo maze akikubira imitungo wenyine, akigizayo abo bazungura cyane cyane iyo atabafiteho inshingano zo kubarera, akavuga ko binyuranyije n'ihame ry'uko abantu bose bareshya imbere y'amategeko nk'uko riteganywa n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryavuzwe haruguru.

Asobanura ko ingingo zavuzwe haruguru zinyuranyije n'ingingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryavuzwe haruguru, kubera ko zateje amakimbirane mu muryango ashobora no kuba intandaro y'ibindi byaha bikomeye nk'ubwicanyi aho kuwurengera kuko ziha uburenganzira umupfakazi bwo kugumana umutungo wose, izungura rikazaba ari uko apfuye cyangwa yongeye gushaka kandi akanemererwa kuzungura nyakwigendera.

Asoza avuga ko izo ngingo zinyuranyije n'ingingo ya 34 y'Itegeko Nshinga rya Repubulika y'u Rwanda, kubera ko uwapfakaye ahabwa uburenganzira bwo kwikubira umutungo

wenyine yitwaje ko yasezeranye ivangamutungo rusange, hakirengagizwa uburenganzira bw'abandi bazungura b'uwapfuye cyane cyane abana batabyawe n'uwapfakaye kandi kuzungura ari uguhabwa uburenganzira n'inshingano ku mutungo n'imyenda by'uwapfuye, akanavuga ko kwambura bamwe uburenganzira bwo kuzungura, asanga ari ukubambura uburenganzira ku mutungo kandi kuzungura ari bumwe mu burenganzira bw'ibanze.

Abahagarariye Leta y'u Rwanda bavuga ko ingingo ya 8, igika cya 2 n'iya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru zitanyuranye n' ingingo ya 15 y'Itegeko Nshinga kuko zidasumbanya abazungura. Uwapfakaye ntasigarana imitungo y'uwo bari barashyingiranywe wapfuye nk'umuzungura, ahubwo ayisigarana nka nyirayo kuko izungura riba ritarafunguka. Ikindi ni uko iyo ngingo ya 76 (1°) nta vangura iryo ariryo ryose iteza kubera ko iyo umwe mu bashakanye apfuye, uwapfakaye ahabwa n'iyo ngingo ishingano zo kurera abana yabyaranye n'uwo bari barashyingiranywe ndetse n'abo batabyaranye.

Basoza bavuga ko umushingamategeko washyizeho itegeko ryavuzwe yari agamije kurengera cyane cyane uwapfakaye, bitewe n'uko iyo umwe mu bashakanye yapfaga, usigaye cyane cyane umugore yahitaga aterwa hejuru, akavanwa mu mitungo yashakanye na nyakwigendera nyamara bari barasezeranye ivangamutungo. Kuba hari abana batavutse ku bashyingiranywe bashobora guhemukirwa n'uwapfakaye, nabyo umushingamategeko yabitekerejeho, aho amuha izo nshingano zo kurera abana be n'ab'uwapfuye bemewe n'amategeko.

Abahagarariye Ishuri ry'Amategeko rya Kaminuza y'u Rwanda ryaje mu rubanza nk'Inshuti y'Urukiko, bavuga ko iyo usesenguye izo ngingo zavuzwe haruguru usanga bivuguruzwa

ihame ryo kugira uburenganzira n'ububasha bungana ku bashyingiranywe bahisemo ivangamutungo rusange nk'uburyo bw'imicungire y'umutungo wabo kuko muri iryo vangamutungo bumvikana gushyira hamwe umutungo wabo wose, ko kandi buri wese aba afite uburenganzira kuri kimwe cya kabiri cy'umutungo basangiye bombi.

Basoza bavuga ko ingingo ebyiri zaregewe ko zinyuranye n'Itegeko Nshinga, zifite ikibazo kuko iyo uwapfakaye yegukanye umutungo wose akawukoresha uko ashatse kandi hari abandi bazungura, bibangamira ihame ryo kureshya imbere y'amategeko rivugwa mu ingingo ya 15 y'Itegeko Nshinga.

**Incamake y'icyemezo:** 1. Usaba kuba inshuti y'urukiko agomba kuba adasubiramo gusa imvugo z'ababuranyi ahubwo agomba kuba afite ubunararibonye buhagije hamwe no kuba akora ubushakashatsi ku bibazo bijyanye n'ikirimo kuburanwa.

2. Kuba uwapfakaye adakwiye kugereranywa n'abandi bazungura, ntibyakwitwa ko ari ivangura cyangwa kutareshya imbere y'amategeko kuko aba yabuze uwo bari bafatanyije urugo, basangiye inshingano zarwo, akaba agomba kuzikomeza wenyine ndetse akaba yaragize uruhare mu gushaka umutungo, mu gihe abandi nta ruhare baba barabigizemo.

3. Uburenganzira umuntu afite ku mutungo bugomba kubahwa na buri wese, nyiri umutungo akaba awugiraho uburenganzira busesuye, kandi akaba ari ntawe ushobora kuwumuvutsa keretse ku mpamvu z'inyungu rusange kandi hubahirijwe amategeko. Ntawakwemeza ko afite uburenganzira ku mutungo atarabona kubera ko ubwo burenganzira bujyanye n'ibintu umuntu atunze, atari byo yizera kuzabona mu gihe kizaza.

4. Uwapfakaye asigarana umutungo wose, izungura rigatangira iyo yongeye gushaka cyangwa apfuye, ateganyirizwa ingano y'umutungo atemerewe gutanga cyangwa kuraga, agahabwa ibihano iyo atuzuza inshingano yahawe zo kurera abana yasigiwe na nyakwigendera mu rwego rwo gukumira no kugabanya amakimbirane ashingiye ku izungura.

5. Izungura ry'abashyingiranywe bakavanga umutungo ritangira ari uko bombi bapfuye cyangwa uwapfakaye yongeye gushyingirwa. Uburenganzira bw'abazungura busobanuka neza iyo izungura ritangiye, hakamenyekana abazungura nyakuri n'uburyo bazakurikirana.

**Ikirego gisaba kwemeza ko ingingo z'itegeko zinyuranyije  
n'Itegeko Nshinga, nta shingiro gifite.**

**Amategeko yashingiweho:**

Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa  
4/06/2003 nk'uko ryavuguruwe mu 2015, ingingo ya 10,  
15, 16, 17, 18 n'iya 34.

Itangazo mpuzamahanga ryerekeye uburenganzira bwa muntu  
ryo mu mwaka wa 1948, ingingo ya 7 n'iya 17.

Article 1 of Protocol n° 1 to the European Convention on  
Human Rights.

Article 239, the National Civil (Code) Act, 2017 (2074).

Amasezerano Nyafurika y'Uburenganzira bwa Muntu  
n'Abaturage yemejwe ku wa 27/06/1981, ingingo ya 3  
n'iya 14.

Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu  
n'umuryango, ingingo ya 2.

Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire  
y'umutungo w'abashyingiranywe, impano n'izungura,

ingingo ya 8, 49, 51, 52, 55, 56, 57, 59, 73, 75, 76, 83-87, n'iya 94-99.

Itegeko N° 22/99 ryo ku wa 12 Ugushyingo 1999 ryuzuzwa Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyiranywe, impano n'izungura.

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- Application n° 28369/95, Bourimi v. the Netherlands, (2000), Para.35
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## **Urubanza**

### **I. IMITERERE Y'URUBANZA**

[1] Me Ngendahayo Kabuye yatanze ikirego mu Rukiko rw'Ikirenga asaba kwemeza ko ingingo ya 8, igika cya 2, iya 52, igika cya 3, iya 75 n'iya 76 (1o) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyiranywe, impano n'izungura zinyuranyije n'ingingo ya 15, iya 18 n'iya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 nk'uko ryavuguruwe mu 2015, kubera ko uwapfakaye ahabwa uburenganzira bwo kwikubira umutungo wenyine yitwaje ko yasezeranye ivangamutungo

rusange, hakirengagizwa uburenganzira bw'abandi bazungura b'uwapfuye cyane cyane abana batabyawe n'uwapfakaye.

[2] Izo ngingo enye (4) urega asaba Urukiko rw'Ikirenga kwemeza ko zinyuranyije n'Itegeko Nshinga, zikubiye mu byiciro bibiri bikurikira:

- icyiciro cya mbere kigizwe n'ingingo ya 8, igika cya 2 hamwe n'ingingo ya 76 (1°). Ingingo ya 8, igika cya 2 iteganya ko iyo uburyo bw'ivangamutungo rusange ku bashakanye busheshwe kubera urupfu rw'umwe mu bari barashyiranywe, umutungo wegukanwa n'uwapfakaye kugeza igihe izungura rikorewe. Iya 76 (1°) yo iteganya ko abashyiranywe bafitanye amasezerano y'ivangamutungo rusange bazungurwa mu buryo bukurikira: iyo umwe apfuye usigaye yegukana umutungo wose akubahiriza inshingano yo kurera abana babo n'ab'uwapfuye bemewe n'amategeko.
- icyiciro cya kabiri kigizwe n'ingingo ya 52, igika cya 3 hamwe n'ingingo ya 75. Ingingo ya 52, igika cya 3 iteganya ko izungura ry'abashyiranywe ritangira ari uko bombi bapfuye cyangwa umwe yongeye gushyirirwa, keretse iyo itegeko ribiteganya ukundi. Iya 75 iteganya ko uwapfakaye afite uburenganzira bwo kugira uruhare mu izungura ry'umutungo wasizwe n'uwo bari barashyiranywe; Uwapfakaye uhamagawe mu izungura, azungurana mu buryo bungana n'abazungura bo ku rwego rwa mbere.

[3] Me Ngendahayo Kabuye avuga ko akurikije ibiteganywa n'izo ngingo zavuzwe haruguru, abona zinyuranyije n'ingingo ya

15, iya 18 n'ya 34 z'ItegekoNshinga rya Repubulika y'u Rwanda ryo ku wa 04/06/2003 ryavuguruwe mu 2015<sup>1</sup>, kuko byagaragaye ko iyo umwe mu bashyingiranywe apfuye, hakaboneka abandi bana abo babyeyi badahuriyeho ndetse n'abandi bazungura muri rusange, umubyeyi usigaye yishingikiriza izo ngingo maze akikubira imitungo wenyine, akigizayo abo bazungura cyane cyane iyo atabafiteho inshingano zo kubarera. Avuga ko hari n'igihe aba afite izo nshingano ariko ntazuzuze nk'uko bikwiriye, bigateza amakimbirane mu muryango ndetse hakavuka imanza za hatu na hatu.

[4] Avuga kandi ko mu manza zitandukanye abo bazungura bagiye batsindwa, umupfakazi akikubira umutungo wenyine, kandi ihame ari uko abantu bose bareshya imbere y'amategeko, ndetse Leta ikaba ariyo igomba kurengera abana, bakagira uburenganzira ku mutungo wasizwe n'umubyeyi wabo no gukumira amakimbirane mu muryango.

[5] Iburanisha ry'uru rubanza ryabaye ku wa 13/01/2022, Me Ngendahayo Kabuye, yunganiwe na Me Umulisa Kayigamba Alice afatanyije na Me Serugo Jean-Baptiste, naho Leta y'u Rwanda ihagarariwe n'intumwa zayo, Me Kayitesi Petronille hamwe na Me Ntwali Emile.

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<sup>1</sup> Ingingo ya 15 iteganya ko abantu bose barareshya imbere y'amategeko kandi barengerwa ku buryo bungana. Iya 18 yo ivuga ko umuryango niwo shingiro kamere ry'imbaga y'Abanyarwanda, urengerwa na Leta. Mu gika cya gatatu ikavuga ko Leta ishyiraho amategeko n'inzego bikwiye bishinzwe kurengera umuryango, by'umwihariko umwana na nyina, kugira ngo umuryango ugire ubwisanzure.

Iya 34 iteganya ko buri muntu afite uburenganzira ku mutungo bwite, waba uwe ku giti cye cyangwa uwo asangiye n'abandi. Umutungo bwite, uw'umuntu ku giti cye cyangwa uwo asangiye n'abandi utavogerwa. Uburenganzira ku mutungo ntibuhungabanywa keretse ku mpamvu z'inyungu rusange kandi hakurikijwe ibiteganywa n'amategeko.

[6] Iburanisha ritangiye, Urukiko rwabanje gufata icyemezo ku busabe rwashyikirijwe n’Umuryango Nyarwanda uharanira uburenganzira bw’umwana n’umugore (HAGURUKA) uhagarariwe na Umuhoza Ninette, ukaba warasabye kwemererwa kuba Inshuti y’Urukiko (*Amicus Curiae*) muri uru rubanza. Urukiko rwasanze nta kintu gishya kivugwa n’uwo Muryango gitandukanye n’ibyagaragajwe n’umwe mu baburanyi cyatuma wemererwa kuba Inshuti y’Urukiko kugira ngo uzarwunganire mu guca urubanza. Rwabishingiye ku murongo rwatanze ku kibazo nk’iki mu rubanza rwa *Democratic Green Party of Rwanda*, aho rwasobanuye ko kugira ngo umuntu cyangwa umuryango bemerewe kuba Inshuti y’Urukiko, hagomba kuba hari icyo bagaragaza ko barwunganira kandi gitandukanye n’ibivugwa n’ababuranyi<sup>2</sup>. Rwanzuye ko umuryango Haguruka utemerewe kuba Inshuti y’Urukiko muri uru rubanza.

[7] Iburanisha ryarakomeje, ababuranyi bajya impaka ku kibazo cyo kumenya niba Ngendahayo Kabuye afite inyungu zo gutanga ikirego kirebana no kwemeza ko ingingo ya 8, igika cya 2, iya 52, igika cya 3, iya 75 n’iya 76 (1o) z’Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y’umutungo w’abashyiranywe, impano n’izungura, zinyuranyije n’ingingo ya 15, iya 18 n’iya 34 z’Itegeko Nshinga rya Repubulika y’u Rwanda.

[8] Mu rubanza rubanziriza urundi rwaciwe ku wa 18/02/2022, Urukiko rushingiye ku murongo rwatanze mu rubanza RS/INCONST/SPEC 00002/2018/SC rwa Mugisha Richard, rwasanze Ngendahayo Kabuye nk’Avoka ufite uruhare muri sosiyete rwo guteza imbere amategeko, kandi

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<sup>2</sup> Reba urubanza RS/SPEC/0002/15/CS rwaciwe n’Urukiko rw’Ikirenga ku wa 09/09/2015 haburana Democratic Green Party of Rwanda, igika cya 5.

nk'umunyarwanda urebwa n'ibiteganywa n'itegeko aregera, afite inyungu zo gutanga ikirego gisaba kwemeza ko zimwe mu ngingo z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, zinyuranyije n'Itegeko Nshinga, kabone n'ubwo byaba bigaragara ko nta nyungu zihariye agifitemo.

[9] Ku wa 12/04/2022, iburanisha ryarakomeje Ngendahayo Kabuye yunganiwe na Me Umulisa Kayigamba Alice na Me Serugo Jean-Baptiste, Leta y'u Rwanda ihagarariwe n'intumwa zayo: Me Kayitesi Petronille na Me Kabibi Spéciose; naho Ishuri ry'Amategeko rya Kaminuza y'u Rwanda ryaje mu rubanza nk'Inshuti y'Urukiko) rihagarariwe na Uwineza Odette na Dr Turamwishimiye Marie Rose.

[10] Kuri uwo munsu, hasuzumwe ubusabe bw'Ishuri ry'Amategeko rya Kaminuza y'u Rwanda bukubiye mu nyandiko yo ku wa 08/04/2022, bwo kuba inshuti y'urukiko muri uru rubanza. Urukiko rwasanze iryo shuri ryujuje ibisabwa, byatuma ryemererwa kuba Inshuti yarwo muri uru rubanza birimo kuba usaba kuba inshuti y'urukiko adasubiramo gusa imvugo z'ababuranyi ahubwo agomba kuba afite ubunararibonye buhagije, hamwe no kuba akora ubushakashatsi ku bibazo bijyanye n'ikirimo kuburanwa, bityo rwemeza ko Ishuri ry'Amategeko rya Kaminuza y'u Rwanda riguma mu rubanza nk'inshuti y'urukiko.

[11] Me Kabibi Spéciose, uhagarariye Leta y'u Rwanda, yasabye ko iburanisha risubikwa kugira ngo babanze basesengure neza imyanzuro ivuguruye yatanzwe n'abahagarariye Ishuri ry'Amategeko rya Kaminuza y'u Rwanda, kuko bayibonye bakererewe. Urukiko rwimuye iburanisha, ababuranyi bamenyeshwako rizasubukurwa ku wa 19/09/2022, ariko uwo

munsi ntirwaburanishwa kubera ko abahagarariye Leta y'u Rwanda bari mu mahugurwa, iburanisha ryimurirwa ku wa 22/11/2022.

[12] Kuri iyo tariki, iburanisha ryakomeje Me Ngendahayo Kabuye yunganiwe na Me Umulisa Kayigamba Alice, Leta y'u Rwanda ihagarariwe n'intumwa zayo: Me Kayitesi Petronille na Me Kabibi Spéciose, Ishuri ry'Amategeko rya Kaminuza y'u Rwanda rihagarariwe na Uwineza Odette na Dr Turamwishimiye Marie Rose.

[13] Ababuranyi bagiye impaka ku kibazo cyo kumenya niba ingingo enye (4) zavuzwe haruguru zinyuranyije n'ingingo ya 15, iya 18 n'iya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda. Naho ku bijyanye n'ikibazo cyo kumenya niba ingingo ya 8, igika cya 2; iya 52, igika cya 3; iya 75 n'iya 76 (1o) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryibukijwe haruguru zibangamiye ishyirwa mu bikorwa ry'izindi ngingo zirebana n'izungura ndetse n'andi mategeko mboneza mubano, Urukiko rwemeje ko kitasuzumwa kubera ko atari ikibazo gisaba Urukiko kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga<sup>3</sup>.

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<sup>3</sup> Iyi ngingo iteganya ko Urukiko rw'Ikirenga ari rwo rufite ububasha bwo kuburanisha ibirego byerekeranye no kwemeza ko itegeko rinyuranyije n'Itegeko nshinga, ikanasobanura uburyo bene ibyo birego bitangwa.

## II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

- 1. Kumenya niba ingingo ya 8, igika cya 2 n'iya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, zinyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015**

[14] Ngendahayo Kabuye avuga ko ingingo ya 8, igika cya 2, y'Itegeko n° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura n'iya 76 (1°) zinyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04/06/2003 ryavuguruwe mu 2015, kuko zisumbanya abafite uburenganzira ku mutungo w'uwapfuye.

[15] Akomeza asobanura ko ingingo ya 15 y'Itegeko Nshinga ivuga ko abantu bose bareshya imbere y'amategeko kandi itegeko rikabarengera kimwe, nyamara Umushingamategeko akaba yarafashe uburenganzira bufitwe n'abantu benshi akabwegurira uwafakaye, akaba yaramurengeye ariko akibagirwa abandi, kubera ko afite uburenganzira ahabwa n'itegeko bwo kuzungura, akagira n'uburenganzira ku mutungo yari asangiye n'uwo bashyingiranywe wafuye.

[16] Avuga kandi ko izo ngingo zibangamiye uburenganzira bwo kureshya imbere y'amategeko buteganywa mu ngingo 15 y'Itegeko Nshinga, kuko zitanga uburenganzira bw'umurenge ku mupfakazi kuko afite uburenganzira akomora ku masezerano yagiranye na nyakwigendera mu ishyingirwa, ko niba ari amasezerano y'ivangamutungo rusange, uwafakaye afite 50%

y'umutungo wose, niba ari ivangamutungo w'umuhahano, uwapfakaye afite umutungo we bwite akongera akagira 50% y'umutungo w'umuhahano, byaba ivanguramutungo risesuye, uwapfakaye akaba afite umutungo we bwite kuko aribyo yahisemo. Asanga kongera kumugira umuzungura w'uwo bari barashyingiranywe ari ukumuha uburenganzira bw'umurengera ugereranyije n'abandi bazungura.

[17] Ngendahayo Kabuye anavuga ko uko gusumbanya abantu ari byo byatumye atanga ikirego kugira ngo agaragarize Urukiko rw'Ikirenga ko ingingo zavuzwe haruguru zinyuranye n'Itegeko Nshinga cyane cyane mu ngingo yaryo ya 15 kuko n'ingingo ya 10, agace ka 5°, y'iryio Tegeko Nshinga iteganya ko Leta y'u Rwanda yiyemeje ... kubaka Leta iharanira imibereho myiza y'abaturage no gushyiraho uburyo bukwiye kugira ngo bagire amahirwe angana mu mibereho yabo, naho ingingo ya 16 yaryo ikavuga ko abanyarwanda bavuka kandi bagakomeza kugira uburenganzira n'ubwisanzure bungana, nta vangura iryo ari ryo ryose.

[18] Avuga kandi ko ihame ryo kureshya imbere y'amategeko risobanura ko amategeko akurikizwa kimwe ku bantu bose kandi ku buryo bumwe, ko kubahiriza amategeko bidashobora gukorwa ku buryo bunyuranye ku bintu bisa, ibyo bikavuga ko mu gihe hari abantu batandukanye bafite uburenganzira bahabwa n'itegeko, bidashoboka ko bamwe babuhabwa abandi bakabubuzwa.

[19] Yongeraho ko iri hame ridateganyijwe mu Itegeko Nshinga gusa, kuko riboneka no mu ngingo ya 7 y'Itangazo Mpuzamahanga ryerekeye uburenganzira bwa muntu, mu ngingo ya 2 (1) y'Amasezerano mpuzamahanga yerekeye uburenganzira mu by'imbenezamubano no mu bya politiki, mu ngingo ya 2

y'Amasezerano mpuzamahanga yerekeye uburenganzira mu by'ubukungu, imibereho myiza n'umuco, ndetse no mu ngingo ya 2 y'Amasezerano Nyafurika yerekeye uburenganzira bwa muntu n'ubw'abaturage. Avuga kandi ko uwitwa Erwin Chemerinsky asobanura iryo hamwe mu magambo akurikira: *"Things that are alike should be treated alike, and things that are unlike should be treated unlike in proportion to their unalikehood"*<sup>4</sup>. Mu kinyarwanda bikaba bivuze ko ibintu bimeze kimwe bifatwa kimwe, naho ibintu bitandukanye bigafatwa ku buryo butandukanye hakurikijwe itandukaniro ryabyo.

[20] Me Umulisa Kayigamba Alice, wunganira Ngendahayo Kabuye, avuga ko ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru, ziha uwapfakaye uburenganzira bwo gusigarana umutungo wose ariko ko byagaragaye ko uwapfakaye awukoresha uko ashaka, akawugurisha, cyangwa akabeshaho neza abana be yabyaranye na nyakwigendera, naho abo nyakwigendera yabyaye hanze ntabiteho.

[21] Me Kayitesi Petronille, uhagarariye Leta y'u Rwanda, avuga ko ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryibukijwe haruguru zitanyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda kuko zidasumbanya abazungura. Avuga ko kureshya imbere y'amategeko bivuze gufata kimwe abantu bari mu buryo no mu bihe bimwe, ko kandi hashingiwe ku ngingo ya 8, igika cya 2 yavuzwe haruguru, uwapfakaye adasigarana imitungo y'uwo bari barashyiringanywe wapfuye

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<sup>4</sup> Chemerinsky, Erwin, In defense of equality: A reply to Professor Westen, Mich. L. Rev. 81 (1982): 575.

nk'umuzungura, ahubwo ayisigarana nka nyirayo kuko izungura riba ritarafunguka.

[22] Avuga kandi ko n'ingingo ya 76 (1°) y'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryamaze kuvugwa itanyuranye n'iya 15 y'Itegeko Nshinga kuko nta vangura iryoariryo ryose iteza kubera ko iyo umwe mu bashakanye apfuye, uwapfakaye ahabwa n'iyi ngingo ishingano zo kurera abana yabyaranye n'uwo bari barashyingiranywe ndetse n'abo batabyaranye.

[23] Me Kabibi Speciose, nawe uhagarariye Leta y'u Rwanda, ashimangira ko ingingo ebyiri zimaze kuvugwa zitanyuranyije n'ingingo ya 15 y'Itegeko Nshinga, kuko abantu batari mu bihe bimwe badashobora kureshyeshywa, ko kandi nta wigeze wamburwa uburenganzira bwo kuzungura. Yongeraho ko umushingamategeko washyizeho itegeko ryavuzwe yari agamije kurengera cyane cyane uwapfakaye, bitewe n'uko iyo umwe mu bashakanye yapfuye, usigaye cyane cyane umugore yahitaga aterwa hejuru, akavanwa mu mitungo yashakanye na nyakwigendera nyamara bari barasezeranye ivangamutungo. Akomeza avuga ko kuba hari abana batavutse ku bashyingiranywe bashobora guhemukirwa n'uwapfakaye, nabyo umushingamategeko yabitekerejeho, ariyo mpamvu yahaye uwapfakaye inshingano zo kurera abana be n'ab'uwapfuye bemewe n'amategeko.

[24] Uwineza Odette na Dr Turamwishimiye Rose, bahagarariye Ishuri ry'Amategeko rya Kaminuza y'u Rwanda ryaje mu rubanza nk'Inshuti y'Urukiko, bavuga ko iyo usesenguye igika cya 2 cy'ingingo ya 8 y'Itegeko N° 27/2016 ryagarutsweho haruguru n'ingingo ya 76 (1°), usanga bivuguruzwa ihame ryo kugira uburenganzira n'ububasha bungana ku bashyingiranywe bahisemo ivangamutungo rusange nk'uburyo

bw'imicungire y'umutungo wabo kuko muri iryo vangamutungo bumvikana gushyira hamwe umutungo wabo wose, ko kandiburi wese aba afite uburenganzira kuri kimwe cya kabiri cy'umutungo basangiyebombi (*Undivided half interest*).<sup>5</sup>

[25] Bakomeza bavuga ko ihame ryo kungana k'uburenganzira n'ububasha abashyingiranywe bagira mu gihe bahisemo ivangamutungo rusange, rigira inkurikizi ku ruhare buri wese agomba kubona igihe habaye iseswa ry'amasezerano yo gushyingirwa ku mpamvu zitandukanye harimo n'urupfu. Basoza bavuga ko ingingo ebyiri zaregewe ko zinyuranye n'Itegeko Nshinga zifite ikibazo kuko iyo uwapfakaye yegukanye umutungo wose akawukoresha uko ashatse kandi hari abandi bazungura, bibangamira ihame ryo kureshya imbere y'amategeko rivugwa mu ngingo ya 15 y'Itegeko Nshinga.

## UKO URUKIKO RUBIBONA

[26] Mbere yo gusuzuma niba ingingo ya 8, igika cya 2 n'iya 76, (1°) z'Itegeko N° 27/2016 ryo kuwa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura zinyuranyije n'Itegeko Nshinga nk'uko urega abivuga, ni byiza kubanza gusobanura amwe mu mahame ashimangirwa muri iryo Tegeko Nshinga kandi ajyanye n'uru rubanza, ni ukuvuga ihame ryo kureshya imbere y'amategeko n'iryo kutavangura.

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<sup>5</sup> Thomas M. Featherston, Jr. *Separate Property or community Property: An introduction to marital property law in community property States*, Texas: Baylor University, School of Law, 2016, P.4.

**i. Ihame ryo kureshya imbere y'amategeko n'iryo kutavangura**

[27] Ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04 Kamena 2003 ryavuguruwe mu 2015, iteganya ko abantu bose barashya imbere y'amategeko. Itegeko ribarengera ku buryo bumwe. Ibikubiye muri iyi ngingo biraza guhinwa mu bice bikurikira, hakoreshwe ihame ryo kureshya imbere y'amategeko.

[28] Ingingo ya 16 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04 Kamena 2003 ryavuguruwe mu 2015 ivuga ko abanyarwanda bose bavukana kandi bagakomeza kugira uburenganzira n'ubwisanzure bingana. Ivangura iryo ari ryo ryose cyangwa kurikwirakwiza byaba bishingiye ku bwoko, ku muryango cyangwa ku gisekuru, ku nzu, ku ibara ry'umubiri, ku gitsina, ku karere, ku byiciro by'ubukungu, ku idini cyangwa ukwemera, ku bitekerezo, ku mutungo, ku itandukaniro ry'umuco, ku rurimi, ku bukungu, ku bumuga bw'umubiri cyangwa ubwo mu mutwe no ku rindi vangura iryo ari ryo ryose, birabujijwe kandi bihanwa n'amategeko. Ibisobanuwe muri iyi ngingo biraza kugarukwaho mu bice bikurikirikira nk'ihame ryo kutavangura.

[29] Amahame yo kureshya imbere y'amategeko no kutavangura ateganywa no mu masezerano mpuzamahanga u Rwanda rwashyizeho umukono. Urugero ni ingingo ya 7 y'Itangazo mpuzamahanga ryerekeye uburenganzira bwa muntu ryo mu mwaka wa 1948, ivuga ko abantu bose bashya imbere y'amategeko kandi barengerwa kimwe n'amategeko nta vangura

iryo ari ryo ryose<sup>6</sup> (*All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against discrimination in violation of this Declaration and against any incitement to such discrimination*).

[30] Hari kandi ingingo ya 26 y'Amasezerano Mpuzamahanga ku burenganzira Mbenezamubano n'ubwa Politiki<sup>7</sup> yo mu 1966, iteganya ko abantu bose bareshya imbere y'amatageko, ko kandi barengerwa kimwe n'amategeko nta vangura iryo ari ryo ryose (*All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status*).

[31] Ingingo ya 3 y'Amasezerano Nyafurika y'Uburenganzira bwa Muntu n'Abaturage yemejwe ku wa 27/06/1981, nayo iteganya ko abantu bose bareshya imbere y'amategeko kandi itegeko rikabarengera ku buryo bumwe (*Every individual shall be equal before the law. Every individual shall be entitled to equal protection of the law*)<sup>8</sup>.

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<sup>6</sup> Assembly, UN General, Universal declaration of human rights, UN General Assembly 302.2 (1948): 14-25.

<sup>7</sup> International Covenant on Civil and Political Rights/Pacte International des droits civils et politiques

<sup>8</sup> African (Banjul) Charter On Human and Peoples' Rights (Adopted 27 June 1981, OAU Doc.CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986).

[32] Amahame yibukijwe haruguru yasobanuwe kandi n’abahanga mu mategeko, inkiko hamwe n’izindi nzego zirebwa n’uburenganzira bwa muntu. Inkoranyamagambo y’uburenganzira bwa muntu isobanura ko ihame ryo kureshya imbere y’amategeko ryumvikanisha ko itegeko rirengera abantu bose nta kubavangura (*Le principe d'égalité devant la loi suppose que la loi protège tout le monde sans discrimination*)<sup>9</sup>. Ivangura ryo risobanurwa nko gutandukanya abantu ushingiyeye ku bintu bitemewe (*La discrimination est définie comme une différenciation des personnes ou des situations, sur la base d'un ou plusieurs critère(s) non légitime(s)*)<sup>10</sup>. Ihame ryo kutavangura risobanuye rero kwirinda gutandukanya abantu nta mpamvu.

[33] Ibisobanuro bitangwa n’abahanga mu mategeko bihura n’ibyemejwe n’inkiko. Mu rubanza rw’Akagera Business Group rwaciye n’uru Rukiko ku wa 23/09/2016, Urukiko rwagaragaje ko ingingo ya 15 n’iya 16 z’Itegeko Nshinga zifitanye isano ku buryo mu kuzisobanura zidakwiye gutandukanywa. Ingingo ya 15 ivuga ko abantu bose bareshya imbere y’amategeko kandi bakarengerwa n’amategeko mu buryo bumwe. Ni ukuvuga ko hatagomba kubaho ivangura rituma abantu batarengerwa mu buryo bumwe cyangwa kutagira uburenganzira aho bakabugize. Naho ingingo ya 16 ikomerezaho ivuga uburyo gutandukanya abantu bifatwa nk’ivangura kandi ko bitemewe n’Itegeko Nshinga<sup>11</sup>.

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<sup>9</sup> *Dictionnaire des droits de l'Homme, sous la direction de Joël Andriantsimbazovina, Hélène Gaudin, Jean-Pierre Maguénau, Stéphane Rials et Frédéric Sudre*, Presses Universitaires de France, 2008, p.284.

<sup>10</sup> *Dictionnaire de Droit International Public, sous la direction de Jean Salmon*, Bruylant, Bruxelles, 2001, p.344.

<sup>11</sup> Urubanza RS/SPEC/0001/16/CS, Akagera Business Group, rwaciye ku itariki ya 23/09/2016, igika cya 29. Urwo rubanza ruvugwa kandi mu rubanza

[34] Ibijyanye n'uko amahame yavuzwe haruguru agomba kureberwa hamwe, byanavuzwe mu rubanza rwa Rev. Christopher Mtikila n'abandi<sup>12</sup> baburanye na Tanzania, rwaciwe n'Urukiko Nyafurika rushinzwe uburenganzira bwa muntu n'abatwaga, aho urwo Rukiko rwasobanuye ko ihame ryo kudakorerwa ivangura rifitanye isano n'iryo kureshya imbere y'amategeko (*...the right not to be discriminated against is related to the right to the equal protection by the law...*). Ibi kandi urwo Rukiko rwanabishimangiye mu zindi manza zakurikiyeho.<sup>13</sup>

[35] Na none kandi, Akanama kagenzura iyubahirizwa ry'uburenganzira bwa muntu k'Umuryango w'Abibumbye<sup>14</sup> nako kavuze ko kudakorerwa ivangura, kureshya imbere y'amategeko no kurengeza n'amategeko mu buryo bumwe nta vangura, bigize ihame rimwe shingiro kandi rusange ryerekeye kurinda no kurengeza uburenganzira bwa muntu: “*Non discrimination, together with equality before the law and equal protection of the law without discrimination, constitute a basic and general principle relating to the protection of human*”.<sup>15</sup>

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RS/INCONST/SPEC 00001/2019/SC, Murangwa Edward, rwaciwe ku wa 29/11/2019, igika cya 32.

<sup>12</sup> Application 011/2011, Rev.Christopher Mtikila v. United Republic of Tanzania, par. 119.

<sup>13</sup> Application 001/2014 - APDH v. Republic of Cote d'Ivoire, par.146, Application 022/2017 Harold Muthali v. Malawi, par.81.

<sup>14</sup> United Nations Human Rights Committee/Comité des Nations-Unies sur les droits de l'homme.

<sup>15</sup> Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc.HRI/GEN/1/Rev.1 at 26 (1994).

[36] Hashingiwe ku bisobanuro byatanzwe haruguru, biragaragara ko ihame ryo kureshya imbere y'amategeko rijyana n'iryo kutavangura, kandi ayo mahame yombi akaba afitanye isano. Kubera iyo mpamvu, agomba gusomerwa hamwe kuko yombi ahuriza ku kintu cy'ingenzi cyo kudasumbanya abantu mu byo betemewe cyangwa babujijwe nta mpamvu, ugamije kugira abo uheza ku burenganzira bemererwa n'amategeko.

**ii. Kudafata kimwe abantu cyangwa itsinda ry'abantu byafatwa buri gihe nko kutubahiriza ihame ryo kureshya imbere y'amategeko n'iryo kutavangura?**

[37] Mu gushaka igisubizo cy'iki kibazo, ni byiza kureba nanone uko inkiko zitandukanye n'izindi nzego zikemura ibibazo bijyanye n'uburenganzira bwa muntu hamwe n'inyandiko z'abahanga mu mategeko zagiye zikivugaho.

[38] Mu rubanza rwa Marckx aburana n'Ububirigi, Urukiko rw'Uburayi rushinzwe uburenganzira bwa muntu rwagaragaje ko hemezwa ko habayeho kunyuranya n'ihame ryo kutavangura, iyo: a) Abantu bari mu bihe bimwe bafashwe mu buryo butandukanye; b) iyo uko kubatandukanya kudashingiye ku mpamvu yumvikana kandi ishyize mu gaciro; cyangwa iyo c) impamvu yashingiweho n'uburyo bwakoreshejwe ntaho bihuriye. Rwabivuze muri aya magambo: *“a violation of the principle of non-discrimination arises if: a) equal cases are treated in a different manner; b) a difference in treatment does not have an objective and reasonable justification; or c) if there is no proportionality between the aim sought and the means employed”*<sup>16</sup>.

<sup>16</sup> Application n°6833/74, Marckx v. Belgium, 13 June 1979, para.48.

[39] Nanone mu rubanza rw'Akagera Business Group rwavuzwe mu gika cya 33 cy'uru rubanza, uru Rukiko rwasobanuye ko kureshya imbere y'amategeko no kutavangura bitavuze ko gutandukanya abantu ubwabyo mu bihe byose ari ivangura. Gutandukanya abantu cyangwa ibyiciro by'abantu bishobora kuba ngombwa bitewe n'ikigambiriwe, hari impamvu zumvikana zishingiye ku ntego ifite ireme (*legitimate or rational purpose*).<sup>17</sup>

[40] Akanama k'Umuryango w'Abibumbye kavuze ko uburenganzira bwo kureshya imbere y'amategeko no kurengerwa n'amategeko mu buryo bungana nta vangura, budasobanura ko gufata abantu mu buryo butandukanye buri gihe biba ari ivangura. Ibi kabisobanuye mu rubanza rwa Muller and Engelhard baburana na Namibia muri aya magambo: “*The Committee reiterates its constant jurisprudence that the right to equality before the law and to the equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26*”<sup>18</sup>.

[41] Ibyasobanuwe n'ako Kanama bihura n'ibyasensuwe n'Urukiko rushinzwe iyubahirizwa ry'uburenganzira bwa muntu mu bihugu bya Amerika yo hagati n'iyepfo (*Inter American*

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<sup>17</sup> Reba urubanza RS/SPEC/0001/16/CS, haburana Akagera Business Group, op.cit, par 18. Urwo rubanza rwanagarutseho mu rundi rubanza RS/INCONST/SPEC 00001/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 29/11/2019 haburana Murangwa Edward, igika cya 35.

<sup>18</sup> HRC, Muller and Engelhard v Namibia (Communication N<sup>o</sup>. 919/00), para 6.7. Uru rubanza rwanagarutseho mu rubanza RS/INCONST/SPEC 00001/2019/SC rwaciwe ku wa 29/11/2019 haburana Murangwa Edward, igika cya 36.

*Court of Human Rights*), aho rwavuze ko kubera ko ihame ryo kureshya imbere y'amategeko n'iryo kutavangura bishingiye ku bumwe bw'inyoko muntu bigendanye n'agaciro k'abantu bose, gutandukanya abantu ubwabyo bidafatwa nk'ivangura kuko uburyo bwose bwo gutandukanya abantu butagira ingaruka ku gaciro kabo nk'abantu, bitewe n'uko habaho gutandukanya abantu mu mategeko ariko bitanyuraniye n'ihame ry'ubutabera. *(Precisely because equality and non-discrimination are inherent in the idea of the oneness in dignity and worth of all human beings, it follows that not all differences in legal treatment are discriminatory as such, for not all differences in legal treatment are in themselves offensive to human dignity. There may well exist certain factual inequalities that might legitimately give rise to inequalities in legal treatment that do not violate the principle of justice).*<sup>19</sup>

[42] Urwo Rukiko runasobanura ko ahubwo kudafata abantu kimwe bikozwe na Leta ikabashyira mu byiciro ikurikije ibintu bibatandukanya bidakwiye gufatwa nko kubavangura mu gihe uko gushyira abantu mu byiciro bifite impamvu yumvikana kandi uburyo bwakoreshejwe bukaba bugamije kugera kuri iyo mpamvu *(It follows that there would be no discrimination in differences in treatment of individuals by a state when the classifications selected are based on substantial factual differences and there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule...)*<sup>20</sup>[2].

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<sup>19</sup> I-A Court H.R, *Proposed Amendment to the Naturalization Provision of the Constitution of Costa Rica, Advisory Opinion OC 4/84 of Jan 19, 1984, series A N° 4, p.104-106 paras 56-57.*

<sup>20</sup>Idem.

[43] Mu rubanza rwa Thlimmenos v. Greece, Urukiko rw'Ibihugu by'Iburayi rushinzwe kurengera Uburenganzira bwa Muntu rwagarutse ku bimaze kuvugwa, ruvuga ko Leta zifatwa nk'izarenze ku ngingo ya 14 y'Amasezerano ibuza ivangura, iyo zafashe mu buryo butandukanye abantu bari mu bihe bimwe kandi nta mpamvu yumvikana zitanga. Rwabisobanuye mu magambo akurikira: *“The Court has so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification”*.

[44] Urundi rubanza rwagize icyo ruvuga kuri iki kibazo ni urwa Tanganyika Law Society n'abandi<sup>21</sup>, aho Urukiko Nyafurika rushinzwe Uburenganzira bwa muntu n'abaturage, rwasobanuye ko ibyemezo by'inkiko ku bijyanye n'imbago zishobora kuba ku burenganzira byerekana ko, mu bihugu bigendera kuri demokarasi, ari ngombwa ko hashyirwaho imbibi ku burenganzira bw'abantu, kandi ko ubwo burenganzira bugomba kugarukira mu mbago z'ibikenewe kandi bikwiye, bigahuzwa n'akamaro bizagira (*The jurisprudence regarding the restrictions on the exercise of the rights has developed the principle that, the restrictions must be necessary in a democratic society; they must reasonably proportionate to the legitimate aim pursued...*).<sup>22</sup>

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<sup>21</sup> Application no. 34369/97), Thlimmenos v. Greece (Strasbourg 6 April 2000, para 72.

<sup>22</sup> Application 011/2011-Rev. Christopher Mtikila v. United Republic of Tanzania (merits), para 106.1.

[45] Urukiko rw'Ikirenga rwa Canada, mu rubanza rwa *Andrews c. Law Society of British Columbia*, rwavuze ko kuba itegeko ryatandukanya abantu runaka bitavuze buri gihe ko bigomba gutera ubusumbane kuko hari igihe n'itegeko rishobora gufata abantu ku buryo bumwe nyamara bikarangira biteye ubusumbane bukabije (*Le point de vue selon lequel "les personnes qui se trouvent dans une situation identique doivent être traitées de façon identique" n'entraînera pas nécessairement l'égalité, pas plus que toute distinction ou différence de traitement ne produira forcément une inégalité.... Il faut cependant reconnaître dès le départ que toute différence de traitement entre des individus dans la loi ne produira pas forcément une inégalité et, aussi, qu'un traitement identique peut fréquemment engendrer de graves inégalités*)<sup>23</sup>.

[46] Mu isesengura zagiye zikora, mu manza zinyuranye, inkiko zimwe zasobanuye ku buryo bwihariye ibijyanye n'impamvu Leta isabwa kuba ifite cyangwa inyungu igomba kurengera, kugira ngo itaza gufatwa nk'aho yatandukanyije cyangwa yavanguye abantu ntacyo ishingiyeho, cyangwa se ko yakoresheje uburyo butajyanye n'itegeko yihaye. Zinagaragaza uburyo inkiko zigenzura ko Leta cyangwa inzego zayo zubahirije amategeko.

[47] Mu rubanza rwa Murat Vural na Turkey, Urukiko rw'Uburayi rushinzwe uburenganzira bwa muntu rwasobanuye

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<sup>23</sup> *Andrews c. Law Society of British Columbia* - [1989] 1 RCS 143 - 1989-02-02, para. 52: rwabishingiye ku byavuzwen'umucamanza Frankfurter, ko yari umunyabwenge cyane umuntu wavuze ko nta busumbane bukabije burenze gufataabantu mu buryo bumwe kandi batareshya (*C'était un homme sage celui qui a dit qu'il n'y avait pas de plus grande inégalité que l'égalité de traitement entre individus inégaux*).

ko mu gihe Urukiko rusuzuma ikibazo cy'iyubahirizwa ry'uburenganzira bwa muntu, rugomba gusuzuma urubanza rwose, by'umwihariko rukaba rugomba kugenzura niba imbago zashyizwe ku burenganzira zijyanye n'intego Leta ikurikiranye, rukareba kandi niba impamvu itanga zifite ishingiro kandi zihagije (*In exercising its supervisory jurisdiction, the Court must look at the impugned interference in the light of the case as a whole. In particular, it must determine whether the interference in question was "proportionate to the legitimate aims pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient"*).<sup>24</sup>

[48] Urwo Rukiko rwongeye kubishimangira no mu rubanza Olsson yaburanye na Suède, aho rwavuze ko ku bijyanye by'umwihariko n'impamvu zishingiye ku mibereho y'abaturage, ari ngombwa kureba niba Leta yarafashe icyemezo yabanje gushishoza neza kandi ishingiye ku mpamvu zifite ireme kandi zumvikana (*En ce qui concerne les raisons sociales impérieuses, la Cour vérifie, non seulement si l'État concerné a usé de son pouvoir d'appréciation en bonne foi, mais également si les raisons avancées sont pertinentes et suffisantes*).<sup>25</sup>

[49] Urukiko rw'Ikirenga rw'igihugu cy'Ubuhande, mu rubanza Morarjee aburana na Union of India, narwo rwemeje ko kuvuga ko umuntu yafashwe bitandukanye n'abandi gusa ubwabyo bidahagije kugira ngo byitwe ko yakorewe ivangura, ahubwo ubivuga agomba kugaragaza ko yafashwe bitandukanye n'abandi bari mu cyiciro kimwe na we, kandi nta mpamvu yumvikana (*An applicant pleading that Article 14 has been*

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<sup>24</sup> Application n°. 9540/07, Murat Vural v. Turkey, of 21/01/2015, para. 64.

<sup>25</sup> Requête n° 10465/83, Olsson c. Suède, (24 Novembre 1988) n° 130 (A), para. 68.

*violated must make out that not only he had been treated differently from other but he has been so treated from persons similarly circumstanced without any reasonable basis, and such differential treatment is unjustifiably made)*<sup>26</sup>.

[50] Mu rubanza rwa Uwinkindi Jean, Urukiko rw’Ikirenga rwasobanuye ko gushyira abantu mu byiciro bigomba gukorwa hagamijwe kugera ku ntego yumvikana, igaragarira buri wese inashingiye ku mategeko kandi ibyashingiweho bikaba bifite ireme mu nyungu rusange.<sup>27</sup>

[51] Nk’uko byavuzwe haruguru, usibye inkiko zinyuranye zagiye zisobanura ihame ryo kureshya imbere y’amategeko n’iryo kutavangura, abahanga mu mategeko nabo batanze ibisobanuro kuri ayo mahame. Daniel Lochak avuga ko ihame ryo kureshya imbere y’amategeko, rikwiye kumvikana nk’ihame ryo kutavangura, ridahatira gufata abaturage mu buryo busa, ahubwo ribuza uburyo butandukanye bwo gufata abantu mu buryo budakurikije amategeko, ni ukuvuga budashingiye ku itandukaniro riri hagati y’abantu (*Le principe d'égalité, qu'il convient d'interpréter plutôt, désormais, comme un principe de non-discrimination, n'impose plus de traiter tous les membres de la société de façon nidentique, mais il proscrie les différences de traitement illégitimes, c'est-à-dire non justifiées par des différences de situation*).<sup>28</sup>

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<sup>26</sup> Morarjee Rajkotia & Ors vs Union of India & Ors case n° 46 of 1965, on 4 February, 1966, para 8.

<sup>27</sup> Reba urubanza n° RS/INCONST/PEN 0005/12/CS rwaciwe ku wa 22/02/2013, igika cya 16.

<sup>28</sup> Danièle Lochak, Les minorités et le droit public français. Du refus des différences à la gestion des différences. Alain Fenet; Gérard Soulier. Les minorités et leurs droits depuis 1789, L’Harmattan, pp.111-189, 1989.

[52] Undi muhanga, Olivier Jouanjan asobanura ko gushaka byanze bikunze gufata abantu kimwe bishobora ahubwo kubyara kubatandukanya bikomeye haba mu buzima busanzwe cyangwa mu mibereho y'abantu ku buryo byanavamo kubavangura (*Une identité formelle de traitement peut induire une différence substantielle, réelle, sociale et, le cas échéant, une discrimination*).<sup>29</sup>

[53] André Viola nawe yifashishije ibyavuzwe na M. Pelissier, yasobanuye ko kureshya imbere y'amategeko bidashingiye gusa ku kuba abantu bafatwa kimwe, ahubwo binashingiye no mu kugereranya ababa bagomba kureshya imbere y'amategeko kuko kudafata kimwe abantu bigaragara ko batandukanye aribwo burunganire (*Comme le souligne M. Pélissier, l'égalité n'est pas seulement une identité de traitement, elle est la qualité d'un rapport entre deux termes déclarés comparables. Par conséquent, une différence de traitement à la mesure d'une différence de situation constitue une relation d'égalité*)<sup>30</sup>.

[54] Umuhanga mu mategeko Cécile Barrois de Sarigny we asobanura ko Abacamanza iyo basuzuma ihame ryo kureshya imbere y'amategeko barireba mu buryo bwagutse, ibyo bigatuma mu igenzura bakora birinda gusimbura inzego za Leta ku bijyanye n'uburyo nyabwo bwo kugera ku ntego zigamijwe (*Les juges appréhendent la norme d'égalité prise dans sa généralité, ce qui les conduit à opérer un contrôle distancié garantissant qu'ils ne substituent pas leur propre appréciation à celle des*

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<sup>29</sup> Jouanjan, Olivier, Logiques de l'égalité, Titre VII 1 (2020): 1-8.

<sup>30</sup> Viola, André, La loi doit être la même pour tous: vers la fin d'un principe républicain, (2005): 601-618.

*pouvoirs publics quant au meilleur moyen de parvenir aux objectifs visés)*<sup>31</sup>.

[55] Akomeza avuga ko uko kwiha intera mu igenzura, bijyanye n'imiterere y'ihame ryo kureshya imbere y'amategeko kuko usanga ibyemezo by'inkiko birifata nk'ihame ridakakaye, kuko ritabuza Umushingamategeko cyangwa urwego rushyiraho amabwiriza, gushaka ibisubizo bitandukanye ku bantu bari mu bihe bitandukanye, kabone niyo rwakwirengagiza ihame ryo kureshya imbere y'amategeko rugamije kurengera inyungu rusange, icyangombwa akaba ari uko, uko gutandukanya abantu bijyanye n'itegeko igamijwe kandi iri mu murongo w'itegeko (*Cette prise de distance se traduit dans la formulation même du principe d'égalité, lequel est présenté par la jurisprudence comme un principe « en creux » qui « ne s'oppose pas » à ce que le législateur ou ... l'autorité investie du pouvoir réglementaire règle de façon différente des situations différentes ni à ce qu'il déroge à l'égalité pour des raisons d'intérêt général pourvu que, dans l'un comme l'autre cas, la différence de traitement qui en résulte soit en rapport direct avec l'objet de la norme qui l'établit*).<sup>32</sup>

[56] Uwo muhanga asobanura kandi ko ibyo bitanga urwinyagamburiro ruhagije ku nzego za Leta kuko arizo ziba zigomba gushyira abantu mu byiciro bitandukanye, ndetse zikagaragaza inyungu rusange irengerwa, umucamanza akaba agomba kureba gusa niba ibyakozwe byari ngombwa, akanareba ishingiro ry'iyonyungu rusange ivugwa, akanagenzura niba koko ibyo byaba impamvu yo gutuma abantu badafatwa kimwe (*La*

<sup>31</sup> Barrois de Sarigny, Cécile. "Le principe d'égalité dans la jurisprudence du Conseil constitutionnel et du Conseil d'État." Titre VII 4.1 (2020): 18-25.

<sup>32</sup> Ibidem

*marge de manœuvre des pouvoirs publics est dans ce cadre garantie. C'est à eux qu'il appartient de caractériser des catégories différentes ou de définir les exigences de l'intérêt général, le juge appréciant seulement la pertinence des catégories ou des considérations d'intérêt général avancées, ainsi que la cohérence du choix d'une différence de traitement*<sup>33</sup>.

[57] Nyuma y'ibisobanuro byatanzwe haruguru ku bijyanye n'amahame ateganyijwe mu ngingo ya 15 n'iyi bijyana ya 16 z'Itegeko Nshinga, hari ibintu by'igenzi biyakubiyemo:

- Abantu bari mu bihe cyangwa mu byiciro bimwe, bafatwa kimwe;
- Iyo badafashwe kimwe nta mpamvu ifite ireme kandi yumvikana, byitwa ivangura;
- Leta ishobora gutandukanya abantu cyangwa ibyiciro by'abantu ariko ntibiyitwe kubangamira ihame ryo kureshya imbere y'amategeko cyangwa iryo kutavangura;
- Kugira ngo bishoboke, Leta igomba kuba ifite impamvu yumvikana, ifite ireme kandi ikurikije amategeko, kandi ikaba igamije inyungu rusange z'abatwaga.

[58] Ibisobanuro bimaze gutangwa byumvikanisha rero ko Leta, mu byemezo ifata cyangwa mu mategeko ishyiraho, ishobora kugira ibyo igenera abantu cyangwa ibyiciro by'abantu ishaka kurengera by'umwihariko, ariko ntibigenere abandi. Ibyo ntibifatwa nk'ivangura, ahubwo ni ugutandukanya abantu

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<sup>33</sup> Barrois de Sarigny, Cécile. "Le principe d'égalité dans la jurisprudence du Conseil constitutionnel et du Conseil d'État., Op.cit, p.20.

cyangwa kubashyira mu byiciro bitandukanye ku mpamvu zumvikana, zishingiye kuri gahunda Leta yihaye n’itego ishaka kugeraho.

### iii. Ku bijyanye n’uru rubanza

[59] Nk’uko byibukijwe haruguru, ikibazo kigomba gukemurwa ni icyo kumenya niba ingingo ya 8, igika cya mbere n’iya 76 (1°) z’Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryibukijwe haruguru zinyuranyije n’ingingo ya 15 y’Itegeko Nshinga rya Repubulika y’u Rwanda. Ngendahayo Kabuye watanze ikirego, avuga ko izo ngingo zivangura abazungura, kubera ko ziha uwapfakaye uburenganzira bw’umurengera, zigaheza abandi bazungura.

[60] Mu gusuzuma ibyo urega avuga kuri izi ngingo, ni ngombwa gusubiza amaso inyuma, hakarebwa impamvu yatumye hashyirwaho Itegeko rimaze kuvugwa, n’icyo ryari rigamije. Mu bice byabanje haruguru, hasobanuwe ko impamvu y’itegeko igomba kuba yumvikana, ifite ireme kandi ishingiyeye ku mategeko.

[61] Nk’uko biboneka mu isobanurampamvu y’Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryibukijwe haruguru, mbere y’uko rijyaho ryatanzweho ibitekerezo n’abantu b’ingeri zitandukanye. Risobanura kandi ko ibyo bitekerezo byagaragaje ko itegeko ryari risanzwe ryo mu 1999<sup>34</sup> ryatezaga ibibazo byinshi, ku buryo kubikemura byagombaga gutuma ingingo nyinshi zaryo zihinduka, ari yo mpamvu, aho guhindura ingingo zimwe z’iryo tegeko, byabayeye ngombwa ko hajyaho irishya. Mu bibazo byinshi

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<sup>34</sup> Itegeko N° 22/99 ryo ku wa 12 Ugushyirahamwe 1999 ryuzuzaga Igitabo cya mbere cy’urwunge rw’amategeko mbonezamubano kandi rishyirahamwe igice cya gatanu cyerekeye imicungire y’umutungo w’abashyirahamwe, impano n’izungura.

byaterwaga n'ishyirwa mu bikorwa ry'itegeko ryariho, harimo iby'ingenzi bikurikira:

- kuba ritarateganyaga uburyo bwo kuzungura ku bana b'abakobwa basigaye ababyeyi babo bamaze gupfa mbere y'uko rishyirwa mu bikorwa;
- kuba ritarigeze riteganya urupfu mu mpamvu zisesa uburyo bw'imicungire y'umutungo w'abashyingirwanywe, ku buryo umuntu yibazaga niba ubwo buryo bwagumaho kandi umwe mu bashyingiranwe atakiriho. Ibi byateraga urujijo mu gihe cyo kuzungura ugasanga benshi baritiranyaga uburenganzira bwo kuzungura n'uburenganzira uwafakaye akomora ku buryo bw'imicungire yari yarahisemo;
- kuba Itegeko risanzwe ritarateganyaga kuzungurana kw'abashakanye.

[62] Nanone kandi, impamvu yatumye ingingo z'iryo Tegeko zaregewe ziyaho ishimangirwa mu nyandikomvugo y'inama y'inteko rusange y'Inteko Ishinga Amategeko, Umutwe w'Abadepite<sup>35</sup> no muri raporo z'inama za Komisiyo ya politiki, uburinganire n'ubwuzuzanye bw'abagore n'abagabo mu iterambere ry'igihugu<sup>36</sup>, mu gihe hasuzumwaga umushinga w'iryo Tegeko.

[63] Izo nyandikomvugo na raporo zigaragaza ko mbere yo gutangira gusuzuma uwo mushinga w'itegeko, abagize Komisiyo bakoze ingendo mu gihugu, bahura n'abaturage bahagarariye abandi, hagamijwe gukusanya ibitekerezo bizafasha mu

<sup>35</sup> Reba inyandikomvugo yo ku wa 15/11/2013.

<sup>36</sup> Inama zabaye guhera 03-26/06/2014.

kuwusuzuma. Izo nyandiko zigaragaza ko ibi byakozwe nyuma yo kubona ko Itegeko N° 22/99 ryo ku wa 12 Ugushyingo 1999 ryamaze kuvugwa ryari rifite ingingo zirenga 50% zitakijyanye n'igihe, ari yo mpamvu abagize iyo Komisiyo basanze ari ngombwa gushyiraho itegeko rishya aho guhindura izo ngingo.

[64] Abagize Inteko Ishinga amategeko bagaragaje kandi ko mu rwego rwo kurinda uwapfakaye kwandavura no kugira imibereho mibi ugereranyije n'uko yari abayeho uwo bari barashakanye akiriho, mu gihe umwe mu bashyingiranywe barasezeranye ivangamutungo rusange apfuye, usigaye agomba kwegukana umutungo wose, kubera ko yari awusangiye na nyakwigendera, kandi akaba asigaranye wenyine inshingano z'urugo bari bafatanyije.

[65] Basanze kandi hari ikibazo cy'uko iyo umwe mu bashakanye apfuye, uwapfakaye nta burenganzira yari afite bwo kumuzungura, kandi aba yaragize uruhare mu gushaka umutungo w'urugo rwabo, iyo akaba ari imwe mu mpamvu yatumye Itegeko ryari risanzwe rihinduka. Basobanuye ko, ku bashyingiranywe banasezeranye ivangamutungo rusange, abana bakwiye kuzungura nyuma y'uko ababyeyi bombi batakirihho, bityo izungura ryabo rikaba rigomba gutangira ari uko bombi batakirihho cyangwa uwapfakaye yongeye gushyingirwa.

[66] Ibiboneka mu isobanurampamvu ryavuzwe haruguru no mu nyandikomvugo y'imirimo y'Inteko Ishinga Amategeko bihura kandi n'ibitekerezo byatanzwe na zimwe mu nzego za Leta mu gihe hategurwaga umushinga w'itegeko wavuzwe haruguru. Mu nyandiko iri muri dosiye y'urubanza yateguwe na Minisiteri y'uburinganire n'iterambere ry'umuryango (MIGEPROF), hasobanurwa ko ku bashyingiranywe bagahitamo ivangamutungo rusange, uwapfakaye akwiye kwegukana

imitungo yose kugira ngo imusazishe neza hashingiwe ku ruhare aba yaragize mu gushaka iyo mitungo mu gihe amasezerano yo gushyingirwa yari akiriho, cyane cyane ko iyo mitungo ari iy'abashakanye, atari iy'abazungura babo.

[67] Urwego rw'igihugu rushinzwe kugenzura iyubahirizwa ry'uburinganire n'ubwuzuzanye bw'abagore n'abagabo mu iterambere ry'igihugu (*Gender Monitoring Office*), narwo rwateguye inyigo iri muri dosiye y'urubanza, ku ngaruka z'uburinganire ku Itegeko N° 22/99 ryo kuwa 12/11/1999 ryavuzwe haruguru, rusanga mu gihe umwe mu bashyingiranywe apfuye, usigaye akwiyekwegukana umutungo wose, kugira ngo awugireho uburenganzira busesuye.

[68] Nk'uko byakomeje gusobanurwa, ingingo zaregewe z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryibukijwe haruguru, zaje zirengera by'umwihariko uwapfakaye kubera impamvu ryasobanuye nazo zibukijwe haruguru, rimuha itandukaniro n'abandi bazungura, kuko aba yabuze uwo bari basangiye inshingano, nyamara akaba agomba kuzikomeza wenyine. Byasobanuwe kandi haruguru, ko uwapfakaye adakwiye kugereranywa n'abandi bazungura, kuko we aba yaragize uruhare mu gushaka umutungo w'urugo, mu gihe abandi nta ruhare baba barabigizemo, Umushingamategeko akaba yarashatse kurinda uwapfakaye impagarara zajyaga zivuka uwo bashakanye amaze gupfa, zitewe n'abo mu muryango babaga bifuzza kugira uruhare ku mutungo uwapfuye yasize.

[69] Uwo mwihariko uhabwa uwapfakaye ugarukwaho kandi n'abahanga mu by'amategeko Yvaine Bufferan Lanore na Virginie Larribau, aho basobanura ko ubuzima bw'abashyingiranywe butarangirana n'urupfu rw'umwe, ko ikiba cyabayeho ari uko umwe mu bashyingiranywe yapfuye undi

agasigara wenyine, bikaba bitandukanye n'ubutane bw'abashyingiranywe. Bavuga ko iyo umwe mu bashyingiranywe apfuye, ubuzima bushingiye kuri iryo shyiringanwa bukomeza, naho gutandukana byo, bigasiga gusa amasano ashingiye kuri rya shyiringanwa ryigeze kubaho (*La qualité d'époux ne disparaît pas pour autant, avec le décès, le conjoint devenant simplement le conjoint survivant. Contrairement au divorce, le décès laisse intacte cette qualité d'époux. C'est pourquoi, par-delà le décès et la dissolution du mariage, on constate, non seulement la survie de certains effets du mariage ou de l'alliance créée par le mariage*)<sup>37</sup>

[70] Abahanga mu mategeko Bernard Beignier & Sarah Torricelli-Chrifi bavuga ko hari itandukaniro hagati y'uwapfakaye n'abandi bazungura bakomoka k'uwapfuye. Bavuga ko abakomoka kuri nyakwigendera badafite uburenganzira ku izungura, ko ahubwo bafite ubwo kugira uruhare ku izungura, bityo bakaba bagabana umutungo usigaye w'uwo bakomokaho, naho amategeko yo muri iki gihe akaba yaragiye atera imbere ku buryo kuri ubu, uburenganzira bw'uwapfakaye bujyanye no kugira ngo akomeze abeho mu buzima yari asanzwe abayemo. Igitekerezo cy'ingenzi kiva kuri ubwo burenganzira ni uko abana bazungura mu by'ukuri nyuma y'uwo usigaye mu bashakanye apfuye. (*Y-a-t-il une différence politique entre les droits des descendants et les droits du conjoint survivant? Oui, sans aucun doute. Les descendants, sans avoir un droit "à" l'héritage mais un droit "sur" l'héritage, ont vocation à se partager ce qui "reste" du patrimoine de leur auteur. Tandis que le droit contemporain a évolué pour faire des*

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<sup>37</sup> Buffelan-Lanore, Yvaine, and Virginie Larribau-Terneyre. Droit civil. Introduction Biens Personnes Famille. Sirey, 2013, p.737.

*droits du conjoint un véritable droit “ à ” un maintien de son train et style de vie 2Dès lors se profile une idée forte : les enfants n’héritent vraiment qu’au décès du dernier des conjoints).<sup>38</sup>*

[71] Impamvu yatumye hajyaho ingingo z’Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe, zaregawe ko zinyuranye n’Itegeko Nshinga, imaze gusobanurwa mu bika bibanziriza iki. Urukiko rurasanga mbere yo gushyiraho iryo Tegeko, Umushingamategeko yarabanje kumva ibitekerezo by’abaturage bikubiyemo ibibazo byariho byagombaga gushakirwa umuti, abona guhyiraho itegeko rigamije kubikemura no gukumira amakimbirane yo mu muryango muri rusange.

[72] Ibisobanuro byatanzwe haruguru bigaragaza impamvu ituma umupfakazi ahabwa umwihariko utandukanye n’uw’abandi bazungura. Urukiko rurasanga kuba Leta yarashyizeho ingingo ya 8, igika cya 2 n’iya 76 (1°) z’Itegeko N° 27/2016 ryibukijwe haruguru, igamije kurengera by’umwihariko uwo mupfakazi, yari ifite impamvu yumvikana kandi ishingiyeye ku ntego ifite ireme, n’uburyo yakoresheje bukaba bujyanye n’intego yari igamije; bikumvikanisha ko nta vangura abandi bazungura bakorewe.

[73] Urukiko rusanga kandi ibibazo Ngendahayo Kabuye avuga ko byavutse cyangwa bishobora kuvuka nyuma y’uko Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru ritangiye gushyirwa mu bikorwa, bigomba gutandukanywa no kuvuga ko iryo tegeko ubwaryo rinyuranye n’Itegeko Nshinga. Byongeye kandi, mu gihe bigaragaye ko nyuma yo kwegukana umutungo, uwapfakaye awukoresha nabi cyangwa ko atita ku

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<sup>38</sup> Beignier, Bernard, and Sarah Torricelli-Chrifi. *Libéralités et successions*. Montchrestien, ed. Lextenso, 2015, p.223.

nshingano Itegeko ryamuhaye, nk’uko Ngendahayo Kabuye abiburanisha, ubifitemo inyungu wese afite uburenganzira bwo kubitangira ikirego mu nkiko. Ingingo ya 76 (6°) y’Itegeko N° 27/2016 ryavuzwe haruguru yaje muri uwo murongo kubera ko iteganya ko iyo uwapfakaye ataye inshingano zo kurera abana bose cyangwa bamwe muri bo uwapfuye asize, yamburwa n’urukiko rubifitiye ububasha izo nshingano na kimwe cya kabiri ( $\frac{1}{2}$ ) cy’umutungo wose, rukanagena ushinzwe kubarera no kubacungira umutungo kugeza igihe bagiriye imyaka y’ubukure.

[74] Muri urwo rwego kandi rwo gukumira ibibazo bishobora kuvuka bijyanye n’umutungo uwapfakaye aba yegukanye nyuma y’urupfu rw’uwo bari barashakanye, ingingo ya 49 y’iryo Tegeko N° 27/2016 ryo ku wa 08/07/2016 yateganyije ingano atemerewe gutanga cyangwa kuraga kuko uba ugenewe abazungura bazigamirwa (*réservé successorale*)<sup>39</sup>.

[75] Hashingiwe ku bisobanuro byatanzwe haruguru, Urukiko rurasanga ingingo ya 8, igika cya 2 n’iya 76 (1°) z’Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y’umutungo w’abashyingiranywe impano n’izungura, zitanyuranyije

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<sup>39</sup> Iteganya ko abashyingiranywe bafite uburenganzira bwo gutanga impano ariko ntibagomba kurenza umugabane w’ibyo bashobora gutanga.

Hatitawe ku buryo bw’icungamutungo, umugabane w’ibishobora gutangwa ntushobora kurenga kimwe cya gatanu ( $\frac{1}{5}$ ) cy’umutungo w’utanga iyo afite abana, bine bya gatanu ( $\frac{4}{5}$ ) bikaba ibizungurwa bizigamirwa abana n’uwo bashyingiranywe. icyakora, iyo utanga impano nta bana afite ariko uwo bashyingiranywe akaba akiriho, umugabane w’ibishobora gutangwa ntushobora kurenga kimwe cya gatatu ( $\frac{1}{3}$ ) cy’umutungo we, bibiri bya gatatu ( $\frac{2}{3}$ ) bikagirwa ibizungura bizigamirwa uwo bashyingiranywe. Ibizungurwa bizigamirwa bibarwa bashingiye ku mutungo w’utanga havanywemo imyenda yari afite ku muni impano yatangwaga.

n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015.

[76] N'ubwo ariko Urukiko rwemeje ko ingingo ya 8, igika cya 2 n'ya 76 (1°) zimaze kuvugwa zitanyuranyije n'Itegeko Nshinga, Leta ikaba kandi yarateganyije ingamba zigamije gukumira amakimbirane yavuka ashingiye ku mutungo wegukanywe n'uwafakaye, Urukiko rurayigira inama y'uko mu rwego rwo kurushaho kunoza ibikubiye muri izo ngingo, hakwiye kongerwamo izindi ngamba zigamije kurinda no kubungabunga mirongo itanu kw'ijana (50%)<sup>40</sup> by'umutungo uwafakaye asigarana nyuma y'urupfu rw'uwo bashakanye, kugeza igihe izungura rizatangirira.

**2. Kumenya niba ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, zinyuranyije n'ingingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015**

[77] Ngendahayo Kabuye avuga ko ingingo ya 8, igika cya 2 n'ya 76 (1o) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, zinyuranyije n'ingingo ya 18 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015, kubera ko zateje amakimbirane mu muryango aho kuwurengera kuko ziha uburenganzira umupfakazi bwo kugumana umutungo wose yitwaje ko yasezeranye

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<sup>40</sup> Bihwanye n'uruhare uwo bashakanye yari afite ku mutungo

ivangamutungo rusange hirengagijwe ko atari we gusa ufite uburenganzira bwo kuzungura nyakwigendera.

[78] Akomeza avuga ko izo ngingo zabaye isoko y'amakimbirane y'urudaca mu miryango itandukanye, ashobora no kuba intandaro y'ibindi byaha bikomeye nk'ubwicanyi kandi ingingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda iteganya ko umuryango ari wo shingiro kamere y'imbaga y'Abanyarwanda ukaba ugomba kurengerwa na Leta.

[79] Me Umulisa Kayigamba Alice umwunganira avuga ko ingingo ya 8, igika cya 2 n'iya 76 (1<sup>o</sup>) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryibukijwe haruguru zituma uwapfakaye agumana imitungo yose bigateza amakimbirane mu muryango. Asanga byari kuba byiza iyo izo ngingo zivuga ko iyo umwe mu bashakanye apfuye, hakorwa ibarura ku mitungo asize, hakanagenwa uburyo izacungwa n'ubwo nabyo bidaha abanyamuryango bose ubwisanzure kuko abana basizwe n'uwapfuye batarabyawe n'usigaye bakunda kuvutswa ubwisanzure mu muryango bahabwa n'ingingo ya 18 y'Itegeko Nshinga. Asaba Urukiko kuzemeza ko izo ngingo zinyuranije n'ingingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda.

[80] Me Kayitesi Petronille, uhagarariye Leta y'u Rwanda avuga ko ingingo ya 18 y'Itegeko Nshinga iteganya ko umuryango, ishingiro kamere ry'imbaga y'abanyarwanda urengerwa na Leta, igaha uburenganzira n'inshingano ababyeyi bombi mu kurera abana babo, ndetse igateganya ubwisanzure bw'umuryango. Avuga ko ibiteganywa n'ingingo ya 8, igika cya 2 n'iya 76 (1<sup>o</sup>) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 byita ku nyungu z'uwapfakaye ndetse n'iz'abana bikaba bitanyuranyije n'ibitekerezo bivugwa mu ngingo ya 18 y'Itegeko Nshinga ahubwo biyishimangira kuko uburenganzira

bw'uwapfakaye n'ubw'abana basizwe na nyakwigendera bwasisigasiwe.

[81] Asoza avuga ko kuba itegeko ryaragennye ko abashyingiranywe bazungurwa bombi bamaze gupfa, cyangwa uwapfakaye ashatse, bitanyuranyije n'ingingo ya 18 y'Itegeko Nshinga ahubwo bituma ubwisanzure bw'umuryango bugumaho, ntiburangirane n'urupfu rw'umwe mu bashyingiranywe.

[82] Me Kabibi Speciose, uhagarariye Leta y'u Rwanda yongeraho ko umushingamategeko yarengeye umuryango wose harimo abana hamwe n'uwapfakaye kubera ko kuba abashakanye barumvikanye ko n'iyo umwe yapfa undi azakomeza gusigarana umutungo wabo kandi agasigarana n'inshingano zo gutunga abo asigaranye, byubahirije amategeko. Asoza avuga ko ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryibukijwe haruguru zitanyuranyije n'Itegeko Nshinga mu ngingo yaryo ya 18 kuko zirengera umuryango zikanatuma uwapfakaye adakurwa mu mitungo.

[83] Uwineza Odette na Dr Turamwishimiye Marie Rose, bahagarariye Ishuri ry'Amategeko rya Kaminuza y'u Rwanda, bavuga ko ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru zitari mu murongo wo kubungabunga ubusugire bw'umuryango nyarwanda kuko zishobora kuba impamvu y'amakimbirane ashingiye ku izungura ry'umutungo kubera ko umutungo uzungurwa wikubirwa n'uwapfakaye bigatuma uburenganzira bw'abandi bazungura bubangamirwa. Basanga izo ngingo zidahura n'ikigamijwe mu ngingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda nk'uko ryavugururwe muri 2015.

[84] Basoza bavuga ko ingingo zaregewe zikwiye kuvugururwa zigahuzwa n'umurongo wo kurengera uburenganzira bw'abazungura bose ariko na none hitawe ku kurengera mu buryo bwihariye uburenganzira bw'uwapfakaye, kuko ari bwo umuryango wasigasirwa bitanyuranyije n'ingingo ya 18 y'Itegeko Nshinga.

## UKO URUKIKO RUBIBONA

### i. Ihame ryo kurengera umuryango

[85] Ihame ryo kurengera umuryango (*right to the protection of the family / droit à la protection de la famille*) rikubiye mu ngingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 ryavuguruwe mu mwaka wa 2015 iteganya ko umuryango, ni wo shingiro kamere ry'imbaga y'Abanyarwanda, urengerwa na Leta. Ababyeyi bombi bafite uburenganzira n'inshingano zo kurera abana babo. Leta ishyiraho amategeko n'inzego bikwiye bishinzwe kurengera umuryango, by'umwihariko umwana na nyina, kugira ngo umuryango ugire ubwisanzure.

[86] Ingingo ya 18 imaze kuvugwa mu gika kibanziriza iki, ikubiyemo ibitekerezo bine aribyo: i) umuryango nk'ishingiro kamere ry'imbaga y'abanyarwanda ugomba kurengerwa na Leta ii) ababyeyi bombi basangiye uburenganzira n'inshingano zo kurera abana babo iii) umuryango, by'umwihariko umwana na nyina, barengerwa na Leta ishyiraho amategeko n'inzego bikwiye, iv) Leta ifite inshingano zo kurengera ubwisanzure bw'umuryango.

[87] Iryo hame ryo kurengera umuryango riteganyijwe no mu masezerano mpuzamahanga u Rwanda rwashyizeho umukono.

Ingingo ya 16 y'Itangazo Mpuzamahanga ku burenganzira bwa muntu isobanura ko umugabo n'umugore bafite uburenganzira bwo gushyingiranwa no gukora umuryango nk'izingiro kamere umuryango w'abantu ushingiyeho, (*men and women have the right to marry and to create a family as the "natural and fundamental group unit" within society*).

[88] Ingingo ya 23, agace ka 1 y'Amasezerano Mpuzamahanga ku burenganzira mu by'imbenezamubano na politiki, ivuga ko umuryango ariwo shingiro ry'igihugu, ko ukwiye kurindwa na Leta (*The family is the natural and fundamental group unit of society and is entitled to protection by society and the State*).

[89] Ingingo ya 18 (1,2) y'amasezerano Nyafurika ku burenganzira bwa muntu n'ubw'abaturage nayo ivuga ko umuryango ariwo shingiro kamere kandi ukaba ishingiro ry'igihugu. Ugomba kurindwa na Leta kandi ikabungabunga ubusugire bwawo. Leta ifite inshingano zo kurengera umuryango kuko ariwo shingiro ry'umuco n'indangagaciro nyazo za sosiyete (*Family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community*).

[90] Ihame ryo kurengera umuryango ryagiye risobanurwa kandi n'abahanga mu mategeko. Lara Walker yavuze ko amasezerano y'Ibihugu by'Iburayi yerekeranye n'Uburenganzira bwa muntu arengera ubusugire bw'umuryango, bukubiyemo uburenganzira ababyeyi bafite ku bana babo n'uburenganzira bw'abana ku babyeyi babo, kubuza ko abana batandukanywa n'ababyeyi babo mu buryo butemewe n'amategeko, hakazamo

n'uburenganzira bw'ababyeyi bwo kugarurirwa abana babo bajyanywe bunyago (*In addition to the protection of the family, the European Convention on Human Rights protects the right to respect for family life. This includes the rights of parents to have custody and contact with their children, and the rights of children to be with their parents. The European Court of Human Rights helps to protect families from being unlawfully separated – including protecting the rights of parents to recover abducted children*)<sup>41</sup>.

[91] Ibijyanye n'ihame ryo kurengera umuryango nk'inshingano y'ibihugu hamwe n'imiryango mpuzamahanga ifite aho ihurira n'uburenganzira bwa muntu, byagiye kandi binasobanurwa n'inkiko mu manza zitandukanye hamwe n'abahanga mu mategeko.

[92] Mu rubanza John O. Miron na Jocelyne Valliere baburanye na Richard Trudel na Economical Mutual Insurance Company, Urukiko rw'Ikirenga rwa Canada rwavuze ko kubungabunga umuryango, ubwabyo bifite inyungu ikomeye cyane ku gihugu ko kandi gushyingiranwa ari umushinga ufiteye igihugu akamaro, kuko hatabayeho urugo ntihabeho umuryango, nta majyambere yababwo nta n'iterambere ryagerwaho (*the Protection of "family" is, one of the most important interests imaginable in our society, ...marriage is an institution, in the maintenance of which in its purity the public is deeply interested,*

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<sup>41</sup> Walker, Lara, The impact of The Hague Abduction Convention on the rights of the family in the case-law of the European Court of Human Rights and the UN Human Rights Committee: the danger of Neulinger, *Journal of private international law* 6.3 (2010): 649-682.

*for it is the foundation of the family and of society, without which there would be neither civilization nor progress)*<sup>42</sup>.

[93] Na none mu rubanza Moore yaburanye na City of East Cleveland, Urukiko rw'Ikirenga rwa Leta Zunze Ubumwe z'Amerika rwavuze ko Itegeko Nshinga rigomba kurengera ubusugire bw'Umuryango kubera ko umuryango ushinze imizi mu mateka ndetse no mu muco w'igihugu (*the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in Nation's history and tradition*)<sup>43</sup>.

[94] Umuhanga mu mategeko *Ivana Roagna* nawe yasobanuye ko ku bijyanye n'imibereho y'umuryango, ibyemezo by'inkiko zitandukanye mu bihugu by'Iburayi byagiye bigaragaza ko ingingo ya 8 y'amasezerano y'Ibihugu by'Iburayi yerekeranye n'Uburenganzira bwa muntu igaragaza inshingano 2 z'ingenzi Leta iba igomba kubahiriza arizo : guha agaciro amasano abantu bafitanye mu muryango no kubungabunga uwo muryango, hagakurikiraho ishingano zitandukanye ibihugu biba bifite mu rwego rwo gushyira mu bikorwa ubusugire bw'uwo muryango ( *When it comes to family life, the case-law indicates that two main types of obligations stem from Article 8 of the European Convention on Human Rights; the first is to give legal recognition to family ties; the second is to act to preserve family*

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<sup>42</sup> See the case n° 22744, John O. Miron and Jocelyne Valliere v. Richard Trudel, William James Mc Isaac and the Economical Mutual Insurance Company vs. The Attorney General of Canada, the Attorney General for Ontario, the Attorney General of Quebec and the Attorney General of Manitoba, decided by the Supreme Court of Canada, on 25/05/1995.

<sup>43</sup> See the case n° 75-6289, Moore v. City of East Cleveland, U.S. Supreme Court, 431 U.S. 494 (1977), decided on May 31, 1977.

*life. What follows is an overview of the positive obligations states bear in these two areas)*<sup>44</sup>.

[95] Hashingiwe ku bimaze kuvugwa haruguru, Urukiko rurasanga amategeko atandukanye, ibyemezo by'inkiko n'abahanga mu mategeko, byarasobanuye agaciro k'umuryango n'impamvu ugomba kurindwa na Leta, bikaba bihura n'ibiteganywa n'ingingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda yavuzwe haruguru.

**ii. Ihame ryo kurengera umuryango n'uburenganzira bwo kuzungura**

[96] Ingingo ya 17, agace ka 1, y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 ryavuguruwe mu 2015, iteganya ko uburenganzira bwo gushyingiranwa no kugira umuryango burengerwa n'amategeko.

[97] Ingingo ya 18 y'iryo Tegeko Nshinga yibukijwe haruguru, ivuga ko Umuryango ari wo shingiro kamere ry'imbaga y'Abanyarwanda ukaba urengerwa na Leta, ko ababyeyi bombi bafite uburenganzira n'inshingano zo kurera abana babo, Leta igashyiraho amategeko n'inzego bikwiye bishinzwe kurengera umuryango, by'umwihariko umwana na nyina, kugira ngo umuryango ugire ubwisanzure.

[98] Ingingo ya 2 y'Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango, mu gice cy'ibisobanuro by'amagambo, ivuga ko umuryango ari itsinda ry'abantu bafitanye isano hagati yabo ishingiyeye ko bamwe bakomoka ku bandi, ku mategeko cyangwa ku bushyingiranywe; rishobora

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<sup>44</sup> Roagna, Ivana, Protecting the right to respect for private and family life under the European Convention on Human Rights. (2012), p.6.

kuba rigizwe n'ababyeyi, abana, ababakomokaho ndetse n'abo mu miryango y'abashyiranywe nabo.

[99] Hashingiwe ku bimaze kuvugwa haruguru, ni ngombwa kureba uko ihame ryo kurengera umuryango ryumvikana mu gihe hasuzumwa ibijyanye n'izungura. Mu rubanza Pla et Puncernau baburanyemo na Andorre, Urukiko rw'Uburayi rushinzwe kurengera uburenganzira bwa muntu rwavuze ko ari ikintu kimaze kwemerwa ko uburenganzira bwo kuzungura hagati y'ababyeyi n'ababakomokaho bufitanye isano ya hafi n'imibereho y'umuryango irengerwa n'ingingo ya 8 y'Amasezerano y'Ubumwe bw'Ibihugu by'Uburayi ku burenganzira bwa muntu. Rwanavuze ko ibyerekeye izungura nta rage n'iherekanyamutungo uzungurwa ku bushake hagati y'abafitanye isano ya hafi, biba bishingiye ku mibereho yo mu muryango (*It is accepted that the right of succession between children and parents, and between grandchildren and grandparents, was so closely related to family life that it came within the sphere of Article 8 of the European Convention on Human Rights. It has thus considered that matters of intestate succession and voluntary dispositions between near relatives prove to be intimately connected with family life*).<sup>45</sup>

[100] Urwo Rukiko rukomeza ruvuga ko imibereho y'umuryango itareba gusa imibanire y'abantu muri sosiyete cyangwa imibanire ishingiyeye ku muco, ko ahubwo ijyanye n'inyungu zishamikiye ku mutungo, nko gutunga abana no kubishyurira amashuri no kuzigamira imitungo izazungurwa .... (Family life does not include only social, moral or cultural relations, for example in the sphere of children's education; it also comprises interests of a material kind, as is shown by,

<sup>45</sup> Application n° 69498/01, Pla et Puncernau c. Andorre (2004), Para 26.

*amongst other things, the obligations in respect of maintenance and the position occupied in the domestic legal systems of the majority of the Contracting States by the institution of the reserved portion of an estate (Réserve héréditaire)*<sup>46</sup>.

[101] Mu rubanza rwa Bourimi na Netherlands, urwo Rukiko rwakomeje ruvuga ko n'ubwo ingingo ya 8 y'Amasezerano y'Ubumwe bw'Ibihugu by'Uburayi yerekeye uburenganzira bwa muntu itarengera uburenganzira bwo kuzungura nyirizina, ibibazo bijyanye n'izungura nta rage hagati y'ababyeyi n'ababakomokaho bijya mu birengerwa n'iyi ngingo, bitewe n'uko bifitanye isano n'imibereho y'umuryango (*Bien que l'article 8 de la Convention européenne de Droit de l'homme ne garantit pas en tant que tel un droit à hériter, la Cour a admis précédemment que les questions de succession ab intestat entre proches parents entrent dans le champ d'application de cette disposition, dans la mesure où elles représentent un aspect de la vie familiale*).<sup>47</sup>

[102] Hashingiwe ku bimaze kuvugwa haruguru, n'ubwo amategeko yerekeye uburenganzira bwa muntu atarengera uburenganzira bwo kuzungura nk'uburenganzira bwihagije, ibijyanye n'izungura bishobora kureberwa mu ihame ryo kurengera umuryango kubera ko bireba uburenganzira bw'abanyamuryango bwo kuzungurana mu gihe umwe mu bawugize apfuye.

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<sup>46</sup> Ibidem.

<sup>47</sup> Application n° 28369/95, *Bourimi v. the Netherlands*, (2000), Para.35

### iii. Ku bijyanye n'uru rubanza

[103] Nk'uko byibukijwe haruguru, mu kuvuga ko ingingo ya 8, igika cya 2 n'iya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru<sup>48</sup> zinyuranyen'Itegeko Nshinga, Ngendahayo Kabuye abishingira ko nyuma y'urupfurw'umwe mubashakanye, uwapfakaye yegukana imitungo yose akayikoresha icyo ashaka; agasanga biteza umwiryane mu muryango n'impaka za hato na hato, ariyo mpamvu avuga ko ingingo yaregeye zibangamiye ihame ryo kurengera umuryango.

[104] Impamvu yatumye hashyirwaho ingingo zaregewe ko zinyuranyije n'Itegeko Nshinga yasobanuwe mu bika bya 61-68 by'uru rubanza. Nanone kandi mu bika bya 72-73 by'uru rubanza, hibukijwe ko n'ubwo mu Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryamaze kuvugwa, mu ngingo yaryo ya 8, igika cya 2 n'iya 76 (1°), ryateganyije ko mu gihe umwe mu bashyingiranywe bakanasezerana ivangamutungo rusange apfuye, usigaye yegukana umutungo wose, ritagarukiye aho.

[105] Muri iryo Tegeko hari ingingo zinyuranye zigaragaza ko inyungu z'abandi bazungura zitaweho. Urugero n'uko inyungu z'abana zazirikanywe kuko Itegeko ryahaye uwapfakaye inshingano zo gukomeza kubitaho, baba abo yabyaranye na nyakwigendera cyangwa ababyawe na nyakwigendera wenyine. Byongeye kandi, iryo Tegeko ryateganyije ko izungura ritangira iyo uwapfakaye yongeye gushaka, rinateganya ibihano ku wapfakaye utuzuzwa inshingano ze nk'uko bikubiye mu ngingo ya 76 (6°) yasobanuwe mu gika cya 69. Nk'uko nanone byibukijwe haruguru, iryo Tegeko ryanateganyije ikigero cy'umutungo

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<sup>48</sup> Izi ngingo zasesenguwe mu gice cy'urubanza kirebana n'uburenganzira ku mutungo.

uwapfakaye atemerewe gutanga cyangwa kuraga nk'uko byasobanuwe mu ngingo ya 49 yavuzwe mu gika cya 70.

[106] Urukiko rurasanga ibimaze kuvugwa bigamije gukumira no kugabanya amakimbirane yajyaga avuka ashingiye ku izungura, mu rwego rwo kurengera ubumwe n'ubusugire bw'umuryango n'abawugize. Urukiko rurasanga kandi, nk'uko byibukijwe haruguru, Itegeko risobanura neza uko abafite uburenganzira bwo kuzungura bagenda bakurikirana mu gihe cyo kuzungura. Ikibazo cyari kuba iyo uwapfakaye yegukana umutungo wose nyuma y'urupfu rw'uwo bashakanye, ntiha gire n'umwe mu bagize umuryango uzagira uburenganzira bwo kuzungura.

[107] Hashingiwe ku bisobanuro byose byatanzwe haruguru, Urukiko rurasanga ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura zitanyuranyije n'ingingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015.

**3 Kumenya niba ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura. zinyuranyije n'ingingo ya 34 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015**

[108] Ngendahayo Kabuye avuga ko ingingo ya 8, igika cya 2 n'ya 76 (1o) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, zinyuranyije n'ingingo ya 34 z'Itegeko Nshinga rya

Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015, kubera ko uwapfakaye ahabwa uburenganzira bwo kwikubira umutungo wenyine yitwaje ko yasezeranye ivangamutungo rusange, hakirengagizwa uburenganzira bw'abandi bazungura b'uwapfuye cyane cyane abana batabyawe n'uwapfakaye.

[109] Akomeza asobanura ko ingingo ya 34 y'Itegeko Nshinga ivuga ko buri muntu afite uburenganzira ku mutungo bwite, waba uwe ku giti cye cyangwa uwo asangiye n'abandi, ndetse ko umutungo bwite, uw'umuntu ku giti cye cyangwa uwo asangiye n'abandi utavogerwa, ko uburenganzira ku mutungo budahungabanywa keretse ku mpamvu z'inyungu rusange kandi hakurikijwe ibiteganywa n'amategeko. Avuga ko kuzungura ari uguhabwa uburenganzira n'inshingano ku mutungo n'imyenda by'uwapfuye, ko kwambura bamwe uburenganzira bwo kuzungura, asanga ari ukubambura uburenganzira ku mutungo kandi kuzungura ari bumwe mu burenganzira bw'ibanze (*fundamental rights*).

[110] Anavuga ko irangashingiro ry'Itegeko Nshinga rivuga ko abanyarwanda biyemeje kubaka Leta igendera ku mategeko, ishingiye ku iyubahirizwa ry'uburenganzira bwa muntu, ku bwisanzure no ku ihame ry'uko Abanyarwanda bose bareshya imbere y'amategeko n'iry'uburinganire hagati y'abagore n'abagabo, ko rero ibi bitagerwaho hariho bamwe bahezwa mu burenganzira bwabo bw'ibanze n'ingingo zimwe z'amategeko.

[111] Ngendahayo Kabuye avuga kandi ko amasezerano Mpuzamahanga atandukanye u Rwanda rwashyizeho umukono, arengera uburenganzira bw'ibanze ku mutungo, nk'ingingo ya 14 y'amasezerano Nyafurika yerekeye uburenganzira bwa muntu n'ubw'abatwage, ingingo ya 9 ya African Youth Charter, iya 5

y'Itangazo rya *Pretoria (Pretoria Declaration on Economic, Social and Cultural Rights in Africa* rizwi nka "*Pretoria Declaration* ").

[112] Akomeza avuga ko kutagira uburenganzira bungana ku mutungo w'uwapfuye ari ukwamburwa uburenganzira bw'ibanze kandi uwambuwe ubwo burenganzira akaba adashobora kugira imibereho myiza kubera ko adashobora kubona uburenganzira bwo kugira aho aba, uburenganzira bwo kubona ibimutunga, uburenganzira bwo kugira ubutaka (*right to land*), uburenganzira bwo kwivuza, uburenganzira bwo kwiga; uburenganzira ku mazi meza n'isuku.

[113] Me Umulisa Kayigamba Alice umwunganira avuga ko ingingo ya 8, igika cya 2 n'ya 76 (1o) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryibukijwe haruguru zituma uwapfakaye yikubira imitungo yose akigizayo abandi bazungura cyane cyane iyo atabafiteho inshingano zo kubarera, ko kandi hari n'igihe aba afite inshingano zo kubarera ariko ntazuzuze nk'uko bisabwa ugasanga habaye amakimbirane mu muryango ndetse hakavuka imanza za hatu na hatu ari yo mpamvu bemeza ko izo ngingo zinyuranyije n'ingingo ya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda.

[114] Me Kayitesi Pétronille, uhagarariye Leta y'u Rwanda, avuga ko ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 zitanyuranyije n'ingingo ya 34 y'Itegeko Nshinga rya Repubulika y'u Rwanda kuko zitambura abazungura uburenganzira ku mutungo ngo uhabwe uwapfakaye nk'uko Ngendahayo Kabuye abivuga, kuko n'ubwo uwapfakaye yegukana umutungo wose, agumana inshingano zo kurera abana yabyaranye na nyakwigendera n'ab'uwapfuye bemewe

n'amategeko, bakazazungura igihe giteganywa n'amategeko kigeze.

[115] Me Kabibi Speciose, uhagarariye Leta y'u Rwanda, yongeraho ko kuba itegeko ryaragennye ko abashyingiranywe bazungurwa ari uko bombi bamaze gupfa, cyangwa uwapfakaye ashatse ntaho bibangamira ingingo ya 34 y'Itegeko Nshinga kuko umutungo w'abashyingiranywe ari uwabo bombi, atari uw'abazungura. Asanga rero uwo mutungo udakwiye kuvogerwa mu buryo ubwo ari bwo bwose mu gihe abashyingiranywe bafatanyije kuwushaka bakirihobaba bombi cyangwa umwe muri bo.

[116] Uwineza Odette na Dr Turamwishimiye Rose, bahagarariye Ishuri ry'amategeko rya Kaminuza y'u Rwanda, bavuga ko ingingo ya 8, igika cya 2 n'iya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 zibangamiye uburenganzira bw'abandi bazungura baba bafite ku mutungo uzungurwa kuko wikubirwa n'uwapfakaye bikaba binyuranye n'ingingo ya 34 y'Itegeko Nshinga rya Repubulika y'u Rwanda. Basaba ko mu gihe izi ngingo zaba zitaravugururwa, Urukiko rw'lkirenga rwatanga umurongo waba ugenderwaho kugira ngo uburenganzira bw'abazungura bose bwubahirizwe. Bavuga ko nk'aho itegeko riteganywa ko umupfakazi yegukana umutungo wose, hagenwa ko ahabwa inshingano zo kuwucunga ariko hakagaragazwa igihe ntarengwa yawucungamo hanyuma abazungura bose bakazawugabana.

## UKO URUKIKO RUBIBONA

### i. Ihame ryo kugira uburenganzira ku mutungo

[117] Ihame ryo kugira uburenganzira ku mutungo (*the right to property/ droit de propriété*) rikubiye mu ngingo ya 34 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, iteganya ko buri muntu afite uburenganzira ku mutungo bwite, waba uwe ku giti cye cyangwa uwo asangiye n'abandi. Umutungo bwite, uw'umuntu ku giti cye cyangwa uwo asangiye n'abandi ntuvogerwa. Uburenganzira ku mutungo ntibuhungabanywa keretse ku mpamvu z'inyungu rusange kandi hakurikijwe ibiteganywa n'amategeko.

[118] Iryo hame kandi riteganyijwe mu masezerano mpuzamahanga u Rwanda rwashyizeho umukono. Urugero ni ingingo ya 17 y'Itangazo Mpuzamahanga ku burenganzira bwa muntu iteganya ko buri wese, byaba ari ku giti cye cyangwa afatanyije n'abandi, afite uburenganzira ku mutungo kandi ntawe ugomba kuwumubuzaho ubwo burenganzira (*Toute personne, aussi bien seule qu'en collectivité, a droit à la propriété. Nul ne peut être arbitrairement privé de sa propriété*)<sup>49</sup>.

[119] Amasezerano Nyafurika ku burenganzira bwa muntu n'ubw'abaturage, ateganya mu ngingo ya 14, ko buri muntu afite uburenganzira ku mutungo. Uburenganzira ku mutungo ntibuhungabanywa keretse ku mpamvu z'inyungu rusange kandi hakurikijwe ibiteganywa n'amategeko (*Le droit de propriété est garanti. Il ne peut y être porté atteinte que par nécessité publique*

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<sup>49</sup> La Déclaration Universelle des Droits de l'Homme, article 17.

*ou dans l'intérêt général de la collectivité, ce, conformément aux dispositions des lois appropriées)*<sup>50</sup>.

[120] Uburenganzira ku mutungo bwanashimangiwe mu yandi masezerano areba ibihugu byo ku yindi migabane. Ingingo ya 1 y'amasezerano y'inyongera numero ya 1 ku Masezerano y'ibihugu bw'Iburayi ku burenganzira bwa muntu iteganya ko umuntu wese afite uburenganzira ku mutungo we, ko ntawe ushobora kuwuvutswa keretse ku mpamvu z'inyungu rusange<sup>51</sup> (*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law*).

[121] Mu nyandiko igamije gufasha kumva ingingo ya 1 y'Amasezerano y'inyongera numero ya 1 yavuzwe haruguru, hasobanurwa ko umutungo uvugwa muri ayo masezerano usobanuye ibintu binyuranye, birimo ibintu umuntu atunze (biens actuels), ibifite agaciro runaka birimo imyenda afitiwe n'abandi, iyo umuntu yizeye neza kuzishyurwa. Iyo nyandiko ikomeza isobanura ko umutungo ukubiyemo uburenganzira ku mutungo utimukanwa, uwimukanwa n'izindi nyungu zituruka ku mutungo umuntu afite (*La notion de « biens » figurant au premier alinéa de l'article 1 du Protocole N° 1 est une notion autonome, qui peut recouvrir tant des « biens actuels » que des valeurs patrimoniales, y compris des créances en vertu desquelles le requérant peut prétendre avoir au moins une « espérance légitime ». Les « biens » incluent les droits réels et les droits personnels. Ce terme*

<sup>50</sup> La Charte Africaine des Droits de l'Homme et des Peuples, article 14.

<sup>51</sup> Article 1 of Protocol n° 1 to the European Convention on Human Rights.

*englobe les immeubles et les biens meubles ainsi que les autres intérêts patrimoniaux).*<sup>52</sup>

[122] Ingingo ya 21 y'Amasezerano y'Ibihugu by'Amerika ku burenganzira bwa muntu nayo ivuga ko buri muntu afite uburenganzira bwo gukoresha no kwinezeza mu mutungo we. Itegeko ariko rishobora gukuraho ubwo burenganzira iyo rigamije kurengera inyungu rusange... (*Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society...*).<sup>53</sup>

[123] Ijambo umutungo ryasobanuwe mu rubanza rwa Ivcher-Bronstein na Peru aho Urukiko rushinzwe iyubahirizwa ry'uburenganzira bwa muntu mu bihugu bya Amerika yo hagati n'iy'epfo rwavuze ko umutungo ushobora gusobanurwa nk'ibintu byose umuntu ashobora gutunga harimo n'uburenganzira bwose bushobora gufatwa nk'umutungo w'umuntu harimo umutungo wimukanwa, utimukanwa, ufatika, udafatika cyangwa se ikindi kintu cyose bigaragara ko gifite agaciro (*Property can be defined as those material things which can be possessed, as well as any right which may be part of a person's patrimony; that concept includes all movables and immovables, corporeal and incorporeal elements and any other intangible object capable of having value*).<sup>54</sup>

[124] Mu manza zacye, inkiko nazo zagiye zisobanura ihame ry'uburenganzira ku mutungo. Urugero ni urubanza Marckx

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<sup>52</sup> Guide sur l'article 1 du Protocole n° 1 à la Convention Européenne des droits de l'homme: Protection de la propriété, 2022, P.7

<sup>53</sup> American Convention on Human Rights, article 21.

<sup>54</sup> Ivcher Bronstein case vs Peru, Inter-American Court of Human Rights of February 6, 2001 (Merits, Reparations and Costs) para. 122.

yaburanyemo n'Ububirigi mu Rukiko rw'Ibihugu by'Iburayi rushinzwe kurengera uburenganzira bwa muntu. Ku bijyanye n'amategeko y'Ububirigi yerekeye abana babyawe n'umwe mu bashakanye byemewe n'amategeko, Urwo Rukiko rwavuze ko mu rwego rwo kubungabunga uburenganzira buri muntu afite ku mutungo, ingingo ya 1 y'amasezerano y'inyongera numero 1 yavuzwe haruguru, iteganya ko ibijyanye n'uburenganzira ku mutungo ari uburenganzira umuntu afite bwo gukoresha umutungo we uko abyumva, ko kandi kuva kera cyari ikintu cy'ingenzi cyane mu bijyanye n'uburenganzira ku mutungo (*En reconnaissance à chacun le droit au respect de ses biens, l'article 1 garantit en substance le droit de propriété. ...le droit de disposer de ses biens qui constitue un élément traditionnel fondamental du droit de propriété*).<sup>55</sup>

[125] Mu rubanza rwa Hutten-Czapska v Poland, urwo Rukiko rwibukije ko ihame rikuru ku bijyanye n'uburenganzira ku mutungo, ari uko ari ntavogerwa (*peaceful enjoyment of property: usus, fructus, abusus*); ko iyo hari ikirego cy'uko ubwo burenganzira butubahirijwe, hagomba gusuzumwa niba ibyakozwe kuri uwo mutungo byarakurikije amategeko kandi ko byari bishingiye ku mpamvu zemewe kandi zumvikana (*Any interference with the enjoyment of a right or freedom must pursue a legitimate aim*).<sup>56</sup>

[126] Inkiko mpuzamahanga zirimo Urukiko rw'Amerika ndetse n'urw'Afurika zishinzwe uburenganzira bwa muntu zagiye zigaragaza kenshi ko kugira uburenganzira ku mutungo bifasha abantu guharanira uburenganzira bwabo, bikarengera

<sup>55</sup> Marckx c. Belgique, arrêt du 13 juin 1979, Série A n° 31, op.cit, para 49.

<sup>56</sup> Application n° 35014/97, *Hutten-Czapska v Poland [GC]* ECHR 2006-VIII, para 165.

imiryango n'abaturage gakondo, bikanarengera n'abandi bantu bose bafite amateka yihariye abahuza n'umutungo wabo.<sup>57</sup>

[127] Abahanga mu mategeko nabo batanze ibisobanuro bituma uburenganzira ku mutungo burushaho kumvikana. Muri urwo rwego, mu gitabo cyabo Property *Examples & Explanations*, Barlow Burke na Joseph Snoe bavuze ko uburenganzira ku mutungo atari uburenganzira buba hagati y'umuntu n'ikintu atunze, ko ahubwo aba ari n'uburenganzira buba hagati y'abantu ku bijyanye n'ikintu umuntu afiteho uburenganzira. Ubwo burenganzira bwe butuma akumira abandi batemerewe gukoresha icyo kintu, kugikodesha, kukibyaza umusaruro mu buryo bunyuranye, kukigurisha cyangwa se kugitanga. Ibi byose rero bishoboka gusa iyo umuntu afite uburenganzira busobanutse bihagije ku kintu ku buryo abandi bantu bose baba bagomba kubwubaha (*Property law is not about one person's relationship to a thing. Instead, it is about relationship between and among persons with regard to a thing property permits one person to exclude another from using a thing; to use it personally to gain rents, profits or income from it; to sell it; or to give it by will to one relative and not another. All this is possible only when one's relationship to property is clear insofar as others are bound to respect it*).<sup>58</sup>

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<sup>57</sup> Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Series C N° 79, Inter-American Court of Human Rights, August 31, 2001; urubanza rwa Center for Minority Rights in Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, Communication No. 276/2003, African Commission on Human and Peoples' Rights, February 4, 2010; African Commission on Human and Peoples' Rights v. Kenya, Application No. 006/2012, African Court on Human and Peoples' Rights, May 26, 2017.

<sup>58</sup> Burke, D. Barlow, and Joseph A. Snoe. Property: Examples & Explanations. Wolters Kluwer, 2008, p 5.

[128] John G. Sprankling mu gitabo cye Understanding Property Law nawe yashimangiye ko ubusanzwe “umutungo” aba ari uruhurirane rw’uburenganzira (*It is common to describe property as a bundle of rights*). Uburenganzira bwo gukumira abandi ku kintu, ubwo kugitanga, ubwo kugitunga no kugikoresha ndetse n’uburenganzira bwo kugikuraho (*The right to exclude; The right to transfer; The right to possess and use; and The right to destroy*).<sup>59</sup>

[129] Hashingiwe ku bisobanuro byatanzwe haruguru, biragaragara ko uburenganzira umuntu afite ku mutungo bugomba kubahwa na buri wese, nyiri umutungo akaba awugiraho uburenganzira busesuye, kandi akaba ari ntawe ushobora kuwumuvutsa keretse ku mpamvu z’inyungu rusange kandi hubahirijwe amategeko.

**ii. Umuntu ashobora kwemeza ko afite uburenganzira ku mutungo ashingiye ku cyizere cyo kuzawutunga?**

[130] Igisubizo kuri iki kibazo kiboneka mu manza zaciwe no bisobanuro bitangwa n’abahanga mu mategeko. Mu rubanza Marckx yaburanye n’Ububirigi, Urukiko rw’ibihugu by’Iburayi rushinzwe kurengera uburenganzira bwa muntu rwasobanuye ko ingingo ya 1 y’Amasezerano nomero ya 1 y’Amasezerano y’ibihugu by’Iburayi ku burenganzira bwa muntu, yibanda ku kubahiriza uburenganzira bwa buri muntu ku mutungo we, ibi bikaba bigarukira ku mutungo umuntu atunze gusa kuko ubwo burenganzira butabarirwamo iby’imitungo azazungura cyangwa impano azahabwa (*l’article 1 du Protocole numéro 1 se borne à consacrer le droit de chacun au respect de "ses" biens, ne vaut*

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<sup>59</sup> Sprankling, John G., Understanding property law, LexisNexis, 2012, p. 4.

*par conséquent que pour des biens actuels et ne garantit pas le droit d'en acquérir par voie de succession ab intestat ou de libéralités).*<sup>60</sup>

[131] Ibyo urwo Rukiko rwasobanuye rwongeye kubishimangira mu rubanza rwa Van der Mussele aho rwavuze ko uburenganzira buriho ari bwo bwonyine burengerwa n'ingingo ya 1 y'Amasezerano numéro 1 y'inyongera ku Masezerano y'ibihugu bw'Iburayi ku burenganzira bwa muntu , ko kandi iyi ngingo itarengera icyizere cy'umuntu cyo kuzatunga ibintu (*La Cour estime que seuls les droits actuels sont garantis par l'art.1 du Protocole additionnel et que les espérances d'acquérir certains biens ne jouissent pas de protection*).<sup>61</sup>

[132] Hari igihe umutungo wo mu gihe kizaza (*revenu futur*) urengerwa n'amategeko, nko mu gihe umuntu yawutsindiye cyangwa hari ibimenyetso bigaragaza ko hari umwenda wizewe afitiwe n'abandi. Hari n'igihe amategeko arengera icyizere gifite icyo gishingiyeho (*espérance légitime*). Kugira ngo ariko inkiko zemeze ko umuntu afite uburenganzira ku mutungo bushingiye ku bimaze kuvugwa, hagomba kuba hari ibimenyetso bifatika bigaragaza nta gushidikanya ko uburenganzira afite kuri ibyo bintu bugomba kurengerwa n'amategeko. Inkiko zabisobanuye muri aya magambo: "*Un revenu futur ne peut ainsi être considéré comme un bien que s'il a déjà été gagné ou s'il fait l'objet d'une créance certaine*".<sup>62</sup> "*Pour que l'espérance soit "légitime", elle doit être plus qu'un simple espoir et se fonder sur une disposition juridique ou un acte juridique tel qu'une décision judiciaire portant sur l'intérêt patrimonial en question. Dans toute une*

<sup>60</sup> Marckx c. Belgique, arrêt du 13 juin 1979, op.cit, par.50.

<sup>61</sup> Requête n° 8919/80, Van der Mussele, (23 novembre 1983), para .48.

<sup>62</sup> Requête n° 76639/11, Denisov c. Ukraine, (25 septembre 2018), para. 137.

*série d'affaires, la Cour a jugé que les requérants n'avaient pas d'espérance légitime lorsque l'on ne pouvait considérer qu'ils possédaient de manière suffisamment établie une créance immédiatement exigible.*<sup>63</sup>

[133] Inkiko zanasobanuye ko icyo cyizere ubwacyo atari cyo gifatwa nk'umutungo ugomba kurengerwa, ko ahubwo igituma kirengerwa ari uko gishingiye ku burengazira ku mutungo umuntu afite (*L'«espérance légitime» n'était pas en elle-même constitutive d'un intérêt patrimonial; elle se rapportait à la manière dont la créance qualifiée de «valeur patrimoniale» serait traitée en droit interne*).<sup>64</sup>

[134] Ibyasobanuwe mu byemezo by'Inkiko byavuzwe haruguru bihura n'ibisobanuro bitangwa n'abahanga mu mategeko. Mariana Karadjova avuga ko umutungo ari icyo umuntu atunze. Yongeraho ko uburenganzira bwo kuzungura ari uburenganzira bushobora kuzabaho ariko umuntu atari yagira, kuko kugira ngo abugire hari ibyo agomba kuba yujuje, ko ariyo mpamvu bene ubwo burenganzira bushyirwa mu cyiciro cy'uburenganzira butari ubw'ibanze (*...Est considéré comme bien ce qui est déjà acquis. Les droits d'héritage sont plutôt potentiels. Ils ne sont pas encore acquis et dépendent d'un événement futur qui n'est pas déterminé dans le temps. La dépendance de ces droits de certaines conditions les place dans l'ordre des droits non-fondamentaux*).<sup>65</sup>

<sup>63</sup> Requête n° 44912/98, Kopecky c. Slovaquie, (28 septembre 2004), para.49.

<sup>64</sup> Requête n° 1513/03, Draon c. France, (6 octobre 2005), para. 68.

<sup>65</sup> Mariana Karadjova, la protection du droit de propriété au niveau européen et son importance pour l'harmonisation des pratiques des cours constitutionnelles, Bulgarie, p.4, para 1.

[135] Monica Carss-Frisk nawe ashimangira ko itegeko ritarengera uburenganzira butarabaho, ko ingingo ya 1 y'Umugereka wa 1 w'amasezerano ikoreshwa gusa iyo umuntu ashobora kugaragaza uburenganzira afite ku mutungo runaka atunze. Yongeraho ko iyo ngingo itarengera uburenganzira bwo kubona umutungo (*le droit d'acquérir une propriété à l'avenir n'est pas garanti. La protection de l'article 1 du Protocole n° 1 ne s'applique que lorsqu'il est possible de faire valoir un droit sur le bien concerné. L'article 1 ne protège pas le droit d'acquérir un bien*).<sup>66</sup>

[136] Ibisobanuro byatanzwe haruguru ku ihame ry'uburenganzira ku mutungo no ku burenganzira budashobora kwitiranywa n'uburenganzira ku mutungo, byumvikanisha ibintu by'ingenzi bikurikira:

- Umuntu wese afite uburenganzira ku mutungo;
- Ubwo burenganzira buzitirwa gusa n'inyungu rusange kandi hubahirijwe amategeko;
- Uburenganzira ku mutungo burengerwa n'itegeko ni ubujyanye n'ibintu biriho umuntu atunze;
- Itegeko ntirirengera uburenganzira bwo mu gihe kizaza/butarabaho;
- Uburenganzira ku izungura ubwabwo ntibufatwa nk'uburenganzira bw'ibanze ku mutungo.

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<sup>66</sup> Carss-Frisk, Monica. The right to property: A guide to the implementation of Article 1 of Protocol n° 1 to the European Convention on Human Rights. Council of Europe, 2001.

### iii. Ku bijyanye n'uru rubanza

[137] Nk'uko byibukijwe haruguru, mu kuvuga ko ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru zinyuranye n'Itegeko Nshinga, Ngendahayo Kabuye abishingira ku mpamvu y'uko asanga izo ngingo zituma uwapfakaye agira uburenganzira bwo kwikubira umutungo zikambura abandi bazungura uburenganzira bwo kuzungura.

[138] Ibikubiye muri izo ngingo nibyo bigiye gusesengurwa, bihuzwe na zimwe mu ngingo z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryamaze kuvugwa, hanarebwe igihe abazungura babobonera uburenganzira ku mutungo uba ugomba kuzungurwa, kugira ngo hasuzumwe niba koko ingingo zaregewe zinyuranyije n'ingingo ya 34 y'Itegeko Nshinga.

[139] Ingingo ya 8, igika cya 2, n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryibukijwe haruguru zihuriza ku kuba, iyo umwe mu bashakanye barasezeranye ivangamutungo rusange apfuye, usigaye yegukana umutungo bari basangiye. Ingingo ya 76 1° yongeraho ibindi bisobanuro bitaboneka mu ngingo ya 8, igika cya 2, aho ivuga ko uwapfakaye wegukanye umutungo asigaragana inshingano yo kurera abana yabyaranye na nyakwigendera, n'ababyawe n'uwapfuye.

[140] Ingingo ya 51 iteganya ko kuzungura ari uguhabwa uburenganzira n'inshingano ku mutungo n'imyenda by'uwapfuye. Ingingo ya 52<sup>67</sup> y'iryo Tegeko, mu byo iteganya harimo ko izungura ry'uwapfuye ritangira iyo uzungurwa amaze gupfa. icyakora, iyo ngingo iteganya ko izungura

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<sup>67</sup> Iraza kugarukwaho nyuma ku buryo burambuye

ry'abashyingiranywe barasezeranye ivangamutungo rusange ritangira ari uko bombi bapfuye cyangwa umwe yongeye gushyingirwa keretse iyo itegeko ribiteganya ukundi.

[141] Ingingo ya 55 iteganya ko guhera ku munsu izungura ryatangiriyeho, umuzungura, yaba uzungura ku bw'irage cyangwa ku bw'itegeko yitwa umuzungura iyo abyemeye, naho ingingo ya 56<sup>68</sup> n'ya 57<sup>69</sup> zigateganya impamvu zatuma habaho kwamburwa nta mpaka uburenganzira bwo kuzungura. Inkurikizi zo kwamburwa uburenganzira bwo kuzungura n'uko uwari

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<sup>68</sup> Ingingo ya 56 iteganya ko “yamburwa nta mpaka uburenganzira bwo kuzungura, umuzungura wese: 1° wakatiwe n'inkiko kubera ko yishe abishaka cyangwa yagambiriye kwica uzungurwa; 2° wakatiwe n'inkiko kubera ko yabeshyeye cyangwa yatanzeho uzungurwa ubuhamya bw'ibinyoma bwashoboraga gutuma akatirwa n'inkiko igifungo nibura cy'amezi atandatu (6); 3° wataye nkana umwana we uzungurwa, wamugiriye igikorwa cy'urukozasoni, wamwangije imyanya ndangagitsina, wamusambanyije cyangwa wamushoye mu busambanyi. icyemezo cy'urukiko cyonyine kirahagije kugira ngo umuzungura wemewe n'itegeko wakoze kimwe mu byaha byavuzwe mu gika kibanziriza iki, avanwe mu bazungura.

<sup>69</sup> Naho iya 57 iteganya ko ashobora kwamburwa uburenganzira bwo kuzungura, umuzungura wese wemewe n'itegeko cyangwa uwahawe indagano wese: 1° wacanye umubano wa kibyezi n'uwapfuye igihe yari akiriho; 2° wirengagije abigambiriye kandi yari ashoboye kwita k'uzungurwa mu gihe yari abikeneye; 3° witwaje ubushobozi buke bw'uzungurwa, ari ubwo mu mutwe cyangwa ku mubiri, akiharira igice cyangwa ibizungurwa byose; 4° warigishije nkana, wacagaguye cyangwa wangije irage rya nyuma ry'uwapfuye atabimwemereye, cyangwa wihaye uburenganzira agendeye ku irage ryavanweho cyangwa ryataye agaciro. Ufite uburenganzira bwo kuzungura wese ashobora, mu gihekitaranze umwaka umwe (1) uhaye ku munsu izungura ryatangiriyeho cyangwa ku munsu yamenyeyeho imwe muri izi mpamvu, gusaba urukiko rubifitiye ububasha kwambura uburenganzira bwo kuzungura ugomba kuzungura cyangwa ugomba guhabwa indagano, wateje imwe mu mpamvu zavuzwe mu gika cya mbere cy'iyi ngingo. Ikirego gitangwa muburyo bw'ibirego byihutirwa.

ubufite avanwa mu mubare w'abazungura b'uwapfuye nk'uko biteganywa n'ingingo ya 59 y'iryo tegeko.

[142] Ingingo ya 73<sup>70</sup> iteganya urutonde rw'abazungura bahoraho, naho iya 75 igaha uwapfakaye uburenganzira bwo kuzungura uwo bari barashyiringiranywe ikanasobanura uko azungura.

[143] Ingingo ya 76 (1°) nk'uko yibukijwe haruguru, iha uwapfakaye uburenganzira bwo kwegukana umutungo iyo uwo basezeranye ivangamutungo rusange apfuye, akubahiriza inshingano yo kurera abana babo n'ab'uwapfuye bemewe n'amategeko. Ibika bikurikiraho bisobanura uko bigenda iyo abashyiranywe bombi bapfuye, bari bafitanye abana cyangwa batabafite. Binasobanura uko izungura rikorwa mu gihe uwapfakaye yongeye gushaka, yaba afitanye abana n'uwapfuye cyangwa se batabafitanye, n'igihe hari abana bakomoka k'uwapfuye.

[144] Ingingo ya 83-87 ziteganya uburyo imitungo izungurwa yegeeranywa ndetse n'uburyo ibarurwa, inshingano y'inama ishinzwe iby'izungura, ushinzwe kwegeranya umutungo uzungurwa no kwishyura imyenda ikurwa mu mutungo uzungurwa. Mu gihe abazungura bamaze kuboneka ndetse

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<sup>70</sup> Ivuga ko mu izungura hakurikizwa urutonde rukurikira: 1° abana b'uwapfuye; 2° se na nyina b'uwapfuye; 3° abavandimwe b'uwapfuye basangiye ababyeyi bombi; 4° abavandimwe b'uwapfuye basangiye umubyeyi umwe; 5° ba sekuru na nyirakuru b'uwapfuye; 6° ba se wabo, ba nyirasenge, ba nyirarume na ba nyina wabo b'uwapfuye. Haseguriwe ibiteganywa n'ingingo ya 41 y'iri tegeko, buri rwego rw'abazungura ruzitira izindi mu rutonde rw'izungura. Abana b'uwapfuye basangiye ababyeyi bombi bazungura mu gisekuru cya se n'icya nyina, naho abana bahuje umubyeyi umwe gusa bazungura mu gisekuru cy'umubyeyi wabo gusa

n'umutungo uzungurwa wabonetse, ingingo ya 94-99 ziteganywa uburyo uwo mutungo ugabanywa.

[145] Urukiko rurasanga ibikubiye mu ngingo zavuzwe haruguru byerekana ko n'ubwo izungura muri rusange ritangira nyakwigendera akimara gupfa, ntabwo mu by'ukuri icyo gihe umutungo uzungurwa uba wari wamenyekana, abawuzungura nabo baba bataramenyekana, ndetse icyo buri muzungura azegukana nacyo kiba kitaramenyekana ku buryo atabasha kukigiraho uburenganzira busesuye (*usus, fructus na abusus*). Ni ukuvuga rero ko igihe cyose izungura ritatangira, icyo abazungura baba bafite gusa ari icyizere cy'uko mu gihe kizaza bashobora kuzagira uburenganzira ku mutungo wasizwe na nyakwigendera, bitandukanye no kuba babufite muri ako kanya.

[146] Ikindi kandi, ku bijyanye n'abashakanye barasezeranye ivangamutungo rusange, hari umwihariko itegeko ryabageneye ugereranyije n'abandi bashyingiranywe bahisemo ubundi buryo bwo gucunga umutungo bafite, kuko nk'uko byibukijwe, iyo umwe apfuye, usigaye yegukana umutungo wose, izungura rigatangira ari uko abashakanye bombi bapfuye cyangwa uwapfakaye yongeye gushyingirwa.

[147] Ikiboneka mu bisobanuro Ngendahayo Kabuye yatanze, ni uko uburenganzira ku mutungo avuga ko butubahirijwe ari ubwo abazungura ba nyakwigendera, batari uwapfakaye, bizera kuzagira mu gihe cyo kuzungura. Nyamara nk'uko byasobanuwe mu bika byabanje, uburenganzira ku mutungo bujyanye n'ikintu cyangwa ibintu umuntu afite/atunze, itegeko rikaba ritarengera uburenganzira butarabaho. Ibi bisobanuye rero ko uburenganzira bw'abazungura bumenyekana nyuma y'uko izungura ritangiye, ari nabwo hamenyekana abazungura nyakuri n'uburyo bagenda bakurikirana.

[148] Ku bireba by'umwihariko izungura ry'abashyingiranywe bari barasezeranye ivangamutungo rusange, nk'uko byibukijwe haruguru, ritangira ari uko bombi bapfuye cyangwa uwapfakaye yongeye gushyingirwa. Ibyo bivuze ko mu gihe umwe mu bashyingiranywe yapfuye, uwapfakaye akaba akiriho cyangwa atarongera gushyingirwa, nta n'umwe mu bazungura wavuga ko yari yagira uburenganzira ku mutungo burengerwa n'ingingo ya 34 y'Itegeko Nshinga.

[149] Uretse ibisobanuro byatanzwe haruguru, Urukiko rurasanga nta n'aho bigaragara ko ingingo zaregewe ko zinyuranyije n'Itegeko Nshinga zambura bamwe uburenganzira bwo kuzungura nk'uko Ngendahayo Kabuye abivuga, kubera ko nk'uko byagaragajwe haruguru, ingingo ya 75 y'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryibukijwe haruguru yerekana uko abazungura bo ku nzego zitandukanye bagenda bakurikirana mu kuzungura iyo igihe cy'izungura kigeze.

[150] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rurasanga ingingo ya 8, igika cya 2 n'iya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura zitanyuranyije n'ingingo ya 34 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015.

**4. Kumenya niba ingingo ya 52, igika cya 3 n'ya 75 z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, zinyuranyije n'ingingo ya 15, iya 18 n'ya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015**

[151] Ngendahayo Kabuye avuga ko ingingo ya 52, igika cya 3 y'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura zinyuranyije n'ingingo ya 15, iya 18 n'ya 34 z'itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04/06/2003 ryavuguruwe mu 2015.

[152] Akomeza avuga ko umuryango ugizwe n'abantu benshi harimo umugabo n'umugore n'abana babakomokaho, ariko ko hashobora kubaho n'abana bavuka kuri umwe mu bashyingiranywe, hakaba n'abantu bafitanye amasano n'uwapfuye, nyamara ko abo bose itegeko ritabarengera kimwe. Asobanura ko kuba uwapfakaye ahabwa uburenganzira bwo kugumana umutungo wose nyuma y'urupfu rw'uwo bashyingiranywe, akawukoresha icyo ashaka kandi n'abandi bazungura bawukeneye, nyuma akaba umuzungura w'uwo bari barashyingiranywe, bigaragaza ko yahawe uburenganzira bw'umurengera ugereranyije n'abandi bazungura, akaba ari nabyo bikunda guteza amakimbirane mu muryango kandi ihame ari uko Leta ariyo igomba gukumira amakimbirane no kurengera umuryango. Asoza avuga ko Leta igomba guha abazungura bose uburenganzira ku mutungo wasizwe n'umubyeyi wabo aho kugira ngo wikubirwe n'uwapfakaye wenyine.

[153] Me Umulisa Kayigamba Alice umwunganira, avuga ko anenga itegeko ry'izungura kuba ryarateganyije ko iyo umwe mu

bashakanye apfuye umutungo wose wegukanwa n'uwapfakaye, akaba yawugurisha cyangwa akawukoresha ikindi ashatse cyose, mu gihe abandi bazungura badafite uburenganzira kuri uwo mutungo. Avuga kandi ko kuba mu mutungo uzungurwa haba harimo 50% y'umugore na 50% y'umugabo ariko umwe yapfa, usigaye bakamwongerera mu bagomba kuzungura 50% y'uwapfuye, bigaragaza ko uwapfakaye ahabwa uburenganzira bw'umurengera ku mutungo wa nyakwigendera ugereranyije n'abandi bazungura, akaba aribyo biteza amakimbirane mu muryango. Ashingiye kuri izo mpamvu zose, yemeza ko ingingo ya 52, igika cya 3 n'ya 75 z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru zinyuranyije n'ingingo ya 15, iya 18 n'ya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavugururwe mu 2015.

[154] Me Kayitesi Petronille avuga ko ingingo ya 52, igika cya 3 n'ya 75 z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru zitanyuranyije n'ingingo ya 15, iya 18 n'ya 34 z'Itegeko Nshinga kuko zitavangura abazungura cyangwa ngo ziteze amakimbirane mu muryango, ahubwo zirinda uwapfakaye kugira imibereho mibi ugereranyije n'uko yari abayeho uwo bari barashakanye akiriho, cyane cyane ko agumana inshingano zo kurera abana babo n'ab'uwapfuye bemewe n'amategeko, bakazazungura igihe giteganywa n'amategeko kigeze.

[155] Akomeza avuga ko kuba ingingo ya 75 y'Itegeko ryavuzwe haruguru iha uburenganzira uwapfakaye bwo kugira uruhare mu izungura ry'umutungo wasizwe n'uwo bari barashyingiranywe, nta kibazo biteye, ko ahubwo iyi ngingo yari ngombwa cyane kuko bitumvikanaga ukuntu uwapfakaye yahezwaga mu izungura ry'umutungo w'uwo bashakanye kandi aba yaragize uruhare mu kuwushaka, ko rero nta vangura biteza

kandi ntawe byagombye kubangamira kuko umutungo uba usanzwe ari uwe n'uwu bashyingiranywe.

[156] Me Kabibi Speciose yongeraho ko kuba uwapfakaye yagira uruhare rwo kuzungura 50% y'umutungo ntawe byagombye kubangamira, ko nta n'ivangura biteza kuko uwapfakaye nawe ari mu bafashwaga n'uwapfuye, ubwo burenganzira akaba ataragombaga kubwamburwa.

[157] Uwineza Odette na Dr Turamwishimiye Rose, bahagarariye Ishuri ry'Amategeko rya Kaminuza y'u Rwanda, bavuga ko ingingo ya 52, igika cya 3, y'Itegeko N° 27/2016 ryavuzwe haruguru iha uwapfakaye amahirwe aruta ay'abandi bazungura kuko ahabwa uburenganzira bwo kugumana umutungo ugomba kuzungurwa kandi itegeko ritarashyizeho umurongo wo kuwucunga, bikaba bishobora kurangira abandi bazungura babuze icyo bazungura kuko uwapfakaye atabujijwe kuwugurisha cyangwa kuwutanga. Basanga ibyo binyuranyije n'ingingo ya 15, iya 18 n'iya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04/06/2003 ryavuguruwe mu 2015. Banavuga ko kuba ingingo ya 75 y'Itegeko ryavuzwe haruguru yarahaye uwapfakaye uburenganzira bwo kuzungura mugenzi we ntaho bibangamiye ingingo z'Itegeko Nshinga zavuzwe haruguru.

## **UKO URUKIKO RUBIBONA**

[158] Mbere yo gusuzuma niba ingingo ya 52, igika cya 3 n'iya 75 zavuzwe haruguru zinyuranyije n'Itegeko Nshinga, ni ngombwa kwibutsa ko ibisobanuro byatanzwe kuri amwe mu mahame y'Itegeko Nshinga avugwa muri uru rubanza, ni ukuvuga ihame ryo kureshya imbere y'amategeko rivugwa mu

ngingo ya 15, iryo kurengera umuryango rivugwa mu ngingo ya 18 n'iryo kugira uburenganzira ku mutungo rivugwa mu ngingo ya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda, bishingirwaho no mu bice bigiye gukurikira.

[159] Nk'uko byasobanuwe haruguru, ingingo ya 52, igika cya 3 y'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryamaze kuvugwa, ivuga igihe izungura ritangirira, ni ukuvuga nyuma y'urupfu rw'abashyingiranywe bombi cyangwa uwapfakaye yongeye gushaka, naho iya 75 igasobanura uburenganzira uwapfakaye afite bwo kuzungura, ndetse ikerekana uko azungura. icyo Ngendahayo Kabuye agaragaza ko atishimiye ni ukuba asanga izo ngingo ziha uwapfakaye uburenganzira bw'umurengera ugereranyije n'abandi bazungura.

[160] Ingingo zimaze kuvugwa zuzuzanya n'ingingo ya 8, igika cya 2 n'iya 76 (1°) zasuzumwe haruguru, z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryamaze kuvugwa. Mu bika bya 37- 58 by'uru rubanza, uru Rukiko rwasobanuye ko Leta, mu byemezo ifata cyangwa mu mategeko ishahiraho, ishobora gufatira ingamba zihariye ibyiciro by'abantu batandukanye zigamije kubarengera, mu gihe ifite impamvu yumvikana kandi ikurikije amategeko kandi ntibyitwe ivangura.

[161] Urukiko rurasanga impamvu yatumye uwapfakaye ahabwa uburenganzira bwo kuzungura uwo bari barashakanye nk'uko biboneka mu ngingo ya 75 y'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe, yumvikana, ifite ireme kandi ikurikije amategeko, kuko, nk'uko isobanurampamvu y'iryo Tegeko ribigaragaza, Umushingamategeko yashatse gusiba icyuho cyari mu Itegeko N° 22/99 ryo ku wa 12 Ugushyingo 1999 ryuzuzza igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishahiraho igice cya gatanu cyerekeye imicungire

y'umutungo w'abashyingiranywe, impano n'izungura ryariho. Muri iryo Tegeko, ntabwo uwapfakaye yazaga mu bazungura b'uwo bari barashyingiranywe. Umushingamategeko yasanze nta kibuzo uwapfakaye kuzungura uwo bari barashyingiranywe, mu gihe bombi baba baragize uruhare mu gushaka umutungo w'urugo bari bafatanyije.

[162] Kurengera uwapfakaye no kumuha uburenganzira bwo kuzungura uwo bari barashyingiranywe, si umwihariko w'u Rwanda. Ilie Urs yavuze ko mu mateka y'Abaroma, amategeko yagiye avugururwa ku buryo uyu munsu uwapfakaye agira uburenganzira ku mitungo yasizwe n'uwo bashakanye wapfuye nk'uko biri mu ivugurura ry'amategeko y'izungura: "Nowadays, the surviving spouse has three distinctive succession rights: i) a general inheritance right, in competition with any of the classes of heirs ii) a special inheritance right over the movable goods and objects belonging to the household and over the wedding gifts; and iii) a temporary right of occupancy of the house."<sup>71</sup>

[163] Mu gihugu cya Nepal bateganyije ko uwapfakaye wari ukibana na nyakwigendera ariwe uza ku mwanya wa mbere w'abagomba kumuzungura (*The order of preference of nearest heirs for succession shall be as follows :(a) Husband or wife living in the undivided family...*).<sup>72</sup>

[164] Muri Sweden uwapfakaye afatwa nk'umuzungura wa mbere, hanyuma agakurikirwa n'abana ba nyakwigendera. Umwana ukomoka kuri umwe mu bashakanye wapfuye mbere, utari uwo yabyaranye n'uwapfakaye, niwe wenyine ufite

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<sup>71</sup> Urs, Ilie, The inheritance rights of the surviving spouse provided by the Romanian law, *Revista de derecho*(Valparaíso) XXXII (2009): 209-220.

<sup>72</sup> Article 239, the National Civil (Code) Act, 2017 (2074).

uburenganzira bwo gusaba uruhare rwe ku izungura nyuma y'urupfu rw'umubyeyi we. Usibye mu bihe bimaze kuvugwa, uwapfakaye azungura umutungo wose wa nyakwigendera kabone n'ubwo yaba asize abana, ariko na none ntabwo aba yemerewe kuruga uwo mutungo kubera ko uba ugomba kuzazungurwa n'abazungura ba nyakwigendera, igihe uwapfakaye nawe azaba amaze gupfa (*The surviving spouse is to be regarded as a preliminary heir, the children as reversionary heirs. Only a child of the deceased who is not a child of the surviving spouse, may claim his or her share after the death of the first spouse. The spouses inherit the entire estate even where Children exist. However, he or she may not dispose of it by will as it should be passed to the heirs of the previously deceased on his or her own death*).<sup>73</sup>

[165] Abahanga mu by'amategeko bakomeza bavuga ko abana<sup>74</sup> basigarana gusa uburenganzira bwo gusaba ibibatunga, izungura rikazaba ari uko uwapfakaye nawe apfuye (*The children are only entitled to a Pecuniary claim. This Claim is only enforceable after the death of surviving spouse*).<sup>75</sup>

[166] Ibisobanuro bimaze gutangwa haruguru bigaragara ko, n'ubwo buri gihugu gihitamo uburyo bwacyo bwo gukemura

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<sup>73</sup> Miriam Anderson and Esther Arroyo i Amayuelas, *The Law of Succession: Testamentary Freedom: European Perspectives* (Editorial CSIC - CSIC Press, 2011), p.11.

link: [https://books.google.rw/books?id=pwKY3\\_rsoVIC&printsec=frontcover&dq=Right+of+the+surviving+spouse+to+the+succession+of+the+deceased+spouse&hl=en&sa=X&redir\\_esc=y#v=onepage&q=surviving%20spouse&f=false](https://books.google.rw/books?id=pwKY3_rsoVIC&printsec=frontcover&dq=Right+of+the+surviving+spouse+to+the+succession+of+the+deceased+spouse&hl=en&sa=X&redir_esc=y#v=onepage&q=surviving%20spouse&f=false)

<sup>74</sup> Bakomoka ku babyeyi bombi.

<sup>75</sup> Miriam Anderson and Esther Arroyo i Amayuelas, *The Law of Succession: Testamentary Freedom: European Perspectives*, op.cit, p.11.

ibibazo kiba gifite, uko amategeko yagiye atera imbere, uburenganzira ku mutungo bw'uwapfakaye bwagiye burushaho gushimangirwa hagamijwe kumurinda kubaho nabi ugereranyije n'ubuzima yari asanzwe abayemo uwo bashakanye akiriho, nyamara yaragize uruhare mu gushaka umutungo yari asangiye na mugenzi we. Hanibukijwe ko inshingano z'urugo yari asanzwe afatanyije n'uwo bashyingiranywe noneho azikomeza wenyine nyuma y'uko mugenzi we apfuye.

[167] Nyuma y'ibyo bisobanuro, Urukiko rurasanga:

- a. Ku bijyanye n'ihame ryo kureshya imbere y'amategeko
  - Kuba Umushingamategeko yarahaye umwihariko uwapfakaye wo gusigarana umutungo wose, hanyuma yaba yongeye gushaka cyangwa se nawe apfuye akaba ari bwo izungura ritangira, nta vangura biteye. No kuba Umushingamategeko yarahaye uwapfakaye uburenganzira bwo kuzungura uwo bari barashyingiranywe, nabyo ntaho bibangamiye ihame ryo kureshya imbere y'amategeko kubera ko nk'uko byibukijwe haruguru, icyari gutera ivangura n'uko abandi bazungura baba barambuwe uburenganzira bwo kuzazungura, kandi siko bimeze mu Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe.
- b. Ku bijyanye n'ihame ryo kurengera umuryango
  - Urukiko rurasanga nk'uko byasobanuwe mu bika bya 99-101, kuba Itegeko N° 27/2016 ryo

ku wa 08/07/2016 ryarateganyije: i) ko uwapfakaye asigarana umutungo wose, izungura rigatangira iyo yongeye gushaka cyangwa apfuye ; ii) ingano y'umutungo atemerewe gutanga cyangwa kuraga kuko uba ugenewe abazungura bazigamirwa (réserve successorale) iii) ibihano ku wapfakaye utuzuzwa inshingano yahawe zo kurera abana yasigiwe na nyakwigendera, n'ibindi, byose bigamije gukumira no kugabanya amakimbirane yajyaga avuka ashingiye ku izungura, mu rwego rwo kurengera ubumwe n'ubusugire bw'umuryango n'abawugize. Bityo rero imvugo ya Ngendahayo Kabuye y'uko ingingo zaregewe zibangamiye ihame ryo kurengera umuryango, nta shingiro ifite.

- c. Ku bijyanye n'ihame ryo kugira uburenganzira ku mutungo
- Urukiko rurasanga nk'uko byasobanuwe mu bika bya 140 na 145 by'uru rubanza, itegeko ntirirengera uburenganzira butarabaho ndetse umuntu ntashobora kwemeza ko abufite ku mutungo atarabona kubera ko ubwo burenganzira bujyanye n'ibintu umuntu atunze atari byo yizera kuzabona mu gihe kizaza.

[168] Nyuma y'ibimaze gusobanurwa haruguru, Urukiko rurasanga imvugo ya Ngendahayo Kabuye y'uko kuba umutungo uzungurwa wikubirwa n'uwapfakaye wenyine kubera ko izungura ry'abashyingiranywe ritangira ari uko bombi bapfuye

cyangwa uwapfakaye yongeye gushyingirwa, no kuba uwapfakaye yarahawe uburenganzira bwo kuzungura nyakwigendera, binyuranyije n'ihame ryo kugira uburenganzira ku mutungo, nta shingiro ifite, kuko nk'uko byasobanuwe haruguru, uburenganzira bw'abazungura busobanuka neza nyuma y'uko izungura ritangiye, ari nabwo hamenyekana abazungura nyakuri n'uburyo bazakurikirana nk'uko biteganywa n'ingingo ya 75 y'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura.

[169] Hashingiwe ku bisobanuro byose byatanzwe, Urukiko rusanga ingingo ya 52, igika cya 3 n'ya 75 z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura zitanyuranyije n'ingingo ya 15, iya 18 n'ya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015.

### III. ICYEMEZO CY'URUKIKO

[170] Rwemeje ko ikirego cyatanzwe na Ngendahayo Kabuye gisaba kwemeza ko ingingo ya 8, igika cya 2, iya 52 igika cya 3, iya 75 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe impano n'izungura zinyuranyije n'ingingo ya 15, iya 18 n'ya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015, nta shingiro gifite.

[171] Rwemeje ko ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye

imicungire y'umutungo w'abashyingiranywe, impano n'izungura, zitanyuranyije n'ingingo ya 15 y'Itegeko Nshinga.

[172] Rwemeje ko ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, zitanyuranyije n'ingingo ya 18 y'Itegeko Nshinga.

[173] Rwemeje ko ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, zitanyuranyije n'ingingo ya 34 y'Itegeko Nshinga.

[174] Rwemeje ko ingingo ya 52, igika cya 3 n'ya 75 z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, zitanyuranyije n'ingingo ya 15, iya 18 n'ya 34 z'Itegeko Nshinga.

**IMANZA ZEREKERANYE  
N'IMIBURANISHIRIZE Y'IMANZA**



**URUBANZA RWEREKERANYE  
N'IMIBURANISHIRIZE Y'IMANZA  
ZASABIWE GUSUBIRISHAMO KU  
MPAMVU Z'AKARENGANE**



**SIKUBWABO v RWANDA  
DEVELOPMENT BOARD (RDB)  
N’ABANDI (ADD 1)**

[Rwanda URUKIKO RW’IKIRENGA – RS/INJUST/RCOM  
00007/2021/SC (Cyanzayire, PJ, Nyirinkwaya na Hitiyaremye,  
J.) 29 Mata 2022]

*Amategeko agenga imiburanishirize y’imanza zasabiwe gusubirishwamo ku mpamvu z’akarengane – Gusubirishamo urubanza ku mpamvu z’akarengane – Ubujurire – Iyo urubanza rusubirishwamo ku mpamvu z’akarengane ari urubanza rushingiye ku kuba Urukiko rwaranze kwakira ubujurire hirengagijwe amategeko, Urukiko ruburanisha urubanza rwasabiwe gusubirishwamo rusuzuma iyo mpamvu rwasanga ifite ishingiro rugaca urubanza rubanziriza urundi rukemeza ko hirengagijwe amategeko cyangwa kwakira ubujurire maze rukemeza ko iburanisha rikomeza hasuzumwa ingingo z’ubujurire yari yaratanze muri urwo Rukiko.*

*Amategeko agenga imiburanishirize z’imanza z’ubucuruzi – Ibarwa ry’ibihe byo gutanga ibirego bisaba guhagarika cyangwa gutesha agaciro cyamunara ku mitungo igurishwa hashingiwe ku cyemezo cyo kugurisha ingwate cyatanzwe n’umwanditsi mukuru – Ingingo ya 260, igika cya 6, y’Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsu – Ibihe bivugwa mu gika cya 6 cy’ingingo ya 260 bireba by’umwihariko ibirego bisaba guhagarika cyangwa gutesha agaciro cyamunara ku mitungo igurishwa hashingiwe ku cyemezo cyo kugurisha ingwate cyatanzwe n’Umwanditsi*

*Mukuru – Ibihe bivugwa mu gika cya 6 bitandukanye n'ibihe bivugwa mu gika cya 4, bijyanye no gusaba gutesha agaciro cyamunara ku mitungo igurishwa hadashingiwe ku cyemezo cyatanzwe n'Umwanditsi Mukuru.*

**Incamake y'ikibazo:** Mu rwego rwo kugirango hishyurwe umwenda Sikubwabo yari abereyemo Bank of Africa, Umwanditsi Mukuru muri RDB yatanze impushya zo kugurisha ingwate, abanza gutanga uruhushya rwo kugurisha umutungo ufite UPI: 1/02/09/01/844. Nyuma ya cyamunara yakozwe kuri uwo mutungo, SIKUBWABO Raphaël yatanze ikirego gifite No RCOM 01971/2017/TC/NYGE mu Rukiko rw'Ubucuruzi rwa Nyarugenge asaba kuyitesha agaciro, arega Bank of Africa, hagobokeshwamo RDB na Umugiraneza wari ushinze kugurisha ingwate. Mu gihe urubanza rwari rutaracibwa, Umwanditsi Mukuru yatanze uruhushya rwo kugurisha umutungo ufite UPI: 1/02/13/03/115, bituma Sikubwabo atanga ikirego cyihutirwa asaba guhagarikisha cyamunara kuri uyu mutungo. Mu rubanza No RCOMA 00793/2017/CHC/HCC rwaciye ku rwego rw'ubujurire, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ibikorwa bijyanye na cyamunara ku mutungo ufite UPI: 1/02/13/03/115 bihagarara by'agateganyo, hakabanza gutegerezwa icyemezo cy'urukiko ku rubanza No RCOM 01971/2017/TC/NYGE.2

Urubanza No RCOM 01971/2017/TC/NYGE rwarangije inzira z'ubujurire ku wa 06/05/2020, hemezwa ko nta mpamvu yagaragajwe yatesha agaciro cyamunara ku mutungo ufite UPI: 1/02/09/01/844. Ku wa 08/05/2020, Sikubwabo yahise yandikira Umwanditsi Mukuru amusaba guhagarika burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115 kuko hatagaragajwe umwenda watumye ikorwa; ku wa 20/05/2020 atanga ikirego mu

Rukiko rw'Ubucuruzi. Urubanza rwanditswe kuri No RCOM 00767/2020/TC, MUREGO Paulin waguze uwo mutungo muri cyamunara na Umugiraneza wari ushinzwe kuwugurisha barugobokamo ku bushake, hagobokeshwa ku gahato Bank of Africa yatanze umwenda.

Murego yatanze inzitizi asaba ko ikirego cya Sikubwabo kitakwakirwa kuko yagitanze ibihe biteganywa n'amategeko byararenze, iyo nzitizi ntiyakirwa mu rwego rwa mbere ariko mu bujurire bwa mbere n'ubwa kabiri ihabwa ishingiro. Mu rubanza N° RCOMAA 00061/2020/CA rwaciwe ku wa 18/12/2020, Urukiko rw'Ubujurire rwagumishijeho icyemezo cyari cyafashwe n'Urukiko Rukuru rw'Ubucuruzi, rusobanura ko ikirego cyagombaga gutangwa mu minsi 15 ibazwe kuva igihe urundi rubanza No RCOM 00577/2019/TC rwemeje ingano y'umwenda rwabereye itegeko, ni ukuvuga ku wa 20/06/2019, rushingiye ku biteganywa n'ingingo ya 260, igika cya kane, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets. Uru rubanza nirwo Sikubwabo yasabye ko rusubirwamo ku mpamvu z'akarengane.

Sikubwabo avuga ko ikirego cye cyatanzwe hashingiwe ku ngingo ya 260 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, kandi hakurikijwe ibyategetswe n'Urukiko mu rubanza N° RCOMA 00793/2017/HCC rwemeje ko ibikorwa bya cyamunara bihagarara hagategerezwa imikirize y'urubanza N° RCOM 01971/2017/TC/NYGE; ibyo bikaba byarashimangiwe n'urubanza N° RCOMA 01016/2019/HCC narwo rwavuze ko RDB yagombaga gutegereza urubanza N° RCOM

01971/2017/TC/NYGE, bityo iminsi yabazwe n'Urukiko rw'Ubujurire idateganyijwe n'itegeko kuko ingingo rwakoresheje ya 260, igika cya 4, iteganya ko imanza zo gutesha agaciro cyamunara arizo ziregerwa mu minsi 15 uhereye igihe cyamunara yabereyeho, ikaba idateganya ko ibirego byo guhagarikisha cyamunara birebwa n'iyi minsi 15.

Uregwa, abagobotse ku bushake n'uwagobokeshejwe ku gahato, bose bavuga ko batavuguruza icyemezo cyafashwe n'Urukiko rw'Ubujurire, kuko basanga ibihe byo gutanga ikirego bitarubahirijwe.

**Incamake y'icyemezo:** 1. Iyo urubanza rusubirishwamo ku mpamvu z'akarengane ari urubanza rushingiye ku kuba Urukiko rwaranze kwakira ubujurire hirengagijwe amategeko, Urukiko ruburanisha urubanza rwasabiwe gusubirishwamo rusuzuma iyo mpamvu rwasanga ifite ishingiro rugaca urubanza rubanziriza urundi rukemeza ko hirengagijwe amategeko hangwa kwakira ubujurire maze rukemeza ko iburanisha rikomeza hasuzumwa ingingo z'ubujurire yari yatanze muri urwo Rukiko.

2. Ingingo ya 260, igika cya 6, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu. Ibihe bivugwa mu gika cya 6 cy'ingingo ya 260 y'Itegeko rimaze kuvugwa, bireba by'umwihariko ibirego bisaba guhagarika cyangwa gutesha agaciro cyamunara ku mitungo igurishwa hashingiwe ku cyemezo cyo kugurisha ingwate cyatanzwe n'Umwanditsi Mukuru; bikaba bitandukanye n'ibihe bivugwa mu gika cya 4, bijyanye no gusaba gutesha agaciro cyamunara ku mitungo igurishwa hadashingiwe ku cyemezo cyatanzwe n'Umwanditsi Mukuru..

**Ikirego cyo gusubirishamo urubanza ku mpamvu  
z'akarengane gifite ishingiro;  
Ikirego cyatanzwe kigamije guhagarikisha burundu  
cyamunara kikaba cyaragombaga kwakirwa;  
Urubanza rwaciwe, kimwe n'urwarubanjirije, zivanyweho;  
Iburanisha ry'urubanza ku ngingo z'ubujurire rizakomeza.**

**Amategeko yashingiweho:**

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  
260.

**Imanza zifashishijwe:**

Urubanza N° RS/INJUST/RC 00023/2018/SC; Ibyisi v. Kalisa  
Ribakare n'abandi rwaciwe n'Urukiko rw'Ikirenge ku  
wa 31/01/2020.

## **Urubanza**

### **I. IMITERERE Y'URUBANZA**

[1] Uru rubanza rukomoka ku ruhushya rwo guteza cyamunara (permit to sell N° 017-074833) umutungo ufite UPI: 1/02/13/03/115 rwatanzwe n'Umwanditsi Mukuru muri R.D.B ku wa 06/11/2017, kugirango hishyurwe umwenda Sikubwabo Raphaël yari abereyemo Bank of Africa. Iyo cyamunara yakurikiraga indi yakozwe ku wa 09/06/2017 ku mutungo ubaruye kuri UPI: 1/02/09/01/844 nabwo hishyurwa uwo mwenda.

[2] Nyuma y'iyi cyamunara yo ku wa 09/06/2017, Sikubwabo Raphaël yatanze ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge arusaba kuyitesha agaciro, umwenda ukishyurwa hakurikijwe ibindi biteganyijwe mu masezerano y'inguzanyo. Ikirego cyanditswe kuri N° RCOM 01971/2017/TC/NYGE, uregwa ari Bank of Africa, hagobokeshwamo RDB na Umugiraneza Jean Michel wari ushinzwe kugurisha ingwate. Nyuma yo gutanga iki kirego, urubanza rutaracibwa, nibwo Sikubwabo Raphaël yahawe n'Umwanditsi Mukuru *permit to sell* N° 017-074833 yo ku wa 06/11/2017 yavuzwe haruguru, ndetse n'amabwiriza ya cyamunara, birebana n'ingwate ifite UPI: 1/02/13/03/115.

[3] Igihe iyi cyamunara ya kabiri yari itaremezwa n'Umwanditsi Mukuru, Sikubwabo Raphaël wavugaga ko atigeze amenyeshwa umwenda wari usigaye nyuma y'ubwishyu bwavuye muri cyamunara ya mbere, yahise atanga ikirego cyihutirwa asaba guhagarika by'agateganyo cyamunara ku ngwate ya kabiri irebana n'umutungo ufite UPI: 1/02/13/03/115, kugirango habanze gusuzumwa ibyasabwe mu rubanza rw'iremezo. Ikirego cyanditswe kuri No RCOM 02265/2017/TC/NYGE, urubanza rucibwa ku wa 04/12/2017, Urukiko rwemeza ko nta mpamvu yo guhagarika cyamunara yari iteganyijwe ku wa 05/12/2017. Urwo rubanza rwajuririwe mu Rukiko Rukuru rw'Ubucuruzi kuri N° RCOMA 00793/2017/CHC/HCC, rucibwa ku wa 21/12/2017, hemezwa ko ibikorwa bijyanye na cyamunara ku mutungo ufite UPI: 1/02/13/03/115 bihagarara by'agateganyo, hakabanza gutegerezwa icyemezo cy'urukiko ku rubanza No RCOM 01971/2017/TC/NYGE.

[4] Nyuma y'icibwa y'uru rubanza N° RCOMA 00793/2017/CHC/HCC, Sikubwabo Raphaël yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi, asaba guhamagaza Umwanditsi Mukuru agasobanura impamvu atarurangiza<sup>1</sup>, Murego Paulin waguze mu cyamunara yahagaritswe agasubizwa amafaranga yatanze. Ikirego cyanditswe kuri N° RCOM 00024/2019/HCC, urubanza rucibwa ku wa 04/10/2019, Urukiko rwemeza ko rudafite ububasha bwo kuburanisha bene ibyo birego kuko birebana n'imanza z'ubutegetsu. Urwo rubanza rwajuririwe mu Rukiko Rukuru rw'Ubucuruzi kuri N° RCOMA 01016/2018/HCC, rucibwa ku wa 14/02/2020, hemezwa ko ikirego cyakiriwe ariko ko ibyo Umwanditsi Mukuru yagombaga gukora mu gushyira mu bikorwa urubanza N° RCOMA 00793/2017/CHC/HCC yabikoze kuko yahagaritse by'agateganyo iyemezwa rya raporo ya cyamunara kuri UPI: 1/02/13/03/115.

[5] Urubanza N° RCOM 01971/2017/TC/NYGE (rurebana no gutesha agaciro cyamunara yabaye ku wa 09/06/2017 kuri UPI: 1/02/09/01/844) rwari rwatumye cyamunara kuri UPI: 1/02/13/03/115 ihagarikwa by'agateganyo rwaciwe ku wa 16/05/2018, hemezwa ko nta mpamvu yagaragajwe yatesha agaciro cyamunara. Urwo rubanza rwajuririwe mu Rukiko Rukuru rw'Ubucuruzi kuri N° RCOMA 00443/2018/CHC/HCC, rucibwa ku wa 14/12/2018, hemezwa ko urubanza rwajuririwe rudahindutse. Sikubwabo Raphaël yajuriye bwa kabiri mu Rukiko rw'Ubujurire kuri N° RCOMAA 00039/2019/CA, urubanza rucibwa ku wa 06/05/2020, hemezwa ko ubwo bujurire butakiriwe kuko bwatanzwe bukererewe.

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<sup>1</sup> Yatanze ikirego ashingiye ku ngingo ya 184 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 rya CPCCSA, ivuga ku bihano bihabwa umuyobozi wanze gushyira mu bikorwa icyemezo cy'urukiko.

[6] Nyuma y'uko urubanza N° RCOM 01971/2017/TC/NYGE rurangije inzira z'ubujurire, ku wa 08/05/2020 Sikubwabo Raphaël yandikiye Umwanditsi Mukuru amusaba guhagarika burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115. Ku wa 20/05/2020, yatanze ikirego mu Rukiko rw'Ubucuruzi, asaba guhagarika burundu cyamunara ku mutungo we ufite UPI: 1/02/13/03/115, kuko hatagaragajwe umwenda watumye ikorwa. Urubanza rwanditswe kuri N° RCOM 00767/2020/TC, Murego Paulin waguze uwo mutungo muri cyamunara na Umugiraneza Jean Michel wari ushinze kuwugurisha barugobokamo ku bushake, hagobokeshwa ku gahato Bank of Africa yatanze umwenda.

[7] Muri urwo rubanza, Sikubwabo Raphaël yatanze inzitizi asaba Urukiko kutakira ibirego by'abagobotse ku bushake kuko nta nyungu bafite. Murego Paulin nawe yatanze inzitizi asaba ko ikirego cya Sikubwabo Raphaël kitakwirwa kuko yagitanze ibihe biteganywa n'amategeko byo kuba yaregera gutesha agaciro cyamunara byararenze.

[8] Urubanza rwaciye ku wa 22/06/2020, Urukiko rwemeza ko inzitizi yatanze na Sikubwabo Raphaël nta shingiro ifite kuri Murego Paulin kuko ariwe waguze umutungo uburanwa muri cyamunara, amategeko akaba amwemerera kuba yagoboka muri urwo rubanza. Rwemeje ko inzitizi yo kutakira ukugoboka ku bushake kwa Umugiraneza Jean Michel ifite ishingiro kuko hatagaragajwe ko hari amakosa ajyanye n'imihango (*procédure*) yaba yarakozwe mu kugurisha muri cyamunara umutungo uburanwa, kandi ko nta nyungu ze bwite zibangamiwe mu rubanza. Ku bijyanye n'inzitizi yo kutakira ikirego bitewe n'uko cyatanze impitagihe, Urukiko rwemeje ko cyakirwa kigasuzumwa mu mizi. Ku bireba urubanza mu mizi, Urukiko

rwemeje ko ikirego cya SIKUBWABO Raphaël nta shingiro gifite, rutegeka ko cyamunara yakozwe ku mutungo ufite UPI: 1/02/13/03/115 igumaho.

[9] Sikubwabo Raphaël yajuririye imikirize y'urubanza mu Rukiko Rukuru rw'Ubucuruzi, urubanza rwandikwa kuri N° RCOMA 00398/2020/HCC, avuga ko yajurijwe no kuba Urukiko rw'Ubucuruzi rutarahagaritse cyamunana yavuzwe kandi hari impamvu zituma ihagarikwa. Yanasabaga Urukiko gusuzuma niba imanza N° RCOMA 00793/2017/CHC<sup>2</sup> na RCOM 01971/2017/TC/NYGE<sup>3</sup> hari ingaruka zagize kuri iyo cyamunara. Muri urwo rubanza MUREGO Paulin yatanze inzitizi agaragaza ko ikirego cyakiriwe ku rwego rwa mbere kitaragombaga kwakirwa kuko SIKUBWABO Raphaël yareze impitagihe. Umugiraneza Jean Michel yatanze ubujurire bwuririye ku bundi asaba ko hasuzumwa niba urukiko rwa mbere rutaracye urubanza ku byo rutaregewe, anasaba indishyi zinyuranye. Bank of Africa nayo yatanze ubujurire bwuririye ku bundi isaba indishyi z'ibyakoze mu rubanza ku rwego rw'ubujurire.

[10] Urubanza rwaciwe ku wa 16/07/2020, Urukiko Rukuru rw'Ubucuruzi rwemeza ko inzitizi yatanzwe na MUREGO Paulin ifite ishingiro, ko ikirego cyatanzwe na Sikubwabo Raphaël mu Rukiko rw'Ubucuruzi kitagombaga kwakirwa ngo gisuzumwe mu mizi, kuko cyatanzwe impitagihe. Urukiko

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<sup>2</sup> Urubanza rwemeje ko cyamunara iteganyijwe ku mutungo ufite UPI: 1/02/13/03/115 ihagarara by'agateganyo hagategerezwa icyemezo kizafatwa mu rubanza N° RCOM 01971/2017/TC/NYG.

<sup>3</sup> Urubanza SIKUBWABO Raphaël yasabyemo gutesha agaciro cyamunara yabaye ku wa 09/06/2017 ku mutungo ufite UPI: 1/02/09/01/844, hakemezwa ko nta mpamvu yagaragaje yatuma iteshwa agaciro, mu bujurire Urukiko Rukuru rukemeza ko nta gihindutse.

rwasonanuye ko niba mu gutanga ikirego, urega yarashingiye ku byemejwe mu rubanza No RCOM 00577/2019/TC rwaciwe ku wa 20/06/2019 rukagaragaza umwenda yishyuzwaga, byumvikana ko cyamunara yari yarahagaritswe n'ianza zinyuranye yagombaga guhita ikomeza kuva igihe urwo rubanza rusomewe. Kuba rero Sikubwabo Raphaël yatanze ikirego mu Rukiko rw'Ubucuruzi ku wa 20/05/2020, amezi 11 nyuma y'uko cyamunara yemerewe gukomeza, bigaragaza ko yatanze ikirego impitagihe, kikaba kitari gikwiye kwakirwa ngo gisuzumwe mu mizi.

[11] Urukiko Rukuru rw'Ubucuruzi rwemeje kandi ko ubujurire bwuririye ku bundi bwatanzwe na Bank of Africa n'ubwa Umugiraneza Jean Michel bufite ishingiro, rwemeza ko urubanza N° RCOM 00767/2020/TC rwaciwe ku wa 22/06/2020 n'Urukiko rw'Ubucuruzi ruteshejwe agaciro, rutegeka Sikubwabo Raphaël guha Bank of Africa na Umugiraneza Jean Michel: 500.000 Frw y'indishyi zo gusiragizwa mu nkiko, 500.000 Frw y'igihembo cy' Avoka, 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 1.300.000 Frw kuri buri wese.

[12] Sikubwabo Raphaël yajuririye imikirize y'urubanza mu Rukiko rw'Ubujurire, asaba gusuzuma niba ikirego cye cyaratanzwe impitagihe nk'uko Urukiko Rukuru rw'Ubucuruzi rwabyemeje, kandi urubanza N° RCOMA 00793/2017/HCC rwaciwe ku wa 21/12/2017 rwarategetse ko ibikorwa bijyanye na cyamunara ku mutungo ufite UPI: 1/02/13/03/115 bihagarara by'agateganyo, hakabanza gutegerezwa icyemezo cy'Urukiko ku rubanza N° RCOM 01971/2017/TC/NYGE. Mu rubanza N° RCOMAA 00061/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 18/12/2020, hemejwe ko ubujurire bwa Sikubwabo Raphaël

budafite shingiro, ko imikirize y'urubanza rwajuririwe idahindutse.

[13] Sikubwabo Raphaël yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza N° RCOMAA 00061/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 18/12/2020 rwasubirwamo ku mpamvu z'akarengane, avuga ko mu icibwa ryarwo hirengagijwe amategeko n'ibimenyetso. Perezida w'Urukiko rw'Ikirenga yafashe icyemezo ko urwo rubanza rwongera kuburanishwa n'Urukiko rw'Ikirenga, rwandikwa mu bitabo byabugenewe, ruhabwa No RS/INJUST/RCOM 00007/2021/SC.

[14] Iburanisha ry'urubanza ryashyizwe ku wa 14/03/2022 ribera mu ruhame, Sikubwabo Raphaël yunganiwe na Me Uwizeyimana Venuste, RDB ihagarariwe na Me Nkusi Fred, Umugiraneza Jean Michel yunganiwe na Me Matimbano Barton, Murego Paulin ahagarariwe na Me Munderere Léopold, naho Bank of Africa ihagarariwe na Me Kayiranga Cyrille.

[15] Urukiko rwabanje kubaza ababuranyi uburyo Umugiraneza Jean Michel ari mu rubanza, kandi bigaragara ko Urukiko rw'Ubucuruzi rwemeje ko nta nyungu afite yo kurugobokamo ku bushake. Nyuma yo kumva icyo buri muburanyi avuga kuri icyo kibazo, Urukiko rwasanze Umugiraneza Jean Michel agomba kuguma mu rubanza kuko ababuranyi bose bemeza ko Sikubwabo Raphaël wari waratanze inzitizi yayiretse mu bujurire n'ubwo bitagaragajwe mu rubanza.

[16] Sikubwabo Raphaël ashingira akarengane ke ku kuba harabayeho kwibeshya ku rubanza rugomba guherwaho habarwa ibihe byo gusaba guhagarika burundu cyamunara, kuko hemejwe ko urubanza rugomba guherwaho ari N° RCOM 0577/2019/TC

rwaciwe ku wa 20/06/2019 rukemeza umwenda yari abereyemo Bank of Africa<sup>4</sup>, mu gihe ibihe byagombaga kubarwa guhera igihe urubanza N° RCOM 01971/2017/TC/NYGE rwabereye itegeko nk'uko byari byemejwe mu rubanza N° RCOMA 00443/2018/CHC/HCC. Avuga kandi ko habayeho gukoresha nabi ibiteganywa n'ingingo ya 260 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, kubera ko mu gihe cyose Umwanditsi Mukuru ataremeza cyamunara yakozwe hashingiwe ku ruhushya yatanze, ishobora gusabirwa guhagarikwa, ibihe bigatangira kubarwa uhereye igihe uregwa yandikiye Umwanditsi Mukuru.

[17] Abaregwa bavuga ko ikirego cyatanzwe impitagihe, kuko cyagombaga gutangwa mu minsi 15 uhereye igihe cyamunara yabereye hashingiwe ku biteganywa n'ingingo ya 260 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets.

[18] Nyuma yo kumva impaka ziri hagati y'ababuranyi, Urukiko rwasuzumye ibibazo bikurikira:

- Kumenya niba ikirego cyatanzwe na Sikubwabo Raphaël asaba Urukiko guhagarika burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115 cyaratanzwe impitagihe;

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<sup>4</sup> Uru ni urundi rubanza SIKUBWABO Raphaël yarezemo Bank of Africa asaba Urukiko rw'Ubucuruzi kwemeza umwenda ayibereyemo ku itariki ya 10/04/2017, ubwo iyi Banki yasabaga Umwanditsi Mukuru uburenganzira bwo kugurisha ingwate.

- Ibijyanye n'indishyi ababuranyi basaba.

## **II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO.**

- 1. Kumenya niba ikirego cya SIKUBWABO Raphaël kigamije guhagarikisha burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115 cyaratanzwe impitagihe.**

[19] Sikubwabo Raphaël na Me Uwizeyimana Venuste umwunganira bavuga ko ikirego cye cyatanzwe hashingiwe ku ngingo ya 260 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, kandi hakurikijwe ibyategetswe n'Urukiko mu rubanza N° RCOMA 00793/2017/HCC rwemeje ko ibikorwa bya cyamunara bihagarara hagategerezwa imikirize y'urubanza N° RCOM 01971/2017/TC/NYGE; ibyo bikaba byarashimangiwe n'urubanza N° RCOMA 01016/2019/HCC narwo rwavuze ko RDB yagombaga gutegereza urubanza N° RCOM 01971/2017/TC/NYGE.

[20] Basobanura ko iminsi yabazwe n'Urukiko rw'Ubujurire idateganyijwe n'itegeko kuko ingingo rwakoresheje ya 260, igika cya 4, iteganya ko imanza zo gutesha agaciro cyamunara arizo ziregerwa mu minsi 15 uhereye igihe cyamunara yabereyeho, ikaba idateganya ko ibirego byo guhagarikisha cyamunara birebwa n'iyi minsi 15.

[21] Bavuga kandi ko nyuma y'aho urubanza N° RCOM 01971/2017/TC/NYGE rubereye ndakuka, Sikubwabo Raphaël

yandikiye Umwanditsi Mukuru ku wa 08/05/2020 amusaba guhagarika burundu cyamunara, uyu akaba yaragombaga gusubiza mu minsi itatu hakurikijwe ibiteganywa mu ngingo ya 260 y' Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, ariko ntiyasubiza, ikirego gitangwa ku wa 20/05/2020; kikaba cyaratanzwe mu buryo bukurikije amategeko.

[22] Murego Paulin na Me Munderere Léopold umwunganira bavuga ko ikirego cyatanzwe impitagihe nk'uko bisobanuwe mu gika cya 17 cy'urubanza N° RCOMAA 0061/2020/CA; Urukiko rukaba rwarasobanuye ko ingingo ya 260 y' Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, iteganya ko ikirego kigomba gutangwa mu minsi 15 uhereye igihe cyamunara yabereye. Bongeraho ko urubanza N° RCOM 01971/2017/TC/NYGE Sikubwabo Raphaël avuga ko rwagombaga gutegerezwa rwaciwe ku wa 16/05/2018, bivuze ko umunsi wa nyuma yagombye kuba yaratangiyeho ikirego ari ku wa 01/06/2018 kuko yagombaga kugitanga mu minsi 15 uhereye igihe urubanza rwaciriwe; nyamara yagitanze mu mwaka wa 2020, bikaba byumvikana ko yakererewe cyane.

[23] Umugiraneza Jean Michel na Me Matimbano Barton umwunganira bavuga ko batavuguruza icyemezo cyafashwe n'Urukiko rw'Ubujurire, ko basanga ibihe byo gutanga ikirego bitarubahirijwe.

[24] Me Nkusi Fred uhagarariye RDB avuga ko ashingiyeye ku cyemezo cy'Urukiko rw'Ubujurire mu rubanza N° RCOMAA 00061/2020/CA, asanga iki kirego kitarubahirije igihe cy'iminsi 15 iteganywa n'ingingo ya 260, igika cya 4, y' Itegeko N° 22/2018 ryo ku wa 29/04/2018 yavuzwe haruguru.

[25] Me Kayiranga Cyrille uhagarariye Bank of Africa avuga ko ibihe byo gutanga ikirego byagombaga kubarwa guhera igihe cyamunara ku mutungo ufite UPI: 1/02/13/03/115 yabereye, ibyo bihe bikaba bitarubahirijwe hakurikijwe ibiteganywa n'ingingo ya 260 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 rimaze kuvugwa.

## UKO URUKIKO RUBIBONA

[26] Ingingo ya 260, igika cya 6, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu iteganya ko *guhagarika no gutesha agaciro cyamunara ku mitungo igurishwa hashingiwe ku cyemezo cyo kugurisha ingwate cyatanzwe n'Umwanditsi Mukuru, bisabwa Umwanditsi Mukuru. Umwanditsi Mukuru atanga igisubizo mu gihe kitarenze iminsi itatu (3) y'akazi. Iyo hari utishimiye igisubizo cy'Umwanditsi Mukuru cyangwa udahawe igisubizo mu gihe giteganywa muri iki gika, abitangira ikirego mu rukiko rw'ubucuruzi hakurikijwe ibivugwa muri iyi ngingo mu gihe kitarenze iminsi itanu (5) y'akazi uhereye igihe yamenyeye icyo gisubizo.*

[27] Ibivugwa muri iki gika cya 6 cy'ingingo ya 260 y'Itegeko rimaze kuvugwa, bireba by'umwihariko ibirego bisaba guhagarika cyangwa gutesha agaciro cyamunara ku mitungo igurishwa hashingiwe ku cyemezo cyo kugurisha ingwate cyatanzwe n'Umwanditsi Mukuru; ibihe bivugwamo bikaba bitandukanye n'ibihe by'iminsi 15 byashingiweho n'Inkiko

zabanje bivugwa mu gika cya 4<sup>5</sup> cy'ingingo ya 260 yavuzwe haruguru, byo bikaba bijyanye no gusaba gutesha agaciro cyamunara ku mitungo igurishwa hadashingiwe ku cyemezo cyatanzwe n'Umwanditsi Mukuru.

[28] Dosiye y'uru rubanza igaragaza ko ikirego cyatanzwe na Sikubwabo Raphaël, kijyanye no guhagarikisha burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115, hashingiwe ku ruhushya rwo guteza cyamunara (*permit to sell* N° 017-074833) rwatanzwe n'Umwanditsi Mukuru muri RDB ku wa 06/11/2017. Bivuga rero ko ibihe bigomba gushingirwaho mu gusuzuma niba ikirego cyaratanzwe impitagihe, ari ibivugwa mu gika cya 6 cy'ingingo ya 260 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru. Ku bijyanye n'aho guhera ibyo bihe bibarwa, ni ngombwa kubanza kwibutsa ibyemezo byafashwe muri zimwe mu manza zavuzwe mu gice kirebana n'imiterere.

[29] Mbere yo gusaba guhagarika burundu cyamunara ku mutungo ufite UPI:1/02/13/03/115, SIKUBWABO Raphaël yabanje gutanga ikirego cyihutirwa asaba guhagarika by'agateganyo cyamunara kuri uwo mutungo, kugirango hazabanze gufatwa umwanzuro ku kindi kirego N° RCOM 01971/2017/TC/NYGE yari yatanze asaba gutesha agaciro cyamunara yakozwe mbere ku mutungo ufite UPI: 1/02/09/01/844, bityo bimufashe kumenya umwenda yaba asigaje kwishyura nyuma y'iyo cyamunara ya mbere mu gihe itateshwa agaciro.

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<sup>5</sup> Iki gika cya 4 Urukiko rw'Uburundi rwavuze ko ari igika cya 5, ariko bigaragara ko habaye kwibeshya. Giteganywa ko *ikirego gisaba gutesha agaciro cyamunara gitangwa mu gihe kitarenze iminsi cumi n'itanu (15) uherye umunsi cyamunara yabereyeho.*

[30] Mu rubanza N° RCOMA 00793/2017/CHC/HCC rwaciwe ku wa 21/12/2017, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ibikorwa bijyanye na cyamunara ku mutungo ufite UPI: 1/02/13/03/115 bihagarara by'agateganyo, hakabanza gutegerezwa icyemezo cy'urukiko ku rubanza N° RCOM 01971/2017/TC/NYGE rwavuzwe haruguru. Uru rubanza rwaciwe ku wa 16/05/2018, hemezwa ko nta mpamvu yo gutesha agaciro cyamunara ya mbere ku mutungo ufite UPI: 1/02/09/01/844, iki cyemezo kiba ndakuka nyuma y'urubanza rwaciwe n'Urukiko rw'Ubujurire ku wa 06/05/2020.

[31] Nyuma y'uko urubanza N° RCOM 01971/2017/TC/NYGE rwari rwatumye cyamunara kuri UPI: 1/02/13/03/115 ihagarikwa by'agateganyo rubaye ndakuka, Sikubwabo Raphaël yandikiye Umwanditsi Mukuru ku wa 08/05/2020 amusaba guhagarika burundu cyamunara yari yarahagaritswe by'agateganyo.

[32] Hashingiwe ku biteganywa mu gika cya 6 cy'ingingo ya 260 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, Sikubwabo Raphaël yari afite igihe cy'iminsi itatu (3) y'akazi cyo gutegereza igisubizo cy'Umwanditsi Mukuru, icyo gihe kikaba cyarangiye ku wa 13/05/2020. Mu gihe nta gisubizo yahawe, yari afite iminsi itanu (5) y'akazi yo gutanga ikirego mu Rukiko rw'Ubucuruzi, itangira kubarwa guhera ku wa 14/05/2020, bivuze ko umunsi wa nyuma yari afite wo gutanga ikirego wari ku wa 20/05/2020, ari nabwo yagitanze.

[33] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga ikirego cya Sikubwabo Raphaël kigamije guhagarikisha burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115 kitaratanzwe impitagihe kuko yubahirije ibihe biteganywa n'ingingo ya 260, igika cya 6, y'Itegeko N° 22/2018

ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets. Kubera iyo mpamvu, Urukiko rurasanga urubanza N° RCOMAA 00061/2020/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 18/12/2020, kimwe n'urwarubanjirije N° RCOMA 00398/2020/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 16/07/2020, zigomba kuvanwaho. Ni ukuvuga ko hagumaho urubanza N° RCOM 00767/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 22/06/2020, hagakurikiraho gusuzuma ubujurire bwari bwashyikirijwe Urukiko Rukuru rw'Ubucuruzi ku bireba imizi y'urwo rubanza.

[34] Ku bijyanye n'urukiko rwasuzuma ubujurire bwari bwakozwe ku rubanza N° RCOM 00767/2020/TC, Urukiko rusanga iyo ikibazo cyagejwe kuri uru rwego kiza kuba cyaraje nk'ubujurire, hari gushingirwa ku ngingo ya 158, igika cya 2, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets iteganya ko *iyu urukiko rwajuririwe rusanze urubanza rwari rwaregewe mu buryo bukurikije amategeko nyamara urukiko rwaruciye ku rwego rubanza rukavuga ko rutakiriwe kandi rwaragombaga kwakirwa, urukiko rwajuririwe rurwakira, rukagaragaza ko rwagombaga kwakirwa ku rwego rwa mbere, rukarutesha agaciro, rukarusubiza urukiko rwari rwaruciye kugira ngo ruruburanishe mu mizi.* Ni ukuvuga ko urubanza rwari gusubizwa Urukiko Rukuru rw'Ubucuruzi kugirango ruburanishe mu mizi ubujurire rwari rwashyikirijwe.

[35] Nyamara ariko, urubanza ntirwageze muri uru Rukiko mu rwego rw'ubujurire, ahubwo rwaje mu rwego rw'akarengane. Iyi nzira yo gusubirishamo urubanza ku mpamvu z'akarengane ishyingirwaho, igitekerezo cy'Umushingamategeko cyari uko

urukiko rwaregewe biciye muri iyo nzira, rukemura ibibazo byose biri mu rubanza umuburanyi yarugejejeho, aho kugirango rukemure igice kimwe, ikindi gisubire mu nkiko ziri hasi yarwo, bitume habaho imanza zishobora kuzongera kugaruka mu karengane kandi byashobokaga ko ibibazo birangirizwa rimwe n'urukiko ruri ku rwego rwo hejuru. Iki gitekerezo nicyo kigaragara mu rubanza N° RS/INJUST/RC 00023/2018/SC rwaciye n'uru Rukiko ku wa 31/01/2020, Ibyisi Augustin yaregagamo Kalisa Ribakare Didier na Mukantabana Clémentine<sup>6</sup>. Ni Ukuvuga rero ko uru Rukiko arirwo ruzasuzuma ingingo z'ubujurire Sikubwabo Raphaël yari yashyikirije Urukiko Rukuru rw'Ubucuruzi.

[36] Ku bijyanye n'indishyi ababuranyi basaba, Urukiko rurasanga zitasuzumwa ubu kuko urubanza ruzakomeza kuburanishwa, zikaba zizasuzumirwa hamwe n'ikirego cy'ubujurire SIKUBWABO Raphaël yari yashyikirije Urukiko Rukuru rw'Ubucuruzi.

### III. ICYEMEZO CY'URUKIKO

[37] Rwemeje ko ikirego cyatanzwe na Sikubwabo Raphaël cyo gusubirishamo ku mpamvu z'akarengane urubanza No RCOMAA 00061/2020/CA, rwaciye n'Urukiko rw'Ubujurire ku wa 18/12/2020, gifite ishingiro;

[38] Rwemeje ko ikirego cyatanzwe na Sikubwabo Raphaël mu Rukiko rw'Ubucuruzi kigamije guhagarikisha burundu

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<sup>6</sup> Urubanza N° RS/INJUST/RC 00023/2018/SC rwaciye n'Urukiko rw'Ikirenga ku wa 31/01/2020, para 31-32.

cyamunara ku mutungo ufite UPI: 1/02/13/03/115 cyatanzwe mu gihe giteganywa n'amategeko, kikaba cyaragombaga kwakirwa;

[39] Rwemeje ko urubanza No RCOMAA 00061/2020/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 18/12/2020, kimwe n'urwarubanjirije N° RCOMA 00398/2020/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 16/07/2020, zivanyweho;

[40] Rwemeje ko iburanisha ry'urubanza ku ngingo z'ubujurire Sikubwabo Raphaël yari yashyikirije Urukiko Rukuru rw'Ubucuruzi rizakomeza ku munsu Ubwanditsi bw'Urukiko buzamenyesha ababuranyi.

## **UBUSHINJACYAHA v MAGARA N'ABANDI**

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RP  
00001/2020/SC (Ntezilyayo, P.J, Cyanzayire, Hitiyaremye,  
Rukundakuvuga na Muhumuza, J.) 18 Mutarama 2021]

*Gusubirishamo urubanza ku mpamvu z'akarengane – Uwemerewe gusubirishamo ku mpamvu z'akarengane. – Inzira y'akarengane ni inzira idasanzwe yemerewe umuburanyi warenganyijwe ku buryo bugaragarira buri wese, abisabye mu buryo no mu nzira biteganywa n'amategeko, byemejwe n'inzego zibifitiye ububasha zimaze kubisuzuma, binyuranye nibikorwa muzindi nzira z'ubujurire. Ababuranyi bataciye muri izo nzira ntibashobora guhabwa uburenganzira bwo kuririra ku isubirwamo ryasabwe n'abandi rikemerwa, ngo bagire ibyo basaba ko bihinduka ku rubanza batasabye ko rusubirwamo kuko ubwo burenganzira baba barabwibujije.*

*Gusubirishamo urubanza ku mpamvu z'akarengane – Guhindura icyemezo cyafatiwe abatarasabye gusubirishamo ku mpamvu z'akarengane. – icyemezo cyafatiwe abatarasabye gusubirishamo ku mpamvu z'akarengane, bakuririra ku busabe bw'abandi, gishobora guhinduka gusa iyo urukiko rusanze hari ubusobekerane ku byerekeye imikorere y'icyaha bahuriyeho n'abasabye gusubirishamo ku mpamvu z'akarengane, ku buryo icyemezo cyafatirwa abareze cyabagiraho ingaruka mu buryo bubafitiye inyungu.*

*Gusubirishamo urubanza ku mpamvu z'akarengane – Ihinduka ry'icyemezo cya Perezida w'Urukiko rw'Ikirenga – Kuba Perezida yemeje ko urubanza rusubirwamo ku mpamvu*

*z'akarengane, ntibibuza inteko iburanisha gusuzuma ibibazo bidasanzwe, byumvikana nk'ibibazo ndemyagihugu, ikabifataho icyemezo.*

*Gusubirishamo urubanza ku mpamvu z'akarengane – Imbibi z'ikiburanwa –Imbibi z'ikiburanwa mu rubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane, zigenwa n'icyaburanywe mu rwego rwa mbere, icyaburanywe mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, n'imyanzuro y'abasabye ko urubanza rusubirwamo bamaze kubyemererwa na Perezida w'Urukiko rw'Ikirenga*

**Incamake y'ikibazo:** Ubushinjacyaha bwareze mu Rukiko Rwisumbuye rwa Gasabo Karake wari Umuyobozi w'inama y'ubutegetsi w'Ikigo cy'ubwishingizi SONARWA, Mawadza wari Umuyobozi Mukuru wa SONARWA, Bamiika wari Technical Director, Magara Na Kamanzi bagiye basimburana ku mwanya wa Commercial Director na Nzaramba wari Director of Planning and Policy muri Minisiteri y'ibikorwa remezo, bubakurikiranyeho ibyaha bifitanye isano no kunyereza umutungo, gutanga cyangwa kwakira indonke kugira ngo hakorwe ibinyuranyije n'amategeko no kwandika inyandiko zivuga ibintu uko bitari. Urukiko rwaciye urubanza rwemeza ko Bamiika na Magara bahamwa n'icyaha cyo kunyereza umutungo, icyaha cyo gutanga ruswa n'icyaha cyo kwandika inyandiko zitavuga ukuri, rubahanisha igifungo cy'imyaka 7 n'ihazabu y'amafaranga 5.000.000 kuri buri wese; Karake ahamwa n'icyaha cyo kwakira ruswa n'icyaha cyo kunyereza umutungo, rumuhanisha igifungo cy'imyaka 5 n'ihazabu y'amafaranga 5.000.000; Mawadza ahamwa n'icyaha cyo kunyereza umutungo n'icyaha cyo kwemeza inyandiko zitavugisha ukuri rumuhanisha igifungo cy'imyaka 5 n'ihazabu y'amafaranga 5.000.000;

Nzaramba ahamwa n'icyaha cyo kwakira ruswa, rumuhanisha igifungo cy'imyaka itanu n'ihazabu y'amafaranga 5.000.000; Kamanzi ahamwa n'icyaha cyo kunyereza umutungo n'icyaha cyo kwandika inyandiko zitavugisha ukuri, rumuhanisha igifungo cy'imyaka 4 n'ihazabu y'amafaranga 5.000.000. Runategeka Bamiika, Mawazda, Kamanzi, Karake na Magara gufatanya kwishyura amafaranga yanyerejwe muri Sonarwa.

Bamiika, Mawazda, Kamanzi, Karake na Magara ntibishimiye imikirize y'urubanza, bajuririra Urukiko Rukuru. Urukiko rwemza ko ubwo bujurire ntashingiro bufite, ruhindura urubanza rwajuririwe gusa ku bijyanye n'igihano cy'igifungo cyahanishijwe buri wese mu baregwa.

Kamanzi na Magara basubirishijemo urwo rubanza ingingo nshya, Urukiko rwemeza ko ikirego cyabo ntashingiro gifite.

Kamanzi na Magara ntibishimiye icyo cyemezo bandikira Perezida w'Urukiko rw'Ubujurire basaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, Perezida w'Urukiko rw'Ubujurire abasubiza ko nta mpamvu iteganywa n'itegeko yatuma urwo rubanza rusubirwamo ku mpamvu z'akarengane.

Na none Kamanzi na Magara ntibanyuzwe nicyo gisubizo bandikira Urwego rw'Umuvunyi bavuga ko muguca urubanza Urukiko Rukuru rwirengagije amategeko bigatuma barengana. Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga rumusaba ko urubanza rusubirwamo ku mpamvu z'akarengane. Peerezida w'Urukiko rw'Ikirenga yemeje ko urwo rubanza rusubirwamo n'Urukiko rw'Ikirenga.

Ku muni w'iburanisha uhagarariye Ubushinjacyaha yatanze inzitizi ijyanye no kutakira ubusabe bwa Bamiika, Karake, Mawazda na Nzaramba bwo gusuzuma akarengane ku bibareba

kuko batigeze basaba ko imanza batsinzwe zisubirwamo ku mpamvu z'akarengane.

Abo Ubushinjacyaha kwasabye ko gusubirishamo ku mpamvu z'akarenga ikirego cyabo kitakwagirwa, bavuze ko inzitizi Ubushinjacyaha bwatanze ntashingiro ifite, Bavuga ko hakurikijwe ibiteganywa n'itegeko, n'ubwo batasabye ko urubanza batsinzwe rusubirwamo ku mpamvu z'akarengane, itegeko ribaha uburenganzira bwo kuririra ku busabe bw'ababisabye. Bavuga ko iyo Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rusubirwamo ku mpamvu z'akarengane rugomba kuburanishwa mu mizi, ko kandi urubanza rugomba gusubirwamo bundi bushya, rugasa n'aho rutangiye ku rwego rwa mbere, bityo abarubayemo ababuranyi bagasubirana uburenganzira bari bafite icyo gihe. Basoza bavuga ko basanga ari uburenganzira bwabo kuririra ku busaba bwabasubirishijemo ku mpamvu z'akarengane nabo bagasaba kurenganurwa ngo nk'uko byatanzweho umurongo mu rubanza rwaciye n'Urukiko rw'Ikirenga

Kamanzi na Magara bashyigikiye ibyavuzwe n'Ubushinjacyaha bavuga ko abataranyuze mu nzira ziteganywa n'amategeko ngo basabe ko urubanza rwabo rusubirwamo ku mpamvu z'akarengane badashobora kuririra ku busabe bw'abandi, ko bo bishimiye icyemezo cyafashwe.

**Incamake y' icyemezo:** 1. Inzira y'akarengane ni inzira idasanzwe yemerewe umuburanyi warenganyijwe ku buryo bugaragarira buri wese, abisabye mu buryo no mu nzira biteganywa n'amategeko, byemejwe n'inzego zibifitiye ububasha zimaze kubisuzuma, binyuranye nibikorwa muzindi nzira z'ubujurire. Ababuranyi bataciye muri izo nzira ntibashobora guhabwa uburenganzira bwo kuririra ku

isubirwamo ryasabwe n'abandi rikemerwa, ngo bagire ibyo basaba ko bihinduka ku rubanza batasabye ko rusubirwamo kuko ubwo burenganzira baba barabwibujije, bityo Bamiika, Karake, Mawazda na Nzaramba bakaba abatemerewe kurirakwisubirishamo ryasabwe n'abandi.

2. icyemezo cyafatiwe abatarasabye gusubirishamo urubanza ku mpamvu z'akarengane, bakuririra ku busabe bw'abandi, gishobora guhinduka gusa iyo urukiko rusanze hari ubusobekerane ku byerekeye imikorere y'icyaha bahuriyeho n'abasabye gusubirishamo ku mpamvu z'akarengane, ku buryo icyemezo cyafatirwa abareze cyabagiraho ingaruka mu buryo bubafitiye inyungu, bityo ubusabe bwa Bamiika, Karake, Mawazda na Nzaramba bukaba butakwakirwa keretse gusa igihe Urukiko ruzasanga hari ubusobekerane bw'ibiburanwa.

3. Kuba Perezida yemeje ko urubanza rusubirwamo ku mpamvu z'akarengane, ntibibuza inteko iburanisha gusuzuma ibibazo bidasanze, byumvikana nk'ibibazo ndemyagihugu, ikabifataho icyemezo, bityo impaka zishingiye ku kumenya uburenganzira mu rubanza bw' abatarasabye gusubirishamo urubanza ku mpamvu z'akarengane, zikaba zitari impamvu zidasanzwe.

4. Iimbibi z'ikiburanwa mu rubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane, zigenwa n'icyaburanywe mu rwego rwa mbere, icyaburanywe mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, n'imyanzuro y'abasabye ko urubanza rusubirwamo bamaze kubyemererwa na Perezida w'Urukiko rw'Ikirenga, bityo ibyo Bamiika, Karake, Mawazda na Nzaramba bashingiraho ubusabe bwabo bikaba ari nta shingiro bifite.

**Inzitizi yatanzwe ifite ishingiro,  
Iburanisha mu mizi ry'urubanza rizakomeza.**

**Amategeko yashyngiweho:**

Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 190.

Itegeko n° 30/2018 ryo ku wa 29/04/2018 rigena ububasha bw'inkiko, ingingo za 54 kugeza kuya 63.

**Imanza zifashishijwe**

RS/INJUST/RC 00024/2018/SC; Ngizweninshuti v Muhima Giovanni, rwaciwe n'Urukiko rw'Ikirenga ku wa 21/02/2020.

RS/INJUST/RC 00022/2018/SC; Busoro v Busoro rwaciwe n'Urukiko rw'Ikirenga ku wa 21/6/2019.

RS/INJUST/RP 00004/2018/SC; Ubushinjacyaha v Mbarushimana n'abandi rwaciwe n'Urukiko rw'Ikirenga ku wa 28/02/2019 Urubanza

## Urubanza

### I. IMITERERE Y'IKIBAZO

[1] Ubushinjacyaha bwagaragaje ko mu mwaka w'ingengo y'imari wa 2013/2014, Sonarwa yashakishije uburyo bwose yahabwa isoko ry'ubwishingizi bw'ibinyabiziga bya Leta ryatanzwe na Mininfra kuko hari hashize igihe iryo soko ritsindirwa na Cogear. Ubushinjacyaha bwagaragaje ko buri mwaka uko Minisiteri y'ibikorwa remezo (MININFRA) yishyuraga facture y'ubwo bwishingizi, abakozi ba SONARWA nabo bateguraga sheki yo kubikuzza amafaranga ya komisiyo yo kwishyura uwabafashije kubona iryo soko, zanditseho amazina ya Rutagwabira Barnabas cyangwa Mbabazi Gerard bari aba

agents ba SONARWA, kandi ntacyo bayifashije mu kubona iryo soko kubera ko ryatanzwe binyuze mu ipiganwa risesuye (*open tender*).

[2] Ubushinjacyaha bwagaragaje ko mbere y'uko sheki ibikuzwa hakorwaga inyandiko isaba ayo mafaranga, yandikirwaga Umuyobozi Mukuru, yamara gushyirwaho umukono n'abo bireba bose, hagakorwa sheki, ikandikwaho amazina ya Mbabazi Gerard cyangwa Rutagwabira Barnabas nk'abahawe ayo mafaranga, nabo bagasinya kuri izo sheki ko bayakiriye. Nyuma yo kuyabikuza, buri wese yahabwaga 15.000Frw, asigaye akoherezwa Nzaramba Stevenson kugira ngo nawe ayagabane n'abo bafatanyije gutanga iryo soko, asagutse abakozi ba SONARWA nabo bakayagabana.

[3] Ubushinjacyaha bwareze mu Rukiko Rwisumbuye rwa Gasabo Karake Mutsinzi Charles wari Umuyobozi w'inama y'ubutegetsi w'Ikigo cy'ubwishingizi SONARWA (*Chairman wa Board*), Mawadza Nhamo wari Umuyobozi Mukuru wa SONARWA (*Managing Director*), Bamiika Rumanyika Herbert (*Technical Director*), Magara Gahakwa John na Kamanzi Charlotte bagiye basimburana ku mwanya wa Commercial Director na Nzaramba Stevenson wari *Director of Planning and Policy* muri Minisiteri y'ibikorwa remezo (MININFRA), bubakurikiranyeho ibyaha bifitanye isano no kunyereza umutungo, gutanga cyangwa kwakira indonke kugira ngo hakorwe ibinyuranyije n'amategeko no kwandika inyandiko zivuga ibintu uko bitari.

[4] Kamanzi Charlotte yarezwe icyaha cyo kwandika abizi inyandiko zivuga ibintu uko bitari n'icyaha cy'ubufatanyacyaha mu cyaha cyo kunyereza umutungo w'Ikigo, Karake Mutsinzi Charles aregwa ubufatanyacyaha mu gutanga impano kugira ngo

hakorwe ibinyuranyije n'amategeko n' ubufatanyacyaha mu kunyereza umutungo w'ikigo. Bamiika Rumanyika Herbert, Mawadza Nhamo na Magara Gahakwa John bo barezwe icyaha cyo kwandika babizi inyandiko ivuga ibintu uko bitari, icyaha cyo gutanga indonke kugira ngo hakorwe ibinyuranyije n'amategeko, n'ubufatanyacyaha mu kunyereza umutungo.

[5] Urukiko Rwisumbuye rwa Gasabo, mu rubanza RP 00538/2016/TGI/GSBO rwo ku wa 30/06/2017, rwemeje ko:

- a. Bamiika Rumanyika Herbert na Magara Gahakwa John bahamwa n'icyaha cyo kunyereza umutungo, icyaha cyo gutanga ruswa n'icyaha cyo kwandika inyandiko zitavuga ukuri, rubahanisha igifungo cy'imyaka 7 n'ihazabu y'amafaranga 5.000.000 kuri buri wese;
- b. Karake Mutsinzi Charles ahamwa n'icyaha cyo kwakira ruswa n'icyaha cyo kunyereza umutungo, rumuhanisha igifungo cy'imyaka 5 n'ihazabu y'amafaranga 5.000.000;
- c. Mawadza Nhamo ahamwa n'icyaha cyo kunyereza umutungo n'icyaha cyo kwemeza inyandiko zitavugisha ukuri rumuhanisha igifungo cy'imyaka 5 n'ihazabu y'amafaranga 5.000.000;
- d. Nzaramba Stevenson ahamwa n'icyaha cyo kwakira ruswa, rumuhanisha igifungo cy'imyaka itanu n'ihazabu y'amafaranga 5.000.000;
- e. Kamanzi Charlotte ahamwa n'icyaha cyo kunyereza umutungo n'icyaha cyo kwandika inyandiko zitavugisha ukuri, rumuhanisha

igifungo cy'imyaka 4 n'ihazabu y'amafaranga 5.000.000.

[6] Mutsinzi Charles, Kamanzi Charlotte na Magara Gahakwa John gufatanya kwishyura amafaranga yanyerejwe muri SONARWA angana na 163.843.336 Frw. Rutegeka kandi ko Mbabazi Gerard na Rutagwabira Barnabas bahita barekurwa kuko badahamwa n'ibyaha bashinjwaga.

[7] Bamiika Rumanyika Herbert, Mawadza Nhamo, Karake Mutsinzi Charles, Kamanzi Charlotte na Magara Gahakwa John ntibishimiye imikirize y'urwo rubanza, barujuririra mu Rukiko Rukuru, ubujurire bwabo bwandikwa kuri RPA 00669/2017/HC/KIG, RPA 00680/2017/HC/KIG, RPA 00684/2017/HC/KIG, RPA 00685/2017/HC/KIG, RPA 00686/2017/HC/KIG, RPA 00745/2017/HC/KIG.

[8] Ubujurire bwabo bwashyizwe mu rubanza rumwe, ku wa 27/04/2018, Urukiko Rukuru rwemeza ko ubwo bujuriye nta shingiro bufite, ruhindura urubanza rwajuririwe gusa ku bijyanye n'igihano cy'igifungo cyahanishijwe buri wese mu baregwa. Rwahanishije:

- a. Bamiika Rumanyika Herbert, Nzaramba Stevenson igifungo cy'imyaka 3 n'ihazabu y'amafaranga 5.000.000 kuri buri wese;
- b. Magara Gahakwa John, Mawadza Nhamo, Kamanzi Charlotte na Karake Mutsinzi Charles igifungo cy'imyaka 3 gisubitse mu gihe cy'umwaka umwe (1) n'ihazabu y'amafaranga 5.000.000 kuri buri wese.

Rwategetse Bamiika Rumanyika Herbert, Mawadza Nhamo, Karake Mutsinzi Charles, Kamanzi Charlotte na Magara Gahakwa John gufatanya kwishyura amafaranga yanyerejwe muri SONARWA angana na 163.843.336Frw.

[9] Kamanzi Charlotte na Magara Gahakwa John basubirishijemo urwo rubanza ingingo nshya, ikirego cyandikwa kuri RPA 00658/2018/HC/KIG, RPA 00661/2018/HC/KIG, Urukiko rwemeza ko ikirego cyabo kitakiriwe.

[10] Kamanzi Charlotte na Magara Gahakwa John ntibishimiye icyo cyemezo cyafashwe n'Urukiko Rukuru, bandikira Perezida w'Urukiko rw'Ubujurire, basaba ko urubanza RPA 00658-00661/2018/HC/KIG na RPA 00669/2017/HC/KIG -RPA 00680/2017/HC/KIG - RPA 00684/2017/HC/KIG-RPA00685/2017/HC/KIGRPA00686/2017/HC/KIGRPA00745/2017/HC/KIG rusubirwamo ku mpamvu z'akarengane, ariko nyuma yo gusuzuma ubwo busabe, abasubiza ko nta mpamvu iteganywa n'itegeko yatuma urwo rubanza rusubirwamo ku mpamvu z'akarengane.

[11] Kamanzi Charlotte na Magara Gahakwa John ntibanyuzwe n'icyo gisubizo, bandikira Urwego rw'Umuvunyi bavuga ko mu guca urubanza RPA 00669/2017/HC/KIG - RPA 00680/2017/HC/KIG - RPA 00684/2017/HC/KIG -RPA 00685/2017/HC/KIG - RPA 00686/2017/HC/KIG-RPA 00745/2017/HC/KIG, Urukiko Rukuru rwirengagije amategeko, bigatuma barengana.

[12] Urwego rw'Umuvunyi nyuma yo gusuzuma ubusabe bwabo, rwandikiye Perezida w'Urukiko rw'Ikirenga ku wa 25/09/2020 rumusaba ko urubanza RPA 00669/2017/HC/KIG - RPA 00680/2017/HC/KIG - RPA 00684/2017/HC/KIG-RPA

00685/2017/HC/KIG - RPA 00686/2017/HC/KIG - RPA 00745/2017/HC/KIG rwasubirwamo ku mpamvu y'akarengane.

[13] Ku wa 28/09/2020, Perezida w'Urukiko rw'Ikirenga, ashingiye kuri raporo y'Ubugenzuzi Bukuru bw'Inkiko, yemeje ko urwo rubanza rusubirwamo; rwandikwa kuri numero RS/INJUST/RP 00001/2020/SC.

[14] Urubanza rwahamagawe ku wa 26/10/2020, ntirwaburanishwa kubera ko Nzaramba Stevenson, yari yanditse agaragaza impamvu adashobora kwitaba, bituma iburanisha ryimurirwa ku wa 03/11/2020, nabwo ntirwaburanishwa kubera ko Bamiika Rumanyika Herbert yari arwaye, Urukiko rwemeza ko Ubwanditsi bw'Urukiko buzamenyesha indi tariki y'iburanisha.

[15] Iburanisha ryashyizwe ku wa 03/12/2020, uwo muni ugeze ruburanishwa mu ruhame, Kamanzi Charlotte yunganiwe na Me Musore Gakunzi Valery na Me Asimwe Frank, Magara Gahakwa John yunganiwe na Me Uwizeyimana Jean Baptiste na Me Bugingo John Bosco, Bamiika Rumanyika Herbert ari muri gereza hakoreshejwe ikoranabuhanga, yunganiwe na Me Gashagaza Philbert na Me Nyirangirimana Astérie, Karake Mutsinzi Charles yunganiwe na Me Rutabingwa Athanase, Mawadza Nhamo ahagarariwe<sup>1</sup> na Me Bandora Alfred, Nzaramba Stevenson ari muri gereza hakoreshejwe ikoranabuhanga, yunganiwe na Me Kanyambo Diogène na Me Rutabingwa Athanase naho Ubushinjacyaha buhagarariwe n'Umushinjacyaha ku rwego rw'Igihugu Uwombonye Hirwa Sudi.

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<sup>1</sup> Mawadza Nhamo yasabye ko ahagararirwa aho kunganirwa, Urukiko rumaze kusuzuma impamvu yatanze rugasanga zifite ishingiro rurabimwemerera

[16] Ku ikubitiro, Ubushinjacyaha bwatanze inzitizi ijyanye no kutakira ubusabe bwa Bamiika Rumanyika Herbert, Karake Mutsinzi Charles, Mawadza Nhamo na Nzaramba Stevenson bwo gusuzuma akarengane ku bibareba kuko batigeze basaba ko imanza batsinzwe zisubirwamo ku mpamvu z'akarengane.

[17] Bamiika Rumanyika Herbert, Karake Mutsinzi Charles, na Nzaramba Stevenson n'abunganizi babo, ndetse n'uhagarariye Mawadza Nhamo, bavuze ko iyo nzitizi nta shingiro ifite bashingiye ku ngingo ya 63 y'Itegeko N° 30/2018 ryo ku wa 29/04/2018 rigena ububasha bw'inkiko, iteganya ko iyo Urukiko rw'Ikirenga cyangwa urundi rukiko Perezida w'Urukiko rw'Ikirenga akena rushyikirijwe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, rurusuzuma mu mizi bundi bushya abarubayemo ababuranyi bose bahamagajwe. Bavuga ko hakurikijwe ibiteganywa n'iyi ngingo, n'ubwo batasabye ko urubanza batsinzwe rusubirwamo ku mpamvu z'akarengane, itegeko ribaha uburenganzira bwo kuririra ku busabe bw'ababisabye.

[18] Kamanzi Charlotte, Magara Gahakwa John n'ababunganira bunze mu byavuzwe n'Ubushinjacyaha bavuga ko abataranyuze mu nzira ziteganywa n'amategeko ngo basabe ko urubanza rwabo rusubirwamo ku mpamvu z'akarengane badashobora kuririra ku busabe bw'abandi, ko bo bishimiye icyemezo cyafashwe.

## II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

### 1. Kumenya niba abatarasabye ko urubanza rusubirwamo ku mpamvu y'akarengane bashobora kuririra ku busabe bw'abandi bakagira ibyo basaba urukiko ku bibareba

[19] Uhagarariye Ubushinjacyaha avuga ko abari mu rubanza rumwe na Magara Gahakwa John na Kamanzi Charlotte, batakuririra ku busabe bwabo kuko batigeze bagaragaza ko barenganye hakurikijwe ibiteganywa n'ingingo ya 55 igika cya 2 y'Itegeko ryavuzwe haruguru, bakaba batarakurikije inzira amategeko ateganya kugirango barenganurwe, bityo bakaba barivukije uburenganzira bwo gusaba ko urubanza rwabo rusubirwamo ku mpamvu z'akarengane.

[20] Uhagarariye Ubushinjacyaha yasobanuye ko asanga mu mikirize y'urubanza rwahamije ibyaha Nzaramba Stevenson, Bamiika Rumanyika Herbert, Mawadza Nhamo na Karake Mutsinzi Charles, nta karengane kabayemo ku bibareba, ko ariko Urukiko rusanze ari ngombwa bakwumvwa gusa kubyo rwabakeneraho badafaswe nk'ababuranyi.

[21] Me Busingo John Bosco, Me Uwizeyimana Jean Baptiste na Magara Gahakwa John bunganira bunze mu byavuzwe n'Ubushinjacyaha, bavuga ko abasaba kuririra ku busabe bw'abandi nta nyungu bafite mu rubanza, kuko inyungu y'umuburanyi mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ireberwa mu ngingo ya 55 y'Itegeko n° 30/2018 ryavuzwe haruguru, ikagaragazwa no gutanga ikirego mu gihe giteganywa n'ingingo ya 56 y'iryo Tegeko; ko rero Urukiko rwemeje gusuzuma akarengane ku baburanyi batabisabye rwaba

runyuranyije n'izo ngingo. Me Bugingo John Bosco na Me Uwizeyimana Jean Baptiste basanga igituma ababuranyi bose bahamagazwa, ari mu nyungu z'ubutabera kugirango bafashe Urukiko kugera ku kuri.

[22] Me Asiiimwe Frank na Me Musore Gakunzi Valérie bunganira Kamanzi Charlotte bavuga ko kuba Nzaramba Stevenson na bagenzi be batarasabye ko urubanza rwabo rusubirwamo ku mpamvu z'akarengane ari uko bari barishimiye icyemezo bafatiwe. Basobanura ko icyo Umushingamategeko yashatse kumvikanisha mu ngingo ya 63 y'Itegeko n° 30/2018 atari ukugira ngo urubanza rusubirwemo ku mpamvu z'akarengane ku babisabye n'abatarabisabye, ko ahubwo ababayemo ababuranyi bahamagazwa hagamijwe gushaka ukuri ku kibazo Urukiko rwashyikirijwe.

[23] Kamanzi Charlotte we avuga ko hari inzira ziteganywa n'amategeko yanyuzemo asaba ko urubanza rwe rusubirwamo ku mpamvu z'akarengane, akaba asanga ingingo ya 63 y'Itegeko N° 30/2018 ikoreshwa iyo hari abatangiye izo nzira bakabyemererwa, akaba aribwo abarubayemo ababuranyi bose bahamagarwa bagahabwa ijambo, ko rero Nzaramba Stevenson na bagenzi be bagombaga gukurikiza uburyo buteganyijwe n'amategeko mu gusaba ko urubanza rusubirwamo ku bibareba.

[24] Me Gashagaza Philbert na Me Nyirangirimana Astérie bunganira Bamiika Rumanyika Herbert, bavuga ko iyo Perezida w'Urukiko rw'Ikirenga ategutse ko urubanza rusubirwamo, rusubirwamo rwose, ababayemo ababuranyi bose bahamagajwe, akaba ariyo mpamvu Bamiika Rumanyika Herbert nawe yahamagajwe nk'uregwa mu rubanza. Basanga rero nk'uko biteganywa mu ngingo ya 63 y'Itegeko N° 30/2018 ryavuzwe haruguru, urubanza rugomba kuburanishwa bundi bushya,

akarengane Bamiika Rumanyika Herbert yagiriwe kagasuzumwa kagakosorwa. Bemeza ko uyu ari nawo murongo wafashwe mu rubanza RS/INJUST/RCOM 00001/2019/SC haburana Ntegeye Bernard na ECOBANK Rwanda Ltd na Banki Nkuru y'u Rwanda (BNR), aho Urukiko rwavuze ko icyari kigamijwe mu gushyiraho inzira y'akarengane ari ugukosora akarengane gashobora kuboneka mu rubanza bitewe no kwibeshya cyangwa amakosa y'umucamanza ku buryo bugaragarira buri wese kandi nta bundi buryo ako karengane kazakosorwa.

[25] Basobanura ko abahanga bavuga ko ubujurire bukozwe n'uruhande rumwe bugirira akamaro n'urundi ruhande bihuriye ku bibazo bidashobora gutandukanywa.<sup>2</sup> Bityo rero ko n'ubwo gusubirishamo urubanza ku mpamvu z'akarengane atari ubujurire busanzwe, ntacyabuza ko ibikorwa mu bujurire byanakorwa kuri iyi nzira kubera ko ingaruka ari zimwe, cyane ko icyemezo cyafatwa kuri Kamanzi Charlotte na Magara Gahakwa John cyagira ingaruka ku bandi, bikaba bidashoboka ko Urukiko rubafatira icyemezo kandi batumviswe.

[26] Me Gashagaza Philbert na Me Nyirangirimana Astérie bavuze kandi ko ingingo ya 63 y'Itegeko N° 30/2018 ikwiye kumvikana hashingiwe ku murongo wafashwe n'Urukiko mu rubanza RS/INJUST/RC 00022/2018/SC rwaciwe ku wa 21/6/2019 haburana BUSORO Gervais na Busoro Mugunga, hakomezwa ko iyo urubanza rusabiwe gusubirwamo ku mpamvu

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<sup>2</sup> M.D. Dalloz, Ainé, Répertoire méthodique et alphabétique de législation, de doctrine et de jurisprudence, Tome Quatrième, Paris, Bureau de la Jurisprudence Générale du Royaume, 1846, p. 91, para. 593. "L'appel interjeté par l'une des parties profite aux autres dans les matières indivisibles, c'est-à-dire toutes les fois qu'il y a impossibilité absolue d'exécuter et le jugement rendu contre la partie non appelante et le jugement rendu en faveur de celle qui a appelé. »

z'akarengane nta nzitizi n'imwe ishobora gutangwa keretse iyo umuburanyi agaragaje ko hibeshywe ku bihe byo gusubirishamo urubanza ku mpamvu z'akarengane, ko rero Ubushinjacyaha butabirengaho ngo butange inzitizi.

[27] Basaba kandi Urukiko gushingira ku murongo wafashwe n'Urukiko rw'Ikirenga mu rubanza RS/INJUST/RP 00004/2018/SC rwaciwe ku wa 28/02/2019 haburana Ubushinjacyaha na Mbarushimana Jean de Dieu, Rutayisire Ruhinda Sabbat, harimo na Hotel des Milles Collines yaregeye indishyi, mu gice cya 64, aho rwavuze ko ababaye ababuranyi mbere, yaba uwahamwe n'icyaha, uwagihanaguweho n'waregeye indishyi hagomba gusuzumwa kuri bose, ahaba hagaragara akarengane n'icyagateje mu rwego rw'uburyozwe nshinjabyaha n'indishyi. Bakaba basanga uru rubanza ari igisubizo ku ngingo ya 63 yavuzwe haruguru.

[28] Me Kanyambo Diogène na Me Rutabingwa Athanase na Nzaramba Stevenson bunganira, bavuga ko bakurikije ibiteganyijwe n'ingingo ya 63 y'Itegeko N° 30/2018 basanga Nzaramba Stevenson agomba kuba umuburanyi muri uru rubanza kuko n'ubundi yari umuburanyi mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane. Bavuga ko mu gihe Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rugomba gusubirwamo aba atarinjira mu mizi yarwo ngo amenye ko hari abandi barenganye, akaba aricyo ingingo ya 63 y'Itegeko N° 30/2018 ryavuzwe haruguru yaje gukemura kugira ngo hatazagira uwo bigaragara ko yibagiranye.

[29] Bavuga kandi ko ibyo bishimangirwa mu rubanza RS/INJUST/RP 00004/2018/SC, aho rwemeje ko Rutayisire Ruhinda Sabbat ndetse n'waregeraga indishyi baba ababuranyi mu rubanza rwasubirishijwemo ku mpamvu z'akarengane ariko

batarabisabye. Basobanura ko mu gika cya 64 cy'urwo rubanza, Rutayisire Ruhinda Sabbat wari wagizwe umwere, utari ufite impamvu yo kujya mu karengane, Urukiko rwasanze ari ngombwa ko ahamagarwa. Kubera izo mpamvu basaba ko Nzaramba Stevenson yaba umuburanyi muri uru rubanza. Bagaragaza ko uburyo ibyaha byakozwe, bigoye gutandukanya uwakoze icyaha n'icyitso, akaba ariyo mpamvu akarengane kasuzumwa muri rusange.

[30] Me Rutabingwa Athanase na Karake Mutsinzi Charles yunganira bavuga ko ingingo ya 55 y'Itegeko N° 30/2018 irebana n'impamvu zishingirwaho batanga ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane, igika cya nyuma kigakumira utanga ikirego cy'akarengane atariyambaje izindi nzira z'ubujurire, naho iya 56 ikavuga igihe cyo gutanga ikirego, ko rero basanga izo ngingo zitandukanye n'ingingo ya 63 y'iryo Tegeko kuko yo ireba igihe cy'iburanisha ikavuga ko ababaye ababuranyi mu rubanza bose bahamagazwa.

[31] Me Bandora Alfred uhagarariye Mawadza Nhamo avuga ko yemeranya n'abamubanjirije, ariko yongeraho ko gusubirishamo urubanza ku mpamvu z'akarengane ari inzira y'ubujurire budasanzwe kandi bwemewe, asaba Urukiko gushingira ku ngingo ya 153 y'Itegeko n° 22/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo, n'iz'ubutegetsi iteganya ko ababuranyi batajuriye bashobora kugira ibyo basaba, rukemerera Mawadza Nhamo kuba umuburanyi muri uru rubanza kuko akarengane kabaye mu rubanza rwose.

[32] Me Bandora Alfred asobanura kandi ko n'ubwo bigaragara ko Mawadza Nhamo yishyuye ihazabu yaciwe atari uko yishimiye imikirize y'urubanza ku bimureba, ahubwo

byatewe nuko yagombaga kujya kwivuriza hanze, agirana amasezerano na MINIJUST bemera kurekura urwandiko rwe rw'inzira.

## UKO URUKIKO RUBIBONA

[33] Urukiko rurasanga abahamagawe muri uru rubanza bari mu byiciro bibiri: abasabye ko urubanza rwaciwe n'Urukiko Rukuru rusubirwamo ku mpamvu z'akarengane kandi bakabyemererwa, aribo Magara Gahakwa John na Kamanzi Charlotte; n'abahamagawe mu rubanza ariko batigeze basaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, aribo Nzaramba Stevenson, Bamiika Rumanyika Herbert, Karake Mutsinzi Charles na Mawadza Nhamo. Aba bo mu cyiciro cya kabiri ni nabo basaba ko Urukiko rusuzuma imyanzuro yabo, rugahindura ibyemezo bari bafatiwe mu rubanza rwasabiwe gusubirwamo, bashingiye ku kuba ingingo ya 63 y'Itegeko N° 30/2018 ryo ku wa 29/04/2018 rigena ububasha bw'inkiko iteganya ko ababuranyi bose bahamagarwa mu rubanza, rugasubirwamo mu mizi bundi bushya. Mu ngingo zikurikira, harasuzumwa icyo guhamagarwa kw'ababuranyi bose, gusuzuma urubanza mu mizi, no kurusuzuma bundi bushya, bivuze.

[34] Ibyerekeye kuba abari ababuranyi bose mu rubanza rusabirwa gusubirwamo bahamagarwa, bikurura impaka zishingiye ku kumenya icyo abatarasabye ko urubanza rusubirwamo baba baje gukora mu gihe bo nta karengane bagaragaje ko bagiriwe. Ese bashobora kuririra ku karengane kagaragajwe n'abandi bakagaragaza akabo, batanyuze mu nzira ziteganywa n'ingingo za 58-61 z'Itegeko N° 30/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru?

[35] Urukiko rusanga inzira y'akarengane ari inzira idasanzwe yemerewe umuburanyi warenganyijwe ku buryo bugaragarira buri wese, abisabye mu buryo no mu nzira biteganywa n'ingingo za 54,55,56 na 58 z'Itegeko N° 30/2018 ryo ku wa 29/04/2018, byemejwe n'inzego zivugwa mu ngingo ya 58, zimaze kubisuzuma mu nzira ziteganywa n'ingingo za 59 na 62 z'iryo Tegeko; ibyo bikaba binyuranye n'ibikorwa mu zindi nzira z'ubujurire kuko zo zidasaba ishungura ryihariye. Urukiko rusanga ababuranyi bataciye muri izo nzira badashobora guhabwa uburenganzira bwo kuririra ku isubirwamo ryasabwe n'abandi rikemerwa, ngo bagire ibyo basaba ko bihinduka ku rubanza batasabye ko rusubirwamo kuko ubwo burenganzira baba barabwibujije.

[36] Muri urwo rwego, ntibashinjwa mu rubanza kandi nta n'icyo bashobora kurusabamo; bafata ijambo gusa babisabwe n'urukiko, cyangwa bo basabye kugira icyo basobanura ku bijyanye n'imikorere y'icyaha. Ibyo kandi si bishya mu mategeko kuko hakurikijwe ibiteganywa n'ingingo ya 190 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, uregera indishyi ashobora kujurira ku bireba indishyi gusa, Ubushinjacyaha bukaza mu rubanza bugahabwa ijambo, ariko uburenganzira bufite bukagira aho bugarukira kuko budashobora gusaba ko hagira igihinduka ku gihano cyatanzwe.

[37] Urukiko rusanga icyemezo cyafatiwe abatarasabye ko urubanza rusubirwamo ku mpamvu z'akarengane, bakuririra ku busabe bw'abandi, gishobora guhinduka gusa iyo urukiko rusanze hari ubusobekerane ku byerekeye imikorere y'icyaha bahuriyeho n'abasabye gusubirishamo urubanza ku mpamvu

z'akarengane, ku buryo icyemezo cyafatirwa abareze cyabagiraho ingaruka mu buryo bubafitiye inyungu.

[38] Ku bivugwa n'abasaba kuririra ku burenganzira bw'abasabye ko urubanza rusubirwamo ku mpamvu z'akarengane, ko iyo Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rusubirwamo ku mpamvu z'akarengane rugomba kuburanishwa mu mizi, babishingiye ku byemejwe mu rubanza RS/INJUST/RC 00022/2018/SC rwa Busoro Gervais waburanaga na Busoro Mugunga Désiré, Twagirayezu Ildephonse na Mukankombe Chartine, Urukiko rusanga nta shingiro bifite. Koko rero muri urwo rubanza, Urukiko rwavuze ko kuba Perezida yemeje ko urubanza rusubirwamo ku mpamvu z'akarengane, bitabuza inteko iburanisha gusuzuma ibibazo bidasanze, nk'iyubahirizwa ry'ibihe n'ibindi, ikabifataho icyemezo.

[39] Uru Rukiko rurasanga ibibazo bidasanze bivugwa muri urwo rubanza bigomba kumvikana nk'ibibazo ndemyagihugu. Muri uru rubanza, impaka zishingiye ku kumenya uburenganzira mu rubanza bw' abatarasabye gusubirishamo urubanza ku mpamvu z'akarengane binyuze mu nzira ziteganywa n'amategeko yavuzwe haruguru, Urukiko rukaba rusanga icyo ari ikibazo kirebana n'ububasha bw'abaturanyi, kikaba ari ikibazo ndemyagihugu, kigomba gusuzumwa n'inteko iburanisha mbere yo kujya mu mizi y'urubanza.

[40] Ku byerekeye ibyo bavuga ko urubanza rugomba gusubirwamo bundi bushya, rugasa n'aho rutangiye ku rwego rwa mbere, bityo abarubayemo abaturanyi bagasubirana uburenganzira bari bafite icyo gihe, Urukiko rusanga nabyo nta shingiro bifite. Koko rero, nk'uko uru Rukiko rwabitanzeho umurongo, gusubiramo urubanza bundi bushya ntibigomba

kumvikana nko kurusuzuma hatitawe ku manza zabaye mbere y'uko rusabirwa gusubirwamo ku mpamvu z'akarengane, bigasa n'aho zose ziteshejwe agaciro. Urukiko rwasobanuye ahubwo ko imbibi z'ikiburanwa mu rubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane, zigenwa n'icyaburanywe mu rwego rwa mbere, icyaburanywe mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, n'imyanzuro y'abasabye ko urubanza rusubirwamo bamaze kubyemererwa na Perezida w'Urukiko rw'Ikirenga. Uwo murongo watanzwe n'uru Rukiko mu rubanza RS/INJUST/RC 00024/2018/SC haburana Ngizweninshuti Albert na Muhima Giovanni, rwaciwe ku wa 21/02/2020.

[41] Ku bijyanye n'urubanza RS/INJUST/RP 00004/2018/SC rwa Mbarushimana Jean de Dieu abasabye kuririra ku busabe bw'abandi bemeza ko rwatanze umurongo ubibahera uburenganzira, Urukiko rusanga ibyo atari ukuri kuko hatasuzumwe ikibazo cyo kumenya niba abatarasabye ko urubanza rusubirwamo ku mpamvu z'akarengane bakuririra ku busabe bw'abandi bagasaba Urukiko gusuzuma akarengane ku bibareba. Rusanga ahubwo icyo akarengane kari gashingiyeho, ari ukuba uwasabye ko urubanza rusubirwamo yarahanwe wenyine kandi hari abandi bagize uruhare mu ikorwa ry'icyaha batakurikiranwe cyangwa batahanwe, bigatuma yikorera wenyine umuzigo w'indishyi. Urukiko rwemeje ko hahamagazwa gusa abarubayemo ababuranyi mbere, aribo Rutayisire Ruhinda Sabbat nawe wari ukurikiranywe n'Ubushinjacyaha, hamwe na *Compagnie Rwandaise d'Hotellerie et de Tourisme, Hotel des Mille Collines* yaregeraga indishyi.

[42] Urukiko rurasanga n'ubwo Rutayisire Ruhinda Sabbat n'waregeraga indishyi bahamagajwe muri urwo rubanza,

rukabaha ijambo kandi batarasabye ko rusubirwamo ku mpamvu z'akarengane, rutarigeze rugira icyemezo rufata ku bibareba, ahubwo umwanzuro wafashwe gusa k'uwasabye ko urubanza rusubirwamo ku mpamvu z'akarengane ariwe Mbarushimana Jean de Dieu. Bityo rero, kuba Nzaramba Stevenson, Bamika Rumanyika Herbert, Karake Mutsinzi Charles na Mawadza Nhamo n'abunganizi babo bashingira kuri urwo rubanza bagasaba ko hagira ibyemezo bibafatirwa, bikaba nta shingiro bifite.

[43] Rushingiye ku bisobanuro byatanzwe haruguru, Urukiko rusanga ababaye ababuranyi mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane baruhamagarwamo, Urukiko rugashobora kugira icyo rubabaza cyafasha mu micire y'urubanza rusubirishwamo cyangwa nabo bakaba bagira amakuru batanga, ariko bakaba badashobora gusaba ko urwo rubanza ruhinduka ku byerekeye ibyemezo bari bafatiwe, keretse rusanze hari ubusobekerane (*indivisibilité/indivisibility*) bw'ibiburanwa ku buryo rudashobora gufata icyemezo ku busabe bw'abasabye ko urubanza rusubirwamo bitagize ingaruka ku byemezo byafatiwe abatarabisabye kandi ku buryo bubafitiye inyungu.

### III. ICYEMEZO CY'URUKIKO

[44] Rwemeje ko inzitizi yatanzwe n'Ubushinjacyaha ifite ishingiro.

[45] Rwemeje ko akarengane kagomba gusuzumwa mu rubanza RPA 00669/2017/HC/KIG - RPA 00680/2017/HC/KIG - RPA 00684/2017/HC/KIG – RPA 00685/2017/HC/KIG- RPA00686/2017/HC/KIG-RPA 00745/2017/HC/KIG rwaciwe

n'Urukiko Rukuru ku wa 10/12/2018 ari akareba Magara Gahakwa John na Kamanzi Charlotte gusa, rukaba rwafata icyemezo kubireba abandi ari uko rusanze hari ubusobekerane bw'ibiburanwa.

[46] Rwemeje ko iburanisha ry'uru rubanza rizakomeza ku wa 18/01/2021.







**SIKUBWABO v RWANDA  
DEVELOPMENT BOARD (RDB)  
N’ABANDI (ADD 2)**

[Rwanda URUKIKO RW’IKIRENGA – RS/INJUST/RCOM  
00007/2021/SC (Cyanzayire, PJ, Nyirinkwaya na Hitiyaremye,  
J.) 15 Nyakanga 2022]

*Amategeko agenga imiburanishirize y’imanza z’ubucuruzi – Ububasha bw’inkiko – Ubusobekerane bw’imanza – Ingingo za 94, 98, 100 z’Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’inkiko – Ibiteganyijwe mu ngingo ya 100 y’ Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’inkiko ku bireba uburegeke, ni nabyo byakoreshwa ku bireba ubusobekerane.*

*Amategeko agenga imiburanishirize y’imanza z’ubucuruzi – Ububasha bw’inkiko – Ubusobekerane bw’imanza – Mu gihe hari ubusobekerane bw’imanza ziburanihwa mu nkiko zitandukanye zitari ku rwego rumwe, urukiko ruri ku rwego rwo hasi nirwo rugomba kohereza urubanza ururi ku rwego rwo hejuru – Umuburanyi usaba ko imanza zihuzwa, ashyikiriza ubusabe bwe urukiko ruri ku rwego rwo hasi rugomba kohereza urubanza.*

*Amategeko agenga imiburanishirize y’imanza zasabiwe gusubirishwamo ku mpamvu z’akarengane – Ubusobekerane bw’imanza – Urubanza rwaregewe mu rwego rw’akarengane – Urubanza rwaregewe binyuze mu nzira zisanzwe – Guhuza urubanza rwaregewe mu rwego rwo gusubirishamo urubanza ku mpamvu z’akarengane n’urubanza rwaregewe binyuze mu nzira zisanzwe – Urubanza rwaregewe mu rwego rw’akarengane ari urubanza ruba rwararangije inzira z’ubujurire, rushobora no*

*kuba rwararangijwe, rukaba rudashobora guhuzwa n'urubanza rugifite inzira zisanzwe z'ubujurire – Inkiko zaregewe mu nzira zisanzwe zitegereza icyemezo cy'inkiko zaregewe mu rwego rw'akarengane*

**Incamake y'ikibazo:** Mu rwego rwo kugirango hishyurwe umwenda Sikubwabo yari abereyemo Bank of Africa, Umwanditsi Mukuru muri RDB yatanze impushya zo kugurisha ingwate, abanza gutanga uruhushya rwo kugurisha umutungo ufite UPI: 1/02/09/01/844. Nyuma ya cyamunara yakozwe kuri uwo mutungo, Sikubwabo yatanze ikirego gifite No RCOM 01971/2017/TC/NYGE mu Rukiko rw'Ubucuruzi rwa Nyarugenge asaba kuyitesha agaciro, arega Bank of Africa, hagobokeshwamo RDB na Umugiraneza wari ushinzwe kugurisha ingwate. Mu gihe urubanza rwari rutaracibwa, Umwanditsi Mukuru yatanze uruhushya rwo kugurisha umutungo ufite UPI: 1/02/13/03/115, bituma Sikubwabo atanga ikirego cyihutirwa asaba guhagarikisha cyamunara kuri uyu mutungo. Mu rubanza No RCOMA 00793/2017/CHC/HCC rwaciwe ku rwego rw'ubujurire, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ibikorwa bijyanye na cyamunara ku mutungo ufite UPI: 1/02/13/03/115 bihagarara by'agateganyo, hakabanza gutegerezwa icyemezo cy'urukiko ku rubanza No RCOM 01971/2017/TC/NYGE.2

Urubanza No RCOM 01971/2017/TC/NYGE rwarangije inzira z'ubujurire ku wa 06/05/2020, hemezwa ko nta mpamvu yagaragajwe yatesha agaciro cyamunara ku mutungo ufite UPI: 1/02/09/01/844. Ku wa 08/05/2020, Sikubwabo yahise yandikira Umwanditsi Mukuru amusaba guhagarika burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115 kuko hatagaragajwe umwenda watumye ikorwa; ku wa 20/05/2020 atanga ikirego mu

Rukiko rw'Ubucuruzi. Urubanza rwanditswe kuri No RCOM 00767/2020/TC, Murego waguze uwo mutungo muri cyamunara na Umugiraneza wari ushinze kuwugurisha barugobokamo ku bushake, hagobokeshwa ku gahato Bank of Africa yatanze umwenda.

Murego yatanze inzitizi asaba ko ikirego cya Sikubwabo kitakwagirwa kuko yagitanze ibihe biteganywa n'amategeko byararenze, iyo nzitizi ntiyakirwa mu rwego rwa mbere ariko mu bujurire bwa mbere n'ubwa kabiri ihabwa ishingiro. Mu rubanza N° RCOMAA 00061/2020/CA rwaciwe ku wa 18/12/2020, Urukiko rw'Ubujurire rwagumishijeho icyemezo cyari cyafashwe n'Urukiko Rukuru rw'Ubucuruzi, rusobanura ko ikirego cyagombaga gutangwa mu minsi 15 ibazwe kuva igihe urundi rubanza No RCOM 00577/2019/TC rwemeje ingano y'umwenda rwabereye itegeko, ni ukuvuga ku wa 20/06/2019, rushingiye ku biteganywa n'ingingo ya 260, igika cya kane, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu. Uru rubanza nirwo Sikubwabo yasabye ko rusubirwamo ku mpamvu z'akarengane.

Uru Rukiko rwasuzumye niba koko ikirego cya Sikubwabo kigamije guhagarikisha burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115 cyaratanzwe impitagihe, hakurikijwe ibiteganywa n'ingingo ya 260 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru. Nyuma yo gusesengura ibiteganywa n'iyi ngingo, Urukiko rwasanze ibihe bivugwa mu gika cyayo cya 6 byarubahirijwe na SIKUBWABO Raphaël, rwemeza ko ikirego cye cyari cyatanzwe mu gihe giteganywa n'amategeko. Rwemeje ko urubanza N° RCOMAA 00061/2020/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 18/12/2020, kimwe n'urwarubanjirije N° RCOMA

00398/2020/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 16/07/2020 zivanyweho, hakagumaho urubanza N° RCOM 00767/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 22/06/2020.

Rukiko rwemeje ko arirwo rugomba gusuzuma ingingo z'ubujurire Sikubwabo Raphaël yari yashyikirije Urukiko Rukuru rw'Ubucuruzi. Mu gihe urubanza rwari rutegereje kuburanishwa, SIKUBWABO Raphaël yanditse asaba ko urubanza N° RCOMAA 00024/2022/CA ruri mu Rukiko rw'Ubujurire, rujyanye n'ikindi kirego yatanze asaba gutesha agaciro cyamunara ku mutungo ufite UPI: 1/02/13/03/115, rwahamagazwa rugahuzwa n'uru kugirango hatazabaho kuvuguruzanya kubera isano zifitanye. Avuga ko impamvu asaba ko uru rubanza rwahuzwa n'urubanza N° RCOMAA 00024/2022/CA rwahagaze kuburanishwa mu Rukiko rw'Ubujurire, zishingiye ku cyemezo cyafashwe n'uru Rukiko mu rubanza rubanziriza urundi, aho rwavuze ko ibibazo byose birebana n'iki kibazo bikwiye gukemurirwa hamwe kugira ngo hatazavuka izindi manza zikazagera nazo mu karengane. Asobanura ko kuba urubanza ruri mu Rukiko rw'Ubujurire rurebana n'icyemezo cyafashwe n'Umwanditsi Mukuru wa RDB cyo kwemeza burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115, kandi aricyo kiburanwa muri uru rubanza, izo manza zombi zikwiye guhuzwa kubera isano zifitanye.

RDB avuga ko asanga imanza zitahuzwa kubera ko nta sano zifitanye, ko kandi nta bindi bintu Sikubwabo yagombye kuzana bitari ibyo yavuze mu nama ntegurarubanza. Naho abandi bo bavuga ko n'ubwo mbere bari basabye ko imanza zitahuzwa, nyuma yo gusuzuma neza bisubiyeho bakaba basanga zahuzwa kuko zifitanye isano.

**Incamake y'icyemezo:** 1. Ibiteganyijwe mu ngingo ya 100 y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko ku bireba uburegeke, ni nabyo byakoreshwa ku bireba ubusobekerane.

2. Mu gihe hari ubusobekerane bw'imanza ziburanishwa mu nkiko zitandukanye zitari ku rwego rumwe, urukiko ruri ku rwego rwo hasi nirwo rugomba koherereza urubanza ururi ku rwego rwo hejuru

3. Umuburanyi usaba ko imanza zihuzwa, ashyikiriza ubusabe bwe urukiko ruri ku rwego rwo hasi rugomba koherereza urubanza.

4. Urubanza rwaregwe mu rwego rw'akarengane ari urubanza ruba rwararangije inzira z'ubujurire, rushobora no kuba rwararangijwe, rukaba rudashobora guhuzwa n'urubanza rugifite inzira zisanzwe z'ubujurire

5. Iyo hari ubusobekeranye bw'imanza, inkiko zaregwe mu nzira zisanzwe zitegereza icyemezo cy'inkiko zaregwe mu rwego rw'akarengane kugirango hataba ivuguruzanya ry'imanza.

**Ubusabe bwo guhamagaza urubanza ruburanishwa n'Urukiko rw'Ubujurire rugahuzwa n'uru rubanza, ntibukwiye kwakirwa ngo busuzumwe, kuko yabutanze mu nzira zidakurikije amategeko; Iburanisha ry'urubanza rizakomeza.**

**Amategeko yashingiweho:**

Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 94 na 100.

**Imanza zifashishijwe:**

Urubanza N° RS/INJUST/RCOM 00005/2019/SC, Kigali  
Ceramica & Furniture Ltd v Guaranty Trust Bank  
(Rwanda) Plc rwaciwe n'Urukiko rw'Ikirenga.

**Urubanza****I. IMITERERE Y'URUBANZA**

[1] Uru rubanza rukomoka ku ruhushya rwo guteza cyamunara (*permit to sell* N° 017-074833) umutungo ufite UPI: 1/02/13/03/115 rwatanzwe n'Umwanditsi Mukuru muri RDB ku wa 06/11/2017, kugirango hishyurwe umwenda Sikubwabo Raphaël yari abereyemo Bank of Africa. Iyo cyamunara yakurikiraga indi yakozwe ku wa 09/06/2017 ku mutungo ubaruye kuri UPI: 1/02/09/01/844 nabwo hishyurwa uwo mwenda.

[2] Nyuma y'iyi cyamunara yo ku wa 09/06/2017, Sikubwabo Raphaël yatanze ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge arusaba kuyitesha agaciro, umwenda ukishyurwa hakurikijwe ibindi biteganyijwe mu masezerano y'inguzanyo. Ikirego cyanditswe kuri No RCOM 01971/2017/TC/NYGE, uregwa ari Bank of Africa, hagobokeshwamo RDB na Umugiraneza Jean Michel wari ushinze kugurisha ingwate. Nyuma yo gutanga iki kirego, urubanza rutaracibwa, nibwo Sikubwabo Raphaël yahawe n'Umwanditsi Mukuru *permit to sell* N° 017-074833 yo ku wa 06/11/2017 yavuzwe haruguru, ndetse n'amabwiriza ya cyamunara, birebana n'ingwate ku mutungo ufite UPI: 1/02/13/03/115.

[3] Igihe iyi cyamunara ya kabiri yari itaremezwa n'Umwanditsi Mukuru, Sikubwabo Raphaël wavugaga ko atigeze amenyeshwa umwenda wari usigaye nyuma y'ubwishyu bwavuye muri cyamunara ya mbere, yahise atanga ikirego cyihutirwa asaba guhagarika by'agateganyo cyamunara ku ngwate ya kabiri irebana n'umutungo ufite UPI: 1/02/13/03/115, kugirango habanze gusuzumwa ibyasabwe mu rubanza rw'iremezo. Ikirego cyanditswe kuri N° RCOM 02265/2017/TC/NYGE, urubanza rucibwa ku wa 04/12/2017, Urukiko rwemeza ko nta mpamvu yo guhagarika cyamunara yari iteganyijwe ku wa 05/12/2017. Urwo rubanza rwajuririwe mu Rukiko Rukuru rw'Ubucuruzi kuri No RCOMA 00793/2017/CHC/HCC, rucibwa ku wa 21/12/2017, hemezwa ko ibikorwa bijyanye na cyamunara ku mutungo ufite UPI: 1/02/13/03/115 bihagarara by'agateganyo, hakabanza gutegerezwa icyemezo cy'urukiko ku rubanza No RCOM 01971/2017/TC/NYGE.

[4] Nyuma y'icibwa ry'uru rubanza N° RCOMA 00793/2017/CHC/HCC, Sikubwabo Raphaël yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi, asaba guhamagaza Umwanditsi Mukuru agasobanura impamvu atarurangiza<sup>1</sup>, MUREGO Paulin waguze mu cyamunara yahagaritswe agasubizwa amafaranga yatanze. Ikirego cyanditswe kuri No RCOM 00024/2019/HCC, urubanza rucibwa ku wa 04/10/2019, Urukiko rwemeza ko rudafite ububasha bwo kuburanisha bene ibyo birego kuko birebana n'imanza z'ubutegetsu. Urwo rubanza rwajuririwe mu Rukiko Rukuru rw'Ubucuruzi kuri No RCOMA 01016/2018/HCC, rucibwa ku wa 14/02/2020, hemezwa ko

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<sup>1</sup> Yatanze ikirego ashingiye ku ngingo ya 184 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 (CPCCSA), ivuga ku bihano bihabwa umuyobozi wanze gushyira mu bikorwa icyemezo cy'urukiko.

ikirego cyakiriwe ariko ko ibyo Umwanditsi Mukuru yagombaga gukora mu gushyira mu bikorwa urubanza No RCOMA 00793/2017/CHC/HCC yabikoze kuko yahagaritse by'agateganyo iyemezwa rya raporo ya cyamunara kuri UPI: 1/02/13/03/115.

[5] Urubanza No RCOM 01971/2017/TC/NYGE (rurebana no gutesha agaciro cyamunara yabaye ku wa 09/06/2017 kuri UPI: 1/02/09/01/844) rwari rwatumye cyamunara kuri UPI: 1/02/13/03/115 ihagarikwa by'agateganyo rwaciwe ku wa 16/05/2018, hemezwa ko nta mpamvu yagaragajwe yatesha agaciro cyamunara. Urwo rubanza rwajuririwe mu Rukiko Rukuru rw'Ubucuruzi kuri No RCOMA 00443/2018/CHC/HCC, rucibwa ku wa 14/12/2018, hemezwa ko urubanza rwajuririwe rudahindutse. SIKUBWABO Raphaël yajuriye bwa kabiri mu Rukiko rw'Ubujurire kuri No RCOMAA 00039/2019/CA, urubanza rucibwa ku wa 06/05/2020, hemezwa ko ubwo bujurire butakiriwe kuko bwatanzwe bukererewe.

[6] Nyuma y'uko urubanza No RCOM 01971/2017/TC/NYGE rurangije inzira zose z'ubujurire, ku wa 08/05/2020 SIKUBWABO Raphaël yandikiye Umwanditsi Mukuru amusaba guhagarika burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115. Ku wa 20/05/2020, yatanze ikirego mu Rukiko rw'Ubucuruzi, asaba guhagarika burundu cyamunara ku mutungo we ufite UPI: 1/02/13/03/115, kuko hatagaragajwe umwenda watumye ikorwa. Urubanza rwanditswe kuri No RCOM 00767/2020/TC, Murego Paulin waguze uwo mutungo muri cyamunara na Umugiraneza Jean Michel wari ushinze kuwugurisha barugobokamo ku bushake, hagobokeshwa ku gahato Bank of Africa yatanze umwenda.

[7] Muri urwo rubanza, Sikubwabo Raphaël yatanze inzitizi asaba Urukiko kutakira ibirego by'abagobotse ku bushake kuko nta nyungu bafite. Murego Paulin nawe yatanze inzitizi asaba ko ikirego cya SIKUBWABO Raphaël kitakwakirwa kuko yagitanze ibihe biteganywa n'amategeko byo kuba yaregera gutesha agaciro cyamunara byararenze.

[8] Urubanza rwaciye ku wa 22/06/2020, Urukiko rwemeza ko inzitizi yatanzwe na SIKUBWABO Raphaël nta shingiro ifite kuri Murego Paulin kuko ariwe waguze umutungo uburanwa muri cyamunara, amategeko akaba amwemerera kuba yagoboka muri urwo rubanza. Rwemeje ko inzitizi yo kutakira ukugoboka ku bushake kwa Umugiraneza Jean Michel ifite ishingiro kuko hatagaragajwe ko hari amakosa ajyanye n'imihango (*procédure*) yaba yarakozwe mu kugurisha muri cyamunara umutungo uburanwa, kandi ko nta nyungu ze bwite zibangamiwe mu rubanza. Ku bijyanye n'inzitizi yo kutakira ikirego bitewe n'uko cyatanzwe impitagihe, Urukiko rwemeje ko cyakirwa kigasuzumwa mu mizi. Ku birebana n'urubanza mu mizi, Urukiko rwemeje ko ikirego cya Sikubwabo Raphaël nta shingiro gifite, rutegeka ko cyamunara yakozwe ku mutungo ufite UPI: 1/02/13/03/115 igumaho.

[9] Sikubwabo Raphaël yajuririye imikirize y'urubanza mu Rukiko Rukuru rw'Ubucuruzi, urubanza rwandikwa kuri N° RCOMA 00398/2020/HCC, avuga ko yajurijwe no kuba Urukiko rw'Ubucuruzi rutarahagaritse cyamunara yavuzwe kandi hari impamvu zituma ihagarikwa. Yanasabaga Urukiko gusuzuma niba imanza N° RCOMA 00793/2017/CHC<sup>2</sup> na RCOM

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<sup>2</sup> Urubanza rwemeje ko cyamunara iteganyijwe ku mutungo ufite UPI: 1/02/13/03/115 ihagarara by'agateganyo hagategerezwa icyemezo kizafatwa mu rubanza N° RCOM 01971/2017/TC/NYG.

01971/2017/TC/NYGE<sup>3</sup> hari ingaruka zagize kuri iyo cyamunara. Muri urwo rubanza Murego Paulin yatanze inzitizi agaragaza ko ikirego cyakiriwe ku rwego rwa mbere kitaragombaga kwakirwa kuko Sikubwabo Raphaël yazeze impitagihe. Umugiraneza Jean Michel yatanze ubujurire bwuririye ku bundi asaba ko hasuzumwa niba urukiko rwa mbere rutaracyiye urubanza ku byo rutaregewe, anasaba indishyi zinyuranye. Bank of Africa nayo yatanze ubujurire bwuririye ku bundi isaba indishyi z'ibyakoze mu rubanza ku rwego rw'ubujurire.

[10] Urubanza rwaciye ku wa 16/07/2020, Urukiko Rukuru rw'Ubucuruzi rwemeza ko inzitizi yatanzwe na MUREGO Paulin ifite ishingiro, ko ikirego cyatanzwe na Sikubwabo Raphaël mu Rukiko rw'Ubucuruzi kitagombaga kwakirwa ngo gisuzumwe mu mizi, kuko cyatanzwe impitagihe. Urukiko rwasobanuye ko niba mu gutanga ikirego, urega yarashingiye ku byemejwe mu rubanza No RCOM 00577/2019/TC rwaciye ku wa 20/06/2019 rukagaragaza umwenda yishyuzwaga, byumvikana ko cyamunara yari yarahagaritswe n'imanza zinyuranye yagombaga guhita ikomeza kuva igihe urwo rubanza rusomewe. Kuba rero Sikubwabo Raphaël yatanze ikirego mu Rukiko rw'Ubucuruzi ku wa 20/05/2020, amezi 11 nyuma y'uko cyamunara yemerewe gukomeza, bigaragaza ko yatanze ikirego impitagihe, kikaba kitari gikwiye kwakirwa ngo gisuzumwe mu mizi.

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<sup>3</sup> Urubanza SIKUBWABO Raphaël yasabyemo gutesha agaciro cyamunara yabaye ku wa 09/06/2017 ku mutungo ufite UPI: 1/02/09/01/844, hakemezwa ko nta mpamvu yagaragaje yatuma iteshwa agaciro, mu bujurire Urukiko Rukuru rukemeza ko nta gihindutse.

[11] Urukiko Rukuru rw'Ubucuruzi rwemeje kandi ko ubujurire bwuririye ku bundi bwatanzwe na Bank of Africa n'ubwa Umugiraneza Jean Michel bufite ishingiro, rwemeza ko urubanza N° RCOM 00767/2020/TC rwaciwe ku wa 22/06/2020 n'Urukiko rw'Ubucuruzi ruteshejwe agaciro, rutegeka Sikubwabo Raphaël guha Bank of Africa na Umugiraneza Jean Michel 500.000 Frw y'indishyi zo gusiragizwa mu nkiko, 500.000 Frw y'igihembo cy' Avoka, 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 1.300.000 Frw kuri buri wese.

[12] Sikubwabo Raphaël yajuririye imikirize y'urubanza mu Rukiko rw'Ubujurire, asaba gusuzuma niba ikirego cye cyaratanzwe impitagihe nk'uko Urukiko Rukuru rw'Ubucuruzi rwabyemeje, kandi urubanza N° RCOMA 00793/2017/HCC rwaciwe ku wa 21/12/2017 rwarategetse ko ibikorwa bijyanye na cyamunara ku mutungo ufite UPI: 1/02/13/03/115 bihagarara by'agateganyo, hakabanza gutegerezwa icyemezo cy'Urukiko ku rubanza N° RCOM 01971/2017/TC/NYGE. Mu rubanza N° RCOMAA 00061/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 18/12/2020, hemejwe ko ubujurire bwa SIKUBWABO Raphaël budafite shingiro, ko imikirize y'urubanza rwajuririwe idahindutse.

[13] Sikubwabo Raphaël yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza N° RCOMAA 00061/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 18/12/2020 rwasubirwamo ku mpamvu z'akarengane, avuga ko mu icibwa ryarwo hirengagijwe amategeko n'ibimenyetso. Perezida w'Urukiko rw'Ikirenga yafashe icyemezo ko urwo rubanza rwongera kuburanishwa n'Urukiko rw'Ikirenga, rwandikwa mu

bitabo byabugenewe, ruhabwa No RS/INJUST/RCOM 00007/2021/SC.

[14] Iburanisha ryabereye mu ruhame ku wa 13/04/2022, RDB iburanirwa na Me Nkusi Fred, Bank of Africa iburanirwa na Me Kayiranga Cyrille, Murego Paulin aburanirwa na Me Munderere Léopold, Umugiraneza Jean Michel aburanirwa na Me Matimbano Barton, naho Sikubwabo Raphaël yunganirwa na Me Uwizeyimana Vénuste. Kuri iyo tariki, Urukiko rwabanje kuburanisha ku kibazo cyo kumenya niba ikirego cyo guhagarikisha burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115, cyatanzwe na Sikubwabo Raphaël mu Rukiko rw'Ubucuruzi, cyaratanzwe impitagihe. Rwamenyesheje ababuranyi ko icyemezo kuri icyo kibazo kizasomwa ku wa 29/04/2022.

[15] Ku wa 29/04/2022, Urukiko rwasomye urubanza rubanziriza urundi, rwemeza ko:

- a. Ikirego cyatanzwe na Sikubwabo Raphaël mu Rukiko rw'Ubucuruzi kigamije guhagarikisha burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115 cyagombaga kwakirwa;
- b. Urubanza No RCOMAA 00061/2020/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 18/12/2020, kimwe n'urwarubanjirije N° RCOMA 00398/2020/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 16/07/2020, zivanyweho;
- c. Iburanisha ry'urubanza ku ngingo z'ubujurire Sikubwabo Raphaël yari yashyikirije Urukiko Rukuru rw'Ubucuruzi rizakomeza ku munsu Ubwanditsi bw'Urukiko buzamenyesha ababuranyi.

[16] Urubanza rwongeye gushyirwa kuri gahunda y'iburanisha ku wa 13/06/2022, ababuranyi bose baritaba bahagarariwe cyangwa bunganiwe nka mbere. Urukiko rwamenyesheje ababuranyi ibaruwa Sikubwabo Raphaël yarushyikirije ku wa 17/05/2022, asaba ko urubanza N° RCOMAA 00024/2022/CA ruri mu Rukiko rw'Ubujurire<sup>4</sup>, rwahamagazwa rugahuzwa n'uru kubera isano zifitanye.

[17] Nyuma yo kumva icyo buri muburanyi avuga ku cyifuzo cya Sikubwabo Raphaël, Urukiko rwapfundikiye iburanisha kuri icyo kibazo, rubamenyesha ko icyemezo kizasomwa ku wa 15/07/2022.

## II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO.

### a. Kumenya niba urubanza N° RCOMAA 00024/2022/CA ruburanishwa n'Urukiko rw'Ubujurire rwahamagazwa rugahuzwa n'urubanza N° RS/INJUST/RCOM 00007/2021/SC

[18] Sikubwabo Raphaël avuga ko impamvu asaba ko uru rubanza rwahuzwa n'urubanza N° RCOMAA 00024/2022/CA rwahagaze kuburanishwa mu Rukiko rw'Ubujurire, zishingiye ku cyemezo cyafashwe n'uru Rukiko mu rubanza rubanziriza urundi, aho rwavuze ko ibibazo byose birebana n'iki kibazo bikwiye gukemurirwa hamwe kugira ngo hatavuka izindi manza zikazagera nazo mu karengane. Asobanura ko kuba urubanza ruri mu Rukiko rw'Ubujurire rurebana n'icyemezo cyafashwe n'Umwanditsi Mukuru wa RDB cyo kwemeza

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<sup>4</sup> Uru rubanza rwahagaze kuburanishwa hatagerejwe icyemezo kizafatwa n'uru Rukiko

burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115, kandi aricyo kiburanwa muri uru rubanza, izo manza zombi zikwiye guhuzwa kubera isano zifitanye.

[19] Me Uwizeyimana Vénuste wunganira Sikubwabo Raphaël avuga ko imanza zikwiye guhuzwa kubera ko zifitanye isano, ku buryo rumwe rwagira ingaruka ku rundi ziramutse ziciwe mu buryo bunyuranye. Avuga ko ashingiye ku gika cya 35 cy'urubanza rubanziriza urundi, asanga kuburanisha uru rubanza rudahujwe n'ururi mu Rukiko rw'Ubujurire haba hari igice kimwe cyarwo gisigaye gishobora kuzagaruka mu Rukiko rw'Ikirenga mu karengane; ibyiza rero akaba ari uko izo manza zahuzwa ikibazo kigakemukira rimwe.

[20] Me Nkusi Fred uburanira RDB avuga ko asanga imanza zitahuzwa kubera ko nta sano zifitanye, ko kandi nta bindi bintu Sikubwabo Raphaël yagombye kuzana bitari ibyo yavuze mu nama ntegarubanza.

[21] Umugiraneza Jean Michel n'umwunganira bavuga ko n'ubwo mbere bari basabye ko imanza zitahuzwa, nyuma yo gusuzuma neza bisubiyeho bakaba basanga zahuzwa kuko zifitanye isano. Bavuga ko hamwe Sikubwabo Raphaël asaba guhagarika cyamunara ahandi agasaba kuyitesha agaciro, akaba ari amagambo agenda ahindura ariko ikibazo ari kimwe, ko rero bashingiye ku ngingo ya 94 y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, basanga izo manza zigomba guhuzwa kabone n'ubwo zidahuje kamere kuko rumwe ruri mu karengane urundi rukaba ari ubujurire busanzwe. Bongeraho ko kuba ntacyo itegeko rivuga ku bijyanye n'uburyo byagenda mu gihe imanza zidahuje kamere ariko kiburanwa ari kimwe, Urukiko rw'Ikirenga arirwo rukwiye gutanga umurongo.

[22] Bavuga kandi ko n'ubwo mu kirego cya Sikubwabo Raphaël kiri mu Rukiko rw'Ubujurire harimo ibice bibiri, aribyo gutesha agaciro cyamunara ku mutungo ufite UPI: 1/02/13/03/115 no gusubizwa amafaranga yasagutse ku ngwate ya mbere, imanza zifitanye isano ya hafi kuko iby'ibanze ari ugutesha agaciro cyamunara hanyuma ibyo gusubiza amafaranga bigashamikiraho, bikaba rero bitabuza ko imanza zombi zihuzwa.

[23] Me Munderere Léopold uburanira Murego Paulin avuga ko n'ubwo mbere yari yasabye ko imanza zitahuzwa, nyuma yaje gusanga zahuzwa kuko ibirego bisa, Sikubwabo Raphaël akaba yarahinduye gusa amagambo hamwe agasaba gutesha agaciro cyamunara ahandi akaregera kuyihagarika burundu. Asobanura ko ibyiza ari uko imanza zaburanishirizwa hamwe kugira ngo zihutishwe, kuko inzu yaguzwe muri cyamunara mu 2017 ariko uwayiguze akaba atariyahabwa.

[24] Avuga kandi ko kuba urubanza rumwe ruri mu rwego rw'akarengane, urundi rukaba ari ubujurire busanzwe, atari ikibazo kuko igisubizo cyatanze mu rubanza rubanziriza urundi rwasomwe ku wa 29/04/2022 mu gika cyarwo cya 35, hakemezwa ko Urukiko rw'Ikirenga rugomba gukemura ibibazo byose birebana n'uru rubanza. Ku birebana n'amafaranga SIKUBWABO Raphaël asaba gusubizwa mu kirego kiri mu Rukiko rw'ubujurire, avuga ko asanga ari inkurikizi y'ikirego kirebana na cyamunara atari ikirego ukwacyo.

[25] Me Kayiranga Cyrille uhagarariye Bank of Africa avuga ko yabanje gusaba ko imanza zitahuzwa kubera ko abaturanyi atari bamwe, ariko ko nyuma yo gusuzuma agasanga ibirego byose bisa, asaba ko zahuzwa kuko ntacyo byakwangiza.

## UKO URUKIKO RUBIBONA

[26] Ingingo ya 94 y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko habaho imanza zisobekeranye, iyo imanza nyinshi, zifitanye isano ku buryo ikemurwa rya rumwe, rigira ingaruka ku rundi kandi ku buryo ziramutse ziciwe, rumwe ukwarwo, urundi ukwarwo, imikirize yazo ishobora kuvuguruzanya.

[27] Ingingo ya 98 y'Itegeko rimaze kuvugwa, yerekeye ibirego bisobekeranye mu nkiko zitandukanye, iteganya ko ibirego byinshi cyangwa ibiburanwa byinshi, byagombye kuburanishwa mu nkiko zitandukanye, bishobora, ku cyemezo cyanditse cya Perezida w'Urukiko cyangwa Perezida w'Inteko iburanisha, kuburanishirizwa mu rubanza rumwe iyo hari ubusobekerane bwabyo. Iyi ngingo ariko ntisobanura ari Perezida w'Inteko y'uruhe rukiko mu zaregewe ufite ububasha bwo gufata icyemezo cyo kuburanishiriza imanza zose mu rubanza rumwe.

[28] Mu Itegeko Ngenga N° 51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko nk'uko ryahinduwe kandi ryujjwe, ryasimbuwe n'irikoreshwa ubu, ingingo ya 153<sup>5</sup> yagenaga urukiko rwoherereza urundi urubanza,

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<sup>5</sup> Ingingo ya 153 igira iti: *Iyo imanza zifite ikiburanwa kimwe kandi zikomoka ku mpamvu imwe, ziburanwa n'ababuranyi bamwe ziri mu nkiko zitandukanye, cyangwa se iyo hari imanza nyinshi zifitanye isano hagati yazo ku buryo ikemurwa rya rumwe ryagira ingaruka ku icibwa ry'urundi, ziri mu nkiko zitandukanye, urukiko rumwe muri izo, bisabwe n'umwe mu baburanyi, ruzohereza urundi rukurikije uburyo bukurikira kandi hubahirijwe uko bukurikirana:*

*1° urukiko rwagize icyemezo rufata mu rubanza kitari kuruca mu mizi yarwo, ni rwo bahitamo ku rutaragira icyemezo rufata mu rubanza;*

*2° bahitamo urukiko rwisumbuye k'urwo hasi yarwo;*

bisabwe n'umwe mu baburanyi, mu gihe hari uburegeke cyangwa ubusobekerane bw'imanza ziburanishwa mu nkiko zitandukanye. Mu Itegeko rishya N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, habayeho gutandukanya ingingo zivuga ku buregeke n'izivuga ku busobekerane bw'imanza, hanyuma ibyateganywaga n'ingingo ya 153 y'Itegeko Ngenga N° 51/2008 ryo ku wa 09/09/2008 bigaruka ku bireba gusa uburegeke<sup>6</sup>, nti hagira igiteganywa ku bijyanye n'ubusobekerane. Urukiko rusanga ibyo byarabaye kwibagirwa, kuko nta cyari gutuma umushingamategeko atagaragaza urukiko rwoherereza urundi urubanza iyo hari ibirego bisobekeranye byaregewe mu nkiko zitandukanye. Niyo mpamvu Urukiko rusanga ibiteganyijwe mu ngingo ya 100 y' Itegeko N°30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru ku bireba uburegeke, ari nabyo byakoreshwa ku bireba ubusobekerane.

[29] Ingingo ya 100 yavuzwe hejuru iteganya ko rumwe mu nkiko zaregewe rwoherereza urundi urubanza, mu gace kayo ka gatatu (3°) ikagaragaza ko urukiko rwisumbuyeho ku rwo hasi ari rwo rutoranywa kohererezwa urubanza; bivuga ko urukiko ruri ku rwego rwo hasi arirwo rugomba koherereza ururi ku rwego

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3° bahitamo urukiko rwaregewe mbere, ku rwaregewe nyuma;

4° bahitamo urukiko rusanze ku rukiko rwihariye.

<sup>6</sup> Ingingo ya 100 y' Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko igira iti: Iyo inkiko zitandukanye ziregewe urubanza rumwe kandi zose zirufitiye ububasha, rumwe muri zo rwoherereza urundi. Bahitamo:

1° urukiko rwihariye ku rukiko rusanze;

2° urukiko rwaregewe mu rwego rw'ubujurire ku rukiko rwo mu rwego rwa mbere;

3° urukiko rwisumbuyeho ku rukiko rwo hasi;

4° urukiko rwagize icyo rukora ku rubanza kurusha urutaragira icyo rurukoraho;

5° urukiko rwaregewe mbere y'urundi.

rwo hejuru urubanza igihe hari ubusobekerane bw'imanza zaregewe mu nkiko zombi. Ibi kandi byumvikanisha ko umuburanyi usaba ko imanza zihuzwa, ashyikiriza ubusabe bwe urukiko rugomba kohereza urubanza, ni ukuvuga urukiko ruri ku rwego rwo hasi. Urukiko rusanga ubusabe buramutse bushyikirijwe urukiko ruri ku rwego rwo hejuru, byasaba ko arirwo rwohereza urubanza, kandi atari byo biteganyijwe mu gace ka 3° k'ingingo ya 100 yavuzwe haruguru.

[30] Urukiko rusanga ibimaze kuvugwa mu gika kibanza atari umwihariko w'u Rwanda, nk'uko bigaragara mu ngingo za 101<sup>7</sup> na 102<sup>8</sup> z'Igitabo cy'amategeko agenga imiburanishirize y'imanza mbonezamubano cy'abafaransa, ziteganya ko igihe inkiko zitandukanye zaregewe imanza zifitanye isano, ku buryo zagombye kuburanishirizwa hamwe mu nyungu z'ubutabera, urukiko rumwe rushobora gusabwa kohereza urundi urubanza. Mu gihe inkiko zaregewe zitari ku rwego rumwe, ubusabe bushyikirizwa urukiko ruri ku rwego rwo hasi.

[31] Ku bijyanye n'uru rubanza, Sikubwabo Raphaël yandikiye Perezida w'Urukiko rw'Ikirenga ku wa 13/05/2022, asaba guhamagaza urubanza No RCOMAA 00024/2021/CA rugahuzwa n'urubanza No RS/INJUST/RCOM 00007/2021/SC, kubera ko zifitanye isano. Ikigaragara muri iyi baruwa, ni uko urega yasabye uru Rukiko guhamagaza urubanza ruri mu Rukiko

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<sup>7</sup> *S'il existe entre des affaires portées devant deux juridictions distinctes un lien tel qu'il soit de l'intérêt d'une bonne administration de la justice de les faire instruire et juger ensemble, il peut être demandé à l'une de ces juridictions de se dessaisir et de renvoyer en l'état la connaissance de l'affaire à l'autre juridiction.*

<sup>8</sup> *Lorsque les juridictions saisies ne sont pas de même degré, l'exception de litispendance ou de connexité ne peut être soulevée que devant la juridiction du degré inférieur.*

rw'Uburire, kandi nyamara nk'uko byasobanuwe mu bika bibanza, yaragombaga gusaba urukiko ruri ku rwego rwo hasi, ni ukuvugaga urukiko rw'Uburire, kohereza urubanza.

[32] Urukiko rusanga ibivugwa na Sikubwabo Raphaël ko ashingira ubusabe bwe ku byasobanuwe n'uru Rukiko mu gika cya 35 cy'urubanza rubanziriza urundi rwaciye ku wa 29/04/2022, ko *ibibazo byose biri mu rubanza bikwiye gukemurirwa mu rukiko ruri ku rwego rwo hejuru kugirango hatabaho imanza zishobora kuzongera kugaruka mu karengane*, ari imyumvire itari yo y'ibyavuzwe muri icyo gika, kuko kidashobora gusomwa cyonyine kitarebwe hamwe n'ibyavuzwe mu bindi bika bikibanziriza. Icyo Urukiko rwashatse kugaragaza muri urwo rubanza, ni uko igihe urukiko rwashyikirijwe ikibazo cy'akarengane kirebana no kuba inkiko zibanza zaranze kwakira ikirego, rugasanga cyaragombaga kwakirwa, ruvanaho imanza zanze kucyakira, rugahita runasuzuma ikirego mu mizi cyari cyashyikirijwe urukiko rwo hasi. Mu gika cya 35, Urukiko rwasobanuye impamvu rufashe uwo murongo<sup>9</sup>, bikaba ntaho bihuriye no kuba izindi manza zose Sikubwabo Raphaël afite mu zindi nkiko, zifitanye isano n'ikiburanwa, zazanwa zigahuzwa n'uru rubanza, nk'uko ashaka kubyumvikanisha.

[33] Hashingiwe ku bisobanuro byose bimaze gutangwa, Urukiko rurasanga ubusabe bwa Sikubwabo Raphaël bwo guhamagaza urubanza N° RCOMAA 00024/2022/CA

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<sup>9</sup> Urukiko rwasobanuye ko : inzira yo gusubirishamo urubanza ku mpamvu z'akarengane ishyirwaho, igitekerezo cy'Umushingamategeko cyari uko urukiko rwaregewe biciye muri icyo nzira, rukemura ibibazo byose biri **mu rubanza umuburanyi yarugejejeho**, aho kugirango rukemure igice kimwe, ikindi gisubire mu nkiko ziri hasi yarwo, bitume habaho imanza zishobora kuzongera kugaruka mu karengane kandi byashobokaga ko ibibazo birangirizwa rimwe n'urukiko ruri ku rwego rwo hejuru.

ruburanishwa n'Urukiko rw'Ubujurire rugahuzwa n'urubanza N° RS/INJUST/RC 00007/2021/SC kubera isano zifitanye, budakwiye kwakirwa ngo busuzumwe, kuko yabutanze mu nzira zidakurikije amategeko.

[34] Urukiko rurasanga, mu rwego rwo gutanga umurongo wafasha izindi nkiko, ari ngombwa no kugira icyo ruvuga ku bijyanye no kumenya niba imanza ziburanihwa hashingiwe ku birego byashyikirijwe inkiko binyuze mu nzira yo gusubirishamo urubanza ku mpamvu z'akarengane, zishobora guhuzwa n'imanza zaregewe inkiko binyuze mu nzira zisanzwe.

[35] Ibirego bishyikirizwa inkiko binyuze mu nzira yo gusubirishamo urubanza ku mpamvu z'akarengane, bitangwa ku manza ziba zamaze kuba itegeko, kandi bikagira inzira yihariye binyuramo kugirango biburanishwe, isobanurwa kuva ku ngingo ya 53 kugeza ku ya 62 z'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko. Bimwe mu biteganywa muri izo ngingo, ni uko hari isuzuma ribanza gukorwa n'Abayobozi b'Inkiko cyangwa Ubugenzuzi Bukuru bw'Inkiko, bashingiye ku mpamvu zigenwa n'Itegeko, icyemezo cya nyuma kigafatwa na Perezida w'Urukiko rw'Ikirenga.

[36] Urukiko rusanga guhuza imanza ziburanihwa hashingiwe ku birego byatanzwe binyuze muri iyo nzira, n'imanza zirimo kuburanishwa ku birego byatanzwe binyuze mu nzira zisanzwe (bitanyujijwe mu nzira yateganyijwe ku manza z'akarengane), bishobora no kuba birimo kuburanishwa ku rwego rwa mbere, byaba bibangamiye imigendekere myiza y'ubutabera. Ibi birahura n'ibyemejwe n'uru Rukiko mu cyemezo cyafatiwe mu ntebe mu rubanza N° RS/INJUST/RCOM

00005/2019/SC<sup>10</sup>, haburanamo Kigali Ceramica & Furniture Ltd na Guaranty Trust Bank (Rwanda) Plc. Muri urwo rubanza, Urukiko rwasobanuye ko urubanza rwaregewe mu rwego rw'akarengane ari urubanza ruba rwararangije inzira z'ubujurire, rushobora no kuba rwararangijwe, rukaba rudashobora guhuzwa n'urubanza rugifite inzira zisanzwe z'ubujurire.

[37] Urukiko rusanga uburyo bwiza bwo gukuraho impungenge z'uko hashobora kubaho ivuguruzanya hagati y'imanza zaregewe mu rwego rw'akarengane n'izaregewe binyuze mu nzira zisanzwe, ari uko inkiko zaregewe mu nzira zisanzwe zategereza icyemezo cyafatwa n'inkiko zaregewe mu rwego rw'akarengane.

### III. ICYEMEZO CY'URUKIKO

[38] Rwemeje ko ubusabe bwa SIKUBWABO Raphaël bwo guhamagaza urubanza N° RCOMAA 00024/2022/CA ruburanishwa n'Urukiko rw'Ubugurire rugahuzwa n'urubanza N° RS/INJUST/RC 00007/2021/SC, budakwiye kwakirwa ngo busuzumwe, kuko yabutanze mu nzira zidakurikije amategeko;

[39] Rwemeje ko iburanisha ry'urubanza rizakomeza ku munsu Ubwanditsi bw'Urukiko buzamenyesha ababuranyi.

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<sup>10</sup> Reba inyandikomvugo y'iburanisha ryo ku wa 22/06/2020, p. 11



## TWAGIRAYEZU N’ABANDI v TWAGIRAYEZU N’UNDI (ADD)

[Rwanda URUKIKO RW’IKIRENGA – RS/INJUST/RC  
00007/2020/SC (Ntezilyayo, P.J., Cyanzayire, Nyirinkwaya,  
Hitiyaremye na Karimunda J.) 25 Kamena 2021]

*Amategeko agenga imiburanishirije y’imanza – Gutsindwa ku rwego rwa mbere n’urwa kabiri ku mpamvu zimwe – Amakosa yo gukoporora ijambo ku rindi inyandiko z’ababuranyi cyangwa ibisobanuro biri mu rundi rubanza (judicial plagiarism) – Ubujurire bwa kabiri – Iyo Urukiko rwajuririwe rukoporoye imyanzuro y’ababuranyi uko yakabaye cyangwa imikirize y’urubanza rwajuririwe ntirunagaragaze aho rwabikuye, ni amakosa yo kwiwitirira cyangwa gukoporora iby’abandi (judicial plagiarism) – Ntibyafatwa ko umuntu yatsinzwe ku mpamvu zimwe mu gihe urukiko rwajuririwe rwakoporoye ijambo ku rindi icyemezo cy’urukiko rubanza kandi ntaho rwabanje kuvuga ko rwemeranya narwo – icyakora gukoporora ijambo ku rindi ntibyakwitiranywa n’impamvu (motivation par référence), kuko yo ibanzirizwa no gusuzuma niba ababuranyi nta bisobanuro bishya batanze mu myanzuro y’ubujurire hanyuma Urukiko rukemeranywa n’impamvu zatanzwe mu rubanza rwajuririwe mu gihe zisa n’izo Urukiko rwajuririwe rwashingiraho.*

**Incamake y’ikibazo :** Uru rubanza rwatangiye Twagirayezu Alice n’abavandimwe be barega undi muvandimwe wabo witwa Twagirayezu Albert mu Rukiko Rwisumbuye rwa Gasabo, basaba ko amasezerano y’ubugure bw’ikibanza cy’umuryango yakoranye na nyakwigendera Niyongira, wari umugabo wa Umumaranyota aseswa agasubiza uwo mutungo kuko

yawugurishije batabizi. Urukiko Rwisumbuye rwa Gasabo rwasanze Twagirayezu Albert yaragurishije umutungo uburanwa afite ibyangombwa bigaragaza ko ari nyirawo, rusanga ibimenyetso abarega bashingiraho bavuga ko ahaburanwa ari ah'umuryango, byarabonetse nyuma yuko umutungo ugurishijwe, hanyuma rutegeka ko amasezerano yasabirwaga guseswa agumana agaciro kayo.

Twagirayezu Alice n'abavandimwe be, bajuririye Urukiko Rukuru bavuga ko Twagirayezu Albert yahengereye abavandimwe be batakiba mu Rwanda, yiyitirira umutungo w'umuryango, awiyandikishaho, anahita awugurisha, ko Urukiko rwabanje iyo rwikorera iperereza, rugasuzuma n'ibimenyetso barushyikirije, rwari kubona ko Twagirayezu Albert atagaragaza inkomoko y'umutungo yiyitiriye.

Urukiko Rukuru rwemeje ko Urubanza rwaciwe n'Urukiko Rwisumbuye rwa Gasabo rudahindutse kuko Twagirayezu Alice n'abagenzi be batagaragaza ibimenyetso byerekana ko umutungo ari uwabo.

Twagirayezu Alice n'abagenzi be bajuririye Urukiko rw'Ubujurire bavuga ko Urukiko Rukuru rutasuzumye inkomoko y'umutungo wagurishijwe ndetse n'inyandiko Twagirayezu Albert yiyandikiye avuga ko yagurishije umutungo w'umuryango atabihereye uburenganzira.

Umumaranyota yatanze inzitizi yo kutakira ikirego mu rukiko rw'Ubujurire ku mpamvu y'uko agaciro k'ikiburanwa katageze kuri 75.000.000Frw, n'impamvu yuko abatsinzwe, abatsinzwe mu nkiko zombi z'abanje ku mpamvu zimwe.

Urukiko rw'Ubujurire rwemeje ko nubwo abagenagaciro bagaragaje ko agaciro k'ikibanza kiburanwa kari hejuru ya 75.000.000Frw, ariko ingingo zasuzumwe n'Urukiko Rukuru ndetse n'Urukiko Rwisumbuye rwa Gasabo, zihuriye ku kumenya niba umutungo wagurishijwe ari uwa Twagirayezu Albert ku giti cye cyangwa niba wari uw'umuryango wa Twagirayezu Aloys, rwemeza ko izo nkiko zombi zafashe icyemezo zishingiye ku mpamvu zimwe, bityo ko ubujurire butari mu bubasha bwariwo.

Twagirayezu Alice n'abavandimwe be, bandikiye Perezida w'Urukiko rw'Ikirenga basaba ko urubanza rwaciwe n'Urukiko rw'Ubujurire rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ikirenga, amaze gusuzuma ubwo busabe, yategetse ko rwongera ruburanishwa. Twagirayezu na Umumaranyota batanze indi nzitizi yo kutakira ikirego kubera ko abarega batagaragaza impamvu z'akarengane zatumye urubanza rusubirishwamo kandi ko abarega batemerewe gusaba iseswa ry'amasezerano y'ubugure batagizemo uruhare. Urukiko rw'Ikirenga rwemeje ko, iyo Perezida w'Urukiko rw'Ikirenga amaze kwemeza ko urubanza rwongera kuburanishwa, nta zindi nzitizi zitangwa zatumye urubanza rutaburanishwa mu mizi uretse inzitizi ndemyagihugu, naho ku bijyanye n'inzitizi y'uko abarega baba batemerewe gusaba iseswa ry'amasezerano y'ubugure batagizemo uruhare, rwemeje ko iyi nzitizi, igaruka ku mizi y'urubanza, ikaba itasuzumwa hataramenyekana niba Urukiko rw'Ubujurire rwarakoze amakosa rwemeza ko abarega batsinzwe ku mpamvu zimwe mu Rukiko Rwisumbuye no mu Rukiko Rukuru.

Urukiko rw'Ikirenga rwemeje ko kuba Urukiko Rukuru nta bisobanuro byarwo rwashyize mu rubanza rwaciye, ahubwo rwarateruye ibyo Urukiko Rwisumbuye rwa Gasabo,

rugakoporora ijamba ku rindi, Urukiko rw'Ubururire rutari kuvuga ko impamvu ari zimwe muri izo manza zombi, nyamara urubanza rwatangiywe impamvu ari urwaciye ku rwego rwa mbere rwonyine, bikaba byari gutuma ubururire bwa kabiri bwakirwa.

**Incamake y' icyemezo :** Iyo Urukiko rwajuririwe rukoporoye imyanzuro y'ababuranyi uko yakabaye cyangwa imikirize y'urubanza rwajuririwe ntirunagaragaze aho rwabikuye, ni amakosa yo kwiyitirira cyangwa gukoporora iby'abandi (judicial plagiarism), akosorwa nuko Urukiko ruyavumbuye ruburanisha urwo rubanza kugira ngo akosorwe. Bityo Urukiko ruri gusuzuma ubururire bwa kabiri rwasabwe gufata icyemezo ku nzitizi yo kuba uwajuriye yaratsinzwe ku mpamvu zimwe, ntaho rwahera rugereranya imitekerereze y'Inkiko zombi ngo rwemeze ko zafashe ibyemezo zishingiye ku mpamvu zimwe kandi impamvu zaratanzwe gusa n'Urukiko rwaciye urubanza ku rwego rwa mbere.

**Ubururire bwa kabiri bwagombaga kwakirwa.**

**Amategeko yashingiweho:**

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 52.

**Imanza zifashishijwe:**

Urubanza RCOMAA0051/14/CS, Ikigo cy'Imisoro n'Amahoro v SECAM Ltd rwaciye n'Urukiko rw'Ikirenga ku wa 04/12/2015.

Urubanza, RCOMAA0038/16/CS-RCOMAA 0033/2016/SC,  
Bank of Kigali Ltd v Mulisa Kana Martin rwaciwe  
n'Urukiko rw'Ikirenga ku wa 21/4/2017.

Urubanza RCOMAA0048/16/CS; Ikigo cy'Imisoro n'Amahoro  
v SODAR Ltd rwaciwe n'Urukiko rw'Ikirenga ku wa  
19/05/2017.

Urubanza RS/INJUST/RCOM 00002/2020/SC; Road Solution  
Pavement Products na MAILCO Ltd n'Urukiko  
rw'Ikirenga rwaciwe ku wa 25/09/2020.

DiLeo v. Ernst & Young 901 F.2d 624 (7th Cir. 1990)

Cojocar v. B.C. Women's Hosp. & Health Ctr., No. 34304,  
2013 SCC 30 (Can. May 24, 2013).

Stone v. City of Kiowa, 950 P.2d 1305 (Kan. 1997)

State v. McDermott, 810 N.W.2d 237 (Wis. Ct. App. 2012).

### **Inyandiko z'abahanga zifashishijwe.**

Serge Guinchard (sous la dir.) Droit et pratique de la procédure  
civile, Dalloz, Paris, 2014, p.1191.

## **Urubanza**

### **I. IMITERERE Y'URUBANZA**

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine na Twagirayezu Monique, barega musaza wabo Twagirayezu Albert kuba yaragurishije ikibanza cy'umuryango kibaruye kuri UPI 1/02/10/03/4370, batabizi, basaba ko amasezerano y'ubugure yo ku wa 22/02/2012, yakoranye na nyakwigendera Niyongira Jean Claude, wari

umugabo wa Umumaranyota Agnès aseswa, uyu agasubiza umutungo uburanwa.

[2] Mu rubanza RC00038/2017/TGI/GSBO rwaciwe ku wa 27/07/2018, Urukiko Rwisumbuye rwa Gasabo rwasanze Twagirayezu Albert yaragurishije umutungo uburanwa afite acte de notoriété imwanditseho, ibyemezo by'umutungo bitangwa n'inzego z'ibanze, fiche cadastrale n'ibyemezo by'umusoro bigaragaza ko ikibanza n° 4370 ari icye, rusanga ibimenyetso abarega bashingiraho bavuga ko ahaburanwa ari ah'umuryango, byarabonetse mu mwaka wa 2014 kandi umutungo waragurishijwe mu mwaka wa 2012 ndetse n'ibyo bavuga ko hari abatangabuhamy bemeza ko umutungo wari uw'ababyeyi bitahabwa ishingiro kuko abo batangabuhamy ntabagaragajwe kandi nubwo bagaragazwa bakaba batanyomoza ibimenyetso bifitwe na Twagirayezu Albert, rwanzura ko nubwo Twagirayezu Albert atagaragaza inkomoko y'umutungo, ibimenyetso yashyikirije Urukiko bitavugurujwe kandi byerekana ko umutungo wari uwe. Urukiko rwategetse ko amasezerano y'ubugure yo ku wa 22/02/2012 agumana agaciro kayo kuko yakozwe mu buryo bukurikije amategeko.

[3] Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine, na Twagirayezu Monique bajuririyeye Urukiko Rukuru bavuga ko Twagirayezu Albert yahengereye batakiba mu Rwanda, yiyitirira umutungo w'umuryango, awiyandikishaho, anahita awugurisha, ko iyo Urukiko rwikorera iperereza, rugasuzuma n'ibimenyetso barushyikirije, rwari kubona ko Twagirayezu Albert atagaragaza inkomoko y'umutungo yiyitiriye akanawugurisha.

[4] Mu rubanza RCA00291/2018/HC/KIG rwaciwe ku wa 31/01/2019, Urukiko Rukuru rwasanze igihe Niyongira Jean

Claude yaguraga, hari ibimenyetso Twagirayezu Albert yamugaragarije byerekana ko umutungo ari uwe ndetse ko byari no mu bubasha bwe kuba yawugurisha, bityo kuba abazungura ba Twagirayezu Aloys na icyimpaye Marie Rose batagaragaza ibimenyetso byerekana ko umutungo ari uwabo, bishimangira ko umutungo Twagirayezu Albert yagurishije wari uwe, rwanzura ko imikirize y'urubanza RC00038/2017/TGI/GSBO rwaciwe n' Urukiko Rwisumbuye rwa Gasabo ku wa 27/07/2018, idahindutse, rutegeka abarega guha Umumaranyota Agnès 250.000Frw y'igihembo cya Avoka na 100.000Frw y'ikurikiranarubanza.

[5] Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine na Twagirayezu Monique bajuririye Urukiko rw'Ubujurire bavuga ko Urukiko Rukuru rutasuzumye inkomoko y'umutungo wagurishijwe ndetse n'inyandiko Twagirayezu Albert yiyandikiye avuga ko yagurishije umutungo w'umuryango atabiherewe uburenganzira, ko inyandiko y'ubugure yabaye ku wa 01/11/1984 hagati ya icyimpaye Marie Rose na Kavamahanga, n'imvugo z'abatangabuhamya ziyishimangira byirengagijwe nyamara ari byo bigaragaza inkomoko y'umutungo.

[6] Umumaranyota Agnès yatanze inzitizi yo kutakira ubujurire bwa kabiri ashingiye ku mpamvu y'uko haburanwa gusesa amasezerano y'ubugure bw'ikibanza cyaguzwe 10.000.000Frw, nyamara agaciro k'ikiburanwa katageze kuri 75.000.000Frw ateganywa n'ingingo ya 52 y'Itegeko No 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, n'iyo kuba impamvu zashingiweho abarega batsindwa mu Rukiko Rwisumbuye rwa Gasabo ari zimwe n'izashingiweho mu Rukiko Rukuru.

[7] Mu rubanza RCAA00020/2019/CA rwaciwe ku wa 26/06/2020, Urukiko rw'Ubujurire rwasanze nubwo abagenagaciro bemeza ko ikibanza UPI 1/02/10/03/4370 gifite agaciro ka 92.825.000Frw, ingingo zasuzumwe n'Urukiko Rukuru ndetse n'Urukiko Rwisumbuye rwa Gasabo, zihuriye ku kumenya niba umutungo wagurishijwe ari uwa Twagirayezu Albert ku giti cye cyangwa niba wari uw'umuryango wa Twagirayezu Aloys, rusanga izo nkiko zombi zarafashe icyemezo zishingiye ku mpamvu zimwe, rwemeza ko ubujurire butari mu bubasha bwari, abajuriye bategekwa gufatanywa kwishyura Umumaranyota Agnès 500.000Frw y'igihembo cya Avoka n'ikurikiranarubanza.

[8] Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine na Twagirayezu Monique bandikiye Perezida w'Urukiko rw'Ikirenga basaba ko urubanza RCAA00020/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 26/06/2020 rusubirwamo ku mpamvu z'akarengane. Mu cyemezo No 058/CJ/2020 cyo ku wa 19/11/2020, Perezida w'Urukiko rw'Ikirenga, amaze gusuzuma ubwo busabe, yategetse ko rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe.

[9] Iburanisha mu ruhame ryabaye ku wa 02/06/2021, Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine na Twagirayezu Monique bahagarariwe na Me Nshuti Salim hamwe na Me Kazenze Théophile, Twagirayezu Albert ahagarariwe na Me Ngezahayo Bernard, naho Umumaranyota Agnès ahagarariwe na Me Nsengiyumva Viateur.

[10] Urukiko rwabanje gusuzuma inzitizi zatanzwe n'abahagarariye Twagirayezu Albert na Umumaranyota Agnès, bavugaga ko ikirego kidakwiye kwakirwa kubera ko abarega

batagaragaza impamvu z'akarengane zatuma urubanza rusubirishwamo kandi ko abarega batemerewe gusaba iseswa ry'amasezerano y'ubugure batagizemo uruhare.

[11] Ku bijyanye n'inzitizi y'uko nta mpamvu z'akarengane zagaragajwe zatuma urubanza rusubirwamo, Urukiko rwafatiye icyemezo mu ntebe, rushingiye ku biteganywa n'ingingo ya 62, igika cya mbere,<sup>1</sup> n'iya 63<sup>2</sup> z'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko no ku isesengura ryazo ryakozwe mu rubanza Busoro Gervais yaburanagamo na Busoro Mugunga Désiré n'abandi, ry'uko iyo Perezida w'Urukiko rw'Ikirenga amaze kwemeza ko urubanza rwongera kuburanishwa, nta zindi nzitizi zitangwa zatuma urubanza rutaburanishwa mu mizi uretse inzitizi ndemyagihugu,<sup>3</sup> rwanzura ko iyo nzitizi itakiriwe.

[12] Naho ku bijyanye n'inzitizi y'uko abarega baba batemerewe gusaba iseswa ry'amasezerano y'ubugure batagizemo uruhare, rusanga nubwo iyi ngingo yatanzwe nk'inzitizi, igaruka ku mizi y'urubanza, ikaba itasuzumwa hataramenyekana niba Urukiko rw'Ubujurire rwarakoze

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<sup>1</sup> “Iyo Perezida w'Urukiko rw'Ikirenga asuzumye raporo yashyikirijwe ku rubanza rw'akarengane, akemeza ko rwongera kuburanishwa, ayohereza Umwanditsi Mukuru w'Urukiko rw'Ikirenga kugira ngo urwo rubanza rushyirwe kuri gahunda y'iburanisha ...”

<sup>2</sup> “Iyo Urukiko rw'Ikirenga cyangwa urundi rukiko Perezida w'Urukiko rw'Ikirenga agena rushyikirijwe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, rurusuzuma mu mizi bundi bushya abarubayemo ababuranyi bose bahamagajwe.”

<sup>3</sup> Urubanza R S/INJUST/RC 00022/2018/SC hagati ya Busoro Gervais na Busoro Mugunga Désiré n'abandi, rwaciwe n'Urukiko rw'Ikirenga ku wa 28/06/2019, igika cya 18.

amakosa rwemeza ko abarega batsinzwe ku mpamvu zimwe mu Rukiko Rwisumbuye rwa Gasabo no mu Rukiko Rukuru.

[13] Nyuma yo kwemeza ko inzitizi yatanzwe n'ababuranira Twagirayezu Albert na Umumaranyota Agnès itakiriwe, Urukiko rwakomereje ku kibazo cyo kumenya niba ubujurire bwa kabiri bwaragombaga kwakirwa n'Urukiko rw'Ubujurire.

## **II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO.**

**Kumenya niba ubujurire bwa Twagirayezu Alice na bagenzi be bwaragombaga kwakirwa n'Urukiko rw'Ubujurire**

[14] Me Nshuti Salim, uburanira Twagirayezu Alice na bagenzi be, avuga ko mu Rukiko Rwisumbuye rwa Gasabo hasuzumwe ibibazo byo kumenya niba Twagirayezu Albert yari afite uburenganzira bwo kugurisha ubutaka buburanwa no kumenya niba ubwo butaka bwari umutungo usangiwe, mu bujurire ibyo bibazo bisuzumwa hibazwa inkomoko y'umutungo Twagirayezu Albert yagurishije, ariko Urukiko Rukuru rwongeraho ikindi kibazo cyo kumenya niba amasezerano y'ubugure hagati ye na Niyongira Jean Claude yateshwa agaciro, iyi ngingo ikaba itari yasuzumwe ku rwego rwa mbere, ariyo mpamvu asanga mu gihe ingingo zasuzumwe n'inkiko zombi atari zimwe n'impamvu zashingiweho zidashobora kuba zimwe kabone nubwo inkiko zombi zaba zarahuriye ku cyemezo kimwe. Asaba uru Rukiko gusuzuma niba koko Urukiko Rwisumbuye n'Urukiko Rukuru zarabajijwe ibibazo bimwe ndetse zikabisesengura kimwe, rwasanga atari uko bimeze rukemeza ko abo aburanira batatsinzwe ku mpamvu zimwe, bityo ko ubujurire

bwa kabiri bwagombaga kwakirwa kubera ko ikiburanwa gifite agaciro ka 92.825.000Frw.

[15] Me Kazeneza Théophile nawe uburanira Twagirayezu Alice na bagenzi be, asaba uru Rukiko kuzabona ko ibibazo byasuzumwe n'Urukiko Rwisumbuye n'ibyasuzumwe n'Urukiko Rukuru bitandukanye, ko mu Rukiko Rukuru abarega bagaragaje ko n'ubwo ikibanza cyari cyanditse kuri Twagirayezu Albert, aterekanye aho agikomora, nyamara kubigaragaza byari inshingano ze, akaba asanga ubujurire bwaragombaga kwakirwa kubera ko impamvu zashingiweho n'izo Nkiko zombi atari zimwe.

[16] Me Nsengiyumva Viateur, uburanira Umumaranyota Agnès, avuga ko mu Rukiko Rwisumbuye rwa Gasabo no mu Rukiko Rukuru habanje gusuzumwa ikibazo cyo kumenya niba Twagirayezu Albert yari afite uburenganzira bwo kugurisha umutungo uburanwa hamwe no kumenya aho awukomora, inkiko zombi zisanga afite ibimenyetso bitavuguruzwa by'uko umutungo ari uwe, harongerera hasuzumwa ikibazo cyo kumenya niba amasezerano y'ubugure akwiye guseswa, inkiko zombi zemeza ko agumana agaciro kayo kuko yakozwe mu buryo bukurikije amategeko, akaba asanga nta makosa yakozwe n'Urukiko rw'Ubujurire rwemeza ko abarega batsinzwe ku mpamvu zimwe.

[17] Me Ngezahayo Bernard, uburanira Twagirayezu Albert, avuga ko yemeranya na Me Nsengiyumva Viateur kuko nawe asanga ubujurire butaragombaga kwakirwa.

## UKO URUKIKO RUBIBONA.

[18] Ingingo ya 52, igika cya 3, y' Itegeko No 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko “[...] icyakora kandi ubujurire bwa kabiri ntibushobora kwakirwa ku manza z’ababuranye bemera ibyo baregwa, cyangwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe. [...]”

[19] Mu gusobanura impamvu mu rubanza icyo aricyo, uru Rukiko rwatanze umurongo w’uko impamvu itakwitiranwa n’icyemezo, ahubwo ko ari ibisobanuro buri Rukiko rwashingiyeho mu gufata icyemezo cyarwo rugendeye ku byabayeno ku byo amategeko abiteganyaho, ko impamvu arizo zishingirwaho mu kugaragariza no gusobanurira ababuranyi icyatumye Urukiko rufata icyemezo, akaba ari nazo ziherehaye ababuranyi basuzuma niba imiburanire yabo yarasesenguwe n’Urukiko bitewe n’uko buri cyemezo cy’urukiko kigomba kuba cyasobanuriwe impamvu.<sup>4</sup>

[20] Naho ku bijyanye n’impamvu zimwe, mu rubanza Road Solutions Pavement Products yaburanagamo na Mailco Ltd, uru Rukiko rwavuze ko mu gusuzuma niba impamvu ari zimwe “harebwa icyaburanwaga n’imitekerereze ya buri rukiko mu

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<sup>4</sup> Reba urubanza n° RCOMAA 0051/14/CS hagati y’Ikigo cy’Imisoro n’Amahoro na SECAM Ltd rwaciwe ku wa 04/12/2015, igika cya 22, urubanza, RCOMAA0038/16/CS-RCOMAA 0033/2016/SC hagati ya Bank of Kigali Ltd na Mulisa Kana Martin rwaciwe ku wa 21/4/2017, igika cya 21, urubanza n° RCOMAA 0048/16/CS hagati y’Ikigo cy’Imisoro n’Amahoro na SODAR Ltd rwaciwe ku wa 19/05/2017, igika cya 17.

kugaragaza impamvu zashingiweho, kugira ngo (Urukiko) rugere ku cyemezo rwafashe, hitawe ku kureba niba ingingo zaburanywe mbere arizo zagarutsweho mu bujirire kandi ko inkiko zombi zazisubijeho mu buryo bumwe. »<sup>5</sup>

[21] Dosiye y'urubanza igaragaza ko Urukiko Rwisumbuye rwa Gasabo rwasuzumye ikibazo cy'iremezo cyo kumenya niba Twagirayezu Albert hari uburenganzira yari afite bwo kugurisha ikibanza kiburanwa, impamvu Urukiko rwatanze zikaba zigaragara mu gika cya 6 n'icya 7 cy'urubanza RC00038/017/TGI/GSBO, mu Rukiko Rukuru iki kibazo cyahindutse gusuzuma inkomoko y'umutungo uburanwa kugira ngo hagaragare nyirawo w'ukuri, icyakora nk'uko bigaragara mu bika bya 9 na 10 by'urubanza RCA00291/2018/HC/KIG, Urukiko Rukuru rwakoporoye ijamba ku rindi ibyari byavuzwe mu gika cya 6 n'icya 7 by'urubanza rwajuririwe.

[22] Urukiko rurasanga akamaro k'ibisobanuro mu rubanza ari ukugira ngo Urukiko rugaragaze ibyo rwashingiyeho rukemura ikibazo rwashyikirijwe n'ababuranyi, iyo rero ibyo bisobanuro bidashobora kwitirirwa Urukiko kubera ko rwabikoporoye ahandi uko byakabaye kandi ntiruvuge naho rwabikuye, byaba ari ugukoporora imikirize y'urubanza rwajuririwe cyangwa imyanzuro y'ababuranyi, abahanga bavuga ko bidakwiye gufatwa nk'ibisobanuro ahubwo ari amakosa yo kwiyitirira cyangwa gukoporora iby'abandi (judicial plagiarism).<sup>6</sup> Iki kibazo

<sup>5</sup> Urubanza RS/INJUST/RCOM 00002/2020/SC hagati ya Road Solution Pavement Products na MAILCO Ltd, rwaciwe ku wa 25/09/2020, igika cya 24. Reba kandi urubanza RCOMAA0048/16/CS hagati y'Ikigo cy'Imisoro n'Amahoro na SODAR Ltd rwaciwe ku wa 19/05/2017, igika cya 18.

<sup>6</sup>“*If an opinion or order cannot fairly be attributed to the court, describing the process of its production and adoption as judicial plagiarism is perfectly apt.*”

cyagarutsweho kandi n'Inkiko z'ibindi bihugu nkaho mu rubanza DiLeo yaburanaga na Ernest & Young, Urukiko rw'Ubujurire rwa the Seventh Circuit rw'i Chicago rwasanze umuco w'Inkiko z'Uturere (District Court) wo gukoporora ibice bimwe by'imyanzuro y'ababuranyi zikayiyitirira udakwiye guhabwa intebe kubera ko bitesha ishema ibisobanuro Urukiko ruba rwatanze kandi bikagaragaza Urukiko nk'igikoresho cy'ababuranyi, kabone nubwo muri uko gukoporora hamwe na hamwe Urukiko ruba rwongeyemo amagambo yarwo.<sup>7</sup>

[23] Urukiko rurasanga mu rubanza Cojocarú yaburanaga na British Columbia Women's Hospital & Health Center, Urukiko rw'Ubujurire rwa British Columbia muri Canada rwasanze ku mpapuro 105 zigize urubanza rwari rwajuririwe, 84 zari zakoporoye imyanzuro y'ababuranyi uko yakabaye, byakoporowe n'Urukiko rubanza, naho ku bika 222 bigize urubanza, 30 gusa aribyo by'Urukiko, nabyo bikaba byari ku iriburiro, kuvuga muri make imiterere y'urubanza n'imyanzuro y'ababuranyi, bituma Urukiko rw'Ubujurire ruvuga ko impamvu zatanzwe n'Urukiko rubanza zidashobora kwitirirwa isesengura ryarwo ku bibazo rwari rwabajijwe cyangwa ngo zigaragaze ko isesengura rwakoze ariryo ryarugejeje ku cyemezo rwafashe, iki kibazo cyatumye Urukiko rw'Ikirenga rwa Canada rushyiraho

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Reba Douglas R. Richmond, "UNORIGINAL SIN: The Problem of Judicial Plagiarism" (2014) Arizona State Law Journal 177 at 179.

<sup>7</sup>"A district judge could not photocopy a lawyer's brief and issue it as an opinion. Briefs are argumentative, partisan submissions. Judges should evaluate briefs and produce a neutral conclusion, not repeat an advocate's oratory. From time to time district judges extract portions of briefs and use them as the basis of opinions. We have disapproved this practice because it disguises the judge's reasons and portrays the court as an advocate's tool, even when the judge adds some words of his own." Reba DiLeo v. Ernst & Young 901 F.2d 624 (7th Cir. 1990).

ihame ry'uko iyo gukoporora iby'abandi byakozwe ku buryo umuntu usanzwe (reasonable person) abona ko Urukiko ubwarwo rutigeze rusesengura ibimenyetso n'ibibazo rwashyikirijwe kandi bigatuma rudafata icyemezo mu bwigenge bwarwo, urwo rubanza rushobora guteshwa agaciro.<sup>8</sup>

[24] Urukiko rurasanga icyakora muri Amerika, mu rubanza Stone yaburanaga n'Umujyi wa Kiowa rwaciwe mu mwaka wa 1997, Urukiko rw'Ikirenga rwa Kansas rwarasanze nubwo ibyo gukoporora iby'abandi atari umuco wo kwihanganirwa, bitatuma urubanza ruteshwa agaciro, ahubwo rwasubirwamo (review), rugakosorwa,<sup>9</sup> ibi ni nako Urukiko rw'Ikirenga rwa Wisconsin rwabisanze mu rubanza Leta yaburanaga na

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<sup>8</sup>*A judgment should be set aside “only if the [judge’s] copying is of such a character that a reasonable person apprised of the circumstances would conclude that the judge did not put her mind to the evidence and the issues and did not render an impartial, independent decision.”* *Reba Cojocar v. B.C. Women’s Hosp. & Health Ctr.*, No. 34304, 2013 SCC 30 (Can. May 24, 2013).  
<sup>9</sup>*“There is nothing inherently wrong with a trial court’s adopting a party’s findings and conclusions in their entirety as long as they had been individually considered, but it is the sort of shorthand that would be susceptible to abuse. Thus, although not a practice to be encouraged, it is not, standing alone, a violation of Supreme Court Rule 165 [ “In a contested matter submitted to the court without a jury -and when the court grants a motion for summary judgment -the court must state its findings of fact and conclusions of law in compliance with K.S.A. 60- 252.” Rule 165 - Reasons for Decision, Kan. R. Rel. Dist. Ct. 165] or K.S.A. 60-252 [ (1) In general. In an action tried on the facts without a jury or with an advisory jury or upon entering summary judgment, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of evidence, or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under K.S.A. 60-258, and amendments thereto].”* *Reba urubanza Stone v. City of Kiowa*, 950 P.2d 1305 (Kan. 1997).

McDermott,<sup>10</sup> ahanini izi nkiko zashingiye iki cyerekezo ku kuba nubwo Urukiko ruba rwarakoze amakosa rugakoporora ijambo ku rindi inyandiko z'abandi rutabivuze, nta tegeko runaka rigenga imiburanishirize y'imanza ruba rwishe ku buryo byatuma urubanza rwaciye ruteshwa agaciro. Uru Rukiko narwo rukaba rusanga amakosa yo gukoporora ijambo ku rindi inyandiko z'ababuranyi cyangwa ibisobanuro biri mu rundi rubanza adakwiye kwihanganirwa, ariko akaba atari impamvu yatuma urubanza ayo makosa yakozwemo ruteshwa agaciro, ahubwo yatuma Urukiko ruyavumbuye ruburanisha urwo rubanza kugira ngo akosorwe.

[25] Urukiko rurasanga ibyo gukoporora ijambo ku rindi bitakwitiranywa n'icyitwa motivation par référence aho Urukiko rwajuririwe rushobora kwiyitirira ibisobanuro byatanzwe n'Urukiko rwabanje kubera ko motivation par référence ibanzirizwa no gusuzuma niba ababuranyi nta bisobanuro bishya batanze mu myanzuro y'ubujurire no kwemeranya n'impamvu zatanzwe mu rubanza rwajuririwe kubera ko zitanyuranye n'izo Urukiko rwajuririwe rwari gutanga,<sup>11</sup> ku bijyanye n'uru rubanza bikaba bigaragara ko ibisobanuro bijyanye n'inkomoko y'umutungo byari bishya mu bujurire, byongeye kandi ntaho Urukiko Rukuru rwigeze ruvuga ko kwemeranya n'impamvu zatanzwe n'Urukiko Rwisumbuye rwa Gasabo ku buryo

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<sup>10</sup>State v. McDermott, 810 N.W.2d 237 (Wis. Ct. App. 2012) para 25.

<sup>11</sup>“*En appel, la motivation par référence est admise en cas de confirmation du jugement La Cour est réputée avoir adopté les motifs du jugement qu'elle confirme, et qui ne sont pas contraires aux sien La Cour d'Appel n'a pas à expliquer sa décision par d'autres motifs que ceux des premiers juges lorsque les parties ne présentent pas de moyens nouveaux. Dans le cas contraire, le juge doit les analyser.*” Reba Serge Guinchard (sous la dir.) Droit et pratique de la procédure civile, Dalloz, Paris, 2014, p.1191.

byafatwa ko rwazigize izarwo, ahubwo Urukiko Rukuru nta bisobanuro rwatangiye ikibazo cya mbere rwasuzumye.

[26] Urukiko rurasanga, mu gihe Urukiko rwajuririwe rwakoporoye ijambo ku rindi nta na gito rusize cyangwa ruhinduye ku bisobanuro byatanzwe mu rubanza rwari rwajuririwe kandi ntaho rwabanje kuvuga ko rwemeranya narwo, ntibyafatwa ko Urukiko rwajuririwe hari impamvu zarwo rwatangiye icyemezo rwafashe. Iyo bimeze bityo, nubwo nta mategeko runaka aba yishwe ahubwo haba habayeho kutubahiriza amahame agenga imyandikire, ntaho Urukiko rurimo gusuzuma ubujurire bwa kabiri rwasabwe gufata icyemezo ku nzitizi yo kuba uwajuriye yaratsinzwe ku mpamvu zimwe, rwahera rugereranya imitekerereze y'Inkiko zombi ngo rwemeze ko zafashe ibyemezo zishingiye ku mpamvu zimwe kandi impamvu zaratanzwe gusa n'Urukiko rwaciye urubanza ku rwego rwa mbere.

[27] Urukiko rurasanga mu gihe byagaragaye ko nta bisobanuro byarwo Urukiko Rukuru rwashyize mu bika bya 8 na 9 by'urubanza rwaciye, ahubwo rwarateruye ibyo Urukiko Rwisumbuye rwa Gasabo rwari rwanditse mu bika bya 6 na 7 by'urubanza rwarwo, rugakoporora ijambo ku rindi ntacyo rusize cyangwa ruhinduye, bivuze ko Urukiko Rukuru nta mpamvu rwatangiye icyemezo rwafashe muri ibyo bika, bityo Urukiko rw'Ubugurire rukaba rutari kuvuga ko impamvu ari zimwe muri izo manza zombi nyamara urubanza rwatangiwe impamvu ari urwaciye ku rwego rwa mbere rwonyine, bikaba byari gutuma ubujurire bwa kabiri bwakirwa.

[28] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique na Twagirayezu Albertine bataratsinzwe

ku mpamvu zimwe mu Rukiko Rwisumbuye no mu Rukiko Rukuru, bityo ubujurire bwabo bukaba bwaragombaga kwakirwa.

### **III. ICYEMEZO CY'URUKIKO.**

[29] Rwemeje ko Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine na Twagirayezu Monique batatsinzwe ku mpamvu zimwe mu Rukiko Rwisumbuye rwa Gasabo no mu Rukiko Rukuru;

[30] Rwemeje ko ubujurire bwa kabiri bwa Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine na Twagirayezu Monique mu rubanza RCAA00020/2019/CA, bwagombaga kwakirwa n'Urukiko rw'Ubururire, urubanza rukaburanishwa mu mizi;

[31] Ruvuze ko iburanisha mu mizi rizakomeza ku wa 08/09/2021.

**IMANZA ZACIWE MU MIZI**



**URUBANZA MBONEZAMUBANO**



**TWAGIRAYEZU N’ABANDI v  
TWAGIRAYEZU N’UNDI (Fond)**

[Rwanda URUKIKO RW’IKIRENGA – RS/INJUST/RC  
00007/2020/SC– (Ntezilyayo, P.J., Nyirinkwaya, Cyanzayire,  
Muhumuza na Karimunda, J.) 10 Ukuboza 2021]

*Amategeko agenga imanza mbonezamubano – Amasezerano y’ubugure – Umutungo utimukanwa – Kuregera kugaruza umutungo wagurishijwe n’utari nyirawo – Iyo ikibazo gisuzumwa gikomoka ku masezerano y’ubugure bw’umutungo utimukanwa, nyir’umutungo afite uburenganzira bwo kuwukurikirana kuwo awusanganye, atabanje gusaba ko amasezerano y’ubugure yabaye hagati y’uwo awusanganye n’uwawugurishije ateshwa agaciro kuko nta ruhare aba yaragize muri ayo masezarano.*

*Amategeko agenga imanza mbonezamubano – Umutungo utimukanwa – Inkomoko y’umutungo utimukanwa – Uregwa kugurisha ibitari ibye ntashobora gutsimbarara gusa ku kuba afite ibyangombwa by’umutungo atabanje kwerekana uburyo umutungo wageze mu maboko ye.*

*Amategeko agenga amasezerano – Kugurisha ikintu cy’undi – Inkurikizi zo kugurisha ikintu cy’undi – Umuguzi uvukijwe ibyo yaguze asubizwa n’uwamugurishije agaciro kabyo ku munsu abivukijweho, ni ukuvuga ku munsu icyemezo kiwumuvutsa cyafatiweho; ibyo kandi ntibivanaho ko ashobora gusaba uwamugurishije indishyi zo kuba atarubahirije inshingano ze zo kwishingira ko adahungabanywa mu burenganzira yari afite ku mutungo yaguze cyangwa gusaba ko nyir’umutungo nyakuri, uwusubiranye, yishyura agaciro k’ibyongereweho n’uwari uwutunze.*

*Amategeko agenga imanza mbonezamubano – Umutungo utimukanwa – Amasezerano y'ubugure – Igurisha ry'umutungo uhuriweho ryakozwe n'umwe mu bawusangiye – Iyo uwagurishije adahakana amasezerano y'ubugure kandi akaba yemera ko yagurishije umutungo azi ko usangiwe, igurisha rigira agaciro ku bireba igipande kigize umugabane we gusa.*

**Incamake y'ikibazo:** Twagirayezu Albert yagurishije Niyongira ikibanza abanje kumugaragariza ibyemezo by'umutungo bihamya ko icyo kibanza ari icye. Nyuma y'ubwo bugure, Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine na Twagirayezu Monique bavuze ko icyo kibanza cyari icy'umuryango wa Twagirayezu Aloys na icyimpaye Marie Rose, ko musaza wabo yakigurishije batabizi, baregera Urukiko Rwisumbuye rwa Gasabo barusaba gutesha agaciro amasezerano y'ubugure kugira ngo umutungo ugaruke mu maboko y'abazungura bose.

Urukiko Rwisumbuye rwasanze abarega nta bimenyetso barugaragariza bivuguriza ibya Twagirayezu Albert byerekana ko umutungo uburanwa ari uwe bwite. Twagirayezu Alice na bagenzi be bajuririye Urukiko Rukuru, narwo rwemeza ko ubujurire nta shingiro bufite. Bajuririye kandi Urukiko rw'Ubujurire, bavuga ko inkiko zabanje zitasuzumye ikibazo cy'inkomoko y'umutungo, ko Twagirayezu Albert atagaragaza aho akomora umutungo uburanwa. Urukiko rwemeje ko ubujurire butari mu bubasha bwawo kubera ko abarega batsinzwe mu Rukiko Rwisumbuye no mu Rukiko Rukuru ku mpamvu zimwe.

Twagirayezu Alice na bagenzi be basubirishijemo urubanza ku mpamvu z'akarengane mu Rukiko rw'Ikirenga maze Perezida w'Urukiko rw'Ikirenga yemeza ko ruzongera kuburanishwa. Mu

iburanisha mu ruhame Twagirayezu Albert n'Umumaranyota batanze inzitizi bavugaga ko ikirego cy'Abarega kidakwiye kwakirwa kubera ko batagaragaza impamvu z'akarengane zatumu urubanza rusubirishwamo kandi ko batanemerewe gusaba iseswa ry'amasezerano y'ubugure batagizemo uruhare. Urukiko rwafatiye icyemezo mu ntebe rwemeza ko iyo nzitizi nta shingiro ifite kubera ko Perezida w'Urukiko rw'Ikirenga amaze kwemeza ko urubanza rwongera kuburanishwa, nta zindi nzitizi zitangwa zatumu urubanza rutaburanishwa mu mizi uretse inzitizi ndemyagihugu. Ku nzitizi ya kabiri, Urukiko rwemeje ko iyo nzitizi igaruka ku mizi y'urubanza, ikaba itasuzumwa hataramenyekana niba Urukiko rw'Ubujuje rwarakoze amakosa rwemeza ko abarega batsinzwe ku mpamvu zimwe mu nkiko zabanje. Umumaranyota yatanze indi nzitizi ndemyagihugu avuga ko abarega badafite ububasha bwo gusaba gusesa amasezerano y'ubugure batagizemo uruhare ariko Urukiko rwafatiye icyemezo mu ntebe rwemeza ko idakwiye kwakirwa kuko itigeze itangwa nk'impamvu y'akarengane ndetse n'imanza ziza mu karengane ziba zaraciwe burundu.

Iburanisha mu mizi ryarakomeje, habanza gusuzumwa ikibazo kijyanye no kumenya niba Twagirayezu Alice n'Abagenzi be bafite ububasha bwo gusaba ko amasezerano y'ubugure yakozwe hagati ya Twagirayezu Albert na Niyongira ateshwa agaciro. Kuri iki kibazo Abarega bavuga ko ayo masezerano akwiye guteshwa agaciro kuko Twagirayezu Albert nawe ubwe yiyemerera ko yagurishije ibitari ibye. Bavuga kandi ko nubwo abagiranye amasezerano aribo bemerewe gusaba ko aseswa, iryo hame rifite irengayobora ry'uko nta kibuzo nyir'umutungo kuwukurikirana mu maboko y'uwo awusanganye, asaba iseswa ry'amasezerano uwufite yawuguriyeho.

Umumaranyota na Twagirayezu Albert bavuga ko iseswa ry'amasezerano risabwa n'abayagizemo uruhare, bityo iyi ngingo ikaba itari ikwiye kwakirwa kubera ko nta kimenyetso na kimwe abarega bashingiraho bavuga ko umutungo ari uw'abazungura ba Icyimpaye Marie Rose ndetse ko ntacyo bakoze ngo bateshe agaciro inyandiko mpamo zatanzwe n'inzego zibifitiye ububasha zihamya ko ubutaka buburanwa ari ubwe. Ikindi ni uko ayo masezerano atateshwa agaciro kuko yakozwe mu buryo bukurikije amategeko kandi impande zombi zayagiranye zikaba ntacyo ziyakemangaho.

Ku kibazo cyo kumenya niba Twagirayezu Albert yaragurishije umutungo asangiye n'abandi bazungura ba Twagirayezu Aloys na Icyimpaye batabyumvikanyeho n'ingaruka zabyo, Abarega bavuga ko bagaragarije inkiko zabanje ibimenyetso bigaragaza ko ubutaka buburanwa bwari ubwa Kavamahanga, bugurwa na Icyimpaye, umugore wa Twagirayezu Aloys, aba akaba ari ababyeyi babo, bityo bukaba bukwiye kuba ubwabo nk'abazungura babo.

Umumaranyota avuga ko akomora umutungo uburanwa ku bugure bwakozwe n'umugabo we Niyongira kandi ko bwabaye amaze kugaragarizwa ibyangombwa bihamya ko uwo mutungo ari uwa Twagirayezu Albert. Avuga kandi ko amasezerano y'ubugure yo ku wa 01/11/1984 Abarega bashingiraho adakwiye guhabwa agaciro kubera ko handitsemo ko uguze ari Kimpaye Marie Rose, nyamara bo bavuga ko nyina yitwa Icyimpaye Marie Rose.

Mu nama ntegurarubanza, Twagirayezu Albert yemeye ko yagurishije ubutaka asangiye na bashiki be ndetse yemera gusubiza amafaranga yakiriye, akaba yarabikoze mu rwego rwo gushaka guhuguza Umumaranyota Agnès. Yavuze ko gusubiza

amafaranga atari kubiterwa no kuba yaragurishije icy'undi ahubwo ari uko yashakaga kugaruza umutungo we bwite.

Ku kibazo cyo kumenya ingaruka zo kuba umutungo wagurishijwe wari uhuriweho n'abazungura ba Twagirayezu Aloys na Icyimpaye Abarega bavuga ko mu gihe Urukiko rusanze Twagirayezu Albert yaragurishije umutungo bari basangiye, Umumaranyota yasubiza umutungo ba nyirawo akikurikiranira uwamugurishije ku gaciro umutungo ugezeho hashingiwe ku igenagaciro ryashyizwe muri dosiye cyane cyane ko uyu nawe yemera kumusubiza amafaranga yakiriye.

Umumaranyota avuga ko ntacyo yabashije kugira icyo akora kuri ubwo butaka nyuma y'urupfu rw'umugabo we ku buryo kugeza ubu ntacyo yubatshe nta n'icyahindutse ku buso bwabwo ariko ko ibyo bitabujije uwo mutungo kuzamura agaciro, bityo mu gihe uru Rukiko rwasanga, umutungo ugomba gusubizwa mu maboko y'Abarega, Twagirayezu Albert yategekwa kumusubiza agaciro uwo mutungo ugezeho uyu muni.

**Incamake y'icyemezo:** 1 Kugira ngo nyir'umutungo aregere kugaruza ibye byagurishijwe n'utari nyirabyo ntibisaba kubanza gusaba iseswa ry'amasezerano y'ubugure kuko nta ruhare aba yaragize muri ayo masezerano. Ku birebana n'uru rubanza, bikaba ari uburenganzira bwa Twagirayezu Alice na bagenzi be gusaba ko umutungo bumva ko bafiteho uruhare ufitwe na Umumaranyota Agnès ugaruzwa.

2. Uregwa kugurisha ibitari ibye ntashobora gutsimbarara gusa ku kuba afite ibyangombwa by'umutungo atabanje kwerekana uburyo umutungo wageze mu maboko ye; bityo mu gihe Twagirayezu Albert atabasha kugaragaza uburyo umutungo uburanwa wavuye mu maboko ya nyina Icyimpaye Marie Rose, wari nyirawo, ugahinduka uwe ku giti cye, bikwiye gufatwa ko

uwo mutungo yari awusangiye n'abandi bazungura, agurisha uruhare rwabo kuri uwo mutungo batabimuhereye uburenganzira.

3. Umuguzi uvukijwe ibyo yaguze asubizwa n'uwamugurishije agaciro kabyo ku muni abivukijweho, ibyo kandi ntibivanaho ko ashobora gusaba uwamugurishije indishyi zo kuba atarubahirije inshingano ze zo kwishingira ko adahungabanywa mu burenganzira yari afite ku mutungo yaguze cyangwa gusaba ko nyir'umutungo nyakuri, uwusubiranye, yishyura agaciro k'ibyongereweho n'uwari uwutunze. Bityo, Umumaranyota Agnès agomba gusubizwa na Twagirayezu Albert agaciro umutungo uburanwa ugezeho uyu muni kuko ntacyo yawongereyeho.

4. Iyo uwagurishije adahakana amasezerano y'ubugure kandi akaba yemera ko yagurishije umutungo azi ko usangiwe, igurisha rigira agaciro ku bireba igipande kigize umugabane we gusa., bityo uruhare rwa Twagirayezu Albert ku mutungo uburanwa ruhwaye na kimwe cya gatanu (1/5) cyawo kikaba kigomba guhabwa Umumaranyota Agnès, bine bya gatanu byawo (4/5) bigasubizwa Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique na Twagirayezu Albertine, hanyuma Twagirayezu Albert agasubiza Umumaranyota Agnès agaciro kabyo (4/5).

**Ikirego cy'ubujurire cyatanzwe mu Rukiko rw'Ubujurire  
gifite ishingiro kuri bimwe.**

**Urubanza rwaciye n'Urukiko Rukuru ruhindutse kuri  
bimwe.**

**Amategeko yashingiweho:**

Itegeko Ngenga N° 08/2005 ryo ku wa 14/07/2005 rigena imikoreshereze n' imicungire y' ubutaka mu Rwanda, ingingo ya 5.

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw' inkiko, ingingo ya 52, 62, n' iya 63.

Itegeko N° 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y' imanza z' imbenezamubano, iz' ubucuruzi, iz' umurimo n' iz' ubutegetsi, ingingo ya 111.

Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 64 n' iya 113.

Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n' itangwa ryabyo, ingingo ya 3.

**Imanza zifashishijwe:**

RS/INJUST/RC 00022/2018/SC, Busoro Gervais na Busoro Mugunga Désiré n' abandi, , rwaciwe n' Urukiko rw' Ikirenga ku wa 28/06/2019.

RCAA 00045/2016/SC, Kold v Nyirahabimana rwaciwe n' Urukiko rw' Ikirenga ku wa 24/05/2019.

RS/ INJUST/ RC 00011/2018/ SC rwaciwe n' Urukiko rw' Ikirenga ku wa 09/06/2021

RCAA 0018/13/CS rwaciwe n' Urukiko rw' Ikirenga ku wa 24/12/2014.

RS/REV/INJUST/CIV 0003/14/CS, Mukagatare Grace na Succession Bwanakeye Francois, rwaciwe n' Urukiko rw' Ikirenga ku wa 03/03/2017.

RS/REV/INJUST/RC 00038/2017/CS, Itangishaka Leonidas na Nyiramahane Rachel n' undi, rwaciwe n' Urukiko rw' Ikirenga ku wa 22/06/2018.

- RS/INJUST/RC 00008/2019/SC, Gahire Athanase na Mukarushakiro Gloriose na bagenzi be, rwaciwe n'Urukiko rw'Ikirenga ku wa 12/11/2021.  
rwaciwe n'Urukiko rw'Ikirenga ku wa 12/11/2021.
- RCOMAA 0051/14/CS, Ikigo cy'Imisoro n'Amahoro na SECAM Ltd rwaciwe n'Urukiko rw'Ikirenga ku wa 04/12/2015.
- RCOMAA 0038/16/CS-RCOMAA 0033/2016/SC, Bank of Kigali Ltd na Mulisa Kana Martin, rwaciwe n'Urukiko rw'Ikirenga ku wa 21/4/2017.
- RCOMAA, 0048/16/CS Ikigo cy'Imisoro n'Amahoro v SODAR Ltd rwaciwe n'Urukiko rw'Ikirenga ku wa 19/05/2017.
- RS/INJUST/RCOM 00002/2020/SC, Road Solution Pavement Products na MAILCO Ltd, rwaciwe n'Urukiko rw'Ikirenga ku wa 25/09/2020.
- RCOMAA 0048/16/CS, Ikigo cy'Imisoro n'Amahoro na SODAR Ltd, rwaciwe n'Urukiko rw'Ikirenga ku wa 19/05/2017.

**Inyandiko z'abahanga zifashishijwe:**

- Douglas R. Richmond, unoriginal sin: The Problem of Judicial Plagiarism, (2014) Arizona State Law Journal 177 at 179.
- Serge Guinchard (sous la dir.) Droit et pratique de la procédure civile, Dalloz, Paris, 2014, p.1191.

## Urubanza

### I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine na Twagirayezu Monique, barega musaza wabo Twagirayezu Albert kuba yaragurishije ikibanza cy'umuryango kibaruye kuri UPI 1/02/10/03/4370, batabizi, basaba ko amasezerano y'ubugure yo ku wa 22/02/2012, yakoranye na nyakwigendera Niyongira Jean Claude, wari umugabo wa Umumaranyota Agnès aseswa, uyu agasubiza umutungo uburanwa.

[2] Mu rubanza RC 00038/2017/TGI/GSBO rwaciwe ku wa 27/07/2018, Urukiko Rwisumbuye rwa Gasabo rwasanze Twagirayezu Albert yaragurishije umutungo uburanwa afitwe acte de notoriété imwanditseho, ibyemezo by'umutungo bitangwa n'inzego z'ibanze, fiche cadastrale n'inyemezabwishyu yishyuriyeho umusoro bigaragaza ko ikibanza numero 4370 ari icye, rusanga ibimenyetso abarega bashingiraho bavuga ko ahaburanwa ari ah'umuryango, byarabonetse mu mwaka wa 2014 kandi umutungo waragurishijwe mu mwaka wa 2012 ndetse n'ibyo bavuga ko hari abatangabuhamya bemeza ko umutungo wari uw'ababyeyi babo bitahabwa ishingiro kuko abo batangabuhamya ntabagaragajwe, kandi nubwo bagaragazwa bakaba batanyomoza ibimenyetso bifitwe na Twagirayezu Albert, rwanzura ko nubwo Twagirayezu Albert atagaragaza inkomoko y'umutungo uburanwa, ibimenyetso yashyikirije Urukiko bitavugurujwe kandi byerekana ko wari uwe. Urukiko rwategutse ko amasezerano y'ubugure yo ku wa 22/02/2012

agumana agaciro kayo kuko yakozwe mu buryo bukurikije amategeko.

[3] Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine, na Twagirayezu Monique bajuririyeye Urukiko Rukuru bavuga ko Twagirayezu Albert yahengereye batakiba mu Rwanda, yiyitirira umutungo w'umuryango, awiyandikishaho, anahita awugurisha, ko iyo Urukiko rwikorera iperereza, rugasuzuma n'ibimenyetso barushyikirije, rwari kubona ko Twagirayezu Albert atagaragaza inkomoko y'umutungo yiyitiriye akanawugurisha.

[4] Mu rubanza RCA 00291/2018/HC/KIG rwaciwe ku wa 31/01/2019, Urukiko Rukuru rwasanze igihe Niyongira Jean Claude yaguraga, hari ibimenyetso Twagirayezu Albert yamugaragarije byerekana ko umutungo ari uwe ndetse ko byari no mu bubasha bwe kuba yawugurisha, bityo kuba abazungura ba Twagirayezu Aloys na icyimpaye Marie Rose batagaragaza ibimenyetso byerekana ko umutungo ari uwabo, bishimangira ko umutungo Twagirayezu Albert yagurishije wari uwe, rwanzura ko imikirize y'urubanza RC 00038/2017/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 27/07/2018, idahindutse, rutegeka abarega guha Umumaranyota Agnès 250.000 Frw y'igihembo cya Avoka na 100.000 Frw y'ikurikiranarubanza.

[5] Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine na Twagirayezu Monique bajuririyeye Urukiko rw'Ubujurire bavuga ko Urukiko Rukuru rutasuzumye inkomoko y'umutungo wagurishijwe ndetse n'inyandiko Twagirayezu Albert yiyandikiye avuga ko yagurishije umutungo w'umuryango atabihereye uburenganzira, ko inyandiko y'ubugure yabaye ku wa 01/11/1984 hagati ya icyimpaye Marie

Rose na Kavamahanga, n'imvugo z'abatangabuhamya ziyishimangira byirengagijwe nyamara ari byo bigaragaza inkomoko y'umutungo.

[6] Umumaranyota Agnès yatanze inzitizi yo kutakira ubujurire bwa kabiri ashingiye ku mpamvu y'uko haburanwa gusesa amasezerano y'ubugure bw'ikibanza cyaguzwe 10.000.000 Frw, bityo ko agaciro k'ikiburanwa katageze kuri 75.000.000 Frw ateganywa n'ingingo ya 52 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko. Yatanze kandi inzitizi yo kuba impamvu zashingiweho abarega batsindwa mu Rukiko Rwisumbuye rwa Gasabo ari zimwe n'izashingiweho mu Rukiko Rukuru.

[7] Mu rubanza RCAA 00020/2019/CA rwaciwe ku wa 26/06/2020, Urukiko rw'Ubujurire rwasanze nubwo abagenagaciro bemeza ko ikibanza UPI 1/02/10/03/4370 gifite agaciro ka 92.825.000 Frw, ingingo zasuzumwe n'Urukiko Rukuru ndetse n'Urukiko Rwisumbuye rwa Gasabo, zihuriye ku kumenya niba umutungo wagurishijwe ari uwa Twagirayezu Albert ku giti cye cyangwa niba wari uw'umuryango wa Twagirayezu Aloys na icyimpaye Marie Rose, rusanga izo nkiko zombi zarafashe icyemezo zishingiye ku mpamvu zimwe, rwemeza ko ubujurire butari mu bubasha bw'arwo, abajuriye bategekwa gufatanywa kwishyura Umumaranyota Agnès 500.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza.

[8] Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine na Twagirayezu Monique bandikiye Perezida w'Urukiko rw'Ikirenga basaba ko urubanza RCAA 00020/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 26/06/2020, rusubirwamo ku mpamvu z'akarengane. Mu cyemezo nimeru 058/CJ/2020 cyo ku wa 19/11/2020, Perezida

w'Urukiko rw'Ikirenga, amaze gusuzuma ubwo busabe, yategetse ko rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe.

[9] Iburanisha mu ruhame ryabaye ku wa 02/06/2021, Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine na Twagirayezu Monique bahagarariwe na Me Nshuti Salim hamwe na Me Kazenza Théophile, Twagirayezu Albert ahagarariwe na Me Ngezahayo Bernard, naho Umumaranyota Agnès ahagarariwe na Me Nsengiyumva Viateur.

[10] Urukiko rwabanje gusuzuma inzitizi zatanzwe n'abahagarariye Twagirayezu Albert na Umumaranyota Agnès, bavugaga ko ikirego kidakwiye kwakirwa kubera ko abarega batagaragaza impamvu z'akarengane zatuma urubanza rusubirishwamo kandi ko batanemerewe gusaba iseswa ry'amasezerano y'ubugure batagizemo uruhare.

[11] Ku bijyanye n'inzitizi y'uko nta mpamvu z'akarengane zagaragajwe zatuma urubanza rusubirwamo, Urukiko rwafatiye icyemezo mu ntebe, rushingiye ku biteganywa n'ingingo ya 62, igika cya mbere,<sup>1</sup> n'iya 63<sup>2</sup> z'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko no ku isesengura ryazo ryakozwe mu rubanza Busoro Gervais yaburanagamo na Busoro Mugunga Désiré n'abandi, ry'uko iyo Perezida w'Urukiko

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<sup>1</sup>Iyo Perezida w'Urukiko rw'Ikirenga asuzumye raporo yashyikirijwe ku rubanza rw'akarengane, akemeza ko rwongera kuburanishwa, ayohereza Umwanditsi Mukuru w'Urukiko rw'Ikirenga kugira ngo urwo rubanza rushyirwe kuri gahunda y'iburanisha ...

<sup>2</sup> Iyo Urukiko rw'Ikirenga cyangwa urundi rukiko Perezida w'Urukiko rw'Ikirenga akena rushyikirijwe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, rurusuzuma mu mizi bundi bushya abarubayemo ababuranyi bese bahamagajwe.

rw'Ikirenga amaze kwemeza ko urubanza rwongera kuburanishwa, nta zindi nzitizi zitangwa zatuma urubanza rutaburanishwa mu mizi uretse inzitizi ndemyagihugu,<sup>3</sup> rwanzura ko iyo nzitizi itakiriwe.

[12] Naho ku bijyanye n'inzitizi y'uko abarega baba batemerewe gusaba iseswa ry'amasezerano y'ubugure batagizemo uruhare, rusanga nubwo iyi ngingo yatanzwe nk'inzitizi, igaruka ku mizi y'urubanza, ikaba itasuzumwa hataramenyekana niba Urukiko rw'Ubujurire rwarakoze amakosa rwemeza ko abarega batsinzwe ku mpamvu zimwe mu Rukiko Rwisumbuye rwa Gasabo no mu Rukiko Rukuru.

[13] Nyuma yo kwemeza ko inzitizi yatanzwe n'ababuranira Twagirayezu Albert na Umumaranyota Agnès itakiriwe, Urukiko rwakomereje ku kibazo cyo kumenya niba ubujurire bwa kabiri bwaragombaga kwakirwa n'Urukiko rw'Ubujurire. Mu rubanza rubanziriza urundi rwaciwe ku wa 25/06/2021, Urukiko rwasanze Twagirayezu Alice na bagenzi be bataratsinzwe ku mpamvu zimwe mu Rukiko Rwisumbuye rwa Gasabo no mu Rukiko Rukuru, rwemeza ko ubujurire bwabo bwagombaga kwakirwa n'Urukiko rw'Ubujurire.

[14] Iburanisha mu mizi ryashyizwe ku wa 08/09/2021, uwo muni ugeze, Urukiko rusanga Twagirayezu Albert yarambuye Me Ngezahayo Bernard inshingano zo kumuburanira kandi ntawundi Avoka yashatse, ahanishwa ihazabu yo gutinza urubanza, iburanisha ryimurirwa ku wa 15/11/2021.

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<sup>3</sup> Urubanza RS/INJUST/RC 00022/2018/SC hagati ya Busoro Gervais na Busoro Mugunga Désiré n'abandi, rwaciwe n'Urukiko rw'Ikirenga ku wa 28/06/2019, igika cya 18.

[15] Kuri uwo munsu iburanisha ryabereye mu ruhame, Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine, Twagirayezu Monique ndetse na Umumaranyota Agnès bahagarariwe nka mbere, naho Twagirayezu Albert atitabye kandi nta na Avoka umuburanira yashatse, Urukiko rwemeza ko ku bimureba, urubanza ruburanishwa adahari.

[16] Iburanisha rigitangira, Me Nsengiyumva Viateur, uburanira Umumaranyota Agnès, yavuze ko hari indi nzitizi ndemyagihugu afite. Asobanura ko abarega badafite ububasha bwo gusaba gusesa amasezerano y'ubugure batagizemo uruhare, bityo ko hashingiwe ku biteganywa n'ingingo ya 129 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, n'ingingo ya 116 y'Itegeko rigenga amasezerano no ku murongo watanzwe n'uru Rukiko mu gika cya 35 cy'urubanza Mukaruhanga Alexia yaburanaga na Nyirahabimana Emertha na Kold Hansen Jesper,<sup>4</sup> ikirego cya Twagirayezu Albertine na bagenzi be kitagombaga kwakirwa n'inkiko zabanje na n'ubu kikaba kidakwiye kwakirwa.

[17] Me Nshuti Salim na Me Kazenze Théophile baburanira Twagirayezu Albertine na bagenzi be, bavuze ko inzitizi itanzwe na Me Nsengiyumva Viateur ku nshuro ya mbere mu Rukiko rw'Ikirenga idakwiye kwakirwa ngo isuzumwe keretse ariyo akarengane gashingiyeho cyane cyane ko iby'inzitizi byari byarangiye, Urukiko rukemeza ko urubanza rukomeza mu mizi. Basobanura ko iramutse yakiriwe, Urukiko rukwiye gusanga nta shingiro ifite kubera ko nubwo abagiranye amasezerano aribo bemerewe gusaba ko aseswa, iryo hame rifite irengayobora

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<sup>4</sup> Reba urubanza RCAA 00045/2016/SC rwaciye n'Urukiko rw'Ikirenga ku wa 24/05/2019.

ry'uko nta kibuzza nyir'umutungo kuwukurikirana mu maboko y'uwo awusanganye.

[18] Urukiko rwafatiye icyemezo mu ntebe, rusanga inzitizi yatanzwe na Me Nsengiyumva Viateur idakwiye kwakirwa kuko itigeze itangwa nk'impamvu y'akarengane, bitewe n'uko imanza ziza mu karengane ziba zaraciwe burundu, zifite abaziburanye, ari nabo bagaruka mu rubanza rw'akarengane, inzitizi yo kutakira ikirego ikaba yakirwa gusa iyo ariyo akarengane gashingiyeho, uyu akaba ari nawo murongo rwafashe mu manza zinyuranye harimo n'urubanza Nyirahabimana Umwali Roselyne aburana na Habimana Jean Léo Pasteur na bagenzi be,<sup>5</sup> rwemeza ko iburanisha rikomeza hasuzumwa ibibazo bigize imizi y'urubanza.

## **II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO**

### **1. Kumenya niba Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine na Twagirayezu Monique bafite ububasha bwo gusaba ko amasezerano y'ubugure yakozwe hagati ya Twagirayezu Albert na Niyongira Jean Claude ateshwa agaciro**

[19] Me Nshuti Salim na Me Kazenze Théophile, baburanira abarega, bavuga ko amasezerano y'ubugure hagati ya Twagirayezu Albert na Niyongira Jean Claude akwiye guteshwa agaciro kuko Twagirayezu Albert nawe ubwe yiyemerera ko yagurishije ibitari ibye. Bavuga ko nubwo abagiranye amasezerano aribo bemerewe gusaba ko aseswa, iryo hame rifite

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<sup>5</sup> Reba icyemezo cyafatiwe mu ntebe mu rubanza n° RS/ INJUST/ RC 00011/2018/ SC ku wa09/06/2021.

irengayobora ry'uko nta kibuzza nyir'umutungo kuwukurikirana mu maboko y'uwo awusangaye, asaba iseswa ry'amasezerano uwufite yawuguriyeho.

[20] Me Nsengiyumva Viateur, uburanira Umumaranyota Agnès, avuga ko hashingiwe ku biteganywa n'ingingo ya 113 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano no ku murongo watanzwe n'uru Rukiko mu rubanza Mukaruhanga Alexia yaburanaga na Nyirahabimana Emertha na Kold Hansen Jesper w'uko iseswa ry'amasezerano risabwa n'abayagizemo uruhare, iyi ngingo itari ikwiye kwakirwa. Asobanura kandi ko mu gihe nta kimenyetso na kimwe abarega bashingiraho bavuga ko umutungo ari uw'abazungura ba icyimpaye Marie Rose, bakaba ntacyo bakoze kugira ngo bateshe agaciro inyandiko mpamo zatanzwe n'inzeho zibifitiye ububasha zihama ko ubutaka buburanwa ari ubwa Umumaranyota Agnès, asaba uru Rukiko gushimangira ibyemejwe n'inkiko zabanje by'uko amasezerano y'ubugure hagati ya Niyongira Jean Claude na Twagirayezu Albert afite agciro.

[21] Mu nama ntegururubanza, Me Ngezahayo Bernard waburaniraga Twagirayezu Albert yavuze ko asanga nta cyatuma amasezerano y'ubugure Twagirayezu Albert yakoranye na Niyongira Jean Claude aseswa kuko yakozwe mu buryo bukurikije amategeko kandi impande zombi zayagiranye zikaba ntacyo ziyakemangaho.

## **UKO URUKIKO RUBIBONA**

[22] Ku bijyanye n'ibyo Twagirayezu Alice na bagenzi basaba byo gusesa amasezerano y'ubugure yabayeho hagati ya Twagirayezu Albert na Niyongira Jean Claude, ingingo ya 64

y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko amasezerano akozwe mu buryo bukurikije amategeko aba itegeko ku bayagiranye, akaba yaseswa ari uko abayagiranye babyumvikanyeho cyangwa ku zindi mpamvu zemewe n'amategeko. Naho ingingo ya 113, igika cya mbere y'iryo Tegeko iteganya ko amasezerano agira inkurikizi hagati y'abayagiranye gusa, akaba atabangamira undi cyangwa ngo amugirire akamaro hejuru y'ibyayateganyijwemo bimufitiye akamaro.

[23] Izi ngingo zasesenguwe n'uru Rukiko mu buryo burambuye mu manza zitandukanye ariko cyane cyane mu rubanza Mukaruhanga Alexia yaburanaga na Nyirahabimana Emertha na Kold Hansen Jesper, rusanga iyo ikibazo gisuzumwa gikomoka ku masezerano y'ubugure bw'umutungo utimukanwa, nyir'umutungo afite uburenganzira bwo kuwukurikira ku wo awusanganye, atabanje gusaba ko amasezerano y'ubugure yabaye hagati y'uwo awusanganye n'uwawugurishije ateshwa agaciro. Rwasobanuye ko icyatuma amasezerano y'ubugure ateshwa agaciro ari igihe byaba bisabwe n'uwaguze ukurikanywe na nyir'umutungo nyakuri ushaka kugaruza ibye, kuko uwagurishije atatanga bene icyo kirego kandi afite inshingano yo kwishingira uwaguze kugira ngo atunge uwo mutungo nta nkomyi (*garantie contre l'éviction*), na nyir'umutungo nyakuri ntiyasaba iseswa ry'amasezerano y'ubugure atagizemo uruhare.<sup>6</sup>

[24] Hagendewe ku bisobanuro bimaze kugaragazwa haruguru, Urukiko rurasanga ibyo Me Nshuti Salim avugaga ko hari

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<sup>6</sup> Reba urubanza RCAA 00045/2016/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 24/05/2019, kuva ku bika bya 25 kugeza ku cya 34.

irengayobora ku biteganywa n'ingingo ya 64 n'iya 113, igika cya mbere, y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano ku buryo umuntu utarebwa n'amasezerano yasaba iseswa ryayo nta shingiro bifite.

[25] Urukiko rurasanga rero ibisabwa n'ababuranira Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique na Twagirayezu Albertine by'uko kugira ngo babashe gukurikirana umutungo wabo wagurishijwe na Twagirayezu Albert ari ngombwa ko amasezerano y'ubugure hagati ye na Niyongira Jean Claude abanza guseswa nta gaciro bikwiye guhabwa kuko kugira ngo nyir'umutungo aregere kugaruza ibye byagurishijwe n'utari nyirabyo ntibisaba kubanza gusaba iseswa ry'amasezerano y'ubugure.

**2. Kumenya niba Twagirayezu Albert yaragurishije umutungo asangiye n'abandi bazungura ba Twagirayezu Aloys na Icyimpaye Marie Rose batabyumvikanyeho n'ingaruka zabyo**

[26] Me Nshuti Salim na Me Kazenze Théophile, baburanira Twagirayezu Alice na bagenzi be, bavuga ko ubutaka buburanwa bwari ubwa Kavamahanga, bugurwa na Icyimpaye Marie Rose, umugore wa Twagirayezu Aloys, aba akaba ari ababyeyi ba Twagirayezu Albert, Twagirayezu Alice, Twagirayezu Monique, Twagirayezu Alphonsine na Twagirayezu Albertine. Basobanura ko amasezerano y'ubugure yo ku wa 01/11/1984, icyemezo cy'umutungo gakondo cya Icyimpaye Marie Rose cyo ku wa 13/08/2014, inyandiko ya Twagirayezu Albert yo ku wa 15/11/2014 ivuga ko yagurishije umutungo asangiye na bashiki be batabyumvikanyeho, n'imvugo z'abatangabuhamya bihamya

ko umutungo ukwiye kuba uw'abazungura ba icyimpaye Marie Rose na Twagirayezu Aloys.

[27] Bavuga ko ibimenyetso bimaze kuvugwa haruguru byagaragarijwe inkiko, aho kubiha agaciro, zishingira ibyemezo byazo ku kuba umutungo uburanwa wanditse kuri Twagirayezu Albert, nyamara umurongo watanzwe n'Urukiko rw'Ikirenga mu rubanza Harerimana Emmanuel yaburanaga na Sebukayire Tharcisse ubwo rwasesenguraga ibiteganywa n'ingingo ya 10 y'Itegeko N° 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka ari uko uregwa ataburanisha gusa kuba ubutaka bumwanditseho atabanje kugaragaza aho abukomora.

[28] Me Nsengiyumva Viateur, uburanira Umumaranyota Agnès, avuga ko uyu akomora umutungo uburanwa ku bugure bwakozwe n'umugabo we Niyongira Jean Claude kandi ko bwabaye amaze kugaragarizwa ibyangombwa bihamya ko uwo mutungo ari uwa Twagirayezu Albert. Avuga ko amasezerano y'ubugure yo ku wa 01/11/1984 abarega bashingiraho adakwiye guhabwa agaciro kubera ko handitsemo ko uguze ari Kimpaye Marie Rose, nyamara abarega bavuga ko nyina yitwa icyimpaye Marie Rose, bikaba bitumvikana uburyo icyimpaye Marie Rose wari ujijutse kuko yari umuforomokazi, yari gusinya amasezerano y'ubugure ku mazina atari aye ndetse agahindagura n'imikono, akaba asanga mbere yo kwemeza ko ayo masezerano ari ukuri, hakwiye gupimwa imikono iyariho (*vérification de signature*).

[29] Avuga kandi ko inyandiko ya Twagirayezu Albert yo ku wa 15/11/2014 idakwiye guhabwa agaciro kuko Avoka we yavugiye mu nama ntegarurubanza ko ayandika, kari agakino yakoranye na bashiki be kugira ngo bahuguze Niyongira Jean Claude umutungo we, ariko ko amaze kumenya ko yapfuye,

yivanye muri ako gakino. Asobanura ko ikindi gikwiye gutuma iyo nyandiko idahabwa agaciro ari uko itanyujijwe muri Ambassade y'u Rwanda mu Bufaransa. Asoza avuga ko umutungo uburanwa utari kuba ari uwa icyimpaye Marie Rose guhera mu mwaka wa 1984, ngo abe yarabuze kuwiyandikishaho muri MINITRAPE, bityo mu gihe cyose abarega batagaragaza ifishi ya MINITRAPE ihamya ko ahaburanwa hari aha icyimpaye Marie Rose, asaba uru Rukiko kwemeza ko nta karengane kabaye mu manza zisubirishwamo kuko Niyongira Jean Claude yaguze na nyir'umutungo.

[30] Mu nama ntegururubanza, Me Ngezahayo Bernard waburaniraga Twagirayezu Albert, yavuze ko kuba mu nyandiko yo ku wa 15/11/2014, Twagirayezu Albert yaremeye ko yagurishije ubutaka asangiye na bashiki be ndetse akemera gusubiza amafaranga yakiriye byari mu rwego rwo gushaka guhuguza Umumaranyota Agnès. Yavuze ko gusubiza amafaranga atari kubiterwa no kuba yaragurishije icy'undi ahubwo ari uko yashakaga kugaruza umutungo we bwite. Avuga ko inyandiko yo ku wa 15/11/2014 Twagirayezu Albert yayikoze ashutswe na bashiki be bashakaga ko amasezerano y'ubugure aseswa bakongera kugurisha mu rwego rwo gucuruza ubwo butaka. Yasobanuye ko mu mwaka wa 2009, mushiki wa Twagirayezu Albert witwa Twagirayezu Marie Louise yagurishije ubwo butaka 5.000.000 Frw, hanyuma bigeze mu mwaka wa 2012, bumvikana ko amasezerano y'ubugure aseswa, uwaguze agasubizwa amafaranga ye kuko bari babonye umuguzi utanga 10.000.000 Frw. Yavuze ko Twagirayezu Albert amaze kumenya ko Niyongira Jean Claude yapfuye, umutima wamukomanze akanga guhemukira umupfakazi n'imfubyi, aribwo yatangiye kugaragaza ukuri.

## UKO URUKIKO RUBIBONA

[31] Ingingo ya 5 y'Itegeko Ngenga N° 08/2005 ryo ku wa 14/07/2005 rigena imikoreshereze n'imirungire y'ubutaka mu Rwanda ryakoreshwaga ubwo Niyongira Jean Claude yaguraga ubutaka na Twagirayezu Albert yateganyaga ko umuntu wese, ku giti cye cyangwa ishyirahamwe rifite ubuzima gatozi, batunze ubutaka, baba barabubonye ku bw'umuco, cyangwa se barabuhawe n'ubuyobozi bubifitiye ububasha cyangwa se barabuguze, bemerewe kubutungira ku buryo bw'ubukode burambye, hakurikijwe ibiteganywa n'iri Tegeko Ngenga.

[32] Ingingo ya 3, igika cya mbere, y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganywa ko "Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

[33] Dosiye y'urubanza igaragaza ko ibimenyetso Umumaranyota Agnès aburanisha ashaka kwerekana ko umugabo we Niyongira Jean Claude yaguze na nyir'umutungo ari ibi bikurikira:

- *Acte de notoriété* yatanzwe n'Akarere ka Gasabo ku wa 18/01/2012 igaragaza ko umutungo ugizwe n'ikibanza gifite 52m x 103 m uri mu Kagali ka Kagugu ari uwa Twagirayezu Albert.
- icyemezo cy'umutungo gakondo cyatanzwe n'Umurenge wa Kinyinya ku wa 20/01/2012 kigaragaza ko umutungo ufite ubuso bungana na 103 m x 52 m ari gakondo ya Twagirayezu Albert.

- *Fiche Cadastrale* yakozwe ku wa 31/01/2012 igaragaza ko ikibanza nimeru 4370 ari icya Twagirayezu Albert.
- Inyemezabwishyu y'umusoro ku kibanza nimeru 4370 yo ku wa 16/02/2012 igaragaza ko Twagirayezu Albert yishyuriraga icyo kibanza umusoro.

[34] Urukiko rurasanga Twagirayezu Alice na bagenzi baratsinzwe mu nkiko zabanje biturutse ku kuba icyemezo cy'umutungo gakondo cya icyimpaye Marie Rose cyo ku wa 13/08/2014 ndetse n'inyandiko ya Twagirayezu Albert yo ku wa 15/11/2014 ihamya ko yagurishije umutungo w'umuryango atabyumvikanyeho n'abavandimwe be byarabonetse nyuma y'uko uwo mutungo ugurishijwe, inkiko zikaba zaravuze ko bitari ngombwa kuri Twagirayezu Albert kugaragaza inkomoko y'umutungo afitiye ibyangombwa. Nyamara kandi, umurongo watanze n'uru Rukiko mu manza zitandukanye harimo n'urwo Harerimana Emmanuel yaburanaga na Sebukayire Tharcisse,<sup>7</sup> ubwo rwasesenguraga ingingo ya 5 y'Itegeko Ngenga N° 08/2005 ryo ku wa 14/07/2005 ryavuzwe haruguru ni uko umushingamategeko yateganyije uburyo umuntu abona umutungo utimukanwa, uregwa kuba yaragurishije ibitari ibye

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<sup>7</sup> Reba urubanza RCAA 0018/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 24/12/2014, igika cya 21. Uyu murongo ni nawo wagarutseho mu rubanza RS/REV/INJUST/CIV 0003/14/CS hagati ya Mukagatare Grace na *Succession* Bwanakeye Francois, rwaciwe n'Urukiko rw'Ikirenga ku wa 03/03/2017 no mu rubanza RS/REV/INJUST/RC 00038/2017/CS hagati ya Itangishaka Leonidas na Nyiramahane Rachel n'undi rwaciwe n'Urukiko rw'Ikirenga ku wa 22/06/2018, igika cya 19. Reba kandi urubanza Gahire Athanase yaburanaga na Mukarushakiro Gloriose na bagenzi be, rwaciwe n'Urukiko rw'Ikirenga ku wa 12/11/2021, igika cya 67.

akaba atatsimbarara ku kuba afite ibyangombwa atabanje kwerekana uburyo umutungo wageze mu maboko ye.

[35] Urukiko rurasanga icyemezo cy'umutungo gakondo cya icyimpaye Marie Rose cyo ku wa 13/08/2014 gishingiye ku masezerano y'ubugure yo ku wa 01/11/1984, icyimpaye Marie Rose yakoranye na Kavamahanga, ibi bimenyetso hamwe n'urwandiko Twagirayezu Albert yanditse ku wa 15/11/2014 kandi Avoka we yemereye mu nama ntegururubanza bihamya ko umutungo uburanwa waguzwe na icyimpaye Marie Rose, bityo ukaba ugisangiwe n'abazungura be. Kuba mu masezerano y'ubugure yo ku wa 01/11/1984 handitsemo Kimpaye aho kuba icyimpaye cyangwa kuba Me Ngezahayo Bernard yaravugiye mu nama ntegururubanza ko urwandiko Twagirayezu Albert yanditse ku wa 15/11/2014 ari agakino, sibyo byatuma ibikubiye muri izo nyandiko bidahabwa agaciro nk'uko Me Nsengiyumva Viateur abivuga kuko nta kibazo kiri hagati y'abakoranye ayo masezerano cyangwa hagati y'abazungura ba icyimpaye Marie Rose ku kuba mu izina rya nyina haranditswe K mu mwanya ICY, ndetse nta n'ikimenyetso kigaragaza ko Twagirayezu Albert yaba yarasubiye ku mvugo ye iri mu nyandiko yo ku wa 15/11/2014.

[36] Urukiko rurasanga nubwo mu masezerano y'ubugure Twagirayezu Albert yagize ati: njyewe Twagirayezu Albert ngurishije ikibanza cyanjye kiri mu Kagali ka Kagugu, gifite nimero 4370..., akabishingira kuri *fiche cadastrale, parcel number confirmation na acte de notoriété* nkuko bigaragazwa n'ayo masezerano, ntabasha kwerekana uburyo ubwo butaka bwavuye mu maboko ya nyina icyimpaye Marie Rose ngo bube ubwe nko kuba yaramuzunguye, kuba yarabuguze cyangwa se indi nzira yari gutuma buva kuri nyirabwo wari warabuguze ngo

bube umutungo we bwite nk'uko byateganywaga n'ingingo ya 5 y'Itegeko Ngenga N° 08/2005 ryo ku wa 14/07/2005 ryibukijwe haruguru ryakoreshwaga igihe cy'ubugure, bikaba byumvikana ko kuba yari afite ibyo byangombwa bitari byihagije mu gihe cyose atabasha kugaragaza inkomoko y'umutungo ibyo byangombwa bihamya.

[37] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rurasanga ikibanza kibaruye kuri UPI 1/02/10/03/4370 gihereye mu Karere ka Gasabo, Umurenge wa Kinyinya, Akagali ka Kagugu, Umudugudu wa Rukingu ari icya Icyimpaye Marie Rose, kuva aho apfiriye ku wa 21/11/2000 nk'uko byemezwa n'inyandiko y'uwapfuye yo ku wa 02/03/2020, uwo mutungo ukaba waragiye mu maboko y'abazungura be, bivuze ko Twagirayezu Albert awugurisha ku wa 22/02/2012, yagurishije umutungo asangiye n'abandi bazungura batabyumvikanyeho.

### **3. Kumenya ingaruka (*conséquences*) zo kuba umutungo wagurishijwe wari uhuriweho n'abazungura ba Twagirayezu Aloys na Icyimpaye Marie Rose**

[38] Me Nshuti Salim na Me Kazenza Théophile baburanira abarega bavuga ko mu gihe Urukiko rusanze Twagirayezu Albert yaragurishije umutungo bari basangiye, Umumaranyota Agnès yasubiza umutungo ba nyirawo akikurikiranira Twagirayezu Albert ku gaciro umutungo ugezeho hashingiwe ku igenagaciro ryashyizwe muri dosiye cyane cyane ko uyu nawe yemera kumusubiza amafaranga yakiriye.

[39] Me Nsengiyumva Viateur avuga ko Umumaranyota Agnès atabashije kugira icyo akora kuri ubwo butaka nyuma

y'urupfu rw'umugabo we, ku buryo kugeza ubu ntacyo yubatseho nta n'icyahindutse ku buso bwabwo. Asobanura ariko ko ibyo bitabujije uwo mutungo kuzamura agaciro, bityo mu gihe uru Rukiko rwasanga, umutungo ugomba gusubizwa mu maboko y'abazungura ba Twagirayezu Aloys na Icyimpaye Marie Rose, twagirayezu Albert yategekwa gusubiza Umumaranyota Agnès agaciro kangana na 92.825.000 Frw umutungo ugezeho uyu muni.

[40] Mu nama ntegururubanza, Me Ngezahayo Bernard, waburaniraga Twagirayezu Albert, yavuze ko Urukiko rukwiye kugendera ku bimenyetso rwahawe, Umumaranyota Agnès akagumana umutungo we kuko umugabo we yawuguze mu buryo bukurikije amategeko.

## **UKO URUKIKO RUBIBONA**

[41] Ku bijyanye n'inkurikizi zo kuba uwaguze umutungo awusubije nyirawo kandi akaba awusubije ntacyo yawongereyeho, ntacyo amategeko y'u Rwanda ateganya kuri icyo kibazo, icyakora inkiko z'ibindi bihugu zishimangira ko iyo agaciro k'icyagurishijwe kiyongereye igihe uwakiguze agiye kukivutswa, hatitawe kucyo uwacyeguriwe yakoze, umugurisha agomba kumwishyura amafaranga arimo n'agaciro kacyo karenga ku ko cyari gifite igihe cy'igurisha. Ibi byemejwe n'Urukiko Rusesa Imanza mu Bufaransa mu manza zitandukanye aho rwavuze ko abagurishije bagomba gusubiza abaguzi bavukijwe ibyo baguze agaciro kabyo ku muni babivukijweho,

kandi ko hagomba gushingirwa ku gaciro uwo mutungo ubwawo ugezeho bitagizwemo uruhare n'uwaguze.<sup>8</sup>

[42] Urukiko rurasanga ibimaze kuvugwa haruguru byumvikanisha ko umuguzi uvukijwe ibyo yaguze asubizwa n'uwamugurishije agaciro kabyo ku munsu abivukijweho, ni ukuvuga ku munsu icyemezo kiwumuvutsa cyafatiweho; ibyo kandi ntibivanaho ko ashobora gusaba uwamugurishije indishyi zo kuba atarubahiriye inshingano ze zo kwishingira ko adahungabanywa mu burenganzira yari afite ku mutungo yaguze cyangwa gusaba ko nyir'umutungo nyakuri, uwusubiranye, yishyura agaciro k'ibyongereweho n'uwari uwutunze. Ku bireba uru rubanza bikaba bigaragara ko ntacyo Umumaranyota Agnès yongereye kuri uwo mutungo, bityo akaba agomba gusubizwa agaciro ugezeho uyu munsu.

[43] Urukiko rurasanga dosiye y'urubanza irimo igenagaciro ryakozwe ku busabe bwa Twagirayezu Alice na bagenzi be, rikorwa na Ir Dushimimana David ku wa 18/04/2019. Agaragaza

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<sup>8</sup> ... si la chose vendue se trouve avoir augmenté de prix à l'époque de l'éviction, indépendamment même du fait de l'acquéreur, le vendeur est tenu de lui payer ce qu'elle vaut au dessus du prix de la vente..., Reba Cour de Cassation, Chambre civile 3, du 16 janvier 1991. "...les vendeurs sont tenus d'indemniser leurs acquéreurs de la valeur du bien dont ils sont évincés à la date de la décision d'éviction..." Reba Cour de cassation, Chambre civile 3, 07 juillet 2010. "Mais attendu qu'ayant exactement retenu qu'en application de l'article 1633 du code civil, qui vise l'augmentation du prix, indépendamment même du fait de l'acquéreur, M. B... pouvait réclamer à ses vendeurs l'augmentation de la valeur de la parcelle, la cour d'appel, qui a ordonné une expertise afin de déterminer si le prix avait augmenté entre la vente et la décision constatant l'éviction, a, par ce seul motif, légalement justifié sa décision..." Reba Cour de cassation, civile, Chambre civile 3, 27 octobre 2016.

ko agaciro ka m<sup>2</sup> ari 21.000 Frw, bityo ku buso bwose bwa 3.652 m<sup>2</sup>, ubutaka buburanwa bufite agaciro ka 76.692.000 Frw. icyakora yibeshye ku buso kuko icyangombwa cy'umutungo kigaragaza ko ari 3.713 m<sup>2</sup>, bityo agaciro kawo kakaba kari kuba  $21.000 \text{ Frw/m}^2 \times 3.713 \text{ m}^2 = 77.973.000 \text{ Frw}$ . Dosiye irimo na none igenagaciro ryakozwe na Ir Bazina Jean Yves ku wa 02/06/2020 ku busabe bwa Umumaranyota Agnès. Bigaragara ko agaciro kuri m<sup>2</sup> ari 25.000 Frw, bityo ku buso bwa 3.713 m<sup>2</sup>, ubutaka bwose bukagira agaciro ka 92.825.000 Frw.

[44] Urukiko rurasanga nyuma y'izo raporo z'igenagaciro, ku wa 01/12/2021, Urugaga rw'Abagenagaciro ku Mutungo Utimukanwa mu Rwanda (IRPV) rwaratangaje mu Igazeti ya Leta, Ibiciro Fatizo by'Ubutaka mu Rwanda mu mwaka wa 2021, ku bijyanye n'imitungo iherereye mu Karere ka Gasabo, Umurenge wa Kinyinya, Akagari ka Kagugu, Umudugudu wa Rukingu aho ikibanza nimeru UPI 1/02/10/03/4370 gihereye, icyo cyegeranyo kikaba kivuga ko igiciro mpuzandengo kuri m<sup>2</sup> y'ubutaka bwagenewe guturwa nk'uko bimeze ku mutungo uburanwa ari 20.769 Frw, bityo ku birebana n'uru rubanza iki giciro fatizo akaba aricyo cyashingirwaho kubera ko bigaragarira uru Rukiko ko raporo z'abagenagaciro zakozwe bidasabwe n'Urukiko kandi bakaba baratanze agaciro gatandukanye cyane nyamara raporo zarakozwe mu bihe byegeranye cyane.

[45] Urukiko rurasanga rero ubuso bwa 3.713 m<sup>2</sup>, bufite agaciro ka 77.117.297 Frw, aka akaba ariko gakwiye gufatwa nk'agaciro fatizo k'ubutaka buburanwa kuri uyu munsu.

[46] Ku bireba agaciro nyako kagomba gusubizwa uwaguze nta buryarya mu gihe hagurishijwe umutungo usangiwe, uru Rukiko rwabisobanuye na none mu rubanza Gahire Athanase yaburanaga na Mukarushako Gloriose na bagenzi be, aho

rwavuze ko iyo uwagurishije adahakana amasezerano y'ubugure kandi akaba yemera ko yagurishije umutungo azi ko usangiwe, igurisha rigira agaciro ku bireba igipande kigize umugabane we gusa.<sup>9</sup> Ibi bivuze ko amasezerano y'ubugure yakozwe na Twagirayezu Albert afite agaciro ku bireba igipande kigize umugabane we gusa ku mutungo uburanwa, ni ukuvuga kimwe cya gatanu cyawo (1/5) gihwanye na 742,6 m<sup>2</sup> hafite agaciro ka 15.423.459 Frw, uyu akaba ariwo mutungo Umumaranyota Agnès agomba kugumana nyuma yo kuzibukira 4/5 bisigaye ku butaka buburanwa.

[47] Urukiko rurasanga rero mu gihe byagaragaye ko Twagirayezu Albert yagurishije umutungo uburanwa atabyumvikanyeho n'abavandimwe be Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique na Twagirayezu Albertine, aba bavandimwe be bagomba gusubirana uruhare rwabo ku mutungo rungana na 4/5 byawo, nawe agasubiza Umumaranyota Agnès agaciro k'ibyo 4/5 avukijwe gahwanye na 77.117.297 Frw- 15.423.459 Frw = 61.693.838 Frw. Ibi byumvikanyishye kandi ko icyangombwa cy'umutungo cyanditswe kuri Niyongira Jean Claude na Umumaranyota Agnès kigomba guteshwa agaciro, 1/5 cy'ubutaka bubaruye kuri UPI 1/02/10/03/4370 kikandikwa kuri Umumaranyota Agnès, naho 4/5 bikandikwa kuri Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique na Twagirayezu Albertine.

#### **4. Kumenya niba indishyi zisabwa zifite ishingiro**

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<sup>9</sup> Reba urubanza RS/INJUST/RC 00008/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 12/11/2021, ibika bya 82-84.

[48] Me Nshuti Salim, uburanira Twagirayezu Alice na bagenzi be, avuga ko abarega bakwiye kugenerwa 5.000.000 Frw y'igihembo cy'aba Avoka batatu baburanye uru rubanza na 700.000 Frw y'ikurikiranarubanza kuva uru rubanza rubayeho, bakanasubizwa amafaranga bategetswe n'inkiko zabanje guha Umumaranyota Agnès.

[49] Me Nsengiyumva Viateur avuga ko Umumaranyota Agnès ari we wakomeje gusiragizwa mu nkiko kuva 2014 ku bw'amaherere, akaba abisabira indishyi zingana na 5.000.000 Frw hiyongereyeho

[50] Mu nama ntegarurubanza, Me Ngezahayo Bernard waburanigara Twagirayezu Albert, yavuwe ko abarega bakwiye kumuha 3.000.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza kubera kumushora mu manza z'amaherere.

[51] Me Nshuti Salim avuga ko Umumaranyota Agnès nta ndishyi akwiye kuko nawe azi ko umutungo waguzwe n'umugabo we mu buriganya bitewe n'uko atagize amakenga yo gushaka amakuru ahagije ku mutungo uburanwa mbere yo kugura ndetse ntagurire imbere ya Noteri w'ubutaka, bityo akaba agomba kwirengera ingaruka z'amakosa ye. Ku bijyanye n'indishyi zisabwa na Twagirayezu Albert, Me Nshuti Salim na Me Kazeneza Theophile, bavugiye mu nama ntegarurubanza ko

## **UKO URUKIKO RUBIBONA**

[52] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ni

ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuzwa ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyoyi ikirego cy'iremezo cyaba kitakiriwe.

[53] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza Twagirayezu Alice na bagenzi be basaba bagomba kuyahabwa kuko byabaye ngombwa gukurikirana urubanza no gushaka ababunganira. icyakora kubera ko 5.000.000 Frw y'igihembo cya Avoka na 700.000 Frw y'ikurikiranarubanza basaba batagaragaza uburyo ariyo yagiye kuri uru rubanza, mu bushishozi bw'Urukiko bakaba bagenewe 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw, agatangwa na Twagirayezu Albert.

[54] Urukiko rurasanga na none nk'uko byaragajwe haruguru, nyakwigendera Niyongira Jean Claude wari umugabo wa Umumaranyota Agnès yaguze ubutaka buburanwa nta buryarya, kuba Twagirayezu Albert yaramugurishije uwo mutungo azi neza ko awusangiye n'abavandimwe be, byatumye Umumaranyota Agnès, asiragira mu nkiko ashaka kumvikanisha uburenganzira ashaka n'abavoka bamuburanira kandi babihemberwa, bityo amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza asaba akaba agomba kuyahabwa. icyakora ntagaragaza uburyo 5.000.000 Frw y'ikurikiranarubanza cyangwa 1.000.000 Frw y'igihembo cya Avoka ariyo yagiye kuri uru rubanza. Mu bushishozi bw'Urukiko, akaba agenewe 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw, agomba gutangwa na Twagirayezu Albert.

[55] Urukiko rurasanga kandi uburiganya bwakozwe na Twagirayezu Albert aribwo bwatumye bashiki be bagana inkiko kugira ngo barengere uburenganzira bwabo, bityo mu gihe bigaragaye ko ikirego cyabo cyari gifite ishingiro kuva mu ntangiriro, Twagirayezu Albert akaba ariwe ukwiye kubasubiza indishyi batagetswe n'inkiko guha Umumaranyota Agnès zingana na 1.500.000 Frw mu Rukiko Rwisumbuye rwa Gasabo, 350.000 Frw mu Rukiko Rukuru na 500.000 Frw mu Rukiko rw'Ubujurire, yose hamwe akaba 2.350.000 Frw.

### III. ICYEMEZO CY'URUKIKO

[56] Rwemeje ko ikirego cy'ubujurire cyari cyaratanzwe na Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique na Twagirayezu Albertine mu Rukiko rw'Ubujurire gifite ishingiro kuri bimwe.

[57] Rwemeje ko RCA 00291/2018/HC/KIG rwaciwe n'Urukiko Rukuru, Urugereko rwa Kigali ku wa 31/01/2012 ruhindutse ku birebana n'ingano y'ubutaka Umumaranyota Agnès agomba kugumana ku kibanza nimeru UPI 1/02/10/03/4370.

[58] Rwemeje ko icyangombwa cy'umutungo w'ikibanza UPI 1/02/10/03/4370 gihereye mu Mujyi wa Kigali, Akarere ka Gasabo, Umurenge wa Kinyinya, Akagali ka Kagugu, Umudugudu wa Rukingu giteshejwe agaciro, kimwe cya gatanu (1/5) kikaba kigomba kwandikwa kuri Umumaranyota Agnès naho bine bya gatanu byacyo bikandikwa kuri Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique na Twagirayezu Albertine;

[59] Rutegetse Twagirayezu Albert guha Umumaranyota Agnès agaciro ka bine bya gatanu (4/5) by'ikibanza nimeru UPI 1/02/10/03/4370 gahwanye na 61.693.833 Frw.

[60] Rutegetse Twagirayezu Albert gusubiza Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique na Twagirayezu Albertine, bose hamwe, 2.350.000 Frw y'indishyi baciwe n'inkiko zabanje na 800.000 Frw y'igihembo cya Avoka n'ay'ikurikiranarubanza kuri uru rwego, yose hamwe akaba angana na 3.150.000 Frw.

[61] Rutegetse Twagirayezu Albert guha Umumaranyota Agnès 800.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza kuri uru rwego.

[62] Rutegetse Twagirayezu Albert kwishyura ihazabu mbonezamubano yo gutinza urubanza ingana na 200.000 Frw yaciwe mu iburanisha ryabaye ku wa 14/09/2021.

**URUBANZA RW'UBUCURUZI**



# NSENGIYUMVA v BANKI YA KIGALI PLC (BK)

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM  
00005/2021/SC (Ntezilyayo, PJ, Cyanzayire, Hitiyaremye,  
Karimunda na Nyirinkwaya, J.) 07 Ukwakira 2022]

*Amategeko agenga imanza z'ubucuruzi – Inguzanyo ya banki – Inyungu – Inyungu ku nguzanyo banki ziha abakiliya bazo zikomeza kubarwa kugeza umwenda wose wishyuwe zipfa kutarenga umwenda shingiro wagaragajwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa.*

*Amategeko agenga imanza z'ubucuruzi – Amasezerano y'inguzanyo – Gusesa amasezerano y'inguzanyo (résiliation du contrat) ntabwo bikuraho inshingano y'uwahawe umwenda ko igihe cyose atarishyura inyungu zikomeza kubarwa hubahirizwa ihame ry'uko inyungu zitagomba kurenga umwenda shingiro usigaye kwishyurwa (in duplum rule).*

*Amategeko agenga imiburanishirije y'imanza zasabiwe gusubirishwamo ku mpamvu z'akarengane – Imbibi z'ikiburanwa – Ibitari mu mbibi z'icyaburanyweho urubanza rugitangira ntibisuzumwa mu rubanza rusubirishwamo ku mpamvu z'akarengane.*

**Incamake y'ikibazo:** Banki ya Kigali Plc yatanze ikirego mu Rukiko rw'Ubucuruzi, isaba ko Nsengiyumva Fulgence yategekwa kwishyura umwenda remezo ayibereyemo ungana na 155.308.448 Frw, hiyongereyeho inyungu zibazwe kugera ku mwenda remezo, yose hamwe akaba 310.616.976 Frw. Urukiko rw'Ubucuruzi rwaciye urubanza rwemeza ko ikirego cya Banki ya Kigali Plc gifite ishingiro, rumutegeka kwishyura 300.000.000

Frw. Nsengiyumva Fulgence yajuririye Urukiko Rukuru rw'Ubucuruzi, ruca urubanza rwemeza ko agomba kwishyura 155.301.368 Frw aho kuba 300.000.000 Frw. Banki ya Kigali Plc yajuririye Urukiko rw'Ubujurire, rwemeza ko ubujurire bwayo bufite ishingiro, ko Nsengiyumva Fulgence agomba kwishyura 310.616.896 Frw, Nsengiyumva Fulgence yandikira Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rusubirishwamo ku mpamvu z'akarengane, arabyemeza, ruburanishwa ku wa 15/02/2022.

Nsengiyumva Fulgence ko icyo atemera ari inyungu zibazwe nyuma y'uko Banki ya Kigali Plc imwandikiye ku wa 12/10/2012 imumenyesha ko ihagaritse imikoranire isanzwe yari ifitanye nawe kandi ko dosiye ishyizwe mu maboko y'umukozi wayo kugirango yishyuzwe ku ngufu kuko igihe ingwate yari igurishijwe muri cyamunara ntihavemo ubwishyu bwose, banki yagombaga guhita iregera inkiko aho gukomeza kubara inyungu mu gihe cy'imyaka 5 kandi amasezerano yari afitanye na banki yaravuyeho. Avuga kandi ko asanga banki igomba kuryozwa amafaranga bamuhombeje agera kuri 275.400.000 Frw agahuzwa n'umwenda ayibereyemo ungana na 146.543.891 Frw bakishyurana.

BK ivuga ko muri iyo myaka 5 impande zombi zari mu mishyikirano yo kureba uburyo umwenda wakwishyurwa, ndetse ko hari amabaruwa impande zombi zagiye zandikirana, ku buryo itari kuregera inkiko bakiri mu biganirwa kandi ko nta cyari kubuza ko inyungu zikomeza kubarwa igihe cyose umwenda utarishyurwa, zipfa gusa kutarenga umwenda remezo. Ku birebana n'ibyo asaba ko Banki ya Kigali Plc yaryozwa igihombo yatejwe na cyamunara, ivuga ko ari ikirego gishya kuko ikiburanwa muri uru rubanza kuva rutangira ari ingano

y'umwenda akwiye kwishyura banki kubera inguzanyo yamuhaye atishyuye.

**Incamake y'icyemezo:** 1 Ibitari mu mbibi z'icyaburanyweho urubanza rugitangira ntibisuzumwa mu rubanza rusubirishwamo ku mpamvu z'akarengane.

2. Inyungu ku nguzanyo banki ziha abakiliya bazo zikomeza kubarwa kugeza umwenda wose wishyuwe zipfa kutarenga umwenda shingiro wagaragajwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa.

3. Gusesa amasezerano y'inguzanyo (résiliation du contrat) ntabwo bikuraho inshingano y'uwahawe umwenda ko igihe cyose atarishyura inyungu zikomeza kubarwa hubahirizwa ihame ry'uko inyungu zitagomba kurenga umwenda shingiro usigaye kwishyurwa (in duplum rule).

**Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro kuri bimwe Uregwa agomba kwishyura Banki 293.087.782 Frw, akubiyemo 146.543.891 Frw y'umwenda remezo na 146.543.891 Frw y'inyungu.**

**Amategeko yashingiweho:**

Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 60.

**Imanza zifashishijwe:**

Urubanza Umutesi Kaberuka Espérance na I&M Rwanda Ltd;  
N°RCOM A 0166/12/CS rwaciwe n'Urukiko  
rw'Ikirenga ku wa 28/04/2017.

- Urubanza RCOM A 0044/12/CS, Ndayambaje v Ecobank; rwaciwe n'Urukiko rw'Ikirenga ku wa 07/11/2014.
- Urubanza N°RS/INJUST/RC 00007/2018/SC, Nditiribambe Samuel v Gatera Jason et Crts; rwaciwe n'Urukiko rw'Ikirenga ku wa 13/03/2020.
- Urubanza N°RS/INJUST/RSOC 00001/2018/SC, Ukwibishaka Alexis na Banki y'Abaturage y'u Rwanda rwaciwe n'Urukiko rw'Ikirenga ku wa 02/07/2021.
- Urubanza N°RS/INJUST/RAD 00003/2021/SC, Tabaruka Dieudonné v Akarere ka Gicumbi; rwaciwe n'Urukiko rw'Ikirenga ku wa 20/05/2022.

## Urubanza

### I. IMITERERE Y'URUBANZA

[1] Ku wa 08/10/2010, Banki ya Kigali Plc yahaye Nsengiyumva Fulgence umwenda wa 181.182.303 Frw wagombaga kwishyurwa mu myaka 7 ibarwa guhera ku wa 31/11/2010, yishyura 3.770.444 Frw buri kwezi. Nsengiyumva Fulgence ntiyashoboye kwishyura, ajya mu birarane, nyuma asaba ko umwenda uvugururwa (restructuration), ku wa 14/04/2011 yemererwa umwenda wa 196.660.736 Frw wagombaga kwishyurwa mu mezi 120 abarwa guhera ku wa 30/04/2011, yishyura 3.482.715 Frw buri kwezi n'inyungu zingana na 17,25% ku mwaka, nabwo ntiyashobora kwishyura akomeza kujya mu birarane.

[2] Ku wa 12/10/2012, Banki ya Kigali Plc yandikiye Nsengiyumva Fulgence imumenyesha ko ihagaritse uburyo yari asanganywe bwo kwishyura (dénonciation de votre programme

de remboursement) imusaba guhita yishyura umwenda wose ayibereyemo ugeze kuri 247.546.466 Frw, akubiyemo umwenda remezo n'inyungu ziwukomokaho. Yamumenyeshaga kandi ko inyungu zingana na 19,25% zizakomeza kubarwa kugeza umwenda wose wishyuwe, ndetse ko dosiye ye yashyikirijwe ubishinzwe kugira ngo atangire kumwishyuzza ku ngufu amafaranga ayibereyemo.

[3] Ku wa 19/09/2014, inzu Nsengiyumva Fulgence yari yaratanze ingwate muri Banki ya Kigali Plc yagurishijwe muri cyamunara, iyo banki aba ari nayo iyegukana ku mafaranga 100.000.000, ku itariki ya 08/10/2014 hashyirwaho 92.320.310 Frw kuri konte ye.

[4] Nyuma yaho tariki ya 13/10/2017, Nsengiyumva Fulgence yandikiye Banki ya Kigali Plc ayisaba kwigurishiriza ingwate akishyura umwenda ayibereyemo wabarirwaga muri 300.000.000 Frw, Banki ya Kigali Plc imusubiza ku wa 11/12/2017 ko ibimwemereye, amafaranga avuyemo agakuramo 300.000.000 Frw yo kwishyura umwenda, inamubwira ko ibyo imwemereye bizata agaciro niba itabonye ubwishyu mu minsi 60, ibyo akaba ari nabyo byaje kuba.

[5] Ku wa 10/10/2019, Banki ya Kigali Plc yatanze ikirego mu Rukiko rw'Ubucuruzi, isaba ko Nsengiyumva Fulgence yategekwa kwishyura umwenda remezo ayibereyemo ungana na 155.308.448 Frw, hiyongereyeho inyungu zibazwe kugera ku mwenda remezo, yose hamwe akaba 310.616.976 Frw. Nsengiyumva Fulgence yireguye avuga ko yemera umwenda ungana na 247.546.466 Frw, ariko ko inyungu zabazwe nyuma y'uko Banki ya Kigali Plc ihagaritse imikoranire isanzwe bari bafitanye ikanagurisha muri cyamunara ingwate yari yarayihaye atazemera.

[6] Urukiko rw'Ubucuruzi rwaciye urubanza N° RCOM 02129/2019/TC ku wa 23/01/2020, rwemeza ko ikirego cya Banki ya Kigali Plc gifite ishingiro, rutegeka Nsengiyumva Fulgence kwishyura 300.000.000 Frw, akubiyemo umwenda remezo n'inyungu zawo, hiyongereyeho 560.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[7] Urukiko rwashingiye icyemezo cyarwo ku ngingo ya 112 -2° y'Itegeko N° 47/2017 ryo ku wa 23/09/2017 rigena imitunganyirize y'imirimo y'amabanki iteganya ko mu kwishyura imyenda itishyurwa, inyungu zitagomba kurenga umwenda shingiro igihe inguzanyo yageraga ku rwego rwo kutishyurwa, ndetse no ku ngingo ya 28 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo rushingiye ku kuba Nsengiyumva Fulgence yaremeye umwenda mu nyandiko yandikiye Banki ya Kigali Plc ku wa 13/10/2017.

[8] Nsengiyumva Fulgence yajuririyeye Urukiko Rukuru rw'Ubucuruzi, ruca urubanza N° RCOMA 00175/2020/HCC ku wa 27/11/2020, rwemeza ko umwenda Nsengiyumva Fulgence agomba kwishyura Banki ya Kigali Plc ari 155.301.368 Frw aho kuba 300.000.000 Frw yari yemejwe ku rwego rwa mbere.

[9] Urukiko rwasobanuye ko Banki ya Kigali Plc imaze kugurisha ingwate ntikuremo ubwishyu bwose, itagombaga kumara imyaka igera kuri 5 ibara inyungu kandi yarahagaritse imikoranire isanzwe yari ifitanye na Nsengiyumva Fulgence, ahubwo ko yari guhita yitabaza inkiko igasaba ubwishyu busigaye. Rwasobanuye kandi ko kuba Nsengiyumva Fulgence yaremeye kwishyura 300.000.000 Frw mu ibaruwa yo ku wa 13/10/2017 bidakwiye kugenderwaho kuko ayo mafaranga atayemeye nk'uwemera umwenda nyakuri afitiye Banki ya

Kigali Plc, ahubwo ko impande zombi zayemeranyijweho mu gihe zageragezaga kumvikana ngo zikemure ikibazo nta manza zibaye.

[10] Banki ya Kigali Plc yajuririye Urukiko rw'Ubujurire, ruca urubanza N° RCOMAA 00104/2020/CA ku wa 30/04/2021, rwemeza ko ubujurire bwayo bufite ishingiro, ko Nsengiyumva Fulgence agomba kwishyura umwenda remezo n'inyungu ziwukomokaho zibazwe kugera ku ngano y'umwenda remezo, yose hamwe akishyura 310.616.896 Frw, hiyongereyeho 700.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[11] Urukiko rwasobanuye ko inyungu zikomeza kubarwa igihe cyose umwenda zikomokaho utarishyurwa, ariko ntizirenze ingano y'umwenda remezo nk'uko biteganyijwe mu ngingo ya 112- 2° y'Itegeko N° 47/2017 ryo ku wa 23/09/2017 rigena imitunganyirize y'imirimo y'amabanki.

[12] Ku bijyanye n'ibaruwa yo ku wa 13/10/2017, Nsengiyumva Fulgence yandikiye Banki ya Kigali Plc, Urukiko rw'Ubujurire rwasanze nta mpamvu ukwiyemerera kwe muri iyo nyandiko kutashingirwaho nk'uko biteganywa n'ingingo ya 28 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryavuzwe haruguru.

[13] Nyuma y'aho urwo rubanza ruciriwe, Nsengiyumva Fulgence yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko rusubirishwamo ku mpamvu z'akarengane. Nyuma yo gusuzuma icyo kibazo, mu cyemezo cye N° 227/CJ/2021 cyo ku wa 20/09/2021, Perezida w'Urukiko rw'Ikirenga yemeje ko urwo rubanza rwoherezwa mu bwanditsi bw'Urukiko kugira ngo ruzongere ruburanishwe, dosiye ihabwa N° RS/INJUST/RCOM 00005/2021/SC.

[14] Urubanza rwaburanishijwe mu ruhame ku wa 15/02/2022, Nsengiyumva Fulgence yunganiwe na Me Kayiranga Cyrille, naho Banki ya Kigali Plc ihagarariwe na Me Biseruka Frank, ababuranyi bajya impaka ku bibazo bikurikira: ingano y'umwenda Nsengiyumva Fulgence agomba kwishyura Banki ya Kigali Plc (A); ishingiro ry'indishyi Nsengiyumva Fulgence asaba kuri uru rwego (B).

[15] Uwo muni iburanisha ryarapfundikiwe, isomwa ry'urubanza rishyirwa ku wa 25/03/2022. Igihe rwari rwiherereye ngo ruce urubanza, Urukiko rwasanze ari ngombwa gushyiraho Umuhanga wagaragaza uko umwenda Nsengiyumva Fulgence abereyemo Banki ya Kigali Plc wagiye uhinduka.

[16] Muri raporo ye, Umuhanga Ayinkamiye Spéciose yagaragaje ko:

1° Tariki ya 12/10/2012, ubwo Banki ya Kigali Plc yandikiraga Nsengiyumva Fulgence imumenyesha ko ihagaritse imikoranire isanzwe bari bafitanye (dénonciation de crédit), yari ayibereyemo umwenda remezo ungana na 196.660.736Frw, inyungu zisanzwe zingana na 42.120.536Frw, yose hamwe akaba 238.864.201Frw, aho kuba 247.546.466 Frw yari yabazwe na Banki ya Kigali Plc.

Ku bijyanye n'ikinyuranyo kiri mu mibare ye n'iya Banki ya Kigali Plc, yasobanuye ko giterwa n'uko mu kubara inyungu banki yakoresheje iminsi 360, mu gihe we yakoresheje iminsi yose y'umwaka uko ari 365 hakurikijwe amabwiriza ya Banki Nkuru y'u Rwanda akubiye mu ibaruwa yandikiye ibigo by'imari ku wa 3/12/2021.

2° Tariki ya 08/10/2014, inzu ya Nsengiyumva Fulgence imaze kugurishwa muri cyamunara, hishyuwe 92.320.310 Frw, asigarana umwenda ungana na 146.543.891 Frw (238.864.201 Frw - 92.320.310 Frw).

3° Inyungu zisanzwe n'iz'ubukererewe zibazwe kuva ku wa 08/10/2014 kugeza ku wa 05/09/2019 zingana na 138.420.742 Frw, naho inyungu zibazwe kugeza ku wa 31/12/2019 zikaba zingana na 147.076.869 Frw.

[17] Iburanisha ryapfunduwe ku wa 20/09/2022, urubanza ruburanishwa mu ruhamwe, Nsengiyumva Fulgence yunganiwe na Me Kayiranga Cyrille, Banki ya Kigali Plc ihagarariwe na Me Biseruka Frank. Umuhanga Ayinkamiye Spéciose nawe yari yitabye, asobanura ibikubiye muri raporo ye, ababuranyi nabo bagira icyo bayivugaho, nyuma urubanza rurapfundikirwa.

## **II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO:**

### **1. Kumenya ingano y'umwenda nsengiyumva fulgence agomba kwishyura banki ya kigali plc**

[18] Nsengiyumva Fulgence yunganiwe na Me Kayiranga Cyrille avuga ko ntacyo anenga ku mibare yagaragajwe n'Umuhanga, ko icyo atemera ari inyungu zibazwe nyuma y'uko Banki ya Kigali Plc imwandikiye ku wa 12/10/2012 imumenyesha ko ihagaritse imikoranire isanzwe yari ifitanye nawe kandi ko dosiye ishyizwe mu maboko y'umukozi wayo kugirango yishyuzwe ku ngufu kuko igihe ingwate yari igurishijwe muri cyamunara ntihavemo ubwishyu bwose, banki yagombaga guhita iregera inkiko aho gukomeza kubara inyungu

mu gihe cy'imyaka 5 kandi amasezerano yari afitanye na banki yaravuyeho.

[19] Avuga ko Urukiko rw'Ubujurire narwo rwemera mu mwanzuro warwo ko banki yari kwitabaza inkiko imaze kubona ko ingwate itavuyemo ubwishyu bwose, ariko ikabibuzwa n'uko hari imishyikirano hagati y'impande zombi, nyamara iyo mishyikirano yarabaye mu gihe cy'iminsi 60 gusa kuko ariyo minsi Banki ya Kigali Plc yari yamuhaye yo kuba yagurishije.

[20] Avuga kandi ko mu rubanza N°RS/INJUST/RP 00006/2017/CS rwaciwe ku wa 29/11/2019, uru rukiko rwemeje mu buryo budasubirwaho ko Rutembesa Phocas wagurishije umutungo we muri cyamunara n'abo bari bafatanyije bakoze icyaha cyo kwandika cyangwa gukoresha inyandiko yahinduwe cyangwa irimo ibinyoma, kuba yari ahagarariye Banki ya Kigali Plc mu gikorwa cyabayemo icyaha, akaba asanga banki igomba kubiryoza hashingiwe ku ngingo ya 33 y'Itegeko Ngenga No 01/2012 ryo ku wa 02/05/2012 rishyiraho Igitabo cy'Amategeko ahana ryakurikizwaga igihe icyaha cyakorwaga, amafaranga bamuhombeje agera kuri 275.400.000 Frw agahuzwa n'umwenda abereyemo Banki ya Kigali Plc ungana na 146.543.891 Frw bakishyurana.

[21] Me Biseruka Frank avuga ko Banki ya Kigali Plc ahagarariye nayo ntacyo inenga ku mibare yagaragajwe n'Umuhanga, ko kuba harabaye ikinyuranyo hagati y'imibare ye n'iya banki byatewe n'uko amabwiriza ya Banki Nkuru y'u Rwanda asaba kubarira inyungu ku minsi 365 yari atarasohoka igihe batangaga ikirego ku rwego rwa mbere.

[22] Ku birebana n'ibyo Nsengiyumva Fulgence avuga ko Banki ya Kigali Plc itari gukomeza kubara inyungu nyuma ya

cyamunara, ahubwo ko yagombaga guhita igana inkiko, avuga ko nk'uko Urukiko rw'Ubujurire rwabigaragaje mu gika cya 20 cy'urubanza, muri iyo myaka 5 impande zombi zari mu mishyikirano yo kureba uburyo umwenda wakwishyurwa, ndetse ko hari amabarurwa impande zombi zagiye zandikirana, nk'inyandiko Nsengiyumva Fulgence yiyandikiye ubwe ku wa 13/04/2017 yemera umwenda ungana na 300.000.000 Frw, asaba ko yakoroherezwa uburyo bwo kuwishyura, ku buryo Banki ya Kigali Plc itari kuregera inkiko bakiri mu biganiro.

[23] Avuga kandi ko nta cyari kubuza ko inyungu zikomeza kubarwa igihe cyose umwenda utarishyurwa, zipfa gusa kutarenga umwenda remezo nk'uko biteganywa n'ingingo ya 112- 2° y'Itegeko No 47/2017 ryo ku wa 23/09/2017 rigena imitunganyirize y'amabanki, ari nayo mpamvu aho kwishyura inyungu zari zigeze kuri 503.701.707 Frw igihe Banki ya Kigali Plc yatangaga ikirego ku rwego rwa mbere, yasabye kwishyurwa inyungu za 155.301.368 Frw zingana n'umwenda Nsengiyumva Fulgence yayisigayemo ingwate imaze kugurishwa muri cyamunara, aba ari nabyo byemezwa n'Urukiko rw'Ubujurire.

24] Ku birebana n'ibyo Nsengiyumva Fulgence asaba ko Banki ya Kigali Plc yaryozwa igihombo yatejwe na cyamunara, Me Biseruka Frank avuga ko ari ikirego gishya kuko ikiburanwa muri uru rubanza kuva rutangira ari ingano y'umwenda akwiye kwishyura banki kubera inguzanyo yamuhaye atishyuye. Yongeraho ko hari imanza zabaye kuri iyo cyamunara, aho Nsengiyumva Fulgence yasabaga ko iteshwa agaciro, nk'urubanza N°RCOMA 00471/2020/HC, ariko ko itigeze iteshwa agaciro.

## UKO URUKIKO RUBIBONA:

### i. Ku bijyanye n'umwenda remezo

[25] Ingingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye, naho ingingo ya 110 y'Itegeko n° 15/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo igateganya ko amagambo umuburanyi cyangwa umuhagarariye avugiye mu rukiko agira ibyo yemera atsindisha uwayavuze.

[26] Amasezerano ababuranyi bagiranye agaragaza ko Nsengiyumva Fulgence yahawe na Banki ya Kigali Plc umwenda ungana na 181.182.303 Frw waje kuvugururwa ukaba 196.660.736 Frw wagombaga kwishyurwa mu gihe cy'amezi 120 abarwa uherye ku wa 30/04/2011, yishyura 3.482.715 Frw buri kwezi n'inyungu zingana na 17,25% ku mwaka. Historiques za banki ziri muri dosiye nazo zigaragaza ko atigeze yishyura uko byari biteganyijwe mu masezerano, umwenda ugenda wiyongera abarirwa ibirarane.

[27] Nsengiyumva Fulgence nawe ubwe yemera ko atigeze yishyura umwenda yahawe, ndetse kuva ku rwego rwa mbere yaburanye avuga ko yemera umwenda ungana na 247.536.018 Frw wagaragajwe na Banki ya Kigali Plc mu ibaruwa yamwandikiye ku wa 12/10/2012 imumenyesha ko ihagaritse imikoraniye isanzwe bari bafitanye, wasigaye ungana na 155.308.448 Frw ubwo ingwate yagurishwaga muri cyamunara, hakishyurwa 92.320.310 Frw yagabanyije umwenda.

[28] Hashingiwe rero ku masezerano ababuranyi bagiranye no ku kwiyemerera kwa Nsengiyumva Fulgence, Urukiko rurasanga

agomba kwishyura umwenda remezo wasigaye utishyuwe nyuma y'uko ingwate igurishijwe muri cyamunara, usibye ko imibare yakosorwa hakurikijwe iyagaragajwe n'Umuhanga yemeranywaho n'abaturanyi ku mpande zombi, bityo akishyura 146.543.891 Frw aho kuba 155.308.448 Frw yemejwe n'Urukiko rw'Ubujurire.

[29] Ku bijyanye n'ibyo Nsengiyumva Fulgence asaba ko Banki ya Kigali Plc yaryozwa igihombo yatejwe na cyamunara kigera kuri 275.400.000 Frw, ayo mafaranga agahuzwa n'ayo yemera ko abereyemo banki, Urukiko rurasanga bitagomba gusuzumwa kubera ko bitari mu mbibi z'icyaburanyweho urubanza rugitangira, ibi akaba ari nawo murongo wafashwe n'uru rukiko mu manza zinyuranye.

## ii. Ku bijyanye n'inyungu

[30] Ku birebana n'inyungu ku nguzanyo banki ziha abakiliya bazo, ibikubiye mu ngingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano ryavuzwe haruguru, bigomba guhuzwa n'ingingo ya 7 y'Amabwiriza Rusange N°02/2011 yo ku wa 21/03/2011 ya Banki Nkuru y'u Rwanda ku ishyirwa mu byiciro ry'imyenda no guteganya ingoboka yakurikizwaga igihe ikirego cyatangwaga yateganyaga mu gika cyayo cya 2 ko inyungu zose ku myenda itishyurwa neza zandikwa kuri konti y'inyungu zahagaze kugeza igihe zishyuriwe n'uwasabye umwenda, ndetse n'ingingo ya 112 - 2° y'Itegeko N° 47/2017 ryo ku wa 23/9/2017 rigena imitunganyirize y'imirimo y'amabanki iteganya ko inyungu amabanki yishyuzwa ku nguzanyo zitishyurwa zitagomba kurenza umwenda shingiro utarishyurwa igihe inguzanyo yageraga mu rwego rwo kutishyurwa.

[31] Ibivuzwe muri ayo mabwiriza n'iryo tegeko iyo bihurijwe hamwe byumvikanisha ko inyungu ku nguzanyo banki ziha abakiliya bazo zikomeza kubarwa kugeza umwenda wose wishyuwe ariko ko inyungu banki zishobora kwishyuza zitagomba kurenga umwenda shingiro wagaragajwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa.

[32] Ibi uru rukiko rwabisobanuye mu manza zinyuranye, rubigarukaho mu buryo burambuye mu rubanza SIMACO Ltd yaburanye na I&M Bank Rwanda Plc rwaciwe ku wa 25/02/2022, aho rwifashishije inyandiko z'abahanga mu mategeko, rusobanura ko gusesa amasezerano y'inguzanyo (résiliation du contrat) bitakuraho inshingano yateganyaga ku ruhande rw'uwahawe inguzanyo, ndetse n'inkomoko n'impamvu z'ihame ry'uko inyungu zitagomba kurenga umwenda shingiro usigaye kwishyurwa (in duplum rule) .

[33] Mu masezerano avuguruwe ababuranyi bagiranye ku wa 14/04/2011 bigaragara ko bateganyije ko umwenda uzajya ubarirwa inyungu zisanzwe za 17,25% ku mwaka kandi ko banki ishobora guhindura icyo gipimo igihe ibimenyesheje umukiliya wayo mbere y'iminsi 30. Bigaragara kandi ko mu ibaruwa Banki ya Kigali Plc yandikiye Nsengiyumva Fulgence ku wa 12/10/2012 yamenyeshejwe ko icyo gipimo gishyizwe kuri 19,25% kandi ko inyungu zizakomeza kubarwa kugeza umwenda wose wishyuwe ariko ko zizandikwa kuri konti yihariye itandukanye n'iyari isanzwe. Ntaho bigaragara mu masezerano bagiranye no mu nyandiko bagiye bandikirana ko hari icyo bateganyije ku ibarwa ry'inyungu gitandukanye n'ibiteganyijwe mu mabwiriza ya BNR yavuzwe haruguru no mu Itegeko rigena imitunganyirize y'imirimo y'amabanki naryo ryavuzwe haruguru.

[34] Urukiko rurasanga rero nta cyari kubuza ko inyungu zikomeza kubarwa nk'uko amasezerano Nsengiyumva Fulgence yagiranye na Banki ya Kigali Plc abiteganyanya igihe cyose yari atararangiza kwishyura umwenda ayibereyemo, zipfa gusa kubahiriza ibiteganyijwe mu ngingo ya 112 - 2° y'Itegeko ryavuzwe rigena imitunganyirize y'imirimo y'amabanki. Ibi kandi byumvikanisha ko imyiregurire ya Nsengiyumva Fulgence ko nta nyungu zagombaga gukomeza kubarwa nyuma y'uko banki ihagaritse imikoranire isanzwe bari bafitanye n'ingwate ikagurishwa muri cyamunara ntihavemo ubwishyu bwose nta shingiro ifite.

[35] Ku bijyanye n'ingano y'izo nyungu, Umuhanga yagaragaje ko ku wa 31/12/2019 zari zigeze kuri 147.076.869 Frw. Hashingiwe rero ku ihame y'uko inyungu zitagomba kurenga umwenda remezo igihe inguzanyo yageraga mu rwego rwo kutishyurwa, Urukiko rurasanga Nsengiyumva Fulgence agomba kwishyura inyungu zingana na 146.543.891 Frw, aho kuba 155.308.448 Frw yemejwe n'Urukiko rw'Ubujurire.

## **2. Ku bijyanye n'indishyi zisabwa muri uru rubanza**

[36] Nsengiyumva Fulgence asaba ko yahabwa 1.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[37] Me Biseruka Frank uhagarariye Banki ya Kigali Plc avuga ko nta ndishyi Nsengiyumva Fulgence akwiye guhabwa kuko ariwe wakomeje gushora banki mu manza kandi ku mwenda nawe ubwe yemera.

## **UKO URUKIKO RUBIBONA:**

[38] Ingingo ya 111 y'Itegeko No 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi igira iti: ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo [...].

[39] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka Nsengiyumva Fulgence asaba kuri uru rwego atagomba kuyahabwa kuko impande zombi ziburana zifite icyo zitsindiye muri uru rubanza.

## **III. ICYEMEZO CY'URUKIKO:**

[40] Rwemeje ko ikirego cyo gusubirishamo ku mpamvu z'akarengane urubanza N° RCOMAA 00104/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 30/04/2021 gifite ishingiro kuri bimwe;

[41] Rutegetse Nsengiyumva Fulgence kwishyura Banki ya Kigali Plc 293.087.782 Frw, akubiyemo 146.543.891 Frw y'umwenda remezo na 146.543.891 Frw y'inyungu.

**RWANDA LAW  
REPORTS**

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**ENGLISH VERSION**



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- UMUTESI Vestine** : Judge of Commercial Court
- YANKURIJE Dorothee** : Judge of Primary Court



## **PREFACE**

Dear Readers,

We are pleased to present to you the Law Reports Volume 3 [2023]. As usual, we select cases that solve some of the legal issues you encounter, either in your career or in your daily life.

This volume contains eight (8) cases, which includes; two (2) cases relating to the petition seeking to declare the law unconstitutional, one (1) civil cases, one (1) commercial case and four (4) procedural cases.

These cases can be accessed on the website of the judiciary: <http://decisia.lexum.com/rlr/en/nav.do>.

Dr NTEZILYAYO Faustin  
President of the Supreme Court and  
President of the High Council of Judiciary



## **SCOPE OF THE REPORTS**

These reports cover cases decided by the Supreme Court and the Court of Appeal.

## **CITATION**

The Reports in this volume are cited as:  
**[2023] 3 RLR**



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Applicant for the judgment review due to injustice – The procedure for the judgment review due to injustice is extraordinary procedure accorded to a person who blatantly suffered injustice, upon request in accordance with the law, and approval by competent organs on basis of the examination, it is different from other procedures of appeal. Parties who failed to abide by those procedures are not entitled to file incidental applications to the parties' review which has been approved, to request for some changes on the judgment of which they did not apply for the review, because they deprived themselves of such right.

**PROSECUTION v MAGARA ET AL.....**

Reversing a decision made for parties who did not apply for the review due to injustice – A decision taken for those who did not apply for the review due to injustice, who made incidental application, can only be changed when the Court finds that there is the indivisibility of offence commission with the parties who applied for the judgment review due to injustice so that the decision that can be made for applicants is likely to affect their interests

**PROSECUTION v MAGARA ET AL.....103**

Change of the decision of the President of the Supreme Court – The fact that the President of the Supreme Court has approved the application for the review of a judgment on grounds of being vitiated by injustice does not prevent the bench to analyze and decide on special issues considered as of public order

**PROSECUTION v MAGARA ET AL.....103**

Scope of the subject matter – The scope of the subject matter in the case under review due to injustice is determined in relation to the ruling of the first instance, the

ruling of the judgment under review due to injustice and the submissions of the applicants for such review following the approval of the President of the Supreme Court

**PROSECUTION v MAGARA ET AL.....103**

Connexity of cases – A judgment filed for review due to injustice – A case filed in accordance with the ordinary procedure – Combining a judgment filed to review due to injustice with the case filed in accordance with the ordinary procedure – The case filed for review due to injustice is a judgment that has exhausted all the appeal remedies, such judgment might even have been executed; it cannot be combined with an appealable judgment– Courts that have been seized in accordance with the ordinary procedure shall stay the proceedings pending the ruling of the courts seized for review of judgments due to injustice

**SIKUBWABO v RWANDA DEVELOPMENT BOARD ET AL (ADD2).....129**

Scope of the subject matter – Issues that were not subject to examination during the original trial cannot be brought forth for examination in relation to judgment review due to injustice

**NSENGIYUMVA v. BANK OF KIGALI (BK) PLC.....207**



## **SPECIAL CLAIMS**



**PETITION SEEKING TO DECLARE  
A LAW UNCONSTITUTIONAL**



## **Re NGENDAHAYO KABUYE (ADD)**

[Rwanda SUPREME COURT – RS/INCONST/SPEC  
00004/2021/SC (Mukamulisa, P.J., Cyanzayire, Nyirinkwaya,  
Muhumuza and Karimunda, J., February 18, 2022)]

*Constitution – Unconstitutional laws – Interest to sue – While the interest to sue should be understood in a broader sense, the petitioner also has the obligation to demonstrate his/her personal interest in the case – An advocate, in his/her capacity as a legal professional, is entitled to file a petition for unconstitutionality not on his/her own behalf, but in the interest of justice.*

**Facts:** Counsel Ngendahayo Kabuye initiated a petition requesting to decide on the inconsistency of Article 8, Paragraph 2, Article 52, Paragraph 3, Article 75, and Article 76 (1°) of Law N°27/2016 of 08/07/2016 governing matrimonial regimes, donations, and successions, with Articles 15, 18, and 34 of the Constitution of the Republic of Rwanda of 4/06/2003 revised in 2015. The petitioner argues that these provisions violate the rights of other heirs, especially children who are not born from the widow(er), by granting the widow(er) the right to own alone the property on the pretext of the marriage under the community of property regime.

He argues that the reason he finds these provisions to be contravening is the fact that in the event one of the spouses dies and other children not born from their relationship, as well as other heirs in general, appear, the surviving spouse relies on those provisions to claim the entire property for himself/herself, excluding those heirs, especially when he/she does not have the obligation to cater for them. Even if he/she does not have such an

obligation, he/she sometimes fails to fulfill it properly, resulting in family conflicts and recurring lawsuits.

The parties initially debated the issue of determining whether the petitioner has the interest to sue. He stated that, as an advocate, he has a duty to promote the development of the law, and as a Rwandan citizen, he believes that the provisions against which he petitioned infringe upon society, even if they do not personally affect him. He also pointed out that there are cases of individuals who have been impacted by conflicts arising from those provisions. Furthermore, he emphasized that his position aligns with the stance adopted by the Supreme Court in the judgment RS/INCONST/SPEC 00002/2018/SC.

The Government of Rwanda also argues that considering the position adopted by the Supreme Court in the judgment RS/INCONST/SPEC 00002/2018/SC, the petitioner has the interest to sue.

**Held:** 1. While the interest to sue should be understood in a broader sense, the petitioner also has the obligation to demonstrate his/her personal interest in the case.

2. An advocate, in his/her capacity as a legal professional, is entitled to file a petition for unconstitutionality not on his/her own behalf, but in the interest of justice.

**The petitioner has an interest to file the petition and request the Court to declare the provisions of the law inconsistent with the Constitution.  
The hearing on the merits of the case shall be resumed.**

**Statutes referred to:**

Law n°30/2018 of 02/06/2018 determining the jurisdiction of courts, article 72.

**Cases referred to:**

RS/SPEC/0002/15/CS, Democratic Green Party of Rwanda (DGPR) v. Government of Rwanda rendered by the Supreme Court on 09/09/2015.

RS/INCONST/SPEC 00002/2018/SC, Re Mugisha, rendered by the Supreme Court on 18/01/2019.

RS/INCONST/SPEC 00002/2021/SC, Re Byansi, rendered by the Supreme Court on 24/12/2021.

RS/INCONST/SPEC 0003/2021/SC, Re Byansi, rendered by the Supreme Court on 10/12/2021.

## **Judgment**

### **I. BRIEF BACKGROUND OF THE CASE**

[1] Counsel Ngendahayo Kabuye has petitioned the Supreme Court, requesting the Court to declare Article 8(2), Article 52(3), Article 75, and Article 76(1°) of Law no 27/2016 of 08/07/2016 governing matrimonial regimes, donations, and successions inconsistent with Articles 15, 18, and 34 of the Constitution of the Republic of Rwanda of 4/06/2003 revised in 2015. The petitioner argues that these provisions grant the widow(er) the exclusive right to own alone the property on the pretext of their marriage under the community of property regime, thereby disregarding the rights of other heirs, especially the children not born to the widow(er).

[2] The four articles against which he petitioned the Supreme Court to be declared inconsistent with the Constitution are as follows:

- Article 8(2) provides that: "Where the dissolution of such a regime occurs due to death of one of the spouses, the property is owned by the surviving spouse until succession execution",
- Article 52(3) provides that "succession for spouses opens when they both decease or in case one of them remarries unless otherwise provided by law",
- Article 75 provides that "The surviving spouse is entitled to take part in succession of the deceased spouse's estate. The surviving spouse called to succeed inherits in equal portions with first category heirs",
- And article 76 (1o) provides that "Succession of spouses married under the community of property regime is done as follows: if one of the spouses dies, the surviving spouse is entitled to the entire property and fulfills the duty to take care of their children and that of the legitimate children of the de cujus".

[2] Counsel Ngendahayo Kabuye alleges that considering the provisions of the aforementioned articles, he finds them inconsistent with the Constitution of the Republic of Rwanda of 4/06/2003 revised in 2015. He argues that these articles obstruct the execution of other legal provisions relating to succession, as well as other legal instruments pertaining to property rights. He states that the reason he finds these provisions to be contravening is the fact that in the event one of the spouses dies and other children not born from their relationship, as well as other heirs in general, appear, the surviving spouse relies on those provisions

to claim the entire estate for himself/herself, denying the rights of those heirs, especially when he/she does not have the obligation to cater for them. Even if he/she does have such an obligation, he/she sometimes fails to fulfill it properly, resulting in family conflicts and recurring lawsuits.

[4] He further declares that those heirs have lost various cases, and this allowed the widow(er) to hold the estate by himself/herself, despite the principle that all people are equal before the law. He emphasizes that the Government should protect the rights of children to inherit the estate of their parent and prevent family conflicts.

[5] The hearing of the instant case took place on January 13, 2022, with Ngendahayo Kabuye being assisted by Counsel Umulisa Kayigamba Alice and Counsel Serugo Jean Baptiste. The Government of Rwanda was represented by State Attorneys Counsel Kayitesi Petronille and Counsel Ntwali Emile.

[6] At the outset of the hearing, the Court initially decided on the request for intervening in the capacity of a friend of the court (*Amicus Curiae*) submitted by the Rwandan non-governmental organization for the promotion of the rights of women and children (HAGURUKA), represented by Umuhoza Ninette. The Court deemed that the arguments raised by that organization are not significantly different from the arguments raised by one of the parties, and therefore not sufficient to justify its intervention as a friend of the court to contribute to the trial of the case. It relied on the position it adopted on a similar issue, where it held that for a person or a legal entity to be permitted to intervene as a friend of the court, they should demonstrate the contribution they would make to the court that is different from the arguments of

the parties to the case. It decided that the Organisation HAGURUKA is not admitted as a friend of the court in this case.

[7] The hearing proceeded, and the parties disputed the issue regarding whether Counsel Ngedahayo Kabuye has an interest to petition for the inconsistency of Article 8(2), Article 52(3), Article 75, and Article 76(1o) of Law no 27/2016 of 08/07/2016, governing matrimonial regimes, donations, and successions, with Articles 15, 18, and 34 of the Constitution of the Republic of Rwanda.

## II. THE LEGAL ISSUE OF THE CASE

### **Determine whether Counsel Ngedahayo Kabuye has an interest to petition the Court**

[8] Counsel Ngedahayo Kabuye was given the opportunity to explain the interest he has in this case. He stated that, as an advocate, he has a duty to promote the rule of law. Being a Rwandan, he believes that the provisions against which he petitioned the Court undermine the society, even though they have not yet affected him personally. He pointed out that various people have faced problems associated with these provisions, leading to conflicts. He, therefore, raises this argument to assert his interest in requesting the amendment of the aforementioned provisions of the law. He particularly emphasizes that his arguments align with the position adopted by the Supreme Court in the judgment RS/INCONST/SPEC 00002/2018/SC. In paragraph 26 of that judgment, the Supreme Court stated that the interest of advocates is perceived within their profession and is not solely limited to the petitioner, but rather extends to all individuals subject to the law.

[9] Counsel Kayitesi Petronille and Counsel Ntwali Emile, the State Attorneys representing the Government of Rwanda, also argued that, based on the position taken by the Supreme Court in the judgment RS/INCONST/SPEC 00002/2018/SC, specifically in paragraphs 30 and 31, they believe that Counsel Ngendahayo Kabuye has a legitimate interest to bring forward the lawsuit.

## **DETERMINATION OF THE COURT**

[10] Article 72, paragraph one of the Law n°30/2018 of 02/06/2018 determining the jurisdiction of courts provides that: "The Supreme Court is petitioned by any person or company and associations with legal personality over petitions seeking to declare unconstitutional a law if they have any interest."

[11] The issue of interest regarding the petitioner for the unconstitutionality of certain provisions of the law has been examined by this Court in various cases, including the case initiated by Counsel Mugisha Richard. Both parties in the present case have also raised this precedent. The Court has determined that the concept of interest in the case is intended to establish that the petitioner has a specific right he/she seeks to be entitled through the court's decision or he/she requests the court to make decisions that would benefit him/her. It also explained that the petitioner must have a legitimate interest in his/her petition to prevent individuals from using it as a platform to grandstand or advertise their activities, as well as to safeguard against those seeking to exploit rights reserved for others.

[12] The Supreme Court emphasized that when it comes to constitutional petitions, the interest should be broadly understood, particularly in a developing country like Rwanda

where people may not fully comprehend their constitutional rights and require assistance in exercising them through the courts.

[13] This position was reiterated in the case initiated by BYANSI Samuel Baker, where the Court further added that, in order to avoid unnecessary cases that could hinder the functioning of the courts, the petitioner has the right to demonstrate the personal interest he/she has in the case. This personal interest should be one that he/she personally aspires to protect or would directly be deprived of by the law he/she is requesting to be repealed.

[14] In this case, Counsel NGENDAHAYO KABUYE requests the Supreme Court to determine that the aforementioned provisions violate certain rights, specifically the deprivation of the right that guarantees surviving children of one spouse the inheritance of their parent's property upon his/her death by the step-spouse. Additionally, there are instances where the surviving spouse neglects their duty of care towards these children, which indicates unequal treatment before the law, contrary to the legal provision that provides for equal treatment.

[15] Based on the fact that Law n°27/2016 of 08/07/2016 governing matrimonial regimes, donations, and successions is a statute that applies to every individual in Rwandan society, without any exclusion regarding marriage, succession, or property rights, it is binding for all Rwandans, and its provisions should be respected by everyone. This implies that, although the law pertains to all Rwandans in general, it also applies to Counsel NGENDAHAYO KABUYE, who initiated the present petition.

[16] The Court finds that Counsel NGENDAHAYO KABUYE has a legitimate interest in his petition, as he seeks a ruling that certain provisions of the Law governing matrimonial regimes, donations, and successions are inconsistent with the Constitution. Even though he has not yet personally encountered any issues or faced violations of the law, he is still one of the individuals to whom the law applies.

[17] In addition, the Court finds that Counsel NGENDAHAYO KABUYE, as an advocate who plays a role in promoting the rule of law within the society, has a valid interest in initiating a petition to challenge the constitutionality of certain provisions of Law n°27/2016 of 08/07/2016 governing matrimonial regimes, donations, and successions. This holds true even if it is evident that he has no personal interest in the petition. This position aligns with the stance adopted in the case initiated by Mugisha Richard.

### **III. DECISION OF THE COURT**

[18] Holds that Counsel NGENDAHAYO KABUYE has a legitimate interest in initiating a petition seeking to declare the provisions of the Law inconsistent with the Constitution.

[19] Orders that the hearing shall be resumed on 12/04/2022 at 8:00 AM.



## **Re NGENDAHAYO KABUYE (Fond)**

[Rwanda SUPREME COURT – RS/INCONST/SPEC  
00004/2021/SC – (Mukamulisa, P.J., Cyanzayire, Nyirinkwaya,  
Hitiyaremye and Karimunda, J.) February 10, 2023]

*Constitution – Petition seeking to declare a law or a legal provision unconstitutional – Amicus curiae – An applicant for being amicus curiae should not only be reiterating the parties’ statements, rather, he/she is required to have a remarkable experience on the matter and has been conducting a research on issues relating to the subject matter in the case.*

*Constitution – The principle of equality before the law and non-discrimination – Giving a special consideration to a widow/widower in comparison with other heirs should not be construed as discrimination or inequality before the law since such person has lost a spouse, whom they used to share household responsibilities which the widowed has to account for alone, considering that he/she contributed to the acquisition of the family property, while other heirs did not.*

*Constitution – Right to property – The right to property shall not be encroached upon except in public interest and in accordance with the provisions of the law – No one shall claim the right to property that is not entitled to him/her yet, since such right is normally reserved for the assets one owns, and not the property one expects to own in the future.*

*Family law – Succession – Opening of succession – Succession for spouses opens when they both decease or in case one of them remarries – The right to succession is made clear upon the*

*opening of succession, and at that time, real heirs are identified and modalities for the succession are defined.*

**Facts:** Counsel Ngendahayo Kabuye petitioned the Supreme Court seeking to declare paragraph 2 of article 8, paragraph 3 of article 52, articles 75 and 76 (1o) of the Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions, inconsistent with articles 15, 18 and 34 of the Constitution of the Republic of Rwanda of 2003 revised in 2015 on grounds that when one of the spouses deceases, and it is found that there exists other children who were not born to both spouses, and other heirs in general, the remaining parent use the impugned articles to grab the entire property for him/herself alone, with no intention to share it with other heirs especially when they are not under his/her care. The petitioner refers to this to seek declaration that the foregoing is in contradiction with the principle of equality of all people before the law provided under the aforementioned article 15 of the Constitution of the Republic of Rwanda.

The petitioner elucidates that the impugned articles are inconsistent with article 18 of the said Constitution, since such articles are the causes of family conflicts which may lead to other offences such as murder, and instead of protecting the family, they allow the widow/widower to grab the entire property for him/herself alone until he/she deceases or remarries, and surprisingly giving him/her the right to succeed the de cujus.

He concludes by alleging that the impugned articles are inconsistent with article 34 of the Constitution of the Republic of Rwanda as they allow the surviving spouse to grab the entire property using the right entitled to him/her by matrimonial regime of community of property, hence disregarding the rights of other heirs of the de cujus especially children of the latter,

while succession consists of the transfer of rights and obligations on the assets and liabilities of the *de cuius*. The petitioner finds that depriving some of the heirs of their right to succession is also depriving them of the right to property, while succession is a fundamental right.

State Attorneys submit that paragraph 2 of article 8, and article 76 (1°) of the aforementioned law n° 27/2016 of 08/07/2016 are not inconsistent with article 15 of the Constitution of the Republic of Rwanda since they contain no inequality among the heirs. The widow/widower does not remain with the property of the *de cuius* as the heir, rather, as the owner since the succession is not yet opened. In addition, article 76 (1°) does neither contain any discrimination, since when one of the spouses deceases, the impugned article entitles him/her the duty to take care of the children he/she had with the *de cuius* including children who were not born to both spouses.

They conclude by submitting that the legislator's purpose in the aforementioned law, was to provide special protection to the surviving spouse, on ground that it was found that in case of the death of one of the spouses, the surviving spouse especially the widow was used to be mistreated, harassed and even deprived of the right to the property she co-acquired with the *de cuius* whereas they were married under community of property regime. The issue of children who were not born to both spouses, who may be mistreated by the surviving spouse, this has also been provided by the legislator, where the latter gave the widow/widower the duty to take care of his/her children including legitimate children of the *de cuius*.

Representatives of the School of Law of the University of Rwanda, who intervened as *amicus curiae*, aver that when you analyze the impugned articles, you find them contradicting the

principle of equal rights and power for spouses married under community of property regime, whereby they agree to join their entire property, and with such matrimonial regime, each spouse has the right to the half of the co-owned property.

They conclude by upholding that the two articles alleged to be inconsistent with the Constitution, are really problematic, since by allowing the surviving spouse to grab the entire property and use it as he/she wishes, while there are other heirs, this contradicts the principle of equality before the law provided under article 15 of the Constitution.

**Held:** 1. An applicant for being an amicus curia should not only be reiterating the parties' statements, rather, he/she is required to have a remarkable experience on the matter and has been conducting a research on issues relating to the subject matter in the case.

2. Giving a special consideration to a widow/widower in comparison with other heirs should not be construed as discrimination or inequality before the law since such person has lost a spouse, whom they used to share household responsibilities which the widowed has to account for alone, considering that he/she contributed to the acquisition of the family property, while other heirs did not.

3. The right to property shall not be encroached upon except in public interest and in accordance with the provisions of the law. No one shall claim the right to property that is not entitled to him/her yet, since such right is normally reserved for the assets one owns, and not the property one expects to own in the future.

4. The surviving spouse is entitled to the entire property and succession opens when he/she remarries or dies, limitations on

the size of the property he/she may donate or give as a heritage are set, and penalties in case of failure to fulfil his/her duty to take care of their children left by the de cujus in order to avoid and minimize conflicts relating to succession, are provided.

5. Succession for spouses married under community of property regime opens when they both decease or in case one of them remarries. The right to succession is made clear upon the opening of succession, and at that time, real heirs are identified and modalities for the succession are defined.

**Petition seeking to declare provisions of a law unconstitutional lacks merit.**

**Statutes and statutory instruments referred to:**

The Constitution of the Republic of Rwanda of 4/06/2003  
revised in 2015, articles 10, 15, 16, 17, 18 and 34;

Universal declaration of human rights of 1948, articles 7 and 17;

Article 1 of Protocol n° 1 to the European Convention on  
Human Rights;

Article 239, the National Civil (Code) Act, 2017 (2074);

African Charter on Human and Peoples' Rights of 27/06/1981  
article 3 and 14;

Law n° 32/2016 of 28/08/2016 governing persons and family,  
article 2;

Law n° 27/2016 of 08/07/2016 governing matrimonial regimes,  
donations and successions, articles 8, 49, 51, 52, 55, 56,  
57, 59, 73, 75, 76, 83-87, and 94-99;

Law n° 22/99 of 12/11/1999 to Supplement Book I of the Civil  
Code and to Institute Part Five Regarding Matrimonial  
Regimes, Liberalities and Successions.

**Cases referred to:**

- RS/INCONST/SPEC 00001/2019/SC, Re Murangwa Edward, rendered by the Supreme Court on 29/11/2019.
- RS/SPEC/0001/16/CS, Re Akagera Business Group rendered by the Supreme Court on 23/09/2016.
- RS/SPEC/0002/15/CS, Democratic Green Party of Rwanda, rendered by the Supreme Court on 09/09/2015.
- RS/INCONST/PEN 0005/12/CS, Prosecution v Uwinkindi Jean, rendered by the Supreme Court on 22/02/2013.
- HRC, Muller and Engelhard v Namibia (Communication n°. 919/00).
- Morarjee Rajkotia & Ors vs Union of India & Ors case n° 46 of 1965, on 4 February, 1966.
- The case n° 22744, John O. Miron and Jocelyne Valliere v; Richard Trudel, William James Mc Isaac and the Economical Mutual Insurance Companye vs. The Attorney General of Canada, the Attorney General for Ontario, the Attorney General of Quebec and the Attorney General of Manitoba, decided by the Supreme Court of Canada, on 25/05/1995;
- The case n° 75-6289, Moore v. City of East Cleveland, U.S. Supreme Court, 431 U.S. 494 (1977), decided on May 31, 1977;
- Ivcher Bronstein case vs Perou, Inter-American Court of Human Rights of February 6, 2001 (Merits, Reparations and Costs) para. 122.
- Application 6833/74, Marckx v. Belgium, 13 June 1979, para.48.
- Marckx c. Belgique, arrêt du 13 juin 1979, Série A n° 31, op.cit, para 49.
- Application no. Application no. Greece (Strasbourg 6 April 2000, para 72.

- Application n° 69498/01, Pla et Puncernau c. Andorre (2004), Para 26.
- Application n° 28369/95, Bourimi v. the Netherlands, (2000), Para.35
- Application 011/2011, Rev.Christopher Mtikila v. United Republic of Tanzania, par. 119 13, para 106.1.
- Application 001/2014 - APDH v. Republic of Cote d'Ivoire, par.146, Application 022/2017 Harold Muthali v. Malawi, par.81.
- Application n°. 9540/07, Murat Vural v. Turkey, of 21/01/2015, para. 64.
- Requête n° 10465/83, Olsson c. Suède, (24 Novembre 1988) n° 130 (A), para. 68.
- Requête n° 8919/80, Van der Mussele, (23 novembre 1983), para .48.
- Application n° 35014/97, Hutten-Czapska v Poland [GC] ECHR 2006-VIII, para 165.
- Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Series C N° 79, Inter-American Court of Human Rights, August 31, 2001.
- African Commission on Human and Peoples' Rights v. Kenya, Application n° 006/2012, African Court on Human and Peoples' Rights, May 26, 2017.
- Center for Minority Rights in Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, Communication No. 276/2003.
- Requête n° 76639/11, Denisov c. Ukraine, (25 septembre 2018), para. 137 63 Requête n° 44912/98, Kopecky c. Slovaquie, (28 septembre 2004), para.49.
- Requête no 1513/03, Draon c France, (6 octobre 2005), para. 68.

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## Judgment

### I. BACKGROUND OF THE CASE

[1] Counsel Ngendahayo Kabuye petitioned the Supreme Court seeking to declare paragraph 2 of article 8, paragraph 3 of article 52, articles 75 and 76 (1o) of the Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions, inconsistent with articles 15, 18 and 34 of the Constitution of the Republic of Rwanda of 4/06/2003 revised in 2015 on grounds that the surviving spouse is entitled the right to grab the entire property for him/herself alone by using the fact that they were married under community of property regime, hence depriving other heirs, especially the children of the decedent, of their right to succession.

[2] Four (4) articles under unconstitutionality petition to the Supreme Court are in two categories:

- The first category consists of article 8, paragraph 2 and article 76 (1o). Article 8, paragraph 2 reads that “Where dissolution of such a regime occurs due to death of one of the spouses, the property is owned

by the surviving spouse until succession execution”. Article 76 (1o) stipulates that “Succession of spouses married under the community of property regime is done as follows: if one of the spouses dies, the surviving spouse is entitled to the entire property and fulfils the duty to take care of their children and that of the legitimate children of the de cujus”.

- -The second category is made up of article 52, paragraph 3 and article 75. Article 52, paragraph 3 provides that “Succession for spouses opens when they both decease or in case one of them remarries, unless otherwise provided by law”. Article 75 reads that “The surviving spouse is entitled to take part in succession of the deceased spouse’s estate; the surviving spouse called to succeed inherits in equal portions with first category heirs”.

[3] Counsel Ngendahayo Kabuye avers that, based on the provisions of the aforementioned articles, he finds them inconsistent with the Constitution of the Republic of Rwanda of 04/06/2003 revised in 2015<sup>1</sup>, on grounds that when one of the

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<sup>1</sup> Article 15 reads that all persons are equal before the law and they are entitled to equal protection of the law. Article 18 stipulates that the family, being the natural foundation of the Rwandan society, is protected by the State. Paragraph three of the same article reads that the State puts in place appropriate legislation and organs for the protection of the family, particularly the child and mother, in order to ensure that the family flourishes. Article 34 provides that everyone has the right to private property, whether individually or collectively owned. Private property, whether owned individually or collectively, is inviolable. The right to property shall not be

spouses deceases, and it is found that there exists other children who were not born to both spouses, and other heirs in general, the the surviving parent uses the impugned articles to grab the entire property for him/herself alone, with no intention to share it with other heirs especially when they are not under his/her care. He further states that the surviving spouse may be given such the duties but fail to fulfil them as required, hence leading to family conflicts and frequent litigations.

[4] He adds that such the heirs have been losing in various cases, hence allowing the surviving spouse to take the entire property, while the principle is that all people are equal before the law, and the State has the duty to protect children, by entitling to them the right to the property left by their late parent, and to avoid family conflicts.

[5] The hearing of this case was conducted on 13/01/2022, Counsel Ngendahayo Kabuye being assisted by Counsel Umulisa Kayigamba Alice together with Counsel Serugo Jean-Baptiste, while the Government of Rwanda was represented by its attorneys namely Counsel Kayitesi Petronille and Counsel Ntwali Emile.

[6] At the beginning of the hearing, the Court first examined the application for appearing as *Amicus Curiae* submitted by a Rwandan non-governmental organization that works to defend and promote the rights of women and children (HAGURUKA) thereby represented by Umuhoza Ninette. The Court found no new argument by such Organization that could allow it to appear as *Amicus Curiae* which could help the Court in rendering a

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encroached upon except in public interest and in accordance with the provisions of the law.

judgment other than issues raised by one of the parties. The Court based this decision on the position it adopted on a similar issue in the case of Democratic Green Party of Rwanda, where it elucidated that for a person or an organization to be allowed to appear as *Amicus Curiae*, they should present an argument that will help the Court other than the parties' statements<sup>2</sup>. The Court therefore rejected the application by Haguruka Organization to appear as *Amicus Curiae*.

[7] The hearing was resumed, and the parties debated on the issue of determining whether Ngendahayo Kabuye has an interest to lodge a petition seeking to declare article 8, paragraph 2; article 52, paragraph 3; articles 75 and 76 (1o) of the Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and succession, inconsistent with articles 15, 34 and 18 of the Constitution of the Republic of Rwanda.

[8] In an interlocutory judgment rendered on 18/02/2022, the Court, based on the position it adopted in the judgment RS/INCONST/SPEC 00002/2018/SC for Mugisha Richard, found that Ngendahayo Kabuye as a learned counsel who contributes to the promotion of laws in the society, and as a Rwandan concerned by the law under his petition, has interest to lodge a petition seeking to declare some of the articles of the Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and succession, inconsistent with the Constitution of the Republic of Rwanda, though it may be evident that he has no personal interest in the petition.

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<sup>2</sup> See Judgment RS/SPEC/0002/15/CS rendered by the Supreme Court on 09/09/2015 for the Democratic Green Party of Rwanda, paragraph 5

[9] The hearing was resumed on 12/04/2022 with Ngendahayo Kabuye being assisted by Counsel Umulisa Kayigamba Alice and Counsel Serugo Jean-Baptiste, while the Government of Rwanda was represented by its attorneys : Counsel Kayitesi Petronille and Counsel Kabibi Spéciose ; the School of Law of the University of Rwanda appeared as Amicus Curiae represented by Uwineza Odette and Dr Turamwishimiye Marie Rose.

[10] On the same date, it was examined whether the School of Law of the University of Rwanda should be allowed to appear as Amicus Curiae as per its application of 08/04/2022. The Court found that the School fulfils all the required conditions to appear as Amicus Curiae in the instant case, conditions including the fact that an applicant for appearing as Amicus Curiae should not only be reiterating the parties' statements, rather, he/she is required to have a remarkable experience on the matter and has been conducting a research on issues relating to the subject matter in the case, and thus it approved the application submitted by the School.

[11] Counsel Kabibi Spéciose representing the Government of Rwanda requested the Court to adjourn the hearing for allowing them to deeply analyse reviewed submissions presented by the representatives of the School of Law from the University of Rwanda, since such submissions came late. The Court adjourned the hearing and parties were informed that the hearing will be resumed on 19/09/2022, but on that day, the hearing was not conducted due to the training of representatives of the Government of Rwanda, and it was scheduled on 22/11/2022.

[12] The hearing was resumed on the said date, Counsel Ngendahayo Kabuye was assisted by Counsel Umulisa

Kayigamba Alice, whereas the Government of Rwanda was represented by its attorneys : Counsel Kayitesi Petronille and Counsel Kabibi Spéciose ; while the School of Law from the University of Rwanda was represented by Uwineza Odette and Dr Turamwishimiye Marie Rose.

[13] Parties debated on the issue of determining whether the impugned four (4) articles are inconsistent with articles 15, 18 and 34 of the Constitution of the Republic of Rwanda. With regard to the issue of determining whether article 8, paragraph 2; article 52, paragraph 3 and articles 75 and 76 (1o) of the aforementioned Law n° 27/2016 of 08/07/2016 encroaches the application of other provisions relating to succession and other civil legislations, the Court held not to analyze such issue since it does not consist of a petition seeking declaration by the Court for unconstitutionality of a law<sup>3</sup>.

## II. ANALYSIS OF LEGAL ISSUES

### **1. Whether paragraph 2 of article 8, and article 76 (1o) of the Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions, are inconsistent with article 15 of the Constitution of the Republic of Rwanda of 4/06/2003 revised in 2015**

[14] Ngendahayo Kabuye avers that article 8, paragraph 2 and article 76 (1o) of the Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions, are inconsistent

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<sup>3</sup> This article provides that only the Supreme Court has jurisdiction to hear petitions for unconstitutionality of a law, and to explain modalities and procedures of lodging such petitions.

with article 15 of the Constitution of the Republic of Rwanda of 4/06/2003 revised in 2015, since they do not treat equally the heirs of the de cujus.

[15] He further elucidates that article 15 of the Constitution reading that all persons are equal before the law and that they are entitled to equal protection of the law, however, the Legislator entitled to surviving parent the rights reserved for many people, and by protecting him/her, he encroached upon others' rights, since such a surviving parent is entitled by the law the right to succession, as well as the right to the property he/she co-owned with the de cujus, his/her spouse.

[16] He further alleges that the impugned articles encroaches the right to equality before the law provided under article 15 of the Constitution, since they entitle excessive right to the surviving spouse because the latter enjoys the right emanating from the matrimonial regime concluded with the de cujus, whereby the surviving spouse owns 50% of the entire property for marriage under community of property regime, 50% of shared property plus her/his personal property for the regime of limited community of property, and for the separation of property regime, the surviving spouse remains with his/her individual property since it is what he/she chose. He finds that, by making him/her the heir of the de cujus is to entitle to her/him excessive right compared to other heirs.

[17] Ngendahayo Kabuye adds that his petition emanates from such an inequality, which he wished to submit to the Supreme Court that the impugned articles are inconsistent with the Constitution especially its article 15, because its article 10, subparagraph 5 reads that "the State of Rwanda commits itself to ... building a State committed to promoting social welfare and

establishing appropriate mechanisms for equal opportunity to social justice”; while its article 16 stipulates that “all Rwandans are born and remain equal in rights and freedoms”.

[18] He further states that the principle of equality before the law means that all people are equally treated and under the same conditions before the law, and the law cannot be differently applied for similar issues, and this means that it is not possible to entitle the rights to some people while depriving of such rights to others in case such rights are entitled to all those people by the law.

[19] He adds that such a principle is not only provided under the Constitution, it is also provided under article 7 of the Universal Declaration of Human Rights, article 2 (1) of International Covenant on Civil and Political Rights, article 2 of International Covenant on Economic, Social and Cultural Rights, and article 2 of African Charter on Human and Peoples' Rights. He also quoted Erwin Chemerinsky who also explained such principle as follows: "Things that are alike should be treated alike, and things that are unlike should be treated unlike in proportion to their unalikehood"<sup>4</sup>.

[20] Counsel Umulisa Kayigamba Alice assisting Ngendahayo Kabuye states that article 8, paragraph 2 and article 76 (1°) of the aforementioned Law N° 27/2016 of 08/07/2016 entitles to the surviving spouse with the right to inherit the entire property, but it has been evident that such spouse uses such property as he/she wishes, by even selling it or even use it to take

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<sup>4</sup> Chemerinsky, Erwin, In defense of equality: A reply to Professor Westen, Mich. L. Rev. 81 (1982): 575.

care of the children born to both spouses while leaving behind the children who are not born to both spouses.

[21] Counsel Kayitesi Petronille, representing the Government of Rwanda, avers that article 8, paragraph 2 and article 76 (1°) of the aforementioned Law n° 27/2016 of 08/07/2016 are not inconsistent with article 5 of the Constitution of the Republic of Rwanda since they do treat all the heirs equally. She states that equality before the law means to treat equally all people under same conditions and circumstances, and based on the aforementioned article 8, paragraph 2, the surviving spouse does not remain with the property of the de cujus as the heir, rather, he/she remains with it as the owner while awaiting the succession to open.

[22] She also avers that article 76 (1°) of the aforementioned n° 27/2016 of 08/07/2016, is not inconsistent with article 15 of the Constitution as it does not contain any discrimination, because such article entitles to the surviving spouse the duty to take care of the children born to both spouses as well as the children not born to both spouses.

[23] Counsel Kabibi Speciose also representing the Government of Rwanda purports that the two impugned articles are not inconsistent with article 15 of the Constitution, because people under different conditions and circumstances cannot be equally treated. She adds that the legislator's purpose in the aforementioned law, was to provide special protection to the surviving spouse, on ground that it was found that in case of the death of one of the spouses, the surviving spouse especially the widow was used to be mistreated, harassed and even deprived of the right to the property she co-acquired with the de cujus whereas they were married under community of property regime.

On matters relating to the issue of children who were not born to both spouses, who may be mistreated by the surviving spouse, she states that this has also been provided by the legislator, where the latter gave the surviving spouse the duty to take care of his/her children including legitimate children of the de cujus.

[24] Uwineza Odette and Dr Turamwishimiye Rose representing the School of Law of the University of Rwanda, which intervened as *amicus curiae*, aver that when you analyze paragraph 2 of article 8 as well as article 76 (10) of the aforementioned law, you find them contradicting the principle of equal rights and power for spouses married under community of property regime, whereby they agree to join their entire property, and with such matrimonial regime, each spouse has the right to the half of the co-owned property (Undivided half interest)<sup>5</sup>.

[25] They further state that the principle of equality of the right and powers entitled to spouses under community of property regime has an effect on the share reserved for each spouse in case of marriage termination due to various reasons including death. They conclude by upholding that the two articles alleged to be inconsistent with the Constitution, are really problematic, since by allowing the surviving spouse to grab the entire property and use it as he/she wishes, while there are other heirs, this contradicts the principle of equality before the law provided under article 15 of the Constitution.

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<sup>5</sup> Thomas M. Featherston, Jr. *Separate Property or community Property: An introduction to marital property law in community property States*, Texas: Baylor University, School of Law, 2016, P.4.

## DETERMINATION OF THE COURT

[26] Before examining whether article 8, paragraph 2 and article 76, (1°) of the Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions are inconsistent with the Constitution as alleged by the petitioner, it is better to explain first some of the principles evoked in that Constitution related to the instant case, namely the principle of equality before the law and the one of non-discrimination.

**i. The principle of equality before the law and the principle of non-discrimination**

[27] Article 15 of the Constitution of the Republic of Rwanda of 04 June 2003 revised in 2015 reads that “All persons are equal before the law. They are entitled to equal protection of the law”. The content of this article will be summarized in the following paragraphs as the principle of equality before the law.

[28] Article 16 of the Constitution of the Republic of Rwanda of 04 June 2003 revised in 2015 provides that “all Rwandans are born and remain equal in rights and freedoms. Discrimination of any kind or its propaganda based on, inter alia, ethnic origin, family or ancestry, clan, skin color or race, sex, region, economic categories, religion or faith, opinion, fortune, cultural differences, language, economic status, physical or mental disability or any other form of discrimination are prohibited and punishable by law”. The content of the foregoing article will be reiterated in the following paragraphs as the principle of non-discrimination.

[29] The principle of equality before the law and of non-discrimination are also provided under international covenant ratified by Rwanda. The example is article 7 of the Universal

Declaration of Human Rights of 1948 which reads that “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against discrimination in violation of this Declaration and against any incitement to such discrimination”<sup>6</sup>.

[30] In addition, article 26 of the International Covenant on Civil and Political Rights of 1966 provides that “All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, language, religion, political or other opinion, national or social origin, property, birth or other status”<sup>7</sup>.

[31] Article 3 of African Charter On Human and Peoples' Rights adopted on 27/06/1981, also reads that “Every individual shall be equal before the law. Every individual shall be entitled to equal protection of the law”<sup>8</sup>.

[32] The foregoing principles have been also explained by legal scholars, courts as well as other institutions concerned with the human rights. According to the Dictionary on Human Rights, the principle of equality before the law implies that the law

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<sup>6</sup> Assembly, UN General, Universal Declaration of Human Rights, UN General Assembly 302.2 (1948): 14-25.

<sup>7</sup> International Covenant on Civil and Political Rights/Pacte International des droits civils et politiques

<sup>8</sup> African (Banjul) Charter On Human and Peoples' Rights (Adopted 27 June 1981, OAU Doc.CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986).

protects everyone without discrimination<sup>9</sup>. Discrimination is defined as the differentiation of persons or situations on the basis of one or more non-legitimate criteria<sup>10</sup>. The principle of non-discrimination means to avoid differentiation of persons on basis of a non-legitimate criteria.

[33] Explanations provided by legal scholars concur with court precedents. In the judgment of Akagera Business Group rendered by the instant Court on 23/09/2016, it was determined that articles 15 and 16 of the Constitution are so close that they should be jointly interpreted. Article 15 reads that “All persons are equal before the law and that they are entitled to equal protection of the law”. This means that any form of discrimination encroaching upon equal protection of all persons or deprivation of their rights entitled to them, should be avoided. Article 16 provides on how differentiation of persons is construed as discrimination, which is inconsistent with the Constitution<sup>11</sup>.

[34] The idea of a joint interpretation of the aforementioned principles, was also stated in the case of Rev. Christopher Mtikila et al. against Tanzania<sup>12</sup>, rendered by African Court of Human and People’s Rights, where such Court explained that the right

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<sup>9</sup> Dictionnaire des droits de l’Homme, sous la direction de Joël Andriantsimbazovina, Hélène Gaudin, Jean-Pierre Maguénau, Stéphane Rials et Frédéric Sudre, Presses Universitaires de France, 2008, p.284.

<sup>10</sup> Dictionnaire de Droit International Public, sous la direction de Jean Salmon, Bruylant, Bruxelles, 2001, p.344.

<sup>11</sup> Judgment RS/SPEC/0001/16/CS, Akagera Business Group, rendered on 23/09/2016, paragraph 29. This is also reiterated in the judgment RS/INCONST/SPEC 00001/2019/SC, Murangwa Edward, rendered on 29/11/2019, paragraph 32.

<sup>12</sup> Application 011/2011, Rev.Christopher Mtikila v. United Republic of Tanzania, par. 119.

not to be discriminated against is related to the right to the equal protection by the law. This has also been upheld by this Court in other following cases<sup>13</sup>.

[35] Additionally, the United Nations Human Rights Committee<sup>14</sup> also stated that: “Non-discrimination, together with equality before the law and equal protection of the law without discrimination, constitute a basic and general principle relating to the protection of human rights”<sup>15</sup>.

[36] Based on the foregoing elucidations, it is evident that the principle of equality before the law is in line with the principle of non-discrimination, and both principles are closely related. For that reason, such principles have to be jointly read since both reiterate on an important issue of non-differentiation of persons, unless there is a legitimate and reasonable criterion.

**ii. Is differentiation of persons or a group of people always construed as infringing the principle of equality before the law and of non-discrimination?**

[37] In attempting to answer this question, it is also better to analyze positions adopted by various courts and other dispute

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<sup>13</sup> Application 001/2014 - APDH v. Republic of Cote d’Ivoire, par.146, Application 022/2017 Harold Muthali v. Malawi, par.81.

<sup>14</sup> United Nations Human Rights Committee/Comité des Nations-Unies sur les droits de l’homme.

<sup>15</sup> Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc.HRI/GEN/1/Rev.1 at 26 (1994).

resolution organs on matters relating to human rights as well as findings by legal scholars on the matter.

[38] In the case of *Marckx vs Belgium*, the European Court of Human Rights explained that “a violation of the principle of non-discrimination. arises if: a) equal cases are treated in a different manner; b) a difference in treatment does not have an objective and reasonable justification; or c) if there is no proportionality between the aim sought and the means employed”<sup>16</sup>.

[39] Again in the judgment of *Akagera Business Group* referred to in the paragraph 33 of this judgment, the very Court explained that equality before the Law and non-discrimination do not always mean that differentiation of persons itself entails discrimination. Differentiation or categorization of persons can be necessary for legitimate or rational purpose<sup>17</sup>.

[40] In the case of *Muller and England v. Namibia*, the United Nations Committee reiterated its constant jurisprudence on this issue. Such jurisprudence was expressed in the following words : “The Committee reiterates its constant jurisprudence that the right to equality before the law and to the equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26”<sup>18</sup>.

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<sup>16</sup> Application n°6833/74, *Marckx v. Belgium*, 13 June 1979, para.48.

<sup>17</sup> See judgment RS/SPEC/0001/16/CS, for *Akagera Business Group*, op.cit, par 18. That case was also referred to in other case RS/INCONST/SPEC 00001/2019/SC rendered by the Supreme Court on 29/11/2019 for *Murangwa Edward*, paragraph 35

<sup>18</sup> HRC, *Muller and Engelhard v Namibia* (Communication N°. 919/00), para 6.7. That case was also referred to in other case RS/INCONST/SPEC

[41] The elucidations provided by the said Committee concur with the conclusions of the Inter American Court of Human Rights, where it upheld that “Precisely because equality and non-discrimination are inherent in the idea of the oneness in dignity and worth of all human beings, it follows that not all differences in legal treatment are discriminatory as such, for not all differences in legal treatment are in themselves offensive to human dignity. There may well exist certain factual inequalities that might legitimately give rise to inequalities in legal treatment that do not violate the principle of justice”<sup>19</sup>.

[42] The very Court also elucidates that “there would be no discrimination in differences in treatment of individuals by a state when the classifications selected are based on substantial factual differences and there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule...”<sup>20</sup>

[43] In the case of *Thlimmenos v. Greece*, the European Court of Human Rights submitted its consideration in the following words : “The Court has so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification”.

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00001/2019/SC rendered by the Supreme Court on 29/11/2019 for Murangwa Edward, paragraph 36.

<sup>19</sup> I-A Court H.R, Proposed Amendment to the Naturalization Provision of the Constitution of Costa Rica, Advisory Opinion OC 4/84 of Jan 19, 1984, series A N° 4, p.104-106 paras 56-57.

<sup>20</sup> *Idem*

[44] The case of *Tanganyika Law Society et al.*<sup>21</sup> was also referred to on this issue. In that case, the African Court of Human and People's rights motivated that "The jurisprudence regarding the restrictions on the exercise of the rights has developed the principle that, the restrictions must be necessary in a democratic society; they must reasonably proportionate to the legitimate aim pursued..."<sup>22</sup>

[45] In the case of *Andrews c. Law Society of British Columbia*, the Supreme Court of Canada stated that the fact that the law differentiates certain persons, this does not always entail inequality since there are circumstances where equality of people by the law finally ends in a serious inequality.<sup>23</sup>

[46] In their analysis in various cases, some courts explained why a State needs to have a reason or interest to protect, for its act of differentiating or categorizing persons not to be considered as illegitimate or that it has used the manner that is not matching with its purpose. Such courts also indicated how the courts supervise the State or its organs to make sure that they abide by the law.

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<sup>21</sup> Application no. 34369/97), *Thlimmenos v. Greece* (Strasbourg 6 April 2000, para 72.

<sup>22</sup> Application 011/2011-Rev.Christopher Mtikila v. United Republic of Tanzania (merits), para 106.1.

<sup>23</sup> *Andrews c. Law Society of British Columbia* - [1989] 1 RCS 143 - 1989-02-02, para. 52: The Court based this on the statement of Justice Frankfurter (judge) that he was a wise man who said that there was no greater inequality than equal treatment for unequal individuals (C'était un homme sage celui qui a dit qu'il n'y avait pas de plus grande inégalité que l'égalité de traitement entre individus inégaux).

[47] In the case of *Murat Vural v. Turkey*, the European Court of Human Rights explained that “in exercising its supervisory jurisdiction, the Court must look at the impugned interference in the light of the case as a whole. In particular, it must determine whether the interference in question was “proportionate to the legitimate aims pursued” and whether the reasons adduced by the national authorities to justify it are “relevant and sufficient”<sup>24</sup>.

[48] The same Court upheld this in the case of *Olsson v. Sweden*, where it states that with regard to compelling social reasons, the Court verifies not only whether the State concerned has exercised its discretion in good faith, but also whether the reasons put forward are relevant and sufficient.<sup>25</sup>

[49] In the case of *Morarjee v. Union of India*, the Supreme Court of India also held that “An applicant pleading that Article 14 has been violated must make out that not only he had been treated differently from other but he has been so treated from persons similarly circumstanced without any reasonable basis, and such differential treatment is unjustifiably made”<sup>26</sup>.

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<sup>24</sup> Application n°. 9540/07, *Murat Vural v. Turkey*, of 21/01/2015, para. 64.

<sup>25</sup> “En ce qui concerne les raisons sociales impérieuses, la Cour vérifie, non seulement si l’État concerné a usé de son pouvoir d’appréciation en bonne foi, mais également si les raisons avancées sont pertinentes et suffisantes”, Requête n° 10465/83, *Olsson c. Suède*, (24 Novembre 1988) n° 130 (A), para. 68.

<sup>26</sup> *Morarjee Rajkotia & Ors vs Union of India & Ors* case n° 46 of 1965, on 4 February, 1966, para 8.

[50] In the case of Uwinkindi Jean, the Supreme Court explained that differentiation of persons should be done for a legitimate and reasonable purpose and based on public interest<sup>27</sup>.

[51] As reiterated above, apart from various courts which have been explaining the principle of equality before the law and of non-discrimination, legal scholars also provided their inputs on the meaning of such principles. Daniel Lochak states that the principle of equality, which should now be interpreted more as a principle of non-discrimination, no longer requires all members of society to be treated identically, but prohibits illegitimate differences in treatment, i.e. differences not justified by differences in situation<sup>28</sup>.

[52] Another legal scholar named Olivier Jouanjan explained that a formal identity of treatment can lead to a substantial, real, social difference and, where appropriate, discrimination.<sup>29</sup>

[53] Referring to the statement of M. Pelissier, André Viola pointed out that equality is not simply identity of treatment, it is the quality of a relationship between two terms declared to be comparable. Consequently, a difference in treatment

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<sup>27</sup> See judgment n° RS/INCONST/PEN 0005/12/CS rendered on 22/02/2013, paragraph 16.

<sup>28</sup> “Le principe d’égalité, qu’il convient d’interpréter plutôt, désormais, comme un principe de non-discrimination, n’impose plus de traiter tous les membres de la société de façon nidentique, mais il proscriit les différences de traitement illégitimes, c’est-à-dire non justifiées par des différences de situation”, Danièle Lochak, *Les minorités et le droit public français. Du refus des différences à la gestion des différences*. Alain Fenet; Gérard Soulier. *Les minorités et leurs droits depuis 1789*, L’Harmattan, pp.111-189, 1989.

<sup>29</sup> “Une identité formelle de traitement peut induire une différence substantielle, réelle, sociale et, le cas échéant, une discrimination”, Jouanjan, Olivier, *Logiques de l’égalité*, Titre VII 1 (2020): 1-8.

commensurate with a difference in situation constitutes a relationship of equality<sup>30</sup>.

[54] For Cécile Barrois de Sarigny, a legal scholar, Judges take a broad view of the equality standard, which leads them to exercise a distanced review, ensuring that they do not substitute their own assessment for that of the public authorities as to the best way of achieving the desired objectives<sup>31</sup>.

[55] She further states that this distancing is reflected in the very wording of the principle of equality, which is presented by the case law as a hollow principle that does not preclude the legislature or the authority vested with regulatory power from regulating different situations in different ways, or from derogating from equality for reasons of general interest, provided that, in either case, the resulting difference in treatment is directly related to the purpose of the rule establishing it<sup>32</sup>.

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<sup>30</sup> “Comme le souligne M. Pélissier, l'égalité n'est pas seulement une identité de traitement, elle est la qualité d'un rapport entre deux termes déclarés comparables. Par conséquent, une différence de traitement à la mesure d'une différence de situation constitue une relation d'égalité”, Viola, André, La loi doit être la même pour tous: vers la fin d'un principe républicain, (2005): 601-618.

<sup>31</sup> “Les juges appréhendent la norme d'égalité prise dans sa généralité, ce qui les conduit à opérer un contrôle distancié garantissant qu'ils ne substituent pas leur propre appréciation à celle des pouvoirs publics quant au meilleur moyen de parvenir aux objectifs visés”, Barrois de Sarigny, Cécile. "Le principe d'égalité dans la jurisprudence du Conseil constitutionnel et du Conseil d'État." Titre VII 4.1 (2020): 18-25.

<sup>32</sup> “(Cette prise de distance se traduit dans la formulation même du principe d'égalité, lequel est présenté par la jurisprudence comme un principe « en creux » qui « ne s'oppose pas » à ce que le législateur ou ... l'autorité investie du pouvoir réglementaire règle de façon différente des situations différentes ni à ce qu'il déroge à l'égalité pour des raisons d'intérêt général pourvu que, dans

[56] The very legal scholar further explains that in this context, the public authorities' room for manoeuvre is guaranteed. It is up to them to identify the different categories or to define the requirements of the general interest, with the courts assessing only the relevance of the categories or the considerations of general interest put forward, as well as the consistency of the choice of a difference in treatment<sup>33</sup>.

[57] Following the foregoing elucidations on the principles provided under 15 taken jointly with article 16 both of the Constitution, the following main points are retained in those articles :

- a. -Persons under similar circumstances and categories are equally treated ;
- b. -Unequal treatment towards them without legitimate and reasonable ground is construed as discrimination ;
- c. -The State may differentiate people or groups of people, without encroaching upon the principle of equality before the law and of non- discrimination ;

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l'un comme l'autre cas, la différence de traitement qui en résulte soit en rapport direct avec l'objet de la norme qui l'établit", Ibidem.

<sup>33</sup> "La marge de manœuvre des pouvoirs publics est dans ce cadre garantie. C'est à eux qu'il appartient de caractériser des catégories différentes ou de définir les exigences de l'intérêt général, le juge appréciant seulement la pertinence des catégories ou des considérations d'intérêt général avancées, ainsi que la cohérence du choix d'une différence de traitement", Barrois de Sarigny, Cécile. "Le principe d'égalité dans la jurisprudence du Conseil constitutionnel et du Conseil d'État., Op.cit, p.20.

- d. -To that effect, the State should base on reasonable and legitimate ground aiming at protecting public interest.

[58] The foregoing elucidations imply that the State, through its decisions or legislations, may reserve a particularity to certain people or group of people with the intention to treat them differently from others. This cannot be considered as discrimination, rather, it consists of differentiating or categorizing people based on a reasonable ground, in accordance with the targeted Government policies in place.

### **iii. Matters relating to the instant petition**

[59] As above reminded, the issue to be settled is to determine whether article 8, paragraph one and article 76 (1°) of the aforementioned law n° 27/2016 of 08/07/2016 are inconsistent with the Constitution of the Republic of Rwanda. Ngendahayo Kabuye, hereinafter referred to as the petitioner, alleges that the impugned articles contain inequality among the heirs, since they entitle excessive rights to the surviving spouse, hence discriminating other heirs.

[60] In the course of analyzing the petitioner's allegations about the impugned articles, it is better to analyze first the rationale and purpose of the impugned law. In the previous parts, it was explained that the purpose of the law should be reasonable, substantial and legitimate.

[61] As mentioned in the explanatory note of the aforementioned Law n° 27/2016 of 08/07/2016, before its adoption, various people provided their opinions thereof. In such explanatory note, the opinions provided indicated that the former

law of 1999<sup>34</sup> was so problematic that resolving issues arising from it required to modify many of its articles, and this is the reason, instead of modifying some of its articles, it has been better to enact a new one. The following are some of the main issues arising from the application of the former law :

- -Not providing for the succession modalities for female children after the death of their parents before its application ;
- -Such a law has never provided the death as one of the reasons of termination of the matrimonial regime, which caused a confusion about whether such regime should remain valid while one of the spouses has deceased. This was a cause of confusion during succession, so that some people used to confuse the right to succession and the right entitled to the surviving parent, which emanates from matrimonial regime chosen by both spouses ;
- -The former law did not provide for the succession between spouses.

[62] Furthermore, the rationale for the adoption of the impugned articles of the said law is upheld by the minutes of the Parliament session, Chamber of Deputies<sup>35</sup>, and the report of the Gender and Policy Commission<sup>36</sup>, during the consideration of the draft of the said law.

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<sup>34</sup> Law n° 22/99 of 12 November 1999 to Supplement Book I of the Civil Code and to Institute Part Five Regarding Matrimonial Regimes, Liberalities and Successions.

<sup>35</sup> See the minutes of 15/11/2013.

<sup>36</sup> Sessions from 03-26/06/2014.

[63] According to those minutes and reports, before the consideration of such draft of law got started, Members of the Commission travelled all over the country and met citizens' representatives, with an aim to gather opinions that would help in the consideration of the said draft law. Those documents indicate that this was done after it was found that more than 50% of articles of the aforementioned law n° 22/99 of 12 November 1999, were obsolete, and this is the reason why Members of the Commission deemed necessary to enact a new law instead of modifying the said articles.

[64] Members of the Parliament also indicated that in order to protect the surviving spouse from begging and being in harsh living conditions in comparison to the situation prevalent when his/her spouse was alive, when one of spouse married under community of the property deceases, the surviving spouse has to own the entire property since he/she co-owns it with the de cujus since he/she has the duty to maintain the household responsibilities alone.

[65] They also found that there was an issue that in case one of the spouses dies, the surviving spouse had no right to inherit her/his partner, while he/she had contributed in the acquisition of the property, and this is a reason for the amendment of the existing law. They elucidated that, for the spouses under community of property regime, their children should inherit them after both parents have died, this means that the succession should open when both spouses are dead or when the surviving spouse remarries.

[66] The content of the aforementioned explanatory note and the minutes of the Parliament's sessions are in line with the opinions provided by some public institutions during the

preparation of the aforementioned draft law. The statement in the casefile prepared by the Ministry of Gender Promotion and Family (MIGEPROF), indicates that for spouses under community of property regime, the surviving spouse deserves the right to own the entire property for her/his welfare in the old age and for having contributed to the acquisition of that property all along the marriage, especially since the said property belong to spouses and not to their heirs.

[67] The Gender Monitoring Office also prepared a study in the case file on the effects of equality on the Law n° 22/99 of 12/11/1999, and found out that when one of the spouses deceases, the surviving spouse deserves the full right to the entire property.

[68] As it has been above explained, the impugned articles of the aforementioned Law n° 27/2016 of 08/07/2016 were meant to award particular protection for the surviving spouse for the reasons mentioned above, by giving him/her special attention compared to other heirs, because such a spouse has lost his/her partner for the duties he/she has to perform alone. It has been also elucidated that the surviving spouse should not be compared with other heirs, since he/she contributed to the acquisition of the household property while other heirs did not, and the purpose of the Legislator was to protect the surviving spouse from the disputes which used to arise after the death of his/her partner, disputes caused by the family relatives of the de cujus who wished to have a share on the property left by the latter.

[69] Such particularity awarded to the surviving spouse was also reiterated by legal scholars namely Yvaine Bufferan Lanore and Virginie Larribau, whereby they explain that spouses' life does not end with the death of one of them, only, one of the spouses deceases, the other one survives alone, this is different

from the spouse divorce. Unlike divorce, death leaves spouse status intact. After the death of one of the spouses and the dissolution of the marriage, certain effects of the marriage or the alliance created by the marriage survive<sup>37</sup>.

[70] Bernard Beignier & Sarah Torricelli-Chrifi state that there is a difference between the surviving spouse and other heirs of the de cujus. They aver that the heirs from the de cujus have not the right to succession, rather, they have the right to participate in the succession, therefore, they should share the remaining property left by the de cujus, and while contemporary law has evolved to make the rights of the surviving spouse a genuine right to maintain his or her lifestyle. A powerful idea emerging from that right is that children only really inherit on the death of the last of the spouses<sup>38</sup>.

[71] The reason for the adoption of the impugned articles of the Law N° 27/2016 of 08/07/2016, which are alleged to be

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<sup>37</sup> “La qualité d’époux ne disparaît pas pour autant, avec le décès, le conjoint devenant simplement le conjoint survivant. Contrairement au divorce, le décès laisse intacte cette qualité d’époux. C’est pourquoi, par-delà le décès et la dissolution du mariage, on constate, non seulement la survie de certains effets du mariage ou de l’alliance créée par le mariage”, Buffelan-Lanore, Yvaine, and Virginie Larribau-Terneyre. *Droit civil. Introduction Biens Personnes Famille*. Sirey, 2013, p.737.

<sup>38</sup> “Y-a-t-il une différence politique entre les droits des descendants et les droits du conjoint survivant? Oui, sans aucun doute. Les descendants, sans avoir un droit à l’héritage mais un droit sur l’héritage, ont vocation à se partager ce qui “reste” du patrimoine de leur auteur. Tandis que le droit contemporain a évolué pour faire des droits du conjoint un véritable droit à un maintien de son train et style de vie... Dès lors se profile une idée forte : les enfants n’héritent vraiment qu’au décès du dernier des conjoints”, Beignier, Bernard, and Sarah Torricelli-Chrifi. *Libéralités et successions*. Montchrestien, ed. Lextenso, 2015, p.223.

inconsistent with the Constitution has been explained in the previous paragraph. It is in the finding of the Court that, before enacting such a Law, the Legislator first considered opinions from the public on the emerging issues that required a solution, and then enacted the law for solving those issues and to settle family disputes in general.

[72] The foregoing elucidations indicate the reason for awarding special attention to the surviving spouse compared to other heirs. The Court finds that by adopting article 8, paragraph 2 and article 76 (1°) of the aforementioned Law n° 27/2016, awarding special protection towards the surviving spouse, the State based on a reasonable and legitimate ground, and it did it in the manner which matches the set purpose, therefore, there was no discrimination towards other heirs.

[73] It is also in the finding of the Court that the issues that raised or that may arise from the application of the aforementioned law n° 27/2016 of 08/07/2016, as alleged by Ngendahayo Kabuye, should not be confused with alleging that such law is inconsistent with the Constitution. Furthermore, in case it is found that after owning the property, the surviving spouse misuses the property or fails to perform his/her duties provided by the law, as alleged by Ngendahayo Kabuye, any person with interest on the matter may sue to the Court. Article 76 (6°) of the aforementioned Law n° 27/2016 came in for that purpose, since it provides that if the surviving spouse fails to fulfil his/her duties of raising some or all of the children left behind by the de cujus, the competent court strips him/her of such duties and of half (1/2) of the whole property and determines guardian of children and who is in charge of

ensuring the management of the property until they attain the age of majority.

[74] In the same framework of avoiding disputes that may arise from the property owned by the surviving spouse following the death of his/her partner, article 49 of the Law n° 27/2016 of 08/07/2016 has provided the disposable portion that the surviving spouse cannot exceed as a donation or succession, since such a property is reserved for designated heirs<sup>39</sup>.

[75] [75] Based on the foregoing elucidations, the Court finds that article 8, paragraph 2 and article 76 (1°) of the Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions are not inconsistent with article 15 of the Constitution of the Republic of Rwanda of 4/06/2003 revised in 2015.

[76] [76] Even though the Court holds that the foregoing article 8, paragraph 2 and article 76 (1°) are not inconsistent with the Constitution, and though the State put in place for the strategies for the resolution of disputes that may arise from the property awarded to the surviving spouse, the Court recommends

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<sup>39</sup> Such article reads that spouses have the right to make donations provided that they do not exceed the disposable portion.

Notwithstanding the chosen matrimonial regime, the disposable portion cannot exceed one-fifth (1/5) of the property if the donor has children, and the remaining four-fifths (4/5) of property comprises the reserved portion of succession designated for the children and spouse. However, where the donor has no children but the spouse is alive, the disposable portion cannot exceed one third (1/3) of his/her property, and the remaining two thirds (2/3) are the spouse's reserved portion of the estate. The reserved portion of a succession is comprised of the personal property of the donor less any debts the donor owes on the date of donation.

the State that, in order to improve the content of the impugned articles, more strategies for the protection and safeguarding of the 50%<sup>40</sup> of the property awarded to the surviving spouse after the death of his/her partner until succession opens.

**2. Whether article 8, paragraph 2 and article 76 (1°) of the Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions are inconsistent with article 18 of the Constitution of the Republic of Rwanda of 4/06/2003 revised in 2015**

[77] Ngendahayo Kabuye alleges that article 8, paragraph 2 and article 76 (1°) of the Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions are inconsistent with article 18 of the Constitution of the Republic of Rwanda of 4/06/2003 revised in 2015 since, instead of protecting the family, such articles have been the cause of instaneous disputes, because they entitle to the surviving spouse the right to own the entire property just because the latter was married to the de cujus under community of property regime, disregarding that he/she is not the only one who has the right to succeed the de cujus.

[78] The petitioner further states that such provisions have been causing many disputes in various families, and such disputes may lead to the commission of other crimes such as murder, while article 18 of the Constitution of the Republic of Rwanda provides that the family, being the natural foundation of the Rwandan society, is protected by the State.

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<sup>40</sup> Equals to the share on the property reserved for the de cujus.

[79] Counsel Umulisa Kayigamba Alice assisting the petitioner states that article 8, paragraph 2 and article 76 (1°) of the aforementioned Law n° 27/2016 of 08/07/2016 allows the surviving spouse to own the entire property, hence leading to family disputes. For her, it should be better if the said articles provided that when one of the spouses deceases, the entire property left by the de cuius is calculated and its management modalities are determined, though this does not guarantee freedom to all family members, since it was found that the children of the de cuius who are not born to both parents are deprived of the freedom entitled to them by article 18 of the Constitution. She then prays the Court to declare those articles as being inconsistent with article 18 of the Constitution of the Republic of Rwanda.

[80] Counsel Kayitesi Petronille, representing the Government of Rwanda argues that article 18 of the Constitution provides that the family, being the natural foundation of the Rwandan society, is protected by the State, hence entrusting to both parents the duty to take care of their children and providing for the freedom of the family. She states that the provisions of article 8, paragraph 2 and article 76 (1°) of the Law n° 27/2016 of 08/07/2016 take into account the interests of both the surviving spouse and children, and this does not contradict the provisions of article 18 of the Constitution, rather, the impugned articles uphold the latter, for they took into consideration the right of the surviving spouse and of the children left by the de cuius.

[81] To conclude, she states that the provisions that the succession of spouses is done when one of the spouses dies or when the surviving spouse remarries are not inconsistent with article 18 of the Constitution, rather, such provisions maintain the

family freedom, which could be ended by the death of one of the spouses.

[82] Counsel Kabibi Speciose, representing the Government of Rwanda adds that the Legislator has protected the whole family including children and the surviving spouse, because, the fact that the spouses agreed on that in case one of them dies, the surviving spouse will continue to own their property with the duty to take care of children, this is very lawful. To conclude, she states that article 8, paragraph 2 and article 76 (1°) of the aforementioned Law n° 27/2016 of 08/07/2016 are not inconsistent with the Constitution since they protect the family, especially by protecting the surviving spouse from being taken out of the property.

[83] Uwineza Odette and Dr Turamwishimiye Marie Rose representing the School of Law of the University of Rwanda state that article 8, paragraph 2 and article 76 (1°) of the aforementioned Law n° 27/2016 of 08/07/2016 do not respect the principle of protecting the Rwandan society since they may lead to succession-related disputes because the property subject to succession is entirely owned by the surviving spouse, and this encroaches upon other heirs' rights. They therefore find that the impugned articles are inconsistent with the purpose of article 18 of the Constitution of the Republic of Rwanda revised in 2015.

[84] They conclude by requesting for the revision of the impugned articles for them to match with the principle of protecting the rights of all heirs, by also giving special consideration to the surviving spouse, for this is the only way to abide by the principle of protecting the family as provided under article 18 of the Constitution.

## DETERMINATION OF THE COURT

### The right to protection of the family

[85] The right to the protection of the family provided under article 8 of the Constitution of the Republic of Rwanda of 2003 revised in 2015 reads that the family, being the natural foundation of the Rwandan society, is protected by the State. Both parents have the right and responsibility to raise their children. The State puts in place appropriate legislation and organs for the protection of the family, particularly the child and mother, in order to ensure that the family flourishes.

[86] The foregoing article 18 contains four main points, namely : i) the family, being the natural foundation of the Rwandan society, has to be protected by the State ; ii) both parents have the right and responsibility to raise their children; iii) the State puts in place appropriate legislation and organs for the protection of the family, particularly the child and mother; iv) the State ensures that the family flourishes.

[87] The very right to the protection of the family is also reiterated in international covenants ratified by Rwanda. Article 16 of the Universal Declaration of Human Rights stipulates that men and women have the right to marry and to create a family as the natural and fundamental group unit within society.

[88] Article 23, subparagraph 1 of the International Covenant on Civil and Political Rights reads that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

[89] Article 18 (1,2) of African (Banjul) Charter On Human and Peoples' Rights also provides that Family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.

[90] The right to the protection of the family has also been explained by legal scholars. According to Lara Walker, the European Convention on Human Rights protects the right to respect for family life. This includes the rights of parents to have custody and contact with their children, and the rights of children to be with their parents. The European Court of Human Rights helps to protect families from being unlawfully separated – including protecting the rights of parents to recover abducted children<sup>41</sup>.

[91] Matters relating to the right to the protection of the family as the responsibility of States and international organizations dealing with human rights matters, have also been elucidated by various courts as well as legal scholars.

[92] In the case of John O. Miron and Jocelyne Valliere vs Richard Trudel and Economical Mutual Insurance Company, the Supreme Court of Canada upheld that “the Protection of family is, one of the most important interests imaginable in our society,...marriage is an institution, in the maintenance of which in its purity the public is deeply interested, for it is the foundation

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<sup>41</sup> Walker, Lara, The impact of The Hague Abduction Convention on the rights of the family in the case-law of the European Court of Human Rights and the UN Human Rights Committee: the danger of Neulinger, *Journal of private international law* 6.3 (2010): 649-682.

of the family and of society, without which there would be neither civilization nor progress”<sup>42</sup>.

[93] Furthermore, in the case of *Moore vs. City of East Cleveland*, the Supreme Court of the USA upheld that “the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in Nation's history and tradition”<sup>43</sup>.

[94] Ivana Roagna, a legal scholar, also explained that “when it comes to family life, the case-law indicates that two main types of obligations stem from Article 8 of the European Convention on Human Rights; the first is to give legal recognition to family ties; the second is to act to preserve family life. What follows is an overview of the positive obligations states bear in these two areas”<sup>44</sup>.

[95] Based on the foregoing elucidations, it is in the finding of the Court that various legislations, case laws and legal scholars, all reiterated the importance of the family and the reason for its protection by the State, and this is in the line with the provisions of article 18 of the aforesaid Constitution of the Republic of Rwanda.

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<sup>42</sup> See the case n° 22744, *John O. Miron and Jocelyne Valliere v. Richard Trudel, William James Mc Isaac and the Economical Mutual Insurance Company vs. The Attorney General of Canada, the Attorney General for Ontario, the Attorney General of Quebec and the Attorney General of Manitoba*, decided by the Supreme Court of Canada, on 25/05/1995.

<sup>43</sup> See the case n° 75-6289, *Moore v. City of East Cleveland*, U.S. Supreme Court, 431 U.S. 494 (1977), decided on May 31, 1977.

<sup>44</sup> Roagna, Ivana, *Protecting the right to respect for private and family life under the European Convention on Human Rights*. (2012), p.6.

## **ii. The right to the protection of the family and the right to succession**

[96] Article 17, subparagraph 1, of the Constitution of the Republic of Rwanda of 2003 revised in 2015, provides that the right to marry and found a family is guaranteed by the law.

[97] The aforementioned article 18 of the said Constitution reads that The family, being the natural foundation of the Rwandan society, is protected by the State. Both parents have the right and responsibility to raise their children. The State puts in place appropriate legislation and organs for the protection of the family, particularly the child and mother, in order to ensure that the family flourishes.

[98] Article 2 of the law n° 32/2016 of 28/08/2016 governing persons and family, in the section of definition of terms, reads that the family is a group of persons related by kinship, law or marriage; it may include parents, children, their descendants and in-laws.

[99] Based on the foregoing, it is necessary to analyze the interpretation of the right to the protection of the family while examining issues relating to succession. In the case of *Pla and Puncernau vs. Andorre*, the European Court for Human Rights stated that it is accepted that the right of succession between children and parents, and between grandchildren and grandparents, was so closely related to family life that it came within the sphere of Article 8 of the European Convention on Human Rights. It has thus considered that matters of intestate

succession and voluntary dispositions between near relatives prove to be intimately connected with family life<sup>45</sup>.

[100] The very Court further upheld that Family life does not include only social, moral or cultural relations, for example in the sphere of children's education; it also comprises interests of a material kind, as is shown by, amongst other things, the obligations in respect of maintenance and the position occupied in the domestic legal systems of the majority of the Contracting States by the institution of the reserved portion of an estate<sup>46</sup>.

[101] In the case of *Bourimi vs. Netherlands*, the same Court added that although Article 8 of the European Convention on Human Rights does not as such guarantee a right to inherit, the Court has previously accepted that questions of intestate succession between close relatives fall within the scope of that provision, insofar as they represent an aspect of family life<sup>47</sup>.

[102] Based on the foregoing explanations, though the laws relating to human rights do not protect the right to succession as a right itself, the issues of succession can be linked to the right to the protection of the family since such issues concern the right to succession entitled to family members in case one of them dies.

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<sup>45</sup>Application n° 69498/01, *Pla et Puncernau c. Andorre* (2004), Para 26.

<sup>46</sup>*Ibidem*

<sup>47</sup>“Bien que l'article 8 de la Convention européenne de Droit de l'homme ne garantisse pas en tant que tel un droit à hériter, la Cour a admis précédemment que les questions de succession ab intestat entre proches parents entrent dans le champ d'application de cette disposition, dans la mesure où elles représentent un aspect de la vie familiale”, Application n° 28369/95, *Bourimi v. the Netherlands*, (2000), Para.35

### iii. About the instant case

[103] As reiterated above, in alleging that article 8, paragraph 2 and article 76 (1°) of the aforementioned Law n° 27/2016 of 08/07/2016<sup>48</sup> are inconsistent with the Constitution, Ngendahayo Kabuye refers to the fact that the surviving spouse gets the entire property and manages it as he/she wishes; which he finds questionable since it causes conflicts and frequent disputes in the family, and it is for this reason he finds the impugned articles encroaching the right to the protection of the family.

[104] The purpose of adopting the articles alleged to be unconstitutional has been explained in paragraphs 61-68 of the present judgement. Additionally, in paragraphs 72-73 of the instant judgment, it was reminded that, though the aforementioned Law n° 27/2016, article 8, paragraph 2 and article 76 (1°), provided that if one of the spouses dies, the surviving spouse is entitled to the entire property, but it did not end there.

[105] The same Law contains other various provisions indicating that other heirs' interests have also been taken into consideration. The example that can be given is the provision on the children's right whereby the surviving spouse was given the duty to take care of their children and that of the legitimate children of the de cujus. In addition, the same Law provided that the succession opens when the surviving spouse remarries, and penalties have been provided for the surviving spouse who fails to fulfil his/her duties as per article 76 (6°) explained in paragraph 69. As also reiterated above, the very Law provided for the

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<sup>48</sup> These articles have been analyzed in the section relating to the right to property.

disposable portion of the property the surviving spouse cannot exceed for donations or succession, as explained in the article 49 mentioned in the paragraph 70.

[106] The Court finds that the foregoing elucidations aim at preventing frequent family disputes resulting from succession, in order to protect the family unity and integrity and its members. It is also in the finding of the Court that, as mentioned above, the Law explains clearly the succession process for the heirs. The issue could have been raised if the surviving spouse was entitled to the entire property without entitling other heirs the right to succession of the family property.

[107] Based on all elucidations provided above, it is in the finding of the Court that article 8, paragraph 2 and articles 76 (1°) of the Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions, are not inconsistent with article 18 of the Constitution of the Republic of Rwanda of 4/06/2003 revised in 2015.

**3. Whether article 8, paragraph 2 and articles 76 (1°) of the Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions, are inconsistent with article 34 of the Constitution of the Republic of Rwanda of 4/06/2003 revised in 2015**

[108] Ngendahayo Kabuye avers that article 8, paragraph 2 and articles 76 (1°) of the Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions, are inconsistent with article 34 of the Constitution of the Republic of Rwanda of 4/06/2003 revised in 2015, on ground that they entitle to the surviving spouse the entire property, based on marriage under

community of property regime, and hence disregarding the rights of other heirs, especially children of the de cujus who are not born to both spouses.

[109] He further states that article 34 of the Constitution reads that everyone has the right to private property, whether individually or collectively owned. Private property, whether owned individually or collectively, is inviolable. The right to property shall not be encroached upon except in public interest and in accordance with the provisions of the law. He state that the succession means being entitled the right and obligations to the property and debts of the de cujus, that depriving some of the heirs of their rights to succession, is construed as depriving them of their right to property while the succession is one of the fundamental rights.

[110] He also states that the Preamble of the Constitution reads that Rwandans are committed to building a State governed by the rule of law, based on the respect for human rights, freedom and on the principle of equality of all Rwandans before the law as well as equality between men and women, and this cannot be achieved if some persons are deprived of their fundamental rights by certain provisions.

[111] Ngendahayo Kabuye further states that various international covenants ratified by Rwanda, protect the fundamental rights to property, including article 14 of African Charter on Human and People's Rights, article 9 of African Youth Charter, and article 5 of Pretoria Declaration on Economic, Social and Cultural Rights in Africa known as "Pretoria Declaration".

[112] He further adds that not having the right to the property of the de cuius is a deprivation of the fundamental right since the person in that situation cannot enjoy good life since he/she cannot be entitled to the right to shelter, food, land, medical treatment, education, clean water and sanitation.

[113] Counsel Umulisa Kayigamba Alice assisting him argues that article 8, paragraph 2 and articles 76 (1°) of the aforementioned Law n° 27/2016 of 08/07/2016 entitle to the surviving spouse the entire property, hence leaving aside other heirs especially when he/she does not have the duty to take care of them, additionally, the surviving spouse may have such a duty but fails to fulfil them as required, hence leading to family disputes as well as unnecessary lawsuits, and it is in this regard that they find these provisions inconsistent with article 34 of the Constitution of the Republic of Rwanda.

[114] Counsel Kayitesi Pétronille, representing the Government of Rwanda argues that article 8, paragraph 2 and articles 76 (1°) of the Law n° 27/2016 of 08/07/2016 are not inconsistent with article 34 of the Constitution of the Republic of Rwanda on ground that they do not deprive the heirs of their right to the property and entitle it to the surviving spouse as alleged by Ngendahayo Kabuye, because, though the surviving property is entitled the entire property, he/she remains with the duty to take care of their children he/she had with the de cuius as well as those of the de cuius who are not born to both spouses, and the latter have the right to succession as per the law.

[115] Counsel Kabibi Speciose, representing the Government of Rwanda adds that the provision of the law that succession to spouses is done when one of them dies or when the surviving spouse remarries, does not contradict article 34 of the

Constitution, since the property belongs to both spouses and not to their heirs. It is therefore in her finding that such a property should not in any case be encroached upon, especially since it was co-acquired by both spouses whether still alive or deceased.

[116] Uwineza Odette and Dr Turamwishimiye Rose representing the School of Law of the University of Rwanda, state that article 8, paragraph 2 and articles 76 (1°) of the Law n° 27/2016 of 08/07/2016 encroach upon the rights to property of other heirs since such a property is entirely entitled to the surviving spouse, and this is in contradiction with article 34 of the Constitution of the Republic of Rwanda. They request that, while pending the revision of the impugned articles, the Supreme Court should set a position to be referred to in order to protect the right of all heirs. They thus find that, for instance instead of entitling the entire property to the surviving spouse, the latter should be entitled the duty to manage that property in a defined period of time while awaiting for all heirs to share it.

## **DETERMINATION OF THE COURT**

### **i. The right to property**

[117] The right to property provided under article 34 of the Constitution of the Republic of Rwanda of 2003 revised in 2015, stipulates that everyone has the right to private property, whether individually or collectively owned. Private property, whether owned individually or collectively, is inviolable. The right to property shall not be encroached upon except in public interest and in accordance with the provisions of the law.

[118] Such a right has also been provided by international covenants ratified by Rwanda. The example is article 17 of the Universal Declaration of Human Rights reading that everyone, whether alone or in community with others, has the right to own property. No one shall be arbitrarily deprived of his property<sup>49</sup>.

[119] Article 14 of African Charter of Human and People's Rights reads that the right to property is guaranteed. It may not be infringed except by public necessity or in the general interest of the community, in accordance with the provisions of the appropriate laws<sup>50</sup>.

[120] The right to property has also been upheld by other covenants involving countries from other continents. Article 1 of Protocol n° 1 of the European Convention on Human Rights provides that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law<sup>51</sup>.

[121] The concept of property in the first paragraph of Article 1 of Protocol no. 1 is an autonomous concept, which may cover both actual property and assets, including claims in respect of which the applicant may claim to have at least one legitimate

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<sup>49</sup> "Toute personne, aussi bien seule qu'en collectivité, a droit à la propriété. Nul ne peut être arbitrairement privé de sa propriété", La Déclaration Universelle des Droits de l'Homme, article 17.

<sup>50</sup> "Le droit de propriété est garanti. Il ne peut y être porté atteinte que par nécessité publique ou dans l'intérêt général de la collectivité, ce, conformément aux dispositions des lois appropriées", La Charte Africaine des Droits de l'Homme et des Peuples, article 14.

<sup>51</sup> Article 1 of Protocol n° 1 to the European Convention on Human Rights.

expectation. Property includes rights in rem and personal rights. This term covers immovable and movable property as well as other property interests<sup>52</sup>.

[122] American Convention on Human Rights, article 21 reads that everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society<sup>53</sup>...

[123] In the case *Ivcher-Bronstein v. Peru*, Inter-American Court of Human Rights, property can be defined as those material things which can be possessed, as well as any right which may be part of a person's patrimony; that concept includes all movables and immovables, corporeal and incorporeal elements and any other intangible object capable of having value<sup>54</sup>.

[124] In their decisions, the courts have been explaining the right to property. The example is the case of *Marckx vs Belgium* before the European Court for Human Right. Regarding Belgium legislations relating to legitimate children born to one of the spouses, the very Court stated that by recognizing that everyone

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<sup>52</sup> “La notion de « biens » figurant au premier alinéa de l’article 1 du Protocole N° 1 est une notion autonome, qui peut recouvrir tant des «biens actuels» que des valeurs patrimoniales, y compris des créances en vertu desquelles le requérant peut prétendre avoir au moins une «espérance légitime». Les « biens » incluent les droits réels et les droits personnels. Ce terme englobe les immeubles et les biens meubles ainsi que les autres intérêts patrimoniaux”, Guide sur l’article 1 du Protocole n° 1 à la Convention Européenne des droits de l’homme: Protection de la propriété, 2022, P.7.

<sup>53</sup> American Convention on Human Rights, article 21.

<sup>54</sup> *Ivcher Bronstein case vs Perou*, Inter-American Court of Human Rights of February 6, 2001 (Merits, Reparations and Costs) para. 122

has the right to respect for their property, Article 1 essentially guarantees the right to property, the right to dispose of one's property, which is a fundamental traditional element of the right to property<sup>55</sup>.

[125] In the case of *Hutten-Czapska v Poland*, the same Court reminded that the main principle to the right to property is that it cannot be encroached upon (peaceful enjoyment of property: *usus, fructus, abusus*); that any interference with the enjoyment of a right or freedom must pursue a legitimate aim<sup>56</sup>.

[126] International Courts such as American Court and African Court for Human Rights have on several occasions indicated that the right to property helps people protect their rights, by protecting natural families and people as well as other minority groups with history linking them to their property<sup>57</sup>.

[127] Legal scholars also provided some explanations for a better understanding of the right to property. In that regard, in their book entitled *Property Examples and Explanations*, Barlow

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<sup>55</sup>“En reconnaissant à chacun le droit au respect de ses biens, l’article 1 garantit en substance le droit de pro *Marckx c. Belgique*, arrêt du 13 juin 1979, Série A n° 31, op.cit, para 49. priété. ...le droit de disposer de ses biens qui constitue un élément traditionnel fondamental du droit de propriété”.

<sup>56</sup> Application n° 35014/97, *Hutten-Czapska v Poland* [GC] ECHR 2006-VIII, para 165.

<sup>57</sup> *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Series C N° 79, Inter-American Court of Human Rights, August 31, 2001; judgment of Center for Minority Rights in Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, Communication No. 276/2003, African Commission on Human and Peoples’ Rights, February 4, 2010; African Commission on Human and Peoples’ Rights v. Kenya, Application No. 006/2012, African Court on Human and Peoples’ Rights, May 26, 2017.

Burke and Joseph Snoe stated that property law is not about one person's relationship to a thing. Instead, it is about relationship between and among persons with regard to a thing. Such a right permits one person to exclude another from using a thing; to use it personally to gain rents, profits or income from it; to sell it; or to give it by will to one relative and not another. All this is possible only when one's relationship to property is clear insofar as others are bound to respect it<sup>58</sup>.

[128] In his book entitled *Understanding Property Law*, John G. Sprankling also stated that it is common to describe property as a bundle of rights including the right to exclude the right to transfer, the right to possess and use and the right to destroy<sup>59</sup>.

[129] Based on the foregoing elucidations, it is clear that the right to property should be respected by everyone by allowing the property owner to have full rights on his/her property, and such a right should not be encroached upon except for public interest and for a legitimate aim.

**ii. Can a person ascertain that he/she has a right to the property basing on the expectation to own it in the future?**

[130] The answer to this question is found in case laws and elucidations provided by legal scholars. In the case of *Marckx vs Belgium*, the European Court for Human Rights explained that Article 1 of Protocol No. 1 confines itself to enshrining the right of everyone to respect for "his" property, and consequently

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<sup>58</sup> Burke, D. Barlow, and Joseph A. Snoe. *Property: Examples & Explanations*. Wolters Kluwer, 2008, p 5.

<sup>59</sup> Sprankling, John G., *Understanding property law*, LexisNexis, 2012, p. 4.

applies only to current property and does not guarantee the right to acquire it by intestate succession or gifts<sup>60</sup>.

[131] The foregoing has also been reiterated by the same Court in the case of Van der Musselle, where the very Court stated that only present rights are guaranteed by article 1 of the Additional Protocol of the European Convention on Human Rights and such article does not protect the expectation to acquire certain assets<sup>61</sup>.

[132] Future income can be protected by the law, for example in instances it has already been earned or there is evidence that there is expected debt owed by others. The law can protect the legitimate expectation. For Courts to hold that a person has a right to property based on the foregoing, there must be tangible elements of evidence proving beyond reasonable doubt that his/her right on that property has to be protected by the law. Courts explained this as follows: “A future income can be considered as such when it has been earned or it is subject of the legitimate expectation”<sup>62</sup>. For the expectation to be legitimate, it must be more than simple expectation and based on the legal provision or act like the court decision concerning the patrimonial interest. In many cases, the Court held that the claimants did not

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<sup>60</sup> “L’article 1 du Protocole numéro 1 se borne à consacrer le droit de chacun au respect de “ses” biens, ne vaut par conséquent que pour des biens actuels et ne garantit pas le droit d’en acquérir par voie de succession ab intestat ou de libéralités”, *Mareckx c. Belgique*, arrêt du 13 juin 1979, *op.cit*, par.50.

<sup>61</sup> “La Cour estime que seuls les droits actuels sont garantis par l’art.1 du Protocole additionnel et que les espérances d’acquérir certains biens ne jouissent pas de protection”, *Requête n° 8919/80, Van der Musselle*, (23 novembre 1983), para .48.

<sup>62</sup> *Requête n° 76639/11, Denisov c. Ukraine*, (25 septembre 2018), para. 137

have legitimate expectation when it was not possible to consider that they did not really have immediately due claim”<sup>63</sup>.

[133] Courts expounded that the legitimate expectation did not in itself constitute a property to be protected; it is protected because it is related to the way in which the claim qualified as a property value would be treated in domestic law<sup>64</sup>.

[134] Explanations provided by the foregoing caselaws are in line with the statements of legal scholars. According to Mariana Karadjova, what is considered to be property is what has already been acquired. She adds that the inheritance rights are potential. They are not yet acquired and depend on a future event that is not determined in time. The dependence of these rights on certain conditions places them in the category of non-fundamental rights<sup>65</sup>.

[135] Monica Carss-Frisk also reiterates that the right to acquire property in the future is not guaranteed. The protection of Article 1 of Protocol no. 1 of the Convention applies only where

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<sup>63</sup> Requête n° 44912/98, *Kopeccky c. Slovaquie*, (28 septembre 2004), para.49.

<sup>64</sup> “L’espérance légitime n’était pas en elle-même constitutive d’un intérêt patrimonial; elle se rapportait à la manière dont la créance qualifiée de «valeur patrimoniale» serait traitée en droit interne”, Requête n° 1513/03, *Draon c. France*, (6 octobre 2005), para. 68.

<sup>65</sup> “Est considéré comme bien ce qui est déjà acquis. Les droits d’héritage sont plutôt potentiels. Ils ne sont pas encore acquis et dépendent d’un événement futur qui n’est pas déterminé dans le temps. La dépendance de ces droits de certaines conditions les place dans l’ordre des droits non- fondamentaux”, Mariana Karadjova, *La protection du droit de propriété au niveau européen et son importance pour l’harmonisation des pratiques des cours constitutionnelles, Bulgarie*, p.4, para 1.

it is possible to assert a right in the property concerned. She adds that Article 1 does not protect the right to acquire property<sup>66</sup>.

[136] The foregoing elucidations on the right to property and on the right that cannot be confused with the right to property can be summarized in the following points :

- a. Everyone has right to property ;
- b. Such a right can be encroached upon only for public interest and for a legitimate aim ;
- c. The right to property that is protected by the law is the right that is related to existing property one owns ;
- d. The law does not protect the right one expects to have in the future ;
- e. The right to succession cannot be considered as the fundamental right to property.

### **iii. About the instant case**

[137] As reiterated above, by alleging that article 8, paragraph 2, and article 76 (1o) of the aforementioned Law n° 27/2016 of 08/07/2016, Ngendahayo Kabuye bases his allegation on the fact that such provisions entitle to the surviving spouse the right to

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<sup>66</sup> “Le droit d’acquérir une propriété à l’avenir n’est pas garanti. La protection de l’article 1 du Protocole n° 1 ne s’applique que lorsqu’il est possible de faire valoir un droit sur le bien concerné. L’article 1 ne protège pas le droit d’acquérir un bien”, Carss-Frisk, Monica. The right to property: A guide to the implementation of Article 1 of Protocol n° 1 to the European Convention on Human Rights. Council of Europe, 2001.

own the entire property, hence depriving other heirs of their right to succession.

[138] The provisions of the impugned articles are to be analysed in order to link them to some articles of the aforementioned Law n° 27/2016 of 08/07/2016, by examining the time the heirs have to start enjoy their right to the property under succession, in order to determine whether the impugned articles are really inconsistent with article 34 of the Constitution.

[139] Both Article 8, paragraph 2, and article 76 (1o) of the aforementioned Law n° 27/2016 of 08/07/2016, denote that when one of the spouses under community of property regime dies, the surviving spouse acquires the co-owned property. Article 76 (1°) provides more explanations that are not given in article 8, paragraph 2, where that article provides that the surviving spouse who is entitled the right to own the entire property, has the duty to take care of the children born to both spouses and children of the de cuius who are not born to both spouses.

[140] Article 51 reads that succession is the transfer of rights and obligations on the assets and liabilities of the de cuius. Article 52<sup>67</sup> of the same law includes in its provisions that succession opens upon the death of a person. However, the same article provides that succession for spouses opens when they both decease or in case one of them remarries, unless otherwise provided by law.

[141] Article 55 provides that starting from the day of the opening of succession, a person entitled to succeed by way of a will or under law is called a heir as long as he/she accepts it, while

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<sup>67</sup> More details on this article will be provided later.

articles 56<sup>68</sup> and 57<sup>69</sup> provide for reasons for ultimate debarment from succession. Effects of debarment from succession and how a person debarred from succession is excluded from succession of the estate of de cujus are provided under 59 of the same law.

[142] Article 73<sup>70</sup> provides for the order of regular heirs, while article 75 entitles to the surviving spouse the right to the succession of the deceased spouse.

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<sup>68</sup> Article 56 provides that “An heir is automatically deprived of succession rights if he/she: 1° is convicted of intentionally killing the de cujus or of attempting to kill him/her; 2° is convicted of a false accusation or perjury that could have resulted in the de cujus being sentenced to at least six (6) months imprisonment; 3° has deliberately abandoned his/her child whose succession is opened, committed an indecent assault, sexual abuse, exposed him/her to sexual exploitation or sexually abused him/her. A court judgment convicting the legitimate heir of one of the offences referred to under the previous Paragraph is sufficient to deprive him/her of the right to be among heirs

<sup>69</sup> While article 57 provides that Any legitimate heir or legatee may be debarred from succession if: 1° during the lifetime of the de cujus, he/she broke off parental relationships with the de cujus; 2° he/she deliberately failed to take care of the de cujus in time of need; 3° he/she took advantage of the physical or mental inability of the de cujus to take over the whole or part of inheritance; 4° intentionally disposed of, destroyed or altered the last will of the de cujus without his/her consent or took advantage of a revoked or voided will. Any person entitled to succession, within a period not exceeding one (1) year from the day of the opening of succession or the day he/she became aware of one of those reasons, may petition the competent court to debar the heir or legatee responsible for one of the acts provided under the Paragraph One of this Article from succession. The claim is filed in the form of summary procedure.

<sup>70</sup> Such article reads that heirs are entitled to inherit in the following order: 1° children of the de cujus; 2° father and mother of the de cujus; 3° full-blood brothers and sisters of the de cujus; 4° half-brothers and half-sisters of the de cujus; 5° grandparents of the de cujus; 6° paternal and maternal uncles and

[143] The aforementioned article 76 (1°) entitles the surviving spouse to the entire property and the duty to take care of their children and that of the legitimate children of the de cujus. The next paragraphs explain modalities for the succession in case both spouses die, leaving children or not. They also provide explanations on succession modalities when the surviving spouse remarries, having children with the de cujus or not, and in case of existence of the children of the de cujus.

[144] Articles 83-87 provide for liquidation and inventory of the estate, responsibilities of the succession council, liquidator and payment of debts attaching to the estate. After all heirs are found and the estate subject to succession is determined, articles 94-99 provide for the partition of the property.

[145] The Court finds that the content of the foregoing articles indicates that even though generally starts after the death of the de cujus, at that time, the real property for succession is not yet determined, the heirs and their respective portions are also not yet determined for them to enjoy full right to it (usus, fructus and abusus). This means that once the succession is not yet open, the heirs only remain with expectation to have in the future the right to succession of the property left by the de cujus, which is different from having such a right in the present.

[146] Furthermore, for spouses under community of property regime, the law has reserved particularity compared to other

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aunts of the de cujus. Subject to provisions of Article 41 of this Law, each category of successors excludes others in the order of succession. Full-blood children of the de cujus inherit from both the paternal and maternal sides, while consanguineous and uterine children inherit only from the side of the parent to whom they are related.

spouses with a different matrimonial regime, because, as reiterated above, when one of the spouses dies, the surviving spouse is entitled to the entire property, and succession opens when both spouses die or when the surviving spouse remarries.

[147] According to the submissions provided by Ngendahayo Kabuye, it is evident that the right to property alleged to be encroached upon consists of the right of the heirs of the de jure, and not the surviving spouse, they expect to enjoy by the time of succession. However, as explained in the previous paragraphs, the right to property consists of the right one has on the thing or estates one owns, and the law does not protect the right one expects to have in the future. The foregoing means that the rights of heirs are only determined after the opening of succession, and it is by then that regular heirs and their orders are determined.

[148] Regarding spouses under community of property regime in particular, as reiterated above, succession starts when both spouses die or when the surviving spouse remarries. This means that in case one of the spouses dies, and the surviving spouse is still alive or has not remarried yet, none of the heirs can claim to have the right protected under article 34 of the Constitution.

[149] [149] Apart from the foregoing elucidations, it is in the finding of the Court that there is no indication that articles alleged to be inconsistent with the Constitution deprive the heirs of their rights to succession, as alleged by Ngendahayo Kabuye, because, as explained above, article 75 of the aforementioned Law n° 27/2016 of 08/07/2016 provides for the order of regular heirs during succession.

[150] Based on the foregoing elucidations, the Court finds that article 8, paragraph 2 and article 76 (1°) of the Law n° 27/2016 of

08/07/2016 governing matrimonial regimes, donations and successions are not inconsistent with article 34 of the Constitution of the Republic of Rwanda of 2003 revised in 2015.

**4. Whether article 52, paragraph 3 and article 75 of the Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions are inconsistent with articles 15, 18 and 34 of the Constitution of the Republic of Rwanda of 2003 revised in 2015**

[151] Ngendahayo Kabuye allege that article 52, paragraph 3 and article 75 of the Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions are inconsistent with articles 15, 18 and 34 of the Constitution of the Republic of Rwanda of 2003 revised in 2015.

[152] He further states that a family is made up of many members including the husband, wife and their children, children who are born to one spouse, as well as other relatives of the de cujus, however, the law does not protect them equally. He avers that entitling to the surviving spouse the entire property after the death of his/her partner and allow him/her to manage it as he/she wishes, while there are other heirs in need of that property, and entitle him/her the right to inherit the de cujus, it is an indication that he/she is entitled excessive right compared to other heirs, and this is the cause of frequent family disputes, while the principle is that the State has duty to avoid family disputes and protect the family. To conclude, he states that the State should entitle to all heirs the right to the property left by their late parent, instead of entitling the entire property to the surviving spouse only.

[153] Counsel Umulisa Kayigamba Alice criticizes the succession law to provide that when one of the spouses dies, the entire property goes to the surviving spouse, who has the right to sell or use it as she/he wishes, hence depriving other heirs of their right to that property. She avers that the fact that the husband and wife each owns 50% of the property, but that once one of them dies, the surviving spouse is added to those who have to inherit the 50% of the property, which is the share of the de cujus, it is construed as entitling to the surviving spouse an excessive right to property compared to other heirs, and this leads to frequent family disputes. Based on all those reasons, she confirms that article 53, paragraph 3 and article 75 of the aforementioned Law n° 27/2016 of 08/07/2016 are inconsistent with articles 15, 18 and 34 of the Constitution of the Republic of Rwanda of 4/06/2003 revised in 2015.

[154] Counsel Kayitesi Petronille states that article 53, paragraph 3 and article 75 of the aforementioned Law n° 27/2016 of 08/07/2016 are not inconsistent with articles 15, 18 and 34 of the Constitution since they do not discriminate heirs, nor do they lead to family disputes, rather, they protect the surviving spouse from experiencing bad life in comparison to the life he/she was enjoying before the death of his/her partner, especially since he/she remains with the duty to take care of their children including legitimate children of the de cujus who are not born to both spouses, who are allowed to inherit when succession opens.

[155] She further adds that the fact that article 75 of the aforementioned law entitles to the surviving spouse the right to inherit the property of the de cujus, his/her former partner, does not cause any problem, rather, this provision was so necessary especially since it is not understandable how the surviving spouse

had no right to succession of the property his/her partner whom they co-acquired the said property. Therefore, this provision does not contain any discrimination and no one should worry about it since the property is already co-owned by both spouses.

[156] Counsel Kabibi Speciose adds that no one should worry about the right to inherit the 50% of the property, which is the share of the de cuius, and this does not contain any discrimination for the surviving spouse is among those who deserves to be aided by the de cuius, and he/she should not be deprived of that right.

[157] Uwineza Odette and Dr Turamwishimiye Rose, representing the School of Law of the University of Rwanda, state that article 52, paragraph 3, of the aforementioned Law no 27/2016 entitles to the surviving spouse more opportunities compared to other heirs since he/she is entitled the entire property which is subject to succession while the law did not provide for modalities of managing such property, and this can encroach upon other heirs in case the surviving spouse sells or donates it. They thus find that as being inconsistent with articles 15, 18 and 34 of the Constitution of the Republic of Rwanda of 04/06/2003 revised in 2015. They further add that the fact that article 75 of the aforementioned law entitled to the surviving spouse the right to inherit his/her partner, that does not in no way violate the aforementioned articles of the Constitution.

## **DETERMINATION OF THE COURT**

[158] Before examining whether the impugned article 52, paragraph 3 and article 75 are unconstitutional, it is important to note that explanations provided for some principles indicated in this petition, meaning the principle of equality before the law

provided under article 15, the principle of protection of the family provided under article 18, and the right to property provided under article 34 of the Constitution of the Republic of Rwanda, have been referred to in the following paragraphs.

[159] As elucidated above, article 52, paragraph 3 of the said law, provides for the time by when succession opens, meaning after the death of one of the spouses or when the surviving spouse remarries, while article 75 provides for the right to succession entitled to the surviving spouse, and modalities thereof. The concern of Ngendahayo Kabuye is that the impugned articles entitle excessive right to the surviving spouse in comparison to other heirs.

[160] The foregoing articles concur with article 8, paragraph 2 and article 76 (1°) discussed above, of the aforementioned Law n° 27/2016 of 08/07/2016. In the paragraphs 37- 58 of the instant petition, the present Court explained that the State, through its decisions or legislations, may adopt specific strategies or policies for particular groups of people, with an aim to protect them, provided that it is done for a reasonable and legitimate purpose, and this cannot be regarded as discrimination.

[161] According to the Court, the purpose of entitling to the surviving spouse the right to inherit his/her partner as per article 75 of the aforementioned n° 27/2016 of 08/07/2016, is reasonable and legitimate, because, as per the explanatory note of the said Law, the Legislator's purpose was to cover the gap existing in the law N° 22/99 of November 12, 1999 to Supplement Book I of the Civil Code and to Institute Part Five Regarding Matrimonial Regimes, Liberalities and Successions. In the very Law, the surviving spouse was not among the heirs of the *de cujus*, who used to be his/her partner. For the Legislator, nothing was

preventing the surviving spouse to inherit his/her partner (de cujus), while they both contributed to the acquisition of the family property they co-owned.

[162] Protecting the surviving spouse and entitling to him/her the right to inherit his/her partner is not a specialty of Rwanda legislations. In Roman history, Ilie Urs stated that legislations have been undergoing revisions so that nowadays the surviving spouse is entitled the right to succession of the property left by his/her partner as per the amendments of succession laws: “Nowadays, the surviving spouse has three distinctive succession rights: i) a general inheritance right, in competition with any of the classes of heirs ii) a special inheritance right over the movable goods and objects belonging to the household and over the wedding gifts; and iii) a temporary right of occupancy of the house.”<sup>71</sup>

[163] In Nepal, it is provided that the surviving spouse who was still living with the de cujus takes the first place in the order of heirs of the de cujus (The order of preference of nearest heirs for succession shall be as follows :(a) Husband or wife living in the undivided family...)<sup>72</sup>.

[164] In Sweden, the surviving spouse is to be regarded as a preliminary heir, the children as reversionary heirs. Only a child of the deceased who is not a child of the surviving spouse, may claim his or her share after the death of the first spouse. The spouses inherit the entire estate even where Children exist. However, he or she may not dispose of it by will as it should be

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<sup>71</sup> Urs, Ilie, The inheritance rights of the surviving spouse provided by the Romanian law, *Revista de derecho (Valparaíso)* XXXII (2009): 209-220

<sup>72</sup> Article 239, the National Civil (Code) Act, 2017 (2074).

passed to the heirs of the previously deceased on his or her own death<sup>73</sup>.

[165] Legal scholars further state that the children<sup>74</sup> are only entitled to a Pecuniary claim. This Claim is only enforceable after the death of surviving spouse<sup>75</sup>.

[166] Based the foregoing elucidations, it is evident that, even though every country has its own way of addressing its issues, as legal instruments have been improving, the right to property entitled to the surviving spouse has been taken into account in order to protect his/her usual life he/she used to enjoy when his/her partner was still alive, while he/she contributed to the acquisition of the co-owned property. It should also be taken into account the fact that the surviving spouse remains alone with the household obligations which he/she shared with the de cuius.

[167] Following the above motivations, it is in the finding of the Court that:

- a. With regard to the principle of equality before the Law
  - The fact that the Legislator granted a special attention to the surviving spouse by entitling the latter the entire property, and that he/she has to be inherited only when he/she remarries or dies, this does not contain any discrimination. Additionally,

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<sup>73</sup> Miriam Anderson and Esther Arroyo i Amayuelas, *The Law of Succession: Testamentary Freedom: European Perspectives* (Editorial CSIC - CSIC Press, 2011), p.11. link: <https://books.google.rw/books>

<sup>74</sup> Born to both spouses.

<sup>75</sup> Miriam Anderson and Esther Arroyo i Amayuelas, *The Law of Succession: Testamentary Freedom: European Perspectives*, op.cit, p.11.

the fact that the Legislator entitled to the surviving spouse the right to inherit the de cuius, this also does not in no way violate the principle to equality before the Law, because, as reiterated above, there should be a discrimination if other heirs were deprived of the right to succession, and it is not the case in the aforementioned Law n° 27/2016 of 08/07/2016.

b. Regarding the principle of protecting the family

- The Court finds that, as explained in paragraphs 99-101 of the instant case, the fact that the Law n° 27/2016 of 08/07/2016 provided that: i) the surviving spouse is entitled to the entire property and succession opens when the surviving spouse remarries or dies; ii) there is a portion of property that a person is not allowed to dispose of by donation or testament because it is reserved for rightful heirs; iii) there are penalties reserved to the surviving spouse who fails to fulfil the duties of educating the children left by the de cuius, and others, all this aims at reducing succession-related family disputes, in order to protect unity and integrity of the family and its members. Therefore, the allegations of Ngendahayo Kabuye that the impugned articles violate the principle of the protection of the family, are unfounded.

c. With regard to the right to property

- As elucidated above in paragraphs 140 and 145, the Court finds that the law does not protect the right that is not yet determined, and no one cannot

claim the right to property that is not entitled to him/her yet, since such a right is about the property one owns and not he/she expects to own in the future.

[168] Following the above elucidations, the Court finds that the allegations of Ngendahayo Kabuye that the entire property for succession is solely entitled to the surviving spouse since succession opens when both spouse die or when the surviving spouse remarries, and his allegation that the entitling the surviving spouse the right to inherit the de cujus violates the right to property, are unfounded, because, as explained above, the right of the heirs is clearly determined after the opening of succession, the time when the regular heirs and their order of succession is determined as per article 75 of the law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions.

[169] Based on all the foregoing motivations, the Court finds that article 52, paragraph 3 and article 75 of the law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions are not inconsistent with articles 15, 18, and 34 of the Constitution of the Republic of Rwanda of 4/06/2003 revised in 2015.

### **III. DECISION OF THE COURT**

[170] Holds that the petition initiated by Ngendahayo Kabuye seeking declaration that article 8, paragraph 2, article 52, paragraph 3, article 75 and article 76 (1o) of the Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions are inconsistent with articles 15, 18, and 34 of the

Constitution of the Republic of Rwanda of 4/06/2003 revised in 2015, lacks merit ;

[171] Holds that article 8, paragraph 2, and article 76 (1o) of the Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions are not inconsistent with article 15 of the Constitution ;

[172] Holds that article 8, paragraph 2, and article 76 (1o) of the Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions are not inconsistent with article 18 of the Constitution ;

[173] Declares that that article 8, paragraph 2, and article 76 (1o) of the Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions are not inconsistent with article 34 of the Constitution ;

[174] Declares that article 52, paragraph 3, and article 75 of the Law n° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions are not inconsistent with articles 15, 18, and 34 of the Constitution.

## **PROCEDURAL CASES**



**CASE RELATING TO THE  
PROCEDURE FOR REVIEW OF A  
JUDGMENT DUE TO INJUSTICE**



**SIKUBWABO v RWANDA  
DEVELOPMENT BOARD (RDB) ET AL.  
(ADD 1)**

[Rwanda SUPREME COURT – RS/INJUST/RCOM  
00007/2021/SC (Cyanzayire, PJ, Nyirinkwaya and Hitiyaremye,  
J.) April 29, 2022]

*Procedure to review judgments vitiated by injustice – Review of judgments on grounds of being vitiated by injustice – Appeal – In case the judgment under review for being vitiated by injustice is a judgment based on the fact that the Court rejected the appeal disregarding the law, the Court hearing that judgment under review due to injustice examines that ground, and when it finds it founded, it renders the interlocutory judgment and holds that the law or the appeal admissibility was disregarded and decides that the hearing continues with the analysis of the appeal grounds lodged before that Court.*

*Commercial procedure – Calculation of the time limit to lodge the claim seeking suspension or invalidation of an auction conducted basing on the decision of the Registrar General – Article 260, paragraph 6 of the Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure – The time limit provided under the paragraph 6 of article 260 concerns specifically the claims seeking suspension or invalidation of auction conducted basing on the decision of the Registrar General – The time limit provided under the paragraph 4 related to the request for invalidation of an auction conducted without basing on the certificate issued by the Registrar General.*

**Facts:** In the context of reimbursing the loan owed by Sikubwabo to Bank of Africa, the Registrar General in RDB issued the certificate to auction the mortgage, he firstly issued the certificate to sell the property with UPI:1/02/09/01/844. Following the auction of such property, SIKUBWABO Raphaël filed a claim RCOM 01971/2017/TC/NYGE before the Commercial Court of Nyarugenge seeking its invalidation, he sued Bank of Africa, and RDB and Umugiraneza, who was the receiver, intervened. Pending the judgment ruling, the Registrar General issued the certificate to auction the property with UPI:1/02/13/03/115, this led Sikubwabo to file a summary procedure requesting for the suspension of the auction.

In the judgment RCOMA 00793/2017/CHC/HCC rendered at the appeal level, the Commercial High Court ruled for the provisional suspension of the auction of the property with UPI: 1/02/13/03/115, pending the Court decision on the case No RCOM 01971/2017/TC/NYGE.

Case RCOM 01971/2017/TC/NYGE became final on 06/05/2020, it was decided that there is no ground justifying the invalidation of the auction on the property with UPI: 1/02/09/01/844. On 08/05/2020, Sikubwabo requested in writing the Registrar General to definitively suspend the auction on the property with UPI: 1/02/13/03/115 because the loan leading to the auction was not indicated; on 20/05/2020 he lodged a claim before the Commercial Court. The claim was registered on No RCOM 00767/2020/TC, MUREGO Paulin who bought the property within the auction and Umugiraneza who was the receiver voluntarily intervened, Bank of Africa which granted the loan forcibly intervened.

Murego raised the objection requesting for the inadmissibility of Sikubwabo's claim because he filed it after the expiration of the

time limit provided under the law, the objection was not admitted at the first instance, but it was declared founded at the first and second appeals. In the judgment N° RCOMAA 00061/2020/CA rendered on 18/12/2020, the Court of Appeal sustained the ruling of the Commercial High Court, it expounded that it should be lodged within 15 days calculated from the date when the judgment No RCOM 00577/2019/TC which determined the loan amount became final, meaning June 20, 2019, on basis of the provisions of the article 260, paragraph 4 of the Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure. Sikubwabo applied for the review of this judgment on the grounds of injustice.

Sikubwabo maintains that his claim was filed on basis of the article 260 of the Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure and the decision of the Court in the judgment N° RCOMA 00793/2017/HCC which ruled for the suspension of the auction, pending the pronouncement of the judgment N° RCOM 01971/2017/TC/NYGE; this has been highlighted by the judgment N° RCOMA 01016/2019/HCC which also held that RDB should wait for the judgment N° RCOM 01971/2017/TC/NYGE; therefore, the days calculated by the Court of Appeal are not provided under the law because the article 260, paragraph 4, reads that a request for the invalidation of an auction is filed within fifteen (15) days from the date on which the auction was conducted; and it does not provide that the claims for auction suspension are concerned by the period of 15 days.

The respondent, both the parties who voluntarily and forcibly intervened, all state that they cannot contradict the ruling of the

Court of Appeal because they find that the time limit for lodging the claim was not respected.

**Held:** 1. In case the judgment under review for being vitiated by injustice is a judgment based on the fact that the Court rejected the appeal disregarding the law, the Court hearing that judgment under review examines that ground and when the Court finds it justified, it renders the interlocutory judgment and holds that the law was disregarded by not admitting the appeal and decides that the hearing continues with the analysis of the appeal grounds lodged before that Court.

2. In accordance with article 260, paragraph 6 of the Law n° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, the time limit provided under the paragraph 6 of article 260 of the abovementioned Law, concerns specifically the claims seeking the suspension or invalidation of the auction conducted basing on the decision of the Registrar General; it is different from the time limit provided under the paragraph 4 concerning the invalidation of the auction conducted without basing on the decision of the Registrar General.

The application for the review of the judgment vitiated by injustice has merit;

**The claim seeking the suspension of the auction should be admitted;**

**The rendered judgment and the previous one are both quashed;**

**The hearing of the case of the appeal grounds shall be resumed.**

**Statutes and statutory instruments referred to:**

Law no 22/2018 of 29/04/2018 relating to the civil, commercial, labour, and administrative procedure, article 260.

**Case referred to:**

Judgment N° RS/INJUST/RC 00023/2018/SC; IBYISI v. KALISA RIBAKARE et Al. rendered by the Supreme Court on 31/01/2020.

## Judgment

### I. BACKGROUND OF THE CASE

[1] This case emanated from the certificate to sell N° 017-074833 the property with UPI: 1/02/13/03/115 issued by the Registrar General in RDB on 06/11/2017, for the repayment of the loan owed by Sikubwabo Raphaël to Bank of Africa. Such an auction was after the one conducted on 09/06/2017 on the property with UPI: 1/02/09/01/844 for the repayment of that loan.

[2] Following the auction of 09/06/2017, Sikubwabo Raphaël filed the claim before the Commercial Court of Nyarugenge requesting its invalidation, and the loan repayment shall be made according to other terms of the loan contract. The claim was registered on No RCOM 01971/2017/TC/NYGE, the respondent was Bank of Africa, RDB and Umugiraneza Jean Michel who was the receiver intervened. After lodging the claim, pending the judgment, Sikubwabo Raphaël received from the Registrar General the permit to sell N° 017-074833 of 06/11/2017 abovementioned and the auction instructions relating to the mortgage with UPI: 1/02/13/03/115.

[3] While the second auction was not yet approved by the Registrar General, Sikubwabo Raphaël who stated that he was not informed of the outstanding loan after the repayment from the first auction, lodged the summary procedure requesting the provisional suspension of the auction on the second mortgage relating to the property with UPI: 1/02/13/03/115, for firstly examining the request of the principal suit. The case was registered on No RCOM 02265/2017/TC/NYGE, the Court held that there is no reason to suspend the auction scheduled on 05/12/2017. The judgment was appealed before the Commercial High Court on No RCOMA 00793/2017/CHC/HCC, and it was rendered on 21/12/2017, and the very Court decided for the provisional suspension of the auction on the property with UPI: 1/02/13/03/115, pending the Court's decision on the case No RCOM 01971/2017/TC/NYGE.

[4] After the pronouncement of this judgment No RCOMA 00793/2017/CHC/HCC, Sikubwabo Raphaël filed the claim before the Commercial High Court, requesting the intervention of the Registrar General to explain the reason why he does not execute the judgment and Murego Paulin who bought the property in the suspended to be paid back the money he gave. The claim was registered on No RCOM 00024/2019/HCC, the judgment was rendered on 04/10/2019, and the Court declared itself incompetent to hear such claims as they are administrative. Such judgment was appealed before the Commercial High Court on No RCOMA 01016/2018/HCC, it was rendered on 14/02/2020, and it was held that the claim is admissible, but declared that the Registrar General did what he was required to do by executing the judgment No RCOMA 00793/2017/CHC/HCC because he provisionally suspended the approval of the report of the auction on UPI: 1/02/13/03/115.

[5] The judgment No RCOM 01971/2017/TC/NYGE rendered on 16/05/2028 (related to the invalidation of the auction conducted on 09/06/2017 for the property with UPI: 1/02/09/01/844) which occasioned the provisional suspension of the auction on the property with UPI: 1/02/13/03/115, it was held that there is no ground for the invalidation of the auction. The very judgment was appealed before the Commercial High Court and it was registered on No RCOMA 00443/2018/CHC/HCC the ruling thereof was rendered on 14/12/2018, and it was held that the appealed judgment is sustained. Sikubwabo Raphaël appealed for the second level before the Court of Appeal and the appeal was registered on No RCOMAA 00039/2019/CA, and the verdict thereof was pronounced on 06/05/2020, and it was held that such an appeal was not admitted because it was filed with delays.

[6] After all appeal remedies for judgment no RCOM 01971/2017/TC/NYGE were exhausted, on 08/05/2020 Sikubwabo Raphaël wrote to the Registrar General requesting for the definitive suspension of the auction on the property with UPI: 1/02/13/03/115. On 20/05/2020, he lodged the claim before the Commercial Court seeking the definitive suspension of the auction on the property with UPI: 1/02/13/03/115, because the loan for which it was conducted was not indicated. The case was registered on no RCOM 00767/2020/TC, and Murego Paulin who bought the property in the auction and Umugiraneza Jean Michel who was the receiver voluntarily intervened, while Bank of Africa which granted the loan was forcibly intervened.

[7] In that case, Sikubwabo Raphaël raised the objection of inadmissibility of the claims of those who voluntarily intervened because they have no interest in the case. Murego Paulin also raised the objection of inadmissibility of the claim of Sikubwabo

Raphaël because he filed it after the expiration of the time limit provided by the law for the invalidation of the auction.

[8] The case was decided on 22/06/2020, the Court declared unfounded the objection raised by Sikubwabo Raphaël against Murego Paulin because he was the one who bought the disputed property in the auction, and the law allows him to intervene in the case. It declared founded the objection of inadmissibility raised against the voluntary intervention of Umugiraneza Jean Michel because it was not proved that there were mistakes relating to the procedures for the auction of the disputed property and that his personal interests are not jeopardized in this instant case. Regarding the objection of inadmissibility of the claim due to the fact that it was lodged with delays, the Court decided to admit it for its examination on the merits. Regarding the merits of the case, the Court declared unfounded the claim of SIKUBWABO Raphaël and ordered that the auction made on the property with UPI: 1/02/13/03/115 is sustained.

[9] Sikubwabo Raphaël appealed against the judgment ruling in the Commercial High Court, the appeal was registered at n° RCOMA 00398/2020/HCC. He alleges that the Commercial Court has not suspended the concerned auction and yet there were reasons for its suspension. He also requested the Court to determine whether the judgments n° RCOMA 00793/2017/CHC and RCOM 01971/2017/TC/NYGE had any impact on the auction. In the instant case, MUREGO Paulin raised the objection of inadmissibility stating that the claim admitted at the first level would not have been admitted because SIKUBWABO Raphaël failed to file it on time. Umugiraneza Jean Michel has filed a cross-appeal asking for determining whether the first court has not yet ruled on *ultra petita*, hence claiming various damages.

Bank of Africa has also lodged a cross-appeal seeking damages for the expenses incurred at the appeal level.

[10] The case was decided on 16/07/2020, and the Commercial High Court declared the objection raised by MUREGO Paulin justified, that the claim filed by Sikubwabo Raphaël in the Commercial Court would not have been admitted to be examined on the merits, because it was not filed in due time. The Court motivated that if in submitting the claim, the plaintiff based on the ruling of the judgment n0 RCOM 00577/2019/TC rendered on 20/06/2019 in which the owed debt was determined thereof, it is clear that the auction had been suspended by various judgments, such auction would have proceeded immediately after the pronouncement of the judgment was. The fact that Sikubwabo Raphaël filed a claim in the Commercial Court on 20/05/2020, meaning 11 months after it was allowed to proceed with the auction, clearly indicates that he filed the claim with delays, therefore, it would not have been admitted for being examined on the merits.

[11] The Commercial High Court also declared justified the cross-appeal lodged by the Bank of Africa and that of Umugiraneza Jean Michel, and held that the judgment n° RCOM 00767/2020/TC rendered on 22/06/2020 by the Commercial Court is declared null and void, and ordered Sikubwabo Raphaël to pay to the Bank of Africa and Umugiraneza Jean Michel: 500,000 Frw as damages for being dragged into unnecessary lawsuits, 500,000 Frw for counsel fee, 300,000 Frw for a procedural fee, all totaling to 1,300,000 Frw to each one.

[12] Sikubwabo Raphaël appealed the ruling in the Court of Appeal, seeking a determination whether his claim was filed with delays as upheld by the Commercial High Court, and yet the

judgment n° RCOMA 00793/2017/HCC decided on 21/12/2017 has ordered that the procedures relating to the auction of the property with UPI: 1/02/13/03/115 be provisionally suspended, pending the decision of the Court on the case n° RCOM 01971/2017/TC/NYGE. In the judgment n° RCOMAA 00061/2020/CA rendered by the Court of Appeal on 18/12/2020, it was decided that the appeal lodged by Sikubwabo Raphaël is unfounded and that the ruling of the appealed judgment is sustained.

[13] Sikubwabo Raphaël petitioned the President of the Supreme Court requesting the judgment n° RCOMAA 00061/2020/CA rendered by the Court of Appeal on 18/12/2020 be reviewed for grounds of injustice, alleging that in its ruling, the laws and elements of evidence were disregarded. The President of the Supreme Court decided that the judgment be reheard by the Supreme Court, and it was recorded in the appropriate registrar under n0 RS/INJUST/RCOM 00007/2021/SC.

[14] The hearing of the case scheduled on 14/03/2022 was conducted in public, with Sikubwabo Raphaël being assisted by Counsel Uwizeyimana Venuste, RDB represented by Counsel Nkusi Fred, Umugiraneza Jean Michel assisted by Counsel Matimbano Barton, Murego Paulin represented by Counsel Munderere Léopold, while Bank of Africa was represented by Counsel Kayiranga Cyrille.

[15] The Court first requested the parties to prove the appearance of Umugiraneza Jean Michel in the case, whereas it is evident that the Commercial Court has decided that he has no interest in voluntarily intervening in it. After hearing the statement of each party about the matter, the Court found that

Umugiraneza Jean Michel could stay in the case because all parties agree that Sikubwabo Raphaël, who had raised the objection, decided later to withdraw it in the appeal even though it was not mentioned in the case.

[16] Sikubwabo Raphaël relies his injustice on the fact that there was a mistake in determining the judgment that should be based on in calculating the time limit for definitive suspension of the auction because it was held that the judgment to be based on is n° RCOM 0577/2019/TC rendered on 20/06/2019 where the debt he owed to Bank of Africa was determined, while the period was to be counted from the time the judgment n° RCOM 01971/2017/TC/NYGE became final as it was upheld in the judgment n° RCOMA 00443/2018/CHC/HCC. He also avers that there was a misinterpretation of the provisions of article 260 of Law no 22/2018 of 29/04/2018 relating to the civil, commercial, labour, and administrative procedure, because, as long as the Registrar General has not yet approved the auction conducted based on the certificate he issued, such auction can be subject to suspension, hence the time limit is counted from when the respondent wrote to the Registrar General.

[17] The respondents pleaded that the claim was filed with delays because it had to be filed within 15 days from the time of the auction as per the provisions of article 260 of Law no 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure.

[18] After hearing the debates between the parties, the Court examined the following issues:

- Whether the claim filed by SIKUBWABO Raphaël seeking the definitive suspension of the auction

on the property with UPI: 1/02/13/03/115 was not lodged in due time;

- Damages claimed by parties.

## II. ANALYSIS OF LEGAL ISSUES

### **Whether the claim filed by SIKUBWABO Raphaël seeking the definitive suspension of the auction on the property with UPI: 1/02/13/03/115 was lodged in due time**

[19] Sikubwabo Raphaël and his Counsel Uwizeyimana Venuste state that his claim was filed based on article 260 of Law no 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, and in accordance with the decision of the Court in the case n° RCOMA 00793/2017/HCC, where it ruled that the auction process be suspended until the pronouncement of the judgment n° RCOM 01971/2017/TC/NYGE which was upheld by the judgment n° RCOMA 01016/2019/HCC which also held that RDB would be pending until the pronouncement of the judgment n° RCOM 01971/2017/TC/NYGE.

[20] They submit that the days calculated by the Court of Appeal are not provided for by the law because paragraph 4 of article 260 which was applied, provides that applications for the invalidation of the auction are the ones filed within fifteen (15) days from the date on which the auction was conducted, and it does not provide that the application for suspension of the auction is subjected to those 15 days.

[21] They add that when the case n° RCOM 01971/2017/TC/NYGE became final, Sikubwabo Raphaël wrote to the Registrar General on 08/05/2020 requesting him to definitively suspend the auction, and the latter was supposed to respond within three days according to the provisions of article 260 of Law n0 22/2018 of 29/04/2018 mentioned above, but he did not respond, and the claim was filed on 20/05/2020; and it was filed in accordance with the law.

[22] Murego Paulin and his Counsel Munderere Léopold aver that the claim was filed with delays as explained in paragraph 17 of the judgment n° RCOMAA 0061/2020/CA; the Court had explained that article 260 of Law n0 22/2018 of 29/04/2018 mentioned above, provides that the application must be filed within fifteen (15) days from the date on which the auction was conducted. They add that the judgment n° RCOM 01971/2017/TC/NYGE for which they should wait according to Sikubwabo Raphaël was rendered on 16/05/2018, this means that the deadline for filing the claim is 01/06/2018 because he had to lodge it within 15 days from the date of the judgment; however, he filed it in 2020, which is clear that it was too late.

[23] Umugiraneza Jean Michel and his Counsel Matimbano Barton submit that they cannot challenge the decision made by the Court of Appeal and that they find that the time limit for filing a claim has not been respected.

[24] Counsel Nkusi Fred representing RDB submits that, based on the decision of the Court of Appeal in case n° RCOMAA 00061/2020/CA, he finds that this claim does not comply with the 15 days stipulated by article 260, paragraph 4, of the aforementioned Law n0 22/2018 of 29/04/2018.

[25] Counsel Kayiranga Cyrille representing the Bank of Africa submits that the time limit for filing a claim should have been counted from the time of the auction on the property with UPI: 1/02/13/03/115 was conducted, which was not respected as per the provisions of article 260 of aforementioned Law n<sup>o</sup> 22/2018 of 29/04/2018.

## **DETERMINATION OF THE COURT**

[26] Article 260, paragraph 6, of Law n<sup>o</sup> 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that “the suspension or invalidation of an auction conducted basing on the decision of the Registrar General is requested to the Registrar General. The Registrar General responds within three (3) working days. In case there is a party not satisfied by the decision of the Registrar General or who does not get a response in the time limit provided for by this paragraph, the party files a claim in the commercial court in accordance with provisions of this article within five (5) working days running from the date the party was notified of the decision”.

[27] The provisions of paragraph 6 of article 260 of the aforementioned Law, specifically refer to the claims for the suspension or invalidation of the auction of properties conducted based on a certificate to auction the mortgage issued by the Registrar General; the time limit for which it stipulates is different from the time limit of 15 days based on by the previous Courts as referred to in paragraph 4 of the aforementioned article 260, it is related to the request for invalidation of the auction of properties conducted without a certificate issued by the Registrar General.

[28] The case file of this case indicates that the claim filed by Sikubwabo Raphaël is related to the definitive suspension of the auction on the property with UPI: 1/02/13/03/115, based on the certificate to sell in public auction (permit to sell n° 017- 074833) issued by the Registrar General in RDB on 06/11/2017. This means that the time limit required to determine whether the claim was filed with delays is referred to in paragraph 6 of article 260 of the aforementioned Law n0 22/2018 of 29/04/2018. With regards to the starting date for counting the time limit, it is necessary to first recall the decisions made in some of the cases mentioned in the section relating to the background of the case.

[29] Before applying for the definitive suspension of the auction on the property with UPI:1/02/13/03/115, SIKUBWABO Raphaël first filed a summary procedure seeking the provisional suspension of the auction on the concerned property, pending the decision on another claim n<sup>0</sup> RCOM 01971 /2017/TC/NYGE he had filed claiming for the invalidation of the previous auction conducted on the property with UPI: 1/02/09/01/844, so as to allow him to know the remaining debt he would have to pay after the first auction in case it is not invalidated.

[30] In the judgment, n0 RCOMA 00793/2017/CHC/HCC rendered on 21/12/2017, the Commercial High Court declared that the procedures related to the auction of property with UPI: 1/02/13/03/115 should be provisionally suspended, pending the court's decision on the case n0 RCOM 01971/2017/TC/NYGE mentioned above. This case was decided on 16/05/2018, and it was ruled that there is no reason to invalidate the first auction on the property with UPI: 1/02/09/01/844, this decision became final after the decision of 06/05/2020 by the Court of Appeal

[31] After the judgment n0 RCOM 01971/2017/TC/NYGE that had decided for the provisional suspension of the auction on UPI: 1/02/13/03/115 became final, Sikubwabo Raphaël wrote to the Registrar General on 08/05/ 2020 requesting him to definitively suspend the auction which had been provisionally suspended.

[32] Based on the provisions of paragraph 6 of article 260 of the aforementioned Law n° 22/2018 of 29/04/2018, Sikubwabo Raphaël had a period of three (3) working days to wait for the response from the Registrar General, which then ended on 13/05/2020. In case he did not get any response, he had five (5) working days to file a claim in the Commercial Court, counted from 14/05/2020, which means that the deadline to file a claim was 20/05/2020, on which he also filed it.

[33] Based on the foregoing, the Court finds that the claim of Sikubwabo Raphaël seeks to definitively suspend the auction on the property with UPI: 1/02/13/03/115 has been lodged in due time because it has complied with the modalities stipulated in paragraph 6 of article 260 of Law n° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure. Therefore, the Court finds that the judgment n° RCOMAA 00061/2020/CA, rendered by the Court of Appeal on 18/12/2020, as well as the previous judgment n° RCOMA 00398/2020/HCC rendered by the Commercial High Court on 16/07/2020, should be quashed. This means that the judgment n0 RCOM 00767/2020/TC rendered by the Commercial Court on 22/06/2020 should be maintained so as to proceed with the examination of the appeal that was filed before the Commercial High Court relating to the merits of that case.

[34] Regarding the court that should analyze the appeal lodged against the judgment n0 RCOM 00767/2020/TC, the Court finds that if the matter brought to this level had been filed as an appeal, it would have been based on paragraph 2 of article 158 of Law n° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure reading that “if the appeal court finds that the seizure of jurisdiction at the first degree was lawful and that court declared it inadmissible when it was to receive and judge this case, the court of appeal hears the case and declares that it was of the competence of that lower court; it declares this judgment void and refers the case to the first instance court so that it hears it again on the merits”. This means that the case would have been again referred to the Commercial High Court for a hearing on the merits of the appeal filed to it.

[35] However, the case was not appealed before the instant Court, rather it was lodged as injustice-related case. By the time this procedure for the review of the judgment on grounds of being vitiated by injustice was established, the idea of the Legislator was that the court that was seized through that procedure, rules on all issues in the case filed by the party, instead of providing a partial ruling and leave the remaining issues for lower courts, hence leading to potential applications for the review due to injustice for cases which should have been settled by the superior court at once. This is the position adopted in the judgment n° RS/INJUST/RC 00023/2018/SC rendered by the instant Court on 31/01/2020, for the case of Ibyisi Augustin against Kalisa Ribakare Didier and Mukantabana Clémentine. Therefore, the instant Court is the one to analyse the grounds of appeal that Sikubwabo Raphaël had filed to the Commercial High Court.

[36] Regarding the damages claimed by the parties, the Court finds that they should not be examined at this level because the hearing of the case is still ongoing, so such damages will be examined together with the appeal lodged by SIKUBWABO Raphaël to the Commercial High Court.

### III. DECISION OF THE COURT

[37] Holds that the application initiated by Sikubwabo Raphaël for review on the grounds of the injustice of the judgment n0 RCOMAA 00061/2020/CA, rendered by the Court of Appeal on 18/12/2020, is justified;

[38] Holds that the claim filed by Sikubwabo Raphaël in the Commercial Court seeking the definitive suspension of the auction on the property with UPI: 1/02/13/03/115 was lodged within the prescribed time limit, and it should have been admitted;

[39] Decides that the judgment RCOMAA 00061/2020/CA rendered by the Court of Appeal on 18/12/2020, as well as the previous judgment RCOMA 00398/2020/HCC rendered by the Commercial High Court on 16/07/2020, are quashed;

[40] Declares that the hearing of the case on the grounds of appeal that Sikubwabo Raphaël had filed to the Commercial High Court will be resumed on the day that will be communicated to the parties by the Registry of the Court.

## PROSECUTION v MAGARA ET AL.

[Rwanda SUPREME COURT – RS/INJUST/RP  
00001/2020/SC (Ntezilyayo, P.J, Cyanzayire, Hitiyaremye,  
Rukundakuvuga and Muhumuza, J.) January 18, 2021]

*Review of a judgment on grounds of being vitiated by injustice – Applicant for the judgment review due to injustice – The procedure for the judgment review due to injustice is extraordinary procedure accorded to a person who blatantly suffered injustice, upon request in accordance with the law, and approval by competent organs on basis of the examination, it is different from other procedures of appeal. Parties who failed to abide by those procedures are not entitled to file incidental applications to the parties' review which has been approved, to request for some changes on the judgment of which they did not apply for the review, because they deprived themselves of such right.*

*Review of a judgment on grounds of being vitiated by injustice – Reversing a decision made for parties who did not apply for the review due to injustice. – A decision taken for those who did not apply for the review due to injustice, who made incidental application, can only be changed when the Court finds that there is the indivisibility of offence commission with the parties who applied for the judgment review due to injustice so that the decision that can be made for applicants is likely to affect their interests.*

*Review of a judgment on grounds of being vitiated by injustice – Change of the decision of the President of the Supreme Court – The fact that the President of the Supreme Court has approved*

*the application for the review of a judgment on grounds of being vitiated by injustice does not prevent the bench to analyze and decide on special issues considered as of public order.*

*Review of a judgment on grounds of being vitiated by injustice – Scope of the subject matter – The scope of the subject matter in the case under review due to injustice is determined in relation to the ruling of the first instance, the ruling of the judgment under review due to injustice and the submissions of the applicants for such review following the approval of the President of the Supreme Court.*

**Facts:** The Prosecution indicted before the Intermediate Court of Gasabo Karake who was the Chairperson of the Board of Directors in SONARWA, which is an insurance company; Mawadza who was the Managing Director of SONARWA, Bamiika who was its Technical Director, Magara and Kamanzi who successively occupied the position of Commercial Director as well as Nzaramba who was the Director of Planning and Policy in the Ministry of Infrastructure, accusing them to commit offences related to embezzlement and offering or accepting an illegal benefit in order to carry out an illegal act as well as issuing false documents.

The Court heard the case and convicted Bamiika and Magara for the offences of embezzlement, offering corruption and issuing false documents and the same Court sentenced them to imprisonment for a term of seven (7) years with a fine of 5,000,000 Frw for each one; Karake was convicted of the offences of receiving corruption and embezzlement and sentenced to imprisonment for a term of five (5) years with a fine of 5,000,000 Frw; Mawadza was convicted of the offence of embezzlement and approving false documents and sentenced to

imprisonment for a term of five (5) years with a fine of 5,000,000 Frw; Nzaramba was convicted of receiving corruption and sentenced to imprisonment for a term of five (5) years with a fine of 5,000,000 Frw while Kamanzi was convicted of the offence of embezzlement and issuing false documents and sentenced to imprisonment for a term of four (4) years with a fine of 5,000,000 Frw. The very Court also ordered Bamiika, Mawazda, Kamanzi, Karake and Magara to jointly refund the money embezzled from SONARWA.

Bamiika, Mawazda, Kamanzi, Karake and Magara were not satisfied with the ruling and therefore appealed before the High Court. The High Court found their appeal baseless and reversed the appealed judgment only on matters related to the term of imprisonment sentence imposed on each of the defendants.

Kamanzi and Magara applied for case review but the Court found their application unfounded.

Kamanzi and Magara were not satisfied with such a decision and therefore wrote to the President of the Court of Appeal requesting for the review of the impugned judgment on the ground of being vitiated by injustice, and the President of the Court of Appeal replied to such request by notifying to the applicants that there is no ground provided under the law that can substantiate the review of such judgment due to injustice.

Once again Kamanzi and Magara were not happy with the ruling, so they wrote to the Office of the Ombudsman alleging that the High Court disregarded legal provisions in rendering the judgment. The Office of the Ombudsman wrote to the President of the Supreme Court requesting for the review of the judgment for being vitiated by injustice. The President of the Supreme Court decided that the case be reviewed by the Supreme Court.

On the hearing day, the Prosecutor raised the objection related to the inadmissibility of the application submitted by Bamiika, Karake, Mawadza and Nzaramba for analysing the injustice towards their issues because they did not apply for the review due to injustice for the cases they lost.

The Prosecution requested for the inadmissibility of the application for judgment review filed by some parties, the latter stated that the objection raised by the Prosecution lacks merit, and based on legal provisions, though they did not apply for the review due to injustice for the cases they lost, they are entitled to file an incidental application for such review. They submit that in case the President of the Supreme Court decides that the case be reviewed due to injustice, such a case has to be reheard on its merits, and in addition, the case has to be heard anew, just like it was instituted at the first instance, and the parties in such case regain their rights previously held. They conclude by stating that it is their right to make the incidental claim to the application for the judgment review due to injustice and they request to be redressed in their rights as the position was set on those issues in the judgment rendered by the Supreme Court.

Kamanzi and Magara supported the statements by the Prosecution and they submit that those who did not use the procedures provided by the law to apply for the review of their case due to injustice cannot file incidental claims to others' application, that they were satisfied with the judgment ruling.

**Held:** 1. The procedure for the judgment review due to injustice is an extraordinary procedure provided for a person who blatantly suffered injustice, upon request in accordance with the law and approval by competent organs on the basis of the examination, it is different from other procedures of appeal. Parties who failed to

abide by those procedures are not allowed to file an incidental claim to other parties' application for the review, which has been approved, in order to request for some changes on the judgment of which they did not apply for the review, because they deprived themselves of such right; therefore, Bamiika, Karake, Mawazda and Nzaramba are not entitled to file an incidental claim to others' application.

2. A decision taken for those who did not apply for the review due to injustice, who made incidental application, can only be changed when the Court finds that there is indivisibility of commission of offences with the parties who applied for the judgment review due to injustice so that the decision that can be made for applicants is likely to affect their interests; therefore, the request by Bamiika, Karake, Mawazda and Nzaramba cannot be admitted unless the Court finds that there is an indivisibility of subject matters in the case.

3. The fact that the President of the Supreme Court has approved the application for the review of a judgment on grounds of being vitiated by injustice does not prevent the bench to analyze and decide on special issues considered as of public order; therefore, the debates based on determining the rights of those who did not apply for the review of the case due to injustice, do not constitute special grounds.

4. The scope of the subject matter in the case under review due to injustice is determined in relation with the ruling of the first instance, the ruling of the judgment under review due to injustice and the submissions of the applicants for such review following the approval of the President of the Supreme Court; therefore, the grounds on which Bamiika, Karake, Mawazda and Nzaramba base their request are unfounded.

**The raised objection has merit;  
The hearing of the case on the merits shall be resumed.**

**Statutes and statutory instruments referred to:**

Law n° 027/2019 of 19/09/2019 relating to criminal procedure, article 190;

Law n° 30/2018 of 29/04/2018 determining the jurisdiction of courts, articles 54 up to 63.

**Cases referred to:**

RS/INJUST/RC 00024/2018/SC, Ngizweninshuti Albert vs Muhima Giovanni, rendered by Supreme Court on 21/02/2020.

RS/INJUST/RC 00022/2018/SC Busoro Gervais vs Busoro Mugunga rendered by Supreme Court on 21/6/2019.

RS/INJUST/RP 00004/2018/SC Ubushinjacyaha v Mbarushimana et al. rendered by Supreme Court on 28/02/2019.

## **Judgment**

### **I. BACKGROUND OF THE CASE**

[1] The Prosecution indicated that during the fiscal year 2013/2014, SONARWA attempted by all means to win an insurance tender for Government vehicles awarded by MININFRA, because it was awarded to COGEAR for so long. The Prosecution further submitted that the Ministry of Infrastructure used to pay invoices for such insurance, and SONARWA employees on their side used to prepare cheques for withdrawing the commission fee for a person who helped them

to win such tender, and they bore the names of Rutagwabira Barnabas or Mbabazi Gerard, who were SONARWA agents, while they played any role in winning such tender, since it was an open tender.

[2] The Prosecution submitted that before withdrawing the money on the cheque, a request note for such amount on the cheque had to be prepared and sent to the Director General, and after it was signed by all concerned people, then a cheque was prepared in the names of Mbabazi Gerard or Rutagwabira Barnabas as money recipients, and the latter signed on such cheques for receipt acknowledgment. After withdrawing the money, an amount of 15,000 Frw was given to each of them, and the remainder was to be sent to Nzaramba Stevenson for sharing the amount with those who played a role in awarding the tender, and the remaining amount had to be shared by SONARWA employees.

[3] The Prosecution indicted before the Intermediate Court of Gasabo, Karake Mutsinzi Charles who was the Chairperson of the Board of Directors in SONARWA, which is an insurance company; Mawadza Nhamo who was the Managing Director, Bamiika Rumanyika Herbert who was its Technical Director, Magara Gahakwa John and Kamanzi Charlotte who successively occupied the position of Commercial Director as well as Nzaramba Stevenson who was the Director of Planning and Policy in the Ministry of Infrastructure, accusing them to commit offences related to embezzlement and offering or receiving an illegal benefit in order to carry out an illegal act as well as issuing false documents.

[4] Kamanzi Charlotte was accused of knowingly preparing false documents and complicity for embezzlement, while Karake

Mutsinzi Charles was accused of complicity in offering an illegal benefit for committing an illegal act and complicity in embezzlement. Bamiika Rumanyika Herbert, Mawadza Nhamo and Magara Gahakwa John were accused of knowingly preparing false documents, offering an illegal benefit for committing an illegal act, and complicity in embezzlement.

[5] The Intermediate Court of Gasabo, in the case RP 00538/2016/TGI/GSBO of 30/06/2017, held that :

- a. Bamiika Rumanyika Herbert and Magara Gahakwa John are convicted of embezzlement, offering corruption and preparing false documents and they were sentenced to imprisonment for a term of seven (7) years with a fine of 5,000,000 Frw for each one ;
- b. Karake Mutsinzi Charles is convicted of receiving corruption and embezzlement and he was sentenced to imprisonment for a term of five (5) years with a fine of 5,000,000 Frw ;
- c. Mawadza Nhamo was convicted of embezzlement and approving false documents and sentenced to imprisonment for a term of five (5) years with a fine of 5,000,000 Frw ;
- d. Nzaramba Stevenson was convicted of receiving corruption and sentenced to imprisonment for a term of five (5) years with a fine of 5,000,000 Frw ;
- e. Kamanzi was convicted of embezzlement and preparing false documents and sentenced to

imprisonment for a term of four (4) years with a fine of 5,000,000 Frw.

[6] Mutsinzi Charles, Kamanzi Charlotte and Magara Gahakwa John were ordered to jointly refund the money embezzled from SONARWA amounting to 163,843,336 Frw. The very Court also held not guilty Mbabazi Gerard and Rutagwabira Barnabas and ordered for their immediate release.

[7] Bamiika Rumanyika Herbert, Mawadza Nhamo, Karake Mutsinzi Charles, Kamanzi Charlotte and Magara Gahakwa John were not satisfied with the ruling, they thus lodged an appeal before the High Court, and their appeal was registered under RPA 00669/2017/HC/KIG, RPA 00680/2017/HC/KIG, RPA 00684/2017/HC/KIG, RPA 00685/2017/HC/KIG, RPA 00686/2017/HC/KIG, RPA 00745/2017/HC/KIG.

[8] Their appeals were joined in a single case, and on 27/04/2018, the High Court upheld their appeal unfounded and reversed the appealed judgment only on matters related to the term of imprisonment sentence imposed on each accused. The Court imposed on them the following sentences :

- a. Bamiika Rumanyika Herbert and Nzaramba Stevenson were sentenced to imprisonment for a term of three (3) years with a fine of 5,000,000 Frw for each one ;
- b. Magara Gahakwa John, Mawadza Nhamo, Kamanzi Charlotte and Karake Mutsinzi Charles were sentenced to imprisonment for a term of three (3) years suspended for one (1) year with a fine of 5,000,000 Frw each.

[9] The Court ordered Bamiika Rumanyika Herbert, Mawadza Nhamo, Karake Mutsinzi Charles, Kamanzi Charlotte and Magara Gahakwa John to jointly refund the money amounting to 163,843,336 Frw embezzled from SONARWA.

[10] Kamanzi Charlotte and Magara Gahakwa John applied for the review of that case, and the case was registered under RPA 00658/2018/HC/KIG, RPA 00661/2018/HC/KIG and the Court found their application inadmissible.

[11] Kamanzi Charlotte and Magara Gahakwa John were not satisfied with the decision of the High Court, and they wrote to the President of the Court of Appeal applying for the review of the judgment RPA 00658-00661/2018/HC/KIG and RPA 00669/2017/HC/KIG -RPA 00680/2017/HC/KIG - RPA 00684/2017/HC/KIG-RPA00685/2017/HC/KIG-RPA00686/2017/HC/KIGRPA00745/2017/HC/KIG, and the President of the Court of Appeal replied to such request by notifying to the applicants that there is no ground provided under the law that can substantiate the review of that judgment due to injustice.

[12] Kamanzi Charlotte and Magara Gahakwa John were not satisfied with that answer, they wrote to the Office of the Ombudsman alleging that the High Court disregarded legal provisions in rendering the judgment RPA 00669/2017/HC/KIG - RPA 00680/2017/HC/KIG - RPA 00684/2017/HC/KIG -RPA 00685/2017/HC/KIG – RPA 00686/2017/HC/KIG-RPA 00745/2017/HC/KIG, hence they suffered injustice.

[13] The Office of the Ombudsman wrote to the President of the Supreme Court on 25/09/2020 requesting for the review of the judgment RPA 00669/2017/HC/KIG - RPA

00680/2017/HC/KIG - RPA 00684/2017/HC/KIG-RPA  
00685/2017/HC/KIG - RPA 00686/2017/HC/KIG - RPA  
00745/2017/HC/KIG for being vitiated by injustice.

[14] On 28/09/2020, the President of the Supreme Court, basing on the report from the Inspectorate of Courts, decided that the case be reviewed, and it was registered under RS/INJUST/RP 00001/2020/SC.

[15] The case was called on 26/10/2020, but it was not heard on that date because Nzaramba Stevenson had submitted grounds for his absence, hence resulting in adjourning the hearing for 03/11/2020, and once again the hearing did not take place due to the illness of Bamiika Rumanyika Herbert, and the Court informed that the hearing date will be communicated by the Court Registry.

[16] The hearing was scheduled on 03/12/2020, and it was conducted in public on that day, Kamanzi Charlotte being assisted by Counsel Musore Gakunzi Valery and Counsel Asiimwe Frank, Magara Gahakwa John assisted by Counsel Uwizeyimana Jean Baptiste and Counsel Bugingo John Bosco, Bamiika Rumanyika Herbert, via videoconference from the correctional facility, assisted by Counsel Gashagaza Philbert and Counsel Nyirangirimana Astérie, Karake Mutsinzi Charles assisted by Counsel Rutabingwa Athanase, Mawadza Nhamo represented<sup>1</sup> by Counsel Bandora Alfred, Nzaramba Stevenson, via videoconference from the correctional facility, assisted by

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<sup>1</sup> Mawadza Nhamo requested legal representation instead of legal assistance, and after analyzing his grounds, which it found with merit, the Court gave such authorization.

Counsel Kanyambo Diogène while the Prosecution was represented by the National Prosecutor Uwombonye Hirwa Sudi.

[17] At the hearing beginning, the Prosecution raised the objection related to the inadmissibility of the application submitted by Bamiika Rumanyika Herbert, Karake Mutsinzi Charles, Mawadza Nhamo, and Nzaramba Stevenson for analyzing the injustice on their issues because they did not apply for the review due to injustice for the cases they lost.

[18] Bamiika Rumanyika Herbert, Karake Mutsinzi Charles, and Nzaramba Stevenson together with their legal Counsel, and the Legal Counsel for Mawadza Nhamo, stated that the raised objection has no merit, based on article 63 of the Law N° 30/2018 of 29/04/2018 determining the jurisdiction of courts, reading that "When the Supreme Court or any other court designated by the President of the Supreme Court receives an application for review of a judgment on grounds of being vitiated by injustice, it examines the merits of the case anew and in the presence of all parties". Based on the provisions of the foregoing article, they state that, though they did not apply for the review due to injustice for the cases they lost, they are entitled to make an incidental application for review.

[19] Kamanzi Charlotte, Magara Gahakwa John and their legal counsel supported the statements of the Prosecution and stated that those who did not use the procedures provided by the law to request for the review of their case due to injustice cannot file an incidental application, since it appears that they were satisfied with the judgment.

## II. ANALYSIS OF LEGAL ISSUES

**Determine whether those who did not apply for the review of the judgment on grounds of being vitiated by injustice can file incidental applications for making some requests on their behalf**

[20] The Prosecutor states that the co-accused of Magara Gahakwa John and Kamanzi Charlotte, should not file an incidental application because they have never raised the injustice they suffered based on article 55, paragraph 2, of the aforementioned Law, and they failed to abide by legal provisions for being redressed in their rights ; therefore, they deprived themselves of the right to apply for the review of their case due to injustice.

[21] The Prosecutor elucidated that there is no injustice in the ruling that convicted Nzaramba Stevenson, Bamiika Rumanyika Herbert, Mawadza Nhamo, and Karake Mutsinzi Charles on their issues, but if the Court finds it necessary, they should be heard only on the issues required by the Court without considering them as parties.

[22] Counsel Bugingo John Bosco, Counsel Uwizeyimana Jean Baptiste, and their client Magara Gahakwa John emphasized the statements of the Prosecutor, they state that those requesting to file incidental application have no interest in the case because a party's interest in the case under application for review due to injustice refers to article 55 of the aforementioned Law n° 30/2018, and such interest is indicated by lodging an application within the time limit provided by article 56 of that Law; therefore, if the Court decides to examine the review due to injustice for

those who did not apply for it, such decision would be inconsistent with such provisions. Counsel Bugingo John Bosco and Counsel Uwizeyimana Jean Baptiste find that all parties to the case are summoned only in the interest of justice in order for them to help the Court to know the truth.

[23] Counsel Asiimwe Frank and Counsel Musore Gakunzi Valérie assisting Kamanzi Charlotte state that the fact that Nzaramba Stevenson and his co-accused failed to apply for the review of their case due to injustice means that they were satisfied with the judgment ruling. They explain that what the Legislator intended to mean in article 63 of the Law n° 30/2018 was not to review the case due to injustice for those who applied for it and those who did not, rather, the parties to such case are summoned with the intention to search for the truth on the issue submitted to the Court.

[24] Kamanzi Charlotte states that there are some legal procedures she respected in requesting for the review of her case due to injustice, and it is in her finding that article 63 of the Law n° 30/2018 which is applied when there are parties who initiated such procedures and were allowed to do so, and it is by then that all parties in the case are summoned for them to plead; therefore, Nzaramba Stevenson and his colleagues should have respected procedures provided by the Law in applying for the review of their case due to injustice as regarding for their issues.

[25] Counsel Gashagaza Philbert and Counsel Nyirangirimana Astérie assisting Bamiika Rumanyika Herbert state that when the President of the Supreme Court orders for the review of the case, the case is reviewed in its entirety, and all parties being summoned, and it is in this regard that Bamiika Rumanyika Herbert was also summoned as a party in the case. As it is

provided in article 63 of the aforementioned Law n° 30/2018, they find that the case has to be reviewed in order to consider the injustice infringed on Bamiika Rumanyika Herbert. They aver that this is the position adopted in the judgment RS/INJUST/RCOM 00001/2019/SC, Ntegeye Bernard vs ECOBANK Rwanda Ltd and National Bank of Rwanda (BNR), where the Court stated that the purpose in establishing the procedure for review due to injustice is to rectify the injustice that may appear in the judgment due to a judge's mistake or error that is blatant to everyone and there is no other remedy to such injustice.

[26] They elucidate that, according to legal scholars, the appeal lodged by one of the parties benefits the others in indivisible matters<sup>2</sup>. Therefore, though an application to review the judgment on grounds of being vitiated by injustice is not an ordinary procedure of appeal, nothing prevents what is done during an appeal to be also done for this procedure since the outcomes are the same, especially since a decision that may be made for Kamanzi Charlotte and Magara Gahakwa John can affect the decision for other parties, and the Court can't decide on them without hearing them.

[27] Counsel Gashagaza Philbert and Counsel Nyirangirimana Astérie also stated that article 63 of the Law N° 30/2018 should be understood based on the position adopted by the Court in the

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<sup>2</sup> M.D. Dalloz, Ainé, Répertoire méthodique et alphabétique de législation, de doctrine et de jurisprudence, Tome Quatrième, Paris, Bureau de la Jurisprudence Générale du Royaume, 1846, p. 91, para. 593. ‘‘L’appel interjeté par l’une des parties profite aux autres dans les matières indivisibles, c’est-à-dire toutes les fois qu’il y a impossibilité absolue d’exécuter et le jugement rendu contre la partie non appelante et le jugement rendu en faveur de celle qui a appelé. »

judgment RS/INJUST/RC 00022/2018/SC rendered on 21/6/2019, BUSORO Gervais vs Busoro Mugunga, where it was held that when a case is under application for review due to injustice, no objection can be raised unless a party manages to prove that an error has been made during the process of reviewing the judgment on grounds of being vitiated by injustice, therefore, based on the foregoing, the Prosecution cannot raise an objection.

[28] They also pray the Court to refer to the position adopted by the Supreme Court in the judgment RS/INJUST/RP 00004/2018/SC rendered on 28/02/2019, Prosecution vs Mbarushimana Jean de Dieu, Rutayisire Ruhinda Sabbat, including Hotel des Mille Collines which filed a civil case, in paragraph 64, whereby the very Court held that the previous parties, be it those convicted or those declared not guilty and civil parties, an examination of injustice and its cause for criminal liability and compensation should concern all of them. They, therefore, find the instant case as a solution to the aforementioned article 63.

[29] Counsel Kanyambo Diogène and Counsel Rutabingwa Athanase and their client Nzaramba Stevenson, state that, based on the provisions of article 63 of the Law N° 30/2018, they find that Nzaramba Stevenson should be a party in the instant case since he has been a party in the case under review due to injustice. They argue that when the President of the Supreme Court decides that a judgment has to be reviewed, he does so before dealing with the merits of the case, thus being unaware of the existence of other parties who suffered injustice resulting from the same judgment, and the impugned article 63 of the aforementioned Law N° 30/2018 intended to solve such issue so that no party is left out.

[30] They also state that the foregoing is upheld by the judgment RS/INJUST/RP 00004/2018/SC, in which the Court held that Rutayisire Ruhinda Sabbat as well the civil party could be parties in the judgment under review on grounds of being vitiated by injustice, though they had not applied for such review. They elucidate that in paragraph 64 of the said judgment, Rutayisire Ruhinda Sabbat who was declared not guilty, with no reason to apply for the review due to injustice, the Court found it necessary to summon him. Based on the foregoing reasons, they request that Nzaramba Stevenson be a party in the instant case. They indicate that considering the way the offences were committed, it is not easy to separate the offender from the accomplice, the reason why the review of the judgment due to injustice should be considered in general.

[31] Counsel Rutabingwa Athanase and his client Karake Mutsinzi Charles state that article 55 of the Law N° 30/2018 concerns the reasons based on in initiating an application for the review of the judgment on grounds of being vitiated by injustice, and the last paragraph prevents an applicant for review due to injustice who did not use other remedies of appeal, while article 56 provides for the time limit for initiating an application, and they, therefore, find those articles different from article 63 of the said Law since such article provides for the hearing period, that all parties to the case have to be summoned.

[32] Counsel Bandora Alfred representing Mawadza Nhamo states that he concurs with the preceding speakers, but he adds that an application to review due to injustice is an extraordinary procedure of appeal which is legal, and prays the Court to refer to article 153 of the Law n° 22/2018 relating to civil, commercial, labour and administrative procedure, reading that those who have

not appealed can take part in proceedings to protect their interests and allow Mawadza Nhamo to be a party in the instant case since the alleged injustice concerns the entire judgment.

[33] Counsel Bandora Alfred elucidates that, though it is apparent that Mawadza Nhamo paid a fine imposed on him, it does not mean that he was satisfied with the ruling regarding his issues, rather, it was due to the fact that he had to go for medical care abroad, hence concluding an agreement with MINIJUST which permitted the release of his passport.

## **DETERMINATION OF THE COURT**

[34] It is in the finding of the Court that parties summoned in the instant case are in two categories : those who applied for the review of the judgment rendered by the High Court for being vitiated by injustice and got approval, and those are Magara Gahakwa John and Kamanzi Charlotte, and the second category consists of those who were summoned in the case but did not apply for the review of the judgment due to injustice, and those are Nzaramba Stevenson, Karake Mutsinzi Charles, and Mawadza Nhamo. Those in the second category are those requesting the Court to examine their submissions and change the decisions made for them in the judgment under review due to injustice, based on article 63 of the Law N° 30/2018 of 29/04/2018 determining the jurisdiction of courts reading that the merits of the case are examined anew and in the presence of all parties. In the following paragraphs, it will be analyzed the definition of summoning all parties, examination of the merits of the case, and examination of the case anew.

[35] Matters relating to summoning all parties to the case under review due to injustice raise debates related to the determination of the reason for the presence of parties who did not apply for the review of the judgment due to injustice, while they did not claim for suffering injustice. Can they file an incidental application to indicate the injustice they suffered, without respecting procedures provided for under articles 58-61 of the aforementioned Law N° 30/2018 of 29/04/2018 ?

[36] The Court finds that the review due to injustice is an extraordinary procedure provided to a party who blatantly suffered injustice, upon request in accordance with articles 54,55,56 and 58 of the Law N° 30/2018 of 29/04/2018 upon approval by organs mentioned in article 58, after consideration through procedures provided under articles 59 and 62 of the said Law ; and this is different from other procedures of appeal which do not require special analysis. It is in the finding of the Court that parties who failed to abide by such procedures are not authorized to file incidental claims to the others ‘application lodged and admitted, in order to request for some changes on the judgment of which they did not apply for the review because they deprived themselves of such right.

[37] In that regard, they are not accused in that case and they are not allowed to introduce any request thereof ; they only speak when asked by the Court, or when they request to provide some explanations on the commission of an offence. This is not new in law since based on the provisions of article 190 of Law N° 027/2019 of 19/09/2019 relating to criminal procedure, the party claiming for damages appeals only with respect to the civil conviction, the Prosecution appears and is allowed to speak, but

their right is limited since it cannot request for any change on an imposed sentence.

[38] The Court finds that a decision made for those who did not apply for the review of the case due to injustice, and who filed incidental application, such decision may only change if the Court finds indivisibility relating to the commission of an offence with those who applied for the review of the judgment due to injustice, so that a decision made for those who applied for such review may affect the interests of those who did not apply.

[39] With regard to those who request to file an incidental application for the review due to injustice, stating that when the President of the Supreme Court decides that a case be reviewed due to injustice, such case has to be examined on its merit, based on the judgment RS/INJUST/RC 00022/2018/SC of Busoro Gervais vs Busoro Mugunga Désiré, Twagirayezu Ildephonse and Mukankombe Chartine, the Court finds it baseless. It is true that in such judgment, the Court stated that the fact that the President of the Supreme Court decides that a case be reviewed due to injustice, does not prevent the bench to examine special issues, such as the respect of the time limit, among others, and decide on them.

[40] The instant Court finds that special issues mentioned in that judgment should be construed as of public order. In the instant case, the debates are based on to determine the right of those who did not apply for the review of the judgment for being vitiated by injustice through the aforementioned legally provided procedures, the Court finds that this issue is related to the capacity of parties, and this consists of an issue of public order, which has to be examined by the bench before the merits of the case.

[41] On matters relating to their statements that the case has to be examined anew, as it was at the first instance, so that those who have been parties in it may regain their rights previously held, the Court finds those statements baseless. Effectively, as it is in the position adopted by the Court, the case review should not be construed as if the case has to be examined regardless of previous judgments rendered before an application for its review due to injustice as if all previous judgments are declared null and void. Rather, the Court elucidated that the scope of the subject matter in the case under review due to injustice is determined in relation with the ruling of the first instance, the ruling of the judgment under review due to injustice and the submissions of the applicants for such review following the approval of the President of the Supreme Court. Such a position was adopted by the instant Court in the judgment RS/INJUST/RC 00024/2018/SC for Ngizweninshuti Albert vs Muhima Giovanni rendered on 21/02/2020.

[42] With regard to the judgment RS/INJUST/RP 00004/2018/SC for Mbarushimana Jean de Dieu whereby those who filed incidental application allege that the Court set the position which entitles them such a right, the Court finds it untrue because it was not examined an issue relating to determine whether those who did not apply for the review of the judgment due to injustice can file an incidental application to pray the Court to examine injustice related to their issues. The Court finds that the basis of the alleged injustice was on the fact that a party who applied for the case review got sentenced alone while there were other people who contributed to the commission of an offence, and who have neither been sued nor punished, hence leading him to bear alone the burden of paying damages. The Court decided to summon only those who have been parties to that case, namely

Rutayisire Ruhinda Sabbat, who was sued by the Prosecution, together with Compagnie Rwandaise d'Hôtellerie et de Tourisme, Hôtel des Mille Collines, which filed a civil claim.

[43] The Court finds that, though Rutayisire Ruhinda Sabbat and the civil party were summoned in that case, and were allowed to speak though they had not applied for the review of the judgment due to injustice, it did not decide on their issues, rather, a decision was made on the applicant for the review due to injustice, meaning Mbarushimana Jean de Dieu. Therefore, the fact that Nzaramba Stevenson, Bamika Rumanyika Herbert, Karake Mutsinzi Charles and Mawadza Nhamo and their respective legal Counsels refer to the said judgment to pray the Court to decide on their issues, such request is unfounded.

[44] Based on the foregoing elucidations, the Court finds that those who have been parties to the case under review due to injustice are summoned, for the Court to ask them some questions that may help in the adjudication of the case under review due to injustice or for them to provide some information, but being not authorized to request for modification of the judgment on matters relating to decisions made for them, unless the Court finds that there is indivisibility of subject matters, so that the Court cannot rule on the application initiated by those who applied for the review of the judgment due to injustice without affecting the decisions made for those who did not apply for such review and their interests.

### **III. DECISION OF THE COURT**

[45] Held that the objection raised by the Prosecution has merit;

[46] Held that the injustice that has to be examined in the judgment RPA 00669/2017/HC/KIG - RPA 00680/2017/HC/KIG - RPA 00684/2017/HC/KIG - RPA 00685/2017/HC/KIG-RPA00686/2017/HC/KIG-RPA 00745/2017/HC/KIG rendered by the High Court on 10/12/2018 is only related to Magara Gahakwa John and Kamanzi Charlotte, and the Court may decide on matters relating to other parties in case there is the indivisibility of subject matters ;

[47] Held that the hearing of the instant case will be resumed on 18/01/2021.



**CASES RELATING TO CIVIL,  
COMMERCIAL, LABOUR AND  
ADMINISTRATIVE PROCEDURE**



**SIKUBWABO v RWANDA  
DEVELOPMENT BOARD ET AL  
(ADD2)**

[Rwanda SUPREME COURT-RS/INJUST/RCOM  
0007/2021/SC (Cyanzayire, PJ, Nyirinkwaya and Hitiyaremye,  
J.) July 15, 2022]

*Commercial procedure – Jurisdiction of Courts – Connexity of cases – Articles 94,98 and 100 of the Law N<sup>o</sup> 30/2018 of 02/06/2018 determining the jurisdiction of courts – Provisions of article 100 of the law N<sup>o</sup> 30/2018 of 02/06/2018 determining the jurisdiction of courts on matters pertaining to lis pendens shall as well apply to the issues related to the connexity of cases.*

*Commercial procedure – Jurisdiction of Courts – Connexity of cases – When there are cases linked to one another pending before hierarchical different courts, the lower court transfers the concerned case to the superior court – A litigant who requests for combining the cases submits a related application to the lower court which transfers it to the superior court.*

*Procedure for review of the judgment on grounds of being vitiated by injustice – Connexity of cases – A judgment filed for review due to injustice – A case filed in accordance with the ordinary procedure – Combining a judgment filed to review due to injustice with the case filed in accordance with the ordinary procedure – The case filed for review due to injustice is a judgment that has exhausted all the appeal remedies, such judgment might even have been executed; it cannot be combined with an appealable judgment– Courts that have been seized in accordance with the ordinary procedure shall stay the*

*proceedings pending the ruling of the courts seized for review of judgments due to injustice.*

**Facts:** In the context of reimbursing the loan owed by Sikubwabo to Bank of Africa, the Registrar General in RDB issued the certificate to auction the mortgage, he firstly issued the certificate to sell the property with UPI:1/02/09/01/844. Following the auction of such property, SIKUBWABO Raphaël filed a claim N° RCOM 01971/2017/TC/NYGE before the Commercial Court of Nyarugenge seeking its invalidation, he sued Bank of Africa, and RDB and Umugiraneza who was the receiver intervened. Pending the judgment ruling, the Registrar General issued the certificate to auction the property with UPI:1/02/13/03/115, this led Sikubwabo to file a summary procedure requesting the suspension of the auction. In the judgment N° RCOMA 00793/2017/CHC/HCC rendered at the appeal level, the Commercial High Court ruled for the provisional suspension of the auction of the property with UPI: 1/02/13/03/115, pending the Court decision on the case N° RCOM 01971/2017/TC/NYGE.

Case N° RCOM 01971/2017/TC/NYGE became final on 06/05/2020, it was decided that there is no ground substantiating the invalidation of the auction on the property with UPI: 1/02/09/01/844. On 08/05/2020, Sikubwabo requested in writing the Registrar General to definitively suspend the auction on the property with UPI: 1/02/13/03/115 because the loan for which the auction was conducted was not indicated; on 20/05/2020 he lodged a claim before the Commercial Court. The claim was registered on N° RCOM 00767/2020/TC, MUREGO who bought the property within the auction, and Umugiraneza who was the receiver voluntarily intervened, Bank of Africa which granted the loan forcibly intervened.

Murego raised the objection requesting for the inadmissibility of Sikubwabo's claim because he filed it after the expiration of the time limit provided under the law; the objection was not admitted at the first instance, but it was declared founded at the first and second appeals. In the judgment N° RCOMAA 00061/2020/CA rendered on 18/12/2020, the Court of Appeal sustained the ruling of the Commercial High Court, it expounded that it should be lodged within 15 days calculated from the date when the judgment N° RCOM 00577/2019/TC which determined the loan amount became final, meaning June 20, 2019, on basis of the provisions of the article 260, paragraph 4 of the Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure. Sikubwabo applied for the review of this judgment on the grounds of injustice.

This Court has examined whether Sindikubwabo delayed filing a claim seeking the suspension of the auction of his property with UPI: 1/02/13/03/115 as per the provisions of article 260 of the aforementioned Law N° 22/2018 of 29/04/2018. After the analysis of the foregoing article, the Court found that Sindikubwabo Raphaël had complied with the requirement of paragraph 6 of the concerned article and the Court held that his claim was lodged within the time limit provided under the law. This Court held that the judgment N° RCOMAA 00061/2020/CA rendered by the Court of Appeal on 18/12/2020 and the judgment N° RCOMA 00398/2020/HCC rendered by the Commercial High Court on 16/07/2020 are quashed, but this Court sustained the judgment N° RCOM 00767/2020/TC rendered by the Commercial Court on 22/06/2020.

The Court declared itself competent to examine the grounds of appeal submitted by Sindikubwabo Raphaël to the Commercial High Court. While pending the case hearing, Sindikubwabo

Raphaël applied for summoning the parties to the case N° RCOMAA 000024/2022/CA pending before the Court of Appeal which is linked with the claim he filed seeking for the invalidation of the auction of his property in UPI: 1/02/13/115 and combining it with this very case to avoid any eventual contradictory judgments since both cases are linked. He submits that he requests for combining this case with case N° RCOMAA 00024/22/CA that is staying before the Court of Appeal with reference to the decision of this Court in the interlocutory judgment where this Court upheld that all matters that pertain to this very case should be jointly handled in a bid to avoid any related potential cases that might lead to judgment review. He argues that the case that is pending before the Court of Appeal relates to the approval by the RDB Registrar General of the auction of the property registered on UPI: 1/02/13/03/115, and this is the subject matter of this case, both cases must be combined as they are linked.

The legal counsel of RDB notes that these cases cannot be combined since they are not linked, Sindikubwabo should not bring forth other matters different from the issues that he presented during the pre-trial conference. Other litigants state that, even if they had requested for separation of cases, after thorough analysis, they changed their position and they realized that both cases should be combined as they are linked.

**Held 1:** Provisions of article 100 of Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts on matters pertaining to *lis pendens* shall as well apply to the issues related to the connexity of cases.

2. When there are cases linked to one another pending before hierarchical different courts, the lower court transfers the concerned case to the superior court.
3. A litigant who requests for combining the cases submits a related application to the lower court which transfers it to the superior court.
4. The case filed for review due to injustice is a judgment that has exhausted all the appeal remedies, such a judgment might even have been executed; it cannot be combined with an appealable judgment.
5. In instances where there is a connexity of cases, the courts that have been seized in accordance with the ordinary procedure shall stay the proceedings pending the ruling of the courts seized for review of judgments due to injustice for avoiding contradictory judgments.

**Application for summoning the parties to the case that is pending before the Court of Appeal and combining it with this very case should not be admitted for examination because it was not submitted in accordance with the law; The hearing of this case will be resumed.**

**Statutes and statutory instruments referred to:**

Law N° 30/2018 of 02/06/2018 determining the jurisdiction of courts, articles 94 and 100.

**Cases referred to:**

Case N<sup>0</sup> RS/INJUST/RCOM 00005/2019/SC Kigali Ceramica & Furniture Ltd v Guaranty Trust Bank (Rwanda) Plc.

## Judgment

### I. BACKGROUND OF THE CASE

[1] This case emanates from the permit to sell n° 017-074833 issued by RDB Registrar General on 06/11/2017 for the auction of the property registered on the UPI: 1/02/13/03/115 for reimbursing the loan owed by Sindikubwabo Raphaël to Bank of Africa. That auction followed another one conducted on 09/06/2017 on the property registered on the UPI: 1/02/09/01/844 still for the repayment of the same loan.

[2] Following the auction of 09/06/2017, Sindikubwabo Raphaël lodged the claim before the Commercial Court of Nyarugenge seeking the invalidation of the auction and repayment of the loan as per the terms of the concerned loan contract. The claim was registered as RCOM 01971/2017/TC/NYGE, the respondent was Bank of Africa, and the intervening parties were RDB and Umugiraneza Jean Michel who was the receiver. After filing the claim and pending the judgment ruling, Sindikubwabo Raphaël received from the Registrar General the permit to sell n° 017-074833 06/11/2017 above mentioned together with the auction instructions about the mortgage of the property registered under UPI: 1/02/13/03/115.

[3] While this second auction was not yet approved by the Registrar General, Sindikubwabo Raphaël who stated that he was not informed about the remaining loan after the payment from the first auction, he filed a summary procedure seeking the provisional suspension of the auction of the property under UPI: 1/02/13/03/115, pending the examination of the issues claimed in the principal claim. The case was docketed as RCOM

02265/2017/TC/NYGE and it was heard on 04/12/2017, and the Court held that there is no reason for the suspension of the auction of 05/12/2017. This ruling was appealed under the case RCOMA 00793/2017/CHC/HCC before the Commercial High Court and it was heard on 21/12/2017 whereby the Court held that all the activities in relation to the auction of the property registered under UPI: 1/02/13/03/115 should be temporarily suspended, pending the ruling of the case RCOM 01971/2017/TC/NYGE.

[4] Following the ruling of the judgment RCOMA 00793/2017/CHC/HCC, Sindikubwabo Raphaël lodged the claim before the Commercial High Court requesting the intervention of the Registrar General to provide the reasons for the non-execution of the above judgment<sup>1</sup> and Murego Paulin, who bought the property in the suspended auction, was refunded his money. The case was registered as N° RCOM 00024/2019/HCC and it was heard on 04/10/2019 the Court held that it lacks the jurisdiction to hear such cases as they fall under the administrative procedure. This judgment was appealed under N° RCOMA 01016/2018/HCC before the Commercial High Court and it was heard on 14/02/2020, and the Court held that the claim was admitted and the Registrar General has duly accomplished his duty vis-à-vis the execution of the judgment N° RCOMA 00793/2017/CHC/HCC as he temporarily suspended the approval of the auction on the property registered under UPI: 1/02/13/03/115.

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<sup>1</sup> He lodged the claim with reference to article 184 of Law n0 22/2018 of 29/04/2018 relating to the civil, commercial, labour, and administrative procedure that provides the sanctions that apply to an administrative authority for non-execution of a judgment.

[5] The judgment N° RCOM 01971/2017/TC/NYAGE (regarding the invalidation of the auction of 09/06/2017 on UPI: 1/02/09/01/844) which caused the provisional suspension of the auction of the property with UPI: 1/02/13/03/115, was rendered on 16/05/2018 and the Court held that there was no reason for invalidation of the auction. This judgment was appealed under N° RCOMA 00443/2018/CHC/HCC before the Commercial High Court and it was heard on 14/12/2018, and the Court sustained the appealed judgment. Sikubwabo Raphaël lodged a second appeal under N° RCOMAA 00039/2019/CA before the Court of Appeal; the case was heard on 06/05/2020, and the Court held that the appeal was not admitted as it was filed after the expiration of the time limit.

[6] After the judgment RCOM 01971/2017/TC/NYAGE had exhausted all its appeal remedies, Sindikubwabo Raphaël wrote to the Registrar General on 08/05/2020 requesting for the definitive suspension of the auction on the property registered under UPI: 1/02/13/03/115. On 20/05/2020 he lodged the claim before the Commercial Court seeking the definitive suspension of the auction on the property registered under UPI 1/02/13/03/115, because the loan amount underpinning the auction was not indicated. The case was registered as RCOM 00767/2020/TC, Murego Paulin who bought the property in the auction, and Umugiraneza Jean Michel, the receiver voluntarily intervened, whereas, the Bank of Africa which granted the loan forcibly intervened.

[7] In the course of the hearing, Sindikubwabo Raphaël raised the objection requesting the Court not to admit the claims of the parties who voluntarily intervened as they had no interest in the case. Murego Paulin has as well raised the objection

requesting the Court not to admit the claim of Sindikubwabo Raphaël as he filed it after the expiration of the time limit for applying for the invalidation of the auction.

[8] The case was heard on 22/06/2020 and the Court held that the objection raised by Sindikubwabo Raphaël has no effect on Murego Paulin as he bought the contested property in the auction, and he is legally entitled to intervene in the case. It decided that the objection of inadmissibility of the voluntary intervention of Umugiraneza Jean Michel is founded as it was not indicated that there were procedural irregularities related to the auction of the contested property and he has no personal interests that are prejudiced in the case. With regard to the objection related to the inadmissibility of the claim as he was lodged with delays, the Court decided to admit and hear it on the merits. With regard to the merits of the case, the Court held that the claim filed by Sindikubwabo Raphaël lacks merit, and it sustains the auction of the property on UPI: 1/02/13/03/115.

[9] Sindikubwabo Raphaël appealed against the above ruling before the Commercial High Court and the appeal was registered as N° RCOMA 00398/2020/HCC, he submitted that he appealed because the Commercial Court did not decide about the suspension of the contested auction while there were reasons that justify its suspension. He also requested the Court to examine whether judgments RCOMA 00793/2017/CHC<sup>2</sup> and RCOM 01971/2017/TC/NYGE<sup>3</sup> had effects on the very auction. In the

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<sup>2</sup> In this judgment, it was held that an auction that was supposed to be conducted on the property with UPI: 1/02/13/03/115 be suspended pending the ruling of case No RCOM 01971/2017/TC/NYG.

<sup>3</sup> The case in which SIKUBWABO Raphaël requested for the invalidation of the auction conducted on 09/06/2017 on the property UPI: 1/02/09/01/844,

course of this case, Murego Paulin raised the objection arguing that the claim was admitted at the first instance while it should not be admitted because Sindikubwabo Raphaël delayed filing the claim. Umugiraneza Jean Michel filed the cross-appeal requesting to determine whether the first court did not rule *ultra-petita*, and he claimed various damages. Bank of Africa has a well filed a cross-appeal and claimed damages for expenses incurred at the appeal level.

[10] The case was heard on 16/07/2020, the Commercial High Court held that the objection raised by Murego Paulin has merit, the claim filed by Sindikubwabo Raphaël before the Commercial Court was not admissible for the examination since it was lodged after the expiration of the time limit. The Court expounded that by filing the claim if the claimant referred to the ruling of the judgment N° RCOM 00577/2019/TC rendered on 20/06/2019 which determined the loan he had to pay, it is evident that the auction that was suspended by the different judgments should be immediately resumed from the judgment pronouncement. Therefore, the fact that Sindikubwabo Raphaël filed his claim on 20/05/2020, eleven months after the auction should have been resumed, indicates that he delayed filing the claim, the latter should not be admitted for examination on the merits.

[11] The Commercial High Court held that the cross-appeal lodged by Bank of Africa and Umugiraneza Jean Michel has merit, the Court held that the judgment N° RCOM 00767/2020/TC rendered by the Commercial Court on the 22/06/2020 is quashed, it ordered to Sindikubwabo Raphaël to pay to Bank of Africa and Umugiraneza Jean Michel 500,000

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where it was held that he failed to justify his request and during the appeal, the High Court sustained the previous judgment.

Frw for dragging them into unnecessary lawsuits, 500,000 Frw for the counsel fee and 300,000 Frw for the procedural fee, the total is 1,300,000 Frw for each one.

[12] Sikubwabo Raphaël appealed against the above ruling before the Court of Appeal, requesting the latter to determine whether his claim was filed after the expiration of the time limit as it has been held by the Commercial High Court, while the ruling of the judgment N° RCOMA 00793/2017/HCC rendered on 21/12/2017 had ordered for the temporary suspension of the auction of the property registered on UPI: 1/02/13/03/115, pending the Court decision on the case N° RCOM 01971/2017/TC/NYGE. In the judgment N° RCOMAA 00061/2020/CA rendered by the Court of Appeal on 18/12/2020, the Court held that the appeal of Sikubwabo Raphaël lacks merit, and it sustained the appealed judgment.

[13] Sikubwabo Raphaël petitioned the President of the Supreme Court seeking the review of judgment N° RCOMAA 00061/2020/CA rendered by the Court of Appeal on 18/12/2020 as it was vitiated by injustice, he stated that the ruling of the judgment disregarded the laws and elements of evidence. The President of the Supreme Court decided that the judgment should be re-adjudicated by the Supreme Court and it was docketed as RS/INJUST/RCOM 00007/2021/SC.

[14] The hearing was conducted in public on 13/04/2022, RDB was represented by Counsel Nkusi Fred, Bank of Africa by Counsel Kayiranga Cyrille, Murego Paulin by Counsel Munderere Leopold, Umugiraneza Jean Michel by Counsel Matimbano Barton and Sikubwabo Raphaël was assisted by Counsel Uwizeyimana Venuste. On that date, the Court firstly determined whether the claim filed by Sikubwabo Raphaël before

the Commercial Court seeking the definitive suspension of the auction of the property registered under UPI: 1/02/13/03/115 was lodged with delays. The Court notified the parties that the ruling on that issue will be pronounced on 29/04/2022.

[15] On 29/04/2022, the Court pronounced the interlocutory judgment and held that:

- a. the claim filed by Sikubwabo Raphaël before the Commercial Court seeking the definitive suspension of the auction of the property registered under UPI: 1/02/13/03/115 should be admitted;
- b. the judgment N° RCOMAA 00061/2020/CA rendered by the Court of Appeal on 18/12/2020, together with the preceding judgment N° RCOMA 00398/2020/HCC rendered by the Commercial High Court on 16/07/2020 are hereby quashed.
- c. the case hearing on the appeal lodged by Sindikubwabo Raphaël before the Commercial High Court will be resumed on a date the Court's Registry shall notify the parties.

[16] The hearing was rescheduled on 13/06/2022, all parties appeared assisted or represented as previously. The Court informed the parties of a letter that Sindikubwabo Raphaël submitted to the Court on 17/05/2022 requesting the Court to combine case N° RCOMAA 00024/2022/CA<sup>4</sup> pending before the Court of Appeal with this very case as they are linked.

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<sup>4</sup> That case has been suspended pending the decision of this Court.

[17] Having heard the statements of each party on the request of Sikubwabo Raphaël, the Court closed the hearing and informed the litigants that the ruling on this issue will be pronounced on 15/07/2022.

## II. ANALYSIS OF THE LEGAL ISSUE

**Determine whether case N° RCOMAA 00024/2022/CA pending before the Court of Appeal should be combined with case N° RS/INJUST/RCOM 00007/2021/SC**

[18] Sikubwabo Raphaël argues that the reasons why he requests that this very case be jointly tried with the case N° RCOMAA 00024/2022/CA which is stayed before the Court of Appeal are based on the decision taken by this Court in the interlocutory judgment where it upheld that all matters that pertain to this very case should be jointly handled in a bid to avoid any related potential cases that might lead to judgment review due to injustice. He explains that due to the fact the case that is pending before the Court of Appeal concerns the decision taken by the RDB Registrar General for approving the auction of the property registered with UPI: 1/02/13/03/115, while it is the subject matter of this case, the two cases must be combined since they are closely related.

[19] Counsel Uwizeyimana Vénuste assisting Sikubwabo Raphaël argues that the two cases must be combined since they are closely related so that one case can affect another in instances where they are separately tried. He submits that based on paragraph 35 of the interlocutory judgment, he notes that trying this case separately with the case pending before the Court of

Appeal, there can be some of its issues that would be raised before the Supreme Court in the course of the judgment review; thus it is better to combine those cases for jointly handling the issue.

[20] Counsel Nkusi Fred representing RDB finds that the cases should not be combined, because they are not linked and Sindikubwabo should not bring forth other matters different from the issues that he presented during the pre-trial conference.

[21] Umugiraneza Jean Michel and his legal counsel submit that, even if they had requested for separation of cases, after thorough analysis, they changed their position and they realized that both cases should be combined as they are linked. They aver that on one side Sindikubwabo Raphaël requests for the suspension of the auction, on the other one he requests for its invalidation, he changes the wording, but the issue is the same; based on article 94 of Law N<sup>0</sup> 30/2018 of 02/06/2018 determining the jurisdiction of courts, they realize that both cases must be combined even if their nature is different as one is under review due to injustice and the other is about the ordinary appeal. They add that since the law is silent about the procedure applicable when the cases have different natures while the subject matter is the same, the Supreme Court should set the position accordingly.

[22] They also submit that the claim that Sindikubwabo Raphaël lodged before the Court of Appeal has two issues, which are the invalidation of the auction on the property registered under UPI: 1/02/13/03/115, and the refund of the remaining sum of money from the auction of the first mortgage, both cases are closely related since the main issue is the auction invalidation and the secondary issue is the money refund, this fact cannot bar the combination of both cases.

[23] Counsel Munderere Léopold representing Murego Paulin, though he had requested for the separation of the cases, he afterward realized that they should be combined as the claims are similar, Sikubwabo Raphaël only changed the wording, on one side he requested for the invalidation of the auction and on the other side he claimed for its suspension. He explains that it is better to jointly try the cases for the sake of speeding up the proceedings since the house was bought under the auction in 2017 and the buyer has no access to it.

[24] He also avers that the fact that one case is under review due to injustice while the other is about the ordinary appeal is not an issue as the position was set in the interlocutory judgment pronounced on 29/04/2022 in the paragraph 35, it was held that the Supreme Court has to handle all the issues pertaining to this very case. With regard to the refund claimed by Sikubwabo Raphaël in the case before the Court of Appeal, he states that it is a result of the claim related to the auction, not a separate claim.

[25] Counsel Kayiranga Cyrille representing Bank of Africa submits that he earlier had requested for the separation of the cases since the litigants were not the same, but having analyzed them and noted that they are the same, he requests that they can be combined as there can be no prejudice.

## **DETERMINATION OF THE COURT**

[26] Article 94 of Law N° 30/2018 of 02/06/2018 determining the jurisdiction of courts provides that “Connexity occurs when many cases are linked to one another in a way that the decision in one case affects the other and if they are tried separately, they might be contradictory|.

[27] Article 98 of the above-mentioned law provides that “Several actions or subject matters to be heard by the jurisdiction of different courts may, upon a written decision of the president of the court or the president of the bench, be heard in a same trial if there is any connexity of offense.” However, this article does not specify the President of the bench of which court among the seized courts has the competence of deciding about the combination of cases for a joint trial.

[28] ] With the Organic Law, N° 51/2008 of 09/09/2008 determining the organisation, functioning, and jurisdiction of courts that were modified and completed by the current law in force, article 153<sup>5</sup> specified a court that transfers the case to the other, upon the request of one of the parties in instances where there is *lis pendens* or connexity of cases pending before different courts. The new Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts specifies the articles that provide for the connexity of cases, and those relating to *lis pendens* of cases and thus the provisions of article 153 of the Organic Law N° 51/2008 of 09/09/2008 are only limited to matters pertaining to *lis*

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<sup>5</sup> Article 153 provides that: When various claims of the same subject matter based on the same clause and between the same litigants are pending before different courts or if various related claims are pending before different courts such that the resolution of one may affect the others, any of the courts may upon request of any of the parties to the suit send such cases to another court according to the following procedure and manner and in respect of its sequence:

1° a Court which has decided on some preliminary issue other than on merits shall take precedence over that which has not taken any interim orders;

2° a superior Court shall take precedence over an inferior Court;

3° a Court before which the suit or suits were filed first shall take precedence over other Courts;

4° an ordinary Court shall take precedence over a specialized Court.

pendens<sup>6</sup>. The Court finds that such fact results from omission, as there would be no reason for the legislator not to specify the court that transfers to another one the case when there is a connexity of cases before different courts. It is for this reason that this Court finds that the provisions of article 100 of the aforementioned law n° 30/2018 of 02/06/2018 about the *lis pendens* should as well apply to the connexity of cases.

[29] The above-mentioned article 100 provides that one of the seized courts transfers the case to another court, the subparagraph (3<sup>0</sup>) stipulates that the higher court which takes precedence over a lower court is the one to which the case is transferred; meaning that it is the lower court that transfers the case to the higher court in instances where there is connexity of cases filed before both courts. This connotes that a litigant who seeks the combination of cases submits an application to the court that has to transfer the case, and that is the lower court. This Court finds that if the application is submitted to the higher court, the latter would transfer the case, while it is not the provision of subparagraph 3<sup>0</sup> of the above-mentioned article 100.

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<sup>6</sup> Article 100 of the Law n0 30/2018 of 02/06/2018 determining the Jurisdiction of the Court provides that where a case is filed in two different courts with competent jurisdiction, one of the courts sends the case to the other by selecting: 1° a specialised court which takes precedence over an ordinary court;

2° an appellate court which takes precedence over a court of first instance;

3° a higher court which takes precedence over a lower court;

4° a court that has commenced the court process takes precedence over the one that has not yet decided on the case;

5° a court that was seized before any other court.

[30] The Court finds that the stance of the foregoing paragraph is not a particularity of Rwanda, as indicated by articles 101<sup>7</sup> and 102<sup>8</sup> of the French code of civil procedure which provides that when different courts were seized of linked cases so that they should be jointly tried for the interest of justice, one court can be requested to transfer the case to another court. When the seized courts are not of the same level of jurisdiction, the application is submitted to the lower court.

[31] Concerning this very case, Sikubwabo Raphaël petitioned the President of the Supreme Court on 13/05/2022 requesting to combine case N° RCOMMA 00024/2021/CA with the case RS/INJUST/RCOM 00007/2021/SC because they are closely related. As the letter indicates, the applicant requested this Court to request for the transfer of the case pending before the Court of Appeal, while, as it is highlighted in the foregoing paragraphs, he should have requested the lower court, that is the Court of Appeal to transfer the case.

[32] The Court finds that the statements of Sikubwabo Raphaël that he referred his request to the elucidations provided by this Court in paragraph 35 of the interlocutory judgment rendered on 29/04/2022 which ruled that *all issues of the case should be jointly handled by the superior court for avoiding potential cases that would be subject to review due to injustice*

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<sup>7</sup> *S'il existe entre des affaires portées devant deux juridictions distinctes un lien tel qu'il soit de l'intérêt d'une bonne administration de la justice de les faire instruire et juger ensemble, il peut être demandé à l'une de ces juridictions de se dessaisir et de renvoyer en l'état la connaissance de l'affaire à l'autre juridiction.*

<sup>8</sup> *Lorsque les juridictions saisies ne sont pas de même degré, l'exception de litispendance ou de connexité ne peut être soulevée que devant la juridiction du degré inférieur.*

are the misunderstanding of that paragraph as it cannot be taken alone into consideration without linking it to other paragraphs. The Court intended to highlight in that judgment that when the Court is seized for the judgment review because the lower courts did not admit the claim, and finds that it should have been admitted, it quashes the judgments that ruled for its inadmissibility and examines the merits the claim filed to lower court. In paragraph 35, the Court explained the rationale behind such a position<sup>9</sup>, it is not related to the fact that all other cases of Sikubwabo Raphaël pending before other courts, linked with the subject matter, should be combined with this case, as he intends to adduce it.

[33] Based on the foregoing elucidations, the Court finds inadmissible the application filed by Sikubwabo Raphaël for requesting the transfer of case N° RCOMAA 00024/2022/CA pending before the Court of Appeal and combining it with the case n° RS/INJUST/RC 00007/2021/SC as they are linked, because it was not submitted in accordance with the law.

[34] The Court finds that, in the context of setting the position useful for other courts, it must determine whether the cases under litigation based on the claims filed to the courts using the procedure of the judgment review due to injustice, can be combined with the cases filed before the courts using the ordinary procedure.

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<sup>9</sup> The Court motivated that: *When the procedure of judgment review due to injustice was established, the legislator intended that a court which is seized under such a procedure would be allowed to examine all the issues of the contested decision, the legislator so thought to avoid a scenario of handling part of the submitted claim and then leaving the remaining issues to the lower courts, which issues might again accrue and end up in the injustice related review yet they could have been holistically handled by the superior court.*

[35] The claims filed to the courts using the procedure of the judgment review due to injustice are lodged in regards to the final judgments, using the extraordinary procedure for their hearing, provided under article 53 to article 62 of Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts. Some of the provisions of the above articles state that there is the prior consideration conducted by the Presidents of Courts or the Inspectorate-General of Courts, based on the reasons provided under the law, and the final decision is taken by the President of the Supreme Court.

[36] The Court finds that combining the cases under litigation based on the claims filed using such procedure and the cases under litigation on the claims filed using the ordinary procedure (without using the procedure provided for the judgment review due to injustice), which might even include cases that are under litigation at the first instance, it is inappropriate for the fair administration of justice. The above stance is similar to the ruling of this very Court in the judgment N° RS/INJUST/RCOM 00005/2019/SC<sup>10</sup> in which the parties were Kigali Ceramic & Furniture Ltd v Guaranty Trust Bank (Rwanda) Plc. In the above judgment, the Court held that a judgment under review due to injustice is a judgment that has already exhausted all the possible appeal remedies and such a judgment might even have been executed; it cannot be combined with the appealable judgment.

[37] The Court finds that the best way to avoid the concern of contradictory judgments between the rulings of cases under review due to injustice and the rulings on cases lodged under the normal judicial procedure is that the courts seized under the

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<sup>10</sup> See the act of the proceedings for the hearing of 22/06/2020, p.11

ordinary procedure should await the rulings of the courts seized under the procedure of the judgment review due to injustice.

### **III. DECISION OF THE COURT**

[38] Holds that the application by Sikubwabo Raphaël for requesting the transfer of case N° RCOMAA 00024/2022/CA under litigation before the Court of Appeal and combining it with case N° RS/INJUST/RC 00007/2021/SC is inadmissible for examination because it was not submitted in accordance with the law.

[39] Holds that the case hearing will be resumed on the date that the Court's Registry shall notify the parties.



**TWAGIRAYEZU ET AL v  
TWAGIRAYEZU ET AL (ADD)**

[Rwanda SUPREME COURT –RS/INJUST/RC 00007/2020/SC  
(Ntezilyayo, P.J., Cyanzayire, Nyirinkwaya, Hitiyaremye and  
Karimunda, J.) June 25, 2021]

*Procedure law – Losing a case on the first and second instances for the same reasons – Judicial plagiarism – The Second appeal – We talk of judicial plagiarism when the appellate court happens to entirely plagiarise the litigants' submissions or the entire decision of the appealed judgment without indicating the reference thereof – The foregoing cannot be construed as losing a case for same grounds yet the appellate court has just copied the entire wording of the previous court's decision without mentioning whether it concurs with the appealed ruling – Nonetheless, judicial plagiarism can neither be taken for reference-based motivation, as the latter is pre-conditioned on the prior analysis of whether parties have filed their appeals with new arguments, and the appellate Court has to as well acknowledge that with regard to the appeal, it concurs with the previous court's decision, if at all it intends to thereof take a similar stance.*

**Facts:** This case started from the Intermediate Court of Gasabo, Twagirayezu Alice and her siblings suing their brother Twagirayezu Albert, and requesting for the revocation of the plot sale agreement that their brother Twagirayezu Albert had concluded with late Niyongira, the husband to Mrs. Umumaranyota. Twagirayezu claimed that the sold plot belonged to the family and it was sold without informing her. The

Intermediate Court of Gasabo held that the sold plot belongs to Twagirayezu Albert as he produced all documents proving his ownership of the disputed plot; the Court found that the elements of evidence produced by the claimants were obtained after the contested plot sale, it has therefore held that the plot sale agreement should remain as concluded.

Twagirayezu Alice and her siblings appealed the above ruling to the High Court claiming that Twagirayezu Albert took advantage of their absence as they were no longer living in Rwanda and he appropriated himself of their family property and registered it under his name, she also added that had the Court investigated over this issue or had it examined their submitted evidence, it would have realised that Twagirayezu Albert could not account for the origin of the property that he misappropriates.

In the hearing, Twagirayezu and her siblings failed to prove their ownership of the disputed plot and the High Court held to sustain the appealed judgment as it had been rendered by the Intermediate Court of Gasabo.

Twagirayezu Alice and her siblings appealed the High Court's ruling before the Court of Appeal, and they claimed that the High Court never bothered to examine the origin of the sold property that Twagirayezu misappropriates and neither did the Court examine a statement that he himself wrote confirming that he sold the disputed family property with no prior permission by his siblings.

Mrs. Umumaranyota raised an objection of claim inadmissibility by the Court of Appeal, arguing that the subject matter's monetary value is less than 75,000,000 Frw and that the appellants of the case have lost the very case before both the previous courts and for the same reasons.

The Court of Appeal held that though the property valuers have estimated the disputed plot to be more than 75,000,000 Frw, both the High Court and the Intermediate Court of Gasabo had a sole and a common assignment of determining whether the disputed property belongs to Twagirayezu Albert as an individual, or whether this property belongs to the entire family of Twagirayezu Aloys, their father, and the very Court thus ruled that both courts have based their decisions on the same reasons, and therefore, the instant appeal does not fall under the jurisdiction of the Court of Appeal.

Twagirayezu Alice and her siblings petitioned the President of the Supreme Court requesting the review of the judgment rendered by the Court of Appeal for being vitiated by injustice. The President of the Supreme Court analysed their petition and ordered to have the case re-adjudicated. Twagirayezu Albert together with Mrs. Umumaranyota raised an objection of inadmissibility against such an application for review arguing that applicants failed to produce any ground of injustice which could lead to the review of the disputed judgment, besides, those applicants have no right to request for the revocation of an agreement they have not been parties to. The Supreme Court stayed the review moving that once the President of the Supreme Court has ordered for a case review, no more objections against the hearing on the merits of the case could be raised if not for those related to public order concerns. With regard to whether the appellants have the right to request for revocation of an agreement they have never been party to, the Supreme Court ruled that such an objection falls in the merit of the case, and it cannot be separately examined not until the Supreme Court has established that the Court of Appeal has committed an irregularity when it held that the appellants lost the case before

both the High Court and the Intermediate Court for the same grounds.

The Supreme Court held that due to the fact that the High Court has not motivated its ruling and that it simply and entirely copied and pasted the content of the judgment rendered by Gasabo Intermediate Court, the Court of Appeal had no reason to rule that the appellants have lost the case for the same reasons, yet the case has solely been substantiated on the first instance, therefore the second appeal should be admitted.

**Held:** When the appellate court happens to entirely plagiarise the parties' submissions or the entire decision of the appealed judgment without indicating the reference thereof, it is referred to as judicial plagiarism. For the purpose of correction, the court that has detected such plagiarism should have the case retried. Therefore, the court that has been seized for the second appeal, might not move that the appellants have lost the case for the same reasons without both the previous court's positions to serve it as a reference of comparison; more so that the sole existing motivation on the case, was given on the judgment and the ruling of the very first court.

**The second appeal should have been admitted.**

**Statutes and statutory instruments referred to:**

Law no 30/2018 of 02/06/2018 determining the jurisdiction of Courts, article 52.

**Cases referred to:**

RCOMAA 0051/14/CS rendered 04/12/2015 of Rwanda  
Revenue Authority vs SECAM Ltd, paragraph 22.

RCOMAA 0038/16/CS-RCOMAA 0033/2016/SC rendered  
21/04/2017 between Bank of Kigali Ltd vs Mulisa Kana  
Martin, paragraph 21;

RCOMAA 0048/16/CS rendered 19/05/2017 of Rwanda  
Revenue Authority vs SODAR Ltd, paragraphs 17 and  
18;

RS/INJUST/RCOM 00002/2020/SC rendered 25/09/2020 of  
Road Solution Pavement Products vs MAILCO Ltd,  
paragraph 24;

DiLeo vs Ernst & Young 901 F.2d 624 (7th Cir. 1990);  
Cojocarv v. B.C. Women’s Hosp. & Health Ctr., No. 34304,  
2013 SCC 30 (Can. May 24, 2013);

Stone vs City of Kiowa, 950 P.2d 1305 (Kan. 1997);  
State vs McDermott, 810 N.W.2d 237 (Wis. Ct. App. 2012)  
para 25.

**Authors quoted:**

Serge Guinchard (sous la dir.), *Droit et pratique de la  
procédure civile*, Dalloz, Paris, 2014, p.1191

## Judgment

### BACKGROUND OF THE CASE

[1] This case started from the Intermediate Court of Gasabo, Twagirayezu Albertine, Twagirayezu Alice, and Twagirayezu Monique, all suing their brother Twagirayezu Albert for having sold a family plot registered on UPI 1/02/10/03/4370 without

informing them. They requested for the revocation of the plot sale agreement that their brother, Twagirayezu Albert concluded with Niyongira Jean Claude, the late husband to Mrs. Umumaranyota Agnès, and the claimants prayed to have their property returned to them.

[2] In the judgment, RC 00038/2017/TGI/GSBO rendered on 27/07/2018, the Intermediate Court of Gasabo found that Twagirayezu Albert who sold the disputed plot, had an authentic deed registered under his name, and he as well had other related property titles that were issued by the local authorities of the area; he also had the extract cadastral plan of the plot and he had been paying taxes, all to prove that he is the rightful owner of the plot n0 4370. In relation to the above, the Court declined to consider the land titles that the claimants produced as evidence of their plea since these titles were issued to them in 2014 yet the disputed plot was sold in 2012, adding to the fact that the claimants' witnesses who were to testify about their cause did not appear before the Court, leave alone that looking at the case, their testimonies were not convincing enough to rebut the evidence that Twagirayezu Albert has produced. The Court has therefore moved that though Twagirayezu Albert is not indicating the origin of the disputed property, the evidence he has presented to the Court indicates that the disputed property belongs to him. Therefore, the Court ruled that the plot sale agreement of 22/02/2012 stays as agreed since it was legally concluded.

[3] Twagirayezu Albertine, together with Twagirayezu Alice, Twagirayezu Alphonsine, and Twagirayezu Monique appealed the above ruling to the High Court claiming that their brother Twagirayezu Albert took advantage of their absence since they were no longer living in Rwanda and registered the family

property under his own names and sold it. They added that had the Court investigated the issue or if it analysed the evidence they had submitted, it would have realised that Twagirayezu Albert could not explain the origin of the property he misappropriated to himself and sold out.

[4] In the judgment, RCA 00291/2018/HC/KIG rendered on 31/02/2019, the High Court found that by the time Twagirayezu Albert sold the disputed plot to Niyongira Jean Claude, he had all the elements of evidence proving his ownership of the sold plot, and the very evidence gave him the full right to sell it. The fact that his opponents have nothing to prove their ownership of the disputed property is another aspect that proves that the sold plot belongs to Twagirayezu Albert, and the High Court held to stay the ruling of the judgment RC 00038/2017/TGI/GSBO of 27/07/2018 as it was decided by the Intermediate Court of Gasabo, and it ordered to the claimants to pay to Mrs. Umumaranyota 250,000 Frw for Counsel fee and 100, 000 Frw to compensate her for a procedural fee.

[5] Twagirayezu Albertine together with Twagirayezu Alice, Twagirayezu Alphonsine and Twagirayezu Monique, appealed the above decision to the Court of Appeal, arguing that the High Court never bothered to examine the origin of the property that their brother Twagirayezu Albert had sold, and neither did it consider a statement that Twagirayezu himself wrote confirming that he sold the family plot with no prior permission of his siblings. The claimants added that the High Court disregarded the submitted purchase agreement of 01/11/1984 concluded between Icyimpaye Marie Rose and Kavamahanga together with the then witnesses' testimonies yet those were the sound facts that could help clarify about the origin of the disputed property.

[6] Mrs. Umumaranyota Agnès raised an objection of inadmissibility, stating that the sale agreement for which the claimants sought revocation is of a plot that cost 10,000,000 Frw only, which means that the subject matter is less than 75,000,000 Frw as so provided by article 52 of the Law no 30/2018 of 02/06/2018 determining the Jurisdiction of Courts, and she added that she again objects to the admissibility of this case owing to another fact that the claimants have lost this case before both the High Court and the Intermediate Court and for the same reasons.

[7] In judgment, RCAA 00020/2019/CA rendered on 26/06/2020, the Court of Appeal found that the property valuers estimated the plot in UPI 1/02/10/03/4370 at a monetary value of 92,825,000 Frw, but still, the Court of Appeal found that both the High Court and the Intermediate Court were solely and uniformly requested to determine whether the sold property belonged to Twagirayezu Albert or the family of Twagirayezu Aloys, their father. The Court of Appeal found that both Courts based their ruling on the same reasons. The seized court therefore declared itself incompetent to hear the lodged appeal and it ordered the claimants to jointly pay to Mrs. Umumaranyota Agnès 500,000 Frw for both Counsel and procedural fees.

[8] Twagirayezu Albertine together with Twagirayezu Alice, Twagirayezu Alphonsine, and Twagirayezu Monique, petitioned the President of the Supreme Court praying to have the judgment RCAA 00020/2019/CA of 26/06/2020 rendered by the Court of Appeal, reviewed for injustice-related grounds. Following the analysis of their petition, the President of the Supreme Court issued a writ 058/CJ/2020 of 19/11/2020 and sent the case to the Registry of the Supreme Court for it to be retried.

[9] The hearing was conducted in public on 02/06/2021, with Twagirayezu Albertine, together with Twagirayezu Alice, Twagirayezu Alphonsine, and Twagirayezu Monique represented by Counsel Nshuti Salim and Counsel Kazeneza Théophile while Twagirayezu Albert was represented by Counsel Ngezahayo Bernard, whereas Mrs. Umumaranyota Agnès was represented by Counsel Nsengiyumva Viateur.

[10] The Court had to first analyze the objections raised by both Twagirayezu Albert and Mrs. Umumaranyota Agnès who first invoked the inadmissibility of the claim arguing that the claimants failed to prove the injustice leading to the judgment review, as they also argued that the claimants not entitled to request for the revocation of an agreement to which they have never been parties.

[11] With regard to the objection related to the lack of highlighted injustice, with reference to paragraph one of article 62<sup>1</sup> and article 63<sup>2</sup> of the Law no 30/2018 of 02/06/2018 determining the Jurisdiction of Courts; based on the analysis made in the case of Busoro Gervais vs Busoro Mugunga Désiré et al. whereby the Court held that once the President of the Supreme Court has ordered for a case review, no more objections shall be raised; if not the objections with public order concerns<sup>3</sup>;

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<sup>1</sup> « When, upon considering a report on the judgment vitiated by the injustice that is submitted to him/her, the President of the Supreme Court decides that the case be re-adjudicated, he/she forwards the file to the Chief Registrar of the Supreme Court for him/her to set the date for retrial... »

<sup>2</sup> « When the Supreme Court or any other court designated by the President of the Supreme Court receives an application for review of a judgment on grounds of being vitiated by injustice, it examines the merits of the case anew and in the presence of all parties »

<sup>3</sup> Case RS/INJUST/RC 00022/2018 of Busoro Gervais v. Busoro

the Court, on the bench, therefore moved not to admit the raised objection.

[12] With regard to the objection related to the fact that the claimants have no capacity to request for the revocation of an agreement, they have not been parties to, though such ground was raised as an objection, such an objection falls in the merits of the case, and it cannot be separately examined not until the Supreme Court has established that the Court of Appeal has committed an irregularity when it held that the appellants lost the case before both the High Court and the Intermediate Court and thus for the same reasons.

[13] Having declared inadmissible the objections raised by the legal counsel of both Twagirayezu Albert and Mrs. Umumaranyota Agnès, the Court proceeded to the determination of whether the Court of Appeal should have admitted the second appeal on this case.

## **II. ANALYSIS OF THE LEGAL ISSUE**

### **Whether the Court of Appeal should have admitted the second appeal filed by Twagirayezu Alice et Al.**

[14] Counsel Nshuti Salim representing Twagirayezu Alice and her siblings, argues that the Intermediate Court of Gasabo analysed whether Twagirayezu Albert had the right to sell the disputed plot, or whether the disputed plot was the shared property. Before the appellate court, the same issues were still examined, but with an emphasis on the real origin of the disputed property; but the High Court has also added an issue of

determining whether the sale agreement that Twagirayezu Albert concluded with Niyongira Jean Claude should be nullified; and this very last issue had not been examined by the previous Court; the reason why in case the issues examined by both Courts are not the same, the underpinning grounds could not be the same, even though both Courts had taken the same decision. He prayed the seized Court to examine whether it is true that the Intermediate Court and the High Court had been seized for the same issues and they both similarly analysed them ; in case it finds that it is not true, it shall hold that his clients did not lose the case for the same reasons, therefore, the second appeal should have been admitted since its subject matter amounts to 92,825,000 Frw.

[15] For Counsel Kazenzeza Théophile who also assists Twagirayezu Alice and her siblings, prays the Court to notice that the Intermediate Court and the High Court were not seized for the same issues, he also added that while before the High Court, Twagirayezu Albert failed to account for the origin of the property he registered under his names yet the burden to do so was on him. Therefore, it is his finding that the second appeal of this case should have been admitted since the rulings of both previous courts were based on different grounds.

[16] Counsel Nsengiyumva Viateur representing Mrs. Umumaranyota Agnès submits that while before the Intermediate Court of Gasabo and before the High Court as well, both courts had to first examine whether Twagirayezu Albert had the right to sell the disputed property and they also examined the origin of this property, he states that both courts found that Twagirayezu Albert has the evidence proving beyond reasonable doubt that the disputed plot belonged to him, the Courts have also examined

whether the contested sale agreement was to be nullified, but both the Courts moved to stay the agreement as it was legally concluded; he, therefore, notices that the Court of Appeal did not err, since the claimants had lost the case in both previous Courts and for the same reasons.

[17] [17] Counsel Ngezahayo Bernard assisting Twagirayezu Albert submits that he concurs with Counsel Nsengiyumva Viateur, and he also argues that the second appeal should not have been admitted.

## **DETERMINATION OF THE COURT**

[18] Article 52, paragraph 3 of the Law no 30/2018 of 02/06/2018 relating to the Jurisdiction of Courts provides that « [...] The appeal at second instance cannot be admissible for cases in which parties have admitted charges brought against them or a party who has lost his/her case in both courts for the same reasons. [...] »

[19] By defining the case ground, the Court set the position that the ground cannot be confused with the decision, rather they are underlying grounds on which each Court relied in taking the decision in consideration of the facts and the legal provisions, the grounds are based on for justifying and explaining to the parties the motivation for the decision taken by the Court, also the parties rely on the grounds to assess whether their pleading was examined by the Court as each court decision should be grounded.<sup>4</sup>

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<sup>4</sup> See case RCOM AA0051/14/CS of 04/12/2015 between Rwanda Revenue Authority v. SECAM Ltd, paragraph 2. See case RCOMAA 0038/16/SC-RCOMAA 0033/2016/SC of 21/04/2017 between Bank of Kigali Ltd v.

[20] With regard to the same reasons, in the case of Road Solutions Pavement Products vs Mailco Ltd, the Court explained that while examining whether the grounds are the same “the emphasis is put on the subject matter and on the analysis made by each court in a bid to understand the motives that pushed the court to opt for a certain decision. In addition, particular attention is paid to ascertain whether it is the very issues that were brought before the first and the appellate court, and that both courts have handled them in a similar manner”<sup>5</sup>

[21] The case file indicates that the main issue that the Intermediate Court of Gasabo examined was to determine whether Twagirayezu Albert had the right to sell the disputed plot and a related ground that the Court has thereof given features under paragraphs 6 and 7 of the judgment RC 0038/TGI/GSBO. In the High Court, the above issue changed and became the determination of the origin of the disputed property with a bid of figuring out the rightful owner of the disputed property. However, as is evidenced by the contents of paragraphs 9 and 10 of the judgment RCA 00291/2018/HC/KIG, the High Court entirely plagiarised the content of paragraphs 6 and 7 of the appealed judgment.

[22] It is in the finding of the instant Court that the purpose of substantiating the court decides to provide litigants with reasons that backed and lead to a decision it took, when such decision’s

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Mulisa Kana Martin, paragraph 21. See case RCOMAA 0048/16/CS of 19/05/2017 between Rwanda Revenue Authority v. SODAR Ltd, paragraph 17.

<sup>5</sup> See case RS/INJUST/RCOM 00002/2020/SC of 25/09/2020 between Road Solutions Pavement Products v. MAILCO Ltd, paragraph 24. You can as well see case RCOMAA 0048/16/CS of 19/05/2017 between Rwanda Revenue Authority v. SODAR, paragraph 18.

supporting reasons cannot be considered as set by the court because the court has entirely copied from another source without acknowledging any reference thereof, be it the content of the appealed judgment, or the litigants' submissions, the legal scholars state that they cannot be considered as grounds, rather it is judicial plagiarism<sup>6</sup>, and they argue that such plagiarism cannot be taken for the grounds of the court's decision. The above concern has even featured in some courts of other countries, as it once occurred in the case of *Di Leo vs Ernest and Young*, where the Court of Appeal condemned the inappropriate practice of judicial plagiarism among District courts, the Court of Appeal warned that such a practice undermines and tarnishes the court's decision, as it makes the court's decision to seem like a manipulation of the litigants' positions. The court's decision that is so drawn remains so tarnished even when it was only partially plagiarised<sup>7</sup>.

[23] In the case of *Cojocar v British Columbia Women's Hospital & Health Centre*, the Court of Appeal of British Columbia in Canada found that the previous court had plagiarised (entirely copied) 84 pages out of 105 pages from the entire

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<sup>6</sup> If an opinion or order cannot fairly be attributed to the court, describing the process of its production and adoption as judicial plagiarism is perfectly apt." See Douglas R. Richmond, "UNORIGINAL SIN: The Problem of Judicial Plagiarism" (2014) *Arizona State Law Journal* 177 at 179.

<sup>7</sup> A district judge could not photocopy a lawyer's brief and issue it as an opinion. Briefs are argumentative, partisan submissions. Judges should evaluate briefs and produce a neutral conclusion, not repeat an advocate's oratory. From time to time district judges extract portions of briefs and use them as the basis of opinions. We have disapproved of this practice because it disguises the judge's reasons and portrays the court as an advocate's tool, even when the judge adds some words of his own." *Reba DiLeo v. Ernst & Young* 901 F.2d 624 (7th Cir. 1990).

appealed judgment, the court had just copied the litigants' submissions; while on 222 paragraphs of the whole judgment, only 30 paragraphs were the original version of the court about the preface, the summary of the judgment and the submissions of the litigants, therefore the Court of Appeal upheld that the grounds provided by the previous court should not be considered as for its analysis of the issue filed to it or they lead it to the decision it made. This made the Supreme Court of Canada rule that if any judicial plagiarism is so evident that any reasonable person would easily notice that the seized court has never analysed the issues and elements of evidence brought to it and did not take the decision in its discretion, such judgment may be annulled<sup>8</sup>.

[24] However, the Court finds that in the United States of America, for the case of *Stone vs Kiowa City*, the Supreme Court of Kansas held that though judicial plagiarism is still an intolerable practice, it may not lead to the judgment nullification, it may instead call for the judgment review, and thus for correction<sup>9</sup>. And this is exactly what the Supreme Court of

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<sup>8</sup> <sup>8</sup>A judgment should be set aside “only if the [judge’s] copying is of such a character that a reasonable person apprised of the circumstances would conclude that the judge did not put her mind to the evidence and the issues and did not render an impartial, independent decision.” See *Cojocaru v. B.C. Women’s Hosp. & Health Ctr.*, No. 34304, 2013 SCC 30 (Can. May 24, 2013).

<sup>9</sup> <sup>9</sup>“There is nothing inherently wrong with a trial court's adopting a party's findings and conclusions in their entirety as long as they had been individually considered, but it is the sort of shorthand that would be susceptible to abuse. Thus, although not a practice to be encouraged, it is not, standing alone, a violation of Supreme Court Rule 165 [“In a contested matter submitted to the court without a jury -and when the court grants a motion for summary judgment -the court must state its findings of fact and conclusions of law in compliance with K.S.A. 60- 252.” Rule 165 - Reasons for Decision, Kan. R.

Wisconsin opted for while adjudicating the case of McDermott vs the State<sup>10</sup>. For justification of their positions, these courts explained that though the court which plagiarized defies the common judicial practice by entirely copying other persons' content without acknowledgment, there is no judicial procedural law that is being violated to an extent that the concerned judgment is quashed. This very court too concurs with the above position and agrees that the entire plagiarism of whether the litigants' submissions or the content of another judgment is still unbearable, the court still deems that such an irregularity might not necessarily lead to the fact that the judgment is quashed, but instead and for the purpose of correction, the court that has detected it might re-adjudicate the case and have the error rectified.

[25] The Court finds that total judicial plagiarism can neither be taken for reference-based motivation, whereby the appellate court can acknowledge and appropriate itself the motivations authored by the previous court. Judicial plagiarism differs from « reference-based motivation » due to the fact that the latter is pre-conditioned on the prior analysis of whether parties have filed their appeals with new arguments, and the appellate Court has to as well acknowledge that with regard to the appeal, it concurs with the previous court's decision, if at all it intends to thereof

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Rel. Dist. Ct. 165] or K.S.A. 60-252 [(1) In general. In an action tried on the facts without a jury or with an advisory jury or upon entering summary judgment, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under K.S.A. 60-258, and amendments thereto]." See the case of *Stone vs the City of Kiowa*, 950 P.2d 1305 (Kan. 1997).

<sup>10</sup> *State v. McDermott*, 810 N.W.2d 237 (Wis. Ct. App. 2012) para 25.

take a similar stance<sup>11</sup>. With regard to this case at hand, it is evident that at the appeal level, the issue to do with the origin of the disputed property was totally new. More so, the High Court has never acknowledged that it concurs with the judgment by the Intermediate Court of Gasabo so that it can be considered as it referred to it, rather the High Court did not expound on the first issue.

[26] The Court finds that the fact the appellate court entirely plagiarised or modified the explanations provided on the appealed judgment or it did not indicate that it concurred with it, cannot, therefore, be considered to have substantiated its ruling. When such is the case, even if the is no violated law, the principles of drafting are not respected, and the Court that examines the second appeal was not requested to rule about the objection related to the fact that the party lost the case for the same reasons, it has no reference to compare the reasoning of both previous courts to decide that they ruled on basis of the same grounds while the grounds were provided by the court that heard the case at the first instance.

[27] The Court finds that since it is evident that paragraphs 8 and 9 of the High Court's judgment do not provide grounds, and it copied the entire content of paragraphs 6 and 7 of the judgment by the Intermediate Court of Gasabo without any modification whatsoever, this indicates that the High Court has not

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<sup>11</sup> En appel, la motivation par référence est admise en cas de confirmation du jugement La Cour est réputée avoir adopté les motifs du jugement qu'elle confirme, et qui ne sont pas contraires aux sien La Cour d'Appel n'a pas à expliquer sa décision par d'autres motifs que ceux des premiers juges lorsque les parties ne présentent pas de moyens nouveaux. Dans le cas contraire, le juge doit les analyser." Confer Serge Guinchard (sous la dir.) Droit et pratique de la procédure civile, Dalloz, Paris, 2014, p.1191.

substantiated the ruling it held under the aforementioned paragraphs; therefore, the Court of Appeal could not move that both previous courts backed their rulings with the same grounds yet the only existing grounds were those that emanated from the ruling of the case on the first instance, therefore, the second appeal should have been admitted.

[28] With all the foregoing elucidations, the instant Court finds that Twagirayezu Alice together with Twagirayezu Alphonsine, Twagirayezu Monique, and Twagirayezu Albertine have not lost the case before the High Court and the Intermediate Court for the same reasons ; therefore, their second appeal should have been admitted.

### **III. DECISION OF THE COURT**

[29] Holds that Twagirayezu Albertine, together with Twagirayezu Alice, Twagirayezu Alphonsine, and Twagirayezu Monique have not lost the case before the High Court and the Intermediate Court for the same reasons ;

[30] Holds that the second appeal against the judgment RCAA 00020/2019/CA lodged by Twagirayezu Albertine together with Twagirayezu Alice, Twagirayezu Alphonsine, and Twagirayezu Monique should have been admitted by the Court of Appeal and the case re-adjudicated on the merits ;

[31] Decides that the hearing on the merits will be resumed on 08/09/2021.

## **CASES IN MERIT**



**CIVIL CASE**



**TWAGIRAYEZU ET AL v  
TWAGIRAYEZU ET AL (Fond)**

[Rwanda SUPREME COURT – RS/INJUST/RC  
00007/2020/SC– (Ntezilyayo, P.J., Nyirinkwaya, Cyanzayire,  
Muhumuza and Karimunda, J.) December 10, 2021]

*Civil law – Immovable property – Claim for recovering the property sold by the person who is not the owner - Contract of sale – In order for the owner of the property to claim for the recovery of the property sold by the person who is not the owner, it is not necessary to first request for the cancellation of the contract of sale.*

*Civil law – Immovable property – Source of immovable property – The person accused of selling someone else’s property could not base only on having in his possession property titles to claim property ownership without proving how he got such property.*

*Civil law – Contract law – Sale of someone else's property- Effects of selling someone else's property - The buyer deprived of what he/she bought, is given back by the seller the equivalent value on the same day of the deprivation, which does not prevent him/her from claiming from the seller the damages for not fulfilling his/her obligations to guarantee that he/she will not be prejudiced in rights he/she had on the property he/she bought or claim that the real owner of the property, who recovers it, pay the value of the assets added by the previous possessor.*

*Civil procedure – Immovable property – Contract of sale – Sale of co-owned property by one of the co-owners – When the seller does not deny the contract of sale and admits to having sold the*

*property being aware that it is co-owned, the sale is valid as regards to his/her share only.*

**Facts:** Twagirayezu Albert sold the plot of land to Niyongira after showing him the land titles certifying that the plot belongs to him. After the purchase, Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine and Twagirayezu Monique indicated that the plot belonged to the family of Twagirayezu Aloys and Icyimpaye Marie Rose, that their brother sold it without being informed, they sued to the Intermediate Court of Gasabo praying it to invalidate the purchase contract so that the property is recovered by all the heirs.

The Intermediate Court found that the plaintiffs failed to provide the elements of evidence which contradict that of Twagirayezu Albert proving that the disputed property belongs to him. Twagirayezu Alice and her siblings appealed to the High Court, which also found that the appeal was without merit. They also appealed to the Court of Appeal, arguing that the lower courts did not examine the issue of the source of the property and that Twagirayezu Albert did not prove the source of the disputed property. The Court held that the appeal was not within its jurisdiction because the plaintiffs had lost both in the Intermediate Court and the High Court for the same reasons.

Twagirayezu Alice and her siblings applied for a review of the judgment on grounds of being vitiated by injustice to the Supreme Court, and the President of the Supreme Court ordered that it would be re-adjudicated. In the hearing in public, Twagirayezu Albert and Umumaranyota objected that the plaintiffs' claim should not be admitted because they did not prove the grounds for the injustice that would lead to a judgment to be reviewed and that they were not allowed to request the cancellation of the

purchase agreement to which they were not parties. The Court made a decision in the bench declaring that the objection is unfounded because after the President of the Supreme Court has ordered that the case will be re-tried, no other objections would be raised so the case could not be tried on the merits except the objections of public order. On the second objection, the Court decided that the objection is related to the merits of the case, it could not be examined before determining whether the Court of Appeal erred by holding that the plaintiffs lost on the same reasons in the lower courts. Umumaranyota raised another objection to public order arguing that the plaintiffs do not have the capacity to request for the cancellation of the purchase agreement to which they were not parties, but the Court made a decision in the bench upholding that it should not be admitted because it was not filed as a ground of injustice and the judgments for review must be final.

The hearing on the merits was resumed, the Court first examined whether Twagirayezu Alice and her siblings have the capacity to request the invalidation of the purchase contract made between Twagirayezu Albert and Niyongira. In this regard, the plaintiffs aver that the sale contract should be invalidated because Twagirayezu Albert himself admitted to having sold someone else's property. They also state that, although the parties to the contract are the ones who are allowed to request for its cancellation, such principle has an exception stating that nothing can prevent the owner of the property from claiming it against the person who possesses it requesting for the cancellation of the contract of sale that the present owner concluded.

Umumaranyota and Twagirayezu Albert state that the cancellation of the contract is requested by parties to it, so this ground should not be considered because there is no proof of

which the plaintiffs rely on to claim that the property belongs to the heirs of Icyimpaye Marie Rose and that they did nothing to invalidate the authentic deeds issued by competent authorities certifying that the disputed land belongs to him. Also, the agreement could not be invalidated because it was made in accordance with the law, and both contracting parties do not challenge it.

On the issue of determining whether Twagirayezu Albert sold the property co-owned with other heirs of Twagirayezu Aloys and Icyimpaye without their consent and its effects, the plaintiffs state that they have produced to the lower courts elements of evidence to prove that the disputed land belonged to Kavamahanga, and it was later bought by Icyimpaye, the wife of Twagirayezu Aloys, who are their parents, and such land should therefore be in their possession as their heirs.

Umumaranyota submits that she owned the disputed property from the purchase made by her husband Niyongira and that it happened following the presentation to her of the documents proving that the property belongs to Twagirayezu Albert. She also adds that the purchase agreement dated 01/11/1984 relied on by the Plaintiffs should not be considered because it is written that the buyer is Kimpaye Marie Rose, yet they state that their mother's name is Icyimpaye Marie Rose.

In the pre-trial conference, Twagirayezu Albert admitted to having sold the land he co-owned with his sisters and agreed to return the money he received, and he did this with the intention to steal the disputed property from Umumaranyota Agnès. He stated that returning the money was not due to the fact that he had sold someone else's property, rather, he wanted to recover his property.

With regard to the issue of determining the effects resulting from the fact that the property that was sold was co-owned by the heirs of Twagirayezu Aloys and Icyimpaye, the Plaintiff state that, in case the Court finds that Twagirayezu Albert sold the co-owned property, Umumaranyota will have to return the property to its real owners and claim from the seller for the actual value of the property based on the valuation report included in the file, especially since the seller agrees to return the money he received.

Umumaranyota states that, though she has not been able to exploit the land after her husband's death so that until now she has not built anything and nothing has changed on its surface, this does not prevent the property from increasing in value, so if this instant Court finds that the property should be returned in the possession of the Plaintiffs, Twagirayezu Albert would be ordered to return the actual value of the property to her.

**Held:** 1. For the owner of the property to return the property sold by the person who is not the owner, it is not necessary to first request for the cancellation of the purchase contract to which he/she was not a party. Regarding this case, it is the right of Twagirayezu Alice and her siblings to request the recovery of the property to which they are entitled as they think and which is possessed by Umumaranyota Agnès.

2. The person accused of selling someone else's property could not base only on possessing the property titles to claim property ownership without proving how he got such property; therefore, in case Twagirayezu Albert fails to prove how the disputed property was dispossessed from his mother Icyimpaye Marie Rose, who was the owner and became his personal property, it should be construed as he co-owned such property with other

heirs, and that he sold their share on that property without their consent.

3. The buyer deprived of what he/she bought, is given back by the seller the equivalent value on the same day of the deprivation, which does not prevent him/her from requesting from the seller the damages for not fulfilling his/her obligations to guarantee that he/she will not be prejudiced in rights he/she had on the property he/she bought or claim that the real owner of the property, who recovers it, pay the value of the assets added by the previous possessor. Therefore, Umumaranyota Agnès must be paid back by Twagirayezu Albert the actual value of the disputed property as of today because she did not add anything to it.

4. When the seller does not deny the contract of sale and admits to having sold the property being aware that it is co-owned, the sale is valid as regards his/her share only; therefore, Twagirayezu Albert's share in the disputed property is equal to one fifth (1/5) of it, which shall be given to Umumaranyota Agnès, and four-fifths of it (4/5) shall be returned to Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique and Twagirayezu Albertine, and Twagirayezu Albert has to return its value (4/5) to Umumaranyota Agnès.

**The appeal lodged in the Court of Appeal has merit in part.  
The judgment rendered by the High Court is reversed in part.**

**Statutes and statutory instruments referred to:**

Organic Law n° 08/2005 of 14/07/2005 determining the use and management of land in Rwanda, article 5;

Law n°30/2018 of 02/06/2018 determining the jurisdiction of courts, articles 52, 62, and 63;

- Law n° 22/2018 of 29/04/2018 relating to the civil, commercial, labor, and administrative procedure, article 111;
- Law n° 45/2011 of 25/11/2011 governing contracts, articles 64 and 113;
- Law n° 15/2004 of 12/06/2004 relating to evidence and its production, article 3.

**Cases referred to:**

- Busoro Gervais and Busoro Mugunga Désiré ctrs,  
RS/INJUST/RC 00022/2018/SC, decided by the  
Supreme Court on 28/06/2019;
- RCAA 00045/2016/SC decided by the Supreme Court on  
24/05/2019;
- RS/ INJUST/ RC 00011/2018/ SC decided by the Supreme  
Court on 09/06/2021;
- RCAA 0018/13/CS decided by the Supreme Court on  
24/12/2014;
- RS/REV/INJUST/CIV 0003/14/CS, Mukagatare Grace and  
Succession Bwanakeye Francois, , decided by the  
Supreme Court on 03/03/2017;
- RS/REV/INJUST/RC 00038/2017/CS, Itangishaka Leonidas  
and Nyiramahane Rachel ctrs, decided by the Supreme  
Court on 22/06/2018;
- RS/INJUST/RC 00008/2019/SC, Gahire Athanase and  
Mukarushakiro Gloriose ctrs, decided by Supreme Court  
on 12/11/2021.
- RCOMAA 0051/14/CS, Rwanda Revenue Authority and  
SECAM Ltd, decided by the Supreme Court on  
04/12/2015;
- RCOMAA 0038/16/CS-RCOMAA 0033/2016/SC, Bank of  
Kigali Ltd and Mulisa Kana Martin, decided by the  
Supreme Court on 21/4/2017.

RCOMAA, 0048/16/CS, Rwanda Revenue Authority and SODAR Ltd, decided by the Supreme Court on 19/05/2017.

RS/INJUST/RCOM 00002/2020/SC, Road Solution Pavement Products and MAILCO Ltd, decided by the Supreme Court on 25/09/2020.

**Authors:**

Douglas R. Richmond, “Unoriginal sin: The Problem of Judicial Plagiarism”, (2014) *Arizona State Law Journal* 177 at 179;

Serge Guinchard (sous la dir.) Droit et pratique de la procédure civile, Dalloz, Paris, 2014, p.1191.

## Judgment

### I. BACKGROUND OF THE CASE

[1] This case was initiated in the Intermediate Court of Gasabo, Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine and Twagirayezu Monique, all suing their brother Twagirayezu Albert for selling the family plot registered on UPI 1/02/10/03/4370, without being informed, and they request that the purchase agreement of 22/02/2012, made with the late Niyongira Jean Claude, who was the husband of Umumaranyota Agnès, be invalidated, and that the latter return back the disputed property.

[2] In the judgment RC 00038/2017/TGI/GSBO rendered on 27/07/2018, the Intermediate Court of Gasabo found that Twagirayezu Albert sold the disputed property with an authentic

deed in his names, the property titles issued by local authorities, an deed plan as well as the tax receipt, all proving that the plot number 4370 belongs to him, and it was in the finding of the Court that the elements of evidence on which the plaintiffs rely to state that the disputed plot belongs to the family, were issued in 2014 while the property was sold in 2012, and their statement that there are witnesses who testify that the property belongs to their parents, should not be considered because those witnesses were not presented, and even though they were presented, they could not contradict the evidence produced by Twagirayezu Albert, and the very Court concluded that, even though Twagirayezu Albert did not prove the source of the disputed property, the elements of evidence he produced before the Court were not challenged and all prove that the property belonged to him. The Court ordered that the purchase agreement dated 02/22/2012 remains valid because it was made in accordance with the law.

[3] Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine, and Twagirayezu Monique appealed to the High Court alleging that Twagirayezu Albert took advantage of their absence in Rwanda, and appropriated to himself the family property, hence registering it under his names, and immediately sold it, that had the Court investigated and examined the elements of evidence presented before it, it should have noticed that Twagirayezu Albert failed to indicate the source of the property he appropriated to himself and sold.

[4] In the judgment RCA 00291/2018/HC/KIG rendered on 31/01/2019, the High Court found that by the time Niyongira Jean Claude bought the property, Twagirayezu Albert managed to prove that the property belonged to him and that it was within his

capacity to sell it, therefore, the fact that the heirs of Twagirayezu Aloys and Icyimpaye Marie Rose fail to produce the elements of evidence proving that the property belongs to them, it is a confirmation that the property sold by Twagirayezu Albert belonged to him, and the very Court thus sustained the ruling of the case RC 00038/2017/TGI/GSBO decided by the Intermediate Court of Gasabo on 07/27/2018, hence ordering the plaintiffs to pay to Umumaranyota Agnès 250,000 Frw for counsel fee and 100,000 Frw for the procedural fee.

[5] Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine and Twagirayezu Monique appealed to the Court of Appeal alleging that the High Court never bothered to examine the origin of the sold property and the statement issued by Twagirayezu Albert admitting that he sold family's property without prior authorization, that the sale agreement was concluded on 01/11/1984 between Icyimpaye Marie Rose and Kavamahanga, and the testimonies of the witnesses supporting such statement were ignored, while they could help identify the origin of the property.

[6] Umumaranyota Agnès raised the objection of inadmissibility against the second appeal based on the ground that the subject matter is the cancellation of the purchase contract of the plot of land bought for 10,000,000 Frw so that the value of the subject matter does not reach 75,000,000 Frw provided by article 52 of Law n°30/2018 of 02/06/2018 determining the jurisdiction of courts. She also objected that the grounds for which the plaintiffs lost the case in the Intermediate Court of Gasabo are the same as those in the High Court.

[7] In the judgment RCAA 00020/2019/CA rendered on 26/06/2020, the Court of Appeal found that although the property

valuers confirmed that the plot UPI 1/02/10/03/4370 is worth 92,825,000 Frw, the issues analysed by the High Court and the Intermediate Court of Gasabo, are related to determining whether the sold property belongs to Twagirayezu Albert as an individual or whether it belongs to the family of Twagirayezu Aloys and Icyimpaye Marie Rose, and the High Court found that both courts took the decision based on the same reasons, hence declaring that the appeal does not fall within its jurisdiction, and the appellants were ordered to jointly pay to Umumaranyota Agnès 500,000 Frw for counsel and procedural fee.

[8] Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine and Twagirayezu Monique wrote to the President of the Supreme Court requesting that the judgment RCAA 00020/2019/CA rendered by the Court of Appeal on 26/06/2020 be reviewed on grounds of being vitiated by injustice. In decision number 058/CJ/2020 of 19/11/2020, the President of the Supreme Court, after reviewing the request, ordered that it be sent to the Registry of the Supreme Court for being reheard.

[9] The hearing in public was held on 02/06/2021, Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine and Twagirayezu Monique being represented by Counsel Nshuti Salim and Counsel Kazeneza Théophile, Twagirayezu Albert represented by Counsel Ngezahayo Bernard, while Umumaranyota Agnès was represented by Counsel Nsengiyumva Viateur.

[10] The Court first examined the objections raised by the legal counsel of Twagirayezu Albert and Umumaranyota Agnès, who stated that the application should not be admitted because the plaintiffs did not prove the grounds for the injustice that would lead to the review of the judgment and that they were not

allowed to request the cancellation of the purchase agreement to which they were not parties.

[11] Regarding the objection that no grounds for injustice have been presented for the judgment to be reviewed, the Court made a decision in the bench, based on the provisions of paragraph one<sup>1</sup> of article 62, and article 63<sup>2</sup> of Law n°30/2018 of 02/06/2018 determining the jurisdiction of courts and their analysis made in the case of Busoro Gervais vs Busoro Mugunga Désiré and others, that in case the President of the Supreme Court confirms that the case will be reheard, no other objections are raised to prevent the case from being tried on the merits except the objections of public order,<sup>3</sup> and the Court thus concluded that the objection is not admitted.

[12] As for the objection that the plaintiffs are not allowed to apply for the cancellation of the purchase agreement to which they were not parties, the Court finds that, even if this argument was raised as an objection, it is related to the merits of the case, and it should not be examined before determining whether the Court of Appeal erred in declaring that the plaintiffs lost on the

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<sup>1</sup> Where, upon considering a report on the judgment vitiated by the injustice that is submitted to him/her, the President of the Supreme Court decides that the case be re-adjudicated, he/she forwards the file to the Chief Registrar of the Supreme Court for him/her to set the date for the hearing thereof .....

<sup>2</sup> When the Supreme Court or any other court designated by the President of the Supreme Court receives an application for review of a judgment on grounds of being vitiated by injustice, it examines the merits of the case anew and in the presence of all parties.

<sup>3</sup> Judgment RS/INJUST/RC 00022/2018/SC between Busoro Gervais and Busoro Mugunga Désiré ctrs, decided by Supreme Court on 28/06/2019, paragraph 18.

same reasons both in the Intermediate Court of Gasabo and in the High Court.

[13] After deciding that the objection raised by the lawyers of Twagirayezu Albert and Umumaranyota Agnès was rejected, the Court examined whether the second appeal should have been admitted by the Court of Appeal. In the interlocutory judgment rendered on 25/06/2021, the Court found that Twagirayezu Alice and her siblings did not lose the case on the same reasons both in the Intermediate Court of Gasabo and the High Court, hence upholding that their appeal would have been admitted by the Court of Appeal.

[14] The hearing on the merits was scheduled on 09/08/2021, and on that date, the Court found that Twagirayezu Albert had revoked the mandate conferred upon Counsel Ngezahayo Bernard and no other lawyer was sought, and he was fined for delaying the case, the trial was thus adjourned to 11/15/2021.

[15] On that day, the hearing was held in public, Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine, Twagirayezu Monique and Umumaranyota Agnès being represented as before, but Twagirayezu Albert did neither appear nor did he seek a lawyer to represent him, and the Court ruled that, as he was concerned, the case was heard in absentia.

[16] At the beginning of the hearing, Counsel Nsengiyumva Viateur, representing Umumaranyota Agnès, raised another objection of public order. He elucidated that the plaintiffs do not have the capacity to request for the cancellation of the contract of sale to which they were not parties, therefore, based on the provisions of article 129 of the Law n° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative

procedure, and article 116 of the Law n° 45/2011 of 25/11/2011 governing contracts, and on the position adopted by the instant Court in paragraph 35 of the judgment of *Mukaruhanga Alexia v. Nyirahabimana Emertha and Kold Hansen Jesper*<sup>4</sup>, the claim of Twagirayezu Albertine and her siblings would not have been admitted by the lower courts, the same should apply in this instance.

[17] Counsel Nshuti Salim and Counsel Kazenzeza Théophile representing Twagirayezu Albertine and her siblings, avered that the objection raised by Counsel Nsengiyumva Viateur for the first time in the Supreme Court should not be accepted for examination unless the alleged injustice is based on it, especially that the issues relating to objections had been closed, and that the very Court should decide that the case should resume on the merits. They explain that if such an objection is admitted, the Court should find it unfounded because, even though only parties to the contract are allowed to request for its cancellation, this principle has an exception stating that nothing can prevent the owner of the property from claiming it from the person who possesses it.

[18] The Court made the decision on the bench, and found that the objection raised by Counsel Nsengiyumva Viateur should not be accepted because it was not raised as a ground for injustice, due to the fact that the judgments for review must be final, with the litigants, who are also the same in the judgment for review, and the inadmissibility objection is accepted only if the injustice is based on it, and this is the position adopted in various cases including the case of *Nyirahabimana Umwali Roselyne v.*

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<sup>4</sup> See judgment RCAA 00045/2016/decided by Supreme Court on 24/05/2019.

Habimana Jean Léo Pasteur and his colleagues,<sup>5</sup> and the instant Court upholds that the hearing continues by examining the issues on the case merits.

## II. ANALYSIS OF LEGAL ISSUES

### **1. Whether Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine and Twagirayezu Monique have the capacity to request for invalidation of the sale agreement concluded between Twagirayezu Albert and Niyongira Jean Claude**

[19] Counsel Nshuti Salim and Counsel Kazenzeza Théophile assisting the plaintiffs argue that the sale agreement between Twagirayezu Albert and Niyongira Jean Claude should be invalidated because Twagirayezu Albert himself admitted to having sold someone else's property. They say that although only parties to the contract are allowed to request its cancellation, this principle does not prevent the owner of the property from claiming it against the person who possesses it, requesting the cancellation of the contract by which the possessor bought it.

[20] Counsel Nsengiyumva Viateur, assisting Umumaranyota Agnès, avers that based on the provisions of article 113 of Law n° 45/2011 of 25/11/2011 governing contracts and on the position set by the instant Court in the case of Mukaruhanga Alexia v. Nyirahabimana Emertha and Kold Hansen Jesper, where it was held that the cancellation of the contract is requested by the

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<sup>5</sup> See the decision taken in bench in judgment n° RS/ INJUST/ RC 00011/2018/ SC on 09/06/2021.

parties, therefore, this ground should not have been accepted. He further explains that since there is no evidence presented by the plaintiffs to prove that the property belongs to the heirs of Icyimpaye Marie Rose, and they have done nothing to invalidate the titles issued by the competent authorities proving that the disputed land belongs to Umumaranyota Agnès, he thus requests this Court to uphold the previous court's rulings where it was held that the contract of sale between Niyongira Jean Claude and Twagirayezu Albert is valid.

[21] In the pre-trial conference, Counsel Ngezahayo Bernard assisting Twagirayezu Albert stated that he found that there is no ground for invalidating the sale agreement concluded between Twagirayezu Albert and Niyongira Jean Claude because it was done in accordance with the law and both parties entered into it without any objection.

## **DETERMINATION OF THE COURT**

[22] Regarding the request of Twagirayezu Alice and her siblings for cancellation of the sale agreement concluded between Twagirayezu Albert and Niyongira Jean Claude, article 64 of Law n° 45/2011 of 25/11/2011 governing contracts stipulates that “contracts made in accordance with the law shall be binding between parties. They may only be revoked at the consent of the parties or for reasons based on law”. As for the first paragraph of article 113, of that Law stipulates that “contracts shall have effect only on contracting parties. They shall not cause any prejudice to a third party and shall only benefit to him/her in case of provisions in favour of a third party”.

[23] The foregoing articles have been analyzed by the instant Court in detail in various cases, but especially in the case of Mukaruhanga Alexia v. Nyirahabimana Emertha and Kold Hansen Jesper, and found that in case the issue under examination arises from the contract of purchase of immovable property, the owner of the property has the right to claim it against the possessor, without asking for the annulment of the contract of sale between the buyer and the seller. It explained that what makes the purchase contract null and void is when it is requested by the buyer to be claimed by the real owner who wants to return his/her property because the seller cannot file such a claim and yet he/she has the responsibility to guarantee the buyer to own the property without problems, and the real owner cannot request for the cancellation of the purchase agreement to which he/she was not a party.<sup>6</sup>

[24] In the premises, the Court finds unfounded the statements of Counsel Nshuti Salim that there is an exception to the provisions of articles 64 and the first paragraph of article 113, of Law n° 45/2011 of 25/11/2011 governing contracts in such a way that a third party would request its cancellation.

[25] The Court, therefore, finds baseless the arguments of the counsels for Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique and Twagirayezu Albertine that in order to be able to claim for their property sold by Twagirayezu Albert, it is necessary to first invalidate the purchase agreement between him and Niyongira Jean Claude because in order for the owner of the property to claim for the recovery of his/her property bought

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<sup>6</sup> See judgment RCAA 00045/2016/SC decided by Supreme Court on 24/05/2019, from paragraphs 25 to 34.

by the person who is not the owner, it is not necessary to first apply for the cancellation of the purchase contract.

## **2. Whether Twagirayezu Albert sold the property co-owned with the other heirs of Twagirayezu Aloys and Icyimpaye Marie Rose without their consent and the effects thereof**

[26] Counsel Nshuti Salim and Counsel Kazenzeza Théophile assisting Twagirayezu Alice and her siblings, state that the disputed plot of land belonged to Kavamahanga, and was later bought by Icyimpaye Marie Rose, the wife of Twagirayezu Aloys, who are the parents of Twagirayezu Albert, Twagirayezu Alice, Twagirayezu Monique, Twagirayezu Alphonsine and Twagirayezu Albertine. They aver that the sale agreement dated 01/11/1984, the certificate of inheritance in the name of Icyimpaye Marie Rose dated 13/08/2014, the document issued by Twagirayezu Albert dated 15/11/2014 indicating that he sold the property he co-owned with his sisters without their consent, as well as the statements of the witnesses testifying that the property should belong to the heirs of Icyimpaye Marie Rose and Twagirayezu Aloys.

[27] They state that the aforementioned elements of evidence were produced before the Courts, and instead of considering them, such courts based their decisions on the fact that the disputed property is registered to Twagirayezu Albert, hence disregarding the position set by the Supreme Court in the case of Harerimana Emmanuel v. Sebukayire Tharcisse when analysing the provisions of article 10 of Law n° 43/2013 of 16/06/2013 governing land in Rwanda where it was held that the defendant does not just claim that the land is registered in his/her name without first proving its source.

[28] Counsel Nsengiyumva Viateur assisting Umumaranyota Agnès, argues that the latter acquired the disputed property on the purchase made by her husband Niyongira Jean Claude and that it happened upon the presentation of documents proving that the property belongs to Twagirayezu Albert. He adds that the purchase agreement dated 01/11/1984 raised by the plaintiffs should not be considered because it states that the buyer is Kimpaye Marie Rose, yet the plaintiffs say that their mother's names are Icyimpaye Marie Rose, which is not clear how Icyimpaye Marie Rose who was literate because she was a nurse, would sign a purchase agreement in a name that was not hers, and changed her signatures. He found that, before confirming that the agreement is truthful, there should be a verification of the signature.

[29] He further submits that Twagirayezu Albert's statement of 15/11/2014 should not be considered because his lawyer averred during the pre-trial conference that when he wrote it, it was a plan with his sisters to steal Niyongira Jean Claude's property, but that after he realised that he died, he withdrew the plan. He explains that another factor that should make the document invalid is that it was not sent through the Rwandan Embassy in France. He concludes that the disputed property would not have belonged to Icyimpaye Marie Rose since 1984, because if it was so, she would have registered it in MINITRAPE, therefore, as long as the plaintiffs do not present the form filled in by MINITRAPE to prove that the disputed land belonged to Icyimyape Marie Rose, he prays the instant Court to uphold that there was no injustice in the judgments under review because Niyongira Jean Claude bought it from the owner of the property.

[30] During the pre-trial conference, Counsel Ngezahayo Bernard assisting Twagirayezu Albert stated that the fact that in a statement dated 15/11/2014, Twagirayezu Albert admitted to having sold the land he co-owned with his sisters and even agreed to return the money he received as part of an attempt to steal Umumaranyota Agnès. He stated that returning the money was not due to the fact that he had sold someone else's property, but he rather wanted to return his property. He submitted that the statement dated 15/11/2014 was issued by Twagirayezu Albert after being deceived by his sisters who wanted the purchase agreement to be canceled and sell it again in order to get more money out of that land. He explained that in 2009, Twagirayezu Albert's sister by the name of Twagirayezu Marie Louise, sold the land for 5,000,000 Frw, then in 2012, they agreed to invalidate the purchase contract and refund the buyer because they had found a new buyer who was ready to offer 10,000,000 Frw. He indicated that when Twagirayezu Albert realised that Niyongira Jean Claude was dead, he felt remorseful and decided not to wrong against the widow and the orphans, and he decided to reveal the truth.

## **DETERMINATION OF THE COURT**

[31] Article 5 of the Organic Law n° 08/2005 of 14/07/2005 determining the use and management of land in Rwanda that was into force when Niyongira Jean Claude bought the disputed land with Twagirayezu Albert provided that " any person or association with legal personality that owns land either through custom or who acquired it from competent authorities or who purchased it are allowed to own it on long term lease in conformity with provisions of this organic law".

[32] Paragraph one of article 3, of Law n° 15/2004 of 12/06/2004 relating to evidence and its production reads that " Each party has the burden of proving their allegations".

[33] The case file indicates that the evidence that Umumaranyota Agnès is basing on to prove that her husband Niyongira Jean Claude bought from the owner of the property is as follows:

- Authentic deed issued by Gasabo District on 18/01/2012 indicating that the property consisting of a plot of land measuring 52m x 103m, located in Kigali – Kagugu, belongs to Twagirayezu Albert;
- The certificate of inheritance issued by Kinyinya Sector on 20/01/2012 proving that the property with an area of 103 m x 52 m is the inherited property of Twagirayezu Albert;
- A deed plan was established on 31/01/2012 indicating that plot number 4370 belongs to Twagirayezu Albert;
- Property tax receipt for plot number 4370 dated 16/02/2012 indicating that Twagirayezu Albert paid the property tax.

[34] The Court finds that Twagirayezu Alice and her siblings lost the case in the previous courts due to the fact that the certificate of inheritance of Icyimpaye Marie Rose dated 13/08/2014 and the document issued by Twagirayezu Albert dated 15/11/2014 proving that he sold the family property without the consent of his siblings, was found after the property was sold, and the courts concluded that it was not necessary for

Twagirayezu Albert to prove the origin of the property registered under his names, with elements of evidence thereof. However, the position set by the instant Court in various cases, including the one of Harerimana Emmanuel v. Sebukayire Tharcisse,<sup>7</sup> when analysing article 5 of the above-mentioned Organic Law n° 08/2005 of 14/07/2005, that the legislator has provided the procedure in which a person gets an immovable property, the person accused of selling someone else's property could not base only on possessing the property titles to claim property ownership without proving how he owned such property.

[35] [35] The Court finds that the certificate of inheritance of Icyimpaye Marie Rose dated 13/08/2014 is based on the purchase agreement dated 01/11/1984 concluded between Icyimpaye Marie Rose and Kavamahanga, and these elements of evidence and the document established by Twagirayezu Albert on 15/11/2014 and his Counsel's submissions during the pre-trial conference, all prove that the disputed property was bought by Icyimpaye Marie Rose, so it is still co-owned by her heirs. The fact that the purchase agreement dated 01/11/1984 contains the name Kimpaye instead of Icyimpaye or the fact that Counsel Ngezahayo Bernard submitted in the pre-trial conference that the statement of Twagirayezu Albert issued on 15/11/2014 consists of machination, they cannot lead to not consider all contents of

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<sup>7</sup> See judgment RCAA 0018/13/CS decided by Supreme Court on 24/12/2014, paragraph 21. This position was also upheld in the Judgment RS/REV/INJUST/CIV 0003/14/CS between Mukagatare Grace and *Succession* Bwanakeye François, decided by the Supreme Court on 03/03/2017 and in Judgment RS/REV/INJUST/RC 00038/2017/CS between Itangishaka Léonidas and Nyiramahane Rachel et Al. decided by the Supreme Court on 22/06/2018, paragraph 19. See also judgment Gahire Athanase against Mukarushakiro Gloriose and her colleagues, decided by the Supreme Court on 12/11/2021, paragraph 67.

the foregoing documents, as submitted by Counsel Nsengiyumva Viateur, because there is no dispute between those who made the agreement or between the heirs of Icyimpaye Marie Rose as regard to the spelling of their mother's name, where they wrote K instead of ICY, and there is no evidence that Twagirayezu Albert has reversed his statement of 15/11/2014.

[36] [36] The Court finds that, although in the purchase agreement, Twagirayezu Albert stated: I, Twagirayezu Albert, sell my plot of land located in Kagugu Cell, with number 4370..., based on the deed plan, parcel number confirmation and authentic deed as indicated by that agreement, he failed to prove how the land was transferred from his mother Icyimpaye Marie Rose to him, such as because he inherited it from her, or bought it or any other way that would make it being transferred from the owner who had bought it so as to become his personal property as per article 5 of the aforementioned Organic Law n° 08/2005 of 14/07/2005 that was into force at the time of the purchase, which means that having in his possession the land titles was not a sufficient proof that the disputed land belongs to him while he failed to prove the source of the property evidenced by those documents.

[37] [37] In the premises, it is in the finding of the Court that the plot of land registered on UPI 1/02/10/03/4370 located in Gasabo District, Kinyinya Sector, Kagugu Cell, Rukungu Village belongs to Icyimpaye Marie Rose, from the time she died on 21/11/2000 as evidenced by the death deed of 02/03/2020, the property was inherited by her heirs, which means that by the time Twagirayezu Albert sold it on 22/02/2012, he sold the property he co-owned with other heirs without their consent.

### **3. Determine the effects of the fact that the property sold was co-owned with the heirs of Twagirayezu Aloys and Icyimpaye Marie Rose**

[38] Counsel Nshuti Salim and Counsel Kazenzeza Théophile assisting the plaintiffs state that in case the Court finds that Twagirayezu Albert sold the co-owned property, Umumaranyota Agnès should return the property to the owner and pursue Twagirayezu Albert for the actual value of the property based on the valuation report included in the case file especially that he also agrees to pay back the money he received.

[39] Counsel Nsengiyumva Viateur avers that Umumaranyota Agnès was not able to exploit the land after the death of her husband, and until now nothing has neither been built nor changed on its surface. He submits that this does not prevent the property from increasing in value, so in case the instant Court finds that the property should be returned to the heirs of Twagirayezu Aloys and Icyimpaye Marie Rose, Twagirayezu Albert should be ordered to pay back to Umumaranyota Agnès the actual value of the property amounting to 92,825,000 Frw.

[40] In the pre-trial conference, Counsel Ngezahayo Bernard assisting Twagirayezu Albert submits that the Court should rely on the evidence presented, and award the disputed property to Umumaranyota Agnès because her husband bought it in accordance with the law.

## **DETERMINATION OF THE COURT**

[41] Regarding the effects resulting from the fact that the buyer returns to the owner the property on which nothing was

added, the laws of Rwanda do not provide anything on that issue, however, the jurisdictions of other countries emphasize that in case there has been an increase of the value of the sold property at the time the buyer is going to be deprived of it, regardless of what the offeree did, the seller must pay the additional value exceeding on the one such property had at the time of the sale. This has been upheld by the Court of Cassation in France in various cases where it has been stated that the sellers must return to the deprived buyers the value of the purchase on the date of purchase and that the value of the property itself should be based on the value of the property without the involvement of the buyer.<sup>8</sup>

[42] The Court finds that the aforementioned statements imply that the buyer who is deprived of what he/she bought is returned by the seller the actual value of the property on the day of its deprivation, that is, on the day the decision of its deprivation was made; this does not prevent him/her from asking the seller for compensation for not fulfilling his/her obligation to ensure that

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<sup>8</sup> ... *si la chose vendue se trouve avoir augmenté de prix à l'époque de l'éviction, indépendamment même du fait de l'acquéreur, le vendeur est tenu de lui payer ce qu'elle vaut au dessus du prix de la vente...*, Reba Cour de Cassation, Chambre civile 3, du 16 janvier 1991. "...les vendeurs sont tenus d'indemniser leurs acquéreurs de la valeur du bien dont ils sont évincés à la date de la décision d'éviction..." Reba Cour de cassation, Chambre civile 3, 07 juillet 2010. "Mais attendu qu'ayant exactement retenu qu'en application de l'article 1633 du code civil, qui vise l'augmentation du prix, indépendamment même du fait de l'acquéreur, M. B... pouvait réclamer à ses vendeurs l'augmentation de la valeur de la parcelle, la cour d'appel, qui a ordonné une expertise afin de déterminer si le prix avait augmenté entre la vente et la décision constatant l'éviction, a, par ce seul motif, légalement justifié sa décision..." Reba Cour de cassation, civile, Chambre civile 3, 27 octobre 2016.

he/she is not disturbed in the rights he/she had on the property he/she bought or to request that the real owner of the property, who regains it, pays the value added by the possessor. As far as this case is concerned, it is clear that Umumaranyota Agnès did not add anything to the property, so she must be returned its actual value.

[43] The Court finds that the case file contains the valuation report made upon the request of Twagirayezu Alice and her siblings, made by Eng. Dushimimana David on 18/04/2019. He points out that the value per m<sup>2</sup> is 21,000 Frw, so for the total area of 3,652 m<sup>2</sup>, the disputed land has a value of 76,692,000 Frw. However, he was wrong on the area because the land title indicates that it is 3,713 m<sup>2</sup>, so its value would be 21,000 Frw/m<sup>2</sup> x 3,713 m<sup>2</sup> = 77,973,000 Frw. The case file also contains the valuation report made by Eng. Bazine Jean Yves on 02/06/2020 upon the request of Umumaranyota Agnès. It appears that the value per m<sup>2</sup> is 25,000 Frw, so for an area of 3,713 m<sup>2</sup>, the total land value is 92,825,000 Frw.

[44] The Court finds that after these valuation reports, on 01/12/2021, the Institute of Real Property Valuers in Rwanda (IRPV) published in the Official Gazette, Land Values in Rwanda in the year 2021, in relation to properties located in Gasabo District, Kinyinya Sector, Kagugu Cell, Rukingu Village where the plot number UPI 1/02/10/03/4370 is located, the journal review states that the average price per m<sup>2</sup> of the land intended for residential use is 20,769 Frw, so in relation to this case, this basic price is the one to base on because it is clear to this instant Court that the valuer's reports were made without the request of the Court and they gave a very different value, yet the report was made in very close periods.

[45] The Court therefore finds that the area of 3,713 m<sup>2</sup>, has a value of 77,117,297 Frw, which should be considered as the basic actual value of the disputed land.

[46] Regarding the real value that must be returned to the buyer in good faith in the case of the sale of co-owned property, this instant Court explained it again in the case of Gahire Athanase against Mukarushako Gloriose and his colleagues, where it stated that in case the seller does not deny the purchase agreement and accepts that he has sold the property in full awareness that it was co-owned, the sale is valid only in respect of the part which only constitutes his share<sup>9</sup>. This means that the purchase agreement made by Twagirayezu Albert is valid for the part which only constitutes his share on the disputed property, that is, one-fifth (1/5) of it measuring 742.6 m<sup>2</sup> with a value of 15,423,459 Frw, which is the property Umumaranyota Agnès must keep after letting off the 4/5 remaining on the disputed land.

[47] The Court, therefore, finds that in case it is found that Twagirayezu Albert sold the disputed property without the consent of his siblings Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique and Twagirayezu Albertine, these siblings should regain their share on the property equal to 4/5 of it, and he should return to Umumaranyota Agnès the value of the 4/5 of the deprived one worth 77,117,297 Frw- 15,423,459 Frw = 61,693,838 Frw. This also means that the land title registered to Niyongira Jean Claude and Umumaranyota Agnès must be invalidated, 1/5 of the land registered on UPI 1/02/10/03/4370 shall be registered to Umumaranyota Agnès,

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<sup>9</sup> See judgment RS/INJUST/RC 00008/2019/SC decided by Supreme Court on 12/11/2021, paragraphs 82-84.

and 4/5 shall be registered to Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique, and Twagirayezu Albertine.

#### **4. Whether claimed damages are founded**

[48] Counsel Nshuti Salim assisting Twagirayezu Alice and her siblings, avers that the plaintiffs should be awarded 5,000,000 Frw for counsel fee for three lawyers who assisted them in this instant case and 700,000 Frw of the procedural fee since the start of this case, and they should be reimbursed the amount paid to Umumaranyota Agnès as ordered by the previous courts.

[49] Counsel Nsengiyumva Viateur argues that Umumaranyota Agnès is the one who has been dragged in continuous unnecessary lawsuits since 2014, and is asking for damages amounting to 5,000,000 Frw for that purpose and 1,000.000Frw for Counsel fee.

[50] In the pre-trial conference, Counsel Ngezahayo Bernard assisting Twagirayezu Albert argues that the plaintiffs should pay him 3,000,000 Frw for counsel and procedural fees for being dragged into unnecessary lawsuits.

[51] Counsel Nshuti Salim avers that Umumaranyota Agnès does not deserve any damages because she also knows well that the property was fraudulently bought by her husband due to the fact that he was not careful enough to seek sufficient information about the disputed property before the purchase and nor did he purchase it before the Land Notary, therefore she must be liable for the effects of such mistakes.

## DETERMINATION OF THE COURT

[52] Article 111 of Law n° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure reads that “the claim for representation fees is an incidental claim to the principal claim aiming to repay expenses incurred during judicial proceedings. The claim for legal costs is adjudicated at the same time with the principal claim. It can also be admitted and adjudicated even if the principal claim has not been admitted”.

[53] The Court finds that the counsel and procedural fees claimed by Twagirayezu Alice and her colleagues should be awarded because it was necessary to institute the case and seek lawyers to assist them. However, since they failed to prove the use of 5,000,000 Frw for counsel fee and 700,000 Frw for procedural fee within this instant case, in the sole discretion of the Court, they are awarded 500,000 Frw for counsel fee and 300,000 Frw for procedural fee, all totaling to 800,000 Frw, to be paid by Twagirayezu Albert.

[54] The Court also finds that as stated above, the late Niyongira Jean Claude, who was the husband of Agnès Umumaranyota, bought the disputed land in good faith, because Twagirayezu Albert sold to him the property being aware that he shared it with his siblings, so that Umumaranyota Agnès seized the courts to claim her rights, as well as seeking lawyers to assist her, so the counsel and procedural fees she is requesting must be awarded. However, since she failed to justify the use of 5,000,000 Frw for the procedural fee and 1,000,000 Frw for the counsel fee in this instant case, in the sole discretion of the Court, she is awarded 500,000 Frw for counsel fee and 300,000 Frw for

procedural fee, all totaling to 800,000 Frw, which must be paid by Twagirayezu Albert.

[55] The Court also finds that the fraud committed by Twagirayezu Albert led his sisters to seize the courts to defend their rights, so in case it appears that their claim was justified from the beginning, Twagirayezu Albert is the one who should pay damages ordered by the courts to Umumaranyota Agnès, meaning 1,500,000 Frw in the Intermediate Court of Gasabo, 350,000 Frw in the High Court and 500,000 Frw in the Court of Appeal, all totaling to 2,350,000 Frw.

### III. DECISION OF THE COURT

[56] Holds that the appeal lodged by Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique and Twagirayezu Albertine in the Court of Appeal has merit in part;

[57] Declares RCA 00291/2018/HC/KIG decided by the High Court, Kigali Chamber on 31/01/2012 changed regarding to the size of land that Umumaranyota Agnès should keep on plot number UPI 1/02/ 10/03/4370;

[58] Declares that the land title of the plot UPI 1/02/10/03/4370 located in Kigali City, Gasabo District, Kinyinya Sector, Kagugu Cell, Rukungu Village is invalidated, and decides that one-fifth (1/5) should be registered to Umumaranyota Agnès and four-fifths of it should be registered to Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique and Twagirayezu Albertine;

[59] Orders Twagirayezu Albert to pay to Umumaranyota Agnès the value of four-fifths (4/5) of the plot number UPI 1/02/10/03/4370 amounting to 61,693,833 Frw;

[60] Orders to Twagirayezu Albert to pay back to Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique and Twagirayezu Albertine, 2,350,000 Frw of damages charged by the previous courts and 800,000 Frw for counsel and procedural fees at this instance, all totaling to 3,150,000 Frw;

[61] Orders to Twagirayezu Albert to pay Umumaranyota Agnès 800,000 Frw for counsel and procedural fees at this instance;

[62] Orders to Twagirayezu Albert to pay a civil fine amounting to 200,000 Frw charged in the hearing held on 14/09/2021 for delaying the case.



**COMMERCIAL CASE**



## NSENGIYUMVA v. BANK OF KIGALI (BK) PLC

[Rwanda SUPREME COURT-RS/INJUST/RCOM  
00005/2021/SC (Ntezilyayo, P.J., Cyanzayire,  
Hitiyaremye, Karimunda and Nyirinkwaya, J.) October 7,  
2021]

*Rules of procedure for judgment review due to injustice – Scope of the subject matter – Issues that were not subject to examination during the original trial cannot be brought forth for examination in relation to judgment review due to injustice.*

*Commercial procedure – Bank loan– Bank loan interests – Bank loan interests continue to accrue until the entire loan is repaid, provided that such accrual does not exceed the amount of the outstanding principal loan, as calculated from the date when the loan became non-performing.*

*Commercial procedure – Loan agreement– The termination of a loan agreement does not release the debtor from his/her obligation to repay the related loan interests, and the interests continue to accrue until the full loan is repaid. However, such accrual cannot exceed the amount of the outstanding principal loan (in duplum rule).*

**Facts:** Bank of Kigali Plc sued Nsengiyumva Fulgence before the Commercial Court seeking an order for him to pay to the Bank a principal loan of 155,308,448 Frw, along with the related interests that were computed up to the outstanding principal loan, resulting in a total sum of 310,616,976 Frw. The Commercial Court heard the case and determined that the claim of the Bank of Kigali was founded. Consequently, the Court ordered Nsengiyumva Fulgence to pay 300,000,000 Frw to the Bank. Dissatisfied

with the ruling, Nsengiyumva Fulgence appealed to the Commercial High Court. However, instead of upholding the payment of 300,000,000 Frw, the Commercial High Court ordered him to pay 155,301,368 Frw. Bank of Kigali Plc subsequently appealed against this decision before the Court of Appeal which held that its appeal is grounded and ordered Nsengiyumva Fulgence to pay 310,616,896 Frw. Nsengiyumva Fulgence petitioned the President of the Supreme Court, requesting the review of the judgment on grounds of injustice. The President of the Supreme Court decided accordingly and the judgment was tried on 15/02/2022.

Nsengiyumva Fulgence expressed his dissatisfaction with the calculation of interest charges. He highlighted that on 12/10/2012, the Bank of Kigali Plc had sent him a letter notifying him of the suspension of their normal business partnership and informing him that the case was handed over to the Bank employee who would initiate the process of forced repayment. Nsengiyumva Fulgence argues that since the mortgage auction did not fully cover the debt, the Bank should have immediately resorted to legal action instead of continuing to accrue interest for the entire five-year period, especially considering that the loan agreement had been terminated. Additionally, he asserts that the Bank should be held accountable for the loss of 275,400,000 Frw that he incurred and proposes utilizing 146,543,891 Frw, which remains outstanding, for judicial set-off.

Bank of Kigali Plc argues that throughout the entire five-year period, both parties were engaged in negotiations for debt repayment. It asserts that the correspondences exchanged between them demonstrate this fact, and as a result, they refrained from initiating legal proceedings while the negotiations were ongoing. Additionally, they maintain that there was no prohibition on the accrual of interest as long as it did not exceed the outstanding principal loan since

the loan had not been fully repaid. In regard to the claim of Nsengiyumva Fulgence for the loss incurred due to the auction, Bank of Kigali Plc asserts that this is a new claim unrelated to the current case. It contends that from the trial stage onwards, the focus of this case has been solely on determining the actual amount that the debtor is obligated to pay to the Bank in relation to the unpaid loan he was granted.

**Held: 1.** Issues that were not subject to examination during the original trial cannot be brought forth for examination in relation to the judgment review due to injustice.

2. Bank loan interests continue to accrue until the entire debt is repaid, provided that such accrual does not exceed the amount of the outstanding principal loan, as calculated from the date when the loan became non-performing.

3. The termination of the loan agreement does not release the debtor from his/her obligation to repay the related loan interests, and the interests continue to accrue until the full loan is repaid. However, such accrual cannot exceed the amount of the outstanding principal loan (in duplum rule).

**The application for the judgment review due to injustice has merits in parts.**

**The respondent is ordered to pay the Bank a total of 293,087,782 Frw, which comprises 146,543,891 Frw for the outstanding principal loan and 146,543,891 Frw for the accrued interests.**

**Statutes referred to:**

Law n° 45/2011 of 25/11/2011 governing contracts, article

**Cases referred to:**

RCOMA 0166/12/CS, Umutesi Kaberuka Espérance v I&M Rwanda Ltd rendered by the Supreme Court on 28/04/2017.

RCOMA 0044/12/CS, Ndayambaje v Ecobank, rendered by the Supreme Court on 07/11/2014.

RS/INJUST/RC 00007/2018/SC, Nditiribambe Samuel v Gatera Jason and Crts, rendered by the Supreme Court on 13/03/2020;

RS/INJUST/RSOC 00001/2018/SC Ukwibishaka Alexis v. BPR Bank Rwanda, rendered by the Supreme Court on 02/07/2021.

RS/INJUST/RAD 00003/2021/SC Tabaruka Dieudonné v. Gicumbi District, rendered by the Supreme Court on 20/05/2022.

## Judgment

### 1. BACKGROUND OF THE CASE

[1] On October 8, 2010, the Bank of Kigali Plc granted Nsengiyumva Fulgence a loan of 181,182,303 Frw repayable within 7 years, with a monthly repayment of 3,770,444 Frw starting from November 31, 2020. However, Nsengiyumva Fulgence defaulted and fell into arrears. Subsequently, he requested a loan restructuring, and on April 14, 2011, the loan was restructured to the amount of 196,660,736 Frw, repayable over a period of 120 months with a monthly repayment of 3,482,715 Frw with an interest rate of 17.25%. Despite the restructuring, Nsengiyumva Fulgence once again failed to repay the loan and fell into arrears once more.

[2] On October 12, 2012, the Bank of Kigali Plc sent a letter to Nsengiyumva Fulgence, informing him of the

cancellation of his loan payment plan and instructing him to immediately pay the outstanding amount of 247,546,466 Frw, which included the principal loan and related interests. The letter also notified him that the interest rate of 19.25% would continue to accrue until the entire loan was fully repaid. Additionally, he was informed that his case had been assigned to the Bank employee with the authority to initiate the process of forced repayment.

[3] On September 19, 2014, a house that Nsengiyumva Fulgence had mortgaged with Bank of Kigali Plc was auctioned, and it was the same Bank that acquired the mortgage for 100,000,000 Frw. On October 8, 2014, the amount of 92,320,310 Frw was deposited in the debtor's bank account.

[4] On October 13, 2017, Nsengiyumva Fulgence wrote to the Bank of Kigali Plc requesting permission to sell the mortgaged house and pay his debt of 300,000,000 Frw<sup>108</sup>. On December 11, 2017, the Bank of Kigali Plc replied to him granting permission. However, the Bank cautioned him that he had only 60 days to complete the process and repay the debt; otherwise, the granted permission would become invalid; such a fact happened.

[5] Bank of Kigali Plc filed a claim against Nsengiyumva Fulgence in the Commercial Court, seeking an order for him to pay the Bank the principal loan of 155,308,448 Frw, along with the related interests that were calculated up to the outstanding principal loan, resulting in a total sum of 310,616,976 Frw. Nsengiyumva Fulgence

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<sup>108</sup> By that letter, Nsengiyumva Fulgence stated that based on the loan that I owe to the Bank of Kigali Plc amounting to 300,000,000 Frw, I request your permission to sell the house for repayment to Bank of Kigali Plc, and settling the issue of the loan as after selling it I will pay the loan once for all.

acknowledged the existence of the debt of 247,546,466 Frw, but he did not acknowledge the interests that accrued after the cancellation of their agreement and the auction of the attached mortgage by Bank of Kigali Plc.

[6] On January 23, 2020, the Commercial Court heard the case RCOM 02129/2019/TC and decided that the claim filed by Bank of Kigali Plc was grounded. The Court issued an order directing Nsengiyumva Fulgence to pay the Bank a total sum of 300,000,000 Frw. This amount covered the outstanding principal loan along with the associated interests, in addition to 560,000 Frw for legal counsel and procedural fees.

[7] By so deciding, the Court based its ruling on article 112 (2°) of Law n° 47/2017 of 23/09/2017 governing the organization of banking which provides that in recovering the non-performing loan, the interests must not exceed the principal loan owed when the loan becomes non-performing. The Court has also referred to article 28 of Law n° 15/2004 of 12/06/2004 relating to evidence and its production<sup>109</sup> following the fact that Nsengiyumva Fulgence has, by a letter that he addressed to Bank of Kigali Plc on 13/10/2017, acknowledged the existence of the claimed debt.

[8] Nsengiyumva Fulgence appealed against the aforementioned ruling to the Commercial High Court. The Court tried the case RCOMA 00175/2020/HCC on November 27, 2020, and decided that Nsengiyumva Fulgence should pay 155,301,368 Frw to Bank of Kigali Plc instead of the initially ordered amount of 300,000,000 Frw.

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<sup>109</sup> The article provides that “A friendly letter is used as evidence against its author, even if it has not been signed, as long as it can be established that it emanated from the authoring party. It constitutes an extra-judicial admission even if it contains a recognition of the disputed right”.

[9] The Court clarified that once the Bank of Kigali had auctioned the mortgage attached to the loan and found that the auction proceeds were insufficient to fully pay the debt, it should not have continued calculating the accruing interest for five years while it had already terminated the loan agreement with Nsengiyumva Fulgence, instead, it should have brought the issue before the courts for claiming the remaining repayment. Furthermore, the Court explained that the fact that Nsengiyumva Fulgence acknowledged the debt of 300,000,000 Frw in his letter dated October 13, 2017, cannot be taken into consideration as he did not admit such loan as the debt owed to Bank of Kigali, rather both parties agreed on it while they were negotiating for amicably settling the issue without resorting to the court proceedings.

[10] Bank of Kigali Plc appealed against the aforementioned decision to the Court of Appeal. On April 30, 2021, the Court of Appeal tried the case N<sup>o</sup> RCOMAA 00104/2020/CA and held that the appeal filed by Bank of Kigali Plc was justified. The Court ruled that Nsengiyumva Fulgence should be liable for the outstanding principal debt, along with all the related interests that had accrued up to the outstanding principal loan, resulting in a total sum of 310,616,896 Frw. Additionally, the Court awarded 700,000 Frw for counsel and procedural fees.

[11] The Court held that the interests would continue to accrue until the debt was fully paid off, with the condition that they should not exceed the remaining non-performing principal loan. This ruling is in accordance with the provisions of Article 112 (2<sup>o</sup>) of Law n<sup>o</sup> 47/2017 of 23/9/2017 governing the organization of banking.

[12] Regarding the letter dated October 13, 2017, sent by Nsengiyumva Fulgence to Bank of Kigali Plc, the Court of Appeal found no grounds to dismiss his admission made in

that letter, in accordance with the provisions of Article 28 of the aforementioned Law n° 45/2004 of 12/6/2004.

[13] Following the Court ruling, Nsengiyumva Fulgence filed an application to the President of the Supreme Court, requesting the review of the judgment on grounds of injustice. After examining the application, the President of the Supreme Court, by his decision N° 227/CJ/2021 of 20/9/2021, forwarded the case to the Court's Registry for being re-adjudicated. The case was subsequently assigned the docket N° RS/INJUST/RCOM 00005/2021/SC.

[14] The case was heard in public on February 15, 2022, Nsengiyumva Fulgence was represented by Counsel Kayiranga Cyrille and Bank of Kigali by Counsel Biseruka Frank. During the hearing, the litigants presented arguments on two main issues: (A) The determination of the actual amount of debt that Nsengiyumva Fulgence owes to Bank of Kigali Plc and (B) The justification of the damages claimed by Nsengiyumva Fulgence at this stage of the case.

[15] The hearing was concluded on the same day, and the judgment pronouncement was fixed on March 25, 2022. However, during the deliberation, the Court deemed it necessary to appoint an expert to provide clarification on the evolution of the loan owed by Nsengiyumva Fulgence to Bank of Kigali Plc.

[16] In her report, Ayinkamiye Spéciose, the Expert, highlighted that:

1. On October 12, 2012, when Bank of Kigali Plc notified Nsengiyumva Fulgence of the suspension of the usual dealings on the loan agreement, he owed the Bank a principal loan of 196,660,736 Frw with ordinary interests amounting to 42,120,536 Frw,

resulting in a total sum of 238,864,201 Frw. This amount is different from the previously presented figures of 247,546,466 Frw by Bank of Kigali Plc.

Regarding the difference between the figures provided by the expert and the computation by Bank of Kigali Plc, the expert explained that it arose from the method of calculation. The Bank's computation was based on a period of 360 days per year, while the expert calculated the amount based on 365 days per year, as instructed by the National Bank of Rwanda in its letter of December 3, 2021, which was addressed to financial institutions.

2. On October 8, 2014, after the auction of Nsengiyumva Fulgence's mortgaged house, he made a payment of 92,320,310 Frw. The outstanding loan amounted to 146,543,891 Frw (238,864,201 Frw-92,320,310 Frw).
3. The total amount of ordinary and late loan interests computed from October 8, 2014, to September 5, 2019, amounted to 138,420,742 Frw. Additionally, the interests computed from December 31, 2019, amounted to 147,076,869 Frw.

[17] The hearing was resumed on September 20, 2020, Nsengiyumva Fulgence was assisted by Counsel Kayiranga Cyrille, Bank of Kigali by Counsel Biseruka Frank. Ayinkamiye Spéciose, the appointed expert, also attended the hearing and presented her report. The litigants provided their comments on the report, and subsequently, the hearing was closed.

## II. ISSUES OF THE CASE AND THEIR ANALYSIS

### **a. Determination of the amount of loan to be paid by Nsengiyumva Fulgence to Bank of Kigali Plc**

[18] Nsengiyumva Fulgence assisted by Counsel Kayiranga Cyrille, states that he has no objections to the report presented by the Expert. However, he disagrees with the interests that Bank of Kigali Ltd later charged him, especially considering that it had already notified him of the termination of the loan agreement in its letter dated October 12, 2012. In the letter, it also informed him that the matter was handed over to the Bank employee to initiate a procedure for forced repayment. He further argues that if the proceeds from the mortgage auction were insufficient to fully pay the debt, the Bank should not have continued calculating the accruing interests for the entire 5 years when the loan agreement was no longer in effect.

[19] He further adds that even the Court of Appeal, in its ruling, stated that when the Bank realized that the proceeds from the mortgage auction were insufficient to cover the claimed debt, it should have brought the matter to the competent courts, this was not done as they engaged in negotiations. However, these negotiations lasted only 60 days, which was the time granted by the Bank of Kigali Plc to him for selling the mortgaged house.

[20] He states that in the judgment N<sup>o</sup> RS/INJUST/RP 00006/2017/CS rendered on November 29, 2019, this Court irrevocably held that Mr. Rutembesa Phocas and the persons who assisted him in auctioning his property, had committed the offense of drawing up and using a modified and false document. Due to the fact that Rutembesa Phocas

represented Bank of Kigali in this action that led to the commission of the offense, Bank of Kigali Plc should be held liable under Article 33 of the Organic Law n° 01/2012 of 2/5/2012 instituting the penal code that was into force at the time the offense was committed, they caused to him a loss of 275,400,000 Frw which should be set-off with the outstanding loan of 146,543,891 Frw.

[21] Counsel Biseruka Frank, representing Bank of Kigali Plc in this case, acknowledges that he has no objections to the Expert's report. He further states that the difference between the Bank's figures and his figures stems from the fact that the Bank filed the case before the issuance by the National Bank of Rwanda of the regulation on computing the loan interests based on 365 days per year.

[22] Regarding the statement of Nsengiyumva Fulgence that Bank of Kigali Plc should not have continued to calculate interest accrual for the five years while the loan agreement was terminated and that the Bank should have taken the matter to the competent courts, the legal counsel of the Bank explains that, as stated in paragraph 20 of the Court of Appeal's judgment, both parties were engaged in negotiations for the repayment of the debt during those five years. The legal counsel further points out that several correspondences indicate that negotiations were still ongoing, including a letter dated April 13, 2017, in which Nsengiyumva Fulgence himself acknowledges a debt of 300,000,000 Frw and requests for facilitation in payment terms. Therefore, the Bank of Kigali Plc could not have brought the matter to court while the issue was still being negotiated.

[23] He also argues that there was no reason to halt the accrual of interest since the debt had not been fully repaid. He emphasizes that the interest would continue to accumulate without exceeding the remaining unpaid

principal loan, as stated in Article 112 (2°) of Law N° 47/2017 of 23/09/2017 governing the organization of banking. He points out that this is why Bank of Kigali Plc did not request the full interest amount of 503,701,707 Frw when Bank of Kigali filed the claim at the first instance, it claimed the interest of 155,301,368 Frw, equal to the remaining loan unpaid by Nsengiyumva Fulgence after the mortgage auction and this was upheld by the Court of Appeal.

[24] With regard to the request of Nsengiyumva Fulgence that Bank of Kigali Plc should be held liable for the loss incurred due to the auction, Counsel Biseruka Frank states that it is a new claim as the subject matter from the initiation of the proceedings is the amount of loan that he must repay to the Bank for the loan he failed to repay. He adds that there were other judgments about such an auction whereby Nsengiyumva Fulgence requested its invalidation, for example, the judgment N°RCOMA 00471/2020/HC.

## **DETERMINATION OF THE COURT**

### **Regarding the principal loan**

[25] Article 64 of Law n° 45/2011 of 25/11/2011 relating to contracts provides that contracts made in accordance with the law shall be binding between parties while article 110 of Law n° 15/2004 relating to evidence and its production provides the judicial admission consists of statements the accused or his or her representative makes before the court. Such statements shall serve as plaintiff arguments

[26] The contract entered into by both parties indicates that Nsengiyumva Fulgence was granted the loan of 181,182,303 Frw by the Bank of Kigali Plc. This loan was later restructured and the amount changed to 196,660,736

Frw, with a repayment period of 120 months starting from April 30, 2011. The monthly repayment amount was set at 3,482,715 Frw, with an associated interest rate of 17.25% per year. The Bank statements included in the case file indicate that the borrower did not adhere to the agreed repayment terms, resulting in the arrears.

[27] [27] Nsengiyumva Fulgence himself admitted that he did not repay the loan granted to him, from the first instance, he pleaded that he owed the Bank a loan of 247,536,018 Frw evidenced by the letter of 12/10/2012 sent to him by Bank of Kigali, notifying to him of the suspension of the loan agreement, the remaining loan was 155,308,448 Frw, the loan decreased when the attached mortgage was auctioned, the amount of 92,320,310 Frw was paid.

[28] Considering the agreement signed by both parties and the acknowledgment of the loan by Nsengiyumva Fulgence himself, the Court finds that the debtor is obligated to repay the remaining unpaid principal loan. However, the Court specifies that it will refer to the balance presented by the Expert, as agreed upon by both parties. Therefore, Nsengiyumva Fulgence will be required to pay 146,543,891 Frw, and not the previously determined amount of 155,308,448 Frw as ruled by the Court of Appeal.

[29] With regard to the request of Nsengiyumva Fulgence that Bank of Kigali Plc should be held liable for the loss of 275,400,000 Frw he incurred from the mortgage auction and this loss should be set off with the remaining loan he owes to the Bank, the Court finds that it shall not be examined as it falls outside the scope of the subject matter of the case since the initiation of the proceedings, and this has been the consistent position of the Court in different cases.<sup>110</sup>

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<sup>110</sup> Case RS/INJUST/RC 00007/2018/SC of 13/03/2020 with Nditiribambe Samuel v Gatera Jason and Crts (paragraph 72); Case

### Regarding the loan interests

[30] With regard to the calculation of the loan interests charged by banks, it is important to consider the provisions of Article 64 of the aforementioned Law no. 45/2011 of 25/11/2011 relating to contracts, along with Paragraph 2 of Article 7 of the National Bank of Rwanda Regulation n°. 02/2011 of 21/03/2011 on credit classification and provisioning, which were into force when the claim was filed. According to these provisions, any interest on non-performing credit facilities that had previously accrued but remained uncollected must be reversed and credited to an interest in a suspense account until paid by the borrower. Additionally, Article 112 (2°) of the aforementioned Law no. 47/2017 of 23/09/2017 governing the organization of banking stipulates that the interest on non-performing loans should not exceed the remaining principal loan computed from the time the loan became non-performing.

[31] The aforementioned regulation and the provisions of the above-mentioned law clarify that the interest on loan facilities provided by banks to their clients continues to accrue until the full loan is repaid. However, this accrual is limited to the remaining balance of the unpaid principal loan calculated from the time the loan became non-performing.

[32] The above-mentioned stance is consistent with the position adopted by this Court in various cases<sup>111</sup>. It is also the same position that was discussed and applied in the case between SIMACO Ltd and I&M Bank Rwanda, decided on

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RS/INJUST/RSCO 00001/2018/SC rendered on 02/07/2021 with Ukwibishaka Alexis v. BPR Rwanda (paragraph 12); case RS/INJUST/RAD 00003/2021/SC of 20/05/2022 with Tabaruka Dieudonné v. Gicumbi District.

<sup>111</sup> Umutesi Kaberuka Espérance v. I&M Bank Rwanda Ltd, RCOMA 0166/12/CS of 28/04/2017 ; Ndayambaje v Ecobank, RCOMA 0044/12/CS of 07/11/2014,,

February 25, 2022. In that case, this Court referred to the doctrines put forth by legal scholars and clarified that the rescission of a loan agreement does not release the borrower from his/her repayment obligations<sup>112</sup>. Furthermore, the Court explained the significance of the in duplum rule, which prohibits the accrual of loan interest from exceeding the amount of the remaining unpaid principal loan, calculated from the date the loan became non-performing.<sup>113</sup>

[33] In the revised agreement of April 14, 2011, it is evident that both parties agreed that the loan would now generate an annual interest rate of 17.25%. They also agreed that the Bank had the right to change this rate with prior notice of 30 days. Furthermore, the Bank of Kigali Plc sent a letter to Nsengiyumva Fulgence on October 12, 2012, notifying him of an increase in the interest rate to 19.25%. The letter stated that the loan interest would continue to accrue until the full loan was repaid and informed him that the interest would be deposited into a different account. Their agreement does not contradict the related National Bank of Rwanda Regulation or the Law governing the organization of the banking, as mentioned above.

[34] The Court finds that there was nothing that prevents the accrual of loan interests as long as Nsengiyumva Fulgence had not yet repaid the claimed loan, as stated in the agreement he entered into with Bank of Kigali Plc. The interests were intended to continue accruing, with the condition of adhering to the limits outlined in Article 112 (2<sup>o</sup>) of the aforementioned law governing the organization of banking. This invalidates the defense presented by Nsengiyumva Fulgence who argues that the interests should not have continued accruing due to insufficient auction proceeds and the suspension of the loan agreement terms.

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<sup>112</sup> Case RS/INJUST/RCOM 00008/2021/SC, & 42-46.

<sup>113</sup> *Ibidem*, §48-50.

[35] With regard to the amount of the accrued interests, the Expert's report stated that as of 31/12/2019, these interests amounted to 147,076,869 Frw. Therefore, in accordance with the in duplum rule, which states that the loan interests should not exceed the remaining unpaid principal, the Court held that Nsengiyumva Fulgence is required to pay to Bank of Kigali Plc 146,543,891 Frw, and not the previously stated amount of 155,308,448 Frw as decided by the Court of Appeal.

#### **b. Regarding the damages claimed in this case**

[36] Nsengiyumva Fulgence claimed 1,000,000 Frw for both the counsel and procedural fees.

[37] Counsel Biseruka Frank who represents Bank of Kigali Plc, argues that Nsengiyumva Fulgence deserves no damages. He asserts that it was Nsengiyumva Fulgence who deliberately initiated an unnecessary case against the Bank for the loan he admits himself to.

### **DETERMINATION OF THE COURT**

[38] Article 111 of Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labor, and administrative procedure states this: *The claim for representation fees is an incidental claim to the principal claim aiming to repay expenses incurred during judicial proceedings. The claim for legal costs is adjudicated at the same time as the principal claim [...].*

[39] The Court finds that Nsengiyumva Fulgence is not entitled to damages for the counsel and procedural fees as both parties win the case.

### III. DECISION OF THE COURT

[40] Holds that the application for review of the judgment N<sup>o</sup> RCOMAA 00104/2020/CA rendered by the Court of Appeal on 30/04/2021 on grounds of injustice has merit in part.

[41] Orders to Nsengiyumva Fulgence to repay to Bank of Kigali Plc a sum of 293,087,782 Frw, which includes 146,543,891 Frw for the remaining unpaid principal loan and 146,543,891 Frw for the related interests.



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