

RWANDA / JUDGMENT

BANYURWANIKI v MUKANDAHUNGA**RCA 00362/2019/HC/KIG**

COURT

High Court

DECIDED

8 May 2020

CASE / FILE NUMBER

RCA 00362/2019/HC/KIG

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BANYURWANIKI v MUKANDAHUNGA

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- Date: 2020-05-08
- Case/document no.: RCA 00362/2019/HC/KIG
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Text**Page 1**

BANYURWANIKI v MUKANDAHUNGA [Rwanda – URUKIKO RUKURU – RCA 00362/2019/HC/KIG (Kadigwa, P.J.) 08 Gicurasi 2020] Amategeko y’imanza mbonezamubano – Imiburanishirize y’imanza- Kwemererwa kubyutsa urubanza - Kuba ababuranyi bose bemeranya ko bageze ku rukiko ku muni w’iburanisha ariko bakajijwa ntibamenye aho icyumba cy’iburanisha kiri byafatwa nk’ibyago bagize kandi bitabaturutseho, ibi byago bikaba bigomba gufatwa nk’impamvu ikomeye yatuma umuburanyi utaritabye urubanza rwe rugasibwa yakwemererwa kurubyutsa. Itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano iz’ubucuruzi iz’umurimo n’iz’ubutegetsi, ingingo ya 55. Incamake y’ikibazo: Mukandahunga yareze Banyurwaniki ko yamubeshye ko ari ingaragu bituma bashaka baranasezerana amwandikishaho n’imitungo yari yarazunguye iwabo. Amaze kumenya ko yamubeshye ko ari ingaragu kandi yari yarasezeranye n’undi mugore, yatanze ikirego mu rukiko rwisumbuye asaba ko rwakwemeza ko Banyurwaniki Michel akurwa ku mutungo yandikanyeho na Mukandahunga kuko byagaragaye ko yawanditsweho atari uwe. Urukiko rwemeje ko Banyurwaniki avanwa ku mitungo yari yanditsweho we na Mukandahunga hanyuma ntiyanyurwa n’icyo cyemezo akijuririra mu rukiko Rukuru avuga ko icyo kirego kitagombaga kwakirwa kuko kitari mu

bubasha bw'Urukiko Rwisumbuye kandi ko Mukandahunga atagombaga gusubirishamo urubanza kuko ku muni wo kuburana atitabye kandi ntiyagaragaza impamvu ikomeye yatumye atitaba. Ibyo bibazo ni byo byasuzumwe n'Urukiko Rukuru aho urega yavugaga ko Urubanza RC 0033/2017/TGI/GSBO rwsibwe kuko ku muni w'iburanisha washyizwe kuwa 07/06/2017 urega ariwe Mukandahunga atitabye nta n'impamvu yatanze, arubyutsa avuga ko yajijwe akayoberwa icyumba cy'iburanisha kandi yageze ku rukiko bikemerwa ngo kandi ibyo ari ubujiji bwe, atari impamvu ikomeye yari gutuma urubanza rubyutswa. Akomeza vuga ko iki kirego gishingiye ku butaka kikaba cyaraburanishijwe n'Urukiko rutabifitiye ububasha kuko cyagombaga kuburanishwa n'Urukiko rw'Ibanze. Mukandahunga yisobanura avuga ko impamvu yatanze ifite ishingiro kuko urubanza rwasibwe ababuranyi bose bageze ku rukiko ahubwo bakayoberwa aho icyumba cy'iburanisha gihereye, ibyo n'umuburanyi we akaba yarabyemeye ashyira umukono ku ibaruwa Mukandahunga yandikiye urukiko arumenyesha iyo mpamvu yatumye atagaragara mu cyumba cy'iburanisha, bityo akaba asanga atakwisubiraho ngo ajuririre iyo mpamvu kandi nawe yarayemeraga. Ku kijyanye n'ububasha bw'urukiko, akomeza asobanura ko iyi nzitizi nta gaciro ikwiye guhabwa kubera ko iki kirego gisaba Banyurwaniki gukurwa ku cyangombwa cye cy'umutungo kijyanye n'ibibazo bikomoka ku ihererekanya ry'uburenganzira ku butaka, ibi bibazo rero bya mutation ku butaka bikaba ngo nta Rukiko rwagenewe kubiburanisha, bityo, Urukiko Rwisumbuye rukaba arirwo rwari rufite ububasha kubera ko arirwo rwagenwaga n'itegeko kuburanisha imanza zitahariwe kuburanishwa n'izindi nkiko kandi akaba ari nako bikimeze kugeza ubu mu itegeko rigena ububasha bw'Inkiko rishya.

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Incamake y'icyemezo: 1. Kuba ababuranyi bose bemeranya ko bageze ku rukiko ku muni w'iburanisha ariko bakajijwa ntibamenye aho icyumba cy'iburanisha kiri ni nk'ibyago bagize kandi bitabaturutseho. Ibi byago bikaba bigomba gufatwa nk'impamvu ikomeye ivugwa n'ingingo ya 55 y'itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano iz'ubucuruzi iz'umurimo n'iz'ubutegets, yatuma umuburanyi utaritabye urubanza rwe rugasibwa yakwemererwa kurubyutsa.

2. Mu gihe ikirego cyatangwaga ku rwego rwa mbere itegeko ryagengaga ububasha bw'inkiko ryahaga urukiko rw'ibanze ububasha bwo kuburanisha imanza zerekeye amasambu, n'indi mitungo itimukanwa itarengeje agaciro ka 3.000.000 frw kandi icyaregowe muri uru rubanza kikaba ari ukwambura Banyurwaniki Michel uburenganzira afite kuri pariseri ibaruye kuri UPI 1/02/01/06/3177 irimwo amazu, agaciro kayo bakaba batarakagaragaje mu iburanisha bityo ako gaciro kagomba kugaragzwa kugira ngo hamenyekane Urukiko rufite ububasha kuri urwo rubanza. Iburanisha ry'uru rubanza rizasubukurwa; Ababuranyi bagomba kugaragaza agaciro k'iburanisha. Amategeko yashingiweho: Itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano iz'ubucuruzi iz'umurimo n'iz'ubutegets, ingingo ya 55. Amategeko yifashishijwe atagikoreshwa: Itegeko Ngenga No 51/2008 ryo kuwa 09/09/2008 yigenga ububasha bw'Inkiko, ingingo ya 67 Nta manza zifashishijwe Urubanza IMITERERE Y'URUBANZA [1] Mu rubanza rwajuririwe RC 00179/2017/TGI/GSBO rwaciye kuwa 26/09/2018 Mukandahunga Judith niwe wareze asaba

ibyavuzwe haruguru mu kiregerwa, ashingira ikirego cye kuko ngo Banyurwaniki Michel yamubeshye ko ari ingaragu bituma bagirana amasezerano yo gushingirwa ndetse babyarana abana anamwandikisha ku mitungo yamusanganye kuko we ayikomora ku babyeyi be. Muri urwo rubanza urukiko rwahaye agaciro ikirego cya Mukandahunga Judith, rutegeka ko Banyurwaniki Michel avanwa ku mitungo yari yanditsweho we na Mukandahunga Judith. [2] Banyurwaniki Michel ntiyanyuzwe n'icyo cyemezo akijuririra muri uru Rukiko avuga ko ikirego cya Mukandahunga Judith kitagombaga kwakirwa kuko kitari mu bubasha bw'urukiko rwisumbuye ahubwo cyagombaga kuburanishwa n'urukiko rw'ibanze, ikindi ngo Mukandahunga Judith ntiyagombaga kwemererwa gusubirishamo urubanza kuko ku munsu wo kuburana atitabye kandi ntiyagaragaza impamvu ikomeye yatumye atitaba, ibyo bibazo bikaba aribyo bigomba gusuzumwa muri uru rubanza.

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ISESENGURA RY'IBIBAZO BIRI MURI URU RUBANZA Kuba ikirego cyo gusubirishamo urubanza kitaragomba kwakirwa [3] Uburanira Banyurwaniki Michel avuga ko Urubanza RC 0033/2017/TGI/GSBO rwsibwe kuko ku munsu w'iburanisha washyizwe kuwa 07/06/2017 urega ariwe Mukandahunga atitabye nta n'impamvu yatanze, arubyutsa avuga ko yajijwe akayoberwa icyumba cy'iburanisha kandi yageze ku rukiko bikemerwa ngo kandi ibyo ari ubujiji bwe, atari impamvu ikomeye yari gutuma urubanza rubyutswa, bityo ngo ingingo ya 58 y'itegeko ryariho icyo gihe ryerekeye imiburanishirize y'imanza z'imbonezamubano ikaba itarubahirijwe. [4] Uburanira Mukandahunga Judith we yisobanura avuga ko impamvu yatanze ifite ishingiro kuko urubanza rwasibwe ababuranyi bose bageze ku rukiko ahubwo bakayobera aho icyumba cy'iburanisha gihereye, ibyo ndetse n'umuburanyi we akaba yarabyemeye ashyira umukono ku barwa Mukandahunga Judith yandikiye urukiko arumenyesha iyo mpamvu yatumye atagaragara mu cyumba cy'iburanisha, bityo ngo Banyurwaniki Michel ntakwiriye kwisubira ngo ajuririre iyo mpamvu kandi nawe yarayemeraga. UKO URU RUKIKO RUBIBONA [5] Kuba ababuranyi bose bemeranya kuko bageze ku rukiko ku munsu w'iburanisha ariko bakajijwa ntibamenye aho icyumba cy'iburanisha gihereye, uru Rukiko rusanga bitafatwa nk'uburangare nk'uko Banyurwaniki Michel ashaka kubyumvikanisha kuko ikigaragara cyo nuko bagize umutima wo kwitaba urukiko ku munsu w'iburanisha, bivuze ko bashakaga rwose kuburana. Kuba barayobewe aho icyumba cy'iburanisha kiri uru Rukiko rusanga ari nk'ibyago bagize kandi bitabaturutseho, ibi byago bikaba bigomba gufatwa nk'impamvu ikomeye ivugwa n'ingingo ya 55 y'itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano iz'ubucuruzi iz'umurimo n'iz'ubutegetsi, yatumye umuburanyi utaritabye urubanza rwe rugasibwa yakwemererwa kurubyutsa. Kuba ikirego kitaragombaga kwakirwa kubera iburabubasha ry'urukiko rwaregawe [6] Uburanira Banyurwaniki Michel avuga ko ikirego cya Mukandahunga gishingiye ku butaka kuko asaba ko Banyurwaniki Michel akurwa ku cyangombwa cy'umutungo w'ubwo butaka basangiye (UPI 1/02/01/06/3177). Akomeza avuga ko Iki kirego Mukandahunga yagitanze mu Rukiko Rwisumbuye rwa Gasabo kandi ngo kiri mu bubasha bw'urukiko rw'ibanze nkuko ingingo ya mbere agace ka kabiri y'itegeko ngenga No 01/2015 ryo kuwa 5/5/2015 rihindura kandi ryuzuza itegeko ngenga No 51/2008 ryo kuwa 09/09 /2008 ryerekeye ububasha bw'inkiko

(yakoreshwaga icyo gihe) ibiteganywa. [7] Uburanira Banyurwaniki Michel yavuze ko iyi nzitizi y'iburabubasha bw'urukiko yatanze mu iburanisha ariko ngo urukiko ntirwayiha agaciro, ayigarukaho mu iburanisha ry'urubanza mu mizi ryo kuwa 16/07/2018 nabwo ntiyahabwa agaciro kandi ngo n'itegeko rishya N0 30/2018 ryo kuwa 2/06/2018 rigena ububasha bw'inkiko naryo mu ngingo yaryo ya 27 agace ka gatatu yarongeye gushimangira ko Urukiko rw'Ibanze ari rwo rufite ububasha bwo kuburanisha mu rwego rwa mbere imanza zerekeye umutungo utimukanwa utari ubutaka

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bugenewe ubuhinzi n'ubworozi kandi koko nk'uko igishushanyo mbonera cy'umuji wa Kigali kibigaragaza ubutaka bwo muri parcelle ifite UPI: 1/02/01/06/3177 ni ubwo gutura (reba kopi Master Plan en annexe) [8] Uburanira Mukandahunga Judith yisobanura avuga ko iyi nzitizi y'iburabubasha yatanze na Banyurwaniki nta gaciro ikwiye guhabwa kubera ko iki kirego cya Mukandahunga gisaba Banyurwaniki gukurwa ku cyangombwa cye cy'umutungo kijyanye n'ibibazo bikomoka ku ihererekanya ry'uburenganzira ku butaka (mutation), ibi bibazo rero bya mutation ku butaka bikaba ngo nta Rukiko rwagenewe kubiburanisha, bityo ngo hashingiwe ku ngingo ya 78 y'itegeko ngenga No 51/2008 ryo kuwa 09/09/2008 ryagenaga imiterere, imikorere n'ububasha bw'inkiko mu gihe ikirego cyatangirwe Urukiko Rwisumbuye rukaba arirwo rwari rufite ububasha kubera ko arirwo rwagenwaga n'itegeko kuburanisha imanza zitahariwe kuburanishwa n'izindi nkiko kandi akaba ari nako bikimeze kugeza ubu mu itegeko rigena ububasha bw'inkiko rishya. Uko uru Rukiko rubibona [9] Ku bijyanye n'iki kibazo, uru Rukiko rusanga mu gihe ikirego cyatangwaga ku rwego rwa mbere (13/06/2017) itegeko ryagengaga ububasha bw'inkiko ari Itegeko Ngenga No 51/2008 ryo kuwa 09/09/2008 ingingo yaryo ya 67 ikaba yarahaga urukiko rw'ibanze ububasha bwo kuburanisha imanza zerekeye amasambu, n'indi mitungo itimukanwa itarengeje agaciro ka 3.000.000 frw kandi icyaregowe muri uru rubanza kikaba ari ukwambura Banyurwaniki Michel uburenganzira afite kuri pariseri ibaruye kuri UPI 1/02/01/06/3177 irimwo amazu, agaciro kayo maze bakaba batarakagaragaje mu iburanisha. [10] Kuba urukiko Rwisumbuye rwa Gasabo rwaraburanishije uru rubanza ku rwego rwa mbere rutabanje gusuzuma agaciro k'icyaregowe kandi ariko kagomba gutuma rumenya niba kiri mu bubasha bw'urukiko bwo kuburanisha uru Rukiko rusanga ari ikosa rigomba gukosorwa kuri uru rwego rw'ubujurire, Mukandahunga Judith na Banyurwaniki Michel bakaba bagomba kubanza kugaragaza agaciro k'umutungo baburana ubaruye kuri UPI 1/02/01/06/3177 wavuzwe haruguru. [11] Kuba uburanira Mukandahunga Judith avuga ko ikibazo kiri muri uru rubanza ari ihererekanya ry'umutungo (Mutation) uru Rukiko rusanga nta gaciro byahabwa kuko icyaregowe mu by'ukuri ari ugutesha agaciro uburenganzira bwose Banyurwaniki Michel yaba afite ku mutungo basangiye kubw'isezerano ryo gushyingirwa bagiranye nyuma hakaboneka ikimenyetso simusiga cy'uko rishingiye ku buriganya bwa Banyurwaniki Michel. Rushingiye ku bimaze kuvugwa byose, uru Rukiko rusanga iburanisha ry'uru rubanza rigomba gusubukurwa, ababuranyi bakabanza kurugaragariza agaciro k'umutungo utimukanwa uburanwa, ubaruye kuri UPI 1/02/01/06/3177, uherereye mu Murenge wa Bumbogo ho mu Karere ka Gasabo, bityo iki kibazo cy'ububasha bw'urukiko kikabasha gusuzumwa. ICYEMEZO CY'URUKIKO [12] Urukiko

Rukuru Rwemeje ko iburansha ry'uru rubanza rizasubukurwa;

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Rutegetse Banyurwaniki Michel na Mukandahunga Judith kugaragariza uru Rukiko agaciro k'ikiburanwa; Rutegetse Banyurwaniki Michel na Mukandahunga Judith kuba bashyikirije ubwanditsi bwarwo raporo y'igenagaciro ry'uwo mutungo mu gihe kitarenze ukwezi bamaze gusomerwa uru rubanza rubanziriza urundi; Rutegetse ko iburanisha ry'uru rubanza rizakomeza kuwa 16/07/2020; Rubaye rusubitse igarama.

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