

RWANDA / JUDGMENT

Re. BYANSI (ADD)

RLR V. 3 - 2022

COURT

Supreme Court

DECIDED

10 December 2021

CASE / FILE NUMBER

RS/INCONST/SPEC 00003/2021/SC

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Re. BYANSI (ADD)

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- Date: 2021-12-10
- Case/document no.: RS/INCONST/SPEC 00003/2021/SC
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Text

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Re. BYANSI (ADD) [Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/SPEC 00003/2021/SC– (Ntezilyayo, P.J., Nyirinkwaya, Cyanzayire, Hitiyaremye na Karimunda, J.) 10 Ukuboza 2021] Itegeko Nshinga – Ikirego gisaba kwemeza ko ingingo y'Itegeko inyuranye n'Itegeko Nshinga – Inyungu zo gutanga ikirego – Inyungu igomba kumvikana ku buryo bwagutse, igashingira ku kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga kuko ribangamiye uburenganzira bw'abasaba ko rivaho, cyangwa se rituma icyari kigamijwe n'Itegeko Nshinga kitagerwaho kandi kigomba kurengerwa. Itegeko Nshinga – Ikirego gisaba kwemeza ko ingingo y'Itegeko inyuranye n'Itegeko Nshinga – Inyungu y'uwatanze ikirego – Uwatanze ikirego agomba kwerekana inyungu bwite afite cyangwa yavutswa mu buryo butaziguye n'itegeko asaba ko ryakurwaho. Incamake y'ikibazo: Byansi yatanze ikirego mu Rukiko rw'Ikirenga asaba kwemeza ko ingingo ya 71, mu gika cyayo cya 5 y' Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirizye imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi inyuranyije n'ingingo ya 38 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu

2015. Asobanura ko iyi ngingo ibangamiye abanyamakuru kubera ko kubashyiriraho igihe bagomba kubahiriza mu gusaba kwemererwa gufata amajwi n'amashusho mu cyumba cy'iburanisha, ari uburyo bwo kubuza itangazamakuru kubona amakuru no kubangamira ubwisanzure bwaryo. Akomeza avuga ko bidakwiye ko basabwa uruhushya rwo gutara amakuru mu nkiko, igihe berekana icyangombwa kibaranga. Asoza avuga kandi ko gushyirirwaho igihe cyo gusaba gufata amajwi n'amashusho mu cyumba cy'iburanisha, haba hirengagijwe ko igihe tugezemo hari itangazamakuru rikorwa mu buryo bwa mobile journalism. Uhagarariye Leta muri uru rubanza avuga ko Itegeko Nshinga ntaho riteganyaga ko itangazamakuru rigomba kubona amakuru mu buryo ubwo aribwo bwose akaba ariyo mpamvu iyo ngingo Urega agaragaza ntaho inyuranyije na ryo. Avuga kandi ko kuba itegeko riteganyaga ko itangazamakuru risaba uruhushya rwo gufata amajwi n'amashusho mu cyumba cy'iburanisha bidakuraho ihame ry'uko iburanisha ribera mu ruhame nk'uko bigaragara mu ngingo ya 71 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru. Mbere y'iburanisha mu mizi, Uru Rukiko rwabanje gusuzuma niba Urega afite inyungu muri uru rubanza kubera ko yatanze ikirego nk'umunyamakuru ku wa 04/06/2021 kandi ikarita ye yari yararangiye ku wa 12/05/2021. Kuri iki kibazo Urega avuga ko atanga iki kirego ikarite ye y'akazi yari yararangiye, asaba yari yarasabye ko yongerwa mbere y'uko ita agaciro, biza gutinzwa n'uko serivisi nyinshi zagiye zihagarara kubera icyorezo cya COVID-19 ariko iyo karita ye yaje kongererwa igihe ku wa 20/09/2021 kizarangira ku wa 20/09/2022. Avuga ko ikirego cyo cyakagombye kwakirwa nubwo yagitanze mu gihe ategerejemo ko ikarita ye yongererwa igihe, dore ko n'igihe cy'iburanisha kigeze yarahawe indi karita bityo, ibyo bikaba bitafatwa nk'aho nta nyungu yari afite yo kurega.

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Uhagarariye Leta avuga ko kuba Urega yatanze ikirego mu gihe ikarita ye y'akazi k'Ubunyamakuru yararangiye nta nyungu yari afite yo kurega nk'umunyamakuru, ahubwo icyo gihe yari gutanga ikirego nk'umuntu ku giti cye. Incamake y'icyemezo: 1. Inyungu yo gutanga ikirego igomba kumvikana ku buryo bwagutse, igashingira ku kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga kuko ribangamiye uburenganzira bw'abasaba ko rivaho cyangwa se rituma icyari kigamijwe n'Itegeko Nshinga kitagerwaho kandi kigomba kurengerwa.

2. Uwatanze ikirego agomba kwerekana inyungu bwite afite cyangwa yavutse mu buryo butaziguye n'itegeko asaba ko ryakurwaho. Urega afite inyungu yo kuregera ko itegeko rinyuranyije n'Itegeko Nshinga. Iburanisha ry'urubanza rizakomeza. Amategeko yashingiweho: Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2015, ingingo ya 38. Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange. Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 72. 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 70 n'ya 71. Itegeko N° 02/2013 ryo ku wa 08/02/2013 rigenga itangazamakuru, ingingo ya 3, 4 n'ya 5. Imanza zifashishijwe: Re Mugisha Richard, RS/INCONST/SPEC 0002/2018/SC rwaciye n'Urukiko rw'Ikirenga ku wa 18/01/2019. Areva NP Vs Eskom Holdings Soc Limited and Another [2016]

Zacc 51 rwaciwe n' Urukiko rushinzwe kurinda iremezo ry'Itegeko Nshinga rwa Afurika y'Epfo. Urubanza I. IMITERERE Y'URUBANZA [1] Ku italiki ya 04/06/2021, Byansi Samuel Baker yatanze ikirego mu Rukiko rw'Ikirenga arusaba kwemeza ko ingingo ya 71, mu gika cyayo cya 5 y' Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, giteganyako uburenganzira bwo gufata amajwi n'amashusho mu cyumba cy'iburanisha busabwa mu nyandiko nibura mu masaha mirongo ine n'umunani (48) mbere y'uko iburanisha ritangira, inyuranyije n'ingingo ya 38 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo

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mu 2003 ryavuguruwe mu 2015 mu gace kayo kavuga ko ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru bwemewe kandi bwubahirizwa na Leta. [2] Asobanura ko nk'umunyamakuru ufite ikarita y'akazi nimeron 17/726-11 wibanda cyane mu gukora inkuru zicukumbuye (Investigative journalist) mu Rwanda ndetse no hanze yarwo, asanga ingingo ya 71 igika cya 5 ibangamira abanyamakuru kubera ko kubashyiriraho igihe bagomba kubahiriza mu gusaba kwemererwa gufata amajwi n'amashusho mu cyumba cy'iburanisha, ari uburyo bwo kubuza itangazamakuru kubona amakuru no kubangamira ubwisanzure bwaryo, mu gihe ingingo ya 70 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganyako iburanisha ribera mu ruhamwe. Agaragaza ko kumenyesha abaturage ibibera mu nkiko biri mu murongo w'uburenganzira burebana n'ubwisanzure bw'itangazamakuru no guhabwa amakuru, bugomba kubahirizwa n'inkiko nk'Urwego rw'Ubuyobozi. [3] Yavuze ko bidakwiye ko abanyamakuru basabwa uruhushya rwo gutara amakuru mu nkiko, igihe berekana icyangombwa kibaranga nk'abanyamakuru. Asoza avuga kandi ko gushyirirwaho igihe cyo gusaba gufata amajwi n'amashusho mu cyumba cy'iburanisha, haba hirengagijwe ko igihe tugezemo hari itangazamakuru rikorwa mu buryo bwa mobile journalism. [4] Me Habamuremyi Prosper uhagarariye Leta y'u Rwanda mu rubanza avuga ko ingingo ya 71 igika cya 5 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi itanyuranyije n'ingingo ya 38 y'Itegeko Nshinga rya Repubulika y'u Rwanda. [5] Asobanura ko ntaho Itegeko Nshinga riteganyako itangazamakuru rigomba kubona amakuru mu buryo ubwo aribwo bwose. Akaba ariyo mpamvu ryateganyijwe ubwo buryo mu ingingo ya 71, igika cya 5 y'Itegeko ryavuzwe haruguru, ahasobanurwa ko bisabirwa uburenganzira byibura mu masaha 48 mbere y'uko iburanisha ritangira. Asobanura nanone ko kuba itegeko riteganyako itangazamakuru risaba uruhushya rwo gufata amajwi n'amashusho mu cyumba cy'iburanisha bidakuraho ihame ry'uko iburanisha ribera mu ruhamwe nk'uko bigaragara mu ngingo ya 71 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ibyo bikaba bigaragarira mu gika cya 6 cy'iyi ngingo.2 Urubanza rwaburanishijwe mu ruhamwe ku wa 15/11/2021, Byansi Samuel Baker yunganiye na Me Ruramira Bizimana Zébedée na Me Musore Gakunzi Valéry naho Leta y'u Rwanda ihagarariye na Me Habumuremyi Prosper. Mbere yo kuburanisha urubanza mu mizi, Urukiko rwabanje gusuzuma niba uwareze ariwe Byansi Samuel Baker, afite inyungu muri uru

rubanza nk'uko biteganyijwe n'ingingo ya 72, igika cya mbere y'Itegeko N° 30/2018 rigena ububasha bw'inkiko ryavuzwe haruguru, iki akaba ari nacyo kibazo cyabanje gusuzumwa muri uru rubanza. 1 Iyi karita yatanze na Rwanda Media Commission ku wa 12/05/2020 igomba kurangira ku wa 12/05/2021, iza kongererwa igihe ku wa 20/09/2021, kizarangira ku wa 20/09/22. 2 Ingingo ya 71 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 Perezida w'urukiko afata icyemezo mu nyandiko cyemera cyangwa cyimana uburenganzira bwo gufata amajwi n'amashusho amaze gusuzuma ko nta ngaruka byagira ku nyungu z'ubutabera, umutekano w'Igihugu n'uw'ababuranyi n'umuco mbonezabupfura.

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II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

1. Kumenya niba Byansi Samuel Baker afite inyungu muri uru rubanza [6] Urukiko rwabajije Byansi Samuel Baker niba yatanze ikirego nk'umunyamakuru ku wa 04/06/2021 kandi ikarita ye yari yararangiye ku wa 12/05/2021, asubiza ko, nubwo ikarita y'ubunyamakuru yashingiyeho atanga ikirego ku wa 04/06/2021 yari yararangiye ku wa 12/05/2021, yari yarabaye ko yongererwa igihe mbere y'uko agaciro kayo karangira, ko kuba baratinze kumusubiza kugeza ubwo ikarita ye irangirije igihe byaba byaratewe n'uko serivisi nyinshi zagiye zihagarara kubera icyorezo cya COVID-19. Avuga ko iyo karita ye yaje kongererwa igihe ku wa 20/09/2021 kizarangira ku wa 20/09/2022. Bityo akaba asanga kuba yatanze ikirego cye ikarita ye yararangiye ariko ategereje kubona indi kandi ubu akaba yarayibonye bitaba impamvu yo kutakira ikirego cye kuko akora umurimo w'ubunyamakuru kuva 2017, aho yakoreye ibinyamakuru bitandukanye birimo na Rwanda Broadcasting Agency (RBA) na TV 10. [7] Mu kumwunganira, Me Musore Gakunzi Valéry yashingiyeho ku ngingo ya 3 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu no ku ngingo ya 72 igika cya 1 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, 4 avuga ko umuntu ku giti cye ashobora kuregera Urukiko rw'Ikirenga, kandi ko n'ubwo Byansi Samuel Baker yatanze ikirego ikarita imuranga nk'umunyamakuru yararangiye, ariko asanzwe amuzi nk'umuntu ukora umurimo w'ubunyamakuru, ikindi akaba ari uko igihe cy'iburanisha kigeze yarahawe indi karita. Akaba asanga ibyo bitafatwa nk'aho nta nyungu yari afite yo kurega, ngo bitume ikirego cye kitakirwa. [8] Me Ruramira Bizimana Zébedée nawe wunganira Byansi Samuel Baker, ashingiyeho ku ngingo ya 5 y'Itegeko N° 02/2013 ryo ku wa 08/02/2013 rigenga itangazamakuru, avuga ko mu gihe Urukiko rwasuzuma rugasanga Byansi Samuel Baker yari umunyamakuru n'ubwo yatanze ikirego ikarita ye yararangiye rwakwemeza ko yari afite inyungu zo kurega maze rukakira ikirego cye. [9] Me Habumuremyi Prosper uhagarariye Intumwa Nkuru ya Leta yasobanuye ko bigaragara ko Byansi Samuel Baker yahawe ikarita y'ubunyamakuru ku wa 12/05/2020 ikarangira ku wa 12/05/2021, arangije atanga ikirego nk'umunyamakuru ku wa 04/06/2021 ikarita ye yararangiye; asobanura ko atubahirije ibiteganywa n'itegeko kuko mu gihe nta karita imuranga nk'umunyamakuru yari afite, nta nyungu yari afite yo kurega nk'umunyamakuru,

ahubwo icyo gihe yari gutanga ikirego nk'umuntu ku giti cye. 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 3 Ikirego cyakirwa mu rukiko iyo urega afite ububasha, inyungu n'ubushobozi byo kurega, keretse igihe itegeko ribiteganya ukundi. 4 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.

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bashobora kuregera Urukiko rw'Ikirenga basaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga iyo babifitemo inyungu [11] Ingingo ya 3 y'Itegeko N° 02/2013 ryo ku wa 08/02/2013 rigenga itangazamakuru ivuga ko umunyamakuru w'umunyarwanda, yaba ukora mu kigo cy'itangazamakuru cyemewe cyangwa uwigenga cyangwa uhagarariye igitangazamakuru cy'amahanga mu Rwanda, ahabwa uburenganzira n'Urwego rw'Abanyamakuru Bigenzura. Naho ingingo ya 4 igika cyayo cya 1 y'iryo Tegeko igateganya ko imikorere y'itangazamakuru n'imytwarire y'abanyamakuru umunsi ku wundi bigenzurwa n'Urwego rw'Abanyamakuru Bigenzura (...). [12] Ibirebana n'inyungu zo gutanga ikirego gisaba gukuraho ingingo y'Itegeko kuko inyuranye n'Itegeko Nshinga, uru Rukiko rwabisuzumye mu rubanza⁵ rwaburanishijwemo ikirego Me Mugisha Richard yari yatanze asaba ko ingingo zimwe z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange zivaho kuko zinyuranyije n'Itegeko Nshinga. Mu gusobanura icyemezo cyarwo, Urukiko rwasesenguye amategeko asanzwe akurikizwa mu Rwanda arebana n'iki kibazo, runifashisha imanza zaciwe mu bindi bihugu aho ibirego nk'ibi bimaze igihe bitangwa. [13] Muri urwo rubanza, Urukiko rwasobanuye ibyerekeye inyungu muri rusange n'impamvu ari ngombwa kuzigaragaza kugirango ikirego cyakirwe,⁶ ruvuga ariko ko ku birego bijyanye n'Itegeko Nshinga, inyungu igomba kumvikana ku buryo bwagutse, cyane cyane mu Gihugu nk'u Rwanda kikiri mu nzira y'iterambere aho abatwaga batarasobanukirwa uburenganzira bwabo bagenerwa n'Itegeko Nshinga, bakaba bakeneye gufashwa kubugeraho hifashishijwe inkiko. Urukiko rwasobanuye ko imiterere y'imanza zisaba kwemeza ko Itegeko rinyuranyije n'Itegeko Nshinga, igaragaza ko inyungu muri bene izo manza ishingiyeye ku kwemeza ko Itegeko rinyuranyije n'Itegeko Nshinga kuko ribangamiye uburenganzira bw'abasaba ko rivaho, cyangwa se rituma icyari kigamijwe n'Itegeko Nshinga kitagerwaho kandi kigomba kurengerwa.⁷ [14] Ibirebana no kuba uwatanze ikirego cyo kwemeza ko Itegeko rinyuranyije n'Itegeko Nshinga agomba kuba afite inyungu bwite, byanasuzumwe n'abahanga mu mategeko ndetse n'izindi nkiko. Nk'umuhanga Sylvie Schmitt avuga ko kugira ngo inyungu umuntu afite yo gutanga ikirego yemerwe, igomba kuba ifite ikintu cy'umwihariko gitandukanya nyirayo n'abandi, kiyigira iye bwite. Bitabaye ibyo, umuntu ubonetse wese ashobora kuregera Urukiko rushinzwe kurinda iremezo ry'Itegeko Nshinga kuko buri mutwaga cyangwa ikigo bashobora kwibwira ko bafite inyungu zo kuregera Itegeko Nshinga. Icyo gihe ikirego cyahinduka nk'ikirego cy'abaturage muri rusange, kandi ibyo bidakwiye. Iyo mikorere yatuma inkiko zuzuranamo ibirego, harimo n'ibirego bidakwiye.⁸ Muri uwo murongo, Urukiko rushinzwe kurinda iremezo ry'Itegeko Nshinga rwa 5 Reba urubanza RS/INCONST/SPEC 0002/2018/SC

rwaciwe ku wa 18/01/2019. 6 Reba igika cya 19 n'icya 20 cy'urubanza. 7 Reba igika cya 21 cy'urubanza. 8 Pour que l'intérêt à agir d'une personne soit reconnu, il doit inclure un élément propre qui distingue son titulaire du reste de la société, qui l'individualise. A défaut d'un tel élément, n'importe quelle personne aurait la possibilité de saisir le juge constitutionnel puisque tout citoyen et tout organisme peuvent prétendre avoir un intérêt à défendre la Constitution. Le recours se transformerait en une action populaire, ce qui n'est pas envisageable. L'action populaire provoquerait une surabondance des recours avec des risques de demandes abusives. Sylvie Schmitt, La nature objective

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Afurika y'Epfo, mu rubanza Areva NP Vs Eskom Holdings Soc Limited and Another [2016] ZACC 51 rwavuze ko iyo umuburanyi atanze ikirego wenyine mu nyungu ze bwite, ataba afite ububasha bwagutse bwo kuregera ibinyuranyije n'amategeko. Uwatanze ikirego agomba kwerekana inyungu bwite afite cyangwa yavutswa mu buryo butaziguye n'itegeko asaba ko ryakurwaho.⁹ [15] Ku birebana n'uru rubanza, Byansi Samuel Baker avuga ko kuba ingingo ya 72, igika cya mbere y'Itegeko N° 30/2018 ryavuzwe haruguru itegeka ushaka gufata amajwi n'amashusho mu cyumba cy'iburanisha kubibonera uruhushya rutanzwe na Perezida w'urukiko ashaka kujyamo mbere y'amasaha 48 bibangamiye uburenganzira ahabwa n'Itegeko Nshinga nk'umunyamakuru, bityo ko afite inyungu z'uko Urukiko rubisuzuma rukemeza ko icyo gika cy'iyi ngingo kivaho. [16] Urukiko rurasanga, hashingiwe ku biteganywa n'ingingo ya 3 y'Itegeko N° 02/2013 ryavuzwe haruguru, nta gushidikanya guhari ko mbere y'uko ikarita ye irangiza igihe ku wa 12/05/2021, Byansi Samuel Baker yari yemerewe gukora umurimo w'umunyamakuru kuko yari yujuje ibyangombwa bisabwa n'Urwego rw'Abanyamakuru Bigenzura. Nta gushidikanya kandi ko igihe cyo gutanga ikirego, ku wa 04/06/2021, atari yemerewe gukora umurimo w'umunyamakuru, ariko ko igihe cy'iburanisha, ku wa 15/11/2021, ubwo burenganzira yari abufite kuko ikarita ye y'ubunyamakuru yari yarongerewe igihe ku wa 20/09/2021, kizarangira ku wa 20/09/2022. [17] Urukiko rusanga ingingo ya 71, igika 5 y'Itegeko N° 22/2018 ryavuzwe haruguru ireba uburenganzira bwo gufata amajwi n'amashusho mu iburanisha bureba n'abanyamakuru. Bikumvikanisha ko mu gihe Urukiko rwasanga koko iyo ngingo inyuranyije n'ingingo ya 38 y'Itegeko Nshinga nk'uko Byansi Samuel Baker abiburanisha, icyo cyemezo cyaba kimufitiye akamaro, bityo rukaba rusanga afite inyungu yo gutanga ikirego gisaba kvanaho ingingo y'Itegeko avuga ko imwambura uburenganzira ahabwa n'Itegeko Nshinga. III. ICYEMEZO CY'URUKIKO [18] Rwemeje ko Byansi Samuel Baker afite inyungu yo kuregera kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga muri uru rubanza. [19] Rwemeje ko iburanisha ry'uru rubanza rizakomeza ku itariki umuburanyi azamenyeshwa n'Ubwanditsi bw'Urukiko. du contentieux constitutionnel des normes. Les exemples francais et italien, "Revue francaise de droit constitutionnel, 2007/4, n°72, <https://www.cairn.info/revue-francaise-de-droit-constitutionnel-2007-4-page-719.htm> 9 (...) where a litigant act solely in his or her own interest, there is no broad or unqualified capacity to litigate against illegalities. ... The own interest litigant must therefore demonstrate that his or her interests or potential interests are directly affected by the unlawfulness sought to be impugned". 9Areva NP Vs Eskom Holdings Soc Limited Limited and Another [2016] ZACC 51, at para 32, <https://www.saflii.org/za/cases/>

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