

RWANDA / JUDGMENT

# GAHIGA Marie Thérèse v GAHIGA Ange

RCOM 00001/2022/CA

## COURT

Court of Appeal

## DECIDED

11 February 2022

## CASE / FILE NUMBER

RCOM 00001/2022/CA

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

## GAHIGA Marie Thérèse v GAHIGA Ange

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2022-02-11
- Case/document no.: RCOM 00001/2022/CA
- Collection: Court of Appeal

### Text

#### Page 1

GAHIGA Marie Thérèse v GAHIGA Ange [Rwanda URUKIKO RW'UBUJURIRE - RCOM 00001/2022/CA (Kaliwabo, P.J., Mukamurenzi na Umugwaneza, J.) 11 Gashyantare 2022] Amategeko agenga imiburanishirize y'imanza z'ubucuruzi - Kumenya ibibazo birimo ubwihutirwe - Ikirego cyihutirwa - Kumenya ibibazo birimo ubwihutirwe - Ku birebana n'ibibazo birimo ubwihutire, Umushingamategeko w'u Rwanda ntabwo yabirondoye ahubwo yabihariye umucamanza mu bushishozi bwe ngo abifateho icyemezo nyuma yo kumva imiburanire y'impande zombi zifitanye impaka. Igihe cyo gutanga ikirego kihuta - Igihe cyose hari urubanza rw'iremezo rutaraburanishwa, urukiko rwaregewe rushobora kuregerwa mu buryo bwihuse rukaba rwafata icyemezo cy'agateganyo ku rubanza rwaregewe. Incamake y'ikibazo: Ange GAHIGA yatanze ikirego asaba ko urubanza RCE 240/2016 rwaciriwe mu mahanga rwarangirizwa ku mitungo ya GAHIGA KARITESA NGEZI Marie Thérèse iri mu Rwanda (exequatur). Maze Urukiko Rukuru rw'Ubucuruzi rurabyemeza, biza no gushimangirwa n'Urukiko rw'Ubujuje. GAHIGA KARITESA NGEZI Marie Thérèse amaze gutsindwa mu bujuje nawe yiyambaje inzira z'amategeko zo muri CONGO maze ku wa 01/03/2021 Urukiko rw'Ubujuje rwa Kivu y'Amajyaruguru i Goma ruca urubanza rwemeza ko urubanza RCE 240/2016 ruvanyweho mu ngingo zarwo zose. GAHIGA

KARITESA NGEZI Marie Thérèse ashingiye kuri urwo rubanza, yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi agamiye gusaba ko urubanza RCEA 002 rurangirizwa mu Rwanda (exequatur), urwo Rukiko ruca urubanza rwemeza ko rutujuje ibisabwa biteganywa n'amategeko ngo hemezwe ko rurangirizwa mu Rwanda. Ntiyishimiye iyo mikirize y'urubanza maze ajuririra mu Rukiko rw'Ubujurire. Nanone yisunze icyo kirego remezo, yatanze ikirego cyihutirwa asaba guhagarika irangizwa ry'urubanza rwahawe "exequatur" mu Rukiko Rukuru rw'Ubucuruzi bigashimangirwa mu bujurire n'Urukiko rw'Ubujurire. Kubirebana n'ubwo bujurire, GAHIGA Ange avuga ko nta bwihutirwe bwatuma irangizwa ry'urubanza rihagarara ko kandi irangizwa ry'urubanza rikorerwa ku mutungo utimukanwa ntacyo ryangiriza GAHIGA KARITESA Ngezi Marie Thérèse kuko igihe cyose yaramuka atsinze yasubizwa uyu mutungo. Incamake y'icyemezo: 1. Ku birebana n'ibibazo birimo ubwihutire, Umushingamategeko w'u Rwanda ntabwo yabirondoye ahubwo yabihariye umucamanza mu bushishozi bwe ngo abifateho icyemezo nyuma yo kumva imiburanire y'impande zombi zifitanye impaka.

2. Igihe cyose hari urubanza rw'iremezo rutaraburanishwa, urukiko rwaregewe rushobora kuregerwa mu buryo bwihuse rukaba rwafata icyemezo cy'agateganyo ku rubanza rwaregewe.

## Page 2

Amategeko yashingiweho: Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 44 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 185 Imanza zifashishijwe: Gahiga Marie Thérèse v Gahiga Ange, RCOMA 00001/2020/CA Urubanza rwaciwe n'Urukiko rw'ubujurire Gahiga Marie Thérèse v Gahiga Ange, RCEA 002 Urubanza rwaciwe n'Urukiko rw'ubujurire rwa Kivu y'amajyaruguru Gahiga Marie Thérèse v Gahiga Ange, RCE 240/2016 Urubanza rwaciwe n'Urukiko rw'ubucuruzi rwa Goma muri Repubulika iharanira Demokarasi ya Congo Inyandiko z'abahanga zifashishijwe: Serge Guinchard et alii, Procédure civile, 4 ème Edition, Dalloz, 2015, P. 160 "L'urgence est une notion floue qui ne répond pas à des critères précis. Elle s'apprécie in concreto et suppose une évaluation des intérêts en présence. C'est une notion de fait dont l'appréciation relève du pouvoir souverain des juges de fond, ou plutôt en l'espèce des juges du provisoire". Urubanza I. IMITERERE Y'URUBANZA [1] GAHIGA Ange yatanze ikirego mu Rukiko rw'Ubucuruzi i Goma arega GAHIGA KARITESA NGEZI Marie Thérèse na Sosiyete Holiday Congo SARL, maze mu rubanza RCE 240/2016 urukiko rwemeza ko KARITESA NGEZI GAHIGA Marie Thérèse afatanyaga na Sosiyete Holiday Congo SARL kwishyura GAHIGA Ange mu mafaranga y'amanekongo 1.000.000\$ US y'indishyi. [2] GAHIGA Ange yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi mu Rwanda asaba ko urubanza RCE 240/2016 rwarangirizwa ku mitungo ya GAHIGA KARITESA NGEZI Marie Thérèse iri mu Rwanda (exequatur), maze mu rubanza n°RCOM 00031/2019/HCC Urukiko rwemeza ko urubanza RCE 240/2016 rurangirizwa mu Rwanda, binashimangirwa n'Urukiko rw'Ubujurire mu rubanza n°RCOMA 00001/2020/CA. [3] GAHIGA KARITESA NGEZI Marie Thérèse amaze gutsindwa mu bujurire nawe yiyambaje inzira z'amategeko zo muri CONGO maze ku wa 01/03/2021 Urukiko rw'Ubujurire rwa Kivu y'amajyaruguru i Goma (Cour d'Appel du Nord-Kivu/Goma) ruca urubanza

RCEA 002, rwemeza ko urwo rubanza ruvanyweho mu ngingo zarwo zose.

### Page 3

- [4] Ashingiye kuri urwo rubanza, GAHIGA KARITESA NGEZI Marie Thérèse yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi agamije gusaba ko urubanza RCEA 002 rurangirizwa mu Rwanda (exequatur), maze ku wa 18/11/2021 Urukiko ruca urubanza n°RCOM 00023/2021/HCC, rwemeza ko urubanza RCEA 002 rutujye ibisabwa biteganywa n'amategeko ngo hemezwe ko rurangirizwa mu Rwanda. [5] GAHIGA KARITESA NGEZI Marie Thérèse ntiyishimiye imikirize y'urubanza maze ajuririra mu Rukiko rw'Ubujurire, ubujurire buhabwa n°RCOMA 00011/2021/CA. Yisunze ikirego remezo afite muri uru Rukiko, GAHIGA KARITESA NGEZI Marie Thérèse yatanze ikirego cyihutirwa asaba guhagarika irangizwa ry'urubanza RCE 240/2016 rwahawe "exequatur" mu rubanza n°RCOM 00031/2019/HCC bigashimangirwa mu bujurire n'urubanza n°RCOMA 00001/2020/CA. [6] GAHIGA Ange avuga ko nta bwihutirwe bwatuma irangizwa ry'urubanza rihagarara ko kandi irangizwa ry'urubanza rikorerwa ku mutungo utimukanwa ntacyo ryangiriza GAHIGA KARITESA Ngezi Marie Thérèse kuko igihe cyose yaramuka atsinze yasubizwa uyu mutungo. [7] Iburanisha ry'urubanza mu ruhamye ryabaye ku wa 07/02/2022, ababuranyi bose bitabye, GAHIGA KARITESA NGEZI Marie Thérèse ahagarariwe na Me MUREKATETE Henriette naho GAHIGA Ange ahagarariwe na Me KIROHA Olivier, muri iryo buranisha hasuzumwa ikibazo cyo kumenya niba hari impamvu yihutirwa yatuma Urukiko rutegeka ko irangiza ry'urubanza RCE 240/2016 ryaba rihagaze. II. KIBAZO KIGIZE URU RUBANZA N'ISESENGURWA RYACYO Kumenya niba irangiza ry'urubanza RCE 240/2016 rwahawe "exequatur" mu rubanza n°RCOMA 00001/2020/CA ryahagarikwa by'agateganyo. [8] Mu mwanzuro we, GAHIGA KARITESA NGEZI Marie Thérèse avuga ko asaba Urukiko rw'Ubujurire guhagarika irangizwa ry'urubanza RCE 240/2016 kuko rwavanyweho n'urubanza RCEA 002. Akomeza asobanura ko hari imitungo ye yamaze kugurishwa mu rwego rwo gushyira mu bikorwa ibyategetswe muri urwo rubanza kandi nyamara rwaravanyweho mu ngingo zarwo zose, ko kandi urubanza RCEA 002 rwaruvanyeho ari rwo rusabirwa "exequatur" muri uru Rukiko, akaba asaba ko imitungo ye isigaye (UPI:1/02/13/02/246 na UPI 1/02/13/02/630) yaba irekeyaho kugurishwa mu cyamunara cyane ko ariyo abanamo n'umukecuru (mama we umubyara), kandi ko mu gihe irangizwa ry'urubanza RCE 240/2016 ryaba ridahagaritswe imitungo ye yashirira mu kwishyura amafaranga asaga Miliyali imwe yategetswe mu rubanza RCE 240/2016 rwavanyweho mu ngingo zarwo zose.

### Page 4

- [9] Me MUREKATETE Henriette umuhagarariye avuga ko iki kirego cyihutirwa cyatanzwe hashingiwe ku biteganywa n'ingingo ya 185 y'Itegeko n°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetswe, ko mu gihe bategereje ko urubanza RCOMA 00011/2021/CA rucibwa burundu basanze hari ubwihutire bwo guhagarika ishyirwa mu bikorwa ry'ibyemejwe mu rubanza RCE 240/2016 kuko Umuhesha w'Inkiko yamaze gufatira umutungo wa GAHIGA

KARITESA NGEZI Marie Thérèse harimo n'uwo atuyemo n'umuryango we, kandi iyo umutungo wafatiriwe haba hakurikiyeho kuwugurisha mu cyamunara, bikaba bishobora kumugiraho ingaruka zikomeye. [10] Akomeza avuga ko urubanza RCE 240/2016 rwatangiye kurangizwa, hakaba hari imwe mu mitungo yamaze kugurishwa mu cyamunara ku gaciro gatoya cyane ndetse n'abaguze mu cyamunara bakaba barahise bagurisha abandi bantu, bityo bakaba basaba ko irangiza ry'urubanza RCE 240/2016 ryaba rihagaze kugira ngo imitungo isigaye nayo idakomeze kugurishwa mu cyamunara ku gaciro gato cyane, hanirindwe ko umutungo ukomeza guhererekanywa (mutation) hagati y'abantu benshi, cyane ko n'urubanza bishingiyeho rwamaze kvanwaho mu bujire, hakaba hategerejwe ko urubanza RCEA 002 rwavanyeho ruhambwa "exequatur". [11] Akomeza asobanura kandi ko mu gihe GAHIGA Ange yaramuka atsinze urubanza, nta kibazo yagira cyo kubona ubwishyu kuko Umuhesha w'Inkiko yamaze gutambamira imitungo ya GAHIGA KARITESA NGEZI Marie Thérèse bityo ikaba idashobora gukorerwaho ihererekanya ku bandi bantu; asoba asaba ko mu rwego rwo kwirinda izindi manza no mu nyungu z'ubutabera Urukiko rwategeka ihagarikwa ry'irangiza ry'urubanza RCE 240/2016. [12] Me KIROHA Olivier uhagarariye GAHIGA Ange yiregura avuga ko ikirego cyihutirwa cyatanzwe na GAHIGA KARITESA NGEZI Marie Thérèse kidakwiye guhabwa ishingiro kuko mu ngingo ya 185 y'Itegeko n°22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru abarega bashingiyeho batanga ikirego, Umushingamategeko yateganyijemo ko hagomba kuba hari ikihutirwa cyo kuramira (condition d'urgence), mu gusobanura ishingiro ry'ikirego abarega bakaba bagaragaza gusa ko hari ikirego cy'iremezo ariko bakaba batagaragaza ikintu kihutirwa gituma batanga ikirego. [13] Akomeza asobanura ko ikirego cya GAHIGA KARITESA NGEZI Marie Thérèse kigamije gushaka umwanya wo kurigisa umutungo usigaye mu rwego rwo kugirango GAHIGA Ange azabure umutungo wo kurangirizaho urubanza yatsinze, cyane ko byagaragaye ko hari imwe mu mitungo ye yamaze kwivanaho akayandika kuri "Serena Properties Ltd" afitemo imigabane. Yasobanuye ko irangiza ry'urubanza ntacyo ryangiririza urega kubera ko rikorwa ku mutungo utimukanwa ushobora kumugarukira igihe cyose azaba atsinze urubanza. UKO URUKIKO RUBIBONA [14] Ingingo ya 185, igika cya mbere, y'Itegeko n°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko iyo hari ikirego cy'iremezo, ariko hagomba kugira icyemezwa by'agateganyo mu buryo bwihuta ku rubanza rwaregewe urukiko rutaraburanishwa, ikirego cyihutirwa gishyikirizwa umucamanza ushinze kurangiza impaka zihutirwa w'aho zigomba

## Page 5

gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara. Akaba ari muri ubwo buryo ikirego cya GAHIGA KARITESA NGEZI Marie Thérèse asaba ihagarika ry'irangiza ry'urubanza RCE 240/216 cyatanzwemo nk'uko yabisobanuriye urukiko. [15] Iyi ngingo yumvikanisha neza ko igihe cyose hari urubanza rw'iremezo rutaraburanishwa, urukiko rwaregewe rushobora kuregerwa mu buryo bwihuse rukaba rwafata icyemezo cy'agateganyo ku rubanza rwaregewe. Muri uru rubanza ikiburanwa ni gusaba "exequatur" y'urubanza RCEA 002 rwavanyeho urubanza RCE 240/2016 mu

bujurire, akaba arirwo GAHIGA KARITESA NGEZI Marie Thérèse yisunze asaba ko irangizwa ry'urubanza n° RCOMA 00001/2020/CA rwemeje ko urubanza RCE 240/2016 rurangirizwa mu Rwanda ryahagarara kugeza igihe urubanza rw'iremezo asabamo "exequatur" ruciriwe burundu. [16] Ku birebana n'ibibazo birimo ubwihutire, Umushingamategeko w'u Rwanda ntabwo yabirondoye ahubwo yabihariye umucamanza ngo abifateho icyemezo nyuma yo kumva imiburanire y'impande zombi zifitanye impaka. Abahanga mu mategeko nabo bavuga ko nta kintu gifatika gishingirwaho hemezwa ko hari ubwihutire ku bintu runaka, ko ahubwo bigenwa mu bushishozi bw'umucamanza bitewe n'imiterere y'urubanza afite. [17] Dosiye y'urubanza igaragaza ko urubanza RCE 240/2016 rwahawe "exequatur" mu rubanza n°RCOM 00031/2019/HCC ndetse binashimangirwa mu bujurire mu rubanza n°RCOMA 00001/2020/CA rurimo kurangizwa nk'uko ababuranyi babivugaga; ikindi kandi banahuriza ku kuba uru rubanza rwarasubirishijwemo na GAHIGA KARITESA NGEZI Marie Thérèse mu Rukiko rw'ubujurire rwo muri Kivu y'Amajyaruguru maze mu rubanza RCEA 002 rwaciwe n'urwo rukiko kuwa 01/03/2021 rukavanwaho. Uru rubanza akaba arirwo rurimo gusabirwa "exequatur" mu rubanza n°RCOMA 00011/2021/CA. [18] Mu miburanire, bigaragara ko impande zombi zumvikana ko urubanza RCE 240/2016 rurimo kurangizwa rwavanyweho n'urubanza RCEA 002, ahubwo zikaba zitumvikana ku kirego RCE 006/opp4 cyo gusubirishamo urubanza RCEA 002; Me KIROHA Olivier uburanira GAHIGA Ange akavugaga ko urubanza RCE 240/2016 rugifite agaciro kuko urubanza RCEA 002 rwaruvanyeho rutaraba itegeko (kuko rwasubirishijwemo mu rubanza RCE 006/opp) ukurikije uko amategeko yo muri Congo abiteganyaga, naho Me MUREKATETE Henriette uburanira GAHIGA KARITESA NGEZI Marie Thérèse akavugaga ko gusubirishamo urubanza RCEA 002 byakozwe mu buryo bw'uburiganya nkuko byemejwe mu ibaruwa yanditswe na Perezida w'Urukiko rw'Uburujurire rwa Kivu y'Amajyaruguru muri Congo. [19] Urukiko rurasanga ababuranyi bombi bemeranywe ko urubanza RCE 240/2016 rwaciwe n'Urukiko rw'ubucuruzi rwa Goma muri Repubulika iharanira Demokarasi ya Congo rurimo kurangizwa, rwajuririrwaho mu bujurire n'urubanza RCEA 002 rwaciwe n'Urukiko rw'ubujurire rwa Kivu y'Amajyaruguru (Cour d'Appel du Nord Kivu) kuwa 01/03/2021, ndetse GAHIGA Ange akaba avugaga ko yamaze no kurusubirishamo (opposition) muri urwo rukiko ategereje ko ruburanishwa; ibi bikaba bisobanuye ko mu gihe urubanza RCE 240/2016 rwajuririrwaga mu Rukiko rw'Uburujurire rwa Kivu y'Amajyaruguru i Goma irangizwa ryarwo ryakabaye ryarahagaze. [20] Bityo kuba urubanza RCE 240/2016 rwarakomeje kurangizwa hagendewe ku kuba inkiko zaremeje ko rurangirizwa mu Rwanda ariko nyuma bikaza kugaragara ko uru rubanza

## Page 6

rukiburanishwa mu nkiko za Repubulika Ihariyira Demokarasi ya Congo, iryo rangizarubanza rigomba guhagarara kuko riri gukorerwa ku rubanza rutaraba itegeko ku buryo bunyuranye n'agace ka 2 k'ingingo ya 44 y'Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko ivugaga ko, urubanza rusabirwa "exequatur" rugomba kuba rwaraciwe burundu hakurikijwe amategeko y'igihugu rwaciriwemo. [21] Hashingiye ku mategeko n'ibisobanuro byatanze haruguru, Urukiko rurasanga irangizwa ry'urubanza RCE 240/2016 rwemejwe kurangirizwa mu Rwanda (exequatur) n' urubanza n°RCOMA 00001/2020/CA rwaciwe n'Urukiko rw'ubujurire kuwa

25/09/2020 rwemeza ko urubanza RCOM 00031/2019/HCC rwari rwaciwe n'Urukiko Rukuru rw'Ubucuruzi rudahindutse rigomba guhagarara. III. ICYEMEZO CY'URUKIKO [22] Rwemeje ko ikirego cya KARITESA NGEZI GAHIGA Marie Therese gisaba guhagarika irangizwa ry'urubanza RCE 240/2016 rwahawe "exequatur" mu rubanza n°RCOMA 00001/2020/CA gifite ishingiro; [23] Rutegetse ko irangizwa ry'urubanza RCE 240/2016 rwahawe "exequatur" mu rubanza n°RCOMA 00001/2020/CA rihagaritswe by'agateganyo; [24] Rutegetse ko ingwate y'amagarama y'uru rubanza yatanzwe iheze mu Isanduku ya Leta.

## Source & reproduction note

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

**ORIGINAL SOURCE**      <https://www.amategeko.gov.rw/view/doc/7713/7990>

**CASE PAGE**              <https://chat.esheria.ai/case-law/rwanda/gahiga-marie-therese-v-gahiga-ange-exequaturofforeignjudgments-court-of-appeal-2022>

Prepared on 14 October 2026 · Esheria