

RWANDA / JUDGMENT

Re KABAGEMA (RECT)

RS/RECT/RAD 00001/2022/HC/NYZ

COURT

High Court

DECIDED

26 April 2022

CASE / FILE NUMBER

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Text

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Re KABAGEMA [Rwanda URUKIKO RUKURU – RS/RECT/RAD 00001/2022/HC/NYZ – (Nkundabatware, J. P.) 26 Mata 2022] Amategeko agenga imiburanishirize y’imanza z’ubutegetsu – Gusaba gukosora urubanza –Ibihe byo gusaba gukosora urubanza – Gusaba gukosora urubanza ntibikwiye kubangamirwa n’ibihe by’ukwezi kumwe, mu gihe mu rubanza harimo amakosa y’imyandikire ashobora kubangamira irangizwa ryarwo. Incamake y’ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Muhanga haregerwa ko Akarere ka ruhango kafashe icyemezo ku isambu yo mu muryango we kinyuranye n’ibyo urukiko rwari rwarategetse mbere. Mu gusesengura iki kibazo Urukiko Rwisumbuye rwemeje ko ikirego cyatanze nta shingiro gifite kuko rwasanze urubanza rwaciye ku kibazo kijyanye niyo sambu rwarangijwe. Uwitwa Kabagema yajuririye icyo cyemezo muri uru Rukiko Rukuru, Urugereko rwa Nyanza avuga ko Urukiko rwabanje rwirengagije inenge zigaragara mu cyemezo cyafashwe n’ubuyobozi bw’Akarere ka Ruhango, maze asaba ko cyavanwaho. Ubuyobozi bw’Akarere ka Ruhango bwo bwakomeje kuvuga ko nta cyemezo kindi bwafashe, ko ahubwo rwemeje ko hagumaho ibyari byarakozwe igihe urubanza rwarangizwaga. Urukiko Rukuru rwemeje ko ikirego cya Kabagema gifite ishingiro kuri bimwe, ko icyo cyemezo cyafashwe n’Akarere ka Ruhango gikuweho. Nyuma

y'icibwa ry'urubanza, Urega yaregeye uru Rukiko Rukuru asaba gukosora amakosa agaragara mu myandikire y'urubanza, ko hakosorwa numero y'urubanza, amazina ye akandikwa neza, hagakosorwa amazina y'umugabo we, amazina ya Karambizi, gukosora ibika bigize urubanza n'ahanditse ko ari ikirego cyihutirwa bigakosorwa kuko atari ikirego cyihutirwa. Incamake y'icyemezo: Gusaba gukosora urubanza ntibikwiye kubangamirwa n'ibihe by'ukwezi kumwe, mu gihe mu rubanza harimo amakosa y'imyandikire ashobora kubangamira irangizwa ryarwo. Ikirego gisaba gukosora urubanza, gifite ishingiro. 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 138 n'ya 140. Imanza zifashishijwe: Re Rutagarama, RS/RECT/RC 00001/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 31/05/2019. Urubanza

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I. IMITERERE Y'URUBANZA [1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Muhanga, Ruzibiza Hildegard avuga ko kuwa 18/08/2016, ubuyobozi bw'Akarere ka Ruhango bwafashe icyemezo ku isambu yo mu muryango we kinyuranye n'ibyo urukiko rwari rwategetse mbere. Ngo iyo sambu yafashweho icyemezo kuwa 22/09/1966, kuri iyo tariki urukiko rwa Kanto ya Kirengeri rwaciye urubanza nimeru 440/AC rwaburanagamo Karambizi (se wa Ruzibiza) na Mukarugomwa Antoniya (umugore w'umuvandimwe we Sekabaraga), bakaba baraburanaga isambu ya se ubabyara Gapyisi. Urukiko rwa Kanto ya Kirengeri rwategetse ko iyo sambu bayigabana bakanganya, buri wese agatwara 1/2 cyayo. Ngo urwo rubanza rwaje kurangizwa, ariko ngo ibyo byose ubuyobozi bw'Akarere ka Ruhango rwabirenzeho, rwemeza ko Bizimana nawe agira uburenganzira kuri iyo sambu kandi ngo ntaho ahuriye n'uwo muryango. [2] Urukiko Rwisumbuye rwa Muhanga rwasuzumye ikirego cye rusanga nta shingiro gifite kuko ngo urubanza rwavuzwe haruguru rwarangijwe kuwa 05/08/1967, icyo gihe ngo byagaragaye ko Bizimana François yakomeje gutura aho yari asanzwe atuye kandi ngo ntawe byabangamiye mu baburanyi bombi. Ngo iryo rangizarubanza ntiriyegere rirergerwa ngo ribe ryavanwaho, kandi ngo icyo ubuyobozi bw'Akarere bwahamije ni uko rigumaho. Ikindi Urukiko rwabonye ni uko ngo irangizarubanza ryakozwe na Me Rusunika Jonas kuwa 16/02/2012 nta gaciro rigomba guhabwa kuko urubanza rwari rwaramaze kurangizwa. [3] Kabagema Clotilde Marie Rose yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Nyanza avuga ko Urukiko rwirengagije inenge zigaragara mu cyemezo cyafashwe n'ubuyobozi bw'Akarere ka Ruhango. Yasabye ko icyo cyemezo cyavanwaho. Ubuyobozi bw'Akarere ka Ruhango bwo bwakomeje kuvuga ko nta cyemezo kindi bwafashe, ko ahubwo rwemeje ko hagumaho ibyari byarakozwe igihe urubanza rwarangizwaga. Uburanira Akarere ka Ruhango yasabye Urukiko gutegeka Kabagema Clotilde Marie Rose gutanga indishyi. [4] Mu rubanza RADA 00013/2017/HC/NYZ rwaciwe kuwa 30/11/2018, Urukiko Rukuru Urugereko rwa Nyanza, rwemeje ko ikirego cy'ubujurire cyatanzwe na Kabagema Clotilde Marie Rose gifite ishingiro kuri bimwe, rwemeza ko icyemezo cyo kuwa 18/08/2016 cyari kigamije gukemura ikibazo cyari hagati ya Ruzibiza Hildegard na Bizimana François cyashyizweho umukono n'Umuyobozi w'Akarere ka Ruhango kivuyeho, rwemeza ko imikirize y'urubanza RAD 00001/2017/TGI/MHG rwakijijwe n'Urukiko Rwisumbuye rwa Muhanga kuwa 19/09/2017 ihindutse, rwemeza ko nta ndishyi zikwiye gutangwa muri uru rubanza. [5] Nyuma y'icibwa

ry'urubanza, tariki ya 09/04/2022, Kabagema Clotilde Marie Rose yaregeye urukiko arusaba gukosora amakosa agaragara mu myandikire y'urubanza, ko hakosorwa numero y'urubanza, amazina ye akandikwa neza, hagakosorwa amazina y'umugabo we, amazina ya Karambizi, gukosora ibika bigize urubanza n'ahanditse ko ari ikirego cyihutirwa bigakosorwa kuko atari ikirego cyihutirwa. [6] Urubanza rwaburanishirijwe nk'inyandiko nsobanurakirego itanzwe n'umuranyi umwe tariki ya 19/04/2022.

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- [7] Ikibazo kigiye gusuzumwa ni ukumenya niba hari amakosa y'imyandikire agaragara mu rubanza RADA 00013/2017/HC/NYZ ku buryo yakosorwa. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA
1. Kumenya niba hari amakosa y'imyandikire agaragara mu rubanza RADA 00013/2017/HC/NYZ ku buryo yakosorwa [8] Kabagema Clotilde Marie Rose avuga ko mu guca urubanza, kopi yarwo yasohotse ifite numero itariyo, handitswe RADA 00013/2018/HC/NYZ kandi numero yarwo ari RADA 00013/2017/HC/NYZ. Mu mutwe warwo handitswe ko ari ikirego cyihutirwa kandi atari byo. Mu mwirondoro w'uwarujuriye handitse Kabagema Clotilde aho kuba Kabagema Clotilde Marie Rose, umugabo we witabye Imana yasimbuye banditse ko ari Ruzibiza Ildebrand kandi ari Ruzibiza Hildegard mwene Karambizi Anastase aho kuba mwene Karambizi Athanase. [9] Akomeza avuga ko hakosorwa ikosa rigaragara mu bika bya 3,4,6, 11, 12 (10'), 12 (11') na 16 (14') ahanditse Kabagema Clotilde hakaba Kabagema Clotilde Marie Rose. Mu gika cya 4 handitswe ko Me Ndaruhutse Janvier waburaniye Kabagema Clotilde Marie Rose yasobanuye ko igabana ryabaye muri 1967 harangizwa urubanza nimero 440/AC rwaciwe na kanto ya Kirengeri kuwa 22/09/1966, ryagabanyije Bizimana Ildegarde na Mukarugomwa Antonia, asaba ko izina rya BIZIMANA Ildegarde risimbuzwa Karambizi Anastase. UKO URUKIKO RUBIBONA [10] Ingingo ya 138 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 ibirego bisaba gusobanura cyangwa gukosora amakosa ari mu rubanza biregerwa urukiko rwaciye urwo rubanza bigasuzumwa n'umucamanza waruciye. Iyo bidashobotse bishyikirizwa undi mucamanza. Ingingo ya 140 y'iryo tegeko igateganya ko ikirego gikosora cyangwa gisobanura urubanza kiburanishwa nk'inyandiko nsobanurakirego itanzwe n'umuranyi umwe. Urubanza rukosora urundi, rukosora gusa amakosa y'imyandikire. [11] Urukiko rurasanga nkuko Urukiko rw'Ikirenga rwabibonye mu rubanza RS/RECT/RC 00001/2019/SC rwaciwe kuwa 31/05/2019, mu gihe umuburanyi agaragaza ko mu rubanza rwaciwe harimo amakosa y'imyandikire ku buryo kuyarekeramo byatera ibibazo mu kururangiza, gusuzuma ishingiro ry'icyo kirego bidakwiye kubangamirwa n'igihe cy'ukwezi kumwe giteganywa mu gika cya gatatu cy'ingingo ya 140 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. [12] Urukiko rurasanga nkuko bivugwa na Kabagema Clotilde Marie Rose, mu rubanza RADA 00013/2017/HC/NYZ rwaciwe n'Urukiko Rukuru Urugereko rwa Nyanza hagaragaramo amakosa y'imyandikire. Numero y'urubanza RADA 00013/2018/HC/NYZ harimo ikosa kuko ikirego

cy'ubujurire gitangwa cyahawe numero RADA 00013/2017/HC/NYZ, bityo iryo kosa rikaba 1 Gusaba gukosora cyangwa gusobanura urubanza bikorwa mu gihe cy'ukwezi kumwe uhereye igihe umuburanyi yamenyeye imikirize y'urubanza.

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rikosowe. Ahanditse ko ari ikirego cyihutirwa naho hakaba hakosowe, ikirego cyihutirwa bikaba bikuwemo hakandikwa ruhaburanishiriza imanza z'ubutegetsi kuko ikirego gitangwa mu Rukiko Rwisumbuye rwa Muhanga ari nacyo cyajuririwe cyari ikirego gisanze cy'ubutegetsi. Mu kwandika urubanza kandi, umucamanza yanditse izina rya Kabagema Clotilde kandi afite amazina ane ariyo Kabagema Clotilde Marie Rose nkuko bigaragazwa n'icyemezo cyo kuba warashyingiwe, *extrait d'acte de mariage* no muri iecms aho yatangiye ikirego, iryo kosa ryo kwandika amazina atuzuye naryo rikaba rikosowe. [13] Urukiko rurasanga izina rya Ruzibiza Ildebrand naryo rigomba gukosorwa, hakandikwa Ruzibiza Hildegard nkuko bigaragara mu mitangire ye y'ikirego mu Rukiko Rwisumbuye, ku cyemezo cyo kuba warashyingiwe, "*extrait d'acte de mariage*" na "*attestation de décès*", hose handitse Hildegard, iryo kosa naryo rikaba rikosowe. Ahanditse izina rya Karambizi Athanase risimbujwe irya Karambizi Anastase nkuko bigaragarira mu myirondoro y'uwatanze ikirego mu Rukiko Rwisumbuye rwa Muhanga agaragaza ko se ari Anastase aho kuba Athanase. Ikindi kigomba gukosorwa n'ibika bigize urubanza bikurikiranye mu buryo butari bwo, ahanditse igika cya [4] ku nshuro ya kabiri hakaba hakosowe hakandikwa igika cya [5], ahanditse icya [5] kikaba ari icya [6], ahari igika cya [6] n'icya [7], ahari icya [7] n'icya [8], ahari icya [8] n'icya [9], ahari icya [9] n'icya [10], ahari icya [10] n'icya [11], ahari icya [11] n'icya [12], ahanditse igika cya [10] mu cyemezo cy'urukiko kikaba ari igika cya [13], ahanditse igika cya [11] mu cyemezo cy'urukiko kikaba ari icya [14], ahanditse icya [12] kikaba ari icya [15], ahanditse icya [13] kikaba ari icya [16], ahanditse icya [14] hakandikwa igika cya [17]. Mu gika cya [4] cyakosowe kikaba icya [5] ahanditse izina rya BIZIMANA Ildegarde rikaba risimbujwe izina rya Karambizi Anastase kuko ariryo ryanditse mu rubanza N° 440/AC rwaciwe na Kanto ya Kirengeri kuwa 22/09/1966. III. ICYEMEZO CY'URUKIKO [14] Rwemeje ko ikirego cyatanzwe na Kabagema Clotilde Marie Rose gisaba gukosora amakosa ari mu rubanza RADA 00013/2017/HC/NYZ gifite ishingi. [15] Rwemeje kandi rutegetse ko urubanza RADA 00013/2017/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza tariki ya 30/11/2018 rukosowe, ahanditse RADA 00013/2018/HC/NYZ, hasimbujwe RADA 00013/2017/HC/NYZ, ahanditse Kabagema Clotilde hasimbujwe Kabagema Clotilde Marie Rose, ahanditse Ruzibiza Ildebrand hasimbujwe Ruzibiza Hildegard, ahanditse izina rya Karambizi Athanase risimbujwe irya Karambizi Anastase, ahanditse ko ari ikirego cyihutirwa naho hakaba hakosowe, ikirego cyihutirwa bikaba bikuwemo hakandikwa ruhaburanishiriza imanza z'ubutegetsi n'ibikaba bigize urubanza bikaba bikosowe, ahanditse igika cya [4] ku nshuro ya kabiri akaba ari igika cya [5], muri icyo gika ahanditse izina rya Bizimana Ildegarde rikaba risimbujwe izina rya Karambizi Anastase, ahanditse icya [5] kikaba ari icya [6] gukomeza gutyo kugeza ku gika cya nyuma cya [14] hakandikwa igika cya [17]. [16] Rutegetse ko uru rubanza RS/RECT/RAD 00001/2022/HC/NYZ rwuzuzura urubanza RADA 00013/2017/HC/NYZ rwasabiwe gukosorwa.

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