

RWANDA / JUDGMENT

KAZAVIYO v MURWANASHYAKA N'ABANDI

RC 00004/2024/SC

COURT

Supreme Court

DECIDED

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KAZAVIYO v MURWANASHYAKA N'ABANDI

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Text

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KAZAVIYO v MURWANASHYAKA N'ABANDI [Rwanda URUKIKO RW'IKIRENGA - RC 00004/2024/SC (Mukantaganzwa, P.J., Hitiyaremye, Kalihangabo, J.) 06 Gicurasi 2025] Amategeko agenga imiburanishirize y'imanza – Ububasha bw'urege n'uregwa – Kurega umuntu wapfuye - Kurega umuntu wapfuye (nyakwigendera), binyuranyije n'amategeko kuko umuntu wapfuye aba adashobora kwitaba mu rubanza mu buryo bwemewe n'amategeko ngo aburane, ingaruka zabyo akaba ari uko icyo kirego kiba kitagomba kwakirwa ngo gisuzumwe mu mizi. Incamake y'ikibazo: Byamana yashatse abagore 4 barimo Kabasanza wari umugore wa nyuma, aza gupfa, umwuzukuru we witwa Baganukundi ahita ajya mu mitungo ye, avuga ko yayimuraze. Kabasanza yareze Baganakundi asaba ko yamuha umurima w'urutoki n'indi mirima 2 yasigiwe n'umugabo we. Urukiko rwa Kanto ya Nyamyumba rwemeje ko ikirego cye kidafite ishingiro, ajurira icyo cyemezo mu Rukiko rwa mbere rw'Iremezo rwa Gisenyi, urwo rukiko rwemeza ko ubujurire bwe bufite ishingiro ko atsindiye ibyo yaregeraga. Kabasanza yaje gupfa, uwo mutungo usigaramo umuhungu we witwa Kazaviyo. Mu mwaka wa 1996, Nyirimanzi, umwuzukuru wa Byamana

yareze Kazaviyo mu Rukiko rwa Kanto ya Nyamyumba avuga ko yigabije itongo rya sekuru Byamana kandi nta sano bafitanye. Kazaviyo yavugaga ko ari mwene Byamana na Kabasanza kandi ko kuba ari muri iyo mitungo ari uko nyina yayiburanye akayitsindira. Urukiko rwasanze ikirego gifite ishingiro rwemeza ko Kazaviyo Pascal ava mu itongo rya Byamana yari yarasizemo umugore we witwaga Kabasanza rigizwe n'imirimu 2 kuko batigeze babyarana, ko Kazaviyo Pascal akwiye gusanga Se Nsigayehe akaba ariwe umuha umunani n'umugabane kuko atabyarwa na Byamana. Kazaviyo yakomeje kugenda ajuririra urwo rubanza ariko ntiyatsinda kugeza ubwo atanze ikirego mu Rukiko rw'Ubujurire avuga ko hari imanza 2 zivuguruzanya zaciwe n'Urukiko rwa mbere rw'Iremezo rwa Gisenyi ari zo N° RCA 40/79 rwaciwe ku wa 18/04/1983 na N° RCA 302/R1/97 rwaciwe ku wa 04/08/1997, bityo ko rumwe rukwiye kuvanwaho. Urukiko rw'Ubujurire rwohereje urwo rubanza mu Rukiko rw'Ikirenga, mbere y'iburanisha mu mizi habanza gusuzumwa ikibazo cyo kumenya niba Murwanashyaka Gilbert na Hagumaruseke Aaron aribo bagombaga kuregwa muri uru rubanza bitewe n'uko ikirego gitangwa bari barapfuye nk'uko bigaragazwa n'ibyangombwa biri muri dosiye. Me Mukansanga uhagarariye abakomoka ku baregwa asobanura ko Murwanashyaka Gilbert na Hagumaruseke barezwe muri uru rubanza kandi barapfuye nkuko bigaragazwa n'ibyemezo byatanze n'inzego zibanze. Kazaviyo avuga ko urubanza asaba ko rukurwaho kubera ko ruvuguruzanya n'urundi, abarezwe aribo baruburanye bityo ko kuba barapfuye bitabuzwa urukiko gusuzuma ikibazo cy'ivuguruzanya kiri muri izo manza. Incamake y'icyemezo: Kurega umuntu wapfuye (nyakwigendera), binyuranyije n'amategeko kuko umuntu wapfuye aba adashobora kwitaba mu rubanza mu buryo bwemewe n'amategeko ngo aburane, ingaruka zabyo akaba ari uko icyo kirego kiba kitagomba kwakirwa ngo gisuzumwe mu mizi.

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Ikirego nticyakiriwe. Amategeko yashingiweho: Itegeko N° 71/2024 ryo ku wa 26/06/2024 rigenga abantu n'umuryango, ingingo ya 2. Imanza zifashishijwe: RS/INJUST/RC 00012/2019/SC, Bayingana Ntango Théodomir n'abandi na Ndabamenye Eraste rwaciwe n'Urukiko rw'Ikirenga ku wa 22/07/2022. Court of appeal of Tanzania dated 30 September 2022 in Exim Bank (T) Ltd vs. Yahaya Hamisi Musa (As the Administrator of the Estate of the Late Hamisi Musa Mohamed t/a Mapilau General Traders, Civil Appeal No. 275 of 2019 (Tanzlii); Case of C. Muttu v. Bharath Match Works AIR 1964 Kant 293; Cour de cassation (France), 2e civ. 14 février 2008, n° 06-21.991. Inyandiko z'abahanga zifashishijwe: C. CADIET et E. JEULAND, Droit judiciaire privé, 5è éd., Litec, Paris, 2006, pp. 225-226; SERGE GUINCHARD, Droit et Pratique de la Procédure Civile, 5ème Edition, Paris, Dalloz, 2006-2007, p. 22. Urubanza I. IMITERERE Y'URUBANZA [1] Byamana yari afite abagore 4 barimo Kabasanza wari umugore wa nyuma. Byamana amaze gupfa, umwuzukuru we Baganukundi yahise ajya mu mitungo ye, avuga ko yayimuraze. [2] Kabasanza yatanze ikirego mu Rukiko rwa Kanto ya Nyamyumba, aregera ingabane y'urutoki hamwe n'imirimu 2 yasigiwe n'umugabo we Byamana, arega Baganukundi. [3] Mu rubanza No RC 169/78 rwaciwe ku itariki ya 04/08/1978, Urukiko rwa Kanto ya Nyamyumba rwemeje ko ikirego cya Kabasanza nta shingiro gifite, runemeza ko nta burenganzira afite bwo gutunga imirimu n'urutoki aregera kuko atigeze abitunga. [4] Kabasanza yajuririye mu Rukiko rwa Mbere rw'Iremezo rwa

Gisenyi aregera ingabane y'urutoki n'umurima urimo kawa n'insina uri ahitwa i Nyakabingo, maze mu rubanza No RCA 40/79 rwaciwe ku wa 18/04/1983, urwo Rukiko rwemeza ko ubujurire bwe bufite ishingiro, ko urubanza No RC 169/78 rwaciwe n'Urukiko rwa Kanto ya Nyamyumba ku wa 26/10/1978, ruhindutse muri byose, ruvuga ko Baganukundi atsinzwe naho Kabasanza akaba atsinze. [5] Mu mwaka wa 1996, Nyirimanzi Pascal yareze Kazaviyo Pascal (umuhungu wa Kabasanza) mu Rukiko rwa Kanto ya Nyamyumba, avuga ko yatwaye itongo rya Sekuru witwaga Byamana rigizwe n'imirima 2 ifite ibipimo bikurikira: - Umurima wa 1: intangiriro: 120m; iburyo: 60m; imbugiro: 64m; ibumoso: 48m; - Umurima wa 2: intangiriro: 40m; iburyo: 80m; imbugiro: 11m; ibumoso: 68m.

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[6] Yavugaga kandi ko Kazaviyo Pascal ntacyo apfana nabo, ko adafite uburenganzira bwo kuba muri iyo mitungo kuko atari umwuzukuru wa Byamana, asaba Urukiko kumutegeka kuva mu itongo rya Sekuru. [7] Kazaviyo Pascal yaburanye avuga ko ari mwene Byamana na Kabasanza, ndetse ko impamvu ariwe ufite iyo mitungo iburanwa ari uko nyina Kabasanza yayiburanye akayitsindira mu Rukiko rwa Mbere rw'Iremezo rwa Gisenyi. [8] Mu rubanza No RC 86/96/NYAMY rwaciwe ku wa 27/12/1996, Urukiko rwa Kanto ya Nyamyumba rwemeje ko Kazaviyo Pascal ava mu itongo rya Byamana yari yarasizemo umugore we witwaga Kabasanza rigizwe n'imirima 2 kuko batigeze babyarana, ko Kazaviyo Pascal akwiye gusanga Se Nsigayehe akaba ariwe umuha umunani n'umugabane kuko atabyarwa na Byamana. [9] Kazaviyo Pascal yajuririye urwo rubanza mu Rukiko rwa Mbere rw'Iremezo rwa Gisenyi arega Nyirimanzi Pascal, Murwanashyaka Gilbert na Hagumaruseke Aaron, maze mu rubanza No RCA 302.R1/97 rwaciwe ku wa 04/09/1997, urwo Rukiko rwemeza ko imikirize y'urubanza No RC 86/96/NYAMY idahindutse, ko Kazaviyo Pascal atsinzwe, rumutegeka kuva mu itongo rya Byamana. [10] Kazaviyo Pascal yongeye kuregera Urukiko Rwisumbuye rwa Rubavu ikirego cyo gusubirishamo urubanza N° RCA 302/R1/97 ingingo nshya ashingiye ku kuba yarahawe icyemezo (Attestation d'identité complète) kigaragaza ko ari mwene Byamana cyatanzwe na Komini Nyamyumba ku wa 16/07/1994, maze mu rubanza N° RCA 0515/011/TGI/RBV/RCA 05/16/01/TGI/RBV, urwo Rukiko rwemeza ko ikirego cya Kazaviyo Pascal kitakiriwe kuko ikimenyetso ashingiraho asubirishamo urubanza ingingo nshya yakibonye mbere y'icibwa ry'urubanza asubirishamo, rumutegeka kurekura iryo tongo kuko atigeze abyarwa na Byamana. [11] Kazaviyo Pascal yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Musanze, avuga ko Urukiko Rwisumbuye rutitaye ku bimenyetso yaruhaye, maze mu rubanza N° RCAA 009/12/HC/MUS, urwo Rukiko rwemeza ko ubujurire bwe butakiriwe. [12] Kazaviyo Pascal yatanze ikirego mu Rukiko rw'Ubujurire, arusaba gukemura ikibazo cy'ivuguruzanya kiri hagati y'imanza 2 zaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Gisenyi ari zo N° RCA 40/79 rwaciwe ku wa 18/04/1983 na N° RCA 302/R1/97 rwaciwe ku wa 04/08/1997, avuga ko muri izo manza zombi, umutungo waburanwaga ari umwe ariko ko ibyemezo byawufashweho bitandukanye kandi byanabaye itegeko, ikirego cye cyoherezwa mu Rukiko rw'Ikirenga maze cyandikwa kuri N° RC 00004/2024/SC. [13] Urubanza rwaburanishijwe mu ruhamwe ku itariki ya 06/05/2025, Kazaviyo Pascal yunganirwa

na Me Munini Patrick naho abaregwa bahagarariwe na Me Mukansanga Ziada, Urukiko rubanza gusuzuma ikibazo kirebana no kumenya niba Nyirimanzi Pascal, Murwanashyaka Gilbert na Hagumaruseke Aaron aribo bagombaga kuregwa muri uru rubanza bitewe n'uko ikirego gitangwa bari barapfuye nk'uko bigaragazwa n'ibyangombwa biri muri dosiye. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

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Kumenya niba Nyirimanzi Pascal, Murwanashyaka Gilbert na Hagumaruseke Aaron baragombaga kuregwa muri uru rubanza. [14] Me Mukansanga Ziada avuga ko kuva mu nama ntegururubanza yagaragarije Urukiko ko abaregwa aribo Nyirimanzi Pascal, Murwanashyaka Gilbert na Hagumaruseke Aaron bose bapfuye, ko abana babakomokaho aribo bamuhaye urubanza kugira ngo azajye gusobanurira urukiko ko ababyeyi babo barezwe barapfuye, asaba Urukiko kutakira ikirego cya Kazaviyo Pascal kubera ko yareze abantu bapfuye kandi umuntu wapfuye atagira ubuzima gatozi. [15] Kazaviyo Pascal na Me Munini Patrick umuburanira bavuga ko urubanza basaba ko rwakurwaho kubera kuvuguruzanya n'urundi abo yareze aribo baruburanye kuko bari bakiriho, ko ariyo mpamvu aribo yareze. Bakomeza bavuga kandi ko ikigamijwe muri uru rubanza ari ugusuzuma ivuguruzanya ry'imanza 2 zabaye itegeko, hakarebwa urugomba kivanwaho, ko kuba haba hari ababuranyi bapfuye bitatuma icyo kibazo cy'ivuguruzanya ry'imanza kidasuzumwa. UKO URUKIKO RUBIBONA [16] Ingingo ya 2, agace ka (w) y'Itegeko N° 71/2024 ryo ku wa 26/06/2024 rigenga abantu n'umuryango ivuga ko ubuzimagatozi bw'umuntu bivuga ububasha umuntu agira bwo kugira uburenganzira n'inshingano kuva akivuka kugeza apfuye. Naho ingingo ya 14 y'iryo Tegeko ikavuga ko urupfu rurangiza ubuzimagatozi bw'umuntu. [17] Abahanga mu mategeko nka Cadiet C. na Jeuland E. mu gitabo bise Droit judiciaire privé, bavuga ko ububasha bugomba kugaragazwa ku ruhande rw'urega no ku rw'uregwa (...) kandi ko iburabubasha ryabo rituma ikirego kitakirwa.¹ [18] Undi muhanga mu mategeko Serge Guinchard na we avuga ko urega cyangwa uregwa bagomba kuba bafite ububasha, kandi iyo bitabaye ibyo, ikirego ntacyakirwa.² [19] Mu rubanza N° RS/INJUST/RC 00012/2019/SC3 rwaciye ku wa 22/07/2022 haburana Bayingana Ntango Théodomir na bagenzi be na Ndabamenye Eraste, uru Rukiko rwabanje gusuzuma niba hari ubutumwa (mandat) Me Rudakemwa Jean Félix yahawe bwo kuburana nyuma yo gusanga Ndabamenye Eraste waregwaga yarapfuye mbere y'itangwa ry'ikirego, rusanga nta butumwa yahawe bwo kumuhagararira mu rubanza, runatesha agaciro imanza zose yamuburaniye rushingiye ku kuba Me Rudakemwa Jean Félix yaramenye ko Ndabamenye Eraste yagiye ahagararira mu manza yaba yarapfuye ariko ntabimenyeshe urukiko ahubwo agakomeza kwitaba nk'umuhagarariye, no kuba kuva urubanza rwatangira mu Rukiko Rwisumbuye rwa Nyarugenge, umwirondoro wa Ndabamenye Eraste watanze na Me Rudakemwa Jean Félix wariho amakuru atari ukuri ndetse amwe akagenda avuguruzanya, bituma rwanzura ko nta kigaragaza ko ari

1 La qualité doit être envisagée aussi bien du côté du demandeur que du défendeur (...). L'absence de qualité du défendeur peut entraîner l'irrecevabilité de l'action aussi bien que l'absence de qualité du demandeur" (C. CADIET et E. JEULAND, Droit judiciaire privé, 5è éd., Litec, Paris, 2006, pp. 225-226.) 2 La qualité est une condition d'existence de l'action, exigée tant en demandant

qu'en défense. Le défaut de qualité donne lieu à une fin de non recevoir", par SERGE GUINCHARD, Droit et Pratique de la Procédure Civile, 5 ème Edition, Paris, Dalloz, 2006-2007, p. 22 3 Reba igika cya cya 39 , 45 n'icya 51

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Ndabamenye Eraste wahaye ubutumwa Me Rudakemwa Jean Félix bwo kumuburanira mu manza zabanje. [20] Mu manza zaciwe n'inkiko zitandukanye zo mu bindi bihugu nko muri Tanzaniya⁴, Ubuhinde⁵ n'Ubufaransa⁶, nazo zemeje ko urubanza ruregwamo umuntu wapfuye, ruba rudafite agaciro kandi rukaba rutagomba kuburanishwa cyangwa ngo rusuzumwe mu mizi kuko umuntu wapfuye adashobora kuba umuburanyi mu rubanza. [21] Hashingiwe ku bivuzwe haruguru, Urukiko rurasanga kurega umuntu wapfuye (nyakwigendera), binyuranyije n'amategeko kuko umuntu wapfuye aba adashobora kwitaba mu rubanza mu buryo bwemewe n'amategeko ngo aburane, ingaruka zabyo akaba ari uko icyo kirego kiba kitagomba kwakirwa ngo gisuzumwe mu mizi. [22] Ku birebana n'uru rubanza, dosiye igaragaza ko ku wa 30/09/2024, Kazaviyo Pascal yatanze ikirego arega Murwanashyaka Gilbert, Nyirimanzi Pascal na Hagumaruseke Aaron, asaba gukemura ukuvuguruzanya kuri hagati y'imanza N° RCA 40/79 rwaciwe ku wa 18/04/1983 na N° RCA 302/R1/97 rwaciwe ku wa 04/08/1997. Dosiye igaragaza kandi icyemezo cy'uko umuntu yapfuye cyatanzwe n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Gashora cyerekana ko Murwanashyaka Gilbert yapfuye ku wa 02/11/2023, icyatanzwe n'uwo muyobozi cyerekana ko Nyirimanzi Pascal yapfuye ku wa 07/11/2014, n'icyatanzwe n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Mubuga cyerekana ko Hagumaruseke Aaron yapfuye ku wa 10/07/2005. [23] Dosiye igaragaza kandi ko ku wa 30/07/2024 aribwo Kazaviyo Pascal yatanze ikirego muri uru Rukiko gisaba gukemura ukuvuguruzanya kuri hagati y'imanza 2 zaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Gisenyi arizo N° RCA 40/79 rwaciwe ku itariki ya 18/04/1983 na N° RCA 302/R1/97 rwaciwe ku itariki ya 04/08/1997, nk'uko byagaragajwe haruguru, icyo gihe abo arega bakaba bari barapfuye. [24] Hashingiwe ku ngingo z'Itegeko N° 71/2024 ryo ku wa 26/06/2024 no ku bisobanuro byatanzwe haruguru biragaragaza ko Kazaviyo Pascal yatanze ikirego kandi azi neza ko abo arega bapfuye, Urukiko rurasanga ikirego cye kidakwiye kwakirwa kubera iburabubasha ry'abo arega. III. ICYEMEZO CY'URUKIKO [25] Rwemeje ko ikirego cyatanzwe na Kazaviyo Pascal kitakiriwe.

4 Reba Court of appeal of Tanzania dated 30 September 2022 in Exim Bank (T) Ltd vs. Yahaya Hamisi Musa (As the Administrator of the Estate of the Late Hamisi Musa Mohamed t/a Mapilau General Traders, Civil Appeal No. 275 of 2019 (Tanzlii), "... according to the settled position of law, the suit filed against the deadperson is a nullity". 5 "If he(defendant) dies before the suit and a suit is brought against him in the name in which he carried on business,the suit is against a dead man and it is a nullity from its inception.The suit being a nullity, the writ of summons issued in the suit by whomsoever accepted is also a nullity. It is immaterial that the suit was brought bonafide and in ignorance of the death of such a person (" Case of C. Muttu v. Bharath Match Works AIR 1964 Kant 293). 6 L'action intentée contre une personne décédée est entachée d'une irrégularité de fond affectant la validité de l'assignation, laquelle est irrecevable."Cela signifie que l'assignation est nulle de plein droit, sans besoin pour la partie adverse de soulever l'exception. Il

s'agit d'une nullité d'ordre public. (Cour de cassation, 2e civ. 14 février 2008, n° 06-21.991)

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