

RWANDA / JUDGMENT

MUKANKUBITO v NABIMANA word 2010

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MUKANKUBITO v NABIMANA [Rwanda SUPREME COURT – RS/INJUST/RC 00009/2019/SC Ntezilyayo, P.J, Nyirinkwaya, Cyanzayire, Mukamulisa, and Hitiyaremye, J.) 03 march 2020] Law governing evidence – marriage – marriage according to the Law – the marriage certificate is the convincing evidence for marriage, if it is lost or the registers of marriage unavailable, in this case it is referred to testimony – for one of a couple living together as husband and wife, being registered in the identification card of another as his/her wife or husband, is not an evidence proving that they are married according to the Law. Facts: The case started before the Nyarugenge Primary Court, Mukankubito requesting a suppletive judgment for her marriage with Nabimana, the Court decided that there is no convincing evidence she provided proving that she concluded a marriage with Nabimana. Mukankubito appealed before the Nyarugenge Intermediate Court indivating that the previous Court disregarded the evidence she produced proving that she is married in accordance with the Law to Nabimana, the Intermediate Court decided that her claim has merit, that a marriage was concluded between her and Nabimana, thus, the appealed judgment is reversed in whole, it decided to award to Mukankubito the suppletive judgment taking place of marriage certificate, the Court to decide so, it motivated that,

there is no reason for refusing to award to Mukankubito the suppletive judgment taking place of marriage certificate because she produced before the Court the evidence proving that she was married in accordance with the Law to Nabimana, which are construed of photos indicating how they were married, marriage certificates issued by Kacyiru sector, church certificate indicating that they were religiously married, it motivated that people could not get married religiously without marriage celebration before commune, the ancient Identification card of her husband, it motivated that it was quite impossible to register her as his wife unless they are married. Nabimana knew about the decision of that judgment after and applied for an opposition indicating that he lived together with Mukankubito as wife and husband since 1978, because Mukankubito had not the majority of age as she was only 17 years old, thus they could not get married according to the Law, thus, they concluded religious marriage in 1983. The Court rendered the judgment and decided that Nabimana's claim has merit, it ordered to reverse the judgment under opposition in whole, that there are no convincing evidence indicating that they were married according to the Law. Mukankubito applied for review for disregarding evidence document issued by NIDA, but the Intermediate Court decided to reject her claim and decided to sustain the decision of the reviewed judgment, it motivated that the document issued by NIDA is not new evidence produced after the hearing because its content is the same as the other document she produced before. Mukankubito applied for case review due to injustice, before the Supreme Court she indicated that the Intermediate Court disregarded the Law in use that time because her representative stated that while Mukankubito celebrated religious marriage it was allowed by the Constitution into force that time and the law provides that religious marriage could be considered as celebrated according to the Law because they were religiously married in 1983. The representative of Nabimana argues instead that the main claim was filed before the primary Court by Mukankubito

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and was praying the Court for a suppletive judgment of certificate of marriage celebrated in 1978 but now, they are indicating that the lawful marriage is that one celebrated religiously in 1983, they find that it is claim modification which is not allowed, and the Constitution they referred to, does not provide so, and that decree was already repealed, that the religious wedding was not recognized by the Law, thus the Court did not err in Law. The representative of Mukankubito continued stating that, there are various evidence disregarded like Nabimana's ID which mentions that his spouse is Mukankubito even their children are registered as well, the content of ID is copied from civil status registers which means that, they are married in accordance with the Law. The representative of Nabimana states that the ID is not an evidence to base on to decide that someone is married to another, rather the evidence allowed by the Law is the marriage certificate or suppletive judgment of marriage certificate, Nabimana adds that, the ID she based on has been forged by Mukankubito to get travel document abroad because she states that their marriage was celebrated in Nyarugenge whereas that ID was issued in Kacyiru. Held: 1. The marriage certificate is the convincing evidence for marriage, if it is lost or the registers of marriage unavailable, in this case it is referred to testimony, thus other documents produced by

Mukankubito issued in Belgium indicating that she is married, cannot be based on to decide that a civil marriage was celebrated.

2. The fact that one of the couple living together as husband and wife, being registered in the identification card of another as his/her wife or husband, is not an evidence proving that they are married according to the Law, thus for Mukankubito to indicate that she was registered in Nabimana's Identification card is not an evidence to base on to decide that they are married according to the Law. The case review due to injustice has no merit. The decision of the case under review due to injustice is sustained. Statutes and statutory instruments referred to: The Constitution Law of 20/12/1978. Articles 25 and 98 The Constitution Law of 24/11/1962, articles 28. The Law No15/2004 of 12/05/2004 relating to evidence and its production article 11. Decree-Law N° 01/81 of 16 January 1981 relating to population's survey, Identification card, articles 5, 6 and 7 The decree of 04/05/1985 instituting title one of civil code, book one, articles 18, 20 and 117 Cases Law referred to: Case RS/REV/INJUST/CIV 0029/16/CS rendered by the Supreme Court on 01/06/2018 Author cited: Ntampaka, Charles, *Droit des personnes et de la famille*, Manuel de droit rwandais, 1993, p. 108 The judgment

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I. BRIEF BACKGROUND OF THE CASE [1] This case originates from Mukankubito Daphrose's claim before Nyarugenge primary Court, praying for suppletive judgment of marriage certificate she celebrated with Nabimana Pierre, arguing that, they were legally married on 18/08/1978 in former Nyarugenge Commune, but she went before Nyarugenge sector to look for marriage certificate and found unavailable the registers for marriage celebrated during that period. [2] On 02/04/2015, Nyarugenge primary Court, rendered the case RC 0088/15/TB/NYGE, and held that there is no evidence provided by Mukankubito Daphrose indicating without doubt that she married Nabimana Pierre on 18/08/1978. It motivated that the marriage certificate of Nabimana Pierre and Mukankubito Daphrose provided by Kacyiru commune on 12/03/2003 is not convincing evidence because it is an ancient evidence and the plaintiff is not indicating the original copy and the authority which awarded the latter lack informations about it because the plaintiff states that their marriage was celebrated before Nyarugenge Sector, whereas the marriage certificate (A qui de droit) which was awarded by Nyarugenge sector authority, indicates that there is no registry of marriage in that sector which prove that Mukankubito Daphrose and Nabimana Pierre are legally married. It also stated that the picture which was taken during their religious wedding, is not even a proof because it does not indicate whether they were married before civil state officer and holding national frag, as provided by the Law, also the properties titles, cannot be considered as evidence because husband and wife may own land without being legally married. It decided without merit the documents which indicate that they are religiously married construed of pictures and documents provided by Land center because the Law does not consider spouse married religiously as legally married. [3] Mukankubito Daphrose did not get contained with that decision, then appealed before Nyarugenge Intermediate Court, arguing that the Court disregarded various evidence she produced before it, which prove that she is

married to Nabimana Pierre, which include identification document containing her name as her wife, a certificate issued by Kacyiru commune on 12/03/2003 which indicates that, they are married. On 30/04/2015, that Court held in judgment RC 0076/15/TGI/NYGE, that Mukankubito Daphrose's appeal has merit, it decided that the appealed judgment is whole reversed, and decided that Mukankubito Daphrose be given supplementary judgment of marriage certificate which would decide that the judgment takes place of marriage certificate and be forward to Nyarugenge sector. [4] The Court by taking such decision, it motivated that there is no ground which prevent Mukankubito Daphrose to be granted the supplementary judgment of marriage certificate, because she produced before the Court convincing evidence that she is legally married to Nabimana Pierre, these include the pictures indicating how Mukankubito Daphrose and Nabimana Pierre were married, certificates issued by Kacyiru sector, certificate Nyamirambo parish which indicate that they were married in church, it motivated that people could not celebrate religious wedding without going through civil marriage, her husband's ancient identification document, it motivated that it could be impossible to register her in the latter as Nabimana Pierre's wife if they are not legally married. [5] Nabimana Pierre applied for a third party opposition for that case, arguing that he has never legally married Mukankubito Daphrose, rather, they lived together as wife and husband

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since 1978, mostly due to the fact that Mukankubito Daphrose was still minor as she was only 17, they could not get married before the civil status officer, rather they celebrated religious marriage in 1983, Nyarugenge Intermediate Court rendered the judgment RCA0076/15/TGI/NYGE on 18/05/2015, and held that Nabimana Pierre's claim has merit, it decided that, there is no convincing evidence which indicating that, Mukankubito Daphrose and Nabimana Pierre celebrated civil marriage. [6] The Court motivated that the evidence referred to, in the case under third party opposition, are the ones found by Mukankubito Daphrose herself which she affirms that, she got them in 1983 while celebrating religious wedding, however those evidence is not proving that she was married before the civil status officer, rather, they prove that she concluded a religious wedding and she does not indicate any Law that invest her the right to be considered as legally married thought she was religiously married 1983, thus, the evidence referred to by the Court is not sufficient to held that, they were legally married. [7] The Court found also that, they based on article 13 of the Law N°15/2004 relating to evidence, and the Court decided that the certificate of marriage of 12/03/2003 is an authentic document which removes any doubt for any person, whereas that certificate was not issued in respect of required conditions by the civil servant within his respective territorial jurisdiction, it motivated that Mukankubito Daphrose stated that, they were legally married before Nyarugenge sector, whereas the marriage certificate was issued by the former Kacyiru commune, even not original, thus, the issuer had no basis to decide that Mukankubito Daphrose and Nabimana Pierre are married. [8] The Court found also some witnesses who were their neighbors who testify that, they were never legally married, rather what they know, they were religiously married, and they could not celebrate civil marriage without them knowing, it found also that Mukankubito Daphrose does not produce a witness who

could testify her statement or indicate the civil status officer (Officier de l'état civil) who officiated their marriage. [9] Mukankubito Daphrose applied for review the case RCA 0106/15/TGI/NYGE arguing that, she possesses a new evidence made of a document issued by NIDA on 05/10/2015. Nyarugenge Intermediate Court rendered the judgment RCA0222/15/TGI/NYGE on 15/12/2015, and held inadmissible Mukankubito Daphrose's application for review, it ordered that the judgment RCA0106/15/TGI/NYGE rendered by Nyarugenge Intermediate Court is sustained, it ordered also Mukankubito Daphrose to pay Nabimana Pierre for damages equivalent to 2.000.000Frw, containing procedural and counsel fee. [10] The Court motivated that the document issued by NIDA on 05/10/2015, is not a new evidence found after the pleadings, because its content is the same as the content of the document of 21/05/2015, and were both requested by Mukankubito Daphrose, this means that during pleadings, Mukankubito Daphrose knew about their content but did not plead on them, and did not indicate hardship reason which prevent her to producing that evidence, it held then that the document of 05/10/2015 is not new evidence. [11] Mukankubito Daphrose wrote to Office of Ombudsman requesting for review the case RCA 0106/15/TGI/NYGE due to injustice. That Office after examination of that request, it wrote

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to the President of the Supreme Court requesting the latter to review that case due to injustice. The President of the Supreme Court after examination, decided that the case RCA 0106/15/TGI/NYGE be registered on the cause list to reviewed, the claim was registered on RS/INJUST/RC 00009/2019/SC. [12] Counsel Mugeni Anita states that Mukankubito Daphrose applied for review the case RCA 0106/15/TGI/NYGE due to injustice because the Court disregarded the Law and evidence which indicate undoubtedly that she married Nabimana Pierre according to the Law, thus, this caused injustice. [13] The hearing of the case occurred in public on 05/02/2020, Nabimana Pierre assisted by Counsel Niyomugabo Christophe and Me Ndagijimana Emmanuel whereas Mukankubito Daphrose is represented by Counsel Mugeni Anita. Before examining issues of the case, the Court examined before, the issue relating to the case RCA 0034/03/2017/HC/KIG pending before the High Court, where Mukankubito Daphrose filed a claim praying the Court to order for the share of the properties she own together with Nabimana Pierre as they lived together as wife and husband, and the issue was to know whether that case has no effects on this case ongoing before he Supreme Court. [14] Withregarding to this issue, counsel Mugeni Anita started explaining how that case aiming at sharing properties between Mukankubito Daphrose and Nabimana Pierre as they lived together as wife and husband. She argues that, she initiated that case because Mukankubito Daphrose noticed that, there was no remaining way after realizing that Nabimana Pierre has started to deregister her on their community property. She states that, this injustice related case has no effects on the ongoing case before the High Court because after the release of Ombudsman's decision, they requested the Court to put that case on hold as to waiting for Supreme Court's decision. [15] On the side of Nabimana Pierre's representative, they state that, they have raised that issue, wondering how Mukankubito Daphrose prays the Court to held that she is legally married to Nabimana Pierre on one side and praying alternatively to share

properties as husband and wife, because this indicate that she agrees that, they are not legally married. They state that, this may be considered as judicial confession, which makes its author, to lose the case, they find that, the case of injustice could be inadmissible consequent to that case. [16] After hearing both sides on that issue, the Court deliberated and decided that after finding that there is a case RCA0034/03/2017/HC/KIG pending before the High Court whose subject matter is sharing the properties, for the justice sake and to avoid contradiction between judgments, that case may be put at stake till the Supreme Court will take decision. [17] After analysing the issues of the case too, the Court examined the objection raised by Nabimana Pierre's representative, stating that, if Counsel Mugeni Anita who represents Mukankubito Daphrose keeps to refer to the evidence titled document issued by Nyamirambo parish during her pleadings, they have to file a claim against that document for the Court to decide that its forgery.

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[18] Counsel Mugeni Anita stated that, because the procedure to file a claim against a forged document delays whereas she has explained that the concerned evidence is not so crucial, rather it emphasizes others, she leaves to use that document issued by Nyamirambo parish, this allowed the hearing to proceed. [19] By requesting to review the case RCA0106/15/TGI/NYGE due to injustice, the Court finds the following issues have to be analyzed, as requested by parties to the case too: i.whether the case RCA0106/15/TGI/NYGE disregarded the applicable Law during the marriage of Mukankubito Daphrose and Nabimana Pierre. ii.Whether the case RCA0106/15/TGI/NYGE disregarded the evidence produced by Mukankubito Daphrose which prove her marriage with Nabimana Pierre. iii.Whether the damages requested by parties to the case can be awarded. II. ANALYSIS OF LEGAL ISSUES. i.whether the case RCA0106/15/TGI/NYGE disregarded the applicable Law during the marriage of Mukankubito Daphrose and Nabimana Pierre. [20] Basing on pleading submission of Counsel Mugeni Anita who represents Mukankubito Daphrose, what should be analyzed regarding this issue is to know whether the marriage of Mukankubito Daphrose and Nabimana Pierre before the church occurred on 17/12/1983 was recognized by the Constitution Law of 20/12/1978 as civil marriage. [21] Counsel Mugeni Anita states that Mukankubito Daphrose and Nabimana Pierre agree that, they lived together since 1978 after celebrating civil marriage because their first born arrived in 1979. She states also that, after Nabimana Pierre hided their marriage's document which prove the celebration of civil marriage, Mukankubito Daphrose then started to look for further evidence for the location where they got married in church in 1983, and Nabimana Pierre admits also that they celebrated religious marriage, but he states that this is different from civil wedding. [22] He explains that, in the case under review, the Judge disregarded the Law which was in use during that time, which was providing that, religious wedding before Roman catholic church was also legal, she states that the constitution of the Republic of Rwanda of 24/11/1962 article 28, was providing that marriage of one man and one woman celebrated before civil status officer or before the church are legally recognized by the Constitution Law, that

Constitution was repealed by another one of 20/12/1978, where by its article 25 provides that: marriage of one man and one woman celebrated before civil status officer is the only Legal marriage, that article was the one in use while Mukankubito Daphrose and Nabimana Pierre religiously wedded in 1983. [23] She continues stating that, the common Laws in use for marriage, there was a decree of 04/05/1895 instituting civil laws, book one. Article 17 of that decree, was providing that, catholic missionaries were invested by colonialists the power to officiate marriage for local population, and that marriage was recognized by administrative authority, thus, the marriage of Mukankubito Daphrose and Nabimana Pierre before Catholic church occurred on 17/12/1983 is legally

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recognized. She states that the Court would have based on that and held that they are married according to the law, mostly the article 26 of that decree and articles 476, 458 of the Law of 1988 (which repealed the Law of 1948) repealed the 1895 decree too, provided that what is already completed remain valid, thus Mukankubito Daphrose based on that and prayed the Supreme Court to grant her a suppletive judgment for wedding certificate. [24] She explains that, wihregarding to the judgment RC00258/2017/TGI/NYGE, for which Mukankubito Daphrose claimed a share of properties with Nabimana Pierre, as they lived together as married couple, the Court would not take it as an evidence for admission by her client of lack of marriage celebration according to the law between her and Nabimana Pierre, rather she filed that claim because she lost previous cases and the answer for her application to the Office of ombudsman delayed, whereas Nabimana Pierre started to deregister her from their common properties, then she chose to file that claim as the only remaining chance. [25] Counsel Niyomugabo Christophe who represents Nabimana Pierre, states that the origin of this case is claim filed by Mukankubito Daphrose before Nyarugenge Primary Court requesting for suppletive judgment of marriage certificate of 18/8/1978 because, she celebrated a civil marriage with Nabimana Pierre on this date, that judgment was registered on RC 0088/15/TB/NYGE, but Mukankubito Daphrose does not indicate in the case RCA 0106/15/TGI/NYGE, where the Court disregarded the evidence which prove that she married Nabimana Pierre in 1978, rather she indicates the evidence that they celebrated a religious wedding in 1983, he finds that she has modified the subject matter of the claim whereas the article 6 of the Law N° 21/2018 relating to the civil, commercial, labor and administrative procedure does not allow her to modify the claim at this instance. [26] He continues stating that, with regarding to the statement of the representative of Mukankubito Daphrose that the Constitution of 1978 considered a religious wedding as civil wedding, basing on article 25 of that Constitution Law and on article 17 of the decree Law of 04/05/1895 aforementioned, Counsel Mugeni Anita mentions that article 17 in part, because it provides that catholic missionaries were given by colonialists the power to officiate marriage of local population which marriage would be considered as civil wedding. He states also that, this article explains clearly how catholic missionaries would officiate religious marriage and then officiate civil marriage, as they may be empowered by Gouverneur General and recognized as civil wedding¹ because it was not any missionary who had power to officiate a marriage and recognize

it as official because there are conditions provided by that article 17 which might be fulfilled, among others the concerned missionary had to ask for permission and thus be permitted, and had to officiate the wedding according to the terms and conditions set forth in the permission, and had to officiate the wedding of people who have already completed religious marriage. He adds that, after the wedding, he had to establish immediately the marriage 1 Dans chaque ressort, il peut en outre donner délégation aux agents de la colonie ou à des particuliers, aux fins de dresser ces actes dans l'étendue du territoire pendant le délai et aux conditions qu'il fixe. Ils remplissent ces fonctions sous la direction de l'officier du ressort qui veille à ce que les actes soient régulièrement dressés, constate les irrégularités commises et les signale au gouverneur général. La délégation dont il est question à l'alinéa précédent sera accordée sur leur demande aux missionnaires catholiques avec pouvoir pour eux de célébrer civilement le mariage des indigènes dont ils auront célébré l'union religieuse. Les particuliers et les missionnaires catholiques ne pourront recevoir délégation qu'aux fins de dresser les actes relatifs aux indigènes (du Congo ou des colonies limitrophes)

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certificate (acte de mariage) to be reported to the civil status officer (officier de l'état civil) for the couple to be registered in concerned books. [27] The consels for Nabimana Pierre state also that, the provisions of article 17 of the decree aforementioned, was repealed by the Constitution Law of 1962 because in its article 28 it provides clearly that "the marriage between one man and one woman religiously or before civil status officer" meaning that religious officials of all recognized religious entities can officiate religious marriage and be valid without seeking for permission or going through various formalities prescribed by the written Law as it was provided by article 17 of 04/05/1895's decree. [28] Furthermore, they state that, the Constitution Law of 1962 repealed by the Constitution Law of 1978 which was in force in 1983 when Mukankubito Daphrose religiously married Nabimana Pierre, where the article 25 was providing that "marriage between one man and one woman concluded according to general Laws is the one allowed", also article 93 was providing that "all laws in use which are not contrary to it, if are not repealed or modified will remain applicable", they state then, that all provisions of 04/05/1895's decree contrary to that Constitution Law are repealed including article 17 aforementioned. They state also that, since 28/12/1978 the bourgoumestre were the ones to officiate the marriage according to the Law, they officiated the marriage according to the general Laws, because the Law regulating communes vested only them, the power of civil status officers (officier de l'état civil). The religious officers could not officiate the marriage according to the Law, they could only officiate religiously. [29] They add that, there is a precedent set by the Supreme Court in the judgment RS/INCONST.PEN 0003/10/CS of Gatera Johnson and Kabarisa Teddy rendered on 07/01/2011, where the Court decided that the marriage between one man and one woman concluded before civil status officers is the one allowed, that Court decided so, basing on article 26 of the Constitution Law of the Republic of Rwanda as revised to date, they state that mutatis mutandis, the article 25 of the Constitution Law of 1978 has to be interpreted so. [30] Also the counsels for Nabimana Pierre state that, the marriage of Mukankubito Daphrose na Nabimana would not be considered as legal

basing on the form issued by Nyamirambo parish. They explain again that if a catholic missionary was permitted to officiate marriage, he had to act as a civil status officer (officier de l'état civil) and issue a marriage certificate. They add that as long as Mukankubito Daphrose cannot produce a marriage certificate (acte de mariage) issued by the missionary in presence of two witnesses as provided by article 20 of 04/05/1895's decree,² and indicates that those witnesses are signatories to it, and herself as well, as provided by article 24 of that decree,³ they argue that the statement of Mukankubito Daphrose that is married according to the Law is baseless as she is basing only on the form issued by Nyamirambo parish. [31] Basing on all their pleadings, the counsels for Nabimana Pierre state that the Court did not disregard the Law by rendering the judgment RCA0106/15/TGI/NYGE which held that the religious wedding in 1983 between Mukankubito Daphrose and Nabimana Pierre does not mean that they are married according to the Law in force during that period. 2 Les actes de l'état civil sont reçus en présence de deux témoins » 3 Les actes sont signés par l'officier de l'état civil, par les comparants et les témoins, ou mention est faite de la cause qui empêche, les comparants et les témoins de signer

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[32] With regarding to the case in which Mukankubito Daphrose filed a claim before the Court praying it to order for the share with Nabimana Pierre all their properties as they lived together without marriage, the counsel for Nabimana Pierre states that, this is a confirmation that Mukankubito Daphrose agreed before the Court that they are not married, judicial confession (aveu judiciaire), thus, she could not ignore it and file this claim. [33] Withregarding to these statement of Nabimana Pierre's counsels, Counsel Mugeni Anita states that the decree of 04/05/1895 aforementioned was not repealed by the Constitution Law of 1962, rather it was repealed by the Law N° 42/1988 instituting part one of the book one of civil code. She argued also that, the religious wedding of 1983, the priests replaced missionaries in all their powers. [34] With regarding to the statement that, they modified their claim before the Supreme Court, she states that, this is not true because since the beginning of the case, they are praying to be granted the suppletive judgment of marriage certificate which they keep on requesting, that the judge would examine whether they celebrated the marriage according to the Law. DETERMINATION OF THE COURT [35] Article 25 of the Constitution Law of 20/12/1978 which was in force in 1983 when Nabimana Pierre and Mukankubito Daphrose got married in church, was providing that " marriage between one man and one woman concluded according to the Law and the procedure provided by it, is that one allowed" whereas the article 98 provides that, this Law repealed the Constitution Law of 24/11/1962 as modified to date." [36] The interpretation of that constitution Law of 24/11/1962 mostly article 28 aforementioned indicates that the marriage allowed is that concluded between one man and one woman, if that marriage was concluded before government authority or before the church. This coincide with the issue under analysis, meaning that if a representative of a recognized religious organization in Rwanda would officiate a marriage according to the religious Law, That marriage was accepted as celebrated according to the Law. In the Constitution Law of 20/12/1978, that article 28

aforementioned was not included, because article 25 of the Constitution Law of 1978 did not refer to the marriage concluded before the church, it only provided that the marriage between one man and one woman concluded according to the Law and the procedure provided by it is the one allowed. [37] Withregarding to the provisions of the Law regarding the marriage in 1983 when Mukankubito Daphrose and Nabimana Pierre celebrated religious wedding, Counsel Mugeni Anita states that the Laws which was in force is the decree of 04/05/1895 afore mentioned, mostly in its article 17 also aforementioned. During the hearing of the case of 05/02/2020, Counsel Mugeni Anita was requested to reconcile the statement of article 17 and the provision of article 16 which provides for the procedure to go through by the missionary to recognize the marriage by him officiated after obtaining the permission, and the religious wedding celebrated in 1983. The issue is to know whether the provisions of that article could also apply in 1983 for that marriage before the church to be recognized by the Law, mostly, that the “Gouverneur Général” who would permit the missionary to officiate the marriage in accordance with the Law, who was in office during the colonial period, was no longer there in 1983.Counsel Mugeni Anita

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did not even indicate whether someone else replaced him and acted as provided by articles 16 and 17 aforementioned. With regarding to this issue, the Counsels for Nabimana Pierre state that since 20/12/1978, the religious wedding was no longer considered as a marriage according to the Law, because since then, only the bourgoumestre had the power to officiate the marriage according to the Law, basing on the Law governing communes of 1963. [38] The Law of 23/12/1963 governing communes, as modified by the decree of 26/09/1977 provides in article 58 that bourgoumestre was in charge of “safeguarding civil status and census registry” in this context, he was in charge of gathering and write all informations related to population living in his commune. That task is usually, civil status officer’s duty. Withregarding to officiating marriage in particular, a Law scholar states that in Butare, which was part of country’s provinces, its govnor instructed all bourgoumestres of all communes of that province to officiate all marriage basing on the provisions of the civil Law. Also was published an order instituting solemn acts to be followed. That practice was conquered the country around. He continues stating that the Law No 42/1988 of 27 october 1988 instituting preliminary title and book one of the civil code, in its article 87, confirmed bourgoumestres in that duty of being civil status office, whereas article 456 of that Law provides that all works completed by province and colonialists authorities before the publication of that Law remain valid, though, there was no particular Law vesting bourgoumestres the power to officiate as a civil status officer.⁴ [39] The Court basing on the motivations in paragraphs before this, finds that the statement of Mukankubito Daphrose that the religious marriage Nabimana Pierre celebrated in 1983 in Nyamirambo parish, can be considered as celebrated according to the Law has no merit. ii. Whether in the case RCA0106/15/TGI/NYGE, the evidence proving the marriage between Nabimana Pierre and Mukankubito Daphrose produced by the latter were disregarded. The Identification card of Nabimana Pierre [40] Counsel Mugeni Anita who represents Mukankubito Daphrose states that the case under review due to

injustice, the Court disregarded the evidence including the identification document (I.D) of Nabimana Pierre which indicates that they are legally married, because it was filled by the civil status officer, thus, Mukankubito Daphrose being mentioned as his wife is undoubtful evidence mostly as their both children are indicated in it. [41] Counsel Niyomugabo Christophe states that among the evidence indicated by the Office of Ombudsman that they were disregarded, include the I.D because it indicates that Mukankubito Daphrose and Nabimana Pierre are married, however they find that, it is not an evidence which proves that a person is married to another, even the judge in paragraph 18 of the case under review he motivated it. He states also that article 86 CCLI provides that the civil status of persons proven and indicated by the documents issued according to this provision, that there is no evidence which proves that someone is married to another unless the marriage certificate “acte de mariage” or suppletive judgment of the marriage certificate “jugement supplétif d’acte de mariage.” 4 NTAMPAKA, Charles, Droit des personnes et de la famille, Manuels de droit rwandais, 1993, pages 17, 66 et 67

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[42] During the hearing of 05/02/2020, Nabimana Pierre argued that the I.D he has been using before 1994 was confiscated during genocide against the tutsi in 1994, thus, the I.D produced by Mukankubito Daphrose is a forgery document, she forged for traveling abroad, as is not the only document she forged, also she lied about her completion of secondary studies at Karubanda where she got a diploma no T-568/79 of 25/7/1979, whereas she completed only primary school, she also forged a traveling document (titre de voyage) stating that she is a Congolese citizen, and changed her name for Caroline. His counsels also argue that, in the case under review, the Court did not disregard that I.D rather as it is clear on page 9 paragraph 18 of the judgment RCA0106/15/TGI/NYGE, it motivated that it is not an evidence of civil status, basing on the provisions of the Law, because the legal evidence is the marriage certificate or suppletive judgment which replace that certificate, as argued that their marriage was celebrated in Nyarugenge, whereas that I.D was issued in Kacyiru. DETERMINATION OF THE COURT [43] Article 117 of 04/05/1895's decree aforementioned was providing that the evidence of marriage is produced according to the provisions of related to civil status' certificates, whereas article 109 of that decree provides about the marriage procedure, where they state that, after deciding that they were wife and husband, the civil status officer had to issue the marriage certificate. The content of these articles is corroborated by the writings of a Law scholar named Ntampaka Charles, who indicates that in general that the undoubtful evidence that people are married is a marriage certificate, unless is lost or the registry of marriage is unavailable, in this case they base on testimonies.⁵ [44] Basing on motivations above in previous paragraph, the Court finds that for Mukankubito Daphrose being mentioned in Nabimana Pierre's I.D as his wife cannot be considered as an evidence for proving the marriage concluded according to the Law, because the marriage is evidenced only by the marriage certificate. [45] With regarding to the statement of counsel Mugeni Anita that, for a wife to be registered in her husband's ID they had to be married, the Court finds it without merit because in the decree law N° 01/81

of 16 January 1981 relating to population's survey, to the I.D and to the residence and the domicile of a person, mostly in articles 5,6 and 7 it is provided for the requirements for a person to be awarded the I.D which includes to be aged 16, the applicant must possess 2 passport photos, one might be put on the I.D whereas the other is put on the survey form. Among the requirements, no where is provided that the applicant must indicate that she is married with her husband according to the Law. Rather the annex of that decree contain the informations to be filled in I.D like names of the spouse and of children. The Court finds also that the I.D produced by Mukankubito Daphrose is a copy, she was not able to produce its original, from which she made the copy, especially that Nabimana Pierre does not recognize it, as he mentions that he lost it during genocide. 5 NTAMPAKA, Charles, *Droit des personnes et de la famille*, Manuel de droit rwandais, 1993, pge 108: « En général la prevue du mariage est faite à suffisance par un extrait de l'acte de mariage. La prevue sera faite par témoins en cas de perte ou d'inexistence de registres de mariage ».

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[46] The court basing on the motivations provided in previous paragraphs, it finds, as decided by Nyarugenge Intermediate Court in the judgment for which Mukankubito Daphrose filed for review due to injustice, for indicating that she was registered in Nabimana Pierre's I.D is not an evidence to base on to decide that they are married according to the Law. marriage certifiante [47] Counsel Mugeni Anita states also that another evidence disregarded is the marriage certificate issued in 1983 which indicates that Mukankubito Daphrose and Nabimana Pierre are married, it was issued when Nabimana Pierre requested to be registered as married to Mukankubito Daphrose so that he can get Belgium document. He states also that after receiving Belgium nationality, the authorities of Belgium communes, issued various documents indicating that Nabimana Pierre married to Mukankubito Daphrose according to the Law but the Court disregarded them. [48] Counsel Niyomugabo Christophe states that at first sight, the certificate of marriage issued on 12/3/2003 by kacyiru commune would not be examined because the office of ombudsman did not consider it as a disregarded evidence, however if the Court finds it worthy to be examined, it would declare it as not an evidence proving that Mukankubito Daphrose married Nabimana Pierre because it is not original, and does not fulfill the provisions of article 11 of the Law 15/2004 of 12/05/2004 relating to evidence and its production. He states also that, this is also the view of the judge in paragraph 11 of the judgment RCA0106/15/TGI/NYGE, where he motivated that the concerned document would not be qualified as authentic document basing on fact is not original, and does not fulfill the requirements of article 11 aforementioned, because Mukankubito Daphrose states that their wedding was celebrated in Nyarugenge whereas he asked for that marriage certificate in commune Kacyiru; thus, the issuer had no basis to affirm that Mukankubito Daphrose married Nabimana Pierre. They state also that, the concerned certificate could not be produced as an evidence because it is ancient as it was issued in 2003, it has over 12 years. [49] during the hearing of 05/02/2020, Nabimana Pierre stated that the concerned marriage certificate, he saw it for the first time in Court while

produced by Mukankubito Daphrose. DETERMINATION OF THE COURT [50] Article 18 of the decree Law of 04/05/1985 aforementioned was providing that every office of civil status, civil status certificates would be registered in civil status books whereas article 20 of that decree Law provides that the civil status certificates would be issued in presence of two witnesses. [51] By interpreting article 18 mentioned in previous paragraph, the Court finds that the legislature provided for the registration of civil status certificates in registry because in case of loss of those certificates or any dispute relating to marriage, the civil status officers would have reference to issue further certificates, and informations contained in those registers may be referred to resolve those disputes.

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- [52] The case file indicates that the marriage certificates issued by Kacyiru commune on 12/03/2003 testify that Nabimana Pierre and Mukankubito Daphrose concluded civil marriage before Nyarugenge commune on 18/8/1978 and even concluded regious marriage on 17/12/1983. [53] The Court basing on Mukankubito Daphrose's statement, finds that she argues that she got married to Nabimana Pierre on 18/8/1978 before Nyarugenge commune, she states that Nabimana Pierre made disappear that certificate, reason she filed a claim before the Court to get a suppletive judgment of a marriage certificate. It finds however that, Mukankubito Daphrose did not produce any witness of that marriage who would had accompanied them to pick that certificate as it was provided by article 20 of the decree afore mentioned, furthermore, in the Nyarugenge sector (which replaced the former Nyarugenge commune) which she stated to celebrate their marriage, they indicated that the civil status registers of that period are lost, meaning that Kacyiru commune issued the marriage certificate without basing on authentic informations. [54] The Court basing on previous motivations, it finds that the Nyarugenge Intermediate Court, did not disregard the marriage certificate issued by Kacyiru commune on 12/03/2003 indicating that Nabimana piere and Mukankubito Daphrose concluded a civil marriage before Nyarugenge commune on 18/8/1978 because it was issued regardless the provisions of the Law.
- c. various documents issued by authorities of Belgium communes. [55] Counsel Mugeni Anita argues that another evidence is that in 1999 Mukankubito Daphrose travelled to Belgium with all children, but for making it possible the regroupement familial (family union) it was necessary for Nabimana Pierre to indicate that he is married to Mukankubito Daphrose, which he did and they are considered in Belgium as legally married, in case she denies this, she has to indicate by which other means she got the Belgium nationality. [56] Counsel Niyomugabo Christophe argues that at first sight, this evidence would not be examined because the office of ombudsman did not consider it as a disregarded evidence, but if the Court finds it otherwise, the argument that Nabimana Pierre got a Belgium nationality basing on the fact they were married, is not true, and that, it should wonder why, if Mukankubito Daphrose argues that they were married in Belgium, why didn't she apply for marriage certificate "acte de mariage" in Belgium. He adds that their contents are just Mukankubito Daphrose's statements (Simples déclarations). [57] During the hearing of

05/02/2020, Nabimana Pierre argued that, with regarding to regroupement familial, he prays the Court to ask Mukankubito Daphrose to indicate the document proving where she asked to him that regroupement familial, he explains that he used to travel in European countries, consequently it was impossible to conduct regroupement familial for him, and being a member of the family (composition de ménage) as indicated by one the document, does not mean that he is a Belgium resident, he gives an example of Counsel Mugeni Anita who lives in Rwanda but appears on that concerned composition de ménage, he was also considered as living in Belgium which is not the case, thus, the regroupement familial never happened.

DETERMINATION OF THE COURT

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[58] The case file indicates various documents issued by Molenbeek commune in Belgium, on which is written that Mukankubito Daphrose is married to Nabimana Pierre, those documents are Certificat de résidence historique, légalisation, Composition de ménage, avertissement extrait de rôle Impôt des personnes physiques et taxes additionnelles. [59] The Court, basing on article 117 of the 04/05/1895's decree afore mentioned, as motivated in previous paragraphs, reason for disregarding the marriage certificate as an evidence for marriage according to the Law between Mukankubito Daphrose and Nabimana Pierre, it finds that for various documents issued in Belgium, it is indicated that Mukankubito Daphrose and Nabimana Pierre, is not an evidence which proves that they are married according to the Law, thus, the Nyarugenge Intermediate Court did not erred for not basing on them. Documents from National Identification Agency (NIDA) [60] Counsel Mugeni Anita states that another evidence disregarded is from NIDA construed by the document indicating that they are married according to the Law. She states also that, the Office of Ombudsman conducted an investigation up to Immigration office where it found that among the documents filled by Nabimana Pierre, he mentioned that, he is married to Mukankubito Daphrose. [61] Withregarding to the documents issued by NIDA, the Counsel for Nabimana Pierre argues that, they cannot serve as evidence for review the case due to injustice because their content that Nabimana Pierre is married to Mukankubito Daphrose, it has been corrected in NIDA's data base, now it is clear that Nabimana Pierre is single as indicated on the bachelor certificate (attestation de célibat) issued to him on 20/4/2016 even the new bachelor certificate of 31/10/2019. With regarding to immigration's documents where Nabimana Pierre wrote that he married Mukankubito Daphrose, they state that he filled those documents basing on their religious marriage, but does agree that they were married according to the Law. DETERMINATION OF THE COURT [62] It is clear that Mukankubito Daphrose wrote to National Identification Agency (NIDA) requesting informations on Nabimana Pierre's civil status which replied her basing on National ID Data that Nabimana Pierre is married to Mukankubito Daphrose. Furthermore, on 18/12/2019, the Director General of National Identification Agency (NIDA) issued to whom it may concern informing that Mukankubito Daphrose is married to Nabimana Pierre. Also, on 28/12/2019, that Office wrote to the Executive Secretary of Kimihurura sector a letter replying to his

letter which was requesting informations on Nabimana Pierre, and stated that the latter is married to Mukankubito Daphrose. The Court finds these document as not being evidence proving that, they are married according to the Law as was provided by article 117 of the decree Law of 04/05/1985 aforementioned, thus, the statement of counsel Mugeni Anita, that the intermediate Court disregarded those evidence is without merit. iii.with regarding to damages requested in this case. Analysis of damages requested by Mukankubito Daphrose and Nabimana Pierre

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[63] Mukankubito Daphrose argues that as indicated that the case under review is vitiated by injustice on her side, she prays the Court to order Nabimana Pierre to pay her procedural fee equal to 15,000,000Frw (including air tickets and accomodation) for each instance, this case it went through (Primary Court, High Court, Office of Ombudsman, the Supreme Court), and the Counsel fee equivalent to 1,500,000Frw at each instance, she states that the concerned judgments are almost 9, thus, she is requesting 13,500,000Frw. [64] Nabimana Pierre states that he prays the Court to order Mukankubito to pay him for damages for dragging him in Law suits equivalent to 10,000,000Frw and procedural fee equivalent to 2,000,000Frw, and pay for Counsel fees equivalent to 10,000,000Frw. DETERMINATION OF THE COURT With regarding to damages for being dragged in unnecessary Law suit. [65] The Court finds that the damages for being dragged in unnecessary Law suit requested by Nabimana Pierre would not be awarded because it is Mukankubito Daphrose's rights to file a Court claim for it to examine whether the injustice she pretends she suffered from Nabimana Pierre has merit. With regarding to procedural and counsel fee. [66] The Court finds that Mukankubito Daphrose would not be awarded procedural and counsel fee because the Court found that she did not suffer injustice caused either by the Law or evidence disregarded in the judgment under review due to injustice. [67] The Court finds that Nabimana Pierre has to get paid for procedural and counsel fee because it was necessary to follow up the court claim against him filed by Mukankubito Daphrose because, and paid counsels who assisted him in this case. However, the Court finds that he cannot be awarded 2,000,000Frw he requests because he did not evidenced for it and is excessive, in its discretion it awards him 300,000Frw for procedural fee, with regarding to counsel fee, the Court finds that, it cannot award him 10,000,000Frw he requested because he cannot evidence for it and is excessive, it awards in its discretion 500,000Frw. III. DECISION OF THE COURT [68] Decides that the claim for review due to injustice the judgment RCA0106/15/TGI/NYGE rendered on 18/05/2015 by Nyarugenge Intermediate Court, filed by Mukankubito Daphrose, is without merit. [69] Dicides that the judgment RCA0106/15/TGI/NYGE rendered by Nyarugenge Intermediate Court on 18/05/2015, is sustained; [70] Decides that the damages requested by Mukankubito Daphrose are without merit; [71] Decides that Nabimana Pierre is not awarded procedural fee.

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[72] It orders Mukankubito Daphrose to pay to Nabimana Pierre money equivalent to 300,000Frw for procedural fee and 500,000Frw of counsel fee, all amounting to 800.000Frw.

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