

RWANDA / JUDGMENT

Re. N.A N'UNDI

RLR V.2 2021

COURT

Intermediate Court

DECIDED

11 September 2020

CASE / FILE NUMBER

RCA 00161/2020/TGI/NYGE

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

Re. N.A N'UNDI

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2020-09-11
- Case/document no.: RCA 00161/2020/TGI/NYGE
- Collection: Intermediate Court

Text

Page 1

Re. N.A N'UNDI [Rwanda URUKIKO RW'ISUMBUYE – RCA 00161/2020/TGI/NYGE (Udahemuka, P.J, Mukamana na Nshimiyimana, J.) 11 Nzeri 2020] Amategeko agenga abantu n'umuryango – Kororoka – Kororoka hifashishijwe ikoranabuhanga (Assisted Reproductive Technology) – Kororoka hakoreshejwe uburyo bw'ikorabuhanga bivugwa mu ngingo ya 254 y'Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango bushobora gukorwa bitewe n'aho ikoranabuhanga rigeze.– Uburyo bwo gutwitira undi atewe igi ryahurijwemo intanga z'undi mugore n'undi mugabo (Gestational surrogacy) ni bumwe mu buryo bwemewe) – Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango, ingingo ya 254 Amategeko agenga abantu n'umuryango – uburenganzira bw'umwana – Umwana uvutse hakoreshejwe uburyo bw'ikorabuhanga bwo gufasha umugore kororoka nyuma yo gutwitirwa n'undi mugore, agira uburenganzira bwo kwandikwa mu irangamimerere ku mazina y'ababyeyi batanze intanga, ariko akagira n'uburenganzira bwo konswa n'uwamutwite igihe bishoboka – Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango, ingingo ya 254. Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko rw'Ibanze rwa Kicukiro, aho umugore n'umugabo babana mu buryo byemewe n'amategeko (muri iki Cyegeranyo, umugabo aritwa N.A naho umugore yitwe N.O)

basaba Urukiko ko rwakwemerera uwundi umuryango w'umugore n'umugabo (nabo muri iki Cyegeranyo, umugabo aritwa K.F naho umugore

Page 2

yitwe M.G) kubabyarira hakoreshejwe ikoranabuhanga. Bakaba barabisabaga bashingiye kumasezerano iyo miryango yombi yakoranye bemeranywa ko umuryango wa K.F na M.G uzatwitira N.A na NO hakoreshejwe uburyo bw'ikoranabuhanga kuko kuva bo babana ntibyakundiye ko bashobora kwibaruka abana, ayo masezerano bayashyira umuganga w'impuguke wazabibafashamo kuko byari gukorwa batanga intanga za bombi zigahurizwa hanze muri laboratoire maze igi zatanze rigashyirwa mu mugore ariwe M.G,umuganga yababwiye ko adashobora kubibakorerango kuko ngo hatashyizweho amabwiriza y'uko byakorwa, yahise abasaba kugana inzego zibishinzwe kugira ngo zerekane uburyo byazakorwamo nibwo N.A na N.O bahise bitabaza urukiko ngo rutegeke muganga gukora ibyo bamusabaga. Urukiko rw'Ibanze rwemeje ko ikirego cyabo kidafite ishingiro ngo kuko basaba ibidateganijwe mu mategeko y'u Rwanda kuko ngo kororoka bibaho hagati y' umugore n' umugabo atari hagati y' imiryango ibiri. Abatanze ikirego ntibanyuzwe n'umwanzuro w'Urukiko maze bajuririra mu Rukiko Rwisumbuye rwa Nyarugenge bagaragaza ko ngo umucamanza yavugishije itegeko ibyo ritavuze ngo kuko yavuze ko kororoka bibaho hagati y'umugore n'umugabo atari hagati y' imiryango ibiri, ngo mu gihe nyamara bo basanga bitabujijwe ko byanakorerwa hagati y' imuryango yabyemeranijweho. Muri uru rubanza hiyambajwe inshuti z'urukiko arizo umuryango Haguruka, Kaminuza y'u Rwanda ishami ry'amategeko na HDI. Mu kumenya niba M.G washakanye na K.F yakwemererwa gutwitira inda N.A na N.O, abatanze ikirego bavuze ko Urukiko rukwiye gutegeka ko muganga ashya mu bikorwa icyifuzo cy'imiryango yombi yagiranye ku rundi ruhande M G na K F nabo bavuga ko batumva impamvu umuganga yanze ko bikorwa

Page 3

mu gihe nta n'umwe byari bibangamiye kuko bari babyemeranijweho. Uwunganira abatanze ikirego avuga ko kororoka hakoreshejwe ikoranabuhanga ari ikintu gishya mu gihugu cy' u Rwanda, ko mbere abantu batuye mu Rwanda batashoboye kororoka mu buryo busanzwe bitabazaga ibihugu byo hanze kugira ngo bororoke hakoreshejwe ikoranabuhanga ariko nyuma iryo koranabuhanga riza kugera mu Rwanda, bityo abo yunganira nabo bakaba bararyiyambaje, yasobanuye ko ikoranabuhanga rituma hafatwa intanga z'abantu babiri bakazihuriza hanze bakazitera mu mugore bityo akabyarira uwo muryango wamuhaye iryo gi, akomeza avuga ko mu mategeko y'u Rwanda

kororoka hakoreshejwe ikoranabuhanga birateganijwe , ariko ntibyasobanurwa neza . Kaminuza y'u Rwanda ishami ry'amategeko ivuga ko amategeko y'u Rwanda yemera ubu buryo bwo kororoka butari ubwa kamere k'ubw` ibyo basanga muri uru rubanza nta mbogamizi zikwiriye kugirwa mu kwibaza niba amategeko y'u Rwanda yemera ko kororoka mu buryo butari ubwa kamere, bityo abajuriye bakwiye guhabwa ibyo basabye, ariko ko inyungu z'umwana zigomba kuzitabwaho cyane izijyanye no kubana n'uwamutwise nibura mu gihe cy'amazi 6 kugira ngo ashobore

kumwonsa. Haguruka Asbl, ivuga ko ibyasabwe n'ababuranyi bakwiye kubihabwa ngo kuko bishyigikirwa n'amategeko atandukanye, ko Itegeko Nshinga rya Repubulika y'u Rwanda riteganyako umuntu afite uburenganzira bwo kugira ubuzima bwiza, kubona ubuvuzi n'ukugira umuryango kandi ko uburenganzira bwo kugira abana ari ingenzi nayo ivuga ko kugira ngo uburenganzira bw'umwana bwubahirizwe uwamutwize yamugumana mu gihe cy'amezi 6 kuko za anticorps ziba zitarakura.

Page 4

Health Development Initiative, nayo ivuga ko yemeranywa n' abamubanjirije ko ubujurire bukwiye guhabwa ishingiro no kuzasuzuma uburenganzira bw' umwana uzavuka ntibuzahutazwe. Incamake y'icyemezo:1. Uburyo bw'ikoranbuhanga ryo kuba umuntu yatwitira undi atewe igi ryahurijwemo intanga z'abandi bantu (Gestational surrogacy) ni bumwe mu buryo bwemewe gukoreshwa mu kororoka, iyo byumvikanyweho n'abo bireba kuko Itegeko riteganyako kororoka bikorwa hagati y'umugabo n'umugore mu buryo busanzwe cyangwa bwifashishije ikoranabuhanga cyane cyane ko uburyo bw' ikoranabuhanga buteganywa n'itegeko ari ikintu kigari bukaba bushobora gukorwa bijyanye naho ikoranabuhanga rigeze.; bityo amasezerano M.G washakanye na K.F bagiranye na N.A na M.O yo kwemererwa kubatwitira igi rizavamo umwana agomba kubahirizwa uko yakabaye.

2. Umwana uvutse mu buryo bw'ikoranbuhanga ryo kuba umuntu yatwitira undi atewe igi ryahurijwemo intanga z'abandi bantu (Gestational surrogacy), agira uburenganzira bwo kwandikwa mu irangamimerere ku mazina y'ababyeyi batanze intanga ariko akagira n'uburenganzira bw'ubuzima bwiza akonswa mu gihe cy'amezi 6 n'uwamutwize, bityo umwana akimara kuvuka azandikwa ku babyeyi be aribo N.A na M.O ariko azabana na M.G washakanye na FL bakabana mu gihe cy' amezi 6 akimara kuvuka. Ubujurire bufite ishingiro; Imikirie y'urubanza rwajuririwe irahindutse; Amagarama ahwanye n'ibyakozwe mu rubanza. Amategeko yashyigirweho :

Page 5

Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003. ryavugururwe mu 2015, ingingo ya 17 na 18. Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango, ingingo ya 254. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] N.A na M.O basezeranye kubana nk'umugore n'umugabo mu buryo byemewe n'amategeko, kuwa 22/12/2013, kuva babana ntibyakundiye ko bashobora kwibaruka abana, ibyo byatumye biyamabaza abaganga batandukanye ngo barebe ko baba bafite uburwayi bityo niba bishoboka bavurwe, bavuga ko abaganga bababwiye ko M. O adashobora kubyara, ngo ibyo bikaba byaragaragajwe na raporo ya muganga yo kuwa 20/01/2020, ko mu gushaka igisubizo cy'ikibazo cyari kibugarije, batekereje gukoresha uburyo bw'imyororokere hifashishijwe ikoranabuhanga. [2] N.A na M.O nyuma yo gusuzuma neza uburyo butandukanye bushobora kwiambazwa bahisemo ko batanga intanga za bombi zigahurizwa hanze muri (laboratoire) maze igi zatanze rigashyirwa mu mugore nyuma yo kubyunguranaho inama bifuje ko uwo mugore yaba umuvandimwe wa M.O witwa M.G

washakanye na K.F, bahise babagezaho icyo cyifuzo maze yaba M.G ndetse n'umugabo we witwa K.F bemera ubwo busabe, bahise bagirana amasezerano yanditse yemera ko uwo uzabatwitira igi ryakomotse kuri izo ntanga,

Page 6

umwana yamara kuvuka

bakamubaha, nyuma yo kwemeranywa kuri ayo masezerano bahise berekeza ku mpuguke yagombaga gukoresha ubwo buryo bw'ikoranabuhanga, ariwe Dr. Ngoga Eugene ukorera mu bitaro bya gisirikare bya Kanombe nyuma yo kubona ubwo busabe yakoze raporo, ababwira ko adashobora kubikora ngo kuko hatashyizweho amabwiriza y'uko byakorwa yahise abasaba kugana inzego zibishinzwe kugira ngo zerekane uburyo byazakorwamo, N.A na M.O bahise bitabaza urukiko ngo rutegeke muganga gukora ibyo bamusabaga. [3] Nyuma y'iburanisha ry'urubanza Urukiko rw'Ibanze rwa Kicukiro rwemeje ko ikirego cya N.A na M.O kidafite ishingiro ngo kuko basaba ibidateganijwe mu mategeko y'u Rwanda, uwo mwanzuro ntiwabanyuze maze bahita bawujuririra mu Rukiko rw'Isumbuye rwa Nyarugenge, impamvu zabo z'ubujurire akaba ari uko ngo umucamanza yavugishije Itegeko ibyo ritavuze ngo kuko yavuze ko kororoka bibaho hagati y'umugore n'umugabo atari hagati y'imiryango ibiri, ngo mu gihe nyamara bo basanga bitabujijwe ko byanakorerwa hagati y'imiryango yabyemeranijwe. [4] Bitewe nuko ikirego nk'iki aribwo bwa mbere cyari kigaragaye mu nkiko kandi hifuzwa ko cyatangwaho umucyo n'abantu batandukanye urukiko rwasabye inshuti z'urukiko zifuza kuzatanga ibitekerezo ko zakwimenyekanisha maze Umuryango Haguruka, Unirivesite y'u Rwanda Ishami ry'Amategeko na Health Development Initiative, bagaragaza ubwo bushake, urukiko nyuma yo gusuzuma ubusabe bwabo n'ubumenyi bafite mu bijyanye n'ikibazo cyagombaga gusuzumwa bose uko ari 3 rwabemeraye kuba inshuri z'urukiko. Nyuma yo kubona

Page 7

imiterere y'urubanza urukiko rusanga ingingo zikwiye gusuzumwa ari izi ikurikira. - Kumenya niba M.G washakanye na K.F yakwemererwa gutwitira inda N.A na M.O - Kumenya niba Dr Ngoga hari impungenge yaba yarahuye nazo no kumenya uburyo zakemuka. II ISESENGURA RY'IBIBAZO BIGIZE URUBANZA - Ku byerekeranye no kumenya niba M.G washakanye na K.F yakwemererwa gutwitira inda N.A na M.O [5] N.A na M.O bavuga ko bajuriye bashaka ko Urukiko Rwisumbuye ruhindura icyemezo cy'Urukiko rw'Ibanze ko rero urukiko rukwiye gutegeka ko muganga ashya mu bikorwa icyifuzo cy'imiryango yombi yagiranye ndetse amasezerano agakorerwa imbere ya notaire, ku rundi ruhande M.G na K.F nabo bari batumijwe mu rukiko bahawe ijamba bavuga ko batumva impamvu umuganga yanze ko bikorwa mu gihe nta n'umwe byari bibangamiye; bakomeje basobanura ko kuba iyo miryango yaremeranijwe kuri ayo masezerano binaterwa n'uko M.O ava indimwe na M.G, ngo kuburyo rero M.G yunvaga icyo kibazo umuvandimwe we yari amaranye iminsi nawe kimuremereye, ngo kuburyo biramutse bishoboka ko yamutwitira hiyambajwe ikoranabuhanga yakwifuza kukimufashamo nk'umuvandimwe we. [6] Me Kabasinga wunganiraga N.A na M.O yakomeje asobanura ko

"Kwororoka hakoreshejwe ikoranabuhanga ari ikintu gishya mu gihugu cy' u Rwanda , ko kuba rero mu

Page 8

gihugu hari abantu batashoboye kororoka mu buryo busanzwe hashakishijwe ibisubizo mbere na mbere abanyarwanda bitabazaga ibihugu byo hanze ariko nyuma iryo koranabuhanga riza kugera mu Rwanda ngo abo yunganira rero nabo bakaba barariyambaje, yasobanuye ko ikoranabuhanga rituma hafatwa intanga z'abantu babiri bakazihuriza hanze bakazitera mu mugore bityo akabyarira uwo muryango wamuhaye iryo gi, ko hari ahantu hatandukanye ubu buryo bwatangiye gukoreshwa kandi bukaba nta ngaruka mbi bwigeze bugira ku buzima yavuze ko mu Rwanda kororoka hakoreshejwe ikoranabuhanga amategeko y'u Rwanda yabiteganije, ariko ntihasobanurwa neza niba no kwororoka hagize ugutwitira nabyo byaba byemewe ko rero ibyo bisobanuro bicukumbuwe Urukiko rw'Ibanze rutakoze bikwiye gukorwa n'Urukiko Rwisumbuye bityo uwo yunganira akabona uburenganzu bwe. [7] Abarimu bigisha amategeko boherejwe na UR nk'inshuti y'Urukiko, aribo Turatsinze Emmanuel, Uwineza Odette, Serugo Jean Baptiste batangiye basobanura ko uko babyumva ibibazo bikwiye kwibazwa kuri uru rubanza ari ukumenya niba Urukiko rukwiye gusobanura niba ibijyanye no kororoka hifashishijwe ikoranabuhanga mu Rwanda byemewe. Mu gutanga ibisobanuro byabo bavuga ko ari ingenzi gutandukanya ibyitwa mu rurimi rw'icyongereza Medically Assisted Reproduction cyangwa "MAR" mu magambo ahinnye y'icyongereza, hamwe n'ibizwi nka "Assisted Reproductive Technology" cyangwa se "ART" mu magambo ahinnye y'icyongereza. bahise batanga ibisobanuro bw' ubwo buryo bwombi nkuko bwasesenguye na OMS , bavuga kandi ko uburyo bwo kororoka hifashishije ikoranabuhanga bwa "ART" ari uburyo bumenyereye mu bihugu byateye imbere , ko ndetse bimwe muri ibyo bihugu byatoye amategeko abyemera nka USA , ibindi bihugu

Page 9

bikagaragaza ko bidakwiye kwemerwa kubera impamvu zitandukanye nk'Ubufaransa bubihakana bushingiye ku impamvu mbonezamuko ("ethical reasons") nk'uko byagaragajwe mu manza za *Mennesson v. France* hamwe n'urubanza rwa *Labassee v. France* . ibi ndetse ngo binatuma abafaransa babifuzaga kubera muri ubu buryo bajya kubikorera muri USA, Mu gusoza bavuga ko uburyo bwa ART ari bumwe mu bugize MAR. [8] Uwineza Odette wo muri university of Rwanda nk'inshuti y'urukiko avuga ko asanga umucamanza yasobanuye ingingo nabi, ngo kuko amategeko y'u Rwanda asobanura neza ko kororoka hakoreshejwe ikoranabuhanga byemewe; yakomeje avuga ko muganga atigeze yanga kubikora ngo icyo yashakaga gusa ari amabwiriza ajyanye nabyo ko rero Miniteri y'ubuzima ariyo ifite ububasha bwo kuba yashyiraho ayo mabwiriza, yasoje avuga ko asanga ayo mabwiriza yatangwa n'ababifitiye ububasha, ngo kuko kwitabaza urukiko byakorwa ari uko muganga yanze gukora ibyo amategeko ateganya ko ariko nkuko bigaragara muri uru rubanza muganga atigeze yanga kubikora. [9] Bakomeje bagaragaza ko n'ubwo bwose surrogacy hari ibihugu byayemeye hakunze kugaragara ibibazo bimwe na bimwe muri byo hakaba harimo nk'ikirebana n'uwitwa nyina w'umwana, incuti y'urukiko yavuze ko kuri icyo kibazo bifatwa ku buryo butandukanye ibihugu bimwe na bimwe byemeza ko

uwatwise akabyara ariwe nyina w'umwana nko muri Afrika yepfo mu gihe abandi batabivuga batyo bakemeza ko umwana ari uw'uwatanze igi yasoje avuga ko mu byemezo urukiko ruzafata inyungu z'umwana zigomba kuzitabwaho cyane

Page 10

izijyanye no kubana n' uwamutwise nibura mu gihe cy'amazi 6 kugira ngo ashobore kumwonsa. [10] Turatsinze Emmanuel yongeye kwibutsa ko Urukiko rudakwiye kurengera ngo rufate ibyemezo bireba izindi nzego, avuga ko hari imanza bashyize muri system, harimo ibibazo bya etat civil, uburenganzira bw'umwana, izungura n'ibindi izo manza zisa nizatanga umurongo, ko uru rukiko narwo rwari gutanga umurongo iyo hajya kuba uregera ko yabangamiwe n'amasezerano bagiranye, ibi rero ngo siko bimeze muri uru rubanza kuko ngo kuko ntawareze , ko bityo urukiko rukwiye kugarukira mu isuzuma ryo kumenya niba uburenganzira bw' uko umuryango watwitira undi bwemewe cg butemewe, rukirinda gusuzuma mbere impaka zazavuka ngo ruzishakire n'ibisubizo bitaragaragazwa. Yanzuye avuga ko u Rwanda rwafashe icyemezo cyo kwemera ubu buryo bwo kororoka butari ubwa kamere nk'uko bigaragazwa n'agace ka kabiri k'ingingo ya 254 y'Itegeko rigenga umuryango. Ko kubw'ibyo basanga muri uru rubanza nta mbogamizi zikwiriye kugirwa mu kwibaza niba amategeko y'u Rwanda yemera ko kororoka mu buryo butari ubwa kamere harimo na gestational surrogacy byemewe kuko itegeko risobanutse mu buryo budateje urujijo, ko kubw' ibyo abajuriye bakwiye guhabwa ibyo basabye [11] Maître Garuka Chritian watumwe n' incuti y'urukiko Health Development Initiative, nawe yavuze ko yemeranywa n'abamubanjirije ko ubujurire bukwiye guhabwa ishingiro, bityo amasezerano yo gutwitirana bakoranye agashyirwa mu bikorwa ko kandi hakwiye no kuzasuzumwa uburenganzira bw' umwana uzavuka ntibuzahutazwe. [12] Me Mugemanyi Jean Nepomscene mu izina ry'intumwa y'urukiko Haguruka Asbl, avuga ko ibyasabwe n'ababuranyi

Page 11

bakwiye kubihabwa ngo kuko bishyigikirwa n'amategeko atandukanye, muri yo yavuze ingigo ya 17,18, 21 z'Itegeko nshinga rya Repubulika y'u Rwanda ryo mu 2003 nkuko ryavugururwe kugeza ubu ahavugwa ko umuntu agira uburenganzira bwo kugira umuryango (umugore, umugabo n'abana) uburenganzira bwo kugira abana bukaba ari ingenzi, yavuze kandi ko hari n'uburenganzira bwo kugira ubuzima bwiza, harimo no kubona ubuvuzi ngo bukaba buteganywa mu ngingo ya 25 y' iryo tegeko nshinga ryavuzwe hejuru , avuga ko bemeranywa na UR, ngo kuko mu gika cya 2 cy'ingingo yashingiweho batanga ikirego hakoreshejwe interuro ngo: bashobora kwororoka mu buryo bwa kamere cg hakoreshejwe ikorana buhanga, Yanzuye ko ubwo buryo bwatakagombye gushyirwa hagati y'abashyingiranywe gusa ahubwo byakwaguka urebye n'aho ikoranabuhanga rigeze; yakomeje avuga ko hakwiye no kuzasuzumwa iyandikwa ry'umwana mu bitabo by'irangamimerere avuga ko kuri iyo ngingo urukiko rukwiye kugira icyo ruvugaho rudakwiye kuzategereza ko impaka zavuka zirebana n'ingingo y'uburenganzira bw'umwana uwamutwise akaba yamugumana mu gihe cy'amezi 6 kuko za anticorps ziba zitarakura, nabyo byazatekerezwaho mbere. [13] Urukiko rusanga ku rwego rwa mbere umucamanza yaranzuye urubanza mu buryo bukurikira: Urukiko rusanga nubwo abarega bagaragaza amasezerano

y'ubwumvikane hagati yabo n'umuryango wemeye kubatwitira bakaba bayashingiraho basaba urukiko kuyemeza, ariko rusanga ingingo y'amategako bashingiraho bagira ibyo basaba urukiko ntaho ihuriye nibyo basaba kuko iyi ngingo iteganya kororoka hashingiwe ku ikoranabuhanga hagati y'umugabo n'umugore mugihe bo basaba kororoka hagati y'imiryango ibiri, ariyo mpamvu urukiko rugomba kwemeza ko ikirego cyabo nta shingiro gifite,

Page 12

uyu mwanzuro rero akaba ariwo abajuriye bahakana kuko bavuga ko iyo havuzwe ikoranabuhanga aba ari ikintu cyagutse ngo rero we akaba yarafashe akantu gato cyane; urukiko rero rukaba rugomba kwemeza koko niba yarakoze interpretation itariyo bityo bagahabwa uburenganzira bavuga ko bavukijwe [14] Urukiko rusanga kuba N.A na M.O batarashoboye kororoka mu buryo bwa kamere byaratewe n'ibibazo by'ubuzima bwabo nkuko byagaragajwe na raporo yakozwe n'impuguke yiyambajwe ariyo Dr Eugene Ngoga yo kuwa 20/01/2020 aho yagaragaje ko yakurikiranye ubuzima bwa M.O mu gihe cy'amezi 18 yose agasanga adashobora gusama ibibazo by'ubuzima rero ntibyasibye kubaho ndetse ntibizabura kubaho ariko uko byigaraza niko yaba abahanga mu bya science mu mategeko n'abandi bese bagenda bashaka ibisubizo by'ibibazo biba byugariye isi, aha akaba ari naho hagiye havukira ikoranabuhanga ritandukanye nko kubyaza umuntu bitanyuze mu buryo kameremano ahubwo agashobora kubyara bamubaze, muri ibi bihe rero ibibazo byo kudashobora gusama mu buryo karemano byarushijeho kwiyoungera, mu rwego rwo kubikemura ikoranabuhanga ryagaragaje ko umugore ashobora kubyara nyamara atarigeze atwita, ndetse n'umuryango (ni ukuvuga umugore n'umugabo) bakabyara kandi mu kuri uwo mugore atarigeze asama ngo atwite inda ibyo nibyo science yagaragaje ko bishoboka bizwi nka surrogacy 1.

1 Surrogacy is an arrangement, often supported by a legal agreement, whereby a woman (the surrogate mother) agrees to bear a child for another person or persons, who will become the child's parent(s) after birth. ... Surrogacy is considered one of many assisted reproductive technologies. [<https://en.wikipedia.org/wiki/Surrogacy>] rwasuwe kuwa 10/09/2020.

Page 13

[15] Ku rwego rw'abashingamategeko nabo bateye intambwe maze bemeza ko iyo surrogacy ikwiye kwemerwa mu mategeko y'ibihugu hari n'ibindi bihugu ariko batabikozwa; kubijyanye n'u Rwanda itegeko nshinga cyane ingingo ya 17 na 182 zivuga ko Leta ifite inshingano yo kubungabunga umuryango nyamara ntiwabungabunga umuryango mu gihe ukororoka kwawo mu buryo bwa kamere bidashoboka haramutse hadafashwe ingamba umuryango wazima, mubihe nk'ibyo haba hakwiye kwiambazwa ikoranabuhanga ryaramuka rigaragaje ko ryatanga umusaruro rikiyambazwa. Leta y'u Rwanda igendeye kubyo itegakwa n'iyi ngingo ya 17 ndetse na 18 yakoze umushinga w'itegeko maze uza gutorwa nk'itegeko N° 32/2016 ryo kuwa 28/08/2016 rigenga abantu n'umuryango ingingo yaryo ya 254 igira iti: Kororoka bikorwa hagati y'umugabo n'umugore mu buryo busanzwe cyangwa bwifashishije ikoranabuhanga. Kororoka mu buryo bwifashishije ikoranabuhanga

bigomba kuba byumvikanyweho n'abo bireba.³

2 Ingingo ya 17: Uburenganzira bwo gushyingiranwa no kugira umuryango Uburenganzira bwo gushyingiranwa no kugira umuryango burengerwa n'amategeko. Ugushyingiranwa k'umugabo umwe n'umugore umwe gukorewe mu butegetsi bwa Leta ni ko kwemewe. Ingingo ya 18: Kurengera umuryango Umuryango, ari wo shingiro kamere ry'imbaga y'Abanyarwanda, urengerwa na Leta. Ababyeyi bombi bafite uburenganzira n'inshingano zo kurera abana babo. Leta ishyiraho amategeko n'inzego bikwiye bishinzwe kurengera umuryango, by'umwihariko umwana na nyina, kugira ngo umuryango ugire ubwisanzure. 3 Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango ingingo yaryo ya 254 igira iti : "Kororoka bikorwa hagati y'umugabo n'umugore mu buryo busanzwe cyangwa bwifashishije ikoranabuhanga. Kororoka mu buryo bwifashishije ikoranabuhanga bigomba kuba byumvikanyweho n'abo bireba."

Page 14

[16] Urukiko rero mu buryo budashidikanywaho rusanga ikorana buhanga mu rwego rw'imyororokere mu Rwanda ryemewe, ikorana buhanga kandi akaba ari ikintu kigari ndetse gihinduka amanywa n'ijoro, ku buryo ikorana buhanga riyambazwa none atariryo rizaba riyambazwa ejo, mu rwego rwo kugira amategeko ahamywe umushingamategeko yaravuze ati: Kororoka bikorwa hagati y'umugabo n'umugore mu buryo busanzwe cyangwa bwifashishije ikoranabuhanga. Urukiko rusanga iyo nteruro yuzuye kandi ari ngari, byongeye ikemuye ikibazo cyabajijwe, bitabaye ibyo hajya havuka ikorana buhanga uko rivutse umushingamategeko akajya mu nteko gutora itegeko rijyanye n'ikoranabuhanga ryavumbuwe cyangwa rigezweho, mu byukuri akaba arinayo mbogamizi nini umucamanza wa mbere yahuye nayo kuko atashoboye kwimbika ngo yunve ko ikoranabuhanga ryavuzwe ari ikintu kigari. [17] Urukiko kandi rusanga nk'uko abahanga babisobanura, surrogacy igizwe n'uburyo bubiri ari bwo: Traditional surrogacy: the surrogate's eggs are used, making her the biological mother of the child she carries. Ugenekereje mu Kinyarwanda bikaba bisobanuye ko muri ubu buryo bwa Traditional surrogacy, hakoreshwa igi ry'uwemeye kubyarira undi, bityo bikamugira nyina w'umwana mu buryo bw'amaraso (biological)- Gestational surrogacy: The surrogate has no biological link to the baby. Ugenekereje mu Kinyarwanda bikaba bisobanuye ko umubyeyi nta sano y'amaraso umubyeyi ubyara aba afitanye n'umwana. [18] Nk'uko bigaragara mu busobanuro bwo kororoka hakoreshejwe ikoranabuhanga bizwi nka ART, icyitwa gestational surrogacy ni kimwe mu bigize Assisted

Page 15

Reproductive Technology, iyi na yo ikaba imwe mu bigize Medically Assisted Reproduction (MAR). kubijyanye n'igikorwa cyifuzwa gukorwa na N.A na M.O cyo guha igi umuryango wa K.F na M.G ukababyarira umwana, akaba ari icyitwa mu mvugo ya gihanga "Gestational surrogacy". Mugihe bahisemo ubwo buryo, bivuze ko M.G nta sano y'amaraso azaba afitanye n'umwana azabyara. [19] Urukiko Rwisumbuye rwa Nyarugenge nyuma y'ibimaze gusobanurwa hejuru rwanzura ko amasezerano umuryango wa K.F na M.G bagiranye n'umuryango wa N.A na M.O wo

kubabyarira hakoreshejwe ikoranabuhanga. ntaho ahabanye n'amategeko igihugu cy'u Rwanda kigenderaho, akaba agomba gushyirwa mu bikorwa uko yakabaye. hejuru y'ibyo ariko rusanga kuvuga ko byemewe gusa ubwabyo bidahagije mu gihe imbogamizi zagaragajwe na Dr. Eugene Ngoga zitakemuwe ariyo mpamvu urukiko rufite inshingano yo kugira icyo ruzivugaho. - Ku bijyanye no kumenya niba Dr. Ngoga hari impungenge yaba yarahuye nazo no kumenya uburyo zakemuka. [20] Urukiko rusanga muganga wiyambajwe ariwe Dr. Ngoga nawe atarigeze ahakana ko yakora ibyo yasabwe, yatanze ibisobanuro byimbitse by'ikibazo yagize mbere yo gukora ibyo yasabwaga nyuma yo kugaragaza ko ibisabwa

4 Ibarwa ya Dr Ngonga isubiza Florida Kabasinga Managing Partnerar Certa Law Chambers Re: Your request concerning the case N0 RC 00161/2020/TGI/NYGE Dear Madam,

I am a Chief Consultant Obstetrician Gynecologist working at Rwanda Military hospital. For the past 6 years I have been taking care of infertility couples including providing Assisted reproductive techniques. In the

Page 16

bisanzwe bikorwa ku isi, hashize imyaka irenga kuri 30, ko kandi abifitemo uburambe bw'imyaka 6 yose, Dr Ngoga yagaragaje ko impungenge ihari gusa ari uko mu mategeko y'u Rwanda umubyeyi wibarutse ariwe uhita yitwa nyina w'umwana akaba rero yari akeneye indi nyandiko yazifashishjwa mu kwandika umwana ku babyeyi b'ukuri b'umwana, nawe ubwe yemera ko ari abatanze intanga.

[21] Urukiko rusanga kandi uretse izo mpunge zagaragajwe na Muganga, Me Ndayisenga Jean Claude nubwo nawe yatumwe na Haguruka yatanze igitekerezo gihabanye n'icya mugenzi we avuga ko Urukundo hagati y'umwana n'ababyeyi be (affection/relation sentimentale) mu gihe habayeho "gestational surrogacy" bikwiye gutekerezwaho yavuze ko Impuguke Prof Dr. Gakwavu ivuga ko mu gihe habayeho kubyara muriburiya buryo, n'ubwo umwana avuka adahuje

mentioned case, I advised the couple to seek the experts in law opinion as the only treatment which they could benefit from is surrogacy. This is part of assisted reproductive technique where the embryo from a couple (in this case husband and wife) is placed in the uterus of another woman who will carry the pregnancy till term and deliver. Biologically speaking this child belongs to the couple which had their gametes fertilized. So, the child belongs to them and the surrogate mother is just a pregnancy carrier. This practice has been there for 3 decades. In Rwanda as the baby born is automatically related to person giving birth and written on her name, there is a need to have all important documents before the procedure to avoid any misunderstanding at the time of birth. Of course, the surrogate mother should be aware of what she is doing and a consent signed is required. The parents couple and the surrogate always get the explanations about the procedure and are counselled accordingly. I believe that when both sides are comfortable then we should support them so that they can fulfill their dream of being parents. Let me hope this has clarified the situation and I am available to clarify more even

before the court of law.”

Page 17

DNA/ADN n’uwamutwise, kumutwita ubwabyo no kumwonsa birema/byongera urukundo rwe hagati y’uwamutwise/wamwonkoje, bityo uko umubyeyi wamutwise amutindana muri cya gihe cyo kumwonsa cya ngombwa (kigamije gutera imbaraga “anticorps/antibodies)birushaho kongera umubano we n’umwonsa bikaba byatuma umwonsa agira ingingimira zo kumushyikiriza ababyeyi batanze intanga ndetse no mu gihe batandukanye, bikaba byatera agahinda umwana kubera uko kumenyerana kuba kwarabaye hagati yabo , ko rero mu gukemura icyo kibazo umwana aba akwiye gushyikirizwa ababyeyi batanze intanga akivuka mu rwego rwo kwirinda ko urukundo rwe n’uwamutwise rwakomeza kwiyongera bikazamugiraho ingaruka babatandukanyije. Ko rero nubwo muri Haguruka asbl bemera ko konsa umwana ari ingenzi ariko ibyo nabyo byazatekerezawaho. [22] Urukiko rwemeranywa na Dr. Ngoga ko impungenge yagize zifite ishingiro kuko nkuko byanagaragajwe n’inshuti z’ urukiko, hari igihe umubyeyi amara kwibaruka akabona uwo muziranenge akibuka uko yarushye amutwita akisubiraho, umwana akamwimana , imanza zikavuka, kubijyanye kandi n’amategeko y’u Rwanda koko nyina w’umwana ni uwamwibarutse, iki kibazo rero koko kidakemukiye mu ntangiriro cyatera impagaragara arizo muganga yangaga , cyane ko aho ikorana buhanga mu Rwanda rigeze, rimaze gukataza kuburyo umwana akivuka ahita yandikwa mu bitabo by’ iranga mimerere akiri mu ibyariro (maternite),bityo rero urukiko rushingiye ku masezerano agaragara muri dosiye ndetse n’ invugo z’ imiryango yombi zavugiye imbere y’urukiko rwanzura ko umwana azahita yandikwa ko abyawe na M.O na N.A, bityo rero impungenge za Dr Ngoga zikaba zibonewe igisubizo.

Page 18

[23] Urukiko kandi rusanga uburenganzira bw’umwana bukwiye kubungwabugwa kandi ntibugarukira gusa ku kwandikwa mu bitabo by’ irengamimerere kuko umwana uzavuka akwiye kugira n’uburenganzira k’ubuzima bwiza burimo kumwonsa niburamu gihe cy’ amezi 6 akonswa n’ uwamwibarutse kandi muri icyo gihe akonka amashereka gusa nta kindi avangiwemo, ibi bikaba ari nabyo byemezwa n’ ishami ry’ umuryango w’abibumbye ryita ku buzima OMS, ndetse n’ ishami ryawo ryita kubana UNICEF5, ibijyanye n’uko uwamutwise yamukunda mugihe yamarana nawe igihe kirekire nkuko bivugwa na Me Ndayisenga Jean Claude ayo marangamutima y’uwamwonkeje ahita azitirwa n’ubwo burenganzira bw’umwana bwo konka ndetse n’ubukubiye mu masezeno yagiranye n’abo yatwitiye, rwanzuye rero ko muri ayo mezi yose 6 umwana azabana n’uwamutswise ariwe M.G ariko ababyeyi be bakajya bamubona igihe cyose bamushakiye nabwo bigakorwa mu buryo bitabangamiye umuryango M.G na K.F uko kubana n’uwamutwise mu gihe cy’amezi 6 bituruka ku kintu kimwe cy’ingenzi aricyo kumwonsa, bivuze ko mu gihe

5 In Infant and Young Child Feeding, lesson 1, it is stated as follow “Adequate nutrition during infancy and early childhood is essential to ensure the growth, health, and development of children to their full potential. Poor nutrition increases the risk of illness.....RECOMMENDED

INFANT AND YOUNG CHILD FEEDING PRACTICES: WHO and UNICEF's global recommendations for optimal infant feeding as set out in the Global Strategy are: exclusive breastfeeding for 6 months (180 days) (11); Exclusive breastfeeding means that an infant receives only breast milk from his or her mother or a wet nurse, or expressed breast milk, and no other liquids or solids, not even water, with the exception of oral rehydration solution, drops or syrups consisting of vitamins, minerals supplements or medicines (12)." WHO. Infant and young child feeding: model chapter for textbooks for medical students and allied health professionals. Geneva, World Health Organization, 2009, [https://www.who.int/nutrition/publications/infantfeeding/9789241597494.pdf.] rwasuwe kuwa 10/08/2020.

Page 19

uwamutwise yaba adashobora kubona amashereka nta mpamvu yo gukomeza kubana nawe , ahubwo azahita ahabwa ababyeyi be aribo N.A na M.O. III. ICYEMEZO CY` URUKIKO [24] Rwemeje ko urubanza rwajuririwe arirwo RC 00168/2020/TB/ KICKI ruhindutse mu ngingo zarwo zose; [25] Rutegetse ko amasezerano M.G washakanye na K.F bagiranye na N.A na M.O yo kwemererwa kubatwitira igi rizavamo umwana yubahirizwa uko yakabaye; [26] Rutegetse ko umwana akimara kuvuka azandikwa ku babyeyi be aribo N.A na M.O; [27] Rutegetse ko umwana uzavuka azabana na M.G washakanye na K.F bakabana mu gihe cy` amezi 6 akimara kuvuka; [28] Ruvuze ko amagarama yatanzwe ahwanye n` ibyakozwe mu rubanza.

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/8192/8495>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/na-v-kf-assistedreproductivetechnology-intermediate-court-2020--6a3ea5223b1caa91298184e8>

Prepared on 12 October 2026 · Esheria