

RWANDA / JUDGMENT

NAMANYA v KARANGANWA N'ABANDI

RCAA00006/2022/HC/RWG

COURT

High Court

DECIDED

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NAMANYA v KARANGANWA N'ABANDI

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Text

Page 1

NAMANYA v KARANGANWA N'ABANDI [Rwanda URUKIKO RUKURU URUGEREKO RWA RWAMAGANA – RCAA00006/2022/HC/RWG (Nzirabagande, P.J.) 29 Kamena 2023] Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano – Gutanga ikirego – kurega uwo utagomba kurega – Uvuga ko ari nyirumutungu, akurikirana uwo umutungo wanditseho cyangwa uwurimo. Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano – Ikirego cy'iremezo n'ikirego k'igishamikiyeho – Iyo ikirego cy'iremezo kitakiriwe bituma n'ikirego kigishamikiyeho kitakirwa (l'accessoire suit le principal). Incamake z'ikibazo: Uru rubanza rwatangiye Namanya arega Karanganwa asaba gusubizwa ubutaka yaguze n'umwe mu bazungura ba Gashumba avuga ko ntaho ahuriye n'ubutaka bwaguzwe Karanganwa nawe waguze n'umwe mu bazunguye nyuma Gashumba, bikaba ngombwa ko Karanganwa yimura imbago z'ubutaka yaguze afata kubwa Namanya. Karanganwa we avuga ko ntaho ahuriye n'ubutaka bwaguzwe na Namanya, ko atanagombaga kuregwa; hagobokeshejwe Mukabadege utunze umutungo waguzwe na Karanganwa na Mukangarambe wamugurishije. Mu rubanza RC00214/2018/TB/KRA Urukiko rw'Ibanze rwa Kiramuruzi, rwemeje ko ikirego cya Namanya gifite ishingiro, rutegeka ko akomeza gukorera mu butaka bwe bwose yaguze, rutegeka Karanganwa na Mukabadege guha

Namanya indishyi zitandukanye. Urukiko rwasobanuye ko Namanya yaguze ubutaka bw'abakomoka kuri Nyiramayonde na Gashumba hashingiwe ku igabana rya kabiri ryakozwe mu buryo bukurikije amategeko, naho umutungo waguzwe na Karanganwa nyuma y'igabana rya mbere, ridakurikije amategeko, ukaba waratubijwe n'igabana rya kabiri, ko rero aho yaranduye imbago ari aha Namanya. Karanganwa na Mukabadege bajuririyeye Urukiko Rwisumbuye rwa Nyagatare bavuga ko Urukiko rwirengagije ko umutungo uburanwa udatunzwe na Karanganwa kandi ko utaguzwe mu buriganya; ko nta n'indishyi bari gutegekwa kwishyura. Namanya avuga ko impamvu z'ubujurire nta shingiro zahabwa kuko umutungo aregwa yawuguze mu buryo bukurikije amategeko. Urukiko Rwisumbuye rwa Nyagatare mu rubanza RCA00042/2020/TGI/NYG rwemeje ko Karanganwa yarezwe atagombaga kuregwa, ko atari we nyir'umutungo, rusobanura ko n'ubwo ari we wawuguze ariko yawuguriye Mukabadege akaba ari nawe uwutunze kandi unawanditseho. Namanya yajuririyeye Urukiko Rukuru, Urugereko rwa Rwamagana avuga ko Mukabadege yagombaga gutambamira umwanzuro w'abunzi wamunyaze umutungo, Mukangarambe agurisha ashingiye ku izungura ridakurikije amategeko; avuga ko Urukiko rwirengagiza ko Namanya afite icyemezo cy'iyandikisha ry'ubutaka. Avuga kandi ko Urukiko rwemeje kutakira ikirego ariko ruca urubanza mu mizi. Karanganwa we avuga ko Namanya yamureze kandi atari we nyir'umutungo; umwanzuro w'abunzi ukaba utashingirwaho kuko uvuga iby'izungura bitabareba, kandi ngo Namanya nta hererekanya yari yakozwe. Urukiko rwabanje gusuzuma ibijyanye no kumenya niba hararezwe Karanganwa utanditsweho umutungo, no kumenya niba ikirego kitari gusuzumwa ku rwego rwa mbere kuri Mukabadege wagobokeshejwe. Urukiko Rukuru rwemeje mu rubanza RCAA00006/2022/HC/RWG ko nta kosa Urukiko Rwisumbuye rwakozwe mu kwemeza ko Namanya yareze Karanganwa ataragombaga kuregwa kuko umutungo uburanwa utamwanditseho. Urukiko rwemeje kandi ko kuba Urukiko Rwisumbuye rwaremeje ko

Page 2

ikirego kitari kwakirwa, rutari kwirirwa rusuzuma ibyo kugobokesha Mukabadege kuko ikirego cy'iremezo iyo kitakiriwe n'ikigishamikiyeho kitakirwa ngo gisuzumwe. Ku bijyanye n'indishyi zasabwe n'abaturanyi, Urukiko rwemeje ko nta muburanyi numwe ukwiye guhabwa indishyi. Incamake y'icyemezo: 1. Uvuga ko ari nyirumutungo, akurikirana uwo umutungo wanditseho cyangwa uwurimo. Bityo, iyo uvuga ko umutungo ari uwe areze undi kuko gusa yawuguze kandi utamwanditseho aba areze utagomba kuregwa bituma ikirego kitakirwa.

2. Iyo ikirego cy'iremezo kitakiriwe bituma n'ikirego gishamikiyeho kitakirwa (l'accessoire suit le principal). Bityo iyo Urukiko rwemeje ko urega yareze utagomba kuregwa ntirugomba no gusuzuma ishingiro ry'uwagobokeshejwe muri urwo rubanza. Ubujurire bufite ishingiro. Amategeko yashingiweho: Itegeko No 22/2018 ryo ku wa 29/04/2018 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 111, 115 Nta manza zifashishijwe. Inyandiko z'abahanga zifashishijwe. https://www.google.com/search?q=l%27accessoire+suite+le+principal+code+civil&rlz=1C1GCEenRW1026RW1026&oq=l+accessoire+suite+le+principal&gs_lcrp=EgZjaHJvbWUqDggBECMYExgnGIAEGIoFMgYIABBFdGkyDggBECMYExgnGIAEGIoFMgYIAhBFGEAyCQgDEAA

YDRiABDIICAQQABgWGB4yBggFEEUYPDIGCAYQRRg8MgYIBxBFGDzSAQkxMz
UxOWowajSoAgCwAgA&sourceid=chrome&ie=UTF-8 : “Dans la maxime l'accessoire suit le principal, l'accessoire est un objet qui, du fait de sa dépendance par rapport à l'autre objet, a la même nature juridique que celui-ci ou est soumis à la même règle”, consulte ce 23/06/2023. Urubanza

IMITERERE Y'URUBANZA [1] Urubanza ruri ku rwego rw'ubujurire Namanya William anenga icyemezo cyafashwe mu rubanza RCA00042/2020/TGI/NYG rwaciwe ku wa 26/11/2021 n'Urukiko Rwisumbuye rwa Nyagatare rwemeje ko Karanganwa Cyprien atagombaga kuregwa, ko umutungo bamureze atari uwe, ko na Mukangarambe Eliana wagobokeshejwe ntacyo yagombaga kuryozwa; rutegeka ko nta buryarya (uburiganya) bwabaye mu bugure bwa Mukangarambe Eliana na Mukabadege; rutegeka ko Namanya William ntaho ahuriye na Karanganwa Cyprien na Mukabadege Ancile, kuko atari bo bamugurishije, ko uburenganzira bwe yabubaza uwamugurishije. Rutegeka ko indishyi zategetswe n'Urukiko rw'Ibanze rwa Kiramuruzi zikuweho, ko imikirize y'urubanza RC00214/2018/TB/KRA ihinduwe mu ngingo zarwo zose. Rwategetse Namanya William kwishyura Karanganwa Cyprien na Mukabadege Ancile 820.000Frw y'indishyi zose zibariwe hamwe. [2] Nyuma y'urupfu rwa Gashumba Silas, bamwe mu bamukomokaho bazunguye umutungo we. Karanganwa Cyprien agura umugabane wa Mukangarambe Eliane ; ariko abakomoka kuri Nyiramayonde wapfuye mbere batari bazunguye, baregeye abunzi hafatwa umwanzuro w'uho na bo bogamba kuzungura, izungura risubirwamo, abakomoka kuri Nyiramayonde na bo barazungura, umugabane wabo ugurwa na Namanya Wiliam; umugabane wa Karanganwa uragabanuka.

Page 3

[3] Namanya William avuga ko mu igabana rya kabiri, umugabane wa Mukangarambe wagabanutse, Karanganwa wari wawuguze arandura imbago bituma ahaguzwe na Namanya William hagabanuka. Yareze Karanganwa asaba gusubizwa ubutaka bwe, we akavuga ko ntaho ahuriye n'ubutaka bwaguzwe na Namanya William, ko atanagombaga kuregwa; hagobokeshejwe Mukabadege Ancile utunze umutungo waguzwe na Karanganwa na Mukangarambe Eliana wamugurishije. [4] Mu rubanza rwaciwe n'Urukiko rw'Ibanze rwa Kiramuruzi, Urukiko rwemeje ko ikirego cya Namanya William gifite ishingiro, rutegeka ko akorera nta nkomyi mu butaka bwe bwose yaguze n'abana ba Nyiramayonde Evelyne, rutegeka Karanganwa Cyprien na Mukabadege Ancile guha Namanya William indishyi zibariwe hamwe zingana na 700.000Frw. [5] Urukiko rwasobanuye ko Namanya William yaguze ubutaka bw'abakomoka kuri Nyiramayonde hashingiwe ku igabana rya kabiri ryakozwe mu buryo bukurikije amategeko, ko rero umutungo ari uwe. Umutungo waguzwe na Karanganwa nyuma y'igabana rya mbere, ridakurikije amategeko, ukaba waratubijwe n'igabana rya kabiri, ko rero aho yaranduye imbago ari aha Namanya William. [6] Karanganwa Cyprien na Mukabadege Ancile bajuririywe Urukiko Rwisumbuye rwa Nyagatare bavugaga ko hirengagijwe ko umutungo uburanwa udatanzwe na Karanganwa kandi ko utaguzwe mu buriganya ; ko nta n'indishyi bari gutegakwa kwishyura. Namanya William avuga ko impamvu z'ubujurire nta shingiro zahabwa kuko umutungo aregwa yawuguze mu

buryo bukurikije amategeko n'abawuzunguye kandi awufitiye ibyangombwa. [7] Mu rubanza rujuririrwa, Urukiko Rwisumbuye rwa Nyagatare rwemeje ko Karangwanwa yarezwe atagombaga kuregwa, ko atari we nyir'umutungo, rusobanura ko n'ubwo ari we wawuguze ariko yawuguriye Mukabadege Ancile, akaba ariwe uwutunze unawufitiye icyangombwa cy'ubutaka UPI : 5/04/04/01/1946, nk'uko biteganywa mu ngingo ya 3 y'Iteka rya Minisitiri No 002/2008 ryo ku wa 01/04/2008 rigena uburyo iyandikisha ry'ubutaka rikorwa. [8]

Rusobanura kandi ko nta buriganya cyangwa uburyarya buri mu bugure bwa Mukangarambe Eliana kuko yagurishije umutungo yari yazunguye muri 2003, Mukabadege Ancile awuhererwa icyangombwa mu 2011, mu gihe umwanzuro w'abunzi ugaragazwa ari uwo ku wa 14/04/2016 kandi urebana n'izungura rya bene Gashumba, akaba atari cyo kiburanwa muri uru rubanza. Bityo rero Karangwanwa Cyprien ntiyagomgaba kuregwa. [9]

Namanya William yajurirye Urukiko Rukuru, Urugereko rwa Rwamagana, we na Me Nizeyimana Leopold bavuga ko Mukabadege yagombaga gutambamira umwanzuro w'abunzi wamunyaze umutungo, Mukangarambe Eliana agurisha ashingiye ku izungura ridakurikije amategeko ; rwirengagiza ko Namanya William afite icyemezo cy'iyandikisha. Kuri ibyo hiyongeraho ko Urukiko rwemeje kutakira ikirego ariko ruca urubanza mu mizi. [10] Ku ruhande rwa Karanganwa bavuga ko Namanya William yamureze kandi atari we nyir'umutungo ; umwanzuro w'abunzi ukaba utashingirwaho kuko uvuga iby'izungura bitabareba, kandi Namanya nta hererekanya yari yakozwe. Bavuga nta buriganya Mukabadege yagize kuko yaguze umutungo na nyirawo Urukiko rwasuzumye icyaregwe nta n'icyo rwivugurujeho. [11]

Nyuma y'uko ababuranyi bemeye gukemura ikibazo mu bwumvikane ariko bakisubiraho, abaregwa bakavuga ko basanze umutungo wa Namanya William uko uboneka ku cyangombwa cy'iyandikisha utandukanye n'umutungo nyakuri, Urukiko rwasuzumye inzitizi y'ububasha ku bujurire bw'urubanza rwaciwe n'Urukiko Rwisumbuye mu rwego rw'ubujurire yatanze na Karanganwa n'umwunganira, Urukiko Rukuru rwemeje ko ikirego cyakirwa, hagasuzumwa impamvu z'ubujurire.

Page 4

- [12] Urukiko rwamenyesheje aburanyi ko ikirego cyakiriwe, banamenyeshwa itariki iburanisha rizakomerezaho ; iyo tariki yaje kwimurwa ariko itariki nshya igaragazwa muri « system » ; ku munsu w'iburanisha Mukangarambe Eliane na Mukabadege Ancile ntibitabye nta mpamvu, ahubwo Me Ngerageze yandika avuga ko atarebye muri « system », hafatwa icyemezo cyo kuburanisha abaregwa badahari hagashingirwa ku myanzuro yabo, nyuma asaba isubukurwa anatanga « note de plaidoirie ». [13] Urubanza rwaburanishijwe mu ruhamu ku wa 19/06/2023, Namanya William yunganiwe na Me Nizeyimana Leopold, Mukangarambe Eliane, Karanganwa Cyprien na Mukabadege Ancile batitabiriye iburanisha nta mpamvu yagaragajwe, Urukiko rufata icyemezo cyo kuburanisha badahari hagashingirwa ku myanzuro, ku nyandikomvugo z'iburanisha ryabanje no kuri « note de plaidoirie ». [14] Ikibazo gisuzumwa mu rubanza ni iki gikurira : Kumenya niba hararezwe KARANGANWA Cyprien utanditsweho umutungo (utari we), ikirego kitari gusuzumwa kuri MUKABADEGE Ancile wagobokeshejwe. II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA

RYACYO A.Kumenya niba hararezwe Karanganwa Cyprien utanditsweho umutungo (utari uwe), ikirego kitari gusuzumwa kuri Mukabadege Ancille wagobokeshejwe. [15] Ingingo ya 115 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko kugobokesha ku gahato umuburanyi mu rubanza bisabwa n'umuburanyi ushaka ko umuntu utari mu rubanza aruzanwamo kugira ngo na we aburane, hato atazarutambamira. Iyi ngingo yumvikanisha ko ushaka gutsindira rimwe umuntu n'uwo yareze asaba ko yazanwa mu rubanza kugira ngo abatsindire hamwe. [16] Mu rubanza rujuririrwa, Namanya William yareze Karanganwa Cyprien utanditsweho umutunbo uburanwa hagobokeshwa Mukabadege Ancile wanditsweho uwo mutungo yaguriwe n'umwana we Karanganwa, hagobokeshwa kandi Mukangarambe Eliane wawugurishije. Urukiko rwemeje ko Karangawa Cyprien yarezwe atagombaga kuregwa kuko atari we nyir'umutungo, ariko iburanisha rirakomeza hafatwa icyemezo kuri Mukabadege Ancile. [17] Namanya William na Me Nizeyimana Leopold bavuga ko mu rubanza rujuririrwa habayeho kwivuguruzwa, rwemeza ko ikirego kitagombaga kwakirwa kuko harezwe Karanganwa Cyprien kandi atari we nyir'umutungo, nyamara rukomeza iburanisha runafata icyemezo kuri Mukabadege Ancile kandi atari we warezwe ahubwo yaraje mu rubanza agobokeshejwe, mu gihe hari kwemezwa ko ibintu bisubira uko byari bimeze mbere, ubifitemo inyungu akazongera kurega mu buryo buteganyijwe n'amategeko, basaba ko byakosorwa, urubanza RCA00042/2020/TGI/NYG rugateshwa agaciro, hakemezwa ko ikirego kitakiriwe kubera kurega utari we, ubifitemo inyungu akajya kurega bushyashya. [18] Mu mwanzuro watanze na Me Ngerageze Bernard, ku ruhande rwa Karanganwa Cyprien na Mukabadege Ancile bavuga ko Namanya William atagaragaza aho Urukiko rwivugurujye kuko rwemeje ko Karanganwa Cyprien yarezwe kandi atari we nyir'umutungo, bikaba kandi byarasobanuwe mu rubanza rujuririrwa nyamara uwajuriye nta yindi nenge agaragaza, kuko hanasobanuwe ko ntaho Namanya William ahurira n'abo yareze akaba rero nta mpamvu yatuma urubanza rujuririrwa rutesha agaciro kuko ibyemejwe biteganyijwe n'amategeko. [19] Nk'uko biboneka mu rubanza rujuririrwa, Urukiko Rwisumbuye rwemeje ko Karanganwa Cyprien yarezwe atagombaga kuregwa kubera ko n'ubwo uwo mutungo yawuguriye umubyeyi we ariko yarawumuhaye, ubu ubaruwe kuri Mukabadege Ancile, ko ari we nyir'umutungo. Rusanga rero kuba hari hemejwe ko Karanganwa Cyprien yarezwe atari we wagombaga kuregwa, byumvikanisha

Page 5

ko ikirego kitagombaga kwakirwa kuko uregwa adafite ububasha, ubu kandi nk'uko busabwa k'urega kugira ngo ikirego cyakirwe binasabwa uregwa. [20] Rusanga rero kuba ikirego cy'iremezo kitari cyakiriwe, ni ukuvuga hagati ya Namanya William na Karangwanwa Cyprien, n'igobokeshwa rya Mukabadege Ancile ntiriyari kwakirwa ngo risuzumwe kuko ikirego rishingiyeho kitari kikiriho mu gihe ukugobokeshwa ari inzira yo kwagura ikirego kandi nticyakwagurwa kitariho, kuko nk'uko bivugwa « l'accessoire suit le principal »¹, bivuza rero ko kitari kugumaho ngo Mukabadege Ancile aburanishwe anafatirwe icyemezo. Rusanga ahubwo ikirego cyari kurangiriraho, ibintu bigasubira uko byari bimeze mbere yo kuregera inkiko. Bityo

rero, icyemezo cyafashwe mu rubanza rujuririrwa n'urwo rwajuririye bikuweho, ibintu bigasubira uko byari bimeze, ubifitemo inyungu akaba yarega. B. Kumenya niba hari indishyi zagenwa muri uru rubanza [21] Ingingo ya 111 y'Itegeko No 22/2018 ku wa 29/04/2018 Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ingingo ya 3 y'Itegeko No 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko buri muburanyi agaragaza ibimenyetso by'ibyo aregera. Izi ngingo zumvikanisha ko umuburanyi watakaje mu rubanza, iyo agaragaraje ibimenyetso by'ibyo yangirijwe, yishyurwa n'uwamuteye kujya mu manza nta mpamvu. [22] Mu rubanza rujuririrwa Namanya William yategetswe kwishyura Mukabadege Ancile na Mukangarambe Eliana indishyi zibariwe hamwe kubera ko bashowe mu manza nta mpamvu. Ku rwego rw'ubujurire ababuranyi bose basabye kugenerwa indishyi zigizwe n'ihembo cy'avoka n'ikurikiranarubanza. Urukiko rusanga indishyi zagenwe zitari zikwiye zikaba zikuweho, kuri uru rwego, na bwo akaba nta ndishyi zagenwe Namanya William kuko ari we wabanje kurega uwo atagombaga kurega. III. ICYEMEZO CY'URUKIKO [23] Rwemeje ko ikirego cy'ubujurire cyatanzwe na Namanya William gifite ishingiro; [24] Rwemeje ko icyemezo cyafashwe mu rubanza RCA00042/2020/TGI/NYG rwaciwe n'Urukiko Rwisumbuye rwa Nyagatare ku wa 26/11/2021 (n'urwajuririwe RC00214/2018/TB/KRA) biteshejwe agaciro; [25] Rutegetse ko nta ndishyi zigenwe muri uru rubanza; [26] Rutegetse ko amafaranga yatanzwe na Namanya William ajurira ahwanye n'ibyakozwe;

1[https://www.google.com/search?](https://www.google.com/search?q=l%27accessoire+suit+le+principal+code+civil&rlz=1C1GCEA_enRW1026RW102_6&oq=l+accessoire+suit+le+principal&gs_lcrp=EgZjaHJvbWUqDggBECMYExgnGIAEGIoFMgYIABBFdGkyDggBE C MYExgnGIAEGIoFMgYIAhBFGEAyCQgDEAAyDRiABDIICAQQABgWGB4yBggFEEUYPDIGCAYQRRg8MgY IBxBFGDzSAQkxMz UxOWowajSoAgCwAgA&sourceid=chrome&ie=UTF-8)

[q=l%27accessoire+suit+le+principal+code+civil&rlz=1C1GCEA_enRW1026RW102_6&oq=l+accessoire+suit+le+principal&gs_lcrp=EgZjaHJvbWUqDggBECMYExgnGIAEGIoFMgYIABBFdGkyDggBE C MYExgnGIAEGIoFMgYIAhBFGEAyCQgDEAAyDRiABDIICAQQABgWGB4yBggFEEUYPDIGCAYQRRg8MgY IBxBFGDzSAQkxMz UxOWowajSoAgCwAgA&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=l%27accessoire+suit+le+principal+code+civil&rlz=1C1GCEA_enRW1026RW102_6&oq=l+accessoire+suit+le+principal&gs_lcrp=EgZjaHJvbWUqDggBECMYExgnGIAEGIoFMgYIABBFdGkyDggBE C MYExgnGIAEGIoFMgYIAhBFGEAyCQgDEAAyDRiABDIICAQQABgWGB4yBggFEEUYPDIGCAYQRRg8MgY IBxBFGDzSAQkxMz UxOWowajSoAgCwAgA&sourceid=chrome&ie=UTF-8) : “Dans la maxime l'accessoire suit le principal, l'accessoire est un objet qui, du fait de sa dépendance par rapport à l'autre objet, a la même nature juridique que celui-ci ou est soumis à la même règle”, consulte ce 23/06/2023.

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