

RWANDA / JUDGMENT

Re NYIRABARERA

RS/INTERT/RC 00001/2021/SC

COURT

Supreme Court

DECIDED

9 June 2021

CASE / FILE NUMBER

RS/INTERT/RC 00001/2021/SC

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

Re NYIRABARERA

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2021-06-09
- Case/document no.: RS/INTERT/RC 00001/2021/SC
- Collection: Supreme Court

Text

Page 1

Re NYIRABARERA [Rwanda URUKIKO RW'IKIRENGA - RS/INTERT/RC 00001/2021/SC (Nyirinkwaya, P.J., Hitiyaremye na Kalimunda, J.) 09 Kamena 2021] Amategeko agenga imiburanishirize y'imanza mbonezamubano – Gukosora urubanza – Ibirego bikosora urubanza biba bigamije gukosora gusa amakosa y'imyandikire ari mu rubanza – Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 140. Amategeko agenga imiburanishirize y'imanza mbonezamubano – Gusobanura urubanza – Ibirego bisobanura urubanza biba bigamije gusa gusobanura ibidasobanutse cyangwa ibitera urujijo mu rubanza (obscurité ou ambiguïté) – Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 138. Incamake y'ikibazo: Urubanza N° RS/ INJUST/RC 00034/ 2017/SC Nyirabarera asaba gusobanura cyangwa gukosora rwatangiriye mu Rukiko rw'Ibanze rwa Gatunda aho yaburanga n'Umugabo we Semahoro imitungo uwo mugabo yasahuraga ayijyana mu nshoreke, urega agasaba Urukiko ko rwakwemeza ko iyo mitungo bayihuriyeho kuko basezeranye mu buryo bwemewe n'amategeko. Urukiko rwemeje ko imitungo iregerwa ari iya Nyirabarera n'umugabo we Semahoro uretse ½

cy'isambu idasatuye iri mu mudugudu wa Bukamba n'isambu ya Nyarubuye kuko byahawe Nyirabazungu mu isaranganya. Urega yajuririye Urukiko Rwisumbuye rwa Nyagatare narwo rwemeza ko nta gihindutse mu rubanza rwajuririwe, akomereza mu Rukiko Rukuru Urugereko rwa Rwamagana rwemeza ko ubwo bujuriye butakiriye kuko butujuje ibisabwa n'amategeko bituma yandikira Umuvunyi Mukuru asaba kurenganurwa kuko nta saranganya ryabaye kuri iyo mitungo yaregerwaga, urubanza rwoherezwa mu Rukiko rw'Ikirenga. Uru rukiko rwaje kwemeza ko ½ cy'isambu idasatuye iri mu mudugudu wa Bukamba n'isambu ya Nyarubuye byari byahawe Nyirabazungu, bigarurwa mu mutungo we na Semahoro. Urega yatanze ikirego cyo gusobanura no gukosoza urwo rubanza, asaba ko Urukiko rwagaragaza mu cyemezo cyarwo amasambu yatsindiye, ibipimo byayo, n'aho aherereye. Urubanza rwaburanishijwe harebwa ingingo yo kumenya niba urubanza N° RS/INJUST/RC 00034/2017/SC rukwiye gukosorwa cyangwa gusobanurwa kubyerekeye amasambu Nyirabarera yatsindiye. Urega asaba ko Urukiko rwagaragaza aho imitungo yatsindiye iherereye ndetse n'ibipimo byayo kandi ko rwandika mu cyemezo cyarwo indi mitungo yatsindiye mu Rukiko rw'Ibanze rwa Gatunda. Incamake y'icyemezo: 1. Uburyo imitungo yaburanwe isobanuwe mu manza zabanje nta rujijo bitera ku birebana n'aho iherereye n'ibipimo byayo.

2. Ibirego bikosoza urubanza biba bigamije gukosora gusa amakosa y'imyandikire ari mu rubanza naho ibirego bisobanura urubanza biba bigamije gusobanura ibidasobanutse cyangwa ibitera urujijo mu rubanza bityo ntacyo Urukiko rwasobanura cyangwa rwakosora mu cyemezo

Page 2

cyarwo ku yandi masambu Nyirabarera yatsindiye mu nkiko zabanje kuko atagiweho impaka mu rubanza rwasabiye gukosorwa. Ikirego cya Nyirabarera nta shingiro gifite; Nta kidasobanutse mu rubanza N° RS/INJUST/RC 00034/2017/SC. Amategeko yashingiweho Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 138, 140. Nta manza zifashishijwe Urubanza I. IMITERERE Y'URUBANZA: [1] Urubanza N° RS/ INJUST/RC 00034/ 2017/SC rwaciye n'Urukiko rw'Ikirenga ku wa 11/05/2018, Nyirabarera Euphrasie asaba gusobanura cyangwa gukosoza rwatangiriye mu Rukiko rw'Ibanze rwa Gatunda, arega umugabo we Semahoro Aaron basezeranye mu buryo bukurikije amategeko ko asahura umutungo w'urugo akawuha inshoreke ze, arusaba kwemeza ko imitungo ikurikira ari iye na Semahoro Aaron: - Isambu idasatuye ifite 65m kuri 300m iherereye mu Mudugudu wa Bukamba, mu Kagari ka Gashenyi, Umurenge wa Rukomo, ihana imbibi n'umuhanda imutwe, umuhanda intangiriro, Rutoki iburyo na Kotarisi ibumoso; - Iterasi iri mu Gashenyi, Umurenge wa Rukomo, ifite 32m kuri 40m, ihana imbibi na Nyirabagenzi imutwe, umuhanda intangiro, Kotarisi iburyo na Karihungu ibumoso; - Ikibanza n'inzu biri mu Mudugudu wa Kabeza, Akagari ka Kabeza, Umurenge wa Gatunda, bifite 18m kuri 20m, bihana imbibi n'umuhanda imutwe, umuhanda intangiro, Zakayo iburyo na Bendantunguka ibumoso; - Isambu idasatuye iri mu Mudugudu wa Nyarubuye, Akagari ka Rukomo II, Umurenge wa Rukomo, ifite 67,34m kuri 300m, ihana imbibi n'umuhanda imutwe, umuhanda intangiro, ishyamba rya Leta iburyo na Sibomana ibumoso; - Amazu 02 n'ikibanza kitubatse biri mu

Mudugudu wa Mwurirwa, Akagari ka Rukomo II, Umurenge wa Rukomo. [2] Ku wa 28/03/2013, Urukiko rw'Ibanze rwa Gatunda rwaciye urubanza N° RC 0007/09/TB/GDA, rwemeza ko imitungo ikurikira ari iya Nyirabarera Euphrasie na Semahoro Aaron: - Kimwe cya kabiri ($\frac{1}{2}$) cy'isambu ifite 65m kuri 300m iri mu Mudugudu wa Bukamba, Akagari ka Gashenyi, Umurenge wa Rukomo, ihana imbibi n'umuhanda imutwe, umuhanda intangiro, Rutoki iburyo na Kotarisi ibumoso;

Page 3

- Iterasi iri muri Gashenyi, Umurenge wa Rukomo, ifite 32m kuri 40m, ihana imbibi na Nyirabagenzi imutwe, umuhanda intangiro, Kotarisi iburyo na Karihungu ibumoso; - Ikibanza n'inzu biri mu Mudugudu wa Kabeza, Akagari ka Kabeza, Umurenge wa Gatunda, bifite 18m kuri 20m, bihana imbibi n'umuhanda imutwe, umuhanda intangiro, Zakayo iburyo na Bendantunguka ibumoso; - Amazu 2 n'ikibanza kitubatse biri mu Mudugudu wa Mwurirwa, Akagari ka Rukomo II, Umurenge wa Rukomo. [3] Rwemeje kandi ko Nyirabarera Euphrasie azibukira $\frac{1}{2}$ cy'isambu ya Bukamba n'isambu ya Nyarubuye kuko iyo mitungo yahawe Nyirabazungu mu isaranganya. [4] Nyirabarera Euphrasie yajuririye Urukiko Rwisumbuye rwa Nyagatare avuga ko yategetswe kuzibukira kimwe cya kabiri ($\frac{1}{2}$) cy'isambu yo mu Mudugudu wa Bukamba hamwe n'isambu ya Nyarubuye ngo kuko iyo mitungo yahawe Nyirabazungu mu isaranganya kandi ari amayeri Semahoro Aaron yakoresheje kugira ngo ayimwandikeho. Semahoro Aaron yaje kwitaba Imana urubanza rutaracibwa, rukomezwa n'abazungura be. [5] Ku wa 22/11/2013, Urukiko Rwisumbuye rwa Nyagatare rwaciye urubanza N° RCA 0078/013/TGI/NYG, rwemeza ko imikirize y'urubanza rwajuririye idahindutse. [6] Nyirabarera Euphrasie yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana, mu rubanza N° RCAA 0108/13/HC/RWG rwaciye ku wa 17/07/2014, rwemeza ko ubwo bujuriye butakiriye kuko butujuje ibisabwa n'amategeko. [7] Nyuma y'uko urwo rubanza ruciye, Nyirabarera Euphrasie yandikiye Urwego rw'Umuvunyi asaba ko urubanza N° RCA 0078/013/TGI/NYG rwasubirwamo ku mpamvu z'akarengane. Nyuma yo gusuzuma icyo kibazo, Umuvunyi Mukuru yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko nawe yemeje ko rwoherezwa mu bwanditsi bw'Urukiko rw'Ikirenga rukandikwa mu bitabo byabugenewe kugira ngo ruzongere ruburanishwe. [8] Mu kirego cye gisubirishamo urubanza ku mpamvu z'akarengane, Nyirabarera Euphrasie yasobanuraga ko akarengane ke gashingiye ku kuba Urukiko Rwisumbuye rwaremeje ko kimwe cya kabiri ($\frac{1}{2}$) cy'isambu yo mu Mudugudu wa Bukamba hamwe n'isambu ya Nyarubuye ari ibya Nyirabazungu kuko yahawe ubwo butaka mu isaranganya kandi ritarabayeho. [9] Ku wa 11/05/2018, Urukiko rw'Ikirenga rwaciye urubanza N° RS/INJUST/RC 00034/2017/SC, rwemeza ko kimwe cya kabiri ($\frac{1}{2}$) cy'isambu yo mu Mudugudu wa Bukamba hamwe n'isambu iri Nyarubuye, Nyirabarera Euphrasie yari yategetswe kuzibukira bigarurwa mu mutungo we na Semahoro Aaron. [10] Ku wa 08/04/2021, Nyirabarera Euphrasie yatanze ikirego cyo gusobanura no gukosoza urwo rubanza, asaba ko Urukiko rwagaragaza mu cyemezo cyarwo amasambu yatsindiye guhera ku rwego rwa mbere, ibipimo byayo, n'aho aherereye.

Page 4

[11] Urubanza rwaburanishijwe mu nama y'Abacamanza ku wa 08 Kamena 2021, bitabaye ngombwa guhamagara Nyirabarera Euphrasie kuko umwanzuro Me Minyati Rugamba Jacob yatanze mu izina rye wumvikanisha ikirego cye. [12] Ikibazo cyasuzumwe ni ukumenya niba urubanza N° RS/INJUST/RC 00034/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 11/05/2018 rukwiye gukosorwa cyangwa gusobanurwa kubyerekeye amasambu Nyirabarera Euphrasie yatsindiye. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO Kumenya niba hari ibikwiye gukosorwa cyangwa gusobanurwa mu rubanza N° RS/INJUST/RC 00034/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 11/05/2018. [13] Mu mwanzuro we, Me Minyati Rugamba Jacob asaba Urukiko ko rugaragaza muri "rutegetse" ya 30 aho imitungo ivugwamo iherereye n'ibipimo byayo, ndetse ko rwandika mu cyemezo cyarwo indi mitungo yatsindiye mu Rukiko rw'Ibanze rwa Gatunda nkuko igaragara ku rupapuro rwa 4, igika cya 9 cy'urubanza. UKO URUKIKO RUBIBONA [14] Ingingo ya 138 y' Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko : "Ibirego bisaba gusobanura cyangwa gukosora amakosa ari mu rubanza biregerwa urukiko rwaciye urwo rubanza bigasuzumwa n'umucamanza waruciye ()1". [15] Ku birebana n'ibirego bikosoza urubanza, ingingo ya 140 y'iryo tegeko, mu gika cyayo cya 1 iteganya ko bene ibyo birego biba bigamije gukosora gusa amakosa y'imyandikire ari mu rubanza. [16] Ku birebana n'ibirego bisobanura urubanza, birumvikana ko bene ibyo birego biba bigamije gusobanura ibidasobanutse cyangwa ibitera urujijo mu rubanza (obscurité ou ambiguïté). [17] Hakurikijwe rero ibikubiye muri izi ngingo zimaze kuvugwa, Urukiko rurasanga ntacyo rwasobanura cyangwa rwakosora ku gika cya 30 cy'urubanza N° RS/INJUST/RC 00034/2017/SC kuko kuba Urukiko rw'Ikirenga rwarategetse ko kimwe cya kabiri ($\frac{1}{2}$) cy'isambu yo mu Mudugudu wa Bukamba, hamwe n'isambu iri i Nyarubuye, Nyirabarera yari yategetswe kuzibukira bigarurwa mu mutungo we na Semahoro Aaron, byumvikana neza ko ari imitungo isobanuwe mu rubanza rwasubirishwagamo ku mpamvu z'akarengane no mu rubanza rwarubanjirije rwaciwe n'Urukiko rw'Ibanze rwa Gatunda, uburyo isobanuwe muri izo manza zabanje bikaba nta rujijo bitera ku birebana n'aho iherereye n'ibipimo byayo. 1 Les demandes en rectification d'erreurs matérielles ou en interprétation en cas d'obscurité ou d'ambiguïté sont portées devant la juridiction qui a rendu la décision (....)

Page 5

[18] Urukiko rurasanga nanone ntacyo rwasobanura cyangwa rwakosora mu cyemezo cyarwo ku yandi masambu Nyirabarera Euphrasie yatsindiye mu nkiko zabanje kuko atagiweho impaka mu rubanza N° RS/INJUST/RC 00034/2017/SC, aho rwari rwasabwe gusa gusuzuma ibyerekeye kimwe cya kabiri ($\frac{1}{2}$) cy'isambu yo mu Mudugudu wa Bukamba hamwe n'isambu iri Nyarubuye, Nyirabarera Euphrasie yari yategetswe kuzibukira mu nkiko zabanje, ari nayo mitungo yonyine rwafasheho icyemezo. III. ICYEMEZO CY'URUKIKO [19] Rwemeje ko ikirego cya Nyirabarera Euphrasie nta shingiro gifite; [20] Rwemeje ko nta kidasobanutse mu rubanza N° RS/INJUST/RC 00034/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 11/05/2018,

gikeneye gukosorwa cyangwa gusobanurwa.

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/7030/7307>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/nyirabarera-euphrasie-v-semahoro-aaron-deceased-represented-by-heirs-rectificationofjudgment-supreme-court-2021>

Prepared on 12 October 2026 · Esheria