

RWANDA / JUDGMENT

Re MUHOZA (IKIREGO KIGAMIJE KUVANAHO INGINGO INYURANYIJE N'ITEGEKO NSHINGA)

RLR V.1 - 2014

COURT

Supreme Court

DECIDED

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Re MUHOZA (IKIREGO KIGAMIJE KUVANAHO INGINGO INYURANYIJE N'ITEGEKO NSHINGA)

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Text

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Re MUHOZA (IKIREGO KIGAMIJE KUVANAHO INGINGO INYURANYIJE N'ITEGEKO NSHINGA) [Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/CIV 0001/13/CS (Kayitesi, P.J., Mutashya, Mukanyundo, Kayitesi R, Hatangimbabazi, Kanyange, Mukandamage, Rugabirwa na Munyangeri, J.) 25 Ukwakira 2013] Itegeko Nshinga – Amategeko anyuranyije n'Itegeko Nshinga – Ikirego kigamije gukuraho igika cya kabiri cy'ingingo ya 176 y'itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi – Igihe umwe mubashakanye aburanye umutungo bahuriyeho aba ahagarariye mugenzi we bawusangiye–Kutemerera uwashakanye n'umuburanyi gutambamamira urubanza si ukumwambura uburenganzira ku mutungo buteganywa n'Itegeko Nshinga – Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2004 nkuko ryavuguruwe kugeza ubu , ingingo29 – Itegeko n° 22/99 ryo kuwa 12/11/1999 ryuzuzwa igitabo cya mbere cy'urwunge rw'amategeko

mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, ingingo ya 17. Incamake y'ikibazo: Karekezi Augustin, umugabo wa Muhoza Consolée yaburanye mu Rukiko Rwisumbuye rwa Gasabo isambu yabo yavugaga ko yabohojwe maze aratsindwa. Umuhiza Consolée yatambamiye urwo rubanza ariko asaba Urukiko kuba ruretse gufata icyemezo akabanza gutanga ikirego mu Rukiko rw'Ikirenga gisaba kuvanaho igika cya 2 cy'ingingo ya 176, y'Itegeko n°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi kuko kinyuranyije n'ingingo ya 29 y'Itegeko Nshinga. Mu kirego yashyikirije Urukiko rw'Ikirenga yasobanuye ko ingingo ya 176 mu gika cya mbere, y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru, ivuga ko abemerewe gutambamira urubanza ari abafite inyungu iyo ariyo yose mu rubanza rwaciye, ariko igika cya kabiri cy'iyi ngingo kikaba kitemerera uwashakanye n'umuburanyi kuba yatambamira urubanza, kikaba rero kivuguruza ibiteganywa n'ingingo ya 29 y'Itegeko Nshinga iteganya ko "buri muntu afite uburenganzira ku mutungo we bwite, waba uwe ku giti cye cyangwa uwo afatanyije n'abandi", bityo iyi ngingo ikaba imwaka uburenganzira ahabwa n'Itegeko Nshinga, mu gihe afite uburenganzira kubutaka bw'umugabo we. Incamake y'icyemezo: Igika cya kabiri, ingingo ya 176 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ntaho inyuranyije n'ingingo ya 29 y'Itegeko Nshinga, kuko mugihe umwe mubashakanye aburanye umutungo ahuriyeho na mugenzi we aba amuhagarariye kuburyo atahindukira ngo atambamire urwo rubanza kuko byaba binyuranyije n'icyo iyo nzira yashyirweho. Ikirego nta shingiro gifite. Amagarama y'urubanza aherereye kurega. Amategeko yashyingiweho: Itegeko nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2004 nk' uko ryavugururwe kugeza ubu, ingingoya 29.

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Itegeko n° 22/99 ryo kuwa 12/11/1999 ryuzuzanya igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, ingingo ya 17. Nta manza zifashishijwe. Inyandiko z'abahanga zifashishijwe: SERGE Guichard, Droit et Pratique de la procédure civile, Dalloz, 5^e, 2006, pp.1158,1163. Urubanza I. IMITERERE Y'URUBANZA [1] Umugabo wa Muhoza Consolée witwaga Karekezi Augustin yareze Irambona Alphonse mu Rukiko rw'Ibanze avugaga ko yabohojwe isambu ye, urwo rukiko rwemeza ko Irambona agomba gusubiza Karekezi iyo sambu, ajuririra mu Rukiko Rwisumbuye rwa Gasabo rwemeza ko urubanza rwajuririwe ruhindutse mu ngingo zarwo zose, ko habaye isaranganya ry'iyi sambu buri ruhande rukaba rugomba kugumana aho rwahawe. [2] Urwo rubanza umugabo we yatsinzwemo, Muhoza Consolée yararutambamiye mu Rukiko Rwisumbuye rwa Gasabo ariko asaba ko urukiko rwaba ruretse gufata icyemezo akabanza gutanga ikirego mu Rukiko rw'Ikirenga gisaba kuvanaho ingingo ya 176, igika cya kabiri y'Itegeko n°21/2012 ryo kuwa 14/06/2012 rigena imiburanishirize y'imanza z'imbonezamubano, izubucuruzi, iz'umurimo n'iz'ubutegetsi. [3] Me Nizeyimana Léopold yatanze ikirego mu Rukiko rw'Ikirenga mu mwanya wa Muhoza Consolée, asaba ko ingingo ya 176, igika cya kabiri y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru yavanwaho kuko inyuranyije n'Itegeko Nshinga, ikananyuranya n'ingingo za 35 na 36 z'Itegeko-Ngenga n° 08/2005 ryo kuwa 14/07/2005

rigena imikoreshereze n'imirungire y'ubutaka mu Rwanda. [4] Ikirego cya Muhoza Consolée cyasuzumwe mu iburanisha ryo kuwa 31/07/2013 Me Nizeyimana Léopold amuhagarariye, Minisitiri y'Ubutabera yari yasabwe gutanga ibitekerezo ihagarariwe n'Intumwa ya Leta, Me Rubango Epimague. [5] Me Nizeyimana yahawe umwanya yibutsa ikirego yatanze mu mwanya wa Muhoza Consolée, anavuga ko igice cy'ikirego kirebana n'ingingo za 35 na 36 z'Itegeko-Ngenga n° 08/2005 ryo kuwa 14/07/2005 rigena imikoreshereze n'imirungire y'ubutaka mu Rwanda akihoreye kuko iryo tegeko ryavuyeho, hagasuzumwa gusa ikirebana n'ingingo ya 176, igika cya kabiri y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru, bityo ikirego uru rukiko rugomba gusuzuma kikaba ari icyerekeye iyo ngingo yonyine. [6] Me Rubango Epimague nawe yasobanuye igitekerezo cya Minisitiri y'Ubutabera ku kirego cya Muhoza Consolée. Ku byerekeye iyakirwa ry'ikirego n'ububasha bw'urukiko. [7] Inyandiko ziri muri dosiye zigaragaza ikiregerwa, itariki ikirego cyatangiyeho hamwe n'umukono wa Me Nizeyimana wagitanze mu izina rya Muhoza Consolée. Zigaragaza kandi impamvu ikirego gishingiyeho n'ingwate y'amagarama yatanze na Muhoza Consolée.

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Uwareze yatanze kandi kopi y'igazeti ya Leta yo kuwa 16/07/2012 irimo ingingo y'itegeko asaba ko ivanwaho, bityo ibisabwa n'ingingo ya 54 y'Itegeko Ngenga n° 003/2012 ryo kuwa 13/06/2012 rigena imitunganirize, imikorere n'ububasha by'Urukiko rw'Ikirenga bikaba byarubahirijwe. [8] Muhoza Consolée afite kandi inyungu muri uru rubanza kuko avuga ko ingingo y'itegeko asaba ko ivanwaho asanga imubangamira kuko itamwemerera gutambamira urubanza umugabo we yatsinzwemo kandi ikiburanwa ari isambu y'umuryango nawe afiteho uruhare. [9] Ku byekeranye n'Uububasha bw'Urukiko rw'Ikirenga, ingingo ya 53 y'Itegeko Ngenga n° 003/2012 ryavuzwe haruguru iteganya ko "Urukiko rw'Ikirenga ari rwo ruburanisha ibirego byerekeranye no gusaba gukuraho Itegeko Ngenga, itegeko, itegeko-teka cyangwa itegeko ryemerera kwemeza amasezerano mpuzamahanga, haba kubikuraho byose cyangwa se zimwe mu ngingo zaryo zinyuranije n'Itegeko-Nshinga", bityo ikirego Muhoza Consolée yatanze kikaba kiri mu bubasha bw'Urukiko rw'Ikirenga. II. ISESENGURA RY'IKIBAZO KIRI MU RUBANZA Kumenya niba ingingo ya 176, igika cya kabiri, y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, inyuranije n'ingingo ya 29 y'Itegeko Nshinga. [10] Me Nizeyimana Léopold avuga ko ingingo ya 176, igika cya mbere, y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru, ivuga ko abemerewe gutambamira urubanza ari abafite inyungu iyo ariyo yose mu rubanza rwaciye, ko ariko igika cya kabiri cy'iyi ngingo kitemerera uwashakanye n'umuburanyi kuba yatambamira urubanza, kikaba rero kivuguruzwa ibiteganywa n'ingingo ya 29 y'Itegeko Nshinga iteganya ko "buri muntu afite uburenganzira ku mutungo we bwite, waba uwe ku giti cye cyangwa uwo afatanyije n'abandi". [11] Asobanura ko ingingo y'Itegeko itashobora kvanaho uburenganzira Muhoza Consolée ahabwa n'Itegeko Nshinga kuko afite uburenganzira ku isambu umugabo we yatanze atabyemeye, ariko ingingo ya 176, igika cya kabiri ikaba itamwemerera gukurikirana umutungo we mu nkiko ngo kuko uwo bashakanye yawutsindiye. [12] Na none kandi ngo ntabwo umuryango wagereranywa na sosiyete y'ubucuruzi nk'uko Intumwa ya Leta ibivuga kuko udafite ubuzima

gatozi, ko kandi mu gihe Karekezi yaburanye agatsindwa uwo bashakanye atabizi, agomba kugira inzira yanyuramo kugira ngo akurikirane umutungo afiteho uburenganzira. [13] Me Rubango Epimaque avuga ko ingingo ya 176, igika cya kabiri, y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru itanyuraniye n'ingingo ya 29 y'Itegeko Nshinga kuko umutungo Muhoza Consolée avuga atari uwe bwite ahubwo ari uw'umuryango afatanyije n'abandi, ko mu gihe umuryango ufite uwuhagarariye akaba ari nawe wawuburanye mu nyungu z'umuryango, ntaho ibyo binyuraniye n'Itegeko Nshinga. [14] Avuga ko kuba ingingo isabirwa kuvanwaho itanga uburenganzira bwo gukurikira umutungo w'umuryango, ariko ikanagena ko iyo wakurikiranywe n'umwe mu babifitiye uburenganzira, bidakwiye ko nyuma y'aho abandi bose umwe kuri umwe nawe akurikirana ibyakurikiranywe n'uwari uhagarariye inyungu z'umuryango. Ko agereranya ibimaze

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kuvugwa na sosiyete igizwe n'abanyamigabane benshi ifite uyihagararira mu rwego rw'amategeko, ko nyuma y'urubanza rureba inyungu za sosiyete, buri wese mu banyamigabane atashoza urwe rubanza ku cyaburanwe kireba inyungu rusange zabo. [15] Asobanura ko agace k'ingingo isabirwa kuvaho kagiyeho kugira ngo imanza zijye zigira iherezo kuko bitakumvikana ko urubanza rwajya rwitwa ko rurangiye burundu ari uko buri muntu mu muryango ategereje ko rucibwa kugira ngo nawe atange ikirego cye gituma urubanza rwa mbere rwongera kuburanishwa, ko urubanza ruburanywe mu nyungu z'umuryango ruba rureba abo mu muryango bose baba banafite inshingano yo kuba baruzi, banafite uburenganzira bwo kuruburana mu buryo bumvikanyeho. UKO URUKIKO RUBIBONA. [16] Ingingo ya 29 y'Itegeko Nshinga iteganya ko "Buri muntu afite uburenganzira ku mutungo bwite, waba uwe ku giti cye cyangwa uwo afatanyije n'abandi" naho ingingo ya 176 y'itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi igateganya ko "umuntu wese utareze cyangwa ngo aregwe mu rubanza ariko afite inyungu iyo ari yo yose muri rwo, ashobora gutambamira urwo rubanza rumurenganya ngo rusubirwemo iyo, ari we cyangwa ari n'abo ahagarariye nta warutumiwemo", igika cyayo cya kabiri kigateganya ko "Ibivugwa mu gika cya mbere cy'iyi ngingo ntibireba uwashakanye n'umuburanyi cyangwa abana babo mu gihe ikiburanwa ari umutungo w'umuryango". [17] Ku birebana n'imicungire y'umutungo w'abashyingiranwe, ingingo ya 17 igika cya kabiri, y'Itegeko n° 22/99 ryo kuwa 12/11/1999 ryuzuza igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, iteganya ko "mu buryo bw'ivangamutungo rusange cyangwa ubw'ivangamutungo w'umuhahano, abashyingiranywe bumvikana ku ucunga umutungo bahuriyeho, bafite kandi ububasha bungana bwo kuwukurikirana no kuwuhagararira". [18] Ingingo imaze kuvugwa iha abashyingiranywe uburenganzira bwo kugena uburyo umutungo bahuriyeho uzacungwa, bakihitiramo uzawucunga yaba umugore cyangwa umugabo. Iyo ngingo ibaha kandi ububasha bungana bwo gukurikirana uwo mutungo no kuwuhagararira, bivuze ko yaba umugore cyangwa umugabo ashobora gukoresha ubwo bubasha mu nyungu z'umuryango, bitabaye ngombwa ko abigaragariza uburenganzira yahawe n'uwo bashyingiranywe mu gihe

babana mu buryo bwemewe n'amategeko. [19] Iyo ngingo yumvikanisha kandi ko mu gihe abashyingiranywe bahisemo ivangamutungo rusange cyangwa ivangamutungo w'umuhahano, uwo mutungo uba ari uw'umugabo n'umugore washyizwe hamwe kugira ngo utunge umuryango, bivuze ko udashobora kugabanywa (indivisible) ku buryo ari umugabo cyangwa umugore ntawavuga ko awufiteho uruhare yihariye. [20] Kuba rero umwe mu bashyingiranywe ashobora gukurikirana mu rubanza umutungo ahuriyeho na mugenzi we kandi ugenewe gutunga umuryango, bigomba kumvikana ko aba yabikoze ahagarariye uwo bawusangiye ku buryo utaragiye mu rubanza atafatwa nk'umuntu utarareze cyangwa ngo aregwe uvugwa mu ngingo ya 176, igika cya mbere, y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru.

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[21] Ibimaze kuvugwa bihura kandi n'ibyanditswe n'umuhanga mu mategeko Serge Guinchard abishingiye ku biteganywa n'ingingo ya 1421 y'amategeko mbonezamubano yo mu gihugu cy'Ubufaransa nayo iteganya ko umugore n'umugabo bafite uburenganzira bungana ku micungire y'umutungo basangiye, akavuga ko muri icyo gihe gutambamira urubanza gukoze n'umwe mu bashakanye utaraburanye kutagomba kwakirwa hatiriwe harebwa niba ari umugore cyangwa umugabo¹. [22] Kuba rero umwe mu bashakanye yarahagarariye mu rubanza rurebana n'umutungo w'umuryango, ntiyahindukira ngo arutambamire kuko byaba binyuranije n'icyo iyo nzira yashyiriweho nk'uko bivugwa mu gika cya mbere cy'ingingo yasabiwe kuvanwaho, binahura n'ibyanditse n'abahanga mu mategeko nabo bagaragaza ko iyo nzira y'ubujurire idasanzwe igenewe gusa abantu batabaye ababuranyi, haba ku giti cyabo cyangwa bahagarariye². [23] Hashingiye ku byasobanuwe byose, Urukiko rurasanga ntaho ingingo ya 176, igika cya kabiri, y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi inyuranije n'ingingo ya 29 y'Itegeko Nshinga. III. ICYEMEZO CY'URUKIKO [24] Rwemeye kwakira ikirego cya Muhoza Consolée kuko cyatanze mu buryo bwemewe n'amategeko; [25] Rwemeje ko nta shingiro gifite; [26] Rwemeje ko ingingo ya 176, igika cya kabiri, y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, itanyuranije n'ingingo ya 29 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nk'uko ryavugururwe kugeza ubu; [27] Rutegetse Muhoza Consolée gutanga amagarama y'urubanza angana na 9.600 Frw, atayatanga mu gihe cy'iminsi umunani, ayo mafaranga akavanwa mu byo byakomeye ku ngufu za Leta.

1 Chacun des époux administre les biens communs de telle sorte que la tierce opposition de l'époux non partie au procès est irrecevable, sans qu'il y'ait plus aujourd'hui à observer s'il s'agit du mari ou de la femme : Droit et Pratique de la procédure civile, Sous la direction de Serge Guichard, Dalloz, cinquième édition 2006, p.1163 2 S'agissant d'une voie de recours exceptionnelle destinée uniquement à protéger ceux, qui sans avoir été appelés au procès, peuvent pâtir de son résultat, l'accès doit être réservé aux personnes, qui n'ont effectivement pas été parties, soit directement ou par représentation au débat judiciaire: Droit et Pratique de la procédure civile, Op.Cit., p.1158.

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