

RWANDA / JUDGMENT

Re TUYISHIME

RC00002/2024/SC

COURT

Supreme Court

DECIDED

9 May 2025

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Re TUYISHIME

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Text

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Re TUYISHIME [Rwanda URUKIKO RW'IKIRENGA – RC00002/2024/SC (Muhumuza, P.J., Kalihangabo na Kazungu J.) 09 Gicurasi 2025] Amategeko yerekeye imiburanishirize y'imanza Mbenezamubano – gutanga ikirego – Kwakira ikirego – Ikirego cyakirwa mu rukiko iyo urega afite ububasha, inyungu n'ubushobozi byo kurega keretse igihe itegeko ribiteganyanya ukundi. Bityo, umwana utanze ikirego mu izina rye akuriranye umutungo w'umuryango kandi hari umwe mu babyeyi be wasigaye aba atanze ikirego mu buryo bunyuranyije n'Amategeko kuko nta bubasha abifitiye. Incamake y'ikibazo: Uru rubanza rwatangiye Tuyishimearegera Urukiko rw'Ubujurire ikirego cyo gucyemura ikibazo cy'ivuguruzanya ry'imanza ariko rurwohereza mu Rukiko rw'Ikirenga kuko hafashwe umurongo ko arirwo rufite ububasha ku bibazo nkibi. Tuyishime avuga ko umubyeyi we Bivumbuka yapfuye, asize imanza yaburanye zivuguruzanya ku buryo zarangijwe nabi. Avuga ko Imanza zivuguruzanya zerekereye n'umurima uri ahitwa i Nyarusange: zimwe muri izo zemeje ko ari uwa Kanyanja, izindi zemeza ko ari uwa Bivumbuka, arizo urubanza RCA337/56/85 rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Kibuye ku wa 16/12/1989, n'urubanza RC30/R9/2000 rwaciwe n'Urukiko rwa Kanto ya Mwendo ku wa 22/01/2002. Urukiko rwabanje gusuzuma inzitizi y'iburabubasha bwa Tuyishime yatanzwe n'uhagarariye

Nyirinkindi wabaye umuburanyi muri izo manza. avuga ko ubwo bubasha bufitwe n'umubyeyi we ukiriho Mukasine, umupfakazi wa Bivumbuka. Avuga ko yagombaga gutanga ikirego mu izina izina rya nyina, we akagaragara mu rubanza nk'umuhagarariye. Tuyishime asubiza ko afite ububasha n'inyungu byo gutanga iki kirego kuko ari umuzungura wo ku rwego rwa mbere, akaba kandi yarabihereye uburenganzira n'inama y'umuryango. Urukiko mu rubanza RC00002/2024/SC rwemeje ko Tuyishime atari we wari kuregera ivuguruzanya ry'imanza, kuko ubwo burenganzira bufitwe n'umubyeyi we Mukasine. rwemeza ko kuba nta bubasha Tuyishime afite, ikirego cye kitakwagirwa. Incamake y'icyemezo: Ikirego cyakirwa mu rukiko iyo urega afite ububasha, inyungu n'ubushobozi byo kurega keretse igihe itegeko ribiteganywa ukundi. Bityo, umwana utanze ikirego mu izina rye akuriranye umutungo w'umuryango kandi hari umwe mu babyeyi be wasigaye aba atanze ikirego mu buryo bunyuranyije n'Amategeko kuko nta bubasha abifitiye. Ikirego cyo kuvuguruzanya kw'imanza ntabwo cyakiriwe ngo gisuzumwe. Amategeko yshingiweho: Itegeko N°22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe, Ingingo ya 3; Ingingo ya 111 Itegeko N°27/2016 ryo kuwa 08/07/2016 ryagengaga imicungire y'umutungo w'abashyingiranywe, impano n'izungura, Ingingo ya 76, igika cya 1, 1°, ingingo ya 2, igika cya 1, 5°, Ingingo ya 8, igika cya 2, Nta manza zifashishijwe. Urubanza RC00001/2023/SC, haburana Rutayisire Jean de Dieu na Mukankurikiyimana Béatrice na bagenze be rwaciwe n'Urukiko rw'Ikirenga kuwa 28/07/2023,

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Inyandiko z'abahanga zifashishijwe: Paul Delnoy, Précis de droit civil, Les libéralités et les successions, Liège, Collection de la Faculté de droit de l'Université de Liège, 2009, 3è édition, p.98, n°59 Urubanza.

I. IMITERERE Y'URUBANZA [1] Tuyishime Samuel yatanze ikirego, kuwa 29/02/2024, mu Rukiko rw'Ubujurire aregera gukemura ikibazo cy'ivuguruzanya ry'imanza, cyandikwa kuri PST RC00023/2024/CA, urubanza rwoherejwe mu Rukiko rw'Ikirenga rwandikwa kuri RC00002/2024/SC hashingiwe ku murongo warwo wemeje ko ari rwo rufite ububasha bw'akurikiranye umu gukemura ukuvuguruzanya kuri hagati y'imanza zaciwe mu rwego rwa nyuma. [2] Tuyishime Samuel avuga ko umubyeyi we Bivumbuka Aloys yapfuye, kuwa 23/02/2021, asize imanza yaburanye zivuguruzanya ku buryo zarangijwe nabi. [3] Imanza zivuguruzanya zerekeranye n'umurima uri ahitwa i Nyarusange : zimwe muri izo zemeje ko ari uwa Kanyanja, izindi zemeza ko ari uwa Bivumbuka Aloys. [4] Imanza zemeje ko uyu murima ari uwa Kanyanja ni : RCA337/56/85 rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Kibuye kuwa 16/12/1989, haburana Kandamo na Bivumbuka, na Kanyanja na Mukarubuga barugobotsemo. icyemezo muri uru rubanza cyanditse gitya : « Rwemeje ko umurima w'i Nyagasizi (...) ukaba ugomba kuba uwa Bivumbuka (...) uw'i Nyarusange Kanyanja akaba awuragiriye Mukandamutsa, (...) Kanyanja akaba akwiye kuwusubirana (...). Rwemeje ko Bivumbuka atsindiye imirima (...) n'uw'i Nyarusange ». [5] Hari n'urubanza RC30/R9/2000 rwaciwe n'Urukiko rwa Kanto ya Mwendo kuwa 22/01/2002, haburana Twagiramungu na Kanyanja, icyemezo cyanditse gitya : « Rwemeje ko umurima waburanwaga (uw'i Nyarusange) nk'uko ibimenyetso byatanze mu rubanza hamwe

n'abagabo babajijwe bigaragaza ko ari uwa Nyirinkindi atuyemo kuva 1991 (...) ». [6] Uru rubanza Twagiramungu yarujuririye mu Rukiko rw'Intara ya Kibuye rwandikwa kuri RCA119/72/2002–RCA0184/4/TP/KBY,hago- botsemo kandi Bivumbuka ; maze rucibwa ku wa 10/08/2005, Urukiko rwemeza ko :« ahaburanwa ari aha Kanyanja yahatsindiye mu rubanza RCA337/56/85 mu gihe yarugobokagamo (...), rutegeka ko urubanza rwajuririwe rudahindutse mu ngingo zarwo zose ». [7] Uru rubanza Twagiramungu na Bivumbuka bongeye kurujuririra ruhabwa RCA0318/06/HC/RSZ–RCAA0789/05/HC/RUH, rucibwa n'Urukiko Rukuru rwa Repubulika, Urugereko rwa Rusizi ku wa 30/05/2008 rwemeza ko : « ubujurire nta shingiro kuko umurima uburanwa Kanyanja yawutsindiye mu rubanza RCA337/56/85 rwaciwe ku wa 16/12/1989 kandi rwabaye itegeko kuko rutigeze rusabirwa iseswa. Rwemeje ko imikirize y'urubanza rwajuririwe idahindutse uretse ku byerekeye amagarama n'indishyi ». [8] Imanza zemeje ko umurima w'i Nyarusange ari uwa Bivumbuka Aloys, ni izikurikira : RC0103/12/TB/TWB–RC0104/12/TB/TWB,haburana Bivumbuka waregaga Kanyanja na Uzamushaka ; rwaburanishijwe abaregwa badahari rucibwa n'Urukiko rw'Ibanze rwa Twumba ku wa

1 Ni mwene Bivumbuka Aloys na Mukasine Foibi. 2 RC00001/2023/SC, rwaciwe ku wa 28/07/2023, haburana RUTAYISIRE Jean de Dieu na MUKANKURIKIYIMANA Béatrice na bagenzi be 3 Niwe wawuhaye Nyirinkindi Onesphore umuhungu we.

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31/05/2012, mu byo rwemeje harimo ko : « imirima Bivumbuka Aloys yaregeye ariyo umurima w'i Nyarusange, umurima w'i Nyagasozi ari iye yose ». [9] Kanyanja na Uzamushaka basubirishijemo urubanza ikirego cyabo cyandikwa kuri RC0180/12/TB/TWB, urubanza rwaciwe ku wa 10/09/2012, Urukiko rwemeza ko batagaragaje impamvu ikomeye yatumye batitaba, baratsindwa ; Kanyanja na Uzamushaka bajuririye uru rubanza mu Rukiko Rwisumbuye rwa Karongi ubujurire bwandikwa kuri RCA0659/12/TGI//KGI– 0660/12/TGI/KGI, Urukiko rwaciye urubanza ku wa 28/03/2013, rwemeza ko ubujurire bwabo nta shingiro bwahabwa kuko batatanze ikimenyetso cy'impamvu ikomeye yababujije kwitaba ubwo dosiye yaburanishwaga badahari; Kanyanja yasubirishijemo uru rubanza ingingo nshya mu Rukiko Rwisumbuye rwa Karongi, ikirego cyandikwa kuri RCA0173/13/TGI/KGI, urubanza rwaciwe ku wa 30/12/2013, Urukiko rwemeza ko ikirego cye nta shingiro gifite. [10] Iburanisha ry'urubanza ryabaye mu ruhame ku wa 08/04/2025, hitabye Tuyishime Samuel, yunganiwe na Me Murera Paulin, Me Manirakiza Claude ahagarariye Nyirinkindi Onesphore naho Uzamushaka Anastasie na Twagiramungu Célestin batitabye. Urukiko rwahaye ijambo ababuranyi bitabye kugira ngo bagire icyo bavuga ku batitabye, bose basaba ko urubanza rwaburanishwa kuko abasibye bari batumiwe mu nama ntegurarubanza ntibitaba; rwemeje ko urubanza rugomba kuburanishwa kuko abatitabye bahamagajwe mu buryo bwubahirije amategeko. Urukiko rwamenyesheje ababuranyi ko uhagarariye Nyirinkindi Onesphore yatanze inzitizi y'iburabubasha bwa Tuyishime Samuel akaba ari yo yasuzumwe hamwe n'indishyi zisabwa mu rubanza. II. IBIBAZO BIGOMBA GUSUZUMWA N'ISESENGURA RYABYO Kumenya niba Tuyishime Samuel afite ububasha bwo kuregera ivuguruzanya ry'imanza zaburanywe na se Bivumbuka Aloys atari yapfa, mu gihe umupfakazi wa nyakwigendera akiriho [11] Me Manirakiza Claude uhagarariye Nyirinkindi Onesphore avuga ko Tuyishime Samuel nta

bubasha afite bwo gutanga iki kirego kuko ubwo bubasha bufitwe n'umubyeyi we ukiriho Mukasine Foyibi, umupfakazi wa Bivumbuka Aloys. Avuga ko n'ubwo umuryango waba waramuhaye uburenganzira bwo gukurikirana ikibazo cy'imanza zaburanywe na Bivumbuka Aloys akiriho, bitavuze ko yari gutanga ikirego mu izina rye ahubwo yari kugitanga mu izina rya nyina, we akagaragara mu rubanza nk'umuhagarariye. Asobanura ko ibi abishingira ku ngingo ya 76 y'itegeko N°27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izu- ngura, ryariho igihe yatangaga ikirego. [12] Tuyishime Samuel asubiza ko afite ububasha n'inyungu byo gutanga iki kirego kuko ari umuzungura wo ku rwego rwa mbere, akaba kandi yarabihereye uburenganzira n'inama y'umuryango yateranye ku wa 13/02/2023. Asoza avuga ko ikirego yatanze cyubahirije ibiteganywa n'ingingo ya 3 n'itegeko N°22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe, iteganya ko kugira ngo ikirego cyakirwe ugitanze agomba kuba afite inyungu, ububasha n'ubushobozi. UKO URUKIKO RUBIBONA [13] Ingingo ya 3 y'itegeko N°22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe, iteganya ko : "Ikirego cyakirwa mu rukiko iyo urega afite ububasha, inyungu n'ubushobozi byo kurega keretse igihe itegeko ribiteganywa ukundi (...)"

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- [14] Ingingo ya 76, igika cya 1, 1°, y'itegeko N°27/2016 ryo ku wa 08/07/2016 ryagengaga imicungire y'umutungo w'abashyingiranywe, impano n'izungura4, igihe ikirego cyatangwaga yateganyaga ko : "Abashyingiranywe bafitanye amasezerano y'ivangamutungo rusange bazungurwa mu buryo bukurikira: 1° iyo umwe apfuye usigaye yegukana umutungo wose akubahiriza inshingano yo kurera abana babo n'ab'uwapfuye bemewe n'amategeko". [15] Ingingo ya 8, igika cya 2, y'iri tegeko yo iteganya ko iyo iseswa ry'ivangamutungo rusange ribaye kubera urupfu rw'umwe mu bashyingiranywe, umutungo wegukanwa n'uwapfakaye kugeza igihe izungura rikorewe. [16] Ingingo ya 2, igika cya 1, 5°, y'iri tegeko na none iteganya ko umutungo ari ibintu bifatika n'ibidafatika, imyenda, hamwe n'uburenganzira n'inshingano abifiteho; agace ka 6° k'iyi ngingo ko gateganywa ko umutungo uzungurwa ari umutungo wose usizwe n'uwapfuye kandi wemerewe kuzungurwa. [17] Umuhanga mu mategeko, Paul DELNOY asobanura ko umutungo uzungurwa ari ibyo uwapfuye yaratunze asize bishobora kubarurwa bigahabwa agaciro cyangwa ako gaciro kakamenyekana n'inshingano ze5. [18] Dosiye y'urubanza irimo inyandiko mvugo y'inama y'umuryango igaragaza ko Bivumbuka na Mukasine bashyingiranywe; mu mwaka wa 1999 hatangajwe Itegeko rya mbere mu Rwanda ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura6 7; kuva aho iri tegeko rigiriyeho kuko kandi ababyeyi ba Tuyishime Samuel batahisemo uburyo bwo gucunga umutungo wabo nk'uko iryo tegeko ryabiteganyaga, hashingiwe ku ngingo ya 2, igika cya 2, ya ryo bafatwa nk'abashyingiranywe mu ivangamutungo rusange. [19] Urukiko rusanga inyandiko yakira ikirego yakozwe ku itariki ya 12/04/2024 igaragaza ko ikirego cyatanzwe na Tuyishime Samuel, icyo kirego kikaba ari nacyo cyari cyaratanzwe mu Rukiko rw'Ubujurire. [20]

Rurasanga nyamara inama y'umuryango yateranye ku wa 13/02/2023, yarahaye Tuyishime Samuel, mu nyungu z'umuryango, uburenganzira bwo gukurikirana ikibazo cy'imanza zivugwa; yemeje ndetse ko azasubizwa amafaranga azatanga ku munyamategeko uzamufasha kuri uwo murimo ahawe. Abazungura biyemeje kandi kumuha inkunga yose azakenera kugira ngo inshingano ahawe ayisozze neza. [21] Urukiko rusanga hashingiwe ku ngingo z'amategeko zavuzwe, Mukasine Foibi ari we ufite uburenganzira ku mutungo wose wasizwe na Bivumbuka Aloys, bityo akaba ari nawe ufite uburenganzira bwo kuregera ivuguruzanya rivugwa mu manza zaruregwe. [22] Urukiko rurasanga iyo ikirego gitangwa mu izina rya Mukasine Foibi uhagarariwe na Tuyishime Samuel byari kuba ari byo bihuye n'amategeko n'umwanzuro wafatiwe mu nama y'umuryango yavuzwe.

4 Iri tegeko ryavanyweho n'itegeko n°71/2024 ryo ku wa 26/06/2024 rigenga abantu, umuryango, impano n'izungura. 5 « (...) l'objet de la succession est le patrimoine, c'est-à-dire toutes les prérogatives estimables et toutes les obligations dont le défunt est titulaire à son décès. » (Paul Delnoy, Précis de droit civil, Les libéralités et les successions, Liège, Collection de la Faculté de droit de l'Université de Liège, 2009, 3^e édition, p.98, n°59). 6 Itegeko n°22/99 ryo ku wa 12/11/1999 ryuzuzanya igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igitabo cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura. 7 Iri tegeko ryavanyweho n'itegeko n°27/20216 rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura, naryo rivanwaho n'itegeko n°71/2024 ryo ku wa 26/06/2024 rigenga abantu n'umuryango.

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[23] Urukiko rusanga hashingiwe ku mategeko yibukijwe n'ibisobanuro byatanzwe, Tuyishime Samuel atari we wari kuregera ivuguruzanya ry'imanza zivugwa muri dosiye, kuko ubwo burenganzira bufitwe n'umubyeyi we Mukasine Foibi. Bityo kuba nta bubasha Tuyishime Samuel afite, ikirego cye kikaba kitakwagirwa. Kumenya niba hari indishyi zatangwa muri uru rubanza [24] Nyirinkindi Onesphore asaba indishyi zigizwe na 1.000.000Frw y'igihembo cy'Avoka na 500.000Frw y'ikurikiranarubanza. [25] Tuyishime Samuel avuga ko izi ndishyi nta shingiro kuko ikirego cye kiri mu nyungu z'ababuranyi bese, kigamije gukuraho urujijo ruterwa n'ivuguruzanya hagati y'imanza bahuriraho bese ko ndetse ajya gutanga iki kirego yabigiriwemo inama n'inzego za Leta zitandukanye harimo n'Umuvunyi Mukuru. UKO URUKIKO RUBIBONA [26] Ingingo ya 111 y'itegeko N°22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe, iteganya ko "Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyi ikirego cy'iremezo cyaba kitakiriwe" [27] Urukiko rusanga Nyirinkindi Onesphore yariyambaje Avoka wo kumufasha gutegura urubanza no kuruburana, akaba kandi atsinda urubanza kuko ikirego cya Tuyishime Samuel kitakiriwe, bityo akaba agomba guhabwa indishyi. [28] Urukiko rusanga ariko indishyi Nyirinkindi Onesphore asaba zikabije kuba nyinshi, bityo mu bushishozi bwa rwo

rumugeneye 500.000Frw y'igihembo cy'Avoka na 300.000Frw y'ikurikiranarubanza. III. ICYEMEZO CY'URUKIKO [29] Rwemeje ko ikirego cy'ivuguruzanya ry'imanza cyatanzwe na Tuyishime Samuel kitakiriwe. [30] Rutegetse Tuyishime Samuel kwishyura Nyirinkindi Onesphore indishyi zingana na 500.000Frw y'igihembo cy'Avoka na 300.000Frw y'ikurikiranarubanza.

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