SUCCESSION KABAGEMA v SIBORUREMA N'ABANDI

[Rwanda URUKIKO RW'UBUJURIRE – RS/INJUST/RC00016/2019/CA (Nyirandabaruta, P.J, Mukanyundo na Umugwaneza, J.) 4 Ukuboza 2020]

Amategeko agenga abantu n'umuryango – Ubutane – Ukwiyunga mu gihe hasabwe ubutane – Ukwiyunga kuvanaho impamvu zose z'ubutane, ari indemyagihugu n'impamvu yo kutakira ikirego, bashingira ko ukwiyunga gusigasira umuryango w'abashakanye ukongera kubaho, akaba ariyo mpamvu inzitizi ishingye kuri uko kwiyunga yatangwa aho urubanza rwaba rugeze hose ndetse n'umucamanza abyibwirije akaba ashobora kuyibyutsa.

Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko rwa Mbere rw'Iremezo rwa Gikongoro, Kabagema Annonciata arega Minani kumwambura imitungo itandukanye kandi ariwe mugore w'isezerano. Urukiko rwaciye urubanza ku wa 12/04/1987, rwemeza ko ibintu biburanwa bigize umutungo wa Minani n'umugore we Kabagema, bagomba kubitungana.

Uwitwa Mukanyangenzi umwe mubagore babanye na Minani bitemewe n'amategeko yatanze ikirego arega Minani asaba indezo z'abana babyaranye, muri urwo rubanza hagobokamo abandi bagore 2 babyaranye na Minani n'umugore we w'isezerano, Urukiko ruca urubanza rwemeza ko Minani atanga indezo y'amafaranga 1000 ku kwezi kuri buri mwana yabyaranye nabo bagore. Minani yajuririye Urukiko rw'ubujurire rwa Nyabisundi ruca urubanza yemeza ko indezo ku bana yabayaranye na Niyivuga ikurwa mu mutungo uri Rushorezo naho abo yabyaranye na Mukanyangenzi na Mukarajabo zikava mu muitungu iri I Kimpunga.

Nyuma y'urwo rubanza, Mianani yatanze ikirego mu Rukiko rwambere rw'Iremezo rwa Gikongoro asaba ubutane n'umugore we Kabagema. Urukiko rwemeza ko batanye. Kabagema yaje gusubirishamo urubanza Urukiko ntirwakira ikirego kuko yagitanze igihe cyararenze.

Kabagema yajuririye Urukiko rw'Ubujurire rwa Nyabisindu, mu rubanza Kabagema n'umugabo we Minan bamenyesheje Urukiko ko biyunze bagahitamo gukomeza kubana bakareka kuburana ubutane, Ubushinjacyaha burabishyigikira ndetse n'Urukiko rurabyemeza, ruvuga ko Kabagema yemerewe kureka urubanza ku mpamvu y'uko yiyunze n'umugabo we Minani bakareka inzira z'inkiko y'ubutane bagakomeza kubana.

Nyuma y'aho Minani apfiriye, Kabagema amaze kubona ko abana bahawe indezo barengeje imyaka 18, yatanze ikirego mu Rukiko rw'Ibanze rwa Kibeho, cy'inyandiko nsobanura kirego itanzwe n'umuburanyi umwe, asaba ko iyo ndezo ikurwaho. Urukiko rwanze kwakira ikirego cye, ruvuga ko nta bubasha afite bwo kuregera gukuraho indezo zatanzwe n'Urukiko. Kabagema yajuririye icyo cyemezo mu Rukiko Rwisumbuye rwa Nyamagabe, Urukiko rwemeza ko ikirego cye nta shingiro gifite, kuko nta bubasha afite bwo kuregera ko indezo zikurwaho kandi yaratandukanye n'umugabo we Minani.

Kabagema yajuririye imikirize y'urwo rubanza mu Rukiko Rukuru, Urugereko rwa Nyanza, ikirego cye nticyakirwa, nyuma arusubirishamo ingingo nshya nabwo ikirego nticyakirwa, nyuma yandikira Urwego rw'Umuvunyi, asaba ko urubanza rwaciwe n'Urukiko Rukuru rwa Nyanza rwasubirwamo ku mpamvu z'akarengane, ariko Urwego rw'Umuvunyi rusuzuma urubanza rwaciwe n'Urukiko Rwisumbuye rwa Nyamagabe, ku mpamvu y'uko ari rwo rwaciwe mu mizi.

Umuvunyi Mukuru yandikiye Perezida w'Urukiko rw'Ikirenga, amumenyesha ko urubanza rwaciwe n'Urukiko Rukuru ari rwo rwasabiwe gusubirishwamo ku mpamvu z'akarengane, ariko

hagasuzumwa urubanza rwaciwe n'Urukiko Rwisumbuye rwa Nyamagabe kuko ari rwo rwaciwe mu mizi kandi ari rwo rurimo akarengane, amusaba ko rwasubirwamo ku mpamvu z'akarengane.

Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, rusubirwamo ku mpamvu z'akarengane, ategeka ko rwohererezwa mu Rukiko rw'Ubujurire.

Abazungura ba Kabagema, bavuga ko akarengane kagaragarira ku kuba nk'iko zose zarirengajije Urubanza rw'Ubujurire ku butane Kabagema yatanze muri urwo rubanza akiyunga na Minani umugabo we, ubwo bwiyunge bukemezwa n'Urukiko bittyo bigatumas ubutanze bwari bwaratanzwe mu Rukiko rwa mbere rw'Iremezo buvanwaho, bityo Kabagema akaba yarafite uburenganzira n'ububasha busesuye ku mutungo we yashakanye na Minani. Me Mutabazi avuga kandi ko ibimenyetso byatanzwe n'abaregwa byasuzumanwa ubushishozi kubera ko urubanza rwa mbere rwasomwe mu 1997, Kabagema arajurira, ibyemezo byemeza ko Minani ari ingaragu bigatangwa mu mwaka wa 1998 imanza zigikomeza, kuko ubutane bwavuyeho burundu mu rubanza rwaciwe n'Urukiko rw'Ubujurire rwa Nyabisindu mu mwaka wa 2000, Kabagema na Minani bakongera bakabana, nyuma akaba ari bwo Kabagema yongeyeye gutanga ikirego cy'ubutane nticyakirwe.

Abaregwa bavuga ko Minani yaregeye ubutane mu Rukiko rwa Mbere rw'Iremezo akabuhabwa, Kabagema asubirishamo urubanza ikirego nticyakwakirwa kubera yatinze kugitanga, nyuma Kabagema ajurire mu Rukiko rw'Ubujurire aza kureka ikirego, Urukiko rwemeza ko atsinzwe, bivuze ko urubanza rw'ubutane rutigeze rukurwaho, ko mugihe habayeho ubutane abo bireba bakiyungira imbere y'Urukiko bakareka ikirego, bagomba kongera gusezerana imbere y'amategeko nk'uko biteganywa n'amategeko. Me Karinganire avuga kandi ko hari nibindi bimenyetso byo mu irangamimerere byatanzwe n'ubuyobozi bigaragaza ko batanye ko ikindi kimenyetso ari urubanza rwabaye itegeko rugaragaza aho Kabagema yongeyeye gutanga ikirego cy' ubutane, Urukiko rukemeza ko atsinzwe n'uko ubutane abusanganywe, akaba atarigeze arujuririra. Avuga kandi ko imanza zisaba gukuraho indezo zamutsinze bitewe n'uko byagaragaye ko nta bubasha afite, kuko Minani yapfuye nta mugore w' isezerano afite.

Incamake y'icyemezo: 1. Ukwiyunga kuvanaho impamvu zose z'ubutane, ari indemyagihugu n'impamvu yo kutakira ikirego, bashingira ko ukwiyunga gusigasira umuryango w'abashakanye ukongera kubaho, akaba ariyo mpamvu inzitizi ishingye kuri uko kwiyunga yatangwa aho urubanza rwaba rugeze hose ndetse n'umucamanza abyibwirije akaba ashobora kuyibyutsa, bityo rero Kabagema akaba yari afite ububasha bwo gukurikirana imitungo ya Minana bashakanye kuko batari bwa tane ndetse iyo mitungo harimo n'indezo.

Gusubirishamo urubanza ku mpamvu z'akarengane bifite ishingiro,
Urubanza rwasubirishijwemo ku mpamvu z'akarengane ruvanywehio.

Amategeko yashyimgiweho:

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 10 niya 111

Itegeko nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 2

Itegeko Nº 42/1988 ryo ku wa 27 ukwakira 1988 rishyiraho interuro y'ibanze n'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano, ingingo ya 175 n'iya 255

Nta manza zifashishijwe.

Inyandiko z'abahanga zifashishijwe:

Jean Carbonier, Droit Civil V I, introduction, les personnes, la famille, l'enfant, le couple, 1ed. 2004, Paris, P. 1296.

Urubanza

I.IMITERERE Y'URUBANZA

[1] Kabagema Annonciata yashakanye byemewe n'amategeko na Minani Célestin. Nyuma Minani Céléstin ashaka abandi bagore abaha ku mitungo bari bafitanye batabyumvikanyeho, bituma amakimbirane avuka hagati yabo.

[2] Imanza zatangiriye mu Rukiko rwa Mbere rw'Iremezo rwa Gikongoro, Kabagema Annonciata arega Minani Céléstin kumwabura imitungo itandukanye kandi ariwe mugore w'isezerano. Mu rubanza R.C. No 1270/3/85 rwaciwe ku wa 12/04/1987, Urukiko rwa Mbere rw'Iremezo rwa Gikongoro rwemeje ko ibintu biburanwa bigize umutungo wa Minani Céléstin n'umugore we Kabagema Annonciata, bagomba kubitungana.

[3] Ku wa 11/12/1992, Mukanyangezi, umwe mu bagore Minani yashatse bitemewe n'amategeko yatanze ikirego asaba indezo z'abana barindwi (7) yabyaranye na Minani, hagobokeshwamo Niyivuga, Mukarajabu na Kabagema Annonciata. Mu rubanza R.C. 10.963/25, Urukiko rwa Mbere rw'Iremezo rwa Gikongoro rwemeje ko Minani agomba gutanga indezo ya 1000 Frw ku kwezi kuri buri mwana utarageza ku myaka 18. Minani yajuririye icyo cyemezo, Urukiko rw'Ubujurire rwa Nyabisindu rwemeza ko ubujurire bwe bufite ishingiro, ko indezo ku bana ba Niyivuga igomba gukurwa mu mitungo ye iri Rushorezo, naho ku bana ba Mukanyangezi na Mukarajabu igakurwa mu isambu iri ahitwa i Kimpunga.

[4] Nyuma y'urwo rubanza, Minani yatanze ikirego asaba gutandukana n'umugore we Kabagema Annonciata, mu rubanza RC.0151/1/96 rwaciwe ku wa 30/01/1997, Urukiko rwa Mbere rw'Iremezo rwa Gikongoro rwemeza ubutane. Kabagema yarusubirishijemo, mu rubanza RC 0318/1/1997 rwaciwe n'urwo Rukiko ku wa 14/5/1998, rwemeza ko ikirego cye kitakiriwe kuko yarengeje igihe cyo kurusubirishamo.

[5] Kabagema Annonciata yajuririye urwo rubanza mu Rukiko rw'Ubujurire rwa Nyabisindu, mu rubanza RCA.8817/132 RC.0318/1/92 rwaciwe ku wa 16/05/2000, KABAGEMA Annonciata n'umugabo we Minan Célestin bamenyesha Urukiko ko biyunze bagahitamo gukomeza kubana bakareka kuburana ubutane, Ubushinjacyaha burabishyigikira ndetse n'Urukiko rurabyemeza, ruvuga ko Kabagema Annonciata yemerewe kureka urubanza ku mpamvu y'uko yiyunze n'umugabo we Minani Célestin bakareka inzira z'inkiko y'ubutane bagakomeza kubana.

[6] Nyuma y'aho Minani Célestin apfiriye, Kabagema Annonciata amaze kubona ko abana bahawe indezo barengeje imyaka 18, yatanze ikirego cy'inyandiko nsobanura kirego itanzwe n'umuburanyi umwe, asaba ko iyo ndezo ikurwaho. Mu rubanza RC 0055/14/TB/KBH- RC 0009/14/TB/KBH rwaciwe n'Urukiko rw'Ibanze rwa Kibeho ku wa 05/06/2014, urwo Rukiko rwanze kwakira ikirego cye, ruvuga ko nta bubasha Kabagema Annonciata afite bwo kuregera gukuraho indezo zatanzwe n'Urukiko. Kabagema yajuririye icyo cyemezo mu Rukiko Rwisumbuye rwa Nyamagabe, mu rubanza RCA 0091/RCA 0111/14/TGI/NYBE, rwaciwe ku wa 13/2/2015, urwo Rukiko rwemeza ko ikirego cye nta shingiro gifite, kuko nta bubasha afite bwo kuregera ko indezo zikurwaho kandi yaratandukanye n'umugabo we Minani.

[7] Kabagema Annonciata yajuririye imikirize y'urwo rubanza mu Rukiko Rukuru, Urugereko rwa Nyanza, ikirego cye nticyakirwa, nyuma arusubirishamo ingingo nshya nabwo ikirego nticyakirwa, nyuma ku wa 10/5/2016, yiyambaza Urwego rw'Umuvunyi, asaba ko urubanza RCAA 0096/15/HC/NYA rwaciwe n'Urukiko Rukuru rwa Nyanza rwasubirwamo ku mpamvu z'akarengane, ariko Urwego rw'Umuvunyi rusuzuma urubanza RCA0091/RCA 0111/14/TGI/NYBE rwaciwe n'Urukiko Rwisumbuye rwa Nyamagabe ku wa 13/02/2015, ku mpamvu y'uko ari rwo rwaciwe mu mizi.

[8] Kabagema Annociata, yagaragaje ko mu rubanza RCA 0091/RCA0111/14/TGI/NYBE rwaciwe n'Urukiko Rwisumbuye rwa Nyamagabe, rwemeje ko nta bubasha afite bwo kuregera gukuraho indezo rushingiye ku rubanza RC 0151/1/96 rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Gikongoro ku wa 30/1/1997, rwemeje ubutane hagati ye na Minani Célestin, rwirengagije ko yaretse ikirego kuko yari yiyunze n'umugabo we kandi bituma ikirego cy'ubutane kivanwaho, nk'uko ingingo za 255 y'Itegeko n°42/1988 ryo ku wa 28/10/1988 rigena interuro y'ibanze n'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano ibiteganya.

[9] Urwego rw'Umuvunyi rwasanze Kabagema Annonciata yararenganyijwe, kuko ingingo yagaragaje itigeze ivugwaho, maze ku wa 15/2/2017 Umuvunyi Mukuru yandikira Perezida w'Urukiko rw'Ikirenga, amumenyesha ko urubanza RCAA 0096/15/HC/NYA ari rwo rwasabiwe gusubirishwamo ku mpamvu z'akarengane, ariko hagasuzumwa urubanza RC 0091/RCA 0111/14/TGI/NYBE rwaciwe n'Urukiko Rwisumbuye rwa Nyamagabe kuko ari rwo rwaciwe mu mizi kandi ari rwo rurimo akarengane, amusaba ko rwasubirwamo ku mpamvu z'akarengane.

[10] Ku wa 2/10/2019, Perezida w'Urukiko rw'Ikirenga mu cyemezo N°187/09/2019, yemeje ko urubanza RCAA 0096/15/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 29/6/2026, rusubirwamo ku mpamvu z'akarengane, ategeka ko rwohererezwa mu Rukiko rw'Ubujurire, muri urwo Rukiko ikirego cy'akarengane ka Kabagema Annonciata gihabwa RS/INJUST/RC 00006/2019/CA.

[11] Uhagarariye abazungura ba Kabagema Annonciata asobanura akarengane ke avuga kuba we n'umugabo we Minani Célestin bariyunze byavanyeho ubutane bwari bwaratanzwe n'Urukiko rwa Mbere rw'Iremezo rwa Gikongoro, kubera iyo mpamvu, Kabagema Annonciata akaba yari afite uburenganzira bwo kugaruza imitungo Urukiko rwari rwarategetse ko izajya ivamo indezo y'abana Minani yabyaye hanze kugeza bagize imyaka 18 y'ubukure, ko iyo mitungo yagarurwa mu mitungo Minani Celetsin yari afitanye na Kabagema Annonciata, ikagabanwa abana bose nta vangura nk'uko amategeko abiteganya.

[12] Abaregwa bo bakavuga ko kuba harabaye urubanza rw'ubutane hagati ya Kabagema Annonciata na Minani Célestin, nta bubasha Kabagema Annonciata afite bwo gusaba gusubizwa imitungo Minani Célestin yahaye abana be bitegetswe n'Urukiko, ko kandi n'iyo Urukiko rwasanga afite ububasha, imitungo yarekerwa mu maboko y'abayifite kuko Kabagema Annonciata yari afite imitungo myinshi.

[13] Iburanisha mu ruhame ryateganyijwe ku wa 5/10/2020, ariko uwo munsi urubanza ntirwaburanishwa kuko Mporensenge Françoise wakomeje urubanza rw' umugabo we Ntibizera Jacques wapfuye atahamagajwe, rwimurirwa ku wa 28/10/2020, Sindikubwabo Emmanuel uhagarariye abazungura ba Kabagema Annociata ahagarariwe na Me Mutabazi Jackson naho abandi bazungura ba Minani Célestin barimo na Mporensenge Françoise bahagarariwe na Me Karinganire Steven na Me Rwabirinda Sylvestre.

II. IBIBAZO BIGARAGARA MU RUBANZA N'ISESENGURWA RYABYO

1) Kumenya niba Kabagema Annonciata yari afite ububasha bwo gusaba ko indezo Minani Célestin yategetswe guha abana be yakurwaho

[14] Me Mutabazi Jackson, avuga ko mu gutanga ikirego cye cy'ubujurire ku cyemezo cyafashwe mu rubanza RCA 0091/RCA0111/14/TGI/NYBE, Kabagema yagaragaje ko ingingo nyayo ubujurire bwe bwari bushingiyeho ari ukuba ubutane bwatanzwe bwaravanyweho n'urubanza, ko muri rumaze 3, Kabagema Annonciata yavuze ko yiyunze n'umugabo we, na Minani akavuga ko yiyunze n'umugore we, muri rumaze ya 4 Ubushinjacyaha bushyigikira icyo cyifuzo, agasanga urwo rubanza rwaravanyeho ubutane, ariko Urukiko Rwisumbuye rwa Nyamagabe n'Urukiko Rukuru, Urugereko rwa Nyanza kimwe n'Urukiko Rw'Ibanze rwa Nyamagabe zikirengagiza icyo cyemezo cyafashwe n'Urukiko, ntizite no ku biteganywa n'ingingo ya 255 y'Itegeko No 42/1988 ryo kuwa 28/10/1988 rigena Interuro y'ibanze n'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano ivuga ko:"Urubanza rwo gusaba gutana burundu ruzimangatanywa n'uko abashyingiranywe biyunze (L'action en divorce est éteinte par la réconciliation des époux), iyi ngingo ikaba ikuraho ubutane, bityo Kabagema Annonciata akaba afite uburenganzira n'ububasha busesuye ku mutungo we yashakanye na Minani Célestin.

[15] Me Mutabazi Jackson, avuga ko ibimenyetso byatanzwe n'abaregwa byasuzumanwa ubushishozi kubera ko urubanza rwa mbere rwasomwe ku ya 30/01/1997, Kabagema Annonciata arajurira, ibyemezo byemeza ko Minani Celetsin ari ingaragu bigatangwa mu mwaka wa 1998 imanza zigikomeza, kuko ubutane bwavuyeho burundu mu rubanza rwaciwe n'Urukiko rw'Ubujurire rwa Nyabisindu mu mwaka wa 2000, Kabagema Annonciata na Minani Célestin bakongera bakabana, nyuma akaba ari bwo Kabagema Annonciata yongeye gutanga ikirego cy'ubutane nticyakirwe.

[16] Me Karinganire Steven, avuga ko inzego zemeje akarengane kubera ko zari zifite amakuru y' uruhande rurega gusa, ko mu rubanza RC0151/01/96 rwo ku wa 30/01/1997, Minani Célestin yaregeye ubutane mu Rukiko rwa mbere rw' Iremezo rwa Gikongoro arabuhabwa, nyuma Kabagema Annonciata arusubirishamo, ikirego cyandikwa kuri RC 0318/1/97, Urukiko rwemeza ko ikirego cye kitakiriwe kuko yarengeje ibihe byo gusubirishamo urubanza. Avuga ko Kabagema Annonciata yajuririye urwo rubanza mu Rukiko rw'ubujurire rwa Nyabisindu ruhabwa RCA 8817/132, ariko aza kureka ikirego Urukiko rwemeza ko atsinzwe.

[17] Me Karinganire Steven na Me Rwabirinda Sylvestre bavuga ko mu gihe Kabagema yemerewe kureka ikirego, urubanza rwaciwe n'Urukiko rwa Mbere rw'Iremzo rwa Gikongoro rwahise ruba ndakuka, kuko ari rwo Kabagema yasubirishijemo ndetse akanarujuririra ariko ikirego cye nticyakirwe, bivuze ko urubanza rw'ubutane rutigeze rukurwaho, ko mu gihe habayeho ubutane, nyuma abo bireba bakiyungira imbere y'Urukiko bakareka ikirego, bagombaga kongera gusezerana imbere y'amategeko nk'uko biteganywa n'ingingo ya 278 y'Itegeko no 42/1988 ryo ku wa 28/10/1988 rigena interuro y'ibanze n'Igitabo cya mbere cy'Urwunge rw'amategeko mbonezamubano, cyane ko nyuma yo kwiyunga Minani Célestin yamufataga nk'abandi bagore bose batasezeranye.

[18] Me Karinganire Steven na Me Rwabirinda Sylvestre bavuga ko hari ibindi bimenyetso byerekana ko Kabagema Annonciata yari yaratandukanye burundu na Minani Célestin, nk'icyemezo cyo ku wa 15/06/1998 cyatanzwe n' Umwanditsi w' irangamimerere muri Komini Rwamiko cyerekana ko Kabagema Annonciata atari umugore wa Minani Célestin, indangamuntu

ye igaragaza ko Minani Célestin nta mugore agifite, n'ifishi yanditseho ko marriage yakuweho (*annulé*) hamwe n'ibaruwa ya Burugumestre yandikiye Perefe amumenyesha ko batandukanye. Bavuga ko ikindi kimenyetso ari urubanza RC 318/1/7/TB/KBH rwabaye itegeko rugaragaza aho Kabagema Annonciata yongeye gutanga ikirego cy' ubutane ku wa 19/10/2007, Urukiko rukemeza ko atsinzwe n'uko ubutane abusanganywe, akaba atarigeze arujuririra. Bavuga kandi ko imanza zisaba gukuraho indezo zamutsinze bitewe n'uko byagaragaye ko nta bubasha afite, kuko Minani Célestin yapfuye nta mugore w' isezerano afite.

UKO URUKIKO RUBIBONA

[19] Ingingo ya 2 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko ikimenyetso cyo mu rubanza ari uburyo bukoreshwa kugira ngo ukuri kw' ibyabaye kugaragare. Naho ingingo ya 3 y'iryo tegeko igateganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

[20] Ingingo ya 175 y'Itegeko Nº 42/1988 ryo ku wa 27 ukwakira 1988 rishyiraho interuro y'ibanze n'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano ryakoreshwaga igihe urubanza rwatangiraga iteganya ko ntawe ushobora kongera gushyingirwa ugushyingirwa kwa mbere kukiriho, naho ingingo ya 255, igateganya ko "Urubanza rwo gusaba gutana burundu ruzimanganywa n'uko abashyingiranywe biyunze. Ruzimanganywa kandi n'uko umwe mu bashyingiranywe apfuye urubanza rw'ubutane rutaracibwa burundu…". (*L'action en divorce est éteinte par la réconciliation des époux. Elle s'éteint également par le décès de l'un des époux survenu avant que le jugement ou l'arrêt de divorce ne soit devenu irrévocable*.).

[21] Dosiye igaragaza ko mu rubanza R.C. No 1270/3/85, Kabagema Annonciata yareze Minani Célestin gusesagura umutungo w'urugo, rwaciwe ku wa 12/04/1987, Urukiko rwa Mbere rw'Iremezo rwa Gikongoro rwemeza ko ibintu biburanwa bigize umutungo wa Minani Célestin n'umugore we Kabagema Annonciata ari we bagomba kubitungana hamwe n'abana babyaranye.

[22] Dosiye igaragaza kandi urubanza RCA 8024/130 RC .10.963/25 rwaciwe ku wa 16/9/1992 ku bujurire bw'urubanza R.C. 10.963/25 Mukanyangezi yari yarezemo Minani Célestin asaba indezo z'abana 7 babyaranye hagobokeshwamo Niyivuga, Mukarajabu na Kabagema Annonciata (abagore ba Minani), muri urwo rubanza Urukiko rusanga ikirego cya Minani Célestin gifite ishingiro, rwemeza ko indezo zavanwa mu mutungo afatanyije na Kabagema Annonciata, ko ntacyo bimubangamiraho we n'abana be kuko nabo bafite amasambu ahagije nk'uko Urukiko rwabibonye muri anketi, rwemeza ko indezo ku bana ba Niyivuga ikurwa mu isambu ye iri Rushorezo, Mukanyangezi na Mukarajabu nabo indezo ku bana babo zigakurwa mu isambu iri ahitwa i Kimpunga, ariko ko Minani Célestin akomeza kwitwa nyir'iyo mitungo kuko ariwe ikomokaho, naho Kabagema Annonciata akaba atabujijwe gusangira uwo mutungo wose n'umugabo we w'isezerano.

[23] Dosiye igaragaza ko Minani Célestin yatanze ikirego cy'ubutane mu rubanza RC RC.0151/1/96 rwaciwe ku wa 30/01/1997 n'Urukiko rwa Mbere rw'Iremezo rwa Gikongoro, rwemeza ko amasezerano yo gushyingirwa yabaye mu 1967 imbere ya Burugumesitiri wa Komini Rwamiko hagati ye na Kabagema Annonciata avanyweho, kubera ko Kabagema Annonciata yataye urugo mu gihe kirenze umwaka. Kabagema Annonciata yasubirishijemo urwo rubanza ruhabwa RC 0316/1/1977, ku wa 14/5/98, rwemeza ko ikirego cye kitakiriwe kuko yarengeje ibihe byo kurusubirishamo, ajurira mu Rukiko rw'Ubujurire rwa Nyabisindu, ruca urubanza RCA 8817/132 RC. 0318/1/92 ku wa 16/5/2000, rwemeza ko kureka ikirego cye ku

mpamvu y'uko Kabagema Annonciata n'umugabo we Minani Célestin bagaragarije Urukiko ko biyunze bakareka kuburana ubutane bagakomeza kubana, kwemewe.

[24] Dosiye igaragaza ko Kabagema Annociata yatanze ikirego asaba ko indezo yahawe abana b'abagore babanye na Minani Célestin mu buryo butemewe n'amategeko yavanwaho, mu rubanza RC 0055/14/TB/KBH rwaciwe ku wa 05/06/2014 n'Urukiko Rw'Ibanze rwa Kibeho, rwanga kwakira icyo kirego ruvuga ko nta bubasha afite ku mpamvu y'uko yatandukanye n'umugabo we akiriho, arujuririrye Urukiko Rwisumbuye rwa Nyamagabe narwo rwemeza mu rubanza RCA 0091/RCA 0111/14/TGI/NYBE, ko nta bubasha afite, ajuririra mu Rukiko Rukuru, Urugereko rwa Nyanza, mu rubanza RCAA 0096/15/HC/NYA rwaciwe ku wa 30/10/2015, rwemeza ko ikirego cye kitakiriwe, arusubirishijemo nabwo nticyakirwa.

[25] Ku kibazo cyo kumenya niba Kabagema Annonciata yari afite ububasha bwo gutanga ikirego cyo kuvanaho indezo mu gihe Minani Celetsin wategetswe kuyitanga yapfuye batongeye gusezerana, Urukiko rusanga mu rubanza RCA 8817/132 RC. 0318/1/92 rwaciwe ku wa 16/5/2000, Urukiko rw'Ubujurire rwa Nyanza rwaremeje ko kureka ikireko kwa Kabagema abyemerewe kuko rwasanze yariyunze n'umugabo we Minani Célestin, bakaba bifuza kureka kuburana ikirego cy'ubutane, rusanga icyo cyifuzo gikwiye gushyigikirwa.

[26] Urukiko rw'Ubujurire rusanga igikorwa cyo kwiyunga kwa Minani Célestin n'umugore we Kabagema Annonciata mu Rukiko rw'Ubujurire rwa Nyabisindu byatumye areka ikirego cye cy'ubujurire k'ubutane, bigira ingaruka iteganywa n'ingingo ya 255 y'Itegeko Nº 42/1988 ryo ku wa 27 ukwakira 1988 ryavuzwe haruguru, ryakoreshwaga igihe ikirego cyari mu Rukiko, kuko Urubanza rwo gusaba gutana burundu ruzimanganywa n'uko abashyingiranywe biyunze, bivuze ko Minani Céléstin apfa, Kabagema Annonciata yari akiri umugore we w'isezerano, kandi afite ububasha bwo gukurikirana no kubungabunga umutungo bari barashakanye.

[27] Urukiko rurasanga uretse no kuba mu Rwanda itegeko ryarateganyaga ko kwiyunga bizimanganya urubanza rwo gutana burundu, no mu bindi bihugu, abahanga mu mategeko bavuga ko ukwiyunga kuvanaho impamvu zose z'ubutane, ari indemyagihugu n'impamvu yo kutakira ikirego, bashingira ko ukwiyunga gusigasira umuryango w'abashakanye ukongera kubaho, akaba ariyo mpamvu inzitizi ishingye kuri uko kwiyunga yatangwa aho urubanza rwaba rugeze hose ndetse n'umucamanza abyibwirije akaba ashobora kuyibyutsa … (*la réconciliation efface la cause de divorce. C'est une fin de non recevoir …Elle est d'ordre public, car elle tend à consolider le lien matrimonial. Aussi peut –elle être soulevée en tout état de cause, et même d'office pa le juge…)*[1].

[28] Urukiko rushingiye ku biteganywa mu ngingo ya 255 y'Itegeko Nº 42/1988 ryo ku wa 27 ukwakira 1988 yavuzwe haruguru no kubyavuzwe n'umuhanga, nta hateganya ko igihe habaye ubwiyunge hagati y'abashyingiranywe imbere y'Urukiko, abiyunze bagomba kongera gushyingirwanwa nk'uko abahagarariye abarega bashaka kubyumvikanisha, kuko ingingo ya 278 bashingiraho y'itegeko ryavuzwe haruguru ireba abashyingiranywe batanye burundu bashobora kongera gushyingiranwa, ibi bikaba bitandukanye n'ibya Minani Célestin na Kabagema Annonciata kuko bo bari bagihujwe n'amasezerano yo gushyingirwa kuko bari bataratana burundu, kuko urubanza rw'ubutane baburanaga rwari rutaraba ndakuka, bakiyunga imbere y'Urukiko rw'Ubujurire rwa Nyanza.

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[1] Jean Carbonier, Droit Civil V I, introduction, les personnes, la famille, l'enfant, le couple, 1ed. 2004, Paris, P. 1296

[29] Urukiko rurasanga kuba mu rubanza RCA 8817/132 RC 0318/1/92, Urukiko rw'Ubujurire rwa Nyanza rwaravuze ko Kabagema Annonciata atsinzwe, nyamara urubanza rutaburanishijwe ku mpamvu y'uko Kabagema Annonciata yaretse ikirego ku mpamvu y'uko we n'umugabo we Minani Célestin biyunze n'Ubushinjacyaha bukabishyigikira, Urukiko narwo rukabyemera, atari byo byaherwaho havugwa ko hagumyeho urubanza rwemeje ubutane, kuko bwavanyweho n'uko kwiyunga.

[30] Urukiko rw'Ubujurire rurasanga ibimenyetso abahagarariye abaregwa batanze bavuga ko byerekana ko Minani Celestiin na Kabagema Annonciata bari baratandukanye ari byo: icyemezo cyo ku wa 15/06/1998 cyatanzwe n' umwanditsi w' irangamimerere muri Komini Rwamiko cyerekana ko Kabagema Annonciata atari umugore wa minani Célestin, indangamuntu ya Minani Célestin igaragaza ko nta mugore agifite, ifishi yo ku wa 10/06/1998, yanditseho ko ugushyingiranwa kwakuweho (*marriage annulé*) n'ibaruwa Burugumestre yandikiye Perefe amumenyesha ko Minani Célestin n'umugore we Kabagema Annonciata batandukanye, nta gaciro byahabwakuko ibyo byemezo byatanzwe mu buryo bunyuranyije n'amategeko, kuko byakozwe urubanza rw'ubutane rukiburanishwa mu nkiko, kuko byakozwe guhera 1998 mu gihe urubanza rwa nyuma ari narwo rwavanyeho ubutane (RCA. 8817/132 RC.0138/1/92) rwaciwe ku wa 16/05/2000.

[31] Rurasanga kandi kuba Urukiko rw'Ibanze rwa Kibeho rwaranze kwakira ikirego cy'ubutane cyatanzwe na Kabagema Annonciata ruvuga ko ubutane asaba abusanganywe (urubanza RC 318/17/TB/KBH) nabyo bitashingirwaho hemezwa ko Kabagema Annonciata yari yaratandukanye n'umugabo we Minani Célestin mbere y'uko apfa, kuko nk'uko byagaragajwe haruguru, ubutane bwavanyweho burundu n'ubwiyunge bakoreye imbere y'Urukiko, urwo rubanza rukaba rugomba kuvaho.

[32] Hashingiwe ku bisobanuro bimaze gutangwa haruguru, Urukiko rurasanga Kabagema Annonciata, yari afite ububasha bwo gukurikirana imitungo yose yashakanye na Minani Célestin igihe uyu yari amaze gupfa, harimo n'iyari yatanzwe nk'indezo, kuko bayifatanyije, nk'uko kandi byemejwe mu rubanza RCA 8024/130 RC. 10.963/25 rwaciwe n'Urukiko rw'Ubujurire rwa Nyanza ku wa 16/9/1992.

2. Kumenya niba imitungo Minani Célestin yari yategetswe guhaho indezo abana atabyaranye n'umugore we w'isezerano yagenerwa icyerekezo muri uru rubanza

[33] Me Mutabazi Jackson, avuga ko amasambu yatanzweho indezo, abana bemewe n'amategeko bazungura 50% naho abandi bana babyawe n'abandi bagore n'abana bose ba Kabagema Annonciata bakagabana mu buryo bungana ibisigaye bingana na 50% nk'uko biteganywa n'amategeko.

[34] Me Karinganire Steven na Me Rwabirinda Sylvestre, bavuga ko akarengane ka Kabagema Annonciata atari imanza zerekeranye n'indezo, ahubwo ari urubanza rwamuhaye ubutane, ko mu gihe Kabagema Annonciata yaba afite ububasha ku mitungo, abana Minani Célestin yabyaye hanze bafite ububasha bwo kugumana imitungo bahawe basaziyemo, kuko bahawe amasambu abiri imwe iherereye Rushorezo n'indi iherereye Kimpunga, naho Kabagema Annonciata agasigarana indi mitungo yose, ko byaba byiza abo bunganira bagumanye imirima bahawe, hagakurikizwa ibiteganywa n'ingingo ya 76 y'itegeko ryerekeye impano n'iz'ungura rishya

UKO URUKIKO RUBIBONA

[35] Ingingo ya 10 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko: Umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine.

[36] Dosiye igaragaza ko Kabagema Annonciata yapfuye ku wa 25/7/2017 nk'uko bigaragazwa n'icyemezo cy'uwapfuye cyatanzwe n'umunyamabanga Nshingwabikorwa w'Umurenge wa Rukamba, naho Minani yapfuye mu mwaka wa 2008 nk'uko bigaragazwa n'icyemezo cy'uwapfuye cyatanzwe n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Rukamba.

[37] Urukiko rusanga kuba Kabagema Annociata na Minani Céléstin batakiriho, imitungo yose igomba kugaruka mu muryango wa Minani Céléstin na Kabagema Annonciata.

[38] Urukiko rurasanga ibyerekeranye n'uburyo imitungo igizwe n'imirima iherereye Rushorezo na Kimpunga yagabanywa abazungura ba Minani na Kabagema hashingiwe ku biteganyijwe mu ngingo ya 70 y'Itegeko N° 22/99 ryo ku wa 12/11/1999 ryerekeye impano n'izungura, bitasuzumwa muri uru rubanza, kuko ikirego Urukiko rwasabwe gusuzuma, ari icy'akarengane kavugwa mu manza Kabagema Annonciata yasabagamo ko indezo Minani Célestin yategetswe guha abana yabyaye ku bandi bagore yagaruka mu mitungo yabo, rutaregewe izungura, kubisuzuma rukaba rwaba ruciye urubanza ku kitaregewe kandi bibujijwe n'itegeko. Bikaba ariko bitabujijwe ko ukeneye ko izungura rikorwa, yabisaba yisunze amategeko abiteganya.

3. Ku bijyanye n'indishyi zasabwe muri uru rubanza

[39] Me Mutabazi Jackson, avuga ko kuva izi manza zatangira, Kabagema Annonciata yagiye azitsinda ariko ntarabone uburenganzira bwe, kuko uretse no kuba abaregwa barishingikirije ku ndezo, bahisemo kwigarurira iyo mitungo yose kugeza ubu, mu gihe Kabagema Annonciata n'abana be basigaye mu buzima bubi bwashoboraga kuba bwiza iyo aba yarahawe uburenganzira ku mutungo we, Kubera iyo mpamvu asaba ko abo ahagarariye bahabwa 5 000 000 Frw y'indishyi z'akababaro, 1.000.000 Frw y'igihembo cya Avoka na 500 000 Frw y'ikurikiranarubanza

[40] Me Karinganire Steven na Me Rwabirinda Sylvestre bavuga ko indishyi abo bahagarariye bakwa nta shingiro zifite, ko ahubwo aribo bakwiye guhabwa igihembo cya Avocat kingana 1.000.000 frw na 400.000 Frw yo kubashora mu manza.

UKO URUKIKO RUBIBONA

a. Ku byerekeye indishyi z'akababaro zakwa n'abazungura ba Kabagema Annonciata

[41] Urukiko rurasanga indishyi z'akababaro abazungura ba Kabagema Annonciata baka batazihabwa, kuko abo bazisaba batigeze bategekwa kugarura imitungo bahaweho indezo ngo bange kuyigarura.

b. Ku byerekeye amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka

[42] Ingingo ya 111 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" […] ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe".

[43] Urukiko rurasanga Kabagema Annociata akiriho yarakurikiranye urubanza rwe, n'aho apfiriye abazungura be bakomeza kurukurikirana, bikaba byumvikana ko hari ibyo batakaje bigomba kwirengerwa n'abo baburana, kubera iyo mpamvu bakaba bagomba guhabwa 500.000 Frw y'igihembo cya Avoka na 300.000Frw y'ikurikiranarubanza.

ICYEMEZO CY'URUKIKO

[44] Rwemeje ko ikirego cy'akarengane cyatanzwe na Kabagema Annonciata gifite ishingiro.

[45] Rwemeje ko Kabagema Annonciata yari afite ububasha bwo gusaba ko imitungo yatanzweho indezo igaruka mu mitungo yashakanye na Minani Céléstin.

[46] Rutegetse ko imitungo itimukanwa igizwe n'imirima ibiri umwe uherereye Rushorezo n'undi uherereye Kimpunga igaruka mu mitungo Kabagema Annonciata yashakanye na Minani Céléstin.

[47] Rutegetse ko urubanza RC 318/17/TB/KBH rwaciwe n'Urukikko rw'Ibanze rwa Kibeho ku wa 19/10/2007 ruvanyweho ;

[48] Rutegetse Siborurema Jean Marie Vianney, Dusabimana Josianne, Bugingo Viateur, Mukankundiye Jacquelline, Nyirandutiye Chantal, Mporensenge Françoise, Uwihoreye Christine, Bashimubwabo, Jean Pierre Uwintije Jeannette, Mukarukundo Francine, Nyirasikubwabo Charlotte, Tuyizere Claudette, Niyigena Joseline na Masengesho Jean Bosco gufatanya kwishyura abazungura ba Kabagema Annonciata bahagarariwe na Sindikubwabo Emmanuel, 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza.

[49] Rutegetse ko amafaranga y'ingwate y'amagarama aherera ku isanduku ya Leta.