MUKAMUSONI v. MUKAGASANA N'ABANDI

[Rwanda URUKIKO RUKURU – RCA0087/12/HC/KIG (Murekatete, P.J.) 10 Gicurasi 2013]

Amategeko agenga umuryango – Izungura – Umuco – Uburenganzira bwo kuzungura cyangwa kuzungurwa ku gitsina gore – Kuba umuco nyarwanda utaremereraga umugore/umukobwa nabo mu muryango akomokamo kuzungura no kuzungurwa bifite ingaruka mbi kandi zikomeye ku ihame ry'uko abantu bareshya imbere y'amategeko.

Amategeko agenga umuryango – Izungura – Ibirego birebana n'izungura ryatangiye nta tegeko ribigenga rirajyaho – Mu gukemura ibibazo birebana n'izungura byatangiye mbere yuko nta tegeko ribigenga ririho hakurikizwa ibyemezo by'inkiko biha umugore/umukobwa uburenganzira bwo kuzungura no kuzungurwa maze abagabo na bagore bakagira uburenganzira bungana mu byerekeye izungura n'izungurwa.

Incamake y'ikibazo: Mukagasana na Sarushi mu Rukiko Rukuru ku rwego rw'ubujurire baburanye ibijyanye no kuzungura umutungo wasizwe na Kabera n'umugore we Usabuwera bapfuye mu 1994 nta mwana basize; mu gihe urwo urubanza rwari rutaracibwa Sarushi yaje kwitaba Imana. Urwo Rukiko rwaciye urubanza rwemeza ko hashingiwe ku muco ab'iwabo w'umugabo aribo bemererwaga kuzungura gusa bityo Mukagasana aba ariwe uzungura uwo mutungo.

Mukamusoni amaze kumenya ko Mukagasana agiye kugurisha amazu aburanwa yatambamiye urwo rubanza asaba ko ruhinduka kubera ko arufitemo inyungu kuko ari umukobwa wa Sarushi bityo akaba afite uburenganzira bwo kuzungura Usabuwera mu mwanya wa Se witabye Imana kandi ko rwaciwe abazungura ba Sarushi bataruhamagawemo.

Mukamusoni avuga ko inenge ziri muri uru rubanza zibangamiye inyungu ze ari uko mu guca urubanza hashingiwe ku muco mu gihe wari unyuranyije n'Itegeko Nshinga ryariho kuva 1962 n'irigenderwaho muri iki gihe riteganya ko abantu bose bareshya imbere y'amategeko kimwe n'amasezerano mpuzamahanga u Rwanda rwashyizeho umukono aho ateganya ihame ry'uko abantu bose bangana imbere y'amategeko nta vangura iryo ari ryo ryose.

Mukamusoni akomeza avuga ko umuco wifashishwa mu guca imanza gusa mu gihe utanyuranyije n'amahame ndemyagihugu n' imigenzereze myiza cyangwa utanyuranyije n'Itegeko Nshinga, kuvuga rero ko abakomoka mu muryango w'umugabo aribo bonyine bafite uburenganzira bwo kuzungura byaba binyuranyije nayo mahame kuko umugenzo mboneramuco usumbanisha abantu utemewe.

Mukagasana yiregura avuga ko igihe yaregeraga kuzungura musaza we Kabera itegeko ryerekeye izungura ryo muri 1999 ryari ritarajyaho kandi n'urubanza batambamira rwemeje ko ariwe muzungura wenyine wemewe ko rero urwo rubanza arirwo rukwiye gukurikizwa kuko rwakurikije amategeko.

Mukarurinda we avuga ko n'ubwo aza mu rubanza nk'uregwa ariko arufitemo inyungu kuko ariwe ubyara Usabuwera, akaba rero asanga Mukagasana yarahawe ibirenze ibyo yagombaga guhabwa bitewe n'ibisobanuro by'umucamanza byemeza ko nta tegeko ryariho kandi hariho amasezerano mpuzamahanga k'uburenganzira bw'umugabo n'umugore, ayo masezerano akaba ariyo akwiye gukurikizwa.

Incamake y'icyemezo:1. Kuba umuco nyarwanda utaremereraga umugore/umukobwa nabo mu muryango akomokamo kuzungura no kuzungurwa bifite ingaruka mbi kandi zikomeye ku ihame ry'uko abantu bareshya imbere y'amategeko.

2. Mu gukemura ibibazo birebana n'izungura byatangiye mbere yuko itegeko ribigenga ribaho hakurikizwa ibyemezo by'inkiko biha umugore/umukobwa uburenganzira bwo kuzungura no kuzungurwa maze abagabo n' abagore bakagira uburenganzira bungana mu byerekeye izungura n'izungurwa.

3. Indishyi ntizigenwa gihe uzisaba atagaragaza icyo yangirijwe.

Ikirego cyo gutambama gifite ishingiro;
Amagarama y'urubanza aherereye kuri Mukagasana.

Amategeko yashingiweho:

Itegeko nshinga rya repubulika y'u Rwanda ryo kuwa 04/06/2003 nk'uko ryavuguruwe kugeza ubu, ingingo 16.

Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo 6.

Itegeko N°18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, izumurimo n'iz'ubutegetsi, ingingo ya 6.

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, ingingo ya 49, 95.

Imanza zifashishijwe:

Mukamusoni na Buyitare, RA0967/13.03/84 rwaciwe n'Urukiko Rusesa imanza rw'u Rwanda kuwa 10 Mata 1985.

RC28.691/98 rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali kuwa 22 Nzeri 1999.

RC28.846/98 rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali kuwa 2 Ugushyingo 1998.

RC31.549/99 rwaciwe n'urukiko rwa mbere rw'iremezo rwa Kigali kuwa 16 Gashyantare 2000.

RC28.867/98 rwaciwe n'Urukiko rwa Mbere rw'iremezo rwa Kigali kuwa 15 Ukuboza 1998.

RC28691/98 rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali kuwa 22/09/1999.

RCA8689/132 rwaciwe n'urukiko rw'Ubujurire rwa Nyabisindu kuwa 29/10/1996.

Ibitekerezo by'abahanga:

Sr Karomba F, *Des Régimes matrimoniaux, libéralités et Succession,* Notes de cours, UNR, Faculté de Droit, p.153.

S. Murererehe, *Analyse juridique de l'évolution des droits successoraux de la femme au Rwanda,* mémoire, Faculté de Droit, UNR., Butare, 2003, p.25.

Urubanza

I.IMITERERE Y'URUBANZA

[1] Mu izina rya Mukamusoni Cathérine, Me Nzirabatinyi Fidèle avuga ko ku itariki ya 24/04/2009 uru Rukiko rwakijije ku rwego rw'ubujurire urubanza RCA0162/06/HC/KIG rwaburanwagamo kugabana umutungo wasizwe na Kabera Charles n'umugore we Usabuwera Jeannette, bapfuye mu mwaka wa 1994 nta mwana basize. Mukagasana Domitilla akaba yarasabaga kuzungura ku ruhande rwa musaza we Kabera Charles naho Sarushi asaba kuzungura ku ruhande rw'umukobwa we Usabuwera. Ncogoza warugobotsemo ku bushake akaba yarasabaga amafaranga y'ubukode bushingiye ku masezerano yo gukodesha amazu aherereye Kicukiro ari mu mutungo uzungurwa. Mu gihe rero urubanza rwari rutaracibwa, Sarushi yaje gupfa, abazungura be barimo Mukamusoni Catherine ntibaruhamagarwamo; bakaba bararumenye Mukagasana agiye kugurisha amazu ariyo mpamvu yarutambamiye asaba ko ruhinduka kubera inyungu arufitemo.

[2] Me Nzirabatinyi Fidele avuga ko uwo mutungo utagomba kwiharirwa na Mukagasana wenyine hagendewe ku muco mu gihe Itegeko Nshinga ryariho kuva mu mwaka wa 1962 n' irigenderwaho muri iki gihe riteganya ko abantu bose bareshya imbere y'amategeko, n'itegeko ry'izungura rikaba rivuga ko abashyingiwe mbere batavuze amasezerano yo gucunga umutungo bafatwa nk'abashyingiranwe mu buryo bw'ivangamutungo risesuye; ko kandi umuco utari gukurikizwa mu gihe ubangamiranye n'Itegeko Nshinga kimwe n'amasezerano mpuzamahanga u Rwanda rwashyizeho umukono hose hakaba hateganya ihame ry'uko abantu bose bangana imbere y'amategeko nta vangura iryo ari ryo ryose; bityo ko abazungura ba Usabuwera nabo bafite uburenganzira kuri uwo mutungo.

[3] Me Mudakemwa Apolline uburanira Mukarurinda avuga ko itegeko ry'izungura ryaje mu mwaka wa 1999 kandi ko ritagomba gusubira inyuma ku byabaye mu 1994 ngo kuko icyo gihe hakurikizwaga umuco ku birebana no kuzungura, aho ab'iwabo b'umugabo aribo bemererwaga kuzungura gusa. Ko kuba nta yandi masezerano abazungurwa basize yihariye Mukamusoni nta burengarizira afite bwo kuzungura mukuru we. Asaba ko hagumishwaho imikirize y'urubanza rutambamirwa. Urukiko rugategeka ko Mukamusoni yishyurwa 150.000Frw kubera gushorwa mu manza na 200.000Frw y'igihembo cya Avoka.

[4] Me Nsengimana Elie avuga ko Ncogoza asaba ibyo yatsindiye mu rubanza RCA0162/06/HC/KIG. Naho Me Hamuri Dieudonnée avuga ko Mukarurinda ari nyina wa Usabuwera Jeanette ko nawe afite inyungu mu rubanza n'ubwo aregwa ngo kuko Mukagasana baregwa hamwe yihariye umutungo wenyine. Avuga ko nawe ashyigikiye ibivugwa na Me Nzirabatinyi Fidele.

[5] lbibazo bisuzumwa ni ukumenya ishingiro ry'impamvu zo gutambamira urubanza RCA0162/06/HC/KIG n'ishingiro ry'indishyi zinyuranye zisabwa.

Il. ISESENGURA RY'IBIBAZO BIRI MU RUBANZA

a. Ku byerekeranye n'ishingiro ryo gutambamira urubanza RCA0162/06/HC/KG.

[6] Me Nzirabatinyi Fidele avuga ko Mukamusoni Catherine afite inyungu mu rubanza atambamira ngo kuko ari umukobwa wa Sarushi akaba afite uburenganzira bwo kuzungura Usabuwera mu mwanya wa Sarushi wapfuye. Avuga ko inenge ziri muri urwo rubanza zibangamiye inyungu ze, ari uko mu guca urwo rubanza hashingiwe ku muco kandi ltegeko Nshinga rya repubulika y'uRwanda rubonye ubwigenge kugeza ku rigenderwaho ubu, itangazo mpuzamahanga ry'uburenganzira bwa muntu ryo kuwa 10 ukuboza 1948 n'amasezerano mpuzamahanga yerekeye uburenganzira mu by'imbonezamubano na politiki yo kuwa 19 Ukuboza 1966 ndetse ngo n'amasezerano nyafurika yerekeye uburenganzira bwa muntu n'ubw'abaturage yo kuwa 27 Kamena 1981 bivuga uburinganire bw'umugabo n'umugore no kuba ivangura iryo ariryo ryose ritemewe. Ko nubwo umuco nawo wifashishwa mu guca imanza ko ushingirwaho mu gihe utanyuranyije na ordre public na bonne moeurs, cyangwa utanyuranyije n'Itegeko Nshinga (préambule Constitution de la Republique Rwandaise du 04/06/2003); ko kandi ayo masezerano afite uburemere bw'itegeko akaba ari hejuru y'umuco, u Rwanda rukaba rwaremeje kuyakurikiza.

[7] Akomeza avuga ko mu Itegeko Nshinga kimwe no muri ayo masezerano mpuzamahanga hateganywa ko ivangura iryo ariryo ryose, harimo n'irishingiye ku gitsina ritemewe; ko haramutse hakurikijwe umuco wavugaga ko abantu b'igitsina gabo kimwe n'abakomoka mu muryango w'umugabo aribo bazungura bonyine byaba binyuranyije n'ayo mahame kuko umugenzo mboneramuco usumbanisha abantu utemewe. Akomeza avuga ko muri uru rubanza harebwa izungura kubantu babiri bari basangiye umutungo; ko kuba kuzungurwa ari uburenganzira uwabwamburwa yaba arenganyijwe. Asaba ko rubanza rwatambamiwe rwavaho Usabuwera akazungurwa kuburyo bumwe n'umugabo we KaberaVedaste.

[8] Me Mudakemwa Apolline avuga ko mu 1995 Mukagasana yaregeye kuzungura musaza we Kabera Charles mu rubanza RC23.350/95/Rl ahabwa iyo mitungo, ko icyo gihe itegeko ryerekeye izungura ryo muri 1999 ryari ritarabaho. Ko kandi n'urubanza batambamira rwashimangiye icyo cyemezo ko Mukagasana ariwe muzungura wenyine wemewe. Avuga ko urwo rubanza arirwo rukwiye gukurikizwa kuko rwakurikije amategeko; ko abareze basobanura bihagije aho kuzungura bihuriye na *bonnes moeurs* na *ordre public*. Kuri Ncogoza avuga ko ntacyo yakagombye gusaba kuko yakoze amasezerano y'ubukode hakaba hari ibyo yagombaga gukora n'ibyo yarabujijwe; ko ibyo yakoze byahwaniyemo.

[9] Me Hamuri Dieudonné avuga ko Mukarurinda aza mu rubanza nka nyina wa Usabuwera Jeanette kuko afitemo inyungu n'ubwo aregwa. Avuga ko Mukagasana Domitilla yahawe ibirenze ibyo yagombaga guhabwa ngo kuko ibisobanuro by'Umucamanza: (motivation) bivuga ko nta tegeko ryariho ngo kandi hariho amasezerano mpuzamahanga ku burenganzira bw'umugabo n'umugore (ingingo ya 3 y' amasezerano mpuzamahanga yerekeye uburenganzira mu by'ubukungu, imibereho myiza n'umuco yo kuwa 19 Ukuboza 1966 n'iya 16 y'itangazo mpuzamahanga ry' uburenganzira bwa muntu ryo kuwa 10 Ukuboza 1948) ko ariyo yari gukurikizwa.

[10] Urukiko rusanga ingingo ya 49 y'Itegeko N°22/99 ivuga ko kuzungura ari uguhabwa ububasha n'inshingano ku mutungo n'imyenda bya nyakwigendera. Izungura ritangira iyo umuntu amaze gupfa, rikabera ahantu yari atuye cyangwa aho yabaga. Ingingo ya 95 y'iryo tegeko rivuzwe ritangira gukurikizwa umunsi ritangarijweho mu Igazeti ya Leta ya Repubulika y'u Rwanda. Izi ngingo zumvikanisha neza ko, iri tegeko ridashobora kwiyambazwa mu gukemura ibibazo birebana n'izungura ryatangiye mbere y'uko ritangazwa mu igazeti ya Leta mu kwezi k'ugushyingo 1999. Ibi bikaba bihuje n'uko byemejwe mu rubanza rutambamirwa nk'uko bigaragarira ku rupapuro rwa gatanu muri "Rusanze

ya 6" muri ubwo buryo "Rusanze nta burenganzira Sarushi yarafite bwo kuzungura uruhande rw'umukobwa we Usabuwera Jeanette mbere y'itegeko N°22/99 rirebana n'izungura ryo kuwa 12/11/1999 kubera ko nta tegeko ryabumuhaga ryari ririho, ko icyogihe hakurikizwaga umuco w'uko umutungo uzungurwa n'abiwabo w'umugabo ku buryo nta masezerano yihariye Kabera Charles n'umugore we Usabuwera Jeanette bagiranye muri iryo vangamutungo y'uko bizagenda baramutse bitabye Imana nta mwana basize".

[11] Muri uru rubanza, ikibazo cyo kumenya niba umuco ubuza umugore uburenganzira bwo kuzungura no kuzungurwa wariho mbere y'uko Itegeko N°22/99 rigenga izungura rijyaho unyuranyije n'Itegeko Nshinga cyagarutsweho mu iburanisha uru rukiko rusanga rutagomba kugisuzuma kuko bene ibyo birego bifite inzira bikurikiza; ikigomba kwitabwaho ni ukureba niba hari andi mategeko cyangwa amahame rusange, imanza zaciwe n'inkiko byashoboraga kwifashishwa mu gukemura ikibazo cy'izungura ku ruhande rwa Usabuwera hashingiwe ku busumbane bw'amategeko nk'uko ingingo ya 6 y'itegeko N°18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iyakurikizwaga mu gihe cyo guca urubanza rutambamirwa ryabiteganyaga aho ryavugaga ko mu guca imanza abacamanza bashingira ku ngingo z' amategeko zirebana n' ikirego baregewe cyangwa iyo nta tegeko rijyanye n'ikiburanwa, bagashingira ku mategeko basanga bashyiraho mu gihe baba bashinzwe kuyashyiraho, bifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z' abahanga mu mategeko. Iyi ngingo ikaba yaragaragazaga ko umuco atariwo uza ku mwanya wa mbere mu gihe bigaragaye ko nta tegeko rirebana n'ikiburanwa rihari kuko imbere y'awo haza ibyemezo byafashwe n'inkiko.

[12] Ingingo ya 16 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nk'uko ryavuguruwe kugeza ubu iteganya itya "Abantu bose barangana imbere y'amategeko. Itegeko ribarengera ku buryo bumwe nta vangura iryo ariryo ryose", Iryo hame riteganywa kandi mu itangazo mpuzamahanga ryerekeye uburenganzira bwa muntu ryo kuwa 10/12/1948, kimwe no mu masezerano mpuzamahanga anyuranye u Rwanda rwagiye rusinya nk'uko yavuzwe mu gika cya 6 cy'uru rubanza. Ingingo ya 190 y'Itegeko Nshinga ry'u Rwanda iteganya ko "Iyo amaze gutangazwa mu igazeti ya Leta amasezerano mpuzamahanga yemejwe burundu mu buryo buteganywa n'amategeko agira agaciro gasumba ak'amategeko Ngenga n'ak'amategeko asanzwe (...)". N'ubwo koko iryo hame ryari ririho kandi riteganywa muri ayo mategeko nk'uko byagiye bisobanurwa mbere y'uko urubanza rutambamirwa rucibwa sibyo ubwabyo biha umugore/ umukobwa uburenganzira bwo kuzungura kimwe no kuzungurwa mu gihe izungura ryatangiye nta tegeko ribigenga ririho, ahubwo uburyo iryo hame ryagiye risobanurwa n'inkiko mu manza zinyuranye nibyo byatumye habaho ukwivugurura k'umuco mu birebana n'izungura ku gitsina gore (evolution des droits successoraux de la femme) ari nayo mpamvu ibyemezo by'inkiko aribyo byagombaga gutanga icyerekezo ku burenganzira bwo kuzungurwa kwa Usabuwera kwasabwaga n'abo mu muryango yakomokagamo.

[13] Abanditsi batandukanye b'abanyamategeko bavuze ku birebana n'izungura mu muco w'u Rwanda kugeza ubwo hariho itegeko ryanditswe bahuriza ku kwemeza ko umuco w'u Rwanda wabuzaga umugore cyangwa umukobwa n'abo mu muryango akomokamo kuzungura cyangwa kuzungurwa ufite ingaruka zikomeye ku ihame ry'uko abantu bareshya imbere y' amategeko kandi ko ivangura iryo ariryo ryose, harimo n'irishingiye ku gitsina bitemewe kuko bibuzwa n'Itegeko Nshinga rya Repubulika y'u Rwanda kuva u Rwanda rwagira ubwigenge n'uko ryagiye rivugururwa; bikanabangarnira itangazo mpuzamahanga ry'ubμrenganzira bwa muntu ryo kuwa 10 Ukuboza 1948 u Rwanda rwashyizeho umukono kimwe n'andi masezerano mpuzamahanga ashyigikira iryo hame naryo u Rwanda rukaba rwarayashyizeho umukono.

[14] Muri bo twavuga umwarimu muri kaminuza Nkuru y'u Rwanda, mu isomo rye"*Régimes Matrimoniaux, Libéralités et Successions*", ashyigikira ibyemezo by'inkiko byagiye bifatwa hagati y'imyaka ya 1990-1999 bigaha uburenganzira bwo kuzungura no kuzungurwa ku bantu b'igitsina gore hashingiwe kuri iryo hame "*Pour les successions ouvertes avant la publication de la loi sur R.L.S., les cours et tribunaux ne devraient pas leur appliquer la Loi N°22/99, mais devraient s'inspirer de la jurisprudence à la quelle se referait les juges surtout entre les années 1990-1999 ou la majorité desjuges saisis, sur base de l'égalitéprônée par toutes les constitutions qu'à connu le Rwanda depuis 1962 et les conventions internationales* aux quelles *le Rwanda a adheré, accordaient des droits successoraux, de faconégales, aux filles comme aux garcons.*"[1] Bishatse kuvuga ko mu gukemura ibibazo birebana n'izungura ryatangiye mbere y'uko itegeko ry'izungura ryo muri 1999 ritangazwa hakwifashishwa ibyemezo by'inkiko byafashwe muri bene ibyo bibazo maze abagore n'abagabo bakagira uburenganzira bungana mu byerekeye izungura.

[15] Mu gitabo gisoza amasomo y'icyiciro cya kaminuza ku rwego rwa Bachalor's degree, Murererehe S. yashimangiye ko umuco ubuza igitsina gore kuzungura wagiye wivugurura kubera imanza zaciwe n'inkiko zagiye zisobanura amahame rusange ateganywa mu mategeko y'igihugu kimwe no mu masezerano mpuzamahanga u Rwanda rwasinye "(..) le droit des successions est resté longtemps soumis au regime du droit coutumier, lequel droit écartait la femme de la succession.Toutefois, le droit coutumier a évolué grâce à l'interpretation que les juridictions donnaient aux principes généraux posés par le droit interne et les conventions internationales que le Rwanda a ratifiées"[2]. Aha akaba yaratanze ingero z'izo manza zaciwe zishingiye kuri iryo hame nk'uko riteganywa mu Itegeko Nshinga ryariho nk'urubanza RCA2995/KIG rwaciwe n'Urukiko rw'Ubujurire rwa Kigali kuwa 5/02/1971, aho yagize ati "*On remarque qu'un effort s'est fait au niveau jurisprudentiel car les décisions des juges tendaient à reconnaitre à la femme le droit de succèder. C'est ainsi que la Cour d'Appel de Kigali a décidé que la fille a droit à la succession des biens laissés par ses parents, et que sa part doit être égale à celle de son frère". La Cour a motivé cette decision sur base de l'article 16 de la Constitution Rwandaise qui prône 1'égalité entre les enfants sans distinction de sexe*[3].

[16] Ku birebana n'amasezerano mpuzamahanga ashimangira ihame ry'uburinganire imbere y'amategeko nta vangura iryo ariryo ryose yavuzwe mu bika bibanza akaba yarinjijwe mu mategeko y'u Rwanda, avuga ko nayo agomba gukurikizwa mu Rwanda kandi ko biha uburenganzira umugore bwo kuzungura no kuzungurwa ku rwego rumwe n'urw'umugabo, nk'uko uwo mwanditsi agaragaza imanza zinyuranye zabyemeje nka RC28691/98 rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali kuwa 22/09/1999, RCA8689/132 rwaciwe n'urukiko rw'Ubujurire rwa Nyabisindu kuwa 29/10/1996 (reba iyo memoire ku rupapuro rwa 27).

[17] Ni muri ubwo buryo rero, Urukiko rushingiye ku ngingo ya 6 y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko ibyemezo by'inkiko byifashishwa ku mwanya wa mbere mu ica ry'urubanza igihe nta tegeko rihari rirebana n'ikiburanwa; rusanga mu guca uu rubanza hagomba gukurikizwa imanza zaciwe zihuje kamere n'uru rubanza RA0967/13.03/84 rwaciwe n'Urukiko Rusesa imanza rw'u Rwanda kuwa 10 Mata 1985 hagati ya Mukamusoni na Buyitare aho Mukamusoni yasabaga iseswa ry'urubanza yaciriwe avuga ko urukiko rwamurenganyije rukemeza ko adashobora kuzungura isambu

---

[1]Sr Karomba F, *Des Régimes matrimoniaux, libéralités et Succession*, Notes de cours, UNR, Faculté de Droit, p.153, inédit.
[2]S. Murererehe, *Analyse juridique de l'évolution des droits successoraux de la femme au Rwanda*, mémoire, Faculté de Droit, UNR., Butare, 2003, p.25.
[3]Reba mémoire ya S.Murererehe, p.27.

ya se ngo kubera ko ari umukobwa, urwo rukiko rukemeza ko impamvu atanga ifite ishingiro muri aya magambo “Rusanze kandi n ’ingingo ya Mukamusoni nayo ifite ishingiro kuko urukiko nta mpamvu yemewe n’amategeko rwashingiyeho rwemeza ko umukobwa adashobora kuzungura ibya se cyane cyane igihe Itegeko Nshinga ririho, mu ngingo yaryo ya 16 ridashyigikiye ubusumbane bw’abantu bushingiye ku gitsina”[4]. Aha byumvikanisha ko uru rukiko rwari rukuriye izindi rwatanze icyerekezo cyo gukemura bene ibyo bibazo mu buryo butabangamira Itegeko Nshinga n’amahame mpuzamahanga.

[18] lbyo bikaba byaranemejwe mu zindi manza zinyuranye zirimo RC28.691/98 rwaciwe n’Urukiko rwa Mbere rw’Iremezo rwa Kigali kuwa 22 Nzeri 1999, RC28.846/98 rwaciwe n’Urukiko rwa Mbere rw’Iremezo rwa Kigali kuwa 2 Ugushyingo 1998, RC31.549/99 rwaciwe n’urukiko rwa mbere rw’iremezo rwa Kigali kuwa 16 Gashyantare 2000 na RC28.867/98 rwaciwe n’Urukiko rwa Mbere rw’iremezo rwa Kigali kuwa 15 Ukuboza 1998 (izo manza zivuzwe ziboneka mu bubiko bw’Urukiko Rwisumbuye rwa Nyarugenge) kimwe n’imanza zivugwa mu gika cya 13 na 14 by’uru rubanza; aho hose inkiko zikaba zaremeje ko umukobwa /umugore afite uburenganzira bwo kuzungura ku rwego rumwe n’urw’umuhungu; icyo cyemezo kikaba cyaragiye gifatwa n’izo nkiko zishingiye ku ihame ribuza ubusumbane n’ivangura bishingiye ku gitsina.

[19] Ibyo byemezo rero nibyo bigomba kwifashishwa mu ica ry’uru rubanza mu kwemeza ko Usabuwera afite uburenganzira bwo kuzungurwa n’abo mu muryango avukamo kuko nta mpamvu yari gutuma hiyambazwa umuco mu gihe hari imanza zihuje kamere n’uru zatanze icyerekezo.

[20] Ababuranyi bemeranya ko Kabera Charles na Usabuwera bari barashyingiranywe mu buryo bukurikije amategeko, mu gihe Itegeko N°22/99 rigenga izungura ryari ritarajyaho, ku birebana n’amasezerano yo gucunga umutungo wabo bikaba byarafatwaga ko abashyingiwe mbere batagaragaza amasezerano yihariye batafatwa nk’abashyingiwe mu buryo bw’ivangamutungo rusange. Akaba ariyo mpamvu Usabuwera nawe agomba kuzungurwa n’abo mu muryango we ku rwego rumwe n’uwo bashyingiranywe azungurwa n’abo mu muryango we kuko nta mwana basize.

[21] Bivuze rero ko abo mu muryango wa Kabera Charles bagomba kuzungura 50% n’abo mu muryango wa Usabuwera bakazungura 50% by’umutungo wose wa ba nyakwigendera Kabera Charles na Usabuwera bitabye lmana nta mwana basize na cyane ko Mukagasana Domitilla ushaka kuwiharira atagaragaje ko abazungurwa bari bafitanye amasezerano y’ivanguramutungo.

b. Ku byerekeranye n’indishyi zasabwe.

[22] Mu izina rya Mukagasana Domitilla, Me Ntamakemwa Apolline yasabye ko Mukamusoni ategekwa n’Urukiko kwishyura uwoaburanira 150.000Frw kubera gushorwa mu manza na 200.000Frw y’igihembo cya Avoka.

[23] Abaregwa bavuga ko nta ndishyi bakwiye gutanga, ko basaba ko urubanza ruhinduka kuko Mukagasana adakwiye kwiharira uwo mutungo.

[24] Urukiko rusanga indishyi zisabwa na Mukagasana Domitilla nta shingiro zifite kuko n’ubwo aregwa muri uru rubanza ntagaragaza icyo yangirizwa cyatuma agenerwa indishyi dore ko n’ikirego cya Mukamusoni gifite ishingiro ku mpamvu zatumye atambama. Hakaba rero nta mpamvu yumvikana yatuma uru rukiko rugenera Mukagasana Domitilla indishyi asaba.

---

[4] Reba Récueil des Arrêts de la Cour de Cassation, Années 1983 – 1986, p.266.

III. ICYEMEZO CY'URUKIKO

[25] Rwemeje ko ikirego cyo gutambama cya Mukamusoni Cathérine gifite ishingiro.

[26] Rwemeje ko Usabuwera Jeanette afite uburenganzira bwo kuzungurwa n'abo mu muryango akomokamo barimo Mukamusoni Cathérine ku ruhare rwa 50% n'abo ku ruhande rwa Kabera Charles barimo Mukagasana Domitilla bagatwara 50% by'umutungo wose wa Kabera Charles na Usabuwera Jeanette.

[27] Rutegetse ko urubanza RCA0162/06/HC/KIG ruhindutse ku mpamvu zatumye habaho itambama gusa.

[28] Rutegetse ko Mukagasana Domitilla, Ncogoza Gérard na Mukarurinda Antoinette bafatanya kwishyura amafaranga y'amagarama y'urubanza uko ari ibihumbi mirongo itatu na magana inani (30.800Frw) nibatayatanga, azavanwa mu mitungo yabo ku ngufu.
Rwibukije ko uru rubanza rutasomewe ku gihe ku mpamvu zasobanuwe mu cyemezo cy'isubikwa ry'isomwa cyo kuwa 19/04/2013.