

Re MURORUNKWERE

[Rwanda SUPREME COURT – RS/Inconst/Pén.0001/08/CS (Rugege, P.J., Ruyenzi, Mutashya, Nyirinkwaya, Mukanyundo, Hatangimbabazi, Havugiyaremye, Kanyange and Mukamulisa, J.)
September 26, 2008]

Constitution – Unconstitutional laws – The petition requesting the repeal of article 354 of the Decree Law N°21/77 of 18/08/1977 instituting the penal code of Rwanda – The fact for article 354 of the Decree Law N°21/77 of 18/08/1977 of the penal code of Rwanda to provide that a woman found guilty of adultery shall be punished differently from a man found guilty of the same crime, indicates that sex based discrimination relating to penal sanctions exist; therefore it is inconsistent with the preamble and with article 16 of the Constitution of the Republic of Rwanda of 4/6/2003 as amended and complemented to date – The repeal of the first paragraph of article 354 of the penal code of Rwanda and the preservation of the second paragraph which is amended by addition of the word “or a woman” after the word “man” which is mentioned in that paragraph likely to prevent the article’s contradiction with the Constitution – The insertion of the words “or a woman” in article 354 would not be considered usurpation. Rather, it is institutional balance which will prevent the negative impact likely to result from the nonexistence of a provision providing for penalties for adultery – Constitution of the Republic of Rwanda of 4/6/2003 as amended and complemented to date, articles 11, 16 and 200 – The international convention on elimination of all forms of discrimination against women ratified in the general assembly of the United Nations, in the resolution 34/180 of December 1979, adopted by Rwanda through the Presidential Order N°431/12 of 10/11/1980, article 2 – Organic Law N°01/2004 of 29/01/2004 determining the organization, functioning and competence of the Supreme Court, articles 89, 90 and 93.

Facts: The petitioner, after being found guilty of adultery by the Primary Court, appealed against that decision to the Intermediate Court and filed a claim in the Supreme Court requesting the repeal of article 354 of the Decree Law N°21/77 of 18/08/1977 of the penal code of Rwanda which provides for different penalties for adultery for men and women. The petitioner argues that the article is inconsistent with the preamble and article 16 of the Constitution of the Republic of Rwanda of 4/6/2003 as amended and complemented to date.

Held: 1. Article 354 of the Decree Law N°21/77 of 18/08/1977 instituting the penal code of Rwanda is inconsistent with the preamble and inconsistent with article 16 of the Constitution of the Republic of Rwanda of 4/6/2003 as amended and complemented to date.

2. However, the repeal of the first paragraph of article 354 of the Decree Law N°21/77 of 18/08/1977 of the penal code of Rwanda and the preservation of the second paragraph is likely to prevent the article’s contradiction with the Constitution of the Republic of Rwanda. This Court also finds that the addition of the words “or a woman” in article 354 would not be considered usurpation. Rather, it is institutional balance which will prevent the negative impact likely to result from the nonexistence of a provision providing for penalties for adultery.

The petition has merit.

Court fees are charged to the public treasury.

Statutes and statutory instruments referred to:

Constitution of the Republic of Rwanda of 4/6/2003 as amended and complemented to date, articles 11, 16 and 200.

The international convention on elimination of all forms of discrimination against women ratified in the general assembly of the United Nations, in the resolution 34/180 of December 1979, adopted by Rwanda through the Presidential Order N°431/12 of 10/11/1980, article 2.

Organic Law n° 01/2004 of 29/01/2004 determining the organization, functioning and competence of the Supreme Court, articles 89, 90 and 93.

Cases law referred to:

Schachter v Canada (1992) 2 S.C.R 679, P21. <http://CSC>. Lexum. Umontreal.ca.

S v Manamela 2000 (3) SA1 (CC).

National Coalition of Gay and Lesbian Equality v Minister of Home Affairs 2000(2) SA 1 (CC) para 75.

M v H (1999) 2 SCR, para 139.

Author cited:

Iain Currie and Johan de Waal, *The new Constitution and Administrative Law*, Vol.I, Cape Town, JUTA, 2001, pp. 290-293.

Judgment

I. BACKGROUND OF THE CASE

[1] Murorunkwere Spéciose is prosecuted for adultery per article 354 of the Rwandan penal code. Murorunkwere Spéciose's husband, Sehene JMV, filed a claim with the judicial police accusing his wife of committing adultery with Nisengwe Fred. The judicial police conducted an investigation and handed the file to the prosecution.

[2] On 23/04/2007, the prosecutor at Primary level of Kagarama wrote to the President of Primary Court of Kagarama and transferred to him the dossier in which the prosecution accused Murorunkwere Spéciose and Nisengwe Fred. The criminal action was registered as N° RP0066/TB/Kma. Sehene JMV also filed a civil action for damages.

II. THE CONDUCT OF TRIAL IN THE PRIMARY COURT

[3] The President of the Primary Court of Kagarama scheduled the hearing for 05/06/2007. However, on that date, the case was not heard and was adjourned to 03/07/2007. The hearing was conducted in camera, and its delivery was fixed on 13/07/2007. But, on that date, the delivery was postponed to the 24/07/2007 because the judge had other abrupt obligations.

[4] Murorunkwere Spéciose and Nisengwe Fred pleaded not guilty. The prosecutor submitted evidence based on statements in which the accused admitted the crime before the judicial police as Murorunkwere Spéciose apologised to her husband while Nisengwe Fred explained the way he used to commit adultery with Murorunkwere Spéciose, including the telephone messages that Nisengwe Fred sent to Murorunkwere spéciose.

[5] Sehene who filed a civil case requested that he should be paid damages amounting to 1,000,000Frw, 500,000Frw of reference expenses, and the reimbursement of 1,500,000Frw that Murorunkwere syphoned to Nisengwe Fred. The accused argued that they should not pay for damages since they did not commit the crime, and Nisengwe Fred denied that he had never seen and received 1,500,000Frw falleged to have been issued by Murorunkwere Spéciose.

[6] The Primary Court of Kagarama admitted and examined the action of the prosecution, and after analysis, found it with merit. It sentenced Murorunkwere Spéciose and Nisengwe Fred to to two months imprisonment each. The Court also admitted and analysed the civil action submitted by Sehene JMV and found it with merit. It ordered Murorunkwere Spéciose and Nisengwe Fred to pay Sehene JMV damages amounting to 250,000Frw..

[7] Unsatisfied with the verdict of the Court, Murorunkwere Spéciose and Nisengwe Fred immediately appealed to the Intermediate Court of Nyarugenge. The action was registered under RPA 0137/07/TGI/Nya.

III. THE TRIAL IN THE SUPREME COURT

[8] On 22/04/2008, Gumisiriza Hilary, Murorunkwere Spéciose's counsel, filed an action in the Supreme Court requesting the repeal of article 354 of the decree law N°21/77 of 18/8/1977 because it is inconsistent with the Consitution of the Republic of Rwanda. The action was registered under N° RS/INCONST/PEN 0001/08/CS.

[9] The President of the Supreme Court established an order scheduling the hearing for14/8/2008. The State Attorney, Murorunkwere Spéciose, and Nisengwe Fred were informed of that case. On the day of the hearing, the case was conducted in public. The government was represented by its State Attorney, Rubango Epimaque and Murorunkwere Spéciose was represented by Kazungu Jean Bosco and Gumisiriza Hilary.

[10] After listeningto the report of the screening judge, Gumisiliza Hilary was allotted time to explain in details the case he submitted to the Court on behalf of Murorunkwere Spéciose. The counsel stated that his client had a case in the Primary Court of Kagarama in which she was sentenced based on article 354 of penal code of Rwanda, and that the article is inconsistent with the Constitution of the Republic of Rwanda.

[11] Gumisiriza Hilary, the counsel stated that article 354 of the Rwandan penal code is inconsistent with the preamble of Consitution of the Republic of Rwanda. It is also inconsistent with article 16 which provides that man and woman are equal before the Law. He continued to argue that article 354 of the Rwandan penal code punishes a man and a woman in different ways for the same offence. According to this article, a woman is not given the opportunity to pay the

fine whereas a man is. Persons who commit the same offence shall be punished in a similar manner.

[12] Counsel Gumisiliza Hilary, continued to argue that per paragraph 6 of the Preamble of the Consitution of the Republic of Rwanda, Rwandans resolved to build a State governed by the rule of law. In paragraph 9, they reaffirmed adherence to the principles of human rights enshrined in the Universal Declaration of Human Rights of 10 December 1948. Murorunkwere Spéciose decided to file a case to the Supreme Court after realizing that her interests were being obstructed. If she was found guilty of the offence, she would be sentenced in accordance with a provision which is inconsistent with the Constitution. Gumisiliza Hilary stated that the judge of the primary court of Kagarama resorted to common sense and sentenced the man and woman to the same penalty. The counsel concluded by requesting the Court to exercise its discretion and repeal article 354 of the Rwandan penal code.

[13] Counsel Kazungu Jean Bosco, , was given time for submission and stated that article 185 of the Constitution of Rwanda established the principle of gender equality and established a gender monitoring office which monitors and supervises its compliance. He stated that article 354 of the Rwandan Criminal code is not in compliance with that principle. He continued to argue that article 2 and 15 of the international convention prohibits all forms of discrimination against women. In that convention, it is provided that the ratifying countries shall respect the principle of gender equality, including article 190 of the Constitution

[14] Counsel Gumisiliza Hilary, was asked if he intends to have the whole provision scrapped, or wanted repealed the paragraph relating to wife, or that paragraph relating to man. He replied that the whole provision should be repealed. This would create a legal vacuum for the sanctioning adultery offenders. Thus, to avoid the vacuum, the parliament should immediately pass a law which punishes a man and woman in the same way.

[15] On the questioned raised by the Court, Counsel Kazungu Jean Bosco replied that article 93 of the Law determining the functioning and competence of the Supreme Court provides that the court tries a case based on the limits of the scope of the petition. However, because institutions complement each other, pending the enactment of a new criminal code, the Court can elaborate on the provision to be followed. In this case, the penalty which is imposed on a man should remain in effect since it is the lowest and can be imposed on woman as well. The Court should rule that paragraph 2 of article 354 of Rwandan penal code is applicable in sanctioning both man and woman. Article 6 of the law relating to civil, commercial, social and administrative procedure should be considered, especially where it provides that the judge can enact a law in the absence of the relevant law likely to be referred to in a case.

[16] Rubango Epimaque, the State Attorney, was allotted time to talk about the case filed by Murorunkwere Spéciose. He stated that the request to repeal the article had already been addressed in the draft law of the criminal code which provides that a man and a woman who commit adultery shall be sanctioned in the same way. He continued to argue that the Court should not repeal the whole provision because it may result in a vaccum in the penal code.

[17] Rubango Epimaque continued by stating that during deliberation, the Court should maintain the second paragraph concerning the punishment of a man, and apply it in punishing a

woman. The plaintiff blames article 354 of the Rwandan penal Code for penalizing a woman with a stricter penalty than it does for a man. The request is for an equal punishment for both woman and man. The State Attorney added that if only the first paragraph of article 354 of the Rwandan penal code is repealed without addressing how a woman should be sanctioned, there will be discrimination. For instance, the case in which a woman commits the crime of adultery, she would not be punished. He requested that in the context of institutional checks and balances, the Court should repeal the first paragraph but uphold the second paragraph concerning a man and a woman.

[18] Rubango Epimaque, the State Attorney, was asked whether there would not be a change in the text and the purpose of the article, which could result in an usurpation by the judiciary rather than an institutional check and balance if the Court decides to apply the second paragraph of article 354 of the Rwandan penal code in punishing both a man and a woman. . He replied that the court would not repeal the whole provision because it may result in a legal lacuna. It would be improper for the first paragraph to also be repealed without being replaced. He requested the Court to refer to international conventions in order to take the appropriate measures according to its attributions. The Court could even enact a rule per article 6 of the law N°18/2004 relating to civil, commercial, social and administrative procedure, which has been modified and complemented to date. That article provides that “Judges shall decide cases by basing their decisions on the relevant law or, in the absence of such a law, on the rule they would have enacted, had they to do so, guided by judicial precedents, customs and usages, general principles of law and written legal opinions”.

IV. OPINION OF THE SUPREME COURT

a) Admission of the case

[19] Article 89 of the Organic Law n° 01/2004 of 29/01/2004 determining the organization, functioning and competence of the Supreme Court as modified and complemented to date, provides that “The Supreme Court has exclusive jurisdiction to hear petitions seeking the partial or complete abrogation of an organic law, law, decree-law or law authorizing the ratification of a treaty or international agreement on account of non-conformity with the Constitution” «. As it is mentioned above, the Supreme Court has jurisdiction over actions intending to repeal a provision of the law which is inconsistent with the constitution. Therefore, the filed case is in the jurisdiction of the Supreme Court.

[20] Article 89, paragraph 2 of the Organic Law n° 01/2004 of 29/01/2004 determining the organisation, functioning and jurisdiction of the supreme court, as modified and complemented to date, provides that Court is referred with a petition in writing filed by any individual or legal entity having an interest in the subject matter. The requirements of this article have been met since the petition was filed by an individual having interest in the case, that is to say, the petitioner was punished in accordance with the penalty provided for in the article she wants the court to repeal.

[21] Article 90 of the Organic Law mentioned above provides that “A petition seeking the abrogation of an organic law, law, decree-law or law authorizing the ratification of a treaty or international agreement shall bear the date and signature of the petitioner. It should also indicate

the subject-matter of the petition as well as the grounds for the petition for the abrogation of the organic law, law, decree-law or law authorizing the ratification of a treaty or international agreement. The petitioner attaches to the petition a copy of the relevant organic law, law, decree-law, treaty or international and agreement and its annexes, if any”. This provision has been respected because the petition contains the date and has been signed by the plaintiff, indicates the subject matter and grounds. Murorunkwere has also submitted in annexe of the petition, the law in which figures the article that she prays to be repealed, which is article 354 of the Rwandan penal code.

b) Analysis of the petition

[22] Article 354 of the Rwandan penal code provides that “a wife who is guilty of the offence of adultery shall be punished with one month to one year of imprisonment. A man found guilty of offence of adultery shall be punished with one month to six months of imprisonment and, or a fine amounting to one thousand francs, or one of these penalties”. In this article, the crime referred to in both provisions is the same, that is “adultery”, but its penalties are different. Clearly, the penalty for a wife found guilty of the adultery differs from the penalty of a man found guilty of the same crime.

[23] Concerning the imprisonment penalty, the legislator provided that the minimum penalty is one month for both man and woman. But, concerning the maximum penalty, a woman’s imprisonment extended to one year while a man’s imprisonment extends to six months. It is clear that there is a difference in the maximum imprisonment penalties for a man and that provided for a woman.

[24] The difference between the penalties for a man and woman found guilty of adultery is also evident in the fine. The article stipulates that a man found guilty of adultery may be punished with a fine of up to one thousand Rwandan francs in addition to imprisonment. However, the penalty for a woman does not provide for a fine. The legislator even provided that a man can be sanctioned with imprisonment **or** a fine. However, a woman found guilty of adultery is punished by imprisonment only. She cannot choose between imprisonment and a fine as is the case for a man. This demonstrates the inequality of the law and its gender based discrimination. As stipulated in article 16 of the Constitution of the Republic of Rwanda of 03/06/2014, as amended to date, inequality and discrimination are prohibited. The article reads, “All human beings are equal before the law. They shall enjoy, without any discrimination, equal protection of the law”.

[25] The second paragraph of Article 11 of the Constitution of the Republic of Rwanda provides that “..... Discrimination of whatever kind based on, inter alia, ethnic origin, tribe, clan, colour, **sex**, region, social origin, religion or faith, opinion, economic status, culture, language, social status, physical or mental disability or any other form of discrimination is prohibited and punishable by law”. As indicated by this article, the discrimination based on gender is prohibited.

[26] The international convention also prevents discrimination based on sex. Article 2(c) of the international convention on the elimination of all forms of discrimination against women of

18/12/1979¹, which was ratified by a Presidential Order², provides that the ratifying countries shall fight against all forms of discrimination against women, by adopting appropriate measures and without delaying a policy which eliminates discrimination against women. Every country undertakes to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination³. The fact that men and women have the same rights, penalizing a man in a different way than a woman, contradicts the provision of the convention.

[27] In paragraph (g) of the article mentioned in the previous paragraph, it is provided that each State party to the convention undertakes to repeal all national penal provisions which constitute discrimination against women. The fact that there is a provision in Rwandan penal law which stipulates that a woman found guilty of adultery shall be punished differently from a man found guilty of the same crime, indicates that sex based discrimination exists. This provides another ground for repealing article 354 of the Rwandan penal code which provides for unequal punishment of between a man and a woman found guilty of adultery, it has to be amended.

[28] As explained above, article 354 of the Rwandan penal code is inconsistent with the Constitution. The Supreme Court should examine the appropriate way to settle this issue so that the inequality and discrimination found in this article is repealed. This article is composed of two parts. The first part concerns the penalty which shall be imposed upon a woman found guilty of adultery. The second part provides for the punishment of a man found guilty of adultery. Article 93 of the Organic Law N°01/2004 of 29/01/2004 determining the organization, functioning and competence of the Supreme Court as modified and complemented to date, stipulates that, where the court finds the petition well founded, it can abrogate the whole or part of that law, depending on substance of the petition. While filing the claim, Hilary Gumisiliza, Murorunkwere Spéciose's counsel requested that the court repeals article 354 of the Rwandan penal code. Rubango Epimague, the State Attorney, acknowledges that this article is discriminatory. However, he urges the Court to repeal the first paragraph and apply the second paragraph to a woman found guilty of adultery. This would avoid the legal vacuum that would exist before a new law sanctioning the crime of adultery is enacted

[29] As evident, if we make an overview of each paragraph of article 354 separately, there does not seem to be a problem. Article 354 becomes inconsistent with the Constitution of the Republic of Rwanda when both paragraphs of the article are read together. If one of the parts of the article is repealed, impunity would exist for some of adultery offenders. For instance, if only men are punished and women unpunished, or if only women are punished and men unpunished. In that case, the remaining paragraph would also be inconsistent with the Constitution. If the

¹ The international convention on elimination of all forms of discrimination against women ratified in the general assembly of the United Nations, in the resolution 34/180 of December 1979.

² Presidential Order N°431/12 of 10/11/1980 (O.G N°4 of 15/02/1981)

³ Article 2 of that convention reads: "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of elimination discrimination against women and, to this end, undertake: (C) to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination".

whole article is abrogated, there would be a lacuna. This would imply that the adultery offender, be it a man or a woman, will not be punished.

[30] The Supreme Court, by law, has been assigned jurisdiction to repeal a law, either in part or in whole, if it finds that it contradicts the Constitution. Nevertheless, during the trial, the Court has to take into account the general interest, the reasons why it should not repeal a provision of the law and then leaves a lacuna, which is likely to incite people to fearlessly indulge in adultery as they are aware that no legal provision shall punish them. To resolve the issue in Article 354 of the Rwandan penal code, the Court resolves to separate the paragraphs of the article. The first paragraph is to be repealed and the second paragraph to be complemented by the insertion of the words “or a woman” after the word “a man”. Thus, article 354 of Rwandan Penal Code is to read as follows: “*a man or **woman convicted of adultery shall be liable to a term of imprisonment of one month to six months and a fine of one thousand francs or one of these penalties.*** Is the Supreme Court competent to amend this provision in this way? To address this issue, the Court finds that it should refer to the practices of other Courts around the world.

[31] In order to settle issues arising from a provision of law which is inconsistent with the Constitution, different countries, like Canada, the United States of America, and South Africa have resorted to different means including “severance” (separation of the parts of a provision which are inconsistent with the Constitution and are repealed in order to remain with parts which are not inconsistent with the Constitution), “reading down” (Interpretation of a provision in a broader way that makes the law easily understood and consistent with the Constitution), and “reading in” (Insertion of some words in a provision of the law in order to eliminate the inconsistency with the Constitution)⁴. In judgment **RS/Inconst/Pén.0001/07/CS** delivered on 11/1/2008, this Court resorted to the procedure of separating the parts of a provision and repealing the part which is inconsistent with the Constitution. In this case, the Court finds that the procedures which are compatible with this issue include “severance” and “reading in”. By repealing the first paragraph of article 354 and inserting words in the second paragraph, the provision is no longer inconsistent with the Constitution.

[32] Courts that hear and try petitions in which a repeal of law or a provision is requested for the reason that they are inconsistent with the Constitution, they are recognized the competence to complement the law or to take other measures for preventing the vacuum. In the Constitution of South Africa of 1996, in its article 172, it is provided that in the course of trying the case, the Court may rule that a law or a provision which is in contradiction with the law be repealed. It goes on stating that “.....it may make any order that is just and equitable”.....

[33] The Supreme Court of Canada has also taken decisions that caters for the problem of unconstitutional laws. It does this in conformity with article 52 of the Constitution of 1982 which states that “*The Constitution of Canada is the supreme law of Canada and any law that is inconsistent with the provision of the Constitution is, to the extent of the inconsistency, of no*

⁴These different ways of addressing issues deriving from provisions that are inconsistent with the Constitution are well explained by law scholars, , Iain Currie and Johan de Waal, *The new Constitution and Administrative Law*, Vol.I, Cape Town, JUTA, 2001, p 290-293.

*force or effect*⁵. That Court has explained its jurisdiction in such cases in *Schachter v Canada*⁶. In this case, the court ruled that per article 52 of the Constitution of Canada, it can repeal the law, in whole or in part, interpret the law so that it does not conflict with the constitution, or inserting some words in a provision of the law, as a relevant remedy for the issues surrounding an unconstitutional law.

[34] Article 200 of the Constitution of Rwanda is similar to article 52 of the Constitution of Canada which is mentioned above. Article 200 states, “the Constitution is the supreme law of the State. Any law which is contrary to this Constitution is null and void”. Therefore, it is clear that the Supreme Court of Rwanda has the authority to repeal part of a provision of law that is unconstitutional and insert words in the remaining part, in accordance with article 200 of the Constitution and supported by article 93 of the Organic law N°01/2004 of 29/01/2004 which determines the organization, functioning and competence of the Supreme Court as amended to date. That article provides “Where court finds the petition well founded, it abrogates the whole or part of that law depending on substance of the petition...”. This jurisdiction prevents the legal loophole created when part of a provision is repealed for being inconsistent with the Constitution.

[35] In regards to avoidance of a legal lacuna when a provision or its part is repealed for unconstitutionality, the Court finds a good example in the South African case *S v. Manamela*. In this case, the Constitutional Court encountered a problem when it found that there was a provision which was inconsistent with the Constitution. The repeal of the entire provision would result in a legal vacuum because it would take the parliament a long time to sit, during which many consequences could arise. The Court decided to insert some words in the provision of the law to avoid the lacuna. It stated that: “The striking down of the reverse onus in section 37, without more, would leave a vacuum in the present legislative structure designed to deal with “fencing” which is a pervasive evil in our society. Parliament could remedy the situation, but that takes time, and in the interim that gap would remain. To read in the words necessary to establish an evidential presumption is less invasive of the legislative purpose of section 37 than simply striking down the presumption”⁷.

[36] However, the repeal of a part of a provision and the insertion of words in a provision should be done in a careful manner. The Court should avoid addressing political issues and try to respect the vision and rationale of the legislator during the enactment of disputed law in regard to the aspect of that law after the act of the Court. In the case *National Coalition*, the Constitutional Court of South Africa ruled that the severance of two parts of a provision, one being repealed and the remaining being complemented by the insertion of words, is a decision that the Court takes with care so that even the remaining part of the provision which has been complemented by additional words does not contradict the constitution and respect for fundamental principles of the State. It ruled that: “The severing of words from a statutory provision and reading words into the provision are closely related remedial powers of the court. In deciding whether words should be severed from a provision or whether words should be read as one, a court pays careful

⁵Meaning that “*The Constitution of Canada is the supreme law of Canada and any law that is inconsistent with the provision of the Constitution is, to the extent of the inconsistency, of no force or effect.*”

⁶*Schachter v Canada* (1992) 2 S.C.R. 679, P21. <http://CSC.Lexum.Umontreal.ca>.

⁷*S v Manamela* 2000 (3) SA1 (CC).

attention first, to the need to ensure that the provision which results from severance or reading words into a statute is consistent with the Constitution and its fundamental values and secondly, that the result achieved would interfere with the laws adopted by the legislature as little as possible”⁸.

[37] Concerning the usurpation of power by the judiciary and the non-interference in the powers of the legislature by reading in of words in a statute; the Court should only focus on what is necessary in order for the Constitution to be respected. As held by the Supreme Court of Canada in the case *MvH*⁹ “.....remedial precision requires that the insertion of a handful of words will without more, ensure the validity of the legislation and remedy the constitutional wrong.” This means that, in order to avoid usurpation, a few words should be inserted in the statute. This is enough for the statute to be valid and to rectify its contradiction with the Constitution. In this case, the repeal of the first paragraph of article 354 and insertion of the words, “or a woman” shall only ensure the validity of the legislation and invalidate its inconsistency with the Constitution of the Republic of Rwanda.

[38] In this case, the repeal of the first paragraph of article 354 of the penal code of Rwanda, and the insertion of additional words in the remaining second paragraph is likely to keep article 354 from contradicting the Constitution of the Republic of Rwanda. This Court also finds that the insertion of words in article 354 of the penal code of Rwanda does not constitute usurpation. Rather, it is an institutional balance which aims at preventing the negative implications likely to result from the nonexistence of a provision which penalizes the offence of adultery.

V. THE DECISION OF THE SUPREME COURT

[39] The Supreme Court admits the petition submitted by Murorunkwere Spéciose;

[40] Decides that it has merit.

[41] Repeals the first paragraph of article 354 of Rwandan Penal code.

[42] Rules that the second paragraph of article 354 of Rwandan penal code should include the words “**or a woman**” after the word man.

[43] Rules that article 354 of the Rwandan penal code is modified as follow: “**a man or woman convicted of adultery shall be liable to a term of imprisonment of one month to six months and a fine of one thousand francs or one of these penalties**”.

[44] Rules in favor of Murorunkwere Spéciose.

[45] Decides that Court fees amounting to 5,900Frw are to be borne by the public treasury.

⁸National Coalition of Gay and Lesbian Equality v Minister of Home Affairs 2000(2) SA 1 (CC) para. 75.

⁹*MvH* (1999) 2 SCR, para. 139.