# MUKABARUNGI v. GATSINZI

[Rwanda URUKIKO RW'IKIRENGA – RCAA 0007/13/CS (Kayitesi Z., P.J., Munyangeri na Hitiyaremye, J.)17 Mata 2014]

*Amategeko agenga umuryango – Ubutane – Igabana ry'umutungo mu gihe abashakanye basezeranye ivangamutungo rusange – Umutungo washatswe n'umwe mu bashakanye nyuma yo kutabana by'agateganyo – Kutabana by'agateganyo bijyana buri gihe n'ivanguramutungo, ingaruka zabyo zigatangira gukurikizwa umunsi ikirego cyashyikirijweho Urukiko – Umutungo umwe mu bashakanye yabonye ivangamutungo ryararangiye ntubarirwa mu mutungo ugabanwa – Itegeko N$^{o}$ 42/1988 ryo kuwa 27/10/1988 rishyiraho Interuro y'Ibanze n'Igitabo cya mbere cy'Urwunge rw'Amategeko Mbonezamubano, ingingo ya 289.*

*Amategeko agenga imiburanishirize y'imanza mbonezamubano – Indishyi – Gushorwa mu manza – Nta ndishyi bitangirwa mu gihe uzisaba atagaragarije Urukiko uko yazibaze kandi bikagaragara ko uwajuririye urubanza rwamutsinze atari agamije kumushora mu manza.*

**Incamake y'ikibazo:** Mukabarungi yatanze ikirego cy'ubutane mu Rukiko Rwisumbuye rwa Saint Brieue rwo mu Bufaransa kuwa 28/06/2000 asaba gutandukana na Gatsinzi. Urwo Rukiko rufata icyemezo cy'uko kwiyunga kunaniranye (ordonance de non conciliation), ariko rutegeka ko batandukanye by'agateganyo (séparation de corps). Nyuma y'aho, yatanze ikirego mu

Rukiko rwa mbere rw'iremezo rwa Kigali asaba ubutane. Uru Rukiko rutegeka ko batandukanye kandi rubagabanya ku buryo bungana imitungo bafatanyije.

Mukabarungi yajuriye mu Rukiko Rukuru avuga ko hari imitungo igizwe n'inzu ebyiri bafatanyije Urukiko rubanza rutabagabanyije. Mu gihe hari hagitegerejwe ko urubanza rucibwa yahise atanga ikirego cyihutirwa muri urwo Rukiko asaba guhabwa ibimutunga maze rutegeka Gatsinzi ko agomba kumugenera ibimutunga buri kwezi kugeza urubanza ruciwe; Gatsinzi yajuririye icyo cyemezo mu Rukiko rw'Ikirenga hanyuma rwemeza ko ubujurire bwe butakiriwe kuko kujuririra urubanza rubanziriza urundi bikorerwa rimwe n'urubanza mu mizi.

Mu rubanza rubanziriza urundi Urukiko Rukuru rwafashe icyemezo cyo gushyira hamwe umutungo wose uzagabanywa harimo n'inzu Urukiko rwa Mbere rw'Iremezo rutabagabanyije kugira ngo igabanywe nyuma yo kugenerwa agaciro n'abahanga.

Gatsinzi yatambamiye icyo cyemezo mu izina ry'umwana we, avuga ko inzu iri mu kibanza n◦ 4423 i Remera III idakwiye gushyirwa mu mutungo w'umuryango kubera ko yayihaye uwo mwana kandi ko ayifitiye ibyangombwa bimwanditseho. Urukiko Rukuru rwemeje ko iyo inzu ivanwe mu mutungo ugomba kugabanywa.

Muri 2013, Urukiko Rukuru rwaciye mu mizi urubanza RCA0039/05/HC/KIG maze rwemeza ko Gatsinzi na Mukabarungi bagomba kugabana imitungo yose buri wese agatwara kimwe cya kabiri, uretse ikibanza n$^{o}$4423 n'inzu irimo kuko Gatsinzi yabihaye umwana we witwa Irebe Gatsinzi Lars ubifitiye ibyangombwa nkuko byemejwe n'urubanza rutambamirwa.

Mukabarungi yajuririye Urukiko rw'Ikirenga avuga ko inzu iri mu kibanza n◦ 4423 i Remera III yakuwe mu mutungo bagomba kugabana kandi ari umutungo w'umuryango kuko n'aho waba waraguzwe nyuma y'uko habayeho kutabana by'agateganyo, ariko ukomoka mu

mutungo rusange. Gatsinzi we avuga ko iyo nzu idakwiye gushyirwa mu mitungo igabanwa kuko yawuhashye atakibana na Mukabarungi akaba rero yari afite uburenganzira bwo kuwugenera Irebe Gatsinzi Lars unawufitiye ibyangombwa.

Uburanira Gatsinzi yatanze inzitizi avuga ko Urukiko rw'Ikirenga rudafite ububasha bwo kuburanisha ibirego by'imitungo ishamikiye ku birego remezo by'ubutane, rwo rufata icyemezo ko rufite ububasha bwo kuburanisha ibyo birego.

**Incamake y'icyemezo:** 1. Kutabana by'agateganyo ku bashakanye bijyana buri gihe n'ivanguramutungo, uko kutabana kukaba gufatwa nk'aho kwatangiye gukurikizwa umunsi ikirego cyashyikirijwe Urukiko, bivuga ko uwo mutungo wabonetse ivangamutungo ryararangiye ugomba gufatwa nk'umutungo bwite wa Gatsinzi utagomba kugabanwa, bityo akaba yari afite uburenganzira bwo kuwukoresha uko ashaka.

2. Uregera indishyi zo gushorwa mu manza ntazihabwa mu gihe atagaragarije Urukiko uko yazibaze kandi bikanagaragara ko uwajuririye urubanza rwamutsinze atari agamije kumushora mu manza.

**Ubujurire nta shingiro bufite.**
**Amagarama y'urubanza aherereye ku wajuriye.**

**Amategeko yashingiweho:**
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 24.
Itegeko N° 42/1988 ryo kuwa 27/10/1988 rishyiraho Interuro y'Ibanze n'Igitabo cya mbere cy'Urwunge rw'Amategeko Mbonezamubano, ingingo ya 289.

**Nta rubanza rwifashishijwe.**

**Ibitekerezo by'abahanga byifashishijwe:**
Alain B., *Droit Civil: La famille,* Paris, Litec, 2003, p.274.
Francois T. et Dominique F., *Droit Civil: Les personnes, la famille et les incapacités,* Paris, Dalloz, 1996, pp.451-452.

## Urubanza

## I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rwa Mbere rw'Iremezo rwa Kigali, Gatsinzi Marcel aregera ubutane. Mu rubanza RC 35.932/01 rwaciwe kuwa 04/02/2003, Urukiko rwemeje ubutane ku makosa ya Gatsinzi no ku makosa ya Mukabarungi, runabategeka kugabana ku buryo bungana imitungo bafatanyije igizwe n'inzu iri mu Kibanza n° 3119 n'isambu iri Gasogi mu Mujyi wa Kigali.

[2] Mukabarungi Julienne ntiyishimiye imikirize y'urubanza nuko ajuririra mu Rukiko Rukuru avuga ko hari imitungo afatanyije na Gatsinzi Urukiko rutabagabanyije, ko iyo mitungo igizwe n'inzu iri mu kibanza n° 4423 i Remera III mu Mujyi wa Kigali, n'indi iri mu Kibanza n° 4704 nayo iri i Remera III mu Mujyi wa Kigali.

[3] Mu gihe hagitegerejwe ko urubanza rucibwa mu Rukiko Rukuru, Mukabarungi yatanze ikirego cyihutirwa muri urwo rukiko asaba guhabwa "pension alimentaire". Urukiko Rukuru rwategetse Gatsinzi Marcel kuwa 18/08/2008 kujya aha Mukabarungi 80.000 Frw buri kwezi kugeza urubanza ruciwe.

[4] Gatsinzi ntiyishimiye iki cyemezo nuko akijuririra mu Rukiko rw'Ikirenga. Mu cyemezo cy'Urukiko rw'Ikirenga cyo kuwa 17/03/2009, Urukiko rwemeje ko ubujurire bwa Gatsinzi butakiriwe kubera ko yajuririye urubanza rubanziriza urundi kandi ingingo ya 163 y'Itegeko no 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko kujuririra urubanza rubanziriza urundi bikorwa gusa iyo urubanza rusoza iburanisha rurangiye kandi bigakorerwa rimwe.

[5] Hagati aho Urukiko Rukuru rwafashe icyemezo cyo gushyira hamwe umutungo wose uzagabanywa harimo n'imitungo itaragabanywe mu Rukiko rwa Mbere rw'Iremezo kugira ngo igenerwe agaciro n'abahanga.

[6] Gatsinzi mu izina ry'umwana we witwa Irebe Gatsinzi Lars yatambamiye icyo cyemezo avuga ko inzu iri mu kibanza n◦ 4423 i Remera III idakwiye gushyirwa mu mutungo w'umuryango kubera ko yayihaye uwo mwana kandi ko uwo mwana ayifitiye ibyangombwa bimwanditseho.

[7] Mu rubanza RCA 0099/10/HC/KIG rwaciwe kuwa 16/09/2010, Urukiko Rukuru rwasanze inzu iri mu kibanza n◦ 4423 i Remera III yanditse kuri Irebe Gatsinzi Lars nuko rwemeza ko ivanwe mu mutungo Gatsinzi Marcel na Mukabarungi Julienne bakwiye kugabana.

[8] Mu rubanza RCA 0039/05/HC/KIG rwaciwe kuwa 03/05/2013, Urukiko Rukuru rwemeje ko Gatsinzi Marcel na Mukabarungi Julienne bagomba kugabana imitungo buri wese agatwara kimwe cya kabiri igizwe n'ikibanza n$^{o}$ 3119 n'imitungo irimo biri mu Rugunga, ikibanza n$^{o}$ 4707 n'inzu yubatsemo biri i Nyarutarama, isambu iri i Gasogi, byose mu Mujyi wa Kigali, uwo mutungo wose ukaba ufite agaciro kangana na 223.784.264 Frw.

[9] Urukiko rwongeye kwemeza kandi ko ikibanza n$^{o}$ 4423 n'inzu irimo bidakwiye kugabanywa Gatsinzi na Mukabarungi kubera ko icyo kibanza n'inzu yubatsemo Gatsinzi yabihaye umwana we witwa Irebe Gatsinzi Lars ubifitiye ibyangombwa.

[10] Mukabarungi yajuririye Urukiko rw'Ikirenga avuga ko inzu iri mu kibanza n$^{o}$ 4423 Remera III mu Mujyi wa Kigali yakuwe mu mutungo bagombaga kugabanywa kandi ari umutungo w'umuryango. Gatsinzi we avuga ko iyo nzu idakwiye gushyirwa mu mitungo igabanwa kuko ari iya Irebe Gatsinzi Lars.

[11] Mu iburanisha ryo kuwa 07/01/2014, Me Kazungu wunganira Gatsinzi yatanze inzitizi avuga ko Urukiko rw'Ikirenga rudafite ububasha bwo kuburanisha ibirego by'imitungo ishamikiye ku birego remezo cy'ubutane, maze mu Rubanza rubanziriza urundi RCAA 0007/13/CS rwaciwe kuwa 31/01/2014, Urukiko rw'Ikirenga rufata icyemezo ko rufite ububasha bwo kuburanisha ibyo birego, rutegeka ko iburanisha mu mizi rikomeza kuwa 26/03/2014.

[12] Kuri uwo munsi iburanisha ry'urubanza ryabaye mu ruhame Mukabarungi ahagarariwe na Me Rusanganwa Jean Bosco naho Gatsinzi Marcel ahari kandi ahagarariye umwana we Irebe Gatsinzi Lars bunganiwe na Me Kazungu Jean Bosco.

## II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO.

**Kumenya niba inzu iri mu kibanza n◦ 4423 Remera III mu Mujyi wa Kigali igomba kugarurwa mu mutungo ugomba kugabanywa Gatsinzi Marcel na Mukabarungi Julienne.**

[13] Me Rusanganwa uburanira Mukabarungi avuga ko yajuririye Urukiko rw'Ikirenga arusaba gusubiza inzu iri mu kibanza nº 4423 i Remera III mu mutungo w'umuryango kugirango Mukabarungi ayigabane na Gatsinzi Marcel kuko Gatsinzi yayitanze ayikuye mu mutungo usangiwe mu buryo bunyuranyije n'amategeko cyane cyane ingingo ya 24 y'itegeko n◦ 22/99 ryo kuwa 12/11/1999 ryerekeye imicungire y'umutungo w'abashakanye, impano n'izungura ivuga ko ivangamutungo rirangira ari uko habayeho ubutane.

[14] Me Rusanganwa avuga kandi ko iby'uko hashingirwa ku ngingo ya 44 y'Igitabo cya kabiri cy'urwunge rw'amategeko mbonezamubano cyangwa hakarebwa igihe "certificat d'enregistrement" yatangiwe bitahabwa agaciro kuko inzu yaturutse mu mutungo usangiwe, ngo kandi uyu niwo murongo watanzwe n'Urukiko rw'Ikirenga mu rubanza rwa Nyirabizimana Ziripa na Musoni Ndamage aho rwemeje ko muri bene izi manza ikigomba gusuzumwa ari inkomoko y'umutungo, aho kuba "certificat d'enregistrement".

[15] Asobanura ko nubwo yajya ku ruhande rw'uregwa, hatarebwa igihe Mukabarungi yatangiye ikirego cy'ubutane mu Rukiko Rwisumbuye rwa Saint Brieue mu Bufaransa (France) kuwa 28/06/2000, kuko nta rubanza ku kutabana by'agateganyo cyangwa ku butane rwaciwe n'urwo rukiko, ko ahubwo Urukiko rwavuze ko ubutane buzasuzumwa n'inkiko z'u Rwanda, ko rero Gatsinzi yaguze ikibanza cyubatswemo inzu iburanwa kuwa 07/03/2001 atarabona ubutane bisobanuye ko icyo kibanza ndetse n'inzu icyubatsemo bikomoka mu mutungo w'umuryango, ngo ibi bigaragazwa n'uko mbere y'uko bahabwa ubutane Gatsinzi yakomeje gusura umugore we mu Burayi, bohererezanya amafaranga ndetse n'imitungo yose y'umuryango yari ikiri mu maboko ya Gatsinzi kugeza ubu, bityo ko Urukiko Rukuru rwivuguruje ubwo, mu rubanza RCAA 009/10/HC/KIG, rwemeje ko iyo nzu ivanwa mu bigabanywa, binyuranyije na none n'ingingo ya 24 y'itegeko n◦ 22/99 ryo kuwa 12/11/1999 ryavuzwe haruguru ivuga ko ivangamutungo rirangira ari uko habayeho ubutane.

[16] Me Kazungu wunganira Gatsinzi avuga ko Itegeko n◦22/99 ryo kuwa 12/11/1999 ryerekeye imicungire y'umutungo w'abashingiranywe, impano n'izungura, cyane cyane ingingo yaryo ya 24 ivuga ko ivangamutungo rirangira ari uko habayeho ubutane, ritagomba gukoreshwa muri uru rubanza, kubera ko iyo ngingo ivuga uko bigenda nyuma y'urubanza rw'ubutane, aho kuvuga ku ngaruka z'ubutane zihera kuva ikirego cy'ubutane gitanzwe zikaba ziteganywa n'ingingo ya 247 y'Itegeko nº 42/1988 ryo kuwa 27/10/1988 ryavuzwe haruguru. Avuga ko bifashwe ko ingaruka z'ubutane zitangira nyuma y'urubanza rw'ubutane gusa byatuma umwe mu bashakanye yigwizaho imitungo mu buryo budakwiriye "enrichissement sans cause" kubera ko yakungukira ku musaruro w'undi kandi ntacyo bagihuriyeho.

[17] Me Kazungu avuga kandi ko nubwo nta cyemezo cy'urukiko cyo kutabana by'agateganyo hagati ya Gatsinzi Marcel na Mukabarungi Julienne cyabayeho, kuva aho Jenoside irangiriye batongeye gutura hamwe kubera ko Mukabarungi yigumiye mu Bufaransa naho Gatsinzi agakomeza kuba mu Rwanda, ko kutabana byabaye "de facto", ndetse ko mubyo Mukabarungi yarezwe harimo no guta urugo, ko Mukabarungi abaye yemeza ko yageze mu Rwanda nyuma ya 1994 yabitangira ibimenyetso, bityo ko kohererezanya amafaranga no gusurana atari byo bigaragaza ko babanaga.

[18] Me Kazungu avuga na none ko Mukabarungi ariwe wabanje gutanga ikirego cy'ubutane mu Rukiko Rwisumbuye rwa Saint Brieue mu Bufaransa (France) kuwa 28/06/2000, urwo rukiko rugafata icyemezo kibangira kwiyunga (ordonance de non conciliation), Gatsinzi nawe agatanga ikirego cy'ubutane mu Rwanda kuwa 23/08/2001 kandi akajuririra icyemezo cy'Urukiko Rwisumbuye rwa Saint Brieuc, mu bujurire hakemezwa ko ikibazo cy'ubutane kizakemurwa n'inkiko z'u Rwanda, bityo ko Urukiko rw'Ikirenga rukwiye guhera ku gihe ikirego cy'ubutane cyatangiwe mu Bufaransa, ni ukuvuga kuwa 28/06/2000, rukemeza ko ikibanza nº 4423 n'inzu icyubatsemo biri Remera III bitari mu mutungo rusange w'umuryango kubera ko "certificat d'enregistrement" igaragaza ko byabonetse nyuma y'ikirego cy'ubutane cyatanzwe kuwa 28/06/2000 kandi ko ari umutungo wa Irebe Gatsinzi Lars.

[19] Me Kazungu akomeza avuga ko Urukiko Rukuru rutivuguruje kubera ko hasuzumwe ibigize umutungo abashakanye bagombaga kugabana, Urukiko rusanga Irebe Gatsinzi Lars afite ukuri ko gutambamira urubanza rwashyiraga inzu ye mu mutungo rusange ugabanywa abashakanye kandi atari umuburanyi muri urwo rubanza, ko gukura iyo nzu mu mutungo ugabanwa byubahirije ingingo ya 44 y'igitabo cya kabiri cy'amategeko mbonezamubano n'ingingo ya 247 y'Itegeko nº 42/1988 ryo kuwa 27/10/1988 rishyiraho Interuro y'Ibanze n'Igitabo cya mbere cy'Urwunge rw'Amategeko Mbonezamubano yari yirengagijwe mbere nyamara yumvikanisha ko ivangamutungo rihagarara kuva itariki ikirego cy'ubutane cyatangiweho mu rukiko urwo arirwo rwose, ko rero iyo urubanza rurangiye ubutane bugatangwa abashyingiranywe bagabana gusa ibintu byari bihari ku munsi wo gutanga ikirego.

## UKO URUKIKO RUBIBONA

[20] Ingingo ya 24 y'itegeko n◦ 22/99 ryo kuwa 12/11/1999 ryuzuza igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura ivuga ko kimwe mu bishobora gutuma ivangamutungo rusange rirangira ari ukutabana by'agateganyo (séparation de corps).

[21] Ingingo ya 289 y'Itegeko nº 42/1988 ryo kuwa 27/10/1988 rishyiraho Interuro y'Ibanze n'Igitabo cya mbere cy'Urwunge rw'Amategeko Mbonezamubano yo igateganya ko "kutabana by'agateganyo byemerera abashyingiranywe kutabana bijyana buri gihe n'ivangura ry'umutungo w'abashyingiranywe. Ku bashyingiranywe, uko kutabana kukaba gufatwa" nk'aho kwatangiye gukurikizwa umunsi ikirego cyashyikirijwe urukiko"

[22] Urukiko rurasanga muri dosiye y'urubanza harimo inyandiko igaragaza ko Gatsinzi Marcel yabonye ikibanza n°4423 ku itariki ya 07/03/2001, n'inyandiko ya "Cerificat d'enregistrement" y'inzu iri muri icyo kibanza yo kuwa 18/07/2002.

[23] Dosiye y'urubanza igaragaza kandi ko Mukabarungi yatanze ikirego cy'ubutane mu Rukiko Rwisumbuye rwa Saint Brieue rwo mu Bufaransa kuwa 28/06/2000 asaba gutandukana na Gatsinzi Marcel. Urwo Rukiko rugafata icyemezo kibangira kwiyunga (ordonnance de non conciliation) kuwa 27/02/200. Muri icyo cyemezo Urukiko rwemeje ibi bikurikira: 1) rubemereye kutabana by'agateganyo (séparation de corps), 2) rubujije buri wese gutera umutekano muke aho undi atuye, 3) rutegetse buri wese guha mugenzi we imyenda ye n'ibindi bintu bye bwite, 4) rutegetse ko abana batatu bato barerwa na nyina, 5) rutegetse Gatsinzi Marcel kujya asura abo bana ku bwumvikane, 6) rutegetse Gatsinzi Marcel gutanga ibitunga urugo n'amafaranga y'ishuli ry'abana.

[24] Urukiko rurasanga icyemezo cyavuzwe haruguru cyemerera Gatsinzi na Mukabarungi kutabana by'agateganyo (séparation de corps), biteganywa n'ingingo ya 289 y'Itegeko n$^{o}$ 42/1988 ryo kuwa 27/10/1988 ryavuzwe haruguru. Iyi ngingo ikaba iteganya kandi ko ukutabana by'agateganyo bijyana buri gihe n'ivangura ry'umutungo w'abashingiranywe kandi ko ku bashingiranywe uko kutabana gufatwa nk'aho kwatangiye gukurikizwa umunsi ikirego cyashikirijwe urukiko; ni ukuvuga ko kuri uru rubanza itariki ya 28/06/2000 igomba gufatwa nk'itariki yatangiweho ikirego cyashingiweho hafatwa icyemezo cyo kutabana by'agateganyo. Ibyo iyi ngingo ya 289 iteganya ku bijyanye n'ingaruka zo kutabana by'agateganyo bihura kandi n'ibiteganywa n'ingingo ya 302 y'Igitabo cya mbere cy'Urwunge rw'Amategeko y'Imbonezamubano yo mu Bufaransa ivuga ko ukutabana by'agateganyo buri gihe bigendana no kuvangura umutungo[1].

[25] Urukiko rurasanga rero ibyo uburanira Mukabarungi avuga ko hatabayeho kutabana by'agateganyo atari ukuri kuko hari icyemezo cy'Urukiko kibyemeza, naho ibyo avuga ko Gatsinzi yakomeje gutanga ibitunga urugo no gusura umuryango, uyu yabikoze ashyira mu bikorwa icyemezo cy'Urukiko, bityo izo ngingo zikaba nta shingiro zifite.

[26] Ku kibazo cy'uko hatagomba kurebwa gusa igihe inzu yabonekeye, ko harebwa n'uko yaturutse mu mutungo rusange nkuko uburanira Mukabarungi abivuga, Urukiko rurasanga, uretse kubivuga gusa, nta bimenyetso agaragariza Urukiko by'uko, nyuma yo kutabana by'agateganyo no kuvangura umutungo, haba hari ukundi iyo nzu yari gukomoka ku mutungo rusange mu gihe nta mutungo rusange wari ukimuhuje na Gatsinzi; bityo iyo ngingo ikaba itahabwa agaciro hashingiwe ku ngingo ya 9 y'Itegeko n$^{o}$ 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko urega agomba kugaragaza ibimenyetso by'ibyo aregera yabibura, uwarezwe akaba atsinze.

[27] Hashingiwe ku bisobanuro byatanzwe haruguru, Urukiko rurasanga ikibanza n°4423 n'inzu irimo byarabonetse nyuma yuko urukiko rwemereye Gatsinzi Marcel na Mukabarungi kutabana by'agateganyo (séparation de corps) bijyana n'ivangura ry'umutungo wabo kuva tariki ya 28/06/2000, bivuga ko uwo mutungo wabonetse ivangamutungo ryararangiye, ukaba ugomba gufatwa nk'umutungo bwite wa Gatsinzi Marcel utagomba kugabanwa, akaba yari afite uburenganzira bwo kuwukoresha. Bityo ibyo Mukabarungi asaba ko inzu iri mu kibanza n$^{o}$ 4423 yagarurwa mu mutungo yashakanye na Gatsinzi Marcel bikaba bitahabwa agaciro kuko itari mu mutungo rusange.

---

[1] Ingingo ya 302 ya Code Civil Français iteganya ko: "La separation de corps entraine toujours la separation des biens…"

[28] Uku ni nako abahanga mu mategeko y'umuryango babisanga aho bavuga ko gutandukana by'agateganyo kw'abashingiranywe bijyana n'ivangura ry'umutungo kubera ko nta kiba kikibahuje, ko mu mwanya w'ivangamutungo rusange bifatwa ko bagengwa n'ivangura mutungo kugira ngo mu gihe abashakanye batarabona ubutane hatazagira uwitwaza ivangamutungo rusange agatwara igice cy'imitungo yashatswe n'undi nyuma yo kuregera ubutane cyangwa agafata ibyemezo bibangamira umutungo w'undi[2].

**Kumenya niba indishyi Gatsinzi Marcel asaba yazihabwa**

[29] Mu bujurire bwuririye ku bundi, uburanira Gatsinzi Marcel na Irebe Gatsinzi Lars avuga ko Irebe Gatsinzi Lars yashowe mu manza nta mpamvu kubera yagombye kuburana inzu ye kandi ayifiye icyangombwa cya burundu (certificat d'enregistrement) kigaragaza ko ari ye naho Gatsinzi Marcel agashorwa mu manza k'ubushotoranyi bwa Mukabarungi bityo bakaba babisabira indishyi z'akababaro zingana na 1.000.000 frw.

[30] Uburanira Mukabarungi avuga ko indishyi nta shingiro zifite kubera ko nta bushotoranyi bwabayeho kandi ko nubundi imitungo yagumye mu maboko ya Gatsinzi Marcel.

[31] Ku byerekeye indishyi zingana na 1.000.000 Frw zisabwa na Gatsinzi Marcel, Urukiko rurasanga usibye ko atagaragaza uburyo zabazwe, nta n'ubushotoranyi bwakozwe na Mukabarungi Julienne kuko yajuririye urubanza rwamutsinze ashingiye ku biteganywa n'amategeko, bityo indishyi zisabwa zikaba nta shingiro zifite.

## III. ICYEMEZO CY'URUKIKO.

[32] Rwemeje ko ubujurire bwa Mukabarungi Julienne nta shingiro bufite;

[33] Rwemeje ko ikibanza N° 4423 n'inzu icyubatsemo bitari mu mutungo ugabanywa hagati ya Gatsinzi Marcel na Mukabarungi Julienne, kuko itari mu mutungo rusange.

[34] Ruvuze ko urubanza rwajuririwe ruhamyeho;

[35] Rutegetse Mukabarungi Julienne gutanga amagarama y'urubanza angana na 226.400 frw.

---

[2] Reba Alain Bénabent, *Droit Civil: La famille*, Paris, Litec, 2003, p.274 na Francois Terré na Dominique Fenouillet, Droit Civil: *Les personnes, la famille et les incapacités*, Paris, Dalloz, 1996, pp.451-452.