Re .GATERA NA KABALISA (IKIREGO KIGAMIJE KUVANAHO INGIGO INYURANYIJE N'ITEGEKO NSHINGA)

[Rwanda URUKIKO RW'IKIRENGA – RS/Inconst/Pén.0003/10/CS (Rugege, P.J., Mugenzi, Mukanyundo, Havugiyaremye, Kayitesi,Nyirankwaya, Kanyange, Mukandamage na Munyangeri, J.) 07 Mutarama 2011]

*Itegeko Nshinga – Amategeko anyuranyije n'Itegeko Nshinga – Ikirego kigamije gukuraho ingingo ya 39 y'Itegeko rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina – . Kugirango ubushyingiranwe bw'ababanaga nk'umugore n'umugabo bwemerwe bugomba kuba ari ubushyingiranwe hagati y'umugore umwe n'umugabo umwe kandi bukorewe imbere y'urwego rw'ubutegetsi rubifitiye ububasha kandi mu gihe umwe mu babanaga nk'umugabo n'umugore wabanaga n'abagabo benshi cyangwa n'abagore benshi ahisemo gushyingirwa biciye mu buryo buteganywa n'amategeko, uwo wahisemo gushyingiranwa agabana ku buryo bungana umutungo yari afitanye cyangwa yahahanye na babandi babanaga batarashyingiranywe kandi igabana ry'umutungo wabo ridateganijwe nk'uburenganzira buturuka ku masezerano yo gushyingiranwa ahubwo ari uburenganzira ku mutungo umwe mu babanaga aba afite bushingiye ku kuba barawuhahanye cyangwa bawufitanye – Mu gihe umwe mu babana nk'umugabo n'umugore hari ibyo yigomwe agatanga, afite igitekerezo cyo kuzagira uruhare ku mutungo, uwo babana akemera kubyakira nta gahato azi neza ko ubimuhaye yizera ko azagira uburenganzira ku mutungo, uwabyakiriye aramutse abyikubiye wenyine byaba ari akarengane gakorewe uwabitanze. *

Incamake y'ikibazo: Gatera na kabalisa bashingiye ku rubanza bajuririye mu Rukiko Rukuru nyuma yugutishimira imikirize y'urubanza rwaciwe n'Urukiko Rwisumbuye rwa Gasabo aho rwategetse ko Kiza Anita na Gatera Johnson bagabana ku buryo bungana umutungo w'inzu bafitanye,batanze ikirego mu Rukiko Rw'ikirenga basaba ko ingingo ya 39 y'Itegeko rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina yashingiweho n' Urukiko Rwisumbuye rwa Gasabo mu kubagabanya umutungo yavanwaho kuko inyuranyije n'ingingo ya 29 y'Itegeko Nshinga rya Repubulika y'u Rwanda. Bavuga ko ubundi bushyingiranwe cyangwa kubana nk'umugabo n'umugore bitazwi n'Itegeko Nshinga bidashobora gutanga cyangwa gukomorwaho inshingano n'uburenganzira bingana n'ibyabashyingiranywe mu buryo bukurikije amategeko.

Kiza Anita we akasobanura ko iyi ngingo itanyuranye n'Itegeko Nshinga ko ahubwo ari uburyo umushingamategeko yashyizeho kugirango ababana batarashyingiranywe bashobore kugabana umutungo bashakanye n'uwo bafitanye mu gihe baba batandukanye kandi iki gitekerezo bagihuriyeho n'Intumwa ya Leta aho iyi Ntumwa yongeraho ko umuntu afite uburenganzira ku mutungo afatanije n'abandi baba abo babana batabana batabana..

Incamake y'icyemezo: 1. Igabana ry'umutungo rivugwa mu ngingo ya 39 y'Itegeko rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina ridateganijwe nk'uburenganzira buturuka ku masezerano yo gushyingiranwa ahubwo ari uburenganzira ku mutungo umwe mu babanaga aba afite bushingiye ku kuba barawuhahanye cyangwa bawufitanye.

2. Amasezerano yo gushyingirwa (contrat de mariage) agira agaciro iyo yakorewe mu rwego rw'ubutegetsi rugenwa n'amategeko hagati y'umugabo umwe n'umugore umwe rero ingingo

y'itegeko, cyangwa itegeko muri rusange byaba binyuranye n'Itegeko Nshinga, mu ngingo yaryo ya 26 igika cya mbere mu gihe iyo ngingo cyangwa itegeko byaba bivuga ko ubushyingiranwe bw'umugabo umwe n'abagore benshi cyangwa ubushyingiranwe bw'umugore umwe n'abagabo benshi aribwo bwemewe, cyangwa se iyo ngingo cyangwa itegeko bikavuga ko hari ubundi buryo amasezerano yo gushyingirwa yakorwamo bidaciye mu butegetsi bwa Leta bikaba byagira agaciro imbere y'amategeko.

3. Kugirango ubushyingiranwe bw'ababanaga nk'umugore n'umugabo bwemerwe bugomba kuba ari ubushyingiranwe hagati y'umugore umwe n'umugabo umwe kandi bukorewe imbere y'urwego rw'ubutegetsi rubifitiye ububasha kandi mu gihe umwe mu babanaga nk'umugabo n'umugore wabanaga n'abagabo benshi cyangwa n'abagore benshi ahisemo gushyingirwa biciye mu buryo buteganywa n'amategeko, uwo wahisemo gushyingiranwa agabana ku buryo bungana umutungo yari afitanye cyangwa yahahanye na babandi babanaga batarashyingiranywe.

4. Mu gihe umwe mu babana nk'umugabo n'umugore hari ibyo yigomwe agatanga, afite igitekerezo cyo kuzagira uruhare ku mutungo, uwo babana akemera kubyakira nta gahato azi neza ko ubimuhaye yizera ko azagira uburenganzira ku mutungo, uwabyakiriye aramutse abyikubiye wenyine byaba ari akarengane gakorewe uwabitanze.

5. .Kugira uburenganzira ku mutungo kwa babanaga nk' umugabo n'umugore batarashyingiranywe ntibishingiye gusa ku kuba barabanye nk'umugabo n'umugore batarashyingiranywe ahubwo bigomba kuba bigaragara ko bawufitanye cyangwa ko bawushakanye.

.Rwemeje ko ikirego nta shingiro gifite;
Rwemeje ko ingingo ya 39 y'Itegeko No 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryose rishingiye ku gitsina itanyuranye n'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04 Kamena 2003 nk'uko ryavuguruwe kugeza ubu;
Amagarama y'urubanza aherereye ku barega..

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04 Kamena 2003 nk'uko ryavuguruwe kugeza ubu, ingigo ya 26

Itegeko No 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryose rishingiye ku gitsina,ingigo ya 39.

Imaza zifashishijwe:

Lother Pettkus V. Rosa Becker [1980] rwaciwe n'Urukiko rw'Ikirenga rwa Canada.

Baumgartener v Baumgartner [1987], rwaciwe n'Urukiko Rukuru rwa Australia.

Urubanza

I. Imiterere y'urubanza

[1] Kiza Anita yatanze ikirego mu Rukiko Rwisumbuye rwa Gasabo, arega Gatera Johnson, asaba ko bagabana imitungo bashakanye mbere y'uko Gatera Johnson ashyingiranwa na Kabalisa Teddy. Umugore wa Gatera Johnson ariwe Kabarisa Teddy

yahatiwe kugoboka muri urwo rubanza. Urukiko rwaciye urubanza rwemeza ko Gatera Johnson agabana ku buryo bungana na Kiza Anita umutungo w'inzu bafitanye. Gatera Johnson na Kabalisa Teddy bajuririye urwo rubanza mu Rukiko Rukuru, nyuma batanga ikirego mu Rukiko rw'Ikirenga basaba ko ingingo yashingiweho n'Urukiko Rwisumbuye rwa Gasabo mu kubagabanya umutungo ariyo ya 39 y'Itegeko rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina yavanwaho kuko inyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda.

[2] Urubanza rwaburanishijwe n'Urukiko rw'Ikirenga tariki ya 17/11/2010 abareze baburanirwa na Me Kazungu Jean Bosco afatanije na Me Gumisiriza Hilary, Kiza Anita ahagarariwe na Me Ruberwa Silas afatanije na Me Mukamisha Claudine, Leta ihagarariwe n'Intumwa yayo Me Rubango Epimaque. Nyuma yo kumva igitekerezo cya buri ruhande Urukiko rwatangaje ko urubanza ruzasomwa tariki ya 07/01/2011.

Ikibazo kigomba gusuzumwa muri uru rubanza

Muri uru rubanza ikibazo kigomba gusuzumwa ni icyo kumenya niba ingingo ya 39 y'itegeko rikumira kandi rihana ihohoterwa iryo ari ryose rishingiye ku gitsina, yerekeye igabana ry'umutungo ku babanaga nk'umugabo n'umugore batarashyingiranywe inyuranye n'Itegeko Nshinga rya Repubulika y'u Rwanda.

II. ISESENGURA RY'IKIBAZO N'UKO URUKIKO RUBIBONA

[3] Ingingo Gatera Johnson na Kabalisa Teddy basaba ko Urukiko rw'Ikirenga rwavanaho ni iya 39 y'Itegeko No 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryose rishingiye ku gitsina. Iyo ngingo igira iti "ababanaga nk'umugore n'umugabo batashyingiranywe mu buryo buteganywa n'amategeko, bashyingirwa hakurikijwe ihame ry'ubushyingiranywe bw'umugabo umwe n'umugore umwe. Mu gihe umwe mu barebwa n'ibivugwa mu gika kibanziriza iki, yabanaga n'abagore cyangwa abagabo benshi, abanza kugabana ku buryo bungana na buri wese mu bo babanaga, umutungo bari bafitanye cyangwa bahahanye mbere y'uko ashyingirwa(.....).". Abareze bavuga ko iyo ngingo inyuranye n'ingingo ya 26 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04 Kamena 2003 nk'uko ryavuguruwe kugeza ubu, mu gika cyayo cya mbere aho igira iti " ubushyingiranwe bw'umugabo umwe n'umugore umwe bukorewe mu butegetsi bwa Leta nibwo bwonyine bwemewe(......)". Bavuga ko ubundi bushyingiranwe cyangwa kubana nk'umugabo n'umugore bitazwi n'Itegeko Nshinga bidashobora gutanga cyangwa gukomorwaho inshingano n'uburenganzira bingana n'ibyabashyingiranywe mu buryo bukurikije amategeko.

[4] Abatanze ikirego bavuga ko igika cya kabiri cy'ingingo ya 39 y'Itegeko ryavuzwe haruguru gitegeka abatarashyingiranywe kugabana umutungo ku buryo bungana aricyo gituma iyo ngingo inyuranya n'Itegeko Nshinga rya Repubulika y'u Rwanda. Bavuga ko iryo gabana ry'umutungo w'ababanaga batarashyingiranywe rinyuranye n'Itegeko Nshinga, kuko byaba ari inshingano zimeze kimwe nk'iz'ababanaga barashyingiranywe mu buryo bukurikije amategeko, kandi ari nabwo bushyingiranwe bwonyine Itegeko Nshinga ryemera. Ababuranira Kiza Anita bo basanga iyi ngingo itanyuranye n'Itegeko Nshinga ko ahubwo ari uburyo umushingamategeko yashyizeho kugirango ababana batarashyingiranywe bashobore kugabana umutungo bashakanye n'uwo bafitanye mu gihe baba batandukanye. Iki gitekerezo

bagihuriyeho n'Intumwa ya Leta. Iyi Ntumwa yo yongeraho ko umuntu afite uburenganzira ku mutungo afatanije n'abandi baba abo babana batabana batabana.

[5] Mu gusesengura iki kibazo, Urukiko rurasanga igabana ry'umutungo rivugwa mu ngingo yavuzwe ridateganijwe nk'uburenganzira buturuka ku masezerano yo gushyingiranwa ahubwo ari uburenganzira ku mutungo umwe mu babanaga aba afite bushingiye ku kuba barawuhahanye cyangwa bawufitanye. Ntabwo Itegeko rivuga ko ababanaga batarashyingiranywe bagabana umutungo ku buryo bungana hatitawe ku ruhare urwo ari rwo rwose buri wese yagize kugirango uwo mutungo ubeho cyangwa wiyongere nk'uko bigenda ku bashyingiranywe bagahitamo amaserano y'ivangamutungo rusange cyangwa w'umuhahano, ahubwo mu Itegeko harimo amagambo abiri avuga ngo "**bahahanye"** cyangwa "**bafitanye"**. Ibi bituma umutungo washatswe cyangwa wongerewe n'abantu babana utikubirwa n'umuntu umwe.

[6] Mu gika cya mbere cy'ingingo ya 26 y'Itegeko Nshinga rya Repubulika y'u Rwanda nk'uko ryavuguruwe kugeza ubu, havugwamo ko ubushyingiranwe bw'umugabo umwe n'umugore umwe bukorewe mu butegetsi bwa Leta aribwo bwoyine bwemewe. Muri iki gika hakaba harimo ibitekerezo bibiri by'ingenzi, icya mbere ni uko ubushyingiranwe bwemewe ari ububaye hagati y'umugabo umwe n'umugore umwe, bivuze ko ubushyingiranwe hagati y'umugabo umwe n'abagore barenze umwe, cyangwa ubushyingiranwe hagati y'umugore umwe n'abagabo barenze umwe butemewe. Igitekerezo cya kabiri ni uko kugirango ubushyingiranwe bwemerwe imbere y'amategeko bugomba kuba bwakorewe mu butegetsi bwa Leta. Amasezerano yo gushyingirwa (contrat de mariage) agira agaciro iyo yakorewe mu rwego rw'ubutegetsi rugenwa n'amategeko. Ingingo y'itegeko, cyangwa itegeko muri rusange byaba binyuranye n'Itegeko Nshinga, mu ngingo yaryo ya 26 igika cya mbere mu gihe iyo ngingo cyangwa itegeko byaba bivuga ko ubushyingiranwe bw'umugabo umwe n'abagore benshi cyangwa ubushyingiranwe bw'umugore umwe n'abagabo benshi aribwo bwemewe bwemewe. Cyangwa se iyo ngingo cyangwa itegeko bikavuga ko hari ubundi buryo amasezerano yo gushyingirwa yakorwamo bidaciye mu butegetsi bwa Leta bikaba byagira agaciro imbere y'amategeko.

[7] Ingingo ya 39 y'Itegeko ryavuzwe rikumira kandi rihana ihohoterwa iryo ari ryose rishingiye ku gitsina, ivuga ko ababanaga nk'umugore n'umugabo batashyingiranywe mu buryo buteganywa n'amategeko, bashyingirwa hakurikijwe ihame ry'ubushyingiranywe bw'umugabo umwe n'umugore umwe. Mu gihe umwe mu barebwa n'ibivugwa mu gika kibanziriza iki, yabanaga n'abagore cyangwa abagabo benshi, abanza kugabana ku buryo bungana na buri wese mu bo babanaga, umutungo bari bafitanye cyangwa bahahanye mbere y'uko ashyingirwa (......). Ibitekerezo biri muri iyi ngingo ni bibiri. Icya mbere ni uko kugirango ubushyingiranwe bw'ababanaga nk'umugore n'umugabo bwemerwe bugomba gukorwa hashingiwe ku mategeko ni ukuvuga ko bugomba kubahiriza ibikubiye mu ngingo ya 26 y'Itegeko Nshinga, bukaba ari ubushyingiranwe hagati y'umugore umwe n'umugabo umwe kandi bukorewe imbere y'urwego rw'ubutegetsi rubifitiye ububasha. Ikindi gitekerezo kirimo ni uko mu gihe umwe mu babanaga nk'umugabo n'umugore wabanaga n'abagabo benshi cyangwa n'abagore benshi ahisemo gushyingirwa biciye mu buryo buteganywa n'amategeko, ni ukuvuga ahisemo ubushyingiranwe bw'umugabo umwe n'umugore umwe kandi bukorewe imbere y'ubutegetsi bubifitiye ububasha, uwo wahisemo gushyingiranwa agabana ku buryo bungana umutungo yari afitanye cyangwa yahahanye na babandi babanaga batarashyingiranywe. Ibivugwa muri iyi ngingo ya 39 ntabwo binyuranye n'ibiteganywa n'ingingo ya 26 igika cya mbere y'Itegeko Nshinga kuko hadateganijwemo ko ubushyingiranwe bw'umugabo umwe n'abagore benshi cyangwa ubushyingiranwe

bw'umugore umwe n'abagabo benshi bwemewe, cyangwa se ko amasezerano yo gushyingirwa yakorerwa ahandi hatari mu butegetsi bwa Leta yemewe. Ahubwo ni uburyo umushingamategeko yahisemo bwo kugirango hatabaho akarengane ku byerekeye umutungo ku bantu bifuza kureka kubana nk'umugabo n'umugore batarashyingiranywe, umwe muri bo agahitamo gushyingirwa hakurikijwe icyo amategeko ateganya.

[8] Kuba mu Itegeko rikumira kandi rihana ihohoterwa iryo ari ryose rishingiye ku gitsina hateganijwemo ko ababanaga batarashyingiranywe bagabana umutungo, si umwihariko w'u Rwanda. Mu bihugu bimwe na bimwe, bateye indi ntambwe bashyiraho n'amategeko yihariye yerekeye uburenganzira ku mutungo w'ababanaga nk'umugabo n'umugore batarashyingiranywe. Muri Canada, mu ntara ya Manitoba, bafite Itegeko ryitwa ***Homesteads Act*[1]*/ Loi sur la propriété familiale*** ryemera ihame ry'uko ababana batarashakanye bafite uburenganzira ku mutungo, rinagaragaza aho ubwo burenganzira buva n'aho bugera. Ahandi ni mu gihugu cya New Zealand[2] aho bashyizeho itegeko rirebana n'umutungo w'abashyingiranywe n'abatarashyingiranywe ryo mu 1976 cyane cyane mu ngingo yaryo ya 11 aho bavuga ngo: "*ku bw'iri tegeko, mu gihe cy'igabana ry'umutungo hagati y'abashyingiranywe, n'ababana nk'umugabo* n'umugore *batarashyingiranywe rikorwa ku buryo buri wese agira uruhare rungana n'urw'undi (a) ku nzu y'umuryango, (b) ku bintu byimukanwa by'umuryango (c)* ndetse no ku wundi mutungo wabo uwo ariwo wose". Igabana ry'ababana nk'umugabo n'umugore batarashyingiranywe rigaragara no mu mategeko akoreshwa mu ntara zimwe z'igihugu cya Australia[3].

[9] Uretse amategeko yihariye yerekeye uburenganzira ku mutungo w'ababana nk'umugabo n'umugore batashyingiranywe, hari n'imanza zagiye zicibwa n'inkiko nkuru z'ibihugu bitandukanye, zikaba zarerekanye ko buri wese mu babana nk'umugabo n'umugore batarashyingiranywe afite uburenganzira ku mutungo bafitanye cyangwa bashakanye. Nko muri Canada, hari imanza zagiye zicibwa zerekana ko umwe mu babana nk'umugore n'umugore batarashyingiranywe afite uburenganzira ku mutungo bashakanye cyangwa bafitanye. Mu rubanza ruzwi cyane rwa "**Pettkus *v.* Becker"**[4] rwo mu 1980, Rosa Becker na Lothar Pettkus babanye nk'umugore n'umugabo batarashyingiranywe mu gihe cy'imyaka 19, kuva mu 1955 kugeza 1974, muri iyo myaka yose babanye boroye inzuki, bagura ubutaka ahantu hatatu hatandukanye bwo kororeraho izo nzuki, ku mafaranga Pettkus yazigamye, Rosa Becker yishyuraga ubukode bw'inzu babagamo n'ibindi byakenerwaga mu rugo, akanakora muri "farm" y'inzuki. Ubwo bworozi bwatanze inyungu ishimishije. Mu mwaka wa 1974 baratandukanye, maze Rosa Becker asaba ko yandikwaho ½ cy'ubutaka bororeragaho inzuki ndetse na ½ cy'imizinga y'inzuki (beehives/ruches) bari bafite.

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[1] The Homesteads Act C.C.S.M. c. H80 on http://web2.gov.mb.ca/laws/statutes/ccsm, see the sectionone regarding the definition of "**Owner/ Propriétaire**" (*Means a married person, or a person in a common-law relationship, who is an owner of a homestead/ Personne qui est mariée ou liée à une autrepersonne par une union de fait et qui est propriétaire d'une propriété familiale) and section 2.2* regarding the "**Homestead rights of second spouse or common-law partner"**.

[2] Reba ingingo ya 11 ya Property (Relationships) Act 1976 aho ivuga ngo … "On the division of relationship property under this Act, each of the spouses or partners is entitled to share equally in— (a) the family home; And (b) the family chattels; And (c) any other relationship property."

[3] New South Wales (Property Relationships Act 1984), Victoria (Relationships Act 2008), Queensland (Property Law Act 1974), South Australia (Domestic Partners Property Act 1996), Western Australia (Family Court Act 1997, the amendment act 2002), Tasmania (Relationships Act 2003), Australian Capital Territory (Domestic Relationships Act 1994, Legislation Act 2001 s 169), Northern Territory (De Facto Relationships Act 1991)

[4] Supreme Court of Canada, **Lother Pettkus *V.* Rosa Becker** [1980] 2 S. C. R. 834, http://www.scc-csc.gc.ca/decisions/index-fra.asp

[10] Urukiko rw'Ikirenga rwa Canada rwemeje ko Rosa Becker na Pettkus babanaga nk'umugabo n'umugore bagomba kugabana ku buryo bungana ubutaka n'imizinga bari bafite. Urwo rukiko rwagize ruti "*.....mu gihe umwe mu babana nk'umugabo n'umugore hari ibyo yigomwe agatanga, afite igitekerezo cyo kuzagira uruhare ku mutungo, uwo babana akemera kubyakira nta gahato azi neza ko ubimuhaye yizera ko* azagira uburenganzira ku mutungo, uwabyakiriye aramutse abyikubiye wenyine byaba ari akarengane gakorewe uwabitanze"[5.]

[11] Urundi rubanza rusa nk'urwo, ni urubanza rwa **Beaudouin Daigeault *v.* Richard Paul Eugene**[6] rwo mu 1984 aho Urukiko rw'Ikirenga rwa Canada rwemeje ko nyuma y'uko ababanaga nk'umugabo n'umugore batarashyingiranywe batandukaniye, kandi hari umutungo w'ubutaka bashakanye wanditse ku mugabo ko bawugabana. Urukiko rwavuze ko ababanaga nk'umugabo n'umugore mu gihe runaka, bafatanije mu bikorwa bitandukanye biteza imbere urugo rwabo, bahurije hamwe imbaraga zabo bafite umugambi wo kuzamura umutungo wabo nk'uko ababana barashyingiranywe babigenza, mu gihe bahagaritse uko kubana nk'umugabo n'umugore, ntawe ugomba kwikubira umutungo wose kandi bose baba baragize uruhare kugirango uwo mutungo uboneke.

[12] Si muri Canada gusa inkiko zafashe ibyemezo byo kugabanya umutungo ababanaga nk'umugabo n'umugore batarashyingiranywe, no muri Australia inkiko zagiye zifata ibyemezo nk'ibyo. Nko mu rubanza **Baumgartner *v* Baumgartner**[7] rwo mu 1987, Urukiko Rukuru rwa Australia rwemeje ko icyemezo cyafashwe n'Urukiko rw'Ubujurire rwa New South Wales gifite ishingiro, icyo cyemezo cyategekaga ko ababanaga nk'umugabo n'umugore batarashyingiranywe bagabana umutungo w'ubutaka n'inzu bari bafite. Ibi kandi ni nako byagenze muri New Zealand mu rubanza Hayward v. Giordani8 aho Urukiko rw'ubujurire rwemeje ko nyuma y'uko umugore apfa, uwo babanaga nk'umugabo we ahabwa ½ cy'umutungo wari wanditse kuri uwo mugore babanye mu gihe cy'imyaka 5 kandi batarashyingiranywe.

[13] Amategeko n'imanza byo mu mahanga byagaragajwe haruguru bidufasha kumva neza no gusobanukirwa ko uburyo buvugwa mu ngingo ya 39 bugamije kurengera abatandukanye bamaze igihe babana nk'umugabo n'umugore batarashyingiranywe, bafatanya byose. Ntabwo uko gutandukana kugomba kuba ikibazo kuri bo cyangwa ngo habe hari uwakurenganiramo, hashingiwe ku kuba batarashyingiranywe. Igabana ry'umutungo w'ababanaga nk'umugore n'umugabo ntabwo ribangamiye, kimwe n'uko ritanapfobya ugushyingiranwa.

[14] Muri uru rubanza, abatanze ikirego bavuga ko kureka ababanaga nk'umugabo n'umugore batarashyingiranywe bakagabana umutungo byaba ari ukubaha inshingano

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[5] *.....lorsqu'une personne liée à une autre dans une relation qui équivaut à une union conjugale, se cause un préjudice dans l'expectative raisonnable de recevoir un droit de propriété et que l'autre personne accepte librement les avantages que lui procure la première, alors qu'elle connaît ou devrait connaître cette expectative, il serait injuste de permettre au bénéficiaire de conserver cet avantage. /.....where one person in a relationship tantamount to spousal, prejudiced herself in reasonable expectation of receiving an interest in property and the other in the relationship freely accepted benefits conferred by the first person in circumstances he knew or ought to have known of that expectation, it would be unjust to allow the recipient of the benefit to retain it*

[6] Supreme Court of Canada,Beaudouin – PaulEugen Richard, [1984] 1 R.C.S.2.

[7] High Court of Austraria, Baumgartener v Baumgartner [1987] HCA 59; (1987) 164 CLR 137 (10 December 1987)

[8] The Right Honourable Lord Justice NOURCE, *Unconscionability and the unmarried couple. Some development in the Commonwealth*, Royal Courts of Justice, London, *p104-105*

n'uburenganzira bihwanye n'iby'abashyingiranywe. Ingaruka ku mutungo w'ababanaga nk'umugabo n'umugore batarashyingiranywe mu gihe baretse kubana si zimwe nk'iziboneka mu gihe habaye ubutane hagati y'abashyingiranywe. Iyo abashyingiranywe bahisemo amasezerano y'ivangamutungo risesuye cyangwa w'umuhahano nk'uburyo bwo gucunga umutungo wabo nk'abashyingiranywe, nyuma bagatandukana, bagabana ku buryo bungana umutungo wose. Uburenganzira ku mutungo bushingiye kuri ayo masezerano ku buryo no mu gihe cy'igabana nta kindi kimenyetso gisabwa. Nyamara mu gihe ababanaga nk'umugabo n'umugore batarashyingiranywe bahagaritse kubana, kugirango bagabane umutungo n'uko bagomba kuba bawufitanye cyangwa barawushakanye. Kugira uburenganzira ku mutungo ntibishingiye gusa ku kuba barabanye nk'umugabo n'umugore batarashyingiranywe ahubwo bigomba kuba bigaragara ko bawufitanye cyangwa ko bawushakanye.

[15] Hashingiwe ku bimaze kuvugwa mu bika bibanziriza iki, ntabwo ingingo ya 39 y'Itegeko No 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryose rishingiye ku gitsina inyuranye n'ingingo ya 26 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04 Kamena 2003 nk'uko ryavuguruwe kugeza ubu, ahubwo ituma umutungo ababana batarashyingiranywe bafitanye cyangwa bashakanye utikubirwa n'umwe muri bo.

III. ICYEMEZO CY'URUKIKO RW'IKIRENGA

[16] Urukiko rw'Ikirenga rwemeye kwakira ikirego rwashyikirijwe na Gatera Johnson na Kabalisa Teddy.

[17] Rwemeje ko nta shingiro gifite.

[18] Rwemeje ko ingingo ya 39 y'Itegeko No 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryose rishingiye ku gitsina itanyuranye n'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04 Kamena 2003 nk'uko ryavuguruwe kugeza ubu.

[19] Rutegetse Gatera Johnson na Kabalisa Teddy gufatanya kwishyura amagarama y'uru rubanza angana na 7400 FRW, buri wese agatanga 3700 FRW.