UMUJYI WA KIGALI v. RWABUKWISI

[Rwanda URUKIKO RW'UBUJURIRE – RADAA 00005/2019/CA – (Nyirandabaruta, P.J., Mukanyundo na Ngagi, J.) 3 Nyakanga 2020]

Amategeko agenga imanza z'ubutegetsi – Impamvu itunguranye – Icyemezo cy'ubutegetsi – Nta buryozwe buhaba bushingiye ku kutubariza amasezerano iyo habonetse icyemezo cy'ubutegetsi gituma uruhande rumwe rutubahiriza inshingano zarwo.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Rwabukwisi asaba ko Umujyi wa Kigali utegekwa kumwishyura amafaranga y'ubukode bw'amazu ye wishyuje ntuyamuhe, inyungu zayo n'indishyi zitandukanye.

Impande zombi zaje kureka urubanza maze zigirana amasezerano y'ubwumvikane aho uregwa yemeye kwishyura urega amafaranga yose yamwishyuzaga. Aya masezerano ntiyashyizwe mu bikorwa bituma urega yongera kuregera Urukiko Rwisumbuye asaba ko uregwa ategekwa kuyubahiriza kandi n'urubanza rukarangizwa by'agategenyo n'ubwo yajurira.

Urukiko Rwisumbuye rwasanze mbere y'uko uregwa ashyira mu bikorwa ayo masezerano hari ibaruwa y'Ubushinjacyaha Bukuru yandikiwe uregwa asabwa gufatira ayo mafaranga kuko urega yakorewe urupapuro mpuzamahanga rusaba kumufata kuko akurikiranyweho icyaha cya jenoside bityo, akaba ari impamvu yatumye uregwa ataryozwa kutuzuza inshingano ze.

Urega yajuririye Urukiko Rukuru asaba ko hasuzumwa niba harabayeho impamvu itunguranye yatumye amasezerano atubahirizwa k'uruhande rw'uregwa ndetse asaba ko yahabwa indishyi zitandukanye ndetse n'urubanza rukarangizwa by'agateganyo.

Urukiko Rukuru rwasanze mw'ibaruwa y'Ubushinjacyaha nta na hamwe bwerekanye ko ariya mafaranga yaba ikimenyetso gihamya urega icyaha cyangwa ibyaha ku buryo uregwa yagaragaza imbaraga z'ubutegetsi yashyizweho agahita ashyira mu bikorwa ubwo busabe bw'Ubushinjacyaha kandi rwasanze ayo mafaranga iyo azagufatirwa kubera kurangiza imanza gacaca, hari kwerekanwa ayo agomba kwishyura nayo asigarana. Bityo, rwemeje ko uregwa atagombaga kwemera iryo fatira kuko iyo umuntu akurikiranyweho icyaha bitamwambura uburenganzira ku mutungo we maze rutegeka ko uregwa atanga indishyi zitandukanye.

Uregwa yajuririye Urukiko rw'Ubujurire avuga ko Urukiko Rukuru rwemeje ko nta mpamvu idasanzwe yari gutuma atubahiriza amasezerano yo kwikiranura ndetse ategekwa no gutanga indishyi. Asobanura ko urwo Rukiko rwemeje ko ifatira ryakozwe n'Ubushinjacyaha ridakurikije amategeko kandi ari Urwego rubifitiye ububasha ruhabwa n'itegeko bikaba bitanyuranyije n'itegeko Nshinga ndetse ibaruwa rwanditse akaba ari inyandikompamo, bityo akaba nta mahitamo yari afite ko ibi bifatwa nk'impamvu itunguranye kandi ntawushobora kuvuguruza ibyemezo by'urwo rwego keretse Urukiko.

Mu bujurire bwe, urega avuga ko uregwa yakoze ikosa rikomeye ashyira mu bikorwa ibaruwa y'Ubushinjacyaha atabanje gushishoza. Asobanura ko Ubushinjacyaha bufite uburenganzira bwo gufatira, ariko ko iryo fatira rigomba kuba rishingiye ku mategeko, rikaba rigomba kwemezwa n'Urukiko bityo, akaba asaba guhabwa amafaranga ye kuko umutungo w'umuntu ni ntavogerwa.

Incamake y'icyemezo: Nta buryozwe buhaba bushingiye ku kutubariza amasezerano iyo habonetse icyemezo cy'ubutegetsi gituma uruhande rumwe rutubahiriza inshingano zarwo, bityo iyi ikaba ari impamvu idasanzwe yatumye Umujyi wa Kigali utubahiriza amasezerano yagiranye na Rwabukwisi, ukaba utabiryozwa.

Ubujurire bufite ishingiro.
Urubanza rwaciwe n'Urukiko Rukuru ruhindutse mu ngingo zarwo zose.
Amagarama y'urubanza aherereye k'uwatsinzwe.

Amategeko yashingiweho:
Itegeko N° 014/2018 ryo ku wa 04/04/2018 rigena imitunganyirize, imikorere n'ububasha, by'Ubushinjacyaha Bukuru n'Ubushinjacyaha bwa Gisirikare.
Itegeko N° 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha.
Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano.
Itegeko N° 04/2011/OL ryo ku wa 03/10/2011 rigena imiterere, imikorere n'Ububasha by'Ubushinjacyaha Bukuru n'Ubushinjacyaha bwa Gisirikare.

Imanza zifashishijwe:
Cass. com., 5 Oct. 1953: Bull. civ. 1953, III, n° 280.

Inyandiko z'Abahanga:
Ph. Malaurie, L. Aynès, Droit des obligations, Paris, LGDJ, 2015, pp. 513-514, 519.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Rwabukwisi Jean arega Umujyi wa Kigali asaba urwo Rukiko kuwutegeka kwishyura amafaranga y'ubukode bw'amazu ye wishyuje ntuyamuhe, inyungu zayo za 18% kuva mu mwaka wa 1995 kugeza yishyuwe, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, anasaba Urukiko gutegeka igihano gihatira ubuyobozi kubahiriza icyemezo cy'Urukiko *(astreinte).*

[2] Ku wa 02/06/2017, impande zombi zagiranye amasezerano y'ubwumvikane, Umujyi wa Kigali wemera guha Rwabukwisi Jean 105.900.000 Frw akubiyemo amafaranga y'ubukode bw'inzu ye bw'imyaka itandatu (6), indishyi zo gutinda kuyamuha hamwe n'igihembo cya Avoka wamuhagarariye, bituma Rwabukwisi Jean areka urubanza.

[3] Ubwo bwumvikane ntibwashyizwe mu bikorwa, bituma Rwabukwisi Jean yongera kurega Umujyi wa Kigali mu rubanza nimero RAD 00198/2018/TGI/NYGE, asaba Urukiko kuwutegeka kubahiriza amasezerano y'ubwumvikane bagiranye, ukamuha igihembo cya Avoka n'indishyi zinyuranye, kandi urubanza rukarangizwa by'agateganyo kabone n'ubwo uregwa yajurira. Me Munderere Léopold yagobotse mu rubanza asaba guhabwa igihembo cye cya 15.285.000 Frw nk'uko bikubiye mu masezerano y'ubwumvikane.

[4] Mu rubanza nimero RAD 00198/2018/TGI/NYGE rwaciwe ku wa 30/07/2018, Urukiko Rwisumbuye rwa Nyarugenge rwasanze ku wa 22/08/2017, mbere y'uko Umujyi wa Kigali wishyura, kuko byari biteganyijwe ko bizakorwa bitarenze ku wa 31/08/2017, Ubushinjacyaha Bukuru bwarawandikiye ibaruwa iwusaba gufatira ayo mafaranga y'umwenda yagombaga kwishyurwa agashyirwa kuri konti yabwo iri muri Banki Nkuru y'u Rwanda (BNR) igenewe kubika amafaranga y'ibyafatiriwe, kuko hari urupapuro mpuzamahanga *(mandat d'arrêt international)* bwakoze ku wa 13/05/2014, busaba ko Rwabukwisi Jean afatwa, kuko akurikiranyweho icyaha cya Jenoside, bityo iyi ikaba ari impamvu itunguranye ituma Umujyi wa Kigali utagomba kuryozwa kutuzuza inshingano hakurikijwe ibiteganyijwe mu ngingo ya 4 y'amasezerano yo ku wa

02/08/2017. Rwasanze kandi urubanza rutagomba kurangizwa by'agateganyo, kuko ikirego cya Rwabukwisi Jean nta shingiro gifite ndetse urega akaba atagomba guhabwa indishyi yasabye

[5] Ku birebana n'ikirego cyo kugoboka cyatanzwe na Munderere Léopold, Urukiko Rwisumbuye rwa Nyarugenge rwasanze nacyo nta shingiro gifite kubera ko ikirego cy'iremezo kitahawe ishingiro, kandi 15.285.000 Frw asaba akaba atagaragara mu masezerano Rwabukwisi Jean yagiranye n'Umujyi wa Kigali.

[6] Rwabukwisi Jean ntiyanyuzwe n'icyo cyemezo, ajuririra Urukiko Rukuru arusaba gusuzuma niba harabayeho impamvu itunguranye ituma amasezerano yabaye hagati ye n'Umujyi wa Kigali adashyirwa mu bikorwa, asaba indishyi z'akababaro n'iz'imbonezamusaruro kandi urubanza rukarangizwa by'agateganyo.

[7] Mu rubanza nimero RADA 00129/2018/HC/KIG rwaciwe ku wa 31/05/2019, Urukiko Rukuru rwasanze mu ibaruwa Ubushinjacyaha bwandikiye Umujyi wa Kigali, nta na hamwe bwerekanye ko ariya mafaranga yaba ikimenyetso gihamya Rwabukwisi Jean icyaha cyangwa ibyaha nk'uko biteganywa mu ngingo ya 30 y'Itegeko N° 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha bwashingiyeho busaba ifatira ry'amafaranga yagombaga kwishyurwa Rwabukwisi Jean, ku buryo Umujyi wa Kigali utazuyaje wagombaga guhita wubahiriza ubwo busabe uterekanye imbaraga zidasanzwe washyizweho n'Ubushinjacyaha.

[8] Rwasanze kandi n'iyo aya mafaranga aza gufatirwa kubera kurangiza imanza za Gacaca Umujyi wa Kigali wakomojeho, hari kwerekanwa amafaranga Rwabukwisi Jean yagombaga kwishyura yategetswe n'Urukiko Gacaca n'ayo yagombaga gusigarana cyangwa niba yose yarayaciwe muri izo manza. Urukiko Rukuru rwasanze na none hakurikijwe igisobanuro cy'impamvu ntarengwa itunguranye *(force majeure)*, Umujyi wa Kigali utaragombaga kwemera ifatira ryari ryasabwe n'Ubushinjacyaha, kandi ko kuba umuntu akurikiranyweho icyaha bitamwambura uburenganzira ku mutungo we, maze rutegeka Umujyi wa Kigali guha Rwabukwisi Jean 7.280.625 Frw y'indishyi mbonezamusaruro,700.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka, ukanamusubiza 60.000 Frw yatanzeho amagarama mu nkiko zombi, ruvuga ko indishyi z'akababaro asaba atazikwiye, kuko azihawe byaba ari ukwikungahaza nta mpamvu kandi ko indishyi zikomatanyije zitemewe.

[9] Umujyi wa Kigali wajuririye Urukiko rw'Ubujurire, uvuga ko Urukiko Rukuru rwemeje ko nta mpamvu idasanzwe yari gutuma utubahiriza amasezerano yo kwikiranura wagiranye na Rwabukwisi Jean, nyamara waratanze impamvu zikomeye ntiruzihe agaciro, kandi ko wategetswe kumuha indishyi mbonezamusaruro atazikwiye.

[10] Urubanza rwaburanishijwe mu ruhame ku wa 03/06/2020, Umujyi wa Kigali uhagarariwe na Me Mbonigaba Eulade, rwabukwisi Jean ahagarariwe na Me RUDAKEMWA Jean Félix.

II. BIBAZO BIRI MU RUBANZA N'ISESENGURA RYABYO

1. Kumenya niba ibaruwa y'Ubushinjacyaha yo ku wa 22/08/2017 ari impamvu yari gutuma Umujyi wa Kigali udashyira mu bikorwa amasezerano y'ubwumvikane wagiranye na Rwabukiwisi Jean

[11] Me Mbonigaba Eulade, uhagarariye Umujyi wa Kigali, avuga ko Umujyi wa Kigali utishimiye icyemezo cyafashwe n'Urukiko Rukuru, kuko rwemeje ko ifatira ryakozwe n'Ubushinjacyaha ridakurikije amategeko, ko ariko mu gufata iki cyemezo basanga Urukiko rwaribeshye mu kuganisha muri uwo murongo, kuko Ubushinjacyaha ari urwego rufite uburenganzira bwo gukora ifatira nk'uko biteganywa mu ngingo ya 30 y'Itegeko N° 30/2013 ryo ku

wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakurikizwaga icyo gihe, ndetse ko bisanzwe bikorwa kandi bitanyuranyije n'Itegeko Nshinga. Avuga ko iyo ifatira ryakozwe n'Ubushinjacyaha riba ridakurikije amategeko, Rwabukwisi Jean yari kuriregera, kuko umutungo ukiri uwe ntawe uwumuvogeraho, ko kuba atarabikoze, Umujyi wa Kigali utabimukorera. Akomeza avuga ko indi ngingo Urukiko Rukuru rwirengagije, ari uko ibaruwa y'Ubushinjacyaha ari inyandikompamo, kandi ko ibiyikubiyemo bigaragara ko ari itegeko.

[12] Me Mbonigaba Eulade, uhagarariye Umujyi wa Kigali, akomeza avuga ko urebye imikirize y'urubanza rwaciwe n'Urukiko Rukuru wagira ngo Rwabukwisi Jean yambuwe amafaranga ye, ariko ko atari byo, kuko n'ubwo yafatiriwe akiri aye, ko igihe Ubushinjacyaha buzabona ko akwiye kuyasubizwa buzayamuha. Avuga ko mu kutishyura Rwabukwisi Jean amafaranga bari bumvikanye, Umujyi wa Kigali warebye ifatira ryakozwe, ariko ntiwajya gusuzuma niba rikurikije amategeko, kuko bitari mu nshingano zawo.

[13] Ku byerekeranye no kuba ibaruwa y'Ubushinjacyaha ari impamvu itunguranye, Me Mbonigaba Eulade avuga ko Umujyi wa Kigali utari uzi ko Ubushinjacyaha buzafatira amafaranga ya Rwabukwisi Jean, kandi bwabikoze mu rwego rw'akazi kabwo, bakaba nta yandi mahitamo bari bafite, ko ibi bifatwa nk'impamvu ntarengwa itunguranye *(force majeure)*, kuko nta bundi bwinyagamburiro Umujyi wa Kigali wari ufite, bitewe n'uko ibyemezo by'Ubushinjacyaha bitavuguruzwa n'uwabifatiwe cyangwa ugomba kubishyira mu bikorwa, ko Urukiko rwonyine ari rwo rushobora kubivuguruza; naho kuba bataramenyesheje Rwabukwisi Jean, bikaba byaratewe n'uko iki cyemezo cyagombaga gushyirwa mu bikorwa nta kuzuyaza *(dans l'immédiat).*

[14] Me Rudakemwa Jean Félix avuga ko Umujyi wa Kigali nk'Urwego rukomeye kandi rugendera ku mategeko wakoze ikosa rikomeye, kuko washyize mu bikorwa ibaruwa y'Ubushinjacyaha utabanje gushishoza. Avuga ko koko Ubushinjacyaha bufite uburenganzira bwo gufatira, ariko ko iryo fatira rigomba kuba rishingiye ku mategeko mu buryo buteganywa n'ingingo ya 30 y'Itegeko N° 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakurikizwaga, rikaba rigomba kwemezwa n'Urukiko nk'uko biteganywa n'ingingo ya 34 y'iryo tegeko. Akomeza avuga ko Rwabukwisi Jean aba ahantu hazwi, ku buryo ibivugwa ko yabuze bitafatwa nk'ukuri, kuko atigeze yihisha Ubushinjacyaha, ko rero ingingo ya 34 y'Itegeko Nshinga igomba kubahirizwa agahabwa amafaranga ye, kuko umutungo w'umuntu ari ntavogerwa.

UKO URUKIKO RUBIBONA

[15] Ingingo ya 4 y'amasezerano arangiza ku mwumvikane ikibazo cy'indishyi Umujyi wa Kigali wagiranye na Rwabukwisi Jean ku wa 02/06/2017 iteganya ibikurikira: Mu gihe habaye impamvu zitunguranye zidaturutse ku ruhande rugomba kwishyura (Umujyi wa Kigali) kandi bitashobokaga ko zimenyekana mu gihe cyo gushyira umukono kuri aya masezerano, zigatuma ishyirwa mu bikorwa ryayo ritubahirizwa nk'uko ryumvikanyweho, uruhande rwishyura ntiruryozwa kutuzuza inshingano zarwo. Uruhande rumenye izo mpamvu ruhita ruzimenyesha urundi ruhande kugira ngo bumvikane ikigomba gukorwa.

[16] Isesengura ry'iyi ngingo y'amasezerano imaze kwibutswa haruguru, ryumvikanisha ko impande zombi zateganyije uko byagenda mu gihe habayeho impamvu zitunguranye, bitashobokaga ko zimenyekana mu gihe zashyiraga umukono ku masezerano, kandi zidaturutse ku Mujyi wa Kigali, ndetse zikaba zabuza ishyirwa mu bikorwa ry'amasezerano. Impande zombi rero zemeranyije ko bene izo mpamvu zituma uruhande rutashyize mu bikorwa inshingano zarwo zikubiye mu masezerano rutaryozwa kutuzuza ibiteganyijwe mu masezerano; mu yandi magambo, ntabwo rubarwaho ikosa ryo kudasohoza amasezerano.

[17] Abahanga mu mategeko mbonezamubano ajyanye n'inshingano *(droit des obligations)* bavuga ko ugomba inshingano ataryozwa kuba atashyize mu bikorwa ibiteganyijwe mu masezerano iyo kutayashyira mu bikorwa byatewe n'impamvu itamuturutseho, keretse iyo yabyishingiye. Impamvu bavuga ko zidaturutse k'ugomba inshingano, zirimo impamvu ntarengwa kandi itunguranye (*force majeure*), ibikorwa by'uberewemo inshingano (*faits du créancier*) n'ibikorwa by'undi muntu utari mu masezerano *(fait d'un tiers)* cyangwa igikorwa giturutse ku mbaraga z'ubutegetsi bwa Leta (*fait du prince ou de la puissance publique*). Izi mpamvu zikuraho uburyozwe bw'ufite inshingano, keretse iyo ari izishobora kuba zimara igihe runaka, icyo igihe amaserano akaba ahagaze (suspension)[1].

[18] Ku birebana n'uru rubanza, dosiye igaragaza ko nyuma y'amasezerano yabaye ku wa 02/06/2017 hagati y'Umujyi wa Kigali na Rwabukwisi Jean wishyuzaga amafaranga y'ubukode bw'inyubako zari muri *quartier Mateus* akanarangiza ku bwumvikane ikibazo cy'indishyi, Ubushinjacyaha Bukuru bwandikiye Umujyi wa Kigali ku wa 22/08/2017, buwusaba ko amafaranga yose Umujyi wa Kigali wemeye kwishyura Rwabukwisi Jean ashyirwa kuri konti nimero 1000004258 y'Ubushinjacyaha Bukuru iri muri Banki Nkuru y'u Rwanda (BNR) igenewe kubika amafaranga y'ibyafatiriwe, kuko Rwabukwisi Jean akurikiranwa nk'uwatorotse ubutabera, kuko yahungiye mu Gihugu cy'Ubuholandi, kandi bukaba busanga aya mafaranga ashobora kuzanyagwa nk'uko biteganywa n'amategeko kandi ko mu gihe yayahabwa yamufasha gukomeza kwihisha ubutabera.

[19] Urukiko rurasanga inyandiko y'Ubushinjacyaha Bukuru ifatwa nk'igikorwa gifashwe hashingiwe ku mbaraga z'ubutegetsi bwa Leta *(fait du prince ou de la puissance publique)* cyatumye Umujyi wa Kigali utubahiriza inshingano yo kwishyura Rwabukwisi Jean amafaranga y'ubukode wari umubereyemo. Abahanga mu mategeko bavuga ko bene iki gikorwa aba ari icyemezo gifatwa n'inzego z'Ubutegetsi kandi gifatwa nk'imbogamizi ndakuka, uruhande ruri mu masezerano rudashobora kwigobotora, kandi ituma urwo ruhande rudazohoza inshingano zarwo zaba ari izikomoka ku masezerano cyangwa ku mategeko. Mu gusobanura icyemezo gifaswe n'ubutegetsi ariko kigira ingaruka ku masezerano impande zombi zagiranye *(fait du prince ou de la puissance publique)*, Urukiko Rusesa Imanza rwo mu Bufaransa rutanga urugero rw'icyemezo gifashwe n'ubutegetsi cyo gufatira ibicuruzwa umwikorezi yagombaga gutanga[2]. Urukiko rurasanga uru rugero rwumvikanisha neza ko icyemezo cy'Ubushinjacyaha cyari cyihagije nk'impamvu idasanzwe yatumye Umujyi wa Kigali udasohoza inshingano zawo zo kwishyura Rwabukwisi Jean amafaranga ye y'ubukode nk'uko bari babyumvikanye, kuko ntaho uru rwego rwari guhera rwanga gushyira mu bikorwa icyemezo cy'Ubushinjacyaha Bukuru bwafashe bushingiye ku bubasha buhabwa n'amategeko bwo gukora iperereza, gukurikirana ibyaha no gushakisha ababigizemo uruhare[3],

---

[1] Le débiteur échappe à la responsabilité lorsque l'inexécution est imputable à une cause étrangère, sauf s'il était tenu d'une obligation de garantie. La cause étrangère la plus caractéristique est la force majeure à laquelle sont assimilés les faits du créancier et d'un tiers. Ces causes d'exonération libèrent le débiteur, à moins qu'elles aient eu un caractère momentané : elles n'entraînent alors que la suspension du contrat (Ph. Malaurie, L. Aynès, Droit des obligations, Paris, LGDJ, 2015, pp. 513-514).

[2] La saisie par les autorités publiques de marchandises que le transporteur devait livrer (Cass. com., 5 oct. 1953 : Bull. civ. 1953, III, n° 280).

[3] Ingingo ya 3 y'Itegeko N° 014/2018 ryo ku wa 04/04/2018 rigena imitunganyirize, imikorere n'ububasha, by'Ubushinjacyaha Bukuru n'Ubushinjacyaha bwa Gisirikare. Ingingo ya 2 y'Itegeko N° 04/2011/OL ryo ku wa 03/10/2011 rigena imiterere, imikorere n'Ububasha by'Ubushinjacyaha Bukuru n'Ubushinjacyaha bwa Gisirikare yo iteganya ko Ubushinjacyaha bushinzwe gukurikirana umuntu wese ukekwaho kuba yakoze ibikorwa bigize icyaha

rukaba rusanga no mu gihe Umujyi wa Kigali wasinyaga amasezerano utari kumenya ko icyo cyemezo kizabaho, ndetse nta n'ikigaragara ko waba waragize uruhare mu ifatwa ryacyo.

[20] Urukiko rurasanga rero kuba hari impamvu yatumye Umujyi wa Kigali utubahiriza amasezerano, binawukuraho kuba waryozwa kutayubahiriza, ibi bikaba bihura n'ibyo abahanga mu mategeko bavuzwe haruguru basobanura, aho bavuga ko igikorwa cy'umuntu utari mu masezerano *(fait d'un tiers)* cyangwa icyo bita igikorwa gifashwe n'ubutegetsi bwa Leta *(fait du prince ou de la puissance publique)* ari impamvu ituma ufite inshingano ataryozwa kuba atayubahirije iyo atashoboraga kugihagarika, kubiteganya cyangwa nta ruhare yabigizemo[4].

[21] Urukiko rurasanga na none, kuba Umujyi wa Kigali utarashyize mu bikorwa inshingano yo kwishyura Rwabukwisi Jean amafaranga ye y'ubukode bitewe nuko wasabwe n'Ubushinjacyaha Bukuru kuyashyira kuri konti yabwo iri muri Banki Nkuru y'u Rwanda (BNR) ku mpamvu zasobanuwe haruguru, ntaho binyuranye n'ibiteganywa mu ngingo ya 4 y'amasezerano yo ku wa 02/06/2017 impande zombi zagiranye yagaragajwe haruguru, kuko Umujyi wa Kigali nta bubasha wari ufite bwo kwanga gushyira mu bikorwa ibyo wasabwe n'Ubushinjacyaha Bukuru.

[22] Urukiko rurasanga ibyo uburanira Rwabukwisi Jean avuga ko Umujyi wa Kigali wagombaga gushishoza ntiwemere gushyira mu bikorwa ibyo wasabwe n'Ubushinjacyaha Bukuru nta shingiro byahabwa, kuko nta mahitamo wari ufite hakurikijwe ibyo Umushinjacyaha Mukuru yawusabagagukora.

[23] Urukiko rurasanga kandi bitari ngombwa ko Urukiko Rukuru rujya mu byo gusesengura amategeko agenga ifatira, kuko atari cyo kibazo kiri mu rubanza, kuko Umujyi wa Kigali nta nshingano wari ufite zo kubanza kureba niba iryo fatira rikurikije amategeko cyangwa niba ritayakurikije, ibyo bikaba byabazwa Ubushinjacyaha Bukuru bwafashe icyo cyemezo.

[24] Hashingiwe ku biteganyijwe mu masezerano impande zombi zagiranye no ku bisobanuro bimaze gutangwa, Urukiko rurasanga ubujurire bw'Umujyi wa Kigali, kuri iyi ngingo, bufite ishingiro, kuko nta kigaragaza ko waba waragize umwete mucye mu kutishyura amafaranga wari ubereyemo Rwabukwisi Jean.

1. Kumenya niba Urukiko Rukuru rutaragombaga kugenera Rwabukwisi Jean indishyi mbonezamusaruro.

[25] Me Mbonigaba Eulade avuga ko Urukiko Rukuru rwategetse Umujyi wa Kigali guha Rwabukwisi Jean indishyi mbonezamusaruro kandi zitari zikwiye, kuko ingingo ya 138 y'Itegeko rigenga amasezerano iteganya ko indishyi mbonezamusaruro zihabwa uruhande rurengana zigomba kuba zarateganyijwe. Avuga ko muri uru rubanza, uretse kuba Rwabukwisi Jean yarasabye indishyi zingana na miliyoni icumi (10.000.000 Frw), atigeze agaragaza izo yari ategereje uko zingana, Urukiko Rukuru rero rukaba rwaramugeneye indishyi rutagaragaje aho ruzishingiye, ko kandi atari umucuruzi ku buryo yari kuzihabwa.

[26] Me Rudakemwa Jean Félix avuga ko nta kosa Urukiko Rukuru rwakoze mu kugenera Rwabukwisi Jean indishyi mbonezamusaruro rushingiye ku Itegeko rigenga amasezerano n'ubwo mu masezerano impande zombi zagiranye zitari zateganyijwe. Asaba ko Urukiko rw'Ubujurire rubara izi ndishyi ku gipimo cya 18% ku mwaka, abariwe kuri 105.000.000 Frw guhera ku wa 31/05/2019, itariki urubanza rujuririrwa rwaciriweho, kugeza ku itariki uru Rukiko ruzaciraho urubanza.

---

[4] Le fait d'un tiers ou du prince est également une cause d'exonération du débiteur défaillant, s'il a été irrésistible, imprévisible et si le débiteur ne devait pas en répondre (Ph. Malaurie, L. Aynès, op.cit.,p. 519).

UKO URUKIKO RUBIBONA

[27] Ingingo ya 141 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko ″Nta ndishyi zishobora gutangwa biturutse ku gihombo uwishe amasezerano atashoboraga guteganya mu gihe ayo masezerano yakorwaga, kizaba inkurikizi zo kutayubahiriza″.

[28] Urukiko rurasanga Umujyi wa Kigali utaragombaga gutegekwa guha Rwabukwisi Jean indishyi mbonezamusaruro, kuko kuba utaramwishyuye amafaranga y'ubukode bw'amazu ye wamugombaga atari wo byaturutseho nk'uko byasobanuwe haruguru, bityo indishyi mbonezamusaruro zingana na 7.280.625 Frw zategetswe n'Urukiko Rukuru zikaba zigomba kuvaho, kandi n'izisabwa muri uru Rukiko atagomba kuzihabwa.

2. Kumenya niba Rwabukwisi Jean yahabwa ndishyi z'akababaro n'amafaranga y'ibyatanzwe ku rubanza asaba

[29] Me Rudakemwa Félix asaba Urukiko gutegeka Umujyi wa Kigali guha Rwabukwisi Jean 1.000.000 Frw y'igihembo cya Avoka, 500.000 Frw y'ikurikiranarubanza kandi rukanamugenera indishyi z'akababaro zingana na 10.000.000 Frw yari yasabye mu Rukiko Rukuru ariko ntiruzimuhe, kuko kuvutswa amafaranga ye byamubabaje cyane bikanamugira umutindi.

[30] Me Mbonigaba Eulade avuga ko indishyi zisabwa nta shingiro zifite.

UKO URUKIKO RUBIBONA

[31] Ku byerekeranye n'indishyi z'akababaro zingana na 10.000.000 Frw Rwabukwisi Jean asaba Urukiko ko rutegeka Umujyi wa Kigali kumuha, Urukiko rurasanga atazikwiye, kuko nk'uko biteganywa n'ingingo ya 81 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011, bene izo ndishyi zitangwa n'uruhande rwishe amasezerano, kandi nk'uko byagaragajwe haruguru, Umujyi wa Kigali ntiwishe amasezerano.

[32] Ku byerekeranye na 1.000.000 Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza Rwabukwisi Jean asaba, Urukiko rurasanga nayo atayahabwa, kuko ubujurire bw'Umujyi wa Kigali bufite ishingiro.

III. ICYEMEZO CY'URUKIKO

[33] Rwemeje ko Ubujurire bw'Umujyi wa Kigali bufite ishingiro;

[34] Rwemeje ko urubanza nimero RADA 00129/2018/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 31/05/2019 ruhindutse mu ngingo zarwo zose;

[35] Rwemeje ko icyemezo gitegeka Umujyi wa Kigali kwishyura Rwabukwisi Jean 105.900.000Frw akomoka ku masezerano wagiranye na Rwabukwisi Jean n'indishyi mbonezamusaruro zingana na 7.280.625 Frw gikuweho;

[36] Rutegetse Rwabukwisi Jean gusubiza Umujyi wa Kigali 50.000 Frw y'amagarama watanze ujurira.