GUKORA NI NGOMBWA LTD v DUSHIMIMANA

[Rwanda URUKIKO RW'UBUJURIRE – RCA 00001/2022/CA – (Nyirandabaruta, P.J.) 11 Gashyantare 2022]

Amategeko agenga ubutaka – Umutungo utimikanwa – Itambamira ihererekanyamutungo – Itambamira ry'ihinduramutungo n'icyemezo cy'agateganyo gishobora guhinduka igihe cyose habonetse impamvu nshya.

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Urubanza rwabaye itegeko – Icyemezo gifashwe ku birego byihutirwa – Icyemezo ku kirego cyihutirwa kidashobora gufatwa nk'urubanza rwabaye itegeko kuko gishobora guhindurwa cyangwa kongera kuregerwa nk'ikirego cyihutirwa mu gihe habonetse impamvu nshya.

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Ikirego cyihutirwa – Urubanza rutaraburanishwa –Ijambo urubanza rutaraburanishwa ntirigomba kumvikana nk'aho urubanza ruba rutaratangira kuburanishwa ahubwo rigomba kumvikana nk'urubanza ruba rutaracibwa, rukiri mu rukiko, kubera ko rushobora kumara igihe kinini ruburanishwa, kandi muri icyo gihe bishoboka ko umucamanza yasabwa kugira ibyemezo afata by'agateganyo bigamije kugira ibiramirwa kuko ari cyo kigamijwe mu miburanishirize y'ibirego byihutirwa.

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Ikirego cyihutirwa – Ifatwa ry'icyemezo ku kirego cyihutirwa – Umucamanza afata icyemezo kubyo yaregewe mu kirego cyihutirwa, yirinda kwinjira mu cyaregewe cyangwa kugira icyemezo afata ku byaregewe bitaraburanwa mu mizi y'urubanza kuko ashobora kutabibona kimwe n'uko umucamanza w'urubanza mu mizi ashobora kuzabibona, bityo bikaba byateza ikibazo cy'uko urukiko rushobora gufata ibyemezo bivuguruzanya cyangwa bihabanye ku kiregerwa kimwe hagati y'ababuranyi bamwe.

Incamake y'ikibazo: Hakizimana yatwaye ibikoresho by'ubwubatsi bya kampani Gukora Ni Ngombwa Ltd yiyitirira ko abitumwe na Gasabo Design Ltd maze ajya kubigurisha Nyabugogo, bigurwa na Dushimimana waje kubirindishwa mu gihe cy'ubugenzacyaha kuko ariho byafatiwe. Ubushinjacyaha bwaramukurikiranye ku cyaha cy'ubwambuzi bushukana, bumurega mu Rukiko rw'Ibanze rwa kacyiru rumutegeka gusubiza Gukora Ni Ngombwa Ltd ibyuma bye no kumwishyura indishyi z'akababaro. Iki cyemezo yakijuririye mu Rukiko Rwisumbuye rwa Gasabo ariko hagumishwaho imikirize y'urubanza y'Urukiko rw'Ibanze rwavuzwe haruguru.

Mu gihe cyo kurangiza urwo rubanza, Hakizimana yasabwe n'Umuhesha w'inkiko utari uw'umwuga kubahiriza ibyategetswe muri urwo rubanza ariko we avuga ko Gukora Ni Ngombwa Ltd izi aho ibyuma byayo biri bituma uyu Muhesha w'inkiko yandikira Dushimimana amusaba gusubiza ibyuma nyirabyo, akabikora mu masaha mirongo ine n'umunani ariko ntiyabikora. Ibi byatumye Gukora Ni Ngombwa Ltd atanga ikirego mu Rukiko rw'Ibanze rwa Kicukiro, isaba Urukiko gutegeka Dushimimana gusubiza ibyuma yabonye mu buriganya ariko uru rubanza rutaracibwa yahise atambamira imitungo ye afatanyije n'umugabo we ashingiye ku ngingo ya 213 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakoreshwaga icyo gihe kugira ngo natsindwa izabone ubwishyu, Ikigo cy'ubutaka kirabimwemerera gishyiramo iryo tambama. Uru Rukiko rwasanze Dushimimana atari we ugomba gusubiza ibyuma yarindishijwe ahubwo ko byabazwa Hakizimana.

Gukora Ni Ngombwa Ltd yajuririye mu Rukiko Rwisumbuye rwa Nyarugenge ariko Urukiko rutarafata icyemezo mu mizi yarwo, Dushimimana yahise atanga ikirego cyhutirwa asaba gukuraho itambama ryashyizwe ku mitungo ye itimukanwa maze Urukiko rwemeza ko ikirego cye nta shingiro gifite bityo itambama rigumaho. Mu micire y'urubanza mu mizi, Urukiko Rwisumbuye rwa

Nyarugenge, rwasanze ubujurire bwa Gukora Ni Ingombwa bufite ishingiro maze rwemeza ko Dushimimana agomba kuyisubiza ibyuma byayo ndetse akayiha n'indishyi.

Urega yajuririye bwa kabiri Urukiko Rukuru ariko ntirwahita rusomwa bituma atanga ikirego cyihutirwa muri uru Rukiko, ashingiye kuri iki kirego cy'iremezo, asaba Urukiko gukuraho itambama ryashyizwe ku mutungo asangiye n'Umugabo we. Uregwa aivuga ko icyo kirego kitagomba kwakirwa kubera ko icyo kibazo cyasuzumwe n'Urukiko Rwisumbuye, kandi ko urubanza mu mizi rwamaze kuburanishwa. Avuga kandi ko itambama ryakozwe ryakurikije amategeko, ko nta bwihutirwe buhari kuko icyatumye itambama rishyirwaho, ari uko urubanza rw'iremezo rutaracibwa burundu, bityo ko gukuraho itambama kuri iyo mitungo byabangamira urubanza mu mizi. Urukiko Rukuru rwemeje ko ikirego cya Dushimimana gifite ishingiro, maze rukuraho iryo tambama ku mitungo ye afatanyije n'Umugabo we yari yashyiriweho.

Gukora Ni Ngomwa yajuririye Urukiko rw'Ubujurire ivuga ko Urukiko Rukuru rwashingiye ku itegeko ritariho ryo muri 2021 kandi itambama ryarashyizweho mbere yuko ritangazwa mu igazeti ya Leta, rwirengagiza agaciro k`urubanza rwaciwe ku rwego rwa nyuma, rwirengagije inzitizi yo kutakira ikirego kandi urubanza remezo rwaraburanishijwe, ruca urubanza kukitararegewe, rutegeka ko itambama rivaho kandi bibangamiye urubanza mu minzi rutaracibwa burundu, kandi ruyima n'indishyi yari yasabye.

Kuri ibyo bibazo, Dushimimana avuga ko kuba Urukiko Rukuru rwarashingiye ku itegeko ritariho itambama rikorwa nta shingiro bifite kubera ko ingingo uruhande baburana rwashingiyeho ireba umuntu uberewemo umwenda kandi umwenda udashidikanywaho, ugeze igihe cyo kwishyurwa bitandukanye n'uko ibintu bimeze aho yo yatambamiye umutungo utaburanwa mu rubanza rw'iremezo, ishingiye gusa ko hari urubanza rukiburanishwa mu nkiko.

Avuga ko ihame ry'urubanza rwabaye itegeko ridashobora gukoreshwa ku birego byihutirwa kubera ko ibyo birego bishingira ku birego by'iremezo kandi biba byihariye bitewe n'urukiko bigezemo; ko impamvu umushingamategeko yabiteganyije ari ukugira ngo urukiko ruburanisha urubanza rube rwagira ibyemezo rufata muri urwo rubanza hagamijwe kuramira ibyangirika muri icyo gihe. Akomeza avuga kandi ko Urukiko Rukuru nta kosa rwakoze kuba rwarakiriye ikirego cye kihutirwa kubera ko kuba urubanza rwari rwaraburanishijwe ariko rutarasomwa bitanyuranije n'ingingo ya 185 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, bityo ko no kuba icyo kirego cyaratanzwe nyuma y'iburanisha ry'urubanza remezo ariko rutarasomwa gishobora gusuzumwa, kandi ko n'icyagombaga gusomwa atari urubanza remezo ubwarwo, ahubwo ari icyemezo ku nzitizi yatanzwe na Gukora Ni Ngombwa Ltd ku iyakirwa ry'ikirego.

Asoza avuga ko Urukiko Rukuru rutaciye urubanza kukitararegewe kubera ko atanga ikirego yasabaga Urukiko Rukuru gufata icyemezo cyihutirwa rugategeka ko itambama ryashyizwe ku mitungo ye ryavanwaho kuko ryakozwe binyuranije n'amategeko, bityo Urukiko rwasanze itambama n'ubundi ryarakozwe mu buryo no mu nzira zinyuranye n'amategeko rwanzura ko rivaho kandi ku mitungo yose.

Incamake y'icyemezo: 1. Kuba icyemezo gishyiraho itambama ari icyemezo cy'agateganyo gishobora guhinduka igihe icyo ari cyo cyose habonetse impamvu nshya ituma rihinduka kandi ikirego kirisuzuma kikaba cyaratanzwe nyuma y'uko itegeko ryashingiweho itambama rishyirwaho ryari ritarajyaho, nta cyabuza umucamanza gushingira kuri iryo itegeko mu gihe cy'isuzuma ry'ikibazo mu rwego rwo guhuza iryo tambama n'ibyo amategeko ateganya , yemeza ko ritubahirije amategeko kuko kurigumishaho byaba binyuranyije n'amategeko.

2. Kuba icyemezo gifashwe ku kirego cyihutirwa kigira kamere yo kuba icy'agateganyo, ibyo bikaba bidashobora kubangikanywa no kuba ndakuka, bityo ntikirebwa n'ingingo ya 14 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

3. Ijambo urubanza rutaraburanishwa ntirigomba kumvikana nk'aho urubanza ruba rutaratangira kuburanishwa ahubwo rigomba kumvikana nk'urubanza ruba rutaracibwa, rukiri mu rukiko, kubera ko rushobora kumara igihe kinini ruburanishwa, kandi muri icyo gihe bishoboka ko umucamanza yasabwa kugira ibyemezo afata by'agateganyo bigamije kugira ibiramirwa kuko ari cyo kigamijwe mu miburanishirize y'ibirego byihutirwa.

4. Umucamanza afata icyemezo kubyo yaregewe mu kirego cyihutirwa, yirinda kwinjira mu cyaregewe cyangwa kugira icyemezo afata ku byaregewe bitaraburanwa mu mizi y'urubanza kuko ashobora kutabibona kimwe n'uko umucamanza w'urubanza mu mizi ashobora kuzabibona, bityo bikaba byateza ikibazo cy'uko urukiko rushobora gufata ibyemezo bivuguruzanya cyangwa bihabanye ku kiregerwa kimwe hagati y'ababuranyi bamwe.

Ubujurire bw'ikirego cyihutirwa nta shingiro bufite.
Nta gihindutse ku cyemezo cyafashwe mu rubanza rwaciwe n'Urukiko Rukuru.

Amategeko yashingiweho:
Itegeko N° 27/2021 ryo ku wa 10/06/2021 rigenga ubutaka, ingingo ya 72.
Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 10, 11, 14, 185, 186 n'iya 213.
Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/4/2008, rigena uburyo iyandikishwa ry'ubutaka rikorwa, ingingo ya 11, 61 n'iya 62.

Imanza zifashishijwe:
Murenzi Alphonse na Mutabazi Abayo Jean Claude, RCA 00001/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 17/03/2020

Inyandiko z'Abahanga zifashishijwe:
Serge Guinchard, Droit et pratique de la procédure civile, 8ème ed, Dalloz, Paris, 2014-2015, p. 183 (points 125.05- 6125.8).

Urubanza

I. IMITERERE Y'URUBANZA

[1] Hakizimana Pierre Laurent yagiye muri quincaillerie ya Company yitwa Gukora Ni Ngombwa Ltd, yiyitirira ko yatumwe na Company yitwa Gasabo Design Ltd ibikoresho by'ubwubatsi (1700 *tubes*) bifite agaciro ka 16.910.000 Frw abijyana kubigurisha Nyabugogo, bigurwa na Dushimimana Jacqueline akaba arinaho byafatiriwe. Mu kugenza icyaha, ibyo bikoresho byarindishijwe Dushimimana Jacqueline, nk'uko bigaragazwa n'inyandiko yo ku wa 02/07/2016.

[2] Ubushinjacyaha bwakurikiranyeho Hakizimana Pierre Laurent icyaha cy'ubwambuzi bushukana, rumuregera Urukiko rw'Ibanze rwa Kacyiru, ruca urubanza RP 00562/2016/TB/KCY rumuhamya icyo cyaha rumuhanisha igifungo cy'imyaka itatu n'ihazabu ya 1.000.000 Frw, rumutegeka gusubiza Company Gukora Ni Ngombwa Ltd ibyuma byayo 1700 bifite agaciro ka 16.910.000 Frw, no kuyiha 3.000.000 Frw y'indishyi z'akababaro.

[3] Hakizimana Pierre Laurent ntiyishimiye imikirize y'urubanza, ajurira mu Rukiko Rwisumbuye rwa Gasabo, ruca urubanza RPA 00463/2017/TGI/GSBO ku wa 11/05/2018, rwemeza ko ubujurire bwa Hakizimana Pierre Laurent nta shingiro bufite rugumishaho imikirize y'urubanza rwaciwe n'Urukiko rw'Ibanze rwa Kacyiru.

[4] Nyuma y'icibwa ry'urwo rubanza, ku wa 24/09/2018, Umuhesha w'Inkiko w'umwuga Me Muvunyi Serge, yashyikirije Hakizimana Pierre Laurent itegeko rimwishyuza rimutegeka kugaragaza imitungo ye igomba gufatirwa nkuko amategeko abiteganya. Muri iyo nyandiko, Umuhesha yasabye Hakizimana Pierre Laurent gusubiza Gukora Ni Ngombwa ibyuma byayo, anamutegeka kwishyura amafaranga yategetswe mu rubanza. Hakizimana Pierre Laurent abinyujije ku buyobozi bwa gereza, yasubije Umuhesha w'Inkiko w'Umwuga ko aho ibyuma biri Gukora Ni Ngombwa ihazi ko kandi kujya kubifata ari uburenganzira bwayo. Ku wa 27/09/2018 Umuhesha w'Inkiko yandikiye Dushimimana Jacqueline amusaba gusubiza ibyuma nyirabyo, akabikora mu masaha mirongo ine n'umunani ariko ntiyabikora.

[5] Bitewe n'uko Dushimimana Jacqueline atasubije ibyo byuma, Gukora Ni Ngombwa yatanze ikirego mu Rukiko rw'Ibanze rwa Kicukiro, isaba Urukiko gutegeka Dushimimana Jacqueline gusubiza ibyuma yabonye mu buriganya, gihabwa RC 00714/2019/TB/KICU. Mu gihe urubanza (RC 00714/2019/TB/KICU) rwari rutaracibwa Gukora Ni Ngombwa ishingiye ku biteganywa n'ingingo ya 213 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakoreshwaga icyo gihe, yatambamiye imitungo yanditse kuri Dushimimana Jacqueline, kugira ngo natsindwa izabone ubwishyu, Ikigo cy'ubutaka kirabimwemerera gishyiramo itambama ku mitungo Dushimimana Jacqueline afatanyije n'umugabo we. Urukiko rw'Ibanze rwa Kacyiru mu rubanza RC 00714/2019/TB/KIC, rwasanze Dushimimana atari we ugomba gusubiza ibyuma yarindishijwe ahubwo ko byabazwa Hakizimana Pierre Laurent.

[6] Gukora Ni Ngombwa yajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Nyarugenge, ikirego cyayo gihabwa RCA 00209/2019/TGI/NYGE. Mu gihe urwo Rukiko rutarafata icyemezo mu mizi yarwo, Dushimimana Jacqueline atanga ikirego cyihutirwa asaba gukuraho itambama ryakozwe ku mutungo utimukanwa wa Dushimimana Jacqueline na Dr Sinayobye Jean d'Amour ufite UPI 1/03/02/03/771 na UPI 5/07/09/02/6416) kuko ryakozwe ku mitungo itagira aho ihurira n'imanza ziburanwa, icyo kirego gihabwa RC 00439/2020/TGI/NYGE.

[7] Ku wa 07/07/2020, mu rubanza ku kirego cyihutirwa RC 00439/2020/TGI/NYGE, Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko ikirego cyihutirwa cya Dushimimana Jacqueline nta shingiro gifite, rwemeza ko rudashobora kuvanaho itambama ku mitungo UPI 1/03/02/03/771 na UPI 5/07/09/02/6416 kuko byabangamira urubanza RCA 00209/2019/TGI/NYGE rw'iremezo, iki cyemezo kikaba kitarigeze kijuririrwa.

[8] Mu micire y'urubanza mu mizi, Urukiko Rwisumbuye rwa Nyarugenge, rwasanze ubujurire bwa Gukora Ni Ngombwa bufite ishingiro nkuko rwabisobanuye mu bika bya [16] - [18], maze rwemeza ko Dushimimana Jacqueline agomba gusubiza Gukora Ni Ngombwa ibyuma byayo ndetse akayiha n'indishyi.

[9] Dushimimana Jacqueline, ntiyishimiye imikirize y'urubanza CA 00209/2019/TGI/NYGE, atanga Ubujurire bwa kabiri mu Rukiko Rukuru, urubanza ruhabwa RCAA 00019/2020/HC/KIG ruburanishwa ku nzitizi y'iburabubasha, inteko yaruburanishije ivuga ko ruzasomwa ku wa 23/12/2021 ariko isomwa ryarwo ryimurwa ku wa 27/12/2021 kubera ko Umucamanza yagize akazi kenshi, uwo munsi nabwo ryimurirwa ku wa 11/02/2022.

[10] Dushimimana Jacqueline yatanze ikirego cyihutirwa mu Rukiko Rukuru ashingiye ku kirego cy'iremezo mu bujurire (RCAA 00019/2020/HC/KIG) gihabwa RC 00036/2021/HC/KIG, asaba Urukiko gukuraho itambama ryashyizwe ku mutungo asangiye n'Umugabo we; Gukora Ni Ngombwa ivuga ko icyo kirego kitagomba kwakirwa kubera ko icyo kibazo cyasuzumwe n'Urukiko Rwisumbuye rwa Nyarugenge, kandi ko urubanza mu mizi rwamaze kuburanishwa, inavuga ko itambama ryakozwe ryakurikije amategeko kandi ko nta n'ubwihutirwe buhari kuko icyatumye

itambama rishyirwaho, ari uko urubanza rw'iremezo rutaracibwa burundu, bityo ko gukuraho itambama kuri iyo mitungo byabangamira urubanza mu mizi nk'uko n'Urukiko Rwisumbuye rwa Nyarugenge rwabisobanuye mu rubanza RC 00439/2020/TGI/NYGE.

[11] Ku wa 24/12/2021, Urukiko Rukuru rwafashe icyemezo ku kirego cyihutirwa cya Dushimimana Jacqueline, rwemeza ko gifite ishingiro, maze rukuraho itambama ku mitungo ye afatanyije n'Umugabo we yari yashyiriweho itambama.

[12] Gukora Ni Ngombwa ntiyishimiye icyo cyemezo, ikijuririra mu Rukiko rw'Ubujurire ivuga ko Urukiko Rukuru rwashingiye ku itegeko ritariho ryo muri 2021 kandi itambama ryarashyizweho mbere yuko ritangazwa mu igazeti ya Leta, rwirengagiza agaciro k`urubanza rwaciwe ku rwego rwa nyuma, rwirengagije inzitizi yo kutakira ikirego kandi urubanza remezo rwaraburanishijwe, ruca urubanza kukitararegewe, rutegeka ko itambama rivaho kandi bibangamiye urubanza mu minzi rutaracibwa burundu, kandi ruyima n'indishyi yari yasabye.

[13] Urubanza rwaburanishijwe mu ruhame ku wa 04/02/2022 Gukora Ni Ngombwa ihagarariwe na Me Abasa Fazil na Me Nzabonimana Cassien naho Dushimimana Jacqueline yunganiwe na Me Kayitana Jean Damascène.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba mu gufata icyemezo Urukiko Rukuru rwarashingiye ku itegeko ritariho itambama rishyirwaho

[14] Me Abasa Fazili uhagarariye Gukora Ni Ngombwa avuga ko Urukiko Rukuru rwashingiye ku Itegeko N° 27/2021 ryo ku wa 10/06/2021 rigenga ubutaka, kandi itambama ryarashyizweho mbere yuko iryo tegeko ritangazwa mu igazeti ya Leta ; asobanura ko hashingiwe ku ngingo ya 213 y' Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ibijyanye n'itambama[1], ariyo Umubitsi w'Inyandikompamo z'ubutaka yahereyeho yandikira Me Abasa Fazili mu mwanya wa Gukora Ni Ngombwa, amumenyesha ko itambama ryashyizwe ku mitungo ifite UPI 1/03/02/03/771 na UPI 5/07/09/02/6416, ko Urukiko Rukuru rutari gushingira ku Itegeko N° 27/2021 ryo ku wa 10/06/2021 rigenga ubutaka ritariho itambama rishyirwaho.

[15] Me Abasa Fazili asobanura ko ingingo ya 213 y' Itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru yashingiweho hashyirwaho itambama ivuga ko itambama rishobora gukorwa n'uberewemo umwenda cyangwa undi wese ubifitemo inyungu, kandi ko byasabaga ko nyir'umutungo amenyeshwa kandi bikaba byarakozwe, ko Dushiminama Jacqueline yamenyeshejwe iryo tambama nk'uko bigaragara ahashyirwa ibimenyetso ku kimenyetso cya 023, cyashyizwemo ku wa 21/12/2021.

[16] Me Nzabonimana Cassien nawe uburanira Gukora Ni Ngombwa avuga ko ibyo uhagarariye Dushimimana Jacqueline yavuze ko itambama rita agaciro mu mezi atandatu atari byo kuko n'ubu ikirego kigihari.

[17] Dushimimana Jacqueline avuga ko iby'uko yamenyeshejwe nta byabayeho, kuko atari mu Rwanda, kandi ko nta mukozi witwa Prince yigeze agira.

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[1] Ingingo ya 213 y'itegeko ryavuzwe iteganya ko uberewemo umwenda wese cyangwa umuntu wese ubifitemoinyungu, ashobora gusaba Umubitsi w'inyandikompamo z'ubutaka, ushinzwe ubutaka ku Murenge cyangwa ku Karere w'aho ikitimukanwa kiri kubuza umubereyemo umwenda gukora ihinduzamutungo ry'ibintu byebitimukanwa.

[18] Me Kayitana Jean Damascène wunganira Dushimimana Jacqueline, avuga ko ibyo Gukora Ni Ngombwa Ltd ivuga ko urukiko rwashingiye ku itegeko rishya kandi baratambamye bashingiye ku ngingo ya 213 y' Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nta shingiro bifite, kubera ko Gukora Ni Ngombwa Ltd yirengagiza ko iyi ngingo bashingiyeho ireba (nk'uko babyivugira) umuntu uberewemo umwenda (*créancier*). Umwenda uvugwa muri iyo ngingo ukaba ugomba kumvikana nk'umwenda udashidikanywaho kandi ugeze igihe cyo kwishyurwa, bitandukanye n'uko ibintu bimeze kuri Gukora Ni Ngombwa, aho bo batambamiye umutungo (atari nawo uburanwa mu rubanza rw'iremezo), bashingiye gusa ko hari urubanza rukiburanishwa mu nkiko.

[19] Avuga kandi ko nk'uko Urukiko Rukuru rwabivuze, kuba Umubitsi w'Inyandikompamo z'ubutaka yaremeye iri tambama nawe yakoze amakosa, kuko uretse n'iri tegeko rivuga ku by'imiburanishirize y'imanza mbonezamubano muri rusange, ingingo ya 61 y'Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/4/2008, rigena uburyo iyandikishwa ry'ubutaka rikorwa, umugereka waryo wa 6 ugaragaza abantu bashobora gutambamira uburenganzira bwa nyir'ikibanza muri Rejisitiri y'ibyemezo by'ubutaka bwo kubyegurira, kandi Gukora Ni Ngombwa ikaba itari muri abo bantu, ko kuba n'Umubitsi w'impapurompamo z'ubutaka atarabimenyesheje uwo bireba nk'uko biteganywa mu ngingo ya 11 y'iryo Teka binyuranye n'amategeko, kuko iryo teka ryakomeje no gukurikizwa no mu gihe Itegeko N° 27/2021 ryo ku wa 10/06/2021 rigenga ubutaka ryari rimaze gusohoka mu Igazeti ya Leta. Avuga kandi ko na nyuma y'amezi atandatu kuva ribayeho, iryo tambama ubwaryo ryari ritaye agaciro kuko nta rukiko rwategetse iyongerwa ryaryo nk'uko biteganywa n'ingingo ya 62 y'Iteka rya Minisitiri Nº 002/2008 ryo ku wa 01/04/2022 ryavuzwe haruguru ; ko ibyo Gukora Ni Ngombwa Ltd iburana ivuga ko urukiko rwemeje ko itambama ryakozwe mu buryo budakurikije amategeko rushingiye ku itegeko ryari ritarajyaho igihe itambama ryakorwaga nta shingiro bifite kuko n'Itegeko rya kera naryo bataryubahirije.

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[20] Ingingo ya 213 y' Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko uberewemo umwenda wese cyangwa umuntu wese ubifitemo inyungu, ashobora gusaba Umubitsi w'inyandikompamo z'ubutaka, ushinzwe ubutaka ku Murenge cyangwa ku Karere w'aho ikitimukanwa kiri kubuza umubereyemo umwenda gukora ihinduzamutungo ry'ibintu bye bitimukanwa. Icyakora iyo ataregeye umwenda we mu Rukiko mu gihe kitarenze ukwezi kumwe (1) abisabye, ikibazo cye kigamije gutambamira ihinduzamutungo kiburiramo.

[21] Ingingo ya 74, igika cya 1, y'Itegeko N° 27/2021 ryo ku wa 10/06/2021 rigenga ubutaka [2]iteganya ko umuntu ushaka kwandikisha itambamira ry'ihererekanya ry'ubutaka ashyikiriza ubusabe, mu nyandiko, Umubitsi w'inyandikompamo z'ubutaka iyo : 1º ubutaka butambamirwa ari bwo burebwa n'ikibazo; 2º hari icyemezo cy'urukiko gitegeka gutambamira ubutaka.

[22] Ingingo ya 61 y'Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/4/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa, iteganya ko akoresheje ikirego ashyikirije Umubitsi cyangwa Umubitsi wungirije mw'ifishi iteganywa ku Mugereka wa 6, uwo ari we wese mu bantu bakurikira ashobora gutambamira uburenganzira bwa nyir'ikibanza muri Rejisitiri y'ibyemezo by'ubutaka bwo kubyegurira undi: a) uberewemo umwenda wishyuzwa wahawe icyemezo gihamya nyir'ikibanza ho ingwate ku bintu byimukanwa; b) uberewemo umwenda ufite inyandiko mpesha; c) ushinzwe gucunga igihombo; (…). Umubitsi cyangwa Umubitsi wungirije yandika itambama, ku buryo buvugwa mu ngingo ya 11 y'iri Teka, ku Cyemezo cyanditse muri Rejisitiri y'ibyemezo by'ubutaka

[2] Itegeko N° 27/2021 ryo ku wa 10/06/2021 rigenga ubutaka ryasohotse mu Igazeti idasanzwe ya Leta yo ku wa10/06/2021.

akamenyesha iryo tambama nyirumutungo urebwa n'iryo tambama. Naho ingingo ya 62 y'iryo Teka igateganya ko iyandikwa ry'ibangamira riburizamo uburenganzira bwa nyirikibanza bwo kukikenuza mu gihe cy'amezi atandatu uhereye igihe rikorewe. Ishobora kongererwa igihe kingana n'icya mbere, bitegetswe n'icyemezo cy'urukiko rubifitiye ububasha, kubera impamvu ikomeye.

[23] Mu rubanza rujuririrwa (igika cya 12), Urukiko Rukuru rwasanze itambama ku mutungo wa Dushimimana Jacqueline ritubahirije amategeko (ingingo ya 74,1 y'Itegeko N° 27/2021 ryo ku wa 10/06/2021 rigenga ubutaka yavuzwe haruguru) kuko ritemejwe n'urukiko kandi inzu n'ubutaka bya Dushimimana Jacqueline byashyizweho itambama atari ibyo ikibazo afitane na Gukora Ni Ngombwa Ltd gishingiyeho, ahubwo bigaragara ko iryo tambama ryashyiriweho gusa guteganyiriza ubwishyu, hashingiwe ku ibaruwa ya Gukora Ni Ngombwa Ltd, Dushimimana Jacqueline atabimenyeshejwe ngo agire icyo abivugaho cyangwa icyo abikoraho. Rwasanze kandi Gukora Ni Ngombwa Ltd itarugaragariza uburyo ubwishyu itegereje ku rubanza rukiburanwa bwazaburizwamo mu gihe Dushimimana yemeraga gutanga 15.000.000Frw y'ingwate akoresheje *chêque certifié* yerekanye mu iburanisha ryo ku wa 22/12/2021, Gukora Ni Ngomba Ltd ikaba yaranze kuyifata kandi iburaho amafaranga make gusa ngo yuzuze 17.000.000Frw iregera, rusanga nta mpamvu yo kubuza Dushimimana Jacqueline gukora ubucuruzi bwe neza kandi itambama riramutse rikuweho impungenge byatera Gukora NI Ngombwa ari nke cyane kubera ko Dushimimana agaragaza ko atazananirwa kwishyura aramutse atsinzwe.

[24] Dosiye igaragaza ko ku wa 03/01/2019, Me Abasa Fazil mu mwanya wa Gukora Ni Ngomba aribwo yujuje inyandiko isaba gutambamira ihererekanya ry'ubutaka (*caveat*), ku wa 10/10/2018 akaba aribwo bigaragara ko umuhesha w'inkiko w'umwuga Munyantarama Sadiki yayishyikirije umukozi witwa Nshimiyimana Prince aho Dushimimana Jacqueline akorera Nyabugogo[3].

[25] Ku byo abahagarariye Gukora Ni Ngombwa Ltd bavuga ko icyemezo Urukiko Rukuru rwafashe ku wa 24/12/2021 cyo kuvanaho itambama rwagishingiye ku itegeko ry'ubutaka ritariho igihe itambama ryakorwaga, nk'uko byagaragajwe haruguru, dosiye igaragaza ko ikirego cyihutirwa cyajuririwe, nk'uko biri muri IECMS, mu Rukiko Rukuru, cyatanzwe ku wa 06/12/2021, kiburanishwa ku wa 22/12/202, bikaba bigaragara ko icyo kirego cyatanzwe nyuma y'uko Itegeko N° 27/2021 ryo ku wa 10/06/2021 rigenga ubutaka ritangajwe mu Igazeti ya Leta kandi ritangiye gukurikizwa, akaba ari nta mpamvu n'imwe yari gutuma urwo Rukiko rutarishingiraho mu gihe rubona rikenewe.

[26] Urukiko rw'Ubujurire rurasanga kuba itambamira ry'ihinduranyamutungo ari icyemezo cy'agateganyo ku buryo ntawavuga ko iyo rikozwe biba birangiye, icyo cyemezo kikaba gishobora guhinduka igihe cyose habonetse impamvu nshya, Dusimimana Jacqueline akaba yari yagaragarije Urukiko impamvu atanga, Urukiko nta handi rwari gushakira impamvu ziteganywa n'amategeko zatuma rwemeza cyangwa rwanga iryo tambama hatari mu itegeko ririgenga rikoreshwa mu gihe rusuzuma icyo kibazo. Kuba rero rwarasanze nta mpamvu n'imwe mu ziteganywa n'iryo Tegeko itambama ryubahirije rugategeka ko rivanwa ku mitungo ryari ryashyizweho, kuvuga ko rwemeje ko ritubahirije amategeko kandi itegeko ryashingiweho itambama rishyirwaho ryari ritarajyaho si byo, kuko kugumishaho itambama byari kuba binyuranyije n'amategeko.

[27] Urukiko rw'Ubujurire rurasanga kandi n'iyo Urukiko Rukuru rudashingira ku ngingo ya 74, y'Itegeko N° 27/2021 ryo ku wa 10/06/2021 ry'ubutaka ryavuzwe haruguru, bitari kubuza Urukiko Rukuru kwemeza ko itambama ryakozwe ku mitungo ya Dushimimana Jacqueline na Dr SINAYOBYE Jean d'Amour ridakurikije amategeko, mbere na mbere ku mpamvu y'uko Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/4/2008 rigena uburyo iyandikishwa ry'ubutaka ryakoreshwaga igihe itambama ryakorwaga ndetse rigikoreshwa kugeza ubu, riteganyaga mu ngingo yaryo ya 61,

[3] Reba ikmenyetso 023 ahashyirwa ibimenyetso mu rubanza rujuririrwa.

abantu bashobora gutambamira uburenganzira bwa nyir'ikibanza muri Rejisitiri y'ibyemezo by'ubutaka bwo kubyegurira undi, rikanategeka Umubitsi w'Impapuro Mpamo kubimenyesha nyir'ubutaka[4], nyamara nk'uko bigaragara Gukora Ni Ngombwa Ltd ikaba yaremerewe itambama yasabye ko rishyirwa kuri iyo mitungo kandi itari mu bantu bavugwa mu ngingo ya 61 y'iryo Teka Nº 002/2008 ryo ku wa 01/04/2008, bashobora gukora itambama, ikindi Umubitsi w'Impapurompamo z'Ubutaka akaba atarigeze amenyeha iryo tambama Dushimimana Jacqueline nk'uko biteganywa n'amategeko[5].

[28] Urukiko rurasanga kandi ingingo 213 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi abahagaraiye Gukora Ni Ngombwa Ltd bavuga ko yashingiweho n'Umubitsi w 'Impapurompamo z'ubutaka, itari gushingirwaho, kuko nta mwenda wemejwe n'Urukiko cyangwa wumvikanweho n'impande zombi ariko ntiwishyurwe, Dushimimana Jacqueline abereyemo Gukora Ni Ngombwa Ltd wahereweho hemezwa iryo tambama.

[29] Urukiko rusanga imvugo y'abahagarariye Gukora Ni Ngombwa Ltd y'uko Urukiko Rukuru rwafashe icyemezo rushingiye ku itegeko ritariho, nta shingiro ifite, kuko nk'uko byasobanuwe haruguru, uretse n'uko iryo tambama ryari risanzwe ryarakozwe binyuranyije n'amategeko nk'uko nabyo byagaragajwe, n'iyo riza kuba ryarakozwe mu buryo bukurikije amategeko, nta cyari kubuza Urukiko Rukuru gushingira ku Itegeko N° 27/2021 ryo ku wa 10/06/2021 ry'ubutaka ryavuzwe haruguru, ryahinduye ibintu nyuma y'uko itambama rikozwe, mu rwego rwo guhuza iryo tambama n'ibyo amategeko ateganya, kukokutabikora byari gutuma imitungo itimukanwa ya Dushimimana Jacqueline n'umugabo we Dr. Sinayobye Jean d'Amour iguma mu itambama kandi hakurikijwe iryo Tegeko butagomba gutambamirwa kuko atari bwo ikibazo cy'urubanza Dushimimana Jacqueline afitanye na Gukora Ni Ngombwa Ltd gishingiyeho.

2. Kumenya niba Urukiko Rukuru rwarirengagije agaciro k`urubannza rwaciwe ku rwego rwa nyuma

[30] Abahagarariye Gukora Ni Ngombwa bavuga ko ibyo Dushimimana yasabaga muri uru rubanza (*référé*) n'uko yabisobanuraga, ari nabyo byasabwaga bikanasobanurwa mu kirego cyihutirwa RC 00439/2020/TGI/NYGE hamwe no muri *requête unilatérale* RC 00510/2021/TGI/NYGE mu Rukiko Rwisumbuye rwa Nyarugenge, kandi Urukiko rubifataho umwanzuro ndetse ntibyajuririrwa. Bityo bagasanga Urukiko Rukuru rutaragombaga kongera gusuzuma bundi bushya iki kirego, hakurikijwe ingingo ya 14 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi[6]; ko kuba iki kirego cyarakiriwe kigasuzumwa basanga UrukikoRukuru rwarirengagije agaciro k`urubanza rwaciwe ku rwego rwa nyuma.

[31] Bavuga kandi ko ku bijyanye n'urubanza rwaciwe ku rwego rwa nyuma, Umuhanga mu mategeko Cayrol (N.), nawe ariko abibona, aho avuga ko "*L'autorité de chose jugée à titre provisoire constitue un obstacle à la recevabilité de la demande de la partie qui souhaite saisir à nouveau, le juge des référés. Cette règle trouve son fondement dans le raisonnement suivant: lorsqu'un juge des référés prend une mesure provisoire ou rejette la demande, sa décision, "met fin à l'instance et à l'action en référé*", tugenekereje mu kinyarwanda, uwo muhanga akaba avuga ko icyemezo cyabaye

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[4] Reba ingingo ya 61 y' Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/4/2008 rigena uburyo iyandikishwa ry'ubutaka Rikorwa.

[5] Reba ibaruwa yo ku wa 11/12/2018 Umubitsi w'Impapurompamo z'ubutaka, yandikiye Me Abasa Fazili, akamenyesha Ububitsi w'Impapurompamo z'ubutaka mu Mujyi wa Kigali no mu Ntara y'Iburasirazuba.

[6] Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya14: Urubanza rwaciwe ku rwego rwa nyuma ntirushobora kongera kuburanishwa bundi bushya ku mpamvu zimwe no ku kiburanwa kimwe hagati y'ababuranyi bamwe baburana ikirego kimwe.

itegeko ari imbogamizi ituma ikirego kitakirwa k'ushaka kuregera bundi bushya umucamanza w`ibirego byihutirwa; ko iryo hame rishingira ku mpamvu yuko iyo umucamanza w`ibirego byihutirwa afashe icyemezo cy`agateganyo cyangwa yanze kugifata, aba ashyize iherezo ku rubanza no ku kirego ku birebana n`ikirego kihutirwa. Bavuga ko undi muhanga mu by`amategeko witwa Bouty (C.), mu nyandiko yise « *Chose jugée* », na we avuga ko umucamanza w`ibirego byihutirwa adashobora kongera kuregerwa bundi bushya ikirego yarangije gusuzuma, ko icyo kirego kitakirwa (*Le juge des référés ne peut être saisi une nouvelle fois d'une demande qu'il a déjà tranchée; cette nouvelle demande est irrecevable*).

[32] Me Abasa Fazil na Me Nzabonimana Cassien bahagarariye Gukora Ni Ngombwa Ltd bavuga ko iyo umuburanyi atajuririye icyemezo cyafahwe ku kirego cyihutirwa, atajuririra urubanza maze ngo yongere atange cya kirego cyihutirwa yatanze mbere kuko kiba cyabaye itegeko, ko ibyo Dushimimana Jacqueline yashingiyeho atanga ikirego cyihutirwa mu Rukiko Rwisumbuye rwa Nyarugenge, atakagombye kubigarura mu Rukiko rw'Ubujurire, ariyo mpamvu basanga ikirego cye kitaragombaga kwakirwa, kandi ko umucamanza mu Rukiko Rukuru atagaragaje ko hari ikintu gishya cyabonetse ngo asobanure ko agomba kugisuzuma.

[33] Uhagarariye Dushimimana Jacqueline avuga ko ihame ry'urubanza rwabaye itegeko (*Principe de l'autorité de la chose jugée*) ridashobora gukoreshwa ku birego byihutirwa kubera ko bene ibyo birego bishingira ku birego by'iremezo kandi biba byihariye bitewe n'urukiko bigezemo; ko bikwiye kumvikana ko impamvu umushingamategeko yateganyije ibirego nk'ibi ari ukugira ngo urukiko ruburanisha urubanza rube rwagira ibyemezo rufata muri urwo rubanza hagamijwe kuramira ibyangirika muri icyo gihe, ari nabyo biteganywa mu ngingoya 185 y'Itegeko N° 22 /2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, ko urubanza ku kirego cyihutirwa rwihariye ku rwego ruba rugezeho, bikaba bitabuza uwo yunganira gutanga ikirego mu gihe afite icyihutirwa kigomba kuramirwa cyasabwa muri uru rukiko uretse igihe ibyo asaba byaba byari byarasabwe muri uru rukiko.

[34] Akomeza avuga ko umucamanza ufite dosiye, nta cyamubuza gufata icyemezo agira ibyo aramira mu gihe abisabwe, ko kandi inyandiko y'abahanga yatanzwe n'uwo baburana ibigaragaza, aho iyo hari impamvu nshya bitabuza umucamanza kuzisuzuma, ko rero batanze ibimenyetso byinshi bigaragaza ko uruganda rw'uwo yunganira rukora ibyuma rwari rumaze kugira imyenda myinshi muri Kenya, impamvu nshya (*Circonstances nouvelles*) ikaba ari uko yananiwe kwishyura *wherehouse* agasaba ko umutungo we washyizweho itambama ryakurwaho akabasha kwishyura.

[35] Avuga ko amategeko y'ahandi nko mu Bufaransa abisobanura ku buryo burambuye, aho avuga ko ibyemezo byihutitwa bidashobora ku bw'ibanze kugira kamere y'urubanza rwabaye itegeko, ko bishobora guhindurwa igihe habonetse impamvu nshya (*L'ordonnance de référé n'a pas, au principal, l'autorité de la chose jugée. Elle ne peut être modifiée ou rapportée en référé qu'en cas de circonstances nouvelles*)[7], kandi ibisobanuro atanga bitanyuranye n'ibiteganywa mu ngingo ya 185 y' Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

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[7] Procedure civil (Français) Version en vigueur depuis le 01 janvier 1976 Codifié par Décret 75-1123 1975-12-05 JORF 9 décembre 1975 rectificatif JORF 27 janvier 1976, art. 448, https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006410758). ibi akaba ari nabyo bivugwa mu nyandiko y'umuhanga François de La Vaissière yo kuwa 08 Werurwe 2019 igaragara ku rubuga https://www.dallozactualite.fr/flash/autonomie-de-l-instance-en-refere-et-de-l-instance-au-fond yise Autonomie de l'instance en référé et de l'instance au fond aho François yavuze ku rubanza Arrêt n°132 du 21 février 2019 (18-13.543) - Cour de cassation - Troisième chambre civile - ECLI:FR:CCASS:2019:C300132, ko « Il s'agit d'une situation contentieuse assez fréquente, puisque l'on sait que l'ordonnance de référé n'est pas assortie de l'autorité de chose jugée au principal, étant (sauf exception) une décision de nature provisoire, et qu'il est donc loisible à la partie qui a succombé en référé de tenter de contrarier ce qui lui nuit en saisissant le juge du fond dont la décision exécutoire nereprésentera pas cet inconvénient.

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[36] Ingingo ya 185 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko iyo hari ikirego cy'iremezo, ariko hagomba kugira icyemezwa by'agateganyo mu buryo bwihuta ku rubanza rwaregewe urukiko rutaraburanishwa, ikirego cyihutirwa gishyikirizwa umucamanza ushinzwe kurangiza impaka zihutirwa w`aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara. (…).

[37] Ingingo ya 14 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 rivuzwe haruguru, iteganya ko urubanza rwaciwe ku rwego rwa nyuma ntirushobora kongera kuburanishwa bundi bushya ku mpamvu zimwe no ku kiburanwa kimwe hagati y'ababuranyi bamwe baburana ikirego kimwe.

[38] Umuhanga mu mategeho Serge Guinchard, mu gitabo *Droit et Pratique de la Procédure Civile* (*Droit interne et de l'Union Européenne*) yasobanuye icyo ikirego cyihutirwa ari cyo yifashishije itegeko ryerekeye imiburanishirize y'imanza mbonezamubano ryo mu Bufaransa. Kimwe n'abahanga bagaragajwe haruguru bavuzwe n'ababuranyi, Serge Guinchard nawe avuga ko icyemezo gifatwa ku kirego cyihutirwa ku bw'ibanze ari icyemezo cy'agateganyo gifatwa bisabwe n'umuburanyi, kigafatwa n'umucamanza utaburanisha ikirego mu mizi kugira ngo afate ibyemezo bikenewe ako kanya. Ni icyemezo gishyirwa mu bikorwa by'agateganyo, kabone n'iyo cyajuririrwa (*La décision de référé est de plein droit exécutoire par provision, nonobstant toute voie de recours*) [8].

[39] Mu rubanza RC 00036/2021/HC/KIG rujuririrwa, rwaciwe n'Urukiko Rukuru, ku wa 24/12/2021, Urukiko rwasanze kuba atari ubwa mbere iki kirego kiregewe nta shingiro bifite kubera igisobanuro cy'ijambo ubwaryo ikirego kihutirwa, rubihuje n'ingingo ya 488 *Code de procédure civile Français* igira iti: "*L'ordonnance de référé n'a pas, au principal, l'autorité de la chose jugée. Elle ne peut être modifiée ou rapportée en référé qu'en cas de circonstances nouvelles*", umuntu agenekereje bivuga ko icyemezo ku kirego cyihutirwa kidashobora gufatwa nk'urubanza rwabaye itegeko kuko gishobora guhindurwa cyangwa kongera kuregerwa nk'ikirego cyihutirwa mu gihe habonetse impamvu nshya (igika cya 10).

[40] Nk'uko Urukiko Rukuru rwabigarutseho mu rubanza rujuririrwa, kandi bikanateganywa n'ingingo z'amategeko zavuzwe haruguru, ikirego cyihutirwa kigamije buri gihe kuramira icyihutirwa kandi ku buryo bw'agateganyo. Iyo bigaragaye ko biramutse bidakozwe hari ibyakwangirika ku buryo budasubirwaho, ndetse icyo kirego kigatangwa urubanza mu mizi rutaracibwa, mu gihe urubanza mu mizi ruba rugamije gukemura impaka ku buryo bwa burundu.

[41] Urukiko rusanga, kuba icyemezo gifashwe ku birego byihutirwa kigira kamere yo kuba icy'agateganyo, icyo cyemezo kidashobora kubangikanywa n'icyemezo ndakuka, byumvikanisha ko ibiteganywa mu ngingo ya 14 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, bihabanye n'ibiteganywa mu ngingo ya 185 y'iryo Tegeko. Ibyo kandi nibyo byemejwe mu rubanza RCA 00001/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 17/03/2020, haburana Murenzi Alphonse na Mutabazi Abayo Jean Claude, aho mu gika cya 13 Urukiko rwavuze ko kuba icyemezo gifashwe ku kirego cyihutirwa kigira kamere yo kuba icy'agateganyo, ibyo bidashobora kubangikanywa no kuba ndakuka, ko rero kitarebwa n'ingingo ya 14 yavuzwe haruguru[9]

[42] Urukiko rurasanga kandi kuba Urukiko Rukuru rwarabonye ko n'ubwo Dushimimana Jacqueline yatanze ikirego cyihutirwa mu Rukiko Rwisumbuye rwa Nyarugenge (RC

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[8] Serge Guinchard, Droit et pratique de la procédure civile, 8ème ed, Dalloz, Paris, 2014-2015, p. 183 (points 125.05-6125.8).

[9] Urubanza RCA 00001/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 17/03/2020, igikacya [13].

00439/2020/TGI/NYGE), hari impamvu nshya yarugaragarije ashingiraho agira icyo arusaba, zishingiye ku mpamvu yuko umutungo watambamiwe atashoboraga kuwutangaho ingwate kandi uruganda rwe rukeneye ibikoresho by'ibanze (*row Materials*) no kuba ibikoresho bye byaraheze muri Kenya kubera kubura ubwishyu bw'aho byari bimaze igihe biri (*werehouse*), kandi zitandukanye n'izo yari yatanze mbere, nta cyari kubuza Urukiko kubisuzuma rukareba niba ibyo yaregeye bisaba ubwihutire, kandi niba hari icyo byaramira mu buryo bwihuse.

[43] Urukiko rurasanga rero kuba Urukiko Rukuru rwarakiriye ikirego cya Dushimimana Jacqueline rukakiburanisha, rutarirengagije agaciro k`urubanza rwaciwe ku rwego rwa nyuma, kuko icyaburanwe atari urubanza mu mizi, ahubwo ari ikirego cyihutirwa, kandi icyemezo gifashwe ku kirego cyihutirwa kikaba buri gihe ari icy'agateganyo.

3. Ku menya niba Urukiko rwarirengagije inzitizi yo kutakira ikirego kandi urubanza remezo rwaburanishijwe

[44] Abahagarariye Gukora Ni Ngombwa Ltd bavuga ko bashingiye ku ngingo ya 185 y`Itegeko N^o 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, hatitawe ku bisobanuro by'iyo ngingo mu zindi ndimi, kuko itegeko ryatowe mu Kinyarwanda, basanga ikirego cyihutirwa cyatanzwe na Dushimimana Jacqueline kitaragombaga kwakirwa, kuko urubanza rwari rukiburanishwa, ndetse ko ntaho ubwihutirwe bwari bushingiye mu gihe urubanza rwari rwaraburanishijwe kuwa 23/11/2021 rugomba gusomwa kuwa 23/12/2021, ikirego cyihutirwa kikaburanishwa hasigaye umunsi utarenze umwe kugira ngo urubanza rw`iremezo rusomwe, ko rero Urukiko rudakwiriye gutinda ku bivugwamu zindi ndimi kuko urubanza rwatangiye kuburanishwa.

[45] Uhagarariye Dushimimana Jacqueline avuga ko nta kosa Urukiko Rukuru rwakoze kuko kuba urubanza rwari rwaraburanishijwe ariko rutarasomwa, bivuze ko rukiri muri urwo Rukiko (*Pendante devant cette jurisdiction*), ko no kugeza ubu rutarasomwa kubera impamvu zinyuranye; ko kuba Dushimimana Jacqueline yaratanze ikirego hakiri urubanza remezo rutaracibwa bitanyuranije n'ingingo ya 185 y'Itegeko N^o 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, bityo ko no kuba ikirego cyaratanzwe nyuma y'iburanisha ry'urubanza remezo ariko rutarasomwa ikirego cyihutirwa gishobora gusuzumwa, kandi ko n'icyagombaga gusomwa atari urubanza remezo ubwarwo, ahubwo ari icyemezo ku nzitizi yatanzwe na Gukora Ni Ngombwa Ltd ku iyakirwa ry'ikirego.

UKO URUKIKO RUBIBONA

[46] Ingingo ya 185 yavuzwe haruguru y'Itegeko N^o 22/2018 ryo ku wa 29/04/2018 naryo ryibukijwe, iteganya ko iyo hari ikirego cy'iremezo, ariko hagomba kugira icyemezwa by'agateganyo mu buryo bwihuta ku rubanza rwaregewe urukiko rutaraburanishwa, ikirego cyihutirwa gishyikirizwa umucamanza ushinzwe kurangiza impaka zihutirwa w`aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara. (…).

[47] Urukiko rurasanga n'ubwo Itegeko ryatowe mu rurimi rw'ikinyarwanda, aho banditse urubanza rutaraburanishwa, nta cyabuza urukiko kureba uko ryavuzwe mu zindi ndimi, hagamijwe kubihuza n'ibigamijwe muri iyo ngingo.

[48] Urukiko rusanga ijambo urubanza rutaraburanishwa, byarasobanuwe mu rurimi rw'igifaransa ko ari *une contestation pendante/ an action filed* mu cyongereza, ayo magambo akaba ari yo ahuye n'ikigamijwe mu ngingo ya 185 y'Itegeko N^o 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, ariyo mpamvu ari ryo rigomba kwifashishwa kugira ngo humvikane icyo Umushingamategeko yashatse kuvuga, avuga urubanza rutaraburanishwa.

[49] Urukiko rusanga nk'uko n'Urukiko Rukuru rwabigarutseho, ijambo urubanza rutaraburanishwa, ritagomba kumvikana nk'aho urubanza ruba rutaratangira kuburanishwa, ahubwo rigomba kumvikana ko urubanza ruba rutaracibwa, rukiri muri urwo Rukiko, kubera ko urubanza rushobora kumara igihe kinini ruburanishwa, kandi muri icyo gihe bishoboka ko umucamanza yasabwa kugira ibyemezo afata by'agateganyo bigamije kugira ibiramirwa kandi ni cyo imiburanishirize y'ibirego byihutirwa igamije. Iyo kandi niyo myumvire Umushingamategeko yagaragaje mu zindi ndimi.

[50] Urukiko rushingiye kuri ibyo bisobanuro, rurasanga ibyo abahagarariye Gukora Ni Ngombwa Ltd bavuga ko Urukiko Rukuru rutagombaga kwakira ikirego cyihutirwa cyatanzwe na Dushimimana Jacqueline kandi urubanza remezo rwaraburanishijwe, nta shingiro ifite, kuko nk'uko byasobanuwe urwo rubanza rukiburanishwa muri urwo Rukiko rutaracibwa, akaba nta kosa Urukiko Rukuru rwakoze ryakosorwa kuri uru rwego, kuko uko rwabisobanuye, bihura n'icyo ingingo y'Itegeko igamije.

4. Ibijyanye n'uko Urukiko Rukuru rwaciye urubanza ku kitaregewe

[51] Abahagarariye Gukora Ni Ngombwa Ltd bashingiye ku ngingo ya 10 y`Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ivuga ko umucamanza aca urubanza ku cyaregewe cyose kandi kuri icyo cyonyine, bavuga ko umucamanza w'Urukiko Rukuru yaciye urubanza ku kitaregewe kuko Dushimimana Jacqueline atanga ikirego yasabaga Urukiko Rukuru gufata icyemezo cyihutirwa mu rubanza RCAA 00019/2020/HC/KIG gikuraho itambama ryashyizwe ku mutungo UPI 1/03/02/03/771 kubera impamvu zihutirwa zo kuramira ibirimo kwangirika, ariko ko mu cyemezo cye, umucamanza yavuze ko itambama ryakozwe ku mutungo ufite rivuyeho, nyamara nta wasabye ivanwaho ry'itambama kuri UPI 5/07/09/02/6416, ahubwo Jacqueline Dushimimana yarasabaga ko rikurwa kuri UPI 1/03/02/03/771, ku wundi rikagumaho, akanatanga amafaranga ahagije (ugereranije n'agaciro k'ikiregerwa) yagirwa ingwate (*Chêque certifiée*).

[52] Uhagarariye Dushimimana Jacqueline, avuga ko uwo yunganira atanga ikirego yasabaga Urukiko Rukuru gufata icyemezo cyihutirwa rugategeka ko itambama ryashyizwe ku mitungo ye ryavanwaho, anagaragaza ko ryakozwe binyuranije n'amategeko, ariko kubera akababaro, avuga ko Urukiko rubibonye ukundi, itambama ryaguma kuri umwe mu mitungo, hanyuma undi rikavaho, ndetse anatanga sheki izigamiwe (*certified*) yagombaga gusigara ari ingwate mu gihe Urukiko rwabona ari ngombwa, cyokora ko Gukora Ni Ngombwa Ltd yanze iyo sheki, igasaba ko itambama rigumaho byanze bikunze, ko Urukiko rwasanze itambama n'ubundi ryarakozwe mu buryo no mu nzira zinyuranye n'amategeko rukanzura ko rivaho kandi ku mitungo yose, kuko rutari kuvuga ko itambama ridakurikije amategeko, hanyuma ngo rutegeke ko rigumaho. Avuga kandi ko Gukora Ni Ngombwa Ltd itagaragarije Urukiko ukuntu ubwishyu itegereje mu rubanza bwazaburizwamo, mu gihe Dushimimana Jacqueline yatanze sheki izigamiwe ikayanga.

UKO URUKIKO RUBIBONA

[53] Ingingo ya 10 y' Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, iteganya ko umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine. Naho ingingo ya 11 y'iryo Tegeko, igateganya ko: Umucamanza adashobora gushingira icyemezo cye ku bitagaragajwe mu iburanisha. Ntashobora kandi no guca urubanza ashingiye ku byo aruziho ku giti cye.

[54] Dosiye igaragaza ko icyaregewe mu rubanza RC 00036/2021/HC/KIG rwaciwe n'Urukiko Rukuru ari ikirego cyihutirwa gisaba gukuraho itambama ryakozwe ku mutungo utimukanwa wa Dushimimana Jacqueline na Dr Sinayobye Jean d'Amour ufite UPI 1/03/02/03/771 na UPI 5/07/09/02/6416 bifite *Caviet* yasabwe na Gukora Ni Ngombwa Ltd bigakorwa n'urwego rushinzwe

kubika inyandikompamo z’ubutaka ariko nk’uko bigaragara muri IECMS, icyaregewe ni ikirego kihutirwa mu rubanza RCAA 00019/2020/HC/KIG gisaba icyemezo gitegeka ko itambama ryashyizwe ku mutungo UPI 1/03/02/03/771 rikurwaho.

[55] Dosiye igaragaza ko mu miburanire yabo mu Rukiko Rukuru, uhagarariye Dushimimana Jacqueline yagaragaje ko batanze sheki izigamiwe n’ikibanza UPI 5/07/09/02615 gifite agaciro ka 8.000.000 Frw Gukora Ni Ngombwa Ltd ntibyemere, kuko yo yavugaga ko indishyi isaba ari nyinshi ugereranyije n’agaciro k’ibyo bahabwa na Dushimimana Jacqueline.

[56] Mu rubanza rujuririrwa rwaciwe n’Urukiko Rukuru, bimwe mu byo rwashingiyeho rufata icyemezo, harimo ko rwasanze itambama rikwiye kumvikana nk’irigomba gukemura ikibazo cya *identification* y’umutungo ridashingiye ku irangizarubanza, kuko nk’uko bigaragara, icyari kigamijwe ari guteganyiriza irangizwa ry’urubanza kandi urubanza rukiburanishwa hiyongereyeho ko ko iryo tambama ritubahirije amategeko kuko ikibazo kitari ku nzu cyangwa ikibanza bya Dushimimana Jacqueline ahubwo itambama ari irigamije kuzabona ubwishyu nyuma y’icibwa ry’urubanza mu mizi, bikaba bigaragarira urukiko ko nta cyemezo cy’itambama cyatanzwe n’urukiko. Ikindi akaba ari uko Dushimimana Jacqueline yemera gutanga miliyoni 15 y’amafaranga y’u Rwanda y’ingwate akoresheje sheki ishinganye (*chêque certifié*) yerekanye mu iburanisha tariki ya 22/12/2021, ariko Gukora Ni Ngombwa Ltd ikanga kuyifata...[10]

[57] Urukiko rw’Ubujurire rurasanga nta kosa Urukiko Rukuru rwakoze ryo kuvanaho itambama ku mitungo ibaruye kuri UPI 1/03/02/03/771 na UPI 5/07/09/02/6416 ya Dushimimana Jacqueline na Sinayobye Jean d’Amour mu gihe rwari rumaze kwemeza ko ryakozwe mu buryo budakurikije amategeko.

[58] Hashingiwe kuri ibyo bisobanuro, Urukiko rw’Ubujurire rurasanga nta kosa Urukiko Rukuru rwakoze, ryo kuvanaho itambama ku mitungo yose ya Dushimimana Jacqueline yari yarashyizweho itambama, cyane ko Gukora Ni Ngombwa itagaragaje ko umutungo na sheki yari yahawe na Dushimimana Jacquiline bitari bihagije ugereranyije n’indishyi iregera[11].

5. Kumenya niba gutegeka ko itambama rivaho, byarabangamiye urubanza mu minzi kuko rutaracibwa burundu

[59] Ababuranira Gukora Ni Ngombwa Ltd bavuga ko nk’uko Urukiko Rwisumbuye rwa Nyarugenge rwari rwabibonye mu kirego cyihutirwa RC 00439/2020/TGI/NYGE, aho rwasobanuye neza rukemeza ko rudashobora kuvanaho itambama ku mitungo UPI 1/03/02/03/771 na UPI 5/07/09/02/6416 kuko byabangamira urubanza rw’iremezo RCA 00209/2019/TGI/NYGE rutaracibwa burundu, Urukiko Rukuru rutagombaga gufata icyemezo cyo gukuraho itambama kandi icyatumye rijyaho kitararangira.

[60] Uhagarariye Dushimimana Jacqueline avuga ko urega avuga ko Urukiko Rukuru rutagombaga gufata icyemezo cyo gukuraho itambama, ariko ko nta kimenyetso abitangira, ndetse akabishingira kubyo Urukiko Rwisumbuye rwa Nyarugenge rwavuze, nyamara mu Rukiko Rukuru, urega yaragaragarije Urukiko impamvu nshya z’ubwihutirwe n’ibigomba kuramirwa byihutirwa mu gihe urubanza rutaracibwa burundu, ko urubanza mu mizi rutigeze rubangamirwa n’icyemezo cyafashwe.

UKO URUKIKO RUBIBONA

[10] Soma igika cya 12 cy’urubanza rujuririrwa.

[11] Reba ikirego yari yatanze mu Rukiko Rwibanze rwa Kicukiro, gutegeka Dushimimana Jacqueline gusubizaGukora Ni Ngombwa Ltd ibyuma byayo 1700 (1700 *tubes*) bifite agaciro ka 16.910.000Frw.

[61] Ingingo ya 186, igika cya gatatu y'Itegeko Nº 22/2018 ryo kuwa 29/04/2018 ryavuzwe haruguru, iteganya ko umucamanza uburanisha ikirego cyihutirwa afata icyemezo ku byo yaregewe ariko mu buryo butabangamiye urubanza rw'iremezo mu mizi yarwo.

[62] Isesengura ry'icyo gika cy'iyi ngingo, ryumvikanisha ko mu gihe umucamanza afata icyemezo kubyo yaregewe mu kirego cyihutirwa, yirinda kwinjira mu cyaregewe mu mizi y'urubanza, yirinda kugira icyemezo afata ku byaregewe mu mizi y'urubanza bitaraburanwa, ikindi akaba ashobora kutabibona kimwe n'uko umucamanza w'urubanza mu mizi ashobora kuzabibona, bityo bikaba byateza ikibazo cy'uko urukiko rushobora gufata ibyemezo bivuguruzanya cyangwa bihabanye ku kiregerwa kimwe hagati y'ababuranyi bamwe.

[63] Dosiye igaragaza ikirego Gukora Ni Ngombwa Ltd yatanze mu Rukiko rw'Ibanze rwa Kicukiro gihabwa RC 00714/2018/TB/KIC, irusaba gutegeka Dushimimana Jacqueline kuyisubiza ibyuma byayo 1700 (1700 *tubes*) bifite agaciro ka 16.910.000Frw cyangwa agaciro kabyo.

[64] Dosiye nanone igaragaza ko mu rubanza RC 00036/2021/HC/KIG rwaciwe ku wa 24/12/2021 n'Urukiko Rukuru, urwo Rukiko rwemeje ko itambama ku mitungo UPI 1/03/02/03/771 na UPI5/07/09/02/6416 rivanyweho kuko ritubahirije amategeko, ko amafaranga ibihumbi mirongo ine (40,000 Frw) Dushimimana Jacqueline yatanze arega ahwanye n'imirimo yakozwe mu rubanza, rutegeka ko itambama ryakozwe kuri UPI 1/03/02/03/771 na UPI 5/07/09/02/6416 rikurwaho.

[65] Urukiko rurasanga ibyo abahagarariye Gukora Ni Ngombwa bavuga ko gutegeka ko itambama rivaho byabangamiye imicire y'urubanza mu minzi kuko rutaracibwa burundu, nta shingiro ifite, kuko nk'uko byasobanuwe haruguru, ikiburanwa mu rubanza RCAA 00019/2020/HC/KIG Dushimimana Jacqueline yahereye atanga ikirego cyihutirwa mu Rukiko Rukuru, ari ubujurire bushingiye ku kirego Gukora Ni Ngombwa Ltd yatanze mu Rukiko rw'Ibanze rwa Kicukiro arusaba gutegeka Dushimimana Jacqueline gusubiza Gukora Ni Ngombwa Ltd ibyuma byayo 1700 (1700 *tubes*) bifite agaciro ka 16.910.000Frw cyangwa agaciro kabyo, ibyo bikaba bitandukanye cyane n'ikiburanwa mu kirego cyihutirwa muri uru rubanza, gisaba kuvanaho itambama ku mutungo utimukanwa wa Dushimimana Jacqueline na Dr Sinayobye Jean d'Amour ufite UPI 1/03/02/03/771 na UPI 5/07/09/02/6416 bifite *Caviet*.

[66] Urukiko rurasanga icyemezo cyafashwe n'Urukiko Rukuru cyari kubangamira urubanza mu mizi, iyo bigaragara ko n'ibyuma biburanwa byafashweho icyemezo, cyangwa rukagira icyo ruvuga ku gaciro kabyo.

[67] Hashingiwe kuri ibyo bisobanuro, Urukiko rurasanga gutegaka ko itambama ryashyizwe ku mitungo UPI 1/03/02/03/771 na UPI 5/07/09/02/6416 rivanwaho, ntaho bibangamiye imizi y'urubanza RCAA 00019/2020/HC/KIG.

6. Kumenya niba hari indishyi n'amafaranga y'ibyagiye ku rubanza yatangwakuri uru rwego

[68] Abahagarariye Gukora Ni Ngombwa Ltd bavuga ko mu Rukiko Rukuru yasabye ko Dushimimana Jacqueline ategekwa kuyiha indishyi zingana na 3.000.000 Frw kubera gukomeza kuyishora mu manza nta mpamvu, hamwe na 1.500.000 Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza, akaba asaba Urukiko rw'Ubujurire kumutegeka gutanga izo ndishyi, hiyongeyeho 50.000 Frw y'igarama mu bujurire, hamwe na 1.500.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza kuri uru rwego. Yose hamwe akaba angana na 6.550.000 Frw.

[69] Bavuga ko ibyo uburanira Dushimimana Jacqueline asaba nta shingiro bifite, kuko ibyo Gukora Ni Ngombwa Ltd isaba ibifitiye uburenganzira.

[70] Uhagarariye Dushimimana Jacqueline avuga ko indishyi Gukora Ni Ngombwa Ltd yaka nta shingiro zifite, kuko ubundi indishyi zihabwa umuburanyi watsinze urubanza kuko ari ingaruka z'imigendekere y'urubanza, Gukora Ni Ngombwa Ltd ikaba itari kugenerwa indishyi kandi ariyo yatsinzwe, ko ahubwo uru Rukiko rwategeka Gukora Ni Ngombwa Ltd kwishyura Dushimimana Jacqueline 1.000.000 Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza.

UKO URUKIKO RUBIBONA

[71] Urukiko rurasanga mu gihe Urukiko Rukuru, rwari rumaze kwemeza ko Gukora Ni Ngombwa Ltd itsinzwe, ntaho rwari guhera ruyigenera indishyi izo arizo zose. Rurasanga kandi no kuri uru rwego ntacyo Gukora Ni Ngombwa Ltd igomba kugenerwa kuko n'ubundi itsindwa n'urubanza.

[72] Urukiko rurasanga kuba Dushimimana Jacqueline yarashatse Avoka umwunganira muri uru rubanza, kandi bikagaragara ko yamuburaniye, akwiye kugenerwa amafaranga y' igihembo cya Avoka n'ay' ikurikiranarubanza, ariko akayagenerwa mu bushishozi bw'Urukiko kuko ayo yasabye ari menshi kandi nta bimenyetso ayatangira, bityo akaba agomba guhabwa 500.000Frw y'igihembo cya Avoka na 300.000Frw y'ikurikiranarubanza.

III. ICYEMEZO CY'URUKIKO

[73] Rwemeje ko ubujurire bw'ikirego cyihutirwa bwatanzwe na Gukora Ni Ngomba Ltd nta shingiro bufite.

[74] Rwemeje ko nta gihindutse ku cyemezo cyafashwe mu rubanza RC 00036/2021/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 24/12/2021.

[75] Rutegetse Gukora Ni Ngombwa Ltd guha Dushimimana Jacqueline 500.000Frw y'igihembo cya Avoka na 300.000Frw y'ikurikiranarubanza.