GAHIGA v GAHIGA

[Rwanda URUKIKO RW'UBUJURIRE – RCOM 00001/2022/CA (Kaliwabo, P.J., Mukamurenzi na Umugwaneza, J.) 11 Gashyantare 2022]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ikirego kihutirwa – Igihe cyose hari urubanza rw'iremezo rutaraburanishwa, urukiko rwaregewe rushobora kuregerwa mu buryo bwihuse rukaba rwafata icyemezo cy'agateganyo ku rubanza rwaregewe – Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 185.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ikirego kihutirwa – Ibibazo birimo ubwihutire – Nta kintu gifatika gishingirwaho hemezwa ko hari ubwihutire ku bintu runaka ahubwo bigenwa mu bushishozi bw'umucamanza bitewe n'imiterere y'urubanza afite.

Incamake y'ikibazo: Gahiga yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi asaba ko urubanza RCE 240/2016 rwaciriwe mu mahanga rwarangirizwa ku mitungo ya Gahiga Karitesa iri mu Rwanda (*exequatur*), maze Urukiko rurabyemeza, biza no gushimangirwa n'Urukiko rw'Ubujurire.

Gahiga Karitesa amaze gutsindwa mu bujurire nawe yiyambaje inzira z'amategeko zo muri CONGO maze Urukiko rw'Ubujurire rwa Kivu y'Amajyaruguru i Goma ruca urubanza rwemeza ko urubanza RCE 240/2016 ruvanyweho mu ngingo zarwo zose. Ashingiye kuri urwo rubanza, yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi agamije gusaba ko urubanza RCEA 002 rurangirizwa mu Rwanda (*exequatur*), urwo Rukiko ruca urubanza rwemeza ko rutujuje ibisabwa biteganywa n'amategeko ngo hemezwe ko rurangirizwa mu Rwanda.

Gahiga Karitesa yajuririye mu Rukiko rw'Ubujurire na none yisunze icyo kirego remezo, atanga ikirego cyihutirwa asaba guhagarika irangizwa ry'urubanza rwahawe "*exequatu*r" mu Rukiko Rukuru rw'ubucuruzi bigashimangirwa mu bujurire n'Urukiko rw'Ubujurire. Mu kwiregura kwe, Gahiga avuga ko nta bwihutirwe bwatuma irangizwa ry'urubanza rihagarara ko kandi irangizwa ry'urubanza rikorerwa ku mutungo utimukanwa ntacyo ryangiriza Gahiga Karitesa kuko igihe cyose yaramuka atsinze yasubizwa uyu mutungo.

Ku kibazo cyo kumenya niba irangiza ry'urubanza RCE 240/2016 rwahawe "*exequatur*" ryahagarikwa by'agateganyo, Gahiga Karitesa asobanura ko ryahagarikwa kuko hari imitungo ye yamaze kugurishwa mu rwego rwo gushyira mu bikorwa ibyategetswe muri urwo rubanza kandi nyamara rwaravanyweho mu ngingo zarwo zose, ko kandi urubanza RCEA 002 rwaruvanyeho ari rwo rusabirwa "*exequatu*r"muri uru Rukiko, akaba asaba ko imitungo ye isigaye yaba irekeyaho kugurishwa mu cyamunara.

Mu kwireugura kwe, Gahiga avuga ko ikirego cyihutirwa cyatanzwe n'uwo waburana kidakwiye guhabwa ishingiro kuko kigamije gushaka umwanya wo kurigisa umutungo usigaye mu rwego rwo kugirango azabure umutungo wo kurangirizaho urubanza yatsinze, cyane ko byagaragaye ko hari imwe mu mitungo ye yamaze kwivanaho. Akomeza avuga ko irangiza ry'urubanza ntacyo ryangiririza Urega kubera ko rikorwa ku mutungo utimukanwa ushobora kumugarukira igihe cyose azaba atsinze urubanza.

Incamake y'icyemezo: 1. Igihe cyose hari urubanza rw'iremezo rutaraburanishwa, urukiko rwaregewe rushobora kuregerwa mu buryo bwihuse rukaba rwafata icyemezo cy'agateganyo ku rubanza rwaregewe.

2. Nta kintu gifatika gishingirwaho hemezwa ko hari ubwihutire ku bintu runaka ahubwo bigenwa mu bushishozi bw'umucamanza bitewe n'imiterere y'urubanza afite.

Amategeko yashingiweho:
Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 44.
Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 185

Nta manza zifashishijwe.

Inyandiko z'abahanga zifashishijwe:
Serge Guinchard et alii, Procédure civile, 4 ème Edition, Dalloz, 2015, P. 160.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Gahiga Ange yatanze ikirego mu Rukiko rw'Ubucuruzi i Goma arega Gahiga Karitesa Ngezi Marie Thérèse na Sosiyete Holiday Congo SARL, maze mu rubanza RCE 240/2016 Urukiko rwemeza ko Karitesa Ngezi Gahiga Marie Thérèse afatanya na Sosiyete Holiday Congo SARL kwishyura Gahiga Ange mu mafaranga y'amanyekongo 1.000.000$ US y'indishyi[1].

[2] Gahiga Ange yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi mu Rwanda asaba ko urubanza RCE 240/2016 rwarangirizwa ku mitungo ya Gahiga Karitesa Ngezi Marie Thérèse iri mu Rwanda (*exequatur*), maze mu rubanza RCOM 00031/2019/HCC Urukiko rwemeza ko urubanza RCE 240/2016 rurangirizwa mu Rwanda, binashimangirwa n'Urukiko rw'Ubujurire mu rubanza RCOMA 00001/2020/CA.

[3] Gahiga Karitesa Ngezi Marie Thérèse amaze gutsindwa mu bujurire nawe yiyambaje inzira z'amategeko zo muri Congo maze ku wa 01/03/2021 Urukiko rw'Ubujurire rwa Kivu y'Amajyaruguru i Goma (*Cour d'Appel du Nord-Kivu/Goma*) ruca urubanza RCEA 002, rwemeza ko urwo rubanza ruvanyweho mu ngingo zarwo zose.

[4] Ashingiye kuri urwo rubanza, Gahiga Karitesa Ngezi Marie Thérèse yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi agamije gusaba ko urubanza RCEA 002 rurangirizwa mu Rwanda (*exequatur*), maze ku wa 18/11/2021 Urukiko ruca urubanza RCOM 00023/2021/HCC, rwemeza ko urubanza RCEA 002 rutujuje ibisabwa biteganywa n'amategeko ngo hemezwe ko rurangirizwa mu Rwanda.

[1] *Dans le procès RCE 240/2016, le tribunal de commerce de Goma a condamné solidairement Gahiga Karitesa Ngezi Marie Thérèse et la Société Holiday Congo sarl au paiement de l'équivalent en francs congolais la somme de un million de $ US (1.000.000 $ US) au titre des dommages et intérêt en guise de réparation de préjudice*.

[5] Gahiga Karitesa Ngezi Marie Thérèse ntiyishimiye imikirize y'urubanza maze ajuririra mu Rukiko rw'Ubujurire, ubujurire buhabwa RCOMA 00011/2021/CA. Yisunze ikirego remezo afite muri uru Rukiko, Gahiga Karitesa Ngezi Marie Thérèse yatanze ikirego cyihutirwa asaba guhagarika irangizwa ry'urubanza RCE 240/2016 rwahawe "*exequatur*" mu rubanza RCOM 00031/2019/HCC bigashimangirwa mu bujurire n'urubanza RCOMA 00001/2020/CA.

[6] Gahiga Ange avuga ko nta bwihutirwe bwatuma irangizwa ry'urubanza rihagarara ko kandi irangizwa ry'urubanza rikorerwa ku mutungo utimukanwa ntacyo ryangiriza Gahiga Karitesa Ngezi Marie Thérèse kuko igihe cyose yaramuka atsinze yasubizwa uyu mutungo.

[7] Iburanisha ry'urubanza mu ruhame ryabaye ku wa 07/02/2022, ababuranyi bose bitabye, Gahiga Karitesa Ngezi Marie Thérèse ahagarariwe na Me Murekatete Henriette naho Gahiga Ange ahagarariwe na Me Kiroha Olivier, muri iryo buranisha hasuzumwa ikibazo cyo kumenya niba hari impamvu yihutirwa yatuma Urukiko rutegeka ko irangiza ry'urubanza RCE 240/2016 ryaba rihagaze.

II. KIBAZO KIGIZE URU RUBANZA N'ISESENGURWA RYACYO

1. Kumenya niba irangiza ry'urubanza RCE 240/2016 rwahawe "*exequatur*" mu rubanza RCOMA 00001/2020/CA ryahagarikwa by'agateganyo

[8] Mu mwanzuro we, Gahiga Karitesa Ngezi Marie Thérèse avuga ko asaba Urukiko rw'Ubujurire guhagarika irangizwa ry'urubanza RCE 240/2016 kuko rwavanyweho n'urubanza RCEA 002. Akomeza asobanura ko hari imitungo ye yamaze kugurishwa mu rwego rwo gushyira mu bikorwa ibyategetswe muri urwo rubanza kandi nyamara rwaravanyweho mu ngingo zarwo zose, ko kandi urubanza RCEA 002 rwaruvanyeho ari rwo rusabirwa "*exequatur*"muri uru Rukiko, akaba asaba ko imitungo ye isigaye (UPI:1/02/13/02/246 na UPI 1/02/13/02/630) yaba irekeyaho kugurishwa mu cyamunara cyane ko ariyo abanamo n'umukecuru (mama we umubyara), kandi ko mu gihe irangizwa ry'urubanza RCE 240/2016 ryaba ridahagaritswe imitungo ye yashirira mu kwishyura amafaranga asaga Miliyali imwe yategetswe mu rubanza RCE 240/2016 rwavanyweho mu ngingo zarwo zose.

[9] Me Murekatete Henriette umuhagarariye avuga ko iki kirego cyihutirwa cyatanzwe hashingiwe ku biteganywa n'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[2], ko mu gihe bategereje ko urubanza RCOMA 00011/2021/CA rucibwa burundu basanze hari ubwihutire bwo guhagarika ishyirwa mu bikorwa ry'ibyemejwe mu rubanza RCE 240/2016 kuko Umuhesha w'Inkiko yamaze gufatira umutungo wa Gahiga Karitesa Ngezi Marie Thérèse harimo n'uwo atuyemo n'umuryango we, kandi iyo umutungo wafatiriwe haba hakurikiyeho kuwugurisha mu cyamunara, bikaba bishobora kumugiraho ingaruka zikomeye.

[2] 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.

[10] Akomeza avuga ko urubanza RCE 240/2016 rwatangiye kurangizwa, hakaba hari imwe mu mitungo yamaze kugurishwa mu cyamunara ku gaciro gatoya cyane ndetse n'abaguze mu cyamunara bakaba barahise bagurisha abandi bantu, bityo bakaba basaba ko irangiza ry'urubanza RCE 240/2016 ryaba rihagaze kugira ngo imitungo isigaye nayo idakomeza kugurishwa mu cyamunara ku gaciro gato cyane, hanirindwe ko umutungo ukomeza guhererekanywa (*mutation*) hagati y'abantu benshi, cyane ko n'urubanza bishingiyeho rwamaze kuvanwaho mu bujurire, hakaba hategerejwe ko urubanza RCEA 002 rwaruvanyeho ruhabwa "*exequatur*".

[11] Akomeza asobanura kandi ko mu gihe Gahiga Ange yaramuka atsinze urubanza, nta kibazo yagira cyo kubona ubwishyu kuko Umuhesha w'Inkiko yamaze gutambamira imutungo ya Gahiga Karitesa Ngezi Marie Thérèse bityo ikaba idashobora gukorerwaho ihererekanya ku bandi bantu; asoza asaba ko mu rwego rwo kwirinda izindi manza no mu nyungu z'ubutabera Urukiko rwategeka ihagarikwa ry'irangiza ry'urubanza RCE 240/2016.

[12] Me Kiroha Olivier uhagarariye Gahiga Ange yiregura avuga ko ikirego cyihutirwa cyatanzwe na Gahiga Karitesa Ngezi Marie Thérèse kidakwiye guhabwa ishingiro kuko mu ngingo ya 185 y'Itegeko N°22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru abarega bashingiyeho batanga ikirego, Umushingamategeko yateganyijemo ko hagomba kuba hari ikihutirwa cyo kuramira (*condition d'urgence*), mu gusobanura ishingiro ry'ikirego abarega bakaba bagaragaza gusa ko hari ikirego cy'iremezo ariko bakaba batagaragaza ikintu kihutirwa gituma batanga ikirego.

[13] Akomeza asobanura ko ikirego cya Gahiga Karitesa Ngezi Marie Thérèse kigamije gushaka umwanya wo kurigisa umutungo usigaye mu rwego rwo kugirango Gahiga Ange azabure umutungo wo kurangirizaho urubanza yatsinze, cyane ko byagaragaye ko hari imwe mu mitungo ye yamaze kwivanaho akayandika kuri SERENA PROPERTIES Ltd afitemo imigabane. Yasobanuye ko irangiza ry'urubanza ntacyo ryangiririza urega kubera ko rikorwa ku mutungo utimukanwa ushobora kumugarukira igihe cyose azaba atsinze urubanza.

UKO URUKIKO RUBIBONA

[14] Ingingo ya 185, igika cya mbere, 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. Akaba ari muri ubwo buryo ikirego cya Gahiga Karitesa Ngezi Marie Thérèse asaba ihagarika ry'irangiza ry'urubanza RCE 240/216 cyatanzwemo nk'uko yabisobanuriye Urukiko.

[15] Iyi ngingo yumvikanisha neza ko igihe cyose hari urubanza rw'iremezo rutaraburanishwa, Urukiko rwaregewe rushobora kuregerwa mu buryo bwihuse rukaba rwafata icyemezo cy'agateganyo ku rubanza rwaregewe. Muri uru rubanza ikiburanwa ni gusaba "*exequatu*r" y'urubanza RCEA 002 rwavanyeho urubanza RCE 240/2016 mu bujurire, akaba arirwo Gahiga Karitesa Ngezi Marie Thérèse yisunze asaba ko irangizwa ry'urubanza RCOMA 00001/2020/CA rwemeje ko urubanza RCE 240/2016 rurangirizwa mu Rwanda ryahagarara kugeza igihe urubanza rw'iremezo asabamo "*exequatur*" ruciriwe burundu.

[16] Ku birebana n'ibibazo birimo ubwihutire, Umushingamategeko w'u Rwanda ntabwo yabirondoye ahubwo yabihariye umucamanza ngo abifateho icyemezo nyuma yo kumva imiburanire y'impande zombi zifitanye impaka. Abahanga mu mategeko nabo bavuga ko nta kintu gifatika gishingirwaho hemezwa ko hari ubwihutire ku bintu runaka, ko ahubwo bigenwa mu bushishozi bw'umucamanza bitewe n'imiterere y'urubanza afite[3].

[17] Dosiye y'urubanza igaragaza ko urubanza RCE 240/2016 rwahawe "*exequatur*" mu rubanza RCOM 00031/2019/HCC ndetse binashimangirwa mu bujurire mu rubanza RCOMA 00001/2020/CA rurimo kurangizwa nk'uko ababuranyi babivuga; ikindi kandi banahuriza ku kuba uru rubanza rwarasubirishijwemo na Gahiga Karitesa Ngezi Marie Thérèse mu Rukiko rw'ubujurire rwo muri Kivu y'Amajyaruguru maze mu rubanza RCEA 002 rwaciwe n'urwo Rukiko kuwa 01/03/2021 rukavanwaho. Uru rubanza akaba arirwo rurimo gusabirwa "*exequatur*" mu rubanza RCOMA 00011/2021/CA.

[18] Mu miburanire, bigaragara ko impande zombi zumvikana ko urubanza RCE 240/2016 rurimo kurangizwa rwavanyweho n'urubanza RCEA 002, ahubwo zikaba zitumvikana ku kirego RCE 006/opp[4] cyo gusubirishamo urubanza RCEA 002; Me Kiroha Olivier uburanira Gahiga Ange akavuga ko urubanza RCE 240/2016 rugifite agaciro kuko urubanza RCEA 002 rwaruvanyeho rutaraba itegeko (kuko rwasubirishijwemo mu rubanza RCE 006/opp) ukurikije uko amategeko yo muri Congo abiteganya, naho Me Murekatete Henriette uburanira Gahiga Karitesa Ngezi Marie Thérèse akavuga ko gusubirishamo urubanza RCEA 002 byakozwe mu buryo bw'uburiganya nkuko byemejwe mu ibaruwa yanditswe na Perezida w'Urukiko rw'Ubujurire rwa Kivu y'Amajyaruguru muri Congo.

[19] Urukiko rurasanga ababuranyi bombi bemeranywa ko urubanza RCE 240/2016 rwaciwe n'Urukiko rw'ubucuruzi rwa Goma muri Repubulika iharanira Demokarasi ya Congo rurimo kurangizwa, rwajuririwe runavanwaho mu bujurire n'urubanza RCEA 002 rwaciwe n'Urukiko rw'ubujurire rwa Kivu y'amajyaruguru (Cour d'Appel du Nord Kivu) kuwa 01/03/2021, ndetse Gahiga Ange akaba avuga ko yamaze no kurusubirishamo (*opposition*) muri urwo Rukiko ategereje ko ruburanishwa; ibi bikaba bisobanuye ko mu gihe urubanza RCE 240/2016 rwajuririrwaga mu Rukiko rw'Ubujurire rwa Kivu y'Amajyaruguru i Goma irangizwa ryarwo ryakabaye ryarahagaze.

[20] Bityo kuba urubanza RCE 240/2016 rwarakomeje kurangizwa hagendewe ku kuba inkiko zaremeje ko rurangirizwa mu Rwanda ariko nyuma bikaza kugaragara ko uru rubanza rukiburanishwa mu nkiko za Repubulika Iharanira Demokarasi ya Congo, iryo rangizarubanza rigomba guhagarara kuko riri gukorerwa ku rubanza rutaraba itegeko ku buryo bunyuranye n'agace ka 2 k'ingingo ya 44 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko ivuga ko, urubanza rusabirwa "*exequatur*" rugomba kuba rwaraciwe burundu hakurikijwe amategeko y'igihugu rwaciriwemo.

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[3] Serge Guinchard et alii, Procédure civile, 4 ème Edition, Dalloz, 2015, P. 160 "*L'urgence est une notion floue qui ne répond pas à des critères précis. Elle s'apprécie in concreto et suppose une évaluation des intérêts en présence. C'est une notion de fait dont l'appréciation relève du pouvoir souverain des juges de fond, ou plutôt en l'espèce des juges du provisoire*".

[4] Iki kirego cyoherejwe muri Cour de Cassation kuri nonero RR.2492 bisabwe na Gahiga Ange mu buryo bwa *suspicion légitime,* ikirego kikaba kizaburanishwa ku itariki ya 01/04/2022.

[21] Hashingiwe ku mategeko n'ibisobanuro byatanzwe haruguru, Urukiko rurasanga irangizwa ry'urubanza RCE 240/2016 rwemejwe kurangirizwa mu Rwanda (*exequatur*) n'urubanza RCOMA 00001/2020/CA rwaciwe n'Urukiko rw'ubujurire kuwa 25/09/2020 rwemeza ko urubanza RCOM 00031/2019/HCC rwari rwaciwe n'Urukiko Rukuru rw'Ubucuruzi rudahindutse rigomba guhagarara.

I. ICYEMEZO CY'URUKIKO

[22] Rwemeje ko ikirego cya Karitesa Ngezi Gahiga Marie Therese gisaba guhagarika irangizwa ry'urubanza RCE 240/2016 rwahawe "*exequatur*" mu rubanza RCOMA 00001/2020/CA gifite ishingiro.

[23] Rutegetse ko irangizwa ry'urubanza RCE 240/2016 rwahawe "*exequatur*" mu rubanza RCOMA 00001/2020/CA rihagaritswe by'agateganyo.

[24] Rutegetse ko ingwate y'amagarama y'uru rubanza yatanzwe iheze mu Isanduku ya Leta.