BETA LIFE v. ECOLE FRANCAISE ANTOINE SAINT-EXUPERY

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00061/2019/CA (Kanyange, P.J.) 12 Kamena 2020]

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Ikirego gishya mu bujurire – Gusuma icyo umuburanyi yaregeye n'icyo yasabye – Ikirego nticyakwitwa gishya iyo icyo kigamije ari nacyo ikirego cyatanzwe ku rwego rwa mbere cyari kigamije – Ntibyakwitwa kandi ko ikigamijwe mu rubanza ari kimwe, iyo uwagitanze ashaka kubona ibitandukanye n'ibyo yifuzaga ku rwego rwa mbere ahubwo kumenya ko ikirego ari gishya bireberwa mu cyo kigamije.

Incamake y'ikibazo: BETA LIFE (BETA) yareze Ecole Française Antoine Saint-Exupéry (Ecole Francaise) mu Rukiko rw'Ubucuruzi rwa Nyarugenge isaba kwishyurwa 90.000.000 Frw y'igihombo yayiteje, kuko yasheshe amasezerano bari bafitanye nta mpamvu ishingiyeho ahubwo itubahirije ingingo ya 7 yayo, ayo masezerano akaba yari ayo gutekera abanyeshuri b'iryo shuri, kubagemurira no kubagaburira.

Ecole Française yaburanye ivuga ko yasheshe ayo masezerano ishingiye ku ngingo ya 7 yayo, kuko impande zayakoranye zumvikanye ko ashobora guseswa ku bushake igihe icyo aricyo cyose, kandi ibaruwa yo kuyasesa ikaba yarasobanuye ko yasheshwe hashingiwe kuri iyo ngingo.

Urukiko rw'ubucuruzi rwemeje ko ikirego cya Beta nta shingiro gifite ko amasezerano yagiranye na Ecole Francaise yasheshwe mu buryo bukurikije amategeko.

BETA yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rw'Ubucuruzi rwa Nyarungenge rwirengagije ko mu ngingo ya 7 y'amasezerano impande zombi zagiranye harimo ''*clause léonine*'' itera ubusumbane hagati y'abayagiranye, ko muri icyo gihe Urukiko ruba rugomba kuyitesha agaciro.

Ecole Française yireguye ivuga ko impamvu y'ubujurire ya BETA itajyanye n'ibyasuzumwe ku rwego rwa mbere, kuko kuri urwo rwego yaburanye ivuga ko nta mpamvu yo gusesa amasezerano yatanzwe, ko ahubwo yasheshwe mu buriganya.

Urukiko Rukuru rw'Ubucuruzi rwemeje ikirego BETA yatanze mu bujurire ari gishya ntirwacyacyira kuko kitari gishingiye ku miterere y'amasezerano, mu gihe mu bujurire igaragaza ikibazo cy'amasezerano ubwayo, imiterere yayo n'ibiyakubiyemo ivuga ko bitemewe, kandi ibyo bitarigeze biburanwaho ku rwego rwa mbere.

BETA yongeye ijuririra mu Rukiko rw'Ubujurire ivuga ko kuba mu Rukiko Rukuru rw'Ubucuruzi yarasabye ko hasuzumwa niba ingingo ya 7 y'amasezerano itera ubusumbane hagati y'impande zayagiranye, atari ikirego gishya mu bujurire, kuko iyo ngingo iri mu masezerano baburanishije ku rwego rwa mbere.

Ecole Française Antoine Saint-Exupéry ivuga ko ikibazo cya ''clause léonine'' ari gishya nk'uko Urukiko Rukuru rw'Ubucuruzi rwabisobanuye, kuko kitigeze kiburanwaho ku rwego rwa mbere.

Incamake y'icyemezo: Kuba ikirego cya BETA LIFE cyari kigamije ku rwego rwa mbere, ari indishyi kubera ko uwo bagiranye amasezerano yayasheshe nta mpamvu atanze, bivuze ko atari

cyo ikirego yatanze mu bujurire cyari kigamije. Bityo, iyo bigaragaye ko mu masezerano harimo ingingo itera ubusumbane hagati y’abayagiranye (*clause léonine*), ayo masezerano ateshwa agaciro, bitandukanye no gusaba guhabwa indishyi kubera iseswa ry’amasezerano nta mpamvu.

Ubujurire nta shingiro bufite.
Urubanza rwaciwe n’Urukiko Rukuru rw’Ubucuruzi ntiruhindutse.
Amagarama agumye mu isanduku ya Leta.

Amategeko yashingiweho:

Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi.

Ibitekerezo by’abahanga byifashishijwe:

Serge Guinchard, Droit et pratique de la procédure civile, Dalloz, 2006/2007, p.1109.

Urubanza

I. IMITERERE Y’URUBANZA

[1] BETA LIFE yareze Ecole Française Antoine Saint-Exupéry mu Rukiko rw’Ubucuruzi rwa Nyarugenge isaba kwishyurwa 90.000.000 Frw y’igihombo yayiteje, kuko yasheshe amasezerano bari bafitanye nta mpamvu ishingiyeho ahubwo itubahirije ingingo ya 7 yayo, ayo masezerano akaba yari ayo gutekera abanyeshuri b’iryo shuri, kubagemurira no kubagaburira.

[2] Ecole Française Antoine Saint-Exupéry yaburanye ivuga ko yasheshe ayo masezerano ishingiye ku ngingo ya 7 yayo, kuko impande zayakoranye zumvikanye ko ashobora guseswa ku bushake igihe icyo aricyo cyose, kandi ibaruwa yo kuyasesa ikaba yarasobanuye ko yasheshwe hashingiwe kuri iyo ngingo.

[3] Mu rubanza no RCOM A0191/2017/TC/NYGE rwaciwe ku wa 04/05/2018, Urukiko rw’Ubucuruzi rwa Nyarugenge rwemeje ko ikirego cya BETA LIFE nta shingiro gifite, ko amasezerano yo ku wa 03/01/2017, BETA LIFE yagiranye na Ecole Française Antoine Saint-Exupéry yasheshwe mu buryo bukurikije amategeko, ikaba nta ndishyi ikwiye guha BETA LIFE. Rwategetse BETA LIFE guha Ecole Française Antoine Saint- Exupéry 100.000 Frw y’ikurikiranarubanza na 500.000 Frw y’igihembo cya Avoka.

[4] BETALIFEyajuririye Urukiko Rukuru rw’Ubucuruzi ivuga ko Urukiko rw’Ubucuruzi rwa Nyarungenge rwirengagije ko mu ngingo ya 7 y’amasezerano impande zombi zagiranye harimo ‘’*clause léonine*’’ itera ubusumbane hagati y’abayagiranye, ko muri icyo gihe Urukiko ruba rugomba kuyitesha agaciro, ko kandi icyo atari ikibazo gishya mu bujurire kuko iyo ngingo yasuzumwe ku rwego rwa mbere ariko Urukiko ntirwabona ko harimo ubwo busumbane.

[5] Ecole Française Antoine Saint-Exupéry yireguye ivuga ko impamvu y’ubujurire ya BETA LIFE itajyanye n’ibyasuzumwe ku rwego rwa mbere, kuko kuri urwo rwego yaburanye ivuga ko nta mpamvu yo gusesa amasezerano yatanzwe, ko ahubwo yasheshwe mu buriganya.

[6] Mu rubanza no RCOMA 00410/2018/CHC/HCC rwaciwe ku wa 11/12/2018, Urukiko rwasanze ikibazo BETA LIFE yasabye ko gisuzumwa n'Urukiko rw'Ubucuruzi rwa Nyarugenge, ari ikijyanye n'ishyirwa mu bikorwa ry'amasezerano, cyane cyane mu buryo yasheshwe, ko ingingo ya 7 yayo itubahirijwe kuko hatatanzwe impamvu y'iseswa ry'amasezerano, ko rero ikibazo cya BETA LIFE kitari gishingiye ku miterere y'amasezerano, mu gihe mu bujurire igaragaza ikibazo cy'amasezerano ubwayo, imiterere yayo n'ibiyakubiyemo ivuga ko bitemewe, kandi ibyo bitarigeze biburanwaho ku rwego rwa mbere, n'Urukiko rukaba ntaho rwari guhera rubisuzuma kuko rutari rwabiregewe nk'uko biteganywa n'ingingo 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. Rwasanze rero ikirego BETA LIFE yatanze mu bujurire ari gishya, kikaba kitakwakirwa ngo gisuzumwe hashingiwe ku ngingo ya 157, ikika cya mbere, y'Itegeko rimaze kuvugwa.

[7] Mukwanzura,UrukikoRukururw'UbucuruzirwemejekoubujurirebwaBETALIFEnta shingiro bufite, ko ikirego yatanze mu bujurire ari gishya, kikaba kitahasuzumirwa bwa mbere, ruyitegeka kwishyura Ecole Française Antoine Saint-Exupéry 500.000 Frw y'igihembo cya Avoka yiyongera kuyo yahawe ku rwego rwa mbere.

[8] BETALIFEyajuririyeurworubanzamuRukikorw'Ubujurire,ivugakokubamuRukiko Rukuru rw'Ubucuruzi yarasabye ko hasuzumwa niba ingingo ya 7 y'amasezerano itera ubusumbane hagati y'impande zayagiranye, atari ikirego gishya mu bujurire, kuko iyo ngingo iri mu masezerano baburanishije ku rwego rwa mbere.

[9] Ecole Française Antoine Saint-Exupéry ivuga ko ikibazo cya ''clause léonine'' ari gishya nk'uko Urukiko Rukuru rw'Ubucuruzi rwabisobanuye, kuko kitigeze kiburanwaho ku rwego rwa mbere. Yasabye Urukiko ko yagenerwa amafaranga y'igihembo cya Avoka.

[10] Urubanza rwaburanishijwe mu ruhame ku wa 20/05/2020, BETA LIFE iburanirwa na Me ZITONI Pierre Claver, Ecole Française Antoine Saint-Exupéry iburanirwa na Me Ruton NDASHEJA Sonia hamwe na Me NDAHIMANA Jean Bosco.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba ikirego BETA LIFE yatanze mu bujurire ari gishya

[11] Uburanira BETA LIFE avuga ko ibyo Urukiko Rukuru rw'Ubucuruzi rwemeje ko yatanze ikirego gishya mu bujurire atari byo, kuko ingingo bise ''clause léonine'' isanzwe mu masezerano kandi yaburanyweho ku rwego rwa mbere, ko kuba BETA LIFE yarajuriye igaragaza ko iyo ngingo itera ubusumbane hagati y'impande zagiranye amasezerano, atari byo byakwitwa ko ari ikirego gishya kuko yaburanyweho mu Rukiko rw'Ubucuruzi rwa Nyarugenge, aho BETA LIFE yagaragaje ko amasezerano yasheshwe nta mpamvu.

[12] 12.Asobanura ko kuba urubanza rushingiye ku masezerano, ingingo ya 7 yayo ikaba yaravuzwe mu rwego rwo kwiregura, bivuze ko yaburanyweho. Akomeza asobanura ko iyo Urukiko rusanga koko mu masezerano harimo ''clause léonine'', rwari kuyasesa rukanaca indishyi uwangirije undi, ko kandi impamvu BETA LIFE itasabye gutesha agaciro amasezerano

(résolution) ari uko bitashoboka ko ibintu bisubira uko byari mbere, ahubwo hagomba gutangwa indishyi.

[13] 13.Ababuranira Ecole Française Antoine Saint-Exupéry bavuga ko impamvu y'ubujurire ya BETA LIFE nta shingiro ifite, kuko ikibazo cya ''clause léonine'' kitigeze kiburanwaho mu Rukiko rw'Ubucuruzi rwa Nyarugenge, haba mu myiregurire yayo cyangwa mu nyandikomvugo y'iburanisha.

[14] 14.Basobanura ko hanarebwe ibyari kuva mu rubanza, ku rwego rwa mbere BETA LIFE iyo itsinda yari guhabwa indishyi zishingiye ku iseswa ry'amasezerano nta mpamvu, naho mu bujurire harebwe ikibazo yasabye ko gisuzumwa, ingaruka yari kuba iyo gutesha agaciro amasezerano, ko rero hatari gutangwa indishyi, bivuze ko ari imanza ebyiri zitandukanye kuko zifite ibyo zigamije bitandukanye, bakaba basanga rero ibyo Urukiko Rukuru rw'Ubucuruzi rwakoze bihuye n'ibiteganywa n'ingingo ya 154 y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

UKO URUKIKO RUBIBONA

[15] Ingingo ya 6, igika cya mbere, 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 ''Ikiburanwa kigenwa n'ibisabwa na buri muburanyi. Ibisabwa bigaragarira mu myanzuro iregera urukiko n'imyanzuro yo kwiregura, bigashimangirwa burundu mu nama ntegurarubanza ku manza iteganyijwemo''. Mu gika cya gatatu, iyo ngingo iteganya ko ''Ikiburanwa ntigishobora guhindurwa mu rukiko rwajuririwe. Icyakora, ikiburanwa gishobora guhindurwa n'ibirego by'imigereka iyo bifitanye isano ihamye n'ibyo ababuranyi basaba''.

[16] Ingingo ya 154, igika cya mbere, y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, iteganya ko ''Mu rwego rw'ubujurire ntihashobora gutangirwa ikirego gishya keretse kuregera guhwanya imyenda, cyangwa gutanga ikirego cyo kwiregura ku kirego cy'ibanze cyatanzwe mu rukiko rw'ubujurire''.

[17] Nkuko byibukijwe mu miterere y'urubanza, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ikirego BETA LIFE yatanze mu bujurire ari gishya, kikaba kitahasuzumirwa bwa mbere ku mpamvu rwasobanuye.

[18] Kugira ngo hamenyekane ko ikirego ari gishya, hagomba kurebwa icyo umuburanyi yaregeye n'icyo yari agamije atanga ikirego. Abahanga mu mategeko basobanura ko ikirego kitakwitwa gishya iyo icyo kigamije ari nacyo ikirego cyatanzwe ku rwego rwa mbere cyari kigamije, n'ubwo bwose ishingiro mu rwego rw'amategeko ryaba atari rimwe[1]. Basobanura ko bitakwitwa ko ikigamijwe mu rubanza ari kimwe, iyo uwagitanze ashaka kubona ibitandukanye n'ibyo yifuzaga ku rwego rwa mbere; ko kumenya ko ikirego ari gishya bireberwa mu cyo kigamije. Mu ngero batanga zitandukanye z'ibirego bishya, hari ugusaba gutesha agaciro

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[1] *Une prétention n'est pas nouvelle, si elle tend aux mêmes fins que celle soumise au premier juge, Serge Guinchard, Droit et pratique de la procédure civile, Dalloz, 2006/2007, p.1109*

amasezerano bigafatwa ko atigeze abaho, n'ikirego cy'uburyozwe gituma ayo masezerano agumaho[2].

[19] Ku birebana n'uru rubanza, bigaragara ko mu myanzuro ya BETA LIFE mu Rukiko rw'Ubucuruzi rwa Nyarugenge nk'uko igaragazwa n'ibibazo yasabye ko urwo Rukiko rusuzuma, icyo yari igamije zari indishyi zishingiye ku mpamvu y'uko Ecole Française Antoine Saint-Exupéry yasheshe amasezerano nta mpamvu, ku bw'urugomo, bikayiteza igihombo kuko hari ibikoresho yari yaraguze kubera isoko yatsindiye ikaba yari yiteze no kubona inyungu. Icyo kibazo ni nako cyasuzumwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge, kuko rwasuzumye niba amasezerano yarasheshwe mu buriganya, no kumenya niba BETA LIFE yahabwa indishyi.

[20] BETA LIFE yajuriye mu Rukiko Rukuru rw'Ubucuruzi, ivuga ko Urukiko rw'Ubucuruzi rutabonye ko ingingo ya 7 y'amasezerano ari ''clause léonine'', itera ubusumbane hagati y'abayagiranye, ko kandi iyo bigenze bityo Urukiko ruba rugomba gutesha agaciro iyo ngingo.

[21] Hashingiwe ku bimaze kuvugwa, Urukiko rurasanga icyo ikirego cya BETA LIFE cyari kigamije ku rwego rwa mbere, ari indishyi kubera ko uwo bagiranye amasezerano yayasheshe nta mpamvu atanze, bivuze ko atari cyo ikirego yatanze mu bujurire cyari kigamije, kuko nk'uko nayo ubwayo yabivuze mu mwanzuro yatanze mu Rukiko Rukuru rw'Ubucuruzi no mu miburanire yayo, iyo bigaragaye ko mu masezerano harimo ingingo itera ubusumbane hagati y'abayagiranye (clause léonine), ayo masezerano ateshwa agaciro, bitandukanye no gusaba guhabwa indishyi kubera iseswa ry'amasezerano nta mpamvu.

[22] Ku bivugwa n'uburanira BETA LIFE ko ingingo ya 7 yaburanyweho mu Rukiko rw'Ubucuruzi rwa Nyarugenge, Urukiko rurasanga koko yaraburanyweho ariko BETA LIFE ikaba yarayiburanishaga igamije kugaragaza ko itubahirijwe kuko hatasobanuwe impamvu amasezerano yasheshwe, mu gihe Ecole Française Antoine Saint-Exupéry yavugaga ko yasheshe amasezerano ishingiye kuri iyo ngingo, bivuze rero ko itaburanishijwe mu rwego rwo kugaragaza ko itera ubusumbane (clause léonine).

[23] Urukiko rurasanga rero, hashingiwe ku biteganywa n'ingingo ya 6 n'iya 154 z'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, no ku bisobanuro bitangwa n'abahanga mu mategeko byasobanuwe haruguru, ikirego BETA LIFE yatanze mu bujurire ari gishya, bityo hakaba nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze mu kwemeza ko kitagomba kwakirwa ngo gisuzumwe.

2. Kumenya niba Ecole Française Antoine Saint-Exupéry yagenerwa amafaranga isaba

[24] Ababuranira Ecole Française Antoine Saint-Exupéry basaba ko yagenerwa 1.000.000 Frw y'igihembo cya Avoka kuri uru rwego, naho uburanira BETA LIFE akavuga ko usibye kuba nta kimenyetso yatangiwe, hari no gukabya ku ngano y'amafaranga asabwa harebwe ko urubanza rwaburanishijwe inshuro imwe, ko asanga hatatangwa arenze 100.000 Frw.

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[2] *C'est par la notion d'objet de la prétention, que la nouveauté de celle-ci est reconnue. Est nouvelle la demande en nullité ou en résolution qui a pour effet de mettre à néant le contrat, et l'action en responsabilité qui le laisse subsister P.1110*

UKO URUKIKO RUBIBONA

[25] Ingingo ya 111 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 ''Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza''.

[26] Urukiko rurasanga, kuba byagaragajwe haruguru ko ubujurire bwa BETA LIFE budafite ishingiro, igomba kwishyura Ecole Française Antoine Saint-Exupéry amafaranga y'igihembo cya Avoka wayiburaniye, ariko ikaba itagenerwa ingano y'ayo isaba kuko ari menshi harebwe ibyakozwe ku rubanza, n'ayo uburanira BETA LIFE avuga ko ariyo akwiye akaba akabije kuba macye, ahubwo ikaba igenewe 500.000 Frw yiyongera kuyo yagenewe mu manza za mbere.

III. ICYEMEZO CY'URUKIKO

[27] Rwemeje ko ubujurire bwa BETA LIFE nta shingiro bufite;

[28] Rwemeje ko urubanza no RCOMA 00410/2018/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 11/12/2018 rudahindutse;

[29] Rutegetse BETA LIFE guha Ecole Française Antoine Saint-Exupéry 500.000 Frw y'igihembo cya Avoka kuri uru rwego;

[30] Rutegetse ko amafaranga y'ingwate y'amagarama yatanzwe na BETA LIFE aguma mu Isanduku ya Leta.