KARAGIRE N'UNDI v. MUTABAZI N'ABANDI

[Rwanda URUKIKO RW'UBUJURIRE – RCOM 00002/2020/CA (Tugireyezu, P.J.) 16 Werurwe 2020]

Amategeko agenga imiburnishirize y'imanza z'ubucuruzi – Gusiba urubanza – Icyemezo cy'umwanditsi w'urukiko cyacyira ikirego cyo kubyutsa urubanza – Gutakambira Perezida w'Urukiko – Mu gihe Umwanditsi w'urukiko asesenguye agasanga ikirego cyo kubyutsa urubanza gikwiye kwandikwa, nta muburanyi wabyuririraho ngo yemeze ko ibyerekeye ishingiro ry'impamvu zo kubyutsa urubanza byarangije gufatwaho icyemezo – Umwanditsi w'Urukiko yemeza iyandikwa ry'ikirego kuko ishingiro ry'impamvu zo kubyutsa urubanza ari inshingano y'urukiko – Umuburanyi utakambira Perezida w'Urukiko ni uwo ikirego cye kiba kitakiriwe n'Umwanditsi w'Urukiko – Itegeko no 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 22.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Kubyutsa urubanza – Iyo urubanza rusibwe mu bitabo by'urukiko, rwakirwa iyo usaba kurubyutsa agaragaje impamvu idasanzwe kandi ikomeye yamubjujije kuza kuburana mbere – Itegeko Nº 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 55.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Iyakirwa ry'ikirego cyihutirwa kijyanye no guhagarika irangiza ry'urubanza gishamikiye ku kirego kibyutsa urubanza – Iyo urukiko rusanze ikirego cyo kubyutsa urubanza nta shingiro gifite, nta n'impamvu iba ihari yo gusuzuma ikirego cyihutirwa cyo guhagarika irangiza ry'urubanza ry'agateganyo kuko nta rubanza rw'iremezo ruba rugitegerejwe – Itegeko no 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 185.

Incamake y'ikibazo Abajuriye bagiye baburana n'abaregwa kugeza mu Rukiko rw'ubujurire. Mu rubanza bari bajuririye mu urwo Rukiko rwaje gusibwa kuko bagiye bagaragaza imyitwarire yo gutinza urubanza mu gihe cy'inama ntegurarubanza kandi ntibanitaba ku munsi w'iburanisha; bituma Urukiko rw'ubujurire rufata icyemezo cyo kurusiba.

Abajuriye batanze ikirego cyo kurubyutsa bavuga ko umunsi w'iburanisha bari bafite izindi manza bagombaga kuburana Hejuru kandi y'ikirego cyo kubyutsa urubanza rwari rwasibwe, bahise bashamikiraho ikirego cyihutirwa cyasabaga guhagarika irangiza ry'urubanza ry'agateganyo ry'urubanza rwari rwasibwe.

Bitewe n'uko Urukiko rw'Ubujurire rwahise ruzihuriza hamwe, abajuriye bahise basaba ko urukiko rwabanza kuburanisha ikirego cyihutirwa kuko ngo icyo kubyutsa urubanza cyarangije gufatwaho icyemezo n'ubwanditsi bw'urukiko kandi abaregwa batagitakambiye kwa Perezida w'Urukiko; basaba ko urukiko rutakigarukaho rugisuzuma kuko cyamaze bakishimiye. Kuri iyi ngingo, abaregwa bavuze ko nta shingiro bifite kuko ntaho itegeko riteganya ko utishimiye icyemezo cyo kwakira ikirego kijyanye no kubyutsa urubanza bitakambirwa kwa Perezida w'Urukiko.

Ku ngingo ijyanye n'ikirego kihutirwa, abaregwa mu bujurire basabye ko ikirego cyihutirwa cyatanzwe n'abajuriye kidakwiye kwakirwa ngo kuko babona nta bwihutire bugihari kuko ikirego cyo kubyutsa urubanza nta shingiro gifite.

Incamake y'icyemezo: 1. Kuba umwanditsi w'urukiko yarasesenguye akemeza kwandika ikirego cyo kubyutsa urubanza, abarega ntibakwiye kubyuririraho ngo bemeze ko ibyerekeye ishingiro ry'impamvu batanga basaba ko urubanza rubyutswa byarangije gufatwaho icyemezo.

2. Umuburanyi wemerewe gutakambira Perezida w'urukiko ni uwo ikirego kitakiriwe. Bityo, kuba ikirego cy'abarega cyaranditswe mu bitabo by'urukiko, ibirebana n'ishingiro n'impamvu bashingiyeho bikaba bireba urukiko.

3. Urubanza rusibwe mu bitabo by'urukiko, rwakirwa iyo usaba kurubyutsa agaragaje impamvu idasanzwe kandi ikomeye yamubjujije kuza kuburana mbere.

4. Iyo urukiko rusanze ikirego cyo kubyutsa urubanza nta shingiro gifite, nta n'impamvu iba ihari yo gusuzuma ikirego cyihutirwa cyo guhagarika irangiza ry'urubanza ry'agateganyo kuko nta rubanza rw'iremezo ruba rugitegerejwe.

Ikirego cyo kubyutsa urubanza cyatanzwe n'abajuriye nta shingiro gifite.
Ikirego cyihutirwa cyatanzwe n'abajuriye nticyakiriwe.
Icyemezo cyo gusiba urubanza ntigihindutse.
Amagarama ahwanye n'imirimo yakozwe.

Amategeko yashingiweho:
Itegeko no 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 22, 55 na 185.

Ibitekerezo by'abahanga byifashishijwe:
Jacques HERON, Droit judiciaire privé, Paris, Montchrestien, 1991, P. 242.

Imanza zifashishijwe:
RCOMAA 0053/16/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 21/04/2017 haburana Phoenix of Rwanda Insurance Co. Ltd na Higher Institute of Agriculture and Animal Husbandry (ISAE/Busogo) hamwe na Worldwide Traders Company Ltd.
RCOMAA 00080/2018/CA rwaciwe n'Urukiko rw'ubujurire kuwa 22/01/2020 haburana Karagire Yaramba Jean Baptiste na Mukagasangwa Madeleine barega Mutabazi Geoffrey, Ngirabagabo F.X na Gatete Moussa.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Kuwa 22/01/2020, Urukiko rw'Ubujurire rwafashe icyemezo cyo gusiba urubanza n° RCOMAA 00080/2018/CA uwitwa Karagire Yaramba Jean Baptiste na Mukasangwa Madeleine bari bajuririye barega Mutabazi Geoffrey, Ngirabagabo François Xavier na Gatete Moussa

baburana iseswa ry'amasezerano y'ubugure bw'imigabane bagiranye ku wa 23/01/2018, rushingiye ku kuba abajuriye batari bitabye kandi kuva mu nama ntegurarubanza baragize imyitwarire igaragaza gutinza urubanza ku bushake.

[2] Ku wa 31/01/2020 Karagire Yaramba Jean Baptiste na Mukasangwa Madeleine batanze ikirego mu Rukiko rw'Ubujurire basaba kubyutsa urubanza n° RCOMAA 00080/2019/CA, Karagire Yaramba avuga ko impamvu atitabiriye iburanisha ari uko itariki urubanza rwaburanishirijweho yari afite urubanza rwo guhagarika cyamunara y'urubanza n° RSOC 00060/2017/TGI/GSBO na n° RSOCA 00116/2018/HC/KiG, n'urundi rubanza yagombaga kuburana na Business Partners International Ltd rufite n° RCOM 02745/2019/TC.

[3] Ku wa 25/02/2020 Karagire Yaramba Jean Baptiste yatanze ikirego cyihutirwa mu Rukiko rw'Ubujurire nanone arega Ngirabagabo François Xavier, Mutabazi Geoffrey, Gatete Moussa, agobokesha umuhesha w'inkiko NIYONKURU Jean Aimé avuga ko gishingiye ku kirego cy'iremezo n° RCOM 00002/2020/CA, asaba Urukiko guhagarika irangizarubanza ry'urubanza n° RCOMAA 00080/2019/CA rwaciwe ku wa 22/01/2020 rikorwa n'abaregwa, ikirego gihabwa n° RCOM 00003/2020/CA, ku wa 5/03/2020 Ubwanditsi bw'Urukiko bufata icyemezo cyo guhuriza hamwe imanza zombi mu rubanza n° RCOM 00002/2020/CA.

[4] Urubanza rwaburanishijwe mu ruhame ku itariki ya 12/03/2020, KARAGIRE YARAMBA Jean Baptiste yunganiwe na Me Ntaganda Kabare Festo wan unahagarariye Mukasangwa Madeleine naho Mutabazi Geoffrey, Ngirabagabo François Xavier, Gatete Moussa na Niyonkuru Jean Aimé, bose bunganiwe na Me Mwesigye Livingstone. Iburanisha rigitangira, Me Ntaganda Kabare Festo yasabye Urukiko ko rwasuzuma gusa ikirego cyihutirwa, kuko icyerekeranye no kubyutsa urubanza cyarangije gufatwaho icyemezo n'Ubwanditsi bw'Urukiko, bityo Urukiko rukaba rudashobora kukigarukaho.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURA RYABYO.

[5] Ibibazo biri mu rubanza ni ukumenya niba icyemezo cy'Umwanditsi w'Urukiko cyakira ikirego cyo kubyutsa urubanza n° RCOMAA 00080/2018/CA kibuza ko habaho izindi mpaka mu Rukiko zirebana no kumenya niba ikirego cyo kubyutsa urubanza gifite ishingiro, kumenya niba hari impamvu ikomeye kandi idasanzwe yabujije Karagire Jean Baptiste na Mukasangwa Madeleine kwitabira iburanisha ryo ku wa 22/01/2020 yatuma urubanza n" RCOMAA 00080/2018/CA rubyutswa no kumenya niba ikirego cyihutirwa gikwiye kwakirwa.

11.1. Kumenya niba icyemezo cy'Umwanditsi w'Urukiko cyakira ikirego cyo kubyutsa urubanza n° RCOMAA 00080/2018/CA kibuza ko habaho izindi mpaka mu Rukiko zirebana no kumenya niba icyo kirego cyo kubyutsa urubanza gifite ishingiro.

[6] Me Ntaganda Kabare Festo avuga ko Urukiko rudakwiye gusuzuma ibyerekeranye n'ishingiro ry'impamvu zatumye Karagire na Mukasangwa batitabira iburanisha ryo ku wa 22/01/2020 kuko ubwanditsi bwazemeye mu cyemezo cyabwo, ko rero utacyishimiye yagombaga kugitakambira kwa Perezida w'Urukiko, kuba abaregwa bataragitakambiye kandi barakimenyeshejwe bikaba bivuze ko bakishimiye, hakaba nta mpamvu Urukiko rugomba kongera kugisuzurna.

[7] Me Mwesigye Livingstone avuga ko ibivugwa na Me Kabare nta shingiro bifite, ndetse ko ntaho itegeko riteganya ko utishimiye icyemezo cy'Umwanditsi kibyutsa urubanza, agitakambira kwa Perezida w'Urukiko.

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[8] Ingingo ya 21 y'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi igaragaza impamvu zitandukanye zishobora gutuma ikirego kitandikwa.

[9] Ingingo ya 22 y'iryo tegeko iteganya ko umuburanyi utishimiye icyemezo cy'Umwanditsi w'Urukiko atakamba kwa Perezida w'Urukiko mu nyandiko isobanura uburyo yarenganyijwe mu gihe kitarengeje iminsi itanu (5) uhereye igihe yamenyeye icyo cyemezo.

[10] Ku byerekeranye n'uru rubanza, dosiye igaragaza ko ku wa 13/02/2020 Umwanditsi Mukuru w'Urukiko rw'Ubujurire yafashe icyemezo n° 0011/2020/COM/CA cyemera kwakira ikirego cyo kubyutsa urubanza n° RCOMAA 00080/2019/CA cya Karagire Jean Baptiste na Mukasangwa Madeleine kigahabwa nimero, nyuma gihabwa inteko ngo ikiburanishe.

[11] Urukiko rurasanga mu cyemezo cy'Umwanditsi Mukuru, yaremeje ko ikirego cya Karagire Yaramba Jean Baptiste na Mukasangwa Madeleine cyandikwa mu bitabo by'Urukiko kikazaburanishwa n'Urukiko rw'Ubujurire, kuba yarasesenguye akemeza ko cyandikwa, abarega bakaba badakwiye kubyuririraho ngo bemeze ko ibyerekeranye n'ishingiro ry'impamvu batanga basaba ko urubanza rubyutswa byarangije gufatwaho icyemezo kuko nk'uko bimaze kugaragazwa icyo Umwanditsi w'Urukiko yemeje ari uko ikirego cyandikwa, atari uko impamvu batanze zifite ishingiro kuko ibyo ari akazi k'Urukiko. Urukiko rurasanga nk'uko byumvikana mu rubanza rwaciwe n'Urukiko rw'lkirenga, icyemezo cy'Umwanditsi Mukuru hamwe ndetse n'icyemezo cya Perezida ku itakamba, byombi ari ibyemezo bijyanye n'imitunganyirize y'akazi k'inkiko1, ku bu ryo bidashobora na buhoro kubuza umucamanza uburanisha urubanza mu mizi gusuzuma ikibazo bafasheho icyemezo, bityo Karagire na Mukasangwa bakaba badakwiye kuvuga ko inteko iburanisha idakwiye gusuzuma ishingiro ry'impamvu batanga basaba ko urubanza rubyutswa.

[12] Ku byerekeranye n'ibyo Me Ntaganda Kabare Festo ariwe Avoka wa Karagire Jean Baptiste na Mukasangwa Madeleine avuga ko iyo abaregwa baba batishimiye icyemezo cy'Umwanditsi Mukuru bari kugitambamira kwa Perezida w'Urukiko, ko rero kuba ntacyo bavuze kigomba kugumana agaciro kacyo maze impamvu zo kubyutsa urubanza ntizongere gusuzumwa, Urukiko rurasanga ibyo nta shingiro bifite kuko nk'uko byumvikana mu ngingo ya 22 y'Itegeko n°22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru, umuburanyi wemerewe gutakambira Perezida w'Urukiko ari uwo ikirego cye kitakiriwe n'Umwanditsi w'Urukiko, mûri uru rubanza ho ikirego cyo kubyutsa urubanza kikaba cyarakiriwe n'Umwanditsi w'Urukiko; bityo rero ubwo ikirego cyo kubyutsa urubanza abarega batanze cyanditswe mu bitabo by'Urukiko, ibirebana n'ishingiro ry'impamvu bashingiyeho bikaba bireba Urukiko.

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[1]Reba urubanza n° RCOMAA 0053/16/CS rwaciwe n'Urukiko rw'lkirenga ku wa 21/04/2017, haburana Phoenix of Rwanda Insurance CO Ltd na Higher Institute of Agriculture and animal Husbandry (ISAE /Busogo) hamwe na Worldwide Traders Company Ltd, igika cya 14, 15, 16, 17 na 18.

[13] II.2. Kumenya niba hari impamvu ikomeye kandi idasanzwe yabujije Karagire Jean Baptiste na Mukasangwa Madeleine kwitabira iburanisha ryo ku wa 22/01/2020, yatuma urubanza n° RCOMAA 00080/2018/CA rubyutswa.

[14] Karagire Jean Baptiste avuga ko icyamubujije kuza kuburana urubanza rwe ku wa 22/01/2020, ari uko uwo munsi yari yagize ikibazo cy'ijisho gikomoka ku mpanuka yagize mu kwezi kwa 5 k'umwaka ushize, kandi ko n'umugore we Mukasangwa Madeleine yari yagiye gushakisha amafaranga yo kwishyura umwenda kugira ngo imitungo yabo idatezwa cyamunara harangizwa imanza n° RSOC 00060/17/TGI/GSBO na n° RSOCA 00116/2018/HC/KIG. Akomeza avuga ko kuri uwo munsi kandi, yari afite urundi rubanza yagombaga kuburana rufite n° RCOM 02745/2019/TC cyakora ko yohereje avoka we Me Ntaganda Kabare Festo akaba ari we ujya kuruburana, izi mpamvu akaba ari zo zamubujije kwitabira iburanisha.

[15] Me Ntaganda Kabare Festo avuga ko Karagire Jean Baptiste na Mukasangwa Madeleine bagize ibibazo bikomeye harimo n'ibitunguranye byababujije kwitabira iburanisha ku wa 22/01/2020, kuko uwo munsi mu gitondo akibyuka ari bwo haje abantu baje guteza cyamunara inzu y'umuryango batuyemo nyamara bari bamwijeje ko bataza, ku buryo n'urundi rubanza bari bafite batabashije kurujyamo akaba ari we (Me Ntaganda Kabare) urujyamo, cyakora ko yumvikanye n'abo baburanaga akareka ikirego, akaba asanga Karagire Jean Baptiste atari gusiga umutungo we ugiye gutezwa cyamunara ngo yitabe Urukiko. Avuga ko impamvu yahisemo kwitabira iburanisha ry'Urukiko rw'Ubucuruzi, an uko Karagire Jean Baptiste yamuhaye ubutumwa bwo kumuburanira (mandat) mu Rukiko rw'Ubujurire impitagihe kuko yabumuhaye ku wa 21/01/2020, abonye uburemere bw'urubanza asanga atashobora kuruburana ataruteguye, ari bwo yamugiraga inama yo kwandikira Urukiko arusobanurira uko ikibazo kimeze. Avuga ko kuba abarega barahinduye Avoka mu rubanza rw'Urukiko rw'Ubujurire, an uburenganzira bwabo.

[16] Ngirabagabo François Xavier avuga ko impamvu zitangwa n'abarega nta shingiro zifite, kuko mu nama ntegurarubanza bari bahagarariwe na Me Rutagengwa François Xavier yanga kuvuga, yitwaje ko ahawe ubutumwa bwo kuburana (mandat) vuba, akaba asanga bitari na ngombwa ko abarega ari bo biyizira mu iburanisha mu Rukiko rw'Ubujurire kuko bari bafite Avoka ubunganira. Akomeza avuga ko kuba Karagire Jean Baptiste na Mukasangwa Madeleine barohereje Avoka kubaburanira urubanza rw'ubucuruzi bari bafite, bitaba impamvu ikomeye kuko atanaruburanye ahubwo yari agiye kurureka, kuko ari bo bari barareze. Avuga ko ku munsi w'iburanisha abarega boherereje Urukiko ibaruwa rusanga ibiyikubiyemo nta shingiro bifite, rufata icyemezo cyo gusiba urubanza, kandi ko no muri iyo baruwa batari bagaragaje ko Me Ntaganda Kabare ari we wagombaga kubahagararira, ahubwo bavuze ko ari Me Twagirumugabe Alexis ndetse bavuga ko arwaye, uretse ko nta n'ikimenyetso babitangiye, ko rero ibyo kuvuga ko ari Karagire Jean Baptiste wari urwaye nta shingiro bifite kandi ko n'ubundi yari ahagarariwe atari yunganiwe, bityo impamvu atanga ikaba nta shingiro ifite.

[17] Me Mwesigye Livingstone wunganiye Mutabazi Geoffrey, Ngirabagabo François Xavier, Gatete Moussa na Niyonkuru Jean Aimé avuga ko impamvu zitangwa n'abarega nta shingiro zifite kuko ibaruwa isaba iyimurwa ry'urubanza bayishyikirije Urukiko ku wa 22/01/2020 ku munsi w'iburanisha, ntibagaragaza iyo mpamvu y'uburwayi bwa Karagire muri iyo baruwa, ahubwo bakaba baravugaga ko Me Twagirumugabe Alexis ari we wagombaga kubahagararira ariko akaba arwaye, nyamara uwo Avoka akaba atarigeze aba mu rubanza kuva rwatangira, ko aho bavuga ko Me Ntaganda Kabare Festo yahawe urubanza impitagihe atari byo kuko yivugiye neza ko yari

yagiye mu rubanza rwa Business International Partners mu Rukiko rw'Ubucuruzi, akaba nta na hamwe yigeze asaba ko urubanza rusubikwa cyangwa ngo agire Avoka wundi uri mu rubanza abimenyesha. Avuga ko ibivugwa n'abarega ko umunsi w'iburanisha hari umutungo wabo wagombaga gutezwa cyamunara nta gaciro byahabwa, kuko nta matangazo ya cyamunara bagaragaza, inyandiko y'ubwishyu batanze ikaba idasimbura amatangazo ya cyamunara cyangwa ngo igaragaze ko ubwo bwishyu ari bwo bwahagaritse cyamunara.

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[18] Ingingo ya 55 y'Itegeko n°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezambano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "Iyo urubanza rwasibwe mu bitabo by'Urukiko, mu rwego urwo ari rwo rwose, ku mpamvu z'ushaka kurubyutsa, icyo kibazo cye nticyakirwa atabanje kugaragaza impamvu idasanzwe kandi ikomeye yamubujije kuza kuruburana mbere".

[19] Ingingo ya 3 y'itegeko n°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

[20] Dosiye igaragaza ko mu gusiba urubanza n° RCOMAA 00080/2018/CA, Urukiko rw’ubujurire rwashingiye ku kuba Karagire Yaramba Jean Baptiste na Mukasangwa Madeleine batari bitabye Urukiko ndetse nta n'ubushake berekenye bwo gushaka kuburana, kandi kuva mu nama ntegurarubanza baragaragaje imyitwarire yo gutinza urubanza2.

[21] Urukiko rurasanga mu kubyutsa urubanza rwabo rwasibwe, abarega bavuga ko impamvu yababujije kwitabira iburanisha ryo ku wa 22/01/2020 ari uko Karagire Yaramba Jean Baptiste yari yarwaye ijisho, ko yari afite urundi rubanza mu Rukiko rw'Ubucuruzi no kuba uwo munsi ari bwo inzu babamo baje kuyiteza cyamunara mu buryo butunguranye.

[22] Dosiye igaragaza ko mu ibaruwa Karagire Yaramba yandikiye Urukiko ku wa 21/01/2020, ikagera mu Rukiko ku wa 22/01/2020 umunsi w'iburanisha ry'urubanza n° RCOMAA 00080/2019/CA, yasabye isubika ry'urubanza rwe avuga ko afite izindi manza kuri uwo munsi ari zo n° RCOM 02745/2019/TC rwari mu Rukiko rw'Ubucuruzi, n'urubanza n° RC 00257/2019/KICU rwari mu Rukiko rw'lbanze rwa Kicukiro. Indi mpamvu yatanze, ni uko atashoboye gukora inama ntegurarubanza bituma atabasha gutegura urubanza rwe kandi na Avoka we Twagirumugabe Alexis arwaye, ndetse na Avoka wundi yari yashatse Me Ntaganda Kabare Festo akaba yari yamuhaye ubutumwa bwo kuburana (mandat) uwo munsi ku buryo yari ataramuha ibisobanuro bihagije kugira ngo abashe kumukorera imyanzuro no kumuburanira.

[23] Urukiko rw'Ubujurire rurasanga impamvu Karagire Yaramba Jean Baptiste atanga y'uko yari arwaye ijisho ku wa 22/1/2020 nta shingiro ifite kuko nk'uko biteganywa n'ingingo ya 3 y'itegeko n°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga ko buri muburanyï agomba kugaragaza ukuri kw'ibyo aburana, nta kimenyetso na kimwe abitangira, nko kuba yaba yaragiye kwivuza uwo munsi, bityo Urukiko rukaba ntaho rwahera rwemeza ko ibyo avuga ari ukuri.

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[2] Urubanza n° RCOMAA 00080/2018/CA rwasibwe n'Urukiko rw'Ubujurire ku wa 22/01/2020, igika cya 10, 11, 12, 13.

[24] Ku byerekeranye no kuba kuri iyo tariki ari bwo baje guteza cyamunara inzu ya Karagire Yaramba Jean Baptiste abamo n'umuryango we, bityo ko atari gusiga icyo kibazo ngo aze kuburana mu Rukiko rw'Ubujurire, Urukiko rurasanga uretse n'uko atari impamvu ikomeye kandi idasanzwe yari kubabuza bombi Karagire na Mukasangwa kwitabira iburanisha hamwe na Avoka wabo, nabyo ari ukubivuga gusa kuko nta tangazo rya cyamunara beretse Urukiko ngo kibe ikimenyetso cy'uko koko hari cyamunara yari iteganyijwe cyangwa inyandiko mvugo y'ibyabaye uwo munsi yaba yarakozwe. Rurasanga ka'ndi iyo baza kuba baragize koko ikibazo cy'abaje guteza cyamunara inzu batuyemo, bari kubigaragaza mu ibaruwa isaba gusubika urubanza bashyikirije Urukiko rw'Ubujurire ku wa 22/01/2020 cyane ko cyamunara itajya ikorwa itunguranye, ahubwo ibanzirizwa n'imanikwa ry'amatangazo agaragaza umusi izaberaho. Urukiko rurasanga kandi ikimenyetso cy'aho umugore we yishyuriye umwenda kidahagije kuko kidasimbura itangazo rya cyamunara cyangwa inyandikomvugo y'isubika rya cyamunara byari kugaragaza ko hari cyamunara koko yari iteganijwe kuri uwo munsi.

[25] Urukiko rurasanga ku birebana n'imanza Karagire Yaramba Jean Baptiste n'umwunganizi we bavuga ko yari afite mu Rukiko rw'Ubucuruzi, iyi atari impamvu ikomeye kandi idasanzwe, ahubwo Me Ntaganda Kabare yarahisemo kujya kuburana urubanza mu Rukiko rw'Ubucuruzi, uretse ko narwo ataruburanye ahubwo yaruretse, nyamara yarashoboraga kureka icyo kirego mu nyandiko maze akitaba Urukiko rw'Ubujurire. Rurasanga kuba Me Ntaganda Kabare na Karagire Yaramba Jean Baptiste bavuga ko yari yamuhaye ubutumwa bwo kumuburanira mu gitondo ku buryo atari yateguye urubanza, uretse ko nta n'ikigaragaza ko yari yahawe urubanza mûri icyo'gitondo koko nk'uko abivuga, ntacyari kumubuza kugera mu Rukiko agasobanura ikibazo yagize agasaba ko urubanza rusubikwa kugira ngo ajye kurutegura nk'uko Urukiko rwabisobanuye mu cyemezo cyo gusiba urubanza no RCOMAA 00080/2019/CA cyo ku wa 22/01 /2020[3].

[26] Ku byerekeye urubanza n° RC 00257/2019/KICU rwari mu Rukiko rw'lbanze rwâ Kicukiro Karagire Yaramba Jean Baptiste yari yavuze mu ibaruwa yashyikirije Urukiko rw'Ubujurire ku wa 22/01/2020, ko narwo yagombaga kuruburana uwo munsi, Urukiko rurasanga Karagire Yaramba Jean Baptiste koko yari arurimo nk'umuburanyi kuko yari yararugobotsemo kandi uwo munsi akaba yaritabye iburanisha ryarwo, uretse ko rwasubitswe kugira ngo uburenganzira bwe bwo kunganirwa bwubahirizwe, Urukiko rurasanga nabyo bitafatwa nk'impamvu ikomeye kandi idasanzwe yamubujuje kwitabira iburanisha ry'urubanza n° RCOMAA 00080/2019/CA kuko iburanisha ryarwo ryari riteganyijwe saa tatu n'igice (9h30), mu gihe urubanza n° RC 00257/2019/TB/KICU rwari saa munani (14h00), hakaba nta cyari kumubuza kubanza kwitabira iburanisha ryo mu Rukiko rw'Ubujurire, hanyurna agakomereza mu Rukiko rw'ibanze, cyane ko zose ziri mu Mujyi wa Kigali. Urukiko rurasanga kandi kuba yaragiye mûri iryo buranisha ry'urubanza n° RC 00257/2019/KICU rwari mu Rukiko rw'ibanze rwa Kicukiro aricyo kigaragaza ko impamvu ashingiraho avuga ko atitabiriye iburanisha mu Rukiko rw'Ubujurire kubera ko uwo munsi yari arwaye ijisho cyangwa ko baje kumutereza inzu cyamunara zidakomeye kandi zidasanzwe kuko iyo izo mpamvu zîza kuba zikomeye kandi zidasanzwe zari no kumubuza kwitabira iburansiha mu Rukiko rw'ibanze rwa Kicukiro, bityo kuba yaragiye mu Rukiko rw'ibanze rwa Kicukiro akaba yaranashoboraga no kwitabira n'iburanisha mu Rukiko rw'Ubujurire, cyane ko izo manza zitabereye ku masaha amwe nk'uko byasobanuwe.

[3] Urubanza n°RCOMAA 00080/2018/CA rwasibwe n'Urukiko rw'Ubujurire ku wa 22/01/2020, igika 12.

[27] Hakurikijwe ibisobanuro bitanzwe haruguru, Urukiko rw'Ubujurire rurasanga nta mpamvu ikomeye kandi idasanzwe yabujije Karagire Yaramba Jean Baptiste na Mukasangwa Madeleine kwitabira iburanisha ry'urubanza rwabo n° RCOMAA 00080/2018/CA, ahubwo nk'uko bigaragara mûri urwo rubanza, igika cya 10, kuva mu nama ntegurarubanza y'urubanza rwasibwe kugeza urubanza rusibwa, Karagire Yaramba Jean Baptiste na Mukasangwa barakomeje kurangwa n'imyitwarire yo gutinza urubanza4, bityo icyemezo cyo kurusiba cyafashwe n'uru Rukiko ku wa 22/01/2020 kikaba kidahindutse.

II.3. Kumenya niba ikirego cyihutirwa cya Karagire Jean Baptiste na Mukasangwa Madeleine gikwiye kwakirwa.

[28] Me Mwesigye Livingstone avuga ko ashingiye ku ngingo 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, asanga ikirego cyihutirwa cyatanzwe na Karagire Jean Baptiste na Mukasangwa Madeleine kidakwiye kwakirwa ngo gisuzumwe mu gihe gisuzumiwe hamwe n'urubanza rw'iremezo, ko rero asanga nta bwihutire bugihari.

[29] Me Ntaganda Kabare Festo ariwe Avoka wa Karagire Jean Baptiste na Mukasangwa Madeleine, avuga ko batanze ikirego cyihutirwa barega abo bafitanye urubanza hamwe na Niyonkuru Jean Aimé, Umuhesha w'inkiko w'umwuga bashingiye kuri iyo ngingo ya 185 y'Itegeko y'Itegeko n° 22/2018 ryo ku wa 29/04/2018 rimaze kuvugwa iteganya ko Urukiko rufite urubanza remezo ari rwo rusuzuma ikirego cyihutirwa kirushamikiyeho, ko rero ntawavuga ko ikirego cyihutirwa kitabaho nyamara hari ikirego cyihutirwa gishingiyeho. Avuga kandi ko hari ubwihutire bugaragara mu kirego kuko basanga Umuhesha w'inkiko w'umwuga yarihutiye kurangiza urubanza bityo bakaba basaba guhagarika irangizarubanza ryarwo, impamvu bahisemo iyi nzira akaba ari uko mu kirego cy'iremezo harimo ibibazo byinshi bigomba gusuzumwa ku buryo byazafata umwanya munini, bakaba bagira ngo byibuze bizasuzumwe cyamunara yarahagaze, kuko n'inzira ya cyamunara abaregwa hamwe n'Umuhesha w'inkiko batangiye itubahirije amategeko kuko bateje kashe mpuruza inyuma y'iminsi itanu urubanza ruciwe, kandi baragombaga kubikora nyuma y'iminsi cumu n'itanu (15), asaba ko Urukiko rw'Ubujurire rwagenera abarega indishyi basabye.

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[4] Nk'uko bigaragara mu rubanza RCOMAA 00080/2018/CA rwasibwe mu gika cya 10, Karagire Yaramba Jean Baptiste na Mukasangwa Madeleine, nyuma y'ubujurire bwabo bagiye barangwa n'imyitwarire igaragaza ko batifuza kuburana kandi ari bo bajuriye. Iyo myitwarire igaragazwa n'uko nk'uko bigaragara mûri raporo y'inama ntegurarubanza yo ku wa 13/12/2019, Ubwanditsi bw'Urukiko bumaze gusanga abajuriye barahamagawe inshuro nyinshi basabwa gukora imyanzuro ariko ntibabikore, nyuma yaho ku wa 10/12/2019, bakitaba nta Avoka bafite, babazwa impamvu batazanye na Avoka ubiinganira bakavuga ko bahamagaye Me Nizeyimana Boniface, ababwira ko bahurira ku Rukiko, ariko bikaza kugaragara ko babeshye Urukiko kuko uyu Me Nizeyimana Boniface, ahamagawe n'Ubwanditsi bw'Urukiko yabubwiye kuri telefoni ko batigeze bamuhamagara ko kandi atakiri kuniwenabo, ari bwo inama ntegurarubanza yasubikwaga ishyirwa ku wa 13/12/2019; kuri iyo tariki bitabiriye inama ntegurarubanza bunganiwe na Me Rutagengwa François Xavier ariko basaba ko yasubikwa na none bavuga ko Avoka wabo ari bwo akibona dosiye akaba atazi ibikubiyemo, babonye Ubwanditsi bubyanze bavuga ko ntacyo bongera ku ibyo bavuze.
Naho ku munsi w'iburanisha kuwa 22/01/2020 abareze ntibitabye Urukiko, ahubwo Karagire Yaramba Jean Baptiste yanditse ibaruwa asaba ko urubanza rwimurwa kubera ko Avoka we Me Twagirumugabe Alexis arwaye ariko ntiyabitangira ikimenyetso, uwo Avoka ataranakoze imyanzuro, yongeraho ko Avoka mushya Me Ntaganda Kabare Festo yamuhaye ubutumwa mu gitondo, ariko nawe ntiyitaba Urukiko ngo asobanure ko atiteguye kuburana.

UKO URUKIKO RUBIBONA

[30] Ingingo ya 116 y'Itegeko n°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezambano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko : "Kugobokesha ku gahato ntibyemewe mu Rukiko rw'Ubujurire cyangwa mu Rukiko rw'lkirenga".

[31] Ingingo ya 185 y'Itegeko n°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezambano, 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".

[32] Urukiko rurasanga ibirebana n'igobokeshwa ry'umuhesha w'inkiko Niyonkuru Jean Aimé bidakwiye gusuzumwa kuko byakozwe mu buryo bunyuranyije n'ingingo ya 116 y'Itegeko n°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezambano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko kugobokesha ku gahato bitemewe mu Rukiko rw'Ubujurire cyangwa mu Rukiko rw'lkirenga.

[33] Ku birebana n'abandi baburanyi, Urukiko rurasanga ubwo rwabonye ko ikirego cyo kubyutsa urubanza nta shingiro gifite nk'uko byasobanuwe haruguru, nta n'impamvu ihari ituma uru Rukiko rusuzuma ikirego cyihutirwa cyo guhagarika irangizarubanza ry'agateganyo kuko nk'uko biteganywa n'ingingo ya 185 y'Itegeko n°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezambano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi yavuzwe haruguru hagomba kuba hariho ikirego cy'iremezo kugirango ikirego cyihutirwa gishobore gushyikirizwa umucamanza. Abahanga mu mategeko nabo basobanura ko, uko byagenda kose ikirego cyihutirwa kiba ari agateganyo kandi gifatwa gusa mu gihe hategerejwe icyemezo ku rubanza rw'iremezo5 ; bivuze ko mu gihe nta rubanza rw'iremezo ruhari, nta n'impamvu yo gusuzuma ikirego cyihutirwa. Ku bw'ibyo rero, kubera ko Urukiko rwasanze ikirego cyo kubyutsa urubanza n° RCOMAA 00080/2018/CA nta shingiro gifite, n'icyo kirego cyihutirwa kigishamikiyeho kikaba kitagomba kwakirwa.

[34] Urukiko rurasanga kandi ikirego cyatanzwe na Karagire Yaramba Jean Baptiste na Mukasangwa Madeleine basaba ihdishyi batazikwiriye kubera ko ikirego cyabo cyo kubyutsa urubanza nta shingiro gifite naho ikirego cyihutirwa kikaba kitakiriwe, bivuze ko nta kosa ry'abaregwa izo ndishyi zaba zishingiyeho.

III. ICYEMEZO CY'URUKIKO

[35] Rwemeje ko ikirego cyo kubyutsa urubanza cyatanzwe na Karagire Yaramba Jean Baptiste na Mukasangwa Madeleine nta shingiro gifite;

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[5] Quelle que soit la mesure que prenne le juge des referes, sa decision est toujours provisoire. Ce caractere va pour ainsi dire, de soi pour les mesures d'attente, puis que par definition, elles n'ont ete ordonnees que pour regir le temps qui s'ecoulera jusqu'a la decision du juge principal. Voir Jacques Heron, Droit Judiciaire Prive, Paris, Montchrestien, 1991, p. 242.

[36] Rwemeje ko ikirego cyihutirwa cyatanzwe na Karagire Yaramba Jean Baptiste na Mukasangwa Madeleine kitakiriwe;

[37] Rwemeje ko icyemezo cyo gusiba urubanza n° RCOMAA 00080/2018/CA cyafashwe n'Urukiko rw'Ubujurire ku wa 22/1/2020 kidahindutse.

[38] Rwemeje ko amagarama yatanzwe ahwanye n'imirimo yakozwe.