IKIGO CY'IGIHUGU GISHINZWE ITERAMBERE (RDB) v. ABAZUNGURA BA MUBUMBYI

[Rwanda URUKIKO RW'IKIRENGA – RADA 0050/12/CS (Mutashya, P.J., Rugabirwa na Gakwaya, J.) 28 Ugushyingo 2014]

Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Inzitizi – Iyakirwa ry'ikirego cy'ingoboka – Ugobotse mu rubanza rw'abandi agamije kugira ibyo ahabwa agomba kuba afite uburenganzira bwihariye budashingiye ku kirego cy'iremezo ku buryo ubwo burenganzira bwashoboraga gutuma afata icyemezo cyo kuregera Urukiko wenyine mu kirego cy'iremezo, afite ububasha n'inyungu bimuhesha uburenganzira bwo kugoboka muri urwo rubanza kandi ikirego cye kigomba kuba gisobekeranye n'ikirego cy'iremezo – Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 113, iya 175 n'iya 119.

Incamake y'ikibazo: Abazungura ba Mubumbyi bareze Ikigo cy'Igihugu gishinzwe Iterambere (RDB) mu Rukiko Rukuru, i Kigali, basaba ko cyabishyura toni 1385 z'isima cyangwa amafaranga ahwanye n'agaciro kazo mu gihe cy'icibwa ry'urubanza n'indishyi z'akababaro ndetse n'iz'ikurikiranarubanza kubera ko Mubumbyi yasize yishyuye iyo sima ku mafaranga 36.000.000Frw kuri konti ya CIMERWA ku itariki ya 07/07/1994 ariko agapfa CIMERWA itazimuhaye. Urwo rukiko rwategetse RDB kwishyura iyo sima cyangwa agaciro kayo kangana na 235.450.000Frw n'indishyi z'akababaro n'iz'ikurikiranarubanza zingana na 1.000.000Frw.

RDB yajuriye mu Rukiko rw'Ikirenga ivuga ko abazungura ba Mubumbyi badakwiye guhabwa isima n'indishyi basaba kuko nta masezerano y'ubugure bw'isima berekana agaragaza ko CIMERWA yemeye amasezerano y'ubugure ya Mubumbyi, ikongeraho ko mu gihe Urukiko rwabyumva ukundi rukwiye kubagenera gusa amafaranga 36.000.000Frw Mubumbyi yasize yishyuye kuri konti ya CIMERWA.

Urubanza rugeze mu Rukiko rw'Ikirenga, Kantengwa yarugobotsemo asaba ko RDB yamuha 30% y'amafaranga akomoka ku mwenda w'isima bazatsindira muri uru rubanza, akabisaba ashingiye ku nyandiko-mvugo y'Inama y'Umuryango wa Mubumbyi igaragaza ko uwo muryango wemeye kuzamuha ayo mafaranga biturutse ku kuba waramwambuye imodoka yari yararazwe n'umugabo we, ibihumbi makumyabiri by'amadorari y'amanyamerika (20.000U$) atahawe n'abazungura ba Mubumbyi kandi yarayarazwe mw'irage ryakozwe na Mubumbyi Manasseh mu mwaka wa 1996.

Iburanisha ry'urubanza ritangiye, abazungura ba Mubumbyi batanze inzitizi igamije kutakira ikirego cyo kuguboka cyatanzwe na Kantengwa bavuga ko adafite ububasha n'inyungu bishobora gutuma arugobokamo bitewe n'uko atashakanye mu buryo bwemewe n'amategeko na Mubumbyi kandi ko icyo kirego cye kidafitanye isano n'ikirego cy'iremezo. Bongeraho ko Urukiko rw'Ikirenga rudafite ububasha bwo kuburanisha icyo kirego mu rwego rwa mbere kuko kirebana n'izungura kandi ko irage ryakozwe na Mubumbyi nta gaciro rifite kuko rihungabanya abazungura ku mutungo wabo naho inyandiko-mvugo y'inama y'umuryango ikaba itahabwa agaciro kuko itasinywe n'abagize umuryango bose.

Kantengwa Epiphanie yiregura kuri iyi nzitizi avuga ko ikirego cye gikwiye kwakirwa hashingiwe ku ngingo ya 39, igika cya 2 y'Itegeko N° 59/2008 ryo kuwa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ariryo ryose rishingiye ku gitsina, ndetse no ku rubanza RS/Inconst/Pen0003/10/CS kubera ko afite ububasha n'inyungu byo kurugobokamo

bitewe n'uko yabanye na Mubumbyi Manasseh nk'umugabo n'umugore igihe kirekire bashakana imitungo n'ubwo nta mwana babyaranye.

Avuga rero ko yarugobotsemo kugirango arengere inyungu ze zingana na 30% y'amafaranga azakomoka ku bwishyu bw'imyenda igomba kwishyuzwa, iyi nyungu ikaba ituruka ku bwumvikane bw'inama y'umuryango yemeje ko bafatanya inshingano yo kwishyuza iyo myenda noneho abazungura ba Mubumbyi bakazajya bamuha 30% y'amafaranga azajya ava mu bwishyu bwayo ndetse no ku madolari 20.000U$ abazungura ba mubumbyi batamwishyuye kandi yarayarazwe n'umugabo we.

Incamake y'icyemezo: 1. Uwemerewe kugoboka mu rubanza rw'abandi ni ufite ububasha bwamuhesha uburenganzira bwo kurega ku giti cye mu kirego cy'iremezo uwo baburana mu kirego cy'ingoboka. Kubw'ibyo kuba Kantengwa atashobora kurega RDB ku giti cye asaba ko yamuha 30% y'amafaranga akomoka ku mwenda w'isima hamwe n'amadorari y'amanyamerika ibihumbi makumyabiri (20.000U$) bigaragaza ko nta bubasha afite bwo kugoboka muri uru rubanza.

2. Kuba icyemezo cyafatwa muri uru rubanza ntacyo cyahungabanya ku nyungu za Kantengwa, kandi akaba atarutambamira rumaze gucibwa, ndetse ikirego cye kikaba kidasobekeranye n'ikirego cy'iremezo kuko ahubwo gihura na cyo bigaragaza ko nta nyungu afite yo kugoboka mu rubanza ndetse nta n'isano iri hagati y'ibirego byombi, bityo ikirego cye kikaba kitagomba kwakirwa kuko kitujuje ibisabwa n'amategeko.

Inzitizi igamije kutakira ikirego cyo kugoboka mu rubanza ifite ishingiro;
Iburanisha ry'urubanza mu mizi rizakomeza.

Amategeko yashingiweho:

Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 113, 175 na 119.

Nta manza zashingiweho.

Ibitekerezo by'abahanga:

Albert FETTWEIS, *Manuel de Procédure Civile*, 2 ème Edition, Bruxelles, 1987, p.411.

SERGE GUINCHARD, *Droit et Pratique de la Procédure Civile*, 5 ème éd., Dalloz, Paris, 2006-2007, p.554.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Abazungura ba Mubumbyi Manasseh bavuzwe haruguru bareze Ikigo cy'Igihugu gishinzwe Iterambere (RDB) mu Rukiko Rukuru, i Kigali, basaba ko cyabishyura toni 1385 za sima cyangwa amafaranga ahwanye nazo hiyongereyeho indishyi zavuzwe haruguru kuko Se Mubumbyi Manasseh yazishyuye 36.000.000Frw ayashyize kuri konti ya CIMERWA iri muri Banki ya Kigali kuwa 07/07/1994, nyamara yapfuye kuwa 25/05/1998 atari yazihabwa.

[2] Urukiko Rukuru rwaciye urubanza RAD 0146/11/HC/KIG kuwa 12/09/2012, rutegeka Ikigo cy'Igihugu gishinzwe Iterambere (RDB) kwishyura umuryango wa Mubumbyi Manasseh ugizwe na Bimenyimana Xavier, Twizerimana Ananias, Icyimanimpaye Esther, Mukandayisenga Solange, Uwamariya Christine, Nyirahabimana Thamari, Niyibizi Jean, Ntakirutimana Samuel, na Niyitegeka Elson, uhagarariwe na Mukankusi Monique, toni 1385 za sima cyangwa agaciro kayo kangana na 235.450.000Frw ahwanye n'igiciro cya sima cy'umunsi w'isomwa ry'urubanza, kikanawuha indishyi z'akababaro n'iz'ikurikiranarubanza zingana na 1.000.000Frw.

[3] Ikigo cy'Igihugu gishinzwe Iterambere (RDB) cyajuririye urwo rubanza mu Rukiko rw'Ikirenga kivuga ko kitaha abazungura ba Mubumbyi Manasseh bavuzwe haruguru toni 1385 za sima kuko nta masezerano y'ubugure bwa sima bafite agaragaza ko CIMERWA yemeye "offre" ya Mubumbyi Manasseh, ariko ko Urukiko ruramutse rubibonye ukundi rwabagenera 36.000.000Frw Se yishyuye kuri konti ya CIMERWA hatiyongereyemo inyungu n'indishyi basaba muri uru rubanza.

[4] Kantengwa Epiphanie yagobotse muri uru rubanza asaba ko icyo Kigo cyamuha 30 % y'amafaranga akomoka ku mwenda wa sima bazatsindira muri uru rubanza, ibyo akabisaba ashingiye ku nyandiko-mvugo y'Inama y'Umuryango wa Mubumbyi Manasseh yo kuwa 24/02/2002 igaragaza ko uwo muryango wemeye kuzamuha ayo mafaranga bitewe n'uko wamwambuye imodoka ye yo mu bwoko bwa Benz ifite "plaque" 2628 yari yararazwe n'umugabo we, kikanamuha ibihumbi makumyabiri by'amadorari y'amanyamerika (20.000U$) atahawe n'abazungura be, ibyo akabisaba ashingiye ku irage ryakozwe na Mubumbyi Manasseh kuwa 25/06/1996.

[5] Urubanza rwaburanishijwe mu ruhame kuwa 28/10/2014, Ikigo cy'Igihugu gishinzwe Iterambere (RDB) kidahagarariwe, nyamara cyarahamagawe mu buryo bukurikije amategeko, Me Niyondora Nsengiyumva hamwe na Me Kuradusenge Jacques bahagarariye abazungura ba Mubumbyi Manasseh bavuzwe haruguru, Shema Adamu, Nsanzamahoro Abdounour na Uwitonze Jehady bahagarariwe na Me Ruberwa Silas, naho Kantengwa Epiphanie yunganiwe na Me Ndahimana Jean Bosco.

[6] Iburanisha ry'urubanza ritangiye, ababuranira abazungura ba Mubumbyi Manasseh batanze inzitizi igamije kutakira ikirego cyo kugoboka muri uru rubanza cyatanzwe na Kantengwa Epiphanie kubera ko adafite ububasha n'inyungu bishobora gutuma arugobokamo bitewe n'uko atashakanye mu buryo bwemewe n'amategeko na Mubumbyi Manasseh, no kuba icyo kirego cye kidafitanye isano n'ikirego cy'iremezo cyatanzwe n'abazungura ba Mubumbyi Manasseh cyavuzwe haruguru.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

Kumenya niba ikirego cyo kugoboka mu rubanza cyatanzwe na Kantengwa Epiphanie cyujuje ibisabwa n'amategeko kugira ngo cyakirwe.

[7] Me Niyondora Nsengiyumva na Me Kuradusenge Jacques baburanira abazungura ba Mubumbyi Manasseh bavuga ko ikirego cyo kugoboka muri uru rubanza cyatanzwe na Kantengwa Epiphanie kitakwakirwa hashingiwe ku ngingo ya 2 y'Itegeko N° 21/2012 ryo

kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi[1] kubera ko adafite ububasha bwo kurugobokamo kubera ko atashakanye na Mubumbyi Manasseh mu buryo bwemewe n'amategeko, ko kandi batigeze babyarana umwana nk'uko Kantengwa Epiphanie yabyiyemereye mu mwanzuro yatanze muri uru Rukiko, ko ahubwo ari abazungura ba Mubumbyi Manasseh bafite ububasha bwo kurega Ikigo cy'Igihugu gishinzwe Iterambere umwenda wa sima kibafitiye.

[8] Ababuranira abazungura ba Mubumbyi Manasseh bavuga ko indi mpamvu ituma ikirego cya Kantengwa Epiphanie kitakwakirwa ari uko adafite inyungu yemewe n'amategeko[2] yatuma agoboka muri uru rubanza kubera ko inyungu ye itari yavuka bitewe n'uko igihe cyo kwishyuza icyo Kigo umwenda kibafitiye kitari cyagera kuko batari bawutsindira, ko ahubwo inyungu ye izavuka ubwo bazaba batangiye kwishyuza icyo Kigo umwenda bagitsindiye, ko rero Kantengwa Epiphanie azarega igihe abemeye kumuha 30% y'amafaranga aburanwa muri uru rubanza bazaba banze kuyamuha.

[9] Bongeraho ko indi mpamvu na none ituma ikirego cyo kugoboka muri uru rubanza cyatanzwe na Kantengwa Epiphanie kitakwakirwa, ari uko cyatanzwe mu buryo bunyuranyije n'ingingo ya 119 y'Itegeko N° 21/2012 ryavuzwe haruguru kubera ko icyo kirego kidafitanye isano n'ikirego cy'iremezo. Basobanura ko Kantengwa Epiphanie yagobotse muri uru rubanza asaba guhabwa ibihumbi makumyabiri by'amadorari y'amanyamerika (20.000U$) hiyongereyeho 30% y'amafaranga akomoka ku mwenda wa sima uburanwa muri uru rubanza, ibyo akabivuga ashingiye ku irage ryakozwe na Mubumbyi Manasseh kuwa 25/06/1996 no ku nyandiko-mvugo y'Inama y'Umuryango wa Mubumbyi Manasseh yo kuwa 24/02/2002, ariko ko icyo kirego cye kitakwakirwa kuko kidafitanye isano n'ikirego cy'iremezo cyatanzwe n'abazungura ba Mubumbyi Manasseh gisaba ko Ikigo cy'Igihugu gishinzwe Iterambere (RDB) cyabishyura amatoni ya sima angana na 1385 hiyongereyeho n'indishyi zayo nk'uko bigaragara mu kirego batanze cyavuzwe haruguru.

[10] Ababuranira abazungura ba Mubumbyi Manasseh bavuga na none ko ikirego cya Kantengwa Epiphanie kitakwakirwa kuko Urukiko rw'Ikirenga rudafite ububasha bwo kuburanisha mu rwego rwa mbere ikirego kirebana n'ishyirwa mu bikorwa ry'irage Kantengwa Epiphanie yahatangiye mu rwego rwa mbere hashingiwe ku ngingo ya 119 y'Itegeko N° 21/2012 ryavuzwe haruguru, ko ahubwo niba Kantengwa Epiphanie yarabonaga iryo rage rifite agaciro, yashoboraga kuriregera mu rundi Rukiko rubifitiye ububasha.

[11] Basobanura ko inyandiko y'umurage yakozwe na Mubumbyi Manasseh kuwa 25/06/1996 igaragaza ko yaraze Kantengwa Epiphanie imodoka yo mu bwoko bwa Benz ifite "plaque" 2628 n'ibihumbi makumyabiri by'amadorari y'amanyamerika (20.000 U$) nta gaciro ifite kubera ko iryo rage rihungabanya abazungura be mu mutungo wabo. Ikindi gituma iryo rage ritahabwa agaciro ari uko risa n'ubutumwa (mandat) Kantengwa Epiphanie yari yarahawe na Mubumbyi Manasseh bwo kumwishyuriza imyenda akanabimuhembera, ubwo butumwa bukaba bwararangiranye n'urupfu rw'uwabutanze hashingiwe ku ngingo ya 544 CCLIII.

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[1] Iyo ngingo iteganya ko "Ikirego nticyemerwa mu rukiko iyo urega adafite ububasha, inyungu n'ubushobozi bwo kurega".

[2] Ingingo ya 114 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "Kugira ngo ikirego cye cyakirwe, ugoboka agomba kugaragaza inyungu yemewe n'amategeko, itaziguye kandi ye bwite yaba ishingiye ku mutungo we cyangwa ku mutimanama".

[12] Mu gusoza, bavuga ko inyandiko-mvugo y'Inama y'Umuryango wa Mubumbyi Manasseh yo kuwa 24/02/2002 Kantengwa Epiphanie ashingiraho ukugoboka kwe muri uru rubanza asaba ko yahabwa 30% y'amafaranga akomoka ku mwenda wa sima uburanwa, itahabwa agaciro kuko itasinywe n'abagize Umuryango wa Mubumbyi Manasseh, ko ahubwo yasinywe na Mukankusi Monique afatanyije na Kantengwa Epiphanie batasezeranye na Mubumbyi Manasseh mu buryo bukurikije amategeko. Bongeraho ko kuba iyo nyandiko-mvugo yarasinywe n'abana batatu (3) Mubumbyi Manasseh yabyaranye na Mukankusi Monique bari muri uru rubanza aribo Nyirahabimana Thamari, Icyimanimpaye Esther na Twizerimana Ananias ataricyo cyayihesha agaciro kuko abandi bana ba Mubumbyi Manasseh batababahaye uburenganzira bwo kubahagararira mu isinywa ryayo.

[13] Me Ruberwa Silas uburanira Shema Adamu, Nsanzamahoro Abdounour na Uwitonze Jehady avuga ko Kantengwa Epiphanie adafite ububasha bwo kurugobokamo kuko atari umugore w'isezerano wa Mubumbyi Manasseh, ko kandi atari n'umuzungura we, ko ahubwo abana ba nyakwigendera Mubumbyi Manasseh aribo bafite uburenganzira bwo kurega Ikigo cyavuzwe haruguru umwenda wa sima basigiwe na Se.

[14] Avuga ko ikindi kigaragaza ko ikirego cya Kantengwa Epiphanie kitakwakirwa ari uko Urukiko rw'Ikirenga rutaburanisha mu rwego rwa mbere urubanza rurebana n'izungura. Ikindi n'uko ikirego cya Kantengwa Epiphanie kidafitanye isano n'ikirego cy'iremezo cyatanzwe n'abazungura ba Mubumbyi Manasseh kigamije gusaba ko Ikigo cyavuzwe haruguru cyabishyura umwenda wa sima kibafitiye wavuzwe haruguru.

[15] Mu gusoza, avuga ko Kantengwa Epiphanie atakwemererwa kugoboka muri uru rubanza ashingiye ku rubanza RS/Inconst/Pen 0003/10/CS, Gatera Johson yaburanye na Kabalisa Teddy rwaciwe n'Urukiko rw'Ikirenga kuwa 07/01/2011,rwemeje ko ababanaga nk'umugabo n'umugore mu buryo butemewe n'amategeko bagabana umutungo bashakanye mu gihe umwe muri bo yahisemo gushyingirwa mu buryo bukurikije amategeko kubera ko Kantengwa Epiphanie atatanze ikimenyetso kigaragaza ko hari umutungo yashakanye na nyakwigendera Mubumbyi Manasseh.

[16] Me Ndahimana Jean Bosco wunganira Kantengwa Epiphanie avuga ko ikirego cye kigamije kugoboka muri uru rubanza gikwiye kwakirwa kigasuzumwa hashingiwe ku ngingo ya 39, igika cya 2 y'Itegeko N° 59/2008 ryo kuwa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ariryo ryose rishingiye ku gitsina[3], ndetse no ku rubanza RS/Inconst/Pen 0003/10/CS rwavuzwe haruguru kubera ko afite ububasha n'inyungu byo kurugobokamo bitewe n'uko yabanye na Mubumbyi Manasseh nk'umugabo n'umugore igihe kirekire bashakana imitungo n'ubwo nta mwana babyaranye.

[17] Asobanura ko n'ubwo Kantengwa Epiphanie atarega ku giti cye Ikigo cy'Igihugu gishinzwe Iterambere acyishyuza umwenda ukomoka ku mwenda wa sima wavuzwe haruguru kubera ko atari umuzungura wa Mubumbyi Manasseh, nyamara yagobotse muri uru rubanza kugira ngo arengere inyungu ze zihwanye na 30% y'amafaranga azakomoka ku mwenda wishyuzwa muri uru rubanza, ko kandi inyungu ye yavutse kuwa 24/02/2002, igihe abagize Umuryango wa Mubumbyi Manasseh bemezaga ko bazafatanya kwishyuza imyenda bakazajya bamuha 30% y'amafaranga abonetse, ariko ko batamuhaye ibihumbi makumyabiri

[3]Iyo ngingo iteganya ko "mu gihe ababanaga batarashyingiranywe mu buryo bukurikije amategeko bashatse gushyingiranwa mu buryo bukurikije amategeko, ko iyo hari uwari ufite abagore benshi cyangwa abagabo benshi abanza kugabana ku buryo bungana na buri wese mu bo babanaga umutungo bari bafitanye cyangwa bashakanye".

by'amadorari y'amanyamerika (20.000U$) yarazwe n'umugabo we byishyuwe na Ndayambaje na Mvano.

[18] Akomeza avuga ko ikirego cya Kantengwa Epiphanie gikwiye kwakirwa kuko gifitanye isano n'ikirego cy'iremezo cyatanzwe n'abazungura ba Mubumbyi Manasseh ku birebana n'ibihumbi makumyabiri by'amadorari y'amanyamerika (20.000 U$) yavuzwe haruguru.

[19] Asobanura ko irage ryakozwe na Mubumbyi Manasseh kuwa 25/06/1996 rifite agaciro kubera ko igihe ryakorwaga mu mwaka wa 1996, nta tegeko umugabo we yishe kuko ritabagaho, ko ahubwo yubahirije umuco washoboraga gutuma amuraga umutungo we wose bitewe n'uko yumvaga barabanye neza kuko umuco utateganyaga ingano y'umutungo utaragombaga gutangwa (réserve successorale).

[20] Akomeza asobanura ko inyandiko-mvugo y'Inama y'Umuryango wa Mubumbyi Manasseh yo kuwa 24/02/2002 ifite agaciro kubera ko yasinywe n'abagize Umuryango we bose, ko kandi bemeje ko Kantengwa Epiphanie azahabwa 30% y'amafaranga azakomoka ku myenda bazishyurwa harimo n'umwenda wa sima uburanwa muri uru rubanza.

[21] Kantengwa Epiphanie asobanura ko iyo nyandiko-mvugo ifite agaciro kuko yayisinye afatanyije na Mukankusi Monique hamwe n'abana batatu Mubumbyi Manasseh yabyaranye na Mukankusi Monique aribo: Nyirahabimana Thamar, Twizerimana Ananias na Icyimanimpaye Esther hiyongereyeho n'abandi bo mu muryango we barimo mukuru wa nyakwigendera witwa Mudeyi Modeste, mubyara we n'abatangabuhamya batandukanye, naho kuba Shema Adamu, Nsanzamahoro Abdounour na Uwitonze Jehady bagobotse muri uru rubanza batarayisinyeho icyo gihe ari uko bari bataraba abana ba nyakwigendera Mubumbyi Manasseh.

[22] Mu gusoza, Me Ndahimana Jean Bosco wunganira Kantengwa Epiphanie avuga ko Nyirahabimana Thamar, Nsanzamahoro Abdounour na Uwitonze Jehady baburana uru rubanza batanenga iyo nyandiko-mvugo mu gihe yasinywe n'umubyeyi wabo witwa Mukankusi Monique hashingiwe ku ihame ry'uko ntawe ushobora gushingira ku ikosa rye ngo aribyaze inyungu (Nul ne peut se prévaloir de sa propre turpitude).

UKO URUKIKO RUBIBONA

[23] Ingingo ya 113 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "Kugoboka ku bushake ni igihe umuntu, ku bushake bwe, yinjiye mu rubanza atareze cyangwa atarezwemo, kugira ngo yemeze ko ikiburanwa ari icye cyangwa kugira ngo yizere ko uburenganzira budahungabanywa n'icyemezo cy'urukiko". Naho ingingo ya 114 y'iryo Tegeko igateganya ko "Kugira ngo ikirego cye cyakirwe, ugoboka agomba kugaragaza inyungu yemewe n'amategeko, itaziguye kandi ye bwite yaba ishingiye ku mutungo we cyangwa ku mutimanama". Na none ingingo ya 119 y'Itegeko rimaze kuvugwa, ikavuga ko "Ibirego by'ingoboka ku bushake cyangwa ku gahato mu manza z'abandi byakirwa gusa iyo: 1° bisobekeranye n'ikirego cy'iremezo; 2° urukiko rwaregewe ikirego cy'iremezo rufite ububasha bwo kuburanisha n'ibyo by'ingoboka".

[24] Naho Umuhanga mu mategeko witwa Albert FETTWEIS mu gitabo cye yise "Manuel de Procédure Civile", yasobanuye ko Uwagobotse mu rubanza rw'abandi agamije kugira ibyo

ahabwa (l'intervention agressive) agomba kuba yujuje ibi bikurikira: 1° agomba kuba afite uburenganzira bwihariye (un droit propre) budashingiye ku kirego cy'iremezo ku buryo ubwo burenganzira butahungabanywa n'ingaruka zishobora kuba ku kirego cy'iremezo. 2° agomba kuba afite ububasha n'inyungu bimuhesha uburenganzira bwo kugoboka muri urwo rubanza. 3° Ikirego cy'ingoboka kigomba kuba gisobekeranye n'ikirego cy'iremezo ku buryo bikwiye kuburanishirizwa hamwe kugira ngo hatazafatwa ibyemezo bivuguruzanya[4].

[25] Na none Umuhanga mu mategeko witwa Serge Guinchard mu gitabo cye cyitwa Droit et Pratique de la Procédure Civile[5], yasobanuye ko kugira ngo ikirego cy'ingoboka cyakirwe, ari uko uwagobotse mu rubanza agomba kuba afite ubushobozi, inyungu n'ububasha bimuhesha uburenganzira bwashoboraga gutuma afata icyemezo cyo kuregera Urukiko wenyine, ko kandi ikirego cye gishobora gukomeza kuburanishwa kabone n'ubwo ikirego cy'iremezo kitakiriho bitewe n'uko uwagitanze yakiretse cyangwa kitakiriwe.

[26] Ku birebana n'ububasha bwa Kantengwa Epiphanie bwo kurega Ikigo cy'Igihugu gishinzwe Iterambere (RDB asaba ko cyamuha amafaranga akomoka ku mwenda wa sima uburanwa muri uru rubanza, ibisobanuro by'abahanga mu mategeko byavuzwe haruguru, bigaragaza ko uwemerewe kugoboka mu rubanza rw'abandi ari ufite ububasha bwashoboraga gutuma arega ku giti cye uwo baburana mu kirego cy'ingoboka.

[27] Hakurikijwe ibyo bisobanuro, Urukiko rurasanga kuba Kantengwa Epiphanie atarashoboraga ku giti cye kurega Ikigo cy'Igihugu gishinzwe Iterambere (RDB) asaba ko cyamuha 30% y'amafaranga akomoka ku mwenda wa sima uburanwa muri uru rubanza hamwe n'ibihumbi makumyabiri by'amadorari y'amanyamerika (20.000U$) kubera ko atari umuzungura wa Mubumbyi Manasseh nk'uko nawe ubwe yabyiyemereye imbere y'uru Rukiko, bigaragara ko nta bubasha afite bwo kugoboka muri uru rubanza, ko ahubwo ubwo bubasha bufitwe n'abazungura ba Mubumbyi Manasseh kuko aribo bafite uburenganzira bwo gukurikirana umwenda wa sima uburanwa muri uru rubanza basigiwe n'umubyeyi wabo.

[28] Ku birebana no kumenya niba Kantengwa Epiphanie afite inyungu yatuma agoboka muri uru rubanza, hashingiwe ku ngingo ya 113 y'Itegeko N° 21/2012 ryavuzwe haruguru, ugoboka ku bushake mu rubanza rw'abandi ni urwinjiramo kugira ngo yizere ko icyemezo cy'urukiko kitazahungabanya uburenganzira bwe.

[29] Hakurikijwe ibyo bisobanuro, Urukiko rurasanga icyemezo kizafatwa muri uru rubanza ruri hagati y'Ikigo cy'Igihugu gishinzwe Iterambere (RDB) n'abazungura ba Mubumbyi Manasseh ku birebana n'umwenda wa sima uruburanwamo kitazahungabanya

[4] "*L'intervention agressive exige: 1° que l'intervenant réclame un droit propre, distinct de celui des parties en cause. Il prend position dans le débat de manière indépendante, sans lier son sort à celui d'une des parties originaires. L'intervention agressive est une demande autonome, distincte de la demande principale. 2° L'intervenant doit justifier des conditions de recevabilité de son action: qualité et intérêt. 3° L'intervention doit être unie à la demande principale par un lien de connexité (…). On considère qu'il interdépendance suffisante entre la demande principale et la demande incidente dès qu'il paraît souhatable d'éviter une contrariété de décisions*", par Albert FETTWEIS, "Manuel de Procédure Civile", 2 ème Edition, Bruxelles, 1987, p.411.

[5] "*L'intervenant doit remplir toutes les conditons de recevabilité de droit commun: capacité, intérêt et qualité. Celles-ci sont appréciées, sans excluve ni aménagement, dans les mêmes conditions que si l'intervenant avait soumis sa prétetion à un tribunal en prenant lui-même l'initiative. L'intervenant principal exerce un droit qui lui est propre, sa demande est autonome et doit survivre à la disparution de la demande principale. L'intervention principale n'est affectée ni par le désistement qui éteint la demande initiale, ni par l'irrecevabilité de celle-ci*" par SERGE GUINCHARD, Droit et Pratique de la Procédure Civile, 5 ème Edition, Dalloz, Paris, 2006-2007, p.554.

inyungu za Kantengwa Epiphanie bitewe n'uko ntacyo kizamurenganyaho, bigaragara rero ko nta nyungu afite yatuma agoboka muri uru rubanza.

[30] Urukiko rurasanga ikindi kigaragaza ko Kantengwa Epiphanie adafite inyungu yatuma agoboka muri uru rubanza ari uko adashobora kuzarutambamira rumaze gucibwa kubera ko hashingiwe ku ngingo ya 175 y'Itegeko N° 21/2012 ryavuzwe haruguru, utambamira urubanza rw'abandi ni utararubayemo umuburanyi ariko ashaka ko ruvanwaho kubera ko rumurenganya, nyamara akaba atariko bimeze kuri Kantengwa Epiphanie utari umuzungura wa Mubumbyi Manasseh nk'uko byasobanuwe haruguru, bigaragara ko ahubwo afite ikirego cyihariye (action autonome) ku birebana n'uko ashobora kuzarega igihe cyose abishakiye abagize Umuryango wa Mubumbyi Manasseh ashingiye ku irage ryakozwe na Mubumbyi Manasseh kuwa 25/06/1996 no ku nyandiko-mvugo yo kuwa 24/02/2002 ashingiraho asaba kugoboka muri uru rubanza.

[31] Ku bijyanye no kumenya niba hari isano iri hagati y'ikirego cy'ingoboka cya Kantengwa Epiphanie n'ikirego cy'iremezo cyatanzwe n'abazungura ba Mubumbyi Manasseh, ibiteganywa n'ingingo ya 119 y'Itegeko ryavuzwe haruguru bifatiwe hamwe n'ibisobanuro by'abahanga mu mategeko byavuzwe haruguru, bigaragaza ko ibyo birego byombi bigomba kuba bisobekeranye ku buryo bikwiye kuburanishirizwa hamwe kugira ngo hatazabaho ibyemezo bivuguruzanya.

[32] Ku birebana n'uru rubanza, dosiye igaragaza ko abazungura ba Mubumbyi Manasseh bareze Ikigo cy'Igihugu gishinzwe Iterambere (RDB) basaba ko cyabishyura toni za sima ingana na 1385 cyangwa amafaranga ahwanye nazo Se Mubumbyi Manasseh yaguze muri CIMERWA, nyamara akaba yarapfuye atari yayihabwa nk'uko bigaragazwa n'ibimenyetso biri muri dosiye birimo "Bordereau de versement" yo kuwa 07/07/1994.

[33] Nyamara dosiye igaragaza ko Kantengwa Epiphanie yagobotse muri uru rubanza RADA 0050/12/CS asaba ko icyo Kigo cyamuha 30% y'amafaranga bazatsindira muri uru rubanza akomoka ku mwenda wa sima wavuzwe haruguru hiyongereyeho ibihumbi makumyabiri by'amadorari y'amanyamerika (20.000 U$), ibyo akabisaba ashingiye ku nyandiko y'umurage yakozwe na Mubumbyi Manasseh kuwa 25/06/1996 no ku nyandiko-mvugo y'Inama y'Umuryango wa Mubumbyi Manasseh yo kuwa 24/02/2002 ngo bimwemerera kuzahabwa ayo mafaranga.

[34] Hakurikijwe ibyo bisobanuro, Urukiko rurasanga ikirego cyo kugoboka muri uru rubanza cyatanzwe na Kantengwa Epiphanie kitagomba kwakirwa kuko kitujuje ibisabwa n'ingingo ya 119(1°) y'Itegeko ryavuzwe haruguru kubera ko ku ruhande rumwe kidasobekeranye n'ikirego cy'iremezo, ko ahubwo gihura nacyo (se confond avec la demande initiale) ku birebana n'uko bose basaba ko Ikigo cy'Igihugu gishinzwe Iterambere (RDB) cyabaha amafaranga akomoka ku mwenda wa sima wavuzwe haruguru, ku rundi ruhande kikaba ari ikirego cyigenga ku bijyanye n'ibimenyetso bashingiraho basaba ayo mafaranga kuko abazungura ba Mubumbyi Manasseh bayasaba bashingiye ku masezerano y'ubugure, naho Kantengwa Epiphanie akaba ayasaba ahereye ku irage ryakozwe na Mubumbyi Manasseh kuwa 25/06/1996 no ku nyandiko-mvugo y'Inama y'Umuryango wa Mubumbyi Manasseh yo kuwa 24/02/2002.

[35] Hashingiwe ku mategeko n'ibisobanuro by'abahanga mu mategeko byavuzwe haruguru, Urukiko rurasanga ikirego cyo kugoboka muri uru rubanza cyatanzwe na Kantengwa Epiphanie kitagomba kwakirwa kuko kitujuje ibisabwa n'amategeko nk'uko byasobanuwe haruguru.

III. ICYEMEZO CY'URUKIKO

[36] Rwemeje ko inzitizi yatanzwe n'abazungura ba Mubumbyi Manasseh igamije kutakira ukugoboka muri uru rubanza kwakozwe na Kantengwa Epiphanie ifite ishingiro;

[37] Rwemeje kutakira ikirego cyo kugoboka muri uru rubanza cyatanzwe na Kantengwa Epiphanie;

[38] Rwemeje ko iburanisha ry'urubanza hagati y'Ikigo cy'Igihugu gishinzwe Iterambere (RDB) n'abazungura ba Mubumbyi Manasseh rizaba kuwa 27/01/2015.