SORAS AG Ltd v. UMUHOZA N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RCAA0049/14/CS (Nyirinkwaya, P.J., Mukanyundo na Rugabirwa, J.) 25 Ugushyingo 2016]

Indishyi – Igenwa ry'indishyi zikomoka ku mpanuka zitewe n'ibinyabiziga – Indishyi mbangamirabukungu – Abemerewe guhabwa indishyi mbangamirabukungu – Indishyi mbangamirabukungu zihabwa abaribatunzwe na nyakwigendera bateganywa n'amategeko ndetse n'abandiyaratunzeiyo babigaragarije ibimenyetso – Itegeko N°41/2001 ryo ku wa 19/09/2001, ryerekeye itangwa ry'indishyi ku bahohotewe biturutse ku mpanuka zo ku mubiri zitewe n'ibinyabiziga, ingingo ya 9(1).

Indishyi – Indishyi z'ibangamira ry'umubano – Ibarwa ry'indishyi z'ibangamira ry'umubano – Umushahara muto ntaregwa – Indishyi z'ibangamira ku muco zibarwa hashingiwe ku mushahara muto ntaregwa wemewe n'amategeko – Iteka rya Perezida N°31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, ingingo ya 23.

Incamake y'ikibazo: Nyuma y'urupfu rwa Muhumuza wahitanywe n'impanuka ya moto yari yagonganye n'imodoka byombi bifite ubwishingizi muri SORAS AG Ltd.Umuhoza, Izabayo na Niyoyita bareze SORAS AG Ltd mu Rukiko Rwisumbuye rwa Nyarugenge basaba kuyitegeka ko yabaha indishyi mbonezamusaruro, iz'ibangamira ry'umubano, amafaranga baguze ibyemezo binyuranye, ayo batanzeho ingwate y'amagarama n'igihembo cya Avoka. SORAS AG Ltd yiregura ivuga ko batahabwa ibyo basaba kuko muri bo nta n'umwe nyakwigendera yari atunze.

Urukiko Rwisumbuye rwemeje ko nyakwigendera ariwe warutunze abarega hashingiwe kunyandiko yanditswe n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Gitega maze rutegeka SORAS guha abarega indishyi mbonezamusaruro, iz'ibangamira ry'umubano hamwe n'igihembo cya Avoka ndetse ikanabasubiza amafaranga batanzeho ingwate y'amagarama.

SORAS AG Ltd yajuririye Urukiko Rukuru ivuga ko abarega bahawe indishyi mbangamirabukungu batazikwiye kuberako icyemezo batanze kigaragaza ko bari batunzwe na nyakwigendera gikemagwa kandi ko igipimo cy'ibitsa cyari gikwiye kubarirwaho ari 8% gikoreshwa na Banki Nkuru y'u Rwanda aho kuba 4% akoreshwa n'amabanki asanzwe. Ikomeza ivuga ko indishyi z'ibangamira ry'umubano zitari gushingirwa ku mushahara nyakwigendera yahembwaga ku mwaka kuko itegeko rivuga umushahara muto ntarengwa wemewe n'amategeko.

Umuhoza nabagenzi be batanze ubujurire bwuririye ku bundi bavuga ko indishyi z'ibangamira ry'umubano zabazwe nabi kuko umucamanza yibagiwe gukuba imibare abonye na 12. Urukiko rwemeje ko ubujurire bwa SORAS AG Ltd nta shingiro bufite naho ubwatanzwe na Umuhoza n'abagenzi be bufite ishingiro.

SORAS AG Ltd yajuririye urwo rubanza mu Rukiko rw'ikirenga ivuga ko Urukiko rwirengagije impamvu yajuririrwaga maze rugenera abaregwa indishyi mbangamirabukungu kandi batazikwiye kuko batari batunzwe n'uwahohotewe; ikindi rwabaze indishyi ku gipimo kitari cyo kuko rwazibariye ku gipimo cy'ibitsa kingana na 8% mu gihe urubanza rucibwa cyari kuri 7,960%, ndetse rugenera abaregwa indishyi z'ibangamira ry'umubano rushingiye ku mushahara nyakwigendera yahembwaga ku mwaka kandi zibarirwa ku mushahara

w'umwaka muto ntarengwa wemewe n'amategeko ungana 2,500Frw wemejwe n'Urukiko rw'ikirenga.

Umuhoza n'abavandimwe be bireguye bavuga ko iyi ngingo y'ubujurire nta shingiro ifite kuko nta kimenyetso na kimwe SORAS AG Ltd itanga gihamya ko bataribatunzwe na nyakwigendera.

Incamake y'icyemezo: 1. Indishyi mbangamirabukungu zihabwa abaribatunzwe na nyakwigendera ariko rero abadafite uburenganzira bwo kwishyuza ibibatunga ntibabuzwa gusaba ibibatunga iyo bagaragaje ikimenyetso ko bari batunzwe na nyakwigendera. Bityo rero icyemezo cyatanzwe n'ubuyobozi bw'umurenge wa Gitega nta gaciro cyahabwa kuko atari kimenyetso gihamya ko Umuhoza n'abavandimwebe bari batunzwe mu buryo buhoraho na nyakwigendera cyane ko kitanagaragaza impamvu idasazwe yatumaga abatunga kandi bose bujuje imyaka y'ubukure.

2. Ibijyanye n'igipimo cy'ibitsa cyashingirwaho mu kubara indishyi mbangamirabukungu ntibyasuzumwa kuko izo ndishyi zitagenwe muri uru rubanza.

3. Indishyi z'ibangamira ry'umubanozibarwa hashingiwe ku mushahara muto ntarengwa wemewe n'amategeko ariko bitewe n'uko ubuzima bugenda burushaho guhendakubera ko ibiciro by'ibintu nkenerwa bya ngombwa bidahwema kuzamuka, ndetse n'imishahara n'ibihembo bikagenda byongerwa kugira ngo abahaha bashobore guhangana n'izamuka ry'ibyo biciro; umushahara muto ntarengwa (SMIG) nawo ukaba ukwiye kuzamuka ugashyirwa ku mafaranga 3.000Frw akaba kandi ari nawo washingirwaho mu kugena izo indishyi abavandimwe banyakwigendera bagomba guhabwa.

4. Igihe ababuranyi bose bafite ibyo batsindiye ndetse n'ibyo batsindirwa indishyi z'ikurikiranarubanza n'igihembo cy'avoka ntibigenerwa.

Ubujurire bufite ishingiro kuri bimwe.
Ingwate y'amagarama yatanzwe ihwanye nibyakozwe mu rubanza.

Amategeko yashingiweho:

Itegeko N°41/2001 ryo ku wa 19/09/2001, ryerekeye itangwa ry'indishyi ku bahohotewe biturutse ku mpanuka zo ku mubiri zitewe n'ibinyabiziga, ingingo ya 9(1).

Itegeko Nº 42/1988 ryo kuwa 27 Ukwakira 1988 rishyiraho Interuro y'ibanze n'igitabo cya mbere cy'Urwunge rw'amategeko mbonezamubano, ingingo ya 198, iya 199 n'iya 200.

Iteka rya Perezida N°31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, ingingo ya 23.

Nta manza zifashishijwe.

Inyandiko z'abahanga zifashishijwe:

Laëtitia Stasi, Droit Civil: Personnes, Incapacités, Famille; Edition Paradigme, Orléans 2007, pp.259-260.

Jean Carbonnier, Introduction, les personnes, la famille, l'enfant, le couple, 1ère édition, "Quadrige", Presses Universitaires de France, 2004, p.799.

Yvonne Lambert-Faivre, Droit du dommage corporel, système d'indemnisation, 3ème édition, 1996, Dalloz, p.267.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka ku rupfu rw'uwitwa Muhumuza Jean Pierre wahitanywe n'impanuka ya moto yagonganye n'imodoka, byombi bifite ubwishingizi muri SORAS AG Ltd, maze Umuhoza Pacifique, Izabayo Sylvie na Niyoyita Jacques, abavandimwe ba nyakwigendera Muhumuza Jean Pierre, baregera Urukiko Rwisumbuye rwa Nyarugenge, basaba gutegeka SORAS AG Ltd kubaha indishyi mbonezamusaruro, iz'ibangamirwa ku muco, amafaranga baguze *attestations* zinyuranye, ayo batanzeho ingwate y'amagarama n'igihembo cya Avoka, indishyi zose basaba zingana na 76.754.048Frw. SORAS AG Ltd yireguye ivuga ko batahabwa ibyo basaba kuko muri bo nta n'umwe nyakwigendera yari atunze.

[2] Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza RC0656/13/TGI/NYGE ku wa 07/02/2014, rwemeza ko nyakwigendera ariwe wari utunze abarega hashingiwe ku nyandiko yo ku wa 30/07/2013, yanditswe n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Gitega, naho ku birebana n'indishyi mbonezamusaruro, ruvuga ko zibarwa hashingiwe ko nyakwigendera yinjizaga 499.289Frw ku kwezi kandi akaba yarapfuye asigaje imyaka 38. Bityo, rutegeka SORAS guha abarega, indishyi zose hamwe zingana na 58.726.799Frw zikubiyemo 57.677.866Frw y'indishyi mbonezamusaruro, 748.933Frw y'indishyi z'ibangamira ku muco na 300.000Frw y'igihembo cya Avoka, rutegeka na none SORAS AG Ltd kubasubiza 12.000Frw batanzeho ingwate y'amagarama.

[3] SORAS AG Ltd yajuririye urwo rubanza mu Rukiko Rukuru, ivuga ko abarega bahawe indishyi mbangamirabukungu batazikwiriye kubera ko icyemezo cy'Umunyamabanga Nshingwabikorwa w'Umurenge wa Gitega kivuga ko nyakwigendera yari abatunze gikemangwa, kandi ko *taux de placement* yari ikwiriye kubarirwa kuri 8% kuko aricyo gipimo gikoreshwa na Banki Nkuru y'u Rwanda, aho kuba 4% akoreshwa n'amabanki asanzwe. Ivuga kandi ko *préjudice moral* itari gushingirwa kuri *salaire net annuel* ya nyakwigendera kuko itegeko rivuga umushahara muto ntarengwa wemewe n'amategeko. Umuhoza Pacifique, Izabayo Sylvie na Niyoyita Jacques nabo batanze ubujurire bwuririye ku bundi bavuga ko indishyi z'ibangamira ku muco zabazwe nabi kuko umucamanza yibagiwe gukuba imibare abonye na 12.

[4] Urwo rukiko rwaciye urubanza RCA0089/14/HC/KIG ku wa 28/11/2014, rwemeza ko ubujurire bwa SORAS AG Ltd nta shingiro bufite, rusobanura ko SORAS AG Ltd uretse amagambo gusa y'uko nyakwigendera atariwe wari utunze abayireze, ko nta kimenyetso yabashije kugaragariza Urukiko gihinyuza icyemezo cy'Ubuyobozi bw'Umurenge cyashyikirijwe Urukiko, kandi ko n'ibindi yajuririye nabyo nta bimenyetso ibitangira. Ku birebana na *taux de placement*, SORAS AG Ltd ivuga ko yari ikwiriye kubarirwa kuri 8% igipimo gikoreshwa na BNR aho gushingira kuri 4% ya za Banki z'ubucuruzi.

[5] Urukiko rwasanze SORAS AG Ltd usibye kubivuga gusa itagaragaza *taux* yagenderwagaho na BNR igihe ubwishyu bwagombaga gukorwa, n'urubanza rw'icyitegererezo yatanze, impanuka ruvuga ikaba itarabereye rimwe n'iyo muri uru rubanza, kandi Iteka rya Perezida n° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, rivuga ko igipimo gishingirwaho ari ikingana nibura n'igipimo cy'inyungu y'ibitsa gikoreshwa n'amabanki, bivuze amabanki asanzwe kuko ariyo menshi aho kuganisha kuri BNR, iba ari

imwe rukumbi. Ruvuga kandi ko ku birebana na *préjudice moral*, Urukiko Rwisumbuye rutari gushingira ku mushahara muto ntarengwa “SMIG” mu gihe umushahara nyakwigendera yakoreraga wari uzwi neza. Rwemeje kandi ko ubujurire bwuririye ku bundi bwatanzwe n’abaregwa bavuga ko imibare yakozwe nabi bufite ishingiro, kuko habayeho kwibagirwa gukuba n’umubare 12. Urwo rukiko rwategetse SORAS AG Ltd guha Umuhoza Pacifique, Izabayo Sylvie na Niyoyita Jacques indishyi zose hamwe zingana na 67.465.068Frw, akubiyemo 8.987.202Frw y’indishyi zibangamirwa ku muco, 57.677.866Frw y’indishyi z’ibangamirabukungu na 500.000Frw y’ikurikirana rubanza n’igihembo cya Avoka, yo ku rwego rw’ubujurire.

[6] SORAS AG Ltd yajuririye urwo rubanza mu Rukiko rw’Ikirenga, ivuga ko Urukiko rwirengagije impamvu yajuririrwaga, rugenera abaregwa indishyi mbangamirabukungu kandi batazikwiye kuko batari batunzwe n’uwahohotewe; ko kandi Urukiko rwabaze indishyi ku gipimo kitari cyo kuko rwazibariye ku gipimo cy’ibitsa kingana na 8% (*taux de placement*) mu gihe urubanza rucibwa cyari kuri 7,960%, ndetse rugenera abaregwa indishyi z’ibangamirwa ku muco rushingiye ku mushahara nyakwigendera yahembwaga ku mwaka kandi zibarirwa ku mushahara w’umwaka muto ntarengwa wemewe n’amategeko (*salaire annuel minimum interprofessionnel garanti*).

[7] Urubanza rwaburanishijwe mu ruhame, ku wa 04/10/2016, SORAS AG Ltd ihagarariwe na Me Mukanzigiye Donatille, naho Umuhoza Pacifique, Izabayo Sylvie na Niyoyita Jacques baburanirwa na Me Nzayisenga Charles.

II. IBIBAZO BIGIZE URUBANZA N’ISESENGURA RYABYO

a. Kumenya niba abavandimwe ba nyakwigwendera Muhumuza Jean Pierre bafite uburenganzira ku ndishyi z’ibangamirabukungu baregeye.

[8] Me Mukanzigiye Donatille uburanira SORAS AG Ltd avuga ko Urukiko rwageneye abaregwa indishyi z’ibangamirabukungu kandi batazikwiye kuko izo ndishyi zihabwa abafite uburenganzira ku buryo bwumvikana ko bari batunzwe n’uwahohotewe nk’uko biteganywa n’ingingo ya 22 y’Iteka rya Perezida N°31/ ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw’umubiri buturutse ku mpanuka zitewe n’ibinyabiziga. Avuga ko Urukiko rwageneye izo ndishyi abaregwa rushingiye ku cyemezo cy’Umunyamabanga Nshingwabikorwa w’Umurenge wa Gitega, kivuga ko bari batunzwe na nyakwigendera kandi ataricyo cyagombaga gushingirwaho kuko abarega bose bari bafite imyaka y’ubukure harimo n’uwakoraga kandi batanabarizwa mu Murenge umwe na nyakwigendera Muhumuza Jean Pierre, ku buryo Urukiko ntaho rwari guhera ruhamya ko ariwe wari ubatunze, kuko bitumvikana ukuntu umuntu utuye mu Gitega yatunga utuye Rwezamenyo cyangwa utuye i Nyamirambo. Asobanura ko bene izi ndishyi zihabwa umugore n’abana ba nyakwigendera, ariko ko nyakwigendera Muhumuza Jean Pierre ntabo yasize. Asobanura ko *la prise en charge* batayikoreye ubushakashatsi, ariko ko ubundi umuntu atunga umuntu bari kumwe mu rugo babana kandi bigaragara ko ariwe ushinzwe urwo rugo *(responsable*).

[9] Me Nzayisenga Charles uburanira Umuhoza Pacifique, Izabayo Sylvie na Niyoyita Jacques, avuga ko iyi mpamvu y’ubujurire nta shingiro ifite kuko nta kimenyetso na kimwe gihamya ko nyakwigendera Muhumuza Jean Pierre atariwe wari utunze abavandimwe be, ko nta hantu na hamwe ingingo ya 22 y’Iteka rya Perezida ryavuzwe haruguru, SORAS AG Ltd ishingiraho ubujurire bwayo, iteganya ko abahabwa indishyi bagomba kuba ari abana ba nyakwigendera cyangwa umugore we, kandi ko muri dosiye harimo icyemezo gihamya ko

nyakwigendera Muhumuza Jean Pierre ariwe wari utunze bariya bavandimwe be. Asobanura ko kuba utunzwe (*pris en charge)* n'undi muntu bitavuze ko byanze bikunze ugomba kubana nawe mu nzu imwe cyangwa ko aba akugaburira.

UKO URUKIKO RUBIBONA

[10] Ingingo ya 9, igika cya mbere, y'Itegeko N°41/2001 ryo ku wa 19/09/2001, ryerekeye itangwa ry'indishyi ku bahohotewe biturutse ku mpanuka zo ku mubiri zitewe n'ibinyabiziga, iteganya ko mbere yo gutangira kuregera indishyi mu nkiko, uwangirijwe cyangwa abamuhagarariye bemewe n'amategeko, cyangwa iyo yapfuye, abafite uburenganzira ku bintu bye, bishyuza indishyi uwishingiye uwateje impanuka, cyangwa byaba ngombwa Ikigega cy'ingoboka ku binyabiziga bigenzwa na moteri bigendera ku butaka, binyuze mu bwumvikane, bakamwereka inyandiko zose zemeza ishingiro ry'ibyo basaba.

[11] Ku birebana n'indishyi mbangamirabukungu, isesengura ry'ingingo y'itegeko imaze kuvugwa haruguru, ryumvikanisha ko, abafite uburenganzira bwo gusaba izo ndishyi ari abari batunzwe n'uwahohotewe wapfuye.

[12] Ku byerekeranye n'igisobanuro cy'amagambo "gutunga umuntu", ingingo ya 198 CCL.I iteganya ko "umurimo nshinganwa wo gutunga umuntu ni uwo itegeko ritegeka umuntu gutanga ibitunga umubiri k'uwundi muntu ubikeneye". Ingingo ya 199, yo ikavuga ko ibitunga umuntu bitangwa mu mafaranga cyangwa mu bintu. Ingingo ya 200 yo, igateganya ko abashyingiranywe bafite umurimo nshinganwa wo guhana ibibatunga. Ababyeyi nabo bafite umurimo nshinganwa wo guha abana babo ibibatunga n'abana bikaba uko. Iyo ngingo iteganya kandi ko abana bagomba gufasha abo bakomokaho igihe batishoboye. Abo nabo bagomba gufasha abana.

[13] Mu miburanire yayo, SORAS ivuga ko abavandimwe ba nyakwigendera batagomba kugenerwa indishyi mbangamirabukungu kubera ko atari abatunze, bityo ko icyangombwa cyatanzwe n'Ubuyobozi bw'Umurenge wa Gitega kivuga ko yari abatunze kidakwiye guhabwa agaciro.

[14] Mu ngingo ya 200 CCL.I yavuzwe haruguru, nta hagaragara ko umuntu afite umurimo nshinganwa wo gutunga abavandimwe be (*ses frères et sœurs*). Umuhanga mu mategeko Laëtitia STASI nawe avuga ko inshingano yo gutanga ibitunga umuntu iba ireba gusa abafitanye amasano ataziguye kandi kugeza ku gisanira cya kabiri no kurengaho, ni ukuvuga hagati y'abuzukuru n'aba nyirakuruza na sekuruza. Akomeza avuga ko hagati y'abashyingiranywe, ubushyingire butuma havuka inshingano hagati y'imiryamgo yabo ariko ko inshingano yo gutanga ibitunga umuntu ibaho igihe gusa ubushyingire bukiriho, asoza avuga ko nta murimo nshinganwa wo gutunga umuntu uba hagati y'abavukana, ni ukuvuga hagati ya musaza na mushiki we[1].

[15] Nanone, umuhanga mu mategeko Jean Carbonnier mu gitabo cye *Droit Civil, les personnes, la famille, l'enfant et le couple*, nawe ashimangira ibyavuzwe na mugenzi we Laëtitia STASI umaze kuvugwa haruguru, ko nta nshingano yo guha ibitunga umuntu abo

[1] Laëtitia Stasi, Droit Civil: Personnes, Incapacités, Famille; Edition Paradigme, Orléans 2007, pp.259-260. "On ne trouve donc d'obligation alimentaire stricto sensu qu'en ligne directe et dans les relations entre parents du deuxième degré et au-delà (par exemple dans les rapports petits-enfants et grands-parents). Entre alliés, le mariage fait naître des relations entre les deux familles mais l'obligation n'existe que tant que dure le mariage. La liste des obligés est trèsétroite : l'obligation alimentaire ne joue pas entre frère et sœur".

muvukana, aho avuga tugenekereje ko amasano yose aba hagati y'abantu adatanga uburenganzira ku bitunga umuntu, ko ababigiraho uburenganzira ari abateganywa n'amategeko, agakomeza yerekana ko abafitanye inshingano yo guhana ibitunga umubiri ari abafite amasano ataziguye ku bisanira byose, ariko ko iyi nshingano itaba hagati y'abavukana[2].

[16] Ku birebana n'uru rubanza, Umuhoza Pacifique, Izabayo Sylvie na Niyoyita Jacques, bavuga ko indishyi mbangamirabukungu basaba, bazishingira ku byago bagize byo kubura ibibatunga (préjudice matériel) bahabwaga n'umuvandimwe wabo Muhumuza Jean Pierre wazize impanuka yo mu muhanda kandi ariwe wari ubatunze, bakaba barashyikirije inkiko harimo n'Urukiko rw'Ikirenga icyemezo cyatanzwe ku wa 30/07/2013, na Nkurunziza Idrissa wari Umunyamabanga Nshingwabikorwa w'Umurenge wa Gitega, kivuga ko nyakwigendera yari atunze abavandimwe be.

[17] Ubwo impanuka yo mu muhanda yabaga ku wa 19/03/2011, igahitana nyakwigendera Muhumuza Jean Pierre, Umuhoza Pacifique yari afite imyaka 30, Izabayo Sylvie afite imyaka 26, naho Niyoyita Jacques afite imyaka 22, bivuga ko bose bari bujuje imyaka y'ubukure.

[18] N'ubwo amategeko ateganya mu buryo butaziguye (expressément) abafite inshingano yo gutunga abandi, ni ukuvuga abafite umwenda wo gutanga ibitunga umuntu (débiteurs alimentaires) ndetse n'ababifiteho uburenganzira (créanciers alimentaires), umuhanga Yvonne Lambert-Faivre mu gitabo cye, Droit du dommage corporel, ku gice kirebana no kwishyura indishyi zirebana n'ibyago bituruka ku rupfu rwatewe n'impanuka yo mu muhanda, avuga ko n'abadafite uburenganzira bwo kwishyuza ibitunga umubiri batazitirwa gusaba ibibatunga iyo bagaragaje ikimenyetso ko bari batunzwe na nyakwigendera koko: atanga urugero nk'umuvandimwe w'ikimuga, umwana wabyaye mu batisimu cyangwa imfubyi[3].

[19] Ku birebana n'uru rubanza, Urukiko rurasanga hari ikibazo cy'ibimenyetso kuko icyemezocyatanzwe n'ubuyobozi bw'Umurenge wa Gitega atari cyo kimenyetso gihamya ko abaregwa bahabwaga mu buryo buhoraho (regulièrement) ibibatunga na nyakwigendera Muhumuza Jean Pierre, ko kitanagaragaza impamvu idasanzwe yatumaga abatunga kandi bose bujujeimyaka y'ubukure. Hagombaga rero kugaragazwa ibimenyetso gifatika (urugero nk'impapuro zo kwa muganga zerekana niba bafite ubumuga, bordereau za banki yaheragaho amafaranga, message za mobile money se yabandikiye abohereza amafaranga n'ibindi…) kandi byaboneka Urukiko rwari gushingiraho rusuzuma niba indishyi mbangamirabukungu basaba bazikwiye kuko hashingiwe ku mategeko n'inyandiko z'abahanga zasobanuwe haruguru, nta nshingano iteganywa n'itegeko Muhumuza Jean Pierre yari afite yo gutunga abavandimwe be, ko naho yaba yarabikoraga, byafatwa nk'ubufatanye busanzwe buba hagati y'abagize umuryango (entraide familiale).

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[2]Jean Carbonnier, Introduction, les personnes, la famille, l'enfant, le couple, 1ère édition, "Quadrige", Presses Universitaires de France, 2004, p.799. "Ce ne sont pas tous les rapports de famille humainement reconnaissables qui donnent lieu à l'obligation alimentaire, mais seulement ceux auxquels la loi donnent lieu à l'obligationalimentaire, mais seulement ceux auxquels la loi l'attache expressément. Entre parents, le rapport alimentaire existe en ligne directe à tous les degrés (père et mère et enfants-grands-parents et petits enfants, etc…), jamais en ligne collatérale".

[3]Yvonne Lambert-Faivre, Droit du dommage corporel, système d'indemnisation, 3ème édition, 1996, Dalloz, p.267. "Ainsi ceux qui ne peuvent invoquer une créance alimentaire ne sont pas écartés s'ils peuvent cependant établir qu'ils étaient en fait régulièrement entretenus par le défunt".

[20] Hashingiwe ku bisobanuro byatanzwe haruguru, kuba iriya nyandiko yo ku wa 30/07/2013 yatanzwe n'Ubuyobozi bw'Umurenge wa Gitega idaherekejwe n'ibimenyetso bigizwe n'inyandiko zose zemeza ishingiro ry'ibyo abaregwabasaba zivugwa mu ngingo ya 9 y'Itegeko N°41/2001 ryo ku wa 19/09/2001 ryavuzwe haruguru, Urukiko rusanga nta burenganzira ku ndishyi mbangamirabukungu zatangwa muri uru rubanza, bityo ubujurire bwa SORAS AG Ltd bukaba bufite ishingiro kuri iyi ngingo.

[21] Ku birebana na *taux de placement* ya 4% Urukiko Rukuru rwakoresheje mu kubara indishyi mbangamirabukungu ruvuga ko ariyo ikoreshwa n'amabanki, uhagarariye SORAS AG Ltd akaba yari yayinenze avuga ko hakoreshwa 8% itangwa na BNR kuko ari impuzandengo y'ibipimo bikoreshwa n'amabanki akorera mu gihugu kandi BNR ikaba ariyo banki ikuriye izindi, Urukiko rurasanga rutasuzuma iyi ngingo y'ubujurire kuko kiriya gipimo gikoreshwa mu ibara ry'indishyi mbangamirabukungu, none uru rukiko rukaba rwemeje haruguru ko ntazo abavandimwe ba nyakwigengera Muhumuza Jean Pierre bakwiye kuko nta burenganzira babiherwa n'amategeko.

b. Kumenya umushahara washingirwaho mu kubara indishyi z'ibangamirwa ku muco kimwe n'izindi ndishyi zagenwa.

[22] Me Mukanzigiye Donatille uburanira SORAS AG Ltd avuga ko Urukiko Rukuru rwahaye abaregwa indishyi z'ibangamirwa ku muco rushingiye ku mushahara nyakwigendera yahembwaga ku mwaka (*revenus nets annuels*) runyuranyije n'ibiteganywa n'ingingo ya 23 y'Iteka rya Perezida ryavuzwe haruguru, rivuga ko izi ndishyi zibarirwa ku mushahara w'umwaka muto ntarengwa wemewe n'amategeko (*salaire minimum interprofessionnel garanti-SMIG*), ko ariko kuba nta tegeko rishyiraho SMIG ryari ryashyirwaho mu Rwanda,mu manza zagiye zicibwa n'inkiko harimo n'Urukiko rw'Ikirenga, inkiko zarafashe ko umushahara muto waba 2.500Frw ku munsi zikurikije urwego rw'imibereho (*niveau de vie*) abaturage bagezeho muri rusange muri icyo gihe, urwego imishahara n'ibihembo byari bigezeho ndetse n'uko ibiciro byari byifashe ku isoko.

[23] Avuga ko indishyi zagombaga kubarwa mu buryo bukurikira: 0,5 x umushahara muto ntarengwa wemewe n'amategeko (*SMIG*), ni ukuvuga 0,5x 2500Frw x 30 x 12 x 3 = 1.350.000Frw, aho kuba 8.987.202Frw.

[24] Asobanura ko hari imanza Urukiko rw'Ikirenga rwaciye zirimo, urubanza RCAA0003/11/CS rwaciwe ku wa 12/10/2012, mu gika cya 29, n'urubanza RCAA0212/07/CS rwaciwe ku wa 09/04/2009 mu gika cya 28, ko aho hose hakoreshwaga SMIG ya 2.500Frw, bivuze ko bitari bikwiye gushingira ku mushahara umuntu atahana ku mwaka.

[25] Me Nzayisenga Charles uburanira Umuhoza Pacifique, Izabayo Sylvie na Niyoyita Jacques, avuga ko nta kimenyetso na kimwe SORAS AG Ltd yagaragarije inkiko zo hasi kivuguruza ibyo zashingiyeho, ko kandi nta n'ikimenyetso yatanze gituma mu kubara indishyi hashingirwa ku mushahara mpuzandengo muto wemewe n'amategeko (SMIG). Ku birebana na *jurisprudences* zatanzwe na SORAS AG Ltd, avuga ko Urukiko Rukuru rwabisobanuye neza ko nyakwigendera yari afite umushahara w'umwaka uzwi hakaba hatashingirwa ku mushahara muto w'umwaka ntarengwa, ko rero izo *jurisprudences* zitakoreshwa muri uru rubanza kuko *SMIG* ya 2009 itahura n'iya 2016, cyane ko mu rubanza rwemeza SMIG ya 2.500Frw, Urukiko rwavuze ko ishingiye ku buryo ubuzima buhagaze, hatirengagijwe ko nta tegeko rishyiraho umushahara muto ntarengwa w'umwaka mu Rwanda.

UKO URUKIKO RUBIBONA

[26] Ku birebana n'umushahara uherwaho mu kubara indishyi z'ibangamira ku muco, ingingo ya 23, agace ka gatatu, y'Iteka rya Perezida N°31/01 ryo ku wa 25/08/2003, ryavuzwe haruguru, iteganya ko: "Amafaranga atangirwa ku ibangamira ry'umubano igihe umuntu apfuye, agomba guhabwa gusa abantu bavugwa hepfo kandi hakurikijwe ibiteganywa n'iri Teka:

Uwo bashakanye; 1 x umushahara w'umwaka muto ntarengwa wemewe n'amategeko;

Ababyeyi n'abana b'isezerano cyangwa bemewe n'amategeko: 0.75 x umushahara w'umwaka muto ntarengwa wemewe n'amategeko;

Abavandimwe babo: 0,5 x umushahara w'umwaka muto ntarengwa wemewe n'amategeko".

[27] Urukiko rusesenguye umushahara uvugwa mu ngingo ya 23 imaze kuvugwa hejuru, rurasanga ari umushahara muto ntarengwa wemewe n'amategeko bita SMIG mu ndimi z'amahanga, uyu mushahara akaba atari umusaruro w'umwaka uwahohotewe yatahanaga nk'uko byemejwe n'Urukiko Rukuru mu gika cya 13 cy'imikirize y'urubanza rwajuririwe. Ku byerekeranye n'ingano ya SMIG, Urukiko rurasanga kugeza ubu nta tegeko riyishyiraho rirajyaho ariko ko Urukiko rw'Ikirenga mu rubanza RCAA0202/7/CS, rwaciwe ku wa 09/04/2009, n'izindi zarushingiyeho (urubanza RCAA0003/11/CS rwo ku wa 12/10/2012 n'urubanza RSOCAA0112/10/CS rwo ku wa 15/02/2015), rwemeje ko yaba 2.500Frw, uyu mubare ukaba waragenywe mu bushishozi bw'uru rukiko rushingiye ku biciro biri ku isoko.

[28] Urukiko rurasanga ariko uko imyaka ishira indi igataha, ubuzima bugenda burushaho guhenda kubera ko ibiciro by'ibintu nkenerwa bya ngombwa bidahwema kuzamuka, ndetse n'imishahara n'ibihembo bikagenda byongerwa kugira ngo abahaha bashobore guhangana n'izamuka ry'ibyo biciro, rukaba rusanga ubu SMIG nayo ikwiye kuzamuka ikaba yashyirwa ku mafaranga 3.000Frw, ubu ahembwa umukozi ufasha umufundi (umuyede – aide maçon) ku munsi.

[29] Hashingiwe rero ku mubare wa SMIG umaze kugenwa haruguru, Urukiko rurasanga indishyi z'ibangamira ku muco abavandimwe batatu ba nyakwigendera bagomba guhabwa zabarwa mu buryo bukurikira hashingiwe kuri *formule* iteganywa mu ngingo ya 23 y'Iteka rya Perezida N°31/01 ryo ku wa 25/08/2003, ryavuzwe haruguru ku byerekeye indishyi zihabwa umuntu wapfushije umuvandimwe we mu mpanuka yo mu muhanda: 0.5 x *SMIG* ya 3000Frw x iminsi 30 y'akazi mu kwezi x amezi 12 x abavandimwe 3: 1.620.000Frw, bivuze rero ko buri wese agenewe 540.000Frw y'indishyi z'ibangamirwa ku muco.

c. Ku birebana n'indishyi z'ikurikiranarubanza n'igihembo cya Avoka zatanzwe ku rwego rwa mbere.

[30] Me Mukanzigiye Donatille uburanira SORAS AG Ltd avuga ko Umucamanza yatanze 500.000Frw y'ikurikiranarubanza n'igihembo cya Avoka, yirengagiza ko ubujurire bwayo aribwo bwari bufite ishingiro.

[31] Me Nzayisenga Charles uburanira Umuhoza Pacifique, Izabayo Sylvie na Niyoyita Jacques, avuga ko ubujurire bwuririye ku bundi bwatanzwe mu Rukiko Rukuru, bwari bushingiye ku ngingo zifatika zijyanye n'amakosa agaragara yari yakozwe n'Urukiko Rwisumbuye rwa Nyarugenge (kwibagirwa gukuba n'amezi 12 mu mibare yakoreshejwe), no

ku kababaro abaregeraga indishyi bari bakomeje guterwa na SORAS yari ikomeje kwinangira kubaha indishyi zikomoka ku mpanuka yahitanye umuvandimwe wabo. Avuga ko kubagukuba n'umubare 12 bitarakozwe ryari ikosa rikomeye batari kwihanganira, ariyo mpamvubabijuririye kandi ko indishyi baciwe atariho zishingiye, ko ahubwo hari ibindi byagendeweho hakurikijwe uko Urukiko rubibona.

UKO URUKIKO RUBIBONA

[32] Urukiko rurasanga kuba Urukiko Rukuru rwari rwasuzumye ubujurire bwuririye ku bundi bwatanzwe na Umuhoza Pacifique, Izabayo Sylvie na Niyoyita Jacques, ku bijyanye n'indishyi ku ibangamira ku muco, rukemeza ko bufite ishingiro, nta mpamvu rutari kubagenera amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, bityo iyi ngingo y'ubujurire ya SORAS AG Ltd ikaba nta shingiro ifite.

d. Ku byerekeye indishyi z'ikurikiranarubanza kuri uru rwego.

[33] Me Nzayisenga Charles uburanira Umuhoza Pacifique, Izabayo Sylvie na Niyoyita Jacques, yatanze ubujurire bwuririye ku bundi avuga ko kuba SORAS AG Ltd ikomeje gusiragiza abo ahagarariye mu manza, yabaha 1.000.000Frw y'indishyi z'akababaro na 1.000.000Frw y'igihembo cya Avoka yiyongera kuyo yategetswe n'Urukiko Rukuru.

[34] Uhagarariye SORAS AG Ltd avuga ko indishyi abaregwa basaba ntazo bahabwa, ko ahubwo asaba ko urubanza rwahinduka ku birebana n'indishyi mbangamirabukungu n'iz'ibangamira ku muco, SORAS igahabwa 500.000Frw y'ikurikiranarubanza na 500.000Frw y'igihembo cya Avoka, igasubizwa 75.000 yatanzeho igarama mu Rukiko Rukuru na 100.000Frw muRukiko rw'Ikirenga.

[35] Ku birebana n'ayo mafaranga SORAS AG Ltd isaba gusubizwa, Me Nzayisenga Charles avuga ko ntayo ikwiriye guhabwa, kubera ko ari yo yatumye imanza zibaho, ko iyo itanga indishyi ku neza no mu bwumvikane nk'uko Iteka rya Perezida rubiteganya, bitari ngombwa kwiyambaza Inkiko ngo hashyirweho n'umwunganizi.

UKO URUKIKO RUBIBONA

[36] Urukiko rurasanga muri uru rubanza nta muburanyi ukwiye guhabwa indishyi z'ikurikiranarubanza ndetse n'amafaranga y'igihembo cya Avoka kuri uru rwego, kubera ko buri ruhande rufite ibyo rutsindiye n'ibyo rutsindiwe.

III. ICYEMEZO CY'URUKIKO

[37] Rwemeje ko ubujurire bwa SORAS AG Ltd bufite ishingiro kuri bimwe.

[38] Rwemeje ko nta ndishyi mbangamirabukungu Umuhoza Pacifique, Izabayo Sylvie naNiyoyita Jacques bakwiye guhabwa.

[39] Rutegetse SORAS AG Ltd guha Umuhoza Pacifique, Izabayo Sylvie na Niyoyita Jacques indishyi z'ibangamirwa ku muco zingana na 1.620.000Frw, ni ukuvuga 540.000Frw kuri buri wese, hiyongeyeho 800.000Frw y'ikurikiranarubanza n'igihembo cya Avoka bagenewe mu nkiko ebyiri zabanje, yose hamwe akaba 2.420.000Frw.

[40] Ruvuze ko imikirize y'urubanza RCA0089/14/HC/KIG, rwaciwe ku wa 28/11/2014 n'Urukiko Rukuru ku cyicaro cyarwo i Kigali ihindutse.

[41] Rutegetse ko amafaranga y'ingwate y'amagarama yatanzwe na SORAS AG Ltd, ahwanye n'ibyakozwe mu rubanza.