WALTER RAFFO v. MUNYAMPIRWA

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/INJUST/RCOM0002/16/CS (Mugenzi, P.J., Gakwaya na Mukamulisa, J.) 21 Mata 2017]

Amategeko agenga ububasha bw'inkiko – Icyemezo cyafatiwe mu mahanga gisabwa kubanza kwemezwa n'inkiko zo mu Rwanda – Icyemezo cyafatiwe mu mahanga n'inzego zibifitiye ububasha gisabwa kubanza kwemezwa n'inkiko z'u Rwanda ni ikigamije kuharangirizwa kandi icyo cyemezo kikaba giha uwagihawe uburenganzira ku buryo yakwitabaza ingufu za Leta mu kubona ibyo kimugenera – Itegeko Ngenga N°51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko, ingingo ya 91 n'iya 92 – Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y‟imanza z‟imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 204.

Incamake y'ikibazo: Uru rubanza rukomoka ku masezerano y'ubugure bw'imigabane muri Guest House Kibuye S.A yabaye hagati ya Walter Raffo na Munyampirwa Pascal. Leta y'u Rwanda yaje kwisubiza iyo hoteli maze havuka ibibazo hagati yabo banyamigabane, bituma Walter Raffo wari waraguze arega Munyampirwa mu Rukiko Rukuru rw'Ubucuruzi asaba kwishyurwa imigabane yari afite muri iyo hoteli. Urukiko Rukuru rw'Ubucuruzi rwemeza yuko Munyampirwa agomba gusubiza Walter Raffo imigabane ye.

Munyampirwa ntiyishimiye icyemezo cy'Urukiko Rukuru rw'Ubucuruzi maze ajurira mu Rukiko rw'Ikirenga, narwo rwemeza ko ubujurire bwe bufite ishingiro kuri bimwe.

Nyuma yaho Walter Raffo yongeye arega Munyampirwa mu Rukiko rw'Ubucuruzi rwa Nyarugenge asaba yuko yategekwa kubahiriza amasezerano bagiranye yo kuwa 25/08/2005 anasaba indishyi zitandukanye. Uru rukiko narwo rwemeza yuko iki kirego kitakiriwe kuko rwasanze ikiregerwa cyaraburanywe hagati y'ababuranyi bamwe. Yajuririye mu Rukiko Rukuru rw'Ubucuruzi, narwo rwemeza ko ubujurire bwe nta shingiro bufite rushingiye ku mpamvu zimwe nk'izashingiweho n'urukiko rubanza.

Walter Raffo yagejeje iki kibazo ku rwego rw'umuvunyi avuga ko yarenganyijwe kuko yategetswe kwishyurwa umwenda Munyampirwa yari afite muri BCR kandi nta ruhare yagize mu kuwufata. Uru rwego narwo rwasabye Perezida w'Urukiko rw'Ikirenga ko urwo rubanza rwasubirishwamo ku mpamvu z'akarengane.

Walter Raffo yaje gupfa mbere yuko urubanza rusubirishwamo ku mpamvu z'akarengane rutaraburanishwa maze asimburwa n'abazungura be. Mu iburanisha Munyampirwa yazamuye inzitizi zo kutakira ikirego, harimo yuko icyemezo kigaragaza ko Walter Raffo yapfuye kidashobora gushingirwaho n'inkiko z'u Rwanda kidakorewe "exequatur", agasaba ko cyabanza kwemezwa n'Urukiko Rukuru muri iyo nzira. Mu kwiregura kwabo, abazungura ba Walter Raffo, bavuga ko nta mpamvu Urukiko rwategeka ko hakorwa "exequatur", kuko ikorwa ku manza n'ibyemezo bigomba kurangizwa kandi muri uru rubanza, iki cyemezo cyatanzwe nk'ikimenyetso, kikaba kitagomba kurangizwa.

Incamake y'icyemezo: 1. Icyemezo cyafatiwe mu mahanga n'inzego zibifitiye ububasha gisabwa kubanza kwemezwa n'inkiko z'u Rwanda nikigamije kuharangirizwa kandi icyo cyemezo kikaba giha uwagihawe uburenganzira ku buryo yakwitabaza ingufu za Leta mu kubona ibyo kimugenera. Bityo icyemezo kigaragaza ko umuntu yapfuye ntikigomba kubanza kwemezwa n'inkiko kuko kitagamije kwaka uburenganzira runaka mu buryo hakwitabazwa ingufu za Leta.

Inzitizi nta shingiro rifite.
Amagarama y'urubanza arasubitswe.

Amategeko yashingiweho:
Itegeko Ngenga N°51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko, ingingo ya 91 n'iya 92.
Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 204.

Nta manza zifashishijwe.

Inyandiko z'Abahanga:
Serge Guinchard, Thierry Debard, Lexique des termes juridiques, 23e édition, Paris, 2015-2016, p.463.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Kuwa 11/04/1999, Munyampirwa Pascal yagiranye na Walter Raffo amasezerano yo kugura igice cya Guest House Kibuye S.A ku gaciro ka 250.000USD, bumvikana ko ibibazo bizavuka muri ayo masezerano bizakemurwa n'inkiko zo mu Busuwisi.

[2] Sosiyete Guest House Kibuye S.A yaje kugira ibibazo, Leta y'u Rwanda iza kwisubiza iyo Guest House, hanyuma Walter Raffo arega Munyampirwa asaba kumwishyura agaciro k'imigabane ye muri sosiyete Guest House Kibuye SA, maze ku wa 26/12/2010, Urukiko Rukuru rw'Ubucuruzi rwemeza, mu rubanza RCOM0094/09/HCC, ko Munyampirwa agomba gusubiza Walter Raffo imigabane ye muri sosiyete Guest House Kibuye SA ingana na 170.000.000Frw.

[3] Munyampirwa yajuririye Urukiko rw'Ikirenga, mu rubanza RCOMA0074/10/CS rwo ku wa 13/07/2012, rwemeza ko ubujurire bwe bufite ishingiro kuri bimwe, ko nta migabane agomba kwishyura Walter Raffo, ahubwo uyu ategekwa kwishyura indishyi zingana na 1.000.000Frw.

[4] Walter Raffo yongeye kurega Munyampirwa mu Rukiko rw'Ubucuruzi rwa Nyarugenge, asaba ko yategekwa kubahiriza amasezerano bagiranye yo kuwa 25/08/2005, yateganyaga ko bombi bazafungura konti muri Banki ya Kigali, ikazanyuzwaho amafaranga na "Secrétariat de Privatisation" Leta yagombaga kwishyura, mu rwego rwo kwisubiza Guest House Kibuye SA, asaba n'indishyi zitandukanye. Mu rubanza RCOM01158/14/NYGE rwo kuwa 31/01/2014, Urukiko rwemeza ko ikiregerwa cyaburanwe, hagati y'ababuranyi bamwe, ku kiburanwa kimwe no ku mpamvu imwe, ko rero ikirego kitakiriwe.

[5] Walter Raffo yajuririye Urukiko Rukuru rw'Ubucuruzi, mu rubanza RCOMA0087/14/HCC rwo kuwa 28/03/2014, rwemeza ko ubujurire bwe nta shingiro bufite, kuko icyo yaregeraga mu Rukiko rw'Ubucuruzi cyari cyaraburanywe mbere, runavuga ko Walter Raffo adakwiye gusubizwa umugabane we wenyine, kandi ari umunyamigabane ku rwego rumwe na Munyampirwa, n'abandi, bikaba bigaragara ko ayo mafaranga yishyuwe umwenda wa Guest House Kibuye SA muri BCR, bakaba bakwiye kugabana igihombo.

[6] Walter Raffo, yagejeje ikibazo ku Rwego rw'Umuvunyi, avuga ko yarenganyijwe, kuko yategetswe kugira uruhare mu kwishyura umwenda wa Munyampirwa muri BCR kandi ataragize uruhare mu kuwufata, urwo Rwego rusanga amasezerano y'inguzanyo ya 158.217.605Frw yabaye hagati ya Munyampirwa na BCR igihe yaguraga Guest House Kibuye SA, atari akwiye kugira ingaruka kuri Walter Raffo, maze rusaba Perezida w'Urukiko rw'Ikirenga ko urubanza RCOMA0087/14/HCC rwo kuwa 28/03/2014, rwasubirishwamo ku mpamvu z'akarengane, nawe arwohereza mu Bwanditsi bw'Urukiko, kugira ngo rwongere kuburanishwa.

[7] Ku ruhande rwa Munyampirwa, hatanzwe inzitizi zigamije gusaba ko ikirego kitakwakirwa ku mpamvu zinyuranye, zirimo ijyanye n'ingwate y'abanyamahanga mu gihe barega, iyo kuba hatagaragajwe abafite ububasha bwo gukomeza urubanza nyuma y'urupfu rwa Walter Raffo, n'iyo kuba mu gufata icyemezo mu rubanza RCOMA0087/14/HCC rusabirwa gusubirishwamo ku mpamvu z'akarengane, harashingiwe ku rubanza RCOMA0074/10/CS, gusaba ko rusubirishwamo bikaba bigamije guhindurira urubanza mu rundi, ndetse ko urega ahindura ikirego kuko mu kirego avuga impamvu z'akarengane ariko agasobanura urubanza mu mizi, bikaba bitakwemerwa n'Urukiko rw'Ikirenga kuko undi muburanyi atabyemeye.

[8] Urubanza rwaburanishijwe mu ruhame kuwa 7/02/2017, ku ruhande rwa Walter Raffo haburana Me Habimana Pie, naho Munyampirwa Pascal ahagarariwe na Me Bizimana Shoshi, uyu asaba ko habanza gusuzumwa ibyerekeranye no kumenya niba icyemezo cyagaragajwe cy'uko Walter Raffo yapfuye, cyatangiwe mu mahanga cyashingirwaho n'inkiko zo mu Rwanda, kitabanje kwemezwa mu nzira ya "exequatur ", Urukiko rwemeza ko iyo nzitizi ariyo ibanza gusuzumwa.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

Kumenya niba icyemezo cyatanzwe n'ushinzwe irangamimerere mu gihugu cya Philippines kigaragaza ko Walter Raffo yapfuye, kigomba kubanza kwemezwa mu nzira ya "exequatur'' mu Rwanda kugira ngo kibe cyashingirwaho mu rubanza.

[9] Me Bizimana Shoshi, uburanira Munyampirwa, avuga ko icyemezo cyatanzwe n'uruhande rwa Walter Raffo kigaragaza ko yapfuye, kidashobora gushingirwaho n'inkiko z'u Rwanda kidakorewe "exequatur", kuko kwemeza abazungura hashingiwe kuri cyo biba ari uburyo bwo kugishyira mu bikorwa (éxécution), asaba rero ko cyabanza kwemezwa n'Urukiko Rukuru muri iyo nzira.

[10] Me Habimana Pie, ku ruhande rwa Walter, avuga ko asanga nta mpamvu Urukiko rwategeka ko hakorwa "exequatur", kuko ikorwa ku manza zigomba kurangizwa, naho ku byerekeye uru rubanza, ibyemezo bikaba byaratanzwe nk'ikimenyetso, ariko nta kigomba kurangizwa.

UKO URUKIKO RUBIBONA

[11] Ingingo ya 91 y'Itegeko Ngenga N°51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko nk'uko ryahinduwe kandi ryujujwe kugeza ubu, iteganya ko "*Urukiko Rukuru ruburanisha ibirego bisaba kurangiza mu Rwanda imanza cyangwa ibyemezo byafashwe n'inkiko zo mu mahanga*", iya 92 y'iryo Tegeko Ngenga igateganya ko

“*Inyandikompamo zifite ikigaragaza ko zanditswe n’abategetsi bo mu mahanga, zishobora na zo kurangirizwa mu Rwanda n’Urukiko Rukuru, iyo zujuje ibyangombwa…*” biteganywa ku rutonde rugaragazwa muri iyo ngingo, naho ingingo ya 204 y’Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi ikagira iti “*Uretse igihe haba hari amasezerano mpuzamahanga abivuga ukundi, imanza zaciwe n’inkiko zo mu mahanga n’inyandikomvaho zo mu mahanga zakozwe n’ababigenewe ntizishobora kurangirizwa mu Rwanda zitabyemerewe n’Urukiko rubifitiye ububasha*”.

[12] Urukiko rurasanga, nk’uko byumvikana mu ngingo z’amategeko zibukijwe haruguru, ibyemezo byafatiwe mu mahanga n’inzego zibifitiye ububasha bigomba kubanza kwemezwa n’Urukiko mu Rwanda, ari ibigamije kuharangirizwa nk’uko ingingo z’amategeko zibukijwe haruguru zibigaragaza (*pour être éxécutoire au Rwanda*).

[13] Urukiko rurasanga, icyemezo kigamije kurangizwa (éxécutoire), nk’uko abahanga mu mategeko babisobanura, ari igiha uburenganzira uwagihawe, mu buryo yabasha kwaka ibyo kimugenera yitabaje ingufu za Leta, akaba atariko bimeze ku byerekeye icyemezo cy’uko umuntu yapfuye nk’icyagaragajwe ku byerekeye Walter Raffo, kuko kitagamije kwaka uburenganzira runaka mu buryo hakwitabazwa ingufu za Leta[1], ahubwo kigamije kugaragaza ko atakiriho, maze bibe byashingirwaho ingaruka zinyuranye amategeko ateganya.

[14] Urukiko rurasanga rero, icyemezo cy’urupfu rwa Walter Raffo cyatanzwe n’ushinzwe irangamimerere[2] “certificate of death” mu gihugu cya Philippines, kidasaba kubanza kwemezwa n’urukiko mu Rwanda kugira ngo kibe cyashingirwaho mu rubanza rwa Walter Raffo na Munyampirwa rwajuririwe muri uru Rukiko, bityo, inzitizi yatanzwe kuri icyo kibazo na Munyampirwa ikaba nta shingiro ifite.

III. ICYEMEZO CY’URUKIKO

[15] Rwemeje ko inzitizi yatanzwe na Munyampirwa Pascal ijyanye no kuba icyemezo cy’urupfu rwa Walter Raffo cyatangiwe mu mahanga kigomba kubanza kwemezwa n’Urukiko mu Rwanda, nta shingiro ifite;

[16] Rutegetse ko iburanisha ry’urubanza rizakomeza kuwa 13/06/2017;

[17] Rutegetse ko amagarama y’urubanza asubitswe.

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[1] “*Exécutoire, signifie que celui auquel l'acte en question a reconnu un droit, peut faire procéder à son exécution forcée par les soins d'un officier public qui a compétence pour requérir la force publique”: Serge Braudo, Dictionnaire de droit privé Français, 1996-2017, www.dictionnaire-juridique.com, consulté le 21 Avril 2017.*

-*“Qui permet de procéder à l’exécution avec, au besoin, le concours de la force publique” Serge Guinchard, Thierry Debard, Lexique des termes juridiques, 23e édition, Paris, 2015-2016, p.463.*

[2] OFFICE OF THE CIVIL REGISTER GENERAL- Republic of the Philippines.