MUSASANGOHE v. NTAKIRUTIMANA

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC00023/2017/CS (Nyirinkwaya, P.J., Mukandamage na Karimunda, J.) 12 Mutarama 2018]

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Inzitizi – Ibisabwa ngo ikirego cyakiriwe – Inyungu yo gutanga ikirego – Inyungu igomba kuba iriho igihe ikirego gitangwa, ntibyemewe ko umuntu aregera inyungu ishobora kuzabaho mu gihe kizaza – Itegeko Nº21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo yi 142.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko rw'Ibanze rwa Nyamirambo aho Ntakirutimana mu izina ry'abana be Umuhoza Aline, Ntakirutimana Elie, Ntakirutimana Yves na Ntakirutimana Honoré yareze Musasangohe asaba ko urwo Rukiko rwamutegeka kubandika ku mutungo asangiye na Ntigurirwa wari umugabo we wa mbere w'isezerano banabyaranye mwana witwa Mbatezimana Pautin. Urukiko rwemeje ko abana bahagarariwe na Ntakirutimana bandikwa ku mitungo ya nyina Musasangohe, kandi ko bayifiteho uburenganzira bungana na 25% naho Mbatezimana Pautin yabyaranye n'umugabo we wa mbere akaba ayififiteho 75% mu gihe cy'izungura; runemeza ko nta ndishyi zatangwa muri uru rubanza kuko byaba ari ugusesagura umutungo ugomba kurera abana.

Ababuranyi bombi bajuririye urukiko rwisumbuye aho Ntakirutimana yavugaga ko Urukiko rwaciye urubanza kukitaregewe ndetse ntirwanagena indishyi yari yasabye kuko byaba ari ugusesagura umutungo w'umuryango mu gihe batasezeranye nkuko Musasangohe abivuga. Kurundi ruhande, Musasangohe avuga ko abana yabyaranye na Ntakirutimana batagombye kwandikwa ku mutungo yashakanye n'umugabo w'isezerano kuko yabashakiye iyabo afatanyije na Ntakirutimana bityo ko imitungo iburanwa ikwiye guharirwa we na Mbatezimana yabyaranye n'umugabo w'isezerano.

Urukiko rwaciye urubanza rwemeza ko ubujurire bwabo ntashingiro bufite bityo ko urubanza rwaciwe n'urukiko rw'Ibanze rwa Nyamirambo rudahindutse. Nyuma yaho urwo rubanza ruciriwe Musasangohe yiyambaje Urwego rw'Umuvunyi, maze narwo rwandikira Perezida w'Urukiko rw'Ikirenga rusaba ko urubanza rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge rwasubirwamo kuko rubonamo akarengane gashingiye ku mpamvu y'uko rwirengagije Itegeko Nº43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda n'Iteka rya Minisitiri Nº002/2008 ryo kuwa 01/04/2008 rigenga iyandikishwa ry'ubutaka, maze Perezida w'Urukiko rw'Ikirenga ategeka ko urwo rubanza rwongera kuburanishwa .

Mu Rukiko rw'Ikirenga, Musasangohe yatanze impamvu ndemyagihugu zigaragaza ko ikirego cya Ntakirutimana kitagombaga kwakirwa n'inkiko zabanje kuko nta nyungu yemewe n'amategeko abana ahagarariye bari bafite yo kuregera urukiko, kubera ko umutungo basaba kwandikwaho atari uwe ku giti cye, ahubwo awufatanyije na Ntigurirwa, umugabo we w'isezerano, ko kandi adakwiye kubuzwa uburenganzira ku mutungo we bitewe nuko izungura rizaba atakiriho.

Ntakirutimana avuga ko yatanze ikirego mu izina ry'abana be kuko umutungo uburanwa wanditswe kuri Musasangohe n'umwana we Mbatezimana wenyine, akaba yarifuzaga ko n'abandi bana bawandikwaho kugirango bazagire uburenganzira bungana ku mutungo wa nyina.

Incamake y'icyemezo: 1. Inyungu igomba kuba iriho igihe ikirego gitangwa, ntibyemewe ko umuntu aregera inyungu ishobora kuzabaho mu gihe kizaza bityo rero ikirego cya Umuhoza Aline,

Ntakirutimana Elie, Ntakirutimana Yves na Ntakirutimana Honoré nticyagombaga kwakira n'inkiko zabanje kuko nta nyungu iriho kandi y'aka kanya bafite yo kwandikwa ku mutungo wa nyina Musasangohe, kuko igihe cyo guhabwa iminani cyangwa cyo kumuzungura kitaragera, akaba azazungurwa igihe kigeze kandi hakurikijwe amategeko agenga izungura.

2. Mu gihe ntacyigaragaza ko umugore n'umugabo baburana bafatanyije umutungo ntakibuza ko uwatsindiye indishyi azihabwa igihe ari ngombwa cyane cyane ko batasezeranye mu buryo bwemewe n'amategeko.

Ikirego cyo gisubirishamo urubanza ku impamvu z'akarengane gifite ishingiro.
Amagarama y'urubanza aherereye ku isandu ya Leta.

Amategeko yashingiweho:
Itegeko Nº21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo yi 142.

Nta manza zashingiweho.

Ibitekerezo by'abahanga:
Hakim Boularbah, Olivier Caprasse, Georges De Leval, Frédéric Georges, Pierre Moreau, Dominique Mougenot, Jacques Van Compernolle et Jean-François Van Drooghenbroeck, Droit judiciaire, Tome 2, Manuel de procédure civile, Editions Larcier, 2015, p 91-92.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ntakirutimana Ezira, mu izina ry'abana be Umuhoza Aline, Ntakirutimana Elie, Ntakirutimana Yves na Ntakirutimana Honoré, yareze Musasangohe Vestine, nyina w'abo bana, mu Rukiko rw'Ibanze rwa Nyamirambo asaba ko urwo rukiko rumutegeka kubandika ku mutungo asangiye na Ntigurirwa Cyprien wari umugabo we wa mbere w'isezerano, babyaranye undi mwana witwa Mbatezimana Pautin. Kuwa 14/06/2013 urwo rukiko rwaciye urubanza RC0051/13/TB/NYB, rwemeza ko abana Umuhoza Aline, Ntakirutimana Elie, Ntakirutimana Yves na Ntakirutimana Honoré bandikwa ku mutungo wa nyina ugizwe n'amazu yubatse mu kibanza Nº1342 mu Mudugudu w'Ingezi, ari mu kibanza Nº59 mu Mudugudu wa Nkundumurimo, umurima ufite Nº2118 mu Mudugudu wa Kamenge n'ishyamba riri mu kibanza Nº 2172 mu Mudugudu wa Kamenge, ko kandi bafite uburenganzira bungana na 25% kimwe n'umwana we witwa Mbatezimana Pautin yabyaranye n'umugabo we w'isezerano uwufiteho uburenganzira bungana na 75% mu gihe cy'izungura, ugakomeza gucungwa na nyina, runategeka ko nta ndishyi n'amafaranga y'igihembo cy'Avoka bigomba gutangwa kuko byaba ari ugusesagura umutungo ugomba kurera abana.

[2] Musasangohe Vestine na Ntakirutimana Ezira bajuririye Urukiko Rwisumbuye rwa Nyarugenge, Ntakirutimana Ezira avuga ko urukiko rwagiye ruvuga uruhare rwa buri mwana ku mitungo yanditse kuri Musasangohe Vestine, rugena ijanisha (*pourcentage*) nyamara ibyo bitari mu byo baregeye, ko kandi nta ndishyi zatanzwe hashingiwe ko byaba ari uguhombya umuryango, nyamara Musasangohe

avuga ko Ntakirutimana Ezira atari umugabo w'isezerano, naho ku ruhande rwa Musasangohe Vestine ajurira avuga ko abo bana yabyaranye na Ntakirutimana Ezira batagombye kwandikwa ku mutungo w'umugabo w'isezerano kubera ko yabashakiye imitungo yabo afatanyije na Ntakirutimana Ezira, ko kandi umugabo we ashobora guhunguka umwanya uwo ariwo wose, kuko yaburiye muri Kongo, ko imitungo iburanwa yagombye guharirwa we n'umwana witwa Mbatezimana Pautin yabyaranye na Ntigurirwa Cyprien.

[3] Kuwa 13/12/2013, Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza RCA0186/13/TGI/NYGE - RCA0190/13/TGI/NYGE, rusanga ubujurire bwa Ntakirutimana Ezira nta shingiro bufite kuko ibyo yasabaga ko abana yabyaranye na Musasangohe Vestine bakwandikwa ku mitungo ya nyina yabihawe, kandi hagenwa n'uruhare bwa buri mwana ku mutungo, ko kandi indishyi yasabye zitari ngombwa kubera ko zari buve mu mutungo asaba ko abana be bandikwaho. Ku bujurire bwa Musasangohe Vestine, Urukiko rwasanze adahakana ko abana ari abe, bakaba rero bafite uburenganzira ku mutungo wa nyina nk'uko biteganywa n'ingingo ya 326 y'Igitabo cya mbere cy'urwunge rw'amategeko y'imbonezamubano (CCLI) yakoreshwaga icyo gihe, ko kandi urukiko rwabanje nta zungura rwategetse, maze rwemeza ko ubujurire bwabo bombi nta shingiro bufite, rutegeka ko urubanza RC0005/13/TB/NYB rwaciwe n'Urukiko rw'Ibanze rwa Nyamirambo rudahindutse.

[4] Nyuma y'urwo rubanza, Musasangohe Vestine yiyambaje Urwego rw'Umuvunyi, kuwa 31/08/2015 rwandikira Perezida w'Urukiko rw'Ikirenga rusaba ko urubanza RCA 0186/13/TGI/NYGE - RCA0190/13/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge rwasubirwamo kuko rubonamo akarengane gashingiye ku mpamvu y'uko rwirengagije Itegeko Nº43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda n'Iteka rya Minisitiri Nº002/2008 ryo kuwa 01/04/2008 rigenga iyandikishwa ry'ubutaka, maze Perezida w'Urukiko rw'Ikirenga ategeka ko urwo rubanza rwongera kuburanishwa.

[5] Iburanisha ry'urubanza mu ruhame ryabaye kuwa 11/12/2017, Musasangohe Vestine ahagarariwe na Me Amani Jean de Dieu, naho Ntakirutimana Ezira, mw'izina ry'abana be Umuhoza Aline, Ntakirutimana Elie, Ntakirutimana Yves na Ntakirutimana Honoré, ahagarariwe na Me Bundogo Innocent.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

a. Kumenya niba Ntakirutimana Ezira, mu izina ry'abana be, yari afite inyungu yo kurega asaba ko bandikwa ku mutungo Musasangohe Vestine yashakanye na Ntigurirwa Cyprien.

[6] Me Amani Jean de Dieu, uburanira Musasangohe Vestine, avuga ko ashingiye kubiteganywa n'ingingo ya 142 y'Itegeko Nº21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, asanga hari impamvu ndemyagihugu ituma ikirego cyatanzwe na Ntakirutimana Ezira kitaragombaga kwakirwa n'inkiko zabanje, kubera ko nta nyungu yemewe n'amategeko abana bareze abahagarariye bari bafite yo kuregera urukiko, kubera ko umutungo basaba kwandikwaho atari uwa nyina ku giti cye, ahubwo awufatanyije na Ntigurirwa Cyprien, umugabo we w'isezerano, ko kandi Musasangohe Vestine adakwiye kubuzwa uburenganzira ku mutungo we bitewe n'izungura rizaba atakiriho, cyane cyane ko abazungura be bareze bahagarariwe na se, nta cyemeza ko aribo bazungura be bonyine, kuko ashobora no kubyara abandi bana.

[7] Me Bundogo Innocent, uhagarariye Ntakirutimana Ezira, avuga ko yatanze ikirego mu izina ry'abana yabyaranye na Musasangohe Vestine kubera ko umutungo we wari wanditsweho gusa umwana we umwe witwa Mbatezimana Pautin, akaba rero yarifuzaga ko n'abandi bawandikwaho kugira ngo bazagire uburenganzira ku mutungo wa nyina, ko ariko mu nama nteguramubanza Musasangohe Vestine yavuze ko umutungo baregera umwanditseho 100%, bituma bashakisha amakuru, Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda/Urwego rw'umubitsi w'impapurompamo z'ubutaka, kibagaragariza, mu ibaruwa yo kuwa 22/01/2017, ko umutungo wanditse kuri Musasangohe Vestine wenyine, ko rero kuba Mbatezimana Pautin atawanditseho, nta mpamvu y'uko n'abandi bana be bawandikwaho, bityo n'urubanza rwasabiwe gusubirishwamo ku mpamvu z'akarengane rukaba rukwiye kuvaho.

UKO URUKIKO RUBIBONA

[8] Ku byerekeye inzitizi zisaba kutakira ikirego, ingingo ya 142 y'Itegeko Nº21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "impamvu ituma ikirego kitakirwa ishobora kubyutswa n'umuburanyi cyangwa n'Urukiko rubyibwirije. Impamvu zituma ikirego kitakirwa zigaragazwa n'urukiko rubyibwirije iyo ari indemyagihugu, nko kurenza igihe cyo kujurira cyangwa kutagira ububasha, ubushobozi cyangwa inyungu byo kurega".

[9] Ku byerekeye inyungu yo kurega ivugwa muri iyo ngingo, abahanga mu mategeko bavuga ko igomba kuba iriho igihe ikirego gitangwa, ko bitemewe ko umuntu aregera inyungu ishobora kuzabaho mu gihe kizaza[1].

[10] Bigaragara mu myanzuro itanga ikirego mu Rukiko rw'Ibanze rwa Nyamirambo ku wa 23/01/2013, ko Ntakirutimana Ezira, mu izina ry'abana be Umuhoza Aline, Ntakirutimana Elie, Ntakirutimana Yves na Ntakirutimana Honoré, yareze avuga ko mu gihe cyo kubaruza umutungo, Musasangohe Vestine yafashe umutungo wose awibaruzaho, mu bana be ashyiraho umwana umwe Mbatezimana Pautin abandi bose uko ari bane arabihorera kandi nabo ari abe, akaba yarasabaga urukiko ko rwamutegeka kwandika ku mutungo we abo bana, kuko mu gihe cyo guhabwa iminani cyangwa igihe cyo kuzungura batazagira icyo babona kuko ibintu byose yabyanditse ku muzungura umwe wenyine, ko kandi afite impungenge ko aramutse atakiriho byazakurura imanza zitari ngombwa kugira ngo bazabashe kugira uburenganzira bungana n'ubwa Mbatezimana Pautin.

[11] Urukiko rurasanga inyungu Umuhoza Aline, Ntakirutimana Elie, Ntakirutimana Yves na Ntakirutimana Honoré bafite ku mutungo wa nyina Musasangohe Vestine atari inyungu iriho kandi y'aka kanya, kuko igihe cyo guhabwa iminani cyangwa cyo kumuzungura kitaragera, akaba azazungurwa igihe kigeze kandi hakurikijwe amategeko agenga izungura, bityo rero ikirego cyabo nticyagombaga kwakira n'inkiko zabanje kuko nta nyungu bagaragaza ubu bafite zo kwandikwa ku mutungo wa nyina.

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[1] *"l'intérêt doit être né et actuel. C'est à dire qu'au jour où il exerce son action, le demandeur doit pouvoir tirer un avantage de la prétention qu'il a émise, dans le cas où elle serait déclarée bien fondée. Un intérêt éventuel ne suffit donc pas pour qu'une action soit recevable. En principe l'action ad futurum n'est pas autorisée, ce qui pose la question de la recevabilité des actions préventives et singulièrement des actions à portée probatoire ou déclaratoire, cette dernière étant destinée à faire constater l'existance ou l'inexistence d'un droit en dehors d'une constatation actuelle". Hakim Boularbah, Olivier Caprasse, Georges De Leval, Frédéric Georges, Pierre Moreau, Dominique Mougenot, Jacques Van Ompernolle et Jean-François Van Drooghenbroeck, Droit judiciaire, Tome 2, Manuel de procédure civile, Editions Larcier, 2015, p 91-92.*

[12] Hashingiwe rero ku biteganya n'ingingo ya 142 y'Itegeko Nº21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru, n'ibisobanuro bimaze gutangwa, Urukiko rurasanga urubanza RCA0186/13/TGI/NYGE - RCA0190/13/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge, Musasangohe Vestine yasabye ko rusubirwamo ku mpamvu z'akarengane rugomba kuvaho, ndetse n'urubanza RC0051/13/TB/NYB rwaciwe n'Urukiko rw'Ibanze rwa Nyamirambo kuko abareze nta nyungu bafite.

b. Ku byerekeye indishyi zisabwa na Musasangohe Vestine

[13] Me Amani Jean de Dieu, wunganira Musasangohe Vestine, avuga ko Ntakirutimana Ezira agomba guha uwo yunganira indishyi z'akababaro zingana na 1.500.000Frw kubera ko yamushoye mu manza nta mpamvu, 1.000.000Frw y'igihembo cya Avoka na 500.000Frw y'ikurikiranarubanza kuri uru rwego.

[14] Me Bundogo Innocent, uhagarariye Ntakirutimana Ezira, avuga ko amafaranga yose asabwa na Musasangohe Vestine adakwiye gutangwa kubera ko uwo ahagarariye yareze mu izina ry'abana be, akaba ari we ubarera, ko rero amafaranga yacibwa yava mu mutungo bashakanye.

UKO URUKIKO RUBIBONA

[15] Urukiko rurasanga nta kigaragaza ko imitungo ya Ntakirutimana Ezira ayifatanyije na Musasangohe Vestine, cyane cyane ko batasezeranye mu buryo bwemewe n'amategeko, hakaba rero nta cyatuma atamuha indishyi asaba mu gihe byaba ari ngombwa ko azitanga.

[16] Ku byerekeye 1.500.000Frw y'indishyi z'akababaro Musasangohe Vestine asaba Ntakirutimana Ezira, Urukiko rurasanga koko yaramushoye mu rubanza bitari ngombwa, ariko ayo mafaranga asaba akaba ari ikirenga, bityo mu bushishozi bwarwo akaba agenewe angana na 500.000Frw.

[17] Naho 1.000.000Frw y'igihembo cya Avoka na 500.000Frw y'ikurikiranarubanza kuri uru rwego Musasangohe Vestine asaba Ntakirutimana Ezira, Urukiko rurasanga koko yarashatse Avoka wo kuburana urubanza kandi ararukurikirana, ariko ntagaragaza ko ayo mafaranga ari yo yakoresheje koko kuri uru rubanza, bityo mu bushishozi akaba agenewe 500.000Frw y'igihembo cya Avoka na 200.000Frw y'ikurikiranarubanza, yose hamwe akaba 700.000Frw kuri uru rwego.

III. ICYEMEZO CY'URUKIKO

[18] Rwemeje ko ikirego cyatanzwe na Musasangohe Vestine cyo gusubirishamo ku mpamvu z'akarengane urubanza RCA0186/13/TGI/NYGE - RCA0190/13/TGI/NYGE rwaciwe kuwa 13/12/2013 n'Urukiko Rwisumbuye rwa Nyarugenge, gifite ishingiro;

[19] Rwemeje ko urubanza RCA0186/13/TGI/NYGE – RCA0190/13/TGI/NYGE rwaciwe kuwa 13/12/2013 n'Urukiko Rwisumbuye rwa Nyarugenge, ruvanyweho;

[20] Rutegetse Ntakirutimana Ezira, mw'izina ry'abana be Umuhoza Aline, Ntakirutimana Elie, Ntakirutimana Yves na Ntakirutimana Honoré kwishyura Musasangohe Vestine 500.000Frw y'indishyi z'akababaro na 700.000Frw y'ikurikiranarubanza n'igihembo cy'Avoka nk'uko byasobanuwe haruguru; Rutegetse ko amafaranga y'amagarama y'urubanza aherera ku Isanduku ya Leta.