Re NDENGEYINTWARI

[Rwanda URUKIKO RW'IKIRENGA – RS/RECUS/RC/00001/2018/SC (Nyirinkwaya, P.J., Karimunda na Hitiyaremye, J.) 09 Werurwe 2018]

Amategeko agenga imiburanishirize y'imanza mbonezamubano – Inzitizi – Kwihana umucamanza – Nubwo ntawukwiye gusabwa kuburanira imbere y'umucamanza ugaragaza kubogama, ababuranyi batemerewe kwihana abacamanza bashingiye gusa ku gukeka ko bashobora kubogama kuko ibyo byaremereza imikorere y'inkiko – Uwihannye umucamanza agomba kubigaragariza impamvu zifatika zerekana koko ukubogama kwe – Ubwihane bushingiye ku kuba umucamanza yaratanze inama cyangwa hari icyemezo yafashe mbere gishobora kubangamira imigendekere myiza y'urubanza bugomba gushingira ku bimenyetso bifatika bigaragaza ko yafashe umwanzuro ku kiburanwa cyangwa ku ishingiro ryacyo mu mategeko mbere y'uko ashyikirizwa ibimenyetso by'urubanza cyangwa yumva ibisobanuro by'ababuranyi.

Amategeko agenga imiburanishirize y'imanza mbonezamubano – Ikirego cyihutirwa – Nta kibuza ko umucamanza waburanishije urubanza rwihutirwa aburanisha urw'iremezo iyo ikiburanwa gitandukanye cyangwa se iyo mu rubanza rwa mbere yagarukiye gusa ku gufata icyemezo cy'agateganyo.

Incamake y'ikibazo: Ubwo iburanisha ry'urubanza N° RS/INJUST/RC 00024/2017/SC ryari rigeze hagati, Umunyamategeko uburanira Ndengeyintwari, yihannye mucamanza Hatangimbabazi wari uyoboye inteko y'urwo rubanza avuga ko uwo aburanira atizeye ubutabera kuri uwo mucamanza bitewe n'uko yari mu nteko yaburanishije urubanza N° RC 00006/2017/SC ku kirego cyihutirwa akaba ari nawe wari ushinzwe gutegura urubanza kandi ko uwo mucamanza yagize icyo avuga cyangwa inama atanga ku rubanza aburanisha ndetse akaba yaranagaragaje ubucuti afitanye nuwo baburanaga.

Mu nyandiko yandikiye Perezida w'Urukiko rw'Ikirenga ku wa 26/02/2018, Umucamanza Hatangimbabazi avuga ko vuga ko atari we wenyine wafashe icyemezo mu rubanza N° RC 00006/2017/SC kandi ko atari we wari uyoboye inteko, ariyo mpamvu asanga impungenge za Ndengeyintwari ku ngingo ijyanye n'uko haba hari inama yatanze nta shingiro ifite.

Incamake y'icyemezo: 1. Nubwo ntawukwiye gusabwa kuburanira imbere y'umucamanza ugaragaza kubogama, ababuranyi batemerewe kwihana abacamanza bashingiye gusa ku gukeka ko bashobora kubogama kuko ibyo byaremereza imikorere y'inkiko.

2. Uwihannye umucamanza agomba kubigaragariza impamvu zifatika zerekana koko ukubogama kwe.

3. Ubwihane bushingiye ku kuba umucamanza yaratanze inama cyangwa hari icyemezo yafashe mbere gishobora kubangamira imigendekere myiza y'urubanza bugomba gushingira ku bimenyetso bifatika bigaragaza ko yafashe umwanzuro ku kiburanwa cyangwa ku ishingiro ryacyo mu mategeko mbere y'uko ashyikirizwa ibimenyetso by'urubanza cyangwa yumva ibisobanuro by'ababuranyi.

4. Nta kibuza ko umucamanza waburanishije urubanza rwihutirwa aburanisha urw'iremezo iyo ikiburanwa gitandukanye cyangwa se iyo mu rubanza rwa mbere yagarukiye gusa ku gufata icyemezo cy'agateganyo

Ikirego cy'ubwihane rwashyikirijwe nta shingiro gifite;
Umucamanza Hatangimbabazi Fabien, akomeza kuba mu bagize inteko iburanisha urubanza N° RS/INJUST/RC 00024/2017/SC.

Amategeko yashingiweho:

Itegeko no 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 9, 99:4°5°7°, 320.

Ibitekerezo byababahanga:

Charles W. Wolfman, Modern Legal Ethics, St Paul, Minn, West Publishing Co., 1986.

Cassation, assemblée plenière, 6 novembre 1998, no 95-11, Bull, Ass.plén. no 4.

Serge Guinchard [sous la direction], Droit et pratique de la procédure civile, Paris, Dalloz, 2013, p.1152.

Urubanza

I. IMITERERE Y'URUBANZA

[redacted]Ubwo iburanisha ry'urubanza no RS/INJUST/RC 00024/2017/SC ryabaye ku wa 30/01/2018 ryari rigeze hagati, Me NIYONDORA Nsengiyumva, uburanira Ndengeyintwari Fabien, yavuze ko uwo aburanira atizeye ubutabera ku mucamanza Hatangimbabazi Fabien uyoboye inteko y'urwo rubanza, bitewe n'uko yari mu nteko yaburanishije urubanza no RC 00006/2017/SC ku kirego cyihutirwa rwaciwe ku wa 23/08/2017, ari nawe ushinzwe gutegura urubanza, ariyo mpamvu amwihannye, asaba ko urubanza rwazakomeza yarasimbuwe. Urubanza rwarasubitswe, Me Niyondora Nsengiyumva asabwa kubahiriza ibiteganywa n'amategeko ku bijyanye no kwihana umucamanza.

[redacted]Uwo munsi, Me Niyondora Nsengiyumva yatanze ibisobanuro birambuye ku kirego cy'ubwihane, avuga ko umucamanza Hatangimbabazi Fabien yagize icyo avuga cyangwa inama atanga ku rubanza aburanisha ndetse akaba yaranagaragaje ubucuti afitanye na Karamaga Thomas.

[redacted]Mu nyandiko yandikiye Perezida w'Urukiko rw'Ikirenga ku wa 26/02/2018, Umucamanza Hatangimbabazi Fabien yagize icyo avuga kuri ubwo bwihane.

[redacted]Perezida w'Urukiko rw'Ikirenga yashyizeho Itegeko rishyiraho inteko iburanisha. Iburanisha ryabereye mu nama y'abacamanza ku wa 27/02/2018, hasuzumwa ibikubiye mu myanzuro yatanzwe na Ndengeyintwari Fabien no mu bisobanuro byatanzwe n'Umucamanza Hatangimbabazi Fabien.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

Kumenya niba ubwihane ku mucamanza HATANGIMBABAZI Fabien bufite ishingiro.

[redacted]Me Niyondora Nsengiyumva, uburanira Ndengeyintwari Fabien, avuga ko hari ikirego cyihutirwa KARAMAGE Thomas yatanze mu rubanza no RS/INJUST/RC 00024/2017/SC,

urubanza kuri icyo kirego cyihutirwa rutegurwa n'umucamanza Hatangimbabazi Fabien, hafatwa icyemezo ko Ndengeyintwari Fabien atsinzwe, bityo ko irangiza ry'urubanza rwasubirishijwemo ku mpamvu z'akarengane riba rihagaze, bivuze ko umucamanza Hatangimbabazi Fabien yatanze inama (avis) kuri urwo rubanza, anagira uruhare runini mu cyemezo cyafashwe kuko ari we wari ushinzwe kurutegura (rapporteur), ariyo mpamvu asanga hashingiwe ku biteganywa n'ingingo ya 99, agace ka 5 n'aka 7, y'Itegeko n<u>o</u> 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, umucamanza Hatangimbabazi Fabien akwiye kuva mu rubanza, rugakomezanya n'inteko itaruzi.

[redacted]Avuga kandi ko mu rubanza ku kirego cyihutirwa, inteko yatije Karamaga Thomas imiburanire kuko mu bika bya 25 na 26 by'urubanza bigaragara ko KARAMAGA Thomas yashingiraga ikirego cyihutirwa ku kuba inzu ye igurishijwe atabona aho aba, inteko yongeraho ko yahindurirwa isura, cyangwa ikagurishwa akabura aho atura abaye atsinze urubanza, rurongera ruvuga ko isambu n'urwuri rwe bigurishijwe nabyo byahindurirwa isura, ko Ndengeyintwari Fabien yarandura ubwatsi cyangwa agahingamo ibindi bintu bigatuma inka za Karamaga Thomas zibura icyo zirisha nyamara nta na hamwe Karamage Thomas yigeze abiburanisha. Avuga ko bitagarukiye aho kuko no mu gihe cy'iburanisha ry'urubanza n<u>o</u> RS/INJUST/RC 00024/2017/SC, umucamanza Hatangimbabazi Fabien yongeye gutiza Karamaga Thomas ingingo z'imiburanire, amubaza icyo gusibwa k'ubujurire bwe byamwangirije kandi iyo ngingo ntayo umuburanyi yari yaburanishije, byose bigaragaza ko umucamanza Hatangimbabazi Fabien abogamiye ku ruhande rwa Karamaga Thomas, akaba yaragaragaje ubucuti afitanye nawe, iyo myitwarire ikaba ituma Ndengeyintwari Fabien atizera ko azahabwa ubutabera, ariyo mpamvu asaba uru Rukiko gushingira no ku ngingo ya 99, agace ka 4, y'Itegeko n<u>o</u> 21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru, rukemeza ko umucamanza Hatangimbabazi Fabien avanwe mu nteko iburanisha urubanza n<u>o</u> RS/INJUST/RC 00024/2017/SC.

[redacted]Mu rwandiko umucamanza Hatangimbabazi Fabien yandikiye Perezida w'Urukiko rw'Ikirenga kuri ubwo bwihane, avuga ko atari we wenyine wafashe icyemezo mu rubanza n<u>o</u> RC 00006/2017/SC kandi ko atari we wari uyoboye inteko, ariyo mpamvu asanga impungenge za Ndengeyintwari Fabien ku ngingo ijyanye n'uko haba hari inama yatanze nta shingiro ifite. Avuga kandi ko iburanisha ry'urubanza n<u>o</u> RS/INJUST/RC 00024/2017/SC ryabaye ku wa 07/11/2017, Ndengeyintwari Fabien ahagarariwe na Me Niyondora Nsengiyumva, uyu atanga inzitizi y'iburabubasha, iburanisha rirapfundikirwa, urubanza ku nzitizi rusomwa ku wa 08/12/2017, ababuranyi bamenyeshwa ko urubanza ruzakomeza ku wa 30/01/2018. Asobanura ko uwo munsi Me Niyondora Nsengiyumva yatanze indi nzitizi yo kutakira ikirego, iraburanishwa, Urukiko rwemeza ko izasuzumirwa rimwe n'urubanza mu mizi, yumvise atanyuzwe, abona kumwihana, akaba yibaza impamvu atamwihannye urubanza rugitangira kandi avuga ko impamvu ashingiraho ubwihane zariho mbere, byongeye kandi akaba atagaragaza icyo ashingiraho avuga ko yabogamiye kuri Karamaga Thomas cyangwa afitanye ubucuti nawe, ariyo mpamvu asanga ubwihane bwatanzwe na Ndengeyintwari Fabien nta shingiro bufite. Asoza asaba icyakora ko mu nyungu z'ubutabera no kugirango Ndengeyintwari Fabien azaburane atuje, byaba byiza asimbuwe mu rubanza.

UKO URUKIKO RUBIBONA

[redacted]Ingingo ya 9, igika cya mbere, y'Itegeko no 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda." Naho ingingo ya 99, agace ka 4, aka 5 n'aka 7, y'iryo tegeko, iteganya ko "Umucamanza wese

bashobora kumwihana iyo: ..4◦ umucamanza yagaragaje ubucuti afitiye umwe mu baburanyi cyangwa kuva aho urubanza rutangiriye, yarigeze kwakirwa n'umwe mu baburanyi ku mafaranga ye, cyangwa yaremeye impano ahawe n'umuburanyi; 5◦ yigeze kugira icyo avuga cyangwa agatanga inama kuri urwo rubanza mbere y'uko ruburanishwa ...7° yigeze kuba mu rubanza ari umucamanza, umwunzi, umushinjacyaha, umugenzacyaha, umuburanyi, umutangabuhamya, umusemuzi, inzobere cyangwa umukozi wo mu butegetsi bwa Leta ..."

[redacted]Ku bijyanye no kwihana abacamanza, Urukiko rurasanga abahanga mu mategeko agenga imyitwarire basobanura ko nubwo ntawukwiye gusabwa kuburanira imbere y'umucamanza ugaragaza kubogama, ababuranyi batemerewe kwihana abacamanza bashingiye gusa ku gukeka ko bashobora kubogama kuko ibyo byaremereza imikorere y'inkiko, bigatuma abacamanza bamwe babura icyo bakora kubera guhora bihanwa, abandi bagahorana akazi k'ikirenga ndetse bikabangamira n'abayobora inkiko mu buryo bwo kugena abacamanza baburanisha ibirego byinjiye, ahubwo ko uwihannye Bavuga by'umwihariko ko ubwihane bushingiye ku kuba umucamanza yaratanze inama cyangwa hari icyemezo yafashe mbere gishobora kubangamira imigendekere myiza y'urubanza bugomba gushingira ku bimenyetso bifatika bigaragaza ko yafashe umwanzuro ku kiburanwa cyangwa ku ishingiro ryacyo mu mategeko mbere y'uko ashyikirizwa ibimenyetso by'urubanza cyangwa yumva ibisobanuro by'ababuranyi.[1]

[redacted]Urukiko rurasanga mu rubanza Nº RC 00006/2017/SC rwaciwe ku wa 23/08/2017 harasuzumwe ikibazo cyo kumenya niba hari impamvu z'ubwihutirwe zatuma irangiza ry'urubanza no RCA 0012/09/HC/RWG rihagarara by'agateganyo mu gihe hagitegerejwe icibwa ry'urubanza no RS/INJUST/RC 00024/2017/SC, mu bika bya 22 na 23 by'urwo rubanza akaba ariho Urukiko rwasuzumye ibiri muri dosiye y'urubanza, rusanga Me Harerimana Augustin yaratanze itangazo rya cyamunara rigamije gusubukura igurisha ry'umutungo wa Karamaga Thomas ugizwe n'ibibanza bibiri (UPI 5/02/13/03/461 na UPI 5/02/13/05/1199), rusanga kandi Karamaga Thomas yaratanze ikirego gisaba gusubirishamo urubanza Nº RCA 0012/09/HC/RWG ku mpamvu z'akarengane, icyo kirego gihabwa nimero ariko kigitegereje kuburanishwa, hakaba nta kigaragaza ko Urukiko rwarenze ku nshingano zarwo zo gufata icyemezo ku kirego cyihutirwa gusa rutabangamiye urubanza rw'iremezo mu mizi yarwo.[2]

[redacted]Urukiko rurasanga kandi mu nyandiko ziri muri dosiye, ntaho Me Niyondora Nsengiyumva agaragaza inama (avis), umucamanza Hatangimbabazi Fabien yaba yaragiye kuri icyo kirego cy'iremezo, kugirango bibe byaherwaho hakekwa ko yazabogama mu gihe cyo kukiburanisha, bityo hashingiwe ku biteganywa n'ingingo ya 99, agace ka 5 n'aka 7, y'Itegeko Nº 21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru, ubwihane bushingiye ku gutanga inama cyangwa icyemezo cyafashwe mbere, bukaba nta shingiro bufite.

[1] "No person should be required to stand trial before a judge with a "bent of mind". [But] if the only objective were to assure litigants that the presiding judge was utterly unbiased and impartial, it would be simple to institute a system, […] by which both parties could peremptorily strike the assigned judge without giving a reason. If the process of peremptory challenge were endless, some judges would never try cases, others would be heavily overburdened, and the system of assigning judges would become much too cumbersome for everyday operation. [That is the reason why], the objecting party [must] demonstrate some sound reason for doubting the impartiality of the Judge… [For the judge's expressed view], if the circumstances or contents of a judge's statements indicate that the judge's mind is made up on the factual or legal merits of a reasonably litigated issue and this has occurred before the judge has heard the evidence and arguments of the litigants, then the judge should not sit." Reba Charles W. Wolfman, Modern Legal Ethics, St Paul, Minn, West Publishing Co., 1986, pp.989 and 993

[2] Ingingo ya 320, igika cya mbere, y'Itegeko no 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko : "Umucamanza uburanisha ibirego byihutirwa afata icyemezo ku bibazo byose byihuta, ariko mu buryo butabangamiye urubanza rw'iremezo mu mizi yarwo."

[redacted]Urukiko rurasanga kandi ibirego byihutirwa biba bigamije ko Urukiko rufata icyemezo cy'agateganyo mu buryo bwihuta gishobora kuzavanwaho n'urubanza rw'iremezo, umucamanza akaba asabwa gusuzuma gusa impamvu z'ubwihutirwe, akabikora yitwararitse cyane kugirango atabangamira urubanza rw'iremezo mu mizi yarwo, bityo mu gihe bitagaragajwe ko umucamanza yateshutswe ku nshingano ahabwa n'itegeko zo kutabangamira urubanza rw'iremezo mu mizi yarwo, hakaba nta kibuza ko yaburanisha urubanza rw'iremezo ikirego cyihutirwa cyari gishingiyeho, kuko kuba yaraciye urubanza ku kirego cyihutirwa bidahagaje kugirango hakekwe ko atazatanga ubutabera bwuzuye mu mizi y'urubanza. Uyu murongo kandi ni nawo wemezwa n'inkiko z'ahandi nk'aho Urukiko Rusesa imanza mu Bufaransa rwavuze ko kuba umucamanza aburanisha mu mizi urubanza yafashemo icyemezo cy'agateganyo bitavuze ko byanze bikunze azabogama [3]. Abahanga mu mategeko nabo bashimangira ko nta kibuza ko umucamanza waburanishije urubanza rwihutirwa aburanisha urw'iremezo iyo ikiburanwa gitandukanye cyangwa se iyo mu rubanza rwa mbere yagarukiye gusa ku gufata icyemezo cy'agateganyo,[4] nabyo bishimangira ko mu gihe nta kimenyetso kigaragaza ukobogama ku mucamanza Hatangimbabazi Fabien, ubwihane bwa Ndengeyintwari Fabien bushingiye ku ngingo ya 99, agace ka 5 n'aka 7, y'Itegeko n̲o 21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru nta shingiro bufite.

[redacted]Urukiko rurasanga na none dosiye y'urubanza igaragaza ko KaramagaThomas yashingiye ubwihutire bw'ikirego cye cyihutirwa ku kuba isambu ye irimo inka n'indi irimo inzu ye zishobora kugurishwa akabura aho yerekeza, mu bika bya 24 na 25 by'urubanza n̲o RC 00006/2017/SC, Urukiko rusanga koko guteza cyamunara urwuri rurimo inka cyangwa kumusohora mu nzu atuyemo urubanza ku karengane rutaracibwa byamutera igihombo kidasubirwaho (préjudice irréparable), Ndengeyintwari Fabien akaba atagaragaza aho Urukiko rwaba rwaratije Karamaga Thomas imiburanire ku buryo byafatwa ko rwabogamiye ku ruhande rwe, ndetse n'ibyo avuga ko mu iburanisha ry'urubanza n̲o RS/INJUST/RC 00024/2017/SC naho umucamanza Hatangimabazi Fabien yabajije Karamaga Thomas icyo gusibwa k'ubujurire bwe byamwangije agamije kumutiza imiburanire bikaba bitahabwa agaciro kuko ntakibuza umucamanza kubaza umuburanyi ikibazo gituma asobanukirwa kurushaho urubanza, bityo no kuri iyi ngingo ubwihane bukaba nta shingiro bufite.

[redacted]Urukiko rurasanga na none Ndengeyintwari Fabien atagaragariza Urukiko icyo ashingiraho avuga ko umucamanza Hatangimbabazi Fabien afitanye ubucuti na Karamaga Thomas, kuko kuba uwo baburanaga yaratsinze urubanza we agatsindwa ataribyo byashingirwaho hemezwa ko uwo mucamanza cyangwa inteko yamuburanishije hari ubucuti bafitanye n'uwo baburanaga, bityo ubwihane bushingiye ku ngingo ya 99, agace ka 4 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru, bukaba nta shingiro bufite.

[redacted]Hashingiwe ku bimaze gusobanurwa no ku ngingo z'amategeko zibukijwe haruguru, Urukiko rurasanga ikirego cya Ndengeyintwari Fabien cyo kwihana Umucamanza Hatangimbabazi Fabien mu nteko iburanisha urubanza n̲o RS/INJUST/RC 00024/2017/SC nta shingiro gifite.

III. ICYEMEZO CY'URUKIKO

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[3] "La circosnstance qu'un magistrat statue sur le fond d'une affaire dans laquelle il a pris préalablement une mesure conservatoire n'implique pas une atteinte à l'exigence d'impartialité appréciée objectivement." Reba Cassation, assemblée plenière, 6 novembre 1998, no 95-11, Bull, Ass.plén. no 4.

[4] Le juge peut participer à la décision sur le fond lorsqu'il n'a eu qu'à statuer sur une mesure conservatoire." Serge Guinchard [sous la direction], Droit et pratique de la procédure civile, Paris, Dalloz, 2013, p.1152

[redacted]Rwemeje ko ikirego cy'ubwihane rwashyikirijwe na NDENGEYIINTWARI Fabien nta shingiro gifite;

[redacted]Rwemeje ko umucamanza Hatangimbabazi Fabien, akomeza kuba mu bagize inteko iburanisha urubanza no RS/INJUST/RC 00024/2017/SC.