NGOBOKA V. NIYONSHUTI N'ABANDI.

[Rwanda URUKIKO RW'IKIRENGA – RCAA 0061/11/CS (Kanyange P.J, Hitiyaremye na Gakwaya J.) 7 Nyakanga 2017]

Amategeko agenga amasezerano – Inkomyi nsesamasezerano – Si ngombwa ko abagiranye amasezerano magiririrane bateganya mu masezerano inkomyi nsesamasezerano – Nubwo bayiteganya iseswa ry'amasezerano rigomba gusabwa mu Rukiko mu gihe amasezerano atagaragaza ko abayagiranye bemeranyije mu buryo bweruye ko azaseswa nta rubanza.

Amategeko agenga umutungo – Umutungo utimukanwa – Iyo Urukiko rutegetse ufite umutungo kuwusubiza uwawutsindiye, uwawuhawe agomba kwishyura ikiguzi cy'agaciro uwo mutungo wiyongereyeho kuva igihe wagiriye mu maboko yugomba kuwusubiza, mu rwego rwo kwirinda ubukungahare budakwiye.

Incamake y'ikibazo: Urukiko Gacaca rw'akagari ka Rwaza kaciye urubanza rw'umutungo gategeka Bizimana André kwishyura abo yangirije muri jenoside yakorewe abatutsi mu 1994, mu rwego rwo kurangiza urwo rubanza, Umuhesha w'inkiko Niyonshuti yagurishije inzu ye mu cyamunara igurwa na Rutabikangwa, ariko uwitwa Ngoboka yanga kuva muri iyo nzu avuga ko ari iye yaguze na Bizimana. Ngoboka yareze Umuhesha w'Inkiko Niyonshuti n'uwaguze iyo nzu Rutabikangwa mu Rukiko Rwisumbuye rwa Rubavu, asaba ko iyo cyamunara yateshwa agaciro kuko iyo nzu yagurishijwe ari iye, akaba yarayiguze na Bizimana. Muri urwo rubanza hagobokeshejwemo Murindangabo kuko yasinye ku cyemezo cyashingiweho mu guteza cyamunara. Naho Bizimana na Banki ya Kigali bagoboka ku bushake, Banki yavugaga ko inzu yatejwe cyamunara ari ingwate yayo yahawe na Ngoboka. Uru rukiko rwemeje ko cyamunara igumanye agaciro kayo. Rusanga ukugoboka kwa banki nta shingiro gufite kuko Ngoboka yatanze ingwate ku mutungo utari uwe. Uru rukiko rwategetse kandi Ngoboka gutanga indishyi zitandukanye no kuva mu nzu yaburanwaga.

Ngoboka ntiyishimiye imikirize y'urwo rubanza, ajurira mu Rukiko Rukuru, Urugereko rwa Musanze urwo Rukiko rwemeje ko ubwo bujurire butakiriwe.Ngoboka ntiyishimiye imikirize y'urubanza mu rukiko rukuru, ajurira mu Rukiko rw'Ikirenga Umucamanza mu cyemezo cy'ibanzirizasuzuma, yemeje ko ubujurire bwa Ngoboka butakiriwe.

Ngoboka ntiyishimiye icyo cyemezo akijuririra kwa perezida w'Urukiko rw'Ikirenga avuga ko Umucamanza yirengagije ko hashingiwe ku gaciro k'inzu iburanwa, ubujurire bwe buri mu bubasha bw'Urukiko rw'Ikirenga.Urukiko rw'Ikirenga rwaciye urubanza rubanziriza urundi, rwemeza ko ubujurire bwe bufite ishingiro, ko buri mu bubasha bwarwo.

Mu rubanza mu mizi Ngoboka avuga ko Urukiko rubanza rwirengagije ibimenyetso bigaragaza ko inzu iburanwa ari iye, bigizwe n'amasezerano y'ubugure yagiranye na Bizimana, ko rwanavuze ko ayo masezerano afite inkomyi iyasesa kuko ateganya ko agomba kuba yarangije kwishyura igiciro cy'inzu ku wa 15/1/2007 nyamara iyo tariki ikaba yarageze Ngoboka atararangiza kwishyura.

Niyonshuti, Umuhesha w'inkiko w'umwuga avuga ko yagurishije iyo nzu atarabona amasezerano y'ubugure bw'inzu hagati ya Ngoboka na Bizimana. Avuga kandi ko inzu

yagurishijwe yari yanditse kuri Bizimana kandi ko yari yarafatiriwe n'Urukiko gacaca rw'akagari ka Kibuye.

Rutabikangwa yunganiwe na Nkanika bavuga ko igurishwa ry'inzu iburanwa hagati ya Ngoboka na Bizimana ari "simulation". Bityo asaba urukiko kwemeza ko yaguze nta buryarya.

Murindangabo avuga ko Ngoboka na Bizimana bakoresheje amayeri kugirango banyereze umutungo yagombaga kwishyurwamo.

Naho Bizimana avuga ko icyemezo cy'Urukiko Gacaca rw'Akagali ka Kibuye cyafatiriye imitungo ye kandi rutari rufite ububasha kuko yari yarashyizwe mu rwego rwa mbere ndetse ngo rwamuburanishije atahamagawe. Avuga ko yagurishije Ngoboka inzu iburanwa kandi ko amasezerano bagiranye arimo inkomyi nsesamasezerano kuko Ngoboka atararangiza kumwishyura ikiguzi cyayo,akaba asanga ayo masezerano nta gaciro yahabwa.

Uhagarariye Banki ya Kigali avuga ko inzu iburanwa Ngoboka yayitanzeho ingwate muri BK Ltd. avuga ko nubwo iyo ngwate itanditswe ariko hari amasezerano y'ubugure n'amasezerano y'ingwate yashyiriweho umukono kwa Noteri.

Incamake y'icyemezo : 1. Mu masezerano magiririane inkomyi nsesamasezerano si ngombwa ko abayagiranye bayiteganyamo kandi nubwo bayiteganya, iseswa ry'amasezerano rigomba gusabwa mu Rukiko mu gihe amasezerano atagaragaza ko abayagiranye, bemeranyije mu buryo bweruye ko azaseswa nta rubanza.

2. Cyamunara yakozwe ku mutungo utari uwuwishyuzwa ndetse no mu buryo bunyuranyije n'amategeko igomba guteshwa agaciro, Umutungo ugasubira mu maboko ya nyirawo.

3. Indishyi mbonezamusaruro ntizitangwa iyo uziregera atazigaragariza ibimenyetso.

4. Indishyi zikomoka ku gihombo uziregera yatewe no gufatira inzu ye irimo ibintu ntizitangwa iyo uziregera atagaragaza ibyo bintu ibyo aribyo n'agaciro kabyo.

5. Indishyi ziterwa n'igihombo gikomoka ku nguzanyo ya banki ntizitangwa iyo uziregera atagaragaza ko iyo nguzanyo yari kuyikoresha mu bikorwa bibyara inyungu cyangwa se ngo agaragaze isano iri hagati y'inguzanyo n'abaregwa.

6. Iyo Urukiko rutegetse ufite umutungo kuwusubiza uwawutsindiye, uwawuhawe agomba kwishyura ikiguzi cy'agaciro uwo mutungo wiyongereyeho kuva igihe wagiriye mu maboko yugomba kuwusubiza, mu rwego rwo kwirinda ubukungahare budakwiye.

Ubujurire bufite ishingiro.
Cyamunara yakozwe ivanweho.

Amategeko yashingiweho:

Itegeko N° 21/2012 ryo ku wa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 216.

Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano ingingo ya 77,79.

Itegeko-teka ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, Igitabo cya III cy'urwunge rw'amategeko mbonezamubano ingingo ya 264, 333.

Nta manza zifashishijwe.

Inyandiko z'abahanga zifashishijwe:

Gilles Goubeaux et Philippe Bihr, 100 commentaires d'arrêts en droit civil, 2e édition, L.G.D.J., Paris, 2005, P. 288.

Code civil, Mégacode, Dalloz, Paris, 1997-1998, P. 908

S. Stijns, La résolution pour inexécution en droit belge : conditions et mise en œuvre, in les sanctions de l'inexécution des obligations contractuelles. Etudes de droit comparé, Bruxelles, Bruylant, 2001, P. 578

Frédérique Cohet-Cordey, Betty Laborrier et Jacques Lafond, ventes d'immeubles, 2e édition, Litec, Paris, 2007, P. 140.

Henri De Page, traité élémentaire de droit civil belge, tome deuxième, les incapables- les obligations, 3e édition, Emile Bruylant, Bruxelles, 1964, P. 852.

Urubanza

I.IMITERERE Y'URUBANZA

[1] Ku wa 21/5/2008, hatejwe cyamunara inzu iri kuri Mont Rwaza, ifite n° 704, harangizwa urubanza rwaciwe n'Urukiko Gacaca rw'Akagari ka Kibuye, aho uwitwa Bizimana André yari yatsinzwe. Inzu yaguzwe na Rutabikangwa Emmanuel mu cyamunara ariko nyuma y'aho uwitwa Ngoboka François-Xavier yanga kuva muri iyo nzu avuga ko ari iye yaguze na Bizimana André. Ngoboka François-Xavier yatanze ikirego mu Rukiko Rwisumbuye rwa Rubavu, arega Umuhesha w'Inkiko Niyonshuti Iddi Ibrahim n'uwaguze iyo nzu, Rutabikangwa Emmanuel, asaba ko iyo cyamunara yateshwa agaciro kuko iyo nzu yagurishijwe ari iye, akaba yarayiguze na Bizimana André hakurikijwe amasezerano yo ku wa 21/12/2006

[2] Urwo rubanza rwagobokeshejwemo Murindangabo Faustin wasinye icyemezo cyashingiweho mu guteza cyamunara. Hari kandi n'abarugobotsemo ku bushake aribo Bizimana André watsinzwe urubanza mu Rukiko Gacaca, na Banki ya Kigali ivuga ko inzu yatejwe cyamunara yari yaratanzweho ingwate na Ngoboka François-Xavier kubera umwenda yahawe.

[3] Ku wa 30/11/2010, urwo Rukiko rwaciye urubanza RC0351/09/TGI/RBV, rwemeza ko cyamunara yakozwe ku wa 21/5/2008 igumana agaciro kayo, rwemeza kandi ko ukugoboka kwa Banki ya Kigali kutahabwa agaciro kubera ko Ngoboka François-Xavier yatanze ingwate ku mutungo utimukanwa utari uwe.

[4] Urwo Rukiko rwategetse Ngoboka François-Xavier guha Rutabikangwa Emmanuel indishyi zingana na 10.000.000Frw, agaha Niyonshuti Iddi Ibrahim indishyi zihwanye na 1.000.000Frw na Murindangabo Faustin indishyi zingana na 1.000.000Frw, agatanga n'umusogongero wa Leta ungana na 480.000Frw, runamutegeka kuva mu nzu iri mu kibanza n° 704 kiri kuri Mont Rwaza.

[5] Ngoboka François-Xavier ntiyishimiye imikirize y'urwo rubanza, ajuririra mu Rukiko Rukuru, Urugereko rwa Musanze, ubujurire bwe buhabwa RCA0195/10/HC/MUS. Ku wa 20/01/2011, urwo Rukiko rwemeje ko ubwo bujurire butakiriwe, hashingiwe ku ngingo ya 219,

igika cya 2, y'Itegeko N° 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, kubera ko impaka zivutse mu irangiza ry'urubanza zikemurwa n'Urukiko rwaruciye bwa nyuma, kandi ko bene izo manza zitajuririrwa.

[6] Ngoboka François-Xavier ntiyishimiye imikirize y'urubanza, ku wa 31/01/2011, arujuririra mu Rukiko rw'Ikirenga, ubujurire bwe bwandikwa kuri RCAA0014/11/CS. Ku wa 28/04/2011, Umucamanza washinzwe ibanzirizasuzuma ry'ubwo bujurire, mu cyemezo n° RCIV 0039/11/Pré- ex/11/CS cy'ibanzirizasuzuma, yemeje ko ubujurire bwa Ngoboka François-Xavier butakiriwe kuko butujuje ibisabwa n'ingingo ya 43 y'Itegeko Ngenga N° 01/2004 ryo ku wa 29/1/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga ryariho icyo gihe.

[7] Ngoboka François-Xavier ntiyishimiye icyemezo n° RCIV 0039/11/Pré-ex/11/CS cy'ibanzirizasuzuma mu rubanza RCAA0014/11/CS, akijuririra avuga ko Umucamanza yirengagije ko hashingiwe ku gaciro k'inzu iburanwa, ubujurire bwe buri mu bubasha bw'Urukiko rw'Ikirenga ndetse ko icyemezo cye kinyuranyije n'ibiteganywa n'ingingo ya 43, igika cya 2, 7° y'Itegeko Ngenga N° 01/2004 ryo ku wa 29/1/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga ryakoreshwaga icyo gihe.

[8] Ku wa 16/1/2015, Urukiko rw'Ikirenga rwaciye urubanza rubanziriza urundi, rwemeza ko ubujurire bwa Ngoboka François-Xavier ku cyemezo n° RCIV 0039/11/Pré-ex/11/CS cy'ibanzirizasuzuma mu rubanza n° RCAA 0014/11/CS bufite ishingiro, ko ubujurire bwatanzwe na Ngoboka François-Xavier bufite RCAA0014/11/CS buri mu bubasha bw'Urukiko rw'Ikirenga kandi ko iburanisha ry'uru rubanza rizakomeza ku wa 17/3/2015.

[9] Uru rubanza ntirwashoboye kuburanishwa ku wa 17/3/2015 no ku wa 5/5/2015 kuko umwe mu baburanyi atari afite umwunganira, iburanisha ryimurirwa ku wa 7/7/2015 aho uru Rukiko rwasuzumye ibirebana n'iyakirwa ry'ubujurire bwa Ngoboka François-Xavier mu Rukiko Rukuru.

[10] Ku wa 25/9/2015, Urukiko rw'Ikirenga rwaciye urubanza rubanziriza urundi, rwemeza ko ubujurire bwa Ngoboka François-Xavier ku birebana n'iyakirwa ry'ubujurire bwe mu Rukiko Rukuru bufite ishingiro, ko iburanisha mu mizi ry'uru rubanza rizakomeza ku wa 8/12/2015.

[11] Uru rubanza ntirwashoboye kuburanishwa ku wa 8/12/2015 no ku wa 2/2/2016, iburanisha ryarwo ryimurirwa ku wa 22/3/2016.

[12] Iburanisha mu mizi ryabaye ku wa 22/3/2016, ku wa 31/5/2016 no ku wa 31/5/2017, Ngoboka François-Xavier yunganirwa na Me Hakizimana John, Niyonshuti Iddi Ibrahim yunganirwa na Me Kwizera Bernard, Bizimana André yunganiwe na Me Mukakabanda Athanasie, Abazungura ba Mulindangabo Faustin bahagarariwe na Me Umupfasoni Blandine, Rutabikangwa Emmanuel aburanirwa na Me Nkanika Alimasi naho Bank of Kigali Ltd iburanirwa na Me Rwindikiza Félix.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

a.Kumenya niba inzu iburanwa itaragombaga kugurishwa mu cyamunara kuko iri mu mutungo wa NGOBOKA François-Xavier kandi ikaba itarigeze ifatirwa n'Urukiko Gacaca

[13] Ngoboka François-Xavier avuga ko Urukiko rwirengagije ibimenyetso bigaragaza ko inzu iburanwa ari iye, bigizwe n'amasezerano y'ubugure bw'iyo nzu yo ku wa 1/6/2006 yagiranye na Bizimana André. Asobanura ko Urukiko rwanze guha agaciro ayo masezerano ku mpamvu y'uko habaye amasezerano y'ubwoko bubiri, amwe yanditse ku mashini, andi yanditswe n'ikaramu, ko rwanavuze ko ayo masezerano afite inkomyi iyasesa kuko ateganya ko agomba kuba yarangije kwishyura igiciro cy'inzu ku wa 15/1/2007.

[14] Ngoboka François-Xavier asobanura ko ahubwo ayo masezerano ari amwe kandi atavuguruzanya, ko bayashyize ku mashini mu rwego rw'isuku kandi ko ayo masezerano yakorewe inyandikomvaho. Akomeza asobanura ko Urukiko rutari kwemeza ko ayo masezerano atahabwa agaciro hashingiwe ku nkomyi nsesamasezerano ivugwamo kuko Bizimana André yakomeje kwakira ubwishyu bw'inzu nyuma yo ku wa 15/1/2007 nk'uko bigaragazwa n'ama ''reçus'' yiyandikiraga.

[15] Ngoboka François-Xavier avuga ko Urukiko rutari kwemeza ko atari nyiri inzu iburanwa kuko Urukiko Rwisumbuye rwa Rubavu, hamwe n'Urukiko Rukuru, Urugereko rwa Musanze, zari zemeje ko iyo nzu ari iye kuko yayiguze nta buriganya. Akomeza avuga ko uretse n'ibyo, Urukiko Gacaca rwa Kibuye, rwaburanishije urubanza rwa Bizimana André na Mulindangabo Faustin, rwanze gufatira inzu iburanwa, ahubwo rumwandikira rumubuza kwishyura amafaranga yari yasigayemo Bizimana André. Yongeyeho ko kuba bari batarakora ''mutation'', bitari gutuma Urukiko rwemeza ko atari nyiri nzu iburanwa, nubwo yari icyanditswe kuri Bizimana André.

[16] Ngoboka François-Xavier avuga ko Urukiko rutigeze rugira icyo ruvuga ku ibimenyetso yari yatanze bigaragaza ko iyo nzu itari kugurishwa mu cyamunara, birimo icyemezo cyafashwe n'Urukiko Gacaca rwa Kibuye kitari giteyeho ikashi mpuruza kandi kigaragaza ko inzu iburanwa itigeze ifatirwa n'urwo Rukiko ahubwo, ko rwafatiriye gusa 4.350.000Frw yari asigaye ku bugure bw'iyo nzu, urubanza RP0209/08/TM rwaciwe n'Urukiko rwa Gisirikare ku wa 5/3/2009 rwemeza ko cyamunara yakozwe ishingiye ku nyandiko mpimbano n'ibaruwa y'Umuhuzabikorwa w'Inkiko Gacaca mu Karere ka Rubavu yo ku wa 6/5/2008 yandikiye Umuhesha w'Inkiko w'umwuga Niyonshuti Iddi Ibrahim, amubuza guteza cyamunara inzu iburanwa. Avuga kandi ko iyo nzu itari kugurishwa mu gihe Perezida w'Urukiko Rwisumbuye rw'aho inzu iri atari yafashe icyemezo ko igurishwa cyamunara, hashingiwe ku ngingo ya 297 y'Itegeko N° 18/2004 ryo ku wa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakoreshwaga icyo gihe.

[17] Ngoboka François-Xavier akomeza avuga ko hashingiwe ku ngingo ya 18, igika cya gatatu cy'Itegeko N° 31/2001 ryo ku wa 12/6/2001 rishyiraho kandi ritunganya imikorere y'Urugaga rw'Abahesha b'Inkiko b'Umwuga, Niyonshuti Iddi Ibrahim atari kugurisha iyo nzu kuko iteganya ko Umuhesha w'Inkiko w'umwuga nta bureganzira n'ubushobozi afite bwo guteza cyamunara umutungo utimukanwa uri mu kiburanwa, wanditse mu Bitabo by'ubutaka. Avuga nanone ko hashingiwe ku ngingo ya 264 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano ariwe nyiri nzu iburanwa kuko yayiguze, akanahabwa imfunguzo zayo.

[18] Me Hakizimana John avuga ko inzu iburanwa yatejwe cyamunara ari iya Ngoboka François-Xavier kuko nta rubanza Gacaca yigeze aregwamo cyangwa atsindirwamo iby'imitungo. Akomeza avuga ko mu bimenyetso bibigaragaza, harimo amasezerano y'ubugure bw'inzu hagati ya Bizimana André na Ngoboka François-Xavier yo ku wa 21/12/2006, inyandikomvaho nº 000049 yakozwe na Katisiga R Emile, Noteri wa Leta mu Karere ka Rubavu, urubanza RC 114/8/TGI/RBV rwabaye itegeko, aho Urukiko rwemeje ko inzu iburanwa Bizimana André yari yarayigurishije Ngoboka François-Xavier n'ibaruwa yo ku wa 31/12/2014, Bizimana André yandikiye Ngoboka François-Xavier amwishyuza amafaranga yasigaye bagura inzu.

[19] Me Hakizimana John avuga ko inkomyi nsesamasezerano ivugwa mu ngingo ya gatanu y'amasezerano yo ku wa 21/12/2006 itagezweho kuko nyuma yo ku wa 15/1/2007, Bizimana André yakomeje kwakira ubwishyu bw'inzu nk'uko bigaragazwa n'ama ''reçus'' yagiye yakiriraho amafaranga.

[20] Me Hakizimana John avuga ko Umuhesha w'Inkiko Niyonshuti Iddi Ibrahim yirengagije ibyari byategetswe n'Urukiko Gacaca mu irangiza ry'ibyemezo byarwo, kuko inzu yagurishijwe itigeze ifatirwa n'Urukiko Gacaca kuko rwari rwafatiriye gusa amafaranga yasigaye ku bugure bwayo angana na 4.350.000Frw. Avuga kandi ko Urukiko rwirengangije ko icyamunara cyakozwe gishingiye ku nyandiko zaje kugirwa inyandiko mpimbano mu rubanza RP0209/08/TM rwaciwe ku wa 5/3/2009, ko Urukiko Gacaca rw'Akagali ka Kibuye rwandikiye Ngoboka François- Xavier ibaruwa, rumutegeka kudaha Bizimana André amafaranga yamusigayemo bagura inzu, ndetse ko inzu yagurishijwe nta mpapurompesha ziteyeho kashi mpuruza. Asoza asaba uru Rukiko gutesha agaciro cyamunara Umuhesha w'Inkiko Niyonshuti Iddi Ibrahim yakoze ku nzu ya Ngoboka François-Xavier, rukanategeka ko ayisubizwa.

[21] Niyonshuti Iddi Ibrahim avuga ko yagurishije iyo nzu iburanwa, atari yabona amasezerano y'ubugure bw'inzu hagati ya Ngoboka François-Xavier na Bizimana André, ko ahubwo yayigurishije ashingiye ku rubanza rw'Inkiko Gacaca nº 68 rwaciwe ku wa 28/2/2008 aho Colonel Bizimana André yari yatsinzwe. Asobanura ko iyo nzu yari yafatiriwe ku wa 15/10/2007 n'Urukiko Gacaca kuko ubusanzwe urwo rukiko rwabanzaga gufatira imitungo y'ukurikiranyweho icyaha mbere y'uko urubanza rucibwa.

[22] Niyonshuti Iddi Ibrahim avuga ko guteza cyamunara nta mihango yindi ikozwe, nta n'ikashi mpuruza, nta makosa yakoze kuko icyemezo cy'Inkiko Gacaca cyabaga cyanditseho ko ari icyemezo cyo guteza cyamunara umutungo wafatiriwe, ko ibyo byaje no gushimangirwa n'ibaruwa yo ku wa 9/6/2008 y'Umunyamabanga Nshingwabikorwa w'Inkiko Gacaca, Madamu Mukantangazwa Domitille, aho yasabaga abahesha b'Inkiko kujya barangiza imanza Gacaca batitwaje ko bategereje kashe mpuruza.

[23] Niyonshuti Iddi Ibrahim avuga ko nubwo mu rubanza RP0209/08/TM, Urukiko rwa Gisirikare rwahamije inyangamugayo Habimana Jean-Damascène na Mulindagabo Faustin icyaha cy'inyandiko mpimbano kuko rwemeje ko urubanza rwa Colonel Bizimana André na Mulindagabo Faustin mu Rukiko Gacaca rwari uruhimbano, ariko ko we yaje kurangiza icyemezo cyakosowe kandi gisinyweho n'inyangamugayo zose. Yongeyeho ko mu by'ukuri, icyo cyemezo kitahindutse, ko icyahindutse ari imikono y'inyangamugayo kubera ko icyemezo cya mbere cyari gifite umukono w'inyangamugayo imwe gusa.

[24] Niyonshuti Iddi Ibrahim akomeza avuga ko inzu yagurishije mu cyamunara yari yanditswe kuri Bizimana André kandi ko yari yarafatiriwe n'Urukiko Gacaca rw'Akagari ka Kibuye. Asobanura ko icyemezo cy'Urukiko Gacaca kivuga ko ari amafaranga yari yasigaye agomba gufatwa gusa atakibonye, ko we yarangije icyemezo cy'Urukiko Gacaca cyemeza ko inzu ya Bizimana André iburanwa ubu igomba gutezwa cyamunara.

[25] Niyonshuti Iddi Ibrahim avuga kandi ko Ngoboka François-Xavier atakwitwaza ibaruwa ya Perezida w'Urukiko Gacaca rw'Akagari ka Kibuye yo ku wa 15/10/2007 kuko icyemezo cy'Urukiko Gacaca cyo ku wa 28/2/2008 cyaje kwemeza igurishwa ry'inzu iburanwa.

[26] Niyonshuti Iddi Ibrahim asoza avuga ko imihango (procédure) yose yo kugurisha iyo nzu mu cyamunara yubahirijwe kandi kugeza ubu nta cyemezo gihari kivuguruza iryo rangiza ry'urubanza.

[27] Ku birebana n'amasezerano Ngoboka François-Xavier yemeza ko Urukiko rwirengagije, Me Kwizera Bernard avuga ko aya masezerano yo ku wa 21/12/2006 ari amasezerano y'ubugure bw'agateganyo kuko afite inkomyi nsesamasezerano (condition résolutoire) nk'uko bigaragara mu ngingo zayo za 3 na 4. Avuga ko ingingo ya 3 y'ayo masezerano iteganya ko Ngoboka François-Xavier yagombaga kuba yarangije kwishyura igiciro cy'inzu ku wa 15/1/2007, naho ingingo ya 4 yayo igateganya ko inzu izaba iye akimara kwishyura igiciro cy'inzu. Avuga kandi ko ingingo ya 5 y'ayo masezerano iteganya ko iyo itariki yo ku wa 15/1/2007 irenze Ngoboka François-Xavier atarishyura ayo mafaranga yose, nyiri inzu yari afite uburenganzira bwo gusesa amasezerano.

[28] Me Kwizera Bernard akomeza avuga ko Niyonshuti Iddi Ibrahim atari azi aya masezerano yo ku wa 21/12/2006 igihe yagurishaga inzu iburanwa, ariko kuba Ngoboka François-Xavier atari yararangije kwishyura igiciro cy'inzu ku itariki ya 15/1/2008 kuko iyi yari inkomyi nsesamasezerano (condition résolutoire), bivuze ko atigeze aba nyir'iyo nzu hashingiwe ku ngingo za 81 na 265 z'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano.

[29] Ku birebana n'urubanza.RC0114/08/TGI/RBV hamwe n'urubanza RCA0032/08/HC/MUS zivugwa na Ngoboka François-Xavier, Me kwizera Bernard avuga ko izo manza zirebana n'ibirego byihutirwa yari yashyikirije Inkiko zitari zaciwe burundu, ahubwo ukurikije imiterere yazo asanga ari imanza zaciwe by'agateganyo.

[30] Ku birebana n'imanza zaciwe n'Inkiko Gacaca, Me kwizera Bernard avuga ko irangizwa rya bene izo manza ridasaba ko hakoreshwa kashi mpuruza nk'uko bikorwa ku manza zaciwe n'Inkiko zisanzwe.

[31] Me Nkanika Alimasi avuga ko igurishwa ry'inzu iburanwa hagati ya Ngoboka François-Xavier na Bizimana André ari simulation kuko hashingiwe ku biteganywa n'ingingo ya 35 y'Itegeko rigena ubutaka, abagize umuryango wa Bizimana André bagombaga gushyira umukono ku masezerano bagiranye, bityo kuba Bizimana André yarakoresheje uburiganya bwo kwikuraho umutungo, hagomba kwemeza ko Rutabikangwa Emmanuel yaguze inzu ya Bizimana André nta buryarya kandi ayigura mu cyamunara ikoreshejwe n'Umukozi wari ubifitiye ububasha.

[32] Me Nkanika Alimasi akomeza avuga ko Urukiko rusanze Rutabikangwa Emmanuel yaraguze inzu itari iya Bizimana André, ibyo byabazwa Niyonshuti Iddi Ibrahim kuko ariwe wateje cyamunara iyo nzu iburanwa, akaba rero ariwe ugomba gusubiza Rutabikangwa Emmanuel agaciro k'inzu ubu nk'uko bigaragazwa n'igenagaciro iri muri dosiye.

[33] Murindangabo Faustin avuga ko Ngoboka François-Xavier na Bizimana André bakoresheje amayeri kugirango banyereze umutungo yagombaga kwishyurwamo.

[34] Me Tugirimana Vincent avuga ko amasezerano y'ubugure bw'inzu iburanwa hagati ya Ngoboka François-Xavier na Bizimana André nta gaciro yahabwa kuko anyuranyije n'ibiteganywa n'ingingo ya 10 y'Itegeko Nº 28/2004 ryo ku wa 3/12/2004 ryerekeye imicungire y'imitungo idafite bene yo, no kuba aya masezerano yari yakozwe ku munsi umwe, amwe yandikishije imashini, andi intoki kandi n'abagabo batandukanye.

[35] Me Tugirimana Vincent avuga ko amasezerano y'ubugure bw'inzu iburanwa hagati ya Ngoboka François-Xavier na Bizimana André nta gaciro yahabwa kuko anyuranyije n'ibiteganywa n'ingingo ya 10 y'Itegeko Nº 28/2004 ryo ku wa 3/12/2004 ryerekeye imicungire y'imitungo idafite bene yo, no kuba aya masezerano yari yakozwe ku munsi umwe, amwe yandikishije imashini, andi intoki kandi n'abagabo batandukanye.

[36] Me Tugirimana Vincent avuga ko kuba aya masezerano yarateganyaga ko azatangira kubahirizwa ari uko uwaguze amaze kwishyura agaciro kose k'inzu, Ngoboka François-Xavier atakwitwaza ko yabaye nyir' inzu kandi na n'ubu atararangiza kwishyura amafaranga yose.

[37] Ku birebana n'imanza RC0114/08/TGI/RBV na RCA0032/08/HC/MUS, Me Tugirimana Vincent avuga ko izo manza zaciwe by'agateganyo zitemeje ko inzu iburanwa ari iye kuko zategetse ko hategerezwa urubanza ruzacibwa mu mizi. Asoza avuga ko ashingiye ku byo yavuze haruguru, inzu iburanwa yagurishijwe mu cyamunara ari iya Bizimana André.

[38] Bizimana André avuga ko icyemezo cy'Urukiko Gacaca rw'Akagali ka Kibuye cyo ku wa 15/10/2007 cyafatiriye imitungo ye itanu kandi urwo Rukiko rutari rufite ububasha bwo kumuburanisha kuko yari yarashyizwe mu rwego rwa mbere rw'abantu bakurikiranyweho jenoside. Akomeza avuga ko Urukiko Gacaca rwamuburanishije atahamagawe. Avuga ko yagurishije koko Ngoboka François-Xavier inzu iburanwa kandi amasezerano yemera ari ayandikishije imashini. Akomeza avuga ko kuba amasezerano bagiranye arimo inkomyi nsesamasezerano (condition résolutoire) kandi Ngoboka François-Xavier atararangiza kumwishyura ikiguzi cyayo kuko akimurimo 10.000.000Frw, bityo akaba asanga ayo masezerano nta gaciro yahabwa.

[39] Me Mukakabanda Athanasie avuga ko ingingo ya 3, 4 n'iya 9 z'amasezerano yabaye hagati ya Ngoboka François-Xavier na Bizimana André zumvikanisha ko mu gihe Ngoboka François-Xavier atishyuye ikiguzi cyose cy'inzu, iyo nzu yagurishijwe iguma mu mutungo wa Bizimana André.

[40] Me Mukakabanda Athanasie akomeza avuga ko ibaruwa Bizimana André yandikiye Ngoboka François-Xavier ku wa 31/12/2014, byari mu rwego rwo kumwibutsa ibaruwa yo ku wa 16/5/2007 imutotera (mise en demeure) kwishyura amafaranga amurimo. Yongeyeho ko hari n'indi baruwa yo ku wa 6/1/2015 Bizimana André yanditse amwibutsa iyo ku wa 16/5/2007,

bityo akaba asanga aya mabaruwa abiri atari ikimenyetso kigaragaza ko Ngoboka François-Xavier ari nyir'inzu iburanwa kuva ayiguze.

[41] Ku birebana n'urubanza RC0114/08/TGI/RBV, Me Mukakabanda Athanasie avuga ko urwo rubanza rutemeje ko ubugure bw'inzu iburanwa bwabaye hagati ya NGOBOKA François-Xavier na Bizimana André kuko icyaburanwe muri urwo rubanza cyari ugutesha agaciro cyamunara yo ku wa 21/5/2008.

[42] Me Rusanganwa Jean-Bosco avuga ko inzu iburanwa Ngoboka François-Xavier yayitanzeho ingwate muri BK Ltd. Akomeza avuga ko nubwo iyo ngwate itanditswe ariko hari amasezerano y'ubugure n'amasezerano y'ingwate yashyiriweho umukono kwa Noteri. Asoza asaba Urukiko kwemeza ko iyo nzu ari ingwate ya BK Ltd.

UKO URUKIKO RUBIBONA

[43] Ingingo ya 77, igika cya mbere, y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko ''Inkomyi itangiza inshingano ni ikintu gishobora kutabaho ariko kigomba kubaho mbere y'uko gukora igisabwa biba ngombwa''.

[44] Ingingo ya 79 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigena amasezerano iteganya ko ''Iyo amasezerano ateganya inkomyi ituma inshingano z'ufite inshingano zirangira, mu gihe iyo nkomyi ibayeho, nta nshingano ufite inshingano aba agifite, keretse iyo ikintu cyagizwe inkomyi kibaye kubera ko ufite inshingano atubahirije inshingano ze cyangwa se kibaye nticyongere ku buryo bugaragara inshingano z'ufite inshingano''.

[45] Ingingo ya 264 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano iteganya ko ''Igurisha riba ryuzuye hagati y'abagiranye amasezerano kandi umugurisha akegurira burundu umuguzi icyagurishijwe mu gihe bumvikanye ku kintu no ku giciro cyacyo n'ubwo ikigurishwa kitari cyatangwa n'ikiguzi cyacyo kikaba kitari cyishyurwa''.

[46] Ingingo ya 333 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano iteganya ko ''Iyo byavuzwe mu gihe cy'igurisha ry'ibitimukanwa ko, niba umuguzi atishyuye mu gihe cyemeranijweho, igurishwa rizaseswa nta rubanza, ntibyabuza uwaguze kwishyura nyuma y'igihe bahanye, niba atarandikiwe ibaruwa imutotera kwishyura: ariko nyuma y'iyo baruwa imutotera kwishyura, urukiko ntirwarengaho ngo rumwongerere ikindi gihe''.

[47] Ingingo ya 3 y'amasezerano yo ku wa 21/12/2006 y'ubugure bw'inzu iri muri pareseli nº 704 kuri mont Rwaza, mu Karere ka Rubavu, hagati ya Ngoboka François-Xavier na Bizimana André iteganya ko ''Igiciro cyumvikanweho ni amafaranga miliyoni makumyabiri n'indwi (27.000.000Frw), Bwana Ngoboka François-Xavier akaba yarangije kwishyura ayo mafaranga yose bitarenze ku itariki ya 15 Mutarama 2007''. Ingingo yayo ya 4 iteganya ko ''NGOBOKA namara kwishyura, inzu izahita iba iye''. Naho ingingo yayo ya 5 iteganya ko ''Itariki ivugwa mu ngingo ya 3 irenze Ngoboka ataramara kwishyura ayo mafaranga yose nyir'inzu afite uburenganzira bwo gusesa amasezerano''. Nanone ingingo yayo ya 9 iteganya ko ''Aya masezerano azatangira gushyirwa mu bikorwa uguze amaze kwishyura amafaranga yose ahwanye n'ikiguzi cyumvikanweho, nkuko biteganywa n'ingingo ya 3 y'aya masezerano''

[48] Dosiye y'urubanza igaragaza ko hari ibaruwa Bizimana André yandikiye Ngoboka François-Xavier ku wa 16/5/2007, amumenyesha ko amuhaye iminsi cumi n'itanu yo kurangiza kumwishyura amafaranga yose amugomba, ko iyo minsi nirangira amafaranga yose amusigayemo ataragera kuri konti ye, azahita asesa amasezerano nta yindi nteguza. Igaragaza kandi ko hari indi baruwa yandikiye Ngoboka François- Xavier yo ku wa 31/12/2014 aho amumenyesha ko yongeye kumuha bwa nyuma iminsi itanu ngo abe arangije kumwishyura amafaranga yose amusigayemo. Igaragaza nanone ko hari indi baruwa yamwandikiye ku wa 6/1/2015, amumenyesha ko yafashe icyemezo gisesa amasezerano bagiranye, hakubahirizwa ibigenwa mu ngingo ya 5 n'iya 6 yayo.

[49] Dosiye y'urubanza igaragaza ko ku wa 25/4/2007 no ku wa 30/4/2007, Bizimana André yakomeje kwakira amafaranga Ngoboka François- Xavier yamuhaye mu rwego rwo kumwishyura inzu baguze.

[50] Urukiko rw'Ikirenga rurasanga isesengura ry'ingingo za 3, 4, 5 n'iya 9 z'amasezerano y'ubugure bw'inzu hagati ya Ngoboka François-Xavier na Bizimana André rigaragaza ko abayakoranye bumvikanye ko Ngoboka François-Xavier azegukana inzu nyuma yo kwishyura ikiguzi cyose cyayo kandi agomba kuba yarangije kwishyura ikiguzi cyose bitarenze ku wa 15/1/2007, atabikoze Bizimana André akaba afite uburenganzira bwo gusesa ayo masezerano.

[51] Urukiko rw'Ikirenga rurasanga hashingiwe ku ngingo ya 264 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano, ihame ry'amategeko ari uko amasezerano y'ubugure yegurira umuguzi icyagurishijwe ako kanya kandi mu buryo bwa burundu mu gihe yumvikanye n'umugurisha ku kintu no ku giciro cyacyo n'ubwo ikigurishwa cyaba kitari cyatangwa n'ikiguzi cyacyo kitarishyurwa, bivuze ko nubwo abagiranye amasezerano y'ubugure bashobora gusezerana ko umuguzi azegukana ikigurishwa igihe azarangiriza kwishyura ikiguzi cyose, ariko gutanga icyaguzwe ari ingaruka y'ubwo bugure, nta kigomba gusabwa kugirango uko kugitanga kubeho[1], bityo rukaba rusanga kuba ugushyikiriza icyaguzwe uwakiguze ari ingaruka ku bw'amategeko, ihita ibaho mu busanzwe igihe abagiranye amasezerano bayemeranyijeho cyangwa igihe icyari gitegerejwe n'abagiranye amasezerano cyabayeho, abagiranye amasezerano y'ubugure bashobora kandi kumvikana gusubika igihe cyo gushyikiriza icyaguzwe uwakiguze ariko nta ngaruka bifite ku buzima bw'amasezerano[2]. Byongeye kandi muri uru rubanza byagaragaye ko Ngoboka François-Xavier yabonye inzu iburanwa bakimara gukorana amasezerano y'ubugure na Bizimana André, bityo rukaba rusanga Bizimana André yari yarangije kubahiriza inshingano ze, hakurikijwe ibiteganywa n'ingingo ya 264 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano.

[52] Hakurikijwe ibyasobanuwe mu gika kibanziriza iki, Urukiko rw'Ikirenga rurasanga igenagihe rigaragara mu ngingo ya 3 y'amasezerano y'ubugure hagati ya Ngoboka François-Xavier na Bizimana André itinza gusa iyubahirizwa ry'inshingano ya Ngoboka François-Xavier

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[1] Le transfert de propriété étant une conséquence inhérente à la vente, il ne peut être assorti d'une condition. En effet, la condition est une modalité dont dépend l'existence même de l'obligation'', cass, com., 24/9/2002 in Gilles Goubeaux et Philippe Bihr, 100 commentaires d'arrêts en droit civil, 2e édition, L.G.D.J., Paris, 2005, P. 288.

[2] "Le transfert de propriété est un effet légal du contrat (vente) qui se déclenche en principe par le seul échange des consentements, ou (….) par la survenance d'un événement prévu par les parties. S'il s'agit d'une conséquence de la vente, sa réalisation peut être retardée (terme), mais son existence ne peut être rendue incertaine (condition), idem.

kuko inshingano ye idashidikanywaho (certain)[3]. Rurasanga kandi ibiteganywa n'ingingo ya 4 n'iya 9 z'amasezerano y'ubugure mu rwego rw'amategeko zumvikanisha ko Bizimana André yeguriye Ngoboka François-Xavier inzu baguze kubera ko bumvikanye ku nzu no ku giciro cyayo, bakanashyira umukono ku masezerano yanditswe yo ku wa 21/12/2006, n'ubwo bemeranyije ko inzu izashyikirizwa uwaguze ari uko amaze kwishyura amafaranga yose ku wa 15/1/2007.

[53] Urukiko rw'Ikirenga rurasanga kandi amasezerano y'ubugure bw'inzu hagati ya Ngoboka François-Xavier na Bizimana André ari amasezerano ya magirirane aho inkomyi nsesamasezerano yumvikana itavuzwe, bivuze ko atari ngombwa ko abayagiranye bayivuga mu masezerano kandi nubwo bayivuga, iseswa ry'amasezerano rigomba gusabwa mu Rukiko mu gihe amasezerano atagaragaza ko bemeranyije mu buryo bweruye (de manière expresse) ko igurishwa rizaseswa nta rubanza (de plein droit) niba umuguzi atishyuye mu gihe cyemeranijweho[4], nyamara ibiteganywa n'ingingo ya 5 y'amasezerano y'ubugure hagati ya Ngoboka François-Xavier na Bizimana André byumvikanisha ko mu gihe ku wa 15/1/2007, Ngoboka François- Xavier yari kuba atarishyura igiciro cy'inzu, Bizimana André yari afite uburenganzira bwo gusaba Urukiko rubifitiye ububasha gusesa ayo masezerano. Bivuze ko amasezerano bagiranye adateganye mu buryo bweruye ko niba Ngoboka François-Xavier atishyuye igiciro cyemeranyijwe ku wa 15/1/2007, amasezerano azaseswa nta rubanza, bityo ayo masezerano akaba adashobora kuba impfabusa byanze bikunze (automatiquement) ngo kubera ko Ngoboka François-Xavier atishyuye ikiguzi cyose ku itariki bari bemeranyije[5]

[54] Hashingiwe ku byasobanuwe mu gika kibanziriza iki, Urukiko rw'Ikirenga rurasanga Bizimana André avugisha ingingo ya 333 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano cyavuzwe haruguru ibyo itavuga, kuko iyo ngingo yumvikanisha ko iyo uwaguze atishyuye ikiguzi mu gihe cyemeranyijweho, nta cyamubuza kwishyura nyuma y'igihe bahanye mu gihe atandikiwe ibaruwa imutotera kwishyura, ariko nyuma y'iyo baruwa imutotera kwishyura, ugurisha ashobora gutanga ikirego mu Rukiko rubifitiye ububasha kugira ngo asabe iseswa ry'amasezerano y'ubugure bw'ibintu bitimukanwa kandi ko Urukiko rudafite ububasha bwo gusuzuma ishingiro ry'icyo kirego, ahubwo ko rugomba gusa kwemeza (constater) iseswa

[3] "Si donc l'événement (le paiement du prix) dont dépend le transfert de propriété est juridiquement certain, car faisant l'objet d'une obligation, il s'agit non d'une condition mais d'un terme'', idem.

[4] ''La clause résolutoire de plein droit, qui permet aux parties de soustraire la résolution d'une convention à l'appréciation des juges, doit être exprimée de manière non équivoque, faute de quoi les juges recouvrent leur pouvoir d'appréciation'', Civ. 3e, 12 Oct. 1994 : Bull. civ. III, nº 178, in Code civil, Mégacode, Dalloz, Paris, 1997-1998, P. 908. ''Lorsqu'aucune disposition n'interdit expressément le pacte commissoire exprès, les parties peuvent librement l'insérer dans leur contrat. Dans ce cas, elles doivent être particulièrement attentives dans la rédaction de cette clause, laquelle doit exclure de manière certaine, le contrôle préalable du juge'', S. Stijns, La résolution pour inexécution en droit belge : conditions et mise en œuvre, in les sanctions de l'inexécution des obligations contractuelles. Etudes de droit comparé, Bruxelles, Bruylant, 2001, P. 578, in le pacte commissoire exprès, http://www.actualitsdroitbelge.be/droit-des-affaires-abregés-juridiques, consulté le 4/7/2017. ''En principe, la mise en œuvre de la clause résolutoire expresse requiert une mise en demeure préalable du débiteur'', Cass.2 mai 1964, Pas., 1964,I, p.34, in le pacte commissoire exprès, http://www.actualitsdroitbelge.be/droit-des-affaires-abregés-juridiques, consulté le 4/7/2017

[5] ''L'arrivée du terme ne débouche pas sur la caducité de la vente mais offre la possibilité d'agir en résolution de la vente (…) ou en exécution forcée'', in Frédérique Cohet-Cordey, Betty Laborrier et Jacques Lafond, ventes d'immeubles, 2e édition, Litec, Paris, 2007, P. 140.

ry'amasezerano nk'uko abayagiranye babyumvikanyeho, ndetse ko rudashobora kwemerera uwaguze ikindi gihe cyo kubahiriza inshingano ze[6]

[55] Urukiko rw'Ikirenga rurasanga rero kuba nta ngingo n'imwe y'amasezerano y'ubugure hagati ya Ngoboka François-Xavier na Bizimana André iteganya ko amasezerano y'ubugure azaseswa nta rubanza niba Ngoboka François-Xavier atishyuye ikiguzi mu gihe cyemeranijweho, no kuba ingingo ya 5 y'ayo masezerano iteganya ko icyo gihe Bizimana André azaba afite uburenganzira bwo gusesa amasezerano, ubwo burenganzira bugomba gukoreshwa imbere y'Urukiko nk'uko byasobanuwe haruguru .

[56] Urukiko rw'Ikirenga rurasanga nanone hashingiwe ku byavuzwe haruguru, inzu iburanwa ari iya Ngoboka François-Xavier kuko yayiguze mu buryo bukurikije amategeko, bityo iyo nzu ikaba itaragombaga kugurishwa cyamunura nk'iri mu mutungo wa Bizimana André.

[57] Byongeye kandi, icyemezo n°1 cy'Urukiko Gacaca cyo gushingana cyangwa gufatira by'agateganyo umutungo w'ukurikiranyweho ibyaha bya jenoside cyo ku wa 15/10/2007, Umuhesha w'Inkiko yakoresheje arangiza urubanza rwa Bizimana André, kikaba kitarafatiriye inzu iburanwa, ahubwo cyafatiriye amafaranga Ngoboka François-Xavier yari yasigayemo Bizimana André, angana na miliyoni enye n'ibihumbi magana atatu na mirongo itanu (4.350.000Frw). Kuba kandi n'ibaruwa Urukiko Gacaca rw'Akagari ka Kibuye rwandikiye Ngoboka François-Xavier ku wa 15/10/2007, rumutegeka kutishyura Colonnel Bizimana André amafaranga yamusigayemo angana na 4.350.000Frw, ko bibaye ngombwa yashyirwa kuri konti y'Umurenge wa Nyakiriba, ndetse n'icyemezo cy'irangizarubanza n'umutungo wononwe cyo ku wa 20/2/2008 cyategekaga abantu bose bavugwa mu ngingo ya 199 y'Itegeko N° 18/2004 ryo ku wa 20/6/2004 guteza cyamunara umutungo wafatiriwe ku wa 15/10/2007, bityo nta mpamvu yari ihari yo kugurisha cyamunara ku wa 21/5/2008 inzu iburanwa, kabone nubwo yari kuba ari iya Bizimana André.

[58] Uretse nibyo, Urukiko rw'Ikirenga rurasanga ku wa 5/3/2009, Urukiko rwa Gisirikare rwaraciye urubanza RP0209/08/TM, rwemeza ko Habimana Jean Damascène, Perezida w'Urukiko Gacaca rw'Akagari ka Kibuye, ahamwa n'icyaha cyo gukora inyandiko mpimbano, irebana n'icyemezo cyo ku wa 20/2/2008 cy'irangizarubanza ku birebana n'umutungo wononwe na Bizimana André, aho bigaragara ko urwo Rukiko Gacaca rwategetse ifatira ry'inzu ya Bizimana André iri mu Kagari ka Rwaza, Umurenge wa Rugerero no kuyiteza cyamunara, ndetse na Mulindangabo Faustin ahamwa n'icyaha cyo gukoresha iyo nyandiko mpimbano.

[59] Urukiko rw'Ikirenga rurasanga kandi Kayisire Désiré,Umuhuzabikorwa w'Inkiko Gacaca mu Karere ka Rubavu, yari yandikiye ku wa 6/5/2008, mbere y'uko cyamunara iba, Umuhesha w'Inkiko w'Umwuga, Niyonshuti Iddi Ibrahim, amumenyesha ko ibyemezo ashingiraho

[6] ''Les parties ont stipulé qu'en cas de manquement, le contrat serait résolu de plein droit. Pareille clause a pour effet de supprimer l'une des conséquences de la résolution judiciaire, le pouvoir d'appréciation du juge. Il s'ensuit : 1° que le juge n'aura plus le droit d'apprécier si le manquement est suffisamment grave pour justifier la résolution. En vertu de l'autonomie de la volonté, les parties ont, elles-mêmes, admis d'avance que tout manquement serait fatal. Le juge est lié par la convention ainsi formée. Il n'a plus le droit de substituer son appréciation à celle des parties ; 2° que, de même, et indépendamment du fondement de la résolution, le juge n'aura plus davantage le droit d'accorder un délai d'exécution, que les parties lui ont, par leur libre volonté, enlevés'', in Henri De Page, traité élémentaire de droit civil belge, tome deuxième, les incapables- les obligations, 3e édition, Emile Bruylant, Bruxelles, 1964, P. 852.

arangiza urubanza Bizimana André yatsindiwe mu Kagari ka Kibuye, Umurenge rwa Nyakiriba, byatanzwe n'Urukiko rwa Kibuye, ari inyandiko mpimbano, kandi ko ababikoze bari mu maboko ya polisi, akanamusaba guhagarika irangizarubanza kugira ngo banoze imikoranire myiza no kwirinda ingaruka nyuma y'irangizarubanza.

[60] Kubera impamvu zose zasobanuwe haruguru, Urukiko rw'Ikirenga rurasanga, usibye no kuba inzu yatejwe cyamunara itari umutungo wa Bizimana André, n'iyo cyamunara yakozwe hirengagijwe ibyasobanuwe haruguru, bityo ikaba igomba kuvanwaho, inzu iburanwa igasubira mu maboko ya Ngoboka François-Xavier.

b.Kumenya niba NGOBOKA François-Xavier akwiye guhabwa indishyi asaba.

[61] Ngoboka François-Xavier asaba Urukiko gutegeka Rutabikangwa Emmanuel, Niyoshuti Iddi Ibrahim na Mulindangabo Faustin bafatanyije (solidairement) kumwishyura 27.300.000Frw y'indishyi mbonezamusaruro kuko kuva inzu yatezwa cyamunara, hashize amezi 91, yabuze ubukode bw'inzu bungana na 300.000Frw buri kwezi, 3.000.000Frw y'ibihembo bya Avoka kuva ku rwego rwa mbere kugera ku Rukiko rw'Ikirenga, kandi haraburanwe imanza esheshatu, 8.600.000Frw y'ibintu byari mu nzu iburanwa igihe bayifatiraga, 32.487.000Frw (27.300.000Frwx17%x7ans) y'inyungu agomba guha Banki kuva inzu ifatiriwe, kuko yayiguze afite gahunda yo kuyicuruza ariyo mpamvu yafashe ideni muri Banki n'amagarama angana na 24.000Frw yakoresheje kuva ku rwego rwa mbere.

[62] Ngoboka François-Xavier asaba kandi Urukiko kubategeka kumuha 100.000Frw buri munsi abahatira kwishyura.

[63] Me Nkanika Alimasi avuga ko Rutabikangwa Emmanuel atagomba gutegekwa kwishyura Ngoboka François-Xavier indishyi asaba kuko yaguze inzu iburanwa mu cyamunara cyategetswe n'Urukiko Gacaca, bityo akaba asanga yarayiguze mu buryo bwemewe n'amategeko.

[64] Me Tugirimana Vincent avuga ko Mulindangabo Faustin nta ndishyi agomba gutanga kuko nta makosa yakoze.

[65] Niyonshuti Iddy Ibrahim avuga ko nta ndishyi agomba gutanga kuko nta ruhare yagize mu gukura Ngoboka François-Xavier mu nzu iburanwa.

UKO URUKIKO RUBIBONA

[66] Ingingo ya 258 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano iteganya ko ''Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyiri ugukora ikosa rigikomokaho kuriha ibyangiritse''.

[67] Ingingo ya 216, igika cya mbere, y'Itegeko N° 21/2012 ryo ku wa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ''Abisabwe n'umwe mu baburanyi, mu gihe cy'iburanisha ry'imanza mbonezamubano, iz'ubucuruzi, iz'umurimo, umucamanza ashobora, guteganya igihano cyo gutanga amafaranga y'ubukererwe abazwe buri munsi, buri cyumweru, buri kwezi cyangwa buri

mwaka k'uwo baburana mu gihe azaba atubahirije imikirize y'urubanza rw'iremezo, bitabujije ko yacibwa indishyi z'akababaro mu gihe bibaye ngombwa''.

[68] Hakurikijwe ibiteganywa n'ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano yavuzwe haruguru, kuriha igihombo (ibyangiritse) bigomba gukorwa mu buryo bwuzuye (intégrale ou complète) ariko kugira ngo bishoboke icyo gihombo kigomba kugaragarizwa ibimenyetso byerekana ko cyabayeho.

[69] Ku birebana na 27.300.000Frw y'indishyi mbonezamusaruro Ngoboka François-Xavier asaba kuko kuva inzu yatezwa cyamunara, yabuze ubukode bw'inzu bungana na 300.000Frw buri kwezi, Urukiko rw'Ikirenga rurasanga nta kimenyetso atanga kigaragaza ko iyo nzu yari gukodeshwa kuko kuva yayigura ku wa 21/12/2006 kugeza ku wa 21/5/2008, umunsi yagurishijweho mu cyamunara, itakodeshwaga, bityo akaba adakwiye indishyi mbonezamusaruro asaba.

[70] Ku birebana na 8.600.000Frw y'ibintu byari mu nzu iburanwa igihe bayifatiraga, Urukiko rw'Ikirenga rurasanga atayakwiye kuko atagaragaza ibyo bintu avuga n'ibiciro byabyo.

[71] Ku birebana na 32.487.000Frw (27.300.000Frwx17%x7ans) y'inyungu agomba guha Banki kuva iyo nzu ifatiriwe kuko yayiguze afite gahunda yo kuyicuruza ariyo mpamvu yafashe ideni kuri Banki, Urukiko rw'Ikirenga rurasanga atayahabwa kuko kuva yagura inzu iburanwa kugeza bayigurishije mu cyamunara, atayikoresheje ubucuruzi kandi nta sano iri hagati y'abaregwa n'ideni yafashe kuri Banki kugirango agure iyo nzu.

[72] Ku birebana na 3.000.000Frw y'igihembo cya Avoka kuva ku rwego rwa mbere kugera muri uru Rukiko, Urukiko rw'Ikirenga rurasanga agomba kuyahabwa kuko byabaye ngombwa ko akurikira urubanza rwe ndetse ashaka n'umuhagararira, bityo mu bushishozi bwarwo rukaba rumugeneye 1.500.000Frw y'igihembo cya Avoka kuva ku rwego rwa mbere kugeza kuri uru rwego.

[73] Ku byerekeye 24.000Frw y'amagarama yakoresheje kuva ku rwego rwa mbere, Urukiko rw'Ikirenga rurasanga agomba kuyasubizwa kuko yayatanze kuva mu rwego rwa mbere kugeza muri uru Rukiko.

[74] Hashingiwe ku byasobanuwe haruguru, Urukiko rw'Ikirenga rurasanga Rutabikangwa Emmanuel nta ndishyi agomba guha Ngoboka François-Xavier kuko yaguze inzu iburanwa mu cyamunara, nta buriganya, ahubwo niyoshuti Iddi Ibrahim n'abazungura ba Mulindangabo Faustin aribo bagomba kumwishyura 1.500.000Frw y'igihembo cya Avoka kuva ku rwego rwa mbere kugeza kuri uru rwego na 24.000Frw y'amagarama y'imanza kuva mu rwego rwa mbere kugeza muri uru Rukiko, yose hamwe akaba 1.524.000Frw.

c.Kumenya niba RUTABIKWANGWA Emmanuel akwiye guhabwa indishyi asaba NIYONSHUTI Iddi Ibrahim, NGOBOKA François- Xavier n'abazungura ba MULINDANGABO Faustin

[75] Me Nkanika Alimasi avuga ko Rutabikangwa Emmanuel asaba uru Rukiko gutegeka Ngoboka François-Xavier, Niyonshuti Iddi Ibrahim na Mulindangabo Faustin kumwishyura

agaciro k’inzu ifite ubu kangana na 196.599.084Frw (voir expertise), n’indishyi za 25.000.000Frw zikubiyemo iz’akababaro, iz’ikurikiranarubanza n’igihembo cya Avoka.

[76] Me Nkanika Alimasi yaje gusobanura mu iburanisha ryo ku wa 31/5/2017, ko kuba inzu iburanwa yari yarafatiriwe kandi ikagurishwa mu buryo bukurikije amategeko, nk’uko inyandiko y’inyangamugayo yo ku wa 5/5/2017 ibigaragaza, Rutabikangwa Emmanuel akaba asanga Bizimana André na Ngoboka François-Xavier, niba bashaka gusubirana inzu yabo iburanwa, ari bo bagomba kumwishyura agaciro ifite ubu kuko yayivuguruye, bakanamwishyura 5.000.000Frw y’indishyi z’akababaro, 5.000.000Frw y’ikurikiranarubanza na 5.000.000Frw y’igihembo cya Avoka

[77] Ngoboka François-Xavier avuga ko Rutabikangwa Emmanuel adakwiye amafaranga asaba kuko ariwe wavuguruye inzu iburanwa, akimara kuyigura, akongeraho ‘‘annexes’’, kandi mu rubanza RC0114/08/TGI/RBV, Urukiko Rwisumbuye rwa Rubavu rukaba rwaramutegetse kudasubira muri iyo nzu kugeza igihe urubanza ruzarangirira, icyo cyemezo kiza gushimangirwa n’Urukiko Rukuru, Urugereko rwa Musanze mu rubanza RCA 0032/08/HC/MUS.

[78] Ngoboka François-Xavier akomeza avuga ko amafoto y’inzu yafashwe vuba, agaragaza ko nta cyahindutse, ko inzu imeze uko yayisize. Ku birebana n’indishyi Rutabikangwa Emmanuel asaba, Ngoboka François-Xavier avuga ko atariwe ugomba kuzimuha kuko atigeze amushora mu cyamunara. Asoza avuga ko inzu iburanwa idafite agaciro ka 196.000.000Frw kandi ko raporo ya ‘‘expertise’’ itagaragaza ibyayikozweho.

[79] Me Hakizimana John avuga ko nta kintu bavuga kuri raporo ya ‘‘expertise’’ y’inzu yatanzwe na Rutabikangwa Emmanuel kuko batayimenyeshejwe. Akomeza avuga ko indishyi Rutabikangwa Emmanuel asaba, atari Ngoboka François-Xavier ugomba kuzimuha.

[80] Bizimana André avuga ko haba Ngoboka François-Xavier, haba Rutabikangwa Emmanuel, nta n’umwe wari ufite ububasha bwo kuvugurura iyo nzu, kuko Ngoboka François-Xavier yari atararangiza kwishyura amafaranga yose y’inzu, na Rutabikangwa Emmanuel waguze mu cyamunara cyakozwe mu buryo bunyuranije n’amategeko atari afite uburenganzira bwo kuyivugurura. Asoza avuga ko uretse nibyo, na nubu inzu imeze uko yayisize kandi idafite agaciro Rutabikangwa Emmanuel avuga.

[81] Me Mukakabanda Athanasie avuga ko Bizimana André atariwe wagomba gutanga indishyi kuko ariwe warenganyijwe.

[82] Me Rwindikiza Félix avuga ko umutungo uburanwa wari watanzweho ingwate muri B.K. Ltd ariyo mpamvu isaba uru Rukiko gushishoza neza. Ku byerekeranye n’indishyi zivugwa, avuga ko nta cyo yazivugaho kuko B.K.Ltd itazisabwe.

UKO URUKIKO RUBIBONA

[83] Ingingo ya 258 y’Igitabo cya III cy’urwunge rw’amategeko mbonezamubano iteganya ko ‘‘Igikorwa cyose cy’umuntu cyangirije undi gitegeka nyiri ugukora ikosa rigikomokaho kuriha ibyangiritse”.

[84] Muri dosiye y'uru rubanza, hari inyandiko-mvugo y'irangiza rubanza nº 144 rwaciwe n'Urukiko Gacaca rw'Akagari ka Kibuye aho bigaragara ko ku wa 21/5/2008, Umuhesha w'Inkiko w'umwuga Niyonshuti Iddi Ibrahim yateje cyamunara inzu iri mu kibanza nº 704, kuri mont Rwaza- Rubavu, igurwa na Rutabikangwa Emmanuel amafaranga miliyoni makumyabiri n'imwe n'ibihumbi ijana (21.100.000Frw).

[85] Dosiye y'uru rubanza igaragaza kandi ko hari inyandiko yiswe ''Raporo ku irangiza ry'urubanza nº 144 rwaciwe n'Urukiko Gacaca rw'Akagari ka Kibuye ku wa 28/2/2008'' yakozwe n'Umuhesha w'Inkiko w'umwuga Niyonshuti Iddi Ibrahim, aho asobanura ko kuba ku munsi w'icyamunara, nta muntu n'umwe wagaragaje inyandiko-mpesha (titre exécutoire) cyangwa icyemezo cy'Inkiko gifite inyandiko-mpuruza (titre exécutoire muni d'une formule exécutoire) kugirango nawe abe yagira uruhare ku mafaranga yari abonetse, yashyikirije Mulindangabo Faustin amafaranga yatsindiye uko ari miliyoni makumyabiri n'ibihumbi magana abiri (20.220.000Frw), arabisinyira nk'uko bigaragazwa n'umukono we yashyize kuri P.V y'irangiza ry'urubanza, hasaguka ibihumbi magana inane na mirongo inane (880.000Frw), yagombaga kubikwa kuri ''compte'' y'Akarere kuko Bizimana André wagombaga kuyasubizwa, yari muri gereza ya gisirikare ku Murindi.

[86] Dosiye y'urubanza igaragaza na none ko hari raporo ya ''expertise'' yakozwe ku wa 15/5/2008 na Geoinfo AFrica Ltd, mbere y'uko inzu iburanwa igurishwa muri cyamunara, igaragaza kandi ko mu kibanza cya Bizimana André harimo gusa inzu nini (maison principale), icyo gihe yari afite agaciro ka 15.742.500Frw.

[87] Dosiye y'urubanza igaragaza ndetse ko hari raporo ya ''expertise'' y'inzu iburanwa, ubu iri mu kibanza gifite nº 2055, yakozwe ku wa 25/2/2016, kandi ababuranyi bayibonye ku wa 22/5/2017 nk'uko Me Mukeshimana Juliette, Umuhesha w'Inkiko w'umwuga abyemeza, igaragaza ko iyo nzu ifite agaciro ka 196.599.084Frw. Iyo raporo igaragaza nanone ko hari ibyakozwe muri icyo kibanza, bitariho igihe Ngoboka François-Xavier yaguraga inzu ku wa 21/12/2006, aribyo ''annexes'' ebyiri zifite agaciro ka 10.000.760Frw (8.750.000Frw + 1.250.760 Frw), ''retaining walls'' (mur de soutènement) ifite agaciro ka 19.800.000Frw, ''paved area'' (espace pavé) ifite agaciro ka 5.246.000Frw, ''Mass concrete area'' (terrain bétonné) ifite agaciro ka 4.350.000Frw, ''garden'' (jardin) ifite agaciro ka 8.490.000 Frw, ''septic tank'' (fosse septique) ifite agaciro ka 1.500.000Frw, ''fence'' (clôture) ifite agaciro ka 16.320.000Frw na ''gate'' (portail) ifite agaciro ka 550.000Frw, yose hamwe akaba 66.256.750Frw.

[88] Urukiko rw'Ikirenga rurasanga kuba Rutabikangwa Emmanuel yaraguze mu cyamunara nta buriganya inzu iburanwa, agatanga amafaranga miliyoni makumyabiri n'imwe n'ibihumbi ijana (21.100.000Frw), agomba kuyasubizwa na Niyonshuti Iddi Ibrahim afatanyije n'abazungura ba nyakwigendera Mulindangabo Faustin kuko bagurishije iyo nzu mu buriganya, nyamara Umuhuzabikorwa w'Inkiko Gacaca mu Karere ka Rubavu yari yandikiye Niyonshuti Iddi Ibrahim, amubuza kurangiza urubanza rwa Bizimana André ashingiye ku cyemezo yari afite kuko ari inyandiko mpimbano, ndetse na Mulindangabo Faustin akaba yari azi ko icyo cyemezo ari gihimbano nk'uko byaje kwemezwa n'Urukiko rwa Gisirikare mu rubanza RP0209/08/TM rwaciwe ku wa 5/3/2009, akaba ari nawe washyikirijwe miliyoni makumyabiri n'ibihumbi magana abiri (20.220.000Frw) nyuma ya cyamunara.

[89] Urukiko rw'Ikirenga rurasanga kandi mu buryo bwo kwirinda ubukungahare budakwiye (enrichissement sans cause), Ngoboka François-Xavier agomba gusubiza RUTABIKANGWA Emmanuel agaciro y'ibyo yongeye mu kibanza aho inzu iburanwa iri, ni ukuvuga ko agomba kumuha 56.256.000Frw ajyanye na ''retaining walls" (mur de soutènement) ifite agaciro ka 19.800.000Frw, ''paved area" (espace pavé) ifite agaciro ka 5.246.000Frw, ''Mass concrete area" (terrain bétonné) ifite agaciro ka 4.350.000Frw, ''garden" (jardin) ifite agaciro ka 8.490.000Frw, ''septic tank" (fosse septique) ifite agaciro ka 1.500.000Frw, ''fence" (clôture) ifite agaciro ka 16.320.000Frw na ''gate" (portail) ifite agaciro ka 550.000Frw.

[90] Urukiko rw'Ikirenga rurasanga ariko agaciro ka ''annexes" ebyiri kangana na 10.000.760Frw kavugwa mu gace ka 87 k'uru rubanza katakwishyurwa Rutabikangwa Emmanuel kuko ntakigaragaza ko ariwe wazubatse, cyane cyane ko na Ngoboka François-Xavier avuga ko ariwe wazubatse.

[91] Ku birebana na 5.000.000Frw y'indishyi z'akababaro Rutabikangwa Emmanuel asaba Bizimana André na Ngoboka François-Xavier, Urukiko rw'Ikirenga rurasanga atayahabwa kuko nta makosa bamukoreye yatuma baryozwa ayo mafaranga.

[92] Ku birebana na 5.000.000Frw y'ikurikiranarubanza Rutabikangwa Emmanuel asaba Bizimana André na Ngoboka François-Xavier, Urukiko rw'Ikirenga rurasanga atayahabwa kuko atari Bizimana André wamushoye mu manza, ndetse na NGOBOKA François-Xavier akaba atsinze uru rubanza.

[93] Ku birebana na 5.000.000Frw y'igihembo cya Avoka Rutabikangwa Emmanuel asaba Bizimana André na Ngoboka François-Xavier, Urukiko rw'Ikirenga rurasanga atayahabwa kuko atari Bizimana André wamushoye mu manza kandi na NGOBOKA François-Xavier akaba atsindiye ibyo yari yaregeye.

III. ICYEMEZO CY'URUKIKO

[94] Rwemeje ko ubujurire bwa Ngoboka François-Xavier bufite ishingiro;

[95] Rwemeje ko cyamunara yakozwe ku nzu ya Ngoboka François- Xavier ku wa 21/5/2008 ivanweho;

[96] Rwemeje ko inzu iburanwa isubira mu maboko ya Ngoboka François-Xavier;

[97] Rutegetse Niyoshuti Iddi Ibrahim n'abazungura.ba Mulindangabo Faustin kwishyura Ngoboka François-Xavier 1.500.000Frw y'igihembo cya Avoka kuva ku rwego rwa mbere kugeza kuri uru rwego na 24.000Frw y'amagarama y'imanza kuva ku rwego rwa mbere kugeza muri uru Rukiko, yose hamwe akaba 1.524.000Frw ;

[98] Rutegetse Niyonshuti Iddi Ibrahim n'abazungura ba Mulindangabo Faustin gufatanya kwishyura Rutabikangwa Emmanuel 21.100.000Frw yatanze agura muri cyamunara inzu iburanwa;

[99] Rutegetse ngoboka François-Xavier, mu rwego rwo kwirinda ubukungahare budakwiye, gusubiza Rutabikangwa Emmanuel 56.256.000Frw ajyanye n'ibyo yakoze avugurura inzu iburanwa;

[100] Rutegetse Niyonshuti Iddi Ibrahim, abazungura ba nyakwigendera Mulindangabo Faustin, Bizimana André na Rutabikangwa Emmanuel gufatanya kwishyura amagarama y'urubanza angana na 100.000Frw.