CHINA ROAD v. UZAMUSHAKA

[Rwanda URUKIKO RW'IKIRENGA – RCAA 0017/10/CS (Mukanyundo, P.J., Gatete na Mukandamage, J.) 27 Gashyantare 2015]

Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Uburyozwe – Indishyi zikomoka ku ikosa ryakozwe n'umukozi – Ugomba kuryozwa indishyi zikomoka ku ikosa igihe umukozi yarikoze atari mu kazi ashizwe –Kugirango umukoresha aryozwe indishyi ku ikosa ryakozwe n'umukozi we n'uko uwo mukozi agomba kuba yarikoze mu gihe akora akazi ashinzwe, iyo umukozi akoze ikosa atari mu kazi ashinzwe niwe ugomba kwirengera ingaruka zose

Incamake y'ikibazo: Twahirwa na Nkubito bari abazamu b'ikigo cya China Road, baje gutwara ingorofani yo mu bwoko bwa Dumpe ikorweshwa na moteri bari kwiba umukoresha wabo amapave hamwe na sima hanyuma bakorera impanuka inyuma y'ikigo bashinzwe kurinda maze ihitana Mutabazi. Uzamukunda umugore wa nyakwigendera yaregeye indishyi zituruka ku rupfu rw'umugabo we mu Rukiko Rwisumbuye rwa Gasabo, maze rwemeza ko China Road igomba kumuha indishyi.

China Road yajuririye Urukiko Rukuru maze rugabanya indishyi umucamanza wa mbere yari yagennye. Byatumye China Road nanone ijuririra Urukiko rw'Ikirenga ivuga ko umucamanza yakoresheje akanasobanura mu buryo butari bwo ingingo ya 258 na 260 z'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano (C.C. L.III), kuko atasobanuye niba abakoresha baryozwa buri gihe ibyangijwe n'abakozi babo n'iyo batari mu kazi.

Uzamushaka we avuga ko umucamanza yashingiye ku ngingo ya 258 yavuzwe, kubera ko hari hamaze gupfa umuntu, anashingira ku ngingo ya 260 ivuga ko umukoresha aryozwa ibyangijwe n'umukozi, igihe agize ibyo yangiza ari mu kazi. Kubera rero ko Mutabazi yagonzwe n'abakozi ba China Road (Nkubito na Twahirwa) ikaba kandi itabihakana, igomba kuryozwa amakosa yabo.

Incamake y'icyemezo: Kugirango umukoresha aryozwe indishyi ku cyaha cyakozwe n'umukozi we n'uko uwo mukozi agomba kuba yagikoze mu gihe akora akazi ashinzwe ku bw'ibyo rero Twahirwa na Nkubito bagomba kwirengera ingaruka z'impanuka bateje.

Ubujurire bufite ishingiro;
Amagarama y'urubanza aherereye k'uregwa.

Amategeko yakoreshejwe:
Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 260(3).

Imanza zifashishijwe:
Ubushinjacyaha v. Private Niyoyita Innocent, RPA 0074/07/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 25/07/2008.

Inyandiko z'abahanga zifashishijwe:
Alain Bénabent, Droit Civil, Les Obligations, 11ème éd. Montchrestien, 2007, p. 416.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nyuma y'impanuka yabaye kuwa 30/06/2008 igahitana Mutabazi Emmanuel nkuko byemejwe n'Umurenge wa Kinyinya ndetse n'Ibitaro bya Kibagabaga (certificat de décès), Uzamushaka Consolée, umugore wa nyakwigendera, yaregeye indishyi mu Rukiko Rwisumbuye rwa Gasabo (RC0448/09/TGI/GSBO) zituruka kuri urwo rupfu. Urwo Rukiko rwategetse China Road guha Uzamushaka indishyi zingana na frw 48.165.532.

[2] China Road yajuririye Urukiko Rukuru (RCA 0084/10/HC/KIG), rugabanya indishyi umucamanza wa mbere yari yagennye, ruyitegeka guha Uzamushaka Consolée indishyi zingana na frw 26.713.499.

[3] China Road yajuririye Urukiko rw'Ikirenga ivuga ko Umucamanza yakoresheje akanasobanura mu buryo butari bwo ingingo ya 258 na 260 z'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano (C.C. L.III)**,** kuko atasobanuye niba abakoresha baryozwa buri gihe ibyangijwe n'abakozi babo n'iyo batari mu kazi.

[4] Urubanza rwaburanishijwe mu ruhame kuwa 27/01/2015, ababuranyi bahagarariwe nkuko byasobanuwe haruguru.

II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

Kumenya niba impanuka yakozwe n'abakozi ba China Road, aribo Twahirwa na Nkubito, bari mu kazi bashinzwe ku buryo yabitangira indishyi.

[5] Me Umubyeyi uburanira China Road avuga ko umucamanza wo mu Rukiko Rukuru yasobanuye nabi ingingo ya 258 C.C.L.III akagena indishyi mu buryo budasobanutse. Akomeza avuga ko n'ingingo ya 260 C.C. L.III umucamanza yashingiyeho atasobanuye aho ihuriye n'ikibazo Urukiko rwari rwashyikirijwe, kuko iyo ngingo igaragaza uburyozwe (responsabilité) butandukanye, akaba atarashoboye kwerekana aho ihuriye yabaye, kuko iyo usesenguye iyo ngingo, usanga umukoresha aryozwa ibyangijwe n'umukozi we mu gihe ari mu kazi yashinzwe gukora.

[6] Akomeza avuga ko nubwo Twahirwa na Nkubito bari abakozi ba China Road, bagonze nyakwigendera Mutabazi Emmanuel batwaye ingorofani (motorisé) iriho sima (ciment) bibye China Road, bagongera nyakwigendera ku muhanda badafite n'uburenganzira bwo kuyitwara.

[7] Me Rwidegembya Bosco uburanira Uzamushaka Consolée avuga ko umucamanza yashingiye ku ngingo ya 258 yavuzwe, kubera ko hari hamaze gupfa umuntu, anashingira ku ngingo ya 260 ivuga ko umukoresha aryozwa ibyangijwe n'umukozi, igihe agize ibyo yangiza

ari mu kazi. Kubera rero ko Mutabazi yagonzwe n'abakozi ba China Road (Nkubito na Twahirwa) ikaba kandi itabihakana, igomba kuryozwa amakosa yabo.

[8] Akomeza asobanura ko ingingo y'ubujurire ya China Road yuko kugira ngo indishyi zigenwe, umukozi agomba kuba ari mu kazi ashinzwe kandi n'umukoresha amufiteho ububasha muri icyo gihe nta shingiro ifite, kuko Urukiko rwagaragaje ko Mutabazi yahohotewe n'abakozi ba China Road kandi bari mu kazi kayo.

UKO URUKIKO RUBIBONA.

[9] 9. Ingingo ya 260, igika cya 3 cy'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano (C.C. L.III) [1]iteganya ko *« .....abakoresha baryozwa ibyangijwe n'abakozi babo mu gihe bakora imirimo babashinze…… ».*

[10] Inyandiko zikubiye muri dosiye zigaragaza ku buryo budashidikanywaho ko abakozi ba China Road bitwa Nkubito na Twahirwa bari abazamu bashinzwe kurinda ibikoresho by'umukoresha wabo, dosiye y'impanuka yakozwe na Police (Sécurité routière – Ville de Kigali) ikagaragaza ko ari Twahirwa wari utwaye ingorofani yo mu bwoko bwa DUMPE ikoreshwa na moteri, ari kumwe na Nkubito, bakaba barakoze iyo mpanuka bakica Mutabazi Emmanuel bari basanze ku muhanda yigendera, bari mu gikorwa cyo kwiba umukoresha wabo « *ciment »* na *« pavés ».*

[11] Urukiko rusanga kugirango umukoresha aryozwe indishyi ku cyaha cyakozwe n'umukozi we, uyu agomba kuba yagikoze mu gihe akora akazi ashinzwe. Kubera rero ko Twahirwa na Nkubito bakoze impanuka bakica Mutabazi bari mu gikorwa gitandukanye n'inshingano zabo, kuko bagonze nyakwigendera bari mu gikorwa cyo kwiba umukoresha wabo, bakanamugongera nyuma y'ikigo bashinzwe kurinda, uru Rukiko rusanga bitabazwa umukoresha wabo China Road, ko ahubwo aribo ku giti cyabo bagomba kwirengera ingaruka zose z'impanuka bateje. Ibyo kandi ni nako inkiko zo mu bindi bihugu zakemuye ibibazo nk'ibi[2], uyu akaba ari nawo murongo uru Rukiko rwafashe, nko mu rubanza rw'Ubushinjacyaha na Private Niyoyita Innocent[3], aho Urukiko rw'Ikirenga rwasanze Leta y'u Rwanda (umukoresha) itaryozwa indishyi zikomoka ku cyaha cy'ubwicanyi cyakozwe na Pte Niyoyita kuko nta sano gifitanye n'inshingano ze za gisirikare, indishyi zasabwe akaba ariwe ugomba kuzirengera wenyine.

[12] Hashingiwe ku byasobanuwe rero, Urukiko rusanga indishyi Uzamushaka Consolée asaba zitagomba kuryozwa China Road, ahubwo zigomba kuryozwa abateye impanuka yabaye batari mu kazi bashinzwe n'umukoresha wabo.

III. ICYEMEZO CY'URUKIKO.

[13] Rwemeje ko ubujurire bwa China Road (SNCTPC) bufite ishingiro ;

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[1] Itegeko ryo kuwa 30/07/1888.

[2] Alain Bénabent, Droit Civil, Les Obligations, 11ème éd. Montchrestien, 2007, p. 416 : le commettant ne répond pas *"des dommages causés par le préposé qui, agissant sans autorisation, à des fins étrangères à ses attributions, s'est placé hors des fonctions auxquelles il était employé"*.

[3] Urubanza RPA 0074/07/CS rwaciwe ku itariki ya 25/07/2008

[14] Ruvuze ko imikirize y’urubanza rwajuririwe RCA 0084/10/HC/KIG rwaciwe tariki ya 16/03/2012 n’Urukiko Rukuru ihindutse mu ngingo zose ;

[15] Rutegetse Uzamushaka Consolée kwishyura amagarama y’urubanza ahwanye na frw 100.000.