

## TUYISENGE N’UNDI v. RWANDA MOTOR S.A

[Rwanda URUKIKO RW’IKIRENGA – RS/REV/INJUST/RC 00041/2017/SC (Rugege, P.J., Mutashya na Kayitesi E., J.) 22 Gashyantare 2020]

*Amategeko agenga imiburanishirize y’imanza mbonezamubano – Irangizwa ry’urubanza ku kintu kitagihari – Irangizarubanza rikorerwa ku cyaburanywe cyangwa ku gisa nacyo, byaba bidashobotse hagatangwa ingurane y’agaciro kacyo kabariwe ku gaciro k’ifaranga kariho icyo gihe.*

**Incamake y’ikibazo:** Urubanza rwatangiriye mu Rukiko rwa mbere rw’Iremezo rwa Kigali muri 1995, aho Tuyisenge na Uzamukunda baregaga Rwanda Motor kuba itarabahaye imodoka baguze muri 1993 cyangwa ngo ibahe agaciro kayo. Urukiko rwafashe icyemezo ko ikirego cyabo gifite ishingiro kandi ko Rwanda Motor igomba kubaha ubwoko bw’imodoka baguze.

Rwanda Motor yajuririye Urukiko rw’Ubujurire rwa Kigali, narwo rwemeza ibyo Urukiko rwa Mbere rw’Iremezo rwa Kigali rwemeje. Rwanda Motor yongeye kutishimira imikirize y’urubanza, bituma isaba ko urubanza ruseswa; ariko nyuma y’ivugururwa y’Urwego rw’Ubucamanza, urubanza rwoherejwe mu Rukiko Rukuru rurarusiba kubera ko Rwanda Motor itigeze ikurikirana ikirego cyayo.

Nyuma y’aho, Tuyisenge na Uzamukunda batanze ibirego bitandukanye mu Rukiko Rukuru ku nshuro ya kabiri, bwa mbere basaba ko rwasobanura urubanza rwaciwe n’Urukiko rw’Ubujurire, ubundi barega basaba ko Urukiko rwakemura ikibazo gituruka kw’irangizwa ryarwo; maze Urukiko Rukuru rwemeza ko ntacyo gusobanura gihari, kandi ko urubanza rurangizwa uko rwaciwe.

Irangizwa ry’uru rubanza ntiryashobotse, kuko uruganda rutari rugikora ubwoko bw’izo modoka, kandi Rwanda Motor S.A ikaba yaranze gutanga isa nayo. Ibi byatumye Tuyisenge na Uzamukunda basaba gusubirishamo urubanza ku mpamvu z’akarengane, maze Perezida w’Urukiko rw’Ikirenga yemeza ko rwongera kuburanishwa. Mu miburanire yabo basabye ko bahabwa agaciro k’imodoka mu mafaranga kabariwe aho ifaranga rigeze uyu muni.

Rwanda Motor yavuze ko ikirego cyabo nta shingiro gifite kuko icyatumye urubanza rutarangizwa ari uko ubwoko bw’iyo modoka iburanwa butagikorwa.

**Incamake y’Icyemezo:** Irangizarubanza rikorerwa ku cyaburanywe cyangwa ku gisa nacyo, byaba bidashobotse, hagatangwa ingurane y’agaciro kacyo, kabariwe ku gaciro k’ifaranga kariho icyo gihe.

**Ikirego gifite ishingiro;  
Urubanza RCA 0081/09/HC/KIG ruvanyweho;  
Uregwa agomba gutanga ingurane mu mafaranga ku modoka yaguzwe ntiboneke;  
Amagarama aherereye ku isanduku ya Leta.**

**Amategeko yashingiweho:**

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegets, ingingo ya 9 na 10.  
Itegeko N° 22/2012 ryo ku wa 14/07/2012 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegets, (ryakoreshwaga icyo gihe) ingingo ya 192  
Itegeko N° 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegets.

**Imanza zifashishijwe:**

Nyirabugungo Isabelle v Etablissement Mironko Plastic Industries, RCAA 0116/11/CS rendered on 08/02/2013 by the Supreme Court

**Inyandiko z’abahanga:**

Ephrem GASASIRA, Procédure civile et commerciale, 1993, page 260.

## Urubanza

### I. IMITERERE Y’URUBANZA

[1] Uru rubanza rukomoka ku masezerano yo ku wa 15/02/1994 y’ubugure bw’imodoka ya MAZDA E 2000 ifite imyanya 15 cyangwa 18, yabaye hagati ya Tuyisenge Zabuloni na Uzabumwana Dorothée, na Rwanda Motor S.A, nyuma bagiye kuyifata, Rwanda Motor ibabwira ko imodoka yabo yasahuwe kimwe n’ibindi yari ifite.

[2] Tuyisenge Zabuloni na Uzabumwana Dorothée baregeye Urukiko rwa Mbere rw’Iremezo rwa Kigali, basaba guhabwa imodoka cyangwa agaciro kayo, ibirego byabo bihurizwa hamwe, urubanza ruhabwa N° RC 23.394/95/S1-RC 23.742/95/S1.

[3] Ku wa 30/06/1997, urwo Rukiko rwaciye urubanza rwemeza ko ikirego cya Tuyisenge Zabuloni na Uzabumwana Dorothée gifite ishingiro, rutegeka Rwanda Motor S.A kubaha imodoka baguze ari yo MAZDA E.2000 y’imyanya 15 cyangwa 18, ikanatanga amagarama y’urubanza ahwanye na 3500 Frw.

[4] Rwanda Motor S.A ntiyishimiye imikirize y’urubanza, ijuririra Urukiko rw’Ubujurire rwa Kigali, urubanza rwandikwa kuri N° RCA 12206/KIG-RC 3742/92, ivuga ko Tuyisenge Zabuloni na Uzabumwana Dorothée bishyuye imodoka mu byiciro bitatu, icyiciro cya nyuma bagitanga ku wa 15/02/1994, Rwanda Motor S.A ibereka imodoka yabo SG 28 ifite n° ya chassis SRYOEZ 622110, N° ya moteur 930156 y’ibara ry’umweru, bakaba batarayitwaye kubera impamvu zabo bwite bigera igihe isahuwe hamwe n’izindi mu gihe cya Jenoside yakorewe Abatutsi mu Rwanda muri 1994.

[5] Urukiko rw’Ubujurire rwa Kigali rwasobanuye ko Rwanda Motor S.A idakwiye kuburanisha ‘Force majeure’ kuko yemera ko na Tuyisenge Zabuloni na Uzabumwana Dorothée barishyeye igiciro cy’imodoka bari batumije ku wa 15/02/1994, intambara iba ku wa 07/04/1994, ikaba itabasha gusobanura ukuntu muri ayo mezi abiri itashyikirije iyo modoka ba nyirayo kandi

barayishyuye. Rwasobanuye ko Tuyisenge Zabuloni na Uzabumwana Dorothée batigeze berekwa imodoka kuko itari yakabonye ibiyiranga (identification), ndetse batanasinye kuri fagitire yayo bemeza ko bayihawe.

[6] Rwasobanuye ko nta masezerano y'ububitsi (contrat de dépôt) yabayeho hagati ya Rwanda Motor S.A na Tuyisenge Zabuloni na Uzabumwana Dorothée kuko batari kubitsa imodoka batahawe, ko indishyi z'amafaranga iyi modoka iba yarakoreye mu gihe cy'imyaka 5 zidakwiye kuko itigeze igaragara ngo ikore ngo abe ari ho ahera bagena umusaruro wayo, rutegeka Rwanda Motor S.A guha Tuyisenge Zabuloni na Uzabumwana Dorothée imodoka Minibus MAZDA E 2000 y'inyanya 15 cyangwa 18, kuko bayitangiye ikiguzi kandi Rwanda Motor S.A ikaba igicuruzza amamodoka.

[7] Rwanda Motor S.A ntiyishimiye imikirize y'urubanza isaba ko urubanza ruseswa, ikirego cyayo cyandikwa kuri RCP 1000 nyuma y'ivugurura ry'inzeho z'Ubucamanza muri 2004, urubanza rwoherezwa mu Rukiko Rukuru rwandikwa kuri N° RCAA 0597/06/HC/KIG ku wa 02/11/2007. Urukiko rwategetse ko ikirego gisibwa kuko Rwanda Motor S.A itagikurikiranye ngo kiburanishwe.

[8] Nyuma Tuyisenge Zabuloni na Uzabumwana Dorothée batanze ikirego mu Rukiko Rukuru basaba gusobanura urubanza RCA 12.206/KIG-RC 3742/92, urubanza rwandikwa kuri N° RC 0030/09/HC/KIG, ku wa 12/05/2009, Urukiko rwemeza ko ntacyo gusobanura gihari kubera ko urubanza ubwarwo rusobanutse.

[9] Tuyisenge Zabuloni yongeye gutanga ikirego asaba gukemura ikibazo gituruka ku irangiza ry'urubanza RCA 12.206/KIG-RC 3742/92 ashingiye ku kuba baragiye kurangirisha urubanza Rwanda Motor S.A ikababwira ko imodoka zo muri ubwo bwoko zitagikorwa, asaba ko yahabwa agaciro kayo cyangwa agahabwa indi modoka ifite agaciro nk'akayo, ikirego cyandikwa kuri N° RCA 0081/09/HC/KIG. Ku wa 14/02/2011, Urukiko rwemeza ko ibyo Tuyisenge Zabuloni asaba, bigamije guhindura icyemezo cy'Urukiko kandi rwarabaye itegeko, rutegeka ko urubanza RCA 12.206/KIG-RC 3742/92 rurangizwa uko rwakabaye.

[10] Tuyisenge Zabuloni na Uzabumwana Dorothée bashyizeho umuhesha w'Inkiko ngo arangize urubanza nawe abasubiza ko kurangiza urubanza ku ngufu bidashoboka kubera ko ntacyo yabona afatira bitewe n'uko imodoka ya MAZDA E 2000 Urukiko rwategetse, ntazo Rwanda Motor S.A ifite kandi ko hatafatirwa indi mu gihe Umucamanza ntabyo yategetse, ndetse akaba yaranasabye Rwanda Motor S.A kwishyura indi isa nayo, ikabyanga.

[11] Nyuma y'izo manza zose, Tuyisenge Zabuloni na Uzabumwana Dorothée bandikiye urwego rw'Umuvunyi basaba kurenganurwa. Uru rwego nyuma yo gusesengura urubanza RCA 12206/KIG-RC 3742/92, rwasanze n'ubwo imikirize yarwo yumvikana, ariko icyo Urukiko rwategetse kidashobora gushyirwa mu bikorwa bitewe n'uko imodoka MAZDA E 2000 y'inyanya 15 cyangwa 18 rwategetse ko Rwanda Motor S.A iha Tuyisenge Zabuloni na Uzabumwana Dorothée, itakibaho.

[12] Urwego rw'Umuvunyi rwandikiye Urukiko rw'Ikirenga ku wa 23/05/2016 rusaba ko urubanza RCA 0081/09/HC/KIG rwasubirwamo. Perezida w'Urukiko rw'Ikirenga nyuma yo kubona raporo y' Ubugenzuzi Bukuru bw'Inkiko yakozwe kuri urwo rubanza, yafashe icyemezo

ku wa 01/811/2017 ateguka ko urubanza RCA 12.206/KIG-3742/92 haburana Rwanda Motor S.A na Tuyisenge Zabuloni na Uzabumwana Dorothée rwaciwe n’Urukiko rw’Ubujurire rwa Kigali ku wa 04/06/2001 rusubirwamo ku mpamvu z’akarengane.

[13] Iburanisha mu ruhamye ryabaye ku wa 21/01/2019, hitabye Rwanda Motor S.A ihagarariwe na Me Rutembesa Phocas, Tuyisenge Zabuloni na Uzabumwana Dorothée bahagarariwe na Me Kazenzeza Théophile.

[14] Mbere y’uko iburanisha mu mizi ritangira, Me Rutembesa Phocas uburanira Rwanda Motor S.A yasabye ko iburanisha ryahagarara bakajya kumvikana kugira ngo barebe niba ikibazo bagikemura mu bwumvikane, naho Me Kazenzeza Théophile uburanira Tuyisenge Zabuloni na Uzabumwana Dorothée avuga ko asanga ubwo bwumvikane budakwiye guhagarika urubanza, ko ahubwo iburanisha ryakomeza, noneho babasha kumvikana bakazamenyesha Urukiko, urubanza rwaba rutarasomwa, rugahagarara.

[15] Urukiko rwafatiye icyemezo mu ntebe rutegeka ko iburanisha rikomeza, ababuranyi bazabasha kumvikana bakazabimenyesha Urukiko mbere y’uko urubanza rusomwa.

[16] Me Rutembesa Phocas uburanira Rwanda Motor S.A yatanze inzitizi avuga ko ashingiye ku ngingo ya 86, igika cya 2, agace ka 1° n’aka 2°, y’Itegeko Ngenga n° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n’ububasha bw’Urukiko rw’Ikirenga<sup>1</sup>, asanga ikirego cyatanzwe na Tuyisenge Zabuloni na Uzabumwana Dorothée mu rwego rw’Umuvunyi kidakwiye kwakirwa kubera ko cyatanzwe gikererewe. Ibyo akaba abihera ko urubanza rusabirwa gusubirwamo ku mpamvu z’akarengane, rwaciwe ku wa 04/06/2001, rukaba rutabarirwa mu manza za nyuma ya 2003, bityo rukaba rwaragombaga gushyikirizwa Urwego rw’Umuvunyi mu gihe kitarenze amezi atandatu (6) kuva Itegeko Ngenga rimaze kuvugwa, ritangajwe mu Igazeti ya Leta ya Repubulika y’u Rwanda. Ko kuba Rwanda Motor S.A yarahamagawe n’Uruwego rw’Umuvunyi muri 2015, Me Rutembesa Phocas avuga ko n’ubwo atazi neza itariki urubanza rwashyikirijweho Urwego rw’Umuvunyi, uwo mwaka awufata ko ari wo ikirego cya Tuyisenge Zabuloni na Uzabumwana Dorothée cyashyikirijwe urwo rwego, bityo rukaba rutaragombaga kucyakira kuko igihe giteganyijwe n’Itegeko cy’amezi atandatu (6) cyari cyararenze.

[17] Me Kazenzeza Théophile uburanira Tuyisenge Zabuloni na Uzabumwana Dorothée, avuga ko atumva icyo iyi nzitizi igamije, kuko niba ari inenge igaragara mu cyemezo cy’Uruwego rw’Umuvunyi, atagombye kuyiregera muri uru Rukiko, ko kandi kugira ngo uru rubanza rwongere kuburanishwa, byemejwe na Perezida w’Urukiko rw’Ikirenga; ko rero atumva niba arimo gushaka kujuririra icyo cyemezo bityo ko kubera iyo mpamvu asanga inzitizi itanzwe na Rwanda Motor S.A nta shingiro ifite.

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<sup>1</sup> Imanza zaciwe ku rwego rwa nyuma mbere y’uko iri Tegeko Ngenga ritangazwa mu Igazeti ya Leta ya Repubulika y’u Rwanda zishobora gusubirishwamo ku mpamvu z’akarengane hakurikijwe ibiteganywa n’ingingo ya 81 y’iri Tegeko Ngenga. Izo manza ni izi zikurikira:

1° Imanza zivugwamo akarengane zaciwe burundu nyuma y’ishyirwaho ry’Uruwego rw’Umuvunyi mu mwaka wa 2003 zaba izarangijwe cyangwa izitarangizwa, zizashyikirizwa Urwego rw’Umuvunyi mu gihe kitarenze umwaka umwe (1) kuva iri Tegeko Ngenga ritangajwe mu Igazeti ya Leta ya Repubulika y’u Rwanda.

2° Imanza zaciwe n’inkiko zisanzwe, inkiko z’ubucuruzi n’iza Gisirikare ku rwego rwa nyuma zivugwamo akarengane zashyikirijwe inzego zinyuranye, zizashyikirizwa Urwego rw’Umuvunyi mu gihe kitarenze amezi atandatu (6) kuva iri Tegeko Ngenga ritangajwe mu Igazeti ya Leta ya Repubulika y’u Rwanda.

[18] Urukiko rw'Ikirenga nyuma yo kwiherera rwafashe icyemezo cy'uko inzitizi yatanzwe na Me Rutembesa Phocas mu izina rya Rwanda Motor S.A nta shingiro ifite, kubera ko urubanza rwasabiwe gusubirishwamo ku mpamvu z'akarengane ari RCA 0081/09/HC/KIG rwaciwe ku wa 14/02/2011, akaba atari urubanza RC 23.394/95/S1- RC 23.742/95/S1 rwaciwe ku wa 04/06/2001 nk'uko Me Rutembesa abivuga, ko ibyo avuga by'uko rwashyikirijwe Urwego rw'Umuvunyi impitagihe, atabitangira ibimenyetso. Rutegeka ko urubanza rukomeza mu mizi.

[19] Muri uru rubanza ikibazo ababuranyi batumvikanaho, ni ukumenya niba igihe ikigomba kurangirizwaho urubanza kitagihari, uwatsinze ashobora guhabwa agaciro kacyo mu mafaranga.

## **II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO**

**Kumenya niba igihe ikigomba kurangirizwaho urubanza kitagihari, uwatsinze ashobora guhabwa agaciro kacyo mu mafaranga.**

[20] Me Kazeneza Théophile uburanira Tuyisenge Zabuloni na Uzabumwana Dorothée avuga ko kuva bagura imodoka na Rwanda Motor S.A muri 1994, bakayishyura, nanubu batarayibona, impamvu Rwanda Motor S.A itanga, ikaba ari uko ngo iyo modoka iri muzasahuwe igihe cya Jenocide, ubu ikaba idashobora kuboneka kuko n'inganda zazikoraga zitakizikora.

[21] Avuga ko nubwo izo modoka zitagikorwa, Rwanda Motor S.A yari ifite ubundi buryo bwo kwishyura ariko ntiyabikora, nko gutanga indi modoka imeze nkayo, cyangwa agaciro kayo mu mafaranga, ariko muri ibyo byose nta na kimwe yakoze, ahubwo ikomeza kugundira amafaranga yabo iyacuruza, kandi bo batarabonye imodoka baguze.

[22] Avuga ariko ko nubwo bari bifujye ko bahabwa imodoka ifite agaciro nk'ak'iyi bari baguze, ubu icyo gitekerezo batakigihagazeho, kuko imodoka nk'iyi ubu mu Rwanda ntacyo yakora, kandi abo aburanira bakaba bari bayiguze kugira ngo bayikoreshe ubucuruza (Gutwara abantu) , ahubwo icyifuzo kikaba ari uko bahabwa agaciro kayo mu mafaranga kabariwe aho ifaranga rigeze uyu muni, asaba gusubizwa ikiguzi kingana n'agaciro k'imodoka uyu muni kangana na miliyoni mirongo ine n'imwe n'ibihumbi magana atanu (41.500.000Frw), bagendeye ko muri 1993 idorali rimwe ryari 80 Frw, ubu rikaba ringana na 850 Frw, kandi ko icyo gihe batanze 3.900.000Frw.

[23] Me Rutembesa Phocas uburanira Rwanda Motor S.A avuga ko ibyo basaba ko byashyirwa mu bikorwa atari byo Urukiko rwategetse, kuko rwategetse ko bahabwa imodoka bari baguze muri Rwanda Motor S.A. Avuga ko asanga kuba urubanza rwongeye kugaruka imbere y'urukiko, Rwanda Motor S.A ikwiye kurenganurwa kuko yagaragaje impamvu bitakunze ko ishyikiriza abaguze iyo modoka ariko ntibyahabwa agaciro, aho yerekanye ko iyo modoka yaguzwe nkuko byari byemeranijwe ndetse Rwanda Motor S.A ikayigeza mu bubiko bwayo ariko abari barayiguze ntibihutire kuza kuyitwara kubera impamvu zabo bwite, ko rero kuba itarageze mu maboko yabo nabo babifitemo uruhare.

[24] Avuga ko ikibazo cyatumye urubanza rutarangizwa, ari uko ubwoko bw'izo modoka butagikorwa, Rwanda Motor S.A ikaba itabasha kubona indi isa nayo, ko muri icyo gihe, bari kwemera bagahabwa amafaranga yabo batanze angana na 3.900.000Frw, ariko bakomeje gushyiraho amaniza bavuga ko bashaka agaciro k'iki gihe mu gihe Rwanda Motor S.A nta ruhare yagize kugira ngo iyo modoka idatangwa.

## UKO URUKIKO RUBIBONA

[25] Ihame ry'amategeko agenga imiburanishirize rivuga ko amategeko y'imiburanishirize akurikizwa ako kanya itegeko rigisohoka (les règles de procédure sont d'application immédiate).

[26] Itegeko N° 20/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi rikurikizwa ubungubu, ntaho ryateganyije uko bigenda mu gihe icyaburanwaga ari nacyo kigomba kurangirizwaho urubanza, kitagihari. Urukiko rusanga ariko kuba ibyo bitateganyijwe, atari ku mpamvu z'uko Umushingamategeko yashatse ko bene ibyo bibazo bidakemurwa ku buryo uwatsinze urubanza yabura ingurane mu gihe icyo yatsindiye kitagihari, ahubwo byumvikana ko byibagiranye, ibi kandi bikaba bitagomba kubuza Urukiko guca urubanza hagendewe ku kuba Itegeko rikoresha ubu, ntacyo ryateganyije kuri bene ibyo bibazo, ko ahubwo Urukiko rugomba guca urubanza rushingiye ku ngingo ya 9 igika cya mbere n'icya kabiri y'iryo Tegeko rivuzwe muri iki gika<sup>2</sup>, iteganya ko umucamanza adashobora kwanga guca urubanza yitwaje impamvu iyo ari yo yose, n'iyi ntacyo itegeko ryaba riteganya, ridasobanutse mu buryo bwumvikana cyangwa ridahagije.

[27] Impamvu Urukiko rusanga harabayeho kwibagirana mu gukemurira mu itegeko ibibazo bijyanye no kubura kw'icyagombaga kurangirizwaho urubanza, ari uko mu Itegeko N° 22/2012 ryo ku wa 14/07/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakoreshwaga ubwo Urwego rw'Umuvunyi rwagezaga ikirego mu Rukiko rw'Ikirenga, mu ngingo yaryo ya 195, ryateganyaga ko irangiza ry'imanza rigamije guha uwatsinze icyo yatsindiye, atabibona agahabwa ingurane yabyo<sup>3</sup>, ibivugwa muri iyi ngingo, bikaba ari nabyo byari biteganyijwe mu ngingo ya 192 y'Itegeko N° 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakoreshwaga ubwo urubanza kuri iki kibazo rwaburanishwaga (mu mwaka wa 2011)<sup>4</sup>.

[28] Iki gitekerezo kandi gishimangirwa n'umuhanga mu mategeko Gasasira Ephrem mu gitabo cye « Procédure civile et commerciale, 1993, page 260 », aho avuga ko irangizarubanza rikorerwa ku cyaburanywe cyangwa ku gisa nacyo, byaba bidashobotse, hagatangwa agaciro kacyo kabariwe mu mafaranga.<sup>5</sup>

[29] Uwatsindiye ibintu ariko, siwe uhitamo igihe ashakiye niba mu kurangiza urubanza ahabwa ibyo bintu cyangwa niba ahabwa ingurane yabyo, ahabwa ingurane ari uko irangiza

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<sup>2</sup> Umucamanza aca urubanza ashingiye ku ngingo z'amategeko zirebana n'ikirego yaregewe. Iyo nta tegeko rijyanye n'ikiburanwa ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko. Umucamanza ntashobora kandi kwanga guca urubanza yitwaje impamvu iyo ari yo yose, n'iyi ntacyo itegeko ryaba riteganya, ridasobanutse mu buryo bwumvikana cyangwa ridahagije.

<sup>3</sup> Irangiza ry'imanza n'iry'inyandiko rigamije guha uwatsinze ibintu afitiye uburenganzira bwo guhabwa, akabibona ubwabyo cyangwa akabona ingurane.

<sup>4</sup> Irangiza ry'imanza n'iry'inyandiko rigamije guha uwatsinze ibintu afitiye uburenganzira bwo guhabwa, akabibona ubwabyo cyangwa akabona ingurane.

<sup>5</sup> *L'exécution est directe ou en nature, lorsque c'est la prestation même qui constitue l'objet de l'obligation qui est fournie au créancier. L'exécution par équivalent a lieu lorsque l'exécution directe est impossible, soit que l'objet du litige ne s'y prête pas, soit qu'il y ait mauvaise volonté du débiteur.*

ry'urubanza kucyo yatsindiye ryananiranye, kandi iyo ngurane akayihabwa hagendewe ku gaciro kariho ubu ngubu<sup>6</sup>.

[30] Ku bijyanye n'uru rubanza, Urukiko rurasanga ababuranyi bose bemeranya ko imodoka Minibus Mazda E 2000 y'imyanya 15 cyangwa 18 ari yo yaguzwe na Tuyisenge Zabuloni na Uzabumwana Dorothée muri Rwanda Motor S.A muri 1994, ikaba ari nayo Urukiko rw'Ubujurire rwa Kigali rwategetse Rwanda Motor S.A guha Tuyisenge Zabuloni na Uzabumwana Dorothée mu rubanza RC 23.394/95/S1-RC 23.742/95/S1 rwaciwe ku wa 04/06/2001.

[31] Urukiko rurasanga kandi ababuranyi bose bemeranywa ko inganda zakoraga bene ubwo bwoko bw'imodoka, zitakizikora, bivuze ko irangizarubanza riyerekeyeho ridashoboka kubera ko icyagombaga kurangirizwaho urubanza kidahari; bityo, hashingiwe ku byavuzwe haruguru mu bika bibanziriza iki, Tuyisenge Zabuloni na Uzabumwana Dorothée bakaba bagomba guhabwa na Rwanda Motor S.A ingurane y'agaciro k'iyo modoka mu mafaranga kabariwe aho ifaranga rigeze ubu.

[32] Urukiko rurasanga ku wa 15/02/1994 ubwo Tuyisenge Zabuloni na Uzabumwana Dorothée batangaga igice cya nyuma cy'ubwishyu bw'imodoka, idorali rimwe ryavunjaga amafaranga y'u Rwanda 145,0248Frw<sup>7</sup> nkuko bigaragara ku rubuga rwa Banki Nkuru y'u Rwanda, bityo bakaba baratanze amadolari angana na USD 26.896 kuko amafaranga y'amanyarwanda yose batanze bagura imodoka angana na 3.900.000 Frw (3.900.000 Frw: 145,0248= USD 26.896) .

[33] Urukiko rurasanga ubu idolari ku muni wa none rigeze ku mafaranga y'u Rwanda 875 Frw<sup>8</sup> nk'uko nanone bigaragara ku rubuga rwa Banki Nkuru y'u Rwanda, bivuze ko, rushingiye kuri iryo vunja, Tuyisenge na Uzabumwana bagomba guhabwa na Rwanda Motor S.A ingurane ingana na 875 Frw x 26.896=23.534.000 Frw.

**Kumenya niba amafaranga Tuyisenge Zabuloni na Uzabumwana Dorothée batanze bagura imodoka ntibayihabwe, agomba gutangirwa inyungu yagombye kuba yarungutse.**

[34] Me Kazenze Théophile uburanira Tuyisenge Zabuloni na Uzabumwana Dorothée avuga ko abo uburanira bataba barenganuwe baramutse bahawe gusa icyo baguze cyangwa agaciro kacyo gusa, badahawe inyungu yari kukivanamo mu gihe kirekire nk'iki. Ikaba ariyo mpamvu basaba guhabwa inyungu bavukijwe zibariwe kuri 18% ku mwaka z'agaciro k'imodoka yagombye kuba ifite uyu muni, mu gihe cy'imyaka 10.

[35] Me Rutembesa Phocas uburanira Rwanda Motor S.A avuga ko izi ndishyi asanga nta shingiro zifite, kuko kugira ngo indishyi zatakajwe zisuzumwe, ari uko icyo zishingiyeho cyagombye kuba nibura cyarabayeho.

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<sup>6</sup> Urubanza N° RCAA 0116/11/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 08/02/2013 haburana Nyirabugingo Isabelle v Etablissement Mironko Plastic Industries mu izina ry'uyihagarariye.

<sup>7</sup> <https://www.bnr.rw/index.php?id=89> urubuga rwa Banki Nkuru y'u Rwanda rwasuwe ku wa 14/02/2019 saa yine n'iminota 55

<sup>8</sup> <https://www.bnr.rw/index.php?id=89> urubuga rwa Banki Nkuru y'u Rwanda rwasuwe ku wa 14/02/2019 saa yine n'iminota 55

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[36] Ingingo ya 10 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu iteganya ko Urukiko ruca urubanza ku cyasabwe cyonyine kandi kuri icyo gusa.

[37] Urukiko rurasanga ikiburanwa muri uru rubanza, atari inyungu zikomoka ku mafaranga y'inguzanyo cyangwa amafaranga yishyurwa buri mwaka cyangwa mu kindi gihe kitageze ku mwaka nkuko ingingo ya 657 yo mu gitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, amasezerano n'imirimo nshinganwa ibiteganywa<sup>9</sup>, ko ahubwo icyaregewe ari ukurangiza ibyemezo byafashwe burundu n'inkiko hasabwa ingurane.

[38] Urukiko rurasanga hashingiwe kuri ibyo bisobanuro bitanzwe, ibyo Me Kazeneza Théophile asaba mu izina rya Tuyisenge Zabuloni na Uzabumwana Dorothée by'uko yahabwa inyungu bavukijwe zibariwe kuri 18% ku mwaka z'agaciro k'imodoka yagombye kuba ifite uyu muni, mu gihe cy'imyaka 10, nta shingiro bifite, ko ahubwo icyo bavukijwe ari amahirwe (perte d'une chance) yo kubyaza umusaruro iyo modoka.

[39] Urukiko rurasanga nkuko byagiye bifatwaho icyemezo mu manza zinyuranye haba muri uru Rukiko cyangwa mu nkiko zo mu mahanga<sup>10</sup>, kuvutswa amahirwe bitakwitwaga igihombo nkuko Me Kazeneza Théophile ubaburanira abivuga, ahubwo ari impamvu ituma uwayavukijwe abiharerwa indishyi z'uko atashoboye kubyaza umusaruro icyo yari afiteho uburenganzira, izo ndishyi zikaba zigenwe mu bushishozi bw'Urukiko.

[40] Rushingiye kuri ibyo bisobanuro bimaze gutangwa, Urukiko rurasanga inyungu Me Kazeneza Théophile asaba mu izina ry'abo aburanira, nta shingiro zifite.

### **Ibijyanye n'indishyi zisabwa.**

[41] Me Kazeneza Théophile mu izina rya Tuyisenge Zabuloni na Uzabumwana Dorothée asaba guhabwa indishyi z'akababaro kubera gusiragizwa mu manza ku maherere, kutarangirizwa urubanza, angana na 5.000.000Frw, bakanahabwa amafaranga y'ukurikiranarubanza n'igihembo cya Avoka nayo angana na 5.000.000Frw yose hamwe akaba 10.000.000Frw.

[42] Me Rutembesa Phocas uburanira Rwanda Motor S.A avugaga ko indishyi basaba nta shingiro kuko aribo ubwabo bishoye mu manza bitari ngombwa.

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<sup>9</sup> Iyo ngingo iteganya ko amafaranga yishyurwa uko igihe gitashye, amafaranga y'ubukode bw'inzu cyangwa icyatamurima, inyungu z'amafaranga yagurijwe, muri rusange n'andi mafaranga yose yishyurwa buri mwaka cyangwa mu kindi gihe kitageze ku mwaka, ko ayo mafaranga yose iyo hashize imyaka itanu (5) ntawe uyakurikiranye, ubwo burenganzira buba buzimye.

<sup>10</sup> -*Comme en responsabilité délictuelle, le juge du fond apprécie souverainement le préjudice dès l'instant qu'il a caractérisé la perte de chance. Cf. Civ. 1ère, 10 juillet 2002, Bull.civ. I, n° 19.7*

-Urubanza RCOMAA 0008/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 06/06/2008, Banki ya Kigali iburana na Kampire na Sibomana



[43] Urukiko rurasanga, ku byerekeye indishyi Tuyisenge Zabuloni na Uzabumwana Dorothée bagomba kugenerwa zivugwa mu gika cya 38 na 39 by'uru rubanza zo kuba baravukijwe amahirwe yo kubyaza umusaruro imodoka baguze, bakaba baramaze igihe kirekire bayitegereje ariko ntibayibone kandi barayishyuye, rubageneye 2.000.000 Frw mu bushishozi bwarwo.

[44] Urukiko rurasanga ku byerekeye indishyi z'akababaro Me Kazenze Théophile asaba mu izina rya Tuyisenge Zabuloni na Uzabumwana Dorothée kubera gusiragizwa mu manza ku maherere, nta shingiro zifite, kuko nibo baregaga ntabwo ari Rwanda MOTOR S.A, ntabwo rero ariyo yabasiragije mu manza nkuko babivuga.

[45] Ku byerekeye indishyi basaba z'ikurikiranarubanza n'igihembo cya Avoka, Urukiko rurasanga Tuyisenge Zabuloni na Uzabumwana Dorothée bazikwiye kuko baburanye bahagarariwe, kandi hari n'iby batakaje kubera gukurikirana uru rubanza, bakaba bagomba ariko kuzigenerwa mu bushishozi bw'Urukiko kuko izo basaba ari nyinshi, Urukiko rukaba rubageneye 300.000Frw y'ikurikiranarubanza, na 500.000 Frw y'igihembo cya Avoka, yose hamwe akaba 800.000Frw.

### **III. ICYEMEZO CY'URUKIKO**

[46] Rwemeje ko ikirego cyatanzwe na Tuyisenge Zabuloni na Uzabumwana Dorothée gisaba gusubirishamo ku mpamvu z'akarengane urubanza RCA 0081/09/HC/KIG rwaciwe n'Urukiko Rukuru rwa Kigali ku wa 14/02/2011, gifite ishingiro;

[47] Rwemeje ko urubanza RCA 0081/09/HC/KIG rwaciwe n'Urukiko Rukuru rwa Kigali ku wa 14/02/2011 ruvuyeho;

[48] Rutegetse Rwanda Motor S.A guha Tuyisenge Zabuloni na Uzabumwana Dorothée ingurane ingana na 23.534.000Frw ku modoka MAZDA E 2000 bari baguze yo ntibayihabwa;

[49] Rutegetse Rwanda Motor S.A guha Tuyisenge Zabuloni na Uzabumwana Dorothée indishyi zingana na 2.000.000Frw, amafaranga y'ikurikiranarubanza angana na 300.000Frw, ay'igihembo cya Avoka angana na 500.000Frw, yose hamwe akaba 2.800.000Frw;

[50] Rutegetse ko amagarama y'ibyakozwe mu rubanza aherera ku Isanduku ya Leta.