RUTAZIBWA v LETA Y'U RWANDA (MINIRENA) N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/RAD 00001/2018/SC – (Kayitesi Z, P.J., Nyirinkwaya, Cyanzayire, Hitiyaremye na Rukundakuvuga, J.) 27 Nzeri 2019]

Amategeko agenga imiburanishirize y'imanza – Gusubirishamo urubanza ingingo nshya – Uburiganya – Kugira ngo urubanza rusubirishwemo kubera uburiganya – Hagomba kuba harabaye ibikorwa by'uburiganya hagamijwe kubeshya umucamanza kugira ngo nyiri ugukora ibyo bikorwa atsinde urubanza kandi icyemezo cyafashwe kigomba kuba cyarashingiye gusa ku makuru y'ibinyoma – Ntibifatwa nk'uburiganya kuba umuburanyi yifashe ntagaragaze inyandiko zari gushyigikira ingingo z'undi muburanyi ndetse no guceceka kwe ku bintu atigeze aregwa cyangwa ngo asabwe gutangaho ibisobanuro – Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 170.

Incamake y'ikibazo: Fundi witabye Imana mu 1997 asiga umugore w'isezerano Mukandutiye n'abana be hamwe n'abo yabyaye ku bandi bagore. Umwe mu bana be witwa Rutazibwa yegeranyije imitungo yose ya Se igomba kuzungurwa, mu gihe cyo kuyizungura ntibumvikanye nk'umuryango bituma aregera Urukiko Rwisumbuye rwa Karongi asaba ko yahabwa umugabane we ndetse agasubizwa amafaranga yakoresheje yegeranya uwo mutungo.

Mu kuburana, Rutazibwa yasanze hari imitungo imwe yanditse kuri MINIRENA, Mukandutiye no ku bandi bantu biba ngombwa ko ahita atanga ikirego cy'ubutegetsi muri urwo Rukiko arega Mukandutiye n'Ikigo Gishinzwe umutungo kamere mu Rwanda ariko gisaba ko Leta y'u Rwanda igobokeshwa mu izina rya MINIRENA. Muri uru rubanza, Urukiko rwemeje ko imitungo yanditse kuri Mukandutiye igaruka mu mutungo w'umuryango naho iyanditse kuri MINIRENA n'abandi bantu bakayigumana.

Rutazibwa yajuririye Urukiko Rukuru, urwo Rukiko rwemeza ko ubujurire bwe nta shingiro bufite. Yajuririye kandi mu Rukiko rw'Ikirenga naho Mukandutiye atanga ubujurire bwuririye ku bundi, ariko Urukiko rwemeza ko ubujurire bwabo nta shingiro bufite ndetse Rutazibwa ategekwa kwishyura indishyi.

Rutazibwa yasubirishijemo urubanza ingingo nshya mu Rukiko rw'Ikirenga avuga ko habonetse ikimenyetso gishya kigaragaza ko Umubitsi w'impapurompamo yandikiye amabaruwa Abayobozi b'Akarere n'imirenge uwo mutungo uherereyemo ajyanye no gukosora amakosa kugira ngo ubwo butaka bwandikwe kuri ba nyirabwo ariko ntizashyikirizwa abo zari zandikiwe, kubera ibyo akaba asanga Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda cyaragize uburiganya bwagize ingaruka ku mikirize y'urubanza kandi ko ubwo buriganya bwagaragaye nyuma y'uko urubanza ruciwe, iyo akaba ariyo mpamvu asaba ko uru rubanza rwasubirishwamo ingingo nshya.

Leta y'u Rwanda ivuga ko ikimenyetso gishya cyatanzwe n'Urega cyo gusubirishamo urubanza ingingo nshya kidasobanutse, kuko ntawamenya niba urukomatane rw' amabaruwa atandukanye yatanze aribyo yita ikimenyetso

gishya, akaba yivugira ko ayo mabaruwa yayashyikirije Urukiko, bivuze ko atari ibimenyetso bishya kuko yari asanzweho mu gihe urubanza rwaburanishwaga, akaba atanerekana uburyo kivuguruza ibyashingiweho mu ica ry'urubanza, bityo rero ikirego cye kikaba kidakwiye kwakirwa.

Mukandutiye avuga ko Umubitsi w'Impapurompamo yari azi ukuri ku mitungo y'umuryango wa Fundi, ariko atanga amakuru atuzuye bituma Urukiko rufata icyemezo kitari cyo, bikaba ari uburiganya bwabaye bukagira ingaruka ku rubanza bityo, kuba harabonetse ikimenyetso kigaragaza amakuru yashingiweho ko atariyo, cyagombye kwifashishwa amakosa yabayemo agakosorwa.

Incamake y'icyemezo: 1. Kugira ngo urubanza rusubirishwemo kubera uburiganya, hagomba kuba harabaye ibikorwa by'uburiganya hagamijwe kubeshya umucamanza kugira ngo nyiri ugukora ibyo bikorwa atsinde urubanza kandi icyemezo cyafashwe kigomba kuba cyarashingiye gusa ku makuru y'ibinyoma.

2. Ntibifatwa nk'uburiganya kuba umuburanyi yifashe ntagaragaze inyandiko zari gushyigikira ingingo z'undi muburanyi ndetse no guceceka kwe ku bintu atigeze aregwa cyangwa ngo asabwe gutangaho ibisobanuro.

Gusubirishamo urubanza ingingo nshya ntibyakiriwe;
Amagarama ahwanye n'ibyakozwe.

Amategeko yashingiweho:

Itegeko Nº 22/2018 ryo ku wa 13/06/2018 ryerekeye imiburanishirize y'Imanza z'Imbonezamubano,

iz’Ubucuruzi, iz’Umurimo n’iz’Ubutegetsi, ingingo ya 170.

Itegeko N^o 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi (ryakoreshwaga icyo gihe), ingingo ya 118.

Nta manza zifashishijwe.

Inyandiko z’Abahanga:

Gérard Cornu, Vocabulaire juridique, 6ème éd., Paris, Presses Universitaires de France, 1987, p. 291

Hakim Boularbah, Olivier Caprasse, Georges de Leval, Frédéric Georges, Pierre Moreau, Dominique Mougenot, Jacques Van Compernolle, Jean-François Van Drooghenbroeck, Droit Judiciaire, Manuel de procédure civile T.2, Bruxelles, Ed. Larcier, 2015, p. 1881-1882.

Izabelle Despres et Laurent Dargent, Code de Procédure Civile, 107 ème éd., Dalloz, 2016, p. 709.

Urubanza

I. IMITERERE Y’URUBANZA

[1] Uwitwa Fundi Project yitabye Imana mu 1997, asiga umugore w’isezerano witwa Mukandutiye Bellancile n’abana be, asiga n’abandi bana yabyaye ku bandi bagore. Rutazibwa Alexandre, umwe mu bana ba Fundi Project yaje gushakisha no kwegeranya imitungo yasizwe na se igomba kuzungurwa, igizwe n’ubutaka buherereye mu karere ka Karongi, Rutsiro na Nyamasheke, ariko mu kuzungura no kugabana iyo mitungo

haba ubwumvikane buke hagati ye n'abandi bazungura ba Fundi ndetse n'umugore yasize, bituma Rutazibwa aregera Urukiko Rwisumbuye rwa Karongi asaba kumurika umutungo wa Fundi Project yataruye akegeranya, guhabwa umugabane we akava mu ifatanyamutungo no gusubizwa amafaranga yatanze mu gushakisha no kwegeranya uwo mutungo uzungurwa.

[2] Mu gihe baburanaga urubanza rw'izungura, Rutazibwa Alexandre yasanze imwe mu mitungo avuga ko ari iya se Fundi Project, yanditse kuri MINIRENA, indi yanditse kuri Mukandutiye Bellancille, hari n'indi yanditse ku bandi bantu batandukanye, bituma atanga ikirego cy'ubutegetsi mu Rukiko Rwisumbuye rwa Karongi arega Mukandutiye Bellancille n'Ikigo gishinzwe umutungo kamere mu Rwanda (cyahindutse Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda). Iki Kigo nicyo cyasabye ko Leta y'u Rwanda, mu izina rya Minisiteri y'Umutungo Kamere (MINIRENA), igobokeshwa mu rubanza. Rutazibwa Alexandre, mu kirego yatanze, yasabaga gusubiza abazungura ba Fundi Project ubutaka bwanditswe kuri MINIRENA no kuri Mukandutiye Bellancille, kimwe n'amasambu ataboneka ku rutonde rw'amasambu rwatanzwe n'Umubitsi w'Impapurompamo z'Ubutaka.

[3] Urwo rubanza rwahawe nomero RAD 0039/14/TGI/KRG, rucibwa ku wa 14/07/2016, Urukiko Rwisumbuye rwa Karongi rwemeza ko ubutaka bufite UPI 03/07/4/5439, 03/07/4/5442, 03/07/4/5452, 03/07/4/5482, 03/07/4/5489, 03/07/4/5490, 03/07/4/5491, 03/07/4/5493, 03/07/4/5501, 03/07/4/5509, 03/07/4/5516, 03/07/4/5534, 03/07/4/5506 bukurwa kuri Mukandutiye Bellancille bwari bwanditseho, bukagarurwa mu muryango wa Fundi Project

ugizwe n'abazungura be bakaba aribo bwandikwaho, kandi ko ubutaka bwanditse kuri MINIRENA ibugumana, naho ubwo Rutazibwa Alexandre yasabye Umubitsi w'Impapurompamo z'Ubutaka gushyira ku rutonde rw'amasambu agomba kugarurwa mu muryango wa Fundi Project bukaba butagomba kugarurwa ahubwo bugomba kuguma kubo bwanditseho.

[4] Rutazibwa Alexandre ntiyishimiye imikirize y'urwo rubanza, arujuririra mu Rukiko Rukuru, Urugereko rwa Rusizi, rukorera i Karongi, ruhabwa N° RADA 00001/2016/HC/RSZK, rucibwa ku wa 17/3/2017, Urukiko rwemeza ko ubujurire bwa Rutazibwa Alexandre nta shingiro bufite, ko imikirize y'urubanza N° RAD 0039/14/TGI/KGI rwaciwe n'Urukiko Rwisumbuye rwa Karongi idahindutse mu ngingo zayo zose.

[5] Rutazibwa Alexandre na none ntiyishimiye imikirize y'urwo rubanza, arujuririra mu Rukiko rw'Ikirenga, ruhabwa nomero RADAA 00004/2017/SC; Mukandutiye Bellancille atanga ubujurire bwuririye ku bundi. Urukiko rw'Ikirenga rwaciye urubanza ku wa 02/02/2018, rwemeza ko ubujurire bwa Rutazibwa Alexandre budafite ishingiro, ko n'ubujurire bwuririye ku bundi bwa Mukandutiye Bellancille budafite ishingiro, rutegeka Rutazibwa Alexandre kwishyura MINIRENA na RNRA indishyi zingana na 400.000 Frw.

[6] Ku wa 06/11/2018, Rutazibwa Alexandre yasubirishijemo urwo rubanza N° RADAA 00004/2017/SC ingingo nshya mu Rukiko rw'Ikirenga. Mu myanzuro ye, avuga ko nyuma y'icibwa ryarwo habonetse ikimenyetso gishya, icyo kimenyetso kikaba cyarabonetse ku wa 17/09/2018. Asobanura icyo kimenyetso gishya avuga ko, Umubitsi w'Impapurompamo yagaragarije Urukiko ko yandikiye Abayobozi b'Akarere n'ab'Imirenge ubutaka buzungurwa bubereye mu ifasi kugira

ngo akosore amakosa, ubutaka bwandikwe kuri ba nyirabwo, ariko amabaruwa ntiyashyikirizwa abo yandikiwe, bikaba byaratumye amakosa adakosorwa. Avuga ko iyo Urukiko rumenya, mbere y'icibwa ry'urubanza RADAA 00004/2017/SC, ukuri kugaragazwa n'ibaruwa y'Umurenge wa Musasa yo ku wa 12/09/2018 (yasubizaga iyo Me MUTEMBE yanditse ku wa 20/08/2018), ivuga ko amabaruwa y'Umubitsi w'Impapurompamo atashyikirijwe abo yandikiwe, urubanza rutari gucibwa mu buryo rwaciwe.

[7] Iburanisha ry'urubanza ryashyizwe ku wa 19/03/2019, ariko urubanza rwimurirwa ku wa 11/06/2019 kugira ngo ababuranyi bajye kumvikana nk'uko bari babisabye (Urubanza rwigijwe imbere ku wa 7/6/2019 n'Ubwanditsi bw'Urukiko kubera gahunda nshya y'iburanisha). Kuri uwo munsi, urubanza ntirwaburanishijwe, rwimurirwa ku wa 10/09/2019 ku busabe bw'uhagarariye Leta y'u Rwanda, avuga ko yamenye atinze itariki nshya urubanza rwimuriweho bituma atabasha kwitegura**.**

[8] Ku wa 10/09/2019, urubanza rwaburanishirijwe mu ruhame, Rutazibwa Alexandre yitabye yunganiwe na Me Mutembe Protais, Mukandutiye Bellancille aburanirwa na Me Owerisima Honorine, naho Leta y'u Rwanda iburanirwa na Me Cyubahiro Fiat, ababuranyi bajya impaka ku bijyanye no kumenya niba ikirego cyo gusubirishamo urubanza ingingo nshya, cyatanzwe na Me Mutembe Protais mu izina rya Rutazibwa Alexandre, gishobora kwakirwa.

[9] Mu miburanire ye, Me Mutembe Protais wunganira Rutazibwa Alexandre yavuze ko impamvu bashingiraho basaba ko urubanza rusubirwamo, ari uko habaye uburiganya bwakozwe n'Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda, bwagize ingaruka ku mikirize

y’urubanza; bitandukanye n’ibyari mu myanzuro by’uko kuva aho urubanza ruciriwe habonetse ikimenyetso gishya. Kuba harabaye uburiganya bwagize ingaruka ku mikirize y’urubanza bishimangirwa n’uhagarariye Mukandutiye Bellancille, mu gihe Intumwa Nkuru ya Leta ivuga ko nta buriganya bwabayeho.

[10] Ikibazo nyamukuru kigomba gusuzumwa muri uru rubanza rero, akaba ari ukumenya niba Ikigo gishinzwe imicungire n’imikoreshereze y’ubutaka mu Rwanda cyaragize uburiganya bwagize ingaruka ku mikirize y’urubanza, ku buryo byatuma rusubirwamo.

II. IKIBAZO KIGIZE URUBANZA N’ISESENGURA RYACYO

Kumenya niba Ikigo gishinzwe imicungire n’imikoreshereze y’ubutaka mu Rwanda (RNRA) cyaragize uburiganya bwagize ingaruka ku mikirize y’urubanza, ku buryo byatuma rusubirwamo.

[11] Mu miburanire ye, Me Mutembe Protais wunganira Rutazibwa Alexandre avuga ko impamvu ashingiraho asaba ko urubanza rusubirishwamo ingingo nshya, ari izi zikurikira:

a. kuba harabaye uburiganya bwagaragaye nyuma y’uko urubanza ruciwe. Avuga ko nyuma y’aho Umubitsi w’Impapurompamo aboneye ko yibeshye, yanditse amabaruwa atatu, harimo agenewe Umurenge wa Gihombo n’Umurenge wa Musasa, asaba ko abantu banditse ku butaka buburanwa bagarura ibyangombwa by’ubutaka bahawe, kubera ko hakozwe amakosa bakandikwa ku butaka bw’umuryango wa Fundi Project;

b. ibaruwa ya gatatu, yandikiwe Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda, irebana n'ibishanga byanditswe kuri Leta nyamara nayo ari amasambu yasaranganyijwe hagati y'abazungura ba Fundi n'abaturage. Avuga ko kubireba ayo masambu yiswe ibishanga, Umubitsi w'Impapurompamo yandikiye Umuyobozi w'Akarere ka Nyamasheke, amusaba gushimangira amakuru y'uko ariya masambu yasaranganyijwe koko, muri iyo baruwa akaba atarigeze avuga ko ubwo butaka, bwanditswe kuri MINIRENA, ari ibishanga;

c. nyuma yo gutsindwa mu Rukiko rw'Ikirenga, bamenye ko amabaruwa y'Umubitsi w'Impapurompamo atigeze agera kubo yari agenewe, bakaba barabimenye ari uko yandikiye Umuyobozi w'Umurenge wa Gihombo n'uwa Musasa, nabo bagasubiza ko ayo mabaruwa atigeze abageraho;

d. kuba amabaruwa atarashyikirijwe abo yari agenewe, ni uko habayeho kujijisha, aribyo bigaragaza uburiganya. Niba Umubitsi w'Impapurompamo ataragejeje ayo mabaruwa kuri ba nyirayo, ni uko yabikoze nkana. Uburiganya bukaba bushingiye ku kuba imiburanire y'Ikigo cy'Ubutaka itandukanye n'ibyo Umuyobozi wacyo yandikiye abayobozi b'Inzego z'Ibanze, kandi iyo Urukiko rw'Ikirenga rubona ko ayo mabaruwa atageze kubo yari agenewe ntirwari kwemeza ko amasambu 5 ari igishanga, ko n'amasambu 31 aguma kubo yanditseho nyamara

yari yarasaranganyijwe hagati y’abazungura ba Fundi n’abaturage;

e. kuba ibaruwa yaranditswe nyuma y’aho urubanza ruciriwe, byatewe n’uko batigeze bamenya niba amaburuwa yarageze kuri ba nyirayo, ko kandi mu kuburana batigeze bagira igitekerezo cy’uko ariya mabaruwa yaba ataragejejwe kubo yari agenewe;

f. uburiganya bwakozwe n’Umubitsi w’Impapurompamo ubwo yandikaga amabaruwa ntayageze kubo agenewe, yanabukoreye mu Rukiko, kuko atigeze aha amakuru abaje kuburana kugira ngo bemere ko yibeshye.

[12] Me Mutembe Protais asoza avuga ko ashingiye ku ngingo ya 170 y’Itegeko Nº 22/2018 ryo ku wa 13/06/2018 ryerekeye imiburanishirize y’Imanza z’Imbonezamubano, iz’Ubucuruzi, iz’Umurimo n’iz’Ubutegetsi, asanga ikirego cya Rutazibwa Alexandre gikwiye kwakirwa kubera ko atari gutekereza ko amabaruwa atageze kuri ba nyirayo.

[13] Me Kayiranga Rukumbi Bernard wari uhagarariye Leta y'u Rwanda mu iburanisha ryo ku wa 19/03/2019 no ku wa 07/06/2019, avuga ko ikimenyetso gishya Rutazibwa Alexandre ashingiraho, mu myanzuro yashyikirije Urukiko, asubirishamo urubanza ingingo nshya kidasobanutse, kuko ntawamenya niba urukomatane rw’ amabaruwa atandukanye yatanze aribyo yita ikimenyetso gishya. Byongeye kandi, Me Mutembe Protais nawe ubwe avuga ko ayo mabaruwa yayashyikirije Urukiko, bivuze ko atari ibimenyetso bishya kuko yari asanzweho mu gihe urubanza rwaburanishwaga. Muri ayo mabaruwa harimo:

a. iyo Me Mutembe Protais yandikiye Umuyobozi w'Umurenge wa Gihombo;

b. iyo yandikiye Umuyobozi w'Umurenge wa Musasa;

c. amaburawa Umubitsi w'Impapurompamo Wungirije yandikiye Abayobozi b'iyo Mirenge;

d. ibaruwa Me Mutembe Protais yandikiye Umuyobozi w'Akarere ka Nyamasheke;

e. na kopi y'inyandiko yasinyweho n'uwahoze ari « Mandataire » wa Leta Rusanganwa Eugène.

[14] Avuga kandi ko, hashingiwe ku ngingo ya 170 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 rigenga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ikimenyetso gishya ari ikimenyetso umuburanyi atashoboraga kumenya ko cyaba gihari, akakibona nyuma cyangwa akaba atarabashaga kukigeraho igihe yaburanaga, kandi kikaba gihabwa agaciro iyo gishobora kuvuguruza ibyari byashingiweho mu ica ry'urubanza rusabirwa gusubirwamo. Ku bireba uru rubanza, Rutazibwa Alexandre akaba aterekana ikimenyetso kitari gihari mu iburanisha ry'urubanza rusabirwa gusubirwamo, akaba atanerekana uburyo kivuguruza ibyashingiweho mu ica ry'urubanza, bityo rero ikirego cye kikaba kidakwiye kwakirwa.

[15] Me Cyubahiro Fiat, wari uhagarariye Leta y'u Rwanda mu iburanisha ryo ku wa 10/09/2019, avuga ko:

a. ibaruwa yo ku wa 12/9/2018 Me Mutembe Protais yita ikimenyetso gishya, ivugwamo ubutaka buherereye mu Murenge wa Musasa (AKarere ka Rutsiro), mu gihe ubwo asaba kwandikwaho ku

bireba MINIRENA buherereye mu Murenge wa Gihombo (Akarere ka Nyamasheke), bukaba ntaho buhuriye n'ubuvugwa mu ibaruwa yita ikimenyetso gishya;

b. ikimenyetso Me Mutembe Protais yita gishya atari gishya, kuko ari ibaruwa yanditse nyuma y'icibwa ry'urubanza, bivuze ko yashoboraga no kukibona mbere y'urubanza;

c. amabaruwa yavuzwe haruguru yaburanyweho kuva urubanza rugitangira, ndetse na mbere mu Rukiko Rwisumbuye rwa Karongi Umubitsi Wungirije w'Impapurompamo z'Ubutaka akaba yari yarezwe kubera izo nyandiko. Kuri ibi, Me Mutembe Protais yasubije ko batigeze bamurega uburiganya, ko ahubwo icyo bamureze ari indishyi z'akababaro kuko yaruhije Rutazibwa yanga kumwandika ku masambu yasaranganyije;

d. ibyo Umubitsi Wungirije w'Impapurompamo z'Ubutaka yanditse nta buriganya burimo, akaba yarabyandikiraga abayobozi b'inzego z'ibanze abasaba kwemeza amakuru afite kandi bikaba biri mu nshingano ze;

e. Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda kitandika ubutaka ku muntu kubera ko abisabye, ahubwo cyandika ubutaka ku muntu amaze kugaragaza uburenganzira abufiteho. Kuba rero Rutazibwa Alexandre yarananiwe kwerekana aho akomora ubutaka aburana kuva mu Rukiko Rwisumbuye rwa Karongi no mu Rukiko

Rukuru, Urugereko rwa Rusizi, nta hantu Ikigo cy'Ubutaka cyahera kibumwandikaho;

f. icyagiye gitsinda Rutazibwa Alexandre mu manza zose, ari uko yabuze ibimenyetso by'uko ubutaka aburana bwahoze ari ubw'umubyeyi we.

[16] Mu myiregurire ye, Me Owerisima Mungwe Honorine uhagarariye Mukandutiye Bellancille avuga ko:

a. Umubitsi w'Impapurompamo yari azi ukuri ku mitungo y'umuryango wa Fundi Project, ariko agaha Urukiko amakuru atuzuye, bigatuma rufata icyemezo kitari cyo, bikaba ari uburiganya bwabaye bukagira ingaruka ku rubanza;

b. kuba harabonetse ikimenyetso kigaragaza ko amakuru yashingiweho atariyo, cyagombye kwifashishwa kugira ngo ayo makosa akosorwe, ubutaka bukandikwa kuri ba nyirabwo;

c. uhereye igihe ikimenyetso gishya cyabonekeye n'uburiganya bukihishe inyuma, asanga bihagije ngo ikirego cyo gusubirishamo urubanza ingingo nshya cyakirwe;

d. imikirize y'urubanza yagize ingaruka kuri Mukandutiye Bellancille kubera uburiganya, ubwo buriganya akaba ari uko amabaruwa atageze kubo yohererejwe, kuko iyo abageraho ibibazo bivugwa muri uru rubanza byari kuba byarakemutse;

e. ashingiye ku ingingo ya 58, agace ka d, k'Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/04/2008 rigena uburyo iyandikisha ry'ubutaka rikorwa, asanga ikibazo cyarashoboraga gukemuka batagiye mu

nkiko, kuko Umubitsi w'Impapurompampo yagombaga guhita yandika ubwo butaka ku muryango wa Fundi Project.

UKO URUKIKO RUBIBONA

[17] Mu mpamvu zishobora gutuma urubanza rusubirishwamo ingingo nshya, ziteganywa n'ingingo ya 170 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, harimo kuba mu rubanza harabayemo uburiganya (fraud/dol personnel) bwagize ingaruka ku mikirize y'urubanza, kandi bukaba butarigeze bumenywa n'uwatsinzwe mu gihe cy'iburana.

[18] Uburiganya (dol personnel) busobanurwa n'Umuhanga mu mategeko Gérard CORNU avuga ko hakubiyemo ikitwa "fraude" cyose, ni ukuvuga kubeshya, kugura abatangabuhamya, kumvikana n'Avoka w'undi muburanyi n'ibindi, hagamijwe kubeshya umucamanza kugira ngo utsinde urubanza[1].

[19] Abahanga mu mategeko bayobowe na Georges de LEVAL, nabo basobanura ko kugira ngo urubanza

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[1] "*Ancienne cause d'ouverture de la requête civile englobant toute fraude (mensonge, subornation de témoins, collusion avec l'avocat de l'adversaire, etc.) destinée à tromper le juge pour obtenir de lui une décision à son profit, aujourd'hui remplacée par la "fraude", cas d'ouverture du recours en révision;* Gérard CORNU, Vocabulaire juridique, 6ème éd., Paris, Presses Universitaires de France, 1987, p. 291.
NB: Mu mategeko y'Ibihugu bimwe harimo n'u Rwanda, "requête civile" yasimbuwe na "recours en révision".

rusubirishwemo kubera uburiganya, hagomba kuba harabaye ibikorwa by'uburiganya hagamijwe kubeshya umucamanza kugira ngo nyiri ugukora ibyo bikorwa atsinde urubanza. Basobanura kandi ko uburiganya butagomba kwitiranywa no kuba umuburanyi yifashe ntagaragaze inyandiko zari gushyigikira ingingo z'undi muburanyi. Ibyo bikaba bitandukanye no kuba umuburanyi yabeshya umucamanza amubwira ibinyoma cyangwa ahisha inyandiko mu buryo bw'uburiganya. Basobanura kandi ko kugira ngo urubanza rusubirishwemo ku mpamvu z'uburiganya, icyemezo cyafashwe kigomba kuba cyarashingiye gusa ku makuru y'ibinyoma[2].

[20] Abahanga mu mategeko Izabelle DESPRES na Laurent DARGENT, bahereye ku bisobanuro byatanzwe n'inkiko, bagaragaje igihe guceceka(le silence) bishobora gufatwa nk'uburiganya (fraude), basobanura ko igishobora gufatwa

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[2] "*L'ouverture à requête civile sur la base du dol personnel est ainsi soumise à quatre conditions…Il faut d'abord qu'il y ait eu des manoeuvres frauduleuses déployées en vue d'obtenir une decision favorable en trompant le juge. L'on ne peut à cet égard assimiler la simple et inévitable subjectivité dans la défense de ses propres intérêts à un dol personnel. De même, la simple abstention d'une partie de produire par loyale spontanéité, devant le juge, des documents de nature à faire triompher la prétention de la partie adverse ne constitue pas en soi un dol……Il en est autrement, et il y a dol, lorsque la partie trompe le juge par une affirmation mensongère et une dissimulation frauduleuse de pièces, constituant ensemble une manoeuvre dolosive. En d'autres termes, pour que le dol personnel puisse fonder une requête civile, il faut que la décision entreprise repose tout entière sur des informations à ce point mensongères qu'elles ont aveuglé le juge et l'adversaire* "; Hakim BOULARBAH, Olivier CAPRASSE, Georges de LEVAL, Frédéric GEORGES, Pierre MOREAU, Dominique MOUGENOT, Jacques VAN COMPERNOLLE, Jean-François VAN DROOGHENBROECK, Droit Judiciaire, Manuel de procédure civile, T.2, Bruxelles, Ed. Larcier, 2015, p. 1881-1882.

nk'uburiganya ari uguceceka kw'umwe mu baburanyi ku bintu yarezwe cyangwa yasabwe gutangaho ibisobanuro, ariko ko bidafatwa nk'uburiganya guceceka kw'umuburanyi ku bintu atigeze aregwa cyangwa ngo asabwe gutangaho ibisobanuro[3].

[21] Ibi bisobanuro by'abahanga, bihujwe n'ibiteganywa n'ingingo ya 170 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, byumvikanisha ko:

a. kugira ngo urubanza rusubirishwemo ku mpamvu z'uburiganya:
    i. hagomba kuba habaye ibikorwa bigamije kubeshya umucamanza kugira ngo uwakoze ibyo bikorwa atsinde urubanza;
    ii. icyemezo cyafashwe kigomba kuba gishingiye gusa ku makuru y'ibinyoma;
    iii. uburiganya bugomba kuba bwaragize ingaruka ku mikirize y'urubanza;
b. guceceka kw'umuburanyi ku bintu atigeze asabwa gutangaho ibisobanuro bidafatwa nk'uburiganya;
c. kwifata kw' umuburanyi ntagaragaze inyandiko zari gushyigikira ingingo z'undi muburanyi bititwa uburiganya.

[3] "*Seul peut constituer un acte frauduleux le silence gardé par une partie sur des faits contestés par l'autre partie ou dont il lui est demandé de rendre compte (à l'exclusion du silence d'une partie sur des faits qui ne lui sont pas reprochés et sur lesquels aucune explication ne lui est demandée)";* Izabelle DESPRES et Laurent DARGENT, Code de Procédure Civile, 107 ème éd., Dalloz, 2016, p. 709.

[22] Muri uru rubanza, icyo Rutazibwa Alexandre ashingiraho avuga ko habaye uburiganya, ni ukuba uwaje kuburanira Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda, atarabwiye abacamanza ko hari amabaruwa Umubitsi Wungirije w'Impapurompamo z'Ubutaka mu ifasi y'Intara y'Uburengerazuba yandikiye ubuyobozi bw'Umurenge wa Musasa (Rutsiro) n'uwa Gihombo (Nyamasheke) ku wa 7/01/2015, n'iyo yandikiye Umuyobozi w'Akerere ka Nyamasheke ku wa 29/01/2015, ntagezwe kubo yari agenewe.

[23] Nk'uko bigaragara muri dosiye, ayo mabaruwa (Rutazibwa Alexandre yaboneye kopi) yanditswe urubanza rukiburanishwa ku rwego rw'Urukiko Rwisumbuye rwa Karongi, kuko rwaciwe ku wa 14/07/2016, rwararegewe mu 2014. Hashingiwe ku bigaragara muri kopi y'urubanza no mu nyandikomvugo z'iburanisha, uretse ibaruwa yo ku wa 29/01/2015[4], andi nta muburanyi wayavuzeho, kugira ngo bibaye ngombwa abayavugwamo bahatirwe kugoboka mu rubanza. Ntiyanagarutsweho ku rwego rw'ubujurire mu Rukiko Rukuru, Urugereko rwa Rusizi. Mu Rukiko rw'Ikirenga, bigaragara mu nyandikomvugo y'iburanisha ryo ku wa 19/12/2017 ko ayo mabaruwa yavuzweho, ariko Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda ntikigire icyo gisobanuzwa ku bijyanye no kumenya niba yaragejejwe kubo yari yandikiwe.

[24] Hagendewe ku bisobanuro byatanzwe mu bika bibanza, Urukiko rurasanga kuba Ikigo gishinzwe imicungire

[4] Urukiko rwabajije Me Mutembe icyo avuga kuri iyo baruwa, asubiza ko ibiyikubiyemo byanditse kuri MINIRENA, bakaba bemera ko byandikwa kuri "succession" FUNDI.

n'imikoreshereze y'ubutaka mu Rwanda kitarabwiye Urukiko ko amabaruwa Umubitsi Wungirije w'Impapurompamo z'Ubutaka mu ifasi y'Intara y'Uburengerazuba yandikiye ubuyobozi bw'Umurenge wa Musasa, uwa Gihombo, n'Akarere ka Nyamasheke, atageze ku bo yari agenewe, bitafatwa nk'igikorwa cy'uburiganya kubera impamvu zikurikira:

a. Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda ntikigeze gisabwa ibisobanuro ku bijyanye no kumenya niba amabaruwa yanditswe n'umukozi wacyo yaragejejwe kubo yari agenewe ngo cyange kubitanga cyangwa ngo gitange amakuru y'ibinyoma kigamije gutsinda urubanza. Rutazibwa Alexandre wari uzi ko ayo mabaruwa yanditswe kuko yagenewe kopi, ntiyigeze abaza icyakurikiyeho nyuma y'uko yandikwa, kandi ariwe byari bifitiye akamaro;

b. Nta kimenyetso kigaragaza ko hari ibyo Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda cyabeshye umucamanza kigamije kumuyobya kugira ngo gitsinde urubanza, kandi ihame mu rwego rw'amategeko ari uko uburiganya budakekwa ahubwo bugomba gutangirwa ibimenyetso[5].

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[5] "*Il convient enfin que le dol soit-par toutes voies de droit-prouvé par celui qui l'allègue; il y va d'une application du princippe général en vertu duquel le dol ne se présume pas;* Hakim BOULARBAH, Olivier CAPRASSE, Georges de LEVAL, Frédéric GEORGES, Pierre MOREAU, Dominique MOUGENOT, Jacques VAN COMPERNOLLE, Jean-François VAN DROOGHENBROECK, op. cit, p. 1184.

[25] Urukiko rurasanga kandi, n'iyo abacamanza baza kubwirwa ko amabaruwa yavuzwe haruguru yanditswe n'Umubitsi Wungirije w'Impapurompamo z'Ubutaka, atageze kubo yari agenewe, ntacyo byari guhindura ku mikirize y'urubanza ku mpamvu zikurikira:

a. Urukiko rw'Ikirenga, mu rubanza rusabirwa gusubirwamo, rwasobanuye ko RNRA itahatirwa kwandika kuri "Succession" Fundi Project ubutaka bwanditswe ku bandi bantu (barondoye muri urwo rubanza), kuko batigeze baregwa cyangwa ngo bahatirwe kugoboka mu rubanza. Rwasobanuye ko ibyo byaba ari ugufata icyemezo ku muntu cyangwa ku bantu batabaye ababuranyi muri urwo rubanza, hakemezwa ko bamburwa ubutaka bataburanye, bakavutswa uburenganzira bwo kwiregura;

b. ntibyari gushoboka ko abantu bavugwa mu mabaruwa y'Umubitsi Wungirije w'Impapurompamo z'Ubutaka, bahatirwa kugoboka mu rubanza, kuko hashingiwe ku ngingo ya 118 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakoreshwaga igihe urubanza rwacibwaga, kugoboka bigamije gusaba ko uhatiwe kugoboka agira ibyo acibwa bidashobora gukorwa bwa mbere mu rwego rw'ubujurire;

c. n'iyo rero Urukiko ruza kubwirwa ko amabaruwa yavuzwe haruguru atageze kubo yari agenewe, ntibyari gutuma imikirize y'urubanza ihinduka kuko rutari gufata icyemezo ku bantu batarubayemo ababuranyi.

[26] Urukiko rurasanga rero, hashingiye ku ngingo ya 170 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, no ku bisobanuro bimaze gutangwa, nta buriganya Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda (RNRA) cyakoze, bwagize ingaruka ku mikirize y'urubanza, ku buryo byatuma rusubirwamo; bityo ikirego cyatanzwe na Rutazibwa Alexandre kigamije gusubirishamo urubanza ingingo nshya kikaba kidashobora kwakirwa ngo gisuzumwe.

III. ICYEMEZO CY'URUKIKO

[27] Rwemeje ko ikirego cyatanzwe na Rutazibwa Alexandre cyo gusubirishamo urubanza ingingo nshya kitakiriwe ngo gisuzumwe, kuko cyatanzwe mu buryo budakurikije amategeko;

[28] Rwemeje ko imikirize y'urubanza Nº RADAA 0004/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 02/02/2018, igumyeho;

[29] Rutegetse ko ingwate y'amagarama yatanzwe na Rutazibwa Alexandre ihwanye n'ibyakozwe mu rubanza.