BUJAMBI v SEMANA

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/00007/2017/SC (Hatangimbabazi, P.J, Kanyange na Ngagi, J.) 29 Kamena 2018]

Umutungo – Kugurisha ikintu cy'undi– N'ubwo igurisha rikozwe n'ugaragara nka nyiri ikintu (propriétaire apparent) rishobora kudahungabanywa mu nyungu z'uwaguze nta buryarya, ariko byumvikana ko kugira ngo hemezwe ko umutungo udasubizwa uwufiteho uburenganzira, hagomba kugaragazwa koko ko buri wese yashoboraga kwibwira ko aguze na nyirawo.

Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko rw'Isumbuye rwa Gasabo aho Nyirabaziga yatanze ikirego arega Bujambi na Semana asaba ko Urukiko rutesha agaciro ubugure bwabaye hagati ya Bujambi na Semana. Kuko avuga ko Semana yagurishije inzu itasri iye kuko yari inzu y'umuhungu we witabye Imana kandi akaba ari wari umuzungura we wenyine. Urukiko rwaciye urubanza rwemeza ko ikirego cye gifite ishingiro kuri bimwe, rwemeza ko ubugure bwabaye hagati ya Bujambi na Semana buteshejwe agaciro, ko inzu iburanwa isubira mu maboko y'umuryango wa Bangamwabo, rutegeka Semana Marc kwishyura Bujambi amafaranga yaguze inzu, n'indishyi z'akababaro zo kuba yaramugurishije inzu itari iye.

Semana na Bujambi ntibishimiye imikirize bajuririra Urukiko Rukuru, urwo Rukiko rwemeza ko inzu iburanwa ari iya Bujambi kuko yayiguze mu buryo bukurikije amategeko, rutegeka Semana guha Nyirabaziga amafaranga yakiriye nk'ikiguzi cy'inzu yari iya Bangamwabo, akamuha n'inyungu ndetse n'indishyi z'akababaro.

Nyirabaziga ntiyishimiye imikirize yandikira Urwego rw'Umuvunyi asaba ko urubanza rusubirwamo kumpamvu z'akarengane, Umuvunyi nawe abishyikiriza Urukiko rw'Ikirenga narwo rwemeje ko urubanza rusubirwamo ku mpamvu z'akarengane.

Uhagarariye urega avuga ko impamvu ya mbere yo gusubirishamo ishingiye ku kuba Urukiko Rukuru rwaremeje ko Semana yagurishije inzu ya Nyirabaziga atabiherewe ububasha, ariko rugashyiraho irengayobora rushingiye ku rubanza rwaciwe n'Urukiko Rusesa Imanza mu gihugu cy'Ubufaransa rurebana n'uwagurishije ikintu wagaragaraga nka nyiracyo, rukemeza ko ubugure bugumana agaciro kabwo, Bujambi akagumana inzu naho Semana wagurishije agasubiza amafaranga nyiri umutungo nk'aho yari yamutumye. Asobanura ko urwo rubanza rwashingiweho, rudahuye n'uruburanwa kuko muri urwo rubanza, uwagurishije yari afite icyangombwa cy'umutungo, mu gihe Semana, nta kintu na kimwe yari afite ahubwo yabeshye abaturanyi b'aho inzu iburanwa iri, ko ari we wenyine wasigaye mu muryango wa Bangamwabo kandi nyina akiriho. Avuga kandi ko mu gihe amategeko y'u Rwanda asobanutse neza, nta mpamvu Urukiko rugomba gushingira ku manza zo mu mahanga, mu gihe rwari rwamaze kwemeza ko habayeho kugurisha ikintu cy'undi nta burenganzira.

Uhagarariye Bujambi avuga yaguze inzu na Semana ayirangiwe na Nsabimana, ko nk'umuntu utari usanzwe atuye muri ako gace kandi na nyirayo avuga ko ibyangombwa byaburiye mu ntambara nk'uko icyo kibazo cyari gihuriweho n'abantu benshi, hiyambajwe abaturanyi n'abayobozi b'inzego z'ibanze kugira ngo yizere ko aguze na nyiri umutungo. Avuga kandi ko Urukiko Rukuru mu guca urubanza rwasobanuye ko ntacyo Itegeko rivuga ku muntu waguze n'ugaragara nka nyiri ikintu, rushingira ku nyandiko z'abahanga mu mategeko n'ibyemejwe n'inkiko byagaragaje ko bene uwo muntu agomba kurengerwa, ubugure bwe bukagumana agaciro, akaba asanga urwo rubanza rugomba kugumana agaciro karwo. Akomeza avuga ko kuba Urukiko rwarashingiye ku nyandiko z'abahanga mu mategeko no ku byemezo by'inkiko

z'ahandi, bitafatwa ko habaye akarengane kuri Nyirabaziga kuko amategeko yemera ko byashingirwaho uretse mu gihe binyuranyije n'amahame ndemyagihugu

Incamake y'icyemezo: 1. N'ubwo igurisha rikozwe n'ugaragara nka nyiri ikintu (propriétaire apparent) rishobora kudahungabanywa mu nyungu z'uwaguze nta buryarya, ariko byumvikana ko kugira ngo hemezwe ko umutungo udasubizwa uwufiteho uburenganzira, hagomba kugaragazwa koko ko buri wese yashoboraga kwibwira ko aguze na nyirawo, bityo n'ubwo Bujambi yaguze nta buryarya agendeye gusa kubyo yabwiwe, ntacyari gutuma Semana agaragarira buri wese nka nyiri inzu iburanwa, kubw'iyo mpamvu inzu yagurishijwe nutari nyirayo igomba gusubizwa nyirayo, uwaguze agasubizwa nuwamugurishije agaciro k'inzu ifite ubu.

2. Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyiri ugukora ikosa rigikomokaho kuriha ibyangiritse

Gusubirishamo ku mpamvu z'akarengane bifite ishingiro;
Imikirie y'urubanza rwasubirishijwemo irahindutse.

Amategeko yashingiweho :
Itegeko Ngenga Nº 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 81
tegeko teka ryo kuwa 30/07/1888, rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258 n'iya 276

Nta manza zifashishijwe.

Inyandiko z'Abahanga zifashishijwe
Jérôme Huet, Traité de droit civil, Les principaux contrats spéciaux, 2e édition, Paris, L.G.D.J.pp. 102—103
Francois Terré et Philippe Smiler, '' Droit civil, Les biens, 7e édition, Paris, Dalloz, 2006, p.79.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 07/03/1998, Bujambi Aloys yaguze inzu na Semana Marc iri mu Kagari ka Kamutwa, Umurenge wa Kacyiru, Umujyi wa Kigali, Nyirabaziga Anne Marie akavuga ko iyo nzu ari iy'umuhungu we Bangamwabo Gentil witabye Imana ari ingaragu. Nyirabaziga Anne Marie yatanze ikirego mu Rukiko Rwisumbuye rwa Gasabo, arega Bujambi Aloys na Semana Marc, asaba ko ubugure buteshwa agaciro agahabwa iyo nzu kuko ari we ugomba kuzungura umwana we, anasaba indishyi zinyuranye.

[2] Urwo Rukiko rwaciye urubanza RC 0433/10/TGI/GSBO ku wa 31/01/2012, rwemeza ko ikirego cye gifite ishingiro kuri bimwe, rwemeza ko ubugure bwabaye hagati ya Bujambi Aloys na Semana Marc buteshejwe agaciro, ko inzu iburanwa isubira mu maboko y'umuryango wa Bangamwabo Gentil, rutegeka Semana Marc kwishyura Bujambi Aloys 6.600.000 Frw agizwe na 800.000 Frw yaguze inzu, 5.000.000 y'indishyi z'akababaro zo kuba yaramugurishije inzu itari iye, 300.000 Frw y'igihembo cy'Avoka na 500.000 Frw yo gukurikirana urubanza, Semana Marc kandi agaha Nyirabaziga Anne Marie 800.000 Frw y'indishyi z'akababaro.

[3] Semana Marc na Bujambi Aloys bajuririye mu Rukiko Rukuru, mu rubanza RCA 0103/12/HC/KIG-RCA 0109/12/HC/KIG rwaciwe ku wa 28/12/2012, urwo Rukiko rwemeza ko inzu iburanwa ari iya Bujambi Aloys kuko yayiguze mu buryo bukurikije amategeko, rutegeka Semana Marc guha Nyirabaziga Anne Marie 800.000 Frw yakiriye nk'ikiguzi cy'inzu yari iya Bangamwabo Gentil, akamuha n'inyungu z'ayo zingana na 945.000 Frw. Rwategetse kandi Semana Marc guha Nyirabaziga Anne Marie 500.000 Frw y'indishyi z'akababaro zo kuba yaragurishije inzu ya Bangamwabo Gentil na 600.000 Frw y'igihembo cy'Avoka, runamutegeka guha Bujambi Aloys 600.000 Frw y'igihembo cy'Avoka.

[4] Nyirabaziga Anne Marie yatanze ikirego ku Rwego rw'Umuvunyi, nyuma yo gusuzuma ikibazo cye, Umuvunyi Mukuru yandikira Perezida w'Urukiko rw'Ikirenga asaba ko urubanza RCA 0103/12/HC/KIG-RCA 0109/12/HC/KIG rwasubirwamo, Perezida w'Urukiko rw'Ikirenga nawe afata icyemezo cy'uko urubanza rwoherezwa mu bwanditsi bw'Urukiko kugira ngo ruzongere kuburanishwa.

[5] Urubanza rwaburanishijwe mu ruhame ku wa 24/10/2017, Nyirabaziga Anne Marie ahagarariwe na Me Ngirumpetse Jean Marie Vianney, Semana Marc ahagarariwe na Me Muhizi Emile, Bujambi Aloys ahagarariwe na Me Bigaraba John, hasuzumwa inzitizi yatanzwe na BUJAMBI Aloys yo kutakira ikirego cya Nyirabaziga Anne Marie kuko cyatanzwe mu buryo bunyuranyije n'amategeko. Mu rubanza rubanziriza urundi rwaciwe ku wa 24/11/2017, Urukiko rwemeje ko iyo nzitizi nta shingiro ifite, rutegeka ko iburanisha rizakomeza ku wa 23/01/2018, uwo munsi urubanza ruburanishwa mu ruhame, ababuranyi bahagarariwe nka mbere.

[6] Ku wa 02/03/2018, Urukiko rwafashe icyemezo cyo kugera aho inzu iburanwa iri, kugira ngo rwumve abantu bazi ibyayo, nyuma y'aho urubanza rwongera kuburanishwa ku wa 06/06/2018, ababuranyi bahabwa umwanya wo kugira icyo bavuga ku byavuye muri iryo perereza, Nyirabaziga Anne Marie akaba yari ahagarariwe na Me Ngirumpetse Jean Marie Vianney, Bujambi Aloys ahagarariwe na Me Bigaraba John naho Semana Marc yunganirwa na Me Ngendahayo François-Xavier.

II. ISESENGURA RY'IBIBAZO BIRI MU RUBANZA

1. Kumenya niba inzu iburanwa yaragombaga gusubizwa NYIRABAZIGA Anne Marie

[7] Uburanira Nyirabaziga Anne Marie avuga ko impamvu ya mbere y'ikirego cye ishingiye ku kuba Urukiko Rukuru rwaremeje ko Semana Marc yagurishije inzu ya Nyirabaziga Anne Marie atabiherewe ububasha, rugashingira ku ngingo ya 276 y'Igitabo cya gatatu cy'urwunge w'amategeko mbonezamubano (CCLIII), ariko rugashyiraho irengayobora rushingiye ku rubanza rwaciwe n'Urukiko Rusesa Imanza mu gihugu cy'Ubufaransa rurebana n'uwagurishije ikintu wagaragaraga nka nyiracyo (*propriétaire apparent*), rukemeza ko ubugure bugumana agaciro kabwo, Bujambi Aloys akagumana inzu naho Semana Marc wagurishije agasubiza amafaranga nyiri umutungo nk'aho yari yamutumye. Asobanura ko urwo rubanza rwashingiweho, rudahuye n'uruburanwa kuko muri urwo rubanza, uwagurishije yari afite icyangombwa cy'umutungo (*titre de propriété authentique*), mu gihe Semana Marc wagurishije, nta kintu na kimwe yari afite ahubwo yabeshye abaturanyi b'aho inzu iburanwa iri, ko ari we wenyine wasigaye mu muryango wa Bangamwabo Gentil. Ko rero nta cyangombwa yari afite cyangwa ngo abe yaratuye muri iyo nzu cyangwa ngo ayikodeshe ku buryo yashoboraga kugaragara nka nyirayo.

[8] Avuga kandi ko mu gihe amategeko y'u Rwanda asobanutse neza, nta mpamvu Urukiko rwari gushingira ku manza zo mu mahanga, mu gihe rwari rwamaze kwemeza ko habayeho kugurisha ikintu cy'undi nta burenganzira, cyane cyane ko ingingo ya 6 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi[1] ibuza gushingira ku manza z'ahandi iyo zinyuranyije n'amategeko, ko rero uru Rukiko rwakosora iryo kosa rukemeza ko Semana Marc yagurishije umutungo wa Nyirabaziga Anne Marie atabifitiye ububasha nk'uko n'Urukiko Rukuru rwabibonye, uru Rukiko rukemeza ko hagombaga gushingirwa ku ngingo ya 276 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, nyiri umutungo akawusubirana naho uwagurishije agatanga indishyi nk'uko iyo ngingo ibiteganya.

[9] Asanga kandi umutangabuhamya Nsabimana Salim atarivuguruje nk'uko abo baburana babivuga, kuko kuva ku rwego rwa mbere, yavuze ko yasinye kubera ibinyoma bya Semana Marc. Asobanura kandi ko ikibanza kirimo inzu iburanwa cyaguzwe na Bangamwabo Gentil aba ari nawe wubakamo iyo nzu, ariyo mpamvu mu masezerano y'ubugure havugwamo ko Bujambi Aloys aguze inzu uko imeze, bivuze ko yari inzu yuzuye.

[10] Uburanira Bujambi Aloys avuga ko uyu yaguze inzu na Semana Marc ku mafaranga 800.000 ayirangiwe na Nsabimana Salim, ko nk'umuntu utari usanzwe atuye muri ako gace kandi na nyirayo avuga ko ibyangombwa byaburiye mu ntambara nk'uko icyo kibazo cyari gihuriweho n'abantu benshi, hiyambajwe abaturanyi n'abayobozi b'inzego z'ibanze kugira ngo yizere ko aguze na nyiri umutungo, uwiyambajwe bwa mbere akaba ari Nsabimana Salim wayimurangiye akaba n'umuturanyi wa bugufi, aba ari nawe wandika amasezerano, we n'umugore we bayashyiraho umukono bemeza ko iyo nzu yari iyabo bakayigurisha Semana Marc.

[11] Avuga kandi ko Urukiko Rukuru mu guca urubanza, rwashingiye ku ngingo ya 276 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano (CCLIII), ariko rusobanura ko ntacyo Itegeko rivuga ku muntu waguze n'ugaragara nka nyiri ikintu, rushingira ku nyandiko z'abahanga mu mategeko n'ibyemejwe n'inkiko byagaragaje ko bene uwo muntu agomba kurengerwa, ubugure bwe bukagumana agaciro, akaba asanga urwo rubanza rugomba kugumana agaciro karwo.

[12] Akomeza avuga ko kuba Urukiko rwarashingiye ku nyandiko z'abahanga mu mategeko no ku byemezo by'inkiko z'ahandi, bitafatwa ko habaye akarengane kuri Nyirabaziga Anne Marie kuko ingingo ya 6 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi mugenzi we aburanisha, yemera ko byashingirwaho uretse mu gihe binyuranyije n'amahame ndemyagihugu, cyane cyane ko ibyo Urukiko Rukuru rwashingiyeho, bishingiye ku ngingo ya 1599 ya ''code civil français'' ihura neza n'ingingo ya 276 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, ko kandi ibivugwa n'uwo baburana ko indishyi zitangwa n'uwagurishije, bidateganyijwe muri iyo ngingo.

[13] Avuga kandi ko kuvuga ko Semana Marc atigaragaraza nka nyiri umutungo yagurishije ngo kuko nta byangombwa yari afite, ataribyo, kuko kugeza ubu, na Nyirabaziga Anne Marie nta cyangombwa yigeze agaragaza cyemeza ko ari we nyiri umutungo uburanwa, ko ahubwo abaturanyi aribo bemeje nyiri inzu iburanwa. Asobanura kandi ko mbere yo kugura, Bujambi Aloys yahamagaye abaturanyi harimo na nyumba kumi na Nsabimana Salim wayimurangiye akaba n'umuturanyi wa hafi, bemeza ko inzu ari iya Semana Marc, usibye ko mu Rukiko, Nsabimana Salim yivuguruje akavuga ko ibyo yavuze mbere yabitewe n'uko Semana Marc

[1] Ni ingingo y'Itegeko ryakurikizwaga ubwo urubanza rwaburanishwaga, ihura n'iya 9 y'Itegeko rishya

yamubeshye ko Bangamwabo Gentil yapfuye akaba ari we wamuzunguye ngo kuko ari we wasigaye wenyine.

[14] Akomeza avuga ko kugeza ubu, yaba Nyirabaziga Anne Marie cyangwa Semana Marc, nta n'umwe ufite ibyangombwa byerekana ko inzu ari iye, ko rero nta kuntu Urukiko rutari gushingira kuri ''notion d'apparence'', ko ahubwo asanga Nyirabaziga Anne Marie na Semana Marc bagamije kwambura Bujambi Aloys inzu yaguze.

[15] Uburanira Semana Marc avuga ko umutungo uburanwa wari uwa Bangamwabo Gentil kuko ari we waguze ikibanza na Nsabimana Salim, ananiwe kubaka, awugurisha Semana Marc (mwene se wa Bangamwabo), ko ariko ibyo kwiyandikishaho ubutaka byari bitarabaho. Akomeza avuga ko Bangamwabo Gentil amaze gupfa, Nsabimana Marc yabaye umuranga w'uwo mutungo aba ari we wandika yemeza ko umutungo ari uwa Semana Marc, ko rero asanga aho gushingira kuri ''apparence'', Urukiko Rukuru rwagombaga kwemeza ko Bujambi Aloys yaguze na nyiri umutungo kuko awukomora kuri Bangamwabo Gentil bawuguze nk'uko byemejwe na Nsabimana Salim imbere y'abaturage n'inzego z'ibanze. Avuga kandi ko iby'ubuzungure bwa Bangamwabo Gentil bitashingirwaho kuko na Semana Marc yagombaga kububamo bitewe n'uko bahuje Se.

[16] Semana Marc nawe avuga ko inzu iburanwa ari we wayubatse mu kibanza yaguze na Bangamwabo Gentil 120.000 Frw nawe akaba yari yarakiguze na Nsabimana Salim ku mafaranga 60.000, ko ahubwo Nsabimana Salim amaze kumenya ko impapuro yaguriyeho zabuze, yagiye gushaka umwuzukuru wa Nyirabaziga Anne Marie kugira ngo habe uburiganya bwo kwambura Bujambi Aloys inzu yamugurishije. Asobanura kandi ko Bangamwabo Gentil atigeze agira imirimo akora kuri iyo nzu, ko ahubwo nk'umuvandimwe we babaga bari kumwe, ko ari nawe wazanye amabati yo kuyisakara ayavanye ku yindi nzu yashenywe, ko kandi icyo gihe Bangamwabo Gentil atari ahari.

UKO URUKIKO RUBIBONA

[17] Ingingo ya 81 y' Itegeko Ngenga Nº 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, iteganya ko ''Urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirwamo ku mpamvu z'akarengane (….) iyo mu icibwa ryarwo hirengagijwe amategeko n'ibimenyetso bigaragarira buri wese''.

[18] Imikirize y'urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, igaragaza ko Urukiko Rukuru rwemeje ko Semana Marc yagurishije inzu itari iye, rubishingiye ku mpamvu y'uko nta kimenyetso na kimwe yagaragaje cy'uko ari iye uretse kuvuga gusa ko ari we Akarere kayisubije nyuma y'uko yari yarabohojwe, ariko ntagaragaze icyo kashingiyeho kayimusubiza, ko ahubwo inzu iburanwa ari iya Bangamwabo Gentil kuko Nsabimana Salim yemeza ko ari we wamuhaye ikibanza iyo nzu yubatsemo, na Semana Marc akemera ko icyo kibanza cyabanje kuba icya Bangamwabo Gentil, naho kuvuga ko yakiguze na Bangamwabo Gentil akaba nta kimenyetso abigaragariza, ubwo bugure kandi bukaba butanazwi na Nsabimana Salim wagurishije icyo kibanza Bangamwabo Gentil, akaba anahaturiye.

[19] Rwanashingiye ku mvugo z'abantu bemeje ko babonye Bangamwabo Gentil yubaka iyo nzu, barimo Nsabimana Salim, Ngabonziza André, Nyinawimanzi Charlotte na Nyirabyago Vénantie, hakaba nta mutangabuhamya wigeze avuga ko yabonye Semana Marc kuri iyo nzu mbere ya Jenoside yakorewe Abatutsi, ahubwo yagaragaye nyuma aje kuyisaba, nabwo avuga ko

abikora mu izina ry'umuryango wa Bangambwabo Gentil nk'uko byemejwe na Nyinawimanzi Charlotte na Nsabimana Salim. Rwanasobanuye kandi ko kuba Nsabimana Salim n'umugore we Nyirarukundo Samila barasinyiye Semana Marc igihe cyo kugurisha, nyuma bagatanga ubuhamya bavuga ko inzu ari iya Bangamwabo Gentil, ari we wagombye kugaragaza ko babeshya atanga ibimenyetso ko inzu ari iye, ko kandi n'ubwo ubuhamya bw'abavuga ko inzu atari iye butahabwa agaciro, bitamugira nyirayo kuko kuba umuntu yagurisha inzu, ubwabyo atari ikimenyetso ko ari iye.

[20] N'ubwo imbere y'uru Rukiko Semana Marc yakomeje kuvuga ko inzu iburanwa ari iye, Urukiko rurasanga impamvu zagaragajwe n'Urukiko Rukuru zibukijwe haruguru, zihagije mu kwemeza ko inzu yubatswe na Bangamwabo Gentil, kuko n'abatangabuhamya batandatu (6) babajijwe n'uru Rukiko ubwo rwakoraga iperereza, bane (4) muri bo, aribo Mukarukundo Samila, Nyinawimanzi Charlotte, Nsabimana Salim, Ntashamaje Madeleine, Nyirabyago Vénantie, bemeje ko inzu ari iya Bangamwabo Gentil, naho imvugo ya Nyinawimanzi Charlotte y'uko atamenya uwubatse iyo nzu ngo kuko Semana Marc na Bangamwabo Gentil bazaga kubaka bari kumwe, itahabwa agaciro kuko ivuguruzwa n'ibyo we yivugiye mu Rukiko Rukuru ko ikibanza cyaguzwe na Bangamwabo Gentil aba ari nawe wubakamo inzu. Naho ku birebana n'imvugo ya Nzabahimana Dieudonné nawe wavuze ko inzu yubatswe na Semana Marc na Bangamwabo Gentil, Urukiko rurasanga nayo itahabwa ishingiro kuko avuga gusa ko ikibanza inzu yubatsemo cyari icya Se wa Nsabimana Salim, ko cyaje kugurishwa ariko ko atari ahari, ko yabonye gusa Semana Marc na Bangamwabo Gentil batangira kubaka inzu, bikaba rero bigaragara ko atazi amateka y'iyo nzu, cyangwa adashaka kuyavuga.

[21] Ku birebana n'uko Urukiko Rukuru rwemeje ko inzu iburanwa iguma mu maboko ya Bujambi Aloys wayiguze, imikirize y'urubanza igaragaza ko rwabishingiye ku mpamvu y'uko yaguze n'uwagaragaraga nka nyirayo (*propriétaire apparent*) kandi abikora nta buryarya (*acquéreur de bonne foi*), rubishingiye ku manza zaciwe mu Rukiko Rusesa imanza mu gihugu cy'Ubufaransa.

[22] Urukiko rurasanga ariko, n'ubwo igurisha rikozwe n'uwagaragaraga nka nyiri ikintu (*propriétaire apparent*) rishobora kudahungabanywa mu nyungu z'uwaguze nta buryarya nk'uko byagiye byemezwa n'inyandiko z'abahanga mu mategeko[2] kimwe n'imanza zaciwe ahandi (nk'izashingiweho n'Urukiko Rukuru), byumvikana ko kugira ngo hemezwe ko umutungo udasubizwa uwufiteho uburenganzira, hagomba kugaragazwa koko ko buri wese yashoboraga kwibwira ko aguze na nyirawo.

[23] Isesengura ry'imanza Urukiko Rukuru rwifashishije mu gukemura ikibazo cy'ugomba guhabwa inzu iburanwa, rigaragaza ko izo manza zifite ibyo zashingiyeho byashoboraga gutuma umuntu wese yibwira ko aguze na nyiri umutungo, kuko mu rubanza rumwe (Cass, civ,3e, 22 mars 1968), Urukiko rwagaragaje ko uwagurishije yari afite uruhare runini muri sosiyete (nyiri umutungo wagurishijwe) kandi abaturage bamwizera bitewe n'akazi yakoraga, akaba ari we wakiraga amafaranga y'ubugure igihe kirekire (yishyuwe mu byiciro) kandi abaguze bahabwa ibibanza byabo, Urukiko rubishingiraho ruvuga ko uwariwe wese yashoboraga kumufata ko yahawe ububasha bwo kugurisha mu izina rya sosiyete, bituma abaguze batamburwa umutungo wabo.

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[2] Le défaut de capacité ou de pouvoir, tout comme l'absence de qualité du proriétaire, ne menace pas la validité de la vente s'il peut être établi que l'acheteur, victime d'une croyance légitime, a pu croire que le vendeur était en droit de passer le contrat. La théorie de l'apparence est de nature à sauver, parfois, l'acte: (Jérôme Huet, Traité de droit civil, Les principaux contrats spéciaux, 2e édition, Paris, L.G.D.J.,pp. 102—103).

[24] Mu rundi rubanza narwo rwashingiweho n'Urukiko Rukuru (*Cass, civ,1re, 22 juillet 1986*), bigaragara ko kugira ngo Urukiko rwemeze ko uwaguze agumana inzu yaguze, rwabishingiye ku mpamvu y'uko yaguze ashingiye ku nyandiko nk'uko yagaragazaga iyo nzu[3] ndetse na Noteri kimwe n'ushinzwe kuranga amazu bakaba ariko babimugaragarije kandi n'uwagurishije akaba ntacyo yabivuzeho.

[25] Urukiko rurasanga ku birebana n'uru rubanza, nta kintu gifatika cyari gutuma Semana Marc afatwa na buri wese ko ari we nyiri inzu iburanwa, kuko impamvu zagaragajwe n'Urukiko Rukuru zirimo kuba Nsabimana Salim wagurishije Bangamwabo Gentil ikibanza inzu yubatsemo, kimwe na Nyinawimanzi Charlotte wari nyumbakumi, barashyize umukono ku masezerano y'ubugure avuga ko Semana Marc agurishije inzu ye, atari byo byari gutuma afatwa nka nyiri umutungo mu gihe nta kindi abo babyemeje babishingiyeho. Na none kandi, kuba Urukiko Rukuru rwarashingiye ku mpamvu y'uko inzu yari mu maboko ya Semana Marc kuko ari we Akarere kayisubije nyuma y'uko yari yarabohojwe, nabyo ntibyari gutuma buri wese amufata nka nyirayo kuko usibye kuba kuyisubizwa byarabaye mbere y'igikorwa nyirizina cyo kugurisha, yashoboraga no kuyisubizwa nk'umuvandimwe wa Bangamwabo Gentil.

[26] Urukiko rurasanga kandi kuba Urukiko Rukuru rwaranashingiye ku mpamvu y'uko nta handi Bujambi Aloys yashoboraga kuvana amakuru arebana n'iyo nzu usibye mu baturanyi kuko itubatswe mu buryo buzwi bw'imiturire, nabyo bitaba impamvu yari gutuma Semana Marc afatwa na buri wese nka nyirayo, kuko bibaye ibyo, yaba inzira yoroshye yo kugurisha imitungo y'abandi, cyane cyane ko ubugure bwari bushingiye ku mutungo utimukanwa ubusanzwe busaba ko ugurishije agaragaza inyandiko z'uko ari uwe.

[27] Hashingiwe ku bimaze gusobanurwa, Urukiko rurasanga n'ubwo Bujambi Aloys yaguze nta buryarya agendeye gusa kubyo yabwiwe, ntacyari gutuma Semana Marc agaragarira buri wese nka nyiri inzu iburanwa, ari nacyo imanza zashingiweho n'Urukiko Rukuru zise *erreur commune*[4] bityo Urukiko Rukuru rukaba rutaragombaga gushingira kuri izo manza zidahuye n'ikibazo cy'inzu iburanwa muri uru rubanza, ngo rwemeze ko iguma mu maboko ya Bujambi Aloys.

[28] Urukiko rurasanga rero mu gihe Bujambi Aloys ataguze n'uwagaragaraga nka nyiri inzu iburanwa, byumvikana ko hirengagijwe ingaruka ziteganywa n'ingingo ya 276 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano ku birebana n'ibyo yashoboraga kugenerwa, kuko mu gihe yagurishijwe n'utari nyiri umutungo, icyo yashoboraga kugenerwa ari indishyi nk'uko iyo ngingo ibiteganya, akaba rero atahabwa inzu iburanwa ahubwo igomba kwegurirwa Nyirabaziga Anne Marie nk'umuzungura wa Bangamwabo Gentil.

2. Ku birebana n' indishyi zisabwa

[29] Uburanira Bujambi Aloys avuga ko nyuma yo kugura inzu iburanwa, yayisannye aranayagura, yukaba urugo rw'amatafari ahiye, ashyira ''*béton* muri ''parcelle'' ku buryo agaciro kayo ubu gahagaze kuri 29.359.000 Frw nk'uko bigaragazwa n'igenagaciro ryakozwe ku wa 17/05/2017, na 15.000.000 Frw y'indishyi zo kwimurwa aho yari atuye.

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[3]Il arrive que, fondée sur l'apparence, la croyance erronée dans l'existence d'une situation juridique conduise, dans certaines conditions, à faire prévaloir certains effets de cette apparence sur la réalité juridique: (Francois Terré et Philippe Smiler, '' Droit civil, Les biens, 7e edition Paris, Dalloz, 2006, p.79

[4] Le propriétaire avait aggandi l'appartement vendu (portant nº 9) en empiétant sur l'appartement voisin (nº 10) qui était indivis entre lui et sa fille.

[30] Asobanura ko ikirego cy'indishyi z'inyongeragaciro atari gishya, kuko kuva ku rwego rwa mbere, BUJAMBI Aloys yasabaga ko mu gihe amasezerano y'ubugure yateshwa agaciro, yahabwa agaciro k'ibye hashigiwe ku biteganywa n'ingingo ya 311 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, ko kandi kuvuga ko nta genagaciro ryakozwe mbere yo kugura bitahabwa agaciro kuko mu iperereza Urukiko rwakoze, abaturage bavuze ko inzu yari itaruzura. Byongeye kandi, ingingo ya 311 imaze kuvugwa, ntigendera ku igenagaciro riba ryarakozwe. Asanga rero Nyirabaziga Anne Marie na Semana Marc bagomba gufatanya kumwishyura ibyo yatanze kuko Semana Marc ari we wakiriye ikiguzi cy'inzu naho Nyirabaziga Anne Marie akaba ari we waba uhawe inzu kandi ntacyo yayitanzeho, bivuze ko yaba yikungahaje nta mpamvu.

[31] Uburanira Nyirabaziga Anne Marie avuga ko nta ndishyi izo arizo zose yacibwa kuko nta kosa yakoze, ko atanacibwa indishyi z'inyongeragaciro kuko cyaba ari ikirego gishya, cyane cyane ko nta genagaciro ryigeze rikoreshwa igihe cy'ubugure ngo hamenyekane agaciro inzu yari ifite. Byongeye kandi, hahujwe ibiteganywa n'ingingo za 310-312 z'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, uwagurishije niwe utanga inyongeragaciro uwaguze yashyize ku mutungo, iyo nyirawo ashatse kuwusubirana.

[32] Asanga ahubwo Nyirabaziga Anne Marie ari we wagenerwa indishyi zingana na 23.700.000 Frw z'igihombo yatewe no kuvutswa uburenganzira ku mutungo we, zibariwe kuri 100.000 Frw ku kwezi, 2.000.000 Frw y'ikurikiranarubanza na 3.000.000 Frw y'igihembo cy'Avoka, zikishyurwa na Bujambi Aloys afatanyije na Semana Marc, naho indishyi zisabwa na Semana Marc akaba atazihabwa kuko ari we washoye Nyirabaziga Anne Marie mu manza.

[33] Avuga kandi ko mu byongewe ku nzu na Bujambi Aloys, yakwishyurwa agaciro k'icyumba kimwe asanga kitarenza 1.000.000 Frw hamwe n'urugo aha agaciro ka 1.500.000 Frw kuko ibyakozwe ku mbuga nta reme bifite kuko bitakozwe mu buryo burambye, ko n'agakoni kariho ubwiherero byubakishije rukarakara, bitagira *fondation*, bitahabwa agaciro kuko bidakurikije amabwiriza yo kubaka.

[34] Kuri izo ndishyi zisabwa na Nyirabaziga Anne Marie, uburanira Bujambi Aloys avuga ko ntazo yatanga kuko atunze ibyo yaguze nta buryarya, ko kandi mu gihe yakwamburwa inzu yaguze, yahabwa agaciro ifite ubu kangana na 29.359.000 Frw kagaragazwa n'igenagaciro bashyize muri dosiye.

[35] Uburanira Semana Marc nawe avuga ko indishyi zisabwa na Nyirabaziga Anne Marie, nta shingiro zifite kuko Semana Marc yaguze inzu ikiri kuri ''fondation'' aba ari we uyuzuza, akaba kandi yaragurishije ibye, ko ariko mu gihe Urukiko rwabibona ukundi, uzegukana inzu ari we watanga izo ndishyi, ko ariko Semana Marc asaba ko Nyirabaziga Anne Marie yamuha 3.000.000 Frw yo gushorwa mu manza.

UKO URUKIKO RUBIBONA

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

[37] Urukiko rurasanga hashingiwe ku ngingo imaze kuvugwa, indishyi Bujambi Aloys asaba akwiye kuzihabwa kuko yambuwe inzu yari yaguze bitewe n'amakosa ya Semana Marc, bityo

akaba agomba kumuha amafaranga ahwanye n'agaciro iyo nzu ifite ubu nk'uko biteganywa n'ingingo ya 310 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano[5], ako gaciro kagashingira ku igenagaciro Bujambi Aloys yatanze kuko nta muburanyi wigeze akavuguruza, rikaba rigaragaza ko kangana na 29.359.000 Frw.

[38] Ku birebana na 15.000.000 Frw y'indishyi zo kwimurwa aho yari atuye, Urukiko rurasanga nazo zifite ishingiro kuko kwimurwa ahantu yari abaye imyaka irenga makumyabiri yizera ko ari ahe, bigomba kugira icyo bimuhungabanyaho, ariko bitewe n'uko 15.000.000 Frw asaba ari menshi, akaba agenewe mu bushishozi bw'Urukiko 1.000.000 Frw.

[39] Ku birebana n'indishyi Nyirabaziga Anne Marie asaba ko Bujambi Aloys na Semana Marc bafatanya kumwishyura zingana na 23.700.000 Frw z'igihombo yatewe no kuvutswa uburenganzira ku mutungo we, Urukiko rurasanga atazigenerwa kuko usibye no kuba nta ruhare Bujambi Aloys yabigizemo kuko yaguze nta buryarya, binagaragara ko ayo mafaranga ayabara nk'ubukode yagombye kuba yarabonye, ariko nk'uko Urukiko Rukuru rwabisobanuye ko Bangamwabo Gentil yasize inzu itaruzura, ntacyagaragariza uru Rukiko igihe yari kuzuzurira ngo ibe yakodeshwa, n'umubare w'amafaranga yari gukodeshwa.

[40] Ku birebana na 2.000.000 Frw y'ikurikiranarubanza na 3.000.000 Frw y'igihembo cya Avoka Nyirabaziga Anne Marie asaba, Urukiko rurasanga mu gihe ikirego cye kigize ishingiro ku rugero runini harebwe ibyo yasabaga, kandi akaba yaragize ibyo yishyura akurikirana urubanza harimo no kwishyura Avoka wamuburaniye, akwiye kugenerwa 800.000 Frw mu bushishozi bw'Urukiko kuko ayo asaba akabije kuba menshi, kandi akishyurwa na Semana Marc wenyine kuko ari we wamugurishirije inzu.

[41] Ku ndishyi zisabwa na Semana Marc zingana na 3.000.000 Frw ashingira ku kuba Nyirabaziga Anne Marie yaramushoye mu manza, Urukiko rurasanga atazigenerwa kuko atavuga ko uwo azisaba yamushoye mu rubanza mu gihe atsindiye umutungo yari akurikiranye.

III. ICYEMEZO CY'URUKIKO

[42] Rwemeje ko ikirego cya Nyirabaziga Anne Marie gisaba gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro kuri bimwe;

[43] Rwemeje ko inzu iri mu Mudugudu wa Karukamba, Akagari ka Kamutwa, Umurenge wa Kacyiru, Umujyi wa Kigali ari iya Bangamwabo Gentil, ikaba igomba kwegurirwa Nyirabaziga Anne Marie;

[44] Rutegetse Semana Marc guha Bujambi Aloys 29.359.000 Frw y'agaciro inzu iburanwa ifite ubu na 1.000.000 Frw y'indishyi z'akababaro, yiyongera kuri 600.000 Frw y'igihembo cy'Avoka yagenewe n'Urukiko Rukuru, yose hamwe akaba 30.959.000 Frw;

[45] Rutegetse Semana Marc guha Nyirabaziga Anne Marie 800.000 Frw y'ikurikiranarubanza n'igihembo cy'Avoka kuri uru rwego, yiyongera kuri 500.000 Frw y'indishyi z'akababaro na 600.000 Frw y'igihembo cy'Avoka yagenewe n'Urukiko Rukuru, yose hamwe akaba 1.900.000 Frw.

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[5] Niba ikiguzi cy'icyagurishijwe cyiyongereye igihe uwakiguze yakivutswaga, hatitawe kucyo uwacyeguriwe yakoze, umugurisha agomba kumwishyura amafaranga ahwanye n'agaciro kacyo karenga ako cyari gifite igihe cy'igurisha