

# TWAGIRAYEZU N'ABANDI v TWAGIRAYEZU N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00007/2020/SC (Ntezilyayo, P.J.,  
Cyanzayire, Nyirinkwaya, Hitiyaremye na Karimunda J.) 25 Kamena 2021]

*Amategeko agenga imiburanishirije y'imanza – Gutsindwa ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe — Amakosa yo gukoporora ijambo ku rindi inyandiko z'ababuranyi cyangwa ibisobanuro biri mu rundi rubanza (judicial plagiarism) – Ubujurire bwa kabiri – Iyo Urukiko rwajuririwe rukoporoye imyanzuro y'ababuranyi uko yakabaye cyangwa imikirize y'urubanza rwajuririwe ntirunagaragaze aho rwabikuye, ni amakosa yo kwiyitirira cyangwa gukoporora iby'abandi (judicial plagiarism) – Ntibyafatwa ko umuntu yatsinzwe ku mpamvu zimwe mu gihe urukiko rwajuririwe rwakoporoye ijambo ku rindi icyemezo cy'urukiko rubanza kandi ntaho rwabanje kuvuga ko rwemeranya narwo – icyakora gukoporora ijambo ku rindi ntibyakwitiranywa n'impamvu (motivation par référence), kuko yo ibanzirizwa no gusuzuma niba ababuranyi nta bisobanuro bishya batanze mu myanzuro y'ubujurire hanyuma Urukiko rukemeranywa n'impamvu zatanze mu rubanza rwajuririwe mu gihe zisa n'izo Urukiko rwajuririwe rwashingiraho.*

**Incamake y'ikibazo :** Uru rubanza rwatangiye Twagirayezu Alice n'abavandimwe be barega undi muvandimwe wabo witwa Twagirayezu Albert mu Rukiko Rwisumbuye rwa Gasabo, basaba ko amasezerano y'ubugure bw'ikibanza cy'umuryango yakoranye na nyakwigendera Niyongira, wari umugabo wa Umumaranyota aseswa agasubiza uwo mutungo kuko yawugurishije batabizi. Urukiko Rwisumbuye rwa Gasabo rwasanze Twagirayezu Albert yaragurishije umutungo uburanwa afite ibyangombwa bigaragaza ko ari nyirawo, rusanga ibimenyetso abarega bashingiraho bavuga ko ahaburanwa ari ah'umuryango, byarabonetse nyuma yuko umutungo ugurishijwe, hanyuma rutegeka ko amasezerano yasabirwaga guseswa agumana agaciro kayo.

Twagirayezu Alice n'abavandimwe be, bajuririye Urukiko Rukuru bavuga ko Twagirayezu Albert yahengereye abavandimwe be batakiba mu Rwanda, yiyitirira umutungo w'umuryango, awiyandikishaho, anahita awugurisha, ko Urukiko rwabanje iyo rwikorera iperereza, rugasuzuma n'ibimenyetso barushyikirije, rwari kubona ko Twagirayezu Albert atagaragaza inkomoko y'umutungo yiyitiriye.

Urukiko Rukuru rwemeje ko Urubanza rwaciwe n' Urukiko Rwisumbuye rwa Gasabo rudahindutse kuko Twagirayezu Alice n'abagenzi be batagaragaza ibimenyetso byerekana ko umutungo ari uwabo.

Twagirayezu Alice n'abagenzi be bajuririye Urukiko rw'Ubujurire bavuga ko Urukiko Rukuru rutasuzumye inkomoko y'umutungo wagurishijwe ndetse n'inyandiko Twagirayezu Albert yiyandikiye avuga ko yagurishije umutungo w'umuryango atabihereye uburenganzira.

Umumaranyota yatanze inzitizi yo kutakira ikirego mu rukiko rw'Ubujurire ku mpamvu y'uko agaciro k'ikiburanwa katageze kuri 75.000.000Frw, n'impamvu yuko abatsinzwe, abatsinzwe mu nkiko zombi z'abanje ku mpamvu zimwe.

Urukiko rw'Ubujurire rwemeje ko nubwo abagenagaciro bagaragaje ko agaciro k'ikibanza kiburanwa kari hejuru ya 75.000.000Frw, ariko ingingo zasuzumwe n'Urukiko Rukuru ndetse n'Urukiko Rwisumbuye rwa Gasabo, zihuriye ku kumenya niba umutungo wagurishijwe ari uwa Twagirayezu Albert ku giti cye cyangwa niba wari uw'umuryango wa Twagirayezu Aloys, rwemeza ko izo nkiko zombi zafashe icyemezo zishingiye ku mpamvu zimwe, bityo ko ubujurire butari mu bubasha bwawo.

Twagirayezu Alice n'abavandimwe be, bandikiye Perezida w'Urukiko rw'Ikirenga basaba ko urubanza rwaciwe n'Urukiko rw'Ubujurire rusubirwamo ku mpamvu z'akarengane. Perezida

w'Urukiko rw'Ikirenga, amaze gusuzuma ubwo busabe, yategetse ko rwongera ruburanishwa. Twagirayezu na Umumaranyota batanze indi nzitizi yo kutakira ikirego kubera ko abarega batagaragaza impamvu z'akarengane zatuma urubanza rusubirishwamo kandi ko abarega batemerewe gusaba iseswa ry'amasezerano y'ubugure batagizemo uruhare. Urukiko rw'Ikirenga rwemeje ko, iyo Perezida w'Urukiko rw'Ikirenga amaze kwemeza ko urubanza rwongera kuburanishwa, nta zindi nzitizi zitangwa zatuma urubanza rutaburanishwa mu mizi uretse inzitizi ndemyagihugu, naho ku bijyanye n'inzitizi y'uko abarega baba batemerewe gusaba iseswa ry'amasezerano y'ubugure batagizemo uruhare, rwemeje ko iyi nzitizi, igaruka ku mizi y'urubanza, ikaba itasuzumwa hataramenyekana niba Urukiko rw'Ubujurire rwarakoze amakosa rwemeza ko abarega batsinzwe ku mpamvu zimwe mu Rukiko Rwisumbuye no mu Rukiko Rukuru.

Urukiko rw'Ikirenga rwemeje ko kuba Urukiko Rukuru nta bisobanuro byarwo rwashyize mu rubanza rwaciye, ahubwo rwarateruye ibyo Urukiko Rwisumbuye rwa Gasabo, rugakoporora ijambo ku rindi, Urukiko rw'Ubujurire rutari kuvuga ko impamvu ari zimwe muri izo manza zombi, nyamara urubanza rwatangiwe impamvu ari urwaciye ku rwego rwa mbere rwonyine, bikaba byari gutuma ubujurire bwa kabiri bwakirwa.

**Incamake y'icyemezo:** Iyo Urukiko rwajuririwe rukoporoye imyanzuro y'ababuranyi uko yakabaye cyangwa imikirize y'urubanza rwajuririwe ntirunagaragaze aho rwabikuye, ni amakosa yo kwiyitirira cyangwa gukoporora iby'abandi (judicial plagiarism), akosorwa nuko Urukiko ruyavumbuye ruburanisha urwo rubanza kugira ngo akosorwe. Bityo Urukiko ruri gusuzuma ubujurire bwa kabiri rwasabwe gufata icyemezo ku nzitizi yo kuba uwajuriye yaratsinzwe ku mpamvu zimwe, ntaho rwahera rugereranya imitekerereze y'Inkiko zombi ngo rwemeze ko zafashe ibyemezo zishingiye ku mpamvu zimwe kandi impamvu zaratanze gusa n'Urukiko rwaciye urubanza ku rwego rwa mbere.

### **Ubujurire bwa kabiri bwagombaga kwakirwa.**

#### **Amategeko yashingiweho:**

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 52,

#### **Imanza zifashishijwe:**

Urubanza RCOMAA0051/14/CS rw'Ikigo cy'Imisoro n'Amahoro v SECAM Ltd rwaciwe ku wa 04/12/2015, igika cya 22,

Urubanza, RCOMAA0038/16/CS-RCOMAA 0033/2016/SC rwa Bank of Kigali Ltd v Mulisa Kana Martin rwaciwe ku wa 21/4/2017, igika cya 21,

Urubanza RCOMAA0048/16/CS rw'Ikigo cy'Imisoro n'Amahoro v SODAR Ltd rwaciwe ku wa 19/05/2017, igika cya 17, 18

Urubanza RS/INJUST/RCOM 00002/2020/SC hagati ya Road Solution Pavement Products na MAILCO Ltd, rwaciwe ku wa 25/09/2020, igika cya 24.

DiLeo v. Ernst & Young 901 F.2d 624 (7th Cir. 1990)

Cojocar v. B.C. Women's Hosp. & Health Ctr., No. 34304, 2013 SCC 30 (Can. May 24, 2013).

Stone v. City of Kiowa, 950 P.2d 1305 (Kan. 1997)

State v. McDermott, 810 N.W.2d 237 (Wis. Ct. App. 2012) para 25

#### **Inyandiko z'abahanga zifashishijwe.**

Serge Guinchard (sous la dir.) Droit et pratique de la procédure civile, Dalloz, Paris, 2014, p.1191.

## **Urubanza**

## I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine na Twagirayezu Monique, barega musaza wabo Twagirayezu Albert kuba yaragurishije ikibanza cy'umuryango kibaruye kuri UPI 1/02/10/03/4370, batabizi, basaba ko amasezerano y'ubugure yo ku wa 22/02/2012, yakoranye na nyakwigendera Niyongira Jean Claude, wari umugabo wa Umumaranyota Agnès aseswa, uyu agasubiza umutungo uburanwa.

[2] Mu rubanza RC00038/2017/TGI/GSBO rwaciwe ku wa 27/07/2018, Urukiko Rwisumbuye rwa Gasabo rwasanze Twagirayezu Albert yaragurishije umutungo uburanwa afite acte de notoriété imwanditseho, ibyemezo by'umutungo bitangwa n'inzego z'ibanze, fiche cadastrale n'ibyemezo by'umusoro bigaragaza ko ikibanza n° 4370 ari icye, rusanga ibimenyetso abarega bashingiraho bavuga ko ahaburanwa ari ah'umuryango, byarabonetse mu mwaka wa 2014 kandi umutungo waragurishijwe mu mwaka wa 2012 ndetse n'ibyo bavuga ko hari abatangabuhamya bemeza ko umutungo wari uw'ababyeyi bitahabwa ishingiro kuko abo batangabuhamya ntabagaragajwe kandi nubwo bagaragazwa bakaba batanyomoza ibimenyetso bifitwe na Twagirayezu Albert, rwanzura ko nubwo Twagirayezu Albert atagaragaza inkomoko y'umutungo, ibimenyetso yashyikirije Urukiko bitavugurujwe kandi byerekana ko umutungo wari uwe. Urukiko rwategetse ko amasezerano y'ubugure yo ku wa 22/02/2012 agumana agaciro kayo kuko yakozwe mu buryo bukurikije amategeko.

[3] Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine, na Twagirayezu Monique bajuririye Urukiko Rukuru bavuga ko Twagirayezu Albert yahengereye batakiba mu Rwanda, yiyitirira umutungo w'umuryango, awiyandikishaho, anahita awugurisha, ko iyo Urukiko rwikorera iperereza, rugasuzuma n'ibimenyetso barushyikirije, rwari kubona ko Twagirayezu Albert atagaragaza inkomoko y'umutungo yiyitiriyeye akanawugurisha.

[4] Mu rubanza RCA00291/2018/HC/KIG rwaciwe ku wa 31/01/2019, Urukiko Rukuru rwasanze igihe Niyongira Jean Claude yaguraga, hari ibimenyetso Twagirayezu Albert yamugaragariye byerekana ko umutungo ari uwe ndetse ko byari no mu bubasha bwe kuba yawugurisha, bityo kuba abazungura ba Twagirayezu Aloys na Icyimpaye Marie Rose batagaragaza ibimenyetso byerekana ko umutungo ari uwabo, bishimangira ko umutungo Twagirayezu Albert yagurishije wari uwe, rwanzura ko imikirize y'urubanza RC00038/2017/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 27/07/2018, idahindutse, rutegeka abarega guha Umumaranyota Agnès 250.000Frw y'igihembo cya Avoka na 100.000Frw y'ikurikiranarubanza.

[5] Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine na Twagirayezu Monique bajuririye Urukiko rw'Ubujurire bavuga ko Urukiko Rukuru rutasuzumye inkomoko y'umutungo wagurishijwe ndetse n'inyandiko Twagirayezu Albert yiyandikiye avuga ko yagurishije umutungo w'umuryango atabihereye uburenganzira, ko inyandiko y'ubugure yabaye ku wa 01/11/1984 hagati ya Icyimpaye Marie Rose na Kavamahanga, n'imvugo z'abatangabuhamya ziyishimangira byirengagijwe nyamara ari byo bigaragaza inkomoko y'umutungo.

[6] Umumaranyota Agnès yatanze inzitizi yo kutakira ubujurire bwa kabiri ashingiye ku mpamvu y'uko haburanwa gusesa amasezerano y'ubugure bw'ikibanza cyaguzwe 10.000.000Frw, nyamara agaciro k'ikiburanwa katageze kuri 75.000.000Frw ateganywa n'ingingo ya 52 y'Itegeko No 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, n'iyi kuba impamvu zashingiweho abarega batsindwa mu Rukiko Rwisumbuye rwa Gasabo ari zimwe n'izashingiweho mu Rukiko Rukuru.

[7] Mu rubanza RCAA00020/2019/CA rwaciwe ku wa 26/06/2020, Urukiko rw'Ubujurire rwasanze nubwo abagenagaciro bemeza ko ikibanza UPI 1/02/10/03/4370 gifite agaciro ka

92.825.000Frw, ingingo zasuzumwe n’Urukiko Rukuru ndetse n’Urukiko Rwisumbuye rwa Gasabo, zihuriye ku kumenya niba umutungo wagurishijwe ari uwa Twagirayezu Albert ku giti cye cyangwa niba wari uw’umuryango wa Twagirayezu Aloys, rusanga izo nkiko zombi zarafashe icyemezo zishingiye ku mpamvu zimwe, rwemeza ko ubujurire butari mu bubasha bwarwo, abajuriye bategekwa gufatanya kwishyura Umumaranyota Agnès 500.000Frw y’igihembo cya Avoka n’ikurikiranarubanza.

[8] Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine na Twagirayezu Monique bandikiye Perezida w’Urukiko rw’Ikirenga basaba ko urubanza RCAA00020/2019/CA rwaciwe n’Urukiko rw’Ubujurire ku wa 26/06/2020 rusubirwamo ku mpamvu z’akarengane. Mu cyemezo No 058/CJ/2020 cyo ku wa 19/11/2020, Perezida w’Urukiko rw’Ikirenga, amaze gusuzuma ubwo busabe, yategetse ko rwoherezwa mu Bwanditsi bw’Urukiko rw’Ikirenga kugira ngo ruzongere ruburanishwe.

[9] Iburanisha mu ruhamye ryabaye ku wa 02/06/2021, Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine na Twagirayezu Monique bahagarariwe na Me Nshuti Salim hamwe na Me Kazenze Théophile, Twagirayezu Albert ahagarariwe na Me Ngezahayo Bernard, naho Umumaranyota Agnès ahagarariwe na Me Nsengiyumva Viateur.

[10] Urukiko rwabanje gusuzuma inzitizi zatanzwe n’abahagarariye Twagirayezu Albert na Umumaranyota Agnès, bavugaga ko ikirego kidakwiye kwakirwa kubera ko abarega batagaragaza impamvu z’akarengane zatuma urubanza rusubirishwamo kandi ko abarega batemerewe gusaba iseswa ry’amasezerano y’ubugure batagizemo uruhare.

[11] Ku bijyanye n’inzitizi y’uko nta mpamvu z’akarengane zagaragajwe zatuma urubanza rusubirwamo, Urukiko rwafatiye icyemezo mu ntebe, rushingiye ku biteganywa n’ingingo ya 62, igika cya mbere,<sup>1</sup> n’iya 63<sup>2</sup> z’Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’inkiko no ku isesengura ryazo ryakozwe mu rubanza Busoro Gervais yaburanagamo na Busoro Mugunga Désiré n’abandi, ry’uko iyo Perezida w’Urukiko rw’Ikirenga amaze kwemeza ko urubanza rwongera kuburanishwa, nta zindi nzitizi zitangwa zatuma urubanza rutaburanishwa mu mizi uretse inzitizi ndemyagihugu,<sup>3</sup> rwanzura ko iyo nzitizi itakiriwe.

[12] Naho ku bijyanye n’inzitizi y’uko abarega baba batemerewe gusaba iseswa ry’amasezerano y’ubugure batagizemo uruhare, rusanga nubwo iyi ngingo yatanzwe nk’inzitizi, igaruka ku mizi y’urubanza, ikaba itasuzumwa hataramenyekana niba Urukiko rw’Ubujurire rwarakoze amakosa rwemeza ko abarega batsinzwe ku mpamvu zimwe mu Rukiko Rwisumbuye rwa Gasabo no mu Rukiko Rukuru.

[13] Nyuma yo kwemeza ko inzitizi yatanzwe n’ababuranira Twagirayezu Albert na Umumaranyota Agnès itakiriwe, Urukiko rwakomereje ku kibazo cyo kumenya niba ubujurire bwa kabiri bwaragombaga kwakirwa n’Urukiko rw’Ubujurire.

## **II. IKIBAZO KIGIZE URUBANZA N’ISESENGURWA RYACYO.**

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<sup>1</sup> “Iyo Perezida w’Urukiko rw’Ikirenga asuzumye raporo yashyikirijwe ku rubanza rw’akarengane, akemeza ko rwongera kuburanishwa, ayohereza Umwanditsi Mukuru w’Urukiko rw’Ikirenga kugira ngo urwo rubanza rushyirwe kuri gahunda y’iburanisha ...”

<sup>2</sup> “Iyo Urukiko rw’Ikirenga cyangwa urundi rukiko Perezida w’Urukiko rw’Ikirenga akena rushyikirijwe urubanza rusabirwa gusubirwamo ku mpamvu z’akarengane, rurusuzuma mu mizi bundi bushya abarubayemo ababuranyi bose bahamagajwe.”

<sup>3</sup> Urubanza R S/INJUST/RC 00022/2018/SC hagati ya Busoro Gervais na Busoro Mugunga Désiré n’abandi, rwaciwe n’Urukiko rw’Ikirenga ku wa 28/06/2019, igika cya 18.

## **Kumenya niba ubujurire bwa Twagirayezu Alice na bagenzi be bwaragombaga kwakirwa n’Urukiko rw’Ubujurire**

[14] Me Nshuti Salim, uburanira Twagirayezu Alice na bagenzi be, avuga ko mu Rukiko Rwisumbuye rwa Gasabo hasuzumwe ibibazo byo kumenya niba Twagirayezu Albert yari afite uburenganzira bwo kugurisha ubutaka buburanwa no kumenya niba ubwo butaka bwari umutungo usangiwe, mu bujurire ibyo bibazo bisuzumwa hibazwa inkomoko y’umutungo Twagirayezu Albert yagurishije, ariko Urukiko Rukuru rwongeraho ikindi kibazo cyo kumenya niba amasezerano y’ubugure hagati ye na Niyongira Jean Claude yateshwa agaciro, iyi ngingo ikaba itari yasuzumwe ku rwego rwa mbere, ariyo mpamvu asanga mu gihe ingingo zasuzumwe n’inkiko zombi atari zimwe n’impamvu zashingiweho zidashobora kuba zimwe kabone nubwo inkiko zombi zaba zarahuriye ku cyemezo kimwe. Asaba uru Rukiko gusuzuma niba koko Urukiko Rwisumbuye n’Urukiko Rukuru zarabajijwe ibibazo bimwe ndetse zikabisesengura kimwe, rwasanga atari uko bimeze rukemeza ko abo aburanira batatsinzwe ku mpamvu zimwe, bityo ko ubujurire bwa kabiri bwagombaga kwakirwa kubera ko ikiburanwa gifite agaciro ka 92.825.000Frw.

[15] Me Kazeneza Théophile nawe uburanira Twagirayezu Alice na bagenzi be, asaba uru Rukiko kuzabona ko ibibazo byasuzumwe n’Urukiko Rwisumbuye n’ibyasuzumwe n’Urukiko Rukuru bitandukanye, ko mu Rukiko Rukuru abarega bagaragaje ko n’ubwo ikibanza cyari cyanditse kuri Twagirayezu Albert, aterekanye aho agikomora, nyamara kubigaragaza byari inshingano ze, akaba asanga ubujurire bwaragombaga kwakirwa kubera ko impamvu zashingiweho n’izo Nkiko zombi atari zimwe.

[16] Me Nsengiyumva Viateur, uburanira Umumaranyota Agnès, avuga ko mu Rukiko Rwisumbuye rwa Gasabo no mu Rukiko Rukuru habanje gusuzumwa ikibazo cyo kumenya niba Twagirayezu Albert yari afite uburenganzira bwo kugurisha umutungo uburanwa hamwe no kumenya aho awukomora, inkiko zombi zisanga afite ibimenyetso bitavuguruzwa by’uko umutungo ari uwe, harongeraga hasuzumwa ikibazo cyo kumenya niba amasezerano y’ubugure akwiye guseswa, inkiko zombi zemeza ko agumana agaciro kayo kuko yakozwe mu buryo bukurikije amategeko, akaba asanga nta makosa yakozwe n’Urukiko rw’Ubujurire rwemeza ko abarega batsinzwe ku mpamvu zimwe.

[17] Me Ngezahayo Bernard, uburanira Twagirayezu Albert, avuga ko yemeranya na Me Nsengiyumva Viateur kuko nawe asanga ubujurire butaragombaga kwakirwa.

## **UKO URUKIKO RUBIBONA.**

[18] Ingingo ya 52, igika cya 3, y’ Itegeko No 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’inkiko iteganya ko “[...] icyakora kandi ubujurire bwa kabiri ntibushobora kwakirwa ku manza z’ababuranye bemera ibyo baregwa, cyangwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe. [...]”

[19] Mu gusobanura impamvu mu rubanza icyo aricyo, uru Rukiko rwatanze umurongo w’uko impamvu itakwitiranwa n’icyemezo, ahubwo ko ari ibisobanuro buri Rukiko rwashingiyeho mu gufata icyemezo cyarwo rugendeye ku byabayeno ku byo amategeko abiteganyaho, ko impamvu arizo zishingirwaho mu kugaragariza no gusobanurira ababuranyi icyatumye Urukiko rufata icyemezo, akaba ari nazo ziherwaho ababuranyi basuzuma niba imiburanire yabo yarasesenguwe n’Urukiko bitewe n’uko buri cyemezo cy’urukiko kigomba kuba cyasobanuriwe impamvu.<sup>4</sup>

<sup>4</sup> Reba urubanza n° RCOMAA 0051/14/CS hagati y’Ikigo cy’Imisoro n’Amahoro na SECAM Ltd rwaciwe ku wa 04/12/2015, igika cya 22, urubanza, RCOMAA0038/16/CS-RCOMAA 0033/2016/SC hagati ya Bank of Kigali Ltd na

[20] Naho ku bijyanye n'impamvu zimwe, mu rubanza Road Solutions Pavement Products yaburanagamo na Mailco Ltd, uru Rukiko rwavuze ko mu gusuzuma niba impamvu ari zimwe "harebwa icyaburanwaga n'imitekerereze ya buri rukiko mu kugaragaza impamvu zashingiweho, kugira ngo (Urukiko) rugere ku cyemezo rwafashe, hitawe ku kureba niba ingingo zaburanywe mbere arizo zagarutseweho mu bujurire kandi ko inkiko zombi zazisubijeho mu buryo bumwe. »<sup>5</sup>

[21] Dosiye y'urubanza igaragaza ko Urukiko Rwisumbuye rwa Gasabo rwasuzumye ikibazo cy'iremezo cyo kumenya niba Twagirayezu Albert hari uburenganzira yari afite bwo kugurisha ikibanza kiburanwa, impamvu Urukiko rwatanze zikaba zigaragara mu gika cya 6 n'icya 7 cy'urubanza RC00038/017/TGI/GSBO, mu Rukiko Rukuru iki kibazo cyahindutse gusuzuma inkomoko y'umutungo uburanwa kugira ngo hagaragare nyirawo w'ukuri, icyakora nk'uko bigaragara mu bika bya 9 na 10 by'urubanza RCA00291/2018/HC/KIG, Urukiko Rukuru rwakoporoye ijamba ku rindi ibyari byavuzwe mu gika cya 6 n'icya 7 by'urubanza rwajuririwe.

[22] Urukiko rurasanga akamaro k'ibisobanuro mu rubanza ari ukugira ngo Urukiko rugaragaze ibyo rwashingiyeho rukemura ikibazo rwashyikirijwe n'abaturanyi, iyo rero ibyo bisobanuro bidashobora kwitirirwa Urukiko kubera ko rwabikoroye ahandi uko byakabaye kandi ntiruvuge naho rwabikuye, byaba ari ugukoporora imikuriza y'urubanza rwajuririwe cyangwa imyanzuro y'abaturanyi, abahanga bavugaga ko bidakwiye gufatwa nk'ibisobanuro ahubwo ari amakosa yo kwiyitirira cyangwa gukoporora iby'abandi (judicial plagiarism).<sup>6</sup> Iki kibazo cyagarutseweho kandi n'Inkiko z'ibindi bihugu nkaho mu rubanza DiLeo yaburanaga na Ernest & Young, Urukiko rw'Ubujurire rwa the Seventh Circuit rw'i Chicago rwasanze umuco w'Inkiko z'Uturere (District Court) wo gukoporora ibice bimwe by'imyanzuro y'abaturanyi zikayiyitirira udakwiye guhabwa intebe kubera ko bitesha ishema ibisobanuro Urukiko ruba rwatanze kandi bikagaragaza Urukiko nk'igikoresho cy'abaturanyi, kabone nubwo muri uko gukoporora hamwe na hamwe Urukiko ruba rwongeyemo amagambo yarwo.<sup>7</sup>

[23] Urukiko rurasanga mu rubanza Cojocarú yaburanaga na British Columbia Women's Hospital & Health Center, Urukiko rw'Ubujurire rwa British Columbia muri Canada rwasanze ku mpapuro 105 zigize urubanza rwari rwajuririwe, 84 zari zakoporoye imyanzuro y'abaturanyi uko yakabaye, byakoporowe n'Urukiko rubanza, naho ku bika 222 bigize urubanza, 30 gusa aribyo by'Urukiko, nabyo bikaba byari ku iriburiro, kuvugaga muri make imiterere y'urubanza n'imyanzuro y'abaturanyi, bituma Urukiko rw'Ubujurire ruvugaga ko impamvu zatanzwe n'Urukiko rubanza zidashobora kwitirirwa isesengura ryarwo ku bibazo rwari rwabajijwe cyangwa ngo zigaragaze ko isesengura rwakoze ariryo ryarugejeje ku cyemezo rwafashe, iki kibazo cyatumye Urukiko rw'Ikirenga rwa Canada rushyiraho ihame ry'uko iyo gukoporora iby'abandi byakozwe ku buryo umuntu usanzwe (reasonable person) abona ko Urukiko ubwarwo rutigeze rusesengura ibimenyetso n'ibibazo

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Mulisa Kana Martin rwaciwe ku wa 21/4/2017, igika cya 21, urubanza n° RCOMAA 0048/16/CS hagati y'Ikigo cy'Imisoro n'Amahoro na SODAR Ltd rwaciwe ku wa 19/05/2017, igika cya 17.

<sup>5</sup> Urubanza RS/INJUST/RCOM 00002/2020/SC hagati ya Road Solution Pavement Products na MAILCO Ltd, rwaciwe ku wa 25/09/2020, igika cya 24. Reba kandi urubanza RCOMAA0048/16/CS hagati y'Ikigo cy'Imisoro n'Amahoro na SODAR Ltd rwaciwe ku wa 19/05/2017, igika cya 18.

<sup>6</sup> "If an opinion or order cannot fairly be attributed to the court, describing the process of its production and adoption as judicial plagiarism is perfectly apt." Reba Douglas R. Richmond, "UNORIGINAL SIN: The Problem of Judicial Plagiarism" (2014) Arizona State Law Journal 177 at 179.

<sup>7</sup> "A district judge could not photocopy a lawyer's brief and issue it as an opinion. Briefs are argumentative, partisan submissions. Judges should evaluate briefs and produce a neutral conclusion, not repeat an advocate's oratory. From time to time district judges extract portions of briefs and use them as the basis of opinions. We have disapproved this practice because it disguises the judge's reasons and portrays the court as an advocate's tool, even when the judge adds some words of his own." Reba DiLeo v. Ernst & Young 901 F.2d 624 (7th Cir. 1990).

rwashyikirijwe kandi bigatuma rudafata icyemezo mu bwigenge bwarwo, urwo rubanza rushobora guteshwa agaciro.<sup>8</sup>

[24] Urukiko rurasanga icyakora muri Amerika, mu rubanza Stone yaburanaga n'Umujyi wa Kiowa rwaciwe mu mwaka wa 1997, Urukiko rw'Ikirenga rwa Kansas rwarasanze nubwo ibyo gukoporora iby'abandi atari umuco wo kwihanganirwa, bitatuma urubanza ruteshwa agaciro, ahubwo rwasubirwamo (review), rugakosorwa,<sup>9</sup> ibi ni nako Urukiko rw'Ikirenga rwa Wisconsin rwabisanze mu rubanza Leta yaburanaga na McDermott,<sup>10</sup> ahanini izi nkiko zashingiye iki cyerekezo ku kuba nubwo Urukiko ruba rwarakoze amakosa rugakoporora ijambo ku rindi inyandiko z'abandi rutabivuze, nta tegeko runaka rigenga imiburanishirize y'ianza ruba rwishe ku buryo byatuma urubanza rwaciye ruteshwa agaciro. Uru Rukiko narwo rukaba rusanga amakosa yo gukoporora ijambo ku rindi inyandiko z'abaturanyi cyangwa ibisobanuro biri mu rundi rubanza adakwiye kwihanganirwa, ariko akaba atari impamvu yatuma urubanza ayo makosa yakozwemo ruteshwa agaciro, ahubwo yatuma Urukiko ruyavumbuye ruburanisha urwo rubanza kugira ngo akosorwe.

[25] Urukiko rurasanga ibyo gukoporora ijambo ku rindi bitakwitiranywa n'icyitwa motivation par référence aho Urukiko rwajuririwe rushobora kwiyitirira ibisobanuro byatanzwe n'Urukiko rwabanje kubera ko motivation par référence ibanzirizwa no gusuzuma niba abaturanyi nta bisobanuro bishya batanze mu myanzuro y'ubujurire no kwemeranya n'impamvu zatanzwe mu rubanza rwajuririwe kubera ko zitanyuranye n'izo Urukiko rwajuririwe rwari gutanga,<sup>11</sup> ku bijyanye n'uru rubanza bikaba bigaragara ko ibisobanuro bijyanye n'inkomoko y'umutungo byari bishya mu bujurire, byongeye kandi ntaho Urukiko Rukuru rwigeze ruvuga ko rwemeranya n'impamvu zatanzwe n'Urukiko Rwisumbuye rwa Gasabo ku buryo byafatwa ko rwazigize izarwo, ahubwo Urukiko Rukuru nta bisobanuro rwatangiye ikibazo cya mbere rwasuzumye.

[26] Urukiko rurasanga, mu gihe Urukiko rwajuririwe rwakoporoye ijambo ku rindi nta na gito rusize cyangwa ruhinduye ku bisobanuro byatanzwe mu rubanza rwari rwajuririwe kandi ntaho rwabanje kuvuga ko rwemeranya narwo, ntibyafatwa ko Urukiko rwajuririwe hari impamvu zarwo rwatangiye icyemezo rwafashe. Iyo bimeze bityo, nubwo nta mategeko runaka aba yishwe ahubwo haba habayeho kutubahiriza amahame agenga imyandikire, ntaho Urukiko rurimo gusuzuma ubujurire bwa kabiri rwasabwe gufata icyemezo ku nzitizi yo kuba uwajuriye yaratsinzwe ku mpamvu zimwe, rwahera rugereranya imitekerereze y'Inkiko zombi ngo rwemeze ko zafashe ibyemezo zishingiye ku mpamvu zimwe kandi impamvu zaratanzwe gusa n'Urukiko rwaciye urubanza ku rwego rwa mbere.

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<sup>8</sup>A judgment should be set aside “only if the [judge’s] copying is of such a character that a reasonable person apprised of the circumstances would conclude that the judge did not put her mind to the evidence and the issues and did not render an impartial, independent decision.” *Reba Cojocar v. B.C. Women’s Hosp. & Health Ctr.*, No. 34304, 2013 SCC 30 (Can. May 24, 2013).

<sup>9</sup>“There is nothing inherently wrong with a trial court's adopting a party’s findings and conclusions in their entirety as long as they had been individually considered, but it is the sort of shorthand that would be susceptible to abuse. Thus, although not a practice to be encouraged, it is not, standing alone, a violation of Supreme Court Rule 165 [“In a contested matter submitted to the court without a jury -and when the court grants a motion for summary judgment -the court must state its findings of fact and conclusions of law in compliance with K.S.A. 60- 252.” Rule 165 - Reasons for Decision, Kan. R. Rel. Dist. Ct. 165] or K.S.A. 60-252 [ (1) In general. In an action tried on the facts without a jury or with an advisory jury or upon entering summary judgment, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of evidence, or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under K.S.A. 60-258, and amendments thereto].” *Reba urubanza Stone v. City of Kiowa*, 950 P.2d 1305 (Kan. 1997).

<sup>10</sup>*State v. McDermott*, 810 N.W.2d 237 (Wis. Ct. App. 2012) para 25.

<sup>11</sup>“En appel, la motivation par référence est admise en cas de confirmation du jugement La Cour est réputée avoir adopté les motifs du jugement qu'elle confirme, et qui ne sont pas contraires aux sien La Cour d'Appel n'a pas à expliquer sa décision par d'autres motifs que ceux des premiers juges lorsque les parties ne présentent pas de moyens nouveaux. Dans le cas contraire, le juge doit les analyser.” *Reba Serge Guinchard* (sous la dir.) *Droit et pratique de la procédure civile*, Dalloz, Paris, 2014, p.1191.

[27] Urukiko rurasanga mu gihe byagaragaye ko nta bisobanuro byarwo Urukiko Rukuru rwashyize mu bika bya 8 na 9 by'urubanza rwaciye, ahubwo rwarateruye ibyo Urukiko Rwisumbuye rwa Gasabo rwari rwanditse mu bika bya 6 na 7 by'urubanza rwarwo, rugakoporora ijambo ku rindi ntacyo rusize cyangwa ruhinduye, bivuze ko Urukiko Rukuru nta mpamvu rwatangiye icyemezo rwafashe muri ibyo bika, bityo Urukiko rw'Ubujurire rukaba rutari kuvuga ko impamvu ari zimwe muri izo manza zombi nyamara urubanza rwatangiwe impamvu ari urwaciye ku rwego rwa mbere rwonyine, bikaba byari gutuma ubujurire bwa kabiri bwakirwa.

[28] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique na Twagirayezu Albertine bataratsinzwe ku mpamvu zimwe mu Rukiko Rwisumbuye no mu Rukiko Rukuru, bityo ubujurire bwabo bukaba bwaragombaga kwakirwa.

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

[29] Rwemeje ko Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine na Twagirayezu Monique batatsinzwe ku mpamvu zimwe mu Rukiko Rwisumbuye rwa Gasabo no mu Rukiko Rukuru ;

[30] Rwemeje ko ubujurire bwa kabiri bwa Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine na Twagirayezu Monique mu rubanza RCAA00020/2019/CA, bwagombaga kwakirwa n'Urukiko rw'Ubujurire, urubanza rukaburanishwa mu mizi ;

[31] Ruvuze ko iburanisha mu mizi rizakomeza ku wa 08/09/2021.