UBUSHINJACYAHA v BEZA N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RP 00008/2018/SC (Ntezilyayo, P.J., Mukamulisa, Hitiyaremye, Nyirinkwaya na Rukundakuvuga, J.) 28 Gashyantare 2020]

Amategeko mpanabyaha – Icyaha cyo gukora no gukoresha inyandikompimbano – Ku cyaha cy' inyandikompimbano, nta mugambi w'uburiganya (intention frauduleuse) wabaho mu gihe hatagaragara icyo ubwo buriganya bwamarira ubukora, ni ngombwa ko mu gukora inyandiko itavugisha ukuri bigomba kuba bigamije uburiganya.

Amategeko mpanabyaha – Icyaha cyo kugurisha ikintu cy'undi – Ubutumwa bwo guhagararira undi(procuration) – Ku byerekeye icyaha cyo kugurisha ikintu cy'undi, iki cyaha ntigishoboka ku muntu wahawe ubutumwa busesuye bwo guhagararirira undi muri byose.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu rukiko Rwisumbuye rwa Nyarugenge Ubushinjacyaha burega abitwa Uwamahoro, Niyitegeka na Beza ibyaha byo gukora no gukoresha inyandiko mpimbano no kugurisha ikintu cy'undi, uru rubanza rukaba rwarabayeho nyuma yuko uwitwa Mukarugwiza yahaye Uwamahoro ububasha busesuye bwo gukurikirana imitungo ye yose no kumuhagararira muri byose igihe adahari nk'uko bigaragazwa n'inyandiko (procuration) yo ku wa 05/02/2008. Yifashishije ubwo bubasha, Uwamahoro yagurishije Beza na Niyitegeka imodoka za Mukarugwiza, bagirana amasezerano y'ubugure ariko mu kuyandika, hamwe (ku bireba amasezerano yagiranye na Beza) akagaragara nk'aho ari Mukarugwiza ariko akamusinyira, ku yandi (ku bireba amasezerano yagiranye na Niyitegeka) akayagaragaraho nk'aho ari we nyir'imodoka. Kubera iyo myandikire y'amasezerano, Ubushinjacyaha bwababareze bose gukora no gukoresha inyandikompimbano (inyandiko itavugisha ukuri), ariko Uwamahoro we anaregwa icyaha cyo kugurisha ikintu cy'undi, Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza rwemeza ko badahamwa n'icyaha.

Ubushinjacyaha bwajuririye urwo rubanza mu Rukiko Rukuru, maze urwo Rukiko rwemeza ko amasezerano avugwa mu rubanza ubwayo agize inyandiko mpimbano, ruhamya Niyitegeka, Beza na Uwamahoro ubufatanyacyaha mu gukora no gukoresha inyandiko mpimbano ndetse ruhamya Uwamahoro ikindi cyaha cyo kugurisha ikintu cy'undi ruhanisha Niyitegeka na Beza buri wese igifungo cy'imyaka ibiri (2), naho Uwamahoro Alphonsine ahanishwa igifungo cy'imyaka itandatu (6).

Beza na Niyitegeka basabye ko urwo rubanza rwaciwe n'Urukiko Rukuru rwasubirwamo ku mpamvu z'akarengane, maze ruburanishwa n'Urukiko Rw'Ikirenga, Uru rukiko rwasuzumye iby'ako karengane rubifataho icyemezo ariko runasuzuma n'ibyo Uwamahoro aregwa n'ubwo nta kirego yari yatanze kandi akaba atarabonetse mu iburanisha, hashingiwe ku ngingo ya 63 y'itegeko rigena ububasha bw'inkiko. Ku byerekeye icyaha cy'inyandikompimbano, impaka zashingiye ku kumenya niba hari umugambi wo gukora icyaha abaregwa bagize.

Mu rubanza mu Rukiko Rw'ikirenga Abaregwa (Beza na Niyitegeka) n'ubwo badahakana ko basinye ku masezerano y'ubugure n'uwiyita nyir'ibintu (Uwamahoro) kandi babona neza ko atariwe, bashimangira ko uwo baguze yari afite ububasha busesuye kandi bakagaragaza ko ubwishyu batanze bwageze kuri nyir'ubwite (Mukarugwiza)

Ubushinjacyaha bwo bwemeza ko umugambi wo gukora icyaha wabo ugaragarira ku kuba barasinye inyandiko itavugisha ukuri babibona kandi babishaka. Buvuga kandi ko icyaha cyo gukora no gukoresha inyandiko mpimbano ari icyaha *formelle*, bityo akaba atari ngombwa kwita ku ngaruka (préjudice) cyateje n'ubwo zihari, kuko ibigize icyaha kuri bo ari ugusinya ku masezerano y'ubugure atavugisha ukuri, babizi kandi babishaka

Incamake y'icyemezo: 1. Ku cyaha cy' inyandikompimbano, nta mugambi w'uburiganya (intention frauduleuse) wabaho mu gihe hatagaragara icyo ubwo buriganya bwamarira ubukora, ni ngombwa ko mu gukora inyandiko itavugisha ukuri bigomba kuba bigamije uburiganya, bityo abaregwa ntibahamwa n'icyo cyaha.

2. Ku muntu wahawe ubutumwa busesuye bwo guhagararira undi, ashobora kugaragara imbere y'abo bagirana amasezerano nk'aho ahagarariye uwamutumye (représentation parfaite) cyangwa akabagaragarira nk'aho ari we nyir'ubwite (représentation imparfaite), bityo ntabuzaga Uwamahoro kwandika amasezerano mu buryo yanditswemo kuko na byo byemewe.

3. Ku byerekeye icyaha cyo kugurisha ikintu cy'undi, iki cyaha ntigishoboka ku muntu wahawe ubutumwa busesuye bwo guhagarararira undi muri byose, bityo icyo cyaha ntigihama Uwamahoro.

Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro;
Urubanza RPA00764/2016/HC/KIG rwaciwe n'Urukiko Rukuru ruhindutse mu ngingo zarwo zose;
Abaregwa ni abere.

Amategeko yashingiweho:

Itegeko Nº68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 276.

Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 63.

Itegeko Ngenga N° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 614.

Nta manza zifashishijwe.

Inyandiko z'abahanga:

Bull.crim. 11 dec.1974, 366 cités par Michelle Laure Rassat, Droit Pénal Spécial, 7 ème éd. 2014, p. 1181, N°1087.

Jean Pradel & Michel Danti-Juan, Droit Pénal Spécial, Droit Commun des affaires, CUJAS, 4ème éd. 2007/2008, P.750, N° 1223.

UNODC Sherloc, des crimes et délits contre la foi publique, https://sherloc.unodc.org/res/cld/document/lux/2014/criminal_code_of_luxembourg_html/cp_L2T03.pdf

Nicolas Dissaux, La représentation: notion, in Dalloz, blog dédié à la réforme du Droit des obligations, accessible à http://reforme-obligations.dalloz.fr/2015/04/29/la-representation-notion/

Urubanza

I. IMITERERE Y'URUBANZA

[1] Beza Kevin yaguze imodoka yo mu bwoko bwa Toyota Carina E ifite plaque RAB 187 K, Chassi SB 153 BK00E034920, ayigura ku mafaranga miliyoni eshanu n'ibihumbi magana atanu (5.500.000 frw) nk'uko bigaragara mu masezerano y'ubugure yo ku wa 31/12/2009, yishyuye iyo modoka anyujije amafaranga kuri konti nº 409-1017206-11 yo muri Banki y'Abaturage y'u Rwanda yanditse ku mazina ya Mukarugwiza Janvière ari nawe nyir'iyo modoka. Ku wa 21/12/2009, Niyitegeka Emmanuel nawe yaguze imodoka yo mu bwoko bwa Toyota Carina E ifite plaque RAB 174 S, ayigura ku mafaranga miliyoni enye n'ibihumbi magana atandatu (4.600.000 frw). Izo modoka bombi bazigurishijwe na Uwamahoro Alphonsine wari ufite inyandiko imuhesha ububasha busesuye bwo gukurikirana imitungo ya Mukarugwiza Janvière yose no kumuhagararira muri byose igihe adahari nk'uko bigaragazwa n'inyandiko (procuration) yo ku wa 05/02/2008.

[2] Mu mwaka wa 2016, mu rubanza RP00272/2016/TGI/NYGE Ubushinjacyaha bwareze Uwamahoro Alphonsine, Niyitegeka Emmanuel na Beza Kevin ibyaha byo gukora no gukoresha inyandiko mpimbano no kugurisha ikintu cy'undi mu Rukiko Rwisumbuye rwa Nyarugenge bushingiye ku masezerano y'ubugure bw'imodoka zavuzwe mu gika kibanziriza iki yitiriwe Mukarugwiza Janvière kandi yarasinywe na Uwamahoro Alphonsine ; uyu akabikora nk'aho ari Mukarugwiza Janvière ubwe uyasinyeho kandi adahari.

[3] Niyitegeka Emmanuel na Beza Kevin baburanye bahakana icyaha, maze ku wa 20/09/2016, Urukiko Rwisumbuye rwa Nyarugenge, nyuma yo gusesengura ibimenyetso by'Ubushinjacyaha n'imyiregurire yabo, rwemeza ko ari abere ku icyaha cyo gukora no gukoresha inyandiko mpimbano ndetse no ku cyaha cyo kugurisha icy'undi barezwe, kuko rwemeje ko procuration Mukarugwiza Janvière yasigiye Uwamahoro Alphonsine mu gihe yamusigaga mu bucuruzi bwe, nta kigaragaza ko ari impimbano, ndetse biba uko no kuri Uwamahoro Alphonsine wari waburanishijwe adahari.

[4] Ubushinjacyaha ntibwishimiye iyo mikirize, bujuririra urwo rubanza mu Rukiko Rukuru, ikirego cyandikwa kuri RPA00764/2016/HC/KIG. Ubushinjacyaha, mu myanzuro yabwo ndetse no mu miburanire, bugaragaza ko bunenga uburyo abaregwa bagizwe abere hashingiwe ku kuba nta kigaragaza ko procuration Mukarugwiza Janvière yasigiye Uwamahoro Alphonsine ari impimbano, kandi mu by'ukuri inyandiko mpimbano baregwa ari amasezerano yakozwe hagati ya Niyitegeka Emmanuel na Uwamahoro Alphonsine, n'ayakozwe hagati ya Beza Kevin na Uwamahoro Alphonsine ; busaba ko ibyo byakosorwa.

[5] Mu Rukiko Rukuru, Niyitegeka Emmanuel na Beza Kevin baburanye bemera ko ayo masezerano yabayeho koko. Niyitegeka Emmanuel anemera ko mu masezerano yagiranye na Uwamahoro Alphonsine bagura imodoka, Uwamahoro Alphonsine yiyanditse nka nyir'imodoka, aranabisinyira, avuga ko yari azi ndetse ko iyo modoka atari iya Uwamahoro Alphonsine, ko ahubwo yari iya Mukarugwiza; ko ariko ashingiye kuri procuration (Uwamahoro Alphonsine) yari afite, yemeye kugura nawe. Beza Kevin nawe yemera ko yaguze imodoka na Uwamahoro Alphonsine abizi neza ko ari iya Mukarugwiza Janvière, ariko ko yemeye kuyigura kubera ko yari yamubonanye procuration imwemerera kumuhagararira mu bikorwa bye. Yemera kandi ko

yamenye ko Uwamahoro Alphonsine yashyize umukono we mu mwanya wa Mukarugwiza Janvière nk'ugurisha, ariko ko kugira ngo banki yemere kumuha inguzanyo yo kugura iyo modoka, ayo masezerano yari ngombwa. Uwamahoro Alphonsine we yaburanishijwe adahari nyuma yo kubura aho yabarizwaga no guhamagazwa ahatazwi nk'uko amategeko abiteganya.

[6] Ku wa 13/07/2017, Urukiko Rukuru, mu rubanza nº RPA 00764/2016/HC/KIG, rushingiye ku kuba :

- harabayeho gushyira umukono utari wo ku nyandiko ndetse no guhimba amasezerano muri rusange;
- harabayeho gukoresha ayo masezerano bagamije kubona uburenganzira ku nguzanyo muri banki, kandi ibyo bikaba byaravukije Mukarugwiza Janvière uburenganzira bwe ku mutungo;

Rwemeje ko ayo masezerano ubwayo agize inyandiko mpimbano. Niyitegeka Emmanuel, Beza Kevin na Uwamahoro Alphonsine bahamwe n'ubufatanyacyaha mu gukora no gukoresha inyandiko mpimbano ndetse Uwamahoro Alphonsine akaba ahamwa n'ikindi cyaha cyo kugurisha ikintu cy'undi ; maze : ruhanisha Niyitegeka Emmanuel na Beza Kevin buri wese igifungo cy'imyaka ibiri (2), naho Uwamahoro Alphonsine ahanishwa igifungo cy'imyaka itandatu (6); rutegeka ko imodoka Toyota Carina E ifite plaque RAB 174 S na Toyota Carina E ifite plaque RAB 187 K bisubizwa nyira byo Mukarugwiza Janvière.

[7] Beza Kevin na Niyitegeka Emmanuel ntibishimiye iyo mikirize y'urubanza, bandikira Urwego rw'Umuvunyi basaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane.

[8] Nyuma yo kubigenzura, Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga rusaba ko urubanza RPA 00764/2016/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 13/07/2017 rusubirwamo ku mpamvu z'akarengane, maze Perezida w'Urukiko rw'Ikirenga ashingiye kuri raporo y'Ubugenzuzi Bukuru bw'Inkiko yemeza ko urwo rubanza rusubirwamo ; rwandikwa kuri Nº RS/INJUST/RP 00008/2018/SC.

[9] Ku wa 06/02/2020 urubanza rwarahamagawe, Niyitegeka Emmanuel na Beza Kevin bitaba bunganiwe na Me Gashagaza Philbert, Uwamahoro Alphonsine ntiyitaba kandi yarahamagajwe mu buryo bukurikije amategeko, naho Ubushinjacyaha Bukuru bwitaba buhagarariwe na Niyonzima Vincent, urubanza ruraburanishwa.

[10] Nk'uko babisobanuye mu myanzuro no mu miburanire yabo, Niyitegeka Emmanuel na Beza Kevin bavuga ko akarengane kabo gashingiye ku ngingo zikurikira :

- kuba mu guca urubanza Urukiko rwarashingiye ku myandikire y'amasezerano gusa rukirengagiza ko Uwamahoro Alphonsine yari afite iheshabubasha (procuration) yari yaratanzwe na nyir'imodoka imwemerera uburenganzira busesuye harimo no kugurisha imodoka baguze
- kuba Mukarugwiza Janvière yarakiriye amafaranga y'ikiguzi cy'imodoka zari zicunzwe na Uwamahoro Alphonsine, bivuze ko yari azi ibyakozwe kandi yemeye ubugure bwazo.

[11] Me Gashagaza Philbert avuga ko abo yunganira, Niyitegeka Emmanuel na Beza Kevin, nta mugambi wo gukora icyaha cyo gukora no gukoresha inyandiko mpimbano bari bafite (élément intentionnel) kandi ko iyo umuntu atagambiriye gukora nabi bidafatwa nko gukora icyaha.

[12] Ubushinjacyaha buvuga ko ikibazo kitari ku iheshabubasha (procuration) ko ahubwo kiri ku miterere y’amasezerano y’ubugure basinye nk’aho akozwe na nyirayo bazi ko atari ukuri, ntawe ubibahatiye, bafite ubwenge bwose; bivuze neza ko bari bazi neza ibyo bakora n’icyo bigamije kandi ko igikorwa ubwacyo cyo gukorana amasezerano n’utari nyir’ubwite ku buryo kuri yo hagaragara amazina ye n’umukono we (sa signature) kandi atari ahari akorwa, byihagije kugira ngo habeho icyaha.

[13] Urukiko rurasanga ikibazo gikwiye gusuzumwa muri uru rubanza ari ukumenya niba hari umugambi wo gukora icyaha cyo gukora no gukoresha inyandiko mpimbano mu ikorwa ry’amasezerano hagati ya Beza Kevin, Niyitegeka Emmanuel na Uwamahoro Alphonsine.

II. ISESENGURA RY’IKIBAZO KIGIZE URUBANZA

Kumenya niba hari umugambi wo gukora icyaha cyo « gukora no gukoresha inyandikompimbano » mu ikorwa ry’amasezerano hagati ya Beza Kevin, Niyitegeka Emmanuel na Uwamahoro Alphonsine.

[14] Me Gashagaza Philbert avuga ko, mu kwemeza ko Beza Kevin na Niyitegeka Emmanuel bahamwa n’icyaha cyo gukora no gukoresha inyandiko mpimbano kuko bari bazi ko imodoka bagiye kugura ari iza Mukarugwiza Janvière n’ubwo yanditswe akanasinywaho na Uwamahoro Alphonsine nk’aho ari we Mukarugwiza Janvière, kandi n’abo yunganira bakayashyiraho umukono, Urukiko Rukuru rutasesenguye neza uko ibintu byagenze. Avuga ko kuba Uwamahoro Alphonsine yaritwaye atyo aho kwandika ko ahagarariye Mukarugwiza Janvière, ibyo ari we byagomba kubazwa ; bikaba bidakwiye kuryozwa Beza Kevin na Niyitegeka Emmanuel kuko baguze bamaze kugaragarizwa na Uwamahoro Alphonsine iheshabubasha (procuration) yo ku wa 05/02/2008 ndetse n’amasezerano y’akazi ko gucururiza Mukarugwiza Janvière ibicuruzwa bindi binyuranye nk’uko bikubiye mu masezerano yo ku wa 10/01/2007.

[15] Me Gashagaza Philbert avuga ko Beza Kevin kimwe na Niyitegeka Emmanuel nta mugambi wo gukora icyaha cy’inyandiko mpimbano bigeze bagira, ibyo bikaba binashimangirwa no kuba mu kwishyura amafaranga y’ikiguzi cy’imodoka hashingiwe kuri ayo masezerano Beza Kevin yayashyize kuri konti nomero 409-1017206-11 iri muri Banki y’Abaturange y’u Rwanda ifunguye mu mazina ya Mukarugwiza Janvière; naho Niyitegeka Emmanuel akaba yarayishyuye kashi (mu ntoki) kandi Mukarugwiza Janvière akaba atarahakanye ko ayo mafaranga yayabonye.

[16] Me Gashagaza Philbert avuga ko kuba abaguze bari bazi neza ko amafaranga batanze agera kuri nyir’umutungo byarabongereye icyizere ko ibyo bakora bitanyuranyije n’amategeko, anongeraho ko nta ngaruka mbi ayo masezerano yagize k’uwo ari we wese kuko baguze imodoka kandi ikiguzi cyayo kikishyurwa nyirayo, ari we Mukarugwiza Janvière.

[17] Ubushinjacyaha buvuga ko Beza Kevin na Niyitegeka Emmanuel bari afite umugambi wo gukora no gukoresha inyandiko mpimbano kuko nk’uko imiterere y’amasezerano y’ubugure basinye ibigaragaza, ayo masezerano yanditse nk’aho akozwe na nyirayo, bityo Ubushinjacyaha

bukaba busanga ayo masezerano ari inyandiko itavugisha ukuri nyamara Beza Kevin kimwe na Niyitegeka Emmanuel bakaba yarayisinyeho kandi bazi neza ko ibiyivugwamo atari ukuri.

[18] Ubushinjacyaha buvuga ko ibimenyetso bireguza ntacyo bikemura ku kibazo cyo kuba barasinye ku nyandiko itavugisha ukuri kandi babizi neza :

- Kuba Beza Kevin yarashyize amafaranga kuri konti ya Mukarugwiza Janvière byabaye nyuma, icyaha cyo gukora inyandiko itavugisha ukuri cyamaze kuba ;
- Kuba Uwamahoro Alphonsine yari afite procuration n'amasezerano y'akazi hagati ye na Mukarugwiza Janvière si cyo kibazo kuko ubwabyo bidasobanura impamvu Beza Kevin na Niyitegeka Emmanuel basinye ku nyandiko itavugisha ukuri kandi babibona ;
- Kuba Mukarugwiza yarajyaga aza kenshi mu gihugu ariko akaba ataratanze ikirego ngo akaba yaragitanze ari uko Uwamahoro Alphonsine agiye, uretse ko atari ukuri kuko yatangiye gukurikirana ikibazo kuva muri 2012, ariko nabyo ubwabyo ntacyo byabarengeraho kuko bidahinyuza ibyo kuba barasinye ku masezerano atavugisha ukuri kandi babizi.

[19] Ubushinjacyaha buvuga ko icyaha cyo gukora no gukoresha inyandiko mpimbano ari icyaha formelle, bityo akaba atari ngombwa kwita ku ngaruka (préjudice) cyateje n'ubwo zihari, kuko ibigize icyaha kuri bo ari ugusinya ku masezerano y'ubugure atavugisha ukuri, babizi kandi babishaka.

[20] Ubushinjacyaha busoza buvuga ko icyaha cyo gukoresha inyandiko itavugisha ukuri (usage de faux intellectuel) nacyo cyagezweho kuko ayo masezerano yashingiweho Beza Kevin agasaba inguzanyo muri Banki ndetse bombi bagakorerwa mutation, imodoka ikava ku mazina ya nyirayo Mukarugwiza Janvière ikandikwa ku mazina yabo.

[21] Urukiko rurasanga ipfundo ry'ikibazo ari uko abaregwa n'ubunganira, Me Gashagaza Philbert, bumva ko kugira ngo umugambi wo gukora icyaha cy'inyandiko itavugisha ukuri (faux intellectuel) ube wuzuye ku buryo urema icyaha ari uko ikigenderewe mu gukora iyo nyandiko kiba ari ikintu kibujijwe n'amategeko (intention frauduleuse) mu gihe Ubushinjacyaha bwo bwumva umugambi wo gukora icyaha uba wuzuye igihe umuntu asinye ku nyandiko itavugisha ukuri abizi kandi abishaka.

[22] Icyaha cy'inyandiko itavugisha ukuri ntigisobanurwa mu buryo bwihariye n'amategeko ateganya ibyaha n'ibihano mu Rwanda. Gishakishirizwa ahubwo mu bisobanuro bihabwa icyaha cyo gukora no gukoresha inyandiko mpimbano muri rusange. Itegeko-Teka rishyiraho igitabo cy'amategeko ahana mu Rwanda ryakoreshwaga ubwo iki cyaha cyakorwaga mu mwaka wa 2009, mu ngingo yaryo ya 202, ryahanaga umuntu uhimba amasezerano cyangwa imiterere ya zimwe mu ngingo zayo, ushyiramo cyangwa ukuramo zimwe mu nshingano ziyagize; mu gihe ubu, ibyo bihanwa n'Itegeko nº68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, mu ngingo yaryo ya 276 aho rigira riti « Umuntu wese, ku bw'uburiganya, wandika, wandikisha ibintu bidahuye n'ukuri cyangwa ukora imenyekanisha ritari ryo afatwa nk'uwakoze icyaha cyo gukora ibihimbano ». Iyi ngingo isimbura iya 614 y'Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, yahanaga Umuntu wese : 1° wandika abizi inyandiko

ivuga ibintu uko bitari ; 2° uhindura ku buryo ubwo ari bwo bwose inyandiko yavugaga ukuri ; 3° ukoresha abizi, inyandiko itavugisha ukuri cyangwa yahinduwe.

[23] Nk'uko biboneka, ku byerekeye umugambi wo gukora icyaha cy'inyandikompimbano, iyi ngingo ya 276 y'Itegeko riteganya ibyaha n'ibihano muri rusange yateganyije ko uhanirwa icyaha cyo guhimba no gukoresha inyandiko itavugisha ukuri ari umuntu wese wabikoranye uburiganya1 mu gihe ibyo bitagaragaraga neza mu mategeko yaribanjirije. N'ubwo iri Tegeko atari ryo ryakoreshwaga ubwo abaregwa bakurikiranwaga nk'uko byasobanuwe, Urukiko rusanga iyi ngingo igomba kumvikana nk'isobanura ibitari byarasobanuwe mu ngingo ya 202 y'Itegeko-Teka ryavuzwe haruguru kuko icyaha nyirizina itagihinduye.

[24] Ni byo koko hari abahanga mu mategeko bahamya ko umugambi wo gukora icyaha cy'inyandiko itavugisha ukuri uba wuzuye, igihe cyose ukora cyangwa uwagize uruhare ku nyandiko itavugisha ukuri aba yabikoze azi ko ibyanditswe mu nyandiko binyuranye n'ukuri hatitawe ku kumenya niba iyo nyandiko hari uwo igamije kugirira nabi cyangwa hari uwo yangirije.2 Abashyigikiye uyu murongo bavuga ko babishingira ku kuba inyandikompimbano ari icyaha gikorerwa rubanda kurusha uko kiba icyaha cyagira uwo cyangiriza ku giti cye, kandi kigahanwa kubera impamvu z'inyungu rusange kabone n'aho cyaba cyakozwe mu masezereno y'abantu ku giti cyabo3. Uyu murongo ni nawo Ubushinjacyaha bushyigikiye mu kwemeza ko inyandikompimbano ari infraction formelle, byumvikanisha ko kuba inyandiko itavugisha ukuri bigaragarira mu biyikubiyemo binyuranye n'ukuri, hatitawe ku kindi icyo aricyo cyose.

[25] Urukiko rusanga ariko uyu murongo utemeranywaho na bose. Nk'urugero, Urukiko rusesa imanza rw'Ubufaransa rwemeje ko umuntu wiganye umukono (signature) w'undi yabyemeranyijeho na nyirawo nta cyaha yakoze4. Abashyigikiye uyu murongo bo bashingira ku kuba nta mugambi w'uburiganya (intention frauduleuse) wabaho mu gihe hatagaragara icyo ubwo buriganya bwamarira ubukora5. N'ubwo uyu murongo hari abawunenze6, uru rukiko rwemeranya na wo kuko narwo rusanga ari ngombwa ko mu gukora inyandiko itavugisha ukuri bigomba kuba bigamije uburiganya nk'uko byaje gusobanuka mu ngingo ya 276 y'Itegeko riteganya ibyaha n'ibihano muri rusange rikurikizwa ubu. Urukiko rusanga kandi uburiganya mu gukora inyandiko

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[1] Reba aho igira iti « umuntu wese ku bw'uburiganya… ». "Any person who, with fraudulent intention, produces a false written document, causes to write false statements or produces a conflicting declaration, is considered to commit the offence of forgery.

[2] «*…il est certain qu'une intention de nuire n'est plus requise pour justifier l'infraction que son absence serait de nature à justifier ». Bull.crim. 11 dec.1974, 366 cités par Michelle Laure Rassat, Droit Pénal Spécial, 7 ème éd. 2014, p. 1181, No1087.*

[3] *« Même s'il est commis dans le document purement privé, le faux n'est pas une infraction commise entre particuliers dans le cadre de laquelle il serait logique d'exiger que le faussaire cause un préjudice à celui auquel le document pourrait être opposé, c'est une infraction contre la foi publique par laquelle on veut que la collectivité assure la sécurité juridique de ses membres ». voir Jean Pradel & Michel Danti-Juan, Droit Pénal Spécial, Droit Commun des affaires, CUJAS, 4ème éd. 2007/2008, P.750, No1223*

[4] *Voir Crim.6nov.1989, Dr. Pénal 1990, No 85 cité par Michelle Laure Rassat, op.cit., p 1181, No1087*

[5] *« L'intention frauduleuse se définit comme étant le dessein ou l'intention de se procurer ou de procurer à autrui un avantage illicite quelconque. ... L'intention frauduleuse se restreint à la seule volonté d'introduire dans les relations juridiques un document que l'on sait inauthentique ou mensonger pour obtenir un avantage, même légitime en soi, que l'on n'aurait pas pu obtenir ou que l'on n'aurait obtenu que malaisément en respectant la vérité ou l'intégralité de l'écrit». Voir UNODC Sherloc, des crimes et délits contre la foi publique,* https://sherloc.unodc.org/res/cld/document/lux/2014/criminal_code_of_luxembourg_html/cp_L2T03.pdf

[6] Michelle Laure Rassat, op.cit. p.1181, No1087

itavugisha ukuri bugaragarira mu gukora inyandiko igamije guhesha umuntu inyungu/uburenganzira atashoboraga kubona mu buryo busanzwe; akaba yabibona gusa ari uko ahimbye iyo nyandiko. Mu yandi magambo, nta mugambi w'uburiganya uba uriho, mu gihe ibyanditswe ku nyandiko yitwa impimbano ntacyo byongerera cyangwa bigabanyiriza nyiri ukuyikora ugereranyije n'uko ubundi iyo nyandiko igomba kwandikwa kugira ngo igire agaciro.

[26] Muri uru rubanza, Uwamahoro Alphonsine yahawe ubutumwa busesuye bwo guhagararira Mukarugwiza Janvière muri byose kandi ibyo ntibigibwaho impaka. Ni no muri urwo rwego yagurishije imodoka ze kandi amafaranga yageze kuri nyirayo. Beza Kevin yagaragaje ko amafaranga yayashyize kuri konti ya Mukarugwiza Janvière mu gihe Niyitegeka Emmanuel n'ubwo yishyuye kashi (mu ntoki) ntawe uhakana ko yageze kuri nyirayo. Mu masezerano yo kugura imodoka basinye na Uwamahoro Alphonsine, nibyo koko bigaragara nk'aho Uwamahoro Alphonsine ari we nyiri imodoka (ku bireba Niyitegeka Emmanuel) ahandi akagaragara nk'aho ari Mukarugwiza Janvière (ku bireba Beza Kevin). Ariko, n'iyo Uwamahoro Alphonsine abyandika uko ubusanzwe ubutumwa bwandikwa, ati « Njyewe Uwamahoro Alphonsine, uhagarariye Mukarugwiza Janvière… » ntacyo byari guhindura ku masezerano y'ubugure yabaye kuko mu buryo bumwe cyangwa ubundi (kwandika amasezerano uko bayanditse cyangwa kuyandika uko ubusanzwe yandikwa), icyari kigamijwe kugerwaho (amasezerano y'ubugure bw'imodoka no kugeza ikiguzi cyayo kuri Mukarugwiza Janvière) cyashoboraga kugerwaho ku kigero kimwe. Urukiko rukaba rusanga rero nta buriganya ubwo aribwo bwose bwihishe inyuma yo kwandika ariya masezerano mu buryo bayanditse, haba kuri Beza Kevin, cyangwa kuri Niyitegeka Emmanuel, bityo bakaba badahamwa n'icyaha cyo gukora no gukoresha inyandikompimbano.

[27] Ku bireba Uwamahoro Alphonsine, Urukiko rurasanga hashingiwe ku ngingo ya 63 y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, n'ubwo iburanisha ryabaye adahari ngo yisobanure, rugomba gusuzuma ibyo aregwa, hagafatwa umwanzuro kuko na we ari umuburanyi.[7] Mu masezerano aregwa nk'inyandikompimbano yagiranye na Beza Kevin, kimwe n'ayo yagiranye na Niyitegeka Emmanuel, urukiko rusanga nawe nta buriganya (intention frauduleuse) yayakoranye, kuko nk'uko byasobanuwe ku bandi, no kuri we, gusinya ariya masezerano mu buryo yayasinye nta nyungu/ uburenganzira bw'inyongera byari kumugirira ugereranyije n'ubwo yari kubona iyo ayandika agaragaza neza ko ahagarariye Mukarugwiza Janvière. Nk'uko bigaragara, icyari kigamijwe ni uko nyuma yo kugurisha izo modoka, ayo mafaranga ayageza kuri nyirayo, kandi ntawe uhakana ko yamugezeho ndetse ku bireba Beza Kevin, bikaba binagaragaragaragara ko yagiye ayakoresha nk'uko historique ya compte ye ibigaragaza.[8]

[28] By'umwihariko ku bireba amasezerano Uwamahoro yasinyanye na Niyitegeka Emmanuel, Uwamahoro Alphonsine aregwa kuba ayagaragaraho nk'aho ariwe nyiri imodoka, akanasinyaho atyo. Urukiko rusanga ku muntu wahawe ubutumwa busesuye bwo guhagararira undi nk'ubwo Uwamahoro Alphonsine yari afite, ntacyamubuzaga kwandika amasezerano muri buriya buryo kuko na byo byemewe. Koko rero umuntu ufite ubutumwa bw'undi ashobora kugaragara imbere y'abo bagirana amasezerano nk'aho ahagarariye uwamutumye (représentation parfaite) cyangwa

[7] Iyo ngingo igira iti « Iyo Urukiko rw'Ikirenga cyangwa urundi rukiko Perezida w'Urukiko rw'Ikirenga agena rushyikirijwe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, rurusuzuma mu mizi bundi bushya abarubayemo ababuranyi bose bahamagajwe »

[8] Urugero ni amafaranga Mukarugwiza Janvière yakuye kuri iyo konti ku itariki enye z'ukwa mbere 2010

akabagaragarira nk'aho ari we nyir'ubwite (représentation imparfaite)9. Urukiko rukaba rusanga, uretse no kuba nta mugambi yagize wo gukora inyandiko itavugisha ukuri kuko nta buriganya bubyihishe inyuma nk'uko byasobanuwe mu gika kibanziriza iki, nta n'ubwo amasezerano yagiranye na Niyitegeka Emmanuel yakwitwa inyandiko mpimbano, kuko uburyo yanditse bitabujijwe nk'uko byasobanuwe haruguru.

[29] Urukiko rurasanga kandi ibyerekeye icyaha cyo kugurisha ikintu cy'undi na cyo kitamuhama kuko, nk'uko ubushinjacyaha bwabisobanuye, nta kibazo kiri kuri mandat général Uwamahoro yari yahawe na Mukarugwiza Janvière. Ni ukuvuga ko yari afite uburenganzira bwo kugurisha ikintu icyo aricyo cyose cya Mukarugwiza Janvière mu gihe atarengereye ubutumwa yahawe. Muri uru rubanza kandi, kurengera ububasha yahawe ntibyakumvikana kuko yari yahawe ubutumwa busesuye, butagira imbibi. Gukoresha nabi ubwo butumwa nabyo ntabyabaye kuko nk'uko byasobanuwe, amafaranga y'ikiguzi cy'imodoka yageze kuri nyirazo ndetse aranayakoresha.

III. ICYEMEZO CY'URUKIKO

[30] Rwemeje ko ikirego cyo gusubirishamo ku mpamvu z'akarengane urubanza RPA 00764/2016/HC/KIG cyatanzwe na Beza Kévin na Niyitegeka Emmanuel gifite ishingiro;

[31] Rwemeje ko imikirize y'urubanza RPA00764/2016/HC/KIG rwaciwe n'Urukiko Rukuru kuwa 13/07/2017 ihindutse mu ngingo zayo zose ;

[32] Rwemeje ko Beza Kevin, Niyitegeka Emmanuel na Uwamahoro Alphonsine badahamwa n'icyaha cyo gukora no gukoresha inyandikompimbano ;

[33] Rwemeje ko Uwamahoro Alphonsine adahamwa n'icyaha cyo kugurisha ikintu cy'undi.

[9] « Lorsque le représentant déclare agir pour le compte d'autrui mais contracte en son propre nom, il est personnellement engagé à l'égard du tiers contractant ». Où l'on en induit qu'un représentant, s'il agit toujours pour le compte d'autrui, le fait tantôt au nom d'autrui, tantôt en son nom propre. La doctrine évoque souvent cette distinction en opposant la représentation parfaite à la représentation imparfaite ». Voir Nicolas Dissaux, La représentation: notion, in Dalloz, blog dédié à la réforme du Droit des obligations, accessible à http://reforme-obligations.dalloz.fr/2015/04/29/la-representation-notion/