MUKARWEGO v SUCCESSION NYIRABUYONDI

[Rwanda URUKIKO RW'UBUJURIRE – RS/REV/RC 00001/2021/SC – (Hitiyaremye, P.J., Muhumuza na Karimunda, J.) 18 Werurwe 2022]

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Inzira z'ubujurire – Gusubirishamo urubanza ingingo nshya – Ni inzira idasanzwe ikoreshwa k'urubanza ruba rwaraburanishijwe burundu rugakemura impaka ababuranyi bari bafite ku birebana n'ikiburanwa nyirizina, umuburanyi watsinzwe akayikoresha agamije ko urwo rubanza ruhinduka agahabwa cyangwa se akagumana icyo yaburanaga – Urubanza rubanziriza urundi ntabwo rusabirwa gusubirishwamo ingingo nshya kuko rutarangiza impaka kandi atari urubanza rwaciwe burundu.

Incamake y'ikibazo: Nyirabuyondi yareze mukeba we Mukarwego mu Rukiko Rwisumbuye rwa Huye asaba ko akurwa mu mitungo ye n'umugabo we yigabije ndetse akamuha n'indishyi, mu gihe uyu Mukarwego avuga ko iyo mitungo harimo uwo yakuye iwabo ndetse niyo yihahiye ubwo yabanaga na Nyakwigendera umugabo wabo, akaba ayifitiye ibyangombwa. Urukiko rwategetse ko Uregwa agumana imitungo ye yose imwanditseho kuko ibyo byangombwa ari ari inyandiko mvaho igomba guhabwa agaciro ndetse agahabwa n'indishyi zitandukanye.

Urega yajuririye Urukiko Rukuru, urugereko rwa Nyanza, avuga ko Urukiko Rwisumbuye rwirengagije ibimenyetso byanditse byerekana ko Nyakwigendera Sebakiga ariwe waguze imitungo iburanwa, kandi bakaba barasezeranye ivangamutungo. Urukiko rwemeje ko ubujurire bw'Urega bufite ishingiro, rutegeka ko imitungo iburanwa igabanywamo ku buryo bungana hagati y'Uregwa na Nyakwigendera maze umugabane w'umugabo wabo ukagabanywa abana be bose ku buryo bungana.

Urega yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rwanyuranyiije n'ibiteganywa n'amategeko, ibyo yari kugenerwa nk'umugore w'isezerano rwabigeneye Uregwa babanye mu buryo bunyuranyije n'amategeko, ko kandi ntacyo rwavuze ku mutungo ufite no 126 mu gihe ari umwe mu mitungo yaburanwaga, anasaba kongererwa indishyi. Hagati aho Urega yaje gupfa urubanza rutaracibwa rukomezwa n'abazungura be. Uregwa na we yatanze ubujurire bwuririye ku bundi asaba ko urubanza rwajuririwe rwavanwaho kuko Urukiko rwafashe icyemezo ku bazungura kandi batarabaye ababuranyi ndetse ko ariwe ugomba kugenerwa indishyi.

Muri uru Rukiko, Uregwa yatanze inzitizi y'iburabubasha ashingiye ku gaciro k'ikiburanwa maze Urukiko rusaba ko hakorwa igenagaciro ry'imitungo ku mpande zombi hashyirwaho umugenagaciro, nyuma y'uko abashyizweho n'ababuranyi bagaragaje raporo zidahuye kandi zitumvikanweho n'impande zombi. Umugenagaciro washyizweho n'Urukiko rw'ikirenga yatanze raporo igaragaza ko umutungo uburanwa ufite agaciro kari mu bubasha bw'uru Rukiko. Bityo, hemejwe ko iyo nzitizi nta shingiro ifite maze iburanisha rikomeza mu mizi, nyuma ruca urubanza rwemeza ko Uregwa atsinzwe.

Uregwa yatanze ikirego asaba ko urubanza rwaciwe n'Urukiko rw'Ikirenga rwasubirishwamo ingingo nshya, avuga ko nyuma y'aho urubanza ruciriwe yabonye ikimenyetso cyerekana ko urubanza rutagombaga kwakirwa kuko hashingiwe ku gaciro k'ikiburanwa, rutari mu bubasha bw'Urukiko rw'Ikirenga.

Abarega batanze inzitizi basaba ko iki kirego kitakwakirwa, bavuga ko Urukiko rw'Ikirenga nta bubasha rufite bwo kuburanisha bene ibi birego ko rwakagombye kuregerwa Urukiko rw'Ubujurire. Uregwa avuga ko iyo nzitizi yatanzwe n'abaregwa nta shingiro ifite kuko iki

kirego kiregerwa Urukiko rwaciye urwo rubanza, ko kandi urubanza basaba ko rusubirishwamo ingingo nshya rwaciwe n'Urukiko rw'Ikirenga. Urukiko rwafatiye icyemezo mu ntebe, rwemeza ko iyo nzitizi yatanzwe n'Abarega nta shingiro ifite kubera ko urubanza rusabirwa gusubirwamo ingingo nshya rwaciwe n'Urukiko rw'Ikirenga, bityo akaba ari narwo rugomba kwakira ikirego gisaba kurusubirishamo ingingo nshya.

Urukiko rwakomeje iburanisha, habanza gusuzumwa ikibazo kijyanye no kumenya niba ikirego gisaba gusubirishamo urubanza ingingo nshya cyatanzwe n'Uregwa cyakwakirwa, aho avuga ko avuga ko nyuma y'aho amenyeye imanza zaciwe zigafata icyemezo ku mutungo waburanywe mu rubanza rusabirwa gusubirishwamo ingingo nshya, zikemeza ko utari mu mitungo ya Nyakwigendera, basanze izo manza ari ikimenyetso gishya cyamara impaka kuko wabariwe hamwe n'indi mitungo iburanwa igenerwa agaciro hamwe, utuma uzamura agaciro k'ikiburanwa mazeUrukiko rw'Ikirenga rwemeza ko rufite ububasha rugendeye ku bintu bitari ukuri.

Abarega bavuga ko nta mpamvu yemewe n'amategeko yatuma Uregwa asaba gusubirishamo urubanza RCAA 0039/14/CS ingingo nshya, kuko izo manza ashingiraho nta gishya zazanye kitari gisanzwe kizwi muri urwo rubanza. Bakomeza bavuga ko ibivugwa muri izo manza bitirira ingingo nshya byagiweho impaka muri urwo rubanza bifatwaho icyemezo haba mu rubanza rubanziriza urundi rwaciwe ku nzitizi y'iburabubasha yari yabyukijwe na we, haba no mu rubanza rwaciwe mu mizi.

Basoza bavuga ko urwo rubanza rutagomba gufatwa nk'ingingo nshya, kuko n'iyo wafata agaciro kose k'umutungo wakorewe igenagaciro ugakuramo agaciro k'ikiburanwa mu rubanza bitirira ingingo nshya, ari hahandi harebwe ikinyuranyo, urubanza rwakomeza kuba mu bubasha bw'Urukiko rw'Ikirenga.

Incamake y'icyemezo: Gusubirishamo urubanza ingingo nshya ni inzira idasanzwe ikoreshwa k'urubanza ruba rwaraburanishijwe burundu rugakemura impaka ababuranyi bari bafite ku birebana n'ikiburanwa nyirizina, umuburanyi watsinzwe akayikoresha agamije ko urwo rubanza ruhinduka agahabwa cyangwa se akagumana icyo yaburanaga. Bityo, urubanza Mukarwego Zilipa asabira gusubirishamo ingingo nshya, hakurikijwe imiterere yarwo nk'urubanza rubanziriza urundi rutarangiza impaka, atari urubanza rwaciwe burundu rushobora kurangizwa.

ikiregο cyo gusubirishamo ingingo nshya nticyakiriwe ngo gisuzumwe.
Imikirize y'urubanza rwaciwe n'Urukiko rw'Ikirenga igumyeho.

Amategeko yashingiweho:

Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 105.

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 3, 111, 170 n'iya 172.

Nta manza zifashishijwe.

Inyandiko z'Abahanga zifashishijwe:

Serge Guinchard, Droit pratique de la procédure civile, huitième édition, Février 2014, Dalloz, para. 552.05.

Georges De Leval et alia, Droit judiciaire, Tom 2, Manuel de procédure civile, Collection de la Faculté de droit de l'Université de Liège, larcier, 2015, p. 1173, § 9.93.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nyirabuyondi Naomi, umugore w'isezerano wa Nyakwigendera Sebakiga Jason, yareze mukeba we Mukarwego Zilipa wabanye na Sebakiga Jason kuva mu mwaka wa 1977, ko yigabije imitungo ye n'umugabo we, igizwe n'amasambu atandatu (6) n'ibibanza bitatu (3) birimo amazu, asaba ko iyo mitungo ifitwe na Mukarwego Zilipa yayivamo, akamuha n'indishyi. Mukarwego Zilipa we yavugaga ko imitungo Nyirabuyondi Naomi ashaka kumwaka harimo uwo akomora iwabo n'iyo yihahiye abana na Nyakwigendera Sebakiga Jason, ndetse ko ayifitiye ibyangombwa by'ubutaka.

[2] Ku itariki ya 14/11/2013, Urukiko Rwisumbuye rwa Huye rwaciye urubanza RC 0054/13/TGI/HYE, rushingiye ku byangombwa by'ubutaka Mukarwego Zilipa yari yaburanishije, rutegeka ko agumana imitungo ye yose imwanditseho kuko ibyo bimenyetso ari inyandiko mvaho igomba guhabwa agaciro, rutegeka Nyirabuyondi Naomi guha Mukarwego Zilipa ibihumbi magana atandatu (600.000 Frw) akubiyemo indishyi zo gusiragizwa mu manza, iz'akababaro n'amafaranga y'igihembo cya Avoka.

[3] Nyirabuyondi Naomi yajuririye icyo cyemezo mu Rukiko Rukuru, Urugereko rwa Nyanza, avuga ko Urukiko Rwisumbuye rwirengagije ibimenyetso byanditse byerekana ko Sebakiga Jason ariwe waguze imitungo iburanwa, kandi bakaba barasezeranye ivangamutungo.

[4] Ku itariki ya 29/07/2014, urwo Rukiko rwaciye urubanza RCA 0252/13/HC/NYA rwemeza ko ubujurire bwa Nyirabuyondi Naomi bufite ishingiro, rwemeza ko imitungo iburanwa igizwe n'amasambu ari mu Rurangazi kuri nimero 261, nimero 105 na nimero 594, isambu iri i Musongati ibaruye kuri no 1213 n'isambu iri i Nyarusange kuri no 2117 igabanywa ku buryo bungana hagati ya Sebakiga Jason na Mukarwego Zilipa, igice cya Sebakiga Jason kikagabanywa n'abana be bose. Rwemeje kandi ko indi mitungo igizwe n'inzu iri ku Gatsinsino, amazu abiri (2) ari ku isoko mu Rurangazi na annexes zayo ndetse n'indi iri mu Rurangazi bigabanywa mu buryo bungana hagati ya Sebakiga Jason na Mukarwego Zilipa, umugabane wa Sebakiga Jason ukagabanwa hagati y'abana be bose, rutegeka Mukarwego Zilipa guha Nyirabuyondi Naomi indishyi zingana na 1.000.000 Frw.

[5] Nyirabuyondi Naomi yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru, Urugereko rwa Nyanza, rwanyuranyiije n'ibiteganywa n'amategeko, ibyo yari kugenerwa nk'umugore w'isezerano wa Sebakiga Jason rubigenera Mukarwego Zilipa babanye mu buryo bunyuranyije n'amategeko, ko kandi ntacyo rwavuze ku mutungo ufite nimero 126 mu gihe ari umwe mu mitungo yaburanwaga, anasaba kongererwa indishyi kuko izo Urukiko Rukuru rwamugeneye zidahagije. Hagati aho Nyirabuyondi Naomi yaje gupfa urubanza rutaracibwa rukomezwa n'abazungura be.

[6] Mukarwego Zilipa na we yatanze ubujurire bwuririye ku bundi asaba ko urubanza rwajuririwe rwavanwaho kuko Urukiko rwafashe icyemezo ku bazungura ba Sebakiga Jason kandi batarabaye ababuranyi, anavuga ko ari we ukwiye kugenerwa indishyi z'ikurikiranarubanza, izo gushorwa mu manza ku maherere n'igihembo cya Avoka.

[7] Mu iburanisha ry’urwo rubanza, Mukarwego Zilipa yatanze inzitizi y’iburabubasha ry’Urukiko rw’Ikirenga ashingiye ku gaciro k’ikiburanwa, maze urukiko rusaba ko hakorwa igenagaciro ry’imitungo ku mpande zombi. Umugenagaciro Nyirabuyondi Naomi yashyizeho yagaragaje ko imitungo iburanwa ifite agaciro ka 52.970.520 Frw, naho uwashyizweho na Mukarwego Zilipa agaragaza ko agaciro k’iyo mitungo gahwanye na 34.441.105 Frw. Nyuma yo kudahuza kuri ako gaciro, Urukiko rwashyizeho umugenagaciro warwo, maze muri raporo ye, agaragaza ko agaciro k’ikiburanwa ari 76.662.671 Frw.

[8] Rushingiye kuri ako gaciro, ku itariki ya 28/04/2017, Urukiko rwafashe icyemezo ko inzitizi y’iburabubasha yabyukijwe n’uruhande rwa Mukarwego Zilipa nta shingiro ifite, rwemeza ko iburanisha ry’urubanza rizakomeza mu mizi.

[9] Ku itariki ya 29/09/2017, Urukiko rw’Ikirenga rwaciye urubanza RCAA 0039/14/CS rwemeza ko ubujurire bwatanzwe na Nyirabuyondi Naomi bugakomezwa n’abazungura be nyuma y’urupfu rwe bufite ishingiro, rwemeza ko ubujurire bwuririye ku bundi bwatanzwe na Mukarwego Zilipa nta shingiro bufite, rutegeka ko imitungo iburanwa ibaruye kuri nimero 3952, nimero 105, nimero 261, nimero 1213, nimero 161, nimero 126, nimero 99, nimero 68, nimero 594, nimero 2117 igabanwa ku buryo bungana, ½ kigahabwa abazungura ba Nyirabuyondi Naomi, ikindi kigahabwa abazungura ba Sebakiga Jason, rutegeka ko ibyangombwa by’ubutaka Mukarwego Zilipa yahereweho iyo mitungo biteshwa agaciro, runamutegeka kwishyura Nyirabuyondi Naomi indishyi zingana na 2.279.000 Frw, ndetse no kwishyura 1.006.540 Frw y’umuhanga wiyambajwe mu rubanza.

[10] Nyuma y’icibwa ry’urwo rubanza, irangizwa ryarwo ryarabaye, ariko abazungura ba Sebakiga Jason bakomoka kuri Mukarwego Zilipa bahererezwa kuri imwe mu mitungo yari yaragurishijwe na Sebakiga Jason akiriho, bituma bene imitungo batangira kubashoraho ibirego. Umutungo wari wahawe abo bazungura uri mu kibanza nimero 126 ufite agaciro ka 10.615.680 Frw baje kuwamburwa mu rubanza RC 00135/2018/TB/BSA rwashimangiwe mu bujurire n’urubanza RCA 00046/2019/TGI/HYE rwaciwe ku itariki ya 26/06/2021, muri urwo rubanza urukiko rukaba rwaremeje ko ari uwa Munyarugamba Anastase, rutegeka ko umwandikwaho.

[11] Mukarwego Zilipa amaze kubona izo manza, ku itariki ya 26/08/2021, yatanze ikirego mu Rukiko rw’Ikirenga asubirishamo ingingo nshya urubanza RCAA 0039/14/CS rwaciwe n’urwo Rukiko ku itariki ya 29/09/2017, avuga ko imanza RC 00135/2018/TB/BSA na RCA 00046/2019/TGI/HYE, ari ikimenyetso gishya kimara impaka mu rubanza yaburanye na Nyirabuyondi Naomi, kuko muri urwo rubanza Mukarwego Zilipa yaburanye agaragaza ko mu mitungo yakoreweho igenagaciro n’umuhanga washyizweho n’Urukiko harimo iyo Nyirabuyondi Naomi yabitiriye kandi atari iyabo, abikora agamije gutubura agaciro k’imitungo mu igenagaciro, bityo Urukiko rw’Ikirenga rukaba rutari kubishingiraho ngo rwemeze ko rufite ububasha hashingiwe ku gaciro k’ikiburanwa.

[12] Urubanza rwaburanishijwe mu ruhame ku itariki ya 09/02/2022, Mukarwego Zilipa ahagarariwe na Semanzi Jerôme afatanyije na Ndagijimana Enock, bunganiwe na Me Nduwayo Jean de Dieu, naho abasuzungura ba Nyirabuyondi Naomi bahagarariwe na Me Mbera Ferdinand.

[13] Me Mbera Ferdinand yatanze inzitizi asaba ko iki kirego gisaba gusubirishamo urubanza ingingo nshya kitakwakirwa avuga ko Urukiko rw’Ikirenga nta bubasha rufite bwo kuburanisha bene ibi birego. Asobanura ko guhera igihe itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’inkiko ritangiriye gukurikizwa, uru rubanza rutari mu bubasha

bw'Urukiko rwaregewe, kuko Urukiko rw'Ikirenga rwahawe ubundi bubasha butari ubwo gusuzuma ibijyanye no gusubirishamo imanza ingingo nshya, ko uru rubanza rwakagombye kuregerwa Urukiko rw'Ubujurire hakurikijwe ibiteganywa n'ingingo ya 105 y'Itegeko rimaze kuvugwa.

[14] Ku ruhande rwa Mukarwego Zilipa bo bavuga ko inzitizi yatanzwe n'abaregwa nta shingiro ifite, kuko ingingo ya 105 bashingiraho ireba imanza zari zararegewe Urukiko rw'Ikirenga zari zitaratangira kuburanishwa, ko itareba imanza zari kuregerwa nyuma. Basobanura ko ikirego gisaba gusubirishamo urubanza ingingo nshya, nk'uko biteganywa n'ingingo ya 172 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, kiregerwa Urukiko rwaciye urwo rubanza, ko kandi urubanza basaba ko rusubirishwamo ingingo nshya rwaciwe n'Urukiko rw'Ikirenga.

[15] Nyuma yo kumva icyo ababuranyi bavuga kuri iyo nzitizi, Urukiko rwafatiye icyemezo mu ntebe, rwemeza ko inzitizi yatanzwe n'uburanira abazungura ba Nyirabuyondi Naomi nta shingiro ifite kubera ko urubanza rusabirwa gusubirwamo ingingo nshya rwaciwe n'Urukiko rw'Ikirenga, bityo akaba ari narwo rugomba kwakira ikirego gisaba kurusubirishamo ingingo nshya hashingiwe ku biteganywa n'ingingo ya 172 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko ikirego cy'iremezo cyo gusaba ko urubanza rwaciwe burundu rusubirishwamo ingingo nshya kijyanwa mu Rukiko rwaciye urwo rubanza mu mizi.

[16] Urukiko rwakomeje iburanisha, rubanza gusuzuma ikibazo kijyanye no kumenya niba ikirego gisaba gusubirishamo urubanza ingingo nshya cyatanzwe na Mukarwego Zilipa cyakwakirwa.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba ikirego gisaba gusubirishamo urubanza ingingo nshya cyatanzwe na Mukarwego Zilipa cyakwakirwa

[17] Ku ruhande rwa Mukarwego Zilipa, bavuga ko nyuma y'aho bamenyeye urubanza RC 00135/2018/TB/BSA rwashimangiwe n'urubanza RCA 00046/2019/TGI/HYE, zaciwe zigafata icyemezo ku mutungo waburanywe mu rubanza RCAA 0039/14/CS, zikemeza ko ari uwa Munyarugamba Anastase, basanze izo manza ari ikimenyetso gishya cyamara impaka, nk'uko biteganywa n'ingingo ya 170, igika cya mbere, agace ka 3 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi,[1] kuko zemeza ibyo Mukarwego Zilipa yavugaga mu miburanire ye ko uwo mutungo utagombaga kubarirwa mu mitungo iburanwa ngo bigenerwe agaciro hamwe, kuko byazamuye agaciro k'ikiburanwa, bituma Urukiko rw'Ikirenga rwemeza ko rufite ububasha rugendeye ku bintu bitari ukuri.

[18] Semanzi Jerôme uhagarariye Mukarwego Zilipa avuga ko nk'uko amategeko abiteganya, ziriya manza ari ikimenyetso gishya kimara impaka, kuko Urukiko rwabeshywe na Nyirabuyondi Naomi bituma ruburanisha urubanza rutari mu bubasha bwarwo, kuko

[1] Urubanza rushobora gusubirishwamo ingingo nshya kubera imwe mu mpamvu zikurikira: 3º iyo, kuva aho urubanza ruciriwe, habonetse ikimenyetso gishya kimara impaka kigaragaza neza akarengane katewe n'urubanza rusabirwa gusubirwamo.

hongewemo imitungo ya rubanda bizamura agaciro k'ikiburanwa. Asobanura ko aho hantu hari haraguzwe na Munyarugamba Anastase, Hakizimana, Sindikubwabo, Uwizeyimana, Musabyimana, Seburikoko na Mutagaba, ariko muri aba bose kugeza ubu uwareze akaba ari Munyarugamba Anastase wenyine.

[19] Ndagijimana Enock nawe uhagarariye Mukarwego Zilipa, yongeraho ko habayeho kubeshya Urukiko mu rubanza RCAA 0039/14/CS, kuko uburanira uruhande rw'abazungura ba Nyirabuyonde Naomi yavuze ko imitungo yashyizwe muri *expertise* yose ari iyabo, nyamara ageze mu rubanza RC 00135/2018/TB/BSA aho yaburaniraga Munyarugamba Athanase, arahindukira avuga ko umwe mu mitungo yashyizwe muri ya *expertise* ari uwe. Avuga ko uko kubeshya Urukiko babigendereye byatumye ruca urubanza rutari mu bubasha bwarwo, ari nayo mpamvu basaba ko rwasubirwamo ingingo nshya nyuma yo kubona ko hari urubanza rwaciwe bikagaragara ko hari umutungo washyizwe muri *expertise* utaragombaga kujyamo.

[20] Me Nduwayo Jean de Dieu ku ruhande rwa Mukarwego Zilipa, avuga ko ubwo urubanza RCAA 0039/14/CS rwaburanishwaga, hari hazamuwe inzitizi ijyanye n'agaciro k'ikiburanwa bituma hakorwa igenagaciro, maze umutungo ubaruye kuri nimero 126 ushyirwa mu mitungo ya Sebakiga Jason kandi utari ukiyibarirwamo, ibyo bikaba byarazamuye agaciro k'ikiburanwa bigatuma Urukiko rw'Ikirenga rugira ububasha.

[21] Avuga ko aho urubanza ruciriwe rukarangira, haciwe urubanza RCA 00046/2019/TGI/HYE rwashimangiye urubanza RC 00135/2018/TB/BSA rwemeje ko wa mutungo watumye Urukiko rw'Ikirenga rugira ububasha utari mu mitungo ya Sebakiga Jason, ko ahereye kuri icyo kimenyetso, asanga, kuba haremejwe ko Urukiko rw'Ikirenga rufite ububasha hashingiwe ku igenagaciro ririmo uburiganya, ari akarengane kagiriwe Mukarwego Zilipa, kuko iyo ikirego kitakirwa, urubanza RCAA 0039/14/CS ntirwari kubaho, bityo hakaba haragumyeho urwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, rwari rwagize imitungo rumugenera. Arangiza asaba ko, ashingiye ku kimenyetso kigizwe n'urubanza RCA 00046/2019/TGI/HYE rwashimangiye urubanza RC 00135/2018/TB/BSA, urubanza RCAA 0039/14/CS rwasubirwamo ingingo nshya. Urukiko rwamubajije urubanza basaba ko rwasubirwamo ingingo nshya urwo arirwo, avuga ko ari urubanza rubanziriza urundi kubera ko iyo ubujurire butakirwa nta karengane baba bafite.

[22] Ku ruhande rwa Mukarwego Zilipa nanone babajijwe niba mu gihe haburanwaga urubanza bashaka gusubirishamo ingingo nshya batari bazi ko hari umutungo uri ku butaka bufite nimero 126 wagurishijwe, ndetse na Mukarwego Zilipa ubwe akaba yari yarasinye ku masezerano y'ubugure, Semanzi Jerôme asubiza ko ibyo bari basanzwe babizi, ndetse ko n'abo baburanaga bari babizi. Yongeyeho ko ariko nubwo ayo masezerano yari ayazi, atariyo bashingiraho mu gusubirishamo urubanza ingingo nshya, ko icyo bashingiraho ari imanza zagaragaje ko umwe mu mitungo washyizwe mu mitungo iburanwa utaragombaga kuyibarirwamo.

[23] Ku ruhande rw'abazungura ba Nyirabuyondi Naomi baburanirwa na Me Mbera Ferdinand, mu myanzuro yabo bavuga ko nta mpamvu yemewe n'amategeko yatuma Mukarwego Zilipa asaba gusubirishamo urubanza RCAA 0039/14/CS ingingo nshya, kuko urubanza RC 00135/2019/TB/BS- RCA 00046/2019/TGI/HYE bashingiraho nta gishya rwazanye kitari gisanzwe kizwi muri urwo rubanza. Bavuga ko ibivugwa muri izo manza bitirira ingingo nshya byagiweho impaka mu rubanza RCAA 0039/14/CS bifatwaho icyemezo haba mu rubanza rubanziriza urundi rwaciwe ku nzitizi y'iburabubasha yari yabyukijwe na Mukarwego Zilipa, haba no mu rubanza RCAA 0039/14/CS rwaciwe mu mizi.

[24] Akomeza asobanura ko icyaburanwaga mu rubanza RCAA 0039/14/CS ari umutungo ugizwe n'amasambu n'amazu Mukarwego Zilipa yari yarigabije, naho mu rubanza RC 00135/2018/TB/BSA-RCA 00046/2019/TGI/HYE, icyaburanwaga kikaba ari ubutaka uwaregaga yasabaga kwegurirwa kugira ngo bumwandikweho, n'inzu iri kuri ubwo butaka ifite agaciro ka 10.319.124 Frw abaregwaga bashakaga kumuhuguza. Bavuga ko n'ubwo ubwo butaka bubaruye kuri nimero 126 Mukarwego Zilipa yavugaga ko ari ubwe ku giti cye, mu rubanza RCAA 0039/14/CS, Urukiko rwagenzuye rusanga bwanditse kuri Sebakiga Jason, rutegeka ko nabwo bushyirwa mu mitungo igomba kugabanywa. Akomeza avuga ko urubanza RC 00135/2018/TB/BSA-RCA 00046/2019/TGI/HYE rutavanye ubwo butaka nimero 126 mu mutungo wa Sebakiga Jason, ko ahubwo icyo abaregaga bari bagamije, kwari ugusaba abazunguye uwo mutungo kubegurira agace kawo gafite m 20 kuri m 17 kugira ngo bakiyandikisheho.

[25] Arangiza avuga ko urwo rubanza rutagomba gufatwa nk'ingingo nshya, kuko n'iyo wafata agaciro kose k'umutungo wakorewe igenagaciro ugakuramo 10.319.124 Frw y'agaciro k'ikiburanwa mu rubanza bitirira ingingo nshya, ari hahandi harebwe ikinyuranyo, urubanza rwakomeza kuba mu bubasha bw'Urukiko rw'Ikirenga. Bavuga ko ibyo babishingira ku ngingo ya 170, igika cya nyuma, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko ikimenyetso n'iyo ari gishya gihabwa agaciro iyo gishobora kuvuguruza ibyari byashingiweho mu ica ry'urubanza rusabirwa gusubirishwamo ingingo nshya.

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[26] Ingingo ya 170, igika cya mbere, agace ka 3, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi uwatanze ikirego ashingiraho ikirego cye, iteganya ko urubanza rushobora gusubirishwamo ingingo nshya iyo, kuva aho ruciriwe, habonetse ikimenyetso gishya kimara impaka kigaragaza neza akarengane katewe n'urubanza rusabirwa gusubirwamo.

[27] Itegeko rimaze kuvugwa, nta gisobanuro ritanga ku birebana no gusubirishamo urubanza ingingo nshya, icyakora nk'uko bigaragara mu ngingo ya 172 yaryo yagarutsweho mu gika cya 15 cy'uru rubanza, urubanza rusubirishwamo ingingo nshya ni urubanza ruba rwaraciwe burundu kandi mu mizi. Ku birebana n'igisobanuro kirambuye cy'inzira yo gusubirishamo urubanza ingingo nshya, umuhanga mu mategeko Serge Guinchard, yasobanuye ko ari inzira idasanzwe ikoreshwa mu gihe umuburanyi uyiyambaje aba agamije ko urubanza rwongera rukaburanishwa bundi bushya haba ku birebana n'ikiburanwa, haba no ku birebana n'amategeko *(Le recours en révision est une voie de recours extraordinaire dont l'objet est de faire rétracter un jugement pourqu'il soit à nouveau statué en fait en droit […])*[2].

[28] Undi muhanga mu mategeko witwa Georges De Leval afatanyije na bagenzi be, basobanuye ko gusubirishamo urubanza ingingo nshya ari inzira idasanzwe umuburanyi akoresha asaba umucamanza waciye urubanza rwabaye itegeko kongera kuruburanisha hashingiwe kuri imwe mu mpamvu ziteganywa n'itegeko bitewe no kuba harabayeho ikosa ryo kwibeshya ku birebana n'uko ibintu byagenze, iryo kosa rikaba ridaturuka ku mucamanza kandi rikaba ryaramenyekanye nyuma y'uko urubanza rucibwa. (*La requête civile*[3] *est une voie*

[2] Serge Guinchard, Droit pratique de la procédure civile, huitième édition, février 2014, Dalloz, para. 552.05.
[3] Mu mategeko y'Ibihugu bimwe harimo n'u Rwanda, "*requête civile*" yasimbuwe na "*recours en revision*".

de recours extraordinaire par laquelle une partie demande au juge qui a rendu une décision passée en force de la chose jugée de rétracter celle-ci pour une des causes limitativement énumérées par la loi, reposant sur une erreur de fait, non imputable au juge et découverte postérieurement au prononcé de ladite décision[…][4].

[29] Ku birebana n'urubanza rwabaye itegeko ari narwo rushobora gusabirwa gusubirishwamo ingingo nshya, umuhanga mu mategeko Serge Guinchard, asobanura ko ari uruba rutagishoboye kujuririrwa cyangwa se rwarengeje igihe cyo kujuririrwa, ko rero urubanza rugifite inzira y'ubujurire rudashobora gusabirwa gubirishwamo ingingo nshya. Yabivuze muri aya magambo: *Le recours en révision ne concerne que le jugement passé en force de chose jugée. […] Ainsi, le jugement susceptible d'appel ou d'opposition ne peut permettre une instance en révision pendant le délai du recours*[5].

[30] Hashingiwe ku bivugwa n'abo bahanga, Urukiko rurasanga urubanza rusabirwa gusubirishwamo ingingo nshya, ari urubanza rushobora kurangizwa, icyo umuburanyi ukoresha iyo nzira aba agamije akaba ari ukugira ngo urubanza yatsinzwe ruhinduke ahabwe cyangwa se agumane icyo yaburanaga. Bikaba byumvikana ko ari urubanza ruba rwaraburanishijwe burundu rugakemura impaka ababuranyi bari bafite ku birebana n'ikiburanwa nyirizina.

[31] Urubanza RCAA 0039/14/CS rwaciwe n'Urukiko rw'Ikirenga rwasabiwe gusubirishwamo ingingo nshya, rugizwe n'ibice bibiri: urubanza rubanziriza urundi rwaciwe ku itariki ya 28/04/2017 ubwo hafatwaga icyemezo ku nzitizi irebana n'ububasha bw'urukiko, n'urubanza rwaciwe ku itariki ya 29/09/2017, hafatwa icyemezo mu mizi. Hakurikijwe imyanzuro ndetse n'imiburanire y'uruhande rwa Mukarwego Zilipa ari narwo rwasabye ko urubanza rusubirwamo ingingo nshya, Urukiko rurasanga ikirego cyabo kireba igice cy'urubanza cyerekeranye n'ububasha bw'Urukiko. Ibi rurabishingira ku kimenyetso batanga nk'ingingo nshya, aho bavuga ko nyuma y'urubanza byagaragaye ko Urukiko rw'Ikirenga nta bubasha bushingiye ku gaciro k'ikiburanwa rwari rufite, ko iyo icyo kimenyetso kiza kuba gihari ubujurire butari kwakirwa.

[32] Ku birebana n'icyemezo cyasabiwe gusubirishwamo ingingo nshya nk'uko bimaze kugaragazwa, Urukiko rurasanga bene ibyo byemezo bidashobora gusubirishwamo ingingo nshya, kubera ko, nk'uko byibukijwe haruguru, icyo umuburanyi watsinzwe urubanza agahitamo kwiyambaza bene iyo nzira aba agamije, ni uko, uko urubanza rwaciwe rwahinduka, kandi kuri uru rwego nta rubanza ruba rwagacibwa. Ibi ni nabyo byagarutsweho n'umuhanga mu mategeko muri aya magambo: *S'agissant de décisions avant dire droit, elles ne peuvent pas faire l'objet d'une procédure en révision, dont l'objet est de modifier ce qui est jugé, alors que précisément en l'espèce rien n'est jugé. […]*[6]

[33] Urukiko rurasanga kandi urubanza Mukarwego Zilipa asabira gusubirishamo ingingo nshya, hakurikijwe imiterere yarwo nk'urubanza rubanziriza urundi rutarangiza impaka, atari urubanza rwaciwe burundu rushobora kurangizwa. Ibyerekeranye no kuba imanza zisabirwa gusubirishwamo ingingo nshya ari iziba zaraciwe burundu, bikaba bigarukwaho mu ngingo ya 172, igika cya mbere, y'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru aho ivuga ko bene ibyo birego bijyanwa mu nkiko zaciye izo manza mu mizi.

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[4] Georges De Leval et alia, Droit judiciaire, Tom 2, Manuel de procédure civile, Collection de la Faculté de droit de l'Université de Liège, larcier, 2015, p. 1173, § 9.93.
[5] Idem réf. 2, para. 552.11
[6] Idem réf. 2. § 552.24.

[34] Urukiko rurasanga nanone ariko, n'ubwo imanza zibanziriza izindi zitarangiza impaka zidashobora gusabirwa gusubirishwamo ingingo nshya nk'uko bimaze gusobanurwa, icyaburanwe mu manza RC 00135/2018/TB/BSA na RCA 00046/2019/TGI/HYE uruhande rwa Mukarwego Zilipa rutanga nk'ikimenyetso gishya rusaba gurusibirishamo urubanza ingingo nshya, cyari kizwi ubwo urubanza asaba ko rusubirwamo rwaburanishwaga kuko cyagiweho impaka mu gika cya 11 kigafatwaho icyemezo mu gika cya 24. Icyo akaba ari umutungo wari uri mu butaka bufite nimero 126. Ibi bikaba rero bitandukanye n'ibiteganywa n'ingingo ya 170, igika cya 3, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, iteganya ko, haseguriwe ibivugwa mu gace ka gatatu (3), ikimenyetso gishya ari ikimenyetso umuburanyi atashoboraga kumenya ko cyaba gihari, akakibona nyuma cyangwa akaba atarabashaga kukigeraho igihe yaburanaga.

[35] Hashingiwe kuri ibyo bisobanuro byose bimaze gutangwa, Urukiko rurasanga ikirego gisaba gusubirishamo urubanza ingingo nshya cyatanzwe na Mukarwego Zilipa kidashobora kwakirwa kubera ko cyatanzwe mu buryo budakurikije amategeko.

2. Kumenya niba indishyi zisabwa n'ababuranyi muri uru rubanza zatangwa

[36] Me Mbera Ferdinand uhagarariye abazungura ba Nyirabuyondi Naomi avuga ko ashingiye ku ngingo ya 111 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi[7], abanzungura ba Nyirabuyondi Naomi basaba gusubizwa na Mukarwego Zilipa 1.000.000 Frw bahembye Avoka wababuraniye, 200.000 Frw y'ikurikiranarubanza, na 5.000.000 Frw y'indishyi z'akababaro kubera guhora basiragizwa mu manza.

[37] Ku ruhande rwa Mukarwego Zilipa, Me Nduwayo Jean de Dieu avuga ko izo ndishyi abaregwa basaba ntazo bakwiye kuko Mukarwego Zilipa nta bundi buryo yari gukoresha ngo arenganurwe ku rubanza rwamurenganyije, ko ahubwo kubera imanza Mukarwego Zilipa yashowemo na Nyirabuyondi Naomi asaba abazungura be bakomeje urubanza indishyi zikurikira:

- Igihembo cya Avoka n'ikurikiranarubanza bingana na 650.000 Frw yo mu rubanza RC 00054/13/TGI/HYE.
- Igihembo cya Avoka n'ikurikiranarubanza bingana na 1.000.000 Frw mu rubanza RCA 0252/13/HC/NYA.
- Igihembo cya Avoka n'ikurikiranarubanza mu rubanza RCAA 0039/14/CS bingana na 2.000.000 Frw.
- Igihembo cya Avoka n'ikurikiranarubanza mu gusubirishamo ingingo nshya bingana na 2.000.000 Frw.

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[38] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza asabwa n'uruhande rw'abazungura ba Nyirabuyondi Naomi bagomba kuyahabwa kubera ko bigaragara ko bashatse Avoka wo kubaburanira kandi bakaba batsinze urubanza. Rurasanga ariko miliyoni (1.000.000 Frw) y'igihembo cya Avoka basaba akabije kuba menshi, bityo mu bushishozi

[7] Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kandi kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe.

bw'Urukiko bakaba bagenewe ibihumbi magana atanu (500.000 Frw). Ku birebana n'amafaranga y'ikurikiranarubanza, Urukiko rurasanga ibihumbi magana abiri (200.000 Frw) basaba ari mu rugero rukwiye, bityo bakaba bagomba kuyahabwa. Urukiko rurasanga ariko indishyi z'akababaro kubera guhora basiragizwa mu manza zisabwa n'abazungura ba Nyirabuyondi Naomi ntazo bagomba guhabwa kubera ko batashoboye kugaragaza ko Mukarwego Zilipa ajya gutanga ikirego icyo yari agamije kwari ukubasiragiza mu manza gusa.

[39] Ku birebana n'indishyi zisabwa n'uruhande rwa Mukarwego Zilipa, Urukiko rurasanga ntazo bagomba guhabwa kubera ko ntacyo batsindiye muri uru rubanza.

III. ICYEMEZO CY'URUKIKO

[40] Rwemeje ko ikirego cyatanzwe na Mukarwego Zilipa asaba gusubirishamo ingingo nshya urubanza RCAA 0039/14/CS rwaciwe n'Urukiko rw'Ikirenga kitakiriwe ngo gisuzumwe kuko cyatanzwe mu buryo budakurikije amategeko.

[41] Rwemeje ko imikirize y'urubanza RCAA 0039/14/CS igumyeho.

[42] Rutegetse Mukarwego Zilipa guha abazungura ba Nyirabuyondi Naomi 700.000 Frw akubiyemo ay'igihembo cya Avoka n'ay'ikurikiranarubanza.