TUYISHIMIRE v ADPR

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/RC 00001/2021/SC – (Nyirinkwaya P.J., Hitiyaremye na Karimunda, J.) 22 Mata 2022]

Amategeko agenga amasezerano – Amasezerano y'ubugure – Isinywa ry'amasezerano y'ubugure – Iterabwoba mu isinywa ry'amasezerano – Uvuga ko yakorewe iterabwoba agomba kwerekana ko hari imbaraga z'umubiri cyangwa gushyirwa ku nkeke byamukorewe byatumye asinya amasezerano kubera gutinya kugirirwa nabi.

Amategeko agenga amasezerano – Amasezerano y'ubugure – Isinywa ry'amasezerano y'ubugure – Uburiganya mu isinywa ry'amasezerano – Uvuga ko yakorewe uburiganya agomba kwerekana ko hari amakuru yahishwe, ko yabeshywe cyangwa se ubundi bucabiranya yakorewe agasinya amasezerano atajyaga gusinya iyo ibyo bitaba.

Incamake y'ikibazo: Tuyishimire yareze ADEPR mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko amasezerano y'ubugure yabaye hagati yayo n'umubyeyi we Utetiwabo yateshwa agaciro, avuga ko mu kuyasinya hakoreshejwe iterabwoba n'uburiganya byakozwe n'abapasiteri bari bahagarariye ADEPR. Avuga ko ashingira ku kuba baragiye kumuzana aho yari ari iwabo mu cyahoze ari Komini Bwakira bamubwira ko bifuza kumusanira inzu bakajya bayisengeramo bikarangira bamusinyishije amasezerano y'ubugure.

Urukiko rwemeje ko ikirego cye gifite ishingiro, rutesha agaciro amasezerano y'ubugure yabaye hagati ya Utetiwabo na ADEPR, ruyitegeka kwishyura Urega agaciro k'ikibanza n'indishyi maze nayo ikegukana iyo nyubako.

Uregwa yajuririye Urukiko Rukuru avuga ko urwo rubanza rwaciwe ku buryo budakurikije amategeko kuko hashingiwe ku mvugo z'abatangabuhamya maze Urukiko rwemeza ko ubujurire bwe bufite ishingiro kubera ko nta kimenyetso kigaragaza ko mu isinywa ry'amasezerano habayeho iterabwoba cyangwa uburiganya.

Abinyujije mu nzira yo kubanza kwandikira Urwego rw'Umuvunyi, akabyemererwa, Urega yasabye ko urubanza rwaciwe n'Urukiko Rukuru rusubirwamo ku mpamvu z'akarengane aho akomeza gusaba ko amasezerano y'ubugure yakozwe hagati y'umubyeyi we n'Uregwa ateshwa agaciro. Muri uru rubanza, Urukiko rw'Ikirenga rwasuzumye ikibazo cyo kumenya niba hari iterabwoba n'uburiganya byabaye muri ayo masezerano y'ubugure.

Urega avuga ko akarengane kagaragarira mu cyemezo Urukiko Rukuru rwafashe cy'uko ayo masezerano atagomba guteshwa agaciro kandi yarakozwe hakoreshejwe iterabwoba n'uburiganya. Asobanura ko Utetiwabo bamuteye ubwoba, biga amayeri yo kumujyana ku biro bya Komini, bamujyana mu biro bya Assistant Burugumesitiri wa Komini maze baramufatirana bavuga ko bamwishyuye, basinya ayo masezerano bise ko ari ay'ubugure bw'ikibanza nyamara cyari cyubatsemo n'inzu. Bityo, asaba ko mu gihe Urukiko rwasanga amasezerano yarakozwe mu buryo bunyuranyije n'amategeko rukwiye kuzayatesha agaciro, umutungo ukagaruka mu maboko ye.

Uregwa avuga ko mu manza zose zabaye Urega ntiyigeze agaragariza Urukiko ibimenyetso byerekana iterabwoba n'uburiganya byakorewe Utetiwabo. Asobanura ko Avuga ko nta terabwoba cyangwa uburiganya byabaye mu masezerano aregerwa kuko inyandiko uwo yagiye yandikirana n'ubuyobozi nta na hamwe zigaragaza ko hari iterabwoba cyangwa uburiganya yashyizweho.

Akomeza avuga ko nta kirego cyo gushyirwaho iterabwoba cyangwa uburiganya mu gusinya amasezerano Utetiwabo yigeze atanga mu nzego z'ibanze, nyamara urega yagaragaje ko

amasezerano yakozwe ku bw'uburiganya n'iterabwoba bitewe ni uko atishimiye igiciro cyatanzwe. Asoza avuga ko afite uburenganzira ku mutungo we yaguze kubera ko nta terabwoba cyangwa uburiganya byakoreshejwe mu kuwugura, ko ariko Urukiko rubibonye ukundi, mu rwego rwo gutanga ubutabera, rwakoresha igenagaciro hagasuzumwa agaciro k'ikibanza kuko inzu ivugwa yari yarasenyutse, uretse n'ibyo Urega nta gaciro kayo yagaragaje usibye kugereranya gusa.

Incamake y'icyemezo: 1. Uvuga ko yakorewe iterabwoba agomba kwerekana ko hari imbaraga z'umubiri cyangwa gushyirwa ku nkeke byamukorewe byatumye asinya amasezerano kubera gutinya kugirirwa nabi.

2. Uvuga ko yakorewe uburiganya agomba kwerekana ko hari amakuru yahishwe, ko yabeshywe cyangwa se ubundi bucabiranya yakorewe agasinya amasezerano atajyaga gusinya iyo ibyo bitaba.

Ikirego gisaba gusubirishamo urubanza ku mpamvu, nta shingiro gifite.

Amategeko yashingiweho:
Itegeko N° 020/2019 ryo ku wa 22/08/2019, rikuraho amategeko yose yashyizweho mbere y'itariki y'ubwigenge.
Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, ingingo ya 11, 12, 16 n'iya 17.

Nta manza zifashishijwe.

Inyandiko z'Abahanga zifashishijwe:
François Terré, Philippe Simler et Yves Lequette, Droit civil, Les obligations, 11ème édition, 2013, Dalloz, § 250.
Philippe Malinvaud, Dominique Fenouillet, Mustapha Mekki, Droit des obligations, 13ème édition, Lexis Nexis, 2014, § 201.
Philippe Malaurie, Laurent Aynès, Philippe Stoffel-Munck, Droit des obligations, 10ème édition, LGDJ, 2018.
Code civil français, 119ème édition, Dalloz, art. 1137.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Tuyishimire Iréné Bertrand yareze ADEPR mu Rukiko Rwisumbuye rwa Nyarugenge, asaba gutesha agaciro amasezerano y'ubugure yabaye hagati yayo na nyina Utetiwabo Marie Thérèse, avuga ko ubwo bugure bwabayeho hakoreshejwe uburiganya n'iterabwoba bikomeye byakozwe n'abayobozi b'iryo torero, aho babeshye umubyeyi we ko bagiye kumusanira inzu barangiza bakamukoresha amasezerano y'ubugure.

[2] Ku itariki ya 21/08/2014, urwo Rukiko rwaciye urubanza RC 0193/14/TGI/NYGE, rwemeza ko ikirego cya Tuyishimire Iréné Bertrand gifite ishingiro, ko amasezerano y'ubugure yo ku itariki ya 28/05/1997 yabaye hagati ya Utetiwabo Marie Thérèse na ADEPR ateshejwe agaciro, ruyitegeka kwishyura Tuyishimire Iréné Bertrand 20.760.000 Frw, agizwe na 19.760.000 Frw y'agaciro k'ikibanza na 1.000.000 Frw y'indishyi n'ay'ikurikiranarubanza, maze nayo ikegukana iyo nyubako.

[3] ADEPR yajuririye urwo rubanza mu Rukiko Rukuru ivuga ko rwaciwe ku buryo budakurikije amategeko kuko Umucamanza yashingiye ku mvugo z'abatangabuhamya bavuga ko Utetiwabo Marie Thérèse yasinye amasezerano ashyizweho iterabwoba nyamara atariko byagenze, cyane cyane ko ayo masezerano yabereye imbere y'ubuyobozi bwariho igihe yasinywaga.

[4] Ku itariki ya 23/04/2015, urwo Rukiko rwaciye urubanza RCA 0440/14/HC/KIG, rwemeza ko ubujurire bwatanzwe na ADEPR bufite ishingiro kubera ko nta kimenyetso kigaragaza ko mu isinywa ry'amasezerano habayeho iterabwoba cyangwa uburiganya, rutegeka ko imikirize y'urubanza RC 0139/14/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku itariki ya 21/08/2014 ihindutse mu ngingo zarwo zose.

[5] Mu kugera kuri uwo mwanzuro, Urukiko rwasobanuye ko ibyo Urukiko Rwisumbuye rwavuze ko mu gusinya amasezerano Utetiwabo Marie Thérèse yashyizweho iterabwoba nyamara nta bimenyetso rushingiyeho harebwe ibiteganywa n'ingingo ya 12 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano[1] yakurikizwaga igihe amasezerano y'ubugure yakorwaga. Rwasobanuye kandi ko nta n'ikigaragaza ko hari uburiganya bwabaye muri ayo masezerano kuko nta cyerekana ko igihe cyo kuyasinya Utetiwabo Marie Thérèse yasinyiye ubugure aho gusinyira gusanirwa biturutse ku macabiranya y'abahagarariye ADEPR, ko ahubwo ikigaragara ari uko yasinye ku masezerano ari hamwe n'abatangabuhamya be barimo na muramu we Nzamutuma Jean Damascène akakira n'ikiguzi cy'inzu agurishije.

[6] Ku itariki ya 11/05/2016, Tuyishimire Iréné Bertrand yandikiye Urwego rw'Umuvunyi asaba ko urubanza RCA 0440/14/HC/KIG rwaciwe n'Urukiko Rukuru ku itariki ya 23/04/2015 rwasubirwamo ku mpamvu z'akarengane. Nyuma yo gusuzuma ubwo busabe, ku itariki ya 16/10/2019, Umuvunyi Mukuru yandikiye Perezida w'Urukiko rw'Ikirenga amusaba ko urwo rubanza rwasubirishwamo ku mpamvu z'akarengane.

[7] Ashingiye kuri raporo yakozwe n'Ubugenzuzi bukuru bw'inkiko, Perezida w'Urukiko rw'Ikirenga yafashe icyemezo nimero 186/CJ/2021 ko urubanza rwavuzwe rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe, ruhabwa RS/INJUST/RC 00003/2021/SC.

[8] Mu myanzuro Me Ntigurirwa François yashyikirije Urukiko mu izina rya Tuyishimire Iréné Bertrand, avuga ko bakomeza gusaba ko amasezerano y'ubugure yakozwe hagati ya ADEPR na Utetiwabo Marie Thérèse yateshwa agaciro kubera ko mu kuyasinya uyu yashyizweho iterabwoba, ko kandi habayemo n'uburiganya. Mu kwisobanura, uhagarariye ADEPR avuga ko ayo masezerano yakomezanya agaciro kayo kubera ko uvuga ko yasinywe nyuma yo gushyirwaho iterabwoba n'uburiganya nta bimenyetso abitangira. Impande zombi zasabye indishyi zitandukanye.

[9] Urubanza rwaburanishijwe mu ruhame ku itariki ya 09/03/2022, Tuyishimire Iréné Bertrand ahagarariwe na Me Ntigurirwa François, ADEPR ihagarariwe na Me Murigande Jean Claude afatanyije na Me Safari Ibrahim.

[10] Ikibazo cyasuzumwe muri uru rubanza, ni ukumenya niba mu masezerano y'ubugure yabaye ku itariki ya 28/05/1997 hagati ya Utetiwabo Marie Thérèse na ADEPR harabayemo iterabwoba n'uburiganya byatuma ateshwa agaciro. Hasuzumwe kandi n'ikibazo cy'indishyi zinyuranye zasabwe n'ababuranyi.

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[1] Iyo ngingo iteganya ko iterabwoba riba nyaryo mu gihe rikozwe ku buryo rihungabanya umuntu ushyira mu gaciro kandi rigashobora kumutera impungenge zo kwishyira cyangwa gushyira umutungo we mu byago bikomeye kandi bititirije.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO.

1. Kumenya niba hari iterabwoba n'uburiganya byabaye mu masezerano y'ubugure yakozwe ku itariki ya 28/05/1997 hagati ya Utetiwabo Marie Thérèse na ADEPR ku buryo byatuma ateshwa agaciro

[11] Me Ntigurirwa François uburanira Tuyishimire Iréné Bertrand avuga ko akarengane kari mu rubanza basabira gusubirishwamo kagaragarira mu cyemezo Urukiko Rukuru rwafashe cy'uko amasezerano y'ubugure bw'umutungo yakozwe hagati ya Utetiwabo Marie Thérèse, umubyeyi wa Tuyishimire Iréné Bertrand, na ADEPR adakwiye guteshwa agaciro kuko yakozwe mu buryo bukurikije amategeko kandi ataribyo kubera ko yakozwe hakoreshejwe iterabwoba n'uburiganya.

[12] Asobanura ko impamvu bashingiraho bavuga ko mu gusinya ayo masezerano hakoreshejwe iterabwoba n'uburiganya ari uko, ubwo Utetiwabo Marie Thérèse yari ahungutse, abapasiteri Sebitereko Semukiza Simon na Nsabagasani Jean Baptiste bayobowe n'uwitwa Vincent bamusanze i Karongi mu cyahoze ari Komini ya Bwakira, bamubwira ko bagenzwa no kumutira inzu yo gusengeramo iri i Kigali, bamwemerera no kuzayimusanira nk'umuntu utishoboye. Avuga ko bamushakiye ibyangombwa bamuzana aho inzu ye yari yubatse i Remera bamujyana kwa resiponsabure (*Responsable*) w'Akagari ka Rukiri I witwa Nyirasafari Pascasie ari kumwe na nyumbakumi waho witwa Mihayo Alphonse, babwira abo bayobozi ko bashaka gusanira uwo mukirisitu wabo Utetiwabo Marie Thérèse inzu nyuma bakajya bayisengeramo, ubuyobozi burabibemerera.

[13] Avuga ko nyuma y'iminsi mike, Utetiwabo Marie Thérèse yagarutse kwa Nyirasafari Pascasie nk'umuyobozi w'Akagari amuririra ko ba bapasiteri bamusinyishije amasezerano y'ubugure bw'ikibanza ku ngufu kandi ataribyo bari bumvikanye, ibi bikaba byaremejwe na Nyirasafari Pascasie mu buhamya yatanze mu Rukiko ku itariki ya 11/12/2011.

[14] Akomeza avuga ko kugira ngo batere Utetiwabo Marie Thérèse ubwoba, bize amayeri yo kumujyana ku biro bya Komini Bwakira mu cyahoze ari Perefegitura ya Kibuye, bamujyana mu biro bya Assistant Bourgmestre wa Komini witwa Bizimana Anastase, maze baramufatirana bavuga ko bamwishyuye, ibyo bikaba bigaragazwa ni uko kuri ayo masezerano y'ubugure, na Assistant Bourgmestre yanditseho ngo "*la dernière tranche est donnée en ma face*" (*sic*), ahita ashyiraho n'umukono we. Aha akaba ari nacyo gihe basinyiye ayo masezerano bise ko ari ay'ubugure bw'ikibanza nyamara cyari cyubatsemo n'inzu.

[15] Me Ntigurirwa François mu myanzuro ye avuga ko izindi nenge zigaragaza uburiganya n'iterabwoba byakoreshejwe kugira ngo ADEPR igure umutungo wa Utetiwabo Marie Thérèse, ari izi zikurikira:

- Kuba Pasiteri Sebitereko Simon agaragara nk'uwasinye P.O mu batangabuhamya b'uwaguze, akanongera agasinya nk'uhagarariye uguze kandi naho agasinya P.O, aho hose hakaba hagaragaraho amasinyatire adasa. Bagasanga atari gusinya P.O (*par ordre*) ngo agire *double qualité* asinya nk'uguze, ngo narangiza asinye nk'umutangabuhamya w'uwaguze;
- Kuba harabayeho amasezerano abiri atandukanye, amwe ariho itariki ya 28/05/1997 n'andi atagaragaza itariki yasinyiweho;
- Kuba mu kujya gukora amasezerano baragiye kuyakorera ku Kibuye, bagakoresha abatangabuhamya batazi n'aho umutungo ugurishwa uherereye, abo bapasiteri

bahagarariye ADEPR bakaba barashingiye ku bujiji n'ubukene bya Utetiwabo Marie Thérèse bakamushukisha 80.000 Frw, ahubwo ayo mafaranga akaba yari ay'ubukode;

- Kuba mu mwanzuro wabo (ADEPR) wo kwiregura mu rubanza RC 0103/14/TGI/NYGE, barivugiye ko nyuma ya Jenoside yakorewe Abatutsi basabye ubuyobozi ikibanza cyarimo inzu isenyutse kugira ngo bajye bahasengera, ubuyobozi bukababwira ko nyiraho ashobora kuba ahari, aribwo bashakishije Utetiwabo Marie Thérèse agahitamo kugurisha bakamuha 100.000 Frw, ko iyo mvugo igaragaza ko baguze inzu yubatse.

[16] Akomeza avuga ko, kubera uburiganya n'iterabwoba byakorewe Utetiwabo Marie Thérèse, Konseye (*conseiller*) wa Segiteri Remera witwa Nzabahimana Neto yanditse ku masezerano ko baguze ikibanza cyasenyutsemo inzu, nyamara atari ukuri kuko bitandukanye n'imvugo za ba nyirubwite (ADEPR) biyemerera ko baguze inzu nk'uko bigaragara mu mwanzuro wabo wo kwiregura mu Rukiko Rwisumbuye rwa Nyarugenge. Ibi bikanahura n'ibyavuzwe n'abatangabuhamya bizewe neza kandi bahatuye kuva kera barimo Nyirasafari Pascasie wari Responsable w'Akagari ka Rukiri ya I, Nyumbakumi Mihayo Alphonse, Nyabyenda Narcisse na Senateri Nkusi Juvénal bemeje ko aho hantu hari inzu itarigeze isenyuka.

[17] Mu gusoza, asaba ko mu gihe Urukiko rwasanga amasezerano yarakozwe mu buryo bunyuranyije n'amategeko rwari rukwiye kuzayatesha agaciro, umutungo ukagaruka mu maboko ya Tuyishimire Iréné Bertrand, ko ariko kubera ko ADEPR yubatsemo indi nzu, yahagumana igatanga agaciro k'ikibanza kangana na 75.225.332 Frw, hiyongeyeho 50.000.000 Frw ahwanye n'agaciro k'inzu yasenywe.

[18] Me Safari Ibrahim uburanira ADEPR avuga ko imwe mu mpamvu uruhande rurega rushingiraho runenga amasezerano y'ubugure yabaye hagati ya Utetiwabo Marie Thérèse na ADEPR ari uburiganya n'iterabwoba, no kuba harabayeho amasezerano abiri atandukanye. Avuga ko amasezerano ADEPR izi ko yakoranye na Utetiwabo Marie Thérèse ari ayo ku itariki ya 28/05/1997 yakorewe imbere y'ubuyobozi bwa Segiteri ya Remera agasinywaho n'abatangabuhamya, ko andi avugwa yasobanurwa n'uyaburanisha.

[19] Ku bivugwa na Tuyishimire Iréné Bertrand ko ayo masezerano yasinywe hakoreshejwe uburiganya, amayeri n'iterabwoba bikomeye bikozwe n'abayobozi ba ADEPR, avuga ko mu manza zose zabaye urega atigeze agaragariza Urukiko ibimenyetso byerekana iterabwoba n'uburiganya byakorewe Utetiwabo Marie Thérèse, ko kuba inzu n'ikibanza byagura 100.000 Frw ataribyo bigaragaza uburiganya cyangwa iterabwoba nk'uko bashaka kubyumvikanisha, kuko ushobora gusanga igihe amasezerano yakorwaga ayo mafaranga yari menshi cyane.

[20] Avuga ko indi mpamvu igaragaza ko nta terabwoba cyangwa uburiganya byabaye mu masezerano aregerwa, ari uko n'inyandiko Utetiwabo Marie Thérèse yagiye yandikirana n'ubuyobozi nta na hamwe zigaragaza ko hari iterabwoba cyangwa uburiganya yashyizweho. Atanga urugero rw'inyandiko yo ku itariki ya 24/11/2011 Utetiwabo Marie Thérèse yiyandikiye arega agaragaza ko inzu ye yari yarangiritse maze akabeshywa n'abayobozi ba ADEPR ko bagiye kumusanira, bityo ko abarega ko bamukoreye uburiganya bwo kumusenyera inzu. ADEPR ikaba isanga uburiganya yavugaga ari ubwo gusenya inzu bakayikuramo ibyumba bakayihinduramo urusengero, ko ariko ntaho yagaragaje ko yasinyishijwe amasezerano ashyizweho iterabwoba, yaba ayo gusanirwa cyangwa ayo kugurirwa.

[21] Me Safari Ibrahim uburanira ADEPR akomeza avuga ko nta kirego cyo gushyirwaho iterabwoba cyangwa uburiganya mu gusinya amasezerano Utetiwabo Marie Thérèse yigeze atanga mu nzego z'ibanze, nyamara uyu munsi urega aragaragaza ko amasezerano yakozwe ku bw'uburiganya n'iterabwoba bitewe ni uko atishimiye igiciro cya 100.000 Frw cyatanzwe. Avuga ko, nk'uko byagiye bigarukwaho mu maraporo atandukanye y'inzego z'ibanze, byagaragaye ko ubugure bwabayeho, ko ibyo Utetiwabo Marie Thérèse yavugaga ko atagurishije, ko icyo yumvikanye na ADEPR ari ukumusanira byari ibinyoma. Atanga urugero rwa raporo yo ku itariki ya 05/12/2011 n'iyo ku itariki ya 07/12/2011 yafatiwe umwanzuro ku itariki ya 14/12/2011, ko muri ayo maraporo yose nta na hamwe Utetiwabo Marie Thérèse yigeze agaragaza ko yasinye kubera iterabwoba cyangwa ku bw'uburiganya nk'uko Tuyishimire Iréné Bertrand abivuga.

[22] Asoza avuga ko ADEPR yari ifite uburenganzira ku mutungo wayo yaguze kubera ko nta terabwoba cyangwa uburiganya byakoreshejwe mu kuwugura, ko ariko Urukiko rubibonye ukundi rugasanga ibivugwa n'abarega bifite ishingiro, mu rwego rwo gutanga ubutabera, Urukiko rwakoresha expertise hagasuzumwa agaciro k'ikibanza kuko inzu bavuga yari yarasenyutse, uretse n'ibyo abarega bakaba nta gaciro kayo bagaragaje uretse kugereranya gusa.

UKO URUKIKO RUBIBONA

[23] Impande zombi muri uru rubanza zemeranya ko amasezerano y'ubugure yakozwe hagati ya Utetiwabo Marie Thérèse na ADEPR yabayeho, icyo batemeranyaho ni uburyo yakozwemo ku buryo yaba afite agaciro. Ku ruhande rwa Tuyishimire Iréné Bertrand bavuga ko yabaye hakoreshejwe uburiganya n'iterabwoba ku buryo agomba guteshwa agaciro, mu gihe ku ruhande rwa ADEPR bo bavuga ko buri ruhande rwayasinye mu bwisanzure, bityo ko agomba kugumana agaciro kayo.

[24] Ingingo ya 11 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano yakurikizwaga ubwo amasezerano aregerwa muri uru rubanza yasinywaga, iteganya ko iterabwoba rigiriwe uwemeye inshingano riba impamvu iyitesha agaciro naho ryaba ryarakozwe n'undi wese utari uwo amasezerano afitiye akamaro. Ingingo ya 12, igika cya mbere, y'icyo gitabo igateganya ko iterabwoba riba nyaryo mu gihe rikozwe ku buryo rihungabanya umuntu ushyira mu gaciro kandi rigashobora kumutera impungenge zo kwishyira cyangwa gushyira umutungo we mu byago bikomeye kandi bititirije[2]. Abahanga mu mategeko bavuga ko uvuga ko yashyizweho iterabwoba agomba kwerekana ko hari impamvu zatumye yemera ku gahato. Iterabwoba nk'ikintu cyabayeho, rigomba gutangirwa ibimenyetso hakoreshejwe uburyo bwose bushoboka (*Celui qui pretend qu'il a été victime d'une violence doit démontrer que sont réunies les conditions exigées pour que ce vice de consentement existe. Fait juridique, la violence peut être prouvée par tous les moyens, y compris par les présomptions de l'homme*)[3].

[25] Ku birebana n'igisobanuro cy'iterabwoba, abahanga mu mategeko Philippe Malinvaud, Dominique Fenouillet na Mustapha Mekki, mu gitabo cyabo *Droit des obligations*, basobanura ko ari imbaraga zishyirwa kuri umwe mu bakorana amasezerano kugira ngo ayasinye. Bavuga ko iterabwoba ritandukanye n'izindi mpamvu zishobora gutuma ukwemera guta agaciro nko kuba habayeho kwibeshya, ko iyo habayeho iterabwoba umuntu yemera amasezerano kubera gutinya. (*La violence est une contrainte exercée sur l'un des contractants en vue de l'amener à contracter.*

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[2] Urukiko ruributsa ko icyo gitabo cyakuweho n'Itegeko N° 020/2019 ryo ku wa 22/08/2019, rikuraho amategeko yose yashyizweho mbere y'itariki y'ubwigenge, ariko nk'uko rwabisobanuye mu rubanza rubanziriza urundi RS/INJUST/RC 00004/2021/SC rwaciwe ku itariki ya 28/01/2022, uburenganzira umuntu yarangije kubona ku bw'itegeko ntibushobora guhungabanywa n'itegeko rishya. Mu yandi magambo, bukomeza kugengwa n'itegeko ryariho buboneka. Igika cya 23.
3 François Terré, Philippe Simler et Yves Lequette, Droit civil, Les obligations, 11ème édition, 2013, Dalloz, § 250.

En cela la violence diffère des autres vices du consentement. Ici, le consentement n'est pas vicié par une erreur, spontanée ou provoquée; il est extorqué : la victime donne son consentement sous l'empire de la violence, par crainte […])[4].

[26] Abandi bahanga Philippe Malaurie, Laurent Aynès na Philippe Stoffel-Munck, mu gitabo cyabo nacyo cyitwa *Droit des obligations*, bavuga ko iterabwoba riba rigamije kotsa igitutu umwe mu bakorana amasezerano adashobora kwigobotora kugira ngo yemere ibyo atakagombye kwemera, hakoreshwa imbaraga z'umubiri cyangwa gushyirwa ku nkeke. ([…] *La violence consiste à exercer sur l'une des parties une pression physique ou morale à laquelle celle-ci ne peut résister afin d'obtenir son consentement […])*[5]. François Terré, Philippe Simler na Yves Lequette, mu gitabo cyabo cya Droit civil, nabo basobanura ko habaho iterabwoba mu gihe umuntu asinya amasezerano bitewe n'igitutu ashyirwaho bigatuma agira ubwoba ko natayasinya ashobora kugirirwa nabi […]. Mu yandi magambo, usinya amasezerano ayasinya abizi neza ko ari mabi, gusa akaba atatinyuka kwanga kuyasinya kubera ko aba ari gutinya kuzagiririrwa nabi aramutse yanze. (*Il y a violence lorsqu'une personne contracte sous la menace d'un mal qui fait naître chez elle un sentiment de crainte […]. Autrement dit, le consentement est atteint non dans sa dimension réflexive, mais dans sa dimension volitive: tout en sachant que le contrat proposé est mauvais pour elle, la victime de la violence n'en donne pas moins son consentement, car elle est menacée d'un mal plus grave au cas où elle refuserait de s'engager)*[6].

[27] Ku birebana n'uburiganya, ingingo ya 16 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano cyavuzwe haruguru, iteganya ko ari impamvu itesha agaciro amasezerano iyo ubucabiranya bwakoreshejwe ku ruhande rumwe buteye ku buryo bugaragara neza ko iyo budakoreshwa, urundi ruhande rutari kuyemera. Ingingo ya 17 y'icyo gitabo igateganya ko uburiganya budakekwa, ko ahubwo bugomba kugaragazwa[7].

[28] Abahanga mu mategeko François Terré, Philippe Simler na Yves Lequette, mu gitabo cyabo *Droit civil, Les obligations*, basobanura ko uburiganya mu ikorwa ry'amasezerano ari ibinyoma byose umwe mu bagirana amasezerano abwira mugenzi we bituma yibeshya agafata icyemezo cyo kuyasinya. Uwo muntu mu by'ukuri ntaba yibeshye, ahubwo baba bamubeshye. (*Le dol dans la formation du contrat désigne toutes les tromperies par lesquelles un contractant provoque chez son partenaire une erreur qui le détermine à contracter. Celui qui en est victime ne s'est pas trompé, on l'a trompé […])*[8]

[29] Ikindi gisobanuro cy'uburiganya, kigaragara mu ngingo ya 1137 y'Igitabo cy'amategeko mbonezamubano y'Ubufaransa asa n'ayari akubiye mu gitabo cya gatatu cy'amategeko mbonezamubano cyakurikizwaga mu Rwanda cyavuzwe haruguru kitarakurwaho. Iyo ngingo isobanura ko uburiganya ari ubucabiranya n'ibinyoma umwe mu bakorana amasezerano akoresha kugira ngo mugenzi we yemere kuyasinya. Ikomeza ivuga ko uburiganya buboneka nanone mu guhisha amakuru wabigendereye bikorwa n'uruhande rumwe mu zigirana amasezerano, kandi ruzi neza ko ayo makuru ari ingenzi, ko abonetse urundi ruhande rutakwemera ayo masezerano. (*Le dol est le fait pour un contractant d'obtenir le consentement de l'autre par des manoeuvres ou des*

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[4] Philippe Malinvaud, Dominique Fenouillet, Mustapha Mekki, Droit des obligations, 13ème édition, Lexis Nexis, 2014, § 201.

[5] Philippe Malaurie, Laurent Aynès, Philippe Stoffel-Munck, Droit des obligations, 10ème édition, LGDJ, 2018, § 515.

[6] François Terré, Philippe Simler et Yves Lequette, Droit civil, Les obligations, 11ème édition, 2013, Dalloz, § 241.

[7] Idem, réf. n° 2.

[8] François Terré, Philippe Simler et Yves Lequette, Droit civil, Les obligations, 11ème édition, 2013, Dalloz, § 228.

mensonges. Constitue également un dol la dissimulation intentionnelle par l'un des contractants d'une information dont il sait le caractère déterminant pour l'autre partie)[9].

[30] Ku birebana n'uru rubanza, inyandiko zigize dosiye zigaragaza ko ku itariki ya 28/05/1997 Utetiwabo Marie Thérèse yakoranye amasezerano y'ubugure na ADEPR. Muri ayo masezerano, akaba yaremeye ko agurishije ikibanza cye kirimo inzu yasenywe n'umuyaga, ADEPR ikemera ko icyo kibanza ikiguze ku 100.000 Frw.

[31] Mu bisobanuro bye, Me Ntigurirwa François uburanira Tuyishimire Iréné Bertrand, avuga ko mu gusinya ayo masezerano habayeho iterabwoba n'uburiganya, biturutse ku kuba abapasiteri ba ADEPR barasanze Utetiwabo Marie Thérèse iwabo mu cyahoze ari Komini Bwakira bakamubwira ko bagiye kumusanira inzu bikarangira hasinywe amasezerano y'ubugure. Nk'uko byasobanuwe haruguru, Urukiko rurasanga ibi ubwabyo bitagaragaza ko habayeho iterabwoba harebwe igisobanuro cyaryo, kuko atagaragaza ko hari ibikangisho bamushyizeho, hakoreshwa imbaraga z'umubiri cyangwa kumushyira ku nkeke (*pression physique ou morale*) ngo bamutere ubwoba ko natabagurisha ikibanza cye n'inzu bamugirira nabi.

[32] Urukiko rurasanga kandi nta n'uburiganya bwabayemo, kubera ko n'ubwo Utetiwabo Marie Thérèse ajya kuva iwe mu cyahoze ari Komini Bwakira abapasiteri ba ADEPR baba baramubwiye ko bagiye kumusanira, yagera i Kigali agasinya amasezerano y'ubugure, nta kigaragaza ko ajya kuyasinya hari amakuru yahishwe cyangwa se ibinyoma yabwiwe cyangwa ubucabiranya (*des manœuvres*) bwakoreshejwe byatumye yemera kugurisha umutungo we kandi ataricyo yari agamije, ko iyo abimenya atari kugurisha.

[33] Ikindi Me Ntigurirwa François yerekana nk'uburiganya n'iterabwoba byakorewe Utetiwabo Marie Thérèse, ngo ni uko ku masezerano aregerwa Sebitereko Simon agaragara nk'uwasinye P.O mu batangabuhamya b'uwaguze, akongera agasinya nk'uhagarariye uguze kandi naho agasinya P.O, aho hose hakaba hagaragaraho amasinyatire adasa. Urukiko rurasanga ibi nabyo bitagaragaza ko hari iterabwoba cyangwa uburiganya byakoreshejwe hakurikijwe ibisobanuro byatanzwe haruguru, cyane cyane ko urega adahakana ko amasezerano yabayeho. Izo ahubwo zakabaye ari inenge zigaragazwa n'uruhande rwa ADEPR iramutse ihakana amasezerano.

[34] Urukiko rurasanga ibivugwa n'urega ko iterabwoba rigaragarira mu kuba abapasiteri ba ADEPR barajyanye Utetiwabo Marie Thérèse mu biro bya Assistant Bourgmestre wa Komini ya Bwakira, bakamufatirana bakavuga ko bamwishyuye, Urukiko rurasanga kuba yarasinyiye imbere y'umuyobozi ubwabyo bitafatwa ko ari iterabwoba kuko ntibagaragaza niba hari ibikangisho cyangwa se izindi mbaraga zaba zarakoreshejwe n'uwo muyobozi ngo asinye ku masezerano y'ubugure kubera guterwa ubwoba ko natayasinya ubuzima bwe bujya mu kaga.

[35] Ku birebana n'amasezerano abiri urega avuga ko ari muri dosiye, ibi nabyo akabifata nk'uburiganya n'iterabwoba, Urukiko rurasanga nta masezerano abiri ahari, igihari ni inyandukuro (copies) z'amasezerano, aho kuri imwe hariho itariki amasezerano yakoreweho yandikishije ikaramu, ahandi iyo tariki ikaba itagaragaho. Ibi kandi nabyo ubwabyo akaba ataribyo byagaragaza ko habayeho uburiganya cyangwa iterabwoba hakurikijwe ibisobanuro byatanzwe haruguru.

[36] Hashingiwe ku bisobanuro byose byatanzwe, Urukiko rurasanga nta kimenyetso na kimwe kigaragaza ko mu gusinya amasezerano y'ubugure aregerwa muri uru rubanza Utetiwabo Marie Thérèse yaba yarayasinye ashyizweho iterabwoba cyangwa se hakoreshejwe uburiganya nk'uko

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[9] Code civil français, 119ème édition, Dalloz, art. 1137.

n'Urukiko Rukuru rwaciye urubanza rusubirishwamo ku mpamvu z'akarengane rwabibonye, bityo ikirego cyatanzwe na Tuyishimire Iréné Bertrand kikaba nta shingiro gifite.

2. Ku birebana n'indishyi zisabwa muri uru rubanza

[37] Tuyishimire Iréné Bertrand n'umwunganira basaba Urukiko kwemeza ko Tuyishimire Iréné Bertrand akaba n'umuzungura w'ababyeyi be yahabwa amafaranga ahwanye n'indishyi zikurikira:

- 72.000.000 Frw y'indishyi mbonezamusaruro zingana na 250.000 Frw ku kwezi aba yarakuye mu bukode bw'umutungo ADEPR yigaruriye, akabarwa kuva mu mwaka wa 1997 kugeza mu wa 2021, ni ukuvuga 250.000 Frw x amezi 12 x imyaka 24;
- 10.000.000 Frw y'indishyi z'akababaro kubera kumuhuguza umutungo wa Se ku maherere. Izo ndishyi arazishingira ku makosa avuga ADEPR yakoze igambirira kuriganya umutungo w'umuntu utishoboye, ibyo ngo bikaba byaramugizeho ingaruka zikomeye zo kutajya mu ishuri kuko kugeza ubu yize yagera mu mwaka wa kane w'amashuri abanza akabura amafaranga y'ishuri kugeza n'ubu bikaba byaratumye atakaza ejo hazaza he heza;
- 5.000.000 Frw y'ikurikiranarubanza ahwanye n'agaciro k'ingendo yakoze n'igihe yasiragiye akurikirana iki kibazo, akaba anakubiyemo amafaranga y'ikurikiranarubanza kuva igihe yaregeye mu mwaka wa 2014.

[38] ADEPR ivuga ko izi ndishyi nta shingiro zahabwa kuko yaguze mu buryo no mu nzira zikurikije amategeko. Ivuga ko indishyi z'akababaro zingana na 10.000.000 Frw Tuyishimire Iréné Bertrand n'umwunganizi we basaba ntazo bagomba guhabwa kuko atagaragaza akababaro yamuteye.

[39] ADEPR yatanze ikirego kiregera kwiregura isaba guhabwa 2.000.000 Frw y'igihembo cy'Avoka na 500.000 Frw y'ikurikiranarubanza kubera gukomeza gushorwa mu manza kandi bigaragara ko yaguze mu buryo bukurikije amategeko umutungo bashaka kuyivutsa.

[40] Tuyishimire Iréné Bertrand n'umwunganizi we bavuga ko ikirego cya ADEPR nta shingiro gifite kuko kuba barareze bagaragaza ko barenganye, bakaba batarengana ngo bongere babitangire n'indishyi.

UKO URUKIKO RUBIBONA

[41] Urukiko rurasanga indishyi zisabwa na Tuyishimire Iréné Bertrand muri uru rubanza ntazo agomba guhabwa kuko ntacyo atsindiye.

[42] Urukiko rurasanga ikirego kiregera kwiregura cyatanzwe na ADEPR gifite ishingiro, bityo amafaranga y'igihembo cy'Avoka ndetse n'ay'ikurikiranarubanza ikaba ikwiye kuyahabwa. Ariko kubera ko ayo isaba akabije kuba menshi kandi ikaba idashobora kugaragaza ko ari yo yakoresheje muri uru rubanza, mu bushishozi bw'Urukiko ikaba igenewe 500.000 Frw y'igihembo cy'Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw.

III. ICYEMEZO CY'URUKIKO

[43] Rwemeje ko ikirego gisaba gusubirishamo ku mpamvu z'akarengane urubanza RCA 0440/14/HC/KIG rwaciwe n'Urukiko Rukuru ku itariki ya 23/04/2015, nta shingiro gifite.

[44] Rwemeje ko nta karengane kabaye muri urwo rubanza.

[45] Rutegetse Tuyishimire Iréné Bertrand guha ADEPR 800.000 Frw akubiyemo ay'igihembo cya Avoka n'ay'ikurikiranarubanza.