MURENZI N'UNDI v MUTABAZI N'UNDI (ADD)

[Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RC 00009/2021/SC (Ntezilyayo, P.J., Cyanzayire na Karimunda, J.) 14 Mata 2022]

Amategeko agenga imiburanishirize y'imanza – Imanza mbonezamubano – Uburegeke – Urukiko rufite ububasha bwo kuburanisha urubanza ruri mu buregeke - Iyo inkiko zitandukanye ziregewe urubanza rumwe kandi zose zirufitiye ububasha, rumwe muri zo rurwohererereza urundi. Bahitamo urukiko rwisumbuyeho ku rukiko rwo hasi.

Amategeko agenga imiburanishirize y'imanza – Imanza mbonezamubano – Uburegeke – Uburyo bwo kureba impamvu y'uburegeke - Impamvu y'uburegeke igomba kureberwa 1) mu kuba hari inkiko zitandukanye zaregewe urubanza rumwe, ni ukuvuga ikiburanwa kimwe n'ababuranyi bamwe, 2) mu kuba inkiko zose zaregewe zifite ububasha. Ikiburanwa kimwe bivuze ko ibirego byombi bigomba kuba bifite inkomoko (fait générateur) imwe n'impamvu (cause) imwe. Ababuranyi bamwe bivuze ko ababurana mu rubanza rumwe ari nabo bagomba kuba baburana mu rundi rubanza.

Amategeko agenga imiburanishirize y'imanza – Imanza mbonezamubano – Ihame ryo gushyira mu gaciro - Urukiko ntirwiyambaza ihame ryo gushyira mu gaciro mu kwemeza ibyabaye (facts) cyangwa ibisanzwe biteganywa n'amategeko. Ahubwo iyo rumaze kubona ibyabaye n'amategeko agomba gushingirwaho, nibwo ruba rwemerewe gufata ibyemezo bitandukanye, icyo gihe rushobora gushingira ku gushyira mu gaciro. Iyo rutangiye kwibaza ruti: ni ikihe cyemezo gikwiriye kandi gitanga ubutabera? Ubwo ruba rutangiye inzira y'ugushyira mu gaciro.

Amategeko agenga imiburanishirize y'imanza – Imanza mbonezamubano – Urukiko rufite ububasha bwo kuburanisha urubanza rwaregewe ku rwego rwa mbere mu rukiko rw'Ibanze n'urubanza rwatangiriye mu rukiko rwisumbuye – Urubanza rwaregewe ku rwego rwa mbere mu Rukiko rw'Ibanze ntirushobora kuba mu bubasha bw'Urukiko rw'Ikirenga ndetse n'urubanza rwatangiriye mu Rukiko Rwisumbuye, rugacibwa ku rwego rwa nyuma n'Urukiko Rukuru, nyuma yaho rugasubirishwamo ku mpamvu z'akarengane ntirushobora kuba mu bubasha bw'Urukiko rw'Ibanze kuko inkiko zifite ububasha bwo kuruburanisha ari Urukiko rw'Ubujurire cyangwa Urukiko rw'Ikirenga.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu rukiko rwisumbuye rwa Gasabo aho Mutabazi na Muhawenimana baregaga Murenzi na Uwamahoro bavuga ko kubera imyubakire mibi yabo, urukuta rw'inzu yabo rwasenyutse rukangiza imitungo yabo irimo imodoka n'inzu bagasaba urukiko ko bahabwa indishyi z'ibyangiritse. Abaregwa bo bavuga ko nta ruhare bagize mu isenyuka ry'urukuta rwa Mutabazi ahubwo ko isenyuka ryarwo ryatewe n'ibiza byasanze uyu yarubatse nabi kuko yubatse nta cyangombwa cyo kubaka afite. SORAS AG Ltd (ubu ni SANLAM Assurances Générales Plc) yagobotse mu rubanza isaba ko yakwishyurwa amafaranga yakoresheje isana imodoka yangijwe n'urwo rukuta. Urukiko mu rubanza N^{o} RC 00203/2018/TGI/GSBO rwifashishije raporo z'abahanga ndetse n'abatangabuhamya rwasanze urwo rukuta rwasenyutse biturutse ku gutsikamirwa n'uburemere bw'itaka Murenzi yakoresheje nawe yubaka urukata rwe ndetse rukaba rwarasagaga n'urwegamiye urukuta rwa Mutabazi nuko rutegeka Murenzi na Uwamahoro kwishyura abarega indishyi zinyuranye.

Murenzi na Uwamahoro bajuririye Urukiko Rukuru bavuga ko urukiko rwabanje rwirengagije ko urukuta rwasenywe no kuba rwarubatswe na Murenzi na Uwamhaoro badafite icyangombwa cyo kubaka bityo rwubakwa nabi hatubahirijwe ibipimo kandi ko raporo y'abahanga idakurikije amategeko kuko abayikoze batumvikanye ku mwanzuro, ko ataribo bayishyikirije urukiko kandi ko batayirahiriye. Mutabazi na Muhawenimana nabo bajuririye Urukiko rukuru bavuga ko hari indishyi batahawe zikomoka ku modoka zakodeshejwe zo gutwara itaka. SANLAM nayo yatanze ubujurire bwuririye ku bundi isaba ko indishyi yagenewe mu rukiko rubanza zashyirwa muri uru rubanza.

Ubwo bujurire bwahurijwe hamwe mu rubanza N° RCA 00499/2019/HC/KIG-CMB RCA 00506/2019/HC/KIG hanyuma Urukiko Rukuru rusanga kuba abahanga batararahiye mbere yo gutanga raporo ari ikosa ry'imyandikire bityo bashobora guhamagazwa bakaza gusobanura ibikubiye muri iyo raporo ndetse bakabanza kurahizwa; kuba abakoze raporo batumvikana ku mwanzuro ko ntacyo bitwaye ko ikingenzi ari uko bayumvikanaho nk'abayikoze bafatanyije ndetse rwemeza ko ubujuri bwatanzwe nta shingiro bufite.

Murenzi yasabye ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane maze ruhabwa Urukiko rw'Ikirenga ngo rwongere ruruburanishe maze rusuzuma ibibazo by'ingenzi bikurikira: Kumenya niba raporo y'abahanga yashingiweho mu icibwa ry'urubanza No RCA 00499/2019/HC/KIG- CMB RCA 00506/2019/HC/KIG ikwiye guteshwa agaciro no kumenya icyateye isenyuka ry'urukuta rw'urugo rwa Mutabazi na Muhawenimana.

Usubirishamo urubanza yatanze inzitizi y'uburegeke avuga ko hari ikirego Mutabazi yatanze mu Rukiko rw'Ibanze rwa Gasabo kandi kikaba gifitanye isano n'Uru rubanza akaba aribyo byabanza gusuzumwa. Asobanura ko muri urwo rubanza haregerwa ubwishyu bw'urukuta rushya rwubatswe n'agaciro k'amazu ya annexes yasenywe rwubakwa. Icyo kirego gisaba kubanza kwemeza nyir'uburyozwe, hakaba hari impungenge z'uko icyemezo urwo rukiko rwafata cyaza kinyuranye n'ikizafatwa n'uru Rukiko bityo agasaba ko zahurizwa hamwe ngo hirindwe ko ibyemezo byafatwa byaba bivuguruzanya.

Uregwa nawe avuga ko izo manza ari zimwe ko kuzihuriza hamwe byatuma zirangirizwa rimwe. Akomza avuga ko mu gihe Urukiko rwasanga nta buregeke burimo ko rufite ububasha bwo guhamagaza urubanza ruri mu Rukiko rw'Ibanze kuko Urukiko rw'Ikirenga nubundi rufite ububasha buruta ubw'Urukiko rw'Ibanze hanyuma izi manza zombi zikaburanishwa n'uru rukiko.

Incamake y'icyemezo:1. Iyo inkiko zitandukanye ziregewe urubanza rumwe kandi zose zirufitiye ububasha, rumwe muri zo rurwohereza urundi hagahitwamo urukiko rwisumbuyeho ku rukiko rwo hasi. Ibyaregewe mu rubanza N° RC 00 177/2022/TB/GSBO bitandukanye n'ibiregerwa muri uru rubanza kuko n'ababuranyi batandukanye bityo nta buregeke burimo.

2. Impamvu y'uburegeke igomba kureberwa mu kuba hari inkiko zitandukanye zaregewe urubanza rumwe, no mu kuba inkiko zose zaregewe zifite ububasha. Ikiburanwa kimwe bivuze ko ibirego byombi bigomba kuba bifite inkomoko imwe. Ababuranyi bamwe bivuze ko ababurana mu rubanza rumwe ari nabo bagomba kuba baburana mu rundi rubanza bikaba bitandukanye rero n'uru rubanza bityo nabyo bigahamya ko nta buregeke burimo.

3. Urubanza rwaregewe ku rwego rwa mbere mu Rukiko rw'Ibanze ntirushobora kuba mu bubasha bw'Urukiko rw'Ikirenga ndetse n'urubanza rwatangiriye mu Rukiko Rwisumbuye, rugacibwa ku rwego rwa nyuma n'Urukiko Rukuru, nyuma yaho rugasubirishwamo ku mpamvu z'akarengane ntirushobora kuba mu bubasha bw'Urukiko rw'Ibanze kuko inkiko zifite ububasha bwo

kuruburanisha ari Urukiko rw'Ubujurire cyangwa Urukiko rw'Ikirenga bityo akaba nta buregeke buri mu rubanza RS/INJUST/RC 00009/2021/SC ruri muri uru Rukiko n'ikirego N° RC 00177/2022/TB/GSBO.

Inzitizi yatanzwe nta shingiro ifite;
Nta buregeke buri hagati y'urubanza Nº RS/INJUST/RC 00009/2021/SC n'ikirego cyanditswe kuri Nº RC 00177/2022/TB/GSBO bityo zikaba zitagomba kuburanishirizwa hamwe.

Amategeko yashingiweho:
Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 27,53,100.

Nta manza zifashishijwe.

Inyandiko z'abahanga zifashishijwe:
Serge Guinchard (eds), Droit et pratique de la procédure civile, Paris, Dalloz, 2014, p. 293.
Reba Loïc Cadiet na Emmanuel Jeuland, Droit judiciaire privé, 11e éd., Paris, 2019, p.222.
The Judge as Lawmaker: An English Perspective" in Tom Bingham, The Business of Judging: Selected Essays and Speeches 1985-1999, Oxford, Oxford University Press, 2000, p.36.

Urubanza

I. IMITERERE Y'URUBANZA.

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Mutabazi Abayo Jean Claude na Muhawenimana Joselyne bavuga ko ku bw'amakosa y'imyubakire mibi ya Murenzi Alphonse na Uwamahoro Jacqueline, ku wa 25/05/2018, urukuta rw'urugo rwabo rwasenyutse, rwangiza imodoka ebyiri, amazu ya annexes, ibigega by'amazi n'inkingi z'ibyuma byari bibifashe. Basabye ko iryo senyuka n'ibyangijwe biryozwa Murenzi Alphonse na Uwamahoro Jacqueline, bagategekwa kubaha indishyi zitandukanye.

[2] MurenzI Alphonse na Uwamahoro Jacqueline bavuze ko nta ruhare bagize muri iryo senyuka ry'urukuta rwabo, ko Mutabazi Abayo Jean Claude atagaragaza ko ubwo Murenzi Alphonse yubakaga aribwo haje umututu muri urwo rukuta. Yasobanuye ko isenyuka ry'urukuta ryatewe n'ibiza byasanze Mutabazi Abayo Jean Claude yarubatse nabi kuko yubatse atabiherewe uruhushya, asaba Urukiko kwemeza ko ikirego nta shingiro gifite.

[3] SORAS AG Ltd (yahindutse SANLAM Assurances Générales Plc) yagobotse mu rubanza, isaba ko Murenzi Alphonse na Uwamahoro Jacqueline bategekwa kuyishyura 2.183.000 Frw yakoreshejwe hasanwa imodoka RAD 995F yangiritse bitewe n'isenyuka ry'urukuta rwabo.

[4] Mu rubanza Nº RC 00203/2018/TGI/GSBO rwaciwe ku wa 08/11/2019, Urukiko Rwisumbuye rwa Gasabo rwasanze imvugo z'abatangabuhamya, raporo y'Ubugenzuzi bw'Imyubakire mu Karere ka Gasabo, iy'Umuhanga mu by'ubutaka ndetse n'iy'Itsinda ry'abahanga basuzumye ibyabaye bihuriza ku kwemeza ko urukuta rutari gusenyuka iyo rutagira

ibirutsikamira kuko rwari rukomeye; rusanga kandi Murenzi Alphonse yarubatse urukuta rwe asa n'urwegamije kurwa Mutabazi Abayo Jean Claude, arangije aharunda itaka, rwanzura ko urukuta rwa Mutabazi Abayo Jean Claude rwasenywe n'uko rwatsikamiwe n'ibikorwa bya Murenzi Alphonse, rumutegeka gufatanya na Uwamahoro Jacqueline kwishyura Mutabazi Abayo Jean Claude na Muhawenimana Joselyne indishyi zingana na 22.159.538 Frw, ndetse n'amadorali ya Amerika angana na 6.173.

[5] Murenzi Alphonse na Uwamahoro Jacqueline bajuririye Urukiko Rukuru bavuga ko Urukiko rwirengagije ko kuba urukuta rwa Mutabazi Abayo Jean Claude rutarihanganiye amazi byatewe n'uko atubahirije ibipimo kuko yubatse atabiherewe uruhushya. Bavuga ko na raporo y'Abahanga yashingiweho hafatwa icyemezo ku rwego rwa mbere yakozwe mu buryo bunyuranije n'amategeko kuko abayikoze batumvikana ku mwanzuro yagezeho, ko ataribo bayishikirije Urukiko ndetse ko batayirahiriye. Mutabazi Abayo Jean Claude na Muhawenimana Joselyne nabo bajuririye Urukiko Rukuru bavuga ko hari indishyi batahawe kandi bazikwiriye, ko bagenewe amafaranga make kuyo bakodesheje imodoka nyamara ibimenyetso batanze bihamya ko imodoka RAD 586 M yishyuwe 850.00 Frw naho RAC 847 Y yishyurwa 360.000 Frw.

[6] SANLAM Assurances Générales Plc yatanze ubujurire bwuririye ku bundi, isaba ko 2.183.000 Frw yemejwe ku rwego rwa mbere ashyirwa mu cyemezo cy'Urukiko Rukuru.

[7] Ubujurire bwose bwahurijwe hamwe mu rubanza no RCA 00499/2019/HC/KIG-CMB RCA 00506/2019/HC/KIG rwaciwe ku wa 19/02/2021, Urukiko rusanga:

i. ibyo gufatanya kubaka urukuta bitararegewe ku rwego rwa mbere, bityo bikaba bidakwiye gusuzumwa mu bujurire;

ii. kuba abahanga batararahiye mbere yo gutanga raporo ari ikosa ry'imyandikire rishobora gukosorwa hahamagazwa abakoze raporo kuza kuyisobanurira Urukiko, mbere yo kuyisobanura bakabanza kurahizwa;

iii. kuba abakoze raporo batumvikana ku mwanzuro wayo atari impamvu yatuma iteshwa agaciro kuko icy'ingenzi ari uko benshi muri bo baba bayumvikanaho;

iv. nta muhanga wemeje ko ibiza aribyo byasenye urukuta, kuko raporo y'Ubuyobozi bw'Umudugudu yo ku wa 22/05/2018 igaragaza ko na mbere y'isenyuka ryarwo icyo kibazo cyari gihari, byumvikanisha ko itaka Murenzi Alphonse yageretse kuri urwo rukuta ariryo ryarusenye;

v. nta makosa Urukiko rubanza rwakoze rutanga 720.000 Frw y'imodoka mu bushishozi bwarwo kuko rutari rutegetswe gushingira ku bimenyetso ababuranyi batanze rutabihuje n'ibiciro biri ku isoko cyane cyane ko Mutabazi Abayo Jean Claude nawe yari afite inshingano zo kugabanya igihombo;

vi. indishyi z'akababaro zingana na 20.000.000 Frw Mutabazi Abayo Jean Claude na Muhawenimana Joselyne basaba batazihabwa kuko batagaragaje uburyo ububabare, agahinda no guhangayika batewe n'ibyabaye babibariye ayo mafaranga;

vii. indishyi zingana na 2.183.000 Frw zagenewe SANLAM Assurances Générales Plc zigomba gushyirwa mu cyemezo cy'Urukiko Rukuru ariko zigakurwa mu ndishyi zagenewe Mutabazi Abayo Jean Claude na Muhawenimana Joselyne;

viii. indishyi zari zagenewe Mutabazi Abayo Jean Claude na Muhawenimana Joselyne zikuweho 3.369.336 Frw y'agaciro k'amazu ya annexes na 2.183.000 Frw yagombaga kugenerwa SANLAM Assurances Générales Plc.

[8] Urukiko rwanzuye ruvuga ko urubanza rwajuririwe ruhindutse kuri bimwe, rutegeka Murenzi Alphonse na Uwamahoro Jacqueline guha Mutabazi Abayo Jean Claude na Muhawenimana Joselyne 740.000 Frw y'ikurikiranarubanza, igihembo cya Avoka n'igarama, rubategeka kandi gusubiza SANLAM Assurances Générales Plc Ltd 2.183.000 Frw yakoresheje imodoka.

[9] Murenzi Alphonse yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urubanza Nº CMB RCA 00499/2019/HC/KIG-RCA 00506/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 19/02/2021, rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujurire amaze gusuzuma ubwo busabe, yandikiye Perezada w'Urukiko rw'Ikirenga asaba ko urwo rubanza rwasubirwamo, maze mu cyemezo Nº 243/CJ/2021 cyo ku wa 07/10/2021, Perezida w'Urukiko rw'Ikirenga yemeza ko rwoherezwa mu Bwanditsi bw'Urukiko kugira ngo ruzongere ruburanishwe.

[10] Iburanisha mu ruhame ryabaye ku wa 08/03/2022, Me Habyarimana Christine aburanira Murenzi Alphonse na Uwamahoro Jacqueline, Me Yaramba Ruhara Athanase na Me Niyitegeka Epaphrodite bunganiye Mutabazi Abayo Jean Claude kandi bahagarariye Muhawenimana Joselyne, naho Me Mafaranga Anastase ahagarariye SANLAM Assurances Générales Plc.

[11] Iburanisha rigitangira, Me Habyarimana Christine yavuze ko Murenzi Alphonse arwaye, ko mu busanzwe amwunganira, ariko noneho yamuhaye ububasha bwo kumuhagararira ku bijyanye n'inzitizi y'uburegeke batanze nyuma y'inama ntegurarubanza bitewe n'uko impamvu yayo yabonetse nyuma y'iyo nama. Avuga ko iyo nzitizi ishingiye ku kirego gishya Mutabazi Abayo Jean Claude yatanze mu Rukiko rw'Ibanze rwa Gasabo ku wa 24/02/2022 gihabwa N° RC 00177/2022/TB/GSBO, ko aho Murenzi Alphonse abimenyeye, yasanze icyo kirego gifitanye isano n'uru rubanza, amusaba gutegura inzitizi y'uburegeke, bityo akaba yumva ariyo yaherwaho.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO.

Kumenya niba hari uburegeke hagati y'urubanza no RS/INJUST/RC 00009/2021/SC n'ikirego cyanditswe kuri Nº RC 00177/2022/TB/GSBO mu Rukiko rw'Ibanze rwa Gasabo

[12] Me Habyarimana Christine, uhagarariye Murenzi Alphonse na Uwamahoro Jacqueline, avuga ko ikirego Mutabazi Abayo Jean Claude yatanze mu Rukiko rw'Ibanze rwa Gasabo gifitanye isano n'uru rubanza kuko haregerwa ubwishyu bw'urukuta rushya rwubatswe n'agaciro k'amazu ya annexes yasenywe rwubakwa. Avuga ko ikirego kiri mu Rukiko rw'Ibanze rwa Gasabo gisaba kubanza kwemeza nyir'uburyozwe, hakaba hari impungenge z'uko icyemezo rwafata cyaza kinyuranye n'ikizafatwa n'uru Rukiko. Asaba ko izo manza zahurizwa hamwe zikaburanishwa n'uru Rukiko mu rwego rwo kwirinda ibyemezo by'inkiko bivuguruzanya no kugira ngo ubutabera buzatangwe nta kibazo gisigaye inyuma.

[13] Mutabazi Abayo Jean Claude n'abamwunganira bakanahagararira Muhawenimana Joselyne bavuga ko izo manza ari zimwe, bityo kuzihuriza hamwe bikaba byanatuma zirangirizwa rimwe. Bavuga ko Urukiko rw'Ikirenga rusanze izo manza zirimo uburegeke, rwahamagaza urubanza ruri mu Rukiko rw'Ibanze, zikaburanishirizwa hamwe, ariko ko nubwo bwaba butarimo nta kibuza Urukiko rw'Ikirenga guhamagaza urubanza ruri mu Rukiko rw'Ibanze kuko Urukiko rw'Ikirenga nubundi rufite ububasha buruta ubw'Urukiko rw'Ibanze (Qui peut le plus, peut le moins).

[14] Me Mafaranga Anastase, uburanira SANLAM Assurances Générales Plc, avuga ko uru Rukiko rusanze koko Murenzi Alphonse na Uwamahoro Jacqueline bararenganye byabangamira ikirego cyatanzwe mu Rukiko rw'Ibanze, ariyo mpamvu nawe ashyigikiye ko izo manza zihuzwa, zikaburanishirizwa hamwe.

UKO URUKIKO RUBIBONA:

[15] Ingingo ya 100, igika cya mbere, agace ka 3, y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko « Iyo inkiko zitandukanye ziregewe urubanza rumwe kandi zose zirufitiye ububasha, rumwe muri zo rurwohereza urundi. Bahitamo: urukiko rwisumbuyeho ku rukiko rwo hasi; … »

[16] Urukiko rurasanga iyi ngingo yumvikanisha ko impamvu y'uburegeke igomba kureberwa 1) mu kuba hari inkiko zitandukanye zaregewe urubanza rumwe, ni ukuvuga ikiburanwa kimwe n'ababuranyi bamwe, 2) mu kuba inkiko zose zaregewe zifite ububasha. Ikiburanwa kimwe bivuze ko ibirego byombi bigomba kuba bifite inkomoko (fait générateur) imwe n'impamvu (cause) imwe. Ababuranyi bamwe bivuze ko ababurana mu rubanza rumwe ari nabo bagomba kuba baburana mu rundi rubanza.

[17] Ku bireba uru rubanza, bigaragara ko icyaregewe mu rubanza N° RC 00 177/2022/TB/GSBO ari ukwishyuza Murenzi Alphonse na Uwamahoro Jacqueline uruhare rwabo ku rukuta rwubatswe na Mutabazi Abayo Jean Claude no kwishyura amazu ya annexes yasenywe bitewe n'imyubakire mibi yabo n'indishyi zitandukanye. Muri urwo Rukiko SANLAM Assurances Générales Plc ntiri mu rubanza nk'uwagobotse. Ibisabwa mu Rukiko rw'Ibanze ntibisa n'ibisabwa mu rubanza N° RS/INJUST/RC 00009/2021/SC. Mu Rukiko rw'Ibanze harasabwa uruhare rwa Murenzi Alphonse na Uwamahoro Jacqueline ku rukuta n'amazu ya annexes yubatswe nyuma y'isenyuka ry'urukuta rwa Murenzi Alphonse. Mu Rukiko rw'Ikirenga harasabwa ibintu umunani (8), ku bijyanye n'urukuta n'amazu ya annexes, harasabwa ikiguzi cya 34.038.316 Frw z'ibyangiritse, bityo kwishyuza ikiguzi cy'ibyubatswe no kwishyuza ikiguzi cy'ibyangiritse bikaba bitakwitiranywa cyane cyane ko ntaho bigaragara ko agaciro kishyuzwa kubyangijwe kangana n'agasabwa kubyubatswe. Nubwo rero ababuranyi ari bamwe, ndetse n'inkomoko y'imanza zombi akaba ari uko hari urukuta rwa Murenzi Alphonse rwaridutse rukagira ibyo rwangiza cyangwa rusenya kwa Mutabazi Abayo Jean Claude, ikiburanwa muri izi nkiko zombi si kimwe kandi n'ingano (portée/scope) yacyo si imwe.

[18] Urukiko rurasanga impamvu ya kabiri ishingirwaho hemezwa uburegeke ari ukuba inkiko zaregewe zose zifite ububasha bwo kuburanisha ibyo birego. Kuri iyi ngingo, umuhanga Serge Guinchard avuga ko uburegeke bubaho iyo inkiko zaregewe ikirego kimwe zigifitiye ububasha, bivuze ko iyo rumwe muri izo nkiko rudafite ububasha, hatangwa inzitizi y'iburabubasha aho kuba

iy'uburegeke.[1] Loïc Cadiet na Emmanuel Jeuland nabo bashimangira ko uburegeke bubaho iyo inkiko ebyiri zaregewe urubanza ruhuriye ku kiburanwa kimwe hagati y'ababuranyi bamwe kandi zombi zirufitiye ububasha.[2]

[19] Urukiko rurasanga dosiye igaragaza ko ikirego kiri mu Rukiko rw'Ibanze rwa Gasabo aribwo kigitangira, kikaba cyaratanzwe hashingiwe ku biteganywa n'ingingo ya 27 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 igena ububasha bw'inkiko z'ibanze mu manza mbonezamubano. Naho urubanza N° RS/INJUST/RC 00009/2021/SC ruri kuburanishwa n'uru Rukiko rwarangirije inzira z'ubujurire zisanzwe n'izidasanzwe mu Rukiko Rukuru. Urukiko rw'Ikirenga ruri kuruburanisha mu rwego rwo kurusubirishamo ku mpamvu z'akarengane hashingiwe ku biteganywa n'ingingo ya 53, igika cya mbere, y'Itegeko n° 30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru, iruha ububasha bwo kuburanisha imanza zose zisubirishwamo ku mpamvu z'akarangane cyane cyane izigamije gutanga umurongo wihariye ku zindi nkiko.

[20] Urukiko rurasanga urubanza rwaregewe ku rwego rwa mbere mu Rukiko rw'Ibanze rudashobora kuba mu bubasha bw'Urukiko rw'Ikirenga ndetse n'urubanza rwatangiriye mu Rukiko Rwisumbuye, rugacibwa ku rwego rwa nyuma n'Urukiko Rukuru, nyuma yaho rugasubirishwamo ku mpamvu z'akarengane ntirushobora kuba mu bubasha bw'Urukiko rw'Ibanze kuko inkiko zifite ububasha bwo kuruburanisha ari Urukiko rw'Ubujurire cyangwa Urukiko rw'Ikirenga, bityo ibyo Me Habyarimana Christine avuga ko hari uburegeke hagati y'urubanza N°RS/INJUST/RC 00009/2021/SC ruri muri uru Rukiko n'ikirego N° RC 00177/2022/TB/GSBO kiri mu Rukiko rw'Ibanze rwa Gasabo bikaba nta shingiro bifite.

[21] Urukiko rurasanga kandi ibivugwa n'ababuranyi ko nubwo nta buregeke bwaba buriho izo manza zombi zahuzwa mu nyungu z'ubutabera kuko n'ubundi Urukiko rw'Ikirenga rufite ububasha buruta ubw'Urukiko rw'Ibanze nabyo nta shingiro bifite. Nubwo ingingo ya 100, igika cya mbere, agace ka 3, y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru iteganya ko iyo hari uburegeke Urukiko rwisumbuyeho ruhabwa ibanze (priorité/ primacy) ku rukiko rwo hasi, ntibivanaho ko hagomba kubanza kubahirizwa amahame ateganywa n'icyo gika y'uko inkiko ziba zararegewe ikirego kimwe hagati y'ababuranyi bamwe kandi zikaba zose zigifitiye ububasha.

[22] Urukiko rurasanga kubibona ukundi hakemezwa ko imanza zihuzwa bitewe gusa n'uko urubanza rumwe ruri mu Rukiko rukuriye urundi bitaba bitewe n'uko hari uburegeke hagati y'ibirego ahubwo byafatwa ko bishingiye ku gushyira mu gaciro k'Urukiko. Nyamara kandi gushyira mu gaciro k'Urukiko bigomba kwitonderwa. Tom Bingham wahoze ari Perezida w'Urukiko rw'Ikirenga rw'Ubwongereza, kimwe mu bihugu bizwiho cyane guteza imbere iryo hame, yibutsa ko Urukiko rutiyambaza iryo hame mu kwemeza ibyabaye (facts) cyangwa ibasanzwe biteganywa n'amategeko. Ahubwo ko iyo rumaze kubona ibyabaye n'amategeko agomba gushingirwaho, aribwo ruba rwemerewe gufata ibyemezo bitandukanye, icyo gihe

[1] "La litispendance ne peut avoir lieu que lorsque le même litige est porté devant deux juridictions également compétentes. Si l'une des juridictions est incompétente, ce n'est pas une exception de litispendance qui doit être présentée mais une exception d'incompétence devant la jurisdiction estimée incompétente. Mais la litispendance pourrait etre invoquée ensuite, si la juridiction se déclare compétente et si sa décision n'est pas contestée, …" Serge Guinchard (eds), Droit et pratique de la procédure civile, Paris, Dalloz, 2014, p. 293.

[2] "Il y a litispendance lorsque deux juridictions également compétentes sont saisies d'un même litige, ce qui suppose un litige portant sur le même objet, reposant sur la même cause et opposant les mêmes parties". Reba Loïc Cadiet na Emmanuel Jeuland, Droit judiciaire privé, 11e éd., Paris, 2019, p.222.

rushobora gushingira ku gushyira mu gaciro. Iyo rutangiye kwibaza ruti: ni ikihe cyemezo gikwiriye kandi gitanga ubutabera? Ubwo ruba rutangiye inzira y'ugushyira mu gaciro.[3] Ibimaze gusobanurwa byumvikanisha ugushyira mu gaciro kutaba igipimo (standard) cyaherwaho hemezwa uburegeke.

[23] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rurasanga inzitizi y'uburegeke yatanzwe na Murenzi Alphonse na Uwamahoro Jacqueline nta shingiro ifite.

III. ICYEMEZO CY'URUKIKO

[24] Rwemeje ko inzitizi yatanzwe na Murenzi Alphonse na Uwamahoro Jacqueline nta shingiro ifite;

[25] Rwemeje ko nta buregeke buri hagati y'urubanza no RS/INJUST/RC 00009/2021/SC n'ikirego cyanditswe kuri no RC 00177/2022/TB/GSBO mu Rukiko rw'Ibanze rwa Gasabo, bityo zikaba zitagomba kuburanishirizwa hamwe;

[26] Ruvuze ko iburanisha mu mizi rizakomeza ku wa 18/05/2022 saa mbiri n'igice.

[3] "… an issue falls within a judge's discretion if, being governed by no rule of law, its resolution depends on the individual judge's assessment of what it is fair and just to do in the particular case. He has no discretion in making his findings of fact. He has no discretion in his rulings on the law. But when having made any necessary finding of fact and any necessary ruling of law, he has to choose between different courses of action, orders, penalties or remedies he then exercises discretion. It is only when he reaches the stage of asking himself what is the fair and just thing to do or order in the instant case that he embarks on the exercise of a discretion." Reba "The Judge as Lawmaker: An English Perspective" in Tom Bingham, The Business of Judging: Selected Essays and Speeches 1985-1999, Oxford, Oxford University Press, 2000, p.36.