NDAYISENGA N’UNDI v HABIYAMBERE

[Rwanda URUKIKO RW’IKIRENGA - RS/INJUST/RC 00007/2021/SC (Cyanzayire, P.J., Hitiyaremye na Nyirinkwaya, J.) 16 Ukuboza 2022]

Amategeko agenga imiburanishirize y’imanza – Umwenda – Ibimenyetso – Kugaragaza ko uberewemo umwenda – Uvuga ko aberewemo umwenda agomba kubitangira ibimenyetso.

Amategeko agenga y’imanza mbonezamubano – Inshingano – Inshingano yo kwishyura umwenda ihuriweho “obligation in solidum” – Iyo abantu benshi basangiye umwenda, uwo bawugomba ashobora kubishyuriza hamwe cyangwa se umwe ku wundi – Ariko ashobora gusaba kwishyurwa umwenda wose n’umwe mu basangiye uwo mwenda, uwishyuye agasigara akurikrana bagenzi be.

Incamake y’ikibazo: Habiyambere yaguze inzu ya Mukandekezi mu cyamunara yabaye ku itariki ya 28/09/2011 harangizwa urubanza yatsinzwemo n’Umuhoza, ariko Mukandekezi yanga kuyirekura bituma amurega mu Rukiko rwisumbuye rwa Nyarugenge. Urega ntiyaje gukomeza gukurikirana ikirego cye bituma ikirego cye gisibwa. Nyuma yaje kubuyutsa urubanza muri urwo rukiko hanyuma aho yasabaga ko yahabwa inzu ye, amafaranga y’ubukode yavagamo, amafaranga y’ikurikiranarubanza n’amafaranga y’igihembo cya Avoka. Urukiko rwemeje ko ikirego gifite ishingiro rutegeka ko yahabwa inzu ye ndetse n’amafaranaga y’ikurikirana rubanza n’igihembo cy’avoka akabihabwa n’abazungura ba Mukandekezi aribo Mukandekezi, Mukandengo na Ndayisenga kuko we yari yaramaze gupfa.

Ababuranyi ntibishimiye imikirize bombi bajurira mu Rukiko Rukuru aho urega yavugaga ko urukiko rutamuhaye indishyi yasabye zijyanye n’ubukode bw’inzu hanyuma abaregwa bo bakavuga ko ikirego cyo kubutsa urubanza kitari kwakirwa kuko cyatanzwe nyuma y’iminsi icumi n’itanu yo kurubyutsa kandi ko urukiko rwanditse ko urubanza rwaciwe n’Urukiko rwisumbuye rwa Gasabo kandi ataribyo no kuba urukiko rutahamagaje abazungura bose. Urukiko Rukuru rwaciye urubanza N° RCA 0358-410/15/HC/KIG, rwemeza ko ubujurire bwatanzwe na Habiyambere Ignace bufite ishingiro, rwemeza ko ubujurire bwa Ndayisenga nta shingiro bufite, rutegeka abazungura ba Mukandekezi gufatanya guha Habiyambere indishyi zitandukanye harimo n’iz’ubukode bw’amazu yasabaga. Rwasanze ubujurire bwatanzwe n’abaregwa nta shingiro bufite.

Abazungura ba Mukandekezi bandikiye Urwego rw’Umuvunyi basaba ko urubanza N° RCA 0358-410/15/HC/KIG rwasubirwamo ku mpamvu z’akarengane, maze Urwego rw’Umuvunyi rwandikira Perezida w’Urukiko rw’Ikirenga rusaba ko urwo rubanza rwasubirwamo hanyuma Urukiko rw’Ikirenga aba arirwo ruruburanisha.

Abarega bavuga ko Urukiko Rukuru rwahaye Habiyambere indishyi mbonezamusaruro zirenze izo yasabye. Mukandengo we yanasabaga gusubizwa ikinyuranyo kiri hagati y’amafaranga yatanze harangizwa urubanza n’ayo yumva yagombaga gutanga.

Habiyambere we avuga ko nta kosa Urukiko rwakoze mu kumugenera indishyi mbonezamusaruro kuko yari yazisabye, ko kandi n’amafaranga yakiriye ku ruhande rwa Mukandengo yari ayakwiriye kubera ko harangizwaga urubanza yatsinze. Urukiko, muri uru rubanza rwasanze ikibazo kirimo ari ikijyanye n’ibimeneytso byashingiweho hagenwa indishyi mboneza musaruro no kumenya ikinyura gisabwa na Mukandengo ko cyatangwa.

Abarega bavuga ko urukiko rukuru rwatanze indishyi zirenze izasabwe ntacyo rushingiyeho kuko hari hasabwe indishyi zingana na Frw 5.265.000 zinatangiwe ibimenyetso, hanyuma rukagena izingana na 17.714.000 Frw. Mukandengo we avuga ko Umuhesha w'Inkiko mu kurangiza urubanza, yategetse ko abazungura uko ari batatu bafatanya kwishyura indishyi bituma yishyura 6.663.000 Frw agasaba ko yahabwa ikinyuranyo. Habiyambere we ashimangira ko 17.714.000 Frw yahawe n'Urukiko Rukuru zagumaho kubera ko arizo yasabye.

Incamake y'icyemezo: 1. Uvuga ko aberewemo umwenda agomba kubitangira ibimenyetso. Bivuze ko Habiyambere ariwe wari ufite inshingano yo gutanga ibimenyetso by'uko amafaranga yasabaga yaturutse mu bukode bw 'amazu ye yari 17.714.000 Frw. Bityo indishyi mbonezamusaruro zagombaga gutangwa zikaba zihwanye na 5.265.000 Frw kuko arizo zifitiwe ibimenyetso.

2. Iyo abantu benshi basangiye umwenda, uwo bawugomba ashobora kubishyuriza hamwe cyangwa se umwe ku wundi. Ariko ashobora gusaba kwishyurwa umwenda wose n'umwe mu basangiye uwo mwenda, uwishyuye agasigara akurikrana bagenzi be bityo ibyo Mukandengo asaba byo gusubizwa ikinyuranyo cy'amafaranga yatanze nta shingiro bifite kuko yagomba kwishyura umwenda wose.

Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro kuri bimwe.

Amategeko yashingiweho:
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 12;
Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.

Nta manza zifashishijwe.

Inyandiko z'abahanga zifashishijwe:
Alain BENABENT, Droit des obligations, 19ème édition, LGDJ, § 128 et 680.
Yvaine BUFFELAN-LANORE, Virginie LARRIBAU-TERNEYRE, mu gitabo cyabo "Droit civil, Les obligations", 17ème édition, 2020-2021, SIREY, § 2547 et 2548.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Habiyambere Ignace avuga ko yaguze inzu ya Mukandekezi Euphrasie mu cyamunara yabaye ku itariki ya 28/09/2011 harangizwa urubanza yatsinzwemo n'umukazana we Umuhoza Anonciata, ko ariko kuva yagura iyo nzu atigeze ayigiraho uburenganzira kuko Mukandekezi Euphrasie yanze kuyirekura, bituma amurega mu Rukiko Rwisumbuye rwa Nyarugenge asaba guhabwa inzu ye, amafaranga y'ubukode yavaga muri ayo mazu, amafaranga y'ikurikiranarubanza n'amafaranga y'igihembo cya Avoka.

[2] Ku itariki ya 13/03/2013, Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza Nº RC 0696/12/TGI/NGE, rwemeza ko ikirego cya Habiyambere Ignace gisibwa mu bitabo by'ibirego kubera ubusaze bwakomotse ku kutagikurikirana.

[3] Habiyambere Ignace yaje gutanga ikirego mu Rukiko Rwisumbuye rwa Nyarugenge asaba kubyutsa urubanza, ikirego gihabwa Nº RC 0119/15/TGI/NYGE, urwo rubanza ruburanishwa Mukandekezi Euphrasie yarapfuye, maze ruhamagazwamo abazungura be, aribo Mukandekezi Marie, Mukandengo Aurélie na Ndayisenga Protais.

[4] Ku itariki ya 26/06/2015, urwo Rukiko rwaciye urubanza rwemeza ko ikirego cyatanzwe na Habiyambere Ignace abyutsa urubanza Nº RC 0696/12/TGI/NYGE gifite ishingiro, runemeza ko ikirego yatanze asaba guhabwa inzu yaguze muri cyamunara gifite ishingiro, rutegeka abazungura ba Mukandekezi Euphrasie aribo Mukandekezi Marie, Mukandengo Aurélie na Ndayisenga Protais kumuha inzu yaguze nta yandi mananiza, runabategeka gufatanya kumuha 750.000 Frw akubiyemo ay'igihembo cya Avoka, ay'ikurikiranarubanza, n'ingwate y'igarama yatanze arega.

[5] Habiyambere Ignace na Ndayisenga Protais bombi bajuririye Urukiko Rukuru, Habiyambere Ignace avuga ko Urukiko Rwisumbuye rwa Nyarugenge rwanze guha agaciro indishyi mbonezamusaruro yasabye, Ndayisenga Protais atanga impamvu zikurikira:

- Urukiko Rwisumbuye rwa Nyarugenge ntirwagombaga kwemera ko urubanza rubyutswa kuko iminsi cumi n'itanu yo kurubyutsa yari yararenze;
- Urukiko Rwisumbuye rwanditse ko urubanza rwaciwe n'Urukiko Rwisumbuye rwa Gasabo kandi atari byo;
- Urukiko ntirwahamagaje abazungura bose ba Mukandekezi Euphrasie kuko rwahamagaje batatu gusa kandi bari batanu.

[6] Ku itariki ya 29/01/2016, Urukiko Rukuru rwaciye urubanza Nº RCA 0358-410/15/HC/KIG, rwemeza ko ubujurire bwatanzwe na Habiyambere Ignace bufite ishingiro, rwemeza ko ubujurire bwa Ndayisenga Protais nta shingiro bufite, rutegeka abazungura ba Mukandekezi Euphrasie gufatanya guha Habiyambere Ignace 17.714.000 Frw y'indishyi mbonezamusaruro zikomoka ku bukode bw'amazu, 500.000 Frw y'igihembo cya Avoka na 75.000 Frw y'ingwate y'igarama.

[7] Urukiko Rukuru rwashingiye icyemezo cyarwo ku mpamvu zikurikira:

- Ku birebana no kubyutsa urubanza, rwavuze ko nta gihe ntarengwa itegeko ryateganyaga cyo kubyutsa urubanza rwasibwe kubera impamvu z'ubusaze;
- Ku birebana no kuba umucamanza atarahamagaje abazungura bose, Urukiko rwavuze ko nta cyerekana ko Ndayisenga Protais yari yavuze ko hari abandi bazungura bahari ngo umucamanza yange kubahamagaza;
- Ku birebana no kuba mu rubanza handitseho ko rwaciwe n'Urukiko Rwisumbuye rwa Gasabo aho kuba urwa Nyarugenge, Urukiko rwasanze ibyo bitaba impamvu y'ubujurire ahubwo ari ikosa ry'imyandikire rigomba gukosorwa;

- Ku birebana n'indishyi mbonezamusaruro zasabwe na Habiyambere Ignace, Urukiko rwasanze abajuriye nta kimenyetso batanze ko inzu yaguze zitakodeshwaga, bityo rero ko nta mpamvu atari guhabwa amafaranga y'ubukode.

[8] Ku itariki ya 31/05/2016, Mukandekezi Marie, Mukandengo Aurélie na Ndayisenga Protais, bandikiye Urwego rw'Umuvunyi basaba ko urubanza Nº RCA 0358-410/15/HC/KIG rwaciwe ku itariki ya 29/01/2016 rwasubirwamo ku mpamvu z'akarengane, maze ku itariki ya 24/09/2019, Urwego rw'Umuvunyi rwandikira Perezida w'Urukiko rw'Ikirenga rusaba ko urwo rubanza rwasubirwamo.

[9] Perezida w'Urukiko rw'Ikirenga amaze kubona raporo yarukozweho n'Ubugenzuzi bw'Inkiko, ku itariki ya 04/10/2021, yafashe icyemezo ko urubanza rwavuzwe haruguru rwongera kuburanishwa ruhabwa no RS/INJUST/RC 00007/2021/SC.

[10] Abarega batanze imyanzuro bavuga ko Urukiko Rukuru rwakoze ikosa ryo guha Habiyambere Ignace indishyi mbonezamusaruro zihwanye na 17.714.000 Frw kandi atarizo yasabye. Mukandengo Aurélie ku giti cye we yanasabaga gusubizwa ikinyuranyo kiri hagati y'amafaranga yatanze harangizwa urubanza n'ayo yumva yagombaga gutanga. Habiyambere Ignace we avuga ko nta kosa Urukiko rwakoze mu kumugenera indishyi mbonezamusaruro kuko yari yazisabye, ko kandi n'amafaranga yakiriye ku ruhande rwa Mukandengo Aurélie yari ayakwiriye kubera ko harangizwaga urubanza yatsinze.

[11] Mu iburanisha ryo ku itariki ya 13/01/2022, Me Muhizi Alexis ahagarariye Mukandekezi Marie na Ndayisenga Protais, anunganiye Mukandengo Aurélie, Habiyambere Ignace ahagarariwe na Me Nemeyabahizi Jean Paul, urubanza rwarasubitswe kubera ko Me Nemeyabahizi Jean Paul yavugaga ko hari inyandiko zari muri dosiye atemera yifuzaga kubanza kuregera nk'inyandiko mpimbano.

[12] Ku itariki ya 01/03/2022, Habiyambere Ignace yandikiye Urukiko rw'Ikirenga arugaragariza imbogamizi yahuye nazo mu gupimisha izo nyandiko, asaba ko iburanisha ryasubukurwa hagashingirwa ku bimenyetso bisanzwe muri dosiye.

[13] Iburanisha ryongeye gusubukurwa ku itariki ya 12/09/2022, Mukandengo Aurélie yunganiwe na Me Muhizi Alexis afatanyije na Me Mutarindwa Félix, banahagarariye Ndayisenga Protais na Mukandekezi Marie, Habiyambere Ignace yunganiwe na Me Nemeyabahizi Jean Paul. Mu iburanisha hagaragaye abandi bantu aribo Uwitonze Diane na Mugabe Gilbert bunganiwe na Me Butare Godfrey, basaba kugoboka mu rubanza ku bushake.

[14] Nyuma yo kumva bavuga ko impamvu basaba kugoboka mu rubanza ku bushake ari uko ari abazungura ba Mukandekezi Euphrasie waburanye na Umuhoza Annonciata[1], kandi aribo bakiriye amafaranga yavuye muri expropriation yakozwe ku mitungo baburanaga, Urukiko rwasanze inyungu z'abasabaga kugoboka mu rubanza zifitanye isano n'urubanza nyirakuru Mukandekezi Euphrasie yaburanyemo n'umubyeyi wabo, urwo rubanza rukaba rwarabaye itegeko rwaranarangijwe. Urukiko rwabibukije ko ikiburanwa muri uru rubanza ari ingano y'indishyi mbonezamusaruro abaje mu karengane bavuga ko urukiko rwahaye Habiyambere

[1] Uyu ni umubyeyi wabo.

Ignace atari zo yagombaga guhabwa, aba bo bakaba nta kibazo gifitanye isano na cyamunara bafite, bityo rwemeza ko nta nyungu bafite rwanga kwakira ubusabe bwabo.

[15] Iburanisha ry'urubanza ryarakomeje, ariko Urukiko rusanga rigomba gusubikwa kugira ngo abasubirishijemo urubanza ku mpamvu z'akarengane bazatange umwanzuro w'inyongera bagaragaza umubare w'indishyi babona Habiyambere Ignace yagombaga guhabwa, n'uburyo bazibara bakurikije izo Urukiko Rukuru rwamugeneye. Iburanisha ryimuriwe ku itariki ya 14/11/2022.

[16] Kuri iyo tariki urubanza rwaburanishijwe mu ruhame, Ndayisenga Protais, Mukandekezi Marie bahagarariwe na Me Muhizi Alexis afatanyije na Me Mutarindwa Félix, banunganiye Mukandengo Aurélie, Habiyambere Ignace ahagarariwe na Me Nemeyabahizi Jean Paul.

[17] Hakurikijwe imiterere y'uru rubanza, ibibazo byasuzumwe ni ukumenya ingano nyakuri y'indishyi mbonezamusaruro zagombaga guhabwa Habiyambere Ignace no kumenya niba hari amafaranga y'ikirenga yatanzwe na Mukandengo Aurélie harangizwa urubanza rusubirishwamo ku mpamvu z'akarengane bityo akaba agomba kuyasubizwa n'ingano yayo.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO.

1. Kumenya ingano nyakuri y'indishyi mbonezamusaruro zagombaga guhabwa Habiyambere Ignace.

[18] Me Muhizi Alexis na Me Mutarindwa Félix baburanira Mukandekezi Marie, Mukandengo Aurélie na Ndayisenga Protais, bavuga ko akarengane kabo bagashingira ku kuba Urukiko Rukuru rwarageneye Habiyambere Ignace indishyi mbonezamusaruro zingana na 17.714.000 Frw kandi ntaho bigaragara ko yazisabye haba mu mwanzuro we, haba ndetse no mu iburanisha.

[19] Basobanura ko mu mwanzuro w'inyongera wo ku itariki ya 24/07/2015 watanzwe na Me Mbera Martine waburaniraga Habiyambere Ignace, yasabaga indishyi zingana na 5.265.000 Frw, mu gihe cy'iburanisha akaba yarasabye 5.866.000 Frw nk'uko bigaragara mu nyandiko-mvugo yo ku itariki 19/01/2016.

[20] Bavuga ko Habiyambere Ignace yagombaga kugenerwa indishyi yasabye mu mwanzuro wa Avoka we zingana na 5.265.000 Frw ndetse zanagaragarijwe ibimenyetso kuko yakoze umwanzuro w'inyongera avuye ku kiburanwa aho, mu rwego rwo gushaka amakuru ajyanye n'indishyi mbonezamusaruro basabaga, yifashishije Umunyamabanga Nshingwabikorwa w'Akagari ka Kora, yagiye abaza buri mupangayi amafaranga y'ubukode yishyuraga bigakorerwa inyandiko.

[21] Banzura basaba Urukiko ko 5.265.000 Frw yasabwe na Habiyambere Ignace ariyo yagenerwa kuko ari nayo bafitiye ibimenyetso, ko kuba yarahawe ayo atasabye binyuranyije n'ingingo ya 7 y'Itegeko no 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo, n'iz'ubutegetsi ryakurikizwaga igihe icyo cyemezo cyafatwaga, ndetse n'ibiteganywa n'ingingo ya 8 y'iryo Tegeko ko umucamanza

adashobora gushingira icyemezo cye ku bitaragaragajwe mu iburanisha, ko kandi adashobora guca urubanza ashingiye ku byo aruziho ku giti cye.

[22] Habiyambere Ignace na Me Nemeyabahizi Jean Paul umwunganira, mu mwanzuro wabo bavuga ko Urukiko rutatanze indishyi zitasabwe, ko ahubwo indishyi rwatanze zabanje gusabwa mu rwego rwa mbere ntizatangwa, ibyo bikaba bigaragazwa n'umwanzuro wo ku itariki ya 26/01/2015 wakozwe na Me Mbera Martine mu izina rya Habiyambere Ignace atanga ikirego mu rubanza N° RC 0119/15/TGI/NYGE, izo ndishyi zikaba zaranganaga na 17.714.000 Frw. Bavuga ko nyuma yo kubona izo ndishyi batazihawe mu Rukiko Rwisumbuye, bazijuririye mu Rukiko Rukuru hafatwa icyemezo ko bazihabwa.

[23] Me Nemeyabahizi Jean Paul avuga ko kuri uru rwego Urukiko rwari rwasabye abasubirishijemo urubanza ku mpamvu z'akarengane kurugaragariza ishingiro ry'indishyi bavuga zagombaga gutangwa, ko ariko batabigaragaje. Avuga ko Habiyambere Ignace we afite ibimenyetso by'indishyi yari yasabye, bikaba bigaragara mu rubanza yaburanye mu Rukiko Rwisumbuye ku rupapuro rwa 2, igika cya 6. Avuga ko ikindi kimenyetso atanga cyerekana ko indishyi mbonezamusaruro yahawe arizo yari yasabye, ari uko aburana mu Rukiko Rukuru, Avoka yashatse kwanga kumuburanira, amusaba kuzamuha 1/3 cy'indishyi zose yari yasabye zingana na 17.714.000 Frw, hakaba hari n'inyandiko uwo mu Avoka yandikiye Urugaga rwabo asaba ko rwamwumvikanisha na Habiyambere Ignace, akamwishyura ayo mafaranga bumvikanye kuko yari mu mwanzuro yari yatanze.

[24] Ku birebana n'indishyi abarega bavuga zasabwe mu Rukiko Rukuru, avuga ko muri dosiye hagaragaramo imyanzuro ibiri, umwanzuro wiswe uw'inyongera ukubiyemo indishyi abarega bavuga ko arizo zasabwe, Habiyambere Ignace akaba atemera ko ariwe wawukoze, bityo rero ko indishyi yagenewe n'Urukiko Rukuru nta handi rwazivanye atari uko ari Habiyambere Ignace wari wazisabye.

[25] Ku kibazo kijyanye n'uko mu Rukiko Rwisumbuye Habiyambere Ignace yimwe indishyi bari basabye kubera ko nta bimenyetso barugaragarije, Me Nemeyabahizi Jean Paul avuga ko inzu yakodeshwaga yari igizwe n'imiryango itanu (5) y'ubucuruzi, n'amazu abiri yo mu gikari, inzu z'ubucuruzi zakodeshwaga 60.000 Frw ku kwezi, izo mu gikari zikodeshwa 50.000 Frw ku kwezi, ko ayo mafaranga yose uyakubye n'amezi yari ashize bihwana na 17.714.000 Frw.

[26] Ku birebana n'abantu bafatwa nk'abapangayi bavugwa n'abarega ko basinye ku mpapuro zigaragaza amafaranga y'ubukode bishyuraga ku kwezi, avuga ko mu iperereza ryakozwe na Habiyambere Ignace yasanze abo bantu batanabaho, ko ahubwo ababaga muri ayo mazu batigeze babazwa. Avuga ko hari n'ikirego cyatanzwe mu Bugenzacyaha haregerwa inyandiko z'abo bantu bavugwa ko bakodeshaga amazu ye.

[27] Ku kibazo Me Nemeyabahizi Jean Paul yabajijwe n'Urukiko cyo kugaragaza ibimenyetso bifatika bashingiraho basaba indishyi mbonezamusaruro zingana na 17.714.000 Frw uretse kuvuga gusa ko bari bazisabye mu Rukiko Rukuru, avuga ko ibyo bimenyetso we ntabyo yabonye kugeza ubu.

UKO URUKIKO RUBIBONA

[28] Urukiko rurasanga muri uru rubanza ababuranyi bemeranywa ko hari indishyi mbonezamusaruro Habiyambere Ignace agomba guhabwa, gusa ntibemeranya ku ngano yazo. Ku ruhande rw'abasabye ko urubanza rwasubirwamo ku mpamvu z'akarengane, bo bavuga ko agomba guhabwa 5.265.000 Frw kuko ariyo yari yasabye mu Rukiko Rukuru, mu gihe Habiyambere Ignace we akomeza gushimangira ko 17.714.000 Frw yahawe n'Urukiko Rukuru zagumaho kubera ko arizo yasabye.

[29] Ingingo ya 12, igika cya mbere, 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" urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda". Ibiteganywa n'iyo ngingo, binahura n'ibivugwa mu ngingo ya 3, igika cya mbere, y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko "buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana ". Ibiteganywa muri izo ngingo kandi bihura n'ibivugwa n'umuhanga mu mategeko witwa Alain BENABENT, aho, yifashishije ingingo ya 1353 y'Igitabo cy'imbonezamubano cy'Abafaransa (code civil français), asobanura ko uvuga ko aberewemo umwenda agomba kubitangira ibimenyetso. (Charge de la preuve. L'article 1353 nouveau met très clairement à la charge de celui qui se prétend créancier l'obligation de prouver sa créance: celui qui réclame l'exécution d'une obligation doit la prouver) […].[2]

[30] Hakurikijwe imiterere y'uru rubanza, n'ubwo ababuranyi bakomeza kujya impaka zishingiye ku kumenya niba indishyi mbonezamusaruro Habiyambere Ignace yagenewe n'Urukiko Rukuru yari yazisabye cyangwa atari yazisabye, Urukiko rurasanga ikibazo cy'ingenzi kiri mu rubanza gishingiye ku bimenyetso bigomba gushingirwaho mu kugena izo ndishyi.

[31] Inyandiko ziri muri dosiye zigaragaza ko mu Rukiko Rwisumbuye Habiyambere Ignace yasabaga indishyi mbonezamusaruro zikomoka ku bukode yavugaga ko bwavaga mu mazu ye zihwanye na 17.714.000 Frw, Urukiko rukazimwima ruvuga ko atazitangiye ibimenyetso. Izo nyandiko zigaragaza ko icyo cyemezo yakijuririye mu Rukiko Rukuru akomeza kuzisaba, urwo Rukiko rukaba rwarazimuhaye ruvuga ko abaregwa batashoboye kurugaragariza ko 17.714.000 Frw atariyo yavaga mu bukode bw'amazu ya Habiyambere Ignace.

[32] Muri dosiye kandi hagaragaramo ibaruwa yo ku itariki ya 14/08/2015 yanditswe na Me Mbera Martine mu mwanya wa Habiyambere Ignace, ayandikira Umunyamabanga Nshingwabikorwa w'Akagari ka Kora gaherereyemo umutungo uvugwa mu rubanza. Muri iyo baruwa Me Mbera Martine yasabaga amakuru arebana n'amafaranga yavaga mu mazu ya Habiyambere Ignace, ko kutagira ayo makuru byatumye Urukiko rubura ibimenyetso rushingiraho kugira ngo rwemeze umubare w'amafaranga nyakuri yaturukaga muri ayo mazu. Bigaragara ko Umuyobozi wari wandikiwe yamushubije ku itariki ya 15/09/2015 amumenyesha abantu bari muri ayo mazu n'umubare w'amafaranga bishyuraga. Urukiko rukaba rusanga ari kuri ayo makuru Me Mbera Martine yahereyeho atanga umwanzuro w'inyongera noneho werekanaga ibimenyetso yashingiragaho indishyi mbonezamusaruro zihwanye na 5.265.000 Frw yasabaga.

[33] Ku bivugwa na Habiyambere Ignace ko uwo mwanzuro wiswe uw 'inyongera atawemera ngo kuko utanditswe n'umwunganizi we, Urukiko rurasanga, nk'uko byibukijwe haruguru, mu

[2] Alain BENABENT, Droit des obligations, 19ème édition, LGDJ, § 128.

iburanisha ryo ku itariki ya 13/01/2022, Me Nemeyabahizi Jean Paul yasabye Urukiko ko yifuza kuregera inyandiko-mpimbano rurabimwemerera, muri izo nyandiko yifuzaga kuregera hakaba harimo n'uwo mwanzuro avuga ko atemera. Nyamara ku itariki ya 01/03/2022, Habiyambere Ignace yandikiye Urukiko rw'Ikirenga arugaragariza imbogamizi yahuye nazo mu gupimisha izo nyandiko, asaba ko iburanisha ryasubukurwa hagashingirwa ku bimenyetso bisanzwe muri dosiye, bityo rero Urukiko rugasanga ntaho yahera ahakana uwo mwanzuro. Urukiko rurasanga kandi ntaho Habiyambere Ignace yahera avuga ko Me Mbera Martine atawukoze mu izina rye, kuko inyandiko zashingiweho uwo mwanzuro nk'uko byasobanuwe haruguru, zakozwe mbere y'inama ntegurarubanza yabaye ku itariki ya 28/09/2015, kandi iyo nama yitabiriwe na Mbera Martine yunganiye Habiyambere Ignace.

[34] Ku bivugwa na Habiyambere Ignace ko inzu yakodeshwaga yari igizwe n'imiryango itanu (5) y'ubucuruzi, n'amazu abiri yo mu gikari, inzu z'ubucuruzi zikodeshwa 60.000 Frw ku kwezi, izo mu gikari zikodeshwa 50.000 Frw ku kwezi, ko ayo mafaranga uyakubye n'amezi yari ashize bihwana na 17.714.000 Frw, uretse kubivuga gusa, Urukiko rurasanga nta bimenyetso abigaragariza byerekana ko ariya mazu yavagamo buriya bwishyu koko. Rurasanga ahubwo ibimenyetso bihari ari ibyatanzwe n'Umunyamabanga Nshingwabikorwa w'Akagari ka Kora gaherereyemo ayo mazu abiha Me Mbera Martine wari wabimusabye, ibyo akaba aribyo yashingiyeho akora umwanzuro w'inyongera ugaragaza ko amafaranga y'ubukode yaturutse kuri ayo mazu yari amaze kugera kuri 5.265.000 Frw.

[35] Hashingiwe ku ngingo ya 12, igika cya mbere, y'Itegeko nº 22/2018 no ku ngingo ya 3, igika cya mbere, y'Itegeko nº 15/2004 ryo ku wa 12/06/2004, yombi yavuzwe haruguru, ndetse no ku bisobanuro byatanzwe, Urukiko rurasanga Habiyambere Ignace ariwe wari ufite inshingano yo gutanga ibimenyetso by'uko amafaranga yaturutse mu bukode bw 'amazu ye yari 17.714.000 Frw yasabaga. Bityo indishyi mbonezamusaruro zagombaga gutangwa zikaba zihwanye na 5.265.000 Frw kuko arizo zifitiwe ibimenyetso nk'uko byasobanuwe haruguru. Kubera iyo mpamvu, Urukiko rurasanga ikirego cyatanzwe na Mukandekezi Marie, Mukandengo Aurélie na Ndayisenga Protais basaba gusubirishamo urubanza n° RCA 0358/15/HC/KIG - RCA 0410/15/HC/KIG rwaciwe n'Urukiko Rukuru ku itariki ya 29/01/2016, gifite ishingiro kuri iyo ngingo.

2. **Kumenya niba hari amafaranga y'ikirenga yatanzwe na Mukandengo Aurélie harangizwa urubanza rusubirishwamo ku mpamvu z'akarengane.**

[36] Mukandengo Aurélie na Me Muhizi Alexis umwunganira, bavuga ko ku itariki ya 15/01/2020, Umuhesha w'Inkiko w'Umwuga Me Mutaganda Louis yarangije urubanza Nº RC 0119/15/TGI/NYGE rwaciwe ku itariki ya 26/06/2015 n'urubanza nº RCA 0358-410/15/HC/KIG rwaciwe ku itariki ya 29/01/2016, maze ategeka ko abazungura ba Mukandekezi Euphrasie aribo Mukandekezi Marie, Mukandengo Aurélie na Ndayisenga Protais bakwishyura Habiyambere Ignace 17.714.000 Frw + 500.000 Frw + 75.000 Frw + 750.000 Frw = 19.039.000 Frw agomba kwishyurwa mu buryo bungana kuri bose uko ari batatu, ni ukuvuga 6.346.000 Frw + 300.000 Frw y'igihembo cy'umuhesha w'inkiko w'umwuga kuri buri wese.

[37] Bakomeza bavuga ko Mukandengo Aurélie yishyuye 6.663.000 Frw kuko umutungo we utimukanwa wari warafatiriwe nyamara atariyo yagombaga kwishyura. Avuga ko kuba indishyi zasabwaga zose hamwe zari 5.265.000 Frw, bivuze ko buri wese yagombaga kwishyura 1.755.000 Frw, akaba asaba gusubizwa amafaranga yatanze arenga ku yo yari gutanga, angana na 4.891.000

Frw, ko ibyo bigaragazwa n'inyandiko-mvugo y'irangizarubanza yo ku itariki ya 15/01/2020 na sheki yo ku itariki ya 19/03/2019.

[38] Mukandengo Aurélie avuga kandi ko bagiye gusobanuza urubanza kugira ngo urukiko rwerekane uko indishyi baciwe zagombaga kwishyurwa, urukiko rugasobanura ko bose bagombaga kwishyura amafaranga angana ruranayagaragaza.

[39] Me Nemeyabahizi Jean Paul uburanira Habiyambere Ignace avuga ko urubanza rurangizwa uko rwaciwe, ko mu rubanza rwaciwe n'Urukiko Rukuru nta na hamwe bigeze bategeka amafaranga buri wese yagombaga kwishyura. Avuga ko kubera ko n'urubanza rwari urw'abazungura, ufite ubushobozi muri abo bazungura ari we wagombaga kwishyura. Ku birebana n'urubanza rukosora urundi, avuga ko ntarwo babonye, ko ariko niba ruhari hakaba hari ibitaragenze neza, asaba Urukiko rw'Ikirenga kuzabikosora.

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[40] Urukiko rurasanga mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, Urukiko rwaremeje ko abazungura ba Mukandekezi Euphrasie aribo Mukandekezi Marie, Mukandengo Aurélie na Ndayisenga Protais bafatanya guha Habiyambere Ignace 17.714.000 Frw y'indishyi mbonezamusaruro, 750.000 Frw y'indishyi zategetswe mu Rukiko Rwisumbuye, 500.000 Frw y'igihembo cya Avoka na 75.000 Frw y'igarama yatanzwe na Habiyambere Ignace. Mukandengo Aurélie yatanze ikirego asaba gusobanuza urwo rubanza kugira ngo Urukiko rugaragaze umubare w'amafaranga buri wese yagombaga gutanga, umucamanza yemeza ko ikirego cye nta shingiro gifite.

[41] Urukiko rurasanga kuba Urukiko rwarategetse ko abazungura ba Mukandekezi Euphrasie aribo Mukandekezi Marie, Mukandengo Aurélie na Ndayisenga Protais bagomba gufatanya kwishyura Habiyambere Ignace amafaranga amaze kuvugwa rutagaragaje ayo buri wese yagombaga gutanga, bivuze ko icyo umucamanza yategetse ari uko bagombaga kwishyura mu buryo buhuriweho (obligation in solidum), Habiyambere Ignace akaba yaragombaga kwishyuza amafaranga yose yategetswe n'Urukiko uwo abona ko afite ubushobozi, uyu nawe akazahindukira akajya kwishyuza bagenzi be.

[42] Ibimaze kuvugwa haruguru ni byo abahanga mu mategeko Yvaine BUFFELAN-LANORE na Virginie LARRIBAU-TERNEYRE, mu gitabo cyabo « Droit civil, Les obligations » basobanura muri aya magambo mu rurimi rw'igifaransa: Concernant l'obligation à la dette, s'il y a plusieurs coresponsables, chacun est tenu pour le tout à l'égard de la victime, en vertu de l'obligation in solidum. La victime peut donc réclamer l'intégralité de la réparation à n'importe lequel des coresponsables. […]. Concernant la contribution à la dette, c'est-à- dire la répartition de la charge définitive de la dette de responsabilité, les coresponsables disposent entre eux de recours récursoires. Celui ou ceux qui ont indemnisé la victime peuvent ainsi recourir contre les autres coauteurs à proportion de leur part de responsabilité si la victime ne l'avait pas fait, car ils sont subrogés dans ses droits. […][3] Undi muhanga witwa Alain BENABENT, mu gitabo yise « Droit des obligations », asobanura ko iyo abantu benshi basangiye umwenda, uwo bawugomba

[3] Yvaine BUFFELAN-LANORE, Virginie LARRIBAU-TERNEYRE, mu gitabo cyabo "Droit civil, Les obligations", 17ème édition, 2020-2021, SIREY, § 2547 et 2548.

ashobora kubishyuriza hamwe cyangwa se umwe ku wundi. Ariko ashobora no kwemererwa gusaba kwishyurwa umwenda wose n'umwe mu basangiye uwo mwenda. Inyungu z'ubwo buryo ni uko uberewemo umwenda bimurinda umuzigo w'umwe muri bo udashobora kwishyura, ahubwo bagenzi be barishyura noneho bakazasigara bamwikurikiranira. Yabivuze muri aya magambo mu rurimi rw'igifaransa: Lorsque plusieurs personnes sont responsables du même dommage, la victime peut évidemment les poursuivre ensemble, ou même successivement. Mais on lui permet aussi de demander réparation intégrale à l'un quelconque des responsables: l'avantage de cette responsabilité dite « in solidum » est de ne pas faire supporter par la victime la charge de l'insolvabilité éventuelle de l'un d'eux, mais par les autres responsables qui, ayant payé, ne pourront exercer leur recours contributif contre l'insolvable […][4].

[43] Urukiko rukaba rusanga, ubwo Urukiko Rukuru rwacaga urubanza rukavuga ko abazungura ba Mukandekezi Euphrasie bafatanya kwishyura Habiyambere Ignace amafaranga y'indishyi yavuzwe haruguru rutavuze ayo buri wese yagombaga gutanga, ari bwo buryo buhuriweho (obligation in solidum) rwifuje ko uberewemo umwenda yakwishyurwamo. Urukiko rusanga ahubwo, ubwo umuhesha w'inkiko yajyaga kurangiza urubanza, agafata amafaranga urukiko rwari rwategetse akayagabanyamo gatatu agategeka Mukandekezi Euphrasie kwishyura 1/3 cy'amafaranga yategetswe n'Urukiko, yararurangije uko rutaciwe, kuko Urukiko rutari rwigeze rugena uruhare rwa buri muntu.

[44] Urukiko rurasanga kandi amafaranga abasabye ko urubanza rusubirwamo ku mpamvu z'akarengane barimo na Mukandengo Aurélie, batemera ari ay'indishyi mbonezamusaruro gusa, bivuze ko ayandi ariyo 750.000 Frw y'indishyi zategetswe mu Rukiko Rwisumbuye, 500.000 Frw y'igihembo cya Avoka na 75.000 Frw y'igarama yatanzwe na Habiyambere Ignace nta kibazo bayafiteho. Ibi bikaba bisobanuye ko ikinyuranyo Mukandengo Aurélie asaba gusubizwa ari igikomoka ku ndishyi mbonezamusaruro gusa.

[45] Ubwo harangizwaga urubanza, hashingiwe ku nyandiko-mvugo yakozwe uwo muhango ukorwa, Urukiko rurasanga Mukandengo Aurélie yarishyuye Habiyambere Ignace 6.346.000 Frw aho kuba 6.663.000 Frw kuko arengaho ari ay'umuhesha w'inkiko. Ayo yishyuye ahwanye na 750.000 Frw y'indishyi zategetswe mu Rukiko Rwisumbuye, 17.714.000 Frw y'indishyi mbonezamusaruro yategetswe n'Urukiko Rukuru, 500.000 Frw y'igihembo cya Avoka na 75.000 Frw y'igarama yatanzwe na Habiyambere Ignace, ayo yose ukagabanya gatatu.

[46] Nk'uko byasobanuwe haruguru, Urukiko rwasanze amafaranga y'indishyi mbonezamusaruro yagombaga gutangwa ari 5.265.000 Frw, bivuze ko indishyi zose hamwe Habiyambere Ignace yagombaga guhabwa ari 5.265.000 Frw + 750.000 Frw + 500.000 Frw + 75.000 Frw = 6.590.000 Frw.

[47] Hakurikijwe uburyo bwo kwishyura buhuriweho (obligation in solidum) nk'uko byasobanuwe haruguru, kuba Mukandengo Aurélie yarishyuye Habiyambere Ignace 6.346.000 Frw, ayo akaba ari make ku yo yagombaga guhabwa, Urukiko rurasanga nta mafaranga yandi Mukandengo Aurélie agomba gusubizwa.

3. Gusuzuma ibijyanye n'indishyi zisabwa muri uru rubanza.

[4] Alain BENABENT, Droit des obligations, 19ème édition, LGDJ, § 680.

[48] Me Muhizi Alexis avuga ko abarega bakomeje gusiragizwa mu nkiko no mu zindi nzego kugira ngo bahabwe ubutabera, bityo bakaba babisabira indishyi zingana na 2.000.000 Frw, n'inyungu mbonezamusaruro zingana na 1.000.000 Frw kuri Mukandengo Aurélie wamaze kwishyura Habiyambere Ignace 6.663.000 Frw. Barasaba kandi gusubizwa 500.000 Frw batakaje mu gukurikirana urubanza na 1.500.000 Frw y'igihembo cya Avoka.

[49] Me Nemeyabahizi Jean Paul avuga ko abarega aribo bisiragiza mu nkiko ahubwo bakazisiragizamo Habiyambere Ignace, ko iyo baza kurekura inzu yari yaguze nta kibazo kiba cyarabayeho. Avuga ko aho kugira ngo bashimishwe n'ibyemezo by'Inkiko, bashimishijwe no gutanga ibirego by'urudaca, ko rero aribo bakwiye kwirengera ingaruka zabyo.

[50] Avuga ko kuba abarega bakomeje gushingira ku kinyoma, bagasiragiza Habiyambere Ignace mu nkiko bigatuma atakaza igihe n'amafaranga, bikanamuhangayikisha, imirimo ye ikadindira, ingendo akora zitari ngombwa aza ku nkiko no kubonana na Avoka kuko atuye i Muhanga, hari amafunguro afata, ibyo byose akaba abisabira indishyi zingana na 5.000.000 Frw, akubiyemo igihembo cya Avoka cya 2.000.000 Frw, n'amafaranga y'ikurikiranarubanza akubiyemo ay'ingendo n'itumanaho n'ibindi angana na 3.000.000 Frw.

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[51] Urukiko rurasanga amarafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza asabwa n'abarega aribo Mukandengo Aurélie, Mukandekezi Marie na Ndayisenga Protais bakwiye kuyahabwa kubera ko batsinze urubanza kandi bikaba bigaragara ko bashatse Abavoka bo kububuranira. Rurasanga ariko 1.500.000 Frw yose hamwe basaba ari menshi, bityo mu bushishozi bwarwo bose hamwe bakaba bagenewe 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza.

[52] Ku birebana n'izindi ndishyi basaba, Urukiko rurasanga ntazo bagomba guhabwa kuko batazisobanuye, kimwe n'izisabwa na Mukandengo Aurélie ku giti cye na we akaba ntazo agomba guhabwa kuko ntacyo atsindiye cy'umwihariko.

[53] Ku birebana n'indishyi zisabwa na Habiyambere Ignace, Urukiko rurasanga ntazo agomba guhabwa kubera ko we ntacyo atsindiye muri uru rubanza.

III. ICYEMEZO CY'URUKIKO

[54] Rwemeje ko ikirego gisaba gusubirishamo ku mpamvu z'akarengane urubanza N° RCA 0358/15/HC/KIG-RCA 0410/15/HC/KIG rwaciwe n'Urukiko Rukuru ku itariki ya 29/01/2016 gifite ishingiro kuri bimwe;

[55] Rwemeje ko urwo rubanza ruhindutse ku ndishyi mbonezamusaruro abazungura ba Mukandekezi Euphrasie, aribo Mukandengo Aurélie, Mukandekezi Marie na Ndayisenga Protais bagombaga gufatanya guha Habiyambere Ignace;

[56] Rwemeje ko amafaranga y'indishyi mbonezamusaruro Habiyambere Ignace yagombaga guhabwa ari 5.265.000 Frw;

[57] Rutegetse Habiyambere Ignace guha abazungura ba Mukandekezi Euphrasie, aribo Mukandengo Aurélie, Mukandekezi Marie na Ndayisenga Protais bose hamwe 800.000 Frw akubiyemo ay’ikurikiranarubanza n’ay’igihembo cya Avoka.