MUREKATETE v. DIYOSEZI GATORIKA YA BYUMBA (2)

[Rwanda URUKIKO RW'UBUJURIRE – RSOCAA 00007/2018/CA – (Karimunda, P.J.) 22 Mutarama 2019]

Amategeko agenga imiburanishirije y'imanza mbonezamubano – Inzitizi – Ubuzime burangiza uburenganzira (prescription extentive) – Ubuzime burangiza uburenganzira cyangwa kurangira kw'ibihe bizwi bigira ingaruka zimwe n'iz'inzitizi zisanzwe, iyo nzitizi ntabwo ari ndemyagihugu kandi Urukiko rutemewe kuyibyutsa ribyibwirije. – Inzitizi ndemyagihugu nizo zonyine zishobora gutangwa aho urubanza rwaba rugeze hose.

Incamake y'ikibazo: Murekatete Jovia yareze Diyosezi Gatorika ya Byumba mu Rukiko Rwisumbuye rwa Gicumbi avuga ko yari umukozi wayo akora akazi ku bumuforomokazi mu Bitaro bya Kiziguro guhera ku wa 01/01/2008 aza kugira impanuka mu kazi ku wa 17/07/2009, kuko yijombye urushinge yari amaze gutera umurwayi wabanaga n'ubwandu bwa VIH/SIDA yari amaze kuvura, bityo Jovia yahise ashyirwa ku miti yo kurwanya ubwandu, ariko nyuma y'igihe gito afatwa n'uburwayi bw'ubuhumyi, agendera ko. Yavuze ko yagerageje kwivuriza mu bitaro bitandukanye ariko ntibyagira icyo bitanga bitewe n'uko abaganga basanze ubuhumyi bwe bwaratewe n'icyitwa glucone gifata imyakura igaburira amaso. Akaba ashinja umukoreshawe kuba atigeze amenyesha Ikigo cy'Ubwiteganyirize mu Rwanda (RSSB) iby'iyo mpanuka, ahubwo ko nyuma y'amezi atatu ahuye n'iyo mpanuka yihutiye kumusezerera ku kazi, ntihagira n'ubundi bufasha ahabwa ku buryo byageze aho abura uko yivuza kubera ubukene. Akaba asaba indishyi zuko yirukanwe mu buryo bunyuranyije n'amategeko no kumenya niba ubuhumyi bwe bukomoka ku miti yafashe n'uruhare umukoresha yabigizemo.

Urukiko Rwisumbuye rwa Gicumbi rwaciye urubanza rusanga umurwayi, Jovia yari amaze kuvura yari afite indwara ya *cytomegalovirus* yandura kandi ko Rwanda Biomedical Centre, ikaba yarakoze ubushakashatsi ku mpamvu yateye ubuhumyi ariko ntiyatangaza ibyabuvuyemo, rwanzura ko Murekatetejovia yahuye n'impanuka y'akazi, umukoresha aho kwihutira kubimenyesha Ikigo cy'Ubwiteganyirize mu Rwanda (RSSB) kugirango yishyurirwe ubuvuzi, amuhagarikira umushahara anamusezerera mu kazi akiri mu kiruhuko cy'uburwayi, bimuvutsa amahirwe y'akazi, bituma ativuza kugeza aho uburwayi bumukomeranye akaba agomba kubana n'ubumuga buhoraho bw'ubuhumyi, maze rwanzurako Diyosezi Gatorika ya Byumba igomba kumuha imishahara ingana n'ibyo yari asigaje kugirango ajye mu kiruhuko cy'izabukuru ingana na 61.834.068 Frw, indishyi z'akababaro za 754.074 Frw n'indishyi z'imperekeza zingana na 125.679 Frw, yose hamwe akaba angana na 62.965.179 Frw.

Diyosezi Gatorika ya Byumba ntiyishimiye imikirize y'urwo rubanza, ijuririra mu Rukiko Rukuru ivuga ko ntacyo ikwiye kubazwa kubigendanye n'irangira y'amasezerano y'akazi kuko kuko yasheshwe ku bw'itegeko.Urwo Rukiko rwemeza ko nta gushidikanya guhari ko ubuhumyi bwe bwatewe na virusi yitwa *cytomegalovirus* yandujwe n'urushinge yari amaze gutera umurwayi wari ufite ubwandu bwa VIH/SIDA, ariko ko iyo mpanuka nta ruhare umukoresha yayigizemo ku buryo yabiryorezwa indishyi zingana n'imishahara yari buzinjize kugeza agiye mu kiruhuko cy'izabukuru, rusanga kandi nawe hamwe n'abo mu muryango we bari bafite inshingano yo kumenyesha Ikigo cy'Ubwiteganyirize mu Rwanda ko yakoze impanuka ariko kuba yarirukanwe bitabanje kumenyeshwa Umugenzuzi w'Umurimo ari ukumwirukana nta mpamvu nk'uko byemejwe n'Urukiko rubanza bityo rwanzura ko indishyi z'akababaro, izo kwirukanwa mu buryo bunyuranyije n'amategeko, iz'integuza n'iz'imperekeza zigumaho,

rutegeka ko indishyi zijyanye n'imishahara ingana n'ibyo yari buzinjize mu gihe yari asigaje kugira ngo ajye mu kiruhuko cy'izabukuru zivanyweho.

Murekatete ntiyishimiye imikirize y'urubanza arujuririra mu Rukiko rw'Ikirenga ariko nyuma y'ivugururwa ry'inkiko, urubanza rwoherezwa mu Rukiko rw'Ubujurire hashingiwe ku biteganywa n'Itegeko rigena ububasha bw'Inkiko, habanza gusuzumwa inzitizi yatanzwe na Diyosezi Gatorika ya Byumba y'iburabubasha bubasha bw'Urukiko rw'Ubujurire kuko indishyi zagenwe mu rubanza zitageze kuri 50.000.000 Frw.Urwo Rukiko rwasanze Urukiko Rwisumbuye rwarageneye amafaranga y'indishyi arenga 50.000.000 Frw aherwaho hasuzumwa ububasha bw'Urukiko rw'Ikirenga bushingiye ku gaciro k'indishyi zagenwe n'Urukiko, bityo kuba Urukiko Rukuru rutaragennye indishyi zingana nibura na 50.000.000 Frw akaba ataribyo byabuza uru Rukiko kugira ububasha bwo kuburanisha urubanza kandi bigaragara ko ku rwego rwa mbere, rwagenwemo indishyi zirushyira mu bubasha bwarwo.

Diyosezi yongeye itanga nanone iyindi nzitizi ivuga ko ubujurire bwa Murekatete budakwiye kwakirwa kuko nyuma yo kubona ko imishyikirano yarimo na yo inaniranye, yari afite gusa igihe kingana n'imyaka ibiri yo kuregera Urukiko ariko ko yayirengeje kandi ko atari yemerewe kurega atabanje gushyikiriza ikibazo cye uhagarariye abakozi mu kigo n'ibinanirana agishyikirize Umugenzuzi w'Umurimo mbere yo kuregera Urukiko. izo nzira akaba arizo zibanziriza kuregera Inkiko byaba bitakozwe ikirego nticyakirwe izo nzitizi akaba ari ndemyagihugu kuko zibuza Urukiko kwakira ikirego iyo ibisabwa n'Itegeko ry'umurimo bitubahirijwe.

Murekatete avuga ko inzitizi zo kutakira ikirego zitafatwa nka ndemyagihugu, bityo ko mu gihe zitatanzwe mu nyandiko ya Diyosezi Gatorika ya Byumba itanga ikirego cyangwa ngo zibyutswe mu nama ntegurarubanza, uru Rukiko rudakwiye kuzakira ngo ruzisuzume

Incamake y'ikibazo: 1.Ubuzime burangiza uburenganzira (prescription extentive) cyangwa kurangira kw'ibihe bizwi bigira ingaruka zimwe n'iz'inzitizi zisanzwe, iyo nzitizi ntabwo ari ndemyagihugu kandi Urukiko rutemewe kuyibyutsa ribyibwirije.

2. Inzitizi ndemyagihugu nizo zonyine zishobora gutangwa aho urubanza rwaba rugeze hose, bityo mu gihe iyo nzitizi atari ndemyagihugu ntabwo yakwakirwa ngo isuzumwe ku rwego urwo arirwo rwose cyangwa se ko Urukiko rwazibyutsa rubyibwirije.

Inzitizi y'iburabubasha nta shingiro ifite.
Iburanisha ry'urubanza mu mizi rizakomeza.

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 6,72 agace ka 7, 129.

Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 140,142

Imanza zashingiweho:

SETRAPCO v BARBARA A. STIEFEL FOUNDATION, RCOMA 0153/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 04/04/2014.

Inyandiko za bahanga:

Serge Guinchard et alii [sous la dir.], Droit et pratique de la procédure civile, Paris: Dalloz, 2014,

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gicumbi, MUREKATETE Jovia avuga ko yari umuforomokazi mu Bitaro bya Kiziguro guhera ku wa 01/01/2008, akoreshwa na Diyosezi Gatorika ya Byumba, aza kugira impanuka mu kazi ku wa 17/07/2009, kuko yijombye urushinge yari amaze gutera umurwayi wabanaga n'ubwandu bwa sida yari amaze kuvura. Murekatete Jovia yahise ashyirwa ku miti yo kurwanya ubwandu, ariko nyuma y'igihe gito afatwa n'uburwayi bw'ubuhumyi, agendera ko. Yavuze ko yagerageje kwivuriza mu bitaro bitandukanye ariko ntibyagira icyo bitanga bitewe n'uko abaganga basanze ubuhumyi bwe bwaratewe n'icyitwa glucone gifata imyakura igaburira amaraso. Yavuze ko Ibitaro bya Kiziguro yakoreraga bitigeze bimenyesha Ikigo cy'Ubwiteganyirize mu Rwanda (RSSB) iby'iyo mpanuka, ahubwo ko nyuma y'amezi atatu ahuye n'iyo mpanuka byihutiye kumusezerera ku kazi, ntihagira n'ubundi bufasha ahabwa ku buryo byageze aho abura uko yivuza kubera ubukene.

[2] Murekatete Jovia yavuze ko yivuje ari uko akorewe ubuvugizi na *syndicat* y'abaforomo, abaganga baza kwemeza ko afite ubumuga buhoraho bwa 46%, Minisiteri y'Ubuzima isabwa gukora ubushakashatsi kugirango hamenyekane niba impanuka yaratewe n'imiti yahawe ariko ibyavuye mu bushakashatsi ntiyabimenyeshwa. MUREKATETE Jovia yareze Diyosezi Gatorika ya Byumba asaba indishyi zuko yirukanwe mu buryo bunyuranyije n'amategeko no kumenya niba ubuhumyi bwe bukomoka ku miti yafashe n'uruhare umukoresha yabigizemo.

[3] Mu rubanza no RSC00013/16/TGI/GIC rwaciwe ku wa 23/09/2016, Urukiko Rwisumbuye rwa Gicumbi rwasanze uwo Murekatete Jovia yari amaze kuvura yari afite indwara yitwa *cytomegalovirus* yandura kandi itera ubuhumyi, Minisiteri y'Ubuzima, ibinyujije mu kigo cyitwa *Rwanda Biomedical Centre,* ikaba yarakoze ubushakashatsi ku mpamvu yateye ubuhumyi ariko yanga gutangaza ibyabuvuyemo, rwanzura ko Murekatete Jovia yahuye n'impanuka y'akazi, umukoresha aho kwihutira kubimenyesha Ikigo cy'Ubwiteganyirize mu Rwanda (RSSB) kugirango yishyurirwe ubuvuzi, amuhagarikira umushahara anamusezerera mu kazi akiri mu kiruhuko cy'uburwayi, bimuvutsa amahirwe y'akazi, bituma ativuza kugeza aho uburwayi bumukomeranye akaba agomba kubana n'ubumuga buhoraho bw'ubuhumyi.Urukiko rwategetse Diyosezi Gatorika ya Byumba guha Murekatete Jovia imishahara ingana n'ibyo yari asigaje kugirango ajye mu kiruhuko cy'izabukuru ingana na 61.834.068 Frw, indishyi z'akababaro za 754.074 Frw n'indishyi z'imperekeza zingana na 125.679 Frw, yose hamwe akaba angana na 62.965.179 Frw.

[4] Diyosezi Gatorika ya Byumba ntiyishimiye imikirize y'urwo rubanza, ijuririra mu Rukiko Rukuru ivuga ko ntacyo ikwiye kubazwa kubigendanye n'irangira ry'amasezerano y'akazi hagati yayo na Murekatete Jovia kuko yasheshwe ku bw'itegeko.

[5] Mu rubanza N° RSOCA 00222/2016/HC/KIG rwaciwe ku wa 19/10/2017, Urukiko Rukuru rwasanze nubwo "expertise médicale" yasabwe Ibitaro bya Kaminuza bya Kigali (CHUK) ku burwayi bw'ubuhumyi kugirango hamenyekane niba Murekatete Jovia yasubizwa mu kazi ntayigaragara muri dosiye, nta gushidikanya guhari ko ubuhumyi bwe bwatewe na virusi yitwa cytomegalovirus yandujwe n'urushinge yari amaze gutera umurwayi wari ufite ubwandu bwa VIH/SIDA, ariko ko iyo mpanuka nta ruhare umukoresha yayigizemo ku buryo yabiryorezwa indishyi n'imishahara bya 61.834.068 Frw bingana n'ibyo Murekatete Jovia yari

buzinjize kugeza agiye mu kiruhuko cy'izabukuru, bityo ko guca umukoresha izo ndishyi hashingiwe ku biteganywa n'ingingo ya 4 n'iya 5 y'Itegeko no 05/2015 ryo ku wa 30/03/2015 rigenga imitunganyirize y'ubwiteganyirize bwa pansiyo ari amakosa.

[6] Urukiko rwasanze kandi Murekatete Jovia atagaragaza ko amasezerano yasheshwe mbere y'amezi atandatu ateganywa n'amategeko kuva aho akoreye impanuka, rusanga kandi nawe hamwe n'abo mu muryango we bari bafite inshingano yo kumenyesha Ikigo cy'Ubwiteganyirize mu Rwanda ko yakoze impanuka mu gihe kitarenze imyaka ibiri, icyakora kuba yarirukanwe bitabanje kumenyeshwa Umugenzuzi w'Umurimo mu Karere ka Gicumbi ari ukumwirukana nta mpamvu nk'uko byemejwe n'Urukiko Rwisumbuye rwa Gicumbi, rwanzura ko indishyi z'akababaro, izo kwirukanwa mu buryo bunyuranyije n'amategeko iz'integuza n'iz'imperekeza zategetswe ku rwego rwa mbere zigumaho, rwanzura ko urubanza RSOC 00013/2016/TGI/GIC rwaciwe n'Urukiko Rwisumbuye rwa Gicumbi kuwa 23/09/2016 ruhindutse kuri bimwe, rutegeka ko indishyi zijyanye n'imishahara ingana n'ibyo Murekatete Jovia yari buzinjize mu gihe yari asigaje kugira ngo ajye mu kiruhuko cy'izabukuru zivanyweho.

[7] Murekatete Jovia ntiyishimiye imikirize y'urubanza arujurira mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rwirengagije ingingo ya 94 (1) y'Itegeko no 13/2009 ryo ku wa 27/5/2009 rigenga umurimo mu Rwanda isaba umukoresha kumenyesha ikigo gishinzwe ubwiteganyirize bw'abakozi n'umugenzuzi w'umurimo mu Karere mu gihe cy'iminsi ine (4) y'akazi impanuka zose ziturutse ku kazi, gusuzuma icyakorwa igihe umukoresha atubahirije izi nshingano bikagira ingaruka ku mukozi. Murekatete Jovia yavuze kandi ko hirengagijwe uburyo ibigenerwa umukozi wagize impanuka y'akazi bibarwa hashingiwe ku biteganywa n'ingingo ya 16 y'Itegeko no 06/2003 ryo ku wa 22/3/2003 rihindura kandi ryuzuza Itegeko-Teka ryo ku wa 22/8/1974 rigena imikorere y'Ikigo cy'Ubwiteganyirize mu Rwanda.

[8] Ubujurire bwa Murekatete Jovia bwanditswe kuri No RSOCAA 00003/2017/SC, ariko nyuma y'ivugururwa ry'urwego rw'ubucamanza, urubanza rwoherezwa mu Rukiko rw'Ubujurire hashingiwe ku biteganywa n'ingingo ya 105 y'Itegeko no 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko.

[9] Urubanza rwaburanishijwe mu ruhame ku wa 12/11/2018, habanza gusuzumwa inzitizi yatanzwe na Diyosezi Gatorika ya Byumba ivuga ko ubujurire butari mu bubasha bw'Urukiko rw'Ubujurire kuko indishyi zagenwe mu rubanza zitageze kuri 50.000.000 Frw.

[10] Mu rubanza rubanziriza urundi rwaciwe ku wa 07/12/2018, Urukiko rwasanze Urukiko Rwisumbuye rwa Gicumbi rwarageneye Murekatete Jovia amafaranga y'indishyi arenga 50.000.000 Frw ashingirwaho hasuzumwa ububasha bw'Urukiko rw'Ikirenga bushingiye ku gaciro k'indishyi zagenwe n'Urukiko, kuba Urukiko Rukuru rutaragenye indishyi zingana nibura na 50.000.000 Frw akaba ataribyo byabuza uru Rukiko kugira ububasha bwo kuburanisha urubanza bigaragara ko, ku rwego rwa mbere, rwagenwemo indishyi zirushyira mu bubasha bwarwo, rwanzura ko inzitizi nta shingiro ifite.

[11] Iburanisha ry'urubanza ryakomeje mu ruhame ku wa 15/01/2019, Murekatete Jovia ahagarariwe na Me Rwenga Etienne, Me Kabagema aphrodis na me irafasha félix, diyosezi, gatorika ya byumba ihagarariwe na me Twajamahoro Herman na Me Sadi Jashi.

[12] Ababuranira Diyosezi Gatorika ya Byumba bavuga ko Murekatete Jovia atigeze ashyikiriza ikibazo cye uhagarariye abakozi mu Bitaro bya Kiziguro, ngo nibinanirana agishyikirize Umugenzuzi w'Umurimo mbere yo kuregera Urukiko. Bavuze kandi ko nyuma yo

kutumvikana hagati ya Diyosezi Gatorika ya Byumba na Murekatete Jovia, uyu yari afite imyaka ibiri yo kuregera Urukiko ariko ko yayirengeje, ko izo ari nzitizi ndemyagihugu batanze ku nzego zose, Urukiko Rwisumbuye rwa Gicumbi rwemeza ko nta shingiro zifite, naho Urukiko Rukuru ruraziburanisha ariko ntizagaragara mu cyemezo cyarwo, bavuga ko nta kibuza ko zatangwa no kuri uru rwego.

[13] Ababuranira Murekatete Jovia bavuga ko izo nzitizi zidakwiye gusuzumwa mu Rukiko rw'ubujurire kuko atari ndemyagihugu kandi Diyosezi Gatorika ya Byumba ikaba itarazijuririye.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba inzitizi zitanzwe na Diyosezi Gatorika ya Byumba zakwakirwa zigasuzumwa.

[14] Me TWAJAMAHORO Herman na Me SADI Jashi, baburanira Diyosezi Gatorika ya Byumba, bavuga ko MUREKATETE Jovia atabanje gushyikiriz ikirego cye uhagarariye abakozi mu Bitaro bya Kiziguro, ko iyo abikora bikananirana yari kuregera Umugenzuzi w'Umurimo mu Karere, izo nzira akaba arizo zibanziriza kuregera Inkiko byaba bitakozwe ikirego nticyakirwe. Bavuga ko uretse ibyo, MUREKATETE Jovia yaregeye Urukiko hashize imyaka ibiri yarananiwe kumvikana na Diyosezi Gatorika ya Byumba, izo nzitizi ari ndemyagihugu kuko zibuza Urukiko kwakira ikirego iyo ibisabwa n'Itegeko ry'umurimo bitubahirijwe. Bavuga ko bari bajuririye icyemezo cy'Urukiko Rwisumbuye rwa Gicumbi rwemeje ko nta shingiro zifite, ariko Urukiko Rukuru rusuzuma urubanza mu mizi ntacyo ruzivuzeho, ariyo mpamvu basanga, hashingiwe ku biteganywa n'ingingo ya 140 n'iya 142 z'Itegeko no 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda ryakoreshwaga icyo gihe n'ingingo ya 72 igika 6, n'iya 129 z'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburashirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, nta kibuza ko uru Rukiko rwakira izo nzitizi kugirango bazisobanureho.

[15] Me Rwenga Etienne, Me Kabagema Aphrodis na Me Irafasha Félix, baburanira Murekatete Jovia, bavuga ko kuba inzitizi Diyosezi Gatorika ya Byumba yari yatanze zitarasuzumwe n'Urukiko Rukuru, byayihaga inshingano zo kujurira cyangwa se gutanga ubujurire bwuririye ku bundi ariko ko ntacyo yakoze muri ibyo byombi. Bavuga ko inzitizi zo kutakira ikirego zitafatwa nka ndemyagihugu, bityo ko mu gihe zitatanzwe mu nyandiko ya Diyosezi Gatorika ya Byumba itanga ikirego cyangwa ngo zibyutswe mu nama ntegurarubanza, uru Rukiko rudakwiye kuzakira ngo ruzisuzume.

UKO URUKIKO RUBIBONA

[16] Ingingo ya 6 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″ ikiburanwa kigenwa n'ibisabwa na buri muburanyi. Ibisabwa bigaragarira mu myanzuro iregera urukiko n'imyanzuro yo kwiregura, bigashimangirwa burundu mu nama ntegurarubanza ku manza iteganyijwemo″.

[17] Ingingo 72, agace 7 y'iryo tegeko iteganya ko ″Perezida w'Inteko iburanisha asuzumira hamwe n'ababuranyi inzitizi ku rubanza, zaba zitarakemuriwe mu nama ntegurarubanza, akazifataho icyemezo. Nta nzitizi zindi zakirwa uretse izishingiye ku mategeko ndemyagihugu

zishobora kwakirwa igihe icyo aricyo cyose″ naho ingingo ya 129 y'iryo tegeko ikaba iteganya ko ″impamvu ituma ikirego kitakirwa igaragazwa mu myanzuro yo kwiregura. Iyo ari ndemyagihugu, nko kurenza igihe cyo kujurira, kutagira ububasha, ubushobozi cyangwa inyungu byo kurega, ishobora kubyutswa n'umuburanyi cyangwa urukiko rubyibyirijwe igihe icyo aricyo cyose. Icyemezo gifashwe ku mpamvu zituma ikirego kitakirwa gishobora kujuririrwa cyonyine mu gihe icyo cyemezo gifashwe gituma iburanisha rirangirira aho. Iyo icyo cyemezo gifashwe kitabuza urubanza gukomeza mu mizi, kukijurira bikorerwa hamwe n'urubanza rw'iremezo″.

[18] Ingingo ya 140 y'Itegeko n$_{o}$ 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda iteganya ko :″Iyo havutse impaka zihariye ku kazi hagati y'umukozi n'umukoresha, uruhande bireba rubanza gusaba uhagarariye abakozi iyo ahari, gukemura ayo makimbirane ku bwumvikane. Iyo intumwa z'abakozi zidashoboye gukemura ayo makimbirane, uruhande bireba rubimenyesha Umugenzuzi w'Umurimo rusaba ko yakemurwa ku bwumvikane. Iyo kumvikana bidashobotse, ikirego gishobora gushyikirizwa urukiko rubifitiye ububasha. Iyo kunyura mu nzego zivugwa muri iyi ngingo bitubahirijwe, urukiko rushobora gufata icyemezo cyo kutakira ikirego″.

[19] Ingingo ya 142 y'iryo tegeko rigenga umurimo iteganya ko″ Uburenganzira ku birego byose bituruka ku kutumvikana ku birebana n'amasezerano y'akazi yasinywe hagati y'impande zombi hakurikijwe iri tegeko bigira ubuzime nyuma y'imyaka ibiri (2) uhereye igihe ukutumvikana byatangiriye. Icyo gihe kireka gukomeza kubarwa iyo habayeho gusaba guhuza impande zombi bisabwe intumwa y'abakozi, Umugenzuzi w'umurimo cyangwa ikirego gishyikirijwe urukiko″.

[20] Dosiye y'urubanza igaragaza ko mu myanzuro yayo imbere y'Urukiko Rwisumbuye rwa Gicumbi, Diyosezi Gatorika ya Byumba yavuze ko Umugenzuzi w'Umurimo yohereje Murekatete Jovia mu Rukiko atabanje gusuzuma ko ikibazo cye cyahereye ku muyobozi w'abakozi mu Bitaro bya Kiziguro, ko Umuyobozi w'Umurimo atagaragaje mu ibaruwa ye niba kumvikana byarakunze cyangwa byaranze, ingingo zumvikanweho, izitarumvikanweho n'impamvu yabyo, ndetse n'icyo avuga kuri buri ngingo. Diyosezi Gatorika ya Byumba yavuze kandi ko Umugenzuzi w'Umurimo yandikiye Urukiko Rwisumbuye rwa Nyagatare naho Murekatete Jovia aregera Urukiko Rwisumbuye rwa Gicumbi, nabyo abikora nyuma y'imyaka itanu asezerewe mu kazi kuko yaherukaga guhembwa mu Kuboza 2009 aregera Inkiko mu 2016, ko izo mpamvu zose ari inzitizi zikwiye gutuma Urukiko rwemeza ko ikirego kitakiriwe.

[21] Dosiye y'urubanza igaragaza ko mu rubanza No RSOCC 0037/16/TGI/GIC rwaciwe ku wa 29/07/2016, Urukiko Rwisumbuye rwa Gicumbi rwasanze hari ibaruwa Ibitaro bya Kiziguro byandikiye Ibitaro bya Kaminuza bya Kigali ku wa 08/01/2014 byemera ko Murekatete Jovia ari umukozi wabyo, ukutumvikana kuvuka ku wa 31/03/2014, Murekatete aregera Umugenzuzi w'Umurimo mu 2015, bityo ko kuba yaratanze ikirego cye mu Rukiko ku wa09/02/2016, bigaragaza ko yari akiri mu bihe biteganywa n'amategeko. Urukiko rwasanze kandi nta makosa Murekatete Jovia yakoze aregera Umugenzuzi w'Umurimo w'Akarere ka Gatsibo kuko uyu ari we wari ufite ububasha aho Ibitaro bya Kiziguro bikorera, akaba kandi atari kwiyambaza Umuyobozi w'Abakozi mu

[22] Dosiye y'urubanza igaragaza ko Diyosezi Gatorika ya Byumba ariyo yajuririye Urukiko Rukuru, muri dosiye ivuga ko nta kibazo cy'ububasha bw'Urukiko ifite, igeze mu iburanisha ryo ku wa 13/06/2017 irongera izamura inzitizi zari zatanzwe ku rwego rwa mbere, naho Me Kabagema Aphrodis, waburaniraga Murekatete Jovia, avuga ko izo nzitizi zaburanweho zinafatwaho icyemezo n'Urukiko Rukuru ariko inteko iza guhinduka bityo ko yumva nta

mpamvu yo kuzigarukaho. Kuri iyo ngingo Me Twajamahoro Herman yasubije ko « urubanza rwari rugeze kure, ruburanishwa kandi hari n'ibyemezo byarufashwemo kubera ko inteko yahindutse, urubanza rwatangira rwose», naho Me Sadi Jashi avuga ko «Itegeko riteganya ko iyo umucamanza ahindutse ashobora gukomeza aho byari bigeze cyangwa agatangira bundi bushya», Me Kabagema Aphrodis we yavuze ko ibigarukwaho ari ibitarafashweho icyemezo mu rwego rwo kwirinda ko hafatwa ibyemezo bivuguruzanya. Iburanisha ryarasubitswe kugirango Urukiko rubanze rusuzume ibyemezo byafashwe kuri izo nzitizi, urubanza rusubukurwa ku wa 13/07/2017, Urukiko rwemeza ko bitakiri ngombwa kugaruka ku nzitizi zafashweho icyemezo n'undi mucamanza, rutegeka ko urubanza rukomereza aho rwari rugeze.

[23] Urukiko rurasanga mu iburanisha ry'uru rubanza ryabaye ku wa 15/01/2019, ababuranira Diyosezi Gatorika ya Byumba bariyemereye ko inzitizi batigeze bazijurira muri uru Rukiko, bakaba ntazo bagaragaje mu bujurire bwuririye ku bundi cyangwa ngo bazitange mu nama ntegurarubanza, ariko bakavuga ko bemerewe kuzitanga aho urubanza rwaba rugeze hose kuko ari inzitizi ndemyagihugu, naho ababuranira Murekatete Jovia bo bakavuga ko izo nzitizi ziba zaratanzwe mbere, bityo zikaba zidakwiriye kwakirwa ngo zisuzumwe kuko atari ndemyagihugu.

[24] Urukiko rurasanga ingingo ya 140 y'Itegeko No 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda ryakoreshwaga Murekatete Jovia atanga ikirego yumvikanisha ko umukozi utanyuze mu nzego ziyivugwamo, Urukiko rushobora gufata icyemezo cyo kutakira ikirego, ijambo «rushobora» ryakoreshejwe n'Umushingamageteko ryumvikanisha ko Urukiko rudategetswe byanze bikunze kutakira ikirego iyo imihango iteganyijwe n'iyo ngingo itubahirijwe, ahubwo, mu bushishozi bwarwo, rusuzuma ishingiro ry'impamvu zatumye iyo mihango itubahirizwa rwasanga inyungu z'ubutabera zitegeka ko ikirego kiburanishwa, rukemeza ko cyakiriwe rukakiburanisha, ntabwo rero Umushingamategeko yaba yarahaye Urukiko ubwo bwinyagamburiro ngo byongere bivugwe ko iyo nzitizi ari ndemyagihugu yabyutswa igihe icyari cyo cyose n'aho urubanza rwaba rugeze hose cyangwa yazamurwa n'Urukiko rubyibwirije nk'uko biteganywa n'ingingo ya 129 y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[25] Urukiko rurasanga na none ibiteganywa n'ingingo ya 142 y'Itegeko no 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda by'uko uburenganzira ku birego byose bituruka ku kutumvikana ku birebana n'amasezerano y'akazi bigira ubuzime mu gihe cy'imyaka ibiri bifatwa nk'inzitizi zisanzwe aho kuba iz'indemyagihugu. Abahanga mu mategeko bakaba bavuga ko ubuzime burangiza uburenganzira (prescription extentive) cyangwa kurangira kw'ibihe bizwi bigira ingaruka zimwe n'iz'inzitizi zisanzwe (la prescription extinctive et l'expiration d'un délai prefix produisent sur l'action un effet extinctif semblable, identiquement sanctionné par une fin de non recevoir), kandi ko iyo nzitizi nta na rimwe iba ndemyagihugu kandi ko Urukiko rutemewe kuyibyutsa ribyibwirije (la fin de non recevoir tirée da la prescription est d'interet privée: le juge ne peut la soulever d'office).[1]

[26] Urukiko rurasanga nk'uko biteganywa n'ingingo ya 129 y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi kandi byagiye bigarukwaho n'Urukiko rw'Ikirenga nko mu rubanza SETRAPCO yaburanaga na Barbara A. Stiefel Foundation, inzitizi ndemyagihugu nizo zonyine zishobora

[1] Serge Guinchard et alii [sous la dir.], Droit et pratique de la procédure civile, Paris: Dalloz, 2014, p.44

gutangwa aho urubanza rwaba rugeze hose,[2] bityo mu gihe Doyosezi Gaturika ya Byumba itagaragaza ko inzitizi itanga ari ndemyagihugu uru Rukiko rukaba ntaho rwahera rwemeza ko inzitizi yatanze zakwakirwa ngo zisuzumwe ku rwego urwo arirwo rwose cyangwa se ko Urukiko rwazibyutsa rubyibwirije.

[27] Hashingiwe ku bimaze gusobanurwa haruguru, ku biteganywa n'ingingo ya 72, agace ka 7 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko nta nzitizi zindi zakirwa uretse izishingiye ku mategeko ndemyagihugu zishobora kwakirwa igihe zitabyukijwe mu nama ntegurarubanza no ku kuba Diyosezi Gatorika ya Byumba itarajuririye inzitizi yifuza gutanga imbere y'uru Rukiko, ntiyitange mu nama ntegurarubanza, ndetse ikaba itanagaragara mu myanzuro yayo nk'ubujurire bwuririye k'ubwa Murekatete Jovia, Urukiko rurasanga inzitizi zitangwa na Diyosezi Gatorika ya Byumba zo kutakira ikirego cya Murekatete Jovia zidakwiye kwakirwa ngo zisuzumwe.

III. ICYEMEZO CY'URUKIKO

[28] Rwemeje kutakira ngo rusuzume inzitizi zatanzwe na Diyosezi Gatorika ya Byumba zo kutakira ubujurire bwa MUREKATETE Jovia;

[29] Ruvuze ko iburanisha ry'urubanza mu mizi rizakomeza ku wa 22/01/2019;

[30] Ruvuze ko amagarama y'urubanza asubitswe.

[2] Reba urubanza No RCOMA 0153/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 04/04/2014, haburana SETRAPCO na Barbara A. Stiefel Foundation, 2015.