MUKARUSHAKIRO N'ABANDI v. GAHIRE

[Rwanda URUKIKO RW'IKIRENGA – RCAA0002/15/CS (Mugenzi, P.J., Gatete na Munyangeri, J.) 20 Mutarama 2017]

Amategeko agenga ububasha bw'Inkiko – Ububasha bw'Urukiko rw'Ikirenga – Ububasha mu rwego rw'ubujurire – Impamvu z'ubujurire – Itegeko ritariho – Kwibeshya mu myandikire ku nyito y'Itegeko ntibyafatwa nko gukoresha itegeko ritigeze ribaho cyangwa se ryabayeho nyuma rikavanwaho mu gihe bigaragara ko ibirikubiyemo bihura n'ibiteganyijwe mu Itegeko ryagombaga gukoreshwa.

Amategeko agena ububasha bw'Inkiko – Ububasha bw'Urukiko rw'Ikirenga – Inzitizi y'iburabubasha – Mu gihe urugero rw'indishyi zagenwe mu rubanza zirenze umubare w'izigenwa n'itegeko kugirango ubujurire bwa kabiri bwakirwe, ubujurire burakirwa – Itegeko Ngenga N°03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 28 agace ka 2.

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Gukosoza urubanza – Ubujurire – Ibihe by'ubujurire – Kuba Itegeko ryarateganyije ko ubujurire ku rubanza rusobanura cyangwa rukosora urundi bukorerwa rimwe n'urubanza rwasabiwe gukosorwa, ntibyumvikana nk'uburenganzira bwahabwa uwabuze kujuririra igihe urubanza rw'ibanze, ngo bumubere icyuho cyo kurujuririra nyuma y'ibihe biteganywa n'itegeko – Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 154, igika cya 2 n'icya 3.

Incamake y'ikibazo: Abazungura ba Bagenzi Jean, aribo Bagenzi Théogène, Mukarushakiro Gloriose na Mukangenzi Céline bareze Gahire kuba yarabahuguje inzu basigiwe na se. Gahire we avuga ko yayiguze n'umwe mu bazungura nawe witwa Bagenzi agejeje ku myaka y'ubukure ndetse na nyina Mukarushakiro akaba yarabaye umutangabuhamya muri ayo masezerano.

Urukiko Rwisumbuye rwa Nyarugenge rwatesheje agaciro amasezerano y'ubugure yo ku wa 5/11/1996 n'ayo ku wa 4/11/1997, hagati ya Bagenzi na Gahire kubera ko igihe yakorewe, Bagenzi atari yakagize ubushobozi bwo gukora amasezerano, maze rutegeka abazungura ba Bagenzi Jean kwishyura Gahire 191.713.088Frw, akayahabwa mbere y'uko atanga inzu kubera ko yaguze nta buryarya kuko Bagenzi agurisha ku wa 05/11/1996, yari kumwe n'abavandimwe be, naho amasezerano yo ku wa 4/11/1997 akaba yarakozwe Bagenzi amaze kugira imyaka y'ubukure. Mukarushakiro, Bagenzi na Mukangenzi bajuririye Urukiko Rukuru, bavuga ko urukiko rwategetse Bagenzi kwishyura ibyakozwe kandi ko Gahire yaguze nta buryarya nyamara rwaremeje ko yakoze amasezerano y'ubugure ari umwana, anakagurisha ibitari ibye. Bavuga kandi ko Urukiko rwashingiye ku buhamya bw'umuhanga "expertise" hadakozwe inyandiko y'undi muhanga ngo zigereranywe mu rwego rw'ivuguruzanya "contre expertise".

Gahire nawe yajuriye avuga ko Urukiko Rwisumbuye rwatesheje agaciro amasezerano y'ubugure kandi atari cyo cyaregewe, ko rwirengagije ko Bagenzi yagurishije afite imyaka y'ubukure, kandi ko urwo Rukiko ntacyo rwavuze ku nzitizi zari zatanzwe.

Urukiko Rukuru rwemeje ko ubujurire bwa Mukarushakiro, Bagenzi na Mukangenzi nta shingiro bufite, ariko ko ubwatanzwe na Gahire bufite ishingiro, bityo ko amasezerano y'ubugure agumyeho.

Mukarushakiro na Bagenzi bajuririye iki cyemezo mu Rukiko rw'Ikirenga ku mpamvu zimwe n'izo bashingiyeho ubujurire bwabo mu Rukiko Rwisumbuye, icyakora Mukarushakiro we yongeraho ko mu guca urubanza rujuririrwa, Urukiko rwashingiye ku itegeko ritariho.

Nyuma y'aho ibirego by'ubujurire bitangiwe, Mukangenzi yatanze ikirego cyo gukosoza urubanza mu Rukiko Rukuru, avuga ko atagaragajwe mu baburanyi nk'uwajuriye. Mu rubanza RCA0039/2016/HC/KIG rwo ku wa 09/11/2016 rukosora urundi, hemejwe ko ikirego cye nta shingiro gifite kuko nta kosa ryakozwe rihari rikwiye gukosorwa.

Nyuma y'icyo cyemezo ku kirego gikosoza urubanza rw'Urukiko Rukuru, Mukangenzi nawe yajuririye Urukiko rw'Ikirenga, avuga ko Urukiko Rukuru rwivuguruje rukanitiranya ibintu kandi ko rwashingiye ku manza zo mu mahanga zivuguruza amategeko y'u Rwanda ku byerekeranye n'uwakoze amasezerano ataragira imyaka y'ubukure. Avuga kandi ko rwakoresheje nabi ingingo ya 159 y'Itegeko rigenga amasezerano ku byerekeranye n'igihe ntarengwa cyo gukurikirana no gufata amasezerano yakozwe n'umuntu udafite imyaka y'ubukure nk'aho yemewe, rubiheraho rutwerera Gahire ukutagira uburyarya.

Gahire yatanze inzitizi y'iburabubasha ry'Urukiko rw'Ikirenga avuga ko ubujurire bwa Mukarushakiro n'ubwa Bagenzi mu Rukiko rw'Ikirenga ari ubwo ku rwego rwa kabiri, nyamara bakaba batagaragaza ko ubwo bujurire bwujuje ibisabwa n'itegeko, kugira ngo bube mu bubasha bw'Urukiko rw'Ikirenga. Yanatanze kandi inzitizi yo kutakira ubujurire bwa Mukangenzi avuga ko yifashishije inzira yo gukosoza urubanza nk'amayeri kugirango abone uko ajurira mu gihe nyamara igihe cy'ubujurire gisanzwe cyari cyamaze kurenga.

Incamake y'icyemezo: 1. Kwibeshya mu myandikire ku nyito y'Itegeko ntibyafatwa nko gukoresha itegeko ritigeze ribaho cyangwa se ryabayeho nyuma rikavanwaho mu gihe bigaragara ko ibirikubiyemo bihura n'ibiteganyijwe mu Itegeko ryagombaga gukoreshwa, bityo ingingo y'ubujurire ijyanye no kuba umucamanza ataravuze inyito y'Itegeko, n'itariki yavuze ikaba idahuye n'Itegeko nyaryo, nyamara bigaragara ko ibikubiye mu ngingo ya 431 yavuze ari ibihura n'ibikubiye mu ngingo ya 431 y'Itegeko nyaryo N^{o}42/88 ryo ku wa 27/10/1988, ryariho kandi bihuye n'ikiburanwa kijyanye n'imyaka y'ubukure, nta shingiro ifite.

2. Urugero rw'indishyi zagenwe mu rubanza rwajuririwe zihwanye na 191.713.088Frw zirenze 50.000.000Frw zigenwa n'itegeko kugirango ubujurire bwa kabiri bwemerwe mu Rukiko rw'Ikirenga, bityo inzitizi yo kutakira ikirego nta shingiro ifite.

3. Kuba Itegeko ryarateganyije ko ubujurire ku rubanza rusobanura cyangwa rukosora urundi bukorerwa rimwe n'urubanza rwasabiwe gukosorwa, ntibyumvikana nk'uburenganzira bwahabwa uwabuze kujuririra igihe urubanza rw'ibanze, ngo bumubere icyuho cyo kurujuririra nyuma y'ibihe biteganywa n'itegeko, abinyujije mu kubanza kurusabira gusobanurwa cyangwa gukosorwa.

4. Hashingiwe ku ihame rivuga ko uburiganya butuma ibyakozwe byose bita agaciro, n'inyandiko z'abahanga mu mategeko zisobanura ko inzira yo gusobanuza cyangwa gukosoza urubanza idashobora gukoreshwa hagamijwe guca iruhande inshingano yo kujurira, inzira yo

kubanza gukosoza urubanza hagamijwe kujurira ntiyakwemerwa mu gihe igihe cyo kujurira gisanzwe cyarenze.

Inzitizi y'iburabubasha nta shingiro ifite.
Inzitizi yo kutakira ubujurire ifite ishingiro.
Igice kimwe cy'amagarama giherereye ku wajuriye ubujurire bwe butakiriwe.
Igice gisigaye cy'amagarama kirasubitswe.
Iburanisha mu mizi rizakomeza.

Amategeko yashingiweho:
Itegeko Ngenga N°03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 28 agace ka 2.
Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 154, igika cya 2 n'icya 3.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mu Rukiko Rwisumbuye rwa Nyarugenge, abazungura ba Bagenzi, aribo Bagenzi Théogène, Mukarushakiro Gloriose na Mukangenzi Céline, bahagarariwe na Mukarushakiro Gloriose, bareze Gahire Athanase kuba yarabahuguje inzu basigiwe na se, Gahire we akavuga ko yayiguze na Bagenzi agejeje ku myaka y'ubukure, hari nyina Mukarushakiro, nk'umutangabuhamya.

[2] Mu rubanza N° RC0774/11/TGI/NYGE rwo ku wa 20/03/2013, Urukiko Rwisumbuye rwa Nyarugenge, rwemeje ko ikirego cy'abazungura ba Bagenzi gifite ishingiro, rwemeza ko amasezerano y'ubugure yo ku wa 5/11/1996 n'ayo ku wa 4/11/1997, hagati ya Bagenzi na Gahire ateshejwe agaciro, rutegeka abazungura ba Bagenzi Jean kwishyura Gahire 191.713.088Frw, akayahabwa mbere y'uko atanga inzu.

[3] Urwo Rukiko rwasobanuye ko ayo masezerano yakozwe na Bagenzi adafite ubushobozi, ariko ko Gahire yaguze nta buryarya, kuko Bagenzi agurisha ku wa 05/11/1996, yari kumwe n'abavandimwe be, naho amasezerano yo ku wa 4/11/1997 akaba yarakozwe Bagenzi amaze kugira imyaka y'ubukure, kandi hari na Uwimana Monique, nyina wa Mukarushakiro, nk'umutangabuhamya.

[4] Mukarushakiro, Bagenzi na Mukangenzi bajuririye Urukiko Rukuru, bavuga ko umucamanza yategetse Bagenzi kwishyura ibyakozwe kandi rwaremeje ko yakoze amasezerano y'ubugure ari umwana, agurisha ibitari ibye, hakaba kandi harashingiwe kuri "expertise" hadakozwe "contre expertise", Urukiko kandi rukaba rwarivuguruje rwemeza ko Gahire yaguze nta buryarya, rukanavuga ko amasezerano y'ubugure nta gaciro afite.

[5] Gahire nawe yajuriye avuga ko Urukiko Rwisumbuye rwatesheje agaciro amasezerano y'ubugure kandi atari cyo cyaregewe, ko rwirengagije ko Bagenzi yagurishije afite imyaka y'ubukure, kuko yavutse ku wa 1/01/1976 nk'uko biboneka ku irangamuntu ye no ku cyemezo cy'amavuko, kandi ko urwo Rukiko ntacyo rwavuze ku nzitizi zari zatanzwe.

[6] Mu rubanza RCA0229- RCA0231/13/HC/KIG rwo ku wa 27/06/2014, Urukiko Rukuru rwemeje ko ubujurire bwa Mukarushakiro, Bagenzi na Mukangenzi, nta shingiro bufite, ko ubwatanzwe na Gahire bufite ishingiro, rwemeza ko urubanza RC0774/11/TGI/NYGE ruhindutse kuri byose, ko Gahire atahuguje umutungo uburanwa, ayo masezerano akaba agumyeho.

[7] Ku wa 27/07/2014, Mukarushakiro na Bagenzi bajuririye Urukiko rw'Ikirenga, bavuga ko umucamanza mu Rukiko Rukuru yirengagije ko Bagenzi yagurishije ibitari ibye, aha agaciro "expertise" y'ibyakozwe ku nzu nta "contre expertise" ikozwe, kandi yemeza ko amasezerano y'ubugure ya mbere yuzuza aya kabiri, runemeza ko Uwimana Monique yari ahari, ataribyo, hanyuma yemeza ko Gahire yaguze nta buryarya.

[8] Ku wa 11/10/2016, Mukangenzi yatanze ikirego cyo gukosoza urubanza mu Rukiko Rukuru, avuga ko atagaragajwe mu baburanyi nk'uwajuriye. Mu rubanza RCA0039/2016/HC/KIG rwo ku wa 09/11/2016 rukosora urundi, hemejwe ko ikirego cye nta shingiro gifite, ko nta kosa ryakozwe, kuko, n'ubwo izina rye ritanditswe mu ntangiriro y'urubanza ahagaragazwa ababuranyi, yagaragajwe nk'umuburanyi mu gice cy'imiterere y'urubanza no mu kirusobanura, ndetse no mu cyemezo cyarwo.

[9] Nyuma y'icyo cyemezo ku kirego gikosoza urubanza rw'Urukiko Rukuru, Mukangenzi nawe yajuririye Urukiko rw'Ikirenga, avuga ko Urukiko Rukuru rwivuguruje rukitiranya ibintu, kuko rwemeje ko bakererewe gukurikirana umutungo wabo, kandi nta gihe ntarengwa cyo kuwukurikirana giteganywa, runakoresha nabi ingingo ya 339 y'Igitabo cya Mbere cy'Urwunge rw'amategeko Mbonezamubano (CCL I), ruvuga ko Mukangenzi wagizwe umwana na Gahire adakwiye kuzungura kandi ahubwo yaremewe nk'umwana (reconnaissance).

[10] Avuga ko Urukiko Rukuru rwashingiye ku manza zo mu mahanga, zivuguruza amategeko y'u Rwanda ku byerekeranye n'uwakoze amasezerano ataragira imyaka y'ubukure, runakoresha nabi ingingo ya 159 y'Itegeko rigenga amasezerano, ku byerekeranye n'igihe ntarengwa cyo gukurikirana no gufata amasezerano yakozwe n'umuntu udafite imyaka y'ubukure nk'aho yemewe, rubiheraho rutwerera Gahire ukutagira uburyarya.

[11] Gahire yatanze inzitizi y'iburabubasha ry'Urukiko rw'Ikirenga ku bijyanye n'ubujurire bwa Mukarushakiro n'ubwa ba Bagenzi, anatanga inzitizi yo kutakira ubujurire bwa Mukangenzi kuko yajuriye akerewe.

[12] Urubanza rwaburanishijwe mu ruhame ku wa 06/12/2016, Mukarushakiro ahagarariwe na Me Sebineza Evariste, Bagenzi Théogène yunganiwe na Me Sebineza Evariste na Me Semuhunga N. Silas, Mukagenzi Céline ahagarariwe na Me Buhuru P. Célestin, naho Gahire Athanase yunganiwe na Me Butare Godefroid na Me Mbaga Tuzinde Mbonyimbuga, habanza gusuzumwa inzitizi zavuzwe haruguru zatanzwe na Gahire.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

A. Kumenya niba ubujurire bwa Mukarushakiro n'ubwa Bagenzi buri mu bubasha bw'Urukiko rw'Ikirenga.

[13] Me Butare na Me Mbaga, bunganira Gahire, bavuga ko ubujurire bwa Mukarushakiro n'ubwa Bagenzi mu Rukiko rw'Ikirenga ari ubwo ku rwego rwa kabiri, nyamara akaba atagaragaza ko ubwo bujurire bwujuje ibisabwa n'itegeko, kugira ngo bube mu bubasha bw'Urukiko rw'Ikirenga, nk'uko biteganywa mu ngingo ya 28 agace ka 2 y'Itegeko Ngenga N^{o}03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga.

[14] Basobanura ko impamvu Mukarushakiro yagaragaje muri ubwo bujurire, yo kuba umucamanza yarashingiye ku Itegeko ritariho, nta shingiro ifite, kuko hashingiwe ku ngingo ya 159 y'Itegeko N^{o}45/11 ryo ku wa 25/11/2011 rigenga amasezerano, kandi iryo Tegeko ririho, iyo mpamvu ikaba rero idahuye n'ibiteganywa mu ngingo ya 28 yavuzwe haruguru, kuko n'iyo umucamanza yaba yarasobanuye (interprétation) nabi ingingo y'Itegeko, bitakwitwa ko ritariho.

[15] Me Buhuru, uburanira Mukangenzi avuga ko, nk'uko biboneka mu gace ka 20 k'urubanza rujuririrwa, umucamanza yashingiye ku Itegekoritariho kubera ko yashingiye ku Itegeko ryo mu 1963, ryasimbuwe n'Itegeko N^{o}42/1988 ryo ku wa 27/10/1988.

[16] Me Sebineza na Me Semuhunga, baburanira Mukarushakiro na Bagenzi, bavuga ko, nk'uko biboneka mu gace ka 20 k'urubanza rujuririrwa, Urukiko Rukuru rwashingiye ku Itegeko ry'imbonezamubano(Code civil) ryo ku wa 28/09/1963 ritariho, kandi ko iyo itegeko rigaragajwe mu buryo butari bwo (référence), bifatwa ko hashingiwe ku itegeko ritariho. Bongeraho ko n'iyo iyo mpamvu y'ububasha bw'Urukiko itakwemerwa, ububasha bwarwo bwashingirwa ku rugero rw'indishyi zagenwe mu rubanza, zirengeje 50.000.000Frw.

UKO URUKIKO RUBIBONA

[17] Nk'uko biboneka mu gace ka 20 k'urubanza RCA0229-0231/13/HC rwajuririwe, umucamanza yavuze ko hashingiwe ku ngingo ya 431 y'Itegeko ryo ku wa 28/09/1963 iteganya ko: "ubukure bushyizwe kumyaka makumyabiri n'umwe yuzuye, kuri iyo myaka umuntu ashobora gukora ibintu byose bimuhuza n'abandi uretse ibiteganywa ukundi n'amategeko", ibi bivugwa muri iyo ngingo ariko bikaba ari ibiboneka mungingo 431 y'Itegeko N^{o}42/88 ryo ku wa 27/10/1988, rishyiraho Interuro y'Ibanze n'Igitabo cy'amategeko mbonezamubano.

[18] Urukiko rusanga, n'ubwo umucamanza atavuze inyito y'Itegeko, n'itariki yavuze ikaba idahuye n'Itegeko nyaryo, bigaragara ko ibikubiye mu ngingo ya 431 yavuze ari ibihura n'ibikubiye mu ngingo ya 431 y'Itegeko nyaryo ryariho, N^{o}42/88 ryo ku wa 27/10/1988 rivuzwe haruguru, kandi bihuye n'ikiburanwa, kijyanye n'imyaka y'ubukure, uko kwibeshya mu myandikire kukaba kutafatwa nko kuba harakoreshejwe itegeko ritigeze ribaho cyangwa se ryabayeho nyuma rikavanwaho[1].

[1] Ingingo ya 28, igika cya 2, agace ka 2 y'Itegeko Ngenga N^{o}03/2012/OL ryo ku wa 13/06/2012rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga. Iyo ngingo iteganya ko Urukikorw'ikirenga rufite ububasha bwo

[19] Urukiko rurasanga ariko, n'ubwo impamvu y'iburabubasha ry'Urukiko rw'Ikirenga ritewe no kuba Urukiko Rukuru rwaraciye urubanza rushingiye ku itegeko ritariho nta shingiro ifite, hagaragara indi mpamvu ituma uru Rukiko rugira ububasha ku kirego cy'ubujurire bwa Mukarushakiro n'ubwa Bagenzi ku rwego rwa kabiri, iyo mpamvu ikaba ari ijyanye n'urugero rw'indishyi zagenwe mu rubanza rwajuririwe, zihwanye na 191.713.088 Frw, zikaba zirenze 50.000.000 Frw, ateganywa mu ngingo ya 28, igika cya 2 agace ka 7, y'Itegeko Ngenga N^{o}03/2012/OL ryavuzwe haruguru[2].

B. Kumenya niba ubujurire bwa Mukangenzi bwaratanzwe mu bihe byubahirije amategeko.

[20] Ababuranira Gahire bavuga ko ubujurire bwa Mukangenzi budakwiye kwakirwa, kuko yajuriye nyuma y'igihe cy'iminsi 30 giteganywa n'amategeko, akaba ari amayeri yakoresheje yo kubanza gukosoza urubanza, nyuma y'imyaka ibiri ruciwe, kugira ngo abone uko yinjira mu rubanza ruburanwa. Anavuga ko kuba Urukiko Rukuru rwaremeje ko urubanza rugumanye agaciro karwo bigaragaza ko urubanza rwasabiwe gukosorwa nta kibazo rwari rufite.

[21] Basobanura ko, nk'uko biboneka mu mwanzuro wa Me Buhuru usaba gukosoza, yavuze ko yabonye atagaragara mu bajuriye mu Rukiko rw'Ikirenga, akosoza urubanza kugira ngo abone uko atanga ubujurire,hakaba rero hakwiye kwibazwa aho byagarukira, mu gihe uwakererewe kujurira wese yajya akosoza kugira ngo abone uko yinjira mu rubanza, yitwaje ingingo ya 153 y'Itegeko N^{o}21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko urubanza rwasabiwe gusobanurwa rudashobora kujuririrwa rwonyine bidakorewe rimwe n'urubanza rw'iremezo.

[22] Me Buhuru avuga ko nta mayeri yakoresheje mu gukosoza urubanza, ko ahubwo yakoresheje inzira iteganywa n'amategeko kugira ngo amakosa yari mu rubanza akosorwe, yongeraho ko n'uwakoresha amayeri atabujijwe n'itegeko nta kosa yaba akoze.

UKO URUKIKO RUBIBONA

[23] Ingingo ya 154, igika cya 2 n'icya 3 y'Itegeko N^{o}21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko urubanza rusobanura cyangwa rukosora urundi rwuzuza urubanza rwasabiwe gusobanurwa cyangwa gukosorwa, rudashobora kujuririrwa rwonyine bidakorewe rimwe n'urubanza rw'iremezo, kandi ko igihe cy'ubujurire kuri izo manza zombi gitangira kubarwa uhereye ku munsi w'isomwa ry'urubanza rusobanura cyangwa rukosora urundi.

[24] Urukiko rurasanga, kuba Itegeko ryarateganyije ko ubujurire ku rubanza rusobanura cyangwa rukosora urundi bukorerwa rimwe n'urubanza rwasabiwe gukosorwa, bitakumvikana nk'uburenganzira bwahabwa uwabuze kujuririra igihe urubanza rw'ibanze, ngo bumubere icyuho cyo kurujuririra nyuma y'ibihe biteganywa n'itegeko, abinyujije mu kubanza kurusabira

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kuburanisha mu rwego rw'ubujurire imanza zaciwe ku rwego rwa kabiri n'Urukiko Rukuru, Urukiko Rukuru rw'ubucuruzi cyangwa Urukiko Rukuru rwa Gisirikari, iyo izo manza zashingiye ku itegeko ritariho cyangwa ingingo z'amategeko zitakiriho.

[2] Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha mu rwego rw'ubujurire urubanza rwaciwe ku rwego rwa kabiri n'Urukiko Rukuru, iyo rwagenwemo n'urukiko indishyi zingana nibura na 50.000Frw.

gusobanurwa cyangwa gukosorwa. Ibi byanemejwe n'Urukiko Rusesa imanza mu Bubiligi, rusobanura ko inzira yo gusobanuza ibikubiye mu rubanza rwaciwe, itaviramo uwakererewe gusaba iseswa ry'urubanza, ngo bimuviremo guhabwa ibindi bihe bishya byo kuba yasaba iseswa ry'urubanza yasabiye gusobanurwa[3].

[25] Ku kibazo cyo kuba hatabujijwe amayeri yo kuba umuburanyi yagera ku nzira y'ubujurire nyuma y'ubukererwe nk'uko Me Buhuru abiburanisha, Urukiko rurasanga, iyo nzira y'amayeri itakwemerwa, kuko hari ihame rikomeye mu mategeko ry'uko uburiganya butuma ibyakozwe byose bita agaciro[4], n'abahanga mu mategeko bakaryungamo basobanura ko inzira yo gusobanuza cyangwa gukosoza urubanza idashobora gukoreshwa hagamijwe guca iruhande inshingano yo kujurira[5].

[26] Ku byerekeye Mukangenzi wasabye ikosorwa ry'urubanza nyuma y'imyaka ibiri ruciwe, akarujuririra hashize igihe kirenga imyaka ibiri, nyuma y'urubanza rwo ku wa 09/11/2016, Urukiko rurasanga ikosorwa ryasabwe ryari rigamije gusa gushakisha inzira y'ubujurire ku rubanza rw'ibanze rutari rwarajuririwe igihe, kuko, usibye ko nta n'icyakosozwaga kigaragara, nk'uko Urukiko Rukuru rwabigaragaje, n'ubujurire mu Rukiko rw'Ikirenga, bwakurikiye icyo cyemezo cy'Urukiko Rukuru, ntacyo bwigeze bugaragaza ko bujuririra mu byemejwe n'Urukiko Rukuru ku bijyanye n'ikosozwa ry'urubanza, ahubwo bwaboneyeho impamvu yo kugaruka ku byemejwe mu mizi y'urubanza rw'ibanze Mukangenzi atari yarajuririye mu gihe, bikaba rero bigaragara nta shiti ko ubujurire bwa Mukangenzi ku rubanza RCA0229- RCA0231/13/HC/KIG rwo ku wa 27/06/2014, bwatanzwe bukererewe, kubera iyo mpamvu, bukaba rero budakwiye kwakirwa.

III. ICYEMEZO CY'URUKIKO

[27] Rwemeje ko inzitizi y'iburabubasha ry'Urukiko rw'Ikirenga yatanzwe na Gahire Anastase, ku bujurire bwa Mukarushakiro Gloriose, n'ubwa Bagenzi Théogène, nta shingiro ifite;

[28] Rwemeje ko inzitizi yatanzwe na Gahire Anastase, yo kutakira ubujurire bwa Mukangenzi Céline ifite ishingiro, ubujurire bwe bukaba butakiriwe;

[29] Rutegetse ko iburanisha ry'urubanza rizakomeza mu mizi ku wa 14/03/2017 hasuzumwa ubujurire bwa Mukarushakiro Gloriose n'ubwa Bagenzi Théogène;

[30] Rutegetse ko icya 1/3 cy'amagarama gihereye kuri Mukangenzi Céline, naho 2/3 byayo bikaba bisubitswe

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[3]La procédure eninterprétation d'une décision judiciaire n'a pas pour effet d'ouvrir unnouveau délai pour se pourvoir en cassation contre la décision interprétée": Cass. 26 Avril2001.
[4]"Fraus Omnia corrumpit"; " La fraude corrompt tout."
[5]"La voie d'interprétation ou de rectification ne peut donc être utilisée pour contourner lanécessité d'exercer une voie de recours": Georges DE LEVAL et autres, Droit judiciaire, Tome 2,Manuel de procédure civile, Editions Larcier, Bruxelles, 2015, p.670.