MUKAZI v. MBABAZI

[Rwanda URUKIKO RW'IKIRENGA – RCAA 0027/15/CS (Mugenzi, P.J., Karimunda na Nyirandabaruta, J.) 09 Werurwe 2018]

Amategeko agenga umuryango – Ivangamutungo – Imicungire y'umutungo w'abashyingiranywe mu gihe umwe yitabye Imana – Iyo umwe mu bashyingiranywe apfuye usigaye asigarana inshingano zo gucunga umutungo wose – Itegeko Nº 22/99 ryo ku wa 12/11/1999 ryuzuza igitabo cya mbere cy'Urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, ingingo ya 70,76.

Amategeko agenga amasezerano – amasezerano yo kwikiranura – agaciro k'amasezerano yashyizweho umukono imbere ya noteri – kuba hari inenge zishingiye ku byo amasezerano agaragaza nk'ukuri kutari ko, ntiyafatwa nk'inyandiko mvaho umukozi wa Leta wabigenewe yabereye umuhamya kuko biba binyuranyije n'amategeko ndetse n'ukuri – Itegeko Nº15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 13.

Incamake y'ikibazo: Nyuma yaho Munyabagisha na Mwitende bitabiye Imana imitungo yabo yasigaranywe n'abana babo, Rurangwa, Mukamurangwa na Mukazi maze mu nama bise «Convention de gestion de la masse successorale du défunt Munyabagisha André» bemeranya ukuntu iyo mitungo izacungwa n'ukuntu amakimbirane azakemurwe aramutse abayeho.

Rurangwa aza gukora impanuka y'imodoka yitaba Imana, asiga umugore n'abana batatu. Ku wa 23/10/2003, abazungura ba Rurangwa bahagarariwe na nyina wabo Mbabazi hamwe n'abazungura ba Munyabagisha barongeye bakorana amasezerano yiswe «ubwumvikane hagati y'abagize umuryango wa nyakwigendera Munyabagisha André», bumvikana ko ibigize umutungo wose uzungurwa harimo n'inzu iri mu kibanza Nº1163 kiri Nyarugenge, yanditse kuri Rurangwa, ariko bemeranya ko n'ubwo imwanditseho ari iya Se Munyabagisha, .ko Mbabazi azakora uko ashoboye agakura iyo nzu ku mazina y'umugabo we ikajya ku mazina ry'umuryango wa Munyabagisha. Mbabazi yahawe n'urukiko uburenganzira bwo gucungira abana yabyaranye na Rurangwa umutungo, yongera kandi ahabwa uburenganzira bwo kugurisha inzu iri mu kibanza Nº1163 kiri muri quartier mateus, maze ayigurisha uwitwa Karemera.

Igurishwa ry'iyo nzu ryateje ikibazo maze umwe mu bazungura ba Munyabagisha ariwe Mukazi aregera Urukiko Rwisumbuye rwa Nyarugenge asaba gutesha agaciro amasezerano y'ubugure bwabaye hagati ya Mbabazi na Karemera ku inzu iri mu kibanza Nº1163 avuga ko nta bubasha yahawe bwo kugurisha iyo nzu kuko atari iye, asaba Urukiko gutegeka ko umutungo wagurishijwe igarurwa mu mutungo wa Munyabagisha, asaba n'indishyi z'akababaro. Urukiko rwemeza ko Munyabagisha yapfuye yaramaze kugurisha Rurangwa iyo nzu iburanwa, bityo ko nta muntu wari ufite ububasha bwo kuyigarura mu mutungo wa Munyabagisha nkuko byakozwe na Mbabazi, rutegeko ko amasezerano yiswe «ubwumvikane hagati y'abagize umuryango wa nyakwigendera Munyabagisha André», nta gaciro afite, rwemeza kandi ko inzu iburanwa yagurishijwe mu buryo bwemewe n'amategeko kuko Mbabazi yayigurishije ashingiye ku cyemezo yahawe n'Urukiko kimuha uburenganzira bwo kuyigurisha, kandi icyo cyemezo akaba nta wagitambamiye.

Mukazi yajuririye mu Rukiko Rukuru, maze rwemeza ko urubanza ruhindutse ku bijyanye n'indishyi gusa; arongera ajurira mu Rukiko rw'ikirenga avuga ko umucamanza wo mu Rukiko Rukuru yahaye agaciro amasezerano y'ubugure bw'inzu iburanwa. Mbabazi na Karemera batanze inzitizi y'iburabubasha ry'Urukiko rw'Ikirenga ishingiye ku gaciro k'ikiburanwa no kuba abajuririye batsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe, urukiko rwemeza ko nta shingiro ifite.

Mukazi avuga ko inkiko zose zirengagije amasezerano yo kuwa 23/10/2003 kandi ariho ikibazo kiri asaba urukiko kureba icyo ayo masezerano yari agamije. Akomeza avuga ko inkiko nta bubasha zari zifite bwo gutesha agaciro amasezerano yo ku wa 23/10/2003 kuko atavuguruzwa kandi akaba yarashizweho umukono mbere ya notaire akanasinya ko abaye umuhamya, akaba anafite agaciro k'urubanza rwaciwe burundu.

Uhagarariye Mbabazi avuga ko amasezerano yo ku wa 23/10/2003 atari ayo kwikiranura kuko abaho igihe hari impaka, amakimbirane, cyangwa hari amakimbirane ashobora kuvuka nyamara ayo masezerano akorwa nta makimbirane yariho,akomeza avuga ko bitumvikana ukuntu abantu bagiye bakicara bagafata umutungo wundi muntu bakavuga ko nubwo umwanditseho ataruwe, asanga ko impamvu yatumye Mbabazi asinya aariya masezerano yatewe nubutamenya (ignorance complete) .

Karemera avuga ko icyo abo baburana bita amasezerano yo kwikiranura kidakwiye kwitwa amasezerano, kuko amasezerano yose ateganya uburenganzira n'inshingano (les droits et obligations) nyamara mu masezerano bita ayo kwikiranura ibyo bikaba nta birimo.

Incamake y'icyemezo: 1. Iyo umwe mu bashyingiranywe apfuye usigaye asigarana inshingano zo gucunga umutungo wose. Bityo kuba Mbabazi yaremeye gukora ibisabwa kugira ngo inzu iburanwa ive ku mazina y'umugabo we ijye ku izina ry'umuryango wa Munyabagisha binyuranyije n'amategeko kuko nta bundi bubasha yari afite kuri uwo mutungo uretse ubwo kuwucunga gusa (la gestion).

2. Inyandiko mvaho yemerwa iyo itavugurujwe n'ikindi kimenyetso cyanditswe cyangwa cyunganiwe n'ikindi kimenyetso cyanditse kituzuye. Bityo, amasezerano yo ku wa 23/10/2003 akaba atari ntavuguruzwa kuko Noteri wa Leta yemeje ibintu binyuranyije n'amategeko kandi binyuranyije n'ukuri, ahamya ko Mbabazi azakora ibishoboka byose inzu iburanwa yanditse kuri Rurangwa ikagarurwa mu mutungo wa Munyabagisha kandi nta kimenyetso yagaragarijwe gihamya koko ko n'ubwo imwanditseho ari iya Se.

3. Kuba nta buriganya bwabaye mu buryo Mbabazi yabonyemo icyemezo cyamuhaye uburenganzira bwo kugurisha, amasezerano y'ubugure bw'inzu nta nenge yaba afite yatuma ateshwa agaciro.

Ubujurire nta shingiro bufite.
Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe.
Urubanza rwajuririwe ruhindutse gusa ku bijyanye n'indishyi.

Amategeko yashingiwe:

Itegeko Nº12/2012 ryo ku wa 14/06/2016, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 162,
Itegeko Nº15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 13,
Itegeko Nº 22/99 ryo ku wa 12/11/1999 ryuzuza igitabo cya mbere cy'Urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, ingingo ya 70,76,
Itegeko ryo ku wa 30/07/1888, rishyiraho Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, Ingingo ya 33.

Imanza zifashishijwe:
RCAA 0015/09/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 29/04/2011, haburana Nyirabizimana Zilipa na Musoni Ndamage Thadée, Icyegeranyo cy'ibyemezo by'iInkiko, Nº 13, Mata 2012, p.61-80 (igika cya 20).

Inyandiko z'Abahanga:
Annick Batteur, Les grandes decisions du droit des personnes et de la famille, 2eme ed., LGDJ Lextenso,Toulouse, 2016, p.584;
Brigitte Hess-Fallon et Anne-Marie Simon, *Droit de la famille,* 5ème édition, Dalloz, Paris, 2004, p.126;
Bernard Beignier, Sarah Torricelli-Chrifi, Libéralités et successions, LGDJ,l, Lextenso éd.2015, Toulouse, p.231.

Urubanza

I.IMITERERE Y'URUBANZA

[1] Munyabagisha André n'umugore we Mwitende Mariam bashyingiranywe byemewe n'amateteko, babyarana abana batatu; Rurangwa Innocent, Mukamurangwa Rose na Mukazi Françoise. Bombi bitabye Imana mu bihe binyuranye, Mwitende Mariam muri 1994, na Munyabagisha André ku wa 20/08/2000.

[2] Ku wa 04/09/2003, abazungura ba Munyabagisha André na Mwitende Mariam bakoze inama bemeranywa ku micungire y'imitungo basigiwe n'ababyeyi babo, bagirana inyandiko yiswe «Convention de gestion de la masse successorale du défunt Munyabagisha André», bemeranya ko imitungo yabo ikomeza gucungirwa hamwe kugeza igihe hazakorerwa «liquidation judiciaire», bumvikana ku buryo bagabana ububasha bwo kuyicunga, n'uburyo amakimbirane yaramuka avutse yakemurwa.

[3] Hashize iminsi 17 gusa iyo nama ibaye, ku wa 22/09/2003, Rurangwa Innocent wari wahawe n'abavandimwe be ububasha bwo gucunga imitungo y'umuryango wa Munyabagisha André nawe apfa azize impanuka y'imodoka, asiga umugore (Mbabazi Joy) n'abana batatu bakiri bato (Mwitende Sonia, Mbabazi Eliane na Rurangwa Serge).

[4] Ku itariki ya 23/10/2003, abazungura ba Rurangwa Innocent bahagarariwe na nyina Mbabazi Joy kuko bari bakiri bato, n'abazungura ba Munyabagisha André, bagiranye amasezerano yiswe «ubwumvikane hagati y'abagize umuryango wa nyakwigendera Munyabagisha André», basinyira imbere ya Noteri hari n'abatangabuhamya, bumvikana ku bigize umutungo wose uzungurwa wari umaze kumenyekana, harimo n'inzu iri mu kibanza Nº 1163 kiri Nyarugenge, yanditse kuri Rurangwa Innocent, ariko bemeranya ko n'ubwo imwanditseho ari iya Se Munyabagisha André, Mbabazi Joy, umugore wa Rurangwa Innocent, yemera gukora ibisabwa n'amategeko kugira ngo iyo nzu ive ku mazina ya Rurangwa Innocent ijye ku izina ry'umuryango wa Munyabagisha André.

[5] Muri ayo masezerano bemeranyijwe kandi ko igihe cyose izungura rizaba ritarakorwa, umutungo uzacungwa na Rutayisire Georges abifashijwemo na Mbabazi Joy ku bibazo byose bijyanye no kubungabunga umutungo harimo n'ibijyanye n'imisoro n'ibindi Leta isaba, banumvikana ko umutungo udashobora kugurishwa n'abagize umuryango hatabayeho ubwumvikane buvuye mu nama y'umuryango wa Munyabagisha André, babifashijwemo n'abandi bavandimwe bo mu muryango.

[6] Nyuma y'ibyo, ku wa 24/03/2005, Mbabazi Joy yahawe n'Urukiko rw'Akarere ka Nyarugenge uburenganzira bwo gucungira abana yabyaranye na Rurangwa Innocent umutungo se yabasigiye, naho ku wa 05/04/2005, abisabye Perezida w'urwo Rukiko, ahabwa uburenganzira bwo kugurisha inzu yubatse mu kibanza Nº1163 kiri muri «quartier Mateus», mu Karere ka Nyarugenge, ayigurisha Karemera Peninah ku wa 06/04/2005, igurishwa ry'iyo nzu akaba ari ryo ryabaye intandaro y'imanza baburana kugeza ubu.

[7] Mukazi Françoise yaregeye Urukiko Rwisumbuye rwa Nyarugenge, arusaba kwemeza ko amasezerano y'ubugure bw'inzu iri mu kibanza Nº1163 kiri Nyarugenge, yabaye hagati ya Karemera Peninah na Mbabazi Joy ku wa 06/04/2005, nta gaciro afite kuko Mbabazi Joy yagurishije iyo nzu itari iye nta n'ububasha yahawe n'abazungura ba Munyabagisha André, asaba ko iyo nzu igarurwa mu mutungo wa Munyabagisha André, asaba n'indishyi z'akababaro.

[8] Urwo Rukiko rwaciye urubanza RC 0212/14/TGI/NYGE, ku wa 29/05/2014, rwemeza ko Munyabagisha André yapfuye yaragurishije umuhungu we Rurangwa Innocent inzu iburanwa, umugore we Mbabazi Joy n'abandi bazungura ba Munyabagisha André nta bubasha bari bafite bwo kuyigarura mu mutungo wa Munyabagisha André, ko n'amasezerano yo ku wa 23/10/2003, nta gaciro afite ku byerekeye iyo nzu. Rwemeje kandi ko inzu iburanwa yagurishijwe mu buryo bwemewe n'amategeko kuko Mbabazi Joy yayigurishije ashingiye ku cyemezo yahawe n'Urukiko rw'Akarere ka Nyarugenge kimuha uburenganzira bwo kuyigurisha, kandi icyo cyemezo akaba nta wagitambamiye;

[9] Mukazi Françoise yajuririye urwo rubanza mu Rukiko Rukuru, narwo ruca urubanza RCA 0340/14/HC/KIG, ku wa 27/02/2015, rwemeza ko urubanza rwajuririwe ruhindutse gusa ku bijyanye n'indishyi zasabwe, rutegeka Mukazi Françoise guha Mbabazi Joy na Karemera Peninah buri wese 1.000.000Frw, akubiyemo indishyi z'akababaro, amafarang y'ikurikiranarubanza n'igihembo cya Avoka ku rwego rwa mbere, na 700.000Frw buri wese na none akubiyemo indishyi z'akababaro, n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka ku rwego rwa kabiri, akanishyura amagarama y'urubanza.

[10] Mukazi Françoise yajuririye mu Rukiko rw'Ikirenga, avuga ko umucamanza mu Rukiko Rukuru yahaye agaciro amasezerano Mbabazi Joy yagiranye na Karemera Peninah y'ubugure bw'inzu iburanwa, ashingiye ku kuba Munyabagisha André, mbere y'urupfu rwe, yarayigurishije umuhungu we Rurangwa Innocent, kandi baramusobanuriye ko icyo ayo masezerano y'ubugure yari agamije kwari ukugira ngo Rurangwa Innocent ashobore guhabwa inguzanyo muri banki, ariyo mpamvu na Mbabazi Joy yasinye amasezerano yo ku wa 23/10/2003.

[11] Me Mucyo Donatien uhagarariye Mbabazi Joy na Me Rwagitare Fred Fiston uhagarariye Karemera Peninah, batanze inzitizi y'iburabubasha ry'Urukiko rw'Ikirenga ishingiye ku gaciro k'ikiburanwa, no kuba abajuriye baratsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe, Urukiko rufata icyemezo kuri iyo inzitizi ku wa 01/12/2017, rwemeza ko nta shingiro ifite.

[12] Iburanisha ry'urubanza mu mizi ryabereye mu ruhame ku wa 30/01/2018, Mukazi Françoise ahagarariwe na Me Rutagengwa François Xavier, Karemera Peninah ahagarariwe na Me Munyaneza Remy naho Mbabazi Joy ahagarariwe na Me Mucyo Donatien.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

1) Kumenya niba nta bugure bw'inzu iri mu kibanza Nº1163 Nyarugenge bwabaye hagati ya Munyabagisha André n'umuhungu we Rurangwa Innocent

[13] Me Rutagengwa François Xavier uhagarariye Mukazi Françoise avuga ko inkiko zose zirengangije ikimenyetso kigizwe n'amasezerano yo ku wa 23/10/2003 kandi ipfundo ry'ikibazo ariho riri, asaba Urukiko rw'Ikirenga kureba icyo ayo masezerano yari agamije, kuko impande zombi ziyagirana zari zigamije kwikiranura, kuko umuryango wose wari uzi ko hari andi masezerano y'ubugure bw'inzu iburanwa Munyabagisha André yagiranye n'umuhungu we Rurangwa Innocent, ariko bazi neza ko Rurangwa Innocent na se bayakoze bagamije gusa kugira ngo bibonere inguzanyo.

[14] Me Rutagengwa avuga ko inkiko nta bubasha zari zifite bwo gutesha agaciro amasezerano yo ku wa 23/10/2003, kuko ayo masezerano ari ntavuguruzwa kuko yashyiriweho umukono imbere ya noteri wanasinyiye ko ayabereye umuhamya, kandi ko hashingiwe ku ngingo ya 591 y'Igitabo cya gatatu cy'Urwunge rw'Amategeko Mbonezamubano, ayo masezerano afite agaciro k'urubanza rwaciwe burundu kuko abagize umuryango babyemeranyijweho bashingiye ku ngingo ya 583 y'icyo Gitabo cyavuzwe haruguru, hari n'abandi bantu barimo abavandimwe n'inshuti z'umuryango babihamya.

[15] Me Mucyo Donatien uhagarariye Mbabazi Joy avuga ko amasezerano yo ku wa 23/10/2003 atari ayo kwikiranura ngo kuko ingingo zavuzwe zireba abantu baba bafitanye ikibazo (transaction), bikaba bitumvikana ukuntu abantu bagiye bakicara bagafata umutungo w'undi muntu bakavuga ngo n'ubwo umwanditseho si uwe, ko impamvu Mbabazi Joy yasinye ariya masezerano atayimenya kuko atari ahari, ariko ko yibwira ko Mbabazi Joy yabitewe n'ubutamenya (ignorance complète).

[16] Me Mucyo Donatien akomeza avuga ko amasezerano yo ku wa 23/10/2003 akorwa abari bahari bose nta n'umwe wari ufite ububasha bwo kuba yafata inzu iri mu mutungo wa Rurangwa

Innocent ngo ayishyire mu mutungo wa Munyabagisha André, ko n'umugore we Mbabazi Joy nta bubasha yari afite bwo kubikora kuko ukurikije itegeko ryariho icyo gihe yari afite ububasha bwo gucunga uwo mutungo (gestion) gusa, ari nayo mpamvu ajya kugurisha byabaye ngombwa ko yiyambaza Urukiko abisabira uburenganzira, anasobanura impamvu asaba ubwo burenganzira bwo kugurisha, ko iyo aza kuba afite ubwo bubasha (droit d'aliéner), atari kubisaba Urukiko.

[17] Me Munyaneza Remy avuga ko amasezerano yo kwikiranura abaho igihe hari impaka, amakimbirane, cyangwa hari amakimbirane ashobora kuvuka, nyamara ko amasezerano yo ku wa 23/10/2003 akorwa nta makimbirane yari ariho kuko atagaragajwe muri ayo masezerano. Avuga kandi ko icyo abo baburana bita amasezerano yo kwikiranura kidakwiye kwitwa amasezerano, kuko amasezerano yose ateganya uburenganzira n'inshingano (les droits et obligations) nyamara mu masezerano bita ayo kwikiranura ibyo bikaba nta birimo.

UKO URUKIKO RUBIBONA

[18] Ingingo ya 70 y'Itegeko Nº22/29 ryo kuwa 12/11/1999 ryuzuza igitabo cya mbere cy'Urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, iteganya ko iyo umwe mu bashyingiranywe apfuye usigaye asigarana inshingano zo gucunga umutungo wose.

[19] Ingingo ya 13 y'Itegeko Nº15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko Inyandikomvaho ikemura impaka kuri bose mu byerekeye ibiyivugwamo umukozi wa Leta ubigenewe yabereye umuhamya cyangwa yakoze ariko atarengeje ibyo yari ashinzwe gukora. Ibivuzwe muri iyo nyandikomvaho ntawe ushobora kubihakana, keretse biramutse bikurikiranywe mu rubanza rushinja icyaha cyo kubeshya mu nyandikomvaho cyangwa umuburanyi aregeye ko iyo nyandikomvaho ari impimbano. Ku byerekeye ibindi ihamya, ibyo ivuga n'ukuri kw'ababuranyi, inyandikomvaho yemerwa iyo itavugurujwe n'ikindi kimenyetso cyanditswe cyangwa cyunganiwe n'ikimenyetso cyanditse kituzuye, iyo ihakanwa n'umuburanyi, naho iyo ihakanwa n'undi muntu ashobora kubitangira ikindi kimenyetso cyose cyemerwa n'amategeko.

[20] Mu gufata icyemezo ku byerekeranye n'uko inzu iburanwa itagomba kugarurwa mu mutungo wa nyakwigendera Munyabagisha André, Urukiko Rukuru rwashingiye ku mpamvu y'uko mbere y'uko yitaba Imana, Munyabagisha yari yarayigurishije umuhungu we Rurangwa Innocent ndetse inamwanditseho, ko Mbabazi Joy n'abazungura ba Munyabagisha André nta bubasha bari bafite bwo kuvana iyo nzu mu mutungo wa Rurangwa Innocent ngo bayisubize mu mutungo wa se, runagaragaza ko Mbabazi Joy yagurishije iyo nzu byemewe n'amategeko kuko yabiherewe uburenganzira n'Urukiko.

[21] Dosiye y'uru rubanza igaragaza (cote 89) amasezerano y'ubugure (Acte de vente D.812) yo ku wa 01/12/1989, Munyabagisha André yagiranye n'umuhungu we Rurangwa Innocent imbere ya Libanje Félicien, Noteri wa Leta, hari Bwana Hatangimbabazi André na Bwana Gasamagera Jean Pière, abahamya, yerekana ko kuri iyo tariki Munyabagisha André yagurishije umuhungu we Rurangwa Innocent, ikibanza n'inyubako zose zikirimo gifite ubuso bungana na 05a.38ca, kibaruwe mu bitabo by'ubutaka by'Umujyi wa Kigali kuri Nº1163 ku giciro kingana na 6.000.000Frw. Hari kandi (cote 90) "Certificat d'enregistrement" Vol. R.xiii Folio 112, yo ku

wa 02/04/1990, yerekana ko Rurangwa Innocent abaruwe nka nyiri ikibanza Nº1163 kiri Nyarugenge, hashingiwe ku masezerano y'ubugure bw'icyo kibanza yo ku wa 01/12/1989.

[22] Dosiye y'urubanza igaragaza kandi inyandiko yo ku wa 23/10/2003, yiswe "Ubwumvikane hagati y'abagize umuryango wa nyakwigendera Munyabagisha André", aho abazungura ba Munyabagisha André, n'aba Rurangwa Innocent bahagarariwe n'umugore we Mbabazi Joy kuko bari bakiri bato, bagiranye amasezerano basinyiye imbere ya Noteri hari n'abatangabuhamya, bumvikana ku bigize umutungo wose uzungurwa wari umaze kumenyekana, harimo n'inzu iburanwa iri mu kibanza Nº1163 iri Nyarugenge yanditse kuri Rurangwa Innocent, banemeranya ko umutungo utimukanwa udashobora kugurishwa n'abagize umuryango wa Munyabagisha André bitavuye mu nama y'abawugize babifashijwemo n'abandi bavandimwe.

[23] Nk'uko byerekanywe haruguru, inzu iburanwa iri mu kibanza Nº 1163 kiri Nyarugenge (Quartiers Mateus) yari umutungo wa Rurangwa Innocent guhera mu mwaka wa 1989, akaba nta nyandiko n'imwe yerekana uburyo yaba yarongeye kuba iya Munyabagisha André, kuko abavuze mu nyandiko yo ku wa 23/10/2003 y'ubwumvikane hagati y'abagize umuryango wa nyakwigendera Munyabagisha André, ko n'ubwo iyo nzu yanditse ku mazina ya Rurangwa Innocent, ari iya se Munyabagisha André, ntaho bigeze bagaragaza babashingiye.

[24] Urukiko rw'Ikirenga rurasanga kuba Mbabazi Joy, umugore wa Rurangwa Innocent, yaremeye gukora ibisabwa kugira ngo inzu iburanwa ive ku mazina ya Rurangwa Innocent ijye ku izina ry'umuryango wa Munyabagisha André binyuranyije n'amategeko, nk'uko n'Inkiko zibanza zabisobanuye. Mbabazi Joy nta bubasha yari afite bwo kuvana iyo nzu mu mutungo w'umugabo we Rurangwa Innocent, ngo ijye mu mutungo ugomba kuzungurwa n'abazungura ba Munyabagisha André, kuko nk'uko byasobanuwe haruguru, nta bundi bubasha yari afite kuri uwo mutungo uretse ubwo kuwucunga gusa (la gestion), hakurikijwe ibiteganywa mu ngingo ya 70 y'Itegeko ryerekeye imicungire y'umutungo w'abashyingiranywe ryavuzwe haruguru, ryakurikizwaga icyo gihe.

[25] Ku byerekeye inshingano z'umwe mu bashyingiranywe bahisemo uburyo bw'ivangamutungo rusange usigaye nyuma y'uko mugenzi we apfuye, ingingo ya 70,1º y'Itegeko Nº22/99 ryo ku wa 12/11/1999 ryerekeye izungura ryavuzwe haruguru ryakoreshwaga igihe izungura rya Rurangwa Innocent ryatangiraga, iteganya ko iyo umwe mu bashyingiranywe bafitanye amasezerano y'ivangamutungo rusange apfuye, usigaye asigarana umutungo wose akubahiriza inshingano yo kurera abana no gufasha ababyeyi ba nyakwigendera iyo babikeneye (mu rurimi rw'igifaransa bivugwa muri ubu buryo: .. ".en cas de décès de l'un d'eux, l'époux survivant assure l'administration de l'entièreté du patrimoine....... "), byumvikana rero ko nta kundi ashobora kuba yagena uwo mutungo ashinzwe gucunga. Ibi kandi bihura n'ibyo abahanga mu mategeko nabo basobanura ko iyo umwe mu bashyingiranywe apfuye agasiga abana, usigaye asigarana gusa uburenganzira bwo gukoresha umusaruro ukomoka ku mutungo, nta burenganzira bwo kuwugurisha cyangwa kugira ukundi awugena1[1].

---

[1] Brigitte Hess-Fallon et Anne-Marie Simon, *Droit de la famille*, 5ème édition, Dalloz, Paris, 2004, p.126. *("Si l'époux prédécédé laisse des enfants issus des deux époux, le conjoint survivant recueille l'usufruit de la totalité des biens") ; Bernard Beignier, Sarah Torricelli-Chrifi, Libéralités et successions,LGDJ,l, Lextenso éd.2015, Toulouse, p.231.*

[26] Iby'uko Mbabazi Joy nta bubasha yari afite bwo kuba yagira ukundi agena umutungo w'umugabo we Rurangwa Innocent usibye ubwo kuwucunga gusa binashimangirwa kandi nuko mbere yo kuwugurisha, yagombye kubisabira uburenganzira nk'uko bigaragazwa n'icyemezo Nº 005/05/KJR cyatanzwe n'Urukiko rw'Akarere ka Nyarugenge ku wa 05/04/2005. Iby'uko Mbabazi Joy yashoboraga kwaka uburenganzira bwo kugurisha inzu iburanwa, nk'umwe mu mitungo yari acungiye abazungura ba Rurangwa Innocent, bigaragarira mu ngingo ya 76 y'Itegeko Nº22/99 ryo ku wa 12/11/1999[2], ivuga ko inama ishinzwe iby'izungura ishobore kuregera urukiko isaba ko uwapfakaye usaba kugurisha yamburwa ubwo burenganzira iyo iryo gurisha ritari mu nyungu z'umuryango. Ibi nabyo bihura neza n'ibivugwa n'abahanga mu mategeko nka Annick Batteur3[3], ko uwahawe ububasha bwo gucunga umutungo w'abazungura ashobora no kugurisha, iyo abiherewe uruhushya n'umucamanza mu nyungu z'abazungura.

[27] Ku byo uhagarariye Mukazi Françoise avuga ko amasezerano yo ku wa 23/10/2003, agaragaza ko Mbabazi Joy, ahagarariye abazungura b'umugabo we Rurangwa Innocent, yemeye gukora ibisabwa n'amategeko kugira ngo inzu iri mu kibanza Nº 1163 iri Nyarugenge igaruke mu mutungo wa Munyabagisha André, ari ntavuguruzwa kuko yashyiriweho umukono imbere ya noteri wa Leta, akaba akwiye gushingirwaho nk'ikimenyetso cyerekana ko iyo nzu ari umwe mu bigize umutungo wa Munyabagisha André, Urukiko rurasanga hakurikijwe ibiteganywa mu ngingo ya 13, igika cya kabiri, y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza, yavuzwe haruguru, ayo masezerano atari ntavuguruzwa, kuko Noteri wa Leta yemeje ibintu binyuranyije n'amategeko kandi binyuranyije n'ukuri, ahamya ko Mbabazi Joy azakora ibishoboka byose inzu iburanwa yanditse kuri Rurangwa Innocent ikagarurwa mu mutungo wa Munyabagisha André, ari nta kimenyetso yagaragarijwe gihamya koko ko n'ubwo imwanditseho ari iya se Munyabagisha André. Rurasanga kandi n'iyo Noteri aza kuba yagaragarijwe icyo kimenyetso, atari kwirengagiza ko Mbabazi Joy ushinzwe gusa gucungira umutungo abazungura ba Rurangwa Innocent, yemeye ibyo amategeko atamuhera ububasha, ngo abirengeho yemere kubibera umuhamya.

[28] Rurasanga rero kubera izo nenge zishingiye ku byo ayo masezerano yo ku wa 23/10/2003 agaragaza nk'ukuri kutari ko, atafatwa nk'inyandiko mvaho umukozi wa Leta wabigenewe yabereye umuhamya. Uwo kandi niwo murongo wafashwe n'uru Rukiko mu rubanza RCAA 0015/09/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 29/04/2011, haburana Nyirabizimana Zilipa na Musoni Ndamage Thadée, aho Urukiko rwemeje ko inyandiko y'ivanguramutungo Musoni Ndamage yaburanishaga kandi yashyizweho umukono na Noteri itafatwa nk'inyandiko mvaho kuko Noteri yemeje ibyo atabereye umuhamya akemeza ko habayeho ivanguramutungo kandi ari nta nyandiko y'ivangamutungo yagaragarijwe[4].

---

[2] *Itegeko no 22/99 ryo ku wa 12/11/1999 ryuzuza igitabo cya mbere cy'Urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, Ingingo ya 76: « yo uwapfakaye yifuje kugurisha, kugwatiriza cyangwa kugurana umutungo yasigaranye, inama ishinzwe iby'izungura igasanga bibangamiye inyungu z'urugo, ishobora gusaba urukiko mu kirego cy'ihutirwa ko rumwambura ubwo burenganzira ».*

[3] Annick Batteur, Les grandes decisions du droit des personnes et de la famille, 2eme ed., LGDJ Lextenso,Toulouse, 2016, p.584.

[4] Icyegeranyo cy'ibyemezo by'iInkiko, no 13, Mata 2012, p.61-80 (igika cya 20).

[29] Urukiko rurasanga kandi n'iyo amasezerano yo ku wa 23/10/2003 aza kuba ntavuguruzwa nabwo atari kwemerwa nk'ikimenyetso cyerekana ko inzu iri mu kibanza N⁰ 1163 muri quartiers Mateus, Nyarugenge iri mu mutungo wa Munyabagisha André, kuko nk'uko iyo ngingo ya 13 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004, ryerekeye ibimenyetso mu manza ibiteganya, inyandiko mvaho yemerwa iyo itavugurujwe n'ikindi kimenyetso cyanditswe cyangwa cyunganiwe n'ikindi kimenyetso cyanditse kituzuye, bikaba nyamara bigaragara ko n'iyo iza kuba mvaho itari gukuraho ubugure bwabaye hagati ya Munyabagisha André n'umuhungu we Rurangwa Innocent, bityo akaba atari na ngombwa kwiririwa rusuzuma iby'uko yari ayo kwikiranura cyangwa gukemura cyangwa gukumira impaka.

[30] Urukiko rurasanga rero hajurikijwe ibisobanuro byose byatanzwe, nk'uko kandi byemejwe mu Nkiko zo hasi, Munyabagisha André yarapfuye inzu iburanwa yarayigurishije umuhungu we Rurangwa Innocent, kandi umugore we Mbabazi Joy akaba nta bubasha yari afite bwo kuyigarura mu mutungo wa Munyabagisha André, bityo, imvugo y'uburanira Mukazi Françoise yuko hirengagijwe ko basobanuriye Urukiko ko nta bugure bwabayeho ikaba nta shingiro yahabwa.

2) Ku byerekeye kumenya niba amasezerano y'ubugure yabaye hagati ya Mbabazi Joy na Karemera Peninah yateshwa agaciro

[31] Me Rutagengwa François Xavier avuga ko ibyo bagenzi be bavuga ko abakoze amasezerano yo ku wa 23/10/2003, nta bubasha bari bafite bwo kuvana umutungo mu wa Ruranga Innocent bawusubiza mu wa Munyabagisha André ataribyo, kuko ngo bari bafite ububasha bwo gucunga (gestion) kandi umutungo ukaba waragumye hamwe ngo ucungirwe hamwe, ko iby'uko Mbabazi Joy yasinye amasezerano yo ku wa 23/10/2003 kubera ubutamenya (ignorance) atari byo, ko ahubwo Mbabazi Joy yakoresheje uburiganya kugira ngo abone icyemezo kimwemerera kugurisha.

[32] Avuga kandi ko Karemera Peninah yaguze inzu n'utari nyirayo, ariyo mpamvu amasezerano y'ubugure bwe na Mbabazi Joy agomba guteshwa agaciro, ko ibyo umwunganira avuga ko amasezerano yo ku wa 23/10/2003 adakwiye kumugiraho ingaruka ataribyo kuko ayo masezerano ari ntavuguruzwa kuko yakorewe imbere ya Noteri, kandi ko hashingiwe ku ngingo ya 276 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, ubugure bw'ikintu cy'undi ari imfabusa, akaba rero agomba kugira ingaruka kuri Karemera Peninah, cyokora ko atacibwa indishyi, kandi yasubizwa ibyo yakoresheje atunganya inzu. Asoza asaba Urukiko kwita ku ngingo ya 583 n'iya 591 z'Igitabo cya gatatu cy'Urwunge rw'amategeko mbonezamubano zavuzwe haruguru, rugaha agaciro amasezerano yo ku wa 23/10/2003 kuko ku bwabo umugore wa Rurangwa Innocent wari uhagarariye abana be n'abazungura ba Munyabagisha André aribo bari bafite ububasha kuri iyo nzu kuko nta wundi wari usigaye.

[33] Me Mucyo Donatien avuga ko Mukazi Françoise atari kuregera amasezerano ashingiye ku cyemezo cy'Urukiko atabanje kuregera icyo cyemezo ubwacyo.

[34] Me Munyaneza Remy avuga ko Karemera Peninah yaguze nta buryarya (acquéreur de bonne foi) kandi Mbabazi Joy baguze yari afite ububasha bwo kugurisha, akaba rero adashobora kugirwaho ingaruka n'amasezerano bise ayo kwikiranura, asaba Urukiko kubisuzuma, kuko ku bwe asanga Karemera Peninah nta ngaruka na nkeya ayo masezerano yamugiraho.

UKO URUKIKO RUBIBONA

[35] Ingingo ya 33[5] y'Itegeko ryo ku wa 30/07/1888, rishyiraho Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano ryakoreshwaga igihe Mbabazi Joy na Karemera Peninah bagiranaga amasezerano y'ubugure bw'inzu iburanwa, iteganya ko «amasezerano akozwe mu buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya».

[36] Dosiye igaragaza ko nyuma y'aho Rurangwa Innocent apfiriye ku itariki ya 22/09/2003, umugore we Mbabazi Joy bashyingiranywe byemewe n'amategeko, yahawe n'Urukiko rw'Akarere ka Nyarugenge, mu rubanza RC0222/05/TD/NYG rwo ku wa 24/03/2005, ububasha bwo gucunga umutungo yasigaranye w'abana batatu babyaranye.

[37] Dosiye igaragaza kandi ko hashingiwe kuri ubwo bubasha bwo gucunga umutungo no ku bindi byemezo Mbabazi Joy yashyikirije Urukiko birimo "Certificat d'enregistrement" Vol. R.xiii Folio 112, yo ku wa 02/04/1990, yerekana ko Rurangwa Innocent ari we nyiri ikibanza Nº1163 kiri Nyarugenge muri Quartier Mateus, ndetse no ku bisobanuro yatanze, urwo Rukiko rwamuhaye uburenganzira bwo kugurisha icyo kibanza, mu icyemezo Nº 005/05/KJR cyo ku wa 05/04/2005.

[38] Urukiko rurasanga nk'uko ababuranira Mbabazi Joy na Karemera Peninah babivuga, nta buriganya bwabaye mu buryo Mbabazi Joy yabonyemo icyemezo cyamuhaye uburenganzira bwo kugurisha, bityo, amasezerano y'ubugure bw'inzu iri mu kibanza Nº1163 kiri Nyarugenge yo ku wa 06/04/2005 yagiranye na Karemera Peninah akaba nta nenge afite yatuma ateshwa agaciro.

2) Kumenya niba hari indishyi zagenwa muri uru rubanza

[39] Me Rutagengwa François Xavier uhagarariye Mukazi Françoise avuga ko Mbabazi Joy agomba kwishyura indishyi z'ubukode, bakaba bari basabye 766.000.000Frw (5.000.000 Frw x 12 ans et 9 mois), kuva ku itariki yo ku wa 06/04/2005 kugeza urubanza rusomwe, bakanasaba 25.000.000Frw y'ikurikiranarubanza n'igihembo cya avoka kubera ko urubanza rumaze hafi imyaka 13. Ku bjijyanye n'indishyi zisabwa n'abaregwa, avuga ko uwo ahagarariye aramutse atsinzwe, Urukiko rwazabagenera indishyi zibakwiye.

[40] Me Mucyo Donatien uhagarariye Mbabazi Joy, yabanje gusaba 1.000.000Frw y'indishyi z'akababaro z'uko Mbabazi Joy yakomeje gushorwa mu manza kandi yaragurishije umutungo yasigiwe n'umugabo we mu nyungu z'abana babyaranye, amaze kubiherwa uburenganzira n'Urukiko, asaba kandi ko hiyongera ho 3.000.000Frw akubiyemo amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, ageze mu iburanisha asaba ko ahabwa 5.000.000Frw.

[5] Yasimbuwe n'ingingo ya 64 y'Itegeko Nº 45 /2011 ryo ku wa 25/11/2011 rigenga amasezerano.

[41] Me Munyaneza Remy avuga ko asabira Karemera Peninah indishyi za 2.000.000Frw akubiyemo 500.000FRW y'indishyi z'uko Mukazi Françoise akomeje kumushora mu manza zidafite ishingiro, na 1.500.000frw y'ikurikiranarubanza n'igihembo cya avoka.

UKO URUKIKO RUBIBONA

[42] Urukiko rurasanga indishyi Mukazi Françoise asaba atazihabwa kuko atsinzwe n'urubanza. Ku bandi baburanyi, rurasanga Mukazi Françoise agomba guha Mbabazi Joy na Karemera Peninah, buri wese 800.000Frw akubiyemo ay'ikurikiranarubanza n'igihembo cya avoka kuri uru rwego, indishyi z'akababaro basaba bakaba batazihabwa kuko Mukazi Françoise yari yari afite uburenganzira bwo kujuririra uru Rukiko, nk'uko biteganywa n'ingingo ya 162 y'Itegeko Nº12/2012 ryo ku wa 14/06/2016, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

III. ICYEMEZO CY'URUKIKO

[43] Rwemeje ko ubujurire bwatanzwe na Mukazi Françoise nta shingiro bufite;

[44] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Mbabazi Joy na Karemera Peninah bufite ishingiro kuri bimwe;

[45] Rwemeje ko urubanza RCA0340/14/HC/KIG rwaciwe ku wa 27/02/2015 n'Urukiko Rukuru, ruhindutse gusa ku bijyanye n'indishyi;

[46] Rutegetse Mukazi Françoise guha Mbabazi Joy na Karemera Peninah, buri wese, 800.000Frw akubiyemo, ay'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego;

[47] Rutegetse ko 100.000Frw Mukazi Françoise yatanze ajurira ahwana n'ibyakozwe muri urubanza.