

MUKARWEGO N’ABANDI v. NGIRIYABANDI

[Rwanda URUKIKO RW’IKIRENGA – RS/REV/INJUST/CIV 0009/14/CS, (Rugege P.J., Kayitesi R. na Mutashya, J.) 14 Nzeli 2018]

Amategeko agenga ibimenyetso – Inyandiko ihinnye y’urubanza - Inyandiko ihinnye y’urubanza si incarubanza, ariko ni ikimenyetso kidashidikanywaho ko habaye urubanza hagati y’abaturanyi kandi yerekana icyemezo cyarufashwemo.

Amategeko agenga imiburanishirize y’imanza mboneza mubano – Urubanza rwabaye ntakuka - Guca Urubanza ku kiburanwa cyamaze gufatwaho icyemezo mu rubanza rwabaye ntakuka n’ikosa, rikosorwa nuko urwo rubanza rukurwaho.

Incamake y’Ikibazo :Ngiriyabandi yareze Nyiringango mu Rukiko rwa Kanto ya Nyaruguru ko yamutwariye isambu yitwaje impapuro z’impimbano zerekana ko bayiburanye mu Rukiko rwa Mbere rw’Iremezo rwa Gikongoro, kandi batarayiburanye, maze Urukiko rwa Kanto ya Nyaruguru rwemeza ko isambu iburanwa ikomoka kuri Sekidende wayiraze Ngiriyabandi, akaba afite uburenganzira bwo kuyituramo no kuyibyaza umusaruro, Gumiriza na Nyiringango bakaba bagomba kuyivamo kuko bayigiyemo ku ngufu; runategeka Nyiringango guha Ngiriyabandi indishyi.

Nyiringango yajuririye Urukiko rw’Intara ya Gikongoro, avuga ko isambu ari iya Sekidende wayiraze umwana we Gumiriza bakaba barahamwubakiye muri 1960, ko kandi iyo sambu yayiburanye na Ngiriyabandi akayimutsindira mu Rukiko rwa Mbere rw’Iremezo rwa Gikongoro, uretse ko adafite incarubanza. Urukiko rwaciye urubanza, rwemeza ko ubujurire bwa Nyiringango nta shingiro bufite, rumutegeka guha Ngiriyabandi indishyi.

Nyiringango yajuririye Urukiko Rukuru, Urugereko rwa Nyanza, uru Rukiko rufata icyemezo cyo gusiba urubanza kubera ko Nyiringango atitabye, rwemeza ko harangizwa urubanza rwajuririwe, kabone n’iyo habaho kurubuyutsa.

Nyiringango yaje kwitaba Imana, hanyuma abana be bahagarariwe na Mukarwego Josepha, batanze ikirego cyo gusubirishamo ingingo nshya urubanza mu Rukiko Rwisumbuye rwa Nyamagabe, bagaragaza inyandukuro ihinnye y’urubanza RCA5799/13 nk’ikimenyetso cy’uko Nyiringango yari yaraburanye isambu na Ngiriyabandi akamutsinda, bavuga ko igihe se yaburanaga, iyo nyandukuro itashoboraga kuboneka.Urukiko Rwisumbuye rwa Nyamagabe rwaciye urubanza, rwemeza ko inyandiko igaragazwa n’abareze atari ingingo nshya rwanzura ruvuga ko urubanza rwasubirwamo kuko inyandiko yatanzwe n’abarega nk’ikimenyetso gishya ntaho ihuriye n’urubanza rusabirwa gusubirishwamo.

Mukarwego amaze kubona iki cyemezo, yandikiye Urwego rw’Umuvunyi asaba ko urubanza rwaciye n’Urukiko rwisumbuye rwa Nyamagabe rusubirwamo kubera ko rurimo akarengane, maze Umuvunyi Mukuru yandikira Perezida w’Urukiko rw’Ikirenga asaba ko urubanza yagejejweho na Mukarwego, rwasubirwamo ku mpamvu z’akarengane zigaragara muri urwo rubanza zishingiye ku cyemezo cy’Urukiko Rwisumbuye rwa Nyamagabe rwanze guha agaciro inyandukuro ihinnye y’urubanza RCA5799/13 rwaciye ku wa 27/07/1983 n’Urukiko rwa Mbere rw’Iremezo rwa Gikongoro, yatanzwe n’Umwanditsi w’Urukiko Rwisumbuye rwa Nyamagabe ku wa 20/10/2011, nyamara iyo nyandukuro ari ikimenyetso cy’uko isambu Ngiriyabandi André

aburana, ari iyo yari yaratsindiwe muri 1983. Akomeza avuga ko kuba Urukiko Rwisumbuye rwa Nyamagabe rwarayirengagije, ari akarengane.

Iburanisha mu Rukiko rw'Ikirenga ryabanje gukemura impaka zerekeranye no kumenya niba inyandukuro ihinnye y'urubanza RCA 5799/13 yari gufatwa nk'ingingo nshya mu rubanza rwo mu rukiko rw'Isumbuye. Urukiko rw'Ikirenga rwaciye urubanza rubanziriza urundi rwemeza ko inyandukuro ihinnye y'urubanza RCA 5799/13 rwaciye ku wa 27/07/1983 hagati ya Nyiringango na Ngiriyabandi, ikomoka ku rubanza rwabayeho koko.

Urubanza rwakomeje haburanwa akarengane kagaragara mu manza RC135/3 rwaciye n'Urukiko rwa Kanto ya Nyaruguru ku wa 11/03/2004, n'urubanza RCA0275/05/TP/GIRO-RCA 2880/7/04 rwaciye n'Urukiko Rwisumbuye rwa Nyamagabe ku wa 05/05/2005, abarega bavuga ko Ngiriyabandi atagombaga kuregera isambu yamaze kuburanwa kuko urubanza rwamaze kuba itegeko, uregwa we avuga ko, kuba ikimenyetso gishya cyarakiriwe igisigaye ari ukumenya ishingiro ryacyo bihujwe n'amategeko.

Incamake y'icyemezo: 1. Inyandiko ihinnye y'urubanza si incarubanza, ariko ni ikimenyetso kidashidikanywaho ko habaye urubanza hagati y'abaturanyi kandi yerekana icyemezo cyarufashwemo.

2. Guca Urubanza ku kiburanwa cyamaze gufatwaho icyemezo mu rubanza rwabaye ntakuka n'ikosa, rikosorwa nuko urwo rubanza rukurwaho.

Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane, gifite ishingiro;

Amategeko yashingiweho:

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza

z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 14

Itegeko-Ngenga N°03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha

by'Urukiko rw'Ikirenga, Ingingo ya 81

Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo,

Ingingo ya 3

Itegeko N° 18/2004 ryo ku wa 20/6/2004 ryerekeye imiburanishirize y'imanza

z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi Ingingo ya 360

Iteka rya minisitiri w'Ubutabera N° 002 ryo ku wa 06/01/2005 rigena amagara y'urukiko mu

manza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 2

Nta manza zifashishijwe

Inyandiko z'abahanga zifashishijwe:

Serge GUINCHARD, Droit et Pratique de la Procédure Civile, p. 1225

Urubanza

IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rwa Kanto ya Nyaruguru kuri RC135/3, Ngiriyabandi André arega Nyiringango Faustin ko yamutwariye isambu yitwaje impapuro z'impimbano zerekana ko bayiburanye mu Rukiko rwa Mbere rw'Iremezo rwa Gikongoro, kandi batarayiburanye, maze ku wa 11/03/2004, Urukiko rwa Kanto ya Nyaruguru ruca urubanza rwemeza ko isambu iburanwa ikomoka kuri Sekidende wayiraze Ngiriyabandi André akiri umwana, akaba afite uburenganzira bwo kuyituramo no kuyibyaza umusaruro, Gumiriza na Nyiringango Faustin bakaba bagomba kuyivamo kuko byagaragaye ko bayigiyemo ku ngufu; rutegeka Nyiringango Faustin guha Ngiriyabandi André indishyi zingana na 25.000Frw kubera kumurushya no kumukerereza amuvana mu bye.

[2] Nyiringango Faustin yajuririye Urukiko rw'Intara ya Gikongoro, ikirego cye gihabwa N°RCA0275/05/TP/GIRO-RCA 2880/7/04, avuga ko isambu ari iya Sekidende wayiraze umwana we Gumiriza bakaba barahamwubakiye muri 1960, ko kandi iyo sambu yayiburanye na Ngiriyabandi André akayimutsindira mu Rukiko rwa Mbere rw'Iremezo rwa Gikongoro, uretse ko adafite incarubanza. Ku itariki ya 05/05/2005, uru Rukiko rwaciye urubanza, rwemeza ko ubujurire bwa Nyiringango Faustin nta shingiro bufite, rumutegeka guha Ngiriyabandi André indishyi zingana n'ibihumbi icumi (10.000Frw) kubera ko yamuruhije akanamukura mu isambu ye.

[3] Nyiringango Faustin yajuririye Urukiko Rukuru, Urugereko rwa Nyanza, ikirego cye gihabwa N° RCAA 0725/05/HC/NYA, ku itariki ya 04/06/2008 uru Rukiko rufata icyemezo cyo gusiba urubanza kubera ko Nyiringango Faustin atari yitabye, rwemeza ko harangizwa mu ngingo zarwo zose, urubanza rwajuririwe arirwo RCA0275/05/TP/GIRO-RCA 2880/7/04 rwaciye n'Urukiko rw'Intara ya Gikongoro ku wa 05/05/2005, kabone n'iyo habaho kurubyutsa.

[4] Nyuma y'aho Nyiringango Faustin apfiriye, abana be Mukamana Donatha, Nyirabutoragurwa Médiatrice na Mukarwego Josepha, bahagarariye na Mukarwego Josepha, batanze ikirego cyo gusubirishamo ingingo nshya urubanza RCA0275/05/TP/GIRO-RCA2880/7/04 mu Rukiko Rwisumbuye rwa Nyamagabe, bagaragaza inyandukuro ihinnye y'urubanza RCA5799/13 nk'ikimenyetso cy'uko Nyiringango Faustin yari yaraburanye isambu na Ngiriyabandi André akamutsinda, bavuga ko igihe se ubabyara yaburanaga, iyo nyandukuro itashoboraga kuboneka, basaba ko yaba ingingo nshya ituma urubanza rusubirwamo, ikirego cyandikwa kuri N° RCA 0261/11/TGI/NYBE.

[5] Ku itariki ya 16/03/2012, Urukiko Rwisumbuye rwa Nyamagabe rwaciye urubanza, rwemeza ko inyandiko igaragazwa n'abareze atari ingingo nshya nk'uko babivuga, kubera ko ivuga ku byerekeye amafaranga, hakaba ntaho igaragaza uwatsindiye isambu kandi ari yo iburanwa mu rubanza rusubirishwamo, ko kandi iyo nyandiko itakwitwa urubanza ahubwo ari inyandiko ihinnye yerekana ko hakemuwe ikibazo cy'amafaranga hagati ya Nyiringango Faustin na Ngiriyabandi André, rwanzura ruvuga ko urubanza RCA0275/05/TP/GIRO-RCA2880/7/04 rutasubirwamo kuko inyandiko yatanze n'abareza ntaho ihuriye n'urubanza rusubirwamo gusubirishwamo.

[6] Mukarwego Josepha amaze kubona icyi cyemezo, yitabaje Urwego rw'Umuvunyi asaba ko urubanza RCA0261/11/TGI/NYBE rusubirwamo kubera ko rurimo akarengane, maze ku wa 27/03/2013, Umuvunyi Mukuru yandikira Perezida w'Urukiko rw'Ikirenga asaba ko urubanza

yagejeweho na Mukarwego Josepha, unahagarariye abavandimwe be Mukamana Donatha na Nyirabutoragurwa Médiatrice, rwasubirwamo.

[7] Umuvunyi Mukuru avuga ko impamvu z'akarengane zigaragara muri urwo rubanza zishingiye ku cyemezo cy'Urukiko Rwisumbuye rwa Nyamagabe rwanze guha agaciro inyandukuro ihinnye y'urubanza RCA5799/13 rwaciwe ku wa 27/07/1983 n'Urukiko rwa Mbere rw'Iremezo rwa Gikongoro, yatanzwe n'urwo Rukiko ku wa 20/10/2011, nyamara iyo nyandukuro ari ikimenyetso cy'uko isambu Ngiriyabandi André aburana, ari iyo yari yaratsindiwe muri 1983, avuga ko iyi nyandukuro igize ikimenyetso kamarampaka nk'uko biteganywa mu ngingo ya 184,3° y'Itegeko N°18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ko kuba Urukiko Rwisumbuye rwa Nyamagabe rwarayirengagije, ari akarengane.

[8] Avuga nanone ko Urukiko Rwisumbuye rwa Nyamagabe rwibeshye, aho rwavuze ko inyandiko yatanzwe na Mukarwego Josepha itakwitwa urubanza, ahubwo ko ari inyandiko ihinnye yerekana ko hakemuwe ikibazo cy'amafaranga hagati ya Nyiringango Faustin na Ngiriyabandi André, nyamara muri iyo nyandiko, nta kibazo cy'amafaranga cyaburanywe, ahubwo haburanwaga isambu nkuko bigaragara mu kiburanwa kiri ku nyandukuro ihinnye.

[9] Iburanisha ry'urubanza ryabaye mu ruhamwe ku wa 18/12/2017, Mukamana Donatha na Nyirabutoragurwa Médiatrice bahagarariwe na Mukarwego Josepha, nawe yunganiwe na Me Kayirangwa Marie Grâce, Ngiriyabandi André ahagarariwe na Me Sindayigaya Abson, uwo munsu hagibwa impaka zerekeranye no kumenya niba inyandukuro ihinnye y'urubanza RCA5799/13 yari gufatwa nk'ingingo nshya mu rubanza RCA0261/11/TGI/NYBE, rwemeza ko icyemezo kizafatwa ku wa 19/01/2018.

[10] Ku wa 19/01/2018, Urukiko rw'Ikirenga rwemeje ko mbere y'uko hafatwa icyemezo kuri iyo nzitizi, ari ngombwa gukora iperereza mu Rukiko Rwisumbuye rwa Nyamagabe, n'ahahoze ari Urukiko rwa Kanto ya Nyaruguru, rukirebera niba koko urubanza RCA5799/13 rwarabayeho.

[11] Iperereza ryabaye ku itariki ya 02/03/2018, Urukiko rumaze kureba mu gitabo cy'ibirego cyanditsemo urubanza RCA5799/13 kiri mu Rukiko Rwisumbuye rwa Nyamagabe rwasanze ibikubiyemo bihuye neza n'inyandiko ihinnye yakozwe n'Umwanditsi Mukuru w'urwo Rukiko ku itariki ya 20/10/2011.

[12] Urukiko rwageze kandi ku Rukiko rw'Ibanze rwa Nyaruguru kugira ngo rurebe niba hari urubanza rwaciriwe muri urwo Rukiko hagati ya Nyiringango Faustin na Ngiriyabandi André muri 1983, rusanga urubanza ruhari ari urufite N° RC135/3 rwaciwe ku itariki ya 11/03/2004 gusa, naho urwa mbere ya Jenoside ntirwaboneka, abakozi bo mu Rukiko rw'Ibanze babwira abakora iperereza ko ibitabo by'icyo gihe bidashobora kuboneka kuko byahiye ibindi birononwa.

[13] Urukiko rwemeje ko iburanisha rizongera gupfundurwa ku wa 22/05/2018, ababuranyi bakagira icyo bavuga ku byavuye mu iperereza, uwo munsu ababuranyi baritabye iburanisha riraba, bagira icyo bavuga ku byavuye mu iperereza mu Rukiko Rwisumbuye rwa Nyamagabe no mu cyahoze ari Urukiko rwa Kanto ya Nyaruguru, birangiye, Urukiko rwemeza ko icyemezo ku bijyanye no kumenya niba koko urubanza RCA5799/13 rwarabayeho, kizasomwa ku wa 18/06/2018.

[14] Kuri uwo muni, Urukiko rw'Ikirenga rwaciye urubanza rubanziriza urundi rwemeza ko inyandukuro ihinnye y'urubanza RCA5799/13 rwaciye ku wa 27/07/1983 hagati ya Nyiringango Faustin na Ngiriyabandi André, ikomoka ku rubanza rwabayeho koko, ko rero yagombaga kwakirwa nk'ingingo nshya mu rubanza RCA0261/11/TGI/NYBE igashingirwaho mu gusubiramo urubanza RCA0275/05/TP/GIRO-RCA2880/7/04 Nyiringango Faustin yaburanye na Ngiriyabandi André.

[15] Muri urwo rubanza rubanziriza urundi, Urukiko rw'Ikirenga rwemeje ko urubanza n° RCA 0261/11/TGI/NYBE rwaciye n'Urukiko Rwisumbuye rwa Nyamagabe ku wa 16/03/2012 rwanze ugusubirishamo ingingo nshya urubanza RCA0275/05/TP/GIRO-RCA2880/7/04 rwaciye n'Urukiko Rwisumbuye rwa Nyamagabe ku wa 05/05/2005, ruhindutse mu ngingo zarwo zose, rwemeza ko iburanisha rizakomeza ku muni ababuranyi bazamenyeshwa haburanwa ku bijyanye n'akarengane kagaragara mu manza RC135/3 rwaciye n'Urukiko rwa Kanto ya Nyaruguru ku wa 11/03/2004, n'urubanza RCA0275/05/TP/GIRO- RCA2880/7/04 rwaciye n'Urukiko Rwisumbuye rwa Nyamagabe ku wa 05/05/2005.

[16] Iburanisha ry'urubanza ryongeye gusubukurwa ku wa 24/07/2018, ribera mu ruhamwe hitabye Mukarwego Josepha anahagarariye abavandimwe be Mukamana Donatha na Nyirabutoragurwa Médiatrice yunganiwe na Me Kayirangwa Marie Grâce, Ngiriyabandi André nawe yitabye yunganiwe na Me Sindayigaya Abson.

[17] Me Kayirangwa Marie Grâce uburanira Mukarwego Josepha na bagenzi be, akaba anavuga ko Ngiriyabandi André atagombaga kuregera isambu yamaze kuburanwa kuko urubanza rwamaze kuba itegeko, ko kuba Urukiko Rwisumbuye rwa Nyamagabe rwarirengagije inyandukuro y'urubanza, ari akarengane kuko rwirengagije ko nyuma ya Jenocide inyandiko nyinshi zabuze, Me Sindayigaya Abson we avuga ko, kuba ikimenyetso gishya cyarakiriwe igisigaye ari ukumeya ishingiro ryacyo bihujwe n'amategeko.

I. IKIBAZO KIRI MU RUBANZA N'ISESENGURA RYACYO

Kumenya niba isambu yaburanywe mu rubanza RCA0275/05/TP/GIRO-RCA2880/7/04 rwaciye ku wa 05/05/2005 yari yaraburanyweho mbere urubanza rukaba rwarabayeho itegeko.

[18] Me Kayirangwa Marie Grâce uburanira Mukarwego Josepha uyu akaba ahagarariye abavandimwe be Mukamana Donatha na Nyirabutoragurwa Médiatrice, avuga ko isambu Ngiriyabandi André yaregeye mu Rukiko rw'icyahoze ari Kanto ya Nyaruguru, yari yarayiburanye na Nyiringango Faustin arayitsindirwa, ayijuririra mu Rukiko rwa Mbere rw'Iremezo rwa Gikongoro, nabwo aratsindwa mu rubanza RCA5799/13 rwaciye ku wa 27/07/1983, ariko nyuma ya Jenocide yakorewe Abatutsi muri 1994, arongera ajya kuyiregera mu Rukiko rwa Kanto ya Nyaruguru, no mu Rukiko Rwisumbuye rwa Nyamagabe kubera ko yari azi ko impapuro zose zabuze.

[19] Avuga ko ashimangira ko impine y'icyemezo cy'Urukiko Rwisumbuye rwa Nyamagabe mu rubanza RCA5799/13 rwaciye ku wa 27/07/1983 yagaragaye mu bitabo by'Urukiko, ikwiye guhabwa agaciro Urukiko rukemeza ko isambu iburanwa yafashweho icyemezo mu rubanza rwabaye ntakuka rwaburanwe hagati ya Nyiringango Faustin na Ngiriyabandi André, ko rero

itagombye kongera kugarurwa mu nkiko, naho Mukarwego Donatha uhagarariye abavandimwe be Mukamana Donatha na Nyirabutoragurwa Médiatrice, avuga ko asaba kurenganurwa.

[20] Ngiriyabandi André uregwa avuga ko inyandiko bavuga ko zabuze atari byo, kuko atigeze aburana na Nyiringango Faustin, ahubwo yaburanye na Ruboneza wari warayimwambuye ari umusirikare, ko isambu ari iya Se wabo atari kuyiburana na Nyiringango Faustin kandi ntacyo bapfana, ko rero atagomba kurengana hagendewe ku nyandiko ihinnye yatanzwe n’Urukiko Rwisumbuye rwa Nyamagabe mu buryo atazi.

[21] Me Sindayigaya Abson wunganira Ngiriyabandi avuga ko urubanza ruburanwa rushingiye ku nyandiko mpine yatanzwe n’Urukiko Rwisumbuye rwa Nyamagabe Urukiko rw’Ikirenga rwamaze kwemeza ko ikwiye kwakirwa mu rubanza rubanziriza urundi, ko kuri we asanga igisigaye ari ugusuzuma iyo nyandiko igahuzwa n’amategeko hakarebwa ishingiro ryayo.

UKO URUKIKO RUBIBONA

[22] Ingingo ya 81,2° y’Itegeko-Ngenga N°03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n’ububasha by’Urukiko rw’Ikirenga, iteganya ko : “ Urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirwamo ku mpamvu z’akarengane kubera impamvu zikurikira : (...) Iyo mu icibwa ry’urubanza hirengagijwe amategeko n’ibimenyetso bigaragarira buri wese”.

[23] Ingingo ya 14 y’Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegets, iteganya ko : “ Urubanza rwaciwe ku rwego rwa nyuma ntirushobora kongera kuburanishwa bundi bushya ku mpamvu zimwe no ku kiburanwa kimwe hagati y’ababuranyi bamwe baburana ikirego kimwe”.

[24] Ingingo ya 3 y’Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo, iteganya ko : “ Buri muburanyi agomba kugaragaza ibimenyetso bw’ibyo aburana”.

[25] Ku bijyanye n’uru rubanza, Urukiko rw’Ikirenga rurasanga inyandukuro ihinnye y’urubanza yatanzwe na Mukarwego Josepha mu rubanza RCA0261/11/TGI/NYBE, igaragaza ko Urukiko rwa Mbere rw’Iremezo rwa Gikongoro rwakijije mu bujurire urubanza RCA5799/13 ku wa 27/07/1983 haburana Nyiringango Faustin na Ngiriyabandi André, ikiburanwa ari isambu, urwo Rukiko rukaba rwaremeje ko Ngiriyabandi André atsinzwe, ko hatsinze Gumiriza uburanira Nyiringango Faustin, Ngiriyabandi André ategukwa gutanga amafaranga atandukanye harimo amagarama, indishyi n’umusogongerwa wa Leta, iyo nyandiko ihinnye ikaba yatanzwe n’Umwanditsi w’Urukiko Rwisumbuye rwa Nyamagabe ku wa 20/10/2011, abyandukuye mu gitabo cya 13 cy’ibirego.

[26] Urukiko rurasanga iyi nyandukuro ihinnye, igaragaza nta gushidikanya ko habayeho urubanza rw’isambu hagati ya Nyiringango Faustin na Ngiriyabandi André nk’uko Mukarwego Josepha n’abavandimwe be babivugaga, kikaba ari ikimenyetso gihamya ko aba baburanyi bombi bigeze kuburana isambu mbere mu Rukiko rwa Mbere rw’Iremezo rwa Gikongoro, hagacibwa urubanza RCA5799/13 ku wa 27/07/1983, bityo hakaba nta rundi rubanza rwagombaga gucibwa kuri iyo sambu hashingiwe ku ihame ry’ubudahangarwa bw’urubanza

rwabaye ndakuka, nk'uko biteganyijwe mu ngingo ya 14 y'Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryavuzwe haruguru.

[27] Urukiko rurasanga kandi, kuba haratanzwe inyandiko ihinnye mu mwanya w'urubanza, ari uko urubanza ubwarwo rutashoboraga kuboneka nk'uko Urukiko rw'Ikirenga rwabyiboneye mu iperereza ryo ku wa 02/03/2018 aho Umwanditsi Mukuru w'Urukiko Rwisumbuye rwa Nyamagabe yemeje ko nta nyandiko y'incarubanza ishobora kuboneka, uretse igitabo N°13 cyabonetse ari naho yandukuye icyemezo cyafashwe mu rubanza RCA5799/13, ariko akemeza ko urubanza rwose rudashobora kuboneka¹, kubera ko imanza n'ibitabo bimwe bya mbere ya Jenocide yakorewe Abatutsi muri 1994 byabuze, ibyo kandi bikaba ari nabyo byari byemejwe muri iryo perereza n'Umwanditsi Mukuru w'Urukiko rw'Ibanze rwa Kibeho rwimuriwemo imanza n'ibitabo byose byahoze ari iby'Urukiko rwa Kanto ya Nyaruguru nyuma y'ivugurura ry'ubucamanza.

[28] Urukiko rurasanga ibivugwa n'uburanira Ngiriyabandi André ko iyi nyandiko ihinnye atari urubanza kuko itagaragaza nyir'isambu, nta shingiro bifite kuko n'ubwo atari incarubanza, ariko ni ikimenyetso kidashidikanywaho ko habaye urubanza hagati y'aba baburanyi bombi cyatanzwe n'urwego rubifitiye ububasha ndetse cyerekana icyemezo cyarufashwemo, iyo nyandiko ihinnye kandi, ikaba ifite agaciro kayo, kuko ari imwe mu nyandiko zari ziteganyijwe mu zitangwa n'Urukiko nk'uko Iteka rya minisitiri N°002 ryo ku wa 06/01/2005 rigena amagarama y'urukiko mu manza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryayishyiraga mu nyandiko zitangwa n'Umwanditsi w'Urukiko mu ngingo yaryo ya 2 agace kayo ka 6², iyo nyandiko kandi ikaba inateganyijwe mu ngingo ya 360 y'Itegeko N°18/2004 ryo ku wa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakoreshwaga igihe iyo nyandiko ihinnye yatangwaga, aho iyi ngingo ivuga ko iyo nyandiko ishobora gutangwa nko mu gihe Perezida w'Urukiko asanze uyisaba ari umutindi udashobora kubona amafaranga yo kuyigura³.

[29] Rurasanga kuba Ngiriyabandi André avuga ko inyandiko ihinnye itagaragaza niba isambu yaburanywe muri urwo rubanza RCA5799/13, ari nayo iburanwa mu rubanza RC135/3 rwaciwe n'Urukiko rwa Kanto ya Nyaruguru n'urubanza RCA0275/05/TP/GIRO- RCA2880/7/04 rwaciwe n'Urukiko Rwisumbuye rwa Nyamagabe, nta shingiro bifite kubera ko atagaragaza ibimenyetso by'uko iyo sambu itandukanye n'iyaburanywe mu rubanza RCA5799/13 mu gihe urwo rubanza rugaragaza ko icyaburanywe ari isambu kandi iburanwa hagati ya Nyiringango Faustin na Ngiriyabandi André, bityo akaba atsindwa no kubura ibimenyetso by'ibyo aburanisha

¹ Reba inyandiko –mvugo y'iperereza yakozwe ku wa 02/03/2018 ku rupapuro rwa 2 kugeza ku rwa 3 mu nyandiko zigize urubanza

² Igiciro cy'amafaranga y'u Rwanda yakwa ku nyandiko z'ibyakozwe mu mihango y'urubanza mu byerekeye ikirego mbonezamubano, icy'ubucuruzi, icy'umurimo n'icy'ubutegetsi, agenwe ku buryo bukurikira :

. Inyandiko iriho itegeko mpuruza, imyandukuro irambuye, ingingo z'ingenzi z'urubanza (extrait du jugement) cyangwa inyandukuro y'indi nyandiko iyo ariyo yose ikozwe n'umwanditsi w'urukiko :

- Impapuro ebyiri za mbere

- Buri rupapuro rwiyongereyeho

³ Igihe Perezida w'urukiko rwaciye urubanza asanze umuburanyi ari umutindi nyakujya, ateguka ko bamuha matolewo, inyandiko ihinnye y'urubanza cyangwa kopi y'urubanza atishyuye. Minsi y'urwo rupapuro rutanzwe, bandikaho ko rutangiwe ubuntu.

nk'uko ingingo ya 3 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo, yavuzwe haruguru ibiteganya.

[30] Urukiko rurasanga rero, kuba Urukiko rw'icyahoze ari Kanto ya Nyaruguru n'Urukiko rw'icyahoze ari Intara ya Gikongoro zaraciye urubanza ku isambu yari yaramaze gufatwaho icyemezo mu rubanza rwabaye ntakuka, ari ikosa izo nkiko zakoze, ingaruka zikaba ari uko izo manza zikwiye gukurwaho. Ibyo kandi bikaba ari nabyo bivugwa mu nyandiko y'umuhanga mu mategeko Serge Guinchard mu gitabo cyitwa Droit et Pratique de la Procédure Civile ku rupapuro rwa 1225, igika cya 3⁴, aho asobanura ko imwe mu ngaruka zishoboka mu gihe haciye urubanza ku kintu hirengagijwe ko cyari cyarafashweho icyemezo mu rubanza rwabaye ndakuka, ari uko urwo rubanza ruciwe rukurwaho.

III.ICYEMEZO CY'URUKIKO

[31] Rwemeje ko ikirego gisaba gusubirishamo urubanza RCA0261/11/TGI/NYBE rwaciwe n'Urukiko Rwisumbuye rwa Nyamagabe ku wa 16/03/2012 ku mpamvu z'akarengane, gifite ishingiro ;

[32] Rwemeje ko urubanza RC135/3 rwaciwe n'Urukiko rw'icyahoze ari Kanto ya Nyaruguru ku wa 11/03/2004, n'urubanza RCA0275/05/TP/GIRO- RCA2880/7/04 rwaciwe n'Urukiko Rwisumbuye rwa Nyamagabe ku wa 05/05/2005, zikuweho ;

[33] Rwemeje ko hagumaho imikirize y'urubanza RCA5799/13 rwaciwe n'Urukiko rwa mbere rw'Iremezo rwa Gikongoro ku wa 27/07/1983.

⁴ Le prononcé d'un jugement auquel est conférée l'autorité de la chose jugée entraîne deux séries d'effets : d'une part, le juge est dessaisi et ne peut plus revenir sur sa décision, d'autre part, s'il arrive qu'un autre juge rende une décision méconnaissant la chose précédemment jugée, une sanction pourrait être prononcée tendant à l'annulation de cette décision