

# **NDEREYEHE v. NYIRAMAHINGURA N'ABANDI**

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC  
00020/2017 (Mukanyundo J.P, Hitiyaremye na Munyangeri J.)  
09 Werurwe 2018]

*Amategeko y'imiburanishirize y'ianza mbonezamubano – Gutambamira urubanza – Inyungu – Inyungu z'utanga ikirego cyo gutambamira urubanza, zigomba kuba zitandukanye n'iz'ababuranye urubanza rutambamirwa.*

**Incamake y'ikibazo:** Ndereyehe yareze umukobwa we Musengimana mu Rukiko rw'Ibanze rwa Kinihira, ko yihaye imirima ye ibiri, ishyamba n'inka eshatu. urwo Rukiko, rwemeza ko icyo kirego gifite ishingiro kuko imitungo yaregeye yayibonye nyina wa Musengimana yarapfuye, rutegeka kandi Ndereyehe guha Musengimana umunani.

Musengimana yajuririye mu Rukiko Rwisumbuye, avuga ko imitungo iburanwa yari iya nyina w'itabye Imana ko Se yari yarayambuye murumuna we Nyiramahingura nawe aburana muri urwo rubanza. Urwo Rukiko rwaciye urubanza rwemeza ko Musengimana ataburanira murumuna we kuko nta kimenyetso atanga kigaragaza ko yamutumye, rwemeje kandi ko imikirize y'urubanza rwajuririwe idahindutse.

Nyuma y'urwo rubanza, Nyiramahingura yararutambamiye arega Ndereyehe gusa, ariko Musengimana aza kuza mu rubanza nyuma yaho yemereye kuburana n'ubwo atarezwe. Nyiramahingura avuga ko yatambamiye urwo rubanza kuko Se Ndereyehe yatuje umugore we muto mu isambu yari ituwemo

na nyina, kandi yari yarayitekeshejwe na Sekuru. Urwo rukiko rwemeje ko Nyiramahingura na Musengimana bagumana inzu n'isambu basizwemo na nyina, kandi ko Se abaha igipande ku isambu iri i Remera kubera ko nta munani yigeze abaha, naho ku ibindi biburanwa rutegeka ko buri kimwe kigabanywamo kabiri, ½ kigahabwa Musengimana na Nyiramahingura, naho ikindi ½ kigahabwa Ndereyehe n'umugore we muto. Ndereyehe yajuriye mu Rukiko Rukuru, ariko ikirego cye nticyakirwa.

Ndereyehe yaganyee Urwego rw'Umuvunyi arusaba gusuzuma akarengane yagiriwe mu rubanza rwaciwe n'urukiko rw'isumbuye, Umuvunyi Mukuru nawe nyuma y'isuzuma ry'ubusabe bwe yandikiye Perezida w'Urukiko rw'Ikirenga amusaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane kuko Nyiramahingura yari atemerewe gutambamira urubanza RCA0195/12/TGI/GIC rwabaye hagati ya Se na mukuru we, maze nawe afata icyemezo ko urwo rubanza rusubirishwamo.

Ndereyehe mu Urukiko rw'Ikirenga, Ndereyehe nawe agaragaza ko akarengane ke gashingiye ku kuba hari amategeko yirengagijwe mu rukiko rwisumbuye kuko rwakiriye ikirego cyo gutambama cy'umwana we Nyiramahingura kandi ikiburanwa ari umutungo w'umuryango.

Nyiramahingura, avuga ko mu kwakira ikirego cyo gutambama nta karengane kabaye mu Urukiko Rwisumbuye kuko yari afite inyungu muri urwo rubanza atari yabayemo umuburanyi mbere kandi ko tegeko riteganywa ko umwana adashobora kuburana ibyo Se cyangwa nyina yaburanye n'umuntu utari uwo mu muryango ariko ko ritabuza umwe mu bagize umuryango guharanira uburenganzira afite ku mutungo w'umuryango aburana n'abandi bagize umuryango.

**Incamake y'icyemezo:** 1 Inyungu z'utanga ikirego cyo gutambamira urubanza, zigomba kuba zitandukanye n'iz'ababuranye urubanza rutambamirwa. Ntibihagije kwerekana ko ufite inyungu mu rubanza rutambamirwa, ko ahubwo ugomba kwerekana ko izo nyungu zigomba kuba zitandukanye n'iz'ababuranye urubanza rutambamirwa. Ikirego cyo gutambama nticyakirwa ngo gisuzumwe iyo utambama adashobora kwerekana inyungu yihariye afite itandukanye n'iy'uwaburanye mbere yari akurikiranye mu rubanza atambamira. Bityo ikirego cyo gutambamira urubanza cyatanzwe na Nyiramahingura kitaragombaga kwakirwa kuko atashoboye kwerekana inyungu yihariye afite itandukanye n'iy'uwaburanye mu rubanza yasabaga gutambamira

**Ikirego cyo gusubirishamo urubanza ku mpamvu  
z'akarengane gifite ishingiro;  
Urubanza RCA0296/12/TGI/GIC rukuweho;  
Hagumyehe imikirize y'urubanza RCA0195/12/TGI/GIC.**

**Amategeko yashingiweho:**

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  
176

**Nta manza zifashishijwe.**

**Inyandiko z'abahanga zifashishijwe.**

Serges Guinchard, Droit et pratique de la procédure civile, 8ème  
Edition, Dalloz, 2014.

## I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ibanze rwa Kinihira, Ndereyehe François arega umukobwa we Musengimana Philomène imirima ibiri (2), ishyamba n'inka eshatu (3) yihaye. Ku itariki ya 31/05/2012, urwo Rukiko rwaciye urubanza RC0108/012/TB/KINIH, rwemeza ko ikirego cya Ndereyehe François gifite ishingiro kuko imitungo yaregeye yayibonye nyina wa Musengimana Philomène yarapfuye, kandi ko yakomeje inshingano zo kwita kuri uyu mwana we nyuma y'aho amushyngiriye akananirwa urugo, cyakora ko akwiriye kumuha umunani akurikije umutungo afite.

[2] Musengimana Philomène yajuririye Urukiko Rwisumbuye rwa Gicumbi, avuga ko imitungo iburanwa yari iya nyina icyitegetse Bernadette, ko ariko Se ashaka kuyiha umugore we wa kabiri, akaba yarayambuye murumuna we Nyiramahingura Gratia nawe aburanira muri urwo rubanza.

[3] Ku itariki ya 14/09/2012, urwo Rukiko rwaciye urubanza RCA0195/12/TGI/GIC rwemeza ko nta kimenyetso Musengimana Philomène agaragaza cy'uko murumuna we yamutumye kumuburanira urubanza, kandi ko mu rwego rw'Ibanze atabivuze, urubanza rukaba ruri hagati ye na Se gusa. Ku byerekeye ibiburanwa, Urukiko rwemeje ko imikirize y'urubanza rwajuririwe idahindutse, kuko Musengimana Philomène atabashije gutanga gihamya cy'uko imitungo yaregeye yari iya nyina.

[4] Nyuma y'icibwa ry'uru rubanza, Nyiramahingura Gratia yarutambamiye mu Rukiko Rwisumbuye rwa Gicumbi arega Ndereyehe François gusa, ariko Musengimana Philomène nawe

aza kuza mu rubanza amaze kwemera kuburana n'ubwo atarezwe. Impamvu zo gutambamira uru rubanza Nyiramahingura Gratia yatanze, ni uko Se Ndereyehe François yatuje umugore we muto mu isambu yari ituwemo na nyina icyitegetse Bernadette, kandi yari yarayitekeshejwe na Sekuru Bagora.

[5] Ku itariki ya 28/02/2013, urwo Rukiko rwaciye urubanza RCA0296/12/TGI/GIC, rwemeza ko Nyiramahingura Gratia na Musengimana Philomène bagumana inzu n'isambu biri i Gitwa basizwemo na nyina, kandi Ndereyehe François akabaha igipande ku isambu iri i Remera kubera ko nta munani yigeze abaha. Ku byerekeye ibindi biburanwa bigizwe n'ishyamba n'inka eshatu (3), Urukiko rwemeje ko buri cyose kigabanywa, igipande kimwe kikajya ku rugo rukuru rurimo Musengimana Philomène na Nyiramahingura Gratia, ikindi kigahabwa urugo ruto rurimo Ndereyehe François n'umugore we muto Siyonteze Verdianne, rutegeka ko imanza RC0108/012/TB/KINIH na RCA0195/12/TGI/GIC zivanyweho. Uru rubanza Ndereyehe François yarujuririye mu Rukiko Rukuru, ariko ikirego cye nticyakirwa kubera ko kitujuje ibiteganywa n'amategeko.

[6] Ndereyehe François yaganye Urwego rw'Umuvunyi arusaba gusuzuma akarengane kabaye mu rubanza RCA0296/12/TGI/GIC, Umuvunyi Mukuru yandikira Perezida w'Urukiko rw'Ikirenga amusaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, maze ku itariki ya 18/04/2017 afata icyemezo N°028/2017 ko urubanza RCA0296/12/TGI/GIC rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga rukandikwa mu bitabo byabugenewe kugira ngo rwongere ruburanishwe.

[7] Urwego rw'Umuvunyi ruvuga ko impamvu z'akarengane zigaragara muri urwo rubanza zishingiye ku mpamvu y'uko hari amategeko atarubahirijwe mu kwakira ikirego cyo gutambama cyatanzwe na Nyiramahingura Gratia. Uru rwego rusobanura ko Nyiramahingura Gratia atari yemerewe gutambamira urubanza RCA 0195/12/TGI/GIC hakurikijwe ibiteganywa n'ingingo ya 176, igika cya mbere n'icya kabiri, y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, kubera ko ikiburanwa cyari umutungo w'umuryango kandi akaba ari umwana w'uwarezwe, iyi mpamvu akaba ari nayo Ndereyehe François yagaragaje asobanurira Urukiko rw'Ikirenga akarengane ke.

[8] Urubanza rwaburanishirijwe mu ruhamwe ku itariki ya 30/01/2018 Ndereyehe François yunganiwe na Me Kayitana Dominique Savio, Me Kananga Protogène ahagarariye Musengimana Philomène nawe uhagarariye umuvandimwe we Nyiramahingura Gratia.

## **II. IKIBAZO KIRI MU RUBANZA N'ISESENGURA RYACYO**

**Kumenya niba ikirego cyo gutambamira urubanza RCA0195/12/TGI/GIC kitaragombaga kwakirwa mu Rukiko Rwisumbuye rwa Gicumbi.**

[9] Ndereyehe François avuga ko yaburanye na Musengimana Philomène, ku buryo uyu atari yemerewe gusubira inyuma ngo atambamire urubanza yabayemo umuburanyi. Me Kayitana Dominique Savio umwunganira yongeraho ko ibi binyuranye n'ingingo ya 175 y'Itegeko N°

21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, iteganya ko gutambamira urubanza bireba gusa umuntu utarabaye umuburanyi, bityo na Musengimana Philomène akaba atari yemerewe gutambamira urubanza RCA0195/12/GIC yabayemo umuburanyi.

[10] Me Kayitana Dominique Savio akomeza avuga ko urubanza RCA0296/12/TGI/GIC rwaciwe n'Urukiko Rwisumbuye rwa Gicumbi nyuma yo gutambamira urubanza RCA0195/12/TGI/GIC rwagaragayemo akarengane, kuko ikirego cyatanzwe na Nyiramahingura Gratia hamwe na Musengimana Philomène kitagombaga kwakirwa. Asobanura ko uru rubanza rwatangiriye mu Rukiko rw'Ibanze rwa Kinihira haburanwa umutungo w'umuryango ugizwe n'imirimu ibiri (2), ishyamba n'inka eshatu (3) Ndereyehe François arega umukobwa we Musengimana Philomène asaba ko awuvamo. Akomeza avuga ko Musengimana Philomène amaze gutsindwa yajuriye nabwo agatsindwa, nyuma we na murumuna we Nyiramahingura Gratia batambamira urubanza birengagije ko umutungo uburanwa ari uw'umuryango, byongeye kandi Musengimana Philomène akaba yararubayemo umuburanyi, ibi bikaba binyuranye n'ibiteganywa n'ingingo ya 176 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets.

[11] Me Kananga Protogène uburanira Nyiramahingura Gratia na mukuru we Musengimana Philomène, avuga ko mu kwakira ikirego cyo gutambama cyatanzwe na Nyiramahingura Gratia wenyine mu Rukiko nta karengane kabaye kuko yari afite inyungu nk'uko bigaragara mu rubanza RCA0296/12/TGI/GIC,

akaba atarigeze aba umuburanyi mu rubanza yatambamiye, ko Musengimana Philomène wabaye umuburanyi muri urwo rubanza atigeze atanga ikirego cyo kurutambamira, ko yarujemo nk'wabaye umuburanyi mu rubanza rutambamirwa nk'uko biteganywa n'itegeko riteganywa ko iyo urubanza rutambamiwe, abarubayemo ababuranyi bose barugarukamo. Avuga ko kuba Musengimana Philomène yanditse mu batanze ikirego cyo gutambama byaturutse ku kwibeshya k'Urukiko. Arangiza avuga ko icyo Nyiramahingura Gratia na Musengimana Philomène baburana ari uburenganzira bwo kuguma mu mutungo basigiwe na nyina.

[12] Ku byerekeranye n'ibiteganywa n'ingingo ya 176, igika cya kabiri, y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru, Me Kananga Protogène asobanura ko itegeko riteganywa ko umwana adashobora kuburana ibyo Se cyangwa nyina baburanye n'umuntu utari uwo mu muryango, ko ritabuza umwe mu bagize umuryango guharanira uburenganzira afite ku mutungo w'umuryango aburana n'abandi bagize umuryango, ko bigenze bityo byaba ari akarengane. Me Kananga Protogène asanga bitabujijwe ko umwana cyangwa umubyeyi batambamira umutungo mu gihe umwe awambuye undi, ko icyo umushingamategeko yari agamije mu ngingo ya 176 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ari ukugira ngo uburenganzira bw'abanyamuryango hagati yabo budahungabanywa.

## **UKO URUKIKO RUBIBONA**

[13] Ingingo ya 176 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu,

iteganya ko "Umuntu wese utareze cyangwa ngo aregwe mu rubanza ariko afite inyungu, iyo ari yo yose muri rwo, ashobora gutambamira urwo rubanza rumurenganya ngo rusubirwemo iyo, ari we cyangwa ari n'abo ahagarariye nta warutumiwemo. Ibivugwa mu gika cya mbere cy'iyi ngingo ntibireba uwashakanye n'umuburanyi cyangwa abana babo mu gihe ikiburanwa ari umutungo w'umuryango".

[14] Mu gutanga ibisobanuro ku nyungu (intérêt) y'utanga ikirego cyo gutambamira urubanza, abahanga mu mategeko bavuga ko bidahagije kwerekana ko ufite inyungu mu rubanza rutambamirwa, ko ahubwo izo nyungu zigomba kuba zitandukanye n'iz'ababuranye urubanza rutambamirwa. Akomeza avuga ko utanga ikirego cyo gutambamira urubanza agomba kwerekana ko rumurenganya ku giti cye mu buryo butandukanye n'ubw'abaruburanye, aho kureba gusa icyemezo cy'urukiko; ari nayo mpamvu ikiba kigamijwe atari ugusubiramo urubanza ngo ababuranyi babone ibirenze ibyo bari babonye mbere (.....Pour être utile, l'intérêt doit être distinct de l'une des parties ayant participé au procès. Le préjudice ne doit pas résulter, sans autre élément, de la seule solution, mais doit s'analyser au regard de la situation personnelle du tiers opposant, qui doit prétendre à un intérêt distinct, un préjudice personnel, et évidemment doit avoir une analyse juridique, au moins en partie différente de celle déjà présentée. Il ne s'agit point ici de refaire le procès à l'identique, pour tenter d'obtenir un meilleur résultat...)<sup>1</sup>

[15] Ku birebana no kumenya niba Musengimana Philomène yaratabamiye urubanza yabayemo umuburanyi, inyandiko

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<sup>1</sup> Serges Guinchard, Droit et pratique de la procédure civile, 8ème Edition, Dalloz, 2014, P. 1595 (551-53).

zigize dosiye y'urubanza zigaragaza ko ku itariki ya 12/11/2012, Nyiramahingura Gratia yatanze ikirego gitambamira urubanza RCA0195/12/TGI/GIC rwaciwe ku itariki ya 14/09/2012 arega Ndereyehe François (urubanza RCA0296/12/TGI/GIC, urupapuro rwa 2), aba baburanyi bakaba ari nabo bagaragara ku nyandiko zihamagara Ndereyehe François mu nama ntegururubanza (urupapuro rwa 1112).

[16] Dosiye igaragaza kandi ko mu iburanisha ry'urubanza RCA0296/12/TGI/GIC) ryo ku itariki ya 18/12/2012, Urukiko rwabajije Musengimana Philomène niba yemera kuburana kuko byagaragaraga ko Nyiramahingura Gratia yareze Ndereyehe François wenyine kandi bombi barabaye ababuranyi mu rubanza rutambamirwa, arabyemera.

[17] Hashingiwe kuri izo nyandiko, n'ubwo muri kopi y'urubanza RCA0296/12/TGI/GIC rwasubirishijwemo ku mpamvu z'akarengane handitse ko abarega ari Nyiramahingura Gratia na Musengimana Philomène, Urukiko rw'Ikirenga rurasanga harabayeho kwibeshya kuko nk'uko byagaragajwe haruguru, uwatanze ikirego cyo gutambamira urubanza n° /12/TGI/GIC ni Nyiramahingura Gratia wenyine, ibi bigashimangirwa n'uko no mu cyemezo cy'Urukiko, ruvuga ko "rwemeye kwakira ikirego cya Nyiramahingura Gratia".

[18] Ku birebana no kumenya niba Nyiramahingura Gratia we yari yemerewe gutambamira urubanza RCA0195/12/TGI/GIC, Urukiko rw'Ikirenga rurasanga ikiburanwa muri uru rubanza ari umutungo w'umuryango wa Ndereyehe François aburana n'abana be Musengimana Philomène na Nyiramahingura Gratia bakomoka ku mugore we mukuru nyakwigendera icyitegetse Bernadette, buri ruhanda ruvuga ko ruwufiteho uburenganzira. Nk'uko byagaragajwe

haruguru, icyo Nyiramahingura Gratia na Musengimana Philomène bahuriyeho, ni ugushaka kwegukana isambu n'ishyamba bavuga ko ari ibya nyina nk'uko bigaragara mu rubanza RC0108/012/TB/KINIH (Urupapuro rwa 1, igika cya mbere n'icya kabiri) no mu rubanza RCA0195/12/TGI/GIC (Urupapuro rwa 2, igika cya gatanu), Ndereyehe François nawe avuga ko uyu mutungo ari uwe.

[19] Kuba ibyo Musengimana Philomène na Nyiramahingura Gratia bagamije muri uru rubanza bidatandukanye kuko ntawe ugaragaza umwihariko wo gushaka kwegukana imitungo iburanwa ku giti cye, ahubwo bose bashaka ko igaruka mu mutungo wa nyina icyitegetse Bernadette, ibi bikanashimangirwa ni uko mu rubanza RCA0195/12/TGI/GIC Musengimana Philomène yaburanaga avuga ko anaburanira murumuna we Nyiramahingura Gratia n'ubwo Urukiko rutabimwemeraye, Urukiko rw'Ikirenga rurasanga ikirego cyo gutambamira urubanza RCA0195/12/TGI/GIC cyatanzwe na Nyiramahingura Gratia kitaragombaga kwakirwa ngo gisuzumwe kuko atashoboye kwerekana inyungu yihariye afite itandukanye n'iyi Musengimana Philomène yari akurikiranye mu rubanza yasabaga gutambamira.

[20] Hashingiwe ku biteganywa n'ingingo ya 176 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru, ndetse no ku bisobanuro bitangwa n'abahanga mu mategeko, Urukiko rw'Ikirenga rurasanga ikirego cyo gutambamira urubanza RCA0195/12/TGI/GIC cyatanzwe na Nyiramahingura Gratia mu Rukiko Rwisumbuye rwa Gicumbi kitaragombaga kwakirwa ngo gisuzumwe, bityo urubanza RCA0296/12/TGI/GIC rukaba ruvanyweho hagahamaho

imikirize y'urubanza RCA0195/12/TGI/GIC ari narwo rugomba kurangizwa.

### **III. ICYEMEZO CY'URUKIKO**

[21] Rwemeje ko ikirego cyo gusubirishamo ku mpamvu z'akarengane urubanza RCA0296/12/TGI/GIC cyatanzwe na Ndereyehe François gifite ishingiro;

[22] Rwemeje ko urubanza RCA0296/12/TGI/GIC rwaciwe n'Urukiko Rwisumbuye rwa Gicumbi ku itariki ya 28/02/2013 rukuweho; hagahamaho imikirize y'urubanza RCA0195/12/TGI/GIC rwaciwe n'urwo Rukiko ku itariki ya 14/09/2012.