

TWAGIRAYEZU N'ABANDI v TWAGIRAYEZU N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00007/2020/SC – (Ntezilyayo, P. J., Nyirinkwaya, Cyanzayire, Hitiyaremye na Karimunda, J.) 25 Kamena 2021]

Amategeko agenga ububasha bw'inkiko – Ubujurire ku rwego rwa kabiri – Inzitizi yo kutakira ubujurire – Gutsindwa ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe – Impamvu mu rubanza – Ni ibisobanuro buri Rukiko rwashingiyeho mu gufata icyemezo cyarwo rugendeye ku byabaye no ku byo amategeko abiteganyaho, ko impamvu arizo zishingirwaho mu kugaragariza no gusobanurira ababuranyi icyatumye Urukiko rufata icyemezo, akaba ari nazo ziharwaho ababuranyi basuzuma niba imiburanire yabo yarasesenguwe n'Urukiko bitewe n'uko buri cyemezo cy'urukiko kigomba kuba cyasobanuriwe impamvu.

Amategeko agenga ububasha bw'inkiko – Ubujurire ku rwego rwa kabiri – Inzitizi yo kutakira ubujurire – Gutsindwa ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe – Impamvu zimwe – Mu gihe Urukiko rwajuririwe rwakoporoye ijamba ku rindi nta na gito rusize cyangwa ruhinduye ku bisobanuro byatanzwe mu rubanza rwari rwajuririwe kandi ntaho rwabanje kuvuga ko rwemeranya narwo, ntibyafatwa ko Urukiko rwajuririwe hari impamvu zarwo rwatangiyeye icyemezo rwafashe. Iyo bimeze bityo, nubwo nta mategeko runaka aba yishwe ahubwo haba habayeho kutubahiriza amahame agenga imyandikire, ntaho Urukiko rurimo gusuzuma ubujurire bwa kabiri rwasabwe gufata icyemezo ku nzitizi yo kuba uwajuriye yaratsinzwe ku mpamvu zimwe, rwahera rugereranya imitekerereze y'Inkiko zombi ngo rwemeze ko zafashe ibyemezo zishingiye ku mpamvu zimwe kandi impamvu zaratanzwe gusa n'Urukiko rwaciye urubanza ku rwego rwa mbere.

Incamake y'ikibazo: Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine na Twagirayezu Monique barega musaza wabo Twagirayezu Albert mu Rukiko Rwisumbuye rwa Gasabo ko yagurishije ikibanza cy'umuryango batabizi bakaba basaba ko amasezerano y'ubugure yakoranye na nyakwigendera Niyongira Jean Claude, wari umugabo wa Umumaranyota, aseswa, uyu agasubiza umutungo uburanwa. Urukiko rwategetse ko ayo masezerano agumana agaciro kayo kuko yakozwe mu buryo bukurikije amategeko, rushingiye ku bimenyetso Uregwa yarugaragariye nubwo bitagaragaza inkomoko yawo ndetse bikaba bitaravugurujwe ariko byerekana ko umutungo wari uwe.

Abarega bajuririye Urukiko Rukuru bavuga ko iyo Urukiko rwikorera iperereza, rugasuzuma n'ibimenyetso barushyikirije, rwari kubona ko Uregwa atagaragaza inkomoko y'umutungo yiyitiriye akanawugurisha. Uru Rukiko rwanzuye ko imikirize y'urubanza rwaciye n'Urukiko Rwisumbuye idahindutse kubera ko ibimenyetso Twagirayezu Albert yagaragariye byerekana ko umutungo ari uwe ndetse ko byari no mu bubasha bwe kuba yawugurisha ndetse Abajuriye bakaba bataragaragaje ibimenyetso byerekana ko umutungo ari uwabo. Aba ntibishimiye icyemezo cy'uru Rukiko maze bajuririra Urukiko rw'Ubujurire bavuga ko Urukiko Rukuru rutasuzumye inkomoko y'umutungo wagurishijwe ndetse n'inyandiko Twagirayezu Albert yiyandikiye avuga ko yagurishije umutungo w'umuryango atabihereye uburenganzira, n'imvugo z'abatangabuhamya ziyishimangira, ibi bikaba byarirengagijwe nyamara ari byo bigaragaza inkomoko y'uwo mutungo.

Umumaranyota yatanze inzitizi yo kutakira ikirego cy'Abajuriye avuga ko agaciro k'ikiburanwa katageze kuri 75.000.000 Frw ateganywa n'Itegeko rigenga ububasha bw'inkiko, n'iyi kuba impamvu zashingiweho Abarega batsindwa mu Rukiko ari zimwe n'izashingiweho mu Rukiko Rukuru.

Urukiko rw'Ubujurire rwasanze ingingo zasuzumwe mu nkiko zabanje zihuriye ku kumenya niba umutungo wagurishijwe ari uwa Twagirayezu Albert ku giti cye cyangwa niba wari uw'umuryango we, rusanga icyemezo cyafashwe nazo gishingiye ku mpamvu zimwe, rwemeza ko ubujurire butari mu bubasha bw'arwo.

Abarega bandikiye Perezida w'Urukiko rw'Ikirenga basaba ko urubanza rwaciwe n'Urukiko rw'Ubujurire rusubirwamo ku mpamvu z'akarengane, amaze gusuzuma ubwo busabe, ategetse ko rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe.

Mu iburanishwa mu ruhame, Abaregwa batanze inzitizi y'uko Abarega nta mpamvu z'akarengane bagaragaje zatuma urubanza rusubirwamo hamwe n'inzitizi yo kuba batemerewe gusaba iseswa ry'amasezerano y'ubugure batagizemo uruhare. Urukiko rwafatiye icyemezo mu ntebe rwemeza ko iyo Perezida w'Urukiko rw'Ikirenga amaze kwemeza ko urubanza rwongera kuburanishwa, nta zindi nzitizi zitangwa zatuma urubanza rutaburanishwa mu mizi uretse inzitizi ndemyagihugu. Ku nzitizi ya kabiri, Urukiko rwemeje ko nubwo iyi ngingo yatanzwe nk'inzitizi, igaruka ku mizi y'urubanza, ikaba itasuzumwa hataramenyekana niba Urukiko rw'Ubujurire rwakoze amakosa rwemeza ko Abarega batsinzwe ku mpamvu zimwe.

Urukiko rwakomereje ku kibazo cyo kumenya niba ubujurire bwa kabiri bwaragombaga kwakirwa n'Urukiko rw'Ubujurire maze impande zombi zibitangaho ibisobanuro. Abarega bavuga ko ibibazo byasuzumwe n'Urukiko Rwisumbuye n'ibyasuzumwe n'Urukiko Rukuru bitandukanye, ko mu Rukiko Rukuru bagaragaje ko n'ubwo ikibanza cyari cyanditse kuri Twagirayezu Albert, aterekanye aho agikomora, nyamara kubigaragaza byari inshingano ze, akaba asanga ubujurire bwaragombaga kwakirwa kubera ko impamvu zashingiweho n'izo Nkiko zombi atari zimwe. Bityo, bakaba basaba uru Rukiko gusuzuma niba koko izo nkiko zombi zarabajijwe ibibazo bimwe ndetse zikabisesengura kimwe, rwasanga atari uko bimeze rukemeza ko batatsinzwe ku mpamvu zimwe, bityo ko ubujurire bwa kabiri bwagombaga kwakirwa kubera ko ikiburanwa gifite agaciro ka 92.825.000 Frw.

Umumaranyota avuga ko mu Rukiko Rwisumbuye no mu Rukiko Rukuru habanje gusuzumwa ikibazo cyo kumenya niba Twagirayezu Albert yari afite uburenganzira bwo kugurisha umutungo uburanwa hamwe no kumenya aho awukomora, zisanga afite ibimenyetso bitavuguruzwa by'uko ari uwe, harongera hasuzumwa ikibazo cyo kumenya niba amasezerano y'ubugure akwiye guseswa, inkiko zombi zemeza ko agumana agaciro kayo kuko yakozwe mu buryo bukurikije amategeko.

Incamateke y'icyemezo: 1. Impamvu mu rubanza ni ibisobanuro buri Rukiko rwashingiyeho mu gufata icyemezo cyarwo rugendeye ku byabaye no ku byo amategeko abiteganyaho, ko impamvu arizo zishingirwaho mu kugaragariza no gusobanurira ababuranyi icyatumye Urukiko rufata icyemezo, akaba ari nazo zihariwaho ababuranyi basuzuma niba imiburanire yabo yarasesenguwe n'Urukiko bitewe n'uko buri cyemezo cy'urukiko kigomba kuba cyasobanuriwe impamvu.

2. Mu gihe Urukiko rwajuririwe rwakoporoye ijamba ku rindi nta na gito rusize cyangwa ruhinduye ku bisobanuro byatanzwe mu rubanza rwari rwajuririwe kandi ntaho rwabanje kuvuga ko rwemeranya narwo, ntibyafatwa ko Urukiko rwajuririwe hari impamvu zarwo rwatangiye icyemezo rwafashe. Iyo bimeze bityo, nubwo nta mategeko runaka aba yishwe ahubwo haba habayeho kutubahiriza amahame agenga imyandikire, ntaho Urukiko rurimo gusuzuma ubujurire bwa kabiri rwasabwe gufata icyemezo ku nzitizi yo kuba uwajuriye yaratsinzwe ku mpamvu zimwe, rwahera rugereranya imitekerereze y'Inkiko zombi ngo rwemeze ko zafashe ibyemezo zishingiye ku mpamvu zimwe kandi impamvu zaratanzwe gusa n'Urukiko rwaciye urubanza ku rwego rwa mbere. Bityo, Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique na Twagirayezu Albertine ntabwo batsinzwe ku mpamvu zimwe mu Rukiko Rwisumbuye no mu Rukiko Rukuru, ubujurire bwabo bukaba bwaragombaga kwakirwa.

Abarega ntabwo batsinzwe ku mpamvu zimwe mu Rukiko Rwisumbuye rwa Gasabo no mu Rukiko Rukuru.

Amategeko yashingiweho:

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko, ingingo ya 52, 62 n'ya 63.

Imanza zifashishijwe:

Road Solution Pavement Products na MAILCO Ltd, RS/INJUST/RCOM 00002/2020/SC, rwaciwe n'Urukiko rw'Ikirenga ku wa 25/09/2020.

Busoro Gervais na Busoro Mugunga Désiré n'abandi, RS/INJUST/RC 00022/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 28/06/2019.

Bank of Kigali Ltd na Mulisa Kana Martin, RCOMAA 0038/16/CS-RCOMAA 0033/2016/SC, rwaciwe n'Urukiko rw'Ikirenga ku wa 21/4/2017.

Ikigo cy'Imisoro n'Amahoro na SODAR Ltd RCOMAA 0048/16/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/05/2017.

Ikigo cy'Imisoro n'Amahoro na SECAM Ltd, RCOMAA 0051/14/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 04/12/2015.

Cojocar v. B.C. Women's Hosp. & Health Ctr., No. 34304, 2013 SCC 30 (Can. May 24, 2013).

DiLeo v. Ernst & Young 901 F.2d 624 (7th Cir. 1990).

Stone v. City of Kiowa, 950 P.2d 1305 (Kan. 1997).

State v. McDermott, 810 N.W.2d 237 (Wis. Ct. App. 2012) para 25.

Inyandiko z'Abahanga zifashishijwe:

Douglas R. Richmond, Unoriginal sin: The Problem of Judicial Plagiarism (2014) Arizona State Law Journal 177 at 179.

Serge Guinchard (sous la dir.) Droit et pratique de la procédure civile, Dalloz, Paris, 2014, p.1191.

I. IMITERERE Y'URUBANZA.

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine na Twagirayezu Monique, barega musaza wabo Twagirayezu Albert kuba yaragurishije ikibanza cy'umuryango kibaruye kuri UPI 1/02/10/03/4370, batabizi, basaba ko amasezerano y'ubugure yo ku wa 22/02/2012, yakoranye na nyakwigendera Niyongira Jean Claude, wari umugabo wa Umumaranyota Agnès aseswa, uyu agasubiza umutungo uburanwa.

[2] Mu rubanza RC 00038/2017/TGI/GSBO rwaciwe ku wa 27/07/2018, Urukiko Rwisumbuye rwa Gasabo rwasanze Twagirayezu Albert yaragurishije umutungo uburanwa afite *acte de notoriété* imwanditseho, ibyemezo by'umutungo bitangwa n'inzego z'ibanze, *fiche cadastrale* n'ibyemezo by'umusoro bigaragaza ko ikibanza nimeru 4370 ari icye, rusanga ibimenyetso abarega bashingiraho bavuga ko ahaburanwa ari ah'umuryango, byarabonetse mu mwaka wa 2014 kandi umutungo waragurishijwe mu mwaka wa 2012 ndetse n'ibyo bavuga ko hari abatangabuhamya bemeza ko umutungo wari uw'ababyeyi bitahabwa ishingiro kuko abo batangabuhamya ntabagaragajwe kandi nubwo bagaragazwa bakaba batanyomoza ibimenyetso bifatwe na Twagirayezu Albert, rwanzura ko nubwo Twagirayezu Albert atagaragaza inkomoko y'umutungo, ibimenyetso yashyikirije Urukiko bitavugurujwe kandi byerekana ko umutungo wari uwe. Urukiko rwategetse ko amasezerano y'ubugure yo ku wa 22/02/2012 agumana agaciro kayo kuko yakozwe mu buryo bukurikije amategeko.

[3] Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine, na Twagirayezu Monique bajuririye Urukiko Rukuru bavuga ko Twagirayezu Albert yahengerewe batakiba mu Rwanda, yiyitirira umutungo w'umuryango, awiyandikishaho, anahita awugurisha, ko iyo Urukiko rwikorera iperereza, rugasuzuma n'ibimenyetso barushyikirije, rwari kubona ko Twagirayezu Albert atagaragaza inkomoko y'umutungo yiyitiriye akanawugurisha.

[4] Mu rubanza RCA 00291/2018/HC/KIG rwaciwe ku wa 31/01/2019, Urukiko Rukuru rwasanze igihe Niyongira Jean Claude yaguraga, hari ibimenyetso Twagirayezu Albert

yamugararije byerekana ko umutungo ari uwe ndetse ko byari no mu bubasha bwe kuba yawugurisha, bityo kuba abazungura ba Twagirayezu Aloys na icyimpaye Marie Rose batagaragaza ibimenyetso byerekana ko umutungo ari uwabo, bishimangira ko umutungo Twagirayezu Albert yagurishije wari uwe, rwanzura ko imikirize y'urubanza RC 00038/2017/TGI/GSBO rwaciwe n' Urukiko Rwisumbuye rwa Gasabo ku wa 27/07/2018, idahindutse, rutegeka abarega guha Umumaranyota Agnès 250.000 Frw y'igihembo cya Avoka na 100.000 Frw y'ikurikiranarubanza.

[5] Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine na Twagirayezu Monique bajuririyeye Urukiko rw'Ubururire bavugaga ko Urukiko Rukuru ruzasuzumye inkomoko y'umutungo wagurishijwe ndetse n'inyandiko Twagirayezu Albert yiyandikiyeye avugaga ko yagurishije umutungo w'umuryango atabihereye uburenganzira, ko inyandiko y'ubugure yabayeye ku wa 01/11/1984 hagati ya icyimpaye Marie Rose na Kavamahanga, n'imvugo z'abatangabuhamya ziyishimangira byirengagijwe nyamara ari byo bigaragaza inkomoko y'umutungo.

[6] Umumaranyota Agnès yatanze inzitizi yo kutakira ubururire bwa kabiri ashingiye ku mpamvu y'uko haburanywe gusesa amasezerano y'ubugure bw'ikibanza cyaguzwe 10.000.000 Frw, nyamara agaciro k'ikibanza katageze kuri 75.000.000 Frw ateganywa n'ingingo ya 52 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, n'iyi kuba impamvu zashingiweho abarega batsindwa mu Rukiko Rwisumbuye rwa Gasabo ari zimwe n'izashingiweho mu Rukiko Rukuru.

[7] Mu rubanza RCAA 00020/2019/CA rwaciwe ku wa 26/06/2020, Urukiko rw'Ubururire rwasanze nubwo abagenagaciro bemeza ko ikibanza UPI 1/02/10/03/4370 gifite agaciro ka 92.825.000 Frw, ingingo zasuzumwe n'Urukiko Rukuru ndetse n'Urukiko Rwisumbuye rwa Gasabo, zihuriye ku kumenya niba umutungo wagurishijwe ari uwa Twagirayezu Albert ku giti cye cyangwa niba wari uw'umuryango wa Twagirayezu Aloys, rusanga izo nkiko zombi zarafashe icyemezo zishingiye ku mpamvu zimwe, rwemeza ko ubururire butari mu bubasha bwarwo, abajuririyeye bategekwa gufatanywa kwishyura Umumaranyota Agnès 500.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza.

[8] Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine na Twagirayezu Monique bandikiyeye Perezida w'Urukiko rw'Ikirenga basaba ko urubanza RCAA 00020/2019/CA rwaciwe n'Urukiko rw'Ubururire ku wa 26/06/2020 rusubirwamo ku mpamvu z'akarengane. Mu cyemezo nimeru 058/CJ/2020 cyo ku wa 19/11/2020, Perezida w'Urukiko rw'Ikirenga, amaze gusuzuma ubwo busabe, yategetse ko rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe.

[9] Iburanisha mu ruhamye ryabayeye ku wa 02/06/2021, Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine na Twagirayezu Monique bahagarariye na Me Nshuti Salim hamwe na Me Kazenze Théophile, Twagirayezu Albert ahagarariye na Me Ngezahayo Bernard, naho Umumaranyota Agnès ahagarariye na Me Nsengiyumva Viateur.

[10] Urukiko rwabanje gusuzuma inzitizi zatanze n'abahagarariye Twagirayezu Albert na Umumaranyota Agnès, bavugaga ko ikirego kidakwiye kwakirwa kubera ko abarega batagaragaza impamvu z'akarengane zatumye urubanza rusubirwamo kandi ko abarega batemerewe gusaba iseswa ry'amasezerano y'ubugure batagizemo uruhare.

[11] Ku bijyanye n'inzitizi y'uko nta mpamvu z'akarengane zagaragajwe zatumye urubanza rusubirwamo, Urukiko rwafatiye icyemezo mu ntebe, rushingiye ku biteganywa n'ingingo ya 62,

igika cya mbere,¹ n'ya 63² z'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko no ku isesengura ryazo ryakozwe mu rubanza Busoro Gervais yaburanagamo na Busoro Mugunga Désiré n'abandi, ry'uko iyo Perezida w'Urukiko rw'Ikirenga amaze kwemeza ko urubanza rwongera kuburanishwa, nta zindi nzitizi zitangwa zatuma urubanza rutaburanishwa mu mizi uretse inzitizi ndemyagihugu,³ rwanzura ko iyo nzitizi itakiriwe.

[12] Naho ku bijyanye n'inzitizi y'uko abarega baba batemerewe gusaba iseswa ry'amasezerano y'ubugure batagizemo uruhare, rusanga nubwo iyi ngingo yatanzwe nk'inzitizi, igaruka ku mizi y'urubanza, ikaba itasuzumwa hataramenyekana niba Urukiko rw'Ubujurire rwarakoze amakosa rwemeza ko abarega batsinzwe ku mpamvu zimwe mu Rukiko Rwisumbuye rwa Gasabo no mu Rukiko Rukuru.

[13] Nyuma yo kwemeza ko inzitizi yatanzwe n'ababuranira Twagirayezu Albert na Umumaranyota Agnès itakiriwe, Urukiko rwakomereje ku kibazo cyo kumenya niba ubujurire bwa kabiri bwaragombaga kwakirwa n'Urukiko rw'Ubujurire.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

1. Kumenya niba ubujurire bwa Twagirayezu Alice na bagenzi be bwaragombaga kwakirwa n'Urukiko rw'Ubujurire

[14] Me Nshuti Salim, uburanira Twagirayezu Alice na bagenzi be, avuga ko mu Rukiko Rwisumbuye rwa Gasabo hasuzumwe ibibazo byo kumenya niba Twagirayezu Albert yari afite uburenganzira bwo kugurisha ubutaka buburanwa no kumenya niba ubwo butaka bwari umutungo usangiwe, mu bujurire ibyo bibazo bisuzumwa hibazwa inkomoko y'umutungo Twagirayezu Albert yagurishije, ariko Urukiko Rukuru rwongeraho ikindi kibazo cyo kumenya niba amasezerano y'ubugure hagati ye na Niyongira Jean Claude yateshwa agaciro, iyi ngingo ikaba itari yasuzumwe ku rwego rwa mbere, ariyo mpamvu asanga mu gihe ingingo zasuzumwe n'inkiko zombi atari zimwe n'impamvu zashingiweho zidashobora kuba zimwe kabone nubwo inkiko zombi zaba zarahuriye ku cyemezo kimwe. Asaba uru Rukiko gusuzuma niba koko Urukiko Rwisumbuye n'Urukiko Rukuru zarabajijwe ibibazo bimwe ndetse zikabisesengura kimwe, rwasanga atari uko bimeze rukemeza ko abo aburanira batatsinzwe ku mpamvu zimwe, bityo ko ubujurire bwa kabiri bwagombaga kwakirwa kubera ko ikiburanwa gifite agaciro ka 92.825.000 Frw.

[15] Me Kazeneza Théophile nawe uburanira Twagirayezu Alice na bagenzi be, asaba uru Rukiko kuzabona ko ibibazo byasuzumwe n'Urukiko Rwisumbuye n'ibyasuzumwe n'Urukiko Rukuru bitandukanye, ko mu Rukiko Rukuru abarega bagaragaje ko n'ubwo ikibanza cyari cyanditse kuri Twagirayezu Albert, aterekanye aho agikomora, nyamara kubigaragaza byari inshingano ze, akaba asanga ubujurire bwaragombaga kwakirwa kubera ko impamvu zashingiweho n'izo Nkiko zombi atari zimwe.

[16] Me Nsengiyumva Viateur, uburanira Umumaranyota Agnès, avuga ko mu Rukiko Rwisumbuye rwa Gasabo no mu Rukiko Rukuru habanje gusuzumwa ikibazo cyo kumenya niba

¹ Iyo Perezida w'Urukiko rw'Ikirenga asuzumye raporo yashyikirijwe ku rubanza rw'akarengane, akemeza ko rwongera kuburanishwa, ayohereza Umwanditsi Mukuru w'Urukiko rw'Ikirenga kugira ngo urwo rubanza rushyirwe kuri gahunda y'iburanisha ...

² Iyo Urukiko rw'Ikirenga cyangwa urundi rukiko Perezida w'Urukiko rw'Ikirenga akena rushyikirijwe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, rurusuzuma mu mizi bundi bushya abarubayemo ababuranyi bose bahamagajwe.

³ Urubanza RS/INJUST/RC00022/2018/SC hagati ya Busoro Gervais na Busoro Mugunga Désiré n'abandi, rwaciwe n'Urukiko rw'Ikirenga ku wa 28/06/2019, igika cya 18.

Twagirayezu Albert yari afite uburenganzira bwo kugurisha umutungo uburanwa hamwe no kumenya aho awukomora, inkiko zombi zisanga afite ibimenyetso bitavuguruzwa by'uko umutungo ari uwe, harongerera hasuzumwa ikibazo cyo kumenya niba amasezerano y'ubugure akwiye guseswa, inkiko zombi zemeza ko agumana agaciro kayo kuko yakozwe mu buryo bukurikije amategeko, akaba asanga nta makosa yakozwe n'Urukiko rw'Ubujurire rwemeza ko abarega batsinzwe ku mpamvu zimwe.

[17] Me Ngezahayo Bernard, uburanira Twagirayezu Albert, avuga ko yemeranya na Me Nsengiyumva Viateur kuko nawe asanga ubujurire butaragombaga kwakirwa.

UKO URUKIKO RUBIBONA

[18] Ingingo ya 52, igika cya 3, y' Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko [...] icyakora kandi ubujurire bwa kabiri ntibushobora kwakirwa ku manza z'ababuranye bemera ibyo baregwa, cyangwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe. [...].

[19] Mu gusobanura impamvu mu rubanza icyo aricyo, uru Rukiko rwatanze umurongo w'uko impamvu itakwitiranwa n'icyemezo, ahubwo ko ari ibisobanuro buri Rukiko rwashingiyeho mu gufata icyemezo cyarwo rugendeye ku byabaye no ku byo amategeko abiteganyaho, ko impamvu arizo zishingirwaho mu kugaragariza no gusobanurira ababuranyi icyatumye Urukiko rufata icyemezo, akaba ari nazo zihirwaho ababuranyi basuzuma niba imiburanire yabo yarasesenguwe n'Urukiko bitewe n'uko buri cyemezo cy'urukiko kigomba kuba cyasobanuriwe impamvu.⁴

[20] Naho ku bijyanye n'impamvu zimwe, mu rubanza Road Solutions Pavement Products yaburanagamo na Mailco Ltd, uru Rukiko rwavuze ko mu gusuzuma niba impamvu ari zimwe harebwa icyaburanwaga n'imatekerereze ya buri rukiko mu kugaragaza impamvu zashingiyeho, kugira ngo (Urukiko) rugere ku cyemezo rwafashe, hitawe ku kureba niba ingingo zaburanywe mbere arizo zagarutseweho mu bujurire kandi ko inkiko zombi zazisubijeho mu buryo bumwe⁵

[21] Dosiye y'urubanza igaragaza ko Urukiko Rwisumbuye rwa Gasabo rwasuzumye ikibazo cy'iremezo cyo kumenya niba Twagirayezu Albert hari uburenganzira yari afite bwo kugurisha ikibanza kiburanwa, impamvu Urukiko rwatanze zikaba zigaragara mu gika cya 6 n'icya 7 cy'urubanza RC 00038/017/TGI/GSBO, mu Rukiko Rukuru iki kibazo cyahindutse gusuzuma inkomoko y'umutungo uburanwa kugira ngo hagaragare nyirawo w'ukuri, icyakora nk'uko bigaragara mu bika bya 9 na 10 by'urubanza RCA 00291/2018/HC/KIG, Urukiko Rukuru rwakoporoye ijamba ku rindi ibyari byavuzwe mu gika cya 6 n'icya 7 by'urubanza rwajuririwe.

[22] Urukiko rurasanga akamaro k'ibisobanuro mu rubanza ari ukugira ngo Urukiko rugaragaze ibyo rwashingiyeho rukemura ikibazo rwashyikirijwe n'ababuranyi, iyo rero ibyo bisobanuro bidashobora kwitirirwa Urukiko kubera ko rwabikoporoye ahandi uko byakabaye kandi ntiruvuge naho rwabikuye, byaba ari ugukoporora imikirize y'urubanza rwajuririwe cyangwa imyanzuro y'ababuranyi, abahanga bavuga ko bidakwiye gufatwa nk'ibisobanuro ahubwo ari amakosa yo

⁴ Reba urubanza RCOMAA 0051/14/CS hagati y'Ikigo cy'Imisoro n'Amahoro na SECAM Ltd rwaciwe ku wa 04/12/2015, igika cya 22, urubanza, RCOMAA 0038/16/CS-RCOMAA 0033/2016/SC hagati ya Bank of Kigali Ltd na Mulisa Kana Martin rwaciwe ku wa 21/4/2017, igika cya 21, urubanza RCOMAA 0048/16/CS hagati y'Ikigo cy'Imisoro n'Amahoro na SODAR Ltd rwaciwe ku wa 19/05/2017, igika cya 17.

⁵ Urubanza RS/INJUST/RCOM 00002/2020/SC hagati ya Road Solution Pavement Products na MAILCO Ltd, rwaciwe ku wa 25/09/2020, igika cya 24. Reba kandi urubanza RCOMAA 0048/16/CS hagati y'Ikigo cy'Imisoro n'Amahoro na SODAR Ltd rwaciwe ku wa 19/05/2017, igika cya 18.

kwiytirira cyangwa gukoporora iby'abandi (*judicial plagiarism*)⁶ Iki kibazo cyagarutsweho kandi n'Inkiko z'ibindi bihugu nkaho mu rubanza DiLeo yaburanaga na Ernest & Young, Urukiko rw'Ubujurire rwa the Seventh Circuit rw'i Chicago rwasanze umuco w'Inkiko z'Uturere (*District Court*) wo gukoporora ibice bimwe by'imyanzuro y'ababuranyi zikayiyitirira udakwiye guhabwa intebe kubera ko bitesha ishema ibisobanuro Urukiko ruba rwatanze kandi bikagaragaza Urukiko nk'igikoresho cy'ababuranyi, kabone nubwo muri uko gukoporora hamwe na hamwe Urukiko ruba rwongeyemo amagambo yarwo.⁷

[23] Urukiko rurasanga mu rubanza Cojocarú yaburanaga na British Columbia Women's Hospital & Health Center, Urukiko rw'Ubujurire rwa British Columbia muri Canada rwasanze ku mpapuro 105 zigize urubanza rwari rwajuririwe, 84 zari zakoporoye imyanzuro y'ababuranyi uko yakabaye, byakoporowe n'Urukiko rubanza, naho ku bika 222 bigize urubanza, 30 gusa aribyo by'Urukiko, nabyo bikaba byari ku iriburiro, kuvuga muri make imiterere y'urubanza n'imyanzuro y'ababuranyi, bituma Urukiko rw'Ubujurire ruvuga ko impamvu zatanzwe n'Urukiko rubanza zidashobora kwitirirwa isesengura ryarwo ku bibazo rwari rwabajijwe cyangwa ngo zigaragaze ko isesengura rwakoze ariryo ryarugejeje ku cyemezo rwafashe, iki kibazo cyatumye Urukiko rw'Ikirenga rwa Canada rushyiraho ihame ry'uko iyo gukoporora iby'abandi byakozwe ku buryo umuntu usanzwe (reasonable person) abona ko Urukiko ubwarwo rutigeze rusesengura ibimenyetso n'ibibazo rwashyikirijwe kandi bigatuma rudafata icyemezo mu bwigenge bwarwo, urwo rubanza rushobora guteshwa agaciro⁸

[24] Urukiko rurasanga icyakora muri Amerika, mu rubanza Stone yaburanaga n'Umujyi wa Kiowa rwaciwe mu mwaka wa 1997, Urukiko rw'Ikirenga rwa Kansas rwarasanze nubwo ibyo gukoporora iby'abandi atari umuco wo kwihanganirwa, bituma urubanza ruteshwa agaciro, ahubwo rwasubirwamo (*review*), rugakosorwa,⁹ ibi ni nako Urukiko rw'Ikirenga rwa Wisconsin rwabisanze mu rubanza Leta yaburanaga na McDermott,¹⁰ ahanini izi nkiko zashingiye iki cyerekezo ku kuba nubwo Urukiko ruba rwarakoze amakosa rugakoporora ijambo ku rindi inyandiko z'abandi rutabivuze, nta tegeko runaka rigenga imiburanishirize y'ianza ruba rwishe ku buryo byatuma urubanza rwaciye ruteshwa agaciro. Uru Rukiko narwo rukaba rusanga amakosa yo gukoporora ijambo ku rindi inyandiko z'ababuranyi cyangwa ibisobanuro biri mu rundi rubanza adakwiye

⁶ If an opinion or order cannot fairly be attributed to the court, describing the process of its production and adoption as judicial plagiarism is perfectly apt. Reba Douglas R. Richmond, *Unoriginal Sin: The Problem of Judicial Plagiarism*, (2014) *Arizona State Law Journal* 177 at 179.

⁷ A district judge could not photocopy a lawyer's brief and issue it as an opinion. Briefs are argumentative, partisan submissions. Judges should evaluate briefs and produce a neutral conclusion, not repeat an advocate's oratory. From time to time district judges extract portions of briefs and use them as the basis of opinions. We have disapproved this practice because it disguises the judge's reasons and portrays the court as an advocate's tool, even when the judge adds some words of his own. *Reba DiLeo v. Ernst & Young* 901 F.2d 624 (7th Cir. 1990).

⁸ A judgment should be set aside only if the [judge's] copying is of such a character that a reasonable person apprised of the circumstances would conclude that the judge did not put her mind to the evidence and the issues and did not render an impartial, independent decision. *Reba Cojocarú v. B.C. Women's Hosp. & Health Ctr.*, No. 34304, 2013 SCC 30 (Can. May 24, 2013).

⁹ There is nothing inherently wrong with a trial court's adopting a party's findings and conclusions in their entirety as long as they had been individually considered, but it is the sort of shorthand that would be susceptible to abuse. Thus, although not a practice to be encouraged, it is not, standing alone, a violation of Supreme Court Rule 165 [In a contested matter submitted to the court without a jury-and when the court grants a motion for summary judgment-the court must state its findings of fact and conclusions of law in compliance with K.S.A. 60- 252. Rule 165 - Reasons for Decision, Kan. R. Rel. Dist. Ct. 165] or K.S.A. 60-252 [(1) In general. In an action tried on the facts without a jury or with an advisory jury or upon entering summary judgment, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of evidence, or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under K.S.A. 60-258, and amendments thereto]... *Reba urubanza Stone v. City of Kiowa*, 950 P.2d 1305 (Kan. 1997).

¹⁰ *State v. McDermott*, 810 N.W.2d 237 (Wis. Ct. App. 2012) para 25.

kwihanganirwa, ariko akaba atari impamvu yatuma urubanza ayo makosa yakozwemo ruteshwa agaciro, ahubwo yatuma Urukiko ruyavumbuye ruburanisha urwo rubanza kugira ngo akosorwe.

[25] Urukiko rurasanga ibyo gukoporora ijambo ku rindi bitakwitiranywa n'icyitwa *motivation par référence* aho Urukiko rwajuririwe rushobora kwiyitirira ibisobanuro byatanzwe n'Urukiko rwabanje kubera ko *motivation par référence* ibanzirizwa no gusuzuma niba ababuranyi nta bisobanuro bishya batanze mu myanzuro y'ubujurire no kwemeranya n'impamvu zatanzwe mu rubanza rwajuririwe kubera ko zitanyuranye n'izo Urukiko rwajuririwe rwari gutanga,¹¹ ku bijyanye n'uru rubanza bikaba bigaragara ko ibisobanuro bijyanye n'inkomoko y'umutungo byari bishya mu bujurire, byongeye kandi ntaho Urukiko Rukuru rwigeze kuvuga ko rwemeranya n'impamvu zatanzwe n'Urukiko Rwisumbuye rwa Gasabo ku buryo byafatwa ko rwazigize izarwo, ahubwo Urukiko Rukuru nta bisobanuro rwatangiye ikibazo cya mbere rwasuzumye.

[26] Urukiko rurasanga, mu gihe Urukiko rwajuririwe rwakoporoye ijambo ku rindi nta na gito rusize cyangwa ruhinduye ku bisobanuro byatanzwe mu rubanza rwari rwajuririwe kandi ntaho rwabanje kuvuga ko rwemeranya narwo, ntibyafatwa ko Urukiko rwajuririwe hari impamvu zarwo rwatangiye icyemezo rwafashe. Iyo bimeze bityo, nubwo nta mategeko runaka aba yishwe ahubwo haba habayeho kutubahiriza amahame agenga imyandikire, ntaho Urukiko rurimo gusuzuma ubujurire bwa kabiri rwasabwe gufata icyemezo ku nzitizi yo kuba uwajuriye yaratsinzwe ku mpamvu zimwe, rwahera rugereranya imitekerereze y'Inkiko zombi ngo rwemeze ko zafashe ibyemezo zishingiye ku mpamvu zimwe kandi impamvu zaratanzwe gusa n'Urukiko rwaciye urubanza ku rwego rwa mbere.

[27] Urukiko rurasanga mu gihe byagaragaye ko nta bisobanuro byarwo Urukiko Rukuru rwashyize mu bika bya 8 na 9 by'urubanza rwaciye, ahubwo rwarateruye ibyo Urukiko Rwisumbuye rwa Gasabo rwari rwanditse mu bika bya 6 na 7 by'urubanza rwarwo, rugakoporora ijambo ku rindi ntacyo rusize cyangwa ruhinduye, bivuze ko Urukiko Rukuru nta mpamvu rwatangiye icyemezo rwafashe muri ibyo bika, bityo Urukiko rw'Ubuujurire rukaba rutari kuvuga ko impamvu ari zimwe muri izo manza zombi nyamara urubanza rwatangiwe impamvu ari urwaciye ku rwego rwa mbere rwonyine, bikaba byari gutuma ubujurire bwa kabiri bwakirwa.

[28] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique na Twagirayezu Albertine bataratsinzwe ku mpamvu zimwe mu Rukiko Rwisumbuye no mu Rukiko Rukuru, bityo ubujurire bwabo bukaba bwaragombaga kwakirwa.

III. ICYEMEZO CY'URUKIKO

[29] Rwemeje ko Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine na Twagirayezu Monique batatsinzwe ku mpamvu zimwe mu Rukiko Rwisumbuye rwa Gasabo no mu Rukiko Rukuru.

[30] Rwemeje ko ubujurire bwa kabiri bwa Twagirayezu Albertine, Twagirayezu Alice, Twagirayezu Alphonsine na Twagirayezu Monique mu rubanza RCAA 00020/2019/CA, bwagombaga kwakirwa n'Urukiko rw'Ubuujurire, urubanza rukaburanishwa mu mizi.

¹¹ En appel, la motivation par référence est admise en cas de confirmation du jugement... La Cour est réputée avoir adopté les motifs du jugement qu'elle confirme, et qui ne sont pas contraires aux siens... La Cour d'Appel n'a pas à expliquer sa décision par d'autres motifs que ceux des premiers juges lorsque les parties ne présentent pas de moyens nouveaux. Dans le cas contraire, le juge doit les analyser. Reba Serge Guinchard (sous la dir.) Droit et pratique de la procédure civile, Dalloz, Paris, 2014, p.1191.

[31] Ruvuze ko iburanisha mu mizi rizakomeza ku wa 08/09/2021.