BANKI NKURU Y'U RWANDA (BNR) v NGEZAHOGUHORA N'UNDI

[Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RC 00002/2022/SC (Ntezilyayo, P.J., Nyirinkwaya na Cyanzayire, J.) 22 Nyakanga 2022]

Amategeko agenga imanza z'imbonezamubano – Amasezerano y'ubugure – Kudahungabanywa mu butunzi bw'icyaguzwe – Umugurisha yishingira ko uwo agurishije atagira ikimuhungabanya mu butunzi bw'icyaguzwe kandi agomba kwishyura cyangwa agasaba ko umuguzi yishyurwa n'umuvutsa ibyo yaguze – Niyo mu gihe cy'igurisha haba ntacyateganijwe ku bwishingire, ugurisha ategetswe kwishingira kuba uwaguze yavutswa uburenganzira ku mutungo yaguze wose cyangwa igice cyawo, cyangwa yakwishyuzwa imyenda kuri wo atamenyeshejwe mu gihe cy'igurisha biturutse ku burenganzira bw'undi.

Incamake y'ikibazo: Ngezahoguhora yagurishijwe na Rekeraho ikibanza ariko mu gihe yari atangiye kucyubaka, abona ibaruwa y'Ubuyobozi imuhagarika kugeza haciwe urubanza N° RC 157/09/TGI/NYGE, Banki Nkuru y'u Rwanda (BNR) yaburanagamo na Birikunzira asaba gusubizwa icyo kibanza yavugaga ko yaguze nayo ubwo yari umukozi wayo, ikakigurisha bwa kabiri Rekeraho nawe wari umukozi wayo. Ngezahoguhora yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge arega Ingabire, umugore wa Rekeraho wapfuye, BNR igobokeshwa mu rubanza, arusaba gusesa amasezerano y'ubugure yagiranye na Rekeraho kuko yamugurishije ikibanza izi neza ko atari icyayo, kubera ko urubanza N° RCAA 0031/14/CS rwemeje ko ari icya Birikunzira. BNR yatanze inzitizi yo kutakira ikirego kuko ikiburanwa cyamaze gufatwaho icyemezo n'inkiko ndetse imanza zabaye itegeko.

Urukiko rwasanze ikirego giftie ishingiro ndetse rusanga inkiko ntacyo zavuze ku bijyanye n'ugomba gusubiza urega agaciro k'ikibanza yaguze maze rutegeka uregwa gusubiza urega ikiguzi cyaguzwe ikibanza naho BNR yatanze ikibanza kabiri, ruyitegeka gusubiza urega ikinyuranyo gisigaye hagendewe ku gaciro kose k'ikibanza kagenwe n'umuhanga ndetse n'indishyi zinyuranye.

Ingabire yajuririye Urukiko Rukuru avuga ko ari BNR igomba kubazwa agaciro kose, nayo ijurira isaba Urukiko gusuzuma inzitizi yo kutakira ikirego yatanze mu rubanza rujuririrwa no gusuzuma niba yari ikwiye gutegekwa kwishyura no gutegekwa gutanga indishyi, kandi nta masezerano yagiranye n'urega. Urukiko rwemeje ko BNR ifatwa nk'umugurisha wa mbere, bikaba biyiha inshingano yo kwishingira kudahungabanywa k'umutungo Rekeraho yaguze, ruyitegeka gusubiza agaciro k'ikibanza kose. BNR ntiyishimiye iyo mikirize maze isaba ko urubanza rwasubirwamo ku mpamvu z'akarengane.

Urukiko rwasuzumye ikibazo cyo kumenya ukwiye gusubiza Ngezahoguhora agaciro k'ikibanza yaguze na Rekeraho ndetse n'indishyi zasabwagwa n'ababuranyi. BNR ivuga ko Urukiko Rukuru rwakoze amakosa ruyitegeka kwishyura Ngezahoguhora ikiguzi cyose cy'ikibanza, nta tegeko, amasezerano cyangwa irindi kosa rushingiyeho, nyamara rusonera umuryango wa Rekeraho amafaranga wakiriye, ibyo akaba asanga binyuranije n' ibiteganywa n'ingingo ya 280 na 310 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano (CCLIII)kuko ingaruka z'amasezerano y'ubugure yasheshwe zagombye kugarukira gusa ku bayagiranye.

Ngezahoguhora we avuga ko ibivugwa na BNR ko amasezerano yabaye hagati ye na Rekeraho atayireba nta shingiro bifite kuko ikibazo kidakomoka kuri ayo masezerano, ahubwo icyo kibanza Rekeraho nawe yari yarakiguze na BNR, byumvikana ko icyo gihe BNR yari umugurisha naho Rekeraho akaba umuguzi, kandi n'Urukiko rw'Ikirenga rwemeje ko BNR yakigurishije atari icyayo ahubwo ari icya Birikunzira bityo ikaba igomba kwirengera ingaruka zikomoka ku masezerano y'ubugure yagiranye na Rekeraho.

Ingabire avuga ko ibivugwa na BNR y'uko nta masezerano y'ubugure bw'ikibanza yabaye hagati yayo na Rekeraho nta shingiro bifite kubera ko amasezerano BNR yakoranye n'Akarere ka Kicukiro yari ayo kugura ibibanza, ibyo bikaba bigaragarira mu kuba buri mukozi wese wajyaga guhabwa ikibanza yarasabwaga gusubiza BNR amafaranga 1.200.000, utayatanze ntagihabwe.

Incamake y'icyemezo: Umugurisha yishingira ko uwo agurishije atagira ikimuhungabanya mu butunzi bw'icyaguzwe kandi agomba kwishyura cyangwa agasaba ko umuguzi yishyurwa n'umuvutsa ibyo yaguze bityo BNR igomba kuryozwa igihombo yateje Rekeraho ku bw'amakosa yakoze yo guha ikibanza kimwe abakozi babiri, byatumye cyamburwa Ngezahoguhora wari wakiguze hashingiwe ku ihame ryo kuryoza nyir'ugukora ikosa ryagize uwo ryangiriza yishyura uwarikorewe indishyi.

Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro kuri bimwe.

Amategeko yashingiweho:
Itegeko Nº 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111.

Imanza zifashishijwe:
Nishimwe n'undi na Mugenga, RCAA 00031/2016/SC, rwaciwe n'Urukiko rw'Ikirenga ku wa 25/09/2019.
Twagirayezu Alice n'abandi na Twagirayezu Albert n'undi, RS/INJUST/RC 00007/2020/SC, rwaciwe n'Urukiko rw'Ikirenga ku wa 10/12/2021.
Ngizweninshuti na Muhima, RS/INJUST/RC 00024/2018/SC, rwaciwe n'Urukiko rw'Ikirenga ku wa 21/02/2020.
RADIANT INSURANCE COMPANY Ltd na Dusabimana, RS/INJUST/RC 00005/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 21/01/2022.

Inyandiko z'abahanga:
Le Tourneau, Philippe & Cadiet, Loïc, Droit de la responsabilité. (1998). Page 715 – 716.
Corbière, P. H. (1867). Le droit privé administratif et public dans ses rapports avec la conscience et le culte catholique. Martin-Beaupré., p. 493-496.
Serge BRAUDO et Alexis BAUMANN, Dictionnaire Juridique, 1996-2019, available on https://www.dictionnaire-juridique.com › definition › do..., accessed on 14/07/2022.

Urubanza

I. IMITERERE Y’URUBANZA

[1] Uru rubanza rukomoka ku bugure bwo ku wa 30/03/2010 bw’ikibanza kibaruye kuri N°10270, gifite ubuso bwa 750 m2, giherereye mu Kagari ka Bwerankori, Umurenge wa Kigarama, Akarere ka Kicukiro, Umujyi wa Kigali, bwabaye hagati ya Ngezahoguhora Ildephonse na Rekeraho Aloys, hanakorwa ihererekanyamutungo, maze icyo kibanza cyandikwa kuri Ngezahoguhora Ildephonse.

[2] Mu gihe Ngezahoguhora Ildephonse yari atangiye kubaka icyo kibanza, yabonye ibaruwa y’Ubuyobozi imuhagarika gukomeza imirimo y’ubwubatsi kugeza haciwe urubanza N° RC 157/09/TGI/NYGE, Banki Nkuru y’u Rwanda (BNR) yaburanagamo na Birikunzira Jean Baptiste asaba gusubizwa ikibanza yavugaga ko yaguze nayo ubwo yari umukozi wayo, ngo ikakigurisha bwa kabiri Rekeraho Aloys nawe wari umukozi wayo.

[3] Ngezahoguhora Ildephonse yandikiye Akarere ka Kicukiro, asaba kurenganurwa, agakomeza imirimo ye yo kubaka ikibanza yaguze, kuko yakiguze mu buryo bukurikije amategeko ndetse akaba afite n’ibyangombwa bisabwa, ariko ntiyanyurwa n’igisubizo yahawe, bituma aregera Urukiko Rwisumbuye rwa Nyarugenge, arega Ingabire Jacqueline, umugore wa Rekeraho Aloys witabye Imana, BNR igobokeshwa mu rubanza. Ngezahoguhora Ildephonse yasabaga ko amasezerano y’ubugure yagiranye na Rekeraho Aloys aseswa bitewe n’uko yamugurishije ikibanza azi neza ko atari icye, ikirego cye agishingira ku cyemezo cyafashwe n’Urukiko rw’Ikirenga mu rubanza N° RCAA 0031/14/CS aho rwemeje ko ari icya Birikunzira Jean Baptiste.

[4] Ingabire Jacqueline yireguye avuga ko umugabo we Rekeraho Aloys yari yarahawe ikibanza na BNR nk’umukozi wayo, nyuma y’uko cyambuwe uwitwa Birikunzira Jean Baptiste nawe wari umukozi wa BNR wari wagihawe mbere, ariko akaza kwirukanwa. Avuga ko icyo kibanza umugabo we amaze kugihabwa yakiyandikishijeho, nyuma akaza kukigurisha Ngezahoguhora Ildephonse.

[5] BNR yatanze inzitizi yo kutakira ikirego ivuga ko itagombaga kuregwa mu gihe ikiburanwa cyamaze gufatwaho icyemezo n’inkiko ndetse imanza zaramaze kuba itegeko; isaba ariko ko Urukiko rubibonye ukundi ikirego kikakirwa, rutaha ishingiro ikirego cya Ngezahoguhora Ildephonse kuko itaryozwa ibirebana n’amasezerano yabaye hagati ye na Rekeraho Aloys.

[6] Ku wa 30/04/2019, Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza N° RC 00047/2018/TGI/NYGE, rusanga inkiko zarafashe icyemezo gusa ku bijyanye n’amasezerano yabaye hagati ya Rekeraho Aloys na Ngezahoguhora Ildephonse, ariko ntizagira icyo zivuga ku bijyanye n’ugomba gusubiza Ngezahoguhora Ildephonse agaciro k’ikibanza yaguze. Urukiko rwahaye ishingiro bimwe mu byo Ngezahoguhora Ildephonse yaregeye maze rutegeka Ingabire Jacqueline kumusubiza 6.700.000 Frw umugabo we Rekeraho Aloys yakiriye ubwo bagiranaga amasezerano y’ubugure bw’ubutaka. Urukiko rwasanze BNR yarakoze ikosa ryo gutanga ikibanza kabiri, ibi bikaba intandaro y’ibibazo byose, maze ruyitegeka gusubiza Ngezahoguhora Ildephonse ikinyuranyo gisigaye kingana na 15.800.000 Frw ku gaciro kose k’ikibanza kagenwe n’umuhanga kangana na 22.500.00 Frw, runayitegeka kumuha indishyi zingana na 300.000 Frw, igihembo cy’Avoka n’amafaranga y’ikurikiranarubanza bingana na 1.100.000.

[7] Ingabire Jacqueline yajuririye Urukiko Rukuru avuga ko adakwiye gusubiza Ngezahoguhora Ildephonse amafaranga baguze ikibanza, ahubwo ko ari BNR igomba kubazwa agaciro kose. Banki Nkuru y'u Rwanda nayo yajuriye isaba Urukiko gusuzuma inzitizi yo kutakira ikirego, yatanze mu rubanza rujuririrwa, no gusuzuma niba yari ikwiye gutegekwa kwishyura Ngezahoguhora Ildephonse 15.800.000 Frw, kandi nta masezerano bafitanye, no gusuzuma niba yaragombaga gutegekwa gutanga indishyi.

[8] Mu rubanza N° RCA 00250/2019/HC/KIG - RCA 00251/2019/HC/KIG rwaciwe ku wa 27/08/2020, Urukiko Rukuru rwasanze BNR ifatwa nk'umugurisha wa mbere, ikaba yari ifite inshingano yo kwishingira Rekeraho Aloys kudahungabanywa k'umutungo yaguze, byanagize ingaruka kuri Ngezahoguhora Ildephonse baguze, ruyitegeka gusubiza Ngezahoguhora Ildephonse agaciro k'ikibanza kiburanwa kangana na 22.500.000 Frw.

[9] BNR ntiyishimiye imikirize y'urubanza maze yandikira yandikira Perezida w'Urukiko rw'Ubujurire isaba ko urubanza N° RCA 00250/2019/HC/KIG- RCA 00251/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 27/08/2020 rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujurire amaze gusuzuma ubusabe bwayo, yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ikirenga, amaze gusuzuma raporo yarukozweho, yarwohereje mu bwanditsi bw'Urukiko rw'Ikirenga kugirango ruzaburanishwe, ruhabwa N° RS/INJUST/RC 00002/2022/SC.

[10] Iburanisha mu ruhame ryabaye ku wa 15/06/2022, ababuranyi bose bitabye, BNR ihagarariwe na Me Murego Jean Léonard, Ngezahoguhora Ildephonse yunganiwe na Me Nsabayezu Evariste naho Ingabire Jacqueline yunganiwe na Me Habakurama François Xavier.

[11] Urukiko rwasuzumye ibibazo by'ingenzi bibiri bigizwe no kumenya ukwiye gusubiza Ngezahoguhora Ildephonse agaciro k'ikibanza yaguze na Rekeraho Aloys no kumenya niba indishyi ababuranyi basaba bakwiye kuzihabwa.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

A. Kumenya ukwiye gusubiza Ngezahoguhora Ildephonse agaciro k'ikibanza yari yaguze na Rekeraho Aloys

[12] Me Murego Jean Léonard uhagarariye BNR avuga ko Urukiko Rukuru rwakoze amakosa ruyitegeka kwishyura Ngezahoguhora Ildephonse ikiguzi cya 22.500.000 Frw, nta tegeko, amasezerano cyangwa irindi kosa rushingiyeho, nyamara rusonera umuryango wa Rekeraho Aloys amafaranga 6.700.000 wakiriye, ibyo akaba asanga binyuranije n' ibiteganywa n'ingingo ya 280 na 310 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano (CCLIII)[1] kuko ingaruka z'amasezerano y'ubugure yasheshwe zagombye kugarukira gusa ku bayagiranye aribo Ngezahoguhora Ildephonse n'umuryango wa Rekeraho Aloys uhagarariwe na Ingabire Jacqueline maze agategekwa gusubiza ikiguzi cyose cy'ikibanza.

[13] Yakomeje asobanura ko nta tegeko cyangwa amasezerano biteganya ubufatanye bw'uburyozwe bw'inshingano ubwo aribwo bwose hagati ya BNR n'umuryango wa Rekeraho

[1] Code Civil, Livre III

Aloys kuri Ngezahoguhora Ildephonse (Pluralité des sujets d'obligations ou obligations solidaires) kuko amasezerano BNR yagiranye n'Akarere ka Kicukiro atari ay'ubugure nk'uko abo baburana babiburanisha, ko ahubwo yari ayo gufasha abakozi bayo kubona ibibanza. Ku byerekeye amafaranga 1.200.000 yatangwaga na buri mukozi, uburanira BNR yavuze ko yari inguzanyo igenewe gutunganya ibyo bibanza, bityo ko Urukiko Rukuru rutagombaga gushingira ku ngingo ya 310 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano (CCLIII) irebana n' inshingano z'uwagurishije n'umuguzi.

[14] Yavuze kandi ko ibyo BNR yakoze byose Rekeraho Aloys yabaga abizi nk'uko biri mu nzandiko BNR yagiye yandika nk'urwo ku wa 21/04/2008, aho BNR yasabaga ko ikibanza kiva kuri Birikunzira Jean Baptiste kikajya kuri Rekeraho Aloys, n'imanza zaburanywe mbere hagati ya Birikunzira Jean Baptiste na Nyiransengiyumva, Rekeraho Aloys nawe akaba yarabayemo umuburanyi kandi azi neza ko ibyo aburana ari ukuri.

[15] Uburanira BNR yashoje kuri iyi ngingo asaba Urukiko gushingira ku ngingo ya 33 na 63 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano (CCLIII) zakurikizwaga igihe amasezerano yakorwaga n'ingingo ya 64 na 113 z'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, rukemeza ko amasezerano y'ubugure bw'ikibanza yakozwe ku wa 30/03/2010, BNR ntaho ihuriye nayo kuko areba abayagiranye gusa, banakoranye n'ihinduranyamutungo. Yongeyeho ko, kubera ko amasezerano avugwa yamaze guteshwa agaciro nk'uko byemejwe mu rubanza N° RCA 0412/10/HC/KIG rwaciwe ku wa 20/09/2013, hashingiwe ku ngingo ya 276, 256, 303, 306, 307 na 310 z'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano (CCLIII), Urukiko rwategeka ko ibintu bisubira uko byari bimeze mbere y'uko amasezerano abaho (pristin état), maze Ingabire Jacqueline agasubiza Ngezahoguhora Ildephonse ikiguzi cy'ikibanza.

[16] Mu myanzuro yatanzwe na Me Nsabayezu Evariste wunganira Ngezahoguhora Ildephonse no mu iburanisha, avuga ko ibivugwa na BNR ko amasezerano yabaye hagati ye na Rekeraho Aloys atayireba nta shingiro bifite kuko ikibazo kidakomoka kuri ayo masezerano, ahubwo icyo kibanza Rekeraho Aloys nawe yari yarakiguze na BNR, byumvikana ko icyo gihe BNR yari umugurisha naho Rekeraho Aloys akaba umuguzi, uretse ko mu rubanza N° RCAA 0031/14/CS, ku rupapuro rwa 10, mu gika cya [28], Urukiko rw'Ikirenga rwemeje ko BNR yakigurishije atari icyayo ahubwo ari icya Birikunzira Jean Baptiste.

[17] Asobanura ko ibyo byumvikanisha ko BNR igomba kwirengera ingaruka zikomoka ku masezerano y'ubugure yagiranye na Rekeraho Aloys ubwo baguraga ikibanza N° 10270 bikaza kugaragara ko atari icyayo, kuko BNR yagombaga kwishingira Rekeraho Aloys kudahungabanywa mu mutungo baguze nk'uko byateganywaga n'ingingo ya 302 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano (CCLIII), kwishingira inenge zacyo zihishe n'inenge nsesamasezerano hakurikije ibyateganywaga n'ingigo ya 310 y'icyo Gitabo. Asaba Urukiko gushingira ku ngingo ya 113 na 303 z'icyo Gitabo rukemeza ko Urukiko Rukuru rutarenganyije BNR mu kuyitegeka kwirengera ingaruka zikomoka ku masezerano yabaye hagati ya Ngezahoguhora Ildephonse na Rekeraho Aloys.

[18] Ku birebana n'amafaranga angana na 1.200.000 BNR yasabaga abakozi mbere yo guhabwa ikibanza, Me Nsabayezu Evariste avuga ko ayo mafaranga yagaragaye nk'ikiguzi, kandi ko kuba BNR yaratsinzwe n'urubanza rwaciwe n'Urukiko rw'Ikirenga rwatesheje agaciro amasezerano

y'ubugure kuri icyo kibanza, bitabuza Ngezahoguhora Ildephonse gukurikirana uburenganzira bwe yambuwe mu nkiko bwo gusubizwa agaciro k'ikibanza yaguze, ariko hashingiwe ku kuba guhera 2010 kugeza ubu, agaciro k'ubutaka karazamutse, Urukiko rwategeka kwishyura 60.000.000Frw aho kwishyura 22.500.000Frw yategetswe n'Urukiko Rukuru.

[19] Me Habakurama François Xavier wunganira Ingabire Jacqueline avuga ko ibivugwa na BNR y'uko nta masezerano y'ubugure bw'ikibanza yabaye hagati yayo na Rekeraho Aloys nta shingiro bifite kubera ko amasezerano BNR yakoranye n'Akarere ka Kicukiro yari ayo kugura ibibanza, ibyo bikaba bigaragarira mu kuba buri mukozi wese wajyaga guhabwa ikibanza yarasabwaga gusubiza BNR amafaranga 1.200.000, utayatanze ntagihabwe.

[20] Me Habakurama François Xavier asobanura ko BNR yiyemerera ko Rekeraho Aloys ari umwe mu bakozi bayo bahawe ikibanza ndetse anahabwa inguzanyo y'amafaranga 1.200.000, arangiza kuyishyura ku wa 19/2/2010, anahabwa Attestation de non créance. Ku bw'ibyo, akaba asanga kuba Rekeraho Aloys yaragurishije icyo kibanza Ngezahoguhora Ildephonse nta kosa yakoze kuko yari afite uburenganzira busesuye ku mutungo yaguze, na BNR ikaba yari ifite inshingano yo kumurinda guhungabanywa mu mutungo we. Yakomeje asobanura ko ubwo burenganzira bunagaragarira mu kuba Rekeraho Aloys agurisha icyo kibanza Ngezahoguhora Ildephonse, yari afite ibyangombwa byose birimo fiche cadastrale, autorisation de bâtir, n'icyangombwa cy'ikibanza; ibyo bikanashimangirwa no kuba mu rubanza N° RCA 0031/14/CS, haburana Birikunzira Jean Baptiste, Nyiransengiyumva na BNR, hagobokeshwamo Ngezahoguhora Ildephonse na Rekeraho Aloys, mu gika cyarwo cya 35, Urukiko rw'Ikirenga rwaremeje ko BNR ariyo yakoze amakosa yo guha abakozi bayo babiri ikibanza kimwe, kandi ikaba itarasabye ko urwo rubanza ruvaho.

[21] Ikindi ni uko, ashingiye ku kuba Urukiko rwaremeje ko BNR iryozwa ingaruka zikomoka ku rubanza rwaburanywe hagati ya Birikunzira Jean Baptiste na Nyiransengiyumva, Me Habakurama François Xavier avuga ko BNR igomba no kwirengera ingaruka zikomoka ku masezerano ya Ngezahoguhora Ildephonse na Rekeraho Aloys kuko Birikunzira Jean Baptiste na Rekeraho Aloys bose bari abakozi bayo, bityo ko igomba gukemura impaka zaturutse ku byakozwe na Rekeraho Aloys nk'uko yakemuye impaka zaturutse ku byakozwe na Birikunzira Jean Baptiste.

[22] Akomeza avuga kandi ko n'iyo inkiko ziba zaravuze ko Rekeraho Aloys yishyura Ngezahoguhora Ildephonse, ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano (CCLIII) n'ingingo ya 48[2] y'Itegeko no 45/2011 ryo ku wa 25//11/2011 rigenga amasezerano zimuhesha uburenganzira bwo kwishyuza BNR nka nyirabayazana wo kumushyira mu bibazo.

[23] Asoza kuri iyi ngingo avuga ko mu gihe Urukiko rwategeka umuryango wa Rekeraho Aloys gusubiza Ngezahoguhora Ildephonse amafaranga wakiriye angana na 6.700.000, rwanategeka BNR gusubiza Ingabire Jacqueline amafaranga 15.000.000 y'agaciro kagezweho kuri ubwo butaka muri iyi myaka 16 yose ishize baguze ikibanza, kuko ubutaka buzamuka mu biciro

[2] Ingingo ya 48 y'Itegeko No 45/2011 ryo ku wa 25//11/2011 rigenga amasezerano iteganya ko uruhande rumwe rwirengera ingaruka zikomoka ku kwibeshya mu masezerano iyo ruzi neza ko igihe amasezerano yakorwaga rutari rufite ubumenyi buhagije ku byabaye birebana n'uko kwibeshya ariko rwarafashe ubwo bumenyi bwarwo nk'aho buhagije.

buri mwaka, hanyuma amafaranga yasubizwa Ngezahoguhora Ildephonse agakurwa muyo BNR yasubije Rekeraho Aloys.

UKO URUKIKO RUBIBONA

[24] Ukurikije imyanzuro n'imiburanire y'uhagarire BNR muri uru rubanza, inenge yagaragajwe nk'impamvu yatumye urubanza N° RCA 00250/2019/HC/KIG rusabirwa gusubirwamo ku mpamvu z'akarengane, ni ukuba Urukiko Rukuru rwaremeje ko BNR ariyo igomba gusubiza Ngezahoguhora Ildephonse amafaranga y'ikiguzi cy'ikibanza yaguze na Rekeraho Aloys, rugasonera umuryango wa Rekeraho Aloys amafaranga 6.700.000 wakiriye. Abaregwa bo bavuga ko BNR ariyo igomba kuryozwa amakosa yakoze yo kugurisha ikibanza kimwe abakozi bayo babiri, maze igasubiza Ngezahoguhora Ildephonse agaciro k'icyo kibanza, kabazwe hakurikijwe igiciro kigezeho ubu.

[25] Dosiye y'urubanza igaragaza ko ku wa 02 Werurwe 2006 habaye amasezerano hagati y'Akarere ka Kicukiro na Banki Nkuru y'u Rwanda, kayemerera kuyiha ibibanza 92 byo mu rwego rwa moyen standing, mu murenge wa Kigarama kugira ngo yubakiremo bamwe mu bakozi bayo amazu yubakishijwe "matériaux semi – durables". Mu ngingo ya 2 y'ayo masezerano, Akarere kiyemeje guhanga imihanda no kwishyura imitungo itimukanwa y'abaturage basanzwe bahatuye, naho mu ngingo ya 3, BNR yiyemeza gutanga amafaranga yo gutunganya ibyo bibanza ahwanye na 1.200.000 kuri buri kibanza.

[26] Urukiko rusanga nk'uko byasobanuwe mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, nyuma yo guhabwa ibibanza n'Akarere ka Kicukiro, BNR yarahaye Rekeraho Aloys ikibanza kibaruye kuri N° 10270, kivugwa mu gika cya mbere cy'uru rubanza, nawe atanga amafaranga 1.200.000 ndetse BNR inamuha icyemezo kigaragaza ko nta mwenda ayibereyemo (attestation de non créance), inasaba Akarere ka Kicukiro ku wa 21/04/2008 kuvana icyo kibanza kuri Birikunzira Jean Baptiste kikandikwa kuri Rekeraho Aloys, umukozi wayo. Rekeraho Aloys yaje kukigurisha Ngezahoguhora Ildephonse ku wa 30/03/2010.

[27] Urukiko rusanga impamvu nyamukuru yatumye Urukiko Rukuru rwemeza ko BNR ariyo igomba gusubiza amafaranga y'ikiguzi cy'ikibanza Ngezahoguhora Ildephonse yaguze na Rekeraho Aloys, ari ukuba binyuze mu masezerano yagiranye n'Akarere, yagurishije Rekeraho Aloys ikibanza yari yaramaze kugurisha Birikunzira Jean Baptiste. Ibyo rukaba rwarabishingiye ku kuba Rekeraho Aloys yarishyuye BNR amafaranga 1.200.000 kugira ngo ahabwe icyo kibanza. Ababuranira Ngenzahoguhora Ildephone na Ingabire Jacqueline nabo bashingira kuri ayo mafaranga bavuga ko ari ikiguzi cyatanzwe, basaba ko BNR igomba kwishingira umutungo yagurishije Rekeraho Aloys wambuwe Ngezahoguhora Ildephonse.

[28] Ku birebana n'amafaranga yatangwaga na buri mukozi wa BNR uhawe ikibanza, Urukiko rusanga hagendewe ku ngingo ya 3 y'amasezerano yakozwe hagati y'Akarere na BNR, nta hagaragara ko ayo mafaranga yari ikiguzi cy'ikibanza umukozi ahawe nk'uko ababuranira Ngezahoguhora Ildephonse na Ingabire Jacqueline babiburanisha, ahubwo impande zombi zemeranijwe ko ari amafaranga yo gutunganya ibyo bibanza nk'uko byasobanuwe mu gika cya 25 cy'uru rubanza. Kuba rero BNR yarishyuriye rimwe amafaranga 110.400.000 maze nyuma ikishyuza buri mukozi uhawe ikibanza amafaranga 1.200.000, ntibivanaho ko ayo mafaranga yari agenewe gutunganya ibibanza nk'uko uburanira BNR yabisobanuye. Bityo, ibivugwa ko ari

ikiguzi nta shingiro bifite. Ibyo kandi bikanumvikanisha ko ihame ryo kudahungabaywa mu butunzi bw'icyaguzwe ridashobora gukurikizwa ku bireba BNR kuko nta masezerano y'ubugure yabayeho yaba hagati yayo n'Akarere cyangwa na Rekeraho Aloys.

[29] Ku byerekeye ihame ryo kudahungabanywa mu butunzi bw'icyaguzwe, Urukiko rusanga abahanga mu mategeko nka Philippe le Tourneau na Loïc Cadiet bavuga ko hashingiwe ku ihame rizwi, ugomba kwishingira adashobora kubuza uwaguze umutungo kuwutunga mu mudendezo, bisobanura ko umugurisha atagomba guhungabanya umuguzi mu mutungo yamugurishije; byumvikana ko adashobora gusaba uburenganzira kuri uwo mutungo keretse abanje gusaba gutesha agaciro amasezerano. Bavuga kandi ko guhungabanywa mu mutungo bivuze gutakaza umutungo waguzwe k'uwawuguze biturutse ku burenganzira bw'undi muntu utari umugurisha.[3]

[30] Undi muhanga mu mategeko yavuze ko niyo mu gihe cy'igurisha haba ntacyateganijwe ku bwishingire, ugurisha ategetswe kwishingira kuba uwaguze yavutswa uburenganzira ku mutungo yaguze wose cyangwa igice cyawo, cyangwa yakwishyuzwa imyenda kuri wo atamenyeshejwe mu gihe cy'igurisha biturutse ku burenganzira bw'undi.[4]

[31] Urukiko rushingiye ku bisobanuro by'abo bahanga, rusanga iryo hame ryumvikanisha ko ugomba kuryozwa guhungabanywa k'umuguzi mu mutungo utimukanwa yaguze ari uwawumugurishije. Uko ni nako iryo hame ryanasobanuwe n'Urukiko rw'Ikirenga mu rubanza N° RCAA 00031/2016/SC aho rwavuze ko umugurisha yishingira ko uwo agurishije atagira ikimuhungabanya mu butunzi bw'icyaguzwe, ko umugurisha agomba kwishyura cyangwa agasaba ko umuguzi yishyurwa n'umuvutsa ibyo yaguze[..][5]

[32] Ku birebana n'inkurikizi z'uko uwaguze umutungo awusubije nyirawo, Uru Rukiko rwafashe umurongo kuri icyo kibazo ruvuga ko abagurishije bagomba gusubiza abaguzi bavukijwe ibyo baguze agaciro kabyo ku munsi babivukijweho, kandi ko hagomba gushingirwa ku gaciro uwo mutungo ubwawo ugezeho[...].[6]

[33] Rushingiye ku bisobanuro byatanzwe mu bika bibanziriza iki, Urukiko rusanga ihame ryo kudahungabanywa mu butunzi bw'ikibanza cyaguzwe ryaragombaga kubahirizwa na Rekeraho Aloys witabye Imana, akaba ahagarariwe na Ingabire Jacqueline, nk'uwagurishije Ngezahoguhora Ildephonse ikibanza akaza kucyamburwa hashingiwe ku rubanza N° RCA 0412/10/HC/KIG rwemeje ko uwo mutungo ari uwa Birikunzira Jean Baptiste, rukanatesha agaciro amasezerano yabaye hagati ya Rekeraho Aloys na Ngezahoguhora Ildephonse. Bityo, Ingabire Jacqueline akaba ariwe ugomba gusubiza Ngezahoguhora Ildephonse amafaranga y'ikiguzi cy'icyo kibanza.

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[3] Le Tourneau, Philippe & Cadiet, Loïc, Droit de la responsabilité. (1998). Page 715 – 716, Selon une maxime célèbre, qui doit garantie ne peut évincer, elle signifie que le vendeur ne doit pas perturber la jouissance paisible de l'acquereur. Concrètement, il ne saurait invoquer un droit sur le bien (trouble de droit, sauf pour intenter une action en nullité absolue [..]. L'éviction est la perte que souffre l'acheteur de la chose vendue, ou d'une part, par le droit d'un tiers.

[4] Corbière, P. H. (1867). Le droit privé administratif et public dans ses rapports avec la conscience et le culte catholique. Martin-Beaupré., p. 493-496.Quoique lors de la vente, il n'ait été fait aucune stipulation sur la garantie, le vendeur est obligé de droit, à garantir l'acquereur de l'éviction qu'il souffre de la totalité ou partie de l'object vendu, ou des charges prétendues sur cet objet, et non déclarées lors de la vente.

[5] Urubanza N° RCAA 00031/2016/SC haburana Nishimwe Claudine, Mashami Gisèle v. Mugenga Joseph, rwaciwe ku wa 25/09/2019.

[6] Reba urubanza N° RS/INJUST/RC 00007/2020/SC, haburana Twagirayezu Alice na bagenzi v. Twagirayezu Albert na Umumaranyota Agnès, rwaciwe ku wa 10/12/2021, ku rupapuro rwa 18, igika cya 41 na 42.

[34] Ku birebana n'ingano y'amafaranga Ngezahoguhora Ildephonse agomba gusubizwa, Urukiko rusanga Ingabire Jacqueline agomba kumusubiza amafaranga 22.500.000 ahwanye n'agaciro k'ikibanza yaguze kagenwe n'Umuhanga Eng. Rutazana Jérôme ku wa 08/11/2017. Naho ibivugwa na Me Nsabayezu Evariste ko Ngezahoguhora Ildephonse yasubizwa amafaranga 60.000.000 ashingiye ku gaciro ikibanza yaguze gifite ubu, nta shingiro bifite kuko nk'uko byafashweho umurongo n'uru Rukiko mu manza zitandukanye, iyo ngingo itigeze isuzumwa mu rubanza rusabirwa gusubirwamo, kandi akaba atarasabye ko rusubirwamo.[7]

[35] Urukiko rusanga ariko BNR igomba kuryozwa igihombo yateje Rekeraho Aloys ku bw'amakosa yakoze[8] yo guha ikibanza kimwe abakozi babiri, byatumye cyamburwa Ngezahoguhora Ildephonse wari wakiguze. Ihame ryo kuryoza nyir'ugukora ikosa ryagize uwo ryangiriza yishyura uwarikorewe indishyi ryasobanuwe kandi n'uru Rukiko mu manza zitandukanye.[9] Bityo, BNR ikaba igomba guha Ingabire Jacqueline amafaranga 15.800.000 Frw, aturuka kuri 22.500.000 Frw agomba gusubiza Ngezahoguhora Ildephonse, havuyemo 6.700.000 Frw Ngezahoguhora Ildephonse yari yarahaye Rekeraho Aloys bagura ikibanza. BNR igomba kandi guha Ingabire Jacqueline 1.200.000 Frw, Rekeraho Aloys yari yaratanze kugirango BNR imuhe ikibanza.

B. Kumenya niba indishyi ababuranyi basaba bakwiye kuzihabwa

[36] Me Murego Jean Léonard ashingiye ku ngingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano (CCLIII), ingingo ya 111, igika cya 2 y'Itegeko N° 22/2022 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi n'ingingo ya 109 y'Itegeko rigenga amasezerano, asaba Urukiko gutegeka Ngezahoguhora Ildephonse na Ingabire Jacqueline gufatanya (obligation in solidum) kwishyura BNR indishyi zingana na 2.500.000 Frw yo gushorwa mu manza ku maherere, igihembo cy'Avoka kuko yatakaje umwanya, amafaranga n'ibikoresho bitandukanye mu gukurikirana uru rubanza.

[37] Me Nsabayezu Evariste wunganira Ngezahoguhora Ildephonse avuga ko indishyi BNR isaba itazikwiye kuko nta karengane yakorewe, ahubwo amakosa yayo ariyo yatumye Ngezahoguhora Ildephonse yamburwa ikibanza. Asaba Urukiko kugenera Ngezahoguhora Ildephonse amafaranga 2.000.000 y'igihembo cy'Avoka na 500.000 y'ikurikiranarubanza, hashingiwe ku ngingo ya 9 y'Itegeko N° 22/2022 ryavuzwe haruguru n'iya 34 y'Amabwiriza agena ibihembo mbonera by'Abavoka.

[38] Me Habakurama François Xavier wunganira Ingabire Jacqueline avuga ko indishyi BNR isaba idakwiye kuzihabwa kuko yirengagiza ikibazo yateje kandi ntinasobanure impamvu yazo. Ashingiye ku ngingo ya 111 y'Itegeko N° 22/2022 ryavuzwe haruguru, asaba ahubwo ko Ingabire

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[7] Reba urubanza N° RS/INJUST/RC 00024/2018/SC haburana Ngizweninshuti Albert na Muhima Giovanni, rwaciwe ku wa 21/02/2020, igika cya 21.

[8] Cité par Serge Braudo et Alexis Baumann, Dictionnaire Juridique, 1996-2019, available on https://www.dictionnaire-juridique.com › definition › do..., accessed on 14/07/2022, la responsabilité civile est engagée, soit en raison de l'inexécution d'un contrat, soit en raison d'un acte volontaire ou non, entraînant pour la personne qui est fautive ou qui est légalement présumée fautive, l'obligation de réparer le dommage qui a été subi par une ou plusieurs autres.

[9] Reba urubanza N° RS/INJUST/RC 00005/2021/SC haburana RADIANT INSURANCE COMPANY Ltd na Dusabimana Fulgence rwaciwe ku wa 21/01/2022, igika cya 26, 31 na 35

Jacqueline yasubizwa ibyo yatakaje muri izi manza ashorwamo na BNR, agahabwa 2000.000 Frw y'igihembo cy' Avoka na 500.000 Frw y'ikurikiranarubanza.

UKO URUKIKO RUBIBONA

[39] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe."

[40] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza Ngezahoguhora Ildephonse asaba agomba kuyahabwa kuko byabaye ngombwa gukurikirana urubanza bitewe no kuba amasezerano y'ubugure yagiranye na Rekeraho Aloys yarateshejwe agaciro biturutse ku makosa ya BNR, akamburwa umutungo yaguze, bikaba ngombwa gushaka umwunganira. Icyakora, kubera ko amafaranga asaba ari menshi kandi akaba atayatangira ibisobanuro, akaba agenewe mu bushishozi bw'Urukiko 500.000 Frw y'igihembo cya Avoka, na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw. Urukiko rurasanga kandi ayo mafaranga agomba gutangwa na BNR na Ingabire Jacqueline bagize ibyo batsindirwa mu rubanza, buri wese agatanga kimwe cya kabiri cyayo, ni ukuvuga 400.000 Frw.

[41] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza Ingabire Jacqueline na BNR basaba batagomba kuyahabwa kuko hari ibyo batsindiwe muri uru rubanza.

III. ICYEMEZO CY'URUKIKO

[42] Rwemeje ko ikirego cyatanzwe na Banki Nkuru y'u Rwanda (BNR) isaba gusubirishamo ku mpamvu z'akarengane urubanza N° RCA 00250/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 27/08/2020, gifite ishingiro kuri bimwe;

[43] Rwemeje ko imikirize y'urubanza N° RCA 00250/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 27/08/2020 ihindutse kuri byose;

[44] Rutegetse Ingabire Jacqueline guha Ngezahoguhora Ildephonse amafaranga 22.500.000;

[45] Rutegetse Banki Nkuru y'u Rwanda (BNR) guha Ingabire Jacqueline amafaranga 17.000.000;

[46] Rutegetse Banki Nkuru y' u Rwanda (BNR) na INGABIRE Jacqueline guha Ngezahoguhora Ildephonse amafaranga 800.000, buri wese agatanga kimwe cya kabiri cyayo, ni ukuvuga 400.000 Frw.