

RWANDA / JUDGMENT

SEBERA vs. UMUYI WA KIGALI N'ABANDI

RS/INJUST/RAD 00001/2023/CA

COURT

Court of Appeal

DECIDED

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SEBERA vs. UMUYI WA KIGALI N'ABANDI

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Text

Page 1

SEBERA vs. UMUYI WA KIGALI N'ABANDI [Rwanda URUKIKO RW'UBUJURIRE – RS/INJUST/RAD 00001/2023/CA – (Munyangeri, J. P., Ngagi na Kamere, J.) 13 Ugushyingo 2023] Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Kureka ikirego – Uwaretse ikirego nta shobora kongera ku kiregera mu rukiko iyo bigaragaye ko ibyo yongeye kuregera ari bimwe n'ibyo yaretse mu rubanza rwabaye itegeko. Incamake y'ikibazo: Sebera avuga ko ku wa 13/02/2001 yandikiye Umuyi wa Kigali awusaba ikibanza kiri mu cyahoze ari Selire Ubumanzi, Segiteri Rugenge, Komini Nyarugenge; ku wa 12/09/2001 aragihabwa abona n'amasezerano y'igihe kirambye, ariko aza kucyamburwa nyuma yo gutsindwa imanza yarezwemo na Ruremesha Joseph kuri ubwo butaka. Sebera yageze aho areka ikirego, ariko yongera kuregera Urukiko Rwisumbuye rwa Nyarugenge n'ubundi asaba guhabwa icyo kibanza cyangwa ikindi kigisimbura; inkiko zemeza ko icyo kirego kitakwagirwa kuko yaretse ikirego. Ibyo nibyo byaburanwe mu Rukiko rw'Ubujuje mu rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane. Muri uru rubanza Sebera avuga ko ikirego cye cyari kwakirwa muri izo nkiko zabanje kubera ko icyaregewe mbere gitandukanye n'icyaregewe muri uru rubanza ndetse n'ubujurire bwa mbere yari yatanze nyuma akaza kureka ikirego ni uko yari yareze uwo atagombaga kurega. Bityo, ibyo ntibyari kumuvutsa

uburenganzira bwo kurega Akarere ka Nyarugenge kari gafite mu nshingano zako imicungire y'ubutaka n'itangwa ryabwo mu ifasi yako mu gihe yatangaga ikirego. Avuga kandi ko ababuranyi bo mu manza zabanje batandukanye n'abari muri uru rubanza cyane ko yasabaga Akarere ka Nyarugenge kumuha ingurane y'ubutaka yambuwe, akaba atarasabaga gusubizwa ikibanza, nkuko aricyo cyari cyaregewe mu manza zabanje. Umujyi wa Kigali wireguye uvuga ko Sebera yiyambuye ububasha bwo kuburana bijyana no kwiambura uburenganzira umuntu yari afite bwo gukomeza gukurikirana icyo kirego ubwo yarekagaga ikirego mu rubanza RADA 0026/15/HC/KIG, maze urukiko rukemeza ko atemerewe kongera gutanga ikirego gishingiye kuri icyo kibanza. Bityo, nta karengane Urega yagiriwe mu rubanza RADA 00094/2020/HC/KIG asubirishamo, kuko ikirego ari kimwe. Munyankusi warezwe muri uru rubanza, avuga ko Urega yiyibagiza ko ikirego yaburanye mu manza za mbere yiyambuyemo uburenganzira bwo gukomeza gukurikirana ikirego cye, ari kimwe n'icyo yaregeye muri izi manza nubwo icyo yakoze ari ukugorora ikirego cye avuga ko asaba Urukiko gutegeka Umujyi wa Kigali kumusubiza ikibanza cye yambuwe cyangwa rukamuha ikindi. Avuga kandi ko icyo usesenguye icyaregewe, usanga muri izo manza zombi ari kimwe ndetse kuba ubu arega Umujyi wa Kigali ntaho bitandukaniye no kurega Akarere ka Nyarugenge bitewe n'uko itegeko ryahindutse rikambura akarere ubuzima gatozi ndetse nazimwe mu nshingano kari gafite bigahabwa Umujyi wa Kigali. Bityo akaba nta karengane yagiriwe. Ruremesha na we warezwe na Sebera muri uru rubanza, ashimangira ibyavuzwe nabo bareganwa ko nta karenga Urega yagiriwe kuko icyo yakoze muri uru rubanza ari ukujijisha urukiko, agafata ikirego akagicamo kabiri agakuraho igice kirebana no kuregera ikibanza, akivugira gusa ingurane, mu gihe muri urwo rubanza asaba ko yahabwa ingurane mu gihe yaba adasubijwe ikibanza aburana. Bivuze ko icyo yaregeye mu rubanza yaretsemo ikirego ari kimwe n'icyo muri uru rubanza rusubirishwamo ku mpamvu z'akarengane. Incamake y'icyemezo: Uwaretse ikirego nta shobora kongera ku kiregera mu rukiko icyo bigaragaye ko ibyo yongeye kuregera ari bimwe n'ibyo yaretse mu rubanza rwabaye itegeko.

Page 2

Ikirego gisaba gusubirishamo urubanza ku mpamvu, nta shingiro gifite. 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 12, 14, 111 n'iya 122. Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 106. Imanza zifashishijwe: Nta manza zifashishijwe. Inyandiko z'abahanga zifashishijwe: Loïc Cadiet, Droit judiciaire privé, 2 édition, Paris Litec, p. 623. Jean Vincent et Serge Guinchard, Procédure civile, 26 édition, Paris, Dalloz, 2001, p. 219. Urubanza I. IMITERERE Y'URUBANZA [1] Sebera Edouard avuga ko ku wa 13/02/2001, yandikiye Umujyi wa Kigali awusaba ikibanza kiri mu cyahoze ari Selire Ubumanzi, Segiteri Rugenge, Komini Nyarugenge; ku wa 12/09/2001, amaze kwishyura amafaranga magana atanu (500 Frw) yo gusaba ikibanza n'amafaranga ibihumbi mirongo itanu na bitatu na magana atanu (53.500 Frw) yo kwishyura ibikorwa byarimo (expropriation) urakimuha, mu mwaka wa 2011 agihererwa amasezerano y'ubukode burambye we n'umugore we Nikuze Béatrice, aragitunganya, agikoramo ubusitani, agiteramo n'ibiti, ariko akaza kucyamburwa mu buryo bw'akarengane Akarere ka Nyarugenge

karebera kandi ngo kari gafite inshingano zo kubungabunga uburenganzira bwe kuri ubwo butaka, akakandikira agasaba gukemura icyo kibazo, ariko ntikamusubize. Ibyo byatumye atanga ikirego mu Rukiko Rwisumbuye rwa Nyarugenge arusaba gutegeka Akarere ka Nyarugenge kumusubiza ikibanza cye cyangwa kakamuha ikindi kigisimbura, indishyi zinyuranye, amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka [2] Muri urwo rubanza hagobokeshejwemo abari bafite aho baturira n'icyo kibanza kiburanwa, ari bo Ruremesha Joseph wari warakigurishije na Munyankusi Laurent wari warakiguze. [3] Akarere ka Nyarugenge mbere yo kwiregura katanze inzitizi yo kutakira ikirego cya Sebera Edouard cyanditse kuri RAD 00062/2019/TGI/NYGE, gashingiye ku kuba Urugereko ruburanisha imanza z'ubutegetsi nta bubasha rufite bwo kukiburanisha, kuba atarubahirije umuhango wo gutakambira Ubuyobozi mbere yo gutanga iki kirego mu Rukiko, kuba yarareze uwo atagomba kurega, kuko Akarere ka Nyarugenge katigeze kamwambura ubutaka aregera, no kuba ibyo aregera yarabiburanye mu manza zitandukanye zabaye itegeko. [4] Kavuga kandi ko Urukiko ruramutse rubibonye ukundi icyo kirego kikakirwa, rutagiha ishingiro, kuko Sebera Edouard ari we wigabije ikibanza cya Ruremesha Joseph kiri mu Mudugudu w'Ubumanzi, Akagari ka Rugenge, Umurenge wa Muhima, Akarere ka Nyarugenge, aho mu buryo bwo kujijisha, ku wa 13/02/2001, yujuje form isaba ikibanza, ariko ntagihabwe ngo kuko Ubuyobozi bwasanze ikibanza yasabaga cyanditse kuri Ruremesha Joseph. [5] Ruremesha Joseph yaburanye avuga ko ikirego cya Sebera Edouard kitagomba kwakirwa, ashingiye ku kuba kitari mu bubasha bw'Urugereko ruburanisha imanza z'ubutegetsi, no kuba hari imanza zitandukanye baburanye zamaze kuba itegeko, aho na none haburanwaga icyo kibanza.

Page 3

Munyankusi Laurent avuga ko uwo mutungo yawuguze na Ruremesha Joseph kandi yaburanye na Sebera Edouard, uyu agatsindwa mu manza zitandukanye zabaye itegeko. [6] Mu rubanza RAD 00062/2019/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 11/09/2020, Urukiko rushingiye ku manza zaciwe zirimo urubanza RAD 0076/13/TGI/NYGE na RADA 0026/15/HC/KIG, aho SEBERA Edouard yaretse ikirego cye yaregaga Umujyi wa Kigali, Urukiko rwemeje kutakira ikirego cye, rumutegeka kwishyura igihembo cya Avoka cy'abagobokeshejwe kingana n'amafaranga miliyoni (1.000.000 Frw) kuri bose hamwe, buri wese agahabwa ibihumbi magana atanu (500.000 Frw), ko amafaranga ibihumbi makumyabiri (20.000 Frw), Sebera Edouard yari yatanzeho ingwate y'amagarama arega ahwanye n'ibyarukozwemo. [7] Sebera Edouard yajuririyeye urwo rubanza mu Rukiko Rukuru anenga kuba Urukiko Rwisumbuye rwa Nyarugenge rwaremeje ko kuba mu rubanza RADA 0026/15/HC/KIG yararetse ikirego atemerewe kongera kurega abo baburanaga muri urwo rubanza, no kuba rwaramutegetse guha indishyi abagobokeshejwe. [8] Umujyi wa Kigali wiregura ku ngingo z'ubujurire bwa Sebera Edouard uvuga ko nta shingiro zifite, hashingiye ku kuba mu rubanza RADA 0026/15/HC/KIG yararetse ikirego akiyambura ububasha bwo kongera kurega nk'uko biteganywa n'ingingo ya 122, 124 igika cya 3, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Kandi ko icyo aburana cyamaze gufatwaho icyemezo mu manza RC 0257/10/TGI/NYGE na RCA 0188/11/HC/KIG zamaze kuba itegeko. Bityo ko

ubujurire bwe butagomba kwakirwa. [9] Munyankusi Laurent yireguye avuga ko impamvu z'ubujurire za Sebera Edouard nta shingiro zifite, kuko mu rubanza RAD 0076/13/TGI/NYGE, Urukiko Rwisumbuye rwa Nyarugenge rwanze kwakira ikirego cya Sebera Edouard rushingiye ku kuba:

- icyo yaregeraga cyari cyaramaze gufatwaho icyemezo mu manza zabaye itegeko;
- Sebera Edouard adahakana ko ibyo yaregeraga ari byo yongeye kuregera, kuba yivugira ko Akarere ka Nyarugenge n'Umujyi wa Kigali bihuje inshingano nk'uko bigaragara mu gika cya 13 cy'urubanza RAD 0076/13/TGI/NYGE;
- yariyambuye ububasha n'uburenganzira yari afite bwo kuregera ingurane ubwo mu rubanza No RADA 0026/15/HC/KIG yarekaga ikirego nk'uko biteganywa n'ingingo ya 122 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, bityo ko ubujurire bwe butagomba kwakirwa;
- yarabaye nyirabayazana w'urubanza byari bikwiye ko acibwa indishyi, asaza asaba indishyi zitandukanye. [10] Ruremesha Joseph na we yiregura ku bujurire bwa Sebera Edouard avuga ko nta shingiro bufite, ngo kuko yongeye kuregera ikibanza yari yararegeye mu rubanza RADA 0026/15/HC/KIG kandi yararetse ikirego, akaba anyuranywa n'ibiteganywa n'ingingo ya 106 y'Itegeko N° 15/2004 ryerekeye Ibimenyetso mu manza n' itangwa ryabyo, yaboneyeho gutanga ubujurire bwuririye ku bundi avuga ko ikirego cya Sebera Edouard kitagombaga kwakirwa hashingiwe ku kuba nta nyungu n'ububasha afite bwo kuregera ibitari ibye nk' uko byemejwe mu manza RC 0257/10/TGI/NYGE ndetse no mu rubanza RCA 0188/11/HC/KIG zabaye itegeko, asaba Urukiko kuzagira icyo ruvuga kuri izi manza, ngo kuko mu rubanza rujuririrwa ntacyo rwazivuzeho, kandi ko ntacyo Urukiko rwavuze ku mafaranga y'ikurikiranarubanza kandi yari yayasabye, anasaba indishyi zitandukanye. [11] Mu rubanza RADA 00094/2020/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 30/12/2020, Urukiko rushingiye ku kuba mu rubanza RADA 00026/15/HC/KIG, Sebera Edouard yararetse ikirego

Page 4

ashingiye ku ngingo ya 122 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru, rwasanze yariyambuye ububasha bwo gukomeza gukurikirana ikirego cye, rwemeza ko:

- ikirego cy'ubujurire cya Sebera Edouard kitakiriwe;
- urubanza rwajuririwe rudahindutse kuko Sebera Edouard yiyambuye ububasha bwo gukomeza ikirego, akaba agomba kwishyura igihembo cya Avoka gihwanye n'amafaranga ibihumbi magana atanu (500.000 Frw) ku rwego rw'ubujurire, cyiyongera ku yo abagobokeshejwe bahawe ku rwego rwa mbere;
- ingwate y'igarama yatanzwe mu bujurire ihwanye n'ibyakozwe. [12] Sebera Edouard yasabye ko urubanza RADA 00094/2020/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 30/12/2020, rusibirishwamo ku mpamvu z'akarengane, maze mu cyemezo nimeru 016/CJ/2023, Perezida w'Urukiko rw'Ikirenga yemeza ko urwo rubanza rwoherezwa mu Bwanditsi bw'Urukiko

rw'Ubujurire kugira ngo ruzongere ruburanishwe, ikirego cyandikwa kuri RS/INJUST/RAD 00001/2023/CA. [13] Urubanza rwahamajwe ku wa 09/10/2023, Sebera Edouard ahagarariwe na Me Munyandatwa Nkuba Milton, Umujyi wa Kigali uhagarariwe na Me Nyangezi Bonane, Ruremesha Joseph ahagarariwe na Ruremesha Gilbert, nawe yunganiwe na Me Kamasine Denyse, naho Munyankusi Laurent ahagarariwe na Me Bizumuremyi Félix; uwo munsu iburanisha ryimuriwe ku wa 06/11/2023 kugira ngo abaturanyi bagerageze gukemura ikibazo bafitanye mu bwumvikane. Ku wa 03/11/2023 bamenyesheje Urukiko ko ubwumvikane hagati ya Sebera Edouard n'Umujyi wa Kigali butakunze; maze iburanisha mu ruhame riba ku wa 06/11/2023, Sebera Edouard ahagarariwe na Me Munyandatwa Nkuba Milton afatanije na Me Ndagijimana Ignace, Umujyi wa Kigali, Ruremesha Joseph na Munyankusi Laurent bahagarariwe nka mbere. [14] Mu myanzuro no mu miburanire ye, Sebera Edouard anenga urubanza asubirishamo ku mpamvu z'akarengane ku mpamvu zikurikira: - kuba rwaremeje ko kuba yararetse ubujurire yiyambuye ububasha bwo kurega kandi atarigeze yiyambura ububasha bwo gusaba ingurane y'ubutaka yambuwe Akarere ka Nyarugenge karebera kandi ari ko kagombaga kumurinda kubwamburwa; - kuba icyo aregera muri uru rubanza ntaho gihuriye n'icyo yaregeye mu rubanza RAD 00062/2019/TGI/NYGE, ndetse ko n'abarubayemo abaturanyi atari bamwe; Asaba guhabwa ikindi kibanza gihwanye n'icyo yambuwe cyangwa agahabwa ingurane mu mafaranga, no gukuraho amafaranga y'igihembo cya Avoka yategetswe mu rubanza rusubirishwamo ku mpamvu z'akarengane, maze Urukiko rugatega ko ayasubizwa, akanahabwa indishyi, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. [15] Umujyi wa Kigali mbere yo kwiregura ku ngingo zo gusubirishamo urubanza ku mpamvu z'akarengane, wari wazamuye inzitizi yo kutakira ikirego cyatanzwe na Sebera Edouard hashingiwe ku kuba nta nyungu afite zo kuwurega, ariko mu iburanisha uvuga ko iyo nzitizi uyiretse. Uvuga kandi ko impamvu Sebera Edouard atanga asubirishamo urubanza ku mpamvu z'akarengane nta shingiro zifite, kuko ikibanza aregera muri uru rubanza yiyambuye ububasha bwo kukiregera mu rubanza RADA 0026/15/HC/KIG rwabaye itegeko, ko rero nta n'ingurane agomba guhabwa. Usaba amafaranga y'ibyagiye ku rubanza. [16] Ruremesha Joseph na Munyankusi Laurent nabo bashimangira ibivugwa n'Umujyi wa Kigali bavuga ko nta karengane Sebera Edouard yagiriwe mu rubanza RADA 00094/2020/HC/KIG kuko icyo aregera muri urwo rubanza ari kimwe n'icyo yaregeye mu rubanza RADA 0026/15/HC/KIG.

Page 5

Basaba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. Ruremesha Joseph agasaba n'indishyi zo kuba Sebera Edouard yaramwanduriye izina kubera kumushora mu manza. [17] Urukiko, rushingiye kuri izo mpaka, rusanga hakwiye gusuzumwa ibibazo bikurikira: - kumenya niba ikirego cya Sebera Edouard cyaragombaga kwakirwa; - kumenya niba Sebera Edouard agomba gusubizwa ikibanza cye cyangwa agahabwa ingurane mu mafaranga ku kibanza cye; - kumenya niba amafaranga y'igihembo cya Avoka Sebera Edouard yategetswe kwishyura Ruremesha Joseph na Munyankusi Laurent yari afite ishingiro; - kumenya niba indishyi, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka bisabwa muri uru rubanza bifite

ishingiro. Mu iburanisha rusanga hagomba kubanza gusuzumwa ikibazo cyo kumenya niba ikirego cya Sebera Edouard cyaragombaga kwakirwa. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Kumenya niba ikirego cya Sebera Edouard cyaragombaga kwakirwa [18] Abahagarariye Sebera Edouard bavuga ko ikirego cye cyagombaga kwakirwa kuko icyaregewe mu rubanza RADA 0026/15/HC/KIG gitandukanye n'ikiregerwa muri uru rubanza kandi n'ababuranyi atari bamwe. Asobanura ko nubwo mu rubanza RAD 0076/13/TGI/NYGE yareze Umujyi wa Kigali ariko ko atari wo wagombaga kuregwa, ahubwo yatanze ikirego nabi arega utaragombaga kuregwa, ko kuba rero Sebera Edouard yararetse ubujurire yari yatanze ku kirego kitagombaga kwakirwa kubera yari yarareze uwo atagombaga kurega, ibyo bitari kumuvutsa uburenganzira bwo kurega Akarere ka Nyarugenge kari gafite mu nshingano zako imicungire y'ubutaka n'itangwa ryabwo mu ifasi yako mu gihe yatangaga ikirego. Kandi ko Umujyi wa Kigali winjiye mu rubanza RAD 00062/2019/TGI/NYGE atari uko ari wo warezwe, ahubwo byari bishingiye ku mavugurura yabaye muri uwo Mujiyi, ugahabwa ububasha bwari mu turere twugize harimo n'imanza zatwo. [19] Bavuga kandi ko indi mpamvu igaragaza akarengane Sebera Edouard yagiriwe ari uko inkiko zabanje zahuriye ku kwemeza ko mu rubanza RAD 00062/2019/TGI/NYGE no mu rubanza RADA 00094/2020/HC/KIG ababuranyi ari bamwe n'abo mu rubanza RAD 0076/13/TGI/NYGE ruvuga ko yiyamburiyemo ububasha bwo kurega kandi ngo atari ko biri. Basobanura ko mu rubanza RADA 00026/15/HC/KIG, urega ari Sebera Edouard, uregwa akaba Akarere ka Nyarugenge, Umujyi wa Kigali ukaba warajemo kubera ko wazunguye ububasha mu micungire y'ubutaka n'imanza byari iby'Akarere ka Nyarugenge, naho mu rubanza RAD 0076/13/TGI/NYGE ababuranyi ari Sebera Edouard, Umujyi wa Kigali na Ruremesha Joseph, bikaba byumvikana ko ababuranyi muri izo manza atari bamwe, cyane ko Sebera Edouard yasabaga Akarere ka Nyarugenge kumuha ingurane y'ubutaka yambuwe, akaba atarasabaga gusubizwa ikibanza, Ruremesha Joseph na Munyankusi Laurent bakaba ntaho bari guhurira nabyo, kuko nta nyungu ya hafi cyangwa ya kure bari bafite yari gutuma bagobokeshwa muri urwo rubanza. [20] Uhagarariye Umujyi wa Kigali, mu kwiregura kuri iyi ngingo yo kumenya niba ikirego cyatanze na Sebera Edouard cyaragombaga kwakirwa, avuga ko urubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane ari urubanza No RADA 00094/2020/HC/KIG rwemeje ko imikirize y'urubanza RAD 00062/2019/TGI/NYGE idahindutse, muri urwo rubanza Urukiko rukaba rwari rwaremeje ko kuba mu rubanza RADA 0026/15/HC/KIG, SEBERA Edouard yararetse ikirego kirebana n'ikibanza aburana, atemerewe kongera gutanga ikirego gishingiye kuri icyo kibanza,

Page 6

kuko yaretse ikirego, nk'uko biteganywa n'ingingo ya 122 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ko kureka ikirego ari ukwiyambura ububasha bwo kuburana, bijyana no kwiyambura uburenganzira umuntu yari afite bwo gukomeza gukurikirana icyo kirego, ko kuba rero yariyambuye ububasha bwo kuregera icyo kibanza adakwiye kugarura icyo kibazo muri uru

Rukiko avuga ko yarenganyijwe. Bityo ko nta karengane yagiriwe mu rubanza RADA 00094/2020/HC/KIG asubirishamo, kuko ikirego ari kimwe. [21] Uhagarariye Munyankusi Laurent avuga ko Sebera Edouard yiyibagiza ko mu rubanza No RADA 00094/2020/HC/KIG rusubirishwamo ku mpamvu z'akarengane icyaregerwaga cyari: gutegeka Umujyi wa Kigali gusubiza Sebera ikibanza cye cyangwa ukamuha ikindi kigisimbura, no kumuha indishyi zitandukanye, aho umuhagarariye afata agace kamwe k'ikiregerwa akiyibagiza ko muri urwo rubanza yasabye Urukiko gutegeka Umujyi wa Kigali kumusubiza ikibanza, ibyo bikaba bidatandukanye no kuregera ko yavanwe mu kibanza yahawe adahawe ingurane nk'uko byari mu rubanza RADA 0026/2015/HC/KIG. Akaba asanga ikiregerwa nyirizina mu rubanza yaretse kwari ugusubizwa ikibanza cyangwa ikigisimbura, ko rero ikirego ari kimwe, usibye ko mu rubanza rusubirishwamo ku mpamvu z'akarengane, Sebera Edouard yagoroye ikirego. [22] Asobanura ko Sebera Edouard yifatira agace (volet) kamwe k'ikirego ko kumuha ikindi kibanza, mu gihe kumusubiza ikibanza aburana byaba bidashobotse, ko rero iyo usesenguye usanga icyaregawe muri izo manza zombi ari kimwe. Byongeye kandi kuba yarega Akarere ka Nyarugenge, ubundi akarega Umujyi wa Kigali bidatuma habaho itandukaniro ry'ikirego, kuko byaba bitewe n'ihinduka ry'Itegeko, kuba ryaha ubuzimagatozi Akarere ka Nyarugenge, ubundi bugahabwa Umujyi wa Kigali. Bityo ko hashingiwe ku 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, nta karengane Sebera Edouard yagiriwe mu rubanza RADA 00094/2020/HC/KIG. [23] Uhagarariye Ruremesha Joseph n'umwunganira bavuga ko mu rubanza RAD 0062/2019/TGINYGE, no mu rubanza RADA 00094/HC/KIG rusubirishwamo ku mpamvu z'akarengane, ikiregerwa ari ugutegeka Umujyi wa Kigali gusubiza Sebera Edouard ikibanza cye, cyangwa ukamuha ikindi kigisimbura. Ko mu gusobanura impamvu arusubirishamo ku mpamvu z'akarengane ajijisha Urukiko, afata ikirego akagicamo kabiri agakuraho igice kirebana no kuregera ikibanza, akivugira gusa ingurane, mu gihe muri urwo rubanza asaba ko yahabwa ingurane mu gihe yaba adasubijwe ikibanza aburana. Ko rero kuba mu rubanza RADA 0026/15/HC/KIG Sebera Edouard yarajuririraga urubanza yaregeragamo ikibanza, hanyuma akaza kureka ikirego, mu rubanza RAD 00062/2019/TGI/NYGE atari kongera kuregera ikibanza yaregeraga muri urwo rubanza yaretsemo ikirego. Bityo ko nta karengera SEBERA Edouard yagiriwe mu rubanza RADA 00094/2020/HC/KIG. UKO URUKIKO RUBIBONA [24] Impaka kuri iyi ngingo zishingiye ku kumenya niba icyo Sebera Edouard yaregeye mu rubanza RADA 0026/15/HC/KIG, aho yaretse ikirego cye gitandukanye n'ikiregerwa mu rubanza RADA 00094/2020/HC/KIG asubirishamo ku mpamvu z'akarengane. Mu yandi magambo, Urukiko rurasuzuma niba ikiregerwa mu rubanza yaretsemo ikirego ari kimwe n'icyo mu rubanza rusubirishwamo ku mpamvu z'akarengane. [25] Ingingo 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 iteganya ibikurikira: urubanza rwaciye ku rwego rwa nyuma ntirushobora kongera kuburanishwa bundi bushya ku mpamvu zimwe no ku kiburanwa kimwe hagati y'ababuranyi bamwe baburana ikirego kimwe.

Page 7

[26] Ingingo ya 122 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 rimaze kuvugwa iteganya ko kureka ikirego ari ukwiyambura ububasha bwo kuburana, bijyana no kwiyambura uburenganzira umuntu yari afite bwo gukomeza gukurikirana icyo kirego. [27] Ingingo ya 12 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru itaganya ko urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. [28] Izi ngingo zisuzumiwe hamwe zumvikanisha ko Sebera Edouard uvuga ko ikirego cye cyangombaga kwakirwa kuko ntaho gihuriye n'icyo yaretse ari nawe ufite inshingano yo kubigaragaza. [29] Dosiye y'urubanza igaragaza ko mu rubanza RAD 0076/13/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 06/03/2015 haburana Sebera Muhashyi Edouard n'Umujiyi wa Kigali, Sebera yatanze ikirego muri urwo Rukiko asaba ibikurikira: - ikibanza nahawe nta buryarya n'Umujiyi wa Kigali nkaza kukivanwanamo nta ngurane kandi amasezerano nagiranye na Rwanda National Ressource Authority ataraseswa; - ibikorwa nari nashyize muri icyo kibanza, bigatwarwa n'utarabiruhiye, bifite agaciro ka 15.138.000 Frw; - igihombo natewe no gushorwa mu manza ntawe nigeze nambura kirimo amafaranga yahembwe Avoka angana na 2.200.000 Frw, ayahawe Umuhesha w'inkiko angana na 2.700.000 Frw; - indishyi mpozamarira zo guharabikwa no kubeshyerwa. [30] Muri urwo rubanza, Urukiko rwemeje ko ikirego cyatanzwe na Sebera Edouard kitakiriwe, bituma ajurira mu Rukiko Rukuru, maze mu rubanza RADA 00026/2015/HC/KIG, Sebera Edouard yabwiye Urukiko ko aretse ikirego, Urukiko rurabisuzuma, maze ku wa 15/04/2016, rwemera ukureka ikirego kwe. Mu yandi magambo, mu kureka ikirego, Sebera Edouard yari yiyambuye ububasha bwo kongera gukurikirana ibyo yari yaregeye nk'uko biteganywa n'ingingo ya 122 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru. [31] Dosiye igaragaza kandi ko Sebera Edouard yongeye kuregera Urukiko Rwisumbuye rwa Nyarugenge arega Akarere ka Nyarugenge arusaba gutegeka Akarere ka Nyarugenge kumusubiza ikibanza cye cyangwa kakamuha ikindi kigisimbura, asaba kandi indishyi zinyuranye n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka; muri urwo rubanza, hagobokeshejwemo Ruremesha Joseph na Munyankusi Laurent. Mu rubanza RAD 00062/2019/TGI/NYGE rwaciwe ku wa 11/09/2020, Urukiko rwasanze ikiburanwa muri urwo rubanza n'icyaburanywe mu manza zavuzwe haruguru ari bimwe, kuko icyo Sebera Edouard yasabaga ari ikibanza cye yambuwe ntahabwe ingurane. Rwasanze kuba mu bujirire, Sebera Edouard yararetse ikirego cye, Urukiko Rukuru rukabyemera, bivuze ko yiyambuye ububasha bwo kongera kurega nk'uko biteganywa n'ingingo ya 122 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru ivuga ko kureka ikirego ari ukwiyambura ububasha bwo kuburana bijyana no kwiyambura uburenganzira umuntu yari afite bwo gukomeza gukurikirana icyo kirego. Urukiko rwasanze na none ingingo ya 106 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga ko ububasha bw'urubanza rwabaye ndakuka bugarukira gusa ku cyaburanwe, kigakiranurwa, icyaburanwe kigomba kuba kimwe, ikirego kigomba kuba gishingiye ku mpamvu imwe, kuba cyerekeye ababuranyi kandi bakiburana mu zina ryabo rya mbere...; maze rwemeza ko ikirego cya Sebera Edouard kitagomba kwakirwa ngo gisuzumwe mu mizi yacyo.

Page 8

[32] Mu rubanza RADA 00094/2020/HC/KiG rwaciwe ku wa 10/12/2020, ku bujurire bwatanzwe na SEBERA Edouard, Urukiko Rukuru rwasanze Urukiko Rwisumbuye rwa Nyarugenge nta kosa rwakoze ryo kwanga kwakira ikirego cya Sebera Edouard kuko yaretse ikirego ashingiye ku ngingo ya 122 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru. Rwasanze kandi ikirego Sebera Edouard yongeye kuregera cyarasuzumwe mu rubanza rwarangije kuba itegeko, rwemeza ko yiyambuye ububasha bwo gukomeza gukurikirana ikirego, rukaba rutumva ukuntu yongeye ku rwubura. [33] Urukiko ruributsa ko nk'uko byavuzwe haruguru, Sebera Edouard arega bwa mbere mu rubanza RAD 0076/13/TGI/NYGE yasabye ikibanza yahawe nta buryarya n'Umujyi wa Kigali akaza kukivanwanamo nta ngurane kandi amasezerano yagiranye na Rwanda National Ressource Authority ataraseswa. Mu yandi magambo, iki kirego cyumvikanisha ko Sebera Edouard yasabaga gusubizwa ikibanza avuga ko yahawe nta buryarya n'Umujyi wa Kigali hanyuma akaza kukivanwamo adahawe ikindi kigisimbura cyangwa igiciro cyacyo, kuko ijamba ingurane yakoresheje muri iki kirego ntaho rihuriye n'irikoreshwa mu gihe habayeho kwimura umuntu k'ubw'inyungu rusange, kuko ntabyabayeho. [34] Urukiko ruributsa na none ko mu bujurire bwa Sebera Edouard, mu rubanza RADA 00026/2015/HC/KIG, ari bwo yaretse ikirego, maze ku wa 15/04/2016 Urukiko Rukuru rukemera ukureka ikirego kwe; bivuze ko yari yiyambuye ububasha bwo kongera gukurikirana ibyo yari yaregeye mu rubanza rwajuririwe nk'uko byibukijwe haruguru. [35] Urukiko rurasanga nk'uko inkiko zabanje zabibonye, nta tandukaniro riri hagati y'ikirego Sebera Edouard yaretse cyasabaga ikibanza yahawe nta buryarya akaza kukivanwamo adahawe ingurane (ikigisimbura cyangwa igiciro cyacyo) n'icyo yongeye gutanga asaba gutegeka Akarere ka Nyarugenge kumusubiza ikibanza cye cyangwa kakamuha ikindi kigisimbura. Kuba rero Sebera Edouard yariyambuye ububasha bwo kuregera icyo kibanza, Urukiko rurasanga atari yemerewe kongera kugarura icyo kibazo mu nkiko, kandi urubanza rwamwemereye kureka ikirego rwarabaye itegeko; bityo rukaba rusanga icyaburanywe mu manza zombi cyari kimwe kandi ibi bikaba bihura n'ibisobanuro bitangwa n'abahanga mu mategeko ku bigomba kwitabwaho kugirango harebwe niba ikiburanwa ari kimwe mu manza ebyiri, rumwe rwarabaye ndakuka¹. [36] Urukiko rurasanga ibyo abahagarariye Sebera Edouard bavuga ko ikirego cye cyagombaga kwakirwa kuko icyaregawe mu rubanza RADA 0026/15/HC/KIG gitandukanye n'ikiregerwa muri uru rubanza kandi n'ababuranyi atari bamwe, nta shingiro bifite, kuko nk'uko byasobanuwe haruguru, ikiregerwa ni kimwe kandi n'aburaburanyi ni bamwe muri izo manza, kuko n'ubundi Sebera Edouard yaregaga Umujyi wa Kigali kandi akomeza gusaba ikibanza cyangwa ikindi kigisimbura, aho hamwe usanga bavuga amafaranga, ahandi bakavuga ikindi kibanza. [37] Urukiko rurasanga na none ibyo ababuranira Sebera Edouard bavuga ko ikirego cyagombaga kwakirwa kuko mu rubanza yaretsemo ikirego Sebera Edouard yasabaga Akarere ka Nyarugenge kumuha ingurane y'ubutaka yambuwe, akaba atarasabaga gusubizwa ikibanza yamvanwemo adahawe ingurane, nta shingiro byahabwa, kuko nk'uko byasobanuwe haruguru, yasaba ikibanza cyangwa ingurane yashoboraga kuba ikindi kibanza kigisimbura cyangwa agaciro kacyo mu mafaranga. Urukiko rurasanga usibye ko

Sebera Edouard yarahinduye amagambo mu kirego yatanze mu rubanza

1“L’identité d’objet doit s’entendre de la même chose prise dans la même qualité juridique. Autrement dit, pour que la nouvelle demande se heurte à l’autorité de la chose jugée, il est nécessaire que le litige porte sur le même droit relativement à la même chose”, Loïc CADIET, Droit judiciaire privé, 2 édition, Paris Litec, p. 623. “Quand il s’agit de savoir si, par rapport à une nouvelle demande, la chose a déjà été jugée, il faut examiner la matérialité de la chose demandée et la nature du droit réclamé sur cette chose; si l’une ou l’autre change, il n’y a pas autorité de chose jugée. Pour que celle-ci joue, il faut que le demandeur réclame le même droit ou une chose matériellement identique”, Jean Vincent et Serge Guinchard, Procédure civile, 26 édition, Paris, Dalloz, 2001, p. 219.

Page 9

RAD 00062/2019/TGI/NYGE, agakoresha ikigisimbura, n’ubundi ingurane yavugaga mu rubanza RAD 0076/13/TGI/NYGE n’igisimbura ikibanza avuga ko yavanywemo, kuko atari ingurane ivugwa mu gihe habayeho kwimura abantu ku nyungu rusange, kuko bitigeze bibaho. Urukiko rurasanga muri ibyo birego byombi, ijamba ikibanza rigaruka, ku buryo Sebera Vincent atavugaga ko atigeze yongerera kuregera guhabwa ikibanza. [38] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga, nk’uko inkiko zabanje zabibonye, mu rubanza RADA 0026/15/HC/KIG rwaciwe n’Urukiko Rukuru ku wa 15/04/2016, Sebera Edouard yaretse ikirego cye kandi urwo rubanza rwarabaye itegeko, akaba atari yemerewe kongera kuregera ibyo yaretse; bityo ikirego cye koko kikaba kitaragombaga kwakirwa. Urukiko rurasanga rero nta karengane kari mu rubanza RADA 00094/2020/HC/KIG rwaciwe n’Urukiko Rukuru ku wa 30/12/2021. [39] Urukiko rurasanga kuba nta karengane kagaragaye mu rubanza RADA 00094/2020/HC/KIG rwemeje ko ikirego cya Sebera Edouard kitagomba kwakirwa, byumvikana ko nta mpamvu yo gusuzuma ibindi bibazo yari yaregeye bijyanjye no kumenya niba Sebera Edouard akwiye guhabwa ikibanza gisimbura icyo avuga yambuwe cyangwa agahabwa ingurane mu mafaranga, n’icyo kumenya niba amafaranga y’igihembo cya Avoka Sebera Edouard yategetswe kwishyura Ruremesha Joseph na Munyankusi Laurent yari afite ishingiro, ahubwo harasuzumwa gusa amafaranga y’ikurikiranarubanza n’igihembo cya Avoka asabwa kuri uru rwego.

2. Kumenya niba indishyi, amafaranga y’ikurikiranarubanza n’igihembo cya Avoka bisabwa muri uru rubanza bifite ishingiro [40] Uhagarariye Sebera Edouard ashingiye ku ngingo ya 111 y’Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru, no ku ngingo ya 34 y’Amabwiriza N° 01/2014 akena ibihembo mbonera by’Abavoka, asaba Urukiko rw’Ubujurire gutegeka Umujyi wa Kigali, Ruremesha Joseph na Munyankusi Laurent gufatanya kwishyura Sebera Edouard amafaranga yo gushorwa mu manza nta mpamvu angana na miliyoni enye (4.000.000 Frw) cyane ko amaze imyaka igera muri cumi n’ibiri

(12) mu manza zitari ngombwa. Asaba kandi Urukiko gutegeka Umujyi wa Kigali, Ruremesha Joseph na Munyankusi Laurent gufatanya kumuha amafaranga miliyoni ebyiri (2.000.000 Frw) y’ikurikiranarubanza yatakarije muri izi manza bamushoyemo, na miliyoni enye n’ibihumbi magana atanu (4.500.000 Frw) y’igihembo cya Avoka akubiyemo n’ayo atahawe

mu rubanza asubirishamo ku mpamvu z'akarengane. [41] Uhagarariye Umujyi wa Kigali yiregura ku ndishyi Sebera Edouard asaba avuga ko ntazo akwiye guhabwa, kuko ari we wishoye muri uru rubanza. Avuga kandi ko asaba Urukiko rw'Ubujurire gutegeka Sebera Edouard guha Umujyi wa Kigali amafaranga y'igihembo cya Avoka angana na miliyoni ebyiri (2.000.000 Frw), kubera gukomeza kuwushora mu manza z'amaherere kandi azi neza ko ikibanza aburana yagitsindiwe. [42] Uhagarariye Munyankusi Laurent avuga ko indishyi n'amafaranga y'ikurikiranarubanza Sebera Edouard asaba adakwiye kuyahabwa kuko ariwe wishoye muri izi manza yirengagije imanza zaciwe mbere ku kiburanwa kimwe n'ababuranyibamwe kandi zaramaze kuba Itegeko. Avuga kandi ko ashingiye ku ngingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018, ryavuzwe haruguru, asaba Urukiko rw'Ubujurire gutegeka uzatsindwa urubanza guha Munyankusi Laurent amafaranga ibihumbi magana atandatu (600.000 Frw) y'igihembo cya Avoka, n'amafaranga ibihumbi magana atatu (300.000 Frw) y'ikurikiranarubanza. [43] Uhagarariye Ruremesha Joseph avuga ko indishyi n'amafaranga y'ikurikiranarubanza SEBERA Edouard asaba adakwiye kuyahabwa kuko ariwe wishoye mu manza kandi azi neza ko ikibanza aregera inkiko zemeje ko ari icya Ruremesha Joseph. Avuga kandi ko kuba Sebera Edouard

Page 10

yarashoye Ruremesha Joseph mu manza kandi akuze byamukururiye indwara z'umutima no guhangayika kandi bimwanduriza izina kuko byatumye agaragara nk'umusaza wanduranya. Bityo ko kubera izo mpamvu asaba Urukiko rw'Ubujurire kumutegeka kumuha indishyi z'impozamarira zingana na miliyoni eshanu (5.000.000 Frw), na miliyoni ebyiri (2.000.000Frw) y'ikurikiranarubanza. UKO URUKIKO RUBIBONA [44] 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 ibikurikira: 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'ayo ikirego cy'iremezo cyaba kitakiriwe. [45] Urukiko rurasanga indishyi, amafaranga y'igihembo cya Avoka n'ikurikiranarubanza Sebera Edouard asaba nta shingiro afite kuko nta karengane kagaragaye mu rubanza yasubirishejemo ku mpamvu z'akarengane. Rurasanga ahubwo ayo Umujyi wa Kigali, Ruremesha Joseph na Munyankusi Laurent basaba afite ishingiro kuko hari ibyo batakaje bakurikirana banaburana uru rubanza kandi bakaba barashatse ba Avoka bo kubaburanira, bityo mu bushishozi bwarwo rubageneye, buri wese, amafaranga ibihumbi magana atanu (500.000 Frw) y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza, kuri uru rwego, kuko ayo basaba ari menshi, akaba agomba gutangwa na Sebera Edouard. Naho ku bijyanye n'indishyi mpozamarira Ruremesha Joseph asaba, Urukiko rurasanga ntazo agomba guhabwa kuko nta shingiro zifite. III. ICYEMEZO CY'URUKIKO [46] Rwemeje ko ikirego cya Sebera Edouard gisaba gusubirishamo ku mpamvu z'akarengane urubanza No RADA 00094 /2020/HC/KIG rwaciwe n'Urukiko Rukuru, ku wa 30/12/2021, nta shingiro gifite. [47] Rwemeje ko urubanza RADA 00094 /2020/HC/KIG rwaciwe n'Urukiko Rukuru, ku wa 30/12/2021, rugumyeho. [48] Rutegetse Sebera Edouard guha Umujyi wa

Kigali, Ruremesha Joseph na Munyankusi Laurent, buri wese, ibihumbi magana atanu (500.000 Frw) y'igihembo cya Avoka n'ibihumbi magana abiri (200.000 Frw) y'ikurikiranarubanza, kuri uru rwego.

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