MUNYAMPUNDU N'UNDI v. IKIGO CY'IMISORO N'AMAHORO

[Rwanda URUKIKO RW'IKIRENGA – RCOMAA00040/2016/CS (Mutashya, P.J., Gakwaya na Karimunda, J.) 22 Ukuboza 2017]

Amategeko agenga amasosiyete y'ubucuruzi – Uburyozwe bw'abayobozi cyangwa abanyamigabane ba sosiyete – Uburyozwe bw'abayobozi cyangwa abanyamigabane ba sosiyete bwemezwa gusa n'urukiko iyo hari impamvu, icyo gihe urukiko rwirengagiza itandukaniro riri hagati y'ubuzima gatozi bwa sosiyete n'ubwa banyirayo kugirango baryozwe ibikorwa bya sosiyete nkaho ari ibyabo – Itegeko N°27/2017 ryo kuwa 31/05/2017 rigenga amasosiyete y'ubucuruzi ingingo ya 95.

Amategeko agenga amasosiyete y'ubucuruzi – Uburyozwe – Gufatira umutungo w'abanyamigabane n'abayobozi ba sosiyete hagamijwe kuwugurisha – Gufatira imitungo y'abanyamigabane n'abayobozi ba sosiyete nta cyemezo cy'urukiko kigaragaza uburyozwe bwabo mu gutuma itishyura imisoro yaciwe, n' ukwirengagiza itandukaniro riri hagati y'ubuzimagatozi bwa sosiyete n'ubwabayozi cyangwa abanyamigabane bayo – Itegeko N°27/2017 ryo kuwa 31/05/2017 rigenga amasosiyete y'ubucuruzi ingingo ya 95 – Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha, ingingo ya 46 bis.

Incamake y'ikibazo: Ikigo cy'Imisoro n'Amahôro cyafatiriye imitungo itimukanwa y'abanyamigabane ba sosiyete Quincaillerie du Nil mu rwego rwo kwishyura umusoro icyo kigo cyishyuzaga iyo sosiyete, ibyo bituma abo banyamigabane barega Ikigo cy'Imisoro n'Amahôro mu Rukiko rw'Ubucuruzi rwa Nyarugenge bavuga ko cyatandukiriye gifatira imitungo yabo bwite kandi ubusanzwe umuyobozi cyangwa umunyamigabane wa sosiyete adashobora kuryozwa umusoro iyo bidategetswe n'urukiko, basaba kuvanirwa ho iryo fatiramitungo.

Urwo rukiko rwemeje ko iryo fatira ku mitungo itimukanwa y'abanyamigabane rinyuranyije n'amategeko kuko aho gufatira imitungo ya Quincaillerie du Nil hafatiriwe iya banyamigabane bayo, ibyo kandi bigakorwa nta cyemezo cy'urukiko cyemeza uburyozwe bw'abanyamigabane bayo.

Ikigo cy'Imisoro n'Amahôro nticyishimiye icyo cyemezo maze rukijuririra mu Rukiko Rukuru rw'Ubucuruzi ivuga ko itegeko rirebana n'imitunganyirize yisoresha ridateganya ko habanza kwemezwa uburyozwe bw'umuyobozi cyangwa umunyamigabane wa sosiyete kugira ngo ibikorwa byo kwishyuza umusoro bibone gukorwa. Urukiko rwemeza ko Ikigo cy'Imisoro n'Amahôro cyari ifite uburenganzira bwo gufatira imitungo y'abanyamigabane ba sosiyete Quincaillerie du Nil mbere yuko urukiko rubifitiye ububasha rwemeza uruhare rwabo mu kutishyura imisoro.

Abanyamigabane ba Quincaillerie du Nil ntibanyuzwe n'icyo cyemezo cy'urukiko maze bajurira mu Rukiko rw'Ikirenga bavuga ko imitungo yabo yafatiriwe mu buryo bunyuranyije n'amategeko kuko byakozwe nta cyemezo cy'urukiko kibitegetse, bavuga kandi ko imitungo yabo bwite itandukanye n'imitungo ya sosiyete babereye abanyamigabane, basaba uru rukiko gusuzuma niba ifatira ry'imitungo itari ya nyiri gucibwa imisoro ryemewe mbere yuko urukiko rubifitiye ububasha rwemeza uburyozwe.

Mu kwiregura, Ikigo cy'Imisoro n'Amahôro kivuga ko imitungo yafatiriwe itatejwe cyamunara kandi ko ifatira ry'umutungo w'abayobozi cyangwa abanyamigabane ba sosiyete itarujuje inshingano zayo zo kwishyura umusoro bitewe n'uburangare cyangwa imicungire n'imikoreshereze mibi y'umutungo wayo, riba rigamije gukumira ihinduranyamitungo (mutation) kuko bitabaye umutungo wari kuzavamo umusoro waciwe, wanyerezwa maze umusoro ukabura.

Incamake y'icyemezo: 1. Uburyozwe bw'abayobozi cyangwa abanyamigabane ba sosiyete bwemezwa gusa n'urukiko, icyo gihe urukiko rwirengagiza itandukaniro riri hagati y'ubuzima gatozi bwa sosiyete n'ubwa banyirayo kugirango baryozwe ibikorwa bya sosiyete nkaho ari ibyabo.

2. Gufatira imitungo y'abanyamigabane n'abayobozi ba sosiyete mbere yo kugaragaza uburyozwe bwabo mu gutuma itishyura imisoro yaciwe, n'ukwirengagiza itandukaniro riri hagati y'ubuzimagatozi bwa sosiyete n'ubwabayozi cyangwa abanyamigabane bayo. Ibi bikaba byatuma abayobozi cyangwa abanyamigabane baryozwa ibikorwa bya sosiyete nkaho ari ibyabo igihe icyo aricyo cyose n'uwo ari ariwe wese. Bityo, Ikigo cy'Imisoro n'Amahoro nticyari cyemerewe gufatira imitungo ya Munyampundu na Mukarugambwa mbere y'icyemezo cy'Urukiko kigaragaza uburyozwe bwabo mu gutuma Quinquallerie du Nil Ltd babereye abanyambigabane itishyura imisoro.

Ubujurire bufite ishingiro.
Ifatira riteshejwe agaciro.
Amagarama y'urubanza aherereye kuregwa.

Amategeko yashingiweho:

Itegeko N°27/2017 ryo kuwa 31/05/2017 rigenga amasosiyete y'ubucuruzi, ingingo ya 95, igika cya 5.

Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo, ingingo ya 198 n'iya 248.

Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha, ingingo ya 46 bis n'iya 48.

Imanza zifashishijwe:

Twagiramungu v. Ikigo cy'Imisoro n'Amahôro, RCOMAA0056/2016/SC-RCOMAA 0061/16/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 14/07/211.

Salomon v A Salomon & Co Ltd [1896] UKHL, AGC (Investments) Limited v Commissioner of Taxation, Federal Commissioner of Taxation (1964) 111 CLR 443.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ikigo cy'Imisoro n'Amahôro cyaciye Quincaillerie du Nil Ltd umusoro ungana na 654.158.102Frw. Quincallerie du Nil Ltd ntiyanyuzwe n'icyo cyemezo, yiyambaza inzira zose ziteganywa n'amategeko harimo n'Inkiko isaba ivanwaho ry'umusoro yaciwe. Ku rwego rwa nyuma, Urukiko rw'Ikirenga rwaciye urubanza RCOMA0029/12/CS, rwemeza ko Quincaillerie du Nil Ltd yishyura umusoro yaciwe.

[2] Mu rwego rwo kwishyuza umusoro wari umaze kugera kuri 1.031.615.726Frw, Ikigo cy'Imisoro n'Amahôro cyafatiriye umutungo utimukanwa wa Munyampundu Antoine na Mukarugambwa Béatrice kuko ari abanyamigabane ba Quincallerie du Nil Ltd. Munyampundu Antoine na Mukarugambwa Béatrice baregeye Urukiko rw'Ubucuruzi bavuga ko aho kugirango Ikigo cy'Imisoro n'Amahôro gishake ubwishyu mu mutungo wa Quincaillerie du Nil Ltd yaciwe umusoro, cyatandukiriye, gifatira umutungo bwite wabo kandi ataribo bawuciwe, ko ibi binyuranije n'ingingo ya 48 y'Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha kubera ko umuyobozi cyangwa

umunyamigabane wa sosiyete adashobora kuryozwa umusoro waciwe iyo sosiyete bitategetswe n'Urukiko.

[3] Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza RCOM0805/15/TC/NYGE-RCOM0778/15/TC/NYGE rusanga ifatira ryakozwe ku mitungo itimukanwa iri mu bibanza N°1070, 180, 1271 na 179 rinyuranije n'amategeko kuko mu mwanya wo gufatira imitungo ya Quincaillerie du Nil Ltd hafatiriwe iya Munyampundu Antoine na Mukarugambwa Béatrice, bikorwa urukiko rubifitiye ububasha rutemeje uburyozwe bw'abayobozi n'abanyamigabane bayo nk'uko biteganywa n'ingingo ya 46 bis y'Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha.

[4] Urukiko rw'Ubucuruzi rwa Nyarugenge rwasanze kandi ibyo ikigo cy'imisoro n'amahôro cyaburanishaga ko hakwemezwa uruhare n'uburyozwe bya Munyampundu Antoine na Mukarugambwa Béatrice mu gutuma Quincallerie du Nil Ltd itubahiriza inshingano zayo kuko aribo bayobozi n'abanyamigabane bayo nta shingiro bifite kuko babisabye nyuma yo gufatira imitungo bwite yabo.

[5] Ikigo cy'imisoro n'amahôro nticyishimiye icyo cyemezo, ikijuririra mu Rukiko Rukuru rw'Ubucuruzi kivuga ko ingingo ya 46 *bis* y'Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha ntaho iteganya ko habanza kwemezwa uburyozwe bw'umuyobozi cyangwa umunyamigabane wa sosiyete kugira ngo ibikorwa byo kwishyuza umusoro bibone gukorwa, ahubwo ko umusoresha afite uburenganzira bwo kubishyuza bose mu gihe abona baragize uburangare cyangwa ubushake buke byatumye sosiyete itishyura imisoro yaciwe, havuka impaka, bakaregera Urukiko kugirango rwemeze uburyozwe cyangwa bukurweho.

[6] Mu rubanza RCOMA0024/16/HCC rwaciwe kuwa 15/04/2016, Urukiko rwasanze ikibazo ababuranyi batumvikanaho ari ukumenya niba ari ngombwa kubanza kuregera urukiko kugira ngo rwemeze uburyozwe bw'abayobozi cyangwa abanyamigabane ba sosiyete mbere y'uko imitungo yabo ifatirwa hagamijwe kwishyurira sosiyete imisoro, rusesenguye ingingo ya 46 bis y'Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha, rusanga ntaho ivuga ko nta fatira rikorwa ku mitungo y'abayobozi cyangwa abanyamigabane ba sosiyete mbere y'uko Urukiko rwemeza uburyozwe bwabo kuko ifatira rikorwa mbere y'igurisha kugira ngo imitungo itarigiswa mbere y'icyemezo cy'Urukiko cyemeza uburyozwe bwa ba nyirayo.

[7] Urukiko rwemeje ko ikigo cy'imisoro n'amahôro cyari gifite uburenganzira bwo gufatira imitungo itimukanwa ya Munyampundu Antoine na Mukarugamba Béatrice, abanyamigabane ba Quincaillerie du Nil Ltd, mbere y'uko urukiko rubifitiye ububasha rwemeza ko bagize uruhare mu kutishyura imisoro ya sosiyete, ni uko rwemeza ko imikirize y'urubanza rwajuririwe ihindutse.

[8] Munyampundu Antoine na Mukarugambwa Béatrice ntibishimiye icyo cyemezo bajurira mu Rukiko rw'Ikirenga basaba ko hasuzumwa ikibazo cyo kumenya niba ifatira ry'umutungo utari uwa nyiri gucibwa umusoro ryemewe mbere y'uko urukiko rubyemeza kuko basanga ingingo ya 46 *bis* y'Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha itavuga mu buryo bweruye niba ifatira ry'umutungo w'abayobozi n'abanyamigabane ba sosiyete yaciwe umusoro rikorwa mbere cyangwa nyuma y'icyemezo cy'Urukiko rubifitiye ububasha kigaragaza uburyozwe bwabo, nubwo bo basanga kwemeza uburyozwe aribyo byari bikwiye kubanziriza ifatira bitewe n'uko ifatira rikorwa kugirango umutungo uzagurishwe havemo ubwishyu.

[9] Iburanisha ry'urubanza ryashyizwe kuwa 16/05/2017, uwo munsi ntirwaburanishwa kuko uburanira Ikigo cy'Imisoro n'Amahôro yari mu butumwa. Urubanza rwagiye rwimurirwa ku matariki anyuranye bitewe n'impamvu zitandukanye, rwimurirwa bwa nyuma kuwa 21/11/2017. Uwo munsi iburanisha ribera mu ruhame, Mukarugambwa Béatrice ahagarariwe na Me Ndayisabye Alex, Munyampundu Antoine aburanirwa na Me Twilingiyemungu Joseph naho Ikigo cy'Imisoro n'Amahôro, kiburanirwa na Me Gatera Jean Clément na Me Twahirwa Jean-Baptiste.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO.

II.1. Kumenya niba ifatira y'umutungo wa Munyampundu Antoine na Mukarugambwa Béatrice ryarakozwe mu buryo bunyuranyije n'amategeko.

[10] Me Ndayisabye Alex avuga ko imitungo ya Mukarugambwa Béatrice yafatiriwe mu buryo bunyuranije n'amategeko bitewe n'uko byakozwe nta cyemezo cy'Urukiko kibitegetse nk'uko biteganywa n'ingingo ya 46 *bis* y'Itegeko N°25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha. Asobanura ko Urukiko Rukuru rw'Ubucuruzi rwakoreye iyo ngingo isesengura ritari ryo kuko rwavuze ko nta kigaragaza ko ifatira ryari gukurikirwa n'igurisha, ruraryemeza nyamara icyatumye imitungo itagurishwa ari uko batanze ikirego cyihutirwa gihagarika igurisha, ko Urukiko rwivuguruje kuko nyuma yo kwemeza ifatira, rwavuze ko ikirego cy'uburyozwe kitagombaga kwakirwa, hakibazwa icyo ifatira ryari gushingiraho. Avuga ko gufatira umutungo w'umuntu ku mpamvu z'umusoro bibanzirizwa no kubanza kugaragaza ko ari umusoreshwa, ko ibyo aribyo biteganywa n'ingingo ya 48 y'Itegeko rimaze kuvugwa, kubikora hatabanje kugaragazwa ko nyiri umutungo ari umusoreshwa ari ukuvogera umutungo we bwite, ibyo bikaba bibujijwe n'ingingo ya 34 y'Itegeko-Nshinga ryo mu 2003 ryavuguruwe mu 2015[1], binyuranye n'ihame ry'amategeko rya "piercing corporate veil" ndetse bihabanye n'ibyemezo by'Inkiko zo mu bindi bihugu nko mu Bwongereza aho mu rubanza rwa *Solomon v. Solomon*[2], Urukiko rw'Ikirenga rwavuze ko umutungo bwite w'umuryango cyangwa w'umuntu ku giti cye utakwitiranwa n'umutungo wa sosiyete, ariyo mpamvu asaba uru Rukiko guhindura urubanza rujuririrwa.

[11] Me Twilingiyemungu Joseph uburanira Munyampundu Antoine avuga ko umusoro wishyuzwa Quincaillerie du Nil Ltd, ikaba ifite umutungo wayo utandukanye n'uwa Munyampundu Antoine na Mukarugambwa Béatrice. Avuga ko ingingo ya 46 bis y'Itegeko N°25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha yaje muri 2013 igamije gukumira inyereza ry'umusoro ryakorwa n'abasangiye umutungo na sosiyete, ariko ishyiraho urubibi rw'uko uburyozwe bugomba kwemezwa n'Urukiko, iyo ngingo ikaba igomba gusomerwa hamwe n'iya 48 y'iryo Tegeko ivuga ko ifatira rikurikiza amategeko asanzwe (*droit commun*), naho ingingo ya 223 y' Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ikaba iteganya uburyo ifatira ry'agateganyo rikorwa, izi ngingo zikaba zihuriza ku kuba ifatira ry'agateganyo riba rigamije gushinganisha ibyafatiriwe, hategerejwe urubanza ruzarihinduramo ifatira-bwishyu. Asobanura ko aha ariho Urukiko Rukuru rw'Ubucuruzi rwitiranyije ibintu, ruvuga ko hakozwe ifatira ry'agateganyo nyamara dosiye igaragaza ko nyuma y'ifatira, umusoresha yahise

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[1] "Buri muntu afite uburenganzira ku mutungo bwite waba uwe ku giti cye cyangwa uwo asangiye n'abandi. Umutungo w'umuntu ku giti cye cyangwa uwo asangiye n'abandi ntuvogerwa. Uburenganzira ku mutungo ntibuhungabanywa keretse ku mpamvu z'inyungu rusange kandi hakurikijwe ibiteganywa n'amategeko."

[2] *Solom v. Solomon & Co* [1897] AC 22.

ashyiraho amatariki y'igurisha, ibyo bikaba bitari gukorwa nta cyemezo cy'Urukiko kigaragaza uburyozwe bw'aba nyiri umutungo.

[12] Me Gatera Jean Clément, uburanira Ikigo cy'Imisoro n'Amahôro, avuga ko ifatira ry'umutungo w'abayobozi cyangwa abanyamigabane ba sosiyete itarujuje inshingano zayo zo kwishyura umusoro, bitewe n'uburangare cyangwa imicungire n'imikoreshereze mibi y'umutungo wayo, riba rigamije gukumira ihinduranyamitungo (mutation) kuko bitabaye umutungo wari kuzavamo umusoro waciwe, wanyerezwa. Asobanura ko ingingo ya 46 *bis* y'Itegeko N°25/2005 ryo kuwa 04/12/2005 ryavuzwe haruguru itanga inzira yo gufatira iyo mitungo nta zindi manza zibayeho kuko umushingamategeko yasanze habanje imanza, umutungo wahishwa cyangwa ukarigiswa, aricyo kigaragaza ko nta burenganzira ku mutungo bwavogerewe. Avuga ko iyo mitungo itatejwe cyamunara kandi ko ba nyirayo badahakana ko ari abanyamigabane ba Quincaillerie du Nil Ltd yishyuzwa imisoro yatumye ifatira rikorwa, ariyo mpamvu asanga ntaho umusoresha yanyuranije n'ingingo ya 48 y'Itegeko N°25/2005 ryo kuwa 04/12/2005 ryavuzwe haruguru.

[13] Me Twahirwa Jean-Baptiste nawe uburanira Ikigo cy'Imisoro n'Amahôro, avuga ko icyo Kigo aricyo gifite inshingano zo kwishyuza umusoro, akaba asanga kitari gutanga ikirego cyemeza uburyozwe bw'abanyamigabane ba sosiyete kandi hari ikirego cyatanzwe na Munyampundu Antoine na Mukarugambwa Béatrice. Asobanura ko ifatira ryari rigamije gukumira ko imitungo inyerezwa umusoro ukazabura, kuko gutegereza imanza bishobora kurangira imitungo yarikuvamo ubwishyu irigishijwe.

UKO URUKIKO RUBIBONA

[14] Ingingo ya 198 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko inyandikompesha ari imanza zaciwe n'inkiko, ibyemezo by'abacamanza, imanza z'inkiko nkemurampaka, inyandikomvaho zirimo ingingo zemerera uberewemo umwenda kugurisha icyagwatirijwe bitagombye urubanza, inyandiko z'amasezerano yerekeranye n'amasoko ya Leta, inyandikomvaho n'imanza z'inkiko zo mu mahanga abacamanza bo mu Rwanda babifitiye ububasha bemeye ko ziharangirizwa.

[15] Ingingo ya 248 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko uberewemo umwenda ntashobora gufatira ibintu bitimukanwa by'uwumubereyemo, adashingiye ku nyandiko zivugwa mu ngingo 198 y'iri tegeko.

[16] Ingingo ya 46 bis y'Itegeko N°25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha ivuga ko abayobozi bafite uruhare mu buryo butaziguye mu igenzura no mu micungire y'isosiyete idahamagarira rubanda kuyiguramo imigabane, baryozwa bose hamwe imisoro iyo sosiyete ibazwa, iyo bigaragaye ko ku bushake cyangwa ku burangare bwabo batumye isosiyete iryozwa iyo misoro. Abanyamigabane na bo baryozwa imisoro y'isosiyete iyo bafite uruhare mu micungire y'isosiyete cyangwa mu mikoreshereze mibi y'umutungo wayo ku buryo bituma idashobora kuzuza inshingano zijyanye n'imisoro. Urukiko rubifitiye ububasha rwemeza uburyozwe bw'abayobozi n'abanyamigabane buvugwa muri iyi ngingo.

[17] Ingingo ya 48 y'Itegeko N°25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha ivuga ko iyo umusoro utishyuwe mi minsi cumi n'itanu (15) nk'uko bivugwa mu ngingo ya 46 y'iri tegeko, ibiro by'imisoro bishobora gufatira umutungo w'umusoreshwa, waba uwimukanwa cyangwa utimukanwa, waba uri mu maboko y'umusoreshwa cyangwa undi muntu. Ibyafatiriwe bitezwa cyamunara nyuma y'iminsi umunani (8) umusoreshwa amenyeshejwe inyandiko y'ifatira (…..). Gufatira no guteza cyamunara umutungo wafatiriwe bikurikiza amategeko y'imbonezamubano n'ubucuruzi. Ku birebana n'isoresha, abahesha b'inkiko bo mu buyobozi bw'imisoro banganya ububasha n'abahesha b'inkiko bigenga.

[18] Inyandiko zigize dosiye y'urubanza zigaragaza ko Quincaillerie du Nil Ltd, Munyampundu Antoine na Mukarugambwa Béatrice babereye abanyamigabane, yaciwe umusoro ungana na 654.158.102Frw. Muri dosiye harimo kandi icyemezo cy'Umubitsi Wungirije w'Impapurompamo z'Ubutaka cyo kuwa 12/01/2015 gihamya ko ubutaka buri mu bibanza n°1175, n°1165 na n°2292 biherereye mu Murenge wa Kinyinya, Akagari ka Gasharu, ikibanza n°1070 giherereye mu Murenge wa Kimihurura, Akagari ka Kamukina hamwe n'ibibanza n°180 na n°1271 biherereye mu Murenge wa Gahanga, Akagari ka Gahanga byanditse kuri Munyampundu Antoine na Mukarugambwa Béatrice kandi byashyizweho itambamira ku ihererekanyamutungo iryo ariryo ryose (cote 10).

[19] Dosiye y'urubanza irimo na none inyandiko-mvugo y'ifatira (*procès verbal de saisie*) yo kuwa 10/03/2011 y'inyubako za Munyampundu Antoine na Mukarugambwa Béatrice ziherereye Kacyiru, mu Mujyi wa Kigali kubera umwenda w'umusoro Quincaillerie du Nil Ltd, babereye abanyamigabane, ibereyemo Ikigo cy'Imisoro n'Amahôro, harimo kandi ibaruwa N°94/RRA/DTD/SMTO/TAMD/15 ya Mukakalisa Francine, Umuhesha w'Inkiko mu Buyobozi bw'Imisoro, amenyesha Munyampundu Antoine na Mukarugambwa Béatrice ko afatiriye umutungo wabo w'inzu iri mu kibanza kibaruwe kuri N°UPI 1/02/08/01/1070 mu Mudugudu wa Nyenyeri, Akagari ka Kamukina, Umurenge wa Kimihurura, Akarere ka Gasabo kubera kutishyura umusoro ungana na 654.158.102Frw babereyemo Ikigo cy'Imisoro n'Amahôro, ko nyuma y'iminsi umunani (8), uwo mwenda utishyuwe, inzu izatezwa cyamunara (cotes 6 na 9).

[20] Dosiye irimo kandi ibaruwa ya Me Hakizimana John mu izina rya Munyampundu Antoine yo kuwa 02/06/2011 isaba Komiseri Mukuru gukuraho ifatira ryakorewe inyubako iri mu kibanza n°1084 Kacyiru-Nord, niyo Me Ndayisabye Alex, mu izina rya Mukarugambwa Béatrice, yandikiye Mukakalisa Francine kuwa 01/03/2015 amumenyesha ko inzu yafatiriye atari iya Quincaillerie du Nil Ltd, ahubwo ari iya Mukarugambwa Béatrice na Munyampundu Antoine, kandi ko ariyo batuyemo (cotes 11 na 13).

[21] Urukiko rurasanga Ikigo cy'Imisoro n'Amahôro gishingira ifatira ry'imitungo ya Munyampundu Antoine na Mukarugambwa Béatrice, abanyamigabane ba Quincaillerie du Nil Ltd ku kuba itaboneka ngo yishyure imisoro yaciwe, ko iryo fatira rigamije kuburizamo irigiswa ry'iyo mitungo, ko kandi kubura kw'iyo sosiyete, gukwiye gufatwa nk'imicungire mibi cyangwa imikoreshereze mibi y'umutungo wayo, byatumye itabasha kuzuza inshingano zayo zo kwishyura umusoro yaciwe.

[22] Urukiko rurasanga inyandiko isoresha (*note d'imposition*) yarakorewe Quincaillerie du Nil Ltd, ifite umutungo utandukanye n'uw'abanyamigabane bayo aribo Munyampundu Antoine na Mukarugambwa Béatrice, iyo nyandiko kandi ikaba igira ingaruka k'uwo yakorewe, ku bijyanye n'uru rubanza ikaba itashingirwaho hasoreshwa umuyobozi cyangwa umunyamigabane wa sosiyete kuko atari we iba yakorewe.

[23] Urukiko rurasanga ingingo ya 46 *bis* y'Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha iteganya ko impamvu yatuma umuyobozi wa sosiyete aryozwa hamwe na sosiyete (*solidairement responsables /jointly liable*) imisoro yaciwe sosiyete ari igihe hari icyemezo kigaragaza ko, ku bushake cyangwa ku burangare bwe, yatumye sosiyete itishyura imisoro yari itegetswe kwishyura, naho umunyamigabane agafatanya na sosiyete kwishyura imisoro iyo ari mu bacunga sosiyete cyangwa abagize uruhare mu mikoreshereze mibi y'umutungo wayo bigatuma idashobora kwishyura imisoro yaciwe, ijambo "iyo bigaragaraye (*s'il est raisonablement conclu / if it can be reasonably concluded*) rikoreshwa ku bayobozi, n'amagambo "iyo bafite uruhare mu micungire ya sosiyete cyangwa mu mikoreshereze mibi y'umutungo wayo" akoreshwa ku banyamigabane, Ikigo cy'Imisoro n'Amahôro gishingiraho kivuga ko cyasanze Munyampundu Antoine na Mukarugambwa Béatrice baracunze nabi *Quincaillerie du Nil Ltd*, bari babereye abanyamigabane, ubu ikaba itaboneka, akaba adakwiye gufatwa yonyine (*d'une facon isolée/ in an isolated way*) ahubwo akwiye gusomerwa hamwe n'andi ari muri iyo ngingo n'icyo umushingamategeko yari agamije ayishyiraho.

[24] Urukiko rurasanga ibikubiye mu ngingo ya 46 *bis* y'Itegeko N°25/2005 ryo kuwa 04/12/2005 ryavuzwe haruguru byumvikanisha ko abayobozi cyangwa abanyamigabane ba sosiyete badashobora kuryozwa imisoro yaciwe sosiyete, iyo bitagaragaye ko, ku bushake cyangwa ku burangare bw'abayobozi, ku micungire mibi cyangwa imikoreshereze mibi y'umutungo wa sosiyete bikozwe n'abanyamigane, sosiyete yananiwe kwishyura imisoro yaciwe, amakosa cyangwa imicungire mibi byakozwe n'abayobozi cyangwa abanyimigabane byatumye sosiyete itishyura imisoro yemezwa n'Urukiko mu bushishozi bwarwo, ibyo Ikigo cy'Imisoro n'Amahôro kivuga ko bitari ngombwa kubanza kuregera kwemeza uburyozwe bw'abayobozi cyangwa abanyamigabane, ko ifatira ryakozwe hagamijwe kurinda ko imitungo yarigiswa gusa bikaba nta shingiro bifite.

[25] Urukiko rurasanga gufatira umutungo wa Munyampundu Antoine na Mukarugambwa Béatrice hagamije kuwugurisha mbere yo kugaragaza uburyozwe bwabo mu gutuma sosiyete bari babereye abanyamigabane itishyura imisoro yaciwe ari ukwirengagiza itandukaniro riri hagati y'ubuzimagatozi bwa sosiyete n'ubw'abayobozi cyangwa abanyamigabane bayo[3], kubyirengagiza bikaba byatuma abayobozi cyangwa abanyamigabane baryozwa ibikorwa bya sosiyete nkaho ari ibyabo igihe icyo aricyo cyose n'uwo ari ariwe wese, ibi bikaba bitandukanye n'ibiteganywa n'ingingo ya 46 *bis* ndetse n'iya 48 y'Itegeko N°25/2005 ryo ku wa 04/12/2005 ryavuzwe haruguru.

[26] Urukiko rurasanga nk'uko rwabyemeje mu manza zitandukanye harimo n'urwo Twagiramungu Venuste yaburanaga n'Ikigo cy'Imisoro n'Amahoro, uburyozwe bw'abayobozi cyangwa abanyamigabane ba sosiyete aribyo byitwa "piercing the corporate veil" cyangwa "lifting the veil of the corporation" ni umwihariko (exception) wemezwa gusa n'Urukiko, rukirengagiza itandukaniro riri hagati y'ubuzimagatozi bwa sosiyete n'ubwa ba nyirayo kugirango abayobozi cyangwa abanyamigabane baryozwe ibikorwa bya sosiyete nkaho ari ibyabo[4], iri hame ry'amategeko ry'uko uburyozwe bwemezwa n'Urukiko rikaba ryaribukijwe mu ngingo ya 95, igika cya 5 cy'Itegeko N°27/2017 ryo kuwa 31/05/2017 rigenga amasosiyete y'ubucuruzi ivuga ko "Urukiko rushobora kurenga uburyozwe bushingiye ku migabane kugirango umunyamigabane aryozwe inshingano za

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[3] *"The legal fiction of corporate veil, thus established, enunciate that a Company has a legal personality separate and independent from the identity of its shareholders."* Reba *Murray A. Pickering, the Company as Separate Legal Entity (1968) 31 Mod.L.Rev.481.*

[4] *"Piercing the corporate veil or lifting the veil of incorporation refers to the judicially imposed exception to the separate legal entity principle, whereby courts disregard the separateness of the corporation and hold a shareholder responsible for the actions of the corporation as if it were the actions of the shareholder."* Reba Munyamahoro Réné,

sosiyete iyo rusanze uwo munyamigabane yarakoresheje nabi imiterere ya sosiyete agamije uburiganya cyangwa kwica amategeko cyangwa yarafashe nabi umutungo wa sosiyete nk'aho ari umutungo w'abantu ku giti cyabo." Cyakora, mu kwemeza uburyozwe, Inkiko zishimangira ko bidapfa gukorwa, ahubwo hagomba gushingirwa ku mpamvu zisobanutse (*circumstances in which the corporate veil may be lifted are greatly circumscribed*) zigaragaza igituma abayobozi cyangwa abanyamigabane bagomba kuryozwa ibyakaryojwe sosiyete[5], nabyo bishimangira ko gutandukanya ubwo buzimagatozi bitemezwa n'uwo ari we wese cyangwa ngo abikore uko yiboneye, ahubwo ni umwihariko (exception) wemezwa n'Inkiko mu rwego rwo kurengera inyungu runaka zitari kurengerwa Urukiko ruramutse rutemeje uruhare rw'abayobozi cyangwa abanyamigabane mu gutuma sosiyete itubahiriza inshingano zayo[6].

[27] Urukiko rurasanga kandi gufatira umutungo hagamijwe kuwugurisha muri cyamunara nta nyandikompesha iriho binyuranyije n'ibiteganwa n'ingingo ya 198 n'iya 284 z'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru, nyamara kandi ingingo ya 48 y'Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha iteganya ko gufatira no guteza cyamunara umutungo wafatiriwe bikurikiza amategeko asanzwe agenga imburanishirize y'imanza z'imbonezamubano n'ubucuruzi, byose bigaragaza ko Ikigo cy'Imisoro n'Amahôro kitari cyemerewe gufatira imitungo ya Munyampundu Antoine na Mukarugambwa Béatrice mbere y'icyemezo cy'Urukiko kigaragaza uburyozwe bwabo mu gutuma Quinquallerie du Nil Ltd babereye abanyamigabane, itishyura imisoro.

II.2. Kumenya niba indishyi zisabwa muri uru rubanza zifite ishingiro.

[28] Me Gatera Jean Clément avuga ko Ikigo cy'Imisoro n'Amahôro cyashowe mu manza ku bw'amaherere bituma gishaka abakiburanira bateguye kandi bakurikirana iby'uru rubanza aho gukora ibindi, bakaba babisabira igihembo cya avoka cya 2.000.000Frw.

[29] Me Ndayisabye Alex avuga ko amafaranga Ikigo cy'Imisoro n'Amahôro cyaka kitayakwiriye kuko aricyo cyakoze amakosa gifatira imitungo ya Mukarugambwa Béatrice mu buryo bunyuranyije n'amategeko. Avuga ko iryo fatira ryatumye uwo aburanira agira ibyo atakaza akurikirana umutungo we mu nkiko, ashingiye ku ngingo ya 258 y'Igitabo cya Gatatu cy'urwunge rw'amategeko mbonezamubano, akaba abisabira 1.000.000Frw y'ikurikiranarubanza na 2.000.000 Frw y'igihembo cya Avoka.

[30] Me Twilingiyemungu Joseph avuga ko Ikigo cy'Imisoro n'Amahôro kitakora amakosa ngo gisabe n'indishyi, akaba asanga Munyampundu Antoine ari we ukwiriye 2.000.000Frw y'igihembo cya Avoka kuko yiyambaje umuburanira kugirango agaragaze uburenganzira bwe mu nkiko.

UKO URUKIKO RUBIBONA

[31] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka Ikigo cy'Imisoro n'Amahôro gisaba kitayakwiriye kuko aricyo cyatumye abajuriye bagana inkiko bitewe no kutubahiriza amategeko mbere yo gufatira imitungo yabo.

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[5] Reba *AGC (Investments) Limited v. Commissioner of Taxation, Federal Commissioner of Taxation (1964) 111 CLR 443 (HC, Mc Tiernan, Kitto, Taylor, Windeyer and Owen JJ).*

[6] Reba urubanza RCOMAA0056/2016/SC-RCOMAA 0061/16/CS, hagati ya Twagiramungu Vénuste n'Ikigo cy'Imisoro n'Amahoro rwaciwe n'Urukiko rw'Ikirenga ku wa 14/07/2017, igika cya 22.

[32] Urukiko rurasanga kuba Mukarugambwa Béatrice yararegeye Urukiko akurikirana umutungo we wafatiriwe mu buryo bunyuranije n'amategeko byaratumye agira ibyo atakaza awukurikirana kandi yiyambaza na Avoka uhembwa, bityo akaba agenewe 500.000Frw y'ikurikirarubanza na 1.000.000Frw y'igihembo cya Avoka agenwe mu bushishozi bw'Urukiko kuko atagaragaza ko ayo asaba ariyo yakoresheje kuri uru rubanza.

[33] Urukiko rurasanga kandi Munyampundu Antoine nawe yariyambaje Avoka uhembwa kugirango agaruze umutungo we wari warafatiriwe mu buryo bunyuranije n'amategeko, bityo akaba agenewe mu bushishozi bw'Urukiko 1.000.000Frw y'igihembo cya Avoka kuko atagaragaza ko ayo asaba ariyo yarutanzeho

III. ICYEMEZO CY'URUKIKO

[34] Rwemeje ko ubujurire bwa Munyampundu Antoine bufite ishingiro;

[35] Rwemeje ko ubujurire bwa Mukarugambwa Béatrice bufite ishingiro;

[36] Rwemeje ko ifatira ryakorewe imitungo ya Munyampundu Antoine na Mukarugambwa Béatrice kugirango hishyurwe imisoro yaciwe Quincaillerie du Nil riteshejwe agaciro;

[37] Rutegetse Ikigo cy'Imisoro n'Amahôro kwishyura Mukarugambwa Béatrice 500.000Frw y'ikurikiranarubanza na 1.000.000Frw y'igihembo cya Avoka;

[38] Rutegetse Ikigo cy'Imisoro n'Amahôro kwishyura Munyampundu Antoine 1.000.000Frw y'igihembo cya Avoka;

[39] Rutegetse Ikigo cy'Imisoro n'Amahôro kwishyura amagarama y'urubanza.