NEW KIGALI BUSINESS SERVICES LTD v KASESE DISTILLERS LTD

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00004/2020/SC – (Mukamulisa, P.J., Cyanzayire, Muhumuza, Hitiyaremye na Karimunda, J.) 19 Ugushyingo 2021]

Amategeko agenga amasezerano – Amasezerano y'ubucuruzi – Ibimenyetso mu manza z'ubucuruzi – Ihame rusange ni uko mu manza z'ubucuruzi nta busumbane bw'ibimenyetso bubaho – Ibikorwa by'ubucuruzi ntibigombera byanze bikunze amasezerano yanditse, ahubwo bishobora kugaragazwa hashingiwe ku bimenyetso by'ubwoko bwose harimo n'ubutumwa impande zombi zahererekanyije, inyemezabwishyu, ibitabo by'ibaruramari, ubuhamya cyangwa ibindi bintu bifatika – Singombwa ko iteka hagaragazwa umwimerere w'inyandiko ababuranyi bashingiraho nk'ibimenyetso.

Amategeko agenga amasezerano – Amasezerano y'ubucuruzi – Ibimenyetso bishingirwaho mu manza z'ubucuruzi – Uburemere bw'inyandiko zitangwa nk'ibimenyetso mu manza z'ubucuruzi – Mu gusuzuma niba harabayeho imikoranire hagati y'abacuruzi ntibisaba buri gihe ko hagaragazwa ibimenyetso simusiga, ahubwo hitabwa ku buryo abacuruzi basanzwe bakorana hanyuma hagasuzumwa agaciro gakwiye guhabwa ibimenyetso biba byagaragarijwe Urukiko; narwo mu bushishozi bwarwo, rugasuzuma niba izo nyandiko zikiranuye kandi zifitanye isano na kamere y'ikiburanwa.

Amategeko agenga amasezerano – Amasezerano y'ubucuruzi – Inkurikizi zo kwica amasezerano ku bigo cg sosiyete – Ibigo cyangwa Sosiyete z'ubucuruzi bishobora guhabwa indishyi z'akababaro kuko nk'uko bimeze ku bantu, icyubahiro cyazo, icyizere zifitiwe n'uburyo zifatwa muri rubanda bishobora kubangamirwa kandi bikagira ingaruka ku mibereho yazo; bishoboka ko hangirizwa ibintu by'ingenzi bireba sosiyete kandi bidafite aho bihuriye n'inyungu zayo z'ubucuruzi cyangwa umutungo wayo.

Amategeko agenga amasezerano – Amasezerano y'ubucuruzi – Indishyi z'akababaro zihabwa ibigo cyangwa sosiyete – Ni indishyi ziba zigamije gusa kugaruza agaciro iyo sosiyete yatakaje aho kuba ibyo yahombye kubera ko itasaba iz'uko yatewe agahinda, yababajwe ku mubiri cyangwa ku mutima cyangwa yasuzuguwe kuko ari umwihariko w'abantu. Mu kuzigena, Urukiko rusabwa ubushishozi no gushyira mu gaciro bihagije kugira ngo hatazamo gukabya, izatanzwe zikaba nke cyane ku buryo ntacyo zaba zivuze cyangwa zikaba umurengera ku buryo zakwitiranywa n'indishyi mbonezamusaruro cyangwa iz'igihombo sosiyete yatejwe.

Amategeko agenga imisoro – Kumenyekanisha umusoro – Aho uburyozwe bw'uwamenyekanishije umusoro bugarukira – Iyo ibicuruzwa byamenyekanishirijwe umusoro mu Rwanda biburiwe irengero, ny'ir'ibicuruzwa ntabashe kugaragaza ko byibiwe mu nzira, niwe ukwiye kuryozwa umusoro n'ibihano Ikigo cy'Imisoro n'Amahôro kiba cyaciye uwawumenyekanishije. Urukiko, mu bushishozi bwarwo, rumugenera indishyi z'akababaro iyo yagaragajwe nka bihemu kugeza ubwo abihaniwe ndetse agakurwa kuri serveur y'abamenyekanisha mu gihe amakosa yahaniwe yatewe na nyir'ibicuruzwa.

Incamake y'ikibazo: New Kigali Business Services Ltd yareze Kasese Distillers Ltd (Rwanda) ivuga ko yayihaye inshingano zo kuyimenyekanishiriza ibicuruzwa, irabikora ariko ibicuruzwa ntibyagera mu Rwanda, bituma ibicirirwa umusoro n'ibihano byose hamwe bingana na 152.165.333 Frw. Yasabye ko uburyozwe bushyirwa kuri nyir'ibicuruzwa kuko ari we wari ufite inshingano zo kugeza ibyo bicuruzwa mu Rwanda. Yasabye kandi guhabwa indishyi z'akababaro kuko Ikigo cy'Imisoro n'Amahôro cyayifashe nka bihemu bituma ivanwa kuri *serveur* y'abashinzwe kumenyekanisha umusoro, isaba na none guhabwa amafaranga y'ikurikiranarubanza, igihembo cya Avoka no gusubizwa amagarama yatanze.

Urubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge rugenda rujuririrwa kugeza ubwo New Kigali Business Services Ltd irusubirishijemo ku mpamvu z'akarengane mu Rukiko rw'Ikirenga.

Kasese Distillers Ltd (Rwanda) yagiye yiregura mu nkiko zose ivuga ko nta bicuruzwa yigeze itumiza mu mahanga kuko, uretse kuba igihe byatumizwagwa yari yarahagaritswe gukora na Rwanda Bureau of Standard,

ibimenyetso New Kigali Business Services Ltd iburanisha ishaka kugaragaza ko ariyo yaranguye ibicuruzwa mu mahanga byerekana ko ibarizwa Nyagatare- Iburasirazuba kandi ibarizwa muri Nyarugenge mu Mujyi wa Kigali.

Yasobanuye ko itazi n'uburyo New Kigali Business Services Ltd yabonye inyandiko ibicuruzwa byaziyeho kuko ntazo yayihaye, ko hatagaragajwe umwimerere w'izo nyandiko, ko kandi nta masezerano y'imikoranire New Kigali Business Services Ltd yigeze igaragaza kugira ngo byemerwe ko yayihaye inshingano, ahubwo ko yavuze yakoranye ndetse ahabwa inyandiko z'ibicuruzwa na Byekwaso, umukozi wa Kasese Distillers Ltd (Uganda), usanzwe ukora magendu, ariyo mpamvu New Kigali Business Services Ltd ikwiye kwirengera amakosa yayo yo gukorana n'abantu basanzwe bakora magendu. Ivuga ko indishyi zose zisabwa nta shingiro zifite kuko n'ubundi nta bicuruzwa byayo byigeze bimenyekanishirizwa umusoro.

Incamake y'icyemezo: 1. Ihame rusange ni uko mu manza z'ubucuruzi nta busumbane bw'ibimenyetso bubaho. Ibikorwa by'ubucuruzi ntibigombera byanze bikunze amasezerano yanditse, ahubwo bishobora kugaragazwa hashingiwe ku bimenyetso by'ubwoko bwose harimo n'ubutumwa impande zombi zahererekanyije, inyemezabwishyu, ibitabo by'ibaruramari, ubuhamya cyangwa ibindi bintu bifatika. Singombwa ko iteka hagaragazwa umwimerere w'inyandiko ababuranyi bashingiraho nk'ibimenyetso.

2. Mu gusuzuma niba harabayeho imikoranire hagati y'abacuruzi ntibisaba buri gihe ko hagaragazwa ibimenyetso simusiga, ahubwo hitabwa ku buryo abacuruzi basanzwe bakorana hanyuma hagasuzumwa agaciro gakwiye guhabwa ibimenyetso biba byagaragarijwe Urukiko; narwo mu bushishozi bwarwo, rugasuzuma niba izo nyandiko zikiranuye kandi zifitanye isano na kamere y'ikiburanwa.

3. Ibigo cyangwa Sosiyete z'ubucuruzi bishobora guhabwa indishyi z'akababaro nk'uko bimeze ku bantu, kuko icyubahiro cyazo, icyizere zifitiwe n'uburyo zifatwa muri rubanda bishobora kubangamirwa kandi bikagira ingaruka ku mibereho yazo; bishoboka ko hangirizwa ibintu by'ingenzi bibireba kandi bidafite aho bihuriye n'inyungu zabyo z'ubucuruzi cyangwa umutungo wabyo.

4. Indishyi z'akababaro zihabwa ibigo cyangwa sosiyete ni indishyi ziba zigamije gusa kugaruza agaciro iyo sosiyete yatakaje aho kuba ibyo yahombye kubera ko itasaba iz'uko yatewe agahinda, yababajwe ku mubiri cyangwa ku mutima cyangwa yasuzuguwe kuko ari umwihariko w'abantu. Mu kuzigena, Urukiko rusabwa ubushishozi no gushyira mu gaciro bihagije kugira ngo hatazamo gukabya, izatanzwe zikaba nke cyane ku buryo ntacyo zaba zivuze cyangwa zikaba umurengera ku buryo zakwitiranywa n'indishyi mbonezamusaruro cyangwa iz'igihombo sosiyete yatejwe.

5. Iyo ibicuruzwa byamenyekanishirijwe umusoro mu Rwanda biburiwe irengero, ny'ir'ibicuruzwa ntabashe kugaragaza ko byibiwe mu nzira, niwe ukwiye kuryozwa umusoro n'ibihano Ikigo cy'Imisoro n'Amahôro kiba cyaciye uwawumenyekanishije. Urukiko, mu bushishozi bwarwo, rumugenera indishyi z'akababaro iyo yagaragajwe nka bihemu kugeza ubwo abihaniwe ndetse agakurwa kuri serveur y'abamenyekanisha mu gihe amakosa yahaniwe yatewe na nyir'ibicuruzwa.

Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro.
Urubanza rwaciwe n'Urukiko rw'Ubujurire, ruhindutse mu ngingo zarwo zose.

Amategeko yashingiweho:

East African Community Customs Management Act, 2004, ingingo ya 144, 147 n'iya 148.

Itgeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111.

Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 75.

Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 9.

Iteka rya Minisitiri N°133/moj/ag/18 ryo ku wa 04/06/2018 rigena amafaranga atangwa mu manza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

Iteka rya Minisitiri Nº 002/08.11 ryo ku wa 11/02/2014 rigena amafaranga atangwa mu manza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

Imanza zifashishijwe:

Prime Insurance Ltd na Kansiime James, RS/INJUST/RCOM 00005/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 12/06/2020.

Bralirwa Ltd a na Kazigaba André n'abagenzi be, RCOMAA 0015/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 23/06/2017.

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Inyandiko z'abahanga zifashishijwe:

Memento Expert, Baux Commerciaux 2015-2016, Francis Lefebvre, Levallois, La liberté de preuves l'égard des commerçants exclut … la formalité du double original, 2015, verbo 19105.

Georges Decocq na Aurélie Ballot-Léna, Droit Commercial, Paris, Dalloz, 2015, pp. 84-85.

Véronique Wester-Ouisse, Le préjudice moral des personnes morales: quand la perversion de la cité commence par la fraude des mots, JCP, G n° 39,24 Septembre 2012.

Philippe Le Tourneau, Droit de la responsabilité et des contrats: Régimes d'Indemnisation, Paris, Dalloz, 2014, 2014, pp.664-665.

Philippe Malaurie, Laurent Aynès na Philippe Stoffel-Munck, Droit des obligations, Paris, LDGJ, 2015, p.126.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, New Kigali Business Services Ltd ivuga ko yamenyekanishije ibicuruzwa bya Kasese Distillers Ltd byavaga Dar-Es-Salaam muri Tanzania bigana mu Rwanda ariko bigeze mu nzira biburirwa irengero, ibajije Freight World Ltd yabyikoreye, iyibwira ko byapakururiwe mu nzira, amakamyo asubira Dar-Es-Salaam. New Kigali Business Services Ltd yavuze ko ku wa 30/06/2016, yamenyesheje Ikigo cy'Imisoro n'Amahôro iby'uko ibyo bicuruzwa bitageze mu Rwanda, aho kugira ngo kibyiteho, ku wa 25/07/2016, itungurwa no kubona iciwe umusoro n'ibihano bingana na 152.165.330 Frw no kubona ivanywe kuri serveur y'abamenyekanisha umusoro, isaba ko isubizwa kuri serveur, Kasese Distillers Ltd ikaryozwa umusoro n'ibihano yaciwe.

[2] Kasese Distillers Ltd yireguye ivuga ko ikirego cyaburanwe mu rundi rubanza rwabaye itegeko (urubanza RCOM 00492/2017/TC/NYGE) ubwo New Kigali Business Services Ltd yaregeraga kuvanirwaho icyemezo cya Komiseri, ivuga kandi ko ibijyanye n'ibyaha byo kunyereza umusoro biregerwa inkiko ziburanisha imanza nshinjabyaha, bityo ko bitari mu bubasha bw'Urukiko rw'Ubucuruzi. Ku bijyanye n'imizi y'urubanza, Kasese Distillers Ltd yavuze ko nta nshingano zo kumenyekanisha ibicuruzwa byayo yigeze iha New Kigali Business Services Ltd kuko baterekana ko hari umuyobozi cyangwa umukozi wa Kasese Distillers Ltd bigeze bakorana amasezerano y'uko izabamenyekanishiriza ibicuruzwa.

[3] Ku wa 16/03/2018, Urukiko rwaciye urubanza rubanziriza urundi mu rubanza RCOM 02196/2017/TC/NYGE, habanza gusuzumwa inzitizi yo kutakira ikirego kuko cyaburanwe mu rubanza

RCOM 00492/2017/TC/NYGE rwabaye ndakuka, Urukiko rusanga muri urwo rubanza ikirego kitarakiriwe kubera kutubahiriza ibihe byo kurega, rusanga kandi ababuranyi muri izo manza zombi atari bamwe, rwemeza ko urubanza RCOM 00492/2017/TC/NYGE rutazitiraga New Kigali Business Services Ltd gutanga ikirego gishya.

[4] Ku wa 10/05/2018, Urukiko rw'Ubucuruzi rwa Nyarugenge rwabanje na none gufata icyemezo ku nzitizi ijyanye no kumenya niba urubanza rugomba kuburanishwa n'inkiko ziburanisha imanza nshinjabyaha, rusanga umusoro waraciwe nta kurikiranacyaha ribayeho, bityo ko inzitizi y'iburabubasha yatanzwe na Kasese Distillers Ltd nta shingiro ifite kubera ko ikirego Urukiko rufite atari icy'inshinjabyaha ahubwo ari icy'ubucuruzi. Naho ku bijyanye n'imizi y'urubanza, rwasanze kuba New Kigali Business Services Ltd yaramenyekanishije ibicuruzwa hanyuma bikaburirwa irengero ikwiye gufatwa nka nyirabyo ikishyura imisoro n'ibihano nk'uko biteganywa n'ingingo ya 147 ya East African Community Customs Management Act, 2004 cyane cyane ko itagaragaza ibimenyetso by'uko ibicuruzwa yamenyekanishije byajimijwe na Kasese Distillers Ltd ku buryo ariyo yaryozwa umusoro n'ibihano yaciwe, rwanzura ko ikirego cya New Kigali Business Services Ltd nta shingiro gifite, itegekwa kwishyura umusoro n'ibihano yaciwe bingana na 152.165.330 Frw no guha Ikigo cy'Imisoro n'Amahôro 500.000 Frw y'igihembo cya Avoka.[1]

[5] New Kigali Business Services Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko yagaragaje Certificate of origin na Bill of lading byerekana ko hari ibicuruzwa bya Kasese Distillers Ltd yamenyekanishije bikiri ku cyambu cya Dar-Es-Salaam kandi ko Kasese Distillers Ltd imaze kubura ibicuruzwa byayo yaregeye Ubugenzacyaha bwa Tanzania, bigaragaza ko ibyo bicuruzwa byabayeho koko kandi ko byari byoherejwe mu Rwanda, aho guha agaciro ibyo bimenyetso, Urukiko rw'Ubucuruzi ruyisaba amasezerano y'imikoranire rwirengagije ko ariyo yari isanzwe imenyekanisha ibicuruzwa bya Kasese Distillers Ltd, ikishyurwa hakoreshejwe sheki, isaba Urukiko guha ishingiro ubujurire bwayo, Kasese Distillers Ltd ikaryozwa umusoro n'ibihano yaciwe.

[6] Mu rubanza RCOMA 00441/2018/CHC/HCC rwaciwe ku wa 15/11/2018, Urukiko Rukuru rw'Ubucuruzi rwasanze New Kigali Business Services Ltd nta masezerano yo kumenyekanisha ibicuruzwa bya Kasese Distillers Ltd igaragaza, rusanga iterekana uburyo yabonye Certificate of origin na Bill of lading by'ibicuruzwa ivuga ko ari ibya Kasese Distillers Ltd kuko iyi sosiyete yavugaga ko izo nyandiko yazibonye bwa mbere igeze mu rubanza, rwanzura ko nta bimenyetso bifatika kandi bidashidikanywaho New Kigali Business Services Ltd yagaragaje byerekana ko ibicuruzwa yamenyekanishije ari ibya Kasese Distillers Ltd n'uburyo byaburiwe irengero, bityo ko nta gihindutse ku mikirize y'urubanza rwajuririwe.

[7] New Kigali Business Services Ltd yajuririye Urukiko rw'Ubujurire ivuga ko kuba yaramenyekanishije ibicuruzwa bikiri ku cyambu cya Dar-Es-Salaam nta makosa arimo, ndetse ko kuba ibyo bicuruzwa bitarageze mu Rwanda atariyo yabibazwa cyangwa ngo ibiryorezwe umusoro n'ibihano, ahubwo ko byabazwa Kasese Distillers Ltd n'umwikorezi wayo, isaba ko uburyozwe bushyirwa kuri nyir'ibicuruzwa.

[8] Kasese Distillers Ltd yireguye ivuga ko hari ibimenyetso bigaragaza ko habayeho ikurikirana ry'icyaha cyo kunyereza umusoro, ko iyo nzitizi yatanzwe ku rwego rwa mbere, Urukiko rw'Ubucuruzi rwa Nyarugenge rusanga nta shingiro ifite, ibijuririye, Urukiko Rukuru rw'Ubucuruzi rwibagirwa kuyisuzuma, isaba Urukiko rw'Ubujurire gutesha agaciro imanza zose zaciwe kuko ikirego cyagombaga kuburanishwa n'inkiko mpanabyaha, ariko rwabibona ukundi, rukemeza ko ubujurire nta shingiro bufite kubera ko New Kigali Business Services Ltd itashoboye kugaragaza ibimenyetso bifatika kandi bidashidikanywaho bihamya ko hari ibicuruzwa bya Kasese Distillers Ltd yamenyekanishije.

[1] Ikigo cy'Imisoro n'Amahôro ntabwo cyari umuburanyi muri urwo rubanza

[9] Mu rubanza RCOMAA 00038/2019/CA rwaciwe ku wa 06/12/2019, Urukiko rw'Ubujurire rwasanze ikirego cyatanzwe kidafite kamere y'ikirego nshinjabyaha, rwemeza ko inzitizi ya Kasese Distillers Ltd nta shingiro ifite, naho ku bijyanye n'imizi y'urubanza, rusanga New Kigali Business Services Ltd itagaragaza uburyo Kasese Distillers Ltd yayihaye *Certificate of origin, Facture Commerciale* na *Lettre de chargement* iburanisha cyane cyane ko imyirondoro ya Kasese Distillers Ltd yanditse kuri izo nyandiko idahura n'imyirondoro yayo y'ukuri ndetse Rutagengwa Emmanuel, umuyobozi wa New Kigali Business Services Ltd akaba ahamya ko hari hashize amezi atandatu badakorera Kasese Distillers Ltd imenyekanishamusoro, rwanzura ko ubujurire bwa New Kigali Business Services Ltd nta shingiro bufite, ko nta gihindutse ku mikirize y'urubanza rwajuririwe.

[10] Ku wa 05/01/2020, New Kigali Business Services Ltd, yandikiye Perezida w'Urukiko rw'Ikirenga isaba ko urubanza RCOMAA 00038/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 06/12/2019, rusubirwamo ku mpamvu z'akarengane. Mu cyemezo 261/CJ/2020 cyo ku wa 18/05/2020, Perezida w'Urukiko rw'Ikirenga amaze gusuzuma ubwo busabe, yemeje ko rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe.

[11] Iburanisha mu ruhame ryabaye ku wa 12/01/2021, ku wa 15/03/2021 no ku wa 12/10/2021, New Kigali Business Services Ltd ihagarariwe na Me Ngirumpetse Jean Marie Vianney, naho Kasese Distillers Ltd ihagarariwe na Me Butare Emmanuel na Me Nsengiyumva Abel.

[12] Urukiko rwabanje gusuzuma ibijyanye n'inzitizi yo kutakira ikirego yatanzwe na Kasese Distillers Ltd yavugaga ko inkiko z'ubucuruzi zitari zifite ububasha bwo kuburanisha uru rubanza kubera ko ikirego cyatanzwe cyari icy'inshinjabyaha.

[13] Ku wa 12/01/2021, Urukiko rwafatiye icyemezo mu ntebe, rusanga iyi nzitizi yari yaratanzwe mu Rukiko rw'Ubujurire, urwo Rukiko ruyifataho umwanzuro, Kasese Distillers Ltd ntiyigera igaragaza ko itanyuzwe, bityo ko hashingiwe ku murongo uru Rukiko rwatanze mu rubanza Prime Insurance Ltd yaburanaga na Kansiime James,[2] w'uko umuburanyi adashobora kuririra ku kirego cy'akarengane cyatanzwe n'uwo baburana ngo nawe agire ibyo anenga urubanza rwari rwamunyuze, rusanga iyo nzitizi nta shingiro ifite, rwemeza ko iburanisha rikomeza hasuzumwa ibibazo bigize imizi y'urubanza.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba Kasese Distillers Ltd ariyo ikwiye kuryozwa imisoro n'ibihano byaciwe New Kigali Business Services Ltd

[14] Me Ngirumpetse Jean Marie Vianney, uburanira New Kigali Business Services Ltd avuga ko akarengane kayo gashingiye ku kuba harirengagijwe ibimenyetso byari muri dosiye byerekana ko hari ibicuruzwa Kasese Distillers Ltd (Rwanda) yatumije mu mahanga kandi ko yahaye New Kigali Business Services Ltd inshingano zo kuyimenyekanishiriza umusoro. Asobanura ko izi sosiyete zombi zatangiye gukorana mu mwaka wa 2015 nk'uko bigaragazwa n'amamenyekanishamusoro (*déclarations*) ari muri dosiye, ko Kasese Distillers Ltd yabanzaga kuyiha bonds kugira ngo hakorwe imenyekanishamusoro, igakurikizaho *Bill of lading* kugira ngo hakorwe inyemezabuguzi (iya EBM n'isanzwe), umusoro wishyuzwa waba urenze 500.000 Frw, ikishyura ikoresheje sheki. Avuga ko iyo mikoranire itasabaga byanze bikunze amasezerano yanditse ahubwo ko akenshi yari ishingiye ku cyizere, inyandiko zigahererekanywa mu ntoki, Kasese Distillers Ltd ikagumana imyimerere y'inyandiko yatanze.

[15] Avuga ko Certificat d'enregistrement igaragaza imyirondoro ya Kasese Distillers Ltd (Rwanda), *Bill of lading, Packing list, Commercial invoice, Certificate of origin* n'urutonde rw'abashoferi n'amakamyo ya Freight World Ltd yikoreye ibicuruzwa, bigahamya ko hari ibicuruzwa byatumijwe ku myirondoro na TIN

[2] Urubanza RS/INJUST/RCOM 00005/2018/SC rwaciwe ku wa 12/06/2020, para 41.

102959519 bya Kasese Distillers Ltd (Rwanda). Asobanura ko impapuro z'umwimerere z'ibicuruzwa zahawe Byekwaso Rogers, nyiri Kasese Distillers Ltd (Uganda), nawe azishyikiriza Ruzindana Hassan, wari ushinzwe gushakira Kasese Distillers Ltd (Rwanda) umu *déclarant* i Kigali, uyu akaba ariwe wahaye New Kigali Business Services Ltd inyandiko iburanisha, ibyo bikaba bigaragazwa na e-mails bahererekanyije n'inyandiko Byekwaso Rogers yahaye abashoferi ba Freight World Ltd bikoreye ibicuruzwa.

[16] Avuga ko hejuru y'ibyo, hari ikirego Byekwaso Rogers, nyiri Kasese Distillers Ltd (Uganda), mother company ya Kasese Distillers Ltd (Rwanda) yatanze kuri Polisi ya Nyakato (Mwanza) muri Tanzania, avuga ko ibicuruzwa bye byibwe, hakaba email Byekwaso Rogers yandikiye Rutayisire Emmanuel, Umuyobozi wa Kasese Distillers Ltd (Rwanda), amumenyesha ko ibicuruzwa byibwe, uyu nawe akayohererereza New Kigali Business Services Ltd, ndetse ko hari n'amabaruwa Ikigo cy'Imisoro n'Amahôro cyandikiye Kasese Distillers Ltd (Rwanda) kiyimenyesha ko yanyereje umusoro, uwo musoro ukaba waraciwe New Kigali Business Services Ltd nk'umwishingizi wayo. Asoza avuga ko ibi bimenyetso byose byirengagijwe n'inkiko nyamara bigaragaza ko ibicuruzwa byabayeho, akaba ari ibya Kasese Distillers Ltd (Rwanda) kandi ko New Kigali Business Services Ltd yari yarahawe inshingano zo kuyimenyekanishiriza umusoro, ariyo mpamvu isaba kurenganurwa, uru Rukiko rukemeza ko nyir'ibicuruzwa ariwe ukwiye kubiryorezwa umusoro n'ibihano.

[17] Rutayisire Emmanuel, Umuyobozi wa Kasese Distillers Ltd (Rwanda), avuga ko iyi sosiyete ari iye ku giti cye guhera mu mwaka wa 2014, ikaba ntaho ihuriye na Kasese Distillers Ltd (Uganda), ko ikorera i Kigali kandi ko nta bicuruzwa yigeze itumiza mu mahanga ku wa 13/06/2016. Avuga ko amakuru y'ibyo bicuruzwa no kuba New Kigali Business Services Ltd yarabimenyekanishirije umusoro yayamenye bwa mbere ku wa 30/06/2016, ayabwiwe na Murekatete Sonia, umukozi wa New Kigali Business Services Ltd, akaba yibaza uburyo yari kurangura Ibicuruzwa ntabimenye, inyandiko z'umwimerere yabiranguriyeho n'iz'Ikigo cy'Imisoro n'Amahôro zigahabwa aba *déclarants* atabizi.

[18] Avuga ko hashize igihe, Murekatete Sonia yamusabye nimero za telefoni za Byekwaso Rogers, amubwira ko ibicuruzwa byari ibye kandi ko byibwe, naho Rutagengwa Emmanuel, Umuyobozi wa New Kigali Business Services Ltd amubwira ko aba fraudeurs bashutse umukozi we akora inyandiko zituma ibicuruzwa byoherezwa mu Rwanda. Avuga ko, kubera ko yari azi ko Byekwaso Rogers asanzwe anyereza imisoro, kuva ubwo yagize amakenga atangira kujya afata Murekatete Sonia amajwi, akaba asanga rero nta karengane kabaye mu rubanza rwaciwe n'Urukiko rw'Ubujurire.

[19] Me Butare Emmanuel na Me Nsengiyumva Abel, baburanira Kasese Distillers Ltd bavuga ko New Kigali Business Services Ltd yabajijwe ibimenyetso byerekana ko hari akazi yahawe, yerekana *Certificate of origin na Bill of lading* nyamara izo nyandiko Kasese Distillers Ltd itazizi, zitanditswe ku myirondoro yayo, ko hari naho yabajijwe amerekezo y'ibicuruzwa, ivuga ko byoherererejwe Kasese Distillers Ltd (Uganda). Basobanura ko kuba New Kigali Business Services Ltd yarigeze gukorana na Kasese Distillers Ltd (Rwanda) atari ikimenyetso gihamya ko mu mwaka wa 2016 yayihaye inshingano zo kumenyekanisha ibicuruzwa byayo, ko Kasese Distillers Ltd (Rwanda) itashoboraga gutumiza ibicuruzwa hanze y'igihugu ku wa 13/06/2016 kandi yari yarahagaritswe by'agateganyo na Rwanda Bureau of Standards (RBS), ko n'ibyo yari yaratumije mbere y'uko ihagarikwa, byinjiye mu gihugu ibanje kubisabira uruhushya, bihageze RBS ibifungirana mu bubiko kuko itari yakadohorewe.

[20] Bavuga ko Kasese Distillers Ltd (Rwanda) imaze kwemererwa gukomeza gukora, yahereye kuri spirit yari isanganywe mu bubiko, yongera gutumiza ibicuruzwa mu mahanga ku wa 24/04/2017, ko n'ibivugwa na New Kigali Business Services Ltd ko hari e-mails zihuza Byekwaso Rogers na Kasese Distillers Ltd (Rwanda) cyangwa ko Ikigo cy'Imisoro n'Amahôro cyemeje ko ibicuruzwa byari ibyayo kubera ko byatumijwe ku myirondoro no kuri TIN byayo nta shingiro bikwiye guhabwa kubera ko emails na Bill of lading zitagaragaramo Byekwaso Rogers cyangwa Kasese Distillers Ltd (Rwanda), kandi Murekatete Sonia, umukozi wa New Kigali Business Services Ltd akaba yarivugiye ko yari yaribwiye ko Byekwaso Rogers ari we nyiri Kasese Distillers Ltd (Rwanda). Bavuga ko iyi sosiyete yamenye iby'ibura

ry'ibicuruzwa ibibwiwe na New Kigali Business Services Ltd nyuma y'ibyumweru bitatu byibwe, ko itazi n'uburyo New Kigali Business Services Ltd yabonye inyandiko iburanisha kuko atariyo yazitanze, bityo Kasese Distillers Ltd (Rwanda) ikaba itaryozwa magendu yashatse gukorwa na Kasese Distillers Ltd (Uganda) kuko itari ishami ryayo cyangwa ngo ibe umunyamigabane wayo.

UKO URUKIKO RUBIBONA

[21] Ingingo ya 9 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko ibimenyetso bihamya amasezerano cyangwa ibindi bikorwa bishobora gutangwa hakoreshejwe inyandiko, ubuhamya, uburyo bwo gucukumbura, ukwiyemerera k'umuburanyi cyangwa herekanywe ibindi bintu bifatika.

[22] Ingingo ya 75 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, iteganya ko ibisanzwe bimenyerewe gukorwa mu bucuruzi bishingira ku miterere y'ubwo bucuruzi. Iyo ibyo bimenyerewe byashyizwe mu gitabo cy'amategeko agenga ubucuruzi cyangwa mu kindi gitabo byenda gusa, isesengurwa ryayo rikorwa n'urukiko hakurikijwe amategeko.

[23] Iyo izi ngingo z'amategeko zisomewe hamwe ndetse zigahuzwa na kamere y'ibirego by'ubucuruzi, zumvikanisha ko ibikorwa by'ubucuruzi bitagombera byanze bikunze amasezerano yanditse, ahubwo bishobora kugaragazwa hashingiwe ku bimenyetso by'ubwoko bwose harimo n'ubutumwa impande zombi zahererekanyije (*correspondance*) inyemezabwishyu (*factures*), ibitabo n'inyandiko by'ibaruramari, ubuhamya cyangwa ibindi bintu bifatika. Byongeye kandi Urukiko ubwarwo, mu bushishozi bwarwo, nirwo rusuzuma niba inyandiko zishingirwaho nk'ibimenyetso mu manza z'ubucuruzi zikiranuye kandi zifitanye isano na kamere y'ikiburanwa.

[24] Ku bijyanye n'ireme ry'inyandiko zishingirwaho mu manza z'ubucuruzi cyangwa uburemere bw'inyandiko zitangwa nk'ibimenyetso mu manza z'ubucuruzi (*force probante / probative value*), uru Rukiko rwabisobanuye mu rubanza ROCK GLOBAL CONSULTING Ltd yaburanaga na IMPACT DISTRIBUTORS EAST AFRICA Ltd aho rwavuze ko mu gusuzuma niba harabayeho imikoranire hagati y'abacuruzi bidasaba buri gihe ko hagaragazwa ibimenyetso simusiga, ahubwo ko hitabwa ku buryo abacuruzi basanzwe bakorana hanyuma hagasuzumwa agaciro gakwiye guhabwa ibimenyetso biba byagaragarijwe Urukiko.[3]

[25] Urukiko rurasanga iri hame ry'uko mu manza z'ubucuruzi nta busumbane bw'ibimenyetso bubaho, ari naryo rishimangirwa n'inkiko z'ahandi, by'umwihariko mu rubanza rwa Unidare Plc v Cohen and Another, Urukiko Rukuru rwa Wales and England rukaba rwarasanze iyo hagaragajwe inyandiko zerekana uburyo ibikorwa by'ubucuruzi byagenze, kandi koko bikaba bigaragara ko bene ibyo bikorwa bisanzwe bikorwa muri ubwo buryo bwagaragajwe, Urukiko rukwiye gufata ko uburyo byagaragajwe ari uko byakozwe,[4] ibi ni nabyo bigarukwaho n'abahanga mu mategeko y'ubucuruzi aho bavuga ko kuba mu manza z'ubucuruzi hashobora gushingirwa ku bimenyetso by'ubwoko bwose, bivuze ko atari ngombwa ko iteka hagaragazwa umwimerere w'inyandiko ababuranyi bashingiraho nk'ibimenyetso.[5]

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[3] Reba urubanza RCOMA0041/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 3 Werurwe 2016, kuva ku gika cya 8 kugeza ku gika cya 12.

[4]… When parties to a transaction involving the execution of multiple documents intend them to be executed in a particular order which is necessary to give effect to the intended transaction, the Court should be ready to presume that they were executed in the correct order to give effect to the transaction. Reba Unidare Plc v Cohen and Dermot Power [2006] Ch 489, para 19.

[5] La liberté de preuves à l'égard des commerçants exclut … la formalité du double original. Reba Memento Expert, Baux Commerciaux 2015-2016, Francis Lefebvre, Levallois, 2015, verbo 19105. Reba kandi Georges Decocq na Aurélie Ballot-Léna, Droit Commercial, Paris, Dalloz, 2015, pp. 84-85.

[26] Hashingiwe ku mahame agenga ibimenyetso mu manza z'ubucuruzi amaze gusobanurwa, Urukiko rurasanga mu gihe ababuranyi bemera ko bari basanzwe bakorana, bikanagaragazwa n'impapuro z'imenyekanishamusoro ziri muri dosiye, kuba nta masezerano y'imikoranire yanditse yabaye hagati ya New Kigali Business Services Ltd na Kasese Distillers Ltd, sibyo bivanaho ko iyo mikoranire yabayeho hagati y'izo sosiyete.

[27] Ku bivugwa na Kasese Distillers Ltd by'uko ikigaragaza ko atari yo yatumye New Kigali Business Services Ltd kuyimenyekanishiriza ibicuruzwa ari uko ku nyandiko iburanisha handitseho ko ikorera Nyagatare kandi aderesi yayo ari Nyarugenge, Urukiko rurasanga uwo mwirondoro wa Nyagatare waratanzwe na Rutayisire Emmanuel, nyiri Kasese Distillers Ltd, ubwo yandikishaga iyo sosiyete muri Rwanda Development Board (RDB), iyo aderesi ikaba ariyo yakomeje gukoreshwa n'iyo sosiyete itumiza ibicuruzwa byayo mu mahanga, nk'uko bigaragazwa n'inyandiko zinyuranye ziri muri dosiye, zirimo:

- *Full registration for foreign company* na *Certificate of foreign company registration.*
- Inyandiko y'ubugure bw'imigabane (*Shares Sale Agreement*) ya Kasese Distillers Ltd (Rwanda) yakozwe ku wa 17/11/2014 igaragaza ko sosiyete iguzwe na Rutayisire Emmanuel, ubarizwa mu Karere ka Nyagatare, Umurenge wa Rwempasha.
- Inyandiko yitwa *Certificate of origin* yakozwe na Superior Spirits PvT Ltd ku wa 06/05/2016 na *Bill of lading* yakozwe na Mideterranean Shipping Company S.A. ku wa 22/05/2016 bigaragaza ko uwaguze ibicuruzwa biri kuri izo nyandiko kandi ari nawe ugomba kubyoherererezwa ari Kasese Distillers Ltd, Iburasirazuba, Nyagatare, Kigali, Rwanda.

[28] Urukiko rurasanga kandi mu bimenyetso Kasese Distillers Ltd iburanisha, kuba ntaho igaragaza ko mu Rwanda haba hari indi sosiyete byitiranwa ikorera Nyagatare mu Ntara y'Iburasirazuba ku buryo, bayigeretseho inshingano z'iyo sosiyete yindi kubera kutabasha kuzitandukanya, nabyo bigaragaza ko ibyo ivuga ko atariyo yatumije ibicuruzwa bivugwa muri uru rubanza nta shingiro bifite.

[29] Ku bivugwa nanone na Kasese Distillers Ltd ko nta bicuruzwa yari yararanguye mu mahanga mu mwaka wa 2016, Urukiko rurasanga ataribyo ku mpamvu zikurikira:

- Muri dosiye hagaragaramo inyandiko yitwa "*Batch Certificate of Analysis*" yakozwe n'uruganda rwa Superior Spirits Pvt Ltd ku wa 06/05/2016 igaragaza ko haguzwe amalitiro 198.000 ya Ethyl Alcohol (*Extra Neutral Alcohol*) AT Min 96%, akaba yarapakiwe muri *container* esheshatu zikurikira: MEDU 8229568, MEDU 8532194, MEDU 8795502, MEDU 8883007, GLDU 7375930 na MESU 8533288. Urwo ruganda rwakoze kandi indi nyandiko yitwa *Certificate of Origin* ku wa 06/05/2016, igaragaza ko nyir'ibyo bicuruzwa ari Kasese Distillers Ltd, Iburasirazuba, Nyagatare, Kigali, Rwanda kandi ko ibicuruzwa bivuye ahitwa Ludhiana, mu Buhindi, bikazanyuzwa Dar-Es Salaam, Tanzania, byerekeza mu Rwanda.
- Dosiye y'urubanza na none igaragaramo *Bill of Lading* yakozwe ku wa 22/05/2016 igaragaza *containers* zavuzwe haruguru, ikavuga ko ari iza Kasese Distillers Ltd, Iburasirazuba, Nyagatare, Kigali, Rwanda. Ivuga kandi ko ibicuruzwa byoherejwe mu Rwanda (*country of final destination*), bikaba bigaragara ko Freight World yaje kohererezа Kasese Distillers Ltd iyi nyandiko ku wa 30/05/2016 no ku wa 01/06/2016, ariko na nyuma yaho yohererezwa Rutayisire Emmanuel muri email yo ku wa 13/08/2016.

[30] Urukiko rurasanga kandi ku wa 28/06/2016, Freight World yari yikoreye ibicuruzwa ibizanye i Kigali yaramenyesheje New Kigali Business Services Ltd ko byapakururiwe mu nzira ndetse ko amakamyo yatangiye gusubira Dar-Es-Salaam, iyisaba kubikurikirana ibaza uwitwa Byekwaso Rogers kuko uyu yari i

Kigali. Bigaragara kandi ko ku wa 03/08/2016, Umuyobozi wa Nyakato Police Station (Tanzania) yandikiye Kasese Distillers Ltd, Kigali, Rwanda, ayimenyesha ko containers zikurikira MEDU 8229568, MEDU 8532194, MEDU 8795502, MEDU 8883007, GLDU 7375930 na MESU 8533288, zari zerekeje i Kigali zibwe kandi ko iperereza rigikomeza, muri urwo rwandiko havugwamo ko ibyibwe byari umutungo ubaruwe kuri Rogers S/O Byekwaso, naho ku wa 07/10/2016 Byekwaso Rogers yandikiye Rutayisire Emmanuel, Umuyobozi wa Kasese Distillers Ltd, amusaba ko mu gihe ihamagara ry'Urukiko rwa Mwanza (Tanzania) rwaregewe ubujura ribonetse yahita abimumenyesha (*please let me know as soon as you recorve (sic) it*), ku wa 27/10/2016, Byekwaso Rogers yongera kumwandikira ariko anamenyesha New Kigali Business Services Ltd abohererereza ihamagara ry'Urukiko.

[31] Urukiko rurasanga *containers* Polisi ya Nyakato yavuze ko zaburiwe irengero ari zimwe n'izari kuri *Bill of Lading*, *Certificate of Origin* na Batch Certificate of Analysis, zikaba zari zohererejwe Kasese Distillers Ltd nk'uko byasobanuwe haruguru; ubwo kandi ibicuruzwa byari bimaze gupakururirwa mu nzira, Rutayisire Emmanuel, nyiri Kasese Distillers Ltd (Rwanda) yarabimenyeshejwe ndetse atangira kubishakisha, bikaba bitumvikana uburyo yavuga ko sosiyete ye ntaho ihuriye n'ibyo bicuruzwa ngo bibe byaramushishikaje ako kageni abishakisha kugeza ubwo yiyambaje Polisi n'Inkiko za Tanzania.

[32] Urukiko rurasanga kandi ibyo Kasese Distillers Ltd ivuga ko itari gutumiza ibyo bicuruzwa mbere yo ku wa 08/09/2016 kuko yari yarahagaritswe mu mirimo yayo na Rwanda Bureau of Standard ndetse itemerewe gutumiza spirits mu mahanga nta shingiro bikwiye guhabwa kubera ko nubwo ku wa 28/09/2015 yabujijwe kwinjiza mu gihugu izindi spirits itarakemura ikibazo cyo gukorera inzoga mu macupa ya pulastiki, ntibyayibujije kurenga kuri icyo cyemezo nk'uko byerekanywa n'ibimenyetso byagaragajwe haruguru. Ibi kandi Rutayisire Emmanuel, nyiri Kasese Distillers Ltd yabyiyemereye mu kiganiro yakoranye na Murekatete Sonia nkuko bigaragazwa n'amajwi yashyizwe muri dosiye.

[33] Ku bijyanye n'ukwiye kuryozwa imisoro, Urukiko rurasanga Komiseri wa za Gasutamo yarafashe icyemezo nimero 1776/RRA/CCS/OAU/2016 kimenyesha New Kigali Business Services Ltd ko mu gihe ariyo yishingiye ibicuruzwa yamenyekanishirije umusoro bikaburirwa irengero bikiri mu nzira, ariyo igomba kwishyura ingwate ku musoro ingana na 57.894.334 Frw n'ihazabu ingana na 94.270.996 Frw. Iki cyemezo cyafashwe hashingiwe ku biteganywa n'ingingo ya 147 ya East African Community Customs Management Act, 2004 ivuga ko iyo hakozwe amakosa atuma ibicuruzwa bitagera aho byari byerekeje, umenyekanishije umusoro afatwa nka nyir'ibicuruzwa akaryozwa imisoro n'amahoro nkaho ari we nyirabyo,[6] bityo ko mu gihe hatagaragajwe ko ibicuruzwa byibwe kugira ngo umusoro wishyuwe usubizwe nk'uko biteganywa n'ingingo ya 144 y'iryo Tegeko,[7] uwabimenyekanishirije umusoro ariwe uryozwa inkurikizi zo kuba ibicuruzwa bitarageze mu Rwanda.

[34] Urukiko rurasanga mu gihe New Kigali Business Services Ltd yaciwe umusoro n'ihazabu ku bicuruzwa bya Kasese Distillers Ltd, kuko n'ubwo iyi sosiyete ivuga ko nta bicuruzwa yigeze itumiza mu mahanga, ibimenyetso byose byagaragajwe haruguru byerekana ko ariyo yabitumije; Kasese Distillers Ltd ikaba itabasha kugaragaza ko ibyo bicuruzwa byibwe koko nk'uko biteganywa n'ingingo ya 144 ya East African Community Customs Management Act, 2004 yibukijwe haruguru. Niyo rero igomba kuryozwa umusoro n'ibihano nk'uko biteganywa n'ingingo ya 148 ya East African Community Customs Management Act, 2004, ivuga ko iyo uwakoze imenyekanishamusoro mu izina rya nyir'ibicuruzwa nta makosa yakoze

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[6] A duly authorized agent who performs any act on behalf of the owner of any goods shall, for the purpose of this act, be deemed to be the owner of such goods, and shall accordingly, be personally liable for the payment of any duties to which the goods are liable and for the performance of all acts in respect of the goods which the owner is required to perform under this Act: Provided that nothing herein contained shall relieve the owner of such goods from such liability.

[7] (1) Subject to any regulations, the Commissioner shall refund any customs duty paid on the importation of the goods-

a) Of any import duty, or part thereof which has been paid in respect of goods which have been … pillaged during the voyage…

mu nshingano ze, nyir'ibicuruzwa watanze izo nshingano zo kumenyekanishirizwa umusoro ari we uryozwa ibikorwa byose n'imenyekanishamusoro byakozwe n'intumwa ye.[8]

[35] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rurasanga Kasese Distillers Ltd ariyo igomba kwishyura umusoro ungana na 57.894.334 Frw n'ihazabu ingana na 94.270.996 Frw, byose hamwe bingana na 152.165.330 Frw, byaciwe New Kigali Business Services Ltd kuko Kasese Distillers Ltd (Rwanda) itabashije kugaragaza impamvu ibicuruzwa byayo bitageze mu Rwanda.

2. Kumenya niba Ikigo cy'imisoro n'Amahôro cyaragombaga kugenerwa igihembo cya Avoka kandi kitarabaye umuburanyi

[36] Me Ngirumpetse Jean Marie Vianney, uburanira New Kigali Business Services Ltd, avuga ko iyi sosiyete itagombaga gucibwa igihembo cya Avoka cyagenewe Ikigo cy'Imisoro n'Amahôro kandi iki kigo kitarabaye umuburanyi mu rubanza.

UKO URUKIKO RUBIBONA

[37] Ingingo ya 111 y'Itgeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi igira iti: ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikiye 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." Hakurikijwe ibivugwa muri iyi ngingo, ushobora guhabwa amafaranga y'ikurikiranarubanza ni uwarubayemo, akishyuza ibyo yakoresheje arukurikirana, harimo n'ibyo yishyuye Avoka.

[38] Urukiko rurasanga, n'ubwo muri dosiye hagaragaramo urubanza RCOM 00492/2017/TC/NYGE rwaciwe ku wa 15/09/2017, Urukiko rw'Ubucuruzi rwa Nyarugenge rwategetsemo New Kigali Business Services Ltd guha Ikigo cy'Imisoro n'Amahôro igihembo cya Avoka kingana na 500.000 Frw, bigaragara ko urwo rubanza rutandukanye n'urubanza RCOM 02196/2017/TC/NYGE rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge ku wa 10/05/2018 ari narwo rukomokaho ikirego kiri mu Rukiko rw'Ikirenga, Ikigo cy'Imisoro n'Amahôro kitarurezwemo.

[39] Urukiko rurasanga kuba Urukiko rw'Ubucuruzi rwarategetse New Kigali Business Services Ltd kwishyura Ikigo cy'Imisoro n'Amahôro igihembo cya Avoka kandi kitari umuburanyi mu rubanza, harabayeho kwibeshya, bityo igihembo cya Avoka cyagenewe icyo Kigo mu rubanza RCOM 02196/2017/NYGE kikaba kigomba kuvaho.

3. Kumenya niba indishyi zisabwa zifite ishingiro

[40] Me Ngirumpetse Jean Marie Vianney avuga ko kuba Kasese Distillers Ltd yarakoze amakosa yo kutageza mu Rwanda ibicuruzwa yari yasabye ko bimenyekanishirizwa umusoro, byateje New Kigali Business Services Ltd aburanira akababaro n'igihombo mu buryo bukurikira:

- Yaterewe icyizere n'urwego rwa Leta rubagenzura.
- Yabuze amafaranga yari kwinjiza kuko yahagaritswe gukora guhera ku itariki ya 28/06/2016 kugeza uyu munsi.
- Yatakaje amafaranga akurikirana uburenganzira bwayo mu nzego za Leta no mu nkiko.

[41] Avuga ko kubera izo mpamvu, asaba uru Rukiko gutegeka Kasese Distillers Ltd (Rwanda) guha New Kigali Business Services Ltd indishyi z'akababaro zingana na 50.000.000 Frw, 3.000.000 Frw

[8] An owner of any goods who authorizes an agent to act for him or her in relation to such goods for any of the purposes of this Act shall be liable for acts and declarations of such duly authorized agent …"

y'ikurikiranarubanza n'igihembo cya Avoka no kuyisubiza 140.000 Frw y'ingwate y'amagarama yatanze mu nkiko.

[42] Me BUTARE Emmanuel na Me NSENGIYUMVA Abel, baburanira Kasese Distillers Ltd (Rwanda), bavuga ko ibicuruzwa bivugwa muri uru rubanza atari ibya Kasese Distillers Ltd (Rwanda) kandi ko iyi sosiyete itigeze iha New Kigali Business Services Ltd inshingano zo kuyimenyekanishiriza umusoro, ariyo mpamvu ntacyo ikwiye kuryozwa. Basobanura ko Kasese Distillers Ltd (Rwanda) yakomeje gushorwa mu manza z'amaherere, ikaba ariyo ikwiye guhabwa 3.000.000 Frw y'igihembo cya Avoka nk'uko bigaragazwa n'amasezerano iyo sosiyete yagiranye n'abayiburanira na 1.000.000 Frw y'ikurikiranarubanza.

UKO URUKIKO RUBIBONA

[43] 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.

[44] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza New Kigali Business Services Ltd isaba, igomba kuyahabwa kuko byabaye ngombwa gukurikirana urubanza no gushaka uyunganira. Icyakora kubera ko 3.000.000 Frw isaba itagaragaza uburyo ariyo yagiye kuri uru rubanza, mu bushishozi bw'Urukiko ikaba igenewe 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw.

[45] **[45**]. Ku bijyanye n'indishyi z'akababaro New Kigali Business Services Ltd isaba, Urukiko rurasanga atari ubwa mbere iki kibazo gisuzumwa n'inkiko kuko mu rubanza Bralirwa Ltd yaburanaga na Kazigaba André na bagenzi be, Bralirwa Ltd yasabye indishyi z'akababaro zishingiye ku kuba mu makosa menshi yaregaga Kazigaba André na bagenzi be harimo no gushaka kuyumvisha no kuyisuzugura. Urukiko rw'Ikirenga rwasanze indishyi zisabwa nta shingiro zifite kubera ko bene izo ndishyi zigenwa hashingiwe ku ihungabana ry'amarangamutima umuntu (personne physique) yagize, bityo ko uko guhungabana kudashoboka ku bisamuntu (personne morale).[9]

[46] Urukiko rurasanga icyakora inkiko z'ibindi bihugu zaravuye kuri uwo murongo. Urugero ni urubanza rwari hagati ya Jafa na La Pizzeria, sosiyete ebyiri zo mu Bufaransa. Urukiko Rusesa Imanza mu Bufaransa rwasanze Urukiko rw'Ubujurire rwa Pau rwarakoze amakosa yo kudaha ishingiro ikirego cy'izo sosiyete gisaba indishyi z'akababaro, rwemeza ko, kuri iyo ngingo, urubanza rusheshwe ibintu bigasubira uko byari biri kugira ngo rwongere ruburanishwe.[10] Naho mu rubanza Metropolitan International Schools Limited yaburanaga na Designtechnica Corporation, Google UK Ltd na Google Inc, Urukiko Rukuru rw'Ubwongereza rwasanze kuba Designtechnica Corporation yaravuze ko icyo kigo gikora uburiganya n'ubujura kibwira abanyeshuli ko kibigisha bataje ku ishuri (*distance learning*) byasebeje Metropolitan International Schools Limited bituma abanyeshuli bacika intege zo kucyiyandikishaho, rwemeza ko gihabwa indishyi z'akababaro zingana na 50.000 £.[11]

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[9] Reba urubanza RCOMAA 0015/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 23/06/2017, igika cya 39.
[10] Attendu que pour rejeter les demandes de la sosciété La Pizzeria et de la société Jafa au titre du préjudice moral, l'arrêt retient que s'agissant des sociétés elles ne peuvent prétendre à un quelconque préjudice moral; …Casse et Annule, mais seulement en ce qu'il a rejeté les demandes des sociétés La Pizzeria et Jafa au titre du préjudice moral, l'arrêt rendu le 12 juillet 2010, … remet en conséquence, sur ce point, la cause et les parties dans l'état ou elles se trouvaient avant ledit arrêt… Reba urubanza Com. 15 mai 2012, no 11-10-278 Bulletin Civil IV n° 101.
[11] Metropolitan Internationa Schools Ltd v Designtechnica Corporation, Google UK Ltd na Google Inc, [2010] EWHC 2411 (QB) 35.

[47] Urukiko rurasanga kandi n'Urukiko rw'Uburayi rushinzwe uburenganzira bw'ikiremwamuntu, rwarabigarutseho mu rubanza Comingersoll S.A. yaburanaga na Portugal, ruvuga ko ataribyo gufata icyemezo rusange cy'uko sosiyete zidakwiye guhabwa indishyi z'akababaro hatitawe ku mwihariko wa buri rubanza. Rwasobanuye ko akamaro k'indishyi z'akababaro ari ukugaruza agaciro (*réputation*) sosiyete iba yaratakaje, rimwe na rimwe kakaba kadashobora gushyirwa mu mibare mu buryo bufatika.[12]

[48] Urukiko rurasanga umurongo Urukiko rw'Ikirenga rwari rwaragendeyeho mu gufata icyemezo mu rubanza Bralirwa Ltd yaburanaga na Kazigaba André na bagenzi be, rwifashishije inyandiko z'abahanga,[13] ariwo inkiko z'ibindi bihugu zasubiyeho, ndetse n'inyandiko nshya z'abahanga mu mategeko mbonezamubano zivuga ko utakijyanye n'igihe. Muribo hari Véronique Wester Ouisse uvuga ko ntawari ukwiye guhakana ko sosiyete zishobora gusaba indishyi z'akababaro kubera ko nk'uko bimeze ku bantu, icyubahiro cyazo, icyizere zifitiwe n'uburyo zifatwa muri rubanda bishobora kubangamirwa kandi bikagira ingaruka ku mibereho yazo, bityo ko ikibazo kidakwiye kureberwa gusa ku bikorwa by'ubucuruzi. Icyakora, asobanura ko sosiyete yifuza indishyi z'akababaro igomba kubanza kugaragaza icyo yangirijwe.[14]

[49] Naho Philippe Le Tourneau avuga ko nubwo iby'indishyi z'akababaro kuri za sosiyete bishobora gusa n'ibitangaje, bishoboka ko hakwangirizwa ibintu by'ingenzi biyireba kandi bidafite aho bihuriye n'inyungu zayo z'ubucuruzi cyangwa umutungo wayo. Atanga ingero z'umusoreshwa wabeshyera umusoresha ko mu gihe cyo kumusoresha hakoreshejwe inyandikomvugo y'impimbano cyangwa ikirango cya sosiyete y'ubucuruzi gishobora gukoreshwa mu buryo bukabije mu mashusho y'urukozasoni.[15] Philippe Malaurie, Laurent Aynès na Philippe Stoffel-Munck, nabo bavuga ko nubwo akababaro ka sosiyete cyangwa ibigo gatandukanye n'ak'abantu ku giti cyabo (*personnes physiques*), inkiko zemeje ko sosiyete cyangwa ibigo bikwiye kujya bihabwa indishyi z'akababaro kuko bishoboka ko byangirizwa mu cyubahiro (*honneur*) cyangwa mu buryo zifatwa muri rubanda (*réputation*).[16]

[50] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rurasanga iby'uko sosiyete z'ubucuruzi cyangwa ibigo bishobora guhabwa indishyi z'akababaro bimaze kuba ihame ry'amategeko agenga uburyozwe. Icyakora izo ndishyi ziba zigamije gusa uburyozwe bushingiye ku buryo rubanda ishobora

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[12] On ne doit pas) écarter de manière générale la possibilité d'octroyer une réparation pour le prejudice moral allégué par les personnes morales; cela dépend des circonstances de chaque espèce… Le préjudice autre que matériel peut en effet comporter, pour une telle société, des éléments plus au moins objectifs et subjectifs. Parmi ces éléments, il faut réconnaitre la réputation de l'entreprise, mais également l'incertitude dans la planification des décisions à prendre, les troubles causés à la gestion de l'entreprise elle-même, dont les conséquences ne se pretent pas à un calcul exact… Reba Comingersoll S.A. Portugal, CEDH, 6 Avril 2000, para 32-37.

[13] www.business.leschos.fr/entrepreneurs/juridique/10021714-prejudice-moral-d'une societe 34118?pJiLTS CoGVKQ

[14] Au vrai, nul ne disconvient qu'une société commerciale puisse subir un dommage moral, au sens d'une atteinte à la personnalité sociale qu'elle a pu se forger aux yeux du public: la considération, la réputation voire l'honneur ne sont pas propres aux personnes physiques. Mais une société ne devrait pas pouvoir entirer réparation que si un préjudice en résulte. Or, pour admettre qu'elle puisse subir un préjudice moral, il faudrait reconnaitre que son image, son crédit, sa réputation lui servent à autre chose qu'à développer l'activité commerciale qui borne son objet social et donc sa personnalité juridique. Reba Véronique Wester-Ouisse, Le préjudice moral des personnes morales: quand la perversion de la cité commence par la fraude des mots, J*CP*, G n° 39,24 Septembre 2012.

[15] Il peut sembler étrange d'étendre aux personnes morales la notion de préjudice extrapatrimonial…Mais il arrive qu'un dommage véritablement extrapatrimonial soit en cause, en ce sens que le fait dommageable atteint un intérêt qui ne participe pas du patrimoine de la personne, au sens juridique du terme. Il en va ainsi quand sont atteints certains traits d'une personne morale qui participent de son essence et fondent ainsi son identité foncière, sa personnalité au sens social du terme, si tant qu'elle en ai une… Voici des exemples de préjudice moral, en liaison ou non avec une atteinte à la réputation: ● de l'administration des douanes, pour une inscription de faux faite à tort par un contrevenant contre un procès verbal, …● d'une société, dont la marque a été utilisée de façon massive dans un film pornographique, …Reba Philippe Le Tourneau, Droit de la responsabilité et des contrats: Régimes d'Indemnisation, Paris, Dalloz, 2014, 2014, pp.664-665.

[16] Les tribunaux admettent la réparation du préjudice moral éprouvé par les personnes morales, bien que ce préjuduce soit différent de celui que subissent les personnes physiques. Il s'agit d'une atteinte à leur patrimoine moral, par exemple leur honneur, …ou leur réputation…Philippe Malaurie, Laurent Aynès na Philippe Stoffel-Munck, Droit des obligations, Paris, LDGJ, 2015, p.126.

gutakariza icyizere sosiyete cyangwa ikigo (*réputation/reputation*) cyangwa bukaba bushingiye ku kugaruza icyubahiro cya sosiyete cyangwa ikigo kubera ko izina ryacyo ryasebejwe (*honneur/honor*). Ibi byumvikanisha ko ikigo cyangwa sosiyete (k) itasaba indishyi z'akababaro z'uko (c) yatewe agahinda (*angoisse/distress*), (c) yababajwe ku mubiri cyangwa ku mutima (*blessure physique ou mental/ physical or mental hurt*) cyangwa (c) yasuzuguwe (*humiliation*) kuko ibi ari umwihariko w'abantu (*personne physique*). Byongeye kandi sosiyete ntiyahabwa indishyi z'akababaro itabanje kugaragaza icyo yangirijwe.

[51] Urukiko rurasanga kandi indishyi z'akababaro zihabwa sosiyete cyangwa ikigo ziba zigamije gusa kugaruza agaciro iyo sosiyete cyangwa ikigo byatakaje aho kuba ibyo yahombye *(restoration de l'honneur ou de la réputation/ restoration of the honor or reputation*), bityo mu kuzigena, Urukiko rukaba rusabwa ubushishozi no gushyira mu gaciro bihagije kugira ngo hatazamo gukabya indishyi zatanzwe zikaba nke cyane ku buryo ntacyo zaba zivuze cyangwa zikaba umurengera ku buryo zakwitirwanywa n'indishyi mbonezamusaruro cyangwa iz'igihombo sosiyete cyanga ikigo byatejwe.

[52] Urukiko rurasanga hashingiwe ku byagaragajwe haruguru, indishyi z'akababaro New Kigali Business Services Ltd yasabye Kasese Distillers Ltd ikwiye kuzihabwa kubera ko mu maso ya rubanda ndetse no mu maso y'Ikigo cy'Imisoro n'Amahôro yagaragaye nk'umuhemu bituma inabihanirwa ndetse ikurwa kuri *serveur* y'aba déclarants biturutse ku makosa ya Kasese Distillers Ltd (Rwanda) yo kuba yarapakururiye ibicuruzwa byayo mu nzira nyuma y'uko bimenyekanishirijwe umusoro mu Rwanda. Icyakora kubera ko miliyoni mirongo itanu (50.000.000 Frw) isaba zikabije kuba nyinshi cyane, Urukiko rurasanga mu bushishozi bwarwo igomba kugenerwa miliyoni imwe (1.000.000 Frw).

[53] Ku birebana n'ibyo New Kigali Business Services Ltd isaba byo gusubizwa 140.000 Frw y'amagarama, Urukiko rurasanga kuva urubanza rutangiye, harabayeho ihindagurika ry'amagarama atangwa mu nkiko,[17] mu myanzuro ye Me ngirumpetse Jean Marie Vianney akaba atagaragaza uburyo yageze ku mubare wa 140.000 Frw nta n'ibimenyetso yayatangiyeho yashyize muri dosiye, bityo Urukiko rukaba ntaho rwahera ruyagenera uwo aburanira.

[54] Ku bijyanye n'amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza Kasese Distillers Ltd (Rwanda) isaba, Urukiko rurasanga ntayo ikwiriye kubera ko ntacyo itsindiye muri uru rubanza.

III. ICYEMEZO CY'URUKIKO

[55] Rwemeje ko ikirego cyatanzwe na New Kigali Business Services Ltd gisaba gusubirishamo ku mpamvu z'akarengane urubanza RCOMAA 00038/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 06/12/2019, gifite ishingiro.

[56] Rwemeje ko urubanza RCOMAA 00038/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 06/12/2019, ruhindutse mu ngingo zarwo zose.

[57] Rwemeje ko Kasese Distillers Ltd ariyo igomba kuryozwa imisoro n'ibihano byaciwe New Kigali Business Services Ltd bingana na 152.165.330 Frw.

[58] Rutegetse Kasese Distillers Ltd kwishyura New Kigali Business Services Ltd 152.165.330 Frw y'imisoro n'ibihano New Kigali Business Services Ltd yatanze ku bicuruzwa bya Kasese Distillers Ltd.

[59] Rutegetse Kasese Distillers Ltd kwishyura New Kigali Business Services Ltd 1.000.000 Frw y'indishyi z'akababaro.

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[17] Reba Iteka rya Minisitiri Nº002/08.11 ryo ku wa 11/02/2014 rigena amafaranga atangwa mu manza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryasimbuwe n'Iteka rya Minisitiri N°133/moj/ag/18 ryo ku wa 04/06/2018 rigena amafaranga atangwa mu manza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[60] Rutegetse Kasese Distillers Ltd kwishyura New Kigali Business Services Ltd amafaranga ibihumbi magana atanu (500.000 Frw) y'igihembo cya Avoka n'ibihumbi magana atatu (300.000 Frw) y'ikurikiranarubanza, yose hamwe akaba amafaranga ibihumbi magana inani (800.000 Frw).

[61] Ruvuze ko amafaranga ibihumbi magana atanu (500.000 Frw) y'igihembo cya Avoka, New Kigali Business Services Ltd yategetswe guha Ikigo cy'Imisoro n'Amahôro mu rubanza RCOM 02196/2017/TC/NYGE rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge ku wa 10/05/2018 avuyeho.