

MININTCO Ltd v. DOBUSJES Ltd

[Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA00402/2017/CHC/HCC
(Mutajiri, P.J.) 29 Ukuboza 2017]

Amategeko agamije kurengera iby'umutungo bwite mu by'ubwenge – Uburenganzira bwo kurengera ikirango – Sosiyete yanditseho ikirango ifite uburenganzira busesuye bwo kurega uwacyiganye cyangwa umucuruzi ufite ikirango gitera urujijo ku gicuruzwa cye

Amategeko agamije kurengera iby'umutungo bwite mu by'ubwenge – Gusenya igicuruzwa cyigana ikindi gicuruzwa – Urukiko ntago rutegetswe byanze bikunze gutegeka ko igicuruzwa gifite ikirango cy'ikiganano gisenywa, rushobora ahubwo gutegeka ko gisenywa cyangwa kikavanwa kw'isoko ryo mu gihugu mu bushishozi bwawo – Itegeko N°31/2009 ryo kuwa 26/10/2009 rigamije kurengera iby'umutungo bwite mu by'ubwenge. ingingo ya 284.

Incamake y'ikibazo: Sosiyete MININTCO ® Ltd yandikishije ikirango cyayo cya KANTA mu Ikigo cy'igihugu cy'iterambere (RDB). Iyo sosiyete yaje kumenya ko DOBUSJES Ltd yinjije mu gihugu ibicuruzwa bifite ikirango KANTO BLACK HAIR DYE, cyigana ikirango cya KANTA, kikanatera urujijo. Bityo yareze DOBUSJES Ltd mu Rukiko rw'Ubucuruzi rwa Nyarugenge isaba ko ibyo bicuruzwa bifite ikirango cyigana ikirango cyayo cya KANTA byasenywa.

Urukiko rwaciye urubanza rwemeza ko ikirango KANTO kiri ku bicuruzwa byinjijwe mu Rwanda na DOBUSJES Ltd ari ikirango cy'ikiganano cy'ikirango KANTA cyanditswe mu Rwanda kuri MININTCO Ltd, kandi ko icyo kirango giteza urujijo icyakoza rwemeza ko ibicuruzwa biriho bitagomba gusenywa, ahubwo rutegeka ko DOBUSJES Ltd itemerewe gushyira ku isoko ry'u Rwanda ibyo ibicuruzwa. MININTCO Ltd ntiyishimiye imikirize y'urubanza maze ijurira mu Rukiko Rukuru rw'Ubucuruzi ivuga ko urukiko rubanza rwanze gutegeka ko ibyo bicuruzwa bifite ikirango cya KANTO Black Hair Dye bisenywa, ntiyishimiye indishyi zikomoka ku gihombo yagize no kuba urukiko ntacyo rwavuze ku itangazwa ry'urubanza mu binyamakuru bisomwa na benshi, anasaba indishyi zo gusiragizwa mu manza ku maherere, iz'ikurikiranarubanza n'igihembo cya avoka.

Habanje hasuzumwa inzitizi y' yo kutakira ikirego kuberako urega nta bubasha afite bwo kurega ko umuntu runaka yiganye ikirango cye mu gihe atagaragaje ko asanzwe akora akazi k'inganda n'uregwa akaba adakwiye kuregwa kuko atari uruganda ahubwo ari umucuruzi urangura ikintu uko kiri akagisubiza ntacyo ahinduye.

Kuri iyo nzitizi, MININTCO Ltd ivuga ko isanga nta shingiro ifite kuko nka sosiyete y'ubucuruzi (personne morale) yandikishije ikirango cyayo mu Rwanda ifite uburenganzira bwo kurega uwariwe wese wigana icyo kirango, bityo DOBUSJES Ltd ikaba iregwa kuzana ibicuruzwa bifite ibirango by'ibiganano kandi bitera urujijo. Urukiko rwemeje ko iyo nzitizi nta shingiro ifite kuko MININTCO Ltd yari ifite uburenganzira busesuye bwo gukurikirana uwariwe wese wakwigana cyangwa agakoresha icyo kirango binyuranye n'amategeko.

Mu myiregurire ya DOBUSJES ivuga ko ibivugwa na MININTCO ko ibicuruzwa byagombaga gusenywa nta shingiro bifite kuko itegeko ridategeka umucamanza byanze bikunze gutegeka isenywa ry'ibyo bintu (peut ordonner non doit ordonner), akaba rero yarashishoje asanga ibyo

bintu bitagomba gusenywa, ikomeza ivuga ko nta kwigana ikirango cya MININTCO Ltd byabayeho kuko itavanye izo produits za KANTO mu ruganda ahubwo ko yazivanye mu iduka. Ku birebana n'indishyi zerekeranye n'igihombo zasabwe na MININTCO, ivuga ko itazihabwa kuko yagenewe amafaranga mu kirego cyihutirwa kandi ko bene izo ndishyi zisabirwa hamwe n'urubanza mu mizi, ivuga ko ziramutse zitanzwe yaba yishyuwe inshuro ebyiri, DOBUSJES isoza nayo isaba indishyi z'ikurikiranarubanza n'igihombo cy'Avoka.

Incamake y'icyemezo: 1. Sosiyete yanditseho ikirango ifite uburenganzira busesuye bwo kurega uwacyiganye cyangwa umucuruzi ufite ikirango gitera urujijo ku gicuruzwa cye. Bityo, MININTCO Ltd ifite uburenganzira busesuye bwo gukurikirana uwariwe wese wakwigana cyangwa agakoresha ikirango cyayo binyuranye n'amategeko.

2. Urukiko ntago rutegetswe byanze bikunze gutegeka ko igicurizwa gifite ikirango cy'ikiganano gisenywa, rushobora ahubwo gutegeka ko gisenywa cyangwa kikavanwa kw'isoko ryo mu gihugu mu bushishozi bwarwo.

3. Indishyi z'igihombo zisabwa n' uwajuriye ntizatanga kuko itabasha kugaragariza urukiko igihombo yaba yaratewe n'ibicuruzwa by'uregwa cyane ko ibyo bicuruzwa bitigeze bishyirwa ku isoko ngo bibe byarayibangamiye mu bucuruzi bwayo.

Ubujurire nta shingiro bufite.

Amategeko yashingiweho:

Itegeko N°31/2009 ryo kuwa 26/10/2009 rigamije kurengera iby'umutungo bwite mu by'ubwenge, ingingo ya 284.

Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, ingingo ya 2.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, MININTCO ®Ltd irega DOBUSJES Ltd isaba ko amakarito yayo ariho ikirango cya "KANTO Black Hair Dye" yasenywa.

[2] Inkomoko y'ikibazo ngo akaba ari ukuba kuwa 10/04/2012 Umwanditsi Mukuru (Registrar General) ashingiye ku itegeko N°11/2009 ryo kuwa 26/10/2009 rigamije kurengera umutungo bwite mu by'ubwenge yaratanze icyemezo cy'iyandikisha ry'ikirango cyemeza ko ikirango "KANTA BRAND" ari icya MININTCO Ltd.

[3] MININTCO Ltd ikaba yarareze ivuga ko DOBUSJES Ltd yinjije amakarito 99 mu gihugu afite ikirango cya "KANTO BLACK HAIR DYE", aya makarito ngo akaba yarafatiriwe muri gasutamo ngo kuko ibirango biyariho byigana ibya KANTA, ikaba yarareze isaba ko

byamburwa nyirabyo bigasenya kandi ikiguzi cyo kubisenya kikaba icya nyirabyo, haramuka hari ibyatangiye gushyirwa mu bucuruzi bikavanwamo kuko gukoresha no kwinjiza mu Rwanda ibicuruzwa bya "KANTO BKACK HAIR DYE" byigana ibya KANTA ari igikorwa cy'ipiganwa mu bucuruzi kirimo uburiganya kandi kinyuranyije n'amategeko n'imigirire y'ubunyangamugayo kuko igana icya kanta ndetse kikanateza urujijo.

[4] Isaba kandi ko nyiri ukubycinjiza yamenyesha MININTCO ® Ltd amazina y'abandi bantu n'ibigo by'ubucuruzi n'inganda bifite uruhare mu ikorwa n'ikwirakwiza ry'ibicuruzwa bifite ikirango cya KANTO ndetse inasaba ko yategekwa kwishyura MININTCO ® Ltd indishyi zinyuranye.

[5] DOBUSJES Ltd ikaba yaraburanye ivuga ko ibi bicuruzwa yabiranguriye mu gihugu cy'Ubushinwa (Chine) ko mu kubizana itumvaga ko icyo gicuruzwa gifite ikibazo, ko nyuma yo kugera mu Rwanda yatangajwe nuko ibicuruzwa byayo byafatiriwe na gasutamo ngo kuko byakoreshejwe byiganwe nayo. Ikaba yarasabye kutakira ikirego cya MININTCO Ltd ngo kuko yaba urega n'uregwa nta bubasha bafite mu gihe ikiburanwa ari ukwigana ibihangano by'undi ngo na cyane ko DOBUSJES Ltd nta ruganda igira ngo ibe yakoze KANTO yigana KANTA.

[6] Urukiko mu guca urubanza rukaba rwaremeje ko inzitizi yatanzwe na DOBUSJES Ltd yo kutakira ikirego nta shingiro ifite, rwemeza ko ikirego cya MININTCO Ltd gifite ishingiro kuri bimwe, rwemeza ko ikirango KANTO kiri k'ubicuruzwa byinjijwe mu Rwanda na DOBUSJES Ltd ari ikirango cy'urwiganwa rw'ikirango KANTA cyanditswe mu Rwanda kuri MININTCO Ltd, rwemeza ko icyo kirango giteza urujijo ndetse ko ariko ibicuruzwa kiriho bitagomba gusenya. Rukaba rwarategetse ko DOBUSJES Ltd itemerewe kwinjiza mu bucuruzi ku isoko ry'u Rwanda ibicuruzwa biriho ikirango cya KANTO ndetse runayitegeka kwishyura MININTCO Ltd indishyi z'ikurikiranarubanza n'igihembo cya avoka n'amafaranga y'igarama.

[7] MININTCO Ltd ikaba itarishimiye imikirize y'urubanza maze Me Mhayimana Isaie ajurira avuga ko kuba urukiko mu kwanga gutegeka ko amakarito 99 y'amavuta « KANTO Black Hair Dye » asenywa ngo kuko DOBUSJES yayaranguye idafite umugambi mubi wo kubangamira MININTCO (R) Ltd, rwirengagije ibiteganywa n'ingingo za 258 na 284 z'itegeko rirengera umutungo mu by'ubwenge, kuba urukiko rutarahaye MININTCO Ltd indishyi zikomoka ku gihombo yagize kubera ibikorwa binyuranije n'ubunyangamugayo bya DOBUSJES, ko kuba urukiko ntacyo rwigeze ruvuga mu kibazo yari yasabye ko gisuzumwa kijyanye nuko urubanza ruzacibwa kuri iki kirego rutangazwa mu binyamakuru bisomwa na benshi. Asoza asaba indishyi zo gusiragizwa mu manza ku maherere, iz'ikurikiranarubanza n'igihembo cya avoka.

[8] Mu kugira icyo ivuga ku mpamvu z'ubujurire, Kigali Partners in Law ivuga ko nta shingiro zifite ngo nk'uko urukiko rwabyemeje koko DOBUSJES Ltd itumiza igicuruzwa cya KANTO nta mugambi mubisha wo kwangiriza MININTCO LTD yari ifite ku mpamvu z'uko icyo gicuruzwa atari cyo yaranguye gusa ahubwo yakiranguranye n'ibindi. Isoza isaba indishyi z'ikurikiranarubanza n'igihembo cya avoka.

[9] Muri uru rubanza hakaba hagomba gusuzumwa niba urukiko rwaragombaga gutegeka ko amakarito 99 y'amavuta « KANTO Black Hair Dye » asenywa, gusuzuma niba urukiko rwaragombaga gutegeka ko MININTCO Ltd ihabwa indishyi z'igihombo, gusuzuma niba

urubanza rwaragombaga gutangazwa mu binyamakuru bisomwa na benshi, gusuzuma niba indishyi zo gusiragizwa iz'ikurikiranarubanza n'igihembo cya avoka zisabwa na MININTCO Ltd zatangwa no gusuzuma niba izisabwa na DOBUSJES zatangwa.

II. ISESENGURA RY'IBIBAZO

A. Ku birebana no gusuzuma niba urega n'uregwa nta bubasha bafite bwo kurega

[10] Me Mutarindwa Félix na Me Ndagijimana Augustin basobanura ko habanza gusuzumwa inzitizi yatanzwe mu rukiko rw'ubucuruzi itarakiriwe, aho basanga yaba urega cyangwa uregwa nta bubasha bafite. Uregwa nta bubasha bwo kuregerwa kwigana *produit* runaka z'abandi mu gihe atari uruganda ahubwo ari umucuruzi urangura uko ikintu kiri akagisubiza ntacyo ahinduyeho. Urega nawe ntiyabasha kurega umuntu ko yigana *produit* runaka ze mu gihe atagaragaje ko asanzwe akora akazi k'inganda cyangwa ngo abe yafashwe agakora ariko bitari bisanzwe bizwi.

[11] Me Mhayimana Isaie asobanura ko iyi nzitizi nta shingiro ifite kubera ko ububasha bwa MININTCO Ltd ku kirego cyo kwigana igicuruzwa cyayo cya KANTA ibufite kubera ko ari sosiyeti y'ubucuruzi (personne morale), iregera kuvogerwa mu burenganzira bwayo nka sosiyeti yandikishije ikirango cyayo mu Rwanda, aho kigomba kurindwa nyamara DOBUSJES Ltd ikaba ngo yarabirenzeho ikakigana. DOBUSJES Ltd ikaba iregwa kwigana icyo kirango KANTA, aho yagiye kubikorera mu Bushinwa, ikazana ibicuruzwa yita KANTO byigana ndetse iby'ikirango KANTA ikanabifatanwa, nubw bikaba bifatiriye muri gasutamo. Bityo bikaba bitumvikana ukuntu DOBUSJES Ltd yavugaga ko nta bubasha MININTCO Ltd ifite bwo kuregera ibyayo DOBUSJES ihungabanya mu buryo bunyuranije n'amategeko nkuko urukiko rw'ubucuruzi rwabyemeje.

UKO URUKIKO RUBIBONA

[12] Ingingo ya 2 y'itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganywa ko "ikirego ntiyemerwa mu rukiko iyo urega adafite ububasha, inyungu n'ubushobozi bwo kurega. Ibivugwa mu gika cya mbere cy'yingingo bireba n'amashyirahamwe, imiryango n'ibigo bidafite ubuzima gatozi kuko bidashobora kurega, bitabujije ariko ko bishobora kuregwa"

[13] Urukiko rusanga ibivugwa n'ababuranira DOBUSJES Ltd ko ikirego kitagombaga kwakirwa ngo kuko yaba urega cyangwa uregwa nta bubasha bafite bwo kurega ngo na cyane ko kuregerwa kwigana *produit* runaka z'abandi mu gihe atari uruganda ahubwo ari umucuruzi urangura, bitahabwa ishingiro kuko kuba MININTCO atari uruganda rukora KANTA bitayibuza nka sosiyete yanditsweho ikirango cya KANTA kugira inyungu, ububasha n'ubushobozi buteganywa n'ingingo ya 2 y'itegeko N°21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru, bityo ikaba ifite uburenganzira busesuye bwo gukurikirana uwariwe wese wakwigana cyangwa agakoresha icyo kirango binyuranye n'amategeko.

[14] Urukiko rusanga kuba DOBUSJES Ltd atari uruganda rukora KANTA bitayibuza kuregwa kuko icyo iregwa ari ukwigana no gucuruza ikirango gitera urujijjo cya KANTO Black

Hair Dye, kugira DOBUSJES Ltd iregwe bikaba bitagombera ko iba ariyo ikora icyo gicuruzwa gitera urujijo na cyane ko mubyo iregwa harimo gucuruza no gukwirakwiza icyo gicuruzwa.

B. Ku birebana no gusuzuma niba urukiko rwagombaga gutegeka ko amakarito 99 y'amavuta « KANTO Black Hair Dye » asenywa.

[15] Me Mpayimana Isaie asobanura ko umucamanza yanyuranyije n'amategeko mu kutemeza ko amakarito avugwa asenywa. Ikindi umucamanza akaba ngo yarizaniye notion ya bonne et mauvaise foi kandi itegeko rihari, ikindi Murekatete uhagarariye DOBUSJES Ltd ataribwo bwa mbere yari akoze ibi bikorwa, kuko yari yaranabikoze n'ubundi.

[16] Akomeza asobanura ko MININTCO Ltd ntiyishimiye icyemezo kigaragara mu gace ka 47 k'urubanza rujurirwa n'ibisobanuro bigaragara mu gace ka 29 karwo ku byerekeye kwanga ko amakarito 99 y'amavuta ya « KANTO Black Hair Dye » yafatiriwe muri Gasutamo asenywa, kuva Urukiko narwo rwari rwemeje ko ibyo bicuruzwa ari ibyiganano kandi bitera urujijo, bikaba bisanzwe byaranafatiriwe muri Gasutamo mu rwego rwo kubibuza kwinjira ku isoko ry'u Rwanda ntibyumvikana ukuntu urukiko ruhita rwivuguruza, rukemera ko DOBUSJES yahabwa ibyo bicuruzwa, ndetse ikemererwa ngo kujya kubicuruza hanze y'u Rwanda. Ntibyumvikana ukuntu urukiko rwirengagije ibimenyetso by'umugambi mubi rwagaragarijwe ku byerekeye ukuntu DOBUSJES n'umuyobozi wayo Murekatete Fabiola basanzwe bishobora mu bikorwa byo kwinjiza mu Rwanda amavuta yigana aya KANTA, rukanirengagiza ibiteganyijwe mu mategeko aho ingingo ya 5.1 na 258 ndetse na 284 za *Loi sur propriété intellectuelle* zisobanura zikanagena ibihano ku bikorwa by'ipiganwa birimo uburiganya, maze rugahindukira rukemeza ko DOBUSJES nta mugambi mubi yari ifite yinjiza mu Rwanda KANTO yigana kandi itera urujijo. Dore bimwe mu bimenyetso byirengagijwe byerekana umugambi mubi wa DOBUSJES. Mu myiregurire yayo iburana, DOBUSJES ntiyigeze ihakana iby'uwo mugambi mubi, ahubwo yavugaga ko idashaka ko MININTCO Ltd ikomeza kwiharira isoko ry'ayo mavuta (monopole), reba uko ibisobanura mu gace ka 20 k'urubanza. Hari amagambo bwite Murekatete Fabiola, uyobora DOBUSJES ubwe yanditse ku ibaruwa yo kuwa 11/07/2012 MININTCO Ltd yandikiye DOBUSJES Ltd iyihanangiriza ngo ihagarike gucuruza KANTA z'inyiganano. Icyo gihe DOBUSJES Ltd yemeye ko yari izifite ngo ariko nkeya, ngo yahabwaga n'abantu itari izi aho bazikura. Muri Chine, nta mavuta ya KANTA ahakorera. KANTA ni amavuta akorerwa muri India ariko agacuruzwa muri Afrika gusa. Nta mpamvu rero abo muri China bakwiha gukora ibicupuri batabasha gucuruza iwabo. Ahubwo ukuri, ni ibanga rizwi na bese (secret de polichinelle) ko abacuruzi bo muri Afrika (barimo DOBUSJES Ltd) aribo bajya gukoresha muri Chine bene ayo mavuta y'ibicupuri (ibyiganano/counterfeit) kubera ko badashobora kwemererwa kurangura KANTA Original muri India. Iyo rero DOBUSJES Ltd igiye gukoresha ibicupuri bya KANTO muri Chine, yitwaje KANTA Original ngo barebereho, hanyuma abachinois bakabakorera ibyo byiganano bakabizana kubicuruza ari nabyo yafatanywe. Byakumvikana bite rero ko none nyuma y'imyaka itanu (2012-2017) DOBUSJES yihanangirijwe ko igomba kureka ibikorwa bibi byayo byo gutumiza hanze no gucuruza amavuta yigana KANTA HAIR DYE, urukiko rutinyuka rukemeza ko nta mugambi mubi DOBUSJES ifite wo kuba ariyo iri gukura ibyo bicuruzwa muri Chine, ikabyinjiza mu Rwanda! (Reba ibaruwa yo kuwa 11/7/2012 MININTCO Ltd yandikiye DOBUSJES Ltd isaba guhagarika gucuruza KANTA y'inyiganano nayo ikemera ko izicuruza) cyandikishijwe mu Rwanda.

[17] icyemezo RW-M100000413 cyo kuwa 10/04/2012 cyo kwandikisha ikirango, ingingo ya 284 y'itegeko rigamije kurengera umutungo bwite mu by'ubwenge n'urukiko rwashingiyeho mu gace ka 28 k'urubanza, igaragaza ko "iyi ibicuruzwa byinjijwe mu gihugu ari ibyiganano, cyangwa bibangamiye ku buryo bugaragara uburenganzira ku mutungo bwite mu by'ubwenge, urukiko rubifitiye ububasha rushobora gutegeka ko bisenywa kandi ko bikurwa ku isoko ry'u Rwanda kugirango uburenganzira bwa nyir'umutungo bwite mu by'ubwenge butabangamirwa». Naho iya 280 yaryo ikagaragaza icyemezo byihariye bikurikizwa ku mupaka hagamijwe gukumira iyinjizwa ry'ibicuruzwa bibangamiye uburenganzira ku mutungo bwite mu by'ubwenge butangwa mu Rwanda byafatwa n'inkiko zibifitiye ububasha. Izi ngingo zombi ziruzuzanya, ntabwo imwe ivanaho indi. Ahubwo Urukiko rubanza rwagombye kuba rwariboneye ko ibicuruzwa bya DOBUSJES Ltd byafatirirwe biramutse birekuriwe DOBUSJES Ltd mu gihugu cy'u Rwanda aho ikirango cya KANTA cyandikishijwe kigomba kurengerwa, ibyo MININTCO Ltd yaregeye byose byaba bibaye imfabusa, mu gihe n'ubundi DOBUSJES Ltd yaba yongeye guhabwa umwanya wo gukomeza mu bikorwa byayo bibi yagize akamenyero, ifatira ntacyo ryaba rimaze mu gihe urukiko rusanze ibikorwa by'iyigana no gutera urujijo byarakozwe, maze DOBUSJES Ltd aho kubihanirwa, ahubwo ikabwirwa gusa ngo ntizabishyire ku isoko ryo mu Rwanda kuko ishobora no kubicuruzwa rwihishwa kuko yabihawe contrôle, ko atabicuruzwa ntiyakunda. Bityo, MININTCO (R) ikurikije ibivugwa muri izi ngingo z'amategeko urukiko rubanza rwagaragaje kandi nayo yemera, isanga icyemezo cyagombaga gufatwa kuri ariya makarito 99 ya Kanto yafatirirwe muri Gasutamo, ari ugusenywa, kandi amafranga agiye kuri icyo gikorwa agatangwa na DOBUSJES nkuko n'ubundi inkiko zagiye zibyemeza ku manza zisa n'uru zabaye itegeko.

[18] Me Mutarindwa Félix na Me Ndagijimana Augustin basobanura ko ibivugwa na Me Mhayimana Isaie nta shingiro bifite ngo kuko itegeko barivugira ibyo ritavuze kuko itegeko ridadegeka umucamanza byanze bikunze gutegeka isenywa ry'ibyo bintu (peut ordonner non doit ordonner), akaba rero yarashishoje asanga ibyo bintu bitagomba gusenywa. Ku kibazo cya *bonne ou mauvaise foi* umukiliya wabo yaranguye atagambiriye guhombya MININTCOLtd, ikindi umucamanza akaba yarakoze ibyo yemerewe n'amategeko. Na none basobanura ko mugutumiza buriya bicuruzwa umukiliya wabo yaranguye produits nyinshi iriya KANTO ikaba aribwo bwa mbere yari iyizanye. Gushingira ku ibaruwa yo mu mwaka wa 2012, ngo sibyo kuko icyo gihe DOMUSJOS itajyaga kurangura hanze ahubwo yaranguraga mu gihugu, iyo barwa ngo ikaba yarandikiwe abacurzi benshi, ko kandi icyo gihe umukiliya wabo mu gusubiza yaberetse ko ari KANTA ko kandi atariyo iburanwa uyu muni. Bavuga ko ikimenyetso bazana cya KANTO ngo bakaba batayemera kuko idasa nizafatirirwe. Ko yakabaye agaragaza ikimenyetso cy'uko *carton* ari kwerekana ari iyo yakuye muzafatirirwe muri gasutamo.

[19] Bakomeza basobanura ko nkuko urukiko rwabyemeje koko DOBUSJES Ltd itumiza igicuruzwa cya KANTO nta mugambi mubisha wo kwangiriza MININTCO LTD yari ifite ku mpamvu z'uko icyo gicuruzwa atari cyo yaranguye gusa ahubwo yakiranguranye n'ibindi bicuruzwa bigera kuri 16 kandi izivana mu iduka rimwe ryitwa YIWU CHENMIN IMPORT&EXORT CO Ltd risanzwe rirangurwaho n'abantu benshi.

[20] Ku bijyanye no kuvuga ko habayeho kwigana ikirango cya MININTCO LTD ibyo ngo sibyo kuko DOBUSJES Ltd ntiyavanye iyo produit mu ruganda ahubwo ni mu iduka. Iryo duka naryo rikaba ngo ryarazivanye muri WENLING JINGHUI COSMETIC CO, LTD nk'uko ibimenyetso biri ku mugereka byerekana aho byaranguwe.

[21] Ku bijyanye n'imanza zavuzwe na MININTCO urukiko rwagenderaho ngo basanga zidahuye n'uruburanwa ngo kuko iyo uzisomye usanga ibiburanwa atari bimwe ndetse n'abaregwa bemera ko ibyo bavanye hanze ari KANTA kandi bihuje amazina na KANTA ya MININTCO Ltd mu gihe bo ibicuruzwa byabo byatumijwe bidahuje amazina ndetse zikaba zitarakoreshejwe ahubwo zaranguwe mu iduka rizwi.

[22] Basoza bavuga ko mu ibaruwa ivugwa na MININTCO yo muri 2012 havuzwe abantu batumiza ibicuruzwa bagateraho ikirango cya KANTA. Muri icyo gihe DOBUSJES nta bintu yatumizaga hanze yewe n'ibyo yavuze kuri iriya baruwa ngo ni ikarito zaje iwe zanditseho KANTA ntabwo ari produit ziburanwa ubu zitwa HAIR DYE.

UKO URUKIKO RUBIBONA

[23] Ingingo ya 284 y'Itegeko N°31/2009 ryo kuwa 26/10/2009 rigamije kurengera iby'umutungo bwite mu by'ubwenge iteganya ko iyo ibicuruzwa byinjijye mu gihugu ari ibyiganano, cyangwa bibangamiye ku buryo bugaragara uburenganzira ku mutungo bwite mu by'ubwenge, urukiko rubifitiye ububasha rushobora gutegeka ko bisenywa kandi ko bikurwa ku isoko ry'u Rwanda, kugira ngo uburenganzira bwa nyir'umutungo bwite butabangamirwa“

[24] Urukiko rusanga ikibazo nyamukuru kigomba gusuzumwa ari ukumenya niba amakarito 99 y'amavuta ya KANTO Black Hair Dye agomba gusenya kuko aricyo cyajuririwe kikanaburanishwa mu bujirire, ibyo kuba ari ibicuruzwa by'ibyiganano bikaba bitarajuririwe.

[25] Urukiko rusanga nk'uko byemejwe n'umucamanza wa mbere mu gika cya 27 cy'urubanza rujuririrwa ko igicuruzwa cya KANTO Black Hair Dye ari ikiganano kandi gitera urujijo ku gicuruzwa cya KANTA ndetse akanatega ko kitagomba gucuruzwa mu Rwanda ariko agatega ko na none kidasenywa, akaba nta makosa yakoze kuko ingingo ya 284 y'itegeko N°31/2009 ryo kuwa 26/10/2009 ryavuzwe haruguru itavuga ko umucamanza ategatswe gutegeka ko bene ibyo bicuruzwa bisenywa, ahubwo iteganya ko ashobora gutegeka ko bisenywa;

[26] Urukiko rusanga ibisabwa n'ababuranira MININTCO Ltd ko amakarito 99 yavuzwe haruguru yasenywa bitahabwa ishingiro kuko nk'uko byasobanuwe n'umucamanza wa mbere, kuba nyiri kubigira atariwe wakoze ikirango KANTO Black Hair Dye, ahubwo yakiranguye nk'urangura ibindi bicuruzwa byose, kuba kandi mu kulinjiza mu Rwanda ntakigaragaza ko yari afite umugambi wo kubangamira MININTCO Ltd, uru rukiko narwo rusanga gutegeka DOBUSJES Ltd gusenya ibyo bicuruzwa nk'umucuruzi nayo byayitera igihombo kidasubirwaho, ahubwo nk'uko byemejwe n'umucamanza wa mbere, ikaba itemerewe kubicururiza k'ubutaka bw'u Rwanda, bivugwa ko igomba gushaka ahandi itwara ibicuruzwa byayo bikavanwa k'ubutaka bw'u Rwanda.

C. Ku birebana no gusuzuma niba urubanza rwaragombaga gutangazwa mu binyamakuru bisomwa na benshi

[27] Me Mhayimana Isaie asobanura MININTCO Ltd mubyo yari yasabye mu rukiko rubanza, harimo ko rwatega DOBUSJES Ltd ko urubanza ruzacibwa kuri iki kirego rutangazwa mu binyamakuru bisomwa na benshi mu Rwanda nka Imvaho Nshya, the new times,

igihe.com kandi bikishyurwa na DOBUSJES mu gihe rwasanga ibikorwa by'ipiganwa mu bucuruzi birimo uburiganya bihama DOBUSJES Ltd, nyamara ntacyo urwo rukiko rwigeze rubivugaho. Akaba ariyo mpamvu asaba ko uru rukiko rubitegeka.

[28] Me Mutarindwa Félix asobanura ko rutangazwa mu binyamakuru bisomwa cyane ubifitemo inyungu ariwe wabikora kandi ko bitabujijwe n'amategeko.

[29] Me Ndagijimana asobanura ko nubundi iyo urubanza ruciwe ruba rwabaye publique, iyo publicité ngo akaba atakabaye abisaba urukiko ngo ikizava mu rubanza nikiramuka kimushimishije yazabyikorera.

UKO URUKIKO RUBIBONA

[30] Urukiko rusanga ibisabwa n'ababuranira MININTCO ® Ltd ko urubanza rwaragombaga gutangazwa mu binyamakuru bisomwa na benshi bitahabwa ishingiro kuko byonyine kuba DOBUSJES yategetswe kudacururiza ibyo bicuruzwa ku butaka bw'u Rwanda ndetse akaba nta n'ibindi bicuruzwa nk'ibyo MININTCO Ltd yaba igaragaza ko DOBUSJES yaba yarabishyize ku isoko ngo itangazwa ry'urubanza ribe ariryo kwereka abantu ko ibyo bicuruzwa bitemewe, akaba nta mpamvu yari gutuma umucamanza yemeza itangazwa ry'urubanza mu binyamakuru, ariko MININTCO ® Ltd iramutse ibishaka ikaba yakwitangariza urwo rubanza mu binyamakuru na cyane ko ariyo bifitiye inyungu.

D. Ku birebana no gusuzuma niba urukiko rwaragombaga gutegeka ko MININTCO ® Ltd ihabwa indishyi z'igihombo

[31] Me Mhayimana Isaie asobanura ko MININTCO Ltd ntiyahawe indishyi ku rubanza ku kirego cyihutirwa (référé) RCOM 00654/2017/TC/Nyge nkaho hari ikosa yakoze ndetse yimwe n'indishyi z'igihombo yatewe n'ibikorwa bya DOBUSJES Ltd byabangamiye imikorere yayo bijyanye n'iyigana no gutera urujijo mu baguzi yakoze kandi yahamijwe. MININTCO ® Ltd imaze kubona ko urubanza RCOM0149/2017/TC/Nyge rwahawe itariki ya kure 06/04/2017 kandi ukurikije uko amategeko ateye kuri ibyo birego bisaba ubwihutire kuko ibicuruzwa byari byafatiriwe kuri gasutamo bitagombaga kurenza iminsi icumi yandikiye Perezida w'Urukiko rw'Ubucuruzi isaba itariki ya vuba yo kuburanisha urwo rubanza (reba amabaruwa yoherejwe kuri IECMS) ntiyasubijwe, ari nayo mpamvu yatanze ikirego cyihutirwa kigamije ifatira ry'amakarito 99 yari muri gasutamo, mu rubanza RCOM 0311/2017/TC/Nyge, urukiko rwemeza ifatira ryayo makarito mu gihe cy'iminsi 20 y'akazi, irangiye kuko urubanza rw'iremezo rwari rutaraburanishwa itanga ikindi kirego ishingiyeye na none ku ngingo ya 277 y'itegeko ryerekeye kurengera umutungo bwite mu by'ubwenge gihabwa RCOM 00654/2017/TC/Nyge.

[32] MININTCO ® Ltd isaba guhabwa indishyi z'ikurikiranarubanza n'igihombo cya avoka ndetse n'igarama yatanze kuri urwo rubanza zingana na 1,000,000Frw no guhabwa indishyi kubera ibikorwa bya DOBUSJES Ltd binyuranye n'ubunyangamugayo by'iyigana kandi bitera urujijo ikorera MININTCO ® Ltd zingana na 5,000,000Frw zigatangwa kandi hashingiwe ku gihombo yatejwe na DOBUSJES Ltd iyirukansa mu nkiko ikayivutsa inyungu. Aha urukiko mu kuzigena rukanagenda ku makarito 99 yafatiriwe, noneho buri karito ibamo udukarito 24, natwo kamwe kabamo uducupa twa kanto 12, habariwe ko nibura buri gacupa kagura amafranga magana abiri (200Frw) uwo mubare ni nawo uba mu twa KANTA byumvikane ko igihombo

MININTCO ® Ltd ifite igiterwa n'ibyo byiganano byinjizwa na DOBUSJES Ltd kuko ahari kwinjira KANTA nyayo ubu noneho ni KANTO yinjizwa, inyungu zayo ikaba izivutswa yagombye kuzinjiza.

[33] Ababuranira uregwa basobanura ko izo ndishyi zitagomba gutangwa ngo kuko kuba baratanze ibirego byihutirwa bagenewe amafaranga, ko kandi bene izo ndishyi zisabirwa hamwe n'urubanza mu mizi, ibyo basaba rero bakaba bagamije kwishyurwa inshuro ebyiri ko kandi batazihabwa ngo kuko batsinzwe ikirego cyihutirwa.

[34] Bakomeza bavuga ko ahubwo DOBUSJES Ltd ikaba ariyo yari guhabwa indishyi kuri icyo kirego nubwo itazihawe yewe no mu mizi ntizihabwe. Ku bijyanye n'indishyi zikomoka ku kirango gitera urujijo nazo nta shingiro zahabwa kuko uwareze ntiyabashije kugaragaza ko igikorwa cyabayeye cyari kigamije kwangiriza MININTCO Ltd.

[35] Ku birebana n'igihombo avuga ko zitagomba gutangwa ngo kuko itagaragaza igihombo yaba yaragize. Ko kandi niba ari indishyi nabwo zitatangwa (une personne morale) nta ndishyi igomba guhabwa.

[36] Me Ndagijimana Augustin asobanura ko ku ndishyi z'ibirego byihutirwa, ko nizo bahawe batagombaga kuzihabwa ngo kuko bene izo ndishyi zitangwa mu rubanza rw'iremezo. Avuga ko kuba ibirego byarabaye byinshi ari ku mpamvu za MININTCO ® Ltd ngo kuko ariyo yahoraga isaba kongera igihe cyo gufatira ibyo bicuruzwa.

[37] Akomeza avuga ko MININTCO ® Ltd imaze igihe kigera ku myaka 5 itazana KANTA ngo kubera imisoro yaciwe, ngo bikaba bitumvikana ukuntu umuntu yabuza abantu kuzana ibyo bicuruzwa kandi itazana ibyo bicuruzwa, harebwa itegeko rya *protection du consommateur*. Ikindi izi *produits* ngo zikaba zifite ubuziranenge nk'uko byagaragarijwe ibimenyetso.

[38] Ku kibazo cyo kumenya niba hari indishyi zatanzwe muri *référé* basubiza ko zatanzwe, ariko hagaragajwe urubanza RCOMA 00162/2017/CHC/HCC rwasibye ubujurire bwabo arinarwo rwatanzwemo indishyi zishingiye ku mabwiriza ya Perezida w'Urukiko rw'Ikirenga.

UKO URUKIKO RUBIBONA

[39] Ingingo ya 320, igika cya 4 y'itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "indishyi n'ibindi bijyanye n'amafaranga umuburanyi yakoresheje mu rubanza ku kirego cyihutirwa biregerwa hamwe n'ikirego cy'iremezo".

[40] Urukiko rusanga indishyi z'igihombo zisabwa na MININTCO ® Ltd zitagomba gutangwa kuko itabasha kugaragariza urukiko igihombo yaba yaratewe n'ibicuruzwa bya DOBUSJES Ltd na cyane ko ibyo bicuruzwa bitigeze bishyirwa ku isoko ngo bibe byarabangamiye MININTCO ® Ltd mu bucuruzi bwayo.

[41] Urukiko rusanga indishyi z'ikurikiranarubanza n'igihombo cya avoka zisabwa ku birego byihutirwa RCOM 00311/2017/TC/NYGE na RCOM 00654/2017/TC/Nyge nta shingiro zifite kuko nko k'urubanza RCOM 00311/2017/TC/NYGE izo ndishyi zatanzwe mu rubanza

rw'iremezo ruri kujururirwa uyu munsu nk'uko bigaragara mu gika cya 37 na 49 by'urwo rubanza.

[42] Ku kirego RCOM 00654/2017/TC/Nyge izo ndishyi zikaba zitarigeze zisabwa k'urwego rwa mbere ndetse zikaba zitagomba gutangwa kuko nta kimenyetso uzisaba agaragaza ko icyo kirego cyihutirwa cyanabayeho koko.

E. Ku birebana no gusuzuma niba indishyi z'ikurikiranarubanza n'igihembo cya avoka zisabwa na MININTCO ® Ltd zatangwa.

[43] Me Mhayimana Isaie asobanura ko MININTCO ® Ltd isaba indishyi zo gusiragizwa mu manza ku maherere, iz'ikurikiranarubanza n'igihembo cya avoka za 1.000.000Frw kubera ko ibikorwa bya DOBUSJES Ltd binyuranije n'amategeko byatumye ijya mu manza, ishaka abavoka kandi ibyo byose bitakagombye.

[44] KIGALI PARTNERS IN LAW isobanura ko izo ndishyi isaba ntiyazihabwa ahubwo n'izo yahawe yazakwa kuko zidakurikije amategeko. Ikindi kandi MININTCO ® Ltd niyo yishora mu manza ku bushake.

UKO URUKIKO RUBIBANA

[45] Urukiko rusanga izi ndishyi zitagomba gutangwa kuko uzisaba urubanza rumutsinda.

F. Ku birebana no gusuzuma niba indishyi z'ikurikiranarubanza n'igihemb cya avoka zisabwa na na DOBUSJES zatangwa

[46] Ababuranira DOBUSJES Ltd basobanura ko kuva aho MININTCO ® Ltd itangiriye kurega DOBUSJES imaze kuyitumiza mu manza zirenga 5 kandi muri icyo gihe cyose yoherezaga avoka agakora ikagira n'ibindi itakaza, ngo akaba ariyo mpamvu isabye mu bushishozi bw'urukiko ko yakwishyurwa amafaranga 2,000,000.

[47] Me Mhayimana Isaie asobanura ko MININTCO ® LTD isanga izo ndishyi nta shingiro zifite kubera ko kuza mu manza byatewe n'ibikorwa bya DOBUSJES Ltd yishoyemo byo kwinjiza mu gihugu ibicuruzwa byigana igicuruzwa cya KANTA cyandikishijwe mu Rwanda. Ikaba rero idakwiye kwaka indishyi kuko kuza mu nkiko kwayo niyo yabigizemo uruhare kuko MININTCO ® Ltd yagombaga guharanira uburenganzira bwayo.

UKO URUKIKO RUBIBONA

[48] Ingingo ya 258 y'itegeko ryo kuwa 30 Nyakanga 1888 ryerekeye urwunge rw'amategeko y'imbenezamubano, igitabo cya gatatu ibyerekeye imirimo nshinganwa cyangwa amasezerano iteganya ko "igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse."

[49] Urukiko rusanga indishyi z'ikurikiranarubanza n'igihembo cya avoka zisabwa na DOBUSJES Ltd zifite ishingiro kandi zikaba zigomba hashingiwe ku ngingo ya 258 y'itegeko ryo kuwa 30 Nyakanga 1888 ryavuzwe haruguru, kuko kuba MININTCO ®Ltd nyuma yo gutsinda urubanza ku rwego rwa mbere yarajuriye bigatuma DOBUSJES Ltd igira ibyo itakaza

mu kuza kuburana urubanza mu bujurire, kuba nk'uko byasobanuwe mu rubanza ibyo yajuririye nta shingiro bifite, igihombo yateje DOBUSJES Ltd ikaba igomba kukirengera, ariyo mpamvu igomba kuyishyura amafaranga 700,000 akubiyemo ay'igihembo cya Avoka n'igukurikiranarubanza agenwe mu bushishozi bw'urukiko kuko ayasabwaga ari umurengera.

III. ICYEMEZO CY'URUKIKO

[50] Rwemeye kwakira ubujurire bwa MININTCO Ltd kuko bwatanzwe bikurikije amategeko, ariko rubusuzumye rusanga nta shingiro bufite.

[51] Rwemeje ko nta gihindutse ku mikirize y'urubanza RCOM 00149/2017/TC/NYGE.

[52] Rutegetse MININTCO Ltd kwishyura DOBUSJES Ltd amafaranga 700,000 y'ikurikiranarubanza n'igihembo cya avoka mu bujurire.

[53] Rutegetse ko ibicuruzwa bya DOBUSJES Ltd bifite ikirango KANTO Black Hair Dye bitemewe gucururizwa k'ubutaka bw'u Rwanda, ko gasutamo ibiyiha igashaka ahandi ibijyana hatari mu Rwanda.

[54] Rutegetse ko amafaranga 75.000 MININTCOLtd yatanze ijurira aherera ku isanduku ya Leta.