INNSCOR INTERNATIONAL LTD v. PIZZA IN LTD N'UNDI

[Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA00680/2016/CHC/HCC – (Mutajiri, P.J.) 16 Werurwe 2017]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ingwate itangwa n'abanyamahanga – Sosiyete y'inyamahanga ntishobora gusabwa gutanga ingwate isabwa abanyamahanga baregeye inkiko zo mu Rwanda mu gihe hari uburenganzira yabivukijweho.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ububasha n'ubuzima gatozi bw'isosiyete y'inyamahanga – - Sosiyete y'inyamahanga igaragaje ibyangombwa byayo by'umwimerere byatanzwe n'igihugu ikomokamo, byemejwe na MINAFET (legalisation) biyiha ububasha n'uburenganzira bwo kuregera inkiko z'u Rwanda.

Incamake y'ikibazo: Innscor International Ltd yandikishije ibirango (trade marks) mu Kigo cy'Igihugu cy'Iterambere (RDB). Ivuga ko, sosoiyete zo mu Rwanda Pizza in na Chicken In ziganye ibirango byayo zinabikoresha itabizihereye uburenganzira. Nyuma y'aho yandikiye izo sosiyete ko zirimo gukoresha ibirango byayo mu buryo bunyuranyije n'amategeko, izisaba kuhagarika kubikoresha.

Sosiyete zabisabwe ntizabyubahirije bituma Innscor International Ltd iregera Urukiko rw'Ubucuruzi rwa Nyarugenge isaba ko abaregwa bategekwa guhagarika gukoresha ibirango byayo ndetse bakayiha n'indishyi zitandukanye.

Abaregwa bo bakaba baravugaga ko Pizza inn Ltd na Chicken inn Ltd ari amazina y'ibigo (legal names) ndetse n'amazina y'ubucuruzi (trade names) birengerwa n'amategeko ko kandi n'iyo atandikishijwe arengerwa n'amategeko. Bakaba baratanze inzitizi yo kutakira ikirego cya Innscor International Ltd bavuga ko ikirego cyayo kitagombaga kwakirwa urega kuko urega nta bubasha, inyungu n'ubushobozi afite bwo kurega kuko atari sosiyete kuko urega kuko ari sosiyete itabaho ko kandi ibyo iregera atari ibyayo.

Urukiko rwemeje ko ikirego cya Innscor International Ltd kitakiriwe ngo kuko nta bubasha, inyungu n'ubushobozi bwo kurega ndetse runayitegeka kwishyura abaregwa indishyi z'ikurikiranarubanza n'igihembo cya avoka.

Innscor International Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko ikirego cyayo cyagombaga kwakirwa kuko ifite inyungu, ububasha n'ubushobozi bwo kurega kuko ari sosiyete yandikishije ibirango byayo muri RDB. Abaregwa bo bireguye bavuga ko ikirego cya Innscor International Ltd kitakwakirwa ngo kuko urega atarabasha kugaragaza ko afite ubuzima gatozi. Barongeye basaba ko ikirego cy'uwajuriye kitakwakirwa ngo atatanze ingwate ingwate itangwa n'abanyamahanga.

Mu Rukiko Rukuru rw'Ubucuruzi abaregwa bongeye batanga impamvu ebyiri ikirego kitagomba kwakirwa, iyambere bavuga ko ikirego kitakwakirwa ngo kuko kugeza n'ubu urega ngo ntabasha kwerekana ko sosiyete ye ifite ubuzima gatozi, iyakabiri nuko Urega atatanze ingwate itangwa n'abanyamahanga.

Ku mpamvu ya mbere, Abaregwa bavuga ko Urega ari isosiyete mpuzamahanga ariko akaba atari isosiyete nyarwanda ndetse akaba atari n'iyo muri kimwe mu bihugu bigize EAC, ikaba nta

n’umitungo ifite mu Rwanda yazavanwa ubwishyu iramutse igizwe ibyo itegekwa kwishyura muri uru rubanza, kandi ko n’ubwo Urega ngo avuga ko yandikishije ibirango mu Rwanda, ariko nta kintu na kimwe ahafite yaba ubucuruzi, ishami, yewe nta n’igitekerezo cyo kuhakorera agaragaza.
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Mu kwiregura kuri iyi mpamvu, Uwajuriye avuga ko iyo ngwate abaregwa bagombaga ku yisabira mu Rukiko rw’ibanze ko itangwa kandi ko Itegeko riteganya irengayobora ku gutanga iyo ngwate, aho rivuga ko Urega atayisabwa iyo aregera ibye kandi yavukijwe kandi abifitiye ibimenyetso, akavuga ko nawe araregera ikirango cye yavukijwe n'abaregwa n’ikimenyetso kibigaragaza akaba ari icyemezo gitangwa na RDB.

Incamake y’icyemezo: 1. Sosiyete y’inyamahanga ntitegetswe gutanga ingwate isabwa abanyamahanga mu gihe yaranateye intambwe ikandikisha ibirango byayo. Nta muburanyi wabigiraho impungenge kuko iramutse itsinzwe indishyi yacibwa ishobora no kuzikurikiranwaho ahandi yaba ikorera kuko atari sosiyete baringa ahubwo ifite ibihugu byinshi ikoreramo.

2. Sossiyete y’inyamahanga kugira ngo iregere inkiko z’u Rwanda si ngombwa byanga bikunze kwerekana inyandiko zishingwa zayo zasinyiwe imbere ya Noteri zikemezwa na Minisiteri y’Ububanyi n’Amahanga mu gihe yerekena ibyangombwa byayo by’ishingwa by’umwimerere kandi n’Urwego rw’igihugu rw’Iterambere rwaramaze kwandika ibirango by’iyo sosiyete.

3. Urukiko rw’Ubucuruzi rwa Nyarugenge ntirwagombaga kwakira ngo runaburanishe urubanza rwaciye; bityo akaba ariyo mpamvu Urukiko Rukuru rw’Ubucuruzi rukuyeho icyemezo cyarufashwemo ndetse rukanarutegeka kuruburanisha mu mizi hadatanzwe irindi garama.

Ubujurire bufite ishingiro.
Icyemezo cyo kutakira ikirego ku rwego rwa mbere kivanyweho.
Amagarama aherereye ku baregwa.

Amategeko yashingiweho:
Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, Ingingo ya 87.
Itegeko N° 13bis/2014 ryo kuwa 21/05/2014 rigenga umurimo w’Ubunoteri, Ingingo ya 54
Amabwiriza ya Perezida w’Urukiko rw’Ikirenga N° 002/2015 yo kuwa 18/05/2015 agenga imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, Ingingo ya 26 igika cya 2 n’icya 3.

Nta manza zifashishijwe.

Urubanza

IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, Innscor International Ltd irega Pizza inn Ltd na Chicken inn Ltd isaba ko zategekwa guhagarika gukoresha ibirango byayo ndetse inazisaba indishyi zitandukanye.

[2] Inkomoko y'ikibazo ikaba ngo ari uko ibirango Pizza Inn na Chicken inn ngo ari ibirango (trade mark) byayo ikoresha mu bucuruzi bwayo. Ibyo birango Innscor International Ltd ngo ikaba yarabyandikishije mu bihugu binyuranye birimo n'u Rwanda.

[3] Mu kirego cyayo, Innscor International Ltd ikaba ivuga ko sosiyete Pizza Inn Ltd na Chicken inn Ltd zo mu Rwanda ziganye ibirango byayo zinabikoresha itazibihereye uburenganzira. Imaze kumenya ko izo sosiyete zombi zikoresha ibirango byayo mu buryo bunyuranyije n'amategeko, Innscor International Ltd ngo ikaba ngo INNSCOR INTERNATIONAL Ltd v Pizza Inn Ltd na Chicken inn Ltd yarazandikiye izisaba ko zahagarika gukoresha ibirango byayo, ariko ngo zikomeza kubikoresha. Ikibazo kikaba ngo cyarashyikirijwe RDB, mu mwanzuro wafashwe mu bw'unzi bwakozwe na RDB, abaregwa ngo bakaba baragiriwe inama yo kureka gukomeza gukoresha ibirango bitari ibyabo, ariko ngo babirengaho bafungura andi mashami no gukoresha ibyo birango.

[4] Innscor International Ltd ngo imaze kubona abaregwa nta bushake bwo kureka gukoresha ibirango ivuga ko ari ibyayo, yaregeye urukiko rw'Ubucuruzi rwa Nyarugenge isaba ko abaregwa bategekwa guhagarika gukoresha ibirango byayo ndetse bakayiha n'indishyi zitandukanye nk'uko bikubiye mu kirego ku rwego rwa mbere.

[5] Abaregwa bo bakaba baravugaga ko Pizza inn Ltd na Chicken inn Ltd ari amazina y'ibigo (legal names) ndetse n'amazina y'ubucuruzi (trade names) birengerwa n'amategeko ko kandi n'iyo atandikishijwe arengerwa n'amategeko. Bakaba baratanze inzitizi yo kutakira ikirego ngo kuko urega nta bubasha, inyungu n'ubushobozi afite bwo kurega.

[6] Urukiko mu guca urubanza rukaba rwarategetse ko ikirego cya Innscor International Ltd kitakiriwe ngo kuko nta bubasha, inyungu n'ubushobozi bwo kurega ndetse runayitegeka kwishyura abaregwa indishyi z'ikurikiranarubanza n'igihembo cya avoka no gupfirwa n'igarama yatanze irega.

[7] Innscor International Ltd ikaba itarishimiye imikirize y'urubanza, Me Kizito Safari ajurira avuga ko hasuzumwa niba Innscor International Ltd idafite ubushobozi n'ubuzima gatozi bwo kurega no gusuzuma niba urukiko rutategeka ko ikirego cyakirwa urubanza rukaburanishwa mu mizi, asoza asaba ko abaregwa bategekwa kwishyura indishyi z'igihembo cya avoka ku rwego rw'ubujurire.

[8] Me Mugengangabo Jean Nepomusene na Me Zawadi Steeven baburaira abaregwa bavuga ko ikirego kitakwakirwa ngo kuko kugeza n'ubu urega ngo ntabasha kwerekana ko sosiyete ye ifite ubuzima gatozi ngo kuko ibimenyetso atanga bitubahirije imihango iteganywa n'amategeko bityo bikaba ngo nta n'agaciro bifite, barangiza bavuga na none ko ikirego kitagomba kwakirwa igihe cyose Innscor International Ltd ngo itaratanga ingwate itangwa n'abanyamahanga.

[9] Muri uru rubanza hakaba hagomba gusuzumwa niba Innscor International Ltd igomba gutanga ingwate itangwa n'abanyamahanga no gusuzuma niba Innscor International Ltd ubushobozi n'ubuzima gatozi bwo kurega no gusuzuma niba Innscor International Ltd v Pizza inn Ltd na Chicken inn Ltd Innscor International Ltd yategekwa kwishyura Pizza na Chicken inn Ltd igihembo cya avoka ku rwego rw'ubujurire.

II. ISESENGURA RY'IBIBAZO

A. Ku kibazo cyo gusuzuma niba Innscor International Ltd igomba gutanga ingwate itangwa n'abanyamahanga

[10] Uburanira Chicken inn Ltd avuga ko urega ngo avuga ko ari isosiyete mpuzamahanga ariko akaba atari isosiyete nyarwanda ndetse akaba atari n'iyo muri kimwe mu bihugu bigize EAC. Akaba ndetse ngo nta mitungo ifite mu Rwanda yazavanwa ubwishyu iramutse igizwe ibyo itegekwa kwishyura muri uru rubanza. Akaba ngo ariyo mpamvu hashingiwe ku ngingo ya 87 (1) y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi (CPCCSA) agomba kwishyura ingwate itangwa n'abanyamahanga.

[11] Akomeza avuga ko ngo usibye iyi mpamvu itegenyijwe mu itegeko, iyi ngwate ngo asanga ari ngombwa kubera ko urega n'ubwo ngo avuga ko yandikishije ibirango mu Rwanda, ariko nta kintu na kimwe ahafite yaba ubucuruzi, ishami, yewe nta n'igitekerezo cyo kuhakorera agaragaza, uru rubanza yashoje akaba ngo barufata nko gushoza urubanza agamije indonke. Na none kandi ngo bashingiye ku ngingo ya 20(1) y'amabwiriza No 002/2014 yo kuwa 13 Gashyantare 2014 ya Perezida w'Urukiko rw'ikirenga agenga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ivuga ko "Iyo ikirego kitakiriwe ku mpamvu iyo ariyo yose, uwarezwe cyangwa uwagobokeshejwe ku gahato bashobora guhabwa indishyi zijyanye n'ibyo batakaje n'ibyo bavukijwe mu ikurikirana ry'urwo rubanza iyo bazisabye".

[12] Na none bavuga ko bene iki cyemezo cyafashwe mu rubanza RCAA 0136/11/CS, Ndizihiwe n'Undi v. Mudakemwa n'abandi, rwaciwe n'Urukiko rw'Ikirenga, kuwa 14 Gashyantare 2014, ruboneka ku rubuga rw'Urukiko rw'ikirenga ku murongo (link) https://decisia.lexum.com/rlr/sc/kn/item/109703/index.do?r=AAAAAQAGa3VyZWthAQ cyangwa mu Cyegeranyo cy'Ibyemezo by'Inkiko [V.1-2014]RLR, pp.66-71, aho Urukiko rw'Ikirenga ngo rwanzuye ko indishyi zisabwa mu gihe ikirego kitakiriwe zitaba zishingiye ku kiburanwa ahubwo ziba zishingiye ku gihombo uregwa yatewe n'ibyo yatanze ku kirego yarezwe kandi ko aba akwiye guhabwa indishyi bitabaye ngombwa gutangiza urundi rubanza rurebana n'izo ndishyi.

[13] Basoza bavuga ko basaba ko uregwa aramutse ahisemo kudatanga ingwate itangwa n'abanyamahanga basabye mu gihe kigenwe n'Urukiko, yazacibwa indishyi zishingiye ku gihombo cyatewe n'ikirego cye gikubiyemo igihembo cy'avoka kingana na 5,000,000Frw, amafaranga y'ikurikiranarubanza angana na 2,000,000Frw n'indishyi zo gushorwa mu manza z'amaherere zingana na 5,000,000Frw.

[14] Ibi byo gucibwa ingwate uwaregaga ntayitange ngo agahitamo kureka urubanza ngo byabaye mu rubanza RCOMA 0529/14/HCC Press Tribune VS Lake Muhazi Boulevard aho urega bamuciye ingwate ya 5,000,000 Frw ntayitange bigatuma ikirego cye kitakirwa.

[15] Uburanirara Pizza Inn Ltd we avuga ko ku birebana n'ingwate itangwa n'abanyamahanga, Pizza Inn Ltd na yo ibibona ngo kimwe na Chicken Inn Ltd. Akomeza avuga ko mu gitabo cya "procedure Civile et Commerciale", Gasasira Ephraim ngo agira ati "...ainsi le tribunal ne peut pas le soulever d'office, mais, du moment qu'elle est régulement invoquée, il n'a pas à en apprecier l'opportunité..........de meme, lorsque l'etranger demandeur justifiera de la possession d'immeuble situés au Rwanda, le juge aura seulement à apprecier s'ils sont suffisant pour repondre des condamnations eventuelles ou s'ils ne sont pas frappés de charges qui rendraient inefficace leur garantie..."

[16] Asoza avuga ko urukiko rwazasuzuma niba urega afite imitungo itimukanwa mu Rwanda kandi idafite ubugwate ubwo ari bwo bwose ku buryo byamusonera gutanga iyi ngwate. Niba atayifite, Urukiko ruzamutegeke gutanga ingwate mbere yo gukomeza urubanza.

[17] Uburanira uwajuriye asobanura iyi mpamvu avuga ko mu iburanisha ryo mu Rukiko rw'Ubucuruzi rwa Nyarugenge, ngo abaregwa batakaje amahirwe yo gusaba ko ureba asabwa gutanga ingwata isabwa abanyamahanga, ibyo ngo byatewe n'uko batabikoreye igihe ngo babikore mu iburanisha ry'ibanze.

[18] Akomeza asobanura ko ingingo ya 87 ya CPCCSA ivuga ko uregwa ashobora no kuyisaba bwa mbere ku rwego rw'ubujurire. Ariko ngo itegeko ntiribyemera iyo yatakaje amahirwe yo kubikora ku rwego rwa mbere agatakaza ayo mahirwe.

[19] Ikindi ngo urebye neza iyo ngingo ya 87, itanga exceptions zatuma urega adasabwa gutanga iyo ngwate ngo harimo ko atayisabwa iyo aregera ibye kandi yavukijwe kandi abifitiye ibimenyetso, urega ngo akaba araregera ikirango cye yavukijwe n'abaregwa.

[20] Ikigaragaza ko aregera ibye ngo akaba ari uko icyemezo gitangwa na RDB kibigaragaza kandi ngo kikaba kitarateshejwe agaciro. Ikindi ngo akaba ari uko ingingo ya 141, 150 n'iyi 151 ya IP Law itanga uburenganzira buseseye ku kirango, bivuze ko hagize undi ugikoresha aba avukije nyicaryo umutungo we. Ibi ngo bikaba bihura na exceptions yavuzwe mu inginggo ya 87 ya CPCCSA aho isonera uwavukijwe ibye akabiregera.

[21] Mu byavuzwe nabaregwa ngo ntibigeze bagaragaza umubare w'amafaranga y'ingwate bumva yasabwa urega, ngo yerekane amafaranga yishyuwe avoka cyangwa andi yatanze muri uru rubanza.

[22] Asoza avuga ko ngo n'ubwo atemera ko iyo ngwate ari ngombwa ngo yumva urukiko ruribonye ukundi (á titre subsidiaire), rwazategeka amafaranga ari hagati ya 500,000 na 700,000 kuko arenze ayo yaba adafite ishingiro.

UKO URUKIKO RUBIBONA

[23] Ingingo ya 87 y'itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko '' Usibye igihe baregera ibyabo bavukijwe kandi babifitiye ibimenyetso, abanyamahanga bose, uretse abo mu bihugu by'Umuryango w'Afurika y'Iburasirazuba, bareze bwa mbere cyangwa bagobotse mu rubanza, bisabwe n'uregwa, mbere y'iyindi nzitizi mu rubanza, bagomba gutanga amafaranga y'ingwate ashobora kuvamo amagarama n'indishyi z'akababaro bashobora gucibwa, uretse igihe haba hariho amasezerano ibihugu by'amahanga byaba byaragiranye n'u Rwanda asonera abaturage babyo ingwate. ''

[24] Urukiko rusanga ibivugwa na Me Mugengangabo Jean Nepomusene na Me Zawadi Steeven baburaira abaregwa ko ikirego cya Innscor International Ltd kitagomba kwakirwa igihe cyose itaratanga ingwate itangwa n'abanyamahanga, bitahabwa ishingiro kuko, kuba hashingiwe ku ngingo ya 87 y'itegeko N° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru, atari ihame ko ikirego cy'umunyamahanga kitakirwa ataratanga ingwate, kuba iyi ngingo yarashyizeho exception ikavuga ko iyo uwo munyamahanga aregera ibye yavukijwe kandi afitiye ibimenyetso adategakwa byanze bikunze gutanga iyo ngwate;

[25] Kuba rero Innscor International Ltd igaragaraza ko ibirango irikuregera ari ibyayo ndetse yanandikishije mu rwego rubifitiye ububasha (Rwanda Development Board ''RDB'') ndetse nk'uko yanabigaragaje mu bindi bimenyetso biribuze gusobanurwa mu kibazo cya kabiri cy'urubabanza, Innscor International Ltd ikaba itacibwa iyi ngwate hashingiwe ku byanditswe na Gasasira Ephraim nk'uko bisabwa n'ababuranira abaregwa kuko inyandiko z'abahanga zifashishwa iyo nta tegeko rihari cyangwa ntacyo rivuga kuri icyo kibazo , kuba rero itegeko rihari kandi risobanutse rikaba aririyo rigomba gukoreshwa.

[26] Urukiko rusanga no none ibivugwa n'ababuranira abaregwa ko Innscor International Ltd idakorera mu Rwanda kuburyo iramutse itsinzwe bitashoboka ko yishyura indishyi, bikaba nabyo bitahabwa ishingiro kuko, kuba byonyine iyi sosiyete iriho ndetse yaranateye intambwe ikandikisha ibirango byayo, abaregwa bakaba badakwiye kugira impungenge kuko iramutse itsinzwe indishyi yacibwa ishobora no kuzikurikiranwaho ahandi yaba ikorera kuko atari sosiyete baringa ahubwo ifite ibihugu byinshi ikoreramo, k'ubw'izo mpamvu zose zimaze gusobanurwa, ingwate itangwa n'abanyamahanga Innscor International Ltd isabwa ikaba idategetswe kuyitanga.

B. Ku birebana no gusuzuma niba Innscor International Ltd idafite ubushobozi n'ubuzima gatozi bwo kurega

[27] Me Kizito Safari asobanura ko Urukiko rw'Ubucuruzi rwa Nyarugenge ngo rwanze kwakira ikirego cy'urega ngo kuko adafite ubushobozi bwo kurega ngo kuko nta cyerekana ko Innscor International Ltd ifite ubuzima gatozi ko ndetse ngo n'ibyo yagaragaje by'umwimerere bigaragaza ubuzima gatozi ngo urukiko rwabyirengagije rwemeza ko nta gaciro byahabwa.

[28] Mu kubyima agaciro rukaba ngo rwarasesenguye nabi ingingo z'amategeko rwashingiyeho rwanga kwakira ikirego.

[29] Asobanura na none ko Innscor International Ltd ngo ari sosiyete ifite ubuzima gatozi ngo nk'uko bigaragazwa n'icyemezo cyayo cy'umwimerere cy'iyandikisha (certificate of incorporation) cyatanzwe n'umwanditsi wa Company wo mugihugu cya Mauritius iyi company yanditswemo. Kuba ngo ari sosiyete izwi kandi ifite ubuzima gatozi ngo bishimangirwa na RDB, ibi ngo bikagaragazwa n'inyandiko (correspondences) RDB yagiye yandikira Innscor International Ltd nka sosiyete y'ubucuruzi izwi. Kuba Innscor ngo ari sosiyete ifite ubuzima kandi ngo byongera gushimangirwa na RDB ubwo yayemeraga kwandika ibirango byayo mu Rwanda ikanabitangaza mu igazeti (publication journal) ya 2014 ngo harimo n'ibiburanwa ubu,aha ngo byumvikane neza ko iyo Innscor International Ltd iba nta buzima gatozi ifite RDB itari kwakira no kwemera ubusabe bw'umuntu utariho. Kuko icya mbere uwandikisha ibirango atanga ari icyemezo cye cy'iyandikisha nka sosiyete kandi ibi Innscor irabitanga by'umwimerere ngo hejuru y'ibi RDB yanahaye Innscor International Ltd certificate of registration of a mark nabyo ngo bigaragazaiko itari buyihe umuntu utabaho nk'uko bivugwa n'abaregwa.

[30] Akomeza avuga na none ko ubuzima gatozi n'ubushobozi bw'iyi sosiyete ngo bwongera gushimangirwa kandi n'inyandiko zitandukanye zo kwandikisha ibirango biburanwa mu bihugu bitandukanye ko kandi Innscor itahabwa certificates zo kwandikisha ibyo birango itabaho cyangwa idafite ubuzima gatozi.

[31] Igitangaje akaba ngo ari uko n'abaregwa (Pizza na Chicken Inn Ltd) ngo bazi neza Innscor International bakaba bigiza nkana gusa ndetse ngo batari bakwiye no guhakana ko ibaho cyangwa ifite ubuzimagatozi ngo mu gihe babanje no kubonana nayo no kugererageza gukemura ikibazo mu bwumvikane bakoresheje ubuhuza (mediation) bwa RDB akibaza niba bihuzaga (mediation) n'umuntu utabaho cyangwa niba RDB yahuza abaregwa na baringa.

[32] Kuba abaregwa bavuga ubu ko Innscor International Ltd itabaho cyangwa idafite ubuzima gatozi ngo akaba ari ukugeregeza gushaka impamvu zituma baba bakoresha ibirango byayo binyuranije n'amategeko ngo kuko bajya no kuyibitwara bari bayizi, ngo bakaba bashaka gukomeza guhangana gusa birengagije n'inama bagiriwe na RDB mugihe cya mediation kuko ho hatanahakanwaga ko Innscor ibaho cyangwa izwi.

[33] Icyemezo cy'iyandikisha rya Company cy'umwimerere (original certificate of incorporation duly signed and stamped by Registrar of companies) ngo kikaba cyari gihagije gukemura impaka kuko kitari copy. Urukiko ngo rwasobanuye ko ibimenyetso by' ubuzima gatozi byagombaga kwemezwa na ambasade ya Mauritius mu Rwanda hakubahirizwa inzira zose ziteganywa n' ingingo ya 54 y' itegeko N° 13 bis/2014 ryo kuwa 21/05/2014 rigenga umurimo w'abanoteri. Aha ngo akaba ariho urukiko Urukiko ngo rwasesenguye nabi iyi ngingo bituma runafata icyemezo kiri kujuririrwa.

[34] Asobanura ko ngo ubundi iyi ngingo ya 54 nk'uko binagaragara ku mutwe (title) wayo itegenya ibijyanye n'agaciro k'inyandiko zemejwe n'umunoteri wo mu mahanga ikanagaragaza n'imihango (procedure) ikurikizwa ku nyandiko zemejwe n'umunoteri wo mu mahanga. Nk'uko byumvikana ngo iyi ngingo ireba inyandiko yemejwe n'umu noteri wo mu mahanga ariko ntireba itemejwe n'umunoteri kuko bo iyo batanze yemejwe na Company Registrar kandi ngo ikaba ari umwimerere atari copy certifiée conforme á l' original, ku buryo ngo yari ikeneye iyo mihango ivugwa muri iyi ngingo. Gushingira ku ngingo ya 54 y'itegeko rigenga umurimo w'abanoteri ku

nyandiko aba bakoze kandi iyo batanze atari we wayikoze ngo akaba ari ikosa ryakozwe hatakirwa ikirego ngo ari nayo mpamvu basaba ko rikosorwa n’uru rukiko.

[35] Innscor ngo yagaragaje umwimerere w’icyemezo cy’iyandikwa rya sosiyeti. Aha ngo byumvikane ko umwimerere ari inyandiko yakozwe n’ umwanditsi wa sosiyeti atari inyandiko yemejwe na noteri wo mu mahanga, bityo imihango y’ ingingo y’ itegeko ryavuzwe ikaba ngo itaragombaga gukurikizwa akaba ari nta cyari kubuza ikirego kwakirwa. Iki cyemezo (certificate of incorporation) kikaba ngo gifite agaciro mu kugaragaza ko urega afite ubushobozi n’ ububasha bwo gutanga ikirego. Urukiko rw’ ubucuruzi mu gufata icyemezo ngo rwitiranyije icyo cyemezo cyatanzwe n’ umuyobozi ufite ububasha wo mu gihugu cyo hanze maze rukitiranya n’ inyandiko yatangwa mu rukiko yemejwe na noteri wo mu mahanga kuko ari yo ikenera imihango runaka iteganywa n’ ingingo ya 54 y’ itegeko twavuze haruguru.

[36] Akomeza asobanura ko ngo byari kuba ikibazo iyo Innscor yari kuba yazanye photocopie y’ icyemezo conforme á l’ original yemejwe na noteri wa Mauritius. Aha ngo niho ingingo ya 54 yagombaga kuba yakurikizwa ariko ngo ntabwo ariyo yakoreshejwe mu rukiko. Ahandi urukiko ngo rwakoze ikosa mu isesengura ry’amategeko rwashingiyeho ngo ni kuri convention apostille de la Haye. Mu gufata icyemezo cyo kutakira ikirego cya Innscor, ngo rwanashingiye ku masezerano mpuzamahanga (convention apostille de la Haye) mu ngingo ya kabiri.

[37] Aya amasezerano ngo nk’uko urukiko rubyivugira (mu gika cya 14 cy’urubanza) rujurirwa ngo ntabwo u Rwanda rwayashyizeho umukono, bityo rero uko ibihugu byayasinye byumvikanye ndetse bukabishyira mu masezerano ku bijyanye n’inyandiko mpamo zakorewe mu mahanga bikaba bitari bikwiye gukurikizwa mu Rwanda kuko amategeko y’ u Rwanda aha agaciro kamwe inyandiko mpamo zakorewe hanze y’ igihugu n’ izakorewe mu Rwanda, iyemejwe na noteri ngo akaba ariyo ikenera procédure yihariye kuko aba atari umwimerere.

[38] Urukiko mu gufata icyemezo ngo rwagendeye kuri convention appostille de la HAYE u Rwanda rutashyizeho umukono (reba mu gika cya 13 na 14 cy’ incarubanza) aho ibihugu byashyize umukono kuri ayo masezerano rugena uburyo cyangwa imihango igomba gukurikizwa ku nyandiko yakozwe n’ urwego rubifitiye ububasha (acte authentique), nyamara ngo ibi urukiko ntirwari rukwiye kubishingiraho kuko uko ibihugu byasinye kuri ayo masezerano bibigena bigomba gukurikizwa atariko bikwiye gukurikizwa mu Rwanda kuko u Rwanda rutayasinye.

[39] Avuga ko kubera izo mpamvu zose, ngo asanga Innscor ifite ubushobozi n’ubuzima gatozi byo kurega nk’uko ibyangombwa byose bagaragaje bibisobanura by’umwihariko certificate of incorporation yatanzwe n’urwego rubifitiye ububasha (Company Registrar) ikaba ngo atari inyandiko yemejwe n’umunoteri wo mu mahanga kuburyo hari gushingirwa nku ngingo ya 54 y’itegeko rigenga umwuga w’ubu noteri iteganya ibijyane n’ Agaciro k’inyandiko zemejwe n’umunoteri wo mu mahanga.

[40] Asoza avuga ko mu gihe, Urukiko rwakwemeza ko hakenewe photocopy ya certificat iri notifiée arinayo ikenera kubahiriza iriya procedure iteganywa ngingo ya 54 y’itegeko rigenga umwuga w’ubu noteri iteganya ibijyane n’ agaciro k’inyandiko zemejwe n’umunoteri wo mu mahanga izo nazo ngo zikaba zarazanywe ariko Innscor igomba guhabwa ubutabera igasubizwa uburenganzira yambuwe n’abarega.

[41] Ababuranira Chiken inn Ltd basobanura ko kugeza n'ubu ngo urega atabasha kwerekana ko ari isosiyete ifite ubuzima gatozi ngo kuko ibimenyetso atanga bitubahirije imihango iteganywa n'amategeko, bityo bikaba ngo nta n'agaciro bifite. Ngo kubera ko buri guhugu kigira imbibe n'ubusugire byacyo bituma inyandiko zakorewe mu gihugu kimwe zigomba gukorerwa kwemezwa (legalization) iyo zigiye gukoreshwa mu kindi gihugu. Uyu muhango kandi ngo ntubaho mu Rwanda gusa ahubwo ngo uba ku isi hose. Irengayobora (exception) ngo ribaho ari uko ibihugu runaka byagiranye amasezerano yo gusonerana uwo muhango. U Rwanda abaregwa babamo na Mauritius urega avuga ko akomokamo ngo nta masezerano yo gusonerana uwo muhango bifitanye.

[42] Akomeza avuga ko ibiro bya Minisiteri y'Intebe y'igihugu cya Mauritius urega (Innscor International) avuga ko akomokamo ngo ari na byo bifite mu nshingano uwo muhango, ngo byerekana urutonde rw'inyandiko zigombaga gukorerwa legalisation (Apostille), ndetse ngo n'ikiguzi cy'uwo muhango kuri buri nyandiko. http://pmo.govmu.org/English/Pages/Legalisation-of-Documents.aspx Ngo rugaragaraho inyandiko zitandukanye zikorerwa uwo muhango zirimo Power of Attorney (POA), Certificate of Incorporation and Incumbency (COI), Certificate of Current Standing, Business Registration Card, Written Resolutions of Board of Directors, any other Documents from the Registrar of Companies.

[43] Akomeza avuga ngo ko urega uvuga ko akomoka muri Mauritius agomba kubahiriza ibiteganywa n'amategeko y'iwabo ndetse akanubahiriza ayo mu Rwanda atangamo ikirego. Mu rwego mpuzamahanga amasezerano yerekeye gusonera uwo muhango ngo ari ho kugeza uyu munsi ngo ni convention abolishing the requirement of legalisation for foreign public documents, concluded 5 october 1961 at the Hague (https://assets.hcch.net/docs/b12ad529-5f75-411b-b523-8eebe86613c0.pdf) Mauritius ibereye umunyamuryango ariko u Rwanda rukaba rutari umunyamuryango. Ibi ngo bikaba byumvikana ko nta nyandiko n'imwe iva muri Mauritius yahabwa agaciro itabanje gukorerwa umuhango wa legalization kuko inzego z'ubuyobozi/ubutabera z'igihugu cyacu ngo zidafite uburyo bwo kumenya ko ari ukuri cyangwa atari ukuri.

[44] Ngo nubwo convention abolishing the requirement of legalisation for foreign public documents itareba umubano (relations) hagati y' u Rwanda na Mauritius ngo kuko u Rwanda rutayisinye, ariko ngo igaragaza ko uwo muhango usanzwe uriho kuko ntiyari gukuraho ikitariho kandi icyo yumvikanisha ngo ni uko niba u Rwanda rutarayisinye ariko Mauritius ikaba yarayisinye bivuze ko ku bireba u Rwanda na Mauritius umuhango wa legalization ukiriho uko wakabaye kandi ukorwa ku nyandiko zose.

[45] N'iyo u Rwanda ngo ruza kuba rwarasinye iyo Convention kandi na bwo, ngo inyandiko urega aburanisha ntizasonewe uwu muhango kuko iyo convention mu ngingo yayo ya 1(igika cya 2, a-b) yerekana inyandiko zidasonewe umuhango wa "legalization" aho ngo igira iti "however, the present Convention shall not apply: a) documents executed by diplomatic or consular agents; b) administrative documents dealing directly with commercial or customs operations".

[46] Inyandiko urega ngo avuga ko ari zo zerekana ko afite ububasha "certificates of Incorporation" ubwazo ngo ziri mu kiciro cy'inyandiko zidasonewe umuhango wa legalisation. Ikindi ngo kidakwiye kwirengagizwa ngo nuko n'iyi convention ubwayo idakuraho umuhango w'uko inyandiko zijya gukoreshwa mu mahanga zigomba kubanza kwemezwa n'urwego runaka

nk'uko bigaragara mu ngingo zayo za 3-4, bisobanuye ko hagati ya Mauritius ubwayo n'ibindi bihugu bihuriye muri ayo amasezerano bigisabana legalization ariko mu nzira zoroheje ugereranyije n'ibindi bihugu bitayahuriyemo.

[47] Asoza yibaza uko niba bimeze gutyo ku biyahuriyemo, uko byamera hagati y'u Rwanda na Mauritius bitayahuriyemo. Icyemezo cy'Urukiko rw'Ubucuruzi rwa Nyarugenge ngo gifite ishingiro mu kwemeza ko "Certificates of Incorporation" ngo zigomba kubanza gukorerwa "legalization" hakurikijwe itegeko rigenga umwuga w'ubunoteri mu rwanda kuko ari ryo rinarebana na "legalization" kugeza uyu munsi. Guhamya ko inyandiko ari impamo rero bikaba biba mu nshingano z'abambasaderi n'abanyamabanga babo ba mbere, bityo rero ngo Urega nta bubasha afite.

[48] Urukiko nyuma yo guha umwanya abaregwa ngo babanze bajye gusuzuma niba Certificates of Incorporation yagaragajwe n'urewajuriye kashi iyiriho ari iya noteri wo Minisiteri y'Ububanyi n'Amahanga n'Ubtwererane (MINAFFET) ndetse impande zombi n'urukiko zikemeranya ko nibiramuka bigaragaye ko koko iyo kashi ari iye bazandikira urukiko babirumenyesha noneho rugaca urubanza bitabaye ngombwa ko bagaruka kuburana.

[49] Nyuma yo kubona ibarwa y'ababuranira abaregwa mu bujurire bavuga ko koko basanze iyo Certificates of Incorporation yaracishijwe muri MINAFFET nk'uko amategeko abiteganya ariko na none bagasaba ko bazagaruka imbere y'urukiko kuko nyuma ngo yo gusuzuma iyo nyandiko basanga ubwayo idahagije idakemura ikibazo cyo kugaragaza ko Innscor International ifite ububasha bwo kurega ngo kuko iyo nyandiko atari Certificate of incorporation ahubwo ngo ari certificate of change of name ngo yakabaye igira agaciro ari uko itanzwe hamwe na certificate of incorporation ya Baxley Holdings Limited.

[50] Bakomeza bavuga ko urega yatanze certificate of incorporation ya Baxley Holdings Limited itari legalised hanyuma ngo atanga certificate of change of name from Baxley Holdinds Limited to Innscor International yakorewe legalization.

[51] Me Kizito Safari asobanura ko bagaragaje izina ririho ubu kuko sosiyete yemerewe guhindura amazina, buri gihe mu kugaragaza ko sosiyete iriho atagomba burigihe inyandiko za kera. Asoza avuga ko batanze ibyemezo byerekana ko sosiyete iriho ubu ko ibisabwa n'abagenzi be ari uburyo bwo gutinza urubanza gusa.

UKO URUKIKO RUBIBONA

[52] Ingingo ya 54 y'itegeko N° 13bis/2014 ryo kuwa 21/05/2014 rigenga umurimo w'Ubunoteri iteganya ko ''inyandiko zemezwa n'umunoteri wo mu mahanga zifite agaciro kangana n'ako zifite mu gihugu zakorewemo. Ikimenyetso cy'uko izo nyandiko ari mpamo kiva ku kubanza kwemerwa na Ambasade mu Rwanda y'igihugu iyo nyandiko yakorewemo. Iyo nyandiko yemezwa kandi na serivisi za Minisiteri ifite Ububanyi n'Amahanga mu nshingano zayo.''

[53] Ingingo ya 26 igika cya 2 n'icya 3 y'Amabwiriza ya Perezida w'Urukiko rw'Ikirenga N° 002/2015 yo kuwa 18/05/2015 agenga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ''... Nyamara, iyo Urukiko rwajuririwe

rusanze urubanza rwari rwaregewe mu buryo bukurikije amategeko urukiko rwaruciye ku rwego rubanza rukavuga ko rutakiriwe kandi rwaragombaga kwakirwa, Urukiko rwajuririwe rurarwakira, rukagaragaza ko rwagombaga kwakirwa ku rwego rwa mbere; rukarusubiza Urukiko rwari rwari rwaruciye kugira ngo ruruburanishe mu mizi, nta yindi ngwate y'amagarama itanzwe. Urukiko rwohererejwe uru rubanza ntirushobora kwanga kuburanisha urwo rubanza rwitwaje ko rwafashe icyemezo kuri iryo bura bubasha.''

[54] Urukiko rusanga ibivugwa na Me Mugengangabo Jean Nepomusene na Me Zawadi Steeven baburanira abaregwa ko ikirego kitagomba kwakirwa ngo kuko kugeza n'ubu urega ngo atabasha kwerekana ko sosiyete ye ifite ubuzima gatozi ngo kuko ibimenyetso atanga bitubahirije imihango iteganywa n'ingingo ya 54 y'itegeko rigenga umwuga w'ubu noteri , bityo nta n'agaciro bifite, bitahabwa ishingiro kuko kuba mu bujurire uburanira Innscor International Ltd yagaragaje Certificate of Incorporation ya Innscor International Ltd yaracishijwe mu nzira zivugwa mu ngingo ya 54 y'itegeko rigenga umwuga w'ubu noteri ababuranira abaregwa bavugaga ko bitakozwe;

[55] Urukiko rusanga ibivugwa na Me Mugengangabo Jean Nepomusene na Me Zawadi Steeven ko certificate yatanzwe n'uburanira urega ngo atari Certificate of incorporation ahubwo ngo ari ihindura amazina (certificate of change of name) ngo yakabaye igira agaciro ari uko itanzwe hamwe na certificate of incorporation ya Baxley Holdings Limited, nabyo bitahabwa ishingiro kuko, usibye no kuba certificate of incorporation ya Baxley Holdings Limited basaba nayo yatanzwe nk'uko bigaragazwa n'inyandiko yo kuwa 26/06/1998 yakozwe na Registrar of companies wa Mauritiaus ndetse ikanacishwa muri ambasade ndetse no muri MINAFFET, niyo itarikuba yaratanzwe kuba byonyine haragaragajwe certificate igaragaza ko kuwa 15/07/1998 Baxley Holdings Limited yafashe icyemezo cyo guhindura izina ikitwa Innscor International Ltd ndetse bikanacishwa imbere ya Registrar of companies wo muri Mauritiaus, we wenyine akemeza ko kuwa 27/11/1998 yanditse iryo hindura ry'izina, akaba nta yindi certificate of registration ya Innscor International Ltd yagombaga gukorwa kuko ubwo Registrar yatangaga iyo certificate yo guhindura izina yahise yandika izina rishyashya rya sosiyete; kuba rero nyuma y'uwo muhango na none iyi certificate nayo yaracishijwe muri ambasade y'u Rwanda muri Mauritiaus ndetse ikanacishwa no muri MINAFFET, ibi byose bigaragaza ko sosiyete Innscor International Ltd iriho kandi ifite ubuzima gatozi buyemerera kurega.

[56] Urukiko rusanga ariko na none, niyo izo certificate zose zitari kugaragazwa bitaragombaga kubuza Innscor International Ltd kurega kuko, byonyine kuba RDB nk'urwego rushinzwe kwandika amasosiyete n'ibijyanye n'ubucuruzi, yari yaramaze kwandika trade mark ya Innscor International Ltd, ikaba yarabikoze ari uko imaze kugenzura ko koko iyo sosiyete ibaho, byongeye kandi kuba iyo sosiyete yarerekanaga ibimenyetso by'uko usibye kuba yarandikishije trade mark yayo no mu bindi bihugu binyuranye, yaranayandikishije muri African Regional Intellectual Property Organization (ARIPO), nk'uko bigaragazwa na certificate of registration yatanzwe na Director General kuwa 25/03/2011 ndetse n'urwanda rwabereye umunyamurwango kuwa 24/11/2011[1], bityo nk'urwego mpuzamahanga rukaba rutarashoboraga kwandika iyi trade mark rutabanje narwo kugenzura ko ibaho koko, kuba rero mu birebana n'ubucuruzi ikimenyetso kitabujijwe n'amategeko cyose cyemewe (en matiere commerciale prevue est libre), abavugaga ko

[1]http://www.wipo.int/edocs/pctndocs/en/2011/pct_news_2011_09.pdf.

iyi sosiyete itabaho akaba aribo bari bafite inshingano yo kugaragaza ibimenyetso simusiga ko itabaho koko.

[57] Ku bw'impamvu zose zarondowe hanashingiwe ku ngingo ya 26 igika cya 2 n'icya 3 y'Amabwiriza ya Perezida w'Urukiko rw'Ikirenga N° 002/2015 yo kuwa 18/05/2015 yavuzwe haruguru, Urukiko rw'ubujurire rusanga Urukiko rw'Ubucuruzi rwa Nyarugenge rwaragombaga kwakira rukanaburanisha urubanza RCOM00928/2016/TC/NYGE, ariyo mpamvu rukuyeho icyemezo cyarufashwemo ndetse rukanarutegeka kuruburanisha mu mizi hadatanzwe irindi garama.

C. Ku birebana no gusuzuma niba uwajuriye yategekwa kwishyura igihembo cya avoka ku rwego rw'ubujurire

[58] Ababuranira Chicken na Pizza inn Ltd basaba ko Urukiko Rukuru rw'Ubucuruzi ngo nirusanga ubujurire bwa Innscor International butagomba kwakirwa kubera kudatanga ingwate itangwa n'abanyamahanga izaba yategetswe cyangwa Innscor International ikareka urubanza aho gutanga ingwate, cyangwa nyuma y'uko ingwate itangwa rugasanga icyemezo cy'Urukiko rw'Ubucuruzi rwa Nyarugenge cyo kutakira ikirego kubera kutagira ububasha kwa Innscor International kigomba kugumaho, ruzategeke Innscor International Ltd gusubiza Chicken na Pizza Inn Ldt igihembo cya Avoka kingana na miliyoni imwe (1,000,000) cyo ku rwego rw'ubujurire kuri buri imwe.

UKO URUKIKO RUBIBONA

[59] Urukiko rusanga izi ndishyi zitagomba gutangwa kuko abazisaba urubanza rubatsinda.

III. ICYEMEZO CY'URUKIKO

[60] Rwemeye kwakira ubujurire bwa Innscor International Ltd rubusuzumye rusanga bufite ishingiro.

[61] Rwemeje ko icyemezo cyo kutakira ikirego cyafashwe mu rubanza RCOM00928/2016/TC/NYGE, Innscor International Ltd yaregagamo Chicken Inn Ltd na Pizza Inn Ltd kivanyweho.

[62] Rutegetse ko Innscor International Ltd niramuka yongeye gushyikiriza iki kirego Urukiko rw'Ubucuruzi rwa Nyarugenge rugomba kukiburanisha mu mizi kandi nta ngwate y'amagarama yindi atanzwe.

[63] Rutegetse Chicken Inn Ltd na Pizza Inn Ltd gufatanya kwishyura Innscor International Ltd amafaranga 120,000 y'igarama yatanze irega ku rwego rwa mbere n'urw'ubujurire.