ANGEL PHARMACY Ltd v. NDABATEZE

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/INJUST/COM 0005/15/CS (Kayitesi Z, P.J., Nyirinkwaya na Ngagi, J.) 15 Mutarama 2016]

Amategeko agenga amasosiyete – Icyemezo cy'iyandikisha ry'isosiyete – Icyemezo cy'iyandikisha ry'isosiyete n'ikimenyetso kigaragaza ko isosiyete ishinzwe kandi ifite ubuzima gatozi uhereye ku itariki icyemezo cyanditsweho kugeza igihe izasibirwa mu gitabo cy'amasosiyete n'ibikorwa by 'ubucuruzi.

Amategeko agenga amasosiyete – Isosiyete icuruza imiti (farumasi) – Ikigaragaza ko iriho – Agaciro k'icyangombwa gitangwa na MINISANTE – Icyo cyangombwa si cyo cyemeza ko farumasi iriho ko kandi ari iya kanaka ahubwo n'inyandiko ituma farumasi yateguwe, irimo n'ibicuruzwa itangira gukora.

Incamake y'ikibazo: Uru rubanza rukomaka ku makimbirane aho Umukumburwa avuga ko yashinze Angel Pharmacy Ltd afatanyije n'abana bimfubyi arera ariko kubera ko itegeko ryariho icyo gihe ritemereraga umuntu utarize farumasi kuyifungura, yiyambaza Ndabateze wari warabyize kugirango abasabire ibyangobwa MINISANTE. Nyuma yo guhabwa uburenganzira bwo gufungura iyo farumasi, Ndabateze yabaye Managing Director akajya ahembwa 300,000Frw ku kwezi.

Ndabateze yaje kuvuga ko Angel pharmacy ari iye; izo mpaka zatumye Angel Pharmacy Ltd itanga ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge maze iratsinda, ndetse Urukiko rugaragaza ko Angel pharmacy itabaho, ahubwo ko mu rwego rw'amategeko habaho Angel Pharmacy Ltd, rwemeza ko abayishinze ari abayifitemo imigabane, naho Ndabateze akaba atari umunyamigabane.

Ndabateze yajuriye mu Rukiko Rukuru rw'Ubucuruzi urwo Rukiko rwemeza ko Umukumburwa uhagarariye Angel Pharmacy Ltd agomba gusubiza Ndabateze Angel pharmacy nk'uko babyumvikanyeho bagitangira gukorana.

Umukumburwa yandikiye Urwego rw'Umuvunyi asaba ko urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi rwasubirishwamo ku mpamvu z'akarengane. Umuvunyi Mukuru yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urwo urubanza rwasubirwamo kubera impamvu z'akarengane zikurikira kuko urukiko rwategetse ko Umukumburwa uhagarariye Angel pharmacy Ltd agomba gusubiza Ndabateze Angel pharmacy kandi itarigeze ibaho nkuko bigaragazwa n'ibaruwa yanditswe n'Ubuyobozi bwa RDB ndetse no kuba Urukiko rwarategetse Umukumburwa gusubiza Angel pharmacy bikaba byatera ingaruka yo kudashobora kurangiza urubanza kuko mu gihe cyo kurangiza urubanza, ishobora kuzashakwa ngo isubizwe nyirayo ntiboneke.

Kuri izo mpamvu, Ndabateze Adéline yahakanye kuba yari umukozi w'Umukumburwa Alice. Yavuze ahubwo ko ashaka kwitiranya ANGEL PHARMACY na ANGEL PHARMACY Ltd. Yavuze ahubwo ko 300.000 Frw yarayahabwaga kubera icyangombwa cye yari yaratanze mu gusaba "autorisation"

Umukumburwa uhagarayiye Angel Pharmacy Ltd yasabye indishyi zinyuranye harimo iz'ikurikiranarubanza, mbonezamusaruro nizo kuba Ndabateze yarakoresheje izina Angel hakiyongeraho igihembo cy'Avoka mu rubanza rw'akarengane.

Incamake y'icyemezo: 1. Icyemezo cy'iyandikisha ry'isosiyete n'ikimenyetso kigaragaza ko isosiyete ishinzwe kandi ifite ubuzima gatozi uhereye ku itariki icyemezo cyanditsweho kugeza igihe izasibirwa mu gitabo cy'amasosiyete n'ibikorwa by 'ubucuruzi.

2. Icyangombwa gitangwa na MINISANTE si cyo cyemeza ko farumasi iriho ko kandi ari iya kanaka ahubwo n'inyandiko ituma farumasi yateguwe, irimo n'ibicuruzwa itangira gukora.

3. Igikorwa cyose cyangirije undi gitegeka nyir'ugukora ikosa kuriha ibyangiritse

Ikirego gifite ishingiro kuri bimwe;
Amagarama y'urubanza aherereye kuri Ndabateze.

Amategeko yashingiweho:
Itegeko Nº 07/2009 ryo ku wa 27/04/2009 ryerekeye amasosiyete y'ubucuruzi (ryavuyeho), ingingo ya 2(39, b) ,4, 17(2) niya 18.
Iteka rya Minisitiri Nº 20/15 ryo ku wa 03/05/2005 rigena ibyangombwa bisabwa mu gufungura, gukoresha no kwimura farumasi igenewe kudandaza imiti n'inzu icuruzwamo imiti, ingingo 6
Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa (ryavuyeho), ingingo ya 258

Nta manza zifashishijwe:

Urubanza

I. IMITERERE Y'URUBANZA

[1] Umukumburwa Alice avuga ko kuwa 21/10/2011 yashinze sosiyete y'ubucuruzi bw'imiti yitwa Angel Pharmacy Ltd afatanyije n'abana b'imfubyi arera kandi yari abereye umwishingizi, ari bo Akizanye Alaine, Nduwawe Ange na Umuhoza Aimée. Bitewe n'uko itegeko ryariho icyo gihe ritemereraga umuntu utarize farumasi kuyifungura, Umukumburwa Alice yiyambaje umuntu w'inshuti ye witwa Ndabateze Adeline wari warabyize, aba ari we usaba ibyangombwa muri MINISANTE, hanyuma ahabwa uburenganzira bwo gufungura farumasi nka "Managing Director", ariko akaba atari umunyamigabane, ahubwo farumasi imaze gutangira, Umukumburwa Alice na bagenzi be bakaba barahaga Ndabateze Adeline 300.000 Frw buri kwezi nka "Managing Director" wayo.

[2] Nyuma y'uko havutse impaka hagati ya Ndabateze Adeline na Umukumburwa Alice zerekeranye no kuba Ndabateze Adeline yaravugaga ko Angel Pharmacy ari iye, Angel PHARMACY Ltd yatanze ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge kuri Nº RCOM 0480/14/TC/NYGE, iratsinda, ndetse Urukiko rugaragaza ko Angel Pharmacy itabaho, ahubwo ko

mu rwego rw'amategeko habaho Angel Pharmacy Ltd, rwemeza ko abayishinze ari abayifitemo imigabane, naho Ndabateze Adeline akaba atari umunyamigabane.

[3] Ndabateze Adeline yajuririye mu Rukiko Rukuru rw'Ubucuruzi kuri Nº RCOMA 0465/14/HCC, urwo Rukiko ruca urubanza ku wa 23/10/2014, rwemeza ko Umukumburwa Alice uhagarariye Angel Pharmacy Ltd agomba gusubiza Ndabateze Adeline Angel Pharmacy nk'uko babyumvikanyeho bagitangira gukorana.

[4] Kuwa 04/11/2014, Umukumburwa Alice uhagarariye Angel Pharmacy Ltd yandikiye Urwego rw'Umuvunyi asaba ko urubanza Nº RCOMA 0465/14/HCC rwasubirishwamo ku mpamvu z'akarengane. Kuwa 01/12/2014, Umuvunyi Mukuru yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza Nº RCOMA 0465/14/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi rwasubirwamo kubera impamvu z'akarengane zikurikira:

1) Urukiko rwategetse ko Umukumburwa Alice uhagarariye Angel Pharmacy Ltd asubiza Ndabateze Adeline Angel Pharmacy, ariko ko ibyo bitashoboka kuko, nk'uko bishimangirwa n'ibaruwa Nº RDB/3/RH/0238/02/2014 yanditswe n'Ubuyobozi bwa RDB aho yasubizaga Umukumburwa Alice wayisabaga gusobanura ibijyanye na Angel Pharmacy Ndabateze Adeline avuga ko ari iye na Angel Pharmacy Ltd, hanyuma ubwo buyobozi bukamusubiza ko Ndabateze Adeline yanditse kuri Pharmacie Bethel ifite code 101808806, ibyo bigaragaza ko niba na Angel Pharmacy yarabayeho, yabayeho mu bitekerezo ariko ko mu rwego rw'amategeko itigeze ibaho;

2) Kuba Urukiko rwaremeje ko Umukumburwa Alice uhagarariye Angel Pharmacy Ltd asubiza Ndabateze Adeline Angel Pharmacy, ibyo bitera ingaruka yo kudashobora kurangiza urubanza kuko mu gihe cyo kurangiza urubanza, hashobora kuzashakwa Angel Pharmacy ngo isubizwe nyirayo nk'uko Urukiko rwabitegetse ariko ntiboneke.

[5] Kuwa 21/11/2014,na none Angel Pharmacy Ltd ihagarariwe na Umukumburwa Alice yajuririye urubanza Nº RCOMA 0465/14/HCC (kuri EFS)[1], ikirego cye gihabwa Nº RCOMAA 0054/14/CS, bigeze ku wa 12/06/2015, Urukiko rw'Ikirenga rwemeza ko ubujurire bwayo butari mu bubasha bwarwo.

[6] Iburanisha rya mbere ry'uru rubanza (RS/REV/INJUST/COM 0005/15/CS) ryabereye mu ruhame ku wa 13/10/2015, Angel Pharmacy Ltd ihagarariwe na Umukumburwa Alice yunganiwe na Me Niyondora Nsengiyumva, naho Ndabateze Adeline ahagarariwe n'umugabo we Ngwabije Murihano Ephrem yunganiwe na Me Ngabonziza Julien na Me NDAYAMBAJE Iyamuremye Simon.

[7] Iryo buranisha rigitangira, Ngwabije Murihano Ephrem yazamuye inzitizi zo kutakira ikirego kubera ko hiyambajwe inzira ebyiri z'ubujurire kandi bibujijwe mu ngingo ya 12 y'Itegeko Nº 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ndetse n'ingingo z'akarengane zikaba zidahuye n'ibiteganywa n'ingingo ya 81 y'Itegeko Ngenga Nº 03/2012/OL ryo ku wa 13/06/2012 rigenga imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga. Kuri izo nzitizi, Urukiko, mu rubanza

[1] *Electronic Filing System.*

rubanziriza urundi rwaciwe ku wa 20/11/2015, rwasanze nta shingiro zifite, rwemeza ko iburanisha rizakomeza mu mizi kuwa 09/12/2015.

[8] Iburanisha ryo ku wa 09/12/2015 ryabereye mu ruhame, Angel Pharmacy Ltd ihagarariwe na Umukumburwa Alice yunganiwe na Me Niyondora Nsengiyumva, naho Ndabateze Adeline yunganiwe na Me Ndayambaje Iyamuremye Simon.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

Kumenya farumasi iriho mu rwego rw'amategeko hagati ya Angel Pharmacy Ltd na Angel Pharmacy, ndetse no kumenya nyirayo

[9] Umukumburwa Alice uhagarariye Angel Pharmacy Ltd avuga ko bashinze farumasi nk'imfubyi, bifashisha Ndabateze Adeline wari warize ibya farumasi kugira ngo abafashe kuyishinga, babona "autorisation" nyuma y'umwaka, hanyuma batangiye gukora Ndabateze Adeline abasaba "autorisation" kugira ngo ajye gushinga farumasi ye, ibibazo biratangira, bashaka undi mukozi, ndetse na Ndabateze Adeline ashaka undi mukozi witwa Mutabazi Serge.

[10] Me Niyondora Nsengiyumva wunganira Umukumburwa Alice avuga ko Urukiko rwazasuzuma niba Rejisitiri (Registre) y'ubucuruzi yahawe Sosiyete y'ubucuruzi ari yo ituma Sosiyete ibaho cyangwa niba ibeshwaho na "Licence d'exploitation" yahawe na MINISANTE, ko Angel Pharmacy Ltd yemejwe mu rwego rw'amategeko kuwa 21/10/2011 ikaba inagaragaza abayifitemo imigabane, kandi ko iyo sosiyete imaze kwandikwa ari bwo isaba "Licence d'exploitation" ya farumasi. Avuga ko Ndabateze Adeline yemera ko yahabwaga 300.000 Frw, ko niba koko ari nyiri farumasi nta mpamvu yagombaga guhabwa ayo mafaranga, ko ahubwo yayafataga kubera ko yari umukozi wayo nka "Director Manager".

[11] Ndabateze Adéline avuga ko Umukumburwa Alice ashaka kwitiranya Angel PHARMACY na Angel Pharmacy Ltd, ko atigeze aba umukozi wa Umukumbubwa Alice. Avuga ko, nk'umuntu wize ibijyanye na farumasi, yafunguye Pharmacie Bethel, hanyuma Umukumburwa Alice aza kumutakambira ngo bakorane muri farumasi, afungura Angel PHARMACY kuri "Registre" ye y'ubucuruzi, akajya atuma Umukumburwa Alice ndetse ko uyu yagiye asinya mu mwanya we (P.O), bityo ko iyo aza kuba ari umukoresha we atari kujya amutuma, naho 300.000 Frw akaba yarayahabwaga kubera icyangombwa cye yari yaratanze mu gusaba "autorisation ". Avuga ko yumvikanye na Umukumburwa Alice ko azajya akora ibijyanye n'ibaruramari (comptabilité), naho nyina (wa Ndabateze Adeline) akajya kuri "caisse", kandi ko bazajya bagabana ku kwezi, ko nyuma y'umwaka umwe bari gutandukana, agasubiza Umukumburwa Alice amafaranga ya "Comptoir", n'ay'imiti yari kuba isigayemo, hanyuma agakomeza imirimo ya farumasi muri "Entreprise" ye.

[12] Me Iyamuremye Simon wunganira Ndabateze Adeline avuga ko Umukumburwa Alice uhagarariye Angel Pharmacy Ltd yashatse ibyangombwa arabibura, yifashisha ibyangombwa bya Ndabateze Adeline. Avuga ko ufite uburenganzira kuri farumasi ari ufite uburenganzira bwatanzwe na MINISANTE.

UKO URUKIKO RUBIBONA

Ku byerekeye kumenya farumasi iriho mu rwego rw'amategeko hagati ya Angel Pharmacy Ltd na Angel Pharmacy

[13] Ingingo ya 4 y'Itegeko Nº 07/2009 ryo ku wa 27/04/2009 ryerekeye amasosiyete y'ubucuruzi iteganya ko: "Kwandikisha isosiyete mu biro by'Umwanditsi Mukuru mu by'ubucuruzi ni itegeko". Naho ingingo ya 17, agace ka 2º, y'iri Tegeko rivuzwe haruguru, iteganya ko icyemezo cy'iyandikisha ry'isosiyete kiba ari ikimenyetso kigaragaza ko isosiyete ishinzwe uhereye ku itariki icyemezo cyanditsweho. Ingingo ya 18 nayo iteganya ko isosiyete yanditswe hakurikijwe iri tegeko iba ifite ubuzima gatozi bwite n'izina yanditsweho, kandi ikomeza gukora kugeza igihe izasibirwa mu gitabo cy'amasosiyete n'ibikorwa by'ubucuruzi.

[14] Dosiye y'uru rubanza igaragaza ko Angel Pharmacy Ltd yanditswe mu biro by'Umwanditsi Mukuru mu by'ubucuruzi (Office of the Registrar General) muri "Rwanda Development Board" (RDB) kuwa 21/10/2011 haza kuba "amendment" ku wa 09/10/2012 nkuko bigaragazwa na "*Full Registration for Domestic Company*". Dosiye igaragaza na none ko abanyamigabane ba sosiyete ari Umukumburwa Alice, Akizanye Alaine, Nduwawe Ange na Umuhoza Aimée; Umukumburwa Alice akaba ariwe uyihagarariye mu rwego rw'amategeko, naho Ndabateze Adeline utagaragara mu banyamigabane, akaba "Managing Director" wayo. Inyandiko y'Ubwumvikane (Memorandum of Association) ya Angel Pharmacy Ltd yo ku wa 07/10/2011, ari nacyo cyemezo gishinga sosiyete, yatanzwe na RDB, nayo igaragaza ko Umukumburwa Alice, Akizanye Alaine, Nduwawe Ange na Umuhoza Aimée aribo banyamigabane muri Angel Pharmacy Ltd, Ndabateze Adeline akaba "Managing Director"; kandi ko sosiyete igamije ibikorwa byo kudandaza no kugurisha ibicuruzwa byo muri farumasi, imiti n'iby'isuku (*Retail sale of pharmaceutical and medical goods, cosmetics and toilet articles in specialised stores),* ko n'imari shingiro (capital) ari 2.500.000 Frw yatanzwe ku buryo bungana n'abanyamigabane uko ari bane (4).

[15] Dosiye igaragaza na none ko mu ibaruwa yo ku wa 19/02/2014, Umwanditsi Mukuru mu by'ubucuruzi muri RDB yandikiye Alice Umukumburwa, ivuga neza ko Angel Pharmacy Ltd ariyo sosiyete yanditswe muri "Rwanda Development Board", ko Ndabateze Adeline ari umucuruzi ku giti cye ukoresha izina ry'ubucuruzi "Pharmacie Bethel".

[16] Hashingiwe ku bisobanuro bimaze gutangwa mu bika bibanza, Urukiko rurasanga Angel Pharmacy Ltd ihagarariwe na Umukumburwa Alice ariyo farumasi yanditswe muri RDB, nk'uko bisabwa n'ingingo ya 4 y'Itegeko ryerekeye amasosiyete mu Rwanda; ni nayo ifite ubuzima gatozi kandi iriho mu buryo bwemewe n'amategeko, kuko ariyo yubahirije ibisabwa n'amategeko, naho Angel Pharmacy, Ndabateze Adeline avuga ko ari ye, niyo yaba ikora, nta na hamwe bigaragara ko yaba iriho mu rwego rw'amategeko; kuko uvuga ko iriho, atigeze ayandikisha muri RDB.

Ku byerekeye kumenya nyiri Angel Pharmacy Ltd

[17] Ingingo ya 2, agace ka 32º, b, y'Itegeko Nº 07/2009 ryo ku wa 27/04/2009 ryerekeye amasosiyete y'ubucuruzi iteganya ko umunyamigabane (actionnaire) ari umuntu uvugwa mu nyandiko isaba kwandikwa kw'isosiyete mu gihe cy'ishingwa ryayo kandi agafatwa nk'umunyamigabane kugeza aho izina rye ryandikiwe mu gitabo cy'imigabane.

[18] Ingingo ya 6 y'Iteka rya Minisitiri Nº 20/15 ryo ku wa 03/05/2005 rigena ibyangombwa bisabwa mu gufungura, gukoresha no kwimura farumasi igenewe kudandaza imiti n'inzu

icuruzwamo imiti iteganya ko iyo umufarumasiye akorera abandi, inyandiko isaba gufungura farumasi igomba guherekezwa n'icyemezo kigaragaza ubwo bufatanye cyitwa "Amasezerano mbonera y'ubufatanye" ariho umukono w'umufarumasiye n'uw'umuntu wemerewe n'amategeko gukora mu izina ry'icyo kigo.

[19] Ku byerekeye kumenya niba uruhushya rwa MINISANTE rwo gufungura farumasi ari rwo rwerekana ko farumasi ibayeho mu rwego rw'amategeko, kandi ko uwo icyemezo cyanditseho ariwe nyiri iyo farumasi, Urukiko rurasanga Umukumburwa Alice yaremeranyije na Ndabateze Adeline gufatanya gufungura farumasi, ariko amasezerano mbonera y'ubufatanye akaba yarabaye mu magambo gusa, kuko nta nyandiko ibigaragaza nkuko biteganywa n'ingingo ya 6 y'Iteka rya Minisitiri Nº 20/15 ryo ku wa 03/05/2005 ryavuzwe haruguru iteganya ko umufarumasiye ashobora gukorera abandi bantu. Rurasanga mu bwumvikane bw'impande zombi, uruhande ruhagarariwe na Umukumburwa Alice arirwo rwashatse imari shingiro rugura imiti, ibikoresho, rwishyura inzu n'ibindi, naho uruhare rwa Ndabateze Adeline rukaba rwarabaye gushaka uruhushya akoresheje ibyangombwa bye birimo "registre de commerce", indangamuntu, impamyabumenyi n'ibindi, kugira ngo farumasi yemererwe gufungura imirimo y'ubucuruzi, Ndabateze Adeline akajya ahabwa 300.000 Frw buri kwezi ku bw'iyo "autorisation".

[20] Ikindi kigaragara n'uko igikorwa cyo gushakira farumasi uburenganzira bwo gutangira imirimo yayo cyatangiye ku wa 18/05/2012, aribwo Ndabateze Adeline yandikiye MINISANTE ayisaba uruhushya rwo gufungura farumasi, ku wa 08/06/2012 nibwo "*National Pharmaceutical Establishments Committee*" yatanze raporo y'igenzura ryakozwe yemeza uko ibisabwa kugira ngo farumasi yemererwe gufungura byuzuye, uburenganzira bwo gufungura farumasi butangwa ku wa 09/08/2012 nk'uko bigaragazwa n'ibaruwa nº 20/4265/PH/INSP/JK/2012 yo ku wa 09/08/2012 MINISANTE yandikiye Ndabateze Adeline imwemerera gufungura ibikorwa bya farumasi muri ANGEL. Ibi bikaba bishimangira ko farumasi yabanje kwandikishwa muri RDB mu mwaka wa 2011, uruhushya rwo gutangira ibikorwa ruza nyuma rusanga farumasi iriho, cyane cyane ko n'urwo ruhushya rutangwa nyuma yaho habaye igenzura mu buryo bwa tekenike ryemeje ko ibisabwa byose byuzuye.

[21] Urukiko rurasanga icyangombwa cya MINISANTE atari cyo gituma uwo cyanditseho yitwa nyiri farumasi kuko ingingo ya 6 y'Iteka rimaze kuvugwa haruguru yemera ko haba ubufatanye hagati y'umufarumasiye n'umuntu wemerewe n'amategeko gukora mu izina ry'ikigo, ko ahubwo icyo cyangombwa ari inyandiko ituma farumasi yateguwe, irimo n'ibicuruzwa itangira gukora, ko atari cyo cyemeza ko farumasi iriho ko kandi ari iya kanaka. Urukiko rurasanga Ndabateze Adeline atari kuba nyiri farumasi yasabiye ibyangombwa, na none ngo yongere ajye ahemberwa icyangombwa yahawe, kuko nyir'umugabane, iyo atari umukozi wa sosiyete atagenerwa umushahara, ko ahubwo agabana inyungu ku migabane nk'uko biteganywa n'ingingo ya 156 y'Itegeko Nº 07/2009 ryo ku wa 27/04/2009 ryerekeye amasosiyete y'ubucuruzi ryavuzwe haruguru ivuga ko abanyamigabane bafite uburenganzira ku nyungu zitangwa n'imigabane (...); bityo, Angel Pharmacy Ltd ihagarariwe na Umukumburwa Alice akaba ariyo farumasi iriho mu buryo mwemewe n'amategeko nk'uko byavuzwe haruguru.

[22] Urukiko rurasanga Angel Pharmacy Ltd iriho mu buryo bwemewe n'amategeko, kandi ari yo igomba gukomeza imirimo ya farumasi, naho Angel Pharmacy itariho mu rwego rw'amategeko ikaba itagomba gukomeza gukorera kuri iryo zina kuko byaba binyuranije n'iki cyemezo cy'Urukiko.

[23] Hashingiwe ku bisobanuro n'amategeko byatanzwe haruguru, Urukiko rurasanga abanyamigabane bafunguye farumasi Angel Pharmacy Ltd, ari nabo ba nyirayo ari Umukumburwa Alice, Akizanye Alaine, Nduwawe Ange na Umuhoza Aimée, nk'uko bigaragara kuri "Memorandum of Association" yatanzwe na RDB ku wa 07/10/2011, kuko aribo bagaragara mu nyandiko isaba kwandikwa kw'isosiyete mu gihe cy'ishingwa ryayo kandi farumasi itakwitirirwa undi uretse uwashatse imari shingiro agakusanya n'ibyangombwa kugirango ibeho, naho Ndabateze Adeline akagaragara nka "Managing Director" utari mu banyamigabane.

Kumenya niba hari indishyi zagenwa muri uru rubanza

[24] Umukumburwa Alice uhagarariye Angel Pharmacy Ltd avuga ko indishyi asaba zisobanuye mu buryo bukurikira:

- Amafaranga y'ikurikiranarubanza angana na 5.955.000 Frw agizwe na 1.960.000 Frw yatakaje mu Rukiko rw'Ubucuruzi rwa Nyarugenge mu manza N° RCOM 0480/14/TC/NYAR na N° RCOM 0529/14/TC/NYAR, 550.000 Frw yatakaje mu Rukiko Rukuru rw'Ubucuruzi mu rubanza N° RCOMA 0465/14/HCC, 500.000 Frw yakoresheje ageza ikibazo cye ku Muvunyi, na 2.945.000Frw yakoresheje akurikirana mu Rukiko rw'Ikirenga urubanza RCOMA 0008/15/CS.

- Indishyi mbonezamusaruro zingana na 3.850.000Frw agizwe na 100.000Frw yo kwimuka na 3.750.000Frw y'inyungu yari kuzabona mu bucuruzi bwe kuva ku wa 28/08/2015, ariko agomba kwiyongera kugeza igihe urubanza rurangijwe;

-Indishyi zingana na 2.000.000Frw zijyanye no kuba Ndabateze Adeline akorera ku izina rye, bikazamura imisoro agomba gusora;

-Indishyi zingana na 3.000.000Frw kubera izina ANGEL Ndabateze Adeline yakoresheje kandi ryari ryarakoreshejwe nk'urwibutso rw'ababyeyi babo kuko ari izina rya murumuna we Nduwawe Ange wari ufite amezi 6 ubwo ababyeyi babo bapfaga;

Indishyi zose hamwe zikaba zingana na 14.805.000Frw, hiyongeyeho igihembo cya Avoka mu rubanza rw'akarengane kingana na 1.500.000Frw.

[25] Me Iyamuremye Simon wunganira Ndabateze Adéline avuga ko indishyi zisabwa nta shingiro zahabwa kuko Umukumburwa Alice arimo gukoresha inzira zidakwiye kugira ngo abone farumasi itari iye, ahubwo ko yamugira inama yo gushaka icyangombwa cya farumasi ye adakoresheje farumasi ya Ndabateze Adeline.

UKO URUKIKO RUBIBONA

[26] Ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano iteganya ko: "Igikorwa cyose cyangirije undi gitegeka nyir'ugukora ikosa kuriha ibyangiritse".

[27] Muri uru rubanza, Umukumburwa Alice uhagarariye Angel Pharmacy Ltd asaba 1.960.000Frw y'indishyi z'ibyo yakoresheje mu manza N° RCOM 0480/14/TC/NYAR na N° RCOM 0529/14/TC/NYAR[2] zaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge; dosiye

[2] Uru rubanza rwerekeranye n'ikirego cyihutirwa mu rubanza N° RCOM 0480/14/TC/NYAR aho ikiregerwa cyari: "Gufungurirwa Pharmacy no kwandikwaho autorisation, tukaba dukora mu gihe dutegereje icyemezo cy'urukiko uku

y'urubanza igaragaza ariko ko mu rubanza Nº RCOM 0480/14/TC/NYAR yari yagenewe 800.000Frw. Urukiko rurasanga Angel Pharmacy Ltd yagenerwa 800.000Frw yari yarahawe muri urwo rubanza rwa mbere kuko ari mu rugero rukwiye.

[28] Ku byerekeye amafaranga yatakajwe mu rubanza Nº RCOMA 0465/14/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, Urukiko rurasanga nayo agomba gutangwa uko ari 550.000 Frw nk'uko yasabwe, kuko Angel Pharmacy Ltd yayatakaje ikurikirana urwo rubanza. Naho ku bijyanye n'amafaranga angana na 500.000 Frw yakoreshejwe na Umukumburwa Alice ageza ikibazo ku Rwego rw'Umuvunyi, Urukiko rurasanga nayo akwiye gutangwa kuko akarengane yagiriye mu rubanza Nº RCOMA 0465/14/HCC ariko katumye ayatakaza ashyikiriza ikibazo Urwego rw'Umuvunyi.

[29] Ku byerekeye indishyi z'ibyo yatakaje akurikirana urubanza muri uru Rukiko,Urukiko rurasanga 2.940.000 Frw akomoka ku kirego cyihutirwa (Nº RCOM 0008/15/CS) yifujwe na Umukumburwa Alice uhagarariye Angel Pharmacy Ltd na 1.500.000 Frw ajyanye n'urubanza rw'iremezo (Nº RS/REV/INJUST/COM 0005/15/CS), ari ikirenga, bityo mu bushishozi bwarwo rukaba rugeneye Angel pharmacy Ltd kuri izo manza zombi[3] amafaranga ibihumbi magana inani (800.000Frw) y'ikurikiranarubanza n'igihembo cya Avoka.

[30] Ku byerekeye indishyi mbonezamusaruro zasabwe, Urukiko rurasanga zidakwiye gutangwa kuko Umukumburwa Alice uhagarariye Angel Pharmacy Ltd azisaba ashingiye ko atakoraga no kuba yarimutse aho yakoreraga, kandi mu miburanire ye hari aho asobanura ko Angel Pharmacy Ltd ikorera mu yindi nzu, bisobanuye ko, uretse kuba atarumvikanye na Ndabateze Adéline ku mikorere ya farumasi bari bahuriyeho, Umukumburwa Alice yakomeje ubucuruzi bwa farumasi. Ikindi, n'ubwo Angel Pharmacy Ltd yaba yarahagaritse ubucuruzi yakoraga, ntabwo yagaragaje ibimenyetso ishingiraho isaba indishyi mbonezamusaruro. Naho ku bijyanye n'amafaranga 100.000 yo kwimuka Umukumburwa Alice asaba, Urukiko rurasanga nayo adakwiye kuyahabwa kuko nta kigaragaza ko ari Ndabateze Adéline wamuvanye mu nyubako yakoreragamo, cyane cyane ko n'uru Rukiko (rw'Ikirenga) mu rubanza Nº RCOM 0008/15/CS rwaciwe ku wa 31/07/2015, rwari rwategetse ko irangiza ry'urubanza Nº RCOMA 0465/14/HCC riba rihagaze by'agateganyo kugeza igihe urubanza Nº RS/REV/INJUST/COM 0005/14/CS ruzacibwa.

[31] Ku byerekeye amafaranga n'indishyi zijyanye no kuba Ndabateze Adeline akorera ku izina rye, bikazamura imisoro agomba gusora, ndetse n'indishyi zo kuba Ndabateze Adeline yarakoresheje izina "Angel", Urukiko rurasanga izo ndishyi zose zitagomba gutangwa kuko, hakurikijwe ibisobanuro Umukumburwa Alice atanga, farumasi yatumye habaho impaka yari yashinzwe ku bwumvikane hagati ya Umukumburwa Alice (washoye amafaranga y'imiti, ayo gukodesha inyubako no kugura ibindi bikoresho) na Ndabateze Adeline (watanze icyangombwa cye mu gushaka uburenganzira bwo gufungura farumasi), bityo Umukumburwa Alice uhagarariye Angel Pharmacy ltd akaba atabyuririraho ngo abisabire indishyi.

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kirego cy'iremezo", kandi biragaragara ko ku bijyanye n'indishyi umucamanza yari yasobanuye ko indishyi zizasabwa mu rubanza rw'iremezo (RCOM 0480/14/NYAR).

[3] Ingingo ya 320, igika cya nyuma, y'Itegeko Nº 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, 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."

[32] hakurikijwe ibimaze gusobanurwa haruguru, urukiko rurasanga Angel Pharmacy Ltd igomba guhabwa indishyi zingana na 2.650.000 Frw agizwe na 800.000 Frw zagenwe n'Urukiko rw'Ubucuruzi mu rubanza Nº RCOM 0480/14/TC/NYAR, 550.000 Frw yatakaje mu rubanza Nº RCOMA 0465/14/HCC mu Rukiko Rukuru rw'Ubucuruzi, 500.000 Frw yatakaje ishyikiriza ikibazo Urwego rw 'Umuvunyi na 800.000 Frw yatakaje muri uru rubanza rw'akarengane (Nº RS/REV/INJUST/COM 0005/15/CS).

III. ICYEMEZO CY'URUKIKO

[33] Rwemeje ko ikirego cya Angel Pharmacy Ltd cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro kuri bimwe;

[34] Rwemeje ko Angel Pharmacy Ltd ariyo farumasi iriho mu buryo bwemewe n'amategeko, ikaba ari yo igomba gukomeza imirimo ya Farumasi;

[35] Rwemeje ko Angel pharmacy Ltd ari iy'abanyamigabane aribo Umukumburwa Alice, Akizanye Alaine, Nduwawe Ange na Umuhoza Aimée.