

RWANDA / JUDGMENT

MUKWANO INDUSTRIES LTD v SUPER MOViate LTD

RCOM 00216/2023/TC

COURT

Commercial Court

DECIDED

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MUKWANO INDUSTRIES LTD v SUPER MOViate LTD

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Text

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MUKWANO INDUSTRIES LTD v SUPER MOViate Ltd [Rwanda URUKIKO RW'UBUCURUZI – RCOM 00216/2023/TC (Murenzi., P.J.) 20 Ukwakira 2023] Amategeko agamije kurengera umutungo bwite mu by'ubwenge – Ibirango by'ibicuruzwa byiganye ibindi – Ibicuruzwa bitera urujijo – Ibirango biranga igicuruzwa byandikishijwe mbere bisa n'ibindi by'igicuruzwa byanditswe nyuma, bigomba kurindwa no kurengerwa n'amategeko kuko ibirango byanditswe nyuma biba byariganye ibyanditswe mbere kandi bitemewe n'amategeko. Incamake y'ikibazo: Uru rubanza rwatangiye Mukwano Industries Ltd irega Super Moviate Ltd mu rukiko rw'Ubucuruzi ivuga ko uregwa yakoze e amakosa yo kwigana ikirango cyayo inagikoresha mu bucuruzi bwayo nta ruhushya yabihereye. Isobanura ko Super Moviate Ltd yakoze isabune ifite ikirango cyitwa "SUPER " ndetse ikaba inayicuruza, nyamara ngo icyo kirango kikaba gifite isura isa n'iy'ikirango cya Mukwano Industries Ltd cy'isabune yayo yitwa "SUPA", ivuga ko bisa haba mu miterere yacyo inyuma ndetse n'imbere, nyamara kandi ngo ari yo yandikishije ikirango cyayo "SUPA" mbere muri 2013, ikomeza isobanura ko. Super Moviate Ltd ikoresha ikirango cyayo ku mirimo ifitanye

isano n'icyandikishijwe (gutunganya no gucuruza), bikaba bitera cyangwa se bishobora gutera urujijo muri rubanda, kuko ku isoko abaguzi bitiranya ibyatunganyijwe (products) byombi nkaho ari bimwe cyangwa se bituruka ahantu hamwe, kandi ibyo bikaba ari ibikorwa bibujijwe n'amategeko. Mukwano Industries Ltd isaba Urukiko gutegeka Super Moviante Ltd guhita ihagarika gutunganya no gucuruza isabune ifite ikirango cya "SUPER" uko iteye kuri none, ndetse ikanategekwa gutanga indishyi mbonezamusaruro kubera igihombo iyiteza, cyane cyane ko imaze imyaka itari mike acuruza iyo sabune yakozwe mu buryo butemewe n'amategeko. Super Moviante Ltd ivuga ko ikirego cya Mukwano Industries Ltd nta shingiro gikwiye guhabwa, isobanura ko itigeze yigana ikirango cyayo, kandi ko ibyo bigaragarira ku kuba yarandikishije ikirango cyayo muri 2020, ntibayibwire ko hari undi wacyandikishije cyangwa ko hari undi kibangamiye, ivuga ko ikoresha icyo kirango mu buryo bukurikije amategeko, kuko yabihereye uburenganzira n'urwego rubifitiye ububasha, isoza isaba ko Mukwano Industries Ltd yategekwa kuyiha indishyi zo kuyishora mu manza zidafite ishingiro. Urukiko mu rubanza RCOM 00216/2023/TC rwemeje ko ikirego cya Mukwano Industries Ltd gifite ishingiro, ko ikirango « SUPER » cya Super Moviante Ltd ari urwiganwa rw'ikirango « SUPA » cya Mukwano Industries Ltd, kandi ko ikoresha ryacyo bikozwe na Super Moviante Ltd, bigize ipiganwa ririmo uburiganya. Rutegeka Super Moviante Ltd guhita ihagarika gukora no gucuruza isabune y'amazi ifite ikirango "SUPER" no gukura ku isoko isabune y'amazi ifite icyo kirango cy'urwiganano cya "SUPER" irimo gucuruzwa, itabikora, ibyo bicuruzwa bigafatirwa, bikangizwa ku ngufu za Leta. Incamake y'icyemezo: Ibirango biranga igicuruzwa byandikishijwe mbere bisa n'ibindi by'igicuruzwa byanditswe nyuma, bigomba kurindwa no kurengerwa n'amategeko koko ibirango byanditswe nyuma biba byariganye ibyanditswe mbere kandi bitemewe n'amategeko. Bityo, haba kwigana kw'ibicuruzwa iyo bisa ku miterere (forme), amabara, amagambo yanditse ku bicuruzwa, ijwi (phonetique), ibishushanyo biri ku bicuruzwa, biba bisa kandi kimwe kiganye ikindi kandi giteje urujijo mu baguzi, bikosorwa nuko ikiganye ikindi kivanwa kw'isoko. Ikirego cya Mukwano Industries Ltd gifite ishingiro. Amategeko yashingiweho: Itegeko N° 31/2009 ryo kuwa 26/10/2009 rigamije kurengera umutungo bwite mu by'ubwenge nk'uko ryahinduwe kandi ryujijwe n'itegeko No 50/2018 ryo kuwa 13/08/2018, Ingingo ya 133,136,

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Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezambano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi, Ingingo ya 12,111 Itegeko N° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3 Nta manza zifashshijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Mukwano Industries Ltd ni Sosiyete ikora ibintu bitandukanye harimo n'isabune y'amazi (liquid soap) ifite ikirango cyitwa "SUPA" cyandikishijwe muri RDB, mu gihe Super Moviante Ltd, na yo ari Sosiyete ikora ibintu bitandukanye harimo n'isabune y'amazi (liquid soap) ifite ikirango cyitwa "SUPER". [2] Mukwano Industries Ltd ivuga ko Super Moviante Ltd yakozwe amakosa yo kwigana ikirango cyayo inagikoresha mu bucuruzi bwayo nta ruhushya yabihereye. Isobanura ko Super Moviante Ltd yakozwe isabune ifite ikirango cyitwa "SUPER" ndetse ikaba inayicuruza, nyamara ngo icyo kirango kikaba gifite isura isa n'iy'ikirango cyayo cyitwa "SUPA", haba mu miterere yacyo inyuma

ndetse n'imbere, nyamara kandi ngo ari yo yandikishije ikirango cyayo "SUPA" mbere muri 2013, ikomeza isobanura ko. Super Moviate Ltd ikoresha ikirango cyayo ku mirimo ifitanye isano n'icyandikishijwe (gutunganya no gucuruza), bikaba bitera cyangwa se bishobora gutera urujijo muri rubanda, kuko ku isoko abaguzi bitiranya ibyatunganyijwe (products) byombi nkaho ari bimwe cyangwa se bituruka ahantu hamwe, kandi ibyo bikaba ari ibikorwa bibujijwe n'amategeko. Byongeye kandi ngo iyo urebye icyatunganyijwe (product) gifite ikirango cyitwa "SUPER" cyakozwe na Super Moviate Ltd ukareba n'icyatunganyijwe cya Mukwano Industries Ltd gifite ikirango cya "SUPA", usanga bifitanye isano rikomeye, uherye ku miterere (forme), ibara (umuhondo, icyatsi, umweru, etc), amagambo yanditse kubyatunganyijwe byombi, ijwi (phonetique), ibishushanyije inyuma kuri products zombi, imifuniko isa ku ibara (icyatsi) ndetse n'imiterere (forme) y'iyi mifuniko, n'ibindi byinshi umuntu atarondora, usanga byoroshye cyane ku muntu uwo ari we wese kubyitiranya, ku buryo umuntu yagura kimwe cyangwa se ikindi kuko bigoye kubitandukanya, bityo ko Super Moviate Ltd yigannye ikirango cya Mukwano Industries Ltd, igamije kujijisha rubanda kugira ngo batamenya itandukaniro rya byombi, ibone uko itwara isoko ry'uruganda rufite izina rikomeye kandi rwandikishije ikirango cyarwo mbere, kandi ko ari ibikorwa bibujijwe mu rwego rw'amategeko, ndetse binyuranyije n'imigirire (pratiques) igomba kuranga ubunyangamugayo mu bucuruzi. [3] Kubera izo mpamvu zose zavuzwe haruguru, Mukwano Industries Ltd isaba Urukiko gutegeka Super Moviate Ltd guhita ihagarika gutunganya no gucuruza isabune ifite ikirango cya "SUPER" uko iteye kuri none, ndetse ikanategekwa gutanga indishyi mbonezamusaruro kubera igihombo iteza Mukwano Industries Ltd, cyane cyane ko imaze imyaka itari mike acuruza iyo sabune yakozwe mu buryo butemewe n'amategeko. [4] Super Moviate Ltd ivuga ko ikirego cya Mukwano Industries Ltd nta shingiro gikwiye guhabwa, isobanura ko itigeze yigana ikirango cyayo, kandi ko ibyo bigaragarira ku kuba yarandikishije ikirango cyayo muri 2020, ntibayibwire ko hari undi wacyandikishije cyangwa ko hari undi kibangamiye, bakemera kucyandika, igaragaza icyemezo cy'iyandikisha ry'icyo kirango yahawe na RDB, byongeye kandi ngo kuba Company zombi zikora isabune y'amazi zishobora kugira icyo zihuriraho ntibivuze ko harimo kwiganana, bityo rero ko kuba Super Moviate Ltd ikoresha icyo kirango yandikishije, igikoresha

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mu buryo bukurikije amategeko, kuko yabihereye uburenganzira n'urwego rubifitiye ububasha, isoza isaba ko Mukwano Industries Ltd yategekwa kuyiha indishyi zo kuyishora mu manza zidafite ishingiro. [5] Hashingiwe ku mpaka ziri hagati y'impande zombi, Urukiko rusanga ibibazo bigize urubanza bigomba gusuzumwa ari ibi bikurikira : Kumenya niba ikirango "SUPER" kiri ku isabune ya Super Moviate Ltd ari urwiganwa rw'ikirango "SUPA" kiri ku isabune ya Mukwano Industries Ltd Kumenya niba Super Moviate Ltd yategekwa guhita ahagarika gutunga no gucuruza isabune ifite ikirango "SUPER" kubera ko yigannye ikirango "SUPA" kiri ku isabune ya Mukwano Industries Ltd cyandikishijwe Kumenya niba indishyi mbonezamusaruro zisabwa zatangwa Kumenya niba amafaranga yatanze ku rubanza yatangwa II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA Kumenya niba ikirango "SUPER" kiri ku isabune ya SUPER MOViate Ltd ari urwiganwa rw'ikirango "SUPA" kiri ku isabune ya MUKWANO INDUSTRIES Ltd

[6] Mukwano Industries Ltd ivuga ko Super Moviante Ltd yakoze amakosa yo kwigana ikirango cyayo inagikoresha mu bucuruzi bwayo nta ruhushya yabihereye. Isobanura ko Super Moviante Ltd yakoze isabune ifite ikirango cyitwa "SUPER" ndetse ikaba inayicuruza, nyamara ngo icyo kirango kikaba gifite isura isa n'iy'ikirango cy'isabune yayo cyitwa "SUPA", haba mu miterere yacyo inyuma ndetse n'imbere, nyamara kandi ngo ari yo yandikishije ikirango cyayo "SUPA" mbere muri 2013, ikomeza isobanura ko Super Moviante Ltd ikoresha ikirango cyayo ku mirimo ifitanye isano n'icyandikishijwe (gutunganya no gucuruza), bikaba bitera cyangwa se bishobora gutera urujijo muri rubanda, kuko ku isoko abaguzi bitiranya ibyatunganyijwe (products) byombi nkaho ari bimwe cyangwa se bituruka ahantu hamwe, kandi ibyo bikaba ari ibikorwa bibujijwe n'amategeko. Byongeye kandi ngo iyo urebye icyatunganyijwe (product) gifite ikirango cyitwa "SUPER" cyakozwe Super Moviante Ltd ukareba n'icyatunganyijwe cya Mukwano Industries Ltd gifite ikirango cya "SUPA", usanga bifitanye isano rikomeye, uhereye ku miterere (forme), ibara (umuhondo, icyatsi, umweru, etc), amagambo yanditse kubyatunganyijwe byombi, ijwi (phonetique), ibishushanyije inyuma kuri products zombi, imifuniko isa ku ibara (icyatsi) ndetse n'imiterere (forme) y'iyi mifuniko, n'ibindi byinshi umuntu atarondora, usanga byoroshye cyane ku muntu uwo ari we wese kubyitiranya, ku buryo umuntu yagura kimwe mu mwanya w'ikindi atabizi kuko bigoye kubitandukanya, bityo ko Super Moviante Ltd yigannye ikirango cya Mukwano Industries Ltd, igamije kujijisha rubanda kugira ngo batamenya itandukaniryo rya byombi, ibone uko itwara isoko ry'uruganda rufite izina rikomeye kandi rwandikishije ikirango cyarwo mbere, kandi ko ari ibikorwa bibujijwe mu rwego rw'amategeko, ndetse binyuranyije n'imigirire (pratiques) igomba kuranga ubunyangamugayo mu bucuruzi. [7] Mu gushyigikira ikirego cyayo, Mukwano Industries Ltd igaragaza utubido (utujerikani) tubiri dufite litiro 5, kamwe karimo isabune ikorwa na Mukwano Industries Ltd, akandi karimo isabune ya Super Moviante Ltd turiho ibirango byombi biburanwa muri uru rubanza. [8] Super Moviante Ltd ivuga ko ikirego cya Mukwano Industries Ltd nta shingiro gikwiye guhabwa, isobanura ko itigeze yigana ikirango cyayo, kandi ko ibyo bigaragarira ku kuba yarandikishije ikirango cyayo muri 2020, ntibayibwire ko hari undi wacyandikishije cyangwa ko hari undi kibangamiye, bakemera kucyandika, igaragaza icyemezo cy'iyandikisha ry'icyo kirango yahawe na RDB, byongeye kandi ngo kuba Company zombi zikora isabune y'amazi zishobora kugira icyo zihuriraho ntibivuze ko harimo kwiganana, bityo rero ko kuba Super Moviante Ltd ikoresha icyo kirango yandikishije, igikoresha mu buryo bukurikije amategeko, kuko yabihereye uburenganzira n'urwego rubifitiye ububasha.

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UKO URUKIKO RUBIBONA [9] Impaka ziri hagati y'imipande zombi kuri iyi ngingo zirebana no kumenya niba ikirango "SUPER" kiri ku isabune ya Super Moviante Ltd cyaba ari urwiganwa rw'ikirango "SUPA" kiri ku isabune ya Mukwano Industries Ltd, ku buryo izo sabune zihuriye ku isoko byatera abakiriya urujijo. [10] Ingingo ya 133 y'Itegeko N° 31/2009 ryo kuwa 26/10/2009 rigamije kurengera umutungo bwite mu by'ubwenge nk'uko ryahinduwe kandi ryujijwe n'itegeko No 50/2018 ryo kuwa 13/08/2018, ivuga ko bishobora kwandikwa nk'ibirango, ibimenyetso bikurikira: 1° amazina afite imiterere iyo ari yo yose nk'amagambo, amazina y'abantu, inyuguti, imibare n'impine z'amagambo; 2° ibigaragaza amasura, nk'ibishushanyo, amashusho nyubako,

imiterere y'ibikoresho cyangwa ibyo bipfunyikwamo; 3° amabara cyangwa uruvange rw'amabara; 4° urwunge urwo ari rwo rwose rw'ibimenyetso byavuzwe haruguru. [11] Ingingo ya 136 y'iryo tegeko yo ikavuga ko ikirango kiba ari urwiganwa iyo: 1° gifite isura ihwanye, cyangwa isura isa ku buryo butera urujijo, n'iy'ikirango cyangwa izina ry'ubucuruzi, bisanzwe byaramamaye ku butaka bw'u Rwanda, biranga ibikorwa by'ikindi kigo, bifite isura imwe cyangwa bisa na byo; cyangwa iyo kigizwe n'ikirango cyangwa izina ry'ubucuruzi by'icyo kigo byahinduwe mu zindi ndimi; cyangwa iyo cyamamaye kandi cyanditswe muri Repubulika y'u Rwanda, kikaba kiranga ibikorwa cyangwa imirimo bidafite isura imwe, cyangwa isura isa n'iy'ibikorwa cyangwa imirimo birangwa n'ikirango gisabirwa kwandikwa, mu gihe gukoresha icyo kirango kuri ibyo bikorwa cyangwa kuri iyo mirimo byagaragaza isano iri hagati y'ibyo bikorwa n'iyi mirimo na nyir'ikirango cyanditswe, no mu gihe gukoresha ikirango nk'icyo byabangamira inyungu za nyir'ikirango cyanditswe; 2° gifite isura ihwanye, cyangwa isura isa n'iy'ikirango cyanditswe undi muntu atunze, cyangwa se itariki yo kugitanga cyangwa iyo kwerekana ko cyavumbuwe mbere byarakozwe mbere, kikaba kiranga ibikorwa bimwe cyangwa imirimo imwe, cyangwa ibikorwa cyangwa imirimo bifite isura isa cyane; iyo kandi gisa n'ikirango giteye gityo, ku buryo gishobora gutuma kwibeshya bishoboka, cyangwa kigatera urujijo. Bifatwa nk'aho urujijo nyakuri ruhari, iyo ibimenyetso bifite isura ihwanye biranga ibikorwa cyangwa imirimo bifite isura ihwanye. [12] Izi ngingo zisomewe hamwe zumvikanisha ibishobora kwandikwa nk'ibirango, aho bashobora gukoresha amazina, ibishushanyo, amagambo, inyuguti, imibare, amashusho, amabara n'ibindi, kandi ko icyo kirango gifatwa nk'urwiganwa iyo gifite isura ihwanye, cyangwa isura isa ku buryo bitera urujijo, n'iy'ikirango cyangwa izina ry'ubucuruzi, bisanzwe byaramamaye ku butaka bw'u Rwanda, cyangwa iyo kigizwe n'ikirango cyangwa izina ry'ubucuruzi by'icyo kigo byahinduwe mu zindi ndimi, gifite isura ihwanye, cyangwa isura isa n'iy'ikirango cyanditswe undi muntu atunze, iyo kandi gisa n'ikirango giteye gityo, ku buryo gishobora gutuma kwibeshya bishoboka, cyangwa kigatera urujijo. Bifatwa nk'aho urujijo nyakuri ruhari, iyo ibimenyetso bifite isura ihwanye biranga ibikorwa cyangwa imirimo bifite isura ihwanye. [13] Urukiko rushingiye ku byumvikanishwa n'ingingo z'itegeko ryavuzwe haruguru, rugashingira kandi ku mafoto y'ibirango by'inganda zombi n'ibindi bimenyetso bigaragara kuri ibyo birango, rusanga iyo urebye icyatunganyijwe (product) gifite ikirango cyitwa "SUPER" cyakozwe na Super Moviante Ltd ukareba n'icyatunganyijwe cya Mukwano Industries Ltd gifite ikirango cya "SUPA", usanga bifitanye isano rikomeye, uherye ku miterere (forme), amabara (umuhondo, icyatsi, umweru, etc), amagambo yanditse ku byatunganyijwe byombi, ijwi (phonetique), ibishushanyije inyuma kuri products zombi, imifuniko isa ku ibara (icyatsi) ndetse n'imiterere (forme) y'iyi mifuniko, n'ibindi byinshi umuntu atarondora, ku buryo byoroshye cyane ku muntu uwo ari we wese kubytiranya, akaba yagura isabune ya Super Moviante Ltd ifite ikirango cya "SUPER". [14] Kuba rero ikirango "SUPER" kiranga isabune ya Super Moviante Ltd ari cyo cyandikishijwe nyuma (2020), nyamara kigasanga hari ikindi kirango "SUPA" kiranga isabune ya Mukwano Industries Ltd, cyandikishijwe mbere, kandi icyo cyandikishijwe nyuma kikaba gifite ibimenyetso bitandukanye bisa

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n'iby'ikirango cyandikishijwe mbere ndetse no mu mivugire y'amazina yabyo bisomwa kimwe n'ubwo indimi yanditsemo atari zimwe (ikinyarwanda n'icyongereza), ku buryo bishobora gutera abakiriya urujijo, ntibabashe gutandukanya isabune ya Mukwano Industries Ltd n'isabune ya Super Moviate Ltd, rusanga ikirango "SUPER" cya Super Moviate Ltd cyarigannye ikirango "SUPA" cya Mukwano Industries Ltd. Kumenya niba SUPER MOVIAE Ltd yategekwe guhita ahagarika gutunga no gucuruza isabune ifite ikirango "SUPER" kubera ko yigannye ikirango "SUPA" kiri ku isabune ya MUKWANO INDUSTRIES Ltd cyandikishijwe [15] Mukwano Industries Ltd avuga ko kuba yarandikishije mbere ikirango "SUPA" ku bicuruzwa byayo by'isabune y'amazi (liquid soap), ari yo yonyine ifite uburenganzira bwo gukoresha icyo kirango ku bicuruzwa byayo, keretse hagize undi ibihara uburenganzira, nyamara ngo icyaje kugaragara ni uko Super MoviatE Ltd yihaye kwigana ibyinshi mu bimenyetso by'ikirango cyayo kandi by'ingenzi irabyigana ibishyira mu kirango cyayo "SUPER", kugira ngo bitere urujijo abaguzi, ibone uko itwara abakiriya b'isabune ya Mukwano Industries Ltd bari bamenyereye, bayitiranya n'isabune ya SUPER MOVIAE Ltd, kandi binyuranije n'ingingo ya 150 y'itegeko rigamije kurengera umutungo bwite mu by'ubwenge, ikaba ikwiye gutegekwe guhagarika gutunga no gucuruza ibicuruzwa by'isabune y'amazi icuruza igendeye ku kirango "SUPER" cy'urwigananano, itabikora ibyo bicuruzwa bigafatirwa bigasenywa. [16] Super Moviate Ltd, ivuga ko ibisabwa na Mukwano Industries Ltd nta shingiro bikwiye guhabwa, isobanura ko ikirango cy'isabune yayo atari icyiganano, ngo kuko cyandikishijwe mu buryo bukurikije amategeko, ikaba igikoresha ibifitiye uburenganzira busesuye. UKO URUKIKO RUBIBONA [17] Ingingo ya 150 y'itegeko N° 31/2009 ryo kuwa 26/10/2009 ryibukijwe haruguru ivuga ko ikirango cyanditswe gihesha nyiracyo uburenganzira bwihariye bwo kugikoresha, kandi gukoresha ikirango cyanditswe ku byatunganyijwe n'imirimo cyandikishirijwe bikozwe n'undi muntu utari nyir'ukucyandikisha, bigomba uruhushya rwa nyiracyo. [18] Iyi ngingo yumvikanisha ko kuba Mukwano Industries Ltd yarandikishije ikirango cyayo cya "SUPA" muri RDB muri 2013, ari yo ifite uburenganzira bwihariye bwo gukoresha ikirango yandikishije, bikaba byumvikana ko kigomba kurengerwa n'amategeko, kugira ngo hatagira undi wese ucyigana bikabangamira inyungu za Mukwano Industries Ltd. [19] Ingingo ya 137 y'itegeko N° 31/2009 ryo kuwa 26/10/2009 ryibukijwe haruguru ivuga ko ikirango kiba gitera urujijo iyo gishobora gutuma rubanda cyangwa abacuruzi bibeshya, nko ku karere ibyatunganyijwe cyangwa imirimo iyi n'iyi bikomokamo, ku bwiza bwabyo, ku miterere cyangwa ku turango twabyo. [20] Ingingo ya 177 y'iryo tegeko N° 31/2009 ryo kuwa 26/10/2009 yo ikavuga ko igikorwa cyose cyangwa imigenzereze bigaragaramo ubuhemu mu rwego rw'inganda cyangwa ubucuruzi bikaba bifite inkurikizi cyangwa umugambi wo kugera ku nyungu z'ubucuruzi zibangikanye n'iz'ukora imirimo imwe cyangwa ibicuruzwa bimwe nk'iby'undi biba ari ipiganwa ririmo uburiganya. Naho ingingo ya 179 y'iryo tegeko yo ikavuga ko Urukiko rubifitiye ububasha ruhagarika icyo gikorwa kandi byaba ngombwa rukagena indishyi. [21] Urukiko rushingiye kuri izi ngingo z'itegeko N° 31/2009 ryo kuwa 26/10/2009 rimaze kwibutswa haruguru, rusanga nk'uko n'uhagarariye Mukwano Industries LTD yabisobanuye kandi bikaba bihujwe n'imyumvire yarwo, kuba Super Moviate Ltd ikora kandi igacuruza mu Rwanda isabune y'amazi ifite ikirango cya "SUPER", bigize igikorwa cy'ipiganwa ririmo uburiganya, kubera ko bitera urujijo ku

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isabune y'amazi ikorwa kandi icuruzwa na Mukwano Industries Ltd ifite ikirango cya "SUPA", bityo Super Moviante Ltd ikaba igomba guhita ihagarika gukora no gucuruza isabune ifite icyo kirango no gukura ku isoko isabune y'amazi ifite icyo kirango cy'urwuganano cya "SUPER" yaba arimo gucuruzwa, itabikora uko, ibyo bicuruzwa by'isabune y'amazi bifite icyo kirango biri ku isoko bigafatirwa bikangizwa ku ngufu za Leta. Kumenya niba indishyi zisabwa zatangwa [22] Mukwano Industries Ltd, isaba Urukiko gutegeka Super Moviante Ltd kuyiha indishyi mbonezamusaruro zingana n'amafaranga miliyoni ijana na mirongo itanu, isobanura ko ibikorwa byo kwigana ikirango giteza urujijo kuri rubanza byakozwe na Super Moviante Ltd byayiteje igihombo kingana n'amafaranga 50.000.000 buri mwaka, bityo ko Super Moviante Ltd yayiha indishyi mbonezamusaruro zingana n'amafaranga 150,000, 000 yayihombeje mu gihe cy'imyaka 3, uhereye igihe yatangiriye gukora muri 2019. [23] Super Moviante Ltd, ivuga ko izo ndishyi mbonezamusaruro nta shingiro zikwiye guhabwa, isobanura ko nta kimenyetso na kimwe kigaragaza ko yigeze ihombya Mukwano Industries Ltd, cyane ko yakoraga yarabihereye uburenganzira n'urwego rw'igihugu rubifitiye ububasha. UKO URUKIKO RUBIBONA [24] Impaka ziri hagati y'impande zombi kuri iyi ngingo ni ukumenya niba hari igihombo Mukwano Industries Ltd yagize giturutse ku kuba Super Moviante Ltd yarakoresheje ikirango ku gicuruzwa cy'isabune giteye urujijo ku kirango cy'isabune yacuruzwaga na Mukwano Industries Ltd [25] Ingingo ya 12 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezambano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi ivuga ko urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. Naho uvuga ko atagitegetswe gukora icyo yategekwe gukora cyagaragajwe n'ibimenyetso agomba kugaragaza impamvu zakimukuyeho. Iyo abiburiye ibimenyetso, uwo baburana aramutsinda, naho ingingo ya 3 y'itegeko n° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ivuga ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana. [26] Izi ngingo zifatiwe hamwe zumvikanisha ko urega afite inshingano zo gutanga ibimenyetso bigaragaza ko ibyo aregera ari ukuri, ariko na none uregwa na we akaba afite inshingano zo gutanga ibimenyetso bivuguruzwa ibyatanzwe n'urega bigaragaza ko nta nshingano agifitiye urega, ibi bishatse kuvuga ko urega ari we ufite inshingano ya mbere yo kugaragaza ibimenyetso by'ibyo aregera, yabibura agahita atsindwa, bitabaye ngombwa ko uregwa agira icyo avuga, ariko na none mu gihe urega yashoboye kugaragaza ibimenyetso by'ibyo aregera, uregwa aba agomba na we kugaragaza ibimenyetso bivuguruzwa iby'urega, na we atashobora kubivuguruzwa agatsindwa [27] Hashingiwe ku byumvikanishwa n'izi ngingo z'amategeko yavuzwe haruguru, uru Rukiko rusanga kuba Mukwano Industries Ltd ivuga ko kuba Super Moviante Ltd yarakoresheje ikirango ku gicuruzwa cy'isabune giteye urujijo ku kirango cy'isabune yacuruzwaga na Mukwano Industries Ltd byayiteye igihombo cy'amafaranga 150.000.000 mu myaka itatu Super Moviante Ltd imaze ikora, nyamara ibyo ikabivugisha amagambo gusa, nta kimenyetso na kimwe igaragaza cyerekana ko hari amafaranga yahombye bitewe n'ibyo bikorwa bya Super Moviante Ltd, indishyi mbonezamusaruro isaba nta shingiro zifite, kuko itashoboye kugaragaza ko igihombo izishingiraho cyabayeho. Kumenya niba amafaranga yatanze ku rubanza yatangwa

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[28] Mukwano Industries Ltd, isaba Urukiko gutegeka Super Moviante Ltd kuyiha amafaranga 2.500.000 y'ikurikiranarubanza, n'amafaranga 4.500.000 y'igihembo cy'Avoka, kandi ikayisubiza amafaranga 20.000 y'ingwate y'amagarama yatanze. [29] Super Moviante Ltd, ivuga ko idakwiye kuryozwa amafaranga urega yaba yarakoresheje ku rubanza, ngo kuko ari we wishoye mu manza zidafite ishingiro, akaba agomba kwirengera ingaruka n'ikiguzi cyose cyabyo. UKO URUKIKO RUBIBONA [30] Ingingo ya 111 y'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ivuga ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. [31] Iyi ngingo yumvikanisha ko iyo umuntu yashowe mu manza ku makosa y'uwatumye ajya muri izo manza, afite uburenganzira bwo kumurega indishyi zo gushorwa mu manza ku maherere, zijyanye n'ibyo yatakaje kuri urwo rubanza. [32] Hashingiwe rero ku biteganywa n'ingingo yavuzwe haruguru, rusanga kuba Super Moviante Ltd yarandikishije ikirango giteje urujijo ku bicuruzwa by'isabune y'amazi bya Mukwano Industries Ltd, bikayitera impungenge ko bishobora kuyitera igihombo, bigatuma yitabaza inkiko kugira ngo zibuze Super Moviante Ltd gukomeza gukoresha icyo kirango ku bicuruzwa by'isabune y'amazi icuruzwa, kandi ivane ku isoko ibicuruzwa by'isabune y'amazi bifite icyo kirango giteye urujijo ku kirango cya Mukwano Industries Ltd, ikwiye kubiyihera amafaranga y'ikurikiranarubanza angana n'ibihumbi 300.000 n'igihembo cy'Avoka wayiburaniye kingana n'amafaranga 1.000.000, no kuyisubiza amafaranga ibihumbi 20.000 yanzeho ingwate y'amagarama. III. ICYEMEZO CY'URUKIKO [33] Rwemeje ko ikirego rwashyikirijwe na Mukwano Industries Ltd gifite ishingiro. [34] Rwemeje ko ikirango « SUPER » cya Super Moviante Ltd ari urwiganwa rw'ikirango « SUPA » cya Mukwano Industries Ltd, kandi ko ikoreshwa ryacyo bikozwe na Super Moviante Ltd, bigize ipiganwa ririmo uburiganya. [35] Rutegetse Super Moviante Ltd guhita ihagarika gukora no gucuruza isabune y'amazi ifite ikirango "SUPER" no gukura ku isoko isabune y'amazi ifite icyo kirango cy'urwiganano cya "SUPER" yaba irimo gucuruzwa, itabikora uko, ibyo bicuruzwa by'isabune y'amazi bifite icyo kirango biri ku isoko bigafatirwa, bikangizwa ku ngufu za Leta. [36] Rutegetse Super Moviante Ltd guha Mukwano Industries Ltd amafaranga ibihumbi magana atatu (300.000Frw) y'ikurikiranarubanza, n'amafaranga miliyoni imwe y'igihembo cy'Avoka. [37] Rutegetse Super Moviante Ltd gusubiza Mukwano Industries Ltd amafaranga ibihumbi makumyabiri (20.000Frw) y'ingwate y'amagarama yishyuye ubwo yatangaga iki kirego.

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