

RWANDA / JUDGMENT

SOCOBICO INDUSTRIES S.A vs. ECOBANK N'ABANDI

RS/INJUST/RC 00008/2021/SC

COURT

Supreme Court

DECIDED

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SOCOBICO INDUSTRIES S.A vs. ECOBANK N'ABANDI

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Text

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SOCOBICO INDUSTRIES S.A vs. ECOBANK N'ABANDI [Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00008/2021/SC (Cyanzayire, P.J., Mukamulisa, Kalihangabo na Hitiyaremye J.) 19 Mata 2024] Amasezerano – amasezerano y'umwenda – Ibigize ubucuruzi (fond de commerce) – Uburenganzira bwo gukurikirana ibigize ubucuruzi (droit de suite) – Uburenganzira bwo gukurikirana bw'ufitiye umwenda wanditswe buha bushingiye ku mitungo yandikishijwe, ntibushingira k'umufitiye umwenda – Ufitiye umwenda afite uburenganzira bwo gukurikirana imitungo cyangwa ibigize ubucuruzi aho byaba byahererekanijwe hose (droit de suite), maze undi wabiguze wese akabisubiza, ariko ubwo burenganzira abuhabwa iyo agaragaje ibimenyetso byerekana umwirondoro uhamye w'ibigize ubwo bucuruzi bwe (fonds de Commerce). Incamake y'ikibazo: ECOBANK Rwanda S.A (ubu yabaye ECOBANK Rwanda PIC) yahaye SOCOBICO Industries S.A inguzanyo ingana na 379.000.000Frw, nayo yiyemeza gutanga ingwate y'umutungo utimukanwa ugizwe n'inyubako. Impande zombi zakoranye nanone andi masezerano y'ubugwate yiswe acte de gage de fonds de commerce, aho yiyemeje gutanga ingwate igizwe n'imitungo igize

ubucuruzi (fonds de commerce) y'iyi sosiyete mu gihe cy'imyaka 10, maze muri ayo masezerano, zumvikana ko mu gihe uwahawe inguzanyo izaba inaniwe kwishyura, ingwate yatanze izatezwa cyamunara nta rubanza rubaye (clause d'exécution par voie parée).

Nyuma y'aho SOCOBICO Industries S.A inaniriwe kwishyura umwenda wose yari yahawe, Urukiko rutegeka ko ingwate zatanze zirimo fond de commerce ya sosiyete hamwe n'imitungo itimukanwa zigurishwa muri cyamunara, maze zegukanwa na sosiyete Trust Industries Ltd ku gaciro ka 320.150.000Frws. Ayo mafaranga yavuye muri cyamunara yashyikirijwe ECOBANK Rwanda PIC, ariko kuko atashoboye kwishyura inguzanyo yose, SOCOBICO Industries S.A isigarana umwenda ungana na 258.000.000Frw. Trust Industries Ltd nayo yagurishije iyo mitungo yose sosiyete Catch Up Investment Ltd, iyo nayo iwugurisha sosiyete ROBA Industries Ltd. SOCOBICO Industries S.A yareze ECOBANK Rwanda Pic, Trust Industries Ltd na Notaire Uwitonze Nasira mu Rukiko Rukuru rw'Ubucuruzi, isaba gukemura impaka zikomoka ku irangiza ry'icyemezo cy'urukiko cyategutse guteza cyamunara umutungo wayo; gutesha agaciro cyamunara; isaba no gusubizwa imitungo igize ubucuruzi (fonds de commerce) ivuga ko yahawe Trust Industries Ltd mu buriganya. Trust Industries Ltd na ECOBANK Rwanda PIC yatanze inzitizi y'iburabubasha bw' Urukiko Rukuru rw'Ubucuruzi ivuga ko nta bubasha rufite bwo kuburanisha ikirego cyatanze na SOCOBICO Industries S.A kuko kirebana n'impaka zikomoka ku irangiza ry'icyemezo cya Perezida w'Urukiko Rwisumbuye rwa Nyarugenge gitegeka guteza cyamunara ("ordonnance de vente par voie parée) kandi amategako ateganya ko bene izo mpaka ziburanishwa n'Urukiko rwatanze icyo cyemezo. Urukiko Rukuru rw'Ubucuruzi rwasanze ikirego cyatanze na SOCOBICO Industries S.A kitaragomba kwakirwa kuko kitari mu bubasha bw'urukiko ahubwo ko cyari mu bubasha bw'Urukiko Rwisumbuye rwa Nyarugenge. SOCOBICO Industries S.A nayo itanga ikirego mu Rukiko Rwisumbuye rwa Nyarugenge irega ECOBANK Rwanda PIC, Trust Industries Ltd na Me Uwitonze Nasira, ivuga ko ingwate zigizwe n'imitungo itimukanwa (inyubako) yari ihagije mu kwishyura uwo mwenda, bityo ko bitari ngombwa kugurisha na fonds de commerce yayo yari yatanze ingwate.

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Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko cyamunara yakozwe ku mutungo w'ibigize ubucuruzi (fonds de commerce), yakozwe mu buryo bunyuranyije n'amategako, bityo ko iteshwe agaciro. ECOBANK Rwanda PIC, Trust Industries S.A na Notaire Uwitonze Nasira bajuririje Urukiko Rukuru. ECOBANK Rwanda PIC na Trust Industries Ltd bavuga ko bitari ngombwa kongera gusaba ikindi cyemezo cya kabiri cyo kugurisha ingwate kandi Umucamanza yaremeje ko ibyagurishijwe aribyo inyubako na fond de commerce ari umutungo umwe kandi utatandukanywa,

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bityo ko cyamunara yubahirije amategako kuko mbere y'uko iba, yaratangajwe. Notaire Uwitonze Nasira nawe yarajurije avuga ko atagurishije fonds de commerce ahubwo ko yagurishije inzu. Urukiko Rukuru rwemeje ko ubujurire bwatanze na ECOBANK Rwanda Plc, Trust Industries Ltd

na Me Uwitonze Nasira bufite ishingiro, maze rwemeza ko cyamunara igumanye agaciro kayo. SOCOBICO Industries S.A yajuririye mu Rukiko rw'lkirenga ivuga ko Urukiko Rukuru rwahinduye ikiburanwa kuko ku rwego rwa mbere ikiburanwa cyari ugukemura impaka zavutse mu irangizarubanza, mu gihe mu rwego rw'ubujurire rwemeje ko icyemezo cya Perezida w'Urukiko kitagize icyemezo cy'amategeko, runemeza mu buryo bunyuranyije n'amategeko ko fonds de commerce iri mu bigize ingwate y'umutungo utimukanwa. SOCOBICO Industries yavuze kandi ko yajuririye ku mpamvu yuko Urukiko rwavugurujye imvugo za Noteri Uwitonze Nasira rwanga guha agaciro ukwiyemerera kwe ko yagurishije inzu atagurishije fonds de commerce, ndetse ko amasezerano yashingiweho hatangwa ingwate kuri fonds de commerce nta gaciro yahabwa kuko Umuyobozi Mukuru wayo nta burenganzira yari abifitiye bwo kuyasinye atabanje gusaba uruhushya Inama y'Ubuyobozi. Urukiko rw'lkirenga rwemeje ko ubujurire bufite ishingiro kuri bimwe, rwemeza ko Trust Industries Ltd igomba gusubiza SOCOBICO Industries S.A fonds de commerce yabonye igihe cyamunara yakorwaga. Nyuma yaho, SOCOBICO Industries S.A yandikiye Urwego rw'Umuwanyi Mukuru isaba ko urubanza RCAA 0011/13/CS rwaciwe n'Urukiko rw'lkirenga rwasubirwamo ku mpamvu z'akarengane kuko rudashobora kurangizwa ukurikije uko rwaciwe kuko Urukiko rw'lkirenga rutagaragaje urutonde rw'ibigize fonds de commerce igomba gusubizwa n'uburyo bizasubizwamo. SOCOBICO Industries S.A ikomeza ivuga ko nyuma y'aho Trust Industries Ltd yegukanye imitungo yayo muri cyamunara, maze igategekwa n'Urukiko rw'lkirenga kuyisubiza (fonds de commerce), ntiyabyubahirije, ahubwo yawikuyeho, iwegurira sosiyete Catch Up Investment Ltd, iyo nayo iwugurisha sosiyete ROBA Industries Ltd. Ku bwibyo, SOCOBICO ivuga ko ifite uburenganzira bwo gukurikirana imitungo yayo aho yaba iri hose (le droit de suite) kuko ingwate igizwe na fond de commerce itari gutezwa cyamunara kuko ingwate zindi zigizwe n'imitungo itimukanwa zari zihagije. ECOBANK yiregura ivuga ko ikirego kirebana no kumenya agaciro ka fonds de commerce cyatanzwe na SOCOBICO Industries S.A gisaba gusubirishamo urubanza ku mpamvu z'akarengane kitakwakirwa ngo gisuzumwe kuri uru rwego kuko gifatwa nk'ikirego gishya kitigeze gisuzumwa mbere, bityo ko abishatse yabiregera bundi bushya, avuga ko ibyo ibishingira ku murongo wafashwe n'Urukiko rw'lkirenga aho rwavuze ko ingingo umuburanyi atatanze ajurira ku bushake bwe, adashobora kwifashisha inzira yo gusubirishamo urubanza ku mpamvu z'akarengane ngo asabe ko isuzumwa. Me Nyembo Emelyne wunganira Notaire Uwitonze Nasira, yisobanuye avuga ko icyo uwo yunganira yagurishije ari ingwate yari yarahawe ECOBANK Rwanda Plc atari fonds de commerce, ibyo akabishingira ku itangazo rya cyamunara, raporo ya cyamunara na main levée d'hypothèque, ndetse n'ingwate yari yanditse muri RDB hamwe na expertise yari yatanzwe ubwo yasabaga inguzanyo. Me Nyembo akomeza avuga ko kuba mu rubanza RCAA 0011/13/CS rwaciwe n'Urukiko rw'lkirenga rutagaragaje urutonde rw'ibizasubizwa SOCOBICO n'uburyo izasubizwamo, ibyo byafatwa nk' inenge igomba gukosorwa kugira ngo fonds de commerce isubizwe nyirayo yayo.

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Avuga kandi sosiyete Trust Industries Ltd yegukanye imitungo yose muri cyamunara itari ifite ububasha bwo kuyegurire undi muntu kandi uwo ariwe wese kandi izi neza ko ikibazo kiwushingiyeho kiri mu manza kitari cyarangira, bityo ko hakwiriye kubahirizwa ihame rya droit

de suite, maze Urukiko rukemeza ko ibyakozwe na Trust Industries Ltd ari ikosa, ibintu bigasubira uko byari bimeze, abafite uwo mutungo (fonds de commerce) bakawugarura. Sosiyete Catch Up Investment Ltd yaguze umutungo uburanwa iwugurishijwe na sosiyete Trust yawegukanye muri cyamunara, yiregura ivuga ko inyandiko Urwego rw'Umuvunyi rwashingiyeho rwemeza akarengane, SOCOBICO Industries S.A. itari yigeze iziburanisha na rimwe kuko expertise yakoreshejwe imanza zaramaze gucibwa, bityo ko ibyo bitagombye gufatwa nk'akarengane kuko Urukiko rw'Ikirenga mu Rubanza RS/INTER/CIV 001/14/CS rwasanze kuva imanza zatangira, SOCOBICO Industries S.A itigeze iregera agaciro ka fonds de commerce. Sosiyete Catch Up ivuga kandi ko ntacyo yagombye kubazwa muri uru rubanza bitewe nuko itaragize uruhare mu masezerano ya Gage du fonds de commerce yabaye hagati ya ECOBANK Rwanda PIC na SOCOBICO Industries S.A. Sosiyete Catch Up yongeyeho ivuga ko hashingiwe ku nyandikomvugo ya cyamunara, igaragaza ko icyagurishijwe ari ingwate igizwe n'ubutaka n'inzu zari ziburiho, bityo ko ikibazo gihari cyaba ari ukumenya niba ubwo butaka n'izo nyubako bigize fonds de commerce hashingiwe ku bisobanuro bya fonds de commerce icyo aricyo. Sosiyete Catch Up irangiza ivuga ko yaguze n'umutima mwiza (acquéreur de bonne foi), kandi ibyo yaguzwe bikaba ntaho bihuriye na fonds de commerce, bityo akaba ari yo mpamvu nta na droit de suite yagombye kubaho hakurikiranwa umutungo udafite aho uhuriye n'uwaguzwe, kandi ko ku birebana na cyamunara habaye amatangazo, nyamara nta tambama ryigeze rikorwa. Incamake y'icyemezo: 1. Ufitiwe umwenda afite uburenganzira bwo gukurikirana imitungo cyangwa ibigize ubucuruzi aho byaba byahererekanijwe hose (droit de suite), maze undi wabiguzwe wese akabisubiza, ariko ubwo burenganzira abuhabwa iyo agaragaje ibimenyetso byerekana umwirondoro uhamye w'ibigize ubwo bucuruzi bwe (fonds de Commerce).

2. Kugirango habe umucyo ku bigize fonds de commerce ya SOCOBICO Industries Ltd igomba gusubizwa na Trust Industries Ltd, ni ngombwa gushyiraho Umuhanga mu by'ibaruramari uzaba ashinzwe imirimo yo kugaragaza ibintu bigize ubucuruzi (fonds de commerce) bigaragara muri gage de fonds de commerce y iyo sosiyete yari igifite umunsi w'icyamunara. Urukiko rwemeje ko nta mutungo wa SOCOBICO Industries Ltd uri mu maboko ya ROBA Industries Ltd ikomora kuri Trust Industries Ltd binyuze kuri Catch Up Investment Ltd igomba kuyisubiza; Urubanza ruzakomeza ku itariki izamenyeshwa ababuranyi. Amategeko yashingiweho: Itegeko N 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3; Itegeko N 045/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 113. Imanza zifashishijwe. Urubanza RS/INJUST/RSOC 00001/2022/SC rwa SONARWÃ LIFE ASSURANCE COMPANY LTD na Rugina Jason rwaciwe n'Urukiko rw'Ikirenga kuwa 08/07/2022 ; Urubanza RS/INJUST/RC 00007/201 USC rwa Nditiribambe Samuel, Gatera Jason na Nyâmawa Fautin rwaciwe n'Urukiko rw'Ikirenga kuwa 13/03/2020. Urubanza

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IMITERERE Y'URUBANZA. [1] Ku wa 09/09/2008, ECOBANK Rwanda S.A (ubu yabaye ECOBANK Rwanda PIC) yahaye SOCOBICO Industries S.A inguzanyo ingana na 379.000.000Frw, nayo yiyemeza gutanga ingwate y'umutungo utimukanwa ugizwe n'inyubako ikoreramo imirimo

ijyanye n'inganda iri mu kibanza No 1109 gihereye mu Murenge wa Nyarugenge, mu Mujyi wa Kigali. I Impande zombi zumvikanye kandi ko mu gihe SOCOBICO Industries S.A izaba inaniwe kwishyura, ingwate yatanze izatezwa cyamunara nta rubanza rubaye (clause d'exécution par voie parée).

[2] Ku wa 04/09/2008, ECOBANK Rwanda PIC yari yakoranye andi masezerano y'ubugwate na SOCOBICO Industries S.A yiswe acte de gage de fonds de commerce, aho yiyemeje gutanga ingwate igizwe n'imitungo igize ubucuruzi (fonds de commerce) y'iyi sosiyete, mu gihe cy'imyaka 10. [3] Nyuma y'aho SOCOBICO Industries S.A inaniriwe kwishyura urnwenda wose yari yahawe, ku wa 24/06/2010, ECOBANK Rwanda PIC yandikiye Perezida w'Urukiko Rwisumbuye rwa Nyarugenge isaba ko hashyirwaho umunsi wo kugurisha mu cyamunara inzu ya SOCOBICO Industries S.A, iri mu kibanza No 1109, gihereye i Nyarugenge, yari yatanze ingwate kugira ngo hishyurwe iyo nguzanyo. Mu cyemezo No 0139/MH/2010 cyo ku wa 29/06/2010 cyo kugurisha ingwate mu cyamunara, Perezida w'Urukiko Rwisumbuye rwa Nyarugenge yategetse ko iyo cyamunara igomba kuba ku wa 16/08/2010, saa yine za mu gitondo. Uwo munsi ugeze, cyamunara ntiyabaye, yimurirwa ku wa 02/09/2010, nabwo ntiyaba, irongera yimurirwa ku wa 17/09/2010, saa yine za mu gitondo.

'I Reba ingingo ya 5 ya acte hypothécaire, ivuga ko "en sureté et garantie de remboursements de toutes sommes dues en principal, intérêt, commissions et frais dont il est ou se trouverait débiteur, le créancier déclare qu'il est au profit de la banque l'immeuble énuméré ci-après et les constructions y érigées ou à ériger ; il s'agit de l'immeuble à usage exclusivement industriel Sis dans la parcelle NO 1109 à Nyarugenge/Kigali," Reba ingingo ya 3 ya acte de gage de fonds de commerce. Le gage comprend toutes les valeurs qui composent le fonds de commerce et notamment l'achalandage, l'enseigne, l'organisation commerciale, les marques, et brevets, la clientèle et les créances sur celle-ci, les droits à tous marchés conclus et à conclure, le matériel roulant, l'outillage, le mobilier existant à venir, les fonds en espèces, les effets commerciaux.

[4] Ku wa 17/09/2010, Me Uwitonze Nasira wari Noteri wa Leta mu Karere ka Nyarugenge, yagurishije iyo ngwate muri cyamunara yegukanwa na TRUST Industries Ltd, ihagarariwe na Mugabo Claver, ku gaciro ka 320.150.000Frws; icyakora Biseruka Stanislas wari uhagarariye SOCOBICO Industries S.A ubwo iyo cyamunara yabaga, ntiyashyira urnukono kuri iyo

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nyandikomvugo. Ayo mafaranga yashyikirijwe ECOBANK Rwanda PIC, SOCOBICO Industries S.A isigarana urnwenda ungana na 258.000.000Frw. [5] SOCOBICO Industries S.A yareze ECOBANK Rwanda Pic, Trust Industries Ltd na Me Uwitonze Nasira mu Rukiko Rukuru rw'Ubucuruzi, isaba gukemura impaka zikomoka ku irangiza ry'icyemezo cya Perezida w'Urukiko Rwisumbuye rwa Nyarugenge gitegeka guteza cyamunara umutungo wayo; gutesha agaciro cyamunara yakozwe ku wa 17/09/2010, gusubizwa imitungo igize ubucuruzi (fonds de commerce) bwayo ECOBANK Rwanda PIC na Noteri bahaye Trust Industries Ltd mu buriganya; kwishyurwa igihombo kibazwe kuva ku wa 17/09/2010 kugeza ibintu bisubijwe; guhabwa indishyi z'akababaro n'amafaranga y'ikurikiranarubanza; no gushyiraho by'agateganyo umuntu wigenga ushinze gucunga ikigo

cy'ubucuruzi kiri mu manza no guhagarika imirimo y'ubucuruzi. [6] Trust Industries Ltd na ECOBANK Rwanda PIC batanze inzitizi bavuga ko Urukiko Rukuru rw'Ubucuruzi nta bubasha rufite bwo kuburanisha ikirego cyatanzwe na SOCOBICO Industries S.A kuko kirebana n'impaka zikomoka ku irangiza ry'icyemezo cya Perezida w'Urukiko Rwisumbuye rwa Nyarugenge gitegeka guteza cyamunara umutungo wa SOCOBICO Industries S.A ("ordonnance de vente par voie parée) kandi amategeko ateganya ko bene izo mpaka ziburanishwa n'Urukiko rwatanze icyo cyemezo. [7] Mu rubanza RCOM 0334/10/1-ICC rwaciwe ku wa 21/01/2011, Urukiko Rukuru rw'Ubucuruzi rwasanze ikirego cyatanzwe na SOCOBICO Industries S.A kitagomba kwakirwa kuko kitari mu bubasha bw'ubucuruzi, ahubwo ko cyari mu bubasha bw'Urukiko Rwisumbuye rwa Nyarugenge. [8] SOCOBICO Industries S.A yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge irega ECOBANK Rwanda PIC, Trust Industries Ltd na Me Uwitonze Nasira, isaba nk'ibyo yari yasabye mu kirego yari yatanze mu Rukiko Rukuru rw'Ubucuruzi, inavuga ko ikurikije urnwenda yari ibereyemo ECOBANK Rwanda PIC ndetse n'igenagaciro ryakozwe n'umuhanga, isanga ingwate ku mutungo utimukanwa yari yatanzwe hashingiwe ku ngingo ya 5 y'amasezerano yo ku wa 09/09/2008, yari ihagije mu kwishyura uwo mwenda, ko bitari ngombwa kugurisha fonds de commerce. [9] Mu rubanza RC 0101/11/TG1/NYGE rwaciye ku wa 25/11/2011, Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko cyamunara yo ku wa 17/09/2010 ku mutungo w'ibigize ubucuruzi (fonds de commerce), yakozwe mu buryo bunyuranyije n'amategeko. Urukiko rwemeje ko iyo cyamunara ivanyweho kuko hagurishirijwe rimwe ingwate yatanzwe ku wa 09/09/2008 ndetse n'iyatanzwe ku wa 04/09/2008, hirengagijwe ko uruhushya rwaanzwe ku wa 29/06/2010 rwaangaga uburenganzira bwo kugurisha ingwate yo mu masezerano yo ku wa 09/09/2008. Rwanzuye ko ikirego cya SOCOBICO Industries S.A gifite ishingiro kuri bimwe, rwemeza ko rudafite ububasha bwo gushyiraho ucunga by'agateganyo SOCOBICO Industries S.A, rutegeka ko Trust Industries S.A isubiza SOCOBICO Industries S.A 11.498.750 Frw, rutegeka ECOBANK Rwanda Pic, Me Uwitonze Nasira na Trust Industries S.A gufatanya kwishyura SOCOBICO Industries S.A 60.000.000 Frw y'indishyi mbonezamusaruro, 7.500.000 Frw y'indishyi z'akababaro na 1.500.000 Frw y'igihembo cya Avoka; rutegeka abaregwa gufatanya kwishyura 4% y'umusogongero wa Leta ubariwe kuri 69.000.000Frw angana na 2760.000Frw, runabategeka gufatanya kwishyura 21.000 Frw y'ingwate y'amagarama y'urubanza. [10] ECOBANK Rwanda PIC, Trust Industries S.A na Me Uwitonze Nasira bajuririyeye Urukiko Rukuru. ECOBANK Rwanda PIC na Trust Industries Ltd zivugaga ko bitari ngombwa kongera gusaba ikindi cyemezo cya kabiri cyo kugurisha ingwate kandi Umucamanza yaremeje ko ibyagurishijwe ari umutungo umwe kandi utatandukanywa ndetse ko n'iyi haba harabaye ikosa muri procédure bitarutishwa gukemura ikibazo banki yari ifite cyo kwishyurwa, Trust Industries Ltd y

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ikongeraho ko cyamunara yubahirije amategeko kuko mbere y'uko iba yatangajwe, kandi ko itumva ikosa yakoze ku buryo yacibwa indishyi. [11] Me Uwitonze Nasira yajuririyeye avugaga ko Urukiko Rwisumbuye rwivugururije, ko atagurishije fonds de commerce ahubwo yagurishije inzu, kandi ko bigaragaye ko yakoze ikosa byabazwa umukoresha we ari we Akarere ka Nyarugenge kuko katigeze kitandukanya na we kandi ko amafaranga yavuye muri cyamunara hari ayinjiye mu

Karere. Avuga kandi ko indishyi zigomba gusabwa uwungukiye muri icyo gikorwa. [12] Mu rubanza RCA 0435/11/HC/KIG, RCA 0450/11/HC/KIG, RCA 0437/11/HC/KIG, RCA 0439/11/HC/KIG rwaciwe ku wa 12/10/2012, Urukiko Rukuru rwemeje ko ubujurire bwatanzwe na ECOBANK Rwanda Plc, Trust Industries Ltd na Me Uwitonze Nasira bufite ishingiye, rwemeza ko urubanza NO 0101/11/TGI/NYGE rwaciwe ku wa 25/11/2011 ruhindutse ndetse n'indishyi zatanzwemo zikuweho; rwemeza ko cyamunara yakozwe ku wa 17/09/2010 hubahirizwa amasezerano y'ingwate yo ku wa 09/09/2008 iri mu kibanza no 1109 gihereye mu Kiyovu igumanye agaciro kayo; rutegeka SOCOBICO Industries S.A kwishyura 17.950 Frw y'amagarama y'ibyakozwe mu rubanza. [13] SOCOBICO Industries S.A yajuririyeye Urukiko rw'lkirenga ivuga ko Urukiko Rukuru rwahinduye ikiburanwa kuko ku rwego rwa mbere ikiburanwa cyari ugukemura impaka zavutse mu irangizarubanza, mu gihe mu rwego rw'ubujurire rwemeje ko icyemezo cya Perezida w'Urukiko kitagize icyemezo cy'amategeko, runemeza mu buryo bunyuranyije n'amategeko ko fonds de commerce iri mu bigize ingwate y'umutungo utimukanwa. SOCOBICO Industries yavuze kandi ko Urukiko rwavugurujye invugo za Noteri Uwitonze Nasira rwanga guha agaciro ukwiyemerera kwe ko yagurishije inzu atagurishije fonds de commerce, ndetse rwanga nta mpamvu ko ihabwa 60.000.000 Frw yasagutse muri cyamunara; inongeraho ko amasezerano yo ku wa 04/09/2008 yashingiweho hatangwa ingwate kuri fonds de commerce nta gaciro yahabwa kuko Umuyobozi Mukuru wayo nta burenganzira yari abifitiye bwo kuyasinyira atabanje gusaba uruhushya Inama y'Ubuyobozi. ECOBANK Rwanda PIC na Trust Industries Ltd batanze ubujurire bwuririyeye ku bundi basaba indishyi, amafaranga y'igihembo cya Avoka n'amafaranga y'ikurikirana rubanza. [14] Mu rubanza RCAA 0011/13/CS rwaciwe ku wa 15/11/2013, Urukiko rw'lkirenga rwemeje ko ubujurire bwatanzwe na SOCOBICO Industries S.A bufite ishingiye kuri bimwe, rwemeza ko Trust Industries Ltd igomba gusubiza SOCOBICO Industries S.A fonds de commerce yabonye igihe cyamunara yo ku wa 17/09/2010 yakorwaga, rwemeza ko SOCOBICO Industries S.A itahabwa 60.000.000 Frw yasagutse ku kiguzi cy'ingwate kuko yayaregeye mu bujurire ndetse ikaba itagaragaza ikimenyetso cy'uko yayasabye ECOBANK Rwanda PIC ikayayima, runemeza ko ubujurire bwuririyeye ku bundi bwatanzwe na ECOBANK Rwanda PIC n'ubwa Trust Industries Ltd nta shingiro bufite. [15] Ku wa 17/01/2014, SOCOBICO Industries S.A yatanze ikirego mu Rukiko rw'lkirenga isaba gusobanura igika cya 121 cy'urubanza RCAA 0011/13/CS rwaciwe ku wa 15/11/2013. Isobanura ko ishingiye ku cyemezo cyafashwe muri UNIO rubanza gitegeka Trust Industries Ltd kuyisubiza fonds de commerce yafatiriyeye, ikabihuza n'imiterere yayo (nature même de fonds de commerce), isanga kidashobora gushyirwa mu bikorwa, bityo ko icyaba igisubizo ari uko Urukiko rwagena agaciro mu mafaranga k'ibigomba gusubizwa SOCOBICO Industries S.A. Ikomeza ivuga ko icyo cyemezo kitagaragaza neza ikigomba gusubizwa uwatsinze (imprécision), ivuga kandi ko fonds de commerce igenda ihinduka mu gaciro (valeur), bityo ko muri uru rubanza kabarwa kuwa ku wa 17/09/2010 igihe cyamunara yabereye kandi kakabarwa mu mafaranga aho kubarwa mu ngurane (en nature). [16] Mu rubanza RS/INTER/CIV 0001/14/CS rwaciwe ku wa 20/06/2014, Urukiko rw'lkirenga rwemeje ko ikirego cya SOCOBICO Industries S.A gisaba gusobanura urubanza RCAA

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0011/13/CS rwaciwe ku wa 15/11/2013 nta shingiro gifite, rwemeza ko nta mpamvu yo gusobanura igika cya 121 cy'urwo rubanza. [17] Ku wa 14/12/2017, SOCOBICO Industries S.A yandikiye Urwego rw'Umuvunyi Mukuru isaba ko urubanza RCAA 0011/13/CS rwaciwe n'Urukiko rw'lkirenga ku wa 15/11/2013 rwasubirwamo ku mpamvu z'akarengane kuko rudashobora kurangizwa ukurikije uko rwaciwe. Nyuma yo gusuzuma icyo kibazo, ku wa 03/05/2019, Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'lkirenga rusaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'lkirenga, ashingiye kuri raporo yakozwe n'Ubugenzuzi Bukuru bw'Inkiko, ku wa 05/10/2021, yafashe icyemezo NO 240/0/2021, yemeza ko urwo rubanza rwoherezwa mu Bwanditsi bw'Urukiko rw'lkirenga kugira ngo ruzongere ruburanishwe, ruhabwa RS/INJUST/RC 00008/2021/SC. [18] Urubanza rwatangiye kuburanishwa ku wa 27/06/2023, SOCOBICO Industries S.A ihagarariwe na Me Karangwa Vincent, Me Serge DOUMTSOP Nzogning na Me Shyaka Mashami Vincent; ECOBANK Rwanda Plc ihagarariwe na Me Mukakabanda Athanasie; Me Uwitonze Nasira yunganiwe na Me Nyembo Emelyne; ROBA Industries Ltd ihagarariwe na Me Mucyo Donatien, Trust Industries Ltd ititabye, itanatanze impamvu, kandi yarahamagawe mu nzira no buryo buteganywa n'amategeko. [19] Nyuma yo kumva invugo z'ababuranyi ku busabe bw'uhagarariye ROBA Industries Ltd bwo kugobokesha ku gahato Catch Up Investment Ltd kuko ariyo yayigurishije umutungo ifite uburanwa, Urukiko rwafashe icyemezo ko urubanza rusubikwa, iyo sosiyete ikagobokeshwa. [20] Muri iryo buranisha kandi Urukiko rwasabye Me Uwitonze Nasira kurushyikiriza urutonde rw'ibygurishijwe mu cyamunara; SOCOBICO Industries S.A itegukwa kugaragaza urutonde rw'ibigize fonds de commerce ivuga ko byagurishijwe mu cyamunara; naho ROBA Industries Ltd itegukwa kuzashyikiriza Urukiko urutonde rw'ibigize fonds de commerce yaguze na Catch Up Investment Ltd. [21] Iburanisha mu ruhamye ryakomeje ku wa 27/09/2023, SOCOBICO Industries S.A ihagarariwe na Me Karangwa Vincent, Me Serge DOUMTSOP Nzogning na Me Shyaka Mashami Vincent, ECOBANK Rwanda Plc ihagarariwe na Me Mukakabanda Athanasie, Me Uwitonze Nasira yunganiwe na Me Nyembo Emelyne, ROBA Industries Ltd ihagarariwe na Me Mucyo Donatien. Trust Industries Ltd yahamagawe ahatazwi, Catch Up Investment Ltd ihagarariwe na Me Gatera Gashabana. Habanje gusuzumwa ikibazo bikurikira: kumenya niba Catch Up Investment Ltd ishobora kugobokeshwa mu rubanza ruri ku rwego rw'akarengane; kuba Urwego rw'Umuvunyi rwarafashe icyemezo cy'uko nta karengane kari mu rubanza RCAA 00011/2013/CS hanyuma rukisubiraho nta tegeko rushingiyeho; no kumenya niba ubusabe bwa SOCOBICO Industries S.A bwaratanzwe mu gihe giteganywa n'amategeko. [22] Urukiko rwafatiye icyemezo mu ntebe, rushingiye ku murongo rwatanze mu rubanza N O RS/INJUST/RP 00005/2018/sc rwaciwe ku wa 20/09/2019 aho rwasobanuye ko mu iburanisha ry'urubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane, uwo ariwe wese ufite aho ahuriye n'urubanza ashobora kurugobokeshwamo kugira ngo hatangwe ubutabera bwuzwe; rwanzura ko inzitizi irebana n'igobokeshwa rya Catch Up Investment Ltd idafite ishingiro. Naho ku kibazo kijyanye no kuba Urwego rw'Umuvunyi rwarafashe ibyemezo bivuguruzanya, rwasanze ibyemezo bifatwa n'Urwego rw'Umuvunyi ari ibyemezo by'ubuyobozi bishobora kuba byasubirwamo n'urwo rwego nk'uko byasobanuwe mu rubanza RS/INJUST/RC 00008/2019/SC haburana Gahire Athanase na Mukarushakiro n'abandi.

[23] Urukiko rwasanze kandi urubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane rwaraciwe ku wa 15/11/2013, ubusabe bwo kurusubirishamo bugatangwa ku wa 14/12/2017, bikaba bigaragara ko bwatanzwe mbere y'uko Itegeko No 30/2018 ryo ku wa 02/06/2018 rigena ububasha

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bw'inkiko ritangarijwe mu igazeti ya Leta, rwanzura ko ibara ry'ibihe rigomba gushingira ku gihe ubusabe bw'ibanze bwinjiriye, aho gushingira ku gihe yatakambiyeho, bit-yo iyo nzitizi ijyanye no kutubahiriza ibihe hemezwa ko nta shingiro ifite. [24] Iburanisha mu ruhame ryakomeje ku wa 22/11/2023, SOCOBICO Industries S.A ihagarariwe na Me Karangwa Vincent, Me SERGE DOUMTSOP Nzogning na Me Shyaka Mashami Vincent; ECOBANK Rwanda Plc ihagarariwe na Me Nsengiyumva François; Me Uwitonze Nasira yunganiwe na Me Nyembo Emelyne; ROBA Industries Ltd ihagarariwe na Me Mucyo Donatien. Trust Industries yahamagawe ahatazwi, Catch Up Investment Ltd ihagarariwe na Me Gatera Gashabana. Mu rwego rwo kubahiriza uburenganzira bujyanye no kwiregura kw'ababuranyi no mu nyungu z'ubutabera, Urukiko rwasanze iburanisha rikwiye kwimurwa kugirango ababuranyi babashe kumenya ibikubiye muri rapport d'expertise yashyizwe muri IECMS na SOCOBICO Industries S.A ku wa Actual text of the decision. [25] Iburanisha mu ruhame ryakomeje ku wa 05/03/2024, SOCOBICO Industries S.A ihagarariwe na Me Karangwa Vincent, Me Serge DOUMTSOP Nzogning na Me Shyaka Mashami Vincent; ECOBANK Rwanda Plc ihagarariwe na Me Nsengiyumva Francois, Me Uwitonze Nasira yunganiwe na Me Nyembo Emelyne, ROBA Industries Ltd ihagarariwe na Me Mucyo Donatien; Trust Industries Ltd yahamagawe ahatazwi, Catch Up Investment Ltd ihagarariwe na Me Gatera Gashabana. Uwo muni iburanisha ryarapfundikiwe, ababuranyi bamenyeshwa ko urubanza ruzasomwa ku wa 19/04/2024, ariko Urukiko ruha SOCOBICO Industries S.A icyumweru cyagombaga kurangira ku wa 12/03/2024, kuba yatanze ibimenyetso yavuze bigaragaza identification du fonds de commerce. [26] Ikibazo kigomba gusuzumwa muri uru rubanza ni ibi bikurikira: Kumenya niba Urukiko rukwiye kwemeza agaciro k'ibigize urnutungo w'ubucuruzi (fonds de commerce) ugomba gusubizwa SOCOBICO Industries S.A n'ugomba kuwuyisubiza;

11. IBIBAZO PIGIZE URUBANZA N'ISESENGURA RYABYO 1. Kumenya niba Urukiko rukwiye kwemeza agaciro k'ibigize umutungo w'ubucuruzi (fonds de commerce) ugomba gusubizwa SOCOBICO Industries S.A n'ugomba kuwuyisubiza [27] Abahagarariye SOCOBICO Industries S.A bavuga ko mu mwanzuro ne OMB.03/1082/0519/HA wafashwe ku wa 29/04/2019, Urwego rw'Umuvunyi rwagaragaje ko urubanza RCA 0011/13/CS rwaciwe ku wa 15/11/2013 rwategetse ko Trust Industries Ltd isubiza SOCOBICO Industries S.A fonds de commerce yafatiriye nyuma ya cyamunara yo ku wa 17/09/2010, nyamara ko urwo rubanza rudashobora kurangizwa kuko Urukiko rw'lkirenga rutagaragaje urutonde rw'ibigize fonds de commerce igomba gusubizwa, bityo ko bitashoboka ko Urukiko rutegeka ko hasubizwa stock, mu gihe rutagaragaje ibiyigize. Bakomeza bavuga ko mu nyandiko yiswe rapport d'expertise re/atifa la détermination de la valeur du fonds de commerce de SOCOBICO industries S.A. au 17/09/2010 avec actualisation jusqu'au 31/10/2021, yagaragaje ibigize fonds de commerce, ariko Urukiko ntirwagira icyo rubivugaho. [28] Bavuga kandi ko Urwego rw'Umuvunyi

rwagaragaje ko bimwe mu bigize fonds de commerce harimo imitungo idafatika nka l'achalandage, l'enseigne, l'organisation commerciale, les marques, (a d'entente et les créances n'ibindi bitandukanye, icyakora ko Urukiko rutagaragarije SOCOBICO Industries S.A urutonde rw'ibizasubizwa n'uburyo izasubizwamo cyangwa ngo rugaragaze ko ntabwo Trust Industries Ltd yajyanye. [29] Bakomeza bavuga ko bashingiye ku mwanzuro wafashwe n'Urwego rw'Umuvunyi, basaba Urukiko kuwuha agaciro, rukemeza ko SOCOBICO Industries S.A isubizwa agaciro k'umutungo w'ubucuruzi wayo, nk'uko wagenwe n'umugenagaciro mu buryo bukurikira:

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a.Immobilisation incorpore//e: 124.916.416 Frw; b.Immobilisations corpore//es; 409.695.578 Frw; c.Stocks: 116.034.647 Frw; d.Espèces en caisse et les effets commerciaux au 17/09/2010: 5.487.165Frw; e.Créances diverses au 17/09/2010: 40.455.959 Frw; f.Matières premières en cours de route arrivées après le 17/09/2010 et remises Trust Industries Ltd.' 16.774.049 Frw; j.Manque à gagner sur l'arrêt des activités de l'entreprise du 17/09/2010 au 31/10/2021 suite à l'acte frauduleux du fonds de commerce de SOCOBICO Industries S.A (Soit 4.063jours).' 1.522.672.568 Frw; Ecriture, imprimante, photocopie et reliures des documents SOCOBICO Industries S.A.' 25.300 Frw. Agaciro ka fonds de commerce kose kangana na 2.236.062.683 Frw. [30] Basoba basobanura ko nyuma y'aho Trust Industries Ltd imaze gutegekwa n'Urukiko rw'ikirenga kuyisubiza umutungo wayo (fonds de commerce), iyo sosiyete itabyubahirije, ahubwo yawikuyeho, iwegurira Catch Up Investment Ltd, iyo nayo iwugurisha ROBA Industries Ltd. Bavuga ko SOCOBICO Industries S.A ifite uburenganzira bwo gukurikirana imitungo yayo aho yaba iri hose (le droit de suite) hashingiye ku ngingo ya 113 y'itegeko N o 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, igasaba Urukiko gutegeka ko isubizwa imitungo yayo yose ubu ifitwe na ROBA Industries Ltd kuko kugurisha ikintu cy'undi bibujijwe, kandi na none imitungo iburanwa ikaba yaragurishijwe mu buryo bw'uburiganya. 1 [31] Mu gukomeza gusobanura ibyo isaba Urukiko, SOCOBICO Industries S.A ivuga ko hari ibaruwa yanditswe na ECOBANK Rwanda PIC, imenyeshako igiye gufatira imitungo yose yayo harimo iyimukanwa n'itimukanwa. Akaba ari yo mpamvu Trust Industries Ltd nyuma ya cyamunara yigaruriye imitungo yayo yose, bityo ko Urukiko rutari kwemeza ko basubizwa imitungo idahari, Isobanura ko itaregera ikirango cy'ubucuruzi (marque de /a société), ko icyo iregera ari uburenganzira bwayo ku mitungo yayo yose, irimo imashini zo mu ruganda, imodoka, ibicuruzwa n'ibindi. Ikindi ivuga ni uko inyandikomvugo ya cyamunara isobanura neza imitungo yafatiriwe na BRD. 2 Igaragaza ko ibikoreshe by'isuku yakoraga, aribyo na Trust Industries Ltd yakomeje gukora, Catch Up Investment Ltd nayo bikaba uko, kugera no kuri ROBA Industries Ltd ndetse n'abakozi barnwe yakoresheye bakaba bagikorera ROBA Industries Ltd. Ku bijyanye no kugaragariza Urukiko ibigize fonds de commerce iburanwaho, SOCOBICO Industries Ltd ivuga ko ifite plaques z'imodoka izarushyikiriza, ariko ko imashini itashobora kubona ibiziranga kuko byatwawe mu gihe cy'intambara na genocide yakorewe abatutsi.

1 "...SOCOBICO a le droit d'exercer le droit de suite sur son patrimoine où qu'il se trouve. Se basant sur l'article 113 de la loi sur le contrat, il demande à la Cour Suprême d'ordonner la restitution de son patrimoine en totalité qui est en possession des mains de ROBA Industries Ltd, cela parce que la vente de la chose d'autrui est nulle, et également parce que le patrimoine en question a été vendu frauduleusement." 2 répond à la question en indiquant que dans le dossier se trouve la lettre de l'ECOBANK Rwanda PIC, dans laquelle la banque avait déclaré qu'elle allait saisir tous les biens de SOCOBICO Industries Ltd, y compris les biens meubles et immeubles. C'est la raison pour laquelle Trust Industries Ltd était en possession de tout son patrimoine après la vente aux enchères. Il demande à la Cour de ne pas ordonner la restitution de biens inexistantes poursuit ses explications en affirmant que SOCOBICO Industries Ltd ne réclame pas la marque de sa société, mais plutôt qu'elle revendique ses droits sur son patrimoine en totalité, y compris les machines industrielles, les véhicules, la clientèle, et ainsi de suite. Il continue en expliquant que le procès-verbal de la vente aux enchères précise bien le patrimoine qui a été saisi à l'égard de la BRD. »

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[32] Ku wa 11-12/03/2024, SOCOBICO INDUSTRIES S.A yashyize muri IECMS urutonde rw'imashini zikurikira, nk'uko zigaragara ku nyandiko yitwa 'Maintenance Technica/ Sheet of Machines for SOCOBICO Industries S.A. -- Machines Technica/ Specification' yo ku wa 20/03/2010.

1. Rewinder R350, Semi-Automatic, Ita/converting SPA, Typ.R350, Matricu/e: PP0391, Year: 2002 2.Convertex LMI, Sr:01500-12-93, Color: RAL-5010 Year: 1998/ Origin: Germany, Product: Toilet Ro//, Jumbo Ro//.
3. Convertex SBZ, Sir: 00151-12-92, /<P: 220. color: White RAL-1014, Year: 1996, Origin: Germany, Product: Toilet Ro//, Jumbo Ro//. 4 Horizontal Belt Conveyor, Size: 600 mm x 12 meters, White: PVC (Red line), Product: Transport of toilet Ro//, Kitchen Ro//, Jumbo Ro// to packing Area. 5 Mendrineuse A 800, Inner Core Maker, Color: Green RAL 6011. 6.Saxon Sealer, Sr: 71385-1, Year: 2005, Fischbein — Saxon-Ltd UK. 7.Saxon Sealer. Hot-Air Continuous Heat Seder. Fischbein -- Saxon. Serial: 60627-2, Date: 8.01, origin: UK. 8 Napkin Machine CIRC/ Origin: Taiwan, Year: 1995. 9.Convertex Semi-Automatic Sealer, Origin: Germany, Mode/: Pack-50/36, Group: SFE, Sr: 0379-08-00, V/HZ/Am: 230 vot 50HZ 13 Amp, /<P: 60, Color: Grey/ Blue, Year: 2000. 10 DCM USIMECA, Facial Tissue Maker, Typ: EPOSOLO, Year: 2005, Sr: 83125 11 CONVERTEX E 90, Female Hygienic Tissue Maker, Sr: 950666-09-96, V/HZ/ Ph 240/380N 50 HzHP/KW/KVA 14 /<W, KP: 2 250, Color: White RAL1014, Year: 1995. 12.Paper waste compactor, semi-Automatic machine.

Urubanza RS/INJUST/RSOC 00001/2022/SC rwa SONARWÃ LIFE ASSURANCE COMPANY LTD iburana na Rugina Jason rwaciwe kuwa 08/07/2022 ; RS/INJUST/RC 00024/201 WSC haburana Ngizwenishutj Albeit na Muhima Giovani ; RS/INJUST/RC 00007/201 USC haburana Nditiribambe Samuel, Gatera Jason na Nyâmawa Fautin rwaciwe kuwa 13/03/2020.

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[33] Uhagarariye ECOBANK Rwanda PIC avuga ko nk'uko bigaragara mu rubanza NQ RC 0101/11/ TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge, RCA 0435-0450-0437- 0439/11/ HC/KIG rwaciwe n'Urukiko Rukuru ndetse n'urubanza NQ RCAA 0011/13/CS rwaciwe n'Urukiko rw'lkirenga, SOCOBICO Industries S.A yasabaga ko hakemurwa impaka zavutse mu irangiza rubanza, gutesha agaciro cyamunara yakozwe ku wa 17/09/2010, gusubizwa imitungo igize ubucuruzi bwayo yahawe Trust Industries Ltd mu buriganya, no kwishyurwa igihombo kibazwe kuwa ku wa 17/09/2010 kugeza ibintu bisubijwe, ndetse hagatangwa indishyi z'akababaro n'amafaranga y'ikurikiranarubanza, no kuba hashyirwaho by'agateganyo umuntu wigenga ushinze gucunga ikigo cy'ubucuruzi kiri mu manza. [34] Avuga na none ko mu rubanza RCAA 0011/13/CS, Urukiko rw'lkirenga rwasuzumye ingingo eshanu harimo iyo kumenya niba ikirego kiri mu rwego rwo gukemura impaka zavutse mu irangiza ry'urubanza ku buryo kitashoboraga kujuririrwa; kuba Urukiko rwarasobanuye mu buryo burengera Itegeko No 0139/MH/10 ryo ku wa 29/06/2010 ryo kugurisha umutungo uri mu kibanza no 1109', kuba mu guteza cyamunara harabaye kwitiranya ibigize fonds de commerce n'ibigize inyubako zatanze ingwate; kuba Urukiko Rukuru rwaravugurujwe imvugo ya Noteri Uwitonze Nasira ku ngingo y'icyo yagurishije; n'iyi kumenya niba SOCOBICO Industries S.A yasubizwa 60.000.000 Frw yasagutse ECOBANK Rwanda Plc imaze kwishyurwa. [35] Akomeza avuga ko iyo SOCOBICO Industries S.A ibona ko mu ngingo zasuzumwe n'Urukiko rw'lkirenga harimo akarengane, ari zo zonyine yari gusaba ko zisuzumwa mu rubanza NQ RS/INJUST/RC 00008/2021/SC, bityo ko ibindi bibazo bitigeze biburanwa mu rubanza NO RCAA 0011/13/CS bitasuzumwa kuri uru rwego kuko byaba ari ibirego bishya ndetse ko kuba SOCOBICO Industries S.A itarasabye kubisuzuma bivuze ko yanyuzwe n'icyemezo cyari cyabifashweho ku rwego rwari rwabanje. [36] Avuga ko ibibazo SOCOBICO Industries S.A isaba Urukiko ko rwasuzuma kuri uru rwego, ari bishya ku buryo bitari bikwiriye kwakirwa ngo bisuzumwe, bityo ko ibonye ari ngombwa yabiregera bundi bushya ikurikije ibyo amategeko ateganya. Avuga kandi ko mu gihe ikirego ari ugusubirishamo urubanza ku mpamvu z'akarengane, SOCOBICO Industries S.A yakagombye kuba igaragaza mu mwanzuro wayo akarengane kagaragara mu rubanza Ng RCAA0011/13/CS n'uburyo kakosorwa aho kuburana ibidafitanye isano narwo. Anasobanura ko ikibazo kijyanye no kugena agaciro k'ibigize ubucuruzi (fonds de commerce) cyaregewe mu Rukiko rw'Ubucuruzi mu rubanza RCOM 00372/15/TC/NYGE kandi ko rutigeze rujuririrwa ngo rugere mu Rukiko rw'lkirenga no mu rwego rw'akarengane. [37] Asobanura ko iki kibazo Urukiko rw'lkirenga rwagitanzeho umurongo aho rwavuze ko ingingo umuburanyi atatanze ajurira ku bushake bwe, adashobora kwifashisha inzira yo gusubirishamo urubanza ku mpamvu z'akarengane ngo asabe ko isuzumwa, 5 bityo asaba ko ingingo irebana n'agaciro ka fonds de commerce kagenwe n'umuhanga itagomba gusuzumwa muri uru rubanza. [38] Ku bijyanye n'ubusubiza umutungo uburanwa, uhagarariye ECOBANK Rwanda PIC avuga ko kuba Trust Industries Ltd yarategetswe gusubiza umutungo w'ubucuruzi wa SOCOBICO Industries S.A., ariko ikabirengaho ikawivanaho, isanga ari uburenganzira bwa SOCOBICO Industries S.A. bwo kuwukurikirana aho uri hose, bityo ko Urukiko rwabisuzuma. [39] Me

Mucyo Donatien uhagarariye ROBA Industries Ltd avuga ko muri rusange ihuje imiburanire na ECOBANK Rwanda PIC ku bijyanye n'uko ingingo zasuzumwe n'Urukiko rw'lkirenga SOCOBICO Industries S.A. yaba ibonamo akarengane arizo zonyine zigomba

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gusuzumwa muri uru rubanza, ko ibindi bitigeze biburanwa mu rubanza RCAA0011/13/CS bidakwiye gusuzumwa kuri uru rwego kuko byaba ari ibirego bishya cyangwa byaba bigizwe n'ingingo SOCOBICO Industries S.A. yaburanishije mu Rukuru ikanyurwa n'icyemezo cyazifashweho hanyuma ntizishyikirize Urukiko rw'lkirenga. [40] Ku bijyanye n'ugomba gusubiza umutungo uburanwa, uhagarariye ROBA Industries Ltd avuga ko atari yo ifite uwo umutungo, kuko urebye ibigize umutungo SOCOBICO Industries S.A. ivuga ko ari uwayo, usanga ntaho bihuriye n'uwo yaguze; yongeraho ko mu masezerano y'ubugure yabaye hagati ya ROBA Industries Ltd na Catch up Investment Ltd, impande zombi zumvikanye ko nta nshingano cyangwa umwenda uwo ari we wese ROBA Industries Ltd izabazwa. [41] Avuga ko Catch Up Investment Ltd ari yo ikwiye gusobanura neza aho uwo mutungo yaguze muri cyamunara uhuriye n'uburanwa muri uru rubanza. [42] Asoza asaba Urukiko kwemeza ko nta mitungo ROBA Industries Ltd itunze ifite aho ihuriye n'imitungo iburanwa, icyakora ko biramutse bigaragaye ko hari aho iyo mitungo ihuriye, Urukiko rwakwemeza ko Catch Up Investment Ltd ariyo ibibazwa kuko ROBA Industries Ltd yawubonye mu buryo bukurikije amategako (de bonne foi). [43] Mu iburanisha ryo ku wa 05/03/2024, yongeyeho ko nta karengane kari mu rubanza ushingiyeye ku cyari cyaregewe mu rubanza rusubirwamo. Asobanura ko mu rubanza rusobanura urundi rwaciye n'Urukiko rw'lkirenga, rwemeje ko ibisabwa gusobanurwa muri urwo rubanza bitigeze bigibwaho impaka, maze SOCOBICO Industries S.A. igakomereza mu Rukiko rw'Ubucuruzi isaba kugaragaza agaciro ka fonds de commerce, ariko naho igatsindwa kandi ntijurire, ibyo bikaba bishimangira ko ibyagaruwe mu Rukiko rw'lkirenga byose byamaze gufatwaho icyemezo. [44] Avuga kandi ko SOCOBICO Industries S.A nta c/ientè/e yari igifite kubera ko yari itagikora, ari cyo cyatumye haba cyamunara, bityo ko nta na fonds de commerce yari igihari, kuko droit au bal, marques, n'ibindi byose bitari bigihari kubera ko byose byarangiranye na disparution de la dientè/e, naho marque industrie//e ikaba itari yarandikishijwe. Agaragaza kandi ko kuba Urukiko rwaremeje ko fonds de commerce yari ifitwe na Trust Industries Ltd, bitashoboka ko haba ihererekanya ry'uburyozwacyaha ngo ROBA Industries Ltd igire ibyo iryozwa. [45] Ku bijyanye na droit de suite ivugwa na SOCOBICO Industries S.A., avuga ko iyo sosiyete ariyo igomba kugaragazwa umutungo yashingiraho, ariko ko ntacyo yakoze. ROBA Industries Ltd isobanura ko umutungo wayo ugaragazwa n'amasezerano yagiranye na Catch up Investment Ltd, aho nta nzu ikomoka kuri SOCOBICO Industries Ltd irimo; ko inzu ifite ziri mu Bugesera n'imashini zayo zikaba ntaho zihuriye n'urnutungo wa SOCOBICO Industries S.A., ahubwo ko uwo mutungo wayo waguzwe muri cyamunara kubera ko Trust Industries Ltd yari yarananiwe kwishyura urnwenda yari ifitiye BRD. [46] Asoza ashimangira ko Urukiko rw'lkirenga nta kosa rwakoze kuko ibijyanye n'agaciro ka fonds de commerce bitigeze biburanwaho, ko icyo kibazo cyaregewe

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NO 00008/202 WSC mu Rukiko rw'lkirenga hasabwa arrêt interprétatif, Urukiko ntirwagiha ishingiro, SOCOBICO Industries S.A. iregera Urukiko rw'Ubucuruzi, irusaba kwemeza agaciro ka fonds de commerce yayo yavugaga ko yatwawe na Trust Industries Ltd. Yongeraho ko kuba rero urubanza rwaraciwe n'Urukiko rw'Ubucuruzi, ntirujuririrwe bizitira urega ku nzira yiyambaje kuko ikiburanwa ubu kitigeze kiburanwaho ngo Urukiko rw'lkirenga rubyirengagize; avuga ko ariko Urukiko rubibonye ukundi, Catch Up Investment Ltd ariyo yagira ibyo itegekwa gusubiza nk'uko biri mu ngingo ya 4 y'amasezerano y'ubugure bagiranye. [47] Me Nyembo Emelyne wunganira Me Uwitonze Nasira mu gusobanura ko icyo Noteri yagurishije ari ingwate yari yarahawe ECOBANK Rwanda Plc atari fonds de commerce, avuga ko urebye itangazo rya cyamunara, raporo ya cyamunara na main /evée d'hypothèque, ndetse n'ingwate yari yanditse muri RDB hamwe na expertise yari yatanzwe na SOCOBICO Industres S.A. ubwo yasabaga inguzanyo, byose bigaragaza ko nta kibazo cya fonds de commerce cyigeze kigaragazwa, kandi ko ntayo uwo yunganira yigeze agurisha, ko ahubwo icyo kibazo cyatangiyeye kuvugwa barimo kuburana mu Rukiko Rukuru. [48] Asanga ariko kuba mu rubanza RCAA 0011/13/CS rwaciwe ku wa 15/11/2013, Urukiko rw'lkirenga rutaragaragaje urutonde rw'ibizasubizwa SOCOBICO Industries S.A n'uburyo izasubizwamo, iyo ari inenge yagaragaye mu icibwa ry'urwo rubanza kandi igomba gukosorwa kugira ngo SOCOBICO Industries S.A isubirane fonds de commerce yayo yatwawe na Trust Industries Ltd. [49] Ku bijyanye n'ugomba gusubiza umutungo uburanwa, avuga ko mu gihe Trust Industries Ltd yatsinzwe mu rubanza RCAA 0011/13/CS, Urukiko rw'lkirenga rukayitegeka kwishyura, urubanza rukaba itegeko, n'ubwo rwari rutararangizwa, bitarayihaga ububasha bwo kugurisha cyangwa kwegurira undi uwo ariwe wese uwo mutungo kandi izi neza ko ikibazo kiwushingiyeho kitari cyarangira; akaba ari nayo mpamvu SOCOBICO Industries S.A ivuga ko byakozwe mu buriganya. Asanga hakwiriye kubahirizwa ihame rya droit de suite, maze Urukiko rukemeza ko ibyakozwe na Trust Industries Ltd ari ikosa, ibintu bigasubira uko byari bimeze, abafite uwo mutungo (fonds de commerce) bakawugarura. [50] Me Gatera Gashabana uhagarariye Catch Up Investment Ltd avuga ko mu gusuzuma imiterere y'icyemezo cy'Umuvunyi usanga yarabanje kwemeza ko nta karengane nyuma aza kwivuguruza ashingira akarengane ku ngingo cyangwa se ku bimenyetso umuburanyi yagombye kuba yaragaragariye inkiko. Ko ariko izo nyandiko Urwego rw'Umuvunyi rwashingiyeho rwemeza akarengane, SOCOBICO Industries S.A. itari yigeze iziburanisha na rimwe kuko expertise yakoreshejwe imanza zaramaze gucibwa. Akabiharaho avuga ko ibyo bitagombye gufatwa nk'akarengane kuko Urukiko rw'lkirenga mu Rubanza RS/INTER/CIV 001/14/CS rwasanze kuva imanza zatangira, SOCOBICO Industries S.A itigeze iregera agaciro ka fonds de commerce. [51] Akomeza avuga ko ikirego cyatanzwe na SOCOBICO Industries S.A. imbere y'Urukiko rw'lkirenga gishingiye ahanini ku cyemezo n o 0139+11-1-2010 cyafashwe na Perezida w'Urukiko Rwisumbuye rwa Nyarugenge cyo kugurisha muri cyamunara inzu yayo iri mu kibanza no 1109. Ko nk'uko bigaragara mu nyandikomvugo yakozwe na Me Uwitonze Nasira wari Umuhesha w'Inkiko icyo gihe, yashyize mu bikorwa icyo cyemezo ku wa 17 Nzeri 2019, Trust Industries Ltd ihagarariye na Mugabo Claver, ariyo yegukanye iyo nzu, kandi ko nta hantu higeze havugwa fonds de commerce cyane cyane ko itigeze ivugwa mu cyemezo cya Perezida w'Urukiko Rwisumbuye rwa

Nyarugenge. [52] Yongeraho ko kuba amasezerano ya Gage du fonds de commerce yabaye hagati ya ECOBANK Rwanda PIC na SOCOBICO Industries S.A. ku wa 05/05/2008, ari yo sosiyete ishaka gushingiraho isaba gusubizwa umutungo wayo, hashingiwe ku ngingo ya 113 y'Itegeko No 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano ijyanye n'inkurikizi zayo, iteganya ko amasezerano agira

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inkurikizi ku bayagiranye gusa, atabangamira undi wese kandi amugirira akamaro gusa mu biteganyijwe bijyanye no gusezerana ibifitiye undi akamaro, asanga kuba Catch Up Investment Ltd itaragize uruhare muri aya masezerano, ntacyo yagombye kubazwa muri uru rubanza. [53] Asobanura kandi ko kuba mu rubanza RCAA 0011/13/CS rwaciwe ku wa 15/11/2013, Urukiko rw'lkirenga rwaremeje ko ubujurire bwa SOCOBICO Industries S.A bufite ishingiro kuri bimwe, rugatega Trust Industries Ltd gusubiza SOCOBICO Industries S.A ibigize umutungo w'ubucuruzi, bigaragaza ko ikibazo cyo kuwusubiza kidashobora kubazwa Catch Up Investment Ltd idafite aho ihuriye n'uwo mutungo, bityo ko igobokeshwa ryayo nta shingiro rifite cyane cyane ko na ROBA Industries Ltd yiyemerera ko Catch up Investment Ltd ntaho ihuriye n'iriya gage du fonds de commerce yabaye hagati ya SOCOBICO Industries S.A. na ECOBANK Rwanda PIC.

[54] Akomeza avuga ko mu mwanzuro wa ROBA Investment Ltd, yiyemerera ko itemeranya n'urega ko ifite umutungo uburanwa kuko urebye umutungo avuga ko ari uwe, ntaho uhuriye n'umutungo we yaguze hashingiwe ku masezerano y'ubugure hagati ya ROBA Investment Ltd na Catch Up Investment Ltd. [55] Asobanura ko inkomoko y'umutungo waguzwe na Catch Up Investment Ltd nyuma ikawugurisha ROBA Investment Ltd, ari ingwate ya BRD (the sale of propertties secured by the bank in re/ation to transaction between Trust Industries Limited and BRD P/c); ko nk'uko bigaragara mu nyandikomvugo ya cyamunara yqngwate Trust Industries Ltd yari yatanze muri BRD ku wa 07/08/2019, ikaza kugurishwa n'Umuhesha w'lnkiko, Me Habimana Vedaste bisabwe n'iyi banki, imitungo ivugwamo ntaho ihuriye na fonds de commerce ivugwa n'Urukiko rw'lkirenga mu rubanza RCAA 0011/13/CS rwaciwe ku wa 25/11/2013. Yongera gushimangira ko igobokeshwa ku gahato rya Catch Up Investment Ltd ryasabwe na ROBA Investment Ltd nta shingiro rifite kuko nta mutungo uwo ariwo wose ujyanye na fonds de commerce ya SOCOBICO Industries S.A yakwisobanuraho. Abona kandi ibibazo byose SOCOBICO Industries S.A isaba Urukiko gusuzuma kuri uru rwego, ari bishya uko byakabaye ku buryo bitari bikwiriye kwakirwa ngo bisuzumwe mu rwego rw'akarengane ahubwo ibonye ari ngombwa yabiregera buri bushya ikurikije amategeko. [56] Anavuga kuba SOCOBICO Industries S.A. itarigeze yiyambaza amategeko ajyanye n'itambama cyangwa se ivanwaho rya cyamunara mu bihe biteganywa n'amategeko, ariyo yonyine igomba kubirengera, atari Catch Up Investment Ltd. Ko ibyo byose byongeraga kugaragaza ko igobokeshwa ryategatswe n'Urukiko nta shingiro rifite, kandi ko cyamunara yakozwe mu buryo no mu bihe byemejwe n'amategeko. [57] Mu iburanisha ryo ku wa 05/03/2024, yongeyeho ko inyandikomvugo ya cyamunara igaragaza ko icyagurishijwe ari ingwate igizwe n'ubutaka n'inzu zari ziburiho, ikibazo gihari akaba ari

ukumenya niba ubwo butaka n'izo nyubako bigize fonds de commerce hashingiwe ku bisobanuro bya fonds de commerce icyo aricyo. Avuga ko machines nazo zagarutsweho atari bimwe mu bigize fonds de commerce kandi ko Catch up Investment Ltd itigeze igurisha fonds de commerce. Yongeye kuvuga ko nyuma y'icyemezo cyiUrukiko rw'lkirenga habaye ikirego cya interpretation hagamijwe gusobanura icyo fonds de commerce ari cyo, ariko ntiyahabwa agaciro bituma habaho kujya mu Rukiko rw'Ubucuruzi, ndetse icyemezo rwafashe ntiyajuririrwa ; ko kuba kitarajuririwe, ahubwo hakaba haragaruwe ikiburanwa kimwe n'ibyafashweho icyemezo, binyuranyije n'ibiteganywa n'ingingo ya 14 y'Itegeko N 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu nk'uko ryahinduwe kandi ryujijwe kugeza ubuho kubera ko habayeho L 'autorité de /a chose jugée. [58] Ku bijyanye na procédures za cyamunara, avuga ko harimo na publication igamije gutuma uwo ariwe wese ubangamiwe nayo ayitambamira, nyamara nta tambama ryigeze rikorwa ; ko Catch Up Investment Ltd yaguzwe n'umutima mwiza (acquéreur de bonne foi), ibyaguzwe bikaba ntaho

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bihuriye na fonds de commerce, bityo akaba ari yo mpamvu nta na droit de suite yagombye kubaho hakurikiranwa umutungo udafite aho uhuriye n'uwaguzwe. UKO URUKIKO RUBIBONA [59] Ingingo ya 3 y'Itegeko N15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo igira iti: 'Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana. Umucamanza ashobora nyamara gutegeka umuburanyi wese gutanga gihamya y'ibimenyetso afite. "Naho ingingo ya 12, igika cya mbere, y'Itegeko NO 22/2018 ryavuzwe haruguru, iteganya ko "Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. Mu rubanza RS/INJUST/RC 00020/2022/sc rwaciwe kuwa 12/05/2023, haburana Gasana Tim Alphonse na RADIANT INSURANCE COMPANY Ltd, Urukiko rw'lkirenga rwavuze ko izo ngingo zivuzwe haruguru zumvikanisha ko ufite ibyo yishyura ari we ugomba kubigaragariza ibimenyetso, yabibura Urukiko rukemeza ko ikirego cye nta shingiro gifite. [60] Kugirango Urukiko rushobore gutanga umucyuzi ku kirego cy'urega usaba gusubizwa agaciro k'ibigize ubucuruzi (fonds de commerce), ni ngombwa kumenya ibigize ubucuruzi (fonds de commerce) urega avuga ko byatwawe na Trust Industries Ltd, bikagurwa na Catch Up Investment Ltd muri cyamunara, nayo ikabigurisha na ROBA Industries Ltd mu masezerano yo ku wa 18/10/2021, akaba ari nayo mpamvu urega asaba ko iyi ya nyuma aba ariyo isubiza agaciro kabyo, hashingiwe ku burenganzira bwo gukurikirana (Droit de suite).

- a. Ibigize ubucuruzi (Fonds de commerce) [61] Abahanga mu mategeko basobanura ko ibigize ubucuruzi bivugwa, mbere na mbere, impurirane y'imitungo yose yimukanwat ifatika kimwe n'idafatika umucuruzi yahuje ndetse agategura, kugira ngo akurure kandi anabyaze umusaruro abakiriya. Ibigize iyo mitungo harimo ibikoreshe, ububiko, uburenganzira ku bukode, izina ry'ubucuruzi ndetse n'uburenganzira ku bihangano mu by'inganda (icyemezo cy'ubuvumbuzi, ikirango cy'ubucuruzi, Bikaba ari ingenzi mu gutuma haba kugumana ndetse no kongera abakiriya bakururwa n'ubumenyi bwo gukora bw'umucuruzi, ubwiza bw'ibicuruzwa byacurujwe, aho ubucuruzi bukorera, n'ikirango cyabwo. 63 [62] Abahanga

kandi mu kurondora ubucuruzi' babigabanyamo ibyiciro bibiri. Hari ibidafatika birimo nk'ubukiriya, uburenganzira ku bukode, izina ry'ubucuruzi, ikirango cy'ubucuruzi, n'izina riranga icyiciro cy'ubucuruzi, naho ibifatika birimo ibikoresho bikoresha mu gucunga ubucuruzi, imashini, n'ibicuruzwa, ukuyemo imitungo itimukanwa. Ibikoresho bisobanuye icyo ari cyo cyose

7Xavier Delpech, Fonds de commerce : Composition, Vente, Intermédiaires, Évaluation, Exploitation, Fiscalité, 19e Ed (Editions Dalloz, 2019), p. 3. : « Le fonds de commerce désigne, dans une première approche, « l'ensemble des biens meubles, corporels comme incorporels, qu'un commerçant réunit et organise pour conquérir et exploiter une clientèle : matériel, stock, droit au bail, nom commercial et droits de propriété industrielle (brevet, marque,..). Le fonds de commerce permet essentiellement de retenir et de développer une clientèle attirée par le savoir-faire du commerçant, la qualité des marchandises vendues, l'emplacement de l'établissement, l'enseigne... Xavier Delpech, « Fonds de commerce : Composition, Vente, Intermédiaires, Évaluation, Exploitation, Fiscalité» 19e édition (éditions Dalloz, 2019), p, 77-125: La composition du fonds de commerce se divise en éléments incorporels, tels que la clientèle, le droit au bail du local, le nom commercial, l'enseigne et le nom de domaine, ainsi qu'en éléments corporels, comprenant le matériel et l'outillage servant à l'exploitation du fonds, les marchandises, à l'exclusion des immeubles,/ Françoise Dekeuwer-Defossez et Edith Blary-Clement, Droit Commercial.' Actes de commerce, fonds de commerce, commerçants concurrence, 12 édition, (LGDJ Lextenso, 2019). p. 327-329 : Les éléments matériels du fonds de commerce sont donc au nombre de deux : les marchandises et le matériel. Les marchandises restent exclues du nantissement du fonds de commerce, car le gage qu'elles offriraient serait trop illusoire. Le matériel s'agit des meubles corporels nécessaires à l'exploitation

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gifatika cya ngombwa mu bucuruzi hatabariwemo ibicuruzwa. Ibyo bikoresho biri mu bisanzwe bigize ubucuruzi. Bikaba biri mubyo urnucuruzi ashobora kugurisha ukwabyo byihariye mu buryo butandukanye n'ibindi. Ibicuruzwa bifata umwanya w'umwihariko mu bigize ubucuruzi kuko byo bihora bihinduka. Niyo mpamvu byo bidashobora gutangwaho ingwate mu kwaka inguzanyo, bikaba bitabarwa mu byatanzweho ingwate igihe yatanzwe ku bigize ubucuruzi, kuko yaba idasobanutse [63] Abahanga na none, bavuga ko abakiriya ari izingiro ry'ibigize ubucuruzi ndetse iyo mitungo yose igize ubucuruzi ikaba igize ibicuruzwa byose by'ikigo cy'ubucuruzi. g Kwemera ko ibigize ubucuruzi ari ihuriro, bivuze ko ari ikintu ubwacyo kihagije kigenga, gitandukanye n'urutonde rw'ibikigize, niyo nkomoko y'inyito ubucuruzi'. 9

- b. Uburenganzira bwo gukurikirana (Droit de suite or right of follow-up or resale right) [64] Ingingo ya 113, igika cya 2, y'itegeko N 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ari nayo urega yashingiyeho azamura ibijyanye n'ihame ry' uburenganzira bwo gukurikirana (Droit de suite) ivuga ko ugenewe inshingano ashobora gukoresha uburenganzira n'ububasha ugomba kumwishyura afite ku bandi bantu kugira ngo ashobore kwishyurwa, uretse iyo ubwo burenganzira bushingiye gusa ku muntu ubwe. [65] Mu gusobanura

uburenganzira bwo gukurikirana (Droit de suite), umuhanga mu mategeko Philippe Pernaud-Or/iac, ahereye ku ngingo ya 2461 kugeza ku ya 2474 z'ltegeko ry'Abafaransa agaragaza ko uburenganzira bwo gukurikirana bw'ufitiwe urnwenda wanditswe buba bushingiye ku mitungo yandikishijwe, butaba bushingiye k'umufitiye umwenda. Ufitiwe umwenda akurikirana imitungo cyangwa ibigize ubucuruzi aho byaba byahererekanijwe hose, maze undi wabiguze wese akabisubiza. Il

l'outillage, les machines les meubles meublants, les matériaux (qui n'entrent pas dans la composition des marchandises). 8 Françoise Dekeuwer-Defossez et Edith Blary-Clement 'Droit Commercial' Actes de commerce, fonds de commerce, commerçants, concurrence", 1^{ae} édition, (LGDJ, Lextenso, 2019). p.305 : Le fonds de commerce est l'ensemble des moyens utilisés pour attirer et retenir la clientèle... La clientèle est l'essence du fonds de commerce et ce fonds constitue l'ensemble des biens affectés à l'entreprise. Françoise Dekeuwer-Defossez et Edith Blary-Clement, Droit Commercial,' Actes de commerce, fonds de commerce, commerçants, concurrence, 12^e édition, (LGDJ, Lextenso, 2019). p.315 : La constatation que le fonds de commerce est un ensemble, c'est-à-dire une entité autonome, différente de la somme des éléments qui la composent, est à l'origine même de la notion de fonds de commerce. 10 Reba articles 2461-2474 du Code civil français, 2024 ziboneka kuri Droit de suite, iboneka kuri igira iti « Le droit de suite, comme son nom l'indique, est la concrétisation du fait que la créance du créancier inscrit n'est pas attachée à [a personne du débiteur mais au bien support de l'inscription: autrement dit, la créance suit (d'où le nom de droit de suite) l'immeuble ou le fonds de commerce en quelques mains qu'il passe et le tiers acquéreur du bien, (tiers par rapport à la créance) qui en devient propriétaire est tenu des créances garanties par ces sûretés (Code civil articles 2461 à 2474). » Iyi sosiyete kimwe na ROBA Industries Ltd ñi zimwe mu ma sosiyete agize ROBA Group Of Companies, Mu mwanzuro ya ROBA Industries Ltd ivuga ko ROBA General Merchants Ltd yagiranye amasezerano na Cutch Up Investment Ltd inshingano, inyungu, icyemezo, ikirango cy'ubucuruzi kitwa "C/eaP, n'uruganda rwayo n'amamashini arugize, biherereye mu Kagali ka Kanzenze, mu Karere ka Bugesera.

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[66] Dosiye y'uru rubanza igaragaramo inyandiko mvugo ya cyamunara yo ku wa 17/09/2010 hishyurwa urnwenda SOCOBICO Industries S.A yari ibereyemo ECOBANK Rwanda PIC, aho Trust Industries Ltd yatsindiye inzu yari iy'uruganda rwa SOCOBICO Industries S.A yari mu kibanza n o 1109 ku 320.150.000 Frw. Nyuma y'uko SOCOBICO Industries S.A. iregeye Urukiko rw'Ikirenga ko Trust Industries Ltd yari yegukanye iyo nzu yanatwariyemo fonds de commerce yayo, Urukiko rukemeza ko igomba kuyisubiza, ikibazo cyavutse mu irangizwa ry'icyo cyemezo, hibazwa ibigize ubucuruzi (fonds de commerce) bigornba gusubizwa n'ugomba kubisubiza. [67] Ku kibazo kijyanye no kumenya niba hari ibigize ubucuruzi (fonds de commerce) bya SOCOBICO Industries S.A biri mu maboko y'abaregwa muri uru rubanza, dosiye y'uru rubanza igaragaramo icyemezo cy'iyakirwa ry'ingwate y'ibigize Ubucuruzi (bordereau d'inscription d'un gage de fonds de commerce) hagati ya ECOBANK Rwanda S.A. na SOCOBICO Industries S.A, igizwe n'ibi bikurikira: La clientèle, renseigne,

l'organisation commerciale, le droit au bal, /e matériel, /e mobilier et outillage, les bateaux et /es véhicules, les marchandises et produits en stock à concurrence de 50 % de leur valeur, les marques, les espèces en caisse, les participations éventuelles, les effets de commerce, les créances diverses, les valeurs. [68] Hagaragaramo kandi inyandiko mvugo ya cyamunara yo ku wa 07/08/2019, y'ingwate Trust Industries Ltd yatanze muri BRD zigizwe n'ubutaka bubaruwe kuri UPI: 5/07/09/02/1212, UPI: 5/07/09/02/1213, UPI: 5/07/09/02/1223, UPI: 5/07/09/02/1221, UPI: 5/07/09/02/1222, UPI: 5/07/09/02/1224, UPI: 5/07/09/02/882 na UPI: 5/07/09/02/1215, inyubako ziri kuri ubwo butaka kimwe n'imashini z'uruganda, byatsindiwe na Catch Up Investment Ltd muri iyo cyamunara ku giciro kingana na 6.515.033.019 Frw, biherereye mu Kagali ka Kanzenze, Umurenge wa Ntarama, Akarere ka Bugesera, [69] Hagaragaramo na none amasezerano yo ku wa 18/10/2021 hagati ya ROBA General Merchants Ltd na Catch Up Investment Ltd bagura uburenganzira, [70] Mu iburanisha ryo ku wa 05/03/2024, Urukiko rwari rwasabye SOCOBICO Industries S.A kurugaragariza bitarenze ku wa 12/03/2024 ibimenyetso bigaragaza fonds de commerce yayo yatwawe, yerekana ibirango by'imodoka zaba zaratwawe n'ubwoko bwazo, numero z'imashini zo mu ngandat urutonde rw'ibyari mu bubiko, byose ikabikora yerekana ko ibigize iyo fonds de commerce aribyo biri ku rutonde rw'ibyo Trust Industries Ltd yatanzeho ingwate muri BRD, bikaza kugurwa na Catch Up Investment Ltd muri cyamunara yo ku wa 07/08/2019, nayo ikabigurisha ROBA Industries Ltd ku wa 18/10/2021. Muri iryo buranisha, SOCOBICO Industries S.A. yemeye ko bafite ibirango (plaques) by'imodoka, ko bazabishyikiriza Urukiko, naho ku bijyanye n'imashini bagaragaza ko ntabwo babasha kubona kubera ko byatwawe n'intambara mu gihe cya Jenoside yakorewe Abatutsi. [71] Ku wa 11-12/03/2024, SOCOBICO Industries S.A yashyikirije Urukiko urutonde rw'imashini rwagaragajwe mu gika cya 32 cy'uru rubanza, ariko ntiyagira igisobanuro irutangaho kijyanye n'ikibazo gisuzumwa. [72] Urukiko rurasanga urutonde rw'ibyo SOCOBICO Industries S.A yarushyikirije, rudahura n'ibikubiye mu nyandikomvugo ya cyamunara yo ku wa 17/09/2010, ubwo Trust Industries Ltd yegukanaga inzu yari iy'uruganda rwa SOCOBICO Industries S.A, rukaba rutanahura riimitungo

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Catch Up Investment Ltd yaguze muri cyamunara yo ku wa 07/08/2019 na Trust Industries Ltd yari yatanzeho ingwate muri BRD, ngo bigaragaze ko muri iyo mitungo harimo fonds de commerce yayo ikomoka ku byo Trust Industries Ltd yaba yaregukanye hamwe n'inzu SOCOBICO Industries S.A yakoreragamo, ndetse ntibihuza n'urutonde rw'ibyo ROBA General Merchants Ltd na Catch Up Investment Ltd baguze bikubiye mu masezerano yo ku wa 18/10/2021. [73] Hashingiwe ku ngingo z'amategako zavuzwe haruguru no ku bisobanuro byatanzwe, Urukiko rurasanga SOCOBICO Industries S.A itabasha kugaragaza ibimenyetso nyirizina byerekana umwirondoro uhamye w'ibyari bigize ubucuruzi (fonds de Commerce) yishyura ivuga ko biri mu maboko ya ROBA Industries Ltd aho byayigeze biturutse kuri Catch Up Investment Ltd nayo ibikomora kuri Trust Industries Ltd, bityo rukaba ntaho rwahera rwemeza ko hari ibigize fonds de commerce yayo biri mu maboko ya ROBA Industries Ltd igomba kuyisubiza hashingiwe ku

bubasha bwo gukurikirana (droit de suite). [74] Urukiko rusanga, kugirango habe umucyo ku bigize fonds de commerce ya SOCOBICO Industries Ltd igomba gusubizwa na Trust Industries Ltd nk'uko byemejwe mu rubanza RCAA 0011/13/CS rwaciwe n'Urukiko rw'lkirenga ku wa 15/11/2013, ari ngombwa gushyiraho Umuhanga mu by'ibaruramari uzaba ashinzwe imirimo ikurikira: Kugaragaza ibintu bigize ubucuruzi (fonds de commerce) bigaragara muri gage de fonds de commerce yo ku wa 04/09/2008 iyo sosiyete yari igifite umunsi w'icyamunara yo ku wa 17/09/2010; Kumenya mu bintu bidafatika byari bigize ubucuruzi (éléments incorpore/s du fonds de commerce) bwa SOCOBICO Industries Ltd ibyashoboraga gutwarwa na Trust Industries Ltd; Kugaragaza agaciro k'ibyari bigize ubucuruzi (fonds de commerce) SOCOBICO Industries Ltd yari ifite igihe cya cyamunara yo ku wa 17/09/2010 ugereranyije n'agatangwa na SOCOBICO mu nyandiko yitwa "Rapport d'expertise relatif à /a détermination de /a valeur du fonds de commerce de SOCOBICO Industries Ltd au 17/09/2010 avec actualisation jusqu'au 31/10/2021."

- Kugaragaza n'ibindi byose abona ko ari ngombwa kugaragariza Urukiko. III. ICYEMEZO CY'URUKIKO [75] Rwemeje ko nta mutungo wa SOCOBICO Industries Ltd uri mu maboko ya ROBA Industries Ltd ikomora kuri Trust Industries Ltd binyuze kuri Catch Up Investment Ltd igomba kuyisubiza; [76] Rwemeje ko ababuranyi basigaye mu uru rubanza aribo, SOCOBICO Industries S.A., ECOBANK Rwanda Pic, Trust Industries Ltd na Me Uwitonze Nasira bazumvikana ku Muhanga

4 Mu nyandikomvugo yo ku wa 07/08/2019 yakozwe n' Umuhesha w'inkiko w'umwuga, Me Habimana Védaste avuga ko ingwate yagurishije zari zaratanze na Trust Industries Ltd muri BRD zari zigizwe n'ubutaka bubaruye kuri UPI No. 5/07/09/02/1212; UPI No. 5/07/09/02/1213; UPI No. 5/07/09/02/1223; UPI No. 5/07/09/02/1221; UPI No. 5/07/09/02/1222; UPI No. 5/07/09/02/1224; UPI No. 5/07/09/02/882; inyubako zari ziri kuri ubwo butaka kimwe n'imashini z'uruganda.

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bakamushyikiriza Ubwanditsi bw'Urukiko bitarenze tariki ya 26/04/2024, bananirwa kumwumvikana bakabimenyesha Urukiko bitarenze iyo tariki kugirango rumushyireho; [77] Rutegetse SOCOBICO Industries S.A., ECOBANK Rwanda PIC, Trust Industries Ltd na Me Uwitonze Nasira gufatanya kuriha igihembo cy'Umuhanga; [78] Ruvuze ko itariki urubanza ruzongera kuburanishirizwaho ababuranyi bazayimenyeshwa n'Ubwanditsi bw'Urukiko.

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