

MAFAM Ltd v. IKIGO CY'IMISORO N'AMAHORO (RRA)

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00030/2022/CA (Ngagi, P.J.) 20
Nyakanga 2022]

Amategeko agenga imanza z'ubucuruzi – Kwandikisha ubucuruzi – Ubucuruzi bw'ubwikorezi – Uburenganzira bwo gukora ubwikorezi – Kwandikisha ubucuruzi burimo n'ubwikorezi bitandukanye no guhabwa uburenganzira bwo gukora ubwikorezi.

Amategeko agenga imanza z'ubucuruzi – Umusoro – Umusoro ku nyongeragaciro (TVA) – Ubucuruzi bw'ubwikorezi – Umusoro ku Nyongeragaciro (TVA) ku birebena n'ubwikorezi – serivisi z'ubwikorezi zikozwe n'ababihewe uruhushya zisonewe umusoro ku nyongeragaciro – Itegeko N° 40/2016 ryo ku wa 15/10/2016, ingingo ya 2, rihindura kandi ryuzuza Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro yahinduye ingingo ya 6.

Incamake y'ikibazo: Ikigo Cy'Imisoro n'Amahoro cyakoreye igenzura sosiyete MAFAM Ltd ku binyobwa bya BRALIRWA icuruzwa ikabitwarira abakiriya bayo, maze iyica umusoro ku nyongeragaciro ungana na 132.112.680 Frw, harimo n'ibihano byo gutubya umusoro n'ibyo gutinda kwishyura umusoro, ishingiye ku kuba kuri buri biciro MAFAM Ltd yagurishagaho ibinyobwa yaragendaga ifataho amafaranga runaka kuri fagitire ikora, ikayita ko asonewe TVA ngo kuko ajyanye n'ubwikorezi (*transport*) bw'ibicuruzwa yaranguye muri BRALIRWA, ubwikorezi ntibutangire TVA kandi butayisonewe, itagaragaje uruhushya yahawe n'urwego rubishinzwe (RURA) rwo gukora ubwikorezi.

MAFAM Ltd yajuririye uwo musoro kwa Komiseri Mukuru wa RRA isaba ko ukurwaho kuko yawuciwe mu buryo bunyuranyije n'amategeko, ivuga ko ubwikorezi bw'ibintu ku butaka busonewe TVA, bityo ko itagomba gucibwa TVA kubera ko ubwikorezi ikora buyisonewe, bituma irega RRA mu Rukiko rw'Ubucuruzi irusaba gukuraho umusoro ku nyongeragaciro ungana na 132.112.680 Frw yaciwe kuri serivisi y'ubwikorezi kandi iwusonewe.

Urwo Rukiko rwemeje ko ikirego cya MAFAM Ltd nta shingiro gifite, rwemeza ko umusoro ku nyongeragaciro n'ibihano biwushamikiyeho bingana na 132.112.680 Frw RRA yaciye MAFAM Ltd ukurikije amategeko, bityo ko ugumyeho.

MAFAM Ltd ntiyishimiye iyo mikirize y'urubanza, maze iyijuririra mu Rukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rwashingiye icyemezo cyarwo ku kuba MAFAM Ltd idafite icyangombwa kiyemerera gukora serivisi y'ubwikorezi, kandi atari yo mpamvu Komiseri Mukuru yashingiyeho afata icyemezo, ko kandi itagombaga gucibwa umusoro ku nyongeragaciro kuri serivisi y'ubwikorezi yakozwe kuko iwusonewe, bityo ko itabaraga nabi umusoro yagombaga gusora, isaba kugenerwa indishyi zitandukanye.

Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza, rwemeza ko ubujurire bwa MAFAM Ltd nta shingiro bufite, bityo ko y'urubanza rujuririrwa igumyeho.

MAFAM Ltd yajuririye na none mu Rukiko rw'Ubujujire, ivuga ko itagombaga gucibwa umusoro ku nyongeragaciro kuri serivisi y'ubwikorezi kuko iwusonewe n'amategeko.

RRA ivuga ko uru rubanza rutandukanye n'imanza zabanje, ko muri izo manza abaciwe imisoro bagaragazaga ibyangombwa bibemerera gukora ibwikorezi bahawe na RURA. Ko kuba rero MAFAM Ltd nta burenganzira bwo gukora ubwikorezi yahawe n'Urwego rubishinzwe ntaho yahera ivuga ko ikora ubwikorezi. Akomeza avuga ko mu manza zabanje nubwo batagaragazaga ko bakoze ubwikorezi, ariko bari bafite ibyangombwa byerekana ko bakora ubwikorezi, ariko MAFAM Ltd itagaragaza ibimenyetso byerekana ko ikora ubwikorezi, ikaba idafite n'uruhushya yahawe na RURA bwo gukora ubwikorezi, avuga kandi ko MAFAM Ltd ubwayo yiyemerera ko yakoze serivisi y'ubwikorezi itabifitiye uburenganzira, nyamara kuva mu mwaka wa 2011 hari amabwiriza agaragaza ko ukora serivisi y'ubwikorezi agomba kuba abifitiye uburenganzira ahabwa na RURA nubwo ubucuruzi buba bwandikishijwe muri RDB, bityo ko umusoro ku nyongeragaciro MAFAM Ltd yaciwe ukwiye kugumaho.

Incamake y'icyemezo: 1. Ku byerekeranye n'umusoro wa nyuma yo ku wa 15/10/2016, Urukiko rurasanga ari ngombwa kureba niba MAFAM Ltd yakoze ubwikorezi ibifitiye uburenganzira. Urukiko rurasanga ikimenyetso kigaragara muri dosiye cyerekana ko MAFAM Ltd yari ifite uburenganzira ari icyo ku wa 16/10/2019, bivuze nyuma y'igihe umusoro uburwanwa waciriwe. Urukiko rurasanga kuba MAFAM Ltd idashoboye kugaragaza ko nyuma yo ku wa 15/10/2016, yakoze ubwikorezi ibifitiye uburenganzira butangwa na RURA, umusoro ku nyongeragaciro yaciwe guhera ku wa 15/10/2016, ubwo Itegeko n° 40/2016 ryo ku wa 15/10/2016 rihindura kandi ryuzuzwa itegeko N° 37/2012 ryo ku wa 9/11/2012 rishyiraho umusoro ku nyongeragaciro ryashyirwaho yawuciwe mu buryo bukurikije amategeko, ukaba ugomba kugumaho.

2. Urukiko rurasanga na none ibyo MAFAM Ltd ivuga ko na nyuma y'aho Itegeko n° 40/2016 ryo ku wa 15/10/2016 rihindura kandi ryuzuzwa itegeko n°37/2012 ryo ku wa 9/11/2012 rishyiraho umusoro ku nyongeragaciro rigiriyeho, umusoro ku nyongeragaciro yakwishyura ari uwo yaciwe hagati yo ku wa 15/10/2016 kugeza ku wa 19/07/2017, ubwo yandikishaga ibikorwa by'ubwikorezi muri RDB nta shingiro byahabwa, kuko nk'uko byasobanuwe haruguru, MAFAM Ltd yagombaga kuba ifite uburenganzira yahawe na RURA, bityo n'umusoro yaciwe nyuma yo ku wa 19/07/2017 kugeza aho iboneye uburenganzira bwa RURA nawo yagombaga kuwucibwa, bityo nawo ukaba ugomba kugumaho.

3. Ubwikorezi bw'ibicuruzwa busonewe gucibwa umusoro ku nyongeragaciro (TVA) iyo umwikorezi yabihereye uburenganzira na RURA.

**Ubujurire bufite ishingiro kuri bmwe;
Amagarama y'urubanza ahwanye n'ibyarukozwemo.**

Amategeko yashingiweho:

Itegeko N° 40/2016 ryo ku wa 15/10/2016, ingingo ya 2, rihindura kandi ryuzuzwa Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro yahinduye ingingo ya 6,

Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro, ingingo ya 6,5°, ingingo ya 2 y'Itegeko n° 40/2016 ryo ku wa 15/10/2016 rihindura kandi ryuzuzwa Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro yahinduye ingingo ya 6

Imanza zifashishijwe:

Urubanza RRA v SODAR LTD; RCOMAA 00034/2020/CA rwaciwe n’Urukiko rw’Ubujurire ku wa 19/02/2021.

Urubanza RRA v SRDS LTD RCOMAA 00001/2022/CA; rwaciwe n’Urukiko rw’Ubujurire rwaciwe ku wa 25/03/2022.

Urubanza RRA v SUGIRA LTD; RCOMAA 00057/2021/CA n’Urukiko rw’Ubujurire rwaciwe ku wa 25/03/2022.

Urubanza

I. IMITERERE Y’URUBANZA

[1] Rwanda Revenue Authority (Ikigo Cy’Imisoro n’Amahoro) cyakoreye igenzura MAFAM Ltd ku binyobwa bya BRALIRWA icuruzwa ikabitwarira abakiriya bayo, maze iyica umusoro ku nyongeragaciro ungana na 132.112.680 Frw, harimo n’ibihano byo gutubya umusoro n’ibyo gutinda kwishyura umusoro, ishingiye ku kuba kuri buri biciro MAFAM Ltd yagurishagaho ibinyobwa yaragendaga ifataho amafaranga runaka kuri fagitire ikora, ikayita ko asonewe TVA ngo kuko ajyanye n’ubwikorezi (*transport*) bw’ibicuruzwa yaranguye muri BRALIRWA, ubwikorezi ntibutangire TVA kandi butayisonewe, itagaragaje uruhushya yahawe n’urwego rubishinzwe (RURA) rwo gukora ubwikorezi.

[2] MAFAM Ltd yajuririye uwo musoro kwa Komiseri Mukuru wa RRA isaba ko ukurwaho kuko yawuciwe mu buryo bunyuranyije n’amategeko, kuko ubwikorezi bw’ibintu ku butaka busonewe TVA, hashingiwe ku ngingo ya 6.5 d) y’Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro nk’uko ryavuguruwe kugeza ubu, no kuba ifite uruhushya rwo gukora umurimo w’ubwikorezi, bityo ko itagomba gucibwa TVA kubera ko ubwikorezi ikora buyisonewe kandi ko ntayo yakiriye, ndetse ko ari na ko BRALIRWA ibikora iyo igemuriye MAFAM Ltd ibinyobwa. Komiseri Mukuru yafashe icyemezo ko umusoro MAFAM Ltd yaciwe harimo n’ibihano byo gutubya umusoro n’ibyo gutinda kwishyura umusoro byose hamwe bingana na 132.112.680 Frw bigumaho kuko ukurikije amategeko. MAFAM Ltd ntiyanyuzwe n’icyo cyemezo, bituma irega RRA mu Rukiko rw’Ubucuruzi irusaba gukuraho umusoro ku nyongeragaciro ungana na 132.112.680 Frw yaciwe kuri serivisi y’ubwikorezi kandi iwusonewe.

[3] Mu rubanza RCOM 01431/2020/TC rwaciwe n’Urukiko rw’Ubucuruzi ku wa 08/12/2020, urwo Rukiko rwemeje ko ikirego cya MAFAM Ltd nta shingiro gifite, rwemeza ko umusoro ku nyongeragaciro n’ibihano biwushamikiyeho bingana na 132.112.680 Frw, RRA yaciye MAFAM Ltd ukurikije amategeko, ko ugumyeho; rutegeka MAFAM Ltd guha RRA 500.000 Frw y’igihembo cya Avoka.

[4] MAFAM Ltd ntiyishimiye iyo mikirize y’urubanza, maze ku wa 07/01/2021, iyijuririra mu Rukiko Rukuru rw’Ubucuruzi ivuga ko Urukiko rwashingiye icyemezo cyarwo ku kuba MAFAM Ltd idafite icyangombwa kiyemerera gukora serivisi y’ubwikorezi, kandi atari yo mpamvu Komiseri Mukuru yashingiyeho afata icyemezo, ko kandi itagombaga gucibwa umusoro ku nyongeragaciro kuri serivisi y’ubwikorezi yakoze kuko iwusonewe, bityo ko itabaraga nabi umusoro yagombaga gusora, isaba kugenerwa indishyi zitandukanye.

[5] Ku wa 24/12/2021, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00020/2021/HCC rwemeza ko ubujurire bwa MAFAM Ltd nta shingiro bufite, rwemeza ko MAFAM Ltd igomba guha RRA 400.000 Frw y'igihembo cya Avoka na 100.000 Frw y'ikurikiranarubanza; rutegeka ko hagumyeho imikirize y'urubanza rujurirwa, ko 40.000 Frw MAFAM Ltd yatanzeho ingwate y'amagarama ijurira, ahwanyane n'ibyakozwe byose mu rubanza.

[6] MAFAM Ltd yajuririye na none uru Rukiko, ivuga ko itagombaga gucibwa umusoro ku nyongeragaciro kuri serivisi y'ubwikorezi kuko iwusonewe n'amategeko, inasaba gusubizwa amafaranga y'igihembo cya Avoka, ubujurire bwayo bwandikwa kuri RCOMAA 00030/2022/CA.

[7] Iburanisha ryabaye mu ruhame ku wa 06/07/2022, MAFAM Ltd ihagarariwe na Me Twiringiyemungu Joseph, naho RRA ihagarariwe na Me Twahirwa Jean Baptiste.

[8] Muri rusange, mu iburanisha impaka hagati y'ababuranyi zibanze ku byerekeranye no kumenya niba umusoro ku nyongeragaciro n'ibihano biwushamikiyeho bingana na 132.112.680 Frw, MAFAM Ltd yaciwe bikurikije amategeko.

II. IBIBAZO BIGIZE IBURANISHA N'ISESENGURA RYABYO

1. Kumenya niba umusoro ku nyongeragaciro MAFAM Ltd yaciwe na RRA kuri serivisi y'ubwikorezi ugomba gukurwaho kuko iwusonewe n'amategeko

[9] Uhagarariye MAFAM Ltd avuga ko nyuma yuko MAFAM Ltd iciwe umusoro ku nyongeragaciro yawujuririye kwa Komiseri Mukuru ku mpamvu zuko ubwikorezi bw'ibintu ku butaka busonewe TVA hashingiye ku ngingo ya 6.5 d) y'itegeko n° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro nk'uko ryavugururwe kugeza ubu, kandi MAFAM Ltd ifite uruhushya yandikishije ubwikorezi nk'umurimo yemerewe gukora, bityo ko MAFAM Ltd itagomba gucibwa TVA kubera ko ubwikorezi ikora buyisonewe kandi ntayo na yo yakiriye, kandi ko ari na ko BRALIRWA ibikora iyo igemuriye MAFAM Ltd ibinyobwa, ndetse ko Ikigo cy'Imisoro n'Amahoro kitayica TVA ku bwikorezi iba yagaragaje kuri fagitire yayo, agatanga n'urugero kuri fagitire ya BRALIRWA.

[10] Avuga ko hagenzuwe kuva muri Gashyantare 2015 kugeza mu Kuboza 2015, hagenzurwa umwaka wa 2016 n'uwa 2017 no kuva muri Nyakanga kugeza Ukuboza by'umwaka wa 2018. Avuga ko kuva muri Gashyantare 2015 kugeza mu kwezi kwa cumi 2016, ubwo Itegeko ryahindukaga, Itegeko ryariho ryavugaga ko serivisi z'ubwikorezi zisonewe, ko muri icyo gihe nta burenganzira bwabwagwa. Akomeza avuga ko kuba ukora serivisi y'ubwikorezi agomba kuba yabihereye uburenganzira biteganywa mu Itegeko ryo mu mwaka wa 2016. Avuga ko MAFAM Ltd yandikishije ibikorwa byayo muri RDB ku wa 19/07/2017, kandi muri ibyo bikorwa harimo na serivisi y'ubwikorezi, ko kandi yemera ko hagati y'igihe Itegeko ryagiriye mu mwaka wa 2016 n'igihe MAFAM Ltd yaboneye icyangombwa kiyemerera gukora serivisi y'ubwikorezi yahawe na RDB, icyo igihe cyonyine ari cyo MAFAM Ltd kigomba gusoreshwa TVA.

[11] Avuga kandi mu gisubizo cye, Komiseri Mukuru w'Ikigo cy'Imisoro n'Amahoro atigeze anenga izo ngingo MAFAM Ltd yatanze, ahubwo yavuze ko MAFAM Ltd yafashe igice cy'ikiguzi cy'ibinyobwa bya BRALIRWA bikwirakwizwa na MAFAM Ltd ngo iragisonera. Ko ibivugwa na

Komiseri Mukuru ari na byo byemejwe n'Urukiko Rukuru rw'Ubucuruzi, aho mu gika cya 34 cy'urubanza rujurirwa Urukiko rwagize ruti: « ubwikorezi yita ko busonewe si bwo yakiriye amafaranga yabyo ahubwo yayakiriye ku bicuruzwa hanyuma akagabanya ikiguzi cyabwo acyita icy'ubwikorezi». Asobanura ko ibyo atari ukuri, kuko MAFAM Ltd igemura ibinyobwa bya BRALIRWA mu duce yagenewe ikoresheje imodoka zayo zishinzwe gukora ako kazi, nk'uko yashoboraga gukoresha n'izindi z'abandi bantu bakora ako kazi kandi iyo serivisi batanze igasonerwa. Ko igurisha ibinyobwa ukwabyo, ikanarishya serivisi y'ubwikorezi ukwayo, iyi serivisi y'ubwikorezi akaba ari yo isonewe umusoro ku nyongeragaciro, kandi ubusonerwe bushyirwaho bukanakurwaho n'itegeko, nk'uko biteganyijwe n'ingingo ya 164 y'Itegeko Nshinga rya Repubukika y'u Rwanda. Avuga ko Ikigo cy'Imisoro n'Amahoro kitigeze gihakana ko iyo serivisi y'ubwikorezi MAFAM Ltd itayitanga cyangwa ko itemerewe kuyitanga, ndetse ko amategeko ateganya ko isonewe ku musoro ku nyongeragaciro, bityo ko nta mpamvu yo kutemera ubwo busonerwe mu gihe icyo bushingiyeho kidashidikanywaho mu buryo ubwo ari bwo bwose.

[12] Asobanura ko gukora inyemezabuguzi mu buryo butandukanya serivisi y'ubwikorezi n'ikiguzi cy'ibinyobwa ubwacyo bitabangamiye amategeko, kandi ko atari MAFAM Ltd ibikora yonyine, kuko na BRALIRWA igurisha ibinyobwa idaca TVA ku bwikorezi iba yakoreye MAFAM Ltd bujyanye no kuyigereza kuri *dépôt principal* ibinyobwa byayo. Ko rero ihame ryo kuresheshya abasoreshwa (*principe d'équité fiscale*) riba rigomba gukurikizwa kuko abasoreshwa bose bareshya imbere y'amategeko.

[13] Asobanura kandi ko mu myiregurire ya RRA, yavuze ko MAFAM Ltd ikata kuri buri kiguzi cy'ikaziye imwe amafaranga 300 iyita ay'ubwikorezi (transport), Urukiko rukabyemera rutyo ariko ko rwakoze imibare rugendeye kuri fagitire imwe yatanzwe nk'ikimenyetso mu Rukiko kandi n'izindi zose ari ko zikoze, rusanga ibivugwa na RRA ko ikata 300 Frw kuri buri kaziye atari byo, ariko rukabirengaho rukemeza ko koko MAFAM Ltd ikata 300 Frw kuri buri kaziye, naho andi asigara y'ikinyuranyo hagati y'ibiciro bya BRALIRWA n'igiciro MAFAM yagurishirijeho rutazi ibijyanye na yo.

[14] Avuga ko Urukiko rwabivuze muri aya magambo: « Ikigaragara ahubwo ni uko mu nyemezabuguzi yagaragajwe haruguru, yafataga igiciro yumvikanyeho na BRALIRWA igakuraho 300 Frw yita ay'ubwikorezi n'andi 100 Frw adatangirwa igisobanuro kandi yose akishyurwa n'umukiriya. Ibyo bigaragazwa n'uko Mutzig (33 cl) yayitanze kuri 9.910 Frw kandi ari 10.310 Frw, TURBO (50 cl) kuri 9.600 Frw kandi ari 10.000 Frw, TURBO (33 cl) kuri 7600 Frw kandi ari 8.000 Frw, AMSTEL (33 cl) kuri 11.700 Frw kandi ari 12.1000 Frw. Avuga ko ibyo byerekana ko amafaranga yishyurwaga n'umukiriya ari ay'ikiguzi cy'ibicuruzwa bya BRALIRWA, ariko yose atishyurirwaga umusoro wa TVA wuzuye, kuko hari ayo MAFAM Ltd yakuragaho 300 Frw iyita ay'ubwikorezi andi 100 Frw ntigaragaze impamvu yayo » nk'uko bigaragara mu gace ka 33 k'urubanza rujurirwa.

[15] Asobanura ko Urukiko rwashatse guha agaciro imyiregurire ya RRA kandi rubona neza ko ibyo ivuga ko MAFAM Ltd ikata kuri buri gihe 300 Frw kuri buri kaziye atari byo, rudasobanuye impamvu hagati y'igiciro MAFAM Ltd yagurishijeho n'icyo rwemeje ko cyashyizweho na BRALIRWA mu buryo budahinduka hazamo ikinyuranyo, ahubwo rukavuga ko « andi 100 Frw atagaragarizwa impamvu yayo», rwirengagije ingingo MAFAM Ltd yaburanishaga yuko gukurikiza ibiciro byashyizweho na BRALIRWA atari ihame, ahubwo ko ari ibyo BRALIRWA yifuzaga (recommended retail price : Rwf/bottle), mu gihe ingingo ya mbere (1) y'amasezerano

zagiranye yateganyaga ko «umuranguzi (i.e. MAFAM Ltd) azakwirakwiza ibinyobwa yubahiriza amategeko y'u Rwanda (...) harimo n'Itegeko rigenga ihiganwa mu bucuruzi», kandi ko iryo tegeko ryemera ko ibiciro bishyirwaho mu bwisanzure bw'ugura n'ugurisha, ndetse ko akenshi bishyirwaho n'ugurisha, bikaba bivuze ko ntawe utegeka uwo ari wese kugurisha ku giciro iki n'iki. Avuga ko kuba MAFAM Ltd yagabanyiriza ibiciro abo igurishije ibinyobwa ikabibatwarira, ariko ikabaca ikiguzi cy'uko kubibatwarira itabibujijwe, kuko yaba amasezerano yagiranye na BRALIRWA yaba n'amategeko agenga ubucuruzi muri rusange bitayibuzaga kubikora.

[16] Akomeza avuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibijyanye no kwivuguruza kugaragazwa na RRA kuri icyo kibazo, aho cyari gisanzwe gikorera MAFAM Ltd igenzura ry'umu musoro, kigasanga uburyo yakoresheye bwo gutandukanya serivisi y'ubwikorezi n'agaciro k'ibinyobwa igurisha bihuye n'ibiteganywa n'amategeko, nk'uko bigaragazwa n'igenzura cyayikoreye mu mwaka wa 2014 no mu wa 2018. Ko kandi iyo gikoze igenzura, kiba kigamije gukosora no kwigisha, kuko iyo gisanze uburyo umusororeshwa amenyekanisha umusoro buhuye n'ibyo amategeko ateganywa, bubimushimira bukamusaba kubikomeza atyo. Bityo ko kuba mu magenzura Ikigo cy'Imisoro n'Amahoro cyakoze cyarasanze MAFAM Ltd imenyekanisha umusoro mu buryo bukurikije amategeko nta cyari gutuma idakomeza kubikora, ahubwo ko ari cyo kinyuranya n'ukuri mu guhindura ibyo cyari gisanzwe kizi kandi cyemera gishiraho indi mpamvu inyuranye n'ukuri kandi cyari cyarayishimye uburyo imenyekanishamo TVA mu bucuruzi ikora.

[17] Avuga na none ko mu gika cya 35 cy'urubanza RCOMA 00020/2021/HCC Urukiko rwavuze ko « bitatuma umusoro iregera uteshwa agaciro kuko kuba iwubara mu buryo budahuye na serivisi y'ubwikorezi ikora, ahubwo ari ugufata ikiguzi cyishyurwe ibicuruzwa ikakigabanya igice kimwe kikitwa ubwikorezi, bidahuye n'ibyo itegeko riteganywa, ahubwo ko ari uburyo bwo gutubya umusoro wa TVA iba igomba kwishyurwa watanzwe n'abakiriya bayo». Avuga kandi ko Amabwiriza ya RURA, RRA ishingiraho atashingirwaho kuko icyo ashirirwaho ari ukuzura itegeko, ariko adashobora guteganywa ibyo itegeko ritavuze. Asoza asaba Urukiko gutegeka ko umusoro waciwe MAFAM Ltd kuri serivisi y'ubwikorezi iwusonewe uvanweho.

[18] Abajijwe umwihariko w'uru rubanza rugereranijwe n'imanza zabanje zaciwe n'inkiko harimo n'uru Rukiko ku bijyanye n'umusoro ku nyongeragaciro ucibwa abashyinzwe gutanga ibinyobwa bya BRALIRWA (*distributeurs*), avuga ko nta mwihariko uhari kuri iki kibazo kuko ikibazo kirimo gisa n'ibibazo byakemuwe n'uru Rukiko mu manza yashyize muri sisiteme ya IECMS.

[19] Uhagarariye RRA avuga ko uru rubanza rutandukanye n'imanza zabanje, ko muri izo manza abaciwe imisoro bagaragazaga ibyangombwa bibemerera gukora ubwikorezi bahawe na RURA. Ko kuba rero MAFAM Ltd nta burenganzira bwo gukora ubwikorezi yahawe n'Urwego rubishinzwe ntaho yahera ivuga ko ikora ubwikorezi. Akomeza avuga ko mu manza zabanje nubwo batagaragazaga ko bakoze ubwikorezi, ariko bari bafite ibyangombwa byerekana ko bakora ubwikorezi, ariko MAFAM Ltd itagaragaza ibimenyetso byerekana ko ikora ubwikorezi, ikaba idafite n'uruhushya yahawe na RURA bwo gukora ubwikorezi.

[20] Asobanura ko kuba ingingo ya 2 y'Itegeko n° 40/2016 ryo ku wa 15/10/2016 rihindura kandi ryuzura Itegeko n°37/2012 ryo ku wa 09/11/2012 rishyiraho Umusoro ku nyongeragaciro, iteganywa ko serivisi z'ubwikorezi zisonewe ari “serivisi z'ubwikorezi zikozwe n'ababihereye

uruhushya”, ariko ko MAFAM Ltd itagaragaza uruhushya yahawe n’urwego rubishinzwe (RURA) rwo gukora ubwikorezi, kandi n’iyo iza kuba yarakoze ubwo bwikorezi budasonewe uwo musoro, ko MAFAM Ltd igaragaza icyemezo cya RURA gifite agaciro kuva ku wa 16/10/2019 kugeza ku wa 16/10/2020 kandi igenzura (*audit*) yakorewe rirebana n’imyaka ya 2015, 2016, 2017 na 2018; ko ibyo bivuze ko icyo cyangombwa igaragaza ntacyo cyafasha muri uru rubanza, akaba ari na byo Urukiko rw’Ubucuruzi rwashingiyeho ruvuga ko MAFAM Ltd yakoze amakosa ku buryo itasonerwa TVA.

[21] Akomeza avuga ko MAFAM Ltd ubwayo yiyemerera ko yakoze serivisi y’ubwikorezi itabifitiye uburenganzira, nyamara kuva mu mwaka wa 2011 hari amabwiriza agaragaza ko ukora serivisi y’ubwikorezi agomba kuba abifitiye uburenganzira ahabwa na RURA nubwo ubucuruzi buba bwandikishijwe muri RDB, bityo ko umusoro ku nyongeragaciro MAFAM Ltd yaciye ukwiye kugumaho.

UKO URUKIKO RUBIBONA

[22] Ingingo ya 6,5°,d, y’Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro iteganya ko serivisi y’ubwikorezi bwo gutwara ibintu mu nzira y’ubutaka isonewe umusoro ku nyongeragaciro

[23] Ingingo ya 2 y’Itegeko n° 40/2016 ryo ku wa 15/10/2016 rihindura kandi ryuzuzwa Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro yahinduye ingingo ya 6 yavuzwe haruguru iteganya ko serivisi z’ubwikorezi zikozwe n’ababihereye uruhushya zisonewe umusoro ku nyongeragaciro.

[24] Isesengura ry’izi ngingo zavuzwe haruguru rigaragaza ko ingingo ya 6,5°,d, y’Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro yashyizeho ihame ko serivisi y’ubwikorezi isonewe umusoro ku nyongeragaciro. Bivuze ko uwakoraga serivisi y’ubwikorezi yari asonewe umusoro ku nyongeragaciro. Iyi ngingo yarahinduwe mu mwaka wa 2016 hongerwamo ikigombero (*condition*) cyo kugira ngo serivisi y’ubwikorezi isonerwe umusoro ku nyongeragaciro, ukora ubwo bwikorezi agomba kuba yarabihereye uruhushya n’urwego rubishinzwe. Mu yandi magambo, bivuze ko mbere y’uko ingingo ya 6,5°,d, y’Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro ihinduka, icyasabwaga kwari ukugaragaza ko umuntu cyangwa ikigo runaka bikora ubwikorezi bitabaye ngombwa ko ababihereye uburenganzira.

[25] Muri urubanza, hagomba gusuzumwa niba MAFAM Ltd yarakoze ubwikorezi, no kumenya niba igihe yakoraga ubwo bwikorezi yari isonewe umusoro ku nyongeragaciro hitabwa ku kubyo ingingo z’amategeko zavuzwe haruguru ziteganyaga no ku gihe umusoro uburwa waciriwe.

[26] Dosiye igaragaramo amasezerano y’imikoranyire yo kurangura, MAFAM Ltd yakoranye na BRALIRWA ku wa 01/02/2015. Muri dosiye harimo na none fagitire yo ku wa 25/02/2016 igaragaza ko MAFAM Ltd yakoze ubwikorezi kandi inagaragaza amafaranga y’ubwikorezi MAFAM Ltd ivuga ko asonewe umusoro ku nyongeragaciro.

[27] Ku kibazo cyo kumenya niba MAFAM Ltd yarakoze ubwikorezi bw’ibinyobwa bya BRALIRWA, Urukiko rushingiye ku bimenyetso byibikijwe haruguru rurasanga nta

gushindikanya ko MAFAM Ltd yakoze ubwikorezi bw'ibinyobwa bya BRALIRWA. Hashingiwe ku ngingo ya Ingingo ya 6,5^d, y'Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro, uko yubahirizwaga mbere yuko ihindurwa n'ingingo ya 2 y'Itegeko n° 40/2016 ryo ku wa 15/10/2016 rihindura kandi ryuzuza Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro, iyo ngingo ikaba yarateganyaga ko serivisi y'ubwikorezi bwo gutwara ibintu mu nzira y'ubutaka isonewe umusoro ku nyongeragaciro, kandi MAFAM Ltd ikaba yarakoze iyo serivisi y'ubwikorezi nk'uko bigaragazwa n'amasezerano ifitanye na BRALIRWA na fagitire yatanze, rurasanga MAFAM Ltd yari isonewe umusoro ku nyongeragaciro yaciwe mbere yo ku wa 15/10/2016, kuko ari bwo Itegeko ryongereyeho ko ukora iyo serivisi y'ubwikorezi agomba kuba yarabihereye uburenganzira.

[28] Urukiko rurasanga ibyo RRA ivuga ko Amabwiriza ya RURA yo mwaka wa 2011 yasabaga ko ukora ubwikorezi aba abifitiye uburenganzira ku buryo agomba kubahirizwa, bityo ko n'umusoro MAFAM Ltd yaciwe mbere ya 15/10/2016 wari wubahirije amategeko, nta shingiro byahabwa, kuko usibye ko ayo Mabwiriza yabayeho mbere y'Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro ryateganyaga ko serivisi y'ubwikorezi isonewe nta kindi kigombero (*condition*), nta nubwo amabwiriza avuguruzwa itegeko, ahubwo icyo aba agamije ni ugushyira mu bikorwa itegeko no kurushaho kuryumvikanisha¹.

[29] Ku byerekeranye n'umusoro wa nyuma yo ku wa 15/10/2016, Urukiko rurasanga ari ngombwa kureba niba MAFAM Ltd yarakoze ubwikorezi ibifitiye uburenganzira. Urukiko rurasanga ikimenyetso kigaragara muri dosiye cyerekana ko MAFAM Ltd yari ifite uburenganzira ari icyo ku wa 16/10/2019², bivuze nyuma y'igihe umusoro uburwanwa waciriwe. Urukiko rurasanga kuba MAFAM Ltd idashoboye kugaragaza ko nyuma yo ku wa 15/10/2016, yakoze ubwikorezi ibifitiye uburenganzira butangwa na RURA, umusoro ku nyongeragaciro yaciwe guhera ku wa 15/10/2016, ubwo Itegeko n° 40/2016 ryo ku wa 15/10/2016 rihindura kandi ryuzuza itegeko N° 37/2012 ryo ku wa 9/11/2012 rishyiraho umusoro ku nyongeragaciro ryashyirwaho yawuciwe mu buryo bukurikije amategeko, ukaba ugomba kugumaho.

[30] Urukiko rurasanga ibyo uburanira MAFAM Ltd avuga ko yabonye uburenganzira bwo gukora serivisi y'ubwikorezi yahawe na RDB, kuko ku wa 19/07/2017 yandikishije ibikorwa byayo birimo na serivisi y'ubwikorezi muri RDB, nta shingiro byahabwa kuko kwandikisha ubucuruzi burimo n'ubwikorezi bitandukanye no guhabwa uburenganzira bwo gukora ubwikorezi. Urukiko rurasanga nk'uko byagiye bigaragazwa mu zindi manza zaciwe n'uru Rukiko³, nta na hamwe RDB itanga icyemezo cyo gukora serivisi y'ubwikorezi, ahubwo ubwo burenganzira butangwa na RURA, bivuze rero ko MAFAM Ltd yakoze serivisi y'ubwikorezi itabifitiye uburenganzira, bityo yagombaga gucibwa uwo musoro guhera ku wa 15/10/2016.

[31] Urukiko rurasanga na none ibyo MAFAM Ltd ivuga ko na nyuma y'aho Itegeko n° 40/2016 ryo ku wa 15/10/2016 rihindura kandi ryuzuza itegeko n°37/2012 ryo ku wa 9/11/2012 rishyiraho umusoro ku nyongeragaciro rigiriyeho, umusoro ku nyongeragaciro yakwishyura ari uwo yaciwe hagati yo ku wa 15/10/2016 kugeza ku wa 19/07/2017, ubwo yandikishaga ibikorwa

1 Reba urubanza RCOMAA 00034/2020/CA rwaciwe ku wa 19/02/2021, haburana RRA na SODAR Ltd.

2 *Authorization for transport of goods*) cyanzwe na RURA gifite agaciro guhera ku wa 16/10/2019 kugera ku wa 16/10/2020 ku modoka RAC 765 I.

3 Reba urubanza RCOMAA 00001/2022/CA, rwaciwe ku wa 25/03/2022, haburana RRA na SRDS Ltd; urubanza RCOMAA 00057/2021/CA rwaciwe ku wa 25/03/2022, haburana RRA na SUGIRA Ltd.

by'ubwikorezi muri RDB nta shingiro byahabwa, kuko nk'uko byasobanuwe haruguru, MAFAM Ltd yagombaga kuba ifite uburenganzira yahawe na RURA, bityo n'umusoro yaciwe nyuma yo ku wa 19/07/2017 kugeza aho iboneye uburenganzira bwa RURA nawo yagombaga kuwucibwa, bityo nawo ukaba ugomba kugumaho.

[32] Ku bijyanye n'ubujurire bwuririye ku bundi bwatanzwe na RRA bwo kumenya niba MAFAM Ltd yaragaragaje icyangombwa cyo gukora ubwikorezi yahawe na RURA, no kumenya ibihe byasonerwaga umusoro wa TVA birebwa n'Itegeko n° 40/2016 ryo ku wa 15/10/2016 rihindura kandi ryuzuzwa Itegeko N° 37/2012 ryo ku wa 9/11/2012 rishyiraho umusoro ku nyongeragaciro, Urukiko rurasanga bwashubijwe mu bujurire bwa MAFAM Ltd bumaze gusuzumwa.

2. Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa muri uru rubanza afite ishingiro

[33] Uhagarariye MAFAM Ltd ashingiye ku mabwiriza agena ibihembo mbonera by'abavoka, asaba Urukiko gutegeka RRA guha MAFAM Ltd 2.000.000 Frw y'igihembo cya Avoka.

[34] Uhagarariye RRA yiregura ku mafaranga y'igihembo cya Avoka MAFAM Ltd isaba avuga ko idakwiye kuyahabwa kubera ko ari yo yishoye mu manza zidafite aho zishingiye, ko ahubwo RRA ari yo igomba kuyahabwa. Ashingiye ku biteganywa n'ingingo ya 111 y'itegeko N°22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi asaba Urukiko rw'Ubujurire gutegeka MAFAM Ltd guha RRA 2.000.000 Frw y'igihembo cya Avoka n'ibyatanzwe kuri uru rubanza kuva rutangiye, kubera kuyishora mu manza zidafite ishingiro.

[35] Uhagarariye MAFAM Ltd yiregura ku mafaranga y'igihembo cya Avoka RRA isaba avuga ko nta shingiro afite, kuko ari ingaruka y'imigendekere y'urubanza, Urukiko rukaba ruyagera uwo rwasanze afite ukuri mu rubanza.

UKO URUKIKO RUBIBONA

[36] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza asabwa muri uru rubanza adakwiye gutangwa kuko bigaragaye ko hari umusoro ku nyongeragaciro MAFAM Ltd yaciwe mu buryo bukurikije amategeko ariko hakaba hari n'uwo RRA yayiciye kandi yari uwosonewe.

III. ICYEMEZO CY'URUKIKO

[37] Rwemeje ko ubujurire bwatanzwe na MAFAM Ltd bufite ishingiro kuri bimwe.

[38] Rwemeje ko imikirize y'urubanza RCOMA 00020/2021/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 24/12/2021 ihindutse kuri bimwe.

[39] Rwemeje ko MAFAM Ltd isonewe kwishyura umusoro ku nyongeragaciro (TVA) yaciwe wo kuwa muri Gashyantare 2015 kugeza ku wa 15/10/2016.

[40] Rwemeje ko umusoro ku nyongeragaciro (TVA) MAFAM Ltd yaciwe guhera ku wa 15/10/2016 yawuciwe mu buryo bukurikije amategeko.

[41] Rutegetse MAFAM kwishyura umusoro ku nyongeragaciro (TVA) yaciwe guhera ku wa 15/10/2016, kuko yawuciwe mu buryo bukurikije amategeko.

[42] Ruvuze ko ingwate y'amagarama yatanzwe ihwanye n'ibyakoze mu rubanza.