IKIGO CY'IGIHUGU CY'IMISORO N'AMAHORO v. THE WORLD EXPRESS LTD

[Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA 0586/13/HCC (Niwemugeni, P.J.) 07 Werurwe 2014]

Amategeko agenga imisoro – Igenagaciro ry'ibintu byatumijwe mu mahanga – Mu Kugena agaciro k'icyatumijwe mu mahanga, umusoresha ntashingira ku gaciro k'ibintu byenda kuba bimwe, cyangwa gusa kandi biva mu gihugu kimwe mu gihe usora yagaragaje agaciro k'ikiguzi cyacyo – Itegeko nº15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3;

Amategeko agenga amasezerano – Kuvutswa amahirwe – Indishyi z'amafaranga imodoka yagombaga kwinjiza ikoreshwa mu gutwara abantu – Zitangwa ari uko uzaka agaragaza nta shiti ko iyo modoka yagombaga gukoreshwa mu gutwara abantu – Amafaranga y'ikurikiranarubanza – kugira ngo atangwe ni uko uyaka agaragaza ingano y'ayo yakoresheje, iyo atabigaragaje Urukiko ruyagena mu bushishozi bwarwo – Itegeko nº 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 142.

Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Indishyi z'ikurikirana rubanza – Mu gihe ikirego gifite ishingiro indishyi z'ibigenda mu rubanza ziratangwa.

Incamake y'ikibazo: The World Express yatumije imodoka hanze, igeze mu gihugu imenyesha gasutamo igiciro yayiguzeho kugirango kizashingirweho mu kuyisoresha. Ikigo cy'Iguhugu cy'Imisoro n'Amahôro cyarabyanze, ahubwo kiyigenera agiciro kari hejuru. The World Express yaje kuregera Urukiko rw'Ubucuruzi irusaba kugena igiciro hashingiwe ku masezerano n'inyandiko yishyuriyeho.

Ikigo cy'Iguhugu cy'Imisoro n'Amahôro cyasobanuye ko cyashidikanyije ku giciro cy'imodoka Combi cya 4300$ habariwemo n'igiciro cy'ubwikorezi bituma igena ako gaciro ihereye ku yindi KIA Combi yo mu mwaka umwe n'iyo (1999) yaguzwe 6500$ hatabariwemo igiciro cy'ubwikorezi, yaherukaga kuva mu gihugu cya Koreya.Urukiko rwemeje ko Ikigo cy'igihugu cy'imisoro n'amahôro cyahereye ku makuru adahagije. Ruvuga ko imodoka zakoze zishobora kugira ibiciro bitandukanye haherewe ku buryo zimeze mu gihe cy'igurishwa.

Ikigo cy'Iguhugu cy'Imisoro n'Amahôro cyajuririye Urukiko Rukuru rw'Ubucuruzi kivuga ko: Urukiko rwashingiye ku biteganywa n'umugereka wa 4, igice cya mbere, igika cya 3 n'icya 4 (Transaction value on identical goods na Transaction value on similar goods) cy'itegeko rigenga za Gasutamo z'Umuryango w'Afurika y'Iburasirazuba kandi atari ko bimeze, rukaba rwaranashidikanyije ku cyemezo cyarwo, ko kandi cyanaciwe indishyi zidafite aho zishingiye.

The World Express yo yavuze ko: imodoka iburanwa yazanye n'indi yo mu bwoko bwa Istana yaguzwe 4200$ harimo n'ubwikorezi naho combi ikaba yaraguzwe 4300$ habariwemo n'ubwikorezi, nk'uko bigaragazwa n'amasezerano y'ubugure bw'izo modoka kuri interineti.Yavuze kandi ko Urukiko rutashidikanyije ku cyemezo cyarwo ko ahubwo rwashakaga kugaragaza ibiciro by'imodoka byagaragajwe mu bimenyetso byakoreshejwe mu iburanisha kugira ngo hagaragare ukuri kw'ikiburanwa. Naho ku bijyanye n'indishyi ivuga ko zifite ishingiro. Yatanze ubujurire bwuririye ku bundi isaba indishyi zingana n'amafaranga

yagombaga kwinjiza iyakuye mu bikorwa byo gutwara abagenzi mu gihe cy'umwaka, inyungu mbonezamusaruro hamwe n'ikurikirana rubanza ku rwego rw'ubujurire.

Incamake y'icyemezo: 1. Mu kugena agaciro k'ibintu bisoreshwa bivuye mu mahanga, hashingirwa ku giciro cy'ikiguzi cyabyo cyagaragajwe n'usora mu gihe cyose nta kindi kimenyetso gihagije kibivuguruza cyatanzwe n'umusoresha, bityo agaciro k'imodoka yatumijwe mu mahanga kagaragajwe n'usora, umusoresha ntiyagahindura agendeye ku gaciro k'imodoka zenda gusa, zenda kuba zimwe cyangwa ziva mu gihugu kimwe.

2. Kuba ikirego cya The World Express cyari gifite ishingiro.bituma indishyi zaciwe Ikigo cy'Igihugu cy'Imisoro n'Amahôro (RRA) zigumaho

3. Ntaho The World Express yahera yaka indishyi z'amafaranga yagombaga kuba yarinjije mu gihe itagaragaza imirimo iyo modoka yari gukoreshwa igeze mu gihugu. Naho uwaka amafaranga y'ikurikirana rubanza, agomba kugaragaza niba yarayakoresheje koko, iyo atabashije kubigaragaza, Urukiko ruyagena mu bushishozi bwarwo.

Ubujurire nta shingiro;
Amafaranga yikurikirana rubanza hamwe n'amagarama aherereye k'uwajuriye;
Urubanza rwajuririwe ntiruhindutse.

Amategeko yashingiweho:
Itegeko Nº15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3;
Itegeko Nº 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 142.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] The World Express ivuga ko yatumije imodoka hanze, yagera muri gasutamo ikayimenyesha igiciro yayiguriyeho ariko iracyanga ikayishyira ku giciro cyo hejuru kitari icy'ukuri. Yaregeye Urukiko rw'Ubucuruzi rwa Nyarugenge mu rubanza rujuririrwa, irusaba kugena igiciro gishingiye ku masezerano n'inyandiko yishyuriyeho.

[2] Ikigo cy'Imisoro n'Amahoro (RRA) kivuga ko cyashidikanyije ku giciro cy'imodoka Combi cya 4300$ habariwemo n'igiciro cy'ubwikorezi bituma igena ako gaciro ihereye ku yindi KIA Combi yo mu mwaka imwe n'iyo (1999) yaguzwe 6500$ hatabariwemo igiciro cy'ubwikorezi yaherukaga kuva mu gihugu cya Koreya kimwe n'iyo modoka ivugwa hano. Ikigo cy'Imisoro n'Amahoro cyasabye ko uwo musoro wemezwa indishyi zisabwa na The World Express ntizihabwe agaciro kubera ko umukozi wacyo afite uburenganzira bwo kugena umusoro n'amahoro.

[3] Urukiko rwafashe icyemezo cy'uko RRA ihera ku makuru adahagije mu kugena igiciro kandi kuba izo modoka ziva mu gihugu kimwe ubwabyo bidahagije ko ziba zimwe. Ruvuga kandi ko imodoka zakoze zishobora kugira ibiciro bitandukanye haherewe ku buryo zimeze mu gihe cy'igurishwa. Ikigo cy'Imisoro n'Amahoro (RRA) nticyishimiye icyo

cyemezo, ikijuririra muri uru Rukiko ku mpamvu z'uko urukiko rwavuze ko RRA yashingiye ku biteganywa n'umugereka wa kane, igice cya mbere, igika cya gatatu n'icya kane (Transaction value on identical goods na Transaction value on similar goods) w'itegeko rigenga za Gasutamo z'umuryango w'Afurika y'Iburasirazuba atari ko bimeze, ko urukiko narwo rwashidikanyije mu cyemezo cyarwo, aho ruvuga ko hari impamvu yo gushidikanya ku giciro cya The World Express, ndetse no ku ndishyi urukiko rwaciye. Muri uru rubanza, uru Rukiko rugiye gusuzuma niba izo mpamvu z'ubujurire zifite ishingiro koko.

II. ISESENGURA RY'URUBANZA

1. Ese koko Ikigo cy'Igihugu cy'Imisoro n'Amahôro nticyashingiye Kumugereka wa kane, igice cya mbere, igika cya gatatu n'icya kane (Transaction value on identical goods na Transaction value on similar goods) w'itegeko rigenga za Gasutamo z'umuryango w'Afurika y'Iburasirazuba kigena igiciro cy'imodoka ivugwa muri uru rubanza?

[4] Ikigo cy'Igihugu cy'Imisoro n'Amahôro (RRA) kivuga ko urukiko rwavuze ko cyashingiye ku biteganywa n'umugereka wa kane, igice cya mbere, igika cya gatatu n'icya kane (***Transaction value on identical goods na Transaction value on similar goods)*** w'itegeko rigenga za Gasutamo z'umuryango w'Afurika y'Iburasirazuba mu kugena agaciro k'imodoka ya The World Express Ltd RRA yagendeye ku bicuruzwa bitandukanye ku mpamvu zikurikira:

- Imodoka KIA Combi yahereyeho igena igiciro itandukanye na KIA Combi yatumijwe na The World Express kuko zititwa kimwe na sosiyete zitumizwamo zitandukanye;
- Nta giciro k'izo modoka ziva mu ruganda cyagaragajwe
- Kuba izo modoka ziva mu gihugu kimwe ubwabyo ntibihagije kuba zimwe
- Kuba imodoka zakoze (used vehicles/voitures d'occasion) zidashobora kugira ibiciro bimwe.

[5] Ikigo cy'Igihugu cy'Imisoro n'Amahôro (RRA) cyo kiravuga ko kitashingiye kuri uriya mugereka wavuzwe n'urukiko rugena agaciro k'imodoka, ko ahubwo cyashingiye ku mugereka wa munani, igice cya mbere igika cya munani (Fall back method). Kirasobanura ko icyo gika giteganya ko: "Iyo agaciro k'ibicuruzwa kadashoboye kuboneka hakurikijwe uburyo buteganywa mu bikibanziriza, ako gaciro kaboneka hakoreshejwe uburyo bwo kubara agaciro bwemewe n'amahame n'ingingo rusange zikubiye muri uwo mugereka wa kane no ku makuru aboneka mu gihugu kigize umuryango."

[6] The World Express mu miburanire yayo ivuga ko imodoka iburanwa yazanye n'indi yo mu bwoko bwa Istana, zikaba zaraguzwe hakoreshejwe internet ku giciro cya 8500$ zombi harimo n'ubwikorezi (CIF). Istana yari kuri 4200$ naho Combi iri kuri 4300$ harimo n'ubwikorezi. Bikaba bigaragazwa na sales contract yaguriweho iyo modoka kuri internet.

[7] Uru Rukiko rurasanga kuri iyi ngingo y'ubujurire, Ikigo cy'Imisoro n'Amahoro (RRA) cyaravugishije urukiko ibyo rutavuze kuko nyuma yo kuvuga ibyo uriya mugereka uteganya mu gice cya 8 n'icya 9 by'urubanza rujuririrwa, urukiko rwavuze mu gika cya 10 cy'urwo rubanza ko : "Rushingiye ku biteganywa n'amategeko bivuzwe mu bika bibanziriza iki, rusanga RRA cyangwa se by'umwihariko itarashingiye ku bicuruzwa bimwe cyangwa bisa mu kugena agaciro k'imodoka, ahubwo yarashingiye ku modoka zenda kuba zimwe

cyangwa zenda gusa kandi ziva mu gihugu kimwe.” Ntabwo rero urukiko rwavuze ko RRA yashingiye ku mugereka wa kane, igice cya mbere, igika cya gatatu n’icya kane (Transaction value on identical goods na Transaction value on similar goods) w’itegeko rigenga za Gasutamo z’umuryango w’Afurika y’Iburasirazuba nk’uko ikigo cy’imisoro n’Amahoro gishaka kubyumvikanisha, ahubwo rwavuze ko kitawushingiyeho. Kuvuga ko cyashingiye kuri Fall Back Method iteganya ibijyanye n’iyo agaciro k’ibicuruzwa kadashoboye kuboneka na byo nta shingiro byahabwa kuko rusanga iyo method yakoreshwa igihe nta gaciro k’ibicuruzwa kagaragajwe, mu gihe kuri iyi Combi ivugwa muri uru rubanza, hagaragajwe ko yaguzwe ku giciro cya 4300$. Iyi mpamvu y’ubujurire rero ikaba nta shingiro yahabwa.

2. Ese koko urukiko rwarashidikanyije mu cyemezo cyarwo?

[8] Ikigo cy’Igihugu cy’Imisoro n’Amahôro (RRA) kiravuga ko urukiko rwemeje ko The World Express Ltd igomba gusorera ku gaciro yaguriyeho kangana na 4.300$ nyamara na rwo rwiyemerera ko hari impamvu yo gushidikanya kuri icyo giciro mu ica ry’urubanza ku rupapuro rwa gatatu agace ka 12.

[9] The World Express Ltd yo ivuga ko muri icyo gika, umucamanza yashakaga kugaragaza ibiciro by’imodoka byagaragajwe mu bimenyetso byakoreshejwe mu iburanisha kugira ngo hagaragare ukuri kw’ikiburanwa. Ko ari muri urwo rwego mu gika cya 13 cy’urwo rubanza, urukiko rwasanze impamvu zo gushidikanya zitangwa na RRA nta shingiro zahabwa, rwemeza ko The World Express Ltd igomba gusorera ku gaciro yaguriyeho (transaction value) kangana na 4.300$. Ko bishimangirwa kandi ko n’uko mu gika cya 14, The World Express Ltd yagaragarije urukiko ibimenyetso byuzuzanya kandi bidafite gushidikanya, bigaragaza agaciro nyako imodoka iburanwa igomba gusorerwaho gahwanye na 4.300$.

[10] Hashingiwe ku ngingo ya 3 y’itegeko rigena ibimenyetso mu manza n’itangwa ryabyo, uru Rukiko rurasanga Ikigo cy’Igihugu cy’Imisoro n’Amahôro (RRA) gifata igice kimwe kigifitiye akamaro muri icyo gika cya 12 kivuga ariko ntikirangize interuro yose, kuko urukiko rwavuze ko kuba izo modoka eshatu zose zituruka muri Koreya zidahuje igiciro, yaba impamvu yo gushidikanya ku giciro cyavuzwe na The World Express Ltd cya Combi ya Korea Auto co.Ltd, ***ariko ukugihakana n’ukugena ikindi bigomba amakuru ahagije, arimo ubushishozi kandi afatika.*** Mu gika cya 13, urukiko rwavuze ko rusanga impamvu yo kwizera cyane no kugendera ku makuru y’igiciro cy’imodoka imwe cya 6500$ hatarimo ubwikorezi itumvikana mu gihe hari ibiciro by’ izindi modoka zavuye Koreya zavuzwe haruguru byose biri munsi y’icyo giciro kandi habariwemo n’ubwikorezi buzigeza Dar Es Salaam cyangwa i Kigali. Mu gika cya 14, urukiko rwanzuye ko igiciro cyagaragajwe na The World Express Ltd cyafatwaho ukuri igihe cyose nta kindi kimenyetso gihagije kivuguruza igiciro cy’imodoka Combi cyamenyekanishijwe cya 4300$ kikaba ari cyo cyemezwa.

[11] Bigaragara rero ko Ikigo cy’Igihugu cy’Imisoro n’Amahôro (RRA) cyerekana ikintu gito umucamanza yavuze kigifitiye akamaro, ariko ntigishake kureba ibisobanuro yagihaye gihagije kinaganisha no ku mwanzuro yafashe. Muri East African Community Customs Management Act, Fourth schedule (ss 122 (1) iteganya ko mu kugena igiciro cy’ibintu bivuye mu mahanga, hashingirwa ku giciro cyishyuriweho ibyaguriishijwe. Uru Rukiko rurasanga rero mu rubanza rujuririrwa, ntaho urukiko rugaragaza ko gushidikanya ku giciro cy’iyo modoka ya The World Express byatuma isoreshwa igiciro kiri hejuru y’icyo yaguriweho, ko ahubwo rwagaragaje byaba impamvu ikomeye ituma isoreshwa ku giciro yaguriweho mu gihe cyose nta kindi kimenyetso gihagije kivuguruza igiciro cyerekanwe. Iyi mpamvu y’ubujurire rero ikaba nta shingiro yahabwa.

3. Ese indishyi zaciwe Ikigo cy'Igihugu cy'Imisoro n'Amahôro (RRA) ntizari ngombwa?

[12] Ikigo cy'Igihugu cy'Imisoro n'Amahôro (RRA) kiravuga ko cyaciwe indishyi za 600.000frs z'ibigenda ku rubanza, kikaba gisanga nta shingiro zifite kuko n'ikirego ubwacyo nta shingiro gifite. Uru Rukiko rurasanga atari byo kuko bigaragara ko ikirego cya The World Express cyari gifite ishingiro.

4. Ese indishyi zisabwa na The World Express Ltd zatangwa?

[13] The World Express Ltd irasaba indishyi zingana n'amafaranga yagombaga kwinjiza itwara abagenzi mu mwaka angana na 7.200.000Frw, inyungu mbonezamusaruro za 2.000.000Frw, ay'ikurikirana rubanza ku rwego rw'ubujurire ra 500.000Frw.

[14] Ingingo ya 142 y'itegeko rigenga amasezerano, iteganya ko: "Nta ndishyi zishobora gutangwa ku gihombo kiri hejuru y'icyo uruhande rwarenganyijwe rushobora kugaragaza nta gushidikanya". Uru Rukiko rurasanga The World Express itagaragaza nta shiti ko iyo modoka yagombaga gukoreshwa mu gutwara abantu ku buryo yari kuyikuraho amafaranga isaba, ndetse ikaba itanagaragaza icyo isabira indishyi mbonezamusaruro. Na ho ikurikirana rubanza, ruri buyagene mu bushishozi bwarwo kuko nta kigaragaza ko yakoresheje 500.000Frw ku rwego rw'ubujurire koko.

III. ICYEMEZO CY'URUKIKO

Urukiko Rukuru rw'Ubucuruzi:

[15] Rwemeye kwakira ubujurire rwashyikirijwe n' Ikigo cy'Imisoro n'Amahoro (RRA).

[16] Rwemeje ko nta shingiro bufite.

[17] Rukijije ko The World Express Ltd itsinze, ko Ikigo cy'Imisoro n'Amahoro (RRA) gitsinzwe.

[18] Rutegetse Ikigo cy'Imisoro n'Amahoro (RRA) kwishyura The World Express Ltd 200.000Frw ahwanye n'ikurikirana rubanza ku rwego rw'ubujurire, kikayatanga mu gihe cy'iminsi cumi n'itanu urubanza rubaye itegeko, kitayatanga akavanwa mu byacyo ku ngufu za Leta.

[19] Rutegetse Ikigo cy'Imisoro n'Amahoro (RRA) kwishyura 9700Frw ahwanye n'ibyakozwe muri uru rubanza, kikayatanga mu gihe cy'iminsi cumi n'itanu urubanza rubaye itegeko, kitayatanga akavanwa mu byacyo ku ngufu za Leta.

[20] Rutegetse ko ku bindi hubahirizwa icyemezo cy'urukiko mu rubanza RCOM 0870/13/TC/Nyge.