

NDIGELA v. ATA

[Rwanda URUKIKO RW'IKIRENGA– RCOMA 0054/10/CS (Mugenzi, P.J., Mukamulisa na Rugabirwa, J.) 18 Werurwe 2011]

Amategeko agenga imiburanishirize y'Imanza z'imbonezamubano– Ingwate itangwa n'umunyamahangaurega – Nta Sosiyeti yo mu bihugu bigize umuryango wa Afurika y'Iburasirazubayasabwa ingwate itangwa n'abanyamahanga kuko amategeko ayifata nk'isosiyeti yo mu Rwanda–Itegekon° 14/2010 ryo kuwa 07/05/2010 rihindura kandi ryuzuza itegeko n° 07/2009 ryo kuwa 27/04/2009 ryerekeye amasosiyete y'ubucuruzi, ingingo ya 12 – Itegeko n° 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu, ingingo ya 81.

Amategeko y'ubwikorezi – Amasezerano – Itandukaniro hagati y'amasezerano y'ubwikorezi n'ay'ubukode bw'imodoka – Iyo rwiyezamirimo atariwe ugenzura imodoka yatanzeho ubukode, amasezerano yitwa ay'ubukode bw'imodoka – Iyo imodoka yakodeshejwe itanganywe n'umushoferi agakomeza kugengwa na nyiri modoka, amasezerano yitwa ay'ubwikorezi.

Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Indishyi – Ikurikirana ry'indishyi zikomoka ku byangijwe – Uregera indishyi ashobora guhitamo kuryoza abakoresha ibikorwa byangijwe n'abakozi babo mu gihe bakoraga imirimo babashinze aho kuzishingira ku ikurikiranacyaha– Itegeko ryo kuwa 30/07/1888 ryerekeyeamasezeranocyangwa imirimo nshinganwa, ingingo ya 260.

Incamate y'ikibazo: ATA yagiranye na NDIGELA&CO amasezerano yo kuyitwarira mu modoka ibiribwa ibivana Isaka ibijyana i Goma (RDC). ATA yareze NDIGELA &CO mu Rukiko Rukuru rw'Ubucuruzi ivuga ko itubahirije ayo masezerano y'ubwikorezi bagiranye, kuko imodoka zatwaye ibyo biribwa zigeze i Gisenyi, abashoferi bazo bagurisha ibigori bari batwaye. Urukiko Rukuru rw'Ubucuruzi rwemeje ko ikirego cya ATA gifite ishingiro, rutegeka NDIGELA &CO kuyishyura amafaranga ahwanye n'ibigori byagurishijwe hiyongereyeho avansi yari yahawe ndetse n'amafaranga y'igihembo cya Avoka.

NDIGELA&CO yajuririye urwo rubanza mu Rukiko rw'Ikirenga ivuga ko ikirego cya ATA kitagombaga kwakirwa idatanze ingwate y'amagarama isabwa umunyamahanga urega, ikanavuga ko itari ikwiriye kuryozwa amakosa y'abashoferi bagurishije ibyo bari batwaye, ko ahubwo aribo bakwiye kwishyura kuko bahamwe n'icyaha mu rubanza nshinjabyaha ndetse bakaba banemera kwishyura.

Kuri izi ngingo, ATA yo ivuga ko amasosiyete yo mu bihugu bigize umuryango wa Afurika y'Iburasirazuba afatwa nk'amasosiyete yo mu Rwanda bityo ko nta ngwate isabwa abanyamahanga yagombaga gutanga. Ivuga kandi ko NDIGELA&CO ariyo igomba gutanga indishyi kuko abashoferi bayo aribo barigishije ibyo bari bikoreye kandi ko ariyo yari ifite ishingano zo kubigeza aho bumvikanye.

Incamate y'icyemezo:1. Kuba ATA ari sosiyeti yo mu gihugu kigize umuryango wa Afurika y'Iburasirazuba kandi amategeko y'u Rwanda akaba ayifata nk'isosiyeti nyarwanda, ntigomba kubanza gutanga ingwate y'amagarama isabwa umunyamahanga mbere yo kurega.

2. Iyo nyiri modoka yakodeshejwe atariwe uyigenzura, ayo masezerano yitwa ay'ubukode bw'imodoka naho iyo rwiyemezimirimo atanzeho imodoka ubukode akaba arinawe utanga umushoferi kandi agakomeza kumugenzura, ayo masezerano yitwa ay'ubwikorezi. Bityo amasezerano NDIGELA & CO yagiranye na ATA ni ay'ubwikorezi kuko itagaragaza mu masezerano bagiranye ahateganyijwe ko ATA izishakira abashoferi kandi ikaba itagaragaza ko abashoferi banyereje ibiribwa bari batwaye batari abayo. Kubera iyo mpamvu NDIGELA agomba kuryozwa kuba atarabashije gushyitsa ibyo yikoreye aho byagombaga kugera, kuko byari inshingano ze.

3. Abakoresha baryozwa ibyangijwe n'abakozi babo, iyo bakora imirimo babashinze. Nta cyabuza ATA amahitamo yo kuryoza indishyi NDIGELA & CO nk'umukoresha w'abashoferi bamwangirije aho kuzishingira ku ikurikiranacyaha.

**Ubujurire ntashingiro bufite.
Ubujurire bwuririye ku bundi bufite ishingiro.
NDIGELA & CO itegezwe kwishyura ATA amafaranga y'indishyi, indishyi zo
gusiragizwa mu manza n'igihembo cy'Avoka.
Amagarama aherereye ku wajuriye.**

Amategeko yashingiweho:

Itegeko n° 14/2010 ryo kuwa 07/05/2010 rihindura kandi ryuzuzwa itegeko n° 07/2009 ryo kuwa 27/04/2009 ryerekeye amasosiyete y'ubucuruzi, ingingo ya 12.

Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu, ingingo ya 81.

Itegeko ryo kuwa 30/07/1888 ryerekeye amasezerano cyangwa imirimo nshinganwa, ingingo ya 260.

Inyandiko z'abahanga zifashishijwe:

François COLLART DUTILLEUL et Philippe DELEBECQUE, Contrats civils et commerciaux, 7^e édition, Paris, Dalloz, 2004, p. 698.

Urubanza

I. IMITEREREY'URUBANZA

[1] Sosiyete ALLIED TRANSPORT AGENT (ATA) yatsindiye isoko rya "WORLD Food Programme" (WFP) rihwanye na \$ US 65.000.00 ryerekeranye no gutwara ibiribwa ibivana muri Tanzania ibijyana kuri Goma (RDC). Bitewe nuko ATA nta modoka yari ifite, yagiranye amasezerano y'ubwikorezi na Sosiyete NDIGELA & Co yo kuvana ibigori Isaka ibijyana i Goma, ikodesha amakamyo 2 ya NDIGELA kuri \$ US 11.000.00, iyaha avance ya \$ US 5.000.00.

[2] ATA ivuga ko izo modoka zigeze i Gisenyi abashoferi bazo bagurishije ibigori bari batwaye, bituma irega NDIGELA kuba itarubahirije amasezerano bagiranye y'ubwikorezi maze bikayitera igihombo.

[3] Urukiko Rukuru rw'Ubucuruzi rumaze kwemeza ko ikirego cya ATA gifite ishingiro, rwategetse NDIGELA kwiyishyura \$US 32,214.10 yakaswe na WFP ahwanye na toni 61

z'ibigori abashoferi bayo bagurishije, hakiyongeraho \$US 5.000.00 ahwanye na avance NDIGELA yari yahawe ndetse na \$US 1000.00 y'igihembo cya Avoka.

[4] Mu bujirire mu Rukiko rw'Ikirenga, uburanira NDIGELA avuga ko Ikirego cya ATA kitagombaga kwakirwa idatanze ingwate y'amagarama isabwa abanyamahanga barega, akanavuga ko NDIGELA itari ikwiye kuryozwa amakosa y'abashoferi bagurishije ibyo bari batwaye kandi ari ATA yabihereye akazi hakurikijwe amasezerano y'ubwikorezi ATA yagiranye na NDIGELA, ikindi kandi abagize uruhare mu irigiswa ry'ibigori byabuze banabiyemerera abakaba ari bo bakwiye kwishyura kuko bahamwe n'icyaha mu rubanza nshinjabyaha rwabaciriwe, ndetse hakaba hari n'inyandiko basinye bemera kwishyura.

[5] Urubanza rwaburanishijwe mu ruhamwe ku wa 17/02/2011, NDIGELA & Co ihagarariwe na Me GUMISIRIZA Hilary, naho ALLIED TRANSPORT AGENT ihagarariwe na Me NDUTIYE Yussuf.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

Ku byerekeye ingwate NDIGELA ivuga ko ATA yagombaga gutanga nk'umunyamahanga urega.

[6] NDIGELA ivuga ko Urukiko Rukuru rutagombaga kwakira ikirego cya ATA idatanze ingwate isabwa abanyamahanga kuko ari sosiyete y'inyamahanga.

[7] Nk'uko uburanira ATA abivuga kandi bikaba byaranasobanuwe n'Urukiko Rukuru rw'Ubucuruzi, ingingo ya 81 y'Itegeko n° 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu, iteganya ko, iyo bisabwe n'uregwa, umunyamahanga wese urega agomba gutanga amafaranga y'ingwate, uretse igihe haba hariho amasezerano ibihugu by'amahanga byaba byagiranye n'u Rwanda asonera abatwaga babyo ingwate.

[8] NDIGELA yasobanuriwe ko, usibye n'amasezerano nk'ayo avugwa muri iyo ngingo y'itegeko, hari itegeko nyirizina, n° 14/2010 ryo kuwa 07/05/2010 rihindura kandi ryuzuzwa itegeko n° 07/2009 ryo kuwa 27/04/2009 ryerekeye amasosiyete y'ubucuruzi riteganya, mu ngingo yaryo ya 12 ko amasosiyete yo mu bihugu bigize umuryango wa Afurika y'Iburasirazuba afatwa nk'amasosiyete yo mu Rwanda. Ubujirire rero bwa NDIGELA idahakana ko Sosiyete ATA yo muri Tanzaniya, kimwe mu bihugu bigize uwo muryango irebwa n'iryo tegeko, nta shingiro bufite.

Ku kibazo cyo kumenyaniba amasezerano yabaye hagati ya NDIGELA na ATA ari ay'ubwikorezi cyangwa ay'ubukode gusa bw'imodoka.

[9] NDIGELA ivuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije amasezerano yagiranye na ATA yo guha ATA imodoka maze ikishakira abashoferi yagombaga no kwiyishyurira, bityo rero, NDIGELA ikemeza ko itaryozwa ingaruka z'amasezerano y'ubwikorezi kandi ntayo yagiranye na ATA.

[10] Kuri iyi ngingo, ATA isubiza ko ibyo NDIGELA ivuga byo kuba barasezeranye ko ATA izishakira abashoferi atari ukuri, igahamya ko amasezerano bagiranye ari ay'ubwikorezi NDIGELA yagombaga gukora, ikoresheje imodoka n'abashoferi bayo.

[11] Mu nyandiko y'amasezerano NDIGELA yakoranye na ATA, nta na hamwe hateganyijwe ko ATA izishakira abashoferi nk'uko NDIGELA ibivuga, ikaba itarigeze

igaragaza aho ibikura. Urukiko rurasanga, mu gihe NDIGELA itagaragaza koabashoferi banyereje imizigo batari abayo nk'uko ibivuga, bigomba kwemezwa ko bari abayo, inabafiteho ububasha, amasezerano yagiranye na ATA akaba rero agomba kwitwa amasezerano y'ubwikorezi, aho kuba ay'ubukode bw'imodoka.

[12] Iki gisobanuro kandi gihura n'ibyemezwa n'abanditsi b'abahanga mu mategeko, aho basobanura ko iyo rwiyezamirimo atariwe ugenzura imodoka yatanze, aba adakwiye kwitwa umwikorezi, ahubwo aba ari uwakodesheje gusa iyo modoka, ibyo bikaba bitandukanye n'igihe imodoka y'ubwikorezi yaba yakodeshejwe igatanganwa n'umushoferi, kuko aha ariho amasezerano noneho yitwa ay'ubwikorezi, mu gihe umushoferi akomeje kugengwa n'uwatanze imodoka¹

[13] Kuba amasezerano NDIGELA yagiranye na ATA ari ay'ubwikorezi nk'uko bisobanuwe haruguru, bituma umwikorezi NDIGELA agomba kuryozwa kuba atarabashije gushyitsa ibyo yikoreye aho byagombaga kugera, kuko byari inshingano ze (obligation de resultat) hakurikijwe ibiteganywa n'ingingo ya 16 n'ya 18 z'Itegeko ryo kuwa 19 mutarama 1920 ryerekeye intumwa mu bucuruzi n'abikorezi²

Ku kibazo cy'uko ATA itakurikiranye ubwishyu ku bashoferi barigishije ibintu, ndetse n'abo babigurishijeho kandi baragaragaye.

[14] NDIGELA ivuga ko n'iyi byafatwa ko abashoferi barigishije ibintu bari abayo, atari yo yakwishyuzwa ibyo barigishije kandi biboneka ko ari bo babikoze kuko icyaha ari gatozi, ndetse n'abahishe ibyo bintu bakaba barabihaniwe mu rubanza nshinjabyaha banemera kwishyura.

[15] Kuri icyo kibazo, ATA isubiza ko NDIGELA ariyo igomba gutanga indishyi kuko abashoferi barigishije ibyo bari bikoreye bari abayo, kandi ikaba yari ifite inshingano zo kugeza ibiribwa ahari hateganyijwe, naho kuba yarahisemo gukurikira indishyi ishingiyeye ku masezerano aho gushingira ku ikurikiranacyaha, ATA ivuga ko ari amahitamo ihabwa n'amategeko.

[16] Urukiko rurasanga NDIGELA itaburanisha ihame ry'uko uburyozwacyaha ari gatozi ku wagikoze, mu gihe ntawigeze ayikurikiranaho icyaha cyakozwe n'abandi, ahubwo uburyozwe kuri yo buturutse ku bikorwa by'abashoferi bayo bukaba bwashingira ku ngingo ya 260 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano iteganywa uburyozwe

¹Lorsque l'entrepreneur n'a pas la maîtrise du déplacement du véhicule qu'il fournit, il ne mérite pas la qualité de transporteur : il est un simple bailleur ou plus exactement un frêteur engagé dans un contrat d'affrètement avec un chauffeur. Cependant, si l'engin de transport est loué avec son conducteur, les solutions sont différentes : le contrat doit être requalifié de location en transport, dès l'instant que le conducteur est resté sous les ordres du prétendu bailleur», François COLLART DUTILLEUL et Philippe DELEBECQUE, Contrats civils et commerciaux, 7^e édition, Paris, Dalloz, 2004, p.698.

²Iyo ngingo ya 16 igateganywa ko « Uretse impamvu zitunguranye cyangwa ntarengwa, umwikorezi yishingira isohozza ry'abantu cyangwa ibintu mu gihe cyasezeranywe, iyo nta gihe cyasezeranywe abikora akurikije uko bikorwa mu karere ...», naho iya 18 igateganywa ko umwikorezi ariyozwa ibyangiritse cyangwa ibyatakaye cyangwa ndetse n'impanuka zaba kubo atwaye mu gihe aterekana ko ukwangirika, ugutakara cyangwa impanuka zaturutse ku yindi mpamvu itamuturutseho kandi idashobora kumushinjwa ».

bw'umukoresha ku bikorwa by'umukozi we³, no ku buryozwe bushingiye kuri kamere y' masezerano y'ubwikorezi nk'uko yasobanuwe haruguru.

[17] Naho kuvuga ko ATA yabuze gukurikirana ubwishyu ku banyereje ibintu kandi babyemera, iyo nayo si ingingo yakuraho uburyozwa bwishyu ku mwikorezi wari ufite inshingano zo kugeza ibintu aho yiyemeje, kuko ATA wagombaga kubigerezwa aho bumvikanye yari afite amahitamo yo kuba yakurikirana indishyi ahereye ku masezerano y'ubwikorezi yagiranye na NDIGELA, cyangwa se akaba yazikurikirana mu nzira yo kuziregera ku banyerejeje ibintu byabuze. Ntaho rero NDIGELA yashingira ivuga ko ATA yagombaga byanze bikunze gukurikirana indishyi mu rubanza rw'inshinjabyaha cyangwa se iruhereyeho.

Ku byerekeye indishyi ATA isaba mu bujurire bwuririye ku bundi.

[18] ATA irasaba indishyi zihwanye na 500.000 frw y'igihembo cya Avoka, na 1.000.000 frw yo gusiragizwa mu nkiko, NDIGELA yo igasubiza ko izo ndishyi ntacyo zishingiyeho.

[19] Urukiko rurasanga koko byarabaye ngombwa ko ATA ishyiraho avoka uyiburanira muri ubu bujurire bwa NDIGELA, ikaba ikwiye kubiharerwa indishyi, ariko kuko izo isaba ari ikirenga, ikaba yagenerwa, mu bushishozi bw'Urukiko 300.000 frw y'igihembo cya avoka yiyongera ku yo yari yagenewe mbere.

[20] Harebwe kandi ingingo z'ubujurire bwa NDIGELA muri uru Rukiko n'isesengurwa ryazo nk'uko ryagaragajwe haruguru, bigaragara ko nta mpamvu zishyitse zagombaga gutuma NDIGELA ijuririra urubanza yatsindiwe mu Rukiko Rukuru rw'ubucuruzi, bityo rero indishyi ATA isaba zo kuba yarasiragijwe mu nkiko zikaba zifite ishingiro, ariko ikaba yagenerwa 300.000 frw mu bushishozi bw'Urukiko, kuko ayo isaba ari ikirenga.

III. ICYEMEZO CY'URUKIKO

[21] Rwemeye kwakira ubujurire bwa NDIGELA & Co n'ubwa ALLIED TRANSPORT AGENT (ATA) bubwuriyeho kuko bwaje mu buryo n'inzira bikurikije amategeko;

[22] Rwemeje ko ubujurire bwa NDIGELA & Co nta shingiro bufite; ko ubwa TRANSPORT AGENT bufite ishingiro ;

[23] Rutegetse NDIGELA & Co kwishyura ATA indishyi zihwanye n'amadolari ya Amerika 38.214,10 yaciwe n'Urukiko Rukuru rw'Ubucuruzi, hiyongereyeho 600.000 frw iciwe muri uru Rukiko, itayatanga mu gihe cy'iminsi 15, agakurwa mu byayo ku ngufu za Leta.

[24] Ruyitegetse kwishyura umusogongero wa Leta, uhwanye na 4% y'igiteranyo cy'indishyi zose iciwe, atayatanga mu gihe cy'iminsi 15, agakurwa mu byayo ku ngufu za Leta.

[25] Ruyitegetse kwishyura amagarama y'urubanza ahanye na 32.400 frw, itayatanga mu gihe cy'iminsi umunani, agakurwa mu byayo ku ngufu za Leta.

³Iyo ngingo iteganya ko umuntu ataryozwa gusa ibyangiritse kubera ibikorwa bye bwite, ahubwo anaryozwa ibyangijwe n'ibikorwa by'abo yishingiye cyangwa by'ibintu ashinzwe kurinda, ikanasobanura ko ba shebuja n'abakoresha baryozwa ibyangijwe n'abakozi babo, iyo bakora imirimo babashinze.

