AUTOXPRESS SARL v. IKIGO CY'IMISORO N'AMAHORO

[Rwanda URUKIKO RW'IKIRENGA – RCOMA0084/11/CS (Mugenzi, P.J., Hatangimbabazi na Mukamulisa, J.) 22 Werurwe 2013]

Amategeko agenga imisoro – Imenyekanisha ry'Umusoro –Igenzura – Gutegeka umusoro ugomba kwishyurwa no guca ibihano mu gihe umusoreshwa atemera icyaha cy'imenyekanisha ry'umusoro ritari ryo – Komiseri wa gasutamo nta bubasha afite bwo gutegeka umusoro n'ibihano umusoreshwa utemera icyaha, ahubwo hiyambazwa inkiko – Itegeko rigenga za gasutamo z'umuryango wa Afrika y'Iburasirazuba ryo muri 2004, nk'uko ryavuguruwe kugeza ubu, ingingo ya 219 n'iya 220.

Incamake y'ikibazo: AUTOXPRESS SARL yavanye amapine mu mahanga mu rwego rw'ubucuruzi maze ikigo cy'imisoro n'amahoro kiyikorera igenzura, gisanga hari imisoro itishyuye igomba kwishyurwa ndetse n'igihano kibikomokaho. AUTOXPRESS SARL yatakambiye Komiseri yerekana ko itemera icyaha ishinjwa na RRA ariko Komiseri ashimangira icyo cyemezo. AUTOXPRESS SARL yahise iyirega mu Rukiko Rukuru rw'Ubucuruzi ivuga ko yasoreshejwe mu buryo bunyuranyije n'amategeko. Urukiko rwemeje ko ikirego cyayo kidafite ishingiro, ruyitegeka kwishyura RRA amafaranga angana na 3.565.691Frw y'umusoro hamwe n'amadolari ijana (100$) y'ibihano.

AUTOXPRESS SARL yajuririye mu Rukiko rw'Ikirenga ivuga ko umucamanza yirengagije ingingo ya 219 ya East African Community Act ivuga ko Komiseri wa gasutamo adafite ububasha bwo guca ibihano iyo uregwa atemera icyaha. RRA yo ivuga ko Komiseri atigeze ategeka AUTOXPRESS SARL kwishyura umusoro ahubwo icyo yakoze ari ukugaragaza umusoro wagombaga gucibwa hamwe n'ibihano yagombaga guhabwa, ariko ko atigeze ahana kuko icyo yashakaga ari inzira y'ubwumvikane.

Incamake y'icyemezo: 1. Mu gihe umusoreshwa atemera icyaha cy'imenyekanisha ry'umusoro ritari ryo ashinjwa n'umusoresha, ntagomba gucibwa umusoro n'ibihano. Kuba Komiseri wa gasutamo yarabikoze ku cyaha umusoreshwa atemera, iyishyuzwa ry'uwo musoro ryakozwe mu buryo budakurikije amategeko, bityo isoreshwa rikaba rigomba gukorwa mu buryo bukurikije amategeko.

Ubujurire bufite ishingiro.
Isoreshwa ryakozwe mu buryo bunyuranyije n'amategeko.
Amagarama y'urubanza aherereye ku warezwe.

Amategeko yashingiweho:
Itegeko rigenga za gasutamo z'Umuryango wa Afrika y'Iburasirazuba ryo muri 2004, nk'uko ryavuguruwe kugeza ubu, ingingo ya 219 n'iya 220.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Gasutamo y'Ikigo cy'Igihugu gishinzwe kwinjiza umusoro n'amahoro (RRA) yakoze igenzura ku mapine AUTOXPRESS SARL yavanye mu mahanga mu rwego rw'ubucuruzi, isanga hari imisoro itishyuwe, yandikira AUTOXPRESS SARL iyimenyesha umusoro wagombaga gutangwa ndetse n'igihano iciwe. AUTOXPRESS SARL ntiyabyemeye yandikira Komiseri w'imisoro, uyu nawe agaragaza amafaranga igomba gutanga n'ibihano.

[2] AUTOXPRESS SARL yaregeye Urukiko Rukuru rw'Ubucuruzi, ivuga ko yasoreshejwe mu buryo bunyuranyije n'amategeko. Urukiko rwemeje ko icyo kirego nta shingiro gifite, rutegeka AUTOXPRESS SARL kwishyura 3.565.691Frw y'umusoro n'amahoro yaciwe na Komiseri ushinzwe Gasutamo, no kwishyura 100$ y'ibihano yaciwe na Komiseri wa Gasutamo.

[3] AUTOXPRESS SARL yajuririye Urukiko rw'Ikirenga, ivuga ko Umucamanza yirengagije ingingo ya 219 ya East African Community Customs Management Act "EAC CMA", aho mu gika cyayo cya kabiri igaragaza neza ko Komiseri wa Gasutamo adafite ububasha bwo guca ibihano iyo uregwa icyaha atacyemera, ahubwo ko haba inzira y'ubwumvikane, bananiranwa bukaregera inkiko.

[4] Urubanza rwaburanishijwe mu ruhame ku wa 21/02/2013, AUTOXPRESS iburanirwa na Me Nsengiyumva Abel naho Me Tugirumuremyi Raphael na Me Sugira Belinda baburanira RRA.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

Kumenya niba Komiseri wa Gasutamo afite ububasha bwo guca ibihano umuntu utemera icyaha.

[5] Me Nsengiyumva uburanira AUTOXPRESS SARL avuga ko ingingo yatumye AUTOXPRESS SARL ijurira ari imwe yo kuba Umucamanza yarirengagije ingingo ya 219 ya East African Community Customs Management Act "EAC CMA". Asobanura ko mu rubanza AUTOXPRESS SARL ijuririra, Urukiko Rukuru rw'Ubucuruzi rwemeje ko Komiseri adafite ububasha bwo guca uwo musoro umuntu utemera icyaha, ko ariko rwemeje ko nta musoro yigeze aca AUTOXPRESS SARL, nyamara mu ibaruwa yayandikiye yarayitegekaga kwishyura byanga bikunze (must be paid).

[6] Me Sugira uburanira RRA avuga koicyakozwe ari inyandiko mvugo y'icyaha, ko atari ugutegeka AUTOXPRESS SARL kwishyura, ko icyo Komiseri yakoze ari ukugaragaza umusoro wagombaga gucibwa ndetse n'ibihano biteganyirizwa icyaha. Naho ku byerekeye amagambo, "must be paid", Me Sugira avuga ko n'ubwo ari uko byanditse, Komiseri yagaragaje icyaha ariko ko atigeze ahana AUTOXPRESS SARL.

[7] Me Tugirumuremyi nawe uburanira RRA avuga ko iyo nyandikomvugo y'icyaha ari "statement of offence" yashyikirijwe umusoreshwa kugira ngo ahitemo inzira ashaka, ariko ko icyo RRA iba ishaka ahanini ari inzira yo kumvikana kuko iba idashaka kujyana umuntu mu nkiko. Yasobanuye ko Komiseri atigeze afata AUTOXPRESS SARL nk'umunyacyaha, ahubwo ko yamusabye ubwumvikane ari nabwo yanyuzemo ubwo yajuririraga Komiseri wa Gasutamo.

[8] Me Nsengiyumva avuga ko niba RRA ikomeje kuvuga ko itishyuzaga AUTOXPRESS bisobanura ko nta n'umwenda yaba ibarimo, akaba asanga gusa RRA yarahinduye imiburanire aho imenyeye imikirize y'urubanza RCOMA 0087/10/CS yaburanaga na Munyaneza rwaciwe n'Urukiko rw'Ikirenga, rukemeza ko Komiseri adafite ububasha bwo guca ibihano.

[9] Inyandikomvugo yakozwe na RRA kuwa 19/01/2010 igaragaza ko AUTOXPRESS SARL yakoze icyaha cy'imenyekanisha ritari ryo, giteganywa n'ingingo ya 203, agace ka b), ya East African Community Customs Management Act, kigahanwa n'ingingo ya 12 y'Itegeko N° 74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuza Itegeko N° 25 ryo kuwa 04/12/2005, rigena imitunganyirize y'isoresha, bigatuma inyereza umusoro ungana na 3.565.691Frw.

[10] Nyuma y'iyo nyandiko mvugo RRA yandikiye AUTOXPRESS SARL ibaruwa kuwa 26/02/2010, iyimenyesha icyo cyaha n'uwo musoro, inayisaba kwihutira kwishyura ayo mafaranga, hakurikijwe ibiteganywa n'ingingo ya 130(1) ya East African Community Customs Management Act.

[11] AUTOXPRESS SARL imaze gutakamba yerekana ko itemera icyaha ishinjwa, RRA yayandikiye amabaruwa abiri yombi yo kuwa 06/04/2010 asubiza ibaruwa yayo yo kuwa 11/03/2010, imwe iyibwira ko imisoro n'amahoro yanyereje igomba kwishyura ari 10.902.730Frw n'ibihano bihwanye na 100$ na 166.313Frw, n'indi iyibwira ko imisoro n'amahoro yanyereje igomba kwishyura ari 3.565.691Frw n'ibihano bihwanye na 100 $ na 54.392Frw.

[12] N'ubwo uburanira RRA avuga ko nta musoro cyangwa ibihano AUTOXPRESS SARL yategetswe kwishyura, ko icyakozwe gusa ari inyandiko mvugo y'icyaha, kugira ngo ihitemo inzira yo kumvikana aho kujyanwa mu nkiko, Urukiko rurasanga ibyanditse mu mabaruwa yo kuwa 26/02/2010 no kuwa 06/04/2010 yavuzwe haruguru, bigaragaza neza ko AUTOXPRESS SARL yategetswe kwishyura mu by'ukuri ariya mafaranga, RRA ariyo yahisemo inzira y'ikurikiranacyaha nk'uko yari yabikoreye inyandikomvugo y'umugenzacyaha igaragaza icyaha gikurikiranywe.

[13] Ingingo ya 219 y'itegeko rya East African Community Customs Management "EAC CMA", ababuranyi bombi bashingiraho imiburanire yabo, iteganya mu gace kayo ka (1) ko iyo Komiseri wa Gasutamo afite ibimenyetso by'uko umusoreshwa yakoze icyaha, ashobora kurangiza ikibazo mu bwumvikane, umusoreshwa agategekwa amafaranga agomba kwishyura, ariko mu gace kayo ka (2), iyo ngingo igateganya ko ubwo bubasha abukoresha gusa iyo umusoreshwa yemera icyaha bikozwe mu nyandiko yabiteganirijwe (prescribed form).

[14] Mu ngingo ya 220 y'iryo tegeko rya East African Community Customs Management, havugwamo ko umuntu wakoze icyaha ashobora gukurikiranwa imbere y'Urukiko rufite ububasha, rukaba rwamuha igihano cy'igifungo cyangwa cy'ihazabu mu gihe ahamwe n'icyaha.

[15] Ingingo zombi zimaze kuvugwa zumvikanisha ko gukurikirana icyaha ku musoreshwa ugikekwaho bishobora gukorwa mu buryo bubiri, ubwo kumvikana na we mu gihe yemera icyaha, agacibwa amafaranga, cyangwa akajyanwa mu Rukiko, mu gihe atemera icyaha.

[16] Urukiko rurasanga mu gihe AUTOXPRESS SARL itemeraga icyaha yashinjwaga na RRA, haragombaga gukurikizwa ibiteganywa n'ingingo ya 219 ya East African Community Customs Management Act "EAC CMA" yavuzwe haruguru, bityo rero ikaba itaragombaga gucibwa umusoro mu buryo RRA yabikoze ku cyaha itemera, ahubwo iyishyuzwa ry'uwo musoro rikaba ryakorwa mu buryo bukurikije amategeko.

III. ICYEMEZO CY'URUKIKO

[17] Rwemeje ko ubujurire bwa AUTOXPRESS SARL bufite ishingiro.

[18] Rwemeje ko iyishyuzwa ry'umusoro ryakorewe AUTOXPRESS SARL rivanyweho, bidakuyeho ko RRA yakurikirana iyishyuzwa ry'uwo musoro mu buryo bukurikije amategeko.

[19] Rutegetse RWANDA REVENUE AUTHORITY "RRA" gutanga amagarama y'urubanza angana na 25.800Frw, itayatanga mu gihe gitegetswe, akavanwa mu mutungo wayo ku ngufu za Leta.