IKIGO CY'IMISORO N'AMAHORO v. KAMBA GENERAL MARCHANDISE Ltd

[Rwanda URUKIKO RW'IKIRENGA – RCOMA0152/12/CS (Mugenzi, P.J., Karimunda na Gatete, J.) 22 Mutarama 2016]

Amategeko agenga imisoro – Umusoro ku musaruro – Amafaranga y'ingwate atangwa n'abaguzi – Ayo mafaranga si umusaruro; ahubwo ni igikorwa cyo gushingana kidasoreshwa – Itegeko N°16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro, ingingo ya 16.

Amategeko agenga imisoro – Umusoro ku musaruro – Igisoreshwa – Ufite inshangano zo kugaragaza ibimenyetso by'igisoreshwa – Ikigo cy'Igihugu cy'Imisoro n'Amahoro ni cyo gifite inshingano yo kugaragaza inyungu isoreshwa – Itegeko N^{o}25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ingingo ya 44.

Indishyi – Amafaranga y'ikurikiranarubanza n'igihembo cy'avoka – Uwatsinze agomba kuyishyurwa kuko hari ibyo yatakaje akurikirana urubanza anishyura avoka wamuburaniye – Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Incamake y'ikibazo: Ikigo cy'imisoro n'Amahoro cyakoreye igenzura KAMBA General Marchandise Ltd kimuca 37.447.020Frw y'umusoro. KAMBA General Marchandise Ltd ntiyishimiye umwanzuro w'ubugenzuzi bituma ajuririra Komiseri Mukuru maze nawe ayisubiza ko 2.790.000Frw yasubijwe muri Kigali Multi Choice Ltd avanywe mu musoro yishyuzwa ikaba igomba kwishyura asigaye.

KAMBA General Marchandise Ltd yajuririye uwo mwanzuro mu Rukiko Rukuru rw'Ubucuruzi isaba ko umusoro ungana na 22.957.627Frw wavanwa mu musoro yishyuzwa kubera ko adakomoka ku bucuruzi ahubwo ari ingwate yatangwaga n'abaguzi. Urwo Rukiko rwemeje ko umusoro ungana na 22.957.627Frw uvanwa mu wemejwe na Komiseri Mukuru, rutegeka kandi RRA kwishyura indishyi z'ikurikiranarubanza n'igihembo cya Avoka no gutanga amagarama y'urubanza.

RRA ntiyishimiye icyo cyemezo akijuririra mu Rukiko rw'Ikirenga avuga ko igenzura ku musoro ryakorewe KAMBA General Marchandise Ltd riri mu bwoko by'isoresha rikorwa hakoreshejwe inyandiko y'ikosora aho mu kubara umusoro hagenderwa ku mahame remezo y'ibaruramari kuko mbere y'uko amafaranga ajyanwa muri Banki agomba kubanza gushyirwa mu bitabo byerekana ko yanyuze muri "caisse", ariko ko kubirebana n'uru rubanza, amafaranga yajyanywe muri Banki atanyujijwe muri "caisse" ari nayo mpamvu agomba gusoreshwa. Ikindi kandi iyo ayo amafaranga aza kuba ingwate hari kugaragara "bordereaux" za banki zibyemeza. Ikindi cyerekana ko atari ingwate ni uko bamwe mubo avuga ko batanze ayo mafaranga atayabasubizaga yose, kandi KAMBA General Marchandise Ltd ivuga ko ayo abakiriya basubijwe adahura n'ayo yakiriye.

KAMBA General Marchandise Ltd yiregura ivuga ko kubika amafaranga y'ingwate kuri banki no gusubiza uje kuyaka hakoreshejwe ari muri caisse nta kosa ririmo. Isobanura kandi ko icyangombwa ari uko amafaranga aba ahari kugira ngo uwatanze ingwate ashobore kuyasubizwa igihe ashakiye.

KAMBA General Marchandise Ltd isoza isaba indishyi z'ikurikiranarubanza n'igihembo cy'Avoka kubera gushorwa mu manza nta mpamvu.

Incamake y'icyemezo: 1. Inyungu ku bikorwa by'ubucuruzi ingana n'umusaruro wakiriwe ku bikorwa byose hakuwemo ibyasohowe byose ku birebana n'ibyo bikorwa. Inyungu ku bikorwa irimo kandi umusaruro uva mu igurisha ry'umutungo uwo ari wo wose no ku mafaranga ava mu irangizamutungo yakiriwe mu gihe cy'umusoro. Iyo nyungu kandi ibarwa hashingiwe ku ibarwa ry'inyungu cyangwa igihombo hakurikijwe amahame remezo y'ibaruramari ry'igihugu. Kuba rero urega yarakiriye amafaranga akayajyana kuri banki atayanyujije kuri kesi si byo bigaragaza ko akomoka ku bikorwa by'ubucuruzi kuko ibitabo bye by'ibaruramari bigaragaza ko yari ingwate zatanzwe n'abakiriya be kandi urega (RRA) akaba adahakana ukuri kubikubiyemo. Bityo amafaranga y'ingwate si umusaruro; ahubwo ni igikorwa cyo gushingana kidasoreshwa.

2. Ikigo cy'Imisoro n'Amaharo ni cyo gifite inshingano yo kugaragaza inyungu isoreshwa. Kuba rero kitaragaragaje inyungu KAMBA General Marchandise Ltd yaba yarakuye mu ngwate yakaga abaguzi bayo cyangwa ko yashyiraga amafaranga y'ingwate kuri konti imwe n'iy'ubucuruzi igamije kuyironkamo (ingwate) inyungu runaka, byerekana ko kidafite ibimenyetso by'ibyo kivuga.

3. Igikorwa cyose cy'umuntu cyangirije undi, gitegeka nyiri ugukora ikosa rigikomokaho kuriha ibyangiritse. Bityo rero KAMBA General Marchandise Ltd igenewe amafaranga y'ikurikiranarubanza n'igihembo cya Avoka kuko hari ibyo yatakaje mu gukurikirana uru rubanza ndetse binaba ngobwa ko yiyambaza Avoka uhembwa.

Ubujurire nta shingiro bufite;
Urubanza rwajuririwe ntiruhindutse;
Uwajuriye ategetswe kwishyura amafaranga y'ikurikiranarubanza n'igihembo cy'avoka;
Amagarama y'urubanza aherereye ku wajuriye.

Amategeko yashingiweho:
Itegeko N°16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro, ingingo ya 16.
Itegeko N°25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ingingo ya 44.
Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] KAMBA General Marchandise Ltd yakorewe igenzura ry'umusoro ku nyungu, umusoro ku nyongeragaciro n'umusoro ku bihembo ku myaka ya 2006, 2007 na 2008 maze icibwa umusoro wose hamwe ungana na 37.447.020Frw. KAMBA General Marchandise Ltd ntiyishimiye umwanzuro w'abagenzuzi, ijuririra Komiseri Mukuru, nawe asubiza ku wa

10/01/2012, ayimenyesha ko 2.790.000Frw yasubijwe Kigali Multi Choice Ltd avanywe mu musoro wishyuzwa, ikishyura 34.825.340Frw.

[2] KAMBA General Marchandise Ltd ntiyishimiye uwo mwanzuro iregera Urukiko Rukuru rw'Ubucuruzi isaba ko umusoro ungana na 22.957.627Frw uvanwa mu wemejwe na Komiseri Mukuru kubera ko ari amafaranga adakomoka ku bucuruzi ahubwo ari ingwate (caution) abaguzi bashyira kuri konti yayo mu gihe bagitegereje ibicuruzwa.

[3] Mu rubanza N° RCOM0026/12/HCC rwaciwe ku wa 06/09/2012, urwo Rukiko rwasanze amafaranga ari kuri konti ya Kamba General Marchandise Ltd atarakomotse ku bikorwa by'ubucuruzi ahubwo ari ingwate yashyizweho n'abaguzi, umusoro ucibwa ku gikorwa kijyanye no kugurisha mu gihe ingwate ijyana n'igikorwa cyo gushingana kandi nta mpamvu yo gusesengura ibijyanye n'ingano y'urwunguko kubera ko mu Rwanda amategeko y'ubucuruzi yemerera ugura n'ugurisha kumvikana ku nyungu ndetse n'ababuranyi bakaba bataragaragaje ingano y'urwunguko yumvikanyweho, rwemeza ko umusoro ungana na 22.957.627Frw uvanwa mu wemejwe na Komiseri Mukuru, rutegeka kandi Ikigo cy'Imisoro n'Amahôro kwishyura indishyi z'ikurikiranarubanza n'igihembo cya Avoka zingana na 500.000Frw no gutanga amagarama y'urubanza.

[4] Ikigo cy'Imisoro n'Amahôro nticyishimiye icyo cyemezo kijuririra mu Rukiko rw'Ikirenga, iburanisha mu ruhame riba kuwa 22/12/2015 KAMBA General Marchandise Ltd iburanirwa na Me Twilingiyemungu Joseph naho Ikigo cy'Imisoro n'Amahôro gihagarariwe na Me Gasana Raoul.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba amafaranga y'ingwate yasubijwe beneyo yasoreshwa nk'akomoka ku bikorwa by'ubucuruzi.

[5] Me Gasana Raoul uburanira Ikigo cy'Imisoro n'Amahôro avuga ko igenzura ku musoro ryakorewe KAMBA General Marchandise Ltd riri mu bwoko by'isoresha rikorwa hakoreshejwe inyandiko y'ikosora (principe du contradictoire) aho mu kubara umusoro hagenderwa ku mahame remezo y'ibaruramari kuko mbere y'uko amafaranga ajyanwa muri Banki agomba kubanza gushyirwa mu bitabo byerekana ko yanyuze muri "caisse", ariko ko kubirebana n'uru rubanza, amafaranga yajyanywe muri Banki atanyujijwe muri "caisse" ari nayo mpamvu agomba gusoreshwa.

[6] Asobanura ko igenzura ry'ibitabo by'ibaruramari bigaragaza ko hari amafaranga KAMBA General Marchandise Ltd yita ingwate (caution) y'abaguzi yashyize kuri konti yayo, abo baguzi bayasubizwa bamaze guhabwa ibicuruzwa, nyamara umusoresha akaba agaragaza ko ayo mafaranga atari ingwate (Caution) kubera ko Kamugisha, nyiri KAMBA General Marchandise Ltd, na Sibomana Augustin, Umujyanama wayo mu by'imisoro (Tax Advisor) babwiye abagenzuzi b'imisoro ko, kubera ko amafaranga y'ingwate atari ayabo, bayakiraga mu ntoki (cash), nyuma bakayajyana kuri Banki atanyuze muri "caisse", aribyo bituma ayo mafaranga atagaragara mu bitabo byabo by'ibaruramari.

[7] Asoza avuga ko amafaranga yashyizwe kuri banki iyo aza kuba ingwate (caution) hari kugaragara "bordereaux" za banki zibyemeza, ikindi cyerekana ko atari ingwate (caution) akaba ari nkaho uwitwa Nzaramba yabanje gutanga 5.580.000Frw ku wa 10/09/2007, arongera atanga 3.260.000Frw ku wa 12/10/2007, ariko wareba amafaranga yasubijwe

ugasanga ari 3.260.000Frw, bivuze ko amafaranga KAMBA General Marchandise Ltd yita ingwate itayasubije yose, kandi nayo bavuga ko bashubije adahura n'ayo bakiriye.

[8] Me Twilingiyemungu Joseph uburanira KAMBA General Marchandise Ltd avuga ko hakorwa igenzura ry'umusoro ku nyungu, umusoro ku nyongeragaciro n'umusoro ku bihembo ku myaka ya 2006, 2007 na 2008 hagendewe ku ibaruramari ryakozwe na KAMBA General Marchandise Ltd, hemezwa ko hishyurwa umusoro ndakuka ungana na 37.447.020Frw, ariko mu guca uwo musoro hirengagizwa amategeko. Asobanura ko Komiseri Mukuru yagejejweho icyo kibazo akemeza ko umusoro ungana na 2.621.716Frw uvanwa mu waciwe ariko ikibazo nyamukuru cy'uko umusoro waciwe hirengagijwe amategeko ntagikemure, ari nacyo cyatumye Kamba General Marchandise Ltd iregera Urukiko Rukuru rw'Ubucuruzi kugira ngo hasuzumwe niba amafaranga y'ingwate yasubijwe beneyo akwiye gusoreshwa nk'akomoka ku bikorwa by'ubucuruzi.

[9] Avuga kandi ko kubika amafaranga y'ingwate (caution) kuri banki no gusubiza uje kuyaka hakoreshejwe ari muri caisse nta kosa ririmo, ko icyangombwa aruko aba ahari kuko iyo atahaba byari gutera icyuho mu ibaruramari aribyo byitwa "caisse négative", asobanura ko uwatanze ingwate ashobora kuyisubizwa igihe ashakiye, kandi ko ibyo Ikigo cy'Imisoro n'Amahôro kiburanisha ko iyo ngwate ariyo yaherwagaho abaguzi bishyura nta shingiro bifite kubera ko nta tegeko rivuga ko ingwate iherwaho mu kwishyura ahubwo isubizwa nyirayo iyo impamvu yatumye itangwa itakiriho.

[10] Asoza avuga ko ibitabo by'ibaruramari ndetse na "historique bancaire" bigaragaza ko hari 26.825.000Frw yashyizwe kuri konti n'abaguzi nk'ingwate yo guhabwa ibicuruzwa kandi ko ibaruramari ryerekana ko ayo mafaranga yasubijwe bene yo, umusoresha akaba kugeza ubu adahakana ibyakozwe n'ibaruramari ari naho mu rubanza rujuririrwa umucamanza yagaragaje ko niba Ikigo cy'Imisoro n'Amahôro kitavuguruza ibyanditse mu bitabo by'ibaruramari bya KAMBA General Marchandise Ltd kigomba gutsindwa hashingiwe ku ngingo ya 44 y'Itegeko N°25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha.

UKO URUKIKO RUBIBONA

[11] Ingingo ya 16, igika cya mbere, y'Itegeko N°16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro iteganya ko "Inyungu ku bikorwa by'ubucuruzi ingana n'umusaruro wakiriwe ku bikorwa byose hakuwemo ibyasohowe byose ku birebana n'ibyo bikorwa. Inyungu ku bikorwa irimo kandi umusaruro uva mu igurisha ry'umutungo uwo ari wo wose no ku mafaranga ava mu irangizamutungo yakiriwe mu gihe cy'umusoro. "Naho igika cya kabiri cy'iyo ngingo kivuga ko "Inyungu ku bikorwa by'ubucuruzi ibarwa kuri buri gihe cy'umusoro hashingiwe ku ibarwa ry'inyungu cyangwa igihombo rikorwa hakurikijwe amahame remezo y'ibaruramari ry'igihugu…".

[12] Ingingo ya 44 y'Itegeko N°25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha nk'uko ryahinduwe kandi ryujujwe kugeza ubu, iteganya ko Ubuyobozi bw'Imisoro aribwo bufite inshingano zo kugaragaza ibimenyetso iyo bukosora imenyesha ry'umusoro w'umusoreshwa.

[13] Dosiye y'urubanza igaragaza ko igenzura ry'umusoro wishyuzwa KAMBA General Marchandise Ltd ryashingiye ku nyandiko y'ikosora (principe du contradictoire) ritandukanye n'isoresha nta nteguza (procédure d'imposition d'office) kuko ibitabo

by'ibaruramari byerekana ko hari amafaranga angana na 26.825.000Frw yatanzwe mu ntoki (cash) n'abaguzi ba Kamba General Marchandise Ltd nk'ingwate kugira ngo bazahabwe ibicuruzwa, ayo mafaranga akaba yarashyizwe kuri banki asubizwa ba nyirayo ku mataliki atandukanye anyujijwe muri caisse (Cote 5), kandi ko hanabaye iperereza ryakozwe n'Ikigo cy'Imisoro n'Amahôro kugira ngo hamenyekane umusoro ugomba kwishyurwa hagendewe ku byagaragajwe n'ibaruramari KAMBA General Marchandise Ltd yakoze (Cote 20-21).

[14] Urukiko rurasanga kuba amafaranga yarakiriwe mu ntoki akajyanwa kuri banki n'abakozi ba KAMBA General Marchandise Ltd atabanje kunyuzwa muri caisse ataribyo bigaragaza ko akomoka ku bikorwa by'ubucuruzi, kandi mu gihe ibitabo by'ibaruramari bya KAMBA General Marchandise Ltd bigaragaza ko ayo mafaranga yari ay'ingwate yo gushingana ibicuruzwa yaje gusubizwa bene yo, Ikigo cy'Imisoro n'Amahôro kikaba ntacyo kinenga ibitabo by'ibaruramari bya KAMBA General Marchandise Ltd, ahubwo cyemera ko igisoreshwa ari umusaruro kandi ingwate ikaba atari umusaruro kuko ari igikorwa cyo gushingana kidacibwa umusoro, bituma ntaho uru Rukiko rwahera rwemeza ko amafaranga y'ingwate yasubijwe bene yo atangirwa umusoro.

[15] Urukiko rurasanga kandi, nk'uko biteganywa n'ingingo ya 44 y'Itegeko N°25/2005 ryo ku wa 04/12/2005 ryibukijwe hejuru, Ikigo cy'Imisoro n'Amahôro aricyo gifite inshingano yo kugaragaza inyungu isoreshwa KAMBA General Marchandise Ltd yaba yaravanye mu ngwate yakaga abaguzi bayo, bityo mu gihe icyo kigo kitagaragaza ko KAMBA General Marchandise Ltd yacuruzaga ingwate yakaga abaguzi bayo cyangwa se ko icyatumye ishyira ingwate kuri konti imwe n'iyibicuruzwa ari uko yayivanagamo inyungu runaka, bikwiye gufatwa ko Ikigo cy'Imisoro n'Amahôro kitagaragaza ibimenyetso by'ibyo kivuga, bityo ubujurire bukaba nta shingiro bufite.

2. Kumenya niba KAMBA General Marchandise Ltd yahabwa indishyi isaba muri uru rubanza.

[16] Me Twilingiyemungu Joseph avuga ko KAMBA General Marchandise Ltd ikomeje gushorwa mu manza nta mpamvu, ikaba ibisabira indishyi zingana na 1.000.000Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[17] Me Gasana Raoul avuga ko ibijyanye n'indishyi z'ikurikiranarubanza n'igihembo cya Avoka zisabwa na KAMBA General Marchandise Ltd byasuzumwa mu bushishozi bw'Urukiko kuko zisabwa zishingiye ku kirego cy'iremezo cyatanzwe.

UKO URUKIKO RUBIBONA

[18] Urukiko rurasanga kuba KAMBA General Marchandise Ltd yararezwe mu Nkiko byaratumye igira ibyo itakaza mu gukurikirana uru rubanza ndetse biba ngombwa ko yiyambaza na Avoka uhembwa, bityo hashingiwe ku ngingo ya 258 y'Igitabo cya Gatatu cy'Urwunge rw'Amategeko Mbonezamubano, iteganya ko "igikorwa cyose cy'umuntu cyangirije undi, gitegeka nyiri gukora ikosa rigikomokaho kuriha ibyangiritse", KAMBA General Marchandise Ltd ikaba igenewe, kuri uru rwego, amafaranga ibihumbi magana atanu (500.000Frw) y'ikurikiranarubanza n'igihembo cya Avoka.

III. ICYEMEZO CY'URUKIKO

[19] Rwemeje ko ubujurire bw'Ikigo cy'Imisoro n'Amahôro nta shingiro bufite;

[20] Ruvuze ko nta gihindutse ku mikirize y'urubanza RCOM0026/12/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 06/09/2012;

[21] Rutegetse Ikigo cy'imisoro n'Amahôro kwishyura KAMBA General Marchandise Ltd amafaranga ibihumbi magana atanu (500.000Frw) y'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego yiyongera kuyo yari yaciwe ku rwego rwa mbere;

[22] Rutegetse Ikigo cy'imisoro n'Amahôro kwishyura amagarama y'urubanza ahwanye n'amafaranga ibihumbi ijana (100.000Frw).