UBUSHINJACYAHA v MUDENGE N'ABANDI (ADD)

[Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RP 00001/2022/SC (Ntezilyayo, P.J., Cyanzayire, Nyirinkwaya, Hitiyaremye, na Muhumuza, J.) 17 Kamena 2022]

Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Ikurikirana cyaha – Amategeko ajyanye n'imihango ikurikizwa mu ikurikirana ry'icyaha n'abafite ububasha bwo kugikurikirana ari amategeko y'imigenzo ikurikizwa (règles de procédure /procedural rules), akaba ahita ashyirwa mu bikorwa akimara gusohoka (les règles de procédure sont d'application immédiate/ procedural rules are immediately applicable), kuko aba agamije kunoza ibikorwa by'ikurikiranacyaha.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Ubushinjacyaha bukurikiranyeho Mudenge Emmanuel, Kayigi Habiyambere Aimable, Kayitana Innocent, MEEJI GROUP Ltd na PRECISION HEAVY MACHINERY Ltd, ibyaha bitandukanye nk'uko byavuzwe haruguru; EXERT ENGINEERING GROUP LTD na UNIVENTURE INVESTMENT zikurikiranyweho kunyereza umusoro. Ubushinjacyaha busobanura ko Mudenge ari umucuruzi ufite amasosiyete atandukanye yagiye afungura mu bihe bitandukanye, amwe akaba amwanditseho ayandi ayafitemo imigabane, n'ayandi yafunguye mu mazina y'abandi ariko ayahagarariye, akaba yarayifashishije mu kunyereza umusoro ungana na 5.316.142.850 Frw yifashishije inyemezabwishyu zigaragaza ko yaranguye kandi ntakigaragaza ko ibyo bicuruzwa yabiranguye koko.

Ubushinjacyaha bukomeza buvuga ko muri iryo nyereza ry'imisoro yabifashijwemo n'abakozi b'Ikigo cy'Igihugu cy'Imisoro n'Amahoro (RRA) barimo Kayigi Habiyambere Aimable (Commissioner of Domestic Taxes) na Kayitana Innocent (Head of Tax Account Management Division) bamukoreye amasezerano yo kwishyura mu byiciro kugira ngo akurwe kuri *stop list* yari yashyizweho n'Urwego rw'Igihugu rushinzwe Ubugenzacyaha (RIB), kandi ko hari n'isoko yapiganiye ahagarariye ORANGE GAS ENERGY Ltd akoresheje inyandikompimbano. Naho kuri Kayigi Habiyambere Aimable na Kayitana Innocent, bukaba bubarega icyaha cyo guha umuntu inyandiko adakwiriye guhabwa no kuba icyitso mu cyaha cyo kunyereza umusoro.

Abaregwa baburanye bahakana ibyaha baregwa basaba kugirwa abere naho EXERT ENGINEERING GROUP Ltd na UNIVENTURE INVESTMENT Ltd zaburanishijwe zidahari kuko zamenyeshejwe urubanza mu buryo bukurikije amategeko ariko ntizitaba.

Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza N° RP/ECON 00081/2020/TGI/NYGE (CMB RP/ECON00082/2020/TGI/NYGE), rwemeza ko ikirego cy'Ubushinjacyaha gifite ishingiro kuri bimwe, naho ikirego cy'Ubushinjacyaha kuri EXERT ENGINEERING GROUP Ltd na UNIVENTURE INVESTMENT Ltd kitakiriwe, ruha ishingiro ikirego cy'Ubushinjacyaha kuri MEEJI GROUP Ltd na PRECISION HEAVY MACHINERY Ltd. Mudenge Emmanuel yahamijwe icyaha cyo guhimba, guhindura inyandiko no gukoresha inyandiko mpimbano n'icyaha cyo guhabwa ku bw'uburiganya cyangwa gukora no gukoresha inyandiko n'impapuro bitangwa n'inzego zabigenewe n'icyaha cyo kunyereza umusoro. Maze ruhanisha Mudenge igifungo cy'imyaka (7) n'ihazabu y'amafaranga miliyoni eshatu (3.000,000 Frw) runamutegeka kwishyura umusoro yanyereje, Kayigi na Kayitana buri wese igifungo cy'imyaka itanu (5) n'ihazabu ingana na 1.000.000 Frw.

Abaregwa ntibishimiye imikirize y'urubanza bajuririye Urukiko Rukuru, Mudenge avuga ko atari gukurikiranwa ku cyaha cyo kunyereza umusoro kubera ko habayeho ubuzime, kandi akaba atari umusoreshwa, ko ahubwo sosiyete arizo zagombaga kuregwa mbere maze abazihagarariye cyangwa abanyamigabane bakaregwa nyuma. Akomeza avuga ko impamvu z'ubujurire mu Rukiko Rukuru ari

uko ibikorwa akurikiranyweho byo guha umuntu inyandiko adakwiye guhabwa ntaho bihuriye n'inyito y'icyaha kuko atari we wabaraga cyangwa ngo asuzume ko ingwate yaba yujuje 25% y'agaciro k'umwenda w'imisoro, akaba ataryozwa ibyo kuba zitari zuzuye. Naho Kayitana avuga ko icyaha Urukiko rwamuhamije gishingiye ku masezerano yo kwishyura mu byiciro imisoro yahawe sosiyete zihagarariwe na Mudenge, nyamara ayo masezerano akaba atari mu nyandiko zivugwa mu Itegeko N° 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru. Urwo rukiko rwaciye urubanza rwemeza ko ubujurire bwabo bufite ishingiro, ko icyaha cyo kunyereza umusoro Mudenge akurikiranyweho cyatanzwe mu buryo bunyuranyije n'amategeko, rusobanura ko Urukiko rutagombaga kugisuzuma, rushingiye ku itegeko ryihariye ryakurikizwaga icyo gihe ryagenaga Urwego rufite ububasha bwo gukurikirana no kuregera Urukiko icyaha cyo kunyereza umusoro, rutegeka ko abaregwa bose bafungurwa urwo rubanza rukimara gusomwa.

Ubushinjacyaha bwandikiye Perezida w'Urukiko rw'Ubujurire busaba ko urubanza Nº RPA/ECON 00014/2020/HC/KIG (CMB 00017/2021/HC/KIG) rwasubirwamo ku mpamvu z'akarengane. Nyuma yo gusuzuma icyo kibazo, Perezida w'Urukiko rw'Ubujurire yandikiye Perezida w'Urukiko rw'Ikirenga amusaba ko urwo rubanza rwasubirwamo. Perezida w'Urukiko rw'Ikirenga amaze gusuzuma raporo yakozwe na Perezida w'Urukiko rw'Ubujurire, yagenye Urukiko rw'Ikirenga ko rwakongera kuruburanisha. Urukiko rwaburanishije urubanza hasuzumwa ikibazo kijyanye no kumenya niba ikirego cy'Ubushinjacyaha ku cyaha cyo kunyereza umusoro cyaratanzwe mu buryo bukurikije amategeko. Ubushinjacyaha buvuga ko butagombaga gutanga ikirego bukurikije Itegeko Nº 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoreshwa kuko iryo tegeko atari itegeko rigena ibihano, ahubwo ryari itegeko rya procédure, ko bene ayo mategeko ahita atangira gukurikizwa akimara gutangazwa, bivuze ko nyuma y'uko Itegeko Nº 026/2019 ryavuzwe haruguru rimariye gukuraho Itegeko N° 25/2005, Urukiko rwagombaga gukurikiza Itegeko rishya, kandi ryo rikaba ritarateganyaga ko ikirego cyagombaga gutangwa na RRA.

Abaregwa bavuga ko Itegeko N° 25/2005 rigena imitunganyirize y'isoreshwa ariryo ryagombaga gukurikizwa mu gukurikirana icyaha cyo kunyereza imisoro kuko ari itegeko ryihariye mu birebana n'imisoro (la loi spéciale), aho gukurikiza itegeko risanzwe (*la loi générale de procédure*) nk'uko biteganywa n'ihame ryo mu mategeko "*Specialia generalibus derogant*.

Incamake y'icyemezo: Amategeko ajyanye n'imihango ikurikizwa mu ikurikirana ry'icyaha n'abafite ububasha bwo kugikurikirana ni amategeko y'imigenzo ikurikizwa (règles de procédure /procedural rules), akaba ahita ashyirwa mu bikorwa akimara gusohoka (les règles de procédure sont d'application immédiate/ procedural rules are immediately applicable), kuko aba agamije kunoza ibikorwa by'ikurikiranacyaha, bityo Itegeko N° 026/2019 ryo ku wa 18/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha niryo ryagombaga gukurikizwa.

Ikirego cyatanzwe mu buryo bukurikije amategeko,
Iburanisha ry'uru rubanza rizakomeza ku munsi ababuranyi bazamenyeshwa n'Ubwanditsi bw'Urukiko.

Amategeko yashingiweho:

Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 17

Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha, ingingo ya 57

Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya25 n'iya 88

Itegeko Nº014/2018 ryo ku wa 04/04/2018 rigena imitunganyirize, imikorere n'ububasha by'Ubushinjacyaha Bukuru n'Ubushinjacyaha bwa Gisirikare, ingingo ya 3

Itegeko N° 08/2009 ryo ku wa 27/04/2009 rigena imiterere, imikorere n'inshingano by'Ikigo gishinzwe kwinjiza mu isanduku ya Leta imisoro n'amahoro (RRA), ingingo ya 3

Itegeko Nº 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha, ingingo za 40, 41, 64 na 68

Imanza zashingiweho:

Urubanza N˚RS/INJUST/RC 00022/2018/SC rwa BUSORO Gervais waburanaga na BUSORO Mugunga Désiré, TWAGIRAYEZU Ildephonse na MUKANKOMBE Chartine;

Urubanza rubanziriza urundi N° RS/INJUST/PEN 00001/2020/SC, rwo ku wa 23/12/2020 rwaburanwagamwo MAGARA Gahakwa John et al. vs Ubushinjacyaha

Inyandiko z'abahanga:

Frédérique PERROTIN, Le bilan de la réforme du verrou de Bercy, publié le 23/04/2021, mis à jour le 31/05/2021.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Ubushinjacyaha bukurikiranyeho Mudenge Emmanuel, Kayigi Habiyambere Aimable, Kayitana Innocent, MEEJI GROUP Ltd na PRECISION HEAVY MACHINERY Ltd, ibyaha bitandukanye nk'uko byavuzwe haruguru; EXERT ENGINEERING GROUP LTD na UNIVENTURE INVESTMENT zikurikiranyweho kunyereza umusoro, icyaha giteganywa n'ingingo ya 87 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha, kigahanwa hakurikijwe ingingo ya 25 n'iya 88 z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange.

[2] Ubushinjacyaha busobanura ko Mudenge Emmanuel ari umucuruzi ufite amasosiyete atandukanye yagiye afungura mu bihe bitandukanye, amwe akaba amwanditseho ayandi ayafitemo imigabane, n'ayandi yafunguye mu mazina y'abandi ariko ayahagarariye, akaba yarayifashishije mu kunyereza umusoro ungana na 5.316.142.850 Frw yifashishije inyemezabwishyu zigaragaza ko yaranguye kandi ntakigaragaza ko ibyo bicuruzwa yabiranguye koko.

[3] Ubushinjacyaha bukomeza busobanura ko binyuze mu ruganda rwa MEEJI GROUP Ltd, yanyereje 416.925.742 Frw, anyereza kandi umusoro ungana na 99.388.286 Frw binyuze muri PRECISION HEAVY MACHINERY Ltd, yongera kunyereza angana na 915.142.850 Frw binyuze muri UNIVENTURE INVESTMENT Ltd, naho binyuze kuri EXERT ENGINEERING Group Ltd anyereza umusoro ungana na 3.883.263.887 Frw.

[4] Ubushinjacyaha buvuga ko muri iryo nyereza ry'imisoro yabifashijwemo n'abakozi b'Ikigo cy'Igihugu cy'Imisoro n'Amahoro (RRA) barimo Kayigi Habiyambere Aimable (Commissioner of Domestic Taxes) na Kayitana Innocent (Head of Tax Account Management Division) bamukoreye amasezerano yo kwishyura mu byiciro kugira ngo akurwe kuri stop list yari yashyizweho n'Urwego rw'Igihugu rushinzwe Ubugenzacyaha (RIB), kandi ko hari n'isoko yapiganiye ahagarariye ORANGE GAS ENERGY Ltd akoresheje inyandikompimbano. Naho kuri Kayigi Habiyambere Aimable na Kayitana Innocent, bukaba bubarega icyaha cyo guha umuntu inyandiko adakwiriye guhabwa no kuba icyitso mu cyaha cyo kunyereza umusoro.

[5] Abaregwa baburanye bahakana ibyaha baregwa basaba kugirwa abere naho EXERT ENGINEERING GROUP Ltd na UNIVENTURE INVESTMENT Ltd zaburanishijwe zidahari kuko zamenyeshejwe urubanza mu buryo bukurikije amategeko ariko ntizitaba.

[6] Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza N˚ RP/ECON 00081/2020/TGI/NYGE (CMB RP/ECON00082/2020/TGI/NYGE), rwemeza ko ikirego cy'Ubushinjacyaha gifite ishingiro kuri bimwe, naho ikirego cy'Ubushinjacyaha kuri EXERT ENGINEERING GROUP Ltd na UNIVENTURE INVESTMENT Ltd kitakiriwe, ruha ishingiro ikirego cy'Ubushinjacyaha kuri MEEJI GROUP Ltd na PRECISION HEAVY MACHINERY Ltd.

[7] Urukiko rwahamije Mudenge Emmanuel icyaha cyo guhimba, guhindura inyandiko no gukoresha inyandiko mpimbano n'icyaha cyo guhabwa ku bw'uburiganya cyangwa gukora no gukoresha inyandiko n'impapuro bitangwa n'inzego zabigenewe rushingiye ku nyandiko yitwa "Amendement of installment plan contract" yo kwishyura mu byiciro imisoro ingana na 408.747.642 Frw yahawe MEEJI GROUP Ltd ihagarariwe na Mudenge Emmanuel ku wa 18/7/2019 n'indi nyandiko yahawe ku wa 14/08/2019 nayo iha PRECISION HEAVY MACHINERY Ltd uburenganzira bwo kwishyura mu byiciro umusoro ungana na 69.328.957 Frw, kandi itujuje ibisabwa.

[8] Urukiko rwashingiye kandi ku nyandiko yanditswe ku wa 16/6/2020 n'uwari Komiseri Kayigi Habiyambere Aimable, iherekejwe n'inyandiko zigaragaza ko Mudenge Emmanuel yishyuye 19.4% aho kuba yarishyuye 25% y'umwenda w'umusoro, nk'uko biteganywa n'ingingo ya 23 y'Amabwiriza ya Komiseri Mukuru Nº 002/2007 yo ku wa 15/06/2007 ashyira mu bikorwa Itegeko Nº 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha, nk'uko ryahinduwe kugeza ubu.

[9] Urukiko rwahamije na none Mudenge Emmanuel icyaha cyo kunyereza umusoro, rushingiye ku kuba yarifashishije MEEJI GROUP Ltd na UNIVENTURE INVESTMENT Ltd amenyekanisha mu Kigo cy'Imisoro n'Amahoro (RRA) imisoro yifashishije inyemezabuguzi zitavugisha ukuri[1] agaragaza ko yaranguye ibicuruzwa bitandukanye bigizwe n'ibiribwa muri sosiyete zitwa KABERI Ltd za Karuhije Innocent bifite agaciro kangana na 168.759.576 Frw, ariko ntiyamenyekanisha aho yabigurishirije, cyane ko mu ibazwa ry'uwo bivugwa ko yabimuguriishije yemeje ko bitabayeho ashingiye ko nta movements zigeze ziba kuri konti ye, runashingira ku mvugo ya Kayitesi Vestine ufite sosiyete yitwa NEW PROGRESSIVE Ltd wemeje ko nta nyemezabwishyu yigeze aha MEEJI Group Ltd kuko nta n'ibicuruzwa yayigurishije.

[10] Urukiko rwasanze umusoro wanyerejwe na Mudenge Emmanuel yifashishije inyemezabuguzi z'impimbano za sosiyete ya MEEJI Group Ltd ungana na 437.049.408 Frw, naho uwo yanyereje yifashishije UNIVENTURE INVESTMENT Ltd ungana na 888.258.674 Frw, kandi ko yifashishije PRECISION HEAVY MACHINERY Ltd yanyereje 32.828.510 Frw, yose hamwe akaba 1.358.136.592 Frw.

[11] Urukiko kandi rwahamije Kayigi Habiyambere Aimable na Kayitana Innocent icyaha cyo guha umuntu inyandiko adakwiye kuyihabwa rushingiye ko bahaye Mudenge Emmanuel inyandiko imwemerera kwishyura umusoro mu byiciro kandi atarigeze yishyura nibura 25% y'umwenda w'umusoro, ataranatanze ingwate yemewe n'Ubuyobozi bw'imisoro, no kuba atari asanzwe yishyura imisoro n'amahoro neza kandi mu gihe, rwemeza ariko ko badahamwa no kuba icyitso mu cyaha cyo kunyereza umusoro.

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[1] *Izakozwe ku munsi, isaha imwe ndetse no mu minota yegeranye cyane bigaragazwa na facture yo ku wa 30/11/2018 yakozwe saa 20 :06 :27 iriho ibicuruzwa binyuranye bya 61.000.000frw birimo isukari, isabune umuceri; facture yo ku wa 30/11/2018 saa 20 :10 :48 iriho ibicuruzwa bya 76.500.000frw birimo amavuta, umuceri thaillande n'isukari; iyo ku wa 30/11/2018 saa 20 ;11 :43 y'ibicuruzwa bya miliyoni 45.450.000frw, birimo amavuta, omo n'isukari*

[12] Urukiko rwahanishije Mudenge Emmanuel igifungo cy'imyaka (7) n'ihazabu y'amafaranga miliyoni eshatu (3.000,000 Frw), runahanisha KAYIGI Habiyambere Aimable na Kayitana Innocent buri wese igifungo cy'imyaka itanu (5) n'ihazabu ingana na 1.000.000 Frw.

[13] Urukiko rwategetse Mudenge Emmanuel kwishyura umusoro yanyereje kuri UNIVENTURE INVESTMENT Ltd ungana na 888.258.674 Frw, runamutegeka gufatanya na MEEJI GROUP Ltd kwishyura umusoro yanyereje n'ibirarane ungana na 444.099.512 Frw, agafatanya na none na PRECISION HEAVY MACHINERY Ltd kwishyura umusoro yanyereje n'ibirarane ungana na 172.986.934 Frw.

[14] Mudenge Emmanuel, Kayigi Habiyambere Aimable na Kayitana Innocent bajuririye Urukiko Rukuru. Mudenge Emmanuel n'abamwunganira bavuga ko atari gukurikiranwa ku cyaha cyo kunyereza umusoro kubera ko habayeho ubuzime, kandi akaba atari umusoreshwa. Bavuga kandi ko n'inyemezabuguzi zishingirwaho zo muri 2018 ziregwa MEEJI GROUP Ltd atari impimbano nk'uko byemejwe na Karuhije Innocent wa KABERI Ltd.

[15] Bakomeza bavuga ko sosiyete arizo zagombaga kuregwa mbere maze abazihagarariye cyangwa abanyamigabane bakaregwa nyuma, kuko ubuzima gatozi bwa sosiyete buba butandukanye n'ubw'abanyamigabane bazo, akaba ariyo mpamvu atagombaga kuregwa. Bavuga kandi ko PRECISION HEAVY MACHINERY Ltd na MEEJI GROUP Ltd zitagombaga kuburanishwa ku cyaha cyo kunyereza imisoro, kuko zitakozweho iperereza, ngo zimenyeshwe ibyaha zikurikiranyweho maze zibyiregureho.

[16] Kayigi Habiyambere Aimable kimwe na Me Kayitare Serge umwunganire bavuga ko impamvu z'ubujurire mu Rukiko Rukuru ari uko ibikorwa akurikiranyweho byo guha umuntu inyandiko adakwiye guhabwa ntaho bihuriye n'inyito y'icyaha nk'uko gisobanurwa mu ngingo ya 277 y'Igitabo cy'amategeko ahana cyashingiweho kuko kuba RRA nta ruhare yari ifite mu gushyirisha Mudenge Emmanuel kuri stop list, nta n'urwo yari kugira mu kumukuzaho, kandi ko atari we wabaraga cyangwa ngo asuzume ko ingwate yaba yujuje 25% y'agaciro k'umwenda w'imisoro, akaba ataryozwa ibyo kuba zitari zuzuye.

[17] Kayitana Innocent, kimwe na Me Nzirabatinyi Fidèle umwunganira, avuga ko icyaha Urukiko rwamuhamije gishingiye ku masezerano yo kwishyura mu byiciro imisoro yahawe sosiyete zihagarariwe na Mudenge Emmanuel, nyamara ayo masezerano akaba atari mu nyandiko zivugwa mu ngingo ya 277 y'Itegeko N° 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru, asaba Urukiko Rukuru gutesha agaciro icyo cyemezo. Asobanura kandi ko Urukiko rutagombaga gushingira ku buhamya bwa Mutabazi Amon na Ndikumana Emmanuel rumuhamya icyaha mu gihe nabo ubwabo RRA yabatanzeho ikirego muri RIB nk'uko bigaragara mw'ibaruwa yo ku wa 8/6/2020.

[18] Ku wa 17/12/2021, Urukiko Rukuru rwaciye urubanza No RPA/ ECON 00014/2021/HC/KIG (CMB00017/2021/HC/KIG), rwemeza ko ubujurire bwa Mudenge Emmanuel, Kayigi Habiyambere Aimable na Kayitana Innocent bufite ishingiro, ko icyaha cyo kunyereza umusoro Mudenge Emmanuel akurikiranyweho cyatanzwe mu buryo bunyuranyije n'amategeko, rusobanura ko Urukiko rutagombaga kugisuzuma, rushingiye ku itegeko ryihariye ryakurikizwaga icyo gihe ryagenaga Urwego rufite ububasha bwo gukurikirana no kuregera Urukiko icyaha cyo kunyereza umusoro.

[19] Ku bijyanye n'ibyaha byo guhabwa ku bw'uburiganya cyangwa gukora no gukoresha inyandiko n'impapuro bitangwa n'inzego zabigenewe n'icyaha cyo gukora no gukoresha inyandiko mpimbano byaregwaga Mudenge Emmanuel, rwemeje ko bitamuhama rubishingiye ku kuba nta bimenyetso bigaragaza ko inyandiko yiswe « power of attorney» yo ku wa 21/10/2018 ivugwamo gutanga uburenganzira bwo gushinga sosiyete ORANGE GAS ENERGY Ltd ari impimbano, nta

n'ikigaragaza umugambi wo gukora icyo cyaha no kuba ibyakozwe n'impande zombi ari amasezerano atari inyandiko cyangwa uruhushya.

[20] Ku birebana no kuba Kayigi Habiyambere Aimable na Kayitana Innocent barahaye inyandiko udakwiye kuyihabwa yemerera Mudenge Emmanuel kwishyura mu byiciro, Urukiko Rukuru rwasanze badahamwa n'icyaha kuko rwasanze nta cyaha cyakozwe; rusobanura ko amasezerano yari agamije guha umucuruzi amahirwe yo gukomeza gukora igihe bigaragara ko afite ubushobozi bwo gukora kugira ngo abone ubwishyu bwo kwishyura imisoro ya Leta, bikaba ntaho bihuriye no gushaka gukuza Mudenge Emmanuel kuri stop list kuko atari yayishyizweho n'Ubuyobozi bw'Imisoro nk'uko byemejwe na Komiseri Mukuru.

[21] Urukiko rwahinduye urubanza No RP/ECON 00081/2020/TGI/NYGE (CMB RP /ECON 00082/2020/TGI/NYGE), rwaciwe ku wa 15/01/2021 n'Urukiko Rwisumbuye rwa Nyarugenge maze rutegeka ko abaregwa bose bahita bafungurwa urwo rubanza rukimara gusomwa.

[22] Ubushinjacyaha bwandikiye Perezida w'Urukiko rw'Ubujurire busaba ko urubanza No RPA/ECON 00014/2020/HC/KIG (CMB 00017/2021/HC/KIG) rwasubirwamo ku mpamvu z'akarengane. Nyuma yo gusuzuma icyo kibazo, Perezida w'Urukiko rw'Ubujurire yandikiye Perezida w'Urukiko rw'Ikirenga amusaba ko urwo rubanza rwasubirwamo kuko asanga hashobora kuba harimo akarengane.

[23] Perezida w'Urukiko rw'Ikirenga amaze gusuzuma raporo yakozwe na Perezida w'Urukiko rw'Ubujurire, mu cyemezo cye No 029/CJ/2022 cyo ku wa 16/02/2022, yemeje ko urwo rubanza rwakongera kuburanishwa, rwoherezwa mu bwanditsi bw'uru Rukiko kugira ngo rwandikwe mu bitabo byabugenewe, ruhabwa N˚ RS/INJUST/RP 00001/2022/SC.

[24] Iburanisha ry'urubanza ryashyizwe ku wa 20/04/2022, ariko ryimurirwa ku wa 11/05/2022 kuko Mudenge Emmanuel waburana hifashishijwe ikoranabuhanga, yasabye kuburana imbonankubone bitewe n'ikibazo afite cyo kutumva neza no kuba Kayitana Innocent arwaye hashingiwe ku mpapuro za muganga yatanze.

[25] Uwo munsi ugeze, Ubushinjacyaha Bukuru bwitabye Urukiko buhagarariwe na Ruberwa Bonaventure, Mudenge Emmanuel yitabye yunganiwe na Me Komezusenge Deogratias na Me Bagabo Faustin, Kayigi Habiyambere Aimable yitabye yunganiwe na Me Kayitare Serge na Me Kayijuka Ngabo, Kayitana Innocent atitabye, ariko bigaragara ko yari azi umunsi w'iburanisha.

[26] Ku birebana no kutitaba kwa Kayitana Innocent, Umwunganizi we Me Nzirabatinyi Fidèle yamenyesheje urukiko ko arwaye, yagiye kwivuza mu mahanga, ko ariko nta kiruhuko cy'uburwayi (repos medical) afite akaba yaramusabye gutanga address ye ya skype kugira ngo Urukiko ruramutse rubyemeye rube rwamuburanisha hakoreshejwe iyakure (Skype). Yasabye kandi ko Urukiko rubibonye ukundi rwakwemera ko iburanisha riba amuhagarariye ashingiye ku ngingo ya 123 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha.

[27] Ubushinjacyaha, bushingiye ku ngingo ya 128 y'Itegeko Nº 027/2019 rimaze kuvugwa, bwasabye Urukiko kuburanisha Kayitana Innocent adahari kuko yamenyeshejwe umunsi w'iburanisha, ariko akaba atagaragaje impamvu atitabye Urukiko. Naho ku bijyanye no kuba yahagararirwa muri uru rubanza, buvuga ko bidashoboka kuko icyaha akurikiranyweho ari icyaha cy'ubugome nk'uko biteganywa n'ingingo ya 123 y'iryo Tegeko.

[28] Me Bagabo Faustin wunganira Mudenge Emmanuel avuga ko nta bimenyetso bigaragaza ko Kayitana Innocent arwaye. Ku bijyanye no kuba yahagararirwa, avuga ko asanga yabyemererwa kuko icyaha ashinjwa n'ubwo itegeko ryagiteganyirije igihano cy'igifungo ariko gishobora no guhanishwa

ihazabu gusa, ko ryaba irengayobora n'ubwo icyaha akurikiranyweho ari icyaha cy'ubugome. Naho Me Kayijuka Ngabo avuga ko ashingiye ku ngingo ya 123 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru, asanga Umwunganizi wa Kayitana Innocent adashobora kumuhagararira kuko akurikiranyweho icyaha cy'ubugome.

[29] Urukiko rwafatiye icyemezo mu ntebe cyo kuburanisha urubanza Kayitana Innocent adahari hashingiwe ku ngingo ya 128, igika cya mbere, y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru, runemeza kandi ko adashobora guhagararirwa na Me Nzirabatinyi Fidèle kubera ko aregwa icyaha cy'ubugome gihanishwa igihano kiri hejuru y'imyaka itanu hashingiwe ku ngingo ya 123, igika cya mbere, y'itegeko rimaze kuvugwa.

[30] Mbere y'uko Urukiko ruburanisha urubanza ku kibazo kijyanye no kumenya niba ikirego cy'Ubushinjacyaha ku cyaha cyo kunyereza umusoro cyaratanzwe mu buryo bukurikije amategeko, Mudenge Emmanuel yavuze ko afite inzitizi ndemyagihugu, asobanura ko umwanzuro watanzwe n'Ubushinjacyaha ugaragaza ko ari umwanzuro w'ubujurire, akaba asanga hashingiwe ku Itegeko N° 30/2018 rigena ububasha bw'Inkiko, Urukiko rw'Ikirenga nta bubasha rufite bwo kuburanisha ubujurire. Asaba Urukiko kutakira ikirego cy'Ubushinjacyaha kuko nta mpamvu n'imwe mu ziteganywa n'ingingo ya 55 y'Itegeko N° 30/2018 ryavuzwe haruguru Ubushinjacyaha bwashingiyeho. Avuga kandi ko mu gusaba gusubirishamo urubanza ku mpamvu z'akarengane, hari ingingo nshya Ubushinjacyaha bwashyizemo mu gihe hari umurongo wafashwe n'Urukiko rw'Ikirenga uvuga ko ingingo zitasuzumwe mu nkiko zibanza zidashobora gusuzumwa bwa mbere mu karengane.

[31] Me Komezusenge Déogratias na Me Bagabo Faustin bunganira Mudenge Emmanuel, bavuga ko basanga ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane kitagombye kwakirwa kuko mu Rukiko rw'Ikirenga Ubushinjacyaha bugaragaza ko ari imyanzuro y'ubujurire. Ko Urukiko ruramutse rubibonye ukundi, rwatesha agaciro iyo myanzuro rukabutegeka gukora indi. Ku bijyanye n'impamvu zazanywe bwa mbere mu Rukiko rw'Ikirenga, bavuga ko basanga zidakwiye gusuzumwa.

[32] Me Bagabo Faustin yongeraho ko mu rubanza No RS/INJUST/RC 00011/2019/SC haburana Mukamusoni Vs. Nkundimana Edison, havuzwe ko inteko iburanisha ishobora kuvuguruza icyemezo cya Perezida w'Urukiko rw'Ikirenga mu gihe habayeho kwibeshya ku mihango ndemyagihugu nko kurenza igihe. Akomeza avuga ko mu rundi rubanza No RS/INJUST/RP OOOO1/2020/SC, Urukiko rwemeje ko kuba Perezida w'Urukiko yemeje ko urubanza rusubirwamo bitabuza inteko gusuzuma ibibazo bidasanzwe, bityo ko kuba ababuranyi batazi umwanzuro bagombye gushingiraho biregura, byafatwa nk'impamvu idasanzwe yatuma ikirego cy'Ubushinjacyaha kitakirwa.

[33] Me Kayijuka Ngabo avuga ko ikirego cy'akarengane cy'Ubushinjacyaha kidakwiye kwakirwa kuko mu bijyanye n'inzira z'ubujurire muri rusange, bidashoboka ko ikirego gitangira ari akarengane ngo nyuma gihinduke ubujurire. Asobanura kandi ko kuba muri dosiye hagaragaramo imyanzuro ibiri ivuguruzanya nabyo ari impamvu ituma ikirego kitakagombye kwakirwa.

[34] Kuri iyi nzitizi, Ubushinjacyaha busobanura ko imyanzuro yo ku wa 22/12/2021 yatangaga ikirego ari nayo yahereweho cyakirwa, yajuririraga urubanza rwaciwe n'Urukiko Rukuru kubera impamvu z'akarengane, kuko nk'uko ingingo ya 173 kugeza ku ya 193 z'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru zibisobanura, hari inzira zo kujurira zisanzwe n'izidasanzwe kandi no gusubirishamo urubanza ku mpamvu z'akarengane ikaba ari imwe mu nzira z'ubujurire zidasanzwe.

[35] Buvuga kandi ko mu myanzuro yo ku wa 08/03/2022, mu gika cya 10 ku rupapuro rwa 7, bisobanuye neza ko batajuriye ahubwo basabye ko urubanza rusubirwamo ku mpamvu z'akarengane,

ko rero gutandukanya ibyavuzwe muri icyo gika n'ibyavuzwe mu bika bindi by'umwanzuro bidashoboka. Busoza buvuga ko nta nenge iri mu mwanzuro w'Ubushinjacyaha, kandi ko hari n'icyemezo cyafashwe na Perezida w'Urukiko rw'Ikirenga cyemeza ko urubanza rusubirwamo, bukaba busanga ikirego cyabwo cyakwakirwa hagasuzumwa buri ngingo bwatanze.

[36] Rumaze kumva ababuranyi ku nzitizi yazamuwe na Mudenge Emmnanuel yo kutakira ikirego cy'Ubushinjacyaha cyo gusubirishamo ku mpamvu z'akarengane urubanza rwaciwe n'Urukiko Rukuru, Urukiko rwasanze impamvu Mudenge Emmanuel n'abamwunganira batanga ishingiye ku nenge bavuga ko igaragara mu mwanzuro w'Ubushinjacyaha wo ku wa 08/03/2022, iyo akaba atari inzitizi ndemyagihugu, rushingiye ku murongo watanzwe mu manza zinyuranye.[2]

[37] Urukiko rwakomeje iburanisha, hasuzumwa ikibazo kijyanye no kumenya niba ikirego cy'Ubushinjacyaha ku cyaha cyo kunyereza umusoro cyaratanzwe mu buryo bukurikije amategeko.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba ikirego cy'Ubushinjacyaha ku cyaha cyo kunyereza umusoro cyaratanzwe mu buryo bukurikije amategeko

[38] Ubushinjacyaha buvuga ko habayeho kumva no gukoresha nabi ingingo za 40, 41 na 68 z'Itegeko Nº 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoreshwa ryakoreshwaga igihe icyaha cyakorwaga, aho Urukiko Rukuru rwemeje ko Mudenge Emmanuel atagomba gukurikiranwa ku cyaha cyo kunyereza umusoro ruvuga ko ikirego cyatanzwe mu buryo budakurikije amategeko, kuko umukozi w'Ikigo cy'Igihugu gishinzwe Imisoro n'Amahoro (RRA) ubifitiye ububasha yagombaga kubanza gukora igenzura (audit) maze akarishingiraho akora Procès verbal d'infraction igaragaza icyaha cyakozwe, uwagikoze n'igihe cyakorewe, maze akaba ariyo ishingirwaho hatangwa ikirego.

[39] Busobanura ko inyandikomvugo ivugwa mu ngingo ya 40, 41 na 68 z'Itegeko Nº 25/2005 ryavuzwe haruguru, irebana n'ikurikirana ry'imisoro rikorwa n'urwego rw'ubuyobozi bw'imisoro hagamijwe kwishyuza imisoro (procédure fiscale), ko nta na hamwe izo ngingo ziteganya ko mu gihe hakozwe icyaha kijyanye n'imisoro ariko ntihakorwe iyo nyandiko mvugo nta kurikiranacyaha rigomba kubaho, nyamara Urukiko rukaba rwarirengagije ko ubugenzacyaha bufite ububasha bwo gukurikirana icyaha bubyibwirije nk'uko biteganywa n'ingingo ya 17 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, kandi ko mu manza nshinjabyaha, ibimenyetso bishobora gushingira ku mpamvu zose harebwe ibiteganywa n'ingingo ya 119 y'Itegeko rimaze kuvugwa.

[40] Ku birebana n'aho Urukiko Rukuru rwavuze ko Ubushinjacyaha bwagombaga gutanga ikirego bukurikije Itegeko N° 25/2005 ryavuzwe haruguru kuko ari itegeko ryihariye mu birebana n'imisoro, aho gukurikiza itegeko rusange hakurikijwe ihame "Specialia generalibus derogant," Ubushinjacyaha busanga ibyo urwo Rukiko ruvuga nta shingiro bifite, kuko iryo tegeko atari itegeko rigena ibihano, ahubwo ryari itegeko rya procédure, ko bene ayo mategeko ahita atangira gukurikizwa akimara gutangazwa, bivuze ko nyuma y'uko Itegeko Nº 026/2019 ryavuzwe haruguru rimariye gukuraho Itegeko N° 25/2005, Urukiko rwagombaga gukurikiza Itegeko rishya, kandi ryo rikaba ritarateganyaga ko ikirego cyagombaga gutangwa na RRA.

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[2] Reba urubanza N°RS/INJUST/RC 00022/2018/SC rwa BUSORO Gervais waburanaga na BUSORO Mugunga Désiré, TWAGIRAYEZU Ildephonse na MUKANKOMBE Chartine; n'urubanza rubanziriza urundi N° RS/INJUST/PEN 00001/2020/SC, rwo ku wa 23/12/2020 rwaburanwagamwo MAGARA Gahakwa John et al. vs Ubushinjacyaha

[41] Ku bijyanye n'ingingo ya 64 y'Itegeko N° 25/2005 ryavuzwe haruguru, buvuga ko mu gihe icyaha cyo kunyereza umusoro kitabonywe n'Ubuyobozi bw'imisoro, bitavuga ko aribwo bwonyine bufite ububasha bwo kugenza icyo cyaha, ahubwo n'Ubushinjacyaha bugumana ububasha bwo kuba bwakurikirana ibyo byaha mu gihe bitakozwe n'abahawe ubwo bubasha.

[42] Mu myanzuro yatanzwe n'abunganira Mudenge Emmanuel ndetse no mu iburanisha, bavuga ko Ubushinjacyaha busobanura nabi ibiteganywa n'amategeko kuko mu bijyanye n'icyaha cyo kunyereza umusoro, Umushingamategeko wo mu Rwanda yahaye Ikigo cy'imisoro n'amahoro(RRA), ububasha bwo gukora iperereza kuri icyo cyaha nk'uko biteganywa n'Itegeko N° 08/2009 ryo ku wa 27/04/2009 rigena imiterere, imikorere n'inshingano by'Ikigo gishinzwe kwinjiza mu isanduku ya Leta imisoro n'amahoro (RRA). Bavuga ko hakurikijwe ibivugwa mu ngingo ya 3, 50 y'iryo Tegeko, mu nshingano RRA yahawe harimo ko ariyo igomba kugenza ibyaha ku bantu barenga ku mategeko agenga imisoro n'amahoro, ibyo ikaba yabikora yifashishije abagenzacyaha bari mu ishami ryayo rya RPD.[3]

[43] Bavuga ko ari muri urwo rwego, mbere y'uko hakorwa ikurikiranacyaha ku cyaha cyo kunyereza umusoro, umukozi wa RRA ubifitiye ububasha agomba kubanza gukora igenzura (audit) hagategurwa Procès verbal d'infraction igomba kuba igaragaza icyaha cyakozwe, uwagikoze n'igihe cyakorewe, iyo nyandiko ikamenyeshwa ukurikiranyweho icyaha kugira ngo ayisinye, akanahabwa igihe cyo kuyireguraho nk'uko biteganywa n'ingingo ya 40, 41 na 68 z'Itegeko N° 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha. Bavuga ko iyo bigaragaye ko hari icyaha cyakozwe ku bushake hategurwa ikirego gishingiye kuri ya Procès verbal d'infraction kigashyikirizwa Ubushinjacyaha. Bakavuga ko ibyo byose ntabyabaye, ndetse n'itegeko rishya Ubushinjacyaha bugarukaho ko aririyo ryagombaga gukurikizwa, naryo ritigeze ryambura icyo Kigo ububasha bwo gukora iryo perereza ry'ibanze kuko naryo mu ngingo ya 57 hateganyijwe ko Procès verbal d'infraction igomba gukorwa, ikamenyeshwa ukurikiranyweho icyaha kugira ngo ayisinye ndetse akanahabwa igihe cyo kuyireguraho. Bagaragaza ko Ubushinjacyaha bwatanze ikirego bushingiye ku nyandiko zakozwe n'abakozi bo muri RRA zatangaga amakuru mu rwego rw'akazi zigaragaza ko umusoro wishyuzwa ari ibirarane by'umusoro, ariko izo nyandiko zikaba zidasimbura Procès verbal d'infraction.

[44] Bakomeje bagaragaza ko Itegeko N° 25/2005 rigena imitunganyirize y'isoreshwa aririyo ryagombaga gukurikizwa mu gukurikirana icyaha cyo kunyereza imisoro kuko ari itegeko ryihariye mu birebana n'imisoro (la loi spéciale), aho gukurikiza itegeko risanzwe (la loi générale de procédure) nk'uko biteganywa n'ihame ryo mu mategeko "Specialia generalibus derogant."

[45] Me Bagabo Faustin wunganira Mudenge Emmanuel avuga kandi ko ibivugwa n'Ubushinjacyaha ko kuba hari ubugenzacyaha bushamikiye ku kigo runaka bidakuraho ububasha bufite bwo gukurikirana ibyaha byakorewe muri ibyo kigo, atari byo kuko mu gihe habayeho kunyereza umusoro, umugenzacyaha atari we utanga ikirego ahubwo ubuyobozi bw'imisoro aribwo bwohererereza ikirego Ubushinjacyaha, ko rero hakwibazwa uburyo Ubushinjacyaha bwamenye icyo kirego. Yongera kuvuga ko Ubugenzacyaha bukorera mu ishami rya RPD muri RRA aribwo bufite umwihariko wo gukurikirana ibyaha byo kunyereza imisoro.

[46] Akomeza avuga ko abasoreshwa bacibwa umusoro ari benshi, ko ariko abakurikinwaho icyo cyaha ari abo biba byagaragaye ko babikoze babigambiriye, ko rero iyo RRA itemeje ko habayeho kunyereza umusoro nta handi Ubushinjacyaha bwashingira bukurikirana umusoreshwa. Asobanura kandi ko mu gihe habayeho gufatanya kunyereza umusoro, urwego ruhagarariye umukozi wagize uruhare mu gukora icyaha n'ubundi arirwo rwakohereza ikirego mu Bushinjacyaha.

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[3] Revenue Protection Department

[47] Muri uwo murongo, Me Komezusenge Déogratias nawe wunganira Mudenge Emmanuel, yavuze ko kuba RRA ariyo ifite ububasha bwo kugenza icyaha ku inyerezwa ry'imisoro ikaregera Ubushinjacyaha atari umwihariko w'u Rwanda, kuko ngo no mu bindi bihugu bikorwa. Yasobanuye ko nko mu Bufaransa, ingingo ya 1741 y'Itegeko rusange ry'imisoro iteganya ko ikirego gitangwa n'abashinzwe iby'imisoro, bityo ko Ubushinjacyaha, bubyibwirije, budashobora gukurikirana icyaha cy'inyerezwa ry'imisoro, aribyo byaje kwitwa "Verrou de Bercy."

[48] Mudenge Emmanuel n'abamwunganira basoza bavuga ko kuba ubugenzacyaha (RIB) bwarakurikiranye Mudenge Emmanuel nta nyandiko-mvugo igaragaza icyaha cyakozwe n'umukozi wemewe wa RRA, ikirego kirebana n'inyerezwa ry'umusoro kitagombaga kwakirwa nk'uko n'Urukiko Rukuru rwabibonye.

UKO URUKIKO RUBIBONA

[49] Nk'uko byasobanuwe muri uru rubanza mu bika bibanza, impamvu nyamukuru Ubushinjacyaha buheraho bunenga icyemezo cy'Urukiko Rukuru ni uko rwemeje ko ikirego cyabwo ku cyaha cyo kunyereza imisoro buvuga ko cyakozwe na Mudenge Emmanuel, kitagombaga kwakirwa kuko ngo cyatanzwe mu buryo bunyuranyije n'amategeko kubera ko cyatanzwe nyuma y'uko Ubugenzacyaha bukoze iperereza bubyibwirije, kandi ibyo biri mu bubasha bwihariye bwa RRA, aho nyuma yo kubona ko hari ibimenyetso ku cyaha cyo kunyereza imisoro, ibikorera inyandikomvugo ikaregera Ubushinjacyaha. Mudenge Emmanuel n'abamwunganira bo bavuga ko Urukiko Rukuru nta kosa rwakoze kuko icyemezo cyarwo rwagishingiye ku biteganyijwe mu ngingo za 40, 41, 64 na 68 z'Itegeko N° 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha bemeza ko ariryo ryakurikizwaga igihe ibikorwa bigize icyaha byakorwaga, nyamara Ubushinjacyaha bwo bukavuga ko iryo Tegeko ritari rigikurikizwa kuko ryari ryarasimbuwe n'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha, iri ryo rikaba ridateganya ko RRA igomba kubanza gutanga ikirego nk'uko byari bimeze mbere.

[50] Ingingo ya 64 y'Itegeko N° 25/2005 ryavuzwe haruguru ryakurikizwaga ubwo ibikorwa bigize icyaha cyo kunyereza umusoro abaregwa bakurikiranyweho byakorwaga, yateganyaga ko "Umusoreshwa wanyereje umusoro ahanishwa ihazabu ingana n'ijana ku ijana (100%) by'umusoro yanyereje. Uretse icyo gihano, Ubuyobozi bw'Imisoro bunashyikiriza ikirego Ubushinjacyaha, iyo umusoreshwa yakoze iryo nyereza abigambiriye, nko gukoresha ibaruramari rikosheje, impapuro z'impimbano cyangwa ikindi gikorwa gisanzwe gihanwa n'amategeko. Iyo ahamijwe icyaha, umusoreshwa ashobora gufungwa hagati y'amezi atandatu (6) n'imyaka ibiri (2)." Mu Itegeko N° 026/2019 ryavuzwe haruguru ryasimbuye Itegeko n° 25/2005, ingingo nk'iyi ntiyongeye kugarukamo, kuko ingingo ya 57 y'Itegeko N° 026/2019 Mudenge Emmanuel n'abamwunganira bashingiraho bavuga ko RRA ariyo ishyikiriza Ubushinjacyaha ikirego ku inyerezwa ry'umusoro, ivuga gusa ko umukozi wemewe mu birebana n'imisoro akora inyandikomvugo ku ikosa cyangwa icyaha byakozwe mu rwego rw'akazi, iyo nyandikomvugo ikaba igira agaciro k'ikimenyetso gihagije cy'ibyo umukozi wemewe yabonye. Iyo ngingo ntigaruka ku kuba ubuyobozi bw'imisoro bushyikiriza ikirego Ubushinjacyaha.

[51] Muri uru rubanza, Mudenge Emmanuel n'abamwunganira bahera ku ngingo ya 64 y'Itegeko N° 25/2005 ryavuzwe haruguru, bavuga ko RRA ariyo yagombaga kuregera Ubushinjacyaha. Nk'uko byavuzwe haruguru, iri tegeko ryaje guhindurwa n'Itegeko N° 026/2019 kandi muri iri tegeko, nta hateganyijwe ko kugira ngo icyaha cyo kunyereza umusoro gikurikiranwe n'inzego zishinzwe ikurikiranacyaha, RRA igomba kubanza kuzishyikiriza ikirego. Ikibazo gisigaye gusuzumwa akaba ari icyo kumenya itegeko ryakurikizwaga igihe Ubushinjacyaha bwatangiraga ikurikiranacyaha ry'icyaha cyo kunyereza imisoro kuri Mudenge Emmanuel.

[52] Ihame rusange ni uko amategeko ajyanye n'imihango ikurikizwa mu ikurikirana ry'icyaha n'abafite ububasha bwo kugikurikirana ari amategeko y'imigenzo ikurikizwa (règles de procédure /procedural rules), akaba ahita ashyirwa mu bikorwa akimara gusohoka (les règles de procédure sont d'application immédiate/ procedural rules are immediately applicable), kuko aba agamije kunoza ibikorwa by'ikurikiranacyaha. Urukiko rurasanga Itegeko N° 25/2005 ryavuzwe haruguru ryakurikizwaga ubwo ibikorwa Mudenge Emmanuel akurikiranyweho byakorwaga, kimwe n'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha ryakurikizwaga ubwo yatangiraga gukurikiranwa, ari amategeko afite impu zombi (lois de fond et de forme/ substantive and procedural laws) kuko agena uburyo icyaha kigomba gukurikiranwa n'abafite ububasha bwo kugikurikirana akanateganya ibihano, ariko ikibazo gisuzumwa muri uru rubanza kikaba gishingiye ku kumenya ufite ububasha bwo gukurikirana, kuko icyo Mudenge Emmanuel n'abunganizi be banenga atari ibihano, ahubwo ari ukuba Ubugenzacyaha bwaratangiye ibikorwa by'ikurikiranacyaha butabisabwe na RRA.

[53] Urukiko rurasanga, hashingiwe ku ihame ryavuzwe haruguru ry'uko amategeko y'imigenzo ikurikizwa (règles de procédure /procedural rules) ahita ashyirwa mu bikorwa akimara gusohoka (les règles de procédure sont d'application immédiate/procedural rules are immediately applicable), kuba Mudenge Emmanuel yaratangiye gukurikiranwa ku itariki ya 06/05/2020 (bigaragara ko habayeho kwibeshya umugenzacyaha yandika ko ari mu mwaka wa 2019),[4] Itegeko N° 026/2019 ryo ku wa 18/09/2019 ariryo ryagombaga gukurikizwa, kandi nk'uko byibukijwe haruguru, iby'uko nyuma yo kubona ko hari umusoreshwa wanyereje umusoro Ubuyobozi bw'imisoro bushyikiriza ikirego Ubushinyacyaha, ntibyagarutsemo. Ibi bikaba byumvikanisha rero ko nta cyabuzaga Ubushinjacyaha gutangiza ikurikiranacyaha butabanje kuregerwa na RRA.

[54] Ku birebana n'ingingo ya 3, agace kayo ka 5, y'Itegeko N° 08/2009 ryo ku wa 27/04/2009 rigena imiterere, imikorere n'inshingano by'Ikigo gishinzwe kwinjiza mu isanduku ya Leta imisoro n'amahoro (RRA), Mudenge Emmanuel n'abamvunganira baburanisha bashaka kugaragaza ko RRA ariyo igomba gukora iperereza ku byaha byo kunyereza imisoro, Urukiko rurasanga nta shingiro bifite kuko iyo ngingo ntaho igaragaza ko ariyo yonyine ifite inshingano yo kugenza bene ibyo byaha, mu gihe Ubushinjacyaha bwo bufite inshingano rusange yo gukora iperereza no gukurikirana ibyaha mu gihugu hose[5] harimo n'ibyaha bimunga ubukungu n'imari by'igihugu.[6]

[55] Urukiko rusanga iby'uko Urwego rushinzwe imisoro rwabanza gushyikiriza ikirego Ubushinjacyaha byaragaragaraga no mu mategeko y'ibindi bihugu, nko mu Bufaransa, aho bamaze igihe kirekire amategeko yabo ateganya ko gukurikirana icyaha cyo kunyereza umusoro bigomba gutangizwa n'uko Urwego rushinzwe imisoro rubanza gushyikiriza ikirego Umushinjacyaha kandi bikaba byanemejwe na Komisiyo ishinzwe ibyaha byerekeye imisoro. Ubu buryo bwari bwashyizweho hagamijwe kurengera uburenganzira bw'abasoreshwa no kubarinda kuba bahohoterwa n'Urwego rushinzwe imisoro. Cyakora ubu buryo bwakomeje kunengwa cyane cyane hashingiwe ku kuba ari imbogamizi ku butabera, kuba busumbanya abantu n'ibindi, kuko byagaragaraga ko amadosiye yoroheje ari yo aregerwa mu Bushinjabyaha, naho amadosiye agoye akabanza gukemurirwa ku rwego rw'Urwego rushinzwe imisoro bigatuma abanyabyaha bazi amayeri menshi kimwe n'abakoresha uburyo buhambaye mu gukora ibyaha batagezwa imbere y'ubutabera.

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[4] Harebwe nimero y'iyo nyandiko ni iya 2020, ibyaha yabazwagaho nabyo byari bishingiye ku Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha bigaragara ko ryasohotse mu kwezi kwa 9/2019 bivuze ko ataba yarabajijwe ritaratangira gukurikizwa. Ikindi mu byo yabajijweho harimo amasezerano yo kwishyura imisoro mu byiciro nyamara amwe yabaye kuwa 18/7/2019 andi akorwa kuwa 14/8/2019 naho bikaba byakumvikana ko ataba yarabajijwe ayo masezerano atarakorwa, iyo nyandikomvugo bigaragara kandi ko yashyizwe muri *System* kuwa 8/5/2020 ndetse n'uwunganiraga MUDENGE Emmanuel mu Bugenzacyaha, Me NIYOMUGABO Christophe akaba yarayisinye kuwa 06/05/2020.

[5] Ingingo ya 3 y'Itegeko Nº014/2018 ryo ku wa 04/04/2018 rigena imitunganyirize, imikorere n'ububasha by'Ubushinjacyaha Bukuru n'Ubushinjacyaha bwa Gisirikare.

[6] Ingingo ya 3 agace ka 3 k'Itegeko Nº 014/2018.

Nibyo byatumye mu mwaka wa 2018 hakorwa amavugurura kuri ubu buryo bwo kubanza gutanga ikirego bikozwe n'Urwego rushinzwe imisoro, hongerwaho ubundi buryo bw'uko ku madosiye igenzura ryagaragaje ko afite uburemere bwihariye, Urwego rushinzwe imisoro rutegetswe kujya ruyamenyesha Ubushinjacyaha.[7] Ikindi ni uko, nk'uko Urukiko rushinzwe kurinda Itegeko Nshinga mu Bufaransa rwabivuze mu isesengura ry'icyemezo N° 2016-555 QPC cyo ku wa 22 Nyakanga 2016, guhera igihe igika cy'ingingo ya 1741[8] cyaviriyeho, nta yindi ngingo iteganya mu buryo bweruye ko gutangiza ikurikiranacyaha ry'icyaha cyo kunyereza imisoro rigomba kubanzirizwa n'ikirego cy'Ubuyobozi bw'Imisoro.[9]

[56] Hashingiwe ku bisobanuro byatanzwe haruguru, Urukiko rurasanga ikirego cy'Ubushinjacyaha ku cyaha cyo kunyereza imisoro cyaratanzwe mu buryo bukurikije amategeko, bityo Urukiko Rukuru rukaba rwaragombaga kucyakira rukagisuzuma.

III. ICYEMEZO CY'URUKIKO

[57] Rwemeje ko ikirego cy'Ubushinjacyaha ku cyaha cyo kunyereza imisoro cyatanzwe mu buryo bukurikije amategeko.

[58] Rwemeje ko iburanisha ry'uru rubanza rizakomeza ku munsi ababuranyi bazamenyeshwa n'Ubwanditsi bw'Urukiko.

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[7] Reba Frédérique PERROTIN, *Le bilan de la réforme du verrou de Bercy*, publié le 23/04/2021, mis à jour le 31/05/2021 (https://www.actu-juridique.fr/fiscalite/droit-fiscal/le-bilan-de-la-reforme-du-verrou-de- bercy/).

[8] Ni ingingo y'Itegeko rusange ry'imisoro.

[9] […...]*Toutefois, le Conseil constitutionnel dans le commentaire de la décision n°2016-555 QPC du 22 juillet 2016 mentionne que « depuis la suppression du dernier alinéa de l'article 1741 du CGI par le décret du 15 septembre 1981, aucune disposition législative ne prévoit de manière expresse que la mise en mouvement de l'action publique en matière de fraude fiscale est subordonnée à une plainte de l'administration.*