Ets KALINDA SEKWEKWE v. IKIGO CY'IMISORO N'AMAHORO

[Rwanda URUKIKO RW'IKIRENGA – RCOMA0028/13/CS (Mukanyundo, P.J., Ngagi na Nyirandabaruta, J.) 6 Ugushyingo 2015]

Amategeko agenga imisoro – Kohereza ibicuruzwa mu mahanga – Kumenyekanisha ibicuruzwa byoherejwe mu mahanga – Gusonerwa umusoro ku bicuruzwa byoherejwe mu mahanga – Ntiyahabwa amahirwe itegeko rigenera uwohereje ibicuruzwa mu mahanga igihe atagaragaza ko yabimenyekanishije kuri gasutamo ngo nayo yemere ko bisohoka – Itegeko Nº21/2006 ryo kuwa 28/04/2006 rigena imikorere ya gasutamo, ingingo ya 177 na 179.

Amategeko agenga imisoro – Ikigaragaza ko habayeho kohereza ibicuruzwa mu mahanga – Kugaragariza RRA amazeserano yerekeye ibicuruzwa byoherejwe mu mahanga – N'ubwo ayo masezerano atayagaragarije RRA nayo ubwayo ntagaragaza ko habayeho kohereza ibicuruzwa mu mahanga – Itegeko Nº74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuza Itegeko Nº25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha, ingingo ya 5.

Amategeko agenga imisoro – Kohereza ibicuruzwa mu mahanga – Ntibyitwa kohereza ibicuruzwa mu mahanga igihe ibyoherejwe bitakorewe mu Rwanda – Itegeko Nº21/2006 ryo kuwa 28/04/2006 rigena imikorere ya gasutamo, ingingo ya 2(33).

Amategeko agenga imisoro – Umusoro ku bucuruzi bukorerwa mu mahanga – Utuye mu Rwanda agakorera imirimo ye mu mahanga agomba kwishyura imisoro ku nyongeragaciro – Itegeko N°06/2001 ryo ku wa 20/01/2001 rishyiraho umusoro ku nyongeragaciro, ingingo za 4, 9 na 12.

Amategeko agenga ibimenyetso – Kugaragaza ibimenyetso by'ibyo aregera – Agomba kwishyura umusoro yaciwe kuko atagaragaje ko amafaranga agomba gusorera yari inyishyu y'inguzanyo – Itegeko Nº21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 9 – Itegeko Nº15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.

Amategeko agenga imisoro – Gutakambira Komiseri Mukuru w'Imisoro – Kuzamura mu bujurire ingingo itaragiweho impaka mu rukiko rubanza – Ikibazo cy'umusoro cyitashyiikirijwe Komiseri Mukuru w'Imisoro nticyafatwaho icyemezo; ni nako bigomba kugenda ku kibazo kizamuwe mu bujurire kitagiweho impaka n'ababuranyi mu rukiko rubanza.

Indishyi – Igihembo cy'Avoka – Ntizitangwa igihe uzisaba yatsinzwe mu ngingo ze zose – Itegeko ryo kuwa 30/7/1888 rigena amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Indishyi – Kuzanwa mu rubanza ku maherere – Uwazanywe mu rubanza ku maherere agomba guhabwa amafaranga y'ikurikiranarubanza – Itegeko ryo kuwa 30/7/1888 rigena amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Incamake y'ikibazo: Ikigo cy'Imisoro n'Amahoro cyakoreye igenzura Ets KALINDA SEKWEKWE cyiyica umusoro ku nyongeragaciro ku modoka eshatu harimo ebyiri yagurishirije mu mahanga. Uwo musoro ntiyawishimiye, iwujuririye kwa Komiseri Mukuru ariko nabwo ntiyishimira igisubizo, aregera Urukiko Rukuru rw'Ubucuruzi. Muri uru Rukiko yinubiraga kuba yaraciwe TVA ku modoka eshatu yagurishije nyamara ebyiri muri zo

yarazigurishirije mu mahanga (export) kandi uwohereje ibicuruzwa mu mahanga atagomba gucibwa umusoro uwo ari wo wose. Urukiko Rukuru rw'Ubucuruzi rwemeje ko Ets KALINDA SEKWEKWE igomba gucibwa umusoro ku nyongewragaciro kuko amafaranga yagaragaye kuri konti akomoka ku modoka zagurishirijwe mu mahanga.

Ets KALINDA SEKWEKWE yajuririye icyo cyemezo mu Rukiko rw'Ikirenga ivuga ko ibintu byoherezwa mu mahanga bitagomba gicibwa umusoro ku nyongeragaciro ndetse inongeraho ko 76.000.000Frw yanyuze kuri konti yayo muri Access Bank (Ex-BANCOR) atacibwa umusoro ku nyongeragaciro kuko ayo mafaranga ari ayo yagurijwe na *Station Customer Care Services.*

RRA yo ivuga ko nta kimenyetso Ets KALINDA SEKWEKWE yatanze cyo kohereza ibintu mu mahanga ko ndetse nta kimenyetso kigaragaza ko habayeho amasezerano y'iguriza ry'amafaranga yabaye hagati ya Ets KALINDA SEKWEKWE na *Station Customer Care Services*" iherereye i Goma. RRA yavuze ko urubanza rujuririrwa rutagomba kuvaho ahubwo isaba guhabwa indishyi zo kuzanwa mu manza nta mpamvu.

Incamake y'icyemezo: 1. Ibicuruzwa byose bigomba kugenerwa uko bifatwa muri Gasutamo bikorerwa imenyekanisha kandi bisohoka ku butaka ikoreraho ari uko imenyekanisha ryo gusohora ibicuruzwa rimaze kwemerwa. Kuba rero Ets KALINDA SEKWEKWE yariyemereye ko izo modoka zisoreshwa zagurishijwe mu mahanga nyamara ntigaragaze imenyekanisha zakorewe muri gasutamo ngo zemererwe gusohoka, bigaragaza ko iryo gurishwa ryabaye mu buryo butubahirije amategeko.Bityo, ntiyahabwa uburenganzira bugenerwa ugurisha ibintu mumahanga nkuko biteganywa n'amategeko.

2. Kohereza ibintu mu mahanga bisobanura uburyo Gasutamo ikoresha butuma ibintu byakorewe mu gihugu bisohoka ku butaka gasutamo ikoreraho. Ets KALINDA SEKWEKWE ntiyavuga rero ko yohereje ibintu mu mahanga igihe atagaragaza ko ibyo ivuga ko yohereje byakorewe imbere mu Rwanda.

3. Kuba atuye mu Rwanda, imirimo ye akayikorera i Goma ariko ikamugirira akamaro ari mu Rwanda bigaragaza ko agomba gucibwa umusoro ku nyongeragaciro.

4. Buri mu buranyi agomba kugaragaza ukuri kw'ibyo aburana kandi urega agomba kugaragaza ibimenyetso by'ibyo aregera yabibura agatsindwa. Ets KALINDA SEKWEKWE igomba gutsindwa rero kuko itagaragaza ko amafaranga yategetswe gusorera yari ayo yagurijwe dore ko bitanumvikana ukuntu ayo mafaranga atashyizwe muri banki ifitiwe umwenda ahubwo agashyirwa mu yindi banki hakaba nta n'ikigaragaza ko ayo mafaranga yari agenewe kwishyura uwo mwenda. Bityo agomba gutsindwa kuko atagaragaje ko ayo mafaranga atagomba gusoreshwa.

5. Nta cyemezo cyafatwa ku musoro igihe cyitashyikirijwe Komiseri Mukuru w'Imisoro kandi nticyanasuzumwa igihe ababuranyi batakigiyeho impaka mu rukiko rubanza.

6. Ets Kalinda SEKWEKWE Ntiyahabwa indishyi igihe ingingo zayo zose z'ubujurire nta shingiro zifite ahubwo kuba ubujurire bwayo nta shingiro bufite kandi RRA ikaba yarahamagawe mu rubanza byumvikanisha ko hari ibyo yatakaje byumvikanisha ko RRA ikwiye guhabwa amafaranga y'ikurikiranarubanza.

Ubujurire nta shingiro bufite;
Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe;
Urubanza rwajuririwe ntiruhindutse uretse ku bijyanye n'indishyi uregwa agenewe kuri uru rwego;

Amagarama y'urubanza yatanzwe mu bujurire ahwanye n'imirimo yakozwe.

Amategeko yashingiweho:

Itegeko Nº21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 9.

Itegeko Nº21/2006 ryo kuwa 28/04/2006 rigena imikorere ya gasutamo, ingingo ya 2(33), 177 na 179.

Itegeko Nº74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuza Itegeko no 25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha , ingingo ya 5.

Itegeko N°06/2001 ryo ku wa 20/01/2001 rishyiraho umusoro ku nyongeragaciro, ingingo ya 4, 9 na 12.

Itegeko Nº15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.

Itegeko Nº30/7/1988 ryerekeye amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Nta manza zifashishijwe.

Urubanza

I. IMITEREREY'URUBANZA

[1] Uru rubanza rukomoka ku igenzura Ets KALINDA SEKWEKWE yakorewe n'Ikigo cy'Imisoro n'Amahoro/ Rwanda Revenue Autority (RRA) ku myaka ya 2006, 2007, 2008, 2009 na 2010, imuca umusoro ku nyongeragaciro (TVA) ungana na 53.202.550Frw, inamwemerera igihombo kingana na 181.516.897Frw. Ets KALINDA SEKWEKWE yajuririye uwo musoro kwa Komiseri Mukuru w'Imisoro, ayihanaguraho umusoro (TVA) ungana na 4.729.535Frw hasigara 48.473.015Frw itegekwa kuyishyura.

[2] Ets KALINDA SEKWEKWE ntiyanyuzwe, ijuririra icyemezo cya Komiseri Mukuru w'Imisoro mu Rukiko Rukuru rw'Ubucuruzi, ivuga ko itagombaga gucibwa TVA ingana na 48.473.535Frw hashingiwe ku kuba byaragaragaye ko imodoka imwe muri eshatu yari afite ariyo yasubije "Plaque", kandi amakamyo abiri bashingiraho bamuca ayo mafaranga yaragurishirijwe hanze y'igihugu hakaba harabaye icyo bita "Exportation" kandi ko uwakoze "exportation" adacibwa umusoro uwo ariwo wose.

[3] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza Nº RCOM0057/12/HCC ku wa 18/01/2013, rwemeza ko nta kigomba guhinduka ku cyemezo cyafashwe na Komiseri Mukuru w'Imisoro, rutegeka Ets KALINDA SEKWEKWE gutanga umusoro wose ungana na 48.473.015Frw, ikishyura n'amagarama y'urubanza.

[4] Ets KALINDA SEKWEKWE ntiyishimiye icyemezo cy'Urukiko Rukuru rw'Ubucuruzi, ikijuririra mu Rukiko rw'Ikirenga, ivuga ko yaciwe imisoro kandi Itegeko rivuga ko kohereza ibintu mu mahanga aribyo "Exportation" bidasoreshwa, ko yaciwe TVA ku mafaranga 76.000.000Frw RRA yafashe nk'ayo yacuruje kandi ari umwenda "Station Customer Care Services" y'i Goma muri Repubulika Iharanira Demokarasi ya Congo yayigurije, ko hari na 12.032.500Frw akwiye kuvanwa mu byacurujwe ntasoreshwe, isaba guhanagurwaho TVA ingana na 48.473.015Frw yaciwe mu buryo budakurikije amategeko no gutegeka RRA kuyishyura 500.000Frw y'igihembo cya Avoka.

[5] RRA yo ivuga ko Ets KALINDA SEKWEKWE nta bimenyetso yatanze by'uko habayeho kohereza ibintu mu mahanga, ko itabashije kugaragaza amasezerano y'inguzanyo yabaye hagati yayo na "Station Customer Care Servises" iherereye mu Mujyi wa Goma, ko kandi ibindi birego bitasuzumwa, ko icyemezo cyafashwe n'Urukiko Rukuru rw'Ubucuruzi gikwiye kugumaho kandi RRA igahabwa indishyi zo kuzanwa mu manza nta mpamvu.

[6] Iburanisha ryabaye ku wa 06/10/2015, ETS KALINDA SEKWEKWE ihagarariwe na Me Musafiri Alain naho RRA ihagarariwe na Me Kabibi Spéciose.

II. IBIBAZO BIGOMBA GUSUZUMWA MU RUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba Ets KALINDA SEKWEKWE yaraciwe umusoro wa TVA kuri 86.000USD yacurujwe hakozwe "Exportation".

[7] Me Musafiri Alain uburanira Ets KALINDA SEKWEKWE avuga ko Urukiko Rukuru rw'Ubucuruzi rutahaye agaciro ibisobanuro batanze by`uko 86.000USD yanyuze kuri konti ya Ets KALINDA SEKWEKWE, RRA ikayasoresha TVA ivuga ko akomoka ku modoka zagurishirijwe hanze y`Igihugu zikaba zinatungiweyo, akaba atagomba gucibwa umusoro wa TVA kuko izo modoka zifatwa mu rwego rw'ibintu byoherejwe mu mahanga nk'uko biteganywa n`ingingo ya 87 igika cya mbere, (a), y'Itegeko N^{o}06/2001 ryo ku wa 20/01/2001 rishyiraho umusoro ku nyongeragaciro. Avuga ko Urukiko rwashingiye ku kuba atarubahirije ibisabwa ushaka kohereza ibintu mu mahanga (formalités d'exportation) biteganywa n'ingingo za 176, 177, 178 na 179 z'Itegeko N^{o}21/2006 ryagengaga imikorere ya Gasutamo igihe igenzura ryakorwaga, ko impamvu bitakozwe ari uko izo kamyo zari zarakoze (camions d'occasion); ko ihame ari uko iyo ibicuruzwa bigurishijwe hanze y'Igihugu bitishyura umusoro wa TVA, kandi ko nta hateganyijwe ko mu gihe ibisabwa byaba bitubahirijwe biba bivuze ko kohereza ibintu mu mahanga bitabayeho, ndetse ko Komiseri Mukuru atigeze ashingira kuri izo ngingo akuraho TVA ingana na 4.729.535Frw.

[8] Avuga kandi ko ibyo bisabwa biteganyijwe ku bintu umuntu adashobora kumenya ibyo ari byo ku buryo bworoshye (bitari facilement identifiable) naho imodoka zikaba ubwazo zigaragara, ko imodoka uwo yunganira yaciriwe umusoro ari "Camions" ebyiri yari yaravanye muri Repubulika Iharanira Demokarasi ya Congo akazizana mu Rwanda, nyuma akaza kuzigurishiriza mu gihugu cya Uganda, akaba atumva uburyo yasabwe kwishyura umusoro wa TVA kandi ibyo yakoze bifatwa nko kohereza ibintu mu mahanga (kugurisha ibicuruzwa bivuye mu gihugu ubijyana hanze mu kindi gihugu). Avuga na none ko n'ubwo "formalités d'exportation" zitakozwe, batanze ibimenyetso by'uko imodoka zagurishijwe, ko babinyujije mu iposita bagaruye ibiziranga (plaques), bakaziha RRA, ndetse ko Ets KALINDA SEKWEKWE Ltd yari yavaniweho imisoro ingana na 4.729.535Frw igihe yari imaze gusubiza (plaque) y'imidoka imwe ya''camion" imaze kwerekana ko itakiyanditseho, akaba yumva ko ibyo byakagombye gukorwa no ku zindi "Camions" ebyiri zari zisigaye.

[9] Me Kabibi Spéciose uhagarariye RRA avuga ko ibivugwa n'uhagarariye Ets KALINDA SEKWEKWE nta shingiro bifite, ko hasoreshejwe amafaranga yari kuri konti yayo y'ubucuruzi kandi ko amategeko y'ubucuruzi abyemera, uretse igihe nyiri konti ashoboye kwerekana ko ayo mafaranga cyangwa amwe muri yo atavuye mu bucuruzi cyangwa ko atasoreshwa.

[10] Avuga kandi ko hashingiwe ku biteganywa n'ingingo ya 176 kugeza ku ya 179 z'Itegeko Nº21/2006 ryo kuwa 28/04/2006 rigenga imikorere ya gasutamo, "Exportation regime" idakorwa uko umuntu yishakiye, ko ufite ibyo ashaka kugurisha mu mahanga abanza gukora imenyekanisha (déclaration) muri Gasutamo, babimwemerera akabona kugurisha ibicuruzwa bye aho ashaka hanze y'Igihugu kandi ko icyo gihe nko ku modoka nyirayo asubiza ibyangombwa byerekanaga ko ikoreshwa mu Rwanda, ko kuba Ets KALINDA SEKWEKWE itarabashije kugaragariza Urukiko ko yaba yaramenyekanishije ko izo modoka igiye kuzigurisha hanze y'igihugu, bivuga ko niyo zaba zaragurishijwe zitahabwa amahirwe (avantages) yateganyirijwe kohereza ibintu mu mahanga ateganywa mu ngingo ya 87, igika cya 1, y'Itegeko rigenga umusoro ku nyongeragaciro (TVA) ryavuzwe haruguru, ko kandi nta n'ikigaragaza ko yazigurishije kuko aterekanye byibura imenyekanisha (déclaration) abaziguze baba barakoze iwabo, ko rero RRA isanga ari ntaho Urukiko Rukuru rw'Ubucuruzi rwari guhera rwemeza ko ibyo Ets KALINDA SEKWEKWE ivuga bifite ishingiro.

[11] Ku bijyanye na "plaques" z'izo modoka zagaruwe, uhagarariye RRA avuga ko bitaburanishijweho mu Rukiko Rukuru rw'Ubucuruzi, ariko ko hashingiwe ku ngingo ya mbere, igika cya 5, y'Itegeko N°74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuza itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha, inyandiko cyangwa ikimenyetso bitagaragaye mu gihe cy'igenzura bidahabwa agaciro, ko rero Urukiko rutazita kuri izo "plaques" kuko ziterekanywe mu igenzura. Avuga ko "Plaques" zagaruwe kuwa 11/09/2012 imanza zaratangiye, mu gihe igenzura ryakozwe muri 2006-2010, bivuga ko zagaruwe nyuma y'igenzura. Ikindi ni uko iyo "plaques" zigaruwe na "carte jaune" igarurwa hakuzuzwa "form" yerekana impamvu bigaruwe, ari nabyo bishingirwaho hakorwa igenzura, ariko ko Ets KALINDA SEKWEKWE yagaruye "plaques" zonyine.

UKO URUKIKO RUBIBONA

[12] Itegeko Nº21/2006 ryo kuwa 28/04/2006 rigena imikorere ya gasutamo ryakoreshwaga igihe cy';igenzura ryakorewe Ets KALINDA SEKWEKWE riteganya mu ngingo ya 177 ko ibicuruzwa byose bigomba kugenerwa uko bifatwa muri Gasutamo bikorerwa imenyekanisha, naho ingingo ya 179 igateganya ko ibicuruzwa bisohoka ku butaka Gasutamo ikoreraho ari uko imenyekanisha ryo gusohora ibicuruzwa rimaze kwemerwa.

[13] Na none ingingo ya mbere, igika cya 5, y'Itegeko N°74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuza Itegeko N°25/2005 ryo kuwa 04/12/2005[1] rigena imitunganyirize y'isoresha iteganya ko "umusoreshwa atemerewe gutanga, ku rwego urwo arirwo rwose rw'ubujurire, izindi nyandiko cyangwa ibitabo atagaragaje mu gihe cy'igenzura. Naho igika cya nyuma (art.1 in fine) cy'iyo ngingo giteganya ko umusoreshwa yabyerekana gusa (inyandiko cyangwa ibitabo) ari uko agaragaje impamvu zifatika zatumye atagaragaza ibyo bimenyetso mu gihe cy'igenzura.

[14] Urukiko rurasanga uhagarariye Ets KALINDA SEKWEKWE ubwe yiyemerera ko imodoka avuga ko zagurishijwe hanze y'Igihugu cy'u Rwanda zitigeze zikorerwa imenyekanisha muri Gasutamo nk'uko biteganywa n'amategeko ngo zemererwe gusohoka mu Gihugu zijya kugurishirizwa mu mahanga, iyo mvugo ye ubwayo ikaba igaragaza ko

[1] Ayo mategeko yombi yakoreshejwe igihe cy'igenzura.

n'iyo izo modoka zaba zaragurishijwe hanze y'Igihugu byaba byarakozwe mu buryo butubahirije amategeko, ko rero bitahesha Ets KALINDA SEKWEKWE amahirwe Itegeko ryateganyirije abohereza ibintu mu mahanga (avantages prévus par la loi en cas d'exportation).

[15] Dosiye y'urubanza igaragaza amasezerano yo kuwa 04/05/2006 yakorewe i Kigali hagati ya Ets KALINDA SEKWEKWE ihagarariwe na Kalinda Donatien na Nduwumwami Victor, y'ubugure bw'imodoka "Camion Remorque" yo mu bwoko bwa Mercedes-Benz 2628 ifite "Plaque" RAA 864 M naho "Remorque" ifite "Plaque" RL 0246, amasezerano yo kuwa 26/07/2007 yabaye hagati ya Ets KALINDA SEKWEKWE ihagarariwe na Kavunga Kalinda na Kipkemoi y'ubugure bwa "Camion Mercedes-Benz" 2635 ifite "Plaque" RAA 863M na "Remorque Doll" ifite "Plaque" RL 0244 nayo yakorewe i Kigali, n'ayo kuwa 22/08/2008 yabaye hagati ya Ets KALINDA ihagarariwe na Kavunga Kalinda na Bwana Ssebanakitta Hakim y'ubugure bw'imodoca "Camion Mercedes –Benz" 2628 ifite "Plaque" RAA 860, "Camion Iveco Eurotruck" ifite "Plaque" RAA 859 M na "Remorque Doll" ifite "Plaque" RL 0245, nayo yakorewe i Kigali; ayo masezerano yose Ets KALINDA SEKWEKWE ikaba yarayatanze nk'ibimenyetso byerekana ko kamyo zayo zagurishirijwe mu mahanga.

[16] Urukiko rurasannga ayo masezerano yose y'ubugure bw'imodoka, ari nta n'amwe bigaragara ko RRA yayabonye mu igenzura yakoze, ndetse yose akaba yarakorewe i Kigali, bivuze ko usibye no kuba ibyo bimenyetso bitashingirwaho hakurikijwe ibiteganywa n'ingingo ya mbere, igika cya 5, y'Itegeko N^{o}74/2008 ryo kuwa 31/12/2008 rihindura kandi ryuzuza Itegeko N^{o}25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha, ku mpa mvu z'uko atigeze agaragarizwa RRA igihe cy'igenzura, nta n'ubwo yerekana ko imodoka zivugwa zagurishirijwe hanze y'Igihugu, bityo, rero, ingingo y'ubujurire y'uko 86.000USD akomoka ku modoka zagurishijwe atasoreshwa ikaba nta shingiro ifite.

[17] Urukiko rurasanga kandi ingingo ya kabiri (2) y'Itegeko Nº21/2006 ryo kuwa 28/04/2006 ryavuzwe haruguru iteganya mu gace ka 33 ku bijyanye n'ibisobanuro by'amagambo n'ahantu iri tegeko rikurikizwa, ko: "Kohereza ibintu mu mahanga: bivuga uburyo Gasutamo ikoresha butuma ibintu byakorewe mu gihugu bisohoka ku butaka gasutamo ikoreraho*"*. Kuba rero uhagarariye Ets KALINDA SEKWEKWE avuga ko habayeho kohereza imodoka ebyiri mu mahanga, akaba atari byo, kuko Itegeko rivuga ko *kohereza ibintu mu mahanga* ari ukohereza mu mahanga ibintu byakorewe mu gihugu, kandi izo modoka zikaba zitarakorewe mu Rwanda. Ibi nabyo bishimangira ko ku bijyanye n'izo modoka Ets KALINDA SEKWEKWE idashobora guhabwa amahirwe itegeko ryateganyirije abohereza ibintu mu mahanga.

2) Kumenya niba 76.216.240Frw yageze kuri konti ya Ets KALINDA SEKWEKWE ataragombaga gucibwa umusoro wa TVA.

[18] Me Musafiri Alain avuga ko Ets KALINDA SEKWEKWE yeretse Urukiko Rukuru rw'Ubucuruzi ko 76.216.240Frw yanyuze kuri konti yayo avuye mu bucuruzi bwa "Station Customer Care Services" ya Kalinda Sekwekwe iri i Goma, ariko Urukiko rukavuga ko "bons de prélèvement" berekanye zidahagije, ko bagombaga kwerekana amasezerano yabaye hagati ya Ets KALINDA SEKWEKWE n'iyo "Station" rwirengagije ko izo zombi ari "entreprises individuelles" za Kalinda Sekwekwe atari sosiyete 2 ziba zifite ubuzimagatozi n'ubwo abanyamuryango bazo baba bamwe, ko umuntu umwe atakwandika amasezerano ngo abe ugujije n'ugurijwe.

[19] Akomeza asobanuye ko 76.216.240Frw yanyuze kuri Konti ya Ets KALINDA SEKWEKWE muri Access Bank (ex BANCOR) yaturukaga mu bucuruzi yari afite i Goma adakwiriye gufatwa nk'ayacurujwe mu Rwanda kubera ko yayahanyuzaga mu rwego rwo kumufasha kwishyura inguzanyo yahawe na Banki y'Ubucuruzi y'u Rwanda (BCR) agura "camions" muri "Leasing", ariko nyuma zikabura akazi bigatuma agira igihombo gikomeye, ko iyo "station Customer Care Services" yahaye Ets KALINDA SEKWEKWE ya hano mu Rwanda umwenda mu bihe bitandukanye mu mwaka wa 2007 ungana na 105.900USD akayavunja mu manyarwanda angana na 60.363.000Frw, agashyirwa kuri konti muri Access Bank Rwanda Ltd kugira ngo amufashe kwishyura umwenda wa BCR , ko ibyo bigaragara muri "Grand Livre" ndetse no muri "bons de prélèvement" zigaragaza aho ayo mafaranga yabaga aturutse.

[20] Yasoje avuga ko ingingo ya 12 y'Itegeko N°06/2001 ryo kuwa 20/01/2001 rishyiraho umusoro ku nyongeragaciro iteganya ko ibintu n'imirimo bisoreshwa iyo ibintu bikorwa hagamijwe ikiguzi, bityo ko gusoresha Ets KALINDA SEKWEKWE kuri 76.216.240Frw yanyuze kuri konti ye adaturutse mu bucuruzi bwe bwo mu Rwanda byaba ari ukwirengagiza ibiteganywa n'iyo ngingo, akaba atagombaga gusoreshwa kuko atatarutse ku bintu cyangwa serivisi yacuruje mu Rwanda.

[21] Me Kabibi Spéciose avuga ko kuba nyiri Ets KALINDA SEKWEKWE ikorera mu Rwanda ari nawe nyiri "Station Customer Care Services" ikorera i Goma bitavuze ko amafaranga yajya ava muri sosiyete imwe akajya mu yindi yafatwa nk'inguzanyo mu gihe nta masezerano yabaye hagati y'izo "entreprises" ebyiri, akaba ariho Urukiko Rukuru rw'Ubucuruzi rwahereye ruvuga ko ibyo uhagarariye Ets KALINDA SEKWEKWE avuga bidafite ishingiro. Avuga kandi ko ubucuruzi bwa Ets KALINDA SEKWEKWE bugaragarira mu bitabo, ko nta kuntu ubucuruzi bwa sosiyete imwe bwagaragara mu gitabo cy'iyindi sosiyete bitanagaragaza byibura ko ari ayo yagurijwe. Avuga na none ko Ets KALINDA SEKWEKWE yakoraga umurimo w'ubwikorezi bw'ibintu ibivana mu Rwanda ibijyana i Goma, bityo ko anibaza niba ariya 76.216.240Frw atari ubwishyu bwa serivisi yatanze z'ubwikorezi buva mu Rwanda.

UKO URUKIKO RUBIBONA.

[22] Ingingo ya 12(1) y'Itegeko N°06/2001 ryo ku wa 20/01/2001 rishyiraho umusoro ku nyongeragaciro ryakoreshwaga igihe igenzura ryabereye, iteganya ko ibintu n'imirimo bisoreshwa, hakurikijwe iri tegeko, iyo ibintu bikorwa hagamijwe ikiguzi n'usoreshwa wiyandikishije ubwe, uwo bafatanije, cyangwa umukozi we, hakurikijwe ibisabwa bikubiye mu ngingo ya 4 n'iya 9[2] z'iri Tegeko.

[23] Urukiko rurasanga kuba Kalinda Sekwekwe atuye mu Rwanda ariko akaba afite "Station" i Goma kandi ikaba imugirira akamaro ari mu Rwanda, ariko akaba atabasha

[2] Ingingo ya 9: imirimo ifatwa nk'ikorerwa mu Rwanda iyo uyikora: a) afite icyicaro mu Rwanda kandi nta handi agifite; b) nta cyicaro afite mu Rwanda cyangwa ahandi hose, ariko akaba asanzwe atuye mu Rwanda; c) afite icyicaro mu Rwanda n'ahandi ariko icyicaro cy'ibikorwa bye byitirirwa uwo murimo ukorwa kikaba ikiri mu Rwanda; d) nta cyicaro afite mu Rwanda ahubwo akakigira ahandi ariko abo uwo murimo ukorerwa bawukenera cyangwa ukabagirira akamaro mu Rwanda. Mu gihe ingingo ya 4 y'itegeko ryavuzwe haruguru iteganya ko …ibintu bishyirwa mu rwego rw'ibigurwa mu Rwanda: a) igihe byoherezwa hanze y'u Rwanda ku buryo buhoraho cyangwa budahoraho. b) igihe kubishyira ku masoko bisaba ko bibanza gutunganywa no guteranyirizwa ku butaka bw'u Rwanda akaba ariho bihagurukira.

kugaragaza ko iyo “station” yamugurije amafaranga agera kuri 76.216.240Frw avuga ko yanyuze kuri konti ye mu Rwanda aturutse i Goma, rurasanga hashingiwe ku ngingo z’amategeko zavuzwe haruguru agomba gucibwa umusoro ku nyongeragaciro.

[24] Ingingo ya 3 y’Itegeko Nº15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo iteganya ko: buri mu buranyi agomba kugaragaza ukuri kw’ibyo aburana, naho ‘ingingo ya 9 y’Itegeko Nº21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, iteganya ko: Urega agomba kugaragaza ibimenyetso by’ibyo aregera. Iyo abibuze, uwarezwe aratsinda.

[25] Urukiko rusanga na none kandi ari nta kimenyetso uhagarariye Ets KALINDA SEKWEKWE yigeze ashyikiriza inkiko cyerekana ko 76.216.240Frw ari umwenda “Station Customer Care Services” yayigurije kugira ngo azayifashishe kwishyura umwenda ifite muri I&M Bank, bikaba bitanasobanutse ukuntu ayo mafaranaga aho gushyirwa muri banki yari ifitiwe umwenda, yajyanwe mu yindi banki, akaba nta n’ikigaragaza ko yari agenewe kwishyura uwo mwenda bavuga. Ikindi ni uko “Bons de prélèvement” zerekanywe nazo zitagaragaza ko ayo mafaranga yari agamije kwishyura uwo mwenda. Byongeye kandi kuba Kalinda Sekwekwe ariwe nyiri Ets KALINDA SEKWEKWE akaba na nyiri Station Customer Care y’i Goma, bimworoheye ko yafata amafaranga ya sosiyete imwe akayakoresha agamije kuyabyaza inyungu mu bindi bikorwa bye, kuba rero Ets KALINDA SEKWEKWE itarashoboye gutanga ibimenyetso bitarimo ugushidikanya na guke, byerekana ko 76.216.240 Frw atagombaga gusoreshwa igomba kubitsindirwa, bityo iyi ngingo y’ubujurire nayo ikaba nta shingiro ifite.

3) Gusuzuma niba 12.032.500Frw akwiye kuvanwa mu byacurujwe ntasoreshwe.

[26] Me Musafiri Alain avuga mu mwanzuro yatanze muri uru rubanza ko hari 12.032.500Frw ya TVA yashyizwe kuri konti ya Ets KALINDA SEKWEKWE n’umukiriya we HASS PETROLEUM, ajyanye n’inyemezabuguzi yari yamukoreye ariko ikiguzi cyo ntiyakimuha kuko yamwishyuraga umwenda nawe yari amufitiye, Ets KALINDA SEKWEKWE ikaba yaramenyekanishije iyo TVA muri RRA iranayishyura. Iyi ngingo ye y’ubujurire ntacyo yayivuzeho mu gihe cy’iburanisha, ndetse n’uwari uhagarariye RRA akaba ntacyo yayivuzeho kabone no mu mwanzuro we.

UKO URUKIKO RUBIBONA

[27] Urukiko rurasanga iki kibazo kitasuzumwe mu rubanza rwajuririwe ku mpamvu y’uko kitigeze kigezwa kwa Komiseri Mukuru w’Imisoro, no muri uru rubanza kitasuzumwa kuko ababuranyi batakigiyeho impaka.

4) Gusuzuma indishyi zasabwe mu rubanza.

a) Ku byerekeye indishyi zasabwe na Ets KALINDA SEKWEKWE.

[28] Me Musafiri Alain yasabiye uwo ahagarariye 500.000Frw y’igihembo cya Avoka, Me Kabibi Spéciose avuga ko batazihabwa kuko nta shingiro zifite.

UKO URUKIKO RUBIBONA

[29] Urukiko rurasanga nk'uko byagaragajwe haruguru, ingingo zose z'ubujurire zatanzwe na Ets KALINDA SEKWEKWE ari nta shingiro zifite, bityo ikaba nta ndishyi yahabwa muri uru rubanza.

b) Ubujurire bwuririye ku bundi bwatanzwe na Rwanda Revenue Authority bugamije gusaba indishyi.

[30] Uhagarariye Rwanda Revenue Autority avuga ko ashingiye ku ngingo ya 258 y'Igitabo cya gatatu cy'Urwunge rw'amategeko mbonezamubano, asaba indishyi zijyanye no gushorwa mu manza ku mpamvu z'amaherere no guteshwa igihe cy'ubusa kandi hari indi mirimo bakagombye gukora, asaba ko Ets KALINDA SEKWEKWE yategekwa kubaha indishyi zingana na 2.000.000Frw.

[31] Me Musafiri Alain avuga ko Me Kabibi yaje nka mandataire akaba nta ndishyi yahabwa.

UKO URUKIKO RUBIBONA

[32] Urukiko rurasanga kuba Ets KALINDA SEKWEKWE yarajuriye muri uru Rukiko, ubujurire bwayo bukaba budafite ishingiro nyamara RRA yararuhamagawemo, byumvikana ko hari icyo byayangirije, bityo hashingiwe ku ngingo ya 258 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, iteganya ko igikorwa cyose cyangirije undi gituma uwagiteje abiryozwa, Ets KALINDA SEKWEKWE ikaba igomba kwishyura RRA amafaranga y'ikurikiranarubanza angana na 500.000Frw kuko 2.000.000Frw isaba ari ikirenga kandi ikaba nta bimenyetso yayatangiye.

III. ICYEMEZO CY'URUKIKO.

[33] Rwemeje ko ubujurire bwatanzwe na Ets KALINDA SEKWEKWE nta shingiro bufite.

[34] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Rwanda Revenue Authority bufite ishingiro kuri bimwe.

[35] Rwemeje ko urubanza N^{o} R.COM0075/12/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 18/01/2013, rudahindutse uretse ku bijyanye n'indishyi Rwanda Revenue Authority igenewe kuri uru rwego.

[36] Rutegetse Ets KALINDA SEKWEKWE guha Rwanda Revenue Authority 500.000Frw y'ikurikiranarubanza.

[37] Rutegetse ko amafaranga y'igarama yatanzwe mu bujurire ahwanye n'imirimo yakozwe mu rubanza.