RRA v. RUHANDO

[Rwanda URUKIKO RW'IKIRENGA – RCOMA0122/12/CS (Rugege, P.J., Mukandamage na Ngagi, J.) 22 Mata 2016]

Amategeko agenga umusoro – Isoresha nta nteguza – Inyandiko ziherekeza imenyekanisha – Isoresha nta nteguza rikorwa iyo imenyesha ry'umusoro ritaherekejwe n'inyandiko zose za ngombwa ziteganywa n'amabwiriza ya Komiseri Mukuru w'Ikigo cy'Imisoro n'Amahoro – Itegeko N^{o}25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha, ingingo ya 28(4) – Amabwiriza ya Komoseri Mukuru w'Ikigo cy'Imisoro n'amahoro N^{o}001/2007 yo kuwa 15/06/2007 ashyira mu bikorwa Itegeko N^{o}16/2005 ryo kuwa 18/08/2005 rigena imisoro itaziguye ku nyungu, ingingo ya 2.

Amategeko agenga umusoro – Igipimo kigenderwaho iyo habayeho isoresha nta nteguza – Iyo habaye isoresha nta nteguza, hakoreshwa igipimo giteganywa n'Itegeko mu kubara umusoro mu buryo bucishirije – Itegeko N^{o}25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha, ingingo ya 29, Itegeko N^{o}16/2005 ryo kuwa 18/08/2005 rigena imisoro itaziguye ku musaruro, ingingo 11.

Amategeko agenga Umusoro – Igihe cyagenwe cyo gusoresha – Kuba Ikigo cy'Imisoro n'Amahoro cyari gifite uburenganzira bwo gukosora inyandiko y'imenyesha ry'umusoro ariko ntikibikore mu gihe cyagenwe n'amategeko ubwo burenganzira burazima – Itegeko N^{o}25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha, ingingo ya 26 n'iya 27.

Incamake y'ikibazo: RRA yakoreye Ruhando igenzura, imusoresha nta nteguza umusoro ku nyungu wo mu mwaka wa 2008 n'uwa 2010 ku mpamvu yuko atometse urutonde rwabo abereyemo imyenda ku imenyekanisha yakoze. Yanamuciye nanone umusoro ku nyongeragaciro ku mwaka wa 2008 hamwe n'inyungu z'ubukererwe. Ruhando ntiyishimiye ibyavuye muri iryo genzura maze atakambira Komiseri Mukuru w'Ikigo cy'Imisoro n'Amahoro asaba kuvanirwaho iyo misoro. Nyuma aza kumenyeshwa ko itakamba rye rifite ishingiro gusa ku ngingo ijyanye n'igihombo gikomoka ku mwaka wa 2007.

Ruhando yajuriye mu Rukiko Rukuru rw'Ubucuruzi, rwemeza ko ikirego cye gifite ishingiro, maze rutegeka ko umusoro ku nyungu urebana n'umwaka wa 2008 n'uwa 2010 uvanyweho kandi rwemeza ko umusoro ku nyongeragaciro wishyuwe ku kiranguzo ku mwaka wa 2008 uhwanye na 73.131.312Frw aho kuba 56.623.239Frw ndetse rutegeka RRA kwishyura Ruhando igihembo cya Avoka.

RRA yajuriye mu Rukiko rw'Ikirenga ivuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko isoresha nta nteguza ryakozwe mu buryo budakurikije amategeko nyamara rwirengagije ko ubuyobozi bw'imisoro bufite uburenganzira bwo gusoresha nta nteguza iyo imenyekanisha ry'umusoro ryakozwe n'umusoreshwa ridaherekejwe n'inyandiko zose za ngombwa zirimo n'urutonde rw'abo abereyemo imyenda n'abayimubereyemo nk'uko biteganywa n'itegeko. Ruhando we yisobanura yemera ko n'ubwo itegeko riteganya ko hari inyandiko zigomba guherekeza imenyekanisha ry'umusoro ariko ntiriteganya izo ari zo ndetse n'umuntu ufite ububasha bwo kuzigena, bityo ko Komiseri yihaye ububasha ashyiraho amabwiriza arebana n'urutonde atari ngombwa akaba asaba urukiko kubikosora.

Indi mpamvu y'ubujurire ya RRA ni uko urukiko rwemeje ko umusoro waciwe Ruhando hagendewe ku gipimo cya 4% cy'ibyacurujwe mu mwaka binyuranyije n'amategeko nyamara rwirengagije ko iyo habaye isoresha nta nteguza bidashoboka kujya munsi y'umusoro ucibwa hakoreshejwe inyungu zicishirije nk'uko biteganywa n'amategeko. Ruhando yiregura avuga

ko usoreshwa nta nteguza ari uba agomba gusora nyamara we akaba atagomba gusora kuko ari mu gihombo.

Indi mpamvu y'ubujurire ya RRA ni uko Urukiko Rukuru rw'Ubucuruzi rwirengagije ko umusoro ku nyongeragaciro watanzwe na Ruhando utari ukwiye kubarwa nk'uwishyuwe rushingiye ku kuba itari ifite uburenganzira bwo kuwugenzura kuko igihe cyo gukora igenzura cyari cyarazimye. Ruhando we yiregura avuga yuko iyo umusoreshwa akoze imenyekanisha, umusoresha ntakore igenzura mu gihe giteganywa n'amategeko, ibyakozwe n'umusoreshwa biba ndakuka.

Incamake y'icyemezo: 1. Isoresha nta nteguza rikorwa iyo imenyesha ry'umusoro ritaherekejwe n'inyandiko zose za ngombwa ziteganywa n'amabwiriza ya Komiseri Mukuru w'Ikigo cy'Imisoro n'Amahoro. Bityo, kugena umusoro ku nyungu hakoreshejwe isoresha nta nteguza byakozwe mu buryo bukurikije amategeko.

2. Iyo habaye isoresha nta nteguza, hakoreshwa igipimo giteganywa n'Itegeko mu kubara umusoro mu buryo bucishirije. Bityo kuba umusoreshwa yaraciwe umusoro ubariwe ku gipimo cya 4% cy'ibyacurujwe mu mwaka ntibinyuranyije n'amategeko.

3. Ikigo cy'Imisoro n'Amahoro gifite uburenganzira bwo gukosora inyandiko y'imenyesha ry'umusoro ariko iyo kitabikoze mu gihe cyagenwe n'amategeko ubwo burenganzira burazima. Bityo, umusoro ku nyongeragaciro wishyuwe na Ruhando ku mwaka wa 2008 ugomba guhabwa agaciro.

Ubujurire bufite ishingiro kuri bimwe.
Uregwa ategetswe gusubiza uwareze igice (½) cy'amagarama yari yatanze.

Amategeko yashingiweho:
Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nk'uko ryari ryaravuguruwe kuwa 13/08/2008, ingingo ya 201(1) n'icya (2).
Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha, ingingo za 26, 27, 28(4) n'iya 29.
Itegeko N°16/2005 ryo kuwa 18/08/2005 rigena imisoro itaziguye ku musaruro, ingingo ya 11.
Amabwiriza ya Komiseri Mukuru w'Ikigo cy'Imisoro n'Amahoro N°001/2007 yo kuwa 18/08/2005 rigena imisoro itaziguye ku nyungu, ingingo ya 2.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Kuwa 02/01/2012, Ruhando Ernest yashyikirijwe inyandiko isoza igenzura yakorewe ry'umusoro ku nyungu, n'umusoro ku nyongeragaciro, aho yaciwe imisoro ingana na 162.068.634Frw yerekeranye n'imyaka ya 2006, 2007, 2008, 2009 na 2010.

[2] Ruhando Ernest ntiyishimiye ibyavuye muri iryo genzura, maze kuwa 08/02/2012 ajuririra Komiseri Mukuru w'Ikigo cy'Imisoro n'Amahoro, nawe amusubiza kuwa 30/03/2012 amumenyesha ko itakamba rifite ishingiro ku ngingo ijyanye n'igihombo

gikomoka ku mwaka wa 2007, bityo ku musoro yari yaciwe ungana na 162.068.634Frw avanirwaho ungana na 11.240.413Frw, hasigara 150.828.221Frw ajyanye n'umusoro ku nyungu ku myaka ya 2008 (ungana na 62.583.302Frw) na 2010 (ungana na 66.628.196Frw) hamwe n'umusoro ku nyongeragaciro w'imyaka ya 2008 (ungana na 12.701.584Frw) na 2009 (ungana na 8.915.139Frw), naho inyungu z'ubukererwe zikazabarwa ku munsi wo kwishyura. Ku bijyanye n'umusoro ku nyongeragaciro w'umwaka wa 2008, Komiseri Mukuru yavuze ko umusoro wemewe ko wishyuwe ungana na 56.623.239Frw aho kuba 73.131.312Frw.

[3] Ruhando Ernest ntiyishimiye icyo cyemezo, aregera Urukiko Rukuru rw'Ubucuruzi. Mu rubanza RCOM0095/12/HCC rwaciwe kuwa 15/06/2012, urwo Rukiko rwemeje ko ikirego cye gifite ishingiro, rutegeka ko umusoro ku nyungu wa 2008 ungana na 62.583.302Frw n'uwa 2010 ungana na 66.628.196Frw uvanyweho, ndetse ruvuga ko umusoro ku nyongeragaciro wishyuwe ku kiranguzo (Input VAT) ku mwaka wa 2008 uhwanye na 73.131.312Frw aho kuba 56.623.239Frw. Rwategetse Ikigo cy'Igihugu cy'Imisoro n'Amahoro kwishyura Ruhando Ernest (Rwatole) 500.000Frw y'igihembo cya Avoka.

[4] Ikigo cy'Imisoro n'Amahoro (RRA) nticyishimiye icyo cyemezo, kikijuririra mu Rukiko rw'Ikirenga kivuga ko:

a) Ku bijyanye n'umusoro ku nyungu wo mu mwaka wa 2008 na 2010 wagenwe hakoreshejwe isoresha nta nteguza:

Urukiko Rukuru rw'Ubucuruzi rwavuze ko RRA ibishatse, urutonde rw'ababerewemo imyenda rushobora kugaragazwa nyuma y'itariki y'imenyekanisha ry'umusoro, nyamara ntirugaragaze amategeko yagenderwaho, kuko iyo hamaze kuba imenyekanisha ryakozwe n'umusoreshwa, igihe cyose igenzura ritarakorwa, ntaho cyahurira n'umusoreshwa kimusaba kugaragaza inyandiko izi n'izi;

N'ubwo Umucamanza avuga ko urutonde rwagaragazwa nyuma y'imenyekanisha, ibyo atari byo biteganywa n'amategeko kubera ko igihe cy'imenyekanisha ry'umusoro ku nyungu urwo rutonde ruba ari umugereka, hashingiwe ku biteganywa n'ingingo ya 28, 4^0, y'Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha nk'uko ryahinduwe kandi ryujujwe kugeza ubu, n'ibiteganywa n'ingingo ya 2 y'Amabwiriza ya Komiseri Mukuru N°001/2007 yo kuwa 15/06/2007 ashyira mu bikorwa Itegeko N°16/2005 ryo kuwa 18/08/2005 rigena imisoro itaziguye ku musaruro nk'uko ryahinduwe kandi ryujujwe kugeza ubu;

Urukiko Rukuru rw'Ubucuruzi rwashatse kumvikanisha ko kitemerewe gusoresha nta nteguza igihe cyose kitagaragaza ko ikosa ryakozwe ryatumye kigira igihombo (préjudice), ariko ko rutagaragaza amategeko abiteganya, kandi ko yirengagije ko gusoresha nta nteguza ari bumwe mu buryo bukoreshwa mu gusoresha;

b) Ku bijyanye n'umusoro ku nyungu wabariwe ku gipimo cya 4%, Urukiko Rukuru rw'Ubucuruzi rwirengagije:

Ingingo ya 29, igika cya 3, y'Itegeko N°25/2005 ryo ku wa 04/12/2005 ryavuzwe haruguru, iteganya ko umusoro utangwa iyo habaye isoreshwa nta nteguza udashobora kuba munsi y'umusoro wari gutangwa hakoreshejwe uburyo bwo gusoresha inyungu zicishirije;

Ingingo ya 11 y'Itegeko N°16/2005 ryo kuwa 18/08/2005 ryavuzwe haruguru, iteganya ko umusoro ucishirije ungana na 4% y'ibyacurujwe mu mwaka utangwa na ba nyir'ibikorwa biciriritse;

c) Ku bijyanye n'umusoro ku nyongeragaciro (TVA) w'umwaka wa 2008, Urukiko Rukuru rw'Ubucuruzi rwavuze ko gikwiriye kwemera umusoro wose wishyuwe ku kiranguzo mu mwaka wa 2008 ungana na 73.131.312Frw, ariko ko rwirengagije ko umusoro cyemera ari ujyanye n'amezi cyagenzuye ari yo kuva mu kwezi kwa Gicurasi kugeza mu kwezi k'Ukuboza 2008.

d) Ku bijyanye n'indishyi, kitategekwa kwishyura igihembo cya Avoka kingana na 500.000Frw mu gihe bigaragara ko ikirego cya Ruhando Ernest nta shingiro gifite (*Accessorium sequitur principale*).

[5] Urubanza rwaburanishijwe mu ruhame kuwa 22/03/2016, Ikigo cy'Imisoro n'Amahoro gihagarariwe na Me Mugire Joseph, naho Ruhando Ernest ahagarariwe na Me Nsengiyumva Abel.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURA RYABYO

a. Kumenya niba kugena umusoro ku nyungu wo mu myaka ya 2008 na 2010 hakoreshejwe isoresha nta nteguza, byarakozwe mu buryo bukurikije amategeko.

[6] Me Mugire Joseph avuga ko Urukiko Rukuru rw'Ubucuruzi rwavuze ko isoresha nta nteguza ryakozwe mu buryo budakurikije amategeko, ariko ko rwirengagije ko RRA yakoze iryo soresha ishingiye ku ngingo ya 28, agace ka kane, y'Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha iteganya ko Ubuyobozi bw'Imisoro bufite uburenganzira bwo gusoresha nta nteguza iyo imenyesha ry'umusoro ritaherekejwe n'inyandiko zose za ngombwa, ko Ruhando Ernest atari yaragaragaje urutonde rw'abo abereyemo imyenda nk'uko biteganywa n'ingingo ya 2 y'amabwiriza N°001/2007 yo kuwa 15/06/2007 ashyira mu bikorwa Itegeko N° 16/2008 ryo kuwa 18/08/2005 rigena imisoro itaziguye ku nyungu (ku musaruro). Avuga ko impamvu Ikigo cy'Imisoro n'Amahoro gisaba urutonde rw'ababerewemo imyenda ari ukugira ngo hagaragare ishusho nyakuri y'umutungo kuko imyenda igabanya inyungu zisoreshwa, kandi ko bishoboka ko umusoreshwa yakwiyitirira imyenda itariho.

[7] Me Nsengiyumva Abel, uburanira Ruhando Ernest, avuga ko ingingo ya 28, agace ka kane, y'Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha, iteganya ko hari inyandiko za ngombwa ziherekeza imenyesha ry'umusoro, ariko ko idateganya izo ari zo ndetse n'umuntu ufite ububasha bwo kuzivuga, ko icyarebwa ari ukumenya inyandiko ya ngombwa iyo ari yo n'icyo yafasha mu isoresha. Avuga ko, mu kumenya icyo iyo nyandiko yafasha, harebwa uburyo umusoro ku nyungu ubarwa, ko ingingo ya 16 y'Itegeko N°16/2005 ryo kuwa 18/08/2005 rigena imisoro itaziguye ku musaruro iteganya ko inyungu ari ikinyuranyo hagati y'ibyinjiye n'ibyasohotse, naho ingingo ya 21 y'iryo Tegeko igateganya ibisabwa kugira ngo ikintu cyemerwe ko cyasohotse. Akomeza avuga ko ikindi kigaragaza ko urwo rutonde atari ngombwa ari uko mu igenzura ry'imyaka ya 2006 na 2007 urwo rutonde rutari ruhari kandi ko igenzura ryakozwe rikarangira, ko mu mwaka wa 2008 Ruhando Ernest yakoze imenyekanisha, rirakirwa, ntiyabwirwa ko hari ibiburaho cyangwa ko rituzuye. Avuga ko, mu gushyiraho amabwiriza, Komiseri Mukuru yihaye ububasha kuko itegeko ritabiteganya, kandi ko n'iyo yaba afite ububasha, urwo rutonde atari ngombwa, bityo ko niba yarashyizeho ibintu bitari ngombwa, urukiko rwabikosora, ko urutonde ubwarwo

rutagabanya inyungu ahubwo ko rugaragaza amazina y'abantu baberewemo imyenda, naho inyungu zikagaragara muri "comptabilité".

UKO URUKIKO RUBIBONA

[8] Ingingo ya 28, agace ka kane, y'Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha nk'uko ryahinduwe kandi ryujujwe kugeza ubu, iteganya ko: "Ubuyobozi bw'Imisoro bufite uburenganzira bwo gusoresha nta nteguza mu gihe, […] 4^{0} imenyesha ry'umusoro ritaherekejwe n'inyandiko zose za ngombwa; […]".

[9] Ingingo ya 2 y'Amabwiriza ya Komiseri Mukuru N°001/2007 yo kuwa 15/06/2007 ashyira mu bikorwa Itegeko N°16/2005 ryo kuwa 18/08/2005 rigena imisoro itaziguye ku nyungu[1], iteganya ko: "Umusoreshwa ufite igicuruzo rusange kingana cyangwa kirenze miliyoni makumyabiri (20.000.000Frw) mu mwaka agomba komeka ku imenyekanisha rye impapuro zikurikira: 1. Ishusho y'umutungo; 2. Ishusho y'inyungu cyangwa igihombo; 3. Ishusho y'ubwicungure; 4. Urutonde rw'abamubereyemo umwenda; 5. Urutonde rw'abo abereyemo imyenda".

[10] Muri uru rubanza, dosiye igaragaza ko Ruhando Ernest yakorewe isoresha nta nteguza ry'umusoro ku nyungu w'imyaka ya 2008 na 2010 kubera ko, mu imenyekanisha ry'iyo misoro, atigeze yomekaho urutonde rw'abo abereyemo imyenda, Ikigo cy'Imisoro n'Amahoro kikaba kivuga ko urwo rutonde ari inyandiko ya ngombwa igomba guherekeza imenyekanisha ry'umusoro, mu gihe Ruhando Ernest we yemeza ko urwo rutonde atari inyandiko ya ngombwa kuko imyenda abereyemo abandi bantu iba igaragara muri "Bilan" yaherekeje imenyekanisha, ku buryo urwo rutonde rwatangwa na nyuma mu gihe Ikigo cy'Imisoro n'Amahoro kirukeneye, iyi myumvire ya Ruhando Ernest ikaba ari yo yahawe ireme n'Urukiko Rukuru rw'Ubucuruzi.

[11] Urukiko rurasanga, nk'uko biteganywa n'ingingo ya 28, agace ka kane, y'Itegeko N°25/2005 ryavuzwe haruguru, ihame ari uko isoresha nta nteguza rikorwa iyo imenyesha ry'umusoro ritaherekejwe n'inyandiko zose za ngombwa, izo nyandiko zikaba zarasobanuwe mu ngingo ya 2 y'Amabwiriza ya Komiseri Mukuru N°001/2007 yavuzwe haruguru, hakaba harashyizwemo n'urutonde rw'abo umusoreshwa abereyemo imyenda mu gihe uwo musoreshwa afite igicuruzo rusange kingana na cyangwa kirenze 20.000.000Frw mu mwaka.

[12] Urukiko rurasanga kuba Amabwirizaya ya Komiseri Mukuru N°001/2007 yavuzwe haruguru yaratangajwe mu Igazeti ya Leta[2], nta mpamvu n'imwe yatuma atubahirizwa kuko ntaho anyuranyije n'Itegeko N°16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku nyungu, ibi bikaba byumvikanisha ko Ruhando Ernest yagombaga kubahiriza ingingo ya 2 y'ayo mabwiriza, yomeka ku imenyekanisha ry'umusoro urutonde rw'abo yari abereyemo imyenda. Kuba amabwiriza ya Komiseri Mukuru w'Ikigo cy'Imisoro n'Amahoro yavuzwe haruguru, ateganya ko umusoreshwa agomba kujya atanga urutonde rw'abo abereyemo imyenda, ntibyafatwa nko kurengera ububasha Komiseri Mukuru yahawe (abuse of power)

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[1]Aya mabwiriza yasohotse mu Igazeti ya Leta ya Repubulika y'u Rwanda, N°12 yo kuwa 15/06/2007.

[2]Ingingo ya 201, igika cya 1 n'icya 2, y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04/06/2003 nk'uko ryari ryaravuguruwe ku wa 13/08/2008, ryakurikizwaga igihe isoresha nta nteguza ryakorwaga, yateganyaga ko: "Amategeko, amateka n'andi mabwiriza rusange areba rubanda ntibishobora gutangira gukurikizwa bitabanje gutangazwa mu buryo buteganywa n'amategeko.Ntawe ushobora kwitwaza ko atazi itegeko iyo ryatangajwe mu buryo buteganywa n'amategeko […]".

nk'uko Urukiko Rukuru rw'Ubucuruzi rwabibonye, kuko ari we ushinzwe imicungire ya buri munsi y'icyo kigo[3], cyane cyane ko n'ishingiro ry'urwo rutonde ryumvikana kuko, mu gihe cy'igenzura, rufasha mu kumenya niba koko abo bantu baberewemo imyenda babaho, bityo ibyo bigakuraho impungenge z'uko umusoro wanyerezwa kuko iyo myenda igabanya inyungu zisoreshwa nk'uko byasobanuwe n'uburanira Ikigo cy'Imisoro n'Amahoro.

[13] Urukiko rurasanga, hakurikijwe ibimaze gusobanurwa haruguru, kugena umusoro ku nyungu wo mu mwaka wa 2008 na 2010 hakoreshejwe isoresha nta nteguza, byarakozwe mu buryo bukurikije amategeko, bityo imikirize y'urubanza RCOMA0095/12/HCC kuri iyo ngingo ikaba igomba guhinduka.

b. Kumenya niba Ruhando Ernest akwiye gucibwa umusoro ubariwe ku gipimo cya 4% cy'ibyacurujwe.

[14] Me Mugire Joseph, uburanira Ikigo cy'Imisoro n'Amahoro, avuga ko nyuma y'aho Urukiko Rukuru rw'Ubucuruzi rugaragarije ko isoresha nta nteguza rinyuranyije n'amategeko, rwavuze ko umusoro waciwe Ruhando Ernest hagendewe ku gipimo cya 4% ritubahirije amategeko, ariko ko rwirengagije ko Ikigo cy'Imisoro n'Amahoro cyagaragaje ko gusoresha ku gipimo cya 4% byemewe n'amategeko, ko ingingo ya 29 y'Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha iteganya ko umusoro utangwa iyo habaye isoreshwa nta nteguza udashobora kujya munsi y'umusoro ucibwa hakoreshejwe inyungu zicishirije ziteganywa n'ingingo ya 11 y'Itegeko N°16/2005 ryo kuwa 18/08/2005 rigena imisoro itaziguye ku musaruro ivuga ko umusoro ucishirije ungana na 4% y'ibyacurujwe ku mwaka.

[15] Me Nsengiyumva Abel, uburanira Ruhando Ernest, avuga ko Ikigo cy'Imisoro n'Amahoro gishingira umusoro wa 4% ku ngingo ya 29 y'Itegeko N°25/2005 ryo kuwa 04/12/2005 ryavuzwe haruguru, ariko ko iyo ngingo itubahirijwe kuko iyo usoreshejwe nta nteguza umusoro utagomba kujya hasi ya 4% acibwa hagendewe ku nyungu zicishirije, ko ibyo byumvikanisha ko usoreshwa nta nteguza ari uwagombaga gutanga umusoro, ariko ko Ruhando Ernest ari mu gihombo, bityo akaba ataragombaga gusora, keretse niba umusoro wa 4% ari igihano, mu gihe nyamara mu mategeko y'isoresha icyo gihano kitabamo. Avuga ko mu gika cya 3 cy'ingingo ya 29 imaze kuvugwa haruguru hagaragaramo amagambo "umusoro wari gutangwa hakoreshejwe uburyo bwo gusoresha inyungu zicishirije", ariko ko mu mategeko y'imisoro ntahagaragara "inyungu ziciriritse", ahubwo ko harimo "ibikorwa biciriritse" bigaragara mu ngingo ya 2, agace ka 6, y'Itegeko N°16/2005 ryo kuwa 18/08/2005 rigena imisoro itaziguye ku musaruro. Asoza avuga ko hari urubanza RCOMA0009/11/CS rwaciwe kuwa 07/03/2014 n'Urukiko rw'Ikirenga, haburana RRA na Mukagihana Emerthe, rwakemuye ikibazo nk'icyo Ruhando Ernest afite, bityo ko rwashingirwaho mu gufata icyemezo.

UKO URUKIKO RUBIBONA

[16] Ingingo ya 29, igika cya gatatu, y'Itegeko N°25/2005 ryo kuwa 04/12/2005 ryavuzwe haruguru, iteganya ko: "[…] Umusoro utangwa iyo habaye isoresha nta nteguza ntushobora

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[3] Ingingo ya 21, igika cya 1, y'Itegeko N°08/2009 ryo ku wa 27/04/2009 rigena imiterere, imikorere n'inshingano by'Ikigo cy'Imisoro n'Amahoro, iteganya ko: "Imicungire ya buri munsi ya RRA ishinzwe Komiseri Mukuru. Afite ububasha bwo guhuza no kuyobora ibikorwa bya buri munsi bya RRA kandi akabazwa n'Inama y'Ubuyobozi uko ibyemezo byayo bishyirwa mu bikorwa[…]".

kuba munsi y'umusoro wari gutangwa hakoreshejwe uburyo bwo gusoresha inyungu zicishirije[4]. […]".

[17] Ingingo ya 11, igika cya nyuma, y'Itegeko N°16/2005 ryo kuwa 18/08/2005 rigena imisoro itaziguye ku musaruro, iteganya ko: "[…]. Umusoro ucishirije, ungana n'ane ku ijana (4%) y'ibyacurujwe mu mwaka, utangwa na ba nyir'ibikorwa biciriritse[5]".

[18] Dosiye y'uru rubanza igaragaza ko, nyuma y'uko Ruhando Ernest akorewe isoresha nta nteguza ry'umusoro ku nyungu w'imyaka ya 2008 na 2010, Komiseri Mukuru, mu gisubizo ku itakamba, yemeje ko Ruhando Ernest agomba kwishyura umusoro ku nyungu w'umwaka wa 2008 ungana na 62.583.302Frw[6] ahwanye na 4% y'ibyacurujwe muri uwo mwaka bingana na 977.864.092Frw (Annual turnover rectified), n'umusoro ku nyungu w'umwaka wa 2010 ungana na 66.628.196Frw[7] ahwanye na 4% y'ibyacurujwe muri uwo mwaka bingana na 1.041.065.567Frw (Annual turnover declared). Ikindi na none, ni uko igipimo kingana na 4% cyakoreshejwe giteganywa n'ingingo ya 11, igika cya nyuma, y'Itegeko N°16/2005 ryavuzwe haruguru.

[19] Urukiko rurasanga, nyuma y'isesengura ry'ingingo z'amategeko zivuzwe haruguru, umushingamategeko yarateganyije ko nyir'igikorwa giciriritse ari we utanga umusoro ucishirije ungana na 4% y'ibyacurujwe mu mwaka, bisobanuye ko mu mwanya wo kubara inyungu nyayo, umusoro ubarwa mu buryo bucishirije (imposition forfaitaire). Niba rero ingingo ya 29, igika cya gatatu, y'Itegeko N°25/2005 ryavuzwe haruguru iteganya ko iyo habaye isoresha nta nteguza, umusoro udashobora kujya munsi y'umusoro wari gutangwa hakoreshejwe uburyo bwo gusoresha inyungu zicishirije (imposition forfaitaire), ibyo byumvikanisha ko Ikigo cy'Imisoro n'Amahoro nta bundi buryo cyari gukoresha mu kugena uwo musoro, uretse gukoresha igipimo cya 4% cyavuzwe haruguru, kuko nta kindi gipimo cyigeze giteganywa n'Itegeko N°16/2005 ryo kuwa 18/08/2005 rigena imisoro itaziguye ku musaruro[8]

[20] Ku byerekeranye no kuba Ruhando Ernest avuga ko atagomba gutanga umusoro ku nyungu mu myaka yavuzwe haruguru kuko yari mu gihombo, Urukiko rurasanga, nk'uko byemejwe mu nyandiko isubiza itakamba yanditswe na Komiseri Mukuru w'Ikigo cy'Imisoro n'Amahoro, Ruhando Ernest (Rwatole) yarahanaguweho umusoro ungana na 11.240.413Frw ndetse yemererwa igihombo kingana na 202.021.082Frw mu mwaka wa 2009 mu mwanya wa "Payment position", uyu mwanzuro ukaba warafashwe nyuma yo gusanga itakamba rye rifite ishingiro ku ngingo ijyanye n'igihombo gikomoka ku mwaka wa 2007 kitari cyarimuriwe mu mwaka wa 2009. Ni kuri iyo mpamvu rero Ruhando Ernest atagomba kongera kwitwaza icyo gihombo kugira ngo avuge ko atagomba gutanga umusoro ku nyungu

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[4] In case of an assessment without notice, the amount of taxes cannot be less than the taxes which would be paid if the taxpayer was to pay under presumptive tax regime(Le montant de l'impôt établi en cas d'imposition d'office ne peut être inférieur à celui qui aurait été payé si le contribuable était placé sous le régime de l'imposition forfaitaire).

[5] Intermediate business owners shall pay a lump sum tax of 4% on annual turnover (Un taux d'imposition forfaitaire de quatre pour cent (4 %) est applicable au chiffre d'affaires annuel des petites entreprises).

[6] 62.583.302 Frw agizwe na 39.114.564 Frw y'umusoro fatizo + 3.911.456 Frw y'amahazabu y'ubukererwe + 19.557.282 Frw y'ibihano byo kutubya umusoro.

[7] 66.628.196 Frw agizwe na 41.642.623 Frw y'umusoro fatizo + 4.164.262 Frw y'amahazabu y'ubukererwe + 20.821.311 Frw y'ibihano byo gutubya umusoro.

[8] Iri Tegeko ni ryo rikoreshwa mu kugena umusoro utaziguye ku musaruro (cyangwa ku nyungu).

w’imyaka ya 2008 na 2010 waciwe hakoreshejwe uburyo bw’isoresha nta nteguza, kandi icyo gihombo cyarimuriwe mu mwaka wa 2009.

[21] Hakurikijwe ibimaze gusobanura haruguru, Urukiko rurasanga kuba Ruhando Ernest (Rwatole) yaraciwe umusoro ubariwe ku gipimo cya 4% cy’ibyacurujwe hakoreshejwe uburyo bw’isoresha nta nteguza, ntaho binyuranyije n’amategeko, bityo ko icyemezo cy’Urukiko Rukuru rw’Ubucuruzi kivanaho umusoro ku nyungu w’umwaka wa 2008 ungana na 62.583.302Frw n’uw’umwaka wa 2010 ungana na 66.628.196Frw, kigomba guhinduka.

c. Kumenya niba umusoro ku nyongeragaciro (TVA) ungana na 16.508.073Frw y’umwaka wa 2008 udakwiye kubarwa nk’uwishyuwe hashingiwe ko igihe cyo kuwukorera igenzura cyashaje.

[22] Me Mugire Joseph, uburanira Ikigo cy’Imisoro n’Amahoro (RRA), avuga ko Urukiko Rukuru rw’Ubucuruzi rwirengagije ko mu mwaka wa 2008 Ruhando Ernest yemerewe ko yatanze umusoro ku nyongeragaciro ungana na 56.623.239Frw, akaba yarangiwe 16.508.703Frw yo kuva mu kwezi kwa mbere kugeza mu kwezi kwa kane 2008 kubera ko Ikigo cy’Imisoro n’Amahoro cyamubwiye ko kitakwemera umusoro kidafitiye uburenganzira bwo kugenzura kuko igenzura ryari ryarashaje, rwemeza ko umusoro ku nyongeragaciro watanzwe na Ruhando Ernest ungana na 73.131.312Frw. Avuga ko igenzura rikorwa mu myaka itatu (3) kandi ko icyo gihe kiri “opposable” kuri RRA n’umusoreshwa kuko ku ruhande rwa RRA kwemera ibyo umusoresha avuga byayigiraho ingaruka, bityo ko asanga byagombye kugira ingaruka ku mpande zombi.

[23] Me Nsengiyumva Abel, uburanira Ruhando Ernest, avuga ko, ku bijyanye na TVA, umusoreshwa akora imenyekanisha, Ikigo cy’Imisoro n’Amahoro cyaramuka kitaje kugenzura, ibyakozwe n’umusoreshwa bikaba ndakuka, bityo bigafatwa nk’ukuri.

UKO URUKIKO RUBIBONA

[24] Ingingo ya 26 y’Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y’isoresha, iteganya ko: “Iyo Ubuyobozi bw’Imisoro busanze hari umusoro wabazwe nabi, utarabazwe, wagaragajwe nabi, watubijwe cyangwa irindi kosa mu nyandiko y’imenyesha ry’umusoro cyangwa mu igenzura, bufite uburenganzira bwo kubikosora”.

[25] Ingingo ya 27 y’Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y’isoresha, nk’uko yari yarahinduwe kandi yarujujwe n’ingingo ya 3 y’Itegeko N°74/2008 ryo ku wa 31/12/2008, yateganyaga ko: “Iyo habayeho gukosora inyandiko igena umusoro, Ubuyobozi bw’Imisoro bwoherereza umusoreshwa inyandiko ikosora. Iyo nyandiko iba ikubiyemo umushinga w'inyandiko ikosora n’ibindi bintu byose byashingiweho kugira ngo ikosorwa rikorwe. Inyandiko ikosora igaragaramo amahazabu agenwa n’Ubuyobozi bw’Imisoro iyo habayeho kutubahiriza amategeko agena imitunganyirize y’imisoro. […]. Inyandiko ikosora ishobora gutangwa mu gihe cy’imyaka itatu (3) uhereye ku munsi w’iyakirwa ry’imenyeshamusoro. Inyandiko ikosora igomba kuba yakozwe nibura ku munsi wa nyuma w’icyo gihe cy’imyaka itatu (3). Ubusaze buvugwa muri iki gika buhagarikwa n'inyandiko imenyesha umusoreshwa igihe azagenzurirwa, inyandikomvugo y'icyaha, inyandiko y'umusoreshwa yemera umusoro n'ibindi bikorwa byose biteganywa n'amategeko asanzwe. […]”.

[26] Muri uru rubanza, dosiye igaragaza ko Ikigo cy’Imisoro n’Amahoro cyemera ko Ruhando Ernest (Rwatole) yamenyekanishije ko yishyuye TVA ingana na 73.131.312Frw,

ariko ko abagenzuzi bamwemereye TVA ingana na 56.623.239Frw bitewe n'uko amezi yo kuva muri Mutarama kugeza muri Mata 2008 yashaje ku buryo kuyagenzura bitashobokaga, bityo ko TVA ingana na 16.508.073Frw ijyanye n'ayo mezi idakwiye kwemerwa.

[27] Urukiko rurasanga kuba Ikigo cy'Imisoro n'Amahoro cyari gifite uburenganzira bwo gukosora inyandiko y'imenyesha ry'umusoro, kikabikora mu gihe cy'imyaka itatu (3) nk'uko biteganywa mu ngingo ya 27 yavuzwe haruguru, ibyo byumvikanisha ko kigomba kwirengera ingaruka zo kuba kitarabikoze, cyemera nta kuzuyaza ibyakozwe n'umusoreshwa mu gihe cy'imenyesha ry'umusoro. Ni kuri iyo mpamvu icyo kigo kigomba kwemera TVA yose Ruhando Ernest (Rwatole) yishyuye ku kiranguzo mu mwaka wa 2008 ingana na 73.131.312Frw.

[28] Urukiko rurasanga, hakurikijwe ibimaze gusobanurwa haruguru, umusoro ku nyongeragaciro (TVA) ungana na 16.508.073Frw y'umwaka wa 2008 ukwiye kubarwa nk'uwishyuwe na Ruhando Ernest (Rwatole) kuko kuba igenzura rya TVA ry'umwaka wa 2008 ritarakozwe, bitaturutse ku makosa ye, bityo ko icyemezo cy'Urukiko Rukuru rw'Ubucuruzi cyemeza ko TVA yishyuwe ku kiranguzo (Input VAT) ku mwaka wa 2008 ingana na 73.131.312Frw kitagomba guhinduka.

d. Kumenya niba Ikigo cy'Imisoro n'Amahoro cyari gikwiye gucibwa indishyi.

[29] Me Mugire Joseph avuga ko icyo kigo kitagomba gucibwa indishyi zingana na 500.000Frw kuko ibyo cyakoze biteganywa n'amategeko, bityo ko zakurwaho.

[30] Me Nsengiyumva Abel avuga ko nta makosa umucamanza wa mbere yakoze kuko Ikigo cy'Imisoro n'Amahoro ari cyo cyashoye Ruhando Ernest mu manza.

UKO URUKIKO RUBIBONA

[31] Urukiko rurasanga kuba Urukiko Rukuru rw'Ubucuruzi rwari rwaciye indishyi Ikigo cy'Imisoro n'Amahoro, nta makosa rwakoze kuko rwari rwasanze ari cyo cyatumye Ruhando Ernest ajya mu manza, bityo akagira ibyo atakaza yishyura Avoka.

[32] Urukiko rurasanga ariko, kuri uru rwego rw'ubujurire, icyemezo cyo guca indishyi kigomba kuvanwaho kuko byagaragaye ko isoresha nta nteguza ryakorewe Ruhando Ernest rikurikije amategeko, nk'uko byasobanuwe haruguru, bityo Ikigo cy'Imisoro n'Amahoro kikaba cyari gifite ukuri kuri iyi ngingo.

III. ICYEMEZO CY'URUKIKO

[33] Rwemeje ko ubujurire bw'Ikigo cy'Imisoro n'Amahoro bufite ishingiro kuri bimwe.

[34] Rwemeje ko urubanza RCOMA0095/12/HCC rwaciwe kuwa 15/06/2012 n'Urukiko Rukuru rw'Ubucuruzi ruhindutse gusa ku bijyanye n'umusoro ku nyungu no ku ndishyi.

[35] Rwemeje ko kugena umusoro ku nyungu wo mu mwaka wa 2008 ungana na 62.583.302Frw n'uw'umwaka wa 2010 ungana na 66.628.196Frw, hakoreshejwe isoresha nta nteguza ku gipimo cya 4% cy'ibyacurujwe, byakozwe mu buryo bukurikije amategeko.

[36] Rutegetse ko indishyi z'igihembo cya Avoka zingana na 500.000Frw zari zaraciwe Ikigo cy'Imisoro n'Amahoro zivanyweho.

[37] Rutegetse Ruhando Ernest (Rwatole) gusubiza Ikigo cy'Imisoro n'Amahoro 50.000Frw ahwanye na ½ cy'amagarama kuko cyari cyatanze ingwate ingana na 100.000Frw kandi hakaba hari ingingo z'ubujurire zifite ishingiro.