

## Re URUGAGA RW'ABAVOKA

[Rwanda URUKIKO RW'IKIRENGA – RS/CLR/SPEC 00001/2021/SC – (Ntezilyayo, P.J., Nyirinkwaya, Cyanzayire, Muhumuza na Karimunda, J.) 18 Gashyantare 2022]

*Imikorere y'inkiko – Ihame ry'ukubahiriza umurongo wafashwe (stare decisis), – Urukiko rw'Ikirenga – Imanza ziciwe n'Urukiko rw'Ikirenga nk'Urukiko rukuriye izindi nkiko zose zo mu gihugu zifatwa nk'imanza zitanga umurongo.*

*Imikorere y'inkiko – Ihame ry'ukubahiriza umurongo wafashwe (stare decisis) – Urukiko rw'Ubujurire – Imanza ziciwe n'Urukiko rw'Ubujurire zitanga umurongo ugomba gukurikizwa n'inkiko zo hasi, mu gihe cyose uwo murongo utahinduwe n'Urukiko rw'Ikirenga.*

*Imikorere y'inkiko – Ihame ry'ukubahiriza umurongo wafashwe (stare decisis), – Imanza zatangajwe mu Cyegeranyo cy'Ibyemezo by'Inkiko – Imanza zatoranyijwe zigatangazwa, mu Cyegeranyo cy'Ibyemezo by'Inkiko zifatwa nk'izitanga umurongo kuko zigira agaciro gasumba ak'imanza zaciwe n'inkiko ziri ku rwego rumwe ku kibazo gisa, zikaba zishobora kwifashishwa n'ababuranyi cyangwa abacamanza – Amabwiriza N°001/2021 yo ku wa 15/03/2021 ya Perezida w'Urukiko rw'Ikirenga agenga itangazwa ry'imanza mu cyegeranyo cy'Ibyemezo by'Inkiko, ingingo ya 9.*

*Imikorere y'inkiko – Ihame ry'ukubahiriza umurongo wafashwe (stare decisis) – Mu rwego rwo kubahiriza amahame ashingiye ku kubahiriza umurongo wafashwe (stare decisis), buri Rukiko rugomba kubahiriza umurongo rwafashe ku kibazo runaka cyangwa umurongo wafashwe kuri icyo kibazo n'urukiko rurukuriye.*

**Incamake y'ikibazo:** Urugaga rw'Abavoka mu Rwanda ruvuga ko ENSafrica Rwanda Limited, ikigo cy'ubucuruzi gitanga serivisi mu by'amategeko (*legal services*), cyakorewe igenzura n'ikigo cy'Igihugu cy'imisoro n'amahôro, gicibwa umusoro ku nyongeragaciro(TVA) ndetse n'ibihano kuri serivisi cyahaye abantu ku giti cyabo n'ibigo by'ubucuruzi bibarizwa mu mahanga.

ENSafrica Rwanda Limited yatanze ikirego mu Rukiko rw'Ubucuruzi isaba Urukiko gutegeka ko uwo musoro n'ibihano yaciwe n'ikigo cy'Igihugu cy'imisoro n'amahôro bitakurikije amategeko, kuko imirimo yasheshejwe ifatwa nk'imirimo yoherejwe mu mahanga, bityo ko yari ikwiye kwishyura TVA ya 0%. Ikigo cy'Igihugu cy'imisoro n'amahôro cyo kivuga ko izo serivisi zitoherejwe mu mahanga, akaba ariyo mpamvu zigomba gusoreshwa ku gipimo gisanzwe cya 18%.

Urukiko rwaciye urubanza, rwemeza ko ikirego cya ENSafrica Rwanda Limited nta shingiro gifite, ruyitegeka kwishyura umusoro ku nyongeragaciro (TVA) n'ibihano yaciwe n'ikigo cy'Igihugu cy'imisoro n'amahôro kuko imirimo na serivisi zatanzwe zagiriye akamaro mu Rwanda abazihawe n'ubwo bo ari abanyamahanga, zikaba zigomba gusoreshwa ku gipimo gisanzwe. ENSafrica Rwanda Limited yajuririye icyo cyemezo mu Rukiko Rukuru rw'Ubucuruzi narwo rwemeza ko ubwo bujurire nta shingiro bufite, ruhindura ingano y'umusoro ENSafrica igomba kwishyura rushingiye kuri fagitire.

Nyuma y'ubusabe bwa ENSafrica Rwanda Limited, Urugaga rw'Abavoka mu Rwanda rwatanze ikirego mu Rukiko rw'Ikirenga rusaba isobanurampamo ry'imirimo yoherejwe mu mahanga (*exported services*) isoreshwa ku ijandisha rya zero (0%) nk'uko biteganijwe mu ngingo ya 5, igika cya mbere 1° y'Itegeko rishyiraho umusoro ku nyongeragaciro, kugirango haboneke umurongo usobanutse ku byerekeye iyoherezwa rya serivisi mu mahanga. Urukiko rw'Ikirenga rwaciye urubanza rwemeza ko icyo kirego kitakiriwe ku mpamvu z'uko hari igisobanuro cyatanzwe n'Urukiko Rukuru rw'Ubucuruzi kuri icyo ngingo kitaravuguruzwa kugeza ubu.

Ni muri urwo rwego, Urugaga rw'Abavoka mu Rwanda rwatanze ikirego mu Rukiko rw'Ikirenga, rusaba ko umurongo wafashwe n'Urukiko Rukuru rw'Ubucuruzi kuri icyo kibazo wakurwaho. Ruvuga ko mu mwaka wa 2015 hatowe itegeko rishyiraho umusoro ku nyongeragaciro rikaba rigena ibintu na

servisi bisoreshwa ku ijanisha rya zero (0%), ariko ntirisobanure ibyerekeye servisi zoherezwa mu mahanga. Ruvuga ko kuba umushingamategeko atarasobanuye imirimo yoherezwa mu mahanga, hazakomeza kubaho imyumvire itandukanye hagati y'abasora n'Ikigo cy'Igihugu cy'imisoro n'amahôro, bityo ko ari ngombwa ko Urukiko rw'Ikirenga rutanga umucyo kuri icyo kibazo, kuko igisobanuro cyatanzwe n'Urukiko Rukuru rw'Ubucuruzi kinyuranyije n'amategeko, by'umwihariko amasezerano mpuzamahanga u Rwanda rwashyizeho umukono, nyamara ayo masezerano agira agaciro kandi agakurikizwa mu gihugu, ndetse akaba anasumba amategeko asanzwe harimo n'itegeko rishyiraho umusoro ku nyongeragaciro.

Urugaga rw'Abavoka rushingiye ku manza zaciwe n'ibindi bihugu bitandukanye, rukomeza kuvuga ko umurongo watanzwe n'Urukiko Rukuru rw'Ubucuruzi byumvikana ko unyuranyije na *principle of destination*, kuko hagendewe kuri iryo hame, serivisi zoherejwe mu mahanga, zigomba gusoreshwa ku ijanisha rya zero (0%).

Ishuri ry'Amategeko rya Kaminuza y'u Rwanda, nk'Inshuti y'Urukiko, ritanga ibisobanuro kubyerekeye ibyiciro bitandukanye bya serivisi zoherezwa mu mahanga n'uburyo amategeko atandukanye ndetse n'abahanga babisobanura. Rishingiye ku bisobanuro byatanzwe n'amategeko atandukanye, ndetse no ku ihame rikoresheya mu gusoresha umusoro ku nyongera gaciro rivuga ko uwo musoro usoreshwa n'igihugu cy'umuguzi wa nyuma, risanga igisobanuro cyatanzwe n'Urukiko Rukuru rw'Ubucuruzi kuri serivisi zoherezwa mu mahanga kinyuranyije n'amategeko y'u Rwanda, bityo ko uwo murongo ukwiye guhindurwa n'Urukiko rw'Ikirenga kuko ntacyo rwashingiyeho.

**Incamake y'icyemezo:** 1. Imanza zaciwe n'Urukiko rw'Ikirenga nk'Urukiko rukuriye izindi nkiko zose zo mu gihugu zifatwa nk'imanza zitanga umurongo.

2. Imanza zaciwe n'Urukiko rw'Ubujurire zitanga umurongo ugomba gukurikizwa n'inkiko zo hasi, mu gihe cyose uwo murongo utahinduwe n'Urukiko rw'Ikirenga.

3. Imanza zatoranyijwe zigatangazwa, mu Cyegeranyo cy'Ibyemezo by'Inkiko zifatwa nk'izitanga umurongo kuko zigira agaciro gasumba ak'imanza zaciwe n'inkiko ziri ku rwego rumwe ku kibazo gisa, zikaba zishobora kwifashishwa n'abaturanyi cyangwa abacamanza, ibi ariko ntibivanaho, ku manza zitatangajwe, ihame ry'uko icyemezo cy'Urukiko kiba itegeko ndakuka muri urwo rukiko no mu nkiko ziri hasi yarwo, kikagomba gukurikizwa

4. Mu rwego rwo kubahiriza amahame ashingiye ku kubahiriza umurongo wafashwe (stare decisis), buri Rukiko rugomba kubahiriza umurongo rwafashe ku kibazo runaka cyangwa umurongo wafashwe kuri icyo kibazo n'urukiko rurukuriye

5. icyemezo cyafashwe mu rubanza RCOMA 00350/2019/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ntabwo cyafatwa nk'umurongo watanzwe n'urwo Rukiko kuri icyo kibazo kuko urega atabasha kugaragaza ko icyo cyemezo ariwo murongo rwagiye rufata mu zindi manza zitandukanye hasuzumwa ikibazo nk'iki cyangwa niba waragiye ushingirwaho n'Urukiko rw'Ubucuruzi ruri hasi yarwo, cyane cyane ko mu rundi rubanza rwabaye hagati ya Rwanda Revenue Authority na ENSAfrica Rwanda Limited, hasuzumwa ikibazo nk'iki, rwaciwe nyuma y'icibwa ry'urubanza rusabirwa guhindurirwa umurongo, urwo Rukiko rwafashe icyemezo gitandukanye n'icyaregewe muri uru Rukiko,.

**Ikirego gisaba guhindura umurongo mu rubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, nta mpamvu yacyo.**

**Amategeko yashingiweho:**

Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu mwaka wa 2003 nk'uko ryavuguruwe muri 2015, ingingo ya 95.

Itegeko N°30/2018 ryo kuwa 02/06/2018 rigena ububasha bw'Inkiko, ingingo ya 52, 65 n'iya 73.

Itegeko N° 012/2018 ryo ku wa 04/04/2018 rigena imitunganyirize n'imikorere y'Ubutegetsi bw'Ubucamanza, ingingo ya 50.

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 132.

Itegeko N° 02/2015 ryo ku wa 25/02/2015 rihindura kandi ryuzuzwa Itegeko N°37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro, ingingo ya 1.

Itegeko N°37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro, ingingo ya 5.

Amabwiriza N°001/2021 yo ku wa 15/03/2021 ya Perezida w'Urukiko rw'Ikirenga agenga itangazwa ry'imanza mu cyegeranyo cy'Ibyemezo by'Inkiko, ingingo ya 9.

### **Imanza zifashishijwe:**

Access Bank Rwanda Ltd na SOTIRU Ltd, RS/INJUST/RCOM 00003/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 26/06/2020.

Re. Great Lakes Initiative for Human Rights and Development, RS/INCONST/SPEC 00002/2019/SC, rwaciwe n'Urukiko rw'Ikirenga ku wa 04/12/2019.

Rwanda Revenue Authority na ENSafrica Rwanda Limited, COMA 00017/2021/HCC, rwaciwe n'Urukiko rw'Ikirenga ku wa 29/12/2021.

### **Inyandiko z'abahanga zifashishijwe:**

Berland, David. L., Stopping the pendulum: why stare decisis should constrain the Court from further modification of the search incident to arrest exception, *University of Illinois Law Review* (2011) (2), 695. [...].

Fricero, Natalie, *Procédure Civile*, 5 e ed., LGDJ, 2014, page 438.

Guinchard, Serge, *Procédure Civile, Droit interne et européen du procès civil*, Ed. Dalloz, 34e édition, 2018, p. 63 43(1434).

WTO, Council for Trade in Services, Guidelines for the Scheduling of Specific Commitments Under the General Agreement On Trade in Services (Gats), 23rd March 2001.

WTO, United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services, Report of Panel, 10th November 2004.

## **Urubanza**

### **I. IMITERERE Y'URUBANZA**

[1] Urugaga rw'Abavoka mu Rwanda (RBA) rwatanze ikirego gisaba Urukiko rw'Ikirenga gukuraho umurongo wafashwe mu rubanza RCOMA 00350/2019/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 04/12/2019 haburana ENSafrica Rwanda Limited n'Ikigo cy'Igihugu cy'imisoro n'amahôro (RRA).

[2] Urugaga rw'Abavoka mu Rwanda ruvuga ko ENSafrica Rwanda Limited, ikigo cy'ubucuruzi gitanga serivisi mu by'amategeko (*legal services*), cyakorewe igenzura n'Ikigo cy'Igihugu cy'imisoro n'amahôro, gicibwa umusoro ku nyongeragaciro (TVA) ndetse n'ibihano kuri serivisi cyahaye abantu ku giti cyabo n'ibigo by'ubucuruzi babarizwa mu mahanga.

[3] Urugaga rw'Abavoka mu Rwanda rusobanura ko ibyo byatumye ENSafrica Rwanda Limited itanga ikirego mu Rukiko rw'Ubucuruzi mu rubanza RCOM 01492/2018/TC, isaba Urukiko gutegeka ko uwo musoro n'ibihano yaciwe n'Ikigo cy'Igihugu cy'imisoro n'amahôro bitakurikije amategeko, kuko imirimo yasheshejwe ifatwa nk'imirimo yoherejwe mu mahanga, bityo ko yari ikwiye kwishyura TVA ya 0%. Ikigo cy'Igihugu cy'imisoro n'amahôro kivuga ko izo serivisi zitoherejwe mu mahanga, akaba ariyo mpamvu zigomba gusohesha ku gipimo gisanzwe (*standard rate*) cya 18%.

[4] Ku wa 20/03/2019, Urukiko rwaciye urubanza, rwemeza ko ikirego cya ENSafrica Rwanda Limited nta shingiro gifite, ruyitegeka kwishyura umusoro ku nyongeragaciro (TVA) n'ibihano bingana na 22,814,510 Frw yaciwe n'Ikigo cy'Igihugu cy'imisoro n'amahôro. Urukiko rwafashe icyo cyemezo rushingiye ku kuba imirimo na serivisi zatanzwe zaragiriye akamaro mu Rwanda abazihawe n'ubwo bo ari abanyamahanga, bityo ko zigomba gusoreshwa ku gipimo gisanzwe.

[5] ENSafrica Rwanda Limited yajuriye mu Rukiko Rukuru rw'Ubucuruzi mu rubanza RCOMA 00350/2019/HCC, ku wa 04/12/2019, Urukiko rwemeza ko ubwo bujurire nta shingiro bufite, ruhindura imikirize y'urubanza ku birebana na fagitire zigomba kwishyurirwa TVA, maze rutegeka ENSafrica Rwanda Limited kwishyura 29,261,826 Frw yaciwe n'Ikigo cy'Igihugu cy'imisoro n'amahôro.

[6] Nyuma y'ubusabe bwa ENSafrica Rwanda Limited, Urugaga rw'Abavoka mu Rwanda rwatanze ikirego mu Rukiko rw'Ikirenga mu rubanza RS/INTL/SPEC 00001/2020/SC gisaba isobanurampamo ry'imirimo yoherejwe mu mahanga (*exported services*) isoreshwa ku ijanisha rya zeru (0%) nk'uko biteganijwe mu ngingo ya 5, igika cya mbere-1° y'Itegeko rishyiraho TVA ryavuzwe haruguru, kugira ngo haboneke umurongo usobanutse ku byerekeye iyoherezwa rya serivisi mu mahanga.

[7] Muri urwo rubanza, Urugaga rw'Abavoka rwanengaga uburyo Urukiko Rukuru rw'Ubucuruzi rwasobanuye ingingo ya mbere y'Itegeko N° 02/2015 ryo ku wa 25/02/2015 rihindura kandi ryuzuza Itegeko N°37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro, aho mu gika cya 25 cy'urubanza rwavuzwe haruguru, ruvuga ko «...ubusobanuro bw'imirimo yoherejwe mu mahanga itagomba gucibwa umusoro ku nyongeragaciro (TVA), butagomba gushingira ku kuba uwakorewe iyo mirimo ari mu mahanga gusa ahubwo hagomba kurebwa ko imirimo yakorewe uwo muntu yohererejwe ngo imugirire akamaro mu mahanga iyo ari, kuko icyo gihe aribwo iyo mirimo yafatwa nk'iyoherejwe mu mahanga ndetse ntinacibwe umusoro wa TVA. (...) mu gihe imirimo yakorewe mu Rwanda ikorerwa umunyamahanga utari no mu Rwanda ariko iyo mirimo igomba kumugirira akamaro mu Rwanda, ikaba itagomba gufatwa nk'imirimo yoherejwe mu mahanga. »

[8] Ku wa 23/10/2020, Urukiko rw'Ikirenga rwaciye urubanza rwemeza ko icyo kirego kitakiriwe ku mpamvu z'uko hari igisobanuro cyatanzwe n'Urukiko Rukuru rw'Ubucuruzi kuri iyo ngingo, kandi kikaba kitaravuguruzwa kugeza ubu, ko iyo Urukiko rwaciye urubanza ku rwego rwa nyuma rwafashe umurongo ku kibazo runaka, ruba rumaze impaka kuri icyo kibazo ku buryo nta sobanurampamo riba rigikenewe, ko utishimiye umurongo wafashwe ku kibazo runaka yifuza ko wahinduka mu nyungu z'imanza zizakurikira, abiregera mu Rukiko rw'Ikirenga.

[9] Ni muri urwo rwego, Urugaga rw'Abavoka mu Rwanda rwatanze ikirego mu Rukiko rw'Ikirenga, rusaba ko umurongo wafashwe n'Urukiko Rukuru rw'Ubucuruzi ku kibazo cyavuzwe mu bika bibanziriza iki wakurwaho.

[10] Urubanza rwaburanishijwe mu mizi ku wa 13/12/2021, Urugaga rw'Abavoka mu Rwanda rwitabye ruhagarariwe na Me Bizimana Emmanuel na Me Nzafashwanayo Dieudonné.

[11] Urukiko rwabanje gusuzuma ubusabe bwa Kaminuza y'u Rwanda, Ishami ry'amategeko (*UR/School of Law*) bwo kuba Inshuti y'Urukiko muri uru rubanza. Nyuma yo kumva abahagarariye Urugaga rw'Abavoka, Urukiko rwasanze nta mpamvu yatuma Kaminuza y'u Rwanda, Ishami ry'amategeko itaba Inshuti y'Urukiko muri uru rubanza, rwemera ubusabe bwayo. Kaminuza y'u Rwanda, Ishami ry'amategeko yahagarariwe na Me Bagabo Faustin na Me Sebucensha Leonard.

## **II. IKIBAZO KIGOMBA GUSUZUMWA MURI URU RUBANZA**

## 1. Kumenya niba umurongo watanzwe n'Urukiko Rukuru rw'Ubucuruzi mu rubanza RCOMA 00350/2019/HCC wakurwaho

[12] Abahagarariye Urugaga rw'Abavoka basabye Urukiko ko rutagenda ku bikubiye mu ngingo ya mbere y'umwanzuro batanze yerekeye *incompatibility*, ko ahubwo rwakwita ku bisobanuro bari butange mu iburanisha.

[13] Me Nzafashwanayo Dieudonné uhagarariye Urugaga rw'Abavoka avuga ko mu mwaka wa 2015 hatowe Itegeko n° 02/2015 ryo ku wa 25/02/2015 rihindura kandi ryuzuzwa Itegeko N°37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro, ingingo yaryo ya mbere yaje ihindura kandi yuzuzwa ingingo ya 5 y'Itegeko N°37/2012 ryo ku wa 09/11/2012.

[14] Avuga ko ingingo ya 5 y'Itegeko N°37/2012 ryavuzwe harugugu yagenaga ndetse ikanasobanura mu buryo burambuye ibintu na serivisi bisoreshwa ku ijanisha rya zero (0%), bimwe muri byo, akaba ari ibintu n'imirimo byoherejwe mu mahanga.<sup>1</sup> Akomeza avuga ko ubwo iyo ngingo yavugururwaga mu mwaka wa 2015, ibintu n'imirimo byoherejwe mu mahanga byakomeje gushyirwa mu bintu na serivisi bisoreshwa kuri 0%, ariko itegeko ntiryasobanura ibyerekeye serivisi zoherezwa mu mahanga (*exported services*).<sup>2</sup>

[15] Avuga ko iyo ngingo itigeze inateganya ko imirimo yoherejwe mu mahanga ari iyakorewe mu mahanga gusa, nyamara ingingo ya 5, igika cya mbere lo, y'Itegeko ryo mu mwaka wa 2012 (ryahinduye kandi ryujijwe n'iryo rya 2015) yateganyaga urutonde rw'ibintu n'imirimo bifatwa nk'ibyoherejwe mu mahanga, by'umwihariko ikavugamo imirimo ikorerwa mu mahanga (*services rendered abroad*).

[16] Me Nzafashwanayo Dieudonné avuga ko kuba umushingamategeko atarasobanuye imirimo yoherezwa mu mahanga, hazakomeza kubaho imyumvire itandukanye hagati y'abasora n'Ikigo cy'Igihugu cy'imisoro n'amahôro, bityo ko ari ngombwa ko Urukiko rw'Ikirenga rutanga umucyo kuri icyo kibazo, kuko igisobanuro cyatanzwe n'Urukiko Rukuru rw'Ubucuruzi kuri icyo kibazo kinyuranyije n'amategeko, by'umwihariko amasezerano mpuzamahanga u Rwanda rwashyizeho umukono.

[17] Mu iburanisha, Me Nzafashwanayo Dieudonné yatanze ibisobanuro by'imirimo yoherezwa mu mahanga ashingiye ku nyandiko ya *World Trade Organization* (WTO), yiswe Amabwiriza yo gutegura ukwiyeemerera kwihariye mu masezerano rusange ku bucuruzi muri serivisi (*Guidelines for the Scheduling of Specific Commitments under the General Agreement on Trade in Services (GATS)*).<sup>3</sup>

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<sup>1</sup> Iyo ngingo yateganyaga ko ibintu na serivisi bikurikira bisoreshwa ku ijanisha rya zero:

1° ibintu n'imirimo byoherejwe mu mahanga:

- a) ibintu byoherejwe mu mahanga bifitiye ibimenyetso byemewe na Komiseri Mukuru;
- b) imirimo y'ubwikorezi n'indi mirimo ijyana nabwo ifitanye isano no kohereza ibintu mu mahanga bivugwa mugace ka a) k'iyi ngingo;
- c) imirimo y'ubwikorezi bw'ibintu binyura mu Rwanda bigana mu mahanga harimo n'imirimo ijyana na bwo;
- d) lisansi y'indege;
- e) imirimo ikorerwa mu mahanga;
- f) ibintu bikoreshwa mu ndege ziva mu Rwanda zijya mu Mahanga;

2° ibintu bigurishirizwa mu maduka adasoreshwa, nk'uko biteganywa n'itegeko rigenga za gasutamo.

<sup>2</sup> Ingingo ya mbere y'iryo Tegeko iteganya ko ibintu na serivisi bikurikira bisoreshwa ku ijanisha rya zero:

1. ibintu na serivisi byoherejwe mu mahanga;
2. amabuye y'agaciro yacurujwe ku isoko ry'imbere mu gihugu.

<sup>3</sup> WTO, *Council for Trade in Services*, "Guidelines for the Scheduling of Specific Commitments Under The General Agreement On Trade In Services (Gats)", 23<sup>rd</sup> March 2001, *Cross-border supply is defined as International transport, the*

Avuga ko ayo mabwiriza asobanura ko mu bucuruzi bwa serivisi (*trade in services*) hakubiyemo ubucuruzi bwambukiranya imipaka (*cross-border supply*), aho umuntu wo mu gihugu kimwe, atanga serivisi ku bandi akoresheje itumanaho (*telecommunications*) cyangwa *email*, atarinze kujya mu kindi gihugu.

[18] Ibyo kandi bikaba ari nabyo byemejwe n’akanama ka *World Trade Organisation* kigaga ku ngamba zibangamiye ubucuruzi bwambukiranya umupaka bujyanye n’imikino y’amahirwe no gutega cyane cyane muri Leta z’Ubumwe z’Amerika (*United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services*).<sup>4</sup> Avuga kandi ko ibyo bisobanuro bitandukanye n’umurongo wafashwe n’Urukiko Rukuru rw’Ubucuruzi ku gisobanuro cy’imirimo yoherejwe mu mahanga, kuko rwasobanuye ko kugira ngo imirimo yitwe ko yoherejwe mu mahanga ari uko iba yagiriye uwayikorewe umumaro mu mahanga.

[19] Me Bizimana Emmanuel nawe uhagarariye Urugaga rw’Abavoka avuga ko uwo murongo wafashwe n’Urukiko Rukuru rw’Ubucuruzi unyuranyije n’amaserano mpuzamahanga u Rwanda rwashyizeho umukono, nyamara ayo masezerano agira agaciro kandi agakurikizwa mu gihugu, ndetse akaba anasumba amategeko asanzwe harimo n’itegeko rishyiraho umusoro ku nyongeragaciro nk’uko biteganywa mu ngingo ya 168 n’iya 95 z’Itegeko Nshinga rya Repubulika y’u Rwanda ryo mu mwaka wa 2003 nk’uko ryavugururwe muri 2015.

[20] Akomeza avuga ko Urukiko rw’Ikirenga mu rubanza RS/INTL/SPEC 00001/2020/SC rwavuzwe haruguru, rwemeje ko ayo masezerano akwiye kwifashishwa mu gushaka igisobanuro cy’imirimo yoherejwe mu mahanga, bityo ko guhindura uwo murongo biri mu nyungu z’itegeko.

[21] Me Bizimana Emmanuel avuga kandi ko uwo murongo wafashwe n’Urukiko Rukuru rw’Ubucuruzi unyuranyije na *principle of destination* yemejwe n’Urukiko rw’Ikirenga mu rubanza RS/INCONSIST/SPEC 00004/2019 ku kirego cyatanzwe na Me Nzafashwanayo Dieudonné, aho rwemeje ko iryo hame ari ihame ry’ingenzi mu byerekeye umusoro ku nyongeragaciro (TVA) ku bucuruzi bw’ibintu na serivisi byambukiranya imipaka.

[22] Avuga ko iryo hame rishyigikirwa n’Amabwiriza y’Umuryango w’Ubufatanye mu by’Ubukungu n’Iterambere (*OECD International VAT/GST Guidelines, 2017*), aho nyuma yo gusobanura ibyo gusoresha serivisi umucuruzi aha undi mucuruzi (*Business-to-Business, B2B*) na serivisi umucuruzi aha umuguzi usanzwe (*Business-to-Consumer, B2C*), ayo mabwiriza avuga ko serivisi zisoreshezwa aho zakoreshejwe (*place of consumption*) aho kuba aho zakorewe (*place of performance*). Ko ibyo binahuye n’ibiteganywa mu masezerano mpuzamahanga yavuzwe haruguru, kuko biganisha ku kuba serivisi zisoreshezwa mu gihugu zakoreshejwemo (*place of consumption*) kandi ahafatwa nk’aho serivisi yakoreshejwe (*where the consummation of a service occurs*) ari aho uwahawe serivisi abarizwa; ko ibyo byumvikanisha neza ko imirimo iba yoherejwe mu mahanga, ari iyakorewe umuntu ubarizwa mu kindi gihugu, bityo ikaba igomba gusoreshwa ku ijanisha rya zeru (0%).

[23] Abahagarariye Urugaga rw’Abavoka basobanura kandi iryo hame bashingiye ku manza zaciwe n’ibihugu bitandukanye, harimo n’urubanza rwa *Commissioner of Domestic Taxes na Total Touch Cargo Holland—Income Tax Appeal n°17 of 2013*, rwaciwe n’Urukiko Rukuru rwo muri Kenya, aho

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*supply of a service through telecommunications or mail, and services embodied in exported goods (i.e. services supplied in or by a physical medium, such as a computer diskette or drawings) are all examples of cross-border supply, since the service supplier is not present within the territory of the Member where the service is delivered.*

<sup>4</sup> WTO, “United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services”, Report of Panel, 10<sup>th</sup> November 2004, the panel concluded that “...market access commitment for mode 1 implies the right for other Members’ suppliers to supply a service through all means of delivery, whether by mail, telephone, Internet etc., unless otherwise specified in a Member’s Schedule...”

rwemeje ko aho imirimo yakorewe atari ho hemeza ko yoherejwe cyangwa itoherejwe mu mahanga ko ahubwo icy’ingenzi ari aho uwakoresheje/uwahawe serivisi abarizwa kurusha aho imirimo yakorewe.<sup>5</sup>

[24] Batanze kandi urugero rw’urubanza rwaciwe n’Urukiko rw’Ubujurire mu bijyanye n’imisoro rwo mu Buhinde mu rubanza *Microsoft Corporation (I) (P) Ltd. vs. Commissioner of Service Tax, New Delhi*, narwo rwagarutse kuri iryo hame ruvuga ko ikitabwaho ari aho uhabwa serivisi aherereye kurusha aho uzitanga aherereye,<sup>6</sup> maze rwemeza ko serivisi zo kwamamaza ibikorwa bya Microsoft *Operation Singapore Pvt. Ltd* mu Buhinde bikozwe na *Micrsoft Corporation India Pvt Ltd*, zigize serivisi zoherejwe mu mahanga n’ubwo iyo mirimo ubwayo yakorewe k’ubutaka bw’Ubuhinde.<sup>7</sup>

[25] Bavuga kandi ko Urukiko rw’Ubujurire bw’Imisoro rwo muri Kenya narwo rwagarutse kuri *principle of destination*, mu rubanza *Tax Appeal n° 5 of 2018* hagati ya *Coca-Cola Central East and West Africa Limited* na *The Commissioner of Domestic Taxes*; aho rwemeje ko serivisi zo kwamamaza muri Kenya *Coca-Cola Central East and West Africa Limited* (sosiyete yo muri Kenya) yahaye *Coca-Cola Corporation Export* (ibarizwa muri Leta Zunze Ubumwe z’Amerika) zoherejwe mu mahanga, bityo ko zigomba gusoreshwa muri Kenya ku ijanisha rya zero (0%).<sup>8</sup>

[26] Abahagarariye Urugaga rw’Abavoka bashingiye ku manza zaciwe n’ibindi bihugu bitandukanye zagagarajwe haruguru, bavuga ko umurongo watanze n’Urukiko Rukuru rw’Ubucuruzi byumvikana ko unyuranyije na *principle of destination*, kuko hagendewe kuri iryo hame, serivisi zoherejwe mu mahanga, zigomba gusoreshwa ku ijanisha rya zero (0%) ni izahawe abantu babarizwa mu mahanga hatitawe aho zatangiwe/zakorewe (*place of performance*), ukuyemo serivisi bisaba ko zitangwa uzitangwa n’uzitanga bari kumwe (*on-the-spot services*) zo zisoreshwe aho zakorewe.

[27] Bavuga kandi ko umurongo basaba ko ukurwaho, Urukiko Rukuru rw’Ubucuruzi rwawufashe rutagaragaje icyo rushingiyeho (*absence d’une motivation en droit*), bityo ko ibyo binyuranyije n’ingingo ya 132, igika cya 2, y’Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi iteganya ko ica ry’urubanza rigaragaza ingingo zishingiye ku byabaye n’amategeko ryashingiyeho mu gufata icyemezo.

[28] Abahagarariye Urugaga rw’Abavoka, bashingiye ku bisobanuro byatanze haruguru, basanga uwo murongo ukwiye gukurwaho kuko uteje urujijo, ndetse ukaba wakomeza gukurura impaka hagati y’Ikigo cy’imisoro n’amahoro n’abasoreshwa kimwe n’inkiko zashyikirizwa ikibazo cyerekeye gusobanura imirimo yoherejwe mu mahanga isoresheha ku ijanisha rya zero, kuko Urukiko Rukuru rw’Ubucuruzi rutigeze rusobanura ahafatwa nk’aho serivisi runaka yagiriye umumaro (*the place where the benefit from a service accrues*), kandi ari ryo zingiro ry’igisobanuro rwatanze kuko utamenya niba serivisi runaka yaroherejwe mu mahanga (ugendeye ku murongo Urukiko Rukuru rw’Ubucuruzi rwatanze) utabanje kumenya aho yagize umumaro.

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<sup>5</sup> See Judgement of High Court of Kenya, *Commissioner of Domestic Taxes v Total Touch Cargo Holland—Income Tax Appeal n° 17 of 2013*, para.30.

“*The location where the service is provided does not determine the question of whether the service is exported or not. The test is the location (or place) of use or consumption of that service. Therefore, the relevant factor is the location of the consumer of the service and not the place where the service is performed.*”  
<http://kenyalaw.org/caselaw/cases/view/165957/>.

<sup>6</sup> “... the relevant factor “... is the ‘the location of the service recipient’ and not the ‘place of performance...”, See Judgment of Indian Central Excise and Service Tax Appellate Tribunal, *Microsoft Corporation (I) (P) Ltd. vs. Commissioner of Service Tax, New Delhi [2014-TIOL-1964-CESTAT-DEL]*.

<sup>7</sup> Idem.

<sup>8</sup> See judgement of Tax Appeals Tribunal, *Coca-Cola Central East and West Africa Limited v The Commissioner of Domestic Taxes [Tax Appeal No 5 of 2018]*,  
[http://www.kenyalaw.org/tribunals/TaxAppealTribunal/2020/COCA%E2%80%93COLA-Central-East-and-West-Africa-LTD-v-Commissioner-of-Domestic-Taxes\[2020\]eKLR.pdf](http://www.kenyalaw.org/tribunals/TaxAppealTribunal/2020/COCA%E2%80%93COLA-Central-East-and-West-Africa-LTD-v-Commissioner-of-Domestic-Taxes[2020]eKLR.pdf).

[29] Abahagariye Ishuri ry'Amategeko rya Kaminuza y'u Rwanda, nk'Inshuti y'Urukiko, batanze ibisobanuro kubyerekeye ibyiciro bitandukanye bya serivisi zoherezwa mu mahanga n'uburyo amategeko atandukanye ndetse n'abahanga babisobanura.

[30] Basobanura imirimo yoherezwa mu mahanga bashingiye ku bisobanuro bitangwa n'ingingo ya mbere y' Amasezerano Rusange yerekeye ubucuruzi bwa serivise (*General Agreement on Trade in Services* [GATS] isobanura ko: serivisi zambukiranya imipaka/zoherejwe mu mahanga (*internationally traded services*) bivuze:

- serivisi zitanzwe n'umuntu wo mu gihugu kimwe zigatangirwa mu kindi gihugu cyangwa;
- serivisi zitangiwe mu gihugu kimwe zigahabwa umuntu uri mu kindi gihugu;
- serivisi zatanzwe n'umucuruzi wafunguye ishami ry'ubucuruzi rishamikiye ku bucuruzi bwo mu gihugu cye (subsidiary/branch/agency) kugira ngo atange serivisi mu kindi gihugu;
- serivisi zitanzwe n'umucuruzi wavuye mu gihugu kimwe, akajya kuzitangira mu kindi gihugu.<sup>9</sup>

[31] Bavuga ko ibyo bisobanuro ari nabyo bitangwa mu ngingo ya 16 y'Amasezeraho Mpuzamahanga Ashyiraho Isoko Rusange ry'Umuryango w'Afurika y'Uburasirazuba (*Protocol on the Establishment of the Common Market of the East African Community*).

[32] Bakomeza bavuga ko Umuryango Mpuzamahanga w'Ubucuruzi (WTO) wasobanuye neza ubucuruzi bwa serivisi n'uburyo bw'itangwa ryabwo hashingiwe ku ngingo ya 1.2. ya GATS yagarutsweho haruguru. icyiciro cya mbere ni ubucuruzi bwa serivisi bwambukiranyije umupaka (*Cross-border trade in services*), aho umuguzi wo mu gihugu ahabwa serivisi zikomotse mu mahanga hakoreshejwe itumanaho cyangwa serivisi z'iposita. icyiciro cya kabiri ni serivisi umuguzi aherewe hanze (*consumption abroad*), nk'abamukerarugendo, abanyeshuri, cyangwa abarwayi. Ku birebana n'icyiciro cya gatatu kijyanye no kuzana ubucuruzi mu gihugu (*Commercial presence*), cyo kireba serivisi zatanzwe n'umucuruzi wafunguye ishami ry'ubugure rishamikiye ku bucuruzi bwo mu gihugu cye (*subsidiary/branch/agency*) kugira ngo atange serivisi mu kindi gihugu (banki, hoteli, amasosiyete y'ubwubatsi, etc.). icyiciro cya kane ni serivisi itangwa mu kindi gihugu (*movement of natural persons*), aho umucuruzi w'umunyamahanga atanga serivisi ku giti cye cyangwa umukozi ukorera umucuruzi (sosiyete zikora ubushakashatsi [*consultancy firm*], ibitaro, amasosiyete y'ubwubatsi).

[33] Abahagarariye Inshuti y'Urukiko bashingiye ku bisobanuro byagarutsweho haruguru bitangwa n'amategeko atandukanye, ndetse no ku ihame rikoresheya mu gusoresha umusoro ku nyongera gaciro rivuga ko uwo musoro usoresheya n'igihugu cy'umuguzi wa nyuma (*Principle of destination*), basanga igisobanuro cyatanzwe n'Urukiko Rukuru rw'Ubucuruzi kuri serivisi zoherezwa mu mahanga kinyuranyije n'amategeko y'u Rwanda, bityo ko uwo murongo ukwiye guhindurwa n'Urukiko rw'Ikirenga.

## **UKO URUKIKO RUBIBONA**

[34] Ingingo ya 65 y'Itegeko N°30/2018 ryo kuwa 02.06.2018 rigena ububasha bw'Inkiko iteganya ko Urukiko rw'Ikirenga rufite ububasha bwo gusubiramo umurongo wafashwe n'inkiko ku manza

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<sup>9</sup> Art.1 of GATS states that “For the purposes of this Agreement, trade in services is defined as the supply of a service: (a) from the territory of one Member into the territory of any other Member; (b) in the territory of one Member to the service consumer of any other Member, (c) by a service supplier of one Member, through commercial presence in the territory of any other Member, (d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member”.



zarangije inzira z'ubujurire hagamijwe kurengera itegeko no gutanga umurongo ngenderwaho rubisabwe n'Urugaga rw'Abavoka cyangwa Ubushinjacyaha Bukuru.

[35] Mu gusesengura ingingo imaze kuvugwa haruguru, Urukiko rusanga ari ngombwa kubanza kumenya icyo umurongo wafashwe n'Inkiko bivuze.

[36] Ubundi, imanza ziciwe n'Urukiko rw'Ikirenga nk'Urukiko rukuriye izindi nkiko zose zo mu Gihugu<sup>10</sup> zifatwa nk'imanza zitanga umurongo. Ku bw'Itegeko, Urukiko rw'Ikirenga ni rwo rufite inshingano yo kugenzura imicire y'imanza mu zindi nkiko, rugamije gukosora amakosa yaba yakozwe mu nshingano zazo zo kubahiriza amategeko no gutanga ubutabera, rukanatanga umurongo ku zindi nkiko mu gukemura ibibazo by'amategeko zihura nabyo nk'uko byemejwe mu rubanza RS/INJUST/RCOM 00003/2019/SC rwaciwe n'Urukiko rw'Ikirenga<sup>11</sup> no mu rubanza RS/INCONST/SPEC 00002/2019/SC<sup>12</sup> aho Urukiko rw'Ikirenga rwavuze ko icyo gitekerezo cyaje gushimangirwa mu ngingo ya 65 y'Itegeko rigena ububasha bw'inkiko ryavuzwe haruguru aho bigaragara ko kubahiriza umurongo usanzweho mu gukemura ikibazo runaka ari ihame ndakuka kuko, kugira ngo uwo umurongo uhinduke bisaba kuwuregera Urukiko rw'Ikirenga mu kirego kihariye; narwo kandi nk'uko bigaragara mu ngingo ya 73 y'iryo Tegeko mu gika cyaryo cya nyuma, rukawuhindura rubanje kugaragaza ikibazo kigaragara mu murongo wari usanzweho, mbere yo gutanga umurongo mushya ngenderwaho.

[37] Hashingiwe kandi ku cyerekezo cyafashwe n'Umushingamategeko mu Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko, ryahaye ububasha Urukiko rw'Ubujurire bwo kuburanisha mu rwego rw'ubujurire imanza zaburanishwaga n'Urukiko rw'Ikirenga nk'uko bigaragara mu ngingo ya 52 y'iryo Tegeko, byumvikana ko imanza ruca muri urwo rwego zitanga umurongo ugomba gukurikizwa n'inkiko zo hasi, mu gihe cyose utahinduwe n'Urukiko rw'Ikirenga.

[38] Ikindi kandi, hashingiwe ku biteganywa n'Amabwiriza N°001/2021 yo ku wa 15/03/2021 ya Perezida w'Urukiko rw'Ikirenga agenga itangazwa ry'imanza mu cyegeranyo cy'Ibyemezo by'Inkiko, n'imanza zatoranyijwe zigatangazwa, nazo zifatwa nk'izitanga umurongo kuko zigira agaciro gasumba ak'imanza zaciwe n'inkiko ziri ku rwego rumwe ku kibazo gisa, zikaba zishobora kwifashishwa n'ababuranyi cyangwa abacamanza.<sup>13</sup> Ibi ariko ntibivanaho, ku manza zitatangajwe, ihame ry'uko icyemezo cy'Urukiko kiba itegeko ndakuka muri urwo rukiko no mu nkiko ziri hasi yarwo, kikagomba gukurikizwa.

[39] Ibimaze kuvugwa haruguru bishimangira ihame rya “*stare decisis*” naryo rivuga ko icyemezo cy'Urukiko cyafashwe mu rubanza runaka kiba itegeko ndakuka muri urwo rukiko no mu nkiko ziri hasi yarwo, kikagomba gukurikizwa. Iryo hame rikaba rifasha kubaka amahame ahanye adahindagurika ashingiye ku mategeko, bigatuma habaho kwizera Inkiko n'ibyemezo zifata.<sup>14</sup> Kugirango umurongo wafashwe n'inkiko mu manza zabaye ndakuka uhinduke, ni uko biregerwa

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<sup>10</sup> Ingingo ya 50 y'Itegeko N° 012/2018 ryo ku wa 04/04/2018 rigena imitunganyirize n'imikorere y'Ubutegetsi bw'Ubucamanza.

<sup>11</sup> Urubanza RS/INJUST/RCOM 00003/2019/SC haburana Access Bank Rwanda Ltd na SOTIRU Ltd rwaciwe ku wa 26/06/2020, urupapuro rwa 6, igika cya 14.

<sup>12</sup> Urubanza RS/INCONST/SPEC 00002/2019/SC, Great Lakes Initiative for Human Rights and Development isaba gukurango ingingo kuko zinyuranyije n'Itegeko Nshinga, rwaciwe ku wa 04/12/2019, ibika bya bya 32 na 33.

<sup>13</sup> Reba ingingo ya 9 y'Amabwiriza N° 001/2021 yavuzwe haruguru.

<sup>14</sup> *Berland, David. L., Stopping the pendulum: why stare decisis should constrain the Court from further modification of the search incident to arrest exception, University of Illinois Law Review (2011) (2), 695. “ [...] It promotes the consistent development of legal principles and it fosters reliance on judicial decisions and contributes to the actual and apparent reliability of the judicial process.”*

[https://www.researchgate.net/publication/264877323\\_Stopping\\_the\\_pendulum\\_Why\\_stare\\_decisis\\_should\\_constrain\\_the\\_court\\_from\\_further\\_modification\\_of\\_the\\_search\\_incident\\_to\\_arrest\\_exception](https://www.researchgate.net/publication/264877323_Stopping_the_pendulum_Why_stare_decisis_should_constrain_the_court_from_further_modification_of_the_search_incident_to_arrest_exception)

Urukiko rw'Ikirenga hakurikijwe ibiteganywa n'ingingo ya 65 y'Itegeko N°30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru, hagamijwe kurengera itegeko no gutanga umurongo ngenderwaho.

[40] Kuregera Urukiko rw'Ikirenga hasabwa guhindura umurongo wafashwe n'Inkiko mu nyungu z'itegeko si umwihariko w'u Rwanda gusa kuko binakorwa no mu bihugu bitandukanye. Nko mu Bufaransa, umuhanga mu mategeko witwa Natalie Fricero asobanura ko Umushinjacyaha Mukuru mu Rukiko Rusesa imanza ashobora kuregera urwo Rukiko arusaba guhindura umurongo wafashwe mu rubanza rwarangije inzira zose z'ubujurire cyangwa rwanarangijwe mu gihe umurongo rwafashe unyuranyije n'amategeko. Agarāgaza ko iyi nzira ifite umwihariko kuko igamije kurengera inyungu rusange, kandi ikaba idahungabanya ibyemejwe n'Urukiko ku bireba abaturanyi, bisobanura ko umuburanyi adashobora gushingira ku murongo wahinduwe ngo agire ibyo asaba.<sup>15</sup>

[41] Undi muhanga mu mategeko, Serge Guinchard nawe yavuze ko Umushinjacyaha Mukuru mu Rukiko Rusesa imanza, abyibwirije, ashobora gusaba gusubiramo umurongo udakurikije amategeko, n'ubwo abaturanyi baba banyuzwe nawo ntibawujuririre. Ibyo ashobora kubisaba ku cyemezo cyose kinyuranyije n'amategeko kabone n'iyi urubanza rwaba rwararangijwe. icyo kirego agomba kugitanga mu gihe cy'imyaka itanu ibarwa uherye igihe icyemezo aregera cyasomewe. Asobanura kandi ko muri bene ibyo birego, Umushinjacyaha Mukuru yitwara nk'umurinzi w'itegeko.<sup>16</sup>

[42] Nubwo ibimaze kuvugwa mu bika biri haruguru bigaragaza ko ufite ububasha bwo gutanga ibirego bisaba guhindura umurongo mu nyungu z'itegeko ari Umushinjacyaha Mukuru nk'uko binateganyijwe mu ngingo ya 65 y'Itegeko N° 30/2018 ryavuzwe haruguru, Urukiko rurasanga ibisobanuro bikubiyemo byanifashishwa mu gihe ikirego kinatanzwe n'Urugaga rw'Abavoka kuko narwo rwahawe ubwo bubasha muri iryo Tegeko.

[43] Ku bijyanye n'urubanza RCOMA 00350/2019/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 04/12/2019 rusabirwa guhindurirwa umurongo, Urukiko rurasanga icyemezo cyafashwe muri urwo rubanza, aho rwemeje ko ENSAfrica Rwanda Limited igomba gusoreshwa ku gipimo gisanzwe cya 18% kuko iyo mirimo isoresheya yagiriye akamaro uwayihawe mu Rwanda n'ubwo ari umunyamahanga, kitafatwa nk'umurongo watanzwe n'urwo Rukiko kuri icyo kibazo. Ibyo bishimangirwa no kuba abahagarariye Urugaga rw'Abavoka batarashoboye kugaragariza Urukiko ko icyo cyemezo ariwo murongo rwagiye rufata mu zindi manza zitandukanye hasuzumwa ikibazo nk'iki cyangwa niba waragiye ushingirwaho n'Urukiko rw'Ubucuruzi ruri hasi yarwo.

[44] Ikindi kandi kigaragaza ko atari wo murongo wafashwe n'Urukiko Rukuru rw'Ubucuruzi, ni uko mu rundi rubanza rwabaye hagati ya Rwanda Revenue Authority na ENSAfrica Rwanda Limited, rusuzuma ikibazo nk'iki, rwaciwe ku wa 29/12/2021, nyuma y'icibwa ry'urubanza rusabirwa guhindurirwa umurongo, urwo Rukiko rwasubiye ku murongo rwari rwafashe mbere, rufata icyemezo gitandukanye n'icyaregawe muri uru Rukiko, aho Urukiko Rukuru rw'Ubucuruzi rwemeje ko serivisi zatanzwe na ENSAfrica Rwanda Limited zifatwa nk'izoherejwe mu mahanga zikaba zigomba

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<sup>15</sup> Fricero, Natalie, *Procédure Civile*, 5<sup>e</sup> ed., LGDJ, 2014, page 438; ‘‘ Le pourvoi dans l'intérêt de la loi est réservé au Procureur Général près la Cour de Cassation, qui peut agir pour cesser une violation de la loi par un tribunal, alors que le jugement n'a pas été attaqué par les parties. [...] Ce pourvoi est original, en ce qu'il est destiné à protéger l'intérêt général, et qu'il n'affecte pas la situation des parties.

<sup>16</sup> Guinchard, Serge, *Procédure Civile, Droit interne et européen du procès civil*, Ed. Dalloz, 34<sup>e</sup> édition, 2018, page 643(1434); ‘‘Seul le Procureur Général près la Cour de Cassation, de sa propre initiative, peut former un pourvoi tendant à une censure symbolique d'un jugement ayant bafoué la loi mais contre lequel les parties, satisfaites, n'ont pas voulu exercer de recours. Il peut procéder ainsi contre toute décision contraire aux lois, règlement ou aux formes de procéder, et ce même si la décision a déjà été exécutée. [...] fixe un délai de cinq ans à compter du prononcé de la décision. Par le pourvoi, le Procureur Général se comporte en gardien de la légalité [...].

gusorehwa kuijanisha rya zero.<sup>17</sup> Uru rubanza ubu rukaba rwarajuririwe mu Rukiko rw'Ubujurire na Rwanda Revenue Authority,<sup>18</sup> ibyo byose bikaba bishimangira ko kugeza ubu nta murongo ntakuka uriho kuri iki kibazo ku buryo wasabirwa guhindurwa hagamiye kurengera itegeko no gutanga undi murongo ngenderwaho nk'uko ingingo ya 65 y'Itegeko N° 30/2018 ryavuzwe haruguru ibiteganya; bityo ikirego cy'Urugaga rw'Abavoka mu Rwanda kikaba ntacyo gishingiyeho.

### **III. ICYEMEZO CY'URUKIKO**

[45] Rwemeje ko ikirego cyatanzwe n'Urugaga rw'Abavoka mu Rwanda gisaba guhindura umurongo mu rubanza RCOMA 00350/2019/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 04/12/2019, nta mpamvu yacyo.

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<sup>17</sup> Urubanza RCOMA 00017/2021/HCC, haburana Rwanda Revenue Authority na ENSafrica Rwanda Limited rwaciwe ku wa 29/12/2021, urupapuro rwa 19 kugeza ku rwa 21, ibika bya 30, 31 na 32.

<sup>18</sup> Ikirego cyahawe RCOMAA 00022/2022/CA.