IKIGO CY’IMISORO N’AMAHORO v SUGIRA LTD

[Rwanda URUKIKO RW’IKIRENGA – RS/INJUST/RCOM 00016/2022/SC (Cyanzayire, P.J., Hitiyaremye na Kazungu, J.) 22 Ukuboza 2023]

Amategeko agenga imiburanishirize y’imanza z’ubucuruzi – Umusoro – umusoro ku nyongeragaciro (TVA) – Ubwikorezi busonewe TVA ni ubukorwa n’abantu bakora umwuga w’ibanze wo gutwara ibintu – Ubwikorezi bukorwa mu rwego rwo gukwirakwiza ibicuruzwa n’iyo bwaba bukorwa n’uwabiherewe uruhushya ariko atari wo murimo w’ibanze, bufatwa nka serivisi yunganira (accessoire) icyo gikorwa cy’ibanze cyo gukwirakwiza ibicuruzwa. Iyo icyo gikorwa cy’ibanze kidasonewe TVA, n’ubwo bwikorezi ntibuyisonerwa.

Incamake y’ikibazo: Uru rubanza rukomoka ku kutumvikana kwabaye hagati y’Ikigo cy’Imisoro n’Amahoro (Rwanda Revenue Authority) na SUGIRA Ltd ku birebana n’umusoro ku nyongeragaciro (TVA) yaciwe mu bikorwa by’ubwikorezi ikora ikwirakwiza ibinyobwa bya BRALIRWA.

SUGIRA Ltd ivuga ko itagombaga gucibwa uwo musoro kubera ko urebana na serivisi y’ubwikorezi yakoraga kandi ibifitiye ibyangombwa yahawe n’urwego rubifitiye ububasha, iyo serivisi ikaba isonewe uwo musoro. Mu gihe RRA yo ivuga ko SUGIRA Ltd yagabanyije igiciro yahawe na BRALIRWA, igice kimwe cyacyo icyita ubwikorezi igamije kunyereza umusoro, kandi mu by’ukuri nta bwikorezi busonewe umusoro ku nyongeragaciro yakoraga.

SUGIRA Ltd na RRA baburanye kuva mu Rukiko rw’Ubucuruzi kugeza mu Rukiko rw’Ubujurire, maze mu rubanza RCOMAA 00057/2021/CA rwaciwe ku itariki ya 25/03/2022, Urukiko rw’Ubujurire rwemeza ko SUGIRA Ltd yaciwe umusoro ku nyongeragaciro mu buryo bunyuranyije n’amategeko kuko ikora akazi k’ubwikorezi, ikaba ifite uruhushya rwo gutwarira abaguzi bayo ibinyobwa icuruza kandi ko iyo serivisi yo gutwara ibicuruzwa (transport) isonewe TVA ku bw’Itegeko.

RRA yasabye ko urwo rubanza rusubirishwamo ku mpamvu z’akarengane, hemezwa ko ruburanishwa n’Urukiko rw’Ikirenga, hasuzumwa niba amafaranga RRA yasoresheje SUGIRA Ltd yaba asonewe umusoro wa TVA.

Mu miburanire yayo mu rubanza rusubirwamo ku mpamvu z’akarengane ivuga ko uregwa yagabanyije ibiciro by’ibicuruzwa bya BRALIRWA agamije kugira ngo azatange TVA ku gicuruzo kituzuye, yitwaje ko igice cy’umusoro yagabanyijeho kijyanye n’ubwikorezi kuko bwo busonewe TVA.

SUGIRA Ltd yiregura ivuga ko nta biciro yagabanyije ndetse kuba ifite ibyangombwa yahawe n’urwego rubifitiye ububasha biyisonera umusoro w’inyongeragaciro, bishingiye ku biteganywa n’Itegeko Nº 40/2016 ryo ku wa 15/10/2016 rihindura kandi ryuzuza Itegeko Nº 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro nk’uko ryahinduwe kandi ryujujwe kugeza ubu mu ngingo yaryo ya 2, ishyira mu rutonde rw’ibisonewe umusoro ku nyongeragaciro “serivisi z'ubwikorezi zikozwe n'ababiherewe uruhushya mu gutwara ibintu ku nzira y'ubutaka” bityo hakwiye gutandukanya isoreshwa ry’umusoro k’ukora serivise y’ubwikorezi yarabiherewe uburenganzira bwo kuyikora, n’uyikora atarabiherewe uburenganzira.

Incamake y'icyemezo: Ubwikorezi bukorwa mu rwego rwo gukwirakwiza ibicuruzwa n'iyo bwaba bukorwa n'uwabiherewe uruhushya ariko atari wo murimo w'ibanze, bufatwa nka serivisi yunganira (*accessoire*) icyo gikorwa cy'ibanze cyo gukwirakwiza ibicuruzwa. Iyo icyo gikorwa cy'ibanze kidasonewe TVA, n'ubwo bwikorezi ntibuyisonerwa.

Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro.

Amategeko yifashishijwe:
Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro, Ingingo ya 6, n'iya 9.
Nta manza zifashishijwe.

Inyandiko z'abahanga:
Delebecque Philippe, Isabelle Bon-Garcin et Maurice Bernadet. *Droit des transports*. Dalloz, 2018, p. 29-32,
Kesteloot, Jean Pierre et HOC, Arnaud, *Droit des transports*, 2020, Larcier, p.29-31

Urubanza

I. IMITERERE Y'URUBANZA.

[1] RRA yakoreye SUGIRA Ltd igenzura ryo mu biro (*desk audit*) ry'imyaka itanu kuva mu mwaka wa 2014 kugeza mu wa 2018, isanga harabayeho kunyereza umusoro ku nyongeragaciro (TVA) ungana na 246.042.539 Frw, yabaze hashingiwe ku kigereranyo cy'amafaranga y'igicuruzo yinjije n'ayo yamenyekanishije. SUGIRA Ltd yajuririye uwo musoro kwa Komiseri Mukuru igaragaza ko mu igenzura RRA yayikoreye yagiye ifata amafaranga y'ubwikorezi ikayaca TVA kandi ubwikorezi busonewe kuri uwo musoro, maze ayisubiza ko hari inama yahuje RRA, BRALIRWA n'abakwirakwiza ibinyobwa byayo *(distributors)* yemeje ko nta busonerwe buzongera kwemerwa.

[2] SUGIRA Ltd yareze RRA mu Rukiko rw'Ubucuruzi isaba ko umusoro ku nyongeragaciro ungana na 246.042.539 Frw yaciwe kuri serivisi y'ubwikorezi kandi iwusonewe wakurwaho, RRA yiregura ivuga ko basanze SUGIRA Ltd yaramenyekanishaga TVA ku gicuruzo kituzuye yitwaza ko kuri buri nyemezabuguzi *(facture)* yakoraga igurishije ibinyobwa bya BRALIRWA habaga harimo n'amafaranga y'ubwikorezi *(transport)*.

[3] Ku itariki ya 30/07/2020, Urukiko rw'Ubucuruzi rwaciye urubanza RCOM 00603/2020/TC rwemeza ko ikirego cyatanzwe na SUGIRA Ltd gifite ishingiro, rutegeka ko umusoro ku nyongeragaciro ungana na 246.042.539 Frw yaciwe kuri serivisi y'ubwikorezi ukuweho kuko uwo musoro iwusonewe n'itegeko, rutegeka RRA kwishyura SUGIRA Ltd 800.000 Frw y'igihembo cya Avoka na 20.000 Frw y'ingwate y'amagarama.

[4] RRA yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi, maze ku itariki ya 28/06/2021, urwo Rukiko ruca urubanza RCOMA 00549/2020/HCC rwemeza ko ubujurire bwatanzwe na RRA bufite ishingiro, ruvuga ko imikirize y'urubanza RCOM 00603/2020/TC

ihindutse mu ngingo zarwo zose, rutegeka SUGIRA Ltd kwishyura RRA 246.042.539 Frw y'umusoro ku nyongeragaciro, kuyishyura 1.200.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka na 40.000 Frw y'amagarama yishyuye ijurira.

[5] SUGIRA Ltd yajuririye urwo rubanza mu Rukiko rw'Ubujurire ivuga ko Urukiko Rukuru rw'Ubucuruzi rutasesenguye neza inyemezabuguzi yarushyikirije nk'ikimenyetso ngo rubone ko yayikoze mu buryo yabitegetswemo na RRA kuko zigaragaza ibicuruzwa bisonewe n'ibidasonewe ; ko rutashoboye kandi gusobanukirwa n'uburyo inyemezabuguzi ikozwemo, ari byo byatumye rufata icyemezo kidashingiye ku kuri.

[6] RRA yireguye ivuga ko ubwikorezi butakagombye guhungabanya igiciro SUGIRA Ltd yahawe na BRALIRWA kandi kigomba gutangirwa TVA, ko ibyo kuba Urukiko rwarafashe icyemezo rudasuzumye inyemezabuguzi SUGIRA Ltd yarushyikirije itandukanya ibicuruzwa bya BRALIRWA na serivisi y'ubwikorezi isonewe atari byo, ko ikiburanwa mu by'ukuri muri uru rubanza ari ukuba SUGIRA Ltd yaragiye icuruza igabanya igiciro cya BRALIRWA noneho ikinyuranyo ikacyita ubwikorezi nyamara atari ko yakagombye kubikora, kuko itemerewe kugabanya ibiciro yahawe na BRALIRWA.

[7] Ku itariki ya 25/03/2022, Urukiko rw'Ubujurire rwaciye urubanza RCOMAA 00057/2021/CA, rwemeza ko ubujurire bwa SUGIRA Ltd bufite ishingiro, ko ubwa RRA bwuririye ku bundi nta shingiro bufite, ruvuga ko imikirize y'urubanza rwajuririwe ihindutse, rutegeka ko umusoro ku nyongeragaciro ungana na 246.042.539 Frw waciwe SUGIRA Ltd ukuweho, rutegeka kandi RRA kwishyura SUGIRA Ltd 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza kuri urwo rwego no kuyisubiza 50.000 Frw y'amagarama yatanze ijurira.

[8] Mu gufata iki cyemezo, Urukiko rwashingiye ku mpamvu y'uko SUGIRA Ltd yakoze inyemezabuguzi idatandukanya ibicuruzwa bisonewe n'ibidasonewe TVA, rusanga inyemezabuguzi ziri muri dosiye y'urubanza zigaragaza ko SUGIRA Ltd yagiye itandukanya ibinyobwa bidasonewe TVA n'ubwikorezi buyisonewe. Naho ku kibazo cyo kuba SUGIRA Ltd yaragiye igabanya ibiciro by'ibinyobwa bya BRALIRWA byagombaga gusora TVA yitwaje ubwikorezi *(transport)*, rwasanze ibivugwa na RRA nta shingiro byahabwa, kuko SUGIRA Ltd ifite ibyangombwa biyemerera gukora ubwikorezi bw'ibicuruzwa igenda ikwirakwiza kandi inyemezabuguzi yagiye ikora zigaragaza ko yakoze ubwikorezi, RRA ikaba nta bimenyetso yagaragaje bibivuguruza.

[9] Ku bijyanye no kuba SUGIRA Ltd yaragombaga kubahiriza ibiciro yahawe na BRALIRWA, Urukiko rwasanze bitahabwa ishingiro kuko ibiciro BRALIRWA iha abakwirakwiza ibicuruzwa byayo *(distributeurs)* biba ari ibiciro by'ifatizo *(prix de référence)*, kandi amategeko agenga ihiganwa akaba atabuza ko umucuruzi yatanga igicuruzwa cye ku giciro runaka, mu gihe kitari hasi cyane ku buryo cyahungabanya ibiciro ku isoko[1]. Ibi Urukiko rwabyemeje rushingiye ku masezerano SUGIRA Ltd yagiranye na BRALIRWA ndetse no ku mbonerahamwe y'ibiciro bya BRALIRWA bigaragara muri dosiye, aho BRALIRWA yagiye ikoresha amagambo "*recommended price"* ; rugasobanura ko "*recommended price"* bivuze ko

[1] Itegeko n° 36/2012 ryo ku wa 21/09/2012 rigenga ihiganwa mu bucuruzi no kurengera abaguzi

ibiciro BRALIRWA iha aba *distributeurs* bayo atari itegeko, ko ahubwo ari ibigenderwaho nka *référence*.

[10] Nyuma y'icibwa ry'urwo rubanza, ku itariki ya 18/04/2022, RRA yandikiye Perezida w'Urukiko rw'Ikirenga isaba ko urubanza RCOMAA 00057/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku itariki ya 25/03/2022 rwasubirwamo ku mpamvu z'akarengane. Amaze gusuzuma raporo yakozwe kuri urwo rubanza, ku itariki ya 02/03/2022 yemeje ko rwongera kuburanishwa ruhabwa RS/INJUST/RCOM 00016/2022/SC.

[11] Uru rubanza rwaburanishijwe mu ruhame ku itariki ya 30/05/2023, RRA ihagarariwe na Me Gatera Jean Clément afatanyije na Me Twahirwa Jean Baptiste, SUGIRA Ltd ihagarariwe na Me Twiringiyemungu Joseph. Iburanisha rirangiye, ababuranyi bamenyeshejwe ko urubanza ruzasomwa ku itariki ya 27/10/2023, isomwa ryarwo rigenda ryimuka ku mpamvu zitandukanye, irya nyuma rikaba ryarashyizwe ku ya 22/12/2023. Mbere y'uko iyo tariki igera ariko, bamwe mu bacamanza bagize inteko byabaye ngombwa ko basimburwa, bituma iburanisha ry'urubanza ryongera gupfundurwa rishyirwa ku itariki ya 21/11/2023 kugira ngo inteko ihinduke. Kuri uwo munsi RRA yari ihagarariwe na Me Gatera Clément wenyine, naho SUGIRA Ltd ihagarariwe nka mbere.

[12] Muri uru rubanza ababuranyi bagiye impaka ku kibazo cyo kumenya niba SUGIRA Ltd yaraciwe umusoro ku nyongeragaciro (TVA) kuri serivisi y'ubwikorezi kandi iwusonewe, iki kibazo akaba ari nacyo cyasuzumwe n'Urukiko hamwe n'ikibazo cy'indishyi zasabwe muri uru rubanza.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

- **Kumenya niba SUGIRA Ltd yaraciwe umusoro kunyongeragaciro (TVA) kuri serivisi y'ubwikorezi kandi iwusonewe.**

[13] RRA ivuga ko akarengane kari mu rubanza yasabye ko rwasubirwamo ari uko yasobanuriye Urukiko rw'Ubujurire ko ikibazo kiri hagati y'ababuranyi ari ukuba SUGIRA Ltd, nka *distributeur* wa BRALIRWA, yaragabanyije ibiciro by'ibicuruzwa bya BRALIRWA igamije kugira ngo izatange TVA ku gicuruzo kituzuye, yitwaje ko igice cy'umusoro yagabanyijeho kijyanye n'ubwikorezi kuko bwo busonewe TVA. Ivuga ko yabigaragarije ibimenyetso bidashidikanywaho kuko yatanze amasezerano y'ikwirakwizwa *(distribution)* ry'ibinyobwa BRALIRWA yagiranye na SUGIRA Ltd, yerekana neza ibiciro BRALIRWA yari yayihaye. Ivuga kandi ko yerekanye n'inyemezabuguzi SUGIRA Ltd yagiye itanga mu gukwirakwiza ibicuruzwa bya BRALIRWA, zigaragaza ko ku biciro yabaga yahawe, yagendaga ikuraho igice kimwe ikacyita icy'igicuruzwa, ikindi ikacyitirira ubwikorezi kandi mu by'ukuri itakabaye ihindura igiciro cy'ibicuruzwa yahawe na BRALIRWA.

[14] Ikomeza ivuga ko ibiciro kuri buri gicuruzwa *(produit)* BRALIRWA yabaga yahaye ba *distributeurs* bayo, iyo bihujwe n'inyemezabuguzi SUGIRA Ltd yakoraga, bigaragara ko yakuraga amafaranga ku giciro cya BRALIRWA ikayitirira ubwikorezi kugira ngo budasoreshwa TVA. Yatanze urugero rw'inyemezabuguzi n° 10656 yo ku itariki ya 09/08/2014, aho SUGIRA Ltd yagurishije amakaziye *(casiers)* ya fanta (30 cl) 15, ikaziye iyigurisha 5.400 Frw, ikerekana ko yatanze serivisi y'ubwikorezi ku mafaranga 350 ku ikaziye imwe, kandi mu mwaka wa 2014 yari

ifite amasezerano ya BRALIRWA yo kuzigurisha kuri 5.750 Frw[2]. Ivuga ko iyo isesenguye uru rugero, isanga icyo SUGIRA Ltd yakoze ari ukugabanya 350 Frw ku giciro nyacyo yahawe na BRALIRWA cya 5.750 Frw maze igasorera gusa ikinyuranyo cya 5.400 Frw, naho 350 Frw ikayagaragaza nk'asonewe kuko ngo ari ay'ubwikorezi kandi atari byo, ahubwo ari mu rwego rwo kunyereza TVA ijyanye nayo. Ibi ikaba ari byo iheraho yanzura ko SUGIRA Ltd yabikoraga gutyo, kabone n'ubwo yabaga itatwariye uwayiguzeho ibicuruzwa bya BRALIRWA, ibyo bikaba binyuranyije n'ingingo ya 2 (5) n'iya 11 z'Itegeko n° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro, zisobanura ko ikiguzi ari ubwishyu bwa *produit* na serivisi, kikaba kitagomba kugabanywa nk'uko byakorwaga na SUGIRA Ltd n'Urukiko rukabiyemerera, mu gihe nyamara BRALIRWA nyir'ibicuruzwa itabyemera.

[15] RRA ikomeza isobanura ko amakosa yakozwe n'Urukiko rw'Ubujurire yayiteye akarengane agaragarira mu bika by'urubanza RCOMAA 00057/2021/CA bikurikira :

- Mu gika cya 29, Urukiko rwavuze ko ingingo ya 7 y'Itegeko N° 36/2012 ryo ku wa 09/11/2012 rigena ihiganwa mu bucuruzi no kurengera abaguzi ibuza amasezerano agamije gushyiraho ibiciro kuko ngo bibangamira ihiganwa, ko ariko isanga rutarasobanukiwe n'ubucuruzi buri hagati ya SUGIRA Ltd na BRALIRWA kuko rwagize ngo ni ubucuruzi busanzwe aho umuntu agura hanyuma akagurisha akurikije uko isoko rihagaze, kandi ubucuruzi bwabo ari ugukwirakwiza ibicuruzwa *(distribution)* hanyuma BRALIRWA igaha SUGIRA Ltd *commission*. Ivuga ko ibyo bisobanuye ko ukwirakwiza ibicuruzwa adashobora na rimwe kujya munsi y'ibiciro aba yarahawe na nyirabyo.
- Mu gika cya 32, Urukiko rwasesenguye nabi ibikubiye mu masezerano ari hagati ya BRALIRWA na SUGIRA Ltd kuko rwavuze ko ibiciro ba *distributeurs* bahabwa na BRALIRWA bashobora kubihindura kuko mu masezerano byiswe "*recommended price"*, ko ngo ubwo ari ibiciro by'ifatizo *(prix de référence)*, nyamara mu kinyarwanda BRALIRWA yarabyise ibiciro byemejwe nayo[3]. Ivuga ko iyo myumvire y'Urukiko atariyo kuko *recommended price* bitavuze ko biba bigomba guhinduka bigabanywa, kuko bizwi ko BRALIRWA ijya inasohora amatangazo agira ati : *"nturenze 500"* wenda kuri fanta ya 50 Cl, ko ahubwo igiciro cy'ibicuruzwa bya BRALIRWA gishobora kwiyongera bitewe n'aho byafatiwe (urugero ni fanta ifatiwe muri *hotel* itagura kimwe na fanta ifatiwe muri butike). Ivuga ko kandi ibi na byo bikorwa n'abadandaza *(détaillants)* kuko bo nta masezerano bagira, ko abakwirakwiza ibicuruzwa bo baba bakwiye kugurisha ku giciro bahawe na BRALIRWA.
- Naho mu gika cya 33, aho Urukiko rwavuze ko RRA itatanze ibimenyetso byerekana ko SUGIRA Ltd yagabanyije ibiciro, ivuga ko nabyo ataribyo kuko yerekanye amasezerano BRALIRWA iha

[2] Reba amasezerano ya *distribution* y'umwaka wa 2014
[3] Reba ingingo ya 8 y'amasezerano hagati ya BRALIRWA na SUGIRA

abakwirakwiza ibicuruzwa byayo agaragaramo ibiciro batagomba kujya munsi kuko itabyemera bitewe nuko byayihombya, ko ndetse yatanze n'inyemezabuguzi igaragaza uko SUGIRA Ltd yagendaga igabanya ibiciro. Ivuga ko yanagaragaje ko nta hantu na hamwe muri *déclarations* za SUGIRA Ltd ku musoro ku nyungu yigeze imenyekanisha ko ikora akazi k'ubwikorezi[4].

[16] RRA isobanura kandi ko SUGIRA Ltd itabasha kwerekana uko yumvikanaga n'abakiriya b'ibinyobwa bya BRALIRWA ibijyanye n'ubwikorezi, ku buryo yavuga ko mu kwishyura, abakiriya babaga bazi neza ko mu mafaranga bishyuye ibinyobwa harimo n'ay'ubwikorezi kuko na bo mu gukora *déclaration* nyuma yo gucuruza, bisubizaga TVA ikomoka ku giciro mbumbe *(prix total)* bishyuraga SUGIRA Ltd. Ivuga ko ibyo byerekana ubushake *(intention)* SUGIRA Ltd yabaga ifite bwo kuba itarashakaga ko abakiriya bayo bamenya ko igiciro bishyuye yagiciyemo kabiri.

[17] Isoza ibisobanuro byayo kuri iyi ngingo ivuga ko iyi myitwarire ya SUGIRA Ltd atari ubwa mbere igaragaye mu ba *distributeurs* ba BRALIRWA, kuko babigerageje na mbere ariko ikibazo kigakosorwa n'inkiko uyu muco mubi ugacika[5], ko ariko ibona wongeye kugaruka ; igasaba inkiko kubona ko iyi myitwarire nta kindi igamije uretse kudasorera ubucuruzi bwabo bwose nk'uko babisabwa n'amategeko.

[18] SUGIRA Ltd yiregura ivuga ko ingingo ya 2 y'Itegeko Nº 40/2016 ryo ku wa 15/10/2016 rihindura kandi ryuzuza Itegeko Nº 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ishyira mu rutonde rw'ibisonewe umusoro ku nyongeragaciro "serivisi z'ubwikorezi zikozwe n'ababiherewe uruhushya mu gutwara ibintu ku nzira y'ubutaka". Ivuga ko icyo bisobanuye ari uko hagomba gutandukanywa ukora imirimo y'ubwikorezi abifitiye ibyangombwa bimwemerera kuyikora n'uyikora atabifitiye ibyangombwa, bityo n'uburyo bwo gusoresha umusoro ku nyongeragaciro ku byo ubwikorezi bwabyaye nk'umusaruro bigatandukanywa. Ivuga ko igikwiye kurebwa ari na cyo inkiko zagiye zisuzuma, ari ukumenya niba SUGIRA Ltd yujuje ibiteganywa n'itegeko kugira ngo ibe yasonerwa TVA ku bwikorezi ikora iyo ikwirakwiza ibinyobwa bya BRALIRWA, hagasuzumwa niba ifite ibinyabiziga ikoresha ubwikorezi, hakanarebwa niba ifite uburenganzira bwo gukora imirimo y'ubwikorezi, iyo mirimo ikaba iyikora koko.

[19] SUGIRA Ltd ikomeza ivuga ko ku byerekeranye no kuba ifite ibinyabiziga ikoresha imirimo y'ubwikorezi, amasezerano ayihuza na BRALIRWA, mu ngingo yayo ya 2, ateganya ko SUGIRA Ltd igomba kuba ifite uburyo bwo gukwirakwiza ibinyobwa muri zone yahawe, ni ukuvuga ko igomba kuba ifite amakamyo n'amakamyoneti ahagije, ko rero ibi binyabiziga ibifite, kuko iyo itabigira itari kwemererwa na BRALIRWA gukora uyu murimo.

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[4] Reba urugero rwa *annexes* za *declarations* z'uregwa ku misoro ku nyungu ya 2014 na 2015 ahagaragara ko nta musaruro akomora muri *transport* agira kuko atayikora ahubwo ari *distributeur* w'ibinyobwa bya BRALIRWA ukura umusaruro ku byo yagurishirije BRALIRWA, ubukode bw'inzu ndetse na commissions za banki gusa.

[5] Reba izo manza zabayeho ndetse n'ibyemezo byazifatiwemo kuri iki kibazo RCOM 0493-14-TC & RCOMA 0429-14-HCC rwa Ntawangwanabose Théogène ndetse na RCOMA 0431-14-HCC rwa Soveproa Ltd

[20] Ku bijyanye no kuba SUGIRA Ltd ifite uburenganzira bwo gukora imirimo y'ubwikorezi, ivuga ko ubwo burenganzira yabuhawe n'Ikigo cya Leta kibifite mu nshingano (RURA), kandi buri mwaka ikaba ibitangira umusoro ku musaruro uturuka kuri uwo murimo w'ubwikorezi *(redevances)*. Ku byerekeranye no kuba ikora imirimo y'ubwikorezi koko, ivuga ko amasezerano ayihuza na BRALIRWA, mu ngingo yayo ya 4, ateganya ko SUGIRA Ltd ikwirakwiza ibinyobwa aha hakurikira: Kimironko, Gihogere, Nyabisindu, Kibagabaga, Bibare, Zindiro, Masoro, Bumbogo, Gishaka, Masizi; ko hashingiwe kuri iyo ngingo, byumvikana ko ibyo binyobwa bitwarwa mu modoka zayo, amafaranga ava muri iyi serivisi akaba ariyo atuma ishoboka kuko ariyo akoreshwa mu kugura *carburant*, kwishyura abashoferi n'ibindi, iyi serivisi ikaba itakorerwa ubuntu nk'uko RRA ibyumva kandi ifite ikiguzi.

[21] Kuri iyi ngingo nanone, SUGIRA Ltd ikomeza ivuga ko itanumva ukuntu RRA itareshyeshya abasoreshwa kubera ko serivisi y'ubwikorezi bukorwa na BRALIRWA iyizaniye ibinyobwa ku bubiko bukuru *(dépôt central)* bwayo buri i Masoro ibivanye ku ruganda isonerwa[6], ikaba itumva ukuntu serivisi y'ubwikorezi SUGIRA Ltd ikora ivana ibicuruzwa mu bubiko bwayo ibigeza mu turere yahawe kubigezamo yo itasonerwa nk'uko iya BRALIRWA isonewe. Ivuga ko, uretse no kuba itegeko ubwaryo ryemerera SUGIRA Ltd gusonerwa TVA kuri serivisi y'ubwikorezi ikora, mu rwego rw'imisoro ari ihame kureshyeshya abasora bari muri *conditions* zimwe *(équité fiscale)*.

[22] SUGIRA Ltd ikomeza isobanura ko ku bijyanye n'ibiciro RRA ivuga ko ibigabanya kugira ngo igice kimwe gisonerwe umusoro ku nyongeragaciro, Urukiko rw'Ubujurire rwasanze atari cyo kibazo cyatumye hatangwa ubujurire muri urwo Rukiko, kuko urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, rugaragaza ko nta kibazo cy'ibiciro urwo rukiko rwagize, ko ahubwo ikibazo cyari uko SUGIRA Ltd itagaragazaga inyemezabuguzi itanga kuri serivisi y'ubwikorezi isonewe, n'inyemezabuguzi y'ibinyobwa igurisha bidasonewe.

[23] Ikomeza ibisobanuro byayo ivuga ko impamvu yifashishije iri sesengura ry'Urukiko rw'Ubujurire rimaze kuvugwa, ari uko ikibazo cyari cyatumye itsindwa mu Rukiko Rukuru rw'Ubucuruzi ikajuririra Urukiko rw'Ubujurire kidashingiye ku cyo RRA yita kugabanya ibiciro, ahubwo cyari gishingiye ku kuba ku nyemezabuguzi zitandukanye SUGIRA Ltd itaragaragazaga ubwikorezi ikora itwara ibinyobwa n'ikiguzi ubwacyo cy'ibyo icuruza. Ibi akaba aribyo Urukiko rw'Ubujurire rwakosoye rugaragaza ko kuba biri ku nyemezabuguzi imwe nta kibazo, ko icyangombwa ari uko bigaragazwa mu buryo budashidikanywaho.

[24] SUGIRA Ltd ikomeza ivuga ko kuri iyi ngingo ijyanye n'icyitwa kugabanya ibiciro, ishobora kwifashisha nanone isesengura ryakozwe mu rubanza RCOMAA 00001/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku itariki ya 25/03/2022, haburana undi mu *distributeur* wa BRALIRWA na RRA, aho urwo Rukiko rwasanze ibyo ingingo ya 8 (y'amasezerano) iteganya ko umuranguzi (SRDS Ltd) agura ibinyobwa ku giciro cyemejwe na BRALIRWA kandi akagurisha ku giciro cyemejwe, bidashatse kuvuga byanze bikunze ko umuranguzi adashobora kujya munsi yacyo, kuko iyo usomye iyo ngingo mu rurimi rw'icyongereza, igaragaza ko umuranguzi agura ku giciro cyemejwe *(determined)* na BRALIRWA ariko akagurisha ku giciro agiriweho inama *(recommended)* na BRALIRWA. Bivuze ko hagati ya BRALIRWA Ltd na SRDS Ltd igiciro cyemejwe na BRALIRWA kigomba kubahirizwa uko cyemejwe, ariko hagati ya SRDS Ltd n'abo

[6] Harebwa fagitire ya BRALIRWA

igurishaho ibinyobwa bya BRALIRWA icyo giciro atari itegeko, ko ahubwo cyafatwa nk'igiciro cy'ifatizo (*reference price).*

[25] SUGIRA Ltd isobanura ko Urukiko rwasanze nanone ingingo ya mbere y'ayo masezerano iteganya ko SRDS Ltd igomba kubahiriza amategeko agenga ihiganwa; bivuze ko na BRALIRWA mu myumvire yayo yemera ihiganwa, ariko rikaba rigomba gukorwa mu buryo bwubahirije amategeko; bityo ibyo RRA ivuga ko SRDS Ltd yagombaga kubahiriza ibiciro byatanzwe na BRALIRWA nta shingiro byahabwa, kuko byaba binyuranyije n'ingingo ya 7, igika cya mbere, agace ka 1º, y'Itegeko nº 36/2012 ryo ku wa 21/09/2012 rishyiraho amategeko agenga ihiganwa ku isoko".

[26] SUGIRA Ltd isoza ivuga ko RRA idafata kimwe abasoreshwa kuri iki kibazo, kuko urubanza RCOMAA 00030/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku itariki ya 20/07/2022 (nyuma y'uru rusuzumwa n'Urukiko rw'Ikirenga) rwo rutazanywe mu karengane, bishatse kuvuga ko RRA yaje gusanga ubusesenguzi bwakozwe n'Urukiko rw'Ubujurire ari ukuri, ari nayo mpamvu, Komiseri Mukuru, akurikije umurongo watanzwe n'Urukiko rw'Ubujurire, yafashe icyemezo cyo gukuraho umusoro waciwe Etablissement FURAHA adategereje ko bitegekwa n'Urukiko.

UKO URUKIKO RUBIBONA

[27] Ababuranyi bemeranya ko SUGIRA Ltd ari imwe muri za sosiyete zikwirakwiza ibicuruzwa bya BRALIRWA kandi ko ifite uruhushya ruyemerera kwikorera ibintu ku butaka rwatanzwe n'Ikigo gishinzwe kugenzura imikorere y'inzego zimwe z'imirimo ifitiye Igihugu akamaro (RURA). Icyo batemeranyaho ari nacyo kigize impaka muri uru rubanza, ni ukumenya niba ubwikorezi SUGIRA Ltd ikora mu gihe cyo gukwirakwiza ibinyobwa bya BRALIRWA bukwiye gufatwa nk'ubwikorezi busonewe umusoro wa TVA buvugwa mu ngingo ya 6 y'Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro ryakurikizwaga igihe RRA yacaga SUGIRA Ltd umusoro uburanwa muri uru rubanza.

[28] Ingingo ya 11, igika cya mbere, y'Itegeko N° 37/2012 ryo ku wa 09/11/2012 rimaze kuvugwa, iteganya ko uretse ibyo iryo tegeko riteganya ukundi, agaciro gasoreshwa ku kintu cyangwa kuri serivisi ari ikiguzi cyabyo cyarishywe n'abaguzi mu mafaranga.

[29] Ingingo ya 6, agace ka 5°, y'iryo Tegeko, ivuga ko serivisi z'ubwikorezi zikozwe n'ababiherewe uruhushya zisonewe umusoro ku nyongeragaciro, ingingo ya 9 yaryo ikavuga ko haseguriwe ibivugwa muri iryo tegeko, gutanga ibintu cyangwa serivisi zihariye nk'igikorwa cyunganira ikindi cy'ubundi bwoko cy'ibanze bifatwa nk'aho ari igice cy'igikorwa cy'ibanze.

[30] Urukiko rurasanga Itegeko N° 37/2012 ryo ku wa 09/11/2012 ryavuzwe haruguru ridasobanura neza abafatwa nk'abakora ubwikorezi busonewe TVA abo aribo, akaba ari yo mpamvu mu rwego rwo gukemura impaka ziri hagati y'ababuranyi muri uru rubanza, rwifashishije ibisobanuro bitangwa n'abahanga mu mategeko, aho batandukanya ubwikorezi bw'umwuga bukorwa nk'igikorwa cy'ibanze n'ubwikorezi bukorwa nk'inyunganizi (*accessoire*) ku kindi gikorwa cy'ibanze (*activité principale*).

[31] Delebecque Philippe, Isabelle Bon-Garcin na Maurice Bernadet bavuga ko hari itandukaniro hagati y’ubwikorezi bukorwa n’umuntu ku giti cye n’ubwikorezi rusange. Babisobanura berekana ko ubwikorezi rusange bukorwa n’ababigize umwuga bakabihemberwa, naho ubwikorezi bukorwa n’abantu ku giti cyabo bukaba budakorwa n’ababigize umwuga kuko akenshi bukorwa hagamijwe kurangiza igikorwa cy'ibanze nk’ubucuruzi n’ibindi. (*Il y a une distinction entre transport pour compte propre (transports privés) et les transports pour compte d’autrui (transports publics). Les transporteurs publics sont des professionnels dont le métier consiste à exécuter des transports contre rémunération pour des clients qui sont des entreprises industrielles ou commerciales, des entreprises de services, des administrations ou encore des particuliers. Par opposition, le transport pour le compte propre n’est pas assuré par des professionnels du transport, mais par des entreprises industrielles ou commerciales qui disposent de leurs propres parcs de véhicules et de leurs conducteurs pour réaliser des transports liés à leur activité principale. Pour être qualifié de compte propre, un transport ne constitue qu’une activité accessoire de l’entreprise*)[7].

[32] Uwitwa Jean Pierre Kesteloot mu gitabo cye *Droit des Transports*, avuga ko kuva kera amasezerano y’ubwikorezi yakunze gufatwa nk’amasezerano agamije inyungu kuko yinjira mu mirimo y’ubucuruzi, ko ariko icy’ingenzi atari igihembo umwikorezi ahabwa kuko ashobora no gukorwa habayeho cyangwa hatabayeho ibyo kwishyurana, ko ikirebwa cyane ari uko bwakozwe n’umwikorezi wabigize umwuga (*le contrat de transport a longtemps été considéré comme étant un contrat à titre onéreux puisqu’il s’agit d’une variété de contrat d’entreprise… l’élément constitutif à retenir n’est donc plus la rémunération en tant que telle puisqu’un contrat de transport peut être conclu à titre onéreux ou à titre gratuit, mais bien le caractère professionnel du transporteur*).[8]

[33] Ku bijyanye n’ibikorwa byunganira ibindi bivugwa mu ngingo ya 9 y’Itegeko N° 37/2012 ryo ku wa 09/11/2012 ryavuzwe haruguru, Urukiko rurasanga Umushingamategeko atarabisobanuye ; akaba ariyo mpamvu rwifashishije ibisobanuro bitangwa n’abahanga mu mategeko kugira ngo ibivugwa muri iyo ngingo byumvikane neza. Uwitwa Anon avuga ko serivisi y’inyunganizi ishobora gusobanura serivisi igendana n’igicuruzwa ihabwa umuguzi mu rwego rwo kumufasha kugikoresha (*A Complementary Service may be defined as a service that comes with a product for support. They are the services that are offered in addition to any business's core service and assist the customer in using that service […])*

[34] Ku bijyanye n’ubwikorezi bukorwa nk’inyunganizi hagamijwe kurangiza ikindi gikorwa cy'ibanze, umuhanga mu mategeko Jean Pierre Kesteloot atanga urugero ku masezerano y’ubugure akavuga ko ashobora guteganya ko ugurishije ikintu nk’imashini imesa cyangwa televiziyo, akigeza ku wakiguze kandi ntibyitwe ko ari amasezerano y’ubwikorezi, kubera ko ubwikorezi bukozwe muri ubwo buryo, buba ari igikorwa gishingiye ku masezerano y’ibanze y’ubugure ndetse n’amategeko arebana n’ubwikorezi akaba adakoreshwa muri icyo gihe *(Un contrat de vente peut prévoir que le vendeur déplace la marchandise pour la livrer à l’acheteur, comme par exemple lors de la vente d’une machine à laver ou d’une télévision. Dans ce cas, l’objet principl du contrat est le transfert de la propriété. Le transport par le vendeur n’est qu’un accessoire du*

[7] Delebecque Philippe, Isabelle Bon-Garcin et Maurice Bernadet. *Droit des transports*. Dalloz, 2018, p. 29-32.
[8] Kesteloot, Jean Pierre et HOC, Arnaud, *Droit des transports*, 2020, Larcier, p.29-30.

contrat de vente. Les règles propres au contrat de transport ne s'appliquent donc pas dans les relations entre le vendeur et l'acheteur)[9].

[35] Ibisobanuro bimaze gutangwa bigaragaza ibintu by'ingenzi bikurikira :

- Ubwikorezi busonewe TVA ni ubukorwa n'abantu bakora umwuga w'ibanze wo gutwara ibintu (*professionnels du transport*) ;
- Ubwikorezi bukorwa mu rwego rwo gukwirakwiza ibicuruzwa n'iyo bwaba bukorwa n'uwabiherewe uruhushya ariko atari wo murimo w'ibanze, bufatwa nka serivisi yunganira (*accessoire*) icyo gikorwa cy'ibanze cyo gukwirakwiza ibicuruzwa. Iyo icyo gikorwa cy'ibanze kidasonewe TVA, n'ubwo bwikorezi ntibuyisonerwa.

[36] Ku birebana n'uru rubanza, Urukiko rurasanga n'ubwo SUGIRA Ltd ifite ibyangombwa biyemerera gukora serivisi y'ubwikorezi, amasezerano y'imikoranire hagati yayo na BRALIRWA agaragaza ko ikigamijwe ari ugukwirakwiza ibinyobwa bya BRALIRWA (*distribution*) ; ubwikorezi ikora muri urwo rwego akaba ari serivisi yunganira igikorwa cy'ibanze cyo gukwirakwiza ibinyobwa kidasonewe TVA, bityo n'ubwikorezi bukorwa na SUGIRA Ltd mu gihe cyo gukwirakwiza ibinyobwa bya BRALIRWA bukaba budasonewe TVA.

[37] Hashingiwe ku biteganywa mu ngingo ya 9 y'Itegeko N° 37/2012 ryo ku wa 09/11/2012 ryavuzwe haruguru, isomewe hamwe n'ingingo ya 6, agace ka 5°, ndetse n'iya 11, igika cya mbere, y'iryo Tegeko, ndetse no ku bisobanuro byatanzwe, Urukiko rurasanga SUGIRA Ltd itaraciwe umusoro ku nyongeragaciro (TVA) ku bikorwa by'ubucuruzi bisonewe; bityo ikirego cya RRA cyo gusubirishamo ku mpamvu z'akarengane urubanza RCOMAA 00057/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku itariki ya 25/03/2022 kikaba gifite ishingiro.

 Ku bijyanye n'indishyi zisabwa muri uru rubanza.

[38] Me Gatera Jean Clément na Me Twahirwa Jean Baptiste bavuga ko bitewe nuko RRA yashowe mu manza nta mpamvu, isaba kugenerwa indishyi z'ikurukiranarubanza zingana na 2.000.000 Frw n'igihembo cya Avoka kingana na 2.000.000 Frw ahwanye n'umwanya yamaze itegura uru rubanza n'ibindi byose yifashishije mu gutegura urubanza, ndetse n'igihembo cy'uyiburanira.

[39] Me Twiringiyemungu Joseph uhagarariye SUGIRA Ltd avuga ko indishyi zisabwa na RRA nta shingiro zikwiye guhabwa kuko ariyo yishoye mu manza, ko itakwitwaza amakosa yayo ngo iyasabire indishyi. Avuga ko ahubwo SUGIRA Ltd ariyo ikwiye guhabwa indishyi, ikaba isaba igihembo cya Avoka kingana na 3.000.000 Frw, 1.000.000 Frw y'ikurikiranarubanza hamwe na 2.000.000 Frw yo gushorwa mu manza.

UKO URUKIKO RUBIBONA

[40] Urukiko rurasanga SUGIRA Ltd ari yo itsindwa muri uru rubanza, bityo ikaba nta ndishyi ikwiye guhabwa, ahubwo zikaba zikwiye kugenerwa RRA kubera ko ariyo itsinze kandi ikaba hari ibyo yatakaje mu rwego rwo kuburana no gukurikirana uru rubanza.

[9] Kesteloot, Jean Pierre et HOC, Arnaud, *Droit des transports*, 2020, Larcier, p.31.

[41] Urukiko rurasanga RRA ikwiye kugenerwa amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka, ariko kubera ko ayo isaba akabije kuba menshi kandi itagaragaza ko ari yo yakoresheje, mu bushishozi bwarwo rukaba ruyigeneye 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw. Ku bijyanye n'indishyi zo gushorwa mu manza, Urukiko rurasanga nta shingiro zifite kuko SUGIRA Ltd ijya kurega yari ikurikiranye inyungu zayo.

III. ICYEMEZO CY'URUKIKO

[42] Rwemeje ko ikirego cyatanzwe na Rwanda Revenue Authority (RRA) isaba gusubirishamo ku mpamvu z'akarengane urubanza RCOMAA 00057/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku itariki ya 25/03/2022, gifite ishingiro ;

[43] Rwemeje ko imikirize y'urwo rubanza ihindutse mu ngingo zarwo zose ;

[44] Ruvuze ko umusoro ku nyongeragaciro (TVA) ungana na 246.042.539 Frw SUGIRA Ltd yaciwe na RRA ugumyeho ;

[45] Rutegetse SUGIRA Ltd guha RRA 800.000 Frw akubiyemo ay'igihembo cya Avoka n'ay'ikurikiranarubanza.