MONGOLIA CLEARING AGENCY LTD v. SONARWA GENERAL INSURANCE COMPANY LTD

[Rwanda URUKIKO RW’IKIRENGA – RS/INJUST/RCOM 00002/2023/SC (Cyanzayire, P.J., Kalihangabo na Hitiyaremye, J.) 22 Werurwe 2024]

Amategeko agenga imiburanishirize y’imanza z’ubucuruzi – Umusoro – Umusoro wa Gasutamu – Kumenyekanisha umusoro – Iyo ibicuruzwa bitageze aho byari byerekeje – Uwamenyekanishije umusoro afatwa nka nyir’ibicuruzwa akaryozwa imisoro n’amahoro nkaho ari we nyirabyo – East African Community Customs Management Act, 2004, Ingingo ya 147.

Incamake y’ikibazo: Mongolia Clearing Agency Ltd yafashe ubwishingizi muri SONARWA ku makosa yakora mu kazi kayo ko gukora imenyekanisha ry’ibicuruzwa muri gasutamo. Nyuma iza kumenyekanisha ibicuruzwa by’uwitwa Rutanga Nasar bivugwa ko bigiye i Burundi, ariko biza kuburirwa irengero mu Rwanda. RRA ishingiye ku masezerano y’ubwishingizi ya Mongolia Clearing Agency Ltd, yasabye SONARWA kwishyura umusoro ungana na 63.937.780 Frw irawishyura, nyuma SONARWA isaba Mongolia Clearing Agency Ltd kuyiyasubiza irabyanga bituma iregera Urukiko rw’Ubucuruzi isaba gusubizwa amafaranga y’imisoro yishyuriye iyo sosiyete ku bw’amakosa yayo, inyungu zayo zibariye kuri 18% n’indishyi zitandukanye.

Urukiko rw’Ubucuruzi rwaciye urubanza rwemeza ko Mongolia Clearing Agency Ltd igomba kwishyura SONARWA 69.495.569Frw akubiyemo 63.934.780Frw y’umusoro wishyuwe, 4.710.789Frw y’inyungu, 500.000Frw y’igihembo cya Avoka, 300.000Frw y’ikurikiranarubanza na 50.000Frw y’ingwate y’amagarama y’urubanza.

Mongolia Clearing Agency Ltd yajuririye urwo rubanza mu Rukiko Rukuru rw’Ubucuruzi ivugako ikirego kitagombaga kwakirwa kuko SONARWA yareze uwo itagombaga kurega, kuko yagombaga kurega umushoferi wari utwaye ibicuruzwa byaburiwe irengero n’umukozi wa RRA kandi ko yihutiye kwishyura RRA kandi haragombaga kugeragezwa inzira y’ubwumvikane.

Urukiko Rukuru rw’Ubucuruzi rwaciye urubanza rwemeza ko ubujurire bwa Mongolia Clearing Agency Ltd nta shingiro bufite, rwemeza ko nta gihindutse ku mikirize y’urubanza rwajuririwe.

Mongolia Clearing Agency Ltd yasabye ko urubanza RCOMA00578/2018/CHC/HCC rwaciwe n’Urukiko Rukuru rw’Ubucuruzi rwasubirwamo ku mpamvu z’akarengane irabyemererwa, urubanza ruburanishwa n’Urukiko rw’Ikirenga.

Mongolia Clearing Agency Ltd mu miburanire yayo yagaragaza ko impamvu z’akarengane kayo zishingiye kukuba Urukiko Rukuru rw’Ubucuruzi rweremeje ko igomba kwishyura umusoro nyamara itarigeze yemera ko yawunyereje nk’uko biteganywa n’ingingo ya 219 ya EAC Customs Management Act, 2004, iboneraho no gusaba indishyi zinyuranye.

SONARWA yiregura ivuga ko hari icyemezo cya RRA cyishyuza Mongolia Clearing Agency Ltd umusoro, ko inshingano zayo kwari ukwishyura ikimara guhabwa ibaruwa ya RRA yishyuza, ko kubera iyo mpamvu nta n’indishyi igomba gutanga.

Incamake y'icyemezo: Iyo hakozwe amakosa atuma ibicuruzwa bitagera aho byari byerekeje, uwamenyekanishije umusoro afatwa nka nyir'ibicuruzwa akaryozwa imisoro n'amahoro nkaho ari we nyirabyo. Mu gihe hari amasezerano y'ubwishingizi atubahirijwe, uwatanze ubwishingizi yishyura amafaranga yishingiye uhereye igihe aboneye urwandiko rumwishyuza, atabikora mu gihe kigenwe akishyuzwa ayo mafaranga nk'umwenda utarishyurwa.

Ikirego cyo gusubirishamo ku mpamvu z'akarengane nta shingiro gifite.

Amategeko yifashishijwe:
Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, Ingingo ya 64.
East African Community Customs Management Act, 2004, Ingingo ya 109 n'iya 147.

Imanza zifashishijwe:
Nta manza zifashishijwe

Urubanza

I. IMITERERE Y'URUBANZA.

[1] Mongolia Clearing Agency Ltd yafashe ubwishingizi muri SONARWA ku makosa yakora mu kazi kayo ko gukora imenyekanisha ry'ibicuruzwa muri gasutamo. Nyuma yaje kumenyekanisha ibicuruzwa by'uwitwa Rutanga Nasar bivugwa ko bigiye i Burundi, ariko biza kuburirwa irengero mu Rwanda. Ikigo cy'Igihugu gishinzwe imisoro n'amahoro, RRA muri uru rubanza, gishingiye ku masezerano y'ubwishingizi ya Mongolia Clearing Agency Ltd, cyasabye SONARWA kwishyura umusoro ungana na 63.937.780 Frw irawishyura, nyuma isaba Mongolia Clearing Agency Ltd kuyiyasubiza irabyanga bituma iregera Urukiko rw'Ubucuruzi isaba gusubizwa amafaranga y'imisoro yishyuriye iyo sosiyete ku bw'amakosa yayo, inyungu zayo zibariye kuri 18% n'indishyi zitandukanye.

[2] Mongolia Clearing Agency Ltd yatanze inzitizi ivuga ko Urukiko rw'Ubucuruzi rwaregewe nta bubasha rufite, ko hari kuregerwa Urukiko Rwisumbuye kubera ko ikiburanwa kidafite kamere y'ubucuruzi. Yasabye kandi ko Rutanga Nasar ndetse na Karuranga Marcel, umukozi wa RRA, bagobokeshwa mu rubanza kuko aribo bazi irengero ry'umuzigo. SONARWA yavuze ko Urukiko yaregeye rufite ububasha, kandi ko nta n'impamvu yo kugobokesha Rutanga Nasar na Karuranga Marcel kuko nta masezerano bafitanye.

[3] Ku itariki ya 21/12/2017, Urukiko rw'Ubucuruzi rwaciye urubanza rubanziriza urundi RCOM 01625/2017/TC/NYGE rwemeza ko inzitizi yatanzwe na Mongolia Clearing Agency Ltd nta shingiro ifite, ndetse ko nta n'impamvu zo kugobokesha Rutanga Nasar na Karuranga Marcel, rwemeza ko urubanza rukomeza mu mizi.

[4] Ku itariki ya 26/07/2018, Urukiko rwaciye urubanza mu mizi, rwemeza ko Mongolia Clearing Agency Ltd igomba kwishyura SONARWA 69.495.569 Frw akubiyemo 63.934.780 Frw y'umusoro wishyuwe, 4.710.789 Frw y'inyungu, 500.000 Frw y'igihembo cya Avoka, 300.000 Frw y'ikurikiranarubanza na 50.000 Frw y'ingwate y'amagarama y'urubanza.

[5] Mongolia Clearing Agency Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko SONARWA yareze uwo itagombaga kurega, ko yagombaga kurega umushoferi wari utwaye ibicuruzwa byaburiwe irengero n'umukozi wa RRA, bityo ko n'ikirego kitagombaga kwakirwa, ko kandi yihutiye kwishyura RRA, nyamara ingingo ya 220 ya *EAC Customs Management Act, 2004,* iteganya ko hagombaga kubanza kugeragezwa inzira y'ubwumvikane, ndetse ko Urukiko rwitiranyije amasezerano yakoranye na SONARWA n'ubwishingizi busanzwe *(caution),* bituma rwirengagiza *EAC Customs Management Act.*

[6] Ku itariki ya 17/01/2018, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rubanziriza urundi RCOMA 00578/2018/CHC/HCC rwemeza ko ubujurire bwatanzwe na Mongolia Clearing Agency Ltd ku nzitizi yo kutakira ikirego nta shingiro bufite, rutegeka ko urubanza rukomeza mu mizi.

[7] Ku itariki ya 11/06/2019, Urukiko rwaciye urubanza rwemeza ko ubujurire bwa Mongolia Clearing Agency Ltd nta shingiro bufite, rwemeza ko nta gihindutse ku mikirize y'urubanza rwajuririwe, rutegeka Mongolia Clearing Agency Ltd guha SONARWA 1.000.000Frw akubiyemo amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza.

[8] Mu gufata icyo cyemezo, Urukiko rwashingiye ku mpamvu y'uko amakosa yo kumenyekanisha umusoro Mongolia Clearing Agency Ltd yakoreye mu kazi ariyo yatumye RRA iyaryoza SONARWA yari yarayishingiye kugira ngo iyishyurire uwo musoro nk'uko bari barabyumvikanyeho mu masezerano yo ku itariki ya 30/12/2014, ndetse no kuba amasezerano y'ubwishingizi izo sosiyete zombi zagiranye atagengwa n'amategeko agenga za gasutamo ku buryo na SONARWA yari kubanza gusaba ubwumvikane, ko ahubwo inshingano za SONARWA zari gusa kubahiriza amasezerano nk'uko biteganywa n'ingingo ya 64 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano.

[9] Ku itariki ya 23/07/2019, Mongolia Clearing Agency Ltd yandikiye Perezida w'Urukiko rw'Ubujurire isaba ko urubanza RCOMA 00578/2018/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku itariki ya 11/06/2019, rwasubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujurire amaze gusuzuma ubwo busabe, yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rwasubirwamo, maze mu cyemezo 056/CJ/2023 cyo ku itariki ya 04/05/2023, yemeza ko rwongera kuburanishwa ruhabwa RS/INJUST/RCOM 00002/2023/SC.

[10] Mongolia Clearing Agency Ltd yasabye ko urubanza rwasubirwamo ku mpamvu z'akarengane ivuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko igomba kwishyura umusoro nyamara itarigeze yemera ko yawunyereje nk'uko biteganywa n'ingingo ya 219 ya EAC Customs Management Act, 2004, iboneraho no gusaba indishyi zinyuranye. SONARWA yiregura ivuga ko hari icyemezo cya RRA cyishyuza Mongolia Clearing Agency Ltd umusoro, ko inshingano zayo kwari ukwishyura ikimara guhabwa ibaruwa ya RRA yishyuza, ko kubera iyo mpamvu nta n'indishyi igomba gutanga.

[11] Urubanza rwaburanishijwe mu ruhame ku itariki ya 17/10/2023, Mongolia Clearing Agency Ltd ihagarariwe na Me Cyiza Clément, SONARWA ihagarariwe na Me Nkurunziza Jean Pierre afatanyije na Me Bimenyimana Eric, ababuranyi bajya impaka ku kibazo cyo kumenya niba Mongolia Clearing Agency Ltd itaragombaga kuryozwa umusoro w'ibicuruzwa bya Rutanga Nasar byaburiwe irengero no kumenya niba indishyi zisabwa mu rubanza zatangwa. Iburanisha rishojwe, ababuranyi bamenyeshejwe ko urubanza ruzasomwa ku itariki ya 24/11/2023, ariko hagati aho umwe mu bacamanza bari bagize inteko ahindurirwa imirimo biba ngombwa ko iburanisha ripfundurwa kugira ngo inteko ihinduke, rishyirwa ku itariki ya 13/02/2024.

[12] Kuri uwo munsi ababuranyi bitabye Urukiko, Mongolia Clearing Agency Ltd ihagarariwe na Me Cyiza Clément, SONARWA ihagarariwe na Me Bimenyimana Eric, ababuranyi bamenyeshwa ko Inteko yahindutse kandi ko umucamanza mushya yemera ibyakozwe mu iburanisha ryabanje, isomwa ry'urubanza rishyirwa ku itariki ya 22/03/2024.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO.

- **Kumenya niba Mongolia Clearing Agency Ltd itaragombaga kuryozwa umusoro w'ibicuruzwa bya Rutanga Nasar byaburiwe irengero.**

[13] Me Cyiza Clément uhagarariye Mongolia Clearing Agency Ltd avuga ko akarengane kari mu rubanza basabye ko rwasubirwamo, ari uko Urukiko Rukuru rw'Ubucuruzi rutubahirije ihame ku butabera buboneye buteganywa n'ingingo ya 29 y'Itegeko Nshinga, kubera ko rwemeje ko igomba kwishyura umusoro nyamara itarigeze yemera ko yawunyereje nk'uko biteganywa n'ingingo ya 219 ya *EAC Customs Management Act, 2004.* Asobanura ko inyandiko yujuje yitwa *statement of offence* idahamya ko yemeye ko yakoze icyaha cyo kunyereza umusoro ku bicuruzwa bya Rutanga Nasar, ko ahubwo irimo gukekeranya, hakaba haragombaga kuzuzwa *form* igaragaza ko yemera ko yanyereje umusoro. Avuga ko mu gihe Mongolia Clearing Agency Ltd itiyemereye icyaha, hagombaga kuregerwa Urukiko hashingiwe ku biteganywa n'ingingo ya 220 ya *EAC Customs Management Act, 2004,* akaba arirwo rwemeza ko yanyereje umusoro.

[14] Me Cyiza Clément asobanura kandi ko hasuzumwe ibikubiye mu ngingo ya 219 n'iya 220 za *EAC Customs Management Act*, izo ngingo zateganyije uburyo ibyaha byakorewe muri Gasutamo bihanwamo mu gihe uwakoze icyaha abyemera. Avuga ko ingingo ya 220 ivuga ko iyo uwakoze icyaha atacyemera, hakurikizwa inzira isanzwe yo gukurikirana icyaha. Ku bijyanye n'uru rubanza, avuga ko umukozi wa Gasutamo yakoze inyandikomvugo igaragaza amafaranga y'umusoro Mongolia Clearing Agency Ltd igomba gutanga kubera ibicuruzwa byari byaburiwe irengero, iyo nyandiko ikaba yaragombaga kwemezwa na Komiseri w'Imisoro.

[15] Me Cyiza Clément avuga ko umurongo watanzwe n'Urukiko rw'Ikirenga mu gika cya 13 cy'urubanza RCOMA 0047/10/CS rwaciwe n'Urukiko rw'Ikirenga ari uko, uretse igihe ukekwaho kunyereza umusoro yabyiyemereye yuzuza inyandiko yabugenewe iteganywa n'ingingo ya 219 *EAC Customs Management Act, 2004,* ibyaha bya Gasutamo bikurikiranwa n'inkiko zibifitiye ububasha hakurikijwe ibiteganywa n'ingingo ya 220 y'iryo Tegeko.

[16] Akomeza asobanura ko muri urwo rubanza, Urukiko rw'Ikirenga rwasanze umusoresha nta burenganzira afite bwo kwishyuza usora utemera icyaha, bivuze ko icyemezo cy'Urukiko Rukuru rw'Ubucuruzi kinyuranyije n'uwo murongo nyamara inkiko zigomba kubahiriza imirongo yashyizweho. Asoza avuga ko Mongolia Clearing Agency Ltd yamenyesheje SONARWA ko nta makosa yakoze ndetse ko nta n'icyaha yigeze yemera cyangwa ngo icyemezwe, bityo ko itagombaga kwishyura imisoro, kuba yarabirenzeho ikayishyura ikaba igomba kwirengera ingaruka zabyo ku giti cyayo.

[17] Me Bimenyimana Eric na Me Nkurunziza Jean Pierre bahagarariye SONARWA bavuga ko hari icyemezo cya RRA cyishyuza Mongolia Clearing Agency Ltd umusoro, ko inshingano za SONARWA kwari ukwishyura ikimara guhabwa ibaruwa ya RRA yishyuza. Basobanura ko ntawundi waryozwa

imisoro uretse uwo yaciwe, ko mu gihe Mongolia Clearing Agency Ltd ibona ko hari abatumye yishyuzwa amafaranga ku maherere, yazabikurikiranira kubera ko SONARWA nta masezerano ifitanye nabo.

[18] Me Bimenyimana Eric na Me Nkurunziza Jean Pierre bakomeje bavuga ko SONARWA itari kubura kwishyura kandi ku itariki ya 31/10/2016, Mongolia Clearing Agency Ltd yarayandikiye iyimenyesha ko iri gukora ibishoboka ngo abagize uruhare mu ikorwa ry'icyaha bamenyekane, ko amasezerano bafitanye azarangira ikibazo cyaracyemutse, ariko ko hagati aho nta bushobozi ifite bwo kwishyura umusoro yaciwe.

[19] Bakomeza basobanura ko Mongolia Clearing Agency Ltd itagaragaza mu masezerano yakoranye na SONARWA cyangwa mu mategeko icyari kuyibuza kwishyura umusoro mu gihe yamenyeshejwe ko igomba kwishyura ku bw'amakosa cyangwa icyaha cyakozwe n'uwo yishingiye, ko ubusanzwe, iyo wishyuzwa umusoro utemera, hari inzira *(procedures)* zikurikizwa, SONARWA akaba atariyo yagombaga kuzitangira, ko ahubwo ari Mongolia Clearing Agency Ltd yagombaga kuzikurikiza, RRA ikabisuzuma yasanga ari ukuri, uwo musoro ugakurwaho. Bavuga ko kugeza ubu Mongolia Clearing Agency Ltd itigeze yiyambaza iyo nzira ndetse ko itigeze inaregera inkiko ngo igaragaze ko yaciwe umusoro mu buryo bunyuranyije n'amategeko.

[20] Ku bivugwa na Mongolia Clearing Agency Ltd ko SONARWA itagombaga kwishyura umusoro n'ihazabu yaciwe na RRA kandi itaremeraga icyaha, abavoka bayihagarariye bavuga ko ntacyari kuyibuza kwishyura mu gihe amakosa ya Mongolia Clearing Agency Ltd yari yamaze kwemezwa n'urwego rubifitiye ububasha, kandi ibyo akaba aribyo yari yarishingiye.

UKO URUKIKO RUBIBONA

[21] Impande zombi muri uru rubanza, zemeranya ko ku itariki ya 19/02/2015, umukozi wa Mongolia Clearing Agency Ltd yamenyekanishije ibicuruzwa by'umucuruzi Rutanga Nasar byari byerekeje i Burundi, ariko imodoka yari ibitwaye ikaza kuburirwa irengero itarambuka umupaka ngo igere aho yajyaga, ibi bikaba byaratumye ku itariki ya 20/03/2015, Komiseri wa Gasutamo, ashingiye ku ngingo ya 147 ya *East African Community Customs Management Act, 2004*, aca Mongolia Clearing Agency Ltd umusoro wanyerejwe n'ibihano ungana na 63.934.780 Frw. Icyo ababuranyi batumvikanaho, ni uko SONARWA yishyuye uwo musoro mu mwanya wa Mongolia Clearing Agency Ltd, ikavuga ko yabikoze ishingiye ku masezerano y'ubwishingizi bagiranye, ikaba isaba kuyasubizwa hashingiwe kuri ayo masezerano, Mongolia Clearing Agency Ltd ariko yo ikavuga ko ntayo igomba kuyisubiza kuko itagombaga kuyishyura kubera ko itari yemeye icyaha yashinjwaga na RRA.

[22] Ingingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, iteganya ko amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya.

[23] Ingingo ya 147 ya *East African Community Customs Management Act, 2004*, iteganya ko iyo hakozwe amakosa atuma ibicuruzwa bitagera aho byari byerekeje, uwamenyekanishije umusoro afatwa nka nyir'ibicuruzwa akaryozwa imisoro n'amahoro nkaho ari we nyirabyo *(A duly authorised agent who performs any act on behalf of the owner of any goods shall, for the purposes of this Act, be deemed to be the owner of such goods, and shall, accordingly, be personally liable for the payment of any duties to*

which the goods are liable and for the performance of all acts in respect of the goods which the owner is required to perform under this Act: Provided that nothing herein contained shall relieve the owner of such goods from such liability).

[24] Ingingo ya 109, igika cya mbere, y'Itegeko rimaze kuvugwa, iteganya ko iyo ibiteganyijwe mu masezerano y'ubwishigizi bitubahirijwe, Komiseri ashobora gusaba mu nyandiko uwatanze ubwishingizi kwishyura amafaranga yishingiwe mu gihe kitarenze iminsi cumi n'ine guhera umunsi aboneyeho inyandiko imwishyuza, atabikora muri icyo gihe, Komiseri akaba yakwishyuza ayo mafaranga nk'umwenda utarishyurwa *(Where the conditions of any bond have not been complied with the Commissioner may by notice in writing require the person who has given security under it to pay to him or her the amount of the security within fourteen days of the notice; and on failure to comply with the notice, the Commissioner may enforce payment of the security as though it were duty due and unpaid).*

[25] Inyandiko zigize dosiye y'urubanza zigaragaza ko ku itariki ya 30/12/2014, Mongolia Clearing Agency Ltd yagiranye na SONARWA amasezerano y'ubwishingizi mu bya gasutamo *(Custom Bond Guarantee n° 13801)* yagombaga gutangira ku itariki ya 01/01/2015 akarangira ku ya 31/12/2015, bemeranya ibintu bikurikira :

i. Mongolia Clearing Agency Ltd yemeye ko ishinganishije kuri Komiseri wa gasutamo 100.000.000 Frw ku birebana n'ibicuruzwa binyura mu Rwanda bijya hanze, na 50.000.000 Frw ku bicuruzwa bigarukira mu gihugu, ayo mafaranga akazishyurwa mu gihe yaba itujuje inshingano zayo neza nk'umuntu ushinzwe kumenyekanisha ibicuruzwa *(Hereby acknowledge that we are bound to the commissioner of customs the sum of 150.000.000 of which 100.000.000 for transit operations and 50.000.000 for customs operations to be paid to the commissioner upon failure to discharge our obligations as customs agents).*

ii. Mongolia Clearing Agency Ltd yiyemeje kandi kuzarangiza neza uko bikwiye inshingano zayo mu buryo bunogeye Komiseri wa gasutamo. *(…Shall faithfully perform our duties as customs agents to the satisfaction of the commissioner of customs).*

iii. Mongolia Clearing Agency Ltd na SONARWA biyemeje kuzubahiriza amategeko yose agenga imisoro ku birebana n'ibicuruzwa binyura muri gasutamo kuva ku itariki ya 01/01/2015 kugeza ku ya 31/12/2015. *(We, the principal and the surety understand that the condition of this obligation is that I/we shall comply with all relevant provisions of Customs law in relation to goods under customs control for the period starting from 01/01/2015 to 31/12/2015).*

iv. SONARWA yiyemeje kwishyura ubuyobozi bwa gasutamo mu gihe kitarenze iminsi cumi n'itanu (15) yakiriye urwandiko ruyishyuza amafaranga yishingiwe. *(SONARWA undertakes to pay the amount guaranteed to Customs Administration within*

Fifteen days after reception of a letter from Customs requiring them to pay the amount guaranteed).

[26] Dosiye igaragaza kandi ko ku itariki ya 11/03/2005, Mongolia Clearing Agency Ltd yakorewe inyandikomvugo n'umukozi wa RRA iyica umusoro n'igihano bingana na 63.934.780 Frw kubera ko ibicuruzwa yamenyekanishije ku itariki ya 19/02/2005 bigomba kujya i Burundi byaburiwe irengero bitageze aho byagombaga kujya, iyo nyandiko n'Umuyobozi wa Mongolia Clearing Agency Ltd akaba yarayisinyeho. Ayo makosa ikaba yarayaryojwe hashingiwe ku ngingo ya 147 ya *East African Community Customs Management Act, 2004*.

[27] Kuba mu masezerano y'ubwishingizi yavuzwe haruguru Mongolia Clearing Agency Ltd yariyemeje kuzuza neza inshingano zayo nk'umuntu ushinzwe kumenyekanisha ibicuruzwa, itabikora ikishyura Komiseri wa gasutamo nk'uko bigaragara muri ayo masezerano; kuba kandi ku itariki ya 19/02/2015 yaramenyekanishije ibicuruzwa byagombaga kwerekeza i Burundi ariko bikaburirwa irengero mu nzira bitagezeyo, Urukiko rurasanga Mongolia Clearing Agency Ltd ariyo yagombaga kwirengera umusoro w'ibicuruzwa yamenyekanishije bikaburirwa irengero bitageze aho byagombaga kujya hashingiwe ku ngingo ya 147 ya *East African Community Customs Management Act, 2004*, yavuzwe haruguru.

[28] Urukiko rurasanga kandi kuba umusoro wagombaga gutangwa na Mongolia Clearing Agency Ltd, RRA yarawishyuje SONARWA, nta kosa yakoze kuko yashingiye ku masezerano y'ubwishingizi ayo masosiyete yombi yari yaragiranye no ku ngingo ya 109, igika cya mbere, ya *East African Community Customs Management Act, 2004*, bityo hakaba ntacyari kubuza SONARWA kwishyura umusoro n'ibihano byari byaciwe Mongolia Clearing Agency Ltd kubera ko mu masezerano yavuzwe haruguru yari yishingiye amakosa yayo.

[29] Ku bivugwa na Mongolia Clearing Agency Ltd ko SONARWA itari kwihutira kwishyura kandi itemera icyaha, ibyo ikabishingira ku ngingo ya 219[1] n'iya 220[2] ya East *African Community Customs Management Act, 2004,* Urukiko rurasanga ibyo nta shingiro bifite kubera ko izo ngingo zireba abasora, ibyo akaba aribyo bihura n'umurongo watanzwe n'Urukiko rw'Ikirenga mu

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1 [1] (1) The Commissioner may, where he or she is satisfied that any person has committed an offence under this Act in respect of which a fine is provided or in respect of which anything is liable to forfeiture, compound the offence and may order such person to pay a sum of money, not exceeding the amount of the fine to which the person would have been liable if he or she had been prosecuted and convicted for the offence, as the Commissioner may deem fit ; and the Commissioner may order anything liable to forfeiture in connection with the offence to be condemned.

2 The Commissioner shall not exercise his or her powers under subsection (1) unless the person admits in a prescribed form that he or she has committed the offence and requests the Commissioner to deal with such offence under this section.

[…]

[2] (1) Without prejudice to the powers of any other court of competent jurisdiction, a prosecution for an offence under this Act may be heard and determined before a subordinate court ; and where any such court hears and determines the prosecution it shall have jurisdiction to impose any fine or any sentence of imprisonment which may be imposed under this Act on a person convicted of the offence :

Provided that all proceedings of civil nature shall be filed and determined in accordance with the provisions of the relevant procedural legislation in the Partner State.

[…]

rubanza RCOMA 0047/10/CS Mongolia Clearing Agency Ltd iburanisha. Nk'uko n'Urukiko Rukuru rw'Ubucuruzi rwabibonye, SONARWA yo yari ifite inshingano zo gushyira mu bikorwa ibikubiye mu masezerano yari yaragiranye na Mongolia Clearing Agency Ltd kuko ariyo yayirebaga hashingiwe ku biteganywa n'ingingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 ryavuzwe haruguru, no ku ngingo ya 109, igika cya mbere, ya *East African Community Customs Management Act, 2004*.

[30] Hashingiwe ku ngingo z'amategeko yagaragajwe haruguru, cyane cyane iya 109, igika cya mbere, n'iya 147 za *East African Community Customs Management Act, 2004*, ndetse no ku bisobanuro byatanzwe, Urukiko rurasanga Mongolia Clearing Agency Ltd ari yo yagombaga kuryozwa umusoro w'ibicuruzwa yamenyekanishije bikaburirwa irengero, bityo kuba SONARWA yari yarishingiye amakosa yayo yarawishyuye ikaba nta kosa yakoze.

- **Kumenya niba indishyi zisabwa muri uru rubanza zatangwa.**

[31] Me Cyiza Clément avuga ko Mongolia Clearing Agency Ltd yasabye indishyi mbonezamusaruro kubera ko guhera ku itariki ya 20/02/2015, yahagarikiwe ibikorwa bitewe n'ibaruwa SONARWA yandikiye RRA iyisaba ko iyo sosiyete itazongera kwemererwa gukora, kuva icyo gihe kugeza ubu ikaba itarongera gukora bikaba byarayiteje igihombo harebwe ibyo yinjizaga buri kwezi. Irasaba ko SONARWA ariyo igomba kubiryozwa, maze Urukiko rukayitegeka gutanga 5.000.000 Frw buri kwezi y'indishyi mbonezamusaruro, zibarwa kuva igihe yahagarikiwe kugeza igihe urubanza ruzabera ndakuka nk'uko amategeko abiteganya. Irasaba kandi kugenerwa 2.000.000 Frw y'igihembo cya Avoka na 1.000.000 Frw y'ikurikiranarubanza kuko yashowe mu manza nta mpamvu.

[32] Me Bimenyimana Eric na Me Nkurunziza Jean Pierre bahagarariye SONARWA bavuga ko ku bijyanye n'ibaruwa yanditswe na SONARWA, Mongolia Clearing Agency Ltd idakwiriye kuyishingiraho isaba kwishyurwa indishyi kubera ko SONARWA atariyo itanga uburenganzira bwo gukora cyangwa kubuhagarika, kuba rero nta kosa yayikoreye bikaba nta n'impamvu yayisaba kuyishyura indishyi zavuzwe haruguru. Ivuga ko ahubwo ariyo igomba kugenerwa 1.000.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza.

UKO URUKIKO RUBIBONA

[33] Urukiko rurasanga indishyi Mongolia Clearing Agency Ltd isaba muri uru rubanza ntazo igomba guhabwa kubera ko ntacyo itsindiye.

[34] Ku birebana n'amafaranga y'igihembo cya Avoka asabwa na SONARWA, Urukiko rurasanga ikwiye kuyahabwa kubera ko ari yo itsinze urubanza kandi bikaba bigaragara ko yagombye gushaka Avoka wo kuyiburanira. Rurasanga 300.000 Frw y'ikurikiranarubanza isaba igomba kuyahabwa kubera ko ari mu rugero rukwiwe, ariko 1.000.000 Frw y'igihembo cya Avoka yo akabije kuba menshi, kubera iyo mpamvu, mu bushishozi bwarwo, Urukiko rukaba ruyigeneye 500.000 Frw, yose hamwe akaba 800.000 Frw.

III. ICYEMEZO CY'URUKIKO

[35] Rwemeje ko ikirego cyatanzwe na Mongolia Clearing Agency Ltd isaba gusubirishamo ku mpamvu z'akarengane urubanza RCOMA 00578/2019/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku itariki ya 11/06/2019, nta shingiro gifite ;

[36] Rwemeje ko nta gihindutse ku mikirize y'urwo rubanza ;

[37] Rutegetse Mongolia Clearing Agency Ltd guha SONARWA General Insurance Company Ltd 800.000 Frw akubiyemo ay'igihembo cya Avoka n'ay'ikurikiranarubanza.