

RWANDA / JUDGMENT

IKIGO CY'IMISORO N'AMAHORO (RRA) v. SDV TRANSAMI RWANDA

RCOMA 0156/12/CS

COURT

Supreme Court

DECIDED

22 April 2016

CASE / FILE NUMBER

RCOMA 0156/12/CS

Source: amategeko.gov.rw · Research copy typeset by Esheria. Not court-issued or certified.

IKIGO CY'IMISORO N'AMAHORO (RRA) v. SDV TRANSAMI RWANDA

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2016-04-22
- Case/document no.: RCOMA 0156/12/CS
- Collection: Supreme Court

Text

Page 1

IKIGO CY'IMISORO N'AMAHORO (RRA) v. SDV TRANSAMI RWANDA [Rwanda URUKIKO RW'IKIRENGA – RCOMA 0156/12/CS (Mukanyundo, P.J., Rugabirwa na Ngagi, J.) 22 Mata 2016]

Amategeko agenga gusobanura itegko – Indimi itegeko ryanditsemo zitavuga bimwe –Inyungu zanditse mu Kinyarwanda ni zo umushingamategeko yashaka kuvuga kuko ari rwo rurimi kuko ari rwo rurimi amategeko atorwamo – Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04 Kamena 2003 nk'uko ryavuguruwe kandi ryujwe kugeza ubu, ingingo ya 93. Amategeko agenga imisoro – Gufatira umusoro – Unaniwe gufatira umusoro ku nyungu ku nguzanyo awishyura ubwe – Itegeko n° 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro, ingingo ya 32, 33 na 51 n'Itegeko n° 25/2005 ryom kuwa 18/08/2005 rigena imitunganyirize y'isoresha, ingingo ya 53 na 48. Amategeko agenga imisoro – Ukudasubira inyuma kw'amategeko y'imisoro – Kwishyura umusoro bikorwa hashingiwe ku mategeko yariho igihe cy'igenzura kuko amategeko y'imisoro adasubira inyuma. Amategeko agenga imisoro – Ibihano – Utarafatiriye umusoro bivuze ko aba ataranawumenyekanishije bityo ntanawushyikirize Ubuyobozi bw'Imisoro n'Amahoro,

bityo aba agomba guhanwa – Itegeko n° 16/2005 ryo ku wa 18/08/2005, rigena imisoro itaziguye ku musaruro, ingingo ya 48 na 53 n'Itegeko n° 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'imisoro, ingingo ya 60. Indishyi – Amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka – Uwayasabye ntayimwa hashingiwe gusa ku kuba mu byo yaregeye yaratsindiyemo bimwe kuko muri rusange aba yatsinze urubanza. Amategeko agenga imisoro – Inyungu ku bikorwa by'ubucuruzi – Ubwicungure bw'ubutaka – Ubutaka buriho sima n'ubwo itariho ntibisoreshwa kimwe kuko ubwo iriho bwicungura, bityo rero umusoro wari waciwe ubwo bwicungure butitaweho ugomba kuvaho ukongera ukabarwa kuko mu ibarwa ry'inyungu ku bikorwa by'ubucuruzi, ubwicungure bw'umutungo buvanwa mu nyungu zisoreshwa – Itegeko n° 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro, ingingo ya 24. Indishyi – Nta gihembo cy'Avoka cyangwa amafaranga y'ikurikiranarubanza yatangwa kuko buri ruhande hari ibyo rwatsindiwe. Incamake y'ikibazo: Uru rubanza rukomoka ku musoro ku butaka bwaguzwe na SDV TRANSAMI muri 2008 ibuguze na RWANDEX. Ubwo butaka bugizwe n'amazu n'imbuga (terrain). Bwaguzwe 1.000.000. USD. Rukomoka kandi no ku wundi musoro ukomoka ku nyungu ku nguzanyo SDV TRANSAMI Rwanda yishyuraga STANBIC Bank Kenya. Ku wa 12/10/2011 SDV TRANSAMI Rwanda yashyikirijwe na RRA inyandiko isoza igenzura igaragza ko igomba kwishyura 134.169.199 Frw akubiyemo umusoro ku nyungu, ku nyongeragaciro, ku bihembo n'umusoro ufatirwa wa 15% mu myaka ya 2008 na 2009.

Page 2

SDV TRANSAMI Rwanda yajuririye uwo musoro kwa Komiseri Mukuru w'Imisoro ariko ntiwagabanywa ahubwo isubizwa ko ugomba kwishyurwa kandi hakanyongeraho inyungu z'ubukererwe kugeza igihe uzishyurirwa. Yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi ivuga ko expertise yahereweho asoreshwa yari irimo amakosa yatumye icibwa umusoro mwinshi. Urukiko rwavuze ko icyo kirego gifite ishingiro kuri bimwe rutegeka ko umusoro ufatirwa ungana na 13.284.299 Frw wo mu mwaka wa 2008 n'umusoro ufatirwa ungana na 9.938.198 Frw wo mu mwaka wa 2009, uhanagurwa, naho ku yindi misoro rutegeka ko hahamaho icyemezo cyafashwe na Komiseri Mukuru. Rwemeje kandi ko umusoro ku nyungu wo muri 2009 ungana na 109.248.480 Frw udahindutse, kandi ko n'ubwicungure bw'umwaka wa 2008 bwa 19.702.689 Frw n'ubwo mu mwaka wa 2009 bungana na 54.356.232 Frw butemewe, rutegeka RRA guha SDV TRANSAMI Rwanda 300.000 Frw y'indishyi. RRA yajuririye mu Rukiko rw'Ikirenga, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibyo amategeko ateganya ruvuga ko SDV TRANSAMI Rwanda itagombaga gufatira umusoro wa 15% wa 2009 n'undi ungana na 9.938.198 Frw wa 2009 kuko atari umukoresha wa STANBIC Bank Kenya. RRA ivuga kandi ko Urukiko rwayiciye indishyi zingana na 300.000 Frw kandi ikirego cya SDV TRANSAMI Rwanda cyari gifite ishingiro kuri bimwe bityo nka nyirabayaza ikaba itaragombaga guhabwa indishyi. SDV TRANSAMI Rwanda yasubuje ko iyo ngingo bavuga ko ibategeka gufatira umusoro bayisomye igice bityo ikaba itashingirwaho mu rubanza kuko SDV TRANSAMI Rwanda itari umukoresha wa STANBIC Bank Kenya. Yanavuze ko ibihano RRA yatanze byatanzwe mu buryo unyuranyije n'amategeko. Incamacye y'icyemezo: 1. Kuba ingingo ya 51(2) y'Itegeko No 16/2005 ryo kuwa 18/08/2005 rigena imisoro itaziguye ku musaruro itera urujijo mu myandikire aho mu rurimi rw'ikinyarwanda

rivuga “inyungu irihwa ku mafaranga yabikijwe naho mu cyongereza ikavuga “interests” gusa mu gihe mu gifaransa bavuga “les paiements d'intérêts sur les dépôts”, mu gihe Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4 Kamena 2003, ku byerekeye uburyo amategeko atorwamo iteganya ko itegeko ryose risuzumwa kandi rigatorwa mu Kinyarwanda cyangwa mu rurimi ryateguwemo hitawe kuri buri rurimi mu zikoreshwa mu butegetsi kandi ko iyo itegeko ritumvikanye kimwe mu ndimi zose uko ari eshatu, hitabwa ku rurimi rw'ikinyarwanda cyangwa ururimi ryateguwemo byumvikanisha ko ku byerekeye inyungu zifatirirwa umusoro ungana na 15%, ibyanditse mu Kinyarwanda bihura n'ibyanditse mu Gifaransa bityo ibyanditse mu Kinyarwanda ni byo umushingamategeko yashakaga kuvuga kuko ari rwo rurimi amategeko atorwamo. Bityo inyungu zigomba kumvikana muri iyo ngingo ni inyungu irihwa ku mafaranga yabikijwe zitandukanye n'amafaranga afatirwa ku nyungu zirihwa ku nguzanyo.

2. Kuba umushingamategeko yaribagiwe kuvuga mu ngingo 51 y'Itegeko n° 16/2005 ryo ku wa 18/08/2005, rigena imisoro itaziguye ku musaruro inyungu zikomoka ku nguzanyo si impamvu yatuma ugomba gufatira uwo musoro atawishyura mu gihe atabikoze kuko uwishyura inyungu ku nguzanyo agomba gufatira mafaranga 15%.
3. Mu kwishyura umusoro hagomba gushingirwa ku itegeko ryakoreshwaga igihe SDV TRANSAMI Rwanda yagenzurwaga igacibwa umusoro ungana na 13.284.299 Frw itafatiriye mu mwaka wa 2008 na 9.938.198 Frw nayo itafatiriye mu mwaka wa 2009 kuko amategeko arebana n'imisoro adasubira inyuma uretse mu gihe Umushingamategeko yabivuze mu buryo butaziguye.

Page 3

4. Kuba SDV TRANSAMI Rwanda itarafatiriye umusoro ugomba gufatirwa byumvikanisha ko itari no kumenyekanisha no kuwushyikiriza ubuyobzi bw'Imisoro bityo igomba gucibwa ibihano.
5. Ntiyasaba ko uwareze adahabwa indishyi kuko ibyo yaregetye byose atabobonye kuko kuba Urukiko rwarasanze kimwe muri byo aricyo kidafite ishingiro, bitari kurubuza kuyigenera amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, kuko muri rusange yatsinze urubanza.
6. Mu ibarwa ry'inyungu ku bikorwa by'ubucuruzi, ubwicungure bw'umutungo buvanwa mu nyungu zisoreshwa. Bityo rero kuba ubutaka buriho sima hari igihe kizagera bugasaza maze bikaba ngombwa ko isanwa cyangwa yongera kubakwa byumvikanisha ko umusoro ku nyungu wa 2009 ungana na 109.248.480 Frw, waciwe SDV TRANSAMI Rwanda ugomba kuvaho ukongera ukabarwa bundi bushya, hashingiwe ko igice kiriho sima cyicungura. Bigomba kandi gukorwa ababishinzwe bamaze kugenzura uburyo ibaruramari ryagiye ribara ubwicungure bwabwo.
7. Nta gihembo cy'Avoka cyangwa amafaranga y'ikurikiranarubanza byatwangwa muri uru rubanza kuko buri wese afite ibyo yatsindiwe. Ubujurire bwa RRA bifite ishingiro kuri bimwe. Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe. Uriubanza rujuririrwa

ruhindutse kuri bimwe. RRA itegetswe kongera kubara umusoro wa 2009 ujyanye n'ubutaka bwa SDV TRANSAMI Rwanda buriho beton hitawe ko bwicungura. Rutegetse SDV TRANSAMI Rwanda kwishyura umusoro itafatiriye ariko ukabarwa hakurikijwe amategeko yakurikizwaga icyo gihe. Ingwate y'amagarama ihwanye n'ibyakozwe mu rubanza. Amategeko yashingiweho: Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04 Kamena 2003 nk'uko ryavugururwe kandi kugeza ubu, ingingo ya 93 Itegeko n° 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro, ingingo ya 24, 32, 33 na 51 Itegeko n° 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha, ingingo ya 53 na 48 na 60. Ntamanza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rukomoka ku musoro w'ubutaka SDV TRANSAMI Rwanda yaguze na RWANDEX, bugizwe n'amazu n'imbuga (terrain) yanikwagaho ikawa, SDV TRANSAMI Rwanda ikaba yarahaguze mu mwaka wa 2008, ku giciro cya 1.000.000 USD, ahwanye na 550.000.000 Frw. Hari kandi n'undi musoro ukomoka ku nyungu ku nguzanyo SDV TRANSAMI Rwanda yishyuraga STANBIC Bank Kenya. Nyuma y'igihe itunze buriya butaka, ku wa 12/10/2011, SDV TRANSAMI Rwanda yashyikirijwe na RRA inyandiko isoza igenzura

Page 4

yakorewe ku musoro ku nyungu, ku nyongeragaciro, ku bihembo n'umusoro ufatirwa wa 15%, igiteranyo cyawo ari 134.169.199 Frw ku myaka ya 2008 na 2009. [2] SDV TRANSAMI Rwanda ntiyishimiye uwo musoro yaciwe itakambira Komiseri wa RRA, ayisubiza ayihakanira ko utagabanywa, ko igomba kuwishyura ndetse hakaziyongeraho n'inyungu z'ubukererwe zibarwa kugeza igihe umusoro uzishyurirwa. [3] SDV TRANSAMI Rwanda yaregeye Urukiko Rukuru rw'Ubucuruzi, ivuga ko «expertise» yashingiweho isoreshwa yarimo amakosa bituma icibwa umusoro mwinshi, urwo rukiko ruca urubanza n° RCOM 005/12/HCC, rwemeza ko ikirego cya SDV TRANSAMI Rwanda gifite ishingiro kuri bimwe, rutegeka ko umusoro ufatirwa ungana na 13.284.299 Frw wo mu mwaka wa 2008 n'umusoro ufatirwa ungana na 9.938.198 Frw wo mu mwaka wa 2009, uhanagurwa, naho ku yindi misoro rutegeka ko hahamaho icyemezo cyafashwe na Komiseri Mukuru, ko umusoro ku nyungu wo muri 2009 ungana na 109.248.480 Frw udahindutse, kandi ko n'ubwicungure bw'umwaka wa 2008 bwa 19.702.689 Frw n'ubwo mu mwaka wa 2009 bungana na 54.356.232 Frw butemewe, rutegeka RRA guha SDV TRANSAMI Rwanda 300.000 Frw y'indishyi. [4] RRA yajuririye mu Rukiko rw'Ikirenga, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko SDV TRANSAMI Rwanda itsinze kubijyanye n'umusoro utafatiriwe wa 15%, ungana na 13.284.299 Frw w'umwaka wa 2008 n'undi ungana na 9.938.198 Frw urebana n'umwaka wa 2009, ruvuga ko SDV TRANSAMI Rwanda itagombaga kuwufatira kuko atari umukoresha wa STANBIC Bank Kenya, rwirengagiza ingingo yaburanishije yerekana ko itegeko n° 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro rutegeka abishyura inyungu ku nguzanyo nabo kuwufatira, batabikora akaba aribo bishyura uwo musoro. RRA ivuga kandi ko Urukiko rwayiciye indishyi zingana na 300.000 Frw, kandi rwarasanze ikirego cya SDV TRANSAMI Rwanda hari ibyo kidafiteho ishingiro, bivuze ko itagombaga kugenerwa indishyi kuko ariyo yabaye nyirabayazana w'urubanza. [5] Urubanza rwaburanishijwe mu ruhame ku wa 15/03/2016, RRA ihagarariwe na Me MUGIRE Joseph, naho SDV TRANSAMI Rwanda ihagarariwe

na Me NSENGIYUMVA Abel.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO A. UBUJURIRE BWA RRA

1. Kumenya niba SDV TRANSAMI Rwanda yaragombaga gufatira umusoro wa 15% ku nyungu z'umwenda yishyuye STANBIC Bank Kenya [6] Me MUGIRE Joseph, uhagarariye RRA avuga ko Urukiko rwemeje ko SDV TRANSAMI Rwanda itagombaga gufatira umusoro wa 15% kuko itari umukoresha wa STANBIC Bank Kenya, kandi uwo musoro udafatirwa gusa n'abakoresha ku bakozi babo, ko ahubwo unafatirwa n'abishyura inyungu ku nguzanyo bahawe n'amabanki, ukishyurwa n'abantu ku giti cyabo batuye mu gihugu cyangwa ibigo bikorera imbere mu gihugu harimo n'ibitishyura imisoro. [7] Asobanura ko kuba SDV TRANSAMI Rwanda yagombaga gufatira umusoro ku nyungu yishyuye ku nguzanyo yahawe na STANBIC Bank Kenya ungana na 13.284.299 Frw mu mwaka

Page 5

wa 2008 na 9.938.198 Frw mu mwaka wa 2009, hashingiwe ku biteganywa n'ingingo ya 511 y'Itegeko n° 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku mu musaruro, yarangiza igakora ibiteganywa n'ingingo ya 532, igika cya mbere, y'itegeko rimaze kuvugwa iteganya ko umuntu wishyura umusoro agomba kuwumenyekanisha kandi akawushyikiriza Ubuyobozi bw'Imisoro n'Amahoro mu gihe cy'iminsi cumi n'itanu (15) ikurikira impera ya buri kwezi nk'uko biteganywa mu gika cya 2 cy'ingingo ya 483 y'Itegeko rimaze kuvugwa, kuba SDV TRANSAMI Rwanda itarabikoze ikaba ariyo igomba kuwishyura nk'uko biteganywa n'ingingo ya 53, igika cya mbere y'iri Tegeko. [8] Avuga ko SDV TRANSAMI Rwanda itarigeze ikora imenyekanishamunsi ariyo mpamvu yaciwe ihazabu idahinduka iteganywa n'ingingo ya 60 y'Itegeko n° 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha, ingana n'ibihumbi magana atanu (500.000 Frw) buri kwezi, ndetse anacibwa n'indi hazabu yo kudafatira umusoro ufatirwa, iteganywa n'ingingo ya 61 y'Itegeko rimaze kuvugwa, kandi ko uko kudafatira byatumye icyibwa 10% yo gukererwa kwishyura umusoro, hiyongereyeho n'ihazabu yo gutubya umusoro iteganywa n'ingingo ya 62, kandi ko muri icyo gihe ibihano byari bikiri 100%. Bivuze ko yaciwe umusoro w'ibanze (principal) wa buri kwezi n'ihazabu yo gutubya umusoro (sous estimation) ingana nawo. [9] Asobanura kandi ko kuvuga ko umusoro watubijwe bigomba kumvikana mu buryo bubiri: ni ukuvuga kutawishyura cyangwa se kwishyura mukeya. Abajijwe uko SDV TRANSAMI Rwanda yaba yarawutubije, asubiza ko yawutubije kubera ko udakora "déclaration" na rimwe aba atubije umusoro winjira mu Isanduku ya Leta, ariyo mpamvu nyuma yo kuwucibwa, yaciwe n'ibihano.

1 Ingingo ya 51, igika cya mbere, y'Itegeko n° 16/2005 ryo ku wa 18/08/2005, rigena imisoro itaziguye ku musaruro, ryakurikizwaga mu gihe imisoro iburanwa yacibwaga, iteganya ko : "Umusoro ufatirwa wa cumi na gatanu ku ijana (15%), uvanwa ku mafaranga yishyurwa akurikira atangwa n'abantu ku giti cyabo batuye mu Gihugu cyangwa ibigo bikorera imbere mu Gihugu harimo n'ibitishyura imisoro : 1° inyungu ku migabane, uretse igengwa n'ingingo ya 45 y'iri Tegeko ; 2° inyungu irihwa ku mafaranga yabikijwe ; 3° ibihembo by'ubuhanzi ; 4° amafaranga yishyurwa kuri za serivisi harimo n'amafaranga ya serivisi z'imicungire n'iza tekini ; 5° amafaranga y'akazi yishyurwa umunyabugenzi, umuririmbyi, cyangwa umukinnyi nta

gutandukanya niba yishyuwe ako kanya cyangwa anyujijwe ku kigo kidakorera mu Rwanda ; 6° imikino ya tombola ndetse n'indi mikino y'amafaranga".

2 Ingingo ya 53, igika cya mbere, y'Itegeko n° 16/2005 ryo ku wa 18/08/2005 iteganya ko : « Umuntu wishyuza imisoro ifatirwa wanze kuwufatira hakurikijwe iri tegeko asabwa kwishyura ubwe, Ubuyobozi bw'Imisoro, amafaranga y'umusoro nk'uko biteganywa mu gika cya 2 cy'ingingo ya 48 y'iri tegeko, hiyongereyemo ibihano n'inyungu z'ubukererwe. [...] ».

3 Ingingo ya 48 y'Itegeko n° 16/2005 ryavuzwe haruguru, irebana n'umusoro ufatirwa ku mushahara nk'uko umutwe w'iyi ngingo ubigaragaza, iteganya ko : "Umusoro ufatirwa ku mushahara : « Abantu bakurikira bagomba kwishyura umusoro ufatirwa ku mushahara : 1° umuntu ku giti cye cyangwa ikigo gihemba abakozi bacyo, amafaranga cyangwa ibintu ; 2° ikigo cyishyura pansiyu, hatarimo pansiyu zishyurwa hakurikijwe uburyo bw'ubwiteganyirize butegakwira na Leta. Umuntu uvugwa mu gika cya mbere cy'iyi ngingo wishyura umusaruro uvugwa mu ngingo ya 13 y'iri Tegeko, niwe ufatira umusoro ku mushahara kandi akawishyura ku Buyobozi bw'Imisoro. Iyo atabikoze, agomba kuwuriha hongereyeho amahazabu n'ibihano bijyanye nawo. Umusaruro utishyurirwa umusoro ntufatirwa. Abakoresha bishyura umusoro ufatirwa hakurikijwe igika cya mbere cy'iyi ngingo bagomba, mu gihe cy'iminsi cumi n'itanu (15) ikurikira impera ya buri kwezi. 1° gukora imenyeshamusoro mu buryo bwashobanuwe n'Umuyobozi Mukuru w'Ikigo cy'Imisoro n'Amahoro, koherereza Ubuyobozi bw'Imisoro umusoro ufatirwa ; 2° koherereza umukozi inyandiko igaragaza amazina, umubare n'ubwoko bw'umusaruro hamwe n'umubare w'umusoro ufatirwa wishyuwe (...).

Page 6

[10] Yabajijwe icyo avugaga ku ngingo ya 53 y'Itegeko n° 16/2005 ryo ku wa 18/08/2005 irebana n'ibivugwa n'ingingo ya 48 yaryo irebana n'umusoro umukoresha afatira ku mushahara w'umukozi, asubiza ko ibyo bitavugaga ko ibiteganywa n'ingingo ya 51 bivuyeho, kandi ariyo « base d'imposition », ko ahubwo ingingo ya 48 irebana n'imitunganyirize (procédure) ihuriweho n'ibivugwa mu ngingo ya 48 n'ya 51, ko kandi ingingo ya 51 isobanura neza ubwoko bw'umusoro wishyurwa, ko rero mu ngingo ya 48 Umushingamategeko icyo yari agamije ari ukwerekana uburyo umusoro wishyurwa. Yongeraho ko ingingo ya 53 yo iteganya ibihano ariko ikavugaga ko mu kwishyura uwo musoro hakazakurikizwa ibiteganywa n'ingingo ya 48, ko rero aha ariho Urukiko rwibeshye ruvugaga ko SDV TRANSAMI Rwanda itagombaga gufatira uriya musoro kubera ko atari umukoresha wa STANBIC Bank Kenya aho kumva ko yagombaga gufatira uriya musoro ku mpamvu gusa yuko yayishyuraga inyungu zikomoka ku nguzanyo yari yayihaye nk'uko biteganyijwe mu ngingo ya 51 y'Itegeko rimaze kuvugwa haruguru. [11] Naho ku byerekeye igihano cya 500.000 Frw giteganywa n'Itegeko ryashyizweho nyuma, avugaga ko mu mwaka wa 2008, ingingo ya 60 y'Itegeko n° 25/2005 ryo ku wa 04/12/2005 ryavuzwe haruguru, yahanaga umuntu utamenyekanishije umusoro, ariko ko Urukiko rwazabisuzuma rureba niba SDV TRANSAMI Rwanda itagomba guhanirwa ko itawumenyekanishije. Abajijwe niba SDV TRANSAMI Rwanda yari kumenyekanisha ko itafatiriye cyangwa se niba yari kumenyekanisha icyo itafatiriye, asubiza ko ingingo ya 62 iha

umusoreshwa inshingano zo kumenyekanisha, niba atarafatiriye nabwo yari kumenyekanisha ko atabikoze. Avuga kandi ko SDV TRANSAMI Rwanda yakoze icyaha cyo gutubya umusoro kuko kuba itarawumenyekanishije ntinawufatire byatumye umubare w'imisoro yagombaga kwinjira mu Isanduku ya Leta utuba, bityo ikaba igomba kubihanirwa. [12] Me NSENGIYUMVA Abel uburanira SDV TRANSAMI Rwanda, avuga ko uburanira RRA yasomye ingingo ya 53 y'Itegeko n° 16/2005 ryo ku wa 18/08/2005 igice, kuko iyi ngingo ivuga ko hakurikizwa ibivugwa mu ngingo ya 48, igika cya 2, irebana no gufatira umusoro ku mushahara gusa, bityo ikaba itashingirwaho muri uru rubanza, kuko SDV TRANSAMI Rwanda itari umukoresha wa STANBIC Bank Kenya. Avuga kandi ko ihazabu idahinduka ingana n'ibihumbi magana atanu (500.000 Frw) SDV TRANSAMI Rwanda yaciwe, idakwiye kuko Itegeko riyiteganyaga ryagiyeho mu mwaka wa 2012, mu gihe umusoro uburanwa ari uwo mu mwaka wa 2008 n'uwo mu mwaka wa 2009. [13] Akomeza avuga ko ibihano RRA yatanze ishingiyeye ku ngingo ya 604, iya 615 n'ya 626 z'Itegeko n° 25/2005 ryo ku wa 04/12/2005 ryavuzwe haruguru, byakozwe mu buryo bumyuranyije n'amategeko kuko umuntu atahanirwa kuba atarafatiriye umusoro ngo yongere ahanirwe kuba atarawumenyekanishije, kuko niba atarawufatiriye bidashoboka ko

4Ingingo ya 60 iteganya ko: " Umusoreshwa cyangwa undi muntu wese acibwa ihazabu iyo ananiwe: 1° gutangira igihe imenyeshaga ry'umusoro, 2° gutangira igihe imenyeshaga ry'umusoro ufatirwa, 3° gufatira umusoro ufatirwa (...).

5 Ingingo ya 61 iteganya ko : "Iyo umusoro wagaragajwe mu imenyeshaga ry'umusoro cyangwa umusoro uri mu nyandiko igena umusoro rikosowe n'Ubuyobozi bw'Imisoro utishyurwe mu gihe giteganyijwe, umusoreshwa acibwa ihazabu ingana na 10% by'umusoro agomba kwishyura" [...].

6 Ingingo ya 62 yo ivuga ko : "Iyo ibaruramari cyangwa iperereza rigaragaje ko umusoro ugaragara mu imenyeshaga ari muto ku musoro wagombye kugaragazwa, umusoreshwa acibwa amahazabu akurikira [...]."

Page 7

awumenyekanisha, byongeye kandi ibihano byo gutubya umusoro bikaba bidacibwa umuntu utarakoze imenyekanisha, kimwe n'ihazabu ya « sous estimation », kuko utatubya umusoro utafatiriye, ko ahubwo SDV TRANSAMI Rwanda yagombye gucibwa « principal » na « intérêts de retard » gusa. UKO URUKIKO RUBIBONA [14] Ingingo ya 51, igika cya mbere, y'Itegeko n° 16/2005 ryo ku wa 18/08/2005, rigena imisoro itaziguye ku musaruro, ryakurikizwaga mu gihe imisoro iburanwa yacibwaga, iteganya ko : "Umusoro ufatirwa wa cumi na gatanu ku ijana (15%), uvanwa ku mafaranga yishyurwa akurikira atangwa n'abantu ku giti cyabo batuye mu Gihugu cyangwa ibigo bikorera imbere mu Gihugu harimo n'ibitishyura imisoro : 1° inyungu ku migabane, uretse igengwa n'ingingo ya 45 y'iri tegeko ; 2° inyungu irihwa ku mafaranga yabikijwe ; 3° ibihembo by'ubuhanzi ; 4° amafaranga yishyurwa kuri za serivisi harimo n'amafaranga ya serivisi z'imicungire n'iza tekini ; 5° amafaranga y'akazi yishyurwa umunyabugeni, umuririmbyi, cyangwa umukinnyi nta gutandukanya niba yishyurwe ako kanya cyangwa anyujijwe ku kigo kidakorera mu Rwanda ; 6° imikino ya tombola ndetse n'indi mikino y'amafaranga". [15] Urukiko

rurasanga imyandikire y'ingingo ya 51, agace ka kabiri (2°) y'Itegeko n° 16/2005 ryo ku wa 18/08/2005 ryavuzwe haruguru, itera urujijo ku bakoresha iri tegeko kuko yumvikana mu buryo butandukanye bitewe n'uko mu rurimi rw'Ikinyarwanda handitse ngo "inyungu irihwa ku mafaranga yabikijwe" mu rurimi rw'Icyongereza handitse ngo "interests" gusa, naho mu rurimi rw'Igifaransa handitse ngo "les paiements d'intérêts sur les dépôts", hakaba hakwibazwa ururimi rwakoresha kugira ngo humvikane ibyo Umushingamategeko yashatse kuvuga. [16] Ingingo ya 93 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04 Kamena 2003 nk'uko ryavugururwe kandi ryakoreshwaga kugeza icyo igihe SDV TRANSAMI Rwanda yakorerwaga igenzura ikanasoresha umusoro wa 2008 na 2009 uburanwa muri uru rubanza, iteganya ku byerekeranye n'uburyo amategeko atorwamo, ko "Itegeko ryose risuzumwa kandi rigatorwa mu Kinyarwanda cyangwa mu rurimi ryateguwemo hitawe kuri buri rurimi mu zikoreshwa mu butegetsi. Iyo itegeko ritumvikanye kimwe, mu ndimi uko ari eshatu, hitabwa ku rurimi rw'Ikinyarwanda cyangwa ku rurimi itegeko ryateguwemo". [17] Hashingiwe ku bimaze kuvugwa mu ngingo ya 93 y'Itegeko Nshinga, Urukiko rurasanga ku byerekeranye n'inyungu zifatirirwa umusoro ungana na 15%, ibyanditswe mu Kinyarwanda bihura n'ibyanditswe mu Gifaransa, kuba rero amategeko atorwa mu Kinyarwanda, byumvikana ko ibyanditswe muri urwo rurimi aribyo bigomba kwemezwa ko aribyo Umushingamategeko yashatse kuvuga, bityo inyungu zigomba kumvikana mu ngingo ya 51, agace ka 2°, y'Itegeko n° 16/2005 ryo ku wa 18/08/2005 ryavuzwe haruguru, akaba ari "inyungu irihwa ku mafaranga yabikijwe", izi nyungu zikaba zitandukanye n'amafaranga afatirwa ku nyungu zirihwa ku nguzanyo ari nazo ziburanwa muri uru rubanza. [18] Ingingo ya 33 y'Itegeko n° 16/2005 ryo ku wa 18/08/2005 ryavuzwe haruguru iteganya ko umusaruro ukomoka ku nyungu, nk'uko bivugwa mu ngingo ya 32, ucibwa umusoro ucishirije wa 15%. Iyo iyishyurwa ry'inyungu ryavanyweho umusoro ufatirwa nk'uko biteganwa mu ngingo ya 51 y'iri Tegeko, umusoresha ntiyishyura umusoro ku musaruro uvugwa mu ngingo ya 32 y'iri Tegeko.

Page 8

[19] Iyi ngingo ya 32 imaze kuvugwa mu gika kibanziriza iki, iteganya kandi ko "umusaruro" ukomoka ku nyungu ukubiyemo inyungu zikomoka ku nguzanyo, ku mafaranga abitse, ku ngwate, ku mafaranga ari kuri konti zisanzwe.....". Urukiko rurasanga nk'uko byavuzwe mu ngingo ya 51 y'Itegeko ryavuzwe haruguru, Umushingamategeko yaribagiwe gusubiramo ibikubiye mu musaruro ukomoka ku nyungu nk'uko yari yabivuze mu ngingo ya 33, kuko yanditse gusa inyungu zikomoka ku mafaranga yabikijwe, bikaba bigaragara ko yibagiwe inyungu zikomoka ku nguzanyo, ku ngwate no ku mafaranga ari kuri konti zisanzwe nyamara mu kwandika ingingo ya 33 yari yayoboye ku ngingo ya 51. [20] Urukiko rurasanga ariko, kuba Umushingamategeko yaribagiwe kuvuga ibijyanye n'inyungu zikomoka ku nguzanyo mu ngingo ya 51, atari impamvu yatuma ugomba gufatira uwo musoro atawishyura mu gihe atabikoze, kuko ingingo ya 33 imaze kuvugwa haruguru, ndetse n'iziyibanziriza zigaragaza neza ko uwishyura inyungu ku nguzanyo agomba gufatira ariya mafaranga 15%. Kuba rero ingingo ya 53 y'Itegeko n° 25/2005 rigena imitunganyirize y'isoresha iyobora ku ngingo ya 48, igika cya kabiri, ntaho bihuriye na "fond" y'umusoro,

ahubwo Umushingamategeko yashatse kuvuga ko abarebwa no gufatira umusoro ku isoko, baba abakoresha cyangwa abishyura inyungu zikomoka ku nguzanyo, n'abandi yavuze, mu gufatira bakurikiza ibiteganywa mu ngingo ya 48, igika cya kabiri. [21] Urukiko rurasanga SDV TRANSAMI Rwanda igomba kwishyura umusoro yishyuzwa hashingiwe ku ngingo ya 53 imaze kuvugwa haruguru iteganya ko: "Umuntu wishyura imisoro ifatirwa wanze kuwufatira hakurikijwe iri tegeko asabwa kwishyura ubwe, Ubuyobozi bw'Imisoro, hiyongereyemo ibihano n'inyungu z'ubukererwe. Iyishyura ry'umusoro rivugwa muri iyi ngingo rifatwa nk'indi misoro yose yishyurwa ku birebana n'ingingo iha abasoreshwa uburenganzira bwo kwemera amafaranga y'umusoro baciwe hamwe no gusubizwa umusoro w'ikirenga wafatirwe bishyuye". [22] Ku birebana n'ingano y'umusoro ugomba kwishyurwa, Urukiko rurasanga hagomba gukurikizwa itegeko ryakurikizwaga igihe SDV TRANSAMI Rwanda yagenzurwaga igacibwa umusoro ungana na 13.284.299 Frw itafatiriye mu mwaka wa 2008 na 9.938.198 Frw nayo itafatiriye mu mwaka wa 2009, kuko amategeko arebana n'imisoro adasubira inyuma (non rétroactivité de la loi fiscale) uretse mu gihe Umushingamategeko yabivuze mu buryo butaziguye. [23] Urukiko rurasanga kuba SDV TRANSAMI Rwanda itarafatiriye umusoro ugomba gufatirwa, byumvikana ko itari no kuwumenyekanisha ndetse no kuwushyikiriza Ubuyobozi bw'Imisoro n'Amahoro nk'uko biteganywa mu ngingo za 48 na 53 z' y'Itegeko n° 16/2005 ryo ku wa 18/08/2005 ryavuzwe haruguru, bityo ikaba igomba gucibwa ibihano biteganywa mu ngingo ya 60 y'Itegeko n° 25/2005 ryo ku wa 04/12/2005 ryakurikizwaga igihe yagombaga kubikorera.

2. Kumenya niba RRA itari gucibwa indishyi kuko nta ruhande rwatsinze urundi [24] Me MUGIRE Joseph uhagarariye RRA, avuga ko Urukiko rwaciye RRA indishyi zingana na 300.000 Frw, kandi rwarasanze ikirego cya SDV TRANSAMI Rwanda hari ibyo kidafiteho ishingiro, ko kuba ibyo yaregeye byose itarabibonye, itagombaga kugenerwa indishyi kuko nayo yabaye nyirabayazana w'urubanza. [25] Me NSENGIYUMVA Abel uhagarariye SDV TRANSAMI Rwanda, avuga ko iyi mpamvu nta shingiro ifite kuko iyo RRA yubahiriza ibiteganywa n'amategeko, SDV TRANSAMI

Page 9

Rwanda itari kujya mu rukiko ngo yitabaze avoka, bityo amafaranga RRA yaciwe akaba ajyanye n'ingingo SDV TRANSAMI Rwanda yatsindiye, ari nayo mpamvu yahawe amafaranga make. UKO URUKIKO RUBIBONA [26] Urukiko rurasanga mu rubanza n° RCOM 0005/12/HCC, rwajuririwe, SDV TRANSAMI Rwanda ariyo yareze, isaba kuanirwaho umusoro yari yaciwe, Urukiko rusuzumye ikirego cyayo rusanga gifite ishingiro, usibye ingingo imwe irebana no gusaba iyemerwa ry'ubwicungire bwo mu mwaka wa 2008 n'uwa 2009, maze rutegeka ko yahabwa indishyi z'ikurikiranarubanza n'igihembo cya Avoka kubera ko yiyambaje Inkiko ibitewe n'umusoro Komiseri Mukuru yari yanze kuanaho, none ukaba uvanweho, ariko kubera ko izo yasabaga nta bimenyetso yagaragaje izishingiraho, izigenerwa mu bushishozi bw'Urukiko. [27] Urukiko rurasanga imvugo y'uburanira RRA irebana n'uko SDV TRANSAMI Rwanda itagombaga kugenerwa indishyi kandi ibyo yaregeye byose itarabibonye bitewe n'uko ariyo yabaye nyirabayazana w'urubanza nta shingiro yahabwa, kuko kuba mu birego bya SDV TRANSAMI

Rwanda byasuzumwe, Urukiko rwarasanze kimwe muri byo aricyo kidafite ishingiro, bitari kurubuza kuyigenera amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, kuko muri rusange yatsinze urubanza. B. UBUJURIRE BWURIRIYE KU BUNDI BWA SDV TRANSAMI RWANDA [28] Me NSENGIYUMVA Abel, uhagarariye SDV TRANSAMI Rwanda, avuga ko ubujurire bwuririye ku bundi batanze burebana no gusaba gukurirwaho umusoro ku nyungu wa 2009 ungana na 109.248.480 Frw, kubera ko uwo musoro wabazwe hatitawe kuri "provision pour amortissement", ukaba udakurikije amategeko, kuko igihombo cyo mu mwaka wa 2008 cyarimuriwe mu mwaka wa 2009, bituma umusoro wishyuzwa mu mwaka wa 2009 uba mwinshi. [29] Asobanura ko ikibazo cyabo kirebana no kumenya niba imbuga iburanwa ari "terrain amortissable", kuko "rapport d'expertise" ivuga agaciro ka "cour pavée en béton" yanikwaho ikawa, ko atari ubutaka busanzwe. Abajijwe niba "ubutaka bwubatsheho cyangwa ubutubatsheho ari kimwe, asubiza ko muri "comptabilité" ari ibintu bibiri bitandukanye, kuko ubutaka bwubatsheho bwicungura (amortissable), ikaba itandukanye n'ubutaka bubereye aho kuko bwo budasaza, bukaba butanicungura, bivuze ko igipande kiriho amazu na «cours bétonnée», bitafatwa nk'ubutaka bubereye aho, kuko busaza, bukongera kubakwa cyangwa bugasanwa. SDV TRANSAMI Rwanda mu bujurire bwayo kandi isaba kwishyurwa igihembo cya Avoka kingana na 1.000.000 Frw. [30] Me MUGIRE Joseph, uhagarariye RRA, avuga ko SDV TRANSAMI Rwanda igenda yivugurura kuri iki kibazo, kuko ku rwego rwa mbere SDV TRANSAMI Rwanda yavugaga ko habayeho kwibeshya mu kubara agaciro k'ubutaka, kuko babubariye ku giciro kitari cyo kuri «prix unitaire», nk'uko «expertise» ibigaragaza ku rupapuro rwa 5. Ko kuba ubwo butaka ari « terrain pavé en béton » bidakuraho ko ari ubutaka, kuko ubutaka ari ubutaka, kandi ko ibyo bavuga bongeyeho batabigaragariza agaciro.

Page 10

[31] Ku birebana n'ubujurire bwuririye ku bundi bwatanzwe na SDV TRANSAMI Rwanda, busaba indishyi, Me MUGIRE Joseph avuga ko SDV TRANSAMI Rwanda itazikwiye kuko ariyo yishoye mu manza zidafite ishingiro kuko nta mategeko RRA yishe iyica umusoro. Ahubwo ko basaba SDV TRANSAMI Rwanda indishyi zingana na 1.500.000 Frw kuko yabatesheje igihe ibashora mu manza z'amaherere. UKO URUKIKO RUBIBONA [32] Ingingo ya 24 y'Itegeko n° 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro, iteganya ko : "Mu ibarwa ry'inyungu ku bikorwa by'ubucuruzi, ubwicungure bw'umutungo buvanwa mu nyungu zisoreshwa. Ubutaka, ubukorikori, ibintu bya kera, ibintu bikozwe mu mabuye y'agaciro hamwe n'undi mutungo udasaza cyangwa udata agaciro ntibicungurwa. Ikiguzi cyo kubona ikintu cyangwa cyo kubaka, hamwe n'ikiguzi cyo kunoza, cyo gusana, cyo kongera kubaka amazu, (...) icungurwa buri mwaka, buri cyose ukwacyo hashingiwe ku gipimo cy'ubwicungure cy'icumi ku ijana cy'agaciro byaguzweho. [33] Urukiko rurasanga impande zombi ziburana zemeranya ko imbuga iburanwa iriho sima ya "béton" (cour pavée en béton), icyo batumvikanaho akaba ari uko RRA ivuga ko ubutaka bwose ari kimwe bwaba buriho « béton » cyangwa itariho, ko byose ari ubutaka, ko nta tandukaniro riba hagati yabwo mu rwego rw'imisoro, ko ubutaka bwose buticungura. Naho SDV TRANSAMI Rwanda yo ikavuga ko ubutaka bubereye aho butafatwa nk'ubutaka buriho sima y'igikamba (cour pavée en

béton”, kuko iyo "béton" isaza igasanwa cyangwa ikongera kubakwa bundi bushya, ko rero igenda itakaza agaciro uko igihe gishira ikindi kikaza, bityo ubu butaka bwubutse (cour pavée en béton) bugomba kubarirwa ubwicungure mu gihe cyo kubusoresha. [34] Nk’uko bisobanuye mu ngingo ya 24 y’Itegeko n° 16/2005 ryo ku wa 18/08/2005 ryavuzwe haruguru, Urukiko rurasanga ubutaka butagize icyo bukorwaho buticungura koko, ariko ko iyi ngingo inavuga mu yindi mirongo yayo ko ikiguzi cyo gusana, cyo kongera kubaka bicungurwa buri mwaka. Ku birebana n’uru rubanza, Urukiko rurasanga ubutaka bw’imbuga iriho sima ya "béton" SDV TRANSAMI Rwanda yaguze na RWANDEX bugomba kwemererwa ubwicungure kuko hakurikijwe imiterere yabwo, bizagera igihe iriya « béton » igasaza maze bikaba ngombwa ko isanwa cyangwa yongera kubakwa, bityo umusoro ku nyungu wa 2009 ungana na 109.248.480 Frw, waciwe SDV TRANSAMI Rwanda ukaba ugomba kuvaho ukongera ukabarwa bundi bushya, hashingiwe ko igice kiriho « béton » cyicungura, ibi byose kandi bigakorwa ababishinzwe bamaze kugenzura uburyo ibaruramari ryagiye ribara ubwicungure bwabwo. [35] Ku birebana n’igiciro cyashingirwaho mu kubara agaciro ku butaka kuri metero kare imwe (1m2), Urukiko rurasanga, nk’uko n’Urukiko Rukuru rw’Ubucuruzi rwabibonye, mu kugena agaciro k’ubwo butaka, igiciro fatizo ari 20.000 Frw/m2 cyakomeje kugaragara muri za “Etats financiers” za SDV TRANSAMI Rwanda ndetse no muri “rapport d’expertise” yikoreye yo ubwayo. [36] Ku birebana n’igihembo cya Avoka n’amafaranga y’ikurikiranarubanza Me NSENGIYUMVA Abel asabira SDV TRANSAMI Rwanda, Urukiko rurasanga kuri uru rwego nta muburanyi numwe wayahabwa kuko buri wese afite ibyo atsindiye n’ibimutsinze.

Page 11

III. ICYEMEZO CY’URUKIKO [37] Rwemeje ko ubujurire bw’Ikigo cy’Imisoro n’Amahoro bufite ishingiro kuri bimwe. [38] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na SDV TRANSAMI Rwanda nabwo bufite ishingiro kuri bimwe. [39] Rwemeje ko urubanza n° RCOM 0005/12/HCC rwaciwe n’Urukiko Rukuru rw’Ubucuruzi, ku wa 14/09/2012, ruhindutse kuri bimwe. [40] Rutegetse Ikigo cy’Imisoro n’Amahoro (RRA) kongera kubara umusoro wa 2009 ujyanye n’ubutaka bwa SDV TRANSAMI Rwanda buriho sima ya "béton" hitawe ko ubwo butaka bwicungura. [41] Rutegetse ko umusoro wa 15% SDV TRANSAMI Rwanda itafatiriye mu mwaka wa 2008 n’uwa 2009, igomba kuwishyura ariko ukongera kubarwa hashingiwe ku mategeko yakurikizwaga icyo gihe. [42] Rutegetse ko ingwate y’amagarama yatanzwe ihinganye n’ibyakoze muri uru rubanza.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.amategeko.gov.rw/view/doc/7655/8788>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/ikigo-cyimisoro-namahoro-rra-v-sdv-transami-rwanda-interpretationoftaxstatutes-supreme-court-2016>

Prepared on 14 October 2026 · Esheria