MANUMETAL LTD v. UNIVERSITY OF RWANDA

[Rwanda URUKIKO RW'UBUJURIRE – RCOMA 00009/2021/CA (Ngagi, P.J.)
24 Gicurasi 2024]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Amasezerano – Amasezerano y'ubwishingire – Umwishingizi wiyemeje gutanga ingwate yo kurangiza neza isoko ntiyakwitwaza ko hari impaka mu Bukemurampaka ku bijyanye no kubahiriza amasezerano y'isoko ngo yange gutanga ingwate yemeye.

Incamake y'ikibazo: Uru rubanza rukomoka ku masezerano yiswe "*Supply and Installation of Furniture, Projectors, Sound System and Air Conditioners*" MANUMETAL Ltd yagiranye na University of Rwanda (icyahoze ari SFB) ku giciro cya 607.480.123 Frw, yishingirwa ingwate (performance guarantee) na SORAS AG Ltd ingana na 69.826.062 Frw, MANUMETAL Ltd iza kunanirwa kuyubahiriza, UR isaba SORAS kwishyura amafaranga yayishingiye aho kuyiyishyura hatangira imanza zahereye mu Rukiko rw'Ubucuruzi MANUMETAL iregera binyuze mu kirego gitanzwe n'umuburanyi umwe guhagarika itangwa ry'amafaranga SORAS yishingiye, urwo Rukiko rwemeza ko ayo mafaranga afatirwa mu maboko ya SORAS kugeza igihe impaka hagati ya UR na MANUMETAL zizarangirizwa mu Bukemurampaka.

Nyuma yuko SORAS AG Ltd itsinzwe mu zindi manza ebyiri yaburanagamo na UR yaba mu Rukiko rw'Ubucuruzi no mu Rukiko Rukuru rw'Ubucuruzi ndetse igategekwa kwishyura amafaranga yishingiye MANUMETAL Ltd n'inyungu z'ubukererwe ndetse hagakurwaho icyemezo cy'Urukiko cyemeje ko amafaranga y'ingwate SORAS Ltd yishingiye akomeza gufatirwa mu maboko yayo MANUMETAL Ltd yatambamiye urubanza RCOMA 00579/2018/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, urwo Rukiko mu guca urubanza rwemeza ko ikirego cyayo nta shingiro gifite, ko hagumyeho imikirize y'urubanza rutambamirwa.

MANUMETAL Ltd yajuririye mu Rukiko rw'Ubujurire ivuga ko yari ifite uburenganzira bwo guhagarikisha by'agateganyo amafaranga y'ingwate mu gihe cyose ubukemurampaka butaragaraza ko itubahirije amasezerano.

UR yiregura ivuga ko kwishyurwa amafaranga y'ingwate bitagomba gushingira ku cyemezo cy'ubukemurampaka, ahubwo bigomba gushingira ku masezerano y'ubugwate yagiranye na SORAS AG Ltd.

Incamake y'icyemezo: 1. Umwishingizi wiyemeje gutanga ingwate yo kurangiza neza isoko ntiyakwitwaza ko hari impaka mu Bukemurampaka ku bijyanye no kubahiriza amasezerano y'isoko ngo yange gutanga ingwate yemeye.

Ubujurire nta shingiro bufite.
Amagarama ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 64.

Imanza zifashishijwe:

RCOMAA 0021/14/CS; AKARERE KA NYARUGURU v SONARWA GENERAL INSURANCE COMPANY Ltd rwaciwe n'Urukiko rw'Ikirenga ku wa 30/09/2016.

Urubanza

I. IMITERERE Y'URUBANZA

[1] MANUMETAL Ltd yagiranye na Kaminuza y'u Rwanda/UR (icyahoze ari SFB) amasezerano yitwa "*Supply and Installation of Furniture, Projectors, Sound System and Air Conditioners*" ku giciro cya 607.480.123 Frw. MANUMETAL Ltd yahaye UR ingwate (*Performance guarantee)* ebyiri zatanzwe na SORAS AG Ltd yahindutse SANLAM AG Plc ari zo : DCO 22475 yo ku wa 30/04/2013 ifite agaciro ka 60.748.012 Frw na DCO 28414 yo ku wa 17/10/2013 ifite agaciro ka 9.078.050 Frw. Agaciro k'izo ngwate zombi kaba 69.826.062 Frw.

[2] Ku wa 24/06/2014, UR yandikiye SORAS AG Ltd iyisaba kwishyura amafaranga y'ingwate yo kurangiza neza imirimo yahaye MANUMETAL Ltd ivuga ko MANUMETAL Ltd yananiwe kubahiriza amasezerano. MANUMETAL Ltd ibonye itangiye kugirana ibibazo na UR, yaje gutanga ikirego gitanzwe n'umuburanyi umwe (*requête unilatérale*) mu Rukiko rw'Ubucuruzi gihabwa RCOM 0845/14/TC/NYGE, isaba Urukiko guhagarika by'agateganyo itangwa ry'amafaranga ya *Performance guarantees* nº DCO22475 na nº DCO 28414 angana na 69.826.062 Frw yagombaga gutangwa n'umwishingizi wayo SORAS AG Ltd (SANLAM AG Plc). Ibyo MANUMETAL Ltd ikaba yarabisabaga ivuga ko hari ibitarubahirijwe mu masezerano byatumye yiyambaza Kigali International Arbitration Center (KIAC) isaba ko hakorwa ubukemurampaka kuri icyo kibazo.

[3] Ku wa 10/09/2014, Urukiko rw'Ubucuruzi rwaciye urubanza RCOM 0845/14/TC/NYGE, maze rwemeza ko ikirego cyatanzwe na MANUMETAL Ltd gifite ishingiro, rwemeza ko SANLAM AG Plc ifatira mu maboko yayo amafaranga yasabwaga UR, ayo mafaranga ikayafatira kugeza igihe impaka ziri hagati ya MANUMETAL Ltd na UR zizarangirizwa mu Bukemurampaka.

[4] Ku wa 19/06/2018, UR yatanze ikirego mu Rukiko rw'Ubucuruzi, cyandikwa kuri RCOM 00325/2018/TC, irusaba gutegeka SORAS AG Ltd kubahiriza amasezerano bagiranye, ikayishyura amafaranga y'ingwate yatanze yishingira MANUMETAL Ltd. Isaba kandi inyungu z'ubukererwe ziteganywa n'Itegeko rigenga amasoko ya Leta, ngo kuko SORAS yakererewe kwishyura.

[5] Ku wa 26/07/2018, Urukiko rw'Ubucuruzi rwaciye urubanza RCOM 00325/2018/TC, rutegeka SORAS AG Ltd /SANLAM AG Plc kwishyura University of Rwanda (UR) amafaranga y'ingwate angana na 69.826.062 Frw hiyongereyeho inyungu z'ubukererwe za 1% kuri buri munsi w'ubukererwe uhereye ku wa 10/07/2014.

[6] SORAS AG Ltd/SANLAM AG Plc yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko mu kuyitegeka kwishyura University of Rwanda (UR) amafaranga angana na 69.826.062

n'inyungu zayo zibariwe kuri 1% ya buri munsi, rwirengagije ibikubiye mu masezerano y'ubwishingizi ndetse n'icyemezo cyafashwe mu rubanza RCOM 0845/14/TC.

[7] Ku wa 14/12/2018, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00579/2018/CHC/HCC rwemeza ko ubujurire bwatanzwe na SORAS AG Ltd/SANLAM AG Plc nta shingiro bufite, ko nta gihindutse ku mikirize y'urubanza RCOM 00325/2018/TC. Rutegeka ko icyemezo cyafashwe mu rubanza RCOM 0845/14/TC/NYGE rwaciwe ku wa 10/09/2014 cyo gufatira 69.826.062 Frw ya garantie de bonne execution giteshejwe agaciro, rutegeka ko amafaranga y'igarama SORAS/SANLAM AG Plc yatanze ijurira aherera ku isanduku ya Leta.

[8] Ku wa 05/01/2021, MANUMETAL Ltd yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi itambamira imikirize y'urubanza RCOMA 00579/2018/CHC/HCC, isaba ko urwo rubanza rwateshwa agaciro, ishingiye ku kuba isanga Urukiko Rukuru rw'Ubucuruzi rutaragombaga gutesha agaciro urubanza RCOM 00845/14/TC/NYGE kandi yo ubwayo itarigeze iruregwamo cyangwa ngo iruhamagazwemo, ko kandi urubanza RCOM 00845/14/TC/NYGE rutaragombaga guteshwa agaciro kuko University of Rwanda itigeze ibiregera.

[9] Mu rubanza RCOM 00003/2021/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 23/07/2021, urwo Rukiko rwemeje ko ikirego cyatanzwe na MANUMETAL Ltd itambamira urubanza RCOMA 00579/2018/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 14/12/2018 nta shingiro gifite. Rwemeza ko imikirize y'urubanza RCOMA 00579/2018/CHC/HCC igumyeho. Rutegeka MANUMETAL Ltd kwishyura 500.000 Frw UR yo gutegura, gukurikirana no kuburana uru rubanza. Ruvuga ko amafaranga yatanzwe na MANUMETAL Ltd itanga ikirego ahwanye n'ibyakozwe mu rubanza, akaba ahereyeye ku Isanduku ya Leta.

[10] MANUMETAL Ltd yajuririye uru Rukiko, ubujurire bwayo bwandikwa kuri RCOMA 00009/2021/CA. Urubanza rwaburanishijwe mu ruhame ku wa 10/05/2024, MANUMETAL Ltd ihagarariwe na Me Ruzindana Robert Clément, University of Rwanda (UR) ihagarariwe na Me Habumuremyi Prosper, naho SANLAM AG Plc ihagarariwe na Me Rusanganwa Jean Bosco.

[11] Mu myanzuro no mu miburanire ya MANUMETAL Ltd ivuga ko mu Bukemurampaka haburanwe ibijyanye no gushyira mu bikorwa amasezerano yari hagati ya MANUMETAL Ltd na University of Rwanda (UR), ikaba isanga nyuma y'uko Ubukemurampaka bugaragaje ko MANUMETAL Ltd itubahirije amasezerano ari bwo University of Rwanda yari kuba ifite uburenganzira bwo gusaba amafaranga y'ingwate, ko MANUMETAL Ltd yari ifite uburenganzira bwo guhagarikisha by'agateganyo amafaranga y'ingwate kuko igihe cyose yabonaga inyungu zayo zibangamiwe nta kindi yari gukora usibye kwitabaza ibyo amategeko ateganya. Ivuga kandi ko urubanza RCOM 00579/2018/CHC/HCC atari urubanza rw'iremezo ku rubanza RCOM 0845/14/TC/NYGE rwahagaritse by'agateganyo itangwa ry'amafaranga y'ingwate, ko ahubwo urubanza rw'iremezo ari urubanza rwo mu Bukemurampaka. Isoza isaba amafaranga y'ibyagiye ku rubanza. SANLAM AG Plc ivuga ko icyemezo cy'Ubukemurampaka hagati yayo na UR gifite aho gihurira n'ibirebana n'amasezerano y'ingwate yagiranye na UR, kubera ko urubanza RCOM 0845/2014/TC/NYGE, Urukiko rwemeje ko SORAS/ SANLAM AG Plc ifatira by'agateganyo mu maboko yayo 69.826.062 Frw yasabwaga na UR kugeza igihe impaka zizarangirizwa mu bukemurampaka, ko kandi MANUMETAL Ltd yari ifite uburenganzira bwo guhagarikisha

by'agateganyo amafaranga y'ingwate, hashingiwe ku masezerano y'ubwishingizi yari yaragiranye na SORAS/SANLAM AG Plc. Ivuga kandi ko nk'uko MANUMETAL Ltd ibivuga, ko urubanza RCOM 0845/2014/TC/NYGE ari urubanza rwihariye rwari rushamikiye ku bukemurampaka, ko rutari rushamikiye ku rubanza RCOMA 00579/2018/CHC/HCC.

[12] University of Rwanda yiregura ivuga ko kugira ngo yishyurwe na SANLAM AG Plc amafaranga y'ingwate bitagombaga gushingira ku cyemezo cy'Ubukemurampaka, ko ahubwo byagombaga gushingira ku bikubiye mu masezerano y'ingwate SANLAM AG Plc yayihaye, kuko ayo masezerano ategeka SANLAM AG Plc guhita yishyura nta mpaka, hanyuma icyemezo cy'Ubukemurampaka cyazemeza ko MANUMETAL Ltd itishe amasezerano, akaba ari bwo hagaruzwa ingwate yari kuba yarafatiriye. Bityo ko nta burenganzira MANUMETAL Ltd yari ifite bwo guhagarikisha by'agateganyo amafaranga y'ingwate. Ivuga kandi ko imanza zabanje hagati yayo na SANLAM AG Plc, zaragaragaje ko nta kosa ryabaye mu rubanza RCOM 00579/2018/CHC/HCC rwateshejе agaciro urubanza RCOM 00845/14/TC/NYGE, bityo ko ibyo MANUMETAL Ltd ivuga nta shingiro bifite, isoza isaba amafaranga y'ibyagiye ku rubanza.

[13] Urukiko, rushingiye kuri izo mpaka, rusanga hakwiye gusuzumwa ibibazo bikurikira byo kumenya niba :

- University of Rwanda yaragombaga gutegereza icyemezo cy'Ubukemurampaka ikabona gusaba ingwate[1]:
- MANUMETAL Ltd yari ifite uburenganzira bwo guhagarikisha by'agateganyo amafaranga y'ingwate ;
- Urubanza RCOMA00579/2018/CHC/HCC rutaragombaga gutesha agaciro urubanza RCOM 0845/14/TC/NYGE[2];
- Amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa muri uru rubanza afite ishingiro.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1.Kumenya niba University of Rwanda (UR) yaragombaga gutegereza icyemezo cy'Ubukemurampaka ikabona gusaba ingwate

[14] Uhagarariye MANUMETAL Ltd avuga ko mu mu gika cya 21 cy'urubanza RCOMA 00003/2021/HCC, Urukiko Rukuru rw'Ubucuruzi rwasesenguye ibirebana n'icyemezo cyafashwe mu rubanza RCOM 0845/14/TC/NYGE rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge, maze ruvuga ko iyo icyo cyemezo cy'urubanza kitavanwaho byari kubangamira iyubahirizwa ry'amasezerano yabaye hagati ya SANLAM AG Plc na UR, kuko mu bukemurampaka hataburanwaga ibirebana n'amasezerano y'ingwate yari hagati ya SORAS AG Ltd na UR, akaba asanga ibyo Urukiko rwemeje nta shingiro bifite, kuko ikirego cyatanzwe mu Bukemurampaka cyarebanaga no gushyira mu bikorwa amasezerano yari hagati ya MANUMETAL Ltd na

[1] Iki kibazo cyanditswe muri ubu buryo kugira ngo gihure n'ibyo MANUMETAL Ltd ivuga mu bujuririre bwayo, aho kuba: "Kumenya niba icyemezo cy'Ubukemurampaka cyari gifite aho gihuriye n'amasezerano y'ingwate".

[2] Ubundi aho gukoresha gutesha agaciro, Urukiko rwagombaga gukoresha guhindura urubanza RCOM 0845/14/TC/NYGE.

University of Rwanda (UR), ko Ubukemurampaka mu kugaragaza ko MANUMETAL Ltd itubahirije amasezerano ari bwo University of Rwanda (UR) yari kuba ifite uburenganzira bwo gusaba amafaranga y'ingwate.

[15] Avuga kandi ko muri *Statement of Claim*, harimo ingingo isaba ko amafaranga y'ingwate atatangwa, ahagira hati : "*MANUMETAL Ltd requests that University of Rwanda has no the rights to claim the performance Guarantee*". Bityo ko hashingiwe ku ngingo ya 64 y'Itegeko rigenga amasezerano, University of Rwanda (UR) yagombaga gutegereza Ubukemurampaka bukarangira, bwaba bwemeje ko MANUMETAL Ltd itubahirije amasezerano ikabona gusaba amafaranga y'ingwate.

[16] Uhagarariye SANLAM AG Plc, avuga ko nk'uko MANUMETAL Ltd ibivuga, icyemezo cy'ubukemurampaka hagati yayo na UR gifite aho cyahurira n'ibirebana n'amasezerano y'ingwate hagati ya SORAS/SANLAM na University of Rwanda (UR), kubera ko urubanza RCOM 0845/2014/TC/NYGE rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge ku wa 10/09/2014, rwemeje ko SORAS/ SANLAM AG Ltd ifatira by'agateganyo mu maboko yayo 69.826.062 Frw yasabwaga na University of Rwanda (UR) kugeza igihe impaka mu bukemurampaka zizarangirizwa. Kandi ko ibyo byari byasabwe na MANUMETAL Ltd mu kirego cya *requête unilatérale* yatanze.

[17] Avuga kandi ko ku wa 25/01/2022, Inteko y'Ubukemurampaka yafashe icyemezo kuri ubwo bukemurampaka buvugwa mu rubanza RCOM 0845/2014/TC/NYGE binyuze muri KIAC, hanyuma bwemeza ko MANUMETAL Ltd itubahirije amasezerano yagiranye na University of Rwanda (UR), ko kandi University of Rwanda (UR) ifite uburenganzira bwo kwaka SORAS/SANLAM AG Ltd amafaranga y'ingwate yo kurangiza neza imirimo, nk'uko bigaragara mu gika cya 94 n'icya 95. Bityo ko kuba urubanza RCOM 0845/2014/TC/NYGE rwarateshejwe agaciro n'urubanza RCOMA 00579/2018/CHC/HCC ntawarujuririye, MANUMETAL Ltd itararubayemo umuburanyi, SANLAM AG Plc isanga ibijyanye n'ingwate yari yarahagaritswe n'urubanza RCOM 0845/2014/TC/NYGE byari kurangirizwa mu cyemezo cy'Ubukemurampaka nk'uko cyabigaragaje mu gika cya 95, aho kuba mu rubanza RCOMA 00579/2018/CHC/HCC rwarutesheje agaciro.

[18] Uhagarariye University of Rwanda (UR) yiregura avuga ibyo MANUMETAL Ltd na SANLAM AG Plc zivuga atari byo, ko Urukiko rukwiye no gusuzuma izindi manza zaciwe zirimo n'urubanza RCOMAA 0021/14/CS rwaciwe n'Urukiko rw'Ikirenga, haburana Akarere ka Nyaruguru na SONARWA Insurance Company Ltd, akaba asanga kuba icyemezo cy'ubukemurampaka cyararebanaga n'amasezerano yabaye hagati ya UR na MANUMETAL Ltd, SANLAM AG Plc yishingiye kuyiha ingwate yo kurangiza neza imirimo ya UR, yagombaga kubahiriza amasezerano yagiranye na UR, ko kandi kugira ngo University of Rwanda (UR) yishyurwe amafaranga y'ingwate bitagombaga kugendera ku cyemezo cy'ubukemurampaka, ko ahubwo byagombaga gushingira ku bikubiye mu ngwate SANLAM AG Ltd yahaye UR.

[19] Avuga kandi ko SANLAM AG Plc yagombaga guhita yishyura nta mpaka nk'uko amasezerano zagiranye yabiteganyaga, hanyuma icyemezo cy'ubukemurampaka cyagaragaza ko MANUMETAL Ltd itishe amasezerano akaba ari bwo hagaruzwa ingwate University of Rwanda (UR) yari kuba yarafatiriye.

[20] Avuga na none ko asaba Urukiko rw'Ubujurire kuzasuzuma ukwiregura kwa UR no kwemeza ko gufite ishingiro rushingiye kuri ibi bikurikira by'umwihariko kuba : - ingingo ya 9 y'amasezerano hagati ya University of Rwanda (UR) na MANUMETAL Ltd (GCC 9.2) yarateganyaga ko amakimbirane azavuka hagati yazo azakemurwa binyuze mu bukemurampaka.

- Imiterere y'ingwate SANLAM AG Plc yahaye UR ari iya "*garantie à la première demande*". Asobanura ko ari ubwoko bw'ingwate umwishingizi yishyura uwishingiwe, uwishingiwe akishyuza ku munota wa mbere. Ko SANLAM AG Plc mu kwemerera UR ko izahita yishyura mu gihe izaba yishyuje ingwate, itabanje kujya mu byo kuyibaza impamvu yishyuza cyangwa ibindi bisobanuro.

- Mu rubanza RCOMAA 0021/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 30/09/2016, urwo Rukiko rwarasuzumye ikibazo nk'iki maze mu gika cya 9 n'icya 10 rukagifataho icyemezo, cy'uko bidakwiye ko uwishingiye yanga kurekura ingwate, yitwaje ko hari urubanza mu bukemurampaka rwerekeye amasezerano yatangiwe ingwate.

- Urubanza RCOM 00845/14/TC/NYGE, MANUMETAL Ltd na SANLAM AG Plc zishingikirizaho rwari rwafashe icyemezo cy'agateganyo hategerejwe ibyari kuva mu bukemurampaka, kandi ko ubwo bukemurampaka MANUMETAL Ltd yari yatangije butakomeje, kuko bwahagaze ku wa 21/10/2014, bityo ko ibyo MANUMETAL Ltd na SANLAM zivuga nta gaciro bifite.

UKO URUKIKO RUBIBONA

[21] Impaka kuri iyi ngingo y'ubujurire zishingiye ku kumenya niba University of Rwanda yaragombaga gutegereza icyemezo kizafatwa n'Ubukemurampaka ku kirego MANUMETAL Ltd yayireze, ikabona gusaba SANLAM AG Plc (SORAS AG Ltd) kuyiha ingwate yo kurangiza neza imirimo.

[22] Ingingo ya 64 y'Itegeko Nº 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 buryarya".

[23] Mu rubanza RCOMAA 0021/14/CS rwaciwe ku wa 30/09/2016, haburana Akarere ka Nyaruguru na SONARWA General Insurance Company Ltd, Urukiko rw'Ikirenga rwasobanuye ko ibyafashweho icyemezo n'Ikigo cy'abakemurampaka cya Kigali (KIAC) bijyanye n'uruhare rw'Akarere ka Nyaruguru ndetse n'urwa rwiyemezamirimo EAMECO mu kutubahiriza amasezerano yatangiwe ubwishingizi na SONARWA, ko SONARWA itabyitwaza ngo yange gusubiza Akarere ka Nyaruguru ingwate kayisaba, kuko ikiburanwa ari amasezerano ari hagati y'Akarere ka Nyaruguru na SONARWA bidafite aho bihuriye n'ibyemejwe n'Ikigo cy'abakemurampaka[3].

[24] Ku birebana n'uru rubanza dosiye igaragaramo amasezerano y'isoko yiswe : "*Contract for Supply and Installation of Furniture, Projectrors, Sound System and air Condition*", yabaye ku wa

[3] Reba igika cya 9

08/05/2013, hagati ya School of Finance and Banking (SFB) na MANUMETAL Ltd. Ayo masezerano n'iyo MANUMETAL Ltd yaregeye mu Bukemurampaka muri Kigali International Arbitration Centre ku wa 18/08/2014, irega University of Rwanda (School of Finance and Banking). Igaragaramo n'ibaruwa yo ku wa 21/10/2014, Kigali International Arbitration Centre yandikiye MANUMETAL Ltd na University of Rwanda ihagarika Ubukemurampaka kubera ko avansi yasabwe itatanzwe.

[25] Dosiye igaragaramo na none inyandiko ziswe "*Performance guarantee n^o^* DCO *22475*" na *n^o^* DCO *28414*", aho SORAS AG Ltd yahindutse SANLAM AG Plc yandikiye University of Rwanda (School of Finance and Banking, SFB) iyimenyesha ko izayishyura ingwate ingana na 69.826.062 Frw. Muri izo nyandiko SANLAM AG Plc (SORAS AG Ltd) yandikiye University of Rwanda ko izahita itanga iyo ngwate mu gihe cyose University of Rwanda izayandikira iyisaba, ndetse ko itazayibaza impamvu iyishyuza cyangwa ibindi bisobanuro[4].

[26] Imikirize y'urubanza rujuririrwa igaragaza ko iyo icyemezo ku kirego RCOM 0845/14/TC/NYGE cyatanzwe na MANUMETAL Ltd kitavanwaho, byari kubangamira iyubahirizwa ry'amasezerano hagati ya SANLAM AG Plc na UR kuko icyemezo cyategekaga ifatira ry'amafaranga yasabwaga na UR kugeza igihe impaka ziri hagati ya MANUMETAL Ltd na UR zizarangirizwa mu bukemurampaka, cyafashwe hirengagijwe ko mu bukemurampaka hataburanwaga ibirebana n'amasezerano y'ingwate, hirengagijwe na none ko amasezerano y'ingwate yihariye kandi yari hagati ya SORAS AG Ltd na UR gusa.

[27] Nk'uko byagaragajwe haruguru, amasezerano yo kugemura ibikoresho yari hagati ya University of Rwanda (School of Finance and Banking, SFB) na MANUMETAL Ltd niyo yaregewe mu Bukemurampaka ku wa 18/08/2014, bwaje guhagarikwa ku wa 21/10/2014, akaba atandukanye n'amasezerano y'ingwate yabaye hagati UR na SANLAM AG Plc (SORAS), aho iyi yiyemeje kwishyura University of Rwanda ingwate mu gihe cyose izayisaba, kandi ko itazayibaza impamvu iyishyuza cyangwa ibindi bisobanuro. Kuba rero Urukiko Rukuru rw'Ubucuruzi rwaremeje ko amasezerano y'ingwate atari yo yaregewe mu Bukemurampaka, kandi ko ayo masezerano yihariye kuko yari hagati ya SANLAM AG Plc (SORAS AG Ltd) na UR gusa, uru Rukiko rurasanga nta kosa urwo Rukiko rwakoze.

[28] Urukiko rurasanga, mu rubanza RCOMAA 0021/14/CS rwibukijwe haruguru, Urukiko rw'Ikirenga rwarasobanuye ko umwishingizi wiyemeje gutanga ingwate yo kurangiza neza isoko atakwitwaza ko hari impaka mu Bukemurampaka ku bijyanye no kubahiriza amasezerano y'isoko ngo yange gutanga ingwate. Kuba rero hari impaka mu Bukemurampaka ku bijyanye n'iyubahirizwa ry'amasezerano y'isoko yari hagati ya UR na MANUMETAL Ltd, ntabwo byagombaga gutuma UR idasaba SANLAM AG Plc (SORAS AG Ltd) kuyiha ingwate yiyemeje gutanga, cyane ko mu masezerano y'ingwate, SANLAM AG Plc (SORAS AG Ltd) yiyemeje gutanga iyo ngwate mu gihe cyose izabona ibaruwa ya UR iyisaba, kandi ko itazabanza kuyibaza

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[4] At the request of supplier, we, SORAS Assurances Generales Ltd, hereby irrevocably underteke to pay you any sum not exceeding 60,748,012 RWF upon receipt by us of your first denmand in writing declaring the supplier to be in default under the contract, without cavil or argument, or needing to prove or to show grounds or reasons for your demand or the sum specified therein. This guarantee is valid until the find reception of all supplies.

impamvu iyishyuza cyangwa ibindi bisobanuro. Bityo ibivugwa n'uhagarariye MANUMETAL Ltd ko UR yagombaga kurindira icyemezo kizafatwa n'Ubukemurampaka ikabona gusaba ingwate, nta shingiro bifite.

2. Kumenya niba MANUMETAL Ltd yari ifite uburenganzira bwo guhagarikisha by'agateganyo amafaranga y'ingwate

[29] Uhagarariye MANUMETAL Ltd avuga ko mu gika cya 22 cy'urubanza RCOMA 00003/2021/HCC, Urukiko Rukuru rw'Ubucuruzi rwavuze ko MANUMETAL Ltd yakoze ikosa itanga ikirego cyo guhagarikisha by'agateganyo amafaranga y'ingwate, kandi abagiranye amasezerano y'ingwate ari SANLAM AG Plc na UR, ruvuga kandi ko MANUMETAL Ltd yatanze ikirego cy'umuburanyi umwe igaragaza ko nta mpaka ziri ku byo yasabaga, akaba asanga urwo Rukiko rwarirengagije ko igihe cyose MANUMETAL Ltd ibonye ko inyungu zayo zigiye kubangamirwa yari ifite uburenganzira bwo kwitabaza amategeko, ko kandi iyo Urukiko rusanga ari ngombwa rwashoboraga no gutumiza UR nk'uko biteganywa n'ingingo ya 190 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[30] Avuga kandi ko MANUMETAL Ltd mu gutanga ikirego mu rubanza RCOM 00845/14/TC/NYGE yashingiye ku ngingo ya 189 y'Itegeko Nº 22/2018 ryavuzwe haruguru, isobanura neza ko inyandiko nsobanurakirego ishobora gukoreshwa mu bibazo byose harimo n'ibirebana n'ingwate. Asobanura ko SANLAM AG Plc yaje kumenyesha UR ko hari urubanza ruyitegeka gufatira amafaranga y'ingwate, bityo na yo yari ifite inshingano zo kunyura mu nzira ziteganywa n'amategeko igasaba ko icyo cyemezo gikurwaho, ariko ko atariko yabigenje.

[31] Akomeza avuga ko MANUMETAL Ltd isanga ingingo za 142, 147, 161, 169 z'Itegeko Nº22/2018 ryavuzwe haruguru ziteganya uburyo bwo kujuririra icyemezo cy'Urukiko zitarubahirijwe, kandi UR yari yaramenyeshejwe icyo cyemezo ariko ntigire icyo ibikoraho, ngo ibe yajurira urubanza RCOM 00845/14/TC/NYGE, ngo irusubirishemo nk' urubanza rwaciwe uregwa adahari, cyangwa ngo ijurire ibinyujije mu nzira zidasanzwe zo gutambamira urubanza, no kurusubirishamo ingingo nshya nk'uko amategeko abiteganya, bityo ko kuba UR itarashoboye kubahiriza ibyo amategeko ateganya, urubanza RCOM 00845/14/TC/NYGE rwamaze kuba Itegeko (*autorité de la chose jugée*) kuko yari yararumenye.

[32] Uhagarariye SANLAM AG Plc, avuga ko MANUMETAL Ltd yari ifite uburenganzira bwo guhagarikisha by'agateganyo amafaranga y'ingwate, hashingiwe ku masezerano y'ubwishingizi yari yagiranye na SORAS/SANLAM AG Plc mu ngingo yayo ya 4 irebana na *Subrogation de plein droit*. Ku bijyanye no kuba mu rubanza RCOM 0845/2014/TC/NYGE, Urukiko rw'Ubucuruzi rwa Nyarugenge, rwaremeje ko kwishyura amafaranga y'ingwate bihagarara by'agateganyo kugeza igihe impaka zizarangirizwa mu bukemurampaka, kandi urwo rubanza rukaba rwarahise ruba Itegeko kubera ko rwari rushingiye kuri *requête unilatérale* no kuba rutaranajuririwe, avuga ko SANLAM AG Plc isanga nta bwishyu bwari gutangwa mbere yuko ubukemurampaka burangira.

[33] Uhagarariye UR avuga ko UR yemeza ko Urukiko Rukuru rw'Ubucuruzi mu guca urubanza RCOM 00003/2021/HCC ntaho rwibeshye, kandi ko ntacyo rwirengagije, ko ahubwo rwatanze ubutabera. Ku bijyanye no kuba MANUMETAL Ltd ivuga ko Urukiko rwirengagije ko igihe cyose MANUMETAL Ltd yabonaga ko inyungu zayo zigiye kubangamirwa yari ifite

uburenganzira bwo kwitabaza amategeko, ndetse ko iyo Urukiko rusanga ari ngombwa rwashoboraga no gutumiza UR nk'uko biteganywa n'ingingo ya 190 y'Itegeko N°22/2018 ryavuzwe haruguru, avuga ko asanga ibyo ari ukwigiza nkana, kuko amasezerano y'ingwate ari SORAS/SANLAM AG Plc yayahaye University of Rwanda (UR).

[34] Avuga kandi ko kuba MANUMETAL Ltd ari yo yishingirwaga bitayihesha uburenganzira bwo kwivanga mu masezerano y'ingwate. Ko kandi kuba SORAS/SANLAM AG Plc yari kwishyura UR ingwate, bitari kubuza MANUMETAL Ltd gutegereza, haramuka habayeho ibyemezo by'inkiko bivuga ko MANUMETAL Ltd yubahirije amasezerano yagiranye na UR, bityo ko ingwate zitagombaga gufatirwa, ikabishingiraho isaba ko amafaranga y'ingwate yafatiriwe na UR asubizwa. Iyo akaba ari yo nzira ikurikije amategeko MANUMETAL Ltd yagombaga gukoresha, aho kwitanguranwa ikivanga mu masezerano y'abandi.

[35] Akomeza avuga ko ku bijyanye no kuvuga ko UR yari guca mu nzira ziteganywa n'amategeko igasaba ko icyemezo RCOM 00845/14/TC/NYGE kivanwaho, asanga bitari ngombwa, kuko icyo cyemezo cyari icy'agateganyo, kandi ko impamvu cyari cyafashwe yuko SORAS/SANILAM AG Plc iba ifatiriye amafaranga kugeza ubukemurampaka burangiye yari itakiriho, kuko ubukemurampaka bwari bwashingiweho bwavuyeho ku wa 21/10/2014, nk'uko KIAC yabyandikiye MANUMETAL Ltd na University of Rwanda (UR). Asaba Urukiko rw'Ubujurire kuzasesengura ibimenyetso UR yarushyikirije kugira ngo rubone uburyo yakomeje kugaragariza SORAS/SANLAM AG Plc ko ibiri gukorwa byo kwanga kwishyura ingwate no kuzana urubanza RCOM 00845/14/TC/NYGE rwaburanwe na MANUMETAL Ltd itaba impamvu yo kwanga kurekura amafaranga y'ingwate.

[36] Akomeza avuga ko asaba Urukiko kuzabona ko kuba MANUMETAL Ltd yarabangamiye ishyirwa mu bikorwa ry'amasezerano y'ingwate SORAS/SANLAM AG Plc yagiranye na UR, kandi yarabonaga ko itabifitiye uburenganzira, yari yiteguye no kwirengera ingaruka zizava muri ayo makosa yo kubuza SORAS/SANLAM AG Plc kwishyura UR, nk'uko bigaragazwa n' ibaruwa ifite Ref: 097/RF/CEO/2014 MANUMETAL Ltd yandikiye SORAS/SANILAM AG Plc ku wa 11/07/2014, iyisaba kutishyura ingwate ndetse inayizeza ko izirengera kwishyura indishyi zose zijyanye n'inyungu z'ubukererwe bwo gutinda kwishyura kwayo. Ko kuri ubu atari bwo MANUMETAL Ltd ikwiriye kwiyambaza inkiko isaba ko uko kwiyemeza kwishyura yijeje SORAS/SANLAM AG Plc kuvaho. Bityo ko UR isaba Urukiko rw'Ubujurire kwemeza ko MANUMETAL Ltd itari ifite uburenganzira bwo guhagarikisha by'agateganyo amafaranga y'ingwate.

UKO URUKIKO RUBIBONA

[37] Impaka kuri iyi ngingo y'ubujurire zishingiye ku kumenya niba MANUMETAL Ltd yari ifite uburenganzira bwo guhagarikisha ingwate mu gihe yarimo iburana na UR ku bijyanye n'iyubahirizwa ry'amasezerano impande zombi zagiranye.

[38] Ingingo ya 44 y'Itegeko N°05/2013 ryo ku wa 13/02/2013 rihindura kandi ryuzuza Itegeko N°12/2007 ryo ku wa 27/03/2007 rigenga Amasoko ya Leta ryakoreshwaga mu gihe MANUMETAL Ltd yagiranaga amasezerano na University of Rwanda (SFB), iteganya ibikurikira : "Iyo amasezerano atubahirijwe yose cyangwa atubahirijwe neza ingwate yo kurangiza isoko neza

igomba gufatirwa n'Urwego rutanga isoko nta yandi mananiza, bitabangamiye ikurikizwa ry'ibindi bihano biteganyijwe mu mategeko."

[39] Ingingo ya 78 y'Itegeko N° 12/2007 ryo ku wa 27/03/2007 ryagengaga amasoko ya Leta ryakoreshwaga mu gihe MANUMETAL Ltd yagiranaga amasezerano na University of Rwanda (SFB), iteganya ibikurikira : "Banki cyangwa Ikigo cy'Imari cyemewe n'amategeko gisubiza Urwego rutanga isoko ingwate yose y'ubwishingizi bwo kurangiza isoko mu minsi icumi (10) y'akazi uhereye igihe urwandiko rubisaba rwakiriwe."

[40] Isesengura ry'ingingo zavuzwe haruguru ryumvikanisha ko iyo Urwego rutanga isoko rusanze hari ibitubahijwe mu masezerano rwagiranye n'uwahawe isoko, rufite uburenganzira bwo guhita rufatira ingwate yo kurangiza isoko neza nta mananiza, kandi ko Banki cyangwa Ikigo cy'Imari gisubiza Urwego rutanga isoko ingwate yose y'ubwishingizi bwo kurangiza isoko mu minsi icumi (10) y'akazi uhereye igihe urwandiko rubisaba rwakiriwe. Ibi bikaba byumvikanisha ko Urwego rutanga isoko rudategereza icyemezo kizafatwa ku mpaka zijyanye no kutubahirizwa kw'amasezerano y'isoko ngo rubone gusaba ingwate, kandi ko Banki cyangwa Ikigo cy'Imari cyatanze ingwate gifite inshingano zo guhita kirekura ingwate mu minsi icumi uhereye umunsi cyakiriyeho ibaruwa iyisaba. Byumvikanisha kandi ko uwahawe isoko ndetse n'uwatanze ingwate nta wemewe gushyiraho impamvu zigomba gutuma Urwego rwatanze isoko rudafatira ingwate rwahawe.

[41] Ku bireba n'uru rubanza nk'uko byagaragajwe haruguru, dosiye igaragamo inyandiko yiswe "*Performance guarantee n°* DCO *22475* na *n°* DCO *28414*", aho SANLAM AG Plc (SORAS AG Ltd) yemeye kwishyura University of Rwanda ingwaye ihwanye na 69,826,062 Frw (60,748,012 Frw + 9,078,050 Frw), kandi ko izahita itanga iyo ngwate mu gihe cyose University of Rwanda izayandikira iyisaba, itayibajije impamvu iyishyuza cyangwa ibindi bisobanuro.

[42] Dosiye igaragamo ibaruwa yo ku wa 23/06/2014, UR yandikiye SORAS AG Ltd iyisaba kuyiha ingwate yo kurangiza neza imirimo (*Performance guarantee*) n° DCO 22475" na n° DCO 28414. Igaragaramo kandi ibaruwa yo ku wa 11/07/2014, MANUMETAL Ltd yandikiye SORAS AG Ltd yahindutse SANLAM AG Plc iyisaba kudatanga ingwate UR yayisabye, kuko bazabanza bakabiganiraho na UR, ko kandi yishyingiye kuzatanga inyungu zose zijyanye no gutinda gutanga iyo ngwate.

[43] Dosiye igaragaramo na none urubanza RCOM 0845/14/TC/NYGE rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge ku wa 10/09/2014, aho MANUMETAL Ltd yatanze inyandiko nsobanurakiro itanzwe n'umuburanyi umwe, isaba Urukiko guhagarika by'agateganyo itangwa ry'amafaranga ya *Performance guarantee* n° DCO 22475 na n° DCO 28414 angana na 69,826,062 Frw, hanyuma urwo Rukiko rwemeza ko SORAS AG Ltd ifatira mu maboko yayo amafaranga isabwa na UR kugeza igihe impaka zizarangirizwa mu Bukemurampaka.

[44] Nk'uko byagaragajwe haruguru, SANLAM AG Plc (SORAS AG Ltd) yiyemeje ko izahita itanga ingwate ingana na 69,826,062 Frw mu gihe cyose UR izayandikira iyisaba, itanayibajije impamvu iyishyuza cyangwa ibindi bisobanuro, kandi ku wa 23/06/2014, UR yandikiye SANLAM AG Plc (SORAS AG Ltd) iyisaba iyo ngwate. Kuba rero MANUMETAL Ltd yararenze ku masezerano yari hagati ya UR na SANLAM AG Plc (SORAS AG Ltd) y'uko iyi izahita irekura ingwate mu gihe cyose UR izayandikira iyisa, hanyuma igatanga ikirego gitanzwe n'umuburanyi

umwe mu Rukiko rw'Ubucuruzi rwa Nyarugenge isaba urwo Rukiko gutegeka SANLAM AG Plc (SORAS AG Ltd) gufatira ingwate yasabwaga na UR kugeza ubwo impaka zizarangirizwa mu Bukemurampaka, Urukiko rurasanga ibyo yakoze binyuranyije n'amategeko, kuko nk'uko byasobanuwe haruguru uwahawe isoko ndetse n'uwatanze ingwate nta wemerewe gushyiraho impamvu zigomba gutuma Urwego rwatanze isoko rudafatira ingwate rwahawe, kandi nta tegeko ryemerera uwahawe isoko kubuza umwishingizi gutanga ingwate mu gihe Urwego rwatanze isoko rwayisabye kandi ari byo impande zombi zumvikanye mu masezerano.

[45] Ikindi kandi Urwego rwatanze isoko ntabwo rurindira icyemezo kizafatwa ku mpaka zijyanye no kutubahirizwa kw'amasezerano y'isoko ngo rubone gusaba ingwate, ahubwo nk'uko byasobanuwe haruguru ruhita ruyifatira, kandi Banki cyangwa Ikigo cy'Imari cyatanze ingwate kigomba guhita kiyirekura mu minsi icumi uhereye umunsi cyaboneyeho ibaruwa iyisaba. Bityo MANUMETAL Ltd nta burenganzira bwemewe n'amategeko yari ifite bwo gusaba Urukiko gutegeka SANLAM AG Plc gufatira ingwate yasabwaga na University of Rwanda kugeza igihe impaka zizarangirizwa mu bukemurampaka, kuko atari byo amategeko ateganya kandi si byo impande zombi zumvikanye mu masezerano y'ingwate.

3. Kumenya niba urubanza RCOMA 00579/2018/CHC/HCC rutaragombaga gutesha agaciro urubanza RCOM 0845/14/TC/NYGE

[46] Uhagarariye MANUMETAL Ltd avuga ko mu gika cya 22 n'icya 23 by'urubanza RCOMA 00003/2021/HCC, Urukiko Rukuru rw'Ubucuruzi rwasesenguye ibirebana n'icyemezo cyafashwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge mu rubanza RCOM 0845/14/TC/NYGE cyahagarikaga by'agateganyo itangwa ry'amafaranga y'ingwate, rusanga mu rubanza RCOM 00579/2018/CHC/HCC, Urukiko rwaragombaga kukivanaho kuko rwo rwaciye urubanza rw'iremezo rutari urw'agateganyo ku birebana n'itangwa ry'amafaranga y'ingwate; ibyo MANUMETAL Ltd ikaba isanga nta shingiro bifite, kuko urubanza RCOM 0845/14/TC/NYGE nubwo rwari urw'agateganyo, urubanza remezo rwari urubanza rwo mu Bukemurampaka. Bityo ko ashingiye ku ngingo ya 189 n'iya 187 z'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru ziteganya ibyerekeye inyandiko nsobanurakiregо itanzwe n'umuburanyi umwe, ko ishobora gukoreshwa mu bibazo byose harimo n'ibirebana n'ingwate, asanga iyo UR ishaka gutanga urubanza rw'iremezo yari gutanga ikirego kigamije gutesha agaciro urubanza hashingiwe ku ngingo ya 187 y'Itegeko rimaze kuvugwa haruguru.

[47] Uhagarariye SANLAM AG Plc, avuga ko nk'uko uhagarariye MANUMETAL abisobanura, urubanza RCOM 0845/2014/TC/NYGE ari urubanza rwihariye rwari rushamikiye ku bukemurampaka, ko rutari rushamikiye ku rubanza RCOMA 00579/2018/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 14/12/2018 hajuririrwa urubanza RCOM 00325/2018/TC narwo rwari rwihariye, nubwo urubanza RCOMA 00579/2018/CHC/HCC ari rwo rwatesheje agaciro urubanza RCOM 0845/2014/TC/NYGE.

[48] Avuga kandi ko ikindi cyerekana ko urubanza RCOMA 00579/2018/CHC/HCC atari urubanza rw'iremezo ku rubanza RCOM 0845/2014/TC/NYGE ari ibyari bigamijwe mu manza zombi. Asobanura ko mu rubanza RCOM 0845/2014/TC NYGE haregaga MANUMETAL Ltd mu kirego cya *requête unilatérale*, isaba ko amafaranga y'ingwate angana na 69.826.062 Frw yafatirwa na SORAS/SANLAM AG Plc, kugeza igihe impaka hagati yayo na UR zizarangirira mu

bukemurampaka, icyemezo cy'ubukemurampaka kikaba cyarafashwe ku wa 25/01/2022; naho mu rubanza RCOMA 00579/2018/CHC/HCC, UR yaregaga SORAS/SANLAM AG Plc 69.826.062 Frw y'ingwate, hamwe n'inyungu zayo za 1% ya buri munsi guhera igihe UR yishyurije SORAS/SANLAM AG Plc izo ngwate, ku wa 10/07/2014, kugeza igihe zizishyurirwa, bisobanuye ko kuva ku wa 10/07/2014 kugeza ku wa 16/12/2020, igihe SANLAM AG Plc yishyuriye umwenda remezo wa 69.826.062 Frw, inyungu zari zimaze kugera ku mafaranga 1.642.308.978 Frw, hirengagijwe ko urubanza RCOM 0845/2014/TC/NYGE rwaciwe ku wa 10/09/2014 rubuza SORAS/SANLAM kwishyura, rugateshwa agaciro n'urubanza RCOMA 00579/2018/CHC/HCC rwaciwe ku wa 14/12/2018.

[49] Uhagarariye University of Rwanda (UR), yiregura avuga ko UR yagaragaje uburyo imanza zabanje hagati yayo na SANLAM AG Plc, zaragaragaje uburyo nta kosa ryabaye mu rubanza RCOM 00579/2018/CHC/HCC rwatesheje agaciro urubanza RCOM 00845/14/TC/NYGE, nk’uko binagaragara mu gika cya 19 cy’urubanza RCOMA 00041/2019/CA, aho Urukiko rw’Ubujurire rwagize ruti: "...kandi usibye no kuba icyemezo cyafashwe muri urwo rubanza [RCOM 00845/14/TC/NYGE] cyari icy’agateganyo, binagaragara ko cyavuzweho mu rwego rwo gushimangira igitekerezo cy’uko amasezerano y’ingwate yihariye, akaba yaragombaga kubahirizwa na SORAS AG Ltd." Naho mu mu gika cya 27 cy’urubanza RS/INJUST/RCOM 00003/2020/SC, Urukiko rw’Ikirenga rwavuze ko Urukiko Rukuru rw’Ubucuruzi rwasobanuye neza mu gica cya 21 cy’urubanza RCOMA 00579/2018/CHC/HCC uburyo urubanza RCOM 00845/14/TC/NYGE nta gaciro rwagombaga guhabwa. Bityo ko kuri ubu MANUMETAL Ltd atari yo yakongera kuzana ikibazo cyo kuburana ko urubanza RCOMA 00579/2018/HCC rwagombaga guha agaciro urubanza RCOM 00845/14/TC/NYGE.

UKO URUKIKO RUBIBONA

[50] Ingingo ya 150, agace 5 n’aka 6, y’Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, iteganya ibikurikira: “Ubujurire bukorwa mu buryo bw’umwanzuro utanga ikirego, ugaragaza 5° urutonde rw’inenge z’urubanza zisabirwa gukosorwa n’ibindi bibazo bigomba gusuzumwa; 6° ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragaza amakosa yakozwe n’uburyo agomba gukosorwa hashingiwe ku mategeko n’ibimenyetso n’igisabwa urukiko”. Ingingo ya 3 y’Itegeko N° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo iteganya ko buri muburanyi agomba kugaragaza ukuri kw’ibyo aburana.

[51] Mu rubanza RADAA 00011/2022/CA rwaciwe ku wa 12/06/2023, haburana Nzabarimana Abdallahaman n’Umujyi wa Kigali, uru Rukiko rwasobanuye ko rusomeye hamwe izi ngingo zombi rusanga zumvikanisha ko ujurira afite inshingano yo kugaragaza ko hari inenge ziri mu rubanza rujuririrwa n’ibimenyetso bishimangira ko ibyo Urukiko rwemeje atari byo. Mu yandi magambo ujurira agomba kugaragaza ikosa ryakozwe mu rubanza rujuririrwa, akagaragaza amategeko ashingiraho n’ibimenyetso bihamya ko ibyo avuga ari ukuri[5].

[52] Nk’uko byasobanuwe mu ngingo yasuzumwe mbere y’iyi nta burenganzira MANUMETAL Ltd yari ifite bwo gusaba Urukiko gutegeka SANLAM AG Plc (SORAS AG Ltd) gufatira by’agateganyo ingwate yasabwaga na UR kuko bitari bikurikije amategeko. Kuba rero

[5] Reba igika cya 45.

UR yarasabye SANLAM AG Plc (SORAS AG Ltd) kuyiha ingwate yiyemeje gutanga nta mananiza, ariko iyi ikanga kuyitanga, bigatuma UR itanga ikirego isaba Urukiko gutegeka SORAS AG Ltd /SANLAM AG Plc kwishyura 69,826,062 Frw y'ingwate yo kurangiza isoko neza nk'uko yabyiyemeje mu nyandiko ebyiri z'ingwate, hanyuma mu rubanza RCOM 00579/2018/CHC/HCC, Urukiko Rukuru rw'Ubucuruzi rugatesha agaciro urubanza RCOM 0845/14/TC/NYGE rwahagaritse by'agateganyo itangwa ry'amafaranga y'ingwate, uru Rukiko rurasanga nta kosa urwo Rukiko rwakoze ryo gutesha agaciro icyemezo gihagarika by'agateganyo itangwa ry'amafaranga y'ingwate, cyane ko cyari kibangamiye ibyo UR na SANLAM AG Plc (SORAS AG Ltd) zumvikanye mu masezerano y'ingwate. Bityo iyi ngingo y'ubujurire ya MANUMETAL Ltd nta shingiro ifite.

4. Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa muri uru rubanza afite ishingiro

[53] Uhagarariye MANUMETAL Ltd ashingiye ku ngingo ya 111 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano iz'ubucuruzi iz'umurimo n'iz'ubutegetsi, asaba Urukiko rw'Ubujurire gutegeka University of Rwanda (UR) kwishyura MANUMETAL Ltd amafaranga y'igihembo cya Avoka angana na miliyoni eshatu (3.000.000 Frw), ndetse no kuyisubiza amafaranga y'amagarama yatanze.

[54] Avuga kandi ko amafaranga y'ibyagiye ku rubanza University of Rwanda (UR) isaba nta shingiro afite kuko ari yo nyirabayazana w'uru rubanza.

[55] Uhagarariye University of Rwanda (UR) yiregura ku mafaranga y'igihembo cya Avoka, MANUMETAL Ltd isaba avuga ko ikwiye kuyirengera, kuko uru rubanza rwabayeho kubera amakosa yayo yo kudasesengura ngo ibone ko ikibazo cyabayeho cyatewe no kutubahiriza amasezerano kwa SORAS/SANLAM nk'uko byemeje n'inkiko zitandukanye, ndetse n'amakosa yo kwivanga kwayo mu masezerano SORAS/SANLAM yahaye UR. Bityo ikaba itahindukira ngo iyisabe igihembo cya Avoka, ndetse n'ingwate yamagarama yatenze irega.

[56] Avuga kandi ko ashingiye ku ngingo ya 111 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, no ku ngingo ya 2 (1) (b), iya 65, iya 66 n'iya 67 z'Itegeko Nº 83/2013 ryo ku wa 11/09/2013 rishyiraho Urugaga rw'Abavoka mu Rwanda, rikanagena imikorere n'imitunganyirize byarwo, asaba Urukiko rw'Ubujurire gutegeka MANUMETAL Ltd kwishyura UNIVERSITY OF RWANDA (UR) amafaranga miliyoni imwe (1.000.000 Frw) y'ibyakoreshejwe mu rubanza.

UKO URUKIKO RUBIBONA

[57] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira : "Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe".

[58] Urukiko rurasanga amafaranga y'ibyagiye ku rubanza University of Rwanda isaba ikwiye kuyahabwa, kuko ubujurire bwa MANUMETAL Ltd bwatumye hari ibyo itakaza ikurikirana inaburana uru rubanza, ariko ayo isaba ni menshi kandi nta bimenyetso iyatangira; bityo mu bushishozi bwarwo rugeneye University of Rwanda amafaranga ibihumbi magana arindwi (700.000 Frw) y'ibyagiye ku rubanza, kuri uru rwego, yiyongera ku mafaranga ibihumbi magana atanu (500.000 Frw) yagenwe mu rubanza rujuririrwa, yose hamwe akaba miliyoni imwe n'ibihumbi magana abiri (1,200,000 Frw) agomba gutangwa na MANUMETAL Ltd. Naho ayo MANUMETAL Ltd isaba nta shingiro afite kuko ubujurire bwayo nta shingiro bwahawe.

III. ICYEMEZO CY'URUKIKO

[59] Rwemeje ko ubujurire bwa MANUMETAL Ltd nta shingiro bufite.

[60] Rwemeje ko imikirize y'urubanza RCOM 00003/2021/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 23/07/2021, idahindutse.

[61] Rutegetse MANUMETAL Ltd kwishyura University of Rwanda amafaranga ibihumbi magana arindwi (700.000 Frw) y'ibyagiye ku rubanza, kuri uru rwego, yiyongera ku mafaranga ibihumbi magana atanu (500.000 Frw) yagenwe mu rubanza rujuririrwa, yose hamwe akaba miliyoni imwe n'ibihumbi magana abiri (1,200,000 Frw).

[62] Ruvuze ko amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza.