NAEB v. SINFOTEC Sarl

[Rwanda URUKIKO RW'IKIRENGA – RADA 0025/12/CS (Mutashya, P.J., Rugabirwa na Gakwaya, J.) 25 Mata 2014]

Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Ikimenyetso ku mpamvu ntakumirwa – Inshingano y'urega yo kugaragaza ibimenyetso – Urega agomba kugaragaza ibimenyetso by'ibo aregera. Iyo abibuze, uwarezwe aratsinda –Kuba SINFOTEC itaragaragarije Urukiko ibimenyetso byerekana ko ubwato bwari butwaye "matières premières" bwagize ikibazo, OCIR-THE ikaba itagomba kuyishyura amafaranga yari yayikase nk'indishyi z'ubukererwe bw'iminsi 12 – Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi,ingingo ya 9 – Itegeko n° 15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.

Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Kwica amasezerano – Indishyi z'ubukererwe – Ibarwa ry'ubukererwe – Indishyi z'ikurikiranarubanza n'igihembo cy'avoka – Iyo kwica amasezerano birebana no kutishyura amafaranga cyangwa kudakora igisabwa gishobora kubarwa mu mafaranga azwi cyangwa ashobora kumenyekana, inyungu zibarwa uhereye igihe igisabwa cyagombaga gukorwa hakuwemo ibyo uruhande rwishe amasezerano rufiteho uburenganzira – Inyungu zishobora guteganywa mu masezerano ariko hakagenwa umubare ukwiye ugendeye ku gihombo nyakuri kiriho cyangwa cyiteguwe ko cyabaho mu gihe amasezerano atubahirijwe cyangwa mu gihe cy'ingorane zo kubona ibimenyetso by'igihombo – Iyo ababuranyi bombi basabye amafaranga y'igihembo cy'avoka n'ay'ikurukiranarubanza, kandi buri ruhande rufite ibyo rutsindira n'ibyo rutsindirwa, habaho guhwanywa ibyo basaba ariko Urukiko rukabanza kugaragaza ayo rwageneye buri ruhande – Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 7 n'iya 147 (2) – Itegeko n°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo za 144 na 146.

Incamake y'ikibazo: SINFOTEC Sarl yagiranye amasezerano naOCIR-THE, ubu yahindutse NAEB, yo kuyigemura imifuka yo gupfunyikamo icyayi ku gaciro ka 208.250.000Frw. Yishyuweho amafaranga y'igice cya mbere yari imaze kugemura, hasigara 45.968.585Frw, ariko irangije kugemura igice gisigaye NAEB iyishura 19.570.252Frw, kuko NAEB yayikase 14.855.333Frw y'ibihano by'ubukererwe, 11.543.000Frw yajyanywe n'Umuyobozi wa EIS akaba ari nawe Muyobozi wa SINFOTEC Sarl, yose hamwe ikaba yarakaswe 26.398.333Frw.

SINFOTEC Sarl yareze mu Rukiko Rukuru isaba gusubizwa ayo mafaranga no kwishyurwa indishyi zitandukanye, ay'ibihano by'ubukererwe ku mafaranga itishyuriwe igihe angana na 0,1% buri munsi, ikishyurwa nanone indishyi yakaswe na FINA Bank zibariwe ku gaciro ka 25% buri kwezi, hakiyongeraho indishyi zingana n'agaciro mbumbe (forfait) kangana na 1.000.000Frw kubera ko amafaranga yayo yakoresheje yari umwenda wa Banki yagombaga kwishyura. Isaba inyungu kuri ayo mafaranga ingana na 10.074.427Frw, ikanasaba kwishyurwa amafaranga y'igihembo cy'avoka angana na 10% y'agaciro k'ikiburanwa na 1.000.000Frw y'ikurikiranarubanza. Urukiko rwemeje ko ikirego cya SINFOTEC Sarl gifite ishingiro ku bijyanye n'amafaranga y'ubukererwe bw'iminsi 12 yakaswe binyuranije n'amasezerano kuko yagaragaje ko yahuyen'impamvu ntarengwa no ku bijyanye n'amafaranga yafatiriwe na OCIR-THE.

OCIR-THE yajuriye mu Rukiko rw'Ikirenga, ivuga ko Urukiko Rukuru rwemeje ko habayeho impamvu ntarengwa yatumye habaho ubukererwe bw'iminsi 12 mu kugemura icyiciro cya mbere cy'imifuka kandi SINFOTEC Sarl itarigeze igaragaza ikimenyetso kiyishimangira, ikanavuga ko indishyi z'ibihano by'ubukererwe zagenewe SINFOTEC Sarl zidakwiye kuko zabazwe ku mafaranga itagombaga guhabwa.

SINFOTEC Sarl yireguye ivuga ko ikimenyetso cy'impamvu ntarengwa cyatanzwe mu iburanisha kandi ko umucamanza yabashije kubisobanukirwa akabishingiraho. SINFOTEC Sarl nayo yararujuririye ivuga ko Urukiko Rukuru rwirengagije ko OCIR-THE ariyo yateje ubukererwe, ko Urukiko Rukuru rutabashije kubona ko habaye impamvu itunguranye kandi itigobotorwa (cas de force majeure) yatumye itarashoboye kubahiriza amasezerano, ko Urukiko Rukuru rwanze kuyigenera indishyi zo kutishyura ku gihe biturutse ku makosa ya OCIR-THE.

Incamake y'icyemezo: 1. Urega agomba kugaragaza ibimenyetso by'ibo aregera. Iyo abibuze, uwarezwe aratsinda. Naho uvuga ko icyo yategekwaga gukora cyagaragajwe n'ibimenyetso atagitegetswe kugikora, agomba kugaragaza impamvu zakimukuyeho. Iyo abiburiye ibimenyetso, uwo baburana aramutsinda, bityo kuba SINFOTEC Sarl itaragaragarije Urukiko ibimenyetso byerekana ko ubwato bwari butwaye "matières premières" bwagize ikibazo, OCIR-THE ikaba itagomba kuyishyura amafaranga yari yayikase nk'indishyi z'ubukererwe bw'iminsi 12.

2. OCIR-THE ntiyagombaga gufatira amafaranga y'ubwishyu yagombaga SINFOTEC Sarl mu rwego rw'ihwanya ry'imyenda kubera y'uko ayo mafaranga OCIR-THE yari yayishyuye indi sosiyete yitwa E.I.S., itandukanye na SINFOTEC Sarl, bityo OCIR-THE ikaba igomba kuyatangira indishyi z'ubukererwe.

3. Kuba OCIR-THE yaramenyesheje SINFOTEC Sarl ibizandikwa ku mifuko nyuma y'iminsi 43 uhereye igihe basinyiyeho amasezerano, bigaragara ko urukiko Rukuru rutibeshye ku itariki yo gutangiraraho kubara ubukererwe kuko SINFOTEC Sarlyagombaga gutegereza ko imenyeshwa ibizandikwa ku mifuka kugirango ishyire mu bikorwa amasezerano n'ukuvuga kuva kuwa 13/10/2008 kugeza kuwa 28/11/2008 bityo ubujurire bwa SINFOTEC Sarl nta shingiro bufite.

4. Impamvu ishingiye ku kuba SINFOTEC Sarl yaramenyesheje mu ibaruwa OCIR-THE ko uruganda rukora imifuka rwo muri Kenya rwahagaritse imirimo yarwo kubera ikibazo cy'ubukungu ku isi ntiyatafatwa nk'impamvu ntakumirwa kuko igemurwa ry'imifuka ryagombaga gukorwa mu minsi 45 kandi iyo mpamvu yabaye nyuma y'iyo minsi iteganywa mu masezerano bityo indishyi z'ubukererwe zaciwe na OCIR-THE ku mafaranga yari yarasigaye SINFOTEC Sarl igemura icyiciro cya kabiri cy'imifuka zirakwiye.

5. Indishyi zituruka ku kwica amasezerano zishobora guteganywa mu masezerano ariko hakagenwa umubare ukwiye ugendeye ku gihombo nyakuri kiriho cyangwa cyiteguwe ko cyabaho mu gihe amasezerano atubahirijwe cyangwa mu gihe cy'ingorane zo kubona ibimenyetso by'igihombo, bityo ingingo ya 258 y'Itegeko ryo kuwa 30 Nyakanga 1888 rigenga masezerano cyangwa imirimo nshinganwa ikaba idashobora gukoreshwa muri uru rubanza kuko rurebana n'ikibazo cyo gukora ibisabwa mu masezerano.

6. Indishyi zagenwe n'Urukiko zigomba kugaragara mu cyemezo cy'urubanza, bityo iryo kosa rigomba gukosorwa.

7. Iyo kwica amasezerano birebana no kutishyura amafaranga cyangwa kudakora igisabwa gishobora kubarwa mu mafaranga azwi cyangwa ashobora kumenyekana, inyungu zibarwa

uhereye igihe igisabwa cyagombaga gukorwa hakuwemo ibyo uruhande rwishe amasezerano rufiteho uburenganzira.

8. Umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine kandi ica ry'urubanza risobanura itegeko ryakurikijwe n'ingingo zishingiye ku byabaye zagaragajwe mu rubanza bityo kuba Urukiko rukuru rwarategetse ihwanya ry'amafaranga y'ikurikiranarubanza n'igihembo cy'avoka byasabwaga na buri muburanyi rutabanje kugaragaza ayo rwageneye buri ruhande n'ibisobanuro ruyashingiraho, Urukiko rw'ikirenga rukaba rusanga Urukiko Rukuru rutarubahirije amategeko.

9. OCIR-THE yari ifitiye uburenganzira bwo gukata SINFOTEC Sarl indishyi z'ubukererwe ariko nta burenganzira yari ifite bwo gufatira amafaranga ya SINFOTEC Sarl kubera ihwanya ry'imyenda itari iyayo. OCIR-THE ikaba igomba gutanga indishyi z'ubukerewe z'iminsi 1753 (jours), kuva ku itariki yagombaga kuyishyura kugeza umunsi w'isomwa ry'urubanza, ku gipimo cya 0.1% y'ayo mafaranga ku munsi.

10. Ku byerekeye 31.623.000Frw asabwa na SINFOTEC Sarl arebana n'igihombo OCIR-THE yayiteye kuko ku makosa yayo itashoboye kuriha ideni rya FINA Bank (26.398.333 x 25% x 57,5 mois/12 mois = 31.623.000Frw), Urukiko rw'Ikirenga rurasanga itayahabwa, kuko idashobora gusaba indishyi zishingiye ku ngingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano mu bibazo birebana n'irangiza ry'amasezerano.

11. Ku byerekeye 1.000.000Frw ya forfait asabwa na SINFOTEC Sarl, ntikwiye kuyabona kuko idasobanura impamvu yayo.

12. Ku byerekeye igihembo cy'avoka n'amafaranga y'ikurikiranarubanza bingana na 10% y'indishyi yose igomba guhabwa na OCIR-THE, Urukiko rw'Ikirenga rurasanga, aya mafaranga ari ikirenga, bityo ikiba igenewe akwiye mu bushishozi bwaryo.

Ubujurire bwa OCIR-THE bufite ishingiro kuri bimwe.
Ubujurire bwa SINFOTEC Sarl bufite ishingiro kuri bimwe.
Amagarama y'urubanza aherereye ku mpande zombi.

Amategeko yashingiweho:

Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo za 7, 9 na 147
Itegeko n° 15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ingingo ya 3.
Itegeko n°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano ingingo ya 64, 144 n'iya 146
Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingigo ya 258.

Nta manza zifashishijwe.

Inyandiko z'abahanga zifashishijwe:

Henri De Page, "Traité de droit civil belge, principes-doctrine-jurisprudence", Tome deuxième, troisième édition, Bruylant, Bruxelles, 1964, PP 596-597-602.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Kuwa 30/8/2008, SINFOTEC Sarl yagiranye amasezerano na OCIR-THE, ubu yahindutse NAEB, yo kuyigemura imifuka yo gupfunyikamo icyayi ku gaciro cya 208.250.000Frw. Nyuma yo kwishyurwa amafaranga y'igice cya mbere yari imaze kugemura, hagasigara ikindi gice gifite agaciro kangana na 45.968.585Frw, SINFOTEC Sarl yaje nacyo kukigemura ariko mu kwishyurwa ihabwa 19.570.252Frw, inasobanurirwa ko yakaswe 14.855.333Frw y'ibihano by'ubukererwe, ikanakatwa 11.543.000Frw yatwawe n'Umuyobozi wa EIS RUDAHARISHEMA Emmanuel, akaba ari nawe Muyobozi wa SINFOTEC Sarl, yose hamwe ikaba yarakaswe 26.398.333Frw.

[2] SINFOTEC Sarl ntiyanyuzwe n'ibisobanuro yahawe na OCIR-THE, ubu yahindutse NAEB, byerekeranye n'uburyo yakaswe aya mafaranga, yiyambaza Urukiko Rukuru i Kigali, isaba gusubizwa ayo mafaranga no kwishyurwa indishyi za 12.855.988Frw y'ibihano by'ubukererwe ku mafaranga iregera itishyuriwe igihe, zingana na 0,1% buri munsi (26.398.333Frw x 0,1% x 487 jours = 12.855.988Frw), ikishyurwa nanone indishyi yakaswe na FINA Bank zibariwe ku gaciro ka 25% buri kwezi, hakiyongeraho indishyi zingana n'agaciro mbumbe (forfait) kangana na 1.000.000Frw, kubera ko amafaranga ye yakoresheje yari umwenda wa Banki yagombaga kwishyura nyuma y'ubwishyu na OCIR-THE, isaba inyungu kuri ayo mafaranga ingana na 10.074.427Frw (26.398.333Frw x 25% x 16.5/12 + 1.000.000Frw = 10.074.427Frw), ikanasaba kwishyurwa amafaranga y'igihembo cya avoka angana na 10% y'agaciro k'ikiburanwa na 1.000.000Frw y'ikurikiranarubanza.

[3] Urukiko rwaciye urubanza RAD 0156/10/HC/kig kuwa 27/4/2012, rwemeza ko ikirego cya SINFOTEC Sarl gifite ishingiro ku bijyanye na 2.449.000Frw y'ubukererwe bw'iminsi 12 yakaswe binyuranije n'amasezerano yo kuwa 30/8/2008 kuko yagaragaje ko yahuye na "force majeure" no ku bijyanye na 11.543.000 Frw yafatiriwe na OCIR-THE ivuga ko ihwanyije umwenda yari ifitiwe n'indi sosiyete yitwa Entreprise d'Ingénierie et de Service en sigle E.I.S., rwemeza ariko ko ibindi birego bya SINFOTEC Sarl nta shingiro bifite, rutegeka OCIR-THE kwishyura SINFOTEC Sarl 14.042.000Frw.

[4] OCIR-THE ntiyishimiye imikirize y'uru rubanza, irujuririra kuwa 25/5/2012 mu Rukiko rw'Ikirenga, ivuga ko Urukiko Rukuru, ku birebana n'ubukererwe bw'iminsi 12 yo kugemura icyiciro cya mbere cy'imifuka, rwemeje ko habaye "force majeure" yatumye SINFOTEC Sarl itubahiriza amasezerano, nyamara SINFOTEC Sarl ntiyigeze igaragaza ikimenyetso gishimangira iyo "force majeure". Ivuga kandi ko Urukiko Rukuru rwemeje, nta mpamvu, ko SINFOTEC Sarl ikwiye guhabwa indishyi by'ubukererwe ingana na 6.838.616Frw.

[5] SINFOTEC Sarl nayo, yararujuririye kuwa 26/5/2012, ivuga ko Urukiko Rukuru rwirengagije ko OCIR-THE ariyo yateje ubukererwe, ko Urukiko Rukuru rutabashije kubona ko habaye impamvu itunguranye kandi itigobotorwa (cas de force majeure) yatumye itashoboye kubahiriza amasezerano, ko Urukiko Rukuru rwanze kuyigenera indishyi kandi ko ku makosa ya OCIR-THE, kubera kutishyurwa mu gihe, yatumye igirana ikibazo na FINA Bank. Ivuga kandi ko Urukiko Rukuru rutashyize indishyi z'ubukererwe yayigeneye zingana na 6.838.616Frw mu giteranyo kigaragara mu cyemezo cyarwo, ko Urukiko Rukuru rwamwimye indishyi zose yasabaga kandi byagaragaye ko yarenganyijwe, nyamara rwemeza ko indishyi yasabaga zigomba guhwanywa (compensation), ndetse ko Urukiko Rukuru rwanze kuyigenera 26.398.333Frw kandi ko ayo mafaranga yagombaga kubarirwa indishyi z'ubukererwe bw'iminsi 487, ingana na 12.855.988Frw.

[6] Iburanisha mu ruhame ryabaye kuwa 11/3/2014, OCIR-THE, iburanirwa na Me Rubango Epimaque, Intumwa ya Leta naho SINFOTEC Sarl iburanirwa Rudaharishema Emmanuel, yunganiwe na Me Baragondoza Jean Damascène.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

Ubujurire bwa OCIR-THE

Kumenya niba SINFOTEC Sarl yari yatanze mu Rukiko Rukuru, ikimenyetso kigaragaza impamvu ntakumirwa y'uko ubwato bwari butwaye "matières premières" bwagize ikibazo mu nyanja.

[7] Me Rubango Epimaque, uburanira OCIR-THE, avuga ko Urukiko Rukuru rwemeje ko ubukererwe bw'iminsi cumi n'ibiri (12), kuva kuwa 28/11/2008 kugeza kuwa 9/12/2008, bwatumye OCIR-THE ihana SINFOTEC Sarl, iyikata 2.499.000 Frw y'igihano cy'ubukererwe, bugomba kuvaho kuko icyo gihe SINFOTEC Sarl yahuye n'impamvu ntakumirwa (force majeure) y'uko ubwato bwari butwaye "matières premières" bwagize ikibazo mu nyanja, ko ariyo mpamvu yatumye SINFOTEC Sarl itubahiriza amasezerano bagiranye, nyamara nta kimenyetso SINFOTEC Sarl yigeze itanga kigaragaza iyo mpamvu ntakumirwa (force majeure), mu buryo yasobanuwemo, ku buryo cyari kwemerwa nk'ikigaragaza iyo mpamvu ntakumirwa (force majeure), bityo akaba asanga uru Rukiko rwaremeje iyo mpamvu ntakumirwa (force majeure) rushingiye gusa ku mvugo ya SINFOTEC Sarl, agasaba rero ko icyo gihe cy'iminsi cumi n'ibiri (12), nacyo cyemezwa mu gihe cy'ubukererwe SINFOTEC Sarl ikwiye guhanirwa.

[8] Me Rubango Epimaque asobanura ko impamvu ntakumirwa (force majeure) ari ikintu kimenywa na bose, ko itaba izwi na SINFOTEC Sarl yonyine, ko kuba ubwato bwarapfiriye mu nyanja bikamenywa na SINFOTEC Sarl yonyine kandi yaragombaga kumenywa na buri wese, iyo mpamvu itari ntakumirwa cyane cyane ko usibye kubyandika mu ibaruwa, nta kindi kimenyetso, SINFOTEC Sarl igaragaza.

[9] Me Baragondoza Jean Damascène, uburanira SINFOTEC Sarl, avuga ko ikimenyetso cy'impamvu ntakumirwa (force majeure) cyatanzwe mu iburanisha kandi ko umucamanza yabashije kubisobanukirwa abishingiraho, bityo akaba asanga ko iyo mpamvu itangwa na OCIR-THE nta shingiro ifite kuko Urukiko Rukuru rwakurikije amategeko cyane cyane ko impamvu ntakumirwa (force majeure) iteganyijwe mu masezerano SINFOTEC Sarl na OCIR-THE bagiranye.

UKO URUKIKO RUBIBONA

[10] Ingingo ya 9 y'Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "urega agomba kugaragaza ibimenyetso by'ibo aregera. Iyo abibuze, uwarezwe aratsinda. Naho uvuga ko icyo yategekwaga gukora cyagaragajwe n'ibimenyetso atagitegetswe kugikora, agomba kugaragaza impamvu zakimukuyeho. Iyo abiburiye ibimenyetso, uwo baburana aramutsinda".

[11] Ingingo ya 3, agace ka 1 y'Itegeko n° 15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko "buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana".

[12] Urukiko rw'Ikirenga rurasanga mu gika cya 4 cy'urubanza rwajuririwe, Urukiko Rukuru rushingiye ku ingingo ya 64 y'Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano no ku ibaruwa ya SINFOTEC Sarl yo kuwa 28/10/2008 yakiriwe na OCIR-THE kuwa 30/10/2008 iyimenyesha ko itashobora kubahiriza amasezerano bagiranye mu gihe basezeranye kuko ubwato bwari butwaye "matières premières" buva muri Afrika y'Epfo bugana Kenya bwagize ikibazo mu nyanja, rwaremeje ko indishyi y'ubukererwe bw'iminsi 12, ingana na 2.499.000Frw, SINFOTEC Sarl itakagombye kuzicibwa kubera ko kutubahiriza inshingano zayo kutaturutse ku bushake bwayo nk'uko biteganyije mu masezerano bagiranye mu gika cyayo cya 31.

[13] Usesenguye ibivugwa mu gika cya 4 cy'urubanza rwajuririwe, bigaragara ko Urukiko Rukuru rwemeje ko habaye impamvu ntarengwa itunguranye yatumye SINFOTEC Sarl igemura icyiciro cya mbere y'imifuka kuwa 9/12/2008, hashize iminsi 12 y'ubukererwe, ibyo rubyemeza rushingiye gusa ku ibaruwa yo kuwa 28/10/2008 ya SINFOTEC Sarl, aho imenyesha OCIR-THE ko ubwato bwavaga muri Afrika y'Epfo bugana muri Mombasa-Kenya bwaje kugirira ikibazo mu nyanja bigasaba igihe cy'ubyumweru bitatu kugira ngo gikemuke, nyamara uretse kumenyesha OCIR-THE icyo kibazo, SINFOTEC Sarl yagombaga gutanga n'ibimenyetso bibigaragaza, cyane cyane imbere y'Urukiko Rukuru kuko yaregaga OCIR-THE kuba yari yayikase 2.499.000Frw kubera ubukererwe bw'iminsi 12[1].

[14] Hashingiwe ku biteganywa n'ingingo ya 9 y'Itegeko n° 21/2012 ryo kuwa 14/6/2012 naryo ryavuzwe haruguru n'iya 3 agace ka 1 y'Itegeko n° 15/2004 ryo kuwa 12/6/2004 ryavuzwe haruguru ndetse n'ibisobanuro by'Urukiko Rukuru mu gika cya 4 cy'urubanza rwajuririwe, Urukiko rw'Ikirenga rurasanga nta kimenyetso nta kimwe kigaragaza ko impamvu ntarengwa ivugwa na SINFOTEC Sarl yabaye koko, bityo Urukiko Rukuru rukaba rutagombaga kwemeza ko habaye impamvu ntarengwa, mu gihe nta kimenyetso kibishimangira.

[15] Kubera izo mpamvu zose, Urukiko rw'Ikirenga rurasanga iyo impamvu y'ubujurire bwa OCIR-THE ifite ishingiro, bityo OCIR-THE ikaba itagomba kwishyura SINFOTEC Sarl 2.499.000Frw yari yayikase nk'indishyi z'ubukererwe bw'iminsi 12.

Kumenya niba SINFOTEC Sarl ikwiye indishyi z'ubukererwe, Urukiko Rukuru rwayigeneye.

[16] Me Rubango Epimaque avuga ko indishyi za 6.838.616Frw z'ibihano by'ubukererwe, Urukiko Rukuru rwageneye SINFOTEC Sarl, zidakwiye kuko zabazwe ku mafaranga itagombaga guhabwa, harimo 2.499.000Frw y'ubukererwe na 11.543.000Frw OCIR-THE yavanye mu mafaranga yagombaga kwishyura SINFOTEC Sarl, mu rwego rw'ihwanya ry'imyenda (compensation), bityo akaba asanga izo ndishyi SINFOTEC Sarl itazihabwa kuko nta mpamvu 14.042.000Frw yagombaga kuvanwaho n'Urukiko Rukuru.

[17] Me Baragondoza Jean Damascène avuga ko itagombaga gukatwa 2.499.000Frw y'ubukererwe kuko yahuye n'impamvu ntakumirwa (cas de force majeure) yatumye itubahiriza amasezerano yagiranye na OCIR-THE, ko kandi itagomgaba gukatwa 11.543.000Frw kuko ayo mafaranga ari ay'iyindi sosiyete (E.I.S.), itandukanye na

[1] "C'est au débiteur qui se prétend libéré par cas fortuit ou par force majeure, à prouver cette libération, et par conséquent le fait qui la produit. La preuve de la cause étrangère doit être faite avec tous les caractères requis pour qu'elle soit libératoire, c'est-à-dire que l'exécution soit réellement impossible, et pas simplement plus onéreuse, et que toute faute du débiteur soit exclue". Henri De Page, "Traité de droit civil belge, principes-doctrine-jurisprudence", Tome deuxième, troisième édition, Bruylant, Bruxelles, 1964, PP 596-597-602.

SINFOTEC Sarl, yari ifite umwenda wa OCIR-THE, bityo akaba asanga ko iyo mpamvu y'ubujurire bwa OCIR-THE nta shingiro ifite.

UKO URUKIKO RUBIBONA

[18] Ku byerekeye 2.499.000Frw, nk'uko byavuzwe haruguru, OCIR-THE yari ifite uburenganzira bwo guca SINFOTEC Sarl ayo mafaranga nk'indishyi y'ubukererwe kuko uretse kubivuga, itagaraje impamvu ntakumirwa yatumye itagemurira OCIR-THE imifuka basezeranye mu gihe bumvikanyeho, bityo Urukiko Rukuru rutagombaga kubara izo ndishyi y'ubukererwe rushingiye ku aya mafaranga.

[19] Ku byerekeye 11.543.000Frw, Urukiko rw'Ikirenga rurasanga mu myanzuro y'ubujurire ya OCIR-THE, iremeza ko ibisobanuro byatanzwe n'Urukiko Rukuru ku birebana n'ayo mafaranga, mu gika cya 6 n'icya 7 cy'urubanza rwajuririwe, bikwiye kuko OCIR-THE itagombaga kuyafatira, mu rwego rw'ihwanya ry'imyenda hashingiye ku ngingo ya 181 n'iya 182 z'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, ku bwishyu yagombaga SINFOTEC Sarl ku mpamvu y'uko ayo mafaranga bari barishyuye koko indi sosiyete yitwa E.I.S., itandukanye na SINFOTEC Sarl.

[20] Nk'uko byasobanuwe haruguru, Urukiko rw'Ikirenga rurasanga indishyi z'ibihano by'ubukererwe ku mafaranga SINFOTEC Sarl iregeraga itishyuwe, ryagombaga kubarwa hashingiwe gusa ku 11.543.000Frw yari yakaswe nta mpamvu, bityo OCIR-THE igomba kuyatangira indishyi z'ubukererwe.

[21] Kubera izo mpamvu zose, Urukiko rw'Ikirenga rurasanga iyo ngingo y'ubujurire bwa OCIR-THE ifite ishingiro gusa ku birebana na 2.499.000Frw, Urukiko Rukuru rwayitegetse kwishyura SINFOTEC Sarl.

Ku bujurire bwa SINFOTEC Sarl

Kumenya niba Urukiko Rukuru rwarabaze ubukererwe bwa mbere ruhereye ku tariki yo kuwa 30/8/2008.

[22] Me Baragondoza Jean Damascène avuga ko Urukiko Rukuru rutashishoje neza ngo rubone ko OCIR-THE ari nyirabayazana w'ibibazo byose byavutse, byatumye habaho ubukererwe. Asobanura ko ubukererwe bwa mbere bwatejwe na OCIR-THE kuko yari yahinduye ibizandikwa ku mifuka (artwork) ikabimenyesha SINFOTEC Sarl nyuma y'iminsi 43 (13/10/2008), bamaze gusinya amasezerano kandi ko ayo masezerano yagombaga gushyirwa mu bikorwa mu minsi 45 kuva tariki yo kuwa 30/8/2008.

[23] Me Rubango Epimaque avuga ko Urukiko Rukuru rutahereye ku itariki yo kuwa 30/8/2008 y'insinywa ry'amasezerano, rubara iminsi y'ubukererwe kuko bigararagara neza mu gika cya 4 cy'urubanza rwajuririwe ko itariki Urukiko Rukuru rwahereyeho rubara ibihe by'ubukererwe ari iyo kuwa 13/10/2008, nyuma yo kwemeza ibizandikwa ku mifuka (artwork). Asobanura ko iminsi 45 y'igemurwa ry'ibyumvikanyweho ikaba yarahereye kuri iyo tariki ya 13/10/2008 kugeza kuri tariki yo kuwa 27/11/2008, bityo akaba asanga ko kuba ubukererwe bwarabazwe nyuma y'itariki yo kuwa 13/10/2008, nta makosa Urukiko Rukuru rwakoze.

UKO URUKIKO RUBIBONA

[24] Urukiko rw'Ikirenga rurasanga usomye igika cya 4 cy'urubanza rwajuririwe, biragaragara neza ko Urukiko Rukuru rwatangiye kubara iminsi y'ubukererwe kuva kuwa 13/10/2008, umunsi hemerejwe ibizandikwa ku mifuka "artwork" kandi ko rwemeje ko imifuka yose y'agaciro kangana na 208.250.000Frw yagombaga kuba yarangije kugemurwa mu minsi 45, ari kuwa 28/11/2008, ariko ntibyakorwa ahubwo icyiciro cya mbere kigemurwa kuwa 9/12/2008, icya kabiri kuwa 31/12/2008, icya gatatu kuwa 8/4/2009, icya kane nayo ari nacyo cya nyuma kuwa 10/4/2009.

[25] Hashingiwe ku ibyo byavuzwe haruguru, Urukiko rw'Ikirenga rurasanga ahubwo Urukiko Rukuru, nk'uko OCIR-THE itabihakana, rwemeje ko gushyira mu bikorwa amasezerano SINFOTEC Sarl yagiranye na OCIR-THE, byatinze kuko SINFOTEC Sarl yagombaga kurindira ko OCIR-THE yayimenyesha ibizandikwa ku mifuka (artwork), niyo mpamvu OCIR-THE, aho kutangira kubara iminsi 45 yo kugemura imifuka basezeranye kuwa 30/8/2008, umunsi basinye amasezerano, yayibaze kuva kuwa 13/10/2008, umunsi yamenyesheje SINFOTEC Sarl ibizandikwa ku mifuka.

[26] Kubera izo mpamvu zose, Urukiko rw'Ikirenga rurasanga kuba OCIR-THE yamenyesheje SINFOTEC Sarl ibizandikwa ku mifuka nyuma y'iminsi 43 kuva ku itariki bagiranye amasezerano (30/8/2008), ntabwo bisobanuro ubukererwe bwa SINFOTEC Sarl mu kugemura OCIR-THE imifuka mu minsi 45 kuva ku itariki ya 13/10/2008, n'ukuvuga kuwa 28/11/2008, bityo iyo mpamvu y'ubujurire bwa SINFOTEC Sarl nta shingiro ifite kuko OCIR-THE itari nyirabayazana by'ubukererwe bwa SINFOTEC Sarl.

Kumenya niba ari impamvu ntarengwa ya kabiri yaratumye SINFOTEC Sarl itaragiriza mu gihe amasezerano yagiranye naOCIR-THE no kumenya niba indishyi z'ubukererwe yakaswe na OCIR-THE ku mafaranga 52.205.875 itubahirije amategeko.

[27] Me Baragondoza Jean Damascène avuga ko Urukiko Rukuru rutabashije kubona ko habaye impamvu ntakumirwa (cas de force majeure) ebyiri, kandi ko rwirengagije icya kabiri kirebana n'imifuka yagemuwe OCIR-THE ifite agaciro ka 58.205.875Frw.

[28] Me Baragondoza Jean Damascène, mu iburanisha, asobanura ko nyuma y'uko icyiciro cya mbere cy'imifuka cyinjiye muri MAGERWA, igice cyayo, gifite agaciro ka 58.275.639Frw, cyaje gukurwamo n'ikamyo ebyiri, zikijyana muri OCIR-THE kubera ikibazo kihutirwaga, hagasigara ikindi gice, gifite agaciro ka 58.205.875Frw kingana n'ikamyo ebyiri zagombaga gukurikiza "procédure fiscale", ariko OCIR-THE yatinze kuzikurayo, niyo mpamvu SINFOTEC Sarl yayandikiye ibaruwa, iyisaba kuyitwara, bityo akaba asanga itagombaga gukatwa indishyi z'ubukererwe kuko ubwo bukererwe bwakozwe na OCIR-THE.

[29] Rudaharishema Emmanuel avuga ko nyuma yo kugemura icyiciro cya mbere cy'imifuka, uruganda rwakoraga iyo mifuka, rwahagaritse akazi burundu kuko rwahuye n'ikibazo cy'ihungabana ry'ubukungu ku isi, ngo kubera ibyo, SINFOTEC Sarl yandikiye OCIR-THE kuwa 16/2/2009, iyimenyesha icyo kibazo, ikanayisaba kuyihindurira indi mifuka itandukanye n'iyo bari basezeranye mbere, hakurikijwe "échantillon" nshyashya yayeretse. Akomeza asobanura ko OCIR-THE yasubije ibaruwa ya SINFOTEC Sarl nyuma y'iminsi 15, ivuga ko icyo kibazo cyabaye kitaturutse ku bushake bwa SINFOTEC Sarl ariko ikayimenyesha ko izayica indishyi z'ubukererwe kuko yatinze kuzana imifuka, bityo akaba asanga ko OCIR-THE yivuguruza kubera ko mu gihe yari imaze kwemera ko iyo mpamvu itaturutse ku SINFOTEC Sarl, itari gufata icyemezo cyo kuyikata indishyi z'ubukererwe.

[30] Me Rubango Epimaque avuga ko OCIR-THE itemera impamvu ntakumirwa (cas de force majeure) n'imwe nk'uko yabisobanuye haruguru mu ingingo ya mbere y'ubujurire bwa OCIR-THE. Asobanura ko ku birebana n'impamvu ntakumirwa (cas de force majeure) ya kabiri ivugwa na SINFOTEC Sarl, Urukiko Rukuru rwatanze igisobanuro cyumvikana kandi gikwiye, bityo akaba asanga amakosa ya SINFOTEC Sarl yo kuba itaragemuriye ibintu rimwe kandi izi neza ko yarengeje igihe cyo kubigemura bitabazwa OCIR-THE.

UKO URUKIKO RUBIBONA

[31] Urukiko rw'Ikirenga rurasanga impamvu ntarengwa ya kabiri ivugwa mu rubanza rwajuririwe, irebana n'ikibazo uruganda rwakoraga imifuka SINFOTEC Sarl yagombaga kugemurira OCIR-THE, rwahuye nacyo, cyatumye ruhagarika gukora ku mpamvu cy'ihungabana ry'ubukungu ku isi, naho amafaranga 58.205.875 arebana n'ikindi gice k'imifuka, SINFOTEC Sarl sarl yagemuye OCIR-THE kuwa 31/12/2008.

[32] Ku byerekeye impamvu ntarengwa ya kabiri ivugwa haruguru, Urukiko rw'Ikirenga rurasanga, uretse ko mu ibaruwa yo kuwa 16/2/2009, SINFOTEC Sarl yamenyeshaga OCIR-THE ko uruganda rukora imifuka basezeranye, rwahagaritse imirimo yarwo, ikanagaragaza muri dosiye ikinyamakuru "Daily nation" yo muri Kenya cyasohotse kuwa 7/2/2009, aho kibivuga, iyo mpamvu itari ntarengwa kuko amasezerano yagiranye na OCIR-THE ateganya ko imifuka 200.000 yose basezeranye igomba kugemurwa mu minsi 45, nyamara iyo minsi yari yarangiye kuva kuwa 28/11/2008 ndetse ko iyo mpamvu itanga yabaye nyuma y'iyo tariki yo kuwa 28/11/2008, bityo ibivugwa na SINFOTEC Sarl nta shingiro bifite.

[33] Ku byerekeye indishyi z'ubukererwe SINFOTEC Sarl yakaswe na OCIR-THE ku mafaranga 52,205,875, Urukiko rw'Ikirenga rurasanga SINFOTEC Sarl idatanga ikimenyetso kigaragaza ko ishyikirizwa (livraison) ry'imifuka yari yazanye ryagombaga gukorwa muri MAGERWA, ndetse itagaragaza ko OCIR-THE yari ifite ishingano yo kuyikuraho, icyakora, ingingo za 25.1 na 25.2 ya "Cahier des Clauses Administratives Particulières (CCAP)" zigaragaza ko ishyikirizwa ry'imifuka ikorerwa ku cyicaro cya OCIR-THE kuko ziteganya ko igenzura ry'imifuka rizakorwa igihe ry'ishyikirizwa kandi rikorerwe i Gikondo ku cyicaro cya OCIR-THE[2]. Rurasanga kandi ingingo ya 16 ya "Cahier des Clauses Administratives Générales (CCAG)" igaragaza neza ko SINFOTEC Sarl ariyo igomba kwishyura imisoro yose irebana nibyo ishyikiriza OCIR-THE[3], ndetse ko "bon d'arrivée provisoire" yo kuwa 1/12/2008 y'imifuka yinjiye muri Magerwa, igaragaza ko nyiri mifuka (destinataire) ari SINFOTEC Sarl, bityo ibivugwa na SINFOTEC Sarl by'uko gutinda gukora "procédure fiscale" kwa OCIR-THE aricyo cyatumye icyiciro cya kabiri cy'imifuka cyaratinze gusohoka

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[2]L'article 25.1 du Cahier des Clauses Administratives Particulières dispose que "Les inspections et essais seront effectués à la livraison. Elles vérifieront la conformité entre spécifications techniques et la livraison". Quant à lui, l'article 25.2 du Cahier des Clauses Administratives Particulières dispose que "les inspections et essais seront conduits à Gikondo, siège de l'Ocir-Thé".

[3]L'article 16.1 du Cahier des Clauses Administratives Générales édicte que "pour les fournitures provenant d'un pays autre que le pays de l'Entité de passation des marchés, le Fournisseur sera entièrement responsable de tous les impôts, droit de timbre, patente et taxes dus à l'extérieur du Rwanda". L'article 16.2 du Cahier de Clauses Administratives Générales prévoit que "pour les fournitures fabriquées au Rwanda, le Fournisseur sera entièrement responsable de tous les impôts, droits, patentes, etc…., à payer jusqu'au moment de la livraison à l'Entité de passation des marchés des fournitures faisant l'objet du marché". Enfin, l'article 16.3 du Cahier des Clauses Administratives Générales stipule que "si le fournisseur peut prétendre à des exemptions, réductions, abattements ou privilèges en matières fiscale dans le pays de l'Entité de passation des marchés, l'Entité de passation des marchés fera tout son possible pour permettre au Fournisseur d'en bénéficier jusqu'à concurrence du maximum autorisé".

muri Magerwa, kikavamo tariki yo kuwa 31/12/2008, nyamara cyari cyagezeyo kuwa 1/12/2008, nta gaciro bikwiye guhabwa kuko isesengura ry'ibisobanuro n'izi ngingo zivugwa haruguru, bigaragaza bidashidikanwa ko ari SINFOTEC Sarl yari ifite ishingano yo gukora iyo mitunganyirize y'isoresha (procédure fiscale).

[34] Kubera izo mpamvu zose, Urukiko rw'Ikirenga rurasanga nta makosa Urukiko Rukuru rwakoze mu gihe rwemeje ko impamvu ntarengwa ya kabiri ivugwa na SINFOTEC Sarl nta shingiro ihabwa ndetse ko indishyi z'ubukererwe zakaswe na OCIR-THE ku mafaranga 149.974.361Frw yari yasigaye igihe SINFOTEC Sarl yagemuraga icyiciro cya kabiri cy'imifuka gifite agaciro ka 58.205.875Frw, zikwiye, bityo iyo ngingo y'ubujurire bwa SINFOTEC Sarl nta shingiro ifite.

Kumenya niba indishyi zisabwa na SINFOTEC Sarl hakurikijwe ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano zikwiye.

[35] Me Baragondoza Jean Damascène avuga ko hakurikijwe ingingo ya 64 y'Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigena amasezerano, Urukiko Rukuru rwanze kugena indishyi SINFOTEC Sarl yagombwaga na OCIR-THE, bitewe n'uko ukutayishyura byatumye igirana ikibazo na FINA Bank, ku buryo yaciwe n'Urukiko Rukuru rw'Ubucuruzi indishyi nyinshi z'ibihano, nyamara bigaragara ko Urukiko Rukuru rwirengagije ibivugwa mu ngingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano. Asobanura ko usibye ko amasezerano SINFOTEC Sarl yagiranye na OCIR-THE ateganya indishyi z'ubukererwe, kutishyura SINFOTEC Sarl byayiteje igihombo gikomeye.

[36] Me Rubango Epimaque avuga ko kuri iyi mpamvu y'ubujurire bwa SINFOTEC Sarl, mu gika cya 10 cy'urubanza rwajuririwe, Urukiko Rukuru rwatanze ibisobanuro byumvikana kandi bisobanutse, ahubwo ikitumvikana ari uburyo SINFOTEC Sarl isaba guhabwa indishyi ziteganyijwe mu masezerano yagiranye na OCIR-THE, nyuma igasaba kwishyurwa imyenda n'indishyi zayo ifitanye na FINA Bank.

UKO URUKIKO RUBIBONA

[37] Ingingo ya 144 y'Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano iteganya ko "Iyo kwica amasezerano birebana no kutishyura amafaranga cyangwa kudakora igisabwa gishobora kubarwa mu mafaranga azwi cyangwa ashobora kumenyekana, inyungu zibarwa uhereye igihe igisabwa cyagombaga gukorwa hakuwemo ibyo uruhande rwishe amasezerano rufiteho uburenganzira", naho ingingo ya 146, igika cya mbere y'iryo Tegeko iteganya ko "indishyi ziturutse ku kwica amasezerano zishobora guteganywa mu masezerano ariko hakagenwa umubare ukwiye ugendeye ku gihombo nyakuri kiriho cyangwa cyiteguwe ko cyabaho mu gihe amasezerano atubahirijwe cyangwa mu gihe cy'ingorane zo kubona ibimenyetso by'igihombo".

[38] Ku byerekeye indishyi z'ubukererwe, Urukiko rw'Ikirenga rurasanga mu masezerano yabaye hagati ya OCIR-THE na SINFOTEC Sarl, ingingo ya 15.5 ya "Cahier des Clauses Administratives Générales"[4] iteganya ko niba OCIR-THE itishyuriye SINFOTEC Sarl mu gihe, izakatwa indishyi z'ubukererwe z'imisi yose y'ubukererwe kuri ayo mafaranga ku

[4]L'article 15.5 du Cahier des Clauses Administratives Générales prévoit que "dans l'éventualité où l'Entité de passation des marchés n'effectuerait pas un paiement dû à sa date d'exigibilité ou dans un délai indiqué au CCAP, l'entité de passation des marchés sera tenu de payer au Fournisseur des intérêts sur le montant du paiement en retard, au(x) taux spécifié(s) dans le CCAP pour toute la période de retard jusqu'au paiement intégral du prix, que ce soit avant ou à la suite d'un jugement ou une sentence arbitrale".

gipimo kivugwa muri "Cahier des Clauses Administratives Particulières". Nanone mu gushyira mu bikorwa iyo ngingo yavuzwe haruguru, agace ka CCAG 15.5 ya "Cahier des Clauses Administratives Particulières"[5] gasobanura ko indishyi z'ubukererwe zizabarwa ku gipimo cya 0,1% ku munsi kandi ko zizatangira kubarwa nyuma y'iminsi 45 kuva igihe SINFOTEC Sarl yahaye OCIR-THE inyemezabuguzi (facture) isaba kwishyurwa.

[39] Ku birebana n'indishyi SINFOTEC Sarl isaba, ishingiwe ku ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, Urukiko rw'Ikirenga rurasanga hakurikijwe ihame ry'amategeko ribuza abagombwa inshigano (créanciers) gusaba icyarimwe abagomba inshingano (débiteurs) indishyi zikomoka ku makosa yo kutubahiriza amasezerano (responsabilité contractuelle) n'izishingiye ku makosa akozwe ku bushake (responsabilité délictuelle)[6], SINFOTEC Sarl, mu gihe igaragaza ko amakosa OCIR-THE yakoze ashingiwe ku kutubahiriza inshingano ze zikomoka ku masezerano bagiranye, ntishobora gusaba Urukiko gutegeka OCIR-THE kuyishyura indishyi ishingiwe ku ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, yerekeye n'amakosa akozwe ku bushake n'ibisa nayo (des délits et quasi-délits), bityo ingingo ya 258 y'Igitabo ryavuzwe haruguru ntishobora gukoresha muri uru rubanza kuko rurebana n'ikibazo cyo gukora ibisabwa mu masezerano.

[40] Usibye ibyo byose kandi, bitabangamiye ibyavuzwe mu gika kibanziriza icyi, niba amasezerano agena indishyi zizatangwa mu gihe umwe mu basezeranye atinze kuyubahiriza, ntakundi bigomba kugenda, ni ukubahiriza ibyo bivugwa mu masezerano hakurikijwe ibiteganywa n'ingingo ya 64 y'Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, bityo Urukiko rw'Ikirenga rurasanga SINFOTEC Sarl idakwiye gusaba OCIR-THE kuriha ibyangiritse ku mpamvu y'uko gutinda kuyishyura yatumye itubahiriza amasezerano yagiranye na FINA Bank kuko itashoboye kwishyura ideni ryayo.

[41] Kubera izo mpamvu zose, iyo ngingo y'ubujurire bwa SINFOTEC Sarl nta shingiro ifite.

Kumenya niba icyemezo cy'urubanza rwajuririwe kitagaragaza indishyi z'ubukererwe zingana na 6.838.616Frw zagenewe SINFOTEC Sarl n'Urukiko Rukuru.

[42] Me Baragondoza Jean Damascène avuga ko n'ubwo, Urukiko Rukuru rwageneye SINFOTEC Sarl indishyi nke z'ubukererwe zingana na 6.838.616Frw, rutigeze ruzishyira mu giteranyo kigaragara mu cyemezo cyarwo kiboneka mu gika cya 15 y'urubanza rwajuririwe.

[43] Me Rubango Epimaque avuga ko iyo hagize indishyi zigenwa n'Urukiko bikwiye, zishyirwa muri "dispositif" y'urubanza kugira ngo byorohe kururangiza mu gihe rubaye Itegeko.

UKO URUKIKO RUBIBONA

[5]Le point CCAG 15.5 du Cahier des Clauses Administratives Particulières prévoit que "le nombre de jour de retard de paiement de la facture du Fournisseur qui conditionne le paiement des intérêts de retard est de 45 jours. Le taux d'intérêt applicable sera de 0,1% par jours de retard".

[6]"La règle du non-cumul des responsabilités contractuelle et délictuelle signifie que la responsabilité délictuelle ne peut pas être invoquée entre des cocontractants pour la période de l'exécution d'un contrat", Alain BENABENT, droit civil, les obligations, 11e édition, Montchrestien, Paris, 2007, P. 367. "Le créancier d'une obligation contractuelle ne peut se prévaloir contre le débiteur de cette obligation, quand bien même il y aurait intérêt, des règles de la responsabilité délictuelle", Civ. 1re, 11 janvier 1989, Bull. civ., I, n° 3, in Alain BENABENT, idem.

[44] Urukiko rw'Ikirenga rurasanga mu gika cya 9 cy'urubanza rwajuririwe, Urukiko Rukuru rwageneye SINFOTEC Sarl indishyi z'ubukererwe zingana na 6.838.616Frw ariko aya mafaranga ntavugwa mu cyemezo cy'urubanza.

[45] Nk'uko bivugwa n'ababuranyi, aya mafaranga yagombaga kugaragara mu cyemezo cy'urubanza, bityo Urukiko rw'Ikirenga rurasanga iyo ngingo y'ubujurire bwa SINFOTEC Sarl ifite ishingiro kuko iryo kosa rigomba gukosorwa.

Kumenya niba Urukiko Rukuru rwatanze ibisobanuro mu kwemeza ihwanya ry'amafaranga y'igihembo cya avoka n'ay'ikurikiranarubanza impande zombi zasabaga.

[46] Me Baragondoza Jean Damascène avuga ko mu gika cya 11 y'urubanza rwajuririwe, Urukiko Rukuru rwemeje ko indishyi zasabwaga n'impande zombi zifite ishingiro ariko ari ikirenga, nyuma rukemeza ko zigomba guhwanywa. Asobanura ko ibyo byakozwe n'impande zombi muri uru rubanza ntishobora kungana, bityo akaba asanga nta mpamvu yo kwangira SINFOTEC Sarl indishyi zose yasabaga no kuyitegeka gutanga igice (1/2) cy'amagarama y'urubanza.

[47] Me Rubango Epimaque avuga ko muri uru rubanza, Urukiko Rukuru rwasanze ko ku mafaranga impande zombi zaregeraga, hari ayo SINFOTEC Sarl ikwiye guhabwa, hari n'andi OCIR-THE yayikase zifite inshingiro, bityo kuba mu gika cya 11 cy'ica ry'urubanza, Urukiko Rukuru rwemeje, mu bushishozi bwarwo, ko mu indishyi zasabwaga n'impande zombi zikwiye guhwanywa kuko ababuranyi bombi, buri wese hari ibyo yatsindiwe n'ibyo yatsindiye, akaba asanga ko iyo mpamvu y'ubujurire nta shingiro kuko nta nenge y'ubwo bushishozi bw'Urukiko igaragazwa.

UKO URUKIKO RUBIBONA

[48] Ingingo ya 7 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi itegenya ko "umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine".

[49] Ingingo ya 147, agace ka kabiri y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "ica ry'urubanza risobanura itegeko ryakurikijwe n'ingingo zishingiye ku byabaye zagaragajwe mu rubanza".

[50] Kubyerekeranye n'amafaranga y'igihembo cy'avoka n'ay'ikurukiranarubanza, Urukiko rw'Ikirenga rurasanga SINFOTEC Sarl yarasabaga indishyi zingana na 10% y'agaciro k'ikiburanwa kubera gushorwa mu manza nta mpamvu na 1.000.000Frw y'ikurikiranarubanza naho OCIR-THE yarasabaga 1.000.000Frw y'igihembo cya avoka na 500.000Frw y'ikurikiranarubanza. Rurasanga rushingiye ku ngingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, Urukiko Rukuru rwaremeje ko ibisabwa n'ababuranyi bifite ishingiro ariko kubera ibisabwa ari ikirenga, ndetse ko buri ruhande rufite ibyo rutsindira n'ibyo rutsindirwa, bikaba bigomba guhwanywa.

[51] Kuba Urukiko Rukuru rwarategetse ihwanya ry'amafaranga y'ikurikiranarubanza n'igihembo cya avoka rutabanje kugaragaza ayo rwageneye buri ruhande, Urukiko rw'Ikirenga rurasanga rutarashubije ibyari byasabwe n'ababuranyi, bityo hashingiwe ku ngingo ya 7 n'iya 147, agace ka kabiri z'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Urukiko Rukuru rutubahirije

amategeko kuko mbere yo kwemeza ihwanya ry'amafaranga rwagombaga kugaragaza amafaranga rwageneye buri muburanyi n'ibisobanuro bibishimangira.

[52] Kubera iyo mpamvu, Urukiko rw'Ikirenga rurasanga iyo ingingo y'ubujurire bwa SINFOTEC Sarl ifite ishingiro.

Kumenya niba SINFOTEC Sarl ikwiye guhabwa indishyi zose isaba.

[53] Me Baragondoza Jean Damascène avuga mu myanzuro ye ko Urukiko Rukuru rwanze kugenera SINFOTEC Sarl 14.855.333Frw yakaswe nk'indishyi z'ubukererwe bitari ngombwa na 11.543.000Frw yafatiriwe kandi yaragombaga kubazwa indi sosiyeti yihariye (E.I.S.). Avuga kandi ko aya mafaranga yose (26.398.333Frw) yagombaga kubarirwaho indishyi z'ubukererwe bw'iminsi 487 ku gipimo cya 0,1%, zingana na 12.855.988Frw, nk'uko ziteganywa mu ngingo ya 15.5 ya "Cahier des Clauses Administratives Générales". Avuga ndetse ko agomba kuhongerwaho 25% ku mwaka y'indishyi zibarwa kuva kuwa 21/4/2009 kugeza kuwa 10/3/2010 kuko OCIR-THE yateje SINFOTEC Sarl igihombo bikaba byaratumye igirana ikibazo na FINA Bank, hakiyongeraho "forfait" ya 1.000.000Frw kuko SINFOTEC Sarl yakoreshaga amafaranga y'umwenda nk'uko bigaragara mu ibaruwa yo kuwa 10/3/2010 FINA Bank yandikiye SINFOTEC Sarl, Sarl, indishyi zose ihwanye na 10.074.427Frw (26.398.333Frw + 25% + 16,5 mois/12 mois) + 1.000.000Frw). Asoza avuga ko igiteranyo cy'amafaranga yose OCIR-THE agomba guha SINFOTEC Sarl ari 55.261.622 Frw (39.254.321Frw + 10.074.427Frw + 10% (39.254.321Frw + 10.074.427Frw: igihembo cya avoka) + 1.000.000Frw: ikurikiranarubanza), hiyongereyeho 500.000Frw y'igihembo cy'avoka kubera urubanza rw'ubujurire.

[54] Me Baragondoza Jean Damascène, mu iburanisha, asobanura ko kubera amategeko ateganya ko indishyi z'ubukererwe zidashobora kurenga igipimo cya 10% y'agaciro k'isoko ryose, SINFOTEC Sarl idashobora kuzibara kugeza uyu munsi kuko zirarenga iyo 10% y'igiciro cy'isoko ryose, bityo akaba asaba ko SINFOTEC Sarl, Sarl igenerwa indishyi z'ubukererwe zingana na 10% y'isoko ryose, ni ukuvuga 20.825.000Frw. Asobanura kandi ko SINFOTEC Sarl isaba ubu guhabwa 31.623.000Frw arebana n'igihombo OCIR-THE yayiteye kuko ku makosa yayo itashoboye kuriha ideni ya FINA Bank (26.398.333 x 25% x 57,5 mois/12 mois = 31.623.000Frw), hakiyongeraho "forfait" ya 1.000.000Frw. Asoza asobanura ko SINFOTEC Sarl isaba nanone igihembo c y'avoka n'amafaranga y'ikurikiranarubanza bingana na 10% y'indishyi yose igomba guhabwa na OCIR-THE, n'ukuvuga 7.984.633Frw (26398.333 + 20.825.000 + 31.623.000Frw + 1.000.000Frw = 79.846.333 Frw x 10% = 7.984.633Frw), yose hamwe akaba 87.830.966Frw.

[55] Me Rubango Epimaque avuga ko Urukiko Rukuru rwasobanuye mu buryo bwumvikana impamvu yatumye rwemeye cyangwa rutemeye amafaranga yose SINFOTEC Sarl yaregeraga ndetse n'indishyi zijyanye nayo, bityo kuba SINFOTEC Sarl itagaragaza icyo inenga kuri buri gisobanuro cyatanzwe n'Urukiko Rukuru kuri buri mafaranga yaregerwaga, ahubwo ikifuza gusa guhabwa ibyo yaregeraga byose, akaba asanga ko iyo mpamvu y'ubujurire nta shingiro ifite.

UKO URUKIKO RUBIBONA

[56] Ku byerekeye 26.398.333Frw, harimo 2.499.000Frw, 3.299.436Frw, 8.933.312Frw, na 63.585Frw z'indishyi z'ubukererwe SINFOTEC Sarl yakaswe na OCIR-THE na 11.543.000Frw yakaswe ku mpamvu y'uko yari ifitiye OCIR-THE umwenda, ikaba ikora ihwanya ry'imyenda, Urukiko rw'Ikirenga rurasanga nk'uko byavuzwe haruguru, uretse

11.543.000Frw, OCIR-THE yari ifitiye uburenganzira bwo gukata SINFOTEC Sarl indishyi z'ubukererwe zose zingana na 14.855.333Frw, bityo kuba yarafatiriye SINFOTEC Sarl 11.543.000Frw nta mpamvu, nk'uko byasobanuwe haruguru mu gika cya 19 n'iya 20, OCIR-THE igomba kuyiha indishyi z'ubukerewe z'iminsi 1753 (jours), kuva ku itariki yagombaga kuyishyura kugeza umunsi w'isomwa ry'urubanza, ku gipimo ya 0.1% y'aya mafaranga ku munsi, n'ukuvaga 20.234.000Frw (11.543.000 x 0,1% x 1.753 jours).

[57] Ku byerekeye 31.623.000Frw asabwa na SINFOTEC Sarl arebana n'igihombo OCIR-THE yayiteye kuko ku makosa yayo itashoboye kuriha ideni rya FINA Bank (26.398.333 x 25% x 57,5 mois/12 mois = 31.623.000Frw), Urukiko rw'Ikirenga rurasanga itayahabwa, nk'uko byasobanuwe haruguru mu gika cya 39 n'iya 40, ku mpamvu y'uko idashobora mu bibazo birebana n'irangiza ry'amasezerano, gusaba indishyi zinshingiye ku ngingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano.

[58] Ku byerekeye 1.000.000Frw ya forfait asabwa na SINFOTEC Sarl, Urukiko rw'Ikirenga rurasanga idakwiye kuyabona kuko idasobanura impamvu yayo.

[59] Ku byerekeye 7.984.633Frw y'igihembo cy'avoka n'amafaranga y'ikurikiranarubanza bingana na 10% y'indishyi yose igomba guhabwa na OCIR-THE, Urukiko rw'Ikirenga rurasanga, aya mafaranga ari ikirenga, bityo mu bushishozi bwaryo, rurayigenera 500.000Frw y'igihembo cya avoka na 300.000Frw y'ikurikiranarubanza, yose hamwe akaba 800.000Frw.

[60] Hashingiwe kuri ibyo byose byavuzwe haruguru, Urukiko rw'Ikirenga rurasanga OCIR-THE igomba kwishyura SINFOTEC Sarl 11.543.000Frw yakaswe nta mpamvu, 20.234.000Frw y'indishyi z'ubukererwe n'amafaranga, 500.000Frw y'igihembo cy'avoka na 300.000Frw y'ikurikiranarubanza, yose hamwe 32.577.000Frw.

III. ICYEMEZO CY'URUKIKO

[61] Rwemeje ko ubujurire bwa OCIR-THE bufite ishingiro kuri bimwe.

[62] Rwemeje ko ubujurire bwa SINFOTEC Sarl bufite ishingiro kuri bimwe.

[63] Rutegetse OCIR-THE kwishyura SINFOTEC Sarl 11.543.000Frw yakaswe nta mpumvu, 20.234.000Frw y'indishyi z'ubukererwe kuri ayo mafaranga, 500.000Frw y'igihembo cy'avoka na 300.000Frw y'ikurikiranarubanza, yose hamwe akaba 32.577.000Frw.

[64] Rutegetse OCIR-THE na SINFOTEC Sarl sarl kwishyura amagarama y'uru rubanza anagana n'amafaranga 19.000Frw.