SORAS Ltd v. ITEX Sarl

[Rwanda URUKIKO RW'IKIRENGA – RCOMA 0148/11/CS (Mutashya, P.J., Gatete na Gakwaya, J.) 23 Gicurasi 2014]

Amategeko agenga ubwikorezi – Amasezerano y'ubwikorezi – Ibimenyetso mu masezerano y'ubwikorezi – Amasezerano y'ubwikorezi agaragazwa n'ibimenyetso byose biteganywa n'amategeko, byaba ari ibyerekeye ibicuruzwa bikagaragazwa n'impapuro z'ipakira – Itegeko ryo kuwa 19/1/1920 ryerekeye intumwa mu bucuruzi n'abikorezi, ingingo ya 10.

Amategeko agenga ubwikorezi – Amasezerano y'ubwikorezi – Uburyozwe bw'abikorezi – Umwikorezi aryozwa ibyangiritse cyangwa ibyatakaye mu gihe aterekana ko ukwangirika, ugutakara cyangwa impanuka zaturutse ku yindi mpamvu itamuturutseho kandi idashobora kumushinjwa – Itegeko ryo kuwa 19/1/1920 ryerekeye intumwa mu bucuruzi n'abikorezi, ingingo ya 18.

Amategeko agenga ubwishingizi – Kwishyura indishyi z'ubwishingizi – Isimbura ry'umwishingizi mu burenganzira z'uwishingiwe – Uwishingiye wishyuye indishyi z'ubwishingire, asimbura uwo yishingiye, mu rugero rw'indishyi yatanze, mu byerekeye uburenganzira no gukurikirana abandi bantu batumye yishyura kubera ibikorwa byabo – Itegeko- Teka n^{o} 20/75 ryo kuwa 20/06/1975 ryerekeye ubwishingire, ingingo ya 32 igika cya 1.

Amategeko agenga amsezerano – Ibarwa ry'inyungu ku mafaranga remezo – Igihe zitangirira kubarwa – Iyo kwica amasezerano birebana no kutishyura amafaranga, inyungu zibarwa uhereye igihe uwagombaga kuzishyura yihanangirijwe zikanabarwa hashingiwe ku gipimo cyemewe na Banki Nkuru y'Igihugu hakuwemo ibyo uruhande rwishe amasezerano rufiteho uburenganzira – Itegeko n^{o}45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 144.

Incamake y'ikibazo:SORAS Ltd yareze ITEX s.a.r.l mu Rukiko Rukuru rw'Ubucuruzi ivuga ko yagiranye amazerano y'ubwishingizi bw'icyayi na sosiyeti y'ubwikorezi yitwa TACT Ltd. Nyuma y'aho TACT Ltd yaje kumvikana na sosiyeti ITEX s.a.r.l ngo ibe ariyo yikorera icyayi cya OCIR-THE. Imodoka yari icyikoreye igeze mu gihugu cya Kenya yaje gukora impanuka icyayi yari itwaye kirangirika.

TACT Ltd yaje gusaba SORAS Ltd kuyishyura agaciro k'icyayi yari yishingiye, nyuma SORAS Ltd irabikora, nayo ihita isimbura TACT Ltd mu burenganzira bwayo bwo gukurikirana ITEX s.a.r.l ku gihombo yatewe no kuba ITEX s.a.r.l itaragejeje imizigo aho yagombaga kugezwa. Urukiko Rukuru rw'ubucuruzi rwemeje ko ikirego cya SORAS Ltd nta shingiro gifite.

SORAS Ltdyajuririye Urukiko rw'Ikirenga ivuga koUrukiko Rukuru rw'ubucuruzi rwirengangije ibimenyetso yatanze bigaragaza ko hagati ya ITEX s.a.r.l na TACT Ltd habaye amasezerano y'ubwikorezi bw'icyayi cya OCIR-THE.

ITEX s.a.r.l yo yavuze ko mu bimenyetso byatanzwe birimo na "lettre de transport" igaragaza ko umwikorezi ari TACT Ltd kandi yafashe ubwishingizi ndetse SORAS Ltd ikaba yarishyuye OCIR-THE icyayi cyayo. Yongeye ivuga kandi ko SORAS itagaragaje ko imodoka yakoze impanuka ari iya ITEX s.a.r.l, ndetse ko niyo iza kuba iyayo, ibyo bitari kuba bihagije kugirango iryozwe icyayi cyangiritse kuko nta masezerano y'ubwikorezi yari hagati ya ITEX sarl na TACT Ltd.

ITEX s.a.r.l yatanze ubujurire bwuririye ku bundi isaba ko SORAS ltd itegekwa kuyishyura indishyi z'akababaro kubera gukomeza kuyishora mu manza ku maherere, amafaranga y'ikurikirana rubanza n'ay'igihembo cy'Avoka.

SORAS Ldt yo yasabye ko ITEX s.a.r.l iyishyura inyungu zibariwe kuri 18% y'amafaraga yishuye TACT Ltd, abazwe kuva igihe ITEX s.a.r.l yaboneye integuza. Yanasabye kandi amafaranga y'ikurikirana rubanza n'igihembo cy'Avoka.

Incamake y'icyemezo: 1. Amasezerano y'ubwikorezi ntagaragazwa gusa no kuba yanditse, ashobora no kugaragazwa n'ibimenyetso byose biteganywa n'amategeko nk'inyemezabwishyu yabaye hagati y'umwikorezi n'uwo apakiriye ibintu, icyemezo cy'ubwikorezi bwo mu muhanda mpuzamahanga, ingano y'ibiro bigomba koherezwa ugenewe ibicuruzwa bihura n'ibipakiwe. Bikaba bigaragara rero ko TACT Ltd yagiranye na ITEX s.a.r.l amasezerano y'ubwikorezi bw'icyayi cya OCIR-THE gifite 49.418kg kandi ikaba yari yishyuye igiciro cy'ubwo bwikorezi(4.448$).

2. Umwikorezi aryozwa ibyangiritse mu gihe atagaragaza ko byaturutse ku yindi mpamvu itamuturutseho kandi idashobora kumushinjwa. Ibimenyetso byose byagaragajwe byerekanye ko TACT Ltd yagiranye amasezerano y'ubwikorezi na ITEX s.a.r.l bw'icyayi cya OCIR-THE.

3. Umwishingizi wishyuye indishyi z'ubwishingire, asimbura uwo yishingiye mu rugero rw'indishyi yatanze. Mu gihe SORAS Ltd yishyuye TACT Ltd 20.700.150Frw, SORAS Ltd ifite uburenganzira bwo gusimbura TACT s.a.r.l mu rugero rw'indishyi yishyuye. SORAS Ltd rero ikaba ifite uburenganzira bwo gusaba ITEX s.a.r.l amafaranga 20.700.150 yishyuye TACT Ltd.

4. Inyungu zijyanye no kutishyuriwa igihe ziratangwa kandi zikabarwa hashingiye ku gipimo cyemewe na Banki Nkuru y'igihugu. Izo nyungu zibarwa haherewe ku munsi uzisaba yihanangirijeho ugomba kuzimwishyura.

Ubujurire bufite ishingiro.
Urubanza rwajuririwe ruhindutse kuri byose.
Rutegetse ITEX s.a.r.l kwishyura SORAS Ltd agaciro k'icyayi cyangirikiye mu mpanuka, inyungu ku mafaranga remezo, amafaranga y'ikurikiranarubanza n'ay'igihembo cy'Avocat.
Amagarama aherereye ku regwa.

Amategeko yashingiweho:
Itegeko n°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 144.
Itegeko ryo kuwa 19/1/1920 ryerekeye intumwa mu bucuruzi n'abikorezi, ingingo ya 10 na 18.
Itegeko ryo kuwa 30/07/1888 ryerekeye amasezerano cyangwa imirimo nshinganwa, ingingo ya 431 na 432.
Itegeko- Teka n° 20/75 ryo kuwa 20/06/1975 ryerekeye ubwishingire, ingingo ya 32 igika cya 1.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Soras Ltd yareze ITEX Sarl mu Rukiko Rukuru rw'Ubucuruzi ivuga ko yagiranye amasezerano y'ubwishingizi bw'icyayi na sosiyeti y'ubwikorezi yitwa TACT Ltd (Trans-Africa Container Transport Ltd), hanyuma TACT Ltd yaje guha sosiyeti ITEX Sarl icyayi cya OCIR-THE ngo ibe ariyo icyikorera, imodoka yari icyikoreye igeze mu gihugu cya Kenya, ikora impanuka icyayi yari itwaye kirangirika.

[2] Nyuma y'uko TACT Ltd isabye SORAS Ltd kwishyura icyo cyayi yariyarishingiye, SORAS Ltd yishyuye TACT Ltd agaciro k'icyayi cyangiritse kangana na 20.700.150Frw, SORAS Ltd nayo ihita isimbura TACT Ltd mu burenganzira bwayo bwo gukurikirana ITEX Sarl kuri icyo gihombo (préjudice) yatewe no kuba ITEX Sarl itaragejeje imizigo aho yagombaga gusohozwa, ari nacyo Soras Ltd yaregeye ITEX Sarl.

[3] Urukiko Rukuru rw' Ubucuruzi rwemeje ko icyo kirego cya SORAS Ltd nta shingiro gifite, rwemeje kandi ko ikirego cyo kwiregura cya ITEX Sarl, kigamije gusaba indishyi, kitakiriwe kuko cyatanzwe impitagihe iburanisha ry'urubanza ryaramaze gusozwa.

[4] SORAS Ltd ntiyishimiye imikirize y'urwo rubanza, ijuririra mu Rukiko rw'Ikirenga ivuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibimenyetso byatanzwe bigaragaza ko hagati ya ITEX Sarl na TACT Ltd habaye amasezerano y'ubwikorezi bw'icyayi cya OCIR-THE cyangiritse, ahubwo rwavuze ko ibyo bimenyetso byose bitabigaragaza, ndetse ko fagitire yo kuwa 22/3/2010 ITEX Sarl yakoreye TACT Ltd itagaragaza ko yishyuzaga ubwikorezi bw'icyayi cya OCIR-THE. ITEX Sarl yatanze ubujurire bwuririye ku bundi isaba koSORAS Ltd itegekwa kuyishyura indishyi z'akababaro kubera gukomeza kuyishora mu manza ku maherere, iy'ikurikiranarubanza n'igihembo cy'avoka.

[5] Urubanza rwaburanishijwe mu ruhame kuwa 15/04/2014, SORAS Ltd ihagarariwe na Me Ruzindana Ignace, naho ITEX Sarl ihagarariwe na Me Ndagijimana Emmanuel.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

a. Kumenya niba harabaye amasezerano y'ubwikorezi hagati ya ITEX Sarl na TACT Ltd, yatuma SORAS Ltd, mu mwanya wa TACT Ltd, yishyuza ITEX S.a.r.l agaciro k'icyayi cyangiritse kubera impanuka.

[6] Me Ruzindana Ignace, uhagarariye SORAS Ltd, avuga ko nk'uko bigaragara mu gika cya 5cy'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwavuze ko ibimenyetso Soras Ltd ishingiraho ikirego cyayo ari inyandiko-mvugo yakozwe na Polisi ya Kenya igaragaza izina rya Bisamaza ITEX nka nyir'ukuyimenyesha imizigo yangiritse ubwo yari yikorewe ivanywe mu Rwanda igana Mombasa, fagitire yo kuwa 22/3/2010 ya 4.448USD, ITEX Sarl yakoreye TACT Ltd iyishyuza ubwikorezi bw'icyayi cya OCIR-THE kivugwa muri uru rubanza n'ibaruwa yo kuwa 2/2/2010, Twagirumukiza Benoît, "courtier" wa TACT Ltd yandikiye SORAS Ltd, ariko urwo Rukiko rwasanze ko ibi bimenyetso byose bitagaragaza ko hagati ya ITEX Sarl na TACT Ltd habaye amasezerano y'ubwikorezi bw'icyayi cya OCIR-THE cyangiritse, SORAS Ltd ikakishyurira, none ubu ikaba iregera kugaruza amafaranga yacyishyuriye.

[7] Me Ruzindana Ignace asobanura ko ku byemeza gutyo, Urukiko Rukuru rw'Ubucuruzi rwivuguruje kuko rwemeza ko fagitire yo kuwa 22/3/2010 ya ITEX Sarl irebana n'icyayi cya OCIR-THE kivugwa muri uru rubanza, hanyuma rukarangiza ruvuga ko nta bimenyetso bigaragaza ko habaye amasezerano y'ubwikorezi bw'icyayi cya OCIR-THE cyangiritse, hagati ya ITEX Sarl na TACT Ltd. Asobanura ko kuvuga ko fagitire yo kuwa 22/3/2010, ITEX Sarl yakoreye TACT Ltd iyishyuza ubwikorezi bw'icyayi, itari ikimenyetso kibishimangira, ahubwo ibyo bigaragaza ko Urukiko Rukuru rw'Ubucuruzi rutayisesenguye neza, kuko mu miburanire, ntaho ITEX Sarl yigeze ivuga ko icyayi cyishyuzwa kuri fagitire ivugwa, kijyanye n'ubundi bwikorezi butari ubw'icyayi cya OCIR-THE. Asobanura kandi ko 4.448Usd ari amafaranga y'ubwikorezi, atari agaciro k'icyayi cyane ko ITEX Sarl itari kwishyuza TACT Ltd icyayi, ko ITEX Sarl itashoboye kugaragaza nyiri icyayi, imodoka ye yari yatwaye, ndetse usibye ko ITEX Sarl itari gufata ubwishingizi bw'icyayi kuko icyayi cyari cyishingiwe na TACT Ltd, bigaragara neza ko ari icyayi cya OCIR-THE kubera ko ingano (quantité) y'icyayi igaragara kuri "lettre de transport" ihura n'ibyo TACT Ltd yayihaye, bityo akaba asanga ibi bimenyetso byari bihagije, bitari ngombwa ko habaho amasezerano yanditse, ariyo mpamvuITEX Sarl igomba gusubiza SORAS Ltd 20.700.150Frw yishyuye TACT Ltd kubera icyayi cyangirikiye mu mpanuka yakozwe n'imodoka yayo.

[8] Ku birebana n'imodoka yakoze impanuka, Me Ruzindana Ignace avuga ko ibivugwa mu rubanza rwajuririwe mu gika cya 5 ku rupapuro rwa 4 y'uko "iyo modoka iza kugaragazwa ko ari iya ITEX Sarl, ibi bitaba ubwabyo bivuga ko ari yo yaryozwa inshingano z'umwikorezi kuko byanashoboka ko TACT Ltd yaba umwikorezi ariko akora akazi k'ubwikorezi yiyambaje imodoka ya ITEX Sarl cyangwa se y'undi uwo ariwe wese babyumvikanyeho mu masezerano yihariye atari ay'ubwikorezi", ataribyo kuko mu miburanire ya ITEX Sarl itigeze ivuga ko imodoka zayo zakodeshejwe na TACT Ltd mu buryo aribyo byatumye ikora fagitire yo kuwa 22/3/2010 yishyuzaga TACT Ltd cyangwa ngo igaragaze imodoka bari bakodesheje n'igiciro cy'ubukode, bityo akaba asanga Urukiko Rukuru rw'Ubucuruzi rwarashingiye icyemezo cyarwo ku bitagaragajwe mu iburanisha.

[9] Me Ndagijimana Emmanuel avuga ko uretse ko ITEX Sarl na TACT Ltd bakorana imirimo myinshi, iyo fagitire yo kuwa 22/3/2010 ari fagitire y'icyayi ITEX Sarl yatwariye TACT Ltd gifite agaciro ka 4.448Usd, gitandukanye n'icyayi kivugwa muri uru rubanza gifite agaciro kangana na 20.700.000Frw. Akomeza avuga ko SORAS Ltd itagaragaza ko imodoka yakoze impanuka ari iya ITEX Sarl, ndetse ko niyo iza kuba iyayo, ibyo bitaba bihagije kugirango iryozwe icyayi cyangiritse kuko nta masezerano y'ubwikorezi ari hagati ya ITEX Sarl na TACT Ltd.

[10] Me Ndagijimana Emmanuel asobanura ko "lettre de transport" igaragaza umwikorezi na nyiri icyayi, bityo akaba asanga OCIR-THE idashobora kwemera ko umwikorezi atwara icyayi cyayo atafashe ubwishingizi. Akomeza avuga ko umwikorezi ari TACT Ltd kandi yafashe ubwishingizi, ndetse ko Soras Ltd yishyuye OCIR-THE icyayi cyayo cyagize impanuka, bityo akaba asanga nta mpamvu yatuma ITEX Sarl iza mu masezerano yabaye hagati ya TACT Ltd na Soras Ltd. Asoza avuga ko iyo ITEX Sarl iza kuba umwikorezi yari gufata ubwishingizi kuko ntabwo yari gufata "risque" zo kohereza imodoka yayo ntabwishingizi.

UKO URUKIKO RUBIBONA

[11] Ingingo ya 10 y'Itegeko ryo kuwa 19/1/1920ryerekeye intumwa mu bucuruzi n'abikorezi iteganya ko"amasezerano y'ubwikorezi agaragazwa n'ibimenyetso byose biteganywa n'amategeko mbese nko kubyerekeye ibicuruzwa hakoreshwa impapuro z'ipakira".

[12] Ingingo 431y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano iteganya ko"Ntibabazwa (abikorezi mu muhanda cyangwa mu mazi) gusa ibyo bashyikirijwe mu bwato cyangwa mu modoka, babazwa kandi ibyo baherewe mu cyumba cyangwa mu mangazini ngo bishyirwe mu bwato cyangwa mu modoka".

[13] Ingingo ya 432 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano iteganya ko"baryozwa (abikorezi mu muhanda cyangwa mu mazi) ibyo bahawe byatakaye n'ibyangiritse, keretse berekanye ko byatakaye cyangwa ko byangiritse ku mpamvu itunguranye cyangwa itunguranye ntarengwa".

[14] Ingingo ya 18 y'Itegekoryo kuwa 19/1/1920 ryerekeye intumwa mu bucuruzi n'abikorezi iteganya ko"umwikorezi aryozwa ibyangiritse cyangwa ibyatakaye cyangwa ndetse n'impanuka zaba kubo atwaye mu gihe aterekana ko ukwangirika, ugutakara cyangwa impanuka zaturutse ku yindi mpamvu itamuturutseho kandi idashobora kumushinjwa".

[15] Ingingo ya 32, igika cya 1 y'Itegeko-Teka n° 20/75 ryo kuwa 20/6/1975 ryerekeye Ubwishingire iteganya ko"uwishingiye wishyuye indishyi z'ubwishingire, asimbura uwo yishingiye, mu rugero rw'indishyi yatanze, mu byerekeye uburenganzira no gukurikirana abandi bantu batumye yishyura kubera ibikorwa byabo".

[16] Ku birebana n'amasezerano y'ubwikorezi hagati ya TACT Ltd na ITEX Sarl, Urukiko rw'Ikirenga rurasanga muri dosiye y'uru rubanzahari inyandiko-mvugoya polisi ya Kenya (police station MTITO ANDEI) yo kuwa 1/3/2010, aho Bwana BISAMAZA ITEX abamenyesha ibyabuze igihe imodoka Mercedes Benz ifite icyapa RAB 691K/ RL 0707 yari yakoze impanuka. Rurasanga kandi muri dosiye hari fagitire yo kuwa 22/3/2010, ITEX Sarl yakoreye TACT Ltd, iyisaba kwishyura 4.448Usd y'ubwikorezi bwa 49.418Kg y'icyayi cy'umukara yikoreye kuva Kigali kugeza Mombasa (Kenya), ndetse ko iyo fagitire igaragaza neza ibyanditse no muri "lettre de transport routier international" (international trucking bill of lading) n° 157/2010 yo kuwa 2/2/2010, aho usanga ikilo cy'icyayi kigomba koherezwa Mombasa kwa Bahari (T) Co Ltd (destinataire) ari 49.418Kg (Poids Brut: G. Weight) nk'uko bigaragarano muri "liste de colisage n°029/2010" yo kuwa 2/2/2010, TACT Ltd yari yohererje Bahari (T) Co. Ltd kuwa 19/2/2010 na Soras Ltd, umwishingizi, kuwa 5/4/2010. Byongeye kandi inyandiko yo kuwa 4/3/2010 bita "arrival advice", nayo ikaba igaragaza ko icyayi kivugwa cyoherejwe Bahari (T) Co. Ltd.

[17] Hakurikijwe ibyavuzwe haruguru, Urukiko rw'Ikirenga rurasanga nk'uko biteganywa n'ingingo ya 10 y'Itegekoryo kuwa 19/1/1920 ryerekeye intumwa mu bucuruzi n'abikorezi aho ryemeza ko amasezerano y'ubwikorezi agaragazwa n'ibimenyetso byose biteganywa n'amategeko, ibyo bimenyetso byose bivugwa mu gika kibanziriza iki, bigaragaza neza ko TACT Ltd na ITEX Sarl bagiranye amasezerano y'ubwikorezi bw'icyayi cya OCIR-THE gifite 49.418Kg kigomba koherezwa Mombasa kwa Bahati (T) Co. Ltd ndetse ko TACT Ltd yishyuye ITEX Sarl 4.448Usd y'ubwo bwikorezi bw'icyayi, bityo ibivugwa na ITEX Sarl y'uko amasezerano y'ubwikorezi yanditswe yonyine ashobora kubyemeza, bikaba nta shingiro bifite.

[18] Ku birebana n'igiciro cy'icyayi cyoherejwe Mombasa, Urukiko rw'Ikirenga rurasanga inyandiko iri mu dosiye, bita "proposition d'indemnisation" yo kuwa 19/7/2010, igaragaza neza ko igiciro cyayo cyari 143.792 Usd, ni ukuvuga 82.392.816 Frwy'icyo gihe, bityo ibivugwa na ITEX Sarl y'uko 4.448Usd, agaragara muri fagitireyo kuwa 22/3/2010, ariyo giciro cy'icyayi cyoherejwe Mombasa, ko nta sano afitanye n'icyayi kivugwa muri uru rubanza, bikaba ataribyo kuko 4.448Usd ari igiciro cy'ubwikorezi bw'icyayi nk'uko byagaragajwe haruguru.

[19] Ku birebana na 20.700.150Frw SORAS Ltd yishyuza ITEX Sarl, Urukiko rw'Ikirenga rurasanga mu gihe bigaragara ko SORAS Ltd yishyuye TACT Ltd ayo mafaranga kuwa 22/7/2010 ikoresheje "chèque" n°BB 03920994 (tiré sur la Banque de Kigali) kuko na OCIR-THE yayisabaga kuyishyura icyayi cyayo cyangiritse mu mpanuka yavuzwe haruguru, SORAS Ltd, nk'umwishingizi (assureur), ifite uburenganzira bwo gusimbura TACT Sarl uwo yishingiye mu rugero rw'indishyi yishyuye, isaba ITEX Sarl kuyisubiza ayo mafaranga, bityo hashingiwe ku ingingo ya 431n'iya 432z'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano, ku ngingo ya 18y'Itegeko ryerekeye intumwa mu bucuruzi n'abikorezi no ku ngingoya 32,igika cya 1 y'Itegeko-Tekan° 20/75 ryo kuwa 20/6/1975 ryerekeye Ubwishingire, ITEX Sarl ikaba igomba kwishyura SORAS Ltd 20.700.150Frw.

[20] Hashingiwe kuri ibyo bisobanuro, Urukiko rw'Ikirenga rurasanga iyo mpamvu y'ubujurire bwa SORAS Ltd ifite ishingiro.

b. Kumenya niba SORAS Ltd ikwiye guhabwa inyungu ku mafaranga remezo isaba, indishyi z'ikurikiranarubanza n'igihembo cy'avoka.

[21] Me Ruzindana Ignace, mu myanzuro yanditse, asaba ko ITEX Sarl itegekwa guha Soras Ltd inyungu z'ubukererwe ku mafaranga 20.700.150Frw zibariwe kuri 18%, uhereye igihe ITEX Sarl yaboneye integuza.

[22] Me Ruzindana Ignace asaba kandi ko ITEX Sarl itegekwa guha SORAS Ltd 1.000.000Frw y'ikurikiranarubanza, 500.000Frw y'igihembo cy'avoka mu rwego rwa mbere na 500.000Frw y'igihembo cy'avoka mu rwego rw'ubujurire.

[23] Me Ndagijimana Emmanuel avuga ko SORAS Ltd idakwiye guhabwa amafaranga isaba kuko yareze uwo itagombaga kurega.

UKO URUKIKO RUBIBONA

[24] Ingingo ya 144y'Itegeko n°45/2011 ryo kuwa 25/11/2011 rigenga amasezeranoiteganya 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 amasezeranorufiteho uburenganzira".

[25] Hashingiwe kuri iyo ngingo,kuba ingaruka y'isimbura ari uko uwishyuye asimbura ugomba kwishyurwa mu burenganzira, mu birego,afitek'ugomba kumwishyura, Urukiko rw'Ikirenga rurasanga Soras Ltd izo nyungu izikwiye, bityo ITEX Sarl ikaba igomba kuyishyura inyungu ku mafaranga remezo isaba,ku gipimo cya 7% cyemewe na Banki Nkuru y'Igihugu (taux de placement moyen BNR), zibazwe guherakumunsi SORAS Ltd yihanangirije ITEX Sarl, ni ukuvuga kuwa 13/8/2010, kuko igipimo cya 18% SORAS Ltd ivuga, ari menshi, bityo inyungu ikaba igomba kubarwa mu buryo bukurira:

$$\frac{20.700.150x7ximinsi\ 1379}{100x\ iminsi\ 365} = 5.474.481Frw$$

[26] Ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cya avoka SORAS Ltd isaba, Urukiko rw'Ikirenga rurasanga ayo asaba ari menshi, rukabaruyigeneye mu bushishozi bwarwo (ex aequo et bono) 300.000Frw y'ikurikiranarubanza na 500.000Frw y'igihembo cy'avoka mu rwego rwa mbere no mu rwego rw'ubujurire, yose hamwe akaba 800.000Frw.

[27] Hashingiwe kuri ibyo byose byavuzwe haruguru, Urukiko rw'Ikirenga rurasanga ITEX Sarl igomba kwishyura Soras Ltd 20.700.150Frw y'agaciro k'icyayi cyangirikiye mu mpanuka, 5.474.481Frw y'inyungu ku mafaranga remezo, 300.000Frw y'ikurikiranarubanza na 500.000Frw y'igihembo cya avoka, yose hamwe akaba 26.974.631Frw.

III. ICYEMEZO CY'URUKIKO

[28] Rwemeje ko ubujurire bwa Soras Ltd bufite ishingiro.

[29] Rwemeje kourubanza nº RCOM 0341/10/HCC rwaciwe kuwa 29/07/2011 n'Urukiko Rukuru rw'Ubucuruzi ruhindutse kuri byose.

[30] Rutegetse ITEX Sarl kwishyura Soras Ltd 20.700.150Frw y'agaciro k'icyayi cyangirikiye mu mpanuka, 5.474.481Frw y'inyungu ku mafaranga remezo, 300.000Frw y'ikurikiranarubanza na 500.000Frw y'igihembo cy'avoka, yose hamwe 26.974.631Frw.

[31] Rutegetse ITEX Sarl kwishyura amagarama y'uru rubanza angana na 29.150Frw.