

SORAS AG v. NAEB

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00037/2019/CA (Mukandamage, P.J., Munyangeri na Ngagi, J.) 13 Ukuboza 2019]

Amategeko agenga amasezerano – Avansi yo gutangira imirimo – Inshingano z'umwishingizi nyuma y'ubusabe bwa nyiri umushinga – Mu gihe mu masezerano umwishingizi yishingiye ko ingwate izagira agaciro mu gihe avansi izaba yarangije kwishyurwamu buryo yiyemeje mu masezerano, umwishingizi ahita yishyura ntayandi mananiza kuko icyo gihe avansi yo gutangira imirimo aba atari ubwishyu bw'imirimo iba imaze gukorwa.

Incamake y'ikibazo: NAEB yareze SORAS AG Ltd ivuga ko ku wa 04/10/2012 yagiranye na Entreprise MUKAKIMENYI Marie Rosine/EMMR amasezerano yo kubaka "GISHARI Flower Park" i Gishari mu Karere ka Rwamagana, yishingirwa na SORAS AG Ltd yiyemeje kwishyura 343.813.740 Frw igihe NAEB izayimenyesha ko EMMR yananiwe imirimo yagombaga gukora, ariko ko yayimenyesheje ko EMMR yananiwe imirimo, ikanga kwishyura amafaranga yishingiye.

Urubanza rwaburanishijwe SORAS AG Ltd ititabye, ariko yaramenyeshwe mu buryo bukurikije amategeko; Urukiko rw'Ubucuruzi rwemeza ko ikirego cya NAEB gifite ishingiro; rutegeka SORAS AG Ltd kuyishyura 243.944.991 Frw y'ubwishingire yishingiye EMMR, akubiyemo 217.718.742 Frw yari yasigaye kuko EMMR yahagaritse imirimo imaze kwishyura 126.094.998 Frw, ay'inyungu z'ubukererwe angana na 26.126.249 Frw, na 100.000 Frw y'indishyi z'ikurikiranarubanza n'igihembo cya Avoka.

SORAS AG Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi isaba ko rusuzuma niba rwiyezamirimo EMMR yarakoresheje avansi yakiriye mu bitaragenwe mu isoko rya GISHALI Flower Park, kandi ko niba iyo avansi yarakoreshejwe yose ntacyo SORAS AG Ltd ikwiye kuryozwa nk'umwishingizi. Yasabaga kandi ko Urukiko rwajuririwe rusuzuma niba EMMR na NAEB barahinduye inshingano zateganyijwe mu masezerano batayimenyesheje no kumenya niba ibyo byatuma ubwishingizi bukomeza, inajuririra ko yaciwe indishyi zidafite ishingiro.

Urukiko Rukuru rw'Ubucuruzi rwemeje ikirego cya SORAS AG Ltd nta shingiro gifite rushingiye ko rwasanze hakurikijwe ibikubiye mu nyandiko SORAS AG Ltd yamenyesheje NAEB yiswe "Advance Payment Guarantee N° DCO 12396 yo ku wa 14/09/2012 yaremereye NAEB ko izahita iyishyura igice cya avansi kizaba gisigaye igihe cyose izagisaba iyigaragariza ko uwishingiwe atubahirije inshingano ze z'amasezerano, mu gihe cyose iyo avansi izaba itararangiza kwishyurwa na rwiyezamirimo. Rwasanze kandi, SORAS AG Ltd iterekana aho NAEB na EMMR bahinduye amasezerano yabo, ku buryo byagira ingaruka ku nshingano yiyemeje.

SORAS AG Ltd yarongeye ijuririra Urukiko rw'Ubujujire isaba ko uru Rukiko rusuzuma niba yategekwe kwishyura amafaranga yari asigaye kwishyurwa kuri avansi EMMR yakiriye hatarebwe agaciro k'imirimo ugereranyije n'amafaranga yahawe kubera ko yo ihamya ko ayo mafaranga ari mu gaciro k'imirimo, ndetse rugasuzuma niba EMMR nka rwiyezamirimo hari ikosa yakoze rishingiye ku masezerano ryatuma iryozwa ibijyanye nayo.

Incamake y'icyemezo: Umwishingizi ahita yishyura avansi yo gutangira imirimo nta nzitizi atanze zirebana n'inshingano ziri mu masezerano y'uwo yishingiye, inshingano ze zikareberwa mu byo yiyemeje mu masezerano.

**Ubujurire nta shingiro bufite.
Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe.
Urubanza rwaciye n'Urukiko Rukuru rw'Ubucuruzi ntiruhindutse.
Amagarama ahwanye n'ibyakoze mu rubanza.**

Amategeko yashingiweho:

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu.
Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano.
Itegeko N° 12/2007 ryo ku wa 27/03/2007 rigenga amasoko.

Imanza zifashishijwe:

Urubanza N° RCOMAA 00026/2018/CA RADIANT INSURANCE COMPANY Ltd na RWANDA AGRICULTURE BOARD. rwaciye ku wa 08/02/2019.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, NAEB irega SORAS AG Ltd ivuga ko ku wa 04/10/2012 yagiranye na Entreprise MUKAKIMENYI Marie Rosine/EMMR amasezerano yo kubaka "GISHARI Flower Park" i Gishari mu Karere ka Rwamagana, yishingirwa na SORAS AG Ltd yiyemeje kwishyura 343.813.740 Frw igihe NAEB izayimenyesha ko EMMR yananiwe imirimo yagombaga gukora, ariko ko yayimenyesheje ko EMMR yananiwe imirimo, ikanga kwishyura amafaranga yishingiye. Urubanza rwaburanishijwe SORAS AG Ltd ititabye, ariko yaramenyeshewe mu buryo bukurikije amategeko.

[2] Ku wa 27/10/2017, Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza N° RCOM 001031/2017/TC/NYGE, rumaze kubona SORAS AG Ltd yariyemeje ko iramutse yishyujwe ingwate ya avansi na nyir'imirimo NAEB, izishyura nta bindi bisobanuro, rwemeza ko ikirego cya NAEB gifite ishingiro; rutegeka SORAS AG Ltd kuyishyura 243.944.991 Frw y'ubwishingire yishingiye EMMR, akubiyemo 217.718.742 Frw yari yasigaye kuko EMMR yahagaritse imirimo imaze kwishyura 126.094.998 Frw, ay'inyungu z'ubukererwe angana na 26.126.249 Frw, na 100.000 Frw y'indishyi z'ikurikiranarubanza n'igihembo cya Avoka.

[3] SORAS AG Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi isaba ko rusuzuma niba rwiyezimirimo EMMR yarakoresheje avansi yakiriye mu bitaragenwe mu isoko rya GISHALI Flower Park, kandi ko niba iyo avansi yarakoreshejwe yose ntacyo SORAS AG Ltd ikwiye kuryozwa nk'umwishingizi. Yasabaga kandi ko Urukiko rwajuririye rusuzuma niba EMMR na NAEB barahinduye inshingano zateganyijwe mu masezerano batayimenyesheje no kumenya niba ibyo byatuma ubwishingizi bukomeza, inajuririra ko yaciye indishyi zidafite ishingiro.

[4] Ku wa 23/11/2018, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza N° RCOMAA 00348/2018/CHC/HCC, rusanga hakurikijwe ibikubiye mu nyandiko SORAS AG Ltd yamenyesheje NAEB yiswe "Advance Payment Guarantee N° DCO 12396 yo ku wa 14/09/2012 aho yagaragaje inshingano yiyemeje, yaremereye NAEB ko izahita iyishyura igice cya avansi kizaba gisigaye igihe cyose izagisaba iyigaragariza ko uwishingiye atubahirije inshingano ze z'amasezerano, mu gihe cyose iyo avansi izaba itararangiza kwishyurwa na rwiyemezamirimo. Rwasanze kandi, SORAS AG Ltd iterekana aho NAEB na EMMR bahinduye amasezerano yabo, ku buryo byagira ingaruka ku nshingano yiyemeje, maze rwemeza ko ubujurire bwa SORAS AG Ltd nta shingiro bufite, ruhamishaho imikirize y'urubanza rwajuririwe.

[5] SORAS AG Ltd yajuririye urubanza mu Rukiko rw'Ubujurire isaba ko uru Rukiko rusuzuma niba yategekwa kwishyura amafaranga yari asigaye kwishyurwa kuri avansi EMMR yakiriye hatarebwe agaciro k'imirimo ugereranyije n'amafaranga yahawe kubera ko yo ihamya ko ayo mafaranga ari mu gaciro k'imirimo, ndetse rugasuzuma niba EMMR nka rwiyemezamirimo hari ikosa yakoze rishingiye ku masezerano ryatuma iryozwa ibijyanye nayo.

[6] Urubanza rwaburanishijwe mu ruhamye ku wa 13/11/2019, SORAS AG Ltd ihagarariwe na Me NDARUHUTSE Janvier, NAEB ihagarariwe na Me BUGINGO Spencer, mu iburanisha ry'uru rubanza SORAS AG Ltd ivuga ko iretse ingingo y'ubujurire irebana no kumenya niba EMMR nka rwiyemezamirimo hari ikosa yakoze rishingiye ku masezerano ryatuma iryozwa ibijyanye nayo.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURA RYABYO.

1. Kumenya niba kuba avansi yo gutangira imirimo yarakoreshejwe mu mirimo y'isoko, bivanaho inshingano za SORAS AG Ltd zo kwishyura igice cya avansi EMMR itishyuye.

[7] Me NDARUHUTSE Janvier, uhagarariye SORAS AG Ltd, avuga ko ubujurire bwa SORAS AG Ltd bushingiye ahanini ku gisobanuro cy'amasezerano (interprétation) impande zombi zagiranye. Asobanura ko ikibazo SORAS AG Ltd ifite, ari ukumenya niba igomba kwishyura amafaranga ya "avance de démarrage" yategetswe kwishyura kandi ari mu gaciro k'imirimo yakozwe mu nyubako NAEB yakiriye.

[8] Akomeza avuga ko ubusanzwe hari uburyo (formules) butatu bukoreshwa mu masoko, ubwa mbere akaba ari igihe rwiyemezamirimo yakira amafaranga akagenda nta mirimo akoze, ubwa kabiri akaba ari igihe yahabwa nka 300.000.000 Frw agakoreshamo gusa 100.000.000 Frw amasezerano agaseswa harakozwe imirimo ihwanye n'aya mafaranga, ubwa gatatu akaba ari mu gihe ahabwa izi 300.000.000 Frw akongeraho andi nk'aya, uwatanze isoko yarisesa agasanga inyubako ifite agaciro kangana na 600.000.000 Frw kandi yatanze 300.000.000 Frw gusa, icyo gihe bikaba biba ngombwa ko nyir'inyubako asubiza rwiyemezamirimo 300.000.000 Frw yarengajeho.

[9] Akomeza nanone avuga ko ku birebana n'uru rubanza, rwiyemezamirimo yari kujya yishyura 20% buri gihe uko yishyurwe hasigara 217.000.000 Frw; kugeza ubwo NAEB yakiriye inyubako ifite agaciro ka 243.000.000 Frw, bivuze ko aya mafaranga ya avansi n'ubundi ari muri

iyi nyubako; SORAS AG Ltd ikaba ntacyo ikurikiranyeho rwiyemezamirimo kubera ko amafaranga yayahaye NAEB. Asobanura ko ubusanzwe nyir'inyubako areba agaciro k'inyubako ashidikirijwe, hakavanwamo avansi rwiyemezamirimo yahawe; ko ku bireba EMMR amafaranga yose yahawe yayashyize mu nyubako, bukeye NAEB isesa amasezerano y'isoko, ifata inyubako irimo na avansi yahaye EMMR, ikibazo gihari akaba ari ukumenya niba hari amafaranga ya NAEB rwiyemezamirimo asigaranye, icyumvikana akaba ari uko nta mafaranga NAEB ikwiye kubaza EMMR cyangwa SORAS AG Ltd.

[10] Asoza avuga ko icyo SORAS AG Ltd yishingiye, ari ukugira ngo amafaranga ya "avance de démarrage" EMMR izahabwa itazayajyana mu bindi, kuko mu masezerano handitsemo ko umwishingizi asezeranye kwishyura aya mafaranga niba rwiyemezamirimo adakoresheje amafaranga yahawe icyo yateganyirijwe, ko kuba rero ibi ntabyabayeho, ntacyo akwiye kubazwa. Avuga nanone ko "avance de démarrage" ari nk'inguzanyo ihabwa rwiyemezamirimo, mu kuyisubiza rero, uko nyir'imirimo ahaye rwiyemezamirimo inyemezabuguzi (facture) agenda asigaranaho 10%, ko umwishingizi yari gusabwa kwishyura iyo NAEB igaragaza ko rwiyemezamirimo yahawe facture akigendera.

[11] Me BUGINGO Spencer, uhagaririye NAEB, avuga ko SORAS AG Ltd ikwiye kwishyura amafaranga yasigaye kuri avansi yahawe EMMR yishingiye hakurikijwe ibiteganywa mu ngingo ya 89 y'Itegeko N° 12/2007 ryo ku wa 27/03/2007 rigenga amasoko ya Leta ryakurikizwaga igihe EMMR yahabwaga isoko. Asobanura ko SORAS AG Ltd yishingiye avansi rwiyemezamirimo yahawe, bikaba byumvikana ko niba isoko risheshwe igomba kwishyura aya mafaranga iregwa hamwe n'indishyi, kandi ko iyatanze ntacyo yahomba kuko nayo iyo igiye gukora amasezerano na rwiyemezamirimo hari ibyo ayiha nk'umwishingizi; ikaba rero idakwiye gukomeza gucuruza amafaranga ya NAEB bitari ngombwa.

[12] Ku birebana no kuba avansi NAEB isabwa kwishyurwa iri mu nyubako NAEB yakiriye, Me NDARUHUTSE Janvier avuga ko nta tegeko ribiteganywa, ariko ko isoko ryari ryatanzwe rifite agaciro ka miliyari irenga, rwiyemezamirimo ahabwa avansi ya 343.000.000 Fr Frw, yishyuramo 171.000.000 Frw yonyine, hakaba rero ntacyabuza SORAS AG Ltd kwishyura amafaranga ya avansi asigaye nk'uko biri mu masezerano y'ubwishingizi yakozwe mu buryo bukurikije amategeko.

UKO URUKIKO RUBIBONA

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

[14] Ingingo ya 89 y'Itegeko N° 12/2007 ryo ku wa 27/03/2007 rigenga amasoko ya Leta ryakurikizwaga igihe EMMR yahabwaga isoko, iteganywa ko "Avansi yahawe uwegukanye isoko isubizwa hakoreshejwe ikatwa ry'umubare runaka w'amafaranga ku nyemezabuguzi zatanzwe kandi zemejwe. Igitabo cy'Amabwiriza Agenga Ipiganwa giteganywa ijanisha ry'amafaranga azagenda akatwa kugeza igihe avansi yose yishyuriwe. Ingwate ya avansi isubizwa uwegukanye isoko mu minsi mironko itatu (30) uherye igihe avansi yose yatanze yishyuriwe.

[15] Muri uru rubanza, SORAS AG Ltd ijurira ivuga ko Urukiko Rukuru rw'Ubucuruzi rutagombaga kuyitegeka kwishyura igice cya avansi EMMR itishyuye, kuko ayo mafaranga ari mu mirimo yari imaze gukora, NAEB yo ikavuga ko ayo mafaranga agomba kwishyurwa hakurikijwe ibikubiye mu nyandiko y'ingwate no mu Itegeko rigenga amasoko ya Leta.

[16] Dosiye y'urubanza igaragaza ko NAEB yagiranye na Entreprise MUKAKIMENYI Marie Rosine (EMMR) amasezerano yo kubaka "Gishari Flowe Park" i Gishari mu Karere ka Rwamagana ku gaciro ka 1.719.068.700 Frw, aya masezerano akaba yarateganyaga ko NAEB igomba guha rwiyemezamirimo avansi ingana na 20% y'agaciro k'isoko, ariko ikabikora ari uko rwiyemezamirimo amaze kuyiha ingwate ya avansi ingana n'amafaranga y'ayo avansi, akaba ari muri urwo rwego EMMR yatanze ingwate ya avansi yishingiye na SORAS AG Ltd ingana na 343.813.740 Frw.

[17] Dosiye igaragaza kandi inyandiko y'ingwate ya avansi yo gutangira imirimo "Advance Payment Guarantee" N° DCO 12396 yo ku wa 14/09/2012, igaragaza ko SORAS AG Ltd yiyemeje kwishingira amafaranga atarenga 343.813.740 Frw ikimara kugaragarizwa ubusabe bwanditse buherekejwe n'inyandiko yerekana ko rwiyemezamirimo atubahirije inshingano zikubiye mu masezerano, akoresha avansi yahawe mu bindi bintu binyuranye n'imirimo y'isoko yahawe¹.

[18] Ku birebana n'inshingano SORAS AG Ltd yiyemeje yo kwishyura ikimara kugaragarizwa ubusabe (upon receipt by us of your first demand) nk'uko biri mu nyandiko y'ingwate imaze kuvugwa, abahanga mu mategeko bavuga ko muri ibi bihe, umwishingizi ahita yishyura akibisabwa nta nzitizi atanze zirebana n'inshingano ziri mu masezerano y'uwo yishingiye, ko uburyo bwo kubahiriza inshingano ze bureberwa mu byo yiyemeje mu masezerano yakoze².

[19] Urukiko rukaba rusanga rero hakurikijwe ibi bisobanuro ndetse n'ibikubiye mu ngingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano ryibukijwe haruguru, imvugo ya SORAS AG Ltd ko itagomba kwishyura igice cya avansi isabwa na NAEB kandi yarabiyemeje mu nyandiko y'ingwate nta shingiro ifite.

[20] Urukiko rurasanga kandi ibyo SORAS AG Ltd ivuga ko icyo yishingiye ari ukugira ngo amafaranga ya "avance de démarrage" EMMR izahabwa itazayajyana mu bindi nta shingiro bifite, kuko kuba mu nyandiko y'ingwate havugwamo ko inyandiko yishyuzwa ingwate igomba kuba iherekejwe n'indi igaragaza ko rwiyemezamirimo yakoresheje avansi mu yindi mirimo itajyanye n'isoko, bidakwiye gufatwa ko ari yo mpamvu yonyine yatuma urwego rwatanze isoko rusubizwa

¹ *At the request of the contractor, We, SORAS Assurances Générales Ltd, hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of 343,813,740 Rwf upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the contract because the contractor have used the advance payment for purposes other than the costs of mobilization in respect of the Works.*

² *Philippe MALAURIE ET Laurent AYNES, Droit des sûretés, 9^{ème} Ed, Paris, LGDJ, 2015, p.191: "La garantie à première demande est dotée d'une grande efficacité. A la différence de la caution, le garant ne peut opposer aucune exception tenant au contrat ou à l'obligation garantie: nullité, résiliation ou résolution, exception d'inexécution, compensation, si elles n'ont pas été définitivement et incontestablement établies (...). Les conditions de son obligation s'apprécient par la seule référence aux termes de son engagement; (...).*

avansi, kuko ibi bigize igice kimwe cy'inyandiko y'ingwate, kikaba gikwiye kureberwa hamwe n'igika kibanziriza icya nyuma cy'inyandiko y'ingwate kivuga ko ingwate izagira agaciro kugeza igihe avansi izaba yarangije kwishyurwa³, bivuze ko mu gihe itarishyurwa, ingwate iba igifite agaciro, na avansi ikaba igomba kwishyurwa, uku akaba ari nako uru Rukiko rwabibonye mu rubanza N° RCOMAA 00026/2018/CA rwaciye ku wa 08/02/2019, haburana RADIANT INSURANCE COMPANY Ltd na RWANDA AGRICULTURE BOARD.

[21] Urukiko rurasanga nanone ibivugwa na SORAS AG Ltd ko ntacyo igomba kwishyuzwa kuko amafaranga ya avansi ari mu mirimo yari imaze gukorwa na EMMR yakiriwe na NAEB nta shingiro bifite, kuko avansi yo gutangira imirimo atari ubwishyu bw'imirimo imaze gukorwa, nk'uko byasobanuwe n'Urukiko rw'Ikirenga mu rubanza N° RCOMAA 00055/2016/SC⁴, ahubwo ari amafaranga agomba gusubizwa uwatanze isoko mu buryo buteganywa n'ingingo ya 89 y'itegeko N° 12/2007 ryo ku wa 27/03/2007 rigenga amasoko ya Leta nk'uko ryahinduwe ryubahirizwaga ubwo isoko ryatangwaga.

[22] Urukiko rurasanga rero nta kosa Urukiko Rukuru rwakoze mu gutegeka SORAS AG Ltd kwishyura amafaranga y'ingwate ya avansi angana na 217.718.742 Frw yari asigaye nyuma y'uko EMMR inanirwa gukomeza imirimo, kuko mu nyandiko y'ingwate yari yiyemeje guhita yishyura ikibisabwa nk'uko byagaragajwe kandi itegeko rigenga amasoko rikaba riteganywa ko amafaranga ya avansi agomba gusubizwa uwatanze isoko nk'uko nabyo byasobanuwe haruguru.

[23] Urukiko rushingiye ku ngingo z'amategeko zagaragajwe haruguru no ku bisobanuro byatanzwe, rurasanga ubujurire bwa SORAS AG Ltd nta shingiro bufite, bityo ikaba igomba kwishyura NAEB amafaranga y'ingwate ya avansi angana na 217.718.742 Frw n'inyungu zayo zingana na 26.126.249 Frw nk'uko yabazwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge, akemezwa n'Urukiko Rukuru rw'Ubucuruzi.

2. Kumenya niba NAEB ikwiye guhabwa indishyi isaba

[24] NAEB isaba ko Urukiko rutegeka SORAS AG Ltd kwishyura amafaranga miliyoni ebyiri (2 000 000 Frw) y'indishyi zikomoka ku gushorwa mu rubanza nta mpamvu, n'ikurikiranarubanza guhera ku rwego rw'ubujurire bwa mbere, aya mafaranga akiyongera ku yategetswe n'urukiko rw'ubucuruzi akemezwa n'Urukiko Rukuru rw'Ubucuruzi.

[25] SORAS ivuga ko aya mafaranga NAEB isaba, uretse no kuba ari menshi itagaragaza ko yayatanze.

³ *This guarantee shall remain valid and in full effect from the date of the advance payment received by the contractor under the Contract until the final reimbursement of the advance.*

⁴ Igika cya 18 cy'urubanza kigira kiti: "Avansi yo gutangira imirimo ni amafaranga ahabwa uwatsindiye isoko kugira ngo abashe gutangira gushyira mu bikorwa isoko yatsindiye, bivuze ko nta gice cy'imirimo aba yishyuriwe ku buryo yafatwa nk'ubwishyu, ahubwo uko rwiyezamirimo watsindiye isoko agenda yishyura agaciro k'imirimo yakoze agenda avanamo (déduction) ingano runaka ya avansi akazarangiza kwishyurwa imirimo yakoze ,ya avansi nayo isubijwe uwamuhaye isoko,byumvikana ko itasubizwa uwatanze isoko, ngo yongere ifatwe nk'ubwishyu".

UKO URUKIKO RUBIBONA

[26] 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 ko: *“Ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyi ikirego cy'iremezo cyaba kitakiriwe”*.

[27] Ku birebana n'indishyi zo gushorwa mu rubanza nta mpamvu, Urukiko rurasanga NAEB idakwiye kuyahabwa kuko SORAS AG Ltd yari ifite uburenganzira bwo kujuririra urubanza yatsinzwe, ahubwo ikwiye guhabwa amafaranga y'ikurikiranarubanza kuri uru rwego kuko hari ibyo yatakaje ikurikirana urubanza ndetse ishaka na Avoka wo kuyiburanira, ariko kubera ko ayo yasabye ari menshi hakurikijwe ibyakozwe mu rubanza n'igihe rumaze, akaba akwiye kugenwa mu bushishozi bw'Urukiko; bityo NAEB ikaba ikwiye guhabwa 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza.

III. ICYEMEZO CY'URUKIKO

[28] Rwemeje ko ubujurire bwa SORAS AG Ltd nta shingiro bufite;

[29] Rwemeje ko Ubujurire bwururiye ku bundi bwa NAEB bufite ishingiro kuri bimwe;

[30] Rwemeje ko nta gihindutse ku mikirize y'urubanza N° RCOMA 00348/2018/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 23/11/2018;

[31] Rutegetse SORAS AG Ltd guha NAEB 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza, kuri uru rwego;

[32] Ruvuze ko amafaranga y'igarama yatanzwe na SORAS AG Ltd ahwanye n'imirimu yakozwe.