SOCOGEDI SA v. BRALIRWA

[Rwanda URUKIKO RW'IKIRENGA – R.COM.A0156/11/CS (Mukanyundo, P.J., Havugiyaremye na Mukamulisa, J.) 7 Ukuboza 2012]

Amategeko agenga amasezerano – Amasezerano y'ubufatanye mu bucuruzi – Amasezerano y'ubufatanye mu bucuruzi ashobora kugaragazwa n'imikoranire yaranze impande zombi n'iyo yaba atanditse dore ko n'amategeko y'ubucuruzi adateganya ko agomba kuba yanditse uko byagenda kose.

Amategeko agenga amasezerano – Indishyi zo gusesa amasezerano – Ntihabayeho gusesa amasezerano mu buryo bunyuranyije n'amategeko kuko icy'ingenzi ari uko usheshe amasezerano nk'aya bihagije ko agaragaza impamvu yabimuteye kandi si ngombwa ko atanga indishyi byanze bikunze.

Indishyi – Indishyi zo gushorwa mu manza ku rwego rw'ubujurire – Ntiyahabwa indishyi zishingiye ku bujurire bw'uwo baburanaga avuga ko yamuzanye mu rubanza ku maherere kuko kujuririra icyemezo atishimiye ari uburenganzira bwe kandi hakaba nta kigaragaza ayo maherere.

Incamake y'ikibazo: SOCOGEDI SA (Ubu yabaye SOCOGEDI Ltd) yagiranye amasezerano y'ubufatanye na BRALIRWA. Ayo masezerano yari yerekeye ubucurizi bw'ibinyobwa. Amasezerano yanditse yararangiye ariko na nyuma bakomeza gukorana. Nyuma BRALIRWA yasheshe amasezerano bitewe n'uko SOCOGEDI itari yasubije ibaruwa yari yandikiwe isabwa ibisobanuro bijyanye no kutubahiriza masezerano bari baragiranye.

Nyuma y'iryo seswa SOCOGEDI yandikiye BRALIRWA iyisaba ko bakemura ibibazo mu bwumvikane. Byarananiranye SOCOGEDI irega BRALIRWA mu Rukiko Rukuru rw'Ubucuruzi ivuga ko BRALIRWA yasheshe amasezerano nta mpamvu isaba kwishyurwa indishyi zitandukanye. BRALIRWA yo yisobanuye ivuga ko amasezerano y'ubufatanye bari baragiranye yari yararangiye (amasezerano yanditse). Urwo rukiko rwemeje ko ikirego nta shingiro gifite kuko ayo amasezerano yari yarasheshwe.

SOCOGEDI yajuriye mu Rukiko rw'Ikirenga ivuga ko itishimiye imikirize y'urubanza rwajuririwe kuko rurimo ukwivuguruza bigaragazwa n'uko Urukiko rwemeye ko n'ubwo amasezerano nyiri MDF DDV izina yanditse yabaye hagati ya SOCOGEDI na BRALIRWA yagombaga kurangira ku itariki ya 30/04/2010, nyuma yaho impande zombi zakomeje gukorana nk'uko bishimangirwa n'ibikorwa binyuranye bagiranye mu gihe yongeye kwemeza ko ayo masezerano yari yararangiye. Bongeyeho kandi ko mu masezerano y'ubucurizi inyandiko atari ngombwa.

Kuri izi ngingo z'ubujurire, BRALIRWA yasubije ko amasezerano y'ubufatanye yari yararangiye kandi nta ngingo yateganyaga ko ashobora kwongerwa bitabaye ngombwa gukora andi. Yongeraho ko niyo haba hari ibikorwa bagiranye nyuma, ntibishobora gufatwa nkahobyari bishingiye ku masezerano; ahubwo ko ari ibikorwa umuguzi wese yagirana na buri mucuruzi.

Incamake y'icyemezo: 1. N'ubwo nta masezerano yanditse yabaye nyuma y'irangira ry'ayanditse, ibikubiye mu mabaruwa atandukanye impande zombi zagiye zandikirana bigaragaza nta gushidikanya ko imikoranire hagati yazo yari inashingiye ku masezerano yanditse zari zagiranye mbere yari igihari, dore ko amategeko adateganya ko amasezerano y'ubucuruzi agomba kugaragazwa n'inyandiko gusa; ahubwo icy'ingenzi ni ibimenyetso

bigaragaza ko hari ibyo impande zombi zemeranyijweho kandi bishobora gutangirwa ibimenyetso byose bishoboka.

2. BRALIRWA ntiyasheshe amasezerano mu buryo bunyuranyije n'amategeko kuko yagaragaje impamvu zatumye iyasesa bikubitiye ku bibazo bari bafitanye birimo imikoranire itari myiza kandi mu gusesa amasezerano nk'ayo bari bagiranye (contrat de partenariat), bikaba bihagije ko uyasheshe abitangira ibisobanuro akaba adategetswe byanze bikunze gutanga indishyi.

3. Nta ndishyi zicibwa uwajuriye utarishimiye imikirize y'urubanza iyo bigaragaye ko atakuruye undi mu manza nta mpamvu; ahubwo ni uburenganzira bwe.

Ubujurire bufite ishingiro kuri bimwe;
Ubujurire bwuririye ku bundi nta shingiro bufite;
Ababuranyi bombi bagomba gufatanya kwishyura amagarama y'urubanza.

Nta mategeko yashingiweho.

Nta manza zifashishijwe.

Ibitekerezo by'abahanga byifashishijwe:
Dimitri Houtcieff**,** Droit du commerce et des affaires**,** 2è éd**.,** Sirey, 2008, Nº779.
P. Fernandez, "Contrats commerciaux" disponible sur http://www.avocat.fernandez.com/contrats commerciaux.php

Urubanza

I. IMITERERE Y'URUBANZA

[1] SOCOGEDI SA (Ubu yabaye SOCOGEDI Ltd) yagiranye amasezerano y'ubufatanye na BRALIRWA Ltd arebana n'ubucuruzi bw'ibinyobwa byaba ibisembuye n'ibidasembuye, SOCOGEDI ikavuga ko n'ubwo amasezerano ya nyuma yanditse bagiranye yagombaga kurangira kuwa 30/04/2010, na nyuma y'iyo tariki impande zombi zakomeje gukorana, kugeza ubwo BRALIRWA isheshe amasezerano kuwa 23/12/2010 ku mpamvu z'uko SOCOGEDI itasubije ibaruwa yayandikiye iyisaba gutanga ibisobanuro ku kutubahiriza ibyo bari barumvikanye mu masezerano bagiranye. Nyuma y'iryo seswa ry'amasezerano, SOCOGEDI yandikiye BRALIRWA iyisaba ko bakemura ibibazo bafitanye binyuze mu bwumvikane, binaniranye yitabaza inkiko. BRALIRWA yiregura ivuga ko ntacyo igomba SOCOGEDI kubera ko amasezerano y'ubufatanye bari baragiranye yarangiye kuwa 30/04/2010.

[2] SOCOGEDI yareze BRALIRWA mu Rukiko Rukuru rw'Ubucuruzi kuba yarasheshe amasezerano bari baragiranye nta mpamvu, isaba guhabwa 860.410.433Frw kubera igihombo yagize, 15.000.000Frw y'indishyi na 10.000.000Frw y'igihembo cy'avocat, urwo Rukiko rwemeza ko ikirego cya SOCOGEDI nta shingiro gifite ku mpamvu z'uko nta masezerano y'ubufatanye yari akiri hagati yayo na BRALIRWA kuko yari yarasheshwe.

[3] SOCOGEDI yajuririye Urukiko rw'Ikirenga, dosiye ikorerwa ibanzirizasuzuma, umucamanza ubishinzwe yemeza ko ubujurire bwayo bwakiriwe.

[4] Iburanisha ry'urubanza ryabaye kuwa 1/11/2012 SOCOGEDI iburanirwa na Me Niyomugabo Christophe hamwe na Me Kayiranga Cyrille, BRALIRWA iburanirwa na Me Mpayimana Isaie na Me Basomingera Alberto.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

a) Ku bijyanye no kumenya niba inyandiko SOCOGEDI iburanisha zidakwiye kwitabwaho.

[5] Ababuranira BRALIRWA batanze inzitizi y'uko inyandiko SOCOGEDI yashingiyeho ijurira muri uru Rukiko zirimo izijyanye n'agahimbazamusyi ivuga ko BRALIRWA yagiye iyiha, zidakwiye gushingirwaho ngo Urukiko runazihe agaciro kubera ko abo baburana banze kuzibashyikiriza, ndetse ko na nyuma yo kuzisaba, ababuranira SOCOGEDI batashatse gusubiza ibaruwa yazibasabaga.

[6] Ababuranira SOCOGEDI basubiza ko inyandiko BRALIRWA ivuga zavuzweho kuva mu Rukiko Rukuru rw'Ubucuruzi, kuko urwo Rukiko rwasubitse iburanisha kugira ngo ababuranyi bahererekanye imyanzuro n'inyandiko bazashingiraho baburana, barabikora, iburanisha risubukurwa baburana imizi y'urubanza, ndetse BRALIRWA yiregura ku kirego cya SOCOGEDI, ko rero inzitizi yatanzwe n'ababuranira BRALIRWA nta shingiro ifite.

[7] Urukiko rusanga nk'uko dosiye y'urubanza ibigaragaza, mu iburanisha ry'ibanze ryo kuwa 31/03/2011, uburanira BRALIRWA yarasabye imbabazi z'uko atagejeje ku bo baburana imyanzuro yo kwiregura, anongeraho ko gutinda byatewe n'uko hari inyandiko yari gukoresha yagombaga guhabwa n'abazungu ba BRALIRWA ngo ariko bakaba batari bahari, Urukiko rwimurira imuranisha kuwa 14/04/2011 kugira ngo narwo ruzabanze rusuzume imyanzuro ya BRALIRWA rwari rwabonye ku munsi w'iburanisha.

[8] Iburanisha ryasubukuwe kuwa 14/04/2011, uwo munsi BRALIRWA itanga inzitizi zirimo kuba SOCOGEDI itarayigejejeho ibimenyetso bimwe yashingiyeho irega, bituma nanone iburanisha ryimurirwa kuwa 16/06/2011, kuwa 29/07/2011 Urukiko ruca urubanza rubanziriza urundi ku nzitizi zatanzwe na BRALIRWA, maze ku bijyanye n'ihererekanya ry'inyandiko, rutegeka ko SOCOGEDI igomba guha BRALIRWA ibimenyetso byose itayihaye, iburanisha rindi ryimurirwa kuwa 03/10/2011. Kuri uyu munsi iburanisha mu mizi ryarakomeje, impande zombi zigeza ku Rukiko ingingo zishingiraho.

[9] Ku buryo bw'umwihariko, ku bijyanye n'inzitizi BRALIRWA yatanze isaba ko inyandiko SOCOGEDI iburanisha ivuga ko yakoraga neza kuko BRALIRWA yanabiyihereye agahimbazamusyi, hamwe n'ibindi bimenyetso, n'ubwo BRALIRWA ivuga ubu ko zidakwiye gushingirwaho kubera ko zagaragaye bwa mbere kuri uru rwego, ibyo ivuga binyuranye n'ibikubiye mu nyandiko mvugo y'iburanisha ryo kuwa 16/06/2011 mu Rukiko Rukuru rw'Ubucuruzi kuko yerekana ko iby'izo nyandiko byaburanyweho mbere muri urwo Rukiko. Byongeye kandi, inyandiko BRALIRWA ivuga ko itazi, uretse ko byanaburanyweho mbere, zaturutse iwabo, ku buryo bitumvikana ko yavuga ko itazizi.

[10] Hakurikijwe ibimaze gusobanurwa, Urukiko rusanga kuba kuri uru rwego BRALIRWA yongera kugarura ikibazo yari yaratanze mu Rukiko Rukuru rukagifataho umwanzuro ndetse nyuma ikiregura ku ngingo zose z'ikirego cya SOCOGEDI, kandi ikaba itarajuririye urubanza rwa mbere, bituma inzitizi yayo yavuzwe haruguru yo kudaha agaciro ibimenyetso SOCOGEDI iburanisha nta shingiro ifite.

b) Ku bijyanye no kumenya niba amasezerano y'ubufatanye hagati ya BRALIRWA na SOCOGEDI yarakomeje nyuma yo kuwa 30/04/2010.

[11] Ababuranira SOCOGEDI bavuga ko icyatumye batishimira imikirize y'urubanza rwajuririwe, ari uko rurimo ukwivuguruza kugaragazwa n'uko umucamanza mu gika cya 13 ku rupapuro rwa gatatu rw'incarubanza, yemeye ko n'ubwo amasezerano nyiri izina yanditse yabaye hagati ya SOCOGEDI na BRALIRWA yagombaga kurangira ku itariki ya 30/04/2010, nyuma yaho impande zombi zakomeje gukorana nk'uko bishimangirwa n'ibikorwa binyuranye bagiranye, nyamara mu gika cya 18, urupapuro rwa 6 rw'incarubanza yemeza ko ayo masezerano yari yararangiye kuwa 30/04/2010.

[12] Banavuga ko hashingiwe ku ngingo ya 1 CCL.III ivuga icyo amasezerano ari cyo, ntaho hategetswe ko mu masezerano y'ubucuruzi hagomba inyandiko byanze bikunze, ndetse ko ibivugwa na BRALIRWA ko amasezerano bagiranye yari yarangiye kuwa 30/04/2010, binyomozwa n'uko bakomeje gukorana, ikajya iha SOCOGEDI ibicuruzwa byayo nk'uko yari isanzwe ibigenza, ndetse ko kimwe mu bigaragaza ko imikoranire yakomeje, ari ibaruwa BRALIRWA yandikiye SOCOGEDI kuwa 14/05/2010 yavugaga ngo hagati aho hazakomeza kubahirizwa ingingo zikubiye mu masezerano twari dufitanye hamwe n'ingingo zikubiye mu ibaruwa yacu Div Nº037/com.27/2010 yo kuwa 25/03/2010 zizakomeza kubahirizwa". Bagasanga ibikubiye muri iyo baruwa bigaragaza ko amasezerano atarangiye kuwa 30/04/2010 nk'uko Umucamanza yabyemeje.

[13] Bongeraho ko ikindi kigaragaza ko amasezerano yakomeje, ari uko BRALIRWA yemeje ko SOCOGEDI yakomeje gukora neza kuko kuwa 30/06/2010 yayibihereye igihembo (bonus) cya 10.360.738Frw ndetse SOCOGEDI ikaba yararangije kwishyurwa ayo mafaranga, no kuwa 30/09/2010 igenerwa agahimbazamusyi kajyanye n'igihembwe cya gatatu n'ubwo ko itarakishyurwa.

[14] Ababuranira BRALIRWA basubiza ko nk'uko Urukiko rubanza rwabyemeje, amasezerano yabaye hagati yayo na SOCOGEDI yarangiye kuwa 30/04/2010, kandi nta ngingo iteganya ko ashobora kwongerwa bitabaye ngombwa gukora andi. Banavuga ko niba hari n'ibikorwa baba barakoranye nyuma, bidashingiye ku masezerano bagiranye, ahubwo bakomeje kugirana imikoranire buri muguzi wese yagirana na buri mucuruzi wese (relations commerciales simples) bitandukanye n'amasezerano y'ubufatanye mu by'ubucuruzi- "relations de partenariat commercial" yari ateganyijwe mu masezerano yarangiye nk'uko n'umucamanza wa mbere yabyemeje.

[15] Banavuga ko kuva BRALIRWA yatangira gukorana na SOCOGEDI, hakorwaga buri mwaka amasezerano y'ubufatanye kandi ni nako byakorwaga no ku bandi bacuruzi, ko ariko kubera ko SOCOGEDI yaranzwe n'imikorere itaranyuze BRALIRWA, byatumye itongererwa amasezerano nk'uko byakorewe abandi bakoranaga, maze igenda ihabwa amasoko adahoraho (contrats ponctuels) mu gihe BRALIRWA yari ikiyigerageza (période d'observation) ngo irebe ko ibibazo yari ifite byarangira.

[16] Bongeraho ko mu mabaruwa yayo anyuranye, BRALIRWA yagiye kenshi igaragariza SOCOGEDI iyo mikorere mibi, ko n'ikindi cyerekana ibibazo SOCOGEDI yari ifite, ari uko ubu iri mu nzira zo gufunga (faillite). Ku bijyanye n'agahimbazamusyi SOCOGEDI ivuga ko yahawe, ababuranira BRALIRWA basubiza ko ari aka mbere y'itariki ya 30/04/2010.

[17] Urukiko rusanga impande zombi zemeranya ko amasezerano ya nyuma yanditse yari kurangira kuwa 30/04/2010, icyo zitemeranyaho ni ukuba ubwo bufatanye bwarakomeje

n'ubwo nta yandi masezerano yanditse yasinywe, kugeza ubwo BRALIRWA yasesaga amasezerano kuwa 23/12/2010.

[18] N'ubwo BRALIRWA ivuga ko imikoranire yayo na SOCOGEDI nyuma y'itariki ya 30/04/2010 yari ishingiye ku bikorwa by'igihe gito bidashingiye ku masezerano yanditse bajyaga bagirana, Urukiko rusanga hari ibimenyetso binyuranye bigaragaza ko ubufatanye bw'ubucuruzi bari bafitanye butahagaze ku itariki ya 30/04/2010 yavuzwe haruguru, binyuranye n'ibyo Urukiko rubanza rwemeje. Bimwe muri ibyo bimenyetso ni ibi bikurikira:

- Mu ibaruwa yayo yo kuwa 14/05/2010 BRALIRWA yandikiye SOCOGEDI, igaragaza ko impamvu yayo ari: "kuvugurura amasezerano y'imikoranire";

- Muri iyo baruwa kandi, BRALIRWA igaruka ku biganiro bagiranye kuwa 25/02/2010, igakomeza ivuga ko amasezerano mashya azaba akubiyemo ingingo bemeranyijweho azashyirwaho umukono n'impande zombi muri Kamena 2010; iyo baruwa kandi ikomeza ivuga ko hagati aho hazakomeza kubahirizwa ingingo zikubiye mu masezerano bari bafitanye hamwe n'ingingo zikubiye mu ibaruwa ya BRALIRWA yo kuwa 25/03/2010;

- Mu ibaruwa imaze kuvugwa yo kuwa 25/03/2010, ni ukuvuga ukwezi kumwe mbere y'itariki ya 30/04/2010, yerekeranye no "Kongera gushimangira amasezerano mufitanye na BRALIRWA" yavugaga ku buryo bw'imikoranire n'abakiriya ba BRALIRWA, barimo SOCOGEDI, bashyiriweho kugira ngo barusheho kunoza imikorere;

- Nanone kandi, mu ibaruwa BRALIRWA yandikiye SOCOGEDI kuwa 23/06/2010, ivuga iby'urugendo abakozi bakuru ba BRALIRWA bakoreye mu gace SOCOGEDI icururizamo ibinyobwa bya BRALIRWA (ari byo Kamonyi, Gitarama na Ruhango), ibyo banenze n'uburyo SOCOGEDI igomba gukoresha ngo ikemure ibitaragenze neza.

- Mu ibaruwa yayo kuwa 9/11/2010, mu byo BRALIRWA yamenyeshaga SOCOGEDI, harimo ko ihangayikishijwe n'abakiriya bayo bari mu gace SOCOGEDI ikoreramo binubiraga ko batagerwaho n'ibicuruzwa bya BRALIRWA, inayimenyesha ko yakukiriza ibyo BK yasabye bijyanye na sheki yishyuriraho.

[19] N'ubwo nta masezerano yanditse yabaye nyuma yo kuwa 30/04/2010, Urukiko rusanga ibikubiye mu mabaruwa yavuzwe haruguru bigaragaza nta gushidikanya ko imikoranire hagati ya BRALIRWA na SOCOGEDI yakomeje ndetse ishingira ku byo bari barumvikanye mu masezerano ya mbere. Byongeye kandi, ntaho amategeko ateganya ko amasezerano y'ubucuruzi agomba kugaragazwa n'inyandiko gusa. Ibi bihura n'ibisobanuro bitangwa n'abahanga mu mategeko, ko mu mategeko y'ubucuruzi, ihame ari uko amasezerano yanditse atari shinganwa mu gihe hari ibimenyetso bigaragaza ko hari ibyo impande zombi zemeranyijweho kandi bishobora gutangirwa ibimenyetso byose bishoboka[1].

c) Ku bijyanye no kumenya niba BRALIRWA yarasheshe amasezerano ku buryo budakurikije amategeko ku buryo yabitangira indishyi.

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[1] Kureba, Pierre FERNANDEZ, Contrats commerciaux, disponible sur http://www.avocat.fernandez.com/contrats commerciaux.php : "*En droit commercial, le principe veut que la rédaction d'un contrat écrit ne soit pas obligatoire, la relation contractuelle existant dès l'échange des consentements et pouvant être démontrée par tout moyen. ….Tous les moyens de preuve peuvent être admis en justice : écrits, témoins, aveux, indices, présomptions, etc…";* na Dimitri HOUTCIEFF, Droit du commerce et des affaires, 2è éd., Sirey, 2008, N°779, p.318: "*Les contrats commerciaux sont généralement consensuels, ils se forment par la simple rencontre de l'offre et de l'acceptation*".

[20] Ababuranira SOCOGEDI bavuga ko nyuma y'igihe kitari gito ikorana neza na BRALIRWA, iyi yasheshe amasezerano bari bafitanye mu buryo budakurikije amategeko, ndetse ko n'impamvu itanga yatumye iyasesa y'uko SOCOGEDI yari yarahagaritse gutumiza ibinyobwa byayo batayemera, kubera ko yagiye ikora "commandes" y'ibyo binyobwa, ahubwo BRALIRWA ikanga kuyibiha yitwaje ko sheki zayo zitabanje kwemerwa na Banki ya Kigali (BK), nyamara iyi banki mu ibaruwa yayo yo kuwa 21/12/2010 yandikiye BRALIRWA yaremezaga ko izakomeza gukorana na SOCOGEDI (confirmation du soutien financier à la SOCOGEDI). Bongeraho ko ikindi kigaragaza ko ibyo BRALIRWA ivuga bijyanye n'izo sheki ari urwitwazo, ari uko kuwa 21/12/2010 yakiriye sheki zayo za 60.000.000Frw kandi zitarabanje kwemerwa na BK.

[21] Ababuranira BRALIRWA basubiza ko iseswa ry'amasezerano ryaturutse ku mikorere mibi ya SOCOGEDI, kandi ko kimwe mu bibigaragaza ari ibaruwa BRALIRWA yayandikiye kuwa 23/06/2010 nyuma yo gusura akarere SOCOGEDI yakoreragamo, ikaba yarayibukije amakosa yayiranze ku buryo yabangamiraga inyungu za BRALIRWA.

[22] Banavuga ko SOCOGEDI idakwiye kwitwaza "bonus" yaba yarabonye kuko ari iza mbere y'uko ihindura imikorere yayo, kubera ko yagezaho igahagarika "commandes" z'ibicuruzwa bya BRALIRWA, kandi ko ibyo ivuga bijyanye na sheki zayo nta gaciro byahabwa, kubera ko kuba BRALIRWA yarayisabye ko sheki zayo zizajya zibanza kwemerwa na BK byatewe n'ibyasabwe n'iyo banki nk'uko biboneka mu ibaruwa yayo yo kuwa 21/12/2010. Bagasanga ibi nabyo bigaragaza ko iyo banki nta cyizere yari igifitiye SOCOGEDI, kandi koko n'ubu ikaba iri mu nzira zo gufunga.

[23] Urukiko rusanga n'ubwo BRALIRWA na SOCOGEDI bari bamaze igihe bafite amasezerano y'ubufatanye mu bucuruzi, imikoranire yabo yarageze aho ntikomeze kugenda neza nk'uko bigaragazwa n'amabaruwa atandukanye bagiye bandikirana, urugero akaba ari ibaruwa yo kuwa 23/06/2010 yavuzwe haruguru, aho nyuma yo gusura agace SOCOGEDI ikoreramo, BRALIRWA yayigejejeho impungenge zayo zijyanye n'ibyo ivuga yasanze bitagenda neza. Nanone mu ibaruwa yayo yo kuwa 09/11/2010, BRALIRWA yamenyesheje SOCOGEDI impungenge yagejejweho n'abakiriya bayo bari mu gace SOCOGEDI ikoreramo ngo binubiraga kuba batagerwaho n'ibicuruzwa bya BRALIRWA, iyo baruwa ikaba inasaba SOCOGEDI kwegera BRALIRWA mu buryo bwo kwirinda ko ibura ry'ibinyobwa byayo ryakongera kubaho.

[24] Nanone muri iyo baruwa imaze kuvugwa, BRALIRWA yamenyesheje SOCOGEDI ko BK yayisabye kutazongera kwakira sheki zayo itabanje (BK) kuzemera, inayigira inama yo gukurikiza ibyasabwaga na BK; ibi bikaba binahura n'ibikubiye mu ibaruwa ya BK yo kuwa 21/12/2010 yavuzwe haruguru, aho iyo banki, n'ubwo yemezaga ko izakomeza gufasha SOCODEGI, yavugaga ko ibyo bizamara amezi atatu mu gihe yari itegereje ko yongera gusinyana andi masezerano na BRALIRWA, ariko cyane cyane ikavuga ko igiye gushyiraho uburyo bwo kugenzura ibikorwa bya SOCOGEDI bijyanye n'amasheki yayo yagombaga kubanza kwemezwa, bihujwe kandi na stock yari kuba ifite. Hashingiwe ku bimaze kuvugwa, n'iyo haba hari sheki za SOCOGEDI zaba zarakiriwe na BRALIRWA kandi zitabanje kwemerwa na BK, ntibikuraho amabwiriza ajyanye n'izo sheki nk'uko yavuzwe haruguru.

[25] Urukiko rusanga hakurikijwe ibimaze gusobanurwa, SOCOGEDI itavuga ko yatunguwe no kuba BRALIRWA yarasheshe amasezerano, cyangwa ko iryo seswa ryakozwe bidakurikije amategeko bityo ngo ibisabire indishyi, mu gihe mu ibaruwa yayo, BRALIRWA yagaragaje impamvu itumye iyasesa, kandi bikaba byaraje bikurikira ibindi bibazo byari bisanzwe nk'uko byavuzwe. Ibi kandi bihura n'ibyemezwa n'abahanga mu mategeko, ko mu

gihe amasezerano nk'ayari hagati ya BRALIRWA na SOCOGEDI (contrat de distribution) asheshwe, icya ngombwa ari uko uyasheshe abitangira ibisobanuro, ariko ko adategetswe byanze bikunze gutanga indishyi ku wo bakoranaga[2].

[26] Kubera iyo mpamvu, Urukiko rusanga indishyi zinyuranye SOCOGEDI isaba idakwiye kuzihabwa.

c) Ku bijyanye n'ubujurire bwa BRALIRWA bwuririye ku bundi

[27] BRALIRWA yatanze ubujurire bwuririye ku bwa SOCOGEDI, ikaba isaba ko ku mafaranga yahawe mu Rukiko rubanza, hakwiyongeraho 500.000Frw SOCOGEDI igomba kuyiha kubera kuyishora mu manza nta mpamvu.

[28] SOCOGEDI isubiza ko ibyo BRALIRWA isaba nta shingiro bifite kubera ko ariyo yasheshe amasezerano.

[29] Urukiko rusanga mu gihe SOCOGEDI itishimiye imikirize y'urubanza rwa mbere, nta cyayibuzaga kujurira kuko ari uburenganzira bwayo, kandi nta kigaragaza ko yakuruye BRALIRWA mu manza ku maherere, bityo indishyi BRALIRWA isaba kuri uru rwego ikaba itazikwiye.

III. ICYEMEZO CY'URUKIKO

[30] Rwemeje ko ubujurire bwa SOCOGEDI Ltd bufite ishingiro kuri bimwe.

[31] Rwemeje ko ubujurire bwuririye ku bundi bwa BRALIRWA nta shingiro bufite.

[32] Rutegetse SOCOGEDI Ltd gutanga ½ cy'amagarama y'urubanza angana na 35.750Frw, ni ukuvuga 17.875Frw, itayatanga mu gihe cy'iminsi umunani, agakurwa mu byayo ku ngufu za Leta.

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[2] Kureba François COLLARD DUTILLEUL na Philippe DELEBECQUE, Contats civils et commerciaux, 8è éd., Dalloz, 2007, Nº929, pp.908-909: "….*Le contractant qui prendrait l'initiative de rompre le contrat devrait avoir à se justifier sans être tenu, bien entendu, d'indemniser automatiquement la victime de la résiliation. Il lui appartiendrait simplement de faire état des raisons fondant la cessation des relations contractuelles*".