SANLAM ASSURANCE GENERALES PLC v. UNIVERSITY OF RWANDA

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00003/2020/SC (Nyirinkwaya, P.J., Cyanzayire, Rukundakuvuga, Hitiyaremye na Muhumuza J.) 27 Ugushyingo 2020]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ubujurire bw'akabiri – Kutakira ubujurire – Gutsindwa ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe – Mu gusuzuma niba umuburanyi yaratsinzwe mu nkiko zombi zabanje ku mpamvu zimwe, harebwa icyaburanwaga n'imitekerereze ya buri rukiko (raisonnement juridique) mu kugaragaza impamvu zashingiweho, kugira ngo rugere ku cyemezo rwafashe, hitawe ku kureba niba ingingo zaburanywe mbere arizo zagarutsweho mu bujurire kandi ko inkiko zombi zazishubijeho mu buryo bumwe – Umucamanza wo mu rwego rwa mbere yita ku igenzura ry'ibimenyetso n'amategeko ugereranyije n'ikiburanwa, naho umucamanza wo mu rwego rw'ubujurire akibanda cyane cyane ku kugenzura niba amategeko ku rwego rwa mbere yarubahirijwe uko bikwiye hakurikijwe ibisobanuro n'ibimenyetso byari byatanzwe muri urwo rubanza, byaba ngombwa agakosora aho bikenewe.

Incamake y'ikibazo: School of Finance and Banking (SFB) ubu yabaye University of Rwanda/College of Business and Economics **(**UR) yareze SORAS Assurances Generales Plc, ubu yahindutse SANLAM Assurrence Generales Plc mu Rukiko rw'Ubucuruzi rwa Nyarugenge, isaba ko yategekwa kwishyura ingwate yo kurangiza neza imirimo ku isoko MANUMETAL Ltd yari ifite muri UR yananiwe kurangiza. UR yatanze ikirego mu Rukiko rw'Ubucuruzi irega SORAS AG Plc isaba ko yakwishyurwa ingwate y'amafaranga yishyingiye mu gihe MANUMETAL izaba ibaniwe kurangiza isoko, SORAS AG Plc iratsindwa ndetse inajuririye Urukiko Rukuru rw'Ubucuruzi nabwo iratsindwa.

Nyuma yo gutsindwa mu rwego rwa mbere n'urwa kabiri, SORAS AG Plc yatanze ubujurire bwa kabiri mu Rukiko rw'Ubujurire, Urukiko rwemeza ko ubujurire bwayo butakwakirwa kubera ko yatsinzwe kabiri ku mpamvu zimwe. SORAS AG Plc ntiyishimiye imikirize y'urubanza, isaba ko rwasubirishwamo ku mpamvu z'akarengane, inenga urwo rubanza kuba Urukiko rwaranze kwakira ubujurire bwayo bwa kabiri ruvuga ko yatsinzwe kabiri ku mpamvu zimwe, nyamara hari ikibazo cy'urubanza RCOM 0845/14/TC/NYGE rwafashweho icyemezo mu bujurire rutaraburanyweho mu Rukiko rwa mbere.

UR yo yireguye ivuga ko nta karengane kabaye mu rubanza ruburanwa kuko SORAS AG Plc yatsinzwe kabiri ku mpamvu zimwe. Ibyo ivuga ikabishingiraga ko ku rwego rwa mbere Urukiko rw'Ubucuruzi rwasanze SANLAM AG Plc yari ifitanye amasezerano na UR ariko ikaba itarayubahirije kuko ubwo yishyuzwaga itishyuye kandi amasezerano yarayitegekaga guhita yishyura ikibona ibaruwa ya UR yishyuza nta zindi mpamvu itanze;

Naho mu Rukiko Rukuru rw'Ubucuruzi, SANLAM AG Plc naho yatsinzwe kubera kutuzuza inshingano yiyemeje mu masezerano yagiranye na UR.

Incamake y'icyemezo: Gutsindwa ku mpamvu zimwe, bigenzurwa hashingiwe ku ngingo zatumye umuburanyi ajurira, ndetse n'umwanzuro wazifashweho n'impamvu zashingiweho n'inkiko zombi. Bityo, impamvu zatumye SANLAM AG Plc itsindwa, haba mu Rukiko

rw'Ubucuruzi haba no mu Rukiko Rukuru rw'Ubucuruzi, ari uko itutubahirije amasezerano yagiranye na UR arebana n'ubwishingizi bwo kurangiza imirimo neza ku isoko MANUMETAL Ltd yari yaratsindiye muri UR.

Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane nta shingiro gifite. Urubanza n° RCOMAA 00041/2019/CA rwaciwe n'Urukuko rw'Ubujurire ku wa 13/03/2020 ntiruhindutse mu ngingo zarwo zose.

Amategeko yashingiweho:
Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 52 agace ka 3.
Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi

Imanza zifashshijwe:
Urubanza n° RS/INJUST/RCOM 00002/2020/SC rwaciwe ku wa 29/9/2020 haburana Road Solutions Pavement Products na MAIL CO Ltd.

Inyandiko z'abahanga zifashishijwe:
D. Solomon, M. Calkins & M. Hick, *Identifying and Understanding Standards of Review,* (Revised by Julia Rugg (2019), The Writing Center, Georgetown University Law Center

Urubanza

I. IMITEREREY'URUBANZA

[1] SORAS Assurances Generales Plc, ubu yahindutse SANLAM Assurrance Generales Plc, (SANLAM AG Plc muri uru rubanza), yishingiye MANUMETAL Ltd ku isoko yari ifite muri *School of Finance and Banking* (SFB) ubu yabaye *University of Rwanda/College of Business and Economics* **(**UR**),** aho yemereye ko izishyura ingwate yo kurangiza neza imirimo ikimara kubona ku nshuro ya mbere inyandiko isaba ubwishyu mu gihe MANUMETAL Ltd izaba itubahirije amasezerano y'isoko. MANUMETAL Ltd yaje kutubahiriza ayo masezerano, bituma UR isaba SANLAM AG PLC kuyishyura ingwate yemeye.

[2] MANUMETAL Ltd ibonye itangiye kugirana ibibazo na UR, yaje gutanga ikirego mu Rukiko rw'Ubucuruzi mu nyandiko y'ikibazo gitanzwe n'umuburanyi umwe (requete unilaterale) isaba Urukiko guhagarika by'agateganyo itangwa ry'amafaranga ya *performance guarantees* n° DCO22475 na n° DCO 28414 angana na 69.826.062 Frw yagombaga gutangwa n'umwishingizi wayo ariwe SANLAM AG Plc. Ibyo MANUMETAL Ltd ikaba yarabisabaga ivuga ko hari ibitarubahirijwe mu masezerano byatumye yiyambaza *Kigali International Arbitration Cente*r (KIAC) isaba ko hakorwa ubukemurampaka kuri icyo kibazo.

[3] Ku wa 10/09/2014, Urukiko rw'Ubucuruzi rwafashe icyemezo ku kirego RCOM 0845/14/TC/NYGE, rwemeza ko ikirego cyatanzwe na MANUMETAL Ltd gifite ishingiro, rwemeza ko SANLAM AG Plc ifatira mu maboko yayo amafaranga yasabwaga na UR, ayo

mafaranga ikayafatira kugeza igihe impaka ziri hagati ya MANUMETAL Ltd na UR zizarangirizwa mu bukemurampaka.

[4] UR, nyuma yo kwandikira SANLAM AG Plc iyisaba kwishyura ariko SANLAM AG Plc ntibikore, yatanze ikirego mu Rukiko rw'Ubucuruzi, isaba gutegeka SANLAM AG Plc kwishyura ingwate yo kurangiza neza imirimo ku isoko MANUMETAL Ltd yari ifite ntiyubahirize amasezerano, ikaba yarasabaga amafaranga ari mu masezerano angana na 69.826.062 Frw.

[5] Urubanza rwaburanishijwe SANLAM AG Plc idahari (par defaut), maze ku wa 27/07/2018, Urukiko rw'Ubucuruzi ruca urubanza n° RCOM 00325/2018/TC, rutegeka SANLAM AG Plc kwishyura UR ingwate y'ubwishingizi ihwanye na 69.826.062 Frw, n'inyungu zayo zibariwe kuri 1% buri munsi mu gihe kingana n'iminsi y'ubukererwe igomba kubarwa uhereye ku wa 10/07/2014 kugeza igihe urubanza ruzarangirizwa.

[6] Mu guca urubanza Urukiko rw'Ubucuruzi rwashingiye ku kuba MANUMETAL Ltd itarubahirije amasezerano yo kurangiza isoko yari yaratsindiye, SANLAM AG Plc nk'umwishingizi wayo ikaba yaragombaga kubahiriza amasezerano y'ingwate yagiranye na UR ariko ntibikore.

[7] SANLAM AG Plc yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi, ikirego gihabwa n° RCOMA 00579/2018/CHC/HCC, ivuga ko yajurijwe no kuba Urukiko rw'Ubucuruzi rwarirengagije ibikubiye mu masezerano y'ubwishingizi, ntirunite ku cyemezo cyafashwe ku kirego n° RCOM 0845/14/TC/NYGE, aho umucamanza yategetse ko SANLAM AG Plc ifatira mu maboko yayo amafaranga y'ingwate isabwa kwishyura kugeza igihe impaka hagati ya MANUMETAL Ltd na UR zizarangirira mu bukemurampaka.

[8] Ku wa 14/12/2018, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00579/2018/CHC/HCC, rwemeza ko ubujurire bwa SANLAM AG Plc nta shingiro bufite, ko nta gihindutse ku mikirize y'urubanza n° RCOM 0325/2018/TC/NYGE, runategeka ko icyemezo cyafashwe mu rubanza n° RCOM 0845/14/TC/NYGE rwaciwe ku wa 10/09/2014, cyo gufatira 69.826.062 Frw ya "garantie de bonne execution", giteshejwe agaciro.

[9] Mu guca urubanza Urukiko Rukuru rw'Ubucuruzi rwashingiye ku mpamvu zikurikira:

a. Kuba SANLAM AG Plc yariyemeje kwishyura 69.826.062 Frw y'ingwate mu gihe uwishingiwe atujuje inshingano ze, ikemera kwishyura ayo mafaranga nta yandi mananiza ikimara kwakira inyandiko isaba ubwishyu, ikaba yaragombaga guhita yishyura ikibona ibaruwa iyishyuza;

b. Kuba urubanza n° RC 0845/14/TC/NYGE rwaciwe ku wa 10/09/2014 SANLAM AG Plc yaburanishaga rutaragombaga gushingirwaho kubera ko bitari ngombwa gutegeka ko amafaranga y'ingwate afatirwa kugeza igihe impaka ziri hagati ya UR na MANUMETAL zizarangirira mu bukemurampaka, kuko mu kubitegeka rutyo, Urukiko rwitiranyije amasezerano y'ubwishingizi n'ay'isoko kandi ari amasezerano atandukanye.

[10] SANLAM AG Plc yajuririye urwo rubanza mu Rukiko rw'Ubujurire, ivuga ko yajurijwe n'uko Urukiko Rukuru rw'Ubucuruzi rutahaye agaciro ibisobanuro n'ibimenyetso yatanze. Muri

urwo rubanza, UR yatanze inzitizi isaba Urukiko kutakira ubujurire bwa SANLAM AG Plc kuko isanga yaratsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe.

[11] Ku wa 13/03/2020, Urukiko rw'Ubujurire rwaciye urubanza n° RCOMAA 00041/2019/CA, rwemeza kutakira ubujurire bwa SANLAM AG Plc kuko yatsinzwe mu nkiko zombi zabanje ku mpamvu zimwe.

[12] Mu guca urwo rubanza, Urukiko rw'Ubujurire rwashingiye ku kuba SANLAM AG Plc yaratsinzwe mu nkiko zombi ku mpamvu zimwe (ni ukuvuga mu Rukiko rw'Ubucuruzi no mu Rukiko Rukuru rw'Ubucuruzi), iyo mpamvu ikaba ari ukuba SANLAM AG Plc itarubahirije amasezerano yagiranye na UR arebana n'ubwishingizi bwo kurangiza imirimo neza ku isoko MANUMETAL Ltd yari yaratsindiye.

[13] Nyuma yo kutanyurwa n'ibyemezo by'Inkiko, SANLAM AG Plc yandikiye Perezida w'Urukiko rw'Ikirenga isaba ko urubanza RCOMAA 00041/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 13/03/2020 rusubirishwamo ku mpamvu z'akarengane.

[14] Perezida w'Urukiko rw'Ikirenga amaze gusuzuma ubwo busabe, mu cyemezo cye n° 276/CJ/2020 cyo ku wa 01/06/2020, yemeje ko urwo rubanza rwoherezwa mu bwanditsi bw'Urukiko rukandikwa mu bitabo byabugenewe, kugira ngo ruzongere ruburanishwe, ikirego gihabwa numero RS/INJUST/RCOM 00003/2020/SC.

[15] Mu myanzuro y'impande zombi ababuranyi bagaragaje ko ingingo zigize ibibazo bifuza ko byasuzumwa muri uru rubanza ari izi zikurikira:

a. Kumenya niba SANLAM AG Plc yaratsinzwe inshuro ebyiri ku mpamvu zimwe;
b. Kumenya niba urubanza n° RCOM 0845/14/TC rwa MANUMETAL LTD rukwiye kugumana agaciro karwo;
c. Kumenya niba SANLAM AG Plc igomba kwishyura 69.826.062 Frw y'ingwate yo kurangiza neza isoko n'inyungu za 1% buri munsi w'ubukererwe;
d. Kumenya niba indishyi zisabwa muri uru rubanza zifite ishingiro.

[16] Ku wa 09/11/2020, iburanisha ryabereye mu ruhame, ababuranyi bose bitabye, SANLAM AG Plc ihagarariwe na Me RUSANGANWA Jean Bosco, UR ihagarariwe na Me HABUMUREMYI Prosper. Mu iburanisha Urukiko rwasanze mbere y'uko urubanza ruburanishwa mu mizi ari ngombwa kubanza gusuzuma ingingo ya mbere impande zombi zumvikanyeho ijyanye no kumenya niba SANLAM AG Plc yaratsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe ku buryo ikirego cyayo mu Rukiko rw'Ubujurire kitagombaga kwakirwa, hanasuzumwa niba indishyi zisabwa mu rubanza zatangwa.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

a) Kumenya niba hari ikosa Urukiko rw'Ubujurire rwakoze rwanga kwakira ubujurire bwa SANLAM AG Plc kubera ko yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe.

[17] Me RUSANGANWA Jean Bosco uhagarariye SANLAM AG Plc avuga ko ikirego cyabo gishingiye ku kuba Urukiko rw'Ubujurire rwaravuze ko SANLAM AG Plc yatsinzwe kabiri ku mpamvu zimwe kandi atari ko biri. Avuga ko mu Rukiko rw'Ubucuruzi, urubanza rwaburanishijwe SANLAM AG Plc idahagarariwe (par defaut), igatsindwa no kuba itarubahirije amasezerano, naho mu bujurire, Urukiko Rukuru rw'Ubucuruzi, rukemeza ko nta gihindutse ku mikirize y'urubanza n° RCOM 00325/2018/TC/NYGE nyamara hari hamaze kugaragazwa bwa mbere, impamvu yatumye SANLAM AG Plc itishyura UR ayo mafaranga (ni ukuvuga urubanza n° RCOM 0845/14/TC/NYGE rwaciwe ku wa 10/09/2014 rugategeka SANLAM AG PLC gufatira mu maboko yayo amafaranga isabwa kugeza igihe impaka hagati ya MANUMETAL na UR zizarangirizwa mu bukemurampaka) kandi ko ibyo bitasuzumwe ku rwego rwa mbere. Anavuga ko Urukiko Rukuru rw'Ubucuruzi rwatesheje agaciro urwo rubanza n° RCOM 0845/14/TC/NYGE rwemeza ko nta gihindutse ku rubanza rwajuririwe.

[18] Me RUSANGANWA Jean Bosco akomeza avuga ko asanga ibyemejwe mu rubanza n° RCOMAA 00041/2019/CA ko SANLAM AG PLC yatsinzwe n'impamvu zimwe mu nkiko zombi ari akarengane kuri SANLAM AG Plc, asaba ko Urukiko rw'Ikirenga rwakwemeza ko SANLAM AG Plc yatsinzwe ku mpamvu zitandukanye mu nkiko zombi.

[19] Me HABUMUREMYI Prosper uhagarariye UR avuga ko nta karengane SANLAM AG Plc yahuye nako nk'uko ibivuga, kuko haba mu Rukiko rw'Ubucuruzi no mu Rukiko Rukuru rw'Ubucuruzi SANLAM AG Plc yatsinzwe ku mpamvu imwe yo kutubahiriza amasezerano yagiranye UR.

[20] Me HABUMUREMYI Prosper avuga ko ibyo kuba SANLAM AG Plc yaratsinzwe ku mpamvu zimwe bigaragazwa n'ibi bikurikira:

a. Ku rwego rwa mbere Urukiko rw'Ubucuruzi rwasanze SANLAM AG Plc yari ifitanye amasezerano na UR ariko ikaba itarayubahirije kuko ubwo yishyuzwaga itishyuye kandi amasezerano yarayitegekaga guhita yishyura ikibona ibaruwa ya UR yishyuza nta zindi mpamvu itanze;

b. Mu Rukiko Rukuru rw'Ubucuruzi, SANLAM AG Plc naho yatsinzwe kubera kutuzuza inshingano yiyemeje mu masezerano yagiranye na UR.

[21] Me HABUMUREMYI Prosper avuga ko kuba SANLAM AG Plc ivuga ko itari kurenga ku cyemezo n° RCOM 0845/14/TC/NYGE ngo yishyure UR ari ugukomeza kugaragaza ukudaha agaciro amasezerano impande zombi zagiranye. Asobanura ko amategeko arengera UR kuko yemeza ko ibyo yumvikanye na SANLAM AG Plc ari itegeko hagati yabo, ko ayo masezerano abareba bombi nta wundi uyivanzemo (ingingo ya 64, 65 n'iya 113 z'itegeko rigenga amasezerano), kandi ko iby'inyandiko y'ikibazo (ex parte application) yatanzwe n'umuburanyi umwe ya MANUMETAL Ltd SANLAM AG Plc yishingikirijeho ari uburyo bwatekerejwe bwo gushyiraho inzitizi ituma SANLAM AG Plc itishyura. Avuga ko icyemezo cy'urukiko cyari agateganyo kirindiriye ibizava mu bukemurampaka, ariko ko MANUMETAL Ltd ntacyo yakurikiranye, bityo akaba asanga Urukiko Rukuru rw'Ubucuruzi rwaratanze ubutabera rukurikije ibyo SANLAM AG Plc yari itegetswe gukora ku bw'amasezerano. Asoza avuga ko kuba Urukiko rw'Ubujurire rwaranze kwakira ubujurire bwa SANLAM AG Plc ku rwego rwa kabiri ku mpamvu yagaragaje nta makosa rwakoze.

UKO URUKIKO RUBIBONA

[22] Ingingo ya 52, igika cya 3, y'Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ko "...ubujurire bwa kabiri budashobora kwakirwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe ".

[23] Urukiko rurasanga nk'uko byafashweho umurongo mu zindi manza zaciwe n'uru Rukiko, mu gusuzuma niba umuburanyi yaratsinzwe mu nkiko zombi zabanje ku mpamvu zimwe, harebwa icyaburanwaga n'imitekerereze ya buri rukiko (raisonnement juridique) mu kugaragaza impamvu zashingiweho, kugira ngo rugere ku cyemezo rwafashe, hitawe ku kureba niba ingingo zaburanywe mbere arizo zagarutsweho mu bujurire kandi ko inkiko zombi zazishubijeho mu buryo bumwe[1] Ibi kandi binumvikanisha ko ibyaburanwe mu rwego rwa mbere ari nabyo ubusanzwe bigomba kuburanwa mu rwego rw'ubujurire hashingiwe ku ihame risanzwe mu micire y'imanza rivuga ko umucamanza wo mu rwego rwa mbere yita ku igenzura ry'ibimenyetso n'amategeko ugereranyije n'ikiburanwa, naho umucamanza wo mu rwego rw'ubujurire akibanda cyane cyane ku kugenzura niba amategeko ku rwego rwa mbere yarubahirijwe uko bikwiye hakurikijwe ibisobanuro n'ibimenyetso byari byatanzwe muri urwo rubanza, byaba ngombwa agakosora aho bikenewe. Abahanga mu mategeko, Daniel Solomon, Mary Calkins & Matt Hicks basobanura iby'iri hame muri aya magambo: ''Trial court judges generally resolve relevant factual disputes and make credibility determinations regarding the witnesses' testimony because they see and hear the witnesses testify. Whereas, appellate judges primarily correct legal errors made by lower courts, develop the law, and set forth precedent that will guide future cases''[2].

[24] Mu mategeko agenga imiburanishirize y'imanza mu Rwanda iri hame rishimangirwa cyane cyane mu ngingo ya 154 CPCCSA igira iti: "Ku rwego rw'ubujurire ntihashobora gutangirwa ikirego gishya keretse kuregera guhwanya imyenda, cyangwa gutanga ikirego cyo kwiregura ku kirego cy'ibanze cyatanzwe mu rukiko rw'ubujurire. Icyakora, ababuranyi bashobora kwaka inyungu, ibyishyuwe ku bukode n'ibindi bintu by'inyongera byabonetse kuva aho urubanza rwaciriwe n'indishyi z'igihombo umuburanyi yagize kuva urubanza ruciwe. Ntibibujijwe ariko mu rwego rw'ubujurire gutanga ibisobanuro bishya cyangwa ibimenyetso bishya bigamije kumvikanisha kurushaho ibyari byaraburanishijwe mu rwego rwa mbere.''

[25] Iyi ngingo yumvikanisha ko atari ibirego bishya bibujijwe mu bujurire gusa, ko ahubwo n'ibisobanuro cyangwa ibimenyetso bishya byemerwa gusa iyo *bigamije kumvikanisha kurushaho ibyari byaraburanishijwe mu rwego rwa mbere.* Bityo umwanzuro ufashwe ku kimenyetso kije bwa mbere mu bujurire kidafitanye isano n'ibyaburanishijwe ku rwego rwa mbere ukaba udashobora gushingirwaho n'umuburanyi ushaka kumvikanisha ko atatsinzwe ku mpamvu zimwe kuko, nk'uko byumvikana, icyo kimenyetso kiba ntaho gihuriye n'ibyasuzumwe ku rwego rwa mbere.

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[1] Reba urubanza N° RS/INJUST/RCOM 00002/2020/SC rwaciwe ku wa 29/9/2020 haburana Road Solutions Pavement Products na MAIL CO Ltd.

[2] D. Solomon, M. Calkins & M. Hick, *Identifying and Understanding Standards of Review*, (Revised by Julia Rugg (2019), The Writing Center, Georgetown University Law Center.

[26] Muri uru rubanza Urukiko rusanga icyari cyaregewe cyanasuzumwe mu nkiko zombi (mu Rukiko rw'Ubucuruzi no mu Rukiko Rukuru rw'Ubucuruzi) ari ukumenya niba SANLAM AG Plc yaragombaga kubahiriza amasezerano y'ubwishingizi yagiranye na UR. Rusanga mu Rukiko rw'Ubucuruzi SANLAM AG Plc itarashubije imyanzuro ya UR ntiyanitaba iburanisha bityo ikaba ntacyo yavuze ku bijyanye n'ibyo yarezwe. Rusanga mu bujurire ari bwo SANLAM yazamuye ikibazo kijyanye no kuba Urukiko rwarayitegetse kwishyura amafaranga ya *garantie* yishingiye MANUMETAL LTD kubera ko yananiwe kurangiza neza isoko yatsindiye rwirengagije ko mu rundi rubanza (RCOM 0845/14/TC) Urukiko rw'Ubucuruzi rwayitegetse gufatira amafaranga yagombaga kwishyura UR. Rusanga ariko nk'uko bigaragara mu mikirize y'uru rubanza mu nkiko zombi, SANLAM AG Plc yaratsinzwe no kutubahiriza amasezerano y'ubwishingizi yagiranye na UR mu gihe MANUMETAL Ltd itubahirije inshingano zayo. Urukiko Rukuru rw'Ubucuruzi rwanongeyeho ko amasezerano y'ubwishingizi SANLAM yagiranye na UR atandukanye n'amasezerano y'isoko UR yagiranye na MANUMETAL Ltd.

[27] Uru Rukiko rusanga nk'uko byanasobanuwe neza n'Urukiko Rukuru rw'Ubucuruzi mu rubanza RCOMA 00579/2018/CHC/HCC mu gika cya 21, ukutubahirizwa kw'amasezerano y'isoko hagati ya UR na MANUMETAL Ltd ari nayo avugwa mu rubanza RCOM 0845/14/TC nta ngaruka byashobora kugira ku masezerano hagati ya UR na SANLAM AG Plc. Bikaba byumvikana ko ntaho SANLAM AG Plc yahera iyakoresha nk'ikimenyetso kivuguruza ibyemejwe n'Urukiko rw'Ubucuruzi.

[28] Rusanga gutsindwa ku mpamvu zimwe, bigenzurwa hashingiwe ku ngingo zatumye umuburanyi ajurira, ndetse n'umwanzuro wazifashweho n'impamvu zashingiweho n'inkiko zombi. Urukiko rusanga impamvu zatumye SANLAM AG Plc itsindwa, haba mu Rukiko rw'Ubucuruzi haba no mu Rukiko Rukuru rw'Ubucuruzi, ari uko itutubahirije amasezerano yagiranye na UR arebana n'ubwishingizi bwo kurangiza imirimo neza ku isoko MANUMETAL Ltd yari yaratsindiye muri UR, kandi urubanza RCOM 0845/14/TC/NYGE iburanisha akaba atari yo impamvu yatumye itsindwa mu Rukiko Rukuru rw'Ubucuruzi ahubwo rwarakoreshejwe gusa nk'igisobanuro cy'impamvu yatumye itubahiriza amasezerano, kandi kikaba kitarahawe agaciro.

[29] Kubera izo mpamvu rero, Urukiko rusanga Urukiko rw'Ubujurire nta kosa rwakoze mu kutakira ubujurire bwa kabiri bwa SANLAM AG Plc kuko ukutakirwa kw'ikimenyetso nk'iki kije bwa mbere mu bujurire kandi bigaragara ko kidafitanye isano n'urubanza rwajuririwe ntawakitwaza asaba ko urubanza yatsinzwe rujuririrwa bwa kabiri.

b) Kumenya niba indishyi zisabwa muri uru rubanza zifite ishingiro

[30] Me RUSANGANWA Jean Bosco uhagarariye SANLAM AG Plc avuga ko asaba Urukiko rw'Ikirenga gutegeka UR kwishyura SANLAM AG Plc 1.000.000 Frw y'ikurikiranarubanza na 1.000.000 Frw y'igihembo cy'Avoka ku rwego rwa mbere n'urwa kabiri kubera kuyishora mu manza nta mpamvu. Avuga kandi ko basaba urukiko gutegeka uregwa kwishyura SANLAM AG Plc amafaranga angana na 90.000 (40.000 Frw + 50.000 Frw) y'amagarama yatanzwe.

[31] Me HABUMUREMI Prosper uhagarariye UR avuga ko nta bimenyetso SANLAM AG Plc igaragaza bishyigikira ibyo isaba Urukiko, ko asanga ahubwo uru rubanza n'izindi zabanje zarabayeho kubera kutubahiriza amasezerano biturutse ku makosa n'uburangare bya SANLAM AG Plc, ariyo mpamvu ibyagiye ku rubanza byose ari yo igomba kubyirengera. Asoza asaba

urukiko gutegeka SANLAM AG Plc kwishyura UR 1.000.000 Frw, akubiyemo ay'ikurikiranarubanza n'ay'igihembo cy'Avoka.

UKO URUKIKO RUBIBONA

[32] Ku birebana n'indishyi zisabwa na SANLAM AG Plc, Urukiko rusanga itazikwiye kubera ko ntacyo itsindiye muri uru rubanza.

[33] Rusanga indishyi UR isaba yazihabwa kuko ariyo itsinze kandi hakaba hari ibyo yatanze ikurikirana urubanza ndetse igashaka n'uyiburanira, ariko kubera ko 500.000 Frw y'ikurukiranarubanza isaba ari menshi kandi ikaba idasobanura uburyo yakoreshejwe, Urukiko mu bushishozi bwarwo rukaba rusanga ikwiye guhabwa 300.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya Avoka, yose hamwe akaba 800.000 Frw.

II. ICYEMEZOCY'URUKIKO

[34] Rwemeje ko ikirego cyo gusubirishamo ku mpamvu z'akarengane urubanza n° RCOMAA 00041/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 13/03/2020, cyatanzwe na SANLAM AG Plc, nta shingiro gifite;

[35] Rwemeje nta karengane kari mu rubanza n° RCOMAA 00041/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 13/03/2020;

[36] Rwemeje ko urubanza n° RCOMAA 00041/2019/CA rwaciwe n'Urukuko rw'Ubujurire ku wa 13/03/2020 rudahindutse mu ngingo zarwo zose;

[37] Rutegetse SANLAM AG Plc AG Ltd guha UR amafaranga angana n'ibihumbi magana inani (800.000 Frw) akubiyemo ay'ikurikiranarubanza n'ay'igihembo cy'Avoka.