

RWANDA / JUDGMENT

SORAS v. TRANSCOGE

RCOMA 0020/11/CS

COURT

Supreme Court

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SORAS v. TRANSCOGE

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Text

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SORAS v. TRANSCOGE [Rwanda URUKIKO RW'IKIRENGA – RCOMA 0020/11/CS (Mutashya, P.J., Kanyange na Rugabirwa, J.) 18 Mutarama 2013] Amategeko agenga imiburanishirize y'imanza z'ubucuruza – Kuregera Inyandiko Mpimbano – Ikirego kiregera inyandiko mpimbano “inscription en faux” ntigishobora kongera kuburanishwa mu gihe bigaragara ko uwari ukurikiranyweho icyaha cy'inyandiko mpimbano yagizwe umwere kandi uwatanze ikirego akaba yararegeraga indishyi muri urwo rubanza nshinjabayaha ariko ntaturujuririre rukarinda ruba itegeko. Itegeko Ngenga n° 07/2004 ryo kuwa 25/04/2004 rigena imiterere, imikorere n'ububasha by'Inkiko, ingingo ya 166. Amategeko y'ubwishingizi – Indishyi zikomoka ku masezerano – Mu gihe uwishingiwe agaragaje ko yaguze ibicuruzwa, hakabaho ubwikorezi ariko nyuma bikaza kubura kandi bikemezwa n'inzego zibifitiye ububasha, ntaho umwishingizi yahera yanga kwishyura ibyo bicuruzwa Indishyi – Indishyi z'ubukererwe – Ntizitangwa mu gihe yagenewe amafaranga y'urwunguko (marge bénéficiaire) yavukijwe. Indishyi – Igihano gihatira kurangiza urubanza – Ntigitangwa mu gihe ntakigaragaza ko ugisabiwe atazishyura indishyi ku bushake. Incamake y'ikibazo: TRANSCOGE ihagarariwe na Nyemazi Amon yagiranye na SORAS amasezerano y'ubwishingizi y'ubwikorezi bwa toni 60 z'amata ya Nido yariyaguzwe muri Sosiyete

yitwa SOMEX kandi akikorerwa na Sosiyete yindi yitwa INTERNATIONAL SHIPPING LINE ku bwishingire bungana na 45.301.643 frws TRANSCOGE yaje kwandikira SORAS isaba ko yayiha 90.320.104 frw y'indishyi ivuga ko hari amakarito y'amata ya Nido angana na 2.494 yishingiye yabuze, ariko SORAS yanga kuyiha ayo mafaranga yasabaga y'indishyi angana n'amakarito y'amata yabuze, na 25% ya marge bénéficiaire, aya frais de transport Dubai- Mombasa, ay'ikurikiranarubanza n'ay'igihembo cy'Avoka, n'ay'indishyi zo kuba yarayiteje urubwa, yose hamwe akaba angana na 65.527.800 frws. Mbere ariko y'uko urwo rubanza rucibwa, Soras yajuririye Urukiko rw'Ubujurire rwa Kigali icyemezo cy'Urukiko cyanze kwakira ikirego cyayo kiregera ko inyandiko Transcoge iburanisha muri urwo rubanza ari mpimbano (inscription en faux), SORAS yajuririye kandi muri urwo Rukiko urubanza RC 33.156/2000. Nyuma y'ivugururwa ry'Ubucamanza, izo manza zombi zahurijwe kuri RCA 0028/05/HC/KIG mu Rukiko Rukuru. Uru Rukiko rwemeje ko ubujurire bwa SORAS ku nzitizi iregera inyandiko mpimbano bwakiriwe kuko bwatanze mu buryo no mu bihe biteganywa n'amategeko, runemeza ko ikirego cyayo kiregera inyandiko mpimbano kizasuzumwa n'urwo Rukiko mu iburanisha ryo kuwa 09/05/2006. Nyuma y'aho, Urukiko Rukuru rwafashe icyemezo cy'uko rudafite ububasha bwo kuburanisha urwo rubanza, rurwohereza mu Rukiko Rukuru rw'Ubucuruzi, rwemeza ko rutakongera gusuzuma ikirego cya Soras kiregera inyandiko mpimbano kuko cyafashweho ibyemezo ndakuka mu manza z'inshinjabyaha zagaragaje ko Nyemanzi Amon yapfuye ari umwere, bityo ko ibimenyetso yatanze muri urwo rubanza atari ibihimbano. Rwemeje kandi ko izindi ngingo z'ubujurire za Soras nta shingiro zifite, ruhamishaho imikirize y'urubanza rwajuririwe, rutegeka

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Soras guha Transcoge 3.000.000 Frw y'ikurikiranarubanza n'ay'igihembo cya Avoka, ko ku bindi imikirize y'urubanza RC 33.156/2000 rwajuririwe idahindutse. SORAS yajuririye mu Rukiko rw'Ikirenga ivuga ko hagombye kubanza gufatwa icyemezo ku kirego cyayo kiregera inyandikompimbano, inasaba ko TRANSCOGE itahabwa indishyi isaba kuko nta byangombwa bigaragaza ko yaguze amata ya Nido, nyuma akabura. Ikomeza ivuga ko mu gihe urukiko rusanze igomba guhabwa indishyi yahabwa gusa ayo yishingiye angana na 45.000.000 frws. Yanasbye kandi ko Yahabwa amafaranga 21.543 USD yakoresheje igihe cy'iperereza igasanga ibimenyetso iyi iburanisha ari ibihimbano, inasaba 10.000.000 frws y' indishyi z'uko yayisebeje ikanayishora mu manza na 2000.000 y'igihembo cya avoka. Uburanira TRANSCOGE we asaba ko SORAS yayiha amafaranga angana na 45.000.000 frws yishingiye, 25% y' ikigereranyo cy'inyungu zumvikanyweho (marge bénéficiaire), ay'igihombo yatejwe hamwe n'ay'igihembo cy'Avoka. Isaba kandi inyungu z'ubukererwe zibariwe kugipimo cya 25% kuko yayivukije 45.000.000 frws mu gihe cy'imyaka 12 yose hamwe n'igihano kiyihatira kurangiza uru rubanza kingana na 500.000 frws buri kwezi. Incamake y'icyemezo: 1. Hakurikijwe ihame rya electa una via“ Ikirego kiregera inyandiko mpimbano mu manza mbonezamubano ntigishobora kongera kuburanishwa mu gihe bigaragara ko uwari ukurikiranyweho icyaha cy'inyandiko mpimbano yagizwe umwere kandi uwatanze ikirego akaba yararegeraga indishyi muri urwo rubanza nshinjabayaha ariko ntarujuririre rukarinda ruba itegeko.

2. Mu gihe uwishingiwe agaragaje ko yaguze ibicuruzwa, hakabaho ubwikorezi ariko nyuma bikaza kubura kandi bikemezwa n'inzego zibifitiye ububasha, ntaho umwishingizi yahera yanga kwishyura ibyo bicuruzwa.
3. Ntawahabwa indishyi z'ubukererwe mu gihe yagenewe amafaranga y'urwunguko(marge bénéficiaire) yavukijwe.
4. Ntawacibwa igihano gihatira kwishyura mu gihe nta kigaragaza ko atazishyura. Ubujurire bufite ishingiro kuri bimwe. Ubujurire bwuririye kubundi nta shingiro bufite. Amagarama y'urubanza aherereye kuwareze. Amategeko yashingiweho Itegeko Ngenga n° 07/2004 ryo kuwa 25/04/2004 rigena imiterere, imikorere n'ububasha by'Inkiko, ingingo ya 166. Nta manza zifashishijwe

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Urubanza I. IMITERERE Y'URUBANZA [1] Kuwa 06/10/1999, Transcoge, ihagarariwe na Nyemazi Amon, yagiranye na Soras amasezerano y'ubwishingizi n° 00497630 y'ubwikorezi bwa toni 60 y'amata ya Nido ku gaciro kangana na 55.423.288 Frw, bahereye kuri facture n° 5519 yo kuwa 26/09/1999 ya 122.579 \$, Transcoge yahawe na sosiyete yitwa Yaseen Abdulla Al Khaja Stores. [2] Kuwa 18/10/1999, Transcoge yandikiye Soras iyimenyesha ko itakiguriye ayo mata kuri iyo sosiyete, ko ahubwo izayagurira kuri Somex Investments Limited iba DUBAI kuri 120.888 \$, kandi ko azikorera na International Shipping Line hakurikijwe facture n° 5140 ya 4.400 USD, ko hagati ya Mombasa na Kigali, ayo mata azikorera na Union des Transporteurs kuri 11.400 USD. [3] Kuwa 19/10/1999, Soras na Transcoge bagiranye andi masezerano y'ubwishingizi, aho Soras yakomeje kwishingira toni 60 y'amata ya Nido kuri 45.301.643 Frw. [4] Kuwa 14/03/2000, Transcoge yandikiye Soras isaba ko yayiha 90.320.104 Frw y'indishyi kubera ko amakarito y'amata ya Nido angana na 2.494 yishingiye yabuze, ariko Soras yanga kuyiha ayo mafaranga, ahubwo yakomeje gukora iperereza igamije kugaragaza ko inyandiko Transcoge yakoresheje mu kugura ibyo bicuruzwa ari mpimbano. [5] Transcoge yareze Soras mu Rukiko rwa Mbere rw'Iremezo rwa Kigali isaba ko yayiha indishyi zivugwa mu kirego cyavuzwe haruguru, Urukiko ruca urubanza RC 33.156/2000, rutegeka Soras guha Transcoge 111.096 \$ = 48.587.760 Frw ahwanye na 2.494 y'amakarito y'amata ya Nido yabuze, 25 % ya "marge bénéficiaire" : 48.587.760 Frw + 1.914.000 Frw (ahwanye na 4.400 \$) "frais de transport" Dubai – Mombasa = 12.146.940 Frw, 1.200.600 Frw y'ingendo zihwanye na 2.760 \$, 1.000.000 Frw y'ikurikiranarubanza n'ay'igihembo cya Avoka, 200.000 Frw y'indishyi zo kuba yarayiteye urubwa, bityo yose hamwe akaba 65.527.800 Frw. [6] Mbere ariko y'uko urwo rubanza rucibwa, Soras yajuririye Urukiko rw'Ubujurire rwa Kigali icyemezo cy'Urukiko cyanze kwakira ikirego cyayo kiregera ko inyandiko Transcoge iburanisha muri urwo rubanza ari mpimbano (inscription en faux), ubujurire bwayo bwandikwa kuri 13.203/KIG. Soras yajuririye kandi muri urwo Rukiko urubanza RC 33.156/2000, ubwo bujurire bwandikwa kuri RCA 13.389/KIG, nyuma y'ivugururwa ry'Ubucamanza, izo manza zombi zahurijwe kuri RCA 0028/05/HC/KIG mu Rukiko Rukuru. Uru Rukiko rwemeje ko ubujurire bwa Soras ku nzitizi iregera inyandiko mpimbano bwakiriwe kuko bwatanzwe mu buryo no mu bihe biteganywa n'amategeko, runemeza ko ikirego cyayo kiregera inyandiko mpimbano kizasuzumwa

n'urwo Rukiko mu iburanisha ryo kuwa 09/05/2006. [7] Nyuma y'aho, Urukiko Rukuru rwafashe icyemezo cy'uko rudafite ububasha bwo kuburanisha urwo rubanza, rurwohereza mu Rukiko Rukuru rw'Ubucuruzi, rwemeza ko

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rutakongera gusuzuma ikirego cya Soras kiregera inyandiko mpimbano kuko cyafashweho ibyemezo ndakuka mu manza z'inshinjabyaha zagaragaje ko Nyemanzi Amon yapfuye ari umwere, bityo ko ibimenyetso yatanze muri urwo rubanza atari ibihimbano. Rwemeje kandi ko izindi ngingo z'ubujurire za Soras nta shingiro zifite, ruhamishaho imikirize y'urubanza rwajuririwe, rutegeka Soras guha Transcog 3.000.000 Frw y'ikurikiranarubanza n'ay'igihembo cya Avoka, ko ku bindi imikirize y'urubanza RC 33.156/2000 rwajuririwe idahindutse. [8] Soras yajuririye Urukiko rw'Ikirenga ivuga ko hagombye kubanza gufatwa icyemezo ku kirego cyayo kiregera inyandiko mpimbano mbere yo gusuzuma izindi mpamvu z'ubujurire zayo. Ivuga kandi ko mu gihe bibaye ngombwa kujya mu mizi y'urubanza, Transcog itahabwa indishyi isaba kuko nta byangombwa yayihaye bigaragaza ko yaguze amata akaza kubura, ko ahubwo yayiha indishyi yasabye mu kirego cyayo kiregera kwiregura, ariko ko mu gihe Urukiko rusanze igomba guhabwa indishyi, yahabwa gusa 45.301.643 Frw yishingiye. [9] Transcog yo ivuga ko uru Rukiko rutakongera gusuzuma ikirego cya Soras kiregera inyandiko mpimbano mu manza z'imbonezamubano kuko Inkiko zagifasheho ibyemezo ndakuka mu manza z'inshinjabyaha, kandi ko igomba guhabwa indishyi yasabye mu bujurire bwayo bwuririye ku bwa Soras. [10] Urubanza rwaburanishijwe mu ruhamwe kuwa 06/12/2012, Soras ihagarariwe na Me Nkurunziza François-Xavier, naho Transcog ihagarariwe na Me Masumbuko Nde Emile. II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO: A. UBUJURIRE BWA SORAS Kumenya niba Urukiko Rukuru rw'Ubucuruzi rutafashe icyemezo ku kirego cya Soras kiregera inyandiko mpimbano (inscription en faux) kandi ko rwatanze impamvu zitumvikana (motivation absurde) [11] Uburanira Soras avuga ko Urukiko Rukuru rwemeje ko ruzasuzuma ikirego cyayo kiregera inyandiko mpimbano (inscription en faux) mu manza z'imbonezamubano, ariko ko mu gihe rwari rutaragisuzuma, urwo rubanza rwoherejwe mu Rukiko Rukuru rw'Ubucuruzi, aho rwaciwe mu mizi Urukiko rutabanje gufata icyemezo kuri icyo kirego, ndetse ko rutanasanubanye impamvu rwanze kugifataho icyemezo, ko ahubwo rwatanze impamvu zitumvikana kuko rwasobanuye ko ubujurire bwayo nta shingiro bufite kubera ko Nyemazi Amon yapfuye ari umwere. [12] Avuga ko mbere yo gusuzuma ingingo zayo z'ubujurire, Urukiko rwabanza gufata icyemezo kuri icyo kirego ruherereye ku bimenyetso biri muri dosiye byatanzwe na Transcog n'ibyavuye mu iperereza Ubushinjacyaha bwakoreye i DUBAI bugasanga ibyo bimenyetso ari ibihimbano. [13] Asobanura ko ibyo bimenyetso Soras isanga ari ibihimbano ari ibi bikurikira: - facture proforma n° 5519, Transcog ivuga ko yatanze na Yaseen Abdulla Al Khaja Stores, nyamara ayo maperereza yarerekanye ko iyo sosiyete igurisha inkweto, kandi ko iyo "facture"

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yahawe uwitwa Athanase ubwo yaguraga amapake 20 y'inkweto, ndetse ko iyo Sosiyete yavuze itigeze igurisha Transcoge ibyo bicuruzwa. -facture ya 120.888 \$ yo kuwa 11/10/1999, Transcoge yitiriye Somex Investiments Limited yerekana ko iyo sosiyete yayigurishije amakarito y'amata ya Nido angana na 1632 + 1060, nyamara ngo n'impimbano kuko itagaragaraho nimeroyayo n'imikono y'ugura n'ugurisha. Ikindi n'uko Guverinoma ya DUBAI yemeje ko iyo sosiyete idacururiza muri icyo gihugu, ko ahubwo iba muri Emirats Arabes-Unis, aho icuruza ikawa, ndetse ko nayo yavuze ko itagurishije amata ya Nido muri Afurika. -"A qui de droit", Transcoge yitiriye sosiyete y'ubwikorezi yitwa International Shipping Line, yerekana ko hapakiwe amakarito y'amata ya Nido yavuzwe haruguru, nyamara iyo sosiyete yavuze ko atariyo yatanze iyo nyandiko. [14] Yanavuze ko ikindi cyerekana ko ayo mata atigeze agurwa ngo yoherezwe mu Rwanda, ari uko inyandiko z'ubwikorezi (Lettres de transport) zerekana ko kontineri ebyiri zari zifite uburemere bwa toni 6.720 (toni 3.160 + toni 3.560), kuva i Dubai kugera i Kigali, ko rero ibyo biro binyuranije na toni 60 z'amata ya Nido yishingiye. [15] Uburanira Transcoge avuga ko Urukiko rw'Ikirenga rutakongera gusuzuma ikirego cya Soras kiregera inyandiko mpimbano mu manza z'imbonezamubano kubera ko cyafashweho ibyemezo ndakuka mu manza z'inshinjabyaha, kuko ariyo nzira Soras yari yarahisemo kugira ngo igaragaze ko izo "factures" n'iyi "A qui de droit" ari impimbano, ariko ko iyo nzira itayihiriye kuko Inkiko zemeje ko izo nyandiko atari impimbano kuko Nyemazi Amon yapfuye akiri umwera. UKO URUKIKO RUBIBONA [16] Ku birebana n'ikirego cya Soras kiregera inyandiko mpimbano (inscription en faux), inyandiko ziri muri dosiye zigaragaza ko nyuma y'uko Urukiko Rukuru rwa Repubilika rwemeje ko ruzasuzuma ishingiro ry'icyo kirego, rwemeje nyuma ko rudafite ububasha bwo kuburanisha urwo rubanza, rurwimurira mu Rukiko Rukuru rw'Ubucuruzi hashingiwe ku bitanganywa n'ingingo ya 4 y'Itegeko - Ngenga n° 04/2009 ryo kuwa 29/07/2009 rihindura kandi ryuzuzwa Itegeko - Ngenga n° 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'Inkiko. [17] Nk'uko ingingo imaze kuvugwa haruguru ibiteganywa, urwo rubanza rwongeye kuburanishwa bundi bushya, Urukiko Rukuru rw'Ubucuruzi rukaba rero rutari rutegetswe gukurikiza icyemezo cyari cyarafashwe n'Urukiko Rukuru rwa Repubilika, cyane ko cyari cyarafashwe n'Urukiko rutari rubifitiye ububasha nk'uko n'ababuranyi b'impande zombi babyemeje. Iyo ngingo iteganywa ko imanza zose z'ubucuruzi ...zitari zaburanishwa cyangwa ngo zisomwe n'Urukiko Rukuru zigomba kwimurirwa mu Rukiko Rukuru rw'Ubucuruzi kugira ngo zongere ziburanishwe bundi bushya.

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[18] Byongeye kandi, Urukiko rurasanga, n'ubwo Urukiko rwa Mbere rw'Iremezo rwavuze ko nta kirego cy'inshinjabyaha cyari gihari, bigaragara ariko ko urubanza rw'inshinjabyaha rwaburanishijwe kugeza Nyemazi apfuye, rukomoka ku kirego Soras yari yatanze mu Bugenzacyaha kuwa 1/08/2000, kandi ko imanza z'inshinjabyaha zaciwe zagaragaje ko Nyemazi Amon yapfuye ari umwera ku byaha yari akurikiranweho hatagaragajwe ko izo nyandiko ari mpimbano, Soras yari yararegeye indishyi muri izo manza ikaba itarakomeje icyo kirego cyayo kandi aribwo buryo bwari busigaye bwo kugaragaza ko inyandiko zavuzwe ari mpimbano, hashingiwe ku byateganywaga n'ingingo ya 166 y'Itegeko Ngenga n° 07/2004

ryo kuwa 25/04/20004 rigena imiterere, imikorere n'ububasha by'Inkiko. Urukiko rurasanga kuba ibyo bitarakozwe, bivuze ko itashoboraga kongera gutanga ikirego kiregera inyandiko mpimbano mu manza z'imbonezamubano (inscription en faux) nk'uko bivugwa n'ihame "Electa una via", bivuze rero ko kugeza ubu nta kimenyetso Soras ifite kigaragaza ko izo nyandiko Transcoge iburanisha muri uru rubanza ari mpimbano nk'uko n'Urukiko Rukuru rw'Ubucuruzi rwabyemeje.

2. Kumenya niba Transcoge yujuje ibisabwa kugira ngo ihabwe indishyi [19] Uburanira Soras avuga ko Transcoge itahabwa indishyi isaba muri uru rubanza kuko itayishyikirije ibyagomba bivugwa mu masezerano y'ubwishingizi bagiranye birimo inyemezabuguzi z'aho ibicuruzwa byaturutse (facture du fournisseur) n'inyandiko y'umwimerere y'umwikorezi (connaissance). Avuga ko mu gihe yahabwa indishyi, yakwishyurwa gusa 45.301.463 Frw nk'uko bivugwa mu masezerano bagiranye, ariko ko itahabwa 48.587.760 Frw y'agaciro k'ibicuruzwa ivuga ko byabuze, ndetse n'izindi ndishyi zirimo amafaranga ya marge bénéficiaire yaciwe kuko atavugwa muri ayo masezerano. [20] Uburanira Transcoge avuga ko Soras yayihaye 45.301.463 Frw yishingiye akiyongeraho 25 % ya marge bénéficiaire, 160.838 USD y'igihembo cya Avoka n'andi mafaranga yakoresheje, 701.952 USD z'igihombo yayiteje na 862.790 USD y'indishyi, kuko itayihereye ku gihe amafaranga yishingiye, nyamara yarayihaye inyandiko zose yayisabaga zirimo n'inyemezabuguzi z'umwimerere. UKO URUKIKO RUBIBONA [21] Ku bijyanye n'inyandiko zisabwa kugira ngo Transcoge ihabwe indishyi, dosiye igaragaza ko Soras na Transcoge bagiranye amasezerano y'ubwishingizi kuwa 19/10/1999, Soras yiyemeza kuzishyura Transcoge 45.301.463 Frw mu gihe toni 60 z'amata ya Nido izaba yaguriye kuri Somex Investments Limited iba i DUBAI habaye "sinistre", (ni ukuvuga mu gihe yononekaye, yibwe cyangwa yabuze mu bundi buryo). Bumvikanye kandi ko mu gihe Transcoge yaza gusaba izo ndishyi izayishyikiriza inyandiko zirimo icyemezo cy'ubwishingizi cy'umwimerere (Certificat d'assurance original), inyemezabuguzi z'aho ibicuruzwa byaturutse n'andi mafaranga yabitanzeho (facture d'origine de la marchandise et des frais divers engagés) n'inyandiko y'umwimerere y'umwikorezi (connaissance) nk'uko biteganyijwe muri ayo masezerano no muri « Police Française d'assurance Maritime sur Facultés (marchandises) ». [22] Muri dosiye, hari kandi inyandiko zakozwe na Kenya Ports Authority kuwa 25/11/1999, zerekana ko Transcoge yaguriye ibicuruzwa birimo amata ya Nido i Dubai kuri Somex Investments Limited, kandi ko ubwikorezi bwabyo bwakozwe na MSC FRANCESCA bigera

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mu cyambu cya Mombassa kuwa 04/11/1999, ariko ko haburiye amakarito y'amata ya Nido angana na 2494. Ibyo byashimangiwe kandi na raporo yakozwe na McLaren Toplis kuwa 23/11/1999, hari n'abayobozi b'inzego zinyuranye zibifitiye ububasha kandi zizewe arizo: L'Office National des Ports, L'Office National de Douanes, La Police chargée des Ports, La Sécurité Portuaire, Les Agents Transitaires du destinataire na Unité de Sécurité chargée de la Parcelle n° 18 au sein du Terminal des containers. Ibyo byongeye gushimangirwa kandi na MAGERWA nka Commissaire d'Avarie yakurikiranye ibyo bicuruzwa igasanga harabaye ubujura bw'amakarito

2494 y'amata ya Nido ya Transcoge. [23] Dosiye yerekana nanone ko Transcoge imaze kumenya ko ibyo bicuruzwa byayo byabuze, yandikiye Soras kuwa 14/03/2000, isaba ko yayiha indishyi zingana na 90.320.104 Frw, inayimenyesha ko ku mugereka w'iyi baruwa yometseho inyandiko zinyuranye zirimo icyemezo cy'ubwishingizi cy'umwimerere (certificat d'assurance original), inyemezabuguzi z'aho ibicuruzwa byaturutse (facture du fournisseur), inyemezabuguzi z'umwikorezi, inyandiko zaherekeje ibyo bicuruzwa (B/L n° MSCUD 1809799 na 1809807). Soras yayisubije ko itayihira izo ndishyi bitewe n'uko zikubye hafi incuro ebyiri amafaranga yishingiye. [24] Urukiko rurasanga mu gihe bigaragara ko Transcoge yaguriye amakarito 2.494 y'amata ya Nido kuri Somex Investments Limited, ariko akaba yaraburiye ku cyambu cya Mombasa nk'uko byagaragajwe n'inzego zibifitiye ububasha zavuzwe haruguru, ntaho Soras yahera yanga kwishyura ibyo bicuruzwa kuko igihe yishyuzwaga indishyi itavuze ikibazo cya "facture", ahubwo yivugiye gusa ko itazishyura bitewe n'uko ari nyinshi. [25] Ku birebana n'ingano z'indishyi Soras igomba kwishyura Transcoge zijyanye n'ibyo bicuruzwa byayo byabuze, inkiko zibanza zategetse Soras kwishyura Transcoge 48.587.760 Frw ahwanye n'agaciro k'amata ya Nido yabuze, ariko uru Rukiko rurasanga igomba kuyishyura 45.301.463 Frw kuko ariyo mafaranga agaragarira mu masezerano y'ubwishingizi bagiranye. [26] Ku bijyanye n'amafaranga ya marge bénéficiaire, Urukiko rurasanga ibyo Soras ivuga y'uko itakwishyura Transcoge 25 % ya "marge bénéficiaire" nta shingiro bifite, kuko itagaragaza aho ishingira mu rwego rw'amategeko cyangwa rw'amasezerano yatuma itishyura ayo mafaranga, bikaba byumvikana ko kuba Transcoge itaraboneye ku gihe ayo mafaranga, bigaragara ko byayiteje igihombo, ariko iyo marge bénéficiaire ikaba igomba kubarirwa kuri 45.301.463 Frw yishingiye, no ku gipimo cya 18% ku mwaka, bityo Soras ikaba igomba kwishyura Transcoge amafaranga abazwe mu buryo bukurikira: $45.301.463 \text{ Frw} \times 18 \times 500 \text{ iminsi} = 11.325.366 \text{ Frw}$. 100×360 [27] Urukiko rurasanga kandi Transcoge igomba guhabwa amafaranga yagenewe n'Inkiko zibanza y'ubwikorezi bw'ibicuruzwa kuva Dubai kugera Mombassa angana 1.914.000 Frw hamwe na 1.200.600 Frw y'ingendo, 1.000.000 Frw y'ikurikiranarubanza n'ay'igihembo cya Avoka, 200.000 Frw y'indishyi z'uko yayiteye urubwa, 3.000.000 Frw y'igihembo cya Avoka cyo ku rwego rwa kabiri na 2.500 Frw y'ibyakoze mu rubanza, yose hamwe akaba 7.317.100 Frw.

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[28] Urukiko rurasanga rero igiteranyo cy'indishyi Soras igomba guha Transcoge ari: 45.301.463 Frw y'ibicuruzwa byabuze + 11.325.366 Frw ya marge bénéficiaire + 7.317.100 Frw y'indishyi yaciwe mbere nk'uko zasobanuwe haruguru, bityo yose hamwe akaba 63.943.929 Frw. Kumenya niba Soras yahabwa amafaranga isaba [29] Uburanira Soras asaba ko Transcoge yayihira 21.543 USD yakoresheje igihe cy'iperereza igasanga ibimenyetso iburanisha muri uru rubanza ari ibihimbano, 10.000.000 Frw y'indishyi z'uko yayisebeje ikanayishora mu manza nta mpamvu na 2.000.000 Frw y'igihembo cya Avoka cyo ku nzego zose yaburaniyemo. Asobanura ko Soras yari yaratanze ikirego kiregera kwiregura mu Rukiko Rukuru rw'Ubucuruzi, isaba ko Transcoge yayihira ayo mafaranga, ariko ko urwo Rukiko rwirengagije kuyiyaca. [30] Uburanira Transcoge avuga ko itaha Soras izo ndishyi kuko itayitumye gukora iryo perereza. [31] Urukiko rurasanga Soras itahabwa izo ndishyi isaba mu kirego cyayo

kiregera kwiregura kuko iperereza yakoze ritagaragaje ko ibimenyetso Transcoge iburanisha muri uru rubanza ari ibihimbano. Ikindi n'uko nta kimenyetso yashyikirije uru Rukiko cyerekana ko Transcoge yayisebeje. B. UBURIRIRE BWA TRANSCOGUE BWURIRIYE KU BWA SORAS Kumenya niba Transcoge yahabwa indishyi isaba [32] Transcoge ivuga ko itanze ubujurire bwuririye ku bundi isaba ko Soras yayiha 29.248 USD y'inyungu z'ubukererwe zibariwe ku gipimo cya 25 % kugeza ku muni w'icibwa ry'urubanza kuko yayivukije 45.301.643 Frw mu gihe cy'inyaka 12 yose. Asaba kandi ko Soras yacibwa 500.000 Frw buri kwezi y'igihano kiyihatira kurangiza uru rubanza. [33] Uburanira Soras avuga ko itaha Transcoge izo inyungu kuko nta kosa yakose, ko ahubwo ariyo yakoze ikosa ryo kutayihabwaho yayisabaga kugira ngo iyihe amafaranga yishingiye. Avuga kandi ko itacibwa ibihano biyihatira kurangiza urubanza mu gihe nta ndishyi iracibwa ngo yange kuzishyura. [34] Urukiko rurasanga Transcoge itahabwa inyungu z'ubukererwe mu gihe yagenewe amafaranga y'urwunguko (marge bénéficiaire) yavukijwe. [35] Urukiko rurasanga kandi Soras itacibwa igihano kiyihatira kurangiza urubanza mu gihe nta kigaragaraza ko itazishyura indishyi yaciwe ku bushake. III. ICYEMEZO CY'URUKIKO [36] Rwemeje ko ubujurire bwa SORAS bufite ishingiro kuri bimwe;

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[37] Rwemeje ko ubujurire bwa TRANSCOGUE bwuririye ku bundi nta shingiro bufite; [38] Ruvuze ko imikirize y'urubanza RCOM A 0295/09/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 28/04/2011 ihindutse kuri bimwe; [39] Rutegetse SORAS guha TRANSCOGUE 63.943.929 Frw; [40] Rutegetse SORAS gutanga amagarama y'uru rubanza angana na 106.750 Frw, habariwemo n'ayo yaciwe mu Rukiko Rukuru rw'Ubucuruzi, itayatanga mu gihe cy'iminsi umunani, ayo mafaranga agakurwa mu byayo ku ngufu za Leta.

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