

RWANDA / JUDGMENT

KAYITESI vs RUBANGURA DENIS N'UNDI

RCAA00018/2021/CA & CMB RCAA 00019/2021/CA

COURT

Court of Appeal

DECIDED

9 October 2023

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KAYITESI vs RUBANGURA DENIS N'UNDI

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Text

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KAYITESI vs RUBANGURA DENIS N'UNDI. [Rwanda URUKIKO RW'UBUJURIRE – RCAA00018/2021/CA & CMB RCAA 00019/2021/CA (Nyirandabaruta, P.J; Kamere na Munyangeri, J.) 09 Ukwakira 2023] Amategeko mbonezamubano – Impano – Impano itanzwe n'umupfakazi – Uwapfakaye usigaranye umutungo kandi afitanye abana na nyakwigendera, afite uburenganzira bwo gutanga impano itarengeje 1/5 cy'umutungo wose yasigaranye wa nyakwigendera. Amategeko mbonezamubano – izungura – izungura ry'imitungo ikiburanwa – Ntabwo umuzungura yafata imitungo ikiri mu manza ngo ayite iye kandi atazi icyemezo kizayifatwaho. Incamake y'ikibazo: Uru rubanza rwatangiye GT BANK RWANDA Plc irega Kayitesi mu Rukiko Rwisumbuye rwa Nyarugenge kubera umwenda UPROTUR GROUP Ltd yafashe muri iyo banki Kayitesi akawishingira, nyuma akaza guha impano sosiyete IKAY INC Ltd y'umutungo ufite UPI 1/01/09/09/1010, GT BANK RWANDA Plc yatanze ikirego isaba ko iyo mpano iteshwa agaciro kuko yakozwe mu rwego rwo kwikesha agamije guhunga inshingano zo kwishyura umwenda UPROTUR GROUP Ltd yafashe, yanasabye kandi indishyi zitandukanye, igihembo cya Avoka n'amafaranga y'ikurikiranarubanza. Rubangura yagobotse muri urwo rubanza ku bushake nawe asaba ko umutungo uburanwa usubizwa ku mazina ya Kayitesi ngo kuko uyu anyereza umutungo

w'abazungura ba Rubangura awutangamo impano, kandi yemerewe gutanga ibitarenze 1/5 cy'uwo mutungo, asaba n'amafaranga y'ikurikiranarubanza. Kayitesi yireguye avuga ko ikirego cya GT BANK RWANDA Plc nta shingiro gifite, kuko yatanze impano mu buryo bukurikije amategako. IKAY INC Ltd yo yireguye ivuga ko iyo mpano itaseswa kuko Kayitesi afite imitungo yindi yakwifashishwa mu kwishyura umwenda mu gihe ubwishyu bwa banki bwaba bubuze. Urukiko mu rubanza RC00450/2018/TGI/NYGE rwemeje ko nta kigaragaza ko Kayitesi yatanze ibirengeje ibyo yagombaga gutanga, cyangwa ngo abe yatanze iyo mpano agamije kwikenesha, bityo ko, ikirego cya GT BANK RWANDA nta shingiro gifite, ko ukugoboka kwa Rubangura nta shingiro gufite, rutegeka ko nta mpamvu yo gutesha agaciro impano Kayitesi Immaculée yahaye IKAY INC Ltd. GT BANK RWANDA Plc ntiyishimiye iyo mikirize y'urubanza, irujuririra mu Rukiko Rukuru, ivuga ko Urukiko Rwisumbuye rwirengagije ibisobanuro yatanze bigaragaza ko umutungo wari wanditse kuri Kayitesi wishingiye UPROTUR GROUP Ltd ari ufite n°UPI: 1/01/09/09/1010 gusa, ko kandi imitungo yavuzwe mu rubanza rujuririrwa ko ifite agaciro kagera kuri miliyari 8 ikiri mu manza, bityo ko Kayitesi Immaculée aramutse adasubiranye umutungo watanzweho impano byayihungabanya. Rubangura na we ntiyishimiye imikirize y'urubanza arujuririra mu Rukiko Rukuru, anenga Urukiko Rwisumbuye kuba rwaravuze ko ukugoboka kwe nta shingiro gufite, kandi ngo Kayitesi yarakoze amasezerano y'impano mu rwego rwo kwikenesha ngo aburizemo ubwishyu bw'umwenda wa UPROTUR GROUP Ltd.

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Urukiko mu rubanza RCA00225/2019/HC/KIG & CMB RCA00297/2019/HC/KIG rushingiye ku kuba imitungo yose Kayitesi avuga ko ari iye ikirimo kuburanwa n'abazungura ba Rubangura Védaste, no kuba Kayitesi atarashoboye kuvuguriza ibyo Rubangura Denis avuga y'uko agaciro k'iyi nzu impano karengeje 1/5 cy'umutungo wose wa Kayitesi bikaba bidatanga icyizere ko GT BANK RWANDA Plc yakwishyurwa. Bityo, Urukiko, rwemeza ko ibyakozwe na Kayitesi ari uburyo bwo kwikuraho imitungo ye itari mu manza mu rwego rwo kugira ngo abo abereyemo imyenda bazabure ubwishyu, rwemeza ko amasezerano y'impano agomba guteshwa agaciro. Kayitesi ntiyishimiye imikirize y'urubanza, ayijuririra mu Rukiko rw'Ubujurire, IKAY INC CO Ltd nayo yarajuriye. Kayitesi anenga kuba Urukiko Rukuru rwaremeje ko yatanze impano mu rwego rwo guhungisha imitungo kugira ngo GT BANK RWANDA Plc n'abandi baberewemo imyenda bazabure ubwishyu, avuga ko ubwishyu bwa banki butari kubura kandi ko impano yatanze itarenze 1/5 cy'umutungo wose afite. IKAY INC CO. Ltd nayo yajuriye inenga ko Urukiko Rukuru rwafashe icyemezo cy'uko itsinzwe rutagize icyo ruvuga ku myiregurire yayo, ariko mu iburanisha iyi ngingo yarayiretse, no kuba rwaremeje ko amasezerano y'impano yahawe na Kayitesi ateshwa agaciro hashingiwe ku kuba yarakozwe mu rwego rwo kwikenesha no ku kuba iyo mpano yatanzwe irengeje 1/5 cy'umutungo we wose kandi binyuranyije n'Itegeko. Mu nama ntegururubanza mu Rukiko rw'Ubujurire Kayitesi yavuze ko yamaze kumvikana na GT BANK RWANDA Plc, kandi ko yamaze kuyishyura umwenda yari ayifitiye, bityo ko nta mpaka bagifitanye. Avuga ko hasigaye ingingo z'ubujurire zireba Rubangura Denys zigizwe. Uhagarariye IKAY INC Ltd nawe yavuze kimwe n'uhagarariye Kayitesi ko nabo basigaranye impaka zireba Rubangura Denys. Mu rubanza mu mizi Rubangura Denys yamenyesheje Urukiko ko yihannye

umucamanza waburanishaga uru rubanza, Perezida w'Urukiko rw'Ubujurire mu rubanza RS/RECUS/RC 00003/2022/CA, yemeje ko ikirego cy'ubwihane cya Rubangura Denys nta shingiro gifite, ko umucamanza wihanwe aguma mu nteko iburanisha uru rubanza ariko ko mu nyungu z'ubutabera iburanisha ripfundurwa urubanza rukaburanishwa n'inteko igizwe n'abacamanza batatu. Mu rubanza rubanziriza urundi kandi Urukiko rwemeje ko ukureka ikirego kwa GT BANK RWANDA Plc kutemewe kuko kwakozwe mu buryo budakurikije amategeko ariko ko GT BANK RWANDA Plc ivanwe muri uru rubanza, rugasigaramo gusa ababuranyi Kayitesi Immaculée, IKAY INC Ltd na Rubangura Denys kandi urubanza rugakomeza gusa ku ngingo bafitanyeho impaka. Incamake y'icyemezo: 1. Uwapfakaye usigaranye umutungo kandi afitanye abana na nyakwigendera, afite uburenganzira bwo gutanga impano itarengeje 1/5 cy'umutungo wose yasigaranye wa nyakwigendera. Bityo, iyo uwatanze impano atagaragaza icyegeranyo cyose cy'imitungo yasizwe na nyakwigendera ngo bigaragare ko impano yatanze itarenze 1/5 yemerewe n'Amategeko, impano yatanze iteshwa agaciro kuko bishoboka ko irenze ako gaciro.

2. Imitungo ikiburanwa ntiyabarirwa mu mitungo rusange uzungurwa. Bityo ntabwo umuzungura yafata imitungo ikiri mu manza ngo ayite iye kandi atazi icyemezo kizayifatwaho.
3. Ntabwo umuburanyi yaregera indishyi z'akababaro bwa mbere ku rwego rw'Ubujurire.

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Ubujurire nta shingiro bufite. Amategeko yashingiweho: Itegeko N°27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, Ingingo ya 49, Nta manza zifashshijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Kayitesi Immaculée, Umuyobozi wa UPROTUR GROUP Ltd, yayishingiye ku mwenda yafashe muri GT BANK RWANDA Plc. Iyo Banki ivuga ko KAYITESI Immaculée yahaye IKAY INC Ltd impano y'umutungo utimukanwa ubaruye kuri UPI 1/01/09/09/1010, uherereye mu Karere ka Nyarugenge, agamije kwikesha mu rwego rwo guhunga inshingano zo kwishyura umwenda UPROTUR GROUP Ltd yafashe. GT BANK RWANDA Plc yareze KAYITESI Immaculée na IKAY INC Ltd mu Rukiko Rwisumbuye rwa Nyarugenge, ikirego cyayo gihabwa RC00450/2018/TGI/NYGE, isaba ko uwo mutungo uvanwa kuri IKAY INC Ltd ugasubira kuri Kayitesi Immaculée, isaba kandi indishyi, igihembo cya Avoka n'ikurikiranarubanza. [2] Rubangura Denys yagobotse muri urwo rubanza ku bushake nawe asaba ko umutungo wavuzwe haruguru ugizwe n'inyubako yitwa Rubangura House usubizwa ku mazina ya Kayitesi Immaculée ngo kuko uyu anyereza umutungo w'abazungura ba Rubangura Védaste awutangamo impano, kandi yemerewe gutanga ibitarenze 1/5 cy'uwo mutungo, agasaba kandi amafaranga y'ikurikiranarubanza. [3] Kayitesi Immaculée yireguye avuga ko ikirego cya GT BANK RWANDA Plc nta shingiro gikwiye guhabwa, kuko yatanze impano mu buryo bukurikije amategeko. IKAY INC Ltd yo yireguye ivuga ko iyo mpano itaseswa kuko Kayitesi Immaculée afite imitungo yindi yakwifashishwa mu kwishyura umwenda mu gihe ubwishyu bwa GT BANK RWANDA Plc bwaba bubuze. [4] Urukiko Rwisumbuye rwa Nyarugenge rwasesenguye ibibazo bijyanye no kumenya niba impano Kayitesi Immaculée yatanze y'umutungo ufite n°UPI: 1/01/09/09/1010 yateshwa agaciro ukagarurwa mu mitungo ye, maze mu rubanza rwaciye ku wa

27/03/2019, rushingiye ku ngingo ya 33 y'Itegeko N°27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranwe, impano n'izungura, rusanga nta kigaragaza ko Kayitesi Immaculée yatanze ibirengeje ibyo yagombaga gutanga, cyangwa ngo abe yatanze iyo mpano agamije kwikesha, rwemeza ko ikirego cya GT BANK RWANDA nta shingiro gifite, ko ukugoboka kwa Rubangura Denys nta shingiro gufite, rutegeka ko nta mpamvu yo gutesha agaciro impano Kayitesi Immaculée yahaye IKAY INC Ltd, rutegeka GT BANK RWANDA Plc gufatanya na Rubangura Denys guha IKAY

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INC Ltd 500.000 Frw y'igihembo cya Avoka na 50.000Frw y'ikurikiranarubanza, no guha Kayitesi Immaculée 500.000Frw y'igihembo cya Avoka na 50.000Frw y'ikurikiranarubanza. [5] GT BANK RWANDA Plc ntiyishimiye iyo mikirize y'urubanza, irujuririra mu Rukiko Rukuru, ubujurire bwayo buhabwa RCA00225/2019/HC/KIG, ivuga ko Urukiko Rwisumbuye rwa Nyarugenge rwirengagije ibisobanuro yatanze bigaragaza neza ko umutungo wari wanditse kuri Kayitesi Immaculée wishingiye UPROTUR GROUP Ltd ari ufite n°UPI: 1/01/09/09/1010 gusa, ko kandi imitungo yavuzwe mu rubanza rujuriyirwa ko ifite agaciro kagera kuri miliyari 8 ikiri mu manza, bityo ko Kayitesi Immaculée aramutse adasubiranye umutungo watanze impano byayihungabanya. [6] Rubangura Denys na we ntiyishimiye imikirize y'urubanza arujuririra mu Rukiko Rukuru, ubujurire bwe buhabwa RCA00297/2019/HC/KIG, anenga Urukiko Rwisumbuye rwa Nyarugenge kuba rwaravuze ko ukugoboka kwe nta shingiro gufite, kandi Kayitesi Immaculée yarakoze amasezerano y'impano mu rwego rwo kwikesha ngo aburizemo ubwishyu bw'umwenda wa UPROTUR GROUP Ltd. Izo manza zombi zaburanishijwe zihurijwe hamwe mu rubanza rufite RCA00225/2019/HC/KIG & CMB RCA 00297/2019/HC/KIG. [7] Urukiko Rukuru rwasuzumye ikibazo kijyanye no kumenya niba amasezerano y'impano y'ikibanza N°UPI: 1/01/09/09/1010 Kayitesi Immaculée yagiranye na IKAY INC Ltd yarayakoze mu rwego rwo kwikesha, rushingiye ku kuba imitungo yose Kayitesi Immaculée avuga ko ari iye ikirimo kuburanwa n'abazungura ba Rubangura Védaste, bikaba bidatanga icyizere cyuzuye ko GT BANK RWANDA Plc yakwishyurwa, no kuba Kayitesi Immaculée atarashoboye kuvugurura ingingo Rubangura Denis aburanisha y'uko agaciro k'inzu ya Kayitesi Immaculée iri mu kibanza No UPI: 1/01/09/09/1010 (yatanze impano) irengeje 1/5 cy'umutungo we wose, rwasanze ibyakozwe na Kayitesi Immaculée ari uburyo bwo kwikuraho imitungo ye itari mu manza mu rwego rwo kugira ngo aboreyemo imyenda bazabure ubwishyu, bityo rwemeza ko amasezerano y'impano agomba guteshwa agaciro. [8] Urwo Rukiko rwemeje ko ubujurire bwa GT BANK RWANDA Plc bufite ishingiro, ko ubujurire bwa Rubangura Denys bufite ishingiro kuri bimwe, rutegeka ko urubanza no RC0450/2019/TGI/NYGE rwaciye n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 27/03/2019 ruteshwa agaciro mu ngingo zarwo zose, ko amasezerano y'impano Kayitesi Immaculée yagiranye na IKAY INC Ltd ateshejwe agaciro, ko inzu iri mu kibanza n°UPI: 1/01/09/09/1010 ayisubirana ikamwandikwaho. Rutegeka Kayitesi Immaculée guha GT BANK RWANDA Plc 1.000.000Frw, akubiyemo ay'igihembo cya Avoka n'ay'ikurikiranarubanza, no kuyisubiza amagarama yatanze itanga ikirego. Rutegeka kandi Kayitesi Immaculée guha Rubangura Denys 500.000Frw akubiyemo igihembo cya Avoka n'ay'ikurikiranarubanza no

kumusubiza amagarama yishyuye atanga ikirego. [9] Kayitesi Immaculée ntiyishimiye iyo mikirize y'urubanza, ayijuririra mu Rukiko rw'Ubujurire ku wa 30/09/2021, ubujurire bwe buhabwa RCAA00018/2021/CA, IKAY INC CO Ltd nayo yajuririye ku wa 30/09/2021, ubujurire bwayo buhamwa RCAA00019/2021/CA. Izo manza zombi zahurijwe hamwe mu rubanza RCAA00018/2021/CA & CMB RCAA 00019/2021 kugira ngo ziburanishirizwe hamwe.

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[10] Kayitesi Immaculée anenga kuba Urukiko Rukuru rwaremeje ko yatanze impano mu rwego rwo guhungisha imitungo kugira ngo GT BANK RWANDA Plc n'abandi baberewemo imyenda bazabure ubwishyu, no kuba rwaremeje ko yanyuranyije n'ingingo ya 49 y'Itegeko N°27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranwe, impano n'izungura, iteganya ko utanga impano adashobora kurenza 1/5 by'umutungo wose umuntu atunze mu gihe afite abamukomokaho, kandi afite imitungo yemererwa nk'uwashyingiranywe na Nyakwigendera Rubangura Védaste ihwanye na 50% by'umutungo wose wa Rubangura Védaste, iyo mitungo ikaba ifite agaciro kagera kuri 4.000.000.000Frw, bityo ko ubwishyu butari kubura kandi ko impano yatanze itarenze 1/5 cy'umutungo wose afite. [11] IKAY INC CO. Ltd nayo yajuriye inenga ko Urukiko Rukuru rwafashe icyemezo cy'uko itsinzwe rutagize icyo ruvuga ku myiregurire yayo (igihe cy'iburanisha kigeze iyi ngingo irayireka), no kuba rwaremeje ko amasezerano y'impano yahawe na Kayitesi Immaculée ateshwa agaciro hashingiwe ku kuba yarakozwe mu rwego rwo kwikesha no ku kuba iyo mpano yatanzwe irengeje 1/5 cy'umutungo we wose kandi binyuranyije n'Itegeko. [12] Mu nama ntegururubanza yo ku wa 14/07/2022, Me Intwazayamugabo Armand uhagarariye Kayitesi Immaculée yavuze ko uyu yamaze kumvikana na GT BANK RWANDA Plc, kandi ko yamaze kuyishyura umwenda yari ayifitiye, bityo ko nta mpaka agifitanye na yo kuko ntacyo akiyikurikiranyeho, ndetse ko n'ibyo GT BANK RWANDA Plc yari yaragenewe mu rubanza no RC 00450/2018/TGI/NYGE no mu rubanza RCA00225/2019/HC/KIG rujuririrwa nta shingiro bigifite. Yasobanuye mu gace ka 14 k'inyandikomvugo y'Inama ntegururubanza ko Kayitesi Immaculée ataretse urubanza, ahubwo ko aretse ingingo z'ubujurire zireba GT BANK RWANDA Plc, ariko ko hagsigaye izireba Rubangura Denys zigizwe n'ingingo yo kumenya niba impano yahaye IKAY INC Ltd yaragombaga guteshwa agaciro, ingingo yo kumenya niba indishyi Kayitesi Immaculée yategetswe kwishyura Rubangura Denys zakurwaho, n'iyi kumenya niba hari indishyi Kayitesi Immaculée yagenerwa kuri uru rwego. [13] Mu nama ntegururubanza yavuzwe haruguru, nk'uko na none bigaragara mu gace ka 17 k'inyandikomvugo yayo, Me Munyamasoko Jovith uhagarariye IKAY INC Ltd nawe yavuze kimwe n'uhagarariye Kayitesi Immaculée ko nta mpaka IKAY INC Ltd igifitanye na GT BANK RWANDA Ltd ariko ko hagsigaye izireba Rubangura Denys zigizwe n'ingingo irebana no kuba Urukiko Rukuru rwaratesheje agaciro impano yahawe IKAY INC Ltd, kuba indishyi Urukiko rwategetse IKAY INC Ltd guha Rubangura Denys zigomba kuvanwaho (iyi ngingo ariko ntabwo IKAY INC Ltd yigeze iyisobanura mu buryo burambuye kugira ngo hagire n'undi uyireguraho, nta n'ubwo yayigarutseho mu miburanire yayo) kandi ko izindi Rubangura Denys asaba nta shingiro

ryazo. [14] Nk'uko bigaragara mu gace ka 15 n'aka 16 tw'inyandikomvugo y'inama ntegururubanza, Me Mugabonabandi Jean Maurice, uhagarariye GT BANK RWANDA Ltd, nawe yahamije ibyavuzwe n'abahagarariye abajuriye ko ntacyo GT BANK RWANDA Ltd ikiryoza Kayitesi Immaculée na IKAY INC Ltd kuko impaka zose zari zigize urubanza bari bafitanye ubu zamaze gukemurwa mu bwumvikane, naho uruhande rwa Rubangura Denys rwo ruvuga ko kureka

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urubanza kw'abajuriye nta kibazo byamutera kubera ko icyo gihe hagumaho imikirize y'urubanza rwajuririwe, ariko ko nabyo atabitsimbarayeho kuko bishoboka ko bakumvikana. [15] Mu iburanisha ry'urubanza ryo ku wa 07/10/2022, ababuranyi bose baritabye ariko Me RWIGEMA Vincent uburanira Rubangura Denys asaba Urukiko kwimura iburanisha kugira ngo abone umwanya wo gusozza ubwumvikane yavugaga ko bwenda kurangira, iburanisha ryimurirwa ku wa 11/10/2022. Uwo munsu ugeze ababuranyi bose baritaba, bamenyesha Urukiko ko bananiwe gukemura mu bwumvikane impaka bafitanye. [16] Muri iryo buranisha ryo ku wa 11/10/2022, hasuzumwe ikibazo gisaba ivanwaho ry'imanza zaciwe ku nzego zabanje cyazamuwe na Me Munyangabe Henri Pierre wari urwinjiyemo bwa mbere ahagarariye Kayitesi Immaculée wajuriye kandi ibyo asaba abishyigikirwamo n'uburanira IKAY Ltd nayo yajuriye ndetse na GT BANK Plc yatangiye uru rubanza irega ku rwego rwa mbere. Ibi ariko bikaba bitaremewe na Rubangura Denys n'umwunganizi we. Impaka zaburanishijwe zikaba zari zishingiye ku kibazo cyo kumenya niba mu gihe GT BANK yatanze ikirego cy'iremezo cyo "Gusaba Urukiko gutesha agaciro amasezerano y'impano, yakozwe na Kayitesi Immaculée aha IKAY INC Ltd agamije kwikenesha" ikiretse, ikirego cyo kugoboka mu rubanza cya Rubangura Denys cyo gishobora gukomeza kuburanishwa mu rubanza rw'ubujurire bwa kabiri bwatanzwe na Kayitesi Immaculée na IKAY Ltd. Urukiko kandi rwumvise ababuranyi ku ngingo yo kumenya ibindi basaba mu gihe hazafatwa icyemezo cy'uko urubanza ruhagararira aha. Iburanisha ryasojwe isomwa ry'urubanza rishyizwe ku wa 28/10/2022. [17] Mu gihe Urukiko rwari rutarasoma uru rubanza, ku wa 27/10/2022, umuburanyi Rubangura Denys yamenyesheje Urukiko ko yihannye umucamanza waburanishije uru rubanza kandi abitangira ikirego cyanditswe kuri RS/RECUS/RC 00003/2022/CA, umucamanza wihanwe ahita ahagarika kugira ikindi akora kuri uru rubanza mu gihe hagitegerejwe icyemezo ku bwihane nk'uko biteganywa n'amategeko. [18] Ku wa 27/01/2023, Perezida w'Urukiko rw'Ubujurire yaciye urubanza RS/RECUS/RC00003/2022/CA, yemeza ko ikirego cy'ubwihane cya Rubangura Denys nta shingiro gifite, ko umucamanza wihanwe aguma mu nteko iburanisha uru rubanza ariko ko mu nyungu z'ubutabera iburanisha ripfundurwa urubanza rukaburanishwa n'inteko igizwe n'abacamanza batatu (3). Iburanisha rishyirwa ku wa 08/02/2023. [19] Ku wa 08/02/2023, ababuranyi bose baritabye, Kayitesi Immaculée ahagarariye na Me Munyangabe Henri Pierre afatanyije na Me Intwazayamugabo Armand, IKAY INC Ltd ihagarariye na Me Munyamasoko Jovith, GT BANK RWANDA Plc ihagarariye na Me Safari Jean, naho Rubangura Denys yunganiye na Me Rwigema Vincent. Urukiko rushingiye ku ngingo ya 74 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, rwongeye kumva muri make

ibisobanuro by'ababuranyi ku birebana n'ukureka ikirego kwasabwe na GT BANK RWANDA Plc. Iyo ngingo iteganya ibikurikira: "Iyo umucamanza cyangwa umwe mu bacamanza batangiye urubanza adashoboye kurukomeza kubera impamvu zinyuranye, asimburwa n'undi mucamanza byemejwe na Perezida w'urukiko bireba.

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Isomwa ry'urubanza rishyirwa ku wa 24/02/2023, nyuma ryimurirwa ku wa 03/03/2023, ryongera kwimurirwa ku wa 17/03/2023. [20] Ku wa 17/03/2023, Urukiko rwemeje ko ukureka ikirego kwa GT BANK RWANDA Plc kutemewe kuko kwakozwe mu buryo budakurikije amategeko ariko ko GT BANK RWANDA Plc ivanwe muri uru rubanza, rugasigaramo gusa ababuranyi Kayitesi Immaculée, IKAY INC Ltd na Rubangura Denys kandi urubanza rugakomeza gusa ku ngingo bafitanyeho impaka. Rwategetse ko iburanisha ry'uru rubanza rizakomeza ku wa 28/03/2023, guhera i saa tatu za mu gitondo (9h00). [21] Ku wa 28/03/2023, iburanisha ryimuriwe ku wa 17/04/2023 kuko uwunganira Rubangura Denys yari yagize impamvu yumvikana yatumye ataboneka, ababuranyi basabwa gukoresha uwo mwanya mu kugerageza gukemura mu bwumvikane ikibazo bafitanye. Uwo muni ugeze ababuranyi bongererwa igihe cyo gukomeza inzira y'ubwumvikane ariko ntibashobora kumvikana bituma iburanisha risubukurwa. [22] Iburanisha ryasubukuye ku wa 11/09/2023, Kayitesi Immaculée ahagarariwe na Me Intwazayamugabo Armand, IKAY INC Ltd ihagarariwe na Me Munyamasoko Jovith, naho Rubangura Denys ahagarariwe na Me Rwigema Vincent, impaka zijyibwa ku nenge zagaragajwe haruguru buri wese mu bajuririye yagaragaje mu myanzuro ye y'ubujurire. [23] Hashingiwe kuri izo mpaka ababuranyi bagaragaje mu myanzuro yabo yanditse no ku miburanire yabo, ibibazo Urukiko rusuzuma muri uru rubanza ni ibi bikurikira : Kumenya niba hari amakosa Urukiko Rukuru rwakoze mu kwemeza ko impano Kayitesi Immaculée yahaye IKAY INC Ltd iteshwa agaciro hashingiwe ku kuba irengeje 1/5 cy'umutungo wemewe gutangwa ku muntu ufite abana; Kumenya niba indishyi Kayitesi Immaculée yategetswe kwishyura zavanwaho ; Gusuzuma niba indishyi Rubangura Denys yagenewe ku rwego rubanza zikwiye kongerwa ; Gusuzuma ibijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa n'ababuranyi kuri uru rwego. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA Kumenya niba hari amakosa Urukiko Rukuru rwakoze mu kwemeza ko impano KAYITESI Immaculée yahaye IKAY INC Ltd iteshwa agaciro Muri icyo gihe, iburanisha rikomereza aho ryari rigeze, kandi ibyemezo byafashwe mu rubanza bikagumana agaciro kabyo. icyakora iyo asanze hari ibyakozwe binyuranyije n'amategeko, hashobora gufatwa icyemezo cyo gutangira iburanisha bundi bushya cyangwa kugira ibihindurwa, hamaze kumvwa ababuranyi, hagasobanurwa impamvu. Umuburanyi utishimiye icyo cyemezo, ashobora kukijuririra hamwe n'urubanza mu mizi".

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[24] Me Intwazayamugabo Armand, uhagarariye Kayitesi Immaculée, avuga ko Urukiko Rukuru mu kwemeza ko impano iteshejwe agaciro rwashingiye ku ngingo ya 49 y'Itegeko N°27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, no ku kuba Kayitesi Immaculée atarashoboye kwereka Urukiko imitungo yose

afite ku giti cye n'agaciro kayo ku buryo byavuguruzwa ingingo Rubangura Denys aburanisha, kandi yararugaragariye ko umutungo watanzeho impano ari umutungo we bwite, kandi ko na Rubangura Denys abyemera, akaba nta mpamvu yatuma inzu iri mu kibanza gifite UPI: 1/01/09/09/1010 Rubangura Vedatse yapfuye yaramuhayeho impano yagaruka mu mutungo w'abashyingiranywe kugira ngo igengwe n'ibivugwa mu ngingo ya 49 y'Itegeko N°27/2016 ryo ku wa 08/07/2016; ko ibyo ari ibyo byatumye Urukiko Rukuru rugera ku mwanzuro utari wo, asaba ko wakosorwa n'uru Rukiko rw'Ubujurire, rukemeza ko impano yahawe IKAY INC Ltd igumana agaciro kayo. [25] Asobanura ko iyo ngingo y'Itegeko itari gushingirwaho kandi Kayitesi Immaculée ari umupfakazi, ko itamukumira kuba yagira impano atanga, kuko umutungo yakabaye yarasigaye acungira abana b'umugabo we nyakwigendera Rubangura Védaste abazungura be bararangije kuwugabana², ko muri iryo gabana umutungo uburanwa muri uru rubanza wari warashyizwe ku ruhande nk'uwe bwite utarebwa n'igabana, Kayitesi Immaculée we agasigarana umutungo we bwite atunze nka célibataire (ingaragu) ku buryo aramutse anongeye gushaka iyo ngingo y'Itegeko itashingirwaho hitwajwe ibyo gusigasira umutungo ku bazamuzungura. Asobanura kandi ko ubu Kayitesi Immaculée afite umudendeze usesuye ahabwa n'Itegeko Nshinga ku mutungo we, ndetse ko Itegeko N°27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru ritareba ibyo kuba yatanga impano ku mutungo we kimwe n'uko ritareba iby'uko umutungo we ushobora kugabanuka mu buryo bwo kuwugurisha. [26] Me Intwazayamugabo Armand asobanura kandi ko ibimaze gusobanurwa mu gika kibanziriza iki abishingira ku kuba iyo ngingo ya 49 yashingiweho igaragaza mu iriburiro ryayo ko ireba abashyingiranywe aho itangira igira iti : “abashyingiranwe bafite uburenganzira bwo gutanga impano...” ko itavugamo abapfakaye, abari bonyine (ingaragu), ko itareba abantu muri rusange. [27] Me Munyamasoko Jovith, uhagarariye IKAY INC Ltd, avuga ko iyi ngingo IKAY INC Ltd nayo mu bujurire yatanze iyihuriyeho na Kayitesi Immaculée, ko n'ibisobanuro batanga ari bimwe, ko mu gihe cyo gutanga uwo mutungo Kayitesi Immaculée yari mu bihe by'imimerere bitarebwa n'iyo ngingo ya 49 yakunze kugarukwaho ; ko IKAY INC Ltd yagumana impano yahawe na Kayitesi Immaculée ari muri ibyo bihe by'ubupfakazi, kandi ko no mu gihe cy'igabana uwo mutungo wari waraseguriwe. [28] Rubangura Denys na Me Rwigema Vincent umwunganira biregura bavuga ko ubujurire bwa Kayitesi immaculée n'ubwa IKAY INC Ltd nta shingiro bufite, kuko batanenga icyo Urukiko Rukuru rwashingiyeho rufata icyemezo nk'uko bigaragara mu gika cya 24 na 25 by'urubanza rujuririrwa, kugira ngo bubahirize ibiteganywa n'ingingo ya 150 (5,6) y'Itegeko N 22/2018 ryo ku ⁰ wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets. 2 Reba urubanza RCAA00027/2020/CA rwaciwe ku wa 30/07/2021, haburanwa gusaba kuva mu isangiramutungo; no gutegeka ko umutungo wari usangiwe wose ugabanwa mu buryo bukurikije amategeko, buri wese akagira uruhare rwe.

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[29] Bavuga kandi ko ibyo abajuriye bashaka kuvugisha ingingo ya 49 y'Itegeko N 27/2016 ryo ⁰ ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe impano n'izungura atari byo, kuko mu gika cyayo cya 2, iyo ngingo iteganya umugabane w'ibishobora gutangwa udashobora kurenga kimwe cya gatanu (1/5) cy'umutungo w'utanga iyo afite abana, bine bya gatanu (4/5) bikaba ibizungurwa bizigamirwa abana n'uwo bashyingiranywe, bityo ko kuba Rubangura Denys ari umwe mu bana ba Kayitesi Immaculée afite uburenganzira kuri 4/5 by'umutungo wa Kayitesi Immaculée wose uzigamirwa abana be, ari na yo mpamvu Urukiko nta kosa rwakoze mu kugaragaza ko iyo ngingo itubahirijwe, kandi ko ibyo bavuga ko impano yayitanze ameze nk'aho ari ingaragu ifite abana kuko yari umupfakazi, ndetse ko n'uwo mutungo Kayitesi awukomora ku irage yakorewe na Rubangura Vedaste, bitavuze ko ashobora kuwukoresha uko yishakiye. UKO URUKIKO RUBIBONA [30] Impaka kuri iyi ngingo zishingiye ku kumenya niba umutungo uburanwa Kayitesi Immaculee yahaye IKAY INC Ltd urebwa n'ibiteganywa n'ingingo ya 49 y'Itegeko N°27/2016 ryo ku wa 08/07/2016, kandi niba Kayitesi Imaculee, kuri uru rwego yaragaragarije Urukiko ko umutungo yatanze udafite agaciro karenze 1/5 cy'imitungo afite. [31] Ingingo ya 49, igika cya 2, y'Itegeko N°27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura ifite umutwe ugira uti "Igenwa ry'umugabane ushobora gutangwa" iteganya ibikurikira : "Hatitawe ku buryo bw'icungamutungo, umugabane w'ibishobora gutangwa ntushobora kurenga kimwe cya gatanu (1/5) cy'umutungo w'utanga iyo afite abana, bine bya gatanu (4/5) bikaba ibizungurwa bizigamirwa abana n'uwo bashyingiranywe". [32] Isesengura ry'iyi ngingo yashingiweho n'Urukiko Rukuru mu gutesha agaciro impano Kayitesi yahaye IKAY INC Ltd rigaragaza ko Umushingamategeko mu rwego rwo kurengera uburenganzira bw'abazungura, yateganyije ko umuntu wese ufite abana n'uwo bashyingiranywe, ushaka gutangaho impano bimwe mu bigize umutungo we, adashobora gutanga ngo arenze 1/5 cy'agaciro k'umutungo we wose. [33] Mu rubanza rujuririrwa, igika cya [24], Urukiko Rukuru rushingiye ku miburanire ya Rubangura Denys wavugaga ko Kayitesi Immaculée yakoze ikosa ryo gutanga ibirenze 1/5 cy'imitungo ye kandi bibujijwe mu ngingo ya 49 y'Itegeko N°27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura, rwasanze nabyo bifite ishingiro kuko uretse inzu iri mu kibanza UPI: 1/01/09/09/1010 Kayitesi Immaculée afiteho umwihariko adasangiye n'abandi bazungura ba Rubangura Vedaste, nta yindi mitungo avuga ko ari iye, uretse iyo ategereje nk'uruhare rwe mu mitungo ahuriyeho n'abandi bazungura kandi ko iyo mitungo ikiri mu manza zigikomeza mu nkiko. Mu gika cya [25] cy'urwo rubanza, Urukiko Rukuru rwasanze Kayitesi Immaculée atarabashije kurwerekana icyegeranyo cy'imitungo yose afite ku giti cye n'agaciro kayo, ku buryo byavuguruzwa ingingo Rubangura Denys aburanisha y'uko agaciro k'inzu ya Kayitesi Immaculee iri mu kibanza No UPI: 1/01/09/09/1010 irengeje 1/5 cy'umutungo we wose, ngo bigaragaze ko amasezerano y'impano KAYITESI Immaculee yagiranye na IKAY

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INC Ltd atanyuranije n'ingingo ya 49 y'Itegeko N°27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru. [34] Uru Rukiko rurasanga uburanira Kayitesi Immaculée nawe ubwe yemera ko umutungo uri mu kibanza kibaruye kuri UPI: 1/01/09/09/1010 Kayitesi Immaculée yahayeho IKAY INC Ltd impano Rubangura Denis asaba ko yateshwa agaciro, ari umutungo bwite wa Kayitesi Immaculée yarazwe n'umugabo we Rubangura akiriho; Uru Rukiko rushingiye ku isesengura ry'ingingo ya 49, igika cya 2, y'Itegeko urasanga n°27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru, no kuba Kayitesi Immaculée na Avoka umwunganira badahakana ko afite abana barimo Rubangura Denis, ruransanga ibyo uburanira Kayitesi Immaculée n'uburanira IKAY INC Ltd bavuga ko iyo ngingo itareba Kayitesi Immaculée kuko ari umupfakazi, ingaragu kandi uwo mutungo ukaba ari uwe bwite nta shingiro bifite, kuko iyo ngingo y'Itegeko ireba umuntu wese ufite abana n'uwo bashyingiranywe, bivuze ko kuba Kayitesi Immaculée ari umupfakazi cyangwa ingaragu ariko afite abana bitavanaho ko iyo ngingo imureba igihe cyose yakwifuzaga gutanga impano ku mutungo we. [35] Hashingiwe kuri ibyo bisobanura, rurasanga Urukiko Rukuru kuba rwaratesheje agaciro impano Kayitesi Immaculée yahaye IKAY INC Ltd rushingiye ku mpamvu y'uho iyo mpano itubahirije ibiteganywa mu ngingo ya 49, igika cya 2, y'Itegeko N°27/2016 ryo ku wa 08/07/2016, ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura nta kosa rwakoze. [36] Rurasanga kandi Kayitesi Immaculée na Avoka umuburanira ndetse na IKAY INC Ltd usibye kuvuga gusa ko Kayitesi Immaculée atarebwa n'ingingo y'itegeko yasesenguwe haruguru, batarigeze bavuguruzwa ibyo Urukiko Rukuru rwashingiyeho rutesha agaciro impano Kayitesi Immaculée yahaye IKAY INC Ltd by'uho Kayitesi Immaculée atigeze agaragariza urukiko icyegeranyo cy'indi mitungo bwite yaba afite n'agaciro kayo, ku buryo byavuguruzwa ingingo Rubangura Denys aburanisha y'uho agaciro k'inzu ya Kayitesi Immaculée iri mu kibanza UPI: 1/01/09/09/1010 karengeje 1/5 cy'umutungo we wose, ngo bigaragaze ko amasezerano y'impano Kayitesi Immaculée yagiranye na IKAY INC Ltd atanyuranije n'ingingo ya 49 y'Itegeko N°27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru, bityo ubujurire bwabo kuri iyi ngingo bukaba nta shingiro bufite. Kumenya niba indishyi Kayitesi Immaculée yategetswe kwishyura zavanwaho [37] Me Intwazayamugabo Armand uhagarariye Kayitesi Immaculée asaba Urukiko rw'Ubujurire gutegeka ko amafaranga y'ikurikiranarubanza n'igihembo cy'Avocat Kayitesi Immaculée yategetswe guha Rubangura Denys yavanwaho, kubera ko nta kosa yakoze mu gutanga impano ku mutungo we bwite, kandi ko yabikoze n'umutima mwiza atagamije kwikenesha. [38] Rubangura Denys na Me Rwigema Vincent umwunganira bashingiye ku ngingo ya 150 (5;6) y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, bavuga ko iyi ngingo y'ubujurire nta shingiro ifite, kuko ujurira atagaragaza icyo anenga icyemezo cy'Urukiko kijuririrwa ku bijyanye no kugena indishyi. UKO URUKIKO RUBIBONA

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[39] Urukiko rurasanga icyo uburanira Kayitesi Immaculée avuga ko ashingiraho ajuririra kuvanaho amafaranga y'ikurikiranarubanza n'igihembo cya Avoka yaciwe mu rubanza rwajuririwe ari ukuba ngo nta kosa yakoze mu gutanga umutungo we bwite. Urukiko

rurasanga indishyi asaba ko zivanwaho yarategetswe kuzishyura kubera ko yatsinzwe n'urubanza, kuba nk'uko byasobanuwe haruguru Kayitesi Immaculée no muri ubu bujurire yakomeje gutsindwa no kuba yatanze iyo mpano mu buryo budakurikije amategeko, bituma indishyi yaciwe zigumaho. Bityo iyi mpamvu y'ubujurire bwe nayo ikaba nta shingiro ifite. Gusuzuma niba indishyi RUBANGURA Denys yagenewe ku rwego rubanza zikwiye kongerwa [40] Mu bujurire bwuririye ku bundi Rubangura Denys na Avoka we bavuga ko mu rubanza rujuririrwa indishyi Rubangura Denys yagenewe ari nkeya, bityo ko asaba Urukiko rw'Ubujurire gutegeka Kayitesi Immaculée kumuha indishyi z'akababaro zingana na miliyoni eshanu (5.000.000Frw) kuko yamubabaje cyane nk'umubyeyi, igihembo cya Avoka kingana na 2.000.000Frw na 1.000.000Frw y'ikurikiranarubanza, mu mwanya w'izo yagenewe mu rubanza rujuririrwa. [41] Me Intwazayamugabo Armand uhagarariye Kayitesi Immaculée yiregura ku ndishyi Rubangura Denys asaba avuga ko nta shingiro zifite. UKO URUKIKO RUBIBONA [42] Ku byerekeye indishyi z'akababaro zingana na 5.000.000Frw Rubangura Denis asaba kuri uru rwego, Urukiko rw'Ubujurire rurasangaa nk'uko bigaragara mu gika cya 28 cy'urubanza rujuririrwa, Rubangura Denis yarasabye indishyi z'ibyo yatakaje ku rubanza gusa, Urukiko rusanga azikwiye rurazimugenera, nta ndishyi z'akababaro yigeze yaka. Rurasanga rero ntaho yahera asaba bwa mbere kuri uru rwego rw'ubujurire bwa kabiri indishyi z'akababaro mu gihe ntazo yigeze yaka mu rubanza rujuririrwa. [43] Ku bijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, mu gika cya 28 cyavuzwe haruguru Urukiko Rukuru rutiriwe rugaragaza ingano n'ubwoko bw'indishyi Rubangura Denis yari yasabye ndetse n'ibisobanuro yari yazitangiye, rwemeje kumugenera gusa indishyi z'ibyo yatanze ku rubanza zingana na 500.000Frw kandi ruvuga ko ruzigennye mu bushishozi bwarwo kuko ubujurire bwe bwari bwahawe ishingiro kuri bimwe kandi umubare w'indishyi yari yasabye ukaba wari ukabije kuba ikirenga ndetse nta n'ibimenyetso yawugaragariye. Uru Rukiko rurasanga rero mu gihe amafaranga y'ibyagiye ku rubanza Rubangura Denys yagenewe yagenwe mu bushishozi bw'Urukiko, muri ubu bujurire akaba ntacyo yagaragaje anenga kuri ubwo bushishozi n'impamvu Urukiko rwazishingiyeho rumugenera izingana na 500.000Frw, uru Rukiko ntaho rwabona ruhera ruzihindura. Rusanze rero ubujurire bwa Rubangura Denys nta shingiro bufite. Gusuzuma amafaranga agenda ku rubanza kuri uru rwego

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- [44] Me Intwazayamugabo Armand uhagarariye Kayitesi Immaculée asaba Urukiko rw'Ubujurire gutegeka Rubangura Denys kwishyura Kayitesi Immaculée 2.000.000Frw y'ikurikirarubanza n'igihembo cya Avoka, kuko ukugoboka mu rubanza kwa Rubangura Denys nta kindi kwari kugamije, uretse kumushora mu manza kuko yari azi neza ko inzu iri muri UPI: 1/01/09/09/1010 ari umutungo we bwite, gushaka kuwugarura aho wavuye ngo usubire mu mutungo w'abashyingiranywe, impano ibe itaye agaciro kayo, ubangamirwe no kudatangwaho impano, ari ukuvugisha amategeko icyo atavuga. [45] Me Munyamasoko Jovith uhagarariye IKAY INC Ltd asaba Urukiko rw'Ubujurire Rubangura Denys kwishyura IKAY INC CO Ltd amafaranga angana na 5.000.000Frw y'ikurikiranarubanza n'igihembo cya

Avoka kubera ko Rubangura Denys yayikuruye mu manza kandi yariyemereye ko inzu iri mu kibanza gifite n°UPI : 1/01/09/03/1010 ari umutungo bwite wa Kayitesi Immaculée, ariko akabirengagho agasaba ko iyo mpano ayisubirana. [46] Me Rwigema Vincent wunganira Rubangura Denys nawe asaba Urukiko rw'Ubujurire gutegeka Kayitesi Immaculée na IKAY INC Ltd gufatanya gusubiza uwo yunganira 500.000Frw y'ikurikiranarubanza na 2.000.000Frw y'igihembo cya Avoka, kubera ko bajuriye nta mpamvu bigatuma Rubangura Denys atakaza amafaranga yo kwishyura Avoka no gukurikirana urubanza. Yiregura ku ndishyi Kayitesi Immaculée na IKAY INC Ltd basaba avuga ko nta shingiro zifite, kuko nta bimenyetso bazitangira. Naho ku bijyanye no kuvuga ko kugoboka kwa Rubangura Denys ari ubushotoranyi agasubiza ko atari byo, kuko byagaragaye ko ibyo Kayitesi Immaculée yakoze binyuranije n'amategeko, bikaba kandi bibangamiye uburenganzira bwa Rubangura Denys. [47] Me Intwazayamugabo Armand na Me Munyamasoko Jovith bahagarariye abajuriye basubiza ko izi ndishyi RUBANGURA Denys asaba nta shingiro zifite. UKO URUKIKO RUBIBONA [48] Hashingiwe kuri iyi ngingo, Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka Kayitesi Immaculée na IKAY INC Ltd basaba batayakwiye kuko batsindwa n'urubanza, kandi n'asabwa na Rubangura Denys atayakwiye kuko nawe ubujurire bwe bwuriye ku bundi butahawe ishingiro nk'uko byasobanuwe haruguru. Buri muburanyi akaba agomba kwirengera ibyo yatakaje ku rubanza kuri uru rwego. III. ICYEMEZO CY'URUKIKO [49] Rwemeje ko ubujurire bwatanzwe na Kayitesi Immaculée n'ubwanzwe na IKAY INC Ltd bwombi nta shingiro bufite ; [50] Rwemeje ko ubujurire bwa Rubangura Denys bwuririye ku bundi nabwo nta shingiro bufite ; [51] Rwemeje ko urubanza RCA00225/2019/HC/KIG & CMB RCA 00297/2019/HC/KI rwaciwe n'Urukiko Rukuru ku wa 27/01/2022 rugumyehe mu ngingo zarwo zose ;

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[52] Ruvuze ko amagarama y'uru rubanza yatanze na Kayitesi Immaculée na IKAY INC Ltd ahwanye n'ibyarukozwemo.

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