

RWANDA / JUDGMENT

KWIHANGANA v COOPTHE MULINDI

RCA 00100/2022/HC/KIG

COURT

High Court

DECIDED

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KWIHANGANA v COOPTHE MULINDI

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Text

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KWIHANGANA v COOPTHE MULINDI [Rwanda URUKIKO RUKURU - RCA 00100/2022/HC/KIG (Hitimana, P.J.) 14 Ukuboza 2023] Amategeko aganga imiburanishirize y'imanza – Ibimenyetso – Ikimenyetso gishya - Ikimenyetso gishya ni ikimenyetso cyari gihari cyangwa cyashoboraga gushakwa kikaboneka gishobora kwifashishwa nk'impamvu y'ingingo nshya - Ikimenyetso cyashoboraga kuboneka urubanza rutaraba itegeko ntigishobora kwifashishwa nk'impamvu yatuma urubanza rusubirishwamo ingingo nshya. Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gicumbi Kwihangana arega COOPTHE Mulindi asaba ko yahabwa ikiguzi n'inyungu bikomoka ku cyayi cyavuye mu murima yatsindiye mu rubanza yaburanyemo n'iyi koperative akawutsindira ariko ikanga kuwumuha mu gihe kinga n'imyaka itanu (5) kuko rwaciwe mu mwaka wa 2002 hanyuma uwo murima akawubwa mu mwaka wa 2007. Urwo rukiko rwemeje ko COOPTHE Mulindi itsinzwe ruyitegeka gutanga amafaranga angana na 3.479.000Frw y'umusaruro w'icyayi cye mu gihe cy'imyaka itanu, indishyi zingana n'amafaranga 1.000.000Frw n'andi anyuranye. Uregwa ntiyishimiye iyo mikireize maze ajuririra urwo rubanza mu Rukiko Rukuru. Uru Rukiko rwemeje ko ubujurire bufite ishingiro kuri bimwe maze rutegeka COOPTHE Mulindi kwishyura Kwihangana amafaranga ahwanye na 196.953Frw y'umusaruro aba yaravanye

mu murima we w'icyayi kuva mu mwaka wa 2002 kugeza mu mwaka wa 2007 n'izindi ndishyi. Kwihangana yatanze ikirego mu Rukiko Rukuru asaba gusubirishamo urubanza ingingo nshya, ikirego kirakirwa hasuzumwa ikibazo cyo kumenya niba expertise Kwihangana yakoresheje yafatwa nk'ikimenyetso gishya muri uru rubanza. COOPETHE Mulindi yabanje gutanga inzitizi yo kutakira ikirego ivuga ko hashize igihe kirenze amaezi abiri (2) urubanza rwakoreshejwemo expertise yakozwe na NAEB ari nayo urega ashingiraho avuga ko irimo uburiganya bwatumye ahabwa amafaranga make y'agaciro k'icyayi rubaye ndakuka bityo ko ikirego cyo gusubirishamo urubanza ingingo nshya kitagomba kwakirwa. Iyo nzitizi Urukiko rwasanze idafite ishingiro maze urubanza rukomeza mu mizi. Urega avuga ko ashingiye ku buriganya bwakozwe n'Umukozi wa NAEB wakoze igenagaciro ry'umusaruro wavuye mu murima we Urukiko Rukuru rwashingiyeho rukamugenera agaciro gake k'icyayi mu rubanza rwasomwe mu mwaka wa 2013, nawe yakoresheje irindi genagaciro mu mwaka wa 2021 aho umugenagaciro yagaragaje agaciro nyako k'ingano y'icyayi yavuye mu murima we n'igihe icyo cyayi cyatangiriye gusarurirwa. Bityo akaba asanga icyo ari ikimenyetso gishya cyashingirwaho kuko atari agifte igihe urubanza rwacibwagwa. Uregwa we asobanura ko igenagaciro urega yakoresheje mu mwaka wa 2021 avuga ko yareganijwe na raporo y'igenagaciro yakozwe kandi nawe yamenye mu mwaka wa 2013, atari ikimenyetso gishya kuko atabasha kugaragaza impamvu zatumye iryo genagaciro rishya arikora mbere y'uko igihe kimurengana bityo agasanga icyo kitafatwa nk'ikimenyetso gishya Urukiko rwashingiro rwakira uru ruburanisha uru rubanza. Incamake y'icyemezo: Ikimenyetso gishya ni ikimenyetso cyari gihari cyangwa cyashoboraga gushakwa kikaboneka gishobora kwifashishwa nk'impamvu y'ingingo nshya. Ikimenyetso cyashoboraga kuboneka urubanza rutaraba itegeko ntigishobora kwifashishwa nk'impamvu

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yatuma urubanza rusubirishwamo ingingo nshya bityo, ibyo Kwihangana avuga bikaba nta shingiro bifite kuko icyo yita ikimenyetso gishya yashoboraga kuba yagishaka urubanza rutaraba itegeko dore ko atagaragaza impamvu itigobotorwa yamuteye kutagishaka muri icyo gihe. Ikirego gisubirishamo urubanza ingingo nshya ntiyakiriwe. Amategeko yashingiweho: Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 170, 171. Imanza zifashishijwe: RS/REV/RCOM 00001/2018/SC, Shema n'undi v I&M Bank Rwanda Ple, rwaciwe n'Urukiko rw'Ikirenga ku wa 24 Nyakanga 2020. RS/REV/RC 00001/2021/CA, Ngoga Placide na Mukangoga Marie Louise, rwaciwe n'Urukiko rw'Ubujurire ku wa 11 Ukwakira 2022. Urubanza I. IMITERERE Y'URUBANZA [1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gicumbi aho Kwihangana Eudi yaregaga COOPETHE Mulindi, urubanza rukandikwa kuri RC 0002/08/TGI/Gic aho yasabaga guhabwa amafaranga yavuye mu cyayi angana n'agaciro k'icyayi icyo gihe arega avuga ko ako gaciro kangana n'amafaranga ahwanye na 3.479.000Frw, agasaba kandi inyungu zayo zingana na 625.520Frw, agasaba n'indishyi zingana na 2.000.000Frw; [2] Urukiko rwisumbuye rwemeje ko Kwihangana Eudi atsinze, ko COOPETHE Mulindi itsinzwe, ruyitegeka guha Kwihangana Eudi amafaranga ahwanye na 3.479.000Frw y'umusaruro w'icyayi cye mu gihe cy'imyaka itanu hyongereyeho indishyi zingana n'amafaranga 1.000.000Frw, rutegeka ko ayo mafaranga yose

COOPTHE Mulindi iyatangira umusogongerwa wa Leta ungana n'amafaranga 179.160Frw ndetse igatanga n'amagarama y'urubanza; [3] COOPTHE Mulindi yajuririye urwo rubanza mu Rukiko Rukuru, mu iburanisha ryo kuwa 24/09/2010, Urukiko Rukuru rwaciye urubanza RCA 0213/08/HC/KIG rwemeza ko ikirego cyatanze na COOPTHE Mulindi gisibwa mu bitaro by'ibirego byarwo, rutegeka ko urubanza rwajuririwe rwanditse kuri RC 0002/08/TGI/GIC rudahindutse kuri byose ko rugomba kurangizwa uko rwaciye, rutegeka COOPTHE Mulindi gutanga amagarama y'urubanza; [4] COOPTHE Mulindi yabyukije urwo rubanza RCA 0213/08/HC/KIG rwasibwe uwayiburaniraga atanga impamvu yatumye atitaba mu kuburana urubanza yabyutsaga ko ishingiyeye ku burwayi, impamvu zo kubyutswa zarakiriwe urubanza rurabyutswa, rwemeza ko ruburanishwa, uwaburaniraga COOPTHE Mulindi yatanze inzitizi isaba kutakira ikirego cyatanze na Kwihangana Eudi kuko cyigeze kuburanwa mu rubanza RC 359XXVIII/01/By rwabaye mbere rwaciye n'Urukiko rw'Iremezo rwa Gicumbi, naho mu kuburana mu mizi y'urubanza Coopthe Mulindi iburana ivuga ko kubirebana n'ibiro by'icyayi bivugwa na Kwihangana Eudi, ko

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Umucamanza atagombaga kwemeza ko Kwihangana Eudi agomba guhabwa amafaranga yasabye ntacyo ashingiyeho, Kwihangana Eudi yaburanye ku nzitizi asaba urukiko kutayiha ishingiro inzitizi yo kutakira ikirego kubera ko ikirego cyatanze mu rubanza RC 359XXVIII/01/By gitandukanye n'icyaregerwaga muri urwo rubanza, naho mu mizi y'urubanza Kwihangana aburana avuga ko ntakindi Umucamanza wo ku rwego rwa mbere yari gushingiraho kubera ko ibimenyetso yatanze muri urwo rubanza rujuririrwa COOPTHE Mulindi itigeze ibivuguruzwa; [5] Mu ica ry'urwo rubanza Urukiko rukuru rwemeje ko ubujurire bwatanze na COOPTHE Mulindi bufite ishingiro, rutegeka ko imikirize y' urubanza RC 0002/08/TGI/GIC rwaciye n'Urukiko Rwisumbuye rwa Gicumbi ihindutse kuri bimwe, rutegeka COOPTHE Mulindi kwishyura Kwihangana Eudi amafaranga ahwanye na 196.953Frw y'umusaruro aba yaravanye mu murima we w'icyayi kuva mu mwaka wa 2002 kugeza mu mwaka wa 2007, runayitege kwishyura Kwihangana Eudi amafaranga 300.000Frw y'igihembo cya Avoka n'amafaranga 50.000Frw y'ikurikirana rubanza, ndetse COOPTHE Mulindi itegeka gufatanya na Kwihangana Eudi kwishyura amagarama y'urubanza ahwanye n'amafaranga 10.400Frw, urwo rubanza rucibwa kuwa 27/09/2013; [6] Kuwa 04/02/2022 Kwihangana Eudi yatanze ikirego aricyo cy'uru rubanza asaba gusubirishamo ingingo nshya urubanza RCA 0263/10/HC/KIG rwo kuwa 27/09/2013 rwaciye n'urukiko Rukuru, ashingiyeye ko kuwa 13/12/2021 aribwo yamenye uburiganya bwabaye muri urwo rubanza RCA 0263/10/HC/KIG ubwo ikigo cya SAIC Ltd cyakoze expertise aho iki kigo cyagaragaje ko icyayi cye cyatangiye gutanga umusaruro mu mwaka wa 2003 ndetse kikanagaragaza umusaruro nyakuri icyo cyayi cyatanze utandukanye n'uwagaragaje muri raporo urukiko rukuru rwashingiyeho, ko ibyo byatumye ahabwa indishyi nkeya asaba ko icyo kimenyetso gishya cya kamarampaka cyashingirwaho urubanza rwe rugasubirwamo agahabwa indishyi zijyanye n'umusaruro nyakuri w'icyayi cye wagaragajwe n'iyi expertise yabonye nk'ikimenyetso gishya; [7] COOPTHE Mulindi yaburanye uru rubanza isaba urukiko rukuru kutakira ikirego cyo gusubirishamo ingingo nshya cyatanze na Kwihangana Eudi kubera ko usubirishamo uru rubanza uretse no kuba nta n'impamvu nshya agaragaza yo gusubirishamo uru

rubanza kubera ko ibyo avuga byaburanweho muri izo manza zisubirishwamo, ariko kandi n'ibihe byo kuregera ingingo nshya ko isanga byararenze; [8] Mu iburanishwa ry'uru rubanza ryashyizwe kuwa 14/11/2023 hitabye Kwihangana Eudi yunganirwa na Me Matimbano Barton naho COOPTHE Mulindi iburanirwa na Me Katushabe Mary, Urukiko rukuru rwasuzumye niba ibihe byo kuregera ingingo nshya byarubahirije amategeko ndetse niba ibimenyetso bivugwa na Kwihangana Eudi byaba ari bishya kandi niba ari ibya kamarampaka kuburyo ikirego cy'ingingo nshya gikwiye kwakirwa kikaburanishwa mu mizi no kumenya niba hari indishyi zatangwa muri uru rubanza; II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA Kubyerekeye kumenya niba ibihe byo kuregera gusubirishamo ingingo nshya byarubahirije amategeko

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- [9] Mu mwanzuro ndetse n'ibyavuzwe na Me Katushabe Mary uburanira COOPTHE Mulindi avuga ko asaba urukiko rukuru kutakira iki kirego cyatanze na Kwihangana Eudi aregera gubirishamo urubanza RCA 0263/10/HC/Kig ingingo nshya kubera ko ibihe byo kugitanga byarenze, ko bashingiye ku ngingo ya 171 y'itegeko n° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubutegets, iz'umurimo n'iz'ubutegets, igaragaza igihe ntarengwa cyo gusubirishamo urubanza ingingo nshya kingana n'amezi abiri iyo mparvu ibonetse, ko Urubanza rusubirishwamo rwaciwe mu kwezi kwa 9/2013 hakaba hashize imyaka myinshi kandi icyo urega ashingiraho ari expertise, ko COOPTHE Mulindi ibona urega yagombaga kuba yarayikoresheje akimara kubona iyo expertise atemeraga, bivuze ko Kwihangana Eudi yakabaye yarakoresheje indi expertise mu 2013, ko iyi expertise Kwihangana Eudi yakoresheje nyuma y'imyaka myinshi ntabwo yafatwa nk'ikimenyetso gishya kubera yagombaga kuyibona n'icyo gihe; [10] Mu kwiregura kwa Kwihangana Eudi mu nama ntegururubanza kimwe no kuburana kwe yunganiwe na Me Matimbano Barton, basobanura ko bashingiye ku biteganywa mu ngingo ya 171
- (1) y'Itegeko n° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuru, iz'umurimo n'iz'ubutegets, ivuga ko: «Igihe ntarengwa cyo kuregera gusubirishamo urubanza ingingo nshya rwaciwe burundu ni amezi abiri (2) kuva igihe impamvu ituma urwo rubanza rusabirwa gusubirwamo yabonekeye », ko kuba kuwa 13/12/2021 aribwo Kwihangana Eudi yamenye uburiganya bwabaye mu rubanza RCA 0263/10/HC/KIG rwo kuwa 27/09/2013 rwaciwe n'Urukiko Rukuru, ubwo buriganya akabumenya hashingiye kuri expertise yakozwe na SAIC Ltd, aho yagaragaje ko icyayi cye cyatangiye gutanga umusaruro mu mwaka wa 2003 ndetse ikanagaragaza umusaruro nyakuri icyo cyayi cyatanze utandukanye n'uwagaragaje muri raporo ya Expertise urukiko rukuru rwashingiyeho, asanga ibihe byo gutanga ikirego nk'uko biteganywa mu ngingo imaze kuvugwa haruguru byarubahirijwe; Uko uru rukiko rubibona. [11] Impaka ziri muri uru rubanza zijyanye no kumenya niba ibihe byamezi abiri ateganywa n'itegeko byo gusubirishamo urubanza ingingo nshya byarubahirijwe n'uwatanze iki kirego; [12] Ingingo ya 171 cyane igika cyayo cya mbere, y'itegeko n° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuru, iz'umurimo n'iz'ubutegets, aivuga iti: "Igihe ntarengwa cyo kuregera gusubirishamo urubanza ingingo nshya rwaciwe

burundu ni amezi abiri (2) kuva igihe impamvu ituma urwo rubanza rusabirwa gusubirwamo yabonekeye”; [13] Uru rukiko ruhuje ibiteganywa n’iyi ngingo imaze kuvugwa n’ibigaragazwa na Kwihangana Eudi muri uru rubanza avuga ko icyo ashingiraho nk’ikimenyetso gishya ari raporo y’impuguke SAIC Ltd yiswe “Raporo igaragaza agaciro k’umusaruro uhereye igihe icyayi cyatangiye gutanga umusaruro (2003 – 2007)”, rusanga iyo raporo ariyo Kwihangana Eudi avuga ko yagaragaje uburiganya bwabaye mu rubanza asabira gusubirishamo ingingo nshya kubera ko yagaragaje agaciro k’icyayi cye n’igihe cyatangiye gutanga umusaruro bititaweho n’urukiko rukuru rwaciye urubanza rusabirwa gusubirishamo ingingo nshya, iyo raporo uru rukiko rukaba rusanga yarakozwe tariki ya 13/12/2021 maze Kwihangana Eudi akaregera uru rukiko kuwa 04/02/2022 asaba gusubirishamo urubanza RCA 0263/10/HC/KIG rwaciye kuwa 27/09/2013, uru

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rukiko rusanga ibihe by’amezi abiri Kwihangana Eudi abonye iyo raporo ya expertise ashingiraho nk’ikimenyetso cy’ingingo nshya cyarubahirije ibihe biteganywa n’ingingo ya 171 yavuzwe haruguru, ahubwo icyaba gisigaye uru rukiko rwasuzuma niba koko icyo ari ikimenyetso cyemeza ko ari kamarampaka kandi niba koko icyo kimenyetso kigaragaza ko habaye uburiganya mu ica ry’urubanza rusabirwa gusubirishwamo ingingo nshya bikaba byatuma rwakwagirwa rukaba rwanasubirwamo; Ku byerekeye kumenya niba raporo ya SAIC Ltd yo kuwa 13/12/2021 igaragaza agaciro k’umusaruro w’icyayi yatanze na Kwihangana Eudi yaba ari ibimenyetso byatuma urubanza rwakira kandi rugasubirwamo [14] Mu kuburana ndetse no mu mwanzuro wa Kwihangana Eudi wunganirwa na Me Matimbano Barton bavuga ko mu mwaka wa 2002, urubanza R.C 359/XXVIII/01/BY rwo ku wa 02/04/2002 rwaciye n’urukiko rwa mbere rw’iremezo rwa Byumba, rwategetse COOPTHE Mulindi gusubiza Kwihangana Eudi umulima we uteyemo icyayi yigaruriye mu buryo bunyuranyije n’amategeko, ko urwo rubanza rumaze kuba itegeko, COOPTHE Mulindi yanze kurushyira mu bikorwa ahubwo ikomeza gusarura icyo cyayi kugeza mu mwaka wa 2007 nk’uko bigaragazwa n’inyandiko-mvugo y’irangizarubanza yo ku wa 12/12/2007, Kwihangana Eudi amaze gushyikirizwa icyo cyayi nyuma y’imyaka 5 nk’uko byasobanuwe haruguru, yatanze ikirego mu rubanza RC 0002/08/TGI/GIC rwo ku wa 25/11/2008 rwaciye n’urukiko rwisumbuye rwa Gicumbi asaba guhabwa amafaranga angana na 3.479.000Frw yavanywe mu musaruro wacyo mu gihe kingana n’imyaka 5, asaba kandi inyungu n’indishyi, maze Urukiko rurazimugenera, COOPTHE Mulindi yajuririye icyo cyemezo mu rubanza RCA 0213/08/HC/KIC rwo kuwa 24/09/2010 mu rukiko Rukuru maze urubanza rwayo rurasibwa, irubutsa mu rubanza RCA 0263/10/HC/KIG rwo ku wa 27/09/2013 rwaciye n’urukiko Rukuru ari narwo basaba ko rwasubirishwamo ingingo nshya; [15] Kwihangana Eudi wunganirwa na Me Matimbano Barton bakomeza bavuga ko muri uru rubanza RCA 0263/10/HC/Kig, urukiko rwategetse ko hakorwa Expertise kugira ngo hamenyekane umusaruro nyakuri wavanywe mu cyayi cya Kwihangana Eudi kuva mu mwaka wa 2002 – 2007, ko Expertise yo ku wa 04/06/2013 yakozwe n’umukozi wa NAEB yagaragaje ko icyo cyayi cyatangiye gutanga umusaruro mu mwaka wa 2004 ndetse inagaragaza ko umusaruro cyatanze muri icyo gihe cyose cy’imyaka itanu (5 years) ungana n’amafaranga 196.953Frw, maze rutegeka ko Kwihangana Eudi ahabwa amafaranga

angana na 196.953Frw rushingiye kuri iyo raporo, ariko ku wa 13/12/2021, SAIC Ltd yakozwe expertise y'icyayi cya Kwihangana Eudi mu rwego rwo kugaragaza umusaruro wavanywemo kuva mu mwaka wa 2002 kugeza mu mwaka wa 2007, maze hagendewe ku bimenyetso byavanywe muri COOPTHE Mulindi, hagaragazwa ko icyo cyayi cyatangiye gutanga umusaruro mu mwaka wa 2003 aho kuba mu mwaka wa 2004 nk'uko Expertise urukiko rukuru rwashingiyeho rufata icyemezo ndetse binagaragara ko n'umusaruro nyakuri wavanywemo hakurikijwe ibimenyetso byatanze na COOPTHE Mulindi utandukanye cyane n'uwagaragajwe muri expertise urukiko rwashingiyeho rufata icyemezo kuko muri raporo yakozwe na SAIC Ltd, yagaragaje ko mu gihe kingana n'imyaka itanu icyo cyayi cyatanze umusaruro ungana na 6.127.802Frw, mu gihe Kwihangana Eudi yagenewe n'urukiko rukuru angana na 196.953Frw; [16] Kwihangana Eudi wunganirwa na Me Matimbano Barton bakomeza bavuga ko ikigaragara akaba ari uko ugereranije izo expertise zombi (iyakozwe na NAEB ndetse n'iyakozwe na SAIC

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Ltd) ko basanga expertise urukiko rukuru rwashingiyeho rufata icyemezo irimo uburiganya bukabije butigeze bumenywa na Kwihangana Eudi mu gihe cy'icibwa ry'urubanza kuko atari kumenya ko icyayi cyatangiye gutanga umusaruro mu mwaka wa 2003 mu gihe NAEB yo yavuze umusaruro watangiye mu mwaka wa 2004 ndetse ngo anabashe kumenya ko uwakoze iyo expertise yagiye agabanya nkana ingano y'umusaruro cyagiye gitanga buri mwaka kuko iyo haza gukurikizwa ibimenyetso nyakuri byavuye muri COOPTHE Mulindi ntabwo aba yaragenewe 196.953Frw mu gihe kingana n'imyaka itanu (5), akaba ariyo mpamvu basanga hashingirwa ku biteganywa mu ngingo ya 170 cyane cyane agace kayo ka 1 ndetse n'aka 3 y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ivuga ko: «Urubanza rushobora gusubirishwamo ingingo nshya kubera imwe mu mpamvu zikurikira: 1° habayemo uburiganya bwagize ingaruka ku mikirize y'urubanza, kandi bukaba butarigeze bumenywa n'uwatsinzwe mu gihe cy'iburana »; ndetse n'ibiteganywa mu gace ka 3° k'iyi ngingo, kavuga ko : «iyo, kuva aho urubanza ruciriwe, habonetse ikimenyetso gishya kimara impaka kigaragaza neza akarengane katewe n'urubanza rusabirwa gusubirwamo», maze urubanza RCA 0263/10/HC/KIG rwo ku wa 27/09/2013 rwaciye n'urukiko Rukuru rugasubirishwamo ingingo nshya; [17] Me Katushabe Mary uburanira COOPTHE Mulindi avuga ko COOPTHE Mulindi isaba urukiko rukuru kutakira iki kirego kuko usubirishamo uru rubanza ashingira kuri raporo yakozwe n'umuhanga washyizweho n'urukiko nta kuri kurimo kuko igika cya 13 cy'urubanza RCA 0263/10/HC/KIG rwaciye n'urukiko rukuru kuwa 27.09.2013 kigaragaza ko Me Barinaba Idrisa wunganiraga Kwihangana Eudi muri urwo rubanza, yasabye ko iburanisha ryo kuwa 13.06.2013 risubikwa kugira ngo bajye kwiga ku bikubiye muri iyo raporo, bituma iburanisha ryimurirwa kuwa 11.07.2013, uwo munsu ugeze avuga ku nenge yabonyemo harimo no kuba ngo COOPTHE Mulindi yaragaraje mu mwanzuro wayo ko mu 2003 habonetse 480kg y'umusaruro ku kwezi nyamara raporo y'umu expert ikagaragaza ko nta cyavuyemo, ngo bivuze ko expertise ntacyo yamarira urukiko, mu ica ry'urubanza Urukiko rugeze mu gika cya 22 rwasobanuye impamvu urukiko rugomba gushingira kuri iyo raporo, bityo rero ibyo Kwihangana Eudi avuga ko atigeze abimenya ari ikinyoma

kitagomba guhabwa ishingiro kuko yabiburanishije akabitsindirwa nkuko bigaragara muri urwo rubanza mu gika bamaze kuvuga haruguru, bagasoza basaba kutakira iki kirego kuko nta buriganya bwabayeho mu iburanisha ry'urubanza RCA 0263/10/HC/KIG rusabirwa gusubirishwamo urubanza ingingo nshya; Uko uru rukiko rubibona [18] Uru rukiko rusanga impamvu y'iki kirego cya Kwihangana Eudi asaba ko urubanza RCA 0263/10/HC/KIG rusubirwamo ingingo nshya ashingiye ku kimenyetso avuga ko ari gishya kandi ko ari icya kamarampaka, ko icyo kimenyetso avuga ko ari gishya ko ari raporo ya Expertise yakozwe na SAIC Ltd yemeza ko igaragaza agaciro k'umusaruro uhereye igihe icyayi cyatangiye gutanga umusaruro (2003 – 2007); [19] Uru rukiko rusanga impaka ziri muri uru rubanza ari ukumenya niba ikimenyetso gitangwa na Kwihangana Eudi cyarashoboraga kuboneka mu gihe urubanza asubirishamo ingingo nshya rwaburanwaga cyangwa niba ibikubiye muri icyo kimenyetso avuga ko ari gishya byaba byaraburanweho mu rubanza asabira gusubirishamo ingingo nshya;

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[20] Ingingo ya 170 y'itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ivuga ko “Urubanza rushobora gusubirishwamo ingingo nshya kubera imwe mu mpamvu zikurikira: 1° habayemo uburiganya bwagize ingaruka ku mikirize y'urubanza, kandi bukaba butarigeze bumenywa n'uwatsinzwe mu gihe cy'iburana; 2° urubanza rwaciwe hashingiwe ku mpapuro cyangwa ku buhamya byaje kugaragara cyangwa kwemezwa n'urukiko ko ari ibihimbano nyuma y'icibwa ry'urwo rubanza; 3° iyo, kuva aho urubanza ruciriwe, habonetse ikimenyetso gishya kimara impaka kigaragaza neza akarengane katewe n'urubanza rusabirwa gusubirwamo; 4° urubanza rushingiye ku rubanza rw'inshinjabyaha rwaje gukurwaho nyuma; 5° urubanza rushingiye ku byakozwe mu iburanisha bikoze mu izina ry'umuntu utarigeze atanga ubwo bubasha mu buryo ubwo ari bwo bwose, cyangwa ngo yemere cyangwa yemeze ibyakozwe. Haseguriwe ibivugwa mu gace ka gatatu (3) k'iyi ngingo, ikimenyetso gishya ni ikimenyetso umuburanyi atashoboraga kumenya ko cyaba gihari, akakibona nyuma cyangwa akaba atarabashaga kukigeraho igihe yaburanaga. Ikimenyetso n'iyi ari gishya gihabwa agaciro gusa iyo gishobora kuvuguruzwa ibyari byashingiweho mu ica ry'urubanza rusabirwa gusubirishwamo ingingo nshya”; [21] Uru rukiko rusanga mu kurega iki kirego cy'ingingo nshya kwa Kwihangana Eudi ashingira kuri iyi ngingo imaze kuvugwa cyane ku biteganywa n'igika cyayo cya 1 n'icya 3 aho avuga ko raporo y'umuhanga SAIC Ltd yabonetse kuwa 13/12/2021 yagaragaje agaciro k'umusaruro w'icyayi kandi ko uwo musaruro wagaragaje ko watangiye kuboneka mu mwaka wa 2003 aho kuba mu mwaka wa 2004 nkuko mu rubanza rusabirwa gusubirishwamo ingingo nshya umuhanga wa NAEB yabigaragaje ko aribwo buriganya asanga bwabaye muri urwo rubanza bigatuma agenerwa agaciro gakeya kurusha ako yagombaga guhabwa iyo hagenwa agaciro kukuri; [22] Ku byerekeye kumenya niba ikimenyetso cyatanzwe na Kwihangana Eudi cyarashoboraga kuboneka mu gihe urubanza RCA 0263/10/HC/Kig rwaburanishwaga, rushingiye ku murongo watanzwe n'urukiko rw'ubujurire mu rubanza RS/REV/RC 00001/2021/CA1, aho uru rukiko rwemeje ko “Ikimenyetso gishya ari ikimenyetso cyari

gihari cyangwa cyashoboraga gushakwa kikaboneka gishobora kwifashishwa nk'impamvu y'ingingo nshya? - Ikimenyetso cyashoboraga kuboneka urubanza rutaraba itegeko ntigishobora kwifashishwa nk'impamvu yatuma urubanza rusubirishwamo ingingo nshya", rukaba rusanga mu kimenyetso gitangwa na Kwihangana Eudi, umuhanga witwa Hategekimana Jean Baptiste ariwe nyiri SAIC Ltd yaranditse ku rupapuro rwa mbere avuga ko abikoze kubwa Kwihangana Eudi, bisobanuye ko iyo raporo y'umuhanga yayikoze abisabwe na Kwihangana Eudi urega muri uru rubanza, mu kuburana kwe nubwo avuga ko uburiganya bwabaye muri raporo yakozwe na NAEB bwatumye ahabwa amafaranga makeya kuyo yari yaregeye, rukaba rusanga ntacyo agaragaza mpamvu ki yasabye umuhanga SAIC Ltd kumukorera raporo y'agaciro k'umusaruro w'icyayi mu mwaka wa 2021 nyamara ntacyamubuzaga kuba yashaka ako gaciro mu mwaka wa 2013 ubwo yaburanaga urubanza asabira gusubirishamo ingingo nshya cyangwa ngo abe yarabikoze mbere avuguruzwa raporo y'umuhanga NAEB avuga ko yashingiweho n'urukiko rukuru mu rubanza asabira gusubirishamo ingingo nshya;

1 Reba RS/REV/RC 00001/2021/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 11/10/2022 haburana NGOGA Placide na MUKANGOGA Marie Louise n'abandi (igika cya 20-23), kigaragara ku Mirongo yatanze mu manza zaciwe n'urukiko rw'ubujurire mu kwezi k'ukwakira n'ugushyingo, n° 3.

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[23] Uru rukiko rusanga usibye n'ibimaze kuvugwa ko ikimenyetso kigaragazwa ko cyashobora kuboneka mbere mu ica ry'urubanza rusabirwa gusubirishwamo ingingo nshya, iyo rusuzumye imanza zabanje rusanga haraburanwe ibi bikurikira: - Mu kuburana urubanza RC 00002/08/TGI/Gic, cyane mu gika cya 4 aho umucamanza yasobanuraga ati: "Me Barinabo uburanira Kwihangana Eudi yahawe ijamba kugira ngo asobanure ikirego cye, avuga ko nk'uko bikubiye mu mwanzuro yagejeje ku Rukiko COOPTE Mulindi yabohoje umurima w'icyayi wa Kwihangana Eudi mu mwaka wa 2002 uherereye ku Mulindi. Kuva muri uwo mwaka kugeza 2007 COOPTE Mulindi niyo yasaruraga icyo cyayi ikakigurisha kugeza ubwo urukiko Rukuru rwa Repubulika rwemeje ko uwo murima ari uwa Kwihangana Eudi, hanyuma urubanza rurangizwa. Akomeza asobanura ko asaba amafaranga Coopte yavanaga muri uwo murima mu gihe cy'iyi myaka yose 2002-2007 hakurikijwe ingingo ya 258 CCL III; akaba asaba amafaranga yose hamwe y'umusaruro angana na 3.479.000 Frw, inyungu zayo za 18 ku ijana zingana na 625.000 Frw, restourne KWIHANGANA EUDI aba yarabonye ingana na 16.810 Frw hamwe n'indishyi z'akababaro zingana na 2.000.000 Frw"; - Mu gika cya 10 cy'urwo rubanza RC 0002/08/TGI/Gic, urukiko rwasobanuye ruti: "Me Barinabo yahawe ijamba avuga ko uwo murima wa Kwihangana ujya kubohozwa na Coopte warimo icyayi, arakirandura iteramo ikindi; icyo cyayi yaranduye rero akaba aricyo asabira amafaranga y'umusaruro wacyo kuko kwa mu 2002 kugeza 2007 byeteye umuryango wa Kwihangana Eudi guhungabana mu bukungu akaba ariyo mpamvu yo kwaka indishyi kuko muri icyo gihe cyose uwo murima wari uwa Kwihangana Eudi; asoza avuga ko indishyi zasabwe na Me uburanira Coopte nta shingiro zifite asaba kandi urukiko kurenganura Kwihangana Eudi"; - Mu ica ry'urwo rubanza RC 0002/08/TGI/Gic, mu gika cya 15 urukiko rwasobanuye ibi

bikurikira: “Urukiko rwisumbuye rusanga Me Muhizi ataravugurujye mu rukiko ibiro by’icyayi Kwihangana Eudi ashobora kuvana mu murima we mu kwezi hamwe n’igiciro k’ikiro kimwe bityo urukiko rukaba rugomba kugenera Kwihangana Eudi amafaranga y’umusaruro aba yaravanye mu murima we kuva mu 2002 kugeza mu 2007 nk’uko byasabwe n’uwunganira Kwihangana Eudi ni ukuvuga ko mu myaka itanu aba yaravanyemo amafaranga angana na 3.479.000Frw ateye atya * umwaka wa 2002-700 Kg X 12 X 70 Frw/kg- 588.000 Frw, * umwaka wa 2003-700 Kg X 12 X 70 Frw/kg- 588.000 Frw, * mu mwaka wa 2004-700 Kg X 12 X 70 Frw/kg- 588.000 Frw, *umwaka wa 2005- 700 Kg X 12 X 70 Frw/kg- 588.000 Frw, * umwaka wa 2006-700 Kg X 12 X 70 Frw/kg- 588.000 Frw, * umwaka wa 2007-700Kg X 11 X 70 Frw/kg- 539.000 Frw”; [24] Uru rukiko rusanga ibimaze kuvugwa iyo bihujwe n’ingingo nshya ivugwa na Kwihangana rusanga ibyerekeye imyaka ya 2003 na 2004 yaraburanweho ahubwo agaragaza ko umusaruro we watangiye kuboneka mu mwaka wa 2002 ko ibyo avuga ko ingingo nshya ishingiyeye ko umusaruro w’icyayi cye watangiye mu mwaka wa 2003 nyamara atagaragaza ko uyu mwaka yawuvanaga mu myaka yasabiraga indishyi igihe yaburana izo manza; [25] Uru rukiko rusanga kandi mu kuburana urwo rubanza RC 0002/08/TGI/Gic nyamara uru rubanza akaba ari narwo rwasuzumwe mu mizi mu bujirire bwari bwanditswe kuri RCA 0263/10/HC/Kig nyuma yo kubutsa urwari rwasibwe, ko Kwihangana Eudi yaruburanaga agaragaza ko umusaruro w’icyayi cye watangiye kuboneka mu mwaka wa 2002 ariko mu

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kimenyetso avuga ko ari gishya cyakozwe na SAIC ibisabwe na Kwihangana Eudi agaragaza ko umusaruro we watangiye kuboneka mu mwaka wa 2003, iki yita ko ari ikimenyetso gishya kikaba kitavuguruzwa ibyo yaburanishije kuko umwaka wa 2002 uza imbere y’umwaka wa 2003 avuga muri iyo nyandiko yita ko ari ikimenyetso gishya, ariko kandi usibye n’ibyo rusanga nkuko mu gika cya 15 cy’urwo rubanza RC 0002/08/TGI/Gic kibigaragaza ko Kwihangana Eudi waburanaga urwo rubanza yagaragaje agaciro k’umusaruro w’icyayi yasabiraga indishyi kadafite aho gahuriye n’icyo yita ko ari ikimenyetso gishya, aho urukiko rwavuze ko rusanga Me Muhizi ataravugurujye mu rukiko ibiro by’icyayi Kwihangana Eudi ashobora kuvana mu murima we mu kwezi hamwe n’igiciro k’ikiro kimwe bityo urukiko rukaba rugomba kugenera Kwihangana Eudi amafaranga y’umusaruro aba yaravanye mu murima we kuva mu 2002 kugeza mu 2007 nk’uko byasabwe n’uwunganira Kwihangana Eudi, rukagaragaza ko ibyo yagaragariye urwo rukiko ko yasaruraga ibiro bihwanye na 700Kg ku kwezi urukiko rugakuba amezi 12 aribyo biro 8.400Kg guhera mu mwaka wa 2002 kugeza mu mwaka wa 2007, rukamugenera ibyo yagaragaje ko yasaruraga buri mwaka muri iyo myaka, rwasuzuma ariko icyo yita ikimenyetso gishya aricyo cya raporo ya expertise yakozwe bisabwe na Kwihangana n’ikigo cya SAIC Ltd rusanga ahubwo iki kigo cyaragaragaje ko Kwihangana Eudi yarafite umurururo uhwanyeye na 4.800kg mu mwaka wa 2003 n’uwa 2004, naho mu mwaka wa 2005 akaba yaragize umusaruro wa 6.000Kg naho mu mwaka wa 2006 na 2007 akagira umusaruro wa 7.200Kg, ibi biro by’umusaruro w’icyayi bivugwa muri iyo raporo Kwihangana Eudi avuga ko ari ikimenyetso gishya rukaba rusanga biri muni y’ibiro by’icyayi we ubwe yavuze aburana urubanza RC 0002/08/TGI/Gic aho yavuze ko buri mwaka

yasaruraga ibiro bihwaye na 8.400Kg, rukaba rusanga ibyo yaburanishije muri izo manza ntaho bihuriye n'ibivugwa mucyo yita ikimenyetso gishywa; [26] Uru rukiko rugarutse ku rubanza RCA 0263/10/HC/kig ari narwo rubanza rusabirwa gusubirishwamo ingingo nshya nubwo uru rubanza rwaburanishije mu mizi ikirego cya Kwihangana Eudi, rusanga mu gika cya 18, icya 22 na 23 urukiko rwaravuze ku byerekeye imyaka ya 2002 kugeza 2007, ndetse rumugenera agaciro k'umurururo wagaragajwe muriyo myaka havanyweho ibyakoreshejwe (depenses), bityo ibivugwa na Kwihangana Eudi ko mucyo yita ko ari ikimenyetso gishya hatatanzwe agaciro k'umurururo w'umwana wa 2003 nyamara ibyaragaragajwe na SAIC Ltd ko yagombaga guhabwa umurasuro w'icyayi uhwaye na 216.000Frw rusanga nta gaciro k'ibyakoreshejwe we agaragaza kuburyo iki kimenyetso cyashingirwaho nk'ikimenyetso gishya cyavuguruza ibyo Kwihangana Eudi ubwe yagaragaje aburana imanza zabanje zirimo n'urwo asaba ko rusubirishwamo ingingo nshya; [27] Uru rukiko rusanga ibivugwa na Kwihangana Eudi ko raporo y'umuhanga ya NAEB yateje uburiganya atamenye urubanza ruburanishwa, ariko uru rukiko rushingiye ku murongo wagaragajwe n'urukiko rw'ikirenga mu rubanza RS/REV/RCOM 00001/2018/SC2 rwaciwe kuwa 24/07/2020, aho rwavuze ko cyitwa ikimenyetso gishya kandi ko kigomba kuba kimara impaka, ari ukuvuga ko cyashoboraga gutuma umucamanza afata icyemezo gitandukanye n'icyo yafashe. Kugirango urubanza rusubirwemo ku mpamvu z'uburiganya, hagomba kuba harabaye ibikorwa byo kubeshya umucamanza hagamijwe gutsinda urubanza, kandi ubwo buriganya bukaba bwaragize ingaruka kumikirize y'urubanza, rwabihuza nibyo Kwihangana Eudi agaragaza ko

2 Reba urwo rubanza RS/REV/RCOM 00001/2018/SC, rwaciwe n'urukiko rw'ikirenga kuwa 24/07/2020, mu gika cyarwo cya 31, rugaragara ku rubuga rwa https://www.amategeko.gov.rw/document/judgement/2020_07_24_JP_Com_SC_Kigali_KR_SHEMA%20n%E2%80%99u%20v.%20I%20%26%20M%20BANK%20RWANDA%20Plc.

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raporo ya SAIC Ltd ari ikimenyetso gishya atagaragaza ibihuye n'ibyo ubwe yagaragaje yaburanishaga mu rubanza rusabirwa gusubirishwamo ingingo nshya, iki kimenyetso kikaba kitafatwa nkaho ari gishya kuko ubwe atariko yaburanaga nkuko bigaragara muri icyo kimenyetso ahubwo yatangaga agaciro k'ibiro by'icyayi biri hejuru y'ibyo agaragaza kur'ubu ndetse ko n'agaciro k'amafaranga agaragaza kur'ubu aho avuga ko ikiro kimwe cy'icyayi cyaguraga ahwanye na 45Frw mu mwaka wa 2003 bikagenda bizamuka kugeza mu mwaka wa 2007 akagaragaza ko ikiro cyaguraga ahwanye na 65Frw nyamara mu kuburana kwe mu manza zabanje yagaragaje ko ikiro cy'icyayi cyatangaga umusaruro uhwaye n'amafaranga 70Frw/Kg muri icyo myaka yose ya 2002 kugeza 2007, akaba ariko atagaragaza kurubu ibyakoreshejwe nka depenses, iki giciro cyari hejuru yaburanishije mu manza zabanje icyo kimenyetso yita gishya kikaba cyo kimanura igiciro cy'umusaruro, ko niyo icyo kimenyetso kiboneka icyo gihe rusanga kitari kivuguruza ibyashingiweho hacibwa urubanza rusabirwa gusubirishwamo ingingo nshya; [28] Uru rukiko rushingiye ku bimaze gusobanurwa rukabihuza n'ibiteganywa n'ingingo ya 174 y'itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegets, ivuga ko "Urukiko rwaregwe gusubirishamo urubanza ingingo nshya rubanza gusuzuma ibijyanye n'iyakirwa ry'ikirego,

rukabifataho icyemezo, Iyo ikirego cyo gusubiramo urubanza kitakiriwe, urubanza rwa mbere rugumana agaciro karwo” rukaba rwakwemeza ko ikirego cya Kwihangana Eudi yatanze asaba gusubirishamo urubanza RCA 0263/10/HC/KIG ingingo nshya kidakwiye kwakirwa kubera ko atari ikimenyetso gishya cyahindura urubanza rusabirwa gusubirishwamo ingingo nshya, bityo urwo rubanza rusabirwa gusubirishwamo ingingo nshya rukaba rwagumana agaciro karwo; Ku byerekeye indishyi zisabwa muri uru rubanza [29] Mu mwanzuro wa Me Katushabe Mary uburanira COOPTHE Mulindi asaba ko gukomeza gushorwa mu manza z'amaherere bikozwe na Kwihangana Eudi kandi yaranze kwishyura ku neza ibyo yatsindiwe, ko isaba indishyi zingana na miliyoni eshatu (3.000.000Frw) ndetse n'igihembo cya avocat gihwanye na miliyoni eshatu (3.000.000Frw); [30] Kwihangana Eudi wunganirwa na Me Matimbano Barton bavuga ko indishyi COOPTHE Mulindi Marguerite asaba nta shingiro zifite kuko ariyo yakomeje kumushora mu manza ibizi neza ko yamufatiye umurima w'icyayi batabyumvikanyeho, kuba rero yariyambaje inzira ziteganywa n'amategeko kugirango abone ubutabera, bitatuma icibwa indishyi, ko ahubwo COOPTHE Mulindi ariyo yategekwa kumwishyura indishyi zose hamwe zingana na 10.000.000Frw zikubiyemo amafaranga angana na 5.000.000Frw y'ibihembo by'avoka yishyuye mu manza zitandukanye zikomoka kuri uru rubanza kuko nk'uko bigaragara uru rubanza rwatumye habaho izindi manza nyinshi mu buryo butandukanye bituma Kwihangana Eudi azitakazamo byinshi nyamara bitewe no kuba COOPTHE Mulindi itarubahirije inshingano zayo, ko nyuma yibyo kandi barasaba ko Kwihangana Eudi yagenerwa 5.000.000Frw y'indishyi z'akababaro no gusiragizwa mu nkiko; Uko uru rukiko rubibona [31] Uru rukiko rushingiye ku biteganywa n'ingingo ya 111 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi, cyane igika cyayo cya kabiri, kivuga ko “Ikirego cy'amafaranga

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y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyi ikirego cy'iremezo cyaba kitakiriwe”, rukaba rusanga ikirego cyo gusubirishamo urubanza ingingo nshya cyatanzwe na Kwihangana Eudi kitakiriwe bikaba bitabuza ko hasuzumwa indishyi z'ikurikirana rubanza ndetse n'amafaranga y'igihembo cya avocat, bityo kuba uregwa ariwe COOPTHE Mulindi usaba indishyi z'ikurikirana rubanza ndetse n'igihembo cya avocat kandi uru rubanza rukaba rwaraburanwe na Avocat bitabiriye iburanisha, uwaregeye ingingo nshya itahawe ishingiro n'uru rukiko akaba akwiye kubishyura indishyi zibyo batakaje mu ikurikirana ry'uru rubanza, mu bushishozi bw'urukiko rukaba rusanga COOPTHE Mulindi yagenerwa indishyi zihwanye n'ibihumbi ijana (100.000Frw) z'ikurikirana rubanza, ariko kandi ikanagenerwa n'igihembo cya avocat kingana na 500.000Frw, yose akishyurwa na Kwihangana Eudi watumye uregwa ashakisha avocat waburanye uru rubanza yamushoyemo nta mpamvu, naho ayo COOPTHE Mulindi isaba angana na 3.000.000Frw y'igihembo cya avocat ndetse n'ikurikirana rubanza ringana na 3.000.000Frw akaba ari menshi kandi idasobanurwa uburyo yayakoresheje muri izi manza ariko rutirengagije ko hari ibikorwa yakoze akwiye kwishyurwa mu ikurikirana ry'uru rubanza; III. ICYEMEZO CY'URUKIKO RUKURU [32] Rwemeje ko ikirego cyatanzwe Kwihangana Eudi gisaba gurubirishamo urubanza RCA 0263/10/HC/KIG

ingingo nshya kitakiriwe. [33] Rutegetse ko nta gihindutse ku mikirize y'urubanza RCA 0263/10/HC/KIG rwaciwe n'urukiko rukuru, kuwa 27/09/2013. [34] Rutegetse Kwihangana Eudi kwishyura COOPTHE Mulindi indishyi z'ikurikirana rubanza zingana n'ibihumbi ijana (100.000Frw) akanayishyura kandi n'igihembo cya avoka waburanye uru rubanza kingana n'ibihumbi magana atanu (500.000Frw). [35] Rutegetse ko ingwate y'amagarama yatanzwe na Kwihangana Eudi ihwanye n'ibyakoreshejwe muri uru rubanza, akaba adakwiye kuyasubizwa.

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