

RWANDA / JUDGMENT

MUJAWAMARIYA NUNDI v ECOMEM CO LTD

RCA 00337/2021/HC/KIG

COURT

High Court

DECIDED

14 September 2023

CASE / FILE NUMBER

RCA 00337/2021/HC/KIG

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MUJAWAMARIYA NUNDI v ECOMEM CO LTD

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- Date: 2023-09-14
- Case/document no.: RCA 00337/2021/HC/KIG
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Text

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MUJAWAMARIYA N'UNDI v ECOMEM CO LTD [Rwanda URUKIKO RUKURU - RCA 00337/2021/HC/KIG (Harerimana, P.J.) 14 Nzeri 2023] Amategeko agenga imanza z'imbonezamubano - Amasezerano y'inguzanyo - Kwishyura inyungu z'ubukererwe - Igipimo gikwiye cy'inyungu z'ubukererwe mu kwishyura inguzanyo kigenwa n'Urukiko mu bushishozi bwarwo kandi ntizigomba kurenga ingano y'umwenda wishyuzwa. Incamake y'ikibazo: Uru rubanza rukomoka ku nguzanyo yahawe Atelier de Menuiserie et Furniture de Matériel LTD (AMFM) yayoborwagwa na Mujawamariya ingana na 5 202 000 frw yagombaga kwishyurwa hashyizweho inyungu za 5% mu gihe cy'iminsi mirongo itatu, uwo mwenda akaba yarawuhawe na ECOMEM CO LTD. Mujawamariya yaje kwishyura umwenda wose ungana na 16 800 000 Frw akoresheje sheki ariko biza kugaragara ko itazigamiye hanyuma akurikiranywa n'inzego z'ubutabera aza guhamwa n'icyaha mu rubanza RP/ECON 00049/2018//TB/NYGE. Ishingiye kuri urwo rubanza, ECOMEM CO LTD yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge aregera indishyi, urwo rukiko ruza kwemeza ko Mujawamariya afatanyije na AMFM bafatanyaga kwishyura indishyi zitandukanye.

Abaregwa ntibanyuzwe n'icyo cyemezo bakijurira mu Rukiko Rukuru, rumaze kucyakira rusuzuma ibibazo birimo icyo kumenya niba Mujawamariya agomba gufatanya na AMFM kwishyura indishyi no kumenya ingano y'indishyi zigomba gutangwa. Abarega bavuga ko sheki yatanze na AMFM kandi ko Urukiko rwashingiye ku itegeko ritariho. Akomeza asobanura ko Urukiko rwabariye ku nyungu ya gatanu ku ijana (5%) kandi ntaho amasezerano yo kuwa 6/02/2016 y' amafaranga miliyoni eshanu n'ibihumbi magana abiri na bibiri (5.202.000 frw) rwabariyeho inyungu ya 5% mu minsi 30 ahuriye n'ubwishyu bwa sima aribwo bwishyuwe hakoreshejwe sheki kuko iyo biza kuba bifitanye isano, iyo sheki yari kwandikwa n'izo nyungu zongeyweho. Bakomeza bavuga ko urukiko rwabategetse gutanga inyungu z'umurengera kuko zirenze cyane umwenda. ECOMEM CO LTD ivuga ko Mujawamariya yahamwe n'icyaha cyo gutanga sheki itazigamiye bityo ko adashobora kwikuraho uburyozwe bw'indishyi zituruka kuri icyo cyaha. Ikomeza ivuga ko ibyo kvuga ko inyungu zagenwe ari umurengera nta shingiro bifite kuko izo nyungu ziri mu masezerano kandi akaba agomba gushyirwa mu bikorwa uko yakabaye. Incamake y'icyemezo: Igipimo gikwiye cy'inyungu z'ubukererwe mu kwishyura inguzanyo kigenwa n'Urukiko mu bushishozi bwariye kandi ntizigomba kurenga ingano y'umwenda wishyuzwa bityo inyungu zatanze ni umurengera kuko zirenze umwenda wishyuzwa, Mujawamariya afatanyije na AMFM bakaba bagomba kwishyura kwishyura ECOMEM CO LTD amafaranga miliyoni cumi n'esheshatu n'ibihumbi magana inani (16 800 000 frw) ya sheki yatanze itazigamiye hamwe na miliyoni eshanu n'ibihumbi magana abiri na bibiri (5 202 000 frw) y'inyungu z'ubucyererwe. Ubujurire bwatanze bufite ishingiro kuri bimwe; Urubanza RC 00391/2021/TGI/NYGE ruhindutse gusa ku bijyanye n'ingano y' inyungu z'ubucyererwe.

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Amategeko yashingiweho: Itegeko No 22/2018 ryo kuwa 29/4/2018 ryerekeye imiburanishirize y'imanza mbonezamubano, iz' ubucuruzi, umurimo n' ubutegetsi, ingingo ya 12. Imanza zifashishijwe: RS/INJUST/RCOM 00014/2022/SC, Mugwaneza Carine Sandrine vs Banki ya Kigali, rwaciye n' Urukiko rw'Ikirenga ku wa 31/3/2023. Urubanza I. IMITERERE Y' URUBANZA [1] Ku wa 20/6/2016, Atelier de Menuiserie et Furniture de Matériel LTD (AMFM) yahaye sheki itazigamiye y' amafaranga miliyoni cumi n'esheshatu n' ibihumbi magana inani (16 800 000 frw) iyiha Kompanyi ya ECOMEM Ltd iyo sheki ikaba yarasinywe n' umuyobozi wayo Mujawamariya Devota. Mu rubanza RP/ECON 00049/2018/TB/NYGE, Urukiko rw' ibanze rwa Nyarugenge rwahamije Mujawamariya Devota icyaha cyo gutanga sheki itazigamiye. [2] ECOMEM CO Ltd yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge irega Mujawamariya Devota na Ateriler de menuiserie et furniture de matériel LTD isaba indishyi zikomoka ku cyaha aho yasabaga indishyi zingana na miliyoni mirongo ine n'ebyiri (42 000 000 Frw) zikubiyemo miliyoni cumi n'esheshatu n'ibihumbi magana inani (16 800 000 Frw) yishyuye kuri sheki itazigamiye kongeraho inyungu za 5% ku muni w'ubukererwe mu gihe cy'iminsi 30 zingana na miliyoni makumyabiri n'eshanu n'ibihumbi magana abiri (25 200 000 Frw), amafaranga y'Ikurikiranarubanza angana na miliyoni ebyiri (2 000 000 Frw), igihembo cy'avocat kingana na miliyoni imwe (1 000 000 Frw), amafaranga y'ingwate y'igarama angana n'ibihumbi makumyabiri (20 000 frw). [3] Mujawamariya Devota akaba yaravugaga ko AMFM ariyo yishyuye Kompanyi ya

ECOMEM Ltd kandi ko inyungu za 5% atazemera, akaba yatanze inzitizi y'uko ikirego kiri mu bubasha bw' Urukiko rw'ubucuruzi kuko havugwamo inyungu zitumvikanywaho ko bigize impaka z'ubucuruzi. [4] Mu rubanza N° RC 00391/2020/TGI/NYGE, Urukiko Rwisumbuye rwa Nyarugenge rwasanze Mujawamariya Devota akwiriye gufatanya kwishyura ayo mafaranga afatanije na AMFM, kandi ko ECOMEM LTD igomba kwishyurwa nabo bombi amafaranga miliyoni cumi n'esheshatu n'ibihumbi magana inani (16.800.000 Frw) hiyongereyeho inyungu ingana miliyoni zirindwi n'ibihumbi magana inani na bitatu (7.803.000 Frw) zibariwe ku mafaranga miliyoni eshanu n'ibihumbi magana abiri na bibiri (5.202.000 frw). [5] Mujawamariya Devota na AMFM bajurirye uru Rukiko, ubujurire bwandikwa kuri N° RCA 00337/2021/HC/KIG, urubanza ruburanishwa mu ruhamye kuwa 11/7/2023, ababuranyi bombi bitabye, Mujawamariya Devota na AMFM bahagarariwe na Me Mbitumyimana Jean de Dieu, ECOMEM Co Ltd ihagarariwe n'umuyobozi wayo Murego Paulin, yunganiwe na Me Munderere Leopold na Me Simbizi Fulgence.

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[6] Mujawamariya Devota na AMFM banenga imikirize y'urubanza rwaciwe n' Urukiko Rwisumbuye aho rwasuzumye ibijyanye n'inyungu za 5% kandi batazemera, ko ibyo bigize impaka z' ubucuruzi bikaba biri mu bubasha bw' Urukiko rw'ubucuruzi kandi ko mu gutegeka ko Mujawamariya afatanyaga na AMFM hirengagijwe ibimenyetso bigaragaza ko AMFM LTD ariyo yafashe umwenda, hanirengagizwa kandi ko muri icyo Kampanyi harimo undi munyamuryango kandi ko hanashyirwa ku itegeko ritakiriho, ko inyungu Urukiko rwagennye zitari zikwiriye. [7] ECOMEM Co Ltd ivuga ko inyungu zatanze n'Urukiko zari mu masezerano yaje gukomokwaho sheki itazigamiwe, ko bifatanye isano, bityo ko Urukiko Rwisumbuye rwa Nyarugenge rwari rufite ububasha, ko Mujawamariya Devota yagombaga kwishyura afatanije na AMFM, ko amasezerano akomokwaho sheki ko inyungu zatanze ziyarimo. Igasaba indishyi z'akababaro. Impande zombi zasabye amafaranga y'ibyakoreshejwe mu rubanza. [8] Urukiko, rushingiye kuri izo mpaka, rusanga hakwiye gusuzumwa ibibazo bikurikira: a). Kumenya niba Mujawamariya Devota akwiriye gufatanya na Atelier de Menuiserie et Furniture de Matériel LTD (AMFM) kwishyura. b). Kumenya niba Urukiko Rwisumbuye rwa Nyarugenge rutari rufite ububasha ku bijyanye n'inyungu zari zasabwe. c). Kumenya niba inyungu zatanze zari zikwiriye. d). Kumenya niba indishyi z' akababaro ECOMEM CO Ltd isaba yazihabwa. e). Kumenya niba amafaranga y'ibyakoreshejwe mu rubanza asabwe muri uru rubanza afite ishingiro. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA a). Kumenya niba Mujawamariya Devota atari akwiriye gufatanya na Atelier de Menuiserie et Furniture de Matériel LTD (AMFM) kwishyura. [9] Mu myanzuro y'ubujurire no mu miburanire, Mujawamariya Devota na AMFM bavuye ko Urukiko rwirengagije ibimenyetso bigaragaza ko uwaguze sima akanatanga sheki ari AMFM, kandi ko icyo Kampanyi irimo undi munyamigabane, ko rero gutegeka ko afatanyaga nayo haba harimo akarengane, kandi ko Urukiko rwashyirwa ku itegeko ritakiriho. [10] Mu myanzuro yo kwiregura no mu miburanire, ECOMEM LTD ivuga ko Mujawamariya Devota yahamwe n' icyaha cyo gutanga sheki bityo ko agomba kuziryoza ko niba ashaka kwishyura wenyine

ntacyo byatwara ECOMEM. UKO URUKIKO RUBIBONA [11] Impaka ziri muri uru rubanza zishingiye ku kumenya niba Mujawamariya na Company AMFM bategekwa gufatanya kwishyura indishyi zikomoka ku cyaha cyahamye Mujawamariya Devota.

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- [12] Ingingo ya 11 y'itegeko N° 027/2019 ryo kuwa 19/9/2019 ryerekeye imiburanishirize y'imanza nshinjabyaha ivuga ko Indishyi zishobora kuregwa uwakoze icyaha, uwo bafatanyije gukora icyaha, icyitso cye kimwe n'utegetswe kuriha indishyi. [13] Urukiko ruhereye ko uru rubanza rushingiye ku ndishyi zikomoka ku cyaha cyahamye Mujawamariya Devota cyo gutanga sheki itazigamiye, rusanga ntaho rwahera ruvuga ko adakwiriye kuregwa izo ndishyi. ku bijyanye no gutegeka ko Mujawamariya afatanyaga na AMFM, ruhereye ko iyo mvugo ivugwa na Mujawamariya Devota agaragaza ko atagomba kwishyura kuko atariwe watanze sheki itazigamiye kandi icyaha cyaramuhamye, byongeye sheki yatanzwe akaba ari iya AMFM, rusanga izo ndishyi zikomoka kuri sheki yatanzwe itazigamiye, akwiriye kuzishyura afatanije na AMFM nkuko n' Urukiko Rwisumbuye rwabyemeje. b). Kumenya niba Urukiko Rwisumbuye rwa Nyarugenge rutari rufite ububasha ku bijyanye n'inyungu zari zasabwe. [14] Uhagarariye Mujawamariya Devota na AMFM Ltd avuga ko Urukiko Rwisumbuye rutari rufite ububasha bwo gusuzuma no gutegeka icyiswe inyungu zumvikanyweho mu masezerano zingana na miliyoni zirindwi n'ibihumbi bitatu (7.803.000 frw) zikomoka kuri credit sales terms and conditions ya miliyoni eshanu n'ibihumbi magana abiri na bibiri (5.202.000 frw) kuko ikibazo kiri mu bubasha bw' Urukiko rw'Ubucuruzi kuko amasezerano Urukiko ruvuga ko yumvikaniwemo izi nyungu batayemera. [15] Uhagarariye ECOMEM CO LTD avuga ko ibivugwa na Mujawamariya Devota na AMFM nta shingiro bifite kuko izo nyungu ziri mu masezerano yaje gushyirwa mu bikorwa Mujawamariya Devota atanga sheki ikaza kugaragara ko itazigamiye, ariyo yakomotseho urubanza RP/ECON 00049/2018//TB/NYGE. UKO URUKIKO RUBIBONA [16] Ingingo ya 12 y' itegeko numero 22/2018 ryo kuwa 29/4/2018 ryerekeye imiburanishirize y'imanza mbonezamubano, iz' ubucuruzi, umurimo n' ubutegetsi ivuga ko urega agomba gutanga ibimenyetso by'ibyo aregera iyo abibuze uwo yaregaga aramutsinda. [17] Hashingiye kuri iyo ngingo, Urukiko ruhereye ko ikirego cyatanzwe mu Rukiko Rwisumbuye ari indishyi zikomoka ku cyaha cyo gutanga sheki itazigamiye ya miliyoni cumi n' esheshatu n'ibihumbi magana inani (16 800 000 frw), iyo sheki ikaba ikomoka ku mwenda wagiye ufatwa mu byiciro nkuko inyandiko zigaragaza uwo mwenda zibigaragaza. Ruhereye ko muri izo nyandiko z'umwenda harimo n'iyi Urukiko Rwisumbuye rwashingiyeho rubara izo ndishyi z'ubucyererewe zari zikubiye muri ayo masezerano, rusanga kuba ECOMEM CO ltd yarahisemo gutanga ikirego cy'indishyi ishingiyeye ku cyaha bitari kuyibuza gusaba n'izo nyungu kuko byombi bifitanye isano bityo Urukiko rukaba rwari rufite ububasha ku bijyanye n'izo nyungu. Kuba Mujawamariya Devota na AMFM batemera izo nyungu, rusanga bidakuraho ububasha bw' Urukiko. C. Kumenya niba inyungu zatanzwe zari zikwiriye. [18] Uhagarariye Mujawamariya Devota na AMFM Ltd avuga ko mu gutegeka inyungu ingana na miliyoni zirindwi n' ibihumbi magana inani na bitatu (7.803.000 frw), Urukiko

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Rwisumbuye rwa Nyarugenge rwirengagije ko ntaho credit sales terms and conditions yo kuwa 6/02/2016 y' amafaranga miliyoni eshanu n'ibihumbi magana abiri na bibiri (5.202.000 frw) rwabariyeho inyungu ya 5% mu minsi 30, ihuriye na sima yaguzwe kuwa 20/6/2016 na AMFM Ltd ikishyurwa hakoreshejwe sheki byaje kugaragara ko itazigamiye kuko iyo biza kuba bifitanye isano, kuri sheki yo kuwa 20/6/2016 ya miliyoni cumi n' esheshatu n'ibihumbi magana inani (16.800.000 frw) hari kuba hagaragaramo izo nyungu , ko kandi usibye n'ibyo ko inyungu zingana n' amafaranga miliyoni zirindwi n' ibihumbi magana inani na bitatu (7 803 000 frw) zibariwe kuri miliyoni eshanu n'ibihumbi magana abiri na bibiri (5 202 000 frw) ko byaba ari ubuhendanyi (lesion). [19] ECOMEM CO LTD ivuga ko iyo ngingo nta shingiro ifite kuko ayo masezerano yo ku italiki ya 20/06/2016 izo nyungu zirimo kandi akaba agomba gushyirwa mu bikorwa uko yakabaye hashingiwe ku ngingo ya 64 y'itegeko rigenga amasezerano. UKO URUKIKO RUBIBONA [20] Ikibazo kijyanye n' uburyo inyungu z'ubucyererwe zikwiriye gutangwamo cyatanzweho umurongo n'Urukiko rw'ikirenga mu rubanza RS/INJUST/RCOM 00014/2022/SC rwaciwe n' Urukiko rw'ikirenga kuwa 31/3/2023 haburana Mugwaneza Carine Sandrine na Banki ya Kigali aho urwo Rukiko rwagaragaje ko igipimo gikwiye cy'inyungu z'ubukererwe kigenwa n'Urukiko mu bushishozi bwarwo, ko inyungu zitagomba kurenga izikenewe mu gukosora ibyangijwe ariko kandi zigomba kuba zihagije ku buryo zitanga isomo kugira ngo ibyatumye zitangwa bitazasubira, rwemeza ko inyungu z'ubukererwe zitagomba kurenga ingano y'umwenda wishyuzwa. [21] Ku bijyanye n' uru rubanza, Urukiko rusanga Urukiko Rwisumbuye mu kugena inyungu z'ubucyererwe rwarazibariye ku gipimo cya 5% cyari gikubiye mu nyandiko yashyizweho umukono kuwa 6/2/2016 yiswe credit sa- les terms and conditions y' amafaranga miliyoni eshanu n'ibihumbi magana abiri na bibiri (5.202.000 frw) aho Mujawamariya Devota yiyemereye ko azishyura izo nyungu mu gihe kingana n'iminsi mirongo itatu (30) mu gihe azamara iminsi irindwi (7) atarishyura, Urukiko rubibaze rusanga bihura na mi- liyoni zirindwi n' ibihumbi magana inani na bitatu (7 803 000 frw). [22] Urukiko ruherereye ko inyungu zatanzwe n' Urukiko Rwisumbuye rwa Nyarugenge zirenga umwenda zabariweho nkuko byagaragajwe haruguru, rusanga ibyo binyuranye n'umurongo watanzwe mu rubanza rwavuzwe harugu- ru bityo iyo nenge ikaba ikosowe inyungu zikaba zigomba gutangwa zikaba zingana na miliyoni eshanu n'ibihumbi magana abiri na bibiri (5 202 000 frw). [23] Naho kuba Mujawamariya Devota avuga ko iyo credit card Uruki- ko Rwisumbuye rwabariyeho izo nyungu ntaho ihuriye na sima yaje gukomoka sheki itazigamiye ya miliyoni cumi n'esheshatu n'ibihumbi magana inani (16 800 000 frw), rusanga iyo mvugo nta gaciro yahabwa kuko amafaranga mi- liyoni eshanu n'ibihumbi magana abiri na bibiri (5 202 000 frw) ari igice kimwe mu bigize umwenda wose ungana na miliyoni cumi n' esheshatu n'ibihumbi magana inani (16 800 000 frw) yaje kwishyurwa nk'inyandiko mvunjafaranga itazigamiye.

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- [24] Ku bijyanye n'ikoreshwa ry'itegeko ryavuyeho, Urukiko rusanga nkuko Mujawamariya Devota na AMFM babivuga, ingingo ya 258 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano yakoreshejwe itara- gombaga gukoreshwa kuko itegeko ryavuyeho.
- d. Kumenya niba indishyi z'akababaro ECOMEM isaba yazihabwa. [25] Uhagarariye ECOMEM CO LTD asaba Urukiko ko rwayigenera indishyi z'akababaro za miliyoni eshatu (3 000 000 Frw) kuko abajuriye bakomeje kuyishora mu manza ku maherere bakayiteza igihombo kandi iyo ayo mafaranga iyahabwa iba yarayacurujwe akavamo inyungu. [26] Uhagarariye Mujawamariya Devota na AMFM Ltd avuga ko ibisabwa na ECOMEM Co Ltd nta shingiro kuko Mujawamariya Devota na AMFM LTD bagaragaje ishingiro ry'ubujurire bwabo. UKO URUKIKO RUBIBONA [27] Urukiko ruherye ko indishyi z'akababaro zisabwa ECOMEM itagaragaza ko yari yazisabye ku rwego rwa mbere ngo ibe yarahawe nkeya, inenga ingano yazo, rusanga zitasuzumwa kuri uru rwego.
- e. Kumenya niba amafaranga y'ibyakoreshejwe mu rubanza asabwa yatangwa. [28] Uhagarariye Mujawamariya Devota na AMFM Ltd avuga ko basaba Urukiko gutegeka ECOMEM CO Ltd kubasubiza ingwate y'igarama ingana n'ibihumbi mirongo ine (40.000 frw) buri umwe yishyuye n'amafaranga y'ikurikiranarubanza angana n'ibihumbi Magana abiri (200.000 frw) akubiyemo ay'ingendo, itumanaho, gufotoza, gusikana no ku imprima ndetse n'igihembo cy'avoka kingana na miliyoni imwe (1.000.000frw). [29] Uhagarariye ECOMEM avuga ko ibyo basaba nta shingiro nawe agasaba ko yahabwa miliyoni imwe (1000 000 frw). UKO URUKIKO RUBIBONA [30] Urukiko ruherye ko ubujurire bwatanzwe na Mujawamariya Devota na AMFM bwahawe ishingiro kuri bimwe, rusanga basubizwa ingwate y'igarama batanze ingana n'ibihumbi mirongo inani (80 000 frw), igihembo cy'avoka cy'ibihumbi magana abiri mirongo itanu (250 000 frw) n'amafaranga y'ikurikiranarubanza anagana n'ibihumbi ijana (100 000 frw) kuko asabwa ari ikirenga, yose hamwe akangana n'ibihumbi magana ane mirongo itatu (430 000 frw). Naho asabwa na ECOMEM Co Ltd akaba ari nta shingiro afite. III. ICYEMEZO CY'URUKIKO [31] Rwemeje ko ubujurire bwatanzwe na Mujawamariya Devota na Atelier de menuiserie et furniture de materiel Ltd bufite ishingiro kuri bimwe.

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- [32] Rwemeje ko urubanza RC 00391/2021/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 15/10/2021 ruhindutse gusa ku bijyanye n'ingano y'inyungu z'ubucyererewe. [33] Rutegetse Mujawamariya D vota afatanije na Atelier de Menuiserie et furniture de materiel Ltd kwishyura ECOMEM CO LTD mu izina ry'umuyobozi wayo Murego Paulin amafaranga miliyoni cumi n'esheshatu n'ibihumbi magana inani (16 800 000 frw) ya sheki yatanze itazigamiye hamwe na miliyoni eshanu n'ibihumbi magana abiri na bibiri (5 202 000 frw) y'inyungu z'ubucyererewe. [34] Rutegetse ko mu mafaranga ibihumbi magana atandatu na makumyabiri (620 000 frw) yategetswe ku rwego rwa mbere bagomba guha ECOMEM CO Ltd y'igihembo cy'avoka n'ikurikiranarubanza hakurwamo ibihumbi magana

ane mirongo itatu (430 000 frw) batsindiye kuri uru rwego akubiyemo ingwate y'igarama, igihembo cy'avoka n'ikurikiranarubanza, bakaba bagomba kwishyura ECOMEM CO ltd amafaranga ibihumbi ijana na mirongo icyenda (190 000 frw).

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