

RWANDA / JUDGMENT

NIYOGISUBIZO V BK INSURANCE PLC

RCA 00061/2022/HC/MUS

COURT

High Court

DECIDED

2 March 2023

CASE / FILE NUMBER

RCA 00061/2022/HC/MUS

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NIYOGISUBIZO V BK INSURANCE PLC

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Text

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NIYOGISUBIZO V BK INSURANCE PLC [Rwanda URUKIKO RUKURU URUGEREKO RWA MUSANZE – RCA 00061/2022/HC/MUS (Mukamuhire, P.J.) 02 Werurwe 2023] Itegeko rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga – indishyi mbangamiraburambe – Indishyi mbangamira burambe zitangwa ku muntu uri mukazi cyangwa ugeze igihe cyo gukora cyangwa se ku munyeshuri uri mu mashuri y'isumbuye, mu mashuri y'imyuga, mu mashuri makuru cyangwa andi angana nayo, ntizitangwa ku munyeshuri wiga mu mashuri abanza. Incamake y'ikibazo: Uru rubanza rwatangiye Niyogisubizo arega BK Insurance mu Rukiko Rwisumbuye rwa Musanze asaba Urukiko kuyitegeka kumuha indishyi zitandukanye kubera imodoka yamugonze ifite ubwishingizi muri BK. Avuga ko yasabye indishyi muri BK Insurance ubwo yayigezagaho dosiye hanyuma ikamutumaho ngo abonane na muganga wayo, birakorwa ariko ntiyahabwa ibisubizo, nyuma BK nibwo yamubwiye ko bamusanganye ubumuga bwa 38% ariko ntibagira icyo bamubwira ku bijyanye n'icyiciro cy'ubumuga, ntiyanabarirwa n'indishyi zose za ngombwa. Urukiko mu rubanza RCA00096/2021/TGI/MUS rwemeje ko ikirego cya Niyogisubizo Clement gifite ishingiro, rutegeka BK Insurance Plc guha Niyogisubizo indishyi zitandukanye. Niyogisubizo ntiyishimiye

imikirize y'urwo rubanza, ajurira mu Rukiko Rukuru, urugereko rwa Musanze. Ahagarariwe na nyina Mukandutiye, avuga ko impamvu zatumye ajurira ari uko hari amafaranga yakoresheje yivuzza urukiko rutamusubije kandi factures zayo ziri muri dosiye; avuga ko Urukiko rutamugeneye amafaranga y'igihembo cya Avocat kandi yarayasabye; avuga kandi ko Urukiko rutamugeneye amafaranga y'indishyi zo kubura umwaka w'amashuri; ahagarariye BK Insurance yireguye avuga ko impamvu zose z'ubujurire za Niyogisubizo nta shingiro zifite. Urukiko mu rubanza RCA00061/2022/HC/MUS rwemeje ko ko koko hari factures Niyogisubizo yivurijeho ziri muri dosiye Urukiko rwabanje rutahaye agaciro, Urukiko rwemeje kandi ko koko Urukiko rwabanje rwibagiwe kugenera Niyogisubizo amafaranga y'igihembo cy'Avoka kuko yayasabye. Ku bijyanye no Kumenya niba indishyi zo gutakaza umwaka w'amashuri zikwiye gutangwa, Urukiko rwemeje ko nubwo yasibiye bitewe n'impanuka yagize, nta ndishyi z'ibangamira burambe akwiye kugenerwa kuko yari umunyeshuri wo mu mashuri abanza kandi bakaba batagenerwa bene iza ndishyi. Incamake y'icyemezo: Indishyi mbangamira burambe ku muntu wakoze impanuka zitangwa ku muntu uri mukazi cyangwa ugeze igihe cyo gukora cyangwa se ku munyeshuri uri mu mashuri y'isumbuye, mu mashuri y'imyuga, mu mashuri makuru cyangwa andi angana nayo, kuko abatakaje amahirwe y'akazi, ntizitangwa ku munyeshuri wiga mu mashuri abanza. Bityo, Nubwo umunyeshuri wiga mu mashuri abanza yasibira bitewe n'impanuka yagize, nta ndishyi mbangamiraburambe yagenerwa kuko zitateganyijwe n'Itegeko. Uburirire bufite ishingiro kuri bimwe. Amategeko yashingiweho:

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Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi, Ingingo ya 111, 141 Itegeko No 15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo Iteka rya Perezida No 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, ingingo ya 19 Amabwiriza No 01/2014 akena ibihembo mbonera by'abavoka, ingingo ya 34 Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Kuwa 02/03/2021 habaye impanuka ikomotse ku makosa ya CPL Karasira John wari utwaye imodoka Totoya Land Cruiser RDF 552S maze igonga Niyogisubizo Clement arakomereka bikomeye. Niyogisubizo Clement yagiye kwa muganga basanga afite ubumuga buhoraho bwa 42% ndetse na G3 (icyiciro cy'ibangamiraburanga). Ku wa 07/06/2021 yasabye indishyi muri BK Insurance yishingiye ikinyabiziga, agezaye dosiye yose, BK Insurance imutumaho ngo abonane na muganga wayo, babonana ku wa 15/06/2021, hanyuma ntiyahabwa ibisubizo, akomeza guhamagara umwishingizi ntiyagira icyo amubwira ariko nyuma yaje kumubwirwa ko bamusanganye ubumuga bwa 38% ariko ntibagira icyo bamubwira ku bijyanye n'icyiciro cy'ubumuga, ntiyanabarirwa n'indishyi zose za ngombwa, bituma aregera urukiko ngo ahabwe uburenganzira bwe. [2] Urukiko rwisumbuye rwa Musanze rwaregewe ku rwego rwa mbere rwemeje ko ikirego cya Niyogisubizo Clement gifite ishingiro, rutegeka Bank of Kigali Plc mu izina ry'Umuyobozi wayo guha Niyogisubizo Clement amafaranga 216.000Frw y'indishyi mbangamiraburanga, 432.000Frw y'indishyi z'ububare na 150.000Frw y'ibihombo binyuranye byakomotse ku mpanuka, bakanamusubiza 20.000Frws y'ingwate y'amagarama yatanze arega ku

rwego rwa mbere. [3] Niyogisubizo Clement ntiyishimiye imikirize y'urubanza, ajurira mu Rukiko Rukuru, urugereko rwa Musanze. Ahagarariwe na nyina Mukandutiye Beatrice, uyu nawe ahagarariwe na Me Havugimana Ignace, yavuze ko mpamvu zatumye ajurira ari izi zikurikira: Hari factures z'amafaranga yakoreshejwe yivuzwa urukiko rutasuzumye ngo ruyamugenere kandi zari muri dosiye; Urukiko ntirwamugeneye 650.000Frws y'igihembo cya Avocat kandi yarayasabye; Urukiko ntirwamugeneye 540.000Frws y'indishyi zo kubura umwaka w'amashuri; Urukiko rwakoze ikosa ry'imyandikire rwandika RADIANT aho rwagombaga kwandika BK Insurance (mu gika cya 16 cy'urubanza rwajuririwe), asaba ko rwazabikosora; [4] Me Havugimana Ignace yakomeje asaba urukiko kuzagenera Niyogisubizo Clement 500.000Frws y'igihembo cya Avocat mu bujirire.

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[5] Me Rubayiza Joseph ahagarariye BK Insurance yasubije ku mpamvu z'ubujirire za Niyogisubizo ku buryo bukurikira: Ibyo Niyogisubizo Clement avuga bya factures zitasuzumwe n'urukiko nta shingiro bikwiye guhabwa kuko bigaragara ko urukiko rwazisuzumye maze rugasanga nta shingiro zifite, rukaba rwaragennye indishyi mu bushishozi bwarwo; Ku byerekeye 650.000Frws y'igihembo cya Avocat uhagarariye Niyogisubizo yavuze ko kitagenwe ku rwego rwa mbere, ngo byatewe nuko urukiko rwasanze hari ibyo Niyogisubizo yaregeraga bimwe bifite ishingiro ibindi bidafite ishingiro, rugasanga hari n'ibyo BK Insurance yavuze bimwe byahawe ishingiro, ibindi ntibyaribabwaga, ari nayo mpamvu na BK itagenewe igihembo cya Avocat ; Ku byerekeye 540.000Frws y'indishyi zo kubura umwaka w'amashuri, ngo nta shingiro zikwiye guhabwa kuko, yavuze ko izi ndishyi zitwa iz'ibangamiraburamba mu kazi, Niyogisubizo rero akaba adakwiye kuzigenerwa kuko nta kazi yari afite; Ku byerekeye gukosora ahanditse RADIANT hakandikwa BK Insurance, ngo bizakosorwe kuko bigaragara ko habayeho kwibeshya mu myandikire; Ku byerekeye 500.000Frws y'igihembo cya Avocat mu bujirire, Me Rubayiza Joseph yavuze ko nta shingiro zikwiye guhabwa kuko bigaragara ko ibyemejwe n'urukiko ku rwego rwa mbere byose bifite ishingiro. Urukiko rugiye gusuzuma ibibazo bukurikira: Kumenya niba hari factures z'amafaranga yakoreshejwe kwa muganga zitabazwe mu kugenera Niyogisubizo Clement indishyi z'amafaranga yakoreshejwe ; Kumenya niba Niyogisubizo Clement yaragombaga kugenerwa igihembo cya Avocat kingana na 650.000Frws ku rwego rwa mbere ; Kumenya niba indishyi zo gutakaza umwaka w'amashuri Niyogisubizo Clement asaba zifite ishingiro ; Kumenya niba indishyi z'igihembo cya Avocat Niyogisubizo Clement asaba mu bujirire zifite ishingiro ; Kumenya niba gukosora ikosa ry'imyandikire ryakozwe mu cyemezo kijuririrwa, byasabwe na Niyogisubizo Clement, bifite ishingiro. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA: Kumenya niba hari factures z'amafaranga yakoreshejwe kwa muganga zitabazwe mu kugenera Niyogisubizo Clement indishyi z'amafaranga yakoreshejwe : [6] Ingingo ya 3 y'Itegeko No 15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganywa ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana. [7] Me Havugimana Ignace ahagarariye Mukankundiye Beatrice, umubyeyi wa Niyogisubizo Clement yavuze ko imwe mu mpamvu

zatumye ajurira aruko hari factures zigaragaza amafaranga yakoresheje kwa muganga zitatwaho

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mu kumugenera indishyi ku rwego rwa mbere. Yasobanuye ko hari facture ya 400.000Frws, iya 3.400Frws n'iya 950Frws, yose hamwe akaba 404.350Frws. [8] Me Rubayiza Joseph ahagarariye BK Insurance yavuze ko impamvu y'ubujurire ya Niyogisubizo nta shingiro ikwiye guhabwa kuko bigaragara ko urukiko rwasuzumye indishyi yasabaga maze rugasanga nta shingiro zifite, rukaba rwaragennye indishyi mu bushishozi bwarwo. [9] Mu gusesengura dosiye, urukiko rwasanze, mu gika cya 11, urukiko rwisumbuye rwa Musanze rwaravuze ko amafaranga yakoreshejwe kwa muganga ari 72.000Frws byonyine, nyamara uru rukiko rwasanze hari ibaruwa yo kuwa 18/10/2021 yanditswe na Maniriho Felicien, umubyeyi wa Niyogisubizo Clement, yandikira BK Insurance ayimenyesha facture y'amafaranga yakoreshejwe mu kuvuza Niyogisubizo Clement angana na 404.350Frws. Iriya baruwa kandi ikaba yari muri dosiye ubwo uru rubanza rwaburanwaga mu rukiko rwisumbuye rwa Musanze. [10] Hashingiwe ku bimaze kuvugwa mu gika kibanziriza iki no ku biteganywa n'iriya ngingo y'itegeko yavuzwe haruguru, urukiko rurabona abahagarariye Niyogisubizo Clement baragaragaje ibimenyetso bidashidikanywa by'amafaranga yakoreshejwe kwa muganga, kuba rero basaba kuyasubizwa bikaba bifite ishingiro. Kubera iyo mpamvu rero, urukiko rurabona BK Insurance igomba gusubiza Niyogisubizo Clement ariya mafaranga 404.350Frws yakoresheje yivuzwa, yiyongera ku yo yagenewe ku rwego rwa mbere. Kumenya niba Niyogisubizo Clement yaragombaga kugenerwa igihembo cya Avocat ku rwego rwa mbere: [11] Ingingo ya 111 y'Itegeko No22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe. [12] Uhagarariye Niyogisubizo Clement ari imbere y'uru rukiko yavuze ko indi mpamvu yatumye ajurira aruko ku rwego rwa mbere urukiko rutamugeneye igihembo cya Avocat cya 650.000Frws kandi yari yaraburanye ahagarariwe na Avocat. [13] Me Rubayiza Joseph ahagarariye BK Insurance yavuze ko iriya mpamvu y'ubujurire ya Niyogisubizo Clement nta shingiro ikwiye guhabwa kuko impamvu urukiko rutamugeneye igihembo cya Avocat aruko hari ibyo yaburanaga urukiko rwasanze bifite ishingiro, ibindi bidafite ishingiro. [14] Mu gusesengura dosiye, urukiko rwasanze mu nyandikomvugo y'iburanisha mu rukiko rwisumbuye rwa Musanze, bigaragara ko ku rutonde rw'ibyo yasabaga urukiko kugenera uwo ahagarariye, uhagarariye Niyogisubizo Clement yaravuzemo n'igihembo cya Avocat kingana na 650.000Frws, uhagarariye BK Insurance asubiza ko igihembo uhagarariye Niyogisubizo asaba ari ikirenga kuko nta mirimo idasanzwe yakoze, asaba urukiko kubagenera 500.000Frws. Nyamara mu kugenera Niyogisubizo Clement indishyi, urukiko ntacyo rwigeze ruvuga ku gihembo cya Avocat. Ibi bigaragaza ko mu gusesengura dosiye, urukiko rwibagiwe kugira icyo ruvuga ku gihembo urega yari yasabye, bikaba rero bigomba gukosorwa mu bujurire. [15] Hashingiwe ku bimaze kuvugwa mu gika kibanziriza iki no ku

biteganywa n'iriya ngingo ya 111 yavuzwe haruguru, urukiko rurabona kuba Niyogisubizo Clement asaba kugenerwa igihembo cya Avocat bifite ishingiro kuko byagaragaye ko ku rwego rwa mbere yari ahagarariwe na Avocat, akaba rero agomba kugenerwa igihembo cya Avocat kingana na 500.000Frws kigenwe hashingiwe ku biteganwa n'ingingo ya 34 y'amabwiriza ateganya

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ibihembo mbonera by'abavoka, kuko nta kimenyetso batanze cy'uko Avocat wamuhagarariye yahembwe 650.000 Frws. Kumenya niba indishyi zo gutakaza umwaka w'amashuli Niyogisubizo Clement asaba zifite ishingiro : [16] Ingingo ya 19 (igika cya nyuma) y'Iteka rya Perezida No 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga iteganya ko Ibangamira ry'uburambe mu kazi: gutakaza amahirwe y'akazi umunyeshuri wo mu mashuri yisumbuye, wo mu mashuri y'imyuga, wo mu mashuri makuru cyangwa andi angana na yo ashobora kwizera ; gutakaza uburambe mu kazi ku muntu wari usanzwe akora. Ku wa mbere, amafaranga agomba gutangwa ntashobora kurenga umushahara w'umwaka muto ntarengwa wemewe n'amategeko. Ku wa kabiri, ayo mafaranga agarukira gusa ku mezi atandatu y'umusaruro abazwe kandi atarengeje inshuro 30 umushahara w'umwaka muto ntarengwa wemewe n'amategeko. [17] Me Havugimana Ignace ahagarariye Niyogisubizo Clement yavuze ko indi mpamvu yatumye bajurira aruko urukiko rutamugeneye indishyi zo gutakaza umwaka w'amashuli kandi baragaragaje ikimenyetso kigaragaza ko hari umwaka umwe Niyogisubizo Clement yatakaje bitewe n'iriya mpanuka yamukomerekeje bikomeye, asaba indishyi zingana na 540.000Frws. [18] Uhagarariye BK Insurance yavuze ko indishyi zo gutakaza umwaka w'amashuli Niyogisubizo Clement asaba zitwa iz'ibangamira ry'uburambe mu kazi, Niyogisubizo rero akaba adakwiye kuzigenerwa kuko nta kazi yari afite. [19] Mu gusesengura dosiye, urukiko rwasanze Niyogisubizo Clement yaravutse kuwa 07/08/2010, akaba ari umwana muto wari ukiga mu mashuri abanza, ku buryo ngo ubwo yakoraga impanuka byatumye asibira mu mwaka wa kabiri w'amashuri abanza. [20] Hashingiwe ku bimaze kuvugwa mu gika kibanziriza iki, hagashingirwa no ku biteganywa n'iriya ngingo y'itegeko yavuzwe haruguru, urukiko rurabona Niyogisubizo Clement wigaga mu mashuri abanza atarebwa n'ibiteganywa n'iriya ngingo ya 19 y'Iteka rya Perezida kuko havugwamo abanyeshuli batakaje amahirwe y'akazi, ariko ni uguhera ku banyeshuli b'amashuri yisumbuye kuzamura, bigaragara rero ko Niyogisubizo, nubwo yasibiye bitewe n'impanuka yagize, nta ndishyi akwiye kugenerwa kuko ririya Teko rya Perezida ridateganya abanyeshuli b'amashuri abanza mu bagomba kugenerwa indishyi . Kumenya niba gukosora ikosa ry'imyandikire ryakozwe mu cyemezo kijuririrwa, byasabwe na Niyogisubizo Clement bifite ishingiro : [21] Ingingo ya 141 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko Uwifuza ko urubanza rukosorwa cyangwa rusobanurwa kandi rwarajuririwe, abigaragaza mu mwanzuro, Urukiko rwajuririwe rukabisuzumira hamwe n'izindi ngingo z'ubujurire. Muri icyo gihe Urukiko rwo hasi ntiruba rugifite ububasha bwo gukosora ayo makosa. [22] Uhagarariye Niyogisubizo Clement yasabye urukiko gukosora ikosa ry'imyandikire ryakozwe mu rubanza rwajuririwe, aho mu cyemezo cy'urukiko, urukiko rwanditse RADIANT mu cyimbo cyo kwandika BK Insurance. [23]

Uhagarariye BK Insurance yavuze ko bigaragara ko koko habayeho ikosa ry'imyandikire, asaba urukiko kuzarikosora.

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[24] Mu gusesengura dosiye, urukiko rwasanze mu gika cya 16 cy'urubanza rwajuririwe, handitsemo ko urukiko rutegetse RADIANT Insurance Company Ltd gusubiza Niyogisubizo Clement 20.000Frws y'ingwate y'amagarama atanga ikirego. Aha rero bigaragara koko ko habayeho ikosa mu myandikire kuko ababuranyi mu rubanza rwajuririwe ari Niyogisubizo Clement na BK Insurance, si RADIANT Insurance Company Ltd. Iri kosa rero rikaba rigomba gukosorwa maze ahanditse RADIANT Insurance Company Ltd hakandikwa BK Insurance. Kumenya niba indishyi z'igihembo cya Avocat Niyogisubizo Clement asaba mu bujurire zifite ishingiro : [25] 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 iteganya ko Ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyi ikirego cy'iremezo cyaba kitakiriwe. [26] Me Havugimana Ignace ahagarariye Niyogisubizo Clement yasabye urukiko kumugenera 500.000Frws y'igihembo cya Avocat. [27] Me Rubayiza Joseph ahagarariye BK Insurance yavuze ko nta shingiro zikwiye guhabwa kuko bigaragara ko ibyemejwe n'urukiko ku rwego rwa mbere byose bifite ishingiro. [28] Hashingiwe ku byavuzwe haruguru byose, byagaragaye ko mu ngingo z'ubujurire zinyuranye zatanze na Niyogisubizo Clement, harimo izifite ishingiro ariko harimo n'ingingo idafite ishingiro, bivuga ko hari ibyo yatsinze n'ibyo yatsinzwe. Kubera iyi mpamvu rero, igihembo cya Avocat asaba gusubizwa na BK Insurance akaba adashobora kugihabwa. [29] Ibimaze kuvugwa mu gika kibanziriza iki biri mu mujyo umwe n'ibyemejwe n'urukiko rw'Ikirenga mu rubanza RCAA0049/14/CS rwaciwe kuwa 25/11/2016 (reba igika cya 36, urupapuro rwa 12), haburana SORAS AG LTD na Umuhiza Pacifique, Izabayo Sylvie na Niyoyita Jacques, aho rwemeje ko nta muburanyi ukwiye guhabwa indishyi z'ikurikiranarubanza ndetse n'amafaranga y'igihembo cya Avocat kuko buri ruhande rufite ibyo rutsindiye n'ibyo rutsindiwe. III. ICYEMEZO CY'URUKIKO [30] Urukiko rwemeje ko ubujurire bwa Niyogisubizo Clement ahagarariwe n'umubyeyi we Mukandutiye Beatrice, bufite ishingiro kuri bimwe. [31] Urukiko rutegetse BK Insurance guha Niyogisubizo Clement indishyi ziteye zitya: 216.000Frw y'indishyi mbangamiraburanga; 432.000 Frw y'indishyi z'ububabare; 150.000Frw y'ibihombo binyuranye byakomotse ku mpanuka. 20.000 Frws y'ingwate y'amagarama yarishye atanga ikirego ku rwego rwa mbere; 404.350 Frws yakoreshejwe mu kwivuza (agenwe mu bujurire);

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500.000 Frws y'igihembo cya Avocat ku rwego rwa mbere (agenwe mu bujurire). [32] Urukiko rutegetse ko imikirize y'urubanza RC00096/2021/TGI/MUS rwaciwe n'urukiko rwisumbuye rwa Musanze kuwa 08/07/2022, ihindutse kuri bimwe. [33] Urukiko rutegetse BK Insurance gusubiza uhagarariye Niyogisubizo Clement 40.000Frws y'ingwate y'amagarama yatanze ajurira.

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