

RWANDA / JUDGMENT

## REG v CYUSA

RCA 00042/2022/HC/NYZ

COURT

High Court

DECIDED

28 July 2023

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RCA 00042/2022/HC/NYZ

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## REG v CYUSA

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## Text

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RWANDA ENERGY GROUP Ltd v CYUSA N'ABANDI [Rwanda URUKIKO RUKURU - RCA 00042/2022/HC/NYZ (Badara, P.J.) 28 Nyakanga 2023] Amategeko agenga imanza z'imbonezamubano – Uburyozwe – Uryozwa indishyi z'ikintu cyateje impanuka - Mu gihe ikintu cyabaye inkomoko y'impanuka ushinze ku kirinda niwe ugomba kuryozwa indishyi. Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Huye abarega bavuga ko ubwo abana bari ku ishuri rya Ecole Technique Saint Kizito bari mu gikorwa cya Pratique habereye impanuka y'amashanyarazi yahitanye umwana witwa Kwizera ibyo bikaba byaratewe nuko hari insinga z'amashanyarazi z'ikigo cy'amashanyarazi (REG) zari zaramanutse ntizasubizwa mu mwanya wazo. Abarega bose uko ari batanu basaba indishyi zitandukanye zo kubura umwana wabo. Urukiko rwemeje ko bahabwa indishyi zitandukanye ariko REG ntiyisihimira imikirize y'urubanza irujuririra mu Rukiko Rukuru ivuga indishyi zagombaga kuryozwa ikigo cy'ishuri. Ururukiko Rukuru rwasuzumye ibibazo birimo icyo kumenya umuntu waryozwa indishyi zikomoka ku rupfu rwa Kwizera wishwe n'amashanyarazi no kumenya niba urukiko rwisumbuye rwa Huye rwarategetse indishyi z'akababaro z'umurengera nta tegeko rushingiyeho. REG ivuga ko ikigo mbere y'uko kijyana abana kwigira aho hantu cyagombaga kubanza kumenya ko nta nkomyi

ihari. Ikomeza isobanura ko mbere y'uko iyo mpanuka iba REG itari yarigeze imenya koi zo nsinga zamanutse zikava mu mwanya wazo ko ahubwo bishoboka ko zaba zaramanuwe na Kwizera wazikojejeho igiti yari afite bigateza impanuka yamuhitanye. Ikomeza ivuga ko indishyi zategetswe n'Urukiko Rwisumbuye ziri umurengera kandi zidafite aho zishingiye haba ku itegeko cyangwa se ku manza zaciwe. Ecole Technique Saint Kizito ivuga ko ikigo cy'ishuri nta makosa cyakoze ku buryo cyaryozwa indishyi kubera ko raporo y'umugenzacyaha yasobanuye ko icyateye urupfu ari uko insinga za haute tension zaregutse zikava mu mwanya zarimo zigira hasi metero ebyiri. Abaregwa bavugaga ko nkuko urukiko rwisumbuye rwabivuze, ku kibazo kijyanye n'indishyi, nta tegeko ryihariye rigena uburyo indishyi z'impanuka y'umuriro w'amashanyarazi zitangwa, Urukiko rwagennye indishyi rugendeye ku bushishozi bwawo bityo zikaba atari umurengera ko ahubwo zakongerwa kuko ari nkeya ugereranije n'ibyo Kwizera yari uzamarira umuryango we. Incamake y'icyemezo: Mu gihe ikintu cyabaye inkomoko y'impanuka ushinze ku kirinda niwe ugomba kuryozwa indishyi bityo kuba umwana yarakojejeho icyuma yari afite ku rusinga rw'amashanyarazi agahita afatwa n'umuriro bikamuviramo gupfa bigaragara ko urwo rupfu rwatewe n'amashanyarazi kandi iyo urwo rusinga rutareguka ngo rwegere hasi ntabwo aba yarafashwe n'ayo mashanyari. Rero bigaragara ko habayeho uburangare bwa REG iratakurikiranye ibintu byayo bikagera aho umuriro ufata umunyeshuri ikaba igomba kuryozwa indishyi. Ubujurire bwatanzwe nta shingiro bufite; Imikuriza y'urubanza RC 00056/2021/TGI/HYE ntabwo ihundutse.

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Amategeko yashingiweho: Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, ingingo ya 9; Code Civil Francais, ingingo ya 1242. Imanza zifashishijwe: RadA0018/08/CS rwaciwe n'urukiko rw'Ikirenga kuwa 17/07/2009 aho ELECTROGAC yaburana na Mukamurara Ereda. Urubanza I. IMITERERE Y'URUBANZA [1] Kuwa 3/12/2020 ubwo abana bari ku ishuri rya Ecole Technique Saint Kizitobari mu gikorwa cya Pratique habereye impanuka y'amashanyarazi yahitanye umwana witwaga Kwizera Aime Fabrice wari mu mwaka wa gatandatu mu ishuri ry'ubwubatsi ibyo bikaba byarabaye biturutse kukuba hari insinga z'amashanyarazi z'ikigo cy'amashanyarazi (REG) zari zaramanutse ntizasubizwa mu mwanya wazo nk'uko byemejwe na raporo y'ubugenzacyaha. Abaregwa aribo Vuningoma Theophile na Mukamana Alphonsine bakaba ababyeyi ba nyakwigendera, naho Umutoniwase Sendrine, Cyusa Remy Kevin na Uwamahoro Ange Kevine bakaba abavandimwe ba nyakwigendera basaba ko bahabwa indishyi zose hamwe zingana na 89.260.000 frw. [2] Me Mukwende Milimo Olivier uhagarariye PRIME INSURANCE avugaga ko basanga indishyi nta shingiro zifite kuko zishingiye ku itegeko ryavuyeho kandi ntaho bigaragara uko abaregwa babaze ayo mafaranga n'ingingo y'itegeko bashingiyeho. PRIME INSURANCE irasaba Urukiko gutegeka ko hashingirwa ku masezerano yo kuwa 28/10/2020 yagiranye na EUCL ari nayo ibahuza, bityo bakaza gufata Miliyoni eshanu (5, 000, 000 Frws) y'indishyi. [3] Me Uwamahoro Marie Grace avugaga ko Ecole Technique Saint Kizitoariryo ryakoze amakosa yateye urupfu kuko mbere yo kujyana abanyeshuri aho bakoreraga pratique ryagombaga kubanza kujya gusuzuma ko nta cyateza ikibazo/impanuka gihari, mu gihe rwasanga hari icyateza ibyago gihari, kigahindura aho

kigishiriza, dore ko hari hanze y'ikigo, ndetse cyari gifite na obligation d' information yo gusobanurira abanyeshuri uko bakwiye kwitwara iruhande rw'amashanyarazi, uko bagomba gukoresha ibikoresho babahaye ku buryo bidateza impanuka kuko nicyo cyahaye Kwizera icyuma kirekire cyafashe ku nsinga zari hejuru muri metero enye. Uretse n'ibyo kandi, mu gihe gisanze koko hari insinga zamanutse, rikaba ryaragombaga no kumenyesha REG ko hari insinga zaba zamanutse kugira ngo zizamurwe, mbere yuko rishorayo abanyeshuri, ariko ibyo ntabyakozwe, kuko REG yamenye ikibazo cy'insinga zivugwa ko zamanutse, ubwo habaga impanuka yateye urupfu rwa Kwizera. REG rero igasanga insinga zayo zari hejuru ahubwo, kumanuka bigaragara ko zamanuwe n'icyuma cyashyizweho n'abanyeshuri bari muri pratique kuko mbere y'impanuka yahitanye Kwizera, ntawari warigeze amenyesha REG ko hari insinga zayo zamanutse yaba umuturage, inzego z'ibanze guhera ku mudugudu cyangwa se ishuri ryari rigiye kuhakoreshereza pratique. Kubw' ibyo rero bagasanga, uwaryozwa indishyi zikomoka ku rupfu rwa Fabrice nta wundi uretse ishuri rya Ecole Technique

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Saint Kizitoyigagamo kuko niryo ryamushoye ku rupfu rimujyana ahari insiga z'amashanyarazi hanze y'ikigo, maze rukamuha icyuma kirekire, ndetse ntirimusobanurire ngo rimwereke aho atagomba kugera, cyangwa ibyo atagomba gukora kugira ngo hirindwe impanuka. Bagasaba ko urukiko rwakwemeza ko indishyi zigomba kwishyurwa ari izikubiye mu masezerano y'ubwishingizi zingana na 5,000,000 frw PRIME yari yabageneye bakanga kuyafata. [4] Mu rubanza RC 00056/2021/TGI/HYE rwaciye kuwa 19/05/2022 n'urukiko rwisumbuye rwa Huye, rwategetse ko RWANDA ENERGY GROUP Ltd guha umuryango wa Vuningoma Theophile indishyi z'akababaro zingana n'amafaranga y'u Rwanda miliyoni cumi n'eshanu (15.000.000 frws), indishyi z'ibyakoreshejwe mu gushyingura zingana n'amafaranga y'u Rwanda ibihumbi magana atanu (500.000 frws), indishyi z'ikurikiranarubanza zingana n'amafaranga y'u Rwanda ibihumbi magana atandatu na makumyabiri (620.000 frws). Rutegeka PRIME INSURANCY COMPANY yishyingiye RWANDA ENERGY GROUP Ltd guha umuryango wa Vuningoma Theophile indishyi z'akababaro zingana n'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 frws). [5] Mu gufata icyemezo, urukiko rwasanze REG yaragize uburangare nk'uko n'abakozi bayo babyivugiye aho insinga zamanutse zikava mu mwanya wazo ntibaze kuzisubiza mu mwanya wazo kandi biri mu nshingano zabo, bikageza aho biteza impamuka Kwizera Aime Fabrice yamuviriyemo urupfu, akaba ari bwo baza kuzimanika kuko zateje ikibazo kandi baragombaga kubikora mbere ibyo bibazo byabaye ntibibe, bityo ko ibi biganisha ku kuryozwa indishyi zituruka ku burangare n'ubuteganye buke REG yagize bwateye impamuka Kwizera Aime Fabrice yamuviriyemo urupfu. [6] Urukiko rwasanze abarega bakwiye indishyi z'akababaro batewe no kubura umwana ku babyeyi be ndetse no kubura umuvandimwe ku bavandimwe be, ariko zigacibwa REG kubera uburangare kuko umuntu ataryozwa ibyangiritse biturutse ku bikorwa bye bwite gusa, ahubwo anaryozwa ibyangiritse kubera umwete we muke cyangwa ubwitonzi bwe buke, urukiko rukaba rukwiye kuzigena mu bushishozi bwarwo, maze zigatangwa mu buryo bukurikira: indishyi z'akababaro zitangwa na REG zingana na 20.000.000 frws zikubiyemo 15.000.000 frw igomba gutanga, hiyongeraho n'indishyi z'akababaro za 5.000.000 frw zigomba gutangwa na PRIME

Insurance yishingiye REG nk'uko bigaragara mu masezerano bagiranye. Abarega bafite uburenganzira bwo gusubizwa amafaranga bakoresheje mu gushyingura kuko nta yindi mpamvu yatumye bayasohora uretse ingaruka zituruka ku impanuka yateje urupfu yatewe n'uburangare bwa REG igomba kugira uburyozwe mu kwishyura ibyatewe n'iyi mpanuka byose bityo REG ikaba igomba kwishyura mu bushishozi bw'urukiko amafaranga 500.000 frws yakoreshejwe mu muhango wo gushyingura. [7] Mu myanzuro y'ubujurire no mu miburanire, uhagarariye REG yagobokesheje ku gahato Ecole Technique Saint KizitoSave kugirano abe ariyo iryozwa indishyi zikomoka ku rupfu rwa Kwizera Fabrice ndetse rugatega ko ariyo iryozwa indishyi nkuko byasobanuwe na REG. [8] Uhagarariye REG avuga ko Urukiko rwasesenguye nabi ubuhamya bwatanze n'abakozi ba REG kuko ntabwo bigeze batanga ubuhamya bavuga ko insiga zari zaramanutse mbere yuko impanuka iba, ahubwo icyo bemeje ni uko baje kuzizamura impanuka yaramaze kuba, ko kugira ngo hamenyekane ko impanuka yatewe na REG, Urukiko rwagombaga gusuzuma ibi bikurikira: Icyamba mbere : kuba mbere y'uko impanuka iba, nta kimenyetso icyo aricyo cyose cyaba ibaruwa

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y'ikigo cyangwa undi wese kuva ku muturage kugera ku nzego z'ibanze waba wari warigeze umenyesha REG ko insinga zamanutse, REG yemeza ko mbere y'impanuka, insiga zari mu mwanya wazo, ahubwo zamanuwe n'igiti cyari giftwe na Kwizera Fabrice, akaba ari nacyo cyangije icyuma cyafataga izo nsinga. Kuri iyi ngingo ubuhamya bw'abakozi ba REG bemeje gusa ko baje kuzamura insinga nyuma y'impanuka, ndetse nk'uko REG yabisobanuye, bikaba bigaragara ko izo nsinga ahubwo zamanuwe n'icyo cyuma Fabrice yari afite aricyo cyafashwe n'amashanyarazi akamuviramo urupfu. [9] Icyamba kabiri: kuba ikigo Kwizera yigagaho, mbere yo kubajyana ngo bahakorere pratique kitarigeze kimenyesha REG ko hari insiga zayo zamanutse bityo ko yaza kuzizamura, cyangwa se ngo gihindure aho kigishiriza pratiques, dore ko hari hanze y' ikigo. [10] Icyamba gatatu: kuba nyakwigendera nawe yakoze ikosa ryo kuzamura icyuma ku nsinga kandi bagenzi be bari bamubujije ariko abirengaho agikoza ku rusinga bimuviramo urupfu. Uhagarariye REG akabishingira ku mategeko ndetse n'inyandiko z'abahanga aho avuga nk'igitabo cya Alexandre Dumery cyitwa faute de victime en droit de la responsabilite civile aho avugamo ko ikosa ry'uwangirijwe n'impanuka (victim) rituma adahabwa indishyi (La faute de la victime est une cause d'exonération de la responsabilité civile). [11] Icyamba kane: Kuba impanuka yarabereye hanze y'ikigo, ibi byerekana neza uruhare (amakosa) rw'ikigo mu rupfu rwa Kwizera Fabrice, aho cyajyanye abana barimo Kwizera gukorera pratiques ahantu hashobora guteza ibyago abanyeshuri. Icyamba gatanu: kuba mu cyemezo cyo gushyingura dossier, havugwamo amabaruwa yanditswe n'abaregwa ndetse n'ikigo aho Vuningoma na bagenzi be bemeraga ko ikosa ari iry'ikigo aba ari nacyo baka indishyi ndetse n'ibaruwa yanditswe n'ikigo ibasaba konti ibishyuriraho indishyi zasabwe. Nta kimenyetso kigaragaza ikosa REG yakoze ryateje urupfu, ahubwo ikigo aricyo cyajyanye abanyeshuri hanze ahantu hari inzira z'amashanyarazi ndetse rukabona ko mbere yuko impanuka yahitanye Kwizera iba, insiga za REG nta kibazo zari zifite kuko iyo kiza kuba gihari, kiba cyaramenyeshwe REG mbere, cyangwa se ishuri ntirijyane abanyeshuri ahantu ryabonye ko habateza ibyago. REG igasaba Urukiko Rukuru kwemeza ko

Ecole Technique Saint Kizitode Save ariyo yakoze ikosa ryateje impanuka, bityo niba hari indishyi zikwiye gutangwa, akaba ariyo ikwiye kuziryoza. [12] Uhagarariye REG avuga ko Urukiko rwategetse ko abaregwa bishyurwa indishyi z'akababaro zingana na 20.000.000 Frw, ntirwavuga icyo rushyingiyeho rutegeka izo ndishyi z'umurenge zingana gutyo mu gihe REG yari yagaragaje imanza zitandukanye zigaragaza indishyi zitangwa ku mpanuka y'amashyanyarazi, nk'urubanza RCA 0359/15/HC/KIG rwaburanagamo Ritongo Mining Company na Habyarimana Innocent na bagenzi be aho rwategetse ko indishyi z'akababaro zikwiye ari 450.000 Frw kuri buri muntu. Ariko Urukiko kuba rutarazishingiyeho ahubwo rugatanga indishyi z'umurenge, rutanagaragaje ikindi rushyingiyeho, akavuga ko ari inenge iri muri uru rubanza bityo ikwiye gukosorwa n'Urukiko Rukuru maze rugategeka ko indishyi za 450.000 Frw kuri buri muntu mu gihe byagaragara ko hari indishyi REG ikwiye kuryozwa, kandi nazo zikushyirwa n'umwishingizi wayo ariwe PRIME INSURANCE. [13] Uhagarariye REG avuga ko Urukiko rwategetse ko REG yishyura amafaranga angana na 500.000 Frw ajyanye n'ibyakoreshejwe mu gushyingura, ariko ayo mafaranga yatanze nayo

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ntakwiye gutangwa kuko nta bimenyetso yagaragarijwe. Ibi akabishingira ku ngingo ya 12 y'itegeko no 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. [14] Uhagariye umuryango wa Vuningoma Theophile na bagenzi be biregura bavuga ko basaba indishyi ikigo cy'amashyanyarazi REG zikomoka ku mpanuka y'amashanyarazi yateje urupfu rw'umwana wabo Kwizera Aime Fabrice yari iturutse ku makosa ya REG nk'uko byemejwe na Raporo ya police yakozwe nyuma y'urupfu, inyandiko z'abatangabuhamya ndetse n'abakozi ba REG baje gusubizaho amasinga y'amashanyarazi yateje iyo mpanuka. Vuningoma Theophile na bagenzi be basanga ikigo cy'amashanyarazi REG gikwiye gutanga indishyi z'amakosa yayo bityo bakaba basanga atari ngombwa ko Ecole Technique Saint Kizito de Save yagobokeshwa kuko basanga nta makosa ifite kuko insinga zateje impanuka yahitanye Kwizera Aime Fabrice ari iza REG. [15] Uhagarariye Ecole Technique Saint Kizito avuga ko nta makosa yakozwe n'ikigo cy'ishuri ku buryo yaryozwa indishyi zituruka ku rupfu rwa Kwizera Aime Fabrice wishwe n'amashanyarazi kubera ko raporo y'umugenza cyaha yo kuwa 3/12/2020 mu nyandiko yise inyandikomvugo y'ahabereye icyaha yasobanuye ko icyateye urupfu ari uko insinga za haute tension zaregutse zikava muri position zarimo zirareguka maze zimanukaho metero ebyiri ukurikije aho zakagombye kuba zari ziri zigira hasi zisatira umuhanda ngo ibyo bikaba byaratewe n'icyuma cyitwa CROSS ARM cyari cyaravunitse kandi izo nsinga nicyo zibazifasheho kubera ko rero cyari cyaravunitse byatumye insinga zimanuka. Ikindi umugenzacyaha akomeza avuga ko uburyo insinga zambukirany umuhanda za korewe installation nabi. Ibyo bikorwa byari biri mu nshingano za REG niyo yagomba kumenya niba iyo CROSS ARM yaravunitse cyangwa ikamenya niba insinga za haute tension ziri mu mwanya wazo. Kuba itarabikoze ikaba igomba kubiryoza cyane ko ari ibikorwa byayo ntawundi muntu wemerewe gukora kubikorwa bya REG. [16] Uhagarariye Ecole Technique Saint Kizito akomeza avuga ko hari n'abakozi bayo babajijwe mubugenzacyaha harimo uwitwa

Ndayambaje Jean Pierre ukora muri REG nka Region Foreman ushinze ibintu bya Technique mu Ntara y'amajyepfo we yemeje ko baje ku manika insinga zari zaramanutse mu murenge wa Save aho uwo mwana yaguye baraje kuzimanika ku wa 27/2/2021 akavuga ko babisabwe n'umuyobozi wa REG kugirango baze kuzimanika akomeza avuga ko bahageze bagasanga urwo rutsinga rwaramanutse bitewe n'icyuma cyitwa CROSS ARM cyari cyaravunitse bigatuma urwo rusinga rwigira hasi. Undi mukozi wa REG wabajijwe witwa Nzamutuma Gad akaba nawe avuga ko basanze hari icyuma bita FIRE ARM cyari cyaragiye hasi maze bigatuma urusinga rumanuka rukagera muri metero enye uvuye kubutaka kandi rwakagombye kuba ruri muri metero esheshatu. REG ariyo yari ifite inshingano zo gucunga ibyo bikorwa byayo ikareba ahari ikibazo ikagikemura kuba rero itarabikoze ikaba igomba kubiryoza. [17] Kubijyanye n'ibyo REG ivuga ko Ecole Technique Saint Kizito yajyanye abanyeshuri ahantu hashobora gutera impanuka nta kuri kurimo kuko kuva 30 Gicurasi 2005 ishuri niho ryakoresherezaga pratique kugeza n'ubu kandi nta kibazo cyigeze kiba kuko installation ya REG yari imeze neza nukuvuga insinga za haute tension zari muri metero esheshatu aho kuba muri metero enye. Kuvuga ko ishuli ryahaye abanyeshuri ibyuma birebire nta kuri kurimo cyane staff

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reading niyo bakoresha kuva ishuri ryashingwa kugeza ubu ntaho bihuriye n'ibyo uhagarariye REG avuga ko ikigo cyahaye abanyeshuri ibyuma birebire kandi ntagaragaza n'ikimenyetso kigaragaza ko abanyeshuri bari bahawe ibyuma birebire usibye kubivuga mu magambo cyane ko inyandiko mvugo y'umugenzacyaha wageze ahabereye icyaha avuga ko yahasanze staff reading inkoni abanyeshuri bakoresha muri pratique. [18] Kuvuga ko Ecole Technique Saint Kizito yigisha ibijyanye n'amashanyarazi kandi ifite abarimu b'inzobere mu bijyanye n'amashanyarazi ibinabyo si impamvu yatuma ishuri riryoza indishyi kuko Kwizera Aime Fabrice witabye Imana mu gihe yari muri pratique yari kumwe n'umwalimu wigisha iby'ubwubatsi kandi nuwo mwalimu ntabwo yari afite ubumenyi bwo ku menya niba iza nsinga za haute Tension zaravuye mu mwanya wazo kuko iza nshingano zo kubimenya byari ibya REG n'abakozi bayo. Kuba rero Ishuri rifite abalimu mubijyanye n'amashanyarazi ntabwo abo barimu bashinze kujya kureba ibikorwa by'amashanyarazi bya REG bo inshingano zabo n'ukureba ibijyanye n'amashanyarazi ari mu kigo imbere ni ukuvuga kuva kuri compteur kuza muri installation zo mu kigo gusa kandi ntabwo Kwizera yishwe n'umuriro wo mu kigo imbere. Naho ibyo REG ivuga ko ishuli ryemeye amakosa ntaho ishuri ryigeze ryemera amakosa kuko umuriro wishe Kwizera ni REG yari ifite inshingano yo kuwugenzura. Uhagarariye Ecole Technique Saint Kizito akaba asanga Ecole Saint Kizito de Save itari kugobokeshwa ku gahato muri uru rubanza kuko ntakosa yakoze cyane nkuko babisobanuye haruguru bakaba basanga ubujurire bwa REG nta shingiro bufite bakaba basaba ko hagumaho icyemezo cy'urukiko rwisumbuye kubijyanye n'ugomba kuryozwa indishyi. [19] Me Rubayiza Fikirini Michel uhagarariye abaregwa avuga ko umucamanza yashingiye ku ngingo ya 9 CPCCSA anabisobanura neza avuga ko ku kibazo kijyanye n'indishyi nta tegeko specifique uretse irya assurance umucamanza yagennye indishyi agendeye ku ngingo ya 9 CPCCSA bemeranywaga nawe icyo batemeranyijweho ni ingano y'indishyi yabageneye ari nayo mpamvu basaba ko zakongerwa mu Rukiko Rukuru. Indishyi batanze atari umurenge hagendewe ku zindi manza

zagiye zicibwa, indishyi bagenewe ni nke ahubwo ugereranyije n'urupfu rw'umwana Kwizera. Ibvugwa na REG nta shingiro bifite ahubwo umuryango wa Kwizera warahawe amafranga make ugereranyije n'ibyo uyu mwana yari kuzamarira umuryango we. Kuvuga ko nta tegeko cyangwa ibyemezo by'inkiko byashingiweho sibyo kuko umucamanza yagendeye ku ngingo ya 9 CPCCSA yashingiye ku mvugo z'abahanga. Izo ndishyi ni REG igomba kuzitanga kandi zikongerwa nk'uko byasobanuwe haruguru. [20] Ibibazo bigiye gusuzumwa muri uru rubanza ni ibi bikurikira: a) Kumenya umuntu waryozwa indishyi zikomoka ku rupfu rwa Kwizera Fabien wishwe n'amashanyarazi. b) Kumenya niba urukiko rwisumbuye rwa Huye rwarategetse indishyi z'akababaro z'umurengera nta tegeko cyangwa ibyemezo byafashwe n'inkiko rushingiyeho. c) Kumenya niba hari izindi ndishyi zatangwa muri uru rubanza. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA a) Kumenya umuntu waryozwa indishyi zikomoka ku rupfu rwa Kwizera Fabien wishwe n'amashanyarazi.

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[21] Uhagarariye REG yagobokesheje ku gahato Ecole Technique Saint Kizito Save kugirano abe ariyo iryozwa indishyi zikomoka ku rupfu rwa Kwizera Fabrice ndetse rugategeka ko ariyo iryozwa indishyi. [22] Uhagarariye REG avuga ko Urukiko rwasesenguye nabi ubuhamya bwatanzwe n'abakozi ba REG kuko ntabwo bigeze batanga ubuhamya bavuga ko insiga zari zamananutse mbere yuko impanuka iba, ahubwo icyo bemeje ni uko baje kuzizamura impanuka yaramaze kuba, ko kugira ngo hamenyekane ko impanuka yatewe na REG, Urukiko rwagombaga gusuzuma ibi bikurikira: Icyamba mbere : kuba mbere y'uko impanuka iba, nta kimenyetso icyo aricyo cyose cyaba ibaruwa y'ikigo cyangwa undi wese kuva ku muturage kugera ku nzego z'ibanze waba wari warigeze umenyesha REG ko insiga zamananutse, REG yemeza ko mbere y'impanuka, insiga zari mu mwanya wazo, ahubwo zamanuwe n'igiti cyari gifitwe na Kwizera Fabrice, akaba ari nacyo cyangije icyuma cyafataga izo nsinga. Nk'uko REG yabisobanuye, bikaba bigaragara ko izo nsinga ahubwo zamanuwe n'icyo cyuma Fabrice yari afite aricyo cyafashwe n'amashanyarazi akamuviramo urupfu. Icyamba kabiri: kuba ikigo Kwizera yigagaho, mbere yo kubajyana ngo bahakorere pratique kitarigeze kimenyesha REG ko hari insiga zayo zamananutse bityo ko yaza kuzizamura, cyangwa se ngo gihindure aho kigishiriza pratiques, dore ko hari hanze y'ikigo. Icyamba gatatu: kuba nyakwigendera nawe yarakoze ikosa ryo kuzamura icyuma ku nsinga kandi bagenzi be bari bamubujije ariko abirengaho agikoza ku rusinga bimuviramo urupfu. Uhagarariye REG akabishingira ku mategeko ndetse n'inyandiko z'abahanga aho avuga nk'igitabo cya Alexandre Dumery cyitwa *faute de victime en droit de la responsabilite civile* aho avugamo ko ikosa ry'uwangirijwe n'impanuka (victim) rituma adahabwa indishyi (*La faute de la victime est une cause d'exoneration de la responsabilite civile*). Icyamba kane: Kuba impanuka yarabereye hanze y'ikigo, ibi byerekana neza uruhare rw'ikigo mu rupfu rwa Kwizera Fabrice, aho cyajyanye abana barimo Kwizera gukorera pratiques ahantu hashobora guteza ibyago abanyeshuri. Icyamba gatanu: kuba mu cyemezo cyo gushyingura dossier, havugwamo amabaruwa yanditswe n'abaregwa ndetse n'ikigo aho Vuningoma na bagenzi be bemeraga ko ikosa ari iry'ikigo aba ari nacyo baka indishyi ndetse n'ibaruwa yanditswe

n'ikigo ibasaba konti ibishyuriraho indishyi zasabwe. Nta kimenyetso kigaragaza ikosa REG yakozwe ryateje urupfu, ahubwo ikigo aricyo cyajyanye abanyeshuri hanze ahantu hari inzira z'amashyanyarazi ndetse rukabona ko mbere y'uko impanuka yahitanye Kwizera iba, insiga za REG nta kibazo zari zifite kuko iyo kiza kuba gihari, kiba cyaramenyeshwe REG mbere, cyangwa se ishuri ntirijyane abanyeshuri ahantu ryabonye ko habateza ibyago. REG igasaba Urukiko Rukuru kwemeza ko Ecole Technique Saint Kizitode Save ariyo yakozwe ikosa ryateje impanuka, bityo niba hari indishyi zikwiye gutangwa, akaba ariyo ikwiye kuziryoza. [23] Uhagariye abaregwa avuga ko basaba indishyi ikigo cy'amashanyarazi REG zikomoka ku mpanuka y'amashanyarazi yateje urupfu rw'umwana wabo Kwizera Aime Fabrice yari iturutse ku makosa ya REG nk'uko byemejwe na Raporo ya police yakozwe nyuma y'urupfu, inyandiko z'abatangabuhamya ndeste n'abakozi ba REG baje gusubizaho amasinga y'amashanyarazi yateje iyo mpanuka. Vuningoma Theophile na bagenzi be basanga Ikigo cy'amashanyarazi REG gikwiye gutanga indishyi z'amakosa yayo bityo bakaba basanga atari ngombwa ko Ecole Technique Saint Kizito de Save yagobokeshwa kuko basanga nta makosa ifite kuko insinga zateje impanuka yahitanye Kwizera Aime Fabrice ari iza REG. [24] Uhagarariye Ecole Technique Saint Kizito avuga ko ikigo cy'ishuri nta makosa cyakozwe ku buryo cyaryozwa indishyi zituruka ku rupfu rwa Kwizera Aime Fabrice wishwe

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n'amashanyarazi kubera ko raporo y'umugenzacyaha yo ku wa 3/12/2020 mu nyandiko yise inyandikomvugo y'ahabereye icyaha yasobanuye ko icyateye urupfu ari uko insinga za haute tension zaregutse zikava muri position zarimo zirareguka maze zimanukahwa metero ebyiri ukurikije aho zakagombye kuba zari ziri zigira hasi zisatira umuhanda ngo ibyo bikaba byaratewe n'icyuma cyitwa CROSS ARM cyari cyaravunitse kandi izo nsinga nicyo zibazifasheho kubera ko rero cyari cyaravunitse byatumye insinga zimanuka. Ikindi umugenzacyaha akomeza avuga ko uburyo insinga zambukiranywa umuhanda za korewe installation nabi. Ibyo bikorwa byari biri mu nshingano za REG niyo yagombaga kumenya niba iyo CROSS ARM yaravunitse cyangwa ikamenya niba insinga za haute tension ziri mu mwanya wazo. Kuba itarabikoze ikaba igomba kubiryoza cyane ko ari ibikorwa byayo nta wundi muntu wemerewe gukora kubikorwa bya REG. [25] Uhagarariye Ecole Technique Saint Kizito avuga ko hari n'abakozi bayo babajijwe mu bugenzacyaha harimo uwitwa Ndayambaje Jean Pierre ukora muri REG nka Region Foreman ushinze ibintu bya Technique mu Ntara y'amajepfo we yemeje ko baje ku manika insinga zari zaramanutse mu murenge wa Save aho uwo mwana yaguye baraje kuzimanika ku wa 27/2/2021 akavuga ko babisabwe n'umuyobozi wa REG kugirango baze kuzimanika akomeza avuga ko bahageze bagasanga urwo rutsinga rwaramanutse bitewe n'icyuma cyitwa CROSS ARM cyari cyaravunitse bigatuma urwo rusinga rwigira hasi. Undi mukazi wa REG wabajijwe witwa Nzamutuma Gad akaba nawe avuga ko basanze hari icyuma bita FIRE ARM cyari cyaragiye hasi maze bigatuma urusinga rumanuka rukaba rwaguye rukagera muri metero enye uvuye kubutaka kandi rwakagombye kuba ruri muri metero esheshatu. REG ariyo yari ifite inshingano zo gucunga ibyo bikorwa byayo ikareba ahari ikibazo ikagikemura kuba rero itarabikoze ikaba igomba kubiryoza. [26] Ku bijyanye n'ibyo REG ivuga ko Ecole Technique Saint Kizito yajyanye

abanyeshuri ahantu hashobora gutera impanuka nta kuri kurimo kuko kuva 30 Gicurasi 2005 ishuri niho ryakoresherezagaga pratique kugeza n'ubu kandi ntakibazo cyigeze kiba kuko installation ya REG yari imeze neza nukuvuga insinga za haute tension zari muri metero esheshatu aho kuba muri metero enye. Kuvuga ko ishuli ryahaye abanyeshuri ibyuma birebire nta kuri kurimo cyane ko staff reading niyo bakoresha kuva ishuri ryashingwa kugeza ubu ntaho bihuriye n'ibyo uhagagarariye REG avuga ko ikigo cyahaye abanyeshuri ibyuma birebire kandi ntagaragaza n'ikimenyetso kigaragaza ko abanyeshuri bari bahawe ibyuma birebire usibye kubivuga mu magambo cyane ko inyandiko mvugo y'umugenzacyaha wageze ahabereye icyaha avuga ko yahasanze staff reading inkoni abanyeshuri bakoresha muri pratique. [27] Kuvuga ko Ecole Technique Saint Kizito yigisha ibijyanye n'amashanyarazi kandi ifite abarimu b'inzobere mu bijyanye n'amashanyarazi ibi nabyo si impamvu yatuma ishyuri riryoze indishyi kuko Kwizera Aime Fabrice witabye Imana mu gihe yari muri pratique yari kumwe n'umwalimu wigisha iby'ubwubatsi kandi nuwo mwalimu ntabwo yari afite ubumenyi bwo ku menya niba iza nsinga za haute Tension zaravuye mu mwanya wazo kuko iza nshingano zo kubimenya byari ibya REG n'abakozi bayo. Kuba rero Ishuri rifite abarimu mu bijyanye n'amashanyarazi ntabwo abo barimu bashinzwe kujya kureba ibikorwa by'amashanyarazi bya REG bo inshingano zabo n'ukureba ibijyanye n'amashanyarazi ari mu kigo imbere ni ukuvuga kuva kuri compteur kuza muri installation zo mu kigo gusa kandi ntabwo Kwizera yishwe n'umuriro wo mu kigo imbere. Naho ibyo REG ivugako ishuli ryemeye amakosa ntaho ishuri ryigeze ryemera amakosa kuko umuriro wishe Kwizera ni REG yari ifite inshingano yo

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kuwugenzura. Uhagarariye Ecole Technique Saint Kizito akaba asanga Ecole Saint Kizito de Save itari kugobokeshwa ku gahato muri uru rubanza kuko nta kosa yakoze nk'uko babisobanuye haruguru bakaba basanga ubujurire bwa REG nta shingiro bufite bakaba basaba ko hagumaho icyemezo cy'urukiko rwisumbuye kubijyanye n'ugomba kuryozwa indishyi. UKO URUKIKO RUBIBONA [28] Impaka ziri muri uru rubanza zishingiye ku kumenya uwaryozwa indishyi niba zaryozwa ishuri nyakwigendera yigagaho cyangwa REG ikurikirana ibijyanye n'amashanyari. [29] Urukiko rurasanga indishyi zisabwa muri uru rubanza zishingiye ku ku muriro w'amashanyari wateye urupfu rw'umunyeshuri witwa Kwizera Fabien. Inyandiko z'abahanga ndetse n'amategako yo mu bihugu bitandukanye agaragaza ko umuntu ntaryozwa gusa ibyangiritse kubera ibikorwa bye bwite, ahubwo anaryozwa ibyangijwe n'ibikorwa by'abantu yishingiye cyangwa n'ibintu ashinzwe kurinda. [30] Izi ngingo zumvikanisha ko mu gihe ikintu cyabaye inkomoka y'impanuka ushinze ku kirinda niwe ugomba kuryozwa indishyi. Ibi byashimangiwe n'inyandiko z'abahanga aho bavuye ko: "Ainsi, dans les cas où le litige est causé par une chose, c'est la personne à qui appartient la chose qui est responsable"<sup>2</sup>. Mu gihugu cy'ubufaransa, urukiko rusesa imanza rwatanze umurongo ko kugirango umuntu aryozwe indishyi zikomoka ku kintu ugomba gutanga ibimenyetso bigaragaza ko icyo kintu aricyo nyirabayaza w'indishyi. Urukiko rwabivuze muri aya magambo: "Si on veut faire fonctionner la responsabilité civile du fait des choses, il faut impérativement prouver que la chose est à l'origine matérielle du dommage (Cass. Civ. 3 janvier 1934, DP 1934). C'est ce que l'on appelle le « lien de causalité » [31]

Ku bijyanye n'ikibazo kiri muri uru rubanza, urukiko rurasanga hagendewe ku nyandiko mvugo yakozwe n'umugenzacyaha wageze aho impanuka yabereye kuwa 3/12/2020 agaragaza ko aho amashanyarazi yafatiye umunyeshuri Kwizera Aime Fabrice hari insinga za haute tension z'amashanyarazi zaregutse maze ziramamuka ziva muri position zarimo zimanukaho metero ebyiri. Ukurikije aho zagombye kuba ziri zigira hasi usatira umuhanda. Ibyo bikaba byaratewe n'icyuma bita Cross arm, izo nsinga zari zifasheho, icyo cyuma kikaba cyari cyaravunitse. Ibi byashimangiwe n'abakozi ba barege baje kumanika izo nsiga. [32] Kuba umwana yarakojeje icyuma yari afite ku rusinga rw'amashanyarazi agahita afatwa n'umuriro bikamuviramo gupfa bigaragara ko urwo rupfu rwatewe n'amashanyarazi kandi iyo urwo rusinga rutareguka ngo rwegere hasi ntabwo aba yarafashwe n'ayo mashanyari. Rero bigaragara ko habayeho uburangare bwa REG iratakurikiranye ibintu byayo bikagera aho umuriro ufata umunyeshuri. [33] Urukiko rurasanga intandaro y'urupfu rwa Kwizera ntaho ruhuriye n'ikigo cy'ishuri kuko ibyabaye byabereye hanze y'ikigo kandi urupfu rwa Kwizera rukomoka ku muriro wa REG bityo 1 Reba ingingo ya 1242 ya code civil francais ivuga ko "On est responsable non seulement du dommage que l'on cause par son propre fait, mais encore de celui qui est causé par le fait des personnes dont on doit répondre, ou des choses que l'on a sous sa garde" 2 <https://assurance-professionnelle.ooreka.fr/astuce/voir/480159/responsabilite-civile-du-fait-des-choses>

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REG akaba ariyo igomba kuryozwa izo ndishyi, ko ishuri rya mutagatifu Kizito nta ruhare yabigizemo. b) Kumenya niba urukiko rwisumbuye rwa Huye rwarategetse indishyi z'akababaro z'umurenge nta tegeko cyangwa ibyemezo byafashwe n'inkiko rushingiyeho. [34] Uhagarariye REG avuga ko Urukiko rwategetse ko abaregwa bishyurwa indishyi z'akababaro zingana na 20.000.000 Frw, ntirwavugaga icyo rushingiyeho rutegeka izo ndishyi z'umurenge zingana gutyo mu gihe REG yari yagaragaje imanza zitandukanye zigaragaza indishyi zitangwa ku mpanuka y'amashanyarazi nk'urubanza RCA 0359/15/HC/KIG rwaburanagamo Ritongo Mining Company na Habyarimana Innocent na bagenzi be aho rwategetse ko indishyi z'akababaro zikwiye ari 450.000 Frw kuri buri muntu. Ariko Urukiko kuba rutarazishingiyeho ahubwo rugatanga indishyi z'umurenge, rutanagaragaje ikindi rushingiyeho, akavugaga ko ari inenge iri muri uru rubanza bityo ikwiye gukosorwa n'Urukiko Rukuru maze rugategeka ko indishyi za 450.000 Frw kuri buri muntu mu gihe byagaragara ko hari indishyi REG ikwiye kuryozwa, kandi nazo zikishyirwa n'umwishingizi wayo ariwe PRIME INSURANCE. Hari izindi manza bashyize muri systeme harimo urubanza RC 000395/2020/TGI/NYGE aho Urukiko rwategetse indishyi mpozamarira zingana na 1,500,000 Frw ndetse n'urubanza RC 000019/2021/TGI/MUS naho urukiko rwategetse indishyi mpozamarira zingana na 3,800,000 Frw rushingiye ku kuba Nyakwigendera Nahimana Valens wishwe n'amashanyarazi ataragize amakenga akaba ariyo mpamvu yatumye umuriro umwica, bigatuma indishyi zatanze zaragabanijwemo kabiri hagati y'uregwa, hakabaho responsabilité partagée, kuko nyakwigendera nawe yabonaga isinga hejuru ye aziko zirimo umuriro ushobora kumwica ariko ararenga yoherezayo igiti kibisi (Reba igika cya 12 cy'urubanza RC 00019/2021/TGI/MUS rwabaye itegeko ). [35] Uhagarariye REG avuga ko impamvu indishyi mpozamarira arizo zikwiye guhabwa abatanze ikirego ni uko badashobora

guhabwa indishyi mbangamirabukungu kuko ntabwo bari batunzwe na nyakwigendera Kwizera Aime Fabrice kuko nta kazi yagiraga ahubwo akaba yari umunyeshuri, kubaha rero indishyi mbangamirabukungu ku bantu batari batunzwe na Nyakwigendera byaba ari ukubanganimira ihame ry'amategeko ribuzza l'enrichissement sans cause (ou action de in rem verso). [36] Me Rubayiza Fikirini Michel uhagarariye abaregwa avuga ko umucamanza yashingiye ku ngingo ya 9 CPCCSA anabisobanura neza avuga ko ku kibazo kijyanye n'indishyi nta tegeko specifique rigena uburyo indishyi z'impanuka w'umuriro w'amashanyarazi zitangwa, yagennye indishyi agendeye ku ngingo ya 9 CPCCSA bemeranywaga nawe icyo batemeranyijweho ni ingano y'indishyi yabageneye ari nayo mpamvu basaba ko zakongerwa mu Rukiko Rukuru. Indishyi batanze atari umurenge hagendewe ku zindi manza zagiye zicibwa, indishyi bagenewe ni nke ahubwo ugereranyije n'urupfu rw'umwana Kwizera. Ibivugwa na REG nta shingiro bifite ahubwo umuryango wa Kwizera wahawe amafaranga make ugereranyije n'ibyo uyu mwana yari kuzamarira umuryango we. Kuvuga ko nta tegeko cyangwa ibyemezo by'inkiko byashingiweho sibyo kuko umucamanza yagendeye ku ngingo ya 9 CPCCSA no ku mvugo z'abahanga. UKO URUKIKO RUBIBONA

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[37] Ingingo ya 9 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 Umucamanza aca urubanza ashingiye ku ngingo z'amategeko zirebana n'ikirego yaregowe. Iyo nta tegeko rijyanye n'ikiburanwa ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko. [38] Ikibazo cyo kumenya ingano y'indishyi zatangwa mu gihe habaye impanuka y'umuriro w'amashanyarazi ntabwo kigeze gikemurwa n'amategeko y'u Rwanda nk'uko bimeze ku bijyanye n'impanuka yo muhanda. Akaba ariyo mpamvu urukiko rwisumbuye rwa Huye rwazigenye mu bushishozi bwawo. [39] Ku bijyanye n'ibivugwa n'uburanira REG ko hagenderwa ku byemezo by'inkiko, urukiko rurasanga ibi byemezo by'inkiko bidasa neza neza n'urubanza rwa Kwizera Aime Fabrice. Ikindi izi manza zaciwe n'inkiko zisumbuye kandi nazo zagiye zitanga indishyi zigiye zitandukanye ku buryo nta rubanza rwafatwa nk'icyitegererezo cyane ko zitigeze zisohorwa mu cyegeranyo cy'ibyemezo by'inkiko. [40] Urukiko rurasanga indishyi zatanze n'urukiko rwisumbuye rwa Huye atari umurenge ugereranyije n'aho ibihe bigeze cyane ko hagendewe ku rubanza RadA0018/08/CS rwaciwe n'urukiko rw'Ikirenga kuwa 17/07/2009 aho ELECTROGAZ yaburana na Mukamurara Ereda waregeraga indishyi zikomoka ku rupfu rw'umwana we Irumva Eric, wapfuye azize impanuka y'amashanyarazi akaza guhabwa indishyi zingana na 8.500.000 FRW. Kuba rero urukiko rwisumbuye rwarategetse indishyi zingana na miliyoni 20 000 000 frw ku bantu batanu (5) haribo ababyeyi bombi n'abavandimwe batatu. Izi ndishyi ntabwo ari ikirenga ku muryango ugizwe n'abantu batanu kuko bese bagize akababaro mu buryo butandukanye. c) Kumenya niba hari izindi ndishyi zatangwa muri uru rubanza. [41] Uhagarariye abarega arasaba amafaranga y'igihembo cy'avoka mu rwego rw'ubujurire kingana 3.500.000 FRW n'amafaranga y'ikurikiranarubanza

angana 500.000 FRw ku rwego rw'ubujurire. Ayo mafaranga yose rero yakoreshejwe akaba agomba kwishyurwa na REG kuko iyo mpanuka yabaye ku makosa yayo ndetse ikaba ikomeje no kubashora mu manza. [42] Urukiko rurasanga RWANDA ENERGY GROUP Ltd igomba guha umuryango wa Vuningoma Theophile igihembo cy'avoka kingana n'ibihumbi magana atanu (500 000 frw) kubera ko bakomeje gushorwa mu manza zidafite ishingiro. III. ICYEMEZO CY'URUKIKO [43] Rwemeje ko ubujurire bwatanzwe na RWANDA ENERGY GROUP Ltd nta shingiro bufite. [44] Rwemeje ko imikirize y'urubanza RC 00056/2021/TGI/HYE rwaciwe n'urukiko rwisumbuye rwa Huye idahindutse uretse ko hiyongereyeho igihembo cy'avoka. [45] Rutegetse RWANDA ENERGY GROUP Ltd guha umuryango wa Vuningoma Theophile indishyi zose zategetswe n'urukiko rwisumbuye rwa Huye zigizwe n'indishyi z'akababaro

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zingana n'amafaranga y'u Rwanda miliyoni cumi n'eshanu (15.000.000 frws), indishyi z'ibyakoreshejwe mu gushyingura zingana n'ibihumbi magana atanu (500.000 frws), igihembo cy'avoka n'amafranga y'ikurikiranarubanza harimo n'ayo mu rukiko rukuru yose angana na miliyoni imwe n'ibihumbi ijana na makumyabiri (1 120 000 FRW) naho PRIME INSURANCY COMPANY yishingiye RWANDA ENERGY GROUP Ltd igatanga indishyi z'akababaro zingana n'amafaranga y'u Rwanda miliyoni eshanu (5.000.000 FRW). [46] Rutegetse ko ingwate y'amagarama y'ibihumbi mirongo ine (40 000 frw) yatanzwe na RWANDA ENERGY GROUP Ltd ihwanye n'ibyakozwe muri uru rubanza.

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