

RWANDA / JUDGMENT

SIBOMANA vs. GATE HILLS ESTATE LTD

RCOM 00017/2023/HCC

COURT

Commercial High Court

DECIDED

3 August 2023

CASE / FILE NUMBER

RCOM 00017/2023/HCC

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SIBOMANA vs. GATE HILLS ESTATE LTD

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Text

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SIBOMANA vs. GATE HILLS ESTATE LTD [Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOM 00017/2023/HCC (Noheli, P.J.,) 03 Kanama 2023] Amategeko agenga imiburanishirize y'imanza – Kwakira ikirego – Gutambamira urubanza – Urubanza ku kirego cyihutirwa ntirutambamirwa – Uretse ubujurire no gusubirishamo urubanza, nta yindi nzira y'ubujurire yemewe ku rubanza ku kirego cyihutirwa, bivuze ko n'ikirego cyihutirwa gikomoka ku rubanza rutambamirwa nticyakirwa. Incamake y'ikibazo: Sosiyete Gate Hills Estate Ltd ntabwo yishyuye inguzanyo yahawe na BK Plc nk'uko babyumvikanye, bituma habaho cyamunara y'umutungo utimukanwa watanzweho ingwate, maze wegukanwa n'uwitwa Sebinezwa Muhoza Richard. Uwo mutungo wagurishijwe muri cyamunara warugizwe n'ikibanza kimwe cyaje kugabanywamo ibibanza bitandukanye, kimwe muri byo kigurwa na Karangwa Jules nawe wakigurishije uwitwa Sibomana Andre. Sibomana Andre avuga ko habayeho imanza zitandukanye kuruwo mutungo, maze amenyeshwa ko uwo mutungo we waburanishijwe muri izo manza kandi ko atabizi, bituma afata icyemezo cyo kutambamira izo manza mu Rukiko Rukuru rw'Ubucuruzi, asaba uru rukiko kwongera rukaburanishwa kugira ngo agire icyo arusaba cyangwa agasubizwa amafaranga uwo mutungo ufite hyongereyeho indishyi zinyuranye. Gate Hills Estate Ltd ivuga ko nta nyungu

Sibomana Andre afite muri uru rubanza yatambamiye kuko atagaragaza icyo rumubangamiyeho. Sibomana Andre yabajijwe niba itegeko rimwemerera gutambamira urubanza ku kirego cyihutirwa avuga ko abatabyemerewe ari ababuranye urwo rubanza ariko ko ubangamiwe n'urubanza ku kirego cyihutirwa atabayemo umuburanyi, arutambamira nk'uko Itegeko ribiteganyaga. Gate Hills Estate Ltd yiregura ivuga kandi ko umuntu utarabaye umuburanyi mu kirego cyihutirwa atemerewe kuba yarutambamira, ndetse ko niba hari icyo rumubangamiyeho yatanga ikirego mu nzira zikurikije amategeko. Incamake y'icyemezo: Uretse ubujurire no gusubirishamo urubanza, nta yindi nzira y'ubujurire yemewe ku rubanza ku kirego cyihutirwa, bivuze ko n'ikirego cyihutirwa gikomoka ku rubanza rutambamirwa nticyakirwa. Ikirego nticyakiriwe. Amategeko yashingiweho:

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Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 83 niya 188. Nta manza zifashishijwe. Urubanza I.IMITERERE Y'URUBANZA [1] Gate Hills Estate Ltd ntabwo yishyuye inguzanyo yahawe na BK Plc nk'uko babyumvikanye, bituma habaho cyamunara y'umutungo wanditswe kuri UPI: 1/02/01/01/3507 wegukanwe na Sebinezza Muhoza Richard. Uwo mutungo wagabanyijwemo ibibanza bitandukanye birimo UPI: 1/02/01/01/4923 yaguzwe na Karangwa Jules wawugurishije Sibomana Andre. Sibomana Andre avuga ko nyuma y'ubwo bugure, Gate Hills Estate Ltd yabandikiye ibaruwa ibasaba gutanga ibyangombwa by'uwo mutungo hashingiwe ku manza RCOM 00912/2021/TC, RCOMA 00087/2021/HCC, RCOMAA 00087/2022/CA rwaciwe ku wa 20/01/2023, hamwe n'urubanza RS/INTERT/RCOM 00002/2023/HCC zategetse ko umutungo ubaruye kuri UPI : 1/02/01/01/3507 wandukurwa muri RDB ugasubizwa Gate Hills Estate Ltd. Sibomana Andre yamenyeshejwe ko umutungo we waburanishijwe muri izo manza kandi ko ataraziburanye, afata icyemezo cyo kurutambamira, maze urubanza rwandikwa kuri RCOMA 00286/2023/HCC. Sibomana Andre avuga ko kuwa 29/05/2023, Gate Hills Estate Ltd yamwandikiye imusaba guhagarika ibikorwa byose akorera muri uwo mutungo wabo, inabasaba kutawikuraho ishingiyeho ku rubanza RCOM 00011/2021/HCC rwaciwe ku wa 12/05/2023. [2] Sibomana Andre yatambamiye urwo rubanza, maze ikirego cyandikwa kuri RCOMA 00017/2023/HCC. Iburanishwa ry'urwo rubanza ryagiye ryimurwa ariko kuwa 31/07/2023 ruburanishwa mu ruhame, Sibomana Andre ahagarariwe na Me Uzabakiriho Irene. Gate Hills Estate Ltd yaburanye ihagarariwe na Me Kagabo Venuste, Me Bizimana Olivier bafatanyije na Me Bayingana Janvier naho BK Plc ihagarariwe na Me Rusanganwa Jean Bosco. Sebinezza Muhoza Richard yaburanishijwe adahari kuko atitabye urukiko nta mpamvu. [3] Sibomana Andre avuga ko Gate Hills Estate Ltd yaramwandikiye imusaba guhagarika ibikorwa byose akorera mu kibanza cye kibaruye kuri UPI: 1/02/01/01/4923 no kutacyikuraho bashingiwe ku rubanza RCOM 00011/2021/HCC yatambamiye. Avuga ko urwo rubanza atarutumijwemo kugira ngo agire icyo avuga kuri uwo mutungo wabo, bityo ko rwakogera rukaburanishwa kugira ngo agire uburenganzira bwe kuri uwo mutungo cyangwa urukiko rwabibona ukundi; agasubizwa amafranga uwo mutungo ufite kugeza ubu hiyogeyeho indishyi zinyuranye. Sibomana Andre yabajijwe niba itegeko rimwemerera gutambamira urubanza ku kirego cyihutirwa avuga ko abatabyemerewe ni ababuranye urwo

rubanza. [4] Gate Hills Estate Ltd ivuga ko Sibomana Andre atagaragaza icyo urubanza RCOM 00011/2023/HCC atambamira rumubangamiyeho, bityo ko nta nyungu zo kurutambamira afite na cyane ko atagaragara mu bagiranye ubwumvikane muri urwo rubanza. [5] BK Plc ivuga ko icyemezo cyafashwe mu rubanza RCOM 00011/2023/HCC ntacyo kibangamira Sibomana Andre kubera ko ibyo asaba bizasuzumwa mu manza zitambamira

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urubanza RCOMA 00809/2021/HCC. Sibomana Andre, Gate Hills Estate Ltd na BK Plc buri wese asaba amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka ndetse Sibomana Andre akongeraho n'izindi ndishyi. [6] Urukiko, rushingiye izo mpaka, rusanga hagomba gusuzumwa ibibazo bikurikira: 1.Kumenya niba itegeko ryemera gutambamira urubanza ku kirego cyihutirwa. 2.Kumenya niba hari inyungu urega afite zo gutambamira urubanza RCOM 00011/2023/HCC. 3.Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka asabwa muri uru rubanza afite ishingiro. II.ISESENGURA RY'IBIBAZO BIGIZE URUBANZA 1.Kumenya niba itegeko ryemera gutambamira urubanza ku kirego cyihutirwa [7] Uhagarariye Sibomana Andre yabajijwe niba itegeko rimwemerera gutambamira urubanza ku kirego cyihutirwa avuga ko abatabyemerewe ari ababuranye urwo rubanza ariko ko ubangamiwe n'urubanza ku kirego cyihutirwa atabayemo umuburanyi, arutambamira nk'uko Itegeko ribiteganywa. [8] Me Bayingana Janvier avuga ko utarabaye umuburanyi mu kirego cyihutirwa, atemerewe kuba yarutambamira. Avuga ko hari icyo rumubangamiyeho, yatanga ikirego mu nzira zikurikije amategeko. UKO URUKIKO RUBIBONA [9] Ingingo ya 188 igika cya 1, 2 n'icya 4 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganywa ko igihe cyo gusubirishamo icyemezo cyafashwe ku birego byihutirwa ni iminsi itarenze itanu (5) y'akazi ibarwa uherye igihe uregwa yamenyeye icyo cyemezo. Igihe cyo kujuririra icyemezo ni iminsi itarenze itatu (3) y'akazi uherye ku munsu icyemezo cyasomeweho cyangwa ababuranyi bakimenyeyeho (...). Izindi nzira zo kujurira ziteganyijwe n'amategeko zirabujijwe mu miburanishirize y'imanza z'ikirego cyihutirwa. Naho ingingo ya 162 y'iryo tegeko iteganywa ko umuntu utareze cyangwa ngo aregwe mu rubanza ariko arufitemo inyungu, ashobora gutambamira urwo rubanza rumurenganya ashaka ko rusubirwamo iyo, ari we cyangwa ari n'abo ahagarariye nta warutumiwemo. [10] Ingingo ya 83 igika cya 4 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 rimaze kuvugwa haruguru iteganywa ko impamvu ituma ikirego kitakirwa ni ingingo yose isaba kutakira ikirego cy'umuburanyi, hatinjiwe mu mizi yacyo, kubera ko adafite uburenganzira bwo kurega, nko kuba (...) hari imihango itarubahirijwe iteganywa n'itegeko. [11] Ingingo zimaze kuvugwa haruguru zumvikanisha ko inzira z'ubujurire ku birego byihutirwa zemewe ari ubujurire (appel) no gusubirishamo urubanza gusa, kandi ko iyo hari imihango itubahirijwe mu gutanga ikirego bituma kitakirwa.

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[12] Urukiko rurasanga urega avuga ko abatemerewe gutambamira urubanza ku kirego cyihutirwa ari ababaye ababuranyi, ariko uretse kubivuga gusa ntagaragaza aho abishingira kuko ntaho itegeko ribiteganywa. Ibyo binashimangirwa n'uko n'ubusanze gutambamira

urubanza bikorwa n'utararubayemo umuburanyi kandi urufitemo inyungu nk'uko byagaragajwe haruguru. Kuba rero umushingamategeko yarateganyije ko uretse ubujurire no gusubirishamo urubanza, nta yindi nzira y'ubujurire yemewe ku birego byihutirwa, ntabwo ari uko yari ayobewe ko utarabaye umuburanyi mu rubanza rumubangamiye, n'ubundi ashobora kurutambamira nk'uko bikorwa ku manza zisanzwe, ahubwo ko ari umwihariko yateganyije ku miburanishirize y'ibirego byihutirwa. [13] Urukiko rurasanga kuba urubanza RCOM 00011/2021/HCC rutambamirwa rukomoka ku kirego cyihutirwa, kandi Sibomana Andre akaba yararutambamiye; kandi usibye gusa ubujurire no gusubirishamo urubanza, nta yindi nzira y'ubujurire yemewe ku rubanza ku kirego cyihutirwa; byumvikanisha ko mu gutanga ikirego, atubahirije umuhango w'uko bitemewe gutambamira urubanza ku kirego cyihutirwa, kandi iyo ni imwe mu mpamvu zituma kitakirwa. Bityo rero ikirego cya Sibomana Andre ntabwo cyakiriwe. 2. Kumenya niba hari inyungu urega afite zo gutambamira urubanza RCOM 00011/2023/HCC [14] Uhagarariye Sibomana Andre avuga ko kuba Gate Hills Estate Ltd yaramwandikiye imusaba guhagarika ibikorwa byose akorera mu kibanza cye kibaruye kuri UPI: 1/02/01/01/4923 no kutacyikuraho hashingiwe ku rubanza RCOM 00011/2021/HCC, byatumye arutambamira kuko atarutumijwemo kugira ngo agire icyo avuga kuri uwo mutungo. Asaba ko rwakogera rukaburanishwa kugira ngo agire uburenganzira bwe ku mutungo we cyangwa rwabibona ukundi; agasubizwa amafranga uwo mutungo ufite kugeza ubu, hiyogeyeho indishyi zinyuranye. [15] Abahagarariye Gate Hills Estate Ltd bavuga ko Sibomana Andre atagaragaza icyo urubanza RCOM 00011/2023/HCC atambamira rumubangamiyeho, kandi gutambamira urubanza ntabwo bihagarika irangizwa ryarwo. Bavuga ko kumwandikira, bari bagamiye kumuhatira kubahiriza ibyo urukiko rwategetse ku neza kandi ko ikibanza avuga yubatsemo urukiko rwagishubije Gate Hills Estate Ltd. Bavuga kandi ko urubanza rutambamirwa rwafashwemo icyemezo gishingiye ku bwumvikane bureba ababugiranye ariko ko ntacyo bunamuhungabanyaho kuko urwo rubanza nta muntu rwambura uburenganzira cyangwa ngo rubumuheshe, bityo ibyo asaba nta shingiro bifite. Bavuga rero ko nta nyungu zo gutambamira urwo rubanza Sibomana Andre afite. [16] Uhagarariye BK Plc avuga ko icyemezo cyafashwe mu rubanza RCOM 00011/2023/HCC ari icyemezo cy'agateganyo kugira ngo impande zirebwa n'ikibazo cya BK Plc, Gate Hills Estate Ltd n'abandi gikemurwe hifashishijwe ubuhuza. Avuga ko icyemezo cyafashwe muri urwo rubanza ntacyo kibangamira Sibomana Andre kubera ko ibyo asaba bizasuzumwa mu manza zitambamira urubanza RCOMA 00809/2021/HCC, kandi yarutambamiye mu rubanza RCOMA 00127/2023/HCC. UKO URUKIKO RUBIBONA

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- [17] Urukiko rurasanga impaka kuri iyi ngingo zishingiye ku kumenya niba urega afite inyungu yo gutambamira urubanza rwashingiweho asabwa guhagarika ibikorwa akorera mu kibanza avuga ko ari icye. [18] Ingingo ya 3 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 ikirego cyakirwa mu rukiko iyo urega afite ububasha, inyungu n'ubushobozi byo

kurega, keretse igihe itegeko ribiteganya ukundi. [19] Ingingo imaze kuvugwa haruguru yumvikanisha ko utanga ikirego agomba kuba afite inyungu mu rubanza. Abahanga mu mategeko bavuga ko kugira ngo hagenzurwe ko inyungu yemewe n'amategeko, umucamanza asuzuma uburenganzira kamere bw'urega hagamijwe kureba niba iyo nyungu yarengerwa mu rwego rw'amategeko cyangwa bitaba.1 Ibimaze kuvugwa haruguru bigaragaza ko mu kumenya iba urega afite inyungu, bisaba ko hasuzumwa niba hari uburenganzira bwe bwarengerwa. [20] Urukiko rurasanga kuba Sibomana Andre avuga Gate Hills Estate Ltd yamwandikiye imusaba guhagarika ibikorwa byose akorera mu kibanza cye hashingiwe ku rubanza RCOM 00011/2021/HCC, kandi ababuranira iyo sosiyete bakaba batabihakana ahubwo bakavuga ko kumwandikira, bari bagamiye kumuhatira kubahiriza ibyo urukiko rwategetse ku neza kuko ikibanza avuga yubatsemo urukiko rwagishubije Gate Hills Estate Ltd; byumvikanisha ko hari uburenganzira ku kibanza avuga ko ari cye bubangamiwe kuko yasabwe guhagarika gukomeza kugikorera ibikorwa bye. [21] Ibimaze kuvugwa haruguru bishimangirwa n'uko urubanza RCOMA 00809/2021/HCC havugwamo umutungo wanditswe kuri UPI: 1/03/10/01/3975 kandi iyo UPI ni nayo yakomotseho UPI: 1/02/01/01/4923 Sibomana Andre avuga ko ari iye. Kuba mu rubanza RCOM 00011/2023/HCC haremejwe ko irangiza ry'urubanza RCOMA 00809/2021/HCC rihagaritswe by'agateganyo, kandi ko Sebinezza Muhoza Richard atemerewe kwikuraho umutungo aruburanamo ugizwe na UPI: 1/03/10/01/3975, byumvikanisha ko icyo cyemezo kinareba ibibanza byakomotse kuri iyo UPI: 1/03/10/01/3975 imaze kuvugwa birimo UPI: 1/02/01/01/4902 iburanwa na Sibomana Andre. Rusanga rero afite uburenganzira bwo gukurikirana icyo ari cyo cyose cyamubuza kuba yakoresha mu nyungu ze umutungo uri muri icyo kibanza avuga ko ari icye n'ubwo na Gate Hills Ltd ivuga ko yagisubijwe n'urukiko. Bityo rero ibivugwa n'abaregwa ko nta nyungu afite mu rubanza nta shingiro bifite. [22] Urukiko rurasanga ariko nk'uko byavuzwe haruguru, kuba Sibomana Andre afite inyungu muri uru rubanza ariko akaba yararutambamiye kandi itegeko ritemera ko urubanza ku kirego cyihutirwa rutambamirwa, byumvikanisha ko ikirego cye n'ubundi kitagomba kwakirwa. 3.Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka asabwa muri uru rubanza afite ishingiro 1 Cour de droit.net "L'intérêt à agir: une condition de l'action en justice", <https://www.cours-de-droit.net/l-interet-a-agir-interet-legitime-personnel-ne-actuel-a121610324/> [02/08/2023]. Pour pouvoir vérifier que l'intérêt à agir est légitime, le juge doit examiner le droit substantiel pour savoir si l'intérêt invoqué par le demandeur est juridiquement protégeable ou non.

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- [23] Uhagarariye Sibomana Andre avuga ko urubanza atambamira rwamubangamiye kuba yakoresha umutungo yaguze, bityo ko yabiherwa indishyi zingana n'amafaranga y'u Rwanda miliyoni icumi (10.000.000 FRW) hakiyongeraho igihembo cy'Avoka kingana na miliyoni ebyiri (2.000.000 FRW). Avuga ko indishyi asaba zakwishyurwa na Gate Hills Estate Ltd. Avuga ko indishyi zisabwa na Gate Hill Estate Ltd nta shingiro zifite kuko ivuga ko umutungo Sibomana Andre afite ari wo yumvikanyeho na Sebinezza Muhoza Richard igakomeza, kandi ko ibyakozwe biri mu nyungu za Sibomana Andre, bityo ko ntazo ikwiye kuko ari yo

nyirabayazana w'uru rubanza. [24] Uhagarariye BK Plc avuga ko indishyi zisabwa na Sibomana Andre nta shingiro zifite kubera ko uretse no kuba icyemezo cyafashwe mu rubanza atambamira ari icyemezo cy'agateganyo, nta n'icyo kimubangamiraho kuko ibyo asaba muri uru rubanza, bizasuzumwa mu manza zitambamira urubanza RCOMA 00809/2021/HCC. Avuga ko kuba Sibomana Andre yarashoye BK Plc mu manza ku maherere, Urukiko rwamutegeka kuyishyura amafaranga y'u Rwanda ibihumbi magana atanu (500.000 Frw) y'ikurikiranarubanza n'ibihumbi magana atanu (500.000 Frw) y'igihembo cy'Avoka. [25] Abahagarariye Gate Hills Estate Ltd basaba ko yahabwa indishyi zingana n'amafaranga y'u Rwanda miliyoni imwe (1.000.000 Frw) yo gukurikirana urubanza n'igihembo cy'avoka. Bavuga ko indishyi zisabwa na Sibomana Andre nta shingiro zifite kuko Gate Hills Estate Ltd izisabwa atari yo yamushoye mu manza. Basaba na none ahubwo ko Sibomana Andre yategekwe kuyiha indishyi zingana na miliyoni eshanu (5.000.000 FRW) hamwe n'igihembo cy'avoka kingana na miliyoni imwe (1.000.000 Frw). UKO URUKIKO RUBIBONA [26] Ingingo ya 26 y'Amabwiriza No 01/2014 akena ibihembo mbonera by'Abavoka iteganya ko Avoka w'urega wateguye dosiye n'inyandiko ashobora gusaba igihembo fatizo kiri hagati y'amafaranga 500.000 n'amafaranga 5.000.000 (...). Avoka w'uregwa akena ibihembo bye akurikije agaciro k'ikiburanwa, ingorane ziri mu rubanza, hamwe n'ibyo agomba kubanza gukora byose, ndetse n'ingaruka z'icyemezo cyafashwe; ariko igihembo ntikijye muni y'amafaranga 500.000 kandi ntikirenge amafaranga 3.000.000. Iyo habaye ubujurire, avoka w'urega n'uw'uregwa bashobora gusaba kimwe cya kabiri cy'igihembo cyumvikanyweho ku rwego rwa mbere. Ingingo ya 3 y'Itegeko No 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana. [27] Ingingo ya 111 y'Itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuru, iz'umurimo n'iz'ubutegetsi iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikirira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza (...). Gishobora kandi kwakirwa kikanaburanishwa n'iyi ikirego cy'iremezo cyaba kitakiriwe. [28] Ingingo zivuzwe haruguru zumvikanisha ko hatangwa amafaranga y'ibyatakajwe mu rubanza harimo igihembo cy'Avoka n'ikurikiranarubanza ariko hagatangwa ibimenyetso byabyo. Urukiko rurasanga kuba ikirego cya Sibomana Andre kitakiriwe kubera ko yatambamiye

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urubanza ku kirego cyihutirwa kandi itegeko ritabyemera, byumvikanisha ko indishyi asaba muri uru rubanza nta shingiro zikwiye guhabwa. [29] Kuba ahubwo ikirego cya Sibomana Andre ari cyo cyabaye intandaro y'uru rubanza, kandi kikaba kitakiriwe, byumvikanisha ko kuba BK Plc na Gate Hills Estates Ltd bararutakarijemo amafaranga yo gukurikirana urubanza no guhamba Avoka nk'uko bayasaba; Sibomana Andre agomba kuyaryozwa. Ariko kubera ko amafaranga asabwa ari menshi, Urukiko rusanga mu bushishozi bwawo buri wese agomba guhabwa ibihumbi magana atanu (500.000 Frw) y'igihembo cy'Avoka n'ibihumbi ijana (100.000 Frw) y'ikurikiranarubanza. III. ICYEMEZO CY'URUKIKO [30] Rwemeje ko ikirego cya Sibomana Andre

kitakiriwe. [31] Rutegetse Sibomana Andre guha Bank of Kigali Plc na Gate Hills Estates Ltd buri wese amafaranga y'u Rwanda ibihumbi magana atanu (500.000 Frw) y'igihembo cy'Avoka n'ibihumbi ijana (100.000 Frw y'ikurikiranarubanza. Yose hamwe akaba 600.000 Frw. [32] Rutegetse ko amafaranga y'u Rwanda ibihumbi mirongo ine (40.000 Frw) Sibomana Andre yatanzeho ingwate y'amagarama arega; ahwanye n'ibyakozwe byose muri uru rubanza kandi ko aheze mu isanduka ya Leta.

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