

RWANDA / JUDGMENT

UBUSHINJACYAHA v. TWAYIGIZUMUGABE

RPAA 00347/2023/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v. TWAYIGIZUMUGABE

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Text

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UBUSHINJACYAHA v. TWAYIGUZUMUGABE [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00347/2023/CA (Mukamurenzi, P.J.) 20 Ukubozza 2024] Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Ubujurire – Impamvu z'ubujurire – Iyakirwa ry'impamvu z'ubujurire – Umuburanyi agomba gutanga impamvu z'ubujurire mu gihe giteganywa n'amategeko – Umuburanyi wajuriye atarabona kopi y'urubanza agomba gutanga impamvu z'ubujurire mu gihe kitarenze iminsi mirongo 30 uherye igihe kopi y'urubanza ishyizwe muri IECMS – Impamvu z'ubujurire zitanzwe nyuma y'ibihe by'ubujurire ntizigomba kwakirwa. Incamake y'ikibazo: Twayigizumugabe yafashwe ari gucuruza kuri Ishimwe na Tuyisenge ibiyobyabwenge byo mu bwoko bwa heroyine, Ubushinjacyaha bubarega mu Rukiko Rwisumbuye rwa Gasabo bubakurikiranyeho icyaha cyo kunywa no kugurisha ibiyobyabwenge. Bwasabiye Twayigizumugabe igihano cyo gufungwa burundu n'ihazabu ya miliyoni makumyabiri naho Ishimwe na Tuyisenge bubasabira igifungo cy'imyaka ibiri (2) kuri buri wese; bunasaba ko heroyine yafatiriwe itwikwa. Twayiguzumugabe yaburanye ahakana icyaha cyo gucuruza ibiyobyabwenge ariko yemera ko yabifatanywe, asaba kugabanyirizwa no gusubikirwa ibihano Ubushinjacyaha bwamusabiye. Tuyisenge yaburanye yemera icyaha agisabira n'imbabazi, asaba

kugabanyirizwa no gusubikirwa ibihano, ariko Ishimwe we agahakana asaba kurenganurwa. Urukiko Rwisumbuye rwaciye urubanza rwemeza ko Twayiguzumukiza ahamwa n'icyaha cyo kunywa no gucuruza ibiyobyabwenge, rumuhanisha igifungo cy'imyaka makumyabiri n'itanu n'ihazabu y'amafaranga miliyoni makumyabiri. Rwemeje ko Ishimwe ahamwa n'icyaha cyo kunywa ibiyobyabwenge ahanishwa igifungo cy'umwaka umwe n'amezi atandatu na Tuyisenge ahamwa n'icyaha cyo kunywa ibiyobyabwenge maze ahanishwa igihano cy'igifungo cy'umwaka umwe. Icyo cyemezo Twayiguzumukiza yakijuririye mu Rukiko Rukuru asaba ko inyito y'icyaha yahaniwe cyo gucuruza ibiyobyabwenge byo mu bwoko bwa heroyine ihinduka kuko yemera icyaha cyo gufatanwa ibiyobyabwenge. Ubushinjacyaha bwo kwasabye ko icyo cyemezo kidahinduka kuko hari bimenyetso bigaragaza ko icyaha yakoze ari ugucuruza ibiyobyabwenge. Urukiko Rukuru rwaciye urubanza rwemeza ko urubanza rujuririrwa rudahindutse. Uregwa yongeye ajurira muri uru Rukiko rw'Ubujurire asaba ko rukosora inenge n'amakosa biri mu rubanza ajuririra harimo inenge ijyanye no kuba Abamufashe barashingiye ku makuru atariyo yatanzwe n'abacuruzi babeshye ko bamubonye acuruza heroyine agashingirwaho, nyamara nta bimenyetso bibigaragaza. Icyo yemera ni uko yafatanywe heroyine akaba aricyo cyaha cyo gufatanwa ibiyobyabwenge yahanirwa aho kuba kubicuruzwa kuko atigeze abikora. Ubushinjacyaha buvuga ko ubujurire bwe butagomba kwakirwa kuko mu gihe cyo kujurira Uregwa yanditse ko ajuriye ariko ko atigeze agaragaza inenge n'amakosa bigomba gukosorwa, ahubwo akaba yarabivuze mu mwanzuro we w'inyongera, bityo ingingo ze z'ubujurire akaba yarazitanze nyuma y'igihe cyo kujurira giteganywa n'amategeko. Incamake y'icyemezo: Umuburanyi agomba gutanga impamvu z'ubujurire mu gihe giteganywa n'amategeko. Umuburanyi wajuriye atarabona kopi y'urubanza agomba gutanga impamvu z'ubujurire mu gihe kitarenze iminsi mirongo 30 uhereye igihe kopi y'urubanza ishyizwe muri IECMS. Impamvu z'ubujurire zitanzwe nyuma y'ibihe by'ubujurire ntizigomba kwakirwa. Ubujurire ntibwakiriwe. Urubanza rwaciye n'Urukiko Rukuru ntiruhindutse.

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Amategeko yashingiweho: Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 181 n'ya 183. Imanza zifashishijwe: RPAA00107/2024/CA, Ubushinjacyaha na Nyiringabo Jean Paul, rwaciye n'Urukiko rw'Ubujurire ku wa 13/12/2024. RPA00047/2021/CA, Ubushinjacyaha bwa Gisirikare na Maj(Rtd) Mudathiru Habib alias Mussa, rwaciye n'Urukiko rw'Ubujurire ku wa 09/06/2023. RPAA00559/2021/CA, Ubushinjacyaha na Nabihayimana Emmanuel, rwaciye n'Urukiko rw'Ubujurire ku wa 27/01/2023. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 26/11/2019, Polisi y'Igihugu ishami rishinzwe kurwanya icuruzwa ry'ibiyobyabwenge igendeye ku makuru yahawe n'abaturage, hafashwe uwitwa Twayigizumugabe Jean Luc agurisha heroyine uwitwa Ishimwe Cedrick na Tuyisenge Merard, bayisangiraga ndetse bakanayitera mu nshinge ku maboko yabo no ku bindi bice by'umubiri. Twayigizumugabe Jean Luc yafatanwe udupfunyika 12 twa heroyine, Ishimwe Cedrick afatanwa udupfunyika tubiri (2), naho Tuyisenge Merard afatanwa agapfunyika kamwe (1). [2] Iperereza rirangiye, Ubushinjacyaha bwabaregeye Urukiko Rwisumbuye rwa Gasabo, rubakurikiranyeho icyaha cyo kunywa no kugurisha ibiyobyabwenge byo mu bwoko bwa heroyine, busabira

Twayigizumugabe Jean Luc igifungo cya burundu n'ihazabu ya miliyoni makumyabiri (20.000.000Frw), naho Ishimwe Cedrick na Tuyisenge Merard bubasabira igifungo cy'imyaka ibiri (2) kuri buri wese; bunasaba ko heroyine yafatirwe itwikwa. [3] Twayigizumugabe Jean Luc yaburanye yemera ko anywa heroyine, agahakana ibyo kuyigurisha; yasabye kugabanyirizwa no gusubikirwa ibihano. Tuyisenge Merard yaburanye yemera icyaha asaba imbabazi, kugabanyirizwa no gusubikirwa ibihano, naho Ishimwe Cedrick aburana ahakana icyaha, agasaba kurenganurwa. [4] Mu rubanza RP01652/2020/TGI/GSBO rwaciwe ku wa 06/05/2021, Urukiko Rwisumbuye rwa Gasabo rwasanze hari ibimenyetso bikurikira bigaragaza ko abaregwa bakoze ibyaha baregwa: - Kuri Twayigizumugabe Jean: yemera ko anywa heroyine, imvugo ze mu Bugenzacyaha aho yemeye ko anywa, akanacuruza ibiyobyabwenge; imvugo z'abatangabuhamya Imanishimwe Yves na Nsengiyumva Jean Paul basobanuye ko Twayigizumugabe Jean Luc asanzwe acuruza heroyine, inyandikomvugo y'ibyangonywe (PV de constat) n'inyandiko mvugo y'ifatira igaragaza ko yafatanwe udupfunyika cumi na tubiri (12) twa heroyine. - kuri Tuyisenge merard: yemeye ko anywa heroyine, inyandikomvugo y'ifatira igaragaza ko yafatanwe agapfunyika kamwe (1) ka heroyine. - Kuri Ishimwe Cedrick: imvugo za Twayigizumugabe Jean Luc abazwa mu Bugenzacyaha yasobanuye ko anywa heroyine, iz'abatangabuhamya Imanishimwe Yves na Nsengiyumva Jean Paul, inyandikomvugo yakozwe na Polisi (PV de constat) igaragaza, inyandiko mvugo y'ifatira igaragaza ko yafatanwe udupfunyika tubiri (2) twa heroyine. Urukiko rushingiye kuri ibyo bimenyetso, rwemeje ko Twayigizumugabe Jean Luc ahamwa n'icyaha cyo kunywa no kugurisha ibiyobyabwenge byo mu bwoko bwa heroyine, rumuhanisha

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igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu ya miliyoni makumyabiri (20.000.000 Frw), naho Ishimwe Cedrick na Tuyisenge Merard bahamwa n'icyaha cyo kunywa ibiyobyabwenge byo mu bwoko bwa heroyine, ruhanisha Tuyisenge Merard igifungo cy'umwaka umwe (1) naho Ishimwe Cedrick ahanishwa igifungo cy'umwaka umwe n'amezi atandatu (1 an 6 mois), rutegeka ko heroyi ingana n'udupfunyika 15 abaregwa bafatanwe, dutwikwa urubanza rukimara kuba ndakuka. [5] Twayigizumugabe Jean Luc yajuririye imikirize y'urubanza mu Rukiko Rukuru, avuga ko yahaniwe icyaha cyo gucuruza ibiyobyabwenge bya heroyine kandi ntacyo yakoze, ko icyaha yemera ari icyo kunywa ibiyobyabwenge, asaba ko inyito y'icyaha yahinduka. Uhagarariye Ubushinjacyaha yasabye ko imikirize y'urubanza igumaho kuko hari ibimenyetso by'uko yakoze icyaha cyamuhamye cyo gucuruza heroyine. [6] Mu rubanza RPA00835/2021/HC/KIG rwaciwe n'Urukiko Rukuru, ku wa 07/07/2023, rwemeje ko ubujurire bwa Twayigizumugabe Jean Luc nta shingiro bufite; rwemeza ko imikirize y'urubanza no RP01652/2020/TGI/GSBO idahindutse. [7] Twayigizumugabe Jean Luc yajuririye imikirize y'urwo rubanza mu Rukiko rw'Ubujurire, urubanza ruhabwa RPAA00347/2023/CA, ruburanishwa mu ruhame ku itariki ya 05/12/2024, Twayigizumugabe Jean Luc yunganiwe na Me Niyonsenga Vincent, naho Ubushinjacyaha buhagarariye na Rudatinya Gaspard, Umushinjacyaha ku rwego rw'Igihugu. [8] Mu mwanzuro w'ubujurire wo ku wa 13/07/2023, Twayigizumugabe Jean Luc yajuriye avuga ko atishimiye imikirize y'urubanza ko inenge ziri mu rubanza n'ibindi bisabirwa gukosorwa azabyohereza mu mwanzuro w'inyongera amaze kubona kopi y'urubanza. Ku wa

19/03/2024 nyuma y'amezi 8 yakoze umwanzuro asobanura inenge z'urubanza ajuririra, asaba ko zakosorwa. Muri uwo mwanzuro avuga ko ishami rishinzwe kurwanya ibiyobyabwenge ryatanze amakuru atari yo rigendeye ku mabwire y'abacuruzi, ko babeshye ko yafashwe n'abaturage ari gucuruza heroyine, ko nta bimenyetso byo gucuruza heroyine byagaragajwe, kandi ko atigeze anemera ko ayicuruza, asaba ko yahanirwa icyaha cyo gufatanwa heroyine kuko atayicuruzaga. [9] Ubushinjacyaha buvuga ko urubanza Twayigizumugabe Jean Luc ajuririra rwaciwe ku wa 07/07/2023, kopi y'urubanza ishyirwa muri system ya IECMS ku wa 09/07/2023, ko ku wa 13/07/2023 yanditse ibaruwa y'ubujurire avuga ko atishimiye imikirize y'urubanza, ariko ko inenge n'amakosa bisabirwa gukosorwa azabitanga mu mwanzuro w'inyongera amaze kubona kopi y'urubanza. Buvuga ko bushingiye ku biteganywa n'ingingo ya 181 n'ya 183 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryavugururwe kugeza ubu, busaba ko ubujurire bwe butakirwa ngo busuzumwe, kuko butaje mu buryo no mu nzira zemewe n'amategeko. Busobanura ko mu gihe cy'iminsi 30 yakurikiye icibwa ry'urubanza atigeze agaragaza inenge ziri mu rubanza asabe ko zakosorwa, ahubwo yanditse gusa avuga ko ajuriye ariko ntiyatanga impamvu z'ubujurire, ko rero ingingo z'ubujurire zaje nyuma y'igihe cyo kujurira zitakwirwa. [10] Muri uru rubanza, Urukiko rurasanga hagomba kubanza gusuzumwa inzitizi yatanzwe n'Ubushinjacyaha ijyanye no kumenya niba impamvu z'ubujurire zatanzwe na Twayigizumugabe Jean Luc mu mwanzuro wo ku wa 19/03/2024 zakwirwa zigasuzumwa. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

1. Kumenya niba impamvu z'ubujurire zatanzwe na Twayigizumukiza Jean Luc mu mwanzuro wo ku wa 19/03/2024 zakwirwa zigasuzumwa [11] Uhagarariye Ubushinjacyaha avuga ko urubanza Twayigizumugabe Jean Luc ajuririra rwaciwe ku wa 07/07/2023, kopi y'urubanza ishyirwa muri system ku wa 09/07/2023 maze ku wa 13/07/2023 yandika

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avuga ko ajuriye kuko atishimiye imikirize y'urubanza ariko ko inenge n'amakosa bisabirwa gukosorwa azabitanga mu mwanzuro w'inyongera amaze kubona kopi y'urubanza. Avuga ko asanga mu bihe byo kujurira biteganywa n'amategeko Twayigizumugabe Jean Luc ataragaragaje inenge n'amakosa asaba ko yakosorwa mu rubanza ajuririra, ko ahubwo yazitanze kuwa 19/03/2024, ibiye byo kujurira byararenze, ko asaba urukiko kutazakira ngo ruzisuzume, kuko zatanzwe mu buryo binyuranyije n'ibiteganwa mu ngingo ya 183 y'itegeko N°027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha. Avuga ko kuba ingingo z'ubujurire zaje nyuma y'ibyo bihe amategeko ateganya zitakirwa ngo zisuzumwe byatanzweho umurongo mu rubanza RPAA00559/2021/CA, rwaciwe ku wa 27/01/2023, haburana Ubushinjacyaha na Nabihayimana Emmanuel, urubanza rwa Mbutu Aimable rwaciwe n'Urukiko rw'Ikirenga rusobanura ko impamvu z'ubujurire zituzwa cyangwa ngo zisobanure izatanzwe mbere zitakirwa, ko rero basaba ko ubujurire bwe butakirwa. [12] Twayigizumugabe Jean Luc avuga ko mu gihe yakoraga ubujurire yavuze ko impamvu z'ubujurire azazitanga nyuma amaze kubona kopi y'urubanza, ko yagerageje kuyishakisha ayibona ku itariki yatangiyeho umwanzuro abifashijwemo n'umugiraneza. Anavuga ko aho bari muri gereza kubona kopi bitaborohera kubera ko iyo babajije bababwirako bazayibaha, kubera kutamenya amategeko, nabo

bagategereza, ibihe bikabarengana. [13] Me Niyonsenga Vincent umwunganira avuga ko batemeranywa n'inzitizi yatanzwe n'Ubushinjacyaha, kuko uregwa yajuriye mu gihe giteganywa n'amategeko, amaze kumenya imikirize y'urubanza y'uho Urukiko rwemeje ko igihano yahawe kigumye. Anavuga ko Gereza ifite uburyo ikoramo, ko abagororwa basaba kopi bakarindira igihe bazagererwaho, ko igihe agereweho aribwo akora umwanzuro, ko basanga hagombye gukorwa ubuvugizi usomewe urubanza agahita anahabwa kopi yarwo, ku bafunzwe urukiko rukabona ko igihe yakoreye umwanzuro aribwo yari abonye kopi y'urubanza, kuko nta kigaragaza ko igihe yajuriraga yari ayifite. Yongeraho ko n'ubwo hari umurongo wafashwe kuri iki kibazo ariko bigomba no kumvikana ko Twayigizumugabe Jean Luc yagize imbogamizi zo kutabonera kopi y'urubanza ku gihe, kubera ko afunzwe akaba atari kunenga urubanza adafite kandi yarusabye kopi ntayihabwe, ndetse akaba yaranaburanaga atunganiwe. UKO URUKIKO RUBIBONA [14] Impaka kuri iyi ingingo zishingiye ku kumenya uko bigenda mu gihe ujurira yatanze ubujurire bwe mu gihe ariko ntagaragaze inenge z'urubanza ajuririra, impamvu n'ibisobanuro byatumye ajurira akabitanga nyuma, ibihe by'ubujurire byarangiye. [15] Ikibazo kijyanye n'igihe impamvu z'ubujurire cyangwa igihe inenge ziri mu rubanza rujuririrwa bigomba gutangwa, iyo umuburanyi ajuriye ntagaragaze ibisobanuro ku mpamvu ze z'ubujurire akavugaga ko azabitanga nyuma, cyatanzweho umurongo n'Urukiko rw'Ubujurire mu rubanza rubanziriza urundi no RPA00047/2021/CA rwaciwe ku wa 09/06/2023 haburana Ubushinjacyaha bwa Gisirikare na Maj (Rtd) Mudathiru Habib alias Mussa. Muri urwo rubanza, uru Rukiko rushingiye ku kuba umwanzuro w'ubujurire uba ugomba kuba ukubiyemo n'impamvu z'ubujurire, ko ariko umuburanyi agomba kuba yabonye kopi y'urubanza ajurira kugira ngo abashe kugaragaza inenge zarwo, rwemeje ko impamvu z'ubujurire zatanzwe nyuma y'ibihwe by'ubujurire zitagomba kwakirwa; ko ariko iyo umuburanyi yatinze kubona kopi, impamvu z'ubujurire zigomba gutangwa mu gihe kitarenze iminsi mirongo 30 uhagaze igihe abonye iyo kopi. Uyu murongo wagendeweho mu manza zaciwe n'uru Rukiko, mu ziheruka harimo urubanza RPAA00107/2024/CA rwaciwe ku wa 13/12/2024, haburana Ubushinjacyaha na Nyiringabo Jean Paul. [16] Mu bika bikurikira, Urukiko rurasuzuma niba hari impamvu zatumye Twayigizumugabe Jean Luc adatanga impamvu ashingiraho ubujurire bwe mu bihe biteganywa n'amategeko yatuma imyanzuro yatanze nyuma y'ibihwe by'ubujurire yakirwa.

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[17] Urubanza RPA00835/2021/HC/KIG rujuririrwa, rwaburanishijwe ku wa 7/06/2023, ababuranyi bose bahari, bamenyeshwa ko ruzasomwa ku wa 07/07/2023 saa munani, uwo munsu ababuranyi bamenyeshwe ruzasomwa, kopi y'urubanza ishyirwa muri IECMS ku wa 09/07/2023. Twayigizumugabe Jean Luc abinyujije ku buyobozi bwa Gereza ya Nyarugenge ku wa 13/07/2023, yajuririrye urwo rubanza avugaga ko atishimiye imikirize yarwo, ko inenge zarwo zisabirwa gukorerwa n'ibindi bibazo bigomba gusuzumwa n'uburyo zakorerwa hashingiwe ku mategeko azabyohereza nyuma mu mwanzuro w'inyongera amaze kubona kopi y'urubanza. Bigeze ku wa 19/03/2024 nyuma y'amezi 8 niho yakozwe umwanzuro w'inyongera asobanura inenge z'urubanza ajuririra, asaba ko zakorerwa. [18] Muri uwo mwanzuro, Twayigizumugabe Jean Luc avugaga ko ishami rishinzwe kurwanya ibiyobyabwenge ryatanze

amakuru atariyo rigendeye ku mabwire y'abacuruzi, babeshye ko yafashwe n'abaturage ari gucuruza heroyine. Anavuga ko nta bimenyetso by'uho acuruza heroyine byagaragajwe, kandi ko atigeze anemera ko ayicuruza, asaba ko guhanirwa icyaha cyo gufatanwa heroyine kuko atayicuruzaga. [19] Urukiko rw'Ubujurire rusanga mu mwanzuro Twayigizumugabe Jean Luc yatanze mu bihe byemewe n'amategeko byo kujurira ari uwo yagejeje ku Rukiko ku wa 13/07/2023, ariko uretse kuwita umwanzuro w'ubujurire, ntagaragaza inenge z'urubanza ajuririra kuko yanditse avuga ko azazohereza mu mwanzuro w'inyongera amaze kubona kopi y'urubanza. Umwanzuro w'inyongera akaba yarawutanze ku itariki ya 19/03/2024 hashize amezi umunani (8), nyamara igihe yatangaga ubujurire bigaragara ko kopi y'urubanza yari muri IECMS kuko yashyizwemo ku itariki ya 09/07/2023. Harebwe rero umurongo watanze n'uru Rukiko mu rubanza RPA00047/2021/CA wibukijwe mu gika cya 15 cy'uru rubanza, Twayigizumugabe Jean Luc yari afite iminsi 30 kuva kopi ishyizwe muri dosiye muri IECMS kugira ngo abe yatanze umwanzuro ukubiyemo inenge z'urubanza ashingiraho ajurira, akaba rero atari kurenza itariki ya 08/08/2023 atarayitanga. [20] Urukiko rw'Ubujurire rurasanga ibyo Twayigizumugabe Jean Luc n'umwunganira bavuga ko yajuriye atarabona kopi y'urubanza, kuko yagize imbogamizi zo kutayibona kubera ko Gereza idahita iyibaha, ko bibasaba gutegereza kugeza bagezweho n'uho igihe yatangiye umwanzuro ari cyo gihe yari ayiboneye nta shingiro bifite, kuko ubwo yajuriraga kopi y'urubanza yari muri IECMS, akaba atagaragaza ko mu gihe yari afite cy'iminsi 30 kuva ishyizwemo, yayisabye ubuyobozi bwa Gereza ntibwayimuha. [21] Kubera izo mpamvu, uru Rukiko rurasanga n'ubwo Twayigizumugabe Jean Luc yanditse ajurira mu bihe biteganywa n'amategeko, iminsi 30 kuva kopi y'urubanza ishyizwe muri IECMS yarangiye nta mpamvu z'ubujurire atanze kuko yazitanze ku wa 19/03/2024, ni ukuvuga nyuma y'amezi umunani (8) uhereye igihe kopi yashyiriwe muri IECMS, bituma ubujurire bwe butakirwa, kuko impamvu abushingiraho zatanzwe impitagihe. III. ICYEMEZO CY'URUKIKO [22] Rwemeje ko ubujurire bwa Twayigizumugabe Jean Luc butakiriwe. [23] Rwemeje ko urubanza RPA00835/2021/HC/KIG rwaciye n'Urukiko Rukuru ku wa 07/07/2023 rudahindutse mu ngingo zarwo zose. [24] Rutegetse ko Twayigizumugabe Jean Luc asonerwa amagarama y'urubanza kuko aburana afunze.

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