

RWANDA / JUDGMENT

MURINDA vs. MUKAMUZIMA N'ABANDI [

RADA 00003/2022/HC/NYZ

COURT

High Court

DECIDED

28 July 2023

CASE / FILE NUMBER

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MURINDA vs. MUKAMUZIMA N'ABANDI [

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Text

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MURINDA vs. MUKAMUZIMA N'ABANDI [Rwanda URUKIKO RUKURU, URUGEREKO RWA NYANZA – RADA 00003/2022/HC/NYZ – (Habimana, J. P.) 28 Nyakanga 2023] Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Kuregera Urukiko – icyaregewe mu rukiko – Kumenya icyaregewe mu rukiko ntabwo hashingirwa gusa ku buryo cyanditse ahubwo hagomba no kurebwa ibisabwa na buri muburanyi bigaragazwa n'inyandiko itanga ikirego n'imyanzuro yo kwiregura. Incamake y'ikibazo: Murinda warimo gukurikirana ubutaka bwazizwe n'umubyeyi we Se umubyara, bukaba bufitwe na Mukase yaje gusanga mushikiwe Mukamuzima yarabwiyandikishije rwihishwa yirengagije abandi bavandimwe bakomoka kuri nyir'ubutaka ariwe Nkundintwali. Ibi byatumye atanga ikirego mu Rukiko Rwisumbuye rwa Muhanga asaba gutesha agaciro amasezerano y'ubukode burambye y'ubwo butaka ndetse agobokeshamo Ikigo cy'Igihugu gifite mu nshingano zayo imicungire y'ubutaka. Iki kirego cyahise gihabwa numero kiba ikirego cy'ubutegetsi aho kuba mbonezamubano. Mukamuzima yatanze inzitizi asaba urukiko kutakira iki kirego kuko cyahise gihabwa numero y'ikirego cy'ubutegetsi kandi Leta yari itaraba umuburanyi. Mu gufata icyemezo, Urukiko rwemeje ko iyi nzitizi ifite ishingiro, ko ikirego cy'Urega kitakiriwe. Ibi byatumye uyu akijuririra mu Rukiko Rukuru maze hasuzumwa

ikibazo cyo kumenya niba ikirego cyatanze n'Uwajuriye cyo gutesha agaciro amasezerano y'ubukode burambye bw'ubutaka ari ikirego cy'ubutegets. Kuri iki kibazo cyasuzumwe muri uru rubanza, Urega avuga ko atanga ikirego ntiyashingiye kuwo arega ahubwo yashingiye ku kiregerwa (amasezerano y'ubukode). Ikindi kandi ngo ntiyagobokesheje Ikigo RLMUA nyuma yo kubona nimeru y'ikirego ahubwo yakigobokesheje mu gihe kimwe yaregaga Mukamuzima kimwe no kugobokesha Virginie. Bivuze ko icyo Kigo gifite ubutaka mu nshingano cyaragobokeshejwe gihita gifatwa nk'umuburanyi bituma atanga ikirego mu Rukiko Rwisumbuye mu rugereko ruburanisha imanza z'ubutegets. Uregwa asobanura avuga ko Urega atanga ikirego gisaba gutesha agaciro, yagitanze ashaka kugaragaza ko icyo cyangombwa yakibonye mu buryo bushingiye ku makuru atari ay'ukuri, ko uwo mutungo wari ukiri uw'umuryango wose, ibi ubwabyo bikumvikanisha ko ikirego cyashyikirijwe Urukiko Rwisumbuye, ari ikirego gisanze cy'imbenezamubano na cyane ko yavugaga ko ari umutungo w'umuryango aregera. Akomeza avuga ko kugobokesha iki Kigo cy'ubutaka, ntabwo byari guhindura kamere cg "nature" y'ikirego cyashyikirijwe Urukiko Rwisumbuye. Incamake y'icyemezo: Kumenya icyaregawe mu rukiko ntabwo hashingirwa gusa ku buryo cyanditse ahubwo hagomba no kurebwa ibisabwa na buri muburanyi bigaragazwa n'inyandiko itanga ikirego n'imyanzuro yo kwiregura. Bityo, ikirego Barinda yatanze cyo gutesha agaciro amasezerano y'ubukode burambye bw'ubutaka yakozwe hagati ya Mukamuzima Scholastique n'Ikigo gifite ubutaka mu nshingano ntabwo ari ikirego cy'ubutegets ahubwo ni mbenezamubano kuko icyo baburana n'uwo arega ni isambu. Ubujurire ntibwakiriwe. Amagarama aherera ku isanduku ya Leta. Amategeko yashingirweho: Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 36. Itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 115.

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Itegeko N° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 64. Imanza zifashishijwe: Mbarushimana na Nkundabanyanga, RCAA00022/2016/SC-RCAA 0022/16/CS rwaciye n'Urukiko rw'Ikirenga kuwa 03 Nyakanga 2018. Urubanza I. IMITERERE Y'URUBANZA [1] Alphonse Murinda ubwo yakurikiranaga mu rwego rw'ubuyobozi bw'umurenge wa Runda, mu Karere ka Kamonyi, ibirebana no kugabana umutungo ugizwe n'ubutaka umubyezi we Nkundintwali Ladislav witabye Imana yasize, bukaba bucuze n'umupfakazi Nyirabahuye Virginie akaba mukase, yatunguwe no gusanga ubwo butaka UPI: 2/08/12/04/6030 bufite ubuso 8020 (sqm) bwanditseho mushiki we Mukamuzima Scholastique akaba yarabwiyandikishije rwihishwa yirengagije abandi bavandimwe bakomoka kuri nyir'ubutaka ariwe Nkundintwali. Ibi bigashimangirwa ni uko tariki ya 07/6/2021 igihe Alphonse Murinda yari agiye gusaba gutambamira ihererekanya ry'ubwo butaka, raporo iboneka ku rubuga (website) rw'Ikigo gifite ubutaka mu nshingano, yagaragaje ko bwanditse kuri Mukamuzima Scholastique. [2] Mukamuzima Scolastique wari wunganiye na Me Nyirambarushimana Veneranda yatanze inzitizi asaba urukiko kutakira iki kirego kuko cyahise gihabwa numero y'ikirego cy'ubutegets kandi Leta yari itaraba umuburanyi, ababuranyi ari Murinda Alphonse arega Mukamuzima Scolastique, nyuma y'uko gihabwa iyi numero y'ubutegets nibwo urega yasabye ko Ikigo

cy'Igihugu gifite ubutaka mu nshingano zacyo cyahatirwa kugoboka muri uru rubanza rw'abandi. [3] Mu rubanza RAD 00005/2021/TGI/MHG, urukiko rwemeje ko inzitizi rwashyikirijwe na Mukamuzima Scolastique ifite ishingiro. Rwemeje ko ikirego RAD 00005/2021/TGI/MHG kitakiriwe. Rutegeka Murinda Alphonse n'abo ahagarariye kwishyura indishyi zingana n'ibihumbi magana atanu y'igihembo cya avocat waburaniye Mukamuzima Scolastique na bagenzi be. [4] Mu gufata iki cyemezo, urukiko rwasanze icyaregawe muri uru rubanza RAD 00005/2021/TGI/MHG ni gusaba gutesha agaciro amasezerano y'ubukode burambye bw'ubutaka yakozwe hagati ya Mukamuzima Scholastique n'Ikigo gifite ubutaka mu nshingano (Rwanda Land Management & Use Authority), icyo abarega basaba ni ugutesha agaciro amasezerano y'ubukode burambye yakozwe hagati ya Mukamuzima Scholastique n'Ikigo gifite ubutaka mu nshingano, ni amasezerano y'ubukode burambye yakozwe, abarega basaba ko akurwaho si icyemezo giha Mukaruzima Scholastique uwo mutungo, byumvikana ko ikirego cyashyikirijwe Urukiko Rwisumbuye rwa Muhanga ari ikirego gisanzwe cy'imbonezamubano. Kuba haragobokeshejwe Ikigo gifite ubutaka mu nshingano zacyo, ntibihindura "nature" y'ikirego cyashyikirijwe Urukiko Rwisumbuye rwa Muhanga, ariyo mpamvu inzitizi urukiko rwashyikirijwe na Mukamuzima Scolastique ifite ishingiro bityo ikirego RAD 00005/2021/TGI/MHG kikaba kitakiriwe ngo urubanza rusuzumwe mu mizi. [5] Alphonse Murinda yajuririye uru rukiko rukuru, urugereko rwa Nyanza, urubanza ruhabwa RADA 00003/2022/HC/NYZ, iburanisha ry'urubanza mu ruhamye ryashyizwe kuwa 10/7/2023, uwo munsu ugeze, Alphonse Murinda yitaba urukiko ahagarariye na Mazimpaka Jean Paul naho Mukamuzima Scolastique na Nyirabahuye Virginie bahagarariye na Me Nyirambarushimana Venerande naho Ikigo cy'Igihungu gishinzwe ubutaka kititabye kandi baramenyeshajwe mu buryo bukurikije amategeko bituma urubanza ruburanishwa badahari.

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[6] Mu myanzuro y'ubujurire no mu miburanire, Uhagarariye Alphonse Murinda avuga ko Mulinda atanga ikirego ntiyashingiye kuwo arega ahubwo yashingiye ku kiregerwa (amasezerano y'ubukode). Murinda kandi ntiyagobokesheje ikigo RLMUA nyuma yo kubona numero y'ikirego ahubwo yakigobokesheje mu gihe kimwe yaregaga Mukamuzima Scholastique kimwe no kugobokesha Virginie: bigaragazwa n'incamake y'ikirego bikubiyemo yashyizwe muri IECMS kuwa 06/08/2021 ndetse na "assignments" zatanzwe na TGI Muhanga zo kuwa 19/08/2021 zatangiye rimwe zose ikirego gifite numero RAD 00005/2021/TGI/MHG zigenerwa rimwe urega ndetse n'abagobokeshejwe bose baba ababuranyi aribwo numero y'ikirego yatanze. Kuba Ikigo gifite ubutaka mu nshingano cyaragobokeshejwe cyahise gifatwa nk'umuburanyi bituma Murinda atanga ikirego mu Rukiko Rwisumbuye mu rugereko ruburanisha imanza z'ubutegetsi. [7] Uhagarariye Alphonse Murinda agasanga ibisobanuro by'Urukiko Rwisumbuye bikaba biteye urujijo kuko rwemera ko Murinda yagobokesheje ikigo cya Leta mu buryo no mu nzira zikurikije amategeko ariko ntirwibuke ko icyo kigo cya Leta kigobokeshejwe ikirego kiba icy'ubutegetsi hashingiye ku ngingo ya 36 igika cya 11 COFCJ ihita ikurikizwa ikirego kikaba icy'ubutegetsi kubera ko muri icyo gika cy'icyo ngingo hasobanura neza ko ibirego byose Leta yarezwemo uretse mu gihe amategeko abiteganyaga ukundi biburanishwa n'Inkiko zisumbuye

mu rugereko ruburanisha imanza z'ubutegets. Ibi kandi bigaragazwa n'ingingo z'amategeko ni nabyo byemejwe mu manza zitandukanye. Barasaba urukiko rujuririwe rukemeza ko ikirego gisubizwa mu Rukiko rwisumbuye urugereko ruburanisha imanza z'ubutegets ndetse runemeze ko inzitizi yatanzwe na Mukamuzima Scolastoque nta shingiro ifite. [8] Mukamuzima Scolastique avuga ko Murinda atanga iki kirego gisaba gutesha agaciro, yagitanze ashaka kugaragaza ko icyo cyangombwa yakibonye mu buryo bushingiye ku makuru atari ay'ukuri, ko uwo mutungo wari ukiri uw'umuryango wose, ibi ubwabyo bikumvikanisha ko ikirego cyashyikirijwe Urukiko Rwisumbuye rwa Muhanga, ari ikirego gisanze cy'imbenezamubano na cyane ko yavugaga ko ari umutungo w'umuryango aregera. Mu isesengura nanone urukiko rwasobanuye neza icyo bise kugobokesha ikigo cy'igihugu gifite ubutaka mu nshingano zacyo nk'uko ingingo ya 115 CPCCSA ivuga ku kugobokesha umuburanyi ku gahato, kuba Murinda Alphonse yaragobokesheje iki kigo cy'ubutaka, ntabwo byari guhindura kamere cg "nature" y'ikirego cyashyikirijwe Urukiko Rwisumbuye rwa Muhanga, mu gihe mbere ababuranyi yari Murinda Alphonse urega Mukamuzima Scolastique, kuba icyo kigo cyari gihatiwe kugoboka, ntibyari guhindura kamere y'ikirego. [9] Nyirambarushmana Veneranda uhagarariye Nyirabahuye Virginie avuga ko imyiregurire ya Nyairabahuye ni imwe n'ya Mukamuzima nawe yifuza ko hazabanza hagasuzumwa inzitizi ko ikirego ari imbenezamubano atari ikirego cy'ubutegets. Hagumaho imikirize y'urubanza rwajuririwe kuko iki si ikirego cy'ubutegets. [10] Ibibazo bigiye gusuzumwa muri uru rubanza ni ibi bikurikira: - Kumenya niba ikirego cyatanze na Alphonse Murinda cyo gutesha agaciro amasezerano y'ubukode burambye bw'ubutaka ari ikirego cy'ubutegets. - Kumenya niba hari indishyi zatangwa muri uru rubanza. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Kumenya niba ikirego cyatanze na Alphonse Murinda cyo gutesha agaciro amasezerano y'ubukode burambye bw'ubutaka ari ikirego cy'ubutegets [11] Uhagarariye Alphonse Murinda avuga ko Murinda atanga ikirego ntiyashingiye kuwo arega ahubwo yashingiye ku kiregerwa (amasezerano y'ubukode). Murinda kandi ntiyagobokesheje Ikigo RLMUA nyuma yo kubona numero y'ikirego ahubwo yakigobokesheje mu gihe kimwe yaregaga

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Mukamuzima Scholastique kimwe no kugobokesha Virginie, bigaragazwa n'incamake y'ikirego bikubiyemo yashyizwe muri IECMS kuwa 06/08/2021 ndetse na "assignments" zatanze na TGI Muhanga zo kuwa 19/08/2021 zatangiwe rimwe zose ikirego gifite numero RAD 00005/2021/TGI/MHG zigenerwa rimwe urega ndetse n'abagobokeshejwe bese baba ababuranyi aribwo numero y'ikirego yatanze. Kuba Ikigo gifite ubutaka mu nshingano cyaragobokeshejwe cyahise gifatwa nk'umuburanyi bituma Murinda atanga ikirego mu Rukiko Rwisumbuye mu rugereko ruburanisha imanza z'ubutegets. [12] Uhagarariye Alphonse Murinda agasanga ibisobanuro by'Urukiko Rwisumbuye biteye urujijo kuko rwemera ko Murinda yagobokesheje ikigo cya Leta mu buryo no mu nzira zikurikije amategeko ariko ntirwibuke ko icyo kigo cya Leta kigobokeshejwe ikirego kiba icy'ubutegets hashingiye ku ingingo ya 36 igika cya 11 COFCJ ihita ikurikizwa ikirego kikaba icy'ubutegets kubera ko muri icyo gika cy'icyo ingingo hasobanura neza

ko ibirego byose Leta yarezwemo uretse mu gihe amategako abiteganya ukundi biburanishwa n'Inkiko zisumbuye mu rugereko ruburanisha imanza z'ubutegetsi. Ibi kandi bigaragazwa n'ingingo z'amategako ni nabyo byemejwe mu manza zitandukanye. Barasaba urukiko rujuririwe kwemeza ko ikirego gisubizwa mu Rukiko Rwisumbuye urugereko ruburanisha imanza z'ubutegetsi ndetse runemeze ko inzitizi yatanzwe na Mukamuzima Scolastique nta shingiro ifite. [13] Mukamuzima Scolastique avuga ko Murinda atanga iki kirego gisaba gutesha agaciro, yagitanze ashaka kugaragaza ko icyo cyangombwa yakibonye mu buryo bushingiye ku makuru atari ay'ukuri, ko uwo mutungo wari ukiri uw'umuryango wose, ibi ubwabyo bikumvikanisha ko ikirego cyashyikirijwe Urukiko Rwisumbuye rwa Muhanga, ari ikirego gisanzwe cy'imbenezamubano na cyane ko yavugaga ko ari umutungo w'umuryango aregera. Mu isesengura nanone urukiko rwasobanuye neza icyo bise kugobokesha ikigo cy'igihugu gifite ubutaka mu nshingano zacyo nk'uko ingingo ya 115 CPCCSA ivuga ku kugobokesha umuburanyi ku gahato, kuba Murinda Alphonse yaragobokeshje iki kigo cy'ubutaka, ntabwo byari guhindura kamere cg nature y'ikirego cyashyikirijwe Urukiko Rwisumbuye rwa Muhanga, mu gihe mbere ababuranyi yari Murinda Alphonse urega Mukamuzima Scolastique, kuba icyo kigo cyari gihatiwe kugoboka, ntibyari guhindura kamere y'ikirego. [14] Me Nyirambarushmana Veneranda uhagarariye Nyirabahuye Virginie avuga ko imyiregurire ya Nyirabahuye ni imwe n'iya Mukamuzima nawe yifuza ko hazabanza hagasuzumwa inzitizi ko ikirego ari imbenezamubano atari ikirego cy'ubutegetsi. Hagumaho imikirize y'urubanza rwajuririwe kuko iki si ikirego cy'ubutegetsi. UKO URUKIKO RUBIBONA [15] Impaka ziri muri uru rubanza zishingiye ku kumenya niba ikirego cyatanzwe na Alphonse Murinda cyo gutesha agaciro amasezerano y'ubukode burambye bw'ubutaka ari ikirego cy'ubutegetsi kubera ko hagobokeshejwemo Ikigo cy'Igihugu cy'Ubutaka. [16] Ikibazo kijyanye no gutesha agaciro amasezerano y'ubukode burambye cyatanzweho umurongo mu rubanza RCAA00022/2016/SC-RCAA 0022/16/CS rwaciwe n'urukiko rw'Ikirenga kuwa 03 Nyakanga 2018 aho rwagaragaje ko mu kumenya icyaregewe, ntabwo hashingirwa gusa ku buryo cyanditse, ahubwo hagomba no kurebwa ibisabwa na buri muburanyi bigaragazwa n'inyandiko itanga ikirego n'imyanzuro yo kwiregura, nubwo rero inyandiko itanga ikirego mu Rukiko Rwisumbuye igaragaza ko haregewe gutesha agaciro amasezerano y'ubukode burambye yahawe Mbarushimana utari nyiri umutungo, ariko icyari kigamijwe ari ugusaba Urukiko kwemeza ko uwo mutungo ari uwa Nkundabanyanga. Bityo, kuba ikiregerwa ari isambu, ikirego cyagombaga gutangwa mu Rukiko rw'Ibanze ku rwego rwa mbere bityo urubanza rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge

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kimwe n'urwarushingiyeho mu bujurire rwaciwe n'Urukiko Rukuru, zigomba kuvaho kuko zaciwe n'inkiko zitabifitiye ububasha, ko ikirego cyagombaga gutangwa mu Rukiko rw'Ibanze. [17] Urukiko rurasanga intandaro y'ikibazo kiri muri uru rubanza ni uko ubwo Alphonse Murinda yakurikirana ibijyanye n'umutungo ugizwe n'ubutaka umubyeyi we Nkundintwali Ladislav witabye Imana yasize, bukaba bucuwaga n'umupfakazi Nyirabahuye Virginie akaba mukase, yatunguwe no gusanga ubwo butaka UPI: 2/08/12/04/6030 bwanditseho mushiki we Mukamuzima Scholastique akaba yarabwiyandikishije rwihishwa yirengagije abandi bavandimwe bakomoka

kuri nyir'ubutaka ariwe Nkundintwali. [18] Urukiko rurasanga kuba Mukamuzima Scolastique yaribarujeho ubutaka ndetse akaba afite icyangombwa cy'ubutaka none Alphonse Murinda akaba yatanze ikirego cyo gutesha agaciro amasezerano y'ubukode burambye bw'ubutaka yakozwe hagati ya Mukamuzima Scholastique n'Ikigo gifite ubutaka mu nshingano. Iki kirego ntabwo ari ikirego cy'ubutegetsu kubera ko icyo baburana ni isambu. Ikindi Alphonse Murinda ntabwo arebwa nayo masezerano cyane ko ingingo ya 64 y'Itegeko N° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano ivuga ko amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya. [19] Urukiko rusanga ibibazo bijyanye no kuba umwe mu bagize umuryango yaribarujeho umutungo w'umuryango ndetse akabiharerwa amasezerano y'ubukode burabye ntabwo ikirego cyahinduka ikirego cy'ubutegetsu kubera ko urega asaba gutesha agaciro icyo cyemezo kuko ikiburanwa ni isambu y'umuryango. [20] Urukiko rurasanga iki kirego cyaragombaga kujyanywa mu rukiko ruburanisha imanza z'imbenezamubano kugirango hasuzumwe niba ubwo butaka ari ubutaka bw'umuryango noneho byamara kugaragara urukiko rugategeka ko ubwo butaka bwandikwa ku muryango cyangwa se akaba yasaba ko ubwo butaka bwazungurwa n'umuryango nyamara igitangaje yatanze ikirego ku giti cye ari ikirego cy'umuryango.

2. Kumenya niba hari indishyi zatangwa muri uru rubanza [21] Mukamuzima Scolastique arasaba urukiko ko ruzategeka Murinda Alphonse kumuha indishyi z'akababaro zo gukomeza kumushora mu manza zingana na miliyoni y'u Rwanda (1,000,000 fr) hamwe n'igihembo cy'avoka kingana n'ibihumbi magana atanu (500.000 FRW). Izi ndishyi zikaziyongera kuzo yari yabonye ku rwego rwa mbere zingana n'ibihumbi magana atandatu (600,000 fr). UKO URUKIKO RUBIBONA [22] Ku birebana n'indishyi z'akababaro, urukiko rurasanga Mukamuzima Scolastique nta ndishyi z'akababaro yababwira kubera ko iki kibazo kitasuzumwe mu mizi kuri uru rwego kuko kitari mu bubasha bw'urukiko ruburanisha imanza z'ubutegetsu, naho ku kumushora mu manza zingana na miliyoni y'u Rwanda (1,000,000 FRW) n'igihembo cy'avoka kingana n'ibihumbi magana atanu (500,000 fr) , urukiko rurasanga Mukamuzima Scolastique akwiye guhabwa igihembo cy'avoka kingana n'ibihumbi magana atanu (500 000 frw) naho izindi ndishyi asaba nta shingiro zifite kubera ko atazitangira ibimenyetso. III. ICYEMEZO CY'URUKIKO [23] Rwemeje ko ubujurire bwatanze na Alphonse Murinda butakiriwe.

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- [24] Rwemeje ko imikirize y'urubanza RAD 00005/2021/TGI/MHG rwaciye n'urukiko rwisumbuye rwa Muhanga idahindutse uretse ko hiyongereyeho igihembo cy'avoka. [25] Rutegetse Alphonse Murinda guha Mukamuzima Scolastique igihembo cy'avoka kingana na miliyoni imwe (1 000 000 frw) hakubiyemo igihembo cy'avoka cyo mu Rukiko Rwisumbuye rwa Muhanga no mu Rukiko Rukuru, Urugereko rwa Nyanza. [26] Rutegetse ko ingwate y'amagarama y'ibihumbi mirongo ine (40 000 frw) yatanze na Alphonse Murinda ihwanye n'ibyakozwe muri uru rubanza.

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