

RWANDA / JUDGMENT

UBUSHINJACYAHA v NKUNZIMANA N'ABANDI

RS/INJUST/RP/00001/2018/HC/KIG

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UBUSHINJACYAHA v NKUNZIMANA N'ABANDI

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Text

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UBUSHINJACYAHA v NKUNZIMANA N'ABANDI [Rwanda URUKIKO RUKURU – RS/INJUST/RP/00001/2018/HC/KIG (Nzabonimpa, P.J) 30 Nzeri 2019] Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Ikirego cy'indishyi mu manza nshijabyaha – Ubujurire bw'indishyi mu gihe ushinjwa yagizwe umwere – Kutajurira kw'Ubushinjacyaha – Itangwa ry'ibihabo – Iyo uregera indishyi ajuririye izo ndishyi mu rubanza uregwa yagizwe umwere ariko Ubushinjacyaha ntibujurire, urubanza rukongera gusuzumwa mu mizi yarwo n'urukiko rw'ubujurire rureba aho indishyi zishingiye, uregwa ntashobora guhabwa ibihano kabone niyo Urukiko rwasanga ahamwa n'icyaha. Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko rw'Ibanze rwa Nyamirambo haregwa Nkunzimana, Kalimunda na Ndayizeye baregwa ubujura bukoresha kurira naho Mukayibera aregwa icyaha cyo kubonera inyungu mubikomoka ku cyaha, ibi bikaba bikomoka kubujura byakorewe Honest General Eses aho nayo muri uru rubanza yaregeye indishyi. Urukiko rwaciye urubanza ruhamye icyaha Kalimunda na Ndayizeye rubakatira igifungo cy'imyaka itatu naho Nkunzimana na Mukayibera rubagira abere. Ndayizeye yajuririye Urukiko Rwisumbuye rwa

Nyarugenge narwo ruvuga ko imikirize y'Urubanza rwo mu Rukiko rw'Ibanze idahindutse. Honest General Esees nayo yaje kujurira ivuga ko indishyi bahawe zakongerwa ndetse nabagizwe abere bagahamwa n'icyaha nabo bakagira uruhare rwo gutanga indishyi, Kaimunda nawe yarajuriye asaba kugirwa umwere; imanza zabo zihurizwa hamwe. Urukiko rw'Isumbuye rwafashe icyemezo rwemeza ko abari bagizwe abere bahamwa n'icyaha bakatirwa imyaka 2 y'igifungo ndetse bategekwa gufatanya nabandi kwishyura Honest General Eses indishyi. Nkunzimana na Mukayibera ntibishimiye iyo mikirize, maze bandikira Urukiko Rukuru basaba ko Urubanza rusubirwamo ku mpamvu z'akarengane, Urukiko rw'Ikirenga rwemeje ko Urubanza rusubirwamo n'Urukiko Rukuru. Mwiburanisha ry'urubanza mu Rukiko Rukuru, Nkunzimana na Mukayibera bavuga ko Urukiko rw'Isumbuye rwabahamije ibyaha rubaha n'ibihano kandi Ubushinjacyaha butarajuriye bakaba basinga urukiko rwaciye urubanza ku kitajuririwe. Ubushinjacya nabwo buvuga ko kuba butarajuriye, busanga ibihano bahawe bitari bikwiye, ko ahubwo rwagombaga kubahanisha bose gufatanya kwishyura indishyi rusanza bahamwa n'icyaha. Incamake y'Icyemezo: 1. Iyo uregera indishyi ajuririye izo ndishyi mu rubanza uregwa yagizwe umwere ariko Ubushinjacyaha ntibujurire, urubanza rukongera gusuzumwa mu mizi yarwo n'urukiko rw'ubujurire rureba aho indishyi zishingiye, uregwa ntashobora guhabwa ibihano kabone niyo Urukiko rwasanga ahamwa n'icyaha, bityo Nkunzimana na Mukayibera ntibagomba guhabwa ibihano ku byaha bagizweho abera ku rwego rwa mbere igihe Ubushinjacyaha butajuriye.

2. Iyo uregwa adahamwa n'icyaha ntagomba kuryozwa indishyi zikomoka kuri icyo cyaha, Kuri Nkunzimana na Mukayibera ntibahamwa n'ibyaha baregwaga bityo ntibagomba kuryozwa indishyi, indishyi zikaba zizishyurwa nabahamijwe icyaha aribo Kalimunda na Ndayizeye. Gusubirishamo urubanza kumpamvuz'akarengani bifite ishingiro,

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Amategako yashyigiyeho: Itegeko No 30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 9. 85, 165 n'ya 189 Nta manza zifashishijwe Urubanza I. IMITERERE Y'URUBANZA [1] Ubushinjacyaha bwakurikiranye Nkunzimana Issa; Kalimunda Shafi na Ndayizeye Claude ku cyaha cy'ubujura bukoresha kurira, bunakurikirana Mukayibera Alphonsine ku cyaha cyo guhisha cyangwa kubonera inyungu mu bintu bikomoka ku cyaha, bugasobanura ko mu bihe bitandukanye byo mu mwaka wa 2015, Ndayizeye Claude afatanyije na Karimunda Shafi unavuga ko batumwaga na Boss wabo Nkunzimana Issa, bibye inzoga zo mu bwoko bwa Uganda Waragi zifite agaciro ka 8.753.000 Frw muri Company yitwa Honest General Enterprise ihagarariwe na Rudasingwa James. [2] Urukiko rw'Ibanze rwa Nyamirambo rwaregwe rwaciye urubanza ruvuga ko ibyaha byaregwe, icy'ubujura bukoresha kurira kidahama Nkunzimana Issa, n'icyo guhisha cyangwa kubonera inyungu mu bikomoka ku cyaha kidahama Mukayibera Alphonsine, naho icyaha cy'ubujura bukoresha kurira kikaba gihama Karimunda Shafi na Ndayizeye Claude, rubahanisha igifungo cy'imyaka 3, kandi bakishyura Honest General Enterprises indishyi zihwanye na 11.258.000Frw zikubiyemo agaciro k'inzoga zibwe, inyungu n'igihombo bateje, igihembo cya Avoka n'igarama yatanze irega. [3] Ndayizeye Jean Claude yajuririye imikirize y'urwo rubanza kuri RPA 00812/2017/TGI/NYGE, urukiko

rwisumbuye rwa Nyarugenge ruca urubanza ruvuga ko ubujurire bwe nta shingiro, rwemeza ko hagumaho imikirize y'urubanza rwajuririwe mu ngingo zarwo zose. [4] Honest General Entreprises nayo yajuririye imikirize y'urwo rubanza kuri RPA 00007/2018/TGI/NYGE, na Kalimunda Shafi ajurira kuri RPA 00860/2017/TGI/NYGE ubujurire buhurizwa mu rubanza rumwe kuri RPA 00007 & 00860/2018/TGI/NYGE, ariko Ndayizeye Jean Claude aruhamagarwamo ngo yiregure ku ndishyi Honest General Entreprises yajuririye. [5] Urukiko rwasanze icyaha cy'ubujura bukoreshye kurira gihama Nkunzimana Issa na Kalimunda shafi ruhanisha buri wese igifungo cy'imyaka ibiri (2) naho Mukayibera Alphonsine ahamwa n'icyaha cyo kubonera inyungu mu bikomoka ku cyaha rumuhanisha igifungo cy'umwaka 1 n'amezi 2, rwemeza kandi ko Nkunzimana Issa; Kalimunda Shafi; Ndayizeye Claude na Mukayibera Alphonsine bafatanyaga (in solidum) kwishyura Honest General Entreprises indishyi zihwanye na 14.354.800 Frw. [6] Mukayibera Alphonsine na Nkunzimana Issa bandikiye Urukiko Rukuru basaba ko urubanza RPA 00007 & 00860/2018/TGI/NYGE rwaciwe n'urukiko rwisumbuye rwa Nyarugenge kuwa 14 Kamena 2018 rusubirwamo kubera impamvu z'akarengane.

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[7] Perezida w'Urukiko rw'Ikirenga ashingiye kuri raporo yakozwe n'urukiko Rukuru yafashe icyemezo cy'uko urwo rubanza rusubirwamo ku mpamvu z'akarengane, maze rwongera kuburanishwa bundi bushya mu mizi abarubayemo ababuranyi bose bahamagajwe. [8] Mukayibera Alphonsine avuga ko umucamanza yamuhamije icyaha kandi yari yagizwe umwere kandi Ubushinjacyaha butarajuriye anamutegeka no gutanga indishyi ku cyaha atakoze kandi urubanza rutangira yari yarabajijwe nk'umutangabuhamya. [9] Nkunzimana Issa avuga ko umucamanza yaciye urubanza ku kitaregewe amuhamya icyaha yagizweho umwere kandi ubushinjacyaha butarajuriye, anamutegeka no gutanga indishyi ku cyaha atakoze ngo nuko cyakozwe n'abakozi be. [10] Rudasingwa James uhagarariye Honest General Entreprises yunganiwe na Me Mutalindwa Felix bavuga ko bajurijwe no gusaba kongererwa indishyi kuko izo bahawe ari nkeya cyane, ko Mukayibera Alphonsine na Nkunzimana Issa bahamwa n'icyaha nabo bagafatanyaga bakishyura indishyi kuko Mukayibera Alphonsine yaguze ibyibano akabicuruza, naho Nkunzimana Issa abakozi be bamushinja kuba barafatanyije, kandi abaye ari nta ruhare afite mu ikorwa ry'icyaha yakwishyura indishyi ku byaha byakozwe n'abakozi be. [11] Kalimunda Shafi avuga ko yajuriye asaba kurenganurwa ngo kuko nta cyaha yakoze bityo akaba atakwishyura n'indishyi asabwa. [12] Ndayizeye Jean Claude yahamagajwe mu buryo bukurikije amategeko ariko ntiyitaba urukiko, bityo rwemeza ko ruburanishwa adahari. [13] Ubushinjacyaha buvuga ko ubujurire bwa Kalimunda Shafi nta shingiro kuko yiyemereye icyaha mu bugenzacyaha, ko kubirebana na Mukayibera Alphonsine na Nkunzimana Issa, kuba ubushinjacyaha butarajuriye, busanga ibihano bahawe bitari bikwiye, ko ahubwo rwagombaga kubahanisha bose gufatanyaga kwishyura indishyi kuko hari ibimenyetso bibahamya ibyaha bakurikiranyeho. IBIBAZO BIGIZE URUBANZA Kumenya niba kuba ubushinjacyaha butarajuriye hari ibihano byagombaga gutangwa kuri Mukayibera Alphonsine na Nkunzimana Issa Issa kandi mu rubanza uwaregeye indishyi ajuririra

baragizwe abere. Kumenya niba kuba hari urubanza nshinjabyaha RPA 00812/2017/TGI/NYGE, Ndayizeye Jean Claude yajuririye, urukiko rwisumbuye rukemeza ko nta gihindutse ku rurubanza yajuriye rwari rwanatanzwemo indishyi abahamijwe icyaha bagombaga guha HONEST GENERAL ENTREPRISES, ubu rwabaye ndakuka, byatuma nta ndishyi zaburannwa muri uru rubanza. Kumenya niba Kalimunda Shafi yarahamijwe icyaha atakoze Kumenya niba hari ibimenyetso bihamya Mukayibera Alphonsine icyaha cyo kubonera inyungu mu bikomoka ku cyaha byatuma afatanyaga n'abandi (in solidum) kwishyura Honest General Eses indishyi

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Kumenya niba hari ibimenyetso bihamya Nkunzimana Issa icyaha cy'ubujura bukoresha kurira byatuma afatanyaga n'abandi (in solidum) kwishyura HONEST GENERAL Eses indishyi Kumenya niba HONEST GENERAL ENTREPRISES yakongererwa indishyi yatsindiye mu rukiko rw'Ibanze kandi zikishyurwa n'abaregwa bose muri uru rubanza barimo na Mukayibera Alphonsine na Nkunzimana Issa Issa bari bagizwe abere mu rukiko rw'Ibanze. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA A. Kubirebana no kumenya niba kuba ubushinjacyaha butarajuriye hari ibihano byagombaga gutangwa kuri Mukayibera Alphonsine na Nkunzimana Issa [14] Mukayibera Alphonsine n'umwunganira bavuga yagiriye akarengane n'urukiko rwisumbuye kuko umucamanza yamuhamije icyaha kandi yari yagizwe umwere mu rukiko rubanza kandi Ubushinjacyaha butarajuriye. [15] Nkunzimana Issa n'abamwunganira nabo bavuga ko umucamanza yaciye urubanza ku kitaregwe amuhamya icyaha yagizweho umwere kandi ubushinjacyaha butarajuriye. [16] Uhagarariye ubushinjacyaha avugaga ko kubirebana na Mukayibera Alphonsine na Nkunzimana Issa, kuba Ubushinjacyaha butarajuriye ibihano bahawe ntibyari bikwiye kuko Urukiko rw'Ibanze rwari rwabagize abere kandi Ubushinjacyaha butarajuriye, ko ahubwo rwagombaga kubahanisha bose gufatanyaga kwishyura indishyi rusanze bahamwa n'icyaha. Ubushinjacyaha bukoresha buvugaga ko ari nawo murongo watanze n'urukiko rw'Ikirenga aho mu rubanza RPA 0004/Gen/05/CS rwo kuwa 12/02/2008 rwaciye n'urwo Rukiko haburana ubushinjacyaha na Capitaine Twagiramungu Theophile, aho rwasanze icyaha kimuhama ariko ntirwamuhama ibihano kubera ko ubushinjacyaha butajuriye ahubwo acibwa indishyi. [17] Rudasingwa James uhagarariye Honest General Entreprises na Me Mutalindwa Felix umwunganira bavugaga ko urubanza rusabirwa gusubirwamo nta karengane kabayemo bitewe nuko hari ibimenyetso bihamya icyaha buri wese byagaragajwe, birimo kwiyeemerera ibyaha kwa bamwe mu bashinjwa, no kuba abatabyemera babashinjwa na bagenzi babo, kuba hari imvugo z'abatangabuhamya zibashinja no kuba hari amafoto agaragaza uburyo ubujura bwakorwaga. Bukomeza bavugaga ko hagaragaramo aho banyuzaga inzoga bibye, amagugunguru buriragaho, kuba hari ibarura (inventaire) ry'ibibwe rihari ryakozwe n'umuhesha w'inkiko. UKO URUKIKO RUBIBONA [18] Urukiko rusanga ingingo ya 187 y'Itegeko N°30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ivuga Ubujurire bw'indishyi mu gihe ushinjwa yagizwe umwere: Uregera indishyi ajuririra urubanza rwaciye ku byerekeranye n'indishyi gusa. icyakora, kuba ushinjwa yagizwe umwere mu rwego rwa mbere ntibibuzaga abaregera indishyi kuba bazijuririra mu rwego rw'ubujurire. Muri icyo gihe,

iyu uregera indishyi ajuriye, urubanza rwose rwongera gusuzumwa mu mizi yarwo.” Urukiko rusanga iyo ngingo itumvikanisha ko kuba urubanza rwose rwongera gusuzumwa mu mizi yarwo, iyo abajuririwe bahamwe n’icyaha bacibwa indishyi ndetse bakanahabwa n’ibihano, nkuko urukiko rwisumbuye rwabyemeje , ahubwo yumvikanisha ko ubwo bujuriye buba bureba indishyi gusa, ibi kandi nkuko n’Ubushinjacyaha bubivuga , ni nawo murongo watanze n’urukiko rw’Ikirenga aho mu rubanza RPA 0004/Gen/05/CS rwo kuwa 12/02/2008

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rwaciye haburana ubushinjacyaha na Capitaine Twagiramungu Theophile , aho rwasanze icyaha kimuhama ariko nti rwamuha ibihano kubera ko ubushinjacyaha butajuriye ahubwo acibwa indishyi. [19] Urukiko rusanga rero hashingiwe kuri ibyo bisobanuro gusubirashamo urwo rubanza rwavuzwe haruguru bifite ishingiro kuko rugaragaza akarengane Mukayibera Alphonsine na Nkunzimana Issa urukiko rwisumbuye rwabagiriye rubahanisha gufungwa kandi mu rubanza rwajuririwe bari baragizwe abere, ubushinjacyaha ntibujurire. B. Kumenya niba kuba hari urubanza nshinjabyaha RPA 00812/2017/TGI/NYGE, Ndayizeye Jean Claude yajuririye, urukiko rwisumbuye rukemeza ko nta gihindutse ku rubanza yajuriye rwari rwanatanzwemo indishyi abahamijwe icyaha bagombaga guha Honest General Enterprises, ubu rwabaye ndakuka, byatuma nta ndishyi zaburanywa muri uru rubanza. [20] Abunganira Mukayibera Alphonsine na Nkunzimana Issa Issa, bahuriza ku kuba hari urubanza nshinjabyaha RPA 00812/2017/TGI/NYGE, Ndayizeye Jean Claude yajuririye urukiko rwisumbuye rukemeza ko nta gihindutse ku rubanza yajuriye rwari rwanatanzwemo indishyi abahamijwe icyaha aribo Ndayizeye Jean Claude na Kalimunda Shafi bagombaga guha Honest General Enterprises, urwo rubanza ubu rwabaye ndakuka, ibi bikaba byatuma nta ndishyi zaburanywa muri uru rubanza kuko zafashweho icyemezo , hakaba hari impungenge ko Ndayizeye Jean Claude akomeje kuba muri uru rubanza hashobora kuboneka ibyemezo bibiri bivuguruzanya, icyafatwa n’uru rukiko Rukuru n’icyafashwe n’urukiko rwisumbuye rwa Nyarugenge mu rubanza RPA 00812/2017/TGI/NYGE, ubu rukaba rwarabaye ndakuka [21] Me Mutalindwa Felix wunganira uregera indishyi avuga ko uru rubanza rutangira, uregera indishyi yareze abantu bose uko bari barezwe n’Ubushinjacyaha ni ukuvuga Ndayizeye Jean Claude na Kalimunda Shafi bahamwe n’ibyaha na Mukayibera Alphonsine na Nkunzimana Issa bagizwe abere, igisabwa urukiko akaba ari gusuzuma ubujurire bw’uwaregeye indishyi kuri bose. Akomeza avuga ko kuba uregera indishyi yarajuriye, kandi akajuririra bose, Kalimunda Shafi na Ndayizeye Jean Claude bahamwe n’icyaha nabo bakaba barajuriye, ababuranyi bose bahurizwa hamwe muri uru rubanza, ibirego byabo bigasuzumirwa hamwe. [22] Ubushinjacyaha buvuga ko icyemezo cy’uru rukiko kiramutse cyivanyeho icyemezo cyafashwe n’urukiko rwisumbuye mu rubanza nshinjabyaha RPA 00812/2017/TGI/NYGE aho urukiko rwemeje ko nta gihindutse mu rubanza RP 00166/2016/TB/NYBO rwakijijwe n’Urukiko rw’Ibanze rwa Nyamirambo ku wa 16/11/2017 Ndayizeye Jean Claude yari yajuririye , ndetse urwo rubanza RPA 00812/2017/TGI/NYGE rukaba rwarabaye itegeko, byaba ari inenge kuko muri urwo rubanza igihe urukiko rwasuzumaga ubujurire bwa Ndayizeye Jean Claude butahamagaje impande zose zirimo Honest General Enterprises uregera indishyi ngo na we arubemo umuburanyi rube rwamugiraho ingaruka. UKO URUKIKO RUBIBONA [23] Ingingo ya 189

y'itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko urukiko ruburanisha gusa mu mbibi z'icyajuririwe. Urukiko rusanga mu rubanza nshinjabyaha RPA 00812/2017/TGI/NYGE, Ndayizeye Jean Claude yari yajuririye gusa ibihano yahawe, maze mu guca urubanza urukiko rwemeza ko atsinzwe ko n'imikurizwe y'urubanza RP 00166/2016/TB/NYBO

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rwakijijwe n'Urukiko rw'Ibanze rwa Nyamirambo ku wa 16/11/2017 yajuririye igumyeho mu ngingo zarwo zose. [24] Kuba Ndayizeye Jean Claude yari yajuririye ibihano yahawe gusa nkuko n'urukiko rwisumbuye rabisobanuye mu micire y'urubanza aho rwavuze ko rushingiye ku ngingo yavuzwe haruguru yo kuba urukiko ruburanishagusa mu mbibi z'icyajuririwe, rusanga narwo rutakongera kugabanyirizwa Ndayizeye Jean Claude ibihano, Urukiko rusanga nta cyabuza ikirego cy'indishyi kiburanwa muri uru rubanza kuko zitaburanweho muri urwo rubanza RPA 00812/2017/TGI/NYGE, ikindi kandi Honest General Enterprises, ikaba itarubayemo umuburanyi ku buryo rwamugiraho ingaruka bivuze ko n'urubanza RP 00166/2016/TB/NYBO rwakijijwe n'Urukiko rw'Ibanze rwa Nyamirambo ku wa 16/11/2017 yajuririye kubiyireba rutaraba ndakuka nubwo kuri Ndayizeye Jean Claude rwabaye ndakuka kubirebana n'icyaha yahamijwe rukaba rero rugikomeza kubirebana n'indishyi ari nazo Honest General Enterprises yajuririye. C. Kumenya niba Kalimunda Shafi yarahamijwe icyaha atakoze [25] Karimunda Shafi avuga ko yahamijwe icyaha cy'ubujura kandi ntacyo yakoze ngo kuko icyaha kiba yari yarasezeye ku kazi. Asobanura ko umukoresha we Nkunzimana Issa ari we wamuhamagaye ajyanwa kuri polisi baramukubita asabwa gushinja umukoresha we kuko ari we wari ufite ubwishyu. Yemeye icyaha kubera gukubitwa. Mu kwiregura ku ndishyi, Karimunda Shafi avuga ko nta cyo yazivugaho kuko nta cyaha yakoze, akaba ataryozwa indishyi z'ibyibwe kandi nta ruhare yabigizemo. [26] Ubushinjacyaha buvuga ko ubujurire bwe nta shingiro kuko yemeye icyaha agasobanura ko bibaga muri depo y'inzoga bafatanyije na Boss wabo Nkunzimana Issa. Buvuga ko nkuko bigaragarira mu gika cya 11 cy'urubanza rusabirwa gusubirishwamo, Urukiko rwasanze mu ibazwa rye mu Bugenzacyaha yaremeye icyaha, agasobanura ko buri cyumweru bibaga amakaritoy'inzoga, nyuma yo kugurisha bakagabana na Ndayizeye Claude, ndetse ko bafatanyaga na Nkunzimana wari "BOSS" wabo, akomeza avuga ko izo nzoga bazigurishaga ahantu hatandukanye. UKO URUKIKO RUBIBONA [27] Urukiko rusanga, nkuko n'urukiko rwisumbuye rwabibonye mu rubanza rusubirwamo, mu ibazwa rye mu Bugenzacyaha Karimunda Shafi yaremeye icyaha, agasobanura ko buri cyumweru bibaga amakarito, nyuma yo kugurisha bakagabana na Ndayizeye Claude, ndetse ko bafatanyaga na Nkunzimana wari "BOSS" wabo, ko izo nzoga bazigurishaga ahantu hatandukanye. Rusanga na none Ndayizeye Claude na we imbere y'urukikorwisumbuye avuga ko yemera icyaha agashinja Karimunda Shafi ko bafatanyije, agahuza n'imvugo ya Kalimunda Shafi mu Bugenzacyaha. [28] Urukiko rurasanga kuba Kalimunda Shafi atabasha kugaragaza ibimenyetso bivuguruza ibyo ubushinjacyaha bwashyikirije Urukiko birimo n'imvugo ye yavugiye mu bugenzacyaha bwa Polisi yemera uruhare rwe mu ikorwa rw'icyaha ashinjwa cy'ubujura bukoreshwe kurira, Urukiko rukaba rusanga iki cyaha kimuhama. Naho ibyo avuga ko yemeye icyaha abitewe n'inkoni yakubitwaga bitahabwa ishingiro kuko nta kimenyetso abitangira cyane cyane ko ibyo yemeye bishimangirwa n'ibyo

mugenzi Ndayizeye claude amushinja. Rusanga hashingiwe kuri ibyo bisobanuro ubujurire bwa Kalimunda Shafi nta shingiro. D. Ku byerekeranye n'uruhare rwa Nkunzimana Issa mu gukora icyaha ashinjwa cy'ubujura bukoresha kurira

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[29] Me Mutarindwa Félix wunganira uhagarariye Honest General Enterprise LTD avuga ko basaba ko abo urukiko rwagize abere aribo Nkunzimana Issa na Mukayibera bafatanyaga n'abandi kwishyura indishyi. Akomeza avuga ko kuri Nkunzimana Issa, ashinjwa n'abakozi be Ndayizeye Jean Claude, na Kalimunda Shafi ndetse na Mukayibera Alphonsine kandi ntiyigeze avuga ko hari icyo apfa nabo. Avuga ko amakariko y'inzoga yibwaga Nkunzimana Issa ni we wazitwaraga mu modoka ye bajya kuziguririsha harimo no kwa Mukayibera Alphonsine umushinja, bityo rero ko na we yahamwaga n'icyaha bakazafatanyaga kuriha indishyi, n'iyi kandi icyaha kitamuhama yariha indishyi kubera aba bakozi be bahamijwe icyaha, agategekwa kwishyura indishyi kimwe n'abakozi be kandi ntahakana ko bari abakozi be, akaba yarabafashije muri ubwo bujura, ko kuri Mukayibera Alphonsine, yashatse inyungu ku bintu bituruka ku cyaha arangurira abibye inzoga kandi bakaba bamushinja. [30] Ubushinjacyaha buvuga ko urukiko rwisumbuye rwabahamijwe icyaha rubagenera n'ibihano rushingiye ku bimenyetso bibahamya ibyaha biri muri dosiye, harimo ubuhamya bwa Kalimunda Shafi, umudozi w'inkweto (coordonnier) wemezaga ko Mukayibera Alphonsine yaguraga inzoga zibwe, kandi ntiyigeze abasha kubivuguruzwa. Kubireba Nkunzimana Issa yashinjwe n'abakozi be ari na we wabagiriye inama yo kujya biba izo nzoga, hakaba n'ubuhamya bwa Mukayibera Alphonsine umushinja nkukobigaragarira mu gika cya 9 cy'urubanza rusubirwamo ko ari we wazitwaraga mu modoka ye. Hari kandi n'ibikarito byavuyemo inzoga byagaragaye ko byari iwe kandi ntiyashoboye kugaragaza icyo byahakoraga. Kuba Kalimunda Shafi yivuguruzwa imbere y'urukiko ahakana icyaha ntacyo byatanga nkuko n'urukiko rw'ikirenga rwabibonye mu rubanza RPAA 0004/geN/05/CS, bityo rero kuri Mukayibera Alphonsine na Nkunzimana Issa nubwo ubushinjacyaha butajuriye ariko urukiko rwasanze icyaha kibahama rubatega gufatanyaga gutanga indishyi. [31] Nkunzimana Issa avuga ko nta ruhare yagize mu bujura buvugwa. Asobanura ko inzu akodesha riya Rudasingwa nyiri Honest General Enterprise LTD, ko ntawigeze apfumura idirishya, ko Kalimunda Shafi wabanje kumushinja yari yaramwirukanye ko kandi ari we wagiye kumushaka amujyana mu bugenzacyaha ngo asobanure iby'ubusambo amugejeje kuri police na we ahita avuga ko ngo bafatanyijemubwshyera, byo kumwihimuraho. Kubirebana n'ingunguru bavugaga ko ari zo zuririweho zikabafasha kwiba, avuga ko ari utugunguru twe acuruza. Avuga ko Ndayizeye Jean Claude yemeye ko ari we wibye ko ariko yabikoze ku giti cye, ko atari zo nshingano yari yamuhaye. Avuga kandi ko ibyo Mukayibera Alphonsine Alphonsine amushinja atari ukuri, ko atanywe inzoga, ko atigeze ajyana n'umudozi w'inkweto mu modoka nkuko abimushinja, ko rero amubeshyera. [32] Me Nshimiyimana Mubarak umwunganira avuga ko nkuko bigaragara mu rubanza rujuririrwa Umwe mubaregwa Kalimunda Shafi ubwe yivugiye ko atemera ibihano yahawe ngo kuko kugira ngo yemere icyaha akanashinja Nkunzimana Issa ngo

byatewe n'uko yakubiswe akavuga ko ari we wabatumaga, ibyo akaba ari ibimenyetso bishinjura. Yakomeje avuga ko Uregera indishyi we yivugira ko ngo Nkunzimana Issa yacibwa indishyi ngo hashingiwe ku kuba abamukoreye icyaha ri abakozi be, bityo akaba asanga kuba umucamanza wa mbere yarabishingiyeho akamuha ibhano, yishe amategeko kuko yamuciye indishyi y'icyaha atakoze nyamara uburyozwacyaha ari gatozi. [33] Me Jean Marie Vianney Uwitonze na wunganira Nkunzimana Issa avuga ko aho inzoga zabikwaga, ingunguru bavuga n'aho zibikwa akadilishya bavuga inzoga ntizacamo. Avuga ko imbere y'uru rukiko Mukayibera Alphonsine yajijanyije mu gushinja Nkunzimana Issa ko yamubonye atwaye imodoka bigaragara ko amubeshyera ko kandi Nkunzimana Issa icyo yatumye abakozi ni ukumucururiza si ukumwibira akaba rero ataryozwa ibyaha abakozi be baba barakoze. Kubirebana

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n'indishyi zatangwa ngo hashigiwe ku byabaruwe n'umuhesha w'inkiko avuga nta gaciro byahabwa kuko nta tegeko rimuha izo nshingano UKO URUKIKO RUBIBONA [34] Urukiko rusanga mu guhamya Nkunzimana Issa icyaha cy'ubujura bukoreshye kurira, urukiko rwisumbuye rwarashingiye ku mvugo Kalimunda Shafi mu Bugenzacyaha ihamya ko ubwo bujura we na Ndayizye Jean Claude babukoraga bafatanyije na Boss wabo Nkunzimana Issa, agasobanura uko yari yarabahaye amabwiriza y'uko bazajya babigenza "mu bwenge", bakavugana na Emmanuel w'umuzamu wa HONEST akajya ngo abapangira amakarito; Rwashingiye kandi no kuba kuba Mukayibera Alphonsine amushinja aho avuga ko "Coordonnier" yamuzaniye inzoga akanga kuzigura nyuma agasohoka akajyana na Nkunzimana Issa mu modoka yari atwaye, bakagenda bajyanye n'igikapu cyarimo izo nzoga, ko n'ibyo Nkunzimana Issa ngo yasobanuye ko akorera muri "cave" ngo hakaba haba hari umwijima bitumvikanisha bihagije impamvu aho akorera habaga harunze ibikarito ngo natabimenye ari nabyo byumvikanisha uruhare rwe mu byakorwaga byose, bityo na we akaba akwiye guhamya n'icyaha cya buriya bujura bukoreshye kurira. [35] Kubijyanye n'invugo Kalimunda Shafi mu Bugenzacyaha ihamya ko ubwo bujura we na Ndayizye Jean Claude babukoraga bafatanyije na Boss wabo Nkunzimana Issa, ngo wari warabahaye amabwiriza y'uko bazajya babigenza "mu bwenge", bakavugana na Niyibaza Emmanuel w'umuzamu wa HONEST akajya ngo abapangira amakarito, Urukiko rusanga iyo mvugo ye idahagije mu kwemeza ko iyo nama yayibagiriye koko, kuko dosiye y'ibazwa rya Niyibaza Emmanuel mu bugenzacya, mu nyandiko y'ibazwa rye yahakanye ko atigeze abonana na Kalimunda Shafi, bityo rero invugo ye yonyine ikaba itashyingirwaho nk'ukuri kudashidikanywaho, cyane cyane ko, nkuko Nkunzimana Issa, abiburanisha, ubuhamya bwa Kalimunda Shafi bumushinja bushobora no guterwa no gushaka kumwihimuraho kugira ngo amugushemo, kuko yamwirukanye akaba kandi yaragize n'uruhare rwo kumufatisha kuko ari we wamushakishije akamushyikiriza inzego z'ubugenzacyaha, ibi kandi Ubushinjacyaha ntibubivuguruzwa, ikindi kandi uretse Nkunzimana Issa umushinja, bigaragara ko Ndayizye Jean Claude ntaho amushinja nkuko bigaragazwa na dosiye y'ibazwa rye mu Bugenzacyaha aho yavuze ko atigeze amenyesha Boss we Nkunzimana Issa ibirebana n'ubujura yakoranaga na Kalimunda Shafi. [36] Kubijyanye n'ibyo urukiko rwisumbuye rwavuze ko kuba aho Nkunzimana

Issa akorera habaga harunze ibikarito ngo byumvikanisha uruhare rwe mu byakorwaga ngo kuko ibyo aburanisha ko akorera mu mu nzu yo hasi (cave) kandi ngo hakaba haba umwijima ngo bitumvikanisha bihagije ko nta ruhare yagize , urukiko rusanga ariko nabwo nta kimenyetso simusiga kerekana ko yabigizemo uruhare kuko nkuko abiburanisha siwe wacuruzaga ahubwo yari yarahasize abakozi be bo kumufasha gucuruza aribo Karimunda Shafi na Ndayizeye Jean Claude , we akaza aje kugenzura ibicuruzwa bye yarangiza akajya gukomeza indi mirimo asanzwe akorera ahandi ngo kuko agira n'akandi kazi ko gucuruza Quincaillerie n'amarangi y'imodoka ahandi. Uretse n'ibyo kandi mu ibazwa rya Karimunda Shafi, mu Bugenzacyaha yasobanuye ko ibikarito basanze biri mu ingunguru, ari Ndayizeye Claude wabishyizemo, akabivanga na Vidange. [37] Kubirebana n'imvugo y'umutangabuhamya witwa Mukayibera Alphonsine uvuga ko Nkunuzimana Issa yazanye n'umudozi w'inkweto witwa Nkurikiyimana Valens ukorera imbere y'aho acururiza azanye igikapu kirimo inzoga za Uganda Warage ngo azimugurire azihawe na Nkunuzimana Issa wari usigaye mu modoka bigaragara ko bari kumwe nyuma yo kwanga kuzigura kuko zitari zifite

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facture uwo mudozi w'inkweto akazisubiza Nkunuzimana Issa mu modoka barangizabakazijyana ahandi atabashije kumenya, nyamara Nkurikiyimana Valens mu buhamya bwe mu bugenzacyaha bwa Polisi mubo yavuze yabonye biba inzoga za Company Honest General Enterprise Ltd bakajya kuzigurisha ndetse yanatwaje bagiye kuzigurisha akaba atarigeze avugamo Nkunuzimana Issa. [38] Urukiko rusanga rero hashingiwe kuri ibyo bisobanuro byose byavuzwe haruguru, no ku ngingo ya 165 y'itegeko N°30/2013 ryo ku wa 24/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko "Gushidikanya birengera ushinjwa. Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze", nta kigaragariza urukiko ko Nkunuzimana Issa yakoze icyaha cy'ubujura bukoreshye kurira E. Kubyerekeranye n'uruhare rwa Mukayibera Alphonsine mu cyaha cyo kubonera inyungu mu bikomoka ku cyaha [39] Me Mutarindwa Félix wunganira uhagarariye Honest General Enterprise LTD avuga ko kuri Mukayibera alphonsine, yashatse inyungu ku bintu bituruka ku cyaha arangurira abibye inzoga kandi baramushinja ko kandi na we yemera ko abibagurira. [40] Ubushinjacyaha buvuga ko urukiko rwisumbuye rwahamije Nkunuzimana Issa na na Mukayibera alphonsine icyaha rubagenera n'ibihano hashingiwe ku bimenyetso bibahamya ibyaha biri muri dosiye, harimo ubuhamya bw'umudozi w'inkweto (coordonnier) wemezaga ko Mukayibera Alphonsine yaguraga inzoga, kandi ntiyigeze abivuguruzwa, bityo rero kuri Mukayibera Alphonsine na Nkunuzimana Issa nubwo ubushinjacyaha butajuriye ariko urukiko rwasanze icyaha kibahama rubatega gufatanya gutanga indishyi. [41] Mukayibera Alphonsine yunganiwe na Me Twizeyimana Innocent biregura bavuga ko Mukayibera Alphonsine yagizwe umwere kandi mu myanzuro yayo, Honest General Enterprise LTD, ntaho imuvugamo, ikaba yarasabaga ko Nkunuzimana Issa n'abakozi be bafatanyaga kuriha indishyi. Mukayibera Alphonsine akomeza avuga ko urubanza rutangira bamushyize mu batangabuhamya, nyuma bamuhamagara nk'uregwa, ko n'icyo azi k'umudozi w'inkweto (coordinnier) wabaga kwa Nkunuzimana Issa bavuga umushinja yaje

kumugurishaho inzoga akamubwira ko atazigura, akagenda akabona yinjira mu modoka yari itwawe na Nkunzimana Issa. [42] Me Twizeyimana Innocent avuga ko uwo yunganira ntaho ahuriye n'icyaha ko nta n'indishyi yatanga kuko nta cyintu bigeze bamufatana, ko kandi Ndayizeye Claude mu Rukiko rwisumbuye ntacyo yamushinje dore ko yavuze ko bari baziranye kwa Bariyanga nyamara yongeye kubazwa akavuga ko yari yabuze icyo avuga. Mu rwego rw'ubujurire, hakwiye kurebwa abahamwe n'icyaha. UKO URUKIKO RUBIBONA [43] , Urukiko rusanga mu myanzuro yayo mu rukiko rwisumbuye, nkuko Mukayibera Alphonsine yunganiwe na Me Twizeyimana, babiburanisha, mu myanzuro yayo, Honest General Enterprise LTD, nta ho imuvugamo, yavugaga ahubwo ko urukiko rwirengagije ibimenyetso bihamya Nkunzimana Issa icyaha cy'ubujura yayikoreye. [44] Ingingo ya 85 y'itegeko N°30/2013 ryo ku wa 24/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ivuga Ubushinjacyaha, uwakorewe icyaha cyangwa se abamufiteho uburenganzira

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iyi baregeye indishyi z'akababaro cyangwa biregeye umuburanyi, ni bo bagomba gutanga ibimenyetso byemeza icyaha, urukiko rusanga mu rukiko rwisumbuye [45] Urukiko, rushingiye kuri iyi ngingo, rusanga Honest General Enterprise LTD uregera indishyi nta bimenyetso bihamya Mukayibera Alphonsine icyaha yari yagaragarije urukiko rwisumbuye. [46] Kubirebana n'uko nyamara Urukiko rwabirenzeho rukakimuhamya rushingiye ku mvugo ya Kalimunda Shafi ngo aho mu mu ibazwa rye yemeza ko bamugurishaga inzoga, urukiko rusanga dosiye y'ibazwa rye mu Bugenzacyaha igaragaza ko yavugaga ko inzoga bibye zagurishijwe kwa Bariyanga, kwa Mutongoro, ndetse no kuri Green Corner i Nyamirambo, mu gihe Mukayibera Alphonsine we yivugiye ko umudozi w'inkweto witwa Nkurikiyimana Valens ari we wamuzaniye inzoga akanga kuzigura ngo kuko nta facture zari zifite, uwazizanye akazisubizayo mu modoka itwawe na Nkunzimana Issa. Avuga kandi nta muntu umushinja ko yazimufatanye ari kuzicuruza. Urukiko rusanga rero hashingiye kuri ibyo bisobanuro Urukiko Rwisumbuye ntaho rwari guhera rwemeza nta shiti ko Mukayibera Alphonsine yakoze icyaha ashinjwa cyo guhisha cyangwa kubonera inyungu mu bintu bikomoka ku cyaha. F. Ibirebana mu kumenya niba Honest General Eses yakongererwa indishyi yatsindiye mu rukiko rw'Ibanze kandi zikishyurwa n'abaregwa bose muri uru rubanza barimo na Mukayibera Alphonsine na Nkunzimana Issa Issa bari bagizwe abere mu rukiko rw'Ibanze [47] Rudasingwa James uhagarariye Honest General Entreprises na Me Mutalindwa Felix umwunganira bavuga ko urubanza rusabirwa gusubirwamo nta karengane kabayemo bitewe nuko hari ibimenyetso bihamya icyaha buri wese byagaragajwe, birimo kwiyeemerera ibyaha kwa bamwe mu bashinjwa, no kuba abatabyemera babishinjwa na bagenzi babo, kuba hari imvugo z'abatangabuhamya zibashinja no kuba hari amafoto agaragaza uburyo ubujura bwakorwaga. Bakomeza bavuga ko hagaragaramo aho banyuzaga inzoga bibye, amagugunguru buriragaho, kuba hari ibarura (inventaire) ry'ibyibwe rihari ryakozwe n'umuhesha w'inkiko. [48] Me Mutalindwa Felix mu myanzuro ye yavuze, Ku Indishyi zose hamwe zinyuranye zihwanye 14 354 800 frw umucamanza wo mu rukiko rwisumbuye yagennye Honest General Entreprises hakwiye gashyiraho 1.750.000 FRW y'inyungu, indishyi z'akababaro no gukurikirana urubanza za 1.000.000 FRW kubera kuguma kuyishora mu manza nta mpamvu

ndetse n'igihembo cy'Avoka cya 1.000.000 FRW yose hamwe akaba 18.104.800 FRW. [49] Nkunzimana Issa n'abamwunganira bavuga ko nta ndishyi bagomba gutanga kuko bagizwe abere hakaba nta bimenyetso bimuhamya icyaha. Basaba indishyi z'akababaro za 3.000.000 FRW, igihembo cy'avoka n'ikurikiranarubanza bihwanye na 2.500.000 FRW [50] Mukayibera Alphonsine n'abamwunganira bavuga ko basaba urukiko ko rwagumishaho imikirize y'urubanza rwaciwe n'urukiko rwisumbuye rwa Nyamirambo rwabagize abere [51] Kalimunda Shafi avuga ko nta ndishyi agomba gutanga kuko nta cyaha yakozwe. [52] Ndayizeye Claude mu miburanire ye ku ndishyi Honest General Entreprises yajuririyeye, mu rubanza rusubirishwamo, yireguye avuga ko yaburanye yemera icyaha, ko Indishyi Honest General Entreprises isaba, miliyoni 8 zirenga zikabije kuba nyinshi, kuko atari gutwara ibintu bihwanye n'ayo mafaranga gutyo ngo HONEST ibure kubimenya. Avuga ko ibyo yemera byibwe bigera kuri 500 000

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frw, mu gihe kuri polisi, Honest General Entreprises yavugaga ko ari 900 000 frw, ko amafaranga yagenewe ari ikirenga ntaho ashingiyeye ku buryo yagera kuri miliyoni 8 zirenga. [53] Ingingo ya 9 y'Itegeko N°30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ivuga ko Ikirego cy'indishyi ni ikirego gitangwa hagamijwe kwishyura ibyangijwe n'icyaha, [54] Urukiko rusanga kubireba Nkunzimana Issa na na Mukayibera Alphonsine ibyaha baregwa bitabahama bityo nta ndishyi bagomba gucibwa muri uru rubanza. [55] Kubirebana n'amafaranga y'igihembo cy'avoka n'ikurikiranarubanza bihwanye na 2.500.000 FRW Nkunzimana Issa asaba, urukiko rusanga, Honest General Entreprises igomba kukumuha a 600.000 FRW kuko ari yo yamujuririyeye kandi yaragizwe umwere n'urukiko rubanza hakaba haribyo yatakaje ashaka avoka wo kumuburanirira no gukurikiranaurubanza, ayo mafaranga akaba agenwe mubushishozi bw'urukiko kuko ayakwa ari ikirenga. [56] Kubirebana n'indishyi z'akababaro za 3.000.000 FRW zo gushorwa mu manza ku maherere Nkunzimana Issa asaba, urukiko rusanga, izo ndishyi zitatangwa kuko ari uburenganzira bw'uwaregeye indishyi utishimiye imikirize y'urubanza bwo kujurira ashaka ubutabera, ikindi kandi, mu rukiko rubanza akaba ari Ubushinjacyaha bwafashe icyemezo cyo kumuregera urukiko. [57] Kubirebana n'indishyi Honest General Entreprises isaba u zasobanuye haruguru z'inyongera ku ndishyi zose hamwe zinyuranye zihwanye 14 354 800 frw umucamanza wo mu rukiko rwisumbuye yagennye, isaba ari ikirenga kandi nta bimenyetso bidashidikanywaho ishingiraho, bityo uru rukiko rukaba rusanga indishyi zihwanye na 14. 354. 800 frw yagenewe n'urukiko rubanza zihagije, zikaba zigomba gutangwa na Kalimunda Shafi afatanyije na Ndayizeye Claude (in solidum), kuko ari bo bahamijwe icyaha zikomokaho kandi bakaba batarashoboye kugaragariza urukiko ko zidafite ishingiro III. ICYEMEZO CY'URUKIKO [58] Rwemeje ko ikirego cyo Gusubirishamo urubanza kubera impamvu z'akarengane gifite ishingiro. [59] Rwemeje ko kubireba Nkunzimana Issa na Mukayibera Alphonsine imikirize y'urubanza RPA 00007 & 00860/2018/TGI/NYGE rwaciwe n'urukiko rwisumbuye rwa Nyarugenge kuwa 14 Kamena 2018 ihindutse mu ngingo zarwo zose. [60] Rwemeje ko Nkunzimana Issa adahamwa n'icyaha cy'ubujura bukoreshye kurira, ko na Mukayibera Alphonsine adahamwa n'icyo kubonera inyungu mu bikomoka ku cyaha [61] Rwemeje ko indishyi zinyuranye kimwe n'amafaranga baciwe muri urwo rubanza bivanyweho.

[62] Rutegetse Honest General Entreprise guha Nkunzimana Issa amafaranga ibihumbi magana atandatu (600.000 FRW) y' ikurikiranarubanza n' igihembo cy' Avoka.

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[63] Rutegetse Kalimunda Shafi na Ndayizeye Claude gufatanya (in solidum) kwishyura Honest General Ese indishyi zihwanye na miliyoni cumi n' enye n' ibihumbi magana atatu na mirongo itanu na bine na magana inani (14. 354. 800Frw)

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