

RWANDA / JUDGMENT

Re ASIIMWE

RS/INCONST/SPEC 00004/2020/SC

COURT

Supreme Court

DECIDED

26 March 2021

CASE / FILE NUMBER

RS/INCONST/SPEC 00004/2020/SC

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Re ASIIMWE

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Text

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Re ASIIMWE [Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/SPEC 00004/2020/SC (Ntezilyayo, P.J., Nyirinkwaya, Cyanzayire, Hitiyaremye na Rukundakuvuga, J.) 26 Werurwe 2021] Itegeko Nshinga – Ububasha bw'inkiko – Ubujurire – Ubujurire bwa kabiri – Ubutabera buboneye – Uburenganzira bwo kujurira ntayegayezwa ni ubujurire bwa mbere kandi nabwo bushobora gushyirwaho imbibe (limitations) hagamijwe intego ifite ireme – Uburenganzira bwo kujurira bushobora kugabanywa ku bujurire bwa kabiri, ariko bigakorwa hagaragazwa intego yemewe n'amategeko n'isano yumvikana ifitanye n'uburyo bwakoreshejwe. Itegeko nshinga – Ububasha bw'inkiko – Ingingo zinyuranyije n'itegeko nshinga – Ubujurire bwa kabiri mu manza z'inshinjabyaha – Ubutabera buboneye – Kuba uwaburanye ahakana icyaha aregwa ashobora kwemererwa ubujurire bwa kabiri hashingiwe ku gihano yahawe mu gihe nyamara uwaburanye yemera icyaha aregwa ubujurire bwe bwa kabiri butakirwa kandi aba yarafashije ubutabera, ibi bakaba ari ugusumbanya ababuranyi no kutabafata kimwe ndetse bikaba binyuranyije n'ihame ryo kureshya imbere y'amategeko. Incamake y'ikibazo: Asimwe yatanze ikirego mu Rukiko rw'Ikirenga asaba kwemeza ko ingingo ya 52, igika cya 3 n'ya 46, igika cya 2 z'Itegeko n°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko zinyuranye n'ingingo ya 29 y'Itegeko Nshinga

rya Repubulika y'u Rwanda. Asobanura ko izo ngingo zibangamiye ubutabera buboneye buteganywa n'Itegeko Nshinga kuko mu gihe urukiko rusuzuma ubujurire bwa kabiri rugarukira gusa mu kureba ko umuburanyi yatsinzwe ku mpamvu zimwe mu nkiko ebyiri zabanje ndetse no kuba yaremeyemo ibyo aregwa atemerewe gutanga ubujurire bwa kabiri. Uhagarariye Leta y'u Rwanda avuga ko izo ngingo zavuzwe haruguru zitanyuranye n'ingingo ya 29 y'Itegeko Nshinga kuko amategeko yateganyije izindi nzira z'ubujurire umuburanyi ashobora kwiyambaza mu gihe yaba asanga yararenganye. Urukiko rwakiriye ikirego cy'Urega gihabwa nimero maze ku munsu w'iburanisha hasuzumwa ikibazo kijyanye no kumenya niba kutakira ubujurire bwa kabiri hashingiwe ku kuba uwajuriye yaratsinzwe ku mpamvu zimwe mu nkiko zibanza bibangamiye uburenganzira ku butabera buboneye hamwe n'ikibazo cyo kumenya niba kutakira ubwo bujurire ku manza z'ababuranye bemera ibyo baregwa binyuranyije n'ihame ryo kureshya imbere y'amategeko riteganyijwe n'ingingo ya 15 y'Itegeko Nshinga, bityo bikaba binanyuranyije n'uburenganzira ku butabera buboneye buteganywa n'ingingo ya 29 y'Itegeko Nshinga. Ku kibazo cy'ingingo ya 52, igika cya gatatu, y'Itegeko n°30/2018 ryavuzwe haruguru iteganya kutakira ubujurire bwa kabiri hashingiwe ku kuba uwajuriye yaratsinzwe ku mpamvu zimwe mu nkiko zabanje, Urega avuga ko ituma uwarenganyijwe n'inkiko zo hasi iyo yiyambaje Urukiko rw'Ubujurire kugira ngo rukosore inenge zose zakozwe n'izo nkiko, rwiambura ububasha ruvuga ko yatsinzwe ku mpamvu zimwe bigatuma rudasuzuma urubanza mu mizi kugira ngo rumenye niba harabaye kwica amategeko cyangwa kwirengagiza ibimenyetso, bikaba binyuranyije n'itegeko y'inzira y'ubujurire, bityo uwajuriye akaba yambuwe uburenganzira ku butabera buboneye.

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Akomeza avuga ko iyo itegeko riteganywa ko Urukiko rw'Ubujurire rutakira ubujurire bwa kabiri mu gihe uwajuriye yatsinzwe mu nkiko zibanza ku mpamvu zimwe, ariko rubanje gusuzuma niba hatarabaye kwica amategeko no kwirengagiza ibimenyetso, uburenganzira bw'umuburanyi ku butabera buboneye bwari kuba bwubahirijwe. Asoza kuri iyi ngingo avuga ko kuba hari imanza zisubirwamo ku mpamvu z'akarengane, bisobanuye ko inkiko zibanziriza Urukiko Rukuru, n'Urukiko rw'Ubujurire zishobora gukora amakosa mu icibwa ry'imanza. Bityo, mu gihe cyose iyo ngingo ya 52, igika cya 3 y'Itegeko no 30/2018 ryavuzwe haruguru yakomeza gukoreshwa mu buryo Urukiko rw'Ubujurire ruyikoreshe, umuburanyi wavukijwe uburenganzira bwo kuburana mu mizi kandi abizi neza ko yarenganyijwe ku rwego rwa mbere n'urwa kabiri, ashobora kubifata nko kwimakaza akarengane na ruswa mu butabera. Uhagarariye Leta y'u Rwanda avuga ko amategeko u Rwanda rugenderaho yemera ihame ry'ubujurire bumwe, ariko hanateganyijwe irengayobora ku manza zimwe zishobora kujuririrwa kabiri habanje gusuzumwa niba inkiko ebyiri ziri ku nzego zitandukanye zarafashe umwanzuro umwe zishingiye ku mpamvu zimwe cyane cyane ko inkiko zizeweho gutanga ubutabera buboneye. Avuga kandi ko ku ngingo irebana n'ubutabera buboneye, Umushingamategeko yageneye uburenganzira ku buryo bungana abafitanye ikibazo. Ku ruhande rumwe hateganywa uburenganzira bwo kujurira k'uwatsinzwe n'urubanza, ku rundi ruhande uburenganzira bwo guhabwa ubutabera k'uwatsinze urubanza, bikaba aribyo bihura n'ibiteganywa n'ingingo ya 15 y'Itegeko Nshinga iteganya ko abantu bose

bareshya imbere y'amategako, itegako ribarengera ku buryo bumwe. Asoza avuga ko igika cya 2 cy'ingingo ya 46 n' igika cya 3 cy'ingingo ya 52 z'Itegeko no 30/2018 ryavuzwe haruguru bitanyuranye n'ingingo ya 29 y'Itegeko Nshinga. Ku kibazo kijyanye no kutakira ubujurire bwa kabiri ku manza z'ababuranye bemera ibyo baregwa, Urega avuga ko ibiteganywa n'igika cya 2 cy'ingingo ya 46 n' igika cya 3 cy'ingingo ya 52 z'Itegeko no 30/2018 ryavuzwe haruguru bizitira uwajuriye waburanye yemera icyaha mu nkiko zabanje, mu gihe uregwa waburanye ahakana icyaha we ubujurire bwe bwemerwa harebwe gusa niba yarahanishijwe igihano cy'igifungo cy'imyaka 15, agasanga iyo ngingo inyuranyije n'ihame ryo kureshya imbere y'amategako rivugwa mu ngingo ya 15 y'Itegeko Nshinga. Agaragaza ko mu manza nshinjabyaha, igikwiye kumvikana neza, ari uko n'ubwo uwakoze icyaha aba yemeye icyaha mu nkiko zabanje, bidakwiye kumwambura uburenganzira bwo kujuririra Urukiko rw'Ubujurire mu gihe asanga Inkiko zabanje zitaramuhaye igihano gikwiye. Asoza avuga ko kuba hari izindi nzira z'ubujurire zidasanzwe zateganyijwe harimo no gusubirishamo urubanza ku mpamvu z'akarengane, bidakemura ikibazo kuko n'ubundi iyo uwatsinzwe asubirishijemo urubanza ku mpamvu z'akarengane, yiyambaza Urukiko rutakiriye ubujurire, bikaba nta kizere cyo kurenganurwa aba afite. Uhagarariye Leta y'u Rwanda, avuga ko ingingo ya 52, igika cya 3 n'ingingo ya 46, igika cya 2 z'Itegeko n°30/2018 rigena ububasha bw'inkiko zitanyuranyije n'ingingo ya 29 y'Itegeko Nshinga kuko n'ubwo ubujurire bwa kabiri butakirwa kubera ko uwajuriye yaburanye yemera mu nkiko zabanje, ariko amategako ateganya uburyo aramutse yararenganyijwe yarenganurwa. Incamake y'icyemezo: 1. Ku mpamvu y'imigendekere myiza y'itangwa ry'ubutabera, umushingamategeko yateganyije ko kugira ngo ubujurire bwa kabiri bwakirwe, uwajuriye agomba kuba ataratsinzwe ku mpamvu zimwe, ibyo rero ntibimwambura uburenganzira ku

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butabera buboneye kuko aba yarahawe uburenganzira bwo kujuririra urubanza bwa mbere, kandi bukaba aribwo burenganzira ntayegayezwa adashobora kuvutswa, n'ubwo nabwo bushobora gushyirwaho imbibi (limitations) hagamijwe intego ifite ireme;

2. Kuba ikirego cy'umuburanyi kitakiriwe kuko yatsinzwe ku mpamvu zimwe ntibyatuma arengana kuko umushingamategeko yateganyije inzira yo gushubirishamo urubanza ku mpamvu z'akarengane apfa gukurukiza ibihe biteganywa n'amategako, bityo rero ingingo ya 46, igika cya 2 n'ingingo ya 52, igika cya 3 z'Itegeko n° 30/2018 ryo kuwa 02/06/2018 rigena ububasha bw'inkiko ntizinyuranyije n'ingingo ya 29 y'Itegeko Nshinga, icyakora imyandikire y'ingingo ya 52 y'iryo Tegeko yakosorwa, igika cya 3 ntikijyane n'uduce twose tw'igika cya 2 cy'ingingo ya 52, ahubwo kikajyana gusa n'agace ka 8 n'aka 9 tw'igika cya 2; ibyo ninako byagenda ku bireba ingingo ya 46, igika cya 2 kikajyana gusa n'agace ka 6 k'igika cya 1
3. Kuba uwaburanye ahakana icyaha aregwa ashobora kwemererwa ubujurire bwa kabiri hashingiwe ku gihano yahawe mu gihe nyamara uwaburanye yemera icyaha aregwa ubujurire bwe bwa kabiri butakirwa kandi aba yarafashije ubutabera, ni ugusumbanya ababuranyi no kutabafata kimwe ndetse bikaba binyuranyije n'ihame ryo kureshya imbere y'amategako riteganyijwe mu ngingo ya 15 y'Itegeko Nshinga; bityo rero igice cy'igika cya 3

cy'ingingo ya 52 n'igice cy'igika cya 2 cy'ingingo ya 46 z'Itegeko n°30/2018 rigena ububasha bw'inkiko birebana no kutakira ubujurire bwa kabiri kubera ko uwajuriye yemeye ibyo aregwa binyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda, bikaba binanyuranyije n'ingingo ya 29 y'Itegeko Nshinga. Ikirego kigamije gukuraho ingingo zinyuranyije n'Itegeko Nshinga gifite ishingiro kuri bimwe. Igika cya 2 cy'ingingo ya 46 n'igice cy'igika cya 3 cy'ingingo ya 52 z'Itegeko n°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko birebana no kutakira ubujurire bwa kabiri "ku manza z'ababuranye bemera ibyo baregwa" binyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda. Amategeko yashingiweho: Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2015, ingingo ya 15 n'ya 29 Amasezerano Mpuzamahanga yerekeye uburenganzira mu by'imbonezamubano no mu bya politiki, ingingo ya 14, igika cya 1 n'icya 5; Itegeko N°30/2018 rigena ububasha bw'inkiko, ingingo ya 46, igika 2 n'ya 52, igika cya 3; Imanza zifashishijwe: RS/INCONST/SPEC 00003/2019/SC, Re Me Kabasinga rwaciwe n'Urukiko rw'Ikirenga kuwa 4/12/2019. RS/REV/INJUST/CIV 0023/16/CS, Rutabayiro n'abandi v Mukakabano, rwaciwe n'urukiko rw'Ikirenga ku wa 27/09/2019;

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Kotak Mahindra Bank Pvt. Limited Vs Ambuj A. Kasliwal & Ors, Supreme Court of India, Civil Appellate Jurisdiction, Civil Appeal No. 538 of 2021, <https://indiankanoon.org/doc/56200562/>. Inyandiko z'Abahanga: Serge Guinchard, Droit processual: Droit commun et droit compare du procès equitable, 4ème Ed. Dalloz 2007, Page 420 The Right to Appeal as a Fundamental Right under International Acts and Jurisprudence, with Special Emphasis on Criminal Procedure. Acta Universitatis Danubius. Juridica, Vol 13, No 1 (2017), <http://journals.univ-danubius.ro/index.php/juridica/article/view/3868/4027> Nuala Mole et Catharina Harby, Le droit à un procès equitable, Un guide sur la mise en oeuvre de l'article 6 de la Convention européenne des Droits de l'Homme, Conseil de l'Europe 2007, p. 43 Tarun Jain, Limitations on Second Appeal: The Law Revisited, 18 November 2010, <http://legalperspectives.blogspot.com/2010/11/limitations-on-second-appeal-law.html>; Sabodt Asthana, Second Appeal under Civil Procedure Code: Nature, Scope, Forum and Procedure, 4 January 2020, <https://blog.ipleaders.in/second-appeal> Kotak Mahindra Bank Pvt. Limited Vs Ambuj A. Kasliwal & Ors, Supreme Court of India, Civil Appellate Jurisdiction, Civil Appeal No. 538 of 2021 Urubanza I. IMITERERE Y'IKIBAZO [1] Asimwe Frank yaregeye Urukiko rw'Ikirenga arusaba kwemeza ko ingingo ya 52, igika cya 3 n'ya 46, igika cya 2 z'Itegeko n°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko zinyuranye n'ingingo ya 29 y'Itegeko Nshinga rya Repubulika y'u Rwanda, ikirego cy'e cyandikwa kuri N° RS/INCONST/SPEC 00004/2020/SC. [2] Asobanura ko kuba mu gusuzuma ubujurire bwa kabiri, Urukiko rugarukira gusa ku kureba ko umuburanyi yatsinzwe mu Nkiko ebyiri zibanza ku mpamvu zimwe rudasuzumye niba izo mpamvu zikurikije amategeko, bibangamiye uburenganzira ku butabera buboneye. Avuga kandi ko kuba uwaburanye yemera ibyo aregwa mu nkiko zibanza atemererwa ubujurire bwa kabiri nabyo bibangamiye ubutabera buboneye, agasobanura ko kwemera ibyo umuntu aregwa bitandukanye no kwemera imicire y'urubanza. [3] Uhagarariye Leta y'u Rwanda avuga ko ingingo ya 52, igika cya 3 n'ya 46, igika cya 2 z'Itegeko n°30/2018 ryo ku wa 02/06/2018 rigena ububasha

bw'inkiko zitanyuranye n'ingingo ya 29 y'Itegeko Nshinga iteganya ko: "Buri muntu wese afite uburenganzira ku butabera buboneye" kuko amategako yateganyije izindi nzira z'ubujurire umuburanyi ashobora kwiambaza mu gihe yaba asanga yararenganye.

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- [4] Iburanisha ry'uru rubanza ryashyizwe ku wa 11/01/2021, kuri uwo munsu ntiriyaba ryimurirwa ku wa 04/03/2021, uwo munsu iburanisha ribera mu ruhame, ababuranyi bose bitabye, Asimwe Frank yunganiwe na Me Rwigema Vincent, Me Kabasinga Florida, Me GAKUNZI Musore Valéry na Me Munyentwali Charles, naho Leta y'u Rwanda ihagarariwe na Me Gahongayire Myriam. [5] Rushingiye ku myanzuro y'urega n'imiburanire ye n'abamwunganiye, Urukiko rusanga ibibazo bikwiye gusuzumwa ari ibi bikurikira: Kumenya niba kutakira ubujurire bwa kabiri hashingiwe ku kuba uwajuriye yaratsinzwe ku mpamvu zimwe mu nkiko zibanza bibangamiye uburenganzira ku butabera buboneye buteganywa n'ingingo ya 29 y'Itegeko Nshinga; Kumenya niba kutakira ubujurire bwa kabiri ku manza z'ababuranye bemera ibyo baregwa binyuranyije n'ihame ryo kureshya imbere y'amategako riteganyijwe n'ingingo ya 15 y'Itegeko Nshinga, bityo bikaba binanyuranyije n'uburenganzira ku butabera buboneye buteganywa n'ingingo ya 29 y'Itegeko Nshinga. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA A. Kumenya niba kutakira ubujurire bwa kabiri hashingiwe ku kuba uwajuriye yaratsinzwe ku mpamvu zimwe mu nkiko zibanza bibangamiye uburenganzira ku butabera buboneye buteganywa n'ingingo ya 29 y'Itegeko Nshinga [6] Mu myanzuro Asimwe Frank n'abunganizi be bashyikirije Urukiko no mu miburanire yabo, bavuga ko ingingo ya 52, igika cya 3 y'Itegeko no30/2018 ryavuzwe haruguru, ituma uwarenganyijwe n'inkiko zo hasi iyo yiyambaje Urukiko rw'Ubugurire kugira ngo rukosore inenge zose zakozwe n'izo nkiko, rwiambura ububasha ruvuga ko yatsinzwe ku mpamvu zimwe. Basobanura ko uko kudasuzuma urubanza mu mizi kugira ngo rumenye niba harabaye kwica amategako cyangwa kwirengagiza ibimenyetso, binyuranyije n'intego y'inzira y'ubujurire iteganyijwe mu ngingo za 150 na 157 z'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. [7] Bashyigikira icyo gitekerezo bavuga ko kutakira ubujurire kuko umuburanyi yatsinzwe ku mpamvu zimwe, byambura uwajuriye uburenganzira ku butabera buboneye. Ihame ry'ubutabera buboneye barisobanura mu buryo bubiri bashingiye ku rubanza no RS/INCONST/SPEC00003/2019/SC rwaciwe n'Urukiko rw'Ikirenga: ubutabera buboneye bushingiye ku migendekere, ni ukuvuga uruhererekane rw'ibigomba kubahirizwa mu migendekere y'urubanza hashingiwe ku mahame ateganywa n'amategako; n'ubutabera buboneye bushingiye ku biteganywa n'itegeko. Ubu buryo bukaba bubuza ishyirwaho ry'amategako cyangwa izindi ngamba bidashyira mu gaciro zibangamira uburenganzira bw'abaturage. [8] Basobanura ihame ry'uburenganzira ku butabera buboneye, banahereye ku rugero rw'urubanza East African Law Society v Attorney General of the Republic of Burundi & The Secretary General of the East African Community,¹ bavuga ko urwo Rukiko rwashingiye ku kuba uwatanze ikirego yaravukijwe uburenganzira ku butabera buboneye, bityo bikaba 1 EACJ, Reference No. 1 of 2014, delivered on 15 May 2015.

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binyuranyije n'ihame ryo kugendera ku mategeko riteganyijwe mu ngingo ya 6(d) na 7(2) y'Amasezerano ashiraho Umuryango w'Ibihugu by'Afurika y'Iburasirazuba. [9] Bavuga kandi ko ubwo burenganzira bunashimangirwa n'ingingo ya 14 y'Amasezerano Mpuzamahanga yerekeye uburenganzira mu by'imbenezamubano no mu bya politiki (International Covenant on Civil and Political Rights) iteganya ihame ryo guca urubanza rutabera. Basobanura ko ibiteganyijwe n'ingingo ya 46, igika cya 2 n'ingingo ya 52, igika cya 3 z'Itegeko n° 30/2018 ryavuzwe haruguru binyuranyije n'iryo hame kuko bishiraho inzitizi zibuza umuburanyi wareganyijwe n'inkiko ebyiri, kujuririra urundi rukiko kugira ngo arenganurwe. [10] Basobanura kandi ko impamvu zimwe zitagomba kwitiranywa n'impamvu zimwe ziboneye, zifite ishingiro kandi zikurikije amategeko, izo mpamvu zikaba zidashobora kugaragazwa Urukiko rutinjiye mu mizi y'urubanza, cyane ko mu nkiko zibanza akenshi umuburanyi ataba yunganiwe, bikumvikana ko mu Rukiko rw'Ubujurire aba abonye amahirwe yo gucukumbura ibimenyetso. Bavuga ko iyo Itegeko riteganya ko Urukiko rw'Ubujurire rutakira ubujurire bwa kabiri mu gihe uwajuriye yatsinzwe mu nkiko zibanza ku mpamvu zimwe, ariko rubanje gusuzuma niba hatarabaye kwica amategeko no kwirengagiza ibimenyetso, uburenganzira bw'umuburanyi ku butabera buboneye bwari kuba bwubahirijwe. [11] Bagaragaza ko mu gihe Urukiko rw'Ubujurire rutakiriye ubujurire kuko uwajuriye yatsinzwe ku mpamvu zimwe, n'yo yasubirishamo urwo rubanza ku mpamvu z'akarengane mu Rukiko rw'Ubujurire ku manza zaciwe n'Urukiko Rukuru cyangwa mu Rukiko rw'Ikirenga, atarenganurwa kuko izo nkiko mu gusuzuma akarengane hasuzumwa gusa urubanza rwaciwe bwa nyuma harebwa niba mu kugera ku mwanzuro inkiko zabanje zarashingiye ku mpamvu zimwe nk'uko byemejwe mu rubanza RS/INJUST/RP 00002/2019/SC Ubushinjacyaha buburana na Habimana Innocent. [12] Basoba kuri iyo ngingo bavuga ko kuba hari imanza zisubirwamo ku mpamvu z'akarengane, bisobanuye ko inkiko zibanziriza Urukiko Rukuru, n'Urukiko rw'Ubujurire zishobora gukora amakosa mu icibwa ry'imanza. Basobanura ko mu gihe cyose iyi ngingo ya 52, igika cya 3 y'Itegeko n° 30/2018 ryavuzwe haruguru yakomeza gukoreshwa mu buryo Urukiko rw'Ubujurire ruyikoreshe, umuburanyi wavukijwe uburenganzira bwo kuburana mu mizi kandi abizi neza ko yareganyijwe ku rwego rwa mbere n'urwa kabiri, ashobora kubifata nko kwimakaza akarengane na ruswa mu butabera. [13] Me Gahongayire Myriam Uhagarariye Leta y'u Rwanda avuga ko amategeko u Rwanda rugenderaho yemera ihame ry'ubujurire bumwe, ariko hanateganyijwe irengayobora ku manza zimwe zishobora kujuririrwa kabiri (ingingo ya 46 n'ya 52 z'Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko) habanje gusuzumwa niba inkiko ebyiri ziri ku nzego zitandukanye zarafashe umwanzuro umwe zishingiye ku mpamvu zimwe cyane cyane ko inkiko zizeweho gutanga ubutabera buboneye. [14] Avuga kandi ko ingingo ya 55 y'Itegeko n° 30/2018 ryavuzwe haruguru iteganya impamvu zishobora gutuma urubanza rwaciwe ku rwego rwa nyuma rusubirwamo ku mpamvu z'akarengane, ko umuburanyi wakumva yareganyije ariko akazitirwa n'ingingo ya 46 n'ya 52 yakwitabaza iyo nzira. Yongeraho ko, nubwo byagaragaye ko imanza 3% mu zasubirishijwemo

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arizo zigaragaramo akarengane, iyo ngingo yashyizweho mu rwego rwo gufasha umuturage no kumurinda kuba yavutswa uburenganzira. [15] Avuga kandi ko ku ngingo irebana n'ubutabera buboneye, Umushingamategeko yageneye uburenganzira ku buryo bungana abafitanye ikibazo (urega n'uregwa). Ku ruhande rumwe hateganywa uburenganzira bwo kujurira k'uwatsinzwe n'urubanza, ku rundi ruhande uburenganzira bwo guhabwa ubutabera k'uwatsinze urubanza, kandi ko ibyo bihura n'ibiteganywa n'ingingo ya 15 y'Itegeko Nshinga iteganya ko "abantu bose bareshya imbere y'amategeko, itegeko ribarengera ku buryo bumwe." Asoza avuga ko igika cya 2 cy'ingingo ya 46 n' igika cya 3 cy'ingingo ya 52 z'Itegeko n° 30/2018 ryavuzwe haruguru bitanyuranye n'ingingo ya 29 y'Itegeko Nshinga. UKO URUKIKO RUBIBONA [16] Urukiko rusanga mbere y'uko rusuzuma niba igika cya 2 cy'ingingo ya 46 n'igika cya 3 cy'ingingo ya 52 z'Itegeko n° 30/2018 ryavuzwe haruguru binyuranyije n'ingingo ya 29 y'Itegeko Nshinga ari ngombwa kubanza gusobanura ihame rirebana n'uburenganzira ku butabera buboneye, n'uburenganzira bwo kujurira. [17] Ingingo ya 29 y'Itegeko Nshinga iteganya ko "buri muntu wese afite uburenganzira ku butabera buboneye". Iyo ngingo ikaba igaragaza bimwe mu bigize uburenganzira ku butabera buboneye. Mu rubanza n° RS/INCONST/SPEC 00003/2019/SC,2 Urukiko rw'Ikirenga rwasobanuye uburenganzira ku butabera buboneye mu buryo bubiri nk'uko byagaragajwe mu gika cya 7 cy'uru rubanza. [18] Urukiko rusanga ingingo ya 14, igika cya 1 n'icya 5, y'Amasezerano Mpuzamahanga yerekeye uburenganzira mu by'imbenezamubano no mu bya politiki (International Covenant on Civil and Political Rights) igaragaza uburenganzira bwo kuburanira imbere y'urukiko rubifitiye ububasha n'uburenganzira bwo kujurira nka bimwe mu bigize uburenganzira ku butabera buboneye. Uburenganzira bwo kujurira, abahanga mu mategeko babusobanura nk'uburenganzira buri muburanyi utishimiye icyemezo yafatiwe n'Urukiko, afite bwo gusaba mu Rukiko rwisumbuye guhindura cyangwa gukosora icyo cyemezo.³ [19] Undi muhanga witwa Vilard BYTYQI asobanura ko ihame ry'ubujurire rishingiye ku burenganzira bw'uregwa n'ubw'Ubushinjacyaha bwo guhabwa amahirwe yo kujuririra urubanza rwaciwe ku rwego rwa mbere kugira ngo hakosorwe amakosa ashobora kuba yarakozwe n'Urukiko rwaruciye. Uburenganzira bwo gutanga ubujurire buhamiriza ababuranyi ko ihame ryo kuburana ku nzego ebyiri rizubahirizwa.⁴ 2 RS/INCONST/SPEC 00003/2019/SC haburana Me Kabasinga Florida rwaciwe n'Urukiko rw'Ikirenga kuwa 4/12/2019, ku rupapuro rwa 4 n'urwa 5. 3 Serge Guinchard, *Droit processual: Droit commun et droit compare du procès equitable*, 4ème Ed. Dalloz 2007, Page 420, *Le droit d'accès à un tribunal est l'une des deux expressions du droit à un recours. Le droit au recours est le droit de toute personne de pouvoir contester une mesure prise à son encontre, devant une instance investie d'un pouvoir de réformation de cette mesure et/ ou de réparation de ses conséquences dommageables.* 4 *The Right to Appeal as a Fundamental Right under International Acts and Jurisprudence, with Special Emphasis on Criminal Procedure.*

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(2017), <http://journals.univ-danubius.ro/index.php/juridica/article/view/3868/4027> - The notion of appeal refers to the right of the accused and the prosecutor (the prosecuting authority) to have the chance to appeal the judgement of the court of first instance,

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[20] Ikindi ni uko mu bisobanuro by' igika cya 5 cy'ingingo ya 14 y'Amasezerano mpuzamahanga yerekeye uburenganzira mu by'imbenezamubano no mu bya politiki (International Covenant on Civil and Political Rights) havugwa ko umuntu wahamijwe icyaha cyaba icy'ubugome, igikomeye cyangwa cyoroheje, yemerewe gusaba Urukiko rwisumbuye k'urwafashe icyemezo kongera gusuzuma ibimenyetso n'amategeko byashingiweho. Hasobanurwa ariko ko ingingo yavuzwe haruguru idategeka ibihugu gushyiraho inzira nyinshi z'ubujurire, ko ariko mu gihe mu mategeko y'Igihugu hateganyijwe izindi nzira z'ubujurire, uwatsinzwe agomba kwemererwa kwiambaza buri nzira mu buryo ayo mategeko abiteganyaho.5 [21] Abahanga mu mategeko nka Nuala Mole et Catharina Harby bavuga ko uburenganzira bwo kwiambaza urukiko cyangwa kumvwa n'umucamanza atari ntakuka. Bagaragaza ko Urukiko rw'Umuryango w'Ubumwe bw'Ibihugu by'i Burayi mu rubanza Golder c. Royaume- Uni, rwasobanuye ko uburyo busanzwe bukoreshwa, bufatwa nk'igabanywa ryemewe ry'ubwo burenganzira ari ukuba inzira runaka y'ubujurire ishobora kwemerwa habanje gusuzumwa iyakirwa ryayo, ibi bigashingira ku mategeko ashirwaho n'ibihugu.6 [22] Urwo Rukiko rwemeje na none ko ubwo burenganzira bushobora kugabanywa hashingiwe ku ngingo ya 6 (§ 1) y'Amasezerano y'Iburayi y'Uburenganzira bwa muntu kubera impamvu ebyiri zikurikira:

- a. Hagamijwe intego ifite ireme;
- b. Kugaragaza ko hari isano yumvikana hagati y'uburyo bwakoreshejwe n'intego igamijwe.7 [23] Abandi bahanga mu mategeko bakomeza bavuga ko uburenganzira ku bujurire bwa mbere bufatwa nk'uburenganzira bw'ibanze, amategeko y'ibihugu akagenda uko bukoreshwa. Naho ubujurire bwa kabiri kimwe n'izindi nzira z'ubujurire biteganyijwe mu mategeko y'Igihugu bikorwa hashingiwe kubyo umuryango ukeneye, kandi Umushingamategeko akaba ashobora nabwo guteganya ibigomba kubahirizwa kugira ngo ubujurire bwakirwe.8 under the pretense of any eventual error undertaken by this level of trial. Therefore, the appeal plays the role of the instrument that fixes the eventual errors, which could have been done by the court of first instance. The right to submit the appeal guarantees the procedural parties that the principal of two instances will be respected. 5 Le paragraphe 5 de l'article 14

dispose que toute personne déclarée coupable d'une infraction a le droit de faire examiner par une juridiction supérieure la déclaration de culpabilité et la condamnation conformément à la loi, c'est à dire les modalités selon lesquelles le réexamen par une juridiction supérieure doit être effectué, ainsi que la détermination de la juridiction chargée de procéder au réexamen conformément au Pacte. Le Paragraphe 5 de l'article 14 n'exige pas aux Etats parties qu'ils mettent en place plusieurs instances d'appel. Toutefois si le droit interne prévoit d'autres instances d'appel, le condamné doit pouvoir utiliser effectivement chacune d'entre elles. (Nations Unies, Pacte international relatif aux droits civils et politiques, Remarques générales No. 32, 23 août 2007, <http://hrlibrary.umn.edu/gencomm/french/f-gencom32.pdf>) 6 Nuala Mole et Catharina Harby, Le droit à un procès équitable, Un guide sur la mise en oeuvre de l'article 6 de la Convention européenne des Droits de l'Homme, Conseil de l'Europe 2007, p. 43. Toutefois, le droit d'accès à un tribunal n'est pas absolu. La Cour a ajouté dans l'arrêt *Golder c. Royaume-Uni* que ce droit appelle, de par sa nature même, une réglementation émanant de l'Etat (qui peut varier dans le temps et dans l'espace en fonction des besoins et des ressources de la collectivité et des particuliers), laquelle ne doit en aucun cas porter atteinte à la substance dudit droit ni se heurter à d'autres droits consacrés par la Convention. Les juges de Strasbourg ont en outre précisé dans leur jurisprudence qu'une limitation du droit d'accès ne serait compatible avec l'article 6 qu'à la double condition de : a. poursuivre un but légitime ; b. présenter un rapport raisonnable de proportionnalité entre les moyens employés et le but visé. 7 Ibidem.

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- [24] Guteganya ibigomba kubahirizwa kugira ngo ubujurire bwakirwe, binagaragara mu rubanza rwaciye n'Urukiko rw'Ikirenga rw'Ubuganda haburana Kotak A. Mahindra Bank Pvt. Limited v Ambuj A. Kasliwal & Ors⁹, aho Urukiko rwavuze ko bisanzwe byemewe ko iyo uburenganzira bwo kujurira buteganyijwe n'Itegeko, mu gihe itanga ubwo burenganzira, Inteko Ishinga Amategeko ishobora guteganya ibigomba kubahirizwa kugirango ubwo burenganzira bukoreshe, igihe cyose ibyo bigomba kubahirizwa bitabangamira ugomba kubikora ku buryo ahubwo biba imbogamizi zidafite ishingiro zimuvutsa ubwo burenganzira. [25] Urukiko rusanga Umushingamategeko wo mu Rwanda, nk'uko bimeze mu bindi bihugu, yateganyije uburyo umuburanyi ashobora kujurira urubanza mu rukiko ruri hejuru y'urwaruciye, anateganya mu ngingo ya 46 n'ya 52 y'Itegeko n° 30/2018 ryavuzwe haruguru, uburyo ubujurire bwa kabiri bushobora gutangwamo. Aha niho yateganyije, mu gika cya 2 cy'ingingo ya 46 n'igika cya 3 cy'ingingo ya 52 y'Itegeko ryavuzwe haruguru ko ubujurire bwa kabiri budashobora kwakirwa ku muburanyi watsinzwe mu nkiko zombi ku mpamvu zimwe. [26] Urukiko rusanga kuba, ku mpamvu y'imigendekere myiza y'itangwa ry'ubutabera, umushingamategeko yateganyije ko kugira ngo ubujurire bwa kabiri bwakirwe, uwajuriye agomba kuba ataratsinzwe ku mpamvu zimwe, bitamwambura uburenganzira ku butabera bubonye kuko aba yarahawe uburenganzira bwo kujurira urubanza bwa mbere, kandi bukaba aribwo burenganzira ntayegayezwa adashobora kuvutswa, n'ubwo nabwo bushobora gushyirwaho imbibi (limitations)

hagamijwe intego ifite ireme. [27] Ku kibazo cyo kuba nta yindi nzira yatuma umuburanyi arenganurwa igihe yatsinzwe ku mpamvu zimwe kandi inkiko zombi zaramurenganyije, Urukiko rusanga kuba Urukiko rw'Ubujurire rwanze kwakira ikirego cye bitamubuza gusaba ko rwa rubanza rwamurenganyije rwasubirwamo ku mpamvu z'akarengane; apfa kutarenza iminsi mirongo itatu kuva amenyeshejwe icyemezo cy'Urukiko rw'Ubujurire nk'uko uru Rukiko rwabitanzeho umurongo mu manza zinyuranye.¹⁰ [28] Rushingiye kubisobanuro byatanzwe, Urukiko rusanga ingingo ya 46, igika cya 2 n'ingingo ya 52, igika cya 3 z'Itegeko n° 30/2018 ryo kuwa 02/06/2018 rigena ububasha bw'inkiko zitanyuranyije n'ingingo ya 29 y'Itegeko Nshinga. [29] Urukiko rusanga ariko imyandikire y'ingingo ya 52 y'iryo Tegeko yakosorwa, igika cya 3 ntikijyane n' uduce twose tw'igika cya 2 cy'ingingo ya 52, ahubwo kikajyana gusa n'agace ka 8 n'aka 9 tw'igika cya 2. Ni nako byagenda kandi ku bireba ingingo ya 46, igika cya 2 kikajyana gusa n'agace ka 6 k'igika cya 1. Koko rero, umucamanza ntakwiye kwirengagiza inenge zivugwa m'uduce kuva ku ka 2 kugeza ku ka 7 tw'ingingo ya 52, n'uduce kuva ku ka 1 kugeza ku ka 5 tw'ingingo ya 46, kabone n'ubwo umuburanyi yaba yaratsinwe mu nkiko zombi ku mpamvu zimwe. 8 Tarun Jain, Limitations on Second Appeal: The Law Revisited, 18 November 2010, <http://legalperspectives.blogspot.com/2010/11/limitations-on-second-appeal-law.html>; Sabodt Asthana, Second Appeal under Civil Procedure Code: Nature, Scope, Forum and Procedure, 4 January 2020, <https://blog.ipleaders.in/second-appeal/> 9 Kotak Mahindra Bank Pvt. Limited Vs Ambuj A. Kasliwal & Ors, Supreme Court of India, Civil Appellate Jurisdiction, Civil Appeal No. 538 of 2021, <https://indiankanoon.org/doc/56200562/>: "It is well settled that when a Statute confers a right of appeal, while granting the right, the Legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory." 10 Urugero ni nko mu rubanza No. RS/REV/INJUST/CIV 0023/16/CS, rwaciwe ku wa 27/09/2019, mu gika cya 28.

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Kumenya niba kutakira ubujurire bwa kabiri ku manza z'ababuranye bemera ibyo baregwa binyuranyije n'ihame ryo kureshya imbere y'amategeko riteganyijwe n'ingingo ya 15 y'Itegeko Nshinga, bityo bikaba binanyuranyije n'uburenganzira ku butabera buboneye buteganywa n'ingingo ya 29 y'Itegeko Nshinga. [30] Ku birebana n'imanza nshinjabyaha, Asiimwe Frank n'abunganizi be bavuga ko uburenganzira bwo kujurira k'uwahamwe n'icyaha bushimangirwa n'ingingo ya 14 y'amasezerano mpuzamahanga yerekeye uburenganzira mu by'imbonezamubano no mu bya politiki (International Covenant on Civil and Political Rights) u Rwanda rwashyizeho umukono. Bagasobanura ko ubundi ukwemera icyaha bigira inyungu k'uregwa mu buryo butandukanye nko kugabanya ingaruka zacyo k'uwagikorewe, kugabanya umwanya n'amafaranga agenda ku bikorwa by'iperereza n'iburanisha, by'umwihariko k'uwakoze icyaha bituma agabanyirizwa igihano nk'uko byanemejwe n'Urukiko rw'Ikirenga mu rubanza RPAA 0014/10/CS rwaciwe ku wa 25 Ukwakira 2013, Ubushinjacyaha bwaregagamo Dusabeyezu Damascène. [31] Bavuga ko igikwiye kumvikana neza mu manza nshinjabyaha, ari uko n'ubwo uwakoze icyaha aba yemeye icyaha mu nkiko zabanje, bidakwiye kumwambura uburenganzira bwo kujuririra

Urukiko rw'Ubujurire mu gihe asanga Inkiko zabanje zitaramuhaye igihano gikwiye, ariko ko ibiteganywa n'igika cya 2 cy'ingingo ya 46 n' igika cya 3 cy'ingingo ya 52 z'Itegeko n°30/2018 ryavuzwe haruguru bizitira uwajuriye waburanye yemera icyaha mu nkiko zabanje, mu gihe uregwa waburanye ahakana icyaha we ubujurire bwe bwemerwa harebwe gusa niba yarahanishijwe igihano cy'igifungo cy'imyaka 15, bagasanga iyo ngingo inyuranyije n'ihame ryo kureshya imbere y'amategeko rivugwa mu ngingo ya 15 y'Itegeko Nshinga. [32] Bakomeza basobanura ko abahanga mu mategeko bavuga ko intego nkuru yo kujurira mu manza nshinjabyaha ari ukugira ngo hatangwe ubutabera. Bikumvikana ko inzitizi iyo ariyo yose ivutsa uwarenganyijwe uburenganzira bwo kujurira iba inyuranye n'amahame y'imitangire y'ubutabera. [33] Batanga ingero z'imanza zaciwe n'Urukiko rw'Ubujurire aho rwanze kwakira ubujurire kuko uwajuriye yaburanye yemera icyaha mu nkiko zabanje. Izo manza ni izi zikurikira: urubanza n° RPAA 00147/2018/CA Ubushinjacyaha burega Munyurangabo Jean Paul wemeye icyaha cyo gusambanya umwana mu nzego zose, Urukiko rumuhanisha igihano cy'igifungo cya burundu y'umwihariko, ajurira mu Rukiko Rukuru rwemeza ko ubujurire bwe nta shingiro bufite maze anajuririye Urukiko rw'Ubujurire rwemeza ko ubujurire bwe butari mu bubasha bw'Urukiko kuko yatsinzwe kabiri ku mpamvu zimwe. Bagaragaza n'urubanza RPAA 00166/2018/CA haregwa Habimana Cedrick, urubanza RPAA 00168/2018/CA haregwa Bizumuremyi Thadée, urubanza RPAA 00069/2018/CA haregwa Ngezahoguhora Olivier n'urubanza RPAA 00167/2018/CA Ubushinjacyaha buregamo Museruka Fabrice. [34] Basobanura ko ingingo ya 107, igika cya 1 y'Itegeko n° 027/2019 rigenga imiburanishirize y'imanza nshinjabyaha iteganya ko ibimenyetso byemeza icyaha bitangwa n'Ubushinjacyaha n'uregera indishyi. Bashimangira ko gushingira ku kwemera icyaha konyine k'uregwa, Urukiko rukanga kwakira ubujurire bwe byaba bibangamiye ihame ryo kutishinja.

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[35] Basoza bavuga ko kuba hari izindi nzira z'ubujurire zidasanzwe zateganyijwe harimo no gusubirishamo urubanza ku mpamvu z'akarengane, bidakemura ikibazo kuko n'ubundi iyo uwatsinzwe asubirishijemo urubanza ku mpamvu z'akarengane, yiyambaza Urukiko rutakiriye ubujurire, bikaba nta kizere cyo kurenganurwa aba afite. Banagaragaza ko icyo Umushingamategeko yari agamije mu gushyiraho ingingo ya 52, igika cya 3 n'iya 46, igika cya 2 z'Itegeko n° 30/2018 kwari ukugena ububasha hashingiwe ku ngano y'ikiburanwa cyangwa igihano cyatanze, akaba aribyo byagumaho. [36] Me Gahongayire Myriam, uhagarariye Leta y'u Rwanda, avuga ko ingingo ya 52, igika cya 3 n'ingingo ya 46, igika cya 2 z'Itegeko n°30/2018 rigena ububasha bw'inkiko zitanyuranije n'ingingo ya 29 y'Itegeko Nshinga kuko n'ubwo ubujurire bwa kabiri butakirwa kubera ko uwajuriye yaburanye yemera mu nkiko zabanje, ariko amategeko ateganya uburyo aramutse yararenganyijwe yarenganurwa. UKO URUKIKO RUBIBONA [37] Ingingo ya 52, igika cya 3 y'Itegeko n°30/2018 ryavuzwe haruguru igira iti: "ubujurire bwa kabiri ntibushobora kwakirwa ku manza z'ababuranye bemera ibyo baregwa [...]," akaba ari nako biteganywa n'ingingo ya 46, igika cya 2 y'iryo Tegeko ku birebana n'iyakirwa ry'ubujurire bwa kabiri mu Rukiko Rukuru. [38] Ku kibazo kijyanye n'uburenganzira bwo kujurira mu manza nshinjabyaha, Urukiko rusanga

nk'uko rwabisobanuye haruguru, uburenganzira bwo kujurira ntayegayezwa ari ubujurire bwa mbere, n'ubwo nabwo bushobora gushyirwaho imbibe (limitations) hagamijwe intego ifite ireme. Ubwo burenganzira bushobora kugabanywa ku bujurire bwa kabiri, ariko bigakorwa hagaragazwa intego yemewe n'amategeko n'isano yumvikana ifitanye n'uburyo bwakoreshejwe nk'uko byemejwe n'Abacamanza bo mu Rukiko rw'Umuryango w'Ubumwe bw'Ibihugu by'I Burayi.¹¹ [39] Urukiko rusanga mu manza nshinjabyaha, ingingo ya 52, igika cya 2, agace ka 9 y'Itegeko n°30/2018 ryavuzwe haruguru yemerera uregwa wahamijwe icyaha n'Urukiko Rukuru cyangwa Urukiko Rukuru rwa Gisirikare, agahanishwa igifungo nibura cy'inyaka 15 kujurira mu Rukiko rw'Ubujurire. [40] Urukiko rurasanga ariko igika cya 3 cy'ingingo ya 52 y'Itegeko n°30/2018 rimaze kuvugwa, giteganywa ko ubujurire bwa kabiri bw'ababuranye bemera ibyo baregwa budashobora kwakirwa, bikumvikana ko abaregwa bahamijwe icyaha kimwe bagahabwa igihano kimwe gituma bemererwa kujuririra Urukiko rw'Ubujurire, umwe waburanye ahakana ashobora kwemererwa kujurira hashingiwe gusa ku gihano yahawe, undi ubujurire bwe ntibwakirwe kuko yaburanye yemera, kandi nyamara aba yaranafashije ubutabera. Ibi byaba ari ugusumbanya ababuranyi no kutabafata kimwe, bikaba binyuranyije n'ihame ryo kureshya imbere y'amategeko riteganyijwe mu ngingo ya 15 y'Itegeko Nshinga. [41] Hashingiwe ku bisobanuro byatanzwe, Urukiko rusanga igice cy'igika cya 3 cy'ingingo ya 52 n'igice cy'igika cya 2 cy'ingingo ya 46 z'Itegeko n°30/2018 rigena ububasha bw'inkiko 11 Ibi byasobanuwe mu bika bya 21 na 22 by'uru rubanza 12 Ibi binareba n'igika cya 2 cy'ingingo ya 46 y'Itegeko ryavuzwe haruguru ku bujurire bwa kabiri mu Rukiko Rukuru.

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birebana no kutakira ubujurire bwa kabiri kubera ko uwajuriye yemeye ibyo aregwa binyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda, bityo bikaba binanyuranyije n'ingingo ya 29 y'Itegeko Nshinga. III. ICYEMEZO CY'URUKIKO [42] Rwemeje ko ikirego cyatanzwe na Asiimwe Frank gifite ishingiye kuri bimwe. [43] Rwemeje ko igice cy'igika cya 2 cy'ingingo ya 46 n'igice cy'igika cya 3 cy'ingingo ya 52 z'Itegeko ryo ku wa 02/06/2018 n°30/2018 rigena ububasha bw'inkiko birebana no kutakira ubujurire bwa kabiri "ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe" bitanyuranyije n'ingingo ya 29 y'Itegeko Nshinga rya Repubulika y'u Rwanda. Urukiko rurajya inama ariko ko ingingo ya 52 y'iryo Tegeko yakosorwa ku buryo ibiteganyijwe mu gika cya 3 cyayo bireba gusa uduce twa 8 na 9 tw'igika cya kabiri, ndetse n'igika cya 2 cy'ingingo ya 46 kikareba gusa agace ka 6 k'igika cya 1 cy'iyi ngingo. [44] Rwemeje ko igice cy'igika cya 2 cy'ingingo ya 46 n'igice cy'igika cya 3 cy'ingingo ya 52 z'Itegeko n°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko birebana no kutakira ubujurire bwa kabiri "ku manza z'ababuranye bemera ibyo baregwa" binyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda, bikaba nta gaciro bifite hashingiwe ku biteganywa n'ingingo ya 3 y'Itegeko Nshinga. [45] Rutegetse ko uru rubanza rutangazwa mu Igazeti ya Leta ya Repubulika y'u Rwanda.

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