

RWANDA / JUDGMENT

GRUNER JES NICHOLAS MPHAZSO v. NYANDWI

RCAA00032/2024/HC/KIG

COURT

High Court

DECIDED

15 January 2025

CASE / FILE NUMBER

RCAA00032/2024/HC/KIG

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GRUNER JES NICHOLAS MPHAZSO v. NYANDWI

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- Case/document no.: RCAA00032/2024/HC/KIG
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Text

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GRUNER JES NICHOLAS MPHAZSO v. NYANDWI [Rwanda URUKIKO RUKURU – RCAA00032/2024/HC/KIG (Nkusi, J. P.) 15 Mutarama 2025] Amategeko agenga imiburanishirize y’imanza mbonezamubano – Ibirego byihutirwa – Cyamunara – Ibirego byo guhagarikisha cyangwa gutesha agaciro cyamunara – Kuba ibirego byo guhagarikisha cyangwa gukuraho cyamunara bitangwa kandi bikaburanishwa mu bihe bimwe nk’iby’ibirego byihutirwa, sibyo bibigira ibirego byihutirwa kuko ku bindi hagenderwa ku miburanishirize y’ibirego bisanzwe biri kuburanishwa mu mizi y’urubanza. Amategeko agenga imiburanishirize y’imanza mbonezamubano – Ikirego cyerekeye gutesha agaciro cyamunara – Ikirego gisaba guhagarika cyangwa gutesha agaciro cyamunara gishobora kujuririrwa bwa kabiri iyo cyujuje ibisabwa kuko aba atari ikirego cyihutirwa gifatwamo icyemezo cy’agateganyo ahubwo ari ikirego mu mizi. Amategeko agenga imanza mbonezamubano – Umutungo – Uburenganzira ku mutungo – Uburenganzira ku mutungo ni ntavogerwa, iyo bibaye ngombwa ko nyirawo awamburwa binyuze muri cyamunara, yemerewe gusaba gutesha agaciro cyamunara mu gihe umutungo ugiye kugurishwa waba utari

uw'uryozwa kwishyura. Incamake y'ikibazo: Nyandwi, umuhesha w'inkiko w'umwuga, yagurishije muri cyamunara umutungo wari uwa Basaritse wahamijwe ibyaha byo kujya mu bitero byishe Abatutsi no gusahura inka mirongo ine n'icyenda (49) z'Abatutsi bazize Genocide mu mwaka w'1994 n'Urukiko Gacaca rw'Umurenge wa Rwiri, mu rwego rwo kwishyura imiryango yasahuwe. Uwo mutungo wagurishijwe wari wanditseho Gruner Jes Nicholas Mphzso waje gutanga ikirego mu Rukiko rw'Ibanze rwa Kicukiro asaba gutesha agaciro iyo cyamunara, avuga ko yawuguze mu buryo bukurikije amategeko. Urukiko rw'Ibanze rwa Kicukiro rwaciye urubanza rwemeza ko iyo cyamunara iteshejwe agaciro, rushingiye ku biteganywa mu ngingo ya 260 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Icyo cyemezo Nyandwi yakijuririye mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko cyamunara yagumana agaciro kayo hashingiwe ku bimenyetso n'amategeko avuga ko byirengagijwe ndetse no kuba hatarabayeho gushyira mu kuri. Gruner yireguye asaba ko icyemezo gitesha agaciro cyamunara cyagumana agaciro kacyo kubera ko iyo cyamunara iteje ibibazo kurusha kubikemura, ko nta buriganya yigeze akora, kuko ngo yaguze imitungo mu buryo bukurikije amategeko akaba yaravuguruye amazu akayongerera agaciro. Urukiko Rwisumbuye rusanga ingingo ya 14 (4) y'Itegeko Ngenga N°04/2012/Ol ryo kuwa 15/06/2012 rikuraho Inkiko Gacaca, rikanagena uburyo bwo gukemura ibibazo byari mu bubasha bwazo yarirengagijwe isobanura neza ko Umuhesha w'inkiko ateza cyamunara umutungo w'ugomba kwishyura n'iyonyuma y'urubanza waba waranditswe ku wundi muntu mu buryo bwo kugira ngo abakorewe icyaha batazishyurwa. Rushingiye kuri iyo ngingo rwemeje ko cyamunara igumaho ruvuga ko hirengagijwe ko umutungo watejwe cyamunara wari uwa Basaritse Frodouard mu gihe cya jenocide yakorewe Abatutsi. Gruner yajuririye muri uru Rukiko Rukuru avuga ko mu rubanza rujuririrwa hemejwe ko umutungo utezwa cyamunara warigishijwe, anenga kandi ko urukiko rwaba rwararenze imbibe z'icyaregewe, kuko haregewe gutesha agaciro cyamunara nyamara urukiko ruca urubanza ku nkomoko y'umutungo. Mu kwiregura kuri ubu bujurire, Nyandwi asaba ko ubu bujurire butakwagirwa cyamunara ikagumaho kuko ngo habaye kurigisa umutungo wa Basaritse wagombaga kuvamo ubwishyu maze ugurishwa Gruner Jes Nicholas Mphazso. Mu miburanire ye, yabanje gutanga inzitizi yo kutakira ubujurire avuga

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ko guteza cyamunara mu irangizwa ry'ibyemezo by'Inkiko Gacaca bikurikiza amategeko asanzwe agenga icyamunara, ko ibirego bijyanye no guhagarika no gutesha agaciro cyamunara bitangwa kandi bikaburanishwa mu bihe by'ibirego byihutirwa. Akomeza avuga ko Itegeko rigenga imiburanishirize y'imanza mbonezamubano riteganywa ko ubujurire bw'ibyemezo byafashwe ku birego byihutirwa bushyikirizwa, urukiko rwisumbuyeho kandi bijuririrwa inshuro imwe gusa. Incamake y'icyemezo: 1. Kuba ibirego byo guhagarikisha cyangwa gukuraho cyamunara bitangwa kandi bikaburanishwa mu bihe bimwe nk'iby'ibirego byihutirwa, sibyo bibigira ibirego byihutirwa kuko ku bindi hagenderwa ku miburanishirize y'ibirego bisanzwe biri kuburanishwa mu mizi y'urubanza.

2. Ikirego gisaba guhagarika cyangwa gutesha agaciro cyamunara gishobora kujuririrwa bwa kabiri iyo cyujuje ibisabwa, kuko aba atari ikirego cyihutirwa gifatwamo icyemezo cy'agateganyo ahubwo ari ikirego mu mizi.
3. Uburenganzira ku mutungo ni ntavogerwa, iyo bibaye ngombwa ko nyirawo awamburwa binyuze muri cyamunara, yemerewe gusaba gutesha agaciro cyamunara mu gihe umutungo ugiye kugurishwa waba utari uw'uryozwa kwishyura. Ubujurire bufite ishingiro. Amagarama aherera k'Uregwa. Amategeko yashingiweho: Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu mwaka wa 2023, ingingo ya 34. Itegeko Ngenga N°04/2012/OL ryo kuwa 15/06/2012 rikuraho Inkiko Gacaca, rikanagena uburyo bwo gukemura ibibazo byari mu bubasha bwazo, ingingo ya 12, 14, 15, 16 n'ya 17. Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganyaye ibyaha n'ibihano muri rusange, ingingo ya 178. Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111, 146, 185, 188, 259 n'ya 260. Imanza zifashishijwe: RCOMAA0031/2016/SC-RCOMAA00036/16/SC, BK Ltd na Habimana Védaste rwaciwe n'Urukiko rw'Ikirenga ku wa 06/04/2018. RCOMAA00058/2022/CA, Manumetal Ltd v. Tedmer Int Trade Co, rwaciwe n'Urukiko rw'Ubujurire ku wa 22/07/2022. RCOMAA00012/2019/CA, Nzitonda Kiyengo v. Cogebanque Ltd, Higiye Martin, Umwanditsi Mukuru muri RDB na Gashema Félicien, rwaciwe n'Urukiko rw'Ubujurire ku wa 09/12/2019. Urubanza I. IMITERERE Y'URUBANZA [1] Urukiko Gacaca rwa rw'Umurenge wa Rwiri, mu karere ka Ngororero rwafashe cyemezo N° 264 ku wa 24/04/2008, ruhamya uwitwa Basaritse Froduard ibyaha byo kujya mu bitero byishe Abatutsi no gusahura inka mirongo ine n'icyenda (49) z'Abatutsi bazize Genocide mu mwaka w'1994, rwemeza ko agomba kuzishyura hakoreshejwe umutungo we w'amazu. Basaritse Froduard yaburanishijwe adahari kuko ngo yari yarahunze, binavugwa ko yapfiriye mu gihugu cya Kongo (RDC).

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- [2] Mu kurangiza icyo cyemezo Umuhesha w'inkiko Me Bernard Nyandwi; abisabwe n'abazungura ba banyakwigendera ari bo Karisa, Gahigiro, Zimurinda, Sabato, Gaterura na Semayira; kandi ashingiye ku biteganywa mu ngingo ya 14 (4) y'Itegeko Ngenga N°04/2012/OL ryo kuwa 15/06/2012 rikuraho Inkiko Gacaca, rikanagena uburyo bwo gukemura ibibazo byari mu bubasha bwazo yagurishije muri cyamunara umutungo ufite UPI: 1/02/08/03/24 wanditswe kuri Gruner Jes Nicholas Mphazso bavugaga ko wasizwe na Basaritse Froduard wari warahunze. [3] Gruner Jes Nicholas Mphazso wari wanditseho umutungo yaregeye Urukiko rw'Ibanze rwa Kicukiro asaba ko iyo cyamunara iteshwa agaciro kuko hagurishijwe umutungo we yaguze mu buryo bwemewe n'amategeko, urukiko mu rubanza RC00560/2024/TB/KICU rwaciwe n'Urukiko rw'Ibanze rwa Kicukiro, rwatesheje agaciro iyo cyamunara rushingiye ku biteganywa mu ngingo ya 260 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. [4] Umuhesha w'inkiko, Me Nyandwi Bernard ntabwo yishimiye imikuriza y'urubanza RC00560/2024/TB/KICU maze ajuririra Urukiko Rwisumbuye rwa Nyarugenge, asaba ko cyamunara yagumana agaciro kayo hashingiwe ku bimenyetso n'amategeko avugaga

ko byirengagijwe ndetse ngo no kuba hatarabayeho gushyira mu kuri. Anasaba ko igihe Urukiko rwasanga ubujurire bufite ishingiro rwategeka Gruner Jes Nicholas Mphazso kumuha indishyi z'ikurikiranarubanza zingana n'amafaranga ibihumbi magana atatu (300.000Frw) n'igihembo cy'Avoka kingana na miliyoni imwe (1.000.000Frw) no kumusubiza ingwate y'amagarama yatanze ingana n'amafaranga ibihumbi makumyabiri (20,000Frw). [5] Ku ruhande rwa Gruner Jes Nicholas Mphazso umuhagarariye yireguraga asaba ko ikirego kitakwagirwa ngo gisuzumwe mu mizi kubera ko abajuriye bashyizemo umwanzuro wabo ku munsu w'iburanisha, mu myanzuro ye anavugaga ariko ko icyemezo gitesha agaciro cyamunara cyagumana agaciro kacyo kubera ko iyo cyamunara iteye ibibazo kurusha kubikemura kandi ngo Gruner Jes Nicholas Mphazso akaba nta buriganya yigeze akora kuko ngo yaguze imitungo mu buryo bukurikije amategeko akaba yaravuguruye amazu akayongera agaciro. [6] Urukiko rwasuzumye niba ubujurire bwa Me Nyandwi Bernard bwakwagirwa bugasuzumwa mu mizi rusanga ubujurire bugomba kwagirwa bugasuzumwa kuko yagaragaje ibyo anenga mu rubanza rujuriyirwa. [7] Urukiko rwisumbuye rwa Nyarugenge mu rubanza RCA00164/2024/TGI/NYGE rwasuzumye niba hari ibimenyetso n'amategeko byirengagijwe ku buryo byashingirwaho cyamunara igumana agaciro kayo rusanga ngingo ya 14 (4) y'Itegeko Ngenga N°04/2012/OL ryo kuwa 15/06/2012 rikuraho Inkiko Gacaca, rikanagena uburyo bwo gukemura ibibazo byari mu bubasha bwazo yarirengagijwe isobanura neza ko Umuhesha w'inkiko ateza cyamunara umutungo w'ugomba kwishyura n'iyonyuma y'urubanza waba waranditswe ku wundi muntu mu buryo bwo kugira ngo abakorewe icyaha batazishyurwa. Urukiko Rwisumbuye rwemeje ko cyamunara igumaho ruvuga ko Urukiko rw'Ibanze rwa Kicukiro rwaciye urubanza rujuriyirwa rwarirengagije ko umutungo watejwe cyamunara wari uwa Basaritse Frodouard mu gihe cya jenocide yakorewe Abatutsi. [8] Gruner Jes Nicholas Mphazso ntiyishimiye imikirize y'urubanza maze atanga ubujurire bwa kabiri avuga ko Urukiko Rwisumbuye rwaciye urubanza ruvuga ko umutungo utezwa cyamunara

1 Iyo ngingo iteganya ko iyo umutungo w'ugomba kwishyura ibyangijwe muri jenocide yakorewe Abatutsi warigishijwe, uhita ushinganwa mu maboko y'uwo uherereyeho, ugatezwa cyamunara hatitawe k'uwo ufite. 2 Iyo ngingo iteganya ko cyamunara ishobora guteshwa agaciro iyo hari ikimenyetso kidashidikanywaho kigaragaza ko umutungo ugiye kugurishwa atari uw'uryozwa kwishyura.

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warigishijwe anenga kandi ko urukiko ngo rwaba rwararenze imbibe z'icyaregewe kuko haregewe guteshwa agaciro cyamunara nyamara urukiko ruca urubanza ku nkomoko y'umutungo. [9] Me Nyandwi Bernard mu kwiregura yabanje gutanga inzitizi ikirego avuga ko ibirego bijyanye no guhagarika no guteshwa agaciro cyamunara bitangwa kandi bikaburanishwa mu bihe by'ibirego byihutirwa kandi ibirego byihutirwa bitemerewe gutangirwa ubujurire bwa kabiri. [10] Me Nyandwi Bernard mu mizi y'urubanza yasabaga ko ubujurire butakwagirwa cyamunara ikagumaho kuko ngo habaye kurigisa umutungo wa Basaritse Frodouard wagombaga kuvamo ubwishyu maze ugurishwa Gruner Jes Nicholas Mphazso. [11] Urukiko rurasuzuma niba

ubujurire bwa kabiri bwakwakirwa, ruzuzuma niba cyamunara yakozwe ku mutungo wanditse kuri Gruner Jes Nicholas Mphazso ikwiriye guteshwa agaciro. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA A. Kumenya niba ubujurire bwa kabiri bwatanzwe na Gruner Jes Nicholas Mphazso bwakwakirwa [12] Me Bernard Nyandwi umuhesha w'inkiko w'umwuga yabanje gutanga inzitizi yo kutakira ubujurira ashingiwe ku ngingo ya 17 y'Itegeko Ngenga N°04/2012/OL ryo ku wa 15/06/2012 rikuraho inkiko gacaca rikanagena uburyo bwo gukemura ibibazo byari mu bubasha bwazo iteganya ko Haseguriwe ibivugwa mu ngingo ya 14, iya 15 n'ya 16 z'iri Tegeko ngenga, guteza cyamunara mu irangizwa ry'ibyemezo by'Inkiko Gacaca bikurikiza amategeko asanzwe agenga icyamunara; Ashingiye no ku ngingo ya 260 al. 5 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko Ibirego bijyanye no guhagarika no gutesha agaciro cyamunara bitangwa kandi bikaburanishwa mu bihe by'ibirego byihutirwa; agashingira no ku ngingo ya 188 y'itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko Ubujurire bw'ibyemezo byafashwe ku birego byihutirwa bushyikirizwa, urukiko rwisumbuyeho kandi bijurirwa inshuro imwe gusa. [13] Gruner Jes Nicholas Mphazso yavugaga ko Urukiko rukuru rufite ububasha bwo kuburanisha urubanza mu bujurire bwa kabiri mu gihe icyaburanwe kitagenewe agaciro mu mafaranga mu manza zabanje, kigomba kuba gifite agaciro nibura kangana na miliyoni mirongo itanu z'amafaranga y'u Rwanda (50.000.000Frw) kagenwe n'umuhanga iyo bibaye ngombwa; kuko ikiburanwa ari cyamunara yakorewe ku mutungo ufite agaciro karengaje miliyoni mirongo itanu (50,000,000Frw). UKO URUKIKO RUBIBONA [14] Ingingo ya 185 igika cya mbere (al. 1) y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi igerageza gusobanura ko iyo hari ikirego cy'iremezo, ariko hagomba kugira icyemezwa by'agateganyo mu buryo bwihuta ku rubanza rwaregewe urukiko rutaraburanishwa, ikirego cyihutirwa gishyikirizwa umucamanza ushinze kurangiza impaka zihutirwa w'aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara. Iyi ngingo isa n'isobanra ko ikirego cyihutirwa ari ikirego kiba gishamikiye ku kindi kirego cy'iremezo hagamijwe kugira icyemezo cy'agateganyo gifatwa mu buryo bwihutwa mu gihe hagitegerejwe iburaisha ry'urubanza mu mizi. [15] Iyo urukiko rugeranyije ibirego byo gutesha agaciro cyamunara nk'uko biteganywa n'ingingo ya 260 n'ikirego cyihutirwa rurasanga ikirego cyo gutesha agaciro cyamunara atari ikirego

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cyihutirwa kuko kiba atari ikirego gifatwamo icyemezo cy'agateganyo ahubwo kiba ari ikirego mu mizi. [16] Ibyo Me Bernard Nyandwi avuga ko ikirego cyo gukuraho cyamunara ari ikirego cyihutirwa (référé) kandi ko ikirego cyihutirwa kijurirwa rimwe kandi izindi nzira z'ubujurire zitemewe, urukiko rurasanga ibi ari ukwitiranya imiterere y'ibirego. Kuba bene ibi birego byo guhagarikisha cyamunara ingingo ya 260 al. 5 CPCCSA iteganya ko ibirego byo guhagaraikasha cyangw agukuraho cyamunara bitangwa kandi bikaburanishwa mu bihe by'ibirego byihutirwa, urukiko rurasanga iki atari cyo kibigira ibirego byihutirwa. Bivuze ko uretse ibihe byo kubiburanisha biba ari bimwe n'ibirego byihutirwa, ku bindi hagenderwa ku miburanishirize

y'ibirego bisanzwe biri kuburanishwa mu mizi y'urubanza. [17] Iki kibazo cyo kumenya niba ibirego bijyanye n'ifatira na za cyamunara bishobora kugira ubujurire bwa kabiri byatanzweho umurongo mu rubanza RCOMAA00058/2022/CA, rwaciwe ku wa 22/07/2022 haburana Manumetal Ltd na Tedmer Int Trade Co Ltd (Igika cya 16). Umurongo uhuriweho wemejwe mu cyegerayo cy'inkiko ni uko ikirego cyihutirwa ari ikirego gishamikiye ku kirego cy'iremezo. Bene icyo kirego kijuririrwa inshuro imwe gusa ariko urubanza rushingiye ku ifatira ryakozwe n'Umuhesha w'inkiko abisabwe n'uberewemo umwenda ushingiyeye ku gikorwa cy'ubucuruzi, rusaba Urukiko kwemeza umwenda ni ibirego bisanzwe ariko biburanishwa mu buryo bw'ikirego cyihutirwa, bikaba bishobora kujuririrwa inshuro irenze imwe3. No muri iki kibazo cyo kumenya niba ikirego cyo gutesha agaciro cyamunara cyajuririrwa inshuro ya kabiri kikaba cyakemurwa hisunzwe uyu murongo. [18] Urukiko Rukuru ku ngingo ya 146 agace ka 6 n'igika cya gatatu (3) rushingiye ko muri cyamunara uyu mutungo wagurishijwe 193.500.000Frw nk'uko bigaragazwa na raporo yakozwe (inyandiko yemeza ubugure mu cyamunara kuri cote 15 mu rubanza rwa TB) rurasanga ubujurire bw akabiri bugomba kwakirwa bugasuzumwa kuko ikiburanwa kirengeje agaciro ka miliyoni mirongo itanu (50.000.000Frw) kandi ujurira ntiyatsinzwe mu nkiko zombi ku mpamvu zimwe kuko yatsinze mu Rukiko rw'Ibanze atsindwa mu Rukiko rwisumbuye. B. Kumenya niba cyamunara yakozwe ku mutungo wanditse kuri Gruner Jes Nicholas Mphazso ikwiriye guteshwa agaciro [19] Mu myanzuro ku ruhande rwa Gruner Jes Nicholas Mphazso yavugaga ko umutungo yawuguze n'uwitwa Alfred Bagire Rubagena na Annah Mutesi nk'uko bigaragazwa n'amasezerano yo kuwa 18/09/2015 n'inyemezabwishyu yo kuwa 18/09/2015. Uyu mutungo utimukanwa, Gruner Jes Nicholas Mphazso yawanditsweho nka nyirawo, kuwa kuwa 12/01/2016. Uyu mutungo wamwanditsweho uhabwa UPI: 1/02/08/03/24. Kuwa icyo gihe kugeza na nubw Gruner Jes Nicholas Mphazso ni we nyiri uwo mutungo kuko afite icyangombwa cyemewe n'amategeko. [20] Ku ruhande rwa Gruner Jes Nicholas Mphazso banenga ko mu rubanza rujurirwa, urukiko rwavuze mu gika cya 22 ku rupapuro rwa 7 ko rushingiye ku ngingo ya 14 y'iryo Tegeko Ngenga N°04/2012/OL ryo kuwa 15/06/2012 iteganya uburyo bwo guteza cyamunara umutungo wafatirirwe n'urukiko Gacaca, aho iteganya uko bigenda iyo umutungo wavanywe mu maboko y'ugomba kwishyura aho ivuga ko iyo umutungo w'ugomba kwishyura warigishijwe, uhita ushinganwa mu

3 Ibi ni nabyo byemejwe mu manza ziri mu Gatabo k' Imirongo yatanze mu manza zaciwe n'Urukiko rw'ubujurire, Ukwezi kwa Nzeli 2022, Page 54-55. harimo: - Urubanza RCOMAA0031/2016/SC-RCOMAA00036/16/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 06/04/2018, haburana BK Ltd na Habimana Védaste - Urubanza RCOMAA00012/2019/CA, rwaciwe ku wa 09/12/2019 Nzitonda Kiyengo aburanamo na Cogebanque Ltd, Higiro Martin, Umwanditsi Mukuru muri RDB na Gashema Félicien, (igika cya 15 n'icya 16).

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maboko y'uwo uherereyeho, ugatezwa cyamunara hatitawe k'uwufite; Ndetse urukiko rwakomeje no mu gika cya 23 aho avuga ko rugasanga rero iyi ngingo isobanura neza ko Umuhesha w'inkiko ateza cyamunara umutungo w'ugomba kwishyura n'iyi nyuma y'urubanza waba waranditswe ku wundi muntu mu buryo bwo kugira ngo abakorewe icyaha batazishurwa. Ibi kandi

Umushingamategeko akaba yarabikoze mu buryo bwo gukumira ihererekanya ry'umutungo w'uwigije cyangwa wasahuye imitungo mu gihe cya Jenocide yakorewe Abatutsi. [21] Ku ruhande rwa Gruner Jes Nicholas mphazso bavugaga ko basanga urukiko rwararenze imbibe z'ibyo rwaregewe ndetse n'ububasha bwawo, kuko ngo basanga hari icyaha cyo kurigisa kigomba kuba cyemejwe n'urukiko mpanabyaha. Imvugo y'urukiko irimo gukomeza ndetse no gushinje Gruner icyaha. Rugaragaza ko habayeho kurigisa ariyo "Element legal" mu bigize icyaha, ndetse runagaragaza ko habayeho na "Element intentionel" aho ruvugaga ko byakozwe mu ntumbero yo kugira abakorewe jenocide yakorewe abatutsi batishyurwa. Icyaha cyo kurigisa ni icyaha giteganywa n'ingingo ya 178 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange aho iteganyaga ko umuntu wese urimo umwenda, uwagujije cyangwa undi muntu wese watanze ingwate, wangije cyangwa warigishije ibintu yatanzeho ingwate, aba akoze icyaha. Bakaba basanga nta cyaha Gruner yakozwe cyo kurigira umutungo ikibdi kandi ngo abashakaga ko cyamunara igumaho ntibagaragaza uruhare rwa Gruner mu kwiyandikaho umutungo mu buriganya nk'uko babyise. [22] Bernard Nyandwi umuhesha w'inkiko w'umwuga yiregura ko Basaritse muri 1994 yakozwe ibyaha bijyanye no gusahura nk'uko byahamijwe n'urubanza Gacaca rwo kuwa 24/04/2008 ndetse rukanatega ko ubwishyu bwose buzava mu mazu ari mu Rugango-Kimihurura-Gasabo -Umujyi wa Kigali. Mu rwego rwo kurigira imitungo yagombaga kuvamo ubwishyu m'irangizwa ry'urubanza Gacaca, Kayitesi Cartas yasabye Umurenge wa Kimihurura ngo yandikweho iyi nzu yagurishijwe mu cyamunara avugaga ko ngo yayiguzwe na Barigora Athanase; bitewe n'uko Umurenge wa Kimihurura wari uzi ko uwo mutungo wari uri mu mitungo igomba kuvamo ubwishyu mw'irangizwa ry'urubanza Gacaca rwari rumaze amezi ruciye kuwa 24/04/2008, Umurenge ngo wangiye Kayitesi Cartas kwandikwaho uwo mutungo ndetse rugira ibyo rumusaba agomba kubanza kuzura kugira ngo azabone guhabwa mu rwego rwo kugira ngo hamenyekane uwo Barigora Athanase ari we ndetse niba ari n'umuzungura wa Basaritse. [23] Mu iburanisha Gruner Jes Nicholas Mphazso yitabye asemurirwa na Shema Aime, yunganiye na Me Hubert Rubasha yasobanuraga ko ari umushoramari mu byerekeranye n'ubukerarugendo akaba yaraguzwe n'uwitwa Bagire umutungo ubaruye kuri UPI: 1/02/09/03/ 24, mu 2015, akabona ibyangombwa muri 2016, agasaba kuvugurura inzu kuko yari ishaje akanagura n'uwitwa Eraste Niyonteze parcelle yari ihagereye. Mu kwezi kwa 08/2023 ngo yaje kwakira ubutumwa bwa whatsapp buvuye kuri Nyandwi Bernard ko umutungo we wari uwa Basaritse Frodouard wakoze genocide yakorewe abatutsi, bityo abamugurishije ko umutungo atari uwabo, ko uwo mutungo ufatirwe kugira ngo hishyurwe 14,700,000frs y'ibyangijwe na nyir'umutungo. [24] Gruner Jes Nicholas Mphazso yakomezaga avugaga ko nyuma y'iyi message yakiriye ubundi butumwa ko umutungo we washyizwe muri cyamunara, nyamara umutungo ngo yarawuguzwe hari inzego z'ubuyobozi, ihinduranya ry'uburenganzira ku butaka ryakozwe mu buryo bukurikije amategeko. Kuko akorera mu Rwanda na Malawi, yakiriye ubutumwa ko yakuwe kuri uwo mutungo akaba ariyo mpamvu ajuririye uru rubanza, ko yaguzwe umutungo mu buryo bwemewe, ko inyandiko zo kugurisha u mutungo we ndetse no kuwumukuraho byateshwa agaciro. [25] Me Hubert Rubasha mu iburanisha avugaga ko barega basabye TB Kicukiro guteshwa agaciro cyamunara, bayikuraho, bajuririra TGI Nyarugenge bararuhindura. Me Hubert Rubasha anenga ko mu gika cya 22 cy'urubanza rujuririrwa umucamanza yavuze ko uwaguzwe inzu yayiguzwe mu buryo bw'uburiganya ngo kugira ngo abakorewe icyaha cya Genocide yakorewe abatutsi batazabona

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ubwishyu. Me Hubert Rubasha avuga ko uwo yunganira agura inzu muri 2005 yayiguze na Alfred Bagire, kari akazu ka rukarakara, agahinduramo etage aranahagura, ubu abarega ngo ntibabasha kugaragaza element moral ko Gruner yari azi ko Basaritse yakozwe genocide. [26] Me Hubert Rubasha avuga ko indi mpamvu y'ubujurire ari uko umucamanza yaciye urubanza ku kitaregewe kuko yazanyemo uburiganya, kandi bareregeye gutesha agaciro cyamunara, hari abandi umutungo wanyuzeho mbere yuko ugera kuri Gruner. Me Rubasha yavugaga ko bandikiye Minubumwe kugeza n'ubu nta gisubizo bahawe, ikindi kandi ngi bashyize muri systeme urubanza rwaciye n'Urukiko Rukuru rwa Musanze ku kibazo gisa niki, aho bahannye abahimbye urubanza gacaca kandi ababuranishijwe muri urwo rubanza batatu muribo bari mu bagaragara kuri uyu mwanzuro w'inteko gacaca, ikindi kandi ngo urubanza bagaragaza ko ari urwa Gacaca rwaciye n'abantu bane, kandi urukkiko gacaca, inteko yabaga igizwe n'abantu batanu (5). [27] Bernard Nyandwi akomeza asobanura ko Kayitesi Caritas yirengagije ubwo Umurenge wamusabye, maze ica ruhinga ashaka ubundi buryo batazi yiyandikaho wa mutungo ahita awikuraho ku buryo umutungo wa Basaritse wagombaga kuvamo ubwishyu warigishijwe urubanza gacaca rwategekaga ko uvamo ubwishyu rutarangijwe, n'uwagombaga kwishyurwa ibye byasahuwe bikanangizwa atishyuwe. Me Bernard Nyandwi yasabwe kurangiza imanza Gacaca zitandukanye harimo n'uru rwa Basaritse ahatse imitungo ya Basaritse ivugwa mu rubanza igomba kuvamo ubwishyu irabura, ashaka amakuru yose asanga uwitwa Kayitesi Cartas yarawurigishije ufitwe na Gruner Jes Nicholas Mphazso. [28] Me Bernard Nyandwi yakomezaga gusobanura ko yahise ashinganyishye umutungo mu maboko ya Gruner Jes Nicholas Mphazso, awuteza cyamunara hatitawe ku kuba ufitwe na Gruner Jes Nicholas Mphazso nkuko byose biteganywa n'ingingo ya 12 na 14 z'itegeko Ngenga N°04/2012/OL ryo ku wa 15/06/2012 rikuraho inkiko gacaca rikanagena uburyo bwo gukemura ibibazo. Me Bernard Nyandwi avuga ko kuba Gruner Jes Nicholas Mphazso ajurira avuga ko ngo umutungo wa Basaritse utarigishijwe yumva yabigaragariza ibimenyetso bigaragaza aho imitungo ya Basaritse yagombaga kuvamo ubwishyu iherereye. [29] Me Ndiokubwayo Innocent wunganira Nyandwi mu iburanisha yavuze ko cyamunara yakurikije amategeko, abihuje n'impamvu z'ubujurire agasanga hari inyandikompesha yashingiweho, mu itegeko rya 2012 rikuraho inkiko gacaca mu ngingo ya 14 hagaragara umwihariko ku myanzuro y'inkiko gacaca ko umutungo utezwa cyamunara hatitawe k'uwufite ari yo mpamvu umutungo wari kuri Gruner watejwe cyamunara hishyurwa ibiryoza Basaritse. Iyi ngingo bagaragaje ngo iha umuhesha w'inkiko uburenganzira bwo kugurisha uyu mutungo. Me Ndiokubwayo Innocent yakomezaga asobanura ko Kuwa 07/01/2009 Kayitesi Caritas yasabye uburenganzira Umurenge wa Kimihurura bamwangira kuwiyandikishaho, bakaba batazi inzira yacyiyemo akagenda awugurisha abandi uza kugera kuri Gruner. UKO URUKIKO RUBIBONA [30] Ingingo ya 34 y'itegeko nshinga rya repubulika y'u Rwanda iteganya ko, (1) buri muntu afite uburenganzira ku mutungo bwite, waba uwe ku giti cye cyangwa uwo asangiye n'abandi. (2) Umutungo bwite, uw'umuntu ku giti cye cyangwa uwo asangiye n'abandi ntuvogerwa. (3) Uburenganzira ku mutungo ntibuhungabanywa, keretse ku mpamvu z'inyungu rusange kandi hakurikijwe ibiteganywa n'amategeko. Iyi ngingo yumvikanisha ko umutungo w'umuntu urengerwa n'amategeko ku buryo adashobora gupfa kuwamburwa kereretse hari

impamvu ziteganywa n'amategeko nko kwamburwa umutungo ku bw'inyungu rusange ariko nabwo hakurikijwe amategeko.

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[31] Ingingo ya 260 yavuzwe hejuru y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi mu bika bibiri (alineas 1 et 2) bya mbere byayo iteganya ko Umuntu wese ubifitemo inyungu ashobora gusaba Urukiko rw'Ibanze rw'aho cyamunara igomba kubera kuyihagarika icyo: 1° hatubahirijwe amategeko agenga ishingana, ifatira n'itangazwa rya cyamunara; 2° umutungo ugomba kugurishwa udashobora kugurishwa kubera ubukene bwa nyirawo nk'uko biteganywa mu ngingo ya 259 y'iri Tegeko; 3° hari ikimenyetso kidashidikanywaho kigaragaza ko umutungo ugiye kugurishwa atari uw'uryozwa kwishyura. Ikongeraho kandi ko izi mpamvu ni nazo zishingirwaho mu kirego gisaba gutesha agaciro cyamunara yakozwe. Iyi ngingo nayo isobanura uburyo bwagenderwaho cyamunara ihagarikwe cyangw aikurweho. [32] Urukiko rusesenguriye hawe ingingo ya 34 y'Itegeko nshinga n'igika cya mbere n'icya kabiri cy'ingingo ya 260 yavuzwe hejuru y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi rurasanga zumvikanisha ko uburenganzira ku mutungo ari ntavogerwa kandi ko n'icyo byaba bibaye ngombwa ko nyirwawo wamburwa binyuze muri cyamunara, nyirawo yemerewe gusaba gutesha agaciro cyamunara mu gihe umutungo waba ugiye kugurishwa waba utari uw'uryozwa kwishyura. [33] Urukiko rushingiye ko umutungo w'umuntu ari ntavogerwa kandi umutungo watejwe cyamunara UPI: 1/02/09/03/24 wanditse kuri Gruner Jes Nicholas Mphazso kuwa muri 2016 ari we wari nyir'umutungo wawuguze nta buryarya (de bonne foi) akawusana akanawongerera agaciro, rurasanga umutungo rurasanga Umuhesha w'inkiko, Me Nyandwi Bernard atari guhita afata uwo mutungo ngo awuteze cyamunara nta kindi abanje kureba. [34] Ingingo ya 14 (4) y'Itegeko Ngenga N°04/2012/OL ryo kuwa 15/06/2012 rikuraho Inkiko Gacaca, rikanagena uburyo bwo gukemura ibibazo byari mu bubasha bwazo yashingiweho n'umuhesha w'inkiko yashingiweho na Me Nyandwi Bernard urukiko rurasanga itari hejuru y'itegeko nshinga ikindi kandi ishyingirwa mu bikorwa byayo yagombye kubahiriza amategeko agenga imiburanishirize y'imana z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. [35] Ibyo uruhande rwa Me Nyandwi Bernard ruvuga ko habaye uburiganya bwakozwe na Gruner Jes Nicholas Mphazso urukiko rurasanga atari byo kuko nta kigaragaza ko yari azi Basaritse Froduard warangizwagaho urubanza. Urukiko rurasanga Gruner Jes Nicholas Mphazso mu bugure bwe nta kosa yakoze cyangwa uburiganya kuko yasanze umutungo utarimo itambama, awugura n'abo wari wanditseho na bo bamukorera iherekanyamutungo, nyuma yawo asaba ibyangombwa byo kuvugurura awongerera agaciro ahindura inyubako agura ubundi butaka UPI: 1/02/08/03/24 ifatanywa na UPI: 1/02/08/03/81 abihuriza hware. Akaba adakwiriye kwamburwa ibyo yaguze nta buryarya. [36] Ibyo Me Nyandwi Bernard n'umwunganira bavuze ko umutungo uburanwa waba wari ushinganye kuko mu cyemezo cyatanzwe n'inkiko Gacaca uyu mutungo waba uvugwamo

urukiko rurasanga atari byo kuko mu bimenyetso byagiye bitangwa birimo Urubanza rwa gacaca rurangizwa kandi ruteye kashi mpuruza kiri kuri cote 12 mu mu rubanza RCOMAA00032/2024/HC/KIG, kikaba kuri cote ya 3 mu rubanza RCA00164/2024/TGI/NYGE rujuririrwa no kuri cote ya 9 mu rubanza RC00560/2024/TB/KICU hagararagara ko umutungo Barasaritse Frodouard afite ari inzu ntabwo bavuga iyo ari yo. Ibyo kuvuga ko inzu iherereye Kimihurura mu karere ka Gasabo; n'ubwo bidashyinganisha umutungo mu rwego urwo ari rwo rwose, urukiko rurasanga ari ibyongeweho nyuma kuri "photocopy" y'urubanza rwa gacaca naho ku icarubanza ryatanze mbere nta byariho. [37] Ibyo Me Nyandwi Bernard n'umwunganira bavuze ko kuwa 07/01/2009 Kayitesi Caritas yasabye uburenganzira Umurenge wa Kimihurura bamwangira kuwiyandikishaho umutungo, urukiko rurasanga bidahamya Gruner Jes Nicholas Mphazso uburiganya cyangwa ngo bihamye ko Ubuyobozi

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bwari buzi ko uyu mutungo uzavamo ubwishyu bw'abangirijwe ibintu muri jenocide yakorewe abatutsi. Mu gusuzuma iki gisubizo cyatanze n'ubuyobozi bw'umurenge wa Kimihurura urukiko rurasanga icyatumye barangaga ko yandikwaho umutungo ari uko nta cyagaragazaga ko Barasaritse Frodouard n'umugore we bapfuye cyangwa ngo bagaragaze ko abana babo baba batakiraho, ubuyobozi bwamusabaga kubanza guca mu nkikomakabisabira uburenganzira. Ibi by'urubanza rwa gacaca bikaba bigaragara ko bitari bizwi n'ubuyobozi bw'umurenge ku buryo Kayitesi Caritas yashoboraga gukosora ibyo yatumwe ubundi inzu ikandikwa ku wayiguze. [38] Urukiko rurasanga hashingiye ku ngingo zerekeye izungura uyu mutungo abana ba Barasaritse batari bemerewe kuwugurisha niba batemeraga kwirengera ubwishyu bwa miliyoni 14... umubyeyi wabo yaciwe n'urukiko gacaca bityo bakaba aribo bagomba kwirengera ingaruka zose zerekeye ishyingirwa mu bikorwa by'icyo urukiko gacaca rwategetse kubera ibikorwa bya Baransaritse yakoze muri jenocide yakorewe abatutsi muri 1994. Urukiko rurabishingira ku kuba batari kubura kumenya ko se yakatiwe n'urukiko kwishyura ayo mafaranga kandi niyo batabimenya uretse ko batabuze kubimenya kuko inkiko gacaca zari mu baturage kandi ibyazo byari ku mugaragaraho cyane binyuranye n'inkiko zisanzwe ihame ry'uko uzungura azungurana n'imyenda yose iyo yahisemo kuzungura birumvikana ko uyu mwenda kuva bariyemeje kuwugurisha biyemeje no kwishyura umwenda bityo bikaba bitagira undi bigiraho ingaruka uretse abo bana be bahisemo kuzungura. Ubundi kuzungura iby'umujenosideri bisaba kubanza kubisuzuma neza. Urukiko rurasanga ariko aho kwihutira guteza cyamunara batabajije uwaguze nta buriganya niba yaba afite igitekerezo cyo kurengera ibye akazaba akurikirana abamushoye mu bibazo cyane ko yashyize ibikorwa byinshi kuri uwo mutungo akaba atari kubura uko yakwishyura ziriya amafaranga 14,700,000Frw zategetswe n'inkiko gacaca akazaba akurikirana abamugurishije ikintu gifite ibibazo ahubwo umuhesha w'inkiko yakoze ikosa ryo kudashyira mu gaciro niba ntabwo nawe yabikoranye (animus nocendi) ku buryo bugaragara urebye ibyo yatesheje agaciro ugerareraniye n'ubuto bw'umwenda ibi bikaba bituma uru rukiko rugomba gutesha agaciro mu bushishozi bwarwo iyi cyamunara bikozwe mu bushishozi kuko uyu muhesha w'inkiko w'umwuga amaze kubona ibikorwa byari byubatswe yagombaga gushishoza kuko yari kubonamo ko umutungo ari guteza ushobora kuba utakiri uwa Barasaritse bigatuma

abanza gushishoza neza byaba na ngombwa akagisha inama. C. Ibyerekeranye n'amafaranga y'ikurikiranarubanza n'igihembo cy'avoka [39] Ndihekubwayo Innocent uburanira Bernard Nyandwi umuhesha w'inkiko w'umwuga yasabye ko Urukiko nirusanga iki kirego kidakwiye kwakirwa, ruzabone ko Me Bernard Nyandwi ko akwiye guhabwa indishyi zikurikirana rubanza zingana na na 300,000Frw n'igihembo cy'Avoka kingana na 500,000Frw yiyongera ku yari yategetswe mu rubanza rujuririrwa. [40] Ku ruhande rwa Runer Jes Nicholas Mphazso umuburanira arasaba urukiko gutegeka Nyandwi kumwishyura igihembo cy'avoka kingana na 2,000,000 Rwf na 500,000 Rwf kubwo kumushora mu manza zitari ngombwa. Ibi akaba abishingira ku ngingo ya 111 y'itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ndetse n'ingingo ya 34 y'amabwiriza No 01/2014 agenga ibihembo mbonera by'abavoka. UKO URUKIKO RUBIBONA [41] Ingingo ya 111 y'itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyi ikirego cy'iremezo cyaba

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kitakiriwe. Urukiko rushingiye ko Bernard Nyandwi yakoze amakosa yo gukoresha cyamunara mu buryo budakurikije amategeko rurasanga nta gihembo cy'avoka akwiriye. [42] Kuba Bernard Nyandwi nk'umuhesha w'inkiko yarakoresheje cyamunara idakuriikije amategeko bikaba ngombwa ko ivanwaho, Urukiko rurasanga agomba kubitangira amafaranga y'igihembo cy'avoka kingana na miliyoni imwe n'igice (1.500.000Frw) akazishyura Gruner Jes Nicholas Mphazso n'ibihumbi magana atatu (300.000Frw) y'ikurikiranarubanza kubwo kumushora mu manza eshatu. III. ICYEMEZO CY'URUKIKO [43] Urukiko Rukuru, rwemeje kwakira ubujurire bwa Gruner Jes Nicholas Mphazso rubusuzumye rusanga bufite ishingiro. [44] Rwemeje ko urubanza RCA00164/2024/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge kuwa 09/09/2024 ruhindutse mu ngingo zarwo zose. [45] Rutegetse ko cyamunara yabaye kuwa 10/06/2024 ikabera ku mutungo ufite UPI: 1/02/08/03/24 wanditse kuri Gruner Jes Nicholas Mphazso iteshejwe agaciro. [46] Rutegetse Bernard Nyandwi kwishyura Gruner Jes Nicholas Mphazso amafaranga miliyoni imwe n'igice (1.500.000Frw) y'igihembo cy'avoka n'ibihumbi magana atatu (300.000Frw) y'ikurikiranarubanza. [47] Rutegetse Bernard Nyandwi kwishyura Gruner Jes Nicholas Mphazso amafaranga ibihumbi mirongo ine (40.000Frw) y'ingwate y'amagarama yishyuwe ari kujurira n'ibihumbi icumi (10.000Frw) yatanze mu rukiko rw'Ibanze ari kurega.

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Prepared on 11 October 2026 · Esheria