

RWANDA / JUDGMENT

UBUSHINJACYAHA v. NSENGIYUMVA N'ABANDI

RPAA 00694/2021/CA - CMB 00695/2021/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v. NSENGIYUMVA N'ABANDI

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Text

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UBUSHINJACYAHA v. NSENGIYUMVA N'ABANDI [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00694/2021/CA - CMB 00695/2021/CA (Rugabirwa, P.J. 16 Ugushyingo 2023)] Amategeko yerekeye imanza nshinjabyaha – Indishyi zikomoka ku cyaha – Indishyi zikomoka ku cyaha zigenwa mu bushishozi bw'Urukiko aho kuzigena hashingiwe ku bipimo bigenwa n'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga. Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Musanze abaregwa (Maniriho, Ngendahimana Na Nsengiyumva) bakurikiranywe n'Ubushinjacyaha ku cyaha cyo gukubita cyangwa gukomeretsa ku bushake byateye urupfu, mu rubanza kandi haregewemo indishyi huririwe ku kirego cy'Ubushinjacyaha abazisaba bavuga ko abaregwa bafatanyaga kubaha indishyi zinyuranye. Abaregwa bo baburanye bahakana icyaha bavuga ko batagize uruhare mu rupfa rwa nyakwigendera kuko batigeze bagera aho yari ari. Urwo rwaciye urubanza rusanga abaregwa bahamwa n'icyaha cyo gukubita cyangwa gukomeretsa byateye urupfu, rubahanisha igifungo cy'imyaka makumyabiri (20) n'ihazabu ya

miliyoni eshanu (5.000.000 Frw) kuri buri wese, rubategeka gufatanya guha indishyi abaziregeye. Abaregwa bajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Musanze, bahakana icyaha, bagasaba kugirwa abere, naho ku birebana n'indishyi bakavuga ko batakwishyura indishyi baciwe ku rwego rwa mbere kuko zikomoka ku cyaha batakoze. Urwo Rukiko narwo rwaciye urubanza rusanga nta kigomba guhinduka kuri Ngendahimana na Nsengiyumva naho uwitwa Maniriho rusanga adahamwa n'icyaha. Ngendahimana na Nsengiyumva barongeye barajurira mu Rukiko Rw'Ubujurire bavuga ko Urukiko Rukuru rwabahamije icyaha hashingiwe ku mvugo z'abatangabuhamya zivuguruzanya kuko batavugaga ibintu ku buryo bumwe, ko kandi imvugo z'abatangabuhamya zitavugaga kimwe na raporo ya muganga, banavugaga kandi ko Urukiko rutahaye agaciro ubuhamya bw'abatangabuhamya bashinjura. Kuri Ngendahimana we yanagaragaje ko Urukiko rwirengagije kumugabanyiriza hashingiwe ku kigero cy'imyaka kuko yatangiye gukurikiranwa afite imyaka cumi n'icyenda (19) y'amavuko. Ubushinjacyaha bwo bwaburanye butanga impamvu zinyuranye busanga ubujurire bw'abajuriye butahabwa agaciro, ko nta kimenyetso batanze kivuguruzanya ibyashingiweho n'Urukiko Rukuru rubahamya icyaha, ko ahubwo rwabahamije icyaha hashingiwe ku mvugo z'abatangabuhamya babajijwe mu Bugenzacyaha, mu bushinjacyaha, ndetse n'abatumiwe n'Urukiko Rukuru, kandi ko batababeshyeye kuko bafitanye amasano. Incamake y'icyemezo: 1. Indishyi zikomoka ku cyaha zigenwa mu bushishozi bw'Urukiko aho kuzigena hashingiwe ku bipimo bigenwa n'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga. Ubujurire bwa Nsengiyumva nta shingiro bufite;

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Ubujurire bwa Ngendahimana bufite ishingiro ku birebana n'igabanyagihano. Amategeko yashingiweho: Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi, ingingo ya 9 n'ya 111. Imanza zifashishijwe: Ubushinjacyaha vs. Mushimiyimana Eric, RPA 0142/11/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 13/11/2015. Ubushinjacyaha vs. Sgt Gatete, RPA 0323/08/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 13/08/2010. Ubushinjacyaha vs. Nzafashwanimana Jean de Dieu, RPAA 00032/2019/CA rwaciwe n'Urukiko Rw'Ubujurire ku wa 28/02/2020. N.A (mu izina ry' umwana we I.A) vs. Kibungo Medical Center, RCAA 00008/2020/CA rwaciwe n'Urukiko Rw'Ubujurire ku wa 25/06/2021.

Urubanza I. IMITERERE Y'URUBANZA [1] Mu ijoro ryo ku wa 27/07/2019, Maniriho Jean d'Amour, Ngendahimana Evariste na Nsengiyumva Innocent, basanze Kirimamahoro Jean Damascène mu kabari k'uwitwa Kadusabe n'uko Maniriho Jean d'Amour ahita asohoka, nyuma gato Nsengiyumva asaba inzoga y'ideni barayimwima nawe ahita asohoka mu kabari ari kumwe na Ngendahimana Evariste maze bumaze kwira Kadusabe afunga akabari ke abwira Kirimamahoro ngo nasohoke, arasohoka akigera hanze asanga Maniriho Jean d'Amour, Nsengiyumva Innocent na Ngendahimana Evariste bamutegeye mu nsi y'inzu y'ako kabari nuko Nsengiyumva Innocent amukubita ibuye mu rubavu ahita yirukanka bose uko ari batatu bamwirukaho agwa ku mukingo uri haruguru y'iyi nzu maze Ngendahimana Evariste amusangayo amukubita ibipfunsi, Kadusabe

abibonye, afata Ngendahimana Evariste amumukura hejuru, muri ako kanya Kirimamahoro aravuga ngo azize inkoko abaregwa bari bibye, akimara kubivuga arapfa. [2] Ubushinjacyaha bwareze Maniriho Jean d'Amour, Ngendahimana Evariste na Nsengiyumva Innocent mu Rukiko Rwisumbuye rwa Musanze rubakurikiranyeho icyaha cyo gukubita cyangwa gukomeretsa ku bushake byateye urupfu, baburana bahakana icyaha bavuga ko batagize uruhare mu rupfa rwa nyakwigendera Kirimamahoro kuko batigeze bagera mu kabari yanyweragamo inzoga. [3] Abagize umuryango wa nyakwigendera Kirimamahoro, ni ukuvuga ababyeyi be, abana be, umugore we, ndetse n'abavandimwe be baregeyemo indishyi buririye ku kirego cy'Ubushinjacyaha basaba ko abaregwa bafatanyaga kubaha indishyi zinyuranye, naho baregwa bavuga ko batabaha indishyi kuko nta cyaha bakoze.

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[4] Urwo Rukiko rushingiye ku mvugo z'abatangabuhamya bemeje ko Maniriho Jean d'Amour, Ngendahimana Evariste na Nsengiyumva Innocent bakubise Kirimamahoro bikamuviramo gupfa nk'uko bishimangirwa na raporo ya muganga igaragaza ko ku mubiri wa nyakwigendera Kirimamahoro Jean Damascène habonekaga ibikomere byinshi bigaragaza ko yishwe akubitswe kuko yari afite ibikomere ku gutwi kw'iburyo, mu bitugu, mu mugongo, mu mbavu z'iburyo, ukubylimba ku jiso ry'iburyo n'amaraso avanze n'amazi yavaga mu kanwa, rwaciye urubanza n° RP 00555/2019/TGI/MUS ku wa 26/06/2020, rwemeza ko Maniriho Jean d'Amour, Ngendahimana Evariste na Nsengiyumva Innocent bahamwa n'icyaha cyo gukubita cyangwa gukomeretsa byateye urupfu, rubahanisha igifungo cy'imyaka makumyabiri (20) n'ihazabu ya miliyoni eshanu (5.000.000 Frw) kuri buri wese, rubatega gufatanyaga guha abaregera indishyi, indishyi zose hamwe zingana na miliyoni cumi n'ebyiri n'ibihumbi magana atandatu na mirongo irindwi (12.670.000 Frw) habariwemo n'amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka. [5] Maniriho Jean d'Amour, Ngendahimana Evariste na Nsengiyumva Innocent bajurirye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Musanze, bahakana icyaha, bagasaba kugirwa abere, bityo ko batakwishyura indishyi baciwe ku rwego rwa mbere kuko zikomoka ku cyaha bakoze. Naho Ubushinjacyaha, ndetse n'abaregera indishyi bavuga ko ubujurire bwabo nta shingiro bufite kuko Urukiko rubanza rwabahamije icyaha hashingiwe ku bimenyetso bidashidikanywaho bigaragaza ko bagikoze. Nyirabahutu Marceline, umugore wa Nyakwigendera Kirimamahoro Jean Damascène, unahagarariye abana be batatu, avuga ko abaregwa bagomba kwishyura indishyi baciwe ku rwego rwa mbere hiyongereyeho miliyoni eshanu (5.000.000 Frw) y'ikurikiranarubanza n'igihembo cy'Avoka yo mu bujurire. [6] Urwo Rukiko rushingiye ku mvugo zibashinje zavuzwe n'abatangabuhamya babajijwe mu Bugenzacyaha n'ababajijwe mu Rukiko Rukuru barimo Kadusabe Faustin na Nzasaba Alexis bibonye n'amaso yabo uko icyaha cyakozwe, no kuri raporo ya muganga igaragaza ko nyakwigendera yari afite ibikomere ku gutwi kw'iburyo, ku rubavu rw'iburyo no mu mugongo, rwaciye urubanza RPA 00404/2020/HC/MUS ku wa 30/06/2021, rwemeza ko Ngendahimana Evariste na Nsengiyumva Innocent bahamwa n'icyaha baregwa, ko igifungo cy'imyaka makumyabiri (20) n'ihazabu ya miliyoni eshanu (5.000.000 Frw) bahanishijwe

bigumyeho, rubatega gufatanya guha abaregera indishyi, indishyi baciwe ku rwego rwa mbere zingana na miliyoni cumi n'ebiyiri n'ibihumbi magana atandatu na mirongo irindwi (12.670.000 Frw) hiyongereyeho ibihumbi magana atanu na mirongo itanu (550.000 Frw) y'ikurikiranarubanza n'igihembo cy'Avoka yo ku rwego rw'ubujurire, rwemeza kandi ko Maniraho Jean d'Amour ari umwere, rutegeka ko ahita arekurwa. [7] Ngendahimana Evariste na Nsengiyumva Innocent bajurirye na none urwo rubanza mu Rukiko rw'Ubujurire, ubujurire bwabo bwandikwa kuri n° RPAA 00694/2021/CA-CMB 00695/2021/CA, urubanza ruburanishwa mu ruhamye ku wa 02/11/2023, Ngendahimana Evariste alias Nsenga yunganiwe na Me Ndayishimiye Jean Paul, Nsengiyumva Innocent yunganiwe na Me Ruturwa Rumande Eson, abaregera indishyi bahagarariwe na Me Havugimana Ignace, naho Ubushinjacyaha buhagarariwe na Mukunzi Faustin, Umushinjacyaha ku rwego rw'igihugu. [8] Mu myanzuro no mu miburanire yabo, Ngendahimana Evariste na Nsengiyumva Innocent n'ababunganira bavuga ko abaregwa bakwiye kugirwa abere kuko batakoze icyaha baregwa, bityo ko bataryozwa indishyi zikomoka ku cyaha batakoze, ko ahubwo rwabahamije icyaha hashingiwe

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ku bimenyetso bivuguruzanya. Naho uhagarariye Ubushinjacyaha avuga ko ubujurire bwabo nta shingiro bufite kuko bahamijwe icyaha hashingiwe ku bimenyetso bigaragaza ko bagikoze. Na none abaregera indishyi bavuga ko ubujurire bw'abaregwa nta shingiro bufite, kuko bahamijwe icyaha hashingiwe ku bimenyetso bigaragaza ko bagikoze, basaba ko ahubwo abaregwa bakwiye kubaha miliyoni ebyiri (2.000.000 Frw) y'ikurikiranarubanza n'igihembo cy'Avoka yo kuri uru rwego. [9] Urukiko rushingiye kuri izo mpaka, rurasuzuma ikibazo cyo kumenya niba Urukiko Rukuru rwarahamije Ngendahimana Evariste na Nsengiyumva Innocent icyaha nta bimenyetso, no kumenya niba bataryozwa indishyi zinyuranye n'amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka. ISESENGURWA RYACYO RY'IBIBAZO BIRI MU RUBANZA Kumenya niba Urukiko Rukuru rwarahamije Ngendahimana Evariste na Nsengiyumva Innocent icyaha nta bimenyetso. [10] Ngendahimana Evariste n'umwunganira bavuga hashingiwe ku ngingo ya 111 y'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko gushidikanya kurengera ushinjwa, Ngendahimana Evariste akwiye kugirwa umwere kubera ko nta bimenyetso bihagije bidashidikanywaho kandi bya simusiga bigaragaza ko yakozwe icyaha, ko ahubwo Urukiko Rukuru rwaciye urubanza mu buryo bugenekereje ubwo rwemezwa ko yageze ahabereye icyaha kandi bibujijwe n'ingingo ya 4 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange. [11] Basobanura ko Ngendahimana Evariste akwiye kugirwa umwere kubera ko Urukiko Rukuru rwamuhamije icyaha hashingiwe ku mvugo z'abatangabuhamya zivuguruzanya kuko batavugaga ibintu ku buryo bumwe kubera ko Kadusabe Faustin alias Gacinya yavuze ko yakozwe icyaha, kandi ko Nzasaba Alexis nawe yamushinje ko yiriwe ku kabari banyweragaho inzoga, nyamara uwo munsu atarigeze agera kuri ako kabari nk'uko byanemejwe na Nsengiyumva Innocent baregwa hamwe muri uru rubanza wavuze ko atigeze amubona kuri ako kabari, ko ahubwo yakageze saa kumi (16h00') za nimugoroba, ariko ko atabonye nyakwigendera Kirimamahoro Jean Damascène kuri ako kabari. [12] Bavuga kandi

ko mu Nzego z'iperereza, Kadusabe Faustin alias Gacinya yavuze ko yabonye n'amaso ye Ngendahimana Evariste na Nsengiyumva Innocent bakubita Kirimamahoro ku buryo byamuviriyemo gupfa, nyamara mu Rukiko Rukuru, yavuze ko yumvise Kirimamahoro atabaza avuga ngo Gacinya we baranyishe banziza inkoko. [13] Bakomeza bavuga ko mu batangabuhamya bose babajijwe mu Rukiko Rukuru ntawigeze yemeza ko yabonye Ngendahimana Evariste akubita Kirimamahoro Jean Damascène bikamuviramo gupfa, ko ahubwo Bangamwabo we yivugiye ko ibyo ashinja Ngendahimana Evariste aribyo yabwiwe.

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[14] Bavuga na none ko raporo ya muganga itavugaga kimwe n'abatangabuhamya bavuzwe haruguru kubera ko muganga yavuze ko Kirimamahoro yuzuye inzoga, basaba ko uwo muganga yatumizwa kugira ngo asobanure raporo ye. [15] Bongeyeho ko Urukiko Rukiko rwirengagije ingingo ya 49 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, kuko rwagombaga kugabanyiriza Ngendahimana Evariste igihano kubera ko yatangiye gukurikiranwa afite imyaka cumi n'icyenda (19) y'amavuko, ndetse ko yagororotse kuko amaze myaka 4 n'amezi atatu mu igororero. [16] Nsengiyumva Innocent n'umwunganira bavuga ko Urukiko Rukuru rwamuhamije icyaha atakoze hashingiwe ku buhamya bwatanzwe n'abatangabuhamya bafitanye ibibazo, ariko ko rutahaye agaciro ubuhamya bw'abatangabuhamya bamushinjuye aribo Kabayiza, Kabina, Bangamwabo Claude na Kambali François bari bari kumwe ku kabari kabereyeho icyaha. [17] Bavuga ko koko Nsengiyumva Innocent yari ku kabari ari kumwe na Kirimamahoro n'abandi benshi ariko ko atigeze amurwanya ngo anamwice, ko ahubwo Kirimamahoro yanyweye inzoga aranamwirukankana, ko kubera ko yari yasinze, yasimbutse ku mukingo ahita yitura hasi bimuviramo gupfa nk'uko byemejwe na muganga wavuze ko Kirimamahoro yishwe n'inzoga nyinshi yanyoye. [18] Bakomeza bavuga ko Urukiko Rukuru rutagombaga guhamya Nsengiyumva Innocent icyaha hashingiwe ku buhamya bwa Kadusabe Alexis kuko bari bafitanye ikibazo cyerekeranye n'uko Nsengiyumva Innocent yabikorereye inzoga baramwambura bituma ajya kwa Kadusabe afataye inkoko arayigurisha ariyishyura nk'uko byashimangiwe n'Umushinjacyaha, ndetse na Avoka uhagarariye abaregera indishyi, bituma bamushinja icyaha atakoze. [19] Bavuga na none ko imvugo z'abatangabuhamya zitahabwa agaciro kuko zivuguruzanya na raporo ya muganga kubera ko bavuze ko nyakwigendera yishwe n'ibuye yatewe na Nsengiyumva Innocent, nyamara raporo ya muganga igaragaza ko yishwe n'inzoga nyinshi yari yanyoye. [20] Bongeyeho ko mu gihe uru Rukiko rubibonye ukundi rwagabanyiriza Nsengiyumva Innocent igihano kubera ko ari bwo bwa mbere akurikiranwe n'Inzego z'Ubutabera kuko yari asanzwe yitwara neza nk'uko biteganywa n'ingingo ya 4 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru. [21] Uhagarariye Ubushinjacyaha avuga ko ubujurire bwa Ngendahimana Evariste na Nsengiyumva Innocent butahabwa agaciro kuko nta kimenyetso batanze kivuguruza ibyashyingiweho n'Urukiko Rukuru rubahamya icyaha, ko ahubwo rwabahamije icyaha hashingiwe ku mvugo z'abatangabuhamya babajijwe mu Bugenzacyaha, mu bushinjacyaha, ndetse n'abatumiwe n'Urukiko Rukuru, kandi ko batababeshyeye kuko bafitanye amasano.

[22] Asobanura ko Urukiko Rukuru rwasanze Ngendahimana Evariste na Nsengiyumva Innocent bari bafite umugambi wo kuzagirira nabi abatumye bafatwa kubera ko bibye inkoko, nk'uko byemejwe n'abatangabuhamya, ko kandi Ngendahimana Evariste yiyemereye ko yageze kuri ako kabari saa kumi (16h00') za nimugoroba, icyaha gikorwa hagati ya sa moya (19h00') na saa mbiri (20h00') z'ijoro, ndetse ko Nsengiyumva Innocent nawe yemeye ko yari kumwe na Kirimamahoro kuri ako kabari, ko kuba nyakwigendera yarirukankanye Nsengiyumva Innocent

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bigaragara ko hari icyo bapfaga, kuko nyakwigendera yavuze ko azize inkoko yibwe na Ngendahimana Evariste na Nsengiyumva Innocent. [23] Avuga kandi ko muganga atahamagazwa muri uru rubanza kuko muri raporo ye yavuze ko Kirimamahoro yanukaga inzoga, ariko ko atemeje ko ariyo yamwishe, ko ahubwo yishwe n'uko yari yakomerekejwe ahantu henshi n'amabuye yakubiswe mu mbavu na Nsengiyumva Innocent ku buryo nyakwigendera yari afite ibikomere ku gutwi kw'iburyo, ku rubavu rw'iburyo, kandi ko yavuye amaraso menshi yasohokaga no mu kanwa, ndetse ko yari yanipfunditse hagati y'urutugu n'umugongo. [24] Me Havugimana Ignace, uhagarariye abaregera indishyi, avuga ko nyakwigendera Kirimamahoro Yishwe na Nsengiyumva Innocent Na Ngendahimana Evariste kubera ko Nsengiyumva Innocent yemeye ko hari ikibazo cy'inkoko yari afitanye na nyakwigendera, kandi ko iyo mvugo ye ihura n'ya Kirimamahoro yavuze agiye gupfa ko bari bamufitiye inzika yatumye bamwica bamuziza inkoko, maze Nsengiyumva Innocent amutera ibuye, naho Ngendahimana Evariste amusimbukira hejuru aramukubita nk'uko byemejwe n'abatangabuhamya biboneye uko icyaha cyakozwe kandi imvugo zabo ntizivuguruzanya. UKO URUKIKO RUBIBONA [25] Nk'uko bigaragarira mu bika bya 22 na 30 by'urubanza rwajuririwe muri uru Rukiko, Urukiko Rukuru rwahamije Nsengiyumva Innocent na Ngendahimana Evariste icyaha baregwa hashingiwe ku buhamya bw'abatangabuhamya babajijwe mu Nzego z'iperereza ndetse no muri urwo Rukiko barimo Kadusabe Faustin, Nzasaba Alexis, Kambali François, Habumuremyi Boniface na Bangamwabo Claude bemeje ko nyakwigendera Kirimamahoro yishwe na Nsengiyumva Innocent afatanyije na Ngendahimana Evariste kuko ku mugoroba wo ku wa 27/07/2019, hagati ya saa moya (19h00') na saa mbiri n'igice (20h30') z'ijoro, bombi bari bari ku kabari ka Kadusabe Faustin Alias Gacinya, ndetse ko bari bamaze igihe bapanze ko bazamwica igihe cy'ubukwe bwo kwa Ntawiheba cyangwa ubwo kwa Nzasaba bwari buteganiye ku wa 08/08/2019, bamuziza ko ari mu babafashe igihe bibaga inkoko ya Kadusabe Faustin bagategekwa kuyishyura, bakanayishyura. [26] Ku bw'umwihariko, Kadusabe Faustin alias Gacinya wiboneye uko icyaha cyakozwe wanatabaye bwa mbere, akanatabara ari kumwe na Nzasaba Alexis wari aho hafi, bavuze ko Nsengiyumva Innocent yateye Kirimamahoro ibuye mu rubavu agwa hasi mu ruhavu cyangwa mu mukungu w'inzu, Kadusabe Faustin yumva avuze ngo Gacinya we nzize ya nkoko, naho Ngendahimana Evariste ahita amusimbukira mu gatuza aramuhorahoza nk'uko byanemejwe n'umutangabuhamya witwa Habumuremyi Boniface, ndetse ko aho Kirimamahoro yapfiriye hari hari urukweto n'ingofero bya Nsengiyumva Innocent wari uhahagaze akaba yaravugaga ngo "Nakubwiye ko nzakwica", noneho beguye bajyanye Kirimamahoro kwa muganga basanga

yapfuye. [27] Hari kandi imvugo ya Ngendahimana Evariste alias Nsenga n'ubwo ahakana icyaha, ariko mu Bugenzacyaha yemeye ko Nsengiyumva Innocent yibye inkoko ya Kadusabe bajyana kuyigurisha ku buryo bayigurishije ibihumbi bitanu (5.000Frw), ndetse ko bafashwe n'abanyerondo barimo Kirimamahoro barayishyura.

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[28] Raporo ya muganga yo ku wa 28/07/2019 igaragaza kandi ko umurambo wa Kirimamahoro wari ufite ibikomere ku gutwi kw'iburyo, mu rubavu rw'iburyo (côté droit ou flanc droit), mu mugongo n'ahandi henshi, ndetse ko wari wanavuye amaraso mu kanywa. [29] Urukiko rusanga, kuba Nsengiyumva Innocent na Ngendahimana Evariste alias Nsenga bari bari aho icyaha cyabereye mu ijoro ryo ku wa 27/28/07/2019, kandi abatangabuhamya bavuzwe haruguru bakaba baremeje ko Kirimamahoro yishwe na Nsengiyumva Innocent afatanyije na Ngendahimana Evariste bamuziza ko yari mu babafashe igihe bibaga inkoko nk'uko na Ngendahimana Evariste yabiyemereye mu Bugenzacyaha, byumwihariko Kadusabe Faustin alias Gacinya wabiboneye n'amaso ye igihe bakoraga icyaha, akaba yarasobanuye ko uruhare rwa Nsengiyumva Innocent ari uko yateye Kirimamahoro ibuye mu rubavu akagwa mu ruhavu rw'inzu, naho Ngendahimana Evariste alias Nsenga akamusimbukiraho nk'uko byanemejwe na Habumuremyi Boniface wasobanuye ko Ngendahimana Evariste yasimbukiye mu gatuza ka Kirimamahoro akamuhorahoza nk'uko byanashimangiwe na raporo ya muganga yo ku wa 28/07/2019 igaragaza ko umurambo wa Kirimamahoro wari ufite ibikomere ku gutwi, mu rubavu no mugongo, ndetse ko wari wavuye amaraso mu kanywa, ari ibimenyetso bigaragaza ku buryo budashidikanywaho ko Nsengiyumva Innocent yafatanyije na Ngendahimana Evariste gukora icyaha baregwa nk'uko byemejwe n'Urukiko Rukuru. [30] Urukiko rusanga kandi raporo ya muganga itavuguruzanya n'imvugo z'abatangabuhamya bavuzwe haruguru, ko ahubwo bihuje kuko umutangabuhamya witwa Kadusabe Faustin alias Gacinya asobanura ko yiboneye Nsengiyumva Innocent atera Kirimamahoro ibuye mu rubavu nk'uko byanemejwe na muganga wasuzumye umurambo wa nyakwigendera agasanga ufite igikomere mu rubavu rw'iburyo (côté droit ou flanc droit), bigaragara ko nyakwigendera Kirimamahoro atishwe n'inzoga cyangwa n'uko yaguye mu mukingo w'inzu, ko ahubwo yishwe n'ibikorwa byo gukubita no kumukomeretsa bikamuviramo gupfa yakorewe na Nsengiyumva Innocent na Ngendahimana Evariste alias Nsenga nk'uko byasobanuwe haruguru, bityo akaba atari ngombwa gutumiza muganga wakoze iyo raporo muri uru rubanza. [31] Urukiko rusanga na none imvugo ya Nsengiyumva Innocent y'uko Urukiko Rukuru rutitaye ku mvugo z'abatangabuhamya bamushinjura barimo aribo Kambali François, Bangamwabo Claude nta shingiro ifite, ahubwo bigaragara ko bari mu batangabuhamya bamushinja urwo Rukiko rwashingiyeho rumuhamya icyaha, kandi imvugo zabo ntizivuguruzanya imvugo za Kadusabe Faustin Alias Gacinya wibiboneye n'amaso ye akora icyaha, ahubwo ziruzuzanya. Urukiko rusanga kandi imvugo za Kabayiza Evariste n'iza Manibaho alias Kabina zidashinjura Nsengiyumva Innocent nk'uko abivuga, kuko Kabayiza Evariste yavuze ko nyakwigendera yaguye mu ruhavu rw'inzu ubwo yirukaga kuri Nsengiyumva Innocent barwanaga ariko ko atabirebaga kuko yahageze nyakwigendera

amaze kugwa, naho Manibaho alias Kabina we avuga ko atamenye icyamwishe, uretse kumva Kadusabe atabaza avuga ko Kirimamahoro apfuye. [32] Byongeye kandi Urukiko rusanga imvugo ya Nsengiyumva Innocent y'uko Urukiko Rukuru rutagombaga kumuhamya icyaha hashingiwe ku buhamya bwa Kadusabe Alexis kuko bari bafitanye ikibazo kijyanye n'uko yabikorereye inzoga bakamwambura bigatuma ajya iwe akahafata inkoko yagurishije akayishyura nta shingiro ifite, bigaragara ahubwo ko ariyo mpamvu yatumye Nsengiyumva Innocent afatanyaga na Ngendahimana Evariste gutera ibuye Kirimamahoro no kumukandagira bikamuviramo gupfa nk'uko byemejwe n'abatangabuhamya barimo Kadusabe

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Alexis bemeje ko bamujijije ko yabafatanye inkoko bari bibye, ndetse ko mbere y'uko nyakwigendera apfa yatabazaga avuga ko azize inkoko. [33] Urukiko rusanga ariko, kuba Ngendahimana Evariste alias Nsenga yarakoze icyaha aribwo yari akiva mu bwana kuko yari afite imyaka cumi n'umunani n'amezi atandatu (18 et 6 mois), bikwiye kumubera impamvu nyoroshyacyaha ituma agabanyirizwa ibihano kugira ngo ahabwe amahirwe yo kwikosora no gusubira mu muryango nyarwanda, bityo Ngendahimana Evariste alias Nsenga akaba agomba guhanishwa igifungo cy'imyaka icumi (10) n'ihazabu miliyoni ebyiri n'ibihumbi magana atanu (2.500.000 Frw), aho kuba igifungo cy'imyaka makumyabiri (20) n'ihazabu ya miliyoni eshanu (5.000.000 Frw) yahanishijwe mbere, hashingiwe ku mikirize y'urubanza n° RPAA 00032/2019/CA rwaciye ku wa 28/02/2020, Ubushinjacyaha buburana na Nzafashwanimana Jean de Dieu, aho Urukiko rw'Ubujurire rwemeje ko umucamanza atagomba kugira ikimuzitira mu kugabanyiriza uregwa igihano mu gihe hari impamvu nyoroshyacyaha, ko ahubwo ashobora gutanga igihano gito kiri munsu y'igiteganywa n'itegeko agamije gutanga igihano gikwiranye n'uburemere bw'icyaha. 2. Kumenya Ngendahimana Evariste na Nsengiyumva Innocent bataryozwa indishyi n'amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka. [34] Ngendahimana Evariste n'umwunganira bavuga ko indishyi zingana na miliyoni cumi n'ebyiri n'ibihumbi magana atandatu na mirongo irindwi (12.670.000 Frw) n'ibihumbi magana atanu na mirongo itanu (550.000 Frw) y'ikurikiranarubanza n'igihembo cy'Avoka abaregera indishyi bagenewe zikwiye kuvanwaho zose kubera ko Ngendahimana Evariste atakozwe icyaha aregwa, ko kuba zarabazwe mu buryo bunyuranije n'amategeko kuko zabazwe hashingiwe ku Iteka rya Perezida n° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, kandi atari impanuka yabaye, ko ahubwo mu gihe uru Rukiko rubibonye ukundi rwazibara mu bushishozi bwarwo. [35] Bavuga kandi ko Urukiko Rukuru rwageneye indishyi ababyeyi ba nyakwigendera n'abavandimwe be bakurikira: Munyarugerero Bernard, Mukamusoni Evelyne, Ntawiheba Léonodas, Ntawuhoramukuri Alexis, Mugabushaka Théogène, Nyirasafari Florence na Ntirenganya Jeanne d'Arc kandi batari batanzwe na nyakwigendera, basaba ko zakurwaho zose, ko ahubwo mu gihe rwasanga Ngendahimana Evariste agomba gutanga indishyi zahabwa umugore wa nyakwigendera n'abana be gusa. [36] Bavuga kandi ko uru Rukiko rubibonye ukundi rwageneye abaregera indishyi ibihumbi magana atanu (500.000 Frw) y'igihembo cy'Avoka yo kuri uru rwego, naho ay'ikurikiranarubanza yo kuri

uru rwego, akagenwa mu bushishozi bw'Urukiko kuko ayo basaba ari umurengera. [37] Nsengiyumva Innocent n'umwunganira bavuga ko atatanga indishyi kuko atakoze icyaha, ariko uru Rukiko rubibonye ukundi rwagenera abaregera indishyi, amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka mu bushishozi bwarwo kuko ayo basaba ari umurengera. [38] Me Havugimana Ignace, uhagarariye abaregera indishyi, avuga ko Ngendahimana Evariste na Nsengiyumva Innocent bakwiye kubaha indishyi baciwe n'Inkiko zabanje kuko indishyi mbonezamusaruro zagenewe gusa umugore wa nyakwigendera n'abana be hashingiwe ku

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murongo watanzwe n'Urukiko rw'Ikirenga mu rubanza RCAA 0049/14/CS rwaciwe ku wa 25/11/2016, aho izo ndishyi zabariwe ku mushahara muto ntarengwa (SMIG) ungana na 3.000 Frw kubera ko nyakwigendera atagiraga akazi kazwi, uretse ko abaregera indishyi bose bahawe indishyi z'akababaro. [39] Avuga kandi ko Ngendahimana Evariste na Nsengiyumva Innocent bakwiye guha abaregera indishyi miliyoni imwe (1.000.000 Frw) y'ikurikiranarubanza na miliyoni imwe (1.000.000 Frw) y'igihembo cy'Avoka yo kuri uru rwego. UKO URUKIKO RUBIBONA [40] Nk'uko byemejwe mu manza nyinshi zaciwe n'Urukiko rw'Ikirenga zirimo urubanza n° RPA 0323/08/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 13/08/2010, haburana Ubushinjacyaha na Sgt GATETE Innocent na Leta y'u Rwanda yajuriye (MININTER) ihagarariwe n'Intumwa ya Leta, naho Kabanyana Grâce n'abana be ahagarariye, baregera indishyi, n'urubanza n° RPA 0142/11/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 13/11/2015, haburana Ubushinjacyaha na Mushimiyimana Eric, ndetse n'urubanza n° RCAA 00008/2020/CA rwaciwe n'uru Rukiko ku wa 25 Kamena 2021, haburana N.A (mu izina ry' umwana we I.A) v Kibungo Medical Center, indishyi zikomoka ku cyaha zigenwa mu bushishozi bw'Urukiko nk'uko biteganywa n'ingingo ya 9 y'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezambano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsiri, aho kuzigena hashingiwe ku bipimo bigenwanye Iteka rya Perezida n° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga kuko ibiteganywa n'iryo Teka bidahuje kamere n'ikiburanwa muri uru rubanza rw'inshinjabyaha. [41] Nk'uko bigaragarira mu bika bya 37 na 38 by'urubanza rwajuririwe muri uru Rukiko, Urukiko Rukuru rwasanze nk'uko n'Urukiko Rwisumbuye rwabibonye, nta tegeko ryihariye rigenga uburyo indishyi mbonezamusaruro cyangwa indishyi z'akababaro zibarwa igihe habayeho icyaha cyahitanye ubuzima bw'umuntu, ko ahubwo zigenwa mu bushishozi bw'Urukiko (equity), rusobanura ko kubera ko mu gutanga bene izo ndishyi ku bushishozi bw'urukiko bishoboka ko hatangwa nkeya cyangwa nyinshi zitajyanye n'ibyo icyaha cyangiye, ariyo mpamvu rusanga nta kosa Urukiko Rwisumbuye rwakoze mu kuzibara rifashishije Iteka rya Perezida n° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga risanzwe rikoresheye mu kugena indishyi mu gihe uwakoreweho impanuka yapfuye, mu ngingo yaryo ya 22 ngo kuko ari uburyo bwiza bwo kugena izi ndishyi hashingiwe ku itegeko. [42] Urukiko Rukuru rwasanze indishyi zatanzwe ku rwego rwa mbere, zigomba kugumaho uko zakabaye mu buryo bukurikira: Nyirabahutu Marceline, umugore w'isezerano wa nyakwigendera Kirimamahoro wasigaye yita ku bana babyaranye yahawe 4.320.000 Frw y'indishyi

mbonezamusaruro, anahabwa 1.080.000 Frw y'indishyi z'akababaro, abana ba

1 Ingingo ya 9 y'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "Umucamanza aca urubanza ashingiye ku ngingo z'amategeko zirebana n'ikirego yaregewe. Iyo nta tegeko rijyanye n'ikiburanwa ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko".

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nyakwigendera aribo Niyogisubizo Sandrine, Nkurunziza Emmanuel na Uwamahoro Honorine hamwe n'ababyeyi ba nyakwigendera aribo Munyarugerero Bernard na Mukamusoni Evelyne bahabwa 4.050.000 Frw, bivuze ko kuri buri wese yahawe 810.000 Frw y'indishyi z'akababaro, naho abavandimwe batanu (5) ba nyakwigendera aribo Ntawiheba Léonidas, Ntawuhoranukuri Alexis, Mugabushaka Théogène, Nyirasafari Florence na Ntirenganya Jeanne d'Arc bahabwa 2.700.000 Frw, bivuze ko buri muvandimwe wa nyakwigendera agomba guhabwa 540.000 Frw y'indishyi z'akababaro (n'ubwo umucamanza yibeshye akandika ko ari 540.000.000 Frw) hiyongereyeho 500.000 Frw y'igihembo cy'Avoka wababuraniye, bakanasubizwa 20.000 Frw y'igarama batanze, yose hamwe akaba 12.670.000 Frw. [43] Urukiko rusanga, Urukiko Rukuru rutaragombaga kugenera abaregera indishyi bangirijwe n'icyaha indishyi mbonezamusaruro n'indishyi z'akababaro zavuzwe haruguru hashingiwe ku bipimo bigenwa n'Iteka rya Perezida n° 31/01 ryo ku wa 25/08/2003 ryavuzwe haruguru, ko ahubwo rwagombaga kuzigena mu bushishozi bwarwo nk'uko byatanzweho umurongo mu manza zavuzwe haruguru. [44] Urukiko rusanga, mu bushishizi bwarwo, indishyi mbonezamusaruro n'iz'akababaro zavuzwe haruguru abaregera indishyi bagenewe n'Urukiko Rukuru mu rubanza rwajuririwe muri uru Rukiko, zikwiye kugumaho uko zakabaye, kuko ziri mu rugero uzigereranyije n'izatanzwe mu zindi manza z'inshinjabyaha nko mu rubanza n° RPA 0142/11/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 13/11/2015, haburana Ubushinjacyaha na Mushimiyimana Eric, aho mu bushishozi bwarwo, urwo Rukiko rwageneye Nyirabagenzi Cécile nyina wa nyakwigendera 1.500.000 Frw y'indishyi z'impozamarira, runagera Dufitumukiza Olivier, Mushimiyimana na Birorimana Célestin, abavandimwe ba nyakwigendera, 1.500.000 Frw y'indishyi z'impozamarira. [45] Ku birebana n'amafaranga y'ikurikiranarubanza n'ay'igihembo cy'Avoka, ingingo ya 111 y'Itegeko n° 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 kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'ayo ikirego cy'iremezo cyaba kitakiriwe". [46] Hashingiwe kuri iyo ngingo, Urukiko rusanga Nsengiyumva Innocent na Ngendahimana Evariste bagomba gufatanya guha abaregera indishyi muri uru rubanza ibihumbi magana atatu (300.000 Frw) y'ikurikiranarubanza n'ibihumbi magana atanu (500.000 Frw) y'igihembo cy'Avoka yo kuri uru rwego, yose hamwe akaba ibihumbi magana inani (800.000 Frw) yo kuri uru rwego agenwe n'Urukiko mu bushishozi bwarwo kuko ayo basaba ari menshi cyane, ayo mafaranga akaba

agomba kwiyongera ku yo baciwe mbere. [47] Urukiko rusanga rero, Nsengiyumva Innocent na Ngendahimana Evariste bagomba gufatanya guha abaregera indishyi miliyoni cumi n'ebiri n'ibihumbi magana atandatu na mirongo irindwi (12.670.000 Frw) y'indishyi mbonezamusaruro n'iz'akababaro, n'amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka, ndetse n'amagarama baciwe ku rwego rwa mbere, hiyongereyeho ibihumbi magana atanu na mirongo itanu (550.000 Frw) y'ikurikiranarubanza n'igihembo cy'Avoka yo mu Rukiko Rukuru hakiyongeraho ibihumbi magana inani (800.000

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Frw) yo kuri uru rwego, yose hamwe akaba miliyoni cumi n'enye n'ibihumbi makumyabiri (14.020.000 Frw) yo ku nzego zose. III. ICYEMEZO CY'URUKIKO [48] Rwemeje ko ubujurire bwa Nsengiyumva Innocent nta shingiro bufite, ko ubujurire bwa Ngendahimana Evariste bufite ishingiro ku birebana n'igabanyagihano; [49] Ruvuze ko imikirize y'urubanza n° RPA 00404/2020/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, ku wa 30/06/2021, ihindutse kuri bimwe; [50] Ruhanishije Ngendahimana Evariste igifungo cy'imyaka icumi (10) n'ihazabu ya miliyoni ebyiri n'ibihumbi magana atanu (2.500.000 Frw), ko igifungo cy'imyaka makumyabiri (20) n'ihazabu ya miliyoni eshanu (5.000.000 Frw) Nsengiyumva Innocent yahanishijwe bigumyeho; [51] Rutegetse Nsengiyumva Innocent na Ngendahimana Evariste gufatanya guha Nyirabahutu Marceline unahagarariye abana be: Niyogisubizo Sandrine, Nkurunziza Emmanuel na Uwamahoro Honorine; ababyeyi ba nyakwigendera: Munyarugerero Bernard na Mukamusoni Evelyne n'abavandimwe be: Ntawiheba Léonidas, Ntawuhoranukuri Alexis, Mugabushaka Théogène, Nyirasafari Florence na Ntirenganya Jeanne d'Arc, abaregera indishyi, miliyoni cumi n'enye n'ibihumbi makumyabiri (14.020.000 Frw) nk'uko yasobanuwe haruguru; [52] Rutegetse ko amagarama y'uru rubanza aherera ku Isanduku ya Leta.

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