

RWANDA / JUDGMENT

KABIRIGI v. UWERA N'ABANDI (ADD)

RS/INJUST/RC00006/2024/CA

COURT

Court of Appeal

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KABIRIGI v. UWERA N'ABANDI (ADD)

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Text

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KABIRIGI v. UWERA N'ABANDI (ADD) [Rwanda URUKIKO RW'UBUJURIRE – RS/INJUST/RC00006/2024/CA (Rutazana, P.J.) 21 Ukwakira 2025] Amategeko agenga gusubirishamo imanza ku mpamvu z'akarengane – Iyakirwa ry'ikirego mu gihe nta bujurire bwa kabiri bwabayeho – Mu gihe umuburanyi yabona ko yatsinzwe mu Nkiko zombi hashingiwe ku mpamvu zimwe bityo akabona ko mu gihe atanze ubujurire bwa kabiri butakwakirwa, ntibyaba impamvu yo kutakira ikirego cye gisaba gusubirishamo urubanza ku mpamvu z'akarengane. Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko rwa mbere rw'Iremezo rwa Kigali, Kabirigi na Uwera baburana isambu, ruza kujuririrwa mu Rukiko rusesa imanza, ariko, aho habereye amavugurura mu nzego z'ubucamanza, rukomereza mu Rukiko Rukuru rwa Repubulika I Kigali. Uru rubanza rwaje kurangizwa, iryo rangizarubanza riregerwa mu Rukiko rw'ibanze rwa Rusororo risabirwa guteshwa agaciro, urwo Rukiko rwemeza ko riteshejwe agaciro, Uwera ajuriye mu Rukiko Rwisumbuye rwa Gasabo, rwemeza ko imikirize y'urubanza ikuweho, yongeye kujurira mu Rukiko Rukuru, umwe mu baburanyi ntiyitaba Urukiko, Umuhesha w'inkiko Ntaganzwa asaba ko urubanza rusibwa, maze Urukiko Rukuru rwemeza ko rusibwe mu bitabo by'Urukiko. Kabirigi yatanze ikirego mu Rukiko Rwisumbuye rwa Gasabo avuga ko ubutaka bwe bwigabijwe ku

bw'uburiganya n'Uwera n'abandi, ndetse agaragariza urukiko amazina y'abagomba kugobokeshwa avuga ko bagurishije ubutaka bwe. Abaregwa batanze inzitizi yo kutakira ikirego bavuga ko urega nta nyungu, ububasha n'ubushobozi byo kurega afite kuko umutungo uburanwa ari uwabo hashingiwe ku masezerano y'ubukode burambye y'uwo mutungo bahawe na Leta. Abaregwa n'abagobokeshejwe kandi bavuze ko ikirego cya Kabirigi kitakwagirwa kuko umutungo aregera yawuburanyeho mu rubanza rwabaye itegeko. Urwo Rukiko rwaciye urubanza rwemeza ko ikirego kitakiriwe. Kabirigi yajuririye mu Rukiko Rukuru, mu guca urubanza rwemeza ko ubujurire bwe budafite ishingiro, bushingiye ku kuba umutungo yaregeye ari wo yatsindiye mu rubanza (RCAA 0023/05/HC/KIG) yaburanye na Uwera Eugénie kandi rwabaye itegeko. Kabirigi yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko rusubirwamo ku mpamvu z'akarengane, Perezida w'Urukiko rw'Ikirenga yemeza ko urubanza rusubirwamo ku mpamvu z'akarengane, rwohererezwa Urukiko rw'Ubujurire kugira ngo rube ari rwo ruruburanisha. Abaregwa batanze inzitizi igamije gusaba ko ikirego kitakirwa, bavuga ko urega yivukije inzira y'ubujurire bwa kabiri. Basobanura ko yari afite uburenganzira bwo kujuririra Urukiko rw'Ubujurire aho gusaba gusuburishamo urubanza ku mpamvu z'akarengane, kuko umutungo uburanwa ufite agaciro karenze 75.000.000 Frw. Kabirigi yireguye kuri iyi nzitizi avuga ko nta shingiro ifite, kuko mu nkiko zombi zabanje yatsinzwe hashingiwe ku mpamvu zimwe, akaba rero atarajuririye Urukiko rw'Ubujurire kuko yabonaga ko ubujurire bwe bwa kabiri butazakirwa hashingiwe kuri iyo mpamvu.

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Incamake y'icyemezo: Mu gihe umuburanyi yabona ko yatsinzwe mu Nkiko zombi hashingiwe ku mpamvu zimwe bityo akabona ko mu gihe atanze ubujurire bwa kabiri butakwagirwa, ntibyaba impamvu yo kutakira ikirego cye gisaba gusuburishamo urubanza ku mpamvu z'akarengane. Inzitizi yo kutakira ikirego nta shingiro ifite. Nta mategeko yashingiweho Imanza zifashishijwe: RS/INJUST/RC 00017/2022/SC; Muhozi Steven vs Uwase Angélique n'undi rwaciye n'Urukiko rw'Ikirenga ku wa 26/04/2024. Urubanza I. IMITERERE Y'URUBANZA [1] Uwera Eugénie na Kabirigi Gérard baburanye isambu mu rubanza RC 34873/01 rwaciye n'Urukiko rwa Mbere rw'Iremezo rwa Kigali ku wa 02/07/2002, urwo Rukiko rwemeza ko Kabirigi Gérard agomba kugumana igice cy'isambu yagabanye na Uwera Eugénie; uyu asaba ko ruseswa (mu Rukiko rusesa imanza rwariho icyo gihe), ikirego cyandikwa kuri RCP 1434, nyuma y'ivugururwa ry'Ubucamanza urwo rubanza rwohererezwa mu Rukiko Rukuru rwa Repubulika kugira ngo ruruburanishe, maze mu rubanza RCAA 0023/05/HC/KIG rwaciye n'urwo Rukiko ku wa 16/05/2006 rwemeza ko nta gihindutse ku mikirize y'urubanza RC 34873/01 rwavuzwe haruguru. [2] Ku wa 19/11/2010 Umuhesha w'inkiko utari uw'umwuga witwa Ntaganzwa Jean Marie Vianney yarangije urwo rubanza, ariko iryo rangizarubanza risabirwa guteshwa agaciro mu Rukiko rw'Ibanze rwa Rusororo, mu rubanza RC 0072/011/TB/RUS rwaciye n'urwo Rukiko ku wa 15/09/2012 rwemeza ko riteshejwe agaciro, rujuririrwa mu Rukiko Rwisumbuye rwa Gasabo, mu rubanza RCA 0301/11/TGI/GSBO rwaciye ku wa 17/12/2012, urwo Rukiko rwemeza ko imikirize y'urubanza RC 0072/011/TB/RUS ikuweho. Uwera Eugénie yongeye kujurira mu Rukiko Rukuru, ariko ku munsu w'iburanisha Musabyimana Ernestine wari uhagarariye umuryango wa Sebakiga

Jean Népomuscène na Uwera Eugénie ntiyitaba Urukiko, Umuhesha w'inkiko Ntaganzwa Jean Marie Vianney asaba ko urubanza rusibwa, maze mu rubanza RCA 0011/13/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 21/05/2013 rwemeza ko rusibwe mu bitabo by'Urukiko. [3] Ku wa 09/06/2021 Kabirigi Gérard yatanze ikirego mu Rukiko Rwisumbuye rwa Gasabo arega Uwera Eugénie, Mutuyimana Oscar, Gakuba Emmanuel na Sagahutu Jean Baptiste, avuga ko bigabije ubutaka bwe mu buryo bw'uburiganya; anasaba ko Musabyimana Ernestine, Muvandimwe Modeste na Ukobizaba Olivier bagobokeshwa ku gahato muri urwo rubanza kuko bagurishije ubutaka bwe. [4] Mbere yo kwiregura ku rubanza mu mizi, Mutuyimana Oscar, Sagahutu Jean Baptiste na Gakuba Emmanuel batanze inzitizi basaba ko ikirego cya Kabirigi Gérard kitakirwa; basobanura

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ko nta nyungu, ububasha n'ubushobozi byo kurega afite kuko umutungo uburanwa ari uwabo hashingiwe ku masezerano y'ubukode burambye y'uwo mutungo bahawe na Leta. [5] Kabirigi Gérard yireguye kuri iyo nzitizi avuga ko afite inyungu, ububasha n'ubushobozi byo kurega, kuko umutungo yaregeye yawuburanye akanawutsindira mu rubanza RCAA 0023/05/HC/KIG ndetse rukarangizwa, ariko akaza gusanga uri mu maboko y'abawuguze bigatuma abarega hamwe n'abawubagurishije. [6] Abaregwa n'abagobokeshejwe ku gahato muri urwo rubanza basabye ko mu gihe ikirego cya Kabirigi Gérard cyaba kitakiriwe, bahabwa indishyi z'ibyo batakaje bakurikirana urubanza. [7] Mu rubanza RC 00238/2021/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 27/01/2023, rwemeje ko ikirego cya Kabirigi Gérard kitakiriwe, rumutegeka kwishyura Uwera Eugénie, Mutuyimana Oscar, Gakuba Emmanuel na Sagahutu Jean Baptiste 100.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya Avoka buri wese, no kwishyura Musabyimana Ernestine, Muvandimwe Modeste na Ukobizaba Olivier amafaranga 100.000 Frw y'ikurikiranarubanza buri wese; naho 20.000 Frw yatanzeho ingwate y'amagarama ruvuga ko ahwanye n'ibyakozwe mu rubanza. [8] Ibyo Urukiko rwabyemeje rushingiye ku kuba Kabirigi Gérard yaremeye ko ubutaka yaregeye ari na bwo yaburanye na Uwera Eugénie RCAA 0023/05/HC/KIG rwabaye itegeko, bityo aba bombi bakaba badashobora kongera kuburana ubwo butaka hagati yabo. [9] Kabirigi Gérard yajuririye urwo rubanza mu Rukiko Rukuru, avuga ko mu rubanza rwabaye itegeko icyaburanwaga ari isaranganya, naho mu kirego yatanze akaba asaba Urukiko gutegeka ko Mutuyimana Oscar, Gakuba Emmanuel na Sagahutu Jean Baptiste kuva mu mutungo we bigabije; bityo izo manza zombi zikaba zitandukanye kuko ikiburanwa ndetse n'ababuranyi atari bimwe. [10] Abaregwa n'abasabiwe kugobokeshwa ku gahato mu rubanza bireguye kuri ubwo bujirire bavuga ko nta shingiro bufite, kuko ikirego cya Kabirigi Gérard kitagombaga kwakirwa. Basobanura ko umutungo yaregeye ari nawo yaburanye na Uwera Eugénie mu rubanza rwabaye itegeko, kandi akaba yiyemerera ko yawutsindiye; naho kuba hari ababuranyi yongeye mu kirego yatanze nyuma bikaba atari impamvu ituma gitandukana n'icyo yari yatanze muri urwo rubanza rwabaye itegeko, ahubwo akaba akwiriye gushaka uko rurangizwa. [11] Mu rubanza RCA 00145/2023/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 25/09/2023, rwemeje ko ubujirire bwa Kabirigi Gérard nta shingiro bufite, rumutegeka kwishyura Sagahutu Jean Baptiste, Gakuba Emmanuel, Uwera Eugénie na Mutuyimana Oscar indishyi

zingana na 500.000 Frw buri wese, naho ingwate y'amagarama yatanze ajurira ikaba hwanyeye n'ibyakozwe mu rubanza. Ibyo Urukiko rwabyemeje rushingiye ku mpamvu y'uko umutungo yaregeye ari wo yatsindiye mu rubanza (RCAA 0023/05/HC/KIG) yaburanye na Uwera Eugénie kandi rwabaye itegeko. [12] Nyuma y'icibwa ry'urwo rubanza RCA 00145/2023/HC/KIG, Kabirigi Gérard yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko rusubirwamo ku mpamvu z'akarengane, mu cyemezo cya Perezida w'Urukiko rw'Ikirenga N° 081/CJ/2024 cyo ku wa 28/05/2024, ashingiye kuri raporo yashyikirijwe na Perezida w'Urukiko rw'Ubujurire ku busabe bwa Kabirigi Gérard, yemeza ko

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urwo rubanza RCA 00145/2023/HC/KIG rusubirwamo ku mpamvu z'akarengane, kandi ko rwohererezwa Urukiko rw'Ubujurire kugira ngo rube ari rwo ruruburanisha. [13] Ikirego cyahawe RS/INJUST/RC 00006/2024/CA, iburanisha ryawo rishyirwa ku wa 01/10/2025; kuri uwo munsu Urukiko rusanga Kabirigi Gérard yohereje inyandiko ya muganga igaragaza ko afite ikiruhuko cy'uburwayi, ariko hitabye uwitwa Kabera Francis uvuga ko ari umuhungu we kandi ko ari we usanzwe amuhagarariye muri izi manza, yunganiwe na Me Nsengiyumva Colette; naho Uwera Eugénie, Mutuyimana Oscar, Gakuba Emmanuel, Musabyimana Ernestine na Muvandimwe Modeste bunganiwe na Me Ilimubuhanga Jean de Dieu, akanahagararira Sagahutu Jean Baptiste na Ukobizaba Olivier. Urukiko rwasanze ari ngombwa ko iburanisha ryimurirwa ku wa 08/10/2025 kugira ngo Kabera Francis ashyikirize Urukiko icyemezo kimuha ububasha (procuration) bwo guhagararira Kabirigi Gérard. [14] Kuri uwo munsu urubanza rwaburanishijwe mu ruhamwe, Kabirigi Gérard ahagarariwe n'umuhungu we Kabera Francis nawe yunganiwe na Me Nsengiyumva Colette, naho Gakuba Emmanuel ahagarariwe na Me Ilimubuhanga Jean de Dieu, uyu akanuganira Uwera Eugénie, Muvandimwe Modeste, Mutuyimana Oscar, Sagahutu Jean Baptiste, Ukobizaba Olivier na Musabyimana Ernestine. [15] Mu kirego cye, Kabirigi Gérard asaba ko urubanza RCA 00145/2023/HC/KIG rusubirwamo ku mpamvu z'akarengane ashingiye ku kuba Urukiko Rukuru rwarirengagije ko yari afite ububasha, inyungu n'ubushobozi byo gukurikirana umutungo we mu maboko y'abawigabije. Asobanura ko uwo mutungo (ubaruye kuri UPI: 1/02/01/01/1253, 1252, 1254, 1255) yawuburanye akawutsindira, ndetse akanawuhabwa mu irangizarubanza ryakozwe n'Umuhesha w'inkiko witwa Ntaganzwa JMV ku wa 19/11/2010, hashingiwe ku gishushanyo cyakozwe ku wa 17/02/2020 kikemezwa n'uwo Muhesha w'inkiko ko gihuye n'ubutaka Kabirigi Gérard yahawe mu irangizwa ry'urubanza ryavuzwe haruguru. [16] Mbere yo kwiregura kuri izo mpamvu z'akarengane, Me Ilimubuhanga Jean de Dieu n'abo aburanira batanze inzitizi igamije gusaba ko ikirego cya Kabirigi Gérard kitakirwa, kuko yivukije inzira y'ubujurire bwa kabiri. Basobanura ko Kabirigi Gérard yari afite uburenganzira bwo kujuririra Urukiko rw'Ubujurire aho gusaba gusuburishamo urubanza ku mpamvu z'akarengane, kuko umutungo uburanwa ufite agaciro karenze 75.000.000 Frw. [17] Kabera Francis (uhagarariye Kabirigi Gérard) n'umwunganira bavuga ko iyo nzitizi nta shingiro ifite, kuko mu nkiko zombi zabanje yatsinzwe hashingiwe ku mpamvu zimwe, akaba rero atarajuririye Urukiko rw'Ubujurire kuko yabonaga ko ubujurire bwe bwa kabiri butazakirwa hashingiwe kuri iyo mpamvu. [18] Iyo nzitizi niyo Urukiko rwabanje gusuzuma. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

Kumenya niba Kabirigi Gérard yarivukije inzira y'ubujurire bwa kabiri, ku buryo ikirego cye gisaba gusubirishamo ku mpamvu z'akarengane urubanza RCA 00145/2023/HC/KIG kitagomba kwakirwa

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[19] Me Ilimubuhanga Jean de Dieu n'abo aburanira bavuga ko ikirego cya Kabirigi Gérard gisaba gusubirishamo ku mpamvu z'akarengane urubanza RCA 00145/2023/HC/KIG kitagomba kwakirwa, bashingiye ku mpamvu y'uko yivukije inzira y'ubujurire bwa kabiri. Basobanura ko umutungo uburanwa ufite agaciro kagera kuri miliyari y'amafaranga y'u Rwanda, bityo Kabirigi Gérard akaba yari afite uburenganzira bwo kujuririra Urukiko rw'Ubugurire, kuba rero yarabwivukije bikaba ari impamvu igomba gutuma ikirego cye kitakirwa hashingiwe ku murongo watanze mu rubanza RS/REV/INJUST/CIV 0023/2016/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 27/09/2019, Rutabayiru na bagenzi be baburana na Mukakabano, ndetse no ku bisobanuro bikurikira biri ku rupapuro rwa 11 rw'Agatabo gasobanura ibirebana n'imiburanishirize y'imanza

zisabirwa gusubirishwamo ku mpamvu z'akarengane: "...gusubirishamo imanza ku mpamvu z'akarengane, ni inzira y'ubujurire idasanzwe kandi yihariye. Yemerwa ku rubanza rwarangije izindi nzira zishoboka zisanzwe n'izidasanzwe. Birumvikana ko kugira ngo iyo nzira yemerwe, hagomba kuba hari impamvu idasanzwe ituma iyo nzira ifungurwa. Iyo itabonetse, ntifungurwa." [20] Kabera Francis (uhagarariye Kabirigi Gérard) na Me Nsengiyumva Colette umwunganira bavuga ko iyo nzitizi nta shingiro ifite, kuko mu nkiko zombi zabanje yatsinzwe no kuba ikirego cye kitarakiriwe kuko inkiko zasanze umutungo yaregeye yari yarawuburanye mu rundi rubanza rwabaye itegeko, bityo rero kuba ataratanze ubujurire bwa kabiri bikaba bitafatwa nko kwivutsa inzira y'ubujurire mu gihe yabonaga ko butazakirwa. Bavuga ko ibi babishingira ku murongo watanze mu rubanza RS/INJUST/RCOM 00003/2022/SC rwaciwe ku wa 15/07/2022, haburana Rwanda Public Procurement Authority (RPPA) na WAPCOS Ltd, no ku bisobanuro Urukiko rw'Ikirenga rwatanze ku rupapuro rwa 9 rw'Agatabo gasobanura ibyerekeye imiburanishirize y'imanza zisubirishwamo ku mpamvu z'akarengane katangajwe mu mwaka wa 2024, ko umuburanyi adategetswe gutanga ubujurire bwa kabiri mu gihe abona ko butazakirwa, Bavuga kandi ko n'Urukiko rw'Ubugurire rwatanze umurongo uvuga ko mu manza zisubirishwamo ku mpamvu z'akarengane hatongeraga gutangwa inzitizi yo kutakira ikirego mu gihe atari ndemyagihugu. [21] Naho ku bijyanye n'umurongo watanze mu rubanza RS/REV/INJUST/CIV 0023/2016/CS abaregwa bashingiraho inzitizi yabo, Kabera Francis n'umwunganira bavuga ko udahuye n'uru rubanza kuko ujyanye n'ikibazo cy'umuburanyi watanze ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane nyuma y'uko yari yararujuririye akerewe ubujurire bwe ntibwakirwe. [22] Me Ilimubuhanga Jean de Dieu n'abo aburanira bavuga ko iyo myiregurire nta shingiro ifite, kuko Kabirigi Gérard yagombaga kujurira hagasuzumwa niba koko mu nkiko zabanje yaratsinzwe hashingiwe ku mpamvu zimwe.

UKO URUKIKO RUBIBONA [23] Impaka kuri iyi ngingo zishingiye ku kumenya niba kuba Kabirigi Gérard atarajuriye urubanza RCA 00145/2023/HC/KIG mu Rukiko rw'Ubujurire bigomba gufatwa nko kwivutsa inzira y'ubujurire bwa kabiri, ku buryo ikirego cye gisaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane kitagomba kwakirwa. Abaregwa kuri uru rwego bavuga ko kuba umutungo uburanwa ufite agaciro karenze 75.000.000 Frw byamuhaga uburenganzira bwo kujurira, naho

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Kabirigi Gérard akavuga ko atajuriye kuko yabonaga ko n'ubundi ubujurire bwe butari kwakirwa, kuko mu nkiko zombi zabanje yatsinzwe hashingiwe ku mpamvu zimwe. [24] Impaka zijya gusa n'izi zatanzweho umurongo mu rubanza RS/INJUST/RC 00017/2022/SC1 rwaciwe n'Urukiko rw'Ikirenga ku wa 26/04/2024, Muhozi Steven aburana na Uwase Angélique n'undi, aho Urukiko rw'Ikirenga rwasobanuye ko mu gihe Muhozi Steven yabonaga atujuje ibisabwa kugira ngo asabe gusubirishamo urubanza ingingo nshya maze akareka ikirego yari yatanze akabyemererwa, bitaba impamvu yo kutakira ikirego cye gisaba gusubirishamo urubanza ku mpamvu z'akarengane. [25] Ku birebana n'uru rubanza, dosiye igaragaza ko urubanza RCA 00145/2023/HC/KIG Kabirigi Gérard yasabye ko rusubirwamo ku mpamvu z'akarengane rwaciwe n'Urukiko Rukuru ku rwego rw'ubujurire bwa mbere. Urukiko rw'Ubujurire rurasanga, hashingiwe ku murongo wagaragajwe mu gika kibanziriza iki, n'ubwo werekeye umuburanyi wari wabanje kwiyambaza inzira yo gusubirishamo urubanza ingingo nshya hanyuma akayireka, imitekerereze y'Urukiko muri urwo rubanza yanashingirwaho ku bijyanye n'ubujurire bwa kabiri; bityo rero n'ubwo agaciro k'ikiburanwa kari kuba kemerera Kabirigi Gérard gutanga ubujurire bwa kabiri nk'uko abaregwa kuri uru rwego babivuga, kuba atarajuriye kuko yabonaga mu nkiko zombi zabanje yaratsinzwe hashingiwe ku mpamvu zimwe bityo agasanga atujuje ibisabwa kugira ngo ubwo bujurire bwe bwakirwe hashingiwe ku biteganywa mu ngingo ya 52 y'itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ko ubujurire bwa kabiri budashobora kwakirwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe, bitafatwa nko kwivutsa inzira y'ubujurire. [26] Hashingiwe ku bimaze gusobanurwa, inzitizi yatanzwa n'abaregwa kuri uru rwego basaba ko ikirego cya Kabirigi Gérard kitakirwa ikaba nta shingiro ifite. III. ICYEMEZO CY'URUKIKO [27] Rwemeje ko inzitizi yo kutakira ikirego cya Kabirigi Gérard gisaba gusubirishamo ku

mpamvu z'akarengane urubanza RCA 00145/2023/HC/KIG nta shingiro ifite. [28] Rwemeje ko iburanisha ry'urubanza RS/INJUST/RC 00006/2024/CA, rizakomeza ku wa 03/11/2025 saa yine (10h). [29] Ruvuze ko amagarama y'urubanza abaye asubitswe.

1 Muri uru rubanza abaregwa bari batanze inzitizi basaba ko ikirego cya MUHOZI Steven kitakirwa ngo kuko yiyambaje icyarimwe inzira yo gusubirishamo urubanza ingingo nshya n'iyokurusubirishamo ku mpamvu z'akarengane.

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