

RWANDA / JUDGMENT

UBUSHINJACYAHA vs MASHIMANGO

RPA 00018/2024/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA vs MASHIMANGO

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Text

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UBUSHINJACYAHA vs MASHIMANGO [Rwanda URUKIKO RW'UBUJURIRE – RPA 00018/2024/CA (Gakwaya P.J.) 26 Gashyantare 2025] Amategeko agenga ibimenyetso – Ibimenyetso mu manza nshinjabyaha – Imvugo z'uregwa – Umucamanza niwe uha agaciro imvugo y'uwiyemereye mu rwego rw'iperereza, kabone n'iyoyagera imbere y'Urukiko akayihakana. Amategeko agenga ibimenyetso – Ubuhamya – Urukiko nirwo rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikwiye kwemerwa cyangwa guhakanwa, rukita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze nta cyo bihimbira. Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rukuru, Urugereko ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi, Ubushinjacyaha bukurikiranye Mashimango alias Majaliwa ku cyaha cyo kuba mu mutwe w'iterabwoba nyuma yuko mu mwaka wa 2023, uregwa yafatiwe mu Rwanda aho yari ari mu rugo rwa nyirasenge witwa Mariam, mu Karere ka Rusizi, akekwa kuba mu mutwe wa Forces Démocratiques pour la Libération du Rwanda (FDLR) no gukora ibikorwa byo kuwushakira abantu bawinjiramo abavana mu Rwanda abajyana muri FDLR mu gihugu cya Repubulika Iharanira Demokarasi ya Congo (RDC). Uregwa yiregura avuga ko atabaye mu mutwe wa FDLR, ko atanayishakiye abayoboke nk'uko Ubushinjacyaha

bubimurega, ko kuba yaremeye icyaha mu iperereza byatewe n'uko yabazwaga mu rurimi rw'ikinyarwanda atumva neza kuko n'ubwo yavukiye mu Rwanda ariko yakuriye muri RDC aho yagiye ari umwana, afite imyaka ibiri (2) y'amavuko. Urwo Rukiko rwaciye urubanza rwemeza ko uregwa ahamwa n'icyaha cyo kuba mu mutwe w'iterabwoba, rumugabanyiriza igihano giteganywa n'Itegeko ku mpamvu y'uko ari ubwa mbere akurikiranyweho icyaha, rumuhanisha igihano cy'igifungo cy'imyaka umunani (8). Mashimango alias Majaliwa yajuririye Urukiko rw'Ubujurire, avuga ko Ubushinjacyaha mu kumurega bwagendeye ku mvugo zakozwe n'Ubugenzacyaha bwiyeandikiye ibyo bwishakiye mu gihe bwamubazaga mu rurimi atazi atanumva nta n'umwunganizi afite; ko kandi bwanamureze bugendeye ku mvugo z'ababajijwe zivuguruzanya, naho izindi zikaba ari impimbano, ko rero bigararagara ko ibyo Urukiko Rukuru rwashingiyeho rumuhamya icyaha byose ari ibinyoma bidafite aho bishingiye, kuko bishingiye kuri "narumvise, narabwiwe" (ouï-dire), kandi hakwiye gushingirwa ku bimenyetso bifatika by'ukuri nyako. Ubushinjacyaha bwo buburana buvuga ko impamvu Mashimango alias Majaliwa ashingiraho ajurira zijyanye no kuba mu Bugenzacyaha yarandikiye ibyo atavuze kubera kutumva ururimi rw'ikinyarwanda no kuba mu kumuhamya icyaha harashingiye ku buhamya bw'ibinyoma bumushinja, byumvikanisha ko ntacyo anenga urubanza kuko ari nazo yaburanishije mbere ntizihabwa ishingiro. Buvuga ko agitangira kubazwa mu Bugenzacyaha yavuze ko ari Umunyarwanda uvuka ku babyeyi b'abanyarwanda, ko uretse kuba yarabajijwe kuri FDLR, yanasobanuye uburyo yashakanye n'Umukongomanikazi, avuga umubare w'abana babyaranye n'andi makuru menshi amureba ku giti cye, Ubugenzacyaha butashoboraga kumenya atariwe ubyivugiye. Ku bijyanye n'imvugo z'abatangabuhamya, Ubushinjacyaha buvuga ko uretse kuvuga gusa ko atemera ibyo abo batangabuhamya bavuze, adasobanura icyo anenga imvugo zabo, uretse n'ibyo kandi mu kumuhamya icyaha hanashingiye ku mvugo ze ubwe yemera icyaha mu nzego zitandukanye. Incamake y'icyemezo: 1. Umucamanza niwe uha agaciro imvugo y'uwiyemereye mu rwego rw'iperereza, kabone n'iyi yagera imbere y'Urukiko akayihakana.

2. Urukiko nirwo rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikwiye kwemerwa cyangwa guhakanwa, rukita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze nta cyo bihimbira.

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Amategeko yashingiweho: Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/8/2023, Ingingo ya 29, igika cya mbere, agace ka (a). Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso, ingingo ya 53 n'ya 87. Amasezerano mpuzamahanga yerekeye uburenganzira mu by'imbonezamubano no mu bya politike, Ingingo ya 14, igika cya gatatu, agace ka a. Imanza zifashishijwe: Ubushinjacyaha vs Shema Ernest, RPAA 00050/2024/CA rwaciye n'Urukiko rw'Ubujurire ku wa 26/4/2024. Ubushinjacyaha vs Twahirwa François, RPAA/Gén 00002/2018/CA rwaciye n'Urukiko rw'Ubujurire ku wa 25/7/2023. Inyandiko z'abahanga: Sonet Saint-Louis, l'élaboration des règles de preuve et de procédure au niveau des tribunaux pénaux internationaux dans le contexte de la diversité des systèmes juridiques nationaux: le cas du ouï-dire, P. 71, mémoire de maîtrise en droit international, in archipel.adm@uquam.ca, consulté le 26/6/2023.

Ubujurire nta shingiro bufite. Urubanza I. IMITERERE Y'URUBANZA [1] Mu kwezi kwa Kanama mu mwaka wa 2023, Mashimango David alias Majaliwa yafatiwe mu Rwanda aho yari ari mu rugo rwa nyirasenge witwa Mariam, mu Karere ka Rusizi, akekwa kuba mu mutwe wa Forces Démocratiques pour la Libération du Rwanda (FDLR) no gukora ibikorwa byo kuwushakira abantu bawinjiramo abavana mu Rwanda abajyana muri FDLR mu gihugu cya Repubulika Ihariyemwe Demokarasi ya Congo (RDC). [2] Iperereza rirangiye, Ubushinjacyaha bwareze Mashimango David alias Majaliwa mu Rukiko Rukuru, Urugereko ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi, icyaha cyo kuba mu mutwe w'iterabwoba, busaba ko cyamuhama, agahanishwa igihano cy'igifungo cy'imyaka cumi n'itanu

(15) nk'uko biteganywa n'ingingo ya 18 y'Itegeko no 46/2018 ryo ku wa 13/8/2018 ryerekeye kurwanya iterabwoba. [3] Mashimango David alias Majaliwa yiregura avuga ko atabaye mu mutwe wa FDLR, atanayishakiye abayoboke nk'uko Ubushinjacyaha bubimurega, ko kuba yaremeye icyaha mu iperereza byatewe n'uko yabazwaga mu rurimi rw'ikinyarwanda atumva neza kuko n'ubwo yavukiye mu Rwanda ariko yakuriye muri RDC aho yagiye ari umwana, afite imyaka ibiri (2) y'amavuko. [4] Mu rubanza no RP 00008/2023/HC/HCCIC rwaciye n'Urukiko Rukuru, Urugereko ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi ku wa 18/4/2024, rushingiye ku mvugo za Mashimango David alias Majaliwa mu iperereza no mu Rukiko aburana ku ifunga n'ifungurwa ry'agateganyo, aho yasobanuye uko yagiye muri FDLR, uko yayibayemo kugeza ageze ku ipeti rya Caporal, ibyo yayikozemo byo kuba mu basirikare bashinzwe kuyishakira ibiryo ahantu hatandukanye mu misozi ya Uvira muri RDC, ndetse n'uburyo yasobanuye ko muri 2015 yayivuyemo no ku mvugo za SHINGA Amri Evariste wavuze

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ko nyuma y'uko abwiwe na mwene wabo wa Mashimango David alias Majaliwa ko aba muri FDLR, yabimubaza akabyemera, rwemeje ko ari ibimenyetso bidashidikanywaho bigaragaza ko yabaye mu mutwe wa FDLR. [5] Ku bijyanye no kuba mu iburanisha ry'urubanza mu mizi, Mashimango David alias Majaliwa ahakana imvugo ze yitwaje ko ibikubiye mu nyandiko mvugo yakorewe mu iperereza bidahuye n'ukuri kubera ko abazwa yari afite ikibazo cyo kutumva no kutavuga neza ikinyarwanda, urwo Rukiko rwemeje ko nta shingiro bifite kuko harebwe uburyo busobanutse yagiye asubiza ibibazo yabajijwe mu iperereza no mu rubanza ku ifunga n'ifungurwa ry'agateganyo, bigaragara ko nta kibazo cyo kutumva no kutavuga neza ururimi rw'ikinyarwanda yari afite ku buryo byari gutuma atumvikana n'abamubaza kugeza aho bandika ibyo atavuze. Rwasobanuye ariko ko nta kimenyetso kidashidikanywaho kigaragaza ko yinjije abantu mu mutwe wa FDLR kuko n'ubwo yabyemeye mu iperereza nyuma yagiye abihakana, kandi nta n'umutangabuhamya n'umwe mu babajijwe wemeje ko hari amakuru abifiteho. Rwemeza rero ko Mashimango David alias Majaliwa ahamya n'icyaha cyo kuba mu mutwe w'iterabwoba, rumugabanyiriza igihano giteganywa n'Itegeko ku mpamvu y'uko ari ubwa mbere akurikiranyweho icyaha, rumuhanisha igihano cy'igifungo cy'imyaka umunani (8). [6] Ku wa 6/5/2024, Mashimango David alias Majaliwa yajuririye Urukiko rw'Ubujurire, avuga ko Ubushinjacyaha mu kumurega bwagendeye ku mvugo zakozwe n'Ubugenazacyaha bwiyandikiye

ibyo bwishakiye mu gihe bwamubazaga mu rurimi atazi atanumva nta n’umwunganizi afite; ko kandi bwanamureze bugendeye ku mvugo za Shinga Amri Evariste zivuguruzanya, aho yavuze ko ariwe wamwibwiriye ko yabaye muri FDLR, akongera akavuga ko yabibwiwe na mwene wabo (wa Mashimango David alias Majaliwa), nyamara ntamuvuge amazina, ko rero ibyo yamushinje ari ibinyoma kuko bataziranye. Yanavuze ko bwanashingiye ku mvugo y’impimbano ya Munyaneza Samuel wamubeshyeye ko afite umuvandimwe witwa Ngendabanyika Pascal kandi ntawe agira, ko rero bigararagara ko ibyo Urukiko Rukuru rwashingiyeho rumuhamya icyaha byose ari ibinyoma bidafite aho bishingiye, kuko bishingiye kuri “narumvise, narabwiwe” (ouï-dire), kandi hakwiye gushingirwa ku bimenyetso bifatika by’ukuri nyako. [7] Ubushinjacyaha buvuga ko bushingiye ku ngingo ya 1831 y’Itegeko n° 027/2019 ryo ku wa 19/9/2019 ryerekeye imiburanishirize y’imanza nshinjabyaha, ingingo ebyiri Mashimango David alias Majaliwa ashingiraho ajurira zijyanye no kuba mu Bugenzacyaha yarandikiwe ibyo atavuze kubera kutumva ururimi rw’ikinyarwanda no kuba mu kumuhamya icyaha harashingiwe ku buhamya bw’ibinyoma bumushinja, byumvikanisha ko ntacyo anenga urubanza kuko ari nazo yaburanishije mbere ntizihabwa ishingiro. [8] Urubanza rwahawe no RPA 00018/2024/CA, ruburanishwa ku wa 19/2/2025, Mashimango David alias Majaliwa yunganiwe na Me Ruturwa Rumande Esron, Ubushinjacyaha buhagarariwe na Habineza Jean Damascène, Umushinjacyaha ku rwego rw’Igihugu. [9] Hakurikijwe ibikubiye mu myanzuro y’ababuranyi n’imiburanire, ibibazo bizasuzumwa ni ukumenya niba Urukiko Rukuru, Urugereko ruburanisha ibyaha mpuzamahanga n’ibyaha byambuka imbibi rwaramujije Mashimango David alias Majaliwa icyaha aregwa, rushingiye ku bimenyetso bitizewe birimo imvugo ze zo mu nzego z’iperereza yakoreshejwe mu rurimi atumva no ku mvugo z’abatangabuhamya bamushinja, z’ibinyoma bamwe muri bo bavuga ko babwiwe cyangwa bumvise. II. ISESENGURA RY’IBIBAZO BIGIZE URUBANZA

1 “Ujurira aba asabwa kugaragaza icyo anenga urubanza ajuririra, akabitangira n’ibimenyetso kugira ngo bikosorwe”.

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- a. Kumenya niba Urukiko Rukuru rwarakoze amakosa yo guhamya MASHIMANGO David alias Majaliwa icyaha rushingiye ku nyandiko mvugo zamwitiriwe zo mu nzego z’iperereza. [10] Mashimango David alias Majaliwa afashijwe n’umwunganizi we, Me Ruturwa Rumande Esron wamusemuriye mu Rukiko, avuga ko anenga Urukiko Rukuru, Urugereko ruburanisha ibyaha mpuzamahanga n’ibyaha byambuka imbibi kuba rwaramujije icyaha cyo kuba mu mutwe w’iterabwoba wa FDLR, rushingiye ku mvugo ze zo mu Bugenzacyaha kandi yarabajijwe mu rurimi rw’ikinyarwanda atavuga atanumva, izo mvugo akaba atazemera kuko banditse ibyo bishakiye bavuga ko yemeye icyaha, nyamara ataribwo kuko waba uwo mutwe wa FDLR cyangwa umutwe wa Mai-Mai yose ntayo yigeze abamo, ko ari umukongomani ukora akazi k’ubukanishi, akaba yarafashwe yaje mu Rwanda gusura nyina wabo. Avuga kandi ko abazwa mu Bushinjacyaha nabwo bamubajije amagambo abiri gusa, babonye atumva ibyo abazwa bagendera kubwo Ubugenzacyaha bwamwandikiye atavuze, ko ahubwo aburana urubanza ku ifungwa n’ifungurwa ry’agateganyo aribwo yabashije kumva

no kumenya ibyo aregwa kuko yumvikanaga n'Umucamanza wamuburanishije wamubwiraga mu rurimi rw'igiswahili, ndetse aburana urubanza mu mizi, Urukiko rumushakira umusemuzi, ashobora kuburana, ariko ntirwumva ibisobanuro bye kandi yararugaragarizaga ko nta bimenyetso bifatika bimuhamya icyaha ashinjwa, uretse imvugo zo mu Bugenzacyaha kandi atazemera, nyamara mu gace ka cumi n'icyenda (19) k'urubanza rubirengaho rwemeza ko kuba atumva ikinyarwanda ari ibyo yigira kandi ubwarwo rwaramushakije umusemuzi. [11] Ubushinjacyaha buvuga ko Mashimango David alias Majaliwa agitangira kubazwa mu Bugenzacyaha yavuze ko ari Umunyarwanda uvuka ku babyeyi ba banyarwanda ariko akaba yaragiye muri Congo ari mutoya, akajya agaruka mu Rwanda aje mu bibazo by'imirimu ye yakodesheje abantu; ko icyo gihe abazwa, uretse kuba yarabajijwe kuri FDLR, yanasobanuye uburyo yashakanye n'Umukongomanikazi, avuga umubare w'abana babyaranye n'andi makuru menshi amureba ku giti cye, Ubugenzacyaha butashoboraga kumenya atariwe ubyivugiyeye. Buvuga kandi ko yanasobanuye uko yagiye muri Mai-Mai nyuma ayivamo ajya muri FDLR, agaragaza akazi yakoraga muri uwo mutwe ariwe ushinze kujya gushakira abarwanyi bawo ibibatunga Buvuga ariko ko adahakana ibyo yavugiyeye mu Rukiko rw'Ibanze rwa Kamembe, aburana ku ifungwa n'ifungurwa ry'agateganyo kandi bigaragara ko yaburanye mu Kinyarwanda ari wenyine atunganiwe, atanga ibisobanuro birambuye kubyo aregwa, ibyo byose rero bikaba biragaragaza ko ibyo avuga ubu, ko yabazwaga ibyo atumvaga, ari ukubeshya, ko ibyanditswe mu nyandikomvugo z'ibazwa mu nzego z'iperereza ari ukuri kuko nta n'inyungu zumvikana abamubazaga bari bafite zo kumuhimbira ibyo atavuze, ko ndetse adasobanura indi mpamvu yaba yaratumye afatwa n'inzego zibishinzwe, uretse kuba zari zimufiteho amakuru arebana n'icyaha aregwa. UKO URUKIKO RUBIBONA [12] Impaka kuri icyi kibazo zishingiye ku kumenya niba Urukiko Rukuru rwarakoze amakosa yo gushingira ku mvugo za Mashimango David alias Majaliwa zo mu Bugenzacyaha nk'ikimenyetso kimuhamya icyaha kandi atazemera, ibyanditswemo akaba atariwe wabivuze kuko atavuga kandi atumva ururimi rw'ikinyarwanda yabajijwemo. [13] Ingingo ya 29, igika cya mbere, agace ka (a), y'Itegeko Nshinga rya Repubulika y'u Rwanda yo ku wa 4/8/2023 iteganya ko "Buri muntu afite uburenganzira ku butabera buboneye, burimo uburenganzira bwo kumenyeshwa imiterere n'impamvu z'icyaha akurikiranyweho, kwiregura no kunganirwa". [14] Ingingo ya 14, igika cya gatatu, agace ka a) y'Amasezerano mpuzamahanga yerekeye uburenganzira mu by'imbenezamubano no mu bya politike, yemejwe n'Itegeko-Teka n° 08/75 ryo ku wa 12/2/1975, iteganya ko "Umuntu wese uregwa icyaha giteganywa n'amategeko ahana yemerewe ku buryo bungana n'ubw'abandi nibura uburenganzira bwo kumenyashwa vuba kandi ku buryo burambuye, mu rurimi yumva imiterere yumva imiterere n'impamvu by'icyaha aregwa".

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- [15] Mu gace ka cumi n'icyenda (19) k'urubanza rujuririrwa, Urukiko Rukuru rwagaragaje ko kuba mu iburanisha ry'urubanza mu mizi Mashimango David alias Majaliwa yarahakanye imvugo ze zo mu Bugenzacyaha no mu Bushinjacyaha yitwaje ko ibikubiye muri izo nyandikomvugo yakorewe mu iperereza bidahuye n'ukuri kubera ko abazwa yari afite

ikibazo cyo kutumva no kutavuga neza ikinyarwanda, nta shingiro bifite, kuko harebwe uburyo busobanutse yagiye asubiza ibibazo yabajijwe mu iperereza no mu rubanza ku ifunga n'ifungurwa by'agateganyo, bigaragara ko nta kibazo cyo kutumva no kutavuga neza ururimi rw'ikinyarwanda yari afite ku buryo byari gutuma atumvikana n'abamubaza kugeza aho bandika ibyo atavuze. [16] Mashimango David alias Majaliwa abazwa mu Bugenzacyaha ku wa 1/9/2023 yavuze ko yemera ko yabaye mu mutwe wa FDLR ko abisabira imbabazi, asobanura ko yavukiye mu Rwanda ku babyeyi bombi b'abanyarwanda, batuye mu Karere ka Rusizi aza kuhava afite imyaka icumi (10), ajya muri Congo atwawe na nyirasenge Mathilde, mu mwaka wa 2001 umutwe wa Mai-Mai ubafata ku ngufu we n'abandi basore ubakuye Uvira aho babaga, babajyana mu gisirikare cyabo, ajyamo atazi ko hari indi mitwe bakorana, aza gushiduka ageze muri FDLR, ayibamo kugeza mu mwaka wa 2015 ari mu gikundi kijya kubibira inka zo kurya mu biturage bitandukanye. Yavuze ko n'ubwo yabaga muri FDLR ariko bari bavanze na Mai-Mai ku buryo n'abandi bashya bazaga hari igihe babaga bazi ko baje muri Mai-Mai ariko bakisanga bakorana na FDLR, ko ibirindiro bimwe bya FDLR byabaga ahitwa i Gituntu, i Masekezi n'i Makobora hose mu misozi ya Uvira, kandi ko we atigeze aza mu bitero byagabwe mu Rwanda kuko yari "kadogo" afite ipeti rya Caporal, icyo yari ashinzwe akaba ari ukubashakira ibyo kurya gusa, ko ibijyanye n'imipangu y'intambara atabimenyaga, akaba yaratangiye kuza mu Rwanda yaramaze kuva muri FDLR mu mwaka wa 2017, azanywe no gusura shangazi we Mathilde Jeanne na mwishywa we Soleil uba i Kigali, kandi akaza anyuze ku mupaka akoresheje jeton, akongera agasubira muri Congo. Yavuze kandi ko asaba ko bishobotse yajyanwa Mutobo nk'abandi agahugurwa, agasubizwa mu buzima busanzwe, ndetse akajya gucyura umugore we n'abana bagatangira ubuzima nk'abandi banyarwanda. [17] Ku wa 4/9/2023, Mashimango David alias Majaliwa abazwa mu Bushinjacyaha yavuze ko yemera ko aba mu mutwe wa FDLR kandi ko akorana nawo, ko yayinjiyemo mu mwaka wa 2011 afite imyaka cumi n'umunani (18), afite ipeti rya Corporal, akaba yari yarigishijwe kurashisha imbunda ya Kalashnikov, aba muri paratuni (section) y'uwitwa Abdou Bikoba, ko ariko we nta operation n'imwe yigeze azamo mu Rwanda, ahubwo basigaraga barinze defence, ubundi akajya kubashakira ibyo kurya muri Uvira, akaba yaratangiye kuza mu Rwanda muri 2017 aje gusura nyirasenge, akinjira akoresheje ibyangombwa by'aba Kongomani indangamuntu cyangwa ikarita ya CPGL. Yavuze ko umuryango we ugizwe n'umugore we n'abana umunani (8) baba muri Congo muri groupement ya Uvira, asoza asaba imbabazi no kurekurwa agasubira kuzana uwo muryango we mu Rwanda. Yavuze kandi ko ariwe winjije Tuyishime na Kayiranga mu mutwe w'iterabwoba wa FDLR. [18] Ku wa 21/9/2023, Mashimango David alias Majaliwa aburana ku ifunga n'ifungurwa ry'agateganyo mu Rukiko rw'Ibanze rwa Kamembe yavuze ko yemera icyaha cyo kuba muri FDLR ariko ko atari azi ko ari umutwe w'iterabwoba, ko yayimazemo imyaka ine (4) kuva mu mwaka wa 2011 kugera mu mwaka wa 2015, ko we n'abandi bahungu bafashwe na Mai-Mai barabatwara, nibwo yinjiye muri FDLR, aza gufatirwa mu Rwanda i Mururu kuko ariho iwabo, akaba yari aje kureba aho yatishije imirima ye, asaba urwo Rukiko kutamufunga by'agateganyo kubera ko atatoroka, ko imitungo ye yose iri mu Rwanda, ndetse n'umugore we n'abana bakaba baramaze kuhagera. [19] Mashimango David alias Majaliwa aburana urubanza mu mizi, yavuze ko yumva ikinyarwanda ariko kukivuga

atabishora. Yaburanye ahakana icyaha aregwaasobanura ko yavuye mu Rwanda akiri umwana muto w'imyaka ibiri gusa, ko yagarutse mu Rwanda inshuro eshatu (3), ku nshuro ya mbere hari mu mwaka wa 2022 aje gushyingura se, ubwa kabiri aza ahamagawe na nyirasenge wari ugiye kumwereka ahantu se yari afite isambu, na none mu mwaka wa 2022 n'uwa 2023, aza anyuze ku mupaka afite icyangombwa cya CEPGL. Yahakanye ko atigeze aba muri FDLR, ko ahubwo muri RDC yakoraga akazi k'ubushoferi n'ubukanishi. Anavuga ko ibyanditswe mu nyandikomvugo z'ibazwa ze zo mu Bugenzacyaha

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no mu Bushinjacyaha aho bavuga ko yemeye ko yari umusirikari muri FDLR ufite ipeti rya Corporal atari byo, ko byatewe no kuba yarabajijwe mu ururimi rw'ikinyarwanda atumva neza, ndetse ko anaburana ibirebana n'ifunga n'ifungurwa by'agateganyo, atemeye ibyo kuba mu mu mutwe wa FDLR. [20] Urukiko rw'Ubujurire rurasanga Mashimango David alias Majaliwa anenga Urukiko rwabanje kuba rwaramuhamije icyaha rushingiye ku mvugo ze zo mu nzego z'iperereza kandi atazemera kuko atariwe wavuze ibizikubiyemo biri mu rurimi rw'ikinyarwanda atumva, we akaba ari Umukongomani, nyamara yabwiye urwo Rukiko ko yumva ikinyarwanda, ariko afite ikibazo cyo kukivuga, ndetse mu Rukiko rw'Ibanze rwa Kamembe, aburana ku ifunga n'ifungurwa ry'agateganyo, yavugaga mu gishwahili, bagasemura mu Kinyarwanda. [21] Urukiko rw'Ubujurire rurasanga uretse n'ibyo, imbere y'uru Rukiko yaremeye ko ibyo yavuze aburana ku ifunga n'ifungurwa ry'agateganyo mu Rukiko rw'Ibanze rwa Kamembe ari ukuri, ko ariwe wabivuze kuko yumvikanaga neza mu rurimi n'Umucamanza wamuburanishije. [22] Urukiko rw'Ubujurire rurasanga rero hashingiwe ku byo yemeye mu Rukiko rwabanje, nk'uko byagaragajwe mu gace ka cumi n'umunani (18) k'uru rubanza, ibivugwa na Mashimango David alias Majaliwa ko Urukiko Rukuru, mu kumuhamya icyaha aregwa, rutari gushingira ku mvugo ze mu Bugenzacyaha no mu Bushinjacyaha kuko yitiriwe ibigaragara mu nyandiko-mvugo z'ibazwa rye, bitahabwa agaciro kuko n'ubwo bamusemuriye ibyavugwaga mu Rukiko, bigaragara nta shiti ko mu rwego rw'iperereza yumvaga neza ibyo akurikiranwaho n'ibyo yabazwaga, ibi bikaba binashimangirwa no kuba mu Bugenzacyaha yarasobanuye ko yavukiye mu Rwanda ku babyeyi bombi b'abanyarwanda, batuye mu Karere ka Rusizi, ndetse n'ubwo yavuze ko yagiye muri Congo afite imyaka icumi (10) y'amavuko, atwawe na nyirasenge Mathilde, ariko umutangabuhamya Munyaneza Samuel, Umukuru w'Umudugudu wa Kanunga, yasobanuye ko yamumenyeye aho mu Mudugudu nyuma ya jenocide yakorewe Abatutsi, ari mukuru, ari mu kigero cy'imyaka makumyabiri (20)2, nyuma aza kujya muri Congo, akajya aza mu Rwanda gusura abavandimwe be akongera agasubira muri Congo, ibi bikaba byumvikanisha ko yavuye mu Rwanda yumva kandi azi kuvuga neza ikinyarwanda. [23] Uretse n'ibyo, Urukiko rw'Ubujurire rurasanga yari asobanukiwe ibyo yabazwaga ku rwego rw'iperereza kuko ibigaragara mu nyandikomvugo ze birebana n'ubuzima bwe bwite n'ibyo yakoze muri Congo, Ubugenzacyaha n'Ubushinjacyaha batari kubimenya, atariwe ku giti cye ubibabwiye, ndetse ibyo yabajijwe ku rwego rw'iperereza bisa neza n'ibyo yaburanishijweho mu Nkiko, bivuze ko uburenganzira bwe bwo kwiregura bwubahirijwe kuko yamenyeshejwe mu buryo bwemewe n'amategako ibikorwa aregwa, asubiza kubyo yabazwaga mu rurimi yumva neza, bityo nta makosa Urukiko Rukuru,

Urugereko ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi rwakoze rumuhamya icyaha aregwa rushingiye ku mvugo ze mu nzego z'iperereza. [24] Hashingiwe ku bisobanuwe haruguru byose, iyi mpamvu y'ubujurire bwa Mashimango David alias Majaliwa nta shingiro ifite.

- b. Kumenya niba Urukiko Rukuru rwarakoze amakosa yo guhamya Mashimango David alias Majaliwa icyaha rushingiye ku mvugo z'abatangabuhamya z'ibinyoma zitizewe kandi bavuga ko bumvise cyangwa babwiwe [25] Mashimango David alias Majaliwa avuga ko Urukiko rwabanje rutagombaga gushingira ku mvugo z'abatangabuhamya barimo Shinga Amri Evariste wavuze ko yamwibwiriye ko ari umusirikare muri FDLR, nyuma akaza kwivuguruza akavuga ko ahubwo yabibwiwe na mwene wabo (wa Mashimango David alias Majaliwa), ariko atagaragaza amazina y'uwo wabimubwiye, ko impamvu atashatse kuvuga amazina ye ari uko azi neza ko amubeshyera; na Munyaneza Samuel wavuze gusa ko yabonye ubutumwa

2 Nk'uko byagaragajwe haruguru, Mashimango David alias Majaliwa yavutse mu mwaka wa 1976.

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kuri telefone bumubwira ko ari mu mutwe wa FDLR, nyamara atavuga uwo wamuhaye ubwo butumwa uwo ariwe, ko kandi atari kubeshya ko afite umuvandimwe witwa Ngendabanyika Pascal kuko ntawe agira, ko rero uretse kuba abo bantu bamushinja atabazi, ariko n'ibyo bamurega ni ibintu bishingiye kuri narumvise narabwiwe, kandi Urukiko rwagombye kugendera ku bimenyetso bifatika. [26] Me Ruturwa Rumande Esron avuga ko Ubushinjacyaha butagaragaje ubushake bwo gukora icyaha cyo kuba mu mutwe w'iterabwoba Mashimango David alias Majaliwa yagize, bukaba nta kimenyetso bwatanze uretse amagambo gusa n'imvugo atemera agaragariza inenge, bikaba binyuranyije n'ingingo ya 4 y'Itegeko n° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, nk'uko ryahinduwe kugeza ubu iteganya ko amategeko mpanabyaha afatwa uko ari, ko rero asaba uru Rukiko kuzita cyane ku bisobanuro bye no kuba yarasabye ko habazwa abatangabuhamya be ntibikorwe, rwabibona ukundi hagashingirwa ku ingingo ya 49 y'Itegeko no 68/2018 ryo ku wa 30/8/2018 ryavuzwe haruguru, igahuzwa no kuba ari ubwa mbere akurikiranywe n'inkiko kandi akaba asanzwe yitwara neza, maze arenganurwe. [27] Ubushinjacyaha buvuga ko ku birebana n'umutangabuhamya Munyaneza Samuel wavuze ko yumvaga bavuga ko Mashimango David alias Majaliwa yabaga muri Mai-Mai, nta nenge iri mu mvugo ze kuko nawe ubwe (Mashimango David alias Majaliwa) abazwa yavuze ko yabaye muri uwo mutwe biza kurangira agiye muri FDLR. Naho umutangabuhamya Shinga Amri Evariste we yavuze ko yamwibwiriye ko aba muri FDLR maze ahamagara mushiki we witwa Vumilia arabimubaza, nawe amubwira ko yumvise babivuga, ko uretse kuvuga gusa ko atemera ibyo abo batangabuhamya bavuze, adasobanura icyo anenga imvugo zabo, uretse n'ibyo kandi mu kumuhamya icyaha hanashingiwe ku mvugo ze ubwe yemera icyaha mu nzego zitandukanye aho yanasobanuye mu buryo burambuye kandi bwumvikana uko yagikoze, ko rero ari inshingano ye yo kugaragaza ibivuguruza ibyo Urukiko Rukuru rwashingiyeho. [28] Ku bijyanye n'umwanzuro w'umwunganizi we, Ubushinjacyaha buvuga ko yivuguruza kuko abanza gushimangira ibyo Mashimango David alias Majaliwa avuga ahakana icyaha, ariko agasaba ko hashingirwa ku ingingo ya 49 y'Itegeko riteganya ibyaha n'ibihano muri rusange, rukabihuza ni uko ari bwo bwa

mbere yakurikiranwa n'inzege z'ubutabera, ndetse no kuba afite imyitwarire myiza, maze akarenganurwa, ko rero bitumvikana uburyo yabibangikanya no kumusabira kugirwa umwere. UKO URUKIKO RUBIBONA [29] Impaka kuri ikibazo zishingiye ku kumenya niba imvugo z'abatangabuhamya Urukiko Rukuru rwashingiweho zitizewe, ari ibinyoma ku buryo zitagombaga gufatwa nk'ikimenyetso gihamya Mashimango David alias Majaliwa icyaha aregwa, kuko bavuga ibyo bumvise, ndetse babwiwe. [30] Ikibazo cyo kumenya icyizere imvugo z'abatangabuhamya zifitiwe ku buryo zashingirwaho nk'ikimenyetso gifatika mu rubanza, cyasuzumwe mu rubanza no RPAA 00050/2024/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 26/4/2024, haburana Ubushinjacyaha na SHEMA Ernest, narwo rushingiye ku rubanza no RPAA/Gén 00002/2018/CA4, rwaciwe n'urwo Rukiko ku wa 25/7/2023, rwasesenguriraga hamwe ingingo ya 62, iya 65 n'iya 119 z'Itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo nk'uko ryahinduwe kugeza ubu5, zumvikanisha ko ihame ku birebana

3 Reba urubanza no RPAA 00050/2024/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 26/4/2024, haburana Ubushinjacyaha na SHEMA Ernest 4 Reba urubanza no RPAA/Gén 00002/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 25/7/2023, haburana Ubushinjacyaha na TWAHIRWA François. 5 Reba ingingo ya 53 y'Itegeko n° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso, yasimbuye iya 62 yavuzwe haruguru, iteganya ko "Urwego rufite ububasha rusuzuma ukwemerwa cyangwa ukutemerwa n'agaciro by'ikimenyetso gishingiye ku buhamya". Iya 87 y'iryo tegeko yasimbuye iya 119 yavuzwe haruguru, iteganya ko "mu rubanza nshinjabyaha, ikimenyetso gishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe umwanya wo kubijyaho impaka".

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n'ubuhamya ari uko umutangabuhamya avuga mu Rukiko ibyo yiboneye cyangwa ibyo yumvise mu buryo butaziguye, ko Urukiko rwonyine rusuzuma mu bushishozi icyizere cyangwa ireme bukwiye guhabwa. [31] Nk'uko kandi byemejwe mu rubanza n° RPAA/Gén 00002/2018/CA rwaciwe n'uru Rukiko ku wa 25/7/2023, ihame ku birebana n'ubuhamya ni uko umutangabuhamya avuga mu Rukiko ibyo yiboneye cyangwa ibyo yumvise mu buryo butaziguye, ko Urukiko rwonyine rusuzuma mu bushishozi icyizere cyangwa ireme bukwiye guhabwa, ko harebwe ububasha bw'Urukiko bwo gusuzuma mu bwigenge no mu bushishozi bwarwo ibimenyetso byose rwashyikirijwe, harebwe na none intego y'amategeko y'ibimenyetso (objectif du droit de la preuve) yo gushakisha ukuri, Inkiko zemera ibimenyetso biziguye (preuve indirecte) cyangwa ibimenyetso bishingiye ku mabwire iyo byizewe (preuve par ouï-dire), bivuze ko ari ihame ko ubuhamya butaziguye cyangwa ubuhamya buziguye bwemewe iyo bwizewe. [32] Na none mu rubanza n° RPAA 00371/2020/CA rwaciwe n'uru Rukiko ku wa 15/12/2022, rwemeje ko Urukiko ari rwo rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikwiye kwemerwa cyangwa guhakanwa, rukita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze nta cyo bihimbira. [33] Mu gace ka cumi na karindwi (17) k'urubanza rujuririrwa, Urukiko rwabanje rwagaragaje ko ruhuje ibyo Mashimango David alias Majaliwa yemereye mu iperereza no mu iburana ku ifunga n'ifungurwa by'uko yagiye muri FDLR, uko yayibayemo kugeza ageze ku ipeti rya Caporal, ibyo yayikozemo byo kuba mubasirikare

bashinzwe kuyishakira ibiryo ahantu hatandukanye mu misozi ya Uvira muri RDC, ndetse n'uburyo yasobanuye ko mu mwaka wa 2015 yayivuyemo n'imvugo za Shinga Amri Evariste wavuze ko nyuma y'uko abwiwe na mwene wabo wa Mashimango David alias Majaliwa ko aba muri FDLR, nawe yabimwibariza akabyemera, n'ubwo mu iburana mu rubanza mu mizi yabihakanye, rushingiye ku biteganywa n'ingingo ya 106 y'Itegeko n° 027/2019 ryo ku wa 19/9/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha n'ya 119 y'Itegeko no 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo zivuga ibijyanye n'uko ibimenyetso bihabwa agaciro n'Urukiko no ku murongo watanze mu manza zaciwe n'Urukiko rw'Ikirenga n'Urukiko rw'Ubujurire ko mu gihe uregwa wemeye icyaha mu nzego z'iperereza yageze mu Rukiko akagihakana, Umucamanza ari we uha agaciro imvugo y'uwiyemereye mu rwego rw'iperereza, kabone n'yo yagera imbere y'Urukiko akayihakana⁹, rwemeza ko

6 Uru Rukiko rwabyemeje rusesengura ibyakumvikana harebwe ibivugwa mu ngingo ya 62, iya 65 n'ya 119 z'Itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo. Ingingo ya 62 y'iryo Tegeko iteganya ibikurikira: "Ubuhamya ni ibivugwa mu rukiko bivuzwe n'umuntu wabibonye cyangwa wabyumvise ubwe ku byerekeye ikiburanwa", iya 65 iteganya ibikurikira: "Urukiko ni rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa. Ntirwitsitsa ku mubare w'abatangabuhamya. Rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivugaga uko byagenze nta cyo bihimbira", naho iya 119 iteganya ko "Mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye. Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura ari byo kandi ko bishobora kwemerwa". 7 "Dans la tradition continentale, le procès est qualifié d'inquisitoire en raison de la participation active du juge dans la recherche et la reconstitution des preuves. Au stade d'instruction, le juge prépare son dossier et réunit les éléments de preuve pour le procès. Le juge du procès appréciera par la suite la recevabilité des éléments de preuve en se fondant sur la pertinence et sur la mesure dans laquelle ils sont révélateurs de vérité. Par la preuve libre, la loi se fixe à l'intime conviction du juge. Telle est la règle en matière pénale dans les pays inspirés du système romano-germanique. En revanche, dans le système de common law, le doute raisonnable, est associé au degré élevé de certitude que doit présenter la preuve pour soutenir une conclusion de culpabilité • Cette norme impose des règles aux juges dans l'évaluation de la preuve. De plus, dans le procès inquisitoire, le juge prend une part active dans l'évaluation finale des éléments de preuve. Le risque d'erreur est alors minime dans l'évaluation faite par un juge savant. Le juge a le contrôle de la procédure", Sonet Saint-Louis, l'élaboration des règles de preuve et de procédure au niveau des tribunaux pénaux internationaux dans le contexte de la diversité des systèmes juridiques nationaux: le cas du ouï-dire, P. 71, mémoire de maîtrise en droit international, in archipel.adm@uqam.ca, consulté le 26/6/2023. 8 Urukiko rw'Ubujurire rwabyemeje rugaragaza ibyo byumvikana hasuzumwe ibivugwa mu ngingo ya 65 y'Itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo. 9 Reba urubanza no RPA 0010/06/CS-RPA 0011/06/CS-RPA 0012/06/CS, haburana Ubushinjacyaha na Ntaganira na bagenzi be, rwaciwe n'Urukiko rw'Ikirenga ku wa 18/7/2008 n'urubanza no RPAA 00564/2021/CA

rw'Ubushinjacyaha na Uwizeyimana Jean Claude, rwaciwe n'Urukiko rw'Ikirenga ku wa 24/3/2023), ibika kuva ku cya 9 kugeza ku cya 10.

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ibyo byose ari ibimenyetso bidashidikanywaho bigaragaza ko Mashimango David alias Majaliwa yabaye mu mutwe wa FDLR. [34] Ku wa 1/9/2023, Ubugenzacyaha bwabajije umutangabuhamya SHINGA Amri Evariste, wavuze ko azi Mashimango David alias Majaliwa ko ariko bataziranye cyane, ko babobanye amaso ku maso inshuro ebyiri, ariko akaba yari asanzwe amwumva abantu bamuvuga ko yitwa Majaliwa, amumenya kubera ko hari bene wabo baziranye, mu mwaka wa 2022 aza no kumenya ko ari umusirikare wa FDLR, abibwiwe na mwene wabo atashatse kuvuga amazina, yumvise ko ari umusirikare muri uwo mutwe kandi akaba akunda kuza mu Rwanda bimutera amakenga, babonanye amubaza icyo akora, undi amubwira ko aba muri FDLR ko ariko akunda kuza mu Rwanda aje gusura bene wabo, nibwo yahise abimenyesha inzego z'umutekano kugira ngo zigenzure niba nta gikorwa kibi kiba kimugenza kuko nko mu kwezi kumwe yazaga mu Rwanda inshuro zirenga eshatu, yavuze kandi ko nyuma yo kumenya ayo makuru yanahamagaye mushiki wa Mashimango David alias Majaliwa witwa Vumiliya uba i Kigali ku Gisozi ukoresha no ya telefone 0723 396 158, amubaza amakuru y'uko yumvise ko uwo musaza we ari umusirikare muri Congo, nawe amubwira ko yabyumvise. [35] Ku wa 30/9/2023, Ubugenzacyaha bwabajije umutangabuhamya Munyaneza Samuel akaba n'Umukuru w'Umudugudu, avuga ko azi Mashimango David alias Majaliwa kuko avuka mu Mudugudu wa Gipfura, akaba anafite bene wabo mu Mudugudu wa Kanunga ayobora, ko nyuma ya jenocide yakorewe Abatutsi nyuma y'uko bahungutse bavuye i Kigali baje gutura muri uwo Mudugudu wa Kanunga ahasanga Mashimango David alias Majaliwa ariko we ari mukuru, ari mu kigero cy'imyaka makumyabiri (20), nyuma aza kujya muri Congo, akajya aza mu Rwanda gusura abavandimwe be akongera agasubira muri Congo, akaba yarigeze kumva umuvandimwe we witwa Ngendabanyika Pascal avuga ko Mashimango David alias Majaliwa ari umusirikare muri Congo muri Mai-Mai atari muri FDLR, akaba yarakundaga kuza mu Rwanda buri mezi atatu ariko mu mezi abiri yari ashize akabayarajemo inshuro ebyiri ajya n'i Kigali gusura umugabo wa mubyara we witwa Shingamategeko Evariste, uyu akaba ari nawe waje kumwandikira message kuri telefone, amubwira ko aho mu Mudugudu we harimo umuntu ukorana na FDLR ariko ntiyamubwira uwo ariwe, nyuma yongera kumuhamagara amubwira ko uwo muntu yafashwe n'abashinzwe umutekano, abajije aza kumva ko ari Mashimango David alias Majaliwa, ko ariko nyuma yaje kumenya ko uwo Evariste hari amakimbirane yagiranye na Mariam nyina wabo wa Mashimango David alias Majaliwa, ikaba ariyo mpamvu yaba yaratumye amutangaho ayo makuru ngo bamufunge. [36] Urukiko rw'Ubujurire rurasanga Mashimango David alias Majaliwa anenga Urukiko rwabanje avuga ko rutagombaga gushingira ku mvugo z'abatangabuhamya Shinga Amri Evariste na Munyaneza Samuel kuko imvugo zabo zitizewe, bavuga ibinyoma bamuhimbiye kandi bavuga ko bumvise bakanavuga ko babwiwe, ariko ibyo avuga nta gaciro byahabwa kuko nyuma yo gusuzuma mu bushishozi ibimenyetso byose byagaragajwe mu rubanza, rwasanze imvugo z'abo batangabuhamya zishimangirwa n'ibyo ubwe yemeye mu nzego z'iperereza. [37] Hashingiwe ku bivugwa mu gace kabanziriza aka, Urukiko rw'Ubujurire

rurasanga nk'uko Urukiko rwabanje rwabibonye, imvugo z'abo batangabuhamya zikwiye kwizerwa kuko zuzuzanya n'ibyo uregwa ubwe yagiye yivugira, ndetse zose hamwe zigaragaza mu buryo budashidakanywaho ko agomba kuryozwa ibikorwa ashinjwa, bityo rero nta kosa rwakoze ruzishingiraho rwemeza ko yakoze icyaha aregwa, iyi ngingo y'ubujurire bwa Mashimango David alias Majaliwa ikaba nta shingiro ifite. [38] Kubera izo mpamvu zose, Urukiko rw'Ubujurire rurasanga ubujurire bwatanzwe na Mashimango David alias Majaliwa, nta shingiro bufite. III. ICYEMEZO CY'URUKIKO [39] Rwemeje ko ubujurire bwatanzwe na Mashimango David alias Majaliwa nta shingiro bufite;

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[40] Rwemeje ko nta gihindutse ku rubanza no RP 00008/2023/HC/HCCIC rwaciwe n'Urukiko Rukuru, Urugereko ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi ku wa 18/4/2024; [41] Rwemeje ko igihano cy'igifungo cy'imyaka umunani (8) Mashimango David alias Majaliwa yahanishijwe, kigumyeho; [42] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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