

RWANDA / JUDGMENT

UBUSHINJACYAHA vs MPONGEMPITE

RP 00001/2024/SC

COURT

Supreme Court

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UBUSHINJACYAHA vs MPONGEMPITE

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Text

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UBUSHINJACYAHA vs MPONGEMPITE [Rwanda URUKIKO RW'IKIRENGA – RP 00001/2024/SC (Cyanzayire, P.J., Kalihangabo na Muhumuza J.) 30 Nzeli 2025] Amategeko yerekeye ububasha bw'Inkiko – Kuvuguruzanya kw'imanza – haba ukuvuguruzanya kw'imanza iyo hari ibyemezo bitandukanye byafashwe n'inkiko (mu manza) bitagishoboye kujuririrwa, kandi bikaba bidashobora kurangizwa icyarimwe Incamake y'ikibazo: Uru rubanza rwatangiye Mpongempite aregera Urukiko rw'Ibanze rwa Ruhango asaba gukemura impaka avuga ko ziri hagati y'imanza gacaca ebyiri zaciwe n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare, zombi zikamuhamya icyaha kimwe, ariko rumwe rukamukatira igifungo cy'imyaka 15, naho urundi rukamukatira igifungo cy'imyaka 30. Avuga ko yarezwe ibyaha bya Jenocide n'ubusahuzi mu rukiko Gacaca, Ubujurire bw'umurenge wa Kareba bumuhanisha igifungo cy'imyaka cumi n'itanu (15) ndetse abamurega ngo basubirishijemo urubanza basubirishijemo urubanza, Inteko y'Urukiko rwa Nyabitare, nayo ikagumishaho igifungo cy'imyaka 15. Avuga ko nyuma yasabye kurekurwa, maze ku wa 03/05/2010 Ubuyobozi bw'igororero rya Muhanga bumuha icyemezo kimufungura nk'umuntu urangije igihano. Mpongempite avuga ko mu 2016 yongeye gufatwa agafungwa, Ubushinjacyaha bukamuregera Urukiko rw'Ibanze rwa Ruhango busaba kwandukura urubanza rwaciwe

n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare, kuko yatashye atarangije igihano rwamukatiye. mu gihe Urukiko rwari rutarafata icyemezo, Ubushinjacyaha bwagaragaje urubanza rwoherejwe na CNLG rwaciwe n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare ku wa 17/08/2009, rumukatira igifungo cy'imyaka 30. Urukiko mu rubanza RDP00029/2027/TB/RHA rwemeje ko nta mpamvu zo kongera kwandukura urubanza kandi ruhari, rutegeka Mpongempite kujya kurangiza igihano cyasigaye. Mpongempite Yajuririye icyo cyemezo mu Rukiko Rwisumbuye rwa Muhanga, narwo mu rubanza RDPA00077/2017/TGI/MHG rwemeza ko icyemezo cyajuririwe kidahindutse. Mpongempite Emmanuel yasubirishijemo urwo rubanza ingingo nshya, Urukiko rwemeza ko ikirego cye kitakiriwe. Mpongempite yongeye kuregera Urukiko rw'Ibanze rwa Ruhango, asaba gukemura impaka ziri hagati y'imanza ebyiri zaciwe n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare, rugafata ebyemezo bibiri birimo icyo gufungwa imyaka 15 n'icyo gufungwa imyaka 30, ku cyaha kimwe cyo kugira ze uruhare mu bitero byishe Nyiramagumeri na Nyirabuduweri, n'ibyasahuye inka. Urukiko mu rubanza RP00462/2024/TB/RHA rwemeje ko nta bubasha rufite bwo gukemura impaka ziri hagati y'imanza zaciwe n'Urukiko Gacaca rwa Nyabitare; rwemeza ko ikirego cye cyohererezwa Urukiko rw'Ikirenga kuko ari rwo rufite ububasha bwo kuburanisha bene izo manza. Mpongempite Emmanuel yasobanuye mu Rukiko r'Ikirenga ko aregera ivuguruzanya ry'ibyemezo 2 byafashwe n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare ku wa 17/08/2009, mu cyemezo kimwe akaba yarakatiwe imyaka 15 y'igifungo, mu kindi cyemezo agakatirwa igifungo cy'imyaka 30. Ubushinjacyaha buvuga ko nta byemezo bibiri by'Inkiko Gacaca bivuguruzanya, kuko hari urubanza rw'Urukiko Gacaca rw'Ubujurire rwa Kareba rwaciwe ku wa 19/6/2007 rukamukatira igifungo cy'imyaka 15; hakaba n'urwaciwe ku wa 17/8/2009 n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare rukamukatira igifungo cy'imyaka 30, ari nawo mwanzuro wa nyuma ugomba kurangizwa. Urukiko mu rubanza RP00001/2024/SC rwemeje ko ikirego cya Mpongempite nta shingiro gifite kuko nta manza 2 zaciwe n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare ku wa 17/08/2009 zivuguruzanya. Incamacye y'icyemezo: haba ukuvuguruzanya kw'imanza iyo hari ibyemezo bitandukanye byafashwe n'inkiko (mu manza) bitagishoboye kujuririrwa, kandi bikaba bidashobora kurangizwa icyarimwe. Bityo,

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iyo hari ibyemezo bibiri bitandukanye ku bihano byahawe umuburanyi n'inkiko zitandukanye mu bihe bitandukanye, ntabwo umuburanyi yavugaga ko bivuguruzanya. Ikirego cy'imanza zivuruzanya nta shingiro gifite. Nta Mategeko yashingiweho. Imanza zifashishijwe: Urubanza RC00001/2023/SC, haburana Rutayisire Jean de Dieu na Mukankurikiyimana Béatrice n'abandi rwaciwe n'Urukiko rw'Ikirenga ku wa 22/12/2023, Urubanza. I. IMITERERE Y'URUBANZA [1] Mpongempite Emmanuel yatanze ikirego mu Rukiko rw'Ibanze rwa Ruhango asaba gukemura impaka avuga ko ziri hagati y'imanza gacaca ebyiri zaciwe n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare ku wa 17/08/2009, zombi zikamuhamya icyaha kimwe, ariko rumwe rukamukatira igifungo cy'imyaka 15, naho urundi rukamukatira igifungo cy'imyaka 30. [2] Asobanura ko yafashwe ku wa 17/12/1995, nyuma ya Jenocide yakorewe Abatutsi mu 1994, akurikiranyweho kugira uruhare rwo kujya mu bitero byishe Nyiramagumeri na Nyirabuduweri, kimwe no kujya mu bitero byasahuye inka. Yavuze ko wa 09/08/2006, Urukiko Gacaca rwa Kareba rwamuhamije

icyaha, rukamuhanisha igifungo cy'imyaka 30. [3] Avuga ko yajuririye icyo cyemezo mu Rukiko Gacaca rw'Ubujurire rwa Kareba, rukamuhanisha igifungo cy'imyaka 15 ku wa 19/06/2007. Avuga kandi ko abamurega basubirishijemo urubanza, hakaza Inteko y'Urukiko iturutse mu Murenge wa Nyabitare, igafata icyemezo ku wa 17/08/2009, nayo ikagumishaho igifungo cy'imyaka 15, icyemezo kigashyikirizwa Gereza ya Muhanga. Asobanura ko nyuma yasabye kurekurwa, kuko agereranyije igihe yinjiriye n'igihe yari amaze afunzwe yabonaga imyaka 15 irangiye, maze ku wa 03/05/2010 Ubuyobozi bw'igororero rya Muhanga bumuha icyemezo kimufungura. [4] Mpongempite Emmanuel avuga ko mu 2016 yongeye gufatwa agafungwa, Ubushinjacyaha bukamuregera Urukiko rw'Ibanze rwa Ruhango busaba kwandukura urubanza rwaciwe n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare, kuko yatashye atarangije igihano rwamukatiye. Yongeraho ko mu gihe Urukiko rwari rutarafata icyemezo, Ubushinjacyaha bwagaragaje urubanza rwoherejwe na CNLG rwaciwe n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare ku wa 17/08/2009, rwamukatiye igifungo cy'imyaka 30. [5] Mu rubanza RDP00029/2027/TB/RHA rwaciwe ku wa 16/06/2017, Urukiko rw'Ibanze rwa Ruhango rwemeje ko nta mpamvu zo kongera kwandukura urubanza kandi rwaramaze kuboneka, rutegeka Mpongempite Emmanuel kujya kurangiza igihano cyasigaye. Yajuririye icyo cyemezo mu Rukiko Rwisumbuye rwa Muhanga, mu rubanza RDPA00077/2017/TGI/MHG rwemeza ko icyemezo cyajuririwe kidahindutse. Mpongempite Emmanuel yasubirishijemo urwo rubanza ingingo nshya, Urukiko rwemeza ko ikirego cye kitakiriwe kuko yiyambaje inzira zitari zo. [6] Mpongempite Emmanuel yaregeye Urukiko rw'Ibanze rwa Ruhango, asaba gukemura impaka ziri hagati y'imanza ebyiri zaciwe n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare ku wa 17/08/2009, rugafata

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ebyemezo bibiri birimo icyo gufungwa imyaka 15 n'icyo gufungwa imyaka 30, ku cyaha kimwe cyo kuba yaragize uruhare rwo kujya mu bitero byishe Nyiramagumeri na Nyirabuduweri, n'ibyasahuye inka. [7] Mu rubanza RP00462/2024/TB/RHA rwaciwe ku wa 18/09/2024, Urukiko rw'Ibanze rwa Ruhango rwemeje ko nta bubasha rufite bwo gukemura impaka ziri hagati y'imanza zaciwe n'Urukiko Gacaca rwa Nyabitare ku wa 17/08/2009 ; rwemeza ko ikirego cye cyoherezwa Urukiko rw'Ikirenga kuko ari rwo rufite ububasha bwo kuburanisha bene izo manza. [8] Ikirego cya Mpongempite Emmanuel cyanditswe mu bitabo by'ibirego kuri RP00001/2024/SC, urubanza ruburanishwa mu ruhame ku wa 10/06/2025, Ubushinjacyaha buhagarariwe n'Umushinjacyaha ku rwego rw'Igihugu Mukunzi Faustin, naho Mpongempite Emmanuel yunganiwe na Me Munini Patrick. [9] Mpongempite Emmanuel yasobanuye ko aregera ivuguruzanya ry'ibyemezo 2 byafashwe n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare ku wa 17/08/2009, mu cyemezo kimwe akaba yarakatiwe imyaka 15 y'igifungo, mu kindi cyemezo agakatirwa igifungo cy'imyaka 30. Ubushinjacyaha buvuga ko nta byemezo bibiri by'Inkiko Gacaca bivuguruzanya, kuko hari urubanza rw'Urukiko Gacaca rw'Ubujurire rwa Kareba rwaciwe ku wa 19/6/2007 rukamukatira igifungo cy'imyaka 15 ; hakaba n'urwaciwe ku wa 17/8/2009 n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare rukamukatira igifungo cy' imyaka 30, ari nawo mwanzuro wa nyuma ugomba kurangizwa. Urubanza ryarapfundikiwe, ababuranyi bamenyeshwa ko ruzasomwa ku wa 31/07/2025, ariko ntirwasomwa kubera gahunda

y'amahugurwa, rwimurirwa ku wa 26/09/2025 nabwo ntirwasomwa kubera isiganwa ry'amagare, rushyirwa ku wa 30/09/2025. [10] Ikibazo cyasuzumwe mu rubanza ni ukumenya niba hari ivuguruzanya hagati y'imanza 2 zaciwe n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare ku wa 17/08/2009. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO Kumenya niba hari ivuguruzanya hagati y'imanza 2 zaciwe n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare ku wa 17/08/2009 [11] Mpongempite Emmanuel n'umwunganira bavuga ko hari ivuguruzanya hagati y'ibyemezo bibiri bimufunga byafashwe n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare ku wa 17/08/2009. Asobanura ko mu cyemezo kimwe yakatiwe igifungo cy'imyaka 15, mu kindi cyemezo agakatirwa igifungo cy'imyaka

30. Avuga ko urubanza rumukatira igifungo cy'imyaka 30 ataruburanye, ko rwagaragajwe na CNLG ku wa 09/05/2017, ubwo basubizaga ibaruwa y'Ubugenzacyaha ifite No 0757/2017/CNLG/SE. Avuga kandi ko urwo rubanza rufite inenge nyinshi, zirimo kuba rwaraciwe n'inyangamugayo 7, harimo 5 zigaragara mu rubanza rwamukatiye igifungo cy'imyaka 15, ariko hakaba harasinye bake muri bo. Asaba ko urubanza rumukatira igifungo cy'imyaka 30 rwavanwaho, hakemezwa ko yarangije igihano cy'igifungo cy'imyaka 15. [12] Mpongembite Emmanuel n'umwunganira basobanura ko urubanza rumukatira igifungo cy'imyaka 30 rwavuye muri CNLG rufite inenge nyinshi, zirimo izikurikira: Ruhuje umunsi, itariki, n'amazina y'inyangamugayo n'urubanza rwaciwe n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare ku wa 17/08/2009 rukamukatira imyaka 15, hasubirwamo urubanza rwaciwe n'Urukiko Gacaca rw'Ubujurire rwa Kareba; Nta mikono y'abagize inteko bose iriho, nta na kashe igaragaraho; Ntihagaragaraho Umurenge wa Nyabitare, ahubwo hagaragaraho Umurenge wa Ntongwe kandi imanza zarabaga hakurikijwe imirenge yariho mbere, igihe Jenocide yakorewe Abatutsi yakorwaga Umurenge wa Ntongwe ukaba warigengaga n'uwa Nyabitare ukigenga;

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Ntiyigeze aburanira mu Murenge wa Ntongwe, nta cyaha ahashinjwa ahubwo ashinjwa icyo mu Murenge wa Kareba, n'abo aregwa niho bari batuye; Ntihashobora kubaho imanza ebyiri umunsi umwe, ahantu hanyuranye, ku bacamanza bamwe, ku muntu umwe no ku cyaha kimwe. [13] Ku bijyanye n'ikibazo yabajijwe n'Urukiko cyo kugaragaza kopi y'urubanza rumukatira igifungo cy'imyaka 15 rwaciwe n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare, kuko kopi igaragara muri dosiye ari iy'urubanza rwaciwe n'Urukiko Gacaca rw'Ubujurire rwa Kareba, Mpongempite Emmanuel yahaye Urukiko icyemezo kirebana n'ifatwa n'ifungwa cyatanzwe n'Urukiko Gacaca rw'Ubujurire rwa Kareba, avuga ko ari cyo yabashije kubona akaba ari nacyo yahereyeho aregera ko habaye ivuguruzanya ry'imanza. [14] Mpongempite Emmanuel n'umwunganira basoba basaba Urukiko gushingira ku ngingo ya 7 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaye ibyaha n'ibihano muri rusange, iteganyako nta muntu ushobora guhanwa inshuro zirenze imwe ku cyaha kimwe, rukanashingira ku murongo rwatanze mu rubanza RC00001/2023/SC haburanagamo Rutayisire Jean de Dieu na Mukankurikiyimana Béatrice na bagenzi be, aho mu mu gika cya 27, Urukiko rwagaragaje ko : “ [...] iyo Urukiko rusanze hari ukuvuguruzanya hagati y'imanza rukuraho urwa kabiri hakagumaho urwa mbere rwabaye ndakuka...”; bityo rugatega

ko urubanza rw'Urukiko Gacaca rw'Ubujurire rwa Nyabitare rwamukatiye igifungo cy'imyaka 30 ruvuyeho. [15] Ubushinjacyaha buvuga ko bushingiye ku makuru yatanzwe na CNLG ku wa 9/5/2017, ndetse n'ayatanzwe na Minubumwe ku wa 13/03/2025, busanga nta byemezo bibiri by'Inkiko Gacaca bivuguruzanya, kuko ku rwego rwa mbere Mpongempite Emmanuel yari yakatiwe igifungo cy'imyaka 30, akajuririra Urukiko Gacaca rw'Ubujurire rwa Kareba rwaciye urubanza ku wa 19/6/2007, rukamukatira igifungo cy'imyaka 15. Buvuga ko urwo rubanza rwasubirishijwemo, Urukiko Gacaca rw'Ubujurire rwa Nyabitare rugaca urundi rubanza ku wa 17/8/2009, rukamukatira igifungo cy'imyaka 30, ari nawo mwanzuro wa nyuma w'Urukiko Gacaca ugomba kurangizwa. [16] Ubushinjacyaha busoza buvuga ko nta mbogamizi zihari mu kurangiza urubanza rwaciye bwa nyuma, kuko nta rundi bisa bivuguruzanya, ahubwo ko hari imanza ebyiri zitandukanye, zaciwe ku matariki atandukanye, ndetse zigacibwa n'inkiko zitandukanye; ku buryo urubanza rwaciye ku wa 17/8/2009 n'urukiko gacaca rw'ubujurire rwa nyabitare rwakuyeho urwaciye ku wa 19/6/2007 n'urukiko gacaca rw'ubujurire rwa kareba. UKO URUKIKO RUBIBONA [17] Impaka ziri muri uru rubanza, zishingiye ku kumenya niba hari imanza 2 zaciwe n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare ku wa 17/08/2009, zivuguruzanya ku birebana n'igihano urwo Rukiko rwahanishije Mpongempite Emmanuel, rumuhanira ibikorwa bimwe bigize icyaha cya Jenocide yakorewe Abatutsi yaregwaga, ari byo kujya mu bitero byishe Nyiramagumeri na Nyirabuduweri, kimwe no kujya mu bitero byasahuye inka. [18] Ibibazo nk'ibi birebana n'ivuguruzanya hagati y'imanza zaciwe ku bintu bimwe kandi ku baburanyi bamwe, byasuzumwe mu manza zinyuranye zaciwe n'uru Rukiko, urwatanze imirongo n'izindi zagendeyeho akaba ari urubanza RC00001/2023/SC rwaciye ku wa 22/12/2023, Rutayisire Jean de Dieu yaburanaga na Mukankurikiyimana Béatrice n'abandi. Muri urwo rubanza, hasuzumwaga ikibazo cy'ivuguruzanya hagati y'imanza ebyiri zaciwe ku rwego rwa nyuma, umwe mu mirongo yatanzwe n'Urukiko akaba ari uko haba ukuvuguruzanya kw'imanza iyo hari ibyemezo bitandukanye byafashwe n'inkiko (mu manza) bitagishoboye kujuririrwa, kandi bikaba bidashobora kurangizwa icyarimwe.

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[19] Ikibazo cyasuzumwe mu rubanza rumaze kuvugwa gisa n'icyo Mpongempite Emmanuel yaregeye, kuko avuga ko hari ivuguruzanya ry'imanza Gacaca ebyiri zaciwe ku rwego rwa nyuma n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare ku wa 17/08/2009, rumwe rukamukatira igifungo cy'imyaka 15, urundi rukamukatira igifungo cy'imyaka 30. [20] Mu nyandiko zigize dosiye yashyikirijwe Urukiko, hagaragaramo kopi y'urubanza rwaciye ku wa 17/08/2009 n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare mu Murenge wa Ntongwe, hasubirishwamo urubanza rwari rwaciye n'Urukiko Gacaca rw'Ubujurire rwa Kareba ku wa 19/06/2007 (rwari rwahanishije urega igifungo cy'imyaka 15), rukatira Mpongempite Emmanuel igifungo cy'imyaka 30. [21] Mu ibaruwa minisiteri y'ubumwe bw'abanyarwanda n'inshingano mboneragihugu (minubumwe) yandikiye umushinjacya mukuru, iyisubiza ku makuru yari yayisabye, havugwamo ko urubanza rwaciye ku wa 17/08/2009 n'urukiko gacaca rw'ubujurire rwa nyabitare/ntongwe, rugakatira Mpongempite emmanuel igifungo cy'imyaka 30, ari wo mwanzuro wa nyuma w'urukiko gacaca. ku mugereka w'ibaruwa ya

minubumwe, hashyizweho kopi y'urwo rubanza, hamwe na kopi y'urubanza rwaciwe ku wa 19/06/2007 n'urukiko gacaca rw'ubujurire rwa kareba ari narwo rwasubirishijwemo. [22] Urukiko rusanga, uretse kopi y'urubanza rwaciwe ku rwego rwa nyuma ku wa 17/08/2009 n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare, rugakatira Mpongempite Emmanuel igifungo cy'imyaka 30, nta yindi kopi iri muri dosiye igaragaza ko kuri iyi tariki, hari urundi rubanza rwaba rwaraciwe n'uru Rukiko Gacaca rukamukatira igifungo cy'imyaka 15. Mu gihe cy'iburanisha, Mpongempite Emmanuel yasabwe gushyikiriza Urukiko kopi y'urubanza avuga ko ari urw'Urukiko Gacaca rw'Ubujurire rwa Nyabitare rwamukatiye igifungo cy'imyaka 15, ariko icyo yagaragaje ni icyemezo cyo gufata no gufunga cyatanzwe n'Urukiko Gacaca rw'Ubujurire rwa Kareba. [23] Urukiko rusanga icyemezo cyo gufata no gufunga kitakwitiranywa n'urubanza, ku buryo Mpongempite Emmanuel yagishingiraho avuga ko hari ukuvuguruzanya hagati y'ianza. Nk'uko byasobanuwe haruguru, ivuguruzanya rishobora kuregerwa urukiko, ni iryagaragaye hagati y'ianza zaciwe ku rwego rwa nyuma, zitagishoboye kujuririrwa. Ntabwo rero hashobora kuregerwa ivuguruzanya hagati y'icyemezo cy'ifata n'ifunga n'urubanza rwaciwe n'Urukiko. [24] Ikindi kandi, bigaragara ko icyemezo cy'ifata n'ifunga Mpongempite Emmanuel aheraho avuga ko hari ivuguruzanya ry'ianza, cyatanzwe n'Urukiko Gacaca rw'Ubujurire rwa Kareba, hashyirwa mu bikorwa urubanza yari yaciriwe ku rwego rw'ubujurire rukamukatira igifungo cy'imyaka 15. Ntabwo icyo cyemezo cyatanzwe n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare, ahubwo abacyanditse bashyizeho itariki urubanza rw'Urukiko rumaze kuvugwa rwaciriweho yo ku wa 17/08/2009, aho gushyiraho itariki urubanza rw'Urukiko Gacaca rw'Ubujurire rwa Kareba rwaraciweho yo ku wa 19/06/2007. [25] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga nta manza 2 zaciwe n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare ku wa 17/08/2009 zivuguruzanya. III. ICYEMEZO CY'URUKIKO [26] Rwemeje ko ikirego cyatanzwe na Mpongempite Emmanuel gisaba gukemura ikibazo cy'ivuguruzanya ry'ibyemezo bibiri byafashwe n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare ku wa 17/08/2009, nta shingiro gifite; [27] Rwemeje ko nta manza 2 zaciwe n'Urukiko Gacaca rw'Ubujurire rwa Nyabitare ku wa 17/08/2009 zivuguruzanya.

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