

RWANDA / JUDGMENT

UBUSHUINJACYAHA v NZAMURAMBAHO na bagenzi be

RPA 0931/13/HC/KIG, RPA 0966/13/HC/KIG, RPA 0967/13/HC/KIG, RPA 0979/13/HC/KIG RPA 0985/13/HC/KIG

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UBUSHUINJACYAHA v NZAMURAMBAHO na bagenzi be

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Text

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UBUSHUINJACYAHA v NZAMURAMBAHO na bagenzi be. [Rwanda URUKIKO RUKURU – RPA 0931/13/HC/KIG, RPA 0966/13/HC/KIG, RPA 0967/13/HC/KIG, RPA 0979/13/HC/KIG RPA 0985/13/HC/KIG (Uwamariya, P.J.) 13 Kamena2014] Amategeko mpanabyaha – Gushorwa mu cyaha – Kugabanyirizwa igihano – Ntiyavuga ko yashowe mu cyaha nyamara yari azi neza umugambi wo kugikora. Amateko mpanabyaha – Ubwicanyi – Uruhare mu gukora icyaha. – Ntiyakwiregura avuga ko nta ruhare yagize mu gukora icyaha nyamara imodoka yatwaye abambuye bakanica nyakwigendera ari we wayikodesheje. Kuba kandi atarajyanye n’abicanyi ntibyamuvanaho icyaha kuko uwo mugambi yari awuzi. Byongeye kandi n’ubwo ubu bwicanyi butamuhama, n’ubwo atariko urukiko rubibona, ubu bujura ubwabwo buhanishwa igifungo cya burundu kuko burimo impamvu nkomeza cyaha igaragazwa no kuba bwarakozwe n’agatsiko k’abantu bamaze

kubijyamo inama. -. Itegeko ngenga no 01/2012/OL ryo kuwa 02/5/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 305. Amategeko mpanabayaha – Ubwicanyi – Kugabana amafaranga yacujwe uwishwe bigaragaza uruhare muri icyo cyaha ku wayagabanye. Amategeko mpanabyaha – Umugambi wo gukora icyaha – Ibimenyetso bimuhamya icyaha – Ntiyavuga ko atari mu mugambo wo gukora icyaha mu gihe hari

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ibimenyetso byinshi bimuhamya icyaha kandi abo bashinjwanywa hamwe ntibari kumuha ku byo bacuje nyakwigendera nta cyo baziranyeho. Incamake y'ikibazo: Urukiko Rwisumbuye rwa Gicumbi rwahamije Ntakirutimana, na Harerimana icyaha cy'ubwicanyi bugambiriwe, ubujura bukoreshye kiboko naho kuri ibyo byaha hiyongeraho no gushinyagurira umurambo kuri Nzamurambaho na Nyakagaragu. Bahanishijwe igifungo cya burundu cy'umwihariko, Ntakirutimana ahanishwa gufungwa burundu naho Harerimana ahanishwa gufungwa imyaka makumyabiri. Bose ntifishimiye icyemezo cy'urukiko maze bajuririra mu Rukiko Rukuru Harerimana avuga ko yahawe igihano kinini nyamara yaremeye icyaha ndetse agasobanura uburyo yagikoze, Ntakirutimana avuga ko Urukiko rwamuhaniye kwica kandi ntabyo yari yagambiriye, Nyakagaragu avuga ko yahaniwe icyaha atagizemo uruhare naho Nzamurambaho we avuga ko yahamijwe icyaha atakoze. Ubushinjacyaha busubiza kuri izi ngingo z'ubujurire, bwavuze ko Harerimana na Ntakirutimana bagize uruhare rukomeye mw'iyicwa rya Tinyinondi Dickson kuko Harerimana yatwaye amafaranga y'uwishwe kandi arabiceceka ntiyabimenyesha ubuyobozi naho iyo Ntakirutimana aza kuba atari azi uwo mugambi, ntaba yarakiriye amafaranga yari amaze kwamburwa uwari umaze kwicwa. Ku bijyanye na Nyakagaragu,

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Ubushinjacyaha bwavuze ko ariwe wagiye amurikira imodoka yari irimo umurambo bagiyeye kuwutwika. Bwongeyeho ko yagabanye ku mafaranga yari yambuwe nyakwigendera. Kubijyanye na Nzamurambaho buvuga ko ari we wagambaniye nyakwigendera yaratwaye dore ko no mu igabana ry'amafaranga yihaye menshi, bigaragaza ko umugambi wari wapanzwe na we. Incamake y'ikibazo: 1. Nubwo avuga ko yashowe mu cyaha, Urukiko rurasanga nawe yarakigizemo uruhare kuko umugambi wo kwica no kwiba yahagurutse awuzi. Kuvuga ko Ntakirutimana yamubwiye ko we atwara igikapu, iki gikapu ntaho yari yakibikije ku buryo yagombaga kugiterura hatabayeho ubugizi bwa nabi bukorere uwari nyiracyo ari nabwo bwabaye, kugeza aho bamwishe bakanamutwikira mu modoka ye.

2. Ntiyavuga ko nta ruhare yagize mu kwica nyakwigendera mu gihe yakodesheje imodoka yatwaye abishe bakanambura nyakwigendera. Kuvuga kandi ko urukiko rwamuhanira ubujura aho kumuhanira ubwicanyi, ntibyahabwa agaciro kuko uyu mugambi wo kwica yari awuzi. Bigaragazwa n'uko mu mvugo ze mu bugenzacyaha yavuze ko uwo mugambi yawubwiriye Nyacyonga na Ntakirutimana. Ibyo yireguza ko atajyanye n'abishe, kuba yari azi ko bagiyeye kwiba, gukodesha imodoka no kuba yemera ko yabakurikiye na moto acunga umutekano no kuba yaragabanye ku mafaranga bacuje nyakwigendera birahagije kumugira

umufatanyacyaha n'abamwishe. Kuba kandi muri ubu bujura barishe bakagerekaho gutwika nyakwigendera bikaba impamvu nkomezacyaha kuri we.

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3. Ntiyavuga ko atari mu mugambi wo gukora ibyaha igihe yagabanye amafaranga bambuye nyakwidendera.
4. Ntiyavuga ko nta mugambi yagiranye n'abicyanyi kuko hagaragara ibimenyetso byinshi bimuhamya icyaha harimo: kuba umwe mu baregwa amushinja icyaha, kuba amushinja ko ari we, afatanyije na mugenzi we, bamennye lisansi ku murambo wa nyakwigendera no ku modoka ye babitwika, kuba barageze mu nzira agahana ikimenyetso na Fiston bigaragaza ko hari icyo bari baziranyeho no kuba amushinja ko ari we watanze itegeko ro kwica nyakwigendera, kuba kandi yarafatanywe amwe mu mafaranga yacujwe nyakwigendera. Bivuze ko iyo aza kuba yaraguye mu gaco k'abambuzi nk'uko abivuga, ntabwo bari kumuha kuri ayo mafaranga ntacyo baziranyeho. Ubujurire nta shingiro bufite. Urubanza rwajuririwe rugumyeho. Amagarama aherereye ku isanduku ya leta. Amategeko yashingiweho: Itegeko ngenga no 01/2012/OL ryo kuwa 02/5/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 305. Nta manza zifashishijwe:

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Urubanza IMITERERE Y'URUBAZA. [1] Mu rubanza RP 0138/13/TGI/GIC rwaciwe n'urukiko Rwisumbuye rwa Gicumbi urukiko rwahamije Nzamurambaho, Ntakirutimana, Nyakagaragu, na Harerimana icyaha cy'ubwicanyi bugambiriwe, ubujura bukoresha kiboko, kuri Nzamurambaho na Nyakagaragu hiyongeraho icyaha cyo gushinyagurira umurambo.

Nzamurambaho

na

Nyakagaragu bahanishijwe igifungo cya burundu. cy'umwihariko, Ntakirutimana ahanishwa igifungo cya burundu, naho Harerimana ahanishwa igifungo cy'imyaka makumyabiri. [2] Abahamwe n'icyaha bese ntibishimiye imikirize y'urubanza barujuririra mu Rukiko Rukuru. Harerimana asobanura ko yajuriye kubera igihano kinini urukiko rwamuhaye kandi yaraburanye yemera icyaha agasobanura n'uburyo yagikoze, akaba asaba ko yagabanyirizwa ibihano. [3] Ntakirutimana avuga ko yajuririye kuba urukiko rwamuhamije icyaha cyo kwica kandi atari yagambiriye kwica, akaba yari yagambiriye kwiba nkuko yari yabivuganye na Nzamurambaho, Nyakagaragu na Fiston. Arasaba urukiko ko rwamuhanira icyaha cyo kwiba. [4] Nyakagaragu asobanura ko yajuririye kuba urukiko rwamuhamije icyaha atarakigizemo uruhare. Avuga ko yatwaye imodoka yakodeshejwe bamubwira

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ko agiye gutwara Fraude yagera mu nzira akaza kuyamburwa na Fiston akaba ariwe uyitwara yitwaje ko ngo we atamenyereye gutwara Fraude ariko nyuma baza kwica umuntu bamaze no kumwambura. Arasaba urukiko kurenganurwa. [5] Nzamurambaho we avuga ko yajuriye kubera ko urukiko Rwisumbuye rwamuhamije icyaha atakoze, akaba ari nta bugambanyi yigeze agira cyangwa ngo agirane umugambi na Ntakirutimana na Harerimana, abari bazi uwo mugambi akaba aribo bamwishe. [6] Ubushinjacyaha bwiregura buvuga ko nubwo Harerimana na Ntakirutina bahakana umugambi wo kwica, bwo bubona ko bagize uruhare mu iyicwa rya Tinyinondi Dickson kuko Harerimana yatwaye amafaranga y'uwishwe kandi nyuma arabiceceka ntiyabibwira ubuyobozi, ko na Ntakirutimana iyo aza kuba atazi uwo mugambi wo kwica aba atarakiriye ayo mafaranga yambuwe uwari umaze kwicwa. Kuri Nyakagaragu busobanura ko yagiranye imishyikirano ikomeye na Nzamurambaho babigeza kuri Ntakirutimana, akaba ari nawe wagiye amurikira imodoka yarimo umurambo wa nyakwigendera bagiye kuwutwika, ikindi akaba yaragabanye ku mafaranga bari bamaze kwambura uwishwe. Kuri Nzamurambaho, buvuga ko ariwe wagambaniye Dickson yari atwaye bakamwambura, bakanamwica ndetse bakagerekaho no kumushinyagurira bamutwikira mu modoka ye , kandi no mu kugabana amafaranga bari bamaze kumwiba akaba yarihayeho menshi, bigaragaza ko umugambi wari wapanzwe na we.

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Ikigomba gusuzumwa muri uru rubanza, nukumenya niba Harerimana Shaban yagabanyirizwa ibihano kuko yemera icyaha, kumenya niba Ntakirutimana François ari nta mugambi yari afite wo kwica Tinyinondi Dickson kandi niba yahanirwa gusa icyaha cy'ubujura bukoreshye kiboko, no kumenya niba hari ibimenyetso bifatika bihamya Nyakagaragu na Nzamurambaho icyaha bashinjwa. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO kumenya

niba

Harerimana

Shaban yagabanyirizwa ibihano kuko yemera icyaha [7] Harerimana Shabani asobanura ko yajuririye kuba urukiko rwaramuhaye ibihano byinshi kandi yaragaragaje uko icyaha cyakozwe akaba yarasobanuye ko icyo cyaha yakigiyemo ashutswe na Ntakirutimana akaba atari yamubwiye ko bagiye kwica ahubwo ko yari yamubwiye ngo amusange ku kazi amutume. Avuga ko yamusanze kuri bariere I Nyacyonga akamubwira ko bagiye gupakira I Gatuna akumva ko ari ibisanzwe ariko akaba atari ko byagenze ahubwo ko abo bari kumwe bari mu modoka ya Nyakagaragu bamubwiye ko imodoka igiye kubanyuraho ko nihagaragara aza gukuramo igikapu. Asobanura ko iyo modoka yari itwawe na Nzamurambaho yarimo nyakwigendera bayitambitse imodoka zigakubana bagaharara. Asobanura koko ko icyo gikapu cya nyakwigendera cyarimo amafaranga

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y'ubwoko butandukanye yagikuye mu modoka, agasobanura uburyo nyakwigendera yishwe nuko yatwitswe n'uburyo bagabanye amafaranga nuko yashyiriye Ntakirutimana umugabane we bamaze kugabana, akaba abisabira imbabazi agasaba urukiko ko rwamugabanyiriza n'ibihano kuko umugore n'abana babayeho nabi, akanavuga ko atazabisubira. [8] Umushinjacyaha avuga ko Harerimana yagabanyirijwe kuko yari guhanishwa igifungo cya burundu. Avuga ko nubwo ashaka gushinjura umukoresha wNtakirutimana, abazwa mu bugenzacyaha yari yaremeye ko uwo mugambi yari awuzi. Avuga kandi ko n'ubwo bwicanyi yabugizemo uruhare kuko yatwaye amafaranga y'uwishwe kandi nyuma yaho ntabibwire inzego z'umutekano. Ibyo kuvuga ko abakoze ubwo bujura bamuteye ubwoba nta kimenyetso kibigaragaza. [9] Urukiko rurasanga Harerimana abazwa mu bugenzacyaha yarivugiye ko yamenye umugambi wo kwica uyu mugande abibwiwe na Ntakirutimana bari Nyacyonga, kandi aho I Nyacyonga akaba ariho imodoka yari itwawe na Nyakagaragu yabafatiye. Nubwo avuga ko iki cyaha yagishowemo na Ntakirutimana, urukiko rurasanga nawe yarakigizemo uruhare rwe bwite kuko umugambi wo kwica no kwiba yahagurutse awuzi. Kuvuga ko Ntakirutimana yamubwiye ko we atwara igikapu, iki gikapu ntaho yari yakibikiye ku buryo yagombaga kugiterura hatabayeho ubugizi bwa nabi bukorewe uwari nyiracyo ari nabwo

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bwabaye, kugeza aho bamwishe bakanamutwikira mu modoka ye. [10] Urukiko rero rurasanga ubujurire bwa Harerimana ari nta shingiro bufite igifungo cy'imyaka 20 yahanishijwe kikaba kidahindutse.

- Kumenya niba Ntakirutimana François ari nta mugambi yari afite wo kwica Tinyinondi Dickson, no kumenya niba yahanirwa gusa icyaha cy'ubujura bukoreshye kiboko [11] Ntakirutimana avuga ko yajuriye kuko urukiko rwamuhamije icyaha cyo kwica kandi we yari yateguye kwiba. Asobanura ko yari yabivuganyeho na Nzamurambaho, Nyakagaragu na Fiston. Asobanura ko yagiye kurangura inzoga Nyabugogo kuko yari azi Fiston (niwe Kabirigi Wikliff) ageze Nyabugogo arahamushyiraho ari kumwe na Nyakagaragu bamubwira ngo nabagurire agacupa, Kabirigi abwira Nyakagaragu ngo bamushyire muri diru yabo kuko ari umukoboyi. Asobanura ko bagiye ahantu hiherereye bakamubaza niba azi Nzamurambaho akabasubiza ko amuzi bamubwira ko agiye gutwara umuntu ufite amafaranga. Asobanura ko uwo muni basubitse gahunda akababwira ko bazabivuganaho undi muni, umuni nyakwigendera Dickson apfa bakaba baragiye bakongera bagahurira aho bari basanzwe baturira noneho uwo muni akaba yarasanze Fiston na Nyakagaragu bari kumwe n'umusirikare atamenye izina akababwira ko we batari bujyane kuko we kwiruka atabibasha ahubwo ko ari bubahe umukozi we akaba ariwe bajyana kuko yanze guhara ayo mafaranga, akaba yaratumye Shabani. Avuga

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ko shabani mu guhindukira yamubwiye ko umuntu bari bakurikiye bamwishe amubajije uwamwishe asubiza ko ari umusirikare itegeko ritanzwe na Nzamurambaho. Avuga ko nyuma y'ibyo yigiriye inama yo guceceka kugira ngo bitazabakoraho. Avuga ko yashatse ba Nyakagaragu ngo abaze impamvu bakoze ibyo batumvikanyeho ntiyababona. Arasaba urukiko ko rwamuhanira icyaha cyo kwiba ntirumuhanire icyo kwica kuko atagikoze. [12] Umushinjacyaha avuga ko iyo Ntakirutimana ataza kuba yari azi umugambi wo kwica nyakwigendera atari kwakira ku mafaranga bagabanye bamaze kumwica. Avuga ko nubwo atageze aho biciye nyakwigendera, ko ariwe wari kuri moto agenzura ko umuhanda umeze neza [13] Urukiko rurasanga ibyo Ntakirutimana avuga ko nta ruhare yagize mu bwicanyi bwakorewe Tinyinondi Dickson nta shingiro byahabwa kuko yagize uruhare rukomeye muri iki cyaha kuko ariwe wakodesheje imodoka yatwaye abambuye bakanica nyakwigendera. Ibyo avuga ko urukiko rwamuhanira icyaha cy'ubujura aho kumuhanira icyaha cy'ubwicanyi, urukiko rurasanga nta gaciro rwabiha kuko uyu mugambi wo kwica yari awuzi, ibi bikaba byemezwa na Harerimana Shabani mu mvugo ze zo mu bugenzacyaha aho yiyemereye ko uwo mugambi yari awuzi kuko yawubwiriwe Nyacyonga na Ntakirutimana. [14] Naho kandi ubu bwicanyi butamuhama (uretse ko urukiko atariko rubibona), n'ubundi ubu bujura burimo impamvu nkomezacyaha kuko bwakozwe n'abajura barenze umwe bakoze agatsiko kishyize hamwe nkuko

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nawe ubwe atabihakana kuko bigaragarira mu mvugo ze ko yabanje kubijyamo inama na Nyakagaragu, Fiston, Harerimana na Nzamurambaho. Ubu bujura, buhanishwa igifungo cya burundu nkuko biteganywa n'ingingo ya 305 y'itegeko ngenga no 01/2012/OL ryo kuwa 02/5/2012 rishyiraho igitabo cy'amategeko ahana. Ibyo yireguza ko atajyanye n'abishe, kuba yari azi ko bagiye kwiba, gukodesha imodoka no kuba nawe ubwe yemera ko yabakurikiye na moto acunga umutekano, no kuba yaragabanye ku mafaranga bacuje nyakwigendera, birahagije kumugira umufatanyacyaha n'abamwishe. Wakubitiiraho kuba noneho muri ubu bujura harishwe uwibwe bakagerekaho kumutwika, bikaba impamvu nkomezacyaha kuri we, bityo ubujurire bwe bukaba ari nta shingiro bufite, ibihano yahawe n'Urukiko Rwisunbuye rwa Gicumbi bikaba bitagomba guhinduka. kumenya niba hari ibimenyetso bifatika bihamya Nyakagaragu ibyaha ashinjwa [15] Nyakagaragu asonura ko yajuriye kuko ngo urukiko rwamuhaniye icyaha atagizemo uruhare. Avuga ko yavuye muri gare ya Nyabugogo ahawe ikiraka na Ntakirutimana bamubwira ko agiye gupakira fraude. Avuga ko Fiston yabanje kuva mu modoka akabategereza akababura, nyuma akaza kumubwira ko abasanga Nyacyonga, ahageze ahafata Fiston, umusirikare na Harerimana. Avuga ko Fiston yamusabye ko ariwe watwara kuko ngo we atamenyere gutwara Fraude, bageze ku Gaseke babona Nzamurambaho abacaho azamura akaboko ariko we ntiyabyitaho, bageze Rwafande Fiston atangira kwiruka we yibwira ko ariwe ufite ya fraude. Avuga ko Nzamurambaho yahise agonga

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ya modoka barimo zombi zirahagarara, Fiston ahita abwira Shabani ngo nakuremo igikapu. Avuga ko bamubwiye ngo abakurikire, akabona bazamutse mu nturusu ageze aho bari baramubwira ngo nagende ajye guhagarara imbere. Arasaba ko yarenganurwa. [16] Umushinjacyaha avuga ko Nyakagaragu ariwe watwaye abari bagiye kwica nyakwigendera barimo n'uwo bita umusirikare batavuze izina ikindi nyakwigendera amaze kwicwa, akaba ariwe wagiye imbere amurikira imodoka yarimo umurambo we kuko bari bayijimije amatara ubwo bari bamujyanye aho bamutwikiye. Avuga ko ariwe wagiranye imishyikirano ikomeye na Ntakirutimana na Nzamurambaho, essence yatwikishijwe imodoka akaba ariwe wayizanye ikindi akaba yaragabanye ku mafaranga bambuye nyakwigendera. Avuga ko ibi byose bigaragaza ko umugambi yari awuzi, bityo ubujurire bwe bukaba ari nta shingiro bufite. [17] Urukiko rurasanga uku guhakana icyaha kwa Nyakagaragu nta shingiro gufite kuko ashinjwa na Harerimana Shaban wemera icyaha na Ntakirutimana ko uyu mugambi bawufatanyije. Ikindi iyo ataza kuba ari mu mugambi w'ibi byaha ntaba yaragabanye ku mafaranga bambuye nyakwigendera, bityo ibi byaha bikaba bimuhama. -kumenya niba hari ibimenyetso bifatika bihamya Nzamurambaho icyaha ashinjwa. [18] Nzamurambaho asobanura ko yajuririye kuba Urukiko Rwisumbuye rwaramuhamije kuba yaragize

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ubugambanyi, ubwicanyi n'ubujura nyamara akaba ataragiranye umugambi n'abicanyi. Avuga ko Harerimana na Ntakirutimana aribo bari bazi uwo mugambi kandi bakaba batarigeze bawumushyiramo. Avuga ko Harerimana na Ntakirutimana bamuhaye amafaranga kugira ngo ntazabavemo kuko aribo bishe umuntu. [19] Nubwo Nzamurambaho agerageza guhunga icyaha, hari ibimenyetso byinshi bikimuhamya: Nyakagaragu nawe uhakana icyaha amushinja ko uwo mugambi yari awuzi anawuziranyeho n'abasore bari mu modoka yatwaye abakuye Nyacyonga (abo ni Fiston, Harerimana Shabani n'umusirikare). Amushinja kandi ko nyakwigendera amaze kwicwa Nzamurambaho afatanyije na Fiston aribo bafashe essence bakayimena ku murambo wa nyakwignendera no kumodoka ye bakayitwika. Harerimana Shabani amushinja ko mu nzira aciye ku modoka

barimo

yahanye ibimenyetso na Fiston (signal), bigaragaza ko hari icyo bari baziranyeho. Amushinja kandi ko ariwe watanze itegeko ryo kwica Tinyinondi

Dickson

kuko yumvaga ko aramutse adapfuye yazabakurikirana kuko abazi, cyangwa se akazabarogesha bagapfa bagashira. Avuga kandi

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ko bamaze kwinjira muri iyo modoka

yari

atwaye Nzamurambaho

yashyizemo umuziki

muremure

ubwo bagendaga bica nyakwigendera. Ntakirutimana nawe amushinja ko uwo mugambi Nzamurambaho

yari awurimo bawufatanyije na Nyakagaragu na Fiston. Kuba kandi yarafatanywe amwe mu mafaranga yacujwe nyakwigendera amaze kwicwa, iyo aza kuba yaraguye mu

gaco k'abambuzi nkuko abivuga

ntiyari guhabwa kuri ayo mafaranga kuko batari kugabana ari ntacyo baziranyeho, ikindi ntiyari

kubura kugirirwa

nabi n'abo avuga ko babateze.

Kuba yaragabanye

ku mafaranga bamucuje,

ni ikimenyetso simusiga

cyuko yari

afatanyije

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nabo,

akaba yaranagize n'uruhare rukomeye

rwo kumugambanira nkuko

abo bafatanyije gukora iki

cyaha babimushinja. [20] Kubera izi mpamvu zose, ubujurire bwe nta shingiro bufite. ICYEMEZO CY'URUKIKO. [21] Rwemeje ko ubujurire bwa Nzamurambaho Jean Pierre, Harerimana Shaban, Ntakirutimana Francois na Nyakagaragu Come nta shingiro bufite. [22] Rwemeje ko imikirize y'urubanza RP 0138/13/TGI/GIC rwajurirwe idahindutse, ibihano Nzamurambaho Jean Pierre, Harerimana Shaban, Ntakirutimana Francois na Nyakagaragu Come bahanishijwe bikaba bigumye. [23] Rutegetse ko amagarama y'urubanza ahererezwa ku isanduku ya Leta kuko Nzamurambaho Jean Pierre, Harerimana Shaban, Ntakirutimana Francois na

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