

RWANDA / JUDGMENT

MUSONI N'UNDI V MUGABUSHAKA N'ABANDI

RCA 00018/2022/HC/MUS

COURT

High Court

DECIDED

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RCA 00018/2022/HC/MUS

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MUSONI N'UNDI V MUGABUSHAKA N'ABANDI

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Text

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MUSONI N'UNDI V MUGABUSHAKA N'ABANDI [Rwanda URUKIKO RUKURU URUGEREKO RWA MUSANZE – RCA 00018/2022/HC/MUS, (Gasore, P.J.) 15 Kamena 2023] Amategeko agenga imiburanishirize y'imanza mbonezamubano – kujurira – kumenyesha ababuranyi – Iyo umuntu bigaragarako atamenyeshejwe gahunda z'iburanisha hakoreshejwe ikoranabuhanga, kuko hari amakuru y'umwirondoro ikorabuhanga ridafite, ntibyafatwa ko yatinze kujurira kuko ibihe byo kujurira bitangira kubarwa uhereye igihe yamenyesherejwe imikirize y'urubanza hakoreshejwe inyandiko. Amategeko agenga imiburanishirize y'imanza mbonezamubano – ikiburanwa – izungura – Iyo ikibazo cy'izungura cyakemuriwe mu muryango kandi abo bireba bose babyemeranyaho, ntabwo hongera gutangwa ikirego cy'izungura mu Rukiko. Amategeko agenga imiburanishirize y'imanza mbonezamubano – Ikiburanwa – Guca urubanza ku kitararegewe – iyo Urukiko rwakiriye ikirego cy'izungura rugafatamo n'icyemezo cyuko ubugure bwakozwe ku mitungo izungurwa buteshwa agaciro, ruba ruciye urubanza ku kitararegewe Incamake y'icyibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Musanze, abana bakomoka

kuri Musabyimana wapfuye barega Mugabushaka basaba ko abamurikira umutungo wose wasizwe n'umubyeyi wabo babanye nkumugabo n'umugore ariko batasezeranye bakabyarana abana 3, kandi mbere yuko babana akaba yarafite abandi bana 2 yabanje kubyarana n'umugabo we w'isezerano witwa Ntambara. Bavuga ko nyuma yaho nyina apfiriye Mugabushaka yashatse undi mugore basezerana ivanga mutungo muhahano ariko ko yataye inshingano za kibyezi kuko ngo bibana. Bavuga ko bamureze mu muryago yanga kwitaba, akaba ariyo mpamvu batanze ikirego mu Rukiko. Urwo rukiko mu rubanza RC00129/2020/TGI/MUS rwemeje ko abarega usibye kuvuga ko imitungo ivugwa muri uru rubanza ari iya Musabyimana wenyine ariko ntibabigaragarize ibimenyetso, rwemeza ko umutungo ufite UPI:5/01/13/03/ 644 uherereye mu karere ka Rwamagana ari uwa Ngabonziza kuko yawuguze mu buryo bukurikije amategeko ndetse agura n'ubifitiye uburenganzira. Rwemeza ko ubutaka bufite UPI: 4/03/08/03/ 2044; UPI:5/01/13/03/ 596; UPI:5/01/13/03/482 bugomba kuzungurwa n'abakomoka kuri Musabyimana. Musoni ntiyishimiye iki cyemezo, akijuririra mu Rukiko Rukuru, Urugereko rwa Musanze, avuga ko abona abana ba Musabyimana batemerewe kuzungura umutungo we UPI:5/01/13/03/482 yaguze mu buryo bwemewe n'amategeko na Mugabushaka. Umwali yagobotse muri uru rubanza mu bujuriye kuko ngo abiyita abazungura batahabwa imitungo ya Mugabushaka na Musabyemariya ngo bayizungure bayita iya nyina kuko ngo ari amayeri yo kugirango iyo mitungo ibaveho bazabure ubwishyu kuko Mugabushaka na Musabyemariya babafitiye ideni babatsindiye. Muri uru Rukiko hasabwe indishyi zitandukanye. Ngabonziza, wari wanditse avuga ko ibikubiye mu bujuriye bwa Musoni ntaho ahuriye na byo, akaba yarasabaga gukurwa mu rubanza, abana ba Musabyimana bageze mu iburanisha basaba ko ahamagarwa kuko batanze ubujuriye bwuririye ku bundi basaba ko ibyo yatsindiye yabyamburwa. Ngabonziza yabanje gutanga inzitizi asaba ko ikirego cy'ubujuriye cya Musoni kitakwagirwa kuko ngo yajuriye impitagihe. Yasabye kandi ko

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kugoboka mu rubanza kwa Umwali kutagomba kwakirwa kuko urubanza rusanze ruburana n'umugabo we babana mu buryo bwemewe n'amategeko. Kubijyanye no kumenya niba ubujuriye bwa Musoni bwaratanze mu bihe bikurikije amategeko, Ngabonziza avuga ko uru rubanza rwaburanishijwe ku rwego rwa mbere ababuranyi bose bahamagajwe ndetse bitabiriye inama ntegururubanza, Ngo umuburanyi wari warahujwe na système, akitabira amwe mu maburanisha ntakwiye gufatwa nk'umuburanyi ubarirwa ibihe by'ubujuriye uhereye igihe amenyesherejwe imikirize y'urubanza kandi ngo bigaragara ko urubanza rwaciwe yari aruzi. Musoni we yavuze ko urubanza RC00120/2020/TGI/MUS rwaciwe ku wa 11/11/2021 arumenyeshwa ku wa 11/01/2022. Ngo ibihe byo kujurira yarabyubahirije uhereye igihe yamenyesherejwe imikirize y'urubanza. Ibi ngo byatewe n'uko umwirondoro we wose utari warashyizwe muri system, ku buryo hari ibyakorwaga muri system ntabimenye. Incamake y'icyemezo: 1. Iyo umuntu bigaragarako atamenyesherejwe gahunda z'iburanisha hakoreshejwe ikoranabuhanga, kuko hari amakuru y'umwirondoro ikorabuhanga ridafite, ntibyafatwa ko yatinze kujurira kuko ibihe byo kujurira bitangira kuburwa uhereye igihe yamenyesherejwe imikirize y'urubanza hakoreshejwe inyandiko. 2. Iyo ikibazo cy'izungura cyakemuriwe mu muryago kandi abo bireba bose babyemeranyaho, ntabwo hatangwa ikirego cy'izungura mu Rukiko. Bityo, iyo hari imitungo

izungurwa yagurishijwe mu buryo bunyuranyije n'Amategeko, uyifiteho ikibazo arega asaba ko igarurwa mu mitungo izungurwa. Kandi Urukiko rwakiriye icyo kirego rugafatamo n'icyemezo cyuko ubugure bwakozwe kuri iyo mitungo buteshwa agaciro, ruba ruciye urubanza ku kitararegowe. 3.Kugoboka mu rubanza ruburanwamo nuwo mwashakanye utagaragaza inyungu bwite uburana ahubwo uburana inyungu z'umuryango, ntabwo kwemerwa. Ubujurire bufite ishingiye. Kugoboka ku bushake ntabwo kwakiriwe. Amategeko yashingiweho. Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu Ingingo ya 10,113,114, 148 Itegeko N°27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura Ingingo ya 51, 84 Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Musanze. Haburana abana bakomoka kuri Musabyimana Dative washakanye na Ntambara Phocas babyarana abana 2 aribo:

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Iradukunda Marie Aime na Igihozo Sandrine. Ntambara Phocas yaje kwitaba Imana. Mu mwaka wa 2000, Musabyimana Dative yabanye na Mugabushaka Pierre Claver mu buryo budakurikije amategeko kandi buri wese yari afite imitungo yigengaho, babyarana abana 3 aribo : Ishimwe Clarisse, Shema Sangano Blaise na Gikundiro Mugisha. Tariki ya 07/03/2007 Musabyimana Dative yitabye Imana, Mugabushaka Pierre Claver asigara arera abana yasigiwe na nyakwigendera, abarerera mu mitungo Musabyimana Dative yari yarasize. Kuwa 06/10/2007, Mugabushaka Pierre Claver yashatse mu buryo bwemewe n'amategeko undi mugore witwa Musabyemariya Valentine basezerana ivangamutungo w'umuhahano nk'uko icyemezo cyatanzwe n'inzego zibifitiye ububasha kibigaragaza. Mu mwaka wa 2010 na 2011 habayeho igikorwa cyo kubaruza imitungo itimukanwa mu Rwanda maze Mugabushaka Pierre Claver wareraga abana yabyaranye na Musabyimana afatanyaga n'umugore we Musabyemariya Valentine biyandikishaho imitungo yasizwe na Musabyimana Dative ndetse barangije bateshuka ku nshingano zo kwita kuri abo bana, kuko batangiye kwibana, bigeze kuwa 25/07/2020 bamurega mu muryango kugirango abamurikire umutungo wose wasizwe n'umubyeyi wabo Musabyimana Dative, yanga kwitaba. Ni yo mpamvu baregeye Urukiko kugira ngo rutegeke ko imitungo yavuzwe haruguru yazungurwa n'abana ba nyakwigendera Musabyimana Dative. [2] Urukiko Rwisumbuye rwa Musanze, nyuma yo gusuzuma imiburanire ya buri ruhande n'ibimenyetso rwashyikirijwe, rwasanze Mugabushaka Pierre Pierre Claver aburana avuga ko abana bamurega batari bakwiye kuregera imitungo mu Rukiko kuko batigeze bamusaba ko imitungo ya mama wabo bayikeneye, ngo abyange kuko n'ubundi yayiyandikishijeho kuko bari bakiri abana kandi akaba nta mutima mubi yabikoranye kuko iyo mitungo yakomeje kuyibarereramwo. Rwasanze abarega usibye kuvuga ko imitungo ivugwa muri uru rubanza ari iya Musabyimana Dative umubyeyi wabo wenyine nta kimenyetso babigaragariza, cyane ko umubyeyi wabo Mugabushaka Pierre Claver yemera ko iyi mitungo Musabyimana Dative yayishatse babana nk'umugabo n'umugore babana mu buryo butemewe n'amategeko, bityo bakaba bayihuriyeho. Rwasanze umutungo ufite UPI :5/01/13/03/ 644 uherereye mu mudugudu wa Nyarusange, Akagari ka Murama, Umurenge wa Nzige, Akarere ka Rwamagana ari uwa Ngabonziza Jean Bosco kuko yawuguze mu buryo bukurikije amategeko

ndetse agura n'ubifitiye uburenganzira kuko asangiye umutungo na Musabyimana Dative. Rwemeje ko ubutaka bufite UPI : 4/03/08/03/ 2044 ; UPI :5/01/13/03/ 596 ; UPI :5/01/13/03/482 bugomba kuzungurwa n'abakomoka kuri Musabyimana Dative. Rwemeje ko ubutaka bufite UPI :5/01/13/03/644 ari ubwa Ngabonziza Jean Bosco. [3] Musoni Evariste ntiyishimiye iki cyemezo. Yajuririye uru rubanza mu Rukiko Rukuru, Urugereko rwa Musanze. Yavuze ko icyatumye ajurira ari uko we abona abana ba musabyimana batemerewe kuzungura umutungo we UPI :5/01/13/03/482 yaguze mu buryo bwemewe n'amategeko na Mugabushaka Pierre Claver, mu gihe bigaragara ko uyu mutungo atari uwa nyina. Umwali Angelique yagobotse muri uru rubanzamu bujurire kuko ngo abiyita abazungura batahabwa imitungo ya Mugabushaka na Musabyemariya ngo bayizungure bayita iya nyina kuko ari amayeri, ngo imitungo ibaveho bazabure ubwishyu kuko Mugabushaka na Musabyemariya babafitiye ideni babatsindiye. Kuri uru rwego hasabwe indishyi zitandukanye. Ngabonziza Jean Bosco, wari wanditse ko ibikubiye mu bujurire bwa Musoni Evariste ntaho ahuriye na byo, akaba yarasabaga gukurwa muri uru rubanza, abana ba Musabyimana bageze mu iburanisha basaba ko ahamagarwa kuko batanze ubujurire bwuririye ku bundi basaba ko ibyo yatsindiye yabyamburwa. Ngabonziza Jean Bosco yitabye Urukiko abanza gutanga inzitizi asaba ko ikirego cy'ubujurire cya Musoni Evariste kitakwirwa kuko ngo yajuriye impitagihe. Yasabye kandi ko kugoboka mu rubanza kwa Umwali Angelique kutagomba kwakirwa kuko urubanza rusanze ruburanywa n'umugabo we babana mu buryo bwemewe n'amategeko.

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- [4] Hakurikijwe ibimaze kuvugwa haruguru, muri uru rubanza hakwiye gusuzumwa ibibazo bikurikira : Kumenya niba ubujurire bwa Musoni Evaritse bwaratanze mu bihe bikurikije amategeko Kumenya niba ibijyanye no kuzungura umutungo UPI :4/03/08/03/2044, UPI :5/01/13/01/482, UPI :5/01/13/03/596, UPI :5/01/13/03/644 byaragombaga kugarurwa mu Rukiko kandi byaramaze gufatwaho umwanzuro n'inama y'umuryango Kumenya niba ikirego cya Umwali Angelique cyo kugoboka mu bushake muri uru rubanza rusanze ruburanywa n'umugabo we gikwiye kwakirwa Kumenya niba indishyi zisabwa muri uru rubanza zikwiye gutangwa II. ISESENGURA RY'IBIBAZO BIRI MU RUBANZA A. Kumenya niba ubujurire bwa Musoni Evaritse bwaratanze mu bihe bikurikije amategeko [5] Ingingo ya 148 y' Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko igihe ntarengwa cyo kujurira ni ukwezi kumwe (1) gitangira kubarwa kuva ku munsu umuburanyi yamenyeyeho ko urubanza rwasomwe. Umuburanyi wari uhari iburanisha ripfundikirwa, n'iyi yaba atari ahari umunsu w'isomwa ry'urubanza, afatwa nk'uwamenye igihe urubanza rwasomwe. Iyo urubanza rwasomwe uregwa adahari kuko adafite aho abarizwa hazwi, amenyeshwa imikuriza y'urubanza hakoreshejwe uburyo bw'imenyesharuhame. Umunsu wa mbere w'iryo menyesharuhame ni wo ntangiriro yo kubara igihe cyo kujurira. [6] Ngabonziza Jean Bosco yavuze ko uru rubanza rwaburanishijwe ku rwego rwa mbere ababuranyi bose bahamagajwe ndetse bitabiriye inama ntegururubanza, ndetse no mu rubanza rubanziriza urundi bose bari bahari. Ngo umuburanyi wari warahujwe na système,

akitabira amwe mu maburanisha ntakwiye gufatwa nk'umuburanyi ubarirwa ibihe by'ubujurire uhereye igihe amenyesherejwe imikirize y'urubanza kandi bigaragara ko urubanza rwamuciriwe yari aruzi. [7] Musoni Evariste yavuze ko urubanza RC00120/2020/TGI/MUS rwaciye ku wa 11/11/2021 arumenyeshwa ku wa 11/01/2022. Ngo ibihe byo kujurira yarabyubahirije uhereye igihe yamenyesherejwe imikirize y'urubanza. Ibi ngo byatewe n'uko umwirondoro we wose utari warashyizwe muri system, ku buryo hari ibyakorwaga muri system ntabimenye. Urukiko rurasanga muri dosiye yo mu Rukiko Rwisumbuye rwa Musanze bigaragara ko mu iburanisha rya nyuma ryabaye ku wa 14/10/2011 Musoni Evariste atari ahari kandi nta kigaragaza ko yari yamenyesherejwe iyo tariki kuko inyandiko yashyizeho umukono ari iyamumenyeshaga inama ntegururubanza yo ku wa 29/03/2021, yaritabye, urubanza ruhabwa itariki yo kuzaburanishwa ku wa 03/06/2021, ariko kuri iyi tariki urubanza ntirwaburanishijwe kuko abacamanza n'abanditsi bari bagiye mu mahugurwa. Rwimuriwe ku wa 15/07/2021, nabwo ntirwaburanishwa kubera gahunda ya guma mu rugo, rwimurirwa ku wa 09/09/2021, habanza gusuzumwa inzitizi, irindi buranisha riba ku wa 14/10/2011. Aya maburanisha yakurikiye inama ntegururubanza ndetse n'inshuro urubanza rwagiye rusubikwa ntibyigeze bimenyeshwa Musoni

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Evariste mu buryo bumwe nk'ubwo yari yaramenyesherejwe itariki y'inama ntegururubanza, kuko yasinyishijwe inyandiko isanzwe, ntiyamenyesherejwe hanyuzwe [8] Muri system ya IECMS, ibi Urukiko rukaba rwarabikoze kuko rwabonaga ko muri system hashobora kuba hari ikibazo gituma atamenya ibibera muri ya IECMS. Ibyo avuga rero ko icyo gihe atari ahujwe na systeme bikaba byafatwaho ukuri. [9] Ikindi gishimangira ko ibyabereye muri system atabimenyaga ni uko nyuma y'aho urubanza ruciriwe, byabaye ngombwa ko amenyeshwa imikirize y'urubanza binyuze mu nyandiko isanzwe. Ibi kandi ntibyari kuba ngombwa iyo aza kuba ahujwe na system. [10] Ku bw'ibyo byose rero, ikirego cy'ubujurire gikwiye kwakirwa kuko yagombaga kujurira ahereye igihe amenyeye imikirize y'urubanza, kandi uhereye igihe yamenyesherejwe, igihe cy'ukwezi kumwe guteganywa n'amategeko yaracyubahirije. B. Kumenya niba ibijyanye no kuzungura umutungo UPI:4/03/08/03/2044, UPI:5/01/13/01/482, UPI:5/01/13/03/596, UPI:5/01/13/03/644 byaragombaga kugarurwa mu Rukiko kandi byaramaze gufatwaho umwanzuro n'inama y'umuryango [11] Musoni Evariste, wajuriye, yavuze ko ku wa 11/11/2021 haciwe urubanza RC0120/2020/TGI/MUS aho abana ba Musabyimana Dative baregaga Mugabushaka Pierre Claver na Musabyemariya Valentine basaba kuzungura imitungo yasizwe na nyina Musabyimana Dative. Urukiko rwagobokesheje abaguze iyo mitungo mu buryo bwemewe n'amategeko na Mugabushaka Pierre Claver na Musabyemariya Valentine aribo Musoni Evariste hamwe na Ngabonziza Jean Bosco. Ku rwego rwa mbere, Urukiko rwaciye urubanza rushingiye ku ngingo 39 y'itegeko n°59/2008 ryo kuwa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina aho igira iti: "Ababanaga nk'umugore n'umugabo batashyingiranywe mu buryo buteganywa n'amategeko, bashyingirwa hakurikije ihame ry'ubushyingiranywe bw'umugabo umwe n'umugore umwe. Mu gihe umwe mu barebwa n'ibivugwa mu gika kibanziriza iki, yabanaga n'abagore cyangwa n'abagabo benshi, abanza

kugabana ku buryo bungana na buri wese mu bo babanaga, umutungo bari bafitanye cyangwa bahahanye mbere y'uko ashyingirwa. Igabana ry'umutungo rivugwa mu gika cya 2 cy'iyi ngingo ntirivutsa abana babyaranye uburenganzira bahabwa n'amategeko. Ibikurikizwa muri iryo gabana bigenwa n'Iteka rya Minisitiri ufite ubutegetsi bw'Igihugu mu nshingano ze." Yakomeje avuga ko abaregaga mu rubanza RC00120/2020/TGI/MUS bagaragaje ko nyina ubabyara ari we Musabyimana Dative, akaba yarabanye na Mugabushaka Pierre Claver guhera mu mwaka wa 2000, ibi bibanza byose abarega nabo ubwabo biyemerera ko imitungo ivugwa muri uru rubanza yayiguzwe abana na Mugabushaka Pierre Claver, ngo byaguzwe mu mutungo bafatanyije kuko babanaga, ibi kandi bigahamya n'uko ubutaka bwose abarega bavugaga ngo nyina yaguzwe bwose yabuguraga afatanyije na Mugabushaka Pierre Claver kuko bombi babwiyandikishagaho (ibi bigaragarira mu gika cya 1, icya 2 n'icya 3 by'urubanza rujuririrwa). Mu gika cya ya 3 bagaragaza ko tariki ya 07/03/ 2007, Musabyimana Dative yitabye Imana. Ibi bigaragaza ko imitungo yashakanye na Mugabushaka Pierre Claver ari iya Mugabushaka, kuko itegeko ribatega kugabana imitungo bahahanye igihe babanye mu buryo budakurikije amategeko ryagiye ho Musabyimana Dative atakiriho. Bivuze ko imitungo Mugabushaka Pierre Claver yabonye abana na Musabyimana Dative yarangiza akayiyandikishaho nta tegeko ryishwe. [12] Musoni Evariste yakomeje avuga ko imitungo abarega baregeye nta kigaragaza ko ari iya nyina kuko itegeko riyimuhesha ryaje yararangije kwitaba Imana, kuko bavugaga ko yitabye Immana mu mwaka wa 2007, kandi itegeko ribatega ababanye mu buryo budakurikije amategeko kugabana umutungo bashakanye ryaje mu mwaka wa 2008. Kuba rero ubutaka bufite

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UPI:5/01/13/03/482 ndetse na UPI:5/01/13/03/ 644 bwaraguzwe na Musoni Evariste na Ngabonziza Jean Bosco, bakaba barabuguze ari we bwanditseho, ntiyahindura ngo avuge ko bwari ubw'umugore we Musabyimana. Yavuze ko aya ari amanyanga yagiranye n'abana be ngo bamurege nawe yemeze ko ubutaka yaguzwe bwari ubw'umugore we ngo bakunde babwisubize. Ngo ikirego cy'abana basaba kuzungura icyo bita umutungo wa nyina nticyagombaga kwakirwa ngo gisuzumwe kuko nta kimenyetso bagaragaza ko iyi mitungo yari iya nyina. Yavuze kandi ko mu rubanza rujuririrwa RC00120/2020/TGI/MUS, mu gika cya 15, Urukiko rwavuze ko ibyo abarega bavugaga ko umutungo baburana wari uwa nyina, usibye kubivugaga nta kimenyetso babigaragariza cyane ko Mugabushaka Pierre Claver yemera ko iyi mitungo Musabyimana yayishatse babana nk'umugabo n'umugore mu buryo butemewe n'amategeko, bityo bakaba bayihuriyeho. Ibi bikwiye kurengera Musoni Evariste na Ngabonziza Jean Bosco, hakemewe ko iyo mitungo itazungurwa ngo kuko bayiguzwe na Mugabushaka mu buryo bwemewe n'amategeko. [13] Igihozo Sandrine, Irankunda Marie Aime, Ishimwe Clarisse na Shema Sangano Blaise, bahagarariye na Me Ahishakiye Callixte bavuze ko ibyo Mugabushaka Pierre Claver yakoze agurisha umutungo wabo bidakurikije amategeko kuko yabanye nk'umugore n'umugabo na Musabyemariya Dative witabye Imana tariki 7/3/2007. Ngo akimara kwitaba Imana imitungo ya Musabyimana Dative yahise iba iy'abana be maze bakomeza kuyirerwamo n'uwahozze ari umugabo wa nyina. Ngo ibivugwa ko hashyingirwa ku ngingo ya 39 y'Itegeko ryo muri 2008 ntikwiye gushingirwaho kuko iri tegeko ryagiye ho Musabyimana Dative yaramaze kwitaba

imana. Bongeho ko Musabyimana Dative amaze kwitaba imana, Mugabushaka Pierre Claver yasigaye arera abana 5 yasigiwe na nyakwigendera abarerera mu mitungo Musabyimana Dative yari yarasize ariko byageze kuwa 06/10/2007 Mugabushaka Pierre Claver aza gushaka mu buryo bwemewe n'amategeko undi mugore witwa Musabyemariya Valentine basezerana ivangamutungo w'umuhahano nk'uko icyemezo cyatanze n'inzego zibifitiye ububasha kibigaragaza. Byageze mu mwaka wa 2010 na 2011 habaho igikorwa cyo kubaruza imitungo itimukanwa mu Rwanda maze Mugabushaka Pierre Claver watureraga afatanyaga n'umugore we Musabyemariya Valentine biyandikishaho imitungo yasizwe n'umubyeyi wacu Musabyimana Dative ndetse barangije bateshuka ku nshingano zo kutwitaho 7. Amwe mu masambu yaje kubarurwa kuri UPI :5/01/13/01/482 na UPI :5/01/13/03/ 644 ku mazina ya Mugabushaka Pierre Claver na Musabyemariya Valentine mu buryo bw'uburiganya ndetse baza no kuyikoreraho amasezerano yo kuyiherekeranya na Musoni na Ngabonziza kandi mu by'ukuri batari babifitiye ububasha. Ngo babimenye ari uko bareze Mugabushaka mu rukiko nawe akagobokesha Musoni Evariste. Byageze kuwa 25/07/2020 bamuregera umuryango kugirango abamurikire umutungo wose wasizwe n'umubyeyi wabo Musabyimana Dative maze yanga kwitaba bituma batanga ikirego mu rukiko rwisumbuye rwa Musanze maze rwemezako imitungo yasizwe na nyakwigendera ikwiye kuzungurwa. [14] Musabyemariya Valentine yasobanuye ko ubutaka buburanwa bwari bubanditseho we n'umugabo we ariko ntabwo bwari ubwabo kuko babucungiraga abana ba Musabyimana Dative. Yavuze ko we n'umugabo we Mugabushaka Pierre Claver basezeranye mu buryo bwemewe n'amategeko bemeranya gucunga umutungo w'umuhahahano nk'uko inyandiko y'ishyingirwa ibigaragaza. Mu gufatanyaga na Mugabushaka Pierre Claver kurera abana ba Musabyimana Dative, babacungiyeye mu mitungo ya nyina, ngo babakoreye inshingano nk'iz'ababyeyi. Mu mwaka wa 2011 habayeho ibarurarusange ry'ubutaka maze kuberako abana bari bakiri bato byabaye ngombwa ko we na Mugabushaka Pierre Claver babyumvikanaho maze iyo mitungo yasizwe na Musabyimana Dative bayibaruzaho ariko bateganyaga ko abana nibakura bazayiyandikishaho. Ngo nyuma yaho bagize ikibazo cy'amafaranga bituma begera Musoni Evariste bamuha ikibanza kirimo inzu gifite UPI 5/01/13/01/482 naho Ngabonziza Jean Bosco

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bamuha igifite UPI :5/01/13/03/ 644, byombi ngo babitanze nk'ingwate maze igihe cyo kumwishyura kigeze Musabyemariya Valentine ahura n'ikibazo arafungwa ariko ngo bari biteguye gusubiza Musoni na Ngabonziza amafaranga kuko isambu babandikishijeho bavuga ko bayibagurishije atari iyabo, ahubwo ni iy'abana ba Musabyimana Dative. Ibi bisobanuro yatanze bihura n'ibya Mugabushaka Pierre Claver, yari yarashyize mu mwanzuro wo kwiregura, ariko we akaba ataritabye ngo yiregure mu Rukiko. UKO URUKIKO RUBIBONA [15] Ingingo ya 10 y' Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu Umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine. Iyi ingingo ishatswe kuvuga ko ibitaragarajwe mu kirego cy'warezwe bitagomba gufatwaho icyemezo. Naho ingingo ya 6 y'iri tegeko ikongeraho ko ikiburanwa kigenwa n'ibisabwa na buri muburanyi. Ibisabwa bigaragarira mu myanzuro iregera urukiko

n'imyanzuro yo kwiregura, bigashimangirwa burundu mu nama ntegurarubanza ku manza iteganyijwemo. Mu iburanisha, umuburanyi ntashobora guhindura ikiburanwa ababuranyi bose batabyemeye. [16] Ingingo ya 84 y' Itegeko N°27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura yo iteganya ko Inama y'umuryango ni yo ishinze gukemura impaka cyangwa ibibazo mu muryango byerekeranye n'izungura mbere y'uko bishyikirizwa Komite y'Abunzi cyangwa urukiko rubifitiye ububasha. [17] Urukiko rurasanga mu Rukiko Rwisumbuye rwa Musanze, aho ikirego cyatangiriye, abareze ari Igihozo Sandrine, Irankunda Marie Aime, Ishimwe Clarisse na Shema Sangano Blaise. Ikirego cyabo cyari gisobanutse neza, baregeye Izungura ku mitungo yasizwe na Musabyimana Dative igizwe n'imitungo UPI:4/03/08/03/2044, UPI:5/01/13/01/482, UPI:5/01/13/03/596, UPI:5/01/13/03/644. Ibi bikaba bishaka kuvuga ko mu gufata icyemezo Urukiko rwagombaga kugarukira gusa ku kwemeza niba abareze bagombaga kuzungura iyi mitungo cyangwa niba batemerewe kuyizungura (kugira ngo ruce urubanza ku cyo rwasabwe cyonyine). Ikigaragara ariko mu iburanisha, icyasuzumwe ni ibijyanye no kuba imitungo ivugwa haruguru yariyandishijweho na Mugabushaka Pierre Claver ndetse na Musabyemariya Valentine mu buryo bukurikije n'amategeko, ari na yo mpamvu rwemeje ko umwe mu baguze bumwe mu butaka buburanwa, ari we Ngabonziza Jean Bosco yabuguze mu buryo bukurikije amategeko ndetse anabugura n'ubifitiye uburenganzira kuko asangiye umutungo na Musabyimana Dative. Ibi bijyanye no kumenya niba ubugure bwarakurikije amategeko si byo byari byaregewe mu by'ukuri. Urukiko rurasanga iyo usesenguye uburyo Urukiko Rwisumbuye rwa Musanze rwafashe icyemezo, bigaragara ko isesengura ryarwo ryagarukiye ku bijyanye n'ubutaka bwaguzwe na Ngabonziza Jean Bosco. Naho ku bundi butaka, ikigaragara ni uko Urukiko rutasesenguye bihagije, ahubwo bigaragara ko rwivugururwe, kuko mu isesengura, mu gika cya 15, rwabonye ko abarega usibye kuvuga ko imitungo ivugwa muri uru rubanza ari iya Musabyimana Dative umubyeyi wabo wenyine nta kimenyetso babigaragariza cyane ko umubyeyi wabo Mugabushaka Pierre Claver yemera ko iyi mitungo Musabyimana Dative yayishatse babana nk'umugabo n'umugore babana mu buryo butemewe n'amategeko, bityo bakaba bayihuriyeho nk'uko ingingo y'itegeko ryavuzwe haruguru ibisobanura. Ibi rero byari gutuma hemezwa ko izungura ritari gushoboka kuko umwe muri ba nyir'umutungo, ari we Mugabushaka Pierre Claver, akiriho, kandi akaba adashobora kuzungurwa akiriho. Ibyo rwari rumaze kubona mu isesengura ryarwo rwabirenzeho, rwemeza ko butaka bufite UPI: 4/03/08/03/ 2044; UPI:5/01/13/03/ 596; UPI:5/01/13/03/ 482 bugomba kuzungurwa n'abakomoka kuri Musabyimana Dative, ibi ariko na byo nta bisobanuro byatangiye (motivation). Mu yandi

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magambo hari ibyo Urukiko rwaregewe, ariko rukaba rutarabifasheho icyemezo, kuko icyemezo gitangirira ku isesengura. Ibi bikaba bikwiye gutuma imikirize y'urubanza rujuririrwa ihinduka. Urukiko rurasanga ikindi kigaragara muri dosiye ari uko muri dosiye hari inyandiko mvugo y'inama y'umuryango wa Musabyimana Dative na Mugabushaka Pierre Claver yo ku wa 25/07/2020 yemeje ko imitungo iri muri UPI:4/03/08/03/2044, UPI:5/01/13/01/482, UPI:5/01/13/03/596 na UPI:5/01/13/03/644 igomba kuzungurwa n'abana basizwe na Musabyimana

Dativa. Iyi nyandiko mvugo y'umuryango ntiyigeze ivuguruzwa na Mugabushaka Pierre Claver ndetse na Musabyemariya Valentine, kuko n'aho bagereye mu Rukiko, bashimangiye ko imitungo iburanwa ari iy'abana ba Musabyimana Dativa. Mu yandi magambo, abana ba Musabyimana Dativa nta kibazo bafite ku bijyanye n'uburenganzira bwabo bwo kuzungura, iki kibazo cyamaze gukemurwa n'inama y'umuryango, kandi ikibazo cyakemukiye mu nama y'umuryango, abo bireba bakaba bemera umwanzuro wafashwe n'inama y'umuryango ntikigaruka mu Rukiko. Iyo Urukiko rusuzuma icyo rwaregewe rwari gusanga abarega nta nyungu bafite zo gusaba kuzungura kandi ubwo burenganzira bwo kuzungura babufite nta wababumbuye. Ikindi kandi n'iyi baba bafite ikibazo ku bijyanye n'uburenganzira bwo kuzungura umubyeyi wabo Musabyimana Dativa ntibari kurega Mugabushaka Pierre Claver kuko bavugaga nta ruhare afite ku mitungo baburana. icyakora nk'uko babigaragaje mu myanzuro yabo itanga ikirego ku rwego rwa mbere, ndetse bakabigarukaho no mu bujirire, icyo bari bamukurikiranyeho ni ukubamurikira imitungo y'umubyeyi wabo Musabyimana Dativa, iki kirego kikaba kitari kwitwa kuzungura. Mugabushaka Pierre Claver na we yaburanye ku rwego rwa mbere asobanura neza ko abana bamurega batari bakwiye kuregera imitungo mu Rukiko kuko batigeze bamusaba ko imitungo ya mama wabo bayikeneye, ngo abyange kuko n'ubundi yayiyandikishije kuko bari bakiri abana kandi akaba nta mutima mubi yabikoranye kuko iyo mitungo yakomeje kuyibarereramo. Hagombaga kwemezwa ko ikirego cyabo cyo gusaba kuzungura kitakirikiriwe. Bityo icyagombaga kuregerwa ni ukugaruza imitungo y'umubyeyi wabo mu mutungo ugomba kuzungurwa. Bikaba rero bidakwiye gufatwaho icyemezo kuko atari byo byaregewe ku rwego rwa mbere. [18] Ku bw'ibyo, hakwiye kwemezwa ko imikurikira y'urubanza RC00129/2020/TGI/MUS rwaciye n'Urukiko Rwisumbuye rwa Musanze ku wa 11/11/2021 ihindutse kuko rwaciye urubanza ku byo rutaregewe, ahubwo ntirwafata icyemezo ku byo rwaregewe. Na none kandi iyo ruramuka rusuzumye icyo rwaregewe, hagombaga kwemezwa ko abarega badafite inyungu yo kuregera kuzungura kandi nta wabimenye cyangwa ngo habe hari uwababumbuye uburenganzira bwo kuzungura imitungo yabo ari iy'umubyeyi wabo. Kuba iyo mitungo ishobora kuba yaragurishijwe n'undi muntu bavugaga ko nta ruhare ayifiteho, ikirego bamurega nticyagombaga kwitwa kuzungura kuko nk'uko ingingo ya 51 y' Itegeko N°27/2016 ryo ku wa 08/07/2016 rigenga imitungo y'umutungo w'abashyiriranywe, impano n'izungura ibiteganywa Kuzungura ni uguhabwa uburenganzira n'inshingano ku mutungo n'inyanga by'uwapfuye. Ibi bigashimangira ko ikirego kigamije kumenya niba umutungo ari uwa nyakwigendera cyangwa gutesha agaciro amasezerano y'ubugure kuri uwo mutungo kidakwiye kwitwa kuzungura. C. Kumenya niba ikirego cya Umwali Angélique cyo kugoboka mu bushake muri uru rubanza rusanze ruburanwa n'umugabo we gikwiye kwakirwa [19] Ingingo ya 113 y' Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganywa ko Kugoboka mu rubanza ni ugusaba kuba umuburanyi cyangwa kugirwa we mu rubanza ataregeye cyangwa atarezwemo. Na ho iya 114 iteganywa ko Ushaka kuburana mu rubanza ataregeye cyangwa atarezwemo abikora mu buryo bwo kuregera inkiko kandi agatanga ingwate y'amagarama. Kugira ngo ikirego cye cyakirwe, ugoboka ku bushake agomba kugaragaza inyungu yemewe

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n'amategeko, itaziguye kandi ye bwite. Ku bw'izi ngingo zombi, kugira ngo ushaka kugoboka mu rubanza abyemererwe, agomba kugaragara ko urwo rubanza atarurezemo cyangwa ko atarurezwemo, akanagaragaza ko afite inyungu yemewe n'amategeko kandi ye bwite. [20] Ngabonziza Jean Bosco yasabye Urukiko kutakira ikirego cya Umwali Angelique cyo kugoboka ku bushake muri uru rubanza kuko urubanza ari gusaba kugobokamo ari urw'umugabo we babana mu buryo bukurikije amategeko, kandi umugabo ni we wajuriye, ngo nta mpamvu yemewe n'amategeko yatuma agoboka mu rubanza nk'uru. [21] Umwali Angelique yavuze ko yashakanye mu buryo bwemewe n'amategeko bw'ivangamutungo risesuye na Musoni Evariste, ngo bakaba barahaye umwenda Valentine Company Ltd na Musabyemariya Valentine kandi imitungo iburanwa abazungura basaba guhabwa isanzwe yanditswe kuri Mugabushaka na Musabyemariya Valentine, ku buryo bashaka kuyikuraho bakabeshya ko ari iy'aba bana kugira ngo bazabure uko barangiza urubanza, ngo bazabure icyo bishyurwa, kandi iyi mitungo ariyo yagombaga kuzavamo ubwishyu. Yavuze ko ikindi cyatumye agoboka muri uru rubanza ari uko Musoni Evariste yarezwe muri uru rubanza aregwa ibibanza 2 gusa ari nabyo agomba kwisobanuraho akaba atabasha kugaragaza no kuvuga ku bindi bibanza atarezwe kandi biburanwa muri uru rubanza, ngo Musabyemariya Valentine na Mugabushaka bashaka kubirigisa babyomeka ku bana kugira ngo abo babereyemo imyenda bazabure ubwishyu. Ngo kubera ko hari umutungo wabo bahaye Valentine Company Ltd na Musabyemariya Valentine, ahazava ubwishyu hakaba hagiye kurigiswa ni yo mpamvu agobotse ngo agaragaze ko usibye ibibanza Musoni Evariste yarezwe akaba ari byo agomba kwisobanuraho gusa ko hari n'ibindi bibanza byanditwe kuri Musabyemariya Valentine na Mugabushaka bitabakurwaho ngo bihabwe abazungura kuko ari ubwishyu bw'ideni bbahaye, kandi bararyemera ndetse n'urukiko rwararyemeje. [22] Umwali Angelique yagaragaje ko urubanza ashingiraho ari urubanza RCOM00081/2020/TC aho umugabo we Musoni Evariste yaregaga Musabyemariya Valentine uyu akaba umugore wa Mugabushaka Pierre Claver (se w'abana barega muri uru rubanza basaba kuzungura ibya nyina) maze uru rukiko rutegeka ko Valentine Company Ltd na Musabyemariya Valentine bafatanyaga kwishyura Musoni Evariste umwenda ungana na 45.794.455Frw, uru rubanza Musabyemariya yararujiririyemo mu Rukiko Rukuru rw'Ubucuruzi, ubujurirre buhabwa RCOMA00458/2020/HCC maze ku wa 05/01/2022, uru rukiko rwemeza ko ubujurire butakiriwe. Ngo kuba Urukiko rw'Ubucuruzi rwarategutse ko Musabyemariya na Company bafatanyaga kwishyura umugabo we Musoni Evariste 45.794.455Frw, bivuze ko na Mugabushaka Pierre Claver nawe iki cyemezo kimureba kuko yasezeranye n'umugabo we ivangamutungo risesuye. Aha niho bageze basanga imitungo ibanditseho ari yo Musoni Evariste azateza mu cyamunara kugira ngo hagaruzwe umutungo bamwambuye, bituma bacura umugambi wo kubeshya ko iyi mitungo ngo yari iya Musabyimana Dative, akaba ari nacyo cyateye Mugabushaka kubeshya muri uru rubanza, akavuga ko imitungo iregerwa atari iye ngo yari iy'umugore we wa mbere kugira ngo ikunde yandikwe ku bana babyaranye maze ikunde ive kuri Mugabushaka Pierre Claver. [23] Musabyemariya Valentine yavuze ko ikirego cyo kugoboka nta shingiro gifite kuko ideni rifitwe na Valentine Company Ltd, ngo nta bwo ari abantu ku giti cyabo, kandi ngo Company ifite imitungo, ngo nta mpamvu yo kugira impungenge ko ubwishyu butazaboneka, cyane cyane ko imitungo ivugwa muri uru

rubanza ari iy'abana ba Musabyimana Dativa. [24] Urukiko rurasanga ikimenyetso cy'ibanze Umwali Angelique yashingiyeho agoboka muri uru rubanza ari urubanza RCOM00081/2020/TC aho umugabo we Musoni Evariste

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yaregaga Musabyemariya Valentine, umugore wa Mugabushaka Pierre Claver. Muri uru rubanza Umwali Angelique nta na hamwe agaragara nk'umuburanyi. Umugabo we warubayemo umuburanyi arahibereye, nta ho yigeze ajya ku buryo byaba ngombwa kumusimbura cyangwa kumuhagararira. Na none kandi, nk'uko Umwali Angelique yabyivugiye, we na Musoni Evariste basezeranye mu buryo bw'ivangamutungo risesuye, bishatse kuvuga kuba Musoni Evariste ari mu rubanza atari ku nyungu ze ku giti cye, ahubwo ari no mu nyungu z'uwo bashakanye Umwali Angelique. Mu yandi magambo, Umwali Angelique yari asanzwe muri uru rubanza, aruhagarariwemo n'umugabo we Musoni Evariste. Nta mpamvu rero yo gutanga ikirego cyo kugoboka mu rubanza ahagarariwemo. [25] Ikindi kigaragara ni uko mu gusobanura ishingiro ry'ikirego cye, Umwali Angelique yasobanuye ko usibye ibibanza Musoni Evariste yarezwe akaba ari byo agomba kwisobanuraho gusa, ngo hari n'ibindi bibanza byanditwe kuri Musabyemariya Valentine na Mugabushaka bitabakurwaho ngo bihabwe abazungura kuko ari ubwishyu bw'ideni babahaye, kandi bararyemera ndetse n'urukiko rwararyemeje. Mu byo avuga ariko ntiyigeze agaragaza icyari kubuza umugabo we Musoni Evariste kuvuga kuri urwo rubanza, kuko nk'umuntu wari wabaye umuburanyi mu rubanza nta cyari kumubuza kugira icyo avuga ku biburanwa muri urwo rubanza byose. Iyi rero ikaba ari indi mpamvu ikwiye gutuma ikirego cya Umwali Angelique kitakirwa. Muri make, Urukiko rurasanga kuba Umwali Angelique atarabashije kugaragaza ko urubanza atarurezwemo (ntiyigeze ahakana ko umugabo we arurimo), na none kandi akaba ataragaragaje inyungu ze bwite muri uru rubanza, kuko we ubwe yasobanuye ko inyungu aharanira ari iz'umuryango we, zashoboraga no gukurikiranwa n'umugabo, ikirego cye cyo kugoboka muri uru rubanza ntigikwiye kwakirwa. D. Kumenya niba indishyi zisabwa muri uru rubanza zikwiye gutangwa [26] Musoni Evariste yavuze ko abaregwa bagomba gufatanya kumuha 2.000.000Frw Y'ikurikiranarubanza na 3.000.000Frw y'igihembo cy'avoka. [27] Igihozo Sandrine, Irankunda Marie Aime, Ishimwe Clarisse na Shema Sangano Blaise bavuze ko basaba urukiko gutegeka Musoni Evariste kudusubiza 1.000.000Frw y'igihembo, 2.000.000frw y'indishyi z'akababaro, ingendo n'insimburamubyizi. [28] Ngabonziza Bosco yavuze ko asaba gukurwa mu rubanza akagererwa igihembo cy'avoca kingana na 500.000Frws Ngabonziza Bosco arasanga kandi mugihe atakurwa murubanza yasaba urukiko kuzategeka umushora mumanza kumuha indishyi z'agasiragizo n'ikurikiranarubanza bingana na 1.000.000Frws [29] Urukiko rurasanga Igihozo Sandrine, Irankunda Marie Aime, Ishimwe Clarisse na Shema Sangano Blaise badakwiye guhabwa indishyi basaba muri uru rubanza kuko mu gutanga ikirego ku rwego rwa mbere hari ibyo batubahirije kuko baregeye kuzungura kandi ikibazo bafite atari uburenganzira bwo kuzungura, ahubwo ikibazo ari ukumenya niba imitungo bagomba kuzungura nta kibazo ifite. [30] Urukiko rurasanga Musoni Evariste akwiye gusubizwa amafaranga yakoresheje akurikira urubanza kuko yiburaniye. Mu bushishozi bw'Urukiko, hashingiwe ku nshuro yitabye n'ibikorwa by'ikurikiranarubanza yakoze, yahabwa 250 000Frw

(habariwemo n'ingwate y'amagarama yatanze). Ngabonziza Jean Bosco waburanye urubanza ku rwego rwa mbere ndetse n'ubujurire, ahagarariwe na avoka, yasubizwa igihembo cya avoka kingana na 750 000Frw, hashingiwe ku mabwiriza agena ibihembo mbonera by'abavoka. Aya mafaranga

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bagomba kuyasubizwa na Mugabushaka Pierre Claver kuko ari we wabazanye muri uru rubanza nk'abagobokeshejwe. III. ICYEMEZO CY'URUKIKO [31] Rwemeje ko ikirego cy'ubujurire cyatanzwe na Musoni Evariste cyakiriwe kandi ko gifite ishingiro. [32] Rwemeje ko kugoboka ku bushake kwa Umwali Angeliue bitakiriwe. [33] Rwemeje ko imikirize y'urubanza RC00129/2020/TGI/MUS rwaciwe n'Urukiko Rwisumbuye rwa Musanze ku wa 11/11/2021 ihindutse kuri byose. [34] Rwemeje ko Igihozo Sandrine, Irankunda Marie Aime, Ishimwe Clarisse na Shema Sangano Blaise batagombaga kugarura mu Rukiko ikibazo cyo kuzungura imitungo y'umubyeyi wabo mu gihe cyari cyaramaze gufatwaho umwanzuro n'inama y'umuryango. Bagombaga kuregera ikibazo nyirizina bafitanye na Mugabushaka Pierre Claver cyereke iyo mitungo umuryango wabemereye kuzungura. [35] Rutegetse Mugabushaka Pierre Claver guha Musoni Evariste indishyi zingana na 250 000Frw, ategetswe kandi guha Ngabonziza Jean Bosco 750 000 Frw. Akayatanga ku neza mu gihe urubanza ruzaba rumaze kuba itegeko, nibitaba ibyo azakurwa mu mitungo ye ku ngufu za Leta.

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