

RWANDA / JUDGMENT

UBUSHINJACYAHA v NDAYIZEYE

RPAA 01283/2024/CA

COURT

Court of Appeal

DECIDED

18 July 2025

CASE / FILE NUMBER

RPAA 01283/2024/CA

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UBUSHINJACYAHA v NDAYIZEYE

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- Date: 2025-07-18
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Text

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UBUSHINJACYAHA v NDAYIZEYE [Rwanda URUKIKO RW'UBUJURIRE - RPAA 01283/2024/CA (Mukandamage, P.J) 18 Nyakanga 2025] Amategeko agenga ibimenyetso – Ibimenyetso mu manza nshinjabyaha – Harebwe cyane cyane umwihariko w'imanza nshinjabyaha, muri izo manza ibimenyetso byose bishobora gushingirwaho mu gihe bigaragaza ukuri kw'ibyabaye (principe de la liberté de la preuve en matière pénale) ababuranyi bakaba barahawe uburyo bwo kuhaba ngo banyomozanye, kandi ko urukiko nirwo rwemeza ko ibyo bimenyetso bishobora kwemerwa. Amategeko agenga ibimenyetso – Ubuhamya – Ukuvuguruzanya kw'abatangabuhamya ku tuntu duto duto ntibihindura ireme ry'ibyo bavuze. Incamake y'ikibazo: Ubushinjacyaha bwakurikiranye Ndayizeye mu Rukiko Rwisumbuye rwa Gucumbi bumurega icyaha cyo gusambanya umwana buvuga ko yasambanyije umwana witwa A. D. w'imyaka cumi n'ibiri (12) y'amavuko, ubwo uyu mwana yari mu ishyamba yagiye gusenya inkwi, amwaka igitambaro yari afite akimupfuka mu maso aramusambanya. Urwo Rukiko rwaciye urubanza rusanga hari ibimenyetso bigaragaza ko Ndayizeye yakoze icyaha cyo gusambanya umwana, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri (20) rumugabanyirije kubera ko ari ubwa mbere yari akurikiranywe mu butabera ku buryo buzwi. Ndayizeye yajuririye Urukiko Rukuru avuga ko

Urukiko Rwisumbuye rwa Gicumbi rwaciye urubanza mu buryo bugenekereje kuko nta kimenyesto simusiga kigaragaza ko icyaha aregwa ariwe wagikoze, asaba kugirwa umwere. Urwo Rukiko narwo rwaciye urubanza rwemeza ko ubujurire bwe nta shingiro bufite, ko ubuhamya bwatanzwe bwuzuzanya na raporo ya Muganga yagaragaje ko akarangabusugi k'umwana kavuyeho. Ndayizeye yajuririyeye Urukiko rw'Ubuja rwemeza ko Urukiko Rukuru rwamuhamije icyaha cyo gusambanya umwana rushingiye ku bimenyetso bishidikanywaho, agasaba kugirwa umwere, ko imvugo z'umwana wahohotewe zivuguruzanya n'ubuhamya bwatanzwe, anavuga kandi ko ubuhamya bw'uwo mwana butagombaga gushingirwaho n'urukiko nk'ikimenyetso kimuhamya icyaha, kuko budashyigikiye n'ibindi bimenyetso. Ku byerekeye raporo ya Muganga, avuga ko ntaho igaragaza ko yamukozeho ku buryo byatumye atakaza ubusugi. Ubushinjacyaha bwo buvuga ko ubujurire nta shingiro bufite, kuko ibimenyetso byashingiweho mu kumuhamya icyaha bidashidikanywaho. Busobanura ko umwana wahohotewe yavuze ko ari Ndayizeye wamusambanyije akamubwira ko nabivuga azamwica, uwo mwana akaba kandi ataramwibeshyeho kuko yari asanzwe amuzi, imvugo z'uwo mwana zikaba zunganirwa na raporo ya Muganga yagaragaje ko umwana yasambanyijwe. Incamake y'icyemezo: 1. Harebwe cyane cyane umwihariko w'imanza nshinjabyaha, muri izo manza ibimenyetso byose bishobora gushingirwaho mu gihe bigaragaza ukuri kw'ibyabaye (principe de la liberté de la preuve en matière pénale) ababuranyi bakaba barahawe uburyo bwo kuhaba ngo banyomozanye, kandi ko urukiko arirwo rwemeza ko ibyo bimenyetso bishobora kwemerwa.

2. Ukuvuguruzanya kw'abatangabuhamya ku tuntu duto duto ntibihindura ireme ry'ibyo bavuze.

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Ubuja nta shingiro bufite. Amategeko yashingiweho: Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso, ingingo ya 87. Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, inginyo ya 119. Imanza zifashishijwe: Ubushinjacyaha vs Gatesi, RPAA 00198/2024/CA, rwaciye n'Urukiko rw'Ubuja ku wa 17/04/2025.

Ubushinjacyaha vs Mbihonge, RPAA 00546/2024/CA rwaciye n'Urukiko rw'Ubuja ku wa 19/03/2025. Ubushinjacyaha vs Ndayishimiye, RPAA 00692/2021/CA rwaciye n'Urukiko rw'Ubuja ku wa 20/01/2023. Ubushinjacyaha vs Birindabagabo, RPA/GEN 00004/2020/CA rwaciye n'Urukiko rw'Ubuja ku wa 08/04/2022

Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 17/06/2023. Mukafureri Claudine yareze Ndayizeye mu Bugenzacyaha avuga ko ku wa 04/06/2023 yasambanyije umwana we witwaga A. D. w'imyaka cumi n'ibiri (12) y'amavuko, ubwo uyu mwana yari mu ishyamba yagiye gusenya inkwi, amwaka igitambaro yari afite akimupfuka mu maso aramusambanya, arangije amubuza kugira uwo abibwira. [2] Nyuma y'iperereza, Ubushinjacyaha bwatanzwe ikirego mu Rukiko Rwisumbuye rwa Gicumbi burega Ndayizeye icyaha cyo gusambanya umwana, busaba ko ahamwe n'icyo cyaha, agahanishwa igifungo cya burundu giteganywa n'ingingo ya 133 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, nk'uko ryahinduwe kugeza ubu. [3] Ndayizeye yaburanye ahakana icyaha, avuga ko ntaho yigeze ahurira n'umwana aregwa

gusambanya, ko kuva afatwa yasabye ko hakorwa ibizamini bya DNA ariko ntibyakorwa, kandi ko atari gutinyuka gusambanya umwana w'imyaka cumi n'ibiri 12) y'amavuko kuko afite umugore n'abana batatu (3), harimo ungana n'uwo mwana, asaba kurenganurwa. [4] Mu rubanza n° RP 00419/2023/TGI/GIC rwaciwe ku wa 18/01/2024, Urukiko Rwisumbuye rwa Gicumbi rwasanze hari ibimenyetso bigaragaza ko Ndayizeye yakoze icyaha cyo gusambanya umwana, birimo imvugo z'umwana, ubuhamya bwatanzwe na Ingabire Scovia wemeza ko Ndayizeye yari mu ishyamba, raporo ya Muganga n'icyemezo cy'amavuko kigaragaza ko umwana yavutse ku wa 11/07/2011, rumuhanisha igifungo cy'imyaka makumyabiri (20) rumugabanyirije kubera ko ari ubwa mbere yari akurikiranwe mu butabera ku buryo buzwi.

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[5] Ndayizeye yajuririye Urukiko Rukuru avuga ko Urukiko Rwisumbuye rwa Gicumbi rwaciye urubanza mu buryo bugenekereje kuko nta kimenyesto simusiga kigaragaza ko icyaha aregwa ariwe wagikoze, asaba kugirwa umwere. Ubushinjacyaha bwavuze ko ubujurire bwa Ndayizeye nta shingiro bufite, kuko nta mpamvu umwana yari afite yo kumubeshyera, busaba ko igihano yahawe kigumaho. [6] Mu rubanza n° RPA 00143/2024/HC/KIG rwaciwe ku wa 29/10/2024, Urukiko Rukuru rwasanze ubujurire bwa Ndayizeye nta shingiro bufite, kuko umwana amushinja kandi ntacyo agaragaza apfa nawe, n'ubuhamya bwa nyirakuru w'umwana, ubwa Ingabire Scovia n'imvugo za nyina w'umwana bikaba byuzuzwa na raporo ya Muganga yagaragaje ko akarangabusugi k'umwana kavuyeho. Ku birebana no gupimisha ADN, urukiko rwasanze itari gupimwa kuko umwana atahise avuga ko yasambanyijwe kandi ko mu koga yahanaguye ibimenyetso, maze rwemeza ko nta gihindutse ku rubanza rwajuririye. [7] Ndayizeye yajuririye Urukiko rw'Ubujurire, urubanza ruhabwa n° RPAA 01283/2024/CA, ruburanishwa mu ruhame ku wa 07/07/2025, Ndayizeye yunganiwe na Me Uwimabera Béata, naho Ubushinjacyaha buhagarariye na Uwizeye Jean Marie, Umushinjacyaha ku rwego rw'Igihugu. Mu iburanisha Ndayizeye yavuze ko impamvu y'ubujurire ijyanye no gusuzuma ibimenyetso byirengagijwe n'urukiko rwabanje atakiyikomeje. [8] Mu myanzuro no mu miburanire, Ndayizeye avuga ko Urukiko Rukuru rwamuhamije icyaha cyo gusambanya umwana rushingiye ku bimenyetso bishidikanywaho, agasaba kugirwa umwere. Uhagarariye Ubushinjacyaha avuga ko ubujurire bwatanzwe na Ndayizeye nta shingiro bufite, kuko ibimenyetso bimuhamya icyaha bihari kandi bihagije. [9] Ikibazo kigomba gusuzumwa muri uru rubanza ni icyo kumenya niba Ndayizeye yarahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho. II. ISESENGURWA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba Ndayizeye yarahamijwe icyaha cyo gusambanya umwana hashingiwe ku bimenyetso bishidikanywaho [10] Ndayizeye n'umwunganira bavuga ko ibimenyetso byashingiweho n'Urukiko Rukuru rumuhamya icyaha cyo gusambanya umwana bishidikanywaho. Bavuga ko imvugo z'umwana wahohotewe zivuguruzanya n'ubuhamya bwatanzwe na Ingabire Scovia ku myenda uwo mwana yari yambaye n'iyi Ndayizeye yari yambaye, kandi ko Ingabire Scovia yavuze ko Ndayizeye ajya amubona aho batuye, nyamara badatuye mu kagari kamwe, ndetse ko ku wa 04/06/2023, umunsi bivugwa ko ariho icyaha cyabaye, yiriwe mu kagari ke. Bavuga kandi ko

ubuhamya bw'umwana uvuga ko yasambanyijwe na Ndayizeye butagombaga gushingirwaho n'urukiko nk'ikimenyetso kimuhamya icyaha, kuko budashyigikiwe n'ibindi bimenyetso, bukaba kandi butandukanye n'ibyo Mukambera Vénantie avuga ko uwo mwana yasambanyijwe n'uwitwa Ndahimana ufite uburwayi bwo mu mutwe. [11] Ku byerekeye raporo ya Muganga, Ndayizeye n'umwunganira bavuga ko itafatwa nk'ikimenyetso kimuhamya icyaha cyo gusambanya umwana, kuko ntaho igaragaza ko yamukozeho ku buryo byatumye atakaza ubusugi. Avuga na none ko atari gushyira igitsina cye

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mu cy'umwana w'imyaka cumi n'ibiri (12), hanyuma ngo atahe amare igihe nk'icyo yamaze nta kibazo afite ndetse n'abo babana ntibabibone, ko ahubwo iyo aba yaramusambanyije yari gukomereka mu gitsina. Bavuga kandi ko ikizamini cya ADN Ndayizeye yasabye kitakozwe, nyamara aricyo cyari gutuma hatangwa ubutabera buboneye. [12] Uhagarariye Ubushinjacyaha avuga ko ubujurire bwatanzwe na Ndayizeye nta shingiro bifite, kuko ibimenyetso byashingiweho mu kumuhamya icyaha bidashidikanywaho. Asobanura ko umwana wahohotewe yavuze ko ari Ndayizeye wamusambanyije akamubwira ko nabivuga azamwica, uwo mwana akaba kandi ataramwibeshyeho kuko yari asanzwe amuzi, imvugo z'uwo mwana zikaba zunganirwa na raporo ya Muganga yagaragaje ko umwana yasambanyijwe, kuko nta karangabusugi afite (she was violated because hymen was not still intact), hamwe n'ubuhamya bwatanzwe. [13] Uhagarariye Ubushinjacyaha avuga kandi ko ubuhamya bwa Mukambera Vénantie uvuga ko umwana yasambanyijwe na Ndahimana ufite uburwayi bwo mu mutwe budakwiye guhabwa agaciro, kuko ibyo yavuze byose atari ibyo yabonye, ahubwo ari ibyo yabwiwe na nyina w'umwana, ku buryo byashoboka ko atamenye neza uwakoze icyaha. [14] Ku byo Ndayizeye n'umwunganira bavuga ko imvugo z'umwana n'ubuhamya bwa INGABIRE Scovia bivuguruzanya, Uhagarariye Ubushinjacyaha avuga ko nta shingiro bifite, ko ahubwo zunganirana. Naho kuba Ndayizeye avuga ko we n'abamushinja batuye mu tugari dutandukanye, Uhagarariye Ubushinjacyaha avuga ko bitamukuraho ko yasambanyije umwana, kuko ashobora kuva mu kagari kamwe akajya mu kandi. [15] Uhagarariye Ubushinjacyaha asoza asaba ko igihano Ndayizeye yahawe cyo gufungwa imyaka makumyabiri (20) cyagumaho, kubera ko atabasha kuvuguruza ibimenyetso byashingiweho n'urukiko rwabanje rumuhamya icyaha. Uko Urukiko rubibona [16] Impaka muri uru rubanza zishingiye ku kumenya niba Ndayizeye yarahamijwe icyaha cyo gusambanya umwana w'imyaka cumi n'ibiri (12) y'amavuko hashingiwe ku bimenyetso bishidikanywaho. [17] Kubyerekeranye n'ibimenyetso mu manza n'itangwa ryabyo, mu rubanza n° RPAA 00692/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 20/01/2023, haburana Ubushinjacyaha na Ndayishimiye Jean Damascène, hasesenguwe ingingo ya 119 y'Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo¹, harebwe cyane cyane ku mwihariko w'imanza nshinjabyaha, maze urukiko rusobanura ko mu manza nshinjabyaha, ibimenyetso byose bishobora gushingirwaho mu gihe bigaragaza ukuri kw'ibyabaye (principe de la liberté de la preuve en matière pénale) ababuranyi bakaba barahawe uburyo bwo kuhaba ngo banyomozanye, kandi ko urukiko arirwo rwemeza ko ibyo bimenyetso bishobora kwemerwa. Iri hame ryashingiweho mu zindi manza zakurikiyeho zaciwe n'uru rukiko, harimo n'urubanza n°

RPAA 00198/2024/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 17/04/2025, haburana Ubushinjacyaha na Gatesi Hasina.

1 Iyo ngingo ihura n'ingingo ya 87 y'Itegeko n° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso.

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[18] Nk'uko bigaragara mu rubanza n° RPA 00143/2024/HC/KIG rwaciwe ku wa 29/10/2024, Urukiko Rukuru rwahamije Ndayizeye icyaha cyo gusambanya umwana rumuhanisha igifungo cy'imyaka makumyabiri (20) rushingiye ku bimenyetso bikurikira:

- imvugo z'umwana wahohotewe wavuze ko yavuye mu rugo iwabo saa munani (14h00') yambaye ikanzu n'ikariso, ajyana na Ingabire Scovia na Uwimaninkunda Ange gusenya inkwi mu ishyamba riherereye Nyarukombe, abona Ndayizeye yambaye ipantaro y'umukara n'ikote, abana bari kumwe bariruka, we ajya kwihisha mu gashibuka cy'inturusu, Ndayizeye arahamusa amwambura igitambaro yari akenyeye mu nda akimupfuka mu maso amukuramo ikariso ayigeza ku maguru ahita amusambanya, arangije amubwira ko nabivuga azamwica, atashye ageze mu rugo nyirakuru Mukambara Vénantie amubajije impamvu atashye kare, amubwira ko ababara umutwe, mu gatuza n'amaguru;
- imvugo za Mukafureri Claudine, nyina w'umwana, wavuze ko Mukambara Vénantie yamwoherereje umwana amubwira ko arwaye agomba kujya kumuvuza, abona umwana arimo kugenda atandukanyije amaguru, amubajije icyo yabaye ntiyagira icyo amubwira, asaba umukobwa witwa Ukwizera Chance kumumubariza icyo yabaye, umwana amubwira ko Ndayizeye yamusambanyije akamubwira ko nabivuga azamwica;
- ubuhamya bwatanzwe na Ingabire Scovia, wavuze ko yavuye mu rugo ari kumwe na Ange bagiye gushaka isaso y'inka, bajyana na A. D. wari wambaye ijipo n'ishati bisa, igitenge n'inkweto z'umutuku we agiye gutashya, babona Ndayizeye avuye kwa nyirabuja ari kuririmba yambaye ipantaro n'umupira w'umukara, we na Ange bariruka, naho A. D. arasigara, bahura n'abana bo kwa Mbabazi bababwira ko Ndayizeye arimo kubirukankana, nyuma basubiye mu ishyamba ntibahasanga A. D. bafata isaso barataha;
- ubuhamya bwatanzwe na Mukambara Vénantie, nyirakuru w'umwana, wavuze ko yohereje umwana gusenya inkwi ari kumwe n'abandi bana bibiri (2) bo kwa Ngarukiye, ariko azana udukwi ducye mu ntoki, amubajije impamvu amusubiza ko yazibuze, mu gitondo ntiyajya kwiga amubajije impamvu ararira amubwira ko arwaye arimo kubabara umutwe, mu gatuza n'amaguru, atumaho nyina ngo ajye kumuvuza, uyu aza kumubwira ko umwana we atarwaye Malaria, ko bamusambanyije, abajijwe niba azi uwasambanyije umwuzukuru we, avuga ko ari umugabo utuye ku gasozi gateganye n'iwabo witwa Ndahimana bivugwa ko ari umusazi;

- raporo yakozwe ku wa 16/06/2023 na Dr Muguyeneza Fidélité wo ku bitaro bya Byumba igaragaza ko umwana yasambanyijwe kuko nta karangabusugi agifite (she was violated because hymen was not still intact). [19] Urukiko rw'Ubujurire rurasanga ibyo Ndayizeye avuga ko hari ukuvuguruzanya hagati y'imvugo z'umwana n'ubuhamya bwatanze na Ingabire Scovia kubyo umwana na Ndayizeye bari bambaye, atari impamvu yatuma ubuhamya yatanze buteshwa agaciro, kuko icy'ingenzi gikubiye mu byo bavuze nuko babonye Ndayizeye mu ishyamba aho bari bari, arabirukankana, asigarana umwana umwe aramusambanya. [20] Urukiko rw'Ubujurire ruributsa kandi ko mu rubanza n° RPA/GEN 00004/2020/CA rwaciye ku wa 08/04/2022, haburana Ubushinjacyaha na Birindabagabo Jean Paul, byasobanuwe ko ukuvuguruzanya kw'abatangabuhamya ku tuntu duto duto bidahindura ireme ry'ibyo bavuze.

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Uyu murongo wanashingiweho mu manza zitandukanye zkurikiyeho zaciye n'uru Rukiko, harimo urubanza n° RPAA 00546/2024/CA rwaciye ku wa 19/03/2025, haburana Ubushinjacyaha na Mbihonge Jean. [21] Na none ku bivugwa mu bujurire bwa Ndayizeye ko imvugo z'umwana zitandukanye n'ibyo nyirakuru Mukambara Vénantie avuga ko uwo mwana yasambanyijwe n'uwitwa Ndahimana ufite uburwayi bwo mu mutwe, urukiko rurasanga koko bombi badahuza, ariko imvugo y'umwana niyo ikwiye guhabwa agaciro, kuko ni we wabonye uwamuhohoteye, kandi amuhurizaho na Ingabire Scovia bari kumwe mu ishyamba aho icyaha cyabereye bagasobanura n'uko byagenze icyo gihe. Ku byo Ndayizeye avuga ko ku wa 04/06/2023, umunsi bivugwa ko ariho icyaha cyabaye yiriwe mu kagari ke nta shingiro bifite, kuko uretse kubivuga, nta kigaragaza ko koko atashoboraga kuva mu kagari kamwe ngo ajye mu kandi, kandi urebye ubuhamya bw'abana bwagarutse haruguru, bigaragara ko bari basanzwe bamuzi neza n'aho yakoraga (kwa nyirabuja). [22] Urukiko rurasanga kandi ubuhamya bw'umwana wahohotewe bwunganiwe na raporo ya Muganga igaragaza ko umwana yasambanyijwe, nta mpamvu rero ihari yatuma budashingirwaho nk'ikimenyetso muri uru rubanza. [23] Urukiko rw'Ubujurire rurasanga na none ibyo Ndayizeye avuga ko raporo ya Muganga itari ikwiye gushingirwaho mu kumuhamya icyaha kuko ntaho igaragaza ko yakoze ku mwana nta shingiro bifite, kuko ubutumwa Muganga yahawe ntabwo harimo kugaragaza ko ariwe wasambanyije umwana, ahubwo yari yasabwe kureba niba umwana yarasambanyijwe nta n'akarangabusugi agifite (she was violated because hymen was not still intact). Ntabwo rero Ndayizeye akwiye kuvuga ko ntacyo yakoze ku mwana, kuko umwana akimara gusambanywa yatashye afite inkwi nkeya, ageze kwa nyirakuru Mukambere Venantie aho yabaga, avuga ko arwaye ariko ntiyavugaga ibyamubayeho kubera ko Ndayizeye yamubwiye ko nabivugaga azamwica, nyirakuru nawe abona ko umwana arwaye atumaho nyina kugirango ajye kumuvuza. [24] Ku byerekeye ikizamini cya ADN itarakozwe, Urukiko rw'Ubujurire rurasanga nk'Urukiko Rukuru rwabibonye, icyo kizamini ntacyo cyari kugaragaza, kubera ko ibyari kwifashishwa mu kugikora byari byahanaguritse kuko umwana atahise ajyanwa kwa muganga icyaha kikimara kuba, kandi kuri uru rwego Ndayizeye ntagaragaza icyashingirwaho hakorwa icyo kizamini. [25] Urukiko rw'Ubujurire rurasanga rero, ibimenyetso byashingiweho n'Urukiko Rukuru mu guhamya Ndayizeye icyaha cyo gusambanya

umwana w'imyaka cumi n'ibiri (12) y'amavuko byuzuzanya kandi bidashidikanywaho, ubujurire bwe bukaba nta shingiro bufite, hakaba hagomba kugumaho imikirize y'urubanza yajuririye, cyane cyane ko igihano cy'igifungo cy'imyaka makumyabiri (20) yahawe gihwanye n'uburemere bw'icyaha yakoze cyo gusambanya umwana w'imyaka cumi n'ibiri (12) y'amavuko, we ari mukuru cyane afite imyaka mirongo itatu n'ine

(34) y'amavuko. III. ICYEMEZO CY'URUKIKO [26] Rwemeje ko ubujurire bwatanzwe na Ndayizeye nta shingiro bufite;

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[27] Rwemeje ko urubanza n° RPA 00143/2024/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 29/10/2024 rugumanye agaciro mu ngingo zarwo zose; [28] Rutegetse ko igihano cy'igifungo cy'imyaka makumyabiri (20) Ndayizeye yahawe muri urwo rubanza ku cyaha cyo gusambanya umwana w'imyaka cumi n'ibiri (12) y'amavuko kigumyeho; [29] Ruvuze ko amagarama y'urubanza aherereye ku Isanduku ya Leta, kuko Ndayizeye yajuriye afunze, akaba asonewe kuyatanga.

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