

RWANDA / JUDGMENT

UBUSHINJACYAHA v NIZERAYESU

RPAA 00287/2025/CA

COURT

Court of Appeal

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UBUSHINJACYAHA v NIZERAYESU

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Text

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UBUSHINJACYAHA v NIZERAYESU [Rwanda URUKIKO RW'UBUJURIRE - RPAA 00287/2025/CA (Mukamurenzi, P.J) 24 Ukwakira 2025] Amategeko agenga ibimenyetso mu manza z'inshinjabyaha – Ukwemerwa kw'ibimenyetso byose

- Mu manza nshinjabyaha, ibimenyetso byose, iyo byagiweho impaka bishobora gushingirwaho mu kwemeza ko uregwa yakoze icyaha (principe de la liberté de la preuve en matière pénale) kandi ibyo bimenyetso bishobora no kuba invugo z'abatangabuhamya, urukiko rukaba arirwo rusuzuma niba ibyo bavuga byakwemerwa cyangwa ntibyemerwe. Incamake y'ikibazo: Hagendewe ku makuru yatanzwe, Nizerayesu yaje gufatanwa udupfunyika 1000 tw'urumogi yari ashiriye umuguzi wari wamuhamagaye. Mu Bugenzacyaha, yemeye ko yafatanywe urumogi arushyiriye uwari wamuhamagaye. Ubushinjacyaha bwamureze mu Rukiko Rwisumbuye rwa Gicumbi icyaha cyo gutunda ibiyobyabwenge, aburana ahakana icyaha ariko urukiko rushingiye ku bimenyetso bitandukanye rusanga icyo cyaha kimuhama, rumukatira igifungo cya burundu. Uregwa yajuririye mu Rukiko Rukuru, avuga yagambaniwe n'uwari umukozi we wamuhamagaye hanyuma agiye kumureba asanga ari kumwe n'abandi bagabo 2 baramufata bavuga ko

bamufatanye urumogi kandi ntarwo yari afite. Urukiko rwasanze ubujurire bwe nta shingiro bufite ariko rumugabanyiriza igihano ahanishwa igifungo cy'imyaka 15 n'ihazabu ya 5.000.0000 Frw. Nizerayesu yongeye kujurira mu Rukiko rw'Ubujurire, hasuzumwa ikibazo cyo kumenya niba hari inenge zirengagijwe n'Urukiko Rukuru zari gutuma imvugo za Nizerayesu Jean Claude n'ibindi bimenyetso byashatswe mu iperereza bidashingirwaho. Uregwa avuga ko Urukiko Rukuru rwashingiye ku mvugo ye yemera icyaha mu Bugenzacyaha kandi uko kwemera kwe yaragutewe no gukubitwa bityo bikaba bitashingirwaho ahamwa n'icyaha. Akomeza vuga ko yagambaniwe akagerekwaho urumogi rutari urwe bityo agasaba ko yagirwa umwere. Ubushinjacyaha busobanura ko uregwa nta cyo anenga ubuhamya bwe yitangiye mu Bugenzacyaha kuko yabutanze atekanye kandi hakaba hari n'abatangabuhamya n'ibindi bimenyetso byemeza ko yafashwe atunda urumogi yari ashiriye umwe mu bahamya wari wigize umuguzi. Incamake y'icyemezo: Mu manza nshinjabyaha, ibimenyetso byose, iyo byagiweho impaka bishobora gushingirwaho mu kwemeza ko uregwa yakoze icyaha (principe de la liberté de la preuve en matière pénale) kandi ibyo ibimenyetso bishobora no kuba imvugo z'abatangabuhamya, urukiko rukaba arirwo rusuzuma niba ibyo bavuga byakwemerwa cyangwa ntibyemerwe. Ubujurire, nta shingiro bufite. Nta mategeko yashingiweho

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Imanza zifashishijwe: RPAA 0101/09/CS, Ubushinjacyaha na Nzajyibwami Emmanuel, rwaciwe n'Urukiko rw'Ikirenga ku wa 09/03/2012; RPAA 00692/2021/CA, Ubushinjacyaha na Ndayishimiye Jean Damascène rwaciwe n'Urukiko rw'Ubujurire ku wa 20/01/2023; RPAA 00411/2023/CA, Ubushinjacyaha na Semugeshe Emmanuel rwaciwe n'Urukiko rw'Ubujurire ku wa 28/05/2025; RPAA 00371/2023/CA, Ubushinjacyaha na Simbandumwe Etiennerwaciwe n'Urukiko rw'Ubujurir ku wa 23/05/2025. Urubanza I. IMITERERE Y'URUBANZA

- [1] Ku wa 08/09/2021, ku bufatanye bwa Station ya Polisi ya Murambi, ishami rya Polisi rishinzwe kurwanya ibiyobyabwenge, inzego z'ibanze n'abaturage, bafatiye Nizerayesu Jean Claude mu mudugudu wa Gisiza, Akagari ka Kabuga, Umurenge wa Masoro, Akarere ka Rulindo, afite udupfunyika 1000 tw'urumogi arushyiriye umukiriya. [2] Nyuma y'iperereza, Ubushinjacyaha bwareze Nizerayesu Jean Claude mu Rukiko Rwisumbuye rwa Gicumbi bumukurikiranyeho icyaha cyo gutunda ibiyobyabwenge byo mu bwoko bw'urumogi, aburana ahakana icyaha avuga ko urumogi rwafashwe rutari urwe, ko rwari urwa Twizerimana wari kumwe na NDAYAMBAJE wari urumutwaje, babona haje abantu bakaruta bakiruka, aba ariwe ufatwa. [3] Mu rubanza No RP 00298/2022/TGI/GIC rwaciwe ku wa 29/07/2022, Urukiko rwemeje ko Nizerayesu Jean Claude ahamwa n'icyaha cyo gutunda ibiyobyabwenge, rumuhanisha igifungo cya burundu n'ihazabu ya 20.000.000 Frw. Mu gufata icyemezo Urukiko rwashingiye ku kuba yarafatanwe envelope irimo udupfunyika 1000 tw'urumogi kandi akaba atarabashije kugaragaza undi waba ari we nyirarwo, kuba yaremeye ko yahamagawe n'umutangabuhamya witwa Niyonshuti Eric wiyise umuguzi, agafatwa afite urumogi yari agamije kumugurisha. [4] Nizerayesu Jean Claude yajuririye urwo rubanza mu Rukiko Rukuru, asaba kugirwa umwere kuko nta cyaha yakoze, ko Twizerimana umushinja

yari umukozi we mu by'amabuye y'agaciro, akamuhamagara amubwira ko aza gufata amafaranga ye kuko imari yayibuze, agezeyo asanga ari kumwe na NDAYAMBAJE naho Twizerimana afite ikarito irimo urumogi, hahita haza abantu bambaye sivile, abo bari kumwe bariruka aba ariwe ufatwa. Yanavuze ko yahamijwe icyaha hashingiwe ku iperereza ripfuye kuko mu Bugenzacyaha yakubiswe akanashukwa ngo yemere icyaha azi ko bimurengera, ko harimo n'akagambane kuko no mu batanze ubuhamya bivugiye ko bafashwe ari batatu ariko babiri bakarekurwa akaba ari we usigara. [5] Mu rubanza No RPA 01024/2022/HC/KIG, rwaciwe n'Urukiko Rukuru, ku wa 26/06/2025, Urukiko rwasanze n'ubwo Nizerayesu Jean Claude ahakana icyaha ariko yacyemeye mu Bugenzacyaha agasobanura aho yakuye urumogi yafatanwe, uko yaruguze n'uko hari abari bamuhamagaye bakamubwira ko bakeneye udupfunyika 1000 tw'urumogi. Rwanasanze n'ibyo

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avuga ko yagambaniwe n'abakozi be akanemera icyaha kubera gukubitwa nta shingiro, kuko nta kimenyetso yabigaragarije. Urukiko rwamugabanyirije igihano, rumuhanisha igifungo cy'imyaka 15 n'ihazabu ya 5.000.0000 Frw. [6] Nizerayesu Jean Claude yajuririye urwo rubanza mu Rukiko rw'Ubujurire, urubanza ruhabwa n° RPAA 00770/2025/CA, iburanisha ribera mu ruhame ku wa 14/10/2025, Nizerayesu Jean Claude yunganiwe na Me KAMALI Jean Baptiste, naho Ubushinjacyaha buhagarariwe na HABINEZA Jean Damascène. [7] Mu myanzuro y'ubujurire no mu miburanire, Nizerayesu Jean Claude n'umwunganira bavuga ko impamvu y'ubujurire ari uko Urukiko Rukuru mu kumuhamya icyaha rwahaye gusa agaciro ibyakozwe n'Ubugenzacyaha, kandi yaragaragaje ko iperereza ryabo ryari ribogamye, ntirwanabaza abatangabuhamya be bari bahari afatwa kuko ibyamubayeho ari akagambane, ko raporo y'inze z'ibanze nayo irimo gushidikanya, kuko yakozwe yaramaze gufatwa, ikaba itanagaragaza ko yashakishwaga cyangwa ko yakekwagaho gukora ibyo bikorwa by'ubucuruzi bw'ibiyobyabwenge. Basaba ko Urukiko rw'Ubujurire rwazikorera iperereza kuko iby'akagambane yakorewe na Munyaneza yifashishije abakozi be yatumaga mu birombe by'amabuye y'agaciro bizwi mu baturage kubera ko abamugambaniye baba babyigamba. [8] Uhagarariye Ubushinjacyaha avuga ko mu bujurire bwe atagaruka ku ngingo yaburanishije zigafatwaho icyemezo nk'iyi kuba yaravugaga ko yemeye icyaha kubera inkoni no gushukwa, ngo agaragaze inenge ziri mu bisobanuro byatanzwe n'urukiko mu bika bya 12-13 by'urubanza rwajuririwe by'uko nta bimenyetso yashoboye kwerekana by'uko yakubiswe cyangwa agashukwa mu gihe yabazwaga mu Bugenzacyaha, ko ikigaragara azana imiburanire mishya asaba kugirwa umwere, nyamara mu nkiko zibanza yarasabaga guhanirwa icyaha cyo gutanwa urumogi ariko ntibihabwe agaciro. Anavuga ko kuba Nizerayesu Jean Claude yarafatanywe urumogi yari agiye kugurisha ku muntu wari wi umuguzi; asanga yagombye kuba yarahamijwe icyaha cyo gucuruza aho kuba icyo gutunda. [9] Mu rubanza harasuzumwa ikibazo cyo kumenya niba hari inenge zirengagijwe n'Urukiko Rukuru zari gutuma imvugo za Nizerayesu Jean Claude n'ibindi bimenyetso byashatswe mu iperereza bidashingirwaho.

II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

Kumenya niba hari inenge zirengagijwe n'Urukiko Rukuru zari gutuma imvugo za Nizerayesu Jean Claude n'ibindi bimenyetso byashatswe mu iperereza bidashingirwaho.

[10] Nizerayesu Jean Claude n'umwunganira basaba ko yagirwa umwere kuko Urukiko Rukuru mu kumuhamya icyaha rwahaye agaciro imvugo ze mu Bugenzacyaha kandi iperereza ryakozwe ryari ribogamye, ntirwagaragaza ko yemeye icyaha bidaturutse kubushake bwe, cyangwa ngo rukore iperereza rubaze abatangabuhamya be barimo uwitwa Mukeshimana Josiane bari bahari ubwo yafatwaga, bakibonera uko yakubiswe, ko uyu mutangabuhamya yamutanze mu rukiko ntiyabazwa n'inyandiko yakoze ntiyitabwaho.

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[11] Bakomeza bavuga ko Urukiko Rukuru rwagombaga kubona ko yagambaniwe na Munyaneza wakoresheje Twizerimana na Ndagijimana yayiyaga atuma kumugurira amabuye mu birombe kugira ngo bamugushe mu cyaha cyo gucuruza ibiyobyabwenge by'urumogi, kuko yafashwe ubwo yari agiye kureba Twizerimana kugira ngo amusubize amafaranga yari yamuhaye yo kumugurira amabuye y'agaciro kubera ko yari yabuze. Anavuga ko muri ako kagambane Munyaneza yanamushutse ko niyemera icyaha arekurwa, ariko nyuma baramuhinduka ntiyarekurwa, ariko ko n'Urukiko rutari kwirengagiza ko kwemera icyaha byonyine bitagira umuntu umunyacyaha.

[12] Banavuga ko ikindi kigaragaza ko ibimenyetso byashingiweho birimo gushidikanya ari uko raporo y'inze z'ibanze yakozwe nyuma yaramaze gufatwa, ibirimo akaba ari ibyo uwayikoze yabwiwe, ariko ko itagaragaza ko yashakishwaga cyangwa yakekwagaho gucuruza ibiyobyabwenge, ahubwo abayikoze bemeza ko bamuzi mu bucuruzi bw'amabuye y'agaciro. Bavuga kandi ko kuba iperereza ryakozwe ribogamye bishimangirwa n'uko umugenzacyaha warikoze wari ufite ubumwe na Munyaneza yaje kwirukanwa kubera imyitwarire ye itari myiza, akaba ari nayo mpamvu basaba ko hakorwa irindi iperereza hakabazwa abatangabuhamya ukuri kukajya ahagaragara, kuko babazwa bagaragaje abari bafite urumogi ntibyandikwa, kandi ko akagambane yakorewe kazwi n'abaturage kubera ko abagakoze babyigamba.

[13] Uhagarariye Ubushinjacyaha avuga ko asanga Nizerayesu Jean Claude ntacyo anenga urubanza rwajuririwe, ko atagaragaza icyo anenga inyandikomvugo ye mu Bugenzacyaha cyatuma idashingirwaho, kuko mu bisobanuro yatanze yagiye arangwa no kwivuguriza, ariko mu nyandikomvugo ye bigaragara ko yayikoze atekanye, asobanura neza uko yafashwe aje kugurisha urumogi, aho rwavaga n'igihe yatangiye kurucururiza, ndetse iza mvugo ze zigashimangirwa n'ubuhamya bw'uwitwa Niyonshuti Eric wamufatishije yigize umuguzi, kandi anafatwa hakaba hari abantu bo mu nzego zitandukanye babibonye.

[14] Akomeza avuga ko Nizerayesu Jean Claude ahindura imiburanire ye asaba kugirwa umwere, nyamara mu Nkiko zibanza yarasabaga ko yahanirwa icyaha cyo gufatanwa urumogi ariko bigateshwa agaciro kubera ko hari ibimenyetso bihamya yakoze icyaha aregwa, ko na raporo y'inze z'ibanze anenga yagaragaje ko yafatiwe mu cyuho, bityo iperereza asaba ntacyo

ryaza kumara mu rubanza, cyane ko atari yararisabye mbere hose. Asaba ko hagumaho imikirize y'urubanza rwajuririwe, ariko agahanirwa icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi aho kuba icyo kubitunda kuko yafatanywe urumogi yari agiye kugurisha ku muntu wari wigize umuguzi.

UKO URUKIKO RUBIBONA

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- [15] Impaka ziri mu rubanza zigamiye kumenya niba ibimenyetso byashingiweho bidahamya ko Nizerayesu Jean Claude yakoze icyaha aregwa no kumenya niba hakorwa irindi perereza.
- [16] Ikibazo cy'ibimenyetso mu manza n'itangwa ryabyo cyasesenguwe mu rubanza n° RPAA 00692/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 20/01/2023, haburana Ubushinjacyaha na Ndayishimiye Jean Damascène¹. Muri urwo rubanza uru Rukiko rwasobanuye ko mu manza nshinjabyaha, ibimenyetso byose, iyo byagiweho impaka bishobora gushingirwaho mu kwemeza ko uregwa yakoze icyaha (principe de la liberté de la preuve en matière pénale) kandi ibyo ibimenyetso bishobora no kuba imvugo z'abatangabuhamya, urukiko rukaba arirwo rusuzuma niba ibyo bavuga byakwemerwa cyangwa ntibyemerwe. Uyu murongo wakurikijwe mu manza zitandukanye zaciwe n'uru Rukiko, mu ziheruka harimo nk'urubanza N° RPAA 00411/2023/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 28/05/2025, Ubushinjacyaha buburana na Semugeshe Emmanuel².
- [17] Ibyerekeranye n'iperereza cyangwa kubaza abatangabuhamya bisabwa n'umuburanyi, byatanzweho umurongo n'Urukiko rw'Ikirenga mu rubanza N° RPAA 0101/09/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 09/03/2012 haburana Ubushinjacyaha na Nzajyibwami Emmanuel³. Muri urwo rubanza Urukiko rw'Ikirenga rwemeje ko Urukiko rudategetswe gukora iperereza cyangwa se kubaza abatangabuhamya igihe cyose bisabwe n'umuburanyi iyo rwumva ibimenyetso rwashyikirijwe bihagije kandi n'ababuranyi bahawe umwanya wo kubyisobanuraho. Uyu murongo wakurikijwe mu manza zitandukanye zaciwe n'Urukiko rw'Ubujurire, mu ziheruka harimo urubanza N° RPAA 00371/2023/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 23/05/2025, Ubushinjacyaha buburana na Simbandumwe Etienne⁴.
- [18] Nk'uko urubanza rujuririrwa rubigaragaza, Urukiko Rukuru rwasanze imiburanire ya Nizerayesu Jean Claude yo guhakana icyaha cyo kuba yarafatanywe urumogi n'uko bamugambaniye ku bushake nta shingiro ifite, kuko abazwa mu Bugenzacyaha yemeye ko urumogi yafatanywe yari yarukuye mu Miyove aruhawe na Twizeyimana, ko rufite agaciro ka 150.000 Frw n'uko yari yavuganye n'abiyitaga abaguzi bamuhaye komande ya boules 1000. Urukiko rukaba rwarahaye agaciro imvugo ze rushingiye ku murongo watanzwe n'Urukiko rw'Ikirenga mu rubanza N° RPA 0010/06/CS - RPA 0011/06/CS - RPA 0012/06/CS, rwaciwe ku wa 18/07/2008, haburana Ubushinjacyaha na Sgt Ntaganira na bagenzi be n'uko nta kimenyetso yatanze kigaragaza ko afatwa na Polisi, cyangwa abazwa mu Bugenzacyaha (RIB) yakubiswe, ndetse runasanga nta n'ikigaragaza ko yagambaniwe na Munyaneza abinyujije mu mukozi we.

[19] Urukiko rw'Ubujurire rwemeranywa n'Urukiko Rukuru ko imvugo za Nizerayesu Jean Claude mu Bugenzacyaha ari ikimenyetso gihamya ko yakozwe icyaha aregwa cyo gutunda ibiyobyabwenge by'urumogi, kubera ko mu mvugo ze yemeye ko enveloppes 2 zafashwe zirimo urumogi udupfunyika 500 buri imwe, ari we wazifatanywe, ko urwo rumogi yari aruvanye mu

1 Reba igika cya 18 cy'urwo rubanza 2 Reba igika cya 42 cy'urwo rubanza 3 Igika cya 9 cy'urwo rubanza. 4 Igika cya 18 cy'urwo rubanza.

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Miyove aruhawe n'uwitwa Twizerimana wamusabye kumubera umukomisiyoneri akazajya amuhemba amafaranga 10.000 Frw, akaba yaragombaga kurugurisha ku muntu atazi bavuganye kuri telefone akamwishyura amafaranga 150.000 Frw.

[20] Urukiko rurasanga ibyo avuga ko izo mvugo ze zitagombaga gushingirwaho kubera ko yemeye icyaha bidaturutse ku bushake bwe nta shingiro bifite, kuko, nk'uko byasobanuwe n'Urukiko Rukuru, nta kimenyetso cy'uko mu Bugenzacyaha yashyizweho agahato kugira ngo acyemere. Ibyo avuga nabyo ko yemeye icyaha abigirwemo inama n'uwitwa Munyanenza amushuka ko nacyemera bamurekura nta shingiro bifite, kuko, uretse n'uko nta kimenyetso gishyigikira ibyo avuga, Munyanenza atari kumugira inama yo kwemera icyaha ngo ayemere, mu gihe avuga ko ariwe wamugambaniye yifashishije abakozi be kugira ngo bamugushe mu cyaha cyo gucuruza urumogi.

[21] Urukiko rurasanga kandi ibyo Nizerayesu Jean Claude avuga ko na raporo y'inze z'ibanze itagombaga gushingirwaho mu kumuhamya icyaha kuko yagaragaje ko asanzwe azwi mu bucuruzi bw'amabuye y'agaciro, ko atari azwi mu bikorwa byerekeye ibiyobyabwenge nta shingiro bifite, ahubwo zishimangira imvugo ze n'iz'abatangabuhamya kuko raporo yakozwe n'Umudugudu wa Gisiza n'ya akagari ka Kabuga zigaragaza ko ku wa 08/09/2021 yafatiwe mu muhanda mu Mudugudu wa Gisiza avuye mu Mudugudu wa Nyakizu afite urumogi udupfunyika 1000 yari agiye kuranguza ku mukiliya bari bavuganye, zikanavuga ko habonetse amakuru y'uko acuruza gasegereti.

[22] Urukiko ruranasanga, nk'uko byatanzweho umurongo mu rubanza RPAA 0101/09/CS rwavuzwe haruguru, nta mpamvu yatuma uru Rukiko rukora irindi perereza mu gihe iryakozwe ryageze ku bimenyetso bidashidikanywaho bigaragaza ko Nizerayesu Jean Claude yafatanywe urumogi udupfunyika 1000 yari agiye kugurisha, birimo imvugo ze mu Bugenzacyaha, iz'umutangabuhamya Niyonshuti Eric wanagize uruhare mukumufatisha yigize umuguzi w'urumogi, imvugo za Mukeshimana Josiane n'iza Dushimumuremye Jean de Dieu bemeje ko yafatanywe udupfunyika 1000 tw'urumogi na raporo y'inze z'ibanze.

[23] Ku byerekeye ibisabwa n'Uhagarariye Ubushinjacyaha ko inyito y'icyaha yahinduka Nizerayesu Jean Claude agahanirwa icyaha cyo gucuruza ibiyobyabwenge byo mu bwo bw'urumogi, Urukiko rw'Ubujurire rurasanga ibyo asaba bifite ishingiro, kuko Nizerayesu Jean Claude abazwa mu Bugenzacyaha yavuze ko urumogi rungana n'udupfunyika 1.000

yafatanwe yagombaga kuruha umuntu bari bavuganye, ko yari kumwishyura amafaranga 150.000 Frw naho umutangabuhamya Niyonshuti Eric yemeza ko ari we bavuganye kuri telefone yigize umuguzi, ko yafashwe amaze kurumuhereza, ategereje ko amwishyura. Izo mvugo zikaba zigaragaza ko Nizerayesu Jean Claude yari mu bikorwa byo gucuruza urumogi. Bityo inyito y'icyaha yakoze ikaba ari ugucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, atari iyo kubitunda yari yarahamijwe n'inkiko zibanza.

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[24] Hashingiwe ku bimaze gusobanurwa, uru Rukiko rurasanga ubujurire bwa Nizerayesu Jean Claude nta shingiro bufite, kuko atabashije kugaragaza impamvu yatuma ibimenyetso byashingiweye n'Urukiko Rukuru biteshwa agaciro; urubanza rukaba ruhindutse gusa ku byerekeye inyito y'icyaha.

III. ICYEMEZO CY'URUKIKO

[25] Rwemeje ko ubujurire bwa Nizerayesu Jean Claude nta shingiro bufite; [26] Rwemeje ko urubanza No RPA 01024/2022/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 26/06/2025 ruhindutse gusa ku byerekeye inyito y'icyaha; [27] Rwemeje ko Nizerayesu Jean Claude ahamwa n'icyaha cyo gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi; [28] Rwemeje ko igihano cy'igifungo cy'imyaka 15 n'ihazabu ya 5.000.000 Frw yahanishijwe mu rubanza rujuririrwa kidahindutse.

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