

RWANDA / JUDGMENT

UBUSHINJACYAHA vs NSABIMANA

RPAA01455/2024/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA vs NSABIMANA

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Text

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UBUSHINJACYAHA vs NSABIMANA [Rwanda URUKIKO RW'UBUJURIRE – RPAA01455/2024/CA (Kamere, P.J.) 25 Nyakanga 2025] Amategeko mpanabyaha – igihano – kugabanyirizwa igihano – uwahamijwe icyaha cyo gusambanya umwana ntashobora kugabanyirizwa igihano hashingiwe ku mpamvu nyoroshyacyaha ku buryo kijya munsu y'igifungo cy'imyaka cumi n'itanu (15), kuko ari cyo gihano gito gishoboka kuri icyo cyaha. Incamake y'ikibazo: Uru rubanza rwatangiye Ubushinjacyaha burega Nsabimana mu Rukiko Rwisumbuye rwa Karongi bumukurikiranyeho icyaha cyo gusambanya umwana w'imyaka itatu(3). Busaba Urukiko ko rwamuhamya icyaha agahanishwa igifungo cya burundu. Nsabimana yaburanye ahakana icyaha, Urukiko ruca urubanza RP00437/2021/TGI/KNG ruhamya Nsabimana icyaha cyo gusambanya umwana uri munsu y'imyaka cumi n'ine rushingiye ku mvugo z'abatangabuhamya no kuri raporo za muganga zigaragaza ko uwo mwana afite infection mu mu muyoboro w'inkari ndetse anafite amashyira mu gitsina n'indi raporo igaragaza ko Nsabimana na we yari afite amashyira mu gitsina, rumuhanisha igifungo cy'imyaka cumi n'itanu (15) kuko ari ubwa mbere yarakurikiranywe mu Nkiko mu buryo buzwi. Nsabimana ntiyishimiye imikirize y'urubanza ajuririra Urukiko Rukuru, Urugereko rwa Rusizi, avuga ko Urukiko rwirengagije ibimenyetso yaruhaye, rumuhanira icyaha

atakoze, avuga ko umurega amuziza amafaranga ye y'amezi 3 yamukoreye atashakaga kumuhemba. Kandi ko abatanze ubuhamya bose ari abararitswe. Ubushinjacyaha bwireguye buvuga ko ubujurire bwa Nsabimana nta shingiro bufite ko ushinjwa ubwe yivugiyeye ko azana ibintu by'umweru mu gitsina akivuzwa, ko iby'uko yaba yarabivugishijwe n'ubwoba ari amayeri yo guhunga icyaha. busaba ko ubujurire bwe butahabwa agaciro, hakagumaho igihano yahanishijwe. Urukiko mu rubanza RPA000145/2024/HC/RSZ, rwemeje ko imikirize y'urubanza rujurirwa idahindutse, ruhanisha Nsabimana igihano cy'igifungo cy'imyaka cumi n'itanu (15). Nsabimana yongeye kujuririra icyo cyemezo mu Rukiko rw'Ubujurire, avuga ko agamije gutakamba ngo yongere agabanyirizwe igihano ndetse anasubikirwe igihano yahawe ku cyaha yemera ko yakoze yasinze. Ubushinjacyaha busaba Urukiko kwemeza ko impamvu z'ubujurire za Nsabimana Valens zose nta shingiro zifite, gutegeka ko imikirize y'urubanza rwaciwe n'Urukiko Rukuru idahindutse Urukiko mu rubanza RPAA01455/2024/CA, rwemeje ko Nsabimana adashobora kongera kugabanyirizwa igihano kuko igihano yahawe aricyo gito giteganyirijwe icyaha cyamuhamye kandi ko kidashobora gusubikwa kuko kirengeje amezi atandatu (6). Incamake y'icyemezo: Uwahamijwe icyaha cyo gusambanya umwana ntashobora kugabanyirizwa igihano hashingiwe ku mpamvu nyoroshyacyaha ku buryo kijya munsu y'igifungo cy'imyaka cumi n'itanu (15), kuko ari cyo gihano gito gishoboka kuri icyo cyaha. Ubujurire nta shingiro bufite Amategeko yashingiweho: Ingingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyira ibyaha n'ibihano muri rusange, yahinduye ingingo ya 60. Imanza zifashishijwe:

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Urubanza RPAA00727/2024/CA haburana Ubushinjacyaha na Harerimana Joseph. rwaciwe n'Urukiko rw'Ubujurire ku wa 14/03/2025. Urubanza. I. IMITERERE Y'URUBANZA [1] Ku wa 03/09/2021, mu Mudugudu wa Kizibaziba, Akagari ka Ryaruhanga, Umurenge wa Mubuga, Akarere ka Karongi, Intara y'Iburengerazuba, Mukangarambe Odette yabonye mu gitsina cy'umwana we w'umukobwa w'imyaka itanu n'amezi icyenda havamo amashyira amubajije icyo yabaye amubwira ko Nsabimana Valens yamufashe ku ngufu, aregera Ubugenzacyaha butangira gukurikirana icyo kibazo, nabwo bushyikiriza dosiye Ubushinjacyaha na bwo bumuregera Urukiko Rwisumbuye rwa Karongi.1 [2] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Karongi aho yaburanye ahakana icyaha ko atigeze asambanya umwana, Ubushinjacyaha bubigaragariza ibimenyetso bigizwe n'amakuru yatazwe n'umwana wahohotewe uri mu kigero cy'imyaka itanu ayabwira nyina, imvugo z'abatangabuhamya barimo Mukangarambe Odette nyina w'umwana wanabimubwiye, abatangabuhamya Nyirahabimana Colette na Ntawiganye Thérèse na bo babibwiye na nyina w'uwo mwana na raporo ya muganga yemeza ko uwo mwana yari afite infection mu muyoboro w'inkari ndetse anafite amashyira mu gitsina n'indi raporo igaragaza ko Nsabimana Valens na we yari afite amashyira mu gitsina ndetse hakaba n'icyemezo cy'uwo mwana kigaragaza ko yavutse ku wa 08/12/2015, bubishingiraho busaba Urukiko kumuhamya icyo cyaha no kumuhanisha igifungo cya burundu. [3] Mu guca urubanza ku wa 28/06/2024, Urukiko rushingiye ku mvugo za nyina w'umwana na we wamuhaye amukuru y'ibyamubayeho, ahujwe n'izo raporo za muganga zavuzwe hejuru, rwamuhamije icyaha cyo

gusambanya umwana utarageza ku myaka 14 y'amavuko, rumukatira igihano cy'igifungo cy'imyaka 15 kubera ko ari bwo bwa mbere yari akurikiranwe mu buryo buzwi, rumugabanyiriza ibihano gutyo hashingiwe kuri iyo mpamvu nyoroshyacyaha n'ibiteganywa n'ingingo ya 2 (a) y'Itegeko n° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange². [4] Nsabimana Valens ntiyishimiye imikirize y'urubanza ajuririra Urukiko Rukuru, Urugereko rwa Rusizi, ubujurire bwe buhabwa RPA000145/2024/HC/RSZ, avuga ko Urukiko rwirengagije ibimenyetso yaruhaye, rumuhanira icyaha atakoze, ko umurega amuziza amafaranga ye y'amezi 3 yamukoreye atashakaga kumuhemba kandi ko byabaye ari uko amaze kugura ihene n'inkoko ; kandi ababajijwe bese ari abatangabuhamya b'indarikwa bazaga kunyera iwe. Asaba ko raporo ya muganga itahabwa agaciro ngo kuko itigeze igaragaza ko yabonetseho amashyira mu gitsina cye. [5] Ubushinjacyaha bwireguye buvuga ko ushinjwa ubwe yivugiyeho ko azana ibintu by'umweru mu gitsina akivuzwa, yongerera kubishimangira aburana mu Rukiko Rwisumbuye, ko iby'uko yaba yarabivugishijwe n'ubwoba ari amayeri yo guhunga icyaha. Buvuga ko imvugo z'umwana zashimangiye n'ubuhamya bw'abantu bakuru batanze, hiyongeraho na raporo ya muganga, bityo busaba ko ubujurire bwe butahabwa agaciro, hakagumaho igihano yahanishijwe, akagikora kuko gihwanye n'ibyo yakoze.

1 Iyo ngingo ya 14 y'iryo Tegeko ikaba iteganywa ibi bikurikira : “Umuntu ukorera ku mwana kimwe mu bikorwa bishingiye ku gitsina bikurikira, aba akoze icyaha: gushyira igitsina cy'umuntu mu gitsina, mu kibuno cyangwa mu kanwa by'umwana; gushyira urugingo urwo ari rwo rwose rw'umubiri w'umuntu mu gitsina cyangwa mu kibuno cy'umwana; gukora ikindi gikorwa cyose ku mubiri w'umwana hagamijwe ishimishamubiri. Agace ka 3 k'ingingo yavuzwe haruguru kagateganywa ko “Iyo gusambanya umwana byakorewe ku mwana uri muni y'imyaka 14 igihano kiba igifungo cya burundu”. 2 Iyo ngingo ya 2 (a) y'iryo tegeko iteganywa ibi bikurikira: “Igifungo cya burundu gishobora kugabanywa ariko ntikijye muni y'igihano cy'igifungo cy'imyaka 15”.

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[6] Mu guca urubanza ku wa 12/12/2024, Urukiko rumaze kubona ko hari ibimenyetso byemeza nta shiti ko icyaha Nsabimana Valens ashinjwa kimuhama nk'uko byemejwe n'Urukiko Rwisumbuye ku rwego rwa mbere, rwemeje ko imikirize y'urubanza RP00437/2021/TGI/KNG rwaciwe n'Urukiko Rwisumbuye rwa Karongi ku wa 28/06/2024 idahindutse, ruhanisha Nsabimana Valens igihano cy'igifungo cy'imyaka cumi n'itanu (15). [7] Nsabimana Valens yongeye kujuririra icyo cyemezo mu Rukiko rw'Ubujurire, ubujurire bwe bwandikwa kuri RPAA01455/2024/CA, mu myanzuro yatanze avuga ko ajurira atagamije guhangana n'ubutabera ahubwo agamije gutakamba ngo yongere agabanyirizwe igihano ndetse anasubikirwe igihano yahawe ku cyaha yemera ko yakoze yasinze, ubu akaba amaze kumenya ingaruka z'icyo cyaha yakoze ngo atazongera ukundi, icyaha anasabira imbabazi kuri uru rwego. [8] Me Nyirihirwe Hilaire wunganira Nsabimana Valens avuga ko gusaba Urukiko rw'Ubujurire ko rutakita ku kuba Nsabimana Valens mbere yaraburanye atemera icyaha kuko kwemera icyaha nta mupaka bigira. Ukwemera kwe no kwicuza ari byo aheraho asaba Urukiko ko rwaca inkoni izamba maze rukamugabanyiriza ibihano. Aha ari ho

Nsabimana Valens asobanura ko igihano yahawe Urukiko kingana n'imyaka 15 rwakigabanya kuko icyo gihano gikakaye, bityo igihano kigabanyijwe bikaba byaba bikwiye kandi Umucamanza afite ubwo bubasha. [9] Me Nyirihirwe Hilaire asobanura ko kuba ubu Nsabimana Valens aburana yemera icyaha asanga ari impamvu nyoroshyacyaha, kuko ari ubwa mbere akurikiranwe n'ubutabera, yemera icyaha akanicuza, ari muri urwo rwego Nsabimana Valens asaba Urukiko ko rwazashingira ku ngingo ya 49, 58 na 60 al. 1. y'Itegeko No 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange; bityo Urukiko rukakira, rukemeza ko ubujurire bwa Nsabimana Valens bufite ishingiro, rukamugabanyiriza ibihano rukurikije ibyo amategeko ateganyaga. [10] Ntawangundi Béatrice, umushinjacyaha ku rwego rw'Igihugu uhagarariye Ubushinjacyaha, avugaga ko Ubushinjacyaha busanga Nsabimana Valens yaraburanye ahakana icyaha haba mu Rukiko Rwisumbuye ndetse no mu Rukiko Rukuru, ko icyo Ubushinjacyaha buvugaga kuri uko kwemera icyaha bwa mbere, busanga hari umurongo uhuriweho n'izindi manza kuri icyo kibazo ugira uti: "Ukwemera icyaha kugira agaciro gashobora gutuma uregwa agabanyirizwa igihano iyo gukoze byibura mbere y'uko iburanisha ku rwego rwa mbere ripfundikirwa, kudashidikanywaho, kuba uwemera agaragaza ko yumva uburemere bw'ibikorwa yemera n'ingaruka zabyo, abyicuza, abisabira imbabazi no kuba yiteguye gusubiza ibyo yangije uko abitegerejweho". Asobanura ko mu rubanza RPA00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022 haburana Ubushinjacyaha na Nsabimana Callixte alias Sankara n'abandi (igika cya 136) ari bwo Urukiko rwasobanuye bwa mbere iyi ngingo kuva aho itegeko riraho ubu ritangarijwe kandi rwasobanuye byimbitse ingingo ya 59 (1° & 3°) y'Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganyaga ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu. Bityo, Ubushinjacyaha bukababwira busanga mu ngingo z'ubujurire za Nsabimana Valens nta kintu agaragaza nk'inenge cyangwa amakosa yakozwe mu rubanza ajuririra asaba ko akosorwa. [11] Ubushinjacyaha burasanga kandi gusubikirwa igihano Nsabimana Valens asaba bidashoboka kuko nk'uwahanishijwe igifungo cy'iremezo kirenze imyaka itanu (5) atabyemererwa n'itegeko, kuko amahirwe yo gusubikirwa igihano itegeko riyateganyiriza gusa uwahanishijwe igifungo cy'iremezo kitarenze imyaka itanu (5), nk'uko biteganywa n'ingingo ya 3 mu gace kayo ka 13, y'Itegeko N° 59/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange.

3 Iyo uwakatiwe nta kindi gihano cy'igifungo kirenga amezi 6 yahanishijwe mbere, Urukiko, rukoresheje icyemezo gisobanura impamvu, rushobora gutegeka gusubika irangiza ry'igihano cyose cyangwa igice cy'igihano cy'iremezo cyangwa cy'ingereka, iyo igihano cy'iremezo cy'igifungo umuntu yakatiwe kitarenze imyaka 5.

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[12] Ubushinjacyaha busaba Urukiko kwemeza ko impamvu z'ubujurire za Nsabimana Valens zose nta shingiro zifite, gutegeka ko imikirize y'urubanza rwaciwe n'Urukiko Rukuru idahindutse. [13] Iburanisha ry'urubanza ryashyizwe ku wa 09/07/2025, ruburanishwa Nsabimana Valens yunganiwe na Me Nyirihirwe Hilaire, naho Ubushinjacyaha buhagarariye na PN Ntawangundi Béatrice, hasuzumwaga niba Nsabimana Valens ashobora kugabanyirizwa

igihano cy'igifungo yahawe kingana n'imyaka 15, kuko yemera icyaha akanagisabira imbabazi kuri uru rwego no kuba igihano yagisubikirwa; urubanza rurapfundikirwa Urukiko rutangaza ko ruzasomwa ku wa 25/07/2025. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA Kumenya niba Nsabimana Valens ashobora kongera kugabanyirizwa igihano yemera akagisabira imbabazi kuri uru rwego [14] Impaka muri uru rubanza zishingiye ku kumenya niba Nsabimana Valens wemera icyaha kuri uru rwego ashobora kongera kugabanyirizwa igihano kikaba cyajya munsu y'igifungo cy'imyaka cumi n'itanu

- (15) yahanishijwe. [15] Nsabimana Valens n'umwunganizi we basaba ko Urukiko rw'Ubujurire ko rutakita ku kuba Nsabimana Valens mbere yaraburanye atemera icyaha kuko kwemera icyaha nta mupaka bigira. Ukwemera kwe no kwicuza bikaba ari byo baheraho basaba Urukiko ko rwaca inkoni izamba maze rukamuganyiriza ibihano yahawe by'igifungo kingana n'imyaka 15 kikaba cyagabanywa kuko icyo gihano gikakaye, bityo igihano kigabanyijwe bikaba byaba bikwiye kandi Umucamanza afitiye ubwo bubasha ahabwa n'ingingo ya 49, 58 na 60 al. 1. y'Itegeko ryavuzwe hejuru. [16] Uhagarariye Ubushinjacyaha asanga bitahabwa agaciro kuko Nsabimana Valens yaraburanye ahakana icyaha haba kuva ku rwego rwa mbere ku rw'ubujurire bwa mbere, akaba yemeye icyaha kuri uru rwego rw'ubujurire bwa kabiri, kandi ko kwemera icyaha bwa mbere byafashweho umurongo uhuriweho n'izindi manza⁴ mu rubanza ruyoboye izindi RPA00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022 haburana Ubushinjacyaha na Nsabimana Callixte alias Sankara n'abandi (igika cya 136). Urwo rubanza rukaba rwarasobanuye iyi ngingo kuva aho itegeko ririho ubu ritangarijwe kandi rwasobanuye byimbitse ingingo ya 59 (1° & 3°) y'Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganyaga ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu. Ko Nsabimana Valens ubu wemera ko yasambanyije umwana utarageze ku myaka 14 y'ubukure, akaba yarahawe igihano gito giteganywa n'itegeko ryavuzwe hejuru. UKO URUKIKO RUBIBONA [17] Ingingo ya 2 y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, yahinduwe ingingo ya 60 mu buryo bukurikira: «Iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano ku buryo bukurikira: Igifungo cya burundu gishobora kugabanywa ariko ntikijye munsu y'igihano cy'igifungo cy'imyaka 15 ; Igifungo kimara igihe kizwi kiva ku mezi 6 kuzamura gishobora kugabanywa, ariko ntikijye munsu ya kimwe cya kabiri cy'igihano gito giteganyirijwe icyaha cyakozwe;

⁴ Ukwemera icyaha kugira agaciro gashobora gutuma uregwa agabanyirizwa igihano iyo gukozwe byibura mbere y'uko iburanisha ku rwego rwa mbere ripfundikirwa, kudashidikanywaho, kuba uwemera agaragaza ko yumva uburemere bw'ibikorwa yemera n'ingaruka zabyo, abyicuza, abisabira imbabazi no kuba yiteguye gusubiza ibyo yangije uko abitegerejweho

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Igihano cy'igifungo kiri munsu y'amezi 6 gishobora gusubikwa". [18] Urukiko rw'Ubujurire rushingiye ku biteganywa n'iyi ngingo ya 2 y'iri Tegeko rimaze kuvugwa, ku mpaka ziri muri uru rubanza zishingiye ku kumenya niba Nsabimana Valens ashobora kongera kugabanyirizwaho

igihano kikaba cyajya muni y'igifungo cy'imyaka cumi n'itanu (15) ku cyaha yahamijwe cyo gusambanya umwana, hashingiwe ku mpamvu nyoroshyacyaha, rurasanga icyo kibazo cyarakemuwe mu manza zitandukanye zaciwe n'uru Rukiko, kuva aho Itegeko N° 059/2023 ryo ku wa 04/12/2023 ritangiye gukurikizwa, izo manza zikaba zirimo nk'urwa vuba rufite RPAA00727/2024/CA rwaciwe ku wa 14/03/2025 haburana Ubushinjacyaha na Harerimana Joseph. Muri izo manza zose, Urukiko rw'Ubujurire rwagiye rushimangira umurongo umwe, uvuga ko uwahamijwe icyaha cyo gusambanya umwana adashobora kugabanyirizwa igihano hashingiwe ku mpamvu nyoroshyacyaha ku buryo kijya muni y'igifungo cy'imyaka cumi n'itanu (15), kuko ari cyo gihano gito gishoboka kuri icyo cyaha. [19] Urukiko rw'Ubujurire rurasanga rero Nsabimana Valens adashobora kongera kugabanyirizwa igihano cy'igifungo cy'imyaka cumi n'itanu (15) yahanishijwe ku cyaha cyo gusambanya umwana yemera kuri uru rwego, kuko icyo yahanishijwe ari cyo gihano gito gishoboka giteganywa n'Itegeko. Kumenya niba Nsabimana Valens yasubikirwa ibihano yahawe. [20] Nsabimana Valens avuga ko akomeje gutakamba kandi asaba imbabazi, ko yakozwe icyaha abitewe n'ubusinzi yaguyemo bigatuma akora icyaha cyo gusambanya umwana n'ubwo yabanje kugihakana, ubu yamenye ingaruka z'icyaha yemeza ko atazagisubira, kandi ibihano yahawe Urukiko rukaba rwabisubika agasubira mu muryango nyarwanda. [21] Ubushinjacyaha buvuga ko gusubikirwa igihano Nsabimana Valens asaba bidashoboka kuko nk'uwahanishijwe igifungo cy'iremezo kirenze imyaka itanu (5) atabyemererwa n'itegeko, kuko amahirwe yo gusubikirwa itegeko riyateganyiriza gusa uwahanishijwe igifungo cy'iremezo kitarenze imyaka itanu (5), nk'uko biteganywa n'ingingo ya 3 mu gace kayo ka 1, y'Itegeko N° 59/2023 ryavuzwe hejuru. UKO URUKIKO RUBIBONA [22] Ingingo ya 2, agace ka (c) y'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyira ibyaha n'ibihano muri rusange, yahinduye ingingo ya 60 mu buryo bukurikira, iteganyira ko : "Igihano cy'igifungo kiri muni y'amezi 6 gishobora gusubikwa". [23] Urukiko rw'Ubujurire rushingiye ku biteganywa n'iyi ingingo ya 2 y'iri Tegeko rimaze kuvugwa ku mpaka ziri muri uru rubanza zishingiye ku kumenya niba Nsabimana Valens yasubikirwa igihano cy'igifungo cy'imyaka cumi n'itanu (15) ku cyaha yahamijwe cyo gusambanya umwana, rurasanga isubikakagihano ryarahariwe gusa igihano cy'igifungo kiri muni y'amezi atandatu, bityo Nsabimana Valens akaba atasubikirwa igihano cy'igifungo cy'imyaka cumi n'itanu (15) yahanishijwe ku cyaha cyo gusambanya umwana. III. ICYEMEZO CY'URUKIKO [24] Rwemeje ko ubujurire bwa Nsabimana Valens nta shingiro bufite. [25] Rwemeje ko igihano cy'igifungo cy'imyaka cumi n'itanu (15) Nsabimana Valens yahanishijwe mu rubanza rwajuririwe kigumyeho.

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[26] Rwemeje ko imikirize y'urubanza RPA00145/2024/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi, ku wa 12/12/2024 igumyeho mu ngingo zarwo zose. [27] Rutegetse ko amagarama y'uru rubanza aherera ku Isanduku ya Leta kuko Nsabimana Valens yaburanye afunzwe.

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