

RWANDA / JUDGMENT

# SGT NTAGANIRA ALIAS BARABASI N'ABANDI v. BANQUE POPULAIRE DE MUHIMA

RPAA 0010/06/CS

COURT

Supreme Court

DECIDED

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## SGT NTAGANIRA ALIAS BARABASI N'ABANDI v. BANQUE POPULAIRE DE MUHIMA

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### Text

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SGT NTAGANIRA ALIAS BARABASI N'ABANDI v. BANQUE POPULAIRE DE MUHIMA [Rwanda URUKIKO RW'IKIRENGA – RPAA 0010/06/CS (Mutashya, P.J., Mukanyundo na Kayisire, J.) 18 Nyakanga 2008] Amategeko agenga imanza nshinjabyaha – icyaha cy'ubufatanyacyaha mu buhemu – Kwemera icyaha mu iperereza no kugihakana mu Rukiko – Umucamanza uburanisha urubanza mu mizi niwe ureba agaciro imvugo yiyemerera icyaha mu rwego rw'iperereza ifite, kabone niyo nyirayo yageze imbere y'Urukiko akayihindura. Kuba ubazwa mu iperereza yiyemerera ko nta gahato yashyizweho cyangwa se ibindi bikorwa bibabaza umubiri ku buryo ibyo yavuze yaba yarabitewe na kuramira amagara ye, ibyo yavuze akaba yarabivuze mu bwisanzure busesuye; kuba yarageze imbere y'Urukiko agahindura, ntabwo bivuga byanze bikunze ko ibyo aribyo bigomba kwemerwa ngo ni uko byavugiwe imbere y'Urukiko, umucamanza afite ubushobozi bwo gushishoza no gusesengura akoresheje umutimanama we, agaciro aha iryo hinduramvugo. Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko rwa

Gisirikare aho abitwa Munyambibi Vénérand, Ntaganira Eugène alias Barabas, Ntagara Gilbert na Kanamugire Théogène alias Pinto baregwa icyaha cy'ubuhemu cyo kunyereza 243.508.614Frw ya Banki y'abaturage ya Muhima, no kurema umutwe w'abagizi ba nabi, Ntaganira Eugène alias Barabas akanaregwa no gutoroka igisirikare mu gihe cy'intambara, maze mu rubanza rwo kuwa 16/04/2004. Urukiko rukemeza ko bose ibyaha bibahama, ruhanisha Munyambibi Vénérand igifungo cy'imyaka itanu, ruhanisha Ntaganira Eugène alias Barabas, Ntagara Gilbert na Kanamugire Théogène alias Pinto, buri wese igifungo cy'imyaka ine (4) ku bufatanyacyaha bw'ubuhemu, ruhanisha kandi Ntaganira Eugène alias Barabas igifungo cy'imyaka itatu (3) ku cyaha cyo gutoroka igisirikare mu gihe cy'intambara, runabategeka kwishyura Banki y'abaturage ya Muhima 345.284.679Frw; Abaregwa ndetse n'Ubushinjacyaha bajuriye mu Rukiko Rukuru rwa Gisirikare, Urukiko rubemeza ibyaha, ruhamishaho ibihano bahawe ku cyaha cy'ubuhemu, ariko kuri Ntaganira Eugène alias Barabas, rumuhanisha igifungo cy'imyaka ibiri (2) ku cyaha cyo gutoroka igisirikare mu gihe cy'intambara, runabategeka kwishyura Banques Populaires ya Muhima 360.397.015Frw. Abaregwa bavuga ko Urukiko rutari gushingira ku kuba Munyambibi yemeraga icyaha yaregwaga mu iperereza kubera ko nyuma yageze mu Rukiko akabihakana akavuga ko yababeshyeraga, bityo bakaba basaba ko ibyavugiwe mu Rukiko nibyo bihabwa agaciro kurusha ibyavugiwe mu rwego rw'iperereza. Urukiko Rukuru rwa Gisirikare ruvuga ko Munyambibi abazwa nta gahato gahato yashyizweho cyangwa se ibindi bikorwa bibabaza umubiri ku buryo ibyo yavuze yaba yarabitewe na kuramira amagara ye, nawe kandi akaba yivugira ko ibyo ntabyamubayeho, ibyo yavuze akaba yarabivuze mu bwisanzure busesuye; kuba yarageze imbere y'Urukiko agahindura, ntabwo bivuga byanze bikunze ko ibyo aribyo bigomba kwemerwa ngo ni uko byavugiwe imbere y'Urukiko,

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umucamanza afite ubushobozi bwo gushishoza no gusesengura akoresheje umutimanama we, agaciro aha iryo hinduramvugo. Sgt Ntaganira Eugène alias Barabas, Ntagara Gilbert na Kanamugire Théogène alias Pinto ntibishimiye imikirize y'urubanza maze bajurira mu Rukiko rw'Ikirenga. Incamake y'icyemezo : 1. Umucamanza uburanisha urubanza mu mizi niwe ureba agaciro invugo yiyemerera icyaha mu rwego rw'iperereza ifite, kabone niyo nyirayo yageze imbere y'Urukiko akayihindura. Kuba ubazwa mu iperereza yiyemerera ko nta gahato yashyizweho cyangwa se ibindi bikorwa bibabaza umubiri ku buryo ibyo yavuze yaba yarabitewe na kuramira amagara ye, ibyo yavuze akaba yarabivuze mu bwisanzure busesuye; kuba yarageze imbere y'Urukiko agahindura, ntabwo bivuga byanze bikunze ko ibyo aribyo bigomba kwemerwa ngo ni uko byavugiwe imbere y'Urukiko, umucamanza afite ubushobozi bwo gushishoza no gusesengura akoresheje umutimanama we, agaciro aha iryo hinduramvugo.

2. Ku cyaha cyo gutoroka igisirikare Sgt Ntaganira Eugène alias Barabas yari akurikiranyweho nawe yiyemerera ko ikibari yari yahawe yarengejeho iminsi cumi n'umunani, bityo icyaha kiramuhama. Ubujurire nta shingiro bufite; Icyaha cy'ubufatanyacyaha kihama abaregwa; Rutegetse Sgt Ntaganira Eugène alias Barabas, Ntagara Gilbert na Kanamugire Théogène alias Pinto gufatanyaga guha Banques Populaires bafatanyije na Munyambibi Vénérand 375.312.895 Frw , ni ukuvuga 14.415.880 Frw ahwanye n'inyungu za 4% za 360.397.015 Frw

yari yagenwe n'Urukiko Rukuru rwa Gisirikare. Amategeko yashingiweho: Itegeko Ngenga N°07/2004 ryo kuwa 25/04/2004 rigena imiterere, imikorere n'ububasha by'inkiko nkuko ryahinduwe kandi rikuzuzwa n'Itegeko Ngenga N° 14/2006 ryo kuwa 22/03/2006; Itegeko Ngenga N° 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nkuko ryahinduwe kandi rikuzuzwa n'Itegeko Ngenga N°13/2006 ryo kuwa 21/03/2006; Itegeko N°13/2004 ryo kuwa 17/5/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha; Itegeko N°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo; Itegeko-teka N° 21/77 ryo kuwa 18/8/1977 rishyiraho igitabo cy'amategeko ahana nk'uko ryahinduwe kugeza ubu. Nta manza zifashishijwe. Urubanza I.IMITERERE Y'URUBANZA [1] Rushingiye ku Itegeko Nshinga rya Repubulika y'u Rwanda ;

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- [2] Rushingiye ku Itegeko Ngenga N°07/2004 ryo kuwa 25/04/2004 rigena imiterere, imikorere n'ububasha by'inkiko nkuko ryahinduwe kandi rikuzuzwa n'Itegeko Ngenga N° 14/2006 ryo kuwa 22/03/2006; [3] Rushingiye ku itegeko Ngenga N° 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nkuko ryahinduwe kandi rikuzuzwa n'Itegeko Ngenga N°13/2006 ryo kuwa 21/03/2006; [4] Rushingiye ku Itegeko N°13/2004 ryo kuwa 17/5/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha; [5] Rushingiye ku Itegeko N°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo; [6] Rushingiye ku Itegeko-teka N° 21/77 ryo kuwa 18/8/1977 rishyiraho igitabo cy'amategeko ahana nk'uko ryahinduwe kugeza ubu; [7] Rumaze kubona ko urubanza rwatangiriye mu Rukiko rwa Gisirikare kuri RP 1853/CG/03 Munyambibi Vénérand, Ntaganira Eugène alias Barabas, Ntagara Gilbert na Kanamugire Théogène alias Pinto baregwa icyaha cy'ubuhemu cyo kunyereza 243.508.614 Frw ya Banki y'abaturage ya Muhima, no kurema umutwe w'abagizi ba nabi, Ntaganira Eugène alias Barabas akanaregwa no gutoroka igisirikare mu gihe cy'intambara, maze mu rubanza rwo kuwa 16/04/2004, Urukiko rukemeza ko bese ibyaha bibahama, ruhanisha Munyambibi Vénérand igifungo cy'imyaka itanu, ruhanisha Ntaganira Eugène alias Barabas, Ntagara Gilbert na Kanamugire Théogène alias Pinto, buri wese igifungo cy'imyaka ine (4) ku bufatanyacyaha bw'ubuhemu, ruhanisha kandi Ntaganira Eugène alias Barabas igifungo cy'imyaka itatu(3) ku cyaha cyo gutoroka igisirikare mu gihe cy'intambara, runabategeka kwishyura Banki y'abaturage ya Muhima 345.284.679 Frw; [8] Rumaze kubona ko abaregwa ndetse n'Ubushinjacyaha bajuriye mu Rukiko Rukuru rwa Gisirikare kuri RPA 0025/04/HCM, maze mu rubanza rwo kuwa 06/06/2005, Urukiko rubemeza ibyaha , ruhamishaho ibihano bahawe ku cyaha cy'ubuhemu, ariko kuri Ntaganira Eugène alias Barabas, rumuhanisha igifungo cy'imyaka ibiri(2) ku cyaha cyo gutoroka igisirikare mu gihe cy'intambara, runabategeka kwishyura Banques Populaires ya Muhima 360.397.015 Frw; [9] Rumaze kubona ubujurire bwa Ntaganira Eugène alias Barabas bwageze muri uru Rukiko kuwa 15/06/2007 bukandikwa kuri RPAA 0012/06/CS, ubwa Ntagara Gilbert bwageze muri uru Rukiko kuwa 15/06/2007 bukandikwa kuri RPAA 0010/06/CS, n'ubwa Kanamugire Théogène alias Pinto bwageze muri uru Rukiko kuwa 15/06/2007 bukandikwa kuri RPAA 0011/06/CS; [10] Rumaze kubona itegeko

N° 0007/07/RP ryo kuwa 08/01/2007 rya Perezida w'Urukiko rw'Ikirenga rishyira iburanisha ry'uru rubanza ku wa 15/02/2007; [11] Rumaze kubona ko kuri uwo munsu rutaburanishijwe rukimurirwa kuwa 18/04/2007, nabwo ntirwaburanishwa rwimurirwa kuwa 21/05/2007; [12] Rumaze kubona ko kuri uwo munsu ababuranyi bitabye, Sgt Ntaganira Eugène alias Barabas, Ntagara Gilbert na Kanamugire Théogène alias Pinto bunganirwa na Maître Nzamwita

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Toy, Banki y'abaturage ya Muhima zihagarariwe na Maître Munyeshema Napoléon, naho Ubushinjacyaha buhagarariwe na Capitaine Murenzi Eugène; [13] Rumaze kumva Maître Nzamwita Toy wunganira abaregwa avuga ko asanga Munyambibi Vénérand nubwo atajuriye, yagombaga guhamagarwa muri uru rubanza kubera ko yari umukozi wa Banques Populaires ya Muhima akanyereza umutungo wayo, abo yunganira bakaba barategetswe gufatanya nawe kuriha, akaba abona yafasha Urukiko kugaragaza ko nta ruhare abaregwa bagize mu inyerezwa ry'umutungo wa Banques Populaires ya Muhima; [14] Rumaze kumva uhagarariye Ubushinjacyaha abazwa icyo atekereza kuri icyo cyifuzo cya Maître Nzamwita Toy akavuga ko nta shingiro gifite kuko Munyambibi yabajijwe, imvugo ze zikaba ziri muri dossier, ko ahubwo abaregwa bakwiregura ku mpamvu Urukiko rwashingiyeho rubahamya icyaha, iyo mvugo y'uhagarariye Ubushinjacyaha ikaba yarashyigikiwe na Maître Munyeshema Napoléon uhagarariye Banques Populaires ya Muhima; [15] Rumaze kubona ko Urukiko rwafashe icyemezo cyo kuburanisha urubanza noneho rwazasanga ari ngombwa ko Munyambibi Vénérand aruhamagarwamo, rukamuhamagara; [16] Rumaze kubona ko abajuriye bose uko ari batatu ingingo zabajuriye ari zimwe; [17] Rumaze kubona ko bose bahuriza kuvuga ko Urukiko Rukuru rwa Gisirikare rwabahamije icyaha cy'ubufatanyacyaha mu buhemu ntacyo rushingiyeho, ahubwo rukaba rwarirengagije nta mpamvu imyiregurire yabo; ko rwabemeje icyaha rushingiyeho ku nyandiko mvugo za Munyambibi Vénérand zo ku wa 04/02/2002 n'izo ku wa 15/4/2002 aho yababeshyeraga ko bamufashije gutwara amafaranga ya Banques Populaires, ariko nyamara rwirengagiza ko we ubwe mu iburana rye, iza nyandiko mvugo yazihakanye, anagaragaza n'icyamuteye kubabeshyera; kuba yarabeshyuriye inyandikomvugo ze imbere y'urukiko kandi mu bwisanzure, bikaba aribyo bikwiye guhabwa agaciro kurusha ibyo yavugiye mu rwego rw'iperereza( L'aveu judiciaire prime sur l'aveu extra-judiciaire); [18] Rumaze kubona ko nanone mu bujurire bwabo, bavuga ko Urukiko rwitwaje agapfunyika (enveloppe) ku kaki ngo Munyambibi yashyiragamo amafaranga noneho akajya ayabahera kuri guichet; ko mu by'ukuri ako gapfunyika kadakwiye kuba impamvu yo kubahamya icyaha kuko nabo batagahakana, ko ahubwo icyo bahakana, ari uko atari amafaranga yabaga arimo, ahubwo ari za échantillons za coltan zabaga zirimo, kandi ko Urukiko rutigeze rugaragaza mu buryo budashidikanywaho ko koko iza enveloppes zabaga zitwaye amafaranga asahuwe banques aho kuba amabuye y'agaciro, dore ko n'umutangabuhamya Itete Martine n'ubwo avuga ko yabonye enveloppe adahamya ko yayibonyemo amafaranga; [19] Rumaze kubona bagaragaza ko ubuhamya bw'abagabo bushingirwaho mu rukiko budakomoka ku buhamya bwite bw'abo bagabo ahubwo bukomoka kubyo abo bagabo bumvikanye na Munyambibi Vénérand amaze kubabeshyera mu nyandikomvugo ze zo ku wa 04/02/2002 n'izo ku wa 15/4/2002, aho kuba ibyo bo bazi ku

kiburanwa; ko ubuhamya bwa Zaninka Marie Josée, umugore wa Vénérand mu buhamya bwe bwo kuwa 08/01/2002 mu nyandikomvugo yakoreshejwe na VITA HAMZA, yasobanuye neza ibyo we n'umugabo we batunze ntiyabyitiranye n'imitungo yabo(y'abaregwa) kandi ntiyanavuga ko bafatanyije n'umugabo we guhemukira Banques Populaires, akaba yarabihinduye ageze imbere y'Urukiko;

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bityo bakaba basaba ko ubwo buhamya bwe bw'umwimerere aribwo bwahabwa agaciro kurusha ibyo yavugiye imbere y'urukiko bishingiye ku kagambane; [20] Rumaze kubona bakomeza kugaragaza ko ubuhamya bw'uwindi mutangabuhamya witwa Itete Martine hagaragaramo guhuzagurika no kutagusha ku ijamba bigaragaza ko ibyo avuga byose ari ukugirango ahuze n'inyandikomvugo za Munyambibi Vénérand gusa, ibyo bikaba biboneka mu nyandikomvugo ye yo kuwa 01/01/2003 aho yavuze ko atazi neza uwo Munyambibi Vénérand yaherezaga enveloppes kandi bose yari abazi; [21] Rumaze kubona nanone mu bujurire bwabo berekana ko Urukiko rutitaye ku gihe inyerezwa ryatangiriye, igihe bamenyanye na Vénérand n'igihe batangiriye gucuruza coltans muri Congo kuko iyo biza kwitabwaho, byari kugaragaza ko nta sano y'icyaha iri hagati yabo na Munyambibi Vénérand, ko icyabahuzaga ari ubucuruzi bw'amabuye y'agaciro, Munyambibi Vénérand akazana amafaranga ngo bakorane mu kugura ibikoresho, nabo bakazana uwabo mugabane batazi ko aye ari amasahurano; [22] Rumaze kubona ko Sgt Ntaganira Eugène alias Barabas yajuririyeho n'icyaha cyo gutoroka igisirikare, akavuga ko Urukiko rwakimuhamije ndetse rukanagerekaho ko hari mu gihe cy'intambara, nyamara nta mpamvu n'imwe urukiko rutanze; ko iyo ntambara bavugaga yari yararangiyeho muri 1994, ko we yari I Bukavu agasaba uruhushya rwo kujya iwabo I Masisi akaruhabwa, yageraye akarwara, ku kibari bari bamuhaye akarenzaho iminsi cumi n'umunani(18), aho agarukiye akabisobanura ariko ntibyemerwaho ahubwo agafungwa amezi ane(4); [23] Rumaze kubona ko mu iburanisha abajuririyeho buri muntu yahawe umwanya uhagije wo kwisobanura kuri izi ngingo, abaregera indishyi n'Ubushinjacyaha nabo bakagira icyo bazivugaho; [24] Rumaze kumva uhagarariye Ubushinjacyaha avuga ko icyaha cyo gutoroka igisirikare Sgt Ntaganira Eugène akurikiranyweho yagikoze kandi bikaba binumvikana, kuko atari gukora akazi ka gisirikare ngo anabone n'umwanya wo gucuruza coltan; kuvugaga ko icyo gihe cyari igihe cy'amahoro atari igihe cy'intambara sibyo kuko icyo gihe abasirikare b'u Rwanda bari muri Congo, u Rwanda na Congo byari mu ntambara kandi icyo gihe yari mu ngabo z'u Rwanda; [25] Rumaze kumva akomeza avuga ko Munyambibi yasobanuye ukuntu yibaga n'ukuntu abaregwa bamufashaga kunyereza amafaranga n'imishyamba bagiranaga, abaregwa bakaba nta kuntu bahakana uruhare rwabo mu kunyereza umutungo wa Banque Populaire ya Muhima; [26] Rumaze kumva uhagarariye Banques Populaires ya Muhima avuga ko ubufatanyacyaha bw'abaregwa bugaragarira mu ngingo ya 91,3° y'igitabo cy'amategeko ahana; akomeza avuga ko abaregwa bavuze ko bamenyanye na Munyambibi mu kwezi kwa gatandatu (6), ibyo ngo bikaba bigamije kugaragaza ko batigeze bafatanyaga na Munyambibi icyaha ngo kuko yatangiye kunyereza uwo mutungo mbere, ibyo bikaba aribyo bivugiyeho ariko bidahura n'ukuri; [27] Rumaze kumva akomeza avuga ko Zaninka umugore wa Munyambibi yiyambaje imiryango ababwirako abona umugabo we akoreshejwe na Sgt Ntaganira na bagenzi be, ko kandi amafaranga

bakoresha ari aya banque, ibyo bikaba bigaragara mu mvugo ye (Zaninka) yo kuwa 25/03/2003 imbere y'Umushinjacyaha wa Gisirikare; arangiza asaba ko abaregwa bakwishyura

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Banques amafaranga baciwe n'Urukiko hiyongereyeho inyungu zayo n'indishyi z'akababaro, yose hamwe akaba 394.528.777 Frw; [28] Rumaze kubona ko iburanisha ryashojwe, ababuranyi bakamenyeshwa ko urubanza ruzasomwa kuwa 21/06/2007, uwo munsu rugafata icyemezo cyuko mbere yo kuruca, Munyambibi Vénérand agomba kwitaba Urukiko akagira ibyo asobanura ku isohoka ry'amafaranga yakoresheje mu by'igihe yakoraga muri Banques Populaires ya Muhima, runasaba kandi Ubushinjacyaha kurukorera enquêtes z'inyongera kuri Nyirandayishimiye Espérance wari Gérante wa Banki y'abaturage ya Muhima, hakamenyekana ukuntu yakoranaga na Munyambibi Vénérand, uburyo yamukoreraga igenzura niba hari iryakozwe, ryaba ritarabaye hakamenyekana impamvu; [29] Rumaze kubona ko kuwa 20/09/2007, Ubushinjacyaha bwa Gisirikare bwagejeje mu Rukiko rw'Ikirenga iperereza ry'inyongera kuri Nyirandayishimiye Espérance nkuko byari byasabwe; [30] Rumaze kubona ko urubanza rwahamagawe kuwa 20/03/2008 ariko uwo munsu ntirwaburanishwa kubera ko ntacyagaragazaga ko ababuranyi bahamagawe, rwimurirwa kuwa 02/06/2008, kuri iyo tariki ababuranyi baritaba, Sgt Ntaganira Eugène alias Barabas, Ntagara Gilbert na Kanamugire Théogène alias Pinto bunganirwa na Maître Nzamwita Toy, Banki y'abaturage ya Muhima zihagarariwe na Maître Munyeshema Napoléon, naho Ubushinjacyaha buhagarariwe na 2Lt Rutagengwa Oswald, hari kandi na Munyambibi Vénérand nkuko Urukiko rwari rwabyifuje; [31] Rumaze kubona ko ababuranyi babanje gusomerwa ibyavuye mu iperereza ryakorewe Nyirandayishimiye Espérance wari Gérante wa Banques Populaires ya Muhima, wasobanuye ko Munyambibi yakiraga amafaranga akayandika mu gatabo k'umukiriya, ku ifishi no mu gitabo cya Banque bita Livre de Caisse, noneho buri mugoroba akamuzanira amafaranga, igitabo n'amafishi kugirango nawe akore contrôle, arebe niba bihura, kandi buri gihe akaba yarasangaga bihura, bikaba byaraje kwanga muri contrôle y'amafishi yakorwaga kabiri mu mwaka, ni ukuvuga mukwa gatandatu(6) no mukwa cumi n'abiri(12); [32] Rumaze kumva ko mu bisobanuro by'akomeje avuga ko mu igenzura ryo mu kwezi kwa gatandatu 2001 ariho igereranywa ry'ibitabo, amafishi n'amafaranga byanze guhura, bituma asaba Inama n'Ubutegetsi gutumiza Inspection, aho iziye niyo yaje kuvumbura uburyo yakoresheje bwo guhimba amanumero akayashyira ku mafishi, kandi ayo mafishi atanditse mu bitabo byabigenewe, bigaragara ko ayo mafaranga yabaga yayatwaye; [33] Rumaze kumva ababuranyi babazwa icyo babivugaho, Maître Munyeshema Napoléon uhagarariye Banki y'abaturage ya Muhima avuga ko Munyambibi Vénérand amafishi yatangaga mu igenzura rya buri munsu yakorerwaga, ayo yabaga yibiyeho amafaranga yarayasigaranaga; naho Maître Nzamwita Toy avuga ko atumva ukuntu Gérante atabonye inyerezwa ryakorewe amafaranga yari ashinzwe gucunga, ko abona harimo complicité na Munyambibi Vénérand; [34] Rumaze kumva Munyambibi Vénérand abazwa uko yabigenzaga kugirango anyereze ariya mafaranga, akavuga ko iyo yashakaga kunyereza, ntiyandikaga amafaranga abikijwe ku ifishi, ko amafishi yabaga yakoresheje anyereza yayasubizaga mu yatarakoreshejwe(vierges), no mu bitabo bya dépôt ntayandikemo, ko ibyo yabikoze umwaka wose;

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[35] Rumaze kumva uhagarariye Ubushinjacyaha avuga ko ibyo Munyambibi avuze abeshya, ko ahubwo yandikaga versement kuri fiche no mu gatabo, nyuma agafata fiche ashaka kunyereza akazibika agashyira gérante nkeya, bivuze ko iyo umukiriya yazaga kubikuza, yahabwaga amafarangaye ariko atarigeze yinjira muri dépôt; [36] Rumaze kumva Munyambibi abazwa niba Gérante hari ukuntu yari kumenya ayo manyanga, agasubiza ko nta kuntu yari kubimenya; abajijwe aho ayo mafaranga yayashyize agasubiza ko yayashyize mu bucuruzi, ko yacuruzanyaga coltan na Sgt Ntaganira Eugène alias Barabas, abandi bakaba baramenyaniye kuri Jambo Beach, abajijwe umubare w'amafaranga yabahaye, agahakana ko ntayo yabahaye; abajijwe niba mu baregwa ntawigeze amusanga kuri guichet, nabyo arabihakana avuga ko ntawe; yongeye kubazwa icyabaga kiri mu dufuka twa kaki yahereza abaregwa atunyujije hejuru ya guichet, agasubiza ko habaga harimo ibisubizo bya coltan; [37] Rumaze kumva Maître Munyeshema Napoléon abazwa gusobanura ibya enveloppe kaki, agasubiza ko iyo enveloppe ari iyo Munyambibi yashyiragamo amafaranga akayaha abaregwa, ko kandi asaba ko imvugo Munyambibi amaze kuvuga zahuzwa n'ibyo yavuze mbere kugirango Urukiko rurebe aho ukuri guherereye; [38] Rumaze kumva uhagarariye Ubushinjacyaha avuga ko ku ngingo z'ubujurire bw'abaregwa bavuga ko bahamijwe icyaha ntacyo Urukiko rushingiyeho usibye ibinyoma bya Munyambibi wababeshyeye, kandi ko nta sano y'icyaha igaragara hagati y'abaregwa na Munyambibi, ko izo ngingo nta shingiro zifite kubera ko umugore wa Munyambibi yavugiye mu Rukiko ko yamenyanye na Sgt Ntaganira Eugène alias Barabas mu kwa kane 2001 mu gihe bo bavuga ko bamenyanye mu kwa gatandatu 2001, ko Kanamugire Théogène alias Pinto yivugiye ko mbere yuko batangira gukorana ubucuruzi bwa coltan, yari yarageze kuri Banques Populaires ya Muhima, Sgt Ntaganira Eugène alias Barabas amwereka Munyambibi amubwira ko ari inshuti ye, ko Munyambibi yemera ko ba Sgt Ntaganira Eugène alias Barabas bazaga kumufata kuri Banques Populaires mu kwa gatanu 2001, byerekana ko bari basanzwe baziranye mbere y'ukwa gatandatu 2001 bavuga, ko Munyambibi yasobanuye uko bafatanyije kunyereza amafaranga n'ukuntu yasohokaga muri Banques, kandi imvugo ye ikaba ihura n'iya Itete Martine; [39] Rumaze kumva Maître Munyeshema Napoléon asaba ko amafaranga bari bagenewe hakwiyongeraho inyungu za 4% zayo, na 6.300.000 Frw yo gukurikirana urubanza n'igihembo cya Avocat, yose hamwe akaba 409.944.057 Frw, havuyemo uruhare rwa Munyambibi utarajuriye; [40] Rumaze kumva Maître Nzamwita Toy avuga ko Munyambibi ariwe auteur principal, ko ntaho bigaragara ko yafatanyije n'abo yunganira, Urukiko rukaba rwarashingiye ku kimenyetso cyuko yari yarabashinje kandi nyuma yarabashinjuye; akomeza avuga ko ku birebana n'indishyi Banques Populaires isaba, hagenderwa kuri rapport ya ba Inspecteurs ba Banques yemeza ko uwakoze icyaha ari Munyambibi, umufatanyacyaha akaba Gérante w'icyo gihe; [41] Rumaze kubona ko iburanisha ryashojwe ababuranyi bakamenyeshwa ko urubanza ruzasomwa kuwa 30/06/2008, ariko uwo munsu ntirwasomwa kuko abacamanza bari bakiri mu mwiherero warwo, rwimurirwa kuwa 11/07/2008 nabwo ntirwasomwa rwimurirwa kuwa 18/07/2008, rukaba rwaraciwe mu buryo bukurikira:

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[42] Rusanze muri uru rubanza ikiburanwa ari ubufatanyacyaha mu buhemu bushingiye ku inyerezwa ry'amafaranga ya Banques Populaires ya Muhima; [43] Rusanze impamvu nyamukuru Urukiko Rukuru rwa Gisirikare rwashingiyeho rwemeza abaregwa icyaha cy'ubufatanyacyaha mu buhemu, ari imvugo ya Munyambibi Vénérand yavugiye imbere y'ubushinjacyaha bwa Gisirikare aho yasobanuraga ukuntu yanyereje amafaranga ya Banques Populaires, akanavuga n'ababimufashijemo aribo, Sgt Ntaganira Eugène alias Barabas, Ntagara Gilbert na Kanamugire Théogène alias Pinto; [44] Rusanze iyo ngingo abaregwa bavuga ko Urukiko rutari kuyishingiraho kubera ko yageze nyuma mu Rukiko akabihakana akavuga ko yababeshyeraga, ko rero ibyavugiwe mu Rukiko nibyo bihabwa agaciro kurusha ibyavugiwe mu rwego rw'iperereza; [45] Rusanze nkuko Urukiko Rukuru rwa Gisirikare rwabibonye, Munyambibi abazwa nta gahato gahato yashyizweho cyangwa se ibindi bikorwa bibabaza umubiri ku buryo ibyo yavuze yaba yarabitewe na kuramira amagara ye, nawe kandi akaba yivugira ko ibyo ntabyamubayeho, ibyo yavuze akaba yarabivuze mu bwisanzure busesuye; kuba yarageze imbere y'Urukiko agahindura, ntabwo bivuga byanze bikunze ko ibyo aribyo bigomba kwemerwa ngo ni uko byavugiwe imbere y'Urukiko, umucamanza afite ubushobozi bwo gushishoza no gusesengura akoresheje umutimanama we, agaciro aha iryo hinduramvugo; [46] Rusanze kandi n'abahanga mu by'amategeko babibona muri ubwo buryo, aha twavuga nka Michel FRANCHIMONT in Manuel de Procédure Pénale, Ed. Collection Scientifique de la Faculté de Droit de Liège, 1989,p.772 aho agira ati : « le juge du fond apprécie souverainement la sincérité d'un aveu fait par le prévenu au cours de l'instruction préparatoire, même quand cet aveu a été ultérieurement rétracté devant le tribunal... » bivuze ngo umucamanza uburanisha urubanza mu mizi niwe ureba agaciro imvugo yiyemerera icyaha mu rwego rw'iperereza ifite, kabone niyo nyirayo yageze imbere y'Urukiko akayihindura ; [47] Rusanze muri uru rubanza hagaragaramo imvugo z'abatangabuhamya barimo Itete Martine wakorana kuri guichet na Munyambibi Vénérand, imvugo ye ikaba ihura n'ibisobanuro bya Munyambibi ku mikorere y'icyaha, cyane cyane ukuntu abaregwa bazaga gutwara amafaranga kuri Banques, Munyambibi Vénérand akayabahereza muri enveloppe ya kaki kuba abaregwa bavuga ko Itete Martine yabanje kubijyaho inama na Munyambibi, bikaba nta shingiro bifite kuko nta bimenyetso babitangira ; ikindi kandi kuba barazaga kuri Banques Populaires kuhafata amafaranga kandi menshi nkuko Munyambibi Vénérand yabisobanuye, bakayakira bayahawe n'umukozi w'iyi Banque ushinze ikigega cyayo kandi nabo babizi neza ko ariko kazi ashinzwe, ntaho bahera bavuga ko amafaranga bajyanaga atari aya Banque, ibyo kandi bikaba bishimangirwa n'imvugo y'umugore wa Munyambibi witwa Zaninka wasobanuye ko mu mwaka wa 2001, yatangiye guterwa ubwoba n'ukuntu Munyambibi yakoresheje amafaranga menshi mu bagore, mu kugura amazu, n'ibindi byinshi kandi mbere ntayo bagiraga, akaba yarabimenyesheje ababyeyi ba Munyambibi n'aba Ntaganira kugirango babibabaze kuko babaga bari kumwe muri ibyo byose, kuri we akaba yarabonaga ari amafaranga ya Banque bari kurya ; [48] Rusanze hashingiwe ku bimaze kuvugwa, icyaha cy'ubufatanyacyaha kibahama ;

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[49] Rusanze ku cyaha cyo gutoroka igisirikare Sgt Ntaganira Eugène alias Barabas akurikiranyweho nawe yiyemerera ko ikibari yari yahawe yarengejeho iminsi cumi n'umunani(18), kandi ko aho afunguriwe aho gusubira muri Unit ye yahise ajya kwicururiza coltan nkuko abivuga, ubujurire bwe kuri icyo cyaha bukaba nta shingiro bufite ; [50] Rusanze inyungu za 4% z'amafaranga Banques Populaires yagenewe n'Urukiko uzihagarariye yaka ayakwiye kuko ni amafaranga aba yaracurujwe kandi akunguka ni ukuvuga 360.397.015 Frw X 4= 14.415.880 Frw 100 [51] Rusanze ay'ikurikiranarubanza n'ay'igihembo cya avocat, mu bwitonzi bw'Urukiko rugeneye Banques Populaires 500.000 Frw kuko ayo zisaba ari ikirenga, yose hamwe akaba 360.397.015 Frw + 14.415.880 Frw= 375.312.895 Frw ; [52] Rwemeye kwakira ubujurire bwa Sgt Ntaganira Eugène alias Barabas, Ntagara Gilbert na Kanamugire Théogène alias Pinto kuko bwaje mu buryo no mu nzira bikurikije amategeko ; [53] Rwemeje ko nta shingiro bufite ; [54] Rutegetse Sgt Ntaganira Eugène alias Barabas, Ntagara Gilbert na Kanamugire Théogène alias Pinto gufatanya guha Banques Populaires bafatanyije na Munyambibi Vénérand 375.312.895 Frw , ni ukuvuga 14.415.880 Frw ahwanye n'inyungu za 4% za 360.397.015 Frw yari yagenwe n'Urukiko Rukuru rwa Gisirikare, na 500.000Frw y'ikurikiranarubanza n'ay'igihembo cya avocat, batayatangira akava mu byabo ku ngufu za Leta; [55] Rubategetse gufatanya gutanga 4% y'umusogongero wa Leta ni ukuvuga 375.312.895 Frw x 4 = 15.012.516 Frw, bakayatangira mu gihe gitegetswe batayatangira 100 bagafungwa iminsi 8 y'ubugwatiramubiri, akava mu byabo ku ngufu za Leta; [56] Rutegetse Sgt Ntaganira Eugène alias Barabas, Ntagara Gilbert na Kanamugire Théogène alias Pinto gufatanya gutanga amagarama ya Leta angana na 13.000 Frw bakayatangira mu gihe gitegetswe batayatangira bagafungwa iminsi 20 y'ubugwatiramubiri, akava mu byabo ku ngufu za Leta;

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