

RWANDA / JUDGMENT

UBUSHINJACYAHA v. SIBOMANA

RLR V.3-2019

COURT

Supreme Court

DECIDED

7 December 2018

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RPAA00327/2018/CA

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UBUSHINJACYAHA v. SIBOMANA

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Text

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UBUSHINJACYAHA v. SIBOMANA [Rwanda URUKIKO RW'IKIRENGA – RPAA00327/2018/CA (Hitiyaremye, P.J.) 07 Ukubozza 2018] Amategeko agenga ibimenyetso – Ibimenyetso – Gukekwaho icyaha – Kuba uregwa n'uwahohotewe (victim) bari basanzwe bafitanye amakimbirane ntago ubwabyo byafatwa nk'ikimenyetso gihamya icyaha. Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Muhanga, Ubushinjacyaha bukurikiranye Sibomana n'umugore we Mukanyiriminega nyuma yuko uwitwa Munyensanga arasiwe muri Boutique ye n'umuntu utazwi mu ijoro ryo ku wa 16/12/2014, abaregwa bakaba baraketswe kuko hari abatangabuhmya bahamije ko bari basanzwe bafitanye amakimbirane na nyakwigendera. Abaregwa baburanye bahakana icyaha. Uru Rukiko rwahamije Sibomana icyaha aregwa rumuhanisha igihano cy'igifungo cya burundu naho umugore we Mukanyiriminega agirwa umwere. Uregwa ntiyishimiye imikirize y'urwo rubanza maze arujuririra mu Rukiko Rukuru, urugereko rwa Nyanza avuga ko yahamijwe icyaha atakoze maze urwo rukiko rwemeza ko ubujurire bwe nta shingiro bufite hashingiwe ku batangabuhamya bemeje ko uregwa yari yarahize kuzicisha nyakwigendera. Yaje kongera kujuririra Urukiko rw'Ikirenga, ariko ruza koherezwa mu Rukiko rw'Ubujujire kubera ivugurwa ry'inkiko. Mu mpamvu z'ubujujire

akagaragaza ko Urukiko Rukuru rwahaye agaciro imvugo z'abamushinja gusa maze rwanga kumva abatangabuhamya bamushinjura, anasaba Urukiko kwikorera iperereza aho nyakwigendera yarasiwe. Uregwa kandi yakomeje avuga ko atigeze yigamba kuzica nyakwigendera ndetse ko atigeze agerageza kumurogesha nkuko hari ababimushinje. Ubushinjacyaha bwo bugaragaza ko abatangabuhamya babajijwe bese bemeje ko yari afitiye urwango nyakwigendera kandi ikindi kigaragaza ko Sibomana yagize uruhare mu iraswa rya nyakwigendera aruko hari umutangabuhamya wemeje ko mbere yuko icyaha gikorwa moto ya Sibomana yamunyuzeho ihetse abantu atazi mu kanya gato nyakwigendera agahita araswa. Incamake y'icyemezo: 1. Kuba uregwa n'uwahohotewe (victim) bari basanzwe bafitanye amakimbirane ntago ubwabyo byafatwa nk'ikimenyetso gihamya icyaha. Ubujurire bufite ishingiye; Amagarama aherereye ku isanduku ya Leta. Amategeko yashingiweho: Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 2, igika cya 1, agace ka 5. Itegeko N°30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 165.

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Itegeko No15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 62, 65 na 119. Nta manza zifashishijwe. Inyandiko z'abahanga zifashishijwe: Etienne Vergès, Géraldine Vial, Olivier Leclerc, Droit de la Preuve, 1ère Edition 2015, p. 552, para. 570 Henri-D. Bosly et Damien Vandermeersch, Droit de la Procédure Pénale, 4ème Edition, Bruxelles, 2005, P. 1316. Michel Franchimont, Ann Jacobs, Adrien Masset, Manuel de Procédure pénale, 2ème édition, p. 1028. Urubanza I. IMITERERE Y'URUBANZA [1] Ku itariki ya 16/12/2014 mu gihe cya saa mbiri n'igice z'ijoro, uwitwa Munyensanga Protogène yarasiwe muri boutique ye n'umuntu utazwi waje yambaye igikoti cy'umukara n'ingofero, Polisi itangira iperereza hakekwa Sibomana Valens n'umugore we Mukanyiriminega Sylvie bari basanzwe bafitanye amakimbirane na nyakwigendera, kuko hari abatangabuhamya bemeza ko bagendaga bigamba kuzamwikiza hakoreshejwe imbunda, ariko abaketswe babajijwe bahakana icyaha. [2] Nyuma y'iperereza, Ubushinjacyaha bwabaregeye Urukiko Rwisumbuye rwa Muhanga, imbere y'Urukiko abaregwa bakomeza guhakana icyaha. Ku itariki ya 12/06/2015, urwo Rukiko rwaciye urubanza RP0111/15/TGI/MHG rwemeza ko Sibomana Valens ahamwe n'icyaha cy'ubwicanyi aregwa, rumuhanisha igifungo cya burundu, naho Mukanyiriminega Sylvie agirwa umwere kuri icyo cyaha kuko Ubushinjacyaha butabashije kugaragaza ibimenyetso simusiga byerekana uruhare rwe mu ikorwa ryacyo. [3] Sibomana Valens yajuririye Urukiko Rukuru, Urugereko rwa Nyanza, avuga ko yahamijwe icyaha atakoze, ku itariki ya 21/01/2016, urwo Rukiko ruca urubanza RPA0389/15/HC/NYA rwemeza ko ubujurire bwe nta shingiro bufite kuko abatangabuhamya batandukanye babajijwe bemeje ko yari yarahize kuzicisha Munyensanga Protogène inkuba cyangwa amasasu, bitewe n'amakimbirane bari bafitanye akomoka ku mpamvu y'uko yavugaga ko ari we wamurogeye umwana. [4] Sibomana Valens yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rwanze kumva abatangabuhamya bamushinjura ahubwo ruha agaciro imvugo z'abamushinja gusa, avuga ko uwitwa Munyaneza Florian wakekwaga ko ari we warashe nyakwigendera atigeze amushinja, asaba ko Urukiko rwajuririwe rwakwikorera iperereza muri

centre ya Nyabuhuzu aho Munyensanga Protogène yarasiwe.

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[5] Nyuma y'ishyirwaho ry'Urukiko rw'Ubujurire, ubujurire bwe bwoherejwe muri urwo Rukiko hashingiwe ku ngingo ya 105 y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko1. [6] Urubanza rwaburanishijwe mu ruhamye ku itariki ya 07/11/2018, Sibomana Valens yunganiwe na Me Nkundirumwana Joseph, Ubushinjacyaha buhagarariwe na Rudatinya N. Gaspard, Umushinjacyaha ku rwego rw'Igihugu II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO Kumenya niba nta bimenyetso bidashidikanywaho byashingiweho n'Urukiko Rukuru, Urugereko rwa Nyanza, mu guhamya Sibomana Valens icyaha. [7] Sibomana Valens avuga ko yajuriye kubera ko Urukiko Rukuru rwamurenganyije cyane, ruvuga ko ari we warashe nyakwigendera Munyensanga Protogène nyamara atarigeze aba umusirikare cyangwa ngo akore imyitoto ya gisirikare, rwanga kubaza abatangabuhamya bamushinjura, ntirwanakora iperereza yasabye kugira ngo ukuri kugaragare, icyo cyaha akaba atari we wagikoze kuko yatabaye kimwe n'abandi. [8] Ku birebana n'ibyavuzwe n'Urukiko Rukuru ko ari we wari waragaragariye urwango rukomeye nyakwigendera Munyensanga Protogène, ko ndetse yari yaranavuze ko azakora ibishoboka byose akamwica, byaba ngombwa agakoresha amasasu, Sibomana Valens avuga ko yagaragariye Urukiko ko icyo bapfaga ari uburengere, ko ariko icyo kibazo cyari cyarakemuwe n'Inteko y'Abunzi ndetse akaba yaramutsinze, hakaba nta mpamvu ihari yari gutuma amwica kandi yaramutsinze. [9] Sibomana Valens akomeza avuga ko amagambo yo kwigamba ko azica Munyensanga Protogène ntayo yigeze avuga, ndetse n'ibyo kuba yaragerageje kumurogesha mbere y'uko araswa nk'uko hari ababimushinje bikaba ntabyabayeho, ko ahubwo hari umupfumu baturanye wamusabye amafaranga ibihumbi ijana (100,000Frw) ngo amurogorere umwana kuko yamubwiraga ko inzu ye yubakiye ku magini arayamwima, akaba ari yo mpamvu yamushinje ibinyoma. Asoza asaba kurenganurwa kuko Urukiko Rukuru rwamuhamije icyaha hashingiwe ku bimenyetso bidafite ireme, byuzuyemo ugushidikanya gusa. [10] Me Nkundirumwana Joseph avuga ko abashinje Sibomana Valens bese bafitanye isano na Munyensanga Protogène, kandi ko muri bo ntawamushinje ko ari we wamurashe, akaba yarasabye ko hakorwa iperereza ariko Urukiko ntirwarikora. Avuga ko mu bimenyetso Urukiko Rwisumbuye rwashingiyeho ruhamya Nsabimana Valens icyaha harimo imvugo ya Munyensanga Protogène mbere y'uko apfa, aho yavugaga ko uwamurashe yari yambaye igikoti cy'umukara n'ingofero kandi akeka ko ari Nsabimana Valens, ibi Urukiko rukaba rutaragombaga kubishingiraho kuko harimo ugushidikanya, ahubwo ko Ubushinjacyaha bwari gushakisha ibimenyetso bihagije, byabura akarenganurwa. 1 Ingingo ya 105, igika cya mbere: "Guhera igihe iri tegeko ritangiriye gukurikizwa, uretse imanza zatangiye kuburanishwa, imanza zose zitakiri mu bubasha bw'urukiko zaregewe, zohererezwa Urukiko rubifitiye ububasha hakurikijwe ibiteganywa n'iri tegeko".

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[11] Ku birebana n'uruhare Sibomana Valens aregwa muri uru rubanza, Me Nkundirumwana Joseph avuga ko mu Rukiko Rwisumbuye yarezwe nk'icyitso, ariko Urukiko rumuhamya icyaha nka gatozi (auteur principal) rushingiye ku mvugo ya Munyensanga Protogène mbere y'uko apfa aho yavugaga ko akeka ko ariwe wamurashe, ibi nabyo bikaba biteye urujijo no gushidikanya kuko mu gihe yafatwa nk'icyitso hakwibazwa impamvu uwarashe atakurikiranywe. Asoza asaba ko uwo yunganira yagirwa umwere. [12] Uhagarariye Ubushinjacyaha avuga ko Sibomana Valens yakurikiranywe nk'icyitso kuko ariwe woheje uwishe Munyensanga Protogène. Mu gusobanura uruhare rwe mu ikorwa ry'icyaha, avuga ko abatangabuhamya babajijwe bose bemeje ko yari afitiye urwango Munyensanga Protogène ndetse akaba yaragerageje kumurogesha, bityo rero akaba ari we wagiye gushaka uwamurashe. [13] Uhagarariye Ubushinjacyaha akomeza avuga ko mu batangabuhamya babajijwe harimo umupfumu witwa Hitabatuma Janvier ushinja Sibomana Valens ko yamubwiye ko azica Munyensanga Protogène ndetse n'Umukuru w'Umudugudu witwa Ntuyenabo Alexis akaba yaremeje ko yumvise ayo magambo, agahamya ko Munyensanga Protogène amaze kumenya imigambi ya Sibomana Valens yahise ajya kwishinganisha. Avuga ko ikindi kigaragaza ko Sibomana Valens yagize uruhare mu iraswa rya Munyensanga Protogène, ari uko hari umutangabuhamya wemeje ko mbere y'uko icyaha gikorwa moto ya Sibomana Valens yamunyuzeho ihetse abantu atazi, mu kanya gato nyakwigendera agahita araswa. [14] Ku birebana no kuba umucamanza w'Urukiko Rwisumbuye yarashingiye ku mvugo ya nyakwigendera mbere y'uko apfa wavuze ko yarashwe na Sibomana Valens ndetse n'Urukiko Rukuru rukayigarukaho, uhagarariye Ubushinjacyaha avuga ko iyo mvugo itakwitabwaho kuko yabajijwe amereye nabi yenda gupfa, kuba yaravuze ko yarashwe na Sibomana Valens bikaba byaratewe n'uko yari yarumvise ko yahigiye kuzamwica. UKO URUKIKO RUBIBONA [15] Ingingo ya 62 y'Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko "ubuhamya ni ibivugwa mu rukiko bivuzwe n'umuntu wabibonye cyangwa wabyumvise ubwe ku byerekeye ikiburanwa". [16] Ingingo ya 65 y'iryo Tegeko, iteganya ko "urukiko ni rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa. Ntirwitsitsa ku mubare w'abatangabuhamya. Rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze ntacyo bihimbira". [17] Ingingo ya 119, igika cya kabiri, y'Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko "Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura ari byo kandi ko bishobora kwemerwa". [18] Inyandiko zigize dosiye y'urubanza, zigaragaza ko ibimenyetso byashingiweho mu rubanza rujuririrwa mu guhamya Sibomana Valens icyaha cy'ubwicanyi bwakorewe

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Munyensanga Protogène warashwe ku itariki ya 16/12/2014, ahanini bigizwe n'imvugo z'abatangabuhamya bemeje ko yababwiye ko azica nyakwigendera cyangwa ababyumvise. [19] Abo batangabuhamya barimo umuvuzi wa gakondo witwa Hitabatuma Janvier wavuze ko Sibomana Valens yamwibwiriye ko afite umugambi wo kurasa Munyensanga Protogène, akaba yarahise abimenyesha nyir'ubwite ndetse n'ubuyobozi bw'umudugudu, uyu mutangabuhamya akaba yarasobanuye ko yajyanye na Sibomana Valens n'umugore we mu Murenge wa Mushishiro mu Karere ka Muhanga kurogesha Munyensanga Protogène kubera ko yavugaga ko ari we wabiciye umwana. [20] Undi mutangabuhamya ni umukuru w'umudugudu witwa Nturanyenabo Alexis wemeje ko Sibomana Valens na Munyensanga Protogène bari bafitanye urwango rukomeye ku buryo uyu yari yaramubwiye ko Sibomana Valens arimo gucura umugambi wo kumwica, avuga ko urupfu rwe nta wundi rwabazwa uretse Sibomana Valens n'umugore we, ariko ko atazi umuntu bakoresheje, iby'izi nzangano kandi bikaba byaranemejwe n'abatangabuhamya bandi barimo Nyirahabimana Emerthe, Karemera Célestin, Bahigabose Eugène, Gahutu Viateur, Ndatimana Vianney, Kayitesi Marie Jeanne, Uwitonze Lucie na Musabyimana. [21] Urukiko rw'Ubujurire rurasanga imvugo z'abatangabuhamya bome babajijwe bakemeza ko Sibomana Valens yari afitiye urwango rukabije nyakwigendera Munyensanga Protogène kandi ko yagendaga yigamba ko azamwica zitashingirwaho mu kumuhamya icyaha cy'ubwicanyi nk'uko yagihamijwe n'Urukiko rwaciye urubanza rujuririrwa, kuko nta n'umwe wigeze avuga ko yamubonye akora icyaha cyangwa se ngo abe yarabyumvanye uwabibonye nk'uko biteganywa n'ingingo ya 62 y'Itegeko N°15/2004 ryo ku wa 12/06/2004 ryavuzwe haruguru. Ibi kandi akaba ari nako n'abahanga mu mategeko babisobanura, aho bemeza ko abatangabuhamya ari abavuga ibyo babonye cyangwa bumvise [...] (Le témoignage ou preuve testimoniale n'a pas été défini par aucun texte. La doctrine s'accorde cependant pour admettre qu'il s'agit de la preuve résultant des déclarations de personnes qui relatent ce qu'elles ont vu ou entendu [...])². Ibyavuzwe n'abo batangabuhamya wenda byafatwa nk'impamvu zari gutuma Sibomana Valens akekwa, ariko ntibyafatwa nk'ibimenyetso bikomeye, bisobanuye kandi bihuye byashingirwaho mu kumuhamya icyaha. [22] Ku bivugwa n'uhagarariye Ubushinjacyaha ko Sibomana Valens yakurikiranywe nk'icyitso mu rupfu rwa Munyensanga Protogène, uru Rukiko rurasanga Ubushinjacyaha buterekana ikimenyetso cy'igikorwa na kimwe kigaraza ko yafashije uwakoze icyaha nk'uko biteganywa n'ingingo ya 2, igika cya mbere, agace ka 5, y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange³, iby'uko ari Sibomana Valens wagiye 2 Etienne Vergès, Géraldine Vial, Olivier Leclerc, Droit de la Preuve, 1ère Edition 2015, p. 552, para. 570. 3 Icyitso: umuntu wafashije uwakoze icyaha mu byagiteguye bigaragarira muri kimwe mu bikorwa bikurikira:

- a) utuma hakorwa icyaha akoresheje igihembo, isezerano ry'igihembo, iterabwoba, agakabyo k'ubutegetsi cyangwa k'ububasha cyangwa amabwiriza agamije gukoresha icyaha;
- b) ufasha uwakoze icyaha mu byagiteguye, mu byoroheje imikorere yacyo cyangwa mu byakinonosoye kandi yarabikoze abizi, cyangwa uwashishikaje uwakoze icyaha;

- c) utuma undi akora icyaha akoresheje imbwirwaruhame, urusaku rushishikaza cyangwa iterabwoba, bibereye ahantu hateraniye abantu barenze babiri (2), inyandiko, ibitabo cyangwa ibindi byanditswe n'icapiro, biguzwe cyangwa bitangiwe ubuntu cyangwa byatangarijwe ahantu hateraniye abantu benshi, amatangazo amanitse cyangwa yeretswe rubanda;
- d) uwahishe uwakoze icyaha, umufatanyacyaha cyangwa uwahishe icyitso kugira ngo ataboneka cyangwa adafatwa, umufasha kwihisha cyangwa gucika cyangwa umuha aho kwihisha cyangwa uwamufashije guhisha ibintu byakoreshejwe cyangwa byagenewe gukoreshwa icyaha;

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gushaka uwishe Munyensanga Protogène akamushuka nta kimenyetso na kimwe gitangwa n'Ubushinjacyaha uretse gukeka gusa, cyane cyane ko buvuga ko n'uwakoze icyaha nka gatozi (auteur principal) atashoboye kumenyekana, ibyo abatangabuhamya bavuze ko bari bafitanye urwango bishingiye ku gukeka gusa nk'uko byasobanuwe haruguru, kuko n'iyi urwango bavuga rwaba rwari ruhari koko, ibyo ubwabyo si ikimenyetso ko Sibomana Valens hari icyo yafashije uwakoze icyaha kuko atari ihame ko ufite n'undi urwango byanze bikunze amugirira nabi. [23] Uru Rukiko rurasanga kandi ikindi kimenyetso gitangwa n'Ubushinjacyaha cy'uko hari umutangabuhamya wemeje ko mbere y'uko icyaha gikorwa moto ya Sibomana Valens yamunyuzeho ihetse abantu atazi, mu kanya gato nyakwigendera agahita araswa, nacyo nta shingiro cyahabwa kuko uwo mutangabuhamya witwa Ntakirutimana Jean Pierre atemeje niba abo bantu ari bo bishe Munyensanga Protogène ngo byumvikane ko ari abo Sibomana Valens yari ahetse kuri moto ye bagiye kwica nyakwigendera. [24] Abahanga mu mategeko Henri-D. Bosly na Damien Vandermeersch, bavuga ko umucamanza adashobora guhamya uregwa icyaha atabonye ko ibimenyetso yabishyikirijwe mu buryo bwemewe n'amategeko, bitarimo ugushidikanya, kandi ibyo bimenyetso impande zombi zikaba zarabigiyeho impaka, ubundi akabisesengura mu bwisanzure (Le juge ne peut déclarer un prévenu coupable que s'il a acquis l'intime conviction de sa culpabilité au-delà de tout doute raisonnable sur la base d'éléments de preuve qui lui ont été régulièrement produits et soumis à la contradiction et qu'il apprécie, en règle, souverainement)⁴. Ibi kandi bigarukwaho n'undi muhanga mu mategeko Michel Franchimont, uvuga ko Urukiko rusesengura mu bwisanzure ibimenyetso biba byatanzwe, ubundi rugashingira ku myumvire yarwo rutaziritswe n'ikimenyetso iki n'iki kiba cyatanzwe (...Le juge forme sa conviction librement sans être tenu par telle preuve plutôt que par telle autre. Il interroge sa conscience et décide en fonction de son intime conviction...) ⁵. [25] Hashingiwe ku ngingo ya 165 y'Itegeko N°30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko "gushidikanya birengera ushinjwa. Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze", no ku ngingo ya 119, igika cya kabiri, y'Itegeko N°15/2004 ryavuzwe haruguru, no ku bisobanuro bitangwa n'abahanga mu mategeko, Urukiko rw'Ubujurire rurasanga ibimenyetso byatanzwe n'Ubushinjacyaha kimwe n'ibyashingiweho n'Urukiko Rukuru, Urugereko rwa Nyanza, mu kwemeza ko Sibomana Valens yagize uruhare mu rupfu rwa

Munyensanga Protogène, birimo ugushidikanya nk'uko byasesenguwe haruguru, bityo akaba agomba kugirwa umwera kuri icyo cyaha. III. ICYEMEZO CY'URUKIKO [26] Rwemeje ko ubujurire bwa Sibomana Valens bufite ishingiro;

- e) uwahishe abizi ikintu cyangwa ibikoresho byakoreshejwe cyangwa byagenewe gukoresha icyaha;
- f) uwiba, uhisha cyangwa wonona nkana ku buryo ubwo aribwo bwose ibintu byagombye gufasha kugenza icyaha, gutahura ibimenyetso cyangwa guhana abakoze icyaha; 4 Henri-D. Bosly et Damien Vandermeersch, *Droit de la Procédure Pénale*, 4ème Edition, Bruxelles, 2005, P. 1316. 5 Michel Franchimont, Ann Jacobs, Adrien Masset, *Manuel de Procédure pénale*, 2ème édition, p. 1028 (appréciation des preuves).

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[27] Rwemeje ko Sibomana Valens ahanaguweho icyaha cy'ubwicanyi yaregwaga kubera gushidikanya; [28] Ruvuze ko imikirize y'urubanza RPA0389/15/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, ku itariki ya 21/01/2016 ihindutse muri byose; [29] Rutegetse ko Sibomana Valens ahita arekurwa urubanza rukimara gusomwa; [30] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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