

RWANDA / JUDGMENT

UBUSHINJACYAHA v. TUYIZERE

RPAA 00382/2024/CA

COURT

Court of Appeal

DECIDED

10 July 2025

CASE / FILE NUMBER

RPAA 00382/2024/CA

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UBUSHINJACYAHA v. TUYIZERE

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Text

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UBUSHINJACYAHA v. TUYIZERE [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00382/2024/CA (Rutazana, P.J.) Ku wa 10 Nyakanga 2025] Amategeko agenga ibyaba n'ibihano – icyaha cy'ubwicanyi – Gusaba kugirwa umwere – Kugira ngo Umucamanza afate icyemezo gihamya icyaha, agomba kuba afite ibimenyetso bihamya nta gushidikanya (preuves à conviction au-delà de tout doute raisonnable) ko ushinjwa ariwe wakoze icyaha. Umucamanza agomba gusesengurana ubushishozi uruhurirane rw'ibimenyetso, agahamya ushinjwa icyaha mu gihe gusa asanga nta wundi mwanzuro wagerwaho n'isesengura yakoze uretse iryo gusanisha uwakoze icyaha n'icyaha cyakozwe.

Incamake y'ikibazo: Uwitwa Tuyizere Evode yaketsweho kuba ari we wishe Niyomubyeyi Valentine w'imyaka 19 y'amavuko hashingiwe ku makuru yatanzwe na nyina wa nyakwigendera witwa Akimanizanye Clémentine ubwo yatangaga ikirego, aho yasobanuye ko umukobwa yari atwite inda yari yaratewe na Tuyizere Evode ndetse ko bari barapanze kubana.

Tuyizere Evode yarafashwe arafungwa mu gihe hari hagikorwa iperereza, rirangiye Ubushinjacyaha bumurega mu Rukiko Rwisumbuye rwa Musanze bumukurikiranyeho icyaha cy'ubwicanyi cyakorewe Niyomubyeyi Valentine, busaba ko ni kimuhama yahanishwa igifungo cya burundu. Yaburanye avuga ko icyaha ashinjwa nta ruhare yakigizemo, asaba kugirwa umwere.

Urukiko Rwisumbuye rwa Musanze rwemeje ko Tuyizere Evode ahamwa n'icyaha ashinjwa, maze rumuhanisha igifungo cya burundu, rushingiye ku bimenyetso bitandukanye bigizwe n'ubuhamya bwa Akimanizanye Clémentine (nyina wa nyakwigendera) hamwe na Historique ya Mtn.

Tuyizere Evode yajurirye Urukiko Rukuru, Urugereko rwa Musanze avuga ko yahamijwe icyaha hashingiwe ku bimenyetso birimo ugushidikanya kuko abatangabuhamya bavuze ibyo babwiwe ariko batabihagazeho.

Uhagarariye Ubushinjacyaha yaburanye avuga ko ubujurire bwa Tuyizere Evode nta shingiro bufite kuko Urukiko Rwisumbuye rwa Musanze rwagaragaje kandi rusobanura neza ibimenyetso rwashingiyeho rumuhamya icyaha cyo kwica Niyomubyeyi Valentine.

Urukiko Rukuru, Urugereko rwa Musanze rwemeje ko ubujurire bwa Tuyizere Evode nta shingiro bufite rushingiye ku mvugo z'abatangabuhamya Akimanizanye Clémentine (nyina wa nyakwigendera), Uwamariya Diane (mukuru wa nyakwigendera) na Niyonizera Marie Solange no kuri Historique ya Mtn (call history) rwasanze bigize ibimenyetso bidashidikanywaho byemeza ko Tuyizere Evode ari we wishe Niyomubyeyi Valentine.

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Urukiko Rukuru, Urugereko rwa Musanze, rwemeje ko ubujurire bwa Tuyizere Evode nta shingiro bufite rushingiye ku mvugo z'abatangabuhamya Akimanizanye Clémentine (nyina wa nyakwigendera), Uwamariya Diane (mukuru wa nyakwigendera) na Niyonizera Marie Solange no kuri Historique ya Mtn (call history) rwasanze bigize ibimenyetso bidashidikanywaho byemeza ko Tuyizere Evode ari we wishe Niyomubyeyi Valentine. Tuyizere Evode yongeye kujurira mu Rukiko rw'Ubujurire, avuga ko yahamijwe icyaha hashingiwe ku bimenyetso bigizwe n'imvugo z'abatangabuhamya na Historique ya MTN nyamara birimo ugushidikanya kandi bikaba bidahuye na kamere y'ikiburanwa.

Uhagarariye Ubushinjacyaha avuga ko impamvu z'ubujurire zatanze na Tuyizere Evode nta shingiro zifite kuko mu rubanza rujuririrwa Urukiko rwasobanuye neza ibimenyetso rwashingiyeho rumuhamya icyaha, ahubwo akaba atabasha kubivuguruzwa. Nyuma yo kumva ibisobanuro by'Ubushinjacyaha Urukiko rwasanze ari ngombwa ko haniyambazwa impuguke yo mu Kigo cya Mtn cyanatanze icyo kimenyetso cya call history, iyo mpuguke (Mugiraneza Himbaza Yves, Manager/Digital and Enterprise Platforms) yitaba Urukiko ku wa 22/04/2025, raporo yaryo ishyikirizwa Urukiko ku wa 20/05/2025. Uru Rukiko rwasuzumye niba mu rubanza rujuririrwa Tuyizere Evode yarahamijwe icyaha cyo kwica Niyomubyeyi Valentine hashingiwe ku bimenyetso byemeza ku buryo budashidikanywaho ko yagikoze koko. Uhagarariye

Ubushinjacyaha avuga ko ibimenyetso bigizwe n'imvugo z'abatangabuhamya na Historique ya Mtn Urukiko Rukuru, Urugereko Rwa Musanze rwashingiyeho rwemeza ko Tuyizere Evode ahamwa n'icyaha cyo kwica Niyomubyeyi Valentine byemeza nta gushidikanya ko yagikoze, nyamara akaba atabasha kubivuguruza kuko usibye gusa kuvuga ko ibyo bimenyetso bidahura n'ikiburanwa no gusubiramo imiburanire ku rwego rwa mbere uregwa n'umwunganira batagaragaza inenge ziri mu rubanza zikwiriye gukosorwa, bityo ko ubujurire bwa Tuyizere Evode nta shingiro bufite Incamake y'icyemezo: Kugira ngo Umucamanza afate icyemezo gihamya icyaha, agomba kuba afite ibimenyetso bihamya nta gushidikanya (preuves à conviction au-delà de tout doute raisonnable) ko ushinjwa ariwe wakoze icyaha. Umucamanza agomba gusesengurana ubushishozi uruhurirane rw'ibimenyetso, agahamya ushinjwa icyaha mu gihe gusa asanga nta wundi mwanzuro wagerwaho n'isesengura yakoze uretse iryo gusanisha uwakoze icyaha n'icyaha cyakozwe.

Ubujurire bufite ishingiro. Uregwa ahita arekurwa urubanza rukimara gusomwa.

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Nta mategeko yashingiweho: Imanza zifashishijwe: Urubanza RPAA 00737/2021/CA rw' Ubushinjacyaha na Uwayisaba Habimana Antoine; rwaciwe n'Urukiko rw'Ubujurire ku wa 16/12/2022; Urubanza RPAA 00249/2023/CA rw' Ubushinjacyaha na Bazimaziki Gratien; rwaciwe n'Urukiko rw'Ubujurire ku wa 20/12/2024; Urubanza RPAA 00379/2023/CA rw'Ubushinjacyaha na Hitiyaremye Pierre alias Kimasa, rwaciwe n'Urukiko rw'Ubujurire ku wa 25/03/2025.

Urubanza

I. IMITERERE Y'URUBANZA

- [1] Ku wa 30/12/2020 mu masaha ya saa moya (7h00), mu Mudugudu wa Nyange, Akagari ka Murambi, Umurenge wa Rusasa, Akarere ka Gakenke, Intara y' Amajyaruguru, mu mugezi wa Mukungwa habonetse umurambo w'umukobwa witwa Niyomubyeyi Valentine w'imyaka 19 y'amavuko ufite ibikomere ku mutwe, ku ijosi no ku bindi bice by'umubiri, ujanwa ku bitaro bikuru bya Shyira nyuma uza koherezwa mu kigo cya Rwanda Forensic Laboratory (RFL) kugira ngo ukorerwe isuzumwa.

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- [2] Uwitwa Tuyizere Evode yaketsweho kuba ari we wamwishe hashingiwe ku makuru yatanze na nyina wa nyakwigendera witwa Akimanizanye Clémentine ubwo yatangaga ikirego, aho yasobanuye ko umukobwa we Niyomubyeyi Valentine yari atwite inda yari yaratewe na Tuyizere Evode ndetse ko bari barapanze kubana, kandi ko ku wa 27/12/2020 Niyomubyeyi Valentine yavuye mu rugo mu masaha ya mbiri z'ijoro agiye kwa Tuyizere Evode.

- [3] Tuyizere Evode yarafashwe arafungwa mu gihe hari hagikorwa iperereza, rirangiye Ubushinjacyaha bumurega mu Rukiko Rwisumbuye rwa Musanze bumukurikiranyeho icyaha cy'ubwicanyi cyakorewe Niyomubyeyi Valentine, busaba ko kimuhama agahanishwa igifungo cya burundu. Yaburanye avuga ko icyaha ashinjwa nta ruhare yakigizemo, asaba kugirwa umwere.
- [4] Mu rubanza RP 00223/2021/TGI/MUS rwaciwe n'Urukiko Rwisumbuye rwa Musanze kuwa 19/05/2022 rwemeje ko Tuyizere Evode ahamwe n'icyaha ashinjwa rumuhanisha igifungo cya burundu, rushingiye ku bimenyetso bigizwe n'ubuhamya bwa Akimanizanye Clémentine (nyina wa nyakwigendera) na Historique ya Mtn bigaragaza ibikurikira:
- Kuba Tuyizere Evode yari yari azi neza ko yateye nyakwigendera inda nk'uko binemeweza n'abatangabuhamya akaniyemerera ko bapangaga kubana, ariko agashaka kumukwepa akikundana n'undi mukobwa;
 - Kuba ku wa 27/12/2020 Tuyizere Evode yaravuganye na Niyomubyeyi Valentine kuri telefone hanyuma uyu aya kumureba, kandi Tuyizere Evode akaba ari we bavuganye bwanyuma;

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- Kuba Historique ya Mtn (call history ku bireba numero ya telefone ya Tuyizere Evode/0788333422 n'ya Niyomubyeyi Valentine/0784419209) iri muri dosiye igaragaza ko bakimara kuvugana muri iryo joro Tuyizere Evode ataraye mu Murenge wa Rusasa yari atuyemo ahubwo yahise yimukira mu Murenge wa Gashaki mu Karere ka Musanze (kuko yatangiye kuvugira ku munara wa Gashaki guhera saa tanu n'iminota 20 n'amasogonda 59 z'ijoro) kandi hakaba nta kintu kigaragara cyatumye yimuka muri iryo joro; ahubwo bikaba bigaragaza ko yari ahunze ibyo yari amaze gukora;
 - Kuba Historique ya Mtn yavuzwe haruguru kandi igaragaza ko ku munsu wo ku wa 28/12/2020 Tuyizere Evode atigeze agerageza guhamagara Niyomubyeyi Valentine.
- [5] Tuyizere Evode yajurirye Urukiko Rukuru, Urugereko rwa Musanze avuga ko yahamijwe icyaha hashingiye ku bimenyetso birimo ugushidikanya kuko abatangabuhamya bavuze ibyo babwiwe ariko batabihagazeho, na Historique ya Mtn ikaba igaragaza ko yavuganye na nyakwigendera nyamara ibi ubwabyo bikaba bitavugaga ko ari we wamwishe.
- [6] Uhagarariye Ubushinjacyaha yaburanye avuga ko ubujurire bwa Tuyizere Evode nta shingiro bufite kuko Urukiko Rwisumbuye rwa Musanze rwagaragaje kandi rusobanura neza ibimenyetso rwashingiyeho rumuhamya icyaha cyo kwica Niyomubyeyi Valentine nk'uko bigaragara mu gika cya 12 n'icya 13 by'urubanza rujuririrwa, nyamara mu bujurire bwe akaba atabasha kubivuguruzwa.

- [7] Mu rubanza RPA 00353/2022/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze kuwa 30/04/2024, rwemeje ko ubujurire bwa Tuyizere Evode nta shingiro bufitte rushingiye ku mvugo z'abatangabuhamya Akimanizanye Clémentine (nyina wa nyakwigndera), Uwamariya Diane (mukuru wa nyakwigndera) na Niyonizera Marie Solange no kuri Historique ya Mtn (call history) rwasanze bigize ibimenyetso bidashidikanywaho byemeza ko Tuyizere Evode ari we wishe Niyomubyeyi Valentine.
- [8] Ibyo Urukiko rwabyemeje kuko rwasanze nyuma y'uko aba bombi bavuganye kuri telefone mu mugoroba wo ku wa 27/12/2020, Niyomubyeyi Valentine yaravuye iwabo mu rugo akagenda atavuze aho agiye, bivuze ko yari afitanye gahunda na Tuyizere Evode dore ko bari banahereye kare bavugana banoherezeranya ubutumwa bugufi (sms), kandi Tuyizere Evode akaba ari we bavuganye bwa nyuma kuri telefone; ndetse nyuma y'aho, muri iryo joro ryo ku wa 27/12/2020, Tuyizere Evode akaba yaravuye iwabo i Rusasa mu Karere ka Gakenke akajya mu Karere ka Musanze (Susa) akaza kugaruka mu Kivuruga (muri Gakenke), arimo kugerageza guhunga icyaha cy'ubwicanyi yari amaze gukora, nyamara akaba adashobora gusobanura impamvu y'uko guhinduranya aho aherereye kandi hari intera ndende mu buryo bugaragara; na nyuma y'aho Tuyizere Evode akaba atarongeye guhamagara numero ye ya telefone ahubwo agahita asubira mu kazi i Bugesera.

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- [9] Tuyizere Evode yongeye kujurira mu Rukiko rw'Ubujurire, urubanza ruhabwa RPAA 00382/2024/CA. Mu bujurire bwe avuga ko yahamijwe icyaha hashingiwe ku bimenyetso bigizwe n'impamvu z'abatangabuhamya na Historique ya MTN nyamara birimo ugushidikanya kandi bikaba bidahuye na kamere y'ikiburanwa, kuko nta mutangabuhamya n'umwe wemeje ko yamubonye akora igikorwa cyo kwica nyakwigendera ahubwo icyo bavuze ari baketse ko ari we wamwishe kuko bumvise bavugana kuri telefone bamubura bagakeka ko yagiye iwe; naho ku bijyanye na Historique ya Mtn avuga ko yashingiweho hemezwa ko muri uwo mugoroba wo ku wa 27/12/2020 yavuye iwabo akajya ahantu hatandukanye ahunga icyaha, nyamara nta mpuguke yagaragaje ko iminara itandukanye bavuga ko yakoresheje avugira kuri telefone muri uwo mugoroba atashoboraga kuyikoresha ari iwabo; hanirengagizwa ko hari abatangabuhamya bemeza ko muri uwo mugoroba atigeze aya iwabo kuko bari kumwe nawe.
- [10] Uhagarariye Ubushinjacyaha avuga ko impamvu z'ubujurire zatanze na Tuyizere Evode nta shingiro zifite kuko mu rubanza rujuririrwa Urukiko rwasobanuye neza ibimenyetso rwashingiyeho rumuhamya icyaha, ahubwo akaba atabasha kubivugurura.
- [11] Urubanza rwaburanishijwe mu ruhamwe ku matariki atandukanye (kuwa 05/02/2025; kuwa 20/03/2025, kuwa 22/04/2025 no kuwa 28/05/2025) Tuyizere Evode yunganiwe na Me Uwiduhaye Julienne naho Ubushinjacyaha buhagarariwe na Mbaragijimana Désiré, Habineza Jean Damascène na Butera Oscar, Abashinjacyaha ku rwego rw'Igihugu bagiye basimburana ku matariki yavuzwe haruguru.

[12] Ku wa 25/03/2025 Urukiko rwaciye urubanza rubanziriza urundi, rwemeza ko mbere yo gufata icyemezo cya burundu ari ngombwa ko Ubushinjacyaha butanga ibisobanuro by'inyongera ku kimenyetso kigizwe na Historique ya Mtn (call history ku bireba numero ya telefone ya Tuyizere Evode/0788333422 n'ya Niyomubyeyi Valentine/0784419209) cyashingiweho n'Urukiko rwemeza ko Tuyizere Evode ahamwa n'icyaha aregwa, by'uwihariko ku bijyaye n'iminara itandukanye yakoresheje avugira kuri telefone mu ijoro ryo ku wa 27/12/2020, Urukiko rukaba rwarabishingiyeho bwemeza ko yagiye ahinduranya aho aherereye ku buryo bwihuse kandi budasobanutse ahunga icyaha yari amaze gukora, nko kuva mu Kivuruga (muri Gakenke) akajya Susa (muri Musanze), cyangwa kuva Susa (muri Musanze) akajya Janja (muri Gakenke); ibi bikanahura n'uburyo Ubushinjacyaha busobanuramo imikorere y'icyaha.

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[13] Nyuma yo kumva ibisobanuro by'Ubushinjacyaha Urukiko rwasanze ari ngombwa ko haniyambazwa impuguke yo mu Kigo cya Mtn cyanatanze icyo kimenyetso cya call history, iyo mpuguke (Mugiraneza Himbaza Yves, Manager/Digital and Enterprise Platforms) yitaba Urukiko ku wa 22/04/2025, nyuma yo kumva ibisobanuro byayo uhagarariye Ubushinjacyaha asaba ko bukora iperereza ry'inyongera hakagaragazwa niba umuntu uri iwabo wa Tuyizere Evode ashobora kuvugira kuri telefone akoresheje iminara itandukanye igaragara muri Historique ya Mtn yavuzwe haruguru; iperereza ry'inyongera rikorwa ku wa 09/05/2025, raporo yaryo ishyikirizwa Urukiko ku wa 20/05/2025.

[14] Hashingiwe ku byagaragajwe haruguru, Urukiko rurasuzuma niba mu rubanza rujuririrwa Tuyizere Evode yarahamijwe icyaha cyo kwica Niyomubyeyi Valentine hashingiwe ku bimenyetso byemeza ku buryo budashidikanywaho ko yagikoze koko.

II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

Kumenya niba mu rubanza rujuririrwa Tuyizere Evode yarahamijwe icyaha cyo kwica Niyomubyeyi Valentine hashingiwe ku bimenyetso byemeza ku buryo budashidikanywaho ko yagikoze koko

[15] Tuyizere Evode na Me Uwiduhaye Julianne umwunganira bavuga ko Urukiko Rukuru, Urugereko rwa Musanze rwamuhamije icyaha rushingiye ku bimenyetso birimo ugushidikanya kandi bidahuye na kamere y'ikiburanwa, bagasaba uru Rukiko kwemeza ko Tuyizere Evode ari umwere bashingiye ku mpamvu zikurikira:

- Kuba icyo abatangabuhamya Akimanizanye Clémentine (nyina wa nyakwigendera) na Uwamariya Diane (mukuru wa nyakwigendera)

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bavuze ari uko bakeka ko Tuyizere Evode ari we wishe Niyomubyeyi Valentine kuko bari bumvise bavugana kuri telefone kandi bakaba bari basanzwe ari inshuti ndetse yaranamuteye inda, babonye batamubona mu cyumba muri uwo mugoroba bakeka ko yagiye kwa Tuyizere Evode kandi ko yamugize umugore; nyamara uretse kubikeka hakaba nta kigaragaza ko koko yari yagiye kwa Tuyizere Evode, ndetse bakaba batanagaragaza ko hari amakimbirane yari yabanje kugirana na nyakwigendera cyangwa indi mpamvu yari gutuma amwica; mu batangabuhamya babijijwe kandi nta n'umwe wemeje ko yabonye Tuyizere Evode na Niyomubyeyi Valentine bari kumwe muri uwo mugoroba wo ku wa 27/12/2020 cyangwa se ko yabonye Tuyizere Evode amwica; bityo ubuhamya bwabo bukaba atari ikimenyetso kimushinja kuko kuba baravuganye bitavuze ko yamwishe.

- Kuba nta mpuguke yagaragaje ko iminara bavuga ko Tuyizere Evode yakoresheje avugira kuri telefone muri uwo mugoroba wo ku wa 27/12/2020 atashoboraga kuyikoresha atavuye iwabo; nta na raporo yakozwe ihuza iyo minara bavuga ko Tuyizere Evode yakoresheje n'aho basanze umurambo wa nyakwigendera;
 - Kuba ibikubiye mu mvugo za Tuyizere Evode mu Bugenzacyaha no mu Bushinjacyaha bitashingirwaho mu kumuhamya icyaha kuko yasubizaga ibibazo yabazwaga kandi bikaba ntaho bihuriye n'igikorwa cyo kwica Niyomubyeyi Valentine.
- [16] Me Uwiduhaye Julienne akomeza asobanura ko Tuyizere Evode yahamijwe icyaha ashinjwa hagendewe ku kugenekereza kandi bitemewe mu manza nshinjabyaha hashingiwe ku ngingo ya 4 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, iteganyaga ko amategeko ahana agomba gufatwa uko ateye, ko adashobora ntashobora gukoreshwa ku buryo butandukira kandi ko inkiko zibujijwe guca imanza ku buryo bugenekereje; agasaba Urukiko kwemeza ko uwo yunganira ari umwere rushingiye ku ngingo ya 111 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganyaga ko 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 rubanza RPAA 00340/2020/CA (MP c/ Ndizihiwe Fabrice) aho uregwa yagizwe umwere kuko Urukiko rw'Ubujurire rwasanze kuba yaraherukaga kuvugana na nyakwigendera bidahagije ngo ahamwe n'icyaha.
- [17] Mu iburanisha kandi Tuyizere Evode yasobanuye ko yaherukanaga na Niyomubyeyi Valentine ku wa 27/12/2020 saa kumi n'ebyiri z'umugoroba ubwo yamunyuragaho yerekeza muri centre ya Gatonde, kandi ko amakuru y'ibura rye yayamenye ku wa 28/12/2020 saa moya n'igice (19h30') z'ijoro ubwo Uwamariya Diane (mukuru wa nyakwigendera) yamuhamagaraga amubaza niba bari kumwe undi akamuhakanira, nawe akagerageza guhamagara numero ye ya telefoni ariko ikanga gucamo.

[18] Yasobanuye kandi ko kuri iyo tariki ya 27/12/2020 yaraye iwabo i Rusasa ahava ku wa 28/12/2020 saa tatu za mu gitondo amaze kubaga inkya mu Murenge wa Rurambi, ajya i Musanze

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kuko ariho yagombaga gutegeza imodoka asubira mu kazi i Bugesera; ariko kuko hari mu gihe cy'icyorezo cya COVID 19 ingendo zitemewe nyuma ya saa moya z'ijoro arara i Musanze, ku wa 30/12/2020 ubwo yari mu kazi mu Bugesera amenya amakuru y'uko umurambo wa nyakwigendera wabonetse mu mugezi wa Mukungwa.

[19] Uhagarariye Ubushinjacyaha avuga ko ibimenyetso bigizwe n'imvugo z'abatangabuhamya na Historique ya Mtn Urukiko Rukuru, Urugereko Rwa Musanze rwashingiyeho rwemeza ko Tuyizere Evode ahamwa n'icyaha cyo kwica Niyomubyezi Valentine byemeza nta gushidikanya ko yagikoze, nyamara akaba atabasha kubivuguruza kuko usibye gusa kuvuga ko ibyo bimenyetso bidahura n'ikiburanwa no gusubiramo imiburanire ku rwego rwa mbere Tuyizere Evode n'umwunganira batagaragaza inenge ziri mu rubanza zikwiriye gukosorwa.

[20] Uhagarariye Ubushinjacyaha akomeza asobanura ko ubujurire bwa Tuyizere Evode nta shingiro bufite hashingiwe ku mpamvu n'ibisobanuro bikurikira:

- ibyo abatangabuhamya bavuze ni ukuri kw'ibyabaye, Tuyizere Evode n'umwunganira bakaba batagaragaza ko hari umutangabuhamya wavuze ibinyoma;
- Tuyizere Evode yavuganye na nyakwigendera inshuro nyinshi nk'uko bigaragazwa na Historique ya Mtn iri muri dosiye, bityo akaba yarapangaga uko yamwica;
- Historique ya Mtn kandi igaragaza ko nyuma y'uko nyakwigendera abuze TUYIZERE Evode yavuye iwabo ajya i Musanze, bigaragaza ko yahungaga icyaha;
- kuba nta mutangabuhamya wamubonye yica nyakwigendera ntibisobanura ko icyaha ashinjwa atagikoze, kuko kuba uwakoze icyaha yamenyekana biterwa n'uburyo cyateguwemo harimo no gusibanganya ibimenyetso; Tuyizere Evode rero nawe akaba atari kwiyerekana arimo kwica nyakwigendera, kandi hakaba hari imanza zinyuranye zaciwe abaregwa bahagamwa n'ibyaha nyamara ntawababonye babikora, kuko umucamanza ari we usesengura akanahuza imikorere y'icyaha n'ibimenyetso byatanze;
- imyiregurire ya Tuyizere Evode y'uko ntacyo yapfaga na nyakwigendera kuko biteguraga kubana nta shingiro ifite kuko yemera ko aho amariye kumutera inda yatangiye kurambagiza undi mukobwa witwa Niyonizera

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Marie Solange yashakaga no kurongora, bikaba byaba aribyo byabaye intandaro yo kumwikiza;

- Tuyizere Evode yemera ko ku itariki 27/12/2020 yari kumwe na Niyomubyeyi Valentine, ariko ntagaragaza aho yagiye cyangwa uko byagenze nyuma y’uko batandukanye kandi yaragombaga kumuba hafi nk’umuntu wari utwite; na nyuma y’uko batandukaniye Tuyizere Evode ntiyongeye guhamagara telefoni ya nyakwigendera. UKO URUKIKO RUBIBONA [21] Impaka muri uru rubanza zishingiye ku kumenya niba mu rubanza rujuririrwa Tuyizere Evode yarahamijwe icyaha cyo kwica Niyomubyeyi Valentine hashingiwe ku bimenyetso byemeza ku buryo budashidikanywaho ko yagikoze koko.
- [22] Ikibazo cyo kumenya ibishingirwaho kugira ngo uregwa ahamwe n’icyaha cyasuzumwe mu manza zinyuranye zaciwe n’uru Rukiko, harimo urubanza RPAA 00737/2021/CA rwaciwe n’Urukiko rw’Ubujurire ku wa 16/12/2022 haburana Ubushinjacyaha na Uwayisaba Habimana Antoine (igika cya 16-17), n’urubanza RPAA 00249/2023/CA rwaciwe ku wa 20/12/2024 haburana Ubushinjacyaha na Bazimaziki Gratien (igika cya 15). Izo manza zihuriye ku murongo ukurikira: “Kugira ngo Umucamanza afate icyemezo gihamya icyaha, agomba kuba afite ibimenyetso bihamya nta gushidikanya (preuves à conviction au-delà de tout doute raisonnable) ko ushinjwa ariwe wakoze icyaha. Umucamanza agomba gusesengurana ubushishozi uruhurirane rw’ibimenyetso, agahamya ushinjwa icyaha mu gihe gusa asanga nta wundi mwanzuro wagerwaho n’isesengura yakoze uretse iryo gusanisha uwakoze icyaha n’icyaha cyakozwe.” Uyu murongo kandi wakomeje gukurikizwa mu manza zaciwe n’uru Rukiko, mu ziheruka gucibwa harimo nk’urubanza RPAA 00379/2023/CA ku wa 25/03/2025 haburana Ubushinjacyaha na Hitiyaremye Pierre alias Kimasa (igika cya 20).
- [23] Nk’uko kandi byasobanuwe mu rubanza RPA 0084/10/CS rwaciwe n’Urukiko rw’Ikirenga ku wa 09/05/2014 haburana Ubushinjacyaha na Gatera¹, ugushidikanya kurengera ushinjwa akagirwa umwere ku cyaha akurikiranweho. Uwo murongo wanakurikijwe mu zindi manza zaciwe n’uru Rukiko, mu ziheruka gucibwa harimo nk’urubanza RPAA 00318/2020/CA haburana Ubushinjacyaha na Birasa Jean Claude (igika cya 33) n’urubanza RPAA 00434/2023/CA - CMB RPAA 00353/2023/CA - CMB RPAA 00366/2023/CA - CMB 00435/2023/CA haburana Mazina Déogratias alias Gasongo n’abandi (igika cya 36), zombi zaciwe ku wa 29/11/2024, n’urubanza RPAA 00379/2023/CA (igika cya 21) rwavuzwe mu gika kibanziriza iki.

1 Uru rubanza rwatangajwe mu Cyegeranyo cy’Ibyemezo by’Inkiko, Vol [2015] 4 RLR.

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- [24] Nk’uko bigaragara mu rubanza rujuririrwa, Urukiko Rukuru, Urugereko rwa Musanze rwemeje ko Tuyizere Evode ahamwa n’icyaha cyo kwica Niyomubyeyi Valentine rushingiye ku bimenyetso n’impamvu birebewe hamwe bikurikira:
- Historique ya Mtn (call history) iri muri dosiye igaragaza ko ku wa 26/12/2020 Tuyizere Evode yavuganye na Niyomubyeyi Valentine kuri telefone (inshuro zigera kuri 12) bakoresheje uburyo bw’amajwi, guhamagarana no kohererezanya ubutumwa bugufi (sms);

- Nk'uko bigaragazwa na Historique ya Mtn yavuzwe haruguru bikanashimagirwa n'abatangabuhamy Akimanizanye Clémentine, Uwamariya Diane na Niyonizera Marie Solange, ku wa 27/12/2020 nabwo bongeye kuvugana kuri telefone inshuro zigera kuri 8 bakoresheje uburyo bw'amajwi (voice) n'ubutumwa bugufi (sms), harimo inshuro eshatu bahamagaranye mu mugoroba wo kuri uwo muni; Historique ya Mtn igaragaza ko NIYOMUBYEYI Valentine yahamagaye Tuyizere Evode saa kumi n'ebiri n'iminota makumyabiri n'itatu n'amasegonda atatu (18h23:03) bavugana amasegonda 20, na saa kumi n'ebiri n'iminota makumyabiri n'itatu n'amasegonda mirongo ine n'arindwi (18h23:47) bavugana amasegonda 16, Tuyizere Evode nawe amuhamagara saa kumi n'ebiri n'iminota makumyabiri n'ine n'amasegonda mirongo ine n'atatu (18h24:43) bavugana amasegonda 18;
- Mu buhamya bwe Uwamariya Diane (mukuru wa nyakwigendera) avuga ko ubwo aba bombi bavuganaga kuri uwo mugoroba wo ku wa 27/12/2020 yumvise Tuyizere Evode abaza Niyomubyeyi Valentine niba yakongera kuboneka ku masaha amwe n'ayo yari yabonekeyeho ejo hashize;
- Nyuma y'uko Tuyizere Evode avuganye na Niyomubyeyi Valentine muri uwo mugoroba wo ku wa 27/12/2020 uyu yavuye mu rugo iwabo agenda atavuze nk'uko byemezwa na nyina (Akimanizanye Clémentine) na mukuru we (Uwamariya Diane), baza kubona ko adahari mu ma saa moya z'umugoroba; bigashimangirwa n'undi mutangabuhamy witwa Niyonizera Marie Solange uvuga ko ubwo yari kumwe na Tuyizere Evode mu nzira berekeza kuri centre yo ku Ishusho Niyomubyeyi Valentine yabanyuzeho yerekeza muri centre ya Gatonde; ko rero ibi bigaragaza neza ko hari gahunda yari afitanye na Tuyizere Evode kuko bari banahereye kare bavugana ndetse bohererezanya ubutumwa bugufi nk'uko bigaragazwa na Historique ya Mtn yavuzwe haruguru;
- Ku wa 27/12/2020 hagati ya saa kumi n'ebiri z'umugoroba na saa yine z'ijoro Tuyizere Evode yagiye ahinduranya aho aherereye ku buryo bwihuse kandi budasobanutse, ava iwabo i Rusasa muri Gakenke aya i Muhoza muri Musanze nyuma aza kugaruka muri Gakenke arimo kugerageza guhunga icyaha cy'ubwicanyi yari amaze gukora, kuko Historique ya Mtn yavuzwe haruguru igaragaza ko yagiye agaragara avugira ku minara itandukanye nka Kivuruga, Kamubuga, Gatonde, Janja, Susa na Ryamurari kandi ugasanga hari iminara irimo intera ndende ku buryo bugaragara nko kuva Kivuruga (muri Gakenke) ukajya Susa (muri Musanze), cyangwa kuva Susa (muri Musanze) ukajya Janja (muri Gakenke); nyamara akaba adashobora gusobanura impamvu y'uko guhinduranya aho aherereye, ibi kandi bikaba bivuguruzwa ibyo avuga ko ku wa 27/12/2020 atigeze ava mu rugo iwabo;

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- Nyuma y'uko Niyomubyeyi Valentine abuze Tuyizere Evode ntiyongeye guhamagara numero ye ya telefone ngo nibura yange gucamo; kuba avuga ko kumuhamagara bitari itegeko kuko nta kazi yari yamuhaye ngo babe bavugana mu rwego rw'akazi, cyangwa ngo abe ari umuntu umufitiye akamaro cyane ku buryo yagombaga kumuhamagara buri muni bikaba bigaragaza ko afite icyo ahisha kuko bitumvikana ukuntu yavugaga amagambo nk'aya ku

muntu bari bamaze iminsi bavugana ndetse bohererezanya n'ubutumwa bugufi, yewe aniyemerera ko bari inshuti anamutwitiye umwana; uko guhita ahagarika kuvugana nawe nabyo bikaba bigaragaza ko yari azi neza ibyo yakoze.

- [25] Imwe mu mpamvu Urukiko Rukuru, Urugereko rwa Musanze rwashingiyeho rwemeza ko Tuyizere Evode ahamwa n'icyaha aregwa cyo kwica Niyomubyeyi Valentine, ni ukuba rwarasanze mu ijoro ryo ku wa 22/12/2020 yaragerageje guhunga icyaha yari amaze gukora akava iwabo i Rusasa mu Karere ka Gakenke akajya i Muhoza muri Musanze nyuma akaza kugaruka muri Gakenke, rubishingiye ku kuba Historique ya Mtn yavuzwe haruguru igaragaza ko muri ayo masaha Tuyizere Evode yavugiraga ku minara itandukanye kandi bigaragara ko hagati yayo harimo intera ndende; Ibi binahura n'ibisobanuro Ubushinjacyaha bwatanze imbere y'uru Rukiko, buvuga ko icyaha cyakorewe i Rusasa hanyuma umurambo bakajya kuwuhisha mu mugezi wa Mukungwa, bityo uko guhinduranya iminara yakoreshwaga na Tuyizere Evode bikaba bigaragaza ko yavuye iwabo i Rusasa muri Gakenke ahunga icyaha.
- [26] Urukiko rw'Ubujurire rurasanga iyi mpamvu yashingiweho n'Urukiko Rukuru, Urugereko rwa Musanze ikanahuza n'uburyo Ubushinjacyaha busobanura icyaha cyakozwemo nta shingiro ifite, kuko iperereza ry'inyongera ryakozwe n'Ubushinjacyaha ku wa 09/05/2025, hari na Me Uwiduhaye Julienne wunganira Tuyizere Evode n'abakozi babiri baturutse mu Kigo cya Mtn, ryagaragaje ko umuntu uri aho Tuyizere Evode yari atuye mu Mudugudu wa Kidomo, Akagari ka Kamonyi, Umurenge wa Rusasa, Akarere ka Gakenke mu Ntara y'Amajyaruguru ashobora kuvugira kuri telefone akoresheje iminara ya Cyabingo, Janja na Kamubuga mu Karere ka Gakenke, n'iminara ya Ryamurari na Gahondo mu Karere ka Nyabihu; ndetse n'impuguke yavuye mu Kigo cya Mtn ikaba yarasobanuriye uru Rukiko ko kuba umuntu yakoresha iminara itandukanye bitavuze ko byanze bikunze aba yavuye aho yari ari, kuko gukoresha umunara biterwa n'ibintu byinshi harimo nk'ubushobozi uwo munara ufite, umubare w'abantu barimo kuwukoresha n'ibindi.
- [27] Urukiko rw'Ubujurire rushingiye ku bimaze gusobanurwa haruguru, rurasanga kuba Historique ya Mtn iri muri dosiye igaragaza ko mu ijoro ryo ku wa 27/12/2020 Tuyizere Evode yavugiye kuri telefone akoresheje iminara itandukanye harimo uwa Kivuruga, uwa Kamubuga, uwa Gatonde, uwa Janja, uwa Susa n'uwa Ryamurari, bitavuze ko byanze bikunze yabaga yahinduranyije aho aherereye, nko kuba yaba yavuye mu Karere ka Gakenke akajya mu ka Musanze hanyuma akagaruka mu ka Gakenke nk'uko Urukiko Rukuru, Urugereko rwa Musanze rwabyemeje; ahubwo nk'uko byasobanuwe birashoboka ko iyo minara yari kuyikoresha atavuye iwabo i Rusasa; bityo rero iyi mpamvu ikaba itashingirwaho hemezwa mu buryo budashidikanywaho ko Tuyizere Evode yahinduranyije aho yari ari akava iwabo i Rusasa mu Karere ka Gakenke agamije guhisha umurambo wa nyakwigendera no guhunga icyaha yari amaze gukora.

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- [28] Urukiko rw'Ubujurire rushingiye ku bimaze gusobanurwa, rurasanga kuba Tuyizere Evode yaba yari yarateye Niyomubyeyi Valentine inda, kuba baravuganye ku wa 26/12/2020 no ku wa 27/12/2020, kuba nyuma y'uko bavuganye mu mugoroba wo ku wa 27/12/2020 nyakwigendera yaravuye iwabo mu rugo, kuba ari we baba baravuganye bwa nyuma, no kuba Tuyizere Evode atarahamagaye telefone ya Niyomubyeyi Valentine kugeza ubwo mukuru we Uwamariya Diane ari we wamuhamagaye ku wa 28/12/2020 amubaza niba bari kumwe, byaba ari zimwe mu mpamvu zatumye Tuyizere Evode akekwa bwa mbere, ariko zikaba zitagize ikimenyetso gihagije cyashingirwaho hemezwa mu buryo budashidikanywaho ko ari we wamwishe, kuko mu buhamya bwe Niyonizera Marie Solange yavuze ko ubwo yari kumwe na Tuyizere Evode berekeza kuri centre yo ku Ishusho Niyomubyeyi Valentine yabanyuzeho yihuta yerekeza kuri centre ya Gatonde, nyuma y'umwanya muto Niyonizera Marie Solange agasubira inyuma naho Tuyizere Evode agakomeza yerekeza kuri centre yo ku Ishusho, hakaba nta cyagaragajwe kivuguruzwa ubwo buhamya, Urukiko rwashingiraho rwemeza nta shiti ko nyuma y'aho hari aho Tuyizere Evode yahuriye na nyakwigendera n'uburyo bahuye akamwica.
- [29] Hashingiwe ku bisobanuro byose byatanzwe mu bika bibanziriza iki no ku murongo watanze n'uru Rukiko wagaragajwe haruguru (igika cya 22 n'icya 23), Urukiko rw'Ubujurire rurasanga ibimenyetso byashingiweho mu rubanza rujuririrwa bidahamya ku buryo budashidikanywaho (au-delà de tout doute raisonnable) ko Tuyizere Evode ari we wishe Niyomubyeyi Valentine, kuko uretse no kuba buri kimenyetso ukwacyo kitagaragaza uruhare rwe muri icyo cyaha, binarebwe hamwe nta cyo bigaragaza Urukiko rwaheraho rugera ku mwanzuro umwe rukumbi wo guhamya mu buryo budashidikanywaho ko ari we wamwishe.
- [30] Kubera izo mpamvu zose ubujurire bwatanzwe na Tuyizere Evode bufite ishingiro, urubanza yajuririye rukaba ruhindutse mu ngingo zarwo zose.

III. ICYEMEZO CY'URUKIKO

- [31] Rwemeje ko ubujurire bwa Tuyizere Evode bufite ishingiro.
- [32] Rwemeje ko Tuyizere Evode adahamwa n'icyaha cy'ubwicanyi yarezwe.
- [33] Rwemeje ko urubanza urubanza RPA 00353/2023/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze kuwa 30/04/2024 ruhindutse mu ngingo zarwo zose.
- [34] Rutegetse ko Tuyizere Evode ahita arekurwa urubanza rukimara gusomwa.

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- [35] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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