

RWANDA / JUDGMENT

UBUSHINJACYAHA vs BAZIRIHE N'ABANDI

RPAA 00244/2022/CA

COURT

Court of Appeal

DECIDED

4 October 2024

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UBUSHINJACYAHA vs BAZIRIHE N'ABANDI

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Text

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UBUSHINJACYAHA vs BAZIRIHE N'ABANDI [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00244/2022/CA (Nyirandabaruta, P.J.) 04 Ukwakira 2024] Amategeko agenga imanza nshinjabyaha – icyaha cyo gutunda no kubika ibiyobyabwenge – Ntabwo umuburanyi yaburanisha ko atakoze icyaha cyo gutunda ibiyobwenge kuko yatwaye igikapu atazi ikirimo kandi atabasha kugaragaza icyatumye atakirebamo kuko kitari gifunze kandi akabikora inshuro nyinshi. Ategeko agenga imiburanishirize y'imanza shinjabyaha – Ubujurire – Imyanzuro y'inyongera – - impamvu z'ubujurire zitanzwe nyuma y'igihe cy'ubujurire – Iyo umuburanyi atanze imyanzuro y'ubujurire y'ingongera igihe cyo kujurira cyararenze kandi idasobanura cyangwa ngo yuzuze impamvu z'ubujurire yatanze, ziba ari impamvu nshya z'ubujurire zitanzwe impitagihe zidakwiye kwakirwa ngo zisuzumwe. Ategeko agenga imiburanishirize y'imanza shinjabyaha – Ibimenyetso – Ibimenyetso mu manza nshinjabyaha – Mu manza nshinjabyaha, ibimenyetso byose, iyo byagiweho impaka bishobora gushingirwaho mu kwemeza ko uregwa yakoze icyaha kandi ibyo bimenyetso bishobora no kuba imvugo z'abatangabuhamya, urukiko rukaba arirwo rusuzuma

niba ibyo bavuga byakwemerwa cyangwa ntibyemerwe. Incamake y'ikibazo: Uru rubanza rwatangiye Ubushinjacyaha burega Bazirihe, Habiyaemye, Byiringiro alias Bizuru na Niyonsenga mu Rukiko Rwisumbuye rwa Rubavu bubakurikiranyeho icyaha cyo kubika no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, bubasabira igifungo cya burundu buri wese nk'uko biteganywa n'ingingo ya 263 y'Itegeko N°68/2018 ryo kuwa 30/08/2018 ryerekeye ibyaha n'ibihano muri rusange nk'uko ryhinduwe kugeza ubu. Abaregwa bireguye bahakana icyaha baregwa naho Niyonsenga yemera ko yafatanywe agapfunyika kamwe k'urumogi yari kunywa kuko ari umushumba. Urukiko mu rubanza RP00277/2019/TGI/RBV, rushingiye ku mvugo z'abaregwa bagiye bashinjanya, rwemeje ko Bazirihe, Byiringiro, Kimana na Habiyaemye bahamwa n'icyaha cyo gutunda no kubika ibiyobyabwenge byo mu bwoko bw'urumogi, ruhanisha buri wese igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu y'amafaranga miliyoni makumyabiri (20.000.000Frw) y'u Rwanda. Naho Niyodusenga Dieudonne waregwaga hamwe na bo yahamwe n'icyaha cyo kunywa ibiyobyabwenge byo mu bwoko bw'urumogi, ahanishwa igifungo cy'umwaka umwe n'amezi umunani. Bazirihe, Byiringiro, Kimana na Habiyaemye bajuririye imikirize y'urwa rubanza mu Rukiko Rukuru, Urugereko rwa Musanze. Bazirihe ajurira avuga ko yahawe igihano kirekire kandi yaraburanye yemera icyaha, asaba kugabanyirizwa igihano; Byiringiro, Kimana na Habiyaemye bavuga ko icyatumye bajurira ari ukugaragariza Urukiko ko batemera icyaha cyo gutunda urumogi, ko hari ibintu byinshi byirenganijwe n'Urukiko Rwisumbuye rwa Rubavu byari gutuma bahanagurwaho icyo cyaha. Ubushinjacyaha bwo bwavuze ko ibyo abajuririye bavuga nta shingiro bifite, busaba ko hagumaho icyemezo cyafashwe n'Urukiko Rwisumbuye rwa Rubavu. Urukiko mu rubanza mu rubanza RPA 00697/2020/HC/MUS rwasanze Bazirihe, Byiringiro, Kimana na Habiyaemye batavuguruzwa ibimenyetso bibashinja byashingiweho bahamwa n'icyaha, rwemeza ko ubujurire bwabo nta shingiro bufite, ko imikirize y'urubanza rujurirwa igumye. Bazirihe yajuririye imikirize y'urwo rubanza mu Rukiko rw'Ubujurire, Urukiko mu rubanza RPAA00197/2023/CA rwemeje ko nubwo atagabanyirizwa igihano hashingiwe kuba yemera icyaha ariko harebwe ko ari ubwa mbere yari akurikiranweho icyaha kandi ko Ubushinjacyaha butagaragaje ko haba hari indi mico mibi yigeze agira mu muryango nyarwanda, kuba yarakoze icyaha afite imyaka makumyabiri n'itanu (23) y'amavuko ndetse no kuba yarahise agaragaza abandi bagize uruhare muri icyo cyaha bese kugira ngo urumogi rumugereho bakanafatwa bagakurikiranwa, akaba akwiye kongera kugabanyirizwa igihano, rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri (20) n'ihazabu ya miliyoni eshanu (5,000,000Frw).

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Byiringiro, Kimana na Habiyaemye nabo bajuririye imikirize y'urubanza rwaciye n'Urukiko Rukuru Urugereko rwa Musanze, Ubujurire bwabo buhurizwa hamwe Byiringiro yajuriye avuga ko n'ubwo yemera ko yafatanywe urumogi, mu rubanza ajuririra, Urukiko Rukuru rwirengagije gusuzuma impamvu zikuraho uburyozwacyaha, ariko ko Urukiko rwabibona ukundi akaba yafatwa nk'icyitso muri uru rubanza. Kimana alias Cobra, yajuriye avuga ko nta kimenyetso Ubushinjacyaha butanga kigaragaza uruhare rwe mu ikorwa ry'icyaha aregwa. Habiyaemye avuga ko icyaha aregwa gifite uwagikoze, urukiko rukaba rwarirengagije ko icyaha ari gatozi.

Ubushinjacyaha buvuga ko kuba Byiringiro atarafashwe acuruza urumogi ariko arushyiriye ugomba kurujyana i Kigali, nta cyabuza ko ahanirwa gutunda ibiyobyabwenge, Kuri Kimana alias Cobra, Ubushinjacyaha buvuga ko nta mpamvu agaragariza Urukiko rw'Ubujurire yatuma imvugo z'abatangabuhamya n'abo bareganwa zidahabwa agaciro, kuri Habiyaremye, Ubushinjacyaha buvuga ko Urukiko Rukuru rwasobanuye impamvu rwashingiyeho rumuhamya icyaha, akaba atabivuriza. Urukiko mu rubanza RPAA00244/2022/CA rwemeje ko nta bimenyetso Byiringiro atanga bivuguriza ibyashyingiweho n'inkiko zabanje zamuhamije ibyaha byo gutunda no kubika ibiyobyabwenge by'urumogi. Rwemeje kandi ko ibyo Kimana alias Cobra avuga ko yahamijwe icyaha nta bimenyetso bishingiweho nta shingiro bifite. Rwemeza ko ubujurire bwe nta shingiro bufite. Ku bijyanye n'ubujurire bwa Habiyaremye yuko Urukiko Rukuru rwamuhamije icyaha atakoze, Urukiko rwemeje ko nta shingiro bufite. Rwemeza kandi ko ibyo kuba Urukiko Rukuru rwarirengagije gukora iperereza yasabye nabyo nta shingiro bifite. Incamake y'icyemezo:1. Ntabwo umuburanyi yaburanisha ko atakoze icyaha cyo gutunda ibiyobwenge kuko yatwaye igikapu atazi ikirimo kandi atabasha kugaragaza icyatumye atakirebamo kuko kitari gifunze kandi akabikora inshuro nyinshi.

2. Iyo umuburanyi atanze imyanzuro y'ubujurire y'ingongera igihe cyo kujurira cyararenze kandi idasobanura cyangwa ngo yuzuze impamvu z'ubujurire yatanze ajurira, ziba ari impamvu nshya z'ubujurire zitanze impitagihe zidakwiye kwakirwa ngo zisuzumwe.
3. Mu manza nshinjabyaha, ibimenyetso byose, iyo byagiweho impaka bishobora gushingirwaho mu kwemeza ko uregwa yakoze icyaha kandi ibyo bimenyetso bishobora no kuba imvugo z'abatangabuhamya, urukiko rukaba arirwo rusuzuma niba ibyo bavuga byakwemerwa cyangwa ntibyemerwe.
4. Nubwo abatangabuhamya babajijwe baba bafite icyo bapfa n'abaregwa, ibyo ntibyafatwa nk'umuziro kuribo utuma batabazwa, icy'ingenzi ni uko imvugo yabo itapfa kwemerwa cyangwa ngo ihakanwe itabanje gusuzumwa n'Urukiko.
5. Urukiko ntirutegetswe gukora iperereza igihe cyose bisabwe n'umuburanyi, iyo rwumva ibimenyetso rwashyikirijwe bihagije kandi n'ababuranyi bahawe umwanya wo kubyisobanuraho. Ubujurire nta shingiro bufite. Amategeko yashingiweho: Itegeko N° 062/2024 ryo ku wa 20/06/2024, Ingingo ya 4 Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kugeza ubu, ingingo ya 107, igika cya 3, Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyira ibyaha n'ibihano muri rusange, ingingo ya 85, igika cya mbere Imanza zifashishijwe:

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Urubanza RCOMAA 00071/2017/CS, haburana MBUTO Aimable na BRD, rwaciwe n'Urukiko rw'Ikirenga ku wa 26/10/2018, igika cya 22 Urubanza RPA/GEN 00004/2019/CA, haburana Ubushinjacyaha na MUNYAGISHARI Bernard, rwaciwe n'Urukiko rw'Ubujurire ku wa 07/05/2021, igika cya 66 Urubanza RPAA 0117/07/CS, haburana Cpl NGABONZIZA Faustin na Sgt BIZIYAREMYE Jean Baptiste, rwaciwe n'Urukiko rw'Ikirenga ku wa 17/09/2010, igika cya 8

Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 26/04/2019, Bazirihe Charlène yafatanywe udupfunyika igihumbi magana abiri makumyabiri n'icyenda (1229) tw'urumogi, Habiyaemye Jean Pierre afatanwa udupfunyika magana atatu mirongo itandatu (360) tw'urumogi, Byiringiro Innocent alias Bizuru afatanwa udupfunyika igihumbi na tune (1004) tw'urumogi, naho Niyonsenga Dieudonné afatanwa agapfunyika kamwe (1) k'urumogi. Bazirihe Charlène yavuze ko yarufatanywe aruhawe na Kimana Innocent alias Cobra kugira ngo arushyire umugore wari warumutumye i Kigali. [2] Ubushinjacyaha bwakurikiranyeho abamaze kuvugwa icyaha cyo kubika no gucuruza ibiyobyabwenge byo mu bwoko bw'urumogi, bubarega mu Rukiko Rwisumbuye rwa Rubavu bubasabira igifungo cya burundu buri wese nk'uko biteganywa n'ingingo ya 263 y'Itegeko N°68/2018 ryo kuwa 30/08/2018 ryerekeye ibyaha n'ibihano muri rusange nk'uko ryhinduwe kugeza ubu. [3] Imbere y'urwo Rukiko Bazirihe Charlène ; Byiringiro Innocent ; Kimana Innocent na Habiyaemye Jean Pierre, bireguye bahakana icyaha baregwa naho Niyonsenga Dieudonné yemera ko yafatanywe agapfunyika kamwe k'urumogi yari kunywa kuko ari umushumba. [4] Mu rubanza RP00277/2019/TGI/RBV rwaciwe ku wa 23/10/2020, urwo Rukiko rushingiye ku mvugo z'abaregwa bagiye bashinjanywa, rwemeje ko Bazirihe Charlène, Byiringiro Innocent, Kimana Innocent na Habiyaemye Jean Pierre bahamwa n'icyaha cyo gutunda no kubika ibiyobyabwenge byo mu bwoko bw'urumogi, ruhanisha buri wese igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu y'amafaranga miliyoni makumyabiri (20.000.000Frw) y'u Rwanda. Naho Niyodusenga Dieudonné waregwaga hamwe na bo yahamwe n'icyaha cyo kunywa ibiyobyabwenge byo mu bwoko bw'urumogi, ahanishwa igifungo cy'umwaka umwe n'amezi umunani (1an et 8mois). [5] Bazirihe Charlène, Byiringiro Innocent, Kimana Innocent na Habiyaemye Jean Pierre bajuririye imikirize y'urwa rubanza mu Rukiko Rukuru, Urugereko rwa Musanze. Bazirihe Charlène ajurira avuga ko yahawe igihano kirekire kandi yaraburanye yemera icyaha, asaba kugabanyirizwa igihano ; Byiringiro Innocent, Kimana Innocent na Habiyaemye Jean Pierre bavuga ko icyatumye bajurira ari ukugaragariza Urukiko ko batemera icyaha cyo gutunda urumogi, ko hari ibintu byinshi byirenganiye n'Urukiko Rwisumbuye rwa Rubavu byari gutuma bahanagurwaho icyo cyaha. Ubushinjacyaha bwo bwavuze ko ibyo abajuririye bavuga nta shingiro bifite, busaba ko hagumaho icyemezo cyafashwe n'Urukiko Rwisumbuye rwa Rubavu. [6] Mu rubanza RPA00697/2020/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze kuwa 11/02/2022, rwasanze Bazirihe Charlène, Byiringiro Innocent, Kimana Innocent na Habiyaemye Jean Pierre batavuguruza ibimenyetso bibashinja byashingiweho bahamwa n'icyaha, rwemeza ko ubujurire bwabo nta shingiro bufite, ko imikirize y'urubanza RP00277/2019/TGI/RBV igumye. [7] Bazirihe Charlène yajuririye imikirize y'urwo rubanza mu Rukiko rw'Ubujurire, urubanza ruhabwa RPAA00197/2023/CA aburana wenyine, kuwa 26/02/2024 Urukiko rw'Ubujurire rusanga n'ubwo atagabanyirizwa igihano hashingiwe kuba yemera icyaha, harebwe ko ari ubwa mbere yari akurikiranweho icyaha kandi ko Ubushinjacyaha butagaragaje ko haba hari indi mico mibi yigeze agira mu muryango nyarwanda, kuba yarakoze icyaha afite imyaka makumyabiri n'itatu (23) y'amavuko ndetse no kuba yarahise agaragaza abandi bagize uruhare muri icyo cyaha bose kugira ngo urumogi

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rumugereho bakanafatwa bagakurikiranwa, izo mpamvu zigereranyije n'igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25) n'ihazabu ingana na miliyoni makumyabiri (20,000,000Frw) yahanishijwe, bigaragara ko Urukiko Rukuru rutitaye kuri izo mpamvu nyoroshyacyaha bikaba ari nabyo byatumye rumuha igihano kirekire, bityo kikaba gikwiriye kongera kugabanywa kugira ngo Bazirihe Charlene ahanwe mu nyungu zo kurengera sosiyete no gukumira ibyaha bishya, ariko binahuzwe n'inyungu yo gusubiza mu buzima busanzwe, bityo rumuhanisha igihano cy'igifungo cy'imyaka makumyabiri (20) n'ihazabu ya miliyoni eshanu (5,000,000Frw). [8] Byiringiro Innocent na Kimana Innocent na Habiyaemye Jean Pierre nabo bajurirye imikirize y'urubanza rwavuzwe haruguru baciriwe n'Urukiko Rukuru, Urugereko rwa Musanze, Ubujurire bwabo buhurizwa hamwe buhabwa RPAA00244/2022/CA, ruburanishwa mu ruhamye ku itariki ya 13/09/2024, Byiringiro Innocent alias Bizuru yunganiwe na Me Rwahama Zacharie, Kimana Innocent alias Cobra na Habiyaemye Jean Pierre bunganiwe na Me Rusagara Innocent, naho Ubushinjacyaha buhagarariwe na Habineza Jean Damascène, Umushinjacyaha ku rwego rw'Igihugu. [9] Byiringiro Innocent yajuriye avuga ko n'ubwo yemera ko yafatanywe urumogi, Urukiko Rukuru rwirengagije gusuzuma impamvu zikuraho uburyozwacyaha, ko mu by'ukuri nta mugambi yari afite wo gukora icyaha aregwa, asaba Urukiko kwemeza ko urumogi yafatanywe mu gikapu yari ahawe n'umukoresha we atazi ibirimo byamubera impamvu zimukuraho uburyozwacyaha, Urukiko rwabibona ukundi akaba yafatwa nk'icyitso muri uru rubanza. [10] Mu mwanzuro w'ubujurire wa Kimana innocent alias cobra wo ku wa 09/03/2022, yajuriye avuga ko nta kimenyetso ubushinjacyaha butanga kigaragaza uruhare rwe mu ikorwa ry'icyaha aregwa. basaba ko imvugo z'abatangabuhamya bareganywa bavuga ko urumogi bafatanywe ari we warubahaye zitahabwa agaciro kuko icyaha ari gatozi kandi ko atahwemye kugaragaza icyo apfa nabo, nyamara inkiko zose yanyuzemo zarabyirengagije. [11] Kimana Innocent yashyize muri system undi mwanzuro ku wa 20/02/2024, ugaragaza ibyo anenga urubanza rujuririrwa, binyuranye n'ibyavuzwe mu mwanzuro yari yatanze mbere. [12] Habiyaemye Jean Pierre n'umwunganira bavuga ko icyaha aregwa gifite uwagikoze, urukiko rukaba rwarirengagije ko icyaha ari gatozi k'uwagikoze akaba ataryozwa icyaha atakoze. Basanga kandi Urukiko Rukuru rwarirengagije gukora iperereza kandi yararisabye kuva agifatwa. [13] Uhagarariye Ubushinjacyaha avuga ko kuba Byiringiro atarafashwe acuruza urumogi ariko arushyirye ugomba kurujyana i Kigali, nta cyabuza ko ahanirwa gutunda ibiyobyabwenge, ko nta mpamvu n'imwe Byiringiro atanga yatuma akurwaho icyaha yahamijwe cyane cyane ko atabasha kuvugurura ibyemejwe n'Urukiko Rukuru kandi nta kimenyetso gishya kibivugurura. [14] Kuri Kimana Innocent alias Cobra, uhagarariye Ubushinjacyaha avuga ko nta mpamvu agaragariza Urukiko rw'Ubujurire yatuma imvugo z'abatangabuhamya n'abo bareganwa zidahabwa agaciro kuko Urukiko rwemeje ko ikigaragara ari uko nta cyo bapfa cyari gutuma ababeshyera, bityo ibyo yavuze abashinja bikwiye bikaba bikwiye kugumaho. [15] Kuri Habiyaemye Jean Pierre, uhagarariye Ubushinjacyaha avuga ko Urukiko rwarasobanuye impamvu rwashingiyeho rumuhamya icyaha, akaba atagaragaza impamvu zibivugurura mu bujurire bwa kabiri uretse gusa kuvuga ko atakoze icyaha. [16] Hashingiwe kuri izo mpaka, muri uru rubanza harasuzumwa ibibazo bikurikira : 1.Kuri Byiringiro Innocent alias Bizuru Kumenya niba Urukiko Rukuru

rwarahamije Byiringiro Innocent alias Bizuru icyaha cyo kubika no gutunda ibiyobyabwenge by'urumogi kandi nta mugambi wacyo yigeze agira. 2.Kuri Kimana Innocent Alias Cobra

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Kumenya niba umwanzuro wa Kimana Innocent yashyize muri "system" ya IECMS ku wa 20/02/2024, ukwiye kwakirwa. Kumenya niba Kimana Innocent yarahamijwe icyaha n'Urukiko Rukuru nta kimenyetso rushingiyeho ; Kumenya niba imvugo z'abatangabuhamya zitari zikwiye guhabwa agaciro. 3.Kuri Habiyaemye Jean Pierre Kumenya niba n'Urukiko Rukuru rwarahamije Habiyaemye Jean Pierre icyaha atakoze. II. ISESENGURA RY'IBIBAZO BIRI MU RUBANZA

1. BYIRINGIRO Innocent alias Bizuru Kumenya niba Urukiko Rukuru rwarahamije BYIRINGIRO Innocent alias Bizuru icyaha cyo kubika no gucuruza ibiyobyabwenge kandi nta mugambi yigeze agira. [17] Byiringiro Innocent alias Bizuru avuga ko n'ubwo yemera ko yafatanywe ibiyobyabwenge by'urumogi, Urukiko Rukuru rwirengagije gusuzuma impamvu zimukuraho uburyozwacyaha, ko mu by'ukuri nta mugambi yari afite wo gukora icyaha aregwa; ko urumogi yafatanywe rwari mu gikapu yari ahawe n'umukoresha we witwa Kimana Innocent alias Cobra kandi ko atari azi ibirimo; asobanura ko yari umushumba aragira inkanga za Kimana Innocent, ubwa mbere amuha igikapu agishyira Bazirihe Charlène ariko ntiyigera areba ibirimo, ubwa kabiri nabwo amuha igikapu ngo agishyire undi muntu atazi bavuganaga gusa kuri telephone, ko hari umugabo watangaga urwo rumogi witwa Gisagara wohererezaga Kimana Innocent alias Cobra amafaranga yo kugura urumogi akarumwoherereza, ariko ko ubwo bamwitaga Claude, ko ari we yafi afitiye telephone; ko icyo gikapu cya kabiri ari nacyo yafatanywe nacyo akakijyana atarebye ibirimo, asaba Urukiko kwemeza ko yafatanywe ibyo atari azi ko afite, rukanemeza ko ibyo byamubera impamvu imukuraho uburyozwacyaha. [18] Me Rwahama Zacharie wunganira Byiringiro Innocent alias Bizuru, avuga ko Urukiko rwahamije uwo yunganira icyaha rushingiye ahanini ku mvugo ya Bazirihe Charlène wavuze ko urumogi yafatanywe yaruhawe na Kimana Innocent alias Cobra abinyujije kuri Byiringiro alias Bizuru; ko nk'uko Byiringiro abisobanura ubwa mbere Kimana yamuhaye igikapu agashyira Bazirihe Charlène kandi ko uyu nawe yemera ko urumogi yafatanywe ari urwa Kimana Innocent alias Cobra warumuhaye abinyujije kuri Byiringiro alias Bizuru, ko icyo shebuja yamubwiraga ari ukwihuta akajyana ubutumwa kuwo amutumyeaho, akaba (Byiringiro) atari kumubaza ati ni ibiki umpaye, ko rero byerekana ko nta mugambi yari afite wo gukora icyaha. [19] Bavuga ko Urukiko rubibonye ukundi Byiringiro Innocent yafatwa nk'icyitso, kandi ko ibyo babishingira ku murongo watanze n'Urukiko rw'Ubujurire mu rubanza RPAA00511/2021/CA, rwaciye ku wa 29/03/2023, haburana Ubushinjacyaha na Karusigarira Ildéphonse (igika cya 14), aho muri urwo rubanza umucamanza yahinduye inyito y'icyaha. [20] Uhagarariye Ubushinjacyaha avuga ko ibyo Byiringiro Innocent asaba byo kwitwa icyitso mu cyaha cyo gutunda no gukwirakwizaho ikiyobyabwenge cy'urumogi bidahura n'ibyo itegeko riteganywa kandi bidakuraho uruhare rwe muri icyo cyaha. Avuga ko kuba Byiringiro Innocent atarafashwe acuruza urumogi ari uko yafashwe arushyiriyemo ugomba kurujyana i Kigali, bityo ko nta cyabuza ko ahanirwa gutunda ibiyobyabwenge, cyane cyane ko atabasha kuvugurura

ibyemejwe n’Urukiko Rukuru kandi nta kimenyetso gishya kibivuguruzwa mu bujirire. UKO URUKIKO RUBIBONA [21] Ingingo ya 4 y’Itegeko Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso igira iti: “..... Uwiregura agaragaza ikimenyetso gishyigikira ukwiregura kwe”. Naho ingingo ya 107,

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igika cya 3, y’Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y’imanza z’inshinjabyaha nk’uko ryahinduwe kugeza ubu igira iti : “Icyakora, iyo icyaha cyabonewe ibimenyetso bikigaragaza, ugukurikiranyeho cyangwa umwunganira ashobora kwerekana impamvu zose yireguza, zerekana ko ikirego kitakwemerwa, zihamya ko icyo aregwa atari icyaha cyangwa se ko ari umwere n’izindi mpamvu zose zivuguruzwa izimuhamya icyo cyaha”. [22] Izi ingingo zirebawe hamwe kandi zigahuzwa n’uru rubanza, zumvukanisha yuko mu gihe ushinjwa (uregwa) atemera ibyo aregwa kandi haramaze kugaragazwa ibimenyetso urukiko rwashingiyeho rumuhamya icyaha aregwa, uyu cyangwa Avoka umwunganira aribo bafite inshingano yo kugaragaza impamvu zose zivuguruzwa izashingiweho hemezwa ko icyaha aregwa kimuhama. [23] Ku bijyanye n’uru rubanza, imiburanire y’impande zombi nk’uko iri haruguru, igaragaza ko igikwiye gusuzumwa ari ukumenya niba Byiringiro Innocent alias Bizuru yarashoboye kugaragariza Urukiko Rukuru, Urugereko rwa Musanze uburyo nta mugambi yigeze agira wo gukora ibyaha aregwa, ariko rukabirengaho ntirwemeze ko ari umwere ku byaha yahamijwe ku rwego rwa mbere byo gutunda no kubika ikinyabwenge cy’urumogi. [24] Mu rubanza RPA00697/2020/HC/MUS rujuririrwa rwaciwe n’Urukiko Rukuru, Urugereko rwa Musanze kuwa 11/02/2022 (igika cya 11), Byiringiro Innocent yajuriye avuga nta bimenyetso bifatika Urukiko rwashingiyeho rumuhamya icyaha, ko we yari umushumba ukorera Kimana Innocent alias Kobla, akaba yaratwaye ibintu atazi mu gikapu yahawe na Kimana ngo agishyire Bazirihe Charlène, ko atigeze amubwira ibirimo kandi nk’umukozi we atari kumubaza ibyo muhaye ibyo aribyo, kandi ko adakwiye guhanirwa gucuruza urumogi, ahubwo akwiye guhanwa hashingiwe ku bikorwa yakoze. [25] Mu gika cya [15] cy’urwo rubanza, Urukiko Rukuru rwasanze n’ubwo abaregwa bahakanye icyaha, badashobora kuvuguruzwa ibimenyetso bibashinja birimo imvugo za Bazirihe Charlène;ko ubwo uyu yaburanaga mu Rukiko Rwisumbuye yasobanuye uburyo yafatanywe urumogi rungana n’udupfunyika igihumbi magana abiri makumyabiri n’icyenda (boules 1229), ndetse akanemera ko yarufatanywe aruhawe n’uwitwa Kimana Innocent alias Cobra wamwoherereje umukozi we witwa Byiringiro alias Bizuru ari nawe warumushyikirije, akanemera ko yavuye i Kigali avugana na Kimana Innocent alias Cbra ndetse ko ariwe wamucumbikishirije haruguru yo kwa Nyiragumiriza k’uwitwa mama Dina. Ruhereye kuri ibyo bisobanuro yatanze rwanzura ko bigaragaza ko Kimana Innocent yacuruye urumogi kandi ko muri icyo gikorwa yifashishaga umukozi we (umushumba) Byiringiro alias Bizuru, kandi ko abo bombi batigeze bavugira kuri ubu buhamya bwa Bazirihe Charlène, kandi ikigaragara ari uko nta cyo bapfa cyari gutuma ababeshyera, ko ibyo yavuze abashinja bikwiye kugumaho. [26] Mu bika bya [16-17] by’urwo rubanza, Urukiko Rukuru rwagaragaje abandi batangabuhamya bashinje abaregwa, uwitwa Nasingizwe Jean Marie Vianney wavuze ko bamaze gufata Bazirihe Charlène wababwiye ko urumogi yafatanywe yaruhawe na Kimana Innocent yifashishije umukozi we

Byiringiro. Nasingizwe Jean Marie Vianney yavuze kandi ko Byiringiro alias Bizuru na Habiyaemye Jean Pierre ari abakozi ba Kimana Innocent bamwambukiriza urumogi barukuye muri Congo, ndetse baberetse n'aho barutabaga mu nzu, yongeyeho ko n'umugore wa Kimana Innocent na we ari muri Gereza kubera gucuruza urumogi. Urukiko rwerekanye ko undi mutangabuhamya ubashinja witwa Uwimana Emmanuel yavuze ko ...Bazirihe Charlène bakimara kumufata basanze afite urumogi mu gikapu, bamubajije ababwira ko yaruhawe na Byiringiro, na we yoherejwe na Kimana Innocent, ko izi mvugo z'abatangabuhamya abajuriye batazivuguruza, bityo zikwiye kugumana agaciro kazo. [27] Nk'uko imiburanire ya Byiringiro Innocent alias Bizuru muri uru Rukiko ndetse n'ibyashingiweho mu rubanza rujuririrwa byose byerekanywe haruguru bibigaragaza, ntacyo anenga impamvu Urukiko Rukuru rwashingiyeho rwemeza ko hagumyeho imikirize y'urubanza rwaciwe n'Urukiko Rwisumbuye rwa Rubavu rwamuhamije ibyaha, ahubwo yagaruye imiburanire ye muri urwo Rukiko Rukuru uko yakabaye, cyokora agashimangira ibimenyetso byashingiweho ahamywa ibyaha kuko nawe ubwe avuga ko yaragiriraga inkya Kimana Innocent wamuhaye igikapu yashyiriye Bazirihe Charlène wagifatanywe kirimo urumogi (boules 1229), akaba yarafashwe (Byiringiro) ku

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nshuro ya kabiri nabwo afite igikapu nanone yahawe na Kimana Innocent kirimo urundi rumogi (boules

1004) yari ashiriye undi muntu witwa Gisagara alias Claude. Uretse ko n'ubwo Byiringiro Innocent abyemera, avuga ko ibyo bikapu yabitwaraga atazi ikirimo, ko nubwo nta ngufuri yariho atigeze amenya ko atwaye urumogi kuko atigeze abifungura ngo arebemo, akabishingiraho avuga ko yagirwa umwere kuko nta mugambi wo gukora icyaha yigeze agira. [28] Urukiko rw'Ubujurire rurasanga uretse kuba Urukiko Rukuru rwarerekanye ibimenyetso rushingiraho ruhamya Byiringiro Innocent ibyaha byo gutunda no kubika ibiyobyabwenge by'urumogi, byagaragajwe mu bika bibanziriza iki, ntacyo rwavuze ku miburanire ye y'uko urumogi yashyiriye Bazirihe Charlène yarutwaye atazi ko ari rwo, ndetse ko n'urwo yafatanywe narwo yari yahawe na Kimana Innocent bwa kabiri atari azi ko atwaye urumogi, nyamara ari byo yashingiragaho n'ubu akomeje gushingiraho asaba kugirwa umwere kuko ngo nta mugambi wo gukora icyaha yigeze agira, uru Rukiko rukaba rugomba kubisuzuma. [29] Urukiko rushingiye ingingo z'amategako zavuzwe haruguru no ku isesengura ryazo ryakozwe, rurasanga kuba Urukiko Rwisumbuye rwa Rubavu rwaragaraje ibimenyetso rwashingiyeho ruhamya Byiringiro Innocent icyaha cyo gutunda n'icyo kubika ibiyobyabwenge by'urumogi, uyu ari we wari ufite inshingano yo kugaragariza Urukiko Rukuru, Urugereko rwa Musanze, ibimenyetso bidashidikanywaho bivuguruza ibyashingiweho ahamywa ibyo byaha, byerekana ko atigeze agira umugambi wo gukora ibyo byaha, ariko usibye kubivuga gusa, nta kimenyetso na kimwe yarugaragariye. [30] Urukiko rw'Ubujurire rurasanga no kuri uru rwego, Byiringiro Innocent nta kimenyetso na kimwe atanga kivuguruza ubuhamya bwatanzwe na Bazirihe Charlène, ubwa Nasingizwe Jean Marie Vianney n'ubwa Uwimana Emmanuel, bose bamushinje kuba ari we washyiriye Bazirihe Charlène igikapu yafatanywe cyavuzwe

haruguru cyarimo udupfunyika igihumbi magana abiri makumyabiri n'icyenda (1229) tw'urumogi, kandi nawe arabyemera, kuvuga ko atigeze amenya ibyo yari atwaye nta kindi kibazo afite gituma yarashoboraga kutamenya ibyo atwaye nk'uko biteganywa mu ngingo ya 85, igika cya mbere, 1o & 2o, y' Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyanya ibyaha n'ibihano muri rusange¹, kandi nk'uko nawe abyivugira yarahabwaga igikapu kitariho ingufuri, ntagire amatsiko yo kurebamo ngo amenye ibyo atwaye, incuro ebyiri zose, nta kuri kurimo, ahubwo nk'uko umutangabuhamya Nasingizwe Jean Marie Vianney yabivuze kandi Byiringiro Innocent akaba atarigeze abivuguruza, ako kari gasanzwe ari akazi amenyereye ko gutunda no kubika ibiyobyabwenge by'urumogi, kuko we na Habiyaemye Jean Pierre bari basanzwe bakorana na Kimana Innocent bamwambukiriza ibiyobyabwenge by'urumogi babivanye muri Congo bakabimuzanira iwe mu Rwanda. [31] Rushingiye kuri ibyo bisobanuro no kubiteganywa mu ngingo ya 107, igika cya 3, y' Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y' imanza z' inshinjabyaha², rurasanga nta bimenyetso Byiringiro Innocent atanga bivuguruza ibyashingiweho n' inkiko zabanje zamuhamije ibyaha byo gutunda no kubika ibiyobyabwenge by'urumogi kuko adashobora kugaragariza Urukiko inzitizi yamubuzaga incuro ebyiri zose kureba mu bikapu yari atwaye, bitanafunze, ngo bityo abe koko ataramenye ibyo atwaye. Rurasanga kandi kuba ataravugurujwe imvugo y' umutangabuhamya Nasingizwe Jean Marie Vianney y' uko Byiringiro na Habiyaemye Jean Pierre bamaze gufatwa bagiye kubereka aho batabaga urumugi mu nzu rwa Kimana Innocent batunda barukura muri Congo, bivuze ko nawe ibyo atabihakana, ibi nabyo bikaba bishimangira yuko ibyo avuga ko atigeze amenya ko ibyo atwaye ari urumogi atari byo kuko yari mu kazi amenyereye asanzwe akora, bityo ibyo avuga ko yahanagurwaho uburyozwacyaha kubera ko yatwaye ibikapu by'urumogi byavuzwe kubera ko yari

1 Nta buryozwacyaha bubaho iyo: 1 ° ushinjwa ari umwana utarageza ku myaka cumi n'ine (14) y'amavuko; 2 ° ushinjwa yari afite uburwayi bwo mu mutwe mu gihe yakoraga icyaha; 2 Ingingo ya 107: "Icyakora, iyo icyaha cyabonewe ibimenyetso bikigaragaza, ugikurikiranyweho cyangwa umwunganira ashobora kwerekana impamvu zose yireguza, zerekana ko ikirego kitakwemerwa, zihamya ko icyo aregwa atari icyaha cyangwa se ko ari umwere n'izindi mpamvu zose zivuguruza izimuhamya icyo cyaha".

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abitegetswe n'umukoresha we bikaba nta shingiro byahabwa, kuko yari mu gikorwa azi neza ko kibujijwe n'amategeko³. [32] Nanone hashingiwe kuri ibyo bisobanuro, rurasanga ibyo avuga ko Urukiko rubibonye ukundi rwakwemeza ko ari ikitso nabyo nta shingiro bifite, bityo ubujirire bwe bukaba nta shingiro bufite. 2. Kuri KIMANA Innocent alias Cobra

- a) Kumenya niba umwanzuro KIMANA Innocent yashyize muri "system" ya IECMS ku wa 20/02/2024, wakwagirwa [33] Nyuma y'uko atanze umwanzuro we wo kujurira ku wa 09/03/2022, ajuririra urubanza RPA00697/2020/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze kuwa 11/02/2022, Kimana Innocent alias Cobra yarongeye ashyize

muri “system” ya IECMS undi mwanzuro ku wa 20/02/2024, avuga ko muri urwo rubanza Urukiko Rukuru rwashingiye ku bimenyetso biteye gushidikanya kandi byashatswe mu buryo bunyuranye n’amategeko. Anavuga ko urwo Rukiko rwabogamye rugaca urubanza ku buryo bugenekereje. Asaba Urukiko rw’Ubujurire gusuzuma niba Itegeko riteganyako umugenzacyaha cyangwa umushinjacyaha umaze gukora isaka, akora inyandikomvugo yaryo; niba isaka Kimana Innocent yakorewe mu rugo no mu kabari ryakozwe mu bihe no buryo buteganywa n’amategeko ndetse no gusuzuma icyateye Urwego rw’iperereza kudakora raporo y’igikorwa cy’isaka. Muri uwo mwanzuro anasaba Urukiko rw’Ubujurire gusuzuma niba umukozi w’undi muntu umukorera akazi kadahoraho, uwo mukozi byamubuza kwikorera akandi kazi kiyongera katabangamira inyungu za sebuja. [34] Urukiko rumubajije ingingo z’ubujurire zikwiye gusuzumwa, Kimana Innocent asubiza ko mu mwanzuro wa kabiri harimo ingingo zunganira umwanzuro wa mbere. Me Rusagara Innocent umwungaira avuga ko ingingo zatanzwe mu mwanzuro ya mbere arizo zasuzumwa, bitabujije ko harebwa n’ibisobanuro byatanzwe mu mwanzuro wa kabiri bihura n’uwa mbere [35] Uhagarariye Ubushinjacyaha avuga ko ibimenyetso byashingiweho mu nkiko zibanza ari byo Kimana Innocent n’umwunganira basabwa kunenga. UKO URUKIKO RUBIBONA [36] Kimana Innocent mu mwanzuro we wo ku itariki 09/03/2022, yajuririye urubanza RPA0697/2020/HC/MUS rwaciwe n’Urukiko Rukuru, Urugereko rwa Musanze kuwa 11/02/2022, arongerera atanga undi mwanzuro yashyize muri dosiye ku wa 20/02/2024, urimo ingingo z’ubujurire kuri urwo rubanza zinyuranye n’izatanze mu mwanzuro yatanze mbere igihe cyo kujurira giteganywa n’itegeko kitararenga. [37] Ibijyanye no kumenya agaciro k’umwanzuro watanzwe ibihe byo kujurira byararangiyeye, urukiko rw’ikirenga rwabitanzeho umurongo mu rubanza RCOMAA00071/2017/cs rwaciwe ku wa 26/10/2018, haburana Mbuto aimable na BRD (igika cya 22), uvuga ko “ingingo yose itanzwe nyuma y’ibihe by’ubujurire, uretse iyuzuza cyangwa isobanura iyatanze mu bihe byemewe byo kujurira, ntigomba kwakirwa kuko iba itubahirije ibihe byateganyirijwe ubujurire.” uyu murongo wanashingiweho mu manza zaciwe n’urukiko rw’ubujurire zirimo urubanza RPA/GEN00004/2019/CA rwaciwe ku wa 07/05/2021 haburana ubushinjacyaha na Munyagishari Bernard (igika cya 66) n’izindi. [38] Mu mwanzuro wo ku wa 09/03/2022 Kimana Innocent yajuririye kuba nta kimenyetso gitangwa n’Ubushinjacyaha kigaragaza uruhare rwe mu ikorwa ry’icyaha cyo gucuruza

3 Impamvu zikuraho uburyozwacyaha zishingiye ku wakoze icyaha zibaho icyo umuntu akoze igikorwa ategetswe n’umuyobozi wemewe n’amategeko, uretse igihe icyo gikorwa bigaragara ko kinyuranye

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ibiyabyabwenge, no kuba imvugo z’abatangabuhamya bamushinja kandi bareganwa zidakwiye guhabwa agaciro. [39] Mu mwanzuro we wo ku wa 20/02/2024, yatanze hashize imyaka ibiri (2) urubanza ajuririra ruciwe, avuga ko Urukiko Rukuru rwashingiye ku bimenyetso biteye gushidikanya kandi byashatswe mu buryo bunyuranye n’amategeko. Anavuga ko urwo Rukiko rwabogamye rugaca urubanza ku buryo bugenekereje. Asaba Urukiko rw’Ubujurire gusuzuma niba Itegeko riteganyako umugenzacyaha cyangwa umushinjacyaha umaze gukora isaka, akora

inyandikomvugo yaryo ; niba isaka Kimana Innocent yakorewe mu rugo no mu kabari ryarakozwe mu bihe no buryo buteganywa n'amategako ndetse no gusuzuma icyateye Urwego rw'iperereza kudakora raporo y'igikorwa cy'isaka. Ndetse asaba Urukiko gusuzuma niba umukozi w'undi muntu umukorera akazi kadahoraho, uwo mukozi byamubuza kwikorera akandi kazi kiyongera katabangamira inyungu za sebuja. [40] Ibyo byose bimaze kuvugwa mu gika kibanziriza iki, ntibyuzuza cyangwa ngo bisobanure ingingo z'ubujurire Kimana Innocent yatanze mu mwanzuro yashyikirije mu bihe byemewe byo kujurira, bityo ibikubiye mu mwanzuro we wa kabiri yatanze ku wa 20/02/2024 bikaba bitakiriwe kuko byaje nyuma y'ibihe byateganyirijwe ubujurire4.

- b) Kumenya niba Urukiko Rukuru yarahamijwe icyaha KIMANA Innocent nta kimenyetso rushingiyeho [41] Kimana Innocent n'umwunganira bavuga ko nta kimenyetso gitangwa n'Ubushinjacyaha kigaragaza uruhare rwe mu ikorwa ry'icyaha aregwa, kuba urumogi aregwa (boule imwe) ari iyasanzwe mu kabari ke, nyuma yo guhabwa urufunguzo n'umukobwa wahakoraga, ko atari akwiye kuryozwa ibyahasanze cyane ko hari abandi bahakoraga. [42] Bashingira ku ngingo ya 29 y' Itegeko Nshinga rya Repubilika y'u Rwanda ivuga ko "Buri muntu wese afite uburenganzira ku butabera buboneye, burimo uburenganzira bwo : kutaryozwa icyaha atakoze, bavuga ko uburyozwacyaha ari gatozi ku wakoze icyaha" bakavuga ko urumogi Kimana Innocent yafatanwe rutari urwe kuko atigeze acuruzwa urumogi, ko ahubwo ari akagambane yakorewe, cyane ko umukobwa wakoreraga mu kabari ke yari ufite urufunguzo rwaho. [43] Uhagarariye Ubushinjacyaha, ashingiye ku ngingo ya 107, igika cya 3, y' Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kugeza ubu iteganya ko "iyi icyaha cyabonewe ibimenyetso bikigaragaza, ugikurikiranyweho cyangwa umwunganira ashobora kwerekana impamvu zose yireguza, zerekana ko ikirego kitakwemerwa, zihamya ko icyo aregwa atari icyaha cyangwa se ko ari umwere n'izindi mpamvu zose zivuguruzwa izimuhamya icyo cyaha", avuga ko izo mpamvu ntazo KIMANA Innocent agaragaza, ikirego cye nta shingiro gifite. UKO URUKIKO RUBIBONA [44] Imiburanire y'impande zombi igaragaza ko hakwiye hasuzumwa niba Urukiko Rukuru rwarahamije Kimana Innocent icyaha cyo gutunda no kubika ibiyobyabwenge, nta bimenyetso rubishingiyeho. [45] Mu rubanza rujuririrwa RPA00697/2020/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze kuwa 11/02/2022 (igika cya 15), urwo Rukiko rwasanze nubwo Kimana Innocent ahakana icyaha, atabasha kuvuguruzwa ibimenyetso bimushinja birimo imvugo za Bazirihe Charlene wemeye ko yafatanywe urumogi aruhawe n'uwitwa Kimana Innocent alias Cobra wamwoherereje umukozi we witwa Byiringiro alias Bizuru warumushyikirije; rwasanze kandi atabasha kuvuguruzwa ubuhamya bwa Nasingizwe Jean Marie Vianney wasobanuye uburyo bafashe Bazirihe Charlene

4 Ingingo ya 181, igika cya 1 y' Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha "Kujurira bikorwa mu gihe kitarenga iminsi mirongo itatu (30) uhereye ku itariki urubanza rwaciriweho ku muburanyi wari uhari cyangwa ahagarariwe igihe urubanza rwacibwaga."

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akababwira ko urumogi afatanywe ari urwo yari amaze guhabwa na Kimana Innocent yifashishije umukozi we Byiringiro alias Bizuru, ko uyu na Habiyaremye Jean Pierre bari abakozi ba Kimana Innocent bamwambukiriza urumogi barukuye muri Congo, bakaba barerekanye n'aho barutabaga mu nzu. [46] Urwo Rukiko rwashingiye kandi ku mvugo y'undi mutangabuhamya witwa Uwimana Emmanuel, nawe umushinja, wavuze ko ari we watumye Bazirihe Charlène afatwa, agendeye ku buryo yamubonaga agenda ayoboza, ko bamaze kumufata barebye mu gikapu cye babona harimo urumogi, bamubajije ababwira ko yaruhawe na Byiringiro Innocent alias Bizuru, atumwe na Kimana Innocent. Rwasanze izo mvugo z'abatangabuhamya Kimana Innocent atarigeze azivuguruza, zikaba zikwiye rero kugumana agaciro kazo. [47] Urukiko rw'Ubujurire rurasanga mu rubanza rujurirwa, Kimana Innocent yarahamijwe icyaha cyo gutunda no kubika ibiyobyabwenge byo mu bwoko bw'urumogi, hashingiwe ku bimenyetso birimo ubuhamya bwa Bazirihe Charlène, ubwa Nasingizwe Jean Marie Vianney n'ubwa Uwimana Emmanuel, bityo ibyo avuga ko yahamijwe icyaha nta bimenyetso bishingiweho bikaba nta shingiro bifite. Iyi ngingo ye y'ubujurire ikaba nta shingiro ifite, igisigaye hakaba hagomba gusuzumwa iby'uko imvugo z'abatangabuhamya zitari zikwiye guhabwa agaciro.

- c) Kumenya niba imvugo z'abatangabuhamya zitari zikwiye guhabwa agaciro [48] Kimana Innocent n'umwunganira bavuga ko imvugo z'abatangabuhamya bareganywa bavuga ko urumogi bafatanywe ari we warubahaye zidakwiye guhabwa agaciro kuko icyaha ari gatozi kandi akaba atarahwemye kugaragaza icyo bapfa ariko inkiko zose yanyuzemo zakabyirengagije. [49] Bavuga ko mu gika cya 16 cy'urubanza rujurirwa, Urukiko Rukuru rutari rukwiye gushingira ku mvugo ya Bazirihe Charlène wemeye icyaha mu rwego rwa mbere, mu gihe nta bindi bimenyetso biyishyigikira. Bavuga ko Bazirihe Charlène yaburanye avuga ko yari azaniye Kimana Innocent urumogi, abazwa mu bugenzacyaha yivugiye ko atari azi Kimana Innocent ko bavuganaga kuri telephone mu gihe nta bimenyetso abatangira nka "historique" ya MTN igaragaza ko bavuganaga. Banavuga ko Bazirihe Charlene yavuze ko akigera i Gisenyi, Kimana Innocent yamucumbikishije kwa mama Dina, ibyo bikaba Atari byo kuko mama Dina atabajijwe ngo abyemeze. [50] Uhagarariye Ubushinjacyaha avuga ko nta mpamvu Kimana Innocent agaragariza Urukiko yatuma imvugo z'abatangabuhamya n'abo bareganwa zidahabwa agaciro kuko Urukiko rwemeje ko ikigaragara ari uko nta cyo bapfa. Avuga ko mu batangabuhamya bashinja Kimana Innocent harimo abari abakozi be ndetse ko hari n'abamushinje mu bagiye kumufata. [51] Akomeza avuga ko kuva Kimana Innocent alias Cobra yafatwa hamwe n'abo bareganywa bahakanaga icyaha ariko Bazirihe Charlène aza kucyemera mu Rukiko Rukuru agabanyirizwa igihano ; ko mu gika cya 10 n'icya 13 by'urubanza rujurirwa, Kimana Innocent alias Cobra yivugiye ko icyaha cy'urumogi gikorwa mu ibanga rikomeye, bityo ko nta mpamvu akwiye gusaba ko hagenzurwa telephone (historique) kandi zarashoboraga kudakoreshwa bitewe n'uburyo icyaha gikorwamo. Avuga ko kandi Kimana Innocent mu Bugenzacyaha (RIB) yasobanuye ko yafunzwe imyaka ibiri (2) azira urumogi, ko ibyo bigaragaza ko yari asanzwe akora ubucuruzi bw'urumogi, atarugeretsweho. UKO URUKIKO RUBIBONA [52] Impaka kuri iyi ngingo y'ubujurire zishingiye ku kumenya niba imvugo

z'abatangabuhamy bareganywa na Kimana Innocent Urukiko Rukuru rutari rukwiye kuzishingiraho rumuhamy icyaha. [53] Mu rubanza rujuririrwa RPA00697/2020/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze kuwa 11/02/2022 (igika cya 15 n'icya 16), Urukiko rwasanze Kimana Innocent alias

5 Urubanza No RPA 00697/2020/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze kuwa 11/02/2022, igika cya 16.

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Cobra ahamwa n'icyaha cyo gutunda no kubika ibiyobyabwenge byo mu bwoko bw'urumogi, rubishingiye ku mvugo z'abamushinja barimo Bazirihe Charlène, Nasingizwe Jean Marie Vianney na Uwimana Emmanuel. Rwagaragaje nk'uko byanavuzwe haruguru, ko Bazirihe Charlène yemeye ko yafatanywe urumogi, aruhawe na Kimana Innocent alias Cobra, amwoherereje umukozi we witwa Byiringiro alias Bizuru aba ariwe urumushyikiriza; ko ibyo bishimangirwa n'ubuhamy bwa Nasingizwe Jean Marie Vianney wavuze ko Bazirihe Charlène amaze gufatanwa urumogi yavuze ko yari amaze kuruhabwa na Kimana Innocent yifashishije umukozi we Byiringiro alias Bizuru, ndetse ko na Uwimana Emmanuel yavuze ko bakimara gufata Bazirihe Charlène barebye mu gikapu cye bakabona harimo urumogi, akababwira ko yaruhawe na Byiringiro Innocent alias Bizuru, na we akaba yari yoherejwe na Kimana Innocent. Urwo Rukiko rwasanze izo mvugo z'abatangabuhamy Kimana Innocent atazivuguruzwa, zikwiye kugumana agaciro kazo. [54] Ku byerekeranye n'agaciro k'ubuhamy, Urukiko rw'Ubujurire mu rubanza RPAA00044/2021/CA, rwaciwe ku wa 29/12/2023, Ubushinjacyaha buburana na Migambi Vianney (igika cya 20) rwatanze umurongo ukurikira: “Mu manza nshinjabyaha, ibimenyetso byose, iyo byagiweho impaka bishobora gushingirwaho mu kwemeza ko uregwa yakoze icyaha kandi ibyo ibimenyetso bishobora no kuba imvugo z'abatangabuhamy, urukiko rukaba arirwo rusuzuma niba ibyo bavuga byakwemerwa cyangwa ntibyemerwe.”⁶ Mu rubanza RPAA0117/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 17/09/2010, haburana Cpl Ngabonziza Faustin na Sgt Biziyaremye Jean Baptiste (igika cya 8), urwo Rukiko narwo rwatanze umurongo ugira uti: “Nubwo abatangabuhamy babajijwe baba bafite icyo bapfa n'abaregwa, ibyo ntibyafatwa nk'umuziro kuribo utuma batabazwa, icy'ingenzi ni uko imvugo yabo itapfa kwemerwa cyangwa ngo ihakanwe itabanje gusuzumwa n'Urukiko.” Uyu murongo wakoreshajwe no mu zindi manza⁷. [55] Urukiko rw'Ubujurire rurasanga mu rubanza rujuririrwa, Urukiko Rukuru rwarahaye agaciro imvugo z'abatangabuhamy zishingiye kuba Bazirihe Charlène ahamya ko yafatanwe udupfunyika igihumbi magana abiri makumyabiri n'icyenda (1229) tw'urumogi, uruhawe na Kimana Innocent alias Cobra, amwoherereje umukozi we witwa Byiringiro alias Bizuru warumushyikirije. Ibi kandi niko mu miburanire ye Byiringiro alias Bizuru abivuga. [56] Abazwa mu Bugenzacyaha ndetse no mu Bushinjacyaha, Bazirihe Charlène yavuze ko yavuganye na Kimana Innocent alias Cobra kuri telephone, baturira i Gisenyi kuri gare ajya kumwereka aho ariburare kwa mama Davina haruguru yo kwa Nyiragumiriza, bukeye ku wa 25/04/2019 atuma umukozi we Bizuru amuha igikapu kirimo urumogi “boules 1229” yari bushyire umugore warumutumye witwa mama Nice akamwishyura amafaranga ibihumbi icumi (10,000Frw)⁸. Ibi ni nabyo Bazirihe Charlène yakomeje kuvuga aburana mu rukiko ku rwego rwa mbere⁹. Ndetse

binashimangirwa na Byiringiro alias Bizuru mu miburanire ye mu Rukiko rw'Ubujurire¹⁰, bityo Kimana Innocent avuga ko ubuhamya bwa Bazirihe Charlene butari gushingirwaho nta bindi bimenyetso bishyigikira imvugo ze, bikaba nta shingiro bifite kuko hari ibindi bimenyetso bibushyigikira, cyane cyane ubuhamya bwa Byiringiro alias Bizuru nawe uhamya ko Kimana Innocent yamuhaye urumogi yashyiriye Bazirihe Charlene, uyu akaza rufatanwa.

6 Uyu murongo ukomeje no gukoreshwa mu zindi manza zijyanye na wo. Urugero : Urubanza N° RPAA 00225/2023/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 20/06/2024 haburana Ubushinjacyaha na NTAKIRENDE Wellars (igika cya 23). 7 Urugero mu rubanza N° RPAA 0117/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 17/09/2010 haburana Cpl NGABONZIZA Faustin na Sgt BIZIYAREMYE Jean Baptiste (igika cya 8); Urubanza N° RPAA 00120/2020/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 26/05/2023 haburana ubushinjacyaha na GAHIGI Anastase (igika cya 17) n'izindi nyinshi. 8 Dosiye Y'Ubugenjacyaha (RIB) No. 00390/GE/GISE SB/WEST/RUBA/2019, Inyandikomvugo y'ibazwa rya BAZIRIHE Charlene, ku wa 27/04/2019, igisubizo cy'ikibazo cya 3 na 4. Reba na Dosiye y'Ubushinjacyaha (NPPA) No. 00440/IPRL RUBA/2019/DM/OB, Inyandikomvugo y'ibazwa rya BAZIRIHE Charlene, ku wa 02/05/2019, igisubizo cy'ikibazo cya 6. 9 Urubanza No RP 00277 /2019/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa Rubavu ku wa 23/10/2020, haburana Ubushinjacyaha na BAZIRIHE Charlene hamwe n'abandi, igika cya 6. 10 Reba inyandikomvugo y'iburanisha ryo ku wa 13/09/2024, urupapuro rwa 1 kugeza ku rwa 3.

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[57] Kubyo Kimana Innocent alias Cobra avuga ko atahwemye kugaragaza ko hari icyo apfa n'abatangabuhamya bamushinje bareganwa, Ururiko rw'Ubujurire rurasanga nabyo nta shingiro bifite kuko ntacyo yigeze agaragaza apfa n'abatangabuhamya bose bavuzwe haruguru, kandi n'iyi baba bafite icyo bapfa, ibyo ntibyafatwa nk'umuziro kuribo, kuko icy'ingenzi ari uko imvugo zabo zigomba gusuzumwa n'Urukiko,¹¹ kandi zikaba zarasuzumwe Urukiko Rukuru rukemeza ko zifite agaciro kuko Kimana Innocent nta kimenyetso atanga kizivuguruza. [58] Kubyo Kimana Innocent avuga ko nta kimenyetso cy'uko yavuganye na Bazirihe Charlene kuri telephone (historique) cyangwa ko yamucumbikishije kwa mama Davina, Urukiko rw'Ubujurire rushingiye ku murongo watanze mu rubanza RPAA00044/2021/CA rwavuzwe haruguru, uvuga ko "ibimenyetso bishobora no kuba imvugo z'abatangabuhamya, urukiko rukaba arirwo rusuzuma niba ibyo bavuga byakwemerwa cyangwa ntibyemerwe;", rurasanga ubuhamya bwa Bazirihe Charlene ari ikimenyetso gihagije kandi gikwiye kwemerwa, gihamya Kimana Innocent icyaha cyo gutunda no kubika ibiyobyabwenge byo mu bwoko bw'urumogi, kubera ko bwuzuzanya n'ibivugwa na Byiringiro Innocent alias Bizuru muri uru Rukiko, bityo kuba nta "historique" ya telephone, nta n'ikigaragaza ko Kimana Innocent yacumbikishirije Bazirihe Charlene kwa mama Davina, bikaba nta cyo bihindura ku cyaha yahamijwe kuko adashinjwa kuvugana nawe kuri telephone cyangwa kumucumbikishiriza, kandi na Kimana Innocent ubwe yivugiyeho ko icyaha cyo gukora ibikorwa byerekeranye n'ibiyobyabwenge gikorwa mu ibanga rikomeye. [59] Rurasanga nk'uko Urukiko Rukuru rwabibonye mu rubanza rujuririrwa, Kimana Innocent atabasha kuvuguruza imvugo z'abatangabuhamya bamushinja uruhare mu

byaha yahamijwe, bityo akaba nta cyari kubuza urwo Rukiko kuzishingiraho ; kubw'ibyo ingingo y'ubujurire bwe y'uko imvugo z'abatangabuhamya bareganywa zitari zikwiye guhabwa agaciro ngo zishingirweho ahamywa icyaha ikaba nayo nta shingiro bufite. 3. Kuri HABİYAREMYE Jean Pierre Kumenya niba HABİYAREMYE Jean Pierre yarahamijwe icyaha atakoze [60] Habiyaremye Jean Pierre n'umwunganira, bashingiye ku ngingo ya 29 y' Itegeko Nshinga rya Repubulika y'u Rwanda ivuga ko "Buri muntu wese afite uburenganzira ku butabera buboneye, burimo uburenganzira bwo : kutaryozwa icyaha atakoze ; ko uburyozwacyaha ari gatozi ku wakoze icyaha" bakavuga ko Urukiko Rukuru rwirengagije ko icyaha ari gatozi k'uwagikoze akaba ataryozwa icyaha atakoze. [61] Bakomeza bavuga ko urwo Rukiko rwirengagije ingingo ya 48, na 109 z'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, rwirengagije gukora iperereza kandi yararisabye kuva yafatwa cyane cyane ko na Byiringiro Innocent bareganwa yagaragaje ko ntaho Habiyaremye Jean Pierre ahuriye n'icyaha aregwa, akaba asaba Urukiko kumugira umwere. [62] Bavuga ko imvugo ya Bazirihe Charlène wiyemereye icyaha idakwiye kuba ikimenyetso gihamya icyaha Habiyaremye Jean Pierre kuko ntaho yigeze agaragaza ko yari mubo yari azaniye urumogi, ko Habiyaremye Jean Pierre yafashwe ari kumwe na Byiringiro Innocent yari amaze gutiza telephone ye ngo ahamagare, ndetse ko agifatwa yashinjawaga kwiba imashini. Bakomeza bavuga ko mu gika cya 17 cy'urubanza rujurirwa, Urukiko rwamuhamije icyaha rushingiye ko nta mpamvu abamufashe bagombaga kumugerekaho urumogi bakarushyirira, bavuga ko iyo ari inenge ikomeye igomba gukosorwa kuko icyaha ni gatozi abagikoze bagomba kugihanirwa akaba adakwiye guhanirwa icyaha atakoze, ko kandi gushingira kuri izo mvugo ari ukugenekereza kandi bihababanye n'amategeko. [63] Bavuga kandi ko muri icyo gika cy'urubanza rujurirwa, Urukiko Rukuru rwashingiye ku kuba ataratanze impamvu yabonye abapolisi akiruka agafatwa n'abaturage, bakavuga ko ibyo nabyo ari

11 Reba umurongo watanze haruguru mu rubanza PAA 0117/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 17/09/2010 haburana Cpl NGABONZIZA Faustin na Sgt BIZIYAREMYE Jean Baptiste (igika cya 8)

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inenge y'urwo rubanza kuko mu Bugenzacyaha yagaragaje ko icyatumye yiruka, ari uko bari batangiye kubashinja kwiba imashini, bakaba bari bagiye kubakubita. Basoza bavuga ko ntaho Urukiko Rukuru rwari guhera rumuhamya icyaha atakoze. [64] Uhagarariye Ubushinjacyaha avuga ko Urukiko rwasobanuye ibyo rwashingiyeho, Habiyaremye Jean Pierre akaba atagaragaza impamvu zibivuguruzwa mu bujurire bwa kabiri uretse gusa kuvuga ko atakoze icyaha hashingiwe ku ngingo ya 107 igika cya 3, y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kugeza ubu ndetse akaba atagaragaza icyo yaba yarasabye kitakozwe, kandi ko atavugaga icyari gukorwaho iperereza. Kandi ko ku bijyanye n'iperereza hari umurongo wafashwe mu rubanza RPA0101/09/CS Nzajyibwami Emmanuel aho Urukiko rw'Ikirenga rwemeje ko: « ...rusanga rudategetswe byanze bikunze gukora iperereza cyangwa se kubaza abatangabuhamya buri gihe cyose umuburanyi

abisabye mu gihe rwumva rwanyuzwe n'ibimenyetso rwashyikirijwe kandi n'ababuranyi bose bahawe umwanya uhagije wo kubyisobanuraho» UKO URUKIKO RUBIBONA [65] Impaka mu bujurire bwa Habiyaemye Jean Pierre zishingiye ku kumenya niba hari ibimenyetso bidashidikanywaho Urukiko Rukuru rwashingiyeho byerekana ko yakoze icyaha aregwa no gusuzuma niba ibijyanye n'iperereza avuga yarasabye ntirikorwe. [66] Ku bijyanye n'ibimenyetso bishobora gushingirwaho mu kwemeza ko uregwa yakoze icyaha, Urukiko rw'Ubujurire mu rubanza RPAA00044/2021/CA, rwaciwe ku wa 29/12/2023 Ubushinjacyaha buburana na Migambi Vianney (igika cya 20) rwatanze umurongo wavuzwe haruguru ko: "Mu manza nshinjabyaha, ibimenyetso byose, iyo byagiweho impaka bishobora gushingirwaho mu kwemeza ko uregwa yakoze icyaha kandi ibyo ibimenyetso bishobora no kuba imvugo z'abatangabuhamya, urukiko rukaba ari rwo rusuzuma niba ibyo bavuga byakwemerwa cyangwa ntibyemerwe" 12. [67] Mu rubanza rujuririrwa, Urukiko Rukuru rwahamije Habiyaemye Jean Pierre icyaha cyo gutunda no kubika ibiyobyabwenge byo mu bwoko bw'urumogi rushingiye ku nyandiko yashyizeho umukono igaragaza ko yafatanwe udupfunyika magana atatu na mirongo itandatu (360) tw'urumogi no ku buhamya bwatanze na Nisingizwe Jean Marie Vianney wari mu bapoli bamufashe wavuze ko bamuhamagaye bigize abakiriya bagiye kurumugurira, yabona ari abapoli agahita yiruka. Urwo Rukiko rwasanze nta mpamvu n'imwe yari gutuma abafashe Habiyaemye Jean Pierre bamugerekaho urumogi ngo yemere kurusinyira, ko ibyo avuga ko yakubiswe kugira ngo asinye ku nyandikomvugo y'ifatira bitafatwaho ukuri kuko nta bimenyetso yabigaragarije, kandi ko adasobanura impamvu yabonye abapoli baje kumufata ari kumwe na Byiringiro Innocent agahita yiruka kugeza ubwo yafashwe n'abaturage¹³. Ibi ni nabyo Urukiko Rwisumbuye rwa Rubavu ku rwego rwa mbere rwashingiyeho rumuhamya icyaha¹⁴. [68] Inyandiko y'ifatira yo kuwa 27/04/2019, Habiyaemye Jean Pierre yashyizeho umukono igaragaza ko yafatanwe udupfunyika magana atatu na mirongo itandatu (360) tw'urumogi¹⁵. Nisingizwe JMV, umupoli wari mubamufashe, mu buhamya yatanze, yavuzwe ko Habiyaemye Jean Pierre yafatanwe urumogi arubazaniye bamubeshye ko bagiye kurugura, icyo gihe ahita yiruka, bamufata bucyeye bwaho bakoresheje Kimana Innocent wamuhamagaye kuri telephone ye¹⁶.

12 Uyu murongo ukomeje no gukoreshwa mu zindi manza zijyanye na wo. Urugero : Urubanza N° RPAA 00225/2023/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 20/06/2024 haburana Ubushinjacyaha na NTAKIRENDE Wellars (igika cya 23). 13 Urubanza No RPA 00697/2020/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 11/02/2022, haburana Ubushinjacyaha, BAZIRIHE Charlene na bagenzi be, igika cya 17. 14 Urubanza No RP 00277/2019/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa Rubavu ku wa 23/10/2020, haburana Ubushinjacyaha, BAZIRIHE Charlene na bagenzi be, igika cya 15. 15 Dosiye Y'Ubugenzacyaha (RIB) No. 00390/GE/GISE SB/WEST/RUBA/2019 16 Dosiye Y'Ubugenzacyaha (RIB) No. 00390/GE/GISE SB/WEST/RUBA/2019, Inyandikomvugo y'umutangabuhamya, NISINGIZWE Jean Marie Vianney, C.23_24.

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[69] Hakurikijwe umurongo watanze mu rubanza RPAA00044/2021/CA rw’ Ubushinjacyaha na Migambi Vianne wagaragajwe haruguru, mu bimenyetso bishobora gushingirwaho mu kwemeza ko uregwa yakoze icyaha, harimo inyandikomvugo y’ifatira n’imvugo z’abatangabuhamya, kandi nk’uko nabyo byagaragajwe haruguru, ibyo bimenyetso nibyo Urukiko Rukuru rwashingiyeho ruhamya Habiyaemye Jean Pierre icyaha aregwa. [70] Urukiko rw’Ubujurire rurasanga Habiyaemye Jean Pierre atagaragaza icyo anenga ibyo bimenyetso byashingiweho ahamywa n’icyaha, ibyo avuga ko yahatiwe guishyira umukono ku nyandikomvugo y’ifatira bikaba nta shingiro bifite kuko nta kigaragaza ako gahato. [71] Rurasanga rero ingingo y’ubujurire bwa Habiyaemye Jean Pierre y’uko Urukiko Rukuru rwamuhamije icyaha atakoze, nta shingiro bufite. Rurasanga kandi ibyo kuba urwo Rukiko rwiregagije gukora iperereza yasabye nabyo nta shingiro bifite kuko haba mu nyandikomvugo y’iburanisha ry’urubanza rujurirwa ndetse no muri kopi y’urwo rubanza ntahagaragara ko Habiyaemye Jean Pierre yigeze asaba iperereza, uretse ko n’ubusanzwe urukiko rudategetswe gukora iperereza igihe cyose bisabwe n’umuburanyi iyo rwumva ibimenyetso rwashyikirijwe bihagije kandi n’ababuranyi bahawe umwanya wo kubyisobanuraho¹⁷, ubujurire bwe bukaba nta shingiro bufite. III. ICYEMEZO CY’URUKIKO [72] Rwemeje ko ubujurire bwatanze na Byiringiro Innocent alias Bizuru, ubwatanze na Kimana Innocent alias Cobra n’ubwatanze na Habiyaemye Jean Pierre, bwose nta shingiro bufite. [73] Rwemeje ko nta gihundutse ku rubanza RPA00697/2020/HC/MUS rwaciwe n’Urukiko Rukuru, Urugereko rwa Musanze kuwa 11/02/2022, rwahamishijeho imikirize y’urubanza RP00277/2019/TGI/RBV rwaciwe n’Urukiko Rwisumbuye rwa Rubavu ku wa 23/10/2020, rwemeje ko Byiringiro Innocent, Kimana Innocent alias Cobra na Habiyaemye Jean Pierre bahamwa n’icyaha cyo gutunda no kubika ibiyobyabwenge byo mu bwoko bw’urumogi, rugahanisha buri wese igifungo cy’imyaka makumyabiri n’itanu (25) n’ihazabu y’amafaranga miliyoni makumyabiri (20.000.000Frw) y’u Rwanda. [74] Rutegetse ko amagarama y’urubanza aherera ku Isanduku ya Leta.

17 “Urukiko ntirutegetswe gukora iperereza cyangwa se kubaza abatangabuhamya igihe cyose bisabwe n’umuburanyi iyo rwumva ibimenyetso rwashyikirijwe bihagije kandi n’ababuranyi bahawe umwanya wo kubyisobanuraho.” Uyu murongo watanze mu rubanza N° RPAA 010/09/CS, rwaciwe n’Urukiko rw’Ikirenga ku wa 09/03/2012 haburana Ubushinjacyaha na NZAJYIBWAMI Emmanuel (igika cya 9), Urubanza N° RPAA 00445/2022/CA, rwaciwe n’Urukiko rw’Ubujurire ku wa 22/12/2023 haburana Ubushinjacyaha na NTEGAMAHEREZO Paul (igika cya 21) n’izindi.

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