

RWANDA / JUDGMENT

UBUSHINJACYAHA vs. NDINKABANDI

RPAA 00593/2022/CA

COURT

Court of Appeal

DECIDED

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UBUSHINJACYAHA vs. NDINKABANDI

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Text

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UBUSHINJACYAHA vs. NDINKABANDI [Rwanda URUKIKO RW'UBUJURIRE – RPAA 00593/2022/CA (Mukandamage, P.J.), 20 Ukuboza 2024] Amategeko agenga imanza nshinjabyaha – Kwakira Ubujurire – Ibihe by'ubujurire – Kujurira bikorwa mu gihe giteganyijwe cy'iminsi mirongo itatu (30), hagaragazwa ibinengwa urubanza rujuririrwa, ibigomba gukosorwa n'impamvu ari amakosa n'uburyo yakosorwa. Mu gihe hari ingingo y'ubujurire itanzwe nyuma y'igihe giteganywa n'itegeko, iyo mpamvu y'ubujurire ntiyakirwa ngo isuzumwe mu gihe bigaragara ko ituzuzwa cyangwa ngo isobanure ingingo y'ubujurire yatanze hubahirijwe ibihe. Amategeko agenga imanza nshinjabyaha – icyaha cyo gusabanya umwana – Kugabanyirizwa igihano – Mu rwego rw'ibirego nshinjabyaha, iyo abaregwa nta kindi banenga urubanza rwajuririwe, uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo. Incamake y'ikibazo: Ndinkabandi w'imyaka yarezwe mu Bugenzacyaha n'umwana witwa D. M. S. w'imyaka cumi n'itandatu (16) y'amavuko, akaba kandi ari umwana w'umugore we, avuga ko yamusambanyije, biza kumenyekana ari uko agiye kwa muganga basanga atwite. Nyuma y'iperereza, Ubushinjacyaha bwatanze ikirego mu Rukiko Rwisumbuye rwa Gasabo burega

Ndinkabandi Védaste icyaha cyo gusambanya umwana, busaba ko kimuhama, maze agahanishwa igifungo cy'imyaka makumyabiri (20). Ndinkabandi yaburanye ahakana icyaha, avuga kandi ko ibisubizo byatanzwe n'abahanga ba Rwanda Forensic Institute (RFI) ku bizamini bya ADN atabyemera. Urukiko Rwisumbuye rwa Gasabo rwasanze hari ibimenyetso bigaragaza ko Ndinkabandi yakoze icyaha cyo gusambanya umwana, birimo raporo ya Muganga yagaragaje ko umwana yasambanyijwe kandi atwite inda y'ibyumweru cumi n'umunani (18), maze rumuhanisha igifungo cy'imyaka makumyabiri (20). Ndinkabandi Védaste yajuririye Urukiko Rukuru yemera icyaha yari yahakanye ku rwego rwa mbere, avuga ko yagikoze atabigambiriye, kuko yatashye yasinze asanga umwana mu rugo amwitiranya n'umugore we, abisabira imbabazi no kugabanyirizwa igihano kikanasubikwa kugira ngo abashe kujya kwita ku bana. Uhagarariye ubushinjacyaha avuga ko Ndinkabandi atagabanyirizwa igihano, kuko atemeye icyaha, ahubwo yacyemeye kubera ko raporo y'abahanga ba RFI yagaragaje ko umwana wavutse muri uko gusambanywa ari uwe. Urukiko Rukuru rwasanze ubujurire bwa Ndinkabandi Védaste nta shingiro bufite, kuko kwemera icyaha mu bujurire no kuba afite abana agomba kujya kurera bitamubera impamvu nyoroshyacyaha zatuma igihano cy'imyaka makumyabiri (20) yahawe kigabanywa ngo kinasubikwe, bityo ko urubanza rwajuririwe rudahindutse.

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Ndinkabandi Védaste yajuririye nanone Urukiko rw'Ubujurire, avuga ko kwemera icyaha yakoreye mu bujurire bwa mbere kwafatwa nk'impamvu nyoroshyacyaha yatuma agabanyirizwa igihano kikagera ku gifungo cy'imyaka icumi (10). Uhagarariye Ubushinjacyaha avuga ko ubujurire bwa Ndinkabandi Védaste butakwagirwa kubera ko impamvu z'ubujurire yazitanze impitagihe, ko mu gihe bwaba bwakiriwe butahabwa ishingiro, kuko yabanje kugora ubutabera ahakana icyaha. Ndinkabandi Védaste n'umwunganira bavuga ko inzitizi yatanzwe n'Ubushinjacyaha nta shingiro ifite, kuko kopi y'urubanza rujururirwa itashyizwe muri dosiye ku munsu urubanza rwasomeweho, kandi ko afunze akaba atarabashaga kugera kuri dosiye ye uko abyifuza, kandi nta wundi muntu yari afite wabikurikirana. Incamake y'icyemezo: 1. Kujurira bikorwa mu gihe giteganyijwe cy'iminsi mirongo itatu (30), hagaragazwa ibinengwa urubanza rujuririrwa, ibigomba gukosorwa n'impamvu ari amakosa n'uburyo yakosorwa. Mu gihe hari ingingo y'ubujurire itanzwe nyuma y'igihe giteganywa n'itegeko, iyo mpamvu y'ubujurire ntiyakirwa ngo isuzumwe mu gihe bigaragara ko ituzuza cyangwa ngo isobanure ingingo y'ubujurire yatanzwe hubahirijwe ibihe.

2. Mu rwego rw'ibirego nshinjabyaha, iyo abaregwa nta kindi banenga urubanza rwajuririwe, uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo Ubujurire nta shingiro. Inzitizi nta shingiro. Amategeko yashingiweho: Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 49. Imanza zifashishijwe: Urubanza RCOMAA 00071/2017/SC rwa Mbuto Aimable na BRD Ltd, rwaciwe n'Urukiko rw'Ikirenga ku wa 26/10/2018, Urubanza RPA 0343/10/CS, rw' Ubushinjacyaha na Mpiranya Boniface rwaciwe n'Urukiko rw'Ikirenga ku wa 27/02/2015, Urubanza RPAA 00544/2023/CA, rw' Ubushinjacyaha na Muvunyi Claude alias

Ntambara. rwaciwe n'Urukiko rw'Ubujurire ku wa 25/09/2024, Urubanza RPA 00060/2021/CA rw' Ubushinjacyaha na Nsabimana Callixte alias Sankara na bagenzi be, rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022, Urubanza RPAA 00247/2023/CA rw' Ubushinjacyaha na Harerimana Gaspard, rwaciwe n'Urukiko rw'Ubujurire ku wa 28/11/2024.

Urubanza

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I. IMITERERE Y'URUBANZA [1] Ku wa 28/10/2018, Ndinkabandi Védaste yarezwe mu Bugenzacyaha n'umwana witwa D. M. S. w'imyaka cumi n'itandatu (16) y'amavuko, avuga ko mu kwezi kwa Nyakanga 2018, yahengereye umugore we (ari nawe nyina) adahari, aramufata amujyana mu cyumba cye aramusambanya, yajya gutaka akamupfuka umunwa, arangije amubuza kubivuga, biza kumenyekana ari uko agiye kwa Muganga basanga atwite. [2] Nyuma y'iperereza, Ubushinjacyaha bwatanze ikirego mu Rukiko Rwisumbuye rwa Gasabo burega Ndinkabandi Védaste icyaha cyo gusambanya umwana, busaba ko kimuhama, maze agahanishwa igifungo cy'imyaka makumyabiri (20) giteganywa n'ingingo ya 133 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyira ibyaha n'ibihano muri rusange. [3] Ndinkabandi Védaste yaburanye ahakana icyaha, avuga ko umwana umushinja atabaga iwe, ahubwo ko yabaga ku ishuri, ko ibisubizo byatanze n'abahanga ba Rwanda Forensic Institute (RFI) ku bizamini bya ADN atabyemera. [4] Mu rubanza RP 00936/2018/TGI/GSBO rwaciwe ku wa 28/11/2019, Urukiko Rwisumbuye rwa Gasabo rwasanze hari ibimenyetso bigaragaza ko Ndinkabandi Védaste yakozwe icyaha cyo gusambanya umwana, birimo raporo ya Muganga yagaragaje ko umwana yasambanyijwe kandi atwite inda y'ibyumweru cumi n'umunani (18), raporo y'abahanga ba RFI yagaragaje ko Ndinkabandi Védaste ari se w'umwana D. M. S. wabyawe n'uwahohotewe, maze rumuhanisha igifungo cy'imyaka makumyabiri (20). [5] Ndinkabandi Védaste yajuririye Urukiko Rukuru yemera icyaha yari yahakanye ku rwego rwa mbere, avuga ko yagikoze atabigambiriye, kuko yatashye yasinze asanga umwana mu rugo amwitiranye n'umugore we, abisabira imbabazi no kugabanyirizwa igihano kikanasubikwa kugira ngo abashe kujya kwita ku bana. Uhagarariye ubushinjacyaha yavuze ko Ndinkabandi Védaste atagabanyirizwa igihano, kuko atemeye icyaha, ahubwo yacyemeye kubera ko raporo y'abahanga ba RFI yagaragaje ko umwana wavutse muri uko gusambanywa ari uwe. [6] Mu rubanza RPA 00593/2022/HC/KIG rwaciwe ku wa 30/09/2022, Urukiko Rukuru rwasanze ubujurire bwa Ndinkabandi Védaste nta shingiro bufite, kuko kwemera icyaha mu bujurire no kuba afite abana agomba kujya kurera bitamubera impamvu nyoroshyacyaha zatuma igihano cy'imyaka makumyabiri (20) yahawe kigabanywa ngo kinasubikwe, rwemeza ko urubanza rwajuririye rudahindutse. [7] Ndinkabandi Védaste yajuririye Urukiko rw'Ubujurire, urubanza ruhabwa RPAA 00593/2022/CA, ruburanishwa mu ruhame ku wa 02/12/2024, Ndinkabandi Védaste yunganiwe na Me Nyiransabimana Cécile, naho Ubushinjacyaha buhagarariwe na Rudatinya Nyangezi Gaspard, Umushinjacyaha ku rwego rw'Igihugu. [8] Mu myanzuro no mu miburanire, Ndinkabandi Védaste avuga ko kwemera icyaha yakoreye mu bujurire bwa mbere kwafatwa nk'impamvu nyoroshyacyaha yatuma agabanyirizwa igihano kikagera ku gifungo cy'imyaka icumi (10). Uhagarariye Ubushinjacyaha avuga ko ubujurire bwa Ndinkabandi Védaste butakwagirwa kubera ko impamvu z'ubujurire yazitanze

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impitagihe, ko mu gihe bwaba bwakiriwe butahabwa ishingiro, kuko yabanje kugora ubutabera ahakana icyaha. [9] Ibibazo bigomba gusuzumwa muri uru rubanza ni ibi bikurikira:

- kumenya niba impamvu z'ubujurire za Ndinkabandi Védaste zitagomba kwakirwa;
 - kumenya niba igihano Ndinkabandi Védaste yahawe cyagabanywa. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA
- a. Kumenya niba impamvu z'ubujurire za Ndinkabandi Védaste zitagomba kwakirwa [10] Uhagarariye Ubushinjacyaha avuga ko urubanza rujuririrwa rwaciwe ku wa 30/09/2022, kopi yarwo ishyirwa muri IECMS ku wa 03/10/2022, Ndinkabandi Védaste ajurira ku wa 17/10/2022 avuga ko atanyuzwe n'imikirize y'urubanza, ariko ko atarabona kopi yarwo ngo amenye neza icyagendeweho hagumishwaho igihano yari yahawe ku rwego rwa mbere. [11] Uhagarariye Ubushinjacyaha avuga kandi ko hashingiwe ku biteganywa n'ingingo ya 183 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, nta bujurire Ndinkabandi Védaste yatanze mu bihe biteganywa n'amategeko, ko impamvu z'ubujurire zaje nyuma zitakwakirwa ngo zisuzumwe, kuko zatanzwe mu buryo bunyuranyije n'ibiteganywa n'ingingo ya 181 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha. [12] Ndinkabandi Védaste n'umwunganira bavuga ko inzitizi yatanze n'Ubushinjacyaha nta shingiro ifite, kuko kopi y'urubanza rujuririrwa itashyizwe muri dosiye ku munsu urubanza rwasomeweho, kandi ko afunze akaba atarabashaga kugera kuri dosiye ye uko abyifuza, kandi nta wundi muntu yari afite wabikurikirana. [13] Ndinkabandi Védaste n'umwunganira bavuga ko yihutiye kujurira yanga ko amatariki yo kujurira amurengana, kandi ko mu mwanzuro uharekeje ibaruwa y'ubujurire yavuze ko Urukiko Rukuru rwagumishijeho igihano yari yajuririye kingana n'imyaka makumyabiri (20) y'igifungo, ko impamvu z'ubujurire azazitanga nyuma amaze kubona kopi y'urubanza rujuririrwa, nyuma ayibonye yihutira gushyira muri dosiye imyanzuro y'inyongera. UKO URUKIKO RUBIBONA [14] Ikibazo kijyanye n'iyakirwa ry'impamvu z'ubujurire zitanzwe hatubahirijwe ibihe by'ubujurire cyasesenguwe mu rubanza rubanziriza urundi mu rubanza RCOMAA 00071/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 26/10/2018, haburana Mbuto Aimable na BRD Ltd, hanyuma urwo Rukiko rusobanura ko kujurira bikorwa mu gihe giteganyijwe cy'iminsi mirongo itatu (30), hagaragazwa ibinengwa urubanza rujuririrwa, ibigomba gukosorwa n'impamvu ari amakosa n'uburyo yakosorwa, ko mu gihe ingingo y'ubujurire itanzwe nyuma y'igihe giteganywa n'itegeko, iyo mpamvu y'ubujurire itagomba kwakirwa ngo isuzumwe mu gihe bigaragara ko ituzuzwa cyangwa ngo isobanure ingingo y'ubujurire yatanze hubahirijwe ibihe. Uyu murongo washingiwaho mu zindi manza uru Rukiko rwaciye, harimo n'urubanza RPAA 00247/2023/CA rwaciwe ku wa 28/11/2024 haburana Ubushinjacyaha na Harerimana Gaspard.

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[15] Dosiye y'urubanza igaragaza ko Ndinkabandi Védaste yajuriye ku wa 17/10/2022, avuga ko atanyuzwe no kuba umucamanza wo mu Rukiko Rukuru yaragumushijeho igihano cy'igifungo cy'imyaka makumyabiri (20) yari yajuririye, hanyuma mu mwanzuro w'inyongera wo ku wa 29/10/2023 asaba ko igihano yahawe cyagabanywa. [16] Urukiko rw'Ubujurire rurasanga ibyo Ndinkabandi Védaste yavuze mu mwanzuro w'inyongera ko atanyuzwe n'uko Urukiko Rukuru, Urugereko rwa Musanze rutahaye agaciro impamvu nyoroshyacyaha ngo rumugabanyirize igihano, ari ibisobanuro byuzuzwa ingingo y'ubujurire yari yatanze yubahirije ibihe by'ubujurire. [17] Urukiko rw'Ubujurire rurasanga rero, hashingiwe ku murongo watanze mu rubanza rwavuzwe haruguru, nta cyabuza ko impamvu z'ubujurire zatanze na Ndinkabandi Védaste zakirwa zigasuzumwa, bityo inzitizi yatanze n'Ubushinjacyaha nta shingiro ifite. b.kumenya niba igihano Ndinkabandi Védaste yahawe cyagabanywa [18] Ndinkabandi Védaste n'umwunganira bavuga ko aburana ku rwego rwa mbere yagize isoni n'ipfunwe by'icyaha yakoze cyo gusambanya umwana aragihakana, ariko ko mu bujurire yacyemeye mu buryo budashidikanywaho, asaba imbabazi, agaragaza ko icyatumye akora icyo cyaha ari ubusinzi, bagasaba ko kuri uru rwego uko kwemera icyaha kwafatwa nk'impamvu nyoroshyacyaha yatuma agabanyirizwa igihano yahawe. [19] Ndinkabandi Védaste n'umwunganira bavuga ko, mu kumugabanyiriza igihano hanashingirwa ku ngingo ya 2 n'ya 14 z'Itegeko N° 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, maze agahanishwa igifungo cy'imyaka icumi (10). [20] Uhagarariye Ubushinjacyaha avuga ko iyi mpamvu y'ubujurire nta shingiro ifite, kubera ko nk'uko n'Urukiko Rukuru rwabibonye, Ndinkabandi Védaste yemeye icyaha kubera ko hakozwe ikizamini cya ADN, abona ko ntayandi mahitamo afite, kuko yari yabanje kugihakana ku rwego rwa mbere, maze Urukiko Rukuru rusanga ukwemera icyaha kwe mu bujurire bitahabwa agaciro, kuko hari imanza zaciwe n'Urukiko rw'Ubujurire zemeje ko ukwemera icyaha gufatwa nk'impamvu nyoroshyacyaha ari ugukozwe mu ntangiriro y'iburanisha. Uhagarariye Ubushinjacyaha asoza asaba ko hagumaho imikirize y'urubanza rwajuririwe. UKO URUKIKO RUBIBONA [21] Kubyerekeranye no kugabanyirizwa igihano mu gihe ariyo mpamvu y'ubujurire yonyine, byatanzweho umurongo mu rubanza RPA 00060/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 04/04/2022 haburana Ubushinjacyaha, Nsabimana Callixte alias Sankara na bagenzi be, uwo murongo ukaba uvuga ko mu rwego rw'ibirego nshinjabyaha, iyo abaregwa nta kindi banenga urubanza rwajuririwe, uretse kuvuga gusa ko batagabanyirijwe bihagije, buri mucamanza ku rwego urwo arirwo rwose, yemerewe gutanga igihano mu bushishozi bwe kijyanye n'uburemere bw'icyaha ndetse n'ingaruka zacyo hakurikijwe ibiteganywa n'ingingo ya 49 y'Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange, ariko ko mu bujurire, umucamanza agomba kuzirikana ko yemerewe gusa guhindura igihano cyatanze n'Umucamanza wo mu rukiko rubanza, ari uko amaze kugaragaza ko urwo rukiko rwaba rwarakoresheje nabi

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itegeko cyangwa ubushishozi bwarwo mu gutanga icyo gihano. Uyu murongo wakurikijwe mu manza zitandukanye zakurikiyeho zaciwe n'uru Rukiko, harimo n'urubanza RPAA 262/2023/CA rwaciwe ku wa 29/11/2024, haburana Ubushinjacyaha na Uwizeyimana Chantal. [22] Mu bika bikurikira harasuzumwa niba mu guhanisha Ndinkabandi Védaste igifungo cy'imyaka makumyabiri (20) ku cyaha cyo gusambanya umwana w'imyaka cumi n'itandatu (16) y'amavuko akamutera inda, Urukiko rwabanje rwaba rwarakoresheje nabi itegeko cyangwa ubushishozi bwarwo ku buryo icyo gihano cyagabanywa. [23] Nk'uko bigaragara mu manza zabanje, Ndinkabandi Védaste yaburanye ku rwego rwa mbere ahakana icyaha, ariko Urukiko Rwisumbuye rwa Gasabo, rushingiye ku bimenyetso rwashyikirijwe n'Ubushinjacyaha, rwamuhamije icyaha aregwa, rumuhanisha igifungo cy'imyaka makumyabiri (20). Mu bujurire yemeye icyaha, avuga ko yatashye yasinze abonye umwana akeka ko ari umugore we, aramusambanya, asaba imbabazi no kugabanyirizwa igihano, Urukiko Rukuru ruza gusanga kwemera icyaha mu bujurire bitamugirira akamaro nk'impamvu nyoroshyacyaha, kuko ari ingingo nshya itanzwe mu bujurire, kandi umucamanza wo mu bujurire aba afite inshingano yo gukosora amakosa aba yakozwe ku rwego rwabanje, maze rwemeza ko ubujurire bwe nta shingiro bufite. [24] Urukiko rw'Ubuja rurasanga nk'uko Urukiko Rukuru rwabibonye, ukwemera icyaha Ndinkabandi Védaste yakoreye mu bujurire ntacyo kwamumarira nk'impamvu yatuma agabanyirizwa igihano yahawe, kuko ukwemera icyaha kwemewe ni ugukozwe mu buryo budashidikanywa mu iburanisha ku rwego rwa mbere nk'uko byatanzweho umurongo mu rubanza RPA 0343/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 27/02/2015, haburana Ubushinjacyaha na Mpiranya Boniface, uwo murongo ukaba uvuga ko ukwemera icyaha kugira agaciro gashobora gutuma uregwa agabanyirizwa igihano iyo gukoze byibura mbere y'uko iburanisha ku rwego rwa mbere ripfundikirwa, kudashidikanywaho, kuba uwemera agaragaza ko yumva uburemere bw'ibikorwa yemera n'ingaruka zabyo, abyicuza, abisabira imbabazi no kuba yiteguye gusubiza ibyo yangije uko abitegerejweho. Uyu murongo wakurikijwe mu manza zitandukanye harimo n'urubanza RPAA 00544/2023/CA, rwaciwe n'Urukiko rw'Ubuja ku wa 25/09/2024, haburana Ubushinjacyaha na Muvunyi Claude alias Ntambara. [25] Urukiko rw'Ubuja rurasanga kandi igihano cy'imyaka makumyabiri (20) Ndinkabandi Védaste yahawe gihwanye n'uburemere bw'icyaha yakoze, kuko yasambanyije umwana w'umugorewe, amutera inda, bituma agira inshingano zo kurera umwana yabyaye kandi nawe yari agikeneye kurerwa, nyamara yaragombaga kumurinda ihohoterwa nk'umurera, bityo icyo gihano kikaba kitagomba kugabanywa. [26] Urukiko rw'Ubuja rurasanga rurasanga rero impamvu z'ubujurire zatanze na Ndinkabandi Védaste nta shingiro zifite, hakaba hagomba kugumaho imikirize y'urubanza yajuririye. III. ICYEMEZO CY'URUKIKO [27] Rwemeje ko inzitizi yatanze n'Ubushinjacyaha nta shingiro ifite; [28] Rwemeje ko ubujurire bwatanze na Ndinkabandi Védaste nta shingiro bufite;

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- [29] Rwemeje ko urubanza RPA 00093/2020/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 30/09/2022 rugumanye agaciro mu ngingo zarwo zose ; [30] Rutegetse ko igihano cy'igifungo cy'imyaka makumyabiri (20) Ndinkabandi Védaste yahanishijwe muri urwo rubanza ku cyaha cyo gusambanya umwana w'imyaka cumi n'itandatu
- (16) y'amavuko kigumyeho; [31] Ruvuze ko amagarama y'urubanza aherereye ku Isanduku ya Leta, kuko Ndinkabandi Védaste yajuriye afunze, akaba asonewe kuyatanga.
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