

## UMWARI N'ABANDI v. SN BRUSSELS AIRLINES

[Rwanda URUKIKO RW'IKIRENGA – RCOMA0007/10/CS (Mugenzi, P.J., Mukamulisa na Rugabirwa, J.) 06 Gicurasi 2011]

*Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ubujurire bwuririye ku bundi – Ubujurire bwuririye ku bundi ntibugarukira gusa ku kibazo cyajuririwe, kuko nta kibuzza ko bwanarebana n'izindi ngingo z'urubanza, zipfa gusa kuba zaraburanyweho mu rwego rwa mbere – Itegeko N°18/24 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo n'izubutegets, ingingo ya 167.*

*Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Iyakirwa ry'ikirego – Mu gihe abarega bashatse ubaburanira umwe, ariko buri wese mu barega akitangira igarama biba ari ibirego bitandukanye – Itegeko N°18/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano iz'umurimo n'iz'ubutegets, ingingo ya 20.*

*Amategeko yo gutwara abantu mu ndege – Ububasha bushingiye ku ifasi – Amategeko akurikizwa – Urega ashobora guhitamo urukiko rw'aho utwara abantu abarizwa, urw'aho afite icyicaro cye cy'ibanze, urw'aho amasezerano yakorewe, cyangwa urw'aho abagenzi bagomba kugezwa – Amategeko y'iburanisha akurikizwa ni ay'aho urukiko rwaregewe – Amasezerano mpuzamahanga ya Varsovie yo kuwa 12/10/1929, ingingo ya 28.*

*Indishyi – Inshingano z'umwikorezi – Indishyi z'akababaro – Sosiyete itwara abantu n'ibintu ifite inshingano zo kugeza abagenzi aho basezeranye (obligation de résultat) itabasha guhunga – Indishyi z'akababaro zigenwa igihe itaragaragaza ko yakoze ibishoboka ngo ishake ubundi buryo bwo kugeza abagenzi aho basezeranye, kabone n'ubwo byari buyihende.*

*Indishyi – Igihembo cy'Avoka – Igihembo cya Avoka kigenwa n'ubushishozi bw'urukiko mu gihe icyasabwe ari umurengera.*

**Incamake y'ikibazo:** Umwari na bagenzi be baguze amatike y'indege ya SN BRUSSELS AIRLINES yo kuva Kigali mu Rwanda bakagera mu Bubiligi no kugaruka maze mu kugaruka SN BRUSSELS ibasiga i kampala abandi Nairobi aho kubageza i Kigali. Ibi byatumye bayirega mu Rukiko Rukuru rw'Ubucuruzi basaba indishyi z'uko yabatereranye bakirwanaho bagakoresha amafaranga yabo icyo gihe cyose bari bamaze i Kampala na Nairobi, banahava bakagaruka i Kigali kandi batabiteganyije. Urukiko rwemeje ko SN BRUSSELS AIRLINES ibaha indishyi z'akababaro, iz'imbonezamusaruro hamwe n'iz'igihembo cy'Avoka.

Abarega bajuririye Urukiko rw'Ikirenga basaba guhabwa indishyi zisumbuye kuzo bahawe mu rukiko rubanza bavuga ko rwabageneye indishyi nkeya ugereranyije n'akababaro bagize, basaba urukiko kubagera buri wese 15.000 Euros n'igihembo cya avoka kingana na 10% y'ayo.

SN BRUSSELS AIRLINES nayo yatanze ubujurire bwuririye ku bundi isaba urukiko kutakira ubujurire bw'abarega ivuga ko urubanza rwagombaga gucibwa hashingiwe ku mategeko yo mu Bubiligi kuko iyi sosiyete yatwaye abagenzi ari imbirigi, ivuga kandi ko ibirego byabo byatanzwe binyuranyije n'amategeko kuko babihurije hamwe hatabayeho *ordonnance* ya Perezida w'urukiko rubifitiye ububasha, ikaba isaba kwishyurwa indishyi z'ikurikiranarubanza hamwe n'izo gushorwa mu manza nta mpamvu. Ikomeza ivuga ko abareze bari abantu barindwi batandukanye, maze barega nk'itsinda ridafite ububasha bwo

kurega. Abarega bisobanura bavuga ko n'ubwo ikirego cyatanzwe ari kimwe kuri bose nta tegeko ryishwe mu gihe buri wese yatanze igarama.

SN BRUSSELS AIRLINES ivuga ko ikirego cy'abarega gishaje kuko amasezerano yo gutwara abantu yabaye hagati yayo n'abarega agengwa n'amategeko yo mu Bubiligi ateganya ko ikirego gisaza nyuma y'umwaka umwe. Kubw'indishyi zisabwa n'abaregwa, ivuga ko ntazo yatanga bitewe n'impamvu itunguranye yatumye ingendo Kampala/Nairobi kugera i kigali zidashoboka, ikavuga ko yemeye gusa kubasubiza amafaranga batanze bagura ayandi matike y'izo gendo zitashobotse hamwe n'ibyo bakoresheje bagaragaza impapuro zerekana ibyo bakoresheje.

**Incamateke y'icyemezo:** 1. Ubujurire bwuririye ku bundi ntibugarukira gusa ku kibazo cyajuririwe, kuko nta kibaza ko bwanarebana n'izindi ngingo z'urubanza, zipfa gusa kuba zaraburanyweho mu rwego rwa mbere.

2. Mu gihe abarega bashatse ubaburanira umwe, ariko buri wese mu barega akitangira igarama biba ari ibirego bitandukanye.

3. Urega ashoboraguhitamo urukiko rw'aho utwara abantu abarizwa, urw'aho afite icyicaro cye cy'ibanze, urw'aho amasezerano yakorewe, cyangwa urw'aho abagenzi bagomba kugezwa kandi amategeko y'iburanisha akurikizwa ni ay'aho urukiko rwaregwe.

4. Sosiyete itwara abantu n'ibintu ifite inshingano zo kugeza abagenzi aho basezeranye (obligation de résultat) itabasha guhunga mu gihe itaragaragaza ko yakoze ibishoboka ngo ishake ubundi buryo bwo kugeza abagenzi aho basezeranye, kabone n'ubwo byari buyihende, bityo rero igomba kubitangira indishyi.

5. Igihembo cya Avoka kigenwa n'ubushishozi bw'urukiko mu gihe icyasabwe ari umurenge.

**Ubujurire bufite ishingiro.  
Ubujurire bwuririye ku bundi nta shingiro bufite.  
Amagarama y'urubanza ahareweye kuwarezwe.**

**Amategeko yashingiweho:**

Amasezerano mpuzamahanga ya Varsovie yo kuwa 12/10/1929 u Rwanda n'u Bubiligi byashyizeho umukono, ingingo ya 28.

Itegeko N°18/24 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo n'izubutegetsi, ingingo ya 20 n'ya 167.

**Nta manza zifashishijwe.**

**Inyandiko z'abahanga zifashishijwe:**

Melina Douchy-Oudot: "Procédure civile", 2ème édition, Paris, 2006, page 366, N°638.

## Urubanza

### I. IMITERERE Y'URUBANZA

[1] Umwari Marie Agnès, Gakwaya Innocent, Gakirendekwe Panthaléon, Nsengiyumva Sylvestre, Senyana Marie Noel, Somayire Rubona Freddy na Spinette Génèvieve baguze amatike y'indege ya Sosiyete SN BRUSSELS AIRLINES, yo kuva i Kigali bajya i Bruxelles no kugaruka, maze mu gihe bagombaga kugaruka iyo sosiyete ikuraho ingendo Entebbe / Nairobi - Kigali zari zisanzweho, bituma igarukiriza abo bagenzi i Kampala na Nairobi gusa, ikavuga ko byatewe n'uko Leta y'u Rwanda yari imaze guhagarika mu buryo butunguranye, indege yayo ku kibuga cy'indege i Kanombe maze ntibishoboke gutwara abagenzi kuri izo ngendo.

[2] Bareze iyo sosiyete basaba indishyi zo kuba yarabatereranye bakirwanaho ku mafaranga yose bakoresheje mu gihe bamaze i Kampala na Nairobi, ndetse no kuhava bagaruka i Kigali.

[3] Urukiko Rukuru rw'Ubucuruzi rwemeje ko SN BRUSSELS AIRLINES igomba gutanga indishyi mbonezamusaruro ziteye zitya: Gakwaya 364.262Frw, Nsengiyumva 287.174Frw, Spinette 282.894Frw, Senyana 247.192Frw, Gakirendekwe 261.361Frw, Somayire 261.361Frw, Umwari 261.361Frw; hamwe n'indishyi z'akababaro (dédommagement du préjudice moral) zihwanye na 1.283.939frw (ahwanye na 1.500 Euros) kuri buri mugenzi, ndetse n'igihembo cy'avoka (honoraires d'avocat) gihwanye na 1.000.000Frw.

[4] Abarega bajurirye Urukiko rw'Ikirenga bavuga ko urukiko rubanza rwahaye agaciro gake akababaro bagize, bakaba basaba ko buri wese yagenerwa 15.000 Euros bari basabye, kandi bakagenerwa igihembo cya avoka kingana na 10% y'ayo.

[5] SN BRUSSELS AIRLINES nayo yatanze ubujurire bwuririye ku bundi ivuga ko ibirego bitagombaga kwakirwa kuko byatanze mu buryo butubahirije amategeko, kuko abarega basa n'abifatanijye kandi ibirego byabo bikaba byarahujwe hatabaye itegeko (ordonnance) rya Perezida w'Urukiko rubifitiye ububasha, ikavuga kandi ko hirengagijwe ko urubanza rwagombaga gucibwa hashingiwe ku mategeko y'Ububiligi kuko SN BRUSSELS AIRLINES yatwaye abo bagenzi ari imbiligi, ikirego kikaba cyaranatanze cyarashaje, hakurikijwe amategeko y'icyo gihugu. Inavuga kandi ko hirengagijwe ko kutabasha kugeza abagenzi i Kigali byatewe n'impamvu zitunguranye zitakwigobotorwa (force majeure).

[6] Iyo sosiyete irasaba kwishyurwa 2.000 Euros y'ibyakoreshywe mu rubanza harimo n'igihembo cya avoka, ikanasaba indishyi za 1000 Euros zo kuba yarashowe mu rubanza nta mpamvu (*action téméraire et vexatoire*).

[7] Urubanza rwaburanishijwe mu ruhamwe kuwa 31/03/2011, abarega bahagarariwe na Me Nzamwita Toy, naho SN BRUSSELS AIRLINES ihagarariwe na Me Kavaruganda Julien hamwe na Me Nizeyimana Boniface.

[8] Abarega babanje gusaba ko ubujurire bwuririye ku bwabo butakwirwa kuko butagarukira gusa ku kibazo cy'indishyi z'akababaro bajurirye, abaregwa bo bakemeza ko ubwo ubujurire bwabo butanyuranyije n'amategeko; Urukiko rwemeza ko ruzabisuzumira hamwe n'ibindi bibazo bigize urubanza.

## **II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO**

## **A. Ku byerekeye iyakirwa ry'ubujurire bwa SN BRUSSELS AIRLINES bwuririye ku bundi.**

[9] Inzitizi y'abarega igamije gusaba ko ubujurire bw'uregwa bwuririye ku bwabo butakwagirwa kuko batajuririye urubanza rwose ahubwo bajuririye gusa urugero rw'indishyi z'akababaro bagenewe n'Urukiko rubanza, bakavuga rero ko ubujurire bwuririye ku bundi butagombye kurebana n'ikindi kitajyanye n'izo ndishyi. SN BRUSSELS AIRLINES yo isanga nta kibuzo ko ubujurire bwayo bwuririye ku bundi bwarebana n'ibindi bibazo bijyanye n'urubanza rwose.

[10] Harebwe ibiteganywa n'ingingo ya 167 y'Itegeko N°18/24 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'umurimo n'izubutegetsu nk'uko ryahinduwe kandi ryujwwe kugeza ubu, yemera ko uregwa mu bujurire ashobora nawe kujurira yuririye ku bujurire bw'urega, ntaho ivuga ko ubujurire bwuririye ku bundi bugarukira gusa ku kibazo cyajurije uwajurije bwa mbere, Urukiko rurasanga nta kibuzo ko ubujurire bwuririye ku bundi bwanarebana n'izindi ngingo z'urubanza, zipfa gusa kuba zaraburanyweho mu rwego rwa mbere.

[11] Iki gisobanuro kinajyanye kandi n'ibivugwa n'abahanga mu mategeko basobanura ko, ubujurire bwuririye ku bundi bushamikirwa ku bujurire bw'ibanze, bugakorwa n'uregwa mu bujurire, mu gihe asanga ataranyuzwe kuri byose mu mikirize y'urubanza rwa mbere<sup>1</sup>, bikumvikana rero ko ibyo bishobora kuba bitaramunyuzwe bitaba gusa ibirebana n'ibyajurije uwo baburana.

## **B. Ku bijyanye n'uburyo ikirego cyatanzwe mu Rukiko Rukuru rw'Ubucuruzi.**

[12] Nk'uko yanabiburanishaga mu Rukiko Rukuru rw'Ubucuruzi, SN BRUSSELS AIRLINES ivuga ko abareze bari abantu barindwi batandukanye, bakaba barareze nk'itsinda hatagaragajwe ubwoko bwaryo n'ububasha rifite bwo kurega, kandi ibirego byabo bigahuzwa byandikwa ku inumero imwe bitemejwe n'itegeko (ordonnance) rya Perezida w'Urukiko.

[13] Uburanira abarega asubiza ko nta tegeko ryishwe, kuko n'ubwo ikirego cyatanzwe ari kimwe kuri bese, buri wese yatanze igarama.

[14] Urukiko rurasanga kuba abarega barashatse avoka umwe akajyanira ibirego byabo hamwe, ariko buri wese mu barega yaritangiye igarama nta tegeko byishe, ibyo birego rero bikaba byarubahirije ibiteganywa n'ingingo ya 20 y'Itegeko N°18/2004 ryerekeye imiburanishirize y'ianza z'imbonezamubano iz'umurimo n'iz'ubutegetsu, iteganya ko iyo abasangiye inyungu mu rubanza ari benshi, barega cyangwa baregwa, buri wese ku bimureba afite uburenganzira n'inshingano z'ababuranyi”, kuvuga ko bareze batagaragaza ububasha bafite ngo kuko bareze ari nk'ishyirahamwe bikaba nta shingiro bifite kuko batigeze biyita ishyirahamwe cyangwa ngo bagaragare nka ryo, ahubwo buri wese akaba yarigaragaje ku giti cye.

[15] Urukiko rurasanga rero nta mpamvu yagaragajwe ku bijyanye n'itangwa ry'ikirego yatuma ibirego byatanzwe bitakirwa, naho kuvuga ko byanabuzwa kwakirwa n'uko byaburanishirijwe hamwe kandi bitahujwe na Perezida w'Urukiko, iyo ikaba itaba impamvu

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<sup>1</sup> *“L'appel incident vient se greffer sur l'appel principal, il est le fait de l'intimé qui ne s'estime pas totalement satisfait de la solution des premiers juges”*. Reba igitabo cya Melina Douchy-Oudot: “Procédure civile”, 2ème édition, Paris, 2006, page 366, N°638.

yo kutakira ikirego cyatanzwe mu buryo bukwiye, ahubwo hashoboraga gusabwa ivanwaho ry'urubanza, iyo habasha kugaragazwa ko ukwandika ibirego mu rubanza rumwe bidahujwe na Perezida w'urukiko ari inenge yo mu rwego rutesha agaciro ibyakozwe mu rubanza, akaba atari byo SN BRUSSELS AIRLINES yasabye.

### **C. Ku kibazo cyo kumenya niba amategeko y'u Rwanda yarashoboraga gukoreshwa muri uru rubanza.**

[16] SN BRUSSELS AIRLINES ivuga ko hashingiwe ku ngingo ya 19 y'amategeko rusange (conditions générales) yayo agenga kontaro yo gutwara abantu n'ibintu, amasezerano yo gutwara abantu yabaye hagati yayo n'abarega agengwa n'amategeko y'u Bubiligi kuko iyo sosiyete ari iyo muri icyo gihugu, ayo mategeko rusange akaba yibutswe ku matike y'indege abagenzi bagura n'ubwo bataba bayazi ubwayo ariko bakaba bashobora kuyashaka bakayabona.

[17] SN BRUSSELS AIRLINES inahera aho yemeza ko ikirego cyatanzwe mu Rukiko Rukuru rw'Ubucuruzi cyashaje, kuko ubusaze bw'ibirego nk'ibyo bubaho nyuma y'umwaka umwe, hakurikijwe amategeko y'u Bubiligi.

[18] Ingingo ya 28 y'Amasezerano mpuzamahanga ya Varsovie yo kuwa 12/10/1929 u Rwanda n'u Bubiligi byashyizeho umukono, akaba asumba amategeko y'ibihugu, iteganya, mu gace kayo ka mbere, ko ku bijyanye n'ahagomba kuregerwa, urega afite guhitamo urukiko rw'aho utwara abantu abarizwa, urw'aho afite icyicaro cye cy'ibanze cy'aho akorera, urw'aho afite icyicaro amasezerano yakorewe, cyangwa urw'aho abagenzi bagomba kugezwa, ikanavuga, mu gace kayo ka kabiri ko amategeko y'iburanisha akurikizwa ari ay'aho urukiko rwaregewe.

[19] Bigaragara rero ko kuba abarega barahisemo kugana inkiko z'u Rwanda nk'uko babyemererwa n'Amasezerano Mpuzamahanga yavuzwe haruguru, bitashidikanywaho ko baregeye urukiko rubifitiye ububasha, kandi hakaba hagomba gukurikizwa amategeko y'u Rwanda, bityo, imburanire y'uko bagombaga gukurikiza amategeko rusange y'iyi sosiyete iniyemerera ko bashobora kuba batarayabonye, ikaba nta shingiro ifite.

[20] No ku bijyanye n'ubuzime bw'ikirego uregwa avuga ko bugomba kureberwa ku mategeko y'Ububiligi hakomezwa ko ubwo buzime bubaho mu mwaka umwe, ingingo ya 29 y'amasezerano mpuzamahanga ya Varsovie yavuzwe haruguru, isobanura ko ubuzime bw'ikirego ari imyaka ibiri, ibarwa ryayo rigakurikiza amategeko y'urukiko rwaregewe, bityo, ubujurire bwa SN BRUSSELS AIRLINES busaba ko hakurikizwa amategeko y'u Bubiligi bukaba nta shingiro bufite.

### **D. Ku byerekeye indishyi zisabwa.**

[21] Abarega bajuririye Urukiko rw'Ikirenga bavuga ko Urukiko rubanza rwahaye agaciro gake akababaro bagize, rubagera indishyi z'akababaro nke cyane zihwanye na 1.500 Euros, bakaba basaba buri wese 15.000 Euros bari basabye kuko basanga ariyo ndishyi ikwiye. Barasaba kandi guhabwa amafaranga y'igihembo cya avoka angana na 10% y'indishyi basaba.

[22] Basobanura ko urwo rugero rw'indishyi basaba rushingiye ku kababaro gakomeye batewe na SN BRUSSELS AIRLINES yategereje umunsi bagombaga kuza i Kigali akaba ariho ibabwira ko itakihabagejeje, ikaba yaranashakiye abandi bagenzi izindi ndege zibageza aho bajyaga ariko bo ikabareka, ibizeza ko nibagera Kampala cyangwa Nairobi izabashakira

ubundi buryo, nyamara bahagera ikabihorera ku buryo bahuye n'ibibazo bikomeye byo gushakisha amacumbi n'uburyo bwo kuyariha ndetse n'ibibatunga mu buryo buruhanyije kuko bitari bwiteguwe. Bavuga ko yabasuzuguye ikabafata nk'aho atari abantu.

[23] SN BRUSSELS AIRLINES yo ivuga ko nta ndishyi ikwiye gutanga kuko yananiwe kugeza abo bagenzi i Kigali bitewe n'uko indege yayo yagumishijwe na Leta y'u Rwanda i Kigali kandi ariyo yagombaga kuza gutwara abagenzi kuva Nairobi/Kampala, bikaba byarabaye impamvu itunguranye kandi itigobotorwa (force majeure ) yatumye ingendo Kampala/Nairobi kugera i Kigali zidashoboka, cyakora ikaba yaremeye kubasubiza gusa amafaranga batanze bagura amatike y'izo ngendo zitashobotse n'ibyo bakoresheje, babanje kubigaragariza impapuro zerekana ibyo bayakoresheje. SN BRUSSELS AIRLINES ihakana kuba yarabavanguye n'abandi bagenzi.

[24] Urukiko rurasanga, SN BRUSSELS AIRLINES, nka sosiyete itwara abantu n'ibintu, yari ifite inshingano zo kugeza abagenzi aho basezeranye (obligation de résultat) itabasha guhunga izo nshingano ivuga ko habaye impamvu itunguranye kandi itigobotorwa ngo nk'uko amasezerano mpuzamahanga ya Varsovie ateganya ko umwikorezi ataryozwa indishyi iyo agaragaje ko yakoze ibishoboka kugirango akumire ingaruka z'ibyakwangirika, nyamara nk'uko Urukiko rubanza rwabisobanuye, uwo mwikorezi akaba ataragaragaje ko yakoze ibishoboka ngo ashake ubundi buryo bwo kugeza abagenzi aho basezeranye, kabone n'ubwo byari bumuhende.

[25] Ku byerekeye urugero rw'indishyi z'akababaro zikwiye, hakurikijwe akababaro abarega bagize kandi bagatewe n'ubushake buke bw'umwikorezi wabashaga gushaka uko abakemurira ikibazo akarangiza inshingano ze, Urukiko rurasanga, buri wese mu barega yakongererwa indishyi z'akababaro zagenwe n'Urukiko rubanza, agahabwa 2.000.000Frw.

[26] Ku bijyanye n'amafaranga y'igihembo cya Avoka, Urukiko rurasanga ayo mafaranga akwiye kugenerwa abareze kuko bagombye kwiyambaza avoka mu rubanza, ariko kuko ayo basaba angana na 10% y'indishyi bifuzaga ari ikirenga, bakaba bagenerwa, mu bushishozi bw'Urukiko 300.000Frw buri wese kuri uru rwego, yiyongera kuri 1.000.000Frw yagenwe mu Rukiko rubanza.

### **III. ICYEMEZO CY'URUKIKO**

[27] Rwemeje kwakira ubujurire bwatanzwe na Umwari Marie Agnès, Gakwaya Innocent, Gakirendekwe Panthaléon, Nsengiyumva Sylvestre, Senyana Marie Noel, Somayire Rubona Freddy na Spinette Génèvieve, n'ubwa SN BRUSSELS AIRLINES bubwuriyeho kuko bwatanzwe mu buryo n'inzira bikurikije amategeko;

[28] Rwemeje ko ubujurire bwa Umwari, Gakwaya, Gakirendekwe, Nsengiyumva, Senyana, Somayire Rubona na Spinette bufite ishingiro kuri bimwe, ko ubwa SN BRUSSELS AIRLINES nta shingiro bufite;

[29] Rukijije ko Umwari, Gakwaya, Gakirendekwe, Nsengiyumva, Senyana, Somayire Rubona na Spinette batsinze; ko SN BRUSSELS AIRLINES itsinzwe;

[30] Rutegetse SN BRUSSELS AIRLINES guha buri wese mu bareze bavuzwe haruguru indishyi z'akababaro zingana na 2.000.000Frw na 1.300.000Frw y'igihembo cya avoka, ni ukuvuga yose hamwe 3.300.000Frw, itayatanga mu gihe cy'ukwezi, ayo mafaranga agakurwa mu byayo ku ngufu za Leta;

[31] Ruyitegetse kwishyura 924.000Frw y'umusongongero wa Leta ahwanye na 4% y'igiteranyo cyose cy'indishyi iciwe (23.100.000Frw), itayatanga mu gihe cy'ukwezi ayo mafaranga akakurwa mu byayo ku ngufu za Leta;

[32] Ruyitegetse kwishyura amagarama y'uru rubanza, ahwanye na 41.700Frw, itayatanga mu gihe cy'iminsi umunani agakurwa mu byayo ku ngufu za Leta;

[33] Ruvuze ko imikirize y'urubanza rwajuririwe ihindutse.