TUKAKIRA N'ABANDI v. HOPITAL LA CROIX DU SUD N'ABANDI

[Rwanda URUKIKO RUKURU – RCA00321/2016/HC/KIG RCA00320/2016/HC/KIG RCA00322/2016/HC/KIG RCA00336/2016/HC/KIG (Kabagambe, P.J.) 29 Nzeri 2017]

Indishyi – Igenwa ry' indishyi zikomoka ku ikosa – Usaba indishyi kubera ibyo yangirijwe agomba kugaragaza ikosa yakorewe, ibyo yangirijwe, n'isano hagati y'ikosa n'ibyo yangirijwe.

Uburyozwe – Uburyozwe bukomoka ku bicuruzwa – Ubucuruzi bw'imiti – umucuruzi w'imiti aryozwa ingaruka mbi zatewe n'umuti utujuje ubuziranenge yagurishije – Itegeko teka ryo kuwa 30/07/1888, rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 259 niya 260.

Incamake y'ikibazo: Nyuma yaho Tukakira, Mutesi, Bayitake na Rubagumya bivurije kuri HOPITAL LA CROIX DU SUD bakabatera umuti wa *ndlr lidocaine 2%* ukabagiraho ingaruka mbi bareze ibyo bitaro mu Rukiko Rwisumbuye rwa Nyarugenge basaba gusubizwa amafaranga batanze bivuza uburwayi batewe nuwo muti, amatike bakoresheje bagiye kwivuza; guhabwa indishyi z'ububabare bagize bakimara guterwa umuti, iz'akababaro; iz'ikurikirana rubanza no gushorwa mu nkiko.

HOPITAL LA CROIX DU SUD yahamagaje mu rubanza SONARWA G.I.CO. Ltd nk'umwishingizi wayo ndetse na ABACUS Pharma Rwanda Ltd nkiyayigurishije umuti *ndlr lidocaine 2%* watewe abarega; Urukiko Rwisumbuye rwemeje ko ikirego cyabo gifite ishingiro kuri bimwe ko kandi umuti *ndlr lidocaine 2%* batewe wabagizeho ingaruka mbi ariko ko nta kosa ry'ubuganga ryakozwe na HOPITAL LA CROIX DU SUD ikoresha uwo muti bityo rero ko idakwiye kuryozwa indishyi zisabwa n'abaregwa ndetse ko SONARWA G.I.CO. Ltd nta nshingano ifite yo gutanga indishyi muri uru rubanza maze rutegeka ko ABACUS Pharma Rwanda Ltd ariyo ifite inshingano yo kuryozwa indishyi zose zisabwa muri uru rubanza kuko ariyo yagurishije umuti watewe abarega ukabagiraho ingaruka mbi.

Abarega bose kimwe na ABACUS Pharma Rwanda Ltd ntibishimiye imikirize y'urubanza bajuririra Urukiko Rukuru bavuga ko batemera uko indishyi zatanzwe n'uburyo zabazwe.

Mu Rukiko Rukuru hasuzumwe niba hari isano hagati yo guterwa *lidocaine 2% batch CM 4032* n'ingaruka mbi abayitewe bagize hamwe no kumenya niba indishyi zisabwa zigomba gutangwa.

ABACUS Pharma Rwanda Ltd yiregura ivuga ko Urukiko rubanza rwashingiye ku kuba harakoreshejwe *ndlr lidocaine 2%* itujuje ubuziranenge nyamara rwirengagiza ko niyo byaba aribyo koko hagomba kugaragazwa isano yaba iri hagati yo guterwa uwo muti uvugwa n'ingaruka mbi abayitewe bagize, ikomeza ivuga ko yagaragarije urukiko ibimenyetso byinshi byerekana ko harimo ugushidikanya kunini mu kwemeza ko ibibazo abareze bagize baba barabitewe na *lidocaine 2% batch CM 4032* bateweho ikinya.

Tukakira, Mutesi, Bayitake na Rubagumya bavuga ko Urukiko rutirengangije isano riri hagati y'uwacuruje umuti n'uwo wagizeho ingaruka kandi ABACUS Pharma Rwanda Ltd igomba kwishingira ko ibicuruzwa byayo bifite ubuziranenge.

HOPITAL LA CROIX DU SUD ivuga ko abarega mu rwego rwa mbere bose bagize ikibazo bakimara kuvurwa, ibyo rero bigaragaza isano iri hagati n'umuti batewe kandi hari n'ibindi bimenyetso bigaragaza ko uwo muti batewe utujuje ubuziranenge bigizwe na raporo zitandukanye zakozwe *laboratoire* zinyuranye bityo rero ABACUS Pharma Rwanda Ltd niyo igomba kuryozwa ingaruka mbi zatewe nuwo muti.

Minisiteri y'ubuzima yabajijwe uko bigenda mu gihe umucuruzi wahawe uruhushya rwo gutumiza imiti azanye umuti utujuje ubuziranenge ivuga ko ariwe wirengera ingaruka zose zaterwa nuwo muti.

Incamake y'icyemezo: 1. Usaba indishyi kubera ibyo yangirijwe agomba kugaragaza ikosa yakorewe, ibyo yangirijwe, n'isano hagati y'ikosa n'ibyo yangirijwe. Hashingiwe kwisuzuma ryakozwe n'abahanga batandukanye umuti wa *ndlr lidocaine 2%* ABACUS Pharma Rwanda Ltd yagurishije HOPITAL LA CROIX DU SUD utari wujuje ubuziranenge ndetse akaba ariwo wateje ubumuga abarega, bityo rero ABACUS Pharma Rwanda Ltd igomba kuryozwa ingaruka zatewe n'uwo muti.

2. Indishyi z'ububabare bwatewe n'uwo muti zigenwe mu bushishozi bw'urukiko kuko nta mategeko ariho ateganya ingano yazo n'uko zabarwa.

3. HOPITAL LA CROIX DU SUD ntiyaryozwa indishyi zogutererana abarega kuko nta kosa ry'ubuvuzi yakoze ahubwo amakosa yakozwe na ABACUS Pharma Rwanda Ltd kuko ariyo yagurishije umuti utujuje ubuziranenge.

4. Igihe ubujurire nta shingiro bufite indishyi zikurikirana rubanza n'igihembo cy'avoka ntizitangwa n'urukiko.

Ubujurire nta shingiro bufite.
Amagarama y'urubanza yatazwe n'abajuriye ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko N°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3 niya 9.
Itegeko teka ryo kuwa 30/07/1888, rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258, 259 niya 260.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Tukakira Rugigana Deus, Mutesi Scola, Bayitake Angelique na Rubagumya Clinton Innocent barega HOPITAL LA CROIX DU SUD, basaba gusubizwa amafaranga batanze bivuza uburwayi, ibikomere n'ibisebe batewe n'ibitaro no gusubizwa amatike bakoresheje bagiye kwivuza, kuri Tukakira Rugigana Deus 9.607.047Frw, Rubagumya Clinton Innocent 230.025Frw, Mutesi Scola 383.212Frw, Bayitake Angelique 375.879Frw; guhabwa indishyi z'ububabare bagize bakimara guterwa umuti, ndetse bakagira ibisebe n'ibikomere n'uburwayi bwuririyeho bitewe n'umuti ibitaro byababateye (Anaesthesia), kuri Tukakira Rugigana Deus 200.000.000Frw, kuri Rubagumya Clinton Innocent 100.000.000Frw, Mutesi Scola 150.000.000Frw, Bayitake Angelique 150.000.000Frw; basaba kandi indishyi z'akababaro, kuri Tukakira Rugigana Deus 100.000.000Frw, Rubagumya Clinton Innocent 50.000.000Frw, Mutesi Scola 50.000.000Frw, Bayitake Angelique 50.000.000Frw; indishyi z'ikurikirana rubanza no gushorwa mu nkiko, kuri Tukakira Rugigana Deus 3000.000Frw, Rubagumya Clinton Innocent 1000.000Frw, Mutesi Scola 1000.000Frw,

Bayitake Angelique 1000.000Frw; gusubizwa amafaranga babuze (financial loss), kuri Tukakira Rugigana Deus 2.992.428Frw, kuri Rubagumya Clinton Innocent 160.000Frw.

[2] Urubanza rwagobokeshejwemo SONARWA G.I.CO. Ltd nk'umwishingizi wa HOPITAL LA CROIX DU SUD na ABACUS Pharma Rwanda Ltd nk'iyagurishije HOPITAL LA CROIX DU SUD umuti *ndlr lidocaine 2%*; bisabwe na HOPITAL LA CROIX DU SUD

[3] Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko ikirego cya Tukakira Rugigana Deus, Mutesi Scola, Bayitake Angelique na Rubagumya Clinton Innocent gifite ishingiro kuri bimwe, rwemeje ko umuti *ndlr lidocaine 2%* watewe Tukakira Rugigana Deus, Mutesi Scola, Bayitake Angelique na Rubagumya Clinton Innocent ariwo wabateye ingaruka mbi bagize, ko nta kosa ry'ubuvuzi HOPITAL LA CROIX DU SUD yakoze ikoresha umuti *ndlr lidocaine 2%* ku barega, ko HOPITAL LA CROIX DU SUD idakwiye kuryozwa indishyi zisabwa n'abarega; rwemeje ko SONARWA G.I.CO.Ltd nta nshingano ifite yo gutanga indishyi muri uru rubanza; rutegeka ko ABACUS Pharma Rwanda Ltd igomba kuryozwa indishyi zikomoka ku muti *ndlr lidocaine* 2% watewe Tukakira Rugigana Deus, Mutesi Scola, Bayitake Angelique na Rubagumya Clinton Innocent, rutegeka ABACUS Pharma Rwanda Ltd guha Tukakira Rugigana Deus indishyi zose hamwe n'igihembo cy'avoka zingana na 21.184.153Frw; guha Rubagumya Clinton Innocent 3.158.106Frw, guha Mutesi Scola 4.251.641Frw no guha Bayitake Angelique 4.224.908Frw; rutegeka ABACUS Pharma Rwanda Ltd gusubiza HOPITAL LA CROIX DU SUD 4.883.604Frw, rwemeje ko ABACUS Pharma Rwanda Ltd nta ndishyi ikwiye; rutegeka ABACUS Pharma Rwanda Ltd gusubiza Tukakira Rugigana Deus, Mutesi Scola, Bayitake Angelique na Rubagumya Clinton Innocent, buri wese 50.000Frw y'amagarama.

[4] ABACUS Pharma Rwanda Ltd kimwe na Tukakira Rugigana Deus, Mutesi Scola na Bayitake Angelique ntibishimiye iyo mikirize y'urubanza, barujuririra mu Rukiko Rukuru, bavuga ko batemera uko indishyi zatanzwe n' uburyo zabazwe.

IBIBAZO BIGOMBA GUSUZUMWA MURI URU RUBANZA.

-Kumenya niba hari isano (lien de causalité) yaba iri hagati yo guterwa lidocaine 2% batch CM 4032 n'ingaruka mbi abayitewe bagize

-Gusuzuma indishyi zigomba gutangwa muri uru rubanza.

II. ISESENGURA RY'IBIBAZO.

Kumenya niba hari isano (lien de causalité) yaba iri hagati yo guterwa lidocaine 2% batch CM 4032 n'ingaruka mbi abayitewe bagize.

[5] Uhagarariye ABACUS Pharma Rwanda Ltd avuga ko Urukiko rwashingiye ku kuba hakoreshejwe *lidocaine* 2% yaba itujuje ubuziranenge, nyamara rwirengagiza ko niyo byaba ari byo koko (lidocaine 2% itujuje ubuziranenge) hagomba kugaragazwa isano (lien de causalité entre le dommage (préjudice) subi et la faute invoquée.) nk'uko rwari rwabigaragarijwe mu gihe cy'iburanisha ariko ntirubihe agaciro kandi binyuranije n'amahame y'ingenzi agenderwaho muri rusange nk'uko abahanga[1] (doctrine) babyemeza, kandi byaribukijwe urukiko mu gihe cy'iburanisha.

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[1]*https://fr.wikipedia.org/wiki/Responsabilit%C3%A9_du_fait_des_produits_de_sant%C3%A9_d%C3%A9fectueux :« afin d'engager la responsabilité du fait d'un produit défectueux, la victime doit prouver la défectuosité du produit, le dommage*

[6] Uhagarariye ABACUS Pharma Rwanda Ltd avuga ko mu isesengura ry'iyi ngingo kandi, urukiko rwirengagije nta mpamvu rugaragaje ibimenyetso byinshi byerekana ko harimo gushidikanya kunini mu kwemeza ko ibibazo abareze bagize baba barabitewe na *lidocaine 2% batch CM 4032* batewe nk' ikinya, kuko muri dosiye y'urukiko rubanza, hariho urutonde rwakozwe na ABACUS Pharma Rwanda Ltd rugaragaza aho umuti wagurishizwe mu gihugu cyose, kandi urukiko rwarabimenyeshejwe, ariko mu mwanzuro warwo ntirwabiha agaciro nk'uko rwabyanzuye ruvuga ko : ‟ …Kuba Me Viateur Mutanguha uburanira ABACUS avuga ko uwo muti wagurishijwe andi mavuliro n'ibitaro ntihagira ingaruka bitera, Urukiko rusanga nta shingiro byahabwa kuko atagaragariza urukiko aho uwo muti wakoreshejwe n'umuntu watewe uretse kubivuga gusa". Aha rero basanga habayeho kwirengagiza nkana ibimenyetso urukiko rwari rwashyikirijwe kandi hari hagamijwe kwerekana ko hagombye kubaho gushidikanya mu kwemeza ko umuti *lidocaine 2% batch CM 4032* wateye ikibazo gusa ku bantu bane bivurije mu bitaro bimwe (Hopital la Croix du Sud) ahatanzwe 100 fl mu gihe hagurishijwe mu gihugu cyose 4282 fl de 30ml.

[7] Ko nyuma y'uko ikibazo cyavugwaga muri Hopital la Croix du Sud kimenyekaniye, ABACUS Pharma Rwanda Ltd, mu rwego rwo gukumira (prévention), yasabye ko ibigo, ibitaro n'Amavuriro byose byaguze umuti *lidocaine 2% batch* 4032 biwugarura, ariko Hopital ya Gitwe niyo yonyine yagaruye 50 fl kuri 69 fl yari yatwaye kandi nta kibazo yigeze ivuga ku barwayi bari barakoreshejweho 19 fl, zindi zigaragara kuri raporo yabyo. Kandi Hopital la Croix du Sud ubwayo yaguze 100 fl za *lidocaine 2% batch CM* 4032, nyamara ikibazo kimaze kuvugwa kuri uwo muti, nayo yasabwe kugarura *flacons* zari zisigaye zitakoreshwa ariko ntiyigeze ibikora ku buryo habaho kwibaza niba izindi zose zitaba zarakoreshejwe ariko ntizigire ingaruka mbi zitera. Kubera izo mpamvu zose rero, hashingiwe ku mahame (principes juridiques : « les mêmes causes produisent les mêmes effets - Eandem causam producunt effectus », « Cum hoc ergo prompter hoc- Même cause, même effet »), habaho gushidikanya gukomeye mu kwemeza ko umuti *lidocaine 2% batch CM 4032* wateye ingaruka mbi ku barwayi bane gusa ku bantu 8564 waba warakoreshejweho.

[8] Abahagarariye Tukakira Rugigana Deus, Mutesi Scola, Bayitake Angelique na Rubagumya Clinton Innocent bavuga ko Urukiko ntirwirengagije isano iri hagati y'uwacuruje umuti n'uwo wagizeho ingaruka (causal link). Nukuvuga ko ABACUS PHARMA LTD igomba gutanga garantie ko ibicuruzwa byayo bifite ubuziranenge kandi ko uwabikoresha wese bitamugiraho ingaruka. Ubikoresha uwo ariwe wese bikamugiraho ingaruka, ABACUS PHARMA LTD igomba kwirengera izo ngaruka. Bityo basanga urukiko ntirwibeshye mu gihe rwafataga icyemezo cyo guca indishyi kuko ibisebe n'ibikomere byabarega bagize byakomotse k'umuti batewe wacurujwe na ABACUS PHARMA LTD.

[9] Abahagarariye Tukakira Rugigana Deus, Mutesi Scola, Bayitake Angelique na Rubagumya Clinton Innocent bavuga kandi ko ABACUS PHARMA LTD ubwayo yemera ko ariyo yacuruje umuti wateye ikibazo ndetse nyuma yo kumenyeshwa ko umuti yacuruje wateje ikibazo, yihutiye kuwuhamagaza ngo udakomeza gukwirakwizwa ku barwayi benshi; kandi yemera ko ariyo yacuruje

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subi ainsi que le lien de causalité entre la défectuosité du produit et la survenance du dommage. En effet, ce lien de causalité doit être certain…. La preuve du lien de causalité…admet la possibilité de recourir à des présomptions graves, précises et concordantes. Ces présomptions ne seront admises que si trois conditions sont réunies. En premier lieu, le fait doit pouvoir être matériellement une cause génératrice du dommage à l'égard des données acquises de la science. Egalement, il doit être hautement probable que le facteur ait été à l'origine du dommage. Enfin toutes les autres causes de possibles du dommage doivent avoir été exclues »

lidocaine 2% igakoreshwa kubarwayi nkikinya igatera ingaruka bagaragaje mu mafoto n'impapuro za muganga bigaragaza ko ariyo nyirabayazana kuko yacuruze umuti udafite ubuziranenge.

[10] Abahagarariye Hopital la Croix du Sud bavuga ko kuvuga ko icyemezo cy'urukiko kitagaragaza isano (lien de causalite) yaba iri hagati yo guterwa *lidocaine 2% BATCH CM 40 32* n'ingaruka mbi bagize mukwiregura kwiyi ngingo, Hopital La Croix Du Sud irasanga ABACUS itarigeze izana inzobere mu byerekeye imiti kugirango avuguruze raporo yatanzwe na *laboratoire* yo mu Rwanda ndetse niyo hanze kugirango bibaye ngombwa abazwe n'urukiko cyangwa ababuranyi. Ikindi kubyerekeye isano biragaragara ku rupapuro rwa mbere ya kopi y'urubanza mu gace kambere aho abarega bo mu rwego rwambere bose bavuga ko nyuma mu gihe gito bamaze kuvurwa bahitaga bagira ikibazo bikagaragaza isano n'umuti batewe. Ikindi n'ibimenyetso bigaragaza ko umuti wikinya utujuje ubuziranenge bikemezwa na ma raporo atandukanye: 1)Raporo ya mbere yo kuwa 15/04/2015 ya laboratoire ya Kaminuza y'u Rwanda, iyi *rapport* isoza igaragaza ko muri *physical chemico test* ku ngingo ya gatatu yitwa *Assay* umuti ufite 94.1 kandi ugomba kuba hagati 95.0% -105.0 % noneho *laboratoire* ikanzura ivuga ko umuti utujuje ibisabwa; 2) Raporo ya kabiri niya SGS ya *Laboratoire waver* yo mu Bubiligi yo kuwa 19/08/2015, iyi laboratoire ikaba yemewe na OMS (organization mondial de la santé) ibi kandi bikaba binashimangirwa na raporo y'uruganda LINCOLN PHARMACEUTICALS rwakoze uwo muti *Lidocaine injection 2%* aho bigaragara ko *BATCH CM 40 32* bagurishije ABACUS PHARMA ushobora gutera ingaruka zitifuzwa zirimo: *allergies* na *necrosis*. Ko mu gihe bigaragara ko n'uruganda rwagurishije uwo muti uvuga ko ufite ikibazo, ABACUS ikabyirengagiza ikagura uwo muti, aho harimo ikibazo nibo bagomba kubiryozwa. Ibi rero basanga ari ibimenyetso bikomeye bisobanutse kandi bihuje bikemeza ko uwo muti wari ufite ikibazo ikaba arinayo sano hagati y'ibikomere n'umuti wateye iki kibazo kubatanze ikirego kurwego rwambere, iyi raporo ikaba igaragaza ko umuti ufite 94.5% kandi wagombaga kuba hagati ya 95.0% na 105.0%, bagasoza bavuga ko umuti uri « fail »!

[11] Urukiko rwatumije mu rubanza umuhanga mu by'imiti wo muri minisiteri y'ubuzima, hitabye uwitwa Semana Edmond, hamwe n'umunyamategeko wo muri iyo ministeri; hatumijwe kandi umuyobozi wa HOPITAL LA CROIX DU SUD, nawe yitabye hamwe n'ushinzwe laboratoire muri ibyo bitaro witwa Kwizera Gad, bose bakaba baratumijwe mu rubanza kugira ngo batange amakuru ku bijyanye n'umuti wa *Lidocaine injection* 2% uburanwa muri uru rubanza.

[12] Semana Edmond yasobanuriye urukiko ko abemerewe kwinjiza imiti mu Rwanda ni depot pharmaceutique n'ibigo by'ubuzima, bakagira ibyangombwa byaho bakura imiti bigaragaza ko imiti yujuje ibisabwa kandi bakagaragaza ko ukora imiti (fournisseur) yujuje ibyangombwa byo gukora imiti; ko hari lisiti y'imiti yemewe kwinjira mu gihugu, kandi iyo umuti ugeze mu gihugu uwayizanye yemerewe kuwutanga kuri *pharamacie detaillant*, ibigo by'ubuzima, kandi iyo umuti ugeze muri *depot* z'ibyo bigo, abaganga bashobora kuwandikira abarwayi. Ikindi abo imiti ica mu ntoki bagomba gukomeza kuwubungabunga kugira ngo utazapfa, ukabikwa neza kuri *temperature* yemewe, kandi bagomba kugumana inyandiko zerekana aho umuti wavuye kugira ngo ni ugira ikibazo bamenye aho umuti wavuye. Kubijyanye na *procedure de rappel* asobanura ko iyo umuti ugize ikibazo bakawutangaho amakuru uhita uhagarikwa gutangwa hakarebwa aho wavuye, uwawutumije, bakamubaza aho yawutanze hose naho wagize ingaruka ni impamvu zaba zarabiteye.

[13] Semana Edmond akomeza avuga ko kuri *lidocaine injection* 2% Minisiteri y'ubuzima yamenyeshejwe ikibazo wateye aho byabereye, n'aho waguzwe, maze Minisiteri y'ubuzima yasuye ibitaro byabereyemo bahagarika « Batch number » yari iri mu isoko, n'umuti uhita uhagarikwa.

Akomeza avuga ko mu Rwanda hemerwa imiti ya *Pharmacopoeia 5: USP* (US Pharmacopoeia), *BP* (British Pharmacopoeia), *European Pharmacopoeia, JP* (Japanese Pharmacopoeia), *Pharmacopoeia international*. Ko iyo hagiye kuba isuzuma harebwa cya gitabo wakozwemo, ni ukuvuga niba umuti uri *BP* isuzuma ryakorwa hakurikijwe igitabo cya *British Pharmacopoeia*. Ikindi niba basanze umuti ufite ikibazo uvanwa ku isoko burundu, kandi ibyo byose bimenyekana hamaze gukorwa amasuzuma akwiye.

[14] Semana Edmond avuga kandi ko kubijyanye n'ubuziranenge bw'umuti, bivuga ko umuti wujuje ibisabwa cyangwa ukiri mu bipimo biri cyangwa bitari munsi y'uwakoze umuti cyangwa uhuje n'ibitabo ngenga mikorere, ko umuti uzajya munsi cyangwa ukarenga igitabo ngenga mikorere, ubwo umuti uba utujuje ubuziranenga cyangwa se harebwa ibara ry'umuti niba udasa nawo ubwo ntuba wujuje ubuziranenge, ikindi hari ubuziranenge bugaragarira ijisho ni ubutagaragarira ijisho bigaragara hakoreshejwe ibipimo. Ariko ko mu Rwanda nta nganda zihari zo gukora amasuzuma ko umuti wujuje ubuziranenge. Ikindi hagomba kurebwa kandi niba ibikoresho bikoreshwa mu gutanga umuti nabyo byujuje ubuziranenge.

[15] Semana Edmond yabajijwe uko bigenda mu gihe umucuruzi wahawe uruhushya na Ministeri y'ubuzima rwo gutumiza umuti azanye umuti utujuje ubuziranenge, asubiza ko ugomba kwirengera ingaruka ni bya byiciro bitandukanye umuti ucamo, ko umuntu wirengera ingaruka bwa mbere ni uwo byabereyeho, kenshi babasaba kubitwika, ubugenzuzi bukorerwa bwa mbere abantu bafite « depot pharamaceutique » bareba *certificate* na *Batch*, kuko uruganda rumwe rushobora gutanga imiti ahantu henshi ariko buri wese aba afite batch number ye, maze bareba niba ari pharmacie cyangwa bitaro bigomba kubyirengera. Semana Edmond yabajijwe icyo Minisiteri y'ubuzima ivuga ku muti *lidocaine injection* 2%, asubiza ko basuye bitaro La croix du sud gusa kuko niho honyine hagize ikibazo, naho batch yose yagiye mu gihugu nta handi havutse ikibazo. Semana Edmond yabajijwe niba nka Ministeri y'ubuzima , igihe basabye ko umuti *Lidocaine injection* 2% usuzumwa, niba basabye ko *expertise* ikorwa bakurikije ibyo ibitabo (Pharmacopoeia) bavuga, asubiza ko expertise zasabwe zagombaga gukorwa zikurikije ibitabo byakoshejwe, ko zakozwe hadakurikijwe ibitabo byakoreshejwe.

[16] Me Gumisiriza avuga ko Minisiteri y'ubuzima yigeze kwandika isaba ko habaho gusuzuma umuti *lidocaine injection* 2% wateye ikibazo, ariko bakibaza icyo Minisiteri y'ubuzima yakoze mu gihe babonye ibisubizo bidakurikije ibitabo.

[17] Me Mutanguha avuga ko Minisiteri y'ubuzima, ibisabwe na LA CROIX DU SUD, yasabye za laboratoire gukora isuzuma, ko umukozi wa LA CROIX DU SUD niwe wasabaga ko hakoreshwa igitabo cya *british Pharmacopoeia*, ko kuba batarebye igitabo cyakoreshejwe ni uburangare, naho gukemanga uburyo bwakoreshejwe n'umuhanga baba barengereye niba expertise zakozwe zikoresheje *USP* (US Pharmacopoeia) kandi umuti warakoresheje igitabo cya *BP* (British Pharmacopoeia).

[18] Me Muhozi Paulin avuga ko hari umukozi wo muri *laboratoire* wagize uruhare kuri *expertise* zakozwe n'uwitwa Kwizera Gad, bagasaba ko nawe agire icyo avuga kugira ngo bihuzwe n'ibyavuzwe n'intumwa ya ministeri y'ubuzima.

[19] Kwizera Gad, umukozi wo mu bitaro LA CROIX DU SUD, umuhanga mu by'imiti wiga *Masters Pharmaceutico*, asobanura ko aribo bakoze correspondance, Ministeri y'ubuzima yabategetse gukoresha iryo suzuma, bababaha laboratoire bemerewe gukoramo amasuzuma; bakaba baratangiye gusaba gukoresha isuzuma muri Africa : Uganda, Kenya, Afrique du sud, no muri Suisse na France, bababwira ko batari tayari yo gukora isuzuma kandi bose bari bemewe na OMS. Ko nabo ubwabo

basaba ko hakorwa izo suzuma bari basabye ko hakurikizwa *British Pharmacopoeia* kuko ariyo yanditse ku muti, muri correspondance bababwira ko methode ikoreshwa muri British Pharmacopoeia ntibibujije ko gukora isuzuma wakoresha *US Pharmacopoeia*. Ko *laboratoire* y'i Butare n'iyo mu Bubirigi babahaye inama ko bakoresha *US Pharmacopoeia*.

[20] Kwizera Gad akomeza avuga ko abantu bose baterwaga umuti byaterwaga ni uburyo bwakoreshejwe abantu batewe ku uruho (mu buryo buri superficiel) uwo muti wateye ikibazo; kandi higeze kuba undi munti wateye ikibazo waguzwe na CAMERWA, ku buryo hari n'abantu bapfuye. Ko n'ubwo umuti wakorwa ufite ubuziranenge uba ugomba gukomeza gukurikiranwa. Ko umuti *Lidocaine injection* 2% hari ibitaro baturanye bawuteye umuntu ku jisho akagira ikibazo, bagasanga birakwiye ko Minisiteri y'ubuzima yongera imbaraga muri *pharmaco vigilance*. Ikindi ko umuti wateye ikibazo hari uducupa 60 babitse mu rwego rwo gukomeza gukora ibizamini, kuko aho umuti waterwaga waratwikaga ugasanga habaye umweru, ikindi umuntu wateraga umuti uwo yayiteye akaribwa cyane agahindura *flacon* nabwo umuntu amubwira ko akomeje kubabara cyane, kandi abateraga umuti ari abantu babifitiye ubumenyi.

[21] Umuyobozi wa HOPITAL LA CROIX DU SUD, Nyirinkwaya Jean Chrysostome, asobanura ko baguze umuti mu kwezi kwa kabili, uterwa abarwayi barababara, babonnye icyo kibazo, bahise babimenyesha Minisiteri y'ubuzima kugira ngo hatavuka ikibazo mu yandi mavuriro. Bakaba baragiye i Butare gusuzumisha uwo muti, bagasanga *Lidocaine* ifite ikibazo na *Lidocaine* idafite ikibazo, kandi ko no ku maso ntaho bihuriye, maze Minisiteri y'ubuzima ibasaba kujya kubikoresha ahandi, bajya mu bubirigi, Kenya na Afrique du Sud no mu Bubiligi biza bihuye n'iby'iButare. Ikindi baguze imiti (2 lots) ariko zose ntabwo bazikoresheje, bakaba barakoresheje igice kimwe kandi ariyo yari ifite ikibazo.

[22] Me Mutanguha avuga ko La Croix du Sud ntiyagaruye ibyo bari baguze byose, kandi Safari aracyakora mu bitaro bya La croix du sud kandi atari yemerewe kuvura umugore we. Ikindi umuforomo wasuzumye Rugigana yatanze amakuru y'uko iyo yihagarikaga yaribwaga ndetse akanishima ku mutwe w'igitsina.

[23] Me Muhozi avuga ko Safari yari « chef des urgences », kandi baba bagiye kuvuga amakosa y'ubuvuzi kandi sicyo kibazo kuko ikibazo ni umuti.

[24] Dr Nyirinkwaya avuga ko ibyo Me Mutanguha avuga nta sano bifitanye n'ikibazo cy'imiti bavuga.

[25] Me Rutagengwa avuga ko uko isuzuma ya *Lidocaine* ryakozwe i Butare no mu Bubiligi, ntiyumva ukuntu abahanga bari gukoresha uburyo (formule) butaribwo, bagasanga ukuri kurahari ariko Abacus Pharma yanze kugukoraho; ikindi bandikiye uwakoze umuti, bakibaza niba yakwivuguruza akavuga ko yakoze umuti ufite ikibazo.

[26] Me Gumisiriza avuga ko nta muntu ukemanga ko SGS idafite ubushobozi bwo kumenya ko umuti udafite ikibazo, ni izindi laboratoire zazanwa bashobora kuvuga ko batazemera mu gihe ABACUS yemeranyije na LA CROIX DU SUD ko umuti bikekwa ko ufite ikibazo; ko ntabwo ABACUS yagombye kuvuga ko ibyakozwe na Laboratoire y'uwakoze umuti ko aribyo by'ukuri, kuko akora ibishoboka kugira ngo umuti uhuzwe ni ibisabwa. Ikindi kuvuga ko nta bimenyetso ko ikibazo cyaturutse ku muti, basanga ataribyo kuko umuganga yateye umuti umurwayi, uwo avuga ko ababara aho kuvuga ko atumva ububabare, bagasanga ikibazo gikomeye gikwiye kuryozwa umuti utungwa

agatoki wakomotse kuwa wucuruje, n'ububabare bwatewe ni umuti. Ikindi ari uko uwo muti ubu warengeje igihe, utagishobora gupimwa (expired) ntiwasubira muri *laboratoire*.

[27] Me Mutanguha avuga ko umuti *Lidocaine BP 2%* ABACUS PHARMA yemeza ko wujuje ubuziranenge, kuba hari ahantu bavuga ko bagize ikibazo bagitewe n'uriya muti, ntabwo babyemera, kuko abakoze isuzuma bakoze amakosa menshi kuko atubahirijwe *standards* wakoreshejwemo, nkuko babisobanuye haruguru. Ko nta bimenyetso simusiga byagaragajwe byemeza ko umuti *lidocaine BP* 2% ariwo wateye ikibazo.

[28] Me Muhozi avuga ko Abacus Pharma yagombaga kugaragaza ko inenga izo raporo kuva na mbere hose, bakaba basaba urukiko gushingira kuri izo raporo kuko Abacus ifite icyicaro cyayo mu Buhinde, bakibaza uko yaza kuvuguruza raporo zakozwe na Minisiteri y'Ubuzima.

UKO URUKIKO RUBIBONA

[29] Hakurikijwe ingingo ya 3 y'itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana. Hakurikijwe ingingo ya 9 y'itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko ibimenyetso bihamya amasezerano cyangwa ibindi bikorwa bishobora gutangwa hakoreshejwe inyandiko, ubuhamya, uburyo bwo gucukumbura, ukwiyemerera k'umuburanyi cyangwa herekanywe ibindi bintu bifatika.

[30] Hakurikijwe ingingo ya 258 y'Itegeko ryo kuwa 30 Nyakanga 1888 rishyiraho urwunge rw'amategeko mbonezamubano ibyerekeye imirimo nshinganwa cyangwa amasezerano (CCLIII) iteganya ko igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse.

[31] Hakurikijwe ingingo ya 259 y'Itegeko ryo kuwa 30 Nyakanga 1888 rishyiraho urwunge rw'amategeko mbonezamubano ibyerekeye imirimo nshinganwa cyangwa amasezerano (CCLIII) iteganya ko umuntu ntaryozwa ibyangiritse biturutse ku bikorwa bye bwite gusa, ahubwo anaryozwa ibyangiritse kubera umwete we muke cyangwa ubwitonzi bwe buke.

[32] Urukiko rurasanga usaba indishyi kubera ibyo yangirijwe agomba kugaragaza ikosa yakorewe, ibyo yangirijwe, n'isano hagati y'ikosa n'ibyo yangirijwe.

[33] Urukiko rurasanga Tukakira Rugigana Deus, Mutesi Scola, Bayitake Angelique na Rubagumya Clinton Innocent batanze ikirego basaba indishyi kubera umuti *ndlr lidocaine* 2% batewe n'ibitaro, HOPITAL LA CROIX DU SUD, bibatera uburwayi, ibikomere n'ibisebe . Rurasanga HOPITAL LA CROIX DU SUD yagaragaje ko nta kosa yakoze ivura Tukakira Rugigana Deus, Mutesi Scola, Bayitake Angelique na Rubagumya Clinton Innocent, ko ahubwo uburwayi, ibikomere n'ibisebe bagize byatewe n'umuti *ndlr lidocaine* 2% batewe, kandi uwo muti bakaba barawuguze kuri ABACUS Pharma Rwanda Ltd. Urukiko rurasanga ABACUS Pharma Rwanda Ltd nayo yemera ko umuti *ndlr lidocaine* 2% watewe Tukakira Rugigana Deus, Mutesi Scola, Bayitake Angelique na Rubagumya Clinton Innocent, ariyo yawugurishije HOPITAL LA CROIX DU SUD.

[34] Rurasanga *rapport medical* yakozwe na HOPITAL LA CROIX DU SUD kuwa 25/05/2015, ivuga ko ku itariki 22/02/2015 uwitwa Rubagumya Innocent, wavutse 1995, yagiye kwivurizayo ashaka ko akurwaho inzara zari zinjiye kwino ryo ku kaguru (*ablation d'ongle incarné du gros orteil droit*),

akaba yaratewe ikinya (*Lidocaine HCI injectable BP 2*%), ariko agira ibibazo kuri iryo no (*necrose cutanee avec oedeme du pied*) bagakeka ko byatewe n'ikinya yatewe kandi ibyo byemejwe na laboratoire zayisuzumye.

[35] Rurasanga rapport medical yakozwe na HOPITAL LA CROIX DU SUD kuwa 25/05/2015, ivuga ko ku itariki 22/02/2015 uwitwa Bayitake Angelique, wavutse 1979, yagiye kwivurizayo (*ablation de Kyste sebacé thoracique anterieur*), aterwa ikinya ariko akavurwa iminsi 2, kubera ububabare bukomeye yagize nyuma yo guterwa ikinya (*Lidocaine HCI injectable BP 2%*), ariko agira ibibazo ku gice cy'umubiri yagombaga kuvurwa (*necrose du site d'infiltration par l'infirmier et le dermatologue*) bagakeka ko byatewe n'ikinya yatewe kandi ibyo byemejwe na laboratoire zayisuzumye.

[36] Rurasanga *rapport medical* yakozwe na HOPITAL LA CROIX DU SUD kuwa 25/05/2015, ivuga ko ku itariki 21/02/2015 uwitwa Tukakira Rugigana Deus, wavutse 1983, yagiye kwivurizayo (*request for circumcision)*, aterwa ikinya (*Lidocaine HCI injectable BP 2%)* ndetse aranavurwa, asabwa gusubira ku bitaro ku itariki 24/02/2015, ariko basanga yagize ikibazo (*a dry necrosis of the prepuce*). bagakeka ko byatewe n'ikinya yatewe kandi ibyo byemejwe na *laboratoire* zayisuzumye.

[37] Rurasanga *rapport medical* yakozwe na HOPITAL LA CROIX DU SUD kuwa 25/05/2015, ivuga ko ku itariki 20/02/2015 uwitwa Mutesi Scola, wavutse 1985, yagiye kwivurizayo (*Retrait d'implat hormonal sous cutanee au bras gauche),* aterwa ikinya ariko akavurwa iminsi 2, kubera ububabare bukomeye yagize nyuma yo guterwa ikinya (*Lidocaine HCI injectable BP 2%)*, ariko agira ibibazo ku gice cy'umubiri yagombaga kuvurwa (necrose seche cutanee localisee); bagakeka ko byatewe n'ikinya yatewe kandi ibyo byemejwe na laboratoire zayisuzumye.

[38] Rurasanga raporo yakozwe kuwa 15/04/2015 na kaminuza y'u Rwanda igaragaza ko umuti *ndlr lidocaine 2%* (Batch N^{o}.CM4032 LINCOLN PHARMACEUTICAL, INDIA) utujuje ubuzirantege[2], kandi ariyo yatewe Tukakira Rugigana Deus, Mutesi Scola, Bayitake Angelique na Rubagumya Clinton Innocent.

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[2]*University of Rwanda, college of Medicine and health sciences laboratory of analysis of foods, drugs, water and toxics, reports analysis : conclusions: " parameters that been analyzed are the pH, identification and assay, bacterial endotoxins, sterility test and research of impurities, following conclusions are be made: the pH is normal, there is no presence of bacterial endotoxins, sterility is negative and results are given in annex I of this report.*
Chromatographic analysis of Lidocaine HCI injection B.P 2% (Batch N$^{o.}$CM4032 LINCOLN PHARMACEUTICAL, INDIA) both concentrated and diluted samples reveal impurities which are normally present when comparing with Lidocaine injection BP 2% samples from other manufactures. The UV spectrum has been found but we are unable to identify which molecule he is. We suggest that the client to send (submit) to other laboratories for further identification with advanced technique like IR or NMR.
Chromatographic analyses of Lidocaine HCI injection B.P 2% (Batch N^{o}. E0889, MAC'S PHARMACETICAL. Nairobi , KENYA) both concentrated and diluted samples reveal the presence of a second excipient ***Propyl Paraben*** *in the product which it presence is not labelled or indicated in the vial of Lidocaine HCI injection B.P 2%; The UV spectrum and the retention time of* ***Propyl Paraben*** *containing the sample match with those of reference standard. We recommend the client not to use it without ensuring that it can adverse effect to patients (not conform to Lidocaine HCI injection B.P 2%).*
As requested by the client, research, identification, assay and research of impurities has been done. However, these impurities have not been identified due to lack more advanced techniques of detection"

[39] Rurasanga raporo yakozwe na SGS (Life science services) kuwa 19/08/2015 nayo igaragaza ko umuti *ndlr lidocaine* 2% (*identification: N^{o}.CM4032)* utujuje ubuzirantege.[3] Kandi uwo muti ariwo watewe Tukakira Rugigana Deus, Mutesi Scola, Bayitake Angelique na Rubagumya Clinton Innocent.

[40] Urukiko rurasanga raporo zatanzwe ari ibimenyetso bigaragaza ko umuti *ndlr lidocaine* 2% (Batch N^{o}.CM4032 LINCOLN PHARMACEUTICAL, INDIA) watewe Tukakira Rugigana Deus, Mutesi Scola, Bayitake Angelique na Rubagumya Clinton Innocent utari wujuje ubuzinenge.

[41] Rurasanga "medical legal report" yakozwe na "king Faisal hospital Kigali" igaragaza ko: kuri Mutesi Schola afite ubumuga buri ku giciro cya 8%[4]; kuri Tukakira Rugigana Deus afite bumuga buri ku giciro cya 30%[5], kuri Rubagumya Clinton Innocent afite ubumuga buri ku giciro cya 3%[6].

[42] Urukiko rurasanga ABACUS Pharma kuvuga ko isuzuma ryakozwe rifite amakosa kuko ritubahirije *standards* za *pharamacopeia* zagombaga gukoreshwa mu isuzuma, nta gaciro byahabwa kuko izo raporo zasabwe na Minisiteri y'Ubuzima kandi ABACUS Pharma itigeze izinenga, igaragarize inenge yazo Minisiteri y'Ubuzima, ndetse na Minisiteri y'Ubuzima itigeze igaragaza ko ifite inenge.

[43] Hakurikijwe ingingo ya 260 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano iteganya ko umuntu ntaryozwa gusa ibyangiritse kubera ibikorwa bye bwite, ahubwo anaryozwa ibyangijwe n'ibikorwa by'abantu yishingiye cyangwa n'ibintu ashinzwe kurinda.

[44] Urukiko rurasanga ABACUS Pharma ariyo igomba kuryozwa ingaruka y'umuti *lidocaine HCI injectable BP 2%* yagurishije HOPITAL LA CROIX DU SUD, abahanga bagaragaje ko itujuje ubuziranenge, ikagirira ingaruka abarwayi bari bagiye kwivuza muri HOPITAL LA CROIX DU SUD, batanze ikirego mu rukiko rubanza. Bityo rurasanga nta kosa urukiko rubanza rwakoze mu kwemeza ko Abacus Pharma ariyo igomba kuryozwa ingaruka y'uwo muti.

Ku byerekeranye n'indishyi zasabwe

a. Gusuzuma ingano z'indishyi z'ububabare zatangwa muri uru rubanza

[45] Abahagarariye Mutesi Scola bavuga ko hashingiwe ku mafoto agaragaza ububabare yagize n'ingaruka bwamugizeho, yari yasabye miliyoni 150.000.000Frw. Ariko nawe yaratangajwe no kubona urukiko ruvuga ko ari ikirenga, kandi bakabura naho urukiko rwashingiye rutanga miliyoni 3.000.000Frw gusa. Bakaba basaba urukiko Rukuru gutanga izi ndishyi zose zasabwe uko ari 150.000.000Frw.

[46] Abahagarariye Bayitake Angelique bavuga ko hashingiwe ku mafoto agaragaza ububabare yagize n'ingaruka bwamugizeho, yari yasabye miliyoni 150.000.000Frw. Ariko nawe yaratangajwe no

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[3] *SGS, CERTIFICATE OF ANALYSIS, Product: Lidocaine Hydrochloride Injection, USP, identification: CM4032, Qty Rec'd : 7, received date : 24/7/2015. "The residue obtained responds to identification test A under Lidocaine: pass. Test: pH, Method: USP <791>, specification: 5.0 -7.0, result: 6.6, status: pass. Test: Assay, Method: USP, specification: 95 - 105.0 % LC, result: mg found 20.1mg/ml, Assay 94.5 % LC, status: **fail.***

[4] *« her inability to work is estimated at 2 months and the permanent incapacity is evaluated at 8% »*

[5] *"Erectile dysfunction due to the initial extensive penile skin necrosis, the subsenquent multiple surgeries and penile curvature. The sexual incapacity is evaluated at 80% today. The permanent physical incapacity is estimated to 30%. NB: the definitive sexual and physical incapacity will be most accurately estimated after additional corrective plastic surgery for penile curvature as suggested by the treating plastic surgeon."*

[6] *his inability to work is estimated at 45 days and the permanent incapacity is evaluated at 3%.*

kubona urukiko ruvuga ko ari ikirenga, kandi bakabura naho urukiko rwashingiye rutanga miliyoni 3.000.000Frw gusa. Bakaba basaba urukiko Rukuru gutanga izi ndishyi zose zasabwe uko ari 150.000.000Frw

[47] Abahagarariye Tukakira Rugigana Deus bavuga ko uhereye ku mafoto yonyine agaragaza ububabare bukomeye cyane urega yagize ku buryo yagombaga guhabwa indishyi zose nkuko yazisabye. Bakaba basaba urukiko Rukuru gutanga izi ndishyi zose zasabwe.

[48] Uhagarariye ABACUS PHARMA RWANDA Ltd avuga ko Urukiko rwatanze indishyi nta bimenyetso bifatika rushingiyeho ruzigena gusa rugendeye ku mafoto yatanzwe n'abareze ngo akaba ariyo agomba kugaragaza ububabare n'ibisebe bagize. Ko amafoto Urukiko rwashingiyeho ntagaragaza igihe n'ahantu ndetse n'uwayafashe ku buryo yafatwaho nk'ikimenyetso gifatika nk'uko biteganywa n'ingingo ya 122 y'itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo.

[49] Abahagarariye HOPITAL LA CROIX DU SUD bavuga ko ntagipimo cyemeza ingano y'ububabare na niyo mpamvu hafatwa icyemezo gishingiye kubimenyetso simusiga byuwareze ariko hakagenderwa kubushishozi bw'umucamanza, ikindi amafoto mashyashya ashobora kuba ari amahimbano mugihe ntabisobanuro by'umuganga biyemeza; ikindi kimenyetso gishobora gushingirwaho ni raporo ya muganga.

UKO URUKIKO RUBIBONA

[50] Hakurikijwe ingingo ya 258 y'itegeko ryo kuwa 30 Nyakanga 1888 rishyiraho urwunge rw'amategeko mbonezamubano ibyerekeye imirimo nshinganwa cyangwa amasezerano (CCLIII) iteganya ko "igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse".

[51] Hakurikijwe ingingo ya 260 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano iteganya ko umuntu ntaryozwa gusa ibyangiritse kubera ibikorwa bye bwite, ahubwo anaryozwa ibyangijwe n'ibikorwa by'abantu yishingiye cyangwa n'ibintu ashinzwe kurinda.

[52] Urukiko rurasanga raporo zagaragajwe na HOPITAL LA CROIX DU SUD zagaragaje ko abareze bagize ikibazo n'umuti batewe, ndetse na raporo zavuye muri King Faysal Hospital zigaragaza ko koko abareze mu rwego rwa mbere bagize ibibazo by'ubuzima. Ariko kubyerekeranye n'ingano y'indishyi nta mategeko ateganya uko yabarwa, zikaba zibarwa mu bushishozi bw'urukiko. Rurasanga n'abareze basaba indishyi nabo ntibagaragaje aho bashingiye basaba ko mukuyabara bahabwa ayo basabye, ndetse no mu bujurire bakaba batagaragaza icyatuma ayo bahawe mu rwego rwa mbere yahinduka cyangwa yakwiyongera. Bityo rurasanga nta kosa urukiko rwakoze mukubagenera indishyi nkuko rwazigenye.

b. Gusuzuma niba HOPITAL LA CROIX DU SUD itaryozwa indishyi zo gutererana abarega

[53] Abahagarariye Tukakira Rugigana Deus, Mutesi Scola na Bayitake Angelique bavuga ko HOPITAL LA CROIX DU SUD ikwiye kuryozwa indishyi zo kuba yaratereranye aba client bayo aribo barega kuko yagombaga kumenya uko bameze nuko bavurwa mbere yo kwita kukumenya icyabateye ikibazo. Ko Ibitaro bya CROIX DU SUD bikwiye gutanga indishyi abarega basabye zo kuba baratereranywe kuko babaye abarwayi babyo ku mpamvu z'ibitaro, ntabwo bari abarwayi bindwara

runaka, ahubwo nyuma yo guterwa umuti, bavuwe ingaruka z'umuti batewe. Ko impamvu HOPITAL LA CROIX DU SUD ikwiye gutanga izi ndishyi zo gutereranwa, n'uko abarega, na mbere y'uko Minisante imenyeshwa ikibazo cyavutse mu bitaro bya CROIX DU SUD, cyangwa kwirukanka gushakisha muri za *Labaratoires* I Butare na handi, cyangwa na mbere y'uko ABACUS PHARMA Ltd imenyeshwa ikibazo cy'umuti yacuruje, abarega bari bamaze kugira ikibazo kandi ibitaro bikizi kuburyo ibitaro byagombaga kuba birimo kubavura cyangwa kubavuza. Ariko, kuba ibitaro byaracecetse, abarega bagashwiragira ahantu hose nta mikoro bafite yo kwita ku ngaruka zako kanya batari biteguye, ibitaro ubwabyo ntibyigeze bibasobanurira icyo birimo gukora kugira ngo babone n'uko kwihangana cyangwa uwabitaho, bagasanga ibitaro bikwiye kuryozwa indishyi zo gutereranwa nk'uko zasabwe kuri buri wese (Tukakira-100.000.000Frw, Mutesi Scola-50.000.000Frw na Bayitake Angelique-50.000.000Frw).

[54] Icyo HOPITAL LA CROIX DU SUD yisobanuraho: HCS imaze kumenya ikibazo abarwayi bagize yakoze *enquete* kandi ibimenyetso byavuye muri iyo *enquete* nibyo byatumye haboneka ibimenyetso urukiko rwashingiyeho, kubera amafaranga HCS yakoresheje nkuko bigaragara ku rupapuro rwa 6 agace ka 15 ka kopi y'urubanza, ibimenyetso bitatu bagaragaza ko uwo umuti ariwo wateye abarega ikibazo ntabwo ari amakosa y'ubuvuzi

UKO URUKIKO RUBIBONA

[55] Hakurikijwe ingingo ya 258 y'itegeko ryo kuwa 30 Nyakanga 1888 rishyiraho urwunge rw'amategeko mbonezamubano ibyerekeye imirimo nshinganwa cyangwa amasezerano (CCLIII) iteganya ko "igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse".

[56] Urukiko rurasanga nta makosa y'ubuvuzi abareze bagaragaje ko HOPITAL LA CROIX DU SUD yaba yarakoze, kuko nkuko byagaragajwe haruguru, amakosa yaryojwe ABACUS Pharma Rwanda Ltd kuko byagaragaye ko ari umuti wayo wateye ikibazo abareze. Bityo rurasanga izo ndishyi zisabwa n'abareze ntaho zishingiye, Urukiko rubanza rukaba nta kosa rwakoze mu kwemeza ko izo ndishyi zitagomba gutangwa.

Ku byerekeranye n'indishyi z'ikurikirana rubanza n'igihembo cy'Avoka

[57] Uhagarariye ABACUS Pharma Rwanda Ltd avuga ko basaba indishyi z'ikurikirana rubanza za 500.000Frw n'indishyi z'igihembo cy'avoka cya 1000.000Frw; basaba kandi indishyi z'akababaro za 2.000.000Frw zo gushorwa mu manza n'indishyi zo guharabikwa mu itangazamakuru za 3.000.000Frw.

[58] Abahagarariye HOPITAL LA CROIX DU SUD bavuga ko batanze ubujurire bwuririye kubundi hashingiwe ku ngingo ya 167 CPCCSA, barasaba urukiko gutegeka Tukakira Rugigana Deus, Mutesi Scola na Bayitake Angelique kwishyura amafaranga 200.000Frw yikurikirana rubanza na 1.000.000Frw y'igihembo cy' *avocat*.

[59] Abahagarariye Tukakira Rugigana Deus, Mutesi Scola na Bayitake Angelique basaba Urukiko gutegeka abaregwa gusubiza amafaranga y'igarama ndetse n'amafaranga y'avoka ndetse n'amafaranga y'ikurikiranarubanza.

UKO URUKIKO RUBIBONA

[60] Urukiko rurasanga ABACUS Pharma Rwanda Ltd itagomba guhabwa indishyi isaba kuko ubujurire bwayo nta shingiro bufite. Rurasanga kandi indishyi HOPITAL LA CROIX DU SUD isaba Tukakira Rugigana Deus, Mutesi Scola na Bayitake Angelique itagomba kuzihabwa kuko ari uburenganzira bwabo bwo kujurira. Rurasanga na none indishyi zisabwa na Tukakira Rugigana Deus, Mutesi Scola na Bayitake Angelique zitangomba gutangwa kuko ubujurire bwabo nta shingiro zifite.

III. ICYEMEZO CY'URUKIKO

[61] Rwemeje kwakira ubujurire bwatanzwe na Tukakira Rugigana Deus, Mutesi Scola na Bayitake Angelique, rubusuzumye rusanga nta shingiro bufite.

[62] Rwemeje kwakira ubujurire bwatanzwe na ABACUS Pharma Rwanda Ltd, rubusuzumye rusanga nta shingiro bufite.

[63] Rwemeje ko urubanza RC0828/15/TGI/NYGE rwaciwe kuwa 03/06/2016 n'Urukiko Rwisumbuye rwa Nyarugenge rudahindutse.

[64] Rutegetse ko amagarama yatanzwe n'abajuriye barega ahwanye n'ibyakozwe mu rubanza.