KING FAISAL HOSPITAL RWANDA LTD v M.A N'ABANDI

[Rwanda URUKIKO RUKURU – RCA 00125/2021/HC/KIG – (Hitimana, P.J.) 02 Nzeri 2022]

Amategeko agenga imanza z'imbonezamubano – Uburyozwe – Uburyozwe buturutse ku makosa yo mu ubuvuzi (Medical liability) –. Uburyozwe bw'ibitaro – Uburyozwe bw'indishyi bushingiye ku ikosa ry'umuganga buba uburyozwe bw'ikigo akorera iyo yakoze ayo makosa ari mu kazi ke, nubwo ayo makosa adatandukanwa n'uwayakoze ariko ko aho akorera naho bafitanye isano n'aho umurwayi yakorewe amakosa.

Amategeko agenga imanza z'imbonezamubano – Uburyozwe – Uburyozwe buturutse ku makosa yo mu ubuvuzi (Medical liability) – Uburangare – Iyo ibitaro bishigingiye kuri raporo y'ibisubizo by'ibizamini bitari byo (wrong diagnosis) yakozwe n'ibindi bitaro bikabaga umurwayi bikamuvanaho igice cy'umubiri bitabanje gusuzuma bundi bushya, nyuma bagasanga ko iyo ndwara ntayo biba bikoze igikorwa cy'uburangare.

Amategeko agenga imanza z'imbonezamubano – Uburyozwe – Uburyozwe buturutse ku makosa yo mu ubuvuzi (Medical liability) – Uburangare – Gusuzuma umurwayi no kumuha ibisubizo by'ibizamini bitari byo (wrong diagnosis) – Kuba umuganga asuzuma akanatanga ibisubizo by'indwara (Pathologist) yatenze ibisubizo by'ibizamini yafashe yemeza ko umurwayi arwaye cancer kandi ntayo arwaye, ibyo bisubizo bikashingirwaho abagwa agatakaza urugingo kandi atarwaye aba akoze igikorwa cy'uburangare.

Incamake y'ikibazo: M.A yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko King Faisal Hospital imuha indishyi kubera kubura urugingo rwe rw'ibere ry'iburyo ubwo yarubagwaga biturutse kuri raporo y'isuzuma yamukoreye yemeza ko arwaye indwara ya '*cance*r'. Uko kubagwa yabikorewe n'ibitaro bya Rwanda Military Hospital ishingiye kuri iyo raporo yari imaze amezi umunani ikozwe. Muri uru rubanza Urega yasabye ko Rwanda Military Hospital na Kyonkunda, umuganga wakoze iyo raporo, barugobokeshwamo ku gahato.

King Faisal Hospital yireguye ivuga ko nta gikorwa cyo kubaga yakoze ko ahubwo izo ndishyi iryozwa zakwishyurwa na Rwanda Military Hospital na Kyonkunda. Rwanda Military Hospital yireguye ivuga ko indishyi zisabwa itaziryozwa ahubwo zaryozwa uwateje ikibazo kubera ko yashingiye kuri raporo y'umuganga wa King Faisal Hospital Rwanda Ltd wagaragaje ko Urega yararwaye "*cancer"* y'ibere kandi ko abaganga buzuzanya. Kyonkunda nawe yireguye avuga ko adakwiye kuryozwa izo ndishyi zisabwa kubera ko yakoze raporo igaragaza aho iyo ndwara igeze ko atigeze yohereza umurwayi ngo abagwe kandi ko bitari ngombwa kubagwa ko yagombaga guhabwa ubundi buvuzi, kandi ko bitagombaga gukorwa nyuma y'amezi umunani asuzumye uwo murwayi ibitaro bigiye kumubaga bitabanje gusuzuma naho ubwo burwayi bugeze.

Urukiko Rwisumbuye rwemeye kwakira ikirego cya M.A maze rutegeka King Faisal Hospital na Rwanda Military Hospital, buri imwe kumuha indishyi zitandukanye. Ibi byatumye King Faisal Hospital ijuririra Urukiko Rukuru ivuga ko igikorwa cyo gusuzuma nabi atari ikosa ryatuma umuganga cyangwa ibitaro bicibwa indishyi, ahubwo ko ishaka kugaragaza ko igikorwa cyo gupima nabi atari cyo cyateye Urega akababaro yasabiye indishyi, ahubwo ko akababaro yasabiye indishyi ari igikorwa cyo kumubaga ibere rikavaho, bityo ikaba idakwiye kuryozwa izo ndishyi.

M.A yireguye kuri izo mpamvu z'ubujurire za King Faisal Hospital Rwanda Ltd avuga ko nta shingiro zikwiye guhabwa cyane ko nta gishya ije kwungura ubutabera ahubwo icyo igamije ari ukujijisha kugirango ihunge uburyozwe cyangwa ngo itaryozwa amakosa yamukoreye bigatera kumubaga.

Rwanda Military Hospital na Kyonkunda ntabwo bitabiriye iri buranisha ariko Rwanda Military Hospital yo yatangiye kwishyura Urega indishyi yategetswe mu rubanza rwabanje. Abitabye aribo King Faisal Hospital na M.A bavuga ko kutitaba kwabo bitabuza uru rubanza kuburanishwa mu mizi kuko kutitaba kwa Rwanda Military Hospital aruko itajuriye ndetse ko yatangiye kwishyura ibyo yategetswe mu rubanza rujuririrwa naho Kyonkunda asanzwe azi urubanza akaba yarohererejwe hamagara kuri email ye.

Muri uru rubanza hasuzumwe ibibazo bitandukanye birimo ikijyanye no kumenya niba hari amakosa yaba yarakozwe na King Faisal Hospital mu gusuzuma no kwemeza ko M.A arwaye "*cancer"* ku buryo yaryozwa indishyi zo gucibwa ibere byakozwe na Rwanda Military Hospital ikaba yaryozwa indishyi iregwa. Kuri iki kibazo King Faisal Hospital itanga impamvu zitandukanye zatumye ijurira, aho ikomeza gushimangira ko igikorwa yakoze cyo gusuzuma Urega ataricyo cyatumye atanga ikirego ko ahubwo aricyo kumubaga. Isobanura

ko itigeze imuvura, ikaba itaranigeze igena uburyo bwo kumuvuramo, ndetse nta nubwo yigeze itanga inama iyo ariyo yose ku bitaro bya Rwanda Military Hospital yerekeranye n'uburyo abaganga baho bagombaga kumuvura. Ikindi ni uko Urega yasabye ko bamushakira ubundi buryo bwo kumuvura ariko batamukuyeho ibere, bakabyanga kandi ubwo buryo bwari buhari, ikaba isanga harabaye uburangare bwakozwe n'umuganga wa Rwanda Military Hospital bityo, icyo kigo cyonyine akaba aricyo kigomba gucibwa indishyi bibaye ari ngombwa.

Mu bujurire bwe, M.A asaba ko ingingo y'ubujurire ya King Faisal Hospital ivuga ko umucamanza yafashe icyemezo cyo kuyica indishyi, ashingiye ku ngingo y'Itegeko Nshinga iteganya ko umuntu wese afite uburenganzira bwo kuba ahantu hatunganye kandi hadafite ingaruka ku buzima, itahabwa agaciro kuko yifashishijwe mu rubanza rujuririrwa hibutswa icyo ivuga gusa. Asaba ko ubujurire bwayo bwateshwa agaciro kuko yarenze kucyo Itegeko rigena ubwishingizi ku mwuga w'ubuvuzi riteganya ko umuntu wese uhabwa ibikorwa by'ubuvuzi afite uburenganzira bwo kubona ibisubizo nyabyo igihe yakorewe ibizami. Akomeza asobanura ko ingingo zose z'ubujurire bwa King Faisal Hospital zitahabwa agaciro kubera ko raporo yakoze yemeza ko arwaye "*cancer*" ariyo nkomoko y'amakosa yose yatumye abagwa ibere nyuma bikaza kugaragara ko atayirwaye.

Incamake y'icyemezo: Uburyozwe bw'indishyi bushingiye ku ikosa ry'umuganga buba uburyozwe bw'ikigo akorera iyo yakoze ayo makosa ari mu kazi ke, nubwo ayo makosa adatandukanwa n'uwayakoze ariko ko aho akorera naho bafitanye isano n'aho umurwayi yakorewe amakosa. Bityo, King Faisal Hospital Rwanda Ltd igomba kwirengera ikosa ryakozwe na Prof Dr Kyonkunda Lynnette, akaba umuganga wayo ryo kwemeza uburwayi bwa "*cancer"* kandi ntabwo M.A yari arwaye nkuko byaje kugaragara nyuma yo kumubaga.

Iyo Ibitaro bishigingiye kuri raporo y'ibisubizo by'ibizamini bitari byo (wrong diagnosis) yakozwe n'ibindi bitaro bikabaga umurwayi bikamuvanaho igice cy'umubiri bitabanje gusuzuma bundi bushya, nyuma bagasanga ko iyo ndwara ntayo biba bikoze igikorwa cy'uburangare. Bityo kuba ibitaro bya Rwanda Military Hospital byabaze umuryayi bigendeye kuri raporo itavugisha ukuri ko umuntu arwaye koko bitabanje gusuzuma bundi bushya umurwayi, bikizera ibipimo bya King Faisal Hospital Rwanda Ltd byakoze igikorwa cy'uburangare.

Kuba umuganga asuzuma akanatanga ibisubizo by'indwara (Pathologist) yatenze ibisubizo by'ibizamini yafashe yemeza ko umurwayi arwaye cancer kandi ntayo arwaye, ibyo bisubizo bikashingirwaho abagwa kandi nta cancer arwaye aba akoze igikorwa cy'uburangare. Bityo kuba umuganga wa King Faisal Hospital Rwanda Ltd yasuzumwe akanatanga ibisubizo by'indwara ya M. A yemeza ko arwaye cancer kandi ntayo arwaye, n'ikikorwa cy'uburangare gikwiye kuryozwa indishyi.

Ubujurire ntashingiro bufite.

Amategeko yashingiweho:
Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 22.
Itegeko Nº 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz 'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 56.
Itegeko N° 49/2012 ryo kuwa 22/01/2013 rigena ubwishingizi ku mwuga w'ubuvuzi, ingingo ya 2, 3, 5 n'iya 13.

Nta manza zifashishijwe.

Inyandiko z'Abahanga zifashishijwe:
Jean Penneau, La Responsabilité du Medecin, 2è edition, Dalloz, 1996, ku rupapuro rwa 52.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu rukiko rwisumbuye rwa Gasabo aho ikirego cyahawe RC 00118/2019/TGI/Gsbo akaba ari M.A waregaga King Faisal Hospital Rwanda Ltd asaba kugenerwa indishyi zikomoka ku kuba yaratakaje urugingo rwe rw'ibere ry'iburyo kubera ubushishozi buke bw'abaganga ba King Faisal Hospital Rwanda Ltd, muri icyo kirego uwaregwaga yagobokesheje ku gahato Kyonkunda Lunnette na Rwanda Military Hospital avuga ko aribo baryozwa indishyi zisabwa na M.A kuko King Faisal Hospital Rwanda Ltd yo isanga nta gikorwa yakoze cyo kubaga ibere rya M.A ko uwagikoze ari Rwanda Military Hospital itarashishoje, ko yagendeye kuri raporo yari imaze amezi umunane ahubwo ko yagombaga kubanza kongera gusuzuma uwo murwayi bagiye kubaga, King Faisal Hospital Rwanda Ltd ikaba isanga nta ndishyi yaryozwa;

[2] Rwanda Military Hospital yagobokeshejwe yiregura ivuga ko yo yashingiye kuri raporo y'umuganga wa King Faisal Hospital Rwanda Ltd wagaragaje ko M.A yararwayecancer y'ibere kandi ko abaganga buzuzanya, ko iyo raporo ariyo yateje ikibazo bityo ko indishyi zisabwa itaziryozwa ahubwo zaryozwa uwateje ikibazo ariwe King Faisal Hospital Rwanda Ltd;

[3] Kyonkunda Lynnette nawe wagobokeshejwe yireguye avuga ko adakwiye kuryozwa indishyi ko ibyo yakoze ari ukugaragaza aho cancer igeze (niveau) ko atigeze yohereza umurwayi ngo abagwekandi ko bitari na ngombwa kubagwa ko yagombaga guhabwa ubundi buvuzi atari ukubagwa gusa,kandi ko bitagombaga gukorwa nyuma y'amezi umunane asuzumye uwo murwayi ibitaro bigiye kumubaga bitabanje gusuzuma naho cancer igeze, agasaba ko ataryozwa indishyi cyane ko atikoreraga ahubwo ko yakoreraga ibitaro bya King Faisal Hospital Rwanda Ltd;

[4] Urukiko rwisumbuye rwemeye kwakira ikirego cya M.A rutegeka King Faisal Hospital Rwanda Ltd guha M.A indishyi zinganga 40.000.000Frw, amafaranga 500.000Frw y'ikurikiranarubanza n'amafaranga 2.000.000Frw y'igihembo cy'Avocat, rutegeka kandi Rwanda Military Hospital guha M.A indishyi zinganga 60.000.000Frw, amafaranga 500.000Frw y'ikurikiranarubanza n'amafaranga 2.000.000Frw y'igihembo cy'Avocat,rutegeka kandi Rwanda Military Hospital gufatanya na King Faisal Hospital Rwanda Ltd kwishyura amafaranga y'amagarama y'urubanza angana 20.000Frw ;

[5] King Faisal Hospital Rwanda Ltd ntiyishimiye imikirize y'urwo rubanza, irujuririra mu rukiko rukuru, ivuga ko igikorwa cyo gusuzuma nabi atari ikosa ryatuma umuganga cyangwa ibitaro bicibwa indishyi, ahubwo ko King Faisal Hospital Rwanda Ltd ishaka kugaragaza ko igikorwa cyogupima nabi M.A ataricyo cyamuteye akababaro (dommages) yasabiye indishyi,ahubwo ko igikorwa cyamuteye ako kababaro (dommages) yasabiye indishyi ari igikorwa cyo kumubaga ibere rikavaho, bityo ko King Faisal Hospital Rwanda Ltd idakwiye kuryozwa indishyizisabwa na M.A ;

[6] M.A yireguye kuri izo mpamvu z'ubujurire za King Faisal Hospital Rwanda Ltdavuga ko nta shingiro zikwiye guhabwa cyane ko nta gishya ije kwungura ubutabera ahubwo icyo igamije ari ukujijisha kugirango King Faisal Hospital Rwanda Ltd ihunge uburyozwe (responsibility) cyangwa ngo itaryozwa amakosa yakoreye bigatera M.A kubagwa kubera uburyo umuganga wayo yemeje muri raporo ko arwaye cancer y'ibere kandi ntayo yari arwaye, ko uko kumusuzuma nabi kwakozwe n'umuganga wayo ariyo nkomoko y'amakosa ariyo mpamvu igomba kwirengera izo ngaruka zose yateje M.A ;

[7] Rwanda Military Hospital ikaba itarigeze yiregura ndetse no mu kuburana ikaba itaritabye urukikoariko igaragaza ko indishyi yategetswe mu rubanza rujuririrwa yemeye uburyo izazishyura M.A, ko nta mpamvu yo kuburana ubujurire kuko yemeye ibyavuye mu rubanza;

[8] Kyonkunda Lynnette nawe ntabwo yitabiriye iburanisha ariko yahamagajwe bikurikije amategeko;

[9] Uru rubanza rukaba rwari rwaratangijwe n'undi mucamanza ari nawe waruburanishije ariko ashyiramo isubukurwa kubera ko hari umwe mu ba avocat (Lex Chambers) wasabye ko yavanwa mu rubanza kubera ko atakirurimo, uyu akaba yari ahagarariye King Faisal Hospital Rwanda Ltd ariko ku munsi w'isubukurwa ry'urubanza hakaba harashyizweho undi mucamanza wakomereje aho ababuranyi bari bageze cyane ko ababuranyi bose babyemeranyijweho ;

[10] Uru rukiko rukaba rwibaza ibibazo bikurikira muri uru rubanza :

- Kumenya niba kutitaba kwa Rwanda Military Hospital na Kyonkunda Lynnette bituma urukiko rudafata icyemezo ku bujurire rwashyikirijwe na King Faisal Hospital Rwanda Ltd ;
- Kumenya niba hari amakosa yaba yarakozwe na King Faisal Hospital Rwanda Ltd mu gusuzuma no kwemeza ko M.A arwaye cancer kuburyo yaryozwa indishyi zo gucibwa ibere byakozwe na Rwanda Military Hospital ;
- Kumenya niba hari izindi ndishyi zagenwa muri uru rubanza n'uwaba uzikwiye uwariwe ;

ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Ku byerekeye kumenya niba kutitaba kwa RMH na Kyonkunda Lynnette bituma urukiko rudafata icyemezo ku bujurire rwashyikirijwe;

[11] Ku munsi w'iburanisha waba uwo kuwa 17/02/2022 ndetse n'uw'isubukurwa ry'urubanza wabayekuwa 28/07/2022 yaba Rwanda Military Hospital na Kyonkunda Lynnette bakaba bataritabiriye iburanisha ariko hitabye gusa King Faisal Hospital Rwanda Ltd na M.A , abitabye bagaragaza ko kutitaba kwa Rwanda Military Hospital aruko itajuriye ndetse ko yatangiye kwishyurwa ibyo yategetswe mu rubanza rujuririrwa naho Kyonkunda Lynnette nubwo atitabye ariko ko asanzwe azi urubanza kubera ko yohererejwe hamagara kuri email ye, ko kutitaba kwe kutabuza ko urubanza rwaburanishwa mu mizi;

UKO URU RUKIKO RUBIBONA.

[12] Uru rukiko rusanga rwashingira ku biteganywa n'ingingo ya 56 y'itegeko nº 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz 'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ivuga ko «Iyo mu iburanisha uregwa atitabye nta mpamvu, urega ashobora gusaba ko urubanza rwimurirwa ku yindi tariki cyangwa gusaba ko ruburanishwa uregwa adahari, hasuzumwa imyanzuro yatanze", kuba muri uru rubanza ari King Faisal Hospital Rwanda Ltd yajuriye nta bujurire bwa Rwanda Military Hospital yatanze kandi bigaragara ko mu nyandiko yo kuwa 30/12/2021 yanditswe na Rwanda Military Hospital yandikira M.A ifite impamvu igira iti: "Kwishyura amafaranga akomoka ku rubanza rufite nimero RC 00118/2019/TGI/Gsbo aho yemera kumwishyura mu byiciro amafaranga yatsindiye ahwanye na Frw", ko uru rukiko rushingiye ku ngingo imaze kuvugwa rusanga kutitaba kwa Rwanda Military Hospital nta mpamvu ko bitatuma uru rubanza rutaburanishwa kuko yagaragaje ko nta nyungu igifite zo gukomeza kuburana urubanza yatsinzwe cyane ko yo itigeze ijurira;

[13] Ku byerekeye Kyonkunda Lynnette nawe utaritabiriye iburanisha ko rusanga nawe yarasanzwe azi neza uru rubanza kuko ahujwe narwo, cyane ko nubwo aregwa akaba yarazanywe muri uru rubanza na King Faisal Hospital Rwanda Ltd ariko kandi ni hayo akorera, akaba we ubwe atarigeze ajurira muri uru rubanza kandi ko nubwo King Faisal Hospital Rwanda Ltd ariyo ijurira ntacyo igaragaza isaba Kyonkunda Lynnette byatuma agira ibyo yireguraho, kutitaba kwe nta mpamvu, bikaba bitabuza uru rukiko gusuzuma ubujurire bwa King Faisal Hospital Rwanda Ltd;

2. Ku byerekeye kumenya niba hari amakosa yaba yarakozwe na KFH mu gusuzuma no kwemeza ko M.A arwaye cancer kuburyo yaryozwa indishyi zo gucibwa ibere byakozwe na RMH ikaba yaryozwa indishyi iregwa;

[14] Mu mwanzuro wa King Faisal Hospital Rwanda Ltd iburanirwa na Me Sebucensha Leonard avuga ko ubujurire bwa mbere bushingiye ko ingingo ya 22 y'Itegeko Nshinga rya Repubulika y'u Rwanda umucamanza yashingiyeho aca urubanza rujuririrwa, ko iyo ngingo iteganya ko "Umuntu wese afite uburenganzira bwo kuba ahantu hatunganye kandi hadafite ingaruka mbi ku buzima", ariko mugika cya 79 cy'urubanza rujuririrwa, umucamanza yavuze ko iyo ngingo iteganya ko agaciro k'umuntu mu maso y'abandi kagomba kubahirizwa, ko ibi bikaba ari impamvu ikomeye umucamanza yashingiyeho kuko kuriwe iyo ngingo iteganya uburenganzira budahungubanywa na gato kubera ko buteganijwe n'itegeko risumba ayandi mugihugu, Icyo kikaba cyaragize influence nini mu myumvire y'umucamanza kubijyanye n'uburenganzira bw'umuntu bwahungabanijwe na King

Faisal Hospital Rwanda Ltd, bivuze ko niyo irindi itegeko umucamanza yashingiyeho rigena ubwishingizi ku mwuga w'ubuvuzi, ritaza kubaho, ko ari hahandi iyo ngingo y'itegeko nshinga (Constitution) yari ihagije kugirango yemeze ko King Faisal Hospital Rwanda Ltd itsinzwe akayica indishyi nkizo yayiciye, bakaba basaba ko icyemezo cye gihinduka kuko iyo ngingo iteganya ibyo umucamanza yavuze ko biteganywa nayo ari nko gushingira ku itegeko ritabaho;

[15] Me Sebucensha Leonard uburanira King Faisal Hospital Rwanda Ltd akomeza avuga ko indi mpamvu yatumye uwo aburanira ajurira aruko asaba urukiko gusuzuma niba iyo Rwanda Military Hospital itaza kubaga M.A ikanakuraho ibere ariko yarasuzumwe nabi na King Faisal Hospital Rwanda Ltd hari dommage byari gutera M.A kuburyo yajyaga gutanga ikirego akabisabira indishyi, ko kuba M.A atigeze arega ibitaro bya Rwanda Military Hospital ahubwo yatanze ikirego mu rukiko arega King Faisal Hospital Rwanda Ltd asaba ko yahabwa indishyi kubera ko King Faisal Hospital Rwanda Ltd yamusuzumye ikemeza ko arwaye indwara ya cancer bigatuma ibitaro bya Rwanda Military Hospital bimubaga bikamukuraho ibere ariko nyuma bikaza kugaragara ko atari arwaye indwara ya cancer, ko nubwo bari buze kugaragaza ko igikorwa cyo gusuzuma nabi atari ikosa ryatuma umuganga cyangwa ibitaro bicibwa indishyi, barashaka kugaragaza ko igikorwa cyo gupima nabi M.A ataricyo cyamuteye dommages yasabiye indishyi, ko igikorwa cyamuteye dommages yasabiye indishyi ar'igikorwa cyo kumubaga ibere rikavaho, ko aha rero barashaka kuvuga ko King Faisal Hospital Rwanda Ltd itagombaga gucibwa indishyi kubera ko igikorwa cyo gusuzuma yakoze ataricyo cyatumye M.A atanga ikirego kuko ubwacyo ataricyo gikorwa cy'ubuvuzi cyamukuyeho ibere, ko nkuko banireguye mu rubanza rujuririrwa, bavuze ko nubwo King Faisal Hospital Rwanda Ltd ariyo yasuzumye M.A , ariko ko itigeze imuvura, ikaba itaranigeze igena uburyo bwo kumuvuramo, ndetse nta nubwo yigeze itanga inama iyo ariyo yose kubitaro bya Rwanda Military Hospital yerekeranye n'uburyo abaganga baho bagombaga kumuvura, ko aha barashaka kugaragaza ko igikorwa cyateye dommages kuri M.A ari igikorwa cyo kumubaga bakamukuraho ibere kandi aricyo cyatumye atanga ikirego, atari igikorwa cyakozwe na King Faisal Hospital Rwanda Ltd, ko kubera iyo mpamvu, basanga King Faisal Hospital Rwanda Ltd nta ruhare yagize mukubaga no gukuraho ibere rya M.A ;

[16] Me Sebucensha Leonard uburanira King Faisal Hospital Rwanda Ltd akomeza avuga ko indi mpamvu yatumye uwo aburanira ajurira aruko mu kubaga bagakuraho ibere aribwo buryo bwonyine bwo kuvura M.A nkuko umuganga wa Rwanda Military Hospital yabiwiye M.A , ko uwareze avuga ko ikindi bireguyeho mu rubanza rujuririrwa kitigeze cyitabwaho, ko bavuze ko M.A yasabye abaganga ba Rwanda Military Hospital ko mbere yuko bamubaga, bakongera bakamupimisha bigaragara ko nawe yakekaga ko ashobora kuba atarwaye indwara ya Cancer cyane cyane ko hari hashize igihe cy'amezi umunani asuzumwe na King Faisal Hospital Rwanda Ltd, bigaragara ko nawe yabonaga ko uburwayi butarimo kwiyongera bikaba ariyo mpamvu yifuzaga ko yakongera agapimwa ariko umuganga w'ibitaro bya Rwanda Military Hospital yarabimwangiye, bikaba byaramubujije amahirwe yajyaga gutuma hamenyekana neza ko nta ndwara ya Cancer, ko ibi mwabisanga kuri Paragraph ya 35 y'urubanza rujuririrwa hamwe no muri raporo y'abahanga kuri rupapuro rwa 2 ahari ibibazo n'ibisubizo biri kuri nomero 7-10 y'iyo raporo, ko aha King Faisal Hospital Rwanda Ltd isanga byari uburangare (professional negligence) bw'abaganga ba Rwanda Military Hospital;

[17] Me Sebucensha Leonard uburanira King Faisal Hospital Rwanda Ltd akomeza avuga ko mu rubanza rujuririrwa King Faisal Hospital Rwanda Ltd yireguye ivuga ko nubwo yasuzumye ko M.A arwaye indwara ya cancer ariko mubyukuri atayirwaye, nabwo basanga uburyo bwo kuvura cancer yari ku kigero cy'iyo basuzumye M.A , iyo Rwanda Military Hospital iza gushishoza, kandi igaha agaciro icyifuzo cya M.A cyo gushaka ubundi buryo bwo kumuvura bitari kumubaga bakamukuraho ibere, bajyaga kumuhandura ikibyimba cyari mu ibere cyari cyasuzumwe ko aricyo cancer, batagombye kumubaga ngo bamukureho ibere, ko uburyo butandukanye bwo kuvura indwara ya cancer bitewe n'ikigero igezeho, mwabisanga mubika bya 18-32 bya copy y'urubanza rujururirwa, ko muri ubwo buryo bundi bwo kuvura indwara ya Cancer iri kuri niveau ya 2 aribwo basuzumye M.A , kumubaga ntibyari birimo, ko kubera ko M.A yasabye ko bamushakira ubundi buryo bwo kumuvura ariko batamukuyeho ibere bakabyanga kandi ubwo buryo bwari buhari, basanga harabaye uburangare bwakozwe n'umuganga wa Rwanda Military Hospital bityo icyo kigo cyonyine akaba aricyo kigomba gucibwa indishyi bibaye ari ngombwa;

[18] Me Sebucensha Leonard uburanira King Faisal Hospital Rwanda Ltd akomeza avuga ko umucamanza yavuze ko ataha agaciro ibyemezo by'Inkiko zo mu bindi bihugu, ariko King Faisal Hospital Rwanda Ltd ntabwo

yabitanze mu rwego rwo kugirango bisimbure amategeko y'u Rwanda ahubwo yazitanze mu rwego rwo gusesengura uburyo amakosa yo mu rwego rw'ubuvuzi akorwa, akaba barashakaga ko izo manza zitanga umucyo ko amakosa yo mu rwego rw'ubuvuzi ari amakosa aturuka kuburangare (negligeance) bitandukanye no kuba amakosa yaturuka ku gikorwa ubwacyo (les faits);

[19] Mu kwiregura kwa M.A uburanirwa na Me Rutayisire Ildephonse avuga ko ikibazo cya mbere cyerekeye ingingo ya 22 y'itegeko nshinga, ko iyi ngingo basanga idakwiye kuba ingingo y'ubujurire kuko nta gishya ije kwungura ubutabera ahubwo icyo igamije ni ukujijisha kugirango King Faisal Hospital Rwanda Ltd ihunge uburyozwe (responsibility) cyangwa ngo itaryozwa amakosa yakoreye M.A , barasaba urukiko ko rwatesha agaciro icyo kibazo (issue) kubera impamvu zikurikira: mu rubanza rujurirwa nta hantu na hamwe handitse ko igika cya 79 aricyo cyonyine urukiko rwashingiyeho rufata icyemezo ndetse muri icyo gika ntabwo ariho handitse ati urukiko rwemeje cyangwa rutegetse, aha baributsa ko ibyanditse muri ibyo bika kuva kuri 72 kugeza 93 by'urubanza rujuririrwa, urukiko rwakoraga ubusesenguzi mu kureba uruhare rw'ibitaro bya Kanombe (Rwanda Military Hospital) kuko ibya King Faisal Hospital Rwanda Ltd byari byarangiye ndetse urukiko rwabifasheho umwanzuro mu bika byabanjirije 72, aho akaba ariho rukiko rwasuzumaga ikibazo kigira kiti: (Kumenya niba Rwanda Military Hospital itaragombaga gukorera ikizami M.A cyo kumenya ko arwaye cancer mbere yo kumubaga ibere nk'umuntu wari umaze amezi umunani akorewe icyo kizami, n'uruhare rwayo ku buryozwe bw'indishyi zisabwa n'urega) byumvikane neza ko ikibazo cyasuzumwaga ari icy'ibitaro bya Kanombe Rwanda Military Hospital aho kuba ikibazo cya King Faisal Hospital Rwanda Ltd, bakaba batumva impamvu ijurira yitwaje ingingo itayireba ndetse idafite icyo itegeka King Faisal Hospital Rwanda Ltd, aha barongeraho ko iyo ngingo ya 22 y'itegeko nshinga nta hantu na hamwe mu rubanza rujuririrwa handitse ko umucamanza ariyo yashingiyeho afata icyemezo, bibukije icyo ivuga ikaba iragira iti: (umuntu wese afite uburenganzira bwo kuba ahantu hatunganye kandi hadafite ingaruka kubuzima), ko ubwabyo bahereye kuri iyo ngingo basanga M.A ubuzima bwe bwarahungabanyijwe na King Faisal Hospital Rwanda Ltd igihe imuvura, imusuzuma ndetse ikemeza ko arwaye cancer ntayo arwaye bituma abagwa ibere rivaho burundu, iki gikorwa King Faisal Hospital Rwanda Ltd yakoze kinyuranye n'ingingo ya 22 y'iryo tegeko nshinga kuko cyahungabanyije ubuzima bwa M.A , ibi babihuza n'ingingo ya 2 al 2 y'itegeko N° 49/2012 ryo kuwa 22/01/2013 rigena ubwishingizi ku mwuga w'ubuvuzi, aho igira iti: "igikorwa cy'ubuvuzi: igikorwa cy'umuvuzi wabigize umwuga mu rwego rwo kuvura, gusuzuma, kwirinda indwara, guteza imbere ubuzima bw'umurwayi cyangwa ubw'umuntu wese uhabwa serivisi z'ubuvuzi" , ko bahereye kuri iyo ngingo basanga King Faisal idahakana ko bavuye ndetse basuzumye M.A , rero iyo ngingo iremeza ko gusuzuma bigize igikorwa cy'ubuvuzi ari nabyo King Faisal Hospital Rwanda Ltd yakoze gusa yemeza ko arwaye canser kandi ntayo arwaye, ibi n'urukiko rwisumbuye rwabisezenguye ndetse rugenda rubihuza n'amategeko aho kuva mu gika cya 61, 62, 63, 64 na 65 cy'urubanza rujuririrwa, ibi byongera guhuzwa n'ingingo ya 5 al 4 y'itegeko N° 49/2012 ryo kuwa 22/01/2013 rigena ubwishingizi ku mwuga w'ubuvuzi ivuga k'uburenganzira n'umutekano w'umurwayi, ko umurwayi cyangwa umuntu wese uhabwa ibikorwa by'ubuvuzi afite uburenganzira bwo kubona ibisubizo nyabyo igihe yakorewe ibizami, ko bahereye kuri iyo ngingo basanga King Faisal Hospital Rwanda Ltd yararenze kuri iyo ngingo mu guha results M.A zidahuje n'ukuri kuko bamubwiye ko arwaye kandi nta canser arwaye, ibi byongera guhuzwa n'ingingo ya 13 y'Itegeko ryavuzwe haruguru, bahereye kuri ibyo bisobanuro, barasaba urukiko ko rwatesha agaciro ubujurire bwa King Faisal Hospital Rwanda Ltd;

[20] M.A uburanirwa na Me Rutayisire Ildephonse akomeza avuga ko impamvu ya kabiri y'ubujurire bwa King Faisal Hospital Rwanda Ltd ivuga ko isaba urukiko gusuzuma niba iyoRwanda Military Hospital itaza kubaga M.A ikanakuraho ibere ariko yarasuzumwe nabi na King Faisal Hospital Rwanda Ltd hari dommage byari gutera M.A kuburyo yajyaga gutanga ikirego akabisabira indishyi, ko M.A asaba urukiko kudaha ishingiro iyi mpamvu y'ubujurire kuko mu rubanza rujuririrwa ntaho urukiko rwigeze ruyisuzuma cyangwa nta n'icyemezo cyafashwe kuri icyo kibazo (issue) dore ko mu rubanza rujuririrwa nta hantu igaragara na hamwe, King Faisal igikorwa yakoze cyo gusuzuma n'ikimwe mubivugwa mu ingingo ya 2 al 2 y'itegeko N° 49/2012 ryo kuwa 22/01/2013 rigena ubwishingizi ku mwuga w'ubuvuzi, aho gira iti: "*igikorwa cy'ubuvuzi: igikorwa cy'umuvuzi wabigize umwuga mu rwego rwo kuvura, gusuzuma, kwirinda indwara, guteza imbere ubuzima bw'umurwayi cyangwa ubw' umuntu wese uhabwa serivisi z'ubuvuzi"*, bashingiye kuri iyo ngingobasanga King Faisal Hospital Rwanda Ltd ariyo nkomoko y'amakosa kuko yasuzumye nabi, akabaariyo mpamvu igomba kwirengera izo ngaruka zose yateje, naho kuvuga ngo iyo idasuzuma M.A byumvikane ko nta gikorwa cy'ubuvuzi yari kuba yamukoreye arikomugihe yamusuzumye ndetse ikamusuzuma nabi igomba kubiryozwa;

[21] M.A uburanirwa na Me Rutayisire Ildephonse akomeza avuga ko kubijyanye no kuba Rwanda Military Hospital ariyo yabaze iryo bere ndetse itabanje kwongera gusuzuma ariyo mpamvu nayo yakoze amakosa igomba kwirengera ku giti cyayo, kuko ibyo bitaro byose byakozeamakosa, barasaba ko iyo mpamvu yateshwa agaciro kuko iyo King Faisal Hospital Rwanda Ltd itemeza ko arwaye kanseri ntabwo aba yarabazwe ndetse kuba King Faisal Hospital Rwanda Ltd yarahaye M.A ibisubizo by'isuzuma (results) bidahuje n'ukuri, ko binyuranye n'ingingo ya ngingo ya 5 al 4 y'itegeko N° 49/2012 ryo kuwa 22/01/2013 rigena ubwishingizi ku mwuga w'ubuvuzi, ivuga k'uburenganzira n'umutekano w'umurwayi ko umurwayi cyangwa umuntu wese uhabwa ibikorwa by'ubuvuzi ko afite uburenganzira bwo kubona ibisubizo nyabyo igihe yakorewe ibizamini, ko basanga King Faisal Hospital Rwanda Ltd yararenze kuri iyo ngingomu guha results M.A zidahuje nukuri kuko bamubwiye ko arwaye kandi nta kanseri arwaye, ibi byongera guhuzwa n'ingingo ya 13 yitegeko ryavuzwe haruguru, bahere kuri ibyo bisobanuro barasaba urukiko ko rwatesha agaciro ubujurire bwa King Faisal Hospital RwandaLtd;

[22] Me Rutayisire Ildephonse uburanira M.A akomeza yiregura avuga ko ku byerekeye ibivugwa na King Faisal Hospital Rwanda Ltd ko uruhare rwa Rwanda Military Hospitalrwo kuba yaranze kongera gusuzuma M.A kandi yarabibasabye mbere yuko bamubaga kandi hari hashize igihe asuzumwe na King Faisal Hospital Rwanda Ltd, ko iyo ngingoyateshwa agaciro kuko mu rubanza rujuririrwa, urukiko rwasuzumye uruhare rwa Rwanda MilitaryHospotal, ndetse urukiko rusanga ibyo bitaro byarakoze amakosa, ndetse urukiko rwisumbuye rukaba rwarabisobanuye mu gika cya 85 aho rwagize ruti: "*Kuba kandi uburanira Rwanda MilitaryHospital ashingira kuri izi mvugo z'umuganga zisobanuwe haruguru, byumvikane ko Rwanda Military Hospital yabaze urega nta cancer arwaye, kuko n'imvugo ze zivuguruzanya, hamwe avugako abaganga babaze urega nta kindi kizami bagombaga gukora ngo ko bangendeye ku cya King Faisal Hospital Rwanda Ltd cyemezaga ko urega arwaye cancer, kandi cyari kimaze amezi umunani gikozwe, ubundi agashingira ku mvugo z'umuganga wavuze ko iyo urega aba amaze amezi umunani arwaye cancer aba yarapfuye, ikindi kandi n'aho uburanira Rwanda Military Hospital avuga ko icyo bagaragaje ari uko M.A arwaye asima, ibi nabyo ntabwobyaba intandaro yo kumubaga ibere bakarikuraho nta cancer yarimo, akaba ariho urukiko ruherarugaragaza ko Me GUMISIRIZA Hilary uburanira Rwanda Military Hospital ibyo avuga nta shingiro bifite)*, ko mu gika cya 89 cy'urubanza rujuririrwa, urukiko rwagize ruti: (*Urukiko rusangaRwanda Military Hospital ariyo yabaze ibere rya M.A nta cancer arwaye nkukobisobanuwe haruguru kandi nayo ikaba itabihakana, ikaba yarateje urega ibyago byo kubura ibere rye, n'aho ryavuye babaga bituma ahorana ibibazo mu buzima bwe nkuko byasobanuwe na Me RUTAYISIRE Ildephonse, abagobokeshejwe bakaba batarigeze babivuguruza, bikaba ari ingaruka zituruka ku buvuzi no kutubahiriza uburengazira bw'umurwayi aho urega yabanje gusaba abaganga ba Rwanda Military Hospital kumukorera ubundi buvuzi atari ukumubaga ibere bakabyirengagiza, akaba riyo mpamvu na Rwanda Military Hospital nayo igomba kuryozwa indishyi)*, ko bahereye kuri ibyo bisobanuro basanga ibitaro bya Kanombe (Rwanda Military Hospital) byarakoze amakosa ndetse urukiko rutegeka ko bagomba kubiryozwa, rero ntabwo bumva impamvu King Faisal Hospital Rwanda Ltd ibigize impamvu z'ubujirire, basanga King Faisal Hospital Rwanda Ltd yakajuririye ibiyireba kubyo urukiko rwafasheho umwanzuro, aha nihobahera bibutsa ko iyo King Faisal Hospital Rwanda Ltd itaza gusuzuma nabi M.A , izi ngaruka zose yagize ntazo yari kugira ndetse akaba ariho uburyozwe bwabobukomoka, akaba ariyo mpamvu basaba urukiko gutesha agaciro ubujurire bwa King FaisalHospital Rwanda Ltd.

[23] Me Rutayisire Ildephonse uburanira M.A akomeza yiregura avuga ko ku bivugwa na King Faisal Hospital Rwanda Ltd isaba urukiko gusuzuma niba kubaga bagakuraho ibere aribwo buryo bwonyine bwo kuvura M.A nkuko umuganga wa Rwanda Military Hospital yabibwiye M.A , ko uregwa asaba urukiko ko rwatesha agaciroiyo mpamvu y'ubujurire kuko ari King Faisal Hospital Rwanda Ltd cyangwa Rwanda Military Hospital, nta buryo na bumwe bari gukoresha bavura M.A kanseri kuko ntayo yari arwaye, kuba King Faisal Hospital Rwanda Ltd ikomeza kugarura icyo kibazo (point), basangaari ugushinyagurira M.A ndetse no kujijisha ubutabera bagamije gukwepa uburyozwe bw'amakosa bakoze mu gusuzuma ndetse banemeza ko M.A arwaye kanseri kandi ntayo yari arwaye, ko binyuranye n'ingingo ya 5 al 4 y' itegeko N° 49/2012 ryo kuwa 22/01/2013 rigena ubwishingizi ku mwuga w'ubuvuzi ivuga k'uburenganzira n'umutekano w'umurwayi ko umurwayi cyangwa umuntu wese uhabwa ibikorwa by'ubuvuzi ko afite uburenganzira bwo kubona ibisubizo nyabyo igihe yakorewe ibizamini, ko basanga King Faisal Hospital Rwanda Ltd yararenze kuri iyo ngingo mu guha ibisubizo (results) M.A zidahuje n'ukuri kuko bamubwiye ko arwaye kandi nta kanseri arwaye, ibi byongera guhuzwa

n'ingingo ya 13 y'Itegeko ryavuzwe haruguru, bahereye kuri ibyo bisobanuro barasaba urukiko korwatesha agaciro ubujurire bwa King Faisal Hospital;

[24] Me Rutayisire Ildephonse uburanira M.A akomeza yiregura avuga ko ku byerekeye ibyemezo by'inkiko zo mu mahanga King Faisal Hospital Rwanda Ltd ivuga ko urukikorwisumbuye rwanze gushingiraho ariko M.A we asanga iryo sesengura cyangwaibyemezo byo mu mahanga byatanzwe na King Faisal Hospital Rwanda Ltd, binyuranye n'amategeko yo mu Rwanda ndetse n'amahame remezo, rero kuba ari inyandiko zandikiwe muri UK cyangwa muri Inde ntabwo bihita bibiha ububashwa bwo gusimbura amategeko yo mugihugucyacu, doreko izo nyandiko ubwazo zinyuranye n'amategeko yo mu Rwanda ndetse zikanyuranyan'amategeko igihugu cyacu kigenderaho, ko usibye n'amategeko yanditse bakomeje kwerekana kourukiko rwusumbuye rwanashingiye kuri Jurispridence y'urukiko rw'Ikirenga (supreme court), ahoku gika cya 71 hagira hati: *"Rusanga ibitaro bya King Faisal Hospital Rwanda Ltd bigomba kwirengera amakosa y'umukozi wabyo Prof. Kyonkunda Lynnette Sinior Consultant yagaragaje koresults y'ikizamini cya BIOPSY: 715/17 cyasohotse yemeza ko M.A arwaye cancer y'ibere ry'iburyo kandi ntayo arwaye nkuko na Jurisprudence y'urubanza N° RCAA00019.2017.SC isobanuwe haruguru",* ibitaro bya King Faisal Hospital Rwanda Ltd aribyo byatanze indishyi zikomoka ku ikosa n'abozi babyo, bityo ntibikwiye ko urukiko rushingira ku nyandiko zo hanze y'igihugu zo kuri internet zitwa ibyemezo, binyuranye n'amategeko n'amahameremezo y'igihugu cyacu, ku gika cya 69 cy'urubanza rujurirwa, urukiko rwongeye kubisobanura neza aho rwagize ruti: (*Urukiko rushingiye kuri Jurisprudence y'urubanza RCAA00019.2017.SC rwatanzweho ikimenyetso n'urega, aho urukiko rw' Ikirenga rwategetse ko icyemezo cy'urukiko Rukuru kidahindutse ku ndishyi zari zategetswe n'urukiko Rwisumbuye aho haregerwaga indishyi zikomoka ku ikosa ry'uburangare bw'abaganga b'ibitaro bya King Faisal Hospital Rwanda Ltd, muri uru rubanza bagaragaza ko n'uburenganzira bw'umurwayi butubahirijwe bituma agira ingaruka zituruka ku buvuzi, ibitaro bya King Faisal Hospital Rwanda Ltd bikaba aribyo byategetswe gutanga indishyi)*, ko bashingiye kuri ibyo bisobanuro basanga King Faisal Hospital Rwanda Ltd ariyo nkomoko yamakosa yose yatumye M.A abagwa ibere, barasaba ko iyo mpamvu yateshwa agaciro;

UKO URU RUKIKO RUBIBONA.

[25] Urukiko rusanga muri uru rubanza ari King Faisal Hospital Rwanda Ltd ijurira igaragaza ko nubwo umukozi wayo Dr Kyonkunda Lynnette yaba yarasuzumye nabi M.A akemeza ko arwaye cancer nyamara ntayo arwaye kuko nyuma yo kubagwa na Rwanda Military Hospital hagaragaye ko ubwo burwayi ntabwo yari afite, ikaba isanga Rwanda Military Hospital itaragombaga kumubaga itabanje kongera kumusuzuma bushya kuko ibizamini by'ubwo burwayi bwagaragajwe na King Faisal Hospital Rwanda Ltd byari bimaze amezi umunane, ikindi ikaba isanga nta gikorwa yakoze cy'ubuvuzi ndetse ko ntanicyo yategetse ku burwayi bwa M.A , igasaba ko itaryozwa indishyi cyane ko isanga atari ibikorwa byayo byatumye M.A aregera indishyi;

[26] Uru rukiko rusanga mu rubanza rujuririrwa RC 00118/2019/TGI/GSBO King Faisal Hospital Rwanda Ltd yategetswe kwishyura M.A indishyi kuko urukiko rwisumbuye rwasobanuye ko hari amakosa yakozwe n'umukozi w'ibyo bitaro ariwe Prof. Kyonkunda Lynnette Sinior Consultant yagaragaje ko ibisubizo (results) by'ikizamini cya BIOPSY: 715/17 cyasohotse yemeza ko M.A arwaye cancer y'ibere ry'iburyo kandi ntayo arwaye, ibyo bisubizo bikaba byaratumye abagwa ibere rikavanwaho, ariko uru rukiko rusanga mu ica ry'urwo rubanza nubwo King Faisal Hospital Rwanda Ltd yaryojwe indishyi zikomoka ku makosa y'umukozi wayo ariko na Rwanda Military Hospital nayo yaryojwe izindi ndishyi zo kuba harabayeho uburangare bw'abaganga bayo bwo kubaga M.A batabanje kongera gusuzuma niba koko arwaye cancer ahubwo bakagendera ku bisubizo by'ibizamini bya King Faisal Hospital Rwanda Ltd bakababaga ibere aribyo bashingiyeho gusa, Rwanda Military Hospital yo ikaba yaremeye ubwo buryozwe, ikaba itarigeze ibijuririra ndetse ikaba yaratangiye no kwishyura ibyo yategetswe mu rubanza rujuririrwa;

[27] Kuba King Faisal Hospital Rwanda Ltd ijurira ivuga ko ingingo ya mbere y'ubujurire bwayo ishingiye ko urukiko rwisumbuye rwashingiye ku ngingo ya 22 y'itegeko nshinga rya repubulika y'u Rwanda ariko idahuye n'ikibazo rwaregewe kandi ko umucamanza yayisobanuye uko idateye,ariko uru rukiko rusuzumye ibyerekeye iyo ngingo rusanga umucamanza yarayivuze mu gika cya 79 ndetse n'icya 88 cy'urubanza rujuririrwa, ariko uru rukiko rusanga muri ibyo bika hatarasuzumwaga ibyerekeye uburyozwe bw'indishyi zategetswe King Faisal Hospital Rwanda Ltdahubwo muri ibyo bika umucamanza yasuzumaga ikibazo gihera

ku gika cya 73 aho umucamanza yasuzumaga ikibazo yibajije ati "*Kumenya niba Rwanda Military Hospital itaragombaga gukoreraikizami M.A cyo kumenya ko arwaye cancer mbere yo kumubaga ibere nk'umuntu wari umaze amezi umunani akorewe icyo kizami , n'uruhare rwayo ku buryozwe bw'indishyi zisabwa n'urega"*, rukaba rusanga uburyozwe bwa King Faisal Hospital Rwanda Ltd bwari bwarangije gusuzumwa mu bika byabangirije iryo suzuma ry'uruhare rwa Rwanda MilitaryHospital;

[28] Uru rukiko rusanga kandi niyo umucamanza ashingira kuri iyo ngingo ya 22 y'itegeko nshinga ku kirego King Faisal Hospital Rwanda Ltd yarezwe icyerekeye indishyi zikomoka ku kwibeshya kw'abaganga bayo bigatuma M.A acibwa ibere ku mpamvu z'uburwayi King Faisal Hospital Rwanda Ltd yagaragaje kandi ntabwo arwaye, ko gusuzuma iyo ngingo ataricyo cyatsinze King Faisal Hospital Rwanda Ltd ahubwo yatsinzwe nuko nayo ubwayo yemera ko umukozi wayo yakoze amakosa, nubwo itemera uburyozwe ariko kandi ikosa ry'umukozi wayo ryanagaragajwe na raporo y'itsinda ry'abaganga bashyizweho basuzuma icyo kibazo cya M.A wabazwe ibere ataragombaga kuribaga, iyi mpamvu yo kuvuga ko urukiko rwashingiye ku ngingo ya 22 y'itegeko nshinga rutaragombaga kuyishingiraho ikaba nta shingiro yahabwa kuko itashingiweho haryozwa indishyi King Faisal Hospital Rwanda Ltd ariko kandi niyo umucamanza atirirwa ayishingiraho ko bitari kuvanaho uburyozwe bw'indishyi za King Faisal Hospital Rwanda Ltd yahamijwe mu bika bibanziriza ahavugwa iyo ngingo;

[29] Ku mpamvu y'ubujurire ya kabiri ivugwa na King Faisal Hospital Rwanda Ltd aho ivuga ko idakwiye kuryozwa indishyi zikomoka ko M.A yabazwe ibere ko iyo Rwanda Military Hospital itaza kumubaga ngo inamukureho ibere ariko yarasuzumwe nabi na King Faisal Hospital Rwanda Ltd niba hari dommages byari gutera M.A kuburyo yajyaga gutanga ikiregoakabisabira indishyi, ariko uru rukiko rusanga nkuko na King Faisal Hospital Rwanda Ltd yemerako hari ikosa ryakozwe n'umukozi wayo Prof Dr Kyonkunda Lynnette cyo kuba yaratanze ibisubizo by'isuzuma bitaribyo byemezaga ko M.A arwaye cancer y'ibere ry'iburyo kandi icyo gikorwa cyayo cyo gusuzuma nabi umurwayi akaba ariyo ntandaro yo kubagwa kwa M.A kuko iyo King Faisal Hospital Rwanda Ltd idasuzuma nabi umurwayi ko atari kwirirwa ajya mu bitaro bya Kanombe (Rwanda Military Hospital) dore ko nyuma y'ibizaminiby'uyu muganga Prof. Dr Kyonkunda Lynnette ko umurwayi atari guterera iyo ahubwo ko yari gushaka uburyo yivuza ubwo burwayi muganga yamubwiye;

[30] Ku byerekeye uburyozwe buvugwa na King Faisal Hospital Rwanda Ltd ko atariyo yagombaga kuryozwa indishyi kuko nta buvuzi yigeze ikora ndetse ko atari nayo yabaze M.A , ariko nkuko n'urukiko rwisumbuye rwabyemeje ibikorwa bya King Faisal Hospital Rwanda Ltd ariyo ntandaro y'ibagwa rya M.A kwakoze na Rwanda Military Hospital ishingiye kuri raporo y'ibizamini byakozwe na King Faisal Hospital Rwanda Ltd, uru rukiko rusanga hari ibikorwa by'ubuvuzi King Faisal Hospital Rwanda Ltd yakoze kuko gusuzuma umurwayi no kumuha ibisubizo by'ibizamini ari kimwe mu bikorwa by'ubuvuzi nkuko ingingo yashingiweho ya 2 agace ka 2º y'itegeko N° 49/2012 ryo kuwa 22/01/2013 rigena ubwishingizi kumwuga w'ubuvuzi, aho ivuga ko *"Muri iri tegeko, amagambo akurikira asobanurwa mu buryo bukurikira: .... 2° igikorwa cy'ubuvuzi: igikorwa cy'umuvuzi wabigize umwuga mu rwego rwo kuvura, gusuzuma, kwirinda indwara, guteza imbere ubuzima bw'umurwayi cyangwa ubw'umuntuwese uhabwa serivisi z'ubuvuzi",* bityo ibivugwa na King Faisal Hospital Rwanda Ltd ko nta gikorwa cy'ubuvuzi yaba yarakoze kuri M.A bikaba nta shingiro byahabwa cyane ko yemera ko hari isuzuma yamukoreye ndetse ikamuba n'ibisubizo by'ibizamini byaje kugaragara nyuma ko indwara ya cancer King Faisal Hospital Rwanda Ltd yemeje ntayo arwaye;

[31] Kugira ngo iryo kosa ryakozwe n'umuganga wa King Faisal Hospital Rwanda Ltd rifatwe nk'ikosa riryozwa indishyi, ingingo ya 2 agace ka 3º y'itegeko N° 49/2012 ryo kuwa 22/01/2013 rigena ubwishingizi ku mwuga w'ubuvuzi, kavuga ko "*Muri iri tegeko, amagambo akurikira asobanurwamu buryo bukurikira: ....3° ikosa ritaryoza indishyi: ingaruka yabaye ku murwayi cyangwa umuntuwese wahawe ibikorwa by'ubuvuzi nta ruhare na rumwe rugaragara rw'umukozi wo mu buvuzi wabigize umwuga cyangwa urw'ikigo gitangirwamo ibikorwa by'ubuvuzi"* muri uru rubanzarusanga hari uruhare rw'ikosa ryakozwe na Prof Dr Kyonkunda Lynnette akaba umuganga wa KingFaisal Hospital Rwanda Ltd, igikorwa yakoze rero iyi ngingo igaragaza ko gikwiye kuryozwa indishyi kuko hari uruhare rw'umuganga wakoze amakosa hashingiwe ku byemejwe n'itsinda ry'abaganga bashyizweho na Minisante bisabwe n'urukiko rwisumbuye rwaburanishaga urubanzarujuririrwa, aho muri raporo yo kuwa 25/08/2020 abaganga Dr Emile Karinganire (Pathologist), Dr Achille Manirakiza (Oncologist) na Dr Japhet Ntezamizero (Surgeon) bemeje ko hari ikosa ryakozwe n'umuganga wa King Faisal

Hospital Rwanda Ltd asuzuma akanatanga ibisubizoby'indwara ya M.A yemeza ko arwaye cancer kandi ntayo arwaye, muri iyoraporo babivuze basoza bemeza n'ibyakozwe muri aya magambo: "*Our findings are that U/S Coreneedle biopsy done at KING FAYSAL was wrongly interpreted as malignant (cancerous) breast lesion while it was not. Conclusions and recommendations : The wrong diagnosis made byPathologist at King Faisal Hospital Rwanda Ltd has led to the wrong surgical treatment approachand unnecessary additional investigations";*

[32] Umwanditsi "Jean Penneau" w'igitabo yise "La Responsabilité du Medecin" 2è edition, Dalloz, 1996, ku rupapuro rwa 27, avuga ko ukora umwuga wo kuvura iyo akora akazi ke ahujwe n'uwo avura hashingiwe ku masezerano yo kumuha ubuvuzi nyabwo bushingiye ku bumenyi yahawe ariko kandi bumuha umutekano ushingiye kuri ako kazi ko kumuvura, uwo mwanditsi abivuga muri ayamagambo ati *"Dans l'exercise de leur art, ceux qui font profession de soigner contractent envers leurs patients non seulement l'obligation de moyens de leur dispenser des soins attentifs, consciencieux, conformes aux données acquise de la science, mais encore une obligation de sécurité portant sinon sur l'acte medical ou paramedical lui-même",* bisobanuye ko muganga ufite inshingano zo kudahungabanya umurwayi mu gihe amuvura, kuba rero hari ikosa ryakozwe n'umuganga w'ibitaro bya King Faisal Hospital Rwanda Ltd mu kazi ke byateye umurwayi kubagwa ataragombaga kubagwa iyo muganga w'umwuga Prof Dr Kyonkunda Lynnette adakora ikosa ryo kwemeza ko M.A arwaye cancer kandi nyuma bikaza kugaragara ko atayirwaye;

[33] Mu kuburana kwa King Faisal Hospital Rwanda Ltd ivuga ko nta gikorwa yakoze cyo kuvura M.A ndetse ko na muganga wayo atigeze agaragaza uburyo indwara yabonye yavurwa, ariko nkuko urukiko rwisumbuye rwabisobanuye mu rubanza rujuririrwa rwagaragaje komuganga wa King Faisal Hospital Rwanda Ltd ariwe wakoze amakosa yo kwemeza uburwayi bwa cancer kandi ntabwo M.A arwaye nkuko byaje kugaragara nyuma yo kumubaga,ko impamvu yabazwe uru rukiko rusanga nubwo ibitaro bya kanombe (Rwanda Military Hospital) nabyo byakoze andi makosa yo kubaga M.A igendeye kuri raporo itavugisha ukuri ko umuntu arwaye koko ibyo bitaro nabyo bikababaga bitabanje gusuzuma bundi bushya umurwayi, bikizera ibipimo bya King Faisal Hospital Rwanda Ltd ari nacyo cyatumye ibyo bitarobya kanombe nabyo bihanwa mu rubanza rujuririrwa kandi n'uru rukiko rukaba rusanga uko guhanwa kwa Rwanda Military Hospital kandi ihanwa ryayo iryemera kuko yatangiye kwishyura ariko kandi uru Rukiko rusanga hari uruhare rw'ibitaro bya King Faisal Hospital Rwanda Ltd byo kubeshya ko M.A arwaye ari nayo ntandaro yo kubagwa ibere kubera uburwayiyemeje ko afite nyamara ntabwo, ikaba yakwirengera ingaruka z'amakosa yayo yatumye M.A abagwa dore ko iyo King Faisal Hospital Rwanda Ltd itemeza ko arwaye ko Rwanda Militaryo Hospital ntacyo yari gushingiraho imubaga ahubwo nta nubwo yari kubagwakuko hagombaga byanze bikunze kugaragazwa ibizamini n'ibisubizo byemeza ko arwaye, kuba byaragaragaye nyuma y'ibagwa ry'ibere rya M.A ko rwakwemeza ko intandaroy'ibagwa ari ibisubizo bya King Faisal Hospital Rwanda Ltd;

[34] Kugira ngo haryozwe indishyi zishingiye ku ikosa ry'umuganga, umwanditsi Jean Penneau, mu gitabo cye "*la responsabilité du médecin*"[1], avuga ko uburyozwe bw'indishyi bushingiye ku kosa ry'umuganga, ariko ko biba uburyozwe bw'ikigo akorera iyo yakoze ayo makosa ari mu kazi ke, ko nubwo ayo makosa adatandukanwa n'uwayakoze ariko ko aho akorera naho bafitanye isano n'aho umurwayi yakorewe amakosa ko ikigo akorera aricyo cyishyura indishyi kuko yakoze amakosa afitanye isano n'akazi akorera icyo kigo, uwo mwanditsi abivuga muri aya magambo ati:*" Le dommage est le resultat de la seule faute personnelle du medecin, aucune faute de service n'a,par ailleurs, été commise, mais parcequ'elle a été commise à l'occasion du fonctionnement du service, cette faute, bien que detachable au point de devenir personnelle au medecin, n'est pas depourvue de tout lien du service, il en resulte que la responsabilite du service n'est pas écartée, du moins dans ses rapports avec le patient, à l'égard de qui celui-ci reste debiteurs de l'obligationde reparer le dommage";*

[35] Ku bivugwa n'uburanira King Faisal Hospital Rwanda Ltd ko iyo Rwanda Military Hospital itaza kubaga M.A ikanakuraho ibere ariko yarasuzumwe nabi na King Faisal HospitalRwanda Ltd hari dommages byari gutera M.A kuburyo yajyaga gutanga ikirego akabisabira indishyi, ariko uru rukiko rusanga nkuko byasobanuwe haruguru iyo King Faisal Hospital RwandaLtd idatanga ibisubizo by'ibizamini yemeza ko M.A arwaye cancer

[1] Jean Penneau, "La Responsabilité du Medecin" 2è edition, Dalloz, 1996, ku rupapuro rwa 52.

kandi ntayoarwaye ko uyu Atari kubvagwa na Rwanda Military Hospital kuko ntacyo yari kumubaga nubwo nayo yagize uburangare bwo guhita ibaga ishingiye kuri raporo ya King Faisal Hospital Rwanda Ltd, kubagwa kwa M.A kukaba gufite inkomoko ku makossa yakozwe na King Faisal Hospital Rwanda Ltd ari nayo mpamvu nayo ikwiye kugira ibyo icibwa nk'indishyi zikomoka ku makosa yayo, bityo indishyi zagenwe mu rubanza rujuririrwa zikaba zikwiye kandi zifite ishingiro kuko zishingiye ku buryozwe bw'uruhare rwa King Faisal Hospital Rwanda Ltd yakoze ikosa ryateje uwarikorewe kubagwa kandi bitari ngombwa;

[36] Ku byerekeye ibivugwa na King Faisal Hospital Rwanda Ltd ko uru rukiko rwasuzuma niba ibyemezo by'inkiko zo mu mahanga byatanzwe na King Faisal Hospital Rwanda Ltd yiregura bishingiye ku mategeko yo mu mahanga cyangwa ari isesengura ry'abacamanza gusa, uru rukiko rusanga nubwo ibyemezo bivugwa na King Faisal Hospital Rwanda Ltd iburana nubwo byafatwa nk'ibyemezo by'inkiko, kabone nubwo ntaho bagaragaza bikomoka byavuye (source), ariko kandikudashingira kuri ibyo byemezo byo mu mahanga ntabwo bivanaho uburyozwe bwa King Faisal Hospital Rwanda Ltd hashingiwe ku mategeko y'u Rwanda cyane itegeko N° 49/2012 ryo kuwa 22/01/2013 rigena ubwishingizi ku mwuga w'ubuvuzi, mu ngingo za 2, 3, 5 n'iya 13 zisobanura ibyerekeye uburyozwe bw'indishyi zishingiye ku ikosa ry'abaganga ikindi kandi ibyo byemezo nubwo bitagira aho bituruka (source) ariko kandi ntabwo bivanaho ko KFH nayo yemera ko habaye ikosa ry'umukozi wayo ari mu kazi kayo ngo ibe ari nayo yafatwa nk'iyakoze ayo makosa, bikababitayivanaho ayo makossa n'uburyozwe bw'indishyi zifitanye isano n'ibagwa ruya M.A , iyi mpamvu y'ubujurire ikaba nta shingiro ifite;

3. Ku byerekeye kumenya niba hari izindi ndishyi zagenwa muri uru rubanza n'uwaba uzikwiye uwariwe;

[37] Me Sebucensha Leonard uburanira King Faisal Hospital Rwanda Ltd avuga ko asaba gusubizwa igihembo cy' Avocat cya 3,000,000Frw, agasaba gusubizwa King Faisal Hospital Rwanda Ltd igarama rya 40,000Frw yatanze itanga ubu bujurire;

[38] Me Rutayisire Ildephonse uburanira M.A avuga ko amafaranga y'igihembo cy'avoka n'ikurikiranarubanza asabwa na King Faisal Hospital Rwanda Ltd yateshwa agaciro kuko ariyo nkomoko y'amakosa yose bityo igomba kwiyishyurira avoka wayo ahubwo barasaba ko M.A urukiko rwategeka ko King Faisal Hospital Rwanda Ltd imwishyura3,000,000Frw na 500,000Frw y'ikurikiranarubanza, naho ingwate y' amagarama ikwiye kuryozwaKing Faisal Hospital Rwanda Ltd yishoye mu manza.

UKO URU RUKIKO RUBIBONA.

[39] Uru rukiko rusanga nubwo King Faisal Hospital Rwanda Ltd ijurira ariko ubujurire bwayo bukabanta shingiro bwahawe bityo n'indishyi isaba kimwe n'igihembo cya avocat ndetse n'igarama yatanze bikaba nta shingiro byahabwa;

[40] Ku byerekeye indishyi zikurikirana rubanza n'igihembo cya avocat bisabwa na M.A mu bujurire rusanga byo byasuzumwa hashingiwe ko King Faisal Hospital Rwanda Ltdariyo yamushoye mu bujurire butahawe ishingiro, ariko mu kugena izo ndishyi M.A akaba akwiye kuzigenerwa mu bushishozi bw'urukiko, akagenerwa ahwanye na 100.000Frw yo gushorwa mu bujurire nta mpamvu ndetse akishyurwa n'igihembo cya avoka gihwanye na 250.000Frw zikishyurwa na King Faisal Hospital Rwanda Ltd wamushoye mubujurire nta mpamvu yumvikana;

III. ICYEMEZO CY'URUKIKO RUKURU

[41] Rwemeje kwakira ubujurire bwatanzwe na King Faisal Hospital Rwanda Ltd rubusuzumye rusanganta shingiro bufite.

[42] Rutegetse ko imikirize y'urubanza RC 00118/2019/TGI/Gsbo rwaciwe n'urukiko rwisumbuye rwa Gasabo kuwa 09/04/2021 idahindutse mu ngingo zayo zose.

[43] Rutegetse King Faisal Hospital Rwanda Ltd kwishyura M.A indishyi zingana na350.000Frw zikubiyemo igihembo cya avocat n'indishyi zikurikirana rubanza zo ku rwego rw'ubujurire.

[44] Rutegetse ko ingwate y'amagarama yatanzwe n'uwajuriye atayisubizwa kuko ihwanye n'amagarama y'ibyakozwe muri uru rubanza.