KING FAISAL HOSPITAL Ltd v M.G mu izina ry'umwana we M.M.A N'ABANDI

[Rwanda URUKIKO RUKURU - RCA 00094/2023/HC/KIG- CMB RCA 00108/2023/HC/KIG (Bandora, P.J.) 18 Kanama 2024]

Amategeko agenga imanza z'imbonezamubano – Uburyozwe bw'umukoresha – Amakosa yakozwe n'abakozi – Umukoresha aryozwa amakosa yakozwe n'umukozi mu nyungu z'umukoresha mu kazi.

Amategeko agenga imanza z'imbonezamubano – Indishyi – Inndishyi zikomoka ku burangare bw'abaganga – Ingano y'indishyi z'akababaro – Indishyi z'akababaro ku makosa yakozwe n'abakozi zigenwa hashingiwe ku bushishozi bw'umucamanza hakitabwa ku buremere bw'ikosa n'ingaruka byagize k'uwahohotewe kandi hitawe ku myaka uwahohotewe azamarana akababaro yatewe, zikagenwa mu bushishozi bw'umucamanza.

Incamake y'ikibazo: Umubyeyi witwa M.A wari utwite inda nkuru yagiye kwisuzumisha mu bitaro bya King Faisal Hospital abonana na muganga witwa Dr. Manzi wagiye umukurikirana amuha gahunda yo kuzabagwa ku wa 12/01/2015 ariko bigeze ku wa 10/01/2015 aza kumva atameze neza aza ku bitaro ahagera mu gitondo saa tatu. Akigera kwa muganga ntabwo yahise abagwa nkuko byari kuri gahunda ahubwo abo yahasanze baramuretse amara amasaha ane bategereza ko abyara mu buryo busanzwe kugeza igihe baboneye ko bidashoboka babona guhamagara muganga w'inzobere mu kubaga witwa Dr Muganda Rwibasira Mugande, araza aramubaga. Kubera gutinda cyane, uwo mubyeyi yaje kubyara umwana unaniwe ari nabyo byamuviriyemo kugira ingaruka z'uburwayi budashobora gukira kuko yagize ikibazo k' ubwonko bwe bwangiritse bituma agira uburwayi bw'igicuri.

M.G, se wa M.M.A (uwahohotewe) yaje gutanga ikirego mu Rukiko Rwisumbuye rwa Gasabo asaba indishyi zitandukanye zikomoka ku burangare bw'abaganga bwatumye umwana we avukana ibibazo byamuteye uburwayi. Urukiko rwategetse ko yahabwa indishyi ariko King Faisal Hospital Ltd ntiyishimira icyo cyemezo ikijuririra mu Rukiko Rukuru ariko kuko Dr. Muganda Rwibasira na we yari yahamijwe uburangare, ajurira icyo cyemezo ariko biza kugaragara ko nta burangare yagize kuko aho yahamagairiwe yahise aza kandi akora inshingano ze neza.
Urukiko rwakiriye ubwo bujurire maze hasuzumwa ikibazo cyo kumenya niba raporo y'abaganga yashingiwe hemeza uburangare bw'abaganga bo mui King Faisal Hospital yaba ifite inenge ku buryo itashingirwaho no kumenya niba indishyi zakurwaho.

King Faisal Hospital Ltd ivuga ko muri raporo y'abahanga yashingiweho igaragaza uburangare bw'abakozi bayo, harimo ugushidikanya kuko ngo bagiye bavuguruzanya aho umwe muri bo yavuze ko bishoboka kuba byaratewe n'uburangare, asanga harimo gushidikanya/doute bityo bikaba byatuma raporo yose iteshwa agaciro dore ko yanashingiye gusa ku buhamya bwatanzwe n'abasaba indishyi. Akomeza avuga ko n'indishyi urukiko rwategetse zidakwiye kuko nta kosa abakozi bayo bakoze kandi zikaba zidafite aho zishingiye dore ko Mbabazi ageze kwa muganga yumvikanye n'abaganga yahasanze ko aza kubyara atabazwe ngo kandi yarabyemeye.

Mbareba we asobanura ko umugore we yahawe gahunda yo byara abazwe, italiki yo kubyara ibura umunsi umwe aza kumva atameze neza ajya kwa muganga agezeyo abaganga yahasanze baramurangarana kuko batahise bamubaga nkuko yari yarabibwiwe na muganga ahubwo bo

bagahitamo ko yategereza amasaha agera muri ane yose hanyuma babona kubyara mu buryo busanzwe binaniranye bakabona guhamagara muganga w'inzobere waje kuza akamubaga. Ibyo kuvuga ko yemeye gutegereza akabyara mu buryo busanzwe, asobanura ko atari byo kuko ntaho yigeze abisinyira. Naho ku bijyanye n'indishyi, asobanura ko indishyi zikwiye kuko umwana we yagize ikibazo cy'uburwayi bw'ubwonko budakira bikazamusaba guhora yivuza ubuzima bwe bwose kandi bikaba byaraturutse ku kuba abakozi ba King Faisal Hospital baramurangaranye bigatuma umwana avuka ananiwe.

Incamake y'icyemezo: 1. Umukoresha aryozwa amakosa yakozwe n'umukozi mu kazi ndetse no mu nyungu z'umukoresha.

2. Indishyi z'akababaro ku makosa yakozwe n'abakozi zigenwa hashingiwe ku bushishozi bw'umucamanza hakitabwa ku buremere bw'ikosa n'ingaruka byagize k'uwahohotewe kandi hitawe ku myaka uwahohotewe azamarana akababaro yatewe, zikagenwa mu bushishozi bw'umucamanza.

3. Umurwayi cyangwa umuntu wese uhabwa ibikorwa by'ubuvuzi afite uburenganzira bwo kwanga kuvurwa cyangwa gukorerwaho igikorwa cyose cy'ubuvuzi, guhindura icyemezo cye mu gihe avurwa, cyangwa kwanga ko igikorwa cy'ubuvuzi gikomeza kumukorerwaho. Kwanga kuvurwa cyangwa kwisubiraho bikorwa mu nyandiko bigashyirwa mu idosiye y'umurwayi.

Ubujurire bufite ishingiro kuri bimwe.

Amategeko yashingiweho:
Itegeko N° 15/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 76,77,96,98;
Itegeko N° 49/2012 ryo kuwa 22/01/2013 rigena ubwishingizi ku mwuga w'ubuvuzi, ingingo ya 10
Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 9, 111, 115.

Imanza zifashishijwe:
RCAA 00008/2020/CA, Ndizeye v Kibungo Medical Center, rwaciwe n'Urukiko rw'Ubujurire ku wa 25/06/2021;
RCAA 00073/2018/CA, Nyirabatesi Laurence n'Ibitaro byitiriwe Umwami Fayisali, rwaciwe n'Urukiko rw'Ubujurire ku wa 19/07/2019.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 08/01/2015 M.A wari utwite inda nkuru, yagiye kwa muganga wamukurinaga witwa Dr Manzi ukorera mubitaro KING FAISAL HOSPITAL LTD RWANDA amaze kumusuzuma amuha gahunda yo ku wa 12/01/2015 kuzabyaraabazwe kuko yari yemeje ko adashobora kubyara mu buryo busanzwe.

[2] Itariki M.A yahawe ntabwo yageze kuko ku wa 10/01/2015 yagize ibise maze yihutira kujya kwa muganga ahagera saa tatu za mu gitondo (09h23).

[3] Akigera kwa Muganga amaze kuzuza ibisabwa byose yakiriwe n'ibitaro ariko ntabwo yahise abagwa nk'uko yari yabyemeranyijweho na Dr Manzi, ahubwo abaganga n'abakozi b'ibitaro babanje kugerageza kureba niba yabyara bisanzwe atabazwe nk'uko mbere byari byemejwe na Dr Manzi.

[4] Abaganga bibitaro bari baraho bamaze kugerageza ko M.A yabyara bisanzwe babonye hashize igihe kinini, nibwo baje kubona ko M.Aadashobora kubyara mu buryo busanzwe, bafata umwanzuro wo guhamagara Umuganga w'impuguke mu kubaga wari ku izamu witwa Dr Muganda Rwibasira Mugande, nawe ahageze asanga koko M.Aadashobora kubyara bisanzwe afata umwanzuro wo kubyaza M.Aamubaze kuko ubundi buryo bwari bwatekerejwe bwari bwanze.

[5] M.A amaze kubyara umwana we M.M.A, byaje kugaragara ko umwana yavutse afite ibibazo bitandukanye birimo no kwangirika k'ubwonko byamuviriyemo ubumuga butandukanye burmi n'indwara y'igicuri, ibyo bikaba byaramugizeho ingaruka z'ubuzima zikomeye cyane ndetse azabana nazo ubuzima bwose.

[6] Nyuma y'ibiganiro bitandukanye byabanje hagati ya y'ababyeyi ba M.M.A mu gushaka uko bakemura icyo kibazo mu bwumvikane na KING FAISAL HOSPITAL LTD RWANDA ariko ntibigire icyo bitanga, M.Gmu izina ry'umwana we M.M.A yaganye inzira y'inkiko, aregera urukiko rwisumbuye rwa Gasabo.

[7] Yabwiye urwo rukiko ko ibibazo umwana we M.M.A yagize yabitewe n'uburangare bw'abakozi ndetse n'abaganga ba KING FAISAL HOSPITAL LTD RWANDA, kuko yari yabasobanuriye ko umugore we M.A adashobora kubyara mu buryo busanzwe nk'uko byari byemejwe na Muganga wamusuzumye mbere, ariko agarutse ahatirwa kubanza kugerageza kubyara bisanzwe, aribyo byateye biriya bibazo kuko umwana yaje kwangirika bikabije binamusigira ingaruka azabano nazo burundu,bityo asaba ko yahabwa indishyi.

[8] Ababuraniraga KING FAISAL HOSPITAL RWANDA LTD biregura bavuga ko ibivugwa na M.Gwareze ko M.A yagombaga kubyara abazwe aho kubyazwa mu buryo busanzwe, nta kimenyetso abitangira kandi ngo ari inshingano z'urega kugaragaza ibimenyetso by'ibyo aregera, bityo akaba atagaragaza uruharerwa KING FAISAL HOSPITAL RWANDA LTD mu byaba byarabaye ku mwana we.

[9] KING FAISAL HOSPITAL RWANDA LTD yagobokesheje ku gahato Dr Muganda Rwibasira Mugande, ivuga ko impamvu y'uko kugobokeshwa ari uko urega avuga ko Dr Muganda Rwibasira Mugande ariwe ntandaro y'ibyabaye ku mwana we M.M.A. Yanagobokeshejemo ku gahato kandi SONARWA GENERAL INSURANCE COMPANY Ltd nk'umwishingizi wa KING FAISAL HOSPITAL RWANDA LTD.

[10] Dr Muganda Rwibasira Mugande we avuga ko nk'umuhanga mu kubyaza (Specialist) wari mu bitaro bya KING FAISAL HOSPITAL RWANDA LTD agahamagarwa ngo yite kuri M. A, yakoze ibyo yasabwaga byose abyaza M.A abazwe ariko umwana avuka arushye. Avuga ko ibibazo umwana yagize, nta kigaragaza ko byaturutse ku burangare bw'abaganga.

[11] Uburanira SONARWA GENERAL INSURANCE COMPANY Ltd nk'umwishingizi wa KING FAISAL HOSPITAL RWANDA LTD yavuze ko SONARWA GENERAL INSURANCE COMPANY Ltd yishingiye amakosa y'umwuga (negligent acts) yakorerwa muri KING FAISAL HOSPITAL RWANDA LTD, ko ariko iyo urebye uburyo M.Ayakurikiranywe nk'uko byemezwa na raporo yakozwe na Dr Gakindi Leonard, nta burangare bujyanye n'umwuga bwabayeho, ko ntacyo SONARWA GENERAL INSURANCE COMPANY Ltd yabazwa ku bijyanye n'indishyi, mu gihe nta kosa ry'umwuga ryabayeho.

[12] Me Bizumuremyi Isaac Mockey na Mfashingabo Aimable bahagarariye KING FAISAL HOSPITAL RWANDA LTD batanze inzitizi muri urwo rubanza, basaba ko ikirego kitakwakirwa ko habayeho ubuzime bw'imyaka itanu, ko kandi M.Gnta nyungu n'ububasha afite muri ruriya rubanza kuko ikirego yagitanze mu nyungu ze bwite kandi cyaragombaga gutangwa na M.M.A agahagararirwa na Mbareba Geofrey.

[13] Ku wa 07/05/2021, Urukiko rwisumbuye rwa Gasabo rwafashe icyemezo kuri izo nzitizi, ku birebana n'ubuzime bw'imyaka itanu, iyi nzitizi ntiyahawe ishingiro hashingiwe ku ngingo ya 26 y'Itegeko N° 49/2012 ryo ku wa 22/01/2013 rigena ubwishingizi k'umwuga w'ubuvuzi iteganya ko ubuzime bubarwa uhereye igihe ingaruka yatangiriye cyangwa yamenyekaniye, kuko ubumuga bwa bwaburundu bwa M.M.A bwagaragajwe na raporo n° 030/RMD/2016 yo ku wa 14/02/2016, Minisitiri w'Ubuzima GASHUMBA Diane yashingiyeho asaba KING FAISAL HOSPITAL RWANDA LTD gukemura icyo kibazo. Ku nzitizi ijyanye n'inyungu n'ububasha byo kurega, iyi nzitizi nayo ntiyahawe ishingiro hashingiwe ku ngingo ya 85 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbone-zamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko abana batarageza ku myaka y'ubukure n'abadafite ububasha bwo kwiregera, bahagararirwa n'ababahagarariye mu mategeko, abana bahagararirwa n'ababyeyi babo.

[14] Mu rubanza mu mizi RC 00068/2020/TGI/GSBO rwaciwe kuwa 27/01/2023 n'urukiko rwisumbuye rwa Gasabo, rwasanze hari ibimenyetso byemeza ko ubumuga M.M.A afite bwatewe n'uburangare bw'abaganga ba KING FAISAL HOSPITAL RWANDA LTD bakiriye M.A birimo:

> Raporo y'impuguke eshatu Prof. Rutagarama Florent, Dr. Munyalimaha Alain inzobere mu kuvura abana (Pediatricians), na Dr. Habimana Emmanuel inzobere mu bigendanye no kubyara n'indwara z'abagore (Obstetrician and Gynecologist). Zanzuye ko bigaragara ko M.A atakurikiranywe neza uko bikwiye igihe yari ku nda, ko habayemo gutinda gufata umwanzuro wo kumubaga, aribyo byateye buriya bumuga bw'uriya mwana.

[15] Mubisobanuro byatanzwe n'urukiko rwisumbuye rwa Gasabo rwasanze amakosa yarakozwe na Dr Muganda Rwibasira Mugande umuganga wa KING FAISAL HOSPITAL RWANDA LTD wabaze M.A akererewe ndetse aranayahanirwa mu rwego rw'akazi.

[16] Urukiko rushingiye kuri iyo raporo rwemeje ko ikirego cya M.Gmu izina ry'umwana we M.M.A kandi ko gifite ishingiro,rutegeka KING FAISAL HOSPITAL RWANDA LTD guha M.Gmu izina ry'umwana we M.M.A indishyi zingana na 125.000.000FRWs, muri izi ndishyi SONARWA GENERAL INSURANCE COMPANY Ltd nk'umwishingizi wa KING FAISAL HOSPITAL RWANDA LTD igatangamo 20.000.000FRWs y'uburyozwe yishingiye, asigaye angana na 105.000.000FRWs agatangwa na KING FAISAL HOSPITAL RWANDA LTD,igaha M.Gmu izina ry'umwana we M.M.A amafaranga 500.000FRWs y'ikurikiranarubanza

n'amafaranga 2.000.000FRWs y'igihembo cya Avoka,igasubiza M.Gmu izina ry'umwana we M.M.A amafaranga 20.000FRWs yatanzeho ingwate y'amagarama y'urubanza.

[17] KING FAISAL HOSPITAL RWANDA LTD ndetse na Dr Muganda Rwibasira John barajuriye muri uru rukiko, imanza zabo zimaze guhuzwa zandikwa kuri RCA 00094/2023/HC/KIG- CMB RCA 00108/2023/HC/KIG, ruburanishwa mu ruhame ku wa 20/05/2024, KING FAISAL HOSPITAL RWANDA LTD iburanirwa na Me Rwakayija Mugande, Dr Muganda Rwibasira John yunganiwe na Me Kayiranga Cyrille, M.Gmu izina ry'umwana we M.M.A aburanirwa na Me SADI na Me Ngabo MUHIRWA Audace.

[18] Mu myanzuro y'ubujurire no mu miburanire, Uburanira KING FAISAL HOSPITAL RWANDA LTD avuga ko Raporo y'impuguke yashingiweho inyuranyije n'ibyemezo by'urukiko bishyiraho izi mpuguke. Nkuko Urukiko narwo rubyivugira impuguke ntabwo zicaye hamwe ngo zikore raporo, ziyunguraneho inama, bityo ko itafatwa nka raporo y'abahanga igomba gushingirwaho. Kuko ishidikanywaho.

[19] Anavuga ko Urukiko rwageneye M.Gmu izina rya M.M.A indishyi za 125.000.000 FRW nta bisobanuro (absence de motivations).

[20] Mu mwanzuro no mumiburanire y'ababuranira M.Gavuga ko raporo iba igamije guha umucamanza imyumvire cyangwa ubumenyi bushobora kuba bwamufasha kufata icyemezo, akaba ariwe ukora ubusesenguzi/appreciation, asanga nta kosa na rimwe ryakozwe.

[21] Mu mwanzuro no mumiburanire y'uburanira SONARWA GENERAL INSURANCE COMPANY Ltd nk'umwishingizi wa KING FAISAL HOSPITAL RWANDA LTD, avuga ko Kuba Sonarwa yaraciwe indishyi za 20,000,000 frw asanga ari akarengane kuko nta kosa ry'umwugwa ryakozwe kuburyo urukiko rwari guca Sonarwa ayo mafaranga, asaba ko yakurwaho.

[22] Mu mwanzuro no mumiburanire ya Dr Muganda Rwibasira John ndetse n'umwunganira bavuga ko imyiregurire ye nk'inzobere mu bijyanye no kubyaza itigeze igaragazwa, ahubwo hashingirwa ku byavuzwe n'uwareze urukiko rumwegekaho amakosa. Avuga ko kuba KING FAISAL HOSPITAL RWANDA LTD yaramugobokesheje muri uru rubanza yajuririye asanga yaramurenganyije.

[23] Ibibazo biri muri uru rubanza ni ukumenya niba:

a) Ibibazo Muhinda Mbareba Allan yagize byaba byaraturutse kuri Dr Muganda Rwibasira John wabaze nyina amubyaza, raporo y'abaganga yemeje uburangare bw'abakozi ba KING FAISAL HOSPITAL RWANDA LTD yashingiweho n'urukiko rwisumbuye rwa Gasabo yakozwe na Prof. Rutagarama Florent, Dr. Munyalimaha Alain inzobere mu kuvura abana (Pediatricians)na Dr. Habimana Emmanuel inzobere mu bigendanye no kubyara n'indwara z'abagore (Obstetrician and Gynecologist) ifite inenge yatuma ibikubiyemo biteshwa agaciro;

b) Indishyi zatanzwe nta bisobanuro byimbitse byazitangiwe.

II. IBIBAZO BIGARAGARA MURI URU RUBANZA N'ISESENGURWA RYABYO

- **Kubijyanye no kumenya niba Ibibazo M.M.A yagize, byaba byaratewe na Dr Muganda Rwibasira John muganga muri KING FAISAL HOSPITAL LTD RWANDA wabaze nyina amubyaza.**

[24] Dr Muganda Rwibasira John muganga muri KING FAISAL HOSPITAL LTD RWANDA wari wagobokeshejwe mu rubanzarujuririrwa nawe ntabwo yishimiye umwanzuro wafashwe n'urukiko rwisumbuye rwa Gasabo rwemeje ko ibibazo uriya mwana yagize byatewe n'amakosa ye arimo uburangare.

[25] Mu mwanzuro no mumiburanire yavuze ko muri matolewa y'urubanza, ntaho Umucamanza yigeze avuga cyangwa ngo agaragaze imyiregurire hamwe n'ibisobanuro byimbitse yatanze nk'inzobere mu bijyanye no kubyaza.

[26] Avuga ko Umucamanza yibanze gusa ku mvugo z'uruhande rwareze maze uruhande rwagobokeshejwe ibyo rwagaragaje bigaragaza ukuri kw'ibyabaye, ntiyabishyirwa muri matolewa y'urubanza bikaba bivuze ko byirengagijwe nkana.

[27] Avuga ko Umucamanza yashingiye ku byemezo bya Rwanda Medical Council, cyane cyane icyemezo cyo kuwa 14/02/2016, maze amakosa ruyashyira kuri Dr Muganda R Mugande.

[28] Asobanura ko icyo anenga, ni uko umucamanza yamushinje uburangare kandi ntabwo yagize, M.A ngo atwite yakurikiranwe na Dr Subira Manzi, yagombaga kumubaga kandi byandikwa ku gapapuro gahabwa umurwayi, noneho akajyana itariki yagera akakerekana.

[29] Avuga ko M.A yaje kugira ibise mbere y'itariki yari yahawe nuko aza ku kazi kumanywa, muganga wari uhari yahamagaye Dogiteri wamukurikiranye wari wamuhaye kuya 12/1, uwo muganga ngo yariyiziye yumvikana n'umurwayi ko bamuha amahirwe yo kubyara neza.

[30] Avuga ko we yari ku izamu iwe mu rugo ategereje ikibazo cyavuka akabona kujya gufasha, baretse M.A ajya kubise nuko akurikiranwa n'ababyaza n'undi muganga wari aho, Mugicuku yaje guhamagarwa na Dr Stephano wari pediatre akaba umuvandimwe we, yamuhamagaye nk'umuvandimwe ngo aze abatabare kuko M.A yatinze kubise, yahamagaye muganga wari mubitaro amubwira uko ikibazo kimeze, yaraje asuzuma M.A aramubwira ngo areke bamufashe, ababishinzwe bamujyana mu cyumba cya operation amaze gusinya ko agiye kubagwa.

[31] Avuga ko bamubaze bigenda neza ariko umwana yavutse arushye. Byarabatangaje kuko ngo ntakibazo cyari cyagaragaye, abaganga b'abana bari aho baramufashije nuko umwana aza kugira ibibazo. Asanga inshingano ze yarazikoze uriya mudamu aramubyaza.

[32] Avuga ko asoma icyemezo cy'umucamanza yibajije icyo yashingiyeho. Nk'umuganga ngo yagiranye ibibazo n'umuganga wari Umuyobozi we wanayoboraga urugaga rw'abaganga, yamwirukanye mu buryo bunyuranije n'amategeko.

[33] Avuga ko byagiye bigaragara mu maraporo yagiye amukorera kandi uwamwirukanye yari amufiteho ububasha. Avuga ko icyemezo kimushyira mu bihano niwe wagisinye, yirengagije imanza baburanye mu 2015.

[34] Avuga ko iyo umuntu agiye kubyara kuri KING FAYSAL HOSPITAL, bahamagara muganga uri aho kandi ababyaza ngo nibo bakurikirana umurwayi. Iyo Muganga ari kubaga ngo bamushyiraho telephone ku gutwi akaba yavuga ngo uwo muntu nibamuzane bamubage cyangwa se bamureke. Iyo akazi karangiye umuganga ataha mu rugo.

[35] Avuga ko muri iyo context, ntabwo umucamanza yerekanye ko umurwayi yamwakiriye nabi kuko inshingano z'umubyaza zitandukanye n'impuguke/Specialist. Umucamana ngo ntiyerekanye ikosa ryabaye.

[36] Avuga ko mu gukurikirana umurwayi uri kubise, Umucamanza yari kwerekana amakosa yabaye, hageze kubyara, akibazauwari kumubyaza, akanibaza igihe specialiste ageze mu bitaro uko byagenze, isaha yahamagariwe n'ibindi.

[37] Avuga ko Umucamanza yanditse ko yahakanye byose kandi ataribyo, bityo agasanga Umucamanza atari guhera kuri raporo y'umuntu wamwirukanye muri Roi Faysal.

[38] Avuga ko kuba King Faysal yaramugobokesheje yaramurenganyije. Agerageje kuvuga uko ibintu biba bimeze, ngo umubyeyi utwite umwana ashobora kugira ikibazo munda hanyuma nyina agahita abagwa ako kanya, gusa umwana ashobora gukomeza kugira icyo kibazo, Icya 2 ni uko umwana ashobora kugaragara ko ntakibazo afite ari munda hanyuma nyina yamara kubyara ikibazo kikagaragara.

[39] Avuga ko hari igipauro imashini isohora, Ikindi ni uko umubyeyi uri kubyara hari igihe cyo gusunika/gupushinga bitewe n'igihe amaze abyara, iyo ari ubwa mbere ni amasaha 2, iyo ari ubwa kenshi ni isaha 1. Sezariyene ngo urebye aho ikorerwa ubanza gusinyisha umubyeyi, niyo yaba intervention rapide, ntiwabaga umubyeyi batamusinzirije cyangwa utamusinyishije.

[40] Uburanira King Faisal Hospital Rwanda Ltd yavuze ko Dr Muganda Rwibasira John kiriya gihe atari wenyine, nubwo ngo ibyo yakoze yabikoze neza, kuba ngo hari ibibazo yari afitanye na Dr Rwamasirabo, uruhare rwe/influence ye ngo ntanyandiko ihari ibihamya. Akibaza ahubwo impamvu batabajije abandi baganga kugira ngo bavuge uko byagenze.

[41] Avuga ko kuvuga ngo umwana yavukanye ikibazo, ntabwo ari ubwa mbere, ibi biri mu bintu bagiye banenga, kuko ibyari byasabwe n'urukiko bitigeze bikorwa nkuko rwabisabye, ahubwo ngo habayemo amarangamutima kuko bashingiye kumvugo z'abarega. Ubundi asanga abarega ari amafaranga baba bashaka, kandi ko indishyi zagenwe ntaho zishingiye.

[42] Uburanira M.Gmu izina ry'umwana we M.M.A avuga ko ibyo Dr Mugande yavuze nta bimenyetso abitangira. Mu gika cy 20, Dr Habimana Emmanuel muri raporo ye yavuze ko Dr Muganda yatinze kubaga uriya mubyeyi, Faysal yaravuze ngo uwo murwayi azajya yivuza King Faysal kubuntu, ibyo akabona ko ari ukwemera uruhare rwayo mubyabaye/responsabilite.

[43] Avuga ko kuba Dr Muganda avuga ko yari afitanye ikibazo na Dr Rwamasirabo, ngo ntahantu nahamwe yagaragaye muri izi raporo. Kuba yarahawe igihano akajurira kikavaho nabyo ngo ntabwo bivuze ko nta makosa yakoze.

[44] Avuga ko muri uru rubanza Dr Mugande ntacyo yaciwe, we yajuriye kuko bavuze ko yagize uburangare. Ibyo yavuze ngo siwe wari kwakira umwana, ariko ko, intarevention yakoze niyo yabiteye. Kuvuga ngo abaganga bari bahari ntibabajijwe, asanga kubabaza bose ataribyo byari gutuma ukuri kujya ahagaragara, ariyo mpamvu asanga iyi mpamvu y'ubujurire nta shingiro ifite.

[45] Uburanira SONARWA GENERAL INSURANCE LTDRDAVOCATES Ltd asaba urukiko kuzabisuzuma, nirusanga ntaburangare bwabaye cyangwa se aba expert batarasobanuye neza muri raporo yabo, urukiko ruzabone ko nta ndishyi SONARWA ikwiye gutanga. Urukiko nirubibona ukundi hazatangwe 20.000.000F ari mu masezerano SONARWA yagiranye na KING FAYSAL Hospital.

UKO URUKIKO RUBIBONA

[46] Ingingo ya 115,1° y’Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi nk’uko ryahinduwe kugeza ubu, iteganya ko "Kugobokesha ku gahato umuburanyi mu rubanza bisabwa n’umuburanyi ushaka ko umuntu utari mu rubanza aruzanwamo kugira ngo na we aburane, hato atazatambamira imikirize yarwo.

[47] Ingingo yagaragajwe ishaka kumvikanisha ko Umuntu ugobokeshejwe agomba kuba afite inyungu muri urwo rubanza ku buryo kumufatira icyemezo adahari byatuma arutambamira.

[48] Ikibazo kirimo gusuzumwa kijyanye no kumenya niba Dr Muganda Rwibasira John Muganga wabaze M.A ariwe wagize uburangare bwatumye umwana wavutse agira ibibazo by’ubuzima bitandukanye ku buryo byari gutuma agobokeshwa muri uru rubanza.

[49] Urukiko rwisumbuye rwa Gasabo rwemeza uruhare rw’ibitaro bya FAISAL rwasobanuye ko ubumuga M.M.A yagize bwatewe n’uburangare bw’abaganga ba KING FAISAL HOSPITAL RWANDA LTD, rusobanura ko habayemo gutinda gufata umwanzuro wo kubaga Mbabazi Anet, ndetse naho umwanzuro ufatiwe hababaho gutinda kumubaga ari byo bishobora kuba byarabaye impamvu y’uko umwana avuka ananiwe cyane bikamuviramo ubumuga afite kugeza uyu munsi. Aya makosa yakozwe mu kubyaza Mbabazi Anet, niyo yatumye ku wa 14/02/2016 Dr Muganda Rwibasira Mugande asabirwa ibihano n’urugaga rw’abaganga byo guhagarikwa ku kazi mu gihe cy’amezi atatu (3 months), kuko habayeho gutinda kubyaza M.Aabazwe kandi ariyo gahunda yari yarahawe, ko ndetse n’aho Dr Muganda Rwibasira Mugande afatiye icyemezo cyo kumubyaza abazwe, yatinze kubikora (There is evidence of delayed intervention by Dr. Muganda Mugande in deciding delivery and even after deciding, the extraction was delayed and the follow up was not done properly).

[50] Urukiko ruributsa ko nk’uko dosiye ibyerekana ndetse bikanavugwa na Dr Muganda Rwibasira Mugande, ni uko uyu wa nyuma yagobokeshejwe nk’umuburanyi ku gahato na KING FAISAL HOSPITAL RWANDA LTD.

[51] Uburanira KING FAISAL HOSPITAL RWANDA LTD kuri uru rwego mu yabwiye uru rukiko ko Dr Muganda Rwibasira Mugande ibyo yakoze abaga M.Ayabikoze neza[1] ndetse no mumiburanire ye mu rukiko rwisumbuye rwa Gasabo, ntabwo yigeze anenga ibyo Dr Muganda Rwibasira Mugande yakoze, ahubwo akavuga ko byatewe nuko uwaregaga yagiye avugamo Dr Muganda Rwibasira Mugande, ariko aha nabyo nta shingiro byahabwa byari gutuma KING FAISAL HOSPITAL RWANDA LTDigobokesha Dr Muganda Rwibasira Mugande kuko ntacyo yamunengaga.

[52] Urukiko rwibaza rero impamvu ishingiye ku itegeko yatumye KING FAISAL HOSPITAL RWANDA LTD igobokesha Dr Muganda Rwibasira Mugande nk'umuburanyi na cyane ko kugoboka ku bushake cyangwa kugobokeshwa ku gahato mu rubanza umuburanyi atarezwemo,ubikora cyangwa ubikorerwa bagomba kwerekana inyungu yemewe n'amategeko, itaziguye kandi ye bwite,cyangwa icyo byari kumubangamiraho mu gihe urukiko rwakwemeza ko KING FAISAL HOSPITAL RWANDA LTD yagize uburangare, na cyane ko kuba Dr Muganda Rwibasira Mugande yatsindwa bitavanaho umukoresha we uburyozwe bw'amakosa y'umukozi wabwo.

[53] Hari ibibazo byazamuwe na Dr Muganda Rwibasira Mugande bitigeze bisubizwa n'urukiko rwisumbuye rwa Gasabo, ndetse no kuri uru rwego, yaba KING FAISAL HOSPITAL RWANDA LTD yamugobokesheje, yaba SONARWA GENERAL INSURANCE LTD, yaba Uburanira M.Gmu izina ry'umwana we M.M.A, aho yavuze ko we igihe biriya bibazo byavukaga yari mu rugo nk'imp uguke iri ku izamu, bityo havuka ikibazo akaba ariho bamuhamagara akaza kugira icyo afasha kandi akaba ariko byagenze kuko M.Aaza we atari ari kubitaro ahubwo yari mu rugo bivuze ko atariwe wamwakiriye.

[54] Urukiko rusanga rero ibivugwa na Dr Muganda Rwibasira Mugande n'ubwo yari ku izamu nk'impuguke, atariwe wakiriye M.A aje kwa Muganga, ahubwo yakiriwe n'abandi bakozi b'ibitaro abaforoma n'abaganga bari bari aho.

[55] Byagombye kumvikana ko Dr Muganda Rwibasira Mugande nta gahunda yari afitanye na M.A uwo munsi, ahubwo ko M.Ayari ayifitanye na Dr Manzi wagombaga kumubaga, ariko ageze kubitaro abo yahasanze bagerageza ubundi buryo busanzwe ariko biza kunanirana, aribwo bahamagaye Dr Muganda Rwibasira Mugande.

[56] Urukiko rusanga haterekanwa icyo Dr Muganda Rwibasira Mugande atakoze yagombaga gukora, cyangwa icyo yakoze atagombaga gukora cyateje ibibazo umwana wa Mbabazi Anet.

[57] Urukiko rusanga kuvuga ko Dr Muganda Rwibasira Mugande yaba yarahamagawe agatinda kuza kubaga M.Aatari ukuri kuko Mbabazi Anet.yageze kubitaro isaha ya 09:23 za mu gitondo, Dr Muganda Rwibasira Mugande ahamagarwa saa cyendaz'amanywa (03:00Pm), M.Aari kunda arimo gusunika/Pushing,igihe cyari gishyize ubwacyo nicyo kibazo cyabayeho kuko abaganga bari bari aho aribo batashoboye guhita bahamagara Dr Muganda Rwibasira Mugande igihe M.Ayari akihagera dore ko yahageze ari ku bise kandi inda igeze igihe cyo kuvuka kandi ibyo kumubyaza abazwe byari byaramaze gufatwaho umwanzuro na Muganga Manzi wamwakiriye bwa mbere,bityo rero ntabwo ikibazo cyakoroshwa bakigereka kuri Dr Muganda

[1]Reba ibika bya 40,62

Rwibasira Mugande,ahubwo n'ubuteganye buke bwababakiriye M.Abatashoboye guhita bamukorera ibyari byaremejwe mbere na Muganga Manzi,bagiye no kubikora bahamagara Muganga Dr Muganda Rwibasira Mugande n'ubundi umwana yatangiye kugira ibibazo/soufrance.

[58] Urukiko rusanga haterekanwa niba ibyo Dr Muganda Rwibasira Mugande yagombaga gukora amaze kugera mu bitaro atarabikoze,cyangwa herekanwe ko yaba yarabaze nabi, uriya mwana biza kumuviramo biriya bibazo,ahubwo ikiriho kandi cyateje biriya bibazo, ni abaganga batindanye M.Ank'uko byakomojweho, bagerageza ko yabyara bisanzwe kandi muganga wamukurikiranye yari yemeje ko kubera ibibazo yabonye afite adashobora kubyara neza, ahubwo agomba kuzabagwa,ndetse bimaze kugaragara ko ibyo batekereje bidashoboka nabo basubiyeku mwanzuro wo kumubaga aribwo bahise bahamagara Dr Muganda Rwibasira Mugande nawe aje akora ibyo yasabwaga nk'impuguke. Bityo kwemeza uruhare Dr Muganda Rwibasira Mugande kubibazo umwana wa M.A yagize ni ukumurenganya nk'uko nawe abyivugira ariyo mpamvu iri kosa ryakozwe n'urukiko rwisumbuye rwa Gasabo rigomba gukosorwa.

- **Kubijyanye no kumenya niba Raporo y'abaganga yemeje uburangare bw'abakozi ba KING FAISAL HOSPITAL RWANDA LTD yashingiweho n'Urukiko Rwisumbuye rwa Gasabo yakozwe na Prof. Rutagarama Florent, Dr. Munyalimaha Alain inzobere mu kuvura abana (Pediatricians)na Dr. Habimana Emmanuel inzobere mu bigendanye no kubyara n'indwara z'abagore (Obstetrician and Gynecologist) ifite ingenge yatuma ibikubiyemo biteshwa agaciro.**

[59] Mu mwanzuro no mu miburanire by'Uburanira KING FAISAL HOSPITAL LTD RWANDA avuga ko ibimenyetso byashingiweho babinenga, hari raporo y'impuguke, bagiye bashingira ku buhamya bwatanzwe n'uwareze. Abo ba expert ngo bagiye bavuguruzanya, umwe yavuze ko bishoboka kuba byaratewe n'uburangare, asanga harimo gushidikanya/doute. Iyi ubwayo asanga ari inenge kuko harimo gukeka. Bityo ko iriya raporo z'abahanga ba RMC zituzuye kuko zititaye ku byagombaga kwigwaho byose.

[60] Avuga ko imvugo z'abahanga urukiko rwashingiyeho rutarazihuje n'ibikorwa byabaye (facts) mu ica ry'urubanza. Ibi asanga bitamutangaje kuko rutari kubona uko rubihuza cyane ko ntaho bihuriye na kamere y'icyaburanwaga.

[61] Avuga ko urugero SA Straus avuga ku kubaga ibihaha, yibaza uburyo ikosa ryaba ryakozwe mu kubaga ibihaha ryahuzwa n'iryakozwe mu kubyaza umubyeyi, urukiko rugakuramo umwanzuro bikaba bidashoboka.

[62] Avuga ko inyandiko z'abahanga zikoreshwa iyo ibyo zivuga bijyanye na kamere y'ikiburanwa aha akaba atariko bimeze. Byongeye J Herring avuga kubisabwa ngo uburyozwe bw'umuganga bwuzure, ariko aha urukiko rukaba rutagaragaza niba ibyakozwe na Dr Muganda Mugande bihagije kugira ngo uburyozwe bwe bwuzure rushingiye ku bimenyetso byatanzwe.

[63] Avuga ko ibyavuzwe na Dr Habimana Emmanuel (Igika cya 28), abinenga kuko yagaragaje ko M.A nyina w'umwana M.M.A, atakurikiranywe neza uko bikwiye igihe yari ku nda, ko habayeho gutinda gufata umwanzuro wo kumubaga, ndetse naho umwanzuro ufatiwe habaho gutinda kumubaga aribyo bishobora kuba byarabaye impamvu y'uko umwana avuka ananiwe bikamuviramo ubumuga afite kugeza uyu munsi'ibyo ngo nta shingiro bigomba guhabwa kubera impamvu zikurikira:

A. Urukiko rwashingiye ku mpuguke imwe mu bakoze raporo y'impuguke. Agendeye ku buryo iyi Raporo yagombaga gukorwa hashingiwe ku cyemezo cy'Urukiko n°. M.M.J/M.L/2021/TGI/GSBO aho Urukiko rugira ruti:"Dutegetse ko Umukuru w'Urugaga rw'Abaganga ashyiraho itsinda ry'abahanga batatu, umwe mu bijyanye no kubyaza (gynecology), n'abandi babiri mu bijyanye n'ubuvuzi bw'abana (pediatric) bagakora raporo ku ngano y'ubumuga M.M.A afite, igihe bwatangiriye n'icyabuteye, iyo raporo bakayisobanura", Icyemezo N°. 002/…TGI/GSBO gitegeko ko Raporo y'Abahanga yo ku wa 30/12/2021 isubirwamo kivuga ko "Dutegetse ko Dr Rutagarama Florent, Dr Nyalihama Alain, na Dr Habimana Emmanuel basubiramo Raporo basabye Urugaga rw'Abaganga, iyo raporo ikaba igomba kugaragaza ingano y'ubumuga Mbareba Muhinda Alan afite, icyabuteye n'igihe bwatangiriye n'igihe buzarangirira kandi iyo raporo bakayisinyaho bose bakayisobanura mu gihe hakoreshejwe amagambo (terms) akoreshwa mu buvuzi bakayasobanura mu Kinyarwanda."Ibi rero asanga urukiko rutabyitayeho, kuko iyo rujya kuba rwarubahirije ibyo rwategetse, ngo nta hantu na hamwe rwategetse ko hakorwa raporo ebyiri ku buryo DR Habimana Emmanuel yari butange expertise ye wenyine. Kuba rero aba bahanga batarakoreye hamwe bikaba bishobora kuviramo KFHR kurenganywa kuko igituma abahanga bakora itsinda bagasuzumira ikibazo hamwe ni ukugira ngo Urukiko rutazagendera ku bitekerezo by'Umuhanga umwe, ariko aha rukaba aricyo rwashingiyeho gusa.

B. Raporo yakozwe na DR Habimana Emmanuel (05/01/2022) irivuruguza (05/01/2022) (Umugereka 1 - Clinical Investigations of the Case of Mbabazi and her Child Dr Habimana Emmanuel). Muri iyi Raporo ari nayo yashingiweho kandi ngo yari yanzwe n'ababuranyi, mu mwanzuro we, ari naho agaragaza ibibazo, Umwanzuro wa 1, ashidikanya ko Mbabazi Annet yasinyiye kubyara bisanzwe yabyemeye (She entered spontaneous labor and she went with trying vaginal delivery with no documented signed consent, may be she gave a verbal consent) nyamara ku urupapuro rwa 1 rw'iyi Raporo, ngo mu Ibazwa rya M.A, M. A yavuze ko yemeye kubyara mu buryo busanzwe ([…] it was changed at admission as agreed with both medical team and the PATIENT [M.A]. Aha akibaza ukuntu iki kibazo iyi mpuguke yagishyize muri Raporo yayo, niba itari igamije guharabika abaganga gusa.

C. Hari kandi aho atanga uko byagenze akoresheje ibintu bitaribyo: mu mwanzuro we avuga ko nta makuru ari muri dosiye (poor documentation), kandi akavuga ko umwana atamanutse mu gihe cy'amasaha ane, ariko akiyibagiza ko ku rupapuro rwa 2 akavuga ko Mbabazi yagiye ku nda 11/01/2015 mu rukerera (1:00 AM), umura ukaba warafungutse neza 3:30, aribwo ababyaza bajyanye Mbabazi kubyara neza kandi kuva 2.00 kugeza 3.30 AM umwana yari kuri 2/5. Kuba rero uyu muhanga ashaka kugaragazako hashizeamasaha arenga ane nta gihindutse nabyo ngo ni ugutanga inama itariyo nkuko bisobanuwe.

D. Kuba muri iyi Raporo ya Dr Habimana Emmanuel ibipimo agaragaza by'ubuzima by'umwana APGAR 5/10; 8/10 na 9/10 ku munota wa 1, uwa 5 n'uwa 10 ayihuza na Dr Gakindi Jean Leonard nawe warebye muri dosiye bombi bavuga ko aribyo basanze muri dosiye ya Muganga w'abana (Pediatrician). Aha akibaza icyo Dr Habimana Emmanuel ashingiraho avuga ko harimo kubusanya hagati ya muganga wabyaje na muganga w'abana kuri APGAR.

[64] Avuga ko Urukiko narwo nk’uko rubyivugira, impuguke ntabwo zicaye hamwe ngo zikore raporo, ziyunguraneho inama, maze zihuze ubumenyi bwazo ari nabyo urukiko rwari rwategetse, maze izi mpuguke zitange raporo imwe ibumbiyemo byose kandi itarimo gushidikanya. Ibi asanga bigaragaza nta gushidikanya ko iyi raporo itakozwe, ahubwo ibyabaye ni uko buri muhanga yagiye afata utuntu aha, undi afata utuntu aha, barangije baregeranya ku buryo batazi n’igihe byegeranyirijwe.

[65] Avuga ko kubijyanye n’ibikubiye muri raporo nabyo abinenga kuko iyi Raporo itafatwa nka Raporo y’abahanga kuko buri tsinda ry’abahanga ryakoze raporo ukwaryo nk’uko yabikomojeho.

[66] Avuga ko, ku gice cya Raporo yakozwe n’abahanga mu buvuzi bw’abana, nta kintu na kimwe bagaragaza bashingiyeho bafata umwanzuro cyane cyane ku bijyanye n’ibibazo umwana yaba yaragize avuka, kuko bigaragara ko batasuzumye dosiye y’umwana cyangwa iy’umubyeyi, ntabwo babajijje abaganga cyangwa umubyeyi, ku buryo ibyo bavuze ntacyo byafasha urukiko ngo rubone ukuri.

[67] Avuga ko ikigaragaza ko batarebye Dosiye y’Umubyeyi n’iy’umwana, ni uko bafite APGAR ya 5, 7, na 8 ku munota wa 1, uwa 5 n’uwa 10 ariko batavuga ngo n’uwu muganga wayifashe (Umugereka wa 2) kandi ikaba inyuranye na APGAR ya muganga w’abana igaragazwa Dr Habimana Emmanuel (umugereka 1) na Dr Gakindi Jean Leonard (umugereka 5), nyamara ngo nk’abaganga b’abana bakabayebaribanze ku byakozwe na muganga w’abana. Bongeye kandi, aba bahanga babeshya nkana muri Raporo yabo nk’aho bavuga ko umwana akimara kuvuka atahise arira (Umugereka 3, p. 4), nyamara mu ibazwa ry’ababyeyi b’umwana baravuze ko umwana wabo akimara kuvuka yarize: “batubwiye ko umwana wabo w’umuhungu yavutse akarira.” Akibaza impamvu impuguke z’ubuvuzi bw’abana zibeshya ku kintu cy’ingenzi nko kuba umwana yaravutse agahita arira n’icyo Urukiko rwashingiraho ruha agaciro raporo yazo.

[68] Avuga ko ku bijyanye na Raporo yakozwe na Dr Habimana Emmanuel (Umugereka 1), nayo ntabwo yashingirwaho ngo ukuri kugaragazwe kuko (1) yabajije uruhande rumwe gusa (Umubyeyi), ashyiramo amakabyankuru nk’aho avuga ko Umubyeyi yamaze amasaha arenga ane nta gihinduka, nyamara akavuga ko umura wafungutse neza 3:30, akajyanwa kubagwa 5:00 aha akibaza impamvu yongera igihe ku buryo nawe ntacyo yafasha urukiko.

[69] Ababuranira M.Gmu izina ry'umwana we M.M.A mu mwanzuro no mumiburanire yabo, bavuga ko muri kopi y'urubanza, guhera kuri point 25- 30, urukiko rwashingiye kuri byinshi, rwasobanuye responsabilite/uburangare rurangije rubihuza n'uru rubanza. Rwasobanuye ibyavuye muri expertise. Faysal yaravuze ngo uwo murwayi azajya yivuza King Faysal kubuntu, bakibaza niba ibyo bitaba byerekana ko bemera uruhare rwabo bityo asanga igika cya 28 cyihagije.

[70] Bavuga ko igika cya 28 kigaragaza uburangare bwabayeho. Ibindi bimenyetso ni uko, umwana yabaye debile bitewe no gutinda mu matako kubera uburangare bw'abaganga bayo. Umuryango ngo wandikiye KING Faysal basubiza ko nta budget bagira. Akibaza niba ntaburangare bwabayeho kuki babyemeye ko umwana akomeza gukurikiranwa nubwo bavugaga ko nta budget bafite.

[71] Bavuga ko kuvuga ko abaganga bari bahari ntibabajijwe, asanga kubabaza bose ataribyo byari gutuma ukuri kujya ahagaragara, bityo ko iyi mpamvu yabo y'ubujurire nta shingiro ifite.

[72] Bavuga ko expertise yakozwe na Habimana, yagaragaje ikibazo umubyeyi n'umwana bari bafite, kuba uwo mwana yaratinze mu matako, hari gukorwa intervention rapide.

[73] Bavuga ko raporo y'abaganga page 4 mu mwanzuro wabo bavuga ko Anet atakurikiranwe neza, kandi ngo uwamukurikiranaga ni Dr Muganda kuko yemeye ko ariwe wari wakoze kandi yemeye ko ariwe wafashe umwanzuro wo kumubaga. Abandi bemeje ko habayeho gutinda gufata umwanzuro wo kumubaga. Abahanga 3 bavuze ko umwana afite ubwonko butigeze bukora neza.

[74] Bavuga ko ibaruwa yanditswe na Ministre, Florence Gasatura yashimiye umurongo watanzwe na Ministre w'ubuzima. Ibi bitaro ngo byavuze ko bishimira Ministre w'ubuzima ariko kuko bari bfite ibibazo biri financial, biyemeje kujya bavura uyu mwana ku buntu, ibi bagasanga bishimangira responsabilite yabo kuko batari kwemera gukomeza kuvura umwana nta ruhare bagize mu mibazo afite.

[75] Bavuga ko muri kopi de jugement umucamanza ngo ntabwo yandika ibintu byose. Uyu Dr Muganda na SONARWA ngo sibo babagobokesheje muri uru rubanza, basanga kuri Dr Muganda asa nuburanira KING FAYSAL. SONARWA nayo yaje mu rubanza izanwe na King Faysal bigaragara ko yemera responsabilite. Ikindi ni uko itegeko Me Rwakayija yavuze rigena uko indishyi muri izi manza zibarwa atazaribona.

[76] Uburanira SONARWA GENERAL INSURANCE LTD mu mwanzuro no mumiburanire ye yibaza niba koko hari uburangare ku buryo SONARWA yakwishyura indishyi. Asaba urukiko kuzareba niba expertise yarakusanyije amakuru ya nkenerwa.

[77] Avuga ko hari team y'abaganga bakoze uwo munsi, asaba urukiko kuzibaza niba koko umurwayi wageze kubitaro akavugana na muganga wari wamuhaye rendez-vous, akamusaba ko yakwemera bakareba ko abyara neza, niba iki kibazo cyaba cyarashubijwe.

[78] Avuga ko Minister yagiriye inama KING FAISAL HOSPITAL RWANDA LTD yo kwishyura ngo bitanduza isura yabo barabyemera, asaba urukiko kuzabisuzuma nirusanga ntaburangare bwabaye cyangwa se aba expert batarasobanuye neza muri raporo yabo, urukiko ruzabone ko nta ndishyi SONARWA ikwiye gutanga cyane hasuzumwa niba kuba umwana yaratinze kuvuka byaba aribyo byateye uburangare cyane ko SONARWA yitsitsa ku burangare bwa KING FAISAL HOSPITAL RWANDA LTD.

UKO URUKIKO RUBIBONA

[79] Ingingo za 76, 77, 96, 98 z’itegeko N° 15/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo z’iteganya ko:" Ubuhamya bw’abahanga ni ubugamije guha urukiko ibisobanuro bishingiye ku bumenyi kimwe n’umwanzuro urenze ubumenyi busanzwe bw’umucamanza mu kazi ke bitewe n’uko ibiburanwa bishingiye ku buhanga bwihariye. Kugira ngo Urukiko ruce urubanza rwaregewe rushobora, gutegeka umuhanga cyangwa abahanga gusuzuma no gutanga ibitekerezo ku bintu bifitanye isano n’urwo rubanza kandi bijyanye n’umwuga wabo Iyo urukiko rutabonye ibisobanuro bihagije muri raporo, rushobora gutegeka abakoze raporo gutanga

ibisobanuro by'inyongera […]. Urukiko ntirukurikiza byanze bikunze ibitekerezo by'abahanga mu gihe binyuranye n'imyumvire y'abacamanza.

[80] Ingingo zagaragajwe zerekana ko mu gihe Umucamanza ashikirijwe urubanza rusaba ubumenyi bw'umwihariko adafite, ashobora mu cyemezo gusaba abahanga cyangwa inzobere muri buriya bumenyi bakamuha ibitekerezo byamufasha kumva neza uko ibintu byagenze, kandi igihe bitamunyuze ashobora kubasaba ko batanga ibisobanuro by'inyongera kandi ko ibyemejwe n'abahanga byose atari ihame ko urukiko rubigenderaho.

[81] Urukiko rusanga ubujurire bwa KING FAISAL HOSPITAL RWANDA LTD bushingiye kunenga ibyemejwe n'abahanga bashizweho n'urukiko rwisumbuye rwa Gasabo, kuko uburanira biriya bitaro asanga bariya bahanga kabone n'ubwo urukiko rwari rwabasabye ko bakorera hamwe, ariko ngo buri umwe yakoze ukwe, undi ukwe banatanga raporo buri wese yakoze. Ndetse ahandi akavuga ko mubyemejwe nabariya bahanga bagenda bakekeranya, bityo asanga ibyo bemeje bitera gushidikanya.

[82] Urukiko rusanga ibivugwa n'uburanira KING FAISAL HOSPITAL RWANDA LTD koko niko byari byagenze mbere aho buri Muhanga yatanze raporo ye ukwe, ndetse raporo zabariya bahanga zanditse mu rurimi rw'icyongereza mu magambo ya gihanga cyane atumvikana neza, urukiko ruza gufata undi mwanzuro rubasaba ko bakorera hamwe bagatanga araporo imwe kandi mu rurimi rw'ikinyarwanda, ibyo barabikora baranabisinyira.[2]

[83] Urukiko rusanga gukorera hamwe bivugwa n'Uburanira KING FAISAL HOSPITAL RWANDA LTD bitavuze byanze bikunze gukorera mu nzu imwe cyangwa ahantu hamwe ku masaha amwe kuko usanga aribyo uriya uburanira KING FAISAL HOSPITAL RWANDA LTD ashaka kumvikanisha, cyane ko icyari kigamijwe kwari ugutanga umucyo kubyabaye byatumye M.Awakurikiranwaga n'abaganga ba KING FAISAL HOSPITAL RWANDA LTD abyara umwana ufite ibibazo byagaragajwe muri ziriya raporo,

[84] Urukiko runasnga urukiko rwisumbuye rwa Gasabo rushyiraho bariya bahanga ,rwashatse kugira imyumvire yuzuye ku cyatumye uriya mwana avukana biriya bibazo ndetse n'ingaruka bizamugiraho mu gihe kingana gute na cyane ko indishyi zasabwaga zagombaga gushingira kuri ariya makuru,ndetse ibyo nibyo ziriya nzobere Prof. Rutagarama Florent, Dr. Munyalimaha Alain inzobere mu kuvura abana (Pediatricians)na Dr. Habimana Emmanuel inzobere mu bigendanye no kubyara n'indwara z'abagore (Obstetrician and Gynecologist) zakoze.

[85] Urukiko rusanga rero nk'uko ziriya nzobere zitandukanye ndetse n'ubumenyi bwazo butandukanye, birumvikana ko buri ruhande rwakoze ibijyanye n'ubumenyi bufite rubishyira muri raporo, ariko bageze ku mwanzuro rusange berekana ko habayeho uburangare bwatumye uriya mwana avuka afite biriya bibazo kandi ko biri ku rugero rwa 100%.

[86] Urukiko rusanga Uburanira KING FAISAL HOSPITAL RWANDA yaraneze cyane ibyakozwe na Dr. Habimana Emmanuel inzobere mu bigendanye no kubyara n'indwara z'abagore (Obstetrician and Gynecologist).

[2] Reba muri dosiye icyo cyemezo ndetse na raporo yaje gukorwa yubahirije ibyasabwe n'urukiko.

[87] Urukiko rusanga uburanira KING FAISAL HOSPITAL RWANDA yaribanze cyane kukunenga ibyemejwe n'inzobere, avuga ko mubyo zemeje zagiye zishidikanya, ibyo agasanga ari ikibazo cyatuma raporo iteshwa agaciro, impuguke ngo ntabwo zicaye hamwe ngo zikore raporo, ziyunguraneho inama, maze zihuze ubumenyi bwazo, ibyabaye ni uko buri muhanga yagiye afata utuntu aha, undi afata utuntu aha, barangije baregeranya ku buryo batazi n'igihe byegeranyirijwe Umwanzuro wa 1, ashidikanya ko Mbabazi Annet yasinyiye kubyara bisanzwe yabyemeye.

[88] Urukiko rusanga rusubiye muri raporo inengwa n'uburanira KING FAISAL HOSPITAL RWANDA, ni uko nk'uko byakomojweho ni raporo imwe yasinyweho n'abariya bahanga bose ariko buri muhanga yaragiye yerekana ibyo yumva ku cyateye biriya bibazo, ntabwo rero byavugwa ko buri wese yatanze raporo ye undi agatanga iye, cyane ko byagaragajwe ko Urukiko rwahise rusaba ko hakorwa raporo imwe ndetse abahanga bose bayisinyaho banerekana umwanzuro bafashe muri rusange.

[89] Urukiko rusubiye kuri raporo nyirizina/fond, raporo ivugwa yerekana ko amakuru izo mpuguke zakuye muri fishi y'umurwayi, ku rupapuro rumushyira mu bitaro (Admission slip) handitseho ko yagombaga kubagwa (Caesarian Section) ku itariki 12/01/2015 kubera ko amazi umwana aba arimo yagabanutse (Severe oligoamnios), umwana yari ataramanuka neza (Poor fetal engagement) ndetse no mu matako ari hato (Pelvic outlet borderline) ariko iyi gahunda iza guhinduka M.An'umugabo we babyumvikanyeho n'abaganga maze agerageza kubyara neza atabazwe.

[90] Mubiganiro bariya bahanga bagiranye na nyina w'umwana ariwe M.A na se w'umwana ariwe M.Gbahuriye ku biro by'urugaga rw'abaganga n'abaganga b'amenyo mu Rwanda biri i Kigali, Bombi bababwiye ko M.A yashyizwe mu bitaro by'ababyeyi mu bitaro byitiriwe umwami Faisal i Kigali ku itariki 10/01/2015 mu masaha ya saa tatu za mugitondo. Gahunda yari yahawe na muganga wamukurikiranaga aho bisuzumisha bataha (Dr Subira Manzi) yari ukubyara abazwe kubera kugira mu matako hato (an elective Cesarian Section due to borderline pelvis) ariko gahunda iza guhinduka abaganga babyumvikanyeho na M.A hamwe n'umugabo we Mbareba Geofrey.

[91] Urukiko rusanga ayo makuru avugwa muri iriya fishi yerekana ko M.A yari asanzwe afite ikibazo ndetse ko na Muganga Dr Subira Manzi wamusuzumye mbere yabibonye bibangombwa ko asaba M.Akuzabyara abazwe ndetseanamuha itariki azaziraho undi arabyemera.

[92] Ikibazo kiri muri iriya raporo ni ukumenya niba ibyari byemejwe na Dr Subira Manzi bigashyirwa muri dosiye y'umurwayi byari gusubirwaho ngo bitewe nuko Abaganga bari bari aho babyumvikanyeho na Mbabazi Anet.

[93] Urukiko rwagenzuye muri dosiye rushaka kureba niba haba hari ikimenyetso cyerekana koko ko M.A na se w'umwana ariwe M.Gbaba baremeye ko M.A yabyara mu buryo busanzwe mu gihe Dr Subira Manzi wari wamusuzumye bari bemeranyijwe ko agomba kubyara abazwe kubera ikibazo cy'amatako mato n'amazi adahagije yari afite, ariko nta nahamwe cyabonetse, ibyo rero abaganga b'Ibitaro bya KING FAISAL HOSPITAL RWANDA LTD bakoze bitsitsa ko M.An'umugabowe baba barisubiyeho, binyuranyije n'ibiteganywa n' ingingo ya 10 y'Itegeko N° 49/2012 ryo kuwa 22/01/2013 rigena ubwishingizi ku mwuga w'ubuvuzi iteganya ko: "Umurwayi cyangwa umuntu wese uhabwa ibikorwa by'ubuvuzi afite uburenganzira bwo kwanga kuvurwa

cyangwa gukorerwaho igikorwa cyose cy’ubuvuzi, guhindura icyemezo cye mu gihe avurwa, cyangwa kwanga ko igikorwa cy’ubuvuzi gikomeza kumukorerwaho. Kwanga kuvurwa cyangwa kwisubiraho bikorwa mu nyandiko bigashyirwa mu idosiye y’umurwayi."

[94] Urukiko rusanga rero kuba umurwayi yakwisubiraho kubyo yagombaga gukorerwa byemewe,ariko kugira ngo ibyo bifatwe ko ariko byagenze, ni uko agomba kubyerekana mu buryo bweruye/expresse, akabyandika bigashyirwa aho buri wese uzashaka kumenya uko byagenze yabisanga,kandi aho nta handi ni muri dosiye y’umurwayi, kandi ziriya nzobere ntabwo zerekanye ko muri dosiye ya M.A iri muri KING FAISAL HOSPITAL RWANDA LTD zaba zarabonye inyandiko yemeza koko ko uriya mubyeyi n’Umugabo we baba baranditse bisubiraho ku cyemezo cyari cyafashwe na Dr Subira Manzi ,bityo rero kuba byavugwa ko M.Gbaba baremeye ko M.Aabyara bisanzwe nta shingiro byahabwa kuko nta cyari kubuza abaganga kubasaba ko babisinyira nk’uko ingingo yagaragajwe ibikomozaho.

[95] Raporo y’impuguke yerekana kandi ko mu fishi y’umurwayi ifite IP 1500010763, ya M.A ndetse no ku rupapuro rujyana M.A mu bitaro (Admission slip) bigaragara ko M.A yashyizwe mu bitaro by’ababyeyi (Maternity) mu bitaro byitiriwe umwami FAISAL ku itariki 10/01/2015 saa 10h02 za mugitondo, asezererwa ku itariki 13/01/20215 saa10h15.Yashyizwe mu bitaro kubera ko yari afite ibise ku nda y’ibyumweru 39 n’iminsi 4 (39weeks and 4days gestation by date) kuko yaherukaga imihango ku itariki 08/04/2014.

[96] Ifishi ya M.A igaragaza ko yagiye ku nda kugeza mu ijoro ryo ku wa 11/01/2015 aho urupapuro rukoreshwa mu gukurikirana umubyeyi uri ku nda (Partograph) rugaragaza ko umura we wari ufungutse byuzuye (Fully cervical dilation) saa cyendan’iminota mirongo itatu za mu gitondo, umutwe w’umwana wamanutse kugeza kuri 2/5 kuva saa munani z’ijoro. M.Ayasunitse (Pushing) amasaha abiri atarabyara. Saa kumi n’imwe za gitondo ku itariki 11/01/2015 nibwo Dr Muganda yafashe icyemezo cyo kumubaga byihutirwa (Emergency Caesarian Section) kubera ko kubyara neza byanze (obstructed labor) maze bamubaga kuva saa kumi n’ebyiri n’iminota itanu kugeza saa moya na makumyabiri n’itanu za mu gitondo, abyara umwana w’umuhungu ufite ibipimo bifatirwa umwana ukivuka (APGAR) bya 5/10, 5/10 na 8/10 ku munota wa mbere, umunota wa gatanu n’umunota wa cumi bikurikiranye, apimaibiro 3,455 akivuka. Umwanayabonywe n’ Umuganga w’abana saa moya n’iminota makumyabiri n’ibiri za mu gitondo amuha APGAR 5/10,8/10,9/10, ku munota wa mbere, uwa gatanu no ku wa cumi, maze abona ko umwana yavutse ananiwe cyane kandi atarimo ahumeka neza (Perinatal birth asphyxia with respiratory distress) ahita amujyana aho abana barembye barwarira (NICU).

[97] Urukiko rusanga rushingiye kuri ibyo impuguke zabonye, ni uko ibabazo M.Ayagize akaza kubyara umwana ufite ibibazo bya burundu byaratewe no guhuzagurika kwa baganga ba KING FAISAL HOSPITAL RWANDA LTD bamwakiriye,harimo guhindura icyemezo Muganga wari wamusuzumye mbere yari yafashe cyo kumubyaza abazwe kuko yari yaramaze kwerekana ikibazo M.Aafite cyo kudashoborakubyara bisanzwenyuma babonye ko inzira bafashe idashoboka nibwo baje gusubira ku mwanzuro wa Dr Subira Manzi wo kumubyaza abazwe ibyo biza gushyirwa mu bikorwa na Dr Muganda ariko bikorwa impitagihe kuko ibyangirika byari byamaze kwangirika cyane ko umwana yavutse ananiwe cyane kandi atarimo ahumeka neza yangiritse ubwonko byamuteye indwara y’igicuri n’ibindi.

[98] Urukiko rusanga iyo gahaunda yo kubagwa M.A yari yahawe yubahirizwa nta cyerekana ko ibibazo byavutse nyuma ku mwana we byari kuba, aribyo byerekana uburangare bw'abaganga ba KING FAISAL HOSPITAL RWANDA LTD batashoboye kugira ubushisozi buhagije mu kwita ku buzima bw'umwana n'umubyeyi, banirengagiza umurongo wari wafashwe n'uwababanjrije wanaje gushyirwa mu bikorwa nyuma ariko ntacyo bakiramira.

[99] Urukiko rero rusanga kuba uburanira KING FAISAL HOSPITAL RWANDA LTD avuga ko raporo yatanzwe irimo gushidikanya ku buryo ibiyivugwamo byose byatehswa agaciro, nta gaciro byahabwa kuko ihamwe arimo gukoresha muri uru rubanza ridahuye n'imiterere yarwo cyane ko bimenyerewe ko iryo hamwe rikunze gukoreshwa mu nshinjabyaha aho ikimenyetso gishinja kigomba kuba kidashindikanywaho,ahubwo mu manza nkuru rurimo kuburanishwa ikigenderewe ntabwo ari ikimenyetso kimara impaka kuri bose nk'uko ashaka kubyumvikanisha, ahubwo ni ugushira mu gaciro no kugereranya ikimenyetso kirusha ibindi ireme.[3]

[100] Urukiko rusanga kubijyanye nuko M.A yari yarahawe gahunda yo kubagwa na Dr. Subira byarashimangiwe na Dr Muganda waje kumubaga nyuma kuko ubundi buryo bwari bwanze ariyo mpamvu ibyavuzwe na ziriya mpuguke ndetse zanabonye ku ifishi y'umurwayi ari ukuri gukwiye gushingirwaho muri uru rubanza.

[101] Raporo rero yerekana ibibazo bikomeye uriya mwana wa M.A yagize kuko banzuye ko Umwana Mbareba Muhinda Allan afite ibimenyetso, haba ibigaragarira amaso ndetse n'ibyagaragajwe n'icyuma kireba mu mutwe, bigaragaza ko yahuye n'ikibazo gikomeye cy'ubwonko kubera kubura umwuka mu gihe cyo kuvuka, bikamuviramo ibi bikurikira:

1. Kugagara kwa hato na hato (uncontrolled epilepsy)
2. Kwangirika gukomeye k'ubwonko (grey and white matter bilateral lesions).
3. Ubwonko budakura neza (encephalomalacia)
3. Amagufa yorohereye bitewe nuko adahura n'izuba (clinical features of rickets)
4. Ibimenyetso by'uko inzira y'ubuhumekero mu bice byo hejuru idafungutse neza (clinical features of upper airways obstruction). bigaragaza ko afite ubumuga bukabije busaba kuzahora yitabwaho ubuzima bwose.

[102] Urukiko rurasanga ubushishozi buke bw'ibitaro KING FAISAL HOSPITAL RWANDA LTD bugaragarira no kuba butaritaye ko M.A yagombaga kwitabwaho ku buryo bwihariye nk'uko byari byemejwe n'Umuganga wabyo wari wabyanzuye, ariko abaganga babyo bamwakiriye nyuma bagahindura uwo mwanzuro bagerageza ubundi buryo nabwo byaje guteza ikibazo uriya mwana ndetse n'ababyeyi be, ibyo byose bakaba barabikoze mu nyungu z'ibitaro nk'umukoresha, bagakora amakosa mu gihe cy'akazi kabo, bityo nk'uko byemejwe n'urukiko rw'ubujurire mu rubanza n° RCAA 00073/2018/CA rwaciwe ku wa 19/07/2019, iyo bigenze gutyo, Umukoresha ariwe ibitaro KING FAISAL HOSPITAL RWANDA LTD nibyo bigomba kuryozwa ayo makosa.

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[3] Dans le droit de la preuve, le terme prépondérance de la preuve peut s'entendre de la supériorité de la preuve que produit une partie par rapport à celle que présente la partie adverse et qui permet, du fait de cette prépondérance, d'emporter la conviction du tribunal

[103] Kubireba raporo ya Dr Leonard Gakindi uhereye kubibazo yerekana umubyeyi yari afite,ahubwo yerekana ko nta ruhare cyangwa uburangare bw'Ibitaro ashingiye ko Uriya mubyeyi yari asanzwe afite ibibazo na mbere yuko abyara,urukiko rusanga biriya bibazo avuga muri raporo ye umubyeyi yari afite, bishobora kuba aribyo byatumye Muganga wamusuzumye bwa mbere amubwira ko agomba kuzabyara abazwe hirindwa izindi ngaruka zavuka abyaye bisanzwe,ndetse anamuha n'itariki azagarukiraho kubyara,kuba rero yaraje mbere y'igihe yari yarahawe,byagombaga gutuma ibitaro byihutira kumufasha akabyara uko byari byemejwe na Muganga wa mbere abazwe, kugira ngo hirindwe ziriya ngaruka zivugwa na Dr leonard Gakindi ,ahubwo ikigaragaza uburangare na none ni uko kutita kuri iriya raporo uriya mugore agarutse Ibitaro byamufashe ahubwo nk'umuntu usanzwe udafite ikibazo ndetse banahindura amerekezo cyangwa uburyo bwari bwemejwe bwo kumubyaza bisanzwe,ahubwo batangira kugerageza kumubyaza bisanzwe kandi Muganga yari yemeje ko abagwa,binaniranye nibwo basubiye ku mwanzuro wari warafashwe na Muganga wa mbere wasuzumye uriya mubyeyi.

Kubijyanye no kumenya niba indishyi zatanzwe zagabanywa cyangwa zakwiyongera

[104] Uburanira KING FAISAL HOSPITAL RWANDA LTD yavuze ko Urukiko mu kugena indishyi zingana na 125.000.000 FRW ntabwo rwavuze izi ndishyi izo arizo, ntabwo ruvuga niba ari iz'akababaro cyangwa se mbonezabukungu, cyangwa se izindi izo arizo zose ku buryo aribyo rwashingiraho rukagena indishyi zikwiye. Ahubwo rukomatanya indishyi nyinshi icyarimwe na zimwe zifitiwe ibisobanuro aho rugira ruti (igika cya 43): "Urukiko rusanga KING FAISAL HOSPITAL RWANDA LTD igomba guha M.Gmu izina ry'umwana we M.M.A indishyi zingana na 125.000.000 FRW, muri izo ndishyi SONARWA GENERAL INSURANCE COMPANY Ltd nk'umwishingizi wa KING FAISAL HOSPITAL RWANDA LTD igatangamo 20.000.000 FRW y'uburyozwe yishingiye asigaye angana na 105.000.000 FRW agatangwa na KING FAISAL HOSPITAL RWANDA LTD."

[105] Asanga kuba Urukiko rwaragennye indishyi rutabanje kugaragaza ingingo rushingiyeho binyuranyije n'ingingo ya 132 y'Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko "Ica ry'urubanza rigaragaza ingingo zishingiye ku byabaye n'amategeko ryashingiyeho mu gufata icyemezo." Bityo asaba Urukiko Rukuru gutesha agaciro izi ndishyi kuko Urukiko mu rubanza rujuririrwa rutagaragaza ingingo rwashingiyeho ruzigena.

[106] Uburanira SONARWA GENERAL INSURANCE LTD yavuze ko mu gihe urukiko rubyumvise ukundi indishyi zatangwa zitagombyekurenga izo yumvikanyena KING FAISAL HOSPITAL RWANDA LTD.

[107] Ababuranira M.Gmu izina ry'umwana we Muhinda Bbareba allan mu bujurire bw'uririye kubwa KING FAISAL HOSPITAL RWANDA LTD basanga zakongerwa zikagezwa kuri miliyoni ibihumbi magana atatau/300.000.000 Frs.

UKO URUKIKO RUBIBONA

[108] Ikibazo kijyanye n'ingano y'indishyi z'akababaro zituruka ku makosa yakozwe n'abakozi bo kwa Muganga, ntabwo aribwo bwa mbere kigera mu nkiko, kuko zemeje ko nta tegeko ririho

rigena uko zitangwa,ahubwo ko hashingirwa ku bushishozi bw'umucamanza hashingiwe ku buremere bw'ikosa n'ingaruka byagize k'uwahohotewe kandi hitawe ku myaka uwo mwana azamarana akababaro yatewe, zikagenwa mu bushishozi bw'umucamanza (ex aequo et bono) Urubanza RCAA 00008/2020/CA rwaciwe ku wa 25/06/2021 n'Urukiko rw'Ubujurire

[109] Muri uru rubanza, indishyi ziregerwa ni izikomoka ku makosa yabereye kwa muganga KING FAISAL HOSPITAL RWANDA LTD yatumye Umwana Mbareba Muhinda Allan avukana ibibazo bitandukanye birimo:

1. Kugagara kwa hato na hato (uncontrolled epilepsy)

2. Kwangirika gukomeye k'ubwonko (grey and white matter bilateral lesions).

3. Ubwonko budakura neza (encephalomalacia)

3. Amagufa yorohereye bitewe nuko adahura n'izuba (clinical features of rickets)

4. Ibimenyetso by'uko inzira y'ubuhumekero mu bice byo hejuru idafungutse neza (clinical features of upper airways obstruction). bigaragaza ko afite ubumuga bukabije busaba kuzahora yitabwaho ubuzima bwose.

[110] Urukiko rusanga ibarwa ry'indishyi rigomba gushingira ku bipimo byagenwe ku mpanuka nk'izo kwa muganga mu gihe bihari ariko mu Rwanda nta gipimo kizwi giherwaho habarwa indishyi zishingiye ku buryozwe bw'umuganga wakoze amakosa bikaviramo umurwayi ubumuga buhoraho.

[111] Urukiko rusanga hakurikijwe ibiteganywa mu ngingo ya 9 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, iteganya ko iyo nta tegeko rijyanye n'ikiburanwa umucamanza ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko, igipimo cyagenwa mu bushishozi bw'Urukiko hitawe ku buremere bw'ikosa ryakozwe, ku buryo Inkiko zakemuye ibindi bibazo bisa n'ikiri muri uru rubanza, ndetse n'inyandiko z'abahanga.

[112] Uurukiko rusanga nk'uko byakomojweho indishyi, zikwiye kugenwa mu bushishozi bw'Urukiko hashingiwe kubyo rwagaragarijwe, harimo no kuba umwana watewe akababaro gasabirwa indishyi azagahorana mu buzima bwose asigaje kubaho, ari nako ababyeyi be bazakomeza kubana nawe muri ibyo bibazo batiteye, bityo nk'uko urukiko rw'Ubujurire rwabikoze mu rundi rubanza Nº RCAA 00073/2018/CA rwaciwe ku kibazo kimeze nk'iki ku wa 19/07/2019 hagati ya Nyirabatesi Laurence n'Ibitaro byitiriwe Umwami Fayisali, haburanwa indishyi z'akababaro zo kuba KING FAISAL HOSPITAL yarateye ibyago Nyirabatesi Laurence ubwo yari mu bitaro byabo.

[113] Urukiko rusanga mu rubanza RCAA 00008/2020/CA rwaciwe ku wa 25/06/2021 n'Urukiko rw'Ubujurire hashingiwe ku buremere bw'ikosa n'ingaruka byagize k'uwahohotewe kandi hitawe ku myaka uwo mwana azamarana akababaro yatewe, zikagenwa mu bushishozi bw'umucamanza (ex aequo et bono),uwo kandi niwo murango wanafashwe no kuzindi manza RADA 0054/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/12/2014 haburana Kabayijuka Gaspard na MINISANTE aho Kabayijuka Gaspard yagiye kwivuza agaterwa urushinge mu mutsi n'uwari umukozi w'Ibitaro bikamuviramo ubumuga, n'urubanza Nº RCAA 00073/2018/CA

rwaciwe n'Urukiko rw'Ubujurire ku wa 19/07/2019 hagati ya Nyirabatesi Laurence n'Ibitaro byitiriwe Umwami Fayisali, aho Nyirabatesi Laurence yagiye kubyara maze mu gihe cyo kumubaga bakamukomeretsa uruhago rw'inkari bikamutera indwara yo kujojoba (fistule).

[114] Muri uru umwana uwahohotewe yagize ubumuga buhoraho kukigero cy'ijana ku ijana 100% azamarana ubuzima bwe bwose nk'uko byakomojweho mu gika cya 109, mu gihe mu rubanza rwavuzwe Irasubiza Amani yagize ubumuga bubabaje kandi buhoraho bungana na 50% ahabwa indishyi za 35.000.000 FRW.

[115] Urukiko rusanga mu rwego rwo kugereranya indishyi zigomba gutangwa muri uru rubanza no gushyira mu gaciro ,ari Miliyoni Mirongo irindwi z'amafaranga y'u Rwanda(70.000.000frs) kuko M.M.A yagize ubumuga bwa 100% azamarana ubuzima bwe bwose kandi azahora ku buvuzi buhoraho nk'uko byasobanuwe,ariko KING FAISAL HOSPITAL LTD ikazishyura ifatanyije n'umwishingizi wayo SONARWA GENERAL INSURANCE LTD, nk'uko babyumvikanyeho mu masezerano y'ubwishingizi bafitanye no ku kigero kitarenze icyo impande zombi zumvikanyeho muri ayo masezerano y'ubwishingizi.

Ku bijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa n'ababuranyi

[116] Uburanira KING FAISAL HOSPITAL LTD RWANDA avuga ko Urukiko rwategetse KING FAISAL HOSPITAL RWANDA LTD guha M.Gmu izina rya M.M.A 500.000 FRW y'ikurikiranarubanza na 2.000.000 FRW y'igihembo cy'Avoka nta bisobanuro, nta shingiro bigomba guhabwa kuko rutagaragaza icyo rushingiraho rugena iri tangwa ry'aya mafaranga 2.500.000 y'u Rwanda. Bityo ibi nabyo binyuranye n'ibitenywa n'ingingo ya 132 y'Itegeko N°. 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko "Ica ry'urubanza rigaragaza ingingo zishingiye ku byabaye n'amategeko ryashingiyeho mu gufata icyemezo.

[117] Ababuranira M.Gmu izina ry'umwana we M.M.A bavuga ko Urukiko rwashingiye ku kuba Mbareba Allan yari afite abamuhagarariye 2 bakumva ko nta tegeko umucamanza yishe atanga iki gihembo.

UKO URUKIKO RUBIBONA

[118] Ingingo ya 111 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ibikurikira: "Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe.

[119] Urukiko rusanga ingingo yagaragajwe ishaka kumvikanisha ko utsinzweurubanza agomba kwishyura amafaranga yose yarukoreshejwemo.

[120] Urukiko rusanga nta bindi bisobanuro byari ngombwa kuri iki kibazo kuko icyo ariya mafaranga asabwa ibitaro ashingiyeho, ni uko ubwa mbere ibitaro byatsinzwe, ikindi ni uko

uwahawe ariya mafaranga yari yifashishije abanyamategeko bamufashije gutegura no kuburana urubanza, kandi bikaba bizwi ko abanyanategeko baburana mu nkiko atari abakorerabushake ahubwo ko umurimo bakora ariwo ubatunze bityo bagomba kuwuhemberwa.

[121] Urukiko rusanga unenga ariya mafaranga yatanzwe atanenga ingano yayo nabyo asobanure mpamvu ki asanga yaba ari menshi, na cyaneko atanazi imirimo bariya banyamategeko bakoze ijyanye n’uru rubanza, no kuba nk’uko dosiye ibyerekana uru rubanza ku rwego rwa mbere rwagiye rusubikwa kenshi bitewe n’ibyagiye bisabwa n’ababuranyi, ibyo byose bikagira icyo byongera ku gaciro k’umurimo uba wakozwe. Bityo nta kosa ryo gukosora kuri iki kibazo.

 Kubijyanye n’indishyi zo gushorwa mu manza zasabwe na M.Gmu izina ry'umwana we M.M.A

[122] Ababuranira M.Gmu izina ry'umwana we M.M.A mu bujurire bushamikiye ku bujurire bwa KING FAISAL HOSPITAL LTD RWANDA basabye urukiko gutegeka KFH indishyi zo gukomeza gushorwa mu manza ku maherere zingana na 10,000,0000 Ruff kuko kugeza hashize imyaka igera 9 yaratereranye umuryango wa Mbareba kubushake kubera amakosa y’uburangare bw’ umuganga wabo.

[123] Uburanira KING FAISAL HOSPITAL LTD RWANDA yavuze ko indishyi abaregwa basaba zo gushorwa mu manzamu buryo bw'amaherere badakwiye kuzihabwa, ahubwo KFHR ikaba isaba kugenerwa indishyi za 5.000.000 FRW zo gushorwa mu manza nta mpamvu, n'izo kwangirizwa izina zingana na 50.000.000 FRW

UKO URUKIKO RUBIBONA

[124] Ingingo ya 152 y’Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi iteganya ko:" Uregwa mu rukiko rujuririrwa ashoborana we kugira ibyo asaba yiregura. Ubujurire bwuririyeku bundi bukorwa n’uwarezwe mu bujurire bwerekeye ku wajuriye cyangwa ku bandi barezwe mu bujurire.

[125] Urukiko rusanga indishyi zisabwa na M.Gmu izina ry'umwana we M.M.A zitahabwa ishingiro kuko kuba urubanza rugeze hano mu bujurire, ni uko itegeko ryemerera uwatsinzwe ku rwego rwa mbere kuba yajurira mu gihe atishimiye umwanzuro yafatiwe ku rwego rwa mbere, bityo ntabwo umuntu yahanirwa kuba yarubahirije ibiteganywa n’Itegeko.

[126] Urukiko rusanga na KING FAISAL HOSPITAL LTD RWANDA itahabwa indishyi isaba kuko yatsinzwe mu bujurire yatanze muri uru rukiko, bityo ntaho zaba zishingiye.

 Ku bijyanye n’amafaranga y’ikurikiranarubanza n’igihembo cya Avoka asabwa n’ababuranyi kuri uru rwego

[127] Me Ngabo Audace Uhagarariye M.Garasaba urukiko gutegeka KFH kwishyura igihembo cy’avoka kingana na 2,000,000 Rwf ku rwego rw’ubujurire ndetse n’ikurikirana rubanza rihwanye na 1,000,0000 FRW.

[128] Me Rwakayija Mugande Uhagarariye King Faisal Hospital Rwanda Ltd avuga ko basanga amafaranga y'igihembo cy'Avoka n'ikurikirana rubanza abaregwa basaba batagomba kuyahabwa,

ahubwo KFHR ikaba isaba Urukiko gutegeka Mbareba uhagarariye umwana we gusubiza KFHR 5.000.000 FRW akubiyemo igihembo cy'avoka n'ikurikirana rubanza na 40.000 FRW y'ingwate z'amagarama y'urubanza.

UKO URUKIKO RUBIBONA

[129] Ingingo ya 111 y’Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, iteganya ibikurikira: “Ikirego cy’amafaranga y’ikurikiranarubanza ni ikirego gishamikira ku kirego cy’iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy’amafaranga y’ikurikiranarubanza kiburanishwa rimwe n’ikirego cy’iremezo. Gishobora kandi kwakirwa kikaburanishwa n’iyo ikirego cy’iremezo cyaba kitakiriwe.

[130] Urukiko rusanga ingingo yagaragajwe ishaka kumvikanisha ko utsinzweurubanza agomba kwishyura amafaranga yose yarukoreshejwemo.

[131] Urukiko rusanga KING FAISAL HOSPITAL LTD RWANDA / KFHR ibyo isaba itabihabwa kuko yatsinzwe urubanza yajuririye, bityo ntaho byaba bishingiye.

[132] Urukiko rusanga M.Gyahabwa indishyi asaba ariko zikagenwa n’urukiko kuko ibyo asaba ari umurengera kandi ntiyirekane niba urubanza rwaba rwarigeze gusubikwa akagaruka kuruburana, bityo nk’uko amabwiriza ashyiraho ighembo cy’avoka abiteganya ko mu bujurire hatangwa kimwe cya kabiri cy’ayatanzwe ku rwego rwa mbere, bityo kuba ku rwego rwa mbere amafaranga yose hamwe y’igihembo cy’Avoka n’ay’Ikurikiranarubanza yari 2.500.000frs, kuri uru rwego ahawe 1.250.000.

III. ICYEMEZO CY’URUKIKO

[133] Rwemeje ko ubujurire bwa KING FAISAL HOSPITAL LTD RWANDA / KFHR nta shingiro bufite.

[134] Rwemeje ko nta ruhare Dr Muganda Rwibasira John yagize mubibazo M.M.A umwana wa M.Gyagize avuka.

[135] Rwemeje ko uburangare bwakozwe n’abandi baganga ba KING FAISAL HOSPITAL LTD RWANDA / KFHR bakiriye M.A aje kubyara ntibamukorere ku gihe ibyo Muganga wa mbere yari yamwandikiye.

[136] Rwemeje ko urubanza RC 00068/2020/TGI/GSBO rwaciwe kuwa 27/01/2023 n’urukiko rwisumbuye rwa Gasabo ruhindutse.

[137] Rwemeje ko KING FAISAL HOSPITAL LTD RWANDA / KFHR igomba guha M.Gmu izina ry'umwana we M.M.A indishyi zingana na Miliyoni Mirongo irindwi z’amafaranga y’u Rwanda(70.000.000frs), muri izi ndishyi SONARWA GENERAL INSURANCE COMPANY Ltd nk'umwishingizi wa KING FAISAL HOSPITAL RWANDA LTD igatangamo 20.000.000FRWs y'uburyozwe yishingiye.

[138] Rwemeje ko KING FAISAL HOSPITAL RWANDA LTD, iha M.G mu izina ry'umwana we M.M.A amafaranga 500.000FRWs y'ikurikiranarubanza n'amafaranga 2.000.000FRWs y'igihembo cya Avoka, igasubiza M.Gmu izina ry'umwana we M.M.A amafaranga 20.000FRWs yatanzeho ingwate y'amagarama y'urubanza yaciwe ku rwego rwa mbere.

[139] Rwemeje ko KING FAISAL HOSPITAL LTD RWANDA / KFHR igomba gusubiza M.Gmu izina ry'umwana we M.M.A amafaranga y’igihembo cy’avoka n’ay ikurikiranarubanza angana na Miliyoni imwe n’ibihumbi magana abiri na mirongo itanu.1.250.000frs.

[140] Rwemeje ko amagarama y’urubanza yatanzwe na KING FAISAL HOSPITAL LTD RWANDA / KFHR ahwanye n’ibyakozwe byose muri uru rubanza.

[141] Rwemeje ko amagarama y’urubanza yatanzwe na Dr Muganda Rwibasira John ayasubizwa n’urukiko kuko yatsinze.

[142] Rusomwe mbere y itariki rwahawe kuko umucamanza azaba afite iburanisha mu rundi rukiko.