U.N mu izina rya M. M. L v LA CROIX DU SUD

[Rwanda URUKIKO RUKURU - RCA 00255/2022/HC/KIG (Mukamuhire, P.J, Juru, Uwamariya, J.)]

Amategeko agenga imanza z'imboneza mubano - *Indishyi zikomoka ku burangare bw'abaganga – Ibisabwa ngo hatengwe indishyi zikomoka ku burangare bw'abaganga* - *Kugira ngo hemezwe ko habaye uburangare mu kuvura umurwayi hagomba kugaragazwa ko uvura yari afite inshingano zo kwita ku murwayi, kuba atarubahirije inshingano ze, no kuba kutita kuri izo nshingano hari ibyo byangirijeho urega.*

Incamake y'ikibazo: U.N yahawe serivisi z'ubuvuzi n'ibitaro bya la criox du sud aho yabyariye umwana ariko amaze kuvuka akagaragaza ibibazo by'ubwonko bwagiye busubria inyuma. Avuga ko yagiye kwisuzumisha akabwirwa ko azabyara atabazwe ariko umunsi yagiye kubyara ntibamwitaho ngo abagwa bituma umwana ananirwa aho amubyariye abyajwe n'umuforomo ngo avuka afite ibibazo byaje kugaragara ubwo ubwonko bwe bwagiye bugabanuka. Yatanze ikirego mu Rukiko rwisumbuyeye rwa Gasabo asaba indishyi zitandukanye. Urukiko rwemeje ko ikirego U.N yatanze mu izina ry'umwana we nta shingiro gihawe, kuko nta bimenyetso bifatika ashimangiza ikirego cye.

Urega ntiyishimiye imikirize y'urubanza arujurira mu Rukiko Rukuru ariko na Hopital la Croix du Sud mbere y'iburanisha isaba Urukiko ko rwayisabira Rwanda medical council raporo yakoze kuri icyo kibazo. Urukiko rwasabye iyo raporo kuko yagombaga kugaragaza uko ikibazo cy'uburwayi kivugwa kimeze.

Ku munsi w'ibiranisha, urukiko rwasuzunye ikibazo cyo kumenya niba uburwayi bwa M.M.L, umwana wa U.N bwaratewe n'uburangare bw'abaganga ba Hopital la Croix du Sud bityo bikaba byatengirwa indishyi.
U.N asobanura ko mbere y'uko abyara yaje kwisuzumisha kuri La Croix du Sud, yakirwa na Dr. Uwiragiye maze amuha gahunda yo kuzagaruka ku wa 27/05/2019 kugira ngo abagwe ngo kubera ko bitashoboka ko abyara atabazwe kuko ngo bishobora kumugiraho ingaruka we ubwe cyangwa umwana we. Kuri iyo tariki saa mbiri (8h00) za mugitondo, yageze kuri ibyo bitaroaje kuri gahunda yo kubagwa yahawe, maze arakirwa, akorerwa ibizamini, hategurwa icyumba agomba kubagirwamo ndetse yambikwa na sonde, ubundi ashyirwa ku gitanda ategereza kubagwa. Yategereje umwanya munini bamusobanurira ko muganga ataraboneka ko akwiye kwihangana. Bigeze saa kumi n'imwe, umwana yaramanutse ariko ntiyarenga mu matako bituma bamukurura avuka ananiwe cyane ari nabyo byakomeje kumugiraho ingaruka z'uburwayi afite bitewe n'uburangare bw'abaganga.

Hopital La Croix du Sud isobanura ko U.N yagiye aza kwisuzumisha ndetse amuha na gahunda yo kubagwa. Umunsi yamuhaye ugeze yaje kuza ahageze abonana na muganga ariko muganga asanga bitakiri ngombwa kumubaga bumvikana ko aza kubyara atabazwe. Bakomeza bauvuga ko bamushyizemo sonde kugira ngo ize gukurura inkari zitivanga n'amaraso kuko yari yarigeze kubagwaho ibyo bikaba bidasobanuye ko yari agiye kubagwa. Bakomeza bavuga ko yaje kubyara mu buryo busanzwe kandi abyara umwana umeze neza udafite ikibazo na kimwe bityo n'ikibazo umwana yaje kugira kikaba ntaho gihuriye no kuba ataritaweho neza bikamuviramo ubumuga.

Incamake y'icyemezo: Kugira ngo hemezwe ko habaye uburangare mu kuvura umurwayi hagomba kugaragazwa ko uvura yari afite inshingano zo kwita ku murwayi, kuba atarubahirije inshingano ze, no kuba kutita kuri izo nshingano hari ibyo byangirijeho urega.

Ubujurire bwatanzwe nta shingiro.

Amategeko yashingiweho:
Itegeko No 15/2004 ryo ku wa 12/06/2016 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3, 76;
Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12.

Nta manza zifashishijwe

Inyandiko z'abahanga zifashishijwe:
Jonathan Herring, Medical Law and Ethics, Oxford University Press, Oxford, 2013, p.104.
Urubanza

I. IMITERERE Y'URUBANZA

[1] U.N mu izina ry'umwana we M.M.L avuga ko umwana we yavukiye mu bitaro byitwa la Croix du Sud, avuka ameze neza ariko hashize akanya ahita ahinduka move bahita bamucanira itara ariko ntibabwira nyina ikibazo umwana afite, nyuma yo kuva mu bitaro bamusezereye yakomeje kugira ibibazo bamujyana kwa muganga, bababwira ko ubwonko bw'umwana bwaboze.

[2] Yasobanuye kandi ko ubusanzwe yagombaga kubyara abazwe nk'uko byari byagenze abyara ku nshuro ya mbere kandi akigera kuri ibyo bitaro niko bari bamubwiye, ariko ibi siko byagenze kuko yabuze gikurikirana hanyuma umu umuforomokazi aba ariwe uhitamo kumubyaza, bikaba byaratumye ubwonko bw'umwana bwangirika bikabije none ubu bukaba bwaratangiye no kubora.

[3] Ku ruhande rwa la Croix du Sud, babanje gutanga inzitizi y'iburabubasha bushingiye ku kiburanwa, bavuga ko hari gutangwa ikirego cy'inshinjabyaha aho gutangwa icy'imbonezamubano hakaregwa uwakoze icyaha aho kuregwa la Croix du Sud kandi ari personne morale. Iyo nzitizi ntiyahawe agaciro iburanisha mu mizi rirakomeza, abahagarariye Hopital biregura bavuga ko nta kimenyetso kigaragaza uburangare bw'abaganga ku buryo byaba aribyo byateye umwana ubumuga afite, cyane cyane ko U.N yabyaye neza umwana akavuka ari nta kibazo afite agasezererwa mu bitaro ari nta kibazo afite, kandi raporo zose zakozwe n'abaganga zikaba zigaragaza ko ari nta kibazo umwana yari afite mu kuvuga, bityo ikirego cy'U.N kikaba ari nta shingiro kigomba guhabwa.

[4] Mu rubanza rwaciwe ku wa 26/04/2022, Urukiko Rwisumbuye rwa Gasabo rwemeje ko ikirego cyatanzwe na U.N mu izina ry'umwana we nta shingiro gihawe, kuko nta bimenyetso bifatika ashimangiza ikirego cye, rutegeka U.N mu izina ry'umwana we guha La Croix du Sud

igihembo cy'avoka kingana n'amafaranga ibihumbi magana atanu (500,000 frw), amagarama y'urubanza yatanze akaba ahwanye n'ibyakozwe mu rubanza.

[5] U.N ntiyishimiye imikirize y'urubanza arujurira muri uru rukiko. Mbere yuko urukiko rwinjira mu mpamvu z'ubujurire zatanzwe na U.N, ababuranira HOPITAL LA CROIX DU SUD basabye urukiko ko rwabanza rugasaba raporo yakozwe na Rwanda Medical and Dental Council bisabwe na Minisiteri y'ubuzima kuko bo bayisabye bakababwira ko batayibaha keretse iramutse isabwe n'urukiko.

[6] Urukiko rwandikiye Rwanda Medical and Dental Council rusaba kurushyikiriza iyo raporo, nyuma yo kuyishyikirizwa iburanisha ry'urubanza ryarakomeje, urubanza ruburanishwa ku wa 23/05/2024 abababuranyi bose bitabye, Hopital la Croix du Sud ihagarariwe na Me MurasirA Appolinaire na Me Muhozi Paulin, U.N aburanira kuri Skype, yunganiwe na Me Matimbano Barton.

[7] U.N n'umwunganizi we bavuga ko yajuriye kuko urukiko ku rwego rwa mbere rwemeje ko ikirego cye kidafite ishingiro kubera ko nta bimenyetso yatanze bishyigikira ibyo aregera kandi yarabitanze ahubwo urukiko rukabyirengagiza.

[8] Ababuranira Hopital la Croix du Sud bavuga ko ubujurire bwatanzwe ari nta shingiro bufite kuko nta bimenyetso byatanzwe bigaragaza uburangare bw'abaganga b'ibi bitaro ku buryo byaryozwa indishyi, kandi no mu bujurire U.N akaba ari nta bimenyetso atanga bigaragaza ubwo burangare bwateje ibibazo umwana we Mwamutureba Mwiyereke afite, bityo uko urubanza rwa mbere rwaciwe bikaba bitagomba guhinduka.

[9] Ibibazo urukiko rugomba gusuzuma ni:

a) Kumenya niba uburwayi bwa M.M.L, umwana wa U.N bwaratewe n'uburangare bw'abaganga ba Hopital la Croix du Sud.

b) Kumenya niba indishyi zisabwa n'ababuranyi kuri uru rwego rw'ubujurire zifite ishingiro.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

Kumenya niba uburwayi bwa M.M.L, umwana wa U.N bwaratewe n'uburangare bw'abaganga ba Hopital la Croix du Sud

[10] U.N n'umwunganizi we bavuga ko mbere y'uko abyara yaje kwisuzumisha kuri La Croix du Sud, yakirwa na Dr. Uwiragiye Norbert maze amuha rendez-vous yo kuzagaruka ku wa 27/05/2019 kugira ngo abagwe (Cesarienne) kuko yamusobanuriye ko bitashoboka ko abyara atabazwe ngo kuko bishobora kumugiraho ingaruka we ubwe, ndetse bikazigira no ku mwana. Kuri iyo tariki ya 27/05/2019, saa mbiri (8h00) za mugitondo, U.N yageze kuri La Croix du Sud bijyanye na rendez-vous yo kubagwa yahawe, maze arakirwa, akorerwa ibizamini, hategurwa icyumba agomba kubagirwamo ndetse yambikwa na sonde, ubundi ashyirwa ku gitanda ategereza ko abagwa (Waiting room). Bavuga ko yakomeje gutegereza ko abagwa umwanya munini ari nako inda yamuryaga cyane, maze abaforomo bakamubwira ko agomba kwihangana bagategereza

Muganga (Docteur) ugomba kumukorera operation kuko ibitaro byagize ikibazo cy'abaganga bakeya.

[11] Bavuga ko byageze mu ma saha ya nimugoroba Saa kumi n'imwe zishyira saa kumi n'ebyiri, umwana aramanuka agera mu matako, abaforomo babibonye bajya kuzana muganga ikitaraganya maze bahita bafata umwanzuro wo kumubyaza atabazwe, bamutera imiti yongera ibise (Teobal) birananirana maze bafata umwanzuro wo gukurura umwana hakoreshejwe ingufu (Vantouse). Ngo umwana amaze gukururwa, yavutse ananiwe cyane bihita bimugiraho ikibazo.

[12] Bavuga ko mu iburanisha ry'urubanza, urukiko rwagaragarijwe ibimenyetso bitandukanye bigaragaza uburangare bwakozwe n'abakozi ba LA Croix du Sud, birimo kuba la Croix du Sud ubwayo mu iburanisha ryabanje yarahakanaga ko U.N atigeze ahabwa rendez-vous yo kubagwa ariko nyuma mu iburanisha ryaherutse Dr Uwiragiye Norbert wamwakiriye ari imbere y'urukiko akaba yaremeye ko koko U.N yahawe iyo rendez vous, maze biza kurangira atabazwe (Reba Pv y'iburanisha yo ku wa 10/03/2022 y'urubanza rujuririrwa).

[13] Bavuga ko kuba U.N yari yarahawe iyo rendez-vous yo kubagwa, maze bikarangira atabazwe ndetse umwana akavuka afite ikibazo cyagiye cyiyongera gahoro gahoro nk'uko bigaragazwa na raporo zitandukanye, bihagije kubona ko abakozi ba La Croix du Sud bagize uburangare kuko kugeza na n'uyu munsi batabasha kugaragaza impamvu nyamukuru yaba yaratumye atabagwa nk'uko byari biri kuri gahunda na cyane ko uwamuhaye iyo gahunda aribwo buryo bwonyine yabonaga ko bwatuma atagira ikibazo.

[14] Bavuga ko kuba baramurangaranye bikagera aho umwana amanuka mu matako maze bagafata umwanzuro wo kumubyaza atabazwe nk'uko byari biteganijwe, basanga nta gushidikanya ku burangare n'ubushishozi buke bw'abakozi ba La Croix du Sud, cyangwa se ubumenyi buke bw'umuganga wamwakiriye utabasha guhagarara ku cyemezo gikwiye ariyo mpamvu ibyo byose umukoresha agomba kubyirengera.

[15] Bavuga ko ibi atari umwihariko w'uru rubanza gusa, kuko mu rubanza N° RCAA 00073/2018/CA rwo ku wa 19/07/2019 rwaciwe n'Urukiko rw'Ubujurire cyane cyane mu bika byarwo bya 22 – 30 mu gusobanura uburangare bw'ibitaro byitiriwe umwami Faisal byaregwaga, rwaburebeye mu mpamvu nyinshi, ndetse urwo rukiko rukaba rwaragiye rwiyambaza ibitekerezo byatanzwe n'abanditsi batandukanye, ariko muri rusange bahuriza ku kuba iyo umurwayi agannye ibitaro aribyo biba bigomba kumenya ikintu cy'ingenzi bigomba kumukorera kuko aba yabigannye abyizeyeho ubumenyi n'ubuhanga we adafite.

[16] Bavuga ko bashingiye kuri uru rubanza, kuba La Croix du Sud yariyemereye ko U.N yayigannye afite rendez vous yo kubagwa ariko bikaza kurangira atabazwe maze bikaba byaratumye kuva ku munsi umwana yavutseho agira ibibazo by'uburwayi budashobora kuzakira nk'uko byagarutsweho muri raporo zitandukanye, basanga bihagije mu kubona ko ukutamubaga akabihindura bishimangira uburangare n'ubushishozi buke bwakozwe na Muganga wa La Croix du Sud wari wamuhaye iyo rendez vous, ibi bikaba bivugwa n'umwanditsi witwa S.A. STARUSS wagarutsweho mu rubanza rumaze kuvugwa haruguru rwaciwe n'Urukiko rw'Ubujurire mu gika cyarwo cya 24-25.

[17] Bavuga kandi ko bashingiye ku biteganywa mu ngingo ya 4 y'itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko Urukiko ruca urubanza rwaregewe hakurikijwe ibimenyetso bihuje na kamere y'ikiburanwa, hakurikijwe imiterere y'urubanza n'uko ibintu byagenze, urukiko rubanza rutaragombaga kuvuga ko urega atsinzwe ngo kuko nta bimenyetso yarugaragarije nyamara uruhande ruregwa rwariyemereye ko yari yahawe gahunda yo kubagwa ariko ntabagwe, kuri we ibibazo umwana yagize akaba abishingira kuri uko guhindura gahunda byakozwe na Muganga, binagaragaza uburangare bagize kuko yabyaye ananiwe n'umwana bakamukurura, ko kuvuga ko ari nta bimenyesto byatanzwe ku ruhande rw'urega ari ukwigiza nkana kugamije kwirengagiza ukuri kw'ibyabaye, ahubwo La Croix du Sud ikaba ariyo idatanga ikimenyetso kivuguruza ibyo urega avuga.

[18] Abahagarariye La Croix du Sud bavuga ko ku rupapuro rwa 5 agace ka 15 Dr Uwiragiye Norbert, muganga w'ababyeyi wakurikiranye U.N kugeza agiye kubyara, yasobanuye ko akigera kwa muganga ari umwe mu baganga bamukurikiranye, ko ari we wamwakiriye bwa mbere amwohereza aho bakirira ababyara. Avuga ko atwite nta kibazo yari afite ariwe cyangwa umwana, iyo nda ikaba yari iya 3, hamwe akaba yarabyaye neza, ahandi abyara bamubaze, bakaba bari bahanye rendez-vous ko azabagwa ku itariki 27/05/2019, amugeraho hagati ya saa sita na saa saba ari ku bise, aramusuzuma baganira ku bijyanye n'uburyo yabyaramo ariko Docteur amusobanurira ko yabyara neza, yemera ko yabyara neza bakamufasha, akaba ariko byagenze, kandi bigenda neza kuko yakurukiranywe. Bavuga ko uyu muganga yavuze ko iyo umuntu yabazwe, kuba ari ku bise bakamushyiramo sonde, ibafasha kumukurikirana, umuti yahawe akaba ari umuti wo kongera ibise witwa ocytocyne.

[19] Bavuga ko uyu muganga yabajijwe niba sonde ishyirwa ku muntu wese, asubiza ko ihabwa uwigeze kubagwa kugira ngo ibafashe kumukurikirana neza, ikabafasha gukura inkari mu ruhago, kuko iyo hajemo amaraso haba harimo ikibazo, abazwa impamvu bakoresheje ventouse, asubiza ko ntayo bakoresheje kuko iyo iri bukoreshwe bahamagara specialiste akaba ariwe uyikoresha atari abaforomo, ko muri dosiye ye bigaragara ko nta vantouse yakoreshejwe.

[20] Bavuga ko uwo muganga yasobanuye ko saa cyenda yamugezeho abona ameze neza asaba ko yakongererwa ibise, ko nyuma y'aho yabyaye neza nta kibazo bakora raporo y'uko umwana na nyina nta kibazo bigeze bagira. Bavuga ko umwana avuka nta kibazo yigeze agaragaza bakurikije ibipimo yari afite, kuko ibipimo byagaragaje ko nyuma yo kuvuka umwana nta kibazo yari afite, kugeza bamusezereye mu bitaro, ko ku byo nyina yavuze ko uruhu rw'umwana rwahinduye ibara rukaba move muganga yasubije ko muri dosiye nta birimo ko ayo makuru ntayo azi.

[21] Bakomeza bavuga ko uyu muganga yabajijwe niba ku bitaro muganga w'abana (pediatre) adasuzuma umwana iyo bamusezereye, asubiza ko icyo bareba ari uko umwana afite ikibazo, yaba nta kibazo afite ntajye muri pediatrie. Yavuze ko yamusabye no gukingiza kuko yabonaga umwana n'umubyeyi nta kibazo bafite.

[22] Bavuga ko Docteur yakomeje avuga ko, nubwo U.N avuga ko umwana yavutse ananiwe atari iby'ukuri kuko ibyo bita APGAR umwana yari afite 9/10, ko umwana ufite ikibazo aba afite 6/10 uwo akaba agomba kwitabwaho. Yabajijwe na none niba uje kwivuza yuzuza form, anabazwa n'igihe byafashe kugira ngo umwana ashyikirizwe nyina, asubiza ko ku kibazo cy'igihe umwana yamaze mu itsinda ryamubyaje atakizi kuko atari ahari, gusa ko igihari aruko iyo umwana avutse

hari itara bamushyiraho we na nyina, ko iyo amaze gusukurwa bamujyana muri sare, bigaterwa n'uko umwana na nyina bameze.

[23] Ku byerekeye form umurwayi yuzuza, bavuga ko uyu muganga yasubije ko iyo amaze kuganira n'umubyeyi, hari iyuzuzwa umubyeyi agasinya n'undi waba amuherekeje agasinya, ko iyo ari ukuvurwa basurinya (souligner), kwaba ari ukuvurwa cyangwa ari ukubyara naho bagasurinya. Yavuze ko ari form yo mu bitaro byabo. Bavuga ko ku bijyanye n'ibimenyetso babona bisobanutse neza mu rubanza rujuririrwa ku rupapuro rwa 9 agace ka 26, ko nta mpamvu yo kubitindaho, kuko ibimenyetso U.N yatanze bidahura n'imiterere y'ikibazo.

[24] Ababuranira la Croix du Sud bavuga ko Itegeko ry'ibimenyetso mu manza n'itangwa ryabyo rivuga neza ko ikimenyetso cyo mu rubanza ari uburyo bukoreshwa kugira ngo ukuri kw'ibyabaye kugaragare, rikanavuga ko Umucamanza ashobora nyamara gutegeka umuburanyi wese gutanga gihamya y'ibimenyetso afite, U.N we akaba yarerekanye ikibazo cy'uburwayi umwana we afite ariko akananirwa kugaragaza inkomoko yacyo, ntanagaragaze isano yabyo n'ubuvuzi yahawe.

[25] Bavuga ko kuba U.N agaragaza ibizamini byemeza ikibazo umwana afite nta hantu bihuriye n'ikibazo yaregeye byo kutitabwaho neza bikamuviramo ubumuga buhoraho. Kuvuga ko yarangaranwe akaba ari nta gaciro byahabwa mu rwego rw'amategeko kuko bitatangiwe ibimenyetso, bityo ubujurire bwe bukaba butahabwa ishingiro, imikirize y'urubanza rwajuririwe ikaba itagomba guhinduka.

[26] Ku rubanza rwaciwe n'Urukiko rw'Ubujurire urega agenderaho avuga ko rwashingirwaho mu guca uru rubanza, bavuga ko ari ntaho ruhuriye n'uru, bityo ukaba rutakwifashishwa.

[27] Kuri raporo yakozwe n'urugaga rw'abaganga bisabwe na Minisiteri y'ubuzima, U.N n'umwunganizi we bavuga ko aba baganga babaye nk'aho baca urubanza kandi ibyo bari basabwe ari ukugaragaza ikibazo umwana afite n'ikigitera, iyi raporo bakaba batayemera kandi ko atari ihame ko igihe cyose urukiko rushingira ku nyandiko z'abahanga no mu gihe zitavugisha ukuri. Bavuga ko badahakana ko U.N yageze kuri La Croix du Sud saa mbiri, yumviye rendez-vous yari yahawe yo kuza ngo abyare abazwe, ariko ntibyakorwa, bigeze mu ma saa tatu zirenga nibwo bamusinyishije ko aza kubyara neza, aza kugera mu ma saa kumi n'ebyiri nta kirakorwa, bigera aho umwana yasohotse ageze mu matako abaganga baza bigaragara ko hari bube ingorane, zanaje no kubaho kuko umwana yagize umunaniro ukabije bamufatira mu matako yagize ikibazo cya oxygene, bituma agira uburwayi babona.

[28] U.N n'umwunganizi we, bavuga ko raporo zatanzwe zitavuze igihe ubu burwayi bwatangiriye n'imvano, ko nubwo ntaho bigaragara ariko bo bagaragaza igihe n'inkomoko, bagasaba urukiko ko byose rwazabisuzumana ubwitonzi rugatanga umwanzuro ukwiriye.

[29] Bavuga ko kuba ababuranira la Croix du Sud bavuga ko hari ibindi bitaro yivurijeho na byo bikemeza ko yagombaga kubagwa, ari ikimenyetso gishimangira uburangare bagize kuko batagombaga kubihindura bakaza no kugeza saa kumi n'ebyiri ategereje kubyara bigatuma umwana agira ikibazo kubera kuvuka ananiwe.

[30] Bavuga ko ahubwo urukiko mu guca urubanza rwazashingira ku nyandiko bashyize muri dosiye yatanzwe n'ikigo cyo muri America bamuvurizaho (Department of neurology Children's

National of Michigan, Washington), kuko igaragaza ko ikibazo umwana afite gituruka ku kuba yarakomerekejwe avuka, rukemeza ko hari uburangare bw'ibitaro, U.N akagenerwa indishyi.

[31] Ababuranira HOPITAL LA CROIX DU SUD bavuga ko iyi raporo yakozwe bisabwe na Minisiteri y'ubuzima igaragaza neza ko nta burangare ibitaro byagize. Bavuga ko U.N yaje kuri ibi bitaro atariho ha mbere yari yisuzumishirije, kuko kuri Saint Jean Polyclinic naho yahivurije bakemeza ko agomba kubyara abazwe, yagana HOPITAL LA CROIX DU SUD na bo bakamuha rendez-vous yo kubagwa ariko we n'umugabo bagasinyira ko abyara atabazwe, kandi mu kubyara akaba ari nta kibazo we n'umwana bagize, ko rero ibibazo umwana yaje kugira nyuma ari ntaho ibi bitaro bihuriye na byo.

[32] Kuvuga ko yaje saa mbiri bagafata icyemezo cyuko arabyara neza saa tatu kandi yari yaje kuri rendez-vouz yo kubagwa bavuga ko nta kosa ibitaro byakoze kuko batagombaga kugira icyo bamukorera ari nta bizamini bya laboratoire babanje kumufata, akaba ari nta gutinda cyangwa se kumurangarana byabayeho.

UKO URUKIKO RUBIBONA

[33] Impaka kuri iki kibazo zishingiye ku kumenya niba uburwayi bwa M.M.L umwana w'U.N bwaratewe n'uburangare bw'abaganga ba Hopital la Croix du Sud.

[34] Ingingo ya 3 y'Itegeko No 15/2004 ryo ku wa 12/06/2016 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana. Iya 76 igateganya ko ubuhamya bw'abahanga ari 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. Naho iya 12 igika cya mbere y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, igateganya ko urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda.

[35] Izi ngingo zose zibumbiye hamwe, zumvikanisha ko urega agomba gutanga ibimenyetso bishyigikira ukuri kw'ibyo avuga mu rubanza, yabibura agatsindwa. Kandi iyo hari ibirenze ubumenyi busanzwe bw'umucamanza mu kazi ke bitewe nuko ibiburanwa bishingiye ku buhanga bwihariye, hiyambazwa abahanga kugira ngo babitangeho ibisobanuro.

[36] Urukiko rubona ko ku rwego rwa mbere, Urukiko Rwisumbuye mu kwemeza ko ari nta bimenyetso U.N atanga bishyigikira ibyo avuga, rwashingiye kuri expertise medicale yakozwe n'itsinda ry'abaganga b'Ibitaro byitiwe Umwami Faisal kuko ariho umwana yavurirwaga.

[37] Nyuma yo gusuzuma iyo raporo yakozwe n'abaganga Uwurukundo Jeanne Marie Claude, Rugamba Girbert umuganga w'abana, na Hakizimana David, muganga ubaga ubwonko n'umugongo, urukiko rwasanze igaragaza ko umwana Mwamutureba Mwiyereke Logan afite uburwayi bwitwa Complicated spastic quadriplegic cerebral palsy, bagasobanura ko ari uburwayi bukomeye buturuka ku bwonko burangwa no kugagara kw'amaguru n'amaboko n'ubwonko butoya ugereranyije n'ibipande cy'ubwonko (ventricules) ariko muri iyo raporo ntibigeze basobanura impamvu yaba itera ubwo burwayi cyangwa se iyaba yarabuteye.

[38] Mu guhamagarwa gusobanura iby’ubu burwayi imbere y’urukiko, bose uko ari itsinda ry’abaganga batatu bahurije ku kuba ubwo burwayi ari progressive bushobora kuza ari mu gihe cyo kuvuka, yaramaze kuvuka cyangwa se, akiri mu nda; bagasobanura ko akiri mu nda, bishobora guturuka ku burwayi karemano bita genetique, imisemburo itameze neza, ko bishobora kuba ari anomaly anatomique, ko umwana ashobora guhura na toxcique cyangwa infection akivuka cyangwa nyuma yo kuvuka, bakavuga ko umwana ashobora kurwara umusonga ntahumeke neza, mugiga, malariya y’ubwonko, imitsi yo mu ijosi itwara amaraso mu bwonko ifite ikibazo, za infections, izindi mpamvu metabolique n’andi mavurusi menshi, kwikubita hasi k’umwana cyangwa kuzunguza umwana bagasobanura ko impamvu ari nyinshi cyane zatera ubwo burwayi.

[39] Mu mu gihe cyo kuvuka, basobanuye ko umwana ashobora kuvuka ananiwe, hakaba imyunyu n’amasukari nabyo byatera iyo ngaruka, cordon yamwiziritse ku ijosi, uretse ko atari bose bigira icyo bitwara, yatinze mu matako, cyangwa se ko yananiwe n‘ubwonko buba bwananiwe, ventouse ko ariko atari buri gihe, amaraso n’umwuka bitagera mu bwonko. Bahurije kandi ku kuba kuba batapfa kumenya icyateye ubu burwayi kuko bamubonye nyuma y’amezi 7 avutse, bakanavuga ko iyo umwana avutse bamuha amanota (APGAR) akaba ariyo agaragaza niba nta kibazo umwana afite. Bahurije ku kuba bataramenye igihe uburwayi bw’umwana bwatangiriye kuko batasabye dosiye y’aho U.N yabyariye.

[40] Ku birebana n’ibishobora gutuma amaraso n’umwuka bitagera mu bwonko, mu bagize itsinda ry’abaganga babajijwe, Dr Hakizimana David yasobanuye ko byaterwa no kuba umutsi uhuza umwana na nyina udakora, placenta yabaye decole, cordon yizingiye ku mwana, umwana asanzwe afite infection, mu gihe arimo kuvuka habaye ikibazo cy’inzira y’umutwe we naho anyura bigakereza process yo kuvuka bigatuma abura amaraso cyangwa umwuka, ko akiri munda umwana ashobora kugira strock nk’abantu bakuru cyane iyo bibaye mu bwonko bwose atari agace kamwe.

[41] Uretse kandi iyi raporo yakozwe n’itsinda ry’aba baganga, mu gika cya 25 cy’urubanza rujuririrwa, urukiko rwagagaje ko na raporo zakozwe mbere aho umwana yagiye avurizwa zigaragaza ko afite ikibazo gikomeye cy’ubwonko, ariko ntibavuga ikibitera.

[42] Urukiko Rwisumbuye rushingiye ku kuba raporo zitandukanye zakozwe n’abaganga ku burwayi bw’uyu mwana zitagaragaza uburangare bw’ibitaro, no kuba dosiye y’U.N yashyikirijwe urukiko itanzwe na Hopital La Croix du Sud itagaragaza ko umwana yavutse afite ibibazo kuko ku gipimo bareberaho UPGAR basanze umwana yari afite 9/10, urukiko rwabuze aho rushingira rwemeza ko uburwayi umwana afite buturuka ku bibazo yagize avuka biturutse ku burangare bw’abaganga bwatumye umwana avuka ananiwe.

[43] Urukiko rusanga mu gihe uru rubanza rwari mu bujurire, ku wa 5 Gashyantare 2024 mu rwandiko N°20/727/MOS/2024, Minisiteri y’ubuzima yandikiye Rwanda Medical and Dental Coucil iyisaba gushyiraho itsinda ry’abaganga kugira ngo bakore iperereza rishingiye ku buvuzi ku kibazo cya M.M.L umwana w’U.N wivurije mu Bitaro bya La Croix du Sud.

[44] Iri tsinda ry’abaganga ryashyizweho rigizwe na Dr Afrika Gasana Guido, Dr Bizimana Achille, Dr Karekezi Claire, Dr Kayirangwa Anabelle, na Dr Uwineza Annnette, ryakoze rikurikije ubutumwa ryahawe, nyuma rishyikiriza Rwanda Medical and Dental Coucil raporo. Rwanda Medical and Dental Coucil nyuma yo kuyisuzuma, ivuga ko bashingiye ku bikubiye muri iyo

raporo byagezweho bamaze kumva abahanga mu by'ubuvuzi no kumva U.N n'umugabo we Mwiyereke Innocent, ryasanze:

a) U.N yarisuzumishirije kuri Saint Jean Polyclinique (consultation prenatale) kugeza ageze igihe cyo kubyara. Bagaragaza kandi ko yanisuzumishije kuri Hopital la Croix du Sud. Kuri Saint Jean Polyclinique bamuhitishijemo kubyara abazwe ariko we ahitamo kubyara mu buryo busanzwe (accouchement par voie basse) nk'uko dosiye bahawe ibigaragaza. Ngo aho guhitamo kuhabyarira, yagiye ku bitaro bya la Croix du Sud aho yageze ari ku bise.

b) Bagaragaza ko ku mugore wigeze kubagwa, uburyo bwombi bwo kubyara bwari bwemewe, ni ukuvuga abazwe cyangwa kubyara mu buryo busanzwe, kandi ko kuri U.N, kuba hagati y'igihe yari aherutse kubagwa n'iyo nda yindi yari atwite, hari hashize imyaka itandatu, ko rero yari umukandida mwiza wo kuba yabyara mu buryo busanzwe.

c) Babonye ko U.N yahise abyara neza umwana w'ibiro bitatu umeze neza (une bonne apparence, une bonne activité et une bonne respiration: APGAR de 9-10-10).

d) Babonye ko kuva umwana avutse kugeza igihe yasohokeye mu bitaro nk'uko bigaragazwa nuko umwana yavutse nta kibazo afite, nta mwuka yigeze yongererwa, yararize nyuma yo kuvuka kandi ko nta kibazo cy'imitsi yigeze agira (déficit neurologique).

e) Basanze kandi mu kubyara, U.N atarigeze akorerwa ventouse cyangwa ngo umwana abe yarakuruwe.

f) Basanze gushyirwamo sonde ku mugore uri ku bise ari ibisanzwe kandi ko ntacyo bitwara umwana n'umubyeyi.

g) Babonye ko nyuma y'ibyumweru 3 umubyeyi yabonye ko umutwe w'umwana watangiye kugabanyuka (microcephalique), bituma yongera kumusuzumisha ku bitaro bitandukanye (CHUK, KFH) kugira ngo hasuzumwe uturemangingo, ibibazo by'abana ndetse n'imitsi.

h) Nyuma y'isuzumwa umwana yakorewe, basanze hari ikibazo cy'ukugabanyuka k'ubwonko (The brain CT scan which done revealed a marked loss of brain volume with exvacuoventriculomegaly, corpus callosum agenesis, gray matter heterotopa, and diffuse ependymal calcifications in favor of a developmental brain anomaly in utero).

[45] Iri tsinda ry'abaganga rishingiye kuri ibi byose byari bimaze kugaragazwa, ryasanze ubu burwayi cyangwa iyi iki kibazo gishobora guterwa n'ibintu byinshi. Ubwandu umwana ashobora gukura ku mubyeyi mu gihe avuka, guhura n'uburozi, ihinduka ry'uturemangingo (kuba ariko yaremwe) cyangwa impanuka yaba bamutwite akaba yava amaraso mu bwoko n'ibindi (infections congénitales materno-fœtales, l'exposition à des toxines, les changements génétiques et les traumatismes tels que l'hémorragie cérébrale intra- utérine, etc). Bavuze ko ibi bibazo bigaragajwe bishobora gutangirana n'isamwa, bikaba bishobora kugaragara umwana avuka, mu bwana cyangwa umuntu akuze. Rimaze kubona ibi byose, ryasanze nta kimenyetso cy'ikosa abaganga bakoze mu gihe bitaga kuri U.N n'umwana we M.M.L, ndetse ko nta n'uburyozwe bwabo.

[46] Urukiko rusanga ibyo U.N avuga ko uburwayi umwana we Mwamutureba afite bukomoka ku burangare bw'abaganga ba Hopital La Croix du Sud, batamubaze nkuko bari babimuhereye

rendez-vous bagategereza ko abyara neza umwana akavuka ananiwe, hashingiwe ku byo iyi raporo igaragaza, nta shingiro bifite kuko umwana yavutse ameze neza kandi ko kugeza bataha bava mu bitaro nta kibazo umwana yari afite.

[47] Kuba U.N avuga ko yakorewe ventouse umwana bakamukurura agakomereka ku bwoko, akabihuza n'inyandiko yashyikirije urukiko yatanzwe na Department of neurology Children's National of Michigan, Washington, igaraza ko uburwayi bw'ubwonko umwana afite buturuka ku gikomere yagize avuka (Mwamutureba has been found to have evidence of a severe peri/neonatal anoxic brain injury. As a result of birth-related injury he is severely neurological impaired, requiring full assistance for all daily care), nta shingiro bifite kuko iyi nyandiko itagaraza uko uyu mwana yasuzumwe n'ibizamini yakorewe byagejeje kuri uyu mwanzuro, kuko uretse kuvuga gusa ko yakomerekejwe avuka, ntibagaragaza ahakomeretse aho ariho, igice cy'ubwoko cyakomerekejwe, bityo iyi nyandiko ikaba itashingirwaho nk'ukuri kugaragaza inkomoko y'uburwayi bw'umwana. Ikindi nta ventouse yakorewe nk'uko U.N abivuga kuko bivuguruzwa n'iyi raporo yakozwe n'intinda ry'abaganga ryasabwe na Minisiteri y'Ubuzima.

[48] Ikindi iyi nyandiko U.N n'umwunganizi we batanga igarararagaza ukwivuguruza kwa U.N ku cyateye uburwayi bw'umwana kuko hari aho we n'umwunganizi we bavuga ko umwana yavutse ananiwe kubera gutegereza kubyara neza igihe kinini bakaba baramurangaranye. Urukiko rukabona ko ikibazo cy'ubwonko gituruka ku kunanirwa k'umwana gitandukanye no kuba umwana yaba yarakomerekejwe avuka. Kandi U.N uvuga ko yakorewe ventouse nta kimenyetso atanga kivuguruza raporo yatanzwe na La Croix du Sud ndetse n'itsinda ry'abaganga ryasabwe na Minisiteri y'ubuzima nkuko urukiko rumaze kubigarukaho mu gika kibanziriza iki.

> Urubanza No RCAA 00073/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 19/07/2019 haburana Nyirabatesi Laurence n'Ibitaro Byitiriwe Umwami Fayisali (KING FAISAL HOSPITAL), U.N n'umwunganizi we basaba ko rwashingirwaho mu guca uru rubanza, mu gika cyarwo cya 23, urukiko rushingiye ku nyandiko y'umuhanga Jonathan Herring[1] uvuga ko kugira ngo hemezwe ko habaye uburangare mu kuvura umurwayi hagomba kugaragazwa ibi bikurikira:
>
> 1) kuba uvura yari afite inshingano zo kwita ku murwayi (duty of care);
> 2) kuba uvura atarubahirije inshingano ze (breach of the duty of care);
> 3) kuba kutita kuri izo nshingano hari ibyo byangirijeho urega (the breach of duty of care caused the claimant damage).

[49] Muri urwo rubanza mu gika cya 25, ku bijyanye no kumenya niba Ibitaro Byitiriwe Umwami Fayisali bitarubahirije inshingano zabyo, Urukiko rwasanze inyandiko yo ku wa 23/02/2004 igaragaza ko Ibitaro Byitiriwe Umwami Fayisali byiyemerera ko Nyirabatesi Laurence yaharwariye indwara ya VVF (Vesico- Vaginal Fistula), itsinda ry'inzobere ryashyizweho n'uru Rukiko rikaba ryaremeje ko ubwo burwayi bwaturutse ku bikorwa bya Dr NDAGIJE Félix wamubaze (the complication of vulvovaginal fistula (VVF) … was iatrogenic by the history and documentation in the patient's file), akomeretsa uruhago rw'inkari, ko n'ubwo ibyo bishobora kuba no ku muganga w'inzobere, uburangare bwabaye ari uko uwo muganga atahise amenya ko yakomerekeje urwo ruhago ngo ahite ahavura, ko ubundi ari ibisanzwe ko uko gukomeretsa

[1] Reba Jonathan Herring, Medical Law and Ethics, Oxford University Press, Oxford, 2013, p.104.

umubyeyi guhita kuvurwa kugakira ndetse ko hari n'igihe atamenya ko byamubayeho, ibyo bikaba bigaragaza ko ibitaro byakoresheje umuganga utamenyereye cyangwa udafite ubumenyi buhagije mu kubyaza ababyeyi babazwe.

[50] Mu gika cya 26 kandi Urukiko rw'Ubujurire rwagaraje ko …. bitumvikana uburyo ibitaro byari bisanzwe bizi ko Nyirabatesi Laurence yaherukaga kubyara abazwe, yahagera akabanza kubura ibise, agahera saa tatu z'igitondo bategereje ko abyara neza ntibishoboke, byagera saa mbiri z'ijoro, ibitaro bikemeza ko abyara abazwe n'umuganga utaramukurikiranye kandi utazobereye mu kubyaza ababyeyi nyamara yari yatangiye akurikiranwa na Dr Ntahonkiriye Gaspard, ibi bikaba bigaragaza ko ibitaro bitashishoje bihagije ku byago umubyeyi waherukaga kubyara abazwe yashoboraga guterwa no kubyazwa n'umuganga utaramukurikiranye kandi utazobereye mu kubyaza, iyo myitwarire ikaba ikwiye gufatwa nk'uburangare bw'Ibitaro Byitiriwe Umwami Fayisali, nk'umukoresha wa Dr Ndagije Félix.

[51] Urukiko Rukuru rusanga muri uru rubanza rw'U.N rusumwa, ni byo koko ko Hopital la Croix du Sud yari ifite inshingano zo kwita ku murwayi (duty of care). Ku kuba izi nshingano zitarubahirijwe (breach of the duty of care), urukiko rurasanga nkuko U.N avivuga kuko ngo yari yahawe rendez- vous yo kubagwa ntibikorwe, urukiko rurasanga ari nta shingiro bifite kuko ntiyagombaga kubagwa adakorewe ibizamini bya Laboratoire ngo hasuzumwe uko ubuzima bwe bugagaze mbere yo kwinjira muri icyo gikorwa. Ikindi yakurukiranwe n'umuforomo guhera 12h44 kuko yari ku bise kugeza abyaye 16h26, bikaba bigaragara ko yabyajwe na Docteur Theophile afatanyije na Donathet banakoze raporo igaragaza ko yabyaye neza umwana akavuka ari muzima nta kibazo afite.

[52] Ku bijyanye no kutita ku nshingano bikaba hari ibyo byangirijeho umwana U.N yabyaye, urukiko rurasanga ari nta kimenyetso kibigaragaza. Kuko U.N avuga ko bamurangaranye ntabagwe nkuko byari kuri rendez-vous yahawe, bagategereza ko abyara neza akabyara saa kumi n'ebyiri umwana yamanutse akagera mu matako kubera kunanira bakamukorera ventouse, akavuga ko ibi ari yo mvano y'uburwayi bw'ubwoko umwana we M.M.L afite. Ariko ibi byose avuga raporo yakozwe n'abaganga bamubyaje nta byo igaragaza, kuko yabyaye neza n'umwana akavuka ari nta kibazo afite.

[53] Kuba yarabyajwe n'undi muganga utari Dr. Uwiragiye Norbert wari wamuhaye rendez-vous yo kubagwa, ntibyakwiranywa n'ibyabaye muri ruriya rubanza Nº RCAA 00073/2018/CA rwaciwe n'Urukiko rw'Ubujurire rwavuzwe haruguru, kuko U.N ntagaragaza ko uyu muganga wamubyaje atari inzobere mu kubyaza ababyeyi, ikindi nta kosa yamukoreye ryamwangiririje kubera ubumenyi buke nkuko byagenze muri ruriya rubanza rwaciwe n'Urukiko rw'Ubujurire bashingiraho. Ahubwo nkuko urukiko rwagiye rubigarukarukaho mu bika byo haruguru, uburwayi bw'ubwoko M.M.L afite imvano yabwo n'igihe bwatangiriye ntibyamenyekanye, bityo uru rubanza rwaciwe n'Urukiko rw'Ubujurire rukaba rutagomba gushingirwaho hemezwa uburyozwe bwa la Croix du Sud kuko nta kosa abaganga b'ibi bitaro bakoreye U.N ryagize ingaruka ku mwana we mu gihe yavukakaga.

[54] Ahubwo nkuko urukiko rwagiye rubigarukarukaho mu bika byo haruguru, uburwayi bw'ubwoko umwana M.M.L afite imvano yabwo, n'igihe bwatangiriye ntibyamenyekanye.

[55] Urukiko rero rurasanga ibyo itsinda ry'abaganga rigizwe na Dr Afrika Gasana Guido, Dr Bizimana Achille, Dr Karekezi Claire, Dr Kayirangwa Anabelle, na Dr Uwineza Annnette, ntaho bitaniye n'ibyakozwe n'itsinda ry'abaganga b'ibitaro byitiwe Umwami Faisal byashingiweho uru rubanza rucibwa ku rwego rwa mbere mu Rukiko Rwisumbuye rwa Gasabo, kuko muri izi raporo zombi aba baganga ntibabashije kubona icyateye ubu burwayi bwa M.M.L, Urukiko Rukuru rukaba rwemeranywa n'uko urubanza rwajuririwe rwaciwe, indishyi U.N asaba zikaba zidafite icyo zishingiyeho kuko nta bimenyetso atanga bishyigikira ibyo avuga nkuko biteganywa n'ingingo ya 3 y'Itegeko No 15/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo yavuzwe haruguru.

b) Kumenya niba indishyi zisabwa n'ababuranyi kuri uru rwego rw'ubujurire zifite ishingiro.

[56] Abahagarariye HOPITAL LA CROIX DU SUD bavuga ko umucamanza wa mbere yageneye Hopital la Croix du Sud amafaranga y'igihembo cy'Abavoka babiri adahagije, ikaba itarasubijwe amafaranga y'ikurikiranarubanza bakurikije umwanya, akazi kenshi kakozwe, ingendo no kubera gushorwa mu manza nta mpamvu.

[57] Bavuga ko kandi Hopital La Croix du Sud isaba amafaranga yo gushora ibitaro mu manza nta mpamvu bishobora guharabika isura yabyo (reputation et image de l'hopital) no gutakarizwa icyizere ku bakiriya (Clients) bayigana basanzwe bayifitiye, kubera izo mpamvu bagasaba amafaranga angana n'ibihumbi magana atatu (3.000.000 Frw).

[58] Barasaba urukiko gutegeka urega kwishyura mafaranga y'igihembo cy'avoka angana na miriyoni eshanu (5.000.000 Frw) ku bavoka babiri bayiburaniye, n'amafaranga y'ikurikirana rubanza angana na miriyoni ebyiri (2.000.000 Frw).

[59] U.N avuga ko kuba La Croix du Sud yaragize uburangare bwatumye umwana we agira ibibazo byaturutse ku buryo yabyajwemo, bigatuma ajya mu manza kuko ibitaro byanze kubikemura ku neza, uru rubanza rukaba rwaratangiriye mu Rukiko Rwisumbuye rwa Gasabo aburanirwa n'abavoka 2 ndetse rukagera n'aho rujuririrwa, kubera kumusiragiza, arasaba gutegeka Hopital La Croix du Sud kumwishyura indishyi zingana n'amafaranga miriyoni eshanu (5.000.000 Frw) zikubiyemo amafaranga miriyoni eshatu (3.000.000 Frw) y'igihembo cy'Abavoka ku nzego zombi ndetse n'amafaranga miriyoni ebyiri (2.000.000 Frw) y'indishyi z'akababaro hakubiyemo no gusiragizwa mu manza.

[60] Ababuranira La Croix du Sud bavuga ko Umucamanza wa mbere yabisobanuye neza yemeza ko niba urega atashoboye kugaragaza ukuri n'ibimenyetso ku byo aregera atsindwa, akaba ari yo mpamvu atagenewe ibyo asaba. Bavuga ko no mu bujurire atagaragaza ikosa ibitaro byakoze kugira ngo bicibwe indishyi, bityo ibyo asaba bikaba bitagomba guhabwa ishingiro.

UKO URUKIKO RUBIBONA

[61] Ingingo ya 34 y'amabwiriza no 01/2014 agenga ibihembo mbonera by'abavoka iteganya ko bitabangamiye ibiteganywa n'ingingo zibanziriza iyi, zo muri aya mabwiriza, avoka afite uburenganzira bwo kugena igihembo ashyize mu gaciro, ariko kitari munsi y'amafaranga ibihumbi magana atanu (500.000 frw), kandi kitarengeje amafaranga miriyoni eshatu (3.000.000 frw),

hiyongeyeho iyo bishoboka, igihembo kibarwa hakurikijwe ibyagezweho ku ijanisha riteganyijwe mu gace ka II k'ingingo ya 23. Naho ingingo ya 33 yo iteganya ko mu bujurire, avoka w'urega n'uw'uregwa bafite uburenganzira kuri ½ cy'igihembo cyumvikanyweho ku rwego rwa mbere.

[62] Urukiko rubona ko kuba ari avoka w'urega n'uregwa ari nta n'umwe warushyikirije amasezerano yagiranye n'uwo aburanira ku bihembo bazahabwa, rushingiye kuri izi ngingo zimaze kuvugwa haruguru, kuba ku rwego rwa mbere HOPITAL LA CROIX DU SUD yaragenewe igihembo cy'avoka kingana n'amafaranga ibihumbi magana atanu (500.000 frw), ntaho Urukiko Rwisumbuye rwanyuranyije n'iyi ngingo, mu bujurire ikaba igomba guhabwa ½ cy'ayo yahawe ku rwego rwa mbere, ni ukuvuga amafaranga ibihumbi magana abiri na mirongo itanu (250.000 frw). Kuba ivuga ko yaburaniwe n'abavoka babiri, ntacyo bihindura ku gihembo, kuko HOPITAL LA CROIX DU SUD itaragaraza akazi kihariye kakozwe na buri mwavoka katashoboraga gukorwa n'umwe muri bo.

[63] Ku mafaranga y'ikurikiranarubanza, urukiko rarasanga ari nta yo Hopital la Croix du Sud yagenerwa kuko uru rubanza rwakurikiranwe n'abavoka bonyine kuva rutangiye kugeza kuri uru rwego rw'ubujurire.

[64] Ku ndishyi zisabwa zo gutakarizwa icyizere no kwangirizwa isura kwa Hopital la Croix du Sud bitewe no gushorwa mu manza na U.N, urukiko rurasanga ari nta kimenyetso zishingiyeho, kuko ababuranira Hopital la Croix du Sud nabo mu miburanire yabo bavuga ko gushorwa mu manza na U.N nta mpamvu, bishobora guharabika isura yabyo (reputation et image de l'hopital) bikanagira ingaruka ku cyizere abakiriya (Clients) basanzwe babifitiye. Byumvikana neza ko basabira indishyi igihombo bataragira, kuko hakurikijwe igisobanuro cy'indishyi z'akababaro nkuko gitangwa n'inkoranyamagambo[2], indishyi z'ibyangiritse, ni indishyi z'amafaranga zigamije gusana ibikomere byumubiri, ibintu cyangwa akababaro umuntu yagize. Kuba bavuga rero ko indishyi bazisabira isura y'ibitaro ishobora kwangirika cyangwa icyizere ibitaro bishobora gutakarizwa, izi ndishyi basaba ntibazihabwa kuko ibihombo bazisabira bitarabaho.

III. ICYEMEZO CY'URUKIKO

[65] Rwemeje ko ubujurire bwa U.N mu izina ry'umwana we M.M.L budafite ishingiro.

[66] Rwemeje ko nta burangare HOPITAL LA CROIX DU SUD yagize bufitanye isano n'ikibazo cy'uburwayi M.M.L afite.

[67] Rwemeje ko urubanza RC 00008/2021/TGI/GSBO rwajuririwe rudahindutse uretse ku gihembo cy'avoka.

[68] Rutegetse U.N mu izina ry'umwana we M.M.L kwishyura HOPITAL LA CROIX DU SUD indishyi z'amafaranga y'igihembo cy'avoka angana n'ibihumbi Magana arindwi na miromgo itanu (750.000 frw) agizwe n'amafaranga ibihumbi magana atanu (500.000 frw) yari yagenewe ku rwego rwa mbere mu Rukiko Rwisumbuye, n'amafaranga ibihumbi magana abiri na mirongo itanu (250.000 frw) kuri uru rwego rw'ubujurire mu Rukiko Rukuru.

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[2] Dommages et intérêts (ou dommages-intérêts), indemnité pécuniaire destinée à réparer un préjudice corporel, matériel ou moral. https://www.larousse.fr/dictionnaires/francais/dommage/26399

[69] Rutegetse ko amafaranga ibihumbi mirongo ine (40.000 frw) U.N mu izina ry'umwana we M.M.L yatanzeho ingwate ajurira, aheze mu isanduku ya Leta kuko ubujurire bwe ari nta shingiro bwahawe.