N.L v. IBITARO BYITIRIWE UMWAMI FAYISALI (KING FAISAL HOSPITAL)

[Rwanda URUKIKO RW'UBUJURIRE – RCAA 00073/2018/CA (Karimunda, P.J., Mukanyundo na Ngagi, J.) 19 Nyakanga 2019]

Amategeko agenga imanza z'imbonezamubano – Uburyozwe – Uburyozwe buturutse ku makosa yo mu ubuvuzi (Medical liability) – Uburangare – Kugira ngo hemezwe ko habaye uburangare mu kuvura umurwayi hagomba kugaragazwa ibi bikurikira : (i) kuba uvura yari afite inshingano zo kwita ku murwayi (duty of care) ; (ii) kuba uvura atarubahirije inshingano ze (breach of the duty of care) ; (iii) kuba kutita kuri izo nshingano hari ibyo byangirijeho urega (the breach of duty of care caused the claimant damage).

Amategeko agenga imanza z'imbonezamubano – Uburyozwe – Uburyozwe buturutse ku makosa yo mu ubuvuzi (Medical liability) – Inshingano zo kwita ku murwayi – Iyo ibitaro byemeye kwakira umurwayi biba byihaye inshingano, mu bushobozi bwabyo, zo gukurikirana uburyo avurwa, kumuha abaganga bafite ubumenyi n'ubushobozi mu bijyanye no kubyaza ababyeyi, guha abaganga ibitaro byamushinze ibikoresho bikwiriye kugirango bakore akazi kabo uko bikwiriye.

Amategeko agenga imanza z'imbonezamubano – Uburyozwe – Uburyozwe buturutse ku makosa yo mu ubuvuzi (Medical liability) –.Uburyozwe bw'Ibitaro – Iyo umuganga cyangwa umuforomo ari mu bitaro nk'umukozi wabyo, atuma ibitaro biryozwa ibikorwa by'uburangare, we nk'umukozi, yakoze mu mbibi z'akazi ke (vicarious liability), ariko ibitaro bishobora no kuryozwa kuba bitahaye umuganga ibikoresho bikwiriye, kutita ku nyubako zabyo cyangwa guhitamo gukoresha cyangwa kugumana abakozi badashoboye akazi (corporate liability), ariyo mpamvu iyo amakosa yakorewe mu kazi, abayakorewe bakwiye gukurikirana umukoresha.

Amategeko agenga imanza z'imbonezamubano – Uburyozwe – Uburyozwe buturutse ku makosa yo mu ubuvuzi (Medical liability) – Uburangare – Umuntu udakoresheje ubushishozi n'ubwitonzi bye uko bikwiye bigateza ingaruka aba akoze ikosa agomba kuryozwa – N'ubwo umuganga yaba ari inzobere akaba ari kubaga agakomeretsa umutsi aba akoze amakosa y'uburangare, ntiyakwitwaza ko ari impanuka ishoboka no ku baganga bamurusha inararibonye, icyo gihe amakosa y'uburangare aba ashingiye ku kuba umuganga aba atarakoresheje ubumenyi bwe nk'uko bagenzi be basangiye umwuga bari kubukoresha.

Amategeko agenga imanza z'imbonezamubano – Uburyozwe – Uburyozwe buturutse ku makosa yo mu ubuvuzi (Medical liability) – Uburangare – Uburangare bw'abaganga mu kubyaza umubyeyi – Umunganga utari inzobere mu kubyaza ababyeyi « généraliste », nta bumenyi bwihariye aba afite mu kubyaza abyeyi cyane cyane abafite « risque » yo kubyara babazwe, iyo ibitaro bisanzwe bizi ko umubyeyi 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 n'inzobere, biba 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, ibitaro, nk'umukoresha, akaba aribyo bikwiye kubiryozwa.

Amategeko agenga imanza z'imbonezamubano – Uburyozwe – Uburyozwe buturutse ku makosa yo mu ubuvuzi (Medical liability) – Uburangare – Uburangare bw'abaganga mu kubyaza umubyeyi – Iyo umuganga utari inzobere (généraliste) wari urimo kubyaza umugore ku mbyaro ya gatatu, atafashe ibipimo by'umuvuduko w'amaraso, ntatere umubyeyi imiti ituma amubyaza atababaye, ntapime amaraso y'umubyeyi kugira ngo atumize amaraso ari bumutere nibiba ngombwa, ndetse amaze no kumubyaza agahura n'ikibazo gisaba ubuhanga cyangwa ubumenyi adafite ariko agatinda guhamagara umuganga w'inzobere mu kubyaza ababyeyi bikaza kuviramo uwo mubyeyi ibyago, uwo muganga abakoze amakosa y'uburangare, yaba akorera mu bitaro akaba aribyo bibyirengera.

Amategeko agenga imanza z'imbonezamubano – Uburyozwe – Uburyozwe buturutse ku makosa yo mu ubuvuzi (Medical liability) – Uburangare – Uburangare bw'abaganga mu kubyaza umubyeyi – Iyo ibitaro bitagaragaza icyatumye bihitamo umuganga utari inzobere ngo abe ari we ubyaza umubyeyi ufite « risque » kandi bizi umwihariko we ari nawo uri mu byatumye atangira gukirikiranwa n'inzobere y'ibyo bitaro akihagera, ntibinagaragaza icyabujije uwo muganga utari inzobere kwiyambaza inzobere mu kubyaza igihe abonye bitangiye kumugora, haba habaye uburangare buturuka bushishozi buke bw'ibitaro aho kuba impanuka.

Indishyi– Igenwa ry'indishyi zikomoka ku ikosa – Kuba ibitaro bitakoresheje ubushishozi n'ubwitonzi bisabwa mu gukurikirana umurwayi maze bikaza kumuviramo ingaruka zinyuranye bituma biryozwa indishyi zikomoka kuri ayo makosa zigenwa mu bushishozi bw'Urukiko.

Incamake y'ikibazo:.mu Gushyingo mu mwaka wa 2003, uwajuriye yagiye kubyarira mu bitaro byitiriwe umwami fayisali ahagera saa tatu za mu gitondo, abyara bamubaze saa mbiri z'ijoro, nyuma yo kubyara agira ibibazo bitandukanye birimo kujojoba, ukuguru kudashinga no kugira imbaraga nke, asaba guhabwa indishyi z'akababaro kubera ibyago ibyo bitaro byamuteje; byatumye atanga ikirego mu Rukiko Rwisumbuye rwa Gasabo arega ibitaro byitiriwe umwami fayisali, icyo kirego cyandikwa kuri RC 0290/09/TGI/GSBO; Ibitaro byitiriwe Umwami Fayisali byireguye bivuga ko bidafite inshingano zo gukiza abarwayi.

Ku wa 08/03/2012, Urukiko Rwisumbuye rwa Gasabo rwaciye RC 0290/09/TGI/GSBO maze rwemeza ko ibitaro byitiriwe umwami fayisali byagize uburangare bitewe n'uko yari amaze kubyara inshuro ebyiri abazwe, ku nshuro ya gatatu, ava saa moya za mu gitondo ari mu bitaro, bamubaga saa mbiri z'ijoro, nabwo abagwa n'umuganga w'umu «généraliste» kandi yari asanzwe akurikiranwa n'umuganga w'inzobere kuko ibitaro byari bizi ko afite ikibazo cyihariye, bityo rero kubera ayo makosa, ibitaro bigomba guha uwajuriye indishyi z'akababaro zingana na 20.000.000 Frw.

Ibitaro byitiriwe umwami fayisali (RBC/KING FAISAL HOSPITAL) byajuririye icyo cyemezo mu Rukiko rukuru bivuga ko Urukiko Rwisumbuye rwa Gasabo rwageneye uwajuriye indishyi zingana na 20.000.000 Frw, ruvuga ko habaye uburangare agatinda kubyazwa kandi nta kimenyetso kibigaragaza kuko uwajuriye yabazwe umunsi yagereyeho ku bitaro.

Urukiko Rukuru rwaciye urubanza RCA 0187/12/HC/KIG ku wa 01/11/2013, maze rubanza gusuzuma ikibazo cyo kumenya niba hararegewe Urukiko rubifitiye ububasha, rusanga kuva ku wa 25/01/2011, Ibitaro Byitiriwe Umwami Fayisali biri mu mutungo w'Ikigo Gishinzwe Ubuzima mu Rwanda (Rwanda Biomedical Center), kandi ubwo ikirego cyatangwaga ku wa 09/11/2011, Itegeko- Ngenga rigena ububasha bw'inkiko ryarateganyaga ko indishyi zikomoka ku buryozwe bw'ibikorwa by'abakozi ba Leta n'ibigo byayo budashingiye ku masezerano biregerwa ku rwego

rwa mbere mu rugereko rw'Ubutegetsi rw'Urukiko Rukuru, rusanga kuba haratanzwe ikirego cy'imbonezamubano mu Rukiko Rwisumbuye rwa Gasabo bivuze ko haregewe Urukiko rutabifitiye ububasha, rwanzura ko urubanza RC 0290/09/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 08/03/2012 ruvanweho.

Yajuririye icyo cyemezo mu Rukiko rw'Ikirenga asaba kugenerwa indishyi zo kuba yaravuwe nabi, agasezererwa adakize akangirika bikaba byaratumye atazongera kubyara ndetse bikanamutera igihombo cyaturutse ku guhora asiragira yivuza.

Nyuma y'ivugurura ry'inzego z'ubutabera, ubujurire bwe bwoherejwe mu Rukiko rw'Ubujurire hashingiwe ku biteganywa n'ingingo ya 105 y'Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ikirego gihabwa RCAA 00073/2018 CA-RC00004/2018/CA.

Mbere y'uko urukiko ruburanisha urubanza mu mizi, Ibitaro byitiriwe umwami fayisali byazamuye inzitizi yo kutakira ubujurire, ijyanye n'uko ibihe byo kujurira bitubahirijwe n'ijyanye no kuba urubanza rwari kuba rwaratangiriye mu rugereko ruburanisha imanza z'ubutegetsi; urukiko rwaciye urubanza rubanziriza urundi maze rwemeza ko inzitizi zatanzwe nta shingiro zifite, bityo ko urubanza rugomba gukomeza kuburanzishwa mu mizi.

Mu iburanisha ry'urubanza mu mizi, urukiko rwabanje kumva icyo ababuranyi bavuga ku bubasha bw'Ikigo Gishinzwe Ubuzima mu Rwanda (RBC) nk'umuburanyi, Urukiko rwasanze icyo kigo nta nyungu gifite mu rubanza, rusanga ubwo hatangagwa ikirego mu mwaka wa 2009 mu Rukiko Rwisumbuye rwa Gasabo, Ibitaro Byitiriwe Umwami Fayisali byari ikigo cyigenga kandi n'ubu bikaba byigenga kuva mu mwaka wa 2013, kuba mu mwaka wa 2011 byarashyizwe mu bigo bya Leta akaba atari byo byahesha Ikigo Gishinzwe Ubuzima mu Rwanda (RBC) inyungu n'ububasha muri uru rubanza, rwanzura ko Ikigo Gishinzwe Ubuzima mu Rwanda (RBC) kitagombaga kuba cyaraciriweho urubanza mu Rukiko Rukuru, n'ubu kikaba kidakwiye kubarwa nk'umuburanyi muri uru rubanza, rutegeka ko kivanywe mu rubanza.

Uwajuriye asobanura impamvu ze z'ubujurire avuga ko ubwo yageraga kwa muganga yasabye ko yabagwa kuko hari hashije igihe cy'imyaka 2 nubundi abyaye abazwe ariko abanga ntibamwumva baguma gutegereza ko abyara neza bigeze ni njoro nibwo mu saa mbili aba aribwo abaganga bafata icyemezo cyo kumubaga, nyuma yo kubagwa yakomeje kubona ibintu bidasanzwe by'uruzi bivanze n'amaraso, ibitaro byamusezereye ibyo bintu bikiza, nyuma y'iminsi 4 yagarutse kwa muganga kuko yabonaga biteye ubwoba, maze yandikirwa ibitaro; akaba asanga kuba ibitaro byari biziko adafite amahirwe ijana ku ijana yo kubyara neza kuko n'ubundi yari yarabyaye abazwe, hanyuma bigatinda ku mubaga kandi abaganga babona ko byananiranye kubyara neza, kuri ibyo hakiyongeraho kubagwa n'umuganga utari inzobere mu kuvura ababyeyi aribyo byamuteye indwara yo kujojoba. Asoza avuga ko ibyo avuga bishimangirwa na raporo yakozwe n'impuguke mu buvuzi bw'indwara z'abagore ku wa 11/06/2019 ndetse n'imvugo zabo, nabyo bigaragaza ko yabazwe nabi, bamusezerera adakize kandi ikibazo yari yagize cyagaragaye, bityo akaba asaba urukiko kwemeza ko Ibitaro Byitiriwe Umwami Fayisali byagize uburangare, bikabiryorezwa indishyi z'igihombo n'iz'akababaro kuko byamuteye uburwayi n'igihombo bitari bikwiye.

Ibitaro Byitiriwe Umwami Fayisali byiregura bivuga ko byakoze icyo byagombaga gukora, kuko Dr NTAHONKIRIYE Gaspard wari warakurikiranye N.L kuva inda ye ifite amezi umunani ari nawe wamwakiriye, hanyuma amusigira undi muganga, bivuze ko atatereranywe. Asobanura ko raporo y'abahanga ndetse n'ibyo bo ubwabo bavugiye mu Rukiko, byemeza ko umwana yari yamanutse ahagama mu matako, mu gihe cyo kumukuramo, muganga akomeretsa uruhago ari nabyo byateye uwajuriye indwara yo kujojoba, bigaragaza ko ibyabaye ari impanuka. Ku bijyanye

n’indishyi z’igihombo uwajuriye asaba nta shingiro zifite kuko nta bimenyetso abitangira, naho iz’akababaro bikaba bisanga zagenwa mu bushishozi bw’Urukiko kuko yavuwe agakira, ubu akaba ari muzima.

Urukiko kugirango rusobanukirwe ikibazo uko giteye rwayambaje abahanga mu buvuzi bw’indwara z’abagore, harimo Dr Ndacyayisenga na Dr Gakindi maze basobanurira urukiko ko basuzumye uwajuriye ndetse na dosiye ye iri mu bitaro byitiriwe umwami fayisari bagasanga umuganga yarabonye ko nyababyeyi igiye guturika, ko umwana atangiye kunanirwa, aramubaga, nyuma yaho aba ari bwo inkari zitangira kujya zizana, agiye kwisuzumisha abaganga basanga harabayeho kwangirika kw’uruhago rw’inkari. Basobanuye ko umubyeyi iyo asabye kubagwa akabisinyira bikwiye guhita bikorwa, ko kuri we bamubaze kubera ko umwana yari atangiye kunanirwa, ariko umuganga wamubaze ntiyamenya ko yakomerekeje uruhago rw’inkari, bakaba babona byaratewe n’uko atari abimenyereye cyangwa atari abifitiye ubumenyi, ko ibyabaye kuri uwajuriye bitari bikwiye kuba byarabayeho cyane cyane harebwe ko yabyariye mu Bitaro Byitiriwe Umwami Fayisali.

Incamake y’icyemezo : 1. Kugira ngo hemezwe ko habaye uburangare mu kuvura umurwayi hagomba kugaragazwa ibi bikurikira : (i) kuba uvura yari afite inshingano zo kwita ku murwayi (duty of care) ; (ii) kuba uvura atarubahirije inshingano ze (breach of the duty of care) ; (iii) kuba kutita kuri izo nshingano hari ibyo byangirijeho urega (the breach of duty of care caused the claimant damage).

2. Iyo ibitaro byemeye kwakira umurwayi biba byihaye inshingano, mu bushobozi bwabyo, zo gukurikirana uburyo avurwa, kumuha abaganga bafite ubumenyi n’ubushobozi mu bijyanye no kubyaza ababyeyi, guha abaganga ibitaro byamushinze ibikoresho bikwiriye kugirango bakore akazi kabo uko bikwiriye.

3. Iyo umuganga cyangwa umuforomo ari mu bitaro nk’umukozi wabyo, atuma ibitaro biryozwa ibikorwa by’uburangare, we nk’umukozi, yakoze mu mbibi z’akazi ke (vicarious liability), ariko ibitaro bishobora no kuryozwa kuba bitahaye umuganga ibikoresho bikwiriye, kutita ku nyubako zabyo cyangwa guhitamo gukoresha cyangwa kugumana abakozi badashoboye akazi (corporate liability), ariyo mpamvu iyo amakosa yakorewe mu kazi, abayakorewe bakwiye gukurikirana umukoresha.

4. N’ubwo umuganga yaba ari inzobere akaba ari kubaga agakomeretsa umutsi aba akoze amakosa y’uburangare, ntiyakwitwaza ko ari impanuka ishoboka no ku baganga bamurusha inararibonye, icyo gihe amakosa y’uburangare aba ashingiye ku kuba umuganga aba atarakoresheje ubumenyi bwe nk’uko bagenzi be basangiye umwuga bari kubukoresha.

5. Umunganga utari inzobere mu kubyaza ababyeyi « généraliste », nta bumenyi bwihariye aba afite mu kubyaza abyeyi cyane cyane abafite « risque » yo kubyara babazwe, iyo ibitaro bisanzwe bizi ko umubyeyi 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 n’inzobere, biba 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, ibitaro, nk’umukoresha, akaba aribyo bikwiye kubiryozwa.

6. Iyo umuganga utari inzobere (généraliste) wari urimo kubyaza umugore ku mbyaro ya gatatu, atafashe ibipimo by'umuvuduko w'amaraso, ntatere umubyeyi imiti ituma amubyaza atababaye, ntapime amaraso y'umubyeyi kugira ngo atumize amaraso ari bumutere nibiba ngombwa, ndetse amaze no kumubyaza agahura n'ikibazo gisaba ubuhanga cyangwa ubumenyi adafite ariko agatinda guhamagara umuganga w'inzobere mu kubyaza ababyeyi bikaza kuviramo uwo mubyeyi ibyago, uwo muganga abakoze amakosa y'uburangare, yaba akorera mu bitaro akaba aribyo bibyirengera.

7. Iyo ibitaro bitagaragaza icyatumye bihitamo umuganga utari inzobere ngo abe ari we ubyaza umubyeyi ufite « risque » kandi bizi umwihariko we ari nawo uri mu byatumye atangira gukirikiranwa n'inzobere y'ibyo bitaro akihagera, ntibinagaragaza icyabujije uwo muganga utari inzobere kwiyambaza inzobere mu kubyaza igihe abonye bitangiye kumugora, haba habaye uburangare buturuka bushishozi buke bw'ibitaro aho kuba impanuka.

8. Kuba ibitaro bitakoresheje ubushishozi n'ubwitonzi bisabwa mu gukurikirana umurwayi maze bikaza kumuviramo ingaruka zinyuranye bituma biryozwa indishyi zikomoka kuri ayo makosa bityo rero kuba ibitaro byitiriwe Umwami Fayisari bitarakoresheje ubushishozi n'ubwitonzi bisabwa uko bikwiye, maze bigategeka ko umuganga utari inzobere (généraliste) ko abaga uwajuriye kandi biziko yari afite kwitabwaho ku buryo bwihariye, maze muri uko kuzuza inshingano yahawe n'umukoresha agakoreramo amakosa yatumye uwajuriye bimuvramo ingaruka zinyuranye harimo indwara yo kujojoba, guhagarika urubyaro no kwiyambaza izindi nzobere mu kuvura indwara z'abagore kugirango avurwe akire, ibitaro bikaba aribyo bigomba kuryozwa ayo makosa.

Ubujurire bufite ishingiro.

Amategeko yashingiweho:

Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3

Itegeko-teka ryo kuwa 30 Nyakanga 1888, rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 259 n'iya 260

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 111

Nta manza zashingiweho.

Inyandiko z'abahanga zashingiweho:

Jonathan Herring, Medical Law and Ethics, Oxford University Press, Oxford, 2013, p.104

SA Strauss, *Doctor, Patient and the Law: A selection of Practical Issue*s, JL Van Schaik, Pretoria, 3rd edition, 1991, pp. 299-300; pp. 280-281; pp. 283-284.

Aberkane, *La Réparation du dommage médical et sa jurisprudence*, Bruxelles, Larcier, 2013, p.60.

Albert MAYAND, *Dictionnaire des maxims et locutions latines utilisées en droit*, 3 édition, Québec, Les Editions Yvon Blais Inc, 1994, p.51

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, N.L arega Ibitaro Byitiriwe Umwami Fayisali, avuga ko mu Ugushyingo 2003, yagiye kuhabyarira, ahagera saa tatu za mu gitondo, abyara bamubaze saa mbiri z'ijoro, nyuma yo kubyara agira ibibazo bitandukanye birimo kujojoba, ukuguru kudashinga no kugira imbaraga nke, asaba guhabwa indishyi z'akababaro kubera ibyago ibyo bitaro byamuteje. Ibitaro Byitiriwe Umwami Fayisali byireguye bivuga ko bidafite inshingano zo gukiza abarwayi, ko mu gihe N.L atagaragaza ibimenyetso by'ibyo avuga, Urukiko rwakwemeza ko indishyi asaba nta shingiro zifite.

[2] Mu rubanza no RC 0290/09/TGI/GSBO rwaciwe ku wa 08/03/2012, Urukiko Rwisumbuye rwa Gasabo rwasanze Ibitaro Byitiriwe Umwami Fayisali bivuga ko bitihutiye kubyaza N.L abazwe kuko byari bitegereje ko abyara neza, rwanzura ko ibyo ari uburangare bitewe n'uko yari amaze kubyara inshuro ebyiri abazwe, ku nshuro ya gatatu, ava saa moya za mu gitondo ari mu bitaro, bamubaga saa mbiri z'ijoro, nabwo abagwa n'umuganga w'umu «généraliste» kandi yari asanzwe akurikiranwa n'umuganga w'inzobere kuko ibitaro byari bizi ko afite ikibazo cyihariye, rwanzura ko kubera ayo makosa, ibitaro bigomba guha N.L indishyi z'akababaro zingana na 20.000.000 Frw.

[3] Ibitaro Byitiriwe Umwami Fayisali byajuririye icyo cyemezo mu Rukiko Rukuru, bijurira byitwa RBC/KING FAISAL HOSPITAL, bivuga ko Urukiko Rwisumbuye rwa Gasabo rwageneye N.L indishyi zingana na 20.000.000 Frw, ruvuga ko habaye uburangare agatinda kubyazwa kandi nta kimenyetso kibigaragaza kuko N.L yabazwe umunsi yagereyeho ku bitaro.

[4] Urukiko Rukuru rwaciye urubanza rubanziriza urundi mu rubanza no RCA 0187/12/HC/KIG ku wa 22/06/2012, rwemeza ko habanza kujyaho impuguke mu by'ubuganga mbere yo guca urubanza burundu, nyuma yaho inteko yarahindutse, Urukiko ruca urubanza ku wa 01/11/2013, rusuzuma ikibazo cyo kumenya niba hararegewe Urukiko rubifitiye ububasha, rusanga kuva ku wa 25/01/2011, Ibitaro Byitiriwe Umwami Fayisali biri mu mutungo w'Ikigo Gishinzwe Ubuzima mu Rwanda (Rwanda Biomedical Center), kandi ubwo ikirego cyatangwaga ku wa 09/11/2011, Itegeko- Ngenga rigena ububasha bw'inkiko ryarateganyaga ko indishyi zikomoka ku buryozwe bw'ibikorwa by'abakozi ba Leta n'ibigo byayo budashingiye ku masezerano biregerwa ku rwego rwa mbere mu rugereko rw'Ubutegetsi rw'Urukiko Rukuru, rusanga kuba haratanzwe ikirego cy'imbonezamubano mu Rukiko Rwisumbuye rwa Gasabo bivuze ko haregewe Urukiko rutabifitiye ububasha, rwanzura ko urubanza no RC 0290/09/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 08/03/2012 ruvanweho.

[5] N.L yajuririye icyo cyemezo mu Rukiko rw'Ikirenga asaba kugenerwa indishyi zo kuba yaravuwe nabi, agasezererwa adakize akangirika bikaba byaratumye atazongera kubyara ndetse bikanamutera igihombo cyaturutse ku guhora asiragira yivuza. Nyuma y'ivugurura ry'inzego z'ubutabera, urubanza rwoherezwa mu Rukiko rw'Ubujurire hashingiwe ku biteganywa n'ingingo ya 105 y'Itegeko no 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ikirego gihabwa no RCAA 00073/2018/CA-RC00004/2018/CA.

[6] Urubanza rwaburanishijwe mu ruhame ku wa 06/02/2019, N.L yunganiwe na Me NDAGIJIMANA Augustin, Ibitaro Byitiriwe Umwami Fayisali bihagarariwe na Me NDARUHUTSE Janvier, Ikigo Gishinzwe Ubuzima mu Rwanda (RBC) gihagarariwe na Me

GAHONGAYIRE Myriam, habanza gusuzumwa inzitizi yo kutakira ubujurire, ijyanye n'uko ibihe byo kujurira bitubahirijwe n'ijyanye no kuba urubanza rwari kuba rwaratangiriye mu rugereko ruburanisha imanza z'ubutegetsi, zazamuwe na Me NDARUHUTSE Janvier mu izina ry'Ibitaro Byitiriwe Umwami Fayisali.

[7] Mu rubanza rubanziriza urundi rwaciwe ku wa 29/03/2019, Urukiko rwasanze ibihe by'ijurira byarubahirijwe ndetse ku rwego rwa mbere N.L yararegeye Urukiko rubifitiye ububasha, rwanzura ko inzitizi zatanzwe n'Ibitaro Byitiriwe Umwami Fayisali nta shingiro zifite, ababuranyi bamenyeshwa ko urubanza ruzakomeza mu mizi ku wa 06/05/2019.

[8] Kuri uwo munsi, iburanisha ryabereye mu ruhame ababuranyi bahagarariwe kandi banunganiwe nka mbere, uretse Ikigo Gishinzwe Ubuzima mu Rwanda (RBC) cyari gihagarariwe na Me NTARUGERA Nicolas, habanza gusuzumwa ububasha bw'Ikigo Gishinzwe Ubuzima mu Rwanda (RBC) nk'umuburanyi mu rubanza.

[9] Nyuma yo kumva icyo ababuranyi bose bavuga ku bubasha bw'Ikigo Gishinzwe Ubuzima mu Rwanda (RBC) nk'umuburanyi, Urukiko rwasanze icyo kigo nta nyungu gifite mu rubanza, rusanga ubwo N.L yatangaga ikirego mu mwaka wa 2009 mu Rukiko Rwisumbuye rwa Gasabo, Ibitaro Byitiriwe Umwami Fayisali byari ikigo cyigenga kandi n'ubu bikaba byigenga kuva mu mwaka wa 2013, kuba mu mwaka wa 2011 byarashyizwe mu bigo bya Leta akaba atari byo byahesha Ikigo Gishinzwe Ubuzima mu Rwanda (RBC) inyungu n'ububasha muri uru rubanza, rwanzura ko Ikigo Gishinzwe Ubuzima mu Rwanda (RBC) kitagombaga kuba cyaraciriweho urubanza mu Rukiko Rukuru, n'ubu kikaba kidakwiye kubarwa nk'umuburanyi muri uru rubanza, rutegeka ko kivanywe mu rubanza.

[10] Iburanisha ryakomereje ku gusuzuma ingingo z'ubujurire za N.L, ababuranyi bose bariregura, ariko Urukiko rusanga ari ngombwa ko hashyirwaho itsinda ry'abaganga b'inzobere mu byerekeye ubuvuzi bw'abagore kugirango risuzume niba N.L yari afite amahirwe yo kubyara atabazwe, niba yaratinze kubagwa, ingaruka zabyo n'icyamuteye indwara yo kujojoba, hemezwa kandi ko hatumizwa n'abaganga bamuvuye mu Bitaro Byitiriwe Umwami Fayisali, ari bo Dr NTAHONKIRIYE Gaspard na Dr NDAGIJE Félix, urubanza rwimurirwa ku wa 11/06/2019.

[11] Kuri uwo munsi, iburanisha ntiryabaye kuko ryahuriranye n'imanza z'inshinjabyaha umwe mu bagize inteko yari afite, urubanza rwimurirwa ku wa 19/06/2019. Uwo munsi ugeze, iburanisha ryabereye mu ruhame, N.L yunganiwe na Me Ndagijimana Augustin, Ibitaro Byitiriwe Umwami Fayisali bihagarariwe na Me Ndaruhutse Janvier, hitaba kandi Dr Ntahonkiriye Gaspard nk'umutangabuhamya, humvwa kandi Dr Ndacyayisenga Victorien na Dr Gakindi Léonard bari mu bagize itsinda ry'abaganga b'inzobere ryashyizweho n'Urukiko.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

II.1. Kumenya niba Ibitaro Byitiriwe Umwami Fayisali byaragize uburangare bwateye N.L indwara yo kujojoba

[12] N.L avuga ko yari yarabyaye umwana wa kabiri abazwe, uwo mwana akaba yari afite imyaka ibiri, ku mbyaro ya gatatu, ajya kubyarira ku Bitaro Byitiriwe Umwami Fayisali, ahagera ku wa 18/11/2003, saa tatu za mugitondo, asaba ko abagwa, abaganga ntibababikora, akomeza

kubabwira ko akwiye kubagwa ntibabyumva. Asobanura ko yatinze ku bise bituma umwana ananirwa, bigeze mu ma saa mbiri z'ijoro yumva agiye guturika umura, aba ari bwo abaganga bafata icyemezo cyo kumubaga, bikorwa mu gihe cy'iminota igera kuri 45, ariko nyuma y'aho akomeza kubona ibintu bidasanzwe by'uruzi bivanze n'amaraso. Avuga ko byageze ku wa 21/11/2003, ibitaro bikamusezerera, ariko bya bintu by'uruzi bivanze n'amaraso bikomeza kuza ndetse n'icyo anyoye cyose kigahita gisohoka, bimutera ubwoba, asubira kwa muganga ku wa 24/11/2003, bamushyira mu bitaro. Asobanura ko kuri iyo nshuro bamushyizemo sonde ariko nayo ikajya inyuza mu gitsina ibyo anyoye mu gitsina aho kubinyuza ahasanzwe hanyura inkari.

[13] N.L akomeza avuga ko kuva ibitaro byari bizi ko adafite amahirwe ijana ku ijana yo kubyara neza kuko byari bifite amakuru y'uko yari amaze imyaka ibiri gusa abyaye abazwe, hanyuma agatinda kubagwa kandi abaganga babona ko kubyara neza byananiranye, kuri ibyo hakiyongeraho kubagwa n'umuganga mushya, utari inzobere mu kuvura ababyeyi kandi utaramukurikiranye nyamara kuva inda ifite amezi umunani yarakurikiranwe n'umuganga w'inzobere mu kubyaza witwa Dr Ntahonkiriye Gaspard ari byo byamuteye indwara yo kujojoba (fistule). Asoza avuga ko raporo yakozwe n'impuguke mu buvuzi bw'indwara z'abagore ku wa 11/06/2019 ndetse n'imvugo zabo, nabyo bigaragaza ko yabazwe nabi, bamusezerera adakize kandi ikibazo yari yagize cyagaragaye, ari yo mpamvu asaba uru Rukiko kwemeza ko Ibitaro Byitiriwe Umwami Fayisali byagize uburangare, bikabiryorezwa indishyi kuko byamuteye uburwayi n'igihombo bitari bikwiye.

[14] Me Ndagijimana Augustin, umwunganira, avuga ko icya mbere kigaragaza uburangare bw'Ibitaro Byitiriwe Umwami Fayisali, ari uko umuganga N.L yasabye atari we wamubyaje ahubwo bikorwa n'undi utagaragara ku rutonde rw'abaganga bemewe mu Rwanda rwatangajwe mu kinyamakuru Imvaho Nshya. Asobanura ko ibitaro byirindirije gukora ibyo byagombaga gukora ku gihe, ko raporo y'abahanga ndetse n'imvugo zabo, byemeza ko ikibazo cya N.L gikomoka ku kuba yarabazwe atinze akanabagwa nabi, ariyo mpamvu asaba uru Rukiko kwemeza ko Ibitaro Byitiriwe Umwami Fayisali byakoze amakosa y'uburangare bikabiryorezwa indishyi.

[15] Me Ndaruhutse Janvier, uburanira Ibitaro Byitiriwe Umwami Fayisali, avuga ko ibyo bitaro byakoze icyo byagombaga gukora, kuko Dr Ntahonkiriye Gaspard wari warakurikiranye N.L ari nawe wamwakiriye, hanyuma amusigira undi muganga, bivuze ko atatereranywe. Asobanura ko raporo y'abahanga ndetse n'ibyo bo ubwabo bavugiye mu Rukiko, byemeza ko umwana yari yamanutse ahagama mu matako, mu gihe cyo kumukuramo, muganga akomeretsa uruhago ari nabyo byateye N.L indwara yo kujojoba, bigaragaza ko ibyabaye ari impanuka.

[16] Mu iburanisha ryabaye ku wa 19/06/2019, Dr Ndacyayisenga Victorien na Dr Gakindi Léonard, nk'abahanga mu buvuzi bw'indwara z'abagore biyambajwe n'Urukiko, barubwiye ko basuzumye N.L na dosiye ye iri mu Bitaro Byitiriwe Umwami Fayisali, basanga umuganga yarabonye ko nyababyeyi igiye guturika, ko umwana atangiye kunanirwa, aramubaga, nyuma yaho aba ari bwo inkari zitangira kujya zizana, agiye kwisuzumisha abaganga basanga harabayeho kwangirika kw'uruhago rw'inkari. Basobanuye ko umubyeyi iyo asabye kubagwa akabisinyira bikwiye guhita bikorwa, ko kuri we bamubaze kubera ko umwana yari atangiye kunanirwa, ariko umuganga wamubaze ntiyamenya ko yakomerekeje uruhago rw'inkari, bakaba babona byaratewe n'uko atari abimenyereye cyangwa atari abifitiye ubumenyi, ko ibyabaye kuri N.L bitari bikwiye kuba byarabayeho cyane cyane harebwe ko yabyariye mu Bitaro Byitiriwe Umwami Fayisali.

[17] Naho Dr Ntahonkiriye Gaspard, amaze kurahira, yemeje ko ari we wakurikiranye N.L, ko bari bumvikanye ko azabyara neza, yabura ibise akabona kubagwa, ageze mu bitaro asanga muri serivisi ya « maternité » hakoreye umuganga w'umu « généraliste » aba ari we umubyaza, ko icyatumye atamubyaza ari uko ibitaro byari byamuhaye akandi kazi.

UKO URUKIKO RUBIBONA

[18] Ingingo ya 259 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano iteganya ibikurikira : « umuntu ntaryozwa ibyangiritse biturutse ku bikorwa bye bwite gusa, ahubwo anaryozwa ibyangiritse kubera umwete we muke cyangwa ubwitonzi bwe buke. » Ingingo ya 260 y'iryo tegeko nayo igateganya ibikurikira : « Umuntu ntaryozwa gusa ibyangiritse kubera ibikorwa bye bwite, ahubwo anaryozwa ibyangirijwe n'ibikorwa by'abantu yishingiye cyangwa n'ibintu ashinzwe kurinda. »

[19] Ingingo ya 3 y'Itegeko no 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko : « buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.»

[20] Mu kwemeza uburangare bw'Ibitaro Byitiriwe Umwami Fayisali, Urukiko Rwisumbuye rwa Gasabo rwasanze N.L yarageze ku bitaro mu gitondo, abaganga bafata umwanzuro wo kumubaga saa mbiri z'ijoro bitewe n'uko batinze bategereje ko abyara neza, rusanga ibyo hamwe no kuba yarakurikiranywe n'umuganga w'inzobere (spécialiste) w'ibyo bitaro, ariko yagera igihe cyo kubyara agatinda kubagwa, naho bibereye bigakorwa n'umuganga utari inzobere mu kubyaza (généraliste) ari uburangare ibitaro bigomba kuryorezwa indishyi.

[21] Dosiye y'urubanza irimo urwandiko Ibitaro Byitiriwe Umwami Fayisali byandikiye Ibitaro bya Muhima ku wa 23/02/2004, bibyohereza N.L kugira ngo abagwe icyitwa VVF (Vesico-vaginal fistula) na Dr J. Van Damme. Harimo kandi raporo yakozwe n'inzobere ku wa 11/06/2019, ivuga ko nyuma yo kuba yarabazwe ku mbyaro ya kabiri, N.L yari afite amahirwe angana na 80% yo kubyara neza, uretse ko yashoboraga guturika umura, bikaba kuri we cyangwa ku mwana, byamugiraho ingaruka cyangwa bikabatera uburwayi bwa « infections), ko kuba yararwaye indwara ya VVF byatewe n'ibikorwa bya muganga kabone n'ubwo mu busanzwe, ibyago byo kurwara iyo ndwara byabarirwa hagati ya 0.5% na 0.28%, ko yamaze amezi ane atabasha guhagarika inkari, ko ibikorwa by'abaganga byaramiye ubuzima bw'umwana ariko ko nubwo yababwiye ko umugabo yamutaye, nk'abahanga, batamenya ingaruka z'ubwo burwayi ku mibereho ye.

[22] Urukiko rurasanga Jonathan Herring1 avuga ko kugira ngo hemezwe ko habaye uburangare mu kuvura umurwayi hagomba kugaragazwa ibi bikurikira :

(i) kuba uvura yari afite inshingano zo kwita ku murwayi (duty of care) ;

(ii) kuba uvura atarubahirije inshingano ze (breach of the duty of care) ;

(iii) kuba kutita kuri izo nshingano hari ibyo byangirijeho urega (the breach of duty of care caused the claimant damage).

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

[23] Ku bijyanye n'inshingano zo kwita ku murwayi, Urukiko rurasanga dosiye y'urubanza irimo inyandiko y'Ibitaro Byitiriwe Umwami Fayisali yitwa «Charge Sheet» igaragaza ko N.L yakiriwe muri ibyo bitaro ku wa 18/11/2008, harimo kandi indi nyandiko yitwa «Maternity Charge Sheet» igaragaza ko yakiriwe muri serivisi ishinzwe kubyaza ababyeyi uwo munsi guhera saa tatu za mu gitondo (9h00), ashyirwa mu bitaro, asezererwa ku wa 21/11/2003, muri iyo minsi akurikiranwa na Dr Ntahonkiriye Gaspard (ku wa 18, ku wa 20 no ku wa 21/11/2003), na Dr Rosemary (ku wa 19/11/2003), abagirwa muri ibyo bitaro ku wa 18/11/2003, guhera saa mbiri z'ijoro (20h00) na Dr Ndagije Félix, kuba ibyo bitaro byaremeye kumwakira bikaba byarabihaga inshingano, mu bushobozi bwabyo, zo gukurikirana uburyo avurwa, kumuha abaganga bafite ubumenyi n'ubushobozi mu bijyanye no kubyaza ababyeyi, guha abaganga ibitaro byamushinze ibikoresho bikwiriye kugirango bakore akazi kabo uko bikwiriye.

[24] Urukiko rurasanga umuhanga S.A. Staruss avuga ko umuganga cyangwa umuforomo uri mu bitaro nk'umukozi wabyo, atuma ibitaro biryozwa ibikorwa by'uburangare, we nk'umukozi, yakoze mu mbibi z'akazi ke (vicarious liability) ariko ko ibitaro bishobora no kuryozwa kuba bitahaye umuganga ibikoresho bikwiriye, kutita ku nyubako zabyo cyangwa guhitamo gukoresha cyangwa kugumana abakozi badashoboye akazi (corporate liability)2, ibi byongera kandi gushimangirwa na Pierre Aberkane uvuga ko amakosa yakorewe mu kazi, abayakorewe bakwiye gukurikirana umukoresha3, byose bigaragaza ko Ibitaro Byitiriwe Umwami Fayisali aribyo, mu bushobozi bwabyo, byari bifite inshingano zo kwita kuri N.L kugirango abyare neza.

[25] Ku bijyanye no kumenya niba Ibitaro Byitiriwe Umwami Fayisali bitarubahirije inshingano zabyo, Urukiko rurasanga inyandiko yo ku wa 23/02/2004 igaragaza ko Ibitaro Byitiriwe Umwami Fayisali byiyemerera ko N.L 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 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.

[26] Urukiko rurasanga imvugo ya N.L y'uko ibitaro byakoresheje umuganga utamenyereye cyangwa udafite ubumenyi buhagije mu kubyaza ishimangirwa n'ubuhamya bwatanzwe na Dr NTAHONKIRIYE Gaspard wemeje ko Dr NDAGIJE Félix atari inzobere mu kubyaza ababyeyi kuko yari « généraliste », bivuze ko nta bumenyi bwihariye yari afite mu kubyaza abyeyi cyane cyane abafite « risque » yo kubyara babazwe, bikaba bitumvikana uburyo ibitaro byari bisanzwe

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[2] "The doctor or nurse who is a member of the staff of a hospital, i.e. occupies a firm and fixed position, is a servant of the hospital authority, and the latter will be delictually liable for acts of professional negligence committed by the servant within the scope of his or her employment." "Hospital liablity for negligence may …be based … on the corporate negligence theory-i.e. negligence which occurs when the hospital furnishes defective equipement or supplies, selects or retains incompetent personnel, maintains its in a negligent fashion, etc…" SA Strauss, *Doctor, Patient and the Law: A selection of Practical Issue*s, JL Van Schaik, Pretoria, 3rd edition, 1991, pp. 299-300.

[3] "Dans le cas d'une faute de service, les victimes auront beaucoup plus de chance de se faire indeminiser par l'administration que par l'agent resposnable du dommage…", Pierre Aberkane, *La Réparation du dommage médical et sa jurisprudence*, Bruxelles, Larcier, 2013, p.60.

bizi ko N.L 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.

[27] Kuri iyi ngingo, Urukiko rurasanga na none umuhanga S.A Strauss yaratanze urugero rw'uburangare bw'ibitaro cyangwa umuganga aho umuganga utari inzobere (généraliste) wari urimo kubyaza umugore ku mbyaro ya gatatu, atafashe ibipimo by'umuvuduko w'amaraso, ntiyatera umubyeyi imiti ituma amubyaza atababaye, ntiyapima amaraso y'umubyeyi kugira ngo atumize amaraso ari bumutere nibiba ngombwa, ndetse amaze no kumubyaza ahura n'ikibazo gisaba ubuhanga cyangwa ubumenyi adafite atinda guhamagara umuganga w'inzobere mu kubyaza ababyeyi biza kuviramo uwo mubyeyi ibyago byo gupfa, agasobanura ko inkiko zemeje ko uwo muganga yakoze amakosa y'uburangare, yaba akorera mu bitaro akaba aribyo bibyirengera4, ku bijyanye n'uru rubanza Ibitaro Byitiriwe Umwami Fayisali bikaba bitagaragaza icyatumye bihitamo Dr NDAGIJE Félix ngo abe ari we ubyaza N.L kandi bizi umwihariko we ari nawo uri mu byatumye atangira gukirikiranwa na Dr NTAHONKIRIYE Gaspard akihagera, ntibinagaragaza icyabujije Dr NDAGIJE Félix kwiyambaza inzobere mu kubyaza igihe yari asanze umwana yahagamye mu matako, bityo ibyo Me NDARUHUTSE Janvier, uburanira Ibitaro Byitiriwe Umwami Fayisali, avuga ko ibyabaye ari impanuka bikaba nta shingiro bifite kuko icyabaye ahubwo ari ubushishozi buke bw'ibitaro.

[28] Urukiko rurasanga ubushishozi buke bw'ibitaro butagaragarira gusa mu kuba N.L yarabyajwe n'umuganga utari inzobere (généraliste) kandi bizi ko yagombaga kwitabwaho ku buryo bwihariye, ahubwo hari no kuba bitarakoresheje ubushishozi n'ubwitonzi bisabwa uko bikwiye, bityo kuva Dr NDAGIJE Félix yari umukozi w'ibyo bitaro, uwo munsi agahabwa inshingano zo gukorera muri serivisi yo kubyaza, akabikora mu nyungu z'ibitaro nk'umukoresha, agakora amakosa mu gihe cy'akazi ke, ibitaro nibyo bigomba kuryozwa ayo makosa.

[29] Urukiko rurasanga ibyo bihura n'ibyemezwa n'umuhanga MAYRAND uvuga ko umuntu udakoresheje ubushishozi n'ubwitonzi bye uko bikwiye bigateza ingaruka aba akoze ikosa agomba kuryozwa5, bikongera bigashimangirwa na S. A Strauss uvuga ko n'ubwo umuganga yaba ari inzobere akaba ari kubaga ibihaha (bronchoscopy) agamije kugira agace akuraho kugira ngo agapime (biopsy) noneho agakurura cyane umutsi witwa superior vena cava wohereza amaraso mu mutwe, ijosi, amaboko no mu gituza bikawutera gukomereka aba akoze amakosa

[4] "A general practitioner was attending to a woman when she gave delivery to her third child. Immediatedly after the birth, Dr N experienced problems with the removal of the placenta from the uterus. The patient bled profusely and died later the same evening from loss of blood and shock. A general practitioner …[was] negligent in several aspects. Among other things he had failed to take proper blood-pressure measurements, to do a necessary intravenous infusion before endeavoring to remove the placenta by hand, to take a blood specimen and to order blood, to call in a specialist obstetrician despite a request by the patient's husband, and to rub the uterus to let it contract." Reba SA Strauss, *Doctor, Patient and the Law: A selection of Practical Issue*s, JL Van Schaik, Pretoria, 3rd edition, 1991, pp. 280-281

[5] "La personne qui se comporte avec moins de diligence et de prudence que le bon père de famille et cause un dommage commet une faute dont elle est responsable.", Albert MAYAND, *Dictionnaire des maxims et locutions latines utilisées en droit*, 3 édition, Québec, Les Editions Yvon Blais Inc, 1994, p.51

y'uburangare, ko atakwitwaza ko ari impanuka ishoboka no ku baganga bamurusha inararibonye, ko icyo gihe amakosa y'uburangare aba ashingiye ku kuba umuganga aba atarakoresheje ubumenyi bwe nk'uko bagenzi be basangiye umwuga bari kubukoresha. Asobanura ko mu kwemeza uburangare, inkiko zavuze ko hagomba kwirindwa ibyo ababuranyi bitwaza byaba byarabaye nyuma y'ibikorwa bakurikiranyweho, ko n'ubwo abaganga babaga abarwayi baba bakorera kuri « pressure and the tensions », ikigomba gusuzumwa ari ukumenya niba barakoresheje ubumenyi n'ubushobozi bafite nk'uko abandi bakora umwuga nk'uwabo bari kubikora (bonus pater familias)6, byose bigaragaza ko Ibitaro Byitiriwe Umwami Fayisali byari bifite inshingano ntibyazubahiriza uko bikwiye biteza ingaruka N.L, bityo bikaba bikwiye kubiryorezwa indishyi.

[30] Hashingiwe ku bimaze gusobanurwa haruguru no ku ngingo z'amategeko zibukijwe, Urukiko rurasanga Ibitaro Byitiriwe Umwami Fayisali byari bifite inshingano zo kuvura N.L, ibyo bitaro ntibyubahiriza izo nshingano uko bikwiye bimuviramo indwara yo kujojoba, guhagarika urubyaro no kwiyambaza izindi nzobere mu kuvura indwara z'abagore kugirango avurwe akire, bityo ayo makosa ibitaro bikaba bigomba kuyaryorezwa indishyi.

II.2. Kumenya ingano z'indishyi N.L akwiye guhabwa kubw'uburangare bw'Ibitaro Byitiriwe Umwami Fayisali.

[31] Me NDAGIJIMANA Augustin avuga ko Ibitaro Byitirwe Umwami Fayisali byamuteye ububabare ku mubiri, abagwa nabi, asezererwa adakize, arangirika ku buryo atazongera kubyara kuko bamufunze « trompes », ko uretse kujojoba, byamuviriyemo indwara y'umugongo n'igifu, bimutera ipfunwe, umugabo aramuta bitewe no kutabasha kuzuza inshingano z'abashakanye, byose hamwe akaba abisabira indishyi z'akababaro zingana na 50.000.000 Frw. Avuga kandi ko ubwo burwayi bwamuteje igihombo kuko yakomeje kwivuriza mu bitaro bitandukanye, ko n'ubwo nta nyemezabuguzi abifitiye kubera ko zatakaye, icyo gihombo gihwanye na 10.000.000 Frw, akwiye kongerwaho amafaranga y'ikurikiranarubanza n'igihembo cya Avoka ku nzego zose kuva uru rubanza rwatangira ahwanye na 12.000.000 Frw.

[32] Me NDARUHUTSE Janvier, uburanira Ibitaro Byitiriwe Umwami Fayisali, avuga ko indishyi z'igihombo N.L asaba nta shingiro zifite kuko nta bimenyetso abitangira, naho iz'akababaro akaba asanga zagenwa mu bushishozi bw'Urukiko kuko yavuwe agakira, ubu akaba ari muzima.

UKO URUKIKO RUBIBONA

[33] Ingingo ya 259 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano iteganya ibikurikira : «umuntu ntaryozwa ibyangiritse biturutse ku bikorwa bye bwite gusa, ahubwo

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[6] "the doctor [is] negligent in tearing the superior *vena cava*, while attempting to biopsy the lymph-node in the gland adjacent thereto…in assessing the foreseeability of harm, the court must guard against the insidious subconscious of ex post facto knowledge. [the court] is mindful too of all the pressures and the tensions which operate on a surgeon …However, in the light of all the evidence and the only possible explanations as to how the perforation of the vena cava and the mediastinal pleura occurred, [the court is] driven to find that on this particular aspect, and by using excessive force, … Dr S did not apply that skill and diligence possessed and exercised at the time by the members of the branch of the profession to which he belonged." Reba SA Strauss, *Doctor, Patient and the Law: A selection of Practical Issue*s, JL Van Schaik, Pretoria, 3rd edition, 1991, pp. 283-284.

anaryozwa ibyangiritse kubera umwete we muke cyangwa ubwitonzi bwe buke.» Ingingo ya 260 y'iryo tegeko nayo iteganya ko « Umuntu ntaryozwa gusa ibyangiritse kubera ibikorwa bye bwite, ahubwo anaryozwa ibyangirijwe n'ibikorwa by'abantu yishingiye cyangwa n'ibintu ashinzwe kurinda.»

[34] Ingingo ya 111, 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 iteganya ko : « Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza.»

[35] Ku bijyanye n'indishyi N.L asaba, dosiye y'urubanza igaragaza ko mu mwanzuro wo kwiregura mu Rukiko Rukuru wo ku wa 16/05/2012, N.L yatanze ubujurire bwuririye ku bundi asaba ko indishyi yagenewe ku rwego rwa mbere zongerwa agahabwa 50.000.000 Frw y'indishyi bitewe n'uko uburangare bw'Ibitaro Byitiriwe Umwami Fayisali bwamuteye ingaruka nyinshi zirimo ububabare bwinshi, kuba umugabo yaramutaye no kuba atazongera kubyara.

[36] Ku bijyanye n'indishyi z'igihombo yaba yaratewe no kwivuza mu bitaro bitandukanye, Urukiko rurasanga muri dosiye harimo urwandiko rw'Ibitaro Byitiriwe Umwami Fayisali rwo ku wa 23/02/2004 rwemeza ko ibyo bitaro bizamwishyurira ibikorwa byo kubagwa Vesico-Vaginal Fistula na Dr J. Van Damme (we shall settle her medical bill upon its presentation to KFH), N.L akaba ataragaraza ko yazanye inyemezabuguzi ibitaro bikanga kumwishyura nk'uko byari byabyiyemeje, naho ku yandi mafaranga yaba yarakoreshe, nta kimenyetso kiri muri dosiye kigaragaza ingano y'ibyo yatanze yivuza ku buryo yabisubizwa, bityo uru Rukiko rukaba ntaho rwahera rwemeza ishingiro rya 10.000.000 Frw y'indishyi z'igihombo asaba.

[37] Ku bijyanye n'indishyi z'akababaro, Urukiko rurasanga Ibitaro Byitiriwe Umwami Fayisali byaragize uburangare nk'uko byagaragajwe haruguru, bitera N.L gusiragira mu bitaro ajya kwivuza, amara amezi ane arwaye kujojoba, bimuviramo guhagarikirwa urubyaro kandi akiri muto, bimutera ipfunwe ndetse akaba anavuga ko umugabo we yamutaye kubera kutabasha gukora inshingano z'abashakanye, bikaba bigaragara ko zimwe muri izo ngaruka azabana nazo ubuzima bwe bwose, kandi akaba amaze hafi imyaka 17 akurikirina indishyi zikomoka ku ngaruka zo kubagwa nabi n'Ibitaro Byitiriwe Umwami Fayisali, bityo, mu bushishozi bw'Urukiko, akaba agenewe indishyi z'akababaro zingana na 28.000.000 Frw.

[38] Urukiko rurasanga kandi muri dosiye nta kimenyetso kirimo kigaragaza ko 12.000.000 Frw ariyo N.L yatanze kuri uru rubanza haba mu kurukurikirana cyangwa se mu guhemba Avoka, bityo hashingiwe ku mirimo yakozwe muri uru rubanza, akaba akwiriye 500.000 Frw y'igihembo cya Avoka kuri buri rwego na 500.000 Frw y'ikurikiranarubanza ku nzego zose, yose hamwe akaba 2.000.000 Frw.

III. ICYEMEZO CY'URUKIKO

[39] Rwemeje ko ubujurie bwa N.L bufite ishingiro ;

[40] Rwemeje ko urubanza no RCA 0187/12/HC/KI rwaciwe n'Urukiko Rukuru ku wa 01/11/2013, ruhindutse mu ngingo zarwo zose ;

[41] Rutegetse Ibitaro Byitiriwe Umwami Fayisali kwishyura N.L 28.000.000 Frw y'indishyi z'akababaro ;

[42] Rutegetse Ibitaro Byitiriwe Umwami Fayisali kwishyura N.L 1.500.000 Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza ku nzego zose;

[43] Rutegetse Ibitaro Byitiriwe Umwami Fayisali gusubiza N.L igarama ry'urubanza yatanze ajurira.