MUREKATETE v. DIYOSEZI GATORIKA YA BYUMBA (3)

[Rwanda URUKIKO RW'UBUJURIRE – RSOCAA 00007/2018/CA – (Karimunda, P.J.) 03 Gicurasi 2019]

Amategeko agenga umurimo – Impanuka y'akazi – Impanuka y'akazi irangwa n'igikorwa kimwe cyangwa ibikorwa bikurikiranye, byabaye ku matariki azwi bitewe n'akazi cyangwa mu gihe cy'akazi, kandi bikaba byaragize ingaruka ku mubiri w'umukozi hatitawe ku gihe ingaruka zagaragariye – Impanuka zabaye umukozi ari aho akorera akazi kandi zabaye mu masaha y'akazi zifatwa nk'impanuka z'akazi kuko umukozi aba ari ku bugenzuzi bw'umukoresha – Umukozi afite inshingano zo kugaragaza ko ibyamubayeho ari impanuka y'akazi kandi ko nubwo aba yagaragaje akababaro katuma hakekwa ko yakoze impanuka y'akazi, imvugo ze ubwazo zitihagije ubwazo ahubwo zigomba kunganirwa n'ubuhamya bufatika.

Amategeko agenga imiburanishirije y'imanza mbonezamubano – Amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza – Amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza ntabwo ari igihano gihabwa utegetswe kuyatanga, si n'ishimwe rihabwa uyagenewe ahubwo agamije gusubiza uwatsinze urubanza ibyo yarutakajeho – Iyo ikirego kitatanzwe hagamijwe gusiragiza undi muburanyi mu nkiko kubw'amaherere, ahubwo kigatangwa n'umuburanyi ushaka kwerekana ko yarenganyijwe, Urukiko, mu bushishozi bwarwo kandi rushingiye ku mpamvu zidasanzwe, rushobora kuvaniraho urega inshingano yo kwishyura igihembo cya Avoka n'amafaranga y'ikurikiranarubanza.

Incamake y'ikibazo: Murekatete Jovia yareze Diyosezi Gatorika ya Byumba mu Rukiko Rwisumbuye rwa Gicumbi avuga ko yari umukozi wayo akora akazi ku bumuforomokazi mu Bitaro bya Kiziguro guhera ku wa 01/01/2008 aza kugira impanuka mu kazi ku wa 17/07/2009, kuko yijombye urushinge yari amaze gutera umurwayi wabanaga n'ubwandu bwa VIH/SIDA yari amaze kuvura, bityo Jovia yahise ashyirwa ku miti yo kurwanya ubwandu, ariko nyuma y'igihe gito afatwa n'uburwayi bw'ubuhumyi, agendera ko. Yavuze ko yagerageje kwivuriza mu bitaro bitandukanye ariko ntibyagira icyo bitanga bitewe n'uko abaganga basanze ubuhumyi bwe bwaratewe n'icyitwa glucone gifata imyakura igaburira amaso. Akaba ashinja umukoreshawe kuba atigeze amenyesha Ikigo cy'Ubwiteganyirize mu Rwanda (RSSB) iby'iyo mpanuka, ahubwo ko nyuma y'amezi atatu ahuye n'iyo mpanuka yihutiye kumusezerera ku kazi, ntihagira n'ubundi bufasha ahabwa ku buryo byageze aho abura uko yivuza kubera ubukene. Akaba asaba indishyi zuko yirukanwe mu buryo bunyuranyije n'amategeko no kumenya niba ubuhumyi bwe bukomoka ku miti yafashe n'uruhare umukoresha yabigizemo.

Urukiko Rwisumbuye rwa Gicumbi rwaciye urubanza rusanga umurwayi, Jovia yari amaze kuvura yari afite indwara ya *cytomegalovirus* yandura kandi ko Rwanda Biomedical Centre, ikaba yarakoze ubushakashatsi ku mpamvu yateye ubuhumyi ariko ntiyatangaza ibyabuvuyemo, rwanzura ko Murekatetejovia yahuye n'impanuka y'akazi, umukoresha aho kwihutira kubimenyesha Ikigo cy'Ubwiteganyirize mu Rwanda (RSSB) kugirango yishyurirwe ubuvuzi, amuhagarikira umushahara anamusezerera mu kazi akiri mu kiruhuko cy'uburwayi, bimuvutsa amahirwe y'akazi, bituma ativuza kugeza aho uburwayi bumukomeranye akaba agomba kubana n'ubumuga buhoraho bw'ubuhumyi, maze rwanzurako Diyosezi Gatorika ya Byumba igomba kumuha imishahara ingana n'ibyo yari asigaje kugirango ajye mu kiruhuko cy'izabukuru ingana

na 61.834.068 Frw, indishyi z'akababaro za 754.074 Frw n'indishyi z'imperekeza zingana na 125.679 Frw, yose hamwe akaba angana na 62.965.179 Frw.

Diyosezi Gatorika ya Byumba ntiyishimiye imikirize y'urwo rubanza, ijuririra mu Rukiko Rukuru ivuga ko ntacyo ikwiye kubazwa kubigendanye n'irangira y'amasezerano y'akazi kuko kuko yasheshwe ku bw'itegeko.Urwo Rukiko rwemeza ko nta gushidikanya guhari ko ubuhumyi bwe bwatewe na virusi yitwa *cytomegalovirus* yandujwe n'urushinge yari amaze gutera umurwayi wari ufite ubwandu bwa VIH/SIDA, ariko ko iyo mpanuka nta ruhare umukoresha yayigizemo ku buryo yabiryorezwa indishyi zingana n'imishahara yari buzinjize kugeza agiye mu kiruhuko cy'izabukuru, rusanga kandi nawe hamwe n'abo mu muryango we bari bafite inshingano yo kumenyesha Ikigo cy'Ubwiteganyirize mu Rwanda ko yakoze impanuka ariko kuba yarirukanwe bitabanje kumenyeshwa Umugenzuzi w'Umurimo ari ukumwirukana nta mpamvu nk'uko byemejwe n'Urukiko rubanza bityo rwanzura ko indishyi z'akababaro, izo kwirukanwa mu buryo bunyuranyije n'amategeko, iz'integuza n'iz'imperekeza zigumaho, rutegeka ko indishyi zijyanye n'imishahara ingana n'ibyo yari buzinjize mu gihe yari asigaje kugira ngo ajye mu kiruhuko cy'izabukuru zivanyweho.

Murekatete ntiyishimiye imikirize y'urubanza arujuririra mu Rukiko rw'Ikirenga ariko nyuma y'ivugururwa ry'inkiko, urubanza rwoherezwa mu Rukiko rw'Ubujurire hashingiwe ku biteganywa n'Itegeko rigena ububasha bw'Inkiko, habanza gusuzumwa inzitizi yatanzwe na Diyosezi Gatorika ya Byumba y'iburabubasha bubasha bw'Urukiko rw'Ubujurire kuko indishyi zagenwe mu rubanza zitageze kuri 50.000.000 Frw.Urwo Rukiko rwasanze Urukiko Rwisumbuye rwarageneye amafaranga y'indishyi arenga 50.000.000 Frw aherwaho hasuzumwa ububasha bw'Urukiko rw'Ikirenga bushingiye ku gaciro k'indishyi zagenwe n'Urukiko, bityo kuba Urukiko Rukuru rutaragennye indishyi zingana nibura na 50.000.000 Frw akaba ataribyo byabuza uru Rukiko kugira ububasha bwo kuburanisha urubanza kandi bigaragara ko ku rwego rwa mbere, rwagenwemo indishyi zirushyira mu bubasha bwarwo. Diyosezi yongeye itanga nanone iyindi nzitizi ivuga ko ubujurire bwa Murekatete budakwiye kwakirwa kuko nyuma yo kubona ko imishyikirano yarimo na yo inaniranye, yari afite gusa igihe kingana n'imyaka ibiri yo kuregera Urukiko ariko ko yayirengeje kandi ko atari yemerewe kurega atabanje gushyikiriza ikibazo cye uhagarariye abakozi mu kigo n'ibinanirana agishyikirize Umugenzuzi w'Umurimo mbere yo kuregera Urukiko. Nanone, Urukiko rwasanze inzitizi Diyosezi itanga zitari ndemyagihugu, itarazijuririye mu Rukiko rw'Ikirenga, zitanagaragara mu myanzuro yayo nk'ubujurire bwuririye ku bundi, bityo rwanzura ko zidakwiye kwakirwa ngo zisuzumwe kuko zitatanzwe mbere cyangwa ngo zitangirwe mu nama ntegurarubanza.

Mw'iburanisha Urukiko rwafashe icyemezo cyo kuhamagaza Murekatete kugirango azaze gusobanura ibyamubayeho, rusaba ko dosiye ze zo kwa muganga zakozwe na Rwanda Biomedical Centre, Ibitaro bya Kaminuza bya Kigali, Ibitaro bya Gisirikare, Ibitaro bya Kabgayi n'Ibitaro bya Kiziguro zohererezwa, runategeka ko Dr Twagiramungu Mukama Diocles wari Umuyobozi w'Ibitaro bya Kiziguro, Dr Fundi Gatare Frederick, wamuvuriye muri ibyo bitaro na Gasana Innocent wari ukuriye ishami ry'abaforomo muri ibyo bitaro bitaba Urukiko nk'abatangabuhamya, rwategetse kandi ko Dr Mudereva Godelive na Dr Piet Noé bamuvuye indwara z'amaso mu bihe bitandukanye mu Bitaro bya Kaminuza bya Kigali no mu Bitaro bya Kabgayi bitaba Urukiko nk'inzobere.

Ku kibazo cyo kumenya niba *cytomegalovirus* arwaye yaratewe n'impanuka y'akazi, Murekatete avuga ko akimara kwijomba urushinge yari amaze gutera umurwayi ufite ubwandu bwa VIH/SIDA yashyize ku miti ikumira ubwandu, ayirangije asubira mu kazi kuko yari mu

kiruhuko cy'uburwayi, bigeze aho ahita ahuma kandi ko mu mwaka wa 2008 yari yarivurije umutwe mu Bitaro bya Kabgayi akeka ko awuterwa n'amaso ariko biza kugaragara ko byaterwaga n'umunaniro nu mu Bitaro bya Kaminuza bya Kigali bamukorera ibizamini byo mu mutwe basanga ari muzima. Asobanura ko urushinge yijombye ku bw'impanuka arirwo rwamwanduje virusi ya cytomegalovirus ifite ingaruka zo gutera ubuhumyi.

Diyosezi ivuga ko nta kigaragaza ko koko yigeze yijomba urushinge avuga ko arirwo rwamwanduje *cytomegalovirus* yamuteye ubuhumyi, ko n'abatangabuhamya babajijwe n'Urukiko bagaragaje ko yatangiye kwivuza amaso guhera mu mwaka wa 2008, icyo gihe akaba atari yagakoze impanuka yitwaza.

Kubirebana n'ikibazo cyo kumenya niba Diyosezi Gatorika ya Byumba itarubahirije inshingano zayo nk'umukoresha, Murekatete avuga ko yakoze impanuka gufata imiti ikumira ubwandu bwa VIH/SIDA, arangiza arangize arahuma ari mu kazi arahuma. Mu gihe ubuhumyi bwe bwatewe n'impanuka y'akazi, umukoresha atagombaga kumutererana nk'uko yabigenje, ahubwo ko yari afite iminsi ine yo kumenyesha iyo mpanuka Ikigo Gishinzwe Ubwiteganyirize bw'Abakozi n'Umugenzuzi w'Umurimo. Asaba urukiko ko kandi rwamugenera igihembo cy'Avoka.

Diyosezi Gatorika ya Byumba, ivuga ko uwajuriye yivugira ko yakoze impanuka ku wa 17/07/2009, nyamara dosiye ye y'umukozi (dossier administratif) ikaba igaragaza ko icyo gihe yari mu kiruhuko cy'uburwayi yatangiye ku wa 15/07/2009, ko nubwo impanuka yaba yarabayeho, umukoresha atayibazwa kuko umukozi atari mu kazi ndetse hakaba ntacyo yari kubikoraho kuko itabimenyeshejwe. Ikomeza ivuga ko itigeze yirukana uwajuriye ahubwo ko umukoresha yubahirije inshingano ze zo kumuhemba imishahara y'amezi atatu nk'uko yabisabwaga ndetse arenza inshingano ze kuko yamuhembye amezi atanu adakora bitewe n'uko yari yarabuze ku kazi, bakaba basanga ntacyo umukoresha atakoze ngo yubahirize amategeko. Isoza isaba ko yahabwa amafaranga y'igihembo cy'Avoka na y'ikurikirana rubanza.

Incamake y'icyemezo: 1. Impanuka y'akazi irangwa n'igikorwa kimwe cyangwa ibikorwa bikurikiranye, byabaye ku matariki azwi bitewe n'akazi cyangwa mu gihe cy'akazi, kandi bikaba byaragize ingaruka ku mubiri w'umukozi hatitawe ku gihe ingaruka zagaragariye.

2. Impanuka zabaye umukozi ari aho akorera akazi kandi zabaye mu masaha y'akazi zifatwa nk'impanuka z'akazi kuko umukozi aba ari ku bugenzuzi bw'umukoresha.

3. Umukozi afite inshingano zo kugaragaza ko ibyamubayeho ari impanuka y'akazi kandi ko nubwo aba yagaragaje akababaro katuma hakekwa ko yakoze impanuka y'akazi, imvugo ze ubwazo zitihagije ubwazo ahubwo zigomba kunganirwa n'ubuhamya bufatika. Bityo kugirango Murekatete Jovia abe yarakoze impanuka y'akazi, ni uko ku wa 17/07/2009, yari kuba yakoreye mu Bitaro bya Kiziguro, akagaragaza ko uwo munsi yavuye umurwayi ufite ubwandu bwa VIH/SIDA na cytomegalovirus, akerekana ko yijombye urushinge yari amaze kumutera kandi ko byatumye amaraso cyangwa andi mavangingo y'umurwayi yivanga n'aye kandi ko iyo bihuye bituma izo ndwara zandura, nyamara kugeza ubu dosiye ye y'abakozi igaragaza ko ku wa 17/07/2009 yari mu kiruhuko cy'uburwayi cy'ukwezi yari yaratangiye ku wa 15/07/2009, byongeye kandi, inkuru y'uko yijombye urwo rushinge niwe wenyine uyibara, ntishimangiwe n'ikindi kimenyetso icyo aricyo cyose nk'amazina y'umurwayi yavuye, kuba uwo murwayi yari afite ubwandu bwa VIH/SIDA na cytomegalovirus cyangwa se ubuhamya bw'abandi bakozi bemeza ibyo avuga, ibi byose bikaba bitera ugushidikanya ku kuba ku wa 17/07/2009 yarakoreye

mu Bitaro bya Kiziguro kandi ko yahijombeye urushinge yari amaze gutera umurwayi ubana n'ubwandu bwa SIDA unafite indwara ya cytomegalovirus.

4. Nubwo uwajuriye yaba yarijombye urushinge avuga, nta kigaragaza ko arirwo rwa muteye cytomegalovirus, kuko na mbere yo ku wa 17/07/2009, yari arwaye amaso nk'uko byemezwa na za raporo z'ibitaro by'amaso zigashimangirwa n'ubuhamya bwa baganga bagiye bamuvura amaso na mbere y'iyo tariki avuga ko yagiriyeho impanuka

5. Mu gihe uburwayi bwa *cytomegalovirus* uwajuriye arwaye butatewe n'impanuka y'akazi, nta nshingano umukoresha yari ifite yo kugira icyo amenyekanisha mu Kigo cy'Igihugu cy'Ubwiteganyirize bw'abakozi.

6. Nyuma y'uko umukoresha amenyeye ko umukozi yafashwe n'indwara y'ubuhumyi, umukoresha yashizeho abaganga batatu kugira ngo basuzume niba yasubira mu kazi nanone akasuzumwa n'izindi nzobere mu buvuzi bw'amaso bose bakemeza ko yahumye kandi ntagaruriro, ibi byose bikaba bigaragaza ko umukoresha yashyize mu gaciro, agaragaza ubushake bwo kumugarura mu kazi, ariko bibuzwa n'uko inzobere zemeje ko yari yararangije guhuma.

7. Amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza ntabwo ari igihano gihabwa utegetswe kuyatanga, si n'ishimwe rihabwa uyagenewe ahubwo agamije gusubiza uwatsinze urubanza ibyo yarutakajeho

8.Iyo ikirego kitatanzwe hagamijwe gusiragiza undi muburanyi mu nkiko kubw'amaherere, ahubwo kigatangwa n'umuburanyi ushaka kwerekana ko yarenganyijwe, Urukiko, mu bushishozi bwarwo kandi rushingiye ku mpamvu zidasanzwe, rushobora kuvaniraho urega inshingano yo kwishyura igihembo cya Avoka n'amafaranga y'ikurikiranarubanza.

Ubujurire nta shingiro bufite;
Uburwayi bw'ubuhumyi bw'uwajuriye butatewe n'impanuka y'akazi yaba yarakoreye mu Bitaro bya Kiziguro;
Amagarama y'urubanza yatanzwe ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:

Itegeko no 06/2003 ryo ku wa 22/03/2003 rihindura kandi ryuzuza Itegeko-Teka ryo ku wa 22 Kanama 1974 rigenga ubwiteganyirize bw'abakozi, ingingo ya 13, igika cya mbere.

Itegeko no 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo 3.

Itegeko no 13/2009 ryo ku wa 27/05/2009 rigenga umurimo, ingingo ya 94. Igika cya mbere 94.

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 111.

Imanza zashingiweho:

British Columbia (Minister of Forests) v. Okanagan Indian Band, [2003] 3 S.C.R. 371

Harold v. Smith, (1860), 5 H. & N. 381

Christianburg Garment co. v. Equal Employment Opportunity Comm'n, 434 U.S. 412, 98 S.Ct.694,54 L.Ed 2d 648 (1978).

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Neil Friedman, Review of Ophthalmology, Elsevier, Edinburgh, 2018, p.244.
William Rawlinson and Gillian Scott, "Cytomegalovirus: A common Virus causing Serious Disease", in Australian Family Physician, Vol.32, no 10, October 2003, p. 789.
Richard G Fiscella and others, Clinical Occular Pharmacology, Butterworh, Heinmann, Elsevier, Saint Louis, 2008, p.204.
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Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gicumbi, MUREKATETE Jovia avuga ko yari umuforomokazi mu Bitaro bya Kiziguro guhera ku wa 01/01/2008, akoreshwa na Diyosezi Gatorika ya Byumba, aza kugira impanuka mu kazi ku wa 17/07/2009, kuko yijombye urushinge yari amaze gutera umurwayi wabanaga n'ubwandu bwa VIH/SIDA yari amaze kuvura. MUREKATETE Jovia yahise ashyirwa ku miti yo kurwanya ubwandu, ariko nyuma y'igihe gito afatwa n'uburwayi bw'ubuhumyi, agendera ko. Yavuze ko yagerageje kwivuriza mu bitaro bitandukanye ariko ntibyagira icyo bitanga bitewe n'uko abaganga basanze ubuhumyi bwe bwaratewe n'icyitwa *glucone* gifata imyakura igaburira amaso. Yavuze ko Ibitaro bya Kiziguro yakoreraga bitigeze bimenyesha Ikigo cy'Ubwiteganyirize mu Rwanda (RSSB) iby'iyo mpanuka, ahubwo ko nyuma y'amezi atatu ahuye n'iyo mpanuka byihutiye kumusezerera ku kazi, ntihagira n'ubundi bufasha ahabwa ku buryo byageze aho abura uko yivuza kubera ubukene.

[2] Murekatete Jovia yavuze ko yivuje ari uko akorewe ubuvugizi na *syndicat* y'abaforomo, abaganga baza kwemeza ko afite ubumuga buhoraho bwa 46%, Minisiteri y'Ubuzima isabwa gukora ubushakashatsi kugirango hamenyekane niba impanuka yaratewe n'imiti yahawe ariko ibyavuye mu bushakashatsi ntiyabimenyeshwa. MUREKATETE Jovia yareze Diyosezi Gatorika ya Byumba asaba indishyi zuko yirukanwe mu buryo bunyuranyije n'amategeko no kumenya niba ubuhumyi bwe bukomoka ku miti yafashe n'uruhare umukoresha yabigizemo.

[3] Mu rubanza n<u>o</u> RSC00013/16/TGI/GIC rwaciwe ku wa 23/09/2016, Urukiko Rwisumbuye rwa Gicumbi rwasanze uwo Murekatete Jovia yari amaze kuvura yari afite indwara ya *cytomegalovirus* yandura kandi itera ubuhumyi, *Rwanda Biomedical Centre,* ikaba yarakoze ubushakashatsi ku mpamvu yateye ubuhumyi ariko ntiyatangaza ibyabuvuyemo, rwanzura ko Murekatete Jovia yahuye n'impanuka y'akazi, umukoresha aho kwihutira kubimenyesha Ikigo cy'Ubwiteganyirize mu Rwanda (RSSB) kugirango yishyurirwe ubuvuzi, amuhagarikira umushahara anamusezerera mu kazi akiri mu kiruhuko cy'uburwayi, bimuvutsa amahirwe

y'akazi, bituma ativuza kugeza aho uburwayi bumukomeranye akaba agomba kubana n'ubumuga buhoraho bw'ubuhumyi. Urukiko rwategetse Diyosezi Gatorika ya Byumba guha Murekatete Jovia imishahara ingana n'ibyo yari asigaje kugirango ajye mu kiruhuko cy'izabukuru ingana na 61.834.068 Frw, indishyi z'akababaro za 754.074 Frw n'indishyi z'imperekeza zingana na 125.679 Frw, yose hamwe akaba angana na 62.965.179 Frw.

[4] Diyosezi Gatorika ya Byumba ntiyishimiye imikirize y'urwo rubanza, ijuririra mu Rukiko Rukuru ivuga ko ntacyo ikwiye kubazwa kubigendanye n'irangira ry'amasezerano y'akazi hagati yayo na MUREKATETE Jovia kuko yasheshwe ku bw'itegeko.

[5] Mu rubanza n$_{\underline{o}}$ RSOCA 00222/2016/HC/KIG rwaciwe ku wa 19/10/2017, Urukiko Rukuru rwasanze nubwo "expertise médicale" yasabwe Ibitaro bya Kaminuza bya Kigali (CHUK) ku burwayi bw'ubuhumyi kugirango hamenyekane niba MUREKATETE Jovia yasubizwa mu kazi ntayigaragara muri dosiye, nta gushidikanya guhari ko ubuhumyi bwe bwatewe na virusi yitwa *cytomegalovirus* yandujwe n'urushinge yari amaze gutera umurwayi wari ufite ubwandu bwa VIH/SIDA, ariko ko iyo mpanuka nta ruhare umukoresha yayigizemo ku buryo yabiryorezwa indishyi n'imishahara bya 61.834.068 Frw bingana n'ibyo MUREKATETE Jovia yari buzinjize kugeza agiye mu kiruhuko cy'izabukuru, bityo ko guca umukoresha izo ndishyi hashingiwe ku biteganywa n'ingingo ya 4n'iya 5 z'Itegeko n$_{\underline{o}}$ 05/2015 ryo ku wa 30/03/2015 rigenga imitunganyirize y'ubwiteganyirize bwa pansiyo ari amakosa.

[6] Urukiko rwasanze kandi Murekatete Jovia atagaragaza ko amasezerano yasheshwe mbere y'amezi atandatu ateganywa n'amategeko kuva aho akoreye impanuka, rusanga kandi nawe hamwe n'abo mu muryango we bari bafite inshingano yo kumenyesha Ikigo cy'Ubwiteganyirize mu Rwanda ko yakoze impanuka mu gihe kitarenze imyaka ibiri, icyakora kuba yarirukanwe bitabanje kumenyeshwa Umugenzuzi w'Umurimo mu Karere ka Gicumbi ari ukumwirukana nta mpamvu nk'uko byemejwe n'Urukiko Rwisumbuye rwa Gicumbi, rwanzura ko indishyi z'akababaro, izo kwirukanwa mu buryo bunyuranyije n'amategeko, iz'integuza n'iz'imperekeza zategetswe ku rwego rwa mbere zigumaho, rwanzura ko urubanza no RSOC 00013/2016/TGI/GIC rwaciwe n'Urukiko Rwisumbuye rwa Gicumbi ku wa 23/09/2016 ruhindutse kuri bimwe, rutegeka ko indishyi zijyanye n'imishahara ingana n'ibyo Murekatete Jovia yari buzinjize mu gihe yari asigaje kugira ngo ajye mu kiruhuko cy'izabukuru zivanyweho.

[7] Murekatete Jovia ntiyishimiye imikirize y'urubanza arujuririra mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rwirengagije ingingo ya 94 (1) y'Itegeko n$_{\underline{o}}$ 13/2009 ryo ku wa 27/5/2009 rigenga umurimo mu Rwanda isaba umukoresha kumenyesha ikigo gishinzwe ubwiteganyirize bw'abakozi n'Umugenzuzi w'Umurimo mu Karere mu gihe cy'iminsi ine (4) y'akazi impanuka zose ziturutse ku kazi, gusuzuma icyakorwa igihe umukoresha atubahirije izi nshingano bikagira ingaruka ku mukozi. Murekatete Jovia yavuze kandi ko hirengagijwe uburyo ibigenerwa umukozi wagize impanuka y'akazi bibarwa hashingiwe ku biteganywa n'ingingo ya 16 y'Itegeko n$_{\underline{o}}$ 06/2003 ryo ku wa 22/03/2003 rihindura kandi ryuzuza Itegeko-Teka ryo ku wa 22/08/1974 rigena imikorere y'Ikigo cy'Ubwiteganyirize mu Rwanda.

[8] Ubujurire bwa MUREKATETE Jovia bwanditswe kuri N^{o} RSOCAA 00003/2017/SC, ariko nyuma y'ivugururwa ry'inkiko, urubanza rwoherezwa mu Rukiko rw'Ubujurire hashingiwe ku biteganywa n'ingingo ya 105 y'Itegeko n$_{\underline{o}}$ 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko.

[9] Urubanza rwaburanishijwe mu ruhame ku wa 12/11/2018, habanza gusuzumwa inzitizi yatanzwe na Diyosezi Gatorika ya Byumba ivuga ko ubujurire butari mu bubasha bw'Urukiko rw'Ubujurire kuko indishyi zagenwe mu rubanza zitageze kuri 50.000.000 Frw.

[10] Mu rubanza rubanziriza urundi rwaciwe ku wa 07/12/2018, Urukiko rwasanze Urukiko Rwisumbuye rwa Gicumbi rwarageneye Murekatete Jovia amafaranga y'indishyi arenga 50.000.000 Frw aherwaho hasuzumwa Ububasha bw'Urukiko rw'Ikirenga bushingiye ku gaciro k'indishyi zagenwe n'Urukiko, kuba Urukiko Rukuru rutaragennye indishyi zingana nibura na 50.000.000 Frw akaba ataribyo byabuza uru Rukiko kugira ububasha bwo kuburanisha urubanza bigaragara ko, ku rwego rwa mbere, rwagenwemo indishyi zirushyira mu bubasha bwarwo, rwanzura ko inzitizi nta shingiro ifite.

[11] Iburanisha ry'urubanza ryakomeje ku wa 15/01/2019, hasuzumwa izindi nzitizi zatanzwe na Diyosezi Gatorika ya Byumba yavuze ko ubujurire bwa Murekatete Jovia budakwiye kwakirwa kuko nyuma yo kubona ko imishyikirano yarimo na Diyosezi Gatorika ya Byumba inaniranye, yari afite gusa igihe kingana n'imyaka ibiri yo kuregera Urukiko ariko ko yayirengeje. Byongeye kandi, Diyosezi Gatorika ya Byumba yavuze ko Murekatete Jovia atari yemerewe kurega atabanje gushyikiriza ikibazo cye uhagarariye abakozi mu Bitaro bya Kiziguro, ngo nibinanirana agishyikirize Umugenzuzi w'Umurimo mbere yo kuregera Urukiko.

[12] Mu rubanza rubanziriza urundi rwaciwe ku wa 22/01/2019, Urukiko rwasanze inzitizi Diyosezi Gatorika ya Byumba itanga zitari ndemyagihugu, itarazijuririye mu Rukiko rw'Ikirenga, zitanagaragara mu myanzuro yayo nk'ubujurire bwuririye ku bundi, rwanzura ko zidakwiye kwakirwa ngo zisuzumwe kuko zitatanzwe mbere cyangwa ngo zitangirwe mu nama ntegurarubanza.

[13] Iburanisha ryakomeje uwo munsi hasuzumwa impamvu z'ubujurire za Murekatete Jovia, urubanza rugeze hagati, Urukiko rufata icyemezo cyo kumuhamagaza kugirango azaze gusobanura ibyamubayeho, rusaba ko dosiye ze zo kwa muganga zakozwe na *Rwanda Biomedical Centre*, Ibitaro bya Kaminuza bya Kigali, Ibitaro bya Gisirikare, Ibitaro bya Kabgayi n'Ibitaro bya Kiziguro zohererezwa Urukiko, runategeka ko Dr TWAGIRAMUNGU Mukama Diocles wari Umuyobozi w'Ibitaro bya Kiziguro, Dr FUNDI Gatare Frederick, wavuriye MUREKATETE Jovia muri ibyo bitaro na GASANA Innocent wari ukuriye ishami ry'abaforomo muri ibyo bitaro bitaba Urukiko nk'abatangabuhamya. Urubanza rwimuriwe ku wa 19/02/2019.

[14] Uwo munsi ugeze MUREKATETE Jovia n'abatangabuhamya bahagamajwe baritabye, bisobanura ku bibazo babajijwe n'Urukiko ndetse n'ababuranyi, impande zombi, bahabwa umwanya wo kugira icyo babaza abatangabuhamya n'icyo bavuga ku nyandiko zoherejwe n'Ibigo byavuzwe haruguru, uretse izasabwe Ibitaro bya Kaminuza bya Kigali byavuze ko bitakwohererereza Urukiko inyandiko z'umurwayi kuko ari ibanga. Mbere yo gupfundikira iburanisha, Urukiko rwemeje ko ruzigira muri ibyo bitaro ku wa 04/03/2019 gusuzuma inyandiko zigaragaza ibyo MUREKETETE Jovia yahivurije n'igihe yagiriyeyo, rwategetse kandi ko Dr MUDEREVA Godelive na Dr PIET Noé bamuvuye indwara z'amaso mu bihe bitandukanye mu Bitaro bya Kaminuza bya Kigali no mu Bitaro bya Kabgayi bitaba Urukiko nk'inzobere, urubanza rwimurirwa ku wa 14/03/2019.

[15] Uwo munsi ugeze, iburanisha ryabereye mu ruhame, MUREKATETE Jovia ahagarariwe nka mbere, Diyosezi Gatorika ya Byumba iburanirwa na Me TWAJAMAHORO Herman, Me SADI Jashi na Me NDEJEJE Pascal, humvwa Dr MUDEREVA Godelive na Dr PIET Noé, n'ababuranyi bagira icyo bavuga kuri raporo y'iperereza ryakozwe n'Urukiko mu Bitaro bya Kaminuza bya Kigali, iburanisha rirapfundikirwa.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

II.1. Kumenya niba cytomegalovirus MUREKATETE Jovia arwaye yaratewe n'impanuka y'akazi

[16] Murekatete Jovia yavugiye mu iburanisha ryo ku wa 19/02/2019, ko akimara kwijomba urushinge yari amaze gutera umurwayi ufite ubwandu bwa VIH/SIDA ku wa 17/07/2009, Dr FUNDI Gatare Frederick yamushyize ku miti ikumira ubwandu, ayirangiza ku wa 15/08/2009, bukeye asubira mu kazi kuko yari mu kiruhuko cy'uburwayi, bigeze ku wa 23/08/2009 ahita ahuma. Asobanura ko mu mwaka wa 2008 yari yarivurije umutwe mu Bitaro bya Kabgayi akeka ko awuterwa n'amaso ariko biza kugaragara ko byaterwaga n'umunaniro, ku wa 20/05/2014 akorera impanuka ahitwa SONATUBES mu Mujyi wa Kigali, ariko ageze mu Bitaro bya Kaminuza bya Kigali bamukorera ibizamini byo mu mutwe no mu nda basanga ari muzima.

[17] Me Kabagema Aphrodis, Me Rwenga Etienne na Me Irafasha Félix, bamuburanira, bavuga ko urushinge Murekatete Jovia yijombye ku bw'impanuka ku wa 17/07/2009 arirwo rwamwanduje virusi ya *cytomegalovirus* ifite ingaruka zo gutera ubuhumyi. Basobanura ko akimara kurwijomba, yahise ashyirwa ku miti irwanya ubwandu bwa VIH/SIDA (prophylaxie), afata n'ikiruhuko cy'uburwayi kuva ku wa 17/07/2009 kugeza ku wa 15/08/2009, nyuma y'iyi tariki aba aribwo atangira guhuma, birangira agendeye ko. Basobanura ko raporo y'iperereza Urukiko rwikoreye mu Bitaro bya Kaminuza bya Kigali n'ubuhamya bwa Dr Mudereva Godelive,wahamuvuriye, bigaragaza ko ubuhumyi butatewe n'impanuka Murekatete Jovia yakoreye kuri SONATUBES mu Mujyi wa Kigali ku wa 20/05/2014, ahubwo ko bushobora kuba bwaratewe n'indwara yandura (infection) ya virusi ya *cytomelovirus* cyangwa imiti yo gukumira ubwandu bwa VIH/SIDA, ariyo mpamvu basaba uru Rukiko kuguma mu murongo wemejwe n'Urukiko Rukuru mu rubanza rujuririrwa w'uko ibyabaye kuri Murekatete Jovia ari impanuka y'akazi.

[18] Me TWAJAMAHORO Herman, Me SADI Jashi na Me NDEJEJE Pascal, baburanira Diyosezi Gatorika ya Byumba, bavuga ko nta kigaragaza ko koko MUREKATETE Jovia yijombye urushinge avuga ko arirwo rwamwanduje *cytomegalovirus* yamuteye ubuhumyi, ko n'abatangabuhamya babajijwe n'Urukiko bagaragaje ko yatangiye kwivuza amaso guhera mu mwaka wa 2008, icyo gihe akaba atari yagakoze impanuka yitwaza, ko na nyuma y'uko ayikoze yagiye kwivuriza amaso mu Bitaro bya Kaminuza bya Kigali, muganga asanga atarandura *cytomegalovirus*, naho iby'uko yaba yaratewe ubuhumyi n'imiti ikumira ubwandu bwa VIH/SIDA, bakaba basanga nta shingiro bifite kuko abaganga bemeza ko imiti ikumira ubwandu bwa VIH/SIDA idashobora gutera ubuhumyi.

UKO URUKIKO RUBIBONA

[19] Ingingo ya 13, igika cya mbere, y'Itegeko n<u>o</u> 06/2003 ryo ku wa 22/03/2003 rihindura kandi ryuzuza Itegeko-Teka ryo ku wa 22 Kanama 1974 rigenga ubwiteganyirize bw'abakozi iteganya ko icyago gikomoka ku kazi ari ikigwirira umukozi cyose ku murimo we, ku mpamvu iyo ariyo yose.

[20] Ingingo ya 3 y'Itegeko n<u>o</u> 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko buri muburanyi agomba kugaragaza ukuri ku ibyo aburana.

[21] Dosiye y'urubanza igaragaza ko mu bika bya 3, 4 na 7 by'urubanza rwaciwe n'Urukiko Rwisumbuye rwa Gicumbi ku wa 23/09/2016, Me Kabagema Aphrodis, waburaniraga Murekatete Jovia, yavuze ko uwo aburanira yijombye urushinge yari amaze gutera umurwayi ubana n'ubwandu bwa VIH/SIDA ku wa 17/07/2009, ashyirwa ku miti ya AZT+3TC+EFV yo kurwanya ubwandu (prophylaxie par anti retro-viraux), ayirangiza ku wa 15/08/2009, bigeze ku wa 23/08/2009 ahita ahuma, agerageza kwivuza ariko Ibitaro byitiriwe Umwami Fayisali bimubwira ko ubuhumyi bwatewe n'uburwayi bw'imyakura igaburira amaso (atteinte du nerf optique), yavuze ko ubuhumyi bwatewe n'iyo miti kuko ari imwe mu ngaruka mbi zayo. Mu gika cya 16 cy'incarubanza, Urukiko rwasanze Rwanda Biomedical Centre yarakoze ubushakashatsi kuri Mureketete Jovia igamije kumenya niba ubuhumyi yarabutewe n'imiti ariko ibyabuvuyemo ntibyatangazwa, rusanga Murekatete Jovia yari amaze kuvura umurwayi ufite cytomegalovirus, indwara yandura kandi itera ubuhumyi, rwanzura ko ibyo bigaragaza ko yakoze impanuka y'akazi, kuko ibyamubayeho byabaye ari mu kazi.

[22] Dosiye y'urubanza igaragaza ko ku wa 30/01/2008, Murekatete Jovia yivurije amaso mu Bitaro bya Kabgayi, muganga asanga afite "strabisme convergent fixe", "diplopie", ikibazo cy'ingohe, amaso yombi yarabyimbye, asabwa gukoresha ibindi bizamini i Kigali, bigeze ku wa 07/09/2009 yivuriza mu Bitaro bya Kaminuza bya Kigali, muganga asanga yaragagaye mu maso (paralysie faciale), atabona neza kandi atabasha guhumbya, ku wa 28/01/2013 yongera kwisuzumisha muri ibyo bitaro, muganga asanga afite ubumuga bwo kutabona bwa 46%, mu mwaka wa 2017 asubira mu Bitaro bya Kabgayi, muganga asanga ijisho ry'iburyo ritabona urumuri, iry'ibumoso ryarahumye, kandi imyakura y'amaso yombi yarabaye mito (bilateral optic atrophy). Dosiye irimo na none raporo yakozwe na Bio Medical Center ku wa 07/02/2017 (nyuma y'icibwa ry'urubanza mu Rukiko Rwisumbuye rwa Gicumbi kuko rwaciwe ku wa 23/09/2016), iyo raporo ikaba igaragaza ko Murekatete Jovia arwaye cytomegalovirus, ko nubwo batabonye IgM (immunoglobulins of high molecular) ahubwo akaba afite IgG (Immunoglobulin G), iyo cytomegalovirus yaba yarakanguwe n'uburwayi yari amaranye iminsi biturutse nko kuba yarandujwe avuka, kuba abasirikare be b'umubiri baragabanyutse cyangwa kuba byaratewe no gutwita (noter que malgré l'absence d'IgM, une réactivation d'une infection ancienne peut être présente notamment en cas d'infection néonatale, dans l'immunodépression ou en période de grossesse).

[23] Dosiye y'urubanza igaragaza ko mu bika bya 27 kugeza kuri 29 by'urubanza rujuririrwa, Urukiko Rukuru rwasanze ku wa 23/12/2013, Dr Kombi Ghislain, Dr kapalanga Joël na Dr Kitete Guy barasuzumye MUREKATETE Jovia basanga nta bwandu bwa VIH/SIDA afite kuko akimara kwijomba urushinge yashyizwe ku miti ibukumira (prophylaxie par anti-retroviraux), rusanga kandi hari «expertise médicale» yo ku wa 26/09/2014 ndetse na raporo y'ibizamini yatanzwe na laboratwari ya Biomedical Centre ku wa 07/01/2017 byose bigaragaza ko Murekatete Jovia afite virusi ya Cytomegalovirus, rusanga abahanga basobanura ko iyo virusi

ikunze kugaragara ku bantu bafite ubwandu bwa VIH/SIDA, rusanga mbere y'uko Murekatete Jovia yijomba urushinge kubw'impanuka atarigeze agaragaza ko afite ubwo burwayi, rwanzura rugira ruti «Bityo ubuhumyi bwa Murekatete Jovia bukaba bufitanye isano no kwijomba urushinge. Urukiko Rurasanga Murekatete Jovia yaragize impanuka y'akazi yo kwijomba urushinge kandi bikaba bifitanye isano n'indwara y'ubuhumyi yagize. Urukiko rurasanga hakurikijwe ibimenyetso byatanzwe ndetse nibyo amategeko ateganya, indwara y'ubuhumyi bwa MUREKATETE Jovia yarayitewe ni impanuka y'akazi yo kwijomba urushinge...»

[24] Dosiye y'urubanza irimo na none raporo y'iperereza ryakozwe n'Urukiko ku Bitaro bya Kaminuza bya Kigali ku wa 04/03/2019, aho Prof Dr Theobald Habyarimana, Umuyobozi w'ibyo bitaro yabwiye Urukiko ko Murekatete Jovia yahageze ku wa 07/09/2009 hashize ibyumweru bitatu yijombye urushinge avuga ko rwamuteye uburwayi bw'ubuhumyi, ku wa 28/11/2013 agaruka gukoresha «expertise médicale», muganga avuga ko afite ubumuga bwa 46% ariko atagaragaje icyo yashingiyeho. Yavuze ko Murekatete Jovia yakoze impanuka ku wa 20/05/2014, ariko ko asuzumye dosiye ye asanga ntaho ihuriye n'ikibazo cye cy'amaso kuko iyo mpanuka yabaye afite icyo kibazo cy'amaso. Avuga kandi ko ubusanzwe *cytomegalovirus* ari ndwara y'abantu bafite ubwandu bwa VIH/SIDA kandi ko kugeza ubu nta bushakashatsi bwagaragaje ko imiti ikumira ubwandu bwa VIH/SIDA itera ubuhumyi.

[25] Dosiye y'urubanza irimo na none imvugo ya Dr Mudereva Godelive wabwiye uru Rukiko ko ku wa 07/09/2009, yasuzumye Murekatete Jovia watakaga umutwe kandi wavugaga ko yijombye urushinge yari amaze gutera umurwayi ufite ubwandu bwa VIH/SIDA, asanga nta bwandu bwa VIH/SIDA cyangwa *cytomegalovirus* afite, ahubwo afite ikibazo cya «*champ visuel*», ijisho ry'ibumoso ritabona urumuri, iry'iburyo ritabona intoki z'umuntu, umutsi w'ijisho udakora ku maso yombi, urugero rwe rwo kutabona (incapacité) rugeze kuri 46%, amwohereza mu Bitaro by'i Kabgayi kugira ngo akorerwe ibizamini, ariko ntiyagaruka. Yasobanuye ko *cytomegalovirus* umuntu ashobora kuyigendana ariko ko yamusuzumye ntayibone kandi bitari gushoboka ko yari kuba ayifite ngo abure kuyibona, ko ari indwara ikunda gufata abafite ubwandu bwa VIH/SIDA, ko asanga ubuhumyi bushobora kuba bwaratewe n'imiti ikumira ubwandu bwa VIH/SIDA.

[26] Naho Dr PIET Noé yavuze ko yasuzumye bwa mbere MUREKATETE Jovia ku wa 30/01/2008, aza avuga ko afite iseseme n'umutwe, amusuzumye, asanga afite «*paralysie des deux yeux*» ariko akibona, afite n'ikibazo cy'uko imyakura y'amaso yagendaga iba mito (*atrophie des nerfs optiques*), ko ibyo bishobora guterwa n'indwara z'imitsi (*pathologie neurologique*), indwara zandura (*infections*) cyangwa gukoresha ubwonko cyane (*tension du cerveau*).Yasobanuye ko bidashoboka ko kugabanuka kw'imyakura y'amaso guterwa n'imiti ikumira ubwandu bwa VIH/SIDA, uretse ko icyo gihe nta n'ubwandu yari afite.

[27] Urukiko rurasanga abahanga mu mategeko bavuga ko impanuka y'akazi irangwa n'igikorwa kimwe cyangwa ibikorwa bikurikiranye, byabaye ku matariki azwi bitewe n'akazi cyangwa mu gihe cy'akazi, kandi bikaba byaragize ingaruka ku mubiri w'umukozi hatitawe ku gihe ingaruka zagaragariye. Basobanura ko impanuka zabaye umukozi ari aho akorera akazi kandi zabaye mu masaha y'akazi zifatwa nk'impanuka z'akazi kuko umukozi aba ari ku bugenzuzi bw'umukoresha, ariko ko umukozi afite inshingano zo kugaragaza ko ibyamubayeho ari impanuka y'akazi, ni ukuvuga kugaragaza ko habayeho ikintu cyaje gitunguranye kikamugiraho ingaruka, ko nubwo inkiko zemera ko akababaro agaragaje gakwiye gutuma

hakekwa ko yakoze impanuka y'akazi, imvugo ze ubwazo zitihagije kabone nubwo yaba ari inyangamugayo, ahubwo ko ibyo avuga bigomba kunganirwa n'ubuhamya bufatika.[1]

[28] Urukiko rurasanga kugirango MUREKATETE Jovia abe yarakoze impanuka y'akazi, ni uko ku wa 17/07/2009, yari kuba yakoreye mu Bitaro bya Kiziguro, akagaragaza ko uwo munsi yavuye umurwayi ufite ubwandu bwa VIH/SIDA na *cytomegalovirus*, akerekana ko yijombye urushinge yari amaze kumutera kandi ko byatumye amaraso cyangwa andi mavangingo y'umurwayi yivanga n'aye kandi ko iyo bihuye bituma izo ndwara zandura, nyamara kugeza ubu dosiye ye y'abakozi igaragaza ko ku wa 17/07/2009 yari mu kiruhuko cy'uburwayi cy'ukwezi yari yaratangiye ku wa 15/07/2009, byongeye kandi, inkuru y'uko yijombye urwo rushinge niwe wenyine uyibara, ntishimangiwe n'ikindi kimenyetso icyo aricyo cyose nk'amazina y'umurwayi yavuye, kuba uwo murwayi yari afite ubwandu bwa VIH/SIDA na *cytomegalovirus* cyangwa se ubuhamya bw'abandi bakozi bemeza ibyo avuga, kuko kuba yarashyizwe ku miti ikumira ubwandu bwa VIH/SIDA bidasobanuye byanze bikunze ko yari yandujwe n'urushinge, ibi byose bikababitera ugushidikanya ku kuba ku wa 17/07/2009 yarakoreye mu Bitaro bya Kiziguro kandi ko yahijombeye urushinge yari amaze gutera umurwayi ubana n'ubwandu bwa SIDA unafite indwara ya *cytomegalovirus*.

[29] Urukiko rurasanga nubwo Murekatete Jovia yaba yarijombye urushinge avuga, nta kigaragaza ko arirwo rwa muteye c*ytomegalovirus*, kuko na mbere yo ku wa 17/07/2009, yari arwaye amaso nk'uko byemezwa na raporo yatanzwe n'Ibitaro by'Amaso bya Kabgayi, bigashimangirwa n'ubuhamya bwa Dr Piet Noé wamuvuriye bwa mbere i Kabgayi ku wa 30/01/2008, asanga imitsi ye y'amaso igenda iba mito (*atrophie des nerfs optiques*), amaso ye yombi atangiye kugagara (*paralysie des deux yeux*), bikongera bikemezwa na Dr Mudereva Godelive wavuze ko yamuvuriye mu Bitaro bya Kaminuza bya Kigali ku wa 07/09/2009, hashyize ibyumweru bitatu yijombye urushinge avuga ko rwamuteye *cytomegalovirus*, asanga ijisho ry'iburyo ritabona urumuri, irindi ritabona intoki z'umuntu kandi umutsi w'ijisho udakora ku maso yombi, abo baganga bombi bakaba bemeza ko nta kimenyetso na kimwe babonye kigaragaza ko Murekatete Jovia yari arwaye *cytomegalovirus*, ibi bikongera gushimangirwa n'uko nawe ubwe yatangiye urubanza mu mwaka wa 2016 avuga ko indwara y'ubuhumyi yayitewe n'imiti aho kuba *cytomegalovirus* ndetse ko byemejwe n'Ibitaro byitiriwe Umwami Fayisali byavuze ko ubuhumyi bwatewe n'uburwayi bw'imyakura igaburira amaso (*atteinte du nerf optique*).

[30] Urukiko rurasanga Dr PIET Noé na Dr MUDEREVA Godelive bavuga ko virus ya *cytomegalovirus* umuntu uyifite ashobora kubana nayo akayigendana atabizi, ibi bikaba bihura n'ibyemejwe na Dr KARANGIRWA Alphonse wasuzumye MUREKATETE Jovia muri *Bio Medical Centre* ku wa 07/02/2017, akemeza ko iyo ndwara umuntu aba ayisanganwe ikabyutswa

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[1] L'accident du travail peut être défini globalement comme un événement ou une série d'événements survenus à des dates certaines par le fait ou à l'occasion du travail, dont il est résulté une lésion corporelle, quelle que soit la date d'apparition de celle-ci…l'accident survenu alors que la victime était au temps et au lieu du travail est présumé accident du travail parce que, quelles qu'aient été les conséquences, le travailleur était alors sous l'autorité ou la surveillance de l'employeur… Le salarié qui se prétend victime d'un accident du travail doit établir la survenance d'un accident, c'est-à-dire la survenance soudaine d'un préjudice, la jurisprudence admettant que la douleur manifestée fait présumer cette survenance… [néanmoins, il faut] que soit réuni un ensemble de présomptions sérieuses, graves et concordantes, les seules allegations de la victime, quelle que soit son honorabilité, étant insuffisantes en l'absence de témoignages directes." Reba Jean-Jacques Dupeyroux et alii, Droit de la sécurité sociale, Dalloz, Paris, 2015, p. 631-633 na 640.

n'uko abasirikare b'umubiri bagabanutse cyangwa igihe umugore atwite cyangwa igiye cyo kubyara (*une réactivation d'une infection ancienne peut être présente notamment en cas d'infection néonatale, dans l'immunodepression ou bien en période de grossesse*). Ibi kandi bihura n'ibyemezwa n'abahanga mu kuvura indwara z'amaso nkaho Richard G Fiscella na bagenzi be bavuga ko *cytomegalovirus retitinis* ari indwara y'amaso y'icyuririzi ikunze kwibasira abarwayi bafite ubwandu bwa VIH/SIDA cyangwa abarwayi batakaje abasirikare benshi kubera ko bahinduriwe ingingo z'umubiri (*CMV retitinis is the most common opportunistic eye infection in patients with AIDS and immuno compromised transplant patients*),[2] naho Ralph C Eagle Jr, akongeraho ko iyo ndwara ifata n'abarwayi ba kanseri yashirijwe (*cancer chimiotherapy)* kandi ko ifata itunguranye igatera kubora kw'ibice bigize amaso *(areas that are opaque cilinacally typically show full thickness retinal destruction. The transition between healthy and totally necrotic retina is often abrupt*)[3], naho Neil J Friedman na bagenzi be bavuga ko *cytomegalovirus* ari indwara itera kuvirirana no kubora buhoro buhoro kw'icyitwa *retine* (*progressive hemorrhagic necrotizing retitinis involving all retinal layer*s), ko ikunze kwibasira nibura 12% by'abantu bafite ubwandu bwa SIDA cyane cyane iyo abasirikare barinda umubiri bagabanutse cyane (CD4‹ 50 cells/mm3), ariko ko ishobora no kwandura igihe umugore ari kubyara (rare syndrome of neonatal cytomegalic inclusion disease).[4]

[31] Ku bijyanye n'uburyo *cytomegalovirus* yandura, William Rawinson na Gillian Scott bavuga ko mu bisanzwe yandurira mu macandwe, mu nkari no mu mashereka, kandi ko ku bana bakiri bato bandura barikonka, cyangwa bitewe n'ibyo bakozeho (fomite spread), iyo bahuye n'abandi bana bayandujwe cyangwa igihe cyo guca inkondo y'umura umwana avuka, ko ishobora guterwa kandi no guhumeka umwuka w'umuntu uyirwaye, imibonano mpuzabitsina, guterwa ingingo z'umubiri z'uyirwaye cyangwa se umubyeyi uyirwaye akayanduza umwana atwite,[5] ibi kandi birongera bikemezwa na Lopo S na bagenzi be mu nyigo yitwa *Seropprelanace to cytomegalovirus in the Portuguese Population, 2002-2003,*[6] naho Dr Ripault na bagenzi be bakongeraho ko iyo ndwara iba yihishe muri hafi 20% y'abantu bakuru, ikaba n'icyuririzi ku bantu batakaje abasirikare benshi bitewe na kanseri, VIH/SIDA, indwara z'umwijima, abahinduriwe ingingo z'umubiri cyangwa abarwaye impyiko, kandi ko kuba umuntu akora kwa muganga mu barwayi bafite abasirikare bake, abahinduriwe ingingo z'umubiri cyangwa mu bijyanye n'imyororokere y'abagore atari impamvu yatuma yandura cytomegalovirus, kuko abantu bahakora bayandura nkuko abaturage muri rusange bayandura ahubwo ko yandurira cyane mu marerero y'abana bafite munsi y'imyaka itatu (crèches), ku bagore batwite no ku bantu batakaje abasirikare b'umubiri.[7]

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[2] Richard G Fiscella and others, Clinical Occular Pharmacology, Butterworh, Heinmann, Elsevier, Saint Louis, 2008, p.204.
[3] Reba Ralph C Eagle, Jr, Eye Pathology: An Atlas and Text, Wolters Kluwer, Philaldephia, 2017, pp. 36-37.
[4] Reba Neil Friedman, Review of Ophthalmology, Elsevier, Edinburgh, 2018, p.244.
[5] Byasohotse kuri www.eurosurveillance.org of 23/06/2011
[6] La contagisite peut durer plusieurs années et être continue ou épisodique. Environ 20% des adultes sont excréteurs intermittents…Maladie opportuniste qui attaint de facon privilegiée les sujets atteints d'immuno depression (hémopathie, cancer, SIDA, les greffés et hémodialysés)… Absence de sur risqe pour le personnel travaillant en contact avec les patients immunodéprimés ou greffés et dans les services d'obstétriques… risque concernant surtout la femme enceinte et les personnes immunodéprimés ou greffés, risque surtout pour le personnel de crèche…" Reba Dr Ripault et alii, Cytomegalovirus, complement au guide EFICATT de l'INRSS, Centre Hospitalier Universitaires des Anges, Bordeaux, Lille, Reims et Rouen.Reba "cytomegalovirus (cmv) -CHU de Rouen", biboneka kuri http://www.chu-rouen.fr/mtph/fiches/CYTOMEGALOVIRUS.pdf [byasomwe ku wa 02/05/2019].
[7]

[32] Urukiko rurasanga nyuma y’uko mu gika cya 28 cy’urubanza rujuririrwa, Urukiko Rukuru rwasanze *cytomegalovirus* ifata abantu bafite ubwandu bwa VIH/SIDA, ibi akaba ari nabyo byemezwa n’inzobere zahamagajwe n’Urukiko ndetse n’abahanga mu buvuzi bw’amaso nk’uko byasobanuwe haruguru, kandi bikaba bigaragara ko ibizamini byo kwa muganga MUREKATETE Jovia yakoresheje bigaragaza ko adafite ubwandu bwa SIDA, ntaho Urukiko Rukuru rwari guhera rwemeza ko indwara y’ubuhumyi yayitewe n’impanuka, kuko kugirango iyo mpanuka ibe yaratumye yandura *cytomegalovirus* byasabaga ko iyo ndwara iba yandura binyuze mu rushinge, nyamara kugeza ubu inzobere n’abahanga bakaba bemeza ko ataribwo buryo yanduramo bitewe n’uko yandurira cyane cyane mu macandwe, mu mashereka no mu nkari, igakunda gufata abantu batakaje abasirikare benshi mu mubiri kubera indwara zitandukanye, abagore batwite n’abana bakiri mu nda bandujwe na ba nyina.

[33] Urukiko rurasanga kandi ikindi cyari guhuza *cytomegalovirus* n’impanuka y’akazi ni uko iyo virusi yari imwihishemo yari kuba yakanguwe no kugabanuka cyane kw’abasirikare barinda umubiri ku kigero nibura cya CD4$<$ 50 cells/mm^3, bitewe n’ubwandu bwa VIH/SIDA, ariko ibyo bikababyarasabaga ko abanza kwandura VIH/SIDA, nyamara sibyo byabaye kuko kugeza ubu nta bwandu bwa VIH/SIDA afite, bityo akaba ntaho yahera avuga ko yakoreye impanuka mu kazi ku buryo byahaga umukoresha inshingano zo kuyimenyekanisha mu Kigo gishinzwe ubwiteganyirize bw’abakozi kuko kuba yarahumye ari mu kazi ataribyo bituma ibyamubayeho byitwa impanuka y’akazi.

[34] Urukiko rurasanga ibyo ababuranira MUREKATETE Jovia basaba ko rwasuzuma niba MUREKATETE Jovia ataratewe ubuhumyi n’imiti ikumira ubwandu bwa SIDA yahawe, ibi bakabishingira ku mvugo ya Dr MUDEREVA Godelive uvuga ko asanga nta kindi cyaba cyaramuteye ubuhumyi mbere ya 2017 uretse kuba yaranyoye imiti myinshi ikumira ubwandu bwa VIH/SIDA, nta shingiro bikwiye guhabwa kuko uretse kuba Dr PIET Noé na Prof Dr Theobald HABYARIMANA bemeza ko kugeza ubu nta bushakashatsi buragaragaza ko imiti ikumira kwandura VIH/SIDA ishobora gutera ubuhumyi, ibizamini bya Laboratwari ya *Biomedical Centre* bihamya ko MUREKATETE Jovia arwaye *cytomegalovirus*, indwara itera ubuhumyi bufata butunguranye ariko amaso amaze igihe avirirana ndetse na bimwe mu bice byayo (rétine) bigenda bibora buhoro buhoro.

[35] Hashingiwe ku bimaze gusobanurwa no ku biteganywa n’ingingo z’amategeko zibukijwe haruguru, Urukiko rurasanga indwara y’ubuhumyi yatangiye gufata MUREKATETE Jovia ku wa 23/08/2009 ntaho ihuriye n’imirimo ye y’ubuforomo mu Bitaro bya Kiziguro kuko, kugeza ubu abaganga n’abahanga bemeza ko icyateye ubuhumyi kidashobora gukomoka ku bwoko bw’impanuka MUREKATETE Jovia avuga ko yakoreye mu Bitaro bya Kiziguro.

II.2. Kumenya niba Diyosezi Gatorika ya Byumba itarubahirije inshingano zayo nk’umukoresha

[36] Murekatete Jovia na Me Kabagema Aphrodis, Me Rwenga Etienne na Me Irafasha Félix, bamuburanira, bavuga ko yatangiye akazi ku wa 01/08/2008, akora impanuka ku wa 17/07/2009, ahita atangira ikiruhuko cy’uburwayi kugirango afate imiti ikumira ubwandu bwa VIH/SIDA, arangiza ikiruhuko cy’uburwayi ku wa 16/08/2009, bigeze ku wa 23/08/2009, ari mu kazi

arahuma. Bavuga ko mu gihe ubuhumyi bwe bwatewe n'impanuka y'akazi, umukoresha atagombaga kumutererana nk'uko yabigenje, ahubwo ko yari afite iminsi ine yo kumenyesha iyo mpanuka Ikigo Gishinzwe Ubwiteganyirize bw'Abakozi n'Umugenzuzi w'Umurimo w'Akarere ibitaro bikoreramo nk'uko biteganywa n'ingingo ya 94(1) y'Itegeko no13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda n'ingingo ya 4 y'Itegeko No 05/2015 ryo ku wa 30/03/2015 rigenga imitunganyirize y'ubwiteganyirize bwa pansiyo.

[37] Bavuga ko inshingano yo kumenyekanisha iyo mpanuka itashyirwa kuri Murekatete Jovia cyangwa umuryango we kuko, nubwo muri bo ntawakwitwaza ko atazi amategeko, bitari korohera Murekatete Jovia kumenyekanisha impanuka yakoze kuko yahise ahuma, naho ababyeyi be bakaba batari kumenya uburyo bamenyekanisha iyo mpanuka bitewe n'uko batize. Basaba uru Rukiko gufata ko uburangare bw'umukoresha bwabujije Murekatete Jovia amahirwe yo kuvurwa akaba yasubira mu kazi no guhabwa ubwiteganyirize bw'abakozi, imyitwarire y'umukoresha ikaba yaratumye ubuzima bwe bukomeza kugenda buba bubi kurushaho, ariyo mpamvu umokoresha akwiye gucibwa indishyi zingana na 61.834.068 Frw ahwanye n'imishahara Murekatete Jovia yari asigaje kuzahembwa kugirango ajye mu kiruhuko cy'izabukuru, ko izo ndishyi zari n'Urukiko Rwisumbuye rwa Gicumbi ariko zivanwaho n'Urukiko Rukuru nta mpamvu.

[38] Me Twajamahoro Herman, Me Sadi Jashi na Me Ndejeje Pascal, baburanira Diyosezi Gatorika ya Byumba, bavuga ko Murekatete Jovia yivugira ko yakoze impanuka ku wa 17/07/2009, nyamara dosiye ye y'umukozi (dossier administratif) ikaba igaragaza ko icyo gihe yari mu kiruhuko cy'uburwayi yatangiye ku wa 15/07/2009, ko nubwo impanuka yaba yarabayeho, umukoresha atayibazwa kuko umukozi atari mu kazi ndetse hakaba ntacyo umukoresha yari kubikoraho kuko atabimenyeshejwe. Basobanura ko ingingo ya 94 y'Itegeko no13/2009 ryo ku wa 27/05/2009 rigenga umurimo ryakoreshwaga icyo gihe itegeka umukozi ndetse n'umuryango we kumenyekanisha iyo mpanuka, bityo mu gihe murekatete Jovia atagaragaza icyamubujije kwimenyekanishiriza impanuka kandi akibasha kuvuga no kugenda, bitabazwa umukoresha. Basaba uru Rukiko gufata ko Murekatete Jovia atigeze yirukanwa kuko nta baruwa imwirukana ku kazi iri muri dosiye, ahubwo ko umukoresha yubahirije inshingano ze zo kumuhemba imishahara y'amezi atatu nk'uko yabisabwaga n'ingingo za 25, 61 na 62 z'Itegeko no13/2009 ryo ku wa 27/05/2009 ryavuzwe haruguru, ndetse arenza inshingano ze kuko yamuhembye amezi atanu adakora bitewe n'uko yari yarabuze ku kazi, bakaba basanga ntacyo umukoresha atakoze ngo yubahirize amategeko.

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[39] Ingingo ya 94, igika cya mbere n'icya kabiri, y'Itegeko no 13/2009 ryo ku wa 27/05/2009 rigenga umurimo ryakoreshwaga igihe Murekatete Jovia yatangaga ikirego iteganya ko: *"Umukoresha agomba kumenyesha ikigo gishinzwe ubwiteganyirize bw'abakozi n'Umugenzuzi w'Umurimo w'Akarere ikigo gikoreramo, mu gihe cy'iminsi ine (4) y'akazi, impanuka zose ziturutse ku kazi cyangwa indwara zikomoka ku kazi zabonetse. Iyo umukoresha atabikoze, bishobora gukorwa n'uwagize impanuka cyangwa uwarwaye cyangwa abo mu muryango we babifitiye uburenganzira mu gihe kitarenze imyaka ibiri (2) uhereye igihe impanuka yabereye cyangwa igihe indwara yagaragariye. "*

[40] Dosiye y'urubanza irimo inyandiko yitwa «Note à la comptablité» yakozwe n'Umuyobozi w'Ibitaro bya Kiziguro ku wa 12/01/2010 avuga ko Murekatete Jovia yarwaye muri Nyakanga 2009, ahabwa ikiruhuko cy'uburwayi, ariko ntiyagaruka ku kazi, hakaba hari hashize amezi atanu ahembwa adakora, asaba ababishinzwe guhagarika umushahara we kugeza igihe Murekatete Jovia azagarukira agasobanura impamvu yabuze ku kazi.Dosiye y'urubanza irimo na none inyandiko yitwa «Attestation de repos médical» yo ku wa 01/07/2009, iha Murekatete Jovia ikiruhuko cy'uburwayi cy'iminsi itanu yari kurangira ku wa 05/07/2009, hakabamo indi «Attestation de repos médical» yo ku wa 15/07/2009, iha Murekatete Jovia ikiruhuko cy'iminsi mirongo itatu, iyo minsi ikaba yari kurangira ku wa 15/08/2009.

[41] Dosiye y'urubanza irimo inyandiko yitwa « *Rapport d'expertise médicale* » yakozwe na Dr Kombi Ghislain, Gr Kapalanga Joël na Dr Kitete Guy ku wa 23/12/2013, aho bavuze ko basanze ijisho rya Murekatete Jovia ry'iburyo ridahumbya iyo yegerejwe urumuri, basaba ko mbere y'uko asubizwa mu kazi asuzumwa n'inzobere mu ndwara z'amaso, hanyuma agasuzumwa n'umuganga w'abakozi kugirango yemeze niba afite ubushobozi bwo gukomeza umwuga we w'ubuforomo. Harimo na none urwandiko Umuyobozi w'Ibitaro bya Kiziguro yanditse ku wa 08/01/2014, asaba «*expertise médicale*» mu Bitaro bya Kaminuza bya Kigali, urwo rwandiko rukaba ruvuga ko Murekatete Jovia amaze imyaka itanu yarahagaritse akazi kugirango yivuze ikibazo cy'amaso yavugaga ko yatewe n'impanuka yakoreye mu kazi, iyo « *expertise médicale* » ikaba yari gufasha kumenya niba Murekatete Jovia yasubizwa mu kazi.

[42] Urukiko rurasanga mu gihe uburwayi bwa *cytomegalovirus* Murekatete Jovia arwaye butatewe n'impanuka y'akazi nk'uko byasobanuwe haruguru, nta nshingano Diyosezi Gatorika ya Byumba yari ifite yo kugira icyo imenyekanisha mu Kigo cy'Igihugu cy'Ubwiteganyirize bw'abakozi nk'uko biteganywa n'ingingo ya 94, igika cya mbere, y'Itegeko n<u>o</u> 13/2009 ryo ku wa 27/05/2009 rigenga umurimo ryakoreshwaga igihe yakoraga mu Bitaro bya Kiziguro; byongeye kandi, Murekatete Jovia avuga ko guhera ku wa 23/08/2009 aribwo yatangiye guhuma, kuva icyo gihe atangira kwivuza ku giti cye mu mavuriro atandukanye, Ibitaro bya Kiziguro bikomeza kumutegereza, ahembwa amezi atanu adakora, ku wa 12/01/2010, aba aribwo umushahara we uhagarikwa by'agateganyo hategerejwe ko atanga ibisobanuro byatumye amara amezi atanu atagaragara ku kazi atanamenyesha umukoresha ibyamubayeho.

[43] Urukiko rurasanga na nyuma y'uko Ibitaro bya Kiziguro bimenyeye ko Murekatete Jovia yafashwe n'indwara y'ubuhumyi, ku wa 23/12/2013 hakozwe raporo y'abaganga batatu bakorera muri ibyo bitaro basabwe gusuzuma niba yasubira mu kazi, bemeza ko Murekatete Jovia asuzumwa n'inzobere mu buvuzi bw'amaso kuko ijisho rye ry'iburyo ritabonaga urumuri kandi ritahumbyaga, hanyuma akazasuzumwa n'umuganga w'abakozi ari nawe uzemeza ko yasubira mu kazi, ku wa 08/01/2014, Ibitaro bya Kiziguro byandikiye Ibitaro bya Kaminuza bya Kigali bisaba «expertise médicale» kugirango hemezwe niba Murekatete Jovia yasubira mu kazi, Dr Mudereva Godelive wari waramusuzumye ku wa 28/01/2013 akemeza ko afite ubumuga bw'ubuhumyi bwa 46%, arongera arabishimangira, ku wa 17/02/2014 Ibitaro by'Amaso bya Kabgayi byemeza ko yahumye kandi ko ntagaruriro (*this lady is legally blind. This is irreversible*)[8], ku wa 26/09/2014, Ibitaro bya Gisirikare bya Kanombe nabyo byemeza ko yahumye (*the above named person (Murekatete Jovia) is legally blind, basing on her visual field*

[8] Reba Attestation médicale, à qui de droit yakozwe na Dr Piet Noé ku wa 17/02/2014.

assessment)[9]9, ibi byose bikaba bigaragaza ko umukoresha yashyize mu gaciro, agaragaza ubushake bwo kumugarura mu kazi, ariko bibuzwa n'uko inzobere zemeje ko Murekatete Jovia yari yararangije guhuma, bitandukanye n'ibyo abamuburanira bavuga ndetse byemejwe mu gika cya 35 cy'urubanza rujuririrwa, ko umukoresha yabonye ahumye ahita amwirukana, bityo ko yirukanwe mu buryo bunyuranyije n'amategeko.

[44] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rurasanga, Urukiko Rukuru rwarakoze ikosa ryo kugumishaho indishyi z'akababaro, iz'integuza n'imperekeza n'izo kwirukanwa mu buryo butemewe n'amategeko zari zemejwe n'Urukiko Rwisumbuye rwa Gicumbi, kuko indwara y'ubuhumyi yatangiye gufata MUREKATETE Jovia ku wa 23/08/2009 ntaho ihuriye n'imirimo ye y'ubuforomo mu Bitaro bya Kiziguro, akaba kandi adahakana ibyo Diyosezi Gatorika ya Byumba ivuga ko itigeze imwirukana, ahubwo ko yamaze amezi atanu imuhemba batazi iyo ari, naho imenyeye ibyamubayeho igaragaza ubushake bw'uko yagaruka mu kazi, ishyiraho itsinda ry'abaganga b'Ibitaro bya Kiziguro kugirango bemeze niba yagaruka mu kazi, iryo tsinda naryo risaba ko asuzumwa n'inzobere, birakorwa, asuzumwa n'inzobere mu bihe bitandukanye no mu bitaro bitatu bitandukanye, bose bahuriza ku mwanzuro w'uko yahumye, bityo ko atagishoboye gukora imirimo ye y'ubuforomo, byumvikanisha ko ibyamubayeho byose bitabazwa umukoresha kuko nta ruhare yabigizemo.

II.3. Kumenya niba amafaranga y'igihembo cya Avoka n'ayikurikiranarubanza asabwa akwiye gutangwa

[45] Murekatete Jovia avuga ko yagaragarije inkiko zibanza ko yishyura avoka amafaranga agurizwa na *Rwanda Nurses and Midwives Union*, akaba agomba kuyishyura kugira ngo azafashe abandi, ikibabaje akaba ari uko nta na hamwe yigeze ayagenerwa, akaba asaba ko Diyosezi Gatorika ya Byumba itegekwa kumusubiza 2.500.000Frw yishyuye aba Avoka ku nzego zibanza na 1.500.000 Frw mu Rukiko rw'Ubujurire.

[46] Ababuranira Diyosezi Gatorika ya Byumba bavuga ko nta gihembo cya Avoka Murekatete Jovia akwiye kuko ibyo aburana nta shingiro bifite, ahubwo bakaba basaba indishyi zingana na 4.000.000 Frw zikubiyemo 3.500.000 Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza.

[47] Kuri izo ndishyi, ababuranira Murekatete Jovia bavuga ko nta shingiro zifite kuko yareze agamije guharanira uburenganzira bwe yavukijwe.

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[48] Ingingo ya 111 y'Itegeko n$_{o}$ 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 ari igishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza.

[49] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa na Murekatete Jovia ntayo yahabwa kuko ubujurire bwe nta shingiro bufite.

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[9] Reba urwandiko rwa Dr Francis MUTANGANA rwanditse ku wa 26/09/2014.

[50] Urukiko rurasanga kandi nkuko byagarutsweho mu rubanza *British Columbia (Minister of Forests)* yaburanye na *Okanagan Indian Band* rwaciwe n'Urukiko rw'Ikirenga rwa Canada narwo rwibutsaga urubanza *Harold* yaburanye na *Smith*,[10] amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza agamije gusubiza uwatsinze urubanza ibyo yarutakajeho, ntabwo rero ari igihano gihabwa utegetswe kuyatanga, si n'ishimwe rihabwa uyagenewe, inkiko z'ahandi nk'Urukiko rw'Ikirenga rwa LetaZu ze Ubumwe za Amerika zikaba zivuga ko iyo ikirego kitatanzwe hagamijwe gusiragiza undi muburanyi mu nkiko kubw'amaherere, ahubwo kigatangwa n'umuburanyi ushaka kwerekana ko yarenganyijwe, Urukiko, mu bushishozi bwarwo kandi rushingiye ku mpamvu zidasanzwe, rushobora kuvaniraho urega inshingano yo kwishyura igihembo cya Avoka n'amafaranga y'ikurikiranarubanza.[11]

[51] Urukiko rurasanga n'ubwo hari ibyo Diyosezi Gatorika ya Byumba yatakaje kugirango uru rubanza ruburanwe kandi ikaba irutsinze, ku buryo yari ikwiriye amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza, ikigaragarira uru Rukiko ni uko, MUREKATETE Jovia atajuriye agamije gusiragiza Diyosezi Gatorika ya Byumba mu Nkiko, ahubwo yashakaga kumvikanisha uburenganzira bwe yibwiraga ko butubahirijwe, bikaba bigaragara ko arwaye indwara y'ubuhumyi kuva ku wa 23/08/2009, iyo ndwara ikaba yaramuteye ubumuga ku kigero cya 46% kandi butagifite igaruriro, imufata akiri umukobwa w'imyaka 25,[12]12 bituma ahagarika akazi kari kamutunze guhera icyo gihe, ku buryo agomba kubeshwaho n'umuryango we n'abagiraneza, ndetse no kugirango abone ba Avoka bamuburanira uru rubanza akaba yaragombye kwiyambaza abagiraneza ba *Rwanda Nurses and Midwives Union,* hejuru y'ibyo akaba atasabwa kwishyurira uwari umukoresha we (Diyosezi Gatorika ya Byumba) igihembo cya Avoka n'amafaranga y'ikurikiranarubanza.

III. ICYEMEZO CY'URUKIKO

[52] Rwemeje ko ubujurire bwa Murekatete Jovia nta shingiro bufite;

[53] Rwemeje ko urubanza n<u>o</u> RSOCA 00222/2016/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 19/10/2017 ruhindutse kuri bimwe;

[54] Ruvuze ko uburwayi bw'ubuhumyi bwa Murekatete Jovia butatewe n'impanuka y'akazi yaba yarakoreye mu Bitaro bya Kiziguro;

[55] Ruvuze ko indishyi zategetswe mu rubanza n^{o} RSOCA 00222/2016/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 19/10/2017 zivuyeho;

[56] Rutegetse ko amagarama y'urubanza yatanzwe ahwanye n'ibyakozwe mu rubanza.

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[10] Costs as between party and party are given by the law as an indemnity to the person entitled to them : they are not imposed as a punishment on the party who pays them, nor given as a bonus to the party who receives them. Reba British Columbia (Minister of Forests) v. Okanagan Indian Band, [2003] 3 S.C.R. 371 at paras. 20-21 [Okanagan], na Harold v. Smith, (1860), 5 H. & N. 381 at 385.

[11] A prevailing defendant in a Title VII action should not ordinarily be awarded fees unless the court found that the pliantiff's case was frivoulous, unreasonable or meriteless. Reba Christianburg Garment co. v. Equal Employement Opportunity Comm'n, 434 U.S. 412, 98 S.Ct.694,54 L.Ed 2d 648 (1978).

[12] Yavutse ku wa 01/01/1984, reba Irangamuntu na Attestation de Naissance yatanzwe n'Umurenge wa Kiramuruzi ku wa 10/02/2016.