N.A (mu izina ry' umwana we I.A) v KIBUNGO MEDICAL CENTER

[Rwanda URUKIKO RW'UBUJURIRE – RCAA 00008/2020/CA (Nyirandabaruta P.J; Kamere na Mukanyundo J.) 25 Kamena 2021]

Amategeko agenga imanza mbonezamubano – Indishyi– Igenwa ry'indishyi zikomoka ku ikosa – Uburyozwe bushingiye kw'ikosa – Amakosa yakozwe n'abaganga mu mwuga wabo – uburyo bwo kubara indishyi z'amakosa y'abaganga bakoze bari mu azi kabo – Indishyi ku buryozwe bw'umuganga wakoze amakosa bikaviramo umurwayi gutakaza bimwe mu bice by'umubiri zibarwa mu bushishozi bw'Urukiko (ex aequoet bono)*.*

Amategeko agenga imanza mbonezamubano – Indishyi – Igenwa ry'indishyi – Iyo urukiko rugennye indishyi rushingiye ku itegeko ridafite aho rihuriye n'ikiburanwa mu rubanza, bifatwa nk'aho rwashingiye ku itegeko ritariho.

Amategeko agenga imanza mbonezamubano – Ubujurire – Igenwa ry'indishyi zikomoka ku ikosa – Urukiko rwajuririwe ntirugomba guhindura icyemezo cyafashwe n'urukiko rwo hasi rutabanje kugaragaza icyo runenga icyo rukinenga.

Imiterere y'Ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Ngoma, N.A mu izina ry' umwana we I.A, arega Kibungo Medical Center (KMC) asaba indishyi mu izina ry'umwana we I.A zikomoka ku kuba umukozi wicyo kigo yarakasemo kabiri igitsina cyuwo mwana bikamuviramo kumugara, ubwo yamusiramuraga abikoranye ubushishozi buke n'uburangare; muri urwo rubanza hagobokeshejwemo Prime Insurance Company Plc nk'umwishingizi wa KMC.

Urukiko rwemeje ko ikirego cyatanzwe na N.A mu izina ry'umwana we I.A gifite ishingiro kuri bimwe, ko KMC yishyura indishyi N.A mu izina ry'umwana we I.A zo kuba umukozi wayo yaramwangije igice cy'umubiri.

Kibungo Medical Center ntiyishimiye imikirize y'urubanza ijuririra mu Rukiko Rukuru, Urugereko rwa Rwamagana ivuga ko Urukiko Rwisumbuye rwategetse KMC kwishyura indishyi zidashingiye ku gipimo na kimwe, runirengagiza ko hari amafaranga yari yarishyuye mu rwego rwo kuvuza umwana no kuba rutarasesenguye neza amategeko ajyanye n'uburyozwe mu gihe uregwa indishyi afite umwishingizi.

Urukiko Rukuru, Urugereko rwa Rwamagana rwemeje ko ubujurire bwatanzwe na KMC bufite ishingiro kuri bimwe, ko urubanza rwajuririwe ruhindutse gusa ku bijyanye n'ikigero cy'indishyi N.A mu izina ry'umwana we I.A yagenewe, aho Urukiko rwazigabanije.

N.A mu izina ry'umwana we I.A ntiyishimiye imikirize y'urubanza arujuririra mu Rukiko rw'Ubujurire, avuga ko Urukiko Rukuru, rwaciye urubanza rushingiye ku Itegeko ritabaho.

Ababuranira Kibungo Medical Center bavuga ko basanga indishyi zaragenwe mu buryo bukurikije amategeko, ko Urukiko rwasuzuma niba zatangwa mu bushishozi bwarwo cyangwa se zigatangwa hakurikijwe inyandiko z'abahanga, cyangwa izagenwe hakurikijwe amategeko.

Urukiko rwemeje ko ibarwa ry'indishyi zagenewe N.A mu izina ry'umwana we I.A zari kwemezwa hashingiwe ku kuba Kibungo Medical Center ubwayo yiyemerera ko hari ikosa ryakozwe n'umukozi wayo, zikabarwa hashingiwe ku bushishozi bw'umucamanza (ex aequo et bono) kuko nta tegeko ririho rigena uburyo n'igipimo fatizo biherwaho mu kuzibara.

Incamake y'Icyemezo:1. Indishyi ku buryozwe bw'umuganga wakoze amakosa bikaviramo umurwayi gutakaza bimwe mu bice by'umubiri zibarwa mu bushishozi bw'Urukiko (ex aequo et bono)

2.Iyo urukiko rugennye indishyi rushingiye ku itegeko ridafite aho rihuriye n'ikiburanwa mu rubanza, bifatwa nk'aho rwashingiye ku itegeko ritariho.

3.Urukiko rwajuririwe ntirugomba guhindura icyemezo cyafashwe n'urukiko rwo hasi rutabanje kugaragaza icyo runenga icyo rukinenga.

Amategeko yashingiweho:
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 9, 111

Imanza zifashishijwe:
Urubanza Nº RCAA 00073/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 19/07/2019 hagati ya Nyirabatesi Laurence n'Ibitaro byitiriwe Umwami Fayisali.
Urubanza Nº RADA 0054/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/12/2014 haburana Kabayijuka Gaspard na MINISANTE.

Inyandiko z'abahanga zifashishijwe :
Bernard Dubuisson et Noel Simar (sous la direction de), Responsabilite, Indemnisation et recours", Volume 174, Juin 2017, page 149
Henri De Page, Traité élémentaire de droit civil Belge, tome deuxième, Les incapables-Les obligations Bruylant, Bruxelles, 1964, P. 1070

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Ngoma, N.A mu izinary'umwana we I.A arega Kibungo Medical Center asaba indishyi zinganana 45.000.000 Frw zikomoka ku kuba umukozi wayo yarakasemo kabiri igitsina cy`umwana we I.A bikamuviramo kumugara, ubwo yamusiramuraga; muri urwo rubanza hagobokeshwamo Prime Insurance Company Plc nk'umwishingizi wa Kibungo Medical Center.

[2] N.A mu izina ry'umwana we I.A yasobanuye ko ku wa 14/04/2017, Umuganga w'Ivuriro Kibungo Medical Center mu gusiramura uwo mwana, yabikoranye ubushishozi buke n'uburangare, aho umwana yitereye hejuru muri icyo gikorwa kubera ubwoba, umutwe w'igitsina cye ukatwaho igice, Kibungo Medical Center yihutira kumujyana mu Bitaro byitiriwe Umwami Faisal bakagiteranya ariko bikanga, ahubwo akaharwarira kugeza ubwo bakuyeho umutwe wose w'igitsina (gland) kubera ko ubwo ibyo bitaro byageragezaga guhomaho igice cyari cyaciwe, umutwe wose watangiye kubora, bitumabawukuraho hagamijwe kurengera urugingo rw'umwana rusigaye; bityo ko kuba byaramuviriyemo ubumuga buhoraho bwa 50% nk'uko byemejwe na muganga wamusuzumye, Kibungo Medical Center igomba kubitangira indishyi.

[3] Urukiko Rwisumbuye rwa Ngoma rwaciye urubanza RC 00222/2017/TGI/Ngoma ku wa 31/07/2018, rwemeza ko ikirego cyatanzwe na N.A mu izina ry'umwana weI.A gifite ishingiro kuri bimwe, ko Kibungo Medical Center yishyura N.A mu izina ry'umwana we I.A indishyi zingana na

35.000.000Frw zo kuba umukozi wayo yaramwangije igice cy'umubiri, 500.000Frw y'igihembo cya Avoka na 50.000Frw y'ingwate y'igarama.

[4] Kibungo Medical Center ntiyishimiye imikirize y'urubanza ijuririra mu Rukiko Rukuru, Urugereko rwa Rwamagana ivuga ko Urukiko Rwisumbuye rwa Ngoma rwategetse Kibungo Medical Center kwishyura indishyi zingana na 35.000.000Frw zidashingiye ku gipimo na kimwe, runirengagiza ko hari 2.900.000Frw yari yarishyuye mu rwego rwo kuvuza umwana no kuba rutarasesenguye neza amategeko ajyanye n'uburyozwe mu gihe uregwa indishyi afite umwishingizi.

[5] Ku wa 30/07/2019, Urukiko Rukuru, Urugereko rwa Rwamagana rwaciye urubanza RCA00065/2018/HC/RWG, rwemeza ko ubujurire bwatanzwe na Kibungo Medical Center bufite ishingiro kuri bimwe, ko urubanza rwajuririwe ruhindutse gusa ku ndishyi N.A mu izina ry'umwana we I.A yagenewe, rutegeka ko yishyurwa indishyi zingana na 8.640.000Frw aho kuba 35.000.000Frw, rutegeka ko nta gihindutse ku bijyanye n'igihembo cya Avoka no ku ngwate y'igarama. Rwemeje kandi ko 2.993.000Frw Kibungo Medical Center yishyuye ivuza umwana I.A adakurwa mu ndishyi icibwa kubera ko yayatanze ikemura ikibazo yari yateje, ko 30.000Frw yishyuwe *expertise judiciaire* adakurwamo kuko ariyo yabisabye kubw' inyungu zayo, rutegeka ko mundishyi zingana na 8.640.000Frw Kibungo Medical Center igomba kwishyura N.A mu izina ry'umwana we I.A, yishyuramo 6.640.000Frw, PRIME Insurance Company Plc ikishyura 2.000.000Frw nk'uko amasezerano Nº 413/00021583- SGPolice impande zombi zagiranye ku wa 24/06/2016 abiteganya, KIBUNGO Medical Center ikanamwishyura 650.000Frw y'igihembo cya Avoka no gukurikirana urubanza ku rwego rw'ubujurire.

[6] N.A mu izina ry'umwana we I.A ntiyishimiye imikirize y'urubanza arujuririra mu Rukiko rw'Ubujurire, avuga ko Urukiko Rukuru, Urugereko rwa Rwamagana rwaciye urubanza rushingiye ku Itegeko ritabaho maze rukirengagiza itegeko risanzweho ryashingiweho n'Urukiko Rwisumbuye rwa Ngoma mu guca urubanza, maze rugahimba itegeko ryarwo ridafite aho rihuriye n'igikorwa cy'ubugome cyakorewe I.A, kuba mu gika cya 16 cy'urubanza RCA00065/2018/HC/RWG, Urukiko Rukuru rwarashingiye ku itegeko ritabaho rwemeza ko ibyabaye ari impanuka nta kimenyetso rushingiyeho, no kuba rwaremeje ko 30.000Frw yishyuwe expertise judiciaire naKIBUNGO Medical Center kandi atari ko bimeze.

[7] Iburanisha ry'urubanza mu ruhame ryashyizwe ku wa 21/12/2020, uwo munsi ugeze ntirwaburanishwa kubera ko umwe mu bacamanza bagize inteko yari arwaye, iburanisha ryimurirwa ku wa 26/01/2021, uwo munsi ugeze ntirwaburanishwa kubera ko Umujyi wa Kigali wari muri gahunda ya guma mu rugo mu rwego rwo kwirinda ikwirakwira rya virusi yaCorona itera indwara ya Covid-19, iburanisha ryimurirwa ku wa 02/06/2021, uwo munsi ruburaishwa mu ruhame, ababuranyi bose bitabye, N.A mu izina ry'umwanawe I.A ahagarariwe na Me Rwenga Etienne, afatanyije na Me GashugiHeron, Kibungo Medical Center ihagarariwe na Dr Kanimba Pierre Célestin yunganiwena Me Mukaruzagiriza Chantal afatanyije na Me Ngerageze Bernard, Prime Insurance Company Plc ihagarariwe na Me Bagomora Charles, isomwa ry'urubanza rishyirwa ku wa 25/06/2021, ari nawo munsi rusomeweho.

II. IBIBAZO BIGIZE URU RUBANZA N'ISESENGURA RYABYO :

a. Kumenya ishingiro mu mategeko ry'indishyi zagenewe N.A mu izinary'umwana we I.A.

[8] Me Gashugi Heron, uhagarariye N.A mu izina ry'umwana we I.A, avuga ko mu gika cya 16 n'icya 21 by'urubanza RCA00065/2018/HC/RWG, Urukiko Rukuru rwaciye urubanza rushingiye ku

Itegeko ritabaho kuko rwahimbye itegeko[1] ridafite aho rihuriye n'igikorwa cy'ubugome cyakorewe I.A, kandi rwari rwabonye ko ibyabaye bifite ingaruka ziremereye zitakwihanganirwa.

[9] Akomeza avuga ko rwemeje ko kuba igitsina cya I.A cyaraciwemo kabiri ari impanuka, rukabyemeza nta kimenyetso rushingiyeho, bigatuma ruca urubanza rushingiye kuIteka rya Perezida Nº 31/01 ryo ku wa 25/8/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, rukaba rwaragereranyije ibintu bibera ahantu hatandukanye cyane, binakorwa n'abantu batandukanyecyane mu mwuga bakora, aho impanuka y'ikinyabiziga ishobora guterwa n'ibintu byinshibitandukanye birimo imodoka ubwayo, umushoferi ku giti cye, imiterere y'umuhanda imodoka igenderaho kimwe n'ibindi byaturuka ku ruhande bigahohotera imodoka n'abayirimo, bikabantaho bihuriye n'Umuganga wazaniwe umwana muzima akamuciramo kabiri igitsina akagitandukanya cyose; ko ahubwo rwagombaga guca urubanza rushingiye ku bushishozi bwarwo nk'uko biteganywa n'ingingo ya 9 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi[2], urubanza RCAA00073/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 19/07/2019, Nyirabatesi Laurence aburana n'Ibitaro byitiriwe Umwami Faisali, aho urwo Rukiko rwagennye indishyi rushingiye ku ngingo ya 260 y'Itegeko ryo ku wa 30/07/1888 rishyiraho interuro y'ibanze y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano[3]n'inyandiko z'abahanga.

[10] Asoza asaba Urukiko rw'Ubujurire gutegeka Kibungo Medical Center kwishyura indishyi zingana na 45.000.000Frw nk'uko zari zasabwe mu Rukiko Rwisumbuye rwa Ngoma kuko atari nyinshi ugereranyije n'ubumuga uwo mwana yatewe; byose bikemezwa hashingiwe kuriexpertise médicale zakozwe, amafoto agaragaza uko igitsina cy'umwana cyaciwemo kabiri, n'ingingo ya 260 y'Itegeko ryo ku wa 30/07/1888 rishyiraho interuro y'ibanze y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano yakoreshwaga igihe urubanza RCA00065/2018/HC/RWG rwacibwaga kuko Itegeko Nº 020/2019 ryo ku wa 22/08/2019 rikurahoamategeko yagiyeho mbere y'Ubwigenge, ryasohotse mu igazeti ya Leta Nº 37 bis ku wa 23/09/2019.

[11] Me Rwenga Etienne, uburanira N.A mu izina ry'umwana we I.A yongeraho ko umucamanza atari akwiye gushingira icyemezo cye ku ngingo z'amategeko zidafite aho zihuriye n'ikiburanwa, kuko mu gihe igikorwa cyo gukata umwana igitsina n'igihe urubanza rwaburanishwaga mu Rukiko Rwisumbuye rwa Ngoma, ingingo ya 260 y'Itegeko ryo ku wa 30/07/1888 rishyiraho interuro y'ibanze y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano ariyo yashingirwagaho, cyangwa agashingira ku bindi byemezo byafashwe n'inkiko nk'urubanza RCAA00073/2018/CA rwavuzwe haruguru, inyandiko z'abahanga[4], cyangwa se agashingira ku muco kuko bisanzwe bizwi

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[1] Uzajya acibwa igitsina n'umuganga azajya afatwa nk'uwagongewe n'ikinyabiziga mu muhanda maze indishyi zo mu muhanda zigakubwa inshuro ebyiri (2).

[2] Umucamanza aca urubanza ashingiye ku ngingo z'amategeko zirebana n'ikirego yaregewe. Iyo nta tegeko rijyanye n'ikiburanwa ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko.

[3] Umuntu ntaryozwa gusa ibyangiritse kubera ibikorwa bye bwite, ahubwo anaryozwa ibyangijwe n'ibikorwa by'abantu yishingiye cyangwa n'ibintu ashinzwe kurinda. Ise w'umwana, na nyina iyo umugabo amaze kwitaba Imana, baryozwa ibyangijwe n'abana babo babana mu nzu imwe. Ba shebuja n'abakoresha baryozwa ibyangijwe n'abakozi babo mu gihe bakora imirimo babashinze. Abarimu n'abanyabubukorikori baryozwa ibyangijwe n'abanyeshuri n'abo bigisha imyuga mu gihe bibaye aribo bashinzwe kub...

[4] Bernard Dubuisson et Noel Simar (sous la direction de), Responsabilite, Indemnisation et recours", Volume 174, Juin 2017, page 149) bavuze kuri "réparation des préjudices subis", ko ku kibazo cyose umucamanza ashyikirijwe, bitewe n'icyabaye, ikibigaragaza by'umwihariko, atanga somme forfaitaire, asobanura ubumuga umwana afite, yibaza icyiciro cy'ubumuga azibonamo hakurikijwe ibyiciro byabwo gutanga indishyi, ariko zidakubye kabiri, kandi zigatangwa n'umwishingizi, yo igatanga ikinyuranyo cyazo.

ko mu muco w'Abanyarwanda uwangirije undi amuha indishyi; bityo ko Kibungo Medical Center ikwiye gutanga indishyi zose nk'uko zasabwe kuko ubumuga umwana afite budatumayiyumva mu bandi, adashobora kugira amahirwe yo gushaka, atagira ubushake bwo gukora imibonano mpuzabitsina cyangwa ngo ashobore kuyikora, kuko cyakaswe, akaba yaratangiyekugira ipfunwe mu bandi bana bigana ku ishuri kuko bamuseka igihe cyose agiye kwihagarikaakabanza gusutama, bakaba banibaza uko azibona amaze gukura ageze igihe cyo gushaka umugore, umukobwa uzemera kumushaka afite igitsina cy'igice.

[12] Dr Kanimba Pierre Célestin nk'Umuyobozi wa Kibungo Medical Center avuga ko ikibazo gikwiye gusuzumwa hashingiwe ku mategeko kuko ikigenderewe ari uburyo bwo kubara indishyi zahabwa I.A. Akomeza avuga ko kuba umucamanza yarafashe icyemezo anyuranyije n'ibiri mu Iteka rya Perezida Nº 31/01 ryo ku wa 25/8/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga nk'aho mu gika cya 21 cy'urubanza yagize ati "*Urukiko rurasanga arikokubera inshingano umuganga uba afite ubuzima bw'abantu bamugana mu biganza bye iba iremereye cyane kurusha iy'utwaye ikinyabiziga kigendera mu muhanda, ni ngombwa ko iyomibare itangwa n' Iteka rya Perezida yifashishijwe, indishyi ziyivuyemo zikuba inshuro ebyiri, mu rwego rw'uburyozwe bw'amakosa y'umuganga y'indishyi", ko* Urukiko rw'Ubujurire rusabwa kuzasuzuma ibijyanye n'indishyi zatanzwe hashingiwe ku Iteka rya Perezida Nº 31/01ryo ku wa 25/08/2003 ryavuzwe haruguru, ko umucamanza yazikubye kabiri kandi atariko biteganyijwe. Asaba Urukiko rw'Ubujurire kubikosora, kuko icyemezo cyafashwe cyashingiye ku itegeko rikoreshejwe nabi, ko kandi Kibungo Medical Center nayo yemera gutanga indishyi, ariko zidakubye kabiri, kandi zigatangwa n'umwishingizi, yo igatanga ikinyuranyo cyazo.

[13] Me Mukaruzagiriza Chantal wunganira Dr Kanimba Pierre Célestin uhagarariye Kibungo Medical Center, avuga ko Urukiko Rukuru, Urugereko rwa Rwamagana, rutashingiye ku itegeko ritariho, kuko rwaciye urubanza rushingiye ku byemejwe mu rubanza RADA 0054/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/12/2014, hagati ya Kabayijuka Gaspard na Minisiteri y'Ubuzima, wari warakomerekejwe n'umuntu wari wiyise umuforomo kandi ari umupulanto i Nyarubuye, amukomeretsa umutsi, bimuviramo ubumuga bwa burundu, kandi ko mu icibwa ry'urwo rubanza hifashishijwe Iteka rya Perezida Nº 31/01 ryo ku wa 25/8/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, kandi ko bo batari gutegeka umucamanza icyo ashingiraho aca urubanza.

[14] Akomeza avuga ko ingingo ya 260 y'Itegeko ryo ku wa 30/07/1888 rishyiraho interuro y'ibanze y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano abajuriye bashingiraho bavuga ko ariyo yagombaga gukurikizwa mu icibwa ry'urubanza, itagena uburyoindishyi zibarwa kandi ko Urukiko rudategetswe gutanga indishyi zisabwa n'umuburanyi zose,ko ahubwo ruzigena mu bushishozi bwarwo. Asoza avuga ko basanga indishyi zaragenwe muburyo bukurikije amategeko, ko Urukiko rwasuzuma niba hatangwa izo zigenekereje hakurikijwe inyandiko z'abahanga, cyangwa izagenwe hakurikijwe amategeko ; kandi koibindi byavuzwe byerekeye ipfunwe ry'umwana, icyiciro cy'ubumuga yibonamo, ntacyo abivugaho.

[15] Me Ngerageze Bernard nawe wunganira Dr Kanimba Pierre Célestin uhagarariye Kibungo Medical Center, avuga ko uko urubanza rwaciwe nta kibazo abibonamo, ko kubaumucamanza yarashingiye ku ngingo ya 9 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimon'iz'ubutegetsi akagena izo ndishyi atagiye kure y'ibiteganywa n'Itegeko, ndetse ko abajuriyebatagaragaza uburyo byakosorwa uretse gushingira ku ngingo ya 260 y'Itegeko ryo ku wa 30/07/1888 rishyiraho interuro y'ibanze y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano idashobora kugaruka mu mategeko ngo ikoreshwe ubu kuko yavanyweho. Akomeza avuga ko baburana mu Rukiko Rukuru ababuranyi bose bari bemeranyijwe ko ibyabaye byari impanuka, ariyo mpamvu mu kugena indishyi hashingiwe ku Iteka

rya PerezidaNº 31/01 ryo ku wa 25/8/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabarebw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga.

[16] Ku bijyanye n'inyandko z'abahanga zagaragajwe abajuriye bavuga ko zashingirwaho mu kugena indishyi, avuga ko ibitabo byandikiwe mu bindi bihugu bitasimbura Iteka rya Perezida ryavuzwe haruguru, ko n'ubwo rivuga ibijyanye no kwishyura indishyi ku bubabare butewe n'impanuka zo mu muhanda, rikwiye guhabwa agaciro kuko rikoreshwa imbere mu gihugu cyacu.

[17] Ku bijyanye no kuba umucamanza yarashyizeho itegeko rivuga ko uzajya acibwa igitsina n'Umuganga azajya afatwa nk'uwagongewe n'ikinyabiziga mu muhanda maze indishyi indishyi zihabwa uwagonzwe n'ikinyabiziga zigakubwa inshuro 2, avuga ko Kibungo Medical Center isanga ibyo ari ukurengera kubera ko urubanza rujuririrwa rutigeze rushyirwamu cyegeranyo cy'ibyemezo by'inkiko gitangazwa n'Urukiko rw'Ikirenga kugira ngo rujye rutanga umurongo ku bibazo bishyikirijwe inkiko bimeze nkabyo, ko iyo mvugo nta shingiro ifite.

[18] Me Bagomora Charles uburanira Prime Insurance Company Plc avuga ko igihe baburanaga mu Rukiko Rukuru, Urugereko rwa Rwamagana ingingo ya 260 y'Itegeko ryo kuwa 30/07/1888 rishyiraho interuro y'ibanze y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano yari yaravuyeho, ko kandi babivuzeho, akaba nta handi Urukiko rwari gushingira uretse gutira ahandi cyangwase kureba uko ahandi bikorwa. Asaba Urukiko rw'Ubujurire kuzasuzuma igihe iryo tegeko ryaviriyeho n'igihe urubanza rujuririrwa rwaciriwe, ko kandi Urukiko rwashingiye ku ngingo ya 9 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi mu rwego rwo gushaka igisubizo kubera ko iyo ngingo yari yaravuyeho.

[19] Ku bijyanye na "*mode de réparation*" na "*méthode d'évaluation*" bivugwa mu nyandiko z'abahanga, avuga ko ibyo byasuzumwe, kuko Urukiko rwabajije abahagarariye umwana, "*réparation*" ijyanye na "*préjudice*" baregeye iyo ari yo, ntibashobora kubisobanura, ruca urubanza rushingiye ku Iteka rya Perezida Nº 31/01 ryo ku wa 25/8/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga,kubera ko ryateganyaga ibisa n'ikibazo rwari rwashyikirijwe, ko kandi byari bisobanutse neza.

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[20] Ingingo ya 9 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira: "*Umucamanza aca urubanza ashingiye ku ngingo z'amategeko zirebana n'ikirego yaregewe.Iyo nta tegeko rijyanye n'ikiburanwa ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategek*o".

[21] Mu rubanza RCA00065/2018/HC/RWG rujuririrwa, mu gika cya 22 n'icya 23, Urukiko Rukuru, Urugereko rwa Rwamagana, rwageneye N.A uhagarariye umwana we I.A indishyi rushingiye ku gipimo giteganywa mu Iteka rya Perezida Nº 31/01 ryo ku wa 25/8/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiributurutse ku mpanuka zitewe n'ibinyabiziga ndetse ruzikuba kabiri ku mpamvu y'uko umuganga ufite ubuzima bw'abantu bamugana mu biganza bye aba afite inshingano ziremereye cyane kurusha iz'utwaye ikinyabiziga kigendera mu muhanda.

[22] Muri uru rubanza, indishyi ziregerwa ni izikomoka ku makosa yabereye kwa muganga yatumye I.A atakaza igice cy'igitsina cye mu gikorwa cyo kumusiramura, ibarwa ryazo rikaba rigomba gushingira ku bipimo byagenwe ku mpanuka nk'izo kwamuganga mu gihe bihari, ariko

kandi n'iyo ibyo bipimo byaba bidahari, ntibyaba impamvu yogushingira ku gipimo kigenwa n' Iteka rya Perezida Nº 31/01 ryo ku wa 25/8/2003 ryavuzwe haruguru kuko ridahuje kamere n'ikiregerwa muri uru rubanza, ahubwo hakurikijwe ibiteganywa mu ngingo ya 9 y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, iteganya ko iyo nta tegeko rijyanye n'ikiburanwa umucamanza ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko, igipimo cyagenwa mu bushishozi bw'Urukiko hitawe ku buremere bw'ikosa ryakozwe, ku buryo Inkiko zakemuye ibindi bibazo bisa n'ikiri muri uru rubanza, ndetse n'inyandiko z'abahanga.

[23] Urukiko rurasanga nk'uko ababuranyi babyemeranwaho mu miburanire yabo, mu Rwanda, nta gipimo kizwi giherwaho habarwa indishyi zishingiye ku buryozwe bw'umuganga wakoze amakosa bikaviramo umurwayi gutakaza bimwe mu bice by'umubiri; aha akaba ariho ababuranyi batumvikana ku buryo Urukiko Rukuru, Urugereko rwa Rwamagana, rwabaze indishyi kuko N.A avuga ko rutagombaga kubara indishyi ruhereye ku bipimo bigenwa n' Iteka rya Perezida Nº 31/01 ryo ku wa 25/8/2003 ryavuzwe haruguru kandi hataburanwa indishyi zikomoka ku mpanuka yo mu muhanda, ko ahubwo zagombaga kugenwa mu bushishozi bw'Urukiko nk'uko biteganywa mu ngingo ya 9 y'Itegeko Nº 22/2018ryo ku wa 29/04/2018 ryavuzwe haruguru; naho Kibungo Medical Center na Dr Kanimba Pierre Célestin uyihagarariye bakavuga ko indishyi zagombaga kubarwa hifashishijwe ibipimo bigaragara muri iryo Teka rya Perezida nk'uko byakozwe n'Urukiko Rukuru mu rubanza rujuririrwa kuko nta gipimo kizwi ku bijyanye ry'uburyozwe bw'amakosa yo kwa muganga.

[24] Urukiko rurasanga n'ubwo nta bipimo biriho bizwi byaherwaho habarwa indishyi zikomoka ku makosa yakozwe n'umuganga mu gihe cyo kuvura umurwayi, izo ndishyi zitagenwa hashingiwe ku bipimo bivugwa mu Iteka rya Perezida Nº 31/01 ryo ku wa 25/8/2003 ryavuzwe haruguru, kuko ibiteganywa n'iryo Teka bidahuje kamere n'ikiburanwa muri uru rubanza. Rusanga ahubwo nk'uko byavuzwe haruguru, zikwiye kugenwa mu bushishozi bw'Urukiko hashingiwe kubyo rwagaragarijwe, harimo no kuba umwana watewe akababaro gasabirwa indishyi azagahorana mu buzima bwose asigaje kubaho, nk'uko uru Rukiko rw'Ubujurire rwabikoze mu rundi rubanza Nº RCAA00073/2018/CA rwaciwe ku kibazo kimeze nk'iki kuwa 19/07/2019 hagati ya Nyirabatesi Laurence n'Ibitaro byitiriwe Umwami Fayisali, haburanwa indishyi z'akababaro zo kuba King Faisal Hospital yarateye ibyago Nyirabatesi Laurence ubwo yari mu bitaro byabo[5].

[25] Urukiko rurasanga mu gihe ababuranyi bumvikana ku ikosa ryakozwe ryatumye I.A atakaza igice cy'umubiri bikamutera ubumuga, igisigaye ari ukwemeza ingano y'indishyi zikwiye guhabwa uwahohotewe hashingiwe ku buremere bw'ikosa n'ingaruka byagize k'uwahohotewe kandi hitawe ku myaka uwo mwana azamarana akababaro yatewe, zikagenwa mu bushishozi bw'umucamanza (*ex aequo et bono*[6]*)* kuko nta tegeko ririho rigenauburyo zibarwa, zikaryozwa Kibungo Medical Center ihagarariwe na Dr Kanimba Pierre Célestin, nk'umukoresha w'umukozi wakoze ikosa risabirwa indishyi. Uwo kandi ni nawo murongo wafashwe n'Urukiko rw'Ikirenga ndetse n'Urukiko rw'Ubujurire mu manza zitandukanye zaburanywemo indishyi zikomoka ku makosa yakozwe n'abakozi bo kwamuganga yateye abarwayi ubumuga, nk'urubanza Nº RADA 0054/12/CS rwaciwe n'Urukikorw'Ikirenga ku wa 19/12/2014 haburana Kabayijuka Gaspard na Minisante aho Kabayijuka Gaspard yagiye kwivuza agaterwa urushinge mu mutsi n'uwari umukozi w'Ibitaro bikamuviramo

[5] Reba igika cya 37 cy'urubanza Nº RCAA 00073/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 19/07/2019 hagati ya NYIRABATESI Laurence n'Ibitaro byitiriwe Umwami Fayisali.

[6] 6 L'évaluation du dommage ex aequo et bono ne peut être adoptée par le juge comme mode d'évaluation que si, d'une part, il donne la raison pour laquelle une autre base d'évaluation, proposée par une des parties, ne peut être admise en l'espèce, et si, d'autre part, l'évaluation ne peut, à défaut d'éléments plus sûrs, se faire qu'ex aequo et bono'', in Henri De Page, Traité élémentaire de droit civil Belge, tome deuxième, Les incapables-Les obligations Bruylant, Bruxelles, 1964, P. 1070.

ubumuga, n'urubanza RCAA00073/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 19/07/2019 hagati ya Nyirabatesi Laurence n'Ibitaro byitiriwe Umwami Fayisali, aho Nyirabatesi Laurence yagiye kubyara maze mu gihe cyo kumubaga bakamukomeretsa uruhago rw'inkari bikamutera indwara yo kujojoba (*fistule*).

[26] Hashingiwe ku mategeko n'ibisobanuro byavuzwe haruguru, Urukiko rurasanga ibarwa ry'indishyi zagenewe N.A mu izina ry'umwana we I.A zarikwemezwa hashingiwe ku kuba Kibungo Medical Center ubwayo yiyemerera ko hari ikosa ryakozwe n'umukozi wayo, zikabarwa hashingiwe ku bushishozi bw'umucamanza (*ex aequoet bono*) kuko nta tegeko ririho rigena uburyo n'igipimo fatizo biherwaho mu kuzibara.

b. Ku bijyanye n'ingano y'indishyi z'akababaro zisabwa

[27] Me Rwenga Etienne Uhagarariye N.A mu izina ry'umwana we I.A asaba Urukiko rw'Ubujurire kwemeza indishyi zingana na 45.000.000Frw zo kuba umukozi wa Kibungo Medical Center yaraciyemo kabiri igitsina cy'umwana I.A bikamutera ubumuga bubabaje kandi buhoraho bungana na 50% nk'ukozari zasabwe mu Rukiko Rwisumbuye rwa Ngoma.

[28] Dr Kanimba Pierre Célestin uhagarariye Kibungo Medical Center n'abunganizi be mu mategeko bavuga ko indishyi zingana na 45.000.000Frw ari umurengera, akaba atanazisobanura, ko kandi Kibungo Medical Center ifite ubwishingizi muri Prime Insurance Company Plc ku birebana n'indishyi. Basaba Urukiko rw'Ubujurire ko mu gihe rwazagena indishyi hazakurwamo 2.993.000Frw Kibungo Medical Center yishyuye uwo mwana avuzwa hamwe na 30.000Frw yishyuwe ingendo zirebana na Expertise**.**

[29] Me Bagomora Charles uburanira Prime Insurance Company Plc avuga ko ubwishingizi Kibungo Medical Center ifite muri Prime Insurance Company Plc bugarukira gusa kuri 2.000.000 Frw nk'uko bigaragazwa n'amasezerano impande zombi zagiranye.

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[30] Ingingo ya 9 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira: "Umucamanza aca urubanza ashingiye ku ngingo z'amategeko zirebana n'ikirego yaregewe.Iyo nta tegeko rijyanye n'ikiburanwa ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko".

[31] Dosiye y'urubanza igaragaramo *expertise* yakozwe n'Ibitaro bya Gisirikare bya Kanombe ku wa 31/05/2019, igaragaza ko umwana yagize ubumuga buhoraho bwa 50%.

[32] Dosiye y'urubanza igaragaza kandi amasezerano y'ubwishingizi Police nº 413/00021583-SG yo ku wa 06/24/2016 yiswe Medical Malpractice Policy Clinic la Medicale yabaye hagati y'uwajuriye na Prime Insurance Company Plc, aho impande zombi zumvikanye ko Prime Insurance Company Plc yishingiye kugera kuri 2.000.000Frw indishyi zishobora gucibwa Kibungo Medical Center mu gihe hari ibyangiritse biturutse ku mpanuka y'umukozi mu kazi.

[33] Mu Rukiko Rwisumbuye rwa Ngoma hagenwe indishyi zingana na 35.000.000Frw zabazwe mu bushishozi bw'Urukiko kuko nta tegeko ryari ririho rigaragaza uko zibarwa, zigenwa hashingiwe ku ngano y'ubumuga bwa 50% n'imyaka igera kuri 57 umwana asigaje kubaho; naho mu Rukiko Rukuru, urugereko rwa Rwamagana hagenwa indishyi zingana na 8.640.000Frw, zibazwe hashingiwe

ku bushishozi bw'Urukiko n'ibipimo bigaragara mu Iteka rya Perezida Nº 31/01 ryo ku wa 25/8/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabarebw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga.

[34] Mu Rukiko Rukuru, Urugereko rwa Rwamagana, mu gika cya 35 cy'urubanza rujuririrwa, 2.993.000Frw Kibungo Medical Center yishyuye ivuza umwana nyuma y'ikosa umukozi wayo yari amaze gukora, rwasanze adakwiye kuvanwa mu ndishyi zagenwe n'Urukiko ku mpamvu y'uko Kibungo Medical Center ariyo yagombaga kwirengera ingaruka no gukemura ikibazo gikomoka ku ikosa ryakozwe kubw'uburangare no kudafata ingambaziboneye zo gukumira ikosa ryabaye; ndetse ko na 30.000 Frw yishyuwe *expertise* itayasubizwa ku mpamvu y'uko Kibungo Medical Center yasabye ko ikorwa mu nyunguzayo nk'ikimenyetso cyo gukoresha mu rubanza.

[35] Urukiko rurasanga inkiko zombi zibanza zarasanze nta tegeko ryihariye riteganya ibipimo byaherwaho mu kubara indishyi kuri iki kibazo, Urukiko Rwisumbuye ruzigena rushingiye ku bushishozi bwarwo, naho Urukiko Rukuru, Urugereko rwa Rwamagana, ruzigena rushingiyeku Iteka rya Perezida Nº 31/01 ryo ku wa 25/8/2003 ridafite aho rihuriye n'ikiburanwa muri uru rubanza, ruvuga ko izo ndishyi zigomba gukubwa inshuro ebyiri (mu gika cya 21), kuko inshingano y'umuganga uba ufite ubuzima bw'abantu bamugana iremereye cyane kurusha iy'utwaye ikinyabiziga mu muhanda nta tegeko ribiteganya. Ibyo Urukiko Rukuru, Urugerekorwa Rwamagana rwakoze, bikaba ari ugushingira ku itegeko ritariho kuko rwashingiye ku Iteka rya Perezida Nº 31/01 ryo ku wa 25/8/2003, ridafite aho rihuriye n'ikiburanwa, byongeyekandi n'indishyi rugennye ruzikuba kabiri ari ntaho biteganyijwe mu Iteka rwashingiyeho.

[36] Urukiko rurasanga uko gushingira ku Itegeko ritariho kwaratumye indishyi zabazwe n'Urukiko Rwisumbuye rwa Ngoma zigabanuka, bituma N.A mu izinary'umwana we I.A ajurira kuko indishyi yagenewe zashingiwe ku itegeko ridafite aho rihuriye n'ikiburanwa, uru Rukiko rukaba rusanga izemejwe n'Urukiko Rwisumbuye rwa Ngoma arizo zikurikije amategeko kuko mu kuzihindura Urukiko Rukuru rutabanje kugaragaza icyo runenga ubushishozi bw'umucamanza wa mbere, kandi bigakorwamu buryo butari bwo kuko byakozwe hashingiwe ku itegeko ritariho, kuko iryashingiweho ridafite aho rihuriye n'ikiburanwa, zikaba zikwiye kugumaho zose nk'uko zemejwe mubushishozi bw'Urukiko kuri urwo rwego rubanza, ariko Kibungo Medical Center, ihagarariwena Dr Kanimba Pierre Célestin, ikazishyura ifatanyije n'umwishingizi wayo Prime Insurance Company Plc nk'uko babyumvikanyeho mu masezerano y'ubwishingizi Nº 413/00021583- SG Police impande zombi zagiranye ku wa 24/06/2016, no ku kigero kitarenze icyo impande zombi zumvikanyeho muri ayo masezerano y'ubwishingizi.

[37] Ku bijyanye na 2.993.000Frw, Kibungo Medical Center yishyuye ivuza umwana ikaba isaba ko yakurwa mu ndishyi izategekwa kwishyura, Urukiko rurasanga nk'uko byemejwe n'Urukiko Rukuru, ayo mafaranga atakurwa mu ndishyi zigenwe n'Urukiko kuko Kibungo Medical Center yagombaga kwirengera ingaruka z'ikibazo umukozi wayo yari amaze guteza, ikavuza umwana yazaniwe n'umubyeyi we ari muzima, uwo mukozi akamukata igice cy'igitsina akamusigira ubumuga buhoraho bwa 50% bwemejwe n'inzobere z'abaganga.

[38] Ku bijyanye na 30.000 Frw yishyuwe na Kibungo Medical Center igihe hakorwaga *expertise ;* Urukiko rurasanga nk'uko Urukiko Rukuru rwabibonye, *expertise* yakozwe hashingiwe ku busabe bwa Kibungo Medical Center igamije kuvuguruza ingano y'ubumugabungana na 50% bwari bwahawe umwana I.A, ikaba rero idakwiye kuyasubizwa kuko byakozwe mu nyungu zayo.

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

[39] Me Rwenga Etienne na Me Gashugi Heron bunganira N.A mu izina ry'umwana we I.A basaba Urukiko gutegeka Kibungo Medical Center, ihagarariwe na Dr Kanimba Pierre Célestin, gusubiza N.A mu izina ry'umwana we 1.000.000Frw y'igihembo cya Avoka ku rwego rw'ubu bujurire, 300.000Frw y'ikurikiranarubanza na 140.000Frw y'amagarama yishyuye mu Rukiko Rwisumbuye rwa Ngoma no mu Rukiko rw'Ubujurire.

[40] Me Mukaruzagiriza Chantal na Me Ngerageze Bernard bunganira Dr Kanimba Pierre Celestin uhagarariye Kibungo Medical Center, basaba Urukiko rw'Ubujurire gutegeka N.A mu izina ry'umwana we guha Kibungo Medical Center 2.000.000Frw y'igihembo cya Avoka akubiyemo ayatanzwe mu Rukiko Rukuru, Urugereko rwa Rwamagana n'ayo mu Rukiko rw'Ubujurire.

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

[42] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa na Kibungo Medical Center ihagarariwe na Dr Kanimba Pierre Célestin nta shingiro afite kuko itsindwa n'urubanza nk'uko bimaze gusobanurwa haruguru.

[43] Urukiko rurasanga amafaranga y'ikurikiranarubanza, igihembo cya Avoka n'igarama asabwa na N.A mu izina ry'umwana we I.A afite ishingiro akaba akwiye kuyabwa ariko ko agenwe mu bushishozi bw'Urukiko kuko ayo yasabye ari menshiñ,bityo akaba agenewe angana na 800.000Frw y'igihembo cya Avoka na 300.000Frw y'ikurikiranarubanza ku nzego zose uru rubanza rwaburanishijweho.

III. ICYEMEZO CY'URUKIKO

[44] Rwemeje ko ikirego cy'ubujurire cya N.A mu izina ry'umwana we I.A gifite ishingiro ;

[45] Rwemeje ko imikirize y'urubanza RCA00065/2018/HC/RWG rwaciwe n'UrukikoRukuru, Urugereko rwa Ramagana, ku wa 30/07/2019, ihindutse kuri byose ;

[46] Rutegetse Kibungo Medical Center ihagarariwe na Dr Kanimba Pierre Célestin, guhaN.A mu izina ry'umwana we I.A indishyi zingana na 35.000.000Frw, Prime Insurance Company Plc ikishyuramo 2.000.000Frw nk'uko impande zombi zabyumvikanyeho mu masezerano y'ubwishingizi Nº 413/00021583- SG yo ku wa24/06/2016 ;

[47] Rutegetse Kibungo Medical Center ihagarariwe na Dr Kanimba Pierre Célestin, guha N.A mu izina ry'umwana we I.A 800.000Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza ku nzego zose.

[48] Rutegetse Kibungo Medical Center ihagarariwe na Dr Kanimba Pierre Célestin, gusubiza N.A mu izina ry'umwana we I.A igarama ryúrubanza yatanze mu Rukiko Rwisumbuye rwa Ngoma no mu Rukiko rwÚbujurire.