IMPACT PHARMA LTD v IJABO CLINICS

[Rwanda URUKIKO RW'UBUCURUZI – RCOMA 00064/2021/HCC (Noheli, PJ) 20 Gicurasi 2022]

Amategeko agenga amasezerano – Agaciro k'amasezerano – Amasezerano iyo yujuje ibisabwa by'ibanze mu ikorwa ryayo aba itegeko ku bayagiranye.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ikirego cy'indishyi – Ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza – Indishyi zigizwe no gusubizwa amafaranga mu mwanya w'akababaro cyangwa umutungo watakajwe cyangwa byose icyarimwe.

Incamake y'Ikibazo: IJABO Clinics yatanze ikirego mu Rukiko rw'Ubucuruzi ivuga ko yagiranye na IMPACT PHARMA Ltd amasezerano yo kuyigurisha imashini yitwa "*Elisa Machine Reader*" yifashishwa muri laboratwari ikishyura 6.000.000 FRW. Hashize igihe gito ifite iyo imashini, yabonye idakora, isaba umuyobozi wa IMPACT Pharma Ltd witwa Mutijima Olive kwihutira gukemura icyo kibazo ariko ntacyo yabikozeho. Mu rubanza RCOM 01552/2020/TC rwaciwe kuwa 30/12/2020, Urukiko rw'Ubucuruzi rwasanze uwagurishije iyo mashini ataravugishije ukuri, rwemeza ko IMPACT Pharma Ltd igomba kwishyura IJABO Clinics amafaranga akubiyemo ayo yishyuye imashini, ay'inyungu mbonezamusaruro n'ay'indishyi zitandukanye kandi ko inafite inshingano zo kujya gufata iyo mashini kuko ari yo yakoze amakosa yo kuyigurisha idakora.

IMPACT PHARMA Ltd yajuririye Urukiko Rukuru rw'ubucuruzi ivuga ko Urukiko rwagendeye ku cyiswe *PV de constat* ya RIB y'uko imashini idakora kandi itararangiye ngo igere ku cyari kigambiriwe. Ivuga kandi ko kuba amasezerano y'ubugure yarakozwe bikurikije amategeko atari guteshwa agaciro. Ikindi ngo ni uko indishyi zagenwe ku rwego rubanza zikwiye guteshwa agaciro, ndetse isaba ko yahabwa iz'ibyatakajwe mu rubanza.

IJABO Clinics ivuga ko kugira ngo ikore amasezerano avugwa byatewe n'uko uwajuriye yayihaye *warranty* igaragariza icyizere ifitiye iyo mashini, ndetse akanavuga ko izahugura abazajya bayikoresha nyamara ibizi neza ko imashini idakora Ikindi ni uko yahishwe ko iyo mashini yakoze ikaba yarahinduriwe na *software*, ntiyanabwirwa ko ikoresha *human reagents gusa*. Ibyo ngo byatumye iyakora ariko ibeshywe, bityo ko yari akwiye guseswa kuko adakurikije amategeko.

Mbere y'uko uru Rukiko rufata icyemezo cy'uru rubanza, habanje gusuzumwa ikibazo cyo kumenya niba *PV de constat* yashingiweho ku rwego rubanza itararangiye ku buryo yahabwa agaciro. IMPACT PHARMA Ltd ijurira ivuga ko yasabye umucamanza kujya aho ikiburanwa kiri kureba iyo mashini, kugobokesha RIB ndetse na PHARMALAB yayizanye mu Rwanda ngo bose basobanure ibya *software* ivugwa ko yahinduwe, ahubwo Urukiko rugendera ku magambo n'amarangamutima y'umuburanyi, narwo rugera aho rwemeza ko IJABO Clinics yagurishijwe imashini ipfuye ngo itaka, kandi mu byukuri imashini idapfuye, yaka. Ikomeza ivuga ko icyiswe *PV de constant* kitahabwa agaciro kuko yagurishije imashini, kandi ko itazi impamvu RIB yaje mu bikorwa by'ubucuruzi bwabo cyane ko nk'urwego rwa Leta rutagombaga kwivanga mu makimbirane y'ubucuruzi adafite aho ahuriye n'inshingano zayo, igakoreshwa n'uruhande rumwe rugambiriye inyungu zihishe noneho IJABO CLINICS Ltd ibonye ako kanyandiko ikagenderaho

ndetse ntiyatuma igikorwa gisozwa ngo RIB niba ari yo bashaka kugira urwitwazo itange raporo iri *official*.

IJABO Clinics ivuga ko *PV de Constat* ifite agaciro kayo kuko uwajuriye ntacyo ashingiraho ayinenga uretse amagambo gusa, kuba yarakozwe hari n'umukozi ushinzwe iperereza wa RIB ahubwo biyiha agaciro gakomeye kuko yizewe nta buriganya yakoreshejwe ndetse hari n'abahanga basanzwe bazi iyo mashini cyane ko na IMPACT PARMA Ltd yari ihari.

Ku kibazo kijyanye no kumenya niba amasezerano avugwa yarakozwe bikurikije amategeko ku buryo atari akwiye guteshwa agaciro, IMPACT PARMA Ltd ivuga ko amasezerano yasinywe n'impande zombi yubahirije amategeko ariko ko atubahirijwe mu itangwa ry'ikirego. Ivuga kandi ko Urukiko rwahisemo gusesa amasezerano rugendeye ku makuru atari yo rugendeye ku bidateganywa n'amasezerano, ndetse ko *PV de constat* ivugwa itasojwe mu kumara amashirakinyoma. Bityo, ikaba isaba Urukiko gusuzuma ko amasezerano yakozwe mu buryo bukurikije amategeko ndetse ko iseswa ryayo rigomba n'ubundi gukurikiza amategeko.

IJABO Clinics ivuga ko yayobejwe bituma ikora amasezerano y'ubugure bw'imashini ya Elisa Machine "*Reader + Wash*" kuko iyo iza kumenya inenge yari ifite zagaragajwe ntabwo aya masezerano yari kuyakora. Ikindi ngo yahishwe ko iyo mashini yakoze ikaba yarahinduriwe na *software*, ntiyanabwirwa ko ikoresha *human reagents* gusa. Bityo, amasezerano avugwa yakozwe mu buryo bunyuranyije n'amategeko kuko yakozwe mu buryarya bw'uwagurishaga ari nayo mpamvu yari akwiye guseswa nk'uko byemejwe ku rwego rubanza.

Muri uru rubanza, hasuzumwe ikibazo cyo kumenya niba indishyi zatanzwe ku rwego rubanza nta shingiro zifite no kumenya iry'izisabwa muri uru rubanza, aho IMPACT Pharma Ltd ivuga ko Urukiko rumaze gutesha agaciro iseswa ry'amasezerano ryakozwe n'Urukiko rw'ubucuruzi, rwanatesha agaciro indishyi zose zagenwe, maze rukavuga ko amasezerano yakozwe afite agaciro bityo, ko agomba kubahirizwa mu ngingo zayo se. IJABO Clinics nayo igasaba ko indishyi zatanzwe zigomba kugumana agaciro kazo kuko zishingiye ku makosa yagaragajwe ku rwego rwa mbere yakozwe n'uwajuriye. Ivuga na none ko uwajuriye adashobora gusaba ko amasezerano yubahirizwa kandi yarakozwe mu buryo budakurikije amategeko mu buriganya kandi bwagaragaye.

Incamake y'icyemezo: 1. Amasezerano iyo yujuje ibisabwa by'ibanze mu ikorwa ryayo aba itegeko ku bayagiranye.

2. Ikirego cy'indishyi ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Indishyi zigizwe no gusubizwa amafaranga mu mwanya w'akababaro cyangwa umutungo watakajwe cyangwa byose icyarimwe.

Ubujurire bufite ishingiro.
Urubanza rwaciwe n'Urukiko rw'Ubucuruzi ruhindutse mu ngingo zarwo zose.
Amagarama aherera k'Uregwa.

Amategeko yashingiweho:

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111.

Itegeko Nº 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 4, 50, 52, 53 n'iya 64.
Itegeko Nº 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa, ingingo ya 3, 2 n'iya 9.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] IJABO Clinics ivuga ko yagiranye na IMPACT PHARMA Ltd amasezerano yo kuyigurisha imashini yitwa "*Elisa Machine Reader*" yifashishwa muri Laboratwari. Ivuga ko IMPACT Pharma Ltd yemeye ko igurishije imashini nzima noneho yishyura 2/3 by'igiciro cyayo ahwanye na 4.000.000 FRW itwara iyo mashini bumvikana ko amafaranga asigaye 2.000.000 Frw azishyurwa nyuma y'igihe gito, kandi ngo ubwo bwishyu bwose bungana na 6.000.000 Frw IJABO Clinics yarabutanze.

[2] IJABO Clinics ivuga ko hashize igihe gito ifite imashini, ngo yabonye idakora, isaba umuyobozi wa IMPACT Pharma Ltd kwihutira gukemra icyo kibazo ariko umuyobozi wayo MUTIJIMA Olive ngo ntacyo yabikozeho. Ibyo ngo byatumye ibona ko habaye uburiganya bwa IMPACT Pharma Ltd, maze kuwa 26/06/2020 umuyobozi wa IJABO Clinics yandikira uwa IMPACT Pharma Ltd ibaruwa yo gutambamira sheki ya 2.000.000 FRW ariko ngo abirengaho arayabikuza. Ibyo byatumye IJABO Clinics itanga ikirego isaba urukiko iseswa ry'amasezerano yo kuwa 10/06/2020 bagiranye, gusubiza amafaranga 6.000.000 FRW y'ikiguzi yakiriwe, inyungu n'indishyi zitandukanye.

[3] IMPACT Pharma Ltd yasabye ko ikirego kitakwakirwa kuko ngo IJABO Clinics yihutiye kurega itabanje yagerageza ubwumvikane ariko urukiko rwasanze iyo nzitizi nta shingiro ifite. Ivuga ko imashini yagurishije IJABO Clinics nta kibazo ifite kandi ko ikibigaragaza ari uko umuyobozi wayo yishyuye PHARMALAB amafaranga 432.000 FRW y'ikiguzi cyo gukora test y'iyo mashini ariko umuyobozi w'IJABO Clinics yanze ko bakuramo code. Bityo rero ngo ikirego cya IJABO Clinics nta shingiro gifite.

[4] Mu rubanza RCOM 01552/2020/TC rwaciwe kuwa 30/12/2020, Urukiko rw'Ubucuruzi rwasanze kuba IMPACT PHARMA Ltd yaratanze garantie y'umwaka atari impamvu yatuma IJABO Clinics igumana imashini yaguze mu gihe byayigaragariye ko ifite ikibazo, kandi ko constat yakozwe n'Urwego rw'Ubugenzacyaha (RIB) yemeje ko iyo mashini itanga ibisubiro bipfuye (0.0) ndetse ko yahinduriwe software. Ibyo ngo bigaragaza ko uwagurishije iyo mashini atavugishije ukuri, bityo ko amasezerano impande zombi zagiranye agomba guseswa ndetse IMPACT PHARMA Ltd igasubiza IJABO Clinics amafaranga 6.000.000 FRW yayihaye kandi ko inafite inshingano zo kujya gufata iyo mashini kuko ari yo yakoze amakosa yo kuyigurisha idakora.

[5] Urukiko rw'Ubucuruzi rwemeje ko ikirego cya IJABO Clinics gifite ishingiro, kandi ko amasezerano yabaye hagati yayo na IMPACT Pharma Ltd kuwa 10/06/2020 yo kugura imashini

izwi ku izina rya "*Elisa Huma Reader HS Machine*" nta gaciro afite, ndetse ko asheshwe ahubwo IMPACT Pharma Ltd igatwara imashini yayo, bitaba ibyo IJABO Clinics ikabikora ndetse ikishyurwa ikiguzi cy'ubwikorezi bwayo. Rwemeje ko IMPACT Pharma Ltd igomba kwishyura IJABO Clinics amafaranga 7.636.000 FRW akubiyemo 6.000.000 FRW yishyuye imashini yavuzwe haruguru, 216.000 FRW y'inyungu mbonezamusaruro, 700.000 FRW y'indishyi z'akababaro, 600.000 FRW y'igihembo cya Avoka wayiburaniye, 100.000 FRW y'ikurikiranarubanza na 20.000 FRW y'ingwate y'amagarama. Rwategetse IMPACT Pharma Ltd kwishyura IJABO Clinics ayo mafaranga yose hamwe angana na 7.636.000 FRW, kandi ko ijya gufata imashini yayo, itabikorwa bigakorwa na IJABO Clinics izayiyishyira ariko ikishyurwa ikiguzi cy'ubwikorezi bwayo.

[6] IMPACT PHARMA Ltd ntabwo yishimiye imikirize y'urwo rubanza, maze irujurira ivuga ko Urukiko rwagendeye ku cyiswe *PV de constat* ya RIB y'uko imashini idakora kandi itararangiye ngo igere ku cyari kigambiriwe. Ivuga kandi ko kuba amasezerano y'ubugure yarakozwe bikurikije amategeko atari guteshwa agaciro. Ikindi ngo ni uko indishyi zagenwe ku rwego rubanza zikwiye guteshwa agaciro, ndetse isaba ko yahabwa iz'ibyatakajwe mu rubanza.

[7] IJABO Clinics ivuga ko kugira ngo ikore amasezerano avugwa byatewe n'uko uwajuriye yayihaye warranty y'amezi icumi (10 months) igaragariza icyizere ifitiye iyo mashini, ndetse ikanavuga ko izahugura abazajya bayikoresha ndetse yakenerwa ikaza gutanga ubufasha nyamara ibizi neza ko imashini idakora (technical support), ngo byayobeje IJABO Clinics yizera ko imashini ari nzima nyamara yarapfuye kuko isuzuma ibizamini by'abarwayi ndetse ikanasohora ibisubizo bipfuye. Ikindi ngo IJABO Clinics yahishwe ko iyo mashini yakoze ikaba yarahinduriwe na software, ntiyanabwirwa ko ikoresha human reagents gusa. Ibyo ngo byatumye iyakora ariko ibeshywe, bityo ko yari akwiye guseswa kuko adakurikije amategeko. Ivuga ko PV de Constat ivugwa ifite agaciro kayo kuko uwajuriye ntacyo ashingiraho ayinenga uretse amagambo gusa. Isaba guhabwa indishyi zitandukanye.

[8] Muri uru rubanza hafashwemo icyemezo ku rubanza rubanziriza urundi cyemeza ko Gad Lee Muhirwa (*Biomedical Engineer Consultant*) azagenzura niba kuwa 10/06/2020 ubwo imashini yitwa "*Elisa Huma Reader HS Machine*" yagurishwaga IJABO Clinics yari nzima ndetse inakora, bitaba ibyo akerekana icyateye kudakora kwayo; byaba byarabaye nyuma y'uko igurishijwe, nabyo akabigaragaza. Muri raporo ye avuga ko IMPACT PHARMA Ltd yatanze reagents za human zo gukoresha zihuye n'imshini yari gupimwa ariko IJABO Clinics irabyanga, ikazana iza BIOS zarangije igihe (expired), kandi ko byatumye adakora expertise.

[9] Uru rubanza rwaburanishijwe mu ruhame, IMPACT PHARMA Ltd itangira iburana ihagarariwe na Mutijima Olive ariko mu iburanisha rya nyuma yahagarariwe na Sibomana Aimable, uwabunganiraga ni Me Kabuye Jean. IJABO Clinics yaburanye ihagarariwe n'umuyobozi wayo Ntagungira Kayonga Egide wunganirwa na Me Ndayisaba Alexis.

- Kumenya niba PV de constat yashingiweho ku rwego rubanza itararangiye ku buryo yahabwa agaciro.
- Kumenya niba amasezerano avugwa yarakozwe bikurikije amategeko ku buryo atari akwiye guteshwa agaciro.
- Kumenya niba indishyi zatanzwe ku rwego rubanza nta shingiro zifite no kumenya iry'izisabwa muri uru rubanza

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Kumenya niba PV de constat yashingiweho ku rwego rubanza itararangiye ku buryo yahabwa agaciro

[10] Uhagarariye IMPACTS PHARMA Ltd n'umwunganira bavuga ko mu rubanza rujuririrwa, Urukiko rwashingiye ku cyiswe PV de constant ya RIB rwemeza ko imashini yaguzwe na IJABO Clinics idakora, kandi iyo PV de constant itarangiye ngo igere ku cyari kigambiriwe kuko yagombaga kurangizwa no gupimwa kw'imashini impande zombi zihari igapimwa n'umu technicien (Inzobere iyizi) kurusha kugendera ku makuru yavugiwe kuri telefone. Bavuga ko ku rwego rubanza, IMPACT PHARMA Ltd yasabye umucamanza kujya aho ikiburanwa kiri (*terrain*) kureba iyo mashini, kugobokesha RIB ndetse na PHARMALAB yayizanye mu Rwanda ngo bose basobanure ibya *software* ivugwa ko yahinduwe kuko bizwi neza ko iyo *software* yakorewe upgrade, ahubwo urukiko rugendera ku magambo n'amarangamutima y'umuburanyi, narwo rugera aho rwemeza ko IJABO Clinics yagurishijwe imashini ipfuye ngo itaka, kandi mu byukuri imashini idapfuye, yaka. Ikindi ngo ni uko no mu igeragezwa ryakozwe mu maso ya RIB, iyo mashini yakaga, ishyirwamo reagents zitari izayo mu rwego rwo gushaka kugereka icyasha kuri IMPACT PHARMA Ltd kandi amasezerano yemeranyijweho n'impande zombi ateganya ko ugura imashini azajya agura reagents zo muri IMPACT PHARMA Ltd.

[11] Uhagarariye IMPACTS PHARMA Ltd n'umwunganira bavuga ko icyiswe *PV de constant* kitahabwa agaciro kuko IMPACT PHARMA Ltd yagurishije imashini, kandi ko batazi impamvu RIB yaje mu bikorwa by'ubucuruzi bwabo cyane ko nk'urwego rwa Leta rutagombaga kwivanga mu makimbirane y'ubucuruzi adafite aho ahuriye n'inshingano zayo, igakoreshwa n'uruhande rumwe rugambiriye inyungu zihishe noneho IJABO CLINICS Ltd ibonye ako kanyandiko ikagenderaho ndetse ntiyatuma igikorwa gisozwa ngo RIB niba ari yo bashaka kugira urwitwazo itange raporo iri *officiel* kuko byari bimaze kugaragara ko imashini idasoma reagents zitari izayo kubera upgrade ya software yayikorewe. Bavuga ko urukiko rutari rukwiye kugendera ku nyandiko itari raporo ngo ruyite raporo. Ikindi ngo ni uko kugendera kuri icyo cyiswe raporo ya RIB bitari byararegewe urukiko mu kirego cya IJABO Clinics ahubwo ko urukiko rwagombaga kuburanisha ibyaregewe cyane ko yasinyweho n'abatari abakozi ba RIB ndetse ikitirirwa raporo ya RIB mu gihe nta na raporo ya RIB iriho ibirango byayo.

[12] Mutijima Olive uhagarariye IMPACTS PHARMA Ltd avuga ko kuba imashini itanga *resultat ya zero*, bitavuga ko idakora. Ikindi ngo ni uko atigeze yanga kujya gukora installation ahubwo ko IJABO Clinics ngo itizeye umu technicien we.

[13] Sibomana Aimable uhagarariye IMPACTS PHARMA Ltd avuga ko nyuma yo kwemeza ko umuhanga azasuzuma imashini ivugwa, IJABO Clinics yamwangiye gukora akazi ke kandi ari yo yari yasabye ko ashyirwaho, inamwihitiramo ariko ngo agiye gupima imashini, *reactifs* yashatse gukoresha uregwa yarazanze, azana izidahuye n'imashini ndetse zarengeje igihe (*expired*). Avuga ko imashini ivugwa iri mu mazu ya IJABO Clinics bituma umuhanga abuzwa ku nabi gukoresha reactifs zihuye n'imashini.

[14] Uhagarariye IJABO Clinics n'umwunganira avuga ko *PV de Constat* ivugwa ifite agaciro kayo kuko uwajuriye ntacyo ashingiraho ayinenga uretse amagambo gusa, kuba yarakozwe nyine hari n'umukozi ushinzwe iperereza wa RIB ahubwo biyiha agaciro gakomeye kuko yizewe nta

buriganya yakoreshejwe ndetse hari n'abahanga basanzwe bazi iyo mashini cyane ko na IMPACT PARMA Ltd yari ihari. Bavuga batabona ibyo abandi bahanga bari kuza gupima iyo mashini barenze abayizi banemeje inenge zidashidikanwaho zituma amasezerano aseswa kuko ni imashini idashobora gukora. Kuba rero IJABO Clinics yaraguze imishani yijejwe ko ikora ariko bikaza kugaragara ko idakora nta buryo yatsindagirwaho ikintu cyapfuye, iyo iza kuba ari nzima uwajuriye yari no kuyifata akayigurisha n'abandi kuko abaguzi ni benshi ariko kubera ko yari izi ko yapfuye, ni yo mpamvu igumya gushaka ko IJABO Clinics iyigumana.

UKO URUKIKO RUBIBONA

[15] Ingingo ya 9 y'Itegeko Nº 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko ibimenyetso bihamya amasezerano cyangwa ibindi bikorwa bishobora gutangwa hakoreshejwe inyandiko, ubuhamya, uburyo bwo gucukumbura, ukwiyemerera k'umuburanyi cyangwa herekanywe ibindi bintu bifatika.

[16] Ingingo ya 2 y'Itegeko Nº 15/2004 ryo kuwa 12/06/2004 ryavuzwe haruguru iteganya ko ikimenyetso cyo mu rubanza ni uburyo bukoreshwa kugira ngo ukuri kw' ibyabaye kugaragare. Naho ingingo ya 4 y'Itegeko Nº 15/2004 ryo kuwa 12/06/2004 rimaze kuvugwa haruguru iteganya ko Urukiko ruca urubanza rwaregewe hakurikijwe ibimenyetso bihuje na kamere y'ikiburanwa.

[17] Dosiye y'uru rubanza igaragaza *PV de constant* yo kuwa 11/09/2020 yashyizweho umukono na n'abarimo abahagarariye amasosiyete aburana muri uru rubanza. Yerekana ko umutechnicien witwa Muvunyi Richard usobanukiwe imashini ivugwa yayikoreye ibizami ariko itanga ibisubizo bipfuye (0.00). Igaragaza ko yahamagaye umutechnicien usanzwe uyikora, ababwira ko impamvu yabiteye ari uko bayihinduriye software ikorana na *reagents za human* gusa.

[18] Dosiye y'uru rubanza igaragaza kandi ko mu ibaruwa yo kuwa 29/09/2020 isubiza ibaruwa bandikiwe uwo munsi, uwajuriye yandikiye uregwa kandi mu byo yamubwiye harimo gusabwa gahunda yo kuza gukuramo code ya PHARMALAB kuwa 09/10/2020, kuyikorera *installation* no guhugura aba *laborantins* babo mu gihe cy'iminsi ibiri (2). Hari kandi inyandiko ya RIB yo kuwa 08/10/2020 yerekana ko imashini ivugwa uregwa yayitwaye azi ko yakoreshejwe (*second hand*), kandi ko ikora ariko ko uregwa atakoresheje abatekinisiye babishoboye ndetse akanakoresha *reagents* zidahuye na softaware yashyizwe muri iyo mashini.

[19] Dosiye y'uru rubanza igaragaza ko mu rubanza rubanziriza urundi, Urukiko rwemeje ko Gad Lee Muhirwa (*Biomedical Engineer Consultant*) azagenzura niba kuwa 10/06/2020 ubwo imashini yitwa "*Elisa Huma Reader HS Machine*" yagurishwaga IJABO Clinics yari nzima ndetse inakora, bitaba ibyo akerekana icyateye kudakora kwayo; byaba byarabaye nyuma y'uko igurishijwe, nabyo akabigaragaza. Muri raporo ye, avuga ko IJABO Clinics yamwimye *reagents* zo gukoresha ahubwo ahabwa na IMPACT PHARMA Ltd iza Human ari nayo brand y'iyo mashini ariko ngo IJABO Clinics irazanga kuko ngo atari zo zazanywe n'imashini ahubwo ngo yatanze iza BIOS zarangije igihe (*expired*) zazanye n'imashini ariko IMPACT PHARMA Ltd ikabihakana. Noneho impaka ziba izo gukoresha reagents runaka aho kureba niba imashini ikora cyangwa idakora. Avuga ariko ko *reagents* zatanzwe na IMPACTS PHARMA Ltd ari zo zakozwe n'uruganda rwakoze imashini ivugwa ari nazo zakagombye gukoreshwa.

[20] Urukiko rurasanga mu kunenga urubanza rujuririrwa, uwajuriye avuga ko urukiko rutari rukwiye gushingira ku cyiswe *PV de constat* ya RIB rwemeza ko imashini yaguzwe idakora, kandi iyo *PV de constat* itarangiye ngo igere ku cyari kigambiriwe kuko yagombaga kurangizwa no gupimwa kw'imashini impande zombi zihari. Avuga ko imashini ivugwa itapfuye kuko yaka ahubwo ni uko ishyirwamo *reagents* zitari izayo, bityo ko amasezerano impande zombi zagiranye, yubahirije amategeko. Uregwa avuga ko *PV de Constat* ivugwa ifite agaciro kayo kuko uwajuriye ntacyo ashingiraho ayinenga uretse amagambo gusa. Rusanga ari ngombwa kureba niba *PV de constat* ivugwa idahuye n'ukuri.

[21] Urukiko rurasanga muri PV de constat yo kuwa 11/09/2020 havugwamo ko imashini itanga ibisubizo bipfuye (0.00), ariko ko biterwa n'uko bayihinduriye *software* ikorana na *reagents* za *human* gusa. Ibyo ni nabyo byagaragajwe na raporo ya RIB yo kuwa 08/10/2020 yerekana ko imashini ivugwa uregwa yayitwaye azi ko yakoreshejwe (*second hand*), kandi ko ikora ariko ko uregwa atakoresheje abatekinisiye babishoboye ndetse akanakoresha *reagents* zidahuye na *software* yashyizwe muri iyo mashini. Izi raporo zimaze kuvugwa haruguru, ntabwo zigaragaza ko imashini ipfuye ahubwo zerekana ko gutanga ibisubizo bitari byo, byatewe no gukoresha reagents zitajyanye na *software* iri mu mashini na cyane ko yaguzwe yarakoze.

[22] Kuba mu rubanza rubanziriza urundi, umuhanga washyizweho avuga ko *reagents* zijyanye n'imashini ivugwa ari iza *human* ariko ngo akaba yarangiwe na IJABO Clinics kuba yazikoresha mu nshingano yahawe zo kwerekana niba imashini idakora, ndetse ko yagurishijwe ari ko imeze, byumvikanisha, *PV de constat* yo kuwa 11/09/2020 itari ikwiye gufatwa n'ikimenyetso kigaragaza ko IJABO Clinics yagurishijwe imashini yapfuye. Bityo rero ubujurire bwa IMPACT PHARMA Ltd kuri iyi ngingo bufite ishingiro.

2. Kumenya niba amasezerano avugwa yarakozwe bikurikije amategeko ku buryo atari akwiye guteshwa agaciro

[23] Uhagarariye IMPACTS PHARMA Ltd n'umwunganira bavuga ko amasezerano yo kuwa 10/06/2020 yasinywe n'impande zombi yubahirije amategeko ariko ko atubahirijwe mu itangwa ry'ikirego ari nabyo Urukiko rw'Ubucuruzi rwirengagije rugendera ku cyiswe *PV de Constat* ya RIB. Bavuga ko amasezerano yari agamije ubugure bw'imashini yitwa *Elisa Human Reader* ikoreshwamo *reagents* za *human*, ari nayo mpamvu yitwa *Human Reader*. Mu masezerano y'ubugure, impande zombi zumvikanye ko ugura agiye gushaka umu *technicien laborantin* uzayikoresha, ugurisha akayikorera icyiswe *installation* yarangiza agahugura (*training*) uwo mukozi uzaba ayikoresha. Ibyo byose ntabyabayeho, ahubwo Urukiko rwagendeye ku makuru y'uburiganya yatangijwe na IJABO Clinics arimo ukuvuguruzanya hagati y'abayatanga ndetse n'Urukiko rw'Ubucuruzi ubwarwo. Avuga ko mu gika cya 6, Urukiko rwavuze ko IMPACT PHARMA Ltd yishyuye amafaranga 432.000 FRW yo gukora (*repair*) imashini, ko ngo ugura yagaragaje ko ipfuye mu gihe imbere y'Urukiko mu iburanisha banyuranyije imvugo bemerera umucamanza ko imashini ipfuye itaka, ariko ibimenyetso bitangiye bakavuga ko RIB yayicanye, yayakije irayipimisha ikoresheje reagents zitari izayo ari nazo zatanze ibisubizo 0.00. Ikindi ngo ni uko ibyo bitanasobanura ko ipfuye kuko ari ibisubizo *neutre* mu buryo buri technical.

[24] Uhagarariye IMPACTS PHARMA Ltd n'umwunganira bavuga ko Urukiko rwahisemo gusesa amasezerano rugendeye ku makuru atari yo rugendeye ku bidateganywa n'amasezerano, ndetse ko *PV de constat* ivugwa itasojwe mu kumara amashirakinyoma, cyane ko amakuru Urukiko rwagendeyeho yiswe uguhindura *software* kuri izo mashini ubwabyo ari inyungu

k'uwayiguze kuko iyo software idahindurwa ahubwo iba *upgrated*. Asaba Urukiko gusuzuma ko amasezerano yakozwe mu buryo bukurikije amategeko ndetse ko iseswa ryayo rigomba n'ubundi gukurikiza amategeko.

[25] Uhagarariye IJABO Clinics avuga ko ingingo ya 50 y'Itegeko Nº 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano iteganya ko kugaragaza ibintu uko bitari bishobora kubaho ukwemeza ibidahuye n'ukuri; imyitwarire igamije kuyobya; igikorwa kigamije cyangwa kizwi nk'aho gisa n'ikigamije kubuza undi muntu kumenya ukuri; guhisha icyo umuntu azi neza ko kimenyekanye byatuma urundi ruhande rutibeshya cyangwa rudakomeza kwibeshya. Kutabigaragaza bifatwa nk'igikorwa cy'uburiganya. Ingingo ya 52 y'iryo tegeko ikavuga ko kugaragaza ibintu uko bitari bifatwa nko kuyobya urundi ruhande iyo bitumye urwo ruhande rubishingiraho kugira ngo rufate icyemezo cyo gukora amasezerano. Ingingo ya 53 y'iryo tegeko ikavuga ko iyo uruhande rwemeye amasezerano rushingiye ku byo rwagaragarijwe n'urundi ruhande bitari ukuri rushobora gusaba gutesha agaciro ayo masezerano. Bavuga ko IJABO Clinics yayobejwe bituma ikora amasezerano y'ubugure bw'imashini ya Elisa Machine "*Reader + Wash*" kuko iyo iza kumenya inenge yari ifite zagaragajwe ntabwo aya masezerano yari kuyakora. Kuba IMPACT Pharma Ltd ari umucuruzi usanzwe ucuruza ziriya mashini nk'uko byemejwe na RDB Certificate, kandi ikaba yarasanganywe iyo mashini mu iduka ryayo, ndetse igatanga warranty y'amezi icumi (*10 months*) igaragariza icyizere ifitiye iyo mashini, ndetse ikanavuga ko izahugura abazajya bayikoresha ndetse yakenerwa ikaza gutanga ubufasha nyamara ibizi neza ko imashini idakora (*technical support*), ngo byayobeje IJABO Clinics yizera ko imashini ari nzima nyamara yarapfuye kuko isuzuma ibizamini by'abarwayi ndetse ikanasohora ibisubizo bipfuye. Ikindi ngo IJABO Clinics yahishwe ko iyo mashini yakoze ikaba yarahinduriwe na *software*, ntiyanabwirwa ko ikoresha *human reagents* gusa. Bityo ngo amasezerano avugwa yakozwe mu buryo bunyuranyije n'amategeko kuko yakozwe mu buryarya bw'uwagurishaga ari nayo mpamvu yari akwiye guseswa nk'uko byemejwe ku rwego rubanza.

[26] Ntagungira Kayonga Egide avuga ko agura imashini yayiguranye na *reactifs* ariko ngo baje kuyipima bazanye izitandukanye n'izo bahawe, barabyanga.

UKO URUKIKO RUBIBONA

[27] Ingingo ya 64 y'Itegeko Nº 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano iteganya ko amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya. Naho ingingo ya 4 y'Itegeko Nº 45/2011 ryo kuwa 25/11/2011 rimaze kuvugwa haruguru iteganya ko ibisabwa by'ibanze mu ikorwa ry'amasezerano ni ibi bikurikira: 1° kwemeranya kw'impande zigirana amasezerano; 2° ubushobozi bwo gukora amasezerano; 3° ishingiro ry'amasezerano; 4° impamvu yemewe n'amategeko.

[28] Ingingo ya 50 y'Itegeko Nº 45/2011 ryo kuwa 25/11/2011 rimaze kuvugwa haruguru iteganya ko kugaragaza ibintu uko bitari bishobora kubaho mu buryo bukurikira: 1° ukwemeza ibidahuye n'ukuri; 2° imyitwarire igamije kuyobya; 3° igikorwa kigamije cyangwa kizwi nkaho gisa n'ikigamije kubuza undi muntu kumenya ukuri; 4° guhisha icyo umuntu azi neza ko kimenyekanye byatuma urundi ruhande rutibeshya cyangwa rudakomeza kwibeshya. Kutabigaragaza bifatwa nk'igikorwa cy'uburiganya.

[29] Dosiye y'uru rubanza igaragaza ko amasezerano y'ubugure yo kuwa 10/06/2020 yabaye hagati y'ababurana muri uru rubanza, yerekana ko uwajuriye yagurishije uregwa imashini yitwa "*Elisa machine* "*Reader Wash*" kuri 6.000.000 FRW hahita hishyurwa 4.000.000 FRW *cash* naho asigaye akazishyurwa kuwa 30/06/2020. Uregwa yagombaga gutanga ubwishyu bwose mbere y'uko ahabwa imashini. Bumvikanye ko hatanzwe ingwate (*warranty*) y'amezi cumi n'abiri (12 months) kandi ko muri icyo gihe uregwa azakoresha reagents zaguzwe muri IMPAMCT PHARMA Ltd nayo muri icyo gihe ikazatanga ubufasha ku gukora na installation ku bijyanye na tekinike y'imashini.

[30] Dosiye y'uru rubanza igaragaza sheki ya BK Plc yo kuwa 10/06/2020 ya 4.000.000 FRW uregwa yahaye uwajuriye ndetse yashyizweho umukono na Mutijima Olive uwo munsi. Hari indi nayo yo muri BK Plc yo kuwa 30/06/2020 ya 2.000.000 FRW uregwa yahaye uwajuriye ikairwa na Mutijima Olive kuwa 12/06/2020. Igaragaza inyandiko yo kuwa 03/09/2020 uwajuriye yandikiye uregwa akayishyikirizwa uwo munsi, kandi yamusabaga ko yamuha itariki bazahuriraho bagakora installation na training y'imashini yabagurishije.

[31] Urukiko rurasanga mu kunenga urubanza rujuririrwa, uwajuriye avuga ko imashini ivugwa itapfuye kuko yaka ahubwo ni uko ishyirwamo reagents zitari izayo, bityo ko amasezerano impande zombi zagiranye, yubahirije amategeko. Uregwa avuga ko kugira ngo akore amasezerano y'ubugure bw'imashini ivugwa byatewe n'uko uwajuriye yayigaragaje uko itari abeshya, bituma yizera ko ari nzima kandi atari byo kuko isohora ibizami bipfuye, kandi ko atari yabwiwe ko ikoreshwaho *reagents* za *human* gusa. Rusanga ari ngombwa kureba niba kuba *reagents* za *human* ari zo zikoreshwa ku mashini ivugwa ariko uregwa akaba yaranze ko zikoreshwa mu kugenzura ko ari nzima, byatuma havugwa ko iyo mashini yagurishijwe yarapfuye.

[32] Urukiko rurasanga nk'uko byateganyijwe mu masezerano impande zombi zagiranye, reagents zagombaga gukoreshwa ni izaguzwe muri IMPAMCT PHARMA Ltd. Ibyo byumvikanisha ko kuba ikibazo imashini yagize cyo kwerekana ko itanga ibisubizo bipfuye ari uko hakoreshwa reagents zidahuye nayo nk'uko byagaragajwe haruguru, ndetse byanemejwe na *PV de constat* yo kuwa 11/09/2020 n'inyandiko ya RIB yo kuwa 08/10/2020; ntabwo byakwemeza ko iyo mashini yaguzwe yarapfuye nk'uko byavuzwe haruguru.

[33] Kuba rero imashini ivugwa nta kigaragaza ko yaguzwe yarapfuye, kandi abayiguze bakaba bari babyumvikanyeho ndetse nayo yemewe kuba yagurishwa; byumvikanisha ko amasezerano y'ubugure bwayo yujuje ibisabwa byose by'ibanze kugira ngo agire agaciro nk'uko biteganywa n'ingingo ya 4 y'Itegeko Nº 45/2011 ryo kuwa 25/11/2011 ryavuzwe haruguru. Ibyo binagaraga kandi ko akozwe bikurikije amategeko ndetse ko akwiye kubahirzwa nta buriganya hagati y'abayagiranye nk'uko biteganywa n'ingingo ya 64 y'Itegeko Nº 45/2011 ryo kuwa 25/11/2011 ryavuzwe haruguru. Rusanga rero amasezerano y'ubugure kuwa 10/06/2020 avugwa muri uru rubanza, akwiye kugumana agaciro kayo. Bityo rero ubujurire bwa IMPACT PHARMA Ltd bufite ishingiro.

3. Kumenya niba indishyi zatanzwe ku rwego rubanza nta shingiro zifite no kumenya iry'izisabwa muri uru rubanza

[34] Uhagarariye IMPACT PHARMA Ltd n'umwunganira bavuga ko Urukiko rumaze gutesha agaciro iseswa ry'amasezerano ryakozwe n'urukiko rw'ubucuruzi, rwanatesha agaciro indishyi zose zagenwe, maze rukavuga ko amasezerano yakozwe kuwa 10/06/2020 afite agaciro bityo ko

agomba kubahirizwa mu ngingo zayo se. Bavuga ko Urukiko rumaze kwemeza ko IJABO Clinics itubahirije ibisabwa mu masezerano yo kuwa 10/06/2020, rwayitegeka kwishyura amafaranga y'u Rwanda miliyoni imwe n'ibihumbi magana ane (1.400.000 FRW) y'igihembo cy'avoka ku rwego rwa mbere naho ku rwego rw'ubujurire igahabwa ikingana n'ibihumbi magana arindwi (700.000 FRW), indishyi z'ikurikiranarubanza zingana n'ibihumbi magana atandatu (600.000 FRW) ku rwego rwa kabiri ndetse igasubizwa amagarama y'urubanza angana n'ibihumbi mirongo ine (40.000 FRW).

[35] Me Kabuye Jean asaba ko basubizwa amafaranga batakaje bagura *reactifs* zagombaga gukoreshwa.

[36] Uhagarariye IJABO Clinics n'umwunganira bavuga ko indishyi zatanzwe zigomba kugumana agaciro kazo kuko zishingiye ku makosa yagaragajwe ku rwego rwa mbere yakozwe n'uwajuriye. Avuga ko uwajuriye adashobora gusaba ko amasezerano yubahirizwa, kandi yarakozwe mu buryo budakurikije amategeko mu buriganya kandi bwagaragaye. Basaba indishyi zingana na miliyoni imwe n'ibihumbi magana atanu (1.500.000 FRW) y'ikurikiranarubanza, miliyoni imwe n'ibihumbi magana atanu (1.500.000 FRW) y'igihembo cy'Avoka n'indishyi z'ikurikiranarubanza zingana n'ibihumbi magan atanu (500.000 FRW).

UKO URUKIKO RUBIBONA

[37] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Naho ingingo ya 3 y'Itegeko N° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

[38] Ingingo ya 26 y'Amabwiriza N° 01/2014 agena ibihembo mbonera by'Abavoka iteganya ko Avoka w'urega wateguye dosiye n'inyandiko ashobora gusaba igihembo fatizo kiri hagati y'amafaranga 500.000 n'amafaranga 5.000.000 (…). Avoka w'uregwa agena ibihembo bye akurikije agaciro k'ikiburanwa, ingorane ziri mu rubanza, hamwe n'ibyo agomba kubanza gukora byose, ndetse n'ingaruka z'icyemezo cyafashwe; ariko igihembo ntikijye munsi y'amafaranga 500.000 kandi ntikirenge amafaranga 3.000.000. Iyo habaye ubujurire, avoka w'urega n'uw'uregwa bashobora gusaba kimwe cya kabiri cy'igihembo cyumvikanyweho ku rwego rwa mbere.

[39] Urukiko rurasanga kuba ubujurire bwa IMPACT Pharma Ltd bufite shingiro ndetse no kugira ngo ize mu rubanza byaratewe na IJABO Clinics yatanze ikirego ku rwego rubanza, byumvikanisha ko IJABO Clinics igomba kubyirengera ikayishyura indishyi z'ibyo yatakaje muri uru rubanza kuko nk'uko bivugwa n'abahanga mu mategeko, indishyi zigizwe no gusubizwa amafaranga mu mwanya w'akababaro cyangwa umutungo watakajwe cyangwa byose icyarimwe.[1]

[1] Serge Braudo "Dictionnaire juridique' https://www.dictionnaire-juridique.com/definition/dommages-interets.php [18/05/2022]. *Les dommages-intérêts constituent la compensation financière à laquelle peut prétendre une personne qui a subi un préjudice moral ou une atteinte dans son patrimoine ou les deux la fois.*

[40] Kuba nta kimenyetso IMPACT Pharma Ltd igaragaza cyerekana aho ikomora ingano y’indishyi isaba, ikwiye kuzihabwa mu bushishozi bw’Urukiko. Bityo rero ikaba ihawe izingana n’amafaranga y’u Rwanda ibihumbi magana atandatu (600.000 FRW) y’igihembo cy’Avoka n’ibihumbi ijana na mirongo itanu (150.000 FRW) y’ikurikiranarubanza. Yose hamwe akaba 750.000 FRW. Rurasanga ariko uretse no kuba uwajuriye atagaragaza ingano y’indishyi asaba zijyanye na *reagents* yaguze, nta n’ubwo agaragaza aho zakoreshejwe kuko umuhanga washyizweho yangiwe na IJABO Clinics kuba yazikoresha. Ibyo byerekana ko ntaho yahera asaba indishyi zabyo kandi zitarakoreshejwe.

III. ICYEMEZO CY’URUKIKO

[41] Rwemeje ko ubujurire bwa IMPACT PHARMA Ltd bufite ishingiro.

[42] Rwemeje ko PV de constat yo kuwa 11/09/2020 n’inyandiko ya RIB yo kuwa 08/10/2020 zivuga ku mashini iburanwa, zitagaragaza ko ipfuye ahubwo zerekana ko gutanga ibisubizo bitari byo, byatewe no gukoresha *reagents* zitajyanye na *software* iri mu mashini.

[43] Rwemeje ko *PV de constat* yo kuwa 11/09/2020 itari ikwiye kugenderwaho nk’ikimenyetso kigaragaza ko imashini ivugwa ipfuye, kandi ko amasezerano y’ubugure bwayo yo kuwa 10/06/2020 afite agaciro.

[44] Rwemeje ko IJABO Clinics igomba guha IMPACT PHARMA Ltd indishyi z’ibyatakajwe muri uru rubanza zingana n’amafaranga y’u Rwanda ibihumbi magana atandatu (600.000 FRW) y’igihembo cy’Avoka n’ibihumbi ijana na mirongo itanu (150.000 FRW) y’ikurikiranarubanza. Yose hamwe akaba 750.000 FRW.

[45] Rutegetse ko urubanza RCOM 01552/2020/TC rwaciwe n’Urukiko rw’Ubucuruzi kuwa 30/12/2020 ruhindutse mu ngingo zarwo zose.

[46] Rutegetse IJABO Clinics gusubiza IMPACT PHARMA Ltd amafaranga y’u Rwanda ibihumbi mirongo ine (40.000 FRW) yatanzeho ingwate y’amagarama ijurira, itayatanga hamwe n’indishyi zimaze kuvugwa haruguru, akagurwa mu byayo ku ngufu za Leta.