# KABAYIJUKA v. LETA Y'U RWANDA

[Rwanda URUKIKO RW'IKIRENGA – RADA 0054/12/CS (Mukanyundo, P.J., Rugabirwa na Gakwaya, J.) 19 Ukuboza 2014]

*Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Uburyozwe – Uburyozwe bw'umukoresha ku makosa yakozwe n'umukozi we – Umukoresha aryozwa amakosa yakozwe n'umukozi we mu gihe yaba yabikoze mu rwego rw'inshingano ze no mu masaha y'akazi – Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 260.*

*Indishyi – Indishyi mbonezamusaruro – Indishyi z'amafaranga yakoreshejwe kubera igikorwa cyangirije undi n'iz'ikurikiranarubanza – Igenwa ry'indishyi mu bushishozi (ex aequo et bono) – Uburyo bwo kubara indishyi mbonezamusaruro – Indishyi mbonezamusaruro zibarwa zishingiye ku mushahara w'amezi cumi n'abiri harebwe n'urugero rw'ubumuga afite, ndetse n'igihe cyo gukora yari asigaje kugira ngo agere ku myaka 65 – Mu gihe uwangirijwe atagaragaza ibimenyetso bishimangira umubare w'amafaranga yakoresheje kubera igikorwa cyamwangirije ariko bigaragara ko icyo gikorwa cyatumye akoresha amafaranga mu gukemura ikibazo cye, agenerwa indishyi zikwiye mu bushishozi (ex aequo et bono) – Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo za 258.*

*Umushahara ukwiye nibura umukozi usanzwe ku munsi – Amafaranga 2.500Frw niwo mushahara ukwiye nibura umukozi usanzwe ku munsi hashingiwe ku miterere y'ibiciro ku isoko ndetse no ku rwego imishahara igezeho mu Gihugu muri rusange.*

**Incamake y'ikibazo:** Kabayijuka yagiye kwivuza ku Kigo Nderabuzima cya Nyarubuye aterwa urushinge kw'itako n'umuntu witwa Hakizamana wambaye nk'umuganga, kuva ubwo bimutera ububabare bukabije. Iki Kigo Nderabuzima cyamwohereje ku bitaro bya Kibungo, ariko ntibyagira icyo bitanga, ahubwo akurizamo kumugara ku buryo bukomeye. Kubera iyo mpamvu yareze Minisiteri y'Ubuzima (Minisanté) mu Rukiko Rukuru, Urugereko rwa Rwamagana asaba ko imuha indishyi kuko ubumuga afite bwatewe n'urwo rushinge, kandi ko uwarumuteye yari umukozi wayo. Urwo Rukiko rwemeje ko nta shingiro ikirego cye gifite.

Kabayijuka yajuriye mu Rukiko rw'Ikirenga avuga ko Urukiko rwirengagize ibimenyetso maze rwemeza ko Ministeri y'Ubuzima itaryozwa indishyi kuko nta kimenyetso kigaragaza ko urushinge yatewe ari rwo rwamumugaje kandi ngo Hakizimana yari umukozi wiyise umuforomo akabishyigikirwamo n'abamukuriye, kandi kuba abayobozi b'ibitaro baremerega ko umuntu udafite ububasha n'ubushobozi bwo gukora ako kazi k'umuforomo agakora, umukoresha we agomba kuryozwa amakosa ye kuko ari amakosa akomeye.

Minisiteri y'Ubuzima yiregura ko nta buryozwe bugomba kubaho kuko ubumuga avuga ko afite nta kigaragaza ko bwatewe n'umukozi wayo, kandi ubwe yarivugiye mu Rukiko ko urushinge yarutewe n'umuntu utari umuganga wari wambaye imyenda y'abaganga, bivuga ko atari umukozi wa Minisiteri y'Ubuzima ngo abe yarabikoze mu nshingano yamuhaye.

**Incamake y'icyemezo:** 1. Umukoresha aryozwa amakosa yakozwe n'umukozi we mu gihe yaba yabikoze mu rwego rw'inshingano ze no mu masaha y'akazi. Minisiteri y'Ubuzima igomba kubiryozwa kuko amakosa y'umukozi wayo ariyo yatumye Kabayijuka wari uharwariye agira ubumuga.

2. Mu gihe uwangirijwe atagaragaza ibimenyetso bishimangira umubare w'amafaranga yakoresheje kubera igikorwa cyamwangirije ariko bigaragara ko icyo gikorwa cyatumye akoresha amafaranga mu gukemura ikibazo cye, agomba kugenerwa mu bushishozi (ex aequo et bono) amafaranga akwiye.

3. Amafaranga 2.500Frw niwo mushahara ukwiye nibura umukozi usanzwe ku munsi hashingiwe ku miterere y'ibiciro kw'isoko ndetse no ku rwego imishahara igezeho mu Gihugu muri rusange. Bityo amafaranga 60.000Frw ari mu rugero rwiza rw'umushahara fatizo mpuzandengo (SMIG).

4. Indishyi mbonezamusaruro zibarwa zishingiye ku mushahara w 'amezi cumi n'abiri harebwe n'urugero rw'ubumuga afite, ndetse n'igihe cyo gukora yari asigaje kugira ngo agere ku myaka 65.

5. Urukiko rumugeneye indishyi z'akababaro, iz'imbonezamusaruro, izo kwivuza n'iz'ingendo yagiye akora.

**Ubujurire bufite ishingiro;**
**Minisiteri y'Ubuzima igomba kuryozwa amakosa yakozwe n' umukozi wayo;**
**Uregwa ategetswe guha uwajuriye amafaranga y'indishyi z'akababaro, i'zimbonezamusaruro, ayo kwivuza n'ingendo yagiye akora.**

**Amategeko yashingiweho:**
Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo za 258 n'iya 260.

**Imanza zifashishijwe:**
*Nyetera v. CORAR, RCAA 0202/07/CS*, rwaciwe n'Urukiko rw'Ikirenga kuwa 09/4/2009.

# Urubanza

# I. IMITERERE Y'URUBANZA

[1] Kabayijuka Gaspard yareze Minisiteri y'Ubuzima (Minisanté) mu Rukiko Rukuru, Urugereko rwa Rwamagana, avuga ko yagiye kwivuza kuri "Centre de santé" ya Nyarubuye kuwa 12/12/2000, mu gihe agitegereje umuganga haza umuntu usa n'umuganga witwa Hakizimana Sylvestre, maze amutera urushinge mu itako, kuva ubwo yumva ububabare bukabije. Ikigo Nderabuzima cyamwohereje ku bitaro bya Kibungo, ariko ntibyagira icyo bitanga, ahubwo aherako amugara ku buryo bukomeye. Kubera iyo mpamvu asaba Urukiko Rukuru gutegeka Minisiteri y'Ubuzima kumuha indishyi, kuko ubumuga afite bwatewe n'urwo rushinge, kandi ko uwarumuteye yari umukozi wayo. Kuwa 28/09/2012, urwo Rukiko rwaciye urubanza RAD 0003/12/HC/Rwg rwemeza ko ikirego cye nta shingiro gifite, ko Leta y'u Rwanda (Minisiteri y'Ubuzima), nta ndishyi igomba kuryozwa.

[2] Kabayijuka Gaspard ntiyishimiye imikirize y'urwo rubanza arujuririra mu Rukiko rw'Ikirenga kuwa 25/10/2012, avuga ko Urukiko Rukuru rutahaye agaciro imvugo z'abatangabuhamya bose bemeza ko yatewe urushinge na Hakizimana Sylvestre, umukozi w'Ikigo nderabuzima (Centre de Santé) cya Nyarubuye ndetse ko ubumuga afite yabutewe n'urwo rushinge yamuteye. Avuga kandi ko Urukiko Rukuru rutahaye agaciro ukwiyemerera kw'Intumwa ya Leta ko agomba guhabwa indishyi.

[3] Iburanisha mu ruhame ryabaye kuwa 23/9/2014 no kuwa 12/11/2014, Kabayijuka Gaspard, aburanirwa na Me Karangwa Vincent naho Minisiteri y'Ubuzima iburanirwa na Me Umwali Claire, Intumwa ya Leta.

## II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

**a. Kumenya niba Minisiteri y'Ubuzima yaryozwa amakosa yakozwe na Hakizimana Sylvestre.**

[4] Me Karangwa Vincent, uburanira Kabayijuka Gaspard, avuga ko nk'uko bigaragara ku rupapuro rwa 6 rw'imikirize y'urubanza rwajuririwe, Urukiko Rukuru rwemeje ko Minisiteri y'Ubuzima itaryozwa indishyi kuko nta kimenyetso kigaragaza ko urushinge Kabayijuka Gaspard yatewe arirwo rwamumugaje, bityo akaba asanga rutarahaye agaciro imvugo z'abatangabuhamya bemeza ko Hakizimana Sylvestre wateye Kabayijuka Gaspard urushinge yari umukozi w'Ikigo Nderabuzima (Centre de Santé) cya Nyarubuye.

[5] Asobanura ko Hakizimana Sylvestre yari umukozi wiyise umuforomo akabishyigikirwamo n'abamukuriye, bityo akaba asanga ko kuba abayobozi b`ibitaro baremerega ko umuntu udafite ububasha n'ubushobozi bwo gukora ako kazi k'umuforomo agakora, umukoresha we agomba kuryozwa amakosa ye kuko ari amakosa akomeye.

[6] Asobanura kandi ko n'ubwo umuganga Ngabonziza Adélard yemeje muri raporo ye yo kuwa 4/9/2003 ko bitoroshye kumenya impamvu yaba yarateye Kabayijuka Gaspard ubwo bumuga, ariko mu nyandiko ye yo kuwa 20/1/2003 ubwo yamukoreraga "transfert" amwohereza ku bitaro bya C.H.K. i Kigali, yavuze ko impamvu y'ubumuga bwe ari urushinge yatewe ku itako hakaba hashize imyaka ibiri. Akomeza avuga ko umuganga Marc, "spécialiste" muri "kinésithérapie" (indwara z'ubumuga) nawe yavuze ko ubumuga bwa Kabayijuka Gaspard bukomoka k'urushinge yatewe ndetse ko hari umuganga yabonanye nawe kuwa 12/12/2000 wemeje mu rurimi rw'igifaransa ko habayeho "paralysie suspecte suite à une injection intramusculaire injectée par Sylvestre dans le nerf sciatique".

[7] Asoza avuga ko mu mwanzuro wayo ku rwego rwa mbere, intumwa ya Leta nayo yemezaga ko Leta igomba guha Kabayijuka Gaspard indishyi ariko zikagabanywa kuko izo yasabaga ari ikirenga, bityo akaba asanga Urukiko Rukuru rutari kwanga kwemeza ko amakosa yakozwe n'umukozi w'ibitaro.

[8] Kabayijuka Gaspard asobanura ko yagiye kwa muganga arwaye malariya, aribwa mu nda ariko yigenza, agezeyo bamushyira ku gitanda, bazana serumu bavanga n'imiti bamutera mu mitsi. Avuga ko uwamuteye iyo serumu yabwiye abaganga bari aho ngo ntibayimukuremo, ko azayimukuramo bukeye, bigeze saa saba ayimukuramo, saa tatu amutera urushinge, bukeye mu gitondo, Hakizimana Sylvestre wari umuforomo wabo amutera urundi rushinge, maze yitura hasi. Avuga kandi ko Umuganga mukuru yari azi ko Hakizimana Sylvestre agomba gutera urwo rushinge kuko n'abandi ariwe wabateraga, kandi ko butari ubwa mbere amutera, ko no mu gatabo yivurizagaho bigaragara.

[9] Ku birebana na "liste de paie" igaragaza abakozi b'Ikigo Nderabuzima cya Nyarubuye yatanzwe na Me Umwali Claire, Me Karangwa Vincent avuga ko nta gushidikanya ko Hakizimana Sylvestre yari umukozi wa Minisiteri y'Ubuzima, kuko yari "auxillaire de santé", ni ukuvuga ko nawe yari umukozi w'ibitaro ushobora gutera urushinge. Ko kuba barahaye Me Umwali Claire "liste de paie" yo muri Novembre 2001, yafatwa ko ari

ikitegererezo (échantillon), kuko iyo aza kubaza igihe Hakizimana Sylvestre yatangiriye akazi nabyo bari kubimubwira.

[10] Me Umwali Claire, uburanira Minisiteri y'Ubuzima avuga ko nta buryozwe bugomba kubaho kuri Minisiteri y'Ubuzima, kuko ubumuga Kabayijuka Gaspard avuga ko afite nta kigaragaza ko bwatewe n'umukozi wayo, kandi Kabayijuka Gaspard ubwe yarivugiye mu rukiko ko urushinge yarutewe n'umuntu utari umuganga wari wambaye imyenda y'abaganga. Ibyo bikaba bivuze ko niba n'uwo muntu yaba yarabayeho koko nk'uko abivuga, ntabwo yaba yari umukozi wa Minisiteri y'Ubuzima ngo abe yarabikoze mu nshingano yamuhaye.

[11] Asobanura ko ku birebana na Hakizimana Sylvestre ugaruka kenshi mu rubanza, Kabayijuka Gaspard yavuze mu Rukiko Rukuru ko yari umukozi ukora isuku mu Kigo Nderabuzima cya Nyarubuye, ariyo mpamvu asaba ko Urukiko rwamuhamagaza agatanga amakuru, kuko umukoresha aryozwa ibyo umukozi we yakoze iyo yamutumye.

[12] Asobanura kandi ko icyemezo cya muganga cyo kuwa 4/9/2003 kigaragaza impamvu y'ubumuga bwa Kabayijuka Gaspard kidasobanutse, aho kivuga mu myanzuro yacyo ko "steppage du pied droit dont la cause est difficile à préciser ce jour d'examen".

[13] Ku birebana na lisiti y'abakozi yatumwe n'Urukiko, Me Umwali Claire asobanura ko igaragaza ko Hakizimana Sylvestre yari "Auxillaire de santé". Akomeza avuga ko kuba Kabayijuka Gaspard yaratewe urushinge mu mwaka wa 2000, kandi iyo lisiti ariyo muri 2001, nta kigaragaza ko ari Hakizimana Sylvestre wamuteye urwo rushinge, ndetse ko nta n'ikigaragaza ko urwo rushinge arirwo rwamuteye gucumbagira ngo bibe byakwitirirwa Minisiteri y'Ubuzima.

## UKO URUKIKO RUBIBONA

[14] Ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano iteganya ko "igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse".

[15] Ingingo ya 260, agace ka 3 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano iteganya ko "bashebuja n'abakoresha baryozwa ibyangirijwe n'abakozi babo mu gihe bakora imirimo babashinze [......]".

[16] Urukiko rw'Ikirenga rurasanga nk'uko bigaragara mu gatabo ke yivurizagamo, Kabayijuka Gaspard yaragiye ku Kigo Nderabuzima cya Nyarubuye kuwa 8/8/2000 kwivuza "malaria", "nausée", "diarrhée" na "gastrite" ariko kuwa 12/12/2000 akaba yaragize ikibazo cyo kumugara (paralysie), nk'uko byemezwa n'ibyo Muganga Gafurama Claude yanditse muri ako gatabo yivurizagamo, aho avuga ko "paralysie suspecte suite à une injection intramusculaire injectée par Sylvestre dans le nerf sciatique".

[17] Urukiko rw'Ikirenga rurasanga kuva icyo gihe Kabayijuka Gaspard yarakomeje kwivuza ubwo bumuga mu bitaro bitandukanye harimo ibitaro bya Kibungo, ibya Rwamagana na "Centre Hospitalier de Kigali" (C.H.K.).

[18] Urukiko rw'Ikirenga rurasanga n'ubwo hari igihe Kabayijuka Gaspard yavuze ko Hakizimana Sylvestre yari umukozi ukora isuku mu Kigo Nderabuzima cya Nyarubuye, ikindi gihe akavuga ko yari umuforomo, ariko, nk'uko bigaragazwa na "liste de paie" yatanzwe na Me Umwali Claire, Hakizimana Sylvestre yari umufasha wa muganga

(auxilliaire de santé) mu Kigo Nderabuzima cya Nyarubuye igihe Kabayijuka Gaspard yahuye n'ikibazo cy'ubumuga afite ndetse ko ariwe wamuteye urushinge rwatumye icyo kibazo kiba nk'uko Muganga Gafuruma Claude yabyemeje.

[19] Urukiko rw'Ikirenga rurasanga hakurikijwe ibisobanuro bimaze gutangwa mu gika kibanziriza iki, Hakizimana Sylvestre yari umwe mu bakozi b'Ikigo Nderabuzima ashinzwe kuvura abarwayi (corps soignant) ari nayo mpamvu yateye urushinge Kabayijuka Gaspard mu rwego rwo kumuvura akoresheje ibikoresho by'Ikigo Nderabuzima cya Nyarubuye.

[20] Ku birebana n'ibivugwa na Minisiteri y'Ubuzima y'uko hakurikijwe raporo ya muganga (rapport d'expertise médico-légale) Ngabonziza Adélard yo kuwa 4/9/2003, nta kintu kigaragaza ko ubumuga bwa Kabayijuka Gaspard bwatewe n'urushinge nk'uko abivuga kubera ko iyo raporo ivuga mu myanzuro yayo ko "steppage du pied droit dont la cause est difficile à préciser à ce jour", Urukiko rw'Ikirenga rurasanga rutashingira kuri iyo raporo yakozwe nyuma y'imyaka itatu kuva ubwo bumuga bugaragaraye, mu gihe muganga Gafurama Claude nyuma yo gusuzuma Kabayijuka Gaspard yaremeje kuwa 12/12/2000, umunsi icyo kibazo kivuka, ko urushinge yatewe na Hakizimana Sylvestre ari nyirabayazana w`ubumuga bwe nk'uko byasobanuwe mu gace ka 16 k'uru rubanza.

[21] Ku birebana n'uburyozwe bwa Minisiteri y'Ubuzima ku makosa yakozwe na Hakizimana Sylvestre, wari umukozi wayo icyo gihe, Urukiko rw'Ikirenga rurasanga hakurikijwe ibiteganywa n'ingingo ya 260, agace ka 3 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano cyavuzwe haruguru, umukoresha aryozwa amakosa yakozwe n'umukozi we mu gihe yaba yabikoze mu rwego rw'inshingano ze no mu masaha y'akazi, bityo kuba ibikorwa bya Hakizimana Sylvestre byarangije Kabayijuka Gaspard mu gihe yakoraga imirimo ashinzwe, mu masaha y'akazi ndetse akoresha n`ibikoresho by'Ikigo Nderabuzima cya Nyarubuye mu nyungu zacyo, Minisiteri y'Ubuzima igomba kubiryozwa kuko amakosa y'umukozi wayo ariyo yatumye Kabayijuka Gaspard wari uharwariye agira ubumuga[1].

[22] Urukiko rw'Ikirenga rurasanga kandi ibyavuzwe mu gika kibanziriza iki bishimangirwa n'inyandiko y'abahanga mu mategeko, aho basobanura ko umukoresha aryozwa ibyangijwe n'umukozi we iyo mu bikorwa yakoze, kimwe muri byo nibura gifitanye isano n'inshingano ze[2]

[23] Hashingiwe ku ngingo z'amategeko zavuzwe haruguru no ku bisobanuro byatanzwe, Urukiko rw'Ikirenga rurasanga iyo ngingo y'Ubujurire bwa Kabayijuka Gaspard ifite ishingiro.

**b. Kumenya niba Kabayijuka Gaspard akwiye indishyi asaba.**

---

[1] "La jurisprudence décide que la responsabilité du commettant existe dès que l'acte dommageable a été accompli pendant la durée du service, et en relation avec ce service" in Henri De Page <u>Traité élémentaire de droit civil Belge</u>, tome deuxième, Les incapables-Les obligations Bruylant, Bruxelles, 1964, P. 1019.

[2] "On peut se contenter d'un simple lien de connexité entre l'acte dommageable du préposé et ses fonctions, pour pouvoir engager la responsabilité du commettant. L'auteur continue en disant que" lorsque l'acte du préposé consiste en un exercice défectueux de ses fonctions, le rattachement est manifeste: tel est le cas d'un chauffeur livreur qui commet un accident de la circulation du fait d'une vitesse excessive… CH. Larroumet, note sous cass. Com.12 oct. 1993, Dalloz.1994.124, séc.p. cité par Françoise BENAC-SCHMIDT. Uyu kandi ni wo murongo wemejwe mu rubanza RPA 0210/10/CS rwaciwe n'uru Rukiko kuwa 18/7/2014, haburana Ubushinjacyaha na Munyankumburwa Valens, Manirarora Rosette n'abana be n'Akarere ka Burera.

[24] Me Karangwa Vincent avuga ko Kabayijuka Gaspard asaba Urukiko kumugenera indishyi z'impozamarira zingana na 5.000.000Frw, asaba kandi indishyi mbonezamusaruro za 60.000Frw buri kwezi zihwanye n'umushahara yigeneraga mu mirimo yikoreraga zigomba kubarwa kuva kuwa 12/12/2000, asaba na none andi 200.000Frw akubiyemo ayo yatanze yivuza n'ayo yakoresheje mu ngendo ajya kuburana uru rubanza, yose hamwe akaba 13.480.000Frw kugeza mu kwezi kwa gatandatu k'umwaka wa 2012.

[25] Me Umwali Claire avuga ko indishyi zose Kabayijuka Gaspard atazikwiye kuko atari Minisiteri y'Ubuzima igomba kuryozwa ibyo byamubayeho.

## UKO URUKIKO RUBIBONA

[26] Ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano iteganya ko "igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse".

[27] Hakurikijwe ibiteganywa n'ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano yavuzwe haruguru, kuriha igihombo (ibyangiritse) bigomba gukorwa mu buryo bwuzuye (intégrale ou complète) ariko kugira ngo bishoboke icyo gihombo kigomba kugaragarizwa ibimenyetso bigaragaza ko cyabayeho.

[28] Urukiko rw'Ikirenga rurasanga mu gihe uwangirijwe atagaragaza ibimenyetso bishimangira umubare w'amafaranga yakoresheje kubera igikorwa cyamwangirije ariko bigaragara ko icyo gikorwa cyatumye akoresha amafaranga mu gukemura ikibazo cye, nk'uko bigaragara muri uru rubanza byumvikana ko Kabayijuka Gaspard yagombaga gukoresha amafaranga ye mu kwivuza, kugura imiti, gukora ingendo, kwitunga, akaba agomba kugenerwa mu bushishozi (ex aequo et bono) amafaranga akwiye koko[3].

[29] N'ubwo nta kimenyetso Kabayijuka Gaspard yatanze kigaragaza umushahara wa 60.000Frw avuga ko yigeneraga buri kwezi kandi akaba nta tegeko rirajyaho rigena umubare w'umushahara fatizo mpuzandengo (SMIG), Urukiko rw'Ikirenga rurasanga umubare wa 60.000Frw uri mu rugero rukwiye, kuko n'uru Rukiko mu rubanza RCAA 0202/07/CS rwaciwe ku itariki ya 9/4/2009, rwemeje ko 2.500Frw ariwo mushahara ukwiye nibura umukozi usanzwe ku munsi hashingiwe ku miterere y'ibiciro kw'isoko ndetse no ku rwego imishahara igezeho mu Gihugu muri rusange, bityo 60.000Frw akaba ariyo yaherwaho mu kubarira Kabayijuka Gaspard indishyi mbonezamusaruro, harebwe n'urugero rw'ubumuga afite, ndetse n'igihe cyo gukora yari asigaje kugira ngo agere ku myaka 65.

[30] Ku byerekeye indishyi z'impozamarira zingana na 5.000.000Frw zisabwa na Kabayijuka Gaspard, Urukiko rw'Ikirenga rurasanga akwiye kuyahabwa kubera ububabare yagize nyuma yo gukomeretswa umutsi w'itako n'urushinge yatewe nk'uko byasobanuwe haruguru n`igihe cyose amaze arwaye, ariko ayo asaba akaba ari ikirenga, rumugeneye mu bushisozi bwarwo angana na 1.500.000Frw.

---

[3] "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.

[31] Ku byerekeye indishyi mbonezamusaruro Kabayijuka Gaspard agenewe, Urukiko rw'Ikirenga rurasanga ayo mafaranga abazwe mu buryo bukurikira:

$$\frac{60.000Frw \times 12 \text{ (amezi) } \times 15 \text{ (taux d'incapacité) } \times 5 \text{ (igihe cyo gukora yari asigaje)}}{100} = 540.000Frw.$$

[32] Ku byerekere 200.000 Frw yo kwivuza n'ayo yakoresheje mu ngendo ajya kuburana uru rubanza rwe, Urukiko rurasanga aya mafaranga yayagenerwa kuko ari mu rugero rukwiye.

[33] Urukiko rurasanga Kabayijuka Gaspard agenewe: 1.500.000Frw y'indishyi z'akababaro, 540.000Frw y'indishyi mboneza musaruro na 200.000Frw yo kwivuza n'ingendo yagiye akora, yose hamwe akaba angana na 2.240.000Frw.

## III. ICYEMEZO CY'URUKIKO

[34] Rwemeje ko ubujurire bwa Kabayijuka Gaspard bufite ishingiro.

[35] Rwemeje ko Minisiteri y'Ubuzima igomba kuryozwa amakosa yakozwe na Hakizimana Sylvestre, umukozi wayo, wangije Kabayijuka Gaspard.

[36] Rutegetse Minisiteri y'Ubuzima guha Kabayijuka Gaspard 1.500.000Frw y'indishyi z'akababaro, 540.000Frw y'indishyi mboneza musaruro na 200.000Frw yo kwivuza n'ingendo yagiye akora, yose hamwe akaba angana na 2.240.000Frw.