RWANDAIR LTD v. KARANGWA

[Rwanda URUKIKO RW'IKIRENGA – RCOMAA0025/13/CS (Mutashya, P.J., Nyirinkwaya na Hitiyaremye, J.) 31 Nyakanga 2015]

Amategeko agenga gutwara abantu mu ndege – Ibikomere by'umutima bikomoka ku mpanuka y'indege – Amasezerano mpuzamahanga ya Varsovie ateganya ko ibigomba gutangirwa indishyi mu gihe habaye impanuka y'indege, ari urupfu, ibisebe cyangwa se ibindi bikomere by'umubiri, ibikomere by'umutima bikaba bitari mu bitangirwa indishyi – Amasezerano mpuzamahanga ya Varsovie yo kuwa 12/10/1929 yerekeye gutwara abantu mu ndege, ingingo ya 17.

Incamake y'ikibazo: Karangwa Oreste yagiranye amasezerano na RWANDAIR Ltd yo kumutwara mu ndege kuva i Kigali kugera Uganda ikanamugarura. Ku munsi w'urugendo iyo indege yakoze impanuka igihaguruka ku kibuga cy'indege i Kanombe. Karangwa Oreste yaje gutanga ikirego mu Rukiko Rwisumbuye rwa Gasabo asaba indishyi zishingiye ku masezerano yo gutwara abantu mu ndege atarubahirijwe, urwo rukiko ruca urubanza ruvuga ko nta bubasha rufite bwo gusuzuma ikirego cye. Yaje kongera gutanga ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge, RWANDAIR Ltd itanga inzitizi ivuga ko ikirego cyashaje kuko atubahirije ibihe byo kurega biteganywa n'itegeko. Urukiko rwaciye urubanza rubanziriza urundi rwemeza ko iyo nzitizi nta shingiro ifite. Urubanza rwaburanishijwe mu mizi, Urukiko rwemeza ko Karangwa Oreste atsinze, rutegeka RWANDAIR Ltd kumuha indishyi zingana na miliyoni eshatu (3.000.000) n'amafaranga ibihumbi magana atatu (300.000) y'igihembo cya avoka.

RWANDAIR Ltd ntiyishimiye imikirize y'urubanza, irujuririra mu Rukiko Rukuru rw'Ubucuruzi, ivuga ko Urukiko rw'Ubucuruzi rutahaye agaciro ibyerekeranye n'ubuzime bw'icyaha, ko no mu kubara indishyi hakoreshejwe amategeko atariyo, Karangwa Oreste na we atanga ubujurire bwuririye ku bundi avuga ko indishyi yagenewe zabazwe nabi. Uru Rukiko rwaciye urubanza rwemeza ko Karangwa atsinze, rutegeka RWANDAIR Ltd kumwishyura amadorali 183.523USD, amafaranga y'amanyarwanda ibihumbi magana atanu (500.000) y'ikurikiranarubanza n'igihembo cya avoka ku rwego rw'ubujurire, rutegeka kandi ko ku bindi hubahirizwa icyemezo cy'Urukiko rubanza.

RWANDAIR Ltd ntiyishimiye imikirize y'urubanza, irujuririra mu Rukiko rw'Ikirenga, ivuga ko yaburanye isobanura ko Karangwa Oreste atari agifite uburenganzira bwo kurega kuko yarengeje igihe giteganywa n'amategeko, igasobanura ko impanuka yabaye ku itariki ya 12/11/2009, ko hashingiwe ku ngingo ya 29 ya Convention de Varsovie, itariki ya nyuma yo kurega yari iya 11/11/2011. Ivuga kandi ko Urukiko rutagombaga gutanga indishyi rushingiye ku ntimba Karangwa Oreste avuga yatewe n'impanuka, kuko nta bikomere ku mubiri iyo mpanuka yamuteye, ko n'indishyi zatanzwe zabazwe mu buryo bunyuranyije n'amategeko.

Uburanira Karangwa avuga ko yakomeretse, akaba agomba kubibonera indishyi, ko ibikomere bivugwa mu masezerano yashingiweho mu rubanza atari ibyo ku mubiri gusa, ko ahubwo n'ibikomere byo ku mutima birimo kandi hakaba hari impapuro zo kwa muganga zerekana ko ibyo bikomere yabigize kuko yahungabanye bikomeye.

Ku munsi w'iburanisha, uburanira Karangwa yatanze inzitizi yo kutakira ubujurire bwa RWANDAIR avuga ko yatsinzwe ku mpamvu zimwe ku rwego rwa mbere n'urwa kabiri, maze Urukiko rw'Ikirenga rufata icyemezo mu rubanza rubanziriza urundi ko iyo nzitizi nta

shingiro ifite. Urukiko rw'Ikirenga kandi rwemeje mu rubanza rubanziriza urundi, ko ibijyanye n'ubuzime bw'ikirego nta shingiro bufite.

Incamake y'icyemezo: Kuba abateguye aya Masezerano Mpuzamahanga ya Varsovie, barateganyije mu ngingo yayo ya 17 ko ibigomba gutangirwa indishyi mu gihe habaye impanuka y'indege, ari urupfu (la mort), ibisebe (blessures) cyangwa se ibindi bikomere by'umubiri (ou toute autre lésion corporelle), ayo yose akaba ari amagambo asobanura ibintu bifatika, iyo n'ibikomere byo ku mutima cyangwa se ihungabana (blessures psychiques, traumatisme), ibintu bidafatika cyangwa se bitaboneshwa amaso, biba mu bushake bw'abateguye aya masezerano, ntibiba byarabananiye kubyandikamo mu buryo bweruye. Bityo, urega nta ndishyi yabibonera kubera ko bene ibyo bikomere bitari mu bitangirwa indishyi hakurikijwe amasezerano ya varsovie yaburanishijwe muri uru rubanza.

Ubujurire bufite ishingiro.
Urubanza rwajuririwe ruhindutse muri byose.
Amagarama y'urubanza aherereye ku warezwe.

Amategeko yashingiweho:
Amasezerano mpuzamahanga ya Varsovie yo kuwa 12/10/1929 yerekeye gutwara abantu mu ndege, ingingo ya 17.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Karangwa Oreste yagiranye amasezerano na RWANDAIR Ltd yo kumutwara kuva i Kigali kugera Uganda ikanamugarura, maze ku itariki ya 12/11/2009 indege yari igiye Entebe muri Uganda igihaguruka ku kibuga cy'indege i Kanombe ikora impanuka. Ku itariki ya 11/11/2011 Karangwa Oreste yatanze ikirego mu Rukiko Rwisumbuye rwa Gasabo asaba indishyi zishingiye ku masezerano yo gutwara abantu mu ndege ngo atarubahirijwe, mu rubanza rwo ku wa 24/04/2012 urwo rukiko ruca urubanza ruvuga ko nta bubasha rufite bwo gusuzuma ikirego cye.

[2] Karangwa yaje kongera gutanga ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge, RWANDAIR Ltd itanga inzitizi ivuga ko ikirego cyashaje kuko atubahirije ibihe byo kurega biteganywa n'itegeko, ku itariki ya 4/3/2013 Urukiko ruca urubanza rubanziriza urundi RCOM0102/13/TC/NYGE rwemeza ko iyo nzitizi nta shingiro ifite. Urubanza rwaburanishijwe mu mizi, ku itariki ya 22/4/2013 Urukiko rwemeza ko Karangwa Oreste atsinze, rutegeka RWANDAIR kumuha indishyi zingana n'amafaranga y'u Rwanda miliyoni eshatu (3.000.000) n'amafaranga ibihumbi magana atatu (300.000) y'igihembo cya avoka.

[3] RWANDAIR Ltd ntiyishimiye imikirize y'urubanza, irujuririra mu Rukiko Rukuru rw'Ubucuruzi, ivuga ko Urukiko rw'Ubucuruzi rutahaye agaciro ibyerekeranye n'ubuzime, ko no mu kubara indishyi hakoreshejwe amategeko atariyo, Karangwa Oreste na we atanga ubujurire bwuririye ku bundi avuga ko indishyi yagenewe zabazwe nabi. Uru Rukiko rwaciye urubanza RCOMA0180/13/HCC rwemeza ko Karangwa atsinze, rutegeka RWANDAIR Ltd

kumwishyura amadorali 183.523USD, amafaranga y'amanyarwanda ibihumbi magana atanu (500.000) y'ikurikiranarubanza n'igihembo cya avoka ku rwego rw'ubujurire, rutegeka kandi ko ku bindi hubahirizwa icyemezo cy'Urukiko mu rubanza RCOM0102/13/TC/Nyge.

[4] RWANDAIR Ltd ntiyishimiye imikirize y'urubanza, irujuririra mu Rukiko rw'Ikirenga, ivuga ko yaburanye isobanura ko Karangwa Oreste atari agifite uburenganzira bwo kurega kuko yarengeje igihe giteganywa n'amategeko, igasobanura ko impanuka yabaye ku itariki ya 12/11/2009, ko hashingiwe ku ngingo ya 29 ya Convention de Varsovie, itariki ya nyuma yo kurega yari iya 11/11/2011. Ivuga kandi ko Urukiko rutagombaga gutanga indishyi rushingiye ku ntimba Karangwa Oreste avuga yatewe n'impanuka, kuko nta bikomere ku mubiri iyo mpanuka yamuteye, ko n'indishyi zatanzwe zabazwe mu buryo bunyuranyije n'amategeko.

[5] Ku itariki ya 6/05/2014 ababuranyi bitabye Urukiko, iburanisha ribera mu ruhame RWANDAIR Ltd ihagarariwe na Me Nkurunziza François Xavier, naho Karangwa Oreste aburanirwa na Me Rwihandagaza Richard. Kuri uwo munsi uburanira Karangwa yatanze inzitizi yo kutakira ubujurire bwa RWANDAIR Ltd avuga ko yatsinzwe ku mpamvu zimwe ku rwego rwa mbere n'urwa kabiri, maze ku itariki ya 06/06/2014 Urukiko rw'Ikirenga rufata icyemezo mu rubanza rubanziriza urundi ko iyo nzitizi nta shingiro ifite, rutegeka ko iburanisha rizakomeza ku itariki ya 23/09/2014.

[6] Ku itariki ya 23/09/2014 ababuranyi bitabye Urukiko bunganiwe nka mbere, hasuzumwa ingingo y'ubujurire bwa RWANDAIR Ltd yavugaga ko ikirego cya Karangwa Oreste kitagombaga kwakirwa ngo kuko yagitanze kandi harabaye ubuzime, ku itariki ya 14/11/2014 Urukiko rw'Ikirenga rwanzura ko iyo ngingo y'ubujurire nta shingiro ifite, rutegeka ko urubanza mu mizi ruzakomeza ku itariki ya 20/01/2015.

[7] Kuri uwo munsi iburanisha ryabaye mu ruhame, ababuranyi bitabye kandi bahagarariwe nka mbere. Nyuma yo kumva ibisobanuro by'impande zombi, ababuranyi bamenyeshejwe ko isomwa ry'urubanza rizaba ku itariki ya 27/2/2015, ariko uwo munsi ugeze Urukiko rufata icyemezo ko iburanisha rizongera gufungurwa kugira ngo ababuranyi bagire icyo bavuga ku nyandiko zagejejwe muri dosiye nyuma y'isozwa ry'iburanisha, rishyirwa ku itariki ya 21/4/2015, uwo munsi ugeze urubanza ntirwaburanishwa kubera ubwire iburanisha ryimurirwa ku itariki ya 13/5/2015.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

➢ **Kumenya niba ibikomere byo ku mutima (blessures psychiques) bikomoka ku mpanuka y'indege byatangirwa indishyi ziteganyijwe mu ngingo ya 17 y'Amasezerano ya Varsovie arebana n'ibyo gutwara abantu n'ibintu mu ndege yashyizweho umukono ku itariki ya 12/10/1929.**

[8] Me Nkurunziza François Xavier uburanira RWANDAIR Ltd avuga ko impamvu yabateye kujurira ari uko umucamanza waciye urubanza bajuririye yageneye Karangwa Oreste indishyi ashingiye ku ntimba avuga ko yatewe n'impanuka y'indege ya RWANDAIR Ltd yaburiyemo inshuti ye magara, kandi bo basanga indishyi zivugwa mu ngingo ya 17 y'Amasezerano Mpuzamahanga ya Varsovie zigomba gukomoka ku ngaruka zitaziguye umuntu yatewe n'impanuka, akavuga ko izo ngaruka zigomba kuba zigaragara kandi zifatika.

[9] Avuga ko bizwi ko Karangwa Oreste nta bikomere by'umubiri yatewe n'impanuka y'indege ya RWANDAIR Ltd, ko ahubwo ibyo avuga ari uguhungabana yatewe n'iyo mpanuka, ko ibyo ari byo byose n'ibimenyetso bishingiye ku maraporo yakozwe n'abaganga yerekana bidafite ireme.

[10] Avuga ko ingingo ya 17 y'Amasezerano ya Varsovie iteganya ko mu gihe cy'impanuka y'indege, indishyi zigenwa gusa iyo habayeho urupfu cyangwa se ibikomere by'umubiri kandi Karangwa akaba atagaragaza ko ibyo bikomere yabigize. Yongeraho ko n'iyo Urukiko rwasanga n'ibikomere byo ku mutima (blessures psychiques) bigomba gutangirwa indishyi, Karangwa atazihabwa kuko muganga yemeje ko ibyo bikomere yabitewe n'intimba yari afite kubera gutakariza inshuti ye magara mu mpanuka, ko rero ibyo bikomere bye nta sano itaziguye bifitanye n'impanuka yakozwe n'indege ya RWANDAIR Ltd.

[11] Me Nkurunziza François Xavier mu nyandiko yashyikirije urukiko, avuga ko no mu zindi nkiko hagiye hafatwa ibyemezo ko ibikomere bitangirwa indishyi iyo bikomoka ku mpanuka y'indege hashingiwe ku ngingo ya 17 y'Amasezerano ya Varsovie, ari ibikomere by'umubiri gusa. Aha yatanze urugero rw'urubanza Morris v. KLM Royal Dutch Airlines rwabereye mu Bwongereza aho umukobwa w'imyaka cumi n'itanu (15) yasagariwe n'umugenzi mu ndege, akajya kurega avuga ko ibyo byamuhungabanyije, agasaba indishyi ashingiye ku ngingo 17 y'Amasezerano amaze kuvugwa, the House of Lords, ifatwa nk'Urukiko rw'Ikirenga, ikanzura ko nta ndishyi agomba guhabwa hashingiwe kuri iyo ngingo kubera ko nta bikomere byo ku mubiri yagaragazaga.

[12] Me Rwihandagaza Richard uburanira Karangwa Oreste avuga ko yakomeretse, akaba agomba kubibonera indishyi hashingiwe ku ngingo ya 17 y'Amasezerano ya Varsovie. Avuga ko ibikomere bivugwa muri iyi ngingo atari ibikomere byo ku mubiri (blessures physiques) gusa, ko ahubwo n'ibikomere byo ku mutima (blessures psychiques) birimo kandi hakaba hari impapuro zo kwa muganga zerekana ko ibyo bikomere yabigize kuko yahungabanye bikomeye.

[13] Ku birebana n'ingaruka ibyo bikomere byamugizeho mu kazi ke, Me Rwihandagaza avuga ko n'ubwo atari inzobere muri ibyo bibazo, asanga ihungabana Karangwa yakomoye muri iyo mpanuka ryaramugizeho ingaruka mu kazi ke ka buri munsi, ko n'abaganga b'inzobere biyambajwe babisonuye mu maraporo yabo.

[14] Ku birebana no kuba iryo hungabana Karangwa Oreste yararitewe no kubura inshuti ye, Me Rwihandagaza Richard umuburanira avuga ko na byo byamuhungabanyije kuko umudamu witwa Azera watakarije ubuzima muri iyo mpanuka ari Karangwa wari umujyanye muri Uganda, ko ndetse na ticket ye ari we wari wayiguze, agahora yishinja ko ari we wabaye nyirabayazana mu rupfu rwe.

[15] Mu nyandiko Me Rwihandagaza Richard yashyikirije Urukiko, avuga ko inkiko zo mu Bufaransa zitigeze zishaka kumenya ubwoko bw'ibikomere ushaka kuregera indishyi aba yagiriye mu ndege, niba ari ibikomere by'umubiri cyangwa se ibikomere byo ku mutima (les juridictions françaises n'ont toujours pas eu à se prononcer sur la question de savoir ce que recouvre la notion de "lésion corporelle", si elle comprend uniquement la lésion qui n'entraine qu'un préjudice physique ou si elle comprend également une lésion qui occasionna un préjudice psychique). Atanga urugero rw'urubanza rwaciwe n'Urukiko Rusesa imanza mu 1982, aho rwafashe icyemezo, ko rushingiye ku ngingo ya 17 y'Amasezerano ya Varsovie, umugenzi afite uburenganzira bwo gusaba indishyi zikomoka ku ihungabana, n'ubwo

umwikorezi (le transporteur aérien) nta ruhare yaba yabigizemo, ariko rwerekanye ingaruka abagenzi batewe n'ishimutwa ry'indege, zaba ingaruka zishingiye ku bikomere by'umubiri cyangwa ku ihungabana.

[16] Avuga ko muri urwo rubanza basanze nta ruhare umwikorezi afite muri izo ngaruka, zaba izishingiye ku bikomere by'umubiri cyangwa ku ihungabana, atari uko ingaruka zishingiye ku ihungabana zidatangirwa indishyi, ko ahubwo umwikorezi yashoboye kugaragazako yari yakoze ibishoboka byose mu rwego rwo kwirinda izo ngaruka hashingiwe ku biteganywa n'ingingo ya 20 y'Amasezerano ya Varsovie.

[17] Muri iyo nyandiko Me Rwihandagaza avuga ko mu birebana n'amategeko y'umurimo, Urukiko Rusesa imanza rwo mu Bufaransa rwafashe ihungabana (trouble psychique) nk'ibikomere bisanzwe by'umubiri (lésion corporelle), akavuga ko urwo rukiko rwemeje iyo nyito ubwo rwasuzumaga ikibazo cy'umukozi wagize ihungabana arimo akorerwa igenzurwa.

[18] Arangiza asaba Urukiko ko rwababafasha gusobanukirwa icyo ijambo blessures (ibikomere) rivugwa mu ngingo ya 17 y'Amasezerano ya Varsovie risobanura kuko ababuranyi bataryumva kimwe, aho bamwe bavuga ko ibikomere byo ku mubiri gusa (blessures physiques) aribyo birebwa n'iyo ngingo, abandi bo bakumva n'ibikomere byo ku mutima (blessures psychiques) iyo ngingo nabyo ibireba.

UKO URUKIKO RUBIBONA

[19] Ingingo ya 17 y'amasezerano ya Varsovie yo kuwa 12/10/1929 nk'uko yahinduwe n'Amasezerano y'i La Haye yo ku wa 28/09/1955 u Rwanda rwashyizeho umukono ivuga ko utwara abagenzi mu ndege aryozwa urupfu rw'abo atwaye cyangwa ibikomere bagize iyo bikomoka ku mpanuka yabaye umuntu ari mu ndege, ayizamukamo cyangwa ayimanukamo (Le transporteur est responsable du dommage survenu en cas de mort, de blessure ou de toute autre lésion corporelle subie par un voyageur lorsque l'accident qui a causé le dommage s'est produit à bord de l'aéronef ou au cours de toutes opérations d'embarquement et de débarquement).

[20] Ku birebana n'uru rubanza, Me Rwihandagaza Richard uburanira Karangwa Oreste avuga ko ibikomere bivugwa mu ngingo ya 17 y'Amasezerano amaze kuvugwa atari ibikomere by'umubiri gusa, ko ahubwo n'ibikomere by'umutima ari nabyo uwo aburanira yemeza ko yagiriye mu mpanuka y'indege ya RWANDAIR Ltd akabisabira indishyi, mu gihe Me Nkurunziza François Xavier uburanira RWANDAIR Ltd we avuga ko ibikomere birebwa n'ingingo ya 17 y'Amasezerano yibukijwe haruguru, ari ibikomere by'umubiri gusa, ko ibyo ku mutima bitarimo.

[21] Ikibazo cyo kumenya niba ibikomere umugenzi yagize abitewe n'impanuka yabaye ari mu ndege ari iby'umubiri gusa (blessures physiques) cyangwa se niba n'ibikomere by'umutima (blessures psychiques) birebwa n'iyo ngingo, Urukiko rw'Ikirenga rurasanga ari ikibazo kigomba kubonerwa igisubizo hifashishijwe ubusesenguzi bwakorewe iyi ngingo n'abahanga bayikozeho ubushakashatsi n'ibyemezo by'izindi nkiko zahuye n'ikibazo nk'iki.

[22] Mu nyandiko ye yise "La réparation du préjudice moral dans les accidents de transport aérien"[1], Me Kenneth WEISSBERG, avoka mu Rugaga rw'i Paris, avuga ko

[1] www.weissbergavacats.com/publications/prejudice-moral-accidents-aeeriens.pdf

Amasezerano Mpuzamahanga ya Varsovie ateganya ibintu bitatu bishobora gutuma umuntu aregera urukiko asaba indishyi. Urupfu, ibisebe n'ibikomere by'umubiri (la mort, les blessures et les lésions corporelles). Muri iyo nyandiko avuga ko n'ubwo amagambo "urupfu" n'"ibisebe" nta kibazo kidasanzwe ateye mu buryo yumvikana, ko atari ko bimeze ku birebana n'ijambo "ibikomere by'umubiri". Akavuga ko ikibazo ari ukumenya niba iryo jambo rivugwa mu ngingo ya 17 y'Amasezerano Mpuzamahanga ya Varsovie rikomatanya n'intimba, agahinda n'ibindi bikomere byo ku mutima, ibi bikaba byatuma uwabigize abibonera indishyi hashingiwe kuri iyo ngingo imaze kuvugwa.

[23] Nyuma yo gusoma ibyemezo bitandukanye byafashwe n'inkiko nyinshi ubwo zabaga zagejejweho ibirego bisaba indishyi zikomoka ku bikomere by'umutima (préjudice moral), uyu munyamategeko asanga inkiko nyinshi zaragiye zanzura ko, kugira ngo ibikomere byo ku mutima bitangirwe indishyi, bigomba kuba biherekejwe n'ibikomere by'umubiri bikomoka ku mpanuka. Avuga ko ari na wo murongo wafashwe n'Urukiko rw'Ikirenga rwo muri Amerika mu rubanza Eastern Airlines, Inc. v. Floyd, (1991) aho rwanzuye ko, hashingiwe ku ngingo ya 17 y'Amasezerano ya Varsovie Ikigo gitwara abantu mu ndege kidashobora kugira icyo kiryozwa mu gihe umugenzi ataguye mu mpanuka cyangwa ngo imutere ibikomere by'umubiri (We conclude that an air carrier cannot be held liable under Article 17 when an accident has not caused a passenger to suffer death, physical injury or physical manifestation of injury)[2].

[24] Mu rubanza Edith Rosman et al., Appellants, v. Trans World Airlines, Inc., Respondent. Miriam Herman, an Infant, by Alexander Herman, Her Father and Natural Guardian, et al., Appellants, v. Trans World Airlines, Inc., Respondent, rwaciwe n'Urukiko rw'Ubujurire rwa Leta ya New York (Court of Appeals of State of New York) ku itariki ya 13/06/1974, abarega basabaga indishyi zo kuba barahungabanye, ubwo ku itariki ya 6/09/1970 indege bari barimo ibyihebe byayiyobyaga bari mu nzira bava Tel Aviv, Israel, berekeza New York City. Umucamanza yavuze ko, hashingiwe ku ngingo ya 17 y'Amasezerano Mpuzamahanga ya Varsovie, abarega bagomba kwerekana ibimenyetso by'uko bagize ibikomere by'umubiri bifatika byaba byaratewe n'ihungabana cyangwa se n'uburyo mu ndege hari hameze, ko ariko ihungabana ryonyine ritinjira mu biteganyijwe n'iyo ngingo (At the trial, plaintiffs should be allowed to prove damages for palpable, objective bodily injuries suffered, whether caused by psychic trauma or by the physical conditions on the aircraft, irrespective of impact, but not for psychic trauma alone)[3].

[25] Mu myumvire y'uru Rukiko, runashingiye kandi ku bimaze kwerekanwa haruguru, kuba abateguye aya Masezerano Mpuzamahanga ya Varsovie, barateganyije mu ngingo yayo ya 17 ko ibigomba gutangirwa indishyi mu gihe habaye impanuka y'indege, ari urupfu (la mort), ibisebe (blessures) cyangwa se ibindi bikomere by'umubiri (ou toute autre lésion corporelle), ayo yose akaba ari amagambo asobanura ibintu bifatika, iyo n'ibikomere byo ku mutima cyangwa se ihungabana (blessures psychiques, traumatisme), ibintu bidafatika cyangwa se bitaboneshwa amaso, biba mu bushake bw'abateguye aya masezerano, ntibiba byarabananiye kubyandikamo mu buryo bweruye. Ibi kandi akaba ari nako byumviswe n'inkiko zinyuranye zo mu mahanga zahuye n'ikibazo cy'abaregeraga indishyi zikomoka ku bikomere byo ku mutima bavuga ko byaturutse ku mpanuka z'indege.

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[2] caselaw.findlaw.com/us-supreme-court/499/530/html
[3] http://www.leagle.com/decision/197441934NY2d385_1368.xml/ROSMAN V. TRANS WORLD AIRLINES#

[26] Hashingiwe ku bisobanuro bimaze gutangwa, kuba Karangwa Oreste avuga ko yahungabanye cyangwa yagize ibikomere byo ku mutima byaturutse ku mpanuka y'indege ya RWANDAIR Ltd yari arimo, ariko akaba atagaragaza ko hari ibikomere by'umubiri iyo mpanuka yamusigiye cyangwa se byaba byaraturutse kuri iryo hungabana avuga ko yatewe n'iyo mpanuka, Urukiko rw'Ikirenga rurasanga nta ndishyi yabibonera kubera ko bene ibyo bikomere bitari mu bitangirwa indishyi hashingiwe ku ngingo ya 17 y'Amasezerano Mpuzamahanga ya Varsovie yibukijwe haruguru.

[27] Nyuma yo gusanga nta ndishyi Karangwa Oreste agomba guhabwa nk'uko bimaze gusobanurwa, Urukiko rw'Ikirenga rurasanga atari ngombwa gusuzuma ingingo ya RWANDAIR Ltd irebana n'uburyo izo ndishyi zibarwa.

[28] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rw'Ikirenga rurasanga ubujurire bwa RWANDAIR Ltd bufite ishingiro, bityo urubanza RCOMA0180/13/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku itariki ya 04/10/2013 rukaba ruhindutse muri byose.

III. ICYEMEZO CY'URUKIKO

[29] Rwemeje ko ubujurire bwa RWANDAIR Ltd bufite ishingiro;

[30] Ruvuze ko urubanza RCOMA 0180/13/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku itariki ya 04/10/2013 ruhindutse muri byose;

[31] Rutegetse Karangwa Oreste gutanga amagarama y'urubanza ahwanye n'amafaranga ibihumbi ijana (100.000).