# MUKANDOLI v SENKWARE

[Rwanda URUKIKO RW'UBUJURIRE – RCAA 00024/2020/CA (Kanyange, P.J.) 26 Ugushyingo 2021]

*Amategeko agenga ibimenyetso mu manza n'itangwa ryabyo – Ikimenyetso kitanditse – Amasezerano ntagaragazwa gusa n'inyandiko ahubwo ashobora kwemezwa n'ibindi bimenyetso birimo ubuhamya, uburyo bwo gucukumbura no kwemera k'umuburanyi.*

*Amategeko agenga ibimenyetso mu manza n'itangwa ryabyo – Ubuhamya – Ubuhamya bushingirwaho n'Urukiko ni ubwatangiwe mu iburanisha kurusha gushingira kubugaragara muri raporo cyangwa inyandiko zitandukanye zigize dosiye*

**Incamake y'ikibazo:** uru Rubanza rwatangiye Mukandoli arega Senkware mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko yamusubiza inzu yamutije, hagobokeshwamo Kajeguhakwa na Ruhetamacumu bava indimwe na Senkware bisabwe na Mukandoli kuko avuga ko bamugurije amafaranga mu bihe bitandukanye agashaka kuyabishyura bakabyanga bavuga ko ari ikiguzi cy'iguzi bamuhaye ku nzu ye icumbitsemo umuvandimwe wabo.

Senkware yireguye avuga ko iyo nzu yayiguze na Mukandoli, ko kuba nta masezerano y'ubugure yanditse agaragara bidahagije guhakana ubugure kuko hari ibindi bimenyetso bibugaragaza. Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko ikirego cya Mukandoli gifite ishingiro, ko Senkware asubiza Mukandoli umutungo uburanwa, rutegeka Mukandoli gusubiza Senkware n'abavandimwe be amafaranga bamuhaye.

Senkware yajuririye urwo rubanza mu Rukiko Rukuru avuga ko Urukiko Rwisumbuye rwa Nyarugenge rwirengagije ibimenyetso binyuranye bigaragaza ko inzu iburanwa yayiguze. Mukandoli yavuze ko ubujurire bwa Senkware nta shingiro bufite atanga n'ubujurire bwuririye ku bundi.

Urukiko Rukuru rwemeje ko ubujurire bwa Senkware bufite ishingiro, ko ubujurire bwuririye ku bundi bwatanzwe na Mukandoli budafite ishingiro, ko urubanza rwajuririwe ruhindutse, ko inzu iburanwa ari iya Senkware yaguze na Mukandoli bityo ikaba igomba kumwandikwaho. Mukandoli yajuririye urwo rubanza mu Rukiko rw'Ubujurire avuga ko Urukiko Rukuru rwahaye Senkware inzu iburanwa rushingiye ku bimenyetso bitemewe n'amategeko.

Senkware yazamuye inzitizi y'iburabubasha bw'Urukiko rw'Ubujurire, Urukiko rwemeje ko iyo nzitizi nta shingiro ifite.

Mu rubanza mu mizi ababuranira Mukandoli bavuga ko Urukiko Rukuru rwahaye Senkware umutungo uburanwa kandi atari uwe ahubwo yarawutijwe na Mukandoli, akaba atarawuguze kuko atagaragaje inyandiko y'ubwo bugure nkuko biteganywa n'amategeko. Bavuga kandi ko Urukiko Rukuru rwemeje ko inzu iburanwa ari iya Senkware rushingiye ku bimenyetso bitemewe n'amategeko. Uburanira Senkware avuga ko nta bimenyetso bitemewe n'amategeko byashingiweho kandi ko inzu yayiguze. Urukiko rw'Ubujurire rwemeje ko inzu iburanwa ari iya Senkware.

**Incamake y'icyemezo:** 1. amasezerano atagaragazwa gusa n'inyandiko ahubwo ashobora kwemezwa n'ibindi bimenyetso birimo ubuhamya, uburyo bwo gucukumbura no kwemera k'umuburanyi.

2.Ubuhamya bushingirwaho n'Urukiko ni ubwatangiwe mu iburanisha kurusha gushingira kubugaragara muri raporo cyangwa inyandiko zitandukanye zigize dosiye. Bityo kuba hari ubuhamya bugaragara muri raporo yakozwe n'urwego rw'Umuvunyi rugerageza gucyemura ikibazo cy'umutungo uburanwa ntabwo bwafatwa nk'ikimenyetso mu rubanza.

3. Ibimenyetso bitsindisha umuburanyi ntibigomba guturuka byanze bikunze kuri we. Bityo kuba inyandiko itaranditswe n'umuburanyi ubwe, ntibyabuza ko isuzumwa nk'ikimenyetso kigaragaza ukuri kw'ibyabaye cyangwa ngo ifatwe nk'ikimenyetso kidakurikije amategeko.

**Ubujurire nta shingiro bufite;**

**Amategeko yashingiweho:**

Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 2,3,9, 62,64,67

**Nta manza zifashishijwe**

# Urubanza

## I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge Mukandoli Mullens Catherine arega Senkware Emile, asaba ko yamusubiza inzu yamutije mu mwaka wa 1994, bisabwe na Mukandoli Mullens Catherine hagobokeshwamo abavandimwe ba Senkware Emile aribo Kajeguhakwa Bernard na Ruhetamacumu Eugène, Mukandoli Catherine avuga ko Kajeguhakwa Bernard yamugurije 1.000.000Frw kugira ngo ajyane abana b'imfubyi i Burayi, na nyuma yaho Ruhetamacumu Eugène amaguriza 800.000Frw yo kwishyura "douanes" ku bintu yari atahukanye mu mwaka wa 2006, ko yagerageje kuyabishyura bakamubeshya aho bahurira ntibaboneke, ariyo mpamvu yatanze ikirego asaba gusubizwa umutungo we no guhabwa indishyi zinyuranye.

[2] Senkware Emile yireguye avuga ko iyo nzu yayiguze na Mukandoli Mullens Catherine mu mwaka wa 1995 ku giciro cya 1.800.000Frw, ko kuba nta masezerano y'ubugure yanditse bidahagije guhakana ubugure kuko hari ibindi bimenyetso bibugaragaza birimo kuba Mukandoli Mullens Catherine ubwe yarakiriye amafaranga nubwo avuka ko ari ayo bamugurije, no kuba abana ba Mukandoli Mullens Catherine baranditse bavuga ko ubugure bwakozwe batabwemera.

[3] Mu rubanza RC00756/2018/TGI/NYGE rwaciwe ku wa 29/11/2019, Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko ikirego cya Mukandoli Mullens Catherine gifite ishingiro, ko Senkware Emile asubiza Mukandoli Mullens Catherine umutungo uri mu kibanza nº 53 mu Mujyi wa Kigali, Akarere ka Nyarugenge, Umurenge wa Muhima, Akagari ka Kabasengerezi, Umudugudu wa Kabasengerezi, akanamuha indishyi zihwanye na 25.820.000Frw, runemeza ko Mukandoli Mullens Catherine asubiza Senkware Emile n'abavandimwe be 1.800.000Frw bamuhaye.

[4] Senkware Emile yajuririye urwo rubanza mu Rukiko Rukuru avuga ko Urukiko Rwisumbuye rwa Nyarugenge rwirengagije ibimenyetso binyuranye bigaragaza ko inzu iburanwa yayiguze, ko kuba atarahawe icyangombwa cy' umutungo bitavuze ko umutungo atari uwe, anavuga ko yaciwe indishyi zinyuranye zidafite ishingiro.

[5] Mu rubanza RCA00017/2019/HC/KIG rwaciwe ku wa 08/10/2020, Urukiko Rukuru rwemeje ko ubujurire bwatanzwe na Senkware Emile bufite ishingiro, ko ubujurire bwuririye ku bundi bwatanzwe na Mukandoli Mullens Catherine budafite ishingiro, ko urubanza rwajuririwe ruhindutse, ko inzu iri mu kibanza nº 53 mu Mujyi wa Kigali, Akarere ka Nyarugenge, Umurenge wa Muhima, Akagari ka Kabasengerezi, Umudugudu wa Kabasengerezi ari iya Senkware Emile yaguze na Mukandoli Mullens Catherine ikaba igomba kumwandikwaho, ko indishyi zaciwe Senkware Emile zivanweho, rutegeka Mukandoli Mullens Catherine guha Senkware Emile 200.000Frw y'ikurikiranarubanza na 750.000Frw y'igihembo cya Avoka mu rwego rwa mbere no mu bujurire.

[6] Mukandoli Mullens Catherine yajuririye urwo rubanza mu Rukiko rw'Ubujurire avuga koUrukiko Rukuru rwahaye Senkware inzu iburanwa rushingiye ku bimenyetso bitemewen'amategeko.

[7] Habanje gusuzumwa inzitizi yatanzwe na Senkware Emile irebana n'iburabubasha bw'Urukiko rw'Ubujurire, mu cyemezo cyo ku wa 16/04/2021 Urukiko rusanga iyo nzitizi nta shingiro ifite, iburanisha rikomeza ku wa 15/06/2021 Mukandoli Mullens Catherineyunganiwe na Me Habimana Adolphe hamwe na Me Simon Ndayambaje Yamuremye, Senkware Emile yunganiwe na Me Barahira Eric. Ababuranyi basobanuye imiburanire yabo, Urukiko rubamenyesha ko urubanza ruzasomwa ku wa 16/07/2021, uwo munsi rufata icyemezo mu rubanza rubanziriza cyo kuzagera ku kiburanwa hari n'abazi iby'inzu iburanwa bazashakwa n'ababuranyi.

[8] Urukiko rwageze aho ikiburanwa kiri ku wa 04/10/2021[1], ababuranyi bahari hamwe n'ababunganira, rwumva abatangabuhamya ba ruri ruhande, ku ruhande rwa Mukandoli yifuza ko habazwa Mukamuligo Goretti n'abana be Nyirasafari Valentine na Uwimana Claudine, hamwe na Mukashayaka Janvière, umwisengeneza we, wumviswe nk'utanga amakuru kubera ayo masano, naho ku ruhande rwa Senkware, yifuza ko habazwa Mukamana Adelite, Musanabera Xaverine, Ruzigana Célestin, Ndagijmana Giriseli, Munyakayanza Azarias hamwe na Ngendahimana Epa, urubanza rwongera kuburanishwa ku wa 01/11/2021 kugira ngo ababuranyi bagire icyo bavuga kuri ubwo buhamya.

## II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

**Kumenya niba Urukiko Rukuru rwarahaye Senkware umutungo utari uwe rushingiye ku bimenyetso bitemewe n'amategeko**

[9] Ababuranira Mukandoli bavuga ko Urukiko Rukuru rwahaye Senkware umutungo uburanwa kandi atari uwe ahubwo yarawutijwe na Mukandoli, akaba atarawuguze nkuko abivuga kuko atagaragaje inyandiko y'ubwo bugure nkuko biteganywa n'ingingo ya42, igika cya 4, y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ivuga ko umutungo utimukanwa urengeje agaciro ka 50.000Frw udashobora kugurishwa nta masezerano yanditswe akozwe, mu gihe nyamara ikibazo kikiri ku rwego rw'Umurenge bamubajije inyandiko y'ubwo bugure akayemera ariko ntiyayigaragaza, ahubwo ubwo ikibazo cyari kigeze ku rwego rw'Umuvunyi, avuga ko iyo nyandiko yayibuze.

[10] Bavuga ko Urukiko Rukuru rwemeje ko inzu iburanwa ari iya Senkware rushingiye ku bimenyetso bitemewe n'amategeko, kuko ubuhamya rwashingiweho ari ubw'abantu batageze imbere y'Urukiko ahubwo bukubiye muri raporo y'urwego rw'Umuvunyi kandi hari ubwo Mukandoli atemera, ibyo bikaba binyuranye n'ingingo ya 62 y'Itegeko ryemekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko ubuhamya ari ibivugwa mu rukiko bivuzwe n'umuntu wabibonye cyangwa wabyumvise ubwe, ko rero ibikubiye muri iyo raporo bitakwitwa ubuhamya Umucamanza yashingiraho afata icyemezo, bikaba atari na ngombwa ko hagibwa impaka ku bikubiye muri iyo raporo.

[11] Bavuga kandi ko ikindi kimenyetso kitemewe n'amategeko cyashingiweho n'Urukiko Rukuru, kigizwe n'ibaruwa yanditswe n'abana ba Mukandoli igenewe Me Nsengimana Elie na Me Twahirwa Antoine, babaha uburenganzira bwo kubakurikiranira ikibazo cy'ubugure bw'inzu bavugaga ko bwakozwe na nyina ariko batabwemera, banemera gusubiza amafaranga yakiriwe na nyina, ariko icyo kimenyetso kikaba kitujuje ibiteganywa n'ingingo za 28, 33 na 34 z'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo, kuko kidakomoka kuri Mukandoli.

[12] Na none kandi, ngo hari ivuguruzanya ku mafaranga Senkware avuga ko ari yo yishyuye nk'ikiguzi cy'inzu, kuko igiteranyo cy'ayo avuga ko yishyuwe mbere ya 2008 ari 1.500.000Frw, akaba atangana na 1.800.000Frw avuga ko ariyo yaguze inzu iburanwa, ko rero bitumvikana uburyo yavuga ko yishyuye amafaranga arenga igiciro bari bumvikanye mu gihe icyo giciro nacyo cyari kitarishyurwa. Byongeye kandi, Senkware n'abavandimwe be ntibahuza n'uwitwa Gakuba Jean Marie Vianney ku mpamvu z'itangwa ry'ayo mafaranga, kuko aba mbere bavuga ko yari ayo guhosha amahane, Gakumba we akavuga ko yari ayo

[1] Rwagiyeyo bitinze kubera ingamba zariho zo kwirinda koronavirusi

kurangiza ikibazo cy'ubugure, bivuze ko hishyurwaga icyiciro cy'amafaranga yari asigaye, ko iryo vuguruzanya rigaragaza ko impamvu y'itangwa ry'ayo mafaranga Senkware aburanisha ari impimbano, mu gihe Umucamanza agomba gushingira ku bimenyetso bigaragaza ukuri nk'uko biteganywa n'ingingo ya 2 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ivuga ko ikimenyetso cyo mu rubanza ari uburyo bukoreshwa kugira ngo ukuri kw'ibyabaye kugaragare, hamwe n'ingingo ya 3 y'iryo tegeko, ivuga ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

[13] Bavuga ko ibimaze kugaragazwa haruguru, ari ibimenyetso bigaragaza ko nta masezerano y'ubugure yigeze abaho, kuko iyo abaho, impande zombi zagombaga kumvikana ku kiguzi cy'inzu no ku byiciro kizishyurwamo, bikaba ahubwo bishimangira imvugo ya Mukandoli y'uko amafaranga Senkware yita ko ari ay'ubugure, ari ayo yagurijwe nkuko yabivuze mu nkizo za mbere, ko ikindi cyerekana ko nta bugure bwabayeho ari uko amafaranga Senkware avuga ko yaba yarishyuye nk'ikiguzi cy'inzu iburanwa ntaho ahuriye n'agaciro kayo kuko ifite agaciro ka miliyono hafi ijana kandi ntacyo yigeze ikorwaho.

[14] Kuri icyo kibazo cy'amafaranga Mukandoli avuga ko yagurijwe, abamuburanira bavuga ko Urukiko Rukuru rwavuze ko nta masezerano y'umwenda agaragaza, ko nta n'ibimenyetso yagaragaje bishimangira ibyo avuga hashingiwe ku biteganywa n'ingingo ya 12 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 ko urega agomba kugaragaza ibimenyetso by'ibyo aregera, ariko iyo ngingo ikaba yarakoreshejwe mu buryo butari bwo, kuko Mukandoli ataburana umwenda wa 1.800.000Frw, ahubwo aburana umutungo we, ko rero kuba atari gutanga ikirego yiyishyuza kuko abamugurije badashaka gufata amafaranga bamugurije, ntibyari kumubuza gukurikirana inzu ye mu gihe nta wigeze ahakana ko itigeze iba iye.

[15] Ku kibazo uru Rukiko rwababajije cyo kumenya uburyo Senkware yageze mu nzu iburanwa, Mukandoli yasobanuye ko ari inshuti y'umuryango kuva cyera, akaba yaramutije inzu kugira ngo ayitunganye akoreremo ubukwe, ko we yabaga i burayi, ariko nyuma ya Jenoside aza mu Rwanda (1995), kubera ko hari igisasu cyari cyayangije, abwira Senkware ngo ayisane azayirongoreremo ; ko nyuma y'amezi 2 yasubiye i burayi, agaruka mu mwaka wa 1996, asanga Senkware yarayivuyemo anayikodesha. Akomeza asobanura ko yagiye gushaka Senkware ngo amusubize inzu ye, amuzaniyena cadeau y'umwana, ko ariko yakomeje kumwihisha ndetse akanamutera ubwoba mu magambo, ko yaje gutura mu Rwanda mu mwaka wa 2006 ko kandi Senkware yamusabaga ko bagura iyo nzu ariko akamwangira kuko nawe yashakaga gutura.

[16] Mukandoli n'abamwunganira basaba rero ko hakwemezwa ko nta bugure bwabayeho maze agahabwa inzu ye hamwe n'indishyi yasabye.

[17] Mu kwiregura, uburanira Senkware avuga ko nta bimenyetso bitemewe n'amategeko byashingiweho, kuko ku rupapro wa 8 n'urwa 9 z'urubanza rujuririrwa, Urukiko rwagaragaje amategeko rwashingiyeho harimo ingingo ya 9 y'Itegeko 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, ko kandi ibyo bishimangirwa n'ingingo ya 2 y'iryo tegeko kuko nayo iteganya ko ikimenyetso cyo mu rubanza ari uburyo bukoreshwa kugira ngo ukuri kw'ibyabaye kugaragare.

[18] Avuga ko ibivuzwe haruguru ari nabyo bisobanura ko ibyo Mukandoli avuga ko ubuhamya bwatanzwe igihe Umuvunyi yakoranyaga abaturage butagomba guhabwa agaciro, nta shingiro bifite, kuko itegeko ryemera ubwo bwoko bw'ibimenyetso. Avuga kandi ko hashingiwe ku ngingo ya 13 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ubwo buhamya bufite agaciro, kuko bwakorewe imbere y'umuyobozi wa Leta, bukaba bufite agaciro k'inyandikomvaho.

[19] Ku birebana n'ibaruwa yanditswe n'abana ba Mukandoli, uburanira Senkware avuga ko uwo baburana adakwiye kuvuga ko atari ikimenyetso cyemewe, kuko abo bana batarose ko nyina yagurishije

inzu ku mafaranga 1.800.000Frw, kandi bakaba bemera ko ubwo bugure bwabayeho usibye kuba bavuga ko butakurikije amategeko, icyo kikaba ari ikimenyetso gikomeye kuko kugera icyo gihe Mukandoli yari yicecekeye kuko yari azi ko yagurishije, abonye abana bamuteye hejuru aba aribwo ahimba amayeri yo kuvuga ko atagurishije, yirengagije ko yakiriye amafaranga y'ubwo bugure, ibyo atekereza bikaba binyuranye n'ingingo ya 100 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 ko ntawushobora gusaba gutesha agaciro amasezerano kubera inenge afite kandi yarayirenzeho akayubahiriza mu gihe yakiraga amafaranga abizi neza ko ari ikiguzi cy'inzu.

[20] Asanga rero nubwo amasezerano y'ubugure yabuze, bitavanaho ko ubwo bugure bwabayeho hashingiwe ku bimenyetso birimo ibaruwa y'abana ba Mukandoli yo ku wa 22/02/2010, raporo y'Umuvunyi yo ku wa 27/09/2011, aho abari abaturanyi ba Mukandoli bemeje ko inzu iburanwa yari iye nyuma ikagurwa na Senkware, muri bo hakaba uwitwa Gakumba JMV, umwisengeneza wa Mukandoli, wasobanuye ko mu rwego rwo kurangiza ikibazo cy'ubugure, ubwo bari kuri OBK mu mwaka wa 2008, Ruhetamacumu yahaye Mukandoli 800 $, mu bindi bimenyetso hakaba ibaruwa y'Ubuyobozi bw'Akarere ka Nyarugenge yo ku wa 24/08/2010 na raporo yakozwe n'Umunyamabanga nshingwabikorwa w'Umurenge wa Muhima.

[21] Ku birebana n'amafaranga yishyuwe nk'ikiguzi cy'inzu iburanwa, Senkware avuga ko yayiguze 1.800.000Frw, ko yabanje kumwishyura 1.000.000Frw, agiye gusubira i burayi amuha 200.000Frw, andi agenda ayamuha kuko yazaga mu gihugu buri mwaka, ko ubundi bari bumvikanye 1.200.000Frw ariko bigeze mu mwaka wa 2007 atangira kuvuga ko hari amafaranga amusigayemo, mukuru we (wa Senkware) witwa Ruheramacumu amutumaho azana na mwisengeneza we witwa Gakumba JMV, Mukandoli avuga ko yumva hasigaye 400.000Frw maze Ruhetamacumu amuha 800 $, bataha bazi ko ikibazo kirangiye. Senkware n'umwunganira bavuga kandi ko usibye kuba ikibazo cy'ayo mafaranga atari cyo cyaregewe, iby'ayo mafaranga binazwi n'abana be.

[22] Basanga ahubwo imvugo za Mukandoli ku birebana n'amafaranga yakiriye zirimo uburiganya kuko zidahuza, kuko yabwiye Ubuyobozi bw'Umurenge wa Muhima ko yagurije Senkware amafaranga amuhaho inzu ye ingwate arangije yanga kuyimusubiza nkuko bigaragara mu ibaruwa yo ku wa 24/06/2010, naho mu ibaruwa y'integuza umwunganizi we mu by'amategeko yandikiye Senkware ku wa 08/08/2008, akaba yaramusabaga guzubiza inzu ya Mukandoli atuyemo kubw'uburiganya kuva muri 1995, mu gihe mu iburanisha yavuze ko iyo nzu yayitije Senkware kugira ngo ayirongoreremo.

[23] Usibye uko kudahuza ku buryo Senkware yageze mu nzu iburanwa, Senkware avuga ko hari n'ibidashoboka kuko Mukandoli avuga ko yayimutije kugira ngo ayirongoreremo kandi nyamara yararongoye mu mwaka wa 2000 nkuko icyemezo kiri muri dosiye kibigaragaza, ari nabwo yaje kuyituramo, ariko akaba ayitunze kuva mu mwaka wa 1995, ko kandi buri mwaka Mukandoli yazaga mu Rwanda iyo nzu ikodeshwa, naho ku birebana n'igiciro yaguzweho, asobanura ko muri icyo gihe inzu z'aho ari ko zaguraga, ko kandi yari inzu nto ya 5m kuri 6m.

[24] Ku birebana n'uko Urukiko Rukuru rwavuze ko nta masezerano Mukandoli yagaragajeyerekana ko amafaranga yahawe yari ayo yagurijwe, uburanira Senkware avuga ko Urukiko rwashatse kugaragaza ikinyoma cya Mukandoli kubyo yireguzaga, kuko n'abavuga ko bamugurije babihakana, Urukiko rukaba rero rwarabisobanuye neza mu gika cya 32 cy'urubanza rujuriirwa, aho rwavuze ko Mukandoli atashoboye kubigaragariza ibimenyetso.

## UKO URUKIKO RUBIBONA

[25] Ingingo ya 9 y'Itegeko Nº 15/2004 ryo ku wa 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.'' Naho ingingo ya 64 y'iryo tegeko, iteganya ko ''Haseguriwe ibiteganywa n'amategeko yihariye, ikimenyetso cy'intangabuhamya mu magambo ntigishobora kwemerwa ku masezerano y'amafaranga y'amanyarwanda arenze ibihumbi mirongo itanu (50.000Frw) cyangwa ku kintu gifite agaciro kayarengeje, kabone n'iyo yaba ari amasezerano yo kubitsa ku bushake, keretse ubuhamya bwabo bwunganiwe n'ibindi bimenyetso''.

[26] Isesengura ry'izo ngingo ryumvikanisha ko amasezerano atagaragazwa gusa n'inyandikoahubwo ashobora kwemezwa n'ibindi bimenyetso birimo ubuhamya, uburyo bwo gucukumbura no kwemera k'umuburanyi. Ryumvikanisha kandi ko ubuhamya bwonyine butemerwa ku kintu gifite agaciro karengeje 50.000Frw, keretse mu gihe bwunganiwe n'ibindi bimenyetso.

[27] Ikibazo kiri muri uru rubanza ni icyo kumenya niba Senkware ari we nyiri umutungo uburanwa hashingiwe ku kuba avuga ko yawuguze n'ubwo nta masezerano y'ubugure agaragaza kuko avuga ko yabuze, cyangwa niba ari uwa Mukandoli uvuga ko yawutijeSenkware, akaba ari muri ubwo buryo awurimo.

[28] Imikirize y'urubanza rwajuririwe, igaragaza ko nyuma yo gusesengura raporo yakozwe n'Urwego rw'Umuvunyi aho rwabajije abatangabuhamya banyuranye (Mukandoli na Senkware bahari), Urukiko Rukuru rwasobanuye ko nubwo Senkware atagaragaje amasezerano y'ubugure bw'inzu iburanwa, imvugo z'abatangabuhamya babajijwe ku rwego rw'Umuvunyi zishimangira ko iyo nzu yayiguze akanayivugurura Mukandoli abibireba nkuko yabivugiye ku rwego rw'Umuvunyi, kandi akaba atabasha gusobanura impamvu Senkware yayivuguruye. Rwanasobanuye ko ibaruwa yanditswe n'abana ba Mukandoli igaragaza ko nabo bari bazi ubwo bugure, icyo batemeraga akaba ari uburyo bwakozwemo. Urukiko rwasobanuye kandi ko Mukandoli avuga ko amafaranga yakiriye atari ay'ubugure bw'inzu ahubwo ari umwenda yahawe, ariko ko nk'uwatanze ikirego, nta masezerano y'umwenda agaragaza cyangwa ibimenyetso bishimangira ibyo avuga hashingiwe ku ngingo ya 12 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].

[29] Ku birebana n'ubuhamya bwashingiweho, uru Rukiko rurasanga nk'uko Urukiko Rukuru rwabisobanuye, ari ubukubiye muri raporo yakozwe n'urwego rw'Umuvunyi mu rwego rwogucyemura ikibazo cy'umutungo uburanwa, bukaba ariko butakwitwa ubuhamya bwafatwank'ikimenyetso mu rubanza kuko butatangiwe mu rukiko nkuko ingingo ya 62 y'ItegekoNº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ibiteganya, ngo bube bwaratanzwe hubahirijwe uburyo bwo kumva abatangabuhamya buvugwa mu ngingo ya 67 n'izikurikira z'Itegeko rimaze kuvugwa. Urukiko rurasanga ahubwo ubuhamya bugomba gushingirwaho, ari ubw'abatangabuhamya bumviswe ubwouru Rukiko rwageraga ku kiburanwa, kuko ari bwo bwatanzwe mu buryo bukurikijeamategeko.

[30] Ku kibazo cyo kumenya nyiri umutungo uburanwa, Urukiko rurasanga Senkware ari weuwufite kuva mu mwaka wa 1995, hakaba hagombye kugaragazwa mu buryo bwumvikanauko wageze mu maboko ye kuva icyo gihe kugeza mu mwaka wa 2008, ubwo Mukandoli yatangiraga kuwukurikirana.

[31] Ku birebana n'uburyo uwo mutungo wageze mu maboko ya Senkware, Urukiko rurasanga Mukandoli yaragiye abisobanura mu buryo butandukanye, kuko mu ibaruwa y'Umunyamabanga nshingwabikorwa w'Akagari ka Kabasengerezi yo ku wa 24/06/2010 yandikiwe Senkware, havugwamo ko bombi bahujwe, Senkware akavuga ko ari we ufite inzu kuko yayiguze naho Mukandoli akavuga ko Senkware yamugurije amafaranga akayimuhaho ingwate, ashatse kuyamwishyura arayanga ayigumamo ku ngufu. Naho mu ibaruwa yo ku wa 24/08/2010 Umuyobozi w'Akarere ka Nyarugenge yandikiye Mukandoli asubiza iye yo ku wa 26/07/2010, aho yari yasabye kutemerera Senkware kwiyandikishaho inzu ye yabohoje, naho ku rwego rw'Umuvunyi, Mukandoli asobanura ko nyuma yo gusubizwa inzu ye yari yarabohojwe, yayicungishije Senkware ariko ko yayimwatse kuva mu mwaka wa 2007 akayimwima, naho

[2] Iteganya ko ''Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda''.

mu nkiko, cyane cyane imbere y'uru Rukiko, Mukandoli ubwe akaba yarasobanuye ko yatije Senkware inzu kugira ngo ayitunganye azakoreremo ubukwe.

[32] Urukiko rurasanga nkuko bimaze kugaragazwa, Mukandoli atabasha gusobanura mu buryo bumwe kandi bwumvikana uko Senkware yageze mu nzu iburanwa, cyane cyane ko ku birebana n'impamvu bigaragara ko ariyo yahisemo kuburanisha mu nkiko zitandukanye, yo kuba yarayitije Senkware kugira ngo azayikoreremo ubukwe, ivuguruzwa n'icyemezo kiri muri dosiye, kuko kigaragaza ko Senkware yakoze ubukwemu mwaka wa 2000, bivuze ko atari gutiza inzu umuntu wari gukora ubukwe mu myaka itanu.

[33] Urukiko rurasanga rero kuba Mukandoli atabasha gusobanura mu buryo bwumvikana uko Senkware yageze mu nzu yahoze ari iye, ariko akaba yemera ko hari amafarangayakiriye, yagombye kuvuguruza imvugo ya Senkware y'uko ayo mafaranga yatanzwe nk'ikiguzi cy'iyo nzu, kuko kuvuga gusa ko ayo mafaranga yayagurijwe n'abavandimwe baSenkware bidahagije mu gihe uyu avuga ko ari ikiguzi cy'inzu iburanwa kandi akaba ariwe uyifite kuva mu mwaka wa 1995, Mukandoli akaba rero ari we ugomba kugaragazako ari umwenda yahawe hatitawe ko atari wo yaregeye kubw'ibanze, ahubwo hashingiweku kuba buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana (la charge de prouver les faits qu'elle ellègue) nkuko biteganywa n'ingingo ya 3 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo.

[34] Urukiko rurasanga kandi imvugo ya Senkware y'uko amafaranga Mukandoli yakiriye ari ikiguzi cy'inzu iburanwa, ishimangirwa n'ibaruwa y'abana be (ba Mukandoli) yo ku wa 22/02/2010 bandikiye Me Nsengimana Elie na Me Twahirwa Antoine babaha uburenganzira bwo gukurikirana ikibazo cy'inzu y'umuryango, bavuga ko yagurishijwe n'umubyeyi wabo Mukandoli Catherine mu buryo budakurikije amategeko agenga umuryango, ko kandi biteguye gusubiza 1.800.000Frw uwo mubyeyi wabo yakiriye. Kuba iyo baruwa itaranditswe na Mukandoli ubwe, Urukiko rurasanga bitabuza ko isuzumwa nk'ikimenyetso kigaragaza ukuri kw'ibyabaye nk'uko biteganywa n'ingingo ya 2 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryavuzwe haruguru, kuko ibimenyetso bitsindisha umuburanyi bitagomba kumuturukaho byanze bikunze, bivuze rero ko ibivugwa n'ababuranira Mukandoli bashingiye ku ngingo za 28, 33 na 34 z'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo mu rwego rwo kugaragaza ko icyo kimenyetso kidakurikije amategeko, nta shingiro bifite, kuko ntaho Urukiko Rukuru rwigeze rugishingiraho nk'ikimenyetso gikomoka kuri Mukandoli ubwe.

[35] Urukiko rurasanga na none ibivugwa na Mukandoli n'abamwunganira ko Senkwareyivuguruza ku birebana n'amafaranga avuga ko ari yo yishyuye nk'ikiguzi cy'inzu, nta shingiro bifite, kuko Senkware avuga ko igiteranyo cy'ayo yishyuye ari 1.800.000Frw, bikanemezwa n'abana ba Mukandoli bavuga ko yakiriye 1.800.000Frw, kandi na Mukandoli akaba avuga ko ayo mafaranga yayahawe koko n'ubwo avuga ko ari ayo yagurijwe.

[36] Nkuko kandi byibukijwe mu miterere y'urubanza, Urukiko rwageze ku kiburanwa kugira ngo rurusheho gusobanukirwa ibivugwa n'ababuranyi rwifashishije abazi iby'inzu iburanwa, rwumva abantu bashatswe n'ababuranyi[3], cyane cyane mu rwego rwo kumenya uburyo Senkware yageze mu nzu iburanwa no kumenya niba uko iyo nzu imeze uyumunsi ari ko yari imeze mu mwaka wa 1995[4].

[37] Ku birebana n'abo batangabuhamya, abatanzwe na Mukandoli bose bavuga ko inzu yari iye, ariko ibyo bazi ku birebana n'iyo nzu bikaba bigarukira mu mwaka wa 1994, kuko Mukamuligo Goretti yasobanuye ko jenoside irangiye bagiye gutura i Kiruhura, bivuzerero ko batazi uburyo Senkware yageze muri iyo nzu. Ku birebana n'imiterere y'iyo nzu,Mukamuligo yavuze ko icyayihindutseho cyonyine ari umuryango wimuwe hamwe n'ibaraza ryongeweho, umukobwa we Nyirasafari Valentine nawe avuga ko icyahindutse ari ibaraza ryongewe ahimuriwe umuryango, ko n'urugi rwahinduwe, undi mukobwa we witwa

[3] Abumviswe bavuzwe mu gika cya 8 cy'uru rubanza
[4] Mukandoli avuga ko uko inzu imeze ubu ari ko yayisigiye SENKWARE

Uwimana Claudine nawe avuga ko inzu yavuguruwe basiga amarangi, bahindura n'aho umuryango wari uri hanongerwaho ibaraza, ko n'urugi n'amadirishya byahinduwe. Mukagasana Janvière wumviswe nk'utanga amakuru, nawe yavuze ko umuryango w'inzu wimuwe hongerwaho n'ibaraza, inzu inongerwa mu bugari (largeur), ko n'amadirishya n'urugi byahinduwe.

[38] Ku birebana n'abatangabuhamya ba Senkware, bane bahuriza ku kuba yarageze mu nzu iburanwa kubera ubugure, kuko Mukamana Adelite avuga ko yahabaye n'umuryango we bakodesha, uwo bishyuraga witwa Françoise aza kubabwira ko amafaranga bishyuye ari aya nyuma kuko inzu yagurishijwe, nyuma haza Senkware Emile ababwira ko yaguze, abasaba kwitegura bakazayivamo. Uwitwa Ruzigana Célestin nawe yavuze ko yashatse kugura inzu iburanwa ariko Senkware arayimutanga, ko icyo gihe yarangwaga n'uwitwa Venansiya, ko nubwo atahagaze kuri ubwo bugure bamubwiye ko Senkware yahamutwaye. Naho musanabera Saverina,avuga ko azi aho inzu iburanwa yubatse kuva mu mwaka wa 1976, asobanura ko yari iyaMukandoli ayigurisha Senkware wigaga icyo gihe muri Kaminuza y'u Rwanda i Butare, akaba yari yaramusabye kujya amurebera ko amafundi batamwiba, ko yaje kuyituramo akoze ubukwe, naho Munyakayanza Azarias asobanura ko yamenyane naSenkware bombi bubaka mu gace inzu iburanwa irimo, ko yumvaga bavuga ko yahaguze n'umuntu babana muri Soferwa ariko akaba atazi amafaranga yahaguze usibye ko inzu zo muri ako gace zaguraga nka 800.000Frw.

[39] Ku birebana na Ndendahimana Epa na Ndagijimana Giriseli, ubuhamya bwabo bugaragaza ko nubwo batavuze ko Senkware yageze mu nzu iburanwa kubera ubugure, ariko bavuga ko bamubonye yubaka.

[40] Ku birebana n'imiterere y'inzu, abatangabuhamya batanzwe na Senkware uko ari 6 bahuriza kuvuga ko inzu yarimo mbere yahinduwe, kuko Mukamana Adelite wayibayemo akodesha, avuga ko yari inzu nto y'ibyumba 2, ko umuryango wari hepfo kandi urugi ari urw'ibiti, bakaba barishyuraga 5.000frw y'ubukode, Ndendahimana Epanawe avuga ko kari akazu gato ka gitwe kimwe, ko yanagurishije Senkware akandi kazu kari ahari urugo (ubu) kugira ngo azabone aho ashyira irembo, ko harebwe uko inzuimeze ubu bigaragara ko yakozweho byinshi (transformations) ko kandi mu myaka ya 1995 nta nzu imeze nk'uko iri ubu yari muri kariya gace, Ruzigama Célestin nawe avugako kari akazu gato ka gitwe kimwe, na Musanabera avuga ko kari akazu ka mazi amwe (gitwe kimwe), Munyakayanza nawe avuga ko kari akazu ka mazi amwe, agereranyije kakaba kari gafite nk'ibyumba 2 n'uruganiriro, ko Senkware yongeyeho ahantu hanini, Ndagijimana Giriseli nawe avuga ko kari akazu ka gitwe kimwe, ko Senkware yakaguye cyane mu mpande zose.

[41] Urukiko rurasanga imvugo z'abo batangabuhamya batanzwe na Senkware, zivuguruzaiya Mukandoli uvuga ko uko inzu ihagaze uyu munsi ari ko yayimuhaye, kuko abo batangabuhamya bahuriza kuvuga ko hahozemo akazu gato ka gitwe kimwe, gatandukanye n'inzu irimo uyu munsi Urukiko rwabonye igihe cy'iperereza, bikanashimangirwa n'amakuru yatanzwe na Mukagasana Janvière (wazanwe na Mukandoli) nawe wavuze ko inzu yongerewe mu bugari, hagira n'ibindi ihindurwaho. Ku bireba n'abatangabuhamya batanzwe na Mukandoli, Urukiko rurasanga imvugo y'uko icyahindutse ku nzu ari umuryango wimuwe hakongerwaho n'ibaraza, nta gaciro igomba guhabwa, kuko iby'iyo nzu batabirusha Mukamana Adelite wayituyemo cyangwaMukagasana Janvière wavuze ko ari we wahaye urufunguzo rwayo Venansiya nyuma y'uko uwari warayibohoje ayivuyemo, bivuze ko nawe yari azi imiterere yayo,hakaniyongeraho imvugo z'ababonye Senkware yubaka nk'uko byasobanuwe haruguru.

[42] Hashingiwe ku buryo bwo gucukumbura no ku bimenyetso birimo ibaruwa y'abana ba Mukandoli hamwe n'ubuhamya bwatanzwe, Urukiko rurasanga inzu iburanwa ari iya Senkware yaguze na Mukandoli nkuko byemejwe n'Urukiko Rukuru, bikaba rero atari ngombwa gusuzuma ibirebana n'amafaranga y'ubukode Mukandoli asaba kuko adahawe inzu yaregeye, kimwe n'andi mafaraga yasabye kuko ubujurire bwe nta shingiro bufite. Urukiko rurasanga kandi kuba nta nyandiko y'ubwo bugure Senkware yagaragaje kuko avuga ko yatakaye, bitamwambura uburenganzira ku mutungo yaguze akanawutunga igihe kingana n'imyaka 13, akawuvugurura Mukandoli areba, cyane cyane ko n'ingingo ya 42 y'Itegeko Nº 45/2011 ryo

ku wa 25/11/2011 rigenga amasezerano ababuranira Mukandoli baburanisha, ritari ririho igihe inzu iburanwa yagurwaga.

**2. Kumenya niba SENKWARE Emile yagenerwa amafaranga asaba**

[43] Mu bujurire bwuririye ku bundi, Senkware Emile asaba ko yagenerwa 5.000.000Frw yo gushorwa mu manza, 1.500.000Frw y'igihembo cya Avoka na 500.000Frw y'ikurikiranarubanza ku rwego rwa mbere, 1.000.000Frw y'igihembo cya Avoka na 200.000Frw y'ikurikiranarubanza mu Rukiko Rukuru, n'andi nk'ayo mu Rukiko rw'Ubujurire.

[44] Uburanira Mukandoli avuga ko ayo mafaranga nta shingiro afite kuko Senkware ariwe watumye urubanza rubaho.

## UKO URUKIKO RUBIBONA

[45] Ku birebana n'amafaranga yo gushorwa mu manza, Urukiko rurasanga Senkware atayagenerwa, kuko atagaragaza uburyo Mukandoli yamushoye mu rubanza, usibye kuba yarajuriye nk'uko amategeko abimwemerera.

[46] Ku birebana n'andi mafaranga y'ibyagiye ku manza zaburanwe mu nkiko za mbere, Urukiko rurasanga nayo atayagenerwa, kuko imikirize y'urubanza rwajuririwe igaragaza ko yayagenewe, akaba atagaragaza icyo anenga ingano y'ayagenwe.

[47] Urukiko rurasanga ku birebana n'amafaranga y'ikuriikiranarubanza n'ighembo cya Avokakuri uru rwego, Senkware akwiye kuyagenerwa kuko byagaragajwe ko ubujurire bwa Mukandoli wamureze mu bujurire nta shingiro bufite, kandi hari ibyo yatanze kurubanza, ariko ku birebana n'igihembo cya Avoka akaba atagenerwa ayo asaba kuko ari menshi, akaba agennewe 800.000 Frw kuri uru rwego akubiyemo 300.000Frw y'ikurikiranarubanza na 500.000Frw y'igihembo cya Avoka.

## ICYEMEZO CY'URUKIKO

[48] Rwemeje ko ubujurire bwa Mukandoli Mullens Catherine nta shingiro bufite;

[49] Rwemeje ko ubujurire bwa Senkware Emile bwuririye ku Mukandoli Mullens Catherine bufite ishingiro kuri bimwe;

[50] Rwemeje ko inzu iri mu kibanza nº 53, mu Mudugudu wa Kabasengerezi, Akagari ka Kabasengerezi, Umurenge wa Muhima, Akarere ka Nyarugenge mu Mujyi wa Kigali ari iyaSenkware Emile;

[51] Rutegetse Mukandoli Mullens Catherine guha Senkware Emile 800.000Frw y'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego;

[52] Rwemeje ko amagarama yatanzwe ahwanye n'ibyakozwe ku rubanza