

RWANDA / JUDGMENT

CIMERWA LTD v KIGALI CERAMICA FURNITURE LTD ET.AL

RLR V.2-2025

COURT

Supreme Court

DECIDED

15 November 2024

CASE / FILE NUMBER

RS/INJUST/RCOM 00001/2024/SC

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- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2024-11-15
- Case/document no.: RS/INJUST/RCOM 00001/2024/SC
- Collection: Supreme Court

Text

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CIMERWA LTD v KIGALI CERAMICA FURNITURE LTD ET.AL [Rwanda SUPREME COURT – RS/INJUST/RCOM 00001/2024/SC (Mukamulisa, P.J., Kalihangabo and Hitiyaremye, J.) November 15, 2024] Law governing the commercial procedure – Cheque – Issuing a cheque for the purpose of debt payment – The mere issuance of a cheque to a payee is not enough for the drawer to consider the debt as settled. Rather, the drawer bears the legal obligation to assure the payee that there are sufficient funds in his or her account on the date the cheque is due for payment until its expiration, and that he or she will not obstruct its payment. Law governing the commercial procedure – Breach of contract – Interests – Interests are calculated based on the average lending rate publicized by the National Bank of Rwanda Facts: CIMERWA Ltd entered into a contract with Kigali Ceramica Furniture Ltd, whereby they agreed that CIMERWA would supply KCF Ltd with cement on credit, and KCF Ltd would pay the debt by cheque. However, KCF Ltd did not perform the contract, CIMERWA sent KCF Ltd a payment request, yet KCF Ltd did not make any payment, which made CIMERWA file a case before the Commercial Court, requesting payment of an

outstanding debt amounting to 90,350,000

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Frw, as well as 16,263,000 Frw in compensation for pecuniary loss along with other various damages. The Commercial Court rendered a judgment holding that the case of CIMERWA Ltd lacks merit and t ordered CIMERWA Ltd to refund an amount of 11,650,000 Frw, the surplus of the debt due. CIMERWA appealed to the Commercial High Court, alleging that the Commercial Court had disregarded the evidence, and that the cheques issued by KCF Ltd did not settle the debt, as they were dishonored due to insufficient funds. The Commercial High Court rendered the judgment holding that the appeal lodged by CIMERWA was unfounded and confirmed the judgment of the Commercial court. CIMERWA Ltd wrote to the President of the Court of Appeal requesting the review of the judgment on grounds of injustice. After review, the President of the Court of Appeal wrote to the President of the Supreme Court, who approved the review of the case, and it was heard by the Supreme Court. In its submissions during the review of the judgment on grounds of injustice, CIMERWA Ltd alleged that the Commercial Court had disregarded the evidence, including delivery notes, which indicated the quantity of cement it had supplied to KCF Ltd. CIMERWA stated that it was given two cheques as payment, but upon presentation for encashment, they were dishonored due to insufficient funds. CIMERWA further submitted that the non-payment resulted in financial loss, and therefore, it

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sought interest at the rate of 18% per annum, to be calculated for a period of four years and six months, alleging that had the payment been made on time, the funds would have been reinvested to generate returns. CIMERWA concluded by asserting that it was not its decision to delay the encashment of the cheques, but rather KCF Ltd effectively obstructed their payment by issuing bouncing cheques. It requested the Supreme Court to detract the case of KCF Ltd of not being indebted, as the company itself had acknowledged the debt, CIMERWA further argued that if it is so accepted, it would amount to unlawful enrichment. Kigali Ceramica and Furniture Ltd contends that it does not owe CIMERWA Ltd any debt, as it paid it out by cheque, thus, the fact that CIMERWA did not proceed with encashment is not attributable to KCF Ltd, and therefore, CIMERWA must bear any financial loss resulting from its own inaction. KCF Ltd further states that it should not be held liable for the damages for pecuniary loss because they are baseless. Held: 1. The mere issuance of a cheque to a payee is not enough for the drawer to consider the debt as settled, rather, the drawer bears the responsibility to assure the payee that there are sufficient funds in his or her account on the date the cheque is due until its expiration, and that he or she will not obstruct its payment.

2. Interests are calculated based on the average lending rate publicized by the National Bank of Rwanda.

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The application for the review of the judgment on grounds of injustice has merit Statutes and statutory instruments referred to: Law n° 32/2009 of 18/11/2009 governing negotiable instruments Regulation n° 006/2015 of 16/09/2015 of the National Bank of Rwanda relating to bouncing cheques Cases referred to: Nova (Jersey) Knit Ltd v Kammgarn Spinnerei GmbH

[1977] 1 WLR 713 (CA). RS/INJUST/RCOM00003/2022/SC; Murwanashyaka Jean Damascène v. BAMU TRADE COMPANY Ltd rendered by the Supreme Court on 31/03/2023. RS/INJUST/RCOM00014/2022/SC; Mugwaneza Carine Sandrine v. Bank of Kigali Plc rendered by the Supreme Court on 31/03/2023. Scholarly writings referred to: Thierry Bonneau, *Droit bancaire*, 14e éd., LGDJ, Paris, 2021, p.482. Jérôme Lasserre Capdeville et les autres, *Droit bancaire*, 3e éd., Dalloz, Paris, 2021, P.600.

Judgment

I. BACKGROUND OF THE CASE

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This case started in the Commercial Court, where CIMERWA Ltd sued KIGALI CERAMICA FURNITURE Ltd, hereinafter referred to as KCF Ltd, for breach of contract entered into on 12 April 2017. The contract, titled "Cement Supply Contract on 30 Days Credit Facility", was to last for one renewable year. As per the agreement, CIMERWA Ltd committed to supplying FCF Ltd with cement on credit, and KCF Ltd undertook to repay using cheques as the agreed mode of payment.

KCF Ltd did not pay as agreed upon, on September 11, 2020 and October 5, 2020, CIMERWA Ltd wrote a payment request for the outstanding debt. KCF Ltd did not pay out the debt, which made CIMERWA Ltd file a case before the Commercial Court on February 16, 2021, requesting the Commercial Court to order KCF Ltd to pay 90,350,000 Frw as the outstanding debt ; 16,263,000 Frw as damages for pecuniary loss as well as various other various damages.

KCF Ltd contended that the entire debt arising from the contract dated 12/04/2017 had been fully settled, as it was a contractual requirement that each new delivery of cement was contingent upon the full payment for the previous supply. It contended that, since the contract was set to expire on 12 April 2018, it means that CIMERWA Ltd should not be requesting the payment of any debt, and if it requests for the payment of any debt this would rather be based on a contract other than the one in question in this case

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In the judgment RCOM 00155/2021/TC rendered on 02 July 2021, the Commercial Court found that: i. KCF Ltd did not owe CIMERWA Ltd. any outstanding debt, as it paid it out by cheques amounting to 102,000,000 Frw¹, and the contract dated 12 April 2017, expired on 12 April 2018; ii. CIMERWA Ltd has to refund KCF Ltd the amount of 11,650,000 Frw², based on the legal principle

of refund of undue payments, which holds that a person who receives something not legally owed to them—whether knowingly or by mistake has a duty to return it, in order to prevent unlawful enrichment, since the payment received significantly exceeds the debt being claimed; iii. The pecuniary and moral damages requested by CIMERWA Ltd are unfounded, as they were dependent on the principal claim, which the Court found baseless.

The Court ruled that the case of CIMERWA Ltd lacks merit and ordered CIMERWA Ltd to refund KCF Ltd the amount of 11,650,000 Frw, the surplus of the due debt.

1 The first cheque, bearing the amount of 51,000,000 Frw, was issued on 30/11/2018, and the second cheque, also bearing the amount of 51,000,000 Frw, was issued on 03/12/2018. 2
102,000,000 Frw received - 90.350.000 Frw for the claimed debt = 11,650,000 Frw

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CIMERWA Ltd appealed to the Commercial High Court, alleging that the contract dated 12/04/2017 was never suspended, as its business relationship with KCF Ltd continued as usual.

CIMERWA Ltd also criticized the Commercial Court for disregarding the evidence it had submitted, including delivery notes indicating the dates, quantities, and prices of cement it had supplied to KCF Ltd, that the court should not have held that the debt was paid out by two cheques issued by KCF Ltd, as by the time of their encashment, there were not sufficient funds, it concluded by requesting the court to award it the cost of the proceedings and the advocate fee.

KCF Ltd and Karangwa Raymond contended that the grounds for appeal submitted by CIMERWA Ltd were unfounded, because the debt they owed it had already been fully paid and its does not produce any evidence substantiating its allegations that it is still a creditor of KCF. They concluded by requesting the cost of proceedings and the advocate fee.

In the judgment RCOMA 00555/2021/HCC rendered on 20/09/2022, the Commercial High Court held that: - The fact that CIMERWA Ltd continued doing business with KCF Ltd does not means that those deals were still governed by the contract dated 12/04/2017, which had expired;

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- The lower court committed no error in ruling that the contract had terminated, as both parties failed to comply with Article 7 of that contract, which required either a formal extension or an express agreement that the contract would be tacitly renewed; - The continuation of business relations between CIMERWA Ltd and KCF Ltd could not be taken as conclusive evidence that the contract remained in force, because in commercial practice, parties may engage in transactions without a written agreement ; - KCF Ltd is not liable to pay any interest on the debt since it owes no debt to CIMERWA Ltd ; - CIMERWA Ltd is not entitled to the claimed damages because the appeal on which such claims were based was found to be without merit.

The Court concluded that the appeal lodged by CIMERWA Ltd lacks merit and confirmed the judgment rendered in case RCOM 00155/2021/TC by the Commercial Court on 02/07/2021, it ordered d CIMERWA Ltd to refund KCF Ltd an amount of 11,650,000 Frw as the surplus of the due debt, pay 1,000,000 Frw in damages for and the cost of proceedings and the advocate fee at the appellate stage. The Court further held that the amount of 40,000 Frw deposited by CIMERWA Ltd as court fee in the appeal shall be transferred to the Public Treasury.

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On 28/10/2022, CIMERWA Ltd wrote to the President of the Court of Appeal, applying for review of the judgment RCOMA 00555/2021/HCC rendered by the Commercial High Court on 20/09/2022, on grounds of injustice. After examining the request, the President of the Court of Appeal wrote to the President of the Supreme Court, requesting that the judgment be reviewed, by decision No. 012/CJ/2024 dated 07/02/2024, the President of the Supreme Court ordered that the case be transmitted to the Registry of the Supreme Court for review.

The case hearing was scheduled on 06/06/2024, and the Court found that the parties appeared, CIMERWA Ltd being represented by Counsel Ndahimana Jean Bosco, while KCF Ltd and Karangwa Raymond were represented by Counsel Gahamanyi Justin, and the following legal issues were debated : a. Whether KCF Ltd owes any debt to CIMERWA Ltd and, if so, whether interests on this debt are due ; b. Whether Karangwa Raymond should be held jointly liable with KCF Ltd for payment of the alleged debt, if established ; c. Whether KCF Ltd should be ordered to reimburse CIMERWA Ltd the amount of 11,650,000 Frw, previously paid in execution of

judgment

RCOMA 00555/2022/HCC ; d. Whether the damages requested are legally founded.

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During the hearing, the Court further ordered the Managing Director of KCF Ltd to submit, no later than 13/06/2024, the information regarding the transactions carried out on the company's account under his management (bank statement) covering the period from 25/11/2018 to 06/09/2019.

After hearing the submissions of both parties on the issues in dispute, the hearing was closed, and the Court informed the parties that judgment would be delivered on 19/07/2024. During its deliberations, the Court found that the Managing Director of KCF Ltd had failed to provide the requested information on transactions carried out on the company's account (bank statement). Given the fact that this piece of evidence would have clarified the subject matter in this case, the Court deems it necessary, prior to rendering its judgment, to obtain the piece of evidence from BPR Bank Plc, as the cheques issued originated from that bank. On 24/07/2024, the bank provided the bank statement, and the case was consequently rescheduled for a new hearing.

The public hearing was held on 09/10/2024, CIMERWA Ltd was represented by Counsel Abayo Jean Claude, while KCF Ltd and Karangwa Raymond were represented as before. The parties proceeded with debating the bank statement provided by BPR Bank Plc. II. ANALYSIS OF LEGAL

ISSUES

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II.1. Whether KCF Ltd owes CIMERWA Ltd any debt to and, if so, whether interests on this debt are due

Regarding the alleged debt owed by KCF Ltd to CIMERWA Ltd, Counsel Ndahimana Jean Bosco, representing CIMERWA Ltd, argues that the basis for seeking the review of the

judgment

RCOMA 00555/2021/HCC rendered by the Commercial High Court on 20/09/2022, on grounds of injustice, lies in the Court's failure to thoroughly assess the evidence submitted. He contends that had the Court properly examined the evidence, it would have found that no payment had been made, that the two cheques amounting to 102,000,000 Frw issued to CIMERWA Ltd were not backed by sufficient funds, and that the Managing Director of KCF Ltd would not have requested an extension of time for payment and issued substitute cheques if he had already settled the debt. He further argued that the Court failed to consider delivery notes that clearly reflected the actual outstanding debt of 99,350,000 Frw, and thus overlooked the provisions of Articles 104³ and 108, paragraph one⁴, of Law no 15/2004 of 12/06/2004 relating to evidence and its production in courts.

³ This article reads that: "Presumptions are inferences that the law or a court makes from a known fact to discern an unknown fact". ⁴ This article stipulates that: "Presumptions that have not been established by the law are left to the discretion and wisdom of the court. The court shall admit only those presumptions if they are important, precise and consistent".

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During the hearing of 06/06/2024, Counsel Ndahimana Jean Bosco further submits that they request that the issue as to whether KCF Ltd had really paid out its debt be examined, whether the mere existence of the cheques is enough to ascertain that payment had occurred, and therefore requested that KCF Ltd be ordered to provide the full bank statement demonstrating whether the said cheques were actually cashed out.

He argue that, had the Commercial High Court properly assessed and validated the aforementioned pieces of evidence, it would have concluded that no payment had been effected, that that the failure of the the Court to carry out such an assessment amounted to disregarding the provisions of Article 104 and Article 108, paragraph one, of Law No. 15/2004 of 12/06/2004 relating to evidence and its production in courts.

Regarding the interest arising from the alleged debt, Counsel Ndahimana Jean Bosco submits that the claim is based on the fact that CIMERWA Ltd is a commercial company operating with borrowed funds, and that the non-payment caused pecuniary loss to the company. He therefore requests the Supreme Court to award interest at a rate of 18% per annum, calculated over a period of four years and six months, on the grounds that, had the funds been paid, they would have generated additional revenue. He indicates that the interest should be calculated as follows: $(90,350,000 \text{ Frw} \times 18\%) \times 4 \text{ years} + 1/2 \text{ year} = 65,052,000 \text{ Frw} + 8,131,500 \text{ Frw} = 73,183,500 \text{ Frw}$.

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During the hearing held on 09/10/2024, CIMERWA Ltd, represented by Counsel Abayo Jean Claude, submitted that the bank statement presented clearly showed that KCF Ltd had no funds in its account at the time the disputed cheques dated 30/11/2018 and 03/12/2018 were issued. This, he argued, supports the assertion that KCF Ltd had requested CIMERWA Ltd not to present the cheques to the bank due to insufficient funds. CIMERWA Ltd alleges that it could only have known this information through disclosure by the account holder.

Counsel Ndahimana Jean Bosco, representing CIMERWA Ltd, concluded by alleging that the assertions made by KCF Ltd namely, that CIMERWA Ltd should bear the consequences of not presenting the cheques for payment are legally unfounded for the following reasons: (i) It was KCF Ltd itself that requested CIMERWA Ltd not to present the cheques to the bank, citing lack of funds in the account at the time; (ii) Article 112 of the law governing negotiable instruments applicable at the time only provides that the drawer of a cheque which was not presented for payment cannot be held liable for damages; it does not exempt the drawer from the underlying obligation to pay; (iii) Accepting KCF Ltd's argument would amount to unlawful enrichment, since KCF Ltd acknowledges that it received cement from CIMERWA Ltd.

Counsel Gahamanyi Justin, counsel for KCF Ltd and Karangwa Raymond, allege that the submissions made by counsel for CIMERWA Ltd are not true because

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the cement bags delivered in September, October, and November 2018, as evidenced by the delivery notes, were fully paid for by cheques dated 30/11/2018 and 03/12/2018. He further submits that the allegations of CIMERWA Ltd that it received no payment, while simultaneously it states that the cheques in question had expired after more than 240 days, yet the legal validity of a cheque is limited to 60 days, are contradictory and untruthful. He also notes that the letter dated 31/07/2019 does not indicate that the cheques issued were meant to replace earlier ones, even if that were the case, CIMERWA Ltd would have no valid claim, as it acknowledges receipt of the cheques and fails to demonstrate the existence of any other outstanding debt corresponding to their value.

He concludes on this issue by stating that both the cheque dated 30/11/2018 and the one dated 03/12/2018 constituted payment. Therefore, if CIMERWA Ltd now claims that it received no payment, it bears the burden of explaining why it failed to present the cheques for encashment, yet Law no 32/2009 of 18/11/2009 relating to negotiable instruments, which was in force at the time, as well as under the current Law no 060/2021 of 14/10/2021 governing negotiable instruments, clearly explains it.

During the hearing held on 06/06/2024, Counsel Gahamanyi Justin added that the mere fact that CIMERWA Ltd was given the cheques equivalent to the debt owed sufficed to constitute payment, and that any negligence in presenting the cheques for encashment

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could not be attributed to KCF Ltd. He added that, in accordance with Article 112 of the law governing negotiable instruments, the loss resulting from failure to cash out a cheque falls upon the bearer. When asked whether the cheques were actually honoured, he responded that he could not confirm. Consequently, the Court ordered KCF Ltd to submit, no later than 13/06/2024, the banking statement of its accounts covering the period from 25/11/2018 to 06/09/2019.

With respect to the interests claimed by CIMERWA Ltd, Counsel Gahamanyi Justin submits that, since the debt allegedly owed to CIMERWA Ltd was already paid out, the compensatory interests claimed by the company cannot be upheld, as there would be no basis to support such a claim.

During the hearing held on 09/10/2024, Counsel Gahamanyi Justin explained that the assertion by CIMERWA Ltd—that there were no funds in the account at the time the cheques were issued—should be disregarded, as the bank statement clearly indicates that a total of 654,331,953 Frw transited through KCF Ltd's account between 25/11/2018 and 06/09/2019. He further submitted that, even if there had been no funds in the account, this would not have posed any problem, as KCF Ltd had a good working relationship with BPR Bank Plc, under which the bank would honour cheques despite insufficient funds, by allowing overdrafts due to the trust it had in the company.

He further states that CIMERWA Ltd failed to demonstrate whether it had ever presented the issued

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cheques to the bank for encashment. He emphasized that the cheques in question were crossed cheques, such that that if CIMERWA Ltd had submitted them while there were insufficient funds on KCF Ltd's account, the bank would have stamped them accordingly and notified KCF Ltd that it had issued bouncing cheques.

He concludes by stating that CIMERWA Ltd cannot rely on its own inaction to claim that it was given bouncing cheques, while it failed to present them to the bank within the prescribed time for encashment, and therefore must bear full responsibility for its own inaction.

DETERMINATION OF THE COURT [29] In this case, both parties agree that CIMERWA Ltd supplied cement to KCF Ltd and that there was an outstanding debt to be paid out. The point of contention lies in whether that debt was effectively paid out or remained unpaid, as well as whether there are any interests accrued on the debt in case the debt was not paid out.

- a. Determining whether KCF Ltd owes CIMERWA Ltd money [30] In this case, both parties agree that there was an outstanding cement debt of 90,350,000 Rwandan Francs owed by KCF Ltd to CIMERWA Ltd. The disagreement, however, lies in the fact that KCF Ltd states that it settled this debt by two cheques dated 30/11/2018 and 03/12/2018, and that CIMERWA Ltd should bear the consequences of failing to present them for encashment.

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Conversely, CIMERWA Ltd contends that the cheques were bouncing and, as such, the debt remained unpaid. The issue to be determined is whether the issuance of the cheques by KCF Ltd, despite the failure of CIMERWA Ltd to present them to the bank, discharges the debt, or whether it does not. In order to resolve this issue, the Court examined the legal regime governing cheques as a form of payment under negotiable instruments, including their legal value, as provided for by Law no 32/2009 of 18/11/2009 governing negotiable instruments, which was applicable at the time the disputed cheques were issued⁵. The Court further considered whether the cheques issued fulfilled the conditions required to constitute valid payment and whether their mere issuance extinguished the debt owed by KCF Ltd to CIMERWA Ltd. [31] With regard to the validity of a cheque, the law provides that a cheque is valid under specific conditions, as provided for by the aforementioned Law no 32/2009 of 18/11/2009 governing negotiable instruments, as well as the Regulation no 006/2015 of 16/09/2015 of the National Bank of Rwanda relating to bouncing cheques : - The drawer of a negotiable instrument: 1° promises that, when legally presented, it shall be accepted and cashed out according to its value; 2° guarantees, if it is dishonoured, to

5 Article 110 states that: “A cheque is an unconditional order in writing that is addressed by its signatory to one bank or one financial institution, and requires to pay on demand a sum certain in money to the drawer or to a specified person or to the bearer. The name of the bank or the financial institution on which the cheque is drawn shall be clearly indicated”.

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compensate the holder or any endorser who ordered its payment; 3° certifies also that he/she cannot oppose its encashment for the legitimate bearer (article 76 of the said Law); - A cheque shall remain valid for sixty (60) days as from the date of its issuance (article 76 of the aforementioned Law); - The drawer has the following obligations including to keep sufficient funds in the account on the due date until the expiration of validity of the issued cheque (article 5 of the above-mentioned regulations). [32] The Court finds that, based on the foregoing, the legislator demonstrated that the mere issuance of a cheque to its intended payee is not enough for the drawer to feel that he/she paid out the debt . Rather, it imposes on the drawer the obligation to ensure that sufficient funds are available in their account on the date the cheque is

due for payment until its expiration, and that they shall not oppose its payment. This shows that a cheque which does not meet these requirements is not valid, and the drawer remains liable to pay the payee in case the cheque is dishonored. [33] The foregoing is supported by the legal scholar Thierry Bonneau, who in his book *Droit bancaire* states that a cheque is a written order directing a financial institution to pay the bearer the amount indicated

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thereon⁶. The expert further explains that a cheque comprises two elements: first, the parties involved namely, the drawer, the payee (le bénéficiaire), and the bank (the payer); and second, the availability of funds (la provision). Jérôme Lasserre Capdeville and others also indicate that a cheque can only exist if both conditions known as the conditions de fond à la création du chèque (substantial conditions for the creation of the cheque), are met. In this case, the debate focused only on the availability of funds, as that is the issue in dispute. Regarding the funds that can be transacted (available funds), the legal scholars identified four essential conditions that must be fulfilled for a cheque to be considered a negotiable instrument: - The presence of funds in the drawer's account (caractère préalable/ prior nature of a cheque) at the time of issuing and handing in the cheque. This means that mere writing and handing in the cheque is not enough ; the cheque must confer on the holder the right to the amount stated ; - The availability of sufficient funds (caractère suffisant/ sufficiency nature of a cheque) : the drawer must have at least the

⁶ “Le chèque est un document écrit comportant des mentions obligatoires et “par lequel une personne appelée tireur donne l'ordre à un établissement de crédit, appelé tiré, de payer à vue une certaine somme à une troisième personne, appelée bénéficiaire, ou à son ordre” Thierry Bonneau, *Droit bancaire*, 14e éd., LGDJ, Paris, 2021, p.482. ⁷ Jérôme Lasserre Capdeville et les autres, *Droit bancaire*, 3e éd, Dalloz, Paris, 2021, P.600.

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amount indicated on the cheque in their account; - The funds must be available (caractère disponible/availability character): meaning the funds should be immediately accessible for payment; - The cheque must be irrevocable (caractère irrevocable/ irrevocable nature): the drawer cannot revoke it or prevent the bank from paying it (except as otherwise provided by law), and the cheque must remain with the payee until payment or expiry of the cheque's prescription period (Expiration du délai de prescription du chèque). [34] Regarding the cheques issued by KCF Ltd, as previously noted, KCF Ltd and Karangwa Raymond base their argument on Article 112 of the aforementioned Law on negotiable instruments, which provides that " the drawer or endorser of a cheque shall not be liable in case the bearer or endorsee did not presented it for payment in accordance with the law." They allege that the entire debt arising from the agreement of 12/04/2017 was paid out by cheques as payment instruments, and that this alone is sufficient to assert that CIMERWA Ltd was paid. Consequently, KCF Ltd is not liable for the negligence of CIMERWA which failed to present the cheques for encashment. [35] As explained above, for a

cheque to constitute valid payment, it must fulfill the required legal conditions outlined above. However, as also elucidated, both cheques

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issued by KCF Ltd did not meet those conditions. KCF Ltd and Karangwa Raymond allege that by mereissuance of the cheques, article 112 absolves them from liability for non-payment. The Court, therefore, examined the true intent and interpretation of this provision to determine whether failure to present cheques for encashment extinguishes the underlying debt, as claimed by KCF Ltd and Karangwa Raymond in their submissions. [36] The Court finds that this article, along with the law governing negotiable instruments, primarily aims to regulate the transaction related to negotiable instruments, as stated in its Article 1 and provides that, in article 6 the rules of the civil code including the Law governing commerce and contracts, that are not inconsistent with this Law, shall apply to negotiable instruments. The Court finds that the matters related to the debt fall under the scope of those the rules mentioned, while this law regulates only the modes of payment in such a way that the cheque issued as payment becomes invalid or expires, this does not extinguish the underlying debt on which the cheque was based. [37] that the underlying debt remains enforceable and that the creditor retains the right to pursue recovery through all legal avenues. For example, the in the case of *Nova (Jersey) Knit Ltd v Kammgarn Spinnerei GmbH*

[1977] 1 WLR 713 (CA)7, the English Court of Appeal held that the issuance of a negotiable instrument—in that case, a bill of exchange—does not extinguish the debt if

7 Accessible at <https://vlex.co.uk/vid/nova-jersey-knit-ltd-792986765>

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the instrument remains unpaid; rather, the principal obligation survives. Concerning cheques, The Law Society Gazette noted that the issuance of a cheque gives rise to two separate agreements: one for the supply of goods or services and the other for payment⁸. It follows that if the agreement embodied in the cheque is invalid or fails, this does not affect the validity or enforceability of the underlying contract upon which the cheque is based. [38] Based on the foregoing analysis, the Court finds that Article 112 of Law N° 32/2009 of 18/11/2009 on negotiable instruments, which was in force at the time the cheques in question were issued, and Article 108 of Law n° 060/2021 of 14/10/2021 currently governing negotiable instruments, should be interpreted as follows: - A cheque is valid only if it is backed with funds from the date of issuance (the date indicated on the cheque) until its expiration (when it is no longer valid); - The mere issuance of a cheque is not enough for the drawer to be sure that he/she paid out his/her debt; rather, it also imposes an obligation on the drawer to assure the payee that there are sufficient funds in the account on

8 “When a cheque is tendered in payment for goods or services, there are two distinct contracts. The contract for the supply of the goods or services is separate from the contract represented by the cheque. That second contract is an unconditional promise to pay the recipient”. In The Law Society Gazette, <https://www.lawgazette.co.uk/news/benchmarks-customers-face-cheque-mate-the-difficult-battle-to-justify-a-stopped-cheque-/21854.article>

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the date the cheque is due for payment and until it expires; - The contract enshrined in the cheque is distinct from the one on which the payment is based. This means that if the cheque cannot be cashed out for any reason, this does not extinguish the principal debt. Once a cheque becomes invalid, the creditor retains the right to pursue payment of the debt through any other legally recognized means; - The law governing negotiable instruments applies solely to the agreements contained within such instruments and the mechanism of payment, but does not govern the basis of the debt to be paid. [39] With regard to the case at hand, the Court finds that the cheques referred to by KCF Ltd's legal counsel as constituting payment of the debt owed to CIMERWA Ltd are the cheque dated 30/11/2018, valid until 29/01/2019, and the cheque dated 03/12/2018, valid until 02/02/2019, each in the amount of 51,000,000 Frw. The bank statement submitted at the Court's request indicates that between 30/11/2018 and 01/03/2019, KCF Ltd did not have sufficient funds in its account, as of that date, it had a debt of 1,507 Frw, yet the last cheque had expired on 02/02/2019. This demonstrates that the cheques were not backed with sufficient funds from the date of issuance

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until their expiration, in violation of the applicable legal provisions and regulations previously mentioned⁹. [40] The Court finds that the cheques issued by KCF Ltd were invalid as they were not backed by sufficient funds at the time of issuance. Consequently, they could not constitute valid payment. Given that CIMERWA Ltd never received payment, the Court finds that the debt owed by KCF Ltd amounting to 90,350,000 Frw remains outstanding in its entirety. This amount is undisputed, as KCF Ltd itself acknowledges that the disputed cheques were intended to settle this specific debt. Accordingly, KCF Ltd is under the obligation to repay it. [41] The Court further finds that KCF Ltd's assertion that the issuance of cheques alone constitutes payment is not true, as long as a cheque is not cashed out and this does not result in the transfer of funds from the account, no payment is effected. The Court also notes that KCF Ltd does not dispute the debt, a fact substantiated by its letter dated 30/09/2020 addressed to CIMERWA Ltd, titled: “Outstanding Balance Rwf 99,350,000.” Consequently, the Court finds that KCF Ltd retained the funds despite having received goods, which amounts to unlawful enrichment.

⁹ Articles 76 and 113 of Law n° 32/2009 of 18/11/2009 relating to negotiable instruments, which was in force at the time the disputed cheques were issued, together with Article 5 of Regulation No 006/2015 of 16/09/2015 of the National Bank of Rwanda governing bouncing cheques.

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[42] Regarding KCF Ltd's claim that the cheques were crossed (chèques barrés) and thus intended solely for deposit into a bank account, and that due to its relationship with the bank, the latter would have honoured the cheques by allowing an overdraft (dépassement) had CIMERWA Ltd presented them, the Court finds this argument is unfounded because KCF Ltd never communicated such information to CIMERWA Ltd. On the contrary, the case file shows that KCF Ltd wrote to CIMERWA Ltd requesting patience due to delayed payment and even issued replacement cheques, which similarly were not cleared. If KCF Ltd had indeed had such an arrangement with its bank, it would have informed CIMERWA Ltd accordingly. Moreover, this argument does not negate the existence of the debt, as, as previously explained, no funds were transferred from KCF Ltd's accounts to CIMERWA Ltd. b. Whether CIMERWA Ltd should be awarded the interest arising from the outstanding debt [43] Article 144 of the Law n° 45/2011 of 25/11/2011 governing contracts states that "If the breach of the contract consists of a failure to pay a sum of money or to render a performance with fixed or ascertainable monetary value, interests are calculated from the time for performance was due less all deductions to which the party in breach is entitled". [44] As previously explained, KCF Ltd failed to repay the debt it owed to CIMERWA Ltd, a commercial company that anticipated earning profits from the said transaction. CIMERWA Ltd was unable to realize those

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profits for the entire period it remained unpaid by KCF Ltd. Based on the applicable legal provisions referred to above, CIMERWA Ltd is entitled to interest on the principal amount of 90,350,000 Frw, calculated from the date the debt was due until the date of the judgment. [45] Regarding the date from which interest should begin to accrue, the Court finds that the appropriate date is when CIMERWA Ltd became aware that it would no longer receive payment. The case file shows that after the dishonor of the cheques in dispute, KCF Ltd wrote to CIMERWA Ltd on 31/07/2019 acknowledging the debt and issuing new cheques that were to be cashed out on 03/09/2019 and 05/09/2019. CIMERWA Ltd confirms that these cheques were intended to pay out the outstanding debt and accepted that the debt was to be paid on those dates, as indicated in their submissions. Therefore, the Court determines that interest should be calculated from 05/09/2019—the date the last cheque was issued¹⁰—until 15/11/2024, the date of the judgment, amounting to a total of 1,870 days. [46] With regard to the 18% interest rate requested by CIMERWA Ltd, the Court finds that there is a precedent set in various cases indicating the applicable rate for calculating interest. For instance, in the case of *Murwanashyaka Jean Damascène v. BAMU TRADE*

10 These cheques dated 03/09/2019 and 05/09/2019 are not the subject of litigation in the present case. They are only referred to for the sole purpose of determining the date from which interest on the outstanding debt should begin to accrue.

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COMPANY Ltd¹¹, which relied on the precedent set in *Mugwaneza Carine Sandrine v. Bank of Kigali Plc*¹², the Court held that interest should be calculated based on the average lending rate (taux moyen de prêt publicized by the National Bank of Rwanda. [47] The Court finds that the interest to be awarded to CIMERWA Ltd shall be calculated based on the applicable average lending rate of 15.41% as published publicized by the National Bank of Rwanda in September 2024¹³. The interest shall be computed over the 1,870-day period during which KCF Ltd failed to pay out the debt, up to the date of the judgment. The calculation is as follows: $90,350,000 \text{ Frw} \times 15.41 \times 1870 \text{ days} \div (360 \times$

100) = 72,321,912 Frw. II.2. Whether Karangwa Raymond can be held jointly liable with KCF Ltd for payment of the alleged debt [48] Counsel Ndahimana Jean Bosco, representing CIMERWA Ltd, alleges that the cement supplied to KCF Ltd was intended for the construction of a market place. However, after receiving the cement, the company's Managing Director, Karangwa Raymond, refused to effect payment. Counsel argues that Karangwa Raymond

¹¹ Judgment RS/INJUST/RCOMOOOO3/2022/SC rendered by the Supreme Court on 24/05/2024, Paragraph 27 ¹² Judgment RS/INJUST/RCOM00014/2022/SC rendered by the Supreme Court on 31/03/2023, paragraphs 53-55 ¹³ This was the applicable average lending rate on 15/11/2024 at 9 am when the

judgment

was pronounced. Retrieved from <https://www.bnr.rw/yieldcurve>.

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should be held jointly liable with the company for the unpaid debt, as he personally played a role in the non- payment. He contends that Karangwa Raymond used the company as an instrument of fraud. [49] He alleges that in establishing joint liability of Karangwa Raymond with the company he manages, the Court should rely on Article 92, paragraph 4, of Law no 007/2021 of 05/02/2021 governing companies¹⁴, as well as on various precedents set by the Supreme Court, including cases such as *LETSHEGO RWANDA Ltd v. Umubyeyi Marie Claire*¹⁵ and *Twagiramungu Vénuste v. Rwanda Revenue Authority*¹⁶. In these cases, the Court established that the responsibility of directors or shareholders is what is referred to “piercing the corporate veil” or “lifting the veil of the corporation” is an exceptional remedy established exclusively by the Court, which disregards the distinction between the separate legal personality of the company and that of its owners or shareholders based on the aforementioned provision. [50] Counsel Gahamanyi Justin, representing KCF Ltd and Karangwa Raymond, argues that a commercial company duly incorporated under the law possesses legal personality distinct from that of its directors and

14 This article states that: “A court may pierce the corporate veil to hold a shareholder liable for obligations of the company if the court finds that the shareholder has abused the company status form for fraudulent or illegal purposes or abused the company’s assets as if they were personal assets”. 15 See Judgment RS/INJUST/RCOM 00009/2021/SC rendered by the Supreme Court 29/04/2021

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shareholders. He contends that even though KCF Ltd should not be held liable in this case, he does not figure out any legal basis upon which CIMERWA Ltd claims that Karangwa Raymond should be held personally liable for actions that were not his own. He further asserts that CIMERWA Ltd has not demonstrated, even minimally, that Karangwa Raymond misappropriated or damaged company assets. DETERMINATION OF THE COURT [51] Article 95, paragraph one, of the Law n°17/2018 of 13/04/2018 governing companies stipulates that “with the exception of an unlimited liability company, a shareholder is not liable for the obligations of a company only because of being a shareholder (...)”. Paragraph 5 of the same article reads that: “A court may pierce the corporate veil to hold a shareholder liable for obligations of the company if the court finds that the shareholder has abused the company form for fraudulent or illegal purposes or abused the company’s assets as if they were personal assets”. [52] The Court finds that the aforementioned provision outlines three circumstances under which it may pierce the corporate veil to hold a shareholder personally liable for the obligations of the company. These are: (1) when the shareholder has abused the corporate form for fraudulent purposes; (2) when there has been a violation of the law; and (3) when company assets have been misused as personal property.

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[53] The use of this principle was also thoroughly elaborated in the case of Munyampundu Antoine and another v. Rwanda Revenue Authority¹⁷, which leveraged in the precedent set in Twagiramungu Vénuste v. Rwanda Revenue Authority¹⁸. In both cases, the Court reiterated that holding directors or shareholders personally liable referred to as “piercing the corporate veil” or “lifting the veil of the corporation”—is an exceptional remedy that can only be established by the Court. It emphasized that such liability must be based on clearly established grounds, as the circumstances under which the corporate veil may be lifted are strictly limited and must demonstrate why the directors or shareholders should be held accountable for obligations otherwise attributable to the company. [54] In Murwanashyaka Jean Damascène v. BAMU TRADE COMPANY Ltd¹⁹, the Court, relying upon the precedents and legal writings previously cited, clearly elucidated five following principles triggering the liability of directors and shareholders a company: a. For a shareholder to be held liable for acts of the company, the following two conditions must be met each independently sufficient: (i) the shareholder must have abused the corporate form for purposes of fraud or in violation of the

17 See Judgment n° RCOMAA 00040/2016/SC rendered by the Supreme Court on 22/12/2017, paragraph 25. 18 See Judgment RCOMAA 0056/2016/SC-RCOMAA 0061/16/CS, rendered by the Supreme Court on 14/07/2017, paragraph 22. 19 Judgment RS/INJUST/RCOMOOO13/2022/SC rendered by the Supreme Court on 24/05/2024, paragraph 27

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law; and (ii) the shareholder must have misused the company's assets as though they were private assets; b. The personal liability of directors or shareholders is a legal exception, and can only be established by the Court; c. In establishing such liability, the Court must base its decision on clearly established and justified grounds, specifying the reason the shareholder must bear personal responsibility for what would normally be attributed to the legal entity; d. Regarding the misuse of the corporate form for fraudulent or unlawful ends, it must be shown that the shareholder acted with intent to prejudice others, believing that they would not be held personally accountable ; e. The shareholder's acts must have been aimed at securing personal benefit, rather than the interests of the company. [55] With regard to this case, the Court finds that for it to pierce the corporate veil and hold Karangwa Raymond personally liable, CIMERWA Ltd would have proved that: (i) Karangwa Raymond abused the corporate form with intent to commit fraud; Or that (ii) he violated the law; Or that (iii) he misused company assets as though they were his personal property, in such a way as to cause non-payment of the debt. The Court finds that CIMERWA Ltd failed to demonstrate any of the above. The company did not adduce evidence of fraud allegedly

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committed by Karangwa Raymond, nor of any legal violation or intent to prejudice others, or that he was acting for personal gain. Accordingly, the conditions required to lift the corporate veil and impose personal liability are not met in this case. [56] Based on the provisions of Article 95 of the above- mentioned Law no 007/2021 of 05/02/2021 governing companies and the elucidation previously provided, the Court finds that Karangwa Raymond should not be ordered to share liability with KCF Ltd in the repayment of the claimed debt. II.3. Determining whether KCF Ltd should be ordered to reimburse CIMERWA Ltd the amount of 11,650,000 Frw, previously paid in execution of judgment RCOMA 00555/2022/HCC [57] Counsel Ndahimana Jean Bosco, representing CIMERWA Ltd, submits that in case the Supreme Court finds that judgment RCOMA 00555/2022/HCC, for which a review is applied for, is vitiated by injustice, and determines that CIMERWA Ltd was indeed entitled to the payment of the debt it claims, the Court should order KCF Ltd to reimburse the amount of 11,650,000 Frw, which the Commercial High Court had previously ordered CIMERWA Ltd to refund, calling it the surplus of the payment received. [58] Counsel Gahamanyi Justin, representing KCF Ltd, argues that the order requiring CIMERWA Ltd to pay 11,650,000 Frw to the company he represents was based on the finding that CIMERWA Ltd had received an

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amount exceeding the payment it was claiming. He further contends that since CIMERWA Ltd has failed to refute this determination, it has no valid grounds to challenge the that judgment. DETERMINATION OF THE COURT [59] The Commercial High Court ordered CIMERWA Ltd to reimburse KCF Ltd the surplus amounting to 11,650,000 Frw of the payment that CIMERWA Ltd was entitled to recover, based on the fact that CIMERWA Ltd had received two cheques totaling 102,000,000 Frw, while the debt it claimed was 90,350,000 Frw. As previously explained, KCF Ltd never actually paid the debt owed to CIMERWA Ltd, as the cheques it was given were never cashed out. KCF Ltd could not lawfully demand the return of funds it never paid out, as this would amount to unlawful enrichment. Therefore, KCF Ltd must return the 11,650,000 Frw to CIMERWA Ltd in accordance with Article 136, 3° of Law No. 45/2011 of 25/11/2011 governing contracts, which empowers the court to order restitution to prevent unlawful enrichment. II.4. Determining whether the damages requested for are legally founded [60] Counsel Ndahimana Jean Bosco, representing CIMERWA Ltd, requests that the company he represents be awarded 7,500,000 Frw as the cost of the proceedings and advocate fee, on the grounds that it was dragged into court, which caused it to incur losses in terms of resources

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spent in following up the proceedings and hiring legal counsel. [61] Counsel Gahamanyi Justin, representing KCF Ltd, alleges that the damages claimed by CIMERWA Ltd is unfounded, asserting instead that it was CIMERWA Ltd which dragged KCF Ltd. into court. He maintains that it is therefore CIMERWA Ltd that should be ordered to pay 7,500,000 Frw as the cost of proceedings and advocate fee. [62] Article 111 of Law No. 22/2018 of 29/04/2018 relating to the civil, commercial, labor, and administrative procedure, as amended to date, provides that the claim for representation fees is an incidental claim to the principal claim aiming to repay expenses incurred during judicial proceedings. The Court finds that the claim by KCF Ltd for representation and the cost of proceedings amounting to 7,500,000 Frw is unfounded, as the party has lost the case and is therefore not entitled to such reimbursement. [63] With regard to the representation fees and the cost of proceedings claimed by CIMERWA Ltd, the Court finds that the company is entitled to be awarded such fees as it is the successful party in the case. However, the Court finds that the amount of 7,500,000 Frw claimed to be excessive, especially given the absence of supporting evidence. In its discretion, the Court therefore awards 300,000 Frw for the cost of proceedings and 500,000 Frw as advocate fee. III. DECISION OF THE COURT

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[64] Holds that the application by CIMERWA Ltd for review on grounds of injustice of the judgment rendered in case RCOMA 00555/2021/HCC by the Commercial High Court on 20/09/2022 has merit; [65] Holds that the

judgment

RCOMA 00555/2021/HCC rendered by the Commercial High Court on 20/09/2022 is overturned; [66] Holds that Karangwa Raymond is not jointly liable with Kigali Ceramica Furniture Ltd for the payment of the debt in question; [67] Orders Kigali Ceramica Furniture Ltd to pay CIMERWA Ltd the amount of 90,350,000 Frw as the debt owed; [68] Orders Kigali Ceramica Furniture Ltd to pay CIMERWA Ltd the amount of 72,321,912 Frw as interests; [69] Orders Kigali Ceramica Furniture Ltd to reimburse CIMERWA Ltd 11,650,000 Frw as explained above; Orders Kigali Ceramica Furniture Ltd to pay CIMERWA Ltd 800,000 Frw for advocate fee and the cost of the proceedings.

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Prepared on 11 October 2026 · Esheria