

RWANDA / JUDGMENT

MIHIGO v. AKARERE KA KARONGI

RS/INJUST/RCOM 00007/2024/SC

COURT

Supreme Court

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MIHIGO v. AKARERE KA KARONGI

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Text

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MIHIGO v. AKARERE KA KARONGI [Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00007/2024/SC (Cyanzayire, P.J., Kazungu na Muhumuza J.) 20 Kamena 2025] Amategeko agenga imiburanishirize y'imanza z'ubucuruze – Inyungu zo gutanga ikirego ku muntu weguriwe umwenda (cession de créance) – Igikorwa cyo kwegurira undi umwenda ntigishobora kuba itegeko k'ugomba kwishyura mu gihe atabyemeye cyangwa ngo abe yabimenyeshejwe – Mu gihe bigaragara ko hatabayeho kwegurira undi umwenda (cession de créance) mu buryo bweruye, uweguriwe umwenda ntiyagira inyungu zo kurega asaba gukurikirana uburenganzira bwe n'ubwo abishingira ku masezerano yo kwikiranura yabaye hagati ye n'uwamweguriye umwenda kuko nta nyungu itaziguye (direct) kandi bwite (personel) aba afite. Incamake y'ikibazo: Sosiyete Consutancy Buiding Services Company Ltd (CBS), yareze Akarere ka Karongi ivuga ko kanze kuyishyura amafaranga angana na 17.001.597Frw ivuga ko akomoka ku mirimo yari yagakoreye. Akarere ka Karongi karatsindwa, gategekwa kwishyura CBS, ariko irangizarubanza rirananiranwa. Mihigo Bernard wari umunyamategeko wa sosiyete CBS avuga ko imufitiye umwenda ungana na 15.750.000Frw. Mu rwego rwo gukemura icyo kibazo, impande zombi zikorana inyandiko yiswe amasezerano yo kwikiranura, aho bumvikanye ko Mihigo yeguriwe

umutungo wa CBS (cession de créance), kandi ko afite uburenganzira bwo gukurikirana no gufatira imitungo yayo aho iherereye hose mu gihe itubahirije amasezerano yo kwikiranura. Nyuma yaho, Mihigo Bernard yareze Akarere ka Karongi mu Rukiko rw'Ubucurui asaba kwishyurwa, avuga ko yahawe uburenganzira ku mutungo yeguriwe (cession de créance) na sosiyete CBS ku bw'amasezerano yo kwikiranura yagiranye na CBS. Urukiko rw'Ubucuruzi rwaciye urubanza maze rwemeza ko ikirego cya Me Mihigo Bernard kitakiriwe kubera ko nta nyungu afite zo kurega. Mihigo Bernard yajuririye mu Rukiko Rukuru rw'Ubucuruzi, avuga ko afite inyungu n'ububasha bwo gukurikirana amafaranga Akarere ka Karongi kagombaga kwishyura CBS kuko yabihereye uburenganzira. Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza, maze rwemeza ko ubujurire nta shingiro bufite, bityo hagumaho imikiriye y'urubanza rwaciye n'inkiko zabanje. Mihigo Bernard yandikiye Perezida w'Urukiko rw'Ubujurire, asaba gusubirishamo ku mpamvu z'akarengane urubanza RCOMA 00632/2022/HCC rwaciye n'Urukiko Rukuru rw'Ubucuruzi, ku mpamvu yuko inkiko zabanje zemeje ko nta nyungu afite zo gutanga ikirego, bityo ko asanga harabayeho akarengane ubwo inkiko z'Ubucuruzi zangaga kwakira ikirego cye, aho yasabaga Akarere kumwishyura amafaranga yategetswe na CBS kumwishyura hashingiwe ku masezerano y'ubwumvikane imapande zombi zakoranye. Uhagarariye Akarere ka Karongi yiregura avuga ko asanga nk'uko inkiko zibanza zabibonye mu rubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane, Mihigo Bernard nta nyungu

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itaziguye afite imwemerera kuba yarega kubera ko mu rubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane atari arurimo nk'umuburanyi, ahubwo akaba yari arurimo nk'uhagarariye CBS mu mategeko/Avoka, bityo ko asanga sosiyete CBS niyo ifite inyungu itaziguye/direct. Incamake y'icyemezo: Igikorwa cyo kwegurira undi umwenda ntigishobora kuba itegeko k'ugomba kwishyura mu gihe atabyemeye cyangwa ngo abe yabimenyeshejwe. Mu gihe bigaragara ko hatabayeho kwegurira undi umwenda mu buryo bweruye, uweguriwe umwenda ntiyagira inyungu zo kurega asaba gukurikirana uburenganzira bwe n'ubwo abishingira ku masezerano yo kwikiranura yabaye hagati y'impande zombi kuko nta nyungu itaziguye (direct) kandi bwite (personel) aba afite. Ikirego cyatanze gisaba gusubirishamo ku mpamvu z'akarengane nta shingiro gifite.

Amategako yashingiweho: Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 3. Nta manza zifashishijwe.

Urubanza I.IMITERERE Y'IKIBAZO [1] Uru rubanza rukomoka ku manza RCOM 00612/2020/TC na RCOMA 00834/2021/HCC zabaye hagati y'Akarere ka Karongi na Consutancy Buiding Services Company Ltd ("CBS"), aho CBS yaregaga ako karere kutayishyura amafaranga akomoka ku mirimo yari yaragakoreye. Izo manza zaraburanishijwe ziracibwa, Akarere ka Karongi karatsindwa, gategekwa kwishyura CBS amafaranga angana na 17.001.597Frw. CBS nayo yari ifitiye umwenda Mihigo Bernard ungana na 15.000.000Frw; maze mu rwego rwo gukemura icyo kibazo, CBS na Mihigo Bernard bakorana inyandiko ku wa 15/07/2022 bise "Amasezerano yo

kwikiranura hagati ya CBS na Me Mihigo Bernard”, bumvikana ko ubwishyu bugomba gutangwa mu masaha 24 kuva bamaze gusinya ayo masezarano; CBS itakubahiriza icyo gihe Mihigo Bernard akagira uburenganzira bwo kwikurikiranira umututungo wa CBS aho uri hose akishyurwa. Amasaha 24 yarangiye CBS itishyuye, Mihigo Bernard atangira kwishyura Akarere ashingiye ku masezerano yagiranye na CBS. [2] Urubanza rwatangiriye mu Rukiko rw’Ubucuruzi, Mihigo Bernard asaba Urukiko gutegeka Akarere ka Karongi kumwishyura 15.750.000Frw yafatiriwe mu maboko yako, ajyanye no kurangiza urubanza RCOMA 00834/2021/HCC, avuga ko ayakurikirana mu rwego rw’uburenganzira ku mutungo yeguriwe (cession de créance) ku bw’amasezerano yo kwikiranura yagiranye na CBS.

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[3] Mu iburanisha, Mihigo Bernard yabajijwe nyir’umutungo wafatiriwe, asubiza ko ari uwa CBS, abazwa impamvu itari umuburanyi mu rubanza kandi ariyo nyir’umutungo, asubiza ko ari ukubera ko amasezerano yo kwikiranura yagiranye na CBS amuhesha uburenganzira bwo kuwukurikirana, ko we asanga atari ngombwa ko CBS izanwa mu rubanza. [4] Akarere ka Karongi katanze inzitizi y’iburabubasha ry’Urukiko rw’Ubucuruzi kavuga ko igikorwa cy’Akarere cyo kudashyira amafaranga kuri konti yavuzwe ubwabyo atari ubucuruzi ku buryo biregerwa mu Rukiko rw’Ubucuruzi. [5] Ku wa 07/10/2022, Urukiko rw’Ubucuruzi rwaciye urubanza RCOM 01261/2022/TC, rwemeza ko ikirego cya Me Mihigo Bernard kitakiriwe kubera ko nta nyungu afite zo kurega. [6] Mihigo Bernard yajuririye mu Rukiko Rukuru rw’Ubucuruzi, avuga ko afite inyungu n’ububasha bwo gukurikirana amafaranga Akarere ka Karongi kagombaga kwishyura CBS, CBS ikaba yarahise irugobokamo bwa mbere muri urwo Rukiko (HCC). [7] Ku wa 24/10/2022, Urukiko Rukuru rw’Ubucuruzi rwaciye urubanza RCOMA 00632/2022/HCC, rwemeza ko ubujurire bwa Mihigo Bernard nta shingiro bufite, rwemeza ko hagumye imikirize y’urubanza RCOM 01261/2022/TC rwaciye n’Urukiko rw’Ubucuruzi ku wa 07/10/2022. Rwategetse Mihigo Bernard kwishyura Akarere ka Karongi amafaranga ibihumbi magana atanu (500.000 Frw) y’indishyi z’ibyagiye ku rubanza mu rwego rw’ubujurire. [8] Mu gufata icyo cyemezo, Urukiko Rukuru rw’Ubucuruzi rwashingiye ku kuba nta nyungu Mihigo Bernard afite zo gufatira amafaranga harangizwa urubanza RCOMA 00834/2021/HCC mu gihe Akarere ka Karongi kashatse kururangiza ku neza bigakomwa mu nkokora n’impamvu ziturutse kuri CBS kagombaga kwishyura. [9] Ku wa 16/11/2022, Mihigo Bernard yandikiye Perezida w’Urukiko rw’Ubujurire, asaba gusubirishamo ku mpamvu z’akarengane urubanza RCOMA 00632/2022/HCC rwaciye n’Urukiko Rukuru rw’Ubucuruzi ku wa 24/10/2022. [10] Ku wa 30/10/2023, Perezida w’Urukiko rw’Ubujurire yandikiye Perezida w’Urukiko rw’Ikirenga asaba ko urwo rubanza rwasubirwamo ku mpamvu z’akarengane, nawe amaze gusuzuma raporo yarukorewe, mu cyemezo cye N° 160/CJ/2023 cyo ku wa 31/10/2023 yemeza ko urubanza RCOMA 00632/2022/HCC rusubirwamo n’uru Rukiko ku mpamvu z’akarengane, ruhabwa RS/INJUST/RCOM 00007/2024/SC. [11] Uru rubanza rwagomba kuburanishwa ku wa 05/11/2024, uwo munsu iburanisha rirasubikwa hashingiwe ku busabe bw’Umuyobozi w’Akarere ka Karongi mu ibaruwa ye yo ku wa 10/10/2024 aho yasabaga ko imanza zose ako Karere karimo

nk'umuburanyi zasubikwa kugirango gashake Avoka uzajya ukaburanira izo manza. [12] Urubanza rwongeye guhamagazwa ku wa 13/01/2025, Mihigo Bernard yitabye yunganiwe na Me Ntirenganya Seif Jean Bosco, Akarere ka Karongi gahagarariwe na Me Umwali Claire. Muri iryo buranisha Inteko yasuzumye imanza zaciwe n'Urukiko rw'Ubucuruzi hamwe n'Urukiko Rukuru rw'Ubucuruzi, kimwe n'inyandiko mvugo ya raporo y'inama ntegururubanza, Urukiko rusanga ari ngombwa ko habanza gusuzumwa ikibazo kijyanye no kumenya niba Mihigo Bernard

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yari afite inyungu zo kurega, icyemezo kizafatwa kikaba aricyo kizagena amerekezo y'urubanza, niba ikirego cyazakomeza hasuzumwa ibibazo byerekeranye n'urubanza mu mizi. [13] Nyuma yo kubona ko ababuranyi batari biteguye kuburana ku bijyanye n'ikibazo cyavuzwe haruguru kirebana n'inyungu, Urukiko rwabasabye kujya gutegura imyanzuro irebana nacyo, babwirwa ko umunsi urubanza ruzongera kuburanishirizwaho bazawumenyeshwa n'ubwanditsi bw'Urukiko. [14] Uru rubanza rwagombaga guhamagazwa ku wa 11/03/2025, ariko rwimurirwa ku wa 05/05/2025 kubera ko umwe mu bacamanza bagize inteko yari mu butumwa bw'akazi. [15] Ku itariki yavuzwe haruguru iburanisha ryabereye mu ruhamwe, ababuranyi bunganiwe, banahagarariwe nka mbere, uwo munsi hasuzumwa ikibazo kijyanye no kumenya niba Mihigo Bernard yari afite inyungu zo kurega. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba Mihigo Bernard yari afite inyungu zo kurega mu manza zaciwe n'Urukiko Rukuru rw'Ubucuruzi n'Urukiko rw'Ubucuruzi [16] Mihigo Bernard avuga ko mu icibwa ry'urubanza RCOM 01261/2022/TC, Urukiko rw'Ubucuruzi rwemeje ko nta nyungu afite zo gutanga ikirego, rwemeza ko ikirego kitakiriwe, icyo cyemezo kikaba ari nacyo cyemejwe n'Urukiko Rukuru rw'Ubucuruzi mu rubanza RCOMA 00632/2022/HCC rwaciwe n'urwo Rukiko ku wa 24/10/2022. [17] Akomeza avuga ko Urukiko rw'Ubucuruzi mu kwemeza ko ikirego cye kitakiriwe rwabishingiye ku ngingo ya 3 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, akaba asanga ibyashyingiweho n'Urukiko nta shingiro bifite kuko binyuranyije n'ibyemejwe n'Urukiko rw'Ikirenga mu rubanza RC 00002/16/CS haburana Nyiraromba vs Ngirirshuti rwaciwe ku wa 27/01/2017 mu gika cya 19. Muri urwo rubanza, Urukiko rwasobanuye ko inyungu urega agomba kuba afite kugirango ikirego cye cyakirwe, ari itaziguye (direct) kandi bwite (personnel), ku buryo urega abyemererwa gusa ari uko inyungu zibangamiwe ari ize bwite, kandi n'icyemezo cyazafatwa n'Urukiko ariwe ubwe cyagirira akamaro. Urukiko rwanasobanuye kandi ko ugaragaza inyungu muri ubwo buryo ariwe ugira ububasha bwo kurega. Mihigo Bernard yongeyeho ko asanga afite uburenganzira bumwemerera kuba yasaba umucamanza kumuha ibyo aregera. [18] Anavuga ko ibyo kuba afite inyungu yo kurega, byanagarutswaho n'abahanga mu mategeko barimo, Jean Vincent et serge Guinchard, mu gitabo cyabo cya Procédure civile, aho bavuga ko inyungu zigomba kuba ari iz'ako kanya, zavutse kandi zishingiye ku kintu kiriho, zidashingiye ku kugenekereza kw'ibizakorwa; ibyo bikaba bihura n'ibyo umuhanga Serge Guinchard yavuze mu gitabo cye cya Droit et pratique de la procédure civile, aho avuga ko inyungu zigomba kuba iz'umuntu ku giti cye (personnel), ziriho (né) kandi ari iz'ako kanya

(actuel). Avuga ko kuba inyungu ari iz'umuntu kugiti cye, ari kimwe mu bigaragaza ikirego ko cyatanzwe neza, kuko ntawe utegetswe kurengera inyungu z'undi muntu.

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- [19] Asoza avuga ko asanga harabayeho akarengane ubwo inkiko z'Ubucuruzi zangaga kwakira ikirego cye, zikaba zarabikoze zirengagije ko CBS yandikiye Akarere ka Karongi igasaba ko kamwishyura kuri konti ye amafaranga katsindiwe, kandi kuri iyo baruwa CBS ikaba yarometseho amasezerano y'ubwumvikane agaragaza ko Mihigo Bernard yagombaga guhabwa n'Akarere 15.000.000 Frw, bityo ko asanga afite inyungu mu gutanga ikirego asaba Akarere kwishyura amafaranga kategetswe na CBS kumwishyura. [20] Uhagarariye Akarere ka Karongi avuga ko asanga nk'uko inkiko zibanza zabibonye mu rubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane, Mihigo Bernard nta nyungu itaziguye afite imwemerera kuba yarega kubera impamvu zikurikira:
- a) Mihigo Bernard Ubwe yiyemerera ko inyungu ze zishingiye ku kurangiza urubanza RCOMA 00834/2020/HCC;mu gihe yagaragazaga ububasha bw'Urukiko akaba yarasobanuye ko umwenda wafatiriwe ukomoka ku rubanza rwavuzwe haruguru, kandi akaba atari arurimo nk'umuburanyi, ahubwo akaba yari arurimo nk'uhagarariye CBS mu mategeko/Avoka. Bivuze rero ko mu kurangiza uru rubanza uwa mbere ubifitemo inyungu itaziguye/direct ari CBS aho kuba Mihigo Bernard;
 - b) Kuba Mihigo Bernard avuga ko uburenganzira abukomora ku ibaruwa yo ku wa 18/07/2022 CBS yandikiye Akarere igasaba kwishyura ayo mafaranga kuri konti ya Mihigo Bernard, nyamara CBS yarandikiye Akarere igasaba kurangiza urubanza rwayo atari urwa Mihigo Bernard, binagaragaza ko iyo Mihigo Bernard aza kuba afite inyungu zitaziguye yari guhita ubwe yiyishyuriza Akarere bitagombye kunyura kuri CBS. Ibyo binashimangirwa n'ibyavuzwe na Mihigo Bernard mu iburanisha ryo ku wa 19/10/2022 aho yivugiye ko icyishyurwa ari urubanza atari amasezerano, uko kwiemerera yakoreye mu Rukiko kukaba kwashingirwaho kukamutsindisha;
 - c) Kuba CBS yaragobotse mu rubanza ku bushake, uko kugoboka ku bushake mu rubanza kwayo kugaragaza ko ifite inyungu zitaziguye kw'irangizwa ry'urubanza rwayo, bikaba bitandukanye n'ibyavuzwe mw'iburanisha ry'imanza zabanje ko habayeho cession de créance. [21] Uhagarariye Akarere akomeza avuga ko Urubanza RC 0002/2016/CS Mihigo Bernard agaragaza nka Jurisprudence, asanga rudahuye n'uru ruburanwa ku buryo rwagenderwaho, kuko uretse ko ari imanza zidafitanye isano hagendewe ku kiburanwa, nta n'igereranya Mihigo Bernard yakoze ngo agaragaze aho bihuriye cyangwa se uko ruriya rubanza rugaragaza ko yari afite inyungu itaziguye yo gutanga ikirego. [22] Asobanura ko urubanza rwavuzwe haruguru Mihigo Bernard asaba ko rwashingirwaho nka Jurisprudence, uwitwa Nyiraromba yaregaga Ngirinshuti bari baraburanye imanza zitandukanye, Nyiraromba aratsinda, urubanza rurarangizwa ahabwa ubutaka yatsindiye maze abugurisha Nsabiya remye. Nyuma yaho Nyiraromba yatanze ikirego kirebana n'ivuguruzanya ry'imanza mu Rukiko rw'Ikirenga arega Ngirinshuti, maze Nsabimana arugobokamo. Izo manza

yavugaga ko zivuguruzanya yari yarazitsinze, urubanza rurarangizwa ahabwa ubutaka yari yatsindiye ndetse arabugurisha. Yaje kuregera Urukiko avuga ko uwo yagurishije abuzwa amahoro muri uwo mutungo n'uwo baburanye izo manza, ikirego cye nticyakirwa kubera ko Urukiko rwasanze nta nyungu itaziguye afite kuri uwo mutungo kuko yari yaramaze kuwugurisha. Ibyo asanga bitandukanye n'uru rubanza, aho CBS yaburanye n'Akarere ka Karongi ikagatsinda, mu gihe urubanza rutararangizwa ngo CBS ihabwe ibyo yatsindiye, ikandikira Akarere igasaba

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kurangiza urubanza, birumvikana ko bwari uburenganzira bwayo ndetse inafite inyungu ko urubanza rurangizwa kuruta undi wese, ariko yandika isaba ko yakwishyurirwa kuri konti itari iyayo. [23] Avuga ko Mihigo Bernard abinyujije k'umuhesha w'inkiko yandikiye Akarere ka Karongi akamenyesha ko afatiriye umutungo wa CBS uri mu maboko yako; akaba asanga Mihigo Bernard nta nyungu itaziguye afite ku mutungo wa CBS mu gihe urubanza rutari rwarangizwa, kuko mu gushyira mu bikorwa iryo fatira Akarere kaba kabikoze mu rwego rwo kurangiza urubanza kandi nk'uko yabigaragaje, urubanza rurangizwa rukaba atari urwa Mihigo Bernard. Asoza avuga ko hashingiwe kubyo yasobanuye, asaba Urukiko rw'Ikirenga kwemeza ko nta karengane kabaye mu kutakira ikirego cya Mihigo Bernard, kuko nta nyungu itaziguye afite zo kuba yatanga ikirego. [24] Uhagarariye CBS avuga ko Mihigo Bernard yaburaniye CBC Ltd imanza nyinshi, ko ari muri urwo rwego yagobotse muri uru rubanza ishimangira ko Akarere ka Karongi gakwiye kumwishyura amafaranga bemeraniye mu nyandiko yo kwikiranura, ko ibyo asanga byemewe n'amategeko hamwe na coutume. UKO URUKIKO RUBIBONA [25] Ingingo ya 3 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu iteganya ko ikirego cyakirwa mu rukiko iyo urega afite ububasha, inyungu n'ubushobozi byo kurega, keretse igihe itegeko ribiteganya ukundi. [26] Dosiye y'urubanza igaragaza ko nyuma y'aho ku wa 17/06/2022 haciwe urubanza RCOMA 00834/2020/HCC hagati y'Akarere ka Karongi na CBS, Urukiko Rukuru rw'Ubucuruzi rugategeka Akarere kwishyura CBS 17.100.597Frw, impande zivugwa mu rubanza zagiye zandikirana mu buryo bukurikira mbere y'uko Mihigo Bernard agana inkiko:

- a) Ku wa 15/07/2022, habayeho amasezerano yo kwikiranura hagati ya Mihigo Bernard na CBS, bemeranya ko ubwishyu bw'umwenda wa 15.000.000 Frw CBS ibereyemo Mihigo Bernard bugomba gutangwa nyuma ya masaha 24 abarwa bakimara gusinya ku masezerano, Mihigo Bernard atakwishyurwa muri icyo gihe akagira uburenganzira bwo kwikurikiranira umutungo wa CBS aho waba uri hose akishyurwa nta mananiza CBS ikabimenyeshwa gusa;
- b) Ku wa 18/07/2022, CBS yandikiye Akarere ka Karongi ikagaragariza ko amafaranga yagatsindiye azishyurwa kuri Konti ya Mihigo Bernard;

- c) Ku wa 29/07/2022, Akarere kasubije ibaruwa ya CBS kayimenyesha ko katakwishyura amafaranga katsindiwe kuri konti ya Mihigo Bernard kuko ntaho agaragara mu masezerano CBS yari yaragiranye n'Akarere, gasaba CBS kugaragaza konti ya Company yashyirwaho ayo amafaranga;
- d) Dosiye igaragaza ko ubwishyu bwa 17.001.597Frw bwakozwe n'Akarere ku wa 01/08/2022, kuri konti ya CBS, ariko ku wa 02/08/2022 amafaranga aragaruka (Bounced Payment) kuko basanze konti ifunze;

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- e) Ku wa 09/08/2022, CBS yandikiye Umuhesha w'Inkiko email imugaragariza ko umutungo wayo uherereye mu Karere ka Karongi, ko ariho wakwishyurizwa;
- f) Ku 09/08/2022, Umuhesha w'Inkiko yandikiye Akarere ka Karongi ibaruwa afatira umutungo w'Akarere wagombaga kuvamo ubwishyu bwa Mihigo Bernard;
- g) Ku wa 16/09/2022, CBS yandikiye Akarere ikagaragariza konti yayo iri muri Bank of Africa kayishyuriraho;
- h) Nanone ku wa 19/02/2024, CBS yandikiye Akarere igaha indi konti kayishyuriraho iri muri Equity bank. [27] Umuhanga mu mategeko Daniel LIBERT¹ agaragaza ko kwegurirwa umwenda (cession de creance/Debt assignment) bisobanura kwimurira umwenda hamwe n'uburenganzira n'inshingano zose bijyanye nawo k'uwundi muntu, ko uko kwegurira ari igikorwa cyemewe n'amategeko aho uwo muntu wa gatatu aba nyiri uwo mwenda. Asobanura ko hari igihe umuntu waguhaye inguzanyo ashobora kwiyumvamo ko atagishaka kwita ku kwishyurwa kw'iyi nguzanyo, agahitamo kugurisha uwo mwenda ku wundi muntu wa gatatu; ko iyo bibaye bityo, itangazo ryo Kwegurira Undi Umwenda (Notice of Assignment - NOA) ryoherezwa umuntu ufite uwo mwenda, rimumenyesha ko hari undi muntu ubushinzwe gukusanya amafaranga asigaye atarishyurwa; ko ibyo ari byo bita kwegurira undi umwenda.² [28] Undi muhanga mu mategeko Professor Hugh Beale³, asobanura ko umwenda udahinduka inshingano ku muntu uwurimo, ku wegurirwa uburenganzira ku mwenda keretse igihe urimo umwenda yamaze kubimenyeshwa. Niba urimo umwenda yishyuye uwamugurije mbere yo kumenyeshwa iryo yegurirwa, uko kwishyura biba bifite agaciro kandi biramurengera. Abivuga mu magabo y'icyongereza akurikira: "A debtor is not liable to the assignee until notice of the assignment is given. If the debtor pays the assignor before receiving such notice, the payment is valid and discharges the debt."

1 Daniel Liberto, Debt Assignment: How They Work, Considerations and Benefits; June 29, 2021

2 The term debt assignment refers to a transfer of debt, and all the associated rights and obligations, from Assignment (NOA) is sent out to the debtor, the recipient of the loan, informing them that somebody else is now responsible for collecting any outstanding amount. This is referred to as a debt assignment. 3 Professor Hugh Beale, Chitty on Contracts, 33rd Edition, 2020 Sweet & Maxwell Volume 2 para 21-53 4 "La cession n'est opposable au débiteur, s'il n'y a déjà

consenti, que si elle lui a été notifiée ou s'il en a pris acte"; Serge BRAUDO, Dictionnaire du Droit Privé, Définition de Cession de créance, p.1, consulté le 17/06/2025. « Le cédant est généralement tenu de notifier le débiteur de la cession de créances. Cela informe l'acheteur du changement de créancier et l'oblige à effectuer les versements au cessionnaire plutôt qu'au cédant. Le client peut être tenu de consentir à la cession de créances, selon la législation applicable », Définition d'une cession de créance, Altassura, consulté le 18/06/2025, <https://www.affecturage.fr/>

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- [29] Nanone, uwitwa Serge BRAUDO4 asobanura ko kwegurira undi umwenda (cession) bitagira ingaruka k'urimo umwenda keretse igihe yabanje kubimenyeshwa cyangwa akabyemera.
- [30] Ibi byumvikanisha ko inshingano zo kubahiriza kwegurira undi umwenda zitangira gusa nyuma yo kumenyeshwa mu buryo bwemewe. Igihe atabimenyeshejwe, umuntu ufite umwenda ntashobora gushinjwa kutishyura uweguriwe umwenda. [31] Ku bijyanye n'uru rubanza, dosiye igaragaza ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko Mihigo Bernard nta nyungu afite yo gutanga ikirego asaba gufatira amafaranga y'Akarere ka Karongi harangizwa urubanza RCOMA 00834/2020/HCC, mu gihe Akarere ka Karongi kashatse kururangiza ku neza bigakomwa mu nkokora n'impamvu ziturutse kuri CBS yagombaga kwishyurwa. [32] Hashingiwe ku ngingo ya 3 y'Itegeko N°22/2018 ryo ku wa 29/04/2018 y'itegeko yibukijwe haruguru, byumvikana neza ko muri uru rubanza inyungu zitaziguye kandi bwite zivugwa ari izifitwe na CBS kuko ariyo yaburanye urubanza n'Akarere ka Karongi rukomokaho inshingano yako yo kwishyura CBS kuko katsinzwe urwo rubanza; byongeye kandi, amasezerano hagati ya CBS n'Akarere, ari nayo urubanza rwarangizwaga akomokaho, Mihigo Bernard ntiyari umwe mu bayagize. [33] Urukiko rurasanga, n'ubwo Mihigo Bernard agaragaza ko inyungu zo kurega azikomora ku masezerano yo kwikiranura yagiranye na CBS yamuhaga uburenganzira bwo kwishyurwa n'Akarere, ngo bikagaragazwa n'ibaruwa CBS yandikiye Akarere ikagaragariza konti ya Mihigo Bernard kashyiraho amafaranga kishyuzwa, ubwo burenganzira butuzuye kubera impamvu zikurikira:
- a) Mihigo Bernard atanga ikirego mu Rukiko rw'Ubucuruzi yavuze ko akurikirana 15.750.000Frw mu rwego rw'uburenganzira ku mutungo yeguriwe (cession de créance/ assignment of debt) na CBS, ariko iyi Sosiyete ntiyigeze imenyesha Akarere ka Karongi ko umwenda wayo weguriwe Mihigo Bernard. icyabayeho ahubwo, ni ibaruwa CBS yandikiye Umuyobozi w'Akarere imumenyesha ko amafaranga iberewemo yakwishyurwa kuri konti ya Mihigo Bernard, uwo Muyobozi nawe agasubiza ko ntaho uyu agaragara mu masezerano bagiranye. Abahanga mu mategeko bagaragajwe haruguru basobanura ko igikorwa cyo kwegurira undi umwenda kidashobora kuba itegeko k'ugomba kwishyura, mu gihe atabyemeye cyangwa ngo abe yabimenyeshejwe;
- b) Nk'uko byagaragajwe haruguru, mu ibaruwa CBS yanditse ku wa 16/09/2022, yisubiyeho isaba Akarere ko kayishyura amafaranga kayigomba kayanyujijwe kuri konti N° 04024350004 yafunguwe ku bwa CBS n'Umuyobozi Mukuru wayo Iyamubonye Jean D'Amour muri Bank of Africa. Nanone ku wa 19/02/2024, uyu Muyobozi Mukuru wa CBS yandikiye Akarere ka

Karongi akagaragariza indi konti ifite N° 4002200203301 ya CBS muri Equity Bank kakwishyuriraho amafaranga CBS yatsindiye mu rubanza. Ibi bigaragaza ko CBS iteguriye Mihigo Bernard mu buryo bweruye, uburenganzira bwo gukurikirana ubwishyu bwayo mu Karere nkuko ashaka kubyumvikanisha. [34] Ibi bimaze kuvugwa haruguru kandi bihinyuza ibivugwa na CBS ko isanga Mihigo Bernard yari afite inyungu kuko ngo bari bagiranye amasezerano y'ubwishyu, ko kandi yemera ko ayo mafaranga yayishyurwa n'Akarere ka Karongi, kuko iyo CBS iza kuba yemera ko Mihigo

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Bernard afite inyungu, ntiyari kongera kwandikira Akarere ikagaragariza izindi konti kagomba kuyishyuriraho amafaranga yagatsinzemo. Ibi bikaba bigaragaza ko CBS yari igikurikiranye ubwishyu bwayo ku Karere, bityo Mihigo Bernard akaba atavugaga ko afite inyungu bwite kandi itaziguye mu gihe CBS bagiranye amasezerano yo kwikiranura yari igikurikirana izo nyungu ubwayo. Bityo hashingiwe ku mpamvu zasobanuwe haruguru, bikaba bigaragara ko Urukiko Rukuru rw'Ubucuruzi nta kosa rwakoze rwemeza ko Mihigo Bernard nta nyungu afite zo kurega asaba ko Akarere ka Karongi kategekwa kumwishyura. [35] Hashingiwe kuri ibyo bisobanuro, Urukiko rurasanga nta makosa Urukiko Rukuru rw'Ubucuruzi rwakoze mu kwemeza ko Mihigo Bernard nta nyungu yari afite zo kurega. [36] Ku byerekeranye n'indishyi zinyuranye zari zasabwe na Mihigo Beranard na CBS mu rubanza, Urukiko rurasanga atari ngombwa ko zisuzumwa kuko rusanze nta nyungu Mihigo Bernard yari afite zo gutanga ikirego. III. ICYEMEZO CY'URUKIKO [37] Rwemeje ko ikirego cyatanze na Mihigo Bernard asaba gusubirishamo ku mpamvu z'akarengane urubanza RCOMA 00632/2022/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 24/10/2022, nta shingiro gifite. [38] Rwemeje ko nta nyungu zitaziguye kandi bwite Mihigo Bernard yari afite zo gutanga ikirego asaba gutegeka Akarere ka Karongi kumwishyura 15.750.000Frw yafatiriwe mu maboko yako. [39] Rwemeje ko ntagihindutse ku mikirize y'urubanza RCOMA 00632/2022/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 24/10/2022.

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RESUME MIC

1. MIHIGO V AKARERE KA KARONGI Uru rubanza rukomoka ku ideni Akarere ka karongi kari gafitiye sosiyete CBS ikomoka ku mirimo yari yakoreye akarere ariko ntiyishyurwa bituma Cbs irega isaba kwishyurwa, maze akarere karatsindwa, gategekwa kwishyura. Kubera ko iyi societe CBS nayo yari ifitiye ideni uwitwa MIHIGO, impande zombi zikorana amasezerano yiswe ayo kwikiranura ahesha MIHIGO uburenganzira bwo kwishyura akarere (cession de creance), ariko akarere ntikamwishyura kavuga ko katabimenyeshejwe mu buryo officiel. MIHIGO arega asaba kwishyurwa ashingiye ku burenganzira ahabwa n'amasezerano yakoranye na societe CBS, ariko ikirego cye nticyahabwa ishingiro muri TC no muri HCC, kuko inkiko zavugaga ko nta nyungu yarafite zo kurega nubwo yerekanaga amasezerano amuhesha uburenganzira bwo kwishyura. MIHIGO ntiyishimiye ibyo byemezo maze yandika asaba ko urubanza rwaciwe na HCC rusubirishwamo ku mpamvu z'akarengane, ku

mpamvu yuko uru rukiko rwemeje ikirego cye nta shingiro gifite kuko adafite inyungu zo kurega. Nyuma y'isesengura, urukiko rw'ubujurire rwemeje ko adafite inyungu zo kurega koko.

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CASE PAGE <https://chat.esheria.ai/case-law/rwanda/mihigo-bernard-v-akarere-ka-karongi-assignmentofdebt-supreme-court-2025>

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