

RWANDA / JUDGMENT

PROSECUTION v. GAHIGI

RPA 0101/13/HC/NYA

COURT

High Court

DECIDED

20 April 2014

CASE / FILE NUMBER

RPA 0101/13/HC/NYA

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Text

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PROSECUTION v. GAHIGI [Rwanda HIGH COURT – RPA 0101/13/HC/NYA, (Manirakiza, P.J.,) 20 04 2014] Criminal Procedure law – Appeal – No context can make appeal inadmissible under the pretext that the appellant did not hand over his submissions in case he/she did so just after the judgment is rendered since it is not a ground provided for by the law – Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, art. 1, 2 and 18. Evidence law – Eye witness testimony cannot be disallowed in case the accused disputes that the eye witness's testimony is hearsay while the inculpatory witness does not attest so or the accused demonstrates it otherwise – Law no 15/ of 12/06/2004 relating to evidence and its production, art.65. Child law – The penalties inflicted to the child cannot be increased basing on the fact that he pleaded guilty and seeks forgiveness in addition to the fact that he was a student. Additionally, that inflicted to Didace cannot be increased since it is principle. Facts: In the case RP min 0023/12/tgi/mhg Intermediate Court of Muhanga found guilty Didace Gahigi and his co accused who was still a child of assault and battery which resulted in body permanent incapacity and the loss of one of its parts. The Court sentenced the child to one month of imprisonment suspended in one month while Didace Gahigi was fined to 100. 000 Rwf.

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Both Didace Gahigi and appealed to the High Court, the Chamber of Nyanza. On the day of the hearing Gahigi disputed that he was convicted of an offence he had never committed. On the side of the child, he pleaded guilty and accepted the penalty. Counsel for Didace Gahigi stated that his client was convicted for an offence he had not committed and the appeal of the Prosecution was not accompanied by the submissions. He requested for examination. The Prosecution requested the Court to increase the penalties inflicted to the accused because they are not proportional.

Held: 1. There is no ground which may render inadmissible the action of the Prosecution under the pretext that it did not provide its submissions. It is so done for the other party and even for the Court to know the grounds of appeal. In contrast, the Prosecution provided the submissions before the hearing starts.

2. His request not to consider the testimonies given by Oscar Safari cannot be considered since it is hearsay, he asserted, while the witness in question attests that he saw and even his testimony is relevant and pertinent.
3. The penalties inflicted to the child and Didace Gahigi cannot be increased since they are the Court considered the status of the child, that the child pleaded guilty and that he was a student. In addition, there is no evidence proving that he was sentenced to the least penalty since he did not benefit the reduction of the penalty; rather, he was sentenced to the minimum range of the penalty.. Appeal without merit.

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Appeal of the prosecution has no merit The appealed judgment upheld. The Court fees as ordered, Didace Gahigi should pay

12. 700 Rwf. Statutes and statutory instruments referred to: Law no 01/2012/ol of 02/05/2012 instituting the penal code, article 148. Law no 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 1, 2 and 18. Law no 15/2004 of 12/06/2004 relating to evidence and its production, article 65. No cases referred to:

Judgment.

BRIEF BACKGROUND OF THE CASE [1] Didace Gahigi and Ng. D. were accused of voluntary assault and battery resulting in body permanent incapacity loss of one of its party. Didace Gahigi and Ng. D were convicted in the case RPmin 0023/12/tgi/mhg by Intermediate Court of Muhanga . Ng. D was sentenced to one month and half

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imprisonment suspended in the period of one month while Didace Gahigi was fined 100. 000Rwf. [2] Either Didace Gahigi or the Prosecution appealed. On December 12, 2013 and on May 15, 2014, the day of the hearing Didace Gahigi disputed that he was convicted for the offence he had never

committed while Ng. D stated that he pleaded guilty of the offence of which he was found guilty and so accepts the sentence imposed. Karima, the Counsel, states that Gahigi was found guilty of an offence he was not liable. However, he requested the Court to consider the guilty made by Ng. D. Concerning the appeal of the Prosecution which was not accompanied with the submission, he requested the Court to conduct its examination. The Prosecution in its appeal requested the increase of the penalties since they were not fair. [3] The Court is to assess whether the appeal of the Prosecution which was not accompanied by the submissions could constitute the grounds of its inadmissibility, whether Didace Gahigi was convicted of an offence he had never committed and whether the imposed penalty should be increased. II. ANALYSIS OF LEGAL ISSUES. Whether the fact that the Prosecution appealed and never provided the submission directly after the appeal was launched can constitute the grounds of inadmissibility of the appeal.

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- [4] Karima, Counsel for the accused states that the Prosecution appealed against the judgment just after it was rendered. However, he adds, it did not provide the appeal submissions while the latter mandatorily accompanies appeal. Therefore, he states, they consider it as not lodging an appeal though the Prosecution disputed that the Court would examine the request of the counsel for the accused. [5] By virtue of article 1 of Law no 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure which states that the law applies to all other cases in the absence of specific laws governing such procedures, the Court finds that given that the grounds of inadmissibility of the action as listed on articles 2, 18 of the law no 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure there is no inclusion of submissions, there is no reason as to decline the appeal of the prosecution especially that the submissions are provided to another party to the lawsuit as well as the Court in the context of keeping them aware of the grounds of appeal which the Prosecution did before the hearing of the case commences.
- b. Whether Didace committed an offence he is accused. [6] In his appeal Didace states that the Court found him guilty of an offence he had never committed. He adds that the Court based on statements of people who were not together with him while those who were together with him were not interrogated. He finally states

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that he was convicted without examination of evidence. He states that the crime was committed by Ng. D. Who came to his help. He adds that Nzigamasabo Venant was whipped while he did not possess any stick. Furthermore, he opposes that he could not whip Venant Nzigamasabo while the latter was near his house while there was no conflict between them. When he was asked to list the names of the disregarded exculpating witnesses, he states among others Muhamadi while Safari in his interrogation replied that he « heard » on one hand and he « saw » on the other one. Harerimana on his side states that he found a wounded man. However, did not confirm that it is Didace Gahigi who wounded him. [7] Karima, the Counsel, states that Didace Gahigi was

convicted of assault because Ng. D. who whipped Nzigamasabo was coming for rescue but him did not whip the victim. He adds that all the interrogated arrived after the offence was committed. The Prosecution contends that reveal Nzigamasabo whipped and that Didace Gahigi in his appeal does not contradict evidence based on in his conviction. [8] Despite his dissatisfaction that he has been convicted of an offence he had never committed, Didace Gahigi does not reject that people who arrived first at the crime scene including Safari Oscar. Therefore, the fact that at the time he was interrogated at the Judicial Police Osacar Safari confirmed that Venant Nzigamasabo was whipped by Ng. S. and Didace Gahigi in addition to the fact that at his arruval he saw them fighting both Ng. S.

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and Gahigi possessing sticks and whipping Venant Nzigamasabo, the Court finds that Didace Gahigi and his Counsel cannot deceline his liability by stating that Gahigi Didace was found guilty of an offence he had never committed. Contending that the testimony given by Oscar Safari constitutes hearsay, the Court finds that it cannot be considered since, during his interrogation, Oscar Safari did mention that his statements constitutes hearsay. Rather, he adequately attests that his statements constitutes what he saw. Therefore, the fcst that in his appeal Didace Gahigi does not demonstrate otherwise the testimony given by Oscar Safari, the Court notes that his statements deserve to be considered since his testimony is relevant and pertinent as it is provided for by article 65 of the law no 15/2004 of 12/06/2004 relating to evidence and its production. Whether the penalties imposed on the accused should be increased. [9] The Prosecution in its appeal states that the accused were sentenced to the lesser penalties and hence requests their increase. Karima Etienne, the Counsel states that apart from being lesser, the penalties imposed on Didace Gahigi should not have been pronounced because he had never committed an offence. Regarding Ng. D.'s guilty plea and that he sought forgiveness, he requests the court to consider those factors so as to grant the chance for his correction and maintain the imposed penalty. [10] In the appealed judgment, Didace Gahigi was found guilty of assaulty and battery and was sentenced

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to 100. 000 of fine while Ng. D., after his conviction, was sentenced to one month and a half of imprisonment suspended in one month. The fact that article 148 of organic law no 01/2012/ol of 02/05/2012 instituting the penal code provides the penalty of imprisonment ranking from 6 months to 2 years and s fine ranking from 100. 000 Rwf to 500. 000 or one of the two penalties for an offender of voluntary assaulty and battery and that Didace Gahigi was fined to 100. 000 Rwf while Ng. D. was sentenced to one moth and a half suspended , the Court finds that the penalties imposed on them by the first instance court were motivated whereby Ng. D. benefited the penalty reduction and its suspension because he was a juvenile offender, his guilty plea, that he sought forgiveness and that he was a student. With regard to Didace Gahigi, there is no indication which reveals that the penalty imoposed on him was not fair because he did not even benefit the penalty reduction, rather he was sentenced to the minimum range of penalty. [11] Therefore, the

facat that the Prosecution requests the increase of the penalty because the accused were sentenced to the penalpty which are not proportional, the Court finds that the request cannot be granted because the Prosecution does not pricise the grounds to be based on to increase the penalty. Hence, the penalties imposed by the first instance court should be maintained. THE DECISION OF THE COURT [12] Sets aside the appeal lodged by Didace.

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[13] Sets aside the appeal lodged by the Prosecution. [14] Upholds
the

judgment

RPMIn 0023/12/TGI/MHG rendered on January 22, 2013. [15] Orders Didace Gahigi to pay a portion, 12725 Rwf, of the court fees amounting to 25450 Rwf failure of which would result to the deduction from his property.

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