

RWANDA / JUDGMENT

PROSECUTION v. UWASE

RPA 549/13/HC/KIG

COURT

High Court

DECIDED

21 March 2014

CASE / FILE NUMBER

RPA 549/13/HC/KIG

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- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2014-03-21
- Case/document no.: RPA 549/13/HC/KIG
- Collection: High Court

Text

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PROSECUTION v. UWASE [Rwanda SUPREME COURT – RPA 549/13/HC/KIG (Murekatet, J.) Mars 21, 2014] Criminal law – Child defilement – Penalty reduction – Suspension of the penalty – He cannot benefit the penalty reduction since she was sentenced to 10 years of imprisonment while she should have been sentenced to life imprisonment with special provisions, she cannot benefit the suspension of the penalty, she cannot benefit the suspension of the penalty pronounced against her since it is above the range of 5 years provided for by the law, Organic law n°01/2012/OL of 02/05/2012 instituting the penal code, art.78 and 85. Facts: The Prosecution filed an indictment against Uwase Clementine in Intermediate Court of Nyarugenge because of committing child defilement against a child of nine months old. It convicted her and sentenced her to 10 years of imprisonment and a fine of 100 000 Rwf. She appealed to the High Court stating that she pleaded guilty and that short time after her arrest those who arrested him told him that if she pleads guilty she would be released. She requested the Court to reduce and suspend her penalty. The lacks merit of the Prosecution states that Uwase pleaded guilty without any slightest coercion. Additionally, he adds that her grounds of appeal lack merit and hence should not be considered. He concluded requesting the Court to uphold the penalty pronounced at the first

instance since it was sufficiently reduced.. Held: In her defence, she. Pleads not guilty while in the Intermediate Court which was seized at the first instance, she pleaded guilty and explained how she committed it. She admitted that she felt a change in her body and she lied upside down and made the baby boy lie on her in the perspective of sexual satisfaction. Therefore, she cannot benefit the penalty reduction as long as she pleaded guilty without any coercion and be sentenced to 10 years of imprisonment while she would have sentenced to life imprisonment with special provisions. She cannot benefit the suspension of the penalty furthermore, in case her request is not in accordance with the provisions of art 85 of the Organic law n°01/2012/OL of 02/05/2012 instituting the penal code since the penalty pronounced against her is over 5 years of imprisonment. Appeal dismissed. Appealed judgment upheld. Appellant exonerated of court fees Statutes and statutory instruments referred to: Organic law n°01/2012/OL of 02/05/2012 instituting the penal code No case was referred to

Judgment

I. HISTORICAL BACKGROUND OF THE CASE

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[1] The Intermediate Court of Nyarugenge decided the case on the first instance. Uwase was accused by the Prosecution of child defilement against a nine months old baby boy. It found her guilty and sentenced her to ten years of imprisonment and a fine of one hundred thousand (100 000). [2] Uwase Clementine appealed to the High Court seeking forgiveness stating she pleaded guilty because after she was remanded in custody she was told that if she admits an offence she will be released. She requested the penalty and suspension of the penalty. [3] The Representative of the Prosecution states that the grounds of appeal as presented by Uwase lack merit because in her pleading at the first instance she unequivocally explained how she committed an offence. The representative of the Prosecution added that [4] The issue in the case is to know whether forgiveness, reduction and suspension of the penalty requested by Uwase Clementine can be considered II. ANALYSIS OF LEGAL ISSUES Regarding penalty reduction requested by the appellant [5] Uwase Clementine states that she seeks forgiveness so as to benefit the penalty reduction. She states that she did not commit the offence she was accused. Rather, she adds, she committed it because after her arrest she was advised that in case she pleaded guilty she would be released. In explaining the motivation seeking forgiveness, she stated that unclothed, tendered a cloth down on the bed for the baby and when the mother came in she saw the baby crying and called upon neighbours. [6] The Representative of the Prosecution states Uwase at the first instance pleaded guilty without coercion and that she sought forgiveness. In addition, he explained how she committed it stating that she committed child defilement whom she was in charge of taking care. The Prosecution added that her ground of appeal are equivocal reason reason why they should not be considered. He requested the Court to uphold the sentence determined at the first instance since it reduced it sufficiently. [7] The Court notes that as highlighted in the appealed judgement paragraph

7, the appellant admitted before the Court that it had happened as it was explained by the Prosecution. She added that she felt in erection and sought a sexual satisfaction from that baby boy in a range of time equivalent to an hour. As it is indicated in paragraph 4 and 5 of the appealed judgment, the Prosecution explained that she tendered a cloth down on the bed then she lied upside, unclothed the baby boy of 9 months old and lied the baby on her in the perspective of seeking sexual satisfaction from him. Even though, at this instance, Uwase attempts to recant her guilty plea at first instance by stating that she previously pleaded guilty after she was misled that she was going to be released after so doing, she did not manage to justify that she was subjected to coercion to plead guilty at the time when the trial was being conducted. Therefore, her request of penalty reduction cannot be considered violating the content of paragraph 11 of the appealed judgment where the first instance Court reduced the penalty relying on her guilty plea by reducing the penalty from life imprisonment with special provisions to the least penalty of 10

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years of imprisonment as provided for by article 78 of Organic law instituting the penal code. Therefore, her appeal lacks merit. Regarding the request of the appellant of penalty suspension. [8] The Prosecution requested the disallowance of penalty suspension as requested Uwase Clementine. [9] The Court notes that article 85 of Organic law n°01/2012/OL of 02/05/2012 instituting the penal code provides that For the purposes of this Organic Law, the suspension of penalty is a judge's decision to order the stay of execution of a penalty of imprisonment not exceeding five (5) years if the convict has not been previously sentenced to imprisonment or to community service as an alternative penalty to imprisonment of more than six (6). By virtue of those provisions, Uwase Clementine cannot benefit the penalty suspension since she does not fulfil the requirements as set out in provisions of that article given the penalty inflicted to her exceeds five (5) years. This ground of appeal lacks merit as well. III. THE DECISION OF THE COURT [10] Dismiss the appeal filed by Uwase Clémentine. [11] The judgement RP 0283/13/TGI/NYGE is upheld. [12] Uwase clementine is exonerated of court fees since is in jail.

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Prepared on 23 October 2026 · Esheria