

RWANDA / JUDGMENT

THE PROSECUTOR v. NTAKIYIMANA

RPA 0182/09/CS

COURT

Supreme Court

DECIDED

11 September 2013

CASE / FILE NUMBER

RPA 0182/09/CS

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THE PROSECUTOR v. NTAKIYIMANA

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THEPROSECUTOR v. NTAKIYIMANA [Rwanda SUPREME COURT – 2014SC. –. RPA 0182/09/CS (MugenziPJ.,Hatangimbabazi, and Munyangeri J.) September 11, 2013] Criminal Law – Parricide – Guilty plea – Penalty reduction – The judge’s discretion to reduce the penalty – Law n° 13/2004 of 17/5/2004 relating to the code of criminal procedure, Art. 35. Facts:The appellant was convicted of parricide by the High Court, the Chamber of Rusizi and sentenced him to 20 years imprisonment. He appealed to the Supreme Court denying the allegations against him but during the trial, he declared that he does not base on his submissions any more but rather seeks forgiveness and penalty reduction. Held: In the Court’s discretion, though the accused may unequivocally pleads guilty, the judgemay deny him or her penalty reduction in line with the wickedness under which the offence was committed and to have constituted a hard task before pleading guilty, consequently the Court rejects his application for penalty reduction. Appeal dismissed. The appealed judgment remains into force. The court fees charged to the public treasury Statutes and statutory instruments referred to Law n° 13/2004 of 17/5/2004 relating to the code of criminal procedure, article 35 No case referred to. The judgment BRIEF BACKGROUND OF THE CASE [1] The High Court RusiziChamberhas proved guilty Ntakiyimana Jean of parricide and sentenced

him with 20 years imprisonment. where he was indicted by the prosecution for having gone with his father ZIBONUKURION April 4,2001in the forest to seek trees and he killed him there, the corps was found thereafter. [2] NTAKIYIMANA filed an an appeal to the Supreme Court and pleadedbefore the Court on September 25 2013 assisted by Me BUGINGO Kadari Suzane while the Prosecution was represented by HIGANIRO Hermogène.

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[3] NTAKIYIMANA states that he no longer bases his pleadings on the appeal submissionswhereby he was rejecting the allegations, but rather comes to plead guilty and seeks forgiveness for him to benefit the penalty reduction. THE LEGAL ISSUE IN THE CASE AND ITS ANALYSIS. To know whether the guilty plea made by NTAKIYIMANA can entail threduction of the penalty [4] NTAKIYIMANA holds that after he denied in the High Court the offence of having killed his father, now he pleads guilty and seeks forgiveness.,The guilty plea and seeking forgiveness come from sensitization provided to prisoners where he was jailed, and got committed for seeking forgiveness to his family and Rwandan community and then requests to the Court to reduce penalties for him. [5] With regard to the circumstances surrounding the commission of the offence, he states that he was peacefully living with his father where he came to request him a support about building a house.and when they were building, his wife insulted her mother - in - law which made his father to fine him with imposition of the banana juice and in consequence he dispossessed him a plot of land he had given to him and told him that he would repossess it after he pays the imposed fine of banana juice. [6] He eplains that when his father and him were going in the forest to seek trees they talked about that issue and asked his father when he would give him back his plot of land that he retook into his possession and replied that he would recover it after he gives the banana juice imposed on him and the answer made him angry which led him to fight against each other but upon his father'sprovocation who wanted to hit him with a blow of a machette and he was stronger than him then he killed him. [7] On the issue about whether he did not come from home with the premeditation of killing his fatherand hence be the cause he denied the child who wanted to go with them in the forest, he replied that he actually came home with it because of the plot of land that his father had dispossessed to him. [8] Kadali, his counsel argues that the fact that NTAKIYIMANA explains clearly what happened to him without any reserve and that he served 12 years in prison proves that he repented enough for the offence he committed and thus this would constitute the ground for the Court to have a mercy on him and orders his release. [9] The Prosecution argues that NTAKIYIMANA's explanations prove that he pleads guilty for the alleged offence and the Court would grant the forgiveness he is seeking though it is not compulsory. [10] Article 35 of the Law no 2013 of 24/5/2013 relating to the code of criminal procedure provides that when the accused candidly pleads guilty to the offence, the provisions of article 34 of that Law shall apply to the prosecution and the judge seized of the case may reduce the

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penalties down to the half ($\frac{1}{2}$) of applicable penalties and in case the accused would be sentenced to life imprisonment, the penalty may be reduced to twenty (20) years of imprisonment. [11] This provision of the lawlets understand that the Court of law is not bound to reduce penalties cost what it may for the accused who pleads guilty and seeks forgiveness but rather it is in the discretion granted to judge to use that in assessing different grounds under which he may reduce or not penalties. [12] With regard to NTAKIYIMANA apart from having benefited the uppermost penalty reduction in the High Court and even if the cause as that he was the first offender, it is very noticed that even his guilty plea to have committed the offence came from afar since in the previous proceedings he disputed that he killed his father after long brawls between him and his father who provoked him like it is highlighted above on 6th part of this judgment. [13] All of these come in addition to the wickedness by which NTAKIYIMANA has committed the offence of killing his real father after organizing a plan of cutting him in pieces with blows of machete in the forest, hence this makes NTAKIYIMANA unworthy of penalty reduction even though now he pleads guilty. THE COURT ORDER [14] Rules that the appeal of Justin Muhayimana lacks merits [15] Decides that the judgment that Justin Muhayimana appealed against remains in force. [16] Orders the court fees to be becharged to public treasury since the the appellant is in jail

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