

RWANDA / JUDGMENT

PROSECUTION v. MUKAKABANO ET.AL_en

RLR V.4-2018

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Text**Page 1**

PROSECUTION v. MUKAKABANO ET.AL [Rwanda HIGH COURT – RPA0015/2017/HC/HCCI (Mukamurenzi, P.J) March 20, 2017] Criminal Law – The offence of human trafficking – The elements constituting the offence of human trafficking – For the offence to be qualified as human trafficking, there has to be three elements namely recruitment of a person, transfer of a person to another part, the means used such as use of force, deception and threat, and intention pursued like harming his/her life or unlawfully exploiting her or him. Criminal Law – The offence of human trafficking – Trafficking persons out of the country – The fact that the victim of trafficking is an adult and having agreed to go, can not prevent the perpetrator from being prosecuted because this offence is committed by means of deception – Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code, article 251 – Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime of 15/11/2000, article 3. Facts: Before High Court, chamber for international crimes, Nyirabagenzi and Mukakabano were prosecuted for the

offence of human trafficking after Nyirabagenzi and Murekatete were arrested at Gatuna border between Rwanda and Uganda alleging that they were going to search for employment in Oman.

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The Prosecution demonstrates that they were returned back when Nyirabagenzi was trafficking Murekatete. The Prosecution further states that since 2014, Murekatete was constantly persuaded to go and work in Oman, but she didn't go because she had a toddler, in 2017, through Murekatete's mother, Nyirabagenzi persuaded her again to go by telling her that there are opportunities and good welfare in Oman, she decided to leave due to her mother's pressure who used to convince her that she is a single mother and that once she goes, she would get a job and they live a better life and there are other girls who went and they are having better life, the Prosecution also states that Nyirabagenzi collaborates with others such as Mukakabano who connected Nyirabagenzi and Murekatete to someone called Lydia (Fatima) whom they had to call once they reach Kampala, so that she facilitates them to travel to Oman, for that reason, Mukakabano gave Lydia's telephone number to Nyirabagenzi. The accused pleaded not guilty, for Nyirabagenzi, she explained that she was arrested together with Murekatete on their way going to search for a job and that the Prosecution failed to prove that she was caught at the market place where people are trafficked, the buyer and the price she received, she adds that Murekatete who they allege that she was being trafficked, is an adult who cannot act contrary to her will. Whereas for Mukakabano, she argued that she didn't intend to traffick any person, she explains that she lived in Oman from 2012 to 2014, and she had Lydia's telephone address purposely to contact her for help in case she wants to go back to Oman because she works for a recruitment agency situated in Kenya. She adds that she came to know Nyirabagenzi through whatsapp group of Rwandans living in Oman and when she told her that

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she wants to go back to Oman to search for a job, she gave her Lydia's phone number so that she will assist her. Held: 1. For the offence to be qualified as human trafficking, there has to be three elements namely recruitment of a person, transfer of a person to another part, the means used such as use of force, deception and threat, and intention pursued like harming his/her life or unlawfully exploiting her or him.

2. The acts for which Nyirabagenzi Mariam is being prosecuted of recruiting, persuading and taking Murekatete Amina from Rwanda to Oman, her plot was foiled by their arrest at Gatuna border, this constitutes the attempt of the offence of participating in trafficking a person out of the country instead of being qualified as an offence of human trafficking.
3. The fact that Murekatete is an adult and she also wanted to go, can not prevent Nyirabagenzi from being prosecuted because Murekatete was trafficked by means of deception taking advantage of her being poor and single mother, the consent of a victim of trafficking in persons is irrelevant.

4. The fact that Mukakabano participated in connecting Nyirabagenzi and Murekatete to Fatima who was in Kampala who would have facilitated them to travel to Oman, the act she committed constitutes attempt of participating in trafficking persons out of the country. The accused are guilty of attempt of trafficking a person out of the country; Court fees to the public treasury. Statutes and statutory instruments referred to:

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Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code, article 27,250,251 and 252. Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime of 15/11/2000, article 3. No cases referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Nyirabagenzi Mariam and Murekatete Amina were arrested on the border between Rwanda and Uganda at Gatuna, stating that they went to seek a job in Oman. During interrogatory, Murekatete Amina said that she has always been persuaded to find a job for her in Oman, but she didn't go because she had a toddler. The Prosecution filed an action to Court stating that Murekatete Amina was returned back from Gatuna border when she was taken abroad by Nyirabagenzi Mariam as a commodity in acts of human trafficking with a help of Mukakabano Nadia Yazida as an intermediary. They pleaded not guilty, Nyirabagenzi Mariam defends that they were arrested while they went for seeking employment in Oman, whereas Mukakabano Nadia Yazida argues that telephone number she gave to Nyirabagenzi Mariam, belongs to someone who was supposed to arrange her to find employment and official

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documents to allow her travelling to Oman, that she did not intend for human trafficking. [2] Issues to be analysed in this case are determining whether Nyirabagenzi Mariam was arrested taking Murekatete Amina out of the country for human trafficking and whether Mukakabano Nadia Yazida giving out telephone number of the person who was supposed to facilitate them to find official documents to travelli to Oman proves the role in the commission of the offence. II. ANALYSIS OF LEGAL ISSUES Whether Nyirabagenzi Mariam was arrested taking Murekatete Amina out of the country for human trafficking. [3] The prosecution states that since 2014 Murekatete Amina was persuaded to find a job in Oman, that she didn't go because she had a toddler, that later, in 2017 through her mother, Nyirabagenzi Mariam again persuaded her to go saying that she will have a job and good living conditions in Oman, hence she gave in to the pressure of her mother who told her that as a single mother if she went, she would get a job and enables them to have a decent living, she further told her that other girls who went have a better life, but they were arrested on the Gatuna border. [4] The prosecution adds that Nyirabagenzi Mariam cooperates with other people like Mukakabano Nadia Yazida and others from Kenya such as Fatima known as Lydia who they would call once they reach Kampala, to facilitate them in

finding travel documents to Oman. The prosecution further states that during interrogation in judicial police and before

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Prosecution, Nyirabagenzi Mariam confessed that she was arrested at Gatuna together with Murekatete Amina going to Uganda where they had to meet Lydia, who was supposed to facilitate them to leave for Oman, that she also confessed to persuading Murekatete, that in Oman there is good job and better living conditions, that she also once lived there. [5] The Prosecution argues that the offence of human trafficking starts with the acts of persuading, recruitment, and facilitation in travel documents and transportation, that all these were done but fortunately, they were arrested at Gatuna. They add that the intent is also proven through that persuasion promising green pasture which include good job, and they took advantage of her poverty situation. [6] Nyirabagenzi Mariam pleads not guilty, stating that the Prosecution does not prove that she was caught at the human trafficking market, the buyer and the price received. She explained that together with Murekatete, they were arrested on the border on their way to Uganda, that they were going to seek for employment and that she did not persuade her to go to Oman because they didn't know each other, instead, it was on request of Murekatete's mother because she knew that she lived in Oman and was about to go back there. She further argues that by the time Murekatete got a passport, she was living in Oman and that Murekatete reveals how she got it in 2014 and those who helped her to get it. She adds that she is not the one who provided Murekatete with transport fee, that they just met in Nyabugogo Park and boarded together and she also states that as an adult Murekatete could not act contrary to her will.

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[7] She further adds that she spent ten months in Oman, that she came back to Rwanda for burial of her elder sister and she was replaced on her job, that she was arrested on her way back with Murekatete, to search for another job, that in Kampala, they were to meet Fatima also known as Lydia who was going to facilitate them in that journey, she had previously communicated with the latter via a phone call, that she got the Lydia's telephone address from Mukakabano Nadia Yazida whom she met while they were both working in Oman, she had also informed Fatima that she will come together with Murekatete Amina. [8] Counsel Assumani Minsiragwira states that the prosecution does not produce concrete evidence except Murekatete Amina's statements which do not indicate that Nyirabagenzi Mariam was also in the plot to take her to Oman in 2014. He adds that Nyirabagenzi did not premeditate human trafficking because the fact that she was arrested being together with Murekatete, it can not be qualified as human trafficking, rather it would be human trafficking in case she took her without others being aware, in addition, Murekatete Amina also wanted to go and search for a job. He concludes by stating that the elements of evidence produced by the prosecution are doubtful because the market place, buyer and the price have not been established, that basing on the provisions of article 165 of the Law relating to the code of criminal procedure, the benefit of doubt shall be given in favour of the accused. Hence

Nyirabagenzi should be acquitted. THE VIEW OF THE COURT

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[9] The Court finds, the Prosecution case against Nyirabagenzi Mariam for the offence of human trafficking bases on the facts that Nyirabagenzi Mariam was arrested at Gatuna border taking Murekatete Amina, they didn't know the place of destination except stating that they are going to search for a job in Oman and also there are people they didn't know who were going to arrange for them, travel documents and transport fee. [10] The Court finds that in her pleadings and her statements during investigation, Nyirabagenzi Mariam states that she lived in Oman as domestic worker, and she came back, but later she wanted to go back to Oman to look for a job because she was living in poor welfare, she asked Murekatete's mother if her daughter still wants to go to Oman so that they go together, because when she was still working there, she learnt that the former wanted to go there. The court finds that she also says that they would have been facilitated by Fatima (Lydia) who lives in Kenya where the company which facilitates people to be hired is located, that they didnot know each other, they just communicated on the phone, she got her phone adress from Mukakabano Nadia. [11] The Court finds that in her interrogation before judicial police, Murekatete Amina stated that she didn't know Nyirabagenzi Mariam, that they got in touch through Murekatete Amina's mother who convinced her to go to Oman to search for a job, her mother told her that she would be well off and that in 2014, by the intermediary of her mother, Mama Mudasiru wanted to take her to Oman but she refused because she had a toddler. The Court further finds that she stated that they would have met unknown person at the border of Uganda

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and Kenya who was supposed to give them a flight ticket to Oman and that she didn't know the person she was going to work for. [12] In analysis of the statements of the Prosecution, Nyirabagenzi and Murekatete Amina, the Court finds that since 2014, Murekatete Amina has been targeted and persuaded to go and work in Oman because the one named Mama Mudasiru found travel documents for her but she didn't travel due to the fact that she had a toddler. The Court also finds that in 2017, by intermediary of her mother, Nyirabagenzi Mariam has also persuaded her to got to Oman promising her to find a job and that they will travel together, and later, they were arrested at Gatuna border stating that they go to Uganda where they had to meet a person who had to arrange them to travel to Oman. [13] The Court finds that during that journey, Murekatete didn't know the destination, how and who will facilitate her in that travel and what she will do upon her arrival. The Court finds that Nyirabagenzi was fully aware of the traveland destination because she looked for her and requested her to go together to search for a job in Oman, Nyirabagenzi knew the route because she recalls the names of the person named Fatima (Lydia) who would helped them once they reach Uganda and she adds that they used to communicate with the latter by phone call after getting her phone number from Mukakabano Nadia. The Court finds that Nyirabagenzi also reveals that Fatima known as Lydia helped other

girls to leave for Oman. [14] The Court finds that article 250 1o of Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code provides that human trafficking means the acts by which the individual becomes a commodity consisting in recruitment,

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transfer of a person to another part of the country or to another country by use of deception, threat, force or coercion, position of authority over the person, in most cases for the purpose of harming his/her life or unlawfully exploiting by indecent assault, prostitution, unlawful practices, practices similar to slavery by torturing and subjecting to cruel treatment or domestic servitude because he/she is vulnerable due to troubles with the authorities, being a single pregnant woman, ill, disabled or due to other situation which impairs a normal person to act. [15] The Court finds, those motivations comply with the provisions of article 3 of the additional protocol supplementing the United Nations Convention against transnational organized crime of 15 November 2000 to prevent, suppress and punish trafficking in persons, especially women and children, ratified by Rwanda on 26 September 2003, that article also states that the consent of a victim in trafficking in persons is irrelevant.¹ Article 3 of Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime (15/11/2000), provides that : for the purposes of this Protocol : a.« Trafficking in persons » shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other form of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. b. The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

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[16] The Court further finds that article 251 of Organic Law N°01/2012/OL of 02/05/2012 mentioned above provides that any person who participates in any way, personally or through an intermediary , in trafficking a person out of Rwanda to a foreign country by means of deception, use of force, threat or any other form of coercion, taking advantage of his/her troubles with the authorities, conflict with the law , being an orphan, a destitute, lonely, limited knowledge, hard labour, living in a family with children close in age, unemployment, disease, physical or mental disability, a loophole in the law or any other situation likely to impair a normal person to act. [17] In analyzing the provisions of those articles, the Court finds that for the human trafficking to be qualified as an offence, there has to be three elements namely recruitment of a person, transfer of a person to another part, the means used such as use of force, deception and threat, and intention pursued like

harming his/her life or unlawfully exploiting her or him. [18] Considering the provisions of articles above together with article 27 of the Organic Law N° 01/2012/OL of 02/05/2012 which provides for attempt to commit an offence, the Court finds that the acts for which Nyirabagenzi Mariam is being prosecuted of recruiting, persuading and taking Murekatete Amina from Rwanda to Oman whereby she was convincing her that she will get a good job and have good welfare, her plot was foiled by their arrest at Gatuna border, this constitutes the attempt of the offence of participating in trafficking a person out of the country instead of being qualified as an offence of human trafficking provided by article 252 of Organic Law N°01/2012/OL of 02/05/2012 mentioned above.

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[19] The Court finds the statements of Nyirabagenzi that by taking Murekatete she did not intend for human trafficking, that she is mature and she also wanted to find a job are without merit, because considering the way she looked for Murekatete through her mother as an intermediary and she convinced them that they can go to Oman knowing that Murekatete does not have travel documents, and considering that she was in touch with an unknown person whom she used to talk to, who would arrange them in Uganda to find travel documents and to provide them air ticket, Nyirabagenzi does not also show what they should do as compensation of that service, The Court finds, all these circumstances prove that Nyirabagenzi Mariam was aware that her acts were to traffic a person out of the country taking advantage of her indigence because of unemployment. [20] The Court finds the fact that Murekatete is an adult and she also wanted to go can not prevent Nyirabagenzi for being prosecuted because Murekatete was trafficked by means of deception taking advantage of her being poor and single mother, this lead her to decide to go away. In addition, international convention related to prevent, suppress and punish trafficking in persons, especially women and children mentioned, provides that the consent of a victim of trafficking in persons is irrelevant. Whether Mukakabano Nadia Yazida giving out telephone number of the person who was supposed to facilitate Nyirabagenzi and Murekatete to find official documents to travel to Oman proves the role in the commission of the offence [21] The prosecution states that Nyirabagenzi Mariam testifies against Mukakabano Nadia Yazida for having

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connected her with Fatima also known as Lydia, the latter would have helped them in their journey to Oman, the Prosecution adds that Mukakabano confesses for having given telephone adress to Nyirabagenzi and she told Nyirabagenzi that Lydia helped other two girls to travel, it adds that the telephone address which she provided was of paramount importance for Nyirabagenzi Mariam to traffick Murekatete and she was collaborating with Fatima(Lydia) in trafficking of persons to Oman because she knew other people she facilitated and these include Sayidati and Dalila and she knew that Fatima can also find travel documents for Nyirabagenzi and her colleague to leave for Oman. [22] The prosecution further states that the offence of human

trafficking is not committed by one person but by various groups of persons, that Lydia would have passed them to others, who would also have handed them to others and it would have continued in such way till they fulfill their intention, that this offence can not be compared to other ordinary trade, human trafficking is determined by destination and purpose intended such as prostitution, forced labour, slavery or practices similar to slavery, body mutilation, and it adds that the job, the salary and the employer for Murekatete were not revealed. [23] Mukakabano Nadia Yazida states that the Prosecution does not indicate the place where Murekatete was to be sold, the buyer and the price. She explained that she lived in Oman since 2012 to 2014, where she got to know Nyirabagenzi Mariam by WhatsApp group of Rwandans living in Oman and after their return to Rwanda, they met again, she also came to know others including Salima and Ines who went back to Oman and they got jobs through a company situated in Kenya. She states that

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Salima is the one who connected her to Lydia, a Burundian who works for that company in Kenya, so that she facilitates her travel once she needs to go back there, it is in that circumstance that she got Lydia's phone address, and she passed it to Nyirabagenzi when she informed her that she wants to go back to Oman, so that Lydia helps her in finding a job. [24] She adds that she can not remember when she gave that phone address to Nyirabagenzi and that the latter did not inform her what she talked with Lydia and she was not informed of her travel with Murekatete as well. She adds that Nyirabagenzi Mariam as an adult who lived in Oman, knows that there are no human trafficking in Oman, and that no one can face criminal acts because on arrival to Oman, you first check with the police and conclude a contract with the employer before police and at the termination of the contract, you go back to the police for approval of your departure that Murekatete as an adult, no one would have influenced her. [25] Counsel Minsiragwira Assumani argues that the fact that Mukakabano Nadia Yazida gave out the phone number, it is not an act which constitutes the offence of human trafficking, it does not also constitute complicity because the moment they are in Oman, they stay there legally, therefore, she should be acquitted basing on article 165 of the Law relating to the code of criminal procedure. THE VIEW OF THE COURT [26] The Court finds that Mukakabano Nadia Yazida admits to have given Fatima's phone address to Nyirabagenzi Mariam, who was supposed to find for her travel documents to go and

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work in Oman. The Court also finds that Mukakabano states that she has not yet met with Fatima, that she got her number through another girl called Salima, so that she contacts her when she wants to go back because she works at a recruitment company in Kenya. [27] The Court further finds that during the interrogation as well as in the hearing, Nyirabagenzi states that Mukakabano Nadia is the one who connected her to Lydia whom they would have met in Kampala and she had promised her that the latter will get travel documents for them. She adds that she informed Lydia that she will come together with Murekatete and that it is Nadia who gave, Lydia's phone number to Sayidati and Dalira who left before. [28] In analysis of the provisions of article 251 of the Organic Law N°01/2012/OL of 02/05/2012 mentioned above, the

Court finds that to participate in trafficking persons can be committed in different forms, either personally or through an intermediary. The Court finds that by providing the phone number, Mukakabano Nadia connected Nyirabagenzi Mariam, Murekatete Amina to Fatima (Lydia), whom they were to meet in Kampala, The latter was supposed to help them in getting the travel documents, therefore, this proves Mukakabano's role in trafficking persons from Rwanda to a foreign country. [29] The Court finds her denying the role she had in the commission of the offence on the ground that she only issued the phone number is without merit, because considering her explanation of how she knew Fatima(Lydia) together with that of, Nyirabagenzi on how Mukakabano gave her Fatima(Lydia) phone number and also told her that Fatima helped other girls, and she promised her that Fatima will assist them to get travel

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documents and a job as well, and later, Nyirabagenzi talked to Lydia informing her that she will come with Murekatete, all these prove that Mukakabano Nadia Yazida collaborates with Fatima(Lydia) in Kampala, since she is also aware that the persons she sent are subject to human trafficking as she also talks about other girls living in Oman without demonstrating their occupation, she also revealed to Nyirabagenzi other girls who left for Oman arranged by Fatima (Lydia) as intermediary but their location is unknown. [30] The Court finds, the fact that Mukakabano Nadia and Murekatete Amina didn't know each other and she was also not aware of her plot with Nyirabagenzi Mariam, does not prove that she had no role in attempt of trafficking her out of the country as motivated above, she participated by connecting them to Fatima (Lydia) by giving them her phone number and she promised them that Fatima will facilitate them to obtain a job and travel documents to Oman , and also it is not necessary to know each other, instead, what has to be considered is her participation in trafficking her out of the country and intent they had. [31] However, considering the provisions of article 27 of the Organic Law N°01/2012/OL of 02/05/2012 mentioned above, which relates to the attempt to commit an offence, the Court finds the act of Mukakabano Nadia constitutes the offence of attempt of participating in trafficking persons out of the country, because Murekatete was stopped at the border and returned back, hence the commission of the act was prevented. Sentencing

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[32] The Prosecution requests that Mukakabano be sentenced to ten years of imprisonment with a fine of five million. [33] Nyirabagenzi Mariam argues that she did not participate in Murekatete Amina's departure, that she did not persuade her, but on their way, they were both communicating with those supposed to receive them. She adds that she has to look after her elder sister's children who have chronic disease and that no one else would take care of them in case she is imprisoned because her mother is an old woman, that's why she decided to go back to Oman to search for a job. [34] Mukakabano Nadia Yazida states that she requested the Prosecution to produce the conversation she had on the phone with Fatima (Lydia), but it failed, that she also informed the Prosecution that she has children including the one who dropped out of school but this was not considered. [35] Counsel

Assumani Minsiragwira assisting them, argues that the Prosecution failed to prove beyond reasonable doubt that the accused were going to traffic Murekatete Amina, therefore, pursuant to the provisions of article 165 of the Law relating to the code of criminal procedure his clients be acquitted because the benefit of doubt shall be given in favour of the accused. [36] Article 251 provides that any person who participates in any way, personally or through an intermediary, in trafficking a person out of Rwanda to a foreign country by: 1° means of deception, use of force, threat or any other form of coercion; 2° taking advantage of his/her troubles with the authorities, conflict with the law, being an orphan, a destitute, lonely, limited knowledge, hard labour, living in a family with children close in

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age, unemployment, disease, physical or mental disability, a loophole in the law or any other situation likely to impair a normal person to act; shall be liable to a term of imprisonment of one (1) year to three (3) years and a fine of five hundred thousand (500,000) to two million (2,000,000) Rwandan francs. [37] As motivated in previous paragraphs, the Court finds that the acts of Nyirabagenzi Mariam and Mukakabano Nadia Yazida constitute the attempt of participating in trafficking persons out of the country because it was proven that Nyirabagenzi Mariam persuaded Murakatete Amina to go to Oman and she was also arrested on the way taking her, whereas Mukakabano Nadia Yazida connected them to Fatima (Lydia) whom they would have found in Kampala to facilitate their travel to Oman. [38] The Court finds that basing on the provisions of article 251 of the organic Law N°01/2012/OL of 02/05/2012 mentioned above and article 30 of the same organic Law which provides for sentencing of an attempt to commit a felony or a misdemeanour, each one is sentenced to one year and six months of imprisonment and a fine of 500,000Frw. III. THE DECISION OF THE COURT [39] Finds Nyirabagenzi Mariam and Mukakabano Nadia Yazida guilty of attempt of participating in trafficking persons out of the country. [40] Sentences each of them to one year and six months of imprisonment and a fine of 500,000Frw

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[41] Orders that the court fees be charged to the public treasury. [42] Reminds that an appeal must be filed within a period of one (1) month from the pronouncement of the judgement.

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