

RWANDA / JUDGMENT

PROSECUTOR V MUNYANKUMBURWA

RPA 0210/10/CS

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Text

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PROSECUTION v. MUNYANKUMBURWA [Rwanda SUPREME COURT – RPA 0210/10/CS (Kayitesi Zainabo, P.J., Mukanyundo na Rugabirwa, J.) July 18, 2014] Criminal law – Murder – Qualification of an offence. Penalty reduction – Gunning down a person cannot be qualified involuntary homicide as long as shooting after disobeying an order of the superior connotes intent to commit murder – articles 311 of the decree law n° 21/1977 of August 18, 1977 instituting the penal code. Civil law – Damages – Faults committed by a civil servant on duties – The liability for damages resulting from the faults committed by a civil servant on duties – The commission of service faults out of his/her territorial jurisdiction – An employer is held liable for the tortuous acts of his/ her employee when their commission occurred in the exercise of his/ her duties – Law of 30/07/1888 relating to contracts or obligations, article 260. Facts: The Prosecution filed an indictment in the High Court against the appellant for murder where alongside Munyurasi Gakara, the policeman, pursued smugglers and ordered them to put down their belongings and loaded the gun. When Munyurasi heard the loading, he prohibited him from twice from shooting but he disobeyed and gunned down one of them named Nkunuzimana. As an employer of the suspect, Burera District was forced to intervene in the case so as to pay the potential damages.

The accused was found guilty and sentenced to 10 years of imprisonment while Burera District was ordered to pay 7, 450,000 Rwf of damages. The appellant and Burera District appealed to the Supreme Court. The appellant stated that the High Court sentenced him to the heavier penalty of 10 years of imprisonment disregarding that he pleaded guilty and sought forgiveness. State Attorney stated that the Court hold Burera District of damages disregarding that the pleading of the accused and their submissions to the Court. Another ground was that the Court determined the damages basing on article 27 of Law N° 25/2004 of 19/11/2004 establishing and determining the organisation and functioning of the local service in charge of assisting in maintenance of security referred to as "Local Defense" but did not hold anything on paragraph 2 of the same article while it was the core part in the defence of Burera District. Applicants of damages in their cross appeal requested advocate fees. Held: The qualification of an offence should match the facts. Therefore, the Court notes that the acts of the accused are far different from the qualification he requests the Court to confirm for the offence he committed, involuntary homicide. Rather, the intent to commit homicide is demonstrated by disobeying the order of his superior prohibiting him from shooting which he did by three bullets that cost the life of the deceased. Thus, his acts constitute homicide. He cannot benefit the penalty reduction since he had been sentenced to 10 years of imprisonment after gunning down deliberately a citizen who did not fight him while he would have been sentenced to life imprisonment.

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Maintaining the sovereignty of the nation, the security of citizens and their properties is the preoccupation of the National Police and Local Defence. Therefore, he/ she cannot remain indifferent in the sight of the acts threatening the national security or destroying the national economy including smuggling, on the ground that they are not occurring in his/her territorial jurisdiction. Again, he could not have denied executing such a task in case it is mandatory for Local Defence to cooperate with other Security Organs in security maintenance. In deciding the case related to the request of damages resulting from the offence committed by a civil servant, Courts must assess whether the committed acts had a link with his actual duties otherwise, the employer cannot be held liable for the tortuous acts of an employee in the case those faults were not linked to his/her duties and occurred in the time when the employer could not supervise them [acts]. However, the employer should be liable for damages in case the employee committed the offence while he was on his duties even in the case of wrong execution of the latter. The wrong use of weapon in security maintenance cannot prevent the employer from being held liable for the damage caused by the fault in case the employee did not deviate from his duties. . Appeal on both sides lacks merit Cross appeal has merit. Burera District should pay 7,450,000 of Damages and 500 000 for counsel fees. Court fees to the public fund Statutes and statutory instruments referred to: Decree law n° 21/1977 of 18/08/1977 instituting the penal code, art.311. Law of 30/07/1888 relating to contracts or obligations, article 260. Cases referred to: Case RPA 0074/07/CS Prosecution v Pte Authors Cited CH. LARROUMET, note sous cass. Com.12 oct.1993, Dalloz.1994.124, séc.p.125 cité par Françoise BENAC- SCHMIDT, op cit, p.11, n° 74.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] The case originated from the High Court. The Prosecution seized the Court against Munyankumburwa Valens because on August 26, 2008 toward 10 p.m, together with the policeman named Munyurasi Gakara followed up people who were smuggling and when they reached them, Munyurasi stopped the motorbike while Munyankumburwa ordered them to put down their belongings and moved ahead a little bit to stop who were moving away. Upon unknown reasons, he promptly loaded the gun preparing to shoot and when Munyurasi heard it,

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he prohibited him from shooting but in vain. When they [Munyankumburwa and Munyurasi] approached, they realized that one named Nkunuzimana was gunned down. They immediately took him to the hospital but died short time after their arrival. [2] Burera District as an employer of Munyankumburwa was forced to intervene in the case so as to potentially be held liable for the damages. The seized court decided the case on June 28, 2010 and held that Munyankumburwa and Burera District lose the case. It sentenced Munyankumburwa to 10 years of imprisonment and ordered the District in the name of its mayor to pay Manirarora Rosette and her children 7, 450, 000 Rwf. [3] Not satisfied by the ruling of the case, both Munyankumburwa Valens and Burera District in the name of its Mayor appealed to the Supreme Court. Munyankumburwa Valens was stating that the High Court disregarded the explanations he provided and inflicted the heavy penalty of 10 years while he pleaded guilty and sought forgiveness. [4] Karemera Gregoire, State Attorney in the place of Burera District states that they were ordered to pay damages totaling 7450 000 disregarding their pleading during the hearing and the content of their submission. Another point of their dissatisfaction was that the Judge ordered the District to pay damages basing on article 27 of the Law N° 25/2004 of 19/11/2004 establishing and determining the organisation and functioning of the local service in charge of assisting in maintenance of security referred to as "Local Defense" but did not hold anything with regard to the second paragraph of the same article while it was the core part in the defense of Burera District. The applicant for damages requested counsel fees in their cross appeal. [5] The public hearing was conducted on July 7, 2014 Munyankumburwa Valens assisted by Counsels Nzabonimana John Peter, applicant for damages represented by Counsel Bizimana Jean de Dieu, while Burera District was represented by Umwali Claire, State Attorney. II. ANALYSIS OF THE LEGAL ISSUES A. To know the qualification of the offence Munyankumburwa committed and whether he can benefit the penalty reduction. [6] Munyankumburwa and Nzabonimana John Peter, the Counsel who assists him contends that their ground of appeal are the fact that the Court sentenced him to the heavier penalty of 10 years of imprisonment while he pleaded guilty of having murdered Nkunuzimana by gunning him down. In addition, he adds that he had not had any criminal intention since there has been no dispute between them, but the Court disregarded it. They state that Munyankumburwa had not had slightest intention to kill Nkunuzimana since they had never known each other so that some conflict may have occurred and killed him. [7] They state that when Munyankumburwa Valens and the policeman who gave him the gun reached people who

were carrying smuggled goods, that policeman ordered him to stop them but unfortunately he loaded the gun. When he reached near by them he heard the bullet out toward Nkunuzimana. However, he adds, this occurred without his intention. They keep on arguing that if Munyankumburwa had intended to shoot, he would have shot all of those

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smugglers. The fact that he did not do that implies that his acts were not intentional since he only intended to arrest them as smuggling is unlawful. [8] Nsanzimana John Peter, the Counsel, contends that there has been error in facts which resulted in a wrong qualification of an offence. He realizes that the offence Munyankumburwa committed would be qualified involuntary manslaughter provided for by article 145 of Organic Law N° 01/2012/OL of 02/05/2012 instituting the penal code since the constituent elements of homicide are not complete; intent to commit an offence is lacking. He argues that Munyankumburwa has forgotten to keep the safety of the gun closed and accidentally bullets went out. Those acts would be considered to those of the driver who recklessly knocks an individual down on the street. [9] The Representative of the Prosecution disputed that the explanations provided by Munyankumburwa Valens alongside his Counsel are unsubstantiated since, when Munyankumburwa was running to arrest the smugglers, he reached them and loaded the gun and when his comrade prohibited him from shooting, he disrespected and shot. Hence he should not plead before the Court that his acts were accidental while he did it deliberately. [10] He contends that the defense statements made by Munyankumburwa Valens that there was no dispute between him and the deceased is unsubstantiated as well since the existence of conflict is not mandatory to have an intent to murder. He states that the fact that he loaded the gun and his mate prohibited him to shoot but in vain implies that his act was not accidental. He ended stating that Munyankumburwa would not benefit another penalty reduction since it was done at the first instance. [11] Article 311 of the Decree Law n° 21/1977 of 18/08/1977 instituting the penal code which was into effect when the offence was committed provides that voluntary manslaughter is Murder; it is intentional killing of a person and shall be punishable by life imprisonment. [12] As far as the case is concerned, even though before the Court Munyankumburwa and his Counsel denied that Munyankumburwa had had an intent to kill Nkunuzimana and hence he committed involuntary manslaughter in their opinion, the Court finds that the qualification Munyankumburwa requests the Court to give to the offence he committed does not match with the committed acts since the intent to kill is evidenced by the fact that he loaded the gun and when Munyurasi Gakara heard that he prohibited him to shoot but Munyankumburwa disrespected and it cost the life of Nkunuzimana in consequence of three three of bullets. [13] Rather, the Court finds that the fact that Munyankumburwa pleaded guilty in the High Court and the latter referred to that guilty pleas to reduce the penalty. In addition, he was accused of and pleaded on homicide; hence he cannot request to qualify it otherwise especially that the guilty plea of his acts coincide with the statements made by Munyurasi and witnesses who were at the place of the commission of the offence (The comrades of Nkunuzimana), all of them testified that he brutally killed him since he had not fought him. [14] Basing on the explanations provided, the Court finds that

Munyankumburwa Valens willingly shot Nkunuziman. Therefore, the offence he committed and for which he is found guilty

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is homicide provided and punishable by article 311 of Decree Law n° 21/1977 of 18/08/1977 instituting the penal code as stated above. [15] Regarding another penalty reduction requested by Munyankumburwa and his Counsel the ruling of the appealed case indicate that in the penalty determination the High Court sufficiently reduced the penalty since it inflicted him 10 years of imprisonment based on mitigating circumstances concerning his guilty plea and that he was the first offender. [16] In consequence, the Court finds that the fact that Munyankumburwa Valens would have been inflicted the penalty of life imprisonment pursuant to article 311 of the law referred to above but inflicted the penalty 10 years only, implies that the High Court sufficiently reduced the penalty taking into account the gravity of the offence committed of shooting a citizen who had not fought him. Hence his appeal lacks merit. B. To know whether or not Burera District should be held liable for the faults committed by Munyankumburwa Valens, Local Defense Member. [17] Umwali, State Attorney representing Burera District argues that the Court ordered Burera District to pay damages while he admitted that the gun he used in shooting was not his own and used it while he was not entitled to. Furthermore, the policeman who gave him the gun prohibited him to shoot but denied. [18] She states that another ground that Burera District should not be held liable for the fault committed by Munyankumburwa is that the alleged offence was committed in Rulindo District and that he went there without the authorization of the District. Therefore, he should be responsible for his own fault especially that he shot a person deliberately while he knew it was unlawful. [19] The other point of their dissatisfaction is that in holding them liable for damages originating from the offence Munyankumburwa committed, the Court based on article 27 paragraph one of the Law N° 25/2004 of 19/11/2004 establishing and determining the organisation and functioning of the local service in charge of assisting in maintenance of security referred to as "Local Defense" but kept silence on paragraph two of the same article. This paragraph provides that if he or she commits acts contrary to his or her duties, he or she shall be punished in accordance with the law. [20] Munyankumburwa argues that if the policeman had not given him the gun, he would not have tasked himself especially that the gun he used was not belonging to him and that following the smugglers to arrest them does not constitute an offence since he could not disrespect the instructions of his superior. [21] Bizimana, the Counsel for Applicant for damages stated that Munyankumburwa was an employee of Burera District as LDF. Therefore, basing on the provisions of article 260 CCLIII, damages resulting from the offence he committed should be paid by the District as he was its employee.

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[22] He ended by filing a cross appeal requesting damages totaling 500 000 Rwf for procedural and 500 000 Rwf for advocate fees to be increased to those awarded on the first instance. THE VIEW OF THE COURT [23] Article 260 paragraph 3, CCBIII provides that the employer is held liable for tortuous acts of his employees when they are on duties. [24] Regarding the

pleading of the State Attorney for Burera District, that to order it to pay damages to the deceased's family members who were under his charge, Nkunuzimana killed by Munyankumburwa would be a fault since he did it out of the territorial jurisdiction of the District in which he was supposed to execute his duties. The Court finds that the Police and Local Defense main obligation is to maintain the State sovereignty to maintain security of citizens and their property. Even though Local Defense actually has a jurisdiction in which he should execute his duties, he cannot keep his arms crossed or remain indifferent for any acts threatening the national security. Again he could not deny executing an order issued by Sergeant Munyura Gakara while it well is known that Local Defense in his attributions should cooperate with other agencies to maintain the security. [25] As far as this case is concerned, the Court finds that the fact that the Police in Burera District was informed that there were smuggling activities that were being performed in Rulindo District, two districts bordering each other, and when he called the police in Rulindo he got no response, it was necessary the context of executing their attributions of maintaining the national security including preventing smuggling which deteriorates national development to follow up those wrong doers regardless of District borders in which normally they carry out their activities. Therefore, this ground of appeal has no merit. [26] Umwali Claire, State Attorney representing Burera District, states that the holdings of the judgment n° RPA 0074/07/CS decided on July 25, 2007 where the prosecution seized the Court against Pte Niyoyota for murder where the named Gakosi Nkuriza and his siblings applied for damages would be applied in this case so as Burera District not to pay damages since Munyankumburwa used the gun which did not belong to him and even not on the mission of the District. The Court finds that these judgment are so far different one from another taking into consideration circumstances under which the offence was committed because the legal scholars including Viney, JOUDRDAY and STARCK2 state that in deciding the cases, Courts should assess whether the act performed by an employee was related to his task or duties. It implies that the employee cannot be held liable for the consequences triggered by the tortuous acts of his/ her employee in the case those acts had no link with his/her actual tasks or duties and performed in case they were beyond the employer's control. These are the provisions of article 260 of Civil Code Book Three as referred to above. [27] The Court notes, with regard to working hours, that Munyankumburwa has gunned down Nkunuzimana towards 10 pm when he was on duties as ordered by Sergeant Munyurasi Gakara who was his supervisor in his daily activities while Pte Niyoyita has gunned down Mukagatana and her child when he had abandoned the service and the offence was committed at the place where he was not commissioned. With respect to the place where the offence was committed ,as

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explained above, following the smugglers in Rulindo District bordering Burera which is their jurisdiction, while it is obvious that those wrong doers were coming from Burera, it is not service fault that Burera District can pretend to deny its liability as an employer as long as they [Munyankumburwa and Munyurasi Gakara] went to Rulindo only for the purpose of their

attributions. with intention to arrest them [28] With regard to Burera District pleadings denying to pay damages basing on the fact that the used gun to shoot was not his, the Court finds that the gun used in the commission of the crime whether belonged to Munyankumburwa or someone else, is not sufficient itself to order Burera District, as an employer of Munyankumburwa, to repair the damage caused by using the gun. But rather, the reason for which he used it should be assessed. In this case, it is very obvious that Munyankumburwa and his comrade were holding the gun with them to defend themselves in the case they were threatened on their duties of maintaining the security. As it is manifested however, the Court notes that Munyankumburwa had misused the gun even though it occurred while he was on duties. This is the core of his fault based on to order Burera District to pay damages resulting from the fault committed by its employee. [29] Regarding whether Munyankumburwa was ordered to gun down Nkunuzimana, the statement made by Sergeant Munyurasi Gakara indicates that after hearing that he was loading the gun, he prohibited him twice from shooting but he disrespected and fired three bullets which killed the deceased. He performed this act personally, which obliges him to be hold criminally liable since he infringed the provisions of articles 15 and 16 of Law N° 25/2004 of 19/11/2004 establishing and determining the organisation and functioning of the local service in charge of assisting in maintenance of security referred to as “Local Defense” which determine cases in which he/she can resort to the use of weapon including a gun. [30] Basing on the above explanations, the Court notes that Burera District should pay damages as ordered by the High Court because, even though Munyankumburwa gunned down Nkunuzimana for his personal grounds for which he did not provide explanations, it occurred while he was on duties of maintaining security through the fight against smuggling. It happened in the context of complying with the provisions of articles 7 and 4 of the Law N° 25/2004 of 19/11/2004 establishing and determining the organisation and functioning of the local service in charge of assisting in maintenance of security referred to as “Local Defense” whereby he collaborated with Police Agencies to arrest individuals who were caught red-handed smuggling. [31] Therefore, Burera District as an employer should pay damages because Munyankumburwa committed the offence while he was on duties. Again,, as explained, he was executing his duties though he did it in a wrong way. This corresponds with the writings of law scholars that to hold an employer liable for tortuous acts of his employer, it is enough to establish whether his tortuous act was linked to his duties at least...They give an example of a driver of the car if his employer and make an accident because of a high speed.As far as this case is concerned, it is considered that Munyankumburwa committed the offence when he was on duties though he performed in a wrong way. [32] Regarding 500. 000Frw for counsel fees, Bizimana, the Counsel request on behalf of the applicants for damages on this instance, the Court notes that Burera District should pay since it was was necessary to hire an legal advocate and the amount is average.

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THE DECISION OF THE COURT [33] Appeal filed by Munyankumburwa lacks merit [34] Appeal filed by Burera District lacks merit as well [35] Holds that cross appeal filed by Manirarora Rosette and her children, Mukandengo, Hategekimana and Nsengiyumve Fidèle is received and

has merit. [36] Orders Burera District to pay to Manirarora Rosette Mukandengo, Hategekimana and Nsengiyumva 500 000 Rwf for advocate fees as awarded on this instance and should be added to damages amounting 7 450. 000 Rwf awarded by the High Court in Kigali to total 7.950.000. Rwf [37] The court fees should be charged to public fund.

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