

RWANDA / JUDGMENT

THE PROSECUTION v MWISENEZA

RPAA0181/ 10/CS

COURT

Supreme Court

DECIDED

21 March 2014

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RPAA0181/ 10/CS

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Text

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PROSECUTION v MWISENEZA [Rwanda SUPREME COURT – RPAA0181/ 10/CS (Mukanyundo, P.J., Gatete and Mukayisire, J.) 21 Mars 2014] Criminal law – Child defilement against a child under 14 – Committing an offence while young – The juvenile offender should be granted the chance to re-integrate in the society for a successful future – Decree law n° 21/77 of 18/08/197 instituting the penal code, articles 82 and 83. Facts: The appellant was prosecuted for having committed child defilement against two children of 6 and 7 years old. The Court found him guilty and sentenced him to 10 years of imprisonment and fined him with 100 000 Frw. He appealed to the High Court which upheld the appealed judgement since he admitted the offence from the Judicial Police to the Prosecution as well as his plea of guilty before the Court and that all of that evidence matched the testimonies made by interrogated witnesses. He appealed to the Supreme Court stating that there was no medical report that was based on in his conviction and even there were conflicts between him and the interrogated witnesses. Initially, however, during the hearing in the Supreme Court he invalidated his submissions stating that he pleads guilty and seeks forgiveness.

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The Prosecution lamented that he is not worth of another penalty reduction since he failed to cooperate for a smooth administration of justice. Held: The delinquent committed the offence while he was only 14 years old. Therefore he should be given a chance to re-integrate the society for a successful future. Thus, since he pleaded guilty and sought forgiveness, he is sentenced to eight years. Appeal granted The appellant sentenced to 8 years of imprisonment The appealed judgement changed with regard to penalties only Statutes and statutory instruments referred to. Decree law n° 21/77 of 18/08/197 instituting the penal code, art. 82 and 83. No case was referred to

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] The case originates from the Intermediate Court of Rubavu whereby the Prosecution was prosecuting Mwiseneza for having committed child defilement against the child named Mukashema who was 6 and

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another named Tuyishime who was 7 years old. In his pleading, Mwiseneza pleaded guilty and August 23, 2007 the Intermediate Court of Rubavu found him guilty of child defilement against those children and sentenced him to 10 years and a fine totaling (100 000frw). [2] MWISENEZA appealed to the High Court Musanze Chamber which upheld the entirety of the ruling of appealed judgement because he admitted the offence in the Judicial; police, in the Prosecution and pleaded guilty before the Court and his statements match those made by the interrogated witnesses. [3] Mwiseneza appealed to the Supreme Court stating that there is no medical report that the Court based on to convict him and that it based on the statements made by witnesses with whom he was in conflicts. However, on the day of the hearing on February 17, 2014 he invalidated his submissions stating that he pleads guilty and seeks forgiveness. In the course of the trial, he was assisted by Gasana Jean Baptiste while the Prosecution was represented by Munyaneza Nkuru Eric, a National Prosecutor. II. ANALYSIS OF THE LEGAL ISSUE IN THE CASE. To know whether or not Mwiseneza can benefit the penalty reduction. [4] Mwiseneza states that after making a deep thinking now he pleads guilty and seeks forgiveness. He

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explains that on July 10, 2005 when he was coming from school he passed where many learners were crowded playing and afterward some of them left and he remained with two of them named Tuyishime and Mukashema whom he pleads guilty to have committed defilement. He stated that after being criminal investigations were carried out against him, he repeatedly made contradictory statements because of some of the children whom he was in contact together who gave him bad pieces of advice that if he pleaded guilty he would be inflicted heavy penalties; hence one day he could admit the offence and the other one deny it but then he sought forgiveness. He added that he had known the impact brought about by the offence and now he repents. [5] His defense counsel argues that now Mwiseneza requests the Court to consider that

he unequivocally pleads guilty and seeks forgiveness so as to base on those mitigating circumstances about his guilty plea and that he committed it while he was young to benefit the penalty reduction basing on the provisions of article 35 of the law n° 30/2013 of 24/05/2013 relating to the code of criminal procedure and 76 and 78 of the Organic law n° 01/2012/OL of 02/05/2012 instituting the penal code. [6] Furthermore, the defense counsel for Mwiseneza notes that his late guilty plea would not prevent him from benefiting the penalty reduction because the Court has decided the similar case where penalties were reduced. [7] The Representative of the Prosecution contends that Mwiseneza pleaded not guilty but now he does so

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and explains how he committed it. However he states that the penalty reduction had been granted by the Intermediate Court since he was sentenced to 10 years and he could not benefit it again since he constituted a hard task for the administration of justice. Again, he notes that the fact that now he pleads guilty and seeks forgiveness is that he has no other option since he is pleading on the last instance and it is the cause which may justify that the penalty inflicted to him would be maintained.. The view of the Court [8] The Court notes that at first, Mwiseneza pleaded not guilty in the previous Court but now pleads guilty sincerely since he even explains the manner in which he committed it, and consequently repents and seeks forgiveness. [9] Even though the Representative of the Prosecution contends that he would not benefit another penalty reduction since he benefited it from the previous instances and, on his view, thinks that it is because it is the last option since he is pleading on the last instance, the Court notes that the fact that the accused pleads guilty late cannot prevent him from benefiting penalty reduction since at this point he is committed to tell the truth and seek forgiveness. [10] Moreover, the fact that Mwiseneza committed offence at 14 years old, he deserves the chance to be reintegrated in the society since he has the future in front

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of him. Hence basing on the provisions of article 82 and 83 of the Decree law n° 21/77 of 18/08/1977 instituting the penal code which was into force the time when he committed an offence for which he pleads guilty since he sincerely pleads guilty and seeks forgiveness so that he can be sentenced to 8 years of imprisonment III. THE DECISION OF THE COURT. [11] Decides that the appeal filed by Mwiseneza has merit. [12] Sentences him to 8 years [13] Decides that the ruling of the appealed judgement RPA min 0002/07/HC/MUS is changed with regard to penalties.

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