

RWANDA / JUDGMENT

PROSECUTION v NSANGIRANABO

RLR V.1-2016

COURT

Supreme Court

DECIDED

5 September 2015

CASE / FILE NUMBER

RPAA 0221/10/CS

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PROSECUTION v NSANGIRANABO

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Text

Page 1

PROSECUTION v. NSANGIRANABO [Rwanda SUPREME COURT – RPAA 0221/10/CS (Mukanyundo, P.J., Rugabirwa and Gakwaya, J.) September 5, 2014] Law of criminal procedure – Appeal – Prescribed times of appeal – Prescribed times of appeal is 30 days. However, the fact that the accused was not brought at the court for his presence during the delivery of the verdict, and even his appeal notice was not marked of the date of reception by the Prison in addition to the fact that he wrote various letters recalling his appeal, infers that the prescribed times of his appeal must be computed from the date he was notified of the ruling of the case regardless of the date he filed an appeal – Organic Law n° 01/2004 of 29/01/2004 establishing the organisation, functioning and jurisdiction of the supreme court, article 64 and Law n° 013/2004 of 17/05/2004 relating to the code of criminal procedure, article 164. Facts: Nsangiranabo Raphaël was convicted of child defilement by Gisenyi Province Court and sentenced him to life imprisonment and a fine of 100,000, 00Frw. He appealed to the High Court. The latter held that the ruling of the case was not changed. He appealed again to the Supreme Court and the latter ruled appeal inadmissible. He appealed again in the same court but the case screening judge decided his appeal not admissible because it had not respected the prescribed times of appeal since the appealed judgment had

been filed on May 12, 2009 but his appeal was filed on January 5, 2010. He appealed against the order explaining that he did not respect the times of appeal due the fact that Gisenyi Prison in which he was jailed did not take him to the Court for the delivery of the verdict in his presence. He explained that he managed to file appeal after many letter written to the High Court requesting the notification of the decision of the court. The prosecutor adduced that the appeal should not be admitted since he did not respect the times prescribed by the law and, according to the prosecutor, he had been notified of the date of delivery of the verdict. Held: Though the court had notified parties of the pronouncement of the judgment, August 2, 2009 and so it happened but he did not appear in the court, while the case file contain letters he had regularly addressed to the High Court through the director of prison requesting to be notified of the ruling of his case but in vain, and the fact the case was pronounced on the date highlighted above and write a letter notifying of his appeal on August 22, 2009, twenty days after the delivery of the judgment but the administration of the prison did not note on it the date of the receipt, infers that Nsangiranabo cannot be victim of these faults. Thus, his appeal did not exceed 30 days. Appeal against case screening order received. Appeal granted Case screening order quashed Court fees to public fund. Statutes and statutory instruments referred to: Organic Law n° 01/2004 of 29/01/2004 establishing the organisation, functioning and jurisdiction of the Supreme Court, article 64.

Page 2

Law n° 013/2004 of 17/05/2004 relating to the code of criminal procedure, article 164. No case was referred to

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Gisenyi Province Court found Nsangiranabo Raphaël guilty of child defilement against a child of 10 years old. It sentenced him to ten years of imprisonment and a fine of 100,000 Frw. [2] Nsangiranabo Raphaël appealed against the judgment, Musanze Chamber and upheld the ruling of appealed the case. [3] Nsangiranabo Raphaël again appealed against the judgment to the Supreme Court under RPAA 0039/10/CS. Appeal was screened and the judge in the preliminary order n° RP 0168/10/Pré-ex/CS dated June 1, 2010 declared appeal inadmissible because the case n° RPA 0646/06/HC/MUS was tried in his presence on May 12, 2009 and he was notified of its pronouncement as fixed on June 2, 2009 and it was pronounced on the very day but his appeal was filed too late on January 1, 2010. [4] After he was notified of that order, Nsangiranabo Raphaël appealed against that order in this court stating that the case screening judge had to have received his appeal since he did not appeal in the period of thirty days as prescribed by the law because due to the fact that Gisenyi Prison in which he was jailed did not take him to Court for the pronouncement of the judgment he appealed against in this court. He added that he had regularly writing to the High Court requesting it to be notified of the verdict till the court did it on January 5, 2010, the day on which he filed an appeal. [5] The case was tried in public on June 16, 2014 Nsangiranabo Raphaël present and assisted by Murenzi Eugène while the Prosecution was represented by Ntawangundi Béatrice. III. ANALYSIS OF LEGAL ISSUE Whether appeal of Nsangiranabo Raphaël against case screening order has

merit. [6] Nsangiranabo Raphaël and his counsel states that the case screening judge decided that his appeal did not respect the times prescribed by the law overlooking that his appeal did not respect 30 days prescribed by the law because due to the Gisenyi Prison did not take him to the Court for the pronouncement of the judgment n° RPA 0646/06/HC/MUS that was tried on May 12, 2009 and which subsequently would have pronounced on June 2, 2009. He articulated that he had written 5 letters to the High Court, Musanze Chamber requesting to be notified of the decision of the court till he was notified if it on January 5, 2010, the day on which he filed an appeal. He requests case screening order to be quashed to have the chance of trying his case on merit. [7] The Prosecutor disputed that the case screening order must not be changed because since appeal of Nsangiranabo Raphaël did not respect prescribed appeal. She pleads that

Page 3

Nsangiranabo Raphaël was tried in the case n°RPA 0646/06/HC/MUS and when they hearing was closed, he get notified of the date of the pronouncement, June 2, 2009, that on that day, the judgment was pronounced but filed appeal too late, January 5, 2010. THE VIEW OF THE COURT [8] Regarding the times of appeal, article 64 of Organic Law n° 01/2004 of 29/01/2004 establishing the organisation, functioning and jurisdiction of the Supreme Court, article 64 at the time Nsangiranabo Raphaël filed an appeal provides that the period of appeal is thirty

(30) days which starts running as from the day the judgement which is the subject of the appeal was pronounced in the case where the appellant was personally present or represented and in the case where the appellant was informed of the day of judgement but neither attended nor sent a representative. [9] While article 166, paragraph 4 of the Law n° 013/2004 of 17/05/2004 relating to the code of criminal procedure which was into effect at the time when Nsangiranabo Raphaël provides that However, when an appellant is in detention, he or she can lodge his or her appeal from the prison by writing a letter to a court clerk through the in-charge of the prison. The latter signs on the letter and indicates the date of reception which is taken as the date of appeal. He or she immediately transmits appeal statement to the appellate court without delay. [10] With regard to this case, the case file indicates that the judgment n° RPA 0646/06/HC/MUS as tried by the High Court on June 2, 2009 all parties present and when the hearing was closed, the court notified them that the judgment pronouncement was to take place on June 2, 2009. At this day, the judgment was pronounced in absence of each party as indicated by the statement of the pronouncement in the case file. Nsangiranabo Raphaël appealed to this court on January 5, 2010. [11] Furthermore, the case file contains letters dated June 22, 2009, October 26, 2009 and November 2009 that Nsangiranabo Raphaël wrote to the High Court, Musanze Chamber through the Director Gisenyi Prison in which he was jailed. However, the administration of the Prison did not note on the letter the date of receipt. The letters requested the notification of the decision of the court of the case n°RPA 0646/06/HC/MUS which was to be pronounced on June 2, 2009 but without being responded. [12] The court notes that given that the appealed judgment was pronounced on June 2, 2009 and Nsangiranabo immediately wrote his letter of appeal on June 22, 2009, 20 days after the pronouncement of the judgment, but administration of

Gisenyi Prison did not note on it the date of receipt demonstrates that Nsangiranabo Raphaël should not be victim of the faults of committed by administration of Prison. It enfers therefore, that his appeal against the judgment n° RPA 0646/06/HC/MUS is worthy of being admitted as it respected 30 days providedfor by the article 64 of Organic Law referred to above. Hence, his appeal is admissible. Thus case screening order n° RP 0168/10/Pré-ex/CS dated June 1, 2010 is quashed. III. DECISION OF THE COURT [13] Receives appeal filed by Nsangiranabo Raphaël against case screening order n° RP 0168/10/Pré-ex/CS of June 1, 2010 since it complied with the rules of procdure.

Page 4

[14] Decides that appeal is substantiated. [15] Decides that case screening order RP 0168/10/Pré-ex/CS is quashed [16] Orders the court fees to be charged to public treasury.

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