

RWANDA / JUDGMENT

PROSECUTION v. UWIRINGIYIMANA_232774_en

RLR V.2-2017

COURT

Supreme Court

DECIDED

4 May 2016

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PROSECUTION v. UWIRINGIYIMANA [Rwanda SUPREME COURT – RS/REV/INJUST/PEN0004/15/CS (Kayitesi, P.J., Hitiyaremye and Munyangeri, J.) March 4, 2016] Criminal Law – Injustice – To order a person to remain in prison until he/she pays the fine is an injustice because it is not provided for under Rwandan law. Facts: Uwiringiyimana was accused of having wounded domestic animals belonging to another person, and the court convicted and sentenced him to one year (1) imprisonment, and the fine of five hundred thousand Rwandan francs (500,000Frw). The Court decided further that he will remain imprisoned until he pays the total amount of the fine imposed on him. Unsatisfied with the decision, Uwiringiyimana lodged an appeal before the Intermediate Court and the latter sustained the judgment. He filed a case for interpretation of the judgment RPA0358/13/TGI/NGOMA, and requested to be released so that he may be able to pay the fine that was imposed on him, because he is that destitute who cannot afford such fine especially that he is in prison. The court ruled on the matter and stated that nothing was to be clarified in the judgment. Uwiringiyimana applied for review of the judgment RPA0358/13/TGI/

NGOMA rendered by the Intermediate Court of Ngoma due to injustice to the Office of the Ombudsman and the request was taken into consideration. The Prosecutor contended that Uwiringiyimana have been unfairly treated because the Court decided that he will not be released until he pays the total amount of the fine equivalent to five hundred thousand (500,000Frw) because pursuant to the Law, the penalty of imprisonment is served in prison. Held: The fact that the Court ordered that Uwiringiyimana will remain in the prison until he pays the total amount of the fine equivalent to five hundred thousand Rwandan francs (500,000Frw) is injustice, because it is not provided for under Rwandan law. Application for review due to injustice has merit. Uwiringiyimana Aaron must be immediately released. Court fees referred to the public treasury. Statutes and statutory instruments referred to: Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code, article 436. Organic Law N°03/2012/OL of 13/06/20012 determining the organization, functioning and jurisdiction of the Supreme Court, article 81 para. 1, 2 and 3. No case referred to.

Judgment

I. BRIEF BACKGROUND TO THE CASE

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[1] The case started in the Primary Court of Sake under RP0145/13/TB/SKE, where Uwiringiyimana Aaron was accused of having wounded domestic animals belonging to another person. The Court convicted him and sentenced him to one year (1) imprisonment and to the fine of five hundred thousand Rwandan francs (500,000Frw). The court decided further that he will remain imprisoned until he pays the total of the fine imposed on him. [2] Uwiringiyimana Aaron was not satisfied with the decision, therefore he lodged an appeal before the Intermediate Court whereby in the judgment RPA0358/13/TGI/NGOMA, the latter sustained the ruling of the judgment RP0145/13/TB/SKE rendered on 31 October 2013. [3] Unpleased with the decision, Uwiringiyimana Aaron filed a case RPA0026/15/TGI/NGOMA for interpretation of the judgment RPA0358/13/TGI/NGOMA, whereby he was requesting to be released so that he may be able to pay the fine that was imposed on him, because he is that indigent who cannot afford such fine especially that he is in prison. The court ruled on the matter and stated that nothing was to be clarified in the

judgment.

[4] Uwiringiyimana applied for review of the judgment RPA0358/13/TGI/NGOMA rendered by the Intermediate Court of Ngoma due to injustice to the Office of the Ombudsman and the latter in her letter of 25 June 2015 to the Chief Justice, requested that the judgment RPA0358/13/TGI/NGOMA be reviewed due to injustice and this was admitted. [5] The public hearing was held on 29 February 2016 whereby Uwiringiyimana Aaron was assisted by Counsel Mbonyimpaye Elias, while the Prosecution was represented by Ntawangundi Béatrice, the National Prosecutor. II. ANALYSIS OF LEGAL ISSUES Weather the fact that

Uwiringiyimana Aaron was ordered by the court that he will not be released until he pays the total of the fine imposed on him constitutes injustice. [6] Uwiringiyimana argues that he applied for review of the judgment RPA0358/13/TGI/NGOMA due to injustice because the Intermediate Court of Ngoma sentenced him to the penalty of one year imprisonment and the fine of five hundred Rwandan francs (500,000Frw) and ordered that he will not be released unless he pays the total of the fine and consequently he remained in prison for a while because he cannot afford it. He explains that after he served the sentence inflicted on him, he remained imprisoned for about two (2) years and then requests justice to be done by suspending the payment of the fine imposed on him. [7] His Counsel Mbonypaye Elias argues that the previous judge disregarded the provision of article 4 of the Decree Law N°01/2012/OL of 02/05/2012 instituting the penal code, which provides that courts are not allowed to pronounce sentences by analogy. He kept on explaining that justice should be done in favour of Uwiringiyimana so that he may be released because he should not remain in prison for failure to pay the fine while it is not provided for by the Law. [8] He further states that even the provision of article 144 of the Constitution of Rwanda that was into force at the time Uwiringiyimana committed the offence was disregarded, and therefore requests the release of his client.

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- [9] The Prosecution states that the statements made by Uwiringiyimana that he suffered injustice because the court decided that he will not be released until he pays the total of the fine equivalent to five hundred thousand (500,000Frw) while he is an indigent person who cannot afford it especially that he is in prison, should be considered, because pursuant to article 229(1) of the Law N°03/13 of 24/05/2013 relating to the code of criminal procedure providing that “imprisonment penalty shall be served in prison” and article 232 of the Law mentioned above which provides also that “Fine and court fees shall be paid to the Court Registrar within a period of eight (8) days from the date of final judgment, the time that may extend by the President of the court up to six (6) months, as well as article 233(2) reading that “if the convicted person does not pay in the prescribed time limits, he/she shall be forced to pay”; the penalty of imprisonment is served in prison while the execution of the payment of the fine is sought over assets. [10] For all these grounds, the fact that Uwiringiyimana has served the sentence of one year of imprisonment that was inflicted on him in 2014 but remained imprisoned until 2016, the Prosecution finds that it is unjust as he himself alleges, because he would have been made servile in lieu of payment of fine, which implies that in case he is not able to pay, he will remain in prison forever, while it is not provided for by the Law. The Prosecution requested the court to declare that he was unjustly imprisoned and to order his release because he has already served the sentence. THE OPINION OF THE COURT [11] Article 436 of the Decree Law N°01/2012/OL of 02/05/2012 instituting the penal code on which the court relied to punish Uwiringiyimana Aaron provides that “Any person who maliciously and without reasonable justification kills or seriously wounds livestock or domestic animals belonging to another person, shall be liable

to a term of imprisonment of six (6) months to one (1) year and a fine of two hundred thousand (200,000) to two million (2,000,000) Rwandan francs or one of these penalties”. [12] Article 81 paragraphs 1, 2 and 3 of the Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court provides that “The review of a final decision due to injustice shall only be applied for on any of the following grounds: When there are provisions and irrefutable evidence that the judge ignored in rendering the judgment; When the judgment cannot be executed due to the drafting of its content”. [13] The arrest warrant available in the case file proves that Uwiringiyimana Aaron was arrested on 5 July 2013, and the judgment against which the application for review due to injustice was filed sentenced him to the term of one year of imprisonment and the fine of five hundred thousand Rwandan francs 500,000Frw and ordered that he will not be released from the prison until he pays the total amount of the fine. [14] The court finds that since 5 July 2013 the time when Uwiringiyimana Aaron was arrested until 4 July 2014, he has already served the term of one year of imprisonment inflicted on him by the Intermediate Court of Ngoma, though he stayed in prison due to the fact that he had not paid the fine of 500,000Frw as ordered by the Court that he would not be released from the prison until he pays the total amount of the fine.

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[15] The court finds unfair the fact that Uwiringiyimana Aaron was ordered by the court that he will not be released until he pays the fine of five hundred thousand Rwandan francs (500,000Frw), because such penalty is neither provided for by article 436 of the Organic Law N°01/2012/OL of 02/05/2012 mentioned above, nor in any other Rwandan legislation. [16] The Court notices therefore that the fact that Uwiringiyimana Aaron has served in 2014 the penalty of one year of imprisonment inflicted on him but remained imprisoned until today instead of seeking payment of the fine from him constitutes injustice, given that it is not provided for by the Law. The court finds therefore that he must be released as he has already served the penalty of one year imprisonment inflicted on him and the fine he was ordered to pay be cancelled. [17] Considering the legal provisions mentioned above, the court finds that the judgment RPA0358/13/TGI/NGOMA rendered on 31 October 2013 by the Intermediate Court of Ngoma disregarded the Law and cannot be executed as long as Uwiringiyimana Aaron proves to be a destitute while the judgment has ordered that he will not be released until he pays the fine of five hundred thousand Rwandan francs (500,000Frw), implying that he shall never be released whereas he was sentenced to only one year of prison. Therefore, the judgment was unjust and must be quashed with regard to the fact that he would be not released until he pays five hundred thousand (500,000Frw) of the fine and therefore he must be immediately released as he has already served the sentence. III. THE DECISION OF THE COURT [18] Finds the application for review due to injustice filed by Uwiringiyimana Aaron with merit. [19] Decides that judgments RPA0358/13/TGI/NGOMA rendered on 21 February 2014 by the Intermediate Court of Ngoma and RP0145/13/TB/SKE rendered by the Primary Court of Sake on 31 October 2013 changes with regard to their ruling that Uwiringiyimana

Aaron would be released after paying the total amount of the fine imposed on him. [20] Quashes the ruling ordering that Uwiringiyimana Aaron would be released after paying the fine of five hundred thousand Rwandan francs (500,000Frw); [21] Orders immediate release of Uwiringiyimana Aaron; [22] Orders that the court fees be charged to the public treasure.

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