

PROSECUTION v. NZITAKUZE

[Rwanda COURT OF APPEAL– RPAA 00500/2018/CA
(Muhumuza, P.J.) 23 May 2019]

Criminal Law – An attempt of murder – To hold liability for an attempt of murder, it is not sufficient to rely on weapons or tools found with the accused, instead, the culpability required for an attempted murder is an intent of committing an offence – Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code, article 27.

Facts: This case started before the Intermediate Court of Ngoma whereby Nzitakuze was charged with attempt of murder allegedly to be committed against someone called Nsabimana when they were together boozing and had quarrels later. The Prosecution states that in ambush, the accused waited for Nsabimana with intent of murdering him with a machete, fortunately, Nsabimana saw him and they fought for that machete, It adds that people came for rescue and found them still fighting for the machete, they took it off them and calmed the matter. That Court convicted the accused and sentenced him to life imprisonment basing on testimonies of those who came for rescue when Nsabimana and Nzitakuze were fighting as well as on the report of security organs affirming that the machete which Nzitakuze possessed, he got it from Hakizimana Valens's place.

The accused appealed before the High Court, chamber of Rwamagana stating that the Intermediate Court found him guilty of the offence he did not committed disregarding elements of evidence he produced. That Court sustained the

ruling of the appealed judgment and motivated that Nzitakuze is guilty of the offence he is accused because he failed to prove wrong the elements of evidence which were relied on by the Intermediate Court of Ngoma, to find him guilty.

The accused appealed again to the Supreme Court but the case was transferred to the Court of Appeal after judicial reform. In his appeal, he states that the High Court found him guilty without enough assessment of elements of evidence relied on to find him guilty, that the Court also disregarded his defense and failed to conduct a thorough investigation while he requested so since the investigation stage, he adds that the machete he had, he was carrying it to his work of guard and on his way to work, he met Nsabimana who pretended that he was about to be hit, that they fought and people calmed the matter later. He further states that he criticizes the appealed judgment for having indicated that he waited for Nsabimana in ambush, whereas it is wrong, especially that they had no conflicts, he concludes stating that the High Court ruled without basis.

The Prosecution states that all previous Courts ruled the case considering elements of evidence which include the report of security organs, the machete found in place where Nzitakuze and Nsabimana were fighting and that those who came for rescue, testified that they found Nzitakuze being over Nsabimana fighting for the machete that the former wanted to use for hitting the latter. It adds, those who were in bar, explained that after having quarrels with Nsabimana, Nzitakuze went home immediately and get a machete, thereafter he went to wait for Nsabimana, It adds, the fact that Nsabimana had no wounds, was due to circumstances beyond control of the accused, the Prosecution concludes praying to the Court to convict the accused.

Held: For an attempt of murder, to hold liability for an attempt of murder, it is not sufficient to rely on weapons or tools found with the accused, instead, the culpability required for an attempted murder is an intent of committing an offence, therefore, the accused is not guilty.

**Appeal has merit;
The ruling of the appealed judgment is overruled;
Court fees to the public treasury.**

Statute and statutory instruments referred to:

Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code, article 27.

Law N° 30/2013 of 24/05/2013 relating to the code of criminal procedure, article 165.

No case laws referred to.

Author cited:

Arshworth Andrew, Sentencing and Criminal Justice, sixth edition, Cambridge University Press, p.127.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Nzitakuze Théoneste was sued before the Intermediate Court of Ngoma, charged with attempt of murder allegedly to be committed against someone called Nsabimana Blaise when they

were together boozing and had quarrels. The Prosecution states that when Nsabimana Blaise went home, Nzitakuze Théoneste also went and brought a machete, that he waited for him on the way intending to kill him, fortunately Nsabimana Blaise saw Nzitakuze and they fought for the machete, and the former made a scream for help, people came for rescue and found them still fighting for the machete, they took the machete off them and calmed the matter.

[2] The Intermediate Court of Ngoma rendered the judgment RP 0402/15/TGI/NGOMA on 05/11/2015 finding him guilty and sentenced him to life imprisonment basing on the testimonies of Mukarukundo Languida and those of Nyirahabimana Juliette who are among those who came for rescue when Nsabimana Blaise na Nzitakuze Théoneste were fighting, It also relied on the report of security organs stating that the machete which Nzitakuze Théoneste had, he got it from Hakizimana Valens's home.

[3] Nzitakuze Théoneste appealed before the High Court, chamber of Rwamagana stating that the Intermediate Court found him guilty of the offence he did not committed disregarding elements of evidence he produced.

[4] The High Court, chamber of Rwamagana rendered the judgment RPA 0480/15/HC/RWG, on 12/05/2016 sustaining the ruling of the appealed judgment and motivated that Nzitakuze Théoneste is guilty of the offence he is accused of because he failed to prove wrong the elements of evidence which were relied on by the Intermediate Court of Ngoma, to find him guilty.

[5] Nzitakuze Théoneste appealed again to the Supreme Court stating that the High Court found him guilty without enough assessment of elements of evidence relied on to find him guilty, that It also disregarded his defense and failed to conduct a thorough investigation.

[6] Before the case is heard, there were a judicial reform and the Court of Appeal was established, the present case was transferred to that Court pursuant to article 52 and 105 of the Law N°30/2018 of 02/06/2018 determining the jurisdiction of courts.

[7] The hearing of the case was held in public on 09/04/2019, Nzitakuze Théoneste being assisted by Counsel Hategekimana Gratien while the Prosecution was represented by Rudatinya Gaspard, the National Prosecutor.

II. ANALYSIS OF LEGAL ISSUE

Whether Nzitakuze Theoneste was found guilty for the offence he did not commit.

[8] Nzitakuze Théoneste states that he appealed because the High Court rendered the judgment without assessing elements of evidence he produced, that the court did not conduct investigation despite his requests since he was before the investigators whereby he asked to interrogate the owner of the bar in which they were boozing as well as Hakizimana Valens alleged to have given him the machete, Nzitakuze admits for having met Nsabimana Blaise, the latter demanded him to buy for him beer and he replied that he has no money,that he immediately went home to get a machete for his work of guard, that on his way to work, he met Nsabimana Blaise, the latter

said that Nzitakuze wanted to hit him with a machete, they fought and Nsabimana Blaise made a scream for help, people came and calmed the matter, they also took the machete off them. Nzitakuze adds that the statement that he admitted the offence is wrong because he did not confess that he was about to kill Nsabimana Blaise, rather, he admitted that he got the machete from his home carrying it to his work of guard.

[9] Counsel Hategekimana Gracien assisting him, states that together with his client criticize that the appealed judgment indicates that Nzitakuze Théoneste waited for Nsabimana Blaise in ambush, whereas it is wrong, he adds that his client requested for investigation with purpose of knowing whether Nsabimana met Nzitakuze Théoneste on his way to work in order to remove the statement that he was in ambush, especially that they had no conflicts, he adds that the High Court ruled without basis. He concludes stating that though Nzitakuze Théoneste is not guilty, if the Court finds it otherwise, he should be sentenced pursuant to the Law N°68/2018 of 30/08/2018 determining offences and penalties in general which is the one with lesser penalties.

[10] The Prosecution states that all previous courts ruled the case basing on elements of evidence which include the report of security organs, a machete found in place where Nzitakuze Théoneste and Nsabimana Blaise were fighting, all those who came for rescue testified that they found Nzitakuze Théoneste being over Nsabimana Blaise fighting for the machete, that the former wanted to use for hitting the latter. The Prosecution argues that before the Intermediate Court, Nzitakuze Théoneste explained how he met Nsabimana Blaise in bar, and the latter requested him to buy beer, that he explained how they had

quarrels, how he went home leaving him in the place and that he returned to the work of guard carrying a machete.

[11] It proceeds stating that those who were interrogated, explained that after quarrels between Nzitakuze Théoneste and Nsabimana Blaise, the former went home immediately and get a machete, thereafter he went to wait for Nsabimana Blaise, It adds, the fact that Nsabimana Blaise had no wounds, should not be considered because the offender did not murder him due to circumstances beyond his control, rather, Nsabimana was stronger than him, the Prosecution states that the grounds of Nzitakuze Théoneste's appeal have no merit, It prays to the Court to hold that Nzitakuze Théoneste is guilty of attempt of murder, that however, in sentencing, article 21 paragraph 3 of Law N°68/2018 of 30/08/2018 determining offences and penalties in general should apply.

DETERMINATION OF THE COURT

[12] Article 27 of the Organic Law N° 01/2012 of 02/05/2012 instituting the Penal Code provides that an attempt is punishable when the plan to commit an offence has been demonstrated by observable and unequivocal acts constituting the beginning of the offence meant to enable the commission and that were suspended or failed in their purpose only because of circumstances beyond the offender's control.

[13] The Intermediate Court of Ngoma found Nzitakuze Théoneste guilty of attempt of murder basing on the statement of the witness Mukarukundo Languida who accuses him that when she came for rescue, that she found him over Nsabimana Blaise, this is supported by the report from security organs

affirming that the machete which Nzitakuze Théoneste possessed, he got it from Hakizimana Valens's place.

[14] Before the High Court, chamber of Rwamagana, Nzitakuze Théoneste was found guilty basing on the fact that he failed to prove wrong the elements of evidence produced by the Prosecution which were relied on by the Intermediate Court to find him guilty, these elements of evidence include the statements of the witnesses, the report of authorities as well as his confession before the investigators for having fought with Nsabimana Blaise for the machete.

[15] The case file demonstrates that when Mukarukundo Languida was interrogated in investigation bureau on 16/07/2015, whether she knows how Nzitakuze Théoneste intended to hit Nsabimana Blaise with a machete, she replied that she heard a scream for help and woke up for the rescue, by reaching the place, she found Nsabimana Blaise lying down, that Nzitakuze Théoneste was over him fighting for the machete, that together with others, they took the machete off them, that she instantly called the one in charge of security, she added, she does not know any ground of quarrels between Nzitakuze Théoneste and Nsabimana Blaise.

[16] The case file also demonstrates that on 11/07/2015, the authorities of the village where the offence was committed, made a report on the matter, stating that on 11/07/2015, the night time at 10pm, Nsabimana Blaise, Nzitakuze Théoneste and Hakizimana Valens were together at Nyirabungeri Alphonsine's bar but the former left his colleagues in that bar, at that moment Nzitakuze Théoneste started moving around that bar and hid himself at Nsabimana Blaise's fence carrying a

machete which he wanted to use for hitting Nsabimana Blaise, and previously, they had quarrels when they were in that bar.

[17] On 12/07/2015, authorities of Ntebe cell, also made a report indicating that in ambush Nzitakuze Théoneste waited for his neighbour Nsabimana Blaise around his home with intention of hitting him with a machete but by reaching the front view of the house, Nsabimana Blaise immediately saw Nzitakuze Théoneste hiding himself in the fence, that the latter came approaching him carrying a machete and when he was about to hit him, Nsabimana Blaise fought against him to take that machete, at the same time, he was making a scream for help, people came for rescue and took that machete off them.

[18] In his interrogation before the investigation bureau on 12/07/2015, Nzitakuze Theoneste stated that when he was in bar together with Nsabimana Blaise, that they had quarrels, thereafter, he went home to get a machete so that he reports himself to his work of guard, that he met Nsabimana Blaise around his place, that he wanted to run but the latter caught him and they fought, he added that they kept fighting for the machete, Nsabimana Blaise made a scream for help, Hakizimana Valens came for rescue and took the machete off them, at that moment, people came for rescue, among them, there was one in charge of security, those people accuse him that he was about to murder Nsabimana Blaise, they add, that machete was not to be used in killing, rather, he was carrying it to his work of guard.

[19] In his interrogation before the investigators on 15/07/2015, Nsabimana Blaise stated that when he went home, Nzitakuze Théoneste waited for him at the front view of the house, Nsabimana further stated that he saw him coming from

the fence carrying a machete and when he was about to hit him, he failed, Nsabimana Blaise fought against him to take that machete, at the same time, he was making a scream for help, Hakizimana Valens whom Nzitakuze Théoneste borrowed that machete, was first to come, he ceased the conflict and took that machete off them, among others who came, include Mukarukundo, he concluded stating that he has no conflict with Nzitakuze except that the latter is jealous of him because he is wealthier than him.

[20] The analysis of the article 27 of the Law N° 01/2012 of 02/05/2012 mentioned above, implies that for an attempt to be qualified as such and be punishable, it requires that the acts of an offence be demonstrated by observable and unequivocal acts constituting the beginning of the offence meant to enable the commission and that were suspended or failed in their purpose only because of circumstances beyond the offender's control

[21] This is also the opinion of the legal schoolars about an attempt of the offence whereby they state that “the culpability required for an attempted murder is an intent to kill”¹

[22] With regard to the present case, the Court finds that basing on the content of the case file aforementioned, though the accused and the victim do not agree, what happened between Nsabimana Blaise and Nzitakuze Théoneste is fighting due to their quarrels when they were boozing, because the Prosecution failed to prove that Nzitakuze Théoneste waited for Nsabimana Blaise in ambush with intent of murdering him.

¹ Arshworth Andrew, Sentencing and Criminal Justice, sixth edition, Cambridge University Press p.127.

[23] The Court finds, all witnesses affirmed to have found Nzitakuze Théoneste and Nsabimana Blaise fighting for the machete but they added that no one knows how the issue started (whether they met and suspected each other or if one waited for the other in ambush due to quarrels they had) because all those witnesses state that they came for rescue and ceased the disputes, but they do not demonstrate Nzitakuze Theoneste's intent of killing Nsabimana Blaise and whether he failed to do so because of the rescue.

[24] The Court finds that basing on the provisions of the article 165 of the Law N° 30/2013 of 24/05/2013 relating to the code of criminal procedure which provides that if the proceedings conducted as completely as possible do not enable judges to find reliable evidence proving beyond reasonable doubt that the accused committed the offence, the judges shall order his/her acquittal.

[25] The Court finds doubt in elements of evidence for the attempt of murder for which Nzitakuze Théoneste is charged with, because nothing proves that he had the intent of murdering Nsabimana Blaise, therefore, the Court finds no basis of convicting him.

III. THE DECISION OF THE COURT

[26] Holds that Nzitakuze Théoneste's appeal has merit;

[27] Overrules the ruling of the judgment RPA 0480/15/HC/RWG rendered on 12/05/2016 by the High Court, chamber of Rwamagana;

[28] Finds Nzitakuze Théoneste not guilty of attempt of murder;

[29] Orders the release of Nzitakuze Théoneste after pronouncement of this case;

[30] Orders that the court fees be charged to the public treasury.