

PROSECUTION v. MWIZERWA

[Rwanda HIGH COURT – RPA0921/13/HC/KIG (Bukuba P.J.) 7 March, 2014]

Criminal Procedure – Time limit of the appeal – When the date of verdict delivery is postponed without informing the party of the other date, the time limit of his/her appeal will be the time of notification of the decision of the court instead of that of verdict delivery – Law n° 30/2013 of 24/5/2013 relating to criminal procedure, article 176 and 177.

Criminal law – Mitigating circumstances considered by the previous court – The fact that the request of the appellant has been considered in the previous court without any challenge about how it was done, is the ground to uphold the decision.

Facts: Mwizerwa was charged of embezzlement, forgery and use of forged documents in the Intermediate Court of Nyarugenge. In the Judgment rendered on 10 January 2012, he was convicted of the offences and sentenced to four years of imprisonment. He appealed to the High Court on 6 August 2012.

During the hearing, the prosecution requested for inadmissibility of Mwizerwa's appeal as it was submitted after the time limit of the appeal. Mwizerwa argues that, he appeared on the date of his verdict delivery but it did not take place and he was not informed of the date of adjournment. He added that he knew the decision when they brought him the copy of the judgment at the prison. He further challenges that he was sentenced to the heavy penalties while he pleaded guilty and was the first offender. He added that his plan to commit the offence was not fulfilled and therefore requests for the penalty reduction.

Held: 1. If at the date of the delivery of the judgment, the action did not happen and no statement in the file indicating what was done in lieu of its delivery, and there is no other evidence that the appellant was present to be notified of the postponed date and there exists no other evidence to prove that he was notified of the court decision, the reference date for computation of the time limit of appeal is the day that the appellant states to have been notified of the decision. The fact that the appellant was notified of the court's decision on 8 July 2012 and appealed on 6 August 2012 indicates that the time period of one month provided for by the law was not expired. Therefore, the request of the prosecution as to reject the appeal due to the expiry of the time of appeal is groundless

2. The fact that the request of the appellant has been considered in the previous court and the appellant does challenge how it was done, is the ground for upholding the previous decision in the appellate court.

**Appeal admit but without merit.
Appealed judgment upheld.**

Statutes and statutory instruments referred to:

Law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure, articles 176 and 177.

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] This case commenced in the Intermediate Court of Nyarugenge where the prosecution charged Mwizerwa Etienne the offence of embezzlement, counterfeit and use of counterfeited documents. In the judgment rendered on 10 January 2012, the court convicted him and sentenced him with four (4) years of imprisonment. Mwizerwa Etienne was not satisfied with this decision and appealed to the Supreme Court on 6 August, 2012.

[2] On hearing day in the appellate level, the prosecution stated that Mwizerwa Etienne appealed after the time limit for filing an appeal provided by the law had expired and requested the court not to admit it, while Mwizerwa Etienne argued that he came on the day he was informed that the pronouncement of the verdict would take place, but it did not and he was not even told the day on which it had been adjourned to, to the extent that he came to know the day on which it was pronounced when he was brought the copy of the judgment at the prison.

[3] Mwizerwa Etienne further explained that he criticize the fact that he was given harsh penalties when moreover he pleaded guilty and it was his first time to commit an offence and also that he did not accomplish his intention of committing the offence. Therefore, he requests for penalty reduction and he returns in the Rwandan society because he thinks that the three years he has spent in the prison has rehabilitated him.

[4] The prosecution argued that this ground of appeal is baseless because he was charged with two offences and the prosecution requested for him a sentence of 16 years of imprisonment but the court sentenced him to 4 years of imprisonment , thus it is of the view that the appealed decision should be sustained.

[5] The legal issues to be analyzed are to know whether Mwizerwa Etienne appealed after the time limit for filing an appeal had expired so that his appeal is inadmissible as the prosecution pleads and whether he can benefit the penalty reduction on the appellate level.

II. ANALYSIS OF THE LEGAL ISSUES

A. Concerning the period of appeal

[6] The judgment which Mwizerwa Etienne is appealing was rendered on 10 January, 2012 as indicated on the copy of the judgment on mark 51, he appealed on 6 August, 2012 which is the basis of the prosecution 's argument that he appealed after the time limit of appeal as provided for by the law had already expired. On the other hand, Mwizerwa Etienne adduce that he appealed within the time limit provided for by the law ,for he appealed after receiving the copy of the judgment, as for the date of pronouncing the verdict he adduces that he went to the court and found that the Judge had fallen sick and he was not informed the day on which the

pronouncement of the verdict was adjourned to and the copy of the judgment was brought to him in prison on 18 July 2012 which is the basis of his appeal on 6 August 2012.

[7] The court finds that article 176 of the law n° 30/2013 of 24/5/2013 regulating the code of criminal procedure which provides that “An appeal must be filed within a period of one (1) month from the pronouncement of the judgment with respect to a party that was present or represented at the pronouncement of the judgment” while article 177 of that law provides in its paragraph 5 that “If the appellant is in prison, he/she may file the appeal by writing a letter to the court registrar through the prison director. The prison director shall sign on the letter by noting on it the date of receipt which shall be deemed the date of appeal. The prison director shall immediately submit the appeal to the court expected to hear the appeal”.

[8] It finds that the copy of appeal of Mwizerwa Etienne was signed by the administration of the prison on 6 August, 2012 while as mentioned above, the appealed judgment was pronounced on 10 January, 2014. From this perspective, basing on these dates, the time limit of appeal of one month had expired. However, it is clear that the hearing of this case in the first instance on 9 November 2011, made a decision to pronounce this case on 8 December, 2011 as it is demonstrated by that order which is contained in the file on mark 45. On that date, the verdict was not pronounced and there is no statement in the case file to indicate what was done on that date instead of pronouncement moreover it is the only evidence to prove to the court that the appellant was present for him to know the day on which the pronouncement have been adjourned and it doesn't find any other evidence proving that those rulings were communicated to him while the appellant, in his letter of appeal, states that those rulings were communicated to him on 18 July 2012. Therefore, this is the date of reference in determining the period of appeal and that's why it is clear that from that date up to 6 August 2012, the period of one month provided by the law had not yet expired. From this perspective, the request of the prosecution of not admitting this claim due to the time limit of appeal is not valid.

B. Concerning the penalty reduction

[9] Mwizerwa Etienne further explained that he was given harsh penalties while he pleaded guilty and also it was the first time he committed an offence and he did not achieve his criminal objective, therefore he prays for the penalty reduction since the three years he spent in prison was enough for being corrected and therefore requests for penalty reduction and go back in Rwandan society.

[10] The prosecution states that the ground of appeal is not valid since he was charged with two offences and requested for him to be sentenced to 16 years of imprisonment but the court sentenced him to only four (4) years of imprisonment, therefore the appealed decision should not be overruled.

[11] After its analysis, this Court finds that in first instance Mwizerwa Etienne was charged of the offences of embezzlement, counterfeit and use of counterfeited documents which constitute the ideal concurrence of offences provided for in article 93 of the penal code which was into force in Rwanda at that time of the judgement, it sentenced him with the penalty provided for in article 220 of that law since it found that it was the heaviest one but also while analyzing the pleadings of Mwizerwa Etienne who pleaded guilty, committed the offence for the first time, the

Court considered that as mitigating circumstances and reduced the penalties, basing on the provisions of article 83 of that law.

[12] Considering what has been explained above, the court finds that the requests of Mwizerwa have been awarded to him in the first instance and he does not challenge the way it was conducted in that instance, the reason why that decision is sustained.

III. DECISION OF THE COURT

[13] Admits the appeal of Mwizerwa Etienne but after its analysis, it finds that it is without merit.

[14] Rules that the appealed judgment is sustained.