

## PROSECUTOR v. CYUMA MIRUHO

[Rwanda SUPREME COURT – RPA 0142/10/CS (Rugege, P.J, Mukanyundo and Rugabirwa) September 19, 2014]

*Criminal Law – Murder – It shall be murder instead of assault and intentional bodily injuries resulting to unintentional killing, in case it is proved that there was intent to kill.*

*Criminal Law – Penalty reduction – None can benefit the penalty reduction, without proving the mitigating circumstances he/she alleges.*

*Criminal Law – Fixed term penalty – Fixed-term imprisonment is not less than one day and not more than twenty years, except in cases of recidivism or in other cases where the law provides for other ranges of penalties – Decree Law n°21/77 of 18/8/1977 instituting the penal code in Rwanda, article 35.*

**Facts:** The accused hit his wife with the blow of machete, suspecting that she was cheating on him. She was immediately brought to Hospital but died half way. The Intermediate Court of Nyagatare was seized of jurisdiction by the prosecution, accusing him of the assault and intentional bodily injuries resulting to unintentional killing. The court ruled on the case and decided that the accused should be prosecuted for murder instead of the assault and intentional bodily injuries resulting to unintentional killing and decided that it had no jurisdiction to rule on it and transferred the case to the High Court, Rwamagana Chamber. The High Court found him guilty of murder committed against her wife and sentenced him to twenty five years (25) imprisonment. The accused appealed to the Supreme Court, stating that the offence he is charged of was wrongly classified, that he committed assault and intentional bodily injuries resulting to unintentional killing rather than murder and that the High Court disregarded the mitigating circumstances.

The prosecutor contended that the accused has no ground for the reclassification of his offence, that what he argues that he has unintentionally killed his wife is wrong, because he left home stating that if he found his wife at fault he would hit her and he went holding a machete which demonstrates that he intended to hit her with it many times, something that he did and that occasioned the death of his wife.

**Held:** 1. Considering the weapon the accused used, the machete, and the times he used it hitting Akimana Léonille, three or four times as he admitted it, and after, he used the big wood to hit her many times prove that he was not intending to hit her as he has admitted. In addition, all of these acts were committed to someone lying down without defending him. Basing on that, the court finds that the accused intended to commit murder, thus he must be punished for murder instead of assault and intentional bodily injuries resulting in unintentional killing.

2. The High Court did not disregard the mitigating circumstances as argued by the accused as he was sentenced to 25 years instead of life imprisonment. Regarding the accused request that the court may reduce again his penalty, basing on the fact that he killed his wife because he found her cheating on him, the court finds that it is not a mitigating circumstance because he did not prove it.

3. A fixed term imprisonment that could have been inflicted to the accused could not exceed twenty years as provided for by the law. Therefore, twenty five years imprisonment sentenced to him is replaced by twenty years (20) of imprisonment.

**Appeal has merit in part.  
Appealed judgment changes with regards to the penalty.  
Accused sentenced to twenty years of imprisonment.  
Court fees charged to the public treasury.**

**Statutes and statutory instruments referred to:**

Decree Law n°21/77 of 18/8/1977 instituting the penal code in Rwanda, article 35

**No case referred to.**

## **Judgment**

### **I. BRIEF BACKGROUND OF THE CASE**

[1] In the night of 13 April 2007 around 11h00 PM, Cyuma Miruho, suspecting that her wife Akimana Leonille was cheating on him, hit her with a blow of machete. Akimana was immediately brought to Hospital but died half way. At the end of investigations, the prosecution filed a case in the Intermediate Court of Nyagatare against Cyuma Miruho Alexandre for the assault and intentional bodily injuries resulting to unintentional killing. The court ruled on the case on 30 April 2008 and decided that Cyuma Miruho should be prosecuted for murder instead of assault and intentional bodily injuries resulting to unintentional killing and that it had no jurisdiction to rule on it and transferred the case to the High Court, Rwamagana Chamber.

[2] The case was registered in the High Court under RP 0039/08/HC/RWA and on 7 May 2010 the court found Cyuma Miruho Alexandre guilty for murder committed against her wife Akimana Léonille, and sentenced him to 25 years of imprisonment. On 31 May 2010, Cyuma Miruho Alexandre appealed to the Supreme Court, alleging that the offence he is charged of was wrongly classified, that he committed Manslaughter and intentional bodily injuries resulting to unintentional killing rather than murder and that the High Court disregarded his mitigating circumstances.

[3] The case was heard in public in the Supreme Court on 21 July 2014, Cyuma Miruho Alexandre assisted by the counsel, Aimable Ngendahimana while the prosecution was represented by Mr Mutayoba Alphonse, National prosecutor.

### **II. ANALYSIS OF LEGAL ISSUES**

**Whether acts constituting the offence charged with Cyuma Miruho Alexandre could be classified murder or assault and intentional bodily injuries resulting to unintentional killing.**

[4] Cyuma Miruho Alexandre states that his wife delayed to come home and he left home with intention of knowing what was happened to her. He added that on his way, he found her cheating on him and he hit her with the blow of machete because of anger but without intent to kill her. He kept stating that he hit his wife three times with the blow of machete and when it slipped and fell down, he hit her with a big wood.

[5] Ngendahimana Aimable, the Counsel, argues that he agrees with the classification made by the prosecution at the Intermediate Court of Nyagatare that Cyuma Miruho Alexandre committed assault and intentional bodily injuries resulting to unintentional killing. He keeps on stating that his client left home to find his wife and on his way, he found her cheating on him and he hit her with the blow of machete. He added that he finds that his client hit his wife with the blow of machete because she was committing adultery, otherwise he did not leave home with the intent to kill her with machete.

[6] The prosecutor contended that Cyuma Miruho Alexandre has no ground for reclassification of his offence, that his argument that he has unintentionally killed his wife is wrong, because he left home stating that if he found his wife at fault he would hit her and he went holding a machete which demonstrate that he intended to hit her with it many times, something that he did and that occasioned the death of Akimana Léonille.

## **THE VIEW OF THE COURT**

[7] During his interrogation in the Judicial Police, Cyuma Miruho Alexandre admitted that he started by hitting her wife with the blow of machete on shoulders and hit again three times and then after, he cut off the tree and hit her with it many times. During the hearing, he stated that he hit his wife three times and when the machete slipped and fell down, he continued hitting her with the big wood. Considering weapon Cyuma Miruho Alexandre used, the machete and the times he used it hitting Akimana Léonille, three or four times as he admitted, and after, he used the big wood to hit her many times prove that he had intent to kill her contrary to what he admitted. He committed all of this to someone lying down without defending him. Basing on that, the court finds that Cyuma Miruho Alexandre intended to commit murder, thus the offence he must be punished for is murder instead of assault and intentional bodily injuries resulting to unintentional killing.

### **Whether the court disregarded the mitigating circumstances to reduce the penalty for Cyuma Miruho Alexandre.**

[8] Cyuma Miruho Alexandre states that after committing the offence, he reported himself to the police and in his entire interrogation he admitted the offence and sought forgiveness. He added that he was provoked by the fact that his wife was cheating on him and found all those grounds as mitigating circumstances.

[9] The counsel, Ngendahimana Aimable states that in the case file, there are some mitigating circumstances including the fact that Cyuma Miruho Alexandre reported himself to the police and committed the offence being provoked by the fact that he found his wife cheating on him. He added that no man can abstain himself from committing an offence while finding his wife cheating on him.

[10] The prosecutor states that the accused does not unequivocally plead guilty because he denies to have intended to kill Akimana Léonille. With regards to the pleadings of Cyuma Miruho Alexandre that he found his wife cheating on him, the prosecutor contends that the accused did not prove it and even if it had been the case, it would have not been the motive to kill her. Regarding the fact that Cyuma Miruho Alexandre reported himself to the police, the prosecutor states that it was true but that it cannot be considered as mitigating circumstance. In concluding, the prosecutor requested that the appealed judgment be upheld.

## **THE VIEW OF THE COURT**

[11] In paragraph 12 of the case RP0039/08/HC/RWG rendered on 7 May 2010, Cyuma Miruho Alexandre was convicted of murder and sentenced to life imprisonment pursuant to article 311 of the Decree Law n° 21/77 of 18/8/1977 instituting the penal code in Rwanda that was into force at the time when the offence was committed. The judge explained that Cyuma Miruho Alexandre was the first offender and reduced his penalty where life imprisonment was reduced to twenty years imprisonment. This proves that Cyuma Miruho Alexandre got the penalty reduction based on the fact that he was the first offender. Regarding his request that the court may reduce again his penalty, basing on the fact that he killed his wife because he found her cheating on him, the court finds that it is not a mitigating circumstance because Cyuma Miruho Alexandre did not prove it.

[12] Article 35 of the Decree Law n° 21/77 of 18/08/1977 aforementioned provides that “Fixed-term imprisonment is not less than one (1) day and not more than twenty (20) years, except in cases of recidivism or in other cases where the law provides for other ranges of penalties”. In reducing penalty, the High Court sentenced Cyuma Miruho Alexandre to 25 years of imprisonment instead of life imprisonment. A fixed term imprisonment that could have been sentenced to Cyuma Miruho Alexandre could not exceed twenty years (20) as provided for by article 35 as aforementioned.

### **III. THE DECISION OF THE COURT**

[13] Finds Cyuma Miruho Alexandre’s appeal with merit in part.

[14] Decides that the appealed judgment RP0039/10/HC/RWG rendered by the High Court, Rwamagana Chamber on 7 May 2010 only changes with regards to the penalty.

[15] Sentences Cyuma Miruho Alexandre to twenty years of imprisonment.

[16] Orders that the court fees are charged to the public treasury.