

# PROSECUTION v. HABYARIMANA

[Rwanda SUPREME COURT – RPA0152/12/CS (Havugiyaremye, P.J., Kanyange and Munyangeri, J.) October 10, 2014]

*Criminal procedure – Unlawful detention – Imprisonment in case there is appeal while the trial court has not ordered the immediate imprisonment of the accused – In case neither the trial court nor the appellate court has ordered the imprisonment of the accused, the imprisonment of the accused is considered unlawful – Law n° 30/2013 of 24/05/2013 relating the code of criminal procedure, article 183.*

**Facts:** Habyarimana, Manirakiza and Habimana have been accused by the Prosecution alleging that they conspired in the criminal attack directed against the family of Nzeyimana in which they killed his wife and cut off his arm.

The court convicted all the accused of the offense of murder and sentenced them to life imprisonment with damages to Nzeyimana equal to 20,000,000Frw, 4 % of that amount equal to 800,000Frw and court fees. Habyarimana appealed against the verdict before the Supreme Court; but later on he was arrested and jailed in Rusizi Prison and then filed a claim to the Supreme Court stating that he has been unlawfully detained while the appealed judgment was tried while he was in provisional release.

Habimana also appealed against that judgment in the Supreme Court and applied for its review in High Court which ruled however that the case is not admissible.

**Held:** In case neither the trial court nor the appellate court has ordered the imprisonment of the accused, the imprisonment of the accused is considered unlawful.

**The appellants are unlawfully detained.  
The accused must be immediately released.  
The case will be tried by this court.**

**Statutes and statutory instruments referred to:**

Law n° 30/2013 of 24/05/2013 relating the code of criminal procedure, article 183.

**No case referred to.**

## Judgment

### I. BRIEF BACKGROUND OF THE CASE

[1] Habyarimana Philbert, Manirakiza Emmanuel and Habimana Melchior were charged by the Prosecution before the High Court, Rusizi Chamber of conspiring in the attack against the family of Nzeyimana Jerome in the night of 15 October 1996 at Gishagara in Nyamaronko, Nyakabuye Sector, Rusizi District in which they killed his wife and cut off his arm.

[2] In the judgment RP0009/06/HC/RSZ rendered in absentia on 28 March 2012 while they had been legally summoned to appear before the court, the Court ruled that Habyarimana Philbert, Manirakiza Emmanuel and Habimana Melchior are convicted of the offence of murder and sentenced them to life imprisonment and ordered them to pay 20,000,000Frw in moral damages to Nzeyimana Jerome, 4% of that amount of money equal to 800,000Frw and the court fees.

[3] On 24 April 2012, Habyarimana appealed against that judgment before the Supreme Court.

[4] On 23 July 2013, he was arrested and detained in Rusizi Prison. In his letter of 9 April 2014, he lodged a complaint to the Supreme Court alleging that he was illegally detained while the judgment RP0009/06/HC/RSZ that is being executed was rendered while he was free and filed the appeal against the latter.

[5] Habimana Melchior also appealed against that judgment before the Supreme Court on 24 May 2012 and applied for review in the High Court which, however, ruled that his application for review is not admissible in the judgment rendered on 26 March 2013.

[6] On 15 September 2014, the case was publicly tried where Habyarimana was assisted by counsel, Rwangabwoba Bernard, Habimana Melchior assisted by counsel Mihigo Bernard and Nzeyimana Jérôme assisted by counsel Niyibizi Remy while the prosecution was represented by Munyaneza Nkwaya Eric.

[7] Prior to the examination of the case on merits, the Court first examined the issue of whether Habyarimana Philbert and Habimana Melchior are unlawfully detained because they were arrested by the prosecution while they had appealed against the judgment during the trial of which they remained free and whether this is contrary to article 183 of the Law relating to the Code of Criminal Procedure.

## **II. ANALYSIS OF THE LEGAL ISSUE**

### **Whether Habyarimana Philbert and Melchior are illegally detained**

[8] Habyarimana Philbert states that the judgment RP 0009/06/HC/RSZ was rendered in his absentia and after being notified of the verdict therefrom, he appealed against it but after the very appeal he was arrested and detained. He was released after a short period; but was detained again three days later. Thus, he requests his release as restoring in his status during the trial of appealed judgment.

[9] His Counsel, Rwangabwoba Bernard states that even before he was provisionally detained and he had been granted provisional release without any appeal. He further stated that basing on article 183 of Law N<sup>o</sup> 30/2013 of 24/05/ 2013 relating to the Code of Criminal Procedure which provides that "If the accused remaining free during trial is sentenced to imprisonment, he/she shall remain free during trial if he/she has filed an appeal against the penalty unless the court orders his/her immediate arrest". He states that the prosecution has taken a general decision concerning two individuals while they appealed in different ways.

[10] The representative of the Prosecution, who notified the court that he is no longer relying on the previous submissions by his fellow prosecutor, states that the basis of the prosecution is article 227 of the code of criminal procedure which provides that, with respect

to the execution of court judgments, the Public Prosecution is required to execute prison sentences and does so on its own initiative and in doing so, it respects the decision of the court.

[11] Regarding the relation between article 227 of the aforesaid law which he states to have been the basis and article 183, he states that Habyarimana and Habimana have been detained after the prosecution was notified by the court that they did not appeal as evidenced by the certificate thereof delivered by the court.

[12] Mihigo, the Counsel for Habimana Melchior, states that the case under process is not yet final to be executed and hence article 227 of the law relating to the code of criminal procedure which is the basis of the prosecution is not relevant; rather the legal basis is article 183.

[13] He further explains that article 183 paragraph 1 of Law n° 30/2013 of 24/05/2013 (that came into force on 8 July 2013) which provides that if the accused remaining free during trial is sentenced to imprisonment, he/she shall remain free during trial if he/she has filed an appeal against the penalty unless the court orders his/her immediate arrest. He then states that Habimana appealed against that judgment on 24 May 2012 and he was arrested on 23 July 2013 while it was neither ordered by the trial court nor the Supreme Court. He adds that the fact that the prosecution states that Habimana Melchior is detained basing on the judgment RP 0024/12/HC/RSZ is an evidence of grave injustice since he is detained without any court decision ordering that imprisonment as the trial court ruled that his application for review is not admissible.

## **THE VIEW OF THE COURT**

[14] The prosecution states that Habyarimana and Habimana are detained in execution of the decision of the court and they had not appealed by then.

[15] The file of the case demonstrates that the judgement RP 0009/06/HC/RSZ rendered on 28 March 2012 has been appealed against by Habyarimana on 24 April 2012 as noticed from his letter to the Supreme Court while Habimana appealed on 24 May 2012 as evidenced by the certificate issued by the Supreme Court Registry on 28/03/2013 after being notified of the decision of the court. It means that while it is clear that the accused have appealed and the appellate court is yet to decide on their appeal, the appealed against judgment is not yet enforceable as provided for by article 180 of Law n° 30/2013 of 24 May 2013 which provides that "The execution of a judgment shall be stayed until the expiration of the time limits for appeal and if the appeal is filed, until the decision on appeal is rendered".

[16] Moreover, article 183 of the same law provides for the following:

[17] "If the accused remaining free during trial is sentenced to imprisonment, he/she shall remain free during trial if he/she has filed an appeal against the penalty unless the court orders his/her immediate arrest".

[18] "He/she may be arrested and detained if there are serious and exceptional reasons given to the court seized of the appeal".

[19] The documents in this case file demonstrate that Habyarimana and Habimana were free during trial and got sentenced to life imprisonment without an order of immediate arrest

by the trial court and appealed against that judgment as explained; but in the meantime they have been arrested and detained while the appellate court has neither decided on that appeal nor decided to arrest and detain them pending the appeal decision, as the only court competent to do so as provided for by paragraph 2 of article 183 of the abovementioned law.

[20] The Court finds that the information and documents considered by the prosecution in detaining Habyarimana and Habimana should not have been based on since they are contrary to the reality.

[21] Basing on all these explanations, the Court finds that the detentions of Habyarimana Philbert and Melchior is unlawful and therefore have to be immediately released and tried while remaining free.

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

[22] It rules that Habyarimana Philbert and Habimana Melchior are unlawfully detained

[23] It orders that they have to be immediately released and remain free during their trial on merits.

[24] It rules that the trial of this case on merits will continue on 29 October 2014.