

## PROSECUTION v. NYARWAYA

[Rwanda SUPREME COURT – RS/REV/PEN0006/10/CS (Kayitesi Z., P.J., Rugabirwa and Gatete, J.) October 24, 2014]

*Application for review – Case Screening – Status of civil parties in the case screening – They are entitled to be parties in the appeal of the decision of the case screening since they had been parties in the previous judgments and that this decision would have impacts on the case that awarded them damages – Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 3.*

*Criminal procedure Law – Application for review –Admissibility of the grounds for application for review – The fact that the letter produced as new evidence was submitted by a witness who had been a party in the proceeding and that he failed to demonstrate that the truth came to his knowledge after the case was adjudicated infers that it cannot be considered as new evidence – Law N° 13/2004 of 17/05/2004 relating to the code of criminal procedure, articles 180 and 186.*

**Facts:** Nyarwaya Straton and others who did not appeal in this court were indicted by the Prosecution in the High Court accused of complicity in murdering Kayanda Charles. In adjudicating the case, the High Court found that there was no sufficient evidence to convict Straton Nyarwaya. Both the Prosecution and the civil claimant appealed to the Supreme Court after they were dissatisfied of the ruling of the case.

The appellate court convicted the accused and noted that aggravating circumstances were outweighing mitigating circumstances. In consequence, they sentenced to life imprisonment and ordered them to pay various damages.

Nyarwaya again applied for review contending that after adjudication of the case on merit, Ngabonziza Sylvestre wrote an exculpating letter demonstrating that his conviction was a plot.

After the case screening order was delivered, the Court found that the letter could not satisfy the requirements as set out by the law for admissibility of his application for review and held that it is not admissible.

He appealed against the case screening order and both the civil party and the Prosecution appeared in the case. In the course of the hearing, Nyarwaya and his advocates raised an objection contending that the civil claimants should not intervene in the case since the object of the matter is the appeal against the case screening order which does not really concern them and also added that it is not yet time for the hearing of the case on merits. The civil claimants contended that they had been party to the case and they insisted that they had interest in the case at hand because of the damages they were awarded by the same judgment.

With regard to his application for review, the appellant stated that the judge remained silent on the provisions of the law to which he based his application, in addition to the fact that he was in the panel which had adjudicated his case on merit. He requested the Court to quash the case screening order since it is partial.

The Prosecutor requested the Court not to consider the letter as new evidence because it was written by the person who had been a party to the same case.

**Held:** 1. The fact that the Civil claimants have been parties to all prior judgments to the one for which review is sought, gives them the rights to appear in the case screening proceeding because of the interests they have therein as its adjudication would materially affect the judgment which awards them damages.

2. The fact that the letter discharging the accused of the crime was written by the person who had been a party to the case in addition to the fact that in his statements he does not demonstrate that he knew the truth after the adjudication of the case disqualifies the submitted evidence as being new which would otherwise be the base for the review of the case.

3. There is no evidence that the case screening order was taken by a judge who also rendered the judgment of Nyarwaya as subjected to application for review as proved by the case file. Therefore, the case screening order cannot be changed.

**Appeal received.  
Appeal has no merit.  
Order appealed against upheld.**

**Statutes and statutory instruments referred to:**

Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 3.

Law N° 13/2004 of 17/05/2004 relating to the code of criminal procedure, articles 180 and 186.

**No case was referred to**

## **Judgment**

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

[1] The case started in the High Court at its head office in Kigali. Nyarwaya was co-accused with Mazimpaka Oliva, Ngabonziza Sylvestre and Sande Benison of murdering Kayanda Charles. In the judgment RP002/05/HC/KIG, the High Court found that there was no evidence for the conviction of Nyarwaya in addition to the fact that the statements of Ngabonziza and Sande inculcating Nyarwaya were contradictory.

[2] Dissatisfied with the ruling of the case, both the Prosecution and the civil claimants separately appealed to the Supreme Court. The appeals were jointed and recorded under N° RPA0018, RPA0152 and RPA0153.

[3] In the judgment RPA0018/05/CS- 0152/05/CS -0153/05/CS which was heard on May 8,2009, the Court convicted Nyarwaya, Mazimpaka, Ngabonziza and Sande of murder perpetrated against Kayanda Charles. The Court found that the aggravating circumstances overweighed mitigating circumstances and then sentenced each one to life imprisonment and ordered the convicts to pay various damages.

[4] On August 3, 2009 Nyarwaya Straton filed a claim in to the Supreme Court requesting the rectification of the judgment RPA 0018/05/CS-0153/05/CS- 0153/05/CS

delivered on May 8, 2009 since their decisions and his defense arguments which did not appear in the copy of the judgment.

[5] In the judgment RS/RECT/PEN/0001/09/CS rendered on October 29, 2010, the Supreme Court found that the application of Nyarwaya requesting rectification of the judgment has material effects in changing the court decision and ruled that it has no merit pursuant to article 154 of Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure which provides that the application for the rectification of the judgment are made without any material alteration to the decision of the court.

[6] On October 10, 2009 Nyarwaya Straton applied for review before the Supreme Court lamenting that after the court delivered its verdict, Ngabonziza Sylvestre wrote an exculpatory letter dated August 26, 2009(identification code 4). He specified that the letter indicates that his conviction had been plotted by Gakuba Kabati, Mazimpaka Olive, Sande Benison and Ngabonziza Sylvestre.

[7] In the case screening order N° RS/REV/PEN 0060/09/CS-RPA 0018/05/CS-RPA 0152/05/CS-RPA 0153/05/CS dated December 14, 2009; the judge noted that the letter of Ngabonziza did not satisfy the requirements set by the law for admissibility of application for review. The judge ruled that his application is inadmissible as it could not fulfill the requirement set by the law.

[8] Nyarwaya appealed against this order and his appeal was recorded under N° RS/REV/PEN 0006/10/CS. The hearing in an open session started on July 7, 2014 and continued on September 22, 2014 where Nyarwaya was present and assisted by Counsels Buhuru Pierre Celestin and Manirakiza Claudewhile the civil claimants were represented by Counsels Gakuba Kabati and Mutembe Protais while the Prosecution was represented by Bunyoye Grace.

[9] At the very beginning of the hearing, Nyarwaya and his counsels raised an objection concerning the civil claimants' appearance in the case since the object of the matter was appeal against case screening order to which they were not linked and that it was not yet time for the hearing of the case on merits.

[10] With regard to the raised objection, Counsel Mutembe who assists the civil claimants responded that the civil claimants were party to the case RPA 0018/05/CS-0152/05/CS-0153/05/CS as rendered by the Supreme Court on May 8, 2009. He added that they have interest in the case at hand because of the damages they had been awarded. He concluded therefore, that their appearance before the court was lawful. The Prosecutor states that the civil claimants were party to and lost the case before the High Court and appealed to the Supreme Court and won the case. Therefore, he concluded that they are party to the case.

[11] The Court found that the applicants for damages were party to prior proceedings (identification codes 323 and 324) and that they had interest in the case since its ruling has effects on the judgment through which they were awarded damages. The Court immediately decided that they are parties to the case and decided that they should be involved based on article 3 of Law N° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure.

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

➤ **Whether there are grounds for the review of the judgment against Nyarwaya Straton.**

[12] Nyarwaya pleads that he appealed because the case screening judge remained silent on the provisions of the law on which he bases his application for review. He added that after his own investigation, he found out that the screening judge sat in the panel which tried the case on merit. Hence, he seeks justice since, according to him; the case screening order is partial.

[13] Manirakiza, counsel for Nyarwaya, pleaded that the Court breached the law when it based on the statements given by Ngabonziza while he was not qualified to do so in the case in which he was party. He insisted that it led to the plot against Nyarwaya. He added that, though it is not the object of litigation, the Court should consider the retraction of Ngabonziza in his previous statements. Further, he submits that the letter written by Ngabonziza constitutes new evidence because it has never been debated on and therefore should be considered so as to overturn the case screening order. He requested the Court to admit the application filed by Nyarwaya based on article 180, 4o of Law N° 13/2004 of 17/05/2004 relating to the code of criminal procedure which was into effect at the time of application.

[14] He concludes pleading that another factor that must be considered to quash that case screening order is that it was decided by a judge who tried the case at issue on merits. He concludes that it is a very relevant ground that must be considered to rule that his application has merit.

[15] Counsel Buhuru who also assists Nyarwaya states that Ngabonziza earlier lied to the court because his intention was to support the civil claimants. He added that his letter was written after the delivery of the judgment on merit and therefore, points 3 and 4 of article 180 of Law N° 13/2004 of 17/05/2004 as referred to above are not the only ones to be examined in this case; but the entire article 186 should be examined to know whether any of its provisions allows Nyarwanya to apply for review since that article only requires a new evidence which differs from requiring the copy of the judgment which condemned Ngabonziza for perjury.

[16] Counsel Mutembe representing the civil claimants states that Ngabonziza inculpated Nyarwaya from the Judicial Police, the Prosecution and to the Court and that it is not comprehensible why he would have waited for the delivery of the judgment to discover that he was mistaken. He added that counsels for Nyarwaya do not prove to the Court that this time Nyarwaya is telling the truth. He concluded that the testimony given by Ngabonziza is not the only evidence that the Court based on to convict Nyarwaya of the crime since there are many other pieces of evidence which proved the role of Nyarwaya in the conspiracy to murder Kayanda. He added that the judgment for which review is sought respected the principle of fair trial and therefore there is no room for application of provisions of article 180 of the aforementioned Law N° 13/2004 of 17/05/2004 so as to review the judgment.

[17] The Prosecutor disputed that the letter written by Ngabonziza must not be considered as new evidence because Ngabonziza had been party to the judgment subjected to review. He argued further that what would be considered as new evidence is the judgment convicting Ngabonziza of perjury and in the absence of such a judgment, the Court would have no ground to admit his application for review basing on article 186 of Law N° 13/2004 of 17/05/2004 mentioned above.

## THE VIEW OF THE COURT

[18] Concerning the grounds for admissibility of application for review, article 180 of Law N° 13/2004 of 15/05/2004 relating to the code of criminal procedure which was into force at the time the application provides,

“An application for review of a criminal case which has been finally determined can be made for the benefit of any person who has been convicted of a felony or misdemeanor if:

1° After a person convicted of homicide, there is latter discovered enough evidence indicating that the person alleged to have been killed is actually not, 2° After a person convicted of an offence there is discovered another similar judgment which punished a different person for the same offence and the contradiction in the two cases show that one of the convicted persons was innocent; 3° One of the witnesses to a case is subsequently found to have given false testimony against the accused person and the former has already been convicted for the offence. The person convicted of perjury cannot be called as a witness in the new case; 4° After judgment, there is discovered new evidence, indicating that the convicted person was innocent”.

[19] The case file reveals that Nyarwaya based his application for review on the grounds set forth below:

- a. The fact that the case screening judge has, without valid reasons, invalidated the testimony exculpating him constituted by the letter of Ngabonziza.
- b. The fact that that testimony constitutes new evidence by virtue of the provisions of article 180, point 4 of Law N° 13/2004 of 17/05/2004 referred to above.

[20] The Court finds that the judgment N° RPA 0018/05/CS-0152/05/CS-0153/05/CS rendered on May 8, 2009 demonstrates that in deciding the case, the Court based, among other evidences, on statements made by Ngabonziza Sylvestre, Sande and Mazimpaka (identification codes 322-324). The Court finds that Ngabonzi who was a party to that case does not justify that the truth came to his knowledge after the delivery of the verdict. Hence his letter cannot be considered as new evidence for the review of the case of Nyarwaya.

[21] The Court therefore finds that, in his decision, the case screening judge did not disregard any of the provisions of article 180 of Law N° 13/2004 of 17/05/2004 referred to above which was into effect at the time when the application for review was filed. Hence, the application filed by Nyarwaya has no merit.

[22] With respect to the argument of the counsel for Nyarwaya that the case screening order was made by the judge who sat in the panel that rendered the judgment for which Nyarwaya is seeking review, the Court finds that, apart from the fact that it is not related to the grounds of admissibility of application for review, it is not true because the case file contains orders of the President of the Supreme Court dated February 7, 2006 and that of March 15, 2006 (identification codes 3 and 94) which indicate that the case screening judge was not a member of the panel which tried the case subjected to review. It is also justified by the copy of the judgment.

[23] Pursuant to the above explanations and legal provisions, the Court finds that the case screening order on the application for review of the judgment RPA0018/05/CS - 0152/05/CS - 0153/05/CS taken by the Supreme Court on May 8, 2009 is not changed.

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

[24] Receives the appeal filed by Nyarwaya Straton against order RPA0018/05/CS - 0152/05/CS -0153/05/CS rendered by the Supreme Court on May 8, 2009 since it complied with the rules of procedure.

[25] Decides that appeal lacks merit.

[26] Upholds the case screening order RP0435/09/PRE-EX/CS in relation to the case RS/REV/PEN 0060/09/CS - RPA0018/05/CS - RPA0152/05/CS - RPA0153/05/CS delivered on December 14, 2009.