

# PROSECUTION v. NSANGIRANABO

[Rwanda SUPREME COURT– RPAA 0221/10/CS (Mukanyundo, P.J., Gakwaya and Rugabirwa, J.) September 5, 2014].

*Criminal procedure Law – Appeal – Computation of time limit for appeal – Appeal of an accused who is imprisoned – In case the accused who is imprisoned does not manage to appeal on time because of the error of the prison administration or the court which did not allow him/her to know the decision of the court while he did his utmost to know that, the time limit of the appeal starts when he/she is informed of the decision – Law N° 013/2004 of 17/05/2004 regulating the Criminal Procedure Article 166(4).*

**Facts:** The accused was convicted of the offence of child defilement to a child of 12 years old and the Provincial Court of Rubavu sentenced him to life imprisonment and a fine of one million (1,000.000Frw). The accused appealed to the Supreme Court and the appeal was pre-examined by a judge who ruled that the limit time to appeal was over.

The accused appealed against that decision arguing that the judge did not consider his motivation of not having appealed on time because the prison administration did not allow him to go to the pronouncement of the verdict and that he has written many letters to the High Court requesting that he can be informed of the decision and when he was informed, he appealed immediately.

The prosecutor stated that the decision of the case screening should not be changed since the appeal of the accused was filed after the time limit.

**Held:** In case the accused who is imprisoned fails to appeal on time because of the error committed by the prison administration or the court, and does not allow him/her to know the decision of the court in the time limit, the days of appeal starts to be counted when he/she is informed of the decision.

**Appeal has merit.**

**The decision from the case screening is reversed.**

**Statutes and statutory instruments referred to:**

Law N° 013/2004 of 17/05/2004 regulating the Criminal Procedure, article 166(4).

**No case referred to.**

## Judgment

### I. BRIEF BACKGROUND OF THE CASE

[1] The provincial court of Gisenyi ruled that Nsangiranabo Raphael is convicted of the offense of defilement to a child of 10 years old and sentenced him to life imprisonment and fined him with 100,000Frw.

[2] Nsangiranabo Raphael appealed to the High Court, Chamber of Musanze which ruled that the decision of the previous court is upheld.

[3] Nsangiranabo Raphael appealed to the Supreme Court and the case was registered on N° RPAA0039/10/CS. The appeal was pre-examined and the screening judge took the decision N° RP0168/10/Pre-ex/CS on 1 June 2010 and ruled that the appeal is inadmissible because the time limit to appeal was over based on the judgment that was taken on 2<sup>nd</sup> June 2009 when the verdict was delivered but he appealed late on 5 January 2010.

[4] After being informed about the decision of the screening Judge, Nsangiranabo Raphael appealed against it in the same court stating that the screening judge should have ruled admissible his appeal, since the ground of delay of his appeal is that the prison administration did not allow him to go in the court when the verdict was being delivered and that he has been writing letters to the High Court requesting the court to inform him about the decision of the court, but was informed on 5 January 2010 and appealed immediately on that same date.

[5] This case was publicly heard on 16 June 2014; Nsangiranabo Raphael appeared being assisted by Council Murenzi Eugene while the Prosecution was represented by Ntawangundi Beatrice.

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

**To know whether the appeal of Nsangiranabo Raphael on the screening judgment has merit.**

[6] Nsangiranabo Raphael and his Council state that the screening judge ruled that his appeal delayed, disregarding that the ground of not appealing in 30 days provided for by the law is that, the prison of Gisenyi did not take into consideration the importance of hearing the court verdict in the judgment RPA 0646/06/HC/MUS he pleaded and was concluded on 12 May 2009 and was to be pronounced on 2 June 2009. He added that he wrote five letters to the High Court Chamber of Musanze, requesting to be informed about the decision of the judgment until he was informed about it on 5 January 2009 and appealed on the same date. Therefore, he requests the court to reverse the decision of the screening judge and give him chance to plead the case in substance.

[7] The prosecution states that the decision of the screening judge should not be reversed because the appeal of Nsangiranabo Raphael was delayed. She further explained that Nsangiranabo Raphael pleaded the case RPA0646/06/HC/MUS and when the hearing was over, he was informed that the verdict delivery would take place on 2 June 2009 and on that date, the verdict was delivered but he appealed on 5 January 2010.

[8] Regarding the time limit of the appeal, article 64 of the Organic Law N° 01/2004 of 29/01/2004 relating to the organization, functioning and competence of the Supreme Court that was in force when Nsangiranabo Raphael appealed, provides that “The period of appeal is thirty (30) days which starts running from the day the judgment which is the subject of the appeal was pronounced whether the appellant was personally present or represented and in the case where the appellant was informed of the day when the judgment will be passed but does not attend or send a representative”.

[9] While Article 166, paragraph 4 of the Law N° 013/2004 of 17/05/2004 relating to the Code of Criminal Procedure which was in force when Nsangiranabo Raphael appealed provides that when the appellant is in prison, he can make his appeal in prison through a letter addressed to the court clerk through the leadership of the prison who acknowledge receipt and puts the date which is taken as the date of appeal, and should immediately send the appeal to the competent court to hear the case.

[10] Regarding this case, the case file proves that the judgment RPA 0646/06/HC/MUS which was rendered by the High Court on 12 May 2009, all parties being present. When the hearing was closed, the parties were informed about the date when the verdict would be delivery which was on 2 June 2009 and on that date; the verdict was delivered in default of the party as proven by the minutes of the hearing which is in the case file. Nsangiranabo Raphael appealed in this court on 5 January 2010.

[11] In addition to that, in the case file there are letters of 22 October 2009 and of 23 November 2009 which were written by Nsangiranabo Raphael addressed to the High Court, Chamber of Musanze through the administration of Gisenyi Prison in which he was detained but they never put the dates on which the letters were received. In these letters, Nsangiranabo was requesting the court to inform him about the decision of the court RPA0646/06/HC/MUS which was supposed to be pronounced on 2 June 2009 but he never had a response.

[12] The court finds that, the judgment was passed on 02/06/2009 and Nsangiranabo Raphaël immediately wrote an appeal letter on 22 June 2009 which means that it was after 20 days from the delivery of the verdict but the administration of Gisenyi Prison committed a mistake of not writing the date on which the reception of the letter was made, proving that Nsangiranabo Raphael cannot be a victim of the mistakes committed by the administration of the prison, implying that his appeal against the case RPA0646.06/HC/MUS must be considered as if it was lodged in a period of 30 days provided for by article 64 of the Organic Law mentioned above. Therefore, his appeal should be admissible and thus the decision of the screening judge; RP 0168/10/Pres-ex/ CS of 1 June 2010 must be reversed.

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

[13] Court rules that the appeal of Nsangiranabo Raphael on the screening decision RP 0168/10/Pres-ex/CS of 1 June 2010 is received and registered because it was lawfully lodged.

[14] Court rules that his appeal has merit.

[15] Court rules that the decision of the screening judge RP01648/10/Pre-ex/C of 1 June 2010 is reversed.

[16] Court rules that the court fees be paid by the State.