

**NYIRANDORIMANA v. GOVERNMENT OF RWANDA  
(MINADEF) ET AL**

[Rwanda SUPREME COURT – RADA006/11/CS (Nyirinkwaya, P.J., Kayitesi and  
Mukandamage, J.) July 31, 2015]

*Liability – Tort – Negligence – Damages – Duty to safe keep the arsenal – The Government is negligent when it fails to safe keep and monitor its arsenal and in case it is illicitly used, it should be held liable for damages.*

*Damages – Body injury damages – Body injury damages computation rely on tangible facts such as the income, incapacity rate and lucrative years of survival.*

**Facts:** Nyirandorimana seized the High Court requesting that the Government of Rwanda (MINADEF) and Twagirayezu its former soldier jointly pay her damages for the incapacity she sustained when she was shot on the shoulder by him. She argues that the liability of the Government of Rwanda (MINADEF) is premised on its negligence in safe keeping its arsenal when its soldier called Twagirayezu consequently got a gun he used to shoot people and she was also shot on the shoulder. The Court held that the Government was not vicariously liable because it was not negligent, the Court ordered Twagirayezu to solely bear the damages.

Nyirandorimana appealed in the Supreme Court alleging that the basis of the damages she claims for is not the vicarious liability of the Government as an employer of Twagirayezu, instead, it is premised on the negligence of the Government to safe guard its arsenal, a lethal weapon which led to Nyirandorimana being injured.

In its defense, the Government was not negligent because Twagirayezu was its soldier, and as security personnel the Government handed him a weapon without realizing that he was insane, therefore it cannot be held liable for the fault or negligence resulting from the use of that weapon. She adds that the fact for Twagirayezu to have secretly taken a weapon which he is authorized to carry cannot be regarded as negligence on the part of the Government.

**Held:** 1. For the soldier who was not on the duty in the wee hours of the night to be able to return in the military base and pick the gun and those on the guard could not disarm him when they saw that he was going to do something rampageous and later he shot people, this demonstrates the negligence of the Government of Rwanda in safe keeping and controlling its arsenal. Therefore, it is held liable and has to pay damages jointly with Twagirayezu.

2. Body injury damages computation rely on tangible facts such as the income, incapacity rate and lucrative years of survival.

3. The appellant is awarded counsel fees in the court's discretion.

**Appeal has merit in parts;  
Both respondents must equally pay damages to the appellant;  
Court fees to both parties.**

**Statutes and statutory instruments referred to:**

Decree Law 30/07/1888 relating to Contracts or obligations, article 258.

Presidential Order N<sup>o</sup>31/01 Of 25/08/2003 on compensation for personal injury due to accidents caused by motor vehicles, article 18.

**No cases referred to.**

## **Judgment**

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

[1] After the rendering of judgment RP1623/CG/03 on 11 May 2004 by the Military Court whereby Twagirayezu was convicted of murder and attempted murder, Nyirandorimana Claudine seized the High Court claiming that Twagirayezu and the Government of Rwanda (MINADEF) pay her 19,000,000Frw in damages for the incapacity she got when its former soldier Twagirayezu shot her in the shoulder. This was due to the negligence of the Government which did not protect its arsenal and he consequently got a gun he used to shoot her.

[2] The High Court rendered the judgment by default of Twagirayezu and ruled that the Government of Rwanda should not be held vicariously liable for the fault of its employee, on the ground that there was no proof that the gun Twagirayezu used in the shooting was got from its arsenal given to him by another soldier while he was not on duty, therefore it held that Twagirayezu should personally be held liable, thus it ordered him to pay 5,000,000Frw in damages to Nyirandorimana as well as court fees.

[3] Nyirandorimana appealed in the Supreme Court alleging that the High Court did not order the Government of Rwanda (MINADEF) to pay damages while the State attorney admitted before the Court that the Government should be held liable for 20% of all the damages likely to be ordered by the Court. She alleges in addition that she was not awarded counsel fees she requested for.

[4] The hearing in public was held on 13/01/2015, in the absentia of Twagirayezu Maurice although he was summoned to unknown address while Nyirandorimana Claudine was assisted by Nizeyimana Léopold and the Government of Rwanda was represented by State attorney Umwali Claire.

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

**Whether there was negligence by the Government of Rwanda which caused the injury Nyirandorimana suffered.**

[5] Nizeyimana, the counsel for Nyirandorimana argues that she does rely damages she claims for on fact that Twagirayezu was a civil servant instead, it is premised on the negligence of the Government to protect its arsenal in which the gun was stolen to shoot on Nyirandorimana.

[6] On the issue of determining whether Nyirandorimana was shot by Twagirayezu, Counsel Nizeyimana adduces that there is a statement in the criminal file made by Nyirandorimana before Major Kagiraneza who was in charge of the case of a soldier who shot people at Matimba in Nyamirambo which indicates that she was also shot at that same spot in the night of 15/06/2002 dawning to 16/06/2017. He also adds that during the interrogation of Twagirayezu, he confessed that he shot indiscriminately in the crowd; therefore none else shot people at that place during that night to the extent that he would be confused to a different person.

[7] The State attorney Umwali argues that the Government was not negligent because Twagirayezu was its soldier, and as the security personnel the Government handed him a weapon without realizing that he was insane, therefore it cannot be held liable for the fault or negligence resulting from the use of that weapon. She adds that the fact for Twagirayezu to have secretly taken a weapon which he is authorized to carry cannot be regarded as negligence on the part of the Government.

[8] On the issue of determining whether it is Twagirayezu who shot Nyirindorimana, the State attorney argues that there is doubt because in the statements which are in the criminal file nothing proves that she was shot by the mentioned soldier. Furthermore, names of people he may have shot are not indicated, therefore there is no causal link among Nyirandorimana, the civil party, Twagirayezu, the shooter and the Government of Rwanda.

## **THE OPINION OF THE COURT**

[9] In the judgment RP1623/CG/03 rendered on 12/05/2004 by the Military Court, Twagirayezu was charged and tried for having murdered three people namely Niyoyita Jean Bosco, Karegeya Erneste and another one whose identity was unknown. He was also accused of attempted murder.

[10] The Military Prosecution explained that after having a conflict and being beaten by those he was boozing with, Twagirayezu went to fetch a gun from the Military base of Kigali and fired at those who had beaten him and indiscriminately shot them, killing some and injuring others. Twagirayezu pleaded guilty and he was remorseful of the offence he committed. The Court convicted him of the offence of murder and attempted murder.

[11] Even though Nyirandorimana Claudine who claim to be injured by Twagirayezu Maurice is not mentioned in that judgment, but the file indicates that on 18/06/2002 she was interviewed as a victim in the hospital of CHK by Major Kagiraneza Kayihura and she stated that she was shot at around one o'clock A.M by a person wearing civilian clothes with a rifle at what is commonly known as *Mirongo ine* (40) in Nyamirambo / Matimba on 15/06/2002, and together with others they went to Nyamirambo Brigade to report the culprit, she stated that she doesn't know the person who shot her and the motive and that the perpetrator shot others before he left.

[12] During his interrogation by the Military Prosecution on 15/06/2002, Twagirayezu stated that he went to booze in Nyamirambo and got involved in a dispute and was beaten up, he got angry whereby he boarded a motor bicycle and fetched a gun, when he reached at the entrance of the military base the guards asked him where he was going and tried to seize him but he warned them that they should not get closer to him, that they should wait to hear his fate, he got on the motor bicycle and returned to the place where he had been beaten at 40 (*Mirongo ine*), Matimba and shot dead some people and injured others. he explained that all of these happened at around one o'clock A.M.

[13] The statements of both Twagirayezu and Nyirandorimana demonstrate that the latter was among those shot by Twagirayezu during the night of 15/06/2002 dawning to 16/06/2002 in Matimba/Nyamirambo.

[14] The statements of Twagirayezu demonstrate that the gun used to shoot people including Nyirandorimana was not kept in a secure place, because he was able to return to the

military base in the wee hours of the night and pick the gun despite of not being on duty and shot people he was boozing with and with whom he fought. In addition, those on the guard were not able to seize the gun from him while they could suspect that he was going to do something messy.

[15] The Court finds that the Government of Rwanda was negligent in keeping and supervising its gun which led to the shooting of Nyirandorimana, for that the Government of Rwanda together with Twagirayezu should to jointly pay her damages. Therefore, it has to pay ½ for its negligence and another ½ must be paid by Twagirayezu who injured her and who was convicted for murder and attempted murder in the judgment RP1623/CG/03 rendered on 12 May 2004 by the Military Court.

#### **Regarding the damages claimed by Nyirandorimana.**

[16] Counsel Nizeyimana assisting Nyirandorimana adduces that as seen on paragraph 5 of the judgment, the State attorney Sebazungu before the High Court admitted that the Government will pay 20% of the damages awarded, but during the adjudication the Court was silent on the 20% of the 5,000,000Frw awarded to Nyirandorimana as damages, therefore he requests that the Government pays 20% of the damages which Twagirayezu was ordered to pay, that is  $5,000,000\text{Frw} \times 20\% = 1,000,000\text{Frw}$ .

[17] The State Attorney Umwali argues that the Government of Rwanda played no role in the offences of which Twagirayezu was convicted by the Military Court, therefore it is not liable for damages.

[18] She further argues that in the High Court the State attorney stated that the Government of Rwanda should not pay damages because its civil servant who committed the offence was not on duty, but if the Court opines otherwise then it should pay 20% of the damages requested by the plaintiff, therefore if the Court found that the Government is not liable for damages it is legal and it concurs with the legal position from the case laws taken by other courts.

### **OPINION OF THE COURT**

[19] Article 258 CC L.III provides that “any act which causes prejudice to person entails the author to pay damages”.

[20] The Court finds that the High Court awarded Nyirandorimana damages of 5,000,000Frw in its discretion basing on the incapacity of 45% she sustained, moreover such damages for body injury are computed basing on the real figures, in the consideration of the income, incapacity, lucrative survival etc. Therefore the damages awarded in the court’s discretion cannot be the perfect damages in such a body injury claim.

[21] Even though there is no specific statute for the computation of such damages, the Court finds that it should borrow a leaf from article 18 of the Presidential Order N<sup>o</sup>31/01 of 25/08/2003 on compensation for personal injury due to accidents caused by motor vehicles which provides for computation of non-fatal personal damages for the victim whose income cannot be established as is the case for Nyirandorima, therefore they should be computed in the following way:

$$\frac{2.500\text{Frw}^1 \times 25 \text{ days} \times 12 \text{ months}) \times 33 \text{ years} \times 45\%}{1 + (8.75\% \times 33 \text{ years})} = 2,864,952\text{Frw}$$

[22] As motivated above, the Government of Rwanda must pay ½ of 2,864,952Frw equivalent to 1,432,476Frw, and Twagirayezu also pays ½ of 2,864,952Frw equivalent to 1,432,476Frw.

### **Regarding the counsel fees claimed by Nyirandorimana.**

[23] Counsel Nizeyimana assisting Nyirandorimana argues that she was not awarded the counsel fees she requested for while she engaged a lawyer, he requests that she be awarded the counsel fees equivalent to 1,000,000Frw on both instances.

[24] The State Attorney Umwali argues that if Counsel Nizeyimana assisted Nyirandorimana on the first instance and lost because her claim lacked merit, the Government of Rwanda was not the one to pay his fees. He adds that the fact that he assists her on this level does not concern the Government of Rwanda, therefore in case the counsel fees are awarded, they should be borne by Twagirayezu.

## **THE OPINION OF THE COURT**

[25] The Court finds that on both levels Nyirandorimana engaged a lawyer, but it is evident that he did not make for her the Court submissions instead he used those made by Nyirandorimana herself, therefore she cannot be awarded 1,000,000Frw for the counsel fees instead she is awarded 500,000Frw in the court's discretion on both levels, the Government of Rwanda bears ½ equivalent to 250,000Frw, and Twagirayezu also pays ½ equivalent to 250,000Frw.

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

[26] Decides that the appeal of Nyirandorimana Claudine has merit in part;

[27] Orders the Government of Rwanda to pay Nyirandorimana Claudine 1,432,476Frw in damages and 250,000Frw for the counsel fees, all equivalent to 1,682,476Frw;

[28] Orders Twagirayezu Maurice to pay Nyirandorimana Claudine 1,432,476Frw in damages and 250,000Frw for counsel fees, all totalling to 1,682,476Frw;

[29] Orders Twagirayezu to pay ½ of the court fees and another half be borne by the public treasury.

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<sup>1</sup> In various cases like RCAA0003/11/CS delivered on 12/10/2012 and RCAA0202/07/CS rendered on 09/04/2009, The Supreme Court considered the amount of 2,500Frw to be the daily minimum wage.