

## PROSECUTION v. KANGABE

[Rwanda SUPREME COURT – RPAA0027/16/CS (Kayitesi Z, P.J., Kanyange and Ngagi, J.)  
June 09, 2016]

*Criminal Law Procedure – Execution of the judgment – Having little children is not a sufficient ground to stay the execution of the judgment because those children are accorded special care in prison – Law N°54/2011 of 14/12/2011 relating to the rights and the protection of the child, article 56 paragraph 2.*

**Facts:** Before the High Court, chamber of Rwamagana, Kangabe filed a claim for the case review of the judgments RPA0207/15/HC/RWG, RPA0253/15/HC/RWG, RPA0254/15/HC/RWG and RPA0266/15/HC/RWG(combined cases), in which she and her colleagues were convicted for embezzlement, counterfeit and use of counterfeited document.

While the case was pending, Kangabe filed a claim of summary procedure requesting to suspend the execution of the judgments for which she applied for the review on the ground of having little children, her husband suffers from chronic illness of hepatitis B and that herself suffers from chronic illness of stomach ulcers.

The High Court, chamber of Rwamagana rendered the judgment, holding that Kangabe’s claim of summary procedure lacks merit after finding out that she failed to prove to the Court that her grounds of the claim are urgent issues in principal suit.

She appealed to the Supreme Court stating that the High Court disregarded the elements of evidence which prove her claim requesting to suspend the execution of the judgments which she applied to be reviewed, those elements of evidence include the ones demonstrating that she suffers from chronic illness of stomach ulcers, her husband suffers from chronic illness of hepatitis B and that they also have two young children.

The Prosecution argued that the grounds raised by the appellant were discussed before the High Court, chamber of Rwamagana and it finds the claim of the summary procedure as a delaying tactics to avoid the execution of the judgment, therefore it prays that the claim be rejected.

BPR Ltd which was also party to the case, stated that it has no interest in incarcerating Kangabe, but it adds that in prison, patients with the same illness are given special treatment.

**Held:** 1. Kangabe’s illness is not a ground to stay the execution of the judgments for which she applied for the case review because that ground is not sufficient to request the stay of the execution because the prison has special treatment to the incarcerated patients.

2. Having little children is not a sufficient ground to stay the execution of the judgment because those children are accorded special care in prison. Therefore, this ground raised by Kangabe cannot stay the execution of the judgments for which she applied for the case review.

**Appeal lacks merit;  
The rulings of the appealed judgment sustained;  
Court fees deposits cover the expenses of the case.**

**Statute and statutory instruments referred to:**

Law N°30/2013 of 24/5/2013 relating to the code of criminal procedure.

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

Law N°54/2011 of 14/12/2011 relating to the rights and the protection of the child.

Law N°34/2010 of 12/11/2010 on the establishment, functioning and organisation of Rwanda correctional service.

**No case laws referred to:**

## **Judgment**

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

[1] After the High Court, chamber of Rwamagana rendered judgments RPA0207/15/HC/RWG, RPA0253/15/HC/RWG, RPA0254/15/HC/RWG and RPA0266/15/HC/RWG (combined cases) whereby Kangabe Christine and her co-accused were prosecuted for embezzlement, counterfeit and use of counterfeited document, Kangabe Christine applied for the case review and it was recorded on number RPA0134/16/HC/RWG.

[2] Before the case RPA0134/16/HC/RWG was closed, Kangabe Christine filed for the summary procedure claim which was recorded on number RPA0139/16/HC/RWG, praying to the High Court, chamber of Rwamagana to suspend the execution of the judgments RPA0207/15/HC/RWG, RPA0253/15/HC/RWG, RPA0254/15/HC/RWG and RPA0266/15/HC/RWG, on the ground that she has young children, her husband suffers from chronic disease of hepatitis B and that herself, she suffers from chronic disease of stomach ulcers.

[3] On 22 April 2016, the High Court, chamber of Rwamagana adjudicated that case, holding that Kangabe Christine's claim of summary procedure lacks merit, that the claim of the case review cannot suspend the execution of the judgments mentioned above, it was decided so, due to the failure of Kangabe Christine to prove that her grounds are urgent issues in the principal suit (RPA0134/16/HC/RWG), especially that her Counsel Nizeyimana Léopold, states that the issues of the case review are different from those of the summary procedure, therefore it implies that the grounds of the summary procedure are not linked to the principal suit.

[4] Kangabe Christine appealed to the Supreme Court stating that the High Court, chamber of Rwamagana disregarded the elements of evidence contained in the case file which prove that she suffers chronic disease of stomach ulcers, her husband Nyagatare Janvier suffers chronic disease of hepatitis B since 2010, and they have two young children, one of them is 4 month and half old that needs to be cared for, this is emphasized by article 56 of the Law N°54/2011 of 14/12/2011 relating to the rights and the protection of the child which provides that in case a mother with a child under three(3)years old is prosecuted for an offense, the judge will do his/her utmost to impose against such a mother a penalty other than imprisonment.

[5] This case was held in public on 06/06/2016, Kangabe Christine assisted by Counsel Nizeyimana Léopold while the Prosecution was represented by Munyaneza Nkwaya Eric, the National Prosecutor and BPR Ltd was represented by Counsel Ntwari Justin.

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

**Whether the execution of the judgments RPA0207/15/HC/RWG, RPA0253/15/HC/RWG, RPA0254/15/HC/RWG and RPA0266/15/HC/RWG would be suspended pending the judgment on their case review.**

[6] Kangabe Christine and his Counsel Nizeyimana Léopold state that on first instance, the judge erred in deciding that there is no urgent issues in the case, because the case review does not automatically stay its execution, instead, it is requested before the seized court, that Kangabe Christine pleaded the previous cases at liberty for that reason, she also requests that the case review be heard still at liberty, especially that she has a little child of 5 months and that herself suffers from chronic disease of stomach ulcers and in addition, her husband suffers from chronic disease of hepatitis B.

[7] The Prosecution states that Kangabe Christine's grounds are based on article 56 of the Law N°54/2011 of 14/12/2011 relating to the rights and the protection of the child and article 322 of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, however, those grounds were discussed before the High Court, chamber of Rwamagana and paragraph two of article 56 mentioned above, contains some provisions with regard to a pregnant woman or that who has a little child. It further argues that filling of the summary procedure is a tactic intended to delay the case so that it cannot be executed, therefore the claim should not be admitted.

[8] Ntwari Justin, the counsel for BPR Ltd states that BPR Ltd has no interests in imprisoning Kangabe Christine, but he adds that in prison, there are facilities for the prisoners with the same illness, that Kangabe Christine pleaded requesting for suspension of the penalty basing on child rights and the Court decided on it.

## **THE VIEW OF THE COURT**

[9] Article 279 of the Law N°30/2013 of 24/5/2013 relating to the code of criminal procedure provides that all matters that are not provided for under this law shall be handled in accordance with civil procedure rules, unless the civil procedure principles cannot be applicable in criminal matters. This article is supported by article 1 of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure which provides that this law governs the procedure applied by courts in civil, commercial, labour and administrative cases. It shall also apply to all other cases in the absence of specific laws governing such procedures, unless the principles provided for by this Law cannot apply to other cases.

[10] Article 190 of the Law N°21/2012 mentioned above, provides that an application for review shall not prevent the execution of the contested judgment, unless the execution has been

suspended by the court to which the review has been referred for justified reasons. Article 320 paragraph one of that law provides that the summary procedure judge shall decide by way of orders, but without prejudicing the merits of the principal suit [...].

[11] In the present case, the case file demonstrates that the High Court, chamber of Rwamagana did not suspend the execution of the judgments RPA0207/15/HC/RWG, RPA0253/15/HC/RWG, RPA0254/15/HC/RWG and RPA0266/15/HC/RWG due to the fact that Kangabe Christine failed to prove that the grounds of her claim were urgent issues in the principal suit (RPA0134/16/HC/RWG) pending to be adjudicated, those grounds include having little children, and that she and her husband suffer from chronic disease. It is also noted that since the beginning of the proceedings, Kangabe Christine pleaded while at liberty.

[12] The Court finds that in civil cases, the execution of the judgment is suspended through summary procedure to save some interests in order to avoid irreparable harm in case of the delay<sup>1</sup>, such as in case the object in litigation can totally perish to the extent that the claimant for suspension of the execution may not be able to get it up when he/she wins the principal suit. In criminal case, with regard to the issues of suspending the execution, it is obvious that if it is granted, it would be applied on the person convicted and if he is imprisoned, it would cause irreparable harm, however, the Court finds that the consequences cannot be the same as those in the civil cases, because article 197<sup>2</sup> of the Law N°30/2013 mentioned above provides that when a party applied for review and the case subject to review shows that a person was convicted despite his/her innocence, the court may award him/her damages for moral prejudice suffered as a result of the penalty imposed on him/her. If the person sentenced as a result of miscarriage of justice is dead, the right to apply for moral damages shall devolve under the same conditions upon his/her heirs, this proves that after execution of the judgment subjected to the case review, Kangabe Christine has rights to sue and claim for moral damages when she is imprisoned and acquitted latter.

[13] With regard to the ground of having little children, the Court finds that this ground cannot stay the execution of the judgments for which she applied for the case review, because article 56 paragraph two of the Law N°54/2011 of 14/12/2011 relating to the rights and the protection of the child provides that if it is impossible to pronounce a penalty other than imprisonment, a pregnant woman or a mother of a child under three (3) years is detained in a special ward of the prison reserved for mothers with children under three (3) years, in addition, the Law N°34/2010 of 12/11/2010 on the establishment, functioning and organisation of Rwanda correctional service provides that those children are accorded special consideration.<sup>3</sup>

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<sup>1</sup> The judgment RCA0008/10/CS of 21/01/2011, Mukamurenzi Diane & Akingeneye Jean de Dieu vs Karangwa Elysé & Mukarutesi Espérance

<sup>2</sup> Article 197 provides that upon request by the party applying for review, when the case subject to review shows that a person was convicted despite his/her innocence, the court may award him/her damages for moral prejudice suffered as a result of the penalty imposed on him/her. If the person sentenced as a result of miscarriage of justice is dead, the right to apply for moral damages shall devolve under the same conditions upon his/her heirs.

<sup>3</sup> Article 33 of the Law N°34/2010 of 12/11/2010 on the establishment, functioning and organisation of Rwanda correctional service provides that any incarcerated pregnant or breastfeeding woman shall be accorded special consideration. A child who is still breast feeding shall be entitled to adequate and nutritional food as required for infants, and shall be removed from the prison and given to his/her family at three (3) years of age. In case the child has no family to receive him/her, the State shall provide a place where he/she shall be cared for.

[14] Whereas concerning the ground of her illness (Kangabe), the Court also finds that this cannot stay the execution of the judgments for which she applied for the case review, because the prison has medical facilities to the incarcerated patients as provided by article 39 the Law N°34/2010 of 12/11/2010 on the establishment, functioning and organisation of Rwanda correctional service,<sup>1</sup> hence no one should use illness as a pretext to request for not being incarcerated.

[15] Concerning the ground of illness of her husband, the Court finds that illness cannot be ground of suspending the execution of the judgments mentioned because it is not related to the judgment to be executed.

[16] Considering the motivations given above, the Court finds no ground of staying the execution of the judgments RPA0207/15/HC/RWG, RPA0253/15/HC/RWG, RPA0254/15/HC/RWG and RPA0266/15/HC/RWG, therefore the judgment RPA0139/16/HC/RWG rendered on 22/04/2016 by the High Court, chamber of Rwamagana is sustained.

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

[17] Finds without merit the appeal lodged by Kangabe Christine.

[18] Sustains the rulings of the judgment RPA0139/16/HC/RWG rendered on 22/04/2016 by the High Court, chamber of Rwamagana

[19] Holds that the Court fees deposited by Kangabe Christine covers the expenses of the case.

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<sup>1</sup> Article 39 paragraph 2 of the Law N°34/2010 states that every incarcerated person has the same right to medical care as any other citizen. Every prison shall have an infirmary from where patients receive medical care and that collaborates with the health centers nearest to the prison. In case an incarcerated person cannot receive appropriate medical care from the infirmary, he/she shall be transferred to another health centre.