

## PROSECUTION v. MUKARUYANGE

[Rwanda SUPREME COURT– RS/INJUST/PEN 00004/2017/SC, (Mugenzi, P.J., Kanyange and Gakwaya, J.) 23 February 2018]

*Criminal Procedure – Classification of the offence – Re-classification of the offence is in the judge’s duties in case, the judge finds that the acts for which the accused is charged, are not given the right classification – As long as the decision of the Court has not acquired the status of res judicata the offence can be re-classified and the accused’s right to defense be respected.*

**Facts:** This case started before the Primary Court of Nyarugunga whereby Habumugisha was prosecuted for the burglary and Mukaruyange for concealing objects obtained from an offence. That Court rendered the judgment and convicted Habumugisha for the offence and sentenced him to one year of imprisonment and ordered him to pay 80,000,000Frw to the claimant for damages, whereas Mukaruyange was acquitted.

The Prosecution and the civil party were not contented with the rulings of the judgment and appealed to the Intermediate Court of Nyarugenge stating that the Court ignored the statements of the witnesses accusing Mukaruyange of harbouring Habumugisha together with the money he robbed and the Court acquitted her. They pray to the Court for proper examination of the elements of evidence. That Court rendered the judgment sustaining the sentence infringed to Habumugisha, It also found Mukaruyange guilty of being the accomplice of Habumugisha in the theft of money in litigation and of harbouring the offender and objects obtained from an offence, It sentenced her to two (2) years of imprisonment suspended in one year, the Court also ordered them to jointly pay money which was in litigation.

Mukaruyange was not satisfied with the ruling of that judgment, consequently, she wrote to the Office of Ombudsman requesting for the assessment of the injustice she suffered in that judgment stating that she was convicted for the complicity of theft whereas she was not sued for that offence also that, the Court considered the elements of evidence which are not reliable because she knew the offender after the latter has committed the offence when they dealt with the sale of plot.

After examining her request, the Ombudsman wrote to the President of the Supreme Court praying that the judgment RPA 0230/14/TGI/NYGE be reviewed due to injustice occurred for ignoring Laws and evidence, the Office of Ombudsman explains that Mukaruyange was found guilty of the complicity in theft at an appellate level whereas she was not charged for it before and did not respond against it on the first instance, that Office states that Mukaruyange would not have participated in the theft while she met Habumugisha when he had already committed the offence, with regarding the concealment of objects obtained from theft, the Office of Ombudsman states that the Court failed to demonstrate whether Mukaruyange Athanasie was found with money obtained from an offence, the amount and the place where she would have concealed it.

The President of the Supreme Court ordered for that judgment to be reviewed, Mukaruyange was pleading stating that she responded on new offence at the appellate level before the Intermediate Court while she was not prosecuted for it, hence she did not defend herself against it at first instance before the Primary Court because she was accused of concealment of objects obtained

from an offence, but in appeal, she responded to the complicity in burglary, she adds that though the judge may reverse classification of an offence, he/she has to rely on facts, she argues that a judge of appeal erred because he did not hear the defence of the accused before he re-classified of the offence, rather what happened was to lodge a new claim on the appeal which was not pleaded before.

The civil party states that she agrees with her opponents with regarding the competence of the judge of giving a new classification of an offence, in this regards, she finds, that this was what did the judge of the Intermediate Court after hearing the parties and witnesses, he/she decided to qualify the facts as complicity in burglary.

The Prosecution contends that there was no new offence for which the judgment was rendered before the Intermediate Court which was seized in appeal, rather, if article 98 of the Organic Law N° 01/2012/OL instituting the penal code and article 327 of that Law are considered together, provides that a person is also considered as an accomplice if he/she harbours an offender or aids him/her in the concealing, the Court found then, that those acts committed by Mukaruyange, constitute an offence of aiding Habumugisha of burglary

**Held:** 1. Reclassification of an offence is in judge's duties when he/she finds that the acts for which the accused is charged, are not given the right classification, basing on the principle that the judge is seized with the facts and not with the classification, therefore, the issue whether the Intermediate Court would have reversed the claim and hears new charge, has no merit.

2. As long as the decision of the Court has not acquired the status of res judicata the offence can be re-classified and the accused's right to defense be respected, thus, the judge should have granted the parties an opportunity to express their views about a new classification.

3. With regarding the issue whether Mukaruyange is guilty of complicity in burglary, her acts which the Intermediate Court found as an offence, do not contain the complicity because, in the analysis of that Court concerning the presumptions and analysis of the case made in accordance with the wisdom of the judge, there was no submission of elements of important evidence, precise and consistent to prove with no doubt that Mukaruyange helped Habumugisha in acts of burglary, therefore, Mukaruyange Anastasie has to be acquitted on that offence.

4. Concerning the offences of harbouring an offender and concealing objects obtained from an offence, Mukaruyange does not demonstrate elements of evidence which were ignored in judgment which would prove that she did not commit such offences, rather, basing on the offender's statement and corroborating statements of the witnesses, there is no doubt that the Court has enough proof to declare Mukaruyange guilty of harbouring an offender and concealing objects obtained from an offence as she was convicted in the judgment RPA0230/14/TGI/NYGE, therefore, there is no injustice related to ignoring elements of evidence.

**The claim to review the judgment due to injustice has merit in part;  
Court fees are charged to the public treasury.**

**Statute and statutory instruments referred to:**

The Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code, article 326 and 573.

The Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 320.

The Law N° 15/2004 of 12/06/2004 relating to evidence and its production, article 108 and 119.

**Case laws referred to:**

The Prosecution v. Nyawera Céléstin, RPA0033/11/CS rendered on 14/9/2012 by the Supreme Court.

**Author cited:**

Likulia Bolongo, Droit Pénal spécial zairois, Tome I, 2ème édition, Paris, 1985, P. 20, 21.

## **Judgment**

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

[1] The Prosecution sued Habumugisha Butoyi and Mukaruyange Athanasie for the theft committed through burglary for the first and for concealment of objects obtained from an offence for the latter, in this case, Rwasibo Mutesi Béatrice intervened as civil party.

[2] In the judgment RP0355/13/TB/NYRGA rendered by the Primary Court of Nyarugunga on 20/03/2014, that Court found Habumugisha Butoyi guilty for the theft committed through burglary and sentenced him to one year of imprisonment and ordered him to pay back Rwasibo Mutesi Béatrice 80.000.000Frw and damages equivalent to 900.000Frw, that Court found Mukaruyange Athanasie not guilty for the offence she was charged.

[3] The Prosecution and Rwasibo Mutesi Béatrice appealed to the Intermediate Court of Nyarugenge stating that the Court disregarded the testimonies of witnesses accusing Mukaruyange Athanasie of having concealed Habumugisha Butoyi together with the money he stole and found her not guilty. The Prosecution sought to the Court to diligently examine the elements of evidence submitted and held Mukaruyange Athanasie liable for the offence she committed.

[4] In the judgment RPA 0230/14/TGI/NYGE rendered by the Intermediate Court of Nyarugenge on 24/07/2014, that Court found the Prosecution's appeal and that of Rwasibo Mutesi Béatrice with merit, It sustained the penalty infringed to Habumugisha Butoyi, It also held that Mukaruyange Athanasie is guilty of being in complicity with Habumugisha Butoyi in the theft of money in litigation and that one of concealing the offender and objects obtained from an offence, It sentenced her to two(2)years of imprisonment with one year of suspension, the Court ordered her to pay 84.740.000Frw jointly with Habumugisha Butoyi, the Court motivated that, there are testimonies of the witnesses accusing her for the role in the theft of money, these witnesses include her housemaid named Uwamahoro Sara who testified that Mukaruyange Athanasie lodged Habumugisha Butoyi for a long time at her home, and that she had ever confessed that she lodged him for protection because of a lot of money he possessed, this proves that they had convened for robbing the money belonging to Rwasibo Mutesi Béatrice through burglary.

[5] On 10/03/2015, Mukaruyange Athanasie wrote to the Office of Ombudsman requesting for the assessment of the injustice she suffered in the judgment RPA 0230/14/TGI/NYGE because she was convicted for the complicity of theft whereas she was not sued for that offence and that, the Court considered the elements of evidence which are not reliable because she knew the offender after having committed the offence when they dealt with the sale of plot.

[6] The Ombudsman wrote to the President of the Supreme Court requesting that the case RPA0230/14/TGI/NYGE be reviewed due to injustice on the grounds of disregarding Laws and elements of evidence, the Office of Ombudsman states that Mukaruyange Athanasie was convicted for complicity in theft whereas she was not prosecuted for that offence on the first instance, for her to defend accordingly, in addition, that Office states that Mukaruyange Athanasie would not have participated in the theft while she met Habumugisha Butoyi when he had already committed the offence, with regard to the concealment of objects obtained from theft, the Office of Ombudsman states that the Court failed to demonstrate whether Mukaruyange Athanasie was found with money obtained from an offence, the amount and the place where she would have concealed it.

[7] In the order N° 026/2017 of 18/04/2017, the President of the Supreme Court ordered that the case RPA0230/14/TGI/NYGE mentioned above, be reviewed, the hearing was held in public on 15/01/2018, Mukaruyange Athanasie being assisted by Counsel Kayijuka Ngabo, Rwasibo Mutesi Béatrice being assisted by Counsel Munyeshema Napoléon, whilst the Prosecution was represented by Niyonkuru Françoise, the National Prosecutor.

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

[8] In this case, the Court examines whether the judgment was vitiated by the injustice for not complying with the Laws on one hand and disregarding elements of evidence, on the other hand, the Court also examines the issue of damages claimed by the parties.

### **A. Whether there was an injustice for not complying with the Laws**

[9] Mukaruyange Athanasie and Counsel Kayijuka Ngabo assisting her, state that Mukaruyange Athanasie pleaded on new offence at the appellate level before the Intermediate Court while she was not prosecuted for it, hence she did not defend herself against it at first instance before the Primary Court of Nyarugunga because she was accused of concealment of objects obtained from an offence provided and punished by article 326 of the Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code, whereas in appeal she had to respond to the complicity in the burglary.

[10] Counsel Kayijuka Ngabo argues that though the judge may qualify acts of an offence to the new classification, he/she has to rely on facts, Counsel Kayijuka finds that a judge of appeal was mistaken because he did not hear Mukaruyange Athanasie before he makes reclassification of the offence, rather what happened was to lodge a new claim on appeal which was not heard before.

[11] Rwasibo Mutesi Béatrice and Counsel Munyeshema Napoléon assisting her, state that they agree with their opponents with regard to the competence of the judge of giving a new

classification of an offence, in this regards, they find that this is what did exactly the judge of the Intermediate Court after hearing the parties and witnesses, he/she decided to qualify the facts as complicity in burglary.

[12] Counsel Munyeshema Napoléon also states in his written submissions that article 98 of the Organic Law N° 01/2012/OL mentioned above, provides different ways of a person's role in an offence: when a person commits an offence, co-offender(a person who directly cooperates in the commission of an offence) or an accomplice, here is explained that a person is also considered as an accomplice if he/she harbours an offender or aids him/her in the concealing under conditions provided under article 327 of this Organic Law, Counsel Munyeshema is on the view that elements of evidence which were considered, prove that Mukaruyange Athanasie was accomplice, thus she had to be liable, hence there was no injustice, this is also their request to the Supreme Court to sustain the same position.

[13] He states that based on article 81 of the Organic Law N° 03/2012/OL of 13/06/2012 determining organization, functioning, and jurisdiction of the Supreme Court, it should be held that the review of the judgment due to injustice lacks merit since there were no Laws disregarded.

[14] The Prosecution contends that there was no new offence for which the judgment was rendered before the Intermediate Court which was the appellate Court, rather, if article 98 of the Organic Law N° 01/2012/OL mentioned above and article 327 of same Law are considered together, it is clear that a person is also considered as an accomplice if he/she harbours an offender or aids him/her in the concealing, that the Court found that those acts committed by Mukaruyange Athanasie, constitute an offence of aiding Habumugisha Butoyi in the commission of burglary.

## **DETERMINATION OF THE COURT**

[15] With regarding to the issue whether the Intermediate Court would have rendered the judgment for the offence which was not charged, the Court finds that, as the case file demonstrates, Mukaruyange Athanasie was accused before the Primary Court for the concealment of objects obtained from theft which is provided by article 326 of the Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code and the Court discharged her on that offence, whereas the Intermediate Court found, the fact that for long time Mukaruyange lodged Habumugisha Butoyi who had stolen money through burglary, also that, bought together houses and plots in that period he was wanted before she helped him to flee, this indicates rather that she participated and conspired to the acts of theft committed by Habumugisha Butoyi because she also confessed to have lodged him because of a lot of money he possessed for his protection, the Court also convicted her for concealment either of objects from an offence or of an offender.

[16] The Court finds, the fact that the judge based on the acts for which he/she was seized from the conduct of Mukaruyange Athanasie and Habumugisha Butoyi, in its analysis s/he found that those facts demonstrate Mukaruyange Athanasie's complicity in burglary, this cannot be considered as rendering the judgment out of charges in case the judge had analysed the facts submitted by the Prosecution, instead, after analysis, the judge gave them a new classification as complicity in burglary knowing that reversing the classification of an offence is in judge's rights

and obligations when s/he finds that the facts for which the accused is charged, is not linked to the classification<sup>1</sup> basing on the principle that the judge is seized with the facts and not with the classification, therefore, the issue of whether the Intermediate Court would have reversed the claim and heard a new charge, has no merit.

[17] The Court finds rather that, the issue at hand is to know whether the Intermediate Court's analysis was well-made with regarding to the elements of evidence to prove conspiracy of theft and joint participation in committing it.

[18] With regarding to the fact that the judge has reversed a classification of the offence without first having granted Mukaruyange Athanasie the opportunity to respond to a new classification, the Court finds that the judge should have done so after having accorded Mukaruyange Athanasie an opportunity to express her view because as the legal scholars explain, as long as the decision of the Court has not acquired res judicata power, classification of an offence may be reversed, but the accused must be allowed to respond to it, in the sense of the respect of rights to defense, that mistake was rectified before this Court whereby the parties had the opportunity of contradicting themselves as indicated in the grounds of their pleadings.

#### **B. Whether there was injustice due to disregarding elements of evidence**

[19] Mukaruyange Athanasie states that Nyarugenge Intermediate Court of disregarded elements of evidence proving that he did not commit an offence and that Court held that she lodged Habumugisha Butoyi after knowing that he possessed a lot of money whereas it is not true. She explains that it was suspicious that she lodged Habumugisha Butoyi as they went together at her home late at night to take the land title after having bought a plot, and they met through a broker, she adds that Habumugisha returned to his home except that he left parked his car where Mukaruyange Athanasie parks as well because Habumugisha Butoyi's driver requested so.

[20] She argues that her former housemaid Uwamahoro Sara testified that she lodged Habumugisha Butoyi, but this testimony should not be considered because she had quarrels with the latter regarding her job as she was no longer working properly, that's why she falsely accused her.

[21] Counsel Kayijuka Ngabo states that Habumugisha Butoyi's statement before the investigators is false, that he shared money he robbed with Mukaruyange Athanasie because they didn't know each other, instead, Habumugisha Butoyi had later revealed that he made such statement under duress he faced in police just after his arrest. He argues that the investigation was wrongly conducted since before the investigators and it continued as such before the Prosecution, the investigation was misled by suspecting that Mukaruyange Athanasie collaborated with Habumugisha Butoyi in the commission of the offense which includes helping him searching for policemen to assist him getting the land title, the fact that she drove him to her home, being involved in the contract of a sale of a house, the fact that Habumugisha Butoyi's car was kept overnight at her home, all these listed reasons prompted to suspect that she would have kept the money for him whereas it did not happen.

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<sup>1</sup> See the judgment RPA 0033/11/CS rendered on 14/9/2012 by the Supreme Court, the Prosecution v. Nyawera Céléstin.

[22] He also states that Habumugisha Butoyi robbed when it was on Wednesday and he bought a house from Mukaruyange Athanasie on Saturday, that he was arrested after a month, those dates demonstrate that they didn't know each other, thus the charges against Mukaruyange Athanasie contains doubt.

[23] Rwasibo Mutesi Béatrice, the claimant for damages, states that when Habumugisha Butoyi was arrested in Gatsata, he was handed over to the Police, he was asked where he had put money and responded that he had used part of that money to buy a house, another part to buy a car, and that he entrusted the rest to Mukaruyange Athanasie, and the latter lodged him at her home. She adds that it is not the first time for Mukaruyange Athanasie to be prosecuted for concealing the thieves because she was previously prosecuted for the offence of such kind, she states that many people in Gatsata, knew that she lodged Habumugisha Butoyi who spent some days, those people include Uwamahoro Sara and Turatsinze Abdallah, and also, for that reason, Mukaruyange Athanasie's children were angry, that it is painful that she dared do such acts whilst she is a leader.

[24] Counsel Munyeshema Napoléon states that the acts committed by Mukaruyange demonstrate that she had been a co-author in complicity provided by article 98 of the Organic Law N°01/2012/OL mentioned above. He adds that Habumugisha Butoyi confessed in an investigation that Mukaruyange Athanasie lodged him but he changed his statement later stating that he confessed under duress but he failed to prove it while a witness named Migezo affirms that Mukaruyange Athanasie saw Habumugisha Butoyi in possession of a lot of money and she took him to stay at her home, another witness called Turatsinze Abdala also testified that he had known Habumugisha Butoyi by the help of Mukaruyange Athanasie and that he has no dispute with each of them.

[25] The Prosecution contends that after Habumugisha Butoyi committed theft, he sought advice from Mukaruyange Athanasie for buying land in Bugesera, the latter confessed before investigators that she lodged him for a long time, while he was in possession of much money and obviously, that money was without reasonable origin. The Prosecution states that Mukaruyange Athanasie responded to all these charges and that the Court which is seized with the facts and it is up to it to classify those facts in an offence, this was the position of this Court in the judgment RPAA 0117/07/CS between the Prosecution versus Ngabonziza et.al.

## **THE DETERMINATION OF THE COURT**

[26] Regarding the issue whether Mukaruyange Anastasie is guilty of complicity in burglary, this Court finds that her acts from which the Intermediate Court found the offence as mentioned above in paragraph 15, do not contain the complicity because in the analysis of that Court with regard to the presumptions and analysis of the case which are left to the wisdom of the judge as provided by article 108 of the Law N° 15/2004 of 12/06/2004 relating to evidence and its production<sup>1</sup>, there was no submission of important evidence, precise and consistent to prove with no doubt that Mukaruyange Anastasie had helped Habumugisha Butoyi in acts of burglary, therefore, Mukaruyange Anastasie has to be acquitted on that offence.

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<sup>1</sup> That article provides that presumptions that have not been established by the law are left to the discretion and wisdom of the Court. The Court shall admit only those presumptions if they are important, precise, and consistent.

[27] The Court also finds, with regarding to Mukaruyange Anastasie, complicity in burglary should not rely on article 98 litera 3 paragraph 2 of the Organic Law N° 01/2012/OL mentioned above which provides that a person is also considered as an accomplice if he/she harbours an offender or aids him/her in the concealing under conditions provided under article 327 of this Organic Law as stated by the Prosecution and Counsel for Rwasibo Mutesi Beatrice because that article 327 refers to the concealing of objects which were used or meant to commit an offence as indicated in its title as well as in section 10 where that article is located, which make the difference between the provisions of that article and those of article 326 which refers to the concealment of objects obtained from an offence, it is obvious that by errors, the provisions concerning the concealment of objects obtained from an offence were again put in article 327 because they were already provided in article 326 in particular and sufficient manner as motivated above.

[28] Therefore, the Court finds, the acts of concealing objects obtained from an offence for which Mukaruyange Athanasie was charged, should be analysed in consideration of the provisions of article 326 of the Organic Law N° 01/2012/OL mentioned above by examining whether there were elements of evidence which were disregarded by the Intermediate Court to prove that she is innocent from the offence of concealing objects obtained from an offence, and also, basing on article 573<sup>1</sup> of that Organic Law which provides for an offence of concealing an offender, these are acts for which she was prosecuted and she pleaded on it before all previous Courts, this is what shall be examined in part two of the second issue of this case.

[29] In demonstrating that the Intermediate Court ignored elements of evidence which prove that she did not commit an offence, Mukaruyange Athanasie and her Counsel do not demonstrate those elements of evidence which were disregarded, rather, they insist on her behavior towards Habumugisha Butoyi with intention of proving that her conduct does not imply concealing stolen objects and harbouring an offender.

[30] Article 119 of Law N° 15/2004 of 12/06/2004 relating to evidence and its production provides that in criminal cases, the evidence is based on all grounds, factual or legal provided that parties have been given a chance to be present for cross-examination. The court rules on the validity of the Prosecution or defence evidence.

[31] Among elements of evidence taken into consideration by the Intermediate Court to held Mukaruyange Athanasie guilty for concealing an offender and objects obtained from an offence, include Habumugisha Butoyi's confession during his interrogation before the investigators and he made the same confession before the Prosecution that he revealed to Mukaruyange Athanasie that he robbed money from his workplace, that he gave her the half of it for concealment, he states that he gave her three bunches of dollars and euros which he ignores the exact amount, he told her that in case he will be arrested she will bring it back to refund it., this corroborates with the statement of the witness Turatsinze Abdallah who affirmed that he knew Habumugisha Butoyi through Mukaruyange Athanasie and was looking for a plot to buy in Bugesera.

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<sup>1</sup> That article states that any person who provides accommodation, a hiding place or any other means to a suspect or an offender or an accomplice of a felony or misdemeanor that hinders an arrest by judicial organs, shall be liable to a term of imprisonment of two (2) years to five (5) years and a fine of one hundred thousand (100,000) to one million (1,000,000) Rwandan francs.



[32] The Court finds, though before the Court Habumugisha Butoyi reversed his statement and said that he falsely accused Mukaruyange Athanasie because he was under duress in his interrogation, there is no proof that he made such statement under duress and it is also not reasonable that he might have faced assault before the Investigators and before the Prosecution whereas it is obvious that his confession corroborates with the statement of the witness Turatsinze Abdallah as indicated above.

[33] The Court finds, Habumugisha Butoyi's initial confession corroborates with Uwamahoro Sara's statement, the one who was Mukaruyange Athanasie's housemaid, she testified that Mukaruyange Athanasie lodged Habumugisha Butoyi for a long time at her home, this cannot be excluded as it is not true though Mukaruyange Athanasie states that she had quarrels with her housemaid before the latter left her house, while the other witness, Manaturikumwe Eric affirms that he is the one who drove Habumugisha Butoyi to Mukaruyange Athanasie's place in the car that habumugisha had bought, that he slept overnight there, and the car was parked around on the road where Mukaruyange Athanasie parks hers, and she admits that the car was parked in that place though she states that Habumugisha Butoyi returned to his place whereas the vehicle was left because it had mechanical problems, but the driver stated otherwise.

[34] The Court finds that there is another testimony from the witness called Migezo Jean Bosco which corroborates with those given above, whereby he explained that Mukaruyange Athanasie had lodged Habumugisha Butoyi for protection because he had much money.

[35] The Court finds that Mukaruyange Athanasie does not demonstrate elements of evidence which were ignored in judgment RPA0230/14/TGI/NYGE which would prove that he did not conceal objects obtained from an offence and harbouring an offender, rather, enough evidence was based on as reminded above, whereas the grounds considered by the Office of Omboudsman stating that there was injustice because the amount of money robbed, were not established, so that Mukaruyange Athanasie be caught with it, are without merit because those are not reliable evidence required by the Law, instead, article 119 of the Law N<sup>o</sup> 15/2004 of 12/06/2004 relating to evidence and its production provides that in criminal cases, evidence is based on all grounds, factual or legal .....<sup>1</sup> it is in this sense that Habumugisha Butoyi's confession and corroborating statements of the witnesses, prove with no doubt that Mukaruyange Athanasie is guilty of harbouring an offender and concealing objects obtained from an offence<sup>1</sup> as she was convicted in judgment RPA0230/14/TGI/NYGE, therefore, there is no injustice related to ignoring elements of evidence.

[36] The Court finds, though Mukaruyange Athanasie is acquitted on the complicity of burglary, the sentence for which she was infringed by the Intermediate Court is sustained because she is guilty of concealing objects obtained from an offence and harbouring an offender.

### **C. The issue of damages**

[37] Rwasibo Mutesi Béatrice and Counsel Munyeshema Napoléon claim that in case the Court finds no injustice in the judgment which is subject to the review, Mukaruyange Athanasie

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<sup>1</sup> Article 326 provides that any person who knowingly conceals in all or in part extorted or embezzled objects, or objects obtained from an offence other than a felony, shall be liable to a term of imprisonment of six (6) months to two (2) years and a fine of two (2) to ten (10) times the value of the concealed goods or one of these penalties.

should be ordered to 600.000Frw for the fees of her Counsel in the urgent application as well as 1.000.000Frw for the counsel fees in the present case and 500.000Frw for procedural fees, all amounting to 2.100.000Frw.

[38] Rwasibo Mutesi Béatrice and Counsel Munyeshema Napoléon claim that in case the Court finds no injustice in the judgment which is subject to the review, Mukaruyange Athanasie should be ordered to 600.000Frw for the fees of her Counsel in the urgent application as well as 1.000.000Frw for the counsel fees in the present case and 500.000Frw for procedural fees, all amounting to 2.100.000Frw.

[39] Counsel Munyeshema Napoléon states that damages being requested by Mukaruyange Athanasie lack merit because they are requested against Rwasibo Mutesi while she is the one who is the victim.

### **THE COURT DETERMINATION**

[40] The Court finds, the damages requested by Mukaruyange Athanasie's Counsel should not be examined because she does not win the case, rather those claimed by Rwasibo Mutesi Béatrice and her Counsel have to be examined.

[41] The Court finds, basing on article 258 of the Civil Code Book III which provides that "any act of a man, which causes damage to another obliges the person by whose fault it happened to repair it, Rwasibo Mutesi Béatrice would be awarded procedural fees and counsel fees because it is reasonable that she underwent loss in case proceedings and payment of counsel fees, but, since she did not submit concrete evidence to prove her expenses, damages have to be awarded in the discretion of the Court and be given 300.000Frw for procedural fees, 500.000Frw for counsel fees and those of Counsel who pleaded in the urgent application pursuant to article 258 mentioned above and based on article 320 of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure which provides that damages and related expenses incurred by the party during the hearing of summary procedure shall be claimed together with the principal application.

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

[42] Holds that Mukaruyange Athanasie's claim for the review the judgment due to injustice has merit in part;

[43] Decides that she is not guilty of the offence of the complicity of burglary;

[44] Decides that by ideal concurrence, she is guilty of concealing the offender and objects obtained from an offence;

[45] Sentences her to two (2) years of imprisonment suspended in one (1) year;

[46] Sustains damages and court fees ordered in the judgment RPA 0230/14/TGI/NYGE;

[47] Orders her to pay Rwasibo Mutesi Béatrice 500.000Frw for counsel fees and 300.000Frw for procedural fees and 500.000Frw for the counsel fees who pleaded in the urgent application which preceded this judgment;

[48] Orders that the court fees of this judgment be charged to the public treasury.