

PROSECUTION v HABINSHUTI

[Rwanda THE SUPREME COURT– RS/INJUST/RP 00001/2019/SC (Nyirinkwaya, P.J, Cyanzayire, Hitiyaremye, Rukundakuvuga and Muhumuza J.) December 23, 2020]

Criminal procedure Law – Disowning a legal counsel – When the hearing of the case proceeds while a litigant has raised an issue of misunderstanding with his/her legal counsel and the court proceeds with the hearing in such a case, the litigant is deemed to have been heard unassisted.

Facts: This case was instituted before the Intermediate Court of Nyarugenge, the Public Prosecution accusing Habinshuti to have defiled a minor referred to as U.H of 17 years of age. The Court heard the case, convicted the accused and sentenced him to 10 years of imprisonment. The defendant appealed to the High Court, and the latter declared his appeal void of merit.

The defendant again appealed to the Supreme Court, his appeal was admitted for pre-trial conference, but shortly after the reforms in judicial organs and laws determining the jurisdiction of courts, his appeal was transferred to the Court of Appeal which declared itself incompetent to hear his appeal, since he has not been sentenced to life imprisonment, neither did he prove to the Court of grave violation of laws nor serious irregularities in the procedure that could have resulted into injustice.

After the case has been heard, the defendant petitioned the President of the Supreme Court praying the latter to have the case reviewed for grounds of injustice. The President of the Supreme Court ordered it to be registered in the special roll for it to be reviewed. In this Court, the petitioner argues that the Court of Appeal should not have examined the admissibility of this appeal since the very appeal had already been admitted by the Supreme Court. He also appeals that the Court of Appeal went ahead to hear his case yet he had disowned his Counsel without firstly analysing the grounds of the disownment.

The Public Prosecution did not note any defect in the Court's stance, since it first analysed the objection of inadmissibility raised by the Public Prosecution and though the defendant disowned his counsel, he did not provide reasonable grounds for such a disownment.

Held: 1. When the hearing of the case proceeds while a litigant has raised an issue of misunderstanding with his/her legal counsel and the court proceeds with the hearing in such a case, the litigant is deemed to have been heard unassisted.

**Judgment RPAA00342/2018/CA rendered by the Court of Appeal is hereby quashed and replaced by the present judgment;
The second appeal lodged by the defendant is not admissible.**

Statutes and statutory instruments referred to:

Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, article 85, paragraph 5

Organic Law n° 03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of courts, articles 28 and 34;

Law N° 51/2009 of 09/09/2008 determining jurisdiction of courts, article 178.

Cases referred to:

Public Prosecution v. Uwinkindi, RPA 0020/14CS rendered on 04/04/2014, paragraph 13.

Public Prosecution v. Uwinkindi, RPA/GEN/0004/16/C rendered on 14/10/2016, paragraph 21.

Rutabayiro et al v. Mukamabano RS/REV/INJUST/CIV 0023/16/CS rendered by the Supreme Court on 27/09/2019.

Judgment

I. BACKGROUND OF THE CASE

[1] This case was instituted before the Intermediate Court of Nyarugenge, the Public Prosecution accusing Habinshuti Eric to have defiled a minor referred to as U.H of 17 years of age.

[2] On 18/07/2018, the same Court heard the case RP00465/2016/TGI/NYGE, and convicted Habinshuti Eric of the charges brought against him and imposed to him a sentence of 10 years of imprisonment.

[3] Habinshuti Eric appealed to the High Court, and the latter heard the case RPA00701/17/HC/KIG on 30/11/2017, and ruled that his appeal lacks merit.

[4] Habinshuti Eric appealed to the Supreme Court on 20/12/2017 and his appeal was admitted for pre-trial conference. But due to the reform of laws and judicial organs, his casefile was later transferred to the Court of Appeal.

[5] On 7/11/2018, the Court of Appeal examined the case RPAA00342/2018/CA and declared itself incompetent to hear Habinshuti's appeal referring to the provisions of sub-paragraph 2, and sub-paragraph 9 of the article 28 of the Organic Law n0 03/2012 of 13/06/2012 determining the organisation, functioning and the jurisdiction of the Supreme Court¹, highlighting the fact that Habinshuti Eric has not been sentenced to life imprisonment, neither did he prove to the Court of any gross violation of legal provisions nor serious irregularities that could have resulted into injustice.

[6] After the case has been decided on, the defendant petitioned the President of the Supreme Court praying the latter to have the case reviewed for grounds of injustice.

[7] The President of the Supreme Court examined the case, and ordered it to be registered in the special roll for it to be reviewed.

¹ The Supreme Court shall also have appellate jurisdiction over cases heard and decided in the second instance by the High Court, the Commercial High Court or by the Military High Court if such cases lead to a term of imprisonment of at least ten (10) years where the judge pre-screening the case found that there was serious violation of legal provisions or serious irregularities that caused injustice.

[8] The case was heard in public on 01/12/2020 via video conference, Habimana Eric appeared from Mageragere Prison where he is detained, Counsel Habimana Emmanuel, assisting him at the bar, while the Public Prosecution was represented by Munyaneza Nkwaya Eric.

[9] Habinshuti Eric and his legal Counsel Habimana Emmanuel submitted that :

- The Court of Appeal should not have examined the admissibility of the appeal, since the very appeal had already been admitted by the Supreme Court.
- The Court of Appeal decided on the case of Habinshuti Eric, yet the latter had disowned his legal counsel without firstly analysing the grounds of the disownment.

[10] Regarding to whether the Court of Appeal was not to admit the appeal of Habinshuti Eric, just on the fact that the very appeal had already been admitted by the Supreme Court, Habinshuti Eric, and his legal Counsel Habimana Emmanuel argue that they lodged their appeal in reference to the provisions of former Law n° 03/2012/OL of 13/06/2012 determining organisation, functioning, and jurisdiction of the Supreme Court paragraphs 2, sub-paragraph 9 article 28 reads that the Supreme Court has the appellate jurisdiction on cases that lead to a term of imprisonment of at least ten (10) years where the judge pre-screening the case found that there was serious violation of legal provisions or serious irregularities that caused injustice.

[11] They further argue that the Supreme Court had already admitted the appeal, had even scheduled its hearing date, and they therefore defend that the Court of Appeal that received the file due to the reform of laws and judicial organs had no reasons of declaring itself incompetent over the issue since that would be contradicting the Supreme Court.

[12] The representative of the Public Prosecution found no defect in the Courts' decision since the Court first analysed the objection of case inadmissibility raised by the Public Prosecution.

[13] After hearing both parties, the Court decided on the bench as follows :

- i. By the time Habinshuti appealed to the Supreme Court, article 178 of the former law n0 51/2009 of 09/09/2008 determining the jurisdiction of Courts, was providing that rules that govern criminal procedures are of public order. Therefore, the Supreme Court finds that such denotes that it is the duty of the bench to which the case was assigned to examine matters related to court's jurisdiction over such case.
- ii. The Court finds the decision of the Supreme Court Chief Registrar on the admissibility of the case in reference to provisions of articles 34 of the Organic Law n° 03/2012/OL of 13/06/2012 determining organisation, the functioning and jurisdiction of the Supreme Court that was applicable by the time Habinshuti Eric appealed, not judicially entirely binding after all remedies of appeal have been exhausted, rather, it is a judicial work-related decision that is subject to further analysis by the bench.

iii. The foregoing is similar with the positions adopted by this Court in various cases², whereby it clarified that the fact that the Supreme Court Chief Registrar receives and registers a claim, does not prevent the bench from analysing the registered case on matters pertaining to the Court's jurisdiction and case admissibility.

iv. In reference to the foregoing explanations, the Court finds nothing that could have barred the Bench of the Court of Appeal that received the appeal from analysing its admissibility and decide on it accordingly in accordance with the laws that determining the jurisdiction of the Supreme Court by the time Habinshuti Eric appealed to it.

[14] On matters related to whether the Court of Appeal adjudicated the judgment in which Habinshuti Eric has disowned his Counsel without firstly analysing such disownment, Habinshuti submits that the counsel assigned to him, Counsel Gatarayiha, came on 07/11/2018 one day prior to the hearing and advised him to withdraw his appeal since the case contained no injustice. They both thereof disagreed and in the opening of the hearing, Habinshuti disowned his legal counsel and declares it to the judge. The judge did not take into account this disownment, at the beginning of the hearing he disowned him, he declared to the judge that they disagree, the judge went on with the hearing and decided on the bench that his appeal was inadmissible on the basis of the disowned counsel's statements during the hearing and his submissions uploaded in the system. He therefore remarks that he has been prejudiced as he was thereby muzzled and never got time to present his defence.

[15] Counsel Habimana Emmanuel states that the article 89, paragraph 4 of the Law n^o 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure provides that when a party disowns his/her representative before the hearing on the merits, the judge fixes the date and time of the hearing of the disowning case, and takes a decision before the main hearing. In that case, the main hearing is rescheduled with parties being notified accordingly. Thus, the fact that the Court of Appeal did not consider the counsel disownment by Habinshuti Eric, and the hearing proceeded and the disowned counsel was interrogated and his statements were based on, he remarks that he was denied justice entitled to him by the law.

[16] The representative for the Public Prosecution stated that though Habinshuti disowned his legal counsel, he did not provide reasons for the disownment.

[17] After hearing both parties, the Court decided on the bench as follows :

- i. Article 85, paragraph 5 of the Law n^o 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure states that no party can appear before the Supreme Court and the Court of Appeal without the assistance of a counsel.
- ii. The statement of the case hearing in the Court of Appeal indicates that Habinshuti Eric disowned the legal counsel assigned to him just at the beginning of the hearing, but the Court resumed the hearing of the case as if nothing had happened.
- iii. The same statement of the hearing again indicates that Habinshuti Eric, in his defense, disagreed with his legal counsel, since the latter wanted the Court to reject

² Case RPA0020/14/CS decided on 04/04/2014 of Public Prosecution vs Uwinkindi Jean, paragraph 13; case RPA/GEN/0004/16/2016, Public Prosecution vs Uwinkindi Jean, paragraph 21.

Habinshuti's second appeal qualifying it legally void for being admitted, while Habinshuti Eric wanted the very appeal to be admitted and heard by the Court.

- iv. The Court finds that, the fact that Habinshuti Eric disowned his legal counsel, and the latter indicated it in his pleading, and given the fact the hearing continued regardless of the disagreement, constitute serious grounds to believe that Hbinshuti Eric pleaded unassisted, thus he has been deprived of his right to legal assistance entitled to him by the law and it is a principle to plead assisted in the Supreme and the Court of Appeal.
- v. The Supreme Court ruled that the decision of the Court of Appeal is unfounded and decides to analyze the issues that would be examined by that Court starting by the determination of the admissibility of the second appeal lodged by Habinshuti Eric, according to the provisions of article 28 of the Law n^o 03/2012/OL of 13/06/2012 determining organisation, functioning and jurisdiction of the Supreme Court that was applicable by the time Habinshuti Eric filed appeal.

II. ANALYSIS OF LEGAL ISSUES

A. Whether the appeal lodged to the Supreme Court by Habinshuti Eric would be admitted

[18] Habinshuti Eric and his legal Counsel Habimana Eric submit that the Supreme Court had jurisdiction to admit and hear their appeal as per the provisions of article 28. Paragraph 2 sub-paragraph 9 of the Law n^o 03/2012/OL of 13/06/2012 determining organisation, functioning and jurisdiction of the Supreme Court which provides that it shall handle appeals over cases leading to 10 years of imprisonment that contain serious violation of laws or gross irregularities that resulted into injustice, and this is, as they claim, what happened in the case when it was ruled by the High Court.

[19] They aver that laws were seriously violated so that Habinshuti Eric is prejudiced, the article 9 of the Law n^o 68/2018 of 30/08/2018 determining offences and penalties in general provides that an offence is considered to have been committed in case of mens rea, the article 3 of the Law n^o 027/2019 of 19/09/2019 relating to criminal procedure prohibits the judgment by analogy in criminal cases, because Habinshuti Eric was convicted while the Public Prosecution did not prove his intention for child defilement and basing on analogical elements of evidence including the medical report, the birth certificate and the identity card, which are not credible elements of evidence provided under the law to prove a person's age, therefore the requirements provided under article 28, paragraph 2, sub-paragraph 9 of the Law n^o 03/2012 of 13/06/2012 determining organisation, functioning and jurisdiction of the Supreme Court were met for appeal admissibility.

[20] The Representative of the Public Prosecution argues that Habinshuti Eric and his legal Counsel Habimana Emmanuel failed to indicate the violated laws, he further submits that Habimana Eric pleaded guilty, meaning that he admitted all the elements of evidence relied on in convicting him.

[21] Parties were requested to link the appeal of Habinshuti Eric to the provisions of the article 28, paragraph 5 of the aforementioned law n^o 03/2012/OL of 13/06/2021, and Counsel Habimana

Emmanuel states that they did not do a thorough analysis of the very paragraph, even though all courts convicted Habinshuti Eric, they did so on different grounds, every court made its own analysis different from the one of another. The Representative of the Public Prosecution submits that Habinshuti Eric was sentenced on similar grounds by the Intermediate Court and the High Court because he pleaded guilty, such fact was proved by other produced elements of evidence, therefore, he finds that the second appeal was inadmissible.

DETERMINATION OF THE COURT

[22] Article 28 of the then Organic Law n^o 03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court into force by the time Habinshuti lodged appeal provides in its paragraph 2 from sub-paragraph one to nine for the grounds of admissibility of the judgments rendered in the second instance by the High Court, Commercial High Court and the Military High Court which are under the jurisdiction of the Supreme Court, the paragraph 8 stipulates that the Supreme Court has appellate jurisdiction over the cases that lead to a term of imprisonment of at least ten (10) years where the judge pre-screening the case found that there was serious violation of legal provisions or serious irregularities that caused injustice. In addition, the paragraph five of the same article reads that a case lost by a party to proceedings in the first and second instances basing on similar grounds shall not be appealed for to the Supreme Court.

[23] The text of that article indicates that the provisions of paragraph 5 are exception from the preceding paragraphs, and it implies that the appeal is not admitted whenever the appellant has lost in the first and last instances on similar grounds.

[24] With regard to the content of the instant case indicated in the copy of the judgment rendered by the Intermediate Court of Nyarugenge, Habinshuti Eric has lost the case due to the following grounds :

- The fact that from the investigation phase, he pleaded guilty and has been apologetic ;
- -The fact that the medical expert report states that U.H is pregnant ;
- -The fact that the birth certificate and the identity card of U.H indicate that she was born on 24/05/1999, meaning that Habinshuti Eric defiled her while she was under majority age.
- -With regard to Habinshuti's defense that he never knew U.H was under 18, the Court found that such statement cannot be taken into consideration because they were close friends for three years so that he could not ignore her age, had he given it due attention ;
- -Regarding the defense of Habinshuti Eric over being provoked by U.H when the latter requested to pay him a visit, the Court found that it is not possible for a minor to provoke an adult person, especially that he states himself that they slept together for all three rounds and on different occasions.

[25] These are the same grounds for which Habinshuti Eric was convicted in the High Court because it had not contradicted them nor did it add any subsequent analysis, rather, basing on his grounds for appeal, it expounded that the fact that she requested to visit him does not mean that she provoked him and the fact that her age was about being 18 years in few days does not exclude that she was still a minor.

[26] The Court finds that the appeal of Habinshuti Eric was not admissible to the Supreme Court, given that he had lost in the first and second instances for same grounds.

[27] However, the Court finds that Habinshuti Eric still has opportunity to apply for the case review if he finds any injustice in the ruling of the High Court because that judgment is now final as it is the position of this Court³. He has only to abide by the applicable procedure by petitioning the President of the Court of Appeal⁴ requesting him to have his case reviewed on grounds of injustice, within 30 days from the date he is notified of the present ruling⁵.

III. DECISION OF THE COURT

[28] Declares the judgment RPAA 00342/2018/CA rendered by the Court of Appeal on 7/11/2018 quashed and replaced by the present ruling ;

[29] Holds that the second appeal lodged by Habinshuti Eric to Supreme Court is not admissible.

³See case RS/REV/INJUST/CIV 0023/16/CS, Rutabayiro et al vs Mukamabano rendered by the Supreme Court on 27/09/2019

⁴ Article 58 of the Law n^o 30/2018 of 02/06/2018 determining the jurisdiction of courts stipulates that When a party to the case identifies injustice in his/her case, he/she submits an application to that effect in writing to the President of the court immediately higher than the one having tried the case at last instance, for him/her to examine the alleged injustice.

⁵ Article 56 of the Law n^o 30/2018 of 02/06/2018 determining the jurisdiction of courts provides that any litigant who identifies injustice in the last instance of his/her case, petitions the president of the immediate higher court for him to assess the alleged injustice. Any person wishing to have his/her case reviewed on grounds of being vitiated by injustice files, to that effect, a reasoned written application to the competent organ within thirty (30) days of notification of the judgement.