

BAMAKO COURT OF ASSIZES

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JUDGEMENT

REPUBLIC OF MALI
ONE PEOPLE -ONE GOAL - ONE FAITH

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JUDGEMENT No. 31/13 of 09/04/2013

CASE

THE STATE

v.

Issa KONE

CASE TYPE: Paedophilia

ORDINARY PUBLIC HEARING OF 09 April 2013

The Bamako Court of Assizes, sitting in the Courtroom of the said town, during its session of Nine April Two Thousand and Thirteen, before

Mr Mama DIARRA: Adviser at the Bamako Court of Appeal;

PRESIDENT

Mr Sidi KEITA: (Advisers at the Bamako Court of Appeal)

Mr Hamadoun S. SIDIBE:

MEMBERS

Siaka COULIBALY:)

Alpha Baye SANOGO :))

Cheickna DIARRA:)

Adama COULIBALY :))

ASSESSORS

In the presence of of Mr Issa TRAORE, Deputy Attorney General at the Bamako Court of Appeal

THE STATE

Assisted by **Maître DIAWARA Fatimata DE, REGISTRAR** of the said Court

THE COURT

Mindful of ruling No. 387 of the Indictment Division of the Bamako Court of Appeal on 25 September, 2012 to refer to the Bamako Court of Assizes **Issa KONE** born around 1986 at *Léré cercle* in Niafunke, son of Boubacar (deceased) and Amin THERA, Field Supervisor in Diago.

Charged with Paedophilia: MD of 24/06/2011

Mindful of the arrest warrant issued against the above-named person and included in the referral order:

Mindful of the declaration, by the majority, of the Court of Assizes on that date attesting that the accused is guilty of the charges brought against him ;

Mindful of the declaration, by the majority, of this same Court on that date attesting that mitigating circumstances exist for the accused;

After listening to the State in its arguments on the application of the penalty to acts considered established by the Court and upheld against the accused:

After listening to the defence counsel and the accused himself who spoke last in their plea;

After deliberating about this case in accordance with the law;

CONSIDERING that the acts considered established by the Court of Assizes against the accused are provided for and punished under article 228 of the Penal Code:

Mindful of the said articles, together with the provisions of articles 18, 363, 631 of the Criminal Procedure Code, and 728 of the Civil, Commercial and Social Procedure Code, which read as follows: :

Article 228 of the Penal Code: Any act of sexual penetration, of any kind whatsoever, committed on another person, using violence, constraint, threats or surprise shall be rape.

Rape shall be punishable with imprisonment of between five to twenty years, and optionally residency prohibition of between one to five years.

If the rape was committed with help from several people or on a child less than fifteen years, the offender shall be punishable with twenty years imprisonment, residency prohibition of twenty years, and the judges may not, by declaring the existence of mitigating circumstances, reduce the penalty to below imprisonment of five years.

If the rape was committed in the two aggravating circumstances provided for in the preceding sub paragraph, the penalty shall be life imprisonment.

If the perpetrators are the ascendants of the rape victim, those who have authority over the victim, or those responsible for his/her upbringing, his/her custody or are the employees of the persons named herein above, no suspended sentence may be ordered during enforcement.

Article 18 of the Penal Code: If the court finds that mitigating circumstances exist for the offender, it will rule as follows:

1° If he/she faces the death penalty, life imprisonment or imprisonment of between five to twenty years ;

2°) If he/she faces life imprisonment, imprisonment of between five to twenty years
or imprisonment of between two to five years;

3° If he/she faces imprisonment of between five to twenty years or imprisonment of between two to five year;

In the cases provided for in the three preceding paragraphs, residence prohibition may be ordered ;

4°) If the offender faces imprisonment, the court, when declaring the existence of mitigating circumstances, even in an instance of repeat offence, may reduce this sentence below eleven days and the fine to 18,000 francs or to a lesser sum ;

5°) If he/she faces both imprisonment and a fine, the court may separately hand down either one of these penalties;

6° If he/she faces a fine, this may be reduced to penalties for simple offences.

The court may not, in any case, extend the benefits of mitigating circumstances to the perpetrator of a felony or misdemeanour committed when drunk.

The attribution of mitigating circumstances may not, in any case, alter the nature of the offence.

Article 346 of the Criminal Procedure Code: The decision of guilt shall be taken based on a simple majority. However, as concerns mitigating circumstances any decision which does not favour an accused facing the death penalty, shall be taken based on a majority of at least five votes.

Article 363 of the Criminal Procedure Code: An accused person found guilty shall be ordered to pay costs to the party claiming damages.

Article 631 of the Criminal Procedure Code: Sentences passed by criminal courts shall be enforced in compliance with existing provisions.

Article 728 of the Civil, Commercial and Social Procedure Code: Imprisonment for non-payment shall be enforced in the following manner :

- 2 to 10 days for a debt of between 100, 000 to 500, 000 francs.
- 11 to 20 days for a debt of between 500, 001 to 1.000, 000 francs.
- 21 to 90 days for a debt higher than 1, 000,000 francs.

Pursuant to the aforementioned and transcribed legal provisions;

NOW THEREFORE:

Sentences Issa KONE to a term of imprisonment of two (02) years and a fine of CFAF20,000.

Orders the accused to pay the costs for this ruling;

It is therefore ordered, adjudged and decreed publicly by the Indictment of this Court of Assizes in session on the days, month and year stated herein above.

Signed by the President and the Court Registrar.