

**JUVENILE COURT OF
BOBO-DIOULASSO**

**BURKINA FASO
UNITY-PROGRESS-JUSTICE**

**HEARING OF FEBRUARY 22, 2018,
ON MISDEMEANOUR MATTERS**

**JUVENILE JUDGE OF
BOBO-DIOULASSO**

At the ordinary hearing in chambers of the Juvenile Judge in Bobo Dioulasso (Burkina Faso) on February 22, 2018, in which were present: Mr. ONADJA Yempabou, Juvenile Judge of Bobo-Dioulasso;

JGT No. 003 of 22/02/2018

PRESIDENT,

RP No. 022 /2018

Mr TRAORE Ali,
Deputy State Counsel of Faso;

**P.D.
VS
Z.M**

PUBLIC PROSECUTION,

Assisted by Mrs LANKOANDE T. Juliette,
Court Registrar;

Invasion of privacy

COURT REGISTRAR,

**DECISION
See verdict**

The following judgement was delivered:

BETWEEN

The State Counsel of Faso, petitioner in a flagrante delicto proceeding;

ON THE ONE HAND,

AND

Z.M born August 31, 2002, in..... :

Accused of “having voluntarily violated D.R.'s privacy in Bobo-Dioulasso on February 5, 2018, less than 3 (three) years ago, by photographing her naked on a bed with his cell phone and publishing the said photo on WhatsApp social network without her consent;

Acts provided for and punished by article 371 of the penal code”;

ON THE OTHER HAND,

When questioned at the hearing, in accordance with the provisions of article 396 of the Criminal Procedure Code, the accused declared that he wanted to be tried immediately; During the appeal, the State Counsel of Faso stated that he

had summoned the above-mentioned accused before the Juvenile Court Judge at today's hearing to defend himself on account of the above-mentioned prejudice;
And the accused was questioned;
The submissions of the Legal Department were heard;
The accused made his arguments to defend himself;
He was the last to speak;
The Court Registrar recorded the responses of the accused;
On this, the hearings having ended, the Juvenile Judge ruled as follows:

THE JUVENILE JUDGE;

Considering the documents in the file;
Having heard the answers of the accused;
Having heard the submissions of the Legal Department;
Having heard the arguments of the accused;

FACTS

On February 6, 2018, D.R. accompanied by her elder sister filed a complaint at the Gendarmerie Research Section of Bobo-Dioulasso, against Z.M., for alleged violation of privacy committed against her;

The victim stated that in October 2017, she was having sexual relations with Z.M.; that while she was sitting naked on the bed, her boyfriend was discreetly taking pictures of her; that afterwards, he broke off this relationship; and sometime later, he proposed to have sexual relations with her; that since they were no longer friends, she rejected his proposal; However, the accused threatened to publish the nude photograph on social networks if she did not give in to his request; that he actually went on with his threat by publishing the photo in two WhatsApp groups;
When questioned, Z.M. acknowledged the alleged acts; he explained that he had published a photo of his ex-girlfriend in two WhatsApp groups; he explained that he had obtained the said photo without the victim's knowledge;

Upon completion of the investigation, the procedure was transmitted to the State Counsel of Faso at the High Court of Bobo-Dioulasso, who filed a lawsuit before the Juvenile Judge for violation of privacy and left him free;

The case was entered on the cause list of February 15, 2018; on that date, it was postponed until February 22, 2018, for the production of the social investigation report and for the appearance of all parties; on that date, the file was retained; the accused again acknowledged the acts and asked for clemency from the court; describing the circumstances, he stated that after having had sexual relations with D.R in a hostel room, he acted as if he was making a phone call and photographed the victim while she was sitting naked on the bed; he admitted his unethical action and stated that he had asked the victim and her parents for forgiveness on several occasions;

D.O, the victim's father appearing at the hearing stated that he will not file an application for civil damages;

The Legal Department, after having summarized the acts, requested against Z.M. a 12 (twelve) months' suspended prison term and the confiscation of the sealed evidence consisting of a phone;

The Juvenile Judge issued his decision as thus;

PROCEDURE

A-PROSECUTION

1- Guilt of Z.M

Whereas according to article 371-2 of the Penal Code, "is punishable by 2 (two) months to 1 (one) year prison term and a fine of CFAF 50,000 to 1,000,000 or of one of these two penalties only, whoever will have voluntarily violated the intimacy of the private life of others by fixing or transmitting, by means of an unspecified apparatus, the image of a person being in a private place without the consent of this one"; That the offence to be constituted supposes the taking or the publication of the image of a person being in a private place, the absence of consent of the victim and a guilty intention;

Whereas in this case, it appears both from the documents in the case file and from the investigation at the hearing that Z.M. took a photograph of D.R using his cell phone.by trickery; that the accused himself states that in order to obtain this photograph, he pretended to make a phone call; that it is necessary to note the lack of consent of the victim; that this photograph was taken while the victim was in a room which is a private place; that the accused knowingly took the

photograph and then published it in two WhatsApp groups; that his guilty intention is therefore established;

That it is appropriate to conclude that the acts of violation of privacy are established;

2- Sentence

Whereas Article 371-2 of the Penal Code punishes with 2 (two) months to 1 (one) year prison term and a fine of CFAF 50,000 to 1,000,000, or with one of these two penalties only, any person guilty of violating privacy;

Whereas in this case, Z.M. acted with discernment; Whereas, however, it should be noted that the accused is a first-time offender; Whereas, in addition, he has acknowledged his wrong and has repeatedly asked forgiveness to the victim and the parents of the victim and finally sought the clemency of the court;

That as a consequence of the above, he should be sentenced to 1 (one) month prison term;

B- SEALS

Whereas pursuant to article 373 paragraph 3 of the Penal Code, "the court may order the confiscation of the equipment used to commit the offence, any recording or document obtained by means of one of the acts provided for in article 371 above"; whereas the cell phone of the accused, which is the object of sealed evidence No. 01/2018, having been used to commit offences against the privacy of the victim, should be confiscated.

C- COSTS

Whereas under article 473 of the Code of Criminal Procedure, the accused person found guilty is also ordered to pay the costs; Whereas, in the case at hand, Z.M has been found guilty of the acts alleged against him; Whereas, consequently, he should be ordered to pay the costs;

UPON THESE GROUNDS

The Juvenile Judge, ruling in chambers following full trial of a misdemeanour matter in first resort;

- Declares the accused Z.M. guilty of the acts of violation of privacy alleged against him;
- In repression sentences him to an actual prison term of one 1 (month);
- Acknowledges D.O's decision of not filing a civil claim;
- Orders the confiscation of the sealed evidence containing a cell phone belonging to Z.M. and under the care of the Registry of the High Court of Bobo-Dioulasso under No. 01/2018;
- Condemns the accused to pay the costs;

Thus acted, judged and pronounced publicly by the Juvenile Judge of Bobo-Dioulasso on the aforementioned days, months and years and signed

The President

The Court Registrar