

COURT OF APPEAL OF
OUAGADOUGOU

BURKINA FASO

Unity- Progress-Justice

Judgement No. 027 of 30 January
2019

Legal department No.: 026 / 2019

HIGH COURT OF OUAHIGOUYA

HEARING OF JANUARY 30, 2019, ON CRIMINAL MATTERS

CASE:

Public Prosecution:

Vs

E.R.A.

TYPE OF THE OFFENCE

Human trafficking

Decision

(See verdict)

Public hearing of the High Court of Ouahigouya (Burkina Faso) on the thirtieth of December two thousand and nineteen, for ruling criminal matters, in which were present:

Mr **Ali SANOU**, **investigating** judge at the said court and acting as President:

PRESIDENT

Mrs **T. Justine SAWADOGO**, Deputy State Counsel of Faso, representing the Legal Department;

LEGAL DEPARTMENT

Assisted by Barrister **Iliassé SAVADOGO**, Secretary of the Registry and Legal Departments;

COURT REGISTRAR

And Mr. Idrissa DIALLO, Sworn Interpreter;

INTERPRETER:

PANEL

Ali SANOU, President

Justine T. SAWADOGO, L.D.

Iliassé SAVADOGO,

Court Registrar

Idrissa DIALLO, Interpreter

The following judgement was delivered:

BETWEEN

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

ON THE ONE HAND;

AND

E.R.A, born in 1991 in Akwa Ibom State/Nigeria, son of E.A. and O.A, Burkinabe, Nigerian citizen residing in Cotonou, single, father of one child, already convicted in 2016 for pimping by the High Court of Ouahigouya, not recruited or given an award;

Accused of: having in Ouahigouya, during January 2019, less than three (03) years ago, committed human trafficking, in the case at hand the recruitment, transport, transfer, accommodation or reception of minors, namely D.S.E, M.A.F and U.M from Lagos/Nigeria in Ouahigouya/Burkina Faso for proposals;

Acts provided for and punished by articles 511-1, 511.2, 511-3 and 511.4 of the Penal Code;

ON THE OTHER HAND;

During the appeal, the State Counsel of Faso stated that he had summoned the above accused before the Court at today's hearing to defend herself on account of the aforementioned prejudice;

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

The Court Registrar read out the documents in the case file; and the accused was questioned;

The submissions of the Legal Department were heard;

Having received the floor in last position, the accused made her arguments to defend herself.

The Court Registrar recorded the accused's statements and replies;

Then the Court ruled as follows:

THE COURT

Considering the documents in the file;

Having heard the answers and statements of the accused;

Having heard the submissions of the Legal Department;

Having heard the arguments made by the accused, and who spoke last

I- FACTS

On 23 January 2019, D.E.S, a 16 year-old Nigerian minor, appeared at the Central Police Station in Ouahigouya to file a complaint against E.R.A, whom she accused of pimping;

Based on this information, elements of the police station were then sent to the scene to question the accused for investigation;

The investigation made it possible to interview the victims and question the accused;

After hearing D.S.E, she declared that she was orphan and lived with her mother in a village called Ikot Abassi, in Akwa Ibom State in Nigeria; that in early January 2019, a man who came back to spend his holidays in the village approached her mother and proposed to take her to work in a restaurant in Europe; persuaded her mother by making her believe that the work would be very well paid and that she could return and leave as she wished; that long before that, he also convinced his cousin by making the same promises; that it was by this means that he took them a few days later to an unknown destination; When they arrived at the village of Ikot Akpene, he entrusted them to Mike, the brother of the accused, who was waiting for them there with two other girls; that after a long exchange and after having taken the number of the accused from Mike, they boarded again for Lagos where they met the accused for the rest of the journey; that they were beginning to have doubts; that along the way, the parents of one of the girls who was with them kept calling her to tell her to return immediately to the village; that they informed her that she was being taken for prostitution to an unknown destination; that she would end up abandoning them along the way; that once in Lagos, they called the accused who came to pick them up; that they once again took a bus to Cotonou; that they spent four days there before finally embarking for Burkina Faso; that during their stay in Cotonou, the accused issued them with identity cards; that during an exchange, he informed them that he was taking them

to Burkina Faso to work as prostitutes; that they expressed their refusal to continue the journey; that they were threatened by the accused; that she forced them to embark for Burkina Faso and informed them that they would be entrusted to a woman; that on the way, during a police check, U.M.Q was arrested and the accused remained there with her to negotiate her release; that they continued with the bus to the station; that once at the station, she got off to relieve herself and saw policemen; that she then went towards them and revealed to them the situation in which they had arrived in Burkina Faso; that they took her and M.A.F to the police station and passed E.R and U.M.Q; then proceeded to arrest the latter and took them all to the police station;

When heard in turn, M.A.F and U.M.Q echoed the facts stated by D.E.S;

When questioned, E.R acknowledged the facts; she explained that she wanted to do a favour to a woman named Rose who was in Ouahigouya; that while she was in Benin, she received a call from the latter asking her to go to Nigeria to bring girls to Ouahigouya; that she made a deposit of one hundred thousand CFA francs in her account for this purpose; that she went there and brought the girls but was unfortunately questioned by the police upon arrival in Ouahigouya;

Upon completion of the investigation, E.R was referred to the State Counsel of Faso who also received the report of the investigation; Before this magistrate, she reiterated her previous statements, while specifying that it was Rose's husband who recruited the girls and she was just in charge of transporting them to Ouahigouya; She was then prosecuted for human trafficking;

At the bar of the court, the accused maintained her statements made during the preliminary investigation and during her interrogation before the State Counsel of Faso; she specified, however, that she had informed the victims of the activity that they were going to carry out once in Burkina Faso and they had consented to it;

As for the victims, they refuted her statements, explaining that it was under the accused's threats and constraints that they agreed to continue their journey;

After the requisitions of the prosecution, the accused asked for clemency and then the court ruled as follows;

II- PROCEDURE

A- Prosecution

Whereas within the meaning of Article 511-2 of the Penal Code, the offence of human trafficking consists in recruiting, transporting, transferring, sheltering or receiving a minor for the purpose of exploitation; that article 511-3 of the same code specifies that the consent of a victim of human trafficking does not suppress the offence; that the offence thus referred to in order to be constituted

presupposes the establishment of a material act consisting of the recruitment, transport, transfer, accommodation or reception of minors; the guilty intention being established on the basis of the accused's knowledge of the illegality of his act;

Whereas in the case at hand, E.R.A is accused of having committed in Ouahigouya, during January 2019, in any case, less than 3 (three) years ago, trafficking in persons, in the case at hand the recruitment, transport, transfer, accommodation or reception of minors, namely D.S.E, M.A.F and U.M from Lagos/Nigeria to Ouahigouya/Burkina Faso for prostitution; that it emerges consistently from the documents in the case file and from the investigation at the hearing that she transported and accommodated the above-mentioned minor girls from Nigeria with a view to moving them into Burkina Faso to engage them in prostitution; that even if she claims that the girls consented to the said transfer with full knowledge of the facts, this cannot mitigate, much less make the offence within the meaning of Article 511-3 of the Code disappear; that she was fully aware that these acts were punishable by law, as she had already been convicted of pimping; that, as a result, all the elements constituting the offence of human trafficking are present against her and she should be found guilty of it;

B- Sentence

Whereas Article 511-4 of the Penal Code punishes the guilty of human trafficking with 5 (five) to (10) ten years' prison term and a fine of CFAF one million (1,000,000) to five million (5,000,000);

Whereas E.R.A has been found guilty of human trafficking; whereas she is, in principle, liable to these penalties;

Whereas, however, article 217-4, paragraph 2 of the above-mentioned code provides that in criminal matters, the court which recognises mitigating circumstances is authorised to reduce the prison term and the fine even below simple misdemeanour sentences; whereas in the case at hand, the accused has remained consistent in her statements since the preliminary investigation by acknowledging the charges against her, even though she tries to justify her act by invoking the consent of the victims; that, moreover, she was not successful because she was arrested before the victims engaged in prostitution; that she also promised to learn from this case in order to make amends while apologizing to the Court and to the victims; that to give her a last chance for her social rehabilitation, it is appropriate to sentence her to 12 (twelve) months actual prison term and a fine of CFAF five hundred thousand (500,000).

C- COSTS

Whereas within the meaning of Article 473 of the Code of Criminal Procedure, the accused who is found guilty is also ordered to pay the costs; that in the case at hand, the costs are to be borne by E.R.A;

UPON THESE GROUNDS

Ruling in a public hearing after full trial in a criminal court in first resort the court;

Declares E.R.A guilty of the charges of human trafficking against her;

In repression, sentences her to 12 (twelve) months suspended prison term and a fine of CFAF five million (5,000,000);

In addition, condemns her to pay the costs.

In witness whereof this judgement has been signed by the Judge who delivered it and by the Court Registrar on the above-mentioned days, months and years.

THE PRESIDENT

THE COURT REGISTRAR

