

**THE SUPREME COURT SITTING IN KIGALI HEARING CRIMINAL CASES ON 24/11/2017, PUBLICLY DECIDES ON CASE N° RPAA 0069/2017/CS AS FOLLOWS:**

**PARTIES:**

**THE PROSECUTION**

Versus

**NAHAYO Jean - Pierre** (appellant), son of NDUWAMUNGU and NYIRAMAHANGA, born in 1979, living in Gitega Cell, Mukingo Sector, Gisagara District, Southern Province.

**OFFENCE**

Rape of an under 18 years-old girl

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**I. FACTS AND PROCEDURE**

1. The trial began in the Butare Court of First Instance, with the Prosecution prosecuting NAHAYO Jean-Pierre for raping a 13-year-old girl on 25/12/2001. The defendant admitted to having consensual sex with the girl because she was 18 years old. In its judgment No. RP 29890/72/02 of 10/10/2003, the Court convicted him of rape and sentenced him to life imprisonment and a fine of Frw 100,000.
2. NAHAYO Jean-Pierre appealed to the Nyanza High Court, requesting a reduction of his sentence because he admits that he had consensual sex with MUJAWAMARIYA but denies that he forced her to have sex. In its judgment No. RPA 0099/05 / HC / NYA of 21/10/2015, The High Court held that his appeal was unfounded, explaining that there was no valid consent with the 13-year-old girl, that NAHAYO Jean-Pierre's plea of guilt relates to a crime he was not accused of as he was being charged with sexually abusing a child under the age of 18; thus, his request for pardon and mitigating circumstance was not granted.
3. NAHAYO Jean-Pierre appealed to the Supreme Court, arguing that the High Court failed to consider whether the girl he had sex with was 13 or 18 years old, and did not hear the defense witnesses knowing that he and the girl were friends,

that he had been given a heavy sentence whereas he had sex with an 18 years old girl. He later pleaded guilty and sought a reduction of his sentence.

4. The case was heard in public on 24/07/2017 and 23/10/2017, NAHAYO Jean-Pierre assisted by Barrister MUNYANKINDI Monique, the Prosecution represented by RUDATINYA NYANGEZI Gaspard.

## II. THE ISSUE OF THE CASE AND ANALYSIS THEREOF

### **Whether NAHAYO Jean - Pierre deserves a reduced sentence**

5. NAHAYO Jean-Pierre pleads guilty for the offence he is accused of, and his appeal's purpose is to reduce his sentence. He commits not to reoffend and he states that he had committed it at a young age without thinking of the consequences of his acts. He explains that on Christmas Day, he asked the girl to help his wife who was sick, and she replied that she was going to fetch firewood. He then told her that when she finishes helping him he would show her where the firewood can be fetched easily, which she agreed. After her help, he went with the girl to the forest to show her the firewood. Once there, he raped her.
6. He states that he admits that the child he had sex with was 13 years old, and that he thought she was older because she was tall. He asks this Court to reduce his sentence because during his 15 years in prison, he had already seen the consequences of the crime, had had ample time to think about it and repent, and that if forgiven, he would explain to everyone the bad consequences of a crime.
7. Counsel MUNYANKINDI Monique also submits that NAHAYO Jean-Pierre has always pleaded guilty wherever he was questioned, including before this Court where he explained how he did it, that he deserves a pardon and a reduced sentence in accordance with Articles 71 and 77 of Law n ° 01 / 2012 / OL of 02/05/2012 establishing the Penal Code, as he did been held liable to any misconduct prior to the crime and he is a first time offender, which justify a reduction of his sentence to 10 years.
8. The Prosecution representative states that it appears that NAHAYO Jean-Pierre starts telling the truth 15 years after the crime, because in the Court of First Instance and in the High Court, he pleaded guilty to having sex with an 18-year-old girl, which he also explained in his appeal to this Court.

9. He further contends that waiting that long shows that NAHAYO Jean-Pierre does not plead guilty because he feels sorry for the girl but only for the purpose of reducing his sentence. The Prosecution submits that the appellant does not deserve a reduced sentence and his sentence appealed against should be confirmed in order to give a lesson to other child abusers, especially given the large age difference between the girl and NAHAYO Jean-Pierre (22 years) at the time of the offence, and the fact that he could not have been mistaken about the girl's age as he explains that he had taken her out of other children, meaning he knew she was a child.

### THE COURT'S ANALYSIS

10. With regard to mitigating circumstances, Article 82 of Legislative-Decree n° 21/77 of 18/08/1977 establishing the Penal Code in force at the time of the commission of the offense, provides that the judge may consider the appropriateness of mitigating circumstances which preceded, accompanied or followed an offence, and Article 83 provides for the reduction of punishment if there are mitigating circumstances.
11. This Court observes that NAHAYO Jean-Pierre pleaded guilty to having sex in the Court of First Instance of Butare and in the High Court, Nyanza Chamber, but alleged that he had sex with a mature consenting girl, which prevented the High Court from reducing his sentence because the plea of guilt relates to an offence he was not charged with.
12. It is clear, however, that when he appeared before this Court, NAHAYO Jean-Pierre admitted that he had not raped an 18-year-old girl as he had previously pleaded, that instead he raped a 13 years old girl, which was the age given by the child to the Judicial Police where she said she was born in 1989.
13. Although the girl claimed to have been born in 1989, which formed the basis of NAHAYO Jean-Pierre's admission to this Court that he had raped a 13-year-old girl, a document from the National Institute of Identity shows that she was born in 1986, which means that when the crime was committed in 2001, she was 15 years old instead of 13 as held by the Court of First Instance and the High Court.
14. This Court finds, therefore, that as the girl was 15 years of age at the time of the crime, the Court of First Instance and the High Court should not have punished

NAHAYO Jean-Pierre pursuant to paragraph 2 of Article 34 of Law n° 27/2001 of 28/04/2001 Relating to Rights and Protection of the Child Against Violence, in force at the time of the crime, as that paragraph applies to a child victim of rape under the age of 13 and provides for life imprisonment and a fine of 100,000 Frw. The applicable provision was the first paragraph providing for 20 to 25 years imprisonment and a fine of 100,000 Frw for raping a child aged between 14 and 18 years.

15. With regard to the sentence NAHAYO Jean-Pierre seeks to reduce, the Court finds that although not admitting the age of the girl whom he raped even though the girl did not give the exact age, he pleaded guilty for rape since the start and apologized for it. He continues pleading guilty before this Court and even expresses remorse for the crime he has committed, and therefore he deserves pardon and a reduction of his sentence in order to give him the opportunity to correct himself. A reduced sentence is also based on the sentence he should have been given, i.e., 20 to 25 years as described above, instead of life imprisonment.
16. The Court therefore finds that, considering the fact that the sentence may be reduced in accordance with Article 83 of the Legislative Decree n° 21/77 of 18/08/1977 mentioned above, which provides that a sentence of imprisonment of 5 to 20 years or more can be reduced to one year imprisonment, NAHAYO Jean-Pierre should be sentenced to fifteen (15) years imprisonment and a fine of 100,000 Frw, so he should be released immediately as soon as the sentence is read because he has fully served the sentence given that he is in prison since 03/01/2002.

### **III. COURT DECISION**

17. **Holds** that NAHAYO Jean-Pierre's appeal for the purpose of reducing his sentence is well founded;
18. **Decides** that he be sentenced to fifteen (15) years imprisonment and a fine of 100,000 Frw;
19. **Holds** that the judgment No. RPA 0099/05 / HC / NYA decided on 21/10/2015 by the High Court, Nyanza Chamber, is changed with respect to the sentence;
20. **Orders** the immediate release of NAHAYO Jean-Pierre as soon as the judgment is read because his sentence had been completed;

21. **Holds** that the costs of the proceedings are borne by the State Treasury.

**ISSUED AND READ PUBLICLY ON 24/11/2017.**

**GAKWAYA Justin**  
Judge

**KAYITESI Zainabo Sylvie**  
President

**KANYANGE Fidélité**  
Judge

**HABYARIMANA Marcel**  
Registrar