

**THE SUPREME COURT SITTING IN KIGALI, HEARING PUBLICLY CRIMINAL CASES ON 25/03/2011, DECIDES ON CASE RPAA 0034/09 / CS AS FOLLOWS:**

**1. PARTIES**

**PROSECUTION**

Versus

**APPELLANT: NGABONZIZA Emmanuel**, son of Kaganji and Mukaleta, born in 1986, living in Ngoma Cell, Bushekeri Sector, Nyamasheke District, Western Province.

**2. OFFENCE**

Having on 29/01/2006, in Rwabuhizi, Bushekeri Sector, Nyamasheke District, Western Province, raped a 14-year-old girl named Nyiransabimana Françoise, offense provided for and punishable by Article 34 of Law N° 27/2001 of 28/04/2001 Relating to Rights and Protection of the Child Against Violence.

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**I. FACTS AND PROCEDURE**

1. Ngabonziza Emmanuel was convicted for rape of a 14-year-old girl named Françoise Nyiransabimana by the Cyangugu High Court and sentenced to twenty years of imprisonment with a fine of 100,000 Frw. Deciding on the appeal of Ngabonziza Emmanuel, the High Court, Rusizi Chamber, held that the merits of the first judgment remain unchanged.
2. Ngabonziza appealed to the Supreme Court alleging that the High Court refused to reduce his sentence whereas he pleaded guilty, urging this Court to convict him of rape on the grounds that his crime has gone viral. He also submits that the High Court relied on a birth certificate that contradicted the child's father's statement.
3. The hearing took place on 23/02/2011, Ngabonziza Emmanuel defending himself and the Prosecution represented by Habineza Jean Damascène.

**II. ANALYSIS OF THE ISSUES RAISED IN THE CASE**

**a. Whether the High Court sentenced Ngabonziza on the basis of a birth certificate contradicting Nyiransabimana's father's statement**

4. Ngabonziza alleges that the Court erred in relying on the birth certificate issued by the Bushekeri Sector administration stating that Nyiransabimana was born in

1992. He adds that a letter he and her father Uzayisenga Vénuste filed to the Court confirms that she was born in 1988. He explains that he was victim of a conspiracy by a person with whom he has a land dispute who, after hearing the Court's ruling to produce the birth certificate, influenced the content of the certificate issued in the Sector where he is a civil servant.

5. The Prosecution's representative states that the certificate issued by administrative authorities indicates the age of the girl and overweighs her father's writings.
6. During her interrogation by the Judicial Police, Nyiransabimana testified that she was born in 1992. During his interrogation on 30/01/2006, his father Uzayisenga explained that his son Ngabonziza raped her at the age of 14. The court finds that Ngabonziza's allegation that the certificate issued by the Bushekeri Sector administration is a result of a conspiracy by a person with whom he has a land dispute, lacks merits because the certificate's content was taken from the administrative records of information provided by the girl's father, which also coincides with the statements of the aforesaid deponents. It is clear that Nyiransabimana who calls herself Ngabonziza's wife as well as Uzayisenga who calls himself his father-in-law contradict each other in their letters to the Court aimed at protecting him.

**b. Whether the High Court did not reduce Ngabonziza's sentence while he pleaded guilty**

7. Ngabonziza alleges that he pleaded guilty and apologized but the Court sentenced him to a heavy sentence in violation of Article 35 of Law 13/2004 of 17/05/2004 relating to Criminal Procedure Code. When asked to explain his guilt and his actions, he replied that he had not raped Nyiransabimana because they had consensual sex, they were in love and were planning to get married. He adds that while they were preparing to go for a medical examination, they were unable to control their sexual desire because of their adolescence, thus they had intercourse (he calls it advance payment). He therefore submits that he should be punished for an indecent sexual relationship in accordance with Article 359 of the Penal Code because his sexual intercourse went viral which he is ashamed of and apologizes for.
8. The Prosecution argues that Ngabonziza's appeal based on Article 35 of Law 13/2004 of 17/05/2004 relating to Criminal Procedure Code is unfounded because he lied that he did not rape the girl whereas he has freely admitted it during his

interrogation. He adds that from the law perspective there cannot be valid consent to sex as Nyiransabimana was a child.

9. Although Ngabonziza submits that the High Court's judgment ignored his plea of guilty and did not reduce his sentence, he only admitted to having an indecent consensual sex while he was convicted of rape based on testimonies from various witnesses including Harerimana Vénuste, Fatisuka Faustin and Habiyaremye Evariste, who stated that they were involved in the bargain by which Ngabonziza signed contract to give Uzayisenga a cow worth 80,000 Frw who in return committed not to report the rape of his daughter to the police.
10. The Court also finds that Uzayisenga Vénuste, in his statement to the Judicial Police, recounted the terms of his agreement with Ngabonziza, explaining that he raped his daughter so severely that she was still bleeding when they reported to the Police station. Nyiransabimana, despite calling herself Ngabonziza's wife today, explained in detail how she was sexually abused, saying that after refusing to have sex with Ngabonziza, he threw her down, tore apart her underwear, and raped her to the point of bleeding. Therefore, the High Court did not have any ground to reduce his sentence in accordance with Article 35 of the aforementioned Law of 13/04/2004 of 17/05/2004 he relies on as he did not sincerely plead guilty as provided for in that article.
11. In the light of the foregoing, the Court finds that, as explained by the High Court, Ngabonziza's defense on consensual sex with Nyiransabimana, a consent that was never given, is baseless because a child cannot legally consent to sexual intercourse.
12. The Court finds, however, that Ngabonziza is a first time offender, which justifies reducing his sentence in accordance with Articles 82 and 83 of the Penal Code, and sentences him to seven years in prison and a fine of 100,000 Frw.

### **COURT DECISION**

13. **Holds** that Ngabonziza Emmanuel's appeal was unfounded.
14. **Sentences** Ngabonziza to seven years of imprisonment (7years) and a fine of one hundred thousand francs (100,000 Frw).
15. **Holds** that the judgement of the High Court is changed only with respect to the sentence Ngabonziza had been given.

16. **Orders** Ngabonziza to pay  $\frac{1}{2}$  of the costs of the case proceedings totaling 29,650 Frw, i.e. 14,825 Frw, within eight days, failing to do so, the State can forcibly remove it from his possession.

**ISSUED AND PUBLICLY READ ON 25/03/2011**

**MUKANYUNDO Patricie**

**President**

**KANYANGE Fidélité**

**Judge**

**MUKANDAMAGE Marie-Josée**

**Judge**

**HABYARIMANA Marcel**

**Registrar**