

THE MUSANZE HIGH COURT, AT ITS HEADQUARTERS, HEARING CRIMINAL CASES ON APPEAL, ON 13/10/2015, DECIDES AS FOLLOWS:

PARTIES

PROSECUTOR

APPELANT: UWIMANA David, son of NTAWUZABINO Assiel and KAZIHISE Capitoline, born in 1989, living in Kabyaza village, Mbatabata cell, Kamubuga sector, Gakenke District, Northern Province.

OFFENCE: Child defilement. (Appeal against the provisional detention order of UWIMANA David, issued by the Musanze High Court, on 14/09/2015).

I. FACTS AND PROCEDURE

1. UWIMANA David appealed the decision ordering his provisional detention, issued by the Musanze High Court on 14/09/2015. He is charged with raping a 15-year-old girl HAGENIMANA Angélique. UWIMANA explained that the Court did not provide compelling reasons for his remand in custody. The prosecutor submits that UWIMANA's appeal was unfounded, and therefore requested that the decision under appeal be upheld.
2. The issue to be considered is whether UWIMANA David's appeal is well-founded.

II. ANALYSIS OF THE ISSUE IN THE CASE

Whether the appeal of UWIMANA David is founded.

3. In the first instance, the Court ordered provisional detention of UWIMANA David on charges of defilement of a 15-year-old HAGENIMANA Angélique. The Court relied on serious grounds including that during his questioning by the judicial police on 22/08/2015, UWIMANA explained that he planned to have sex with HAGENIMANA but he did have sex with her; and witness NKURUNZIZA Alfred questioned by the judicial police on 22/08/2015, said that he heard HAGENIMANA crying and saying she was being sexually assaulted and when asked about the author, she said David from NTAWUZABINO's house.

4. In his appeal, UWIMANA David stated that there were no compelling reasons given by the first sentence decision to remand him in custody, and that the medical certificate does not show that HAGENIMANA had been raped. The prosecutor argued that UWIMANA's appeal was unfounded, and that in the first instance, the Court found that UWIMANA confessed that he planned to rape HAGENIMANA but did not commit it, that witness NKURUNZIZA testified that HAGENIMANA called for help, and he found her crying and she told him that she had been raped by David, that the medical report shows that HAGENIMANA's sex organ had bruises, and therefore requests the court to uphold the decision appealed against.

5. The Court finds that the grounds of UWIMANA's appeal, as explained above, are unfounded, because during his questioning by the prosecution on 22/ 8/2015, he said he planned to rape HAGENIMANA but did not commit it, and went on to say that he wanted to have sex with her, that it was the first time he had tried it. During his questioning by the Judicial Police on 26/08/2015, UWIMANA said that he and HAGENIMANA arranged to have sex, which they were prevented to do, that he persuaded HAGENIMANA to stay behind with him so that they can have sex. Also, during the questioning by the Prosecution on 31/08/2015, he said that HAGENIMANA asked him to have sex, which was not possible because a person named BIGIRIMANA was present.

6. Also, Witness NKURUNZIZA Alfred, interrogated by the judicial police on 22/08/2015, testified that he heard HAGENIMANA crying and calling for help, saying that she was raped by David from NTAWUZABINO's house, which is what HAGENIMANA also said when questioned by the judicial police on 23/08/2015. Therefore, based on the foregoing, the Court finds that the reasons given in the first instance prove sufficiently that UWIMANA is suspected of having committed the offence under prosecution, as provided for in Article 96 of the Law n°30 / 2013 of 24/05/2013 relating to Criminal Procedure Code criminal. With respect to UWIMANA's assertion that the medical report did not show that HAGENIMANA had been raped, the report does not cancel other sufficient reasons mentioned above. Therefore, UWIMANA David should remain in custody, on the basis of compelling reasons, as described above, leading to the suspicion that he has committed child defilement. So that his appeal is unfounded, and the decision taken in the first instance is unchanged.

III. COURT DECISION

7. Holds that UWIMANA David's appeal is unfounded.

8. Holds that the decision to remand UWIMANA David in custody issued by the Musanze High Court on 14/09/2015 is unchanged.

ISSUED AND READ IN PUBLIC, ON 13/10/2015, THE COURT COMPOSED OF A JUDGE AND A REGISTRAR.

JUDGE

KAYISIRE J.P.Claver
(Signed)

REGISTRAR

NSANZITEGEKO Venant
(Signed)