

**THE MUSANZE HIGH COURT, SITTING IN MUSANZE HEARING PUBLICLY CRIMINAL CASES AT THE APPELLATE LEVEL DECIDES ON CASE RPA 0120/15 / HC / MUS AS FOLLOWS:**

### **PARTIES**

**THE PROSECUTION REPRESENTED BY GAKWERERE Javan, PROSECUTOR AT THE NATIONAL LEVEL.**

**APPELLANT: KAREMERA Valens**, son of MANIRAGUHA and BAYAGWIZE Annociata, born in 1995, living in Muheta village, BUMARA cell, Rwaza sector, Musanze District, Northern Province, single.

### **OFFENCE**

Child defilement provided for and punishable by Articles 190 and 191 of Organic Law N<sup>o</sup> 01/2012 / OL of 02/05/2012 establishing the Penal Code (appeal case RP 0055/15 / TGI / MUS issued by Musanze High Court)

#### **I. FACTS AND PROCEDURE**

1. The prosecution has charged KAREMERA Valens in the Musanze High Court with defilement of a 16-year-old MUKAMANA Sandrine. On different dates of the month of 12/2014, KAREMERA Valens befriended MUKAMANA Sandrine, and they met on days of prayer because she was a student. MUKAMANA started visiting her at the boutique and made her understand that he loves her that they would marry. He started having sex with her when she accompanied him and impregnated her.
2. KAREMERA Valens pleaded guilty and apologized, saying that the girl had told him she was nineteen (19) years and they had consensual sex. The High Court ruled that KAREMERA Valens is guilty of rape and sentenced him to ten (10) years imprisonment.
3. KAREMERA was dissatisfied with the judgment of the Musanze High Court and appealed against it stating that he was given a heavy sentence whereas the girl consented to sex with him and told him she was 19 years. His lawyer MFURANKUNDA Epiphanie submits that his sentence should be reduced again because he had been tricked.

4. In this case, the issue to be considered is whether KAREMERA Valens could have his sentence reduced because he had consensual sex and the girl asked him to have sex.

## II. ANALYSIS OF CASE STUDIES

### **Whether KAREMERA Valens would have his sentence reduced because he had consensual sex and the girl tricked him**

5. KAREMERA Valens appealed asking for a reduced sentence because he had consensual sex with the girl who told him that she was 19 years old. Barrister MFURANKUNDA Epiphane alleges that KAREMERA pleaded guilty and apologized and argues that he was in love with the girl MUKAMANA until they had sex but the girl lied to him that he was 19 years old; moreover, MUKAMANA herself wrote to her parents saying that she lied to KAREMERA about her age and that she was willingly involved in the act. KAREMERA Valens appealed asking for a reduction of the sentence. MUKAMANA wrote the letter and she can confirm it in court. The fact that the girl admits to tricking him proves that she incited him and therefore his sentence should be reduced in accordance with Article 75 of Organic Law No. 01/2012 / OL / 05/2012 establishing the Penal Code.
6. MUKAMANA Sandrine was questioned at the hearing on 29/09/2015 and she confirmed that she told KAREMERA Valens that she was 19 years old because she loved him and she could not tell him her true age because he would abandon her as they were planning to get married, and she wanted him to get her pregnant so that he can marry her.
7. The Prosecution argues that the appeal of KAREMERA is unfounded as the sentence imposed on him is small compared to the crime he committed, that he was given a reduced sentence significantly because the court accepted the mitigating circumstance and could not sentence him to a penalty that is below the minimum legal threshold. With respect to the second ground by which he states that he had no intention of committing the crime but was incited by MUKAMANA Sandrine who lied to him by telling him that she was 19 years, the Prosecution submits that it is unfounded because if KAREMERA had no intent to have sex with Sandrine he would have asked her to show him her ID, which shows that this girl was defiled though the problem arose because she fell pregnant; if he was deceived they would not go into the bush to have sex instead of telling their parents their marriage plan. The prosecution further submits that the defense would make sense if they were of the same age, but it appears that KAREMERA, who is 3 years older than MUKAMANA, tricked Sandrine and demanded that the judgment passed by the Musanze High Court remains unchanged.

8. Article 190 of Organic Law N° 01/2012 / OL of 02/05/2012 establishing the Penal Code states that child defilement means any sexual intercourse or any sexual act with a child regardless of the form or means used. The meaning of this article is different from the definition of rape of an adult person defined by Article 196 of the above Organic Law Rape as causing another person to engage in a non-consensual sexual intercourse by using force, threat or trickery.
9. It appears that child defilement occurs when the victim is a child before the age of 18 regardless of consent or trickery by the child. In the same line, legal experts such as General LIKULYA Bolongo have explained that a child under the age of majority cannot make an informed decision. He stated that, "is considered to be sex with violence the mere fact of rapprochement of sex with a girl aged or apparently aged 16 years, on the grounds that a girl of that age is incapable of giving free and informed consent." (Général LIKULYA BOLONGO, droit pénal zaïrois, LGDJ, Paris 1976, P 112).
10. The Court finds that the grounds given by KAREMERA Valens that his sentence should be reduced because he had consensual sex with the girl who tricked him are unfounded because a child under the age of 18 cannot make an informed consent. Therefore, KAREMERA Valens could no longer have his sentence reduced because the High Court had reduced his sentence in accordance with Articles 77 and 78 of Organic Law N° 01/2012 / OL of 02/05/2012 establishing the Penal Code.

### III. COURT DECISION

11. DECLARES that the appeal filed by KAREMERA Valens is unfounded.
12. DECLARES that the judgment No. RP 0055/15 / TGI / MUS passed by the Musanze High Court on 23/03/2015 is unchanged.
13. ORDERS that KAREMERA Valens be exempted from paying the costs of the proceedings because he is in custody.

**ISSUED AND READ IN PUBLIC ON 23/10/2015.**

**JUDGE**

**REGISTRAR**

**BADARA Léonidas**

**NSANZITEGEKO Venant**