

THE MUSANZE HIGH COURT, SITTING IN MUSANZE AT ITS HEADQUARTERS, HEARD THE CRIMINAL CASE RPA 0224/11 / HC / MUS ON APPEAL AGAINST PROVISIONAL DETENTION AND DECIDED ON 27/08/2011 AS FOLLOWS:

PARTIES

APPELLANT: Gashugi Christian, son of Gashugi John and Mukagakwandi Christine, born in Kanserege Cell, Gikondo Sector, Kicukiro District in Kigali city in 1981, where he is a resident, living in Gatorwa Village, Cyabararika Cell, Muhoza Sector, Musanze District in the Northern Province, is a Rwandan who works in the conveyor industry.

DEFENDANT: The prosecution, represented by Nkusi Faustin, a national prosecutor.

SUBJECT: Appeal against the decision of provisional detention n° 0157/011, taken by the Musanze High Court on 07/06/2011.

II. FACTS AND PROCEDURE

[1] Gashugi Christian was arrested by the judicial police in the night of 30/05/2011 on suspicion of raping a 14-year-old girl named Uwineza Florence. After a police investigation the case was handed over to the prosecution for further investigation. The prosecution requested the Musanze High Court to authorize provisional detention of Gashugi Christian while investigation continues.

[2] After reviewing the submissions of both parties, the Musanze High Court took decision n° 0157/011 authorizing the prosecution's investigation to continue for thirty days while Gashugi Christian was remanded in custody. Dissatisfied with the decision, the accused appealed to the Musanze High Court, and his complaint was recorded under RPA 0224/11 / HC / MUS. The case involves two issues that the court must consider, the first of which is to determine whether the statements of the deponents who have knowledge of Gashugi Christian's suspected crime, namely Uwineza Florence, Ndayambaje Antoine nicknamed Gasaza and Iyamuremye Amisadab, disclose enough reasons to suspect that Gashugi Christian is responsible for rape thus justifying his provisional detention, and the second question is whether the report of the doctor who examined Uwineza Florence disproves the validity of the first instance court's reasons for suspecting that Gashugi Christian committed the crime.

III. SUBMISSIONS OF BOTH PARTIES ON THESE ISSUES AND THE COURT ANALYSIS

[3] Explaining the first ground of his appeal, Gashugi Christian and his counsel Nsengiyumva Straton submit that the statements of Uwineza Florence and Ukundimana Régine should not be relied upon as Uwineza Florence is the plaintiff and that Uwineza Régine recounts what Uwineza Florence told her. Gashugi Christian and his lawyer also submit that the statements made by Ndayambaje Antoine nicknamed Gasaza and Iyamuremye Amisadab should also not be relied upon because they first had a dispute with the suspect Gashugi Christian because they arrested him as "home guards" in their work and stripped him of his phone and money, and when he argued with them they persuaded a girl who was walking behind them to accuse Gashugi Christian of raping her in order to succeed their plot. On these allegations made by the suspect and his lawyer, the prosecution argues that there not reason why the statements of the deponents should not be considered to assess Gashugi Christian's involvement in the commission of the crime he is suspect of, that the victim's explanation to Ukundimana Régine, her statements to the prosecution, and the testimony of those who caught Gashugi Christian into the act of rape of the girl, clearly show that the allegations against Gashugi Christian are true, especially that he does not prove that he had a dispute with the accusers.

[4] The Court notes that in his statement Gashugi Christian indicates that he did not know Uwineza Florence, and that he does not prove any dispute between him and Ndayambaje Antoine nicknamed Gasaza and Iyamuremye Aminadab who only met him during patrol and caught him during work. The Court also notes Uwineza Florence was not a close friend with Ukundimana Régine because she recently gave her a domestic job, the offence Gashugi Christian is accused of happened when this girl was returning from taking her clothes where she had left them to start her new job.

[5] With regard to the strong reasons to suspect that the alleged perpetrator did indeed commit rape, Article 95 of Law n ° 13/2004 of 17/05/2004 relating to Criminal Procedure Code as amended and supplemented by Law n ° 20/2006 of 22/04/2006, provides that strong reasons to suspect that a person has committed an offence are the totality of evidence which can lead to the suspicion that a person might have committed an offence. The High Court finds that at this stage of the proceedings any evidence tending to prove the suspicion has to be duly analyzed, including the statements of various people even if having a dispute with the suspect, the goal being to know the truth about the persons suspected of involvement in the offence.

[6] The High Court therefore finds that Ukundimana Régine's description on how Uwineza Florence got a domestic job, went to take her clothes where she had left them and when she left, is consistent with this girl's explanation of why she returned late, when she left and how she met Gashugi Christian, which is similar to statements of Ndayambaje Antoine nicknamed Gasaza and Iyamuremye Aminadab explaining how they saw Gashugi Christian and Uwineza Florence and that the girl was unfamiliar with them, that she accused Gashugi Christian of raping her while he was not known to her. This discards the unproven dispute that Gashugi Christian alleges in the trial, and buttresses the suspicion that Gashugi Christian raped Uwineza Florence before she was rescued by patrollers.

[7] In the second ground of the appeal, Gashugi Christian argues that had the court considered the medical report on the alleged rape of the girl it would not have decided to remand him in custody. His counsel Nsengiyumva Straton explains that the report shows that Uwineza Florence was not raped and requests the court to rely on this evidence and the fact that Gashugi Christian has a residential address to order his provisional release in accordance with the first paragraph of Article 87 of Law n ° 13/2004 of 17 / 05/2004 on Criminal Procedure Code as amended and supplemented by Law n ° 20/2006 of 22/04/2006 which provides that a suspect is entitled to be free during the time of investigation. With respect of the medical report on the rape of Florence Uwineza, the prosecution's representative said that the fact that the report says that the girl is virgin does not mean that she had not been raped, and submits that the report should be considered alongside other evidence.

[8] The court finds that the medical report shows that nothing unusual about the girl indicates that she had sexual intercourse. But this does not rule out the above reasons leading to suspect that Gashugi Christian took Florence Uwineza where he had planned to rape her and tried to rape her but was stopped by those on patrol who were alerted by the girl's cry. It is the ongoing investigation by the prosecution which will prove whether the conduct of Gashugi Christian amounts to the offence of rape against the girl.

[9] Although there are grounds to suspect that Gashugi Christian was involved in the alleged conduct, nothing hinders Gashugi Christian's provisional release, especially considering the conduct of the crime as explained by the current status of the investigation. The court finds that Gashugi Christian's provisional release will not hinder the investigation if the conditions of his release are defined in accordance with the provisions of the second paragraph of Article 102 of Law n ° 13/2004 of 17/05/2004 on

Criminal Procedure Code as amended and supplemented by Law n ° 20/2006 of 22/04/2006.

IV. COURT DECISION

[10] Declares and orders that Gashugi Christian be given provisional release while the prosecution's investigation continues, that he shall appear before the Prosecutor in charge of investigation every Friday of the week, and that he shall not travel beyond the boundaries of Musanze District without the written permission of the Prosecutor or his surrogate, and he shall observe these measures within four months.

Delivered and read in open court on 27/06/2011, by the High Court of Musanze, located in Musanze at its seat, consisting of Judge Bakuzakundi Athanase and the Registrar of the Court.

JUDGE

SIGNED

Bakuzakundi Ath.

REGISTRAR

SIGNED

Nsanzitegeko Venant