

THE RWAMAGANA HIGH COURT, HEARING PUBLICLY CRIMINAL CASES ON APPEAL DECIDES ON CASE RP.0385 / 10 / HC / RWG ON 30/09/2011 AS FOLLOWS.

PARTIES

PUBLIC PROSECUTOR REPRESENTED BY MADAME BUNYOYE Grace

APPELLANT: BIZABARIMANA Emmanuel, son of Karerangabo Jean Baptiste and Mukabiganda, born in 1988, in Jari, Nyarugenge, Kigali City, lives in Burera village, Rugazi Cell, Katabagemu Sector, Nyagatare District, Eastern Province.

OFFENCE: Child defilement

I. FACTS AND PROCEDURE

1. The Prosecution has charged BIZABARIMANA Emmanuel in the Nyagatare High Court of raping a child under the age of sixteen, alleging that on 25/04/2010 he raped a fifteen-year-old girl named NTABANGANYIMANA Béatrice in a room at the child's home, and he pleaded not guilty in Nyagatare High Court.

2. On 19/11/2010, the Nyagatare High Court convicted BIZABARIMANA Emmanuel of sexually abusing a child under the age of eighteen and sentenced him to twenty years' imprisonment and a fine of one hundred thousand Francs. Because BIZABARIMANA Emmanuel was not happy with the decision, he appealed to the Rwamagana High Court, saying that although he had previously pleaded not guilty, he appealed to the court to plead guilty and apologize for the crime.

The issue to be considered in this case is whether BIZABARIMANA Emmanuel 's guilty plea in appeal justifies a reduced sentence.

II. ANALYSIS OF THE ISSUES ARISING IN THE CASE

• **Whether BIZABARIMANA Emmanuel 's guilty plea in appeal justifies a reduced sentence**

3. BIZABARIMANA Emmanuel appeals stating that he wants to tell the court the truth, plead guilty and apologize. He explains that on 25/04/2010, NTABANGANYIMANA Béatrice met him in the house where he was sleeping because they were friends as

cousins, that BIZABARIMANA immediately grabbed her and raped her; he apologizes for it and admits that he was caught in the act, and demanded that the court reduce his sentence because it was his first time committing a crime and he continued to apologize.

4. The Prosecution argues that BIZABARIMANA Emmanuel's plea of guilty should not be accepted because he defended himself pleading not guilty while he was caught in the act of sexually assaulting NTABANGANYIMAN; that those who rescued the girl heard her cry and caught him lying on the girl; that his confession is not sincere, but he is motivated by the desire to have a reduced sentence, and requests that his request for a reduction of sentence not granted as law does not compel a judge to reduce a sentence whenever there is a guilty plea.

5. Article 110 of Law n ° 15/2004 of 12/06/2004 on Evidence in Trial and its Production provides that the confession made in court have the effect of proof against the confessing party. The confession made by BIZABARIMANA Emmanuel before the court of appeal explaining how he raped NTABANGANYIMANA Béatrice and was caught in the act is evidence of his guilt. His guilt is supported by evidence filed by the prosecution in the Nyagatare High Court, which was the basis on which the court had convicted him of sexually abusing a child under the age of eighteen, and punished him for the offense provided for in Article 34 of Law n ° 27 / 2001 of 28/04/2001 Relating to Rights and Protection of the Child Against Violence, which provides that *"Anybody who rapes a child who is below fourteen years shall be sentenced to life imprisonment and be fined between 200 000 Frw and 500 000 Frw"*.

6. Article 35 of Law no 13/2004 of 17/05/2004 relating to Criminal Procedure Code as amended and supplemented to date provides that when a suspect pleads unquestionably guilty, the judge may reduce his sentence to half of the sentence applicable to the prosecuted offense. The court notes that BIZABARIMANA Emmanuel pleaded guilty to the crime of sexually assaulting an under eighteen-year-old girl named NTABANGANYIMANA Béatrice, and explained how he had committed the crime, which justify a reduced sentence as provided for in this law, because even if he had not pleaded guilty in the first instance at Nyagatare High Court, on appeal he has unequivocally pleaded guilty, and the provision in the aforesaid law does not stipulate a period within which a plea of guilty has to be made, nor does it bar the court to accept it at the appellate level. Therefore, because BIZABARIMANA Emmanuel explains how he committed the offence, apologizes for it saying he would no longer fall into the crime, a reduction of his sentence, and be sentenced to half of the sentence of imprisonment which had been imposed by the trial court is granted as provided for in the aforementioned law.

III. COURT DECISION

7. HOLDS that the appeal filed by BIZABARIMANA Emmanuel is well-founded, that he should have his sentence reduced, and be sentenced to 10 years' imprisonment, running his arrest on 28/04/2010, and a fine of one hundred thousand francs ordered by the trial court, therefore judgment RP0238 / 010 / TGI / NYG issued on 19/11/2010 is only changed with respect to the term of imprisonment.

8. ORDERS BIZABARIMANA Emmanuel to pay legal costs of Rwf21,400, failing to so, the State will forcibly remove it from his possession.

9. Recalls that appeal can be made in thirty days from the date of the judgment.

ISSUED AND READ IN PUBLIC ON 30/09/2011 BY THE RWAMAGANA HIGH COURT COMPOSED OF THE TRIAL JUDGE TWAGIRUMWAMI Martin AND THE COURT'S REGISTRAR MUHAYIMANA Bernardin.

JUDGE

TWAGIRUMWAMI Martin

REGISTRAR

MUHAYIMANA Bernardin