

COURT OF APPEAL OF
OUAGADOUGOU

BURKINA FASO

Unity- Progress- Justice

Judgement No.: 012/2017

Legal Department No.: 008/2017

THE HIGH COURT OF KONGOUSSI

HEARING OF FEBRUARY 1, 2017, ON CRIMINAL MATTERS

CASE:

Legal Department

Vs.

B. E

At the public hearing of the High Court, holding in Kongoussi (Burkina Faso) on the 1/02/2017 (of February two thousand and seventeen), on criminal matters by:

Mr **Saïdou COMPAORE**, Judge, acting as President;

PRESIDENT

Ténin Marie NAKOULMA, Deputy State Counsel of Faso, representing the Legal Department;

TYPE OF OFFENCE

Intimidation

LEGAL DEPARTMENT

Assisted by Barrister **Rassamya Roger OUEDRAOGO**, Court Registrar-in-Chief;

COURT REGISTRAR

Decision:

See verdict

Delivered the following ruling in a suit:

BETWEEN

The State Counsel of Faso petitioner in a flagrante delicto proceeding;

ON THE ONE HAND;

PANEL:

COMPAORE, President

NAKOULMA, L.D.

OUEDRAOGO, Court Registrar

AND

B. E, born in 1975 in Bain by BOUGMA Hervé and SAWADOGO Marie Madeleine, Burkinabe, farmer, living in Bani, single and father of 2 (two) children, who declares to have never been convicted, given an award or recruited;

Accused of: *“having intimidated O. K. V in Bam, on 16 December 2016, less than 3 (three) years ago, with a criminal offence, in the case at hand, by killing her if she did not stop providing contraceptives to his concubine: Acts provided for and punished by article 348 of the penal code*

ON THE OTHER HAND;

When questioned during the 1 February 2017 hearing, in accordance with the provisions of Article 396 of the Code of Criminal Procedure, the accused declared that he wants to be tried immediately

During the appeal, the State Counsel of Faso stated that he had brought the above-mentioned accused before the Court to defend himself on account of the above-mentioned prejudice;

Then, the Court Registrar read out the documents in the case file and the accused was questioned;

The submissions of the Legal Department were heard;

The accused made his arguments to defend himself;

He received the floor in last position;

The Court Registrar took note of the statements and responses of the accused;

At the end of proceedings, the Court ruled as follows:

THE COURT;

Mindful of the documents presented;
Having heard the arguments made by the accused;
Having heard O. K. V in her explanations and constitution of civil party;
Having heard the submissions of the Legal Department;
Having received the floor in last position, the accused made his arguments to defend himself;

I- FACTS

On 12 August 2016, the Territorial Gendarmerie Brigade received O. K. V's complaint against B. E, her husband's cousin, for assault and battery;
The latter, invited to report to the said Brigade did not comply;
A week later, on 19 August, it was the turn of BOUGMA Eric, the concubine of O. K. V, to file a complaint against B. E, this time for having made death threats against his concubine;
He explained that B. E implied to BOUGMA Théophile, one of their paternal uncles that, he had not been able to take the life of O K. V because of the intervention of neighbours: That, this time around, nobody would stop him; that it was this uncle who reported the threats to him so that he could take the necessary measures;
From the testimonies of BOUGMA Théophile, it appears that the accused uttered death threats to O. K V; that, unable to dissuade her, he informed BOUGMA Eric; and that, he believed that the accused was capable of carrying out his threats given that a few days earlier he seriously injured the woman in question;
From the statements of SORE Issa, village councillor of Bam-village, four months ago, B. E attacked the wife of his brother, his baby and his little sister, causing serious injuries on the brother's wife. This time, he reiterated his death threats against O. K. V in front of her in-laws and her paternal uncle; When apprehended and questioned, B. E acknowledged that he had inflicted blows causing injuries to O. K. V, after he had tried in vain to dissuade her from inciting his wife to use contraceptives;
That, as regards the threats, he held them just on the day of their dispute; That he never repeated them either in front of his uncle or in front of anyone else;
When referred to the Legal Department, the State Counsel of Faso of the said Court initiated proceedings following the flagrante delicto procedure against B. E for intimidation, in application of *Article 348 of the Penal Code*;
When heard during the flagrante delicto investigation, B. E, while acknowledging the facts of the threats, explained that he had no intention of carrying out his threats; That his action was motivated by his desire to dissuade the complainant from giving advice on the adoption of contraceptive methods to his wife; That he had

already laid hands on OUEDRAOGO Kiswendsida Veronique for the same reasons;

At the bar, he declared that he did not recognise the facts; That if O. K. V and him came to blows it is precisely because she was providing contraceptives to his wife; BOUGMA Théophile as well as BOUGMA Emmanuel remained constant in their statements; The first one specified that the accused even killed his ducks and cats, and was waiting for him to react to harm his physical integrity;

O.K. V declared herself a civil plaintiff and that the accused be condemned to pay her the sum of CFAF 23,650 (twenty-three thousand six hundred and fifty) as damages; That, this sum represents the costs relating to her medical care following the blows administered to her by B. E;

The Legal Department requested that the accused be kept within the scope of this prejudice and that he be sentenced to 24 (twenty-four) months prison term and a fine of CFAF 600 000 (six hundred thousand); The accused pleaded for the clemency of the court;

II- PROCEDURE

A- Prosecution

I-Constituting the offence

Whereas under Article 348 of the Penal Code, anyone who conditionally threatens to harm another, is said guilty of an offence and is punishable by law with a criminal penalty;

Whereas in the case at hand, it is clear that the accused B. E has first, by words, uttered death threats to O. K. V; That he then reminded his uncle BOUGMA Théophile, that he would put his threats into effect; That this constancy is established despite the denials of the accused; That persisting in his criminal initiative, the accused B. E even went to repeat his threats in front of the parents of his target; That, in addition, the planned offence, undoubtedly murder, is punishable by a criminal sentence;

Whereas the accused was aware of the seriousness of the acts he was about to commit; whereas he was therefore driven by a guilty mind; That from all the above, it follows that the offence of conditional threats is constituted against the accused B. E; That it is appropriate to declare him guilty and sentencing against him;

2- Sentence

Under Article 348 of the Penal Code, the offence of conditional threats is punishable by imprisonment for two to five years and a fine of between CFAF 600,000 and 1,500,000;

Whereas in the case at hand, notwithstanding the fact that the accused B. E is a first-time offender, the acts committed by him are singularized by their extreme seriousness; whereas his attitude before the court shows that he does not realize that his action is highly reprehensible, hence the risk of repetition of similar acts;

Thus, to combine the educational and dissuasive virtues of the penalty of deprivation of liberty, B. E should be sentenced to 24 (twenty-four) months imprisonment and to an actual fine of CFAF

600,000 (six hundred thousand);

B- Civil Action

Whereas it follows from Article 2 of the Code of Criminal Procedure that any person claiming to be the victim of a criminal offence may seek compensation before the criminal courts hearing the prosecution;

Whereas within the meaning of Article 423 of the same code “*[The Criminal Chamber] shall assess the admissibility of the civil action petition and, if necessary, declare the petition inadmissible*” ;

That the admissibility of such an action presupposes proof of the existence of damage, an offence and a direct and personal link between the damage and the offence, in addition to the formal requirements laid down in Articles 418 and pursuant to the Code of Criminal Procedure;

Whereas O. K. V was summoned to the hearing to give a statement on her possible financial claims, she declared herself a civil party. She requested B. E be condemned to pay her the sum of CFAF 23,650 (twenty-three thousand six hundred and fifty) as damages; That she claims in this capacity compensation for damages resulting from the injuries she sustained; That she explains that she incurred expenses for her treatment in the hospital;

Whereas, while it is undeniable that she has suffered damage, it remains that this damage is not the consequence of the offence for which B. E was found guilty; That her damage is clearly linked to assault and battery and not to intimidation; That it is therefore appropriate to declare her action to obtain the conviction of the accused to pay her damages and interests inadmissible;

UPON THESE GROUNDS

Ruling in a public hearing following full trial of a criminal matter in first resort, the court:

Declares BOUGMA Emmanuel guilty of the charges alleged against him;

Sentences him to 24 (twenty-four) months of actual prison term and a suspended fine of CFAF 600,000 (six hundred thousand);

Declares inadmissible the claim for damages of O. K. V;

In addition, condemns B. E to pay the costs.

All of which must be applied in accordance with Articles 52 of the Penal Code, 473 and 477, 699 to 718 of the Code of Criminal Procedure read out by the President.

Thus, the case was heard and judgement delivered by the judge and by the Court Registrar on the dates, months and year as indicated above.

THE PRESIDENT

THE COURT REGISTRAR