

OUAGADOUGOU COURT OF APPEAL

HIGH COURT OF OUAHIGOUYA

BURKINA FASO
Unity-Progress-Justice

Judgement No. 98/2019

**HEARING OF 9 OCTOBER 2019, ON CRIMINAL
MATTERS**

of 09/10/2019
Legal Department No. 110/2019

Legal Department

Vs.

O.I

Type of offence

Pimping

Victims

O. B, D. S,

S. P and

K. O

Decision

(See Verdict)

The High Court of Ouahigouya (Burkina Faso), ruling in a public hearing of a criminal suit on Wednesday 09/10/2019 (ninth October two thousand and nineteen) in the court house of the said city at eight o'clock, presided over by Mister **Sanogo K. Raymond**, judge at the Seat of the said court, assisted by **Ouedraogo Ismaël**, **Ouedraogo R. Balguissa***, **Bourgou Y. Bienvenu** and **Kindo Nofou**, all Judicial Assessors;

The Legal Department represented by the State Counsel of Faso, at the said court Mr **Gnanou B. Simon**;

With Barrister **Wouangrawa Lassina**, Court Registrar-in-Chief who acted as Court Registrar with the assistance of Madam **Bako Carine** epse **Barro**, Intern Court Registrar; And Mr **Diallo Idrissa**, Sworn Interpreter

Delivered the following judgement:

BETWEEN

The State Counsel of Faso suing in a flagrante delicto suit

ON THE ONE HAND

AND

O. I, born on 17 January 1987 in Delta/Nigeria to Obi John and Friday Viviane Nigerian worker residing in Ouahigouya, spinster, without children, never sentenced, decorated, nor recruited before;

Accused "of having in Ouahigouya, in 2019, in any case, less than 3 (three) years ago, committed pimping amongst others:

- ✓ By aiding, abetting or hiding the prostitution of O. B, D. S, S. P and K. O;
- ✓ Drawing profit from the prostitution of O. B, D.S, S. P and K. O by partaking of the proceeds or receiving subsidies thereof;

PANEL

SANOGO K. R.:.....President
GNANOU B. S.:....Legal Department
WOUANGRAWA L.:Registrar
DIALLO D.:Interpreter

JUDICIAL ASSESSORS

- Ouedraogo Ismaël
- Ouedraogo R. Balguissa*
- Bourgou Y. Bienvenu
- Kindo Nofou

Intern Court Registrar

Bako Carine epse Barro

- ✓ By employing, training, or abducting O. B, D.S, S. P and K. O into prostitution or mounting pressure on them to indulge or keep on indulging in prostitution.

Acts punishable by article 533(22) of the Penal Code”;

Having as lawyer, **Sankara S. Bénéwendé law firm;**

ON THE OTHER HAND

Registered on the cause list of 9 October 2019, the suit was retained and full trial held on that same day;

When questioned pursuant to article 321(18) of the Criminal Procedure Code, the Accused sought to be judged immediately;

At the call of the case, the State Counsel explained that by means mentioned above, he had the above-mentioned accused appear in court on this day’s hearing to present her defence with regards to the above prejudice;

The Accused was interrogated as the Court Registrar recorded her replies;

The victims were heard in their explanations;

The Accused presented arguments in her defence;

On that, and after full trial, the court adjourned the hearing for consultations; at resumption, the court ruled as follows:

THE COURT,

Mindful of the documents of the case file;
Having heard the pleas of the Accused;
Having heard the explanations of the victims;

Having heard the submissions of the Legal Department;

Having heard the arguments of the Accused in her defence, and who received the floor in last position;

I- FACTS

On 17 September 2019, Ossia Blessing came to the Central Police Station of Ouahigouya to file a complaint against Obi Ifeoma for Illegal restraint, pimping and abetting in voluntary HIV/AIDS transmission;

Conducting an investigation in flagrante delicto to get to the bottom of this matter, the police officers took down the confessional statement of the plaintiff who said O. I made her come to Burkina Faso from Nigeria 5 (five) months ago; that while in Nigeria, she had proposed her to come and sell in her shop in Burkina Faso; that upon arrival, unlike what they had agreed to, she told her she would have to become a sex worker for her; that to threaten and intimidate her, she seized her identification documents, shaved some of her hair, pubic hair, and armpit in order to to kill her or make her grow mad mystically if she refused to become a sex worker; that later on, she forced her into unprotected sexual intercourse with clients who gave her a lot of money; that she ran a screening test which came out positive; that each night she would force her to go out and work then come back and give all the money she earned; that so far, she had given her CFA F 1,000,000 (one million), that in addition, O. I told her she must pay an additional amount of CFA F 200 000 if she wanted to go back to Nigeria;

The Central Police Station then arrested the Accused and took her into custody, and on that same day at 12:05 PM a search of her home was conducted with her approval, then 3 (three) other victims named K. O, S.P and S. F were present; during this search, 2 (two) packs of condoms and some gel (lubricating), a sachet containing 3 (three) pants, 1 (one) brassiere and pieces of hair, and another sachet containing 7 (seven) ledgers, 2 (two) small exercise books and a small sachet with CFA F 438,500 (four hundred and thirty-eight thousand five hundred) were found and sealed;

When interrogated on the origin of the items found, O.I stated she took it to threaten them; she also added that she resorted to these mystical practices for peace to reign between her and the girls; as for the money she said it was from “cauris d’or” to be deposited in an account and outlined that the condoms and gel are used for prostitution;

On 18 September 2019, D. S, S. P and K. O filed a complaint; D. S explained, O.I came and took her from her village to Ouahigouya to work as a cleaner and sales girl in a shop; but upon arrival,

she realized she had to become her sex worker; that she sent them (she and the other girls) to a place commonly known as “Papa Solo” where they worked as sex workers and at the end of each night they had to give her the proceeds thereof in order to pay back the CFA F 1,000,000 (one million) she claimed from each one of them; that she used the same technique as on O. B to force her into prostitution; S. P and K. O said they arrived Ouahigouya respectively 1 (one) and 4 (four) months ago and that Madam O. I used the same strategy as with Ossia Blessing and D. S to force them into prostitution;

When arrested, the accused simply acknowledge the facts levied against her, explaining that about 8 (eight) months ago she had 3 (three) girls come from Ouagadougou to Ouahigouya, to work as prostitutes; that each one of them had to pay her CFA F 1,000,000 (one million) standing as the amount she spent as their travelling expenses before regaining their freedom; that she got in touch with the girls through her accomplice, Opa in Nigeria, to whom she paid the sum of CFA F 500,000 (five hundred thousand) per girl; that she collected their personal documents, hair on the head, skin, armpit, and pubic, even their pants and brassiere so as to intimidate them;

When the police investigation was over, the police officer forwarded the report to the State Counsel of Faso, who based on the facts, pressed charges of pimping in flagrante delicto against O.I pursuant to article 533(22) of the Penal Code;

In her confessional statement to prosecution, O.I, acknowledged throughout and reiterated what she said during the preliminary inquiry

Appearing in court with the Bénéwendé Sankara law firm as lawyer, O.I declared not to concur with the charges pressed against her; she explained that she had asked a man named Opa in Nigeria who sent him girls willing to become sex workers; that she paid CFA F 500,000 (five hundred thousand) as transport allowance for each of these girls and they had to work to repay her the transport allowance she had spent; she acknowledged collecting money made out of prostitution by a victim; she also acknowledged

providing them with shelter and giving them condoms and gels which they used for prostitution;

In response to the statement of the Accused during the hearing, Ossia Blessing, Djon Sofia, Sunday Precious and Kate Osunbor repeated exactly what they had said during the preliminary inquiry, each of them insisting on the fact that the Accused told them they would come to Ouahigouya to work in a shop, but upon their arrival, she subjected them to prostitution and collected all the proceeds thereof; that she also locked them up in the house each time she went out, to prevent them from escaping;

When recognized to lay any eventual claim; O. B, D. S, S. P and K. O declared not to claim damages parallel to prosecution;

The Legal Department, after summarizing the facts, requested the Accused be charged with the prejudice of pimping and sentenced to an actual prison term of 60 (sixty) months with a fine of CFA F 3,000,000 (three million);

The lawyer of the Accused, in his argument, pointed out, that to err is human; that the Accused was herself once a victim of this practice; that she got to Ouahigouya through a middleman for whom she had to become a sex worker for years before being free; that this created in her the inability to distinguish between good and evil; that verily, the Accused is a first-time offender; that with respect to her painful past, he implored the court's clemency and pleaded for a suspended sentence in her favour;

The Accused received the floor in the last position;

II-PROCEDURE

A- PROSECUTION

1- Guilt of the Accused

Whereas O. I is charged with pimping on O. B, D. S, S. P and K. O;

Whereas pursuant to article 533(22) of the Penal Code; "Pimping is characterized by anyone, by any means whatsoever:

- Aiding, abetting or hiding someone else's prostitution;
- drawing profit from someone's prostitution, sharing products thereof or receiving financial gains from some usually indulging in prostitution

- employing, training, or abducting someone into becoming a sex worker or mounting pressure on her to become and keep on being a sex worker; (...)”;

That based on the analysis of this provision, pimping, to be characterized as an offence requires the occurrence of one of the above actions and a premeditation inspired by the conscious participation in someone else’s prostitution;

Whereas the examination of the case in court and documents thereof showed that the Accused, O.I spent CFA F 500,000 (five hundred thousand) to get each of her fellow citizens – O.B, D.S, S.P and K. O to become sex workers in Burkina Faso; that she sheltered them and provided them with the material thereof particularly dresses, condoms and gels; that she also gave them a place where to practice prostitution; that by so doing the material evidence of aiding and abetting someone else’s prostitution is established;

Whereas the Accused acknowledged she asked to be repaid the money she spent as transport allowance from her fellow citizens’ income; that to this end she collected all what they had earned; that she consequently enjoyed the profits of someone else’s prostitution as described in the above article;

Whereas an examination of the case at the hearing also indicated that the Accused employed O. B, D.S, S.P and K. O, through her friend, Opa in Nigeria, who acted as middleman; that prostitution material was provided by her; that each night she sent them to clients with instructions; that to force them into prostitution, she collected their identification documents, their personal belongings in order to intimidate them, and locked them up in the house each time she was going out to prevent them from escaping; that the employment and constraint into prostitution is sufficiently characterized;

Whereas, moreover, that the Accused had full knowledge of the fact that her action was punishable by law, given that she devised a scheme with her friend Opa in Nigeria, to lie to the girls they were going to sell in shops for them to come to Burkina Faso solely for prostitution; that in addition she adamantly went farther with the offence by intimidating and locking them up each time she went out to prevent them from escaping;

that having noticed that one of the girls became HIV+, she still forced her to continue being a sex worker; that her premeditation is thus clearly characterized;

Thence all the elements required to establish the offence of pimping are enough evidence against the Accused Obi Ifeoma; that it would be proper to hold the prejudice of pimping against her, find her guilty thereof and order a sentence against her;

2- Sentence

Whereas pursuant to the provisions of article 533(22), *in fine* of the Penal Code, pimping is an offence punishable with three to ten years' imprisonment and a CFA F 1,000,000 (one million) to CFA F 6,000,000 (six million); that article 211(1) thereof provides for the judge to administer a mixed sentence, that is, imprisonment or fine with part being a suspended sentence;

Whereas as it is, charges levied against Obi Ifeoma are extremely serious; that she forced those girls into prostitution by locking them up each time she went out so they would not escape; that out of greed, she compelled O. B to have unprotected sexual intercourse with clients who paid more; that this caused the latter to become HIV+; that despite this infection, she compelled her to keep on being a sex worker; that despite being a first-time offender, these facts are glaring evidence of her dangerous character; that it would be proper she be educated through a resocialization prison term of 5 (five) years with an actual 3 (three) years' term and 2 (two) years suspended sentence and an actual fine of CFA F 1 000 000;

3- Seals

Whereas article 213(1) of the Penal Code provides for the exhibits used or destined to commit an offence to be sealed;

That in the case at hand, two sachets having 4 (four) packs of condoms and a gel, a sachet containing 3 (three) pants, 1 (one) brassiere and hair sealed under the care of the Registry of the said Court under number 46/2019 of 07/10/19; that case file documents as well as court arguments indicate that the 4 packs of condoms and the gel were destined for personal prostitution of the Accused and that of the victims, thus destined to commit the offence; it would be proper to order their confiscation;

Whereas pursuant to article 321-99 of the Criminal Procedure Code, the court may order by its own motion or at the request of the Accused, plaintiff or civilly liable persons, the restitution of sealed exhibits in court; that in the case at hand the sachet containing 3 (three) pants, 1 (one) brassiere and pieces of hair sealed, were used to intimidate the victims and force them into prostitution and were not destined to commit the offence; that it is their personal belonging; that it would therefore be proper to return them to their rightful owners;

B- CIVIL ACTION

Whereas pursuant to article 231(1) of the Criminal Procedure Code, “the claim for damages as a result of a crime, an offence, or a misdemeanour can only be filed by those who personally suffered the damages caused directly by the offence”;

Whereas O. B, D.S, S. P and K. O, victims in this case, decided not to claim damages parallel to prosecution during court session; that it would be proper to endorse their decision;

C- COSTS

Whereas article 321-94 of the Criminal Procedure Code provides that every judgement delivered against an accused also orders the costs against the said accused; that in the case at hand, O.I having been found guilty of committing the offence thereto, it would be proper to also order the costs against her;

UPON THESE GROUNDS,

Delivering judgement after full trial in first resort on a criminal matter;

- ❖ Finds O. I guilty as charged;
- ❖ In repression, sentences her to a prison term of 5 (five) years with 3 (three) years actual imprisonment and 2 (two) years suspended sentence and an actual fine of CFA F 1,000,000 (one million);
- ❖ Orders the seizure of the 4 (four) packs of condoms and gel to be destroyed;

- ❖ Orders the restitution of the sachet containing 3 (three) pants, 1 (one) brassiere and pieces of hair to their rightful owners; all in the custody of the Registry of the said court under No. 46/19 on 07/10/2019;
- ❖ Endorses O.B, D. S, S. P and K. O;
- ❖ Orders the costs against O. I.

In faithfulness whereof, this judgement has been signed by the judge who delivered it alongside the Registrar on the same day, month and year as above.

THE PRESIDENT THE COURT REGISTRAR