

OUAGADOUGOU  
COURT OF APPEAL

BURKINA FASO  
Unity-Progress- Justice

-----  
THE OUAHIGOUYA  
HIGH COURT  
-----

HEARING OF 17 JUNE 2020 ON FLAGRANTE DELICTO

Judgement No.

69/2020

of 17/06/2020

Suit No. 071/2020

Legal Department

Vs

O.S.M

Type of offence Death  
threats

Victim:

T.F

Witnesses

OUEDRAOGO Alizèta

TRAORE Seydou

OUEDRAOGO Ramata

OUEDRAOGO

W.N. Fadima

Decision

(see verdict)

Panel:

President: K.

Raymond

SANOOGO

Legal Department:

The Ouahigouya High Court (Burkina Faso), ruling in misdemeanour matters, sitting in its open ordinary court session of Seventeen June **two thousand and twenty (17/06/2020)**, in the Court of the said town, in which were present: Mr **K. Raymond SANOGO**, Judge at the Bench of the said Court;

President:

Assisted by **YERBANGA D. Maurice** and **BELEM Ousmane**

Judicial assessors

In the presence of Mr **Tergou Pie SOME**, Deputy State Counsel of Faso at the said Court;

Legal Department

With the assistance of Barrister Lassina Wouangrawa, Registrar-in-Chief at the said Court;

Registrar

And by Mr **DIALLO Drissa;**

Sworn Interpreter:

Delivered the following ruling in a suit:

**BETWEEN**

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

**One the one hand,**

**AND**

Mr **O.S.M**, born on 25 October 1982 in Koudougou, of OUEDRAOGO Bréhima and of TRAORE Limata, Teacher of Burkinabè nationality domiciled in sector 4 of Ouahigouya city, married and father of two(2) children, and who declares to have never been convicted, *given an award or recruited*;

“You are accused to have, on 1 June 2020, in Ouahigouya, less than three (3) years ago, made death threats by anonymous or signed writing, by image, symbol, or any other form of communication relating to death, in this case, making death threats to with a machete which you ostentatiously brandished”;

**Acts provided for and punishable by Article 521-4 of the Penal code;**

**On the other;**

Entered on the cause list of 17 June 2020, the case was examined and deliberations relating thereto were heard during that session;

Questioned at hearing, in accordance with Article 321- 18 of the Criminal Procedure Code, the accused expressed the desire to be tried immediately;

When the case was called, the State Counsel affirmed that he summoned the above-mentioned accused to Court to defend himself

Tergou Pie SOME regarding the above-mentioned prejudice;

**Court Registrar:**

Lassina Wouangrawa

The accused was interrogated and the Court Registrar recorded his arguments;

**Interpreter:** DIALLO

The accused made his arguments to defend himself;

Drissa

**JUDICIAL**

**THE COURT,**

**ASSESSORS:**

Mindful of the flagrante delicto proceeding initiated against O.S.M;

BELEM Ousmane

Mindful of documentary evidence in the case file;

YERBANGA D.

Having heard arguments made by the accused;

Maurice

Having heard the statements made by the victim;

Having heard the testimonies given by witnesses;

Having heard the submissions made by the Legal Department;

The accused having received the floor, in last position to defend himself;

**I- FACTS**

On 1 June 2020, the Gendarmerie Investigation Unit of Ouahigouya received T.F who was lodging a complaint against her nephew O.S.M for obscene insults and attempted murder; Opening a proper investigation to elucidate the allegations, officers of the said Gendarmerie unit recorded the statements of T.F, the victim, and those of OUEDRAOGO Alizèta, TRAORE Seydou, OUEDRAOGO Ramata, and OUEDRAOGO W.N. Fadima, the witnesses, before apprehending O.S.M, the accused;

To buttress her complaint, T.F explained that she is the full younger sister of OUEDRAOGO Bréhima, father of O.S.M; that OUEDRAOGO Sidi continuously claims that she not only denigrates his father, but himself, his brothers and his sisters; that she gave no consideration to these allegations; that on 1 June 2020, in the afternoon, she was sitting in front of her house when O.S.M arrived; that after having greeted her, he began insulting her; that he asked her if she had said that his maternal grandmother was promiscuous, and she gave an affirmative answer; **that he removed a knife from his bag to slaughter her; that he pressed her head against the wall and she shouted;** that she struggled and the knife fell; that he tried to pick it up, but she held his hand; that in the struggle, OUEDRAOGO Sidi Mohamed's hand knocked her eye; that after hearing her shout, several persons rushed to the scene and rescued her from the hands of her nephew; that her rescuers placed her in her room and keyed the door; not having succeeded to carry out his attack, O.S.M went away, promising to come back and kill her; that after his departure, she deemed it necessary to lodge a complaint with the Gendarmerie

Investigation Unit;

In her statement, OUEDRAOGO Alizèta declared that T.F is her aunt, being her father's full younger sister; that 4 (four) years back, she and her brothers were at odds with her; that they tried in vain to resolve the problem ; that the respondent was unaware of the insults that latter had uttered against them; that on 1 June 2020 she and her brothers agreed, during a meeting with the whole family in Sector No. 7 in Ouahigouya, to ask for forgiveness from aunt T.F in order to resolve the problem that opposed them against each other; that the latter was convened to the said meeting, but she refused to participate in it;

that during the meeting, she and her brothers reported, to everyone, the insults the victim uttered against the respondent's grandmother, his mother and his brothers and sisters; that these insults were against their father TRAORE Bréhima, whom she insulted as lazy and useless to the society; that made aware of that, the respondent went to the victim's house in sector 2 in Ouahigouya to find out what was happening; that the two did not understand themselves and an incident occurred;

Considering that TRAORE Seydou declared to have had a misunderstanding with the respondent's father 4 (four) years back; they both got angry against each other; that on 1 June 2020, he was informed that the respondent was looking for him to kill him with a knife; that the former specified that he wanted to start by killing his cousin, T.F before killing him; that he reported the information to whole family before lodging a complaint with the Gendarmerie; Considering that OUEDRAOGO Ramata declared that on 1 June 2020, she was sitting in front of their house in Sector No. in Ouahigouya; that the respondent came at a certain time and asked after her stepmother T.F; that she answered that she was in the yard; that O.S.M entered, and some minutes later, a girl named OUEDRAOGO Fadima came and informed her that the visitor was threatening to kill her stepmother with a knife; that she entered and saw the respondent threatening to kill her stepmother T.F; that with the help of other people, they begged him not execute his threats;

OUEDRAOGO W.N. Fadima on her part confirmed the statement of OUEDRAOGO Ramata; she specified that O.S.M had actually threatened to kill her grandmother T.F; that he brutalized her; that she fell and shouted for rescue; that it is with the help of several other persons that they managed to rescue the victim and begged O.S.M to leave;

When interrogated by the investigators, O.S.M partially admitted the acts of which he was accused; he declared that he had decided to intimidate his aunt

T.F in order to compel her to stop the insults and denigration she uttered against him, brothers and sisters; that he bought a knife before arriving his aunt's house in Sector 2; that upon arrival, he

just removed the knife and placed it on his thigh to frighten her; that she asked if he had come to kill her; that he responded that he did not want to hurt her; that his intent was to make her stop the insults and denigration she was uttering against them; that he regretted the acts he committed at his aunt's house given that he acted in anger; that he promised never to do it again;

When he was brought before the Legal Department and heard, O.S.M partially admitted the acts of which he was accused and reiterated the statements he had made during the preliminary investigation;

The State Counsel of Faso was prosecuting him in a flagrante delicto proceeding for death threats pursuant to Article 521-4 of the Penal Code;

Before the Bar in Court, the accused partially admitted the acts of which he was accused; he admitted to have threatened her with a knife, but denied having said that he wanted to kill her;

When called upon to file civil claims, T.F declared that she wasn't filing any;

After having summarized the facts, the Legal Department requested that the accused be punished for the charges of death threats and sentenced to a non-suspended prison term of 24 (twenty-four) years and to a fine of CFAF 1,000,000 (one million);

The accused apologized profoundly and pleaded for the clemency of the Court;

At the end of the proceedings, the Court delivered the following judgement;

## **II- PROCEDURE**

### **A-GUILT OF THE ACCUSED**

Whereas O.S.M is prosecuted for acts of death threat pursuant to Article 521-4; that according to this article, "*whoever makes death threats by anonymous or signed writing, by image, symbol, insignia or any other form of communication relating to death, shall be punished with imprisonment of from two to ten years and with a fine of from CFAF 2,000,000 (two million) to CFAF 5,000,000 (five million)*". That according to this article, for the offence of the death threat to be constituted, there must be a physical act of death threat by anonymous or signed writing, by image, symbol, insignia, and a criminal intent; Whereas in the case at hand, it is clear that the accused did not threaten the victim by writing, image, symbol or insignia; that in the absence of the physical act of death threat, the accused cannot therefore be guilty of this offence;

However, considering that the accused admitted having gone to the victim's house with a knife ; that even if he claims he did not utter any verbal threat, eye witnesses, including OUEDRAOGO W.N. Fadima and OUEDRAOGO Ramata stated that he openly declared that he will "take her life if she did not stop insulting and denigrating him and his

brothers and sisters”; that he even placed the knife in question on the victim’s neck while making the declaration; that moreover, the accused himself admits that he bought a knife for that purpose because he was fed-up with insults from the victim;

Whereas according to Article 521-1, “whoever, by any means, makes a conditional threat to harm another person by committing an offence punishable with a criminal sentence, shall be punished with imprisonment of from two to five years, and with a fine of from CFAF 2,000,000 (two million) to CFAF 5,000,000 (five million)”;

That according to these provisions, the actions of the accused fall within the scope of conditional threats; that therefore, the acts of death threats of which he is accused should be reclassified as conditional threats;

Whereas according to Article 512-11 of the Penal Code, homicide is harm done to another person, and is punishable with a criminal sentence; that by acting as he did, the accused is guilty of acts constituting the offence of conditional threat to harm another person, which is an offence punishable with a criminal sentence; that as a result, he should be found guilty;

#### **B-SENTENCE**

Whereas O.S.M is found guilty of acts of conditional threat, that according to Article 521-1 of the Penal Code, he is liable to a sentences of two to five years in prison and a fine of CFAF 2,000,000 (two million) to CFAF 5,000,000 (five million);

Whereas in the case at hand, O.S.M not having been convicted before, he is a first-time offender ; that according to Article 216-1 of the Penal Code, the court delivers sentences within limits set by law, and sets regime according to circumstances surrounding the offence and the personality of the author;

That, furthermore, according to the concluding paragraphs of Article 217-4 of the same Code, where the law provides the concurrent application of a prison term and a fine, the Court may pronounce both penalties by reducing them or reducing one of them only;

Whereas the accused profoundly regretted the acts of which he was accused and pleaded the clemency of the Court; that considering this, in spite of the gravity of the conditional threats of which he is guilty, he should be granted the benefit of a suspended sentence while sentencing him to 12 (twelve) years in prison and to a fine of CFAF 2,000,000 (two million), subject to suspension;

#### **C- COSTS**

Whereas according to Article 321-94 of the Criminal Procedure Code, any accused found guilty shall also be sentenced to pay the costs;

Whereas in the case at hand, O.S.M having been found guilty and sentenced in this proceeding; that the costs of the proceeding be borne by him;

**UPON THESE GROUNDS**

Delivering judgement in an open Court after a full hearing on misdemeanour matters and at first instance, the Court;

- ❖ Reclassifies the acts of death threats held against the accused into conditional threats and finds him guilty of it;
- ❖ Sentences him to 12 (twelve) years in prison and to a fine of CFAF 2,000,000 (two million) subject to suspension;
- ❖ Sentences him to pay the costs.

Thus, the case was heard and judgement delivered in open Court on the date, month and year as indicated above

**The President**  
[Signature here]

**The Registrar**  
[Signature here]