

PROSECUTION v. NSENGIYAREMYE

[Rwanda COURT OF APPEAL – RPAA 00466/2021/CA (Nyirandabaruta, P.J.) 27 January 2023]

Criminal procedure – Mitigating circumstances – Punishment of a young adult should differ from the sentence imposed to an adult aged of more than 25 for the sake of fair trial in consideration of the gravity of offence, its effects and the opportunities for rehabilitation.

Facts: The case was initiated in the Intermediate Court of Ngoma, the defendant was accused by the Prosecution for storing and selling the narcotic drugs in the category of cannabis, it states that the security organs arrested him in Mahama Camp with 30 packs of cannabis he was selling. The Court rendered the judgment and held that the accused was convicted of storing, smoking and selling severe narcotic drugs in the category of cannabis, but as he unequivocally pleaded guilty, it sentenced him to the imprisonment for a term of twenty (20) years and a fine of twenty-one million Rwandan francs (21,000,000 Frw).

The accused lodged appeal before the High Court, Chamber of Rwamagana, stating that he pleaded guilty and apologized for the charge; therefore, he requests for the penalty reduction and the change of the offence qualification. The very Court held that there is no legal reason for the change of the offence qualification as requested by the accused; concerning the penalty reduction, it found that the reduction is no longer possible as the penalty was reduced at the first instance.

The accused filed appeal against the judgment before the Court of Appeal claiming for the change of the qualification of the offence for which he has been convicted because he never sold the cannabis as he had been charged of, the prosecution witnesses related the facts to which they did not assist themselves, their testimonies are equivocal, he was convicted of selling the cannabis by analogy because he was arrested with the cannabis used for smoking.

The Prosecution retorted that the appeal of the accused is not founded because before the Investigation Bureau he admitted that he was arrested with 30 packs of cannabis and he admitted that he wholesaled it and he gains interest for providing himself with food.

Held: Punishment of a young adult should differ from the sentence imposed to an adult aged of more than 25 for the sake of fair trial in consideration the gravity of offence, its effects and the opportunities for rehabilitation; therefore, the fact that the accused committed the offence aged of 20 should be a mitigating circumstance, leading to the penalty reduction.

The appeal has merits.

The judgment is only reversed in regard to the offence.

Cases referred to:

Re Kabasinga, RS/INCONST/SPEC 00003/2019/SC rendered by the Supreme Court on 04/12/2019.

Prosecution v. Niyonsaba, RS/INJUST/RP 00003/2019/SC rendered by the Supreme Court on 28/01/2022.

Prosecution v. Ahimpereye, RPAA 00436/2020/CA rendered by the Court of Appeal on 28/06/2022.

Prosecution v. Hakizimana, RPAA 00091/2021/CA rendered by the Court of Appeal on 19/07/2022.

Prosecution v. Shakabatenda, RPAA 00039/2021/CA rendered by the Court of Appeal on 02/07/2021.

Prosecution v. Nzafashwanimana, RPAA 00032/2019/CA rendered by the Court of Appeal on 28/02/2020.

Authors referred to:

House of Commons Justice Committee, The Treatment of Young Adults in the Criminal Justice System Seventh Report of Session 2016–17 (2016), HC 169, p.9.

NCBI, Young Adults in the 21st Century - Investing in the Health and Well-Being of Young Adults. Available online at <https://www.ncbi.nlm.nih.gov/books/NBK284782/>, accessed on 16th Jan.2023

Cosmin Peneoșum, Judicial Individualization of Punishment in Special Situations. Judge's Role in these Cases, EIRP Proceedings, Vol 10 (2015). Available online at <https://proceedings.univdanubius.ro/index.php/eirp/article/view/1673/1657>, accessed on 18th Jan.2023

Judgment

I. BACKGROUND OF THE CASE

[1] The case was initiated in the Intermediate Court of Ngoma, Nsengiyaremye Elie was accused by the Prosecution for storing and selling the narcotic drugs in the category of cannabis; it states that on 23/05/2019 the security organs arrested him in Mahama Camp with 30 packs of cannabis he was selling.

[2] Nsengiyaremye pleaded that the cannabis with which he was arrested was not for selling, it was used for smoking. In the judgment N° RP 00506/2019/TGI/NGOMA rendered on 18/06/2019, the Intermediate Court of Ngoma based on the admission of the offence by the defendant and the fact that he signed on the seizure statement and he was incriminated by Ntezimana Jean Claude and Bushyitse Désiré to whom he was selling the cannabis when he was arrested in Mahama Camp, it held that Nsengiyaremye is convicted of storing, smoking and selling the severe narcotic drugs in the category of cannabis. However, because he unequivocally pleaded guilty, he was sentenced to the imprisonment for a term of twenty (20) and a fine of twenty-one million Rwandan francs (21,000,000 Frw).

[3] Nsengiyaremye lodged appeal against the judgment ruling before the High Court, Chamber of Rwamagana stating that he pleaded guilty and apologized for the offence; therefore, he requests for the penalty reduction and the change of the offence qualification.

[4] In the judgment N° RPA 00565/2019/HC/RWG rendered on 15/02/2021, the High Court, Chamber of Rwamagana based on the fact that, during the interrogation before the Investigation Bureau, the accused maintained that he bought the cannabis from a Rwandan and he was arrested

when he was bringing it in the Mahama Camp for selling it in order to gain the money to buy food and he usually sold it, the fact that Ntezimana and Bushyitse who arrested him asserted that he was arrested with the cannabis, he told them that he usually sold it and the fact that he signed on the seizure statement and it found that there is no legal reason for the change of the offence qualification as requested by the accused and his legal counsel. Concerning the penalty reduction, it found that the reduction is no longer possible for Nsengiyaremye Elie as the penalty was reduced at the first instance.

[5] Nsengiyaremye Elie once again lodged appeal against the judgment ruling before the Court of Appeal claiming for the change of the qualification of the offence for which he was convicted because he never sold the cannabis as he was charged, the prosecution witnesses related the facts to which they did not assist themselves, their testimonies are equivocal, he was convicted of selling the cannabis by analogy because he was arrested with the cannabis used for smoking.

[6] The case was heard in public on 06/01/2023, the Court of Appeal examined the issue related to determining whether the High Court, Chamber of Rwamagana erred in maintaining the qualification of the offence for which Nsengiyaremye was convicted which was smoking and selling the severe narcotic drugs in the category of cannabis and whether Nsengiyaremye Elie should be subjected to the penalty reduction.

II. ANALYSIS OF LEGAL ISSUES

Determine whether the Court should change the offence qualification and Nsengiyaremye Elie be sentenced for smoking the narcotic drugs instead of smoking and selling them

[7] Nsengiyaremye Elie submits that he challenges the High Court for not having changed the qualification of the offence for which he was convicted while he pleaded that he never sold the cannabis as he was charged and he was forced to make admissions before the Investigation Bureau, also the prosecution witnesses related the facts to which they did not assist themselves, their testimonies are equivocal, he was convicted of selling the cannabis by analogy because he was arrested with the cannabis used for smoking and he never gave it to others.

[8] He submits that he does not accept the witness named Ntezimana Jean Claude as the disputes arose between them due to a girl, he started to run after him, he does not understand why he did not accuse him before as he told him that he sells the cannabis; he states that he has any problem with Bushyitse, it is him who arrested him and he found him when he was smoking the cannabis.

[9] Nsengiyaremye Elie further avers that the Court should not rely on the testimonies of the witnesses who relate the facts to which they did not assist themselves as they are equivocal and the Prosecution did not produce any other element of evidence that proves that he sells the cannabis, the person to whom he gave it and the one who gave him the money, etc.

[10] Counsel Uwiduhaye Julienne who assists him maintains that the High Court, Chamber of Rwamagana rendered the judgment and held that Nsengiyaremye Elie sold the cannabis without basing on sufficient elements of evidence because since his arrest he admits that he was smoking the cannabis when he was arrested and he held in his pocket 30 packs of cannabis for smoking,

such a person who smokes the cannabis cannot make any valid statement and by accusing him, the Prosecution does not rely on any other evidence than the statements of Bushyitsi which have any other supporting evidence. Also, he states that, as upheld in the judgment N^o RPAA 0057/15/CS rendered by the Supreme Court on 11/05/2018 opposing the Prosecution to Sikubwabo Emmanuel, the admission of guilt by the accused is not sufficient evidence.

[11] She submits that in case the Court finds that her client is convicted of smoking and selling the narcotic drugs in the category of cannabis, it shall apply the penalty reduction for him because it is the first time he committed the offence and sentence him to a lesser penalty, basing on the judgment N^o RS/INCONST/SPEC/00003/2019/SC of Kabasinga Floride, paragraph [47].

[12] The Prosecutor avers that the appeal grounds of Nsengiyaremye Elie and his counsel are not founded because, during his interrogation before the Investigation Bureau, Nsengiyaremye admitted that he was arrested with 30 packs of cannabis and he wholesaled it from a Rwandan for one thousand Rwandan francs (1,000 Frw) and he gains profit for buying the food; in consideration of those details, the statements of the accused are true.

[13] He submits that the witnesses called Ntezimana Jean Claude and Bushyitse Désiré assert that the accused was arrested with 30 packs of cannabis and he told them that he sells cannabis. His request for changing the qualification of the offence is not possible because the defendant was accused and convicted of storing and selling the narcotic drugs in the category of cannabis on basis of his own statements before the Investigation Bureau where he admitted himself that he sold the cannabis, since his arrest he never stated that he has a problem with the abovementioned witnesses, the qualification of the offence cannot be changed merely for his claim for which he does not produce any evidence; therefore, such ground is not founded.

DETERMINATION OF THE COURT

[14] The pleading of both parties indicate two main issues to be examined by this Court: determine whether the qualification of the offence for which Nsengiyaremye Elie is accused and convicted should be changed and whether, in case the qualification is not changed, he could be subjected to the penalty reduction.

[15] In the appealed judgment N^o RPA 00565/2019/HC/RWG rendered by the High Court, Chamber of Rwamagana, on 15/02/2021, Nsengiyaremye Elie pleaded that he admitted the charge, but he submits that its qualification should be changed because he was arrested with the cannabis used for smoking. The Court found that before the Investigation Bureau, Nsengiyaremye Elie was interrogated about the reason why he sells the cannabis, he replied that he intended to gain money and there are the witnesses who asserted that he told to them that he usually sells the cannabis; it concluded that Nsengiyaremye Elie does not prove how he could gain money from the cannabis he was arrested with without selling it while Ntezimana Jean Claude and Bushyitse Désiré asserted that he told to them that he usually sells the cannabis¹.

¹ Judgment RPA 00565/2019/HC/RWG rendered by the High Court- Chamber of Rwamagana on 15/02/2021, opposing Nsengiyaremye Elie to the Prosecution, paragraph 13_15

[16] The case file contains the statement of the interrogation of Nsengiyaremye Elie before the Investigation Bureau, he indicates that he was interrogated about where he got the cannabis he was arrested with and he replied that he bought it from a Rwandan at 1,000 Frw, he brought it to the camp for gaining the money for buying the food. He submitted that it was the first time he tried to sell the cannabis because he intended to gain money, but he was arrested before reaching the camp.

[17] The case file also contains the statement of the interrogation of the witnesses named Bushyitse Désiré and Ntezimana Jean Claude who arrested Nsengiyaremye Elie with 30 packs of cannabis and he admits that he was arrested with them, they assert that after arresting him, he told them that the cannabis was meant for the sale and he usually sells the cannabis.

[18] The Court of Appeal finds that, as upheld by the High Court, the fact that Nsengiyaremye Elie was arrested with 30 packs of cannabis and he stated that he intended to get money from it for getting the food, he must be considered as he sold it, because he does not indicate how he could only smoke it and get money without selling it; rather, it is evident that he intended to give it to anyone who needs it and must give to him the money he needs. The position set by this Court in the judgment N° RPAA 00436/2020/CA rendered on 28/06/2022 opposing the Prosecution to Ahimpereye Ndeze François, provides that whenever a person holds the narcotic drugs and intends to give them to anyone who approaches him/her seeking the narcotic drugs to be sold, he/she is a trader of narcotic drugs². The fact that Nsengiyaremye Elie intended to sell the cannabis he was arrested with to anyone who approaches him for getting the money he needs makes him a trader of narcotic drugs.

[19] The Court of Appeal finds that, even if Nsengiyaremye Elie denies his statement before the Investigation Bureau when he replied that he intended to gain money from the cannabis he was arrested with for getting the food, such does not diminish its value, because the manner in which he well explained the reason why he sells it and the place where he got it, indicates that he freely provided the explanations; but, afterwards he changed his statement by denying that he sells it and stating that it was only meant for smoking because even if smoking and selling the narcotic drugs are acts punished under the law, the penalties are different as the penalties for selling them are more severe than for smoking them.

[20] The Court finds that the modification of his statements before the Investigation Bureau cannot be taken into account because the judge hearing the case on the merits considers the substance of the statements of the suspect who admits the offence at the investigation level, even if he/she changes his statements before the Court as did Nsengiyaremye Elie³. It finds that the statements of Nsengiyaremye Elie before the Investigation Bureau should be taken into consideration, because they are emphasized by Ntezimana Jean Claude and Bushyitse Désiré who submitted that he usually sells the cannabis, the statement of Nsengiyaremye Elie that the testimonies of Ntezimana Jean Claude should not be taken into consideration as there was quarrel between them for a girl they both loved should not be taken into account because there is no supporting evidence and Bushyitse Désiré incriminating him avers that there was no dispute between them.

² Judgment N° RPAA 00436/2020/CA rendered by the Court of Appeal on 28/06/2022 opposing the Prosecution to Ahimpereye Ndeze François, paragraph 19.

³ Judgment N° RPAA 00091/2021/CA rendered by this Court on 19/07/2022 opposing the Prosecution to Hakizimana Gilbert

[21] Basing on that analysis, the Court of Appeal finds that the fact that the High Court, Chamber of Rwamagana did not change the qualification of the offence for which Nsengiyaremye Elie was convicted at the first instance, the offence was smoking and selling the severe narcotic drugs in the category of cannabis and it did not err as it is the offence for which he is convicted; therefore, his appeal about that issue is not grounded.

b. Determine whether Nsengiyaremye Elie should be subjected to the penalty reduction

[22] Nsengiyaremye Elie states that he was sentenced to the penalty more severe than the offence of selling the severe narcotic drugs so that he was punished to the imprisonment for a term of 20 years and the offence he committed and admitted was to smoke and be arrested with the narcotic drugs which is punished of 1 to 2 years.

[23] Counsel Uwiduhaye Julienne assisting Nsengiyaremye Elie requests that he should be punished for smoking the cannabis instead of selling it and sentenced to a lesser penalty; in case the Court otherwise finds, it should reduce penalties for him because it is the first time he committed the offence, it should take into consideration his age and in the context of rehabilitation, he should be punished with the reasonable penalty on basis of the judgment NORS/INCOST/SP/RP 00003/2019 rendered by the Supreme Court, and punished with the penalty lesser than the one provided under the law. She requests the Court of Appeal to rely on the judgment RPAA 00156/2022/CA rendered on 27/5/2022 and sentence Nsengiyaremye Elie to the imprisonment for a term of 1 year as he cooperated with the justice and it is the first time he is accused.

[24] The Prosecutor avers that the penalties of imprisonment for a term of twenty (20) years and a fine of 21,000,000 Frw imposed to Nsengiyaremye Elie should be maintained because by his appeal he failed to contradict the elements of evidence supporting his conviction at the first instance.

DETERMINATION OF THE COURT

[25] By the judgment RS/INCONST/SPEC 00003/2019/SC rendered on 04/12/2019, the Supreme Court set the position on the penalty reduction in case of the mitigating circumstances, it held that the refusal for the penalty reduction for the accused in case of the mitigating circumstances is contrary to the judicial principles, it upheld that “the judge should be granted with the independence of sentencing in accordance with the offence gravity, its effects, its causes, the behavior of the offender, his/her privacy and the circumstances of committing the offence⁴”. The Court of Appeal followed that position by rendering various judgments, for example the judgment n° RPAA 00039/2021/CA adjudicated on 02/07/2021⁵, the judgment no RPAA 00032/2019/CA pronounced on 28/02/2020⁶ and others.

⁴ Judgment no.RS/INCONST/SPEC 00003/2019/SC rendered by the Supreme Court on 04/12/2019, Kabasinga Florida, paragraph 48.

⁵ Judgment N° RPAA 00039/2021/CA rendered by the Court of Appeal on 02/07/2021 opposing Shakabatenda Jean de Dieu to the Prosecution paragraph 37.

⁶ Judgment RPAA 00032/2019/CA rendered by the Court of Appeal on 28/02/2020 opposing Nzafashwanimana Jean de Dieu to the Prosecution, paragraph 16-18

[26] The Court finds that Nsengiyaremye Elie was born in 1999 and aged of 20 years when he was arrested on 23/05/2019 with 30 packs of cannabis he was selling. The research conducted by The Justice Committee appointed by the House of Commons pointed out that “Research from a range of disciplines strongly supports the view that Young adults are a distinct group with needs that are different both from children under 18 and adults older than 25, underpinned by the developmental maturation process that takes place in this age group”.⁷ Brain systems supporting motivational and socioemotional processing are still maturing in young adulthood, influencing a more developed prefrontal executive system capable of more sophisticated and effective planning and resulting in unique influences on decision making, such as adaptive choices or risk-taking behavior⁸”.

[27] The Court finds that, even if Nsengiyaremye Elie is convicted of the severe offence of smoking and selling the severe narcotic drugs in the category of cannabis and he does not admit it because he states that he admits the offence of smoking the cannabis, the fact that it is the first time he is tried by the courts and by the time of the offence commission he was a young adult aged of 20 years, he had no effective planning; Nsengiyaremye Elie should be subjected to the penalty reduction because the mitigating circumstances include the fact that the offender was a young adult as upheld by the Supreme Court in the judgment N° RS/INJUST/RP 00003/2019/SC rendered on 28/01/2022⁹.

[28] The Court finds that due to the fact that Nsengiyaremye was not accused of any other offence, he cannot be considered as he was usually offender and he committed the offence when he was aged of 20 years, he should be subjected to the reduction of the penalty of 20 years of imprisonment and a fine of 21,000,000 Frw imposed to him by the High Court, Chamber of Rwamagana in the appealed judgment which did not take into account his age by the time of the offence commission and for imposing the penalty, the judge should consider the privacy of the offender so that his age should be considered as mitigating circumstance as above expounded.

[29] It finds that the punishment of a young adult should differ from the sentence imposed to an adult aged of more than 25 for the sake of fair trial in consideration of the gravity of offence, its effects and the opportunities for rehabilitation in Rwandan society. It finds that sentencing a young adult like an adult is not fair trial and contrary to the principle of individualization of the punishment¹⁰.

[30] [30] Basing on that analysis, the Court of Appeal finds that Nsengiyaremye Elie committed the offence aged of 20 years, he is currently aged of 24 years, such shall be a mitigating circumstance; therefore, he shall be subjected to the penalty reduction so that the penalty shall be

⁷ House of Commons Justice Committee, The Treatment of Young Adults in the Criminal Justice System Seventh Report of Session 2016–17 (2016), HC 169, p.9.

⁸ NCBI, Young Adults in the 21st Century - Investing in the Health and Well-Being of Young Adults. Available online at <https://www.ncbi.nlm.nih.gov/books/NBK284782/>, accessed on 16th Jan.2023

⁹ “Other mitigating circumstances include the fact that the accused has never been convicted, especially for a young adult between 18 and 21 years” Judgment N° RS/INJUST/RP 00003/2019/SC rendered by the Supreme Court on 28/01/2022, opposing Niyonsaba Eric to the Prosecution, paragraph 30.

¹⁰ From a legal perspective, the term of individualization expresses strictly the punishment adaptation in relation to individuality, personality of each offender.” Cosmin Peneoşum Judicial Individualization of Punishment in Special Situations. Judge's Role in these Cases, EIRP Proceedings, Vol 10 (2015). Available online at <https://proceedings.univ-danubius.ro/index.php/eirp/article/view/1673/1657>, accessed on 18th Jan.2023

the imprisonment for a term of ten (10) years and a fine of five million (5,000,000 Frw), especially that there are opportunities for rehabilitation and reintegration in the Rwandan society with abilities to collaborate with others for the country development.

III. DECISION OF THE COURT

[31] Holds that the appeal of Nsengiyaremye Elie has merits in parts;

[32] Holds that the judgment n°RPA 00565/2019/HC/RWG rendered by the High Court, Chamber of Rwamagana on 15/02/2021 is reversed only on the penalty;

[33] Sentences Nsengiyaremye Elie to the imprisonment for a term of ten (10) years and a fine of five million (5,000,000 Frw);

[34] Decides that the court fees are borne to the Public Treasury.