

PROSECUTION v. NDIKUMANA

[Rwanda COURT OF APPEAL–RPA 00014/2019/CA
(Nyirandabaruta, P.J.) October 23, 2020]

Criminal law – The offence of the trafficking in persons – For the offence of human exploitation, it is not necessary for the intended objective of the offence to be achieved, rather, what matters is the criminal intent of the suspect, since it is this criminal intent, that is to say, human exploitation, that is to be punished, rather than the outcome of the offense.

Criminal law – The offence of the trafficking in persons – For the offence of trafficking in persons, the suspect might not invoke the victim’s consent for defence.

Facts: This case began before the High Court, Specialized Chamber hearing international and transnational crimes, with a suspect being prosecuted for the offence of trafficking in persons. The case involved a female victim who travelled from Burundi and crossed into Rwanda. Upon her arrival at the Rwanda border post, Immigration and Emigration Officers questioned her about her destination, a question to which she failed to provide an answer. This failure led the Immigration officers to suspect her as a victim of trafficking in persons. Consequently, they immediately initiated investigations, which implicated a certain Ndikumana as the suspect. Ndikumana was found to have closely monitored every detail related to the movement of the victim. Upon completion of the investigation, the suspect was arrested for the offense of the trafficking in persons. The High Court, Specialized Chamber hearing international and transnational crimes, heard the case and convicted the accused of the offence

of trafficking in persons. The Court sentenced him to a term of 7 years of imprisonment and a fine of ten million Rwandan Francs (10,000,000 FRW).

The accused appealed against the decision before the Court of Appeal, contending that the previous Court unjustly convicted him of the offence of transporting and trafficking in persons solely on the basis of being seen travelling with Shurweryimana, the victim. He added that it was implausible for him to have deceived a mature person with promises of employment, especially when both individuals did know each other. Additionally, he alleges that the Court relied on his guilty plea before the Investigation Bureau, disregarding the fact that he had pleaded guilty due to a loss of mental faculties after enduring severe beatings. This was confirmed by a medical doctor who attested to the ordeal he had endured.

Later on, the accused changed his plea and filed an additional submission before the Court of Appeal, stating that he changed his pleading, he pleads guilty to the charged offense and requests that his guilty plea be considered as a mitigating circumstance for reducing the penalty, along with a subsequent suspension. He further asserts that he is typically a person of good conduct and intends to improve his behaviour. Additionally, he argues that the High Court should not have convicted him of the offense of trafficking in persons. Instead, he contends that he should have been convicted of attempt to trafficking in persons, particularly since the intended offence had not yet been committed.

For the Prosecution, the charged offense was committed when the victim was blindly transported, akin to a lamb, and treated as a commodity for sale under pretext of employment. Ndikumana, being aware of his acts, had already profited from his role in transporting persons for monetary gain. Additionally, the

Prosecution refers to related international conventions and argues that for human trafficking offence, the procedure favours presumed evidence. It further asserts that the entire prosecution procedure against Ndikumana follows a direct path and contains no analogies.

Held 1: For the offence of human exploitation, it is not necessary for the intended objective of the offense to be achieved, rather, what matters is the criminal intent of the suspect, since it is this criminal intent, that is to say, human exploitation, that is to be punished, rather than the outcome of the offence. Therefore, the suspect's appeal, by which he argues that he should instead have been convicted to the offence of attempted human trafficking lacks merit.

2. For trafficking in persons offence, the suspect might not invoke the victim's consent for defence.

The appeal lacks merits.

Statutes and statutory instruments referred to:

Law n° 15/2004 of 12/06/2004 relating to evidence and its production, article 2;

Organic Law n° 01/2012/OL of 02/05/2012 instituting the penal law, articles 76,77,78, 85, 250, 251 and 252;

United Nations Additional Protocol to prevent, suppress and punish trafficking in persons, especially women and children, article 3.

Cases referred to:

The Prosecution v Mukankusi with judgment RPA 0246/09/CS rendered by the Supreme Court on 14/12/2012, Rwanda

Law Report, no 17 of volume 2, 2013, published in April, 2013.

Judgment

I. BACKGROUND OF THE CASE

[1] The case commenced in the High Court, Specialized Chamber hearing international and transnational crimes, wherein the Prosecution accused Ndikumana Clovis of the crime of trafficking in persons. It was alleged that on 31/03/2018, at three o'clock in the morning, a girl named Shurweryimana left her home in Burundi and crossed the border to Rwanda. Upon her arrival at the Immigration Office, officers asked her where she was going. She failed to provide an answer, raising suspicions about who she was with. Immigration officers then questioned a person named Ndikumana Clovis, who appeared to be closely monitoring Shurweryimana. It was discovered that the two were together, leading authorities to suspect that the girl was a victim of trafficking in persons. Ndikumana was subsequently arrested, and the investigation was launched. At the conclusion of the investigation, the suspect was charged with the offence of trafficking in persons.

[2] Ndikumana Clovis claimed his innocence and argued that he met Shurweryimana, the victim, as he got her from another person by the name of Laruma, who commissioned him to take the lady for a job in Uganda, he therefore saw nothing wrong in all he did.

[3] On 18/10/2018, the High Court, Specialized Chamber hearing international and transnational crimes adjudicated the judgment RP 00017/2018/HC/HCCIC and convicted Ndikumana Clovis to the offence of trafficking in persons and sentenced him to 7 years of imprisonment and a fine of ten million Rwandan Francs (10,000,000 Frw).

[4] Ndikumana Clovis appealed against the decision before the Court of Appeal, contending that the previous Court unjustly convicted him of the offence of transporting and trafficking in persons solely on the basis of being seen travelling with Shurweryimana, the victim. He added that it was implausible for him to have deceived a mature person with promises of employment, especially when both individuals did not know each other. Additionally, he alleges that the Court relied on his guilty plea before the Investigation Bureau, disregarding the fact that he had pleaded guilty due to a loss of mental faculties after enduring severe beatings. This was confirmed by a medical doctor who attested to the ordeal he had endured. He also argued that the Court's ruling that he was in charge of all travel matters for Shurweryimana Inès is inaccurate. This is because the lady is a mature individual, even older than him. Therefore, it is implausible that he could have blindly manipulated her.

[5] On 8/10/2019, Ndikumana Clovis filed an additional submission to the Court of Appeal, and stated to have changed his pleading. He submitted that he has now made up his mind, and he cannot keep denying the guilt of an offence that is supported with such enough evidence, and that he thereby pleaded guilty, and he requested for penalty reduction and a subsequent penalty suspension. He submitted that he is normally

a man of good behaviour and he is now ready to mend his conduct.

[6] Nonetheless, though he pleads guilty to the offence, he still submits that the High Court should not have convicted him to the offence of trafficking in persons, arguing that the Court should instead have convicted him to an offence of attempted human trafficking, more so that the charged offence had not been committed and he then states that the Court did not reduce his penalty yet he thereof pleaded guilty.

[7] The hearing was conducted in public on 21/09/2020, with Ndikumana Clovis assisted by Counsel Nkundabatware Bigimba Felix, while the Prosecution was represented by Habarurema Jean Pierre, National Prosecutor.

II. ANALYSIS OF LEGAL ISSUES

Whether Ndikumana Clovis should be convicted to the offence of attempted trafficking in persons rather than the offence of trafficking in persons

[8] Ndikumana Clovis submits that he lodged an appeal on the grounds that his plan had not yet been completed. After their arrest at the border post, the Immigration officials sent Shurweryimana Ines back and arrested him, indicating that his plan had not been completed. Therefore, he requests that the offence should be requalified as attempted trafficking in persons instead of trafficking in persons, citing the judgment RPA 00022/2019/CA for Good Luck Asser Marahaba, rendered by this Court on 17/7/2020, in support of his argument.

[9] Counsel Nkundabatware Bigimba Felix argues that their request for the reclassification of the alleged offence is based on the fact that the offence of trafficking in persons of which Ndikumana Clovis is charged, has not been committed. This argument is grounded in the ruling of the judgment RPA 00022/2019/CA for Good Luck Asser Marahaba rendered on 17/7/2020, which states that Article 251 should be applied instead of Article 252 of the Criminal Code of 2012.

[10] The Prosecutor states that the judgment RPA 00022/2019/CA for Good Luck Asser Marahaba cannot be relied on because it is not a principle that a judgment should serve as reference, especially that Article 9 of Law N^o 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that a judge adjudicates a case on basis of relevant rules of law and Ndikumana Clovis is prosecuted for special offence in consideration of the circumstances in which the persons are exchanged as commodities, brought, transported for the profit purpose.

[11] Concerning Shurweryimana Ines, the victim, the offence has already been completed by the time she was taken like a sheep, in consideration of article 250 of the code of criminal procedure that was into force when the offence was committed, it is obvious that the victim was thereby reduced to a sale commodity, with a sole misconception that was reporting for a job, yet Ndikumana Clovis was already assured of his profit, as he brought a person to Eddy in Uganda for payment as they indicated it by their submissions, he undertook the acts of recruiting, transferring and deceiving with the intention of exploiting the victim for a profit once arrived at the destination.

[12] The Prosecutor also submits that, with reference to the protocol on trafficking in persons, the objective elements of evidence should be applied, there is no issue of attempt in all the acts committed by Ndikumana Clovis, for which reason, the Prosecution considers that Ndikumana should not be punished on the basis of Article 251 of the above-mentioned Law N° 01/2012 of 01/05/2012, instead, his sentence should be determined based on Article 252 of the same Law.

DETERMINATION OF THE COURT

[13] Article 2 of the Law n° 15/2004 of 12/06/2004 relating to evidence and its production in courts provides that evidence is the demonstration of the truth of a fact while article 3 of the same law stipulates that every party has a burden of proving his/her allegations.

[14] Article 250 of the Organic Law n° 01/2012/OL of 02/05/2012 instituting the penal code defines the offence of human trafficking, and the definition includes acts of recruitment, transfer of a person to another part of the country or to another country by use of deception, threat, force or coercion, position of authority over the person, in most cases for the purpose of harming his/her life or unlawfully exploiting them through acts of indecency, prostitution etc... Human trafficking also means the exploitation of people by involving them in forced begging and paid illegal adoption arrangements etc... Exploitation means any form of interests based on sex, forced labour, slavery and other similar practices or the removal of an organ of a human being...

[15] Article 251 of the above-mentioned Organic Law n° 01/2012/OL of 02/05/2012 provides that : “Any person who by any means participates , personally or through an intermediary , in trafficking a person out of Rwanda to a foreign country by: 1° means of deception, use of force, threat or any other form of coercion; 2° taking advantage of his/her troubles with the authorities, conflict with the law , being an orphan, a destitute, lonely, limited knowledge, hard labour, living in a family with children close in age, unemployment, disease, physical or mental disability, a loophole in the law or any other situation likely to impair a normal person to act; shall be liable to a term of imprisonment of one (1) year to three (3) years and a fine of five hundred thousand (500,000) to two million (2,000,000) Rwandan francs”.

[16] Article 252 of the same Organic Law reads that “any person who abducts or causes to be abducted, arrests or causes to be arrested, detains or causes to be detained, transports or causes to be transported any person in order to make them slaves, sell them as slaves, force them into begging, illegally adopt them on payment of a consideration, take them in indecent pictures, in dangerous sports, in armed conflicts, live together as husband and wife for the purpose of torturing them or selling their organs shall be liable to a term of imprisonment of seven (7) years to ten (10) years and a fine of five million (5,000,000) to ten million (10,000,000) Rwandan francs”.

[17] For the judgment under appeal, the High Court found that Ndikumana Clovis has done all his best to conceal his deal with Shurweryimana Ines, adding that while at Rwanda border-post, and when being checked by Immigration and Emigration officers, he submitted to Niyonzima Godfroid, one of the

Immigration officers and told him that he does not know Shurweryimana Ines, adding that he only met her on the bus, but it was later discovered that both Ndikumana Clovis and Shurweryimana Ines, the victim, had all along been together.

[18] The High Court has as well found that Ndikumana Clovis took Shirweryimana Ines out of her country with a planned deal; as he was well aware of his final destination, and he was expecting a payment of between 600 and 700 \$ upon delivery. This indicates that the acts of Ndikumana Clovis did not constitute a genuine help to Shurweryimana Ines as alleged by the accused, as he instead intended to exploit her and thereof make an illicit profit out of her as he had planned to transfer her over to a person by the name of “Eddy”, who in turn, could decide the ultimate fate of Shurweryimana Ines with the intention to recover all that he would have spent on her, more so that the victim would be a stranger and unknown to her host, to whom she has no agreement whatsoever, and she would put to the sole mercy of her host, and consent to do anything that she would not otherwise do.

[19] The High Court found that the concurrence of all facts around the victim’s situation from the Republic of Burundi, her country, to Rwanda; as well as the considerable profit in terms of dollars that the accused was expecting upon delivery indicates that Ndikumana Clovis had an intention to traffic her victim by committing the act he was arrested for, and it convicted him to an offence of human trafficking.

[20] The case file contains a statement of Ndikumana Clovis submitted to the Investigation Bureau on 31/03/2018, in which he pleaded guilty to the offence of trafficking in persons to foreign countries. He acknowledged that he became involved in such

offence due to poverty constraints. He narrated that he has a former classmate named Eddy who resides in Uganda and with whom they have partnered in the recruitment, trafficking, and selling of girls to Arabic countries. He admitted that he has sold one girl named Hadija, but unfortunately, she has been diagnosed positive with Hepatitis. Additionally, he stated that upon the girl's delivery, he receives a payment ranging between 600 and 700 dollars, while Eddy takes the victims to Kenya for visa application processing.

[21] The case file contains a statement dated 02/04/2018 drawn by Niyonzima Godfroid, an officer of the Rwanda Immigration and Emigration Service. He testified that on 31/03/2018 at around 3 pm, he encountered Ndikumana Clovis together with Shurweryimana Ines coming from the Republic of Burundi. He observed both of them discussing, but when he asked Ndikumana Clovis about their destination, he replied negatively. The officer then questioned Shurweryimana Ines about her destination, to which she replied that she was travelling for study purposes. This response raised suspicion for the Immigration officer, prompting him to check Ndikumana's mobile phone. He discovered that Ndikumana had been chatting with other traffickers of persons, leading him to immediately report the case to an Investigation Officer. The similar narrative was also submitted by Nirora Peter, who arrested Ndikumana Clovis. Additionally, it was noted that the suspect's mobile phone contained messages regarding price negotiations upon the victim's delivery into the Republic of Uganda.

[22] The case file also contains a statement made by Shurweryimana on 31/03/2018, wherein she admitted that she was with Ndikumana Clovis when the latter was arrested at

Akanyaru border-post, and that Ndikumana was taking her to Uganda. She further stated that Ndikumana Clovis had promised to cover all expenses for her, and that he is the one who had also processed her passport.

[23] In convicting Ndikumana Clovis to the offence of human trafficking, the High Court underscored that it is undoubtedly proven that Ndikumana Clovis was arrested while attempting to cross Shurweryimana Ines over into the Republic of Uganda. Besides, he has undertaken to pay for the victim's tickets and all other related travelling expenses. He took her with a false promise for a job but with no details about the nature of the job, neither about his future employer nor her work station or any intermediary brokerage, adding that the victim was left to the sole mercy of strangers who were passing her over to each other with no possibility of making her own decision of whether proceeding with the journey or returning back to her country since all her life was now left in the hands of Ndikumana Clovis.

[24] The Court found that for the accused to be convicted to the offence of human trafficking, one of the acts highlighted under article 252 of the above mentioned law suffices for the conviction of the accused, and these include acts of abducting or causing to be abducted, arresting or causing to be arrested, detaining or causing to be detained, transporting or causing to be transported with a sole intention of having unlawfully exploited.

[25] With regard to the suspect's defence by which he argues that he did not deceive Shurweryimana since the latter had herself consented to the deal of crossing the border and meeting Eddy in Uganda, the Court has found it unfounded, more so that he took advantage of her destitute situation and unemployment from Burundi, her own country and promised her of a well-paying job,

and that is why he undertook to find her the passport and crossed her over the border-posts; yet Shurweryimana Ines, the victim, had no idea of her destination, arrival time, the nature of the promised job, her future employer, not even the salary expectations. Besides, it is Ndikumana Clovis, the suspect, who has undertaken to pay for all her travel-related expenses.

[26] The Court has also found that even if Shurweryimana Ines, the victim, had consented to the journey; that might not absolve Ndikumana Clovis for the offence of human trafficking since he had already made her an empty promise for an employment for a hidden intention of exploiting her for his own profit¹. It found that for the offences of trafficking in persons, what matters most is not the consent of the victim, it is rather the tricks that human traffickers use to make their victims fall prey.

[27] With regards to request of Ndikumana Clovis by which he requested to be convicted to the offence of attempted human trafficking, and not to human trafficking, the scholars argue that for acts of human exploitation in the context of the offence of human trafficking, it is not the offence consumption that is so important, what matters most is the offender's intent, since it is

¹ Article 3.b) of Protocol to prevent, suppress and punish trafficking in persons provides that "The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used. Consent cannot therefore be invoked as a defence to exonerate a person from criminal liability." https://www.unodc.org/documents/congress/background_information/Human_Trafficking/TIP_Manual_fr_module_01.pdf , accessed on 16/10/2020.

such criminal intention, human exploitation, that must be deterred, and not the offence consumption².

[28] The argument by the above law scholars concurs with the provision of article 3 of the United Nations Additional Protocol to prevent, suppress and punish the trafficking in persons, especially women and children signed at Palermo in Italy on 15/11/2000, and which Rwanda has ratified on 26/09/2003³, and

² L'«objectif de l'exploitation» est un élément moral de type *dolus specialis*: le *dolus specialis* peut être défini comme l'objectif visé par l'auteur du crime lorsqu'il commet les actes matériels de l'infraction. C'est l'objectif qui importe et non le résultat concret auquel est parvenu l'auteur du crime. Ainsi, la satisfaction de l'élément de *dolus specialis* ne nécessite pas que le but soit effectivement atteint. En d'autres termes, les «actes» et les «moyens» de l'auteur du crime doivent viser à exploiter la victime. Il n'est par conséquent pas nécessaire que l'auteur du crime exploite effectivement celle-ci. P.5, https://www.unodc.org/documents/congress/background_information/Human_Trafficking/TIP_Manual_fr_module_01.pdf accessed on 16/10/2020

³ https://www.unodc.org/documents/data-and-analysis/glotip/Annex_II_-_Definition_and_mandate.pdf visité le 16/10/2020.

Article 3, paragraph (a) of the Protocol states that trafficking in persons “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Article 3, (b) states that: “The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.”

the article provides that the accused might not invoke the victim's consent for defence as long as some acts under the above mentioned article have been committed.

[29] The Court of Appeal finds no irregularity into the High Court's verdict as the latter convicted Ndikumana Clovis to an offence of human trafficking since he took Shurweryimana Ines, the victim, from the Republic of Burundi, and crossed her to Rwanda border-post taking her to Uganda on an empty promise of a job; yet he well knew that he was taking her to a person by the name of Eddy in the Republic of Uganda for a payment of between 600\$ and 700 \$ upon the victim's delivery and then be flown to Saudi Arabia for trade. The Court of Appeal finds that the above acts constitute an offence of human trafficking as provided under articles 250 and 252 of the above mentioned Law n^o 01/2012 of 02/05/2012 together with the aforementioned United Nations Additional Protocol to prevent, suppress and punish trafficking in persons, especially women and children.

[30] With regard to Ndikumana Clovis' request for the requalification of the offence for which he was convicted, citing a precedent set by the judgment RPA 00022/2019/CA for Good Luck Asser Marahaba rendered on 17/07/2020, the Court of Appeal has found his request meritless since for the cited case, Ngowi Good Luck Asser Marahaba was arrested on his way before he crosses Kwizera Marie Claire into the Republic of Uganda, the ultimate destination, and his plan got foiled. The Court convicted him to his role into the acts taking a person out of her country with a purpose of trafficking her as per the provisions of article 27 of the Organic Law n^o 01/2012/OL; while for this case, it has been underscored that for human trafficking offences, it is not the offence consumption that is so important,

adding that what matters most is the offender's intent, since it is such criminal intention of human exploitation that must be deterred, and not the offence consumption.

Whether Ndikumana Clovis pleaded guilty and was not granted the penalty reduction and whether he can be granted the penalty reduction at this level

[31] Ndikumana Clovis together with Counsel Nkundabatware Bigimba Felix, his legal counsel, argue that the accused has been so cooperative to the courts, in the High Court, he pleaded guilty, he pointed out the interest he expected from the offence commission, but he was not granted the penalty reduction. They further add that his offence has not yet caused any serious damages and he thus prays to the Court to refer to articles 77 and 78 of the Penal code then into force, and have his penalty reduced, and subsequently suspended, if possible.

[32] The Prosecutor argues that the law provides no penalty reduction at the appellate instance, rather it provides that the accused who pleads guilty at the onset of the proceedings can be granted the penalty reduction, Ndikumana Clovis has only pleaded guilty before the Investigation Bureau, but before the Court, he did not plead guilty, and therefore he cannot be granted the penalty reduction because the law does not provide for such procedure and in case such procedure is applied, it would be illegal (contra legem).

DETERMINATION OF THE COURT

[33] Article 76 of the Organic Law n° 01/2012/OL of 02/05/2012 instituting the penal code that was then into force at the time the offence was committed provides that the judge may

consider the appropriateness of mitigating circumstances which preceded, accompanied or followed an offence. The decision to accept mitigating circumstances must be justified. Article 77 of the same law stipulates that offence mitigating facts include when ... the accused, before the commencement of prosecution at the first instance happens to sincerely plead guilty, and when the committed offence has caused no serious harm.

[34] Article 78, 1^o of the above mentioned Law n^o 01/2012/OL of 02/05/2012 provides that life imprisonment or life imprisonment with special provisions is replaced by a penalty of imprisonment of not less than ten (10) years, while article 85 of the same Law provides that for the purpose of this very Organic Law, the suspension of penalty is a judge's decision to order the stay of execution of a penalty of imprisonment not exceeding five (5) years if the convict has not been previously sentenced to imprisonment or to community service as an alternative penalty to imprisonment of more than six (6) months as a result of a final judgement.

[35] In the judgment under appeal, Ndikumana Clovis claims that his oral and written submissions to the Investigation Bureau, as well as his guilty plea, were extracted through beatings. However, the Court decided not to consider this submission since the medical report supporting his allegation indicated that he was transferred to Munini Hospital from Nyamyumba Health Centre due to stomach ulcers and depression-related ailments. The appealed judgment held that medically proven conditions of stomach ulcers and extreme depression-related ailments cannot justify allegations of beatings for false self-incrimination. Additionally, it stated that even the sole arrest for criminal prosecution could induce depression.

[36] The Court of Appeal finds that Ndikumana Clovis has never pleaded guilty before the High Court, as he just alleges it. Even the little he admitted before the Investigation Bureau, he later changed it and submitted that he pleaded guilty due to the exerted beatings. The Court determined that his claim for sentence reduction in return for his guilty plea has no justification.

[37] For the purpose of this case, the Court has finds no point in the Prosecution submission by which Ndikumana Clovis deserves no sentence reduction because he failed to plead guilty at the onset of the proceedings. The Court holds that since article 76 of the above mentioned Organic Law provides that the judge may consider the appropriateness of mitigating circumstances which preceded, accompanied or followed an offence, this means that the suspect can start denying the charges brought against him/her, but he/she reserves a right of pleading guilty at any stage of the proceedings, whether before the Prosecution or before the court. That concurs with the ruling of the case RPA 0246/09/CS decided by the Supreme Court with the Prosecution v. Mukankusi Victoire whereby the Court held that nothing forbids the Court to reduce the suspects' penalty as long as he/she sincerely pleads guilty to their offence, the late guilty plea might not be a ground for denying suspects a favor for penalty reduction, more so that there no set time limit that bars the offence suspects from being remorseful and deciding to express the truth before the courts of law⁴.

⁴ Judgment n° RPA 0246/09/CS rendered by the Supreme Court on 14/12/2012, Rwanda Law Report, n° 17, Volume II, 2013, published in April 2023

[38] At this instance, the Court finds that Ndikumana Clovis has sincerely pleaded guilty to his offence and he apologises and regrets his acts. Nevertheless, since Ndikumana Clovis is a recidivist to such crimes, more so that he himself admits to have ever engaged into an offence of human trafficking as he once trafficked a certain Burundian girl by the names of Hadija, whom he later returned back to Burundi as she was diagnosed with hepatitis sickness, and he again recruited Shurweryimana Ines, another victim; all adding to a fact that this is a serious crime with horrible effects on the victim, who suffers the whole trauma of being abducted and separated from her family, a desolation that can lead to the victim's death, he does not deserve the penalty reduction.

[39] Considering all the above provided elucidations, the Court of Appeal holds that the appeal by Ndikumana Clovis has no justification and the Court sustains the previous judgment RP 00017/2018/HCC/HCCIC rendered on 18/10/2018 by the High Court, Specialized Chamber hearing international and transnational crimes.

[40] The Court finds that the request of Ndikumana Clovis for the suspension of penalty cannot be granted, because as provided under the Article 85 of the aforementioned Law N^o 01/2012 of 02/05/2021, the suspension of penalty is applicable in case the convict has been sentenced to a penalty of imprisonment not exceeding five (5) years, Ndikumana Clovis has been sentenced to 7 years of imprisonment.

III. DECISION OF THE COURT

[41] Holds that the appeal lodged by Ndikumana Clovis has no justification;

[42] Holds that the ruling of the judgment RP 00017/2018/HC/HCCIC rendered on 18/10/2018 by the High Court, Specialized Chamber hearing international and transnational crimes is sustained;

[43] Orders that the court fee are borne to the Public Treasury.