

## PROSECUTION v. MURINDA ET AL.

[Rwanda HIGH COURT – RPA 0448/13/HC/NYA (Ngabire, P.J.) April 25, 2014]

*Criminal procedure – Distance between eye witnesses and the crime scene – Contradictory testimonial evidence – Contradictory testimonial evidence creates doubt and the latter favours the accused – Law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure, article 35.*

*Criminal procedure – Guilty plea – Reduction of the penalty – Unequivocal guilty plea entails the reduction of the penalty.*

*Damages arising from the offence – They are awarded in the discretion of the court based on the consequences occasioned by the committed offence – None can reclaim damages where they were granted by the first instance court.*

**Facts:** Intermediate Court of Huye convicted Deny Murinda and his wife Cécile Dukuzeyezu of attempted murder perpetrated against Vital Kalisa. They were sentenced to life imprisonment and ordered to pay Vital Kalisa 2,148,725 Frw in damages. Both Murinda and his wife appealed to the High Court, the former requesting reduction and suspension of the penalty as well as reduction of damages while Cécile Dukuzeyezu was requesting to be acquitted.

In responding to the grounds of appeal, the Prosecution contended that the guilty plea and the forgiveness seeking of Murinda were not authentic. In contrast, the Prosecution added, he wanted to cover his wife so as to be sentenced lonely. The Prosecution concluded by requesting the court to uphold the ruling of the appealed judgment.

**Held:** 1. The fact that the distance between the crime scene and witnesses was too long in such a way that they could not see whether they co-operated to commit the crime and the fact that they could have rushed for rescue if they had been in the vicinity of the crime scene as well as their contradictory statements create doubt which favours the accused. Hence, Cécile Dukuzeyezu is acquitted.

2. The guilty plea made by the accused is unequivocal. Hence, it is a ground for the reduction of the penalty and therefore he is sentenced to 25 years of imprisonment.

3. Based on the consequences of the committed crime, the damages requested by victim are not excessive as alleged by the accused. Hence, they are upheld. The claim of the civil party requesting the increase of awarded damages has no merit since the damages he requests have been granted by the first instance court.

**Cécile Dukuzeyezu is acquitted.**

**Deny Murinda is sentenced to 25 years in jail.**

**Deny Murinda must pay Kalisa Vital 2,148,725 Frw.**

**Deny Murinda is exempted from court fees since he is in jail.**

**Statutes and statutory instruments referred to:**

Law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure, article 35.

**No case was referred to.**

# Judgment

## I. BRIEF BACKGROUND OF THE CASE

[1] In the case whose number has been stated above, Deny Murinda pleaded guilty of having battered Vital Kalisa with blows of machetes in the evening of November 2, 2012 following a dispute over fodder and crops. In addition, he admitted that he solely battered him with blows of machetes. On the other hand, his wife Cécile Dukuzeyezu pleaded not guilty of attempted murder which they were co-accused of. On October 16, 2013, the Intermediate Court of Huye ruled on the case and held that the criminal action filed by the Prosecution and the civil action filed by Vital Kalisa have merit. The Court found Deny Murinda and Dukuzeyezu Cecile guilty of attempted murder. Furthermore, the Court ordered both Deny Murinda and Cecile Dukuzeyezu to pay 2, 148, 725Frw. The court decided that Deny Murinda and Cécile Dukuzeyezu lost the case, sentenced them to life imprisonment and ordered them to pay 2,148,725Frw to Vital Kalisa. Kalisa appealed on November 4, 2013 requesting the penalty reduction and its suspension and the reduction of damages while Cecile Dukuzeyezu appealed requesting to be declared innocent.

## II. ANALYSIS OF LEGAL ISSUES

[2] Both in his appeal notice and submissions as well as during the case hearing, Murinda Deny assisted by Counsel Maurice Ndacyayisenga requests the penalty reduction and suspension of the penalty imposed at the first instance since he pleaded guilty and sought forgiveness but in vain. He also requests the Court to reduce the damages he was ordered to pay Vital Kalisa so that he can pay him at most 500, 000 Frw while Cécile Dukuzeyezu requests to be declared innocent. In contrast, the Prosecution request to uphold the appealed against judgment since the guilty plea made by Deny Murinda is not genuine as he tends to cover his wife so that he can be solely convicted. As for Vital Kalisa, he requests the increase of the damages awarded at the first instance. Hence, in this case the Court will analyse whether Vital Kalisa Deny Murinda his wife Cécile Dukuzeyezu co-acted. In other words, whether the guilty plea made by Deny Murinda is genuine in such a way that it can constitute mitigating circumstance for him (1) to consider issue of the awarded damages and those sought in this case (2).

**Whether Deny Murinda and his wife Cécile Dukuzeyezu cooperated in battering Vital Kalisa with blows of machete and whether the guilty plea and the forgiveness seeking made by Deny Murinda are genuine to constitute the mitigating circumstance**

[3] The Prosecution rejects the defence presented by Deny Murinda who states that he lonely battered Vital Kalisa with the machete by first wounding his leg which weakened him and fell down while Deny Murinda continued battering him with the machete. In contrast, the Prosecution submits that the guilty plea and the forgiveness seeking made by Deny Murinda is equivocal because Kalisa Vital sustained 18 blows of machete on various body parts excluding the leg. This implies, for the prosecution, he was helped by someone as testified.

[4] In his complaint filed to the Judicial Police on 03/11/2012, a day after he was battered with a machete, the Court finds that Vital Kalisa stated that he was wounded on different parts of the body including the leg. This is emphasized by the photo in the case file under identification code 34 which reveals four wounds on the legs of Vital Kalisa. Therefore, the

statement of the Prosecution that Deny Murinda did not batter Vital Kalisa on the legs with the machete has no basis; especially that both in his complaint and pleading, Vital Kalisa affirms that Deny Murinda injured him with the machete on the neck and the head. This is also buttressed by the photos in the case file under identification codes 30, 31 and 33 and this confirms beyond any reasonable doubt the statements of Deny Murinda that he injured Vital Kalisa with a machete who then fell down and the accused continued to batter his victim with blows of machete because it is clear to the Court that someone whose two legs, neck and head have been wounded by the machete can be weakened and fall down in such a way that whoever wants may continue battering him without any help; especially that Vital Kalisa who was injured states in his complaint that when he started fighting with Murinda, they both fell down.

[5] The Court finds that the witnesses relied on in confirming that Deny Murinda and Cécile Dukuzeyezu cooperated in battering Vital Kalisa with the machete namely Esperance Mukakimonyo and Mathias Iyakaremye were on the other hill opposite to the place where Vital Kalisa was battered as affirmed by themselves during their interrogation by the judicial police. This was also affirmed by Vitali Kalisa himself in his aforesaid complaint and the Executive Secretary of Remera Cell in his report of September 26, 2013 whereby he testifies that the distance between the crime scene and the place where the witnesses reside is too long, in such a way that they could not see how Vital Kalisa was wounded. Therefore, the statements of Esperance Mukakimonyo and Mathias Iyakaremye inculcating Cecile Dukuzeyezu as a co-offender of her husband, Deny Murinda create doubt on top of that if they had seen Vitali Kalisa being battered; they should have crossed to save him. In addition, Iyakaremye personally states that when he was at his home he heard Vital Kalisa screaming **“save me I am being killed”**. However, they admitted that they had never reached the crime scene. Moreover, the Court finds that the statements of those two witnesses (Esperance Mukakimonyo and Mathias Iyakaremye) are contradictory since the first testifies that it is Deny Murinda and his wife Cecile Dukuzeyezu who battered Vital Kalisa with the machete. However, in some of his statements he affirms: **“I saw the person over someone beating him but I could not see what he was beating”**. It is clear that only one person battered Vital Kalisa. As for the second (Iyakaremye Mathias), he states that when he heard the screaming of Vital Kalisa calling for help he positioned himself where he could have a clear view of the scene and saw a person over someone else hitting, which clearly implies that he saw only one person battering Vital Kalisa with a machete. However, Mathias Iyakaremye adds this “at the end of the events I saw a husband and a wife moving towards Murinda’s house”. The Court finds the testimonies of Esperance Mukakimonyo and Mathias Iyakaremye explaining that Dukuzeyezu Cecile cooperated with her husband Deny Murinda in battering Vital Kalisa with the machete to be false. Therefore, their statements should not be considered pursuant to article 65 of the Law relating to evidence and its production.

[6] Furthermore, the Court finds that Makuza Evariste, Uwimana Kaniziyo and Nyiraneza Takirine attest that Dukuzeyezu Cécile was at Evariste Makuza’s house at the time Murinda Deny was battering Kalisa Vital with the machete. The statements of Evariste Makuza, Uwimana Kaniziyo and Nyiraneza Takirine are consistent with the defence presented by Dukuzeyezu Cécile that he was not with her husband when he battered Kalisa Vital with the machete. In contrast, the Court finds she was at Evarist Makuza’s since she allegedly moved from there when they heard the scream that Deny Murinda and Vitali Kalisa had fought. These statements also create doubt on whether Dukuzeyezu Cécile might have cooperated with her husband Murinda Deny in macheting Vital Kalisa. This is emphasized by the fact that in the course of the hearing the prosecution has failed to demonstrate that Cécile

Dukuzeyezu was herding with her husband so that she might have cooperated with him in macheting Vital Kalisa. Moreover, there is no other reliable evidence proving beyond reasonable doubt that Cecile Dukuzeyezu cooperated with her husband in macheting Vital Kalisa.

[7] Basing on the above explanations, the Court finds that the prosecution has failed to produce any reliable evidence proving beyond reasonable doubt that Cécile Dukuzeyezu has ever arrived at the place where Deny Murinda bettered Vital Kalisa with the machete and cooperated with the former in attempted murder. Hence, doubt should be given in her favor so as to be acquitted as provided for by article 165 of Law relating to the code of criminal procedure. Furthermore, the Court finds that the explanations provided above indicate that, contrary to the findings of the Intermediate Court of Huye, the guilty plea and the forgiveness seeking made by Deny Murinda before the judicial police, the prosecution, before the Intermediate Court of Huye as well as in the course of the hearing of this case are unequivocal instead of being tricks to avoid consequences of the offence and cover up his wife so as to be solely convicted. Therefore, his plea of guilty and forgiveness seeking should constitute for him mitigating circumstance which should entail the penalty reduction following the provisions of article 35 of Law relating to the code of criminal procedure as well as article 77 and 78 of Organic law instituting the penal code. However, his cruelty and the gravity of the crime of macheting Vital Kalisa should be taken into consideration in the reduction of the penalty. As for his request for penalty suspension, the Court is of the view that his penalty should not be suspended because of his extreme cruelty in macheting Vital Kalisa and should serve the entire imposed penalty in prison so as to be sufficiently corrected with more reason that the imposed penalty is far greater than that which can be suspended as provided for by article 85 of the aforementioned Organic law.

### **Regarding damages**

[8] Deny Murinda requests the court to reduce the damages totalling 2,148,725Frw he and Cecile Dukuzeyezu were ordered to pay Vital Kalisa since, according to him, they are excessive. He submits that he would pay him 500,000Frw at the most while Vital Kalisa requests the Court to order Deny Murinda to add 300,000Frw in addition to the amount awarded at the first instance he paid the motorcyclist who used to provide him with food while he was admitted to the hospital. In addition to this, he requests the court to award the moral damages amounting to 1,000,000Frw, 200,000Frw for involving him in litigations and 300,000Frw for counsel's fees at the appeal level.

[9] The Court finds that 2,148,724 granted to Vital Kalisa in damage is not excessive as alleged by Deny Murinda following the gravity of attempted murder committed against Vital Kalisa because 18 machete injuries on his body Deny Murinda accepts to have caused, inflicted him much pain in such way that, though Vital Kalisa did not die, the hacked parts of the body inflicted him much pain and left many scars as proved by photos in the case file. In addition, the pain he suffered from can neither be compared to damages awarded to Vital Kalisa nor to 500,000Frw which Murinda proposes to pay him with more reason that Vital Kalisa spent long time in the hospital for treatment. Furthermore, this implies that he suffered much loss following the hacking of which he was victim. Hence, the ground of appeal of Deny Murinda has no merit.

[10] The Court finds that the damages Vital Kalisa was awarded at the first instance include the moral damages, counsel fees and the medical expenses as it is motivated in paragraph 18 of the appealed judgment. Hence, additional moral damages and damages he

requests at the appeal level have no merit with more reason that moral damages to be awarded to him should be determined at the discretion of the Court. In addition, he did not prove that he spent much time in court litigations as he was, on the contrary, represented by the lawyer. At the appeal level, no counsel's fees should be awarded since it was necessary for him to be party to the case because it was found that the appeal of Dukuzeyezu Cécile has merit. It is clear that he cannot pretend he has hired a lawyer at appeal level because of Deny Murinda. As for 300, 000Frw Vital Kalisa requests because he contracted a motorcyclist who regularly provided him with food at the hospital, the Court finds that it cannot be awarded as the contract he base on was executed on October 2, 2012 prior to him being hacked and the reality of the other contents of contract is questionable .

### **III. THE DECEISION OF THE COURT**

[11] Decides that the grounds of appeal of Cécile Dukuzeyezu have merit while the grounds of appeal of Deny Murinda have merit in part. Hence, in light of the grounds explained above, the judgment RP 0256/13/TGI/HYE rendered by Intermediate Court of Huye on October 16, 2013 is overruled in respect to Dukuzeyezu Cécile who must be acquitted and to the penalty Deny Murinda must be sentenced to.

[12] It acquits Cécile Dukuzeyezu.

[13] It overrules the judgment n° RP 0256/13/TGI/HYE rendered by Intermediate Court of Huye on October 16, 2013 in regard to Cécile Dukuzeyezu who is acquitted and to the penalty Deny Murinda is sentenced to following the grounds explained above.

[14] It sentences Deny Murinda to 25 years in prison.

[15] It orders Deny Murinda to pay 2,148,725Frw in damages as ordered at the first instance; failure to do so within the time provided for by the law, the amount shall be deducted from his assets through State coercion.

[16] It exempts Murinda from the court fees totaling 4,700Frw since he is in prison following the provisions of article 268 of the law relating to the code of criminal procedure.

