

PROSECUTION v. BAGORA

[Rwanda SUPREME COURT – RPA0308/10/CS (Nyirinkwaya, P.J., Mukanyundo and Rugabirwa, J.) 9 January 2015].

Damages – Civil damages resulting from an offense – Damages based on the impact that would be caused by the offense in case the claimant is not the undertaken victim – The civil party has right to damages in case the offense should have impact on him/her, terrified and traumatized him/her – Law of 30 July 1888 relating to contracts or obligations, article 258.

Facts: In the High Court Chamber of Musanze, Bagora was charged of attempt to murder basing on the fact that he was caught while going to throw a grenade on the house of his sister. Mukapasika Marie Jeanne, daughter of Nyirabazamanza also filed a civil case basing on the torture they went through by him since her childhood until 14 August 2007 when he injured her eye and on 25/09/2009 when he wanted to kill all of them with a grenade.

The Court convicted Bagora and sentenced him with 4 years of imprisonment and ruled that the damages requested by Mukapasika are not valid since the offense of injuring her eye has not been argued upon in this court. Concerning the offence of throwing the grenade, she does not explain how the offense affected her since the intended victim who is her mother, is still alive. Mukapasika appealed to the Supreme Court.

Held: The offense of which Bagora Jonas was convicted has affected Mukapasika Marie Jeanne since the grenade that he intended to throw should have great impact on her and it is understandable that even if the act was not accomplished, it terrified and traumatized her therefore, she has rights to damages.

Appeal has merit.

The appellant must be awarded damages equal to 1.000.000Frw from Bagora.

The appealed judgment changes only on issues concerning the damages.

Court fees goes to the Public Treasury.

Statutes and statutory instruments referred to:

Law of 30 July 1888 relating to contracts or obligations, article 258.

No case laws referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] This case commenced in the High Court Musanze Chamber, when the prosecution charged Bagora with a crime of attempted murder, stating that on 25 September 2009, he was caught near his sister's home Nyirabazamanza with a grenade intending to throw it at his sister's house with which they had land conflicts. Mukapasika Marie Jeanne, daughter of Nyirabazamanza also filed a civil action basing on the torture they went through since her

childhood until 14 August 2007 when he injured her eye and on 25 September 2009 when he intended to kill all of them with a grenade.

[2] On 24 September 2010, That court ruled in the case RP 0100/09/HC/MUS, convicting Bagora of attempted murder and sentenced him to 4 years of imprisonment and ruled that the damages requested by Mukapasika have no merit since the offence of injuring her eye has not been tried before, while concerning the offence of throwing the grenade, she has not explained how it has affected her, especially when the targeted person who is the mother, is still alive.

[3] Mukapasika appealed in the Supreme Court on 19 October, 2010. The case was publicly tried on 1 December 2014, Bagora Jonas was assisted by Council Nzabarantumye Augustin while Mukapasika Marie Jeanne a civil party was assisted by Council Twagirayezu Laurent, while the Prosecution was represented by National Prosecutor, Higaniro Hermogène.

II. ANALYSIS OF THE LEGAL ISSUE

To know whether Mukapasika Marie Jeanne can be awarded civil damages.

[4] Mukapasika Marie Jeanne states that in the first instance, she requested for damages basing on the fact that Bagora injured her eye and that his intention was to kill them with a grenade in their house where they lived with her mother and her little sister, She appealed requesting for damages equal to 5.000.000Frw basing on the grenade that was going to be thrown on them that left her with trauma.

[5] Twagirayezu Laurent Council of Mukapasika also states that if Bagora should have thrown the grenade at the house of his sister as intended, it shouldn't have differentiated among the victims and that's why he finds his client having rights to damages as claimed for in the first instance court, since the offence caused her trauma as mentioned.

[6] Bagora Jonas stated that he had no problem with his nephew Mukapasika Marie Jeanne, but had it with her mother and that he was punished for intending to throw grenade and given a sentence of 4 years of imprisonment, therefore he added that he cannot be ordered to pay damages since nothing was destroyed by the grenade.

[7] Nzabarantumye Augustin Council of Bagora Jonas also states that there is no ground on which Bagora can be ordered to pay damages from the offense of throwing the grenade, since Mukapasika Marie Jeanne presented her claim of damages on appeal level, and highlights that the competent person to claim damages is her mother who is still alive.

[8] The prosecution representative states that they have no claim since they have been satisfied with the decision taken on the penalty but finds reason in the award of damages to Mukapasika Marie Jeanne, since the throwing of the grenade should have had impact on her.

THE VIEW OF THE COURT

[9] Article 258 of the Civil Code Book III states that "Any act of a person that harms another obliges that person who committed that fault to repair"

[10] Bagora Jonas was punished for the attempted murder when he intended to throw the grenade in the house of his sister Nyirabazamanza but lucky enough the offense was stopped without his participation and admits also that his action should have caused harm to his nephew Mukapasika Marie Jeanne since she resides in the same house.

[11] The court therefore, finds that the offense of which Bagora was convicted has affected Mukapasika Marie Jeanne since the grenade he intended to throw should have had great impact, and this is understandable that even though the act has not been accomplished, it has terrified and traumatized her.

[12] Concerning the money requested by Mukapasika Marie Jeanne, the court finds that 5.000.000frw is much compared to the damages caused by the offense and in its discretion; she can be awarded moral damages equal to 1.000.000frw.

III. DECISION OF THE COURT

[13] The appeal of Mukapasika Marie Jeanne has merit.

[14] Orders Bagora Jonas to award her moral damages equal to one million (1.000.000Frw).

[15] Rules that the judgment RP 0100/09/HC/MUS rendered on 24/09/2010 changes in regards damages.

[16] Orders that the costs to be met by the State.