

PROSECUTION v. TWAGIRAYEZU

[Rwanda SUPREME COURT– RPA0038/10/CS (Mutashya, P.J., Kanyange and Hitiyaremye, J.) 21 March, 2014]

Damages– Civil damages resulting from a crime – Allocation of the financial loss not claimed in the name of all concerned – None can claim on his behalf when claiming for the entire family – Civil damages to be paid by the convicted who benefited from penalty reduction in case they are ordered in solidum – The reduction of civil damages in solidum when one of the concerned did not appeal against them. – The fact that the appellant got a lower punishment than his co-offender cannot be the ground to charge him/her lesser damages when the reduction of his/her penalty was not based on his/her minor responsibility in the offence but rather in his/her guilty plea.

Facts: Twagirayezu and his co- offender were charged with the offence of murder in the High Court, Nyanza chamber. The Court convicted them and sentenced the appellant to ten years of imprisonment and his co-offender to life imprisonment, and ordered them to pay in solidum the civil and moral damages totalling five million, one hundred forty five thousand as requested by Ngendahimana in his civil action.

Twagirayezu appealed to the Supreme Court arguing that the court misunderstood the circumstances in which the offence was committed, that he pleaded guilty and sought forgiveness and got the heavy penalty. Regarding civil damages, he stated that he was ordered to pay excessive damages that he could not afford and that they took no money from the deceased as it is said. During the hearing, he stated that he withdrew his appeal in regard to the penalty as he had already served it but that he maintains it in respect to damages.

Held: 1. One hundred forty five thousand Rwandan francs (145,000 Frw) relating to expenses Ngendahimana spent on funerals of his young brother as well as procedural fees must be fully paid since the appellant does neither deny them nor prove them to be excessive.

2. Relating to the financial loss, Ngendahimana Jean Marie Vianney filed a claim on his behalf and he cannot thus claim for the entire family and, regarding himself, he has produced no evidence proving that Munyeshuri who was killed had special responsibility of taking care of him so as to be awarded damages for the financial loss suffered because of losing him.

3. With regards to moral damages, Ngendahimana Jean Marie Vianney deserves them because his brother was killed as proven by the case file, but as five million (5,000,000) that he claims are excessive, the Court must grant them in its discretion considering the sorrow caused to him by the killing of Munyeshuri and the way he was killed; therefore, he deserves to be granted two million Rwandan francs in the Court's discretion.

4. Damages are to be paid in solidum by the co-offenders even if one of them did not appeal because they are co- offenders and their responsibility should be jointly considered.

5. The fact that the appellant got a lower punishment than his co-offender cannot be the ground to charge him lesser damages because the reduction of his penalty was not based on his minor responsibility in the offence but rather on his guilty plea.

**Appeal has merit.
Accused must pay damages in solidum**

**Appealed judgment changes with regard to
damages to be paid by the co-offenders.
Court fees are to the public treasury.**

No statute and statutory instrument referred to.

No case referred to.

Authors referred to:

- M.D. Dalloz, Aîné, *Répertoire méthodique et alphabétique de législation, de doctrine et de jurisprudence*, Tome Quatrième, Paris, Bureau de la Jurisprudence Générale du Royaume, 1846, p. 91, para. 593.
- Serge Guinchard, *Droit et Pratique de Procédure Civile*, Dalloz, 1999p. 1144. Para. 5915

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Twagirayezu Pontien and Ngendahayo Jean de Dieu were prosecuted before the High Court, Nyanza chamber, for having murdered the named Munyeshuri they met in the pub on 17 August 2009 and then they left his corpse on the street.

[2] The High Court that was seized delivered its verdict whereby it convicted Twagirayezu Pontien and Ngendahayo Jean de Dieu basing on the fact that Twagirayezu Pontien pleaded guilty and accused Ngendahayo immediately after his arrest stating that they beat him and went home without knowing that he was dead. The Court sentenced Twagirayezu Pontien to ten (10) years of imprisonment and Ngendahayo Jean de Dieu to life imprisonment and ordered them to pay Ngendahimana in solidum moral damages equivalent to 5,145,000,000 Frw.

[3] Twagirayezu appealed against the decision, arguing that the Court misunderstood the circumstances, he pleaded guilty and sought forgiveness but was sentenced to the severe punishment.

[4] Regarding damages, Twagirayezu states that civil damages he was ordered to pay are excessive and he could not afford them and that allegations that they snatched money from the deceased are false.

[5] The hearing was held in public on October 30,2013 whereby Twagirayezu was present and assisted by Counsel Munyaneza Labani and the Prosecution represented by National Prosecutor Mutayoba Alphonse while the claimant for damages was represented by Counsel Mulinzi Jean de Dieu.

[6] Given the floor, Twagirayezu informed the Court that he withdrew the appeal relating to his penalty as the penalty imposed on him was fully served; but that he maintains the appeal in respect to damages.

[7] On 29 November 2013, the Supreme Court took decision regarding the withdrawal of the appeal in respect to criminal action and decided that it has merit, that he was allowed to

withdraw the appeal in respect to the criminal action, that the case continues only with regard to damages and adjourned the hearing in respect to damages on 6 January 2014. On this date, the case was adjourned on 17 February 2014.

[8] The hearing was held in public on 17 February 2014, Twagirayezu Pontien was present and assisted by Counsel Mwizerwa Alexis, the claimant for damages Ngendahimana was represented by Counsel Uwera Jean d'Arc while the prosecution was represented by National Prosecutor Niyonkuru Françoise.

THE ANALYSIS OF LEGAL ISSUES.

Whether the damages that Twagirayezu Pontien was ordered to pay are excessive.

[9] Mwizerwa Alexis, the counsel for Twagirayezu started by requesting that Ngendahayo Jean de Dieu who also lost the case in respect to civil damages be summoned in this case too as they had requested it in the previous hearing; but after being informed that the Court did not decide to summon him, they stated that they will continue with pleadings in respect to their concerns.

[10] Counsel Mwizerwa Alexis argues that the damages awarded by the Court are excessive and unjustified, that it made an error by not determining the responsibility of each with more reasons that their penalties are different It awarded them in solidum without even considering the life of the deceased with regards to his income before his death. He submitted that the Court did not consider if Twagirayezu can really afford damages he was ordered to pay and that the Court should order him to pay ½ of damages to be awarded and requested the Court to rely on article 258 of the civil code book III (CCL III) as the previous Court did not explain the legal basis of awarded damages.

[11] Explaining the reason why Twagirayezu should pay ½ of the damages to be awarded by the Court, Counsel Mwizerwa Alexis states that even if the judge may have decided payment of the damages in solidum, he did neither order it nor determine the responsibility of each in his decision and that in case they got different penalties even the damages should have been differently allocated. He added that they should not pay in *in solidum* while there was no debt contract and the Court should therefore determine the responsibility of each and then the portion of Twagirayezu Pontien should be reduced as it is his ground of appeal while his co-offender did not appeal.

[12] Counsel Uwera Jean d'Arc, representing Ngendahimana Vianney who is the claimant for damages, states that the judge who delivered the judgment in the High Court ordered the payment of damages in solidum as they were co-offenders; but Twagirayezu Pontien pleaded guilty while Ngendahayo Jean de Dieu escaped even before the trial. He requested that each should pay 50%; but that there is the issue of the co-offender who cannot easily be found because he escaped and that, in her opinion, the damages are not excessive considering the cruelty with which the crime was committed by killing a young person of 24 years old. She adds that, even if there is no equivalent for a person, eleven million they requested and five million and one hundred forty five awarded by the Court are not excessive considering the sorrow inflicted to the victim's family and that the amount might rather be increased.

[13] The representative of the Prosecution states that he has nothing to say as the subject matter is about damages.

THE VIEW OF THE COURT

[14] The documents in the case file shows that the High Court, Nyanza Chamber, convicted Twagirayezu Pontien and Ngendahayo Jean de Dieu of murder and sentenced Twagirayezu to ten years of imprisonment and his co-offender to life imprisonment and ordered them to pay in solidum Ngendahimana the moral damages equal to 5,145,000Frw which includes one hundred forty five thousand Rwandan francs (145,000 Frw) Ngendahimana spent on autopsy and funerals of his young brother as well as the court fees plus five millions of damages.

[15] The Court finds that Twagirayezu does neither deny the amount of one hundred forty five thousand Rwandan francs (145,000 Frw) relating to Ngendahimana's expenses on funerals of his young brother and procedural fees nor prove them to be excessive; thus they must be fully paid.

[16] With regard to financial damages, the Court finds that Ngendahimana Jean Marie Vianey filed a claim on his behalf and he is not thus claiming for the entire family; and, regarding himself, he has produced no evidence proving that Munyeshuri who was killed had special responsibility of taking care of him for him to be awarded damages for the financial loss suffered because of losing him.

[17] With regard to moral damages, the Court finds that Ngendahimana Jean Marie Vianey deserves them because his brother was killed as proven by the case file; but as five millions (5,000,000 Frw) that he claims are excessive, the Court must grant them in its discretion considering the sorrow caused to him by the murder of Munyeshuri and the way he was killed; therefore, he deserves to be granted two million Rwandan francs (2,000,000 Frw) awarded at Court's discretion.

[18] Regarding the way damages should be paid, the Court finds that they are to be paid in solidum by convicted co-offenders, namely Twagirayezu Pontien and Ngendahayo Jean de Dieu even if one of them did not appeal because they co-operated in committing the crime and their responsibility should be jointly considered. The fact that Twagirayezu got a lesser punishment than his co-offender Ngendahayo Jean de Dieu cannot be the ground for him to be charged lesser damages because the reduction of his penalty was not based on his minor responsibility in the offence but rather on his guilty plea.

[19] The fact that they must pay the awarded damages at the appeal level while Ngendahayo Jean de Dieu did not appeal, the Court relies upon opinions of legal scholars stating that, in general, the appeal made by one of parties profits also the other party in case their debt is indivisible; that is to say whenever it is absolutely impossible to enforce the judgment concerning the party who has not appealed and the judgment rendered in favour of the party that has appealed [...]. (*En général, l'appel interjeté par l'une des parties profite aux autres dans les matières indivisibles, c'est-à-dire toutes les fois qu'il y a impossibilité absolue d'exécuter et le jugement rendu contre la partie non appelante et le jugement rendu en faveur de celle qui a appelé[...].*)¹

[20] This opinion is shared by another legal scholar who, while explaining the French Law relating the civil procedure, contends that debt indivisibility has the special effects in regard

¹ M.D. Dalloz, Ainé, *Répertoire méthodique et alphabétique de législation, de doctrine et de jurisprudence*, Tome Quatrième, Paris, Bureau de la Jurisprudence Générale du Royaume, 1846, p. 91, para. 593.

to the appeal and that in executing article 553 of the aforesaid law, in case of indivisible debt due by many persons, the appeal of one of them has effects on others even if they have not participated in the trial. (L'indivisibilité, s'agissant de l'appel, a des effets très particuliers. En application de l'article 553 NCPC, un appel d'une partie produit effet à l'égard des autres, même si elles ne se sont pas jointes à l'instance).²

II. THE DECISION OF THE COURT

[21] Decides that the appeal of Twagirayezu Pontien has merit;

[22] Orders Twagirayezu Pontien and Ngendahayo Jean de Dieu to pay in solidum two millions one hundred forty five thousand (2, 145, 000 Frw) to Ngendahimana Jean Marie Vianney in damages;

[23] Rules that the judgment n° RP0106/08/HC/NYA delivered on 18 December 2009 is overruled with regard to damages to be paid by the convicted;

[24] Rules that court fees are to be paid by the public treasury.

²Serge Guinchard, Droit et Pratique de Procédure Civile, Dalloz, 1999, p. 1144. Para. 5915