

RE NTABWOBA (PETITION FOR THE REPEAL OF UNCONSTITUTIONAL LEGAL PROVISION)

[Rwanda SUPREME COURT – RS/INCONST/GEN 0001/14/CS (Rugege, P.J., Mugenzi,
Nyirinkwaya, Hatangimbabazi, Kanyange, Mukamulisa. Mukandamage, Rugabirwa,
Munyangeri N., J) March 27, 2015]

Constitutional law – Unconstitutional legal provisions – Petition seeking repeal of sub-paragraph 2 of article 10 of Organic Law n^o 04/2012/OL terminating Gacaca Courts and determining mechanisms for solving issues which were under their jurisdiction – Sub-paragraph 2 of article 10 contains a phrasing mistake which can be corrected instead of being contrary to the Constitution, and should be perceived as not contravening the principle of personal criminal liability.

Facts: Gacaca Court of Kinyinya Sector convicted Ntabwoba Amiru alias Cyuma of the offense of genocide where it ruled that he killed Uwimbabazi Therese and sentenced him to 15 years imprisonment. Ntabwoba applied for review of that case before Primary Court of Nyamirambo stating that he has got other judgments which convicted Nshimiyimana Thomas, Harerimana Joseph alias Ngayi and Rwabuhungu Augustin of the offence of killing Uwimana Therese and those judgments do not demonstrate any complicity between them and him.

After filing this claim, Ntabwoba filed a petition with the Supreme Court requesting to repeal sub-paragraph 2 of article 10 of Law n^o 04/2012/OL terminating Gacaca Courts and determining mechanisms for solving issues which were under their jurisdiction arguing that it is contrary to the Constitution.

Held: On one side, the legislator could not have accepted that judgments rendered by Gacaca Courts can be reviewed and provide for obstacles prevention the convict of the offence of murder by Gacaca Courts from applying for review where the offence was committed by others.

The phrase “the only” found in article 10, sub-paragraph 2 is a phrasing mistake which can be corrected instead of being an issue of an unconstitutional legal provision. The fact that is a mistake is also proven by the fact that the English version is different from other languages versions. Therefore, this part of this article should be construed in way that does not contravene to the principle according to which criminal liability is personal as provided by article 17 of the Constitution

**The part of the article at issue is not contrary to the constitution.
With court fees to the Public treasury.**

Statutes and statutory instruments referred to:

Organic Law N^o 04/2012/OL terminating Gacaca Courts and determining mechanisms for solving issues which were under their jurisdiction, sub-paragraph 2 of article 10.

Law N^o 30/2013 of 24/5/2013 relating to the Code of Criminal Procedure, article 268.

Organic Law n^o 03/2012/OL regulating the organization, functioning and competence of the Supreme Court article 53, paragraph 2.

The Constitution of the Republic of Rwanda of 04/06/2003 as amended to date, article 17.

No Case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] This case originates for the judgment rendered by Gacaca Court of Appeal of Kinyanya Sector which convicted Ntabwoba Amiru also known as Cyuma of the offense of genocide. The Court ruled that he has killed Uwimbabazi Therese and sentenced him to 15 years of imprisonment. Ntabwoba Amiru also known as Cyuma filed an application for review of that case in the Primary Court of Nyamirambo stating that he found other judgments convicting Nshimiyimana Thomas, Harerimana Joseph also known as Ngayi and Rwabuhungu Augustin of killing Uwimbabazi Therese while these judgments do not prove that there is complicity between them and him.

[2] While the application for review was pending before the court, Ntabwoba Amiru also known as Cyuma filed a petition with the Supreme Court requesting to repeal sub-paragraph 2 of article 10 of Organic Law n^o04/2012/OL terminating Gacaca Courts and determining mechanisms for solving issues which were under their jurisdiction which he submits is inconsistent with the Constitution.

[3] The case was publicly heard on 23/02/2015 where Ntabwoba Amiru also known as Cyuma was assisted by Counsel Muhikira Jean Claude and Counsel Rubango Epimaque representing the Ministry of Justice gave his opinion on this petition.

II. CONCERNING THE COMPETENCE OF THE COURT AND PROCEDURE FOR ADMISSIBILITY OF THE PETITION.

[4] Concerning the competence of the Supreme Court, article 53 paragraph 2 of Organic Law n^o 03/2012/OL regulating the organization, functioning and competence of the Supreme Court provides that “The Supreme Court shall have jurisdiction [...] over petitions seeking to declare unconstitutional a treaty or an international agreement. The Supreme Court shall also hear petitions regarding the partial or complete repealing of an organic law, an ordinary law, or a decree law on account of non-conformity with the Constitution”.

[5] Ntabwoba Amiru also known as Cyuma wrote to the Supreme Court requesting the repeal of article 10, sub-paragraph 2 of Organic Law n^o 04/2012/OL of 15/06/2012 mentioned above arguing that it is contrary to the Constitution of 4/6/2003 as amended to date. Therefore, this claim is within the competence of the Supreme Court.

[6] Concerning the formalities for admissibility of the petition, the file of the case contains the letter of Ntabwoba Amiru also known as Cyuma wrote to the Supreme Court on 20 November 2014 requesting the repeal of the sub-paragraph of the above mentioned article on account of non-conformity to the Constitution of 4/6/2003 as amended to date.

[7] Ntabwoba Amiru also known as Cyuma has the interest to file the petition with the Supreme Court since the sub-paragraph 2 of article of the Organic Law for which he is

requesting the repeal is the one that would be considered to examine the admissibility of his application for review.

[8] Ntabwoba Amiru also known as Cyuma has also submitted in annex to his letter court submissions explaining his petition sent to the Supreme Court. He also submitted a copy of the organic law part of which he is requesting the repeal since it is purportedly contrary to the constitution.

[9] Ntabwoba Amiru also known as Cyuma who is jailed in Nyarugenge Prison has not deposited the court fees since he is exonerated pursuant to article 268 of Law N^o 30/2013 of 24/5/2013 relating to the Code of Criminal Procedure¹

[10] With regard to the requirements for admissibility of the petition, the Supreme Court finds that Ntabwoba Amiru also known as Cyuma respected the requirements of article 54 of the Organic Law n^o 03/2012/OL of 13/06/2012 mentioned above.

III. ANALYSIS OF THE LEGAL ISSUE

Whether sub-paragraph 2 of article 10 of Organic Law n^o 04/2012 of 15/06/2012 is contrary to the Constitution.

[11] The letter and the court submissions that Ntabwoba Amiru also known as Cyuma submitted to the Supreme Court on 21 November 2014 prove that he requests for the repeal of article 10 sub-paragraph 2 of Organic Law n^o 04/2012 of 15/06/2012 terminating Gacaca Courts and determining mechanisms for solving issues which were under their jurisdiction since he finds that sub-paragraph 2 of that article is contrary to the Constitution of 4/6/2013 as amended to date. Ntabwoba Amiru also known as Cyuma states that the unconstitutionality of the Organic Law n^o 04/2012/OL of 15/06/2012 mentioned above consists in the fact that this law prohibits him to apply for review basing on another judgment which convicted another person for the same offence he is charged with.

[12] He explains that his application for review of the judgment rendered by Gacaca Court basing on the judgment that convicted another person of the same offence requires that that person must have been convicted of that offence of murder only. In case that other person was convicted of the offence of murder and other offences, it prohibits the person who wishes to refer to that judgment while there has been no complicity between the person who applies for review and the person who has been convicted by that judgment to do so.

[13] Muhikira Jean Claude, Counsel for Ntabwoba Amiru also known as Cyuma states that sub-paragraph 2 of article 10 of the abovementioned law is the one that raises issues since Ntabwoba Amiru also known as Cyuma was convicted to have killed Uwimbabazi Therese; but he later found that there are other people who were tried and convicted to have killed Uwimbabazi Therese. Therefore, because of this, his client cannot use this judgment to apply for review since those people have committed other crimes while Ntabwoba was not their accomplice. Therefore, he finds that as long as this article remains into force this would amount to being punished for the offense that one has not committed which is contrary to the Constitution in its article 17 which provides that the criminal liability is personal.

¹ Article 268 of Law N^o 30/2013 of 24/5/2013 relating to the Code of Criminal Procedure provides that a person in prison is exempted from depositing court fees.

[14] The State Attorney Rubango Epimague states that the petitioner has been mistaken since the phrase “**the only**” which appears in the second paragraph of the challenged article means crimes other than the offence of murder of which the applicant for review was also convicted instead of crimes that another person was convicted of by the judgment that the applicant wants to use. Counsel Rubango Epimague adds that the phrasing of this article which is criticized by Ntabwoba Amiru also known as Cyuma is problematic, but it is not contrary to the Constitution and that this can be corrected through other ways than using the procedure used in repealing a law or an article of the law which is not in conformity with the constitution.

OPINION OF THE COURT

[15] Article 53, paragraph 2 of Organic Law n^o 03/2012/OL OF 13/06/2012 determining the Organization, Functioning and Jurisdiction of the Supreme Court provides that the Supreme Court shall have jurisdiction over petitions seeking to declare unconstitutional a treaty or an international agreement. The Supreme Court shall also hear petitions regarding the partial or complete repealing of an organic law, an ordinary law, or a decree law on account of non-conformity with the Constitution”. Ntabwoba Amiru also known as Cyuma filed a petition requesting the repeal of article 10, paragraph 2 of the of Organic Law n^o04/2012/OL terminating Gacaca Courts and determining mechanisms for solving issues which were under their jurisdiction.

[16] Article 10, sub-paragraph 2 of Organic Law n^o04/2012/OL terminating Gacaca Courts and determining mechanisms for solving issues which were under their jurisdiction provides that “A judgment rendered by a Gacaca Court may be reviewed by a competent court due to one (1) of the following reasons [...] if a person is definitively convicted of homicide by a Gacaca Court and it is the only crime to which he/she is convicted, and later another person is convicted of the same crime where there is no complicity between the two” The phrase of this article which is “**the only**” is the one which Ntabwoba Amiru also known as Cyuma argues is contrary to the Constitution in its article 17, paragraph one where it provides that “criminal liability is personal[...]”.

[17] The phrasing of article 10 sub-paragraph 2 mentioned in the previous paragraph, especially the phrase “the only” which appear in fine of this paragraph can imply that for the person convicted of the offense of murder by Gacaca Court to apply for review basing on another judgment which convicted another person of that offense, it requires that the convict of the crime of murder in that judgment that he/she bases on in applying for review, must not have been convicted of any other offenses. This means that, considering the phrasing of the second paragraph of article 10, the phrase “the only” would be an obstacle to the person who was convicted of the offence of murder by Gacaca Court in case he would wish to apply for review of the judgment that convicted him/her on the ground that there are other people who have been convicted of the same offense in another judgment while there is no complicity between them.

[18] Considering this phrasing, the fact that another person was convicted of the crime of murder and another offence or other offences, is understood as if it forfeits the right of the person who was convicted of that offense of murder to apply for review on the grounds that there is another person who was convicted of the same offence while there is no complicity between them. As it is provided for in article 17, paragraph 1 of the Constitution, criminal

liability is personal. This means that the offender is the one to be punished and that no one can be punished for the offence or offences committed by others.

[19] Even though the phrasing of article 10 sub-paragraph 2 of Organic Law n° 04/2012/OL of 15/06/2012, is problematic as explained above, the Court finds that it is necessary to determine whether the legislator intended to limit people who would like to apply for the review of judgments rendered by Gacaca Courts because of offences committed by others or if it is the phrasing of that article which is problematic in a way that it can be corrected through other procedures provided for by the law.

[20] Normally, the application for review is a general principle of Rwandan procedure law². The aim of application for review is to request vacation of a final judgment for the case to be re-tried on the grounds provided for by the law. Regarding the judgments rendered by Gacaca Courts, Organic Law n° 04/2012/OL of 15/06/2012 terminating those courts also provides that those judgments can be reviewed and has listed in its article 10 grounds for review of a judgment rendered by Gacaca Court. It is clear from this that the legislator has accepted that judgments rendered by Gacaca Court can be reviewed basing on the grounds provided for by that organic law.

[21] The legislator could not have accepted the possibility of review of judgments rendered by Gacaca Courts, on one side, and, on the other side, provide for obstacles preventing the person who was convicted of the offence of murder from applying for review on the ground that the offences were committed by other people. The Court finds that the phrase “the only” found in article 10 sub-paragraph 2 is a phrasing mistake which can be corrected instead of being an issue of the unconstitutionality of the law. The fact that it is a phrasing mistake which can be corrected is also proven by the fact that the English version is different from other languages versions.

[22] The Supreme Court finds that article 10 sub-paragraph 2 of Organic Law n° 04/2012/OL terminating Gacaca Courts and determining mechanisms for solving issues which were under their jurisdiction must be construed in way which is not contrary to the principle according to which criminal liability is personal as provided for by article 17 of the Constitution

IV. DECISION OF THE COURT

[23] The Court rules that the petition submitted to it by Ntabwoba Amiru also known as Cyuma requesting to declare unconstitutional article 10, sub-paragraph 2 of Organic Law n°04/2012/OL terminating Gacaca Courts and determining mechanisms for solving issues which were under their jurisdiction is admitted.

[24] The Court rules that this article is not contrary to the Constitution.

[25] The Court orders that the court fees are to be charged to the Public treasury.

² See Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure from articles 184 to 193. See also Law N° 30/2013 of 24/5/2013 relating to the criminal procedure from article 192 to 197.3 “[.....] if a person is definitively convicted of homicide by a Gacaca Court and it is the only crime to which he/she is convicted, and later another person is convicted of the same crime where there is no complicity between the two”;