

## PROSECUTION v. MUTABAZI

[Rwanda SUPREME COURT – RPAA 0227/ 10/CS (Mukanyundo, P.J., Gatete and Mukamulisa, J.) 11 April 2014]

*Criminal law – Child defilement – Penalty reduction– late guilty plea is not the cause of denial of the reduction of the penalty, rather, when the accused is still young and a first time offender, it becomes a mitigating circumstances– Organic law n° 01/2012/OL of 02/05/2012 instituting the penal code art.8 and 765 and Decree – Law n° 21/77 of 18/08/1977 instituting the penal code, art.82 and 83.*

**Facts:** The Intermediate Court of Nyarugenge found that the appellant is guilty of child defilement committed against a girl of 4 years old. It sentenced him to 10 years and fined him with 100 000frw. He appealed to the High Court arguing that the first instance Court convicted him motivating that he admitted the offence yet he did not. Right from the Judicial Police, he claims that he was compelled to sign after being beaten. The Court found that his argument was not true because he was caught on top of the child which is evident enough to qualify for child abuse as it is provided for by the law, hence no medical certificate was needed for him to be convicted. He appealed in the Supreme Court stating that there was no medical report proving that the alleged offence was committed, he states that the Court based on statements made by the witness with whom he was in conflicts. While in the Supreme Court, at the hearing, he notified the Court that he no longer bases on his submissions but rather pleads guilty and seeks forgiveness.

The Prosecution contended that the accused pleads guilty though he did late. However, it added that his request was granted by the Court of First Instance when he was sentenced to 10 years of imprisonment instead of life imprisonment.

**Held:** Given that the appellant pleaded guilty late, cannot prevent him from benefiting another penalty reduction, and the fact that he was younger and a first time offender at the time he committed the offence, should allow him chance be reintegrated in society so as to prepare his future.

**Appeal granted.**

**Appellant sentenced to 7 years.**

**Appealed case changed with regard to penalties.**

**Statutes and statutory instruments referred to:**

Organic law n° 01/2012/OL of 02/05/2012 instituting the penal code art. 8 and 765,  
Decree law n° 21/77 of 18/08/1977 instituting the penal code, art. 82 and 83.

**No case was referred to**

**Judgment**

## I. BRIEF BACKGROUND OF THE CASE

[1] This case started in the Intermediate Court of Nyarugenge where Mutabazi Cleophas was being charged with child defilement against a girl of 4 years named F.I. The Court convicted him and sentenced him to 10 years of imprisonment and fined him to 100,000 frw because he was a juvenile offender.

[2] Mutabazi appealed to the High Court claiming that the previous trial judge sentenced him based on the guilty plea yet he has never pleaded guilty. He states that since in the Judicial Police; he was forced to sign the statements made after he was beaten. The Court noted that he produced no evidence to support his argument but rather what he signed for was matching the statements of witnesses interrogated and it was very clear that he made it willingly given that he even stated clearly how the offence was committed. The Court based on the fact that Mutabazi was seen over the child was sufficient evidence to constitute what is stipulated by the law as child abuse; and it was not necessary therefore to resort to the medical report for him to be convicted. Furthermore, the Court did not consider the conflict he mentioned that he had with the child's mother since he produced no evidence thereon. Therefore, based on all these grounds, the Court upheld the decision of the High Court.

[3] Mutabazi appealed to the Supreme Court stating that the trial judge disregarded his grounds of appeal and convicted him without the medical report to prove whether the offence was really committed. He added that the Court based on the statement made by the witness with whom he was in conflict with.

[4] The hearing was held in public on Mars 10, 2014 Mutabazi assisted by Abijuru Emmanuel, the counsel while the Prosecution was represented by Higaniro Hermogène, a National Prosecutor. Initially, Mutabazi stated that he invalidates his submissions and that he sincerely pleads guilty and seeks forgiveness.

## II. ANALYSIS LEGAL ISSUE

**Whether Mutabazi pleads guilty in such a way that he may benefit the penalty reduction.**

[5] Mutabazi confessed stating that after all the time he spent in jail and all the lessons he benefited from there, he then proclaims standing before Court that he pleads guilty of the offence he had denied before and seeks forgiveness.

[6] He explains that on September 25, 2007 a child named I. F. came from school and went to a home where Mutabazi was working to fetch water, where he immediately took her in the room and abused her sexually. He confirms the statement of a witness named Umurerwa Sifa, who in her statements, testified that he found him over her and immediately went to inform the child's mother and that he was then taken to Police. He keeps on explaining that he admitted the offence in the Judicial Police but later on recanted but then pleads guilty and seeks forgiveness. Furthermore, he explains that he sought forgiveness from the child father after meeting him in prison in 2010 and was blessed and advised him to do the same before the Court which he is

committed to do. He ended stating that he was corrected and requested to reintegrate in the Rwandan society since he will no longer commit an offence.

[7] His defence Counsel states that, this time Mutabazi pleads guilty and seeks forgiveness and is willing not to commit an offence again. He prays to court saying that in penalty determination, the Court take into account that he is a juvenile and first offender and then base on the provisions of article 78 of the Organic Law n° 01/2012 of 02/05/2012/OL instituting the penal code and on articles 82 and 83 of the decree law n° 21/77 of 18/08/1977 instituting the penal code, which provides for mitigating circumstances in order to reduce for him the penalty and sentences him to 5 years.

[8] The Prosecution states that Mutabazi decides to plead guilty after a long time of denial and that what he is requesting for now was granted by the Intermediate Court when it sentenced him to 10 years of imprisonment instead of life imprisonment.

### **THE VIEW OF THE COURT**

[9] The Court notes that even though Mutabazi denied the offence in all organs but now pleads guilty and sincerely seeks forgiveness as he explains even how the offence was committed and that he had sought forgiveness to the child family as well.

[10] Court finds also that though the guilty plea of Mutabazi comes late, it cannot prevent him from benefiting the penalty reduction because he committed the offence while he was young and was a first offender. The Court views that he should be given the chance to be reintegrated in ordinary life very early so that he can develop himself.

[11] The Court therefore finds that based on article 82 and 83 of the decree law n° 21/77 of 18/08/1977 instituting the penal code, provides for mitigating circumstances and article 8 and 765 of the Organic Law n° 01/2012/OL of 02/05/2012 instituting the penal code, Mutabazi deserves the penalty reduction from 10 years that was inflicted to him and be punished to the sentence of 7 years.

### **III. THE DECISION OF THE COURT**

[12] Rule that appeal filed by Mutabazi Cleophas has merit.

[13] Sentences him to 7 years of imprisonment.

[14] Holds that the ruling of case 0587/09/HC/KIG is changed with regard to penalties.