

## KARANGIRA v. IYABURUNGA

[Rwanda SUPREME COURT – RPA0076/15/CS (Hatangimbabazi, P.J., Karimunda and Gakwaya, J.) November 6, 2015]

*Criminal Law – Unlawful detention – Execution of different penalties imposed by two different judgments – The convict who was sentenced to penalties for different offences cannot execute those penalties simultaneously; rather, he waits until the first one is fully served and starts executing another – Organic Law N°01/2012/OL of 02/05/2012 instituting the Penal Code, article 40(7).*

**Facts:** Karangira Jean de Dieu accused Iyaburunga Innocent, the Director of Mpanga Prison, of unlawful detention stating that he would have been released on 17 April 2015 which did not happen considering that he was arrested by the Judicial Police on 17 May 2009 being accused of corruption for which he was punished by Intermediate Court of Gasabo in judgment RP503/09/TGI/GSBO rendered on 14 August 2009 in which he was sentenced to 6 years of imprisonment.

Even though the plaintiff requested that he should be released after executing the first sentence, it was found that there were three different judgments in which he was involved, which are; the judgment of 27/11/2009 which sentenced him to six years of imprisonment followed by the judgment of 21/04/2010 which sentenced him to three (3) years of imprisonment and finally the one of 31/01/2013 which sentenced him to six (6) years of imprisonment. The plaintiff argued that even if there might be other judgments that have imposed other penalties, they should be considered to have been fully served subsequently with the expiry of the first penalty as it was the most severe penalty; but the defendant and his counsel argued that this is contrary to the law.

The High Court which was seized with the case held that since Karangira Jean de Dieu was sentenced to more than one penalty while he is still serving them, the execution of the second penalty must start on the date of expiry of the first sentence and thus his detention is not unlawful.

The plaintiff appealed to the Supreme Court with grounds that the Decree Law N°21/77 of 18 August 1977 instituting the penal Code that was in force at that time, does not implicitly provide for the execution of concomitant penalties imposed for different offences committed in different periods but that the analysis of its articles 36 and 37 and the practice of prisons in Rwanda prove that it is normal to compute the least sentence as taken in the heavy sentence imposed on the prisoner. He further states that the non-retroactivity of the new penal law except in case it favours the accused is a general principle of law implying that article 40(7) of Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code should not have been referred to in this judgment. Iyaburunga and his counsel state that he is legally detained. The representative of the prosecution states that the plaintiff misinterprets the law because the provisions he mentions do not contradict each other.

**Held:** The convict who was sentenced to different penalties for different offences cannot execute them simultaneously; rather, he waits until the first one is fully served and starts executing another.

**Appeal without merit.  
Appealed judgment is upheld.**

**The plaintiff must pay damages to the respondent.  
Court fees are charged to the public treasury.**

**Statutes and Statutory instruments referred to:**

Organic Law N<sup>o</sup>01/2012/OL of 02/05/2012 instituting the penal code, article 40(7).

Decree Law N<sup>o</sup>21/77 of 18 August 1977 instituting the penal code, articles 36 and 37.

**No case referred to.**

**Author cited:**

Michel Franchimont et al., *Manuel de procédure pénale*, Bruxelles: Larcier, 2eme édition, 2006, p.735.

## **Judgment**

### **I. BRIEF BACKGROUND OF THE CASE**

[1] Karangira Jean de Dieu accused Iyaburunga Innocent, the Director of Mpanga Prison, of illegally detaining him before the High Court, Nyanza Chamber, stating that he would have been released on 17 April 2015 but this did not happen. He explained that he was arrested by the Judicial Police on 17 May 2009 being accused of corruption for which he has been punished by Intermediate Court of Gasabo in the judgment RP503/09/TGI/GSBO which was rendered on 14 August 2009 and got sentenced to 6 years of imprisonment; this implying that the sentence he was given has already been fully served on 17 April 2015. He added that in case there might be other sentences given to him for other offences, it would be considered as if those penalties have been executed with the first penalty since it is the heaviest one.

[2] In the judgment RP0004/15/HC/NYA rendered on 29 May 2015, the High Court held that since Karangira Jean de Dieu has been sentenced to more than one penalty while still executing them, the execution of the second sentence should start at the end of the first one and thus concluded that his detention was not unlawful.

[3] Karangira Jean de Dieu was not satisfied with the decision and thus appealed to the Supreme Court.

[4] The hearing was held in public on 5 October 2015, where Karangira Jean de Dieu was present and assisted by Counsel Mbaga Tuzinde Mbonyimbuga while Iyaburunga Innocent had appeared being assisted by Counsel Munyemana Pascal and the Prosecution was represented by Bunyoye Grace, Prosecutor at National level.

### **II. ANALYSIS OF THE LEGAL ISSUE**

**II.1. Whether in case of different final judgments that have imposed different sentences, the less severe penalties should be counted as taken in the heaviest one that was imposed by one of those judgments.**

[5] Karangira Jean de Dieu states that from his detention on 17 May 2009, he has never been released while he was punished pursuant to Decree Law N<sup>o</sup>21/77 of 18 August 1977 instituting the penal Code that was in force at that time, whereby this Decree-Law does not

implicitly provide for the execution of concomitant penalties imposed for different offences committed in different periods but that the analysis of its articles 36 and 37 and the practice of prisons in Rwanda prove that it is normal to count the least sentence as taken in the heavy sentence imposed on the prisoner and that this is how it is provided by foreign laws such as in France. He thus finds that the fact that the High Court did not consider that basing on the loophole found in the Decree-Law mentioned above and ordered that he must execute each separate sentence imposed on him basing on article 40 paragraph 7 of Organic Law N°01/2012/OL of 02/05/2012 instituting the Penal Code while this Organic Law was adopted after he had spent five years in prison should be considered as violating his right not to be judged basing on the new law when it is not in favour of the accused.

[6] He further states that the non-retroactivity of the new penal law except in case it favours the accused is a general principle of law which is provided for by article 765 of Organic Law N°01/2012/OL of 02/05/2012 mentioned above, and article 15 of ICCPR and article 20 of the Constitution of 4 June 2003 as amended to date; indicate that the High Court, Nyanza Chamber, has violated the law and he thus requests this Court to rectify the mistakes made and thus serve him justice.

[7] Counsel Mbagu Tuzinde Mbonymbuga who assists him states that the principle provided for by articles 36 and 37 of Decree Law N°21/77 of 18 August 1977 mentioned above which was in force when Karangira Jean de Dieu was punished is that the least sentence is taken in the heaviest one and that in general a penal law must first inform before punishing which implies that if article 40(7) of Organic Law N°01/2012/OL of 02/05/2012 mentioned above had not existed, Karangira Jean de Dieu should have been released. Therefore, the fact that this provision has been considered to keep him in prison while it was enacted later is contrary to law and violates his rights.

[8] Iyaburunga Innocent states that Karangira Jean de Dieu was punished for three offences and that he has copies of judgments sentencing him to those penalties and those decisions have to be executed as received since their role in Prison is to enforce the decisions of courts and thus he finds that there is no mistake committed in retaining Karangira Jean de Dieu in prison since he should not be released before serving the sentence.

[9] Counsel Munyemana Gatsimbanyi Pascal who assists Iyaburunga Innocent states that there is no ground for unlawful detention provided for by article 90(4) of Law N°30/2013 of 24/05/2013 relating to Criminal Procedure raised by Karangira Jean de Dieu, since he is imprisoned in order to serve execution of judgments which have been rendered in different periods whereby one judgment was rendered on 21/11/2009, another one on 31/01/2013 which proves that the last judgment was rendered after that Organic Law N°01/2012/OL of 02/05/2012 above mentioned was published in official gazette. Therefore, nothing was likely to prevent the application of this Organic Law.

[10] The representative of the Prosecution states that Karangira Jean de Dieu misconstrues articles 36 and 37 of Decree Law N°21/77 of 18 August 1977 instituting the penal Code since there is no difference between them and article 40(7) of the Organic Law N°01/2012/OL of 02/05/2012 instituting the Penal Code. It implies that in case he has no legal basis for his complaint, article 40(7) of Organic Law N°01/2012/OL of 02/05/2012 mentioned above must apply as he cannot say that it is severe against him without showing another one which is less severe.

## OPINION OF THE COURT

[11] Article 36 of the Decree Law N<sup>o</sup>21/77 of 18 August 1977 instituting the penal Code that was in force when Karangira Jean de Dieu was convicted provides that “The term of an imprisonment shall be calculated from the day the judgment has become final” while article 37 of this Decree Law provides that “The period of pre-trial detention shall be fully deducted from the duration of the penalty imposed”.

[12] Article 40 paragraph7 of Organic Law N<sup>o</sup>01/2012/OL of 02/05/2012 instituting the Penal Code provides that “When a person is sentenced to two successive penalties of imprisonment, the second imprisonment shall start from the expiry date of the first one”.

[13] It is indicated in the case file that in the judgment N<sup>o</sup> RP0503/09/TGI/GSBO rendered on 14 August 2009, Karangira Jean de Dieu was prosecuted and convicted for the offence of corruption of that offense and got sentenced to 6 years of imprisonment and a fine of one million Rwandan francs (1,000,000Frw). Karangira Jean de Dieu and the Prosecution appealed to the High Court, at its headquarters in Kigali, and this Court delivered the judgment RPA10891130/09/HC/KIG on 27/11/2009 whereby it ruled that the decision of the appealed judgment is upheld (identification marks 11 and 18).

[14] Karangira Jean de Dieu was also accused of forging document in the Intermediate Court of Gasabo. This Court convicted him of that offense and he was sentenced to three (3) years of imprisonment. Karangira Jean de Dieu appealed against that decision and in judgment RPA0140 - 0318/10/HC/KIG rendered on 21/04/2010, the High Court found the appeal without merit and that consequently the decision of the appealed judgment remains unchanged (identification mark 24).

[15] Karangira Jean de Dieu was also accused before the Intermediate Court of Gicumbi for the offense of forging document and complicity in mismanagement of state assets. That Court rendered the judgment N<sup>o</sup> RPA0198 - 1130/09/TGI/GIC on 19/02/2010 whereby it ruled that he is not guilty of the offense of forging document but convicted him for breach of trust and mismanagement of state properties and was sentenced to five (5) years of imprisonment and a fine of twenty thousand Rwandan francs (20,000Frw). Karangira Jean de Dieu and the Prosecution appealed against that decision before the High Court and it delivered the judgment RPA0252 - 0303/HC/KIG on 31/01/2013 in which it ruled that he is convicted of breach of trust and use of counterfeited document and sentenced him to six (6) years of imprisonment (identification marks 25-46).

[16] The Court finds that the first judgment in which Karangira Jean de Dieu was convicted is that of 27/11/2009 which sentenced him to six (6) years of imprisonment and it is followed by the judgment of 21/04/2010 which sentenced him to three (3) years of imprisonment and lastly the judgment of 31/01/2013 which sentenced him to six (6) years. Therefore, every judgment is separate and independent from the other since he was punished for different offences, by different courts and in different periods. Therefore, as the latest penalties were imposed on him before the execution of the first penalties, it means that he could not immediately execute them while they could not be deducted from the previous penalties, since basing on article 37 of Decree Law N<sup>o</sup>21/77 of 18 August 1977 mentioned above, what is deducted from the duration of the penalty is the pre-trial detention imposed on the suspect against whom a case is pending before courts; and who can be acquitted and who is presumed innocent until his/her conviction. Therefore, there is no confusion between pre-trial detention and the penalty which has been imposed on him in a judgment which has

become final as Karangira Jean de Dieu and Counsel Mbaga Tuzinde Mbonimbuga intended to interpret it.

[17] The Court finds that, basing on article 36 of Decree Law N<sup>o</sup>21/77 of 18 August 1977 mentioned above and that was into force when Karangira Jean de Dieu was punished, the execution of the sentence of six (6) years of imprisonment imposed on him on 31/01/2013 will be pending until the completion of the first penalty of three (3) years of imprisonment that was imposed on him on 21/04/2010 which will also be pending until full execution of the sentence of six (6) years of imprisonment that was imposed on him on 27/11/2009 since he cannot simultaneously execute different sentences.

[18] The Court finds that this position is similar to what is provided by foreign laws like in France, where article 3, paragraph 2 of Law N<sup>o</sup>2005-1549 of 12/12/2005 provides that “Penalties imposed for offences committed in reiteration are mixed with the previous penalties irrespective of their length and without any possibility of deducting them from penalties that were previously imposed”<sup>1</sup> and it is also emphasized by the law scholars who confirm that “when a convict is jailed for any reason, the execution of the sentence is postponed until full execution of the first penalty”<sup>2</sup>. All this, proves that Karangira Jean de Dieu must execute each sentence before his release.

[19] The Court finds that article 40, paragraph 7 of Organic Law N<sup>o</sup>01/2012/OL of 02/05/2012 instituting the Penal Code should not be considered as having set a new principle regarding the execution of concomitant penalties; rather it explained in details the principle enshrined in article 36 of Decree Law N<sup>o</sup>21/77 of 18 August 1977 mentioned above and the ambiguity of this article 36 might have been the origin of different practices of prisons as alleged by Karangira Jean de Dieu. This means that even though the High Court had not based on the new law, this could not have prevented it from reaching the same decision. Therefore, the arguments of Karangira Jean de Dieu that his rights consisting of not to refer to a new penal law for the trial of his case while it is not in his favour, have been violated, lacks merit.

[20] Basing on the grounds in the previous paragraphs, the Court finds that Karangira Jean de Dieu is imprisoned basing on final decisions of courts and that when he is executing the penalties lawfully imposed basing on the offences in respect of which he was convicted, therefore he cannot refute this and state that he is unlawfully imprisoned.

## **II.2. Whether Iyaburunga Innocent can be awarded requested damages.**

[21] Iyaburunga Innocent states that he requests fees amounting to three millions (3,000,000Frw) for advocate before the Supreme Court and damages for being drugged in unreasonable lawsuits.

[22] Karangira Jean de Dieu states that Iyaburunga Innocent cannot be awarded damages since it is Karangira who is the victim.

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<sup>1</sup> “Penalties imposed for offences committed in reiteration are mixed with the previous penalties irrespective of their length and without any possibility of deducting them from penalties that were previously imposed”, *article 3, paragraph 2 of Law N<sup>o</sup> 2005-1549 of 12/12/2005.*

<sup>2</sup> “When a convict is jailed for any reason, the execution of the sentence is postponed until full execution of the first penalty”, Michel Franchimont et alii, *Manuel de procédure pénale*, Bruxelles, Larcier, 2eme édition, 2006, p.735.

## **OPINION OF THE COURT**

[23] The Court finds that Iyaburunga Innocent incurred a loss from the fact that he was accused in court which drove him to seek for a legal counsel. Therefore, he has right to be awarded damages incurred during the lawsuits basing on 258 of the Civil Code Book Three which provides that “Every act of a person which damages another obliges the person whose fault caused damage to repair the loss”.

[24] The Court finds that there is no evidence produced by Iyaburunga Innocent proving the advocate fees agreed on with the lawyer; therefore, even though he deserves damages resulting from this case, three millions (3,000,000Frw) that was requested by Iyaburunga Innocent is excessive and he is thus awarded eight hundred thousand (800,000Frw) upon the discretion of the Court.

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

[25] The Court rules that the appeal of Karangira Jean de Dieu has no merit;

[26] The Court rules that the decision of the judgment RP0004/15/HC/NYA rendered by the High Court, Chamber of Nyanza, on 29/05/2015 is sustained;

[27] The Court orders Karangira Jean de Dieu to pay Iyaburunga Innocent damages equal to eight hundred thousand (800,000Frw) of advocate fees.

[28] The Court rules that the court fees are charged to the public treasury.