

# PROSECUTION v. MANIRIHO ET AL

[Rwanda SUPREME COURT – RPA0082/11/CS (Mukamulisa, P.J., Munyangeri and Hitiyaremye, J.) April 22, 2016]

*Criminal Law – Punishable attempt – For the attempt to be qualified as such and be punished, there should be observable and unequivocal acts toward the commission of the crime which were suspended or failed in their purpose only because of circumstances beyond the offender’s control – Decree-Law N°21/77 of 18/08/1977 instituting the penal code, article 21.*

**Facts:** The accused were prosecuted over the attempt to murder, where the Prosecution accuses them for having plotted to kill Nsabimana Isaac but failed to, and then drafted a “tract” frightening him that they would kill him if he fails to give them three hundred thousand Rwandan francs (300,000Frw). The High Court, Musanze chamber, rendered the verdict and found them guilty of attempt to murder, therefore, sentencing them to life imprisonment.

Unsatisfied with the ruling, the accused appealed to the Supreme Court, stating that the plot in question was not perpetrated, rather it was prepared by Nsabimana Isaac due to the conflicts between him and Niyonsenga Léonard with aim to get him and his fellows imprisoned so as he may be able to monopolise the market. They added that the judge based on the tract while he [the judge] stated that its author was anonymous.

The Prosecution stated that there is no doubt as they accuse each other, and that attempt to felony is equally punished as felony itself, that there was plot to kill Nsabimana Isaac, which was interrupted by circumstances beyond their control.

**Held:** For the attempt to be qualified as such and be punished, there should be observable and unequivocal acts toward the commission of the crime which were suspended or failed in their purpose only because of circumstances beyond the offender’s control. With regard to this case, nothing proves that there has been the commencement of execution of the plot to kill Nsabimana for it to be considered as punishable attempt.

**Appeal granted.  
Appealed judgment overturned.  
Court fees to the public treasury.**

**Statutes and statutory instruments referred to:**

Decree - Law N°21/77 of 18/08/1977 instituting the penal code, article 21.

Organic - Law N°01/2012/OL of 2/5/2012 instituting the penal code, article 25.

**No case law referred to.**

**Authors cited:**

Gaston Stefani, Georges Levasseur, Bernard Bouloc, Droit Pénal Général, Douzième édition 1984, Précis Dalloz, p. 223, para. 194 in fine.

Harald Renout, Droit Pénal Général, Editions Paradigme, manuel 2005-2006, p.126 in fine.

# Judgment

## I. BACKGROUND TO THE CASE.

[1] This case was first tried in the High Court, chamber of Musanze, where the Prosecution accused Maniriho Eric, Niyonsenga Léonard, Uwamahoro Jean d'Amour and Nzamuye Selemani, of the attempt to murder which allegedly took place on 05 August 2010, when they planned to murder Nsabimana Isaac but failed, and were arrested after drafting a tract threatening him to kill him if he fails to give them three hundred Rwandan francs (300,000).

[2] On 3 February 2011, the High Court, chamber of Musanze, tried the case and found Maniriho Eric, Niyonsenga Léonard, Uwamahoro Jean d'Amour and Nzamuye Selemani guilty of attempt to murder, on the ground that the defendants admitted to have known the plot and that there was found a tract whereby they requested Nsabimana Isaac to give them three hundred Rwandan francs (300,000) as ransom and then sentenced everyone to life imprisonment.

[3] Uwamahoro Jean d'Amour and his co-accused were not satisfied with the court decision, and appealed to the Supreme Court, claiming that the plot in question was not executed, rather it was prepared by Nsabimana Isaac due to the conflicts between him and Niyonsenga Léonard with aim to have him and his fellows imprisoned so as he may be able to monopolize the market. Furthermore, they state that the judge based on the tract while he [the judge] stated that its author was anonymous.

[4] The case was tried in public on 18 January 2016 in the absence of Maniriho Eric after serving his summon to unknown address, Niyonsenga Léonard was assisted by Counsel Uwimana Channy, while Uwamahoro Jean d'Amour was assisted by counsel Umulisa Paola, and Nzamuye Selemani by counsel Kabagambe Joëlle, and the Prosecution being represented by Mutayoba Alphonse, the Prosecutor at the National level. However, the hearing was not closed at the same day, therefore, it was postponed to 7 March 2016.

[5] On that day, the hearing of the case resumed, whereby the defendants were assisted as before, except Maniriho Eric who did not appear before the court once again after being summoned to unknown address. The Prosecution was represented by Niyonkuru Françoise, Prosecutor at the national level.

## II. ANALYSIS OF THE LEGAL ISSUE

**Whether Uwamahoro Jean d'Amour and his co-accused are guilty of the offence they are charged with.**

[6] Uwamahoro Jean d'Amour stated that he was proved guilty of the offence he did not commit. He explains that in 2010 on the day he does not recall well, he went to trading center of Busoro to request Niyonsenga Léonard to buy his irish potatoes, who told him that he was not going to buy them as he had no money. He added that he went to sell them on go away price to Nsabimana Isaac, who asked him why Niyonsenga Léonard did not buy them and replied him that it was because the latter had no money. He stated that Nsabimana Isaac instantly asked him the reason why Twishime Fabien plots to kill him, and he replied that he knew nothing about that issue. He added that he went down to the road and met Maniriho

Eric, and shortly after he was called by a police officer, and while he picked up the phone, realized that he was together with both Twishime Fabien and Niyonsenga Léonard. He adds that the police officer asked him regarding the same question and he replied that he heard Nsabimana Isaac saying that Twishime Fabien stated that Niyonsenga Léonard wanted to kill him (Nsabimana Isaac).

[7] When Uwamahoro Jean d'Amour was asked about what he declared in the Judicial Police that he was aware of the plot to kill Nsabimana Isaac, he replied that a significant part of his statement was not recorded, that Nsabimana Isaac accepted it was Twishime Fabien who revealed to him that Niyonsenga Léonard plotted to kill him, and that there is an audio record regarding the plot. He denied to have drafted the said tract.

[8] Counsel Umulisa Paola who assists him reveals that Uwamahoro Jean d'Amour was aware of the same plot and he is the one who revealed it to the Police. She further states that there was no attempt to murder, as there was no strategy likely to be used was indicated to reveal the way the attempt to murder was likely to be executed. Regarding the tract produced as evidence, she stated that it should not be relied on to prove them guilty, as long as there is no expert report proving it was written by them as they reject it.

[9] Considering her written submissions, Counsel Umulisa Paola stated that apart from rumors spread by the complainants that there was a plot to kill Nsabimana Isaac, there is no substantial act towards the commission of the plot, which was interrupted independently to the will of the accused as it is provided for by article 21 of the Decree Law N°21/77 instituting the penal code that was into force at that time. She argues that the spread rumors do not constitute reliable evidence for the commission of the attempted murder.

[10] Nzamuye Selemani states that the High Court did not rely on tangible evidence to conclude that he was in the same plot. Regarding Twishime Fabien's statements that he telephoned him informing him that there was a plot to kill him, he explained that he met Maniriho Eric coming to his home in Gasiza and revealed to him that he heard some people plotting against Twishime Fabien and basing on the fact that the latter was his friend, he called him and introduced him to Maniriho Eric whereby he informed him that Niyonsenga Léonard plots to kill him because he was the one who caused him to fall bankrupt.

[11] Counsel Kabagambe Joëlle assisting Nzamuye Selemani states that his client did nothing other than warning Twishime Fabien that he heard some people plotting to kill him; therefore he has no connection with the crime as Twishime Fabien did not include him when he complained before the Judicial Police. He keeps on stating that Nzamuye Selemani did not condone the killing, thus he revealed out information, and he forthwith requests that Uwamahoro Jean d'Amour's statements charging Nzamuye Selemani would not be considered while the later rejects those statements.

[12] Regarding the tract that is produced as evidence in this case, Counsel Kabagambe Joëlle states that there is neither expert that confirmed it was written by Nzamuye Selemani nor supporting proof that he participated in its drafting. She states that in general, there is no crime committed for there is no substantial act towards the commission of the attempt to murder, considering the elements of the crime as provided for by article 312 of the penal code that was into force at the time of the crime. She further states that, there was not even the plot to commit crime, since the complainants failed to provide evidence proving neither weapons which were likely to be used, time nor place where the crime was plotted to be committed, hence what happened consist only the spread of rumors.

[13] She concluded asking the Supreme Court to acquit Nzamuye Selemani, as the High Court found him guilty basing only on the declarations of co-defendants whilst they also assert that no crime was committed, since there were no acts constituting the beginning of the commission of the offence and that it failed to prove the *mens rea* to kill the victim.

[14] Niyonsenga Léonard criticizes the High Court for having proved him guilty and sentenced him to life imprisonment while he was innocent, and those who accused him lied to the court, and that they are famous scammers. He added that Twishime Fabien brought him ores for sale, yet after paying him, he found them fake ( ordinary stones instead), and then went to report it to the Police. He said that after the questionable release of Twishime Fabien, he got very nervous with him and conspired that he plots to murder him with the complicity of Nsabimana Isaac, and then looked for some people to accuse him namely Nzamuye Selemani and Uwamahoro Jean d'Amour, who later on started drafting tracts.

[15] Counsel Uwimana Channy states that the High Court declared Niyonsenga Léonard guilty without basing on tangible evidence, as it only based on tract, utterances of his co-defendants, and the fact that he was in conflict with Nsabimana Isaac. She states that before the court neither Uwamahoro Jean d'Amour nor Nzamuye Selemani accused him to have suggested him to kill someone, while in the case file it is recorded that they are the ones that he sent to execute the plot. She keeps on arguing that wherever they were interviewed they used to contradict each other. She further argues that Twishime Fabien is a friend to Nsabimana Isaac; therefore, there is no way that Niyonsenga Léonard could have suggested him to kill his friend being aware of their friendship.

[16] She also states that in the course of the interrogation of Maniriho Eric, he said that they wanted only to get a written document from Niyonsenga Léonard, while Nzamuye Selemani stated over the interview that he did not know Niyonsenga Léonard, and that he heard that name when he was conversing with Twishime Fabien. He added that all of them had plotted to have him imprisoned, therefore, she found that the statements in the case file were only based on conflict, rather, there was another hidden intention.

[17] The Prosecutor contends that Niyonsenga Léonard is the one who hired the service for killing as it is affirmed by his co-defendants, that they were acting on his orders after paying them eighty thousand Rwandan francs (80,000Frw). Regarding the argument presented by his counsel stating that no weapons likely to be used were demonstrated, thus, the elements constituting the crime are incomplete, the Prosecutor argues that not only weapons can be used to kill, because they could have even killed Nsabimana Isaac by suffocating him, and this was prevented by the fact that the tract was found. He states, furthermore, that there is no doubt about the crime as co-defendants accuse each other.

[18] When the Prosecutor was requested to indicate the corroboration between his statements and the law, he stated that the attempt to felony itself is equally punished as the felony, therefore, the plot to kill Nsabimana Isaac was committed, where the defendants stated that they were hired by Niyonsenga Léonard, and that they were interrupted beyond their control due to the discovery of the tract.

## **THE VIEW OF THE COURT**

[19] The documents in the case file indicate that before the Judicial Police, Uwamahoro Jean d'Amour admitted that the full plot to kill Nsabimana Isaac was developed in his

presence with Maniriho Eric and Nzamuye Selemani, on the request of Niyonsenga Léonard against four hundred thousand Rwandan francs (400,000Frw), and that Twishime Fabien was a mediator.

[20] Over his interrogation, Twishime Fabien denied his role, and stated that even himself was to be killed, because those who were hired to kill revealed the plot to him, and he informed Nsabimana Isaac, where they convened that they would give those who were likely to kill them three hundred thousand Rwanda francs (300,000Frw) so as not to execute the plot.

[21] Even Maniriho Eric admitted that he was part of this plot he was informed by Uwamahoro Jean d'Amour whom he met at Kadahenda on 5 August 2010 and requested him to get involved. Maniriho also informed Nzamuye Selemani of it, requesting him to help them, and the latter accepted but he have immediately called Twishime Fabien requesting him to threaten Nsabimana Isaac in order to get money from him.

[22] However, in the course of his interrogation, Nzamuye Selemani denied his role in the plot, rather he admitted that he knew all about it and then informed Twishime Fabien who also should be killed. He explained that Niyonsenga Léonard was about to kill him because of the conflict between them in connexion to the debt equivalent to three hundred and fifty Rwandan francs (350,000Frw) that the latter failed to pay back.

[23] Niyonsenga Léonard denied to have hatched a plot to murder, however, he admits to have been in conflict with Twishime Fabien due to the loan amounting to two hundred and fifty thousand Rwandan francs (250,000Frw) he gave to him for the payment of ores which were later discovered to be fake, while Nsabimana Isaac was his trade competitor, but that he cannot be such a ruthless to the extent to get them killed.

[24] Following the analysis of the statements of the defendants and other evidence produced by the Prosecution in the paragraph 20 of case trial, the Supreme Court finds that the High Court declared them guilty of attempted murder against Nsabimana Isaac, and then punished them basing on article 21 of the Decree Law N°21/77 instituting the penal code that was into force at the time of the crime, ruling that the attempt to murder was committed.

[25] Article 21 of the Decree Law N°21/77 instituting the penal code that was into force at the time of the crime, stipulates that “An attempt is punishable when the plan to commit an offence has been demonstrated by observable and unequivocal acts constituting the beginning of the offence meant to enable the commission and that were suspended or failed in their purpose only because of circumstances beyond the offender’s control”.

[26] For the attempt to be qualified as such and be punished there should be observable and unequivocal acts toward the commission of the crime which were suspended or failed in their purpose only because of circumstances beyond the offender’s control.

[27] Furthermore, this also corresponds to Law scholars’ opinion, whereby they state that the beginning of execution and the absence of voluntary withdrawal constitute the two definite elements of the attempt (Le commencement d’exécution et l’absence de désistement volontaire constituent les deux éléments certains de la tentative. ...)<sup>1</sup>. The commencement of

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<sup>1</sup> Gaston Stefani, Georges Levasseur, Bernard Bouloc, Droit Pénal Général, Douzième édition 1984, Précis Dalloz, p. 223, para. 194 in fine.

execution reveals by itself the offense. They are therefore acts which form part of the infringement either as a constitutive element or as an aggravating circumstance (Selon la conception objective, le commencement d'exécution révèle par lui-même le délit. Il s'agit donc d'actes qui font partie de l'infraction, soit en tant qu'élément constitutif, soit en tant que circonstance aggravante)<sup>2</sup>.

[28] Regarding this case, the Supreme Court finds that, basing on the content of the case file as mentioned above, what happened, though the co-defendants contradict each other, was a plot to kill Nsabimana Isaac, though there is no evidence of the commencement of its execution that to constitute a punishable attempt as it was explained.

[29] Regarding the tract as noticed by the Court that stresses on the role of Uwamahoro Jean d'Amour and his co-accused in the attempt to murder, the Supreme Court finds, though there is no tangible evidence proving they are the authors as they themselves deny it, and that the Prosecution failed to produce other evidence proving their role in its drafting; does not itself constitute the commencement of to kill Nsabimana Isaac.

[30] Consideration made of the explanation above, the Supreme Court finds once again that what Maniriho and his co-accused committed was conspiracy, which was not punishable by the penal code which was into force at the time of the offence because this became punishable by the Organic Law N°01/2012/OL of 2/5/2012 instituting the penal code<sup>3</sup>, thus they must not be punished for it.

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

[31] Decides that the appeal lodged by Maniriho Eric, Niyonsenga Léonard, Uwamahoro Jean d'Amour and Nzamuye Selemani is with merit;

[32] Decides that Maniriho Eric, Niyonsenga Léonard, Uwamahoro Jean d'Amour and Nzamuye Selemani are not guilty of the attempt to murder;

[33] Overrules the ruling of the judgment RP0113/10/HC/MUS rendered by the High Court, Musanze chamber on 3 February 2011;

[34] Orders that Uwamahoro Jean d'Amour and Nzamuye Selemani be immediately released;

[35] Orders that the court fees are charged to the public treasury.

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<sup>2</sup> Harald Renout, Droit Pénal Général, Editions Paradigme, Manuel 2005-2006, p.126 in fine.

<sup>3</sup> Article 25 provides that "Conspiracy is an agreement between two or more persons to engage in the commission of an offence by one or more of them, while article 26 provides that Conspiracy to commit a felony or a misdemeanour is considered an attempt to commit the felony or the misdemeanour which was the subject of conspiracy".