

# PROSECUTION v. UZABAKIRIHO ET.AL

[Rwanda SUPREME COURT – RPAA0021/14/CS –  
RPAA0022/14/CS (Mukanyundo, P.J., Hitiyaremye and  
Munyangeri, J.) October 13, 2017]

*Criminal Law – Penalty reduction – Mitigating circumstances – It is the judge who considers the appropriateness of mitigating circumstances – When the offence was committed with severe cruelty, it can be a motive of not reducing the penalty – Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code, article 71.*

*Criminal Law – The criminal liability of the accomplice – The fact that the accused was at the crime scene even though his role was not active, his presence encouraged the author because if he had refused to accompany him, the latter might have been discouraged to go and kill the deceased, this also renders the victim unable to defend himself as he thought he cannot defend himself against both of them, this conduct puts him in the category of an accomplice of the offender – Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code, article 98.*

**Facts:** This case started at the Intermediate Court of Muhanga where the Prosecution accused Uzabakiriho Bernard and Ntabanganyimana Félicien of murder of Nteziryayo Anastase which was committed in the night of 06/12/2013, that they killed him by slashing his neck, arms and his back with a machete, both confessed at the beginning of the investigation.

The Court rendered the judgment RP0534/13/TGI/MHG on 09/01/2014, convicting the accused of murder, and sentencing each of them to life imprisonment, without reducing the penalty despite their confession from the beginning of the case basing on the fact that Ntabanganyimana Félicien premeditated the commission of the offence, whereas for Uzabakiriho Bernard, before the Court he contradicted his prior statements and did not reveal the truth.

Both the accused appealed to the High Court, chamber of Nyanza, and on 20/03/2018 that Court rendered the judgment RPA0075/014/HC/NYA- RPA0083/014/HC/NYA, holding that even though Ntabanganyimana Félicien pleads guilty, his penalty cannot be reduced because he is trying to conceal the role of his brother Uzabakiriho Bernard in the murder, whereas, there is incriminating evidence against him, therefore the Court upheld the life imprisonment sentence meted to each of them by the Intermediate Court of Muhanga. Not satisfied with that decision, the accused appealed again to the Supreme Court, explaining that Ntabanganyimana boozed together with late Nteziryayo Anastase in the bar, and later, they fought and out of the anger Ntabanganyimana went home to wake up his young brother Uzabakiriho and requested him to escort him to go and revenge himself which the latter agreed. When the deceased saw them he ran and fell into a pothole of water and Ntabanganyimana slashed his arm, neck, and at the back with a machete and killed him.

Ntabanganyimana Félicien requests for a penalty reduction stating that he pleaded guilty but the previous Courts sentenced him to a severe penalty, for Uzabakiriho Bernard, he states that the previous Courts disregarded his arguments that the offence was committed by Ntabanganyimana Félicien, and convicted

him without investigation, however before this Court, he confessed for having been accomplice of his elder brother.

The Prosecution states that the fact that Ntabanganyimana went to wake up his young brother and they went together, when the deceased tried to escape, he ran after him and slashed his arm, neck and the back with a machete until he killed him without disengaging from committing the offence. This proves that the offence he committed was premeditated, it noted that this conduct is an aggravating circumstance, whereas for Uzabakiriho, the Prosecution states that he participated in the killing of the deceased as accomplice of his elder brother because he stood by and watched as the victim was being murdered with a machete (*participation passive*), this is considered as giving audacity to the author, the Prosecution concludes praying that the Supreme Court sustains the rulings of the High Court.

**Held:** 1. Even though Ntabanganyimana Félicien confesses the offence, his penalty cannot be reduced due to the cruelty in which he committed the offence because the judge is under no obligation to reduce the penalty of the accused who confesses the offence if she/he finds that the offence was committed with cruelty.

2. The fact that the accused was at the crime scene even though his role was not active, his presence encouraged the author because if he had refused to accompany him, the latter might have been discouraged to go and kill the deceased, this also renders the victim unable to defend himself as he thought he cannot defend himself against both of them, this conduct puts him in the category of an accomplice of the offender.

3. Even though Uzabakiriho Bernard was accomplice in the killing of Nteziryayo Anastase, his role is not at the same degree as that of Ntabanganyimana Félicien who plotted the murder of the deceased and committed it with cruelty, on that ground he has to be sentenced to ten (10) years of imprisonment.

**Ntabanganyimana's appeal lacks merit.  
Uzabakiriho's appeal has merit in part  
Court fees to the public treasury**

**Statute and statutory instruments referred to:**

Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code, article 71,78, 98 and 99.

**Case laws referred to:**

Prosecution v. Nshutirakiza Narcisse, RPA0047/11/CS rendered by the Supreme Court on 27/03/2015.

**Autors cited:**

Jean Pradel, Droit Pénal Général, 20<sup>ème</sup> édition, P. 405.

## **Judgment**

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

[1] This case started at the Intermediate Court of Muhanga where the Prosecution accused Uzabakiriho Bernard and Ntabanganyimana Félicien of murder of Nteziryayo Anastase which was committed in the night of 06/12/2013, that they

killed him by slashing his neck, arms and his back with a machete, both confessed at the beginning of the investigation.

[2] The Court rendered the judgment RP0534/13/TGI/MHG on 09/01/2014, convicting the accused of murder, and sentencing each of them to life imprisonment, without reducing the penalty despite their confession from the beginning of the case. The Court decided that Ntabanganyimana Félicien cannot benefit from penalty reduction because of he premeditated the commission of the offence, whereas for Uzabakiriho Bernard, the Court ruled that the penalty cannot be reduced because before the Court he contradicted his prior statements and did not reveal the truth.

[3] Ntabanganyimana Félicien and Uzabakiriho Bernard appealed to the High Court, chamber of Nyanza, and on 20/03/2018 that Court rendered the judgment RPA0075/014/HC/NYA- RPA0083/014/HC/NYA, holding that even if Ntabanganyimana Félicien pleads guilty, he should not benefit the penalty reduction because he is trying to conceal the role of his brother Uzabakiriho Bernard in the murder, whereas, there is incriminating evidence against him, therefore the Court upheld the life imprisonment sentence meted to each of them by the Intermediate Court of Muhanga.

[4] Not satisfied with that decision, Ntabanganyimana Félicien and Uzabakiriho Bernard appealed again to the Supreme Court, Ntabanganyimana Félicien requesting for a penalty reduction stating that he pleaded guilty but the previous Courts sentenced him to a severe penalty, for Uzabakiriho Bernard, he states that the previous Courts disregarded his arguments that the offence was committed by Ntabanganyimana Félicien, and convicted him without investigation, however

before this Court, he confessed for having been accomplice of his elder brother.

[5] The hearing was held in public on 18/09/2017, Ntabanganyimana Félicien assisted by Counsel Dushimire Jeannette and Uzabakiriho Bernard assisted by Counsel Nzabarantumye Augustin, and the Prosecution was represented by Munyaneza Nkwaya Eric, the National Prosecutor.

## **II. ANALYSIS OF LEGAL ISSUES**

**With regard to Ntabanganyimana Félicien**

**Whether Ntabanganyimana Félicien's confession is sincere, so that it can serve as mitigating circumstances**

[6] Ntabanganyimana Félicien states that he is not contended with the appealed judgment because he pleaded guilty from the beginning, but the Courts disregarded it and sentenced him to severe penalty without reducing it, therefore, he requests the penalty to be reduced because he was sentenced to severe punishment whereas the law provides that she would benefit penalty reduction to ten (10) years of imprisonment.

[7] With regard to the commission of the offence, Ntabanganyimana Félicien explains that he boozed together with late Nteziryayo Anastase in the bar, and later, they fought but people who were around intervened and stopped the fight. He states that due to the anger caused by the acts of the deceased, he went to wake up his brother Uzabakiriho Bernard and informed him that he has just had a fight with someone and he is going to revenge, he asked his brother to escort him and Uzabakiriho agreed. Ntabanganyimana Félicien further more

says that the deceased ran when he saw them, Ntabanganyimana Félicien ran after him but the the deceased fell into pothole of water and Ntabanganyimana Félicien caught and slashed his arm, neck, and at the back with a machete and killed him, he returned back and told his young brother Uzabakiriho Bernard that he has just killed Nteziryayo Anastase with whom he had conflicts, he also asked him not to reveal it to any one. He concludes by saying that he acted alone in murdering Nteziryayo Anastase, and that his young brother had no role in the commission of the offence except that he accompanied him, knew the commission of that offence and concealed it.

[8] Counsel Dushimire Jeannette states that in previous Courts, Ntabanganyimana Félicien concealed the role of his young brother in the commission of the offence, but before this Court he is revealing the truth by demonstrating that there was complicity whereby his young brother agreed to escort him, hence, he deserves penalty reduction.

[9] The Prosecutor contends that Ntabanganyimana Félicien's appeal lacks merit because he premeditated the offence is accused of, with the motive of revenging after the fight he had with the deceased. The prosecutor futher states that Ntabanganyimana Félicien statements intending to prove that he was provoked should not be considered, that in examining them, the Court should be guided by the judgment of the Prosecution v. Mbanzamihigo Jean Pierre, RPA0274/08/CS rendered by the Supreme Court on 07/01/2011, whereby the Court based on the writings of the Law scholar Jean Claude Soyer regarding the self defense and provocation, he states that when a provoked person committs an offence sometime later, it is considered as a

revenge, in other words, he takes the law into his own hands instead of resorting to justice.

[10] The Prosecutor further states that concerning the case at hand, Ntabanganyimana Félicien revenged himself because it took a while after he fought with Nteziryayo Anastase without disengaging from committing the offence. The prosecutor argues that this is demonstrated by the fact that Ntabanganyimana Félicien went to wake up his young brother and they went together, when the deceased tried to escape, he ran after him and slashed his arm, neck and at the back with a machete until he killed him, this proves that the offence he committed was premeditated, this conduct is aggravating circumstance, for that reason, the Prosecutor prays that the Supreme Court sustains the rulings of the High Court.

## **THE VIEW OF THE COURT**

[11] Article 71 of Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code provides that the judge shall determine a penalty according to the gravity of the offence taking into account offender's motives, history and background, circumstances surrounding the commission of the offence and individual circumstances.

[12] The documents of the case file demonstrate that Ntabanganyimana Félicien admitted having killed Nteziryayo Anastase with a machete, before this Court, he explains that the deceased ran when he saw them waiting to ambush him, Ntabanganyimana ran after him but the late fell in pothole of water, Ntabanganyimana Félicien slashed his arms, neck and his back with a machete till he killed him.

[13] The Supreme Court finds that Ntabanganyimana Félicien cruelly murdered Nteziryayo Anastase as also demonstrated by the medical report and photos of the deceased's body contained in the case file, they indicate that he was killed with a machete to the extent that his hand was cut off, all those have to be considered in determining the penalty as provided by article 71 of Organic Law N°01/2012/OL of 02/05/2012 mentioned above.

[14] The Supreme Court finds that even though Ntabanganyimana Félicien confesses the offence, the judge is under no obligation to reduce the penalty if she/he finds that the offence was committed with cruelty as it was done by Ntabanganyimana Félicien. This precedent was also upheld in the judgment of the Prosecution v. Nshutirakiza Narcisse, RPA0047/11/CS rendered on 27/03/2015 whereby the accused pleaded guilty but the Court refused to reduce the penalty because of cruelty, inhuman and degrading treatments used in murdering his wife by cutting different parts of her body with a machete.<sup>1</sup>

[15] Considering the laws and motivations provided above, the Supreme Court finds that Ntabanganyimana Félicien's appeal lacks merit, hence, the life imprisonment he was sentenced to by the High Court, chamber of Nyanza in the judgment RPA0075/14/HC/NYA-RPA0083/14/HC/NYA rendered on 09/01/2014 is sustained.

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<sup>1</sup> The Supreme Court, Law Report, V.3-July 2016, P.189-194.

## **B. With regard to Uzabakiriho Bernard**

### **Dertemining the role of Uzabakiriho Bernard in the murder of Nteziryayo Anastase.**

[16] Uzabakiriho Bernard admits his complicity in the death of the late Nteziryayo Anastase, and for this reason, he requests for forgiveness. He explains that Ntabanganyimana Félicien came at around 8h00 PM wounded and had lost a tooth, he woke him up and requested to accompany him, Uzabakiriho Bernard asked him where they are going and he replied that he is going to revenge against a person who had beaten him, thus they went together. He further states that on their way they met a person who got afraid when he saw them and ran, Ntabanganyimana Félicien ran after him and hit him with a machete, he returned and told Uzabakiriho that he has killed him but he ordered him not to reveal it, and also the latter decided to keep the secret for his elder brother.

[17] He adds that he is remorseful for having escorted his elder brother after he was told that he was going to avenge himself, that if he had refused to escort him, he would not have gone, that he went due to the emotions for his elder brother because he was injured whereas he went when he was in good health, and that he thought that although his elder brother was going to revenge himself, he could also die.

[18] His counsel, Adv. Nzabarabantumye Augustin states that Uzabakiriho Bernard did nothing wrong because he saw his elder brother taking the machete, and he thought that he would be attacked, for that reason he accepted to accompany him, so that he intervenes in case anything happens to him. He argues

that the fact that Uzabakiriho Bernard admits having accompanied his elder brother well knowing that he was going to carry out criminal act, that is direct role in the death of the late Nteziryayo Anastase, therefore, it should be a ground for reducing the penalty.

[19] The Prosecutor contends that Uzabakiriho Bernard participated in the killing of Nteziryayo Anastase as accomplice of his elder brother Ntanganyimana Félicien because he stood by and watched as the victim was being murdered with a machete (participation passive), this is considered as increasing the audacity of his brother as was held in the case of the Prosecutor v. Kayishema Clément and Ruzindana Obed rendered on 01/08/2001 by International Criminal Tribunal for Rwanda which had its headquarters in Arusha.

[20] Article 78, 1° of Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code provides that if there are mitigating circumstances, the reduction of penalties shall be as follows : life imprisonment or life imprisonment with special provisions is replaced by a penalty of imprisonment of not less than ten (10) years.

[21] Article 98, Paragraph 1, *Litera 3* of the aforementioned Organic Law, provides that an accomplice is a person knowingly aids or abets the offender in preparing, facilitating or committing the offence, or a person who incites the offender, whereas article 99 of the same Organic Law provides that the accomplice is not subject to the same penalty as the offender or co-offender, except in cases where the law provides otherwise or when the judge in his/her discretion finds that the accomplice's responsibility in the commission of the offence is the same as or greater than that of the principal offender.

[22] The Law scholar Jean Pradel demonstrates that sometimes the presence of the one accused as an accomplice at the crime scene makes the criminals to have the audacity to execute their plot or weakening the resistance of their victim. Therefore, the fact that the accused was at the crime scene on the side of the offender, even though his role was not active, being with the author is considerable assistance, which should be taken into consideration in prosecuting him. (...*Un auteur avait noté à juste titre qu'il peut se faire qu'à elle seule la présence sur les lieux du prévenu...ait pour résultat d'accroître l'audace des malfaiteurs ou d'affaiblir la résistance de leur victime. Cette attitude physiquement passive comporte alors une aide psychologique positive et efficace qui doit être prise en considération au même titre*).<sup>2</sup>

[23] Before this Court, Uzabakiriho Bernard admits that he went together with his elder brother Ntabanganyimana Félicien after the latter had told him that he had a fight with someone and he has to revenge himself, he took the machete and Uzabakiriho followed him, when they met Nteziryayo Anastase, he became afraid when he saw that they were two and he immediately ran, Ntabanganyimana Félicien ran after him and repeatedly slashed him with a machete, and Uzabakiriho Bernard did not intervene. The Supreme Court finds that this conduct encouraged his elder brother in the commission of the offence because if he had refused to accompany him, the latter might have been discouraged to go and kill the deceased, or if he went, the deceased might have defended himself. This was not the case because the victim became afraid when he saw that they were two, and ran because he thought he could not fight

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<sup>2</sup> Jean Pradel, *Droit Pénal Général*, 20<sup>e</sup> édition, P. 405.

with both of them. That conduct puts him in the category of an accomplice of the author of the offence as stipulated by article 98 paragraph one (1), *litera* 3 of Organic Law N°01/2012/OL of 02/05/2012 mentioned above.

[24] The Supreme Court finds that even if Uzabakiriho Bernard was accomplice in the killing of Nteziryayo Anastase, his role is not at the same degree as that of Ntabanganyimana Félicien who plotted the murder of the deceased and committed it with cruelty as motivated above, especially that he confesses and requests for forgiveness, therefore, pursuant to article 78, 1° and 99 of aforementioned Organic Law N°01/2012/OL, Uzabakiriho Bernard must be sentenced to ten (10) years of imprisonment.

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

[25] Decides that the appeal lodged by Ntabanganyimana Félicien lacks merit.

[26] Decides that the appeal lodged by Uzabakiriho Bernard has merit in part

[27] Sustains the life imprisonment meted to Ntabanganyimana Félicien by the High Court, chamber of Nyanza.

[28] Decides that the rulings of the case RPA0075/14/HC/NYA-RPA0083/14/HC/NYA is modified with regard to Uzabakiriho Bernard

[29] Sentences Uzabakiriho Bernard to ten (10) years of imprisonment

[30] Orders that the court fees be charged to the public treasury.