

PROSECUTION v. MAYOBERE

[Rwanda SUPREME COURT – RPAA0067/15/CS (Mukamulisa, P.J., Mukandamage and Muhumuza, J.) May 18, 2018]

Criminal procedure – Continuous offence – The prescriptive period of a criminal action runs from the date of the cessation of the last act of the offence – Law N°30/2013 of 24/5/2013 relating to the code of criminal procedure, article 6 paragraph 3.

Facts: Mayobere was prosecuted for the offence of counterfeit and use of counterfeit document before the Intermediate Court of Rubavu, the Prosecution stated that the offence was committed when his parents bought a piece of land from Sinumvayabo and his wife Nyiramatama and the parents entrusted Mayobere with custody of the sale agreement. The prosecution states that after Semahundo's death, Mayobere concealed that agreement, instead he wrote another indicating that he is the one who bought that piece of land on 23/09/1975. Mayobere Jean Baptiste's brother, Samvura Joseph sued for damages in the case. That Court found Mayobere not guilty of counterfeit and use of counterfeit document.

The Prosecution and the claimant for damages were not satisfied with the rulings of the judgment, consequently, they lodged appeal to the High Court, chamber of Musanze. That Court found Mayobere guilty of counterfeit and use of counterfeit document and sentenced him to six (6) years of imprisonment and a fine of 300,000Frw, it also held that the ruling of the judgment rendered by the Intermediate Court of Rubavu is overturned and ordered Mayobere to give Samvura various damages.

The accused appealed to the Supreme Court stating that in the High Court, the judge based on non existing law at the time of commission of the offence because the judge applied the Organic Law N°01/2012/OL instituting the penal code of 2012 which was not in existence because the document he was accused of, is dated 29/02/1975, he argues that the law which should have been applied is the penal code instituted in the colonial period (Decree of 3 January 1940) which was in force at that time. He adds that there was prescription of the offence he was accused.

The prosecution, argues that before examining the grounds of appeal, the Court should first examine the jurisdiction of the Supreme Court because this is the second appeal and the Prosecution finds that it does not fall in the jurisdiction of this Court considering the sentence of Mayobere J. Baptiste. The Prosecution also responded to the grounds of the appeal of the accused, the Prosecution is of the view that the judge did not err, because the last time Mayobere used that document was in the case RC0069/2013/TB/NYAB between him and Samvura Joseph which was rendered on 19/07/2013 and that was post colonial period, and the penal law which was in force is that of 2012.

Held: 1. Mayobere began to use the document he is accused of having counterfeited, in 2011 and also produced it as an element of evidence in the case RC0069/2013/TB/NYBA adjudicated by the Primary Court of Nyakiliba on 19 July 2013, therefore, the Hight Court did not base on non existing law.

2. For the continuous offence, the prescriptive period of a criminal action runs from the date of the cessation of the last act of the offence. Therefore, the fact that the accused is charged with continuous offence, this is the reason, there was application of organic law N°01/2012/OL of 02/05/2012 instituting the penal code which was in force when the last act of the offence was committed.

3. The High Court, chamber of Musanze ruled on the case within its jurisdiction because it tried the appeal of the judgment rendered on first instance by the Intermediate Court of Rubavu.

**Appeal is not in the jurisdiction of the Supreme Court;
Sustains the appealed judgment;
Court fees charged to the accused.**

Statutes and statutory instruments referred to:

Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, article 28(2)

Organic Law N°51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts as modified and complemented to date, article 105.

Law N°30/2013 of 24/5/2013 relating to the code of criminal procedure, article 6 paragraph 3.

No case law referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] This case started at the Intermediate Court of Rubavu, where Mayobere Jean Baptiste was prosecuted for the counterfeit and use of counterfeited document, the Prosecution stated that the offence was committed when his parents bought a piece of land from Sinumvayabo and his wife Nyiramatama and they entrusted Mayobere with custody of the sale contract. The prosecution states that after Semahundo's death, Mayobere concealed that contract, instead, he drafted another one which demonstrates that he is the one who bought that piece of land on 23/09/1975. Mayobere Jean Baptiste's brother, Samvura Joseph filed for damages in that case. The Intermediate Court of Rubavu rendered the judgment and held that Mayobere Jean Baptiste is not guilty of counterfeit and use of counterfeited document, hence the Court acquitted him.

[2] The Prosecution and Samvura Joseph, the claimant for damages were not satisfied with the ruling of the case, they appealed to the High Court, chamber of Musanze. That Court found Mayobere Jean Baptiste guilty of the offence of counterfeit and use of counterfeited document he is accused for, it sentenced him to six years of imprisonment and a fine of 300,000Frw, it also held that the ruling of the judgment RP0018/14/TGI/RBV rendered by the Intermediate Court of Rubavu is overturned. It also ordered Mayobere J. Baptiste to pay Samvura Joseph, damages equivalent to 500,000Frw, counsel's fees of 500,000Frw and to refund him 125,000Frw that he paid as court fees.

[3] Mayobere Jean Baptiste appealed to the Supreme Court stating that in the ruling of the case, the Judge based on non-existing law at the time of the commission of the offence and that the High Court tried the case on which it has no jurisdiction.

[4] The case was heard on 26/03/2018, Mayobere J. Baptiste assisted by Counsel Mberabagabo B. Richard, the Prosecution represented by Ntawangundi Beatrice, while Samvura Joseph was assisted by Counsel Tugirimana Vincent. Before examining the grounds of the appeal, the Court examined the objection of lack of jurisdiction of the Supreme Court raised by the Prosecution.

II. ANALYSIS OF LEGAL ISSUES

Whether the second appeal falls under the Supreme Court jurisdiction.

Regarding the issue of rendering the judgment basing on non-existing law

[5] The prosecution argues that before examining the grounds of appeal, the Court should first examine the jurisdiction of the Supreme Court because this is the second appeal and the Prosecution finds that it does not fall in the jurisdiction of this Court considering the sentence of Mayobere J. Baptiste.

[6] The Prosecution also responded to the statements of Mayobere J. Baptiste and his advocate that in the appealed judgment, the judge based on the non-existing law at the time of the commission of the offence because a document he is accused, was drafted on 23/09/1975, but in rendering the judgment, the judge based on article 609 of the Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code, whereas the judge should have applied article 124 of the penal code of the colonial period which was in force when that document was written.

[7] For those reasons, the Prosecution states that basing on the provisions of article 6 paragraph 4 of the law N° 30/2013 of 24/5/2013 relating to the code of criminal procedure, the Prosecution is of the view that Mayobere J. Baptiste and his advocate's arguments are false, because the last time Mayobere J. Baptiste used that document was in the case RC 0069/2013/TB/NYAB between him and Samvura Joseph which was rendered on 19/07/2013 and that was post colonial period, and the penal law which was in force is that of 2012, thus the judge did not err.

[8] The Prosecution further adds that considering the facts given above and the provisions of article 28 litera two of the Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, this article precludes Mayobere J. Baptiste from appealing to this Court because he was sentenced to the lesser penalty than the one provided by the organic law mentioned above and the Prosecution proved that the period for prosecution of the offence did not lapse.

[9] Counsel Tugirimana Vincent assisting Samvura Joseph, states that his client also raised an objection of inadmissibility of Mayobere J. Baptiste's second appeal because it does not comply with the provision of article 28 paragraph 2 of Organic Law N° 03/2012/OL of 13/06/2012 mentioned above, because the second appeal is lodged when the penalty sentenced to

the accused exceeds 10 years of imprisonment whereas Mayobere J. Baptiste was sentenced to six years of imprisonment(6years), therefore he should not have appealed to the Supreme Court.

[10] He adds that the arguments concerning the prescription of the criminal action is groundless because article 6 of the law N°30/2013 of 24/5/2013 relating to the code of criminal procedure provides that as to continuous offences, the prescriptive period of a criminal action shall run from the date of the cessation of the last act of the offence which is 2013, because Mayobere started using the document he is accused of in 2011, he again used it during pre trial detention, it is obvious that there was continuous use of that document, hence, there is no prescription of offence.

[11] Counsel Mberabagabo B.Richard assisting Mayobere J.Baptiste states that the document which the Prosecution alleges that it was last used on 19/07/2013 in the case RC0069/2013/TB/NYAB is not true because the Prosecution cannot prove it, rather, he and his client find that the document produced during the case proceeding as an element of evidence is the one dated 29/02/1975 and it is the same document that Mayobere is accused for even though he does not agree that he forged any document especially that he did not respond to that allegation. He also argues that the document they admit is that of 23/09/1975, when Mayobere bought a piece of land.

[12] He further states that basing on the provisions of article 28 of the organic law N°03/2012/OL mentioned above, the ground of their appeal is that the Court relied on the non-existing law at the time of the commission of the alleged offence, he emphasizes that article 124 of the penal code of the time of the colonization (Decree of 3 January 1940) which was in force at that time should have been applied. He adds that as the judge relied on article 609 of the Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code supports their claim that he based on non-existing law and the offence which Mayobere is accused of, expired due to the prescriptive period.

THE VIEW OF THE COURT

[13] Article 28 litera 2 of the Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court provides that the Supreme Court shall also have appellate jurisdiction over cases heard and decided in the second instance by the High Court if such cases are based on non-existing law, repealed legal provisions or decided by a court that does not have jurisdiction.

[14] The Court finds Mayobere J. Baptiste's statement that High Court, chamber of Musanze based on non existing law in rendering the judgment without merit because the document he is accused for having counterfeited and used it, he used it since 2011 when he was litigating before Abunzi with his mother Bashimiki, he does not also deny having used it as an evidence in the case RC0069/2013/TB/NYBA rendered by the Primary of Nyakiriba on 19/07/2013, in the case between him and Samvura Joseph.

[15] The Court also finds that the offence that Mayobere J.Baptiste is accused of, is a continuous offence provided by article 6 paragraph 3 of the Law N°30/2013 of 24/5/2013 relating to the code of criminal procedure which states that the prescriptive period of a criminal action shall run from the date of the cessation of the last act of the offence which is 2013 as reminded above, this is the ground by which the High Court, chamber of Musanze based on Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code which was in force when the last act of the offence was committed, it is obvious that the period of the prosecuting the offence did not lapse. Therefore this Court finds that the High Court, chamber of Musanze did not err.

Whether the judgment was rendered by the Court without jurisdiction

[16] Counsel Mberabagabo B. Richard states that the High Court, chamber of Musanze rendered the judgment without jurisdiction because it disregarded article 60 of the Constitution of the Republic of Rwanda of 04 June 2003 as revised up to date where it provides for the branches of Government and indicates that they are separate and complementary. He further finds that the provisions of article 21 paragraph 2 of the Law N°30/2013 of 24/5/2013 relating to the code of criminal procedure whereby it indicates that Judicial Police Officers have the primary responsibility to conduct preliminary investigation, it is obvious that the judge did not consider all these articles whereas these provisions demonstrate powers and duties of each branch, especially that Mayobere was convicted basing on the document by which he did not defend himself against, before Judicial Police.

[17] The Prosecution argues that Mayobere J.Baptiste's ground of appeal that the High Court, chamber of Musanze rendered the judgment without jurisdiction lacks merit, because the High Court, chamber of Musanze had territorial and material jurisdiction as it tried the first appeal against the judgment of the case tried in merit by the intermediate Court of Rubavu, they state this, relying on the provisions of the article 105 of Organic Law N°51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts.

[18] Counsel Tugirimana Vincent who assists Samvura Joseph states that the High Court, chamber of Musanze was competent to hear the case because it was the appeal of the judgment rendered on first instance by the intermediate Court of Rubavu.

THE VIEW OF THE COURT

[19] Article 28 litera two of the Organic Law N°03/2012/OL of 13/06/2012 provides that the Supreme Court has appellate jurisdiction over cases heard and decided in the second instance by the High Court, if such cases (.....) were decided by a court that does not have jurisdiction.

[20] The main grounds of Mayobere J. Baptiste's appeal of the case decided on the second instance by the High Court, chamber of Musanze are that; the appealed case was decided basing on non existing law and that the High Court, chamber of Musanze rendered the judgment while it had no jurisdiction.

[21] The Court finds that the claim of Mayobere J.Baptiste that High Court, chamber of Musanze rendered the judgment while it had no jurisdiction, is with no merit because that Court

heard an appeal of the case which was decided on first instance by the Intermediate Court of Rubavu, as it is provided by article 105 of the Organic Law N°51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts as modified and complemented to date whereby it provides that the High Court hears appeal of criminal cases tried on first instance by the Intermediate Court.

[22] The Court finds that the High Court, chamber of Musanze rendered the judgment of the case which is in its jurisdiction, therefore, the ground of Mayobere J. Baptiste's appeal is without merit.

[23] Upon the motivations given above, the Court finds Mayobere J. Baptiste's second appeal lodged before the Supreme Court is not in its jurisdiction.

III. THE DECISION OF THE COURT

[24] Decides that the appeal lodged by Mayobere J. Baptiste is not in the jurisdiction of the Supreme Court;

[25] Sustains the rulings of the judgment RPA0181/14/HC/MUS rendered on 27 July 2015 by High Court, chamber of Musanze;

[26] Orders Mayobere J. Baptiste to pay the court fees.