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Rwanda MCC Threshold Program

JUSTICE STRENGTHENING PROJECT

FINAL TRAINING REPORT

EVALUATION OF JUDGMENTS FOR COURT INSPECTORS

MAY 8, 2010



Professor James Raymond during the May 8, 2010 Training for Court Inspectors on Judgment Evaluation.

JUNE 20, 2010

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RWANDA MCC THRESHOLD PROGRAM JUSTICE STRENGTHENING PROJECT

TRAINING REPORT:
Evaluation of Judgments for Court Inspectors
May 8, 2010

Kigali, Rwanda

TRAINING REPORT:
June 20, 2010

Author: George Muwanguzi Kalisa, Justice Sector Training Specialist

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Training Report

Overview

Instructor: Professor James C. Raymond
Participants: Inspectors of Courts
Venue: Rwanda Justice Strengthening Project offices

Introduction

This Inspector training builds upon the previous Training of Trainers courses in Judgment Writing. The training lasted for one half-day and focused on the evaluation of judgments using the two versions of Professor Raymond's checklist - one a schematic and the other an elaborated version of the same. The training included 7 inspectors of court one of whom is female.

This course was particularly aimed at Court Inspectors. These are judicial officers charged with inspecting all the courts in Rwanda. They work under the Chief Justice within the administrative framework of the Supreme Court. Inspectors are appointed from among the judges of the High Court and are to have at least four years working experience as judges. They are by law supposed to supervise all the courts in Rwanda including the Supreme Court; though in practice their inspection activities are mainly conducted in the primary courts, Intermediate Courts and the High Court. Inspectors generally look at the efficiency and ethical aspects of the performance of the judges as well as their discipline. They are therefore an important link within the judiciary to ensure the quality of the judgments rendered. Inspectors immediately report to the Inspector General and their inspection reports are submitted to the Chief Justice with the required recommendations for action. They are therefore an important link within the judiciary since their activities transcend a single level of jurisdiction and are supported by the office of the Chief Justice.

Training Goals

1. To distinguish between objective and subjective aspects of evaluation.
2. To distinguish between evaluating and editing.
3. To distinguish between surface editing and deep editing.
4. To distinguish between evaluating form and evaluating content.
5. To apply a checklist to a sample judgment.
6. To re-write the sample judgment and discuss the results.
7. To demonstrate the use of Track Changes.
8. To provide the group with at least one example of a revised judgment.

Training Objectives

The main objective is to provide Inspectors with the techniques and the reference materials necessary to consistently, uniformly and effectively evaluate judgments.

Methodology

The training was undertaken by employing several modes of instruction, including: lectures, group discussions, individual and group evaluation of judgments. Participants were guided in ways to use, interpret and effectively apply the provided judgment quality checklists.

Training Materials

Training materials provided included the checklists for evaluating judgments, as well as copies of both an original judgment, *Ngendahayo*, along with a revision of that judgment that reflects international best practices. The original judgment was translated into English in order to allow Prof. Raymond the ability to revise and edit the judgment and provide comments to the participants. That model judgment was then translated back into Kinyarwanda to be used as a reference by the inspectors. Both the checklist and model judgment provide evaluative references that the inspectors will use in their on-going work with the courts.

In the process of evaluating the sample judgment, *Ngendahayo*, inspectors discussed issues raised in the case, including: right to counsel; the presumption of innocence; burden of proof; role of the judge as investigator or referee; and statutory elements of an offence. The inspectors discussed how these issues are best dealt with in the judgment and reflected on the difference between the original judgment and international best practices demonstrated in the model judgment.

Focus and Applications

The training also focused on legal writing as a mode of thinking as well as a means of communication. Emphasis was put on selection, organization, and analysis. The issue-driven approach advocated in the main TOT program was discussed as a useful trial management tool for judges because it keeps counsel efficient and on the point, encouraging settlement without trials. The end result will be improved capacity by the inspectorate to evaluate judgments, emphasizing that all judgments must be easily understood not only by the parties, but also by the public.

Organization of the training

The training was conducted in English. Because some of the trainees are not fluent in English, discussions were also done in French to ensure full and effective transmission of knowledge, participation and communication. The original version of the sample judgment was translated in English and its revised version was translated into Kinyarwanda to enable trainees to easily identify the changes and apply them in their learning process.

Training Evaluation

The goal of this training was teaching inspectors how to evaluate judgments, including the ability to distinguish between evaluating and editing. Participants were required to apply the checklists to the sample judgment that was given to them by assigning numerical values to different sections of the sample judgment. The checklists were designed to provide a numerical total for the evaluation (with a maximum score of 28). After the individual evaluation of that sample judgment by each trainee, the inspectors were able to compare their scores and reach a fairly consistent consensus.

During the training, the inspectors agreed that their job was not to evaluate the decision, but rather to act as evaluators, editors and advisors, using the checklists to guide their colleagues. Because the checklists are the same as those that were used in the Training of Trainers courses for High Court and Supreme Court judges as well as for students at the ILPD, they provide a shared context for discussing essential elements of judgments. Furthermore, they could be used by independent evaluators to provide pre- and post- evaluations in future programs. Judges could evaluate their own work, or the work of their colleagues. The inspectors could also be asked to evaluate pre-and post training samples without being told which were which.

Challenges Identified

Basing on the training's goals and objectives, the general rating of the training was quite good. The main challenge cited was "language". The language of instruction was English and not all the trainees were fluent in English. This led to the instructor being obliged to sometimes switch from English to French, a second language for Prof. Raymond. Training materials are in both English and French, and where possible in Kinyarwanda. The most successful trainings are supported by simultaneous interpretation that includes English, French and Kinyarwanda, but the costs are extremely high.

Another challenge cited was the time allocated for the training. Although the Supreme Court defined the time available for inspectors to participate in this training, the time was described in the evaluations as very short based upon the nature and extent of the issues that were addressed. JSP has recommended allocating more time for these trainings, but the day to day work of the inspectors and judges has limited their availability to participate.

Key Recommendations

- The main recommendation from the participants was allocation of more time for this kind of training as half a day left a lot of unfinished business.
- It was also recommended that the inspectors who followed the training be relieved of most of their judicial duties in order to examine the quality of judgments by using the checklists that were left with them.
- Basing on what shall be expected of the inspectors which will mainly be examining and evaluating judgments, it is critical that the checklists, or an improved version, be reduced into formal written criteria for evaluating judgments.

Annexes

I. Syllabus & Program

JUDGMENT WRITING – SUPREME COURT & HIGH COURTS JUDGES

DAY ONE

- 09:00 Welcome
- 09:15 Plenary Session.
Explanation of the program, its goals and objectives.
Inspectors read and discuss the sample judgment
- 10:00 Break
- 10:20 Lecture/Discussion: –The Checklist Revisited”
- 11:00 Inspectors individually score sample judgment.
- 11:15 Inspectors compare and discuss scoring results.
- 12:15 Plenary discussion of the checklist; suggestions for improvement; problems in evaluation.
This session will include an analysis and discussion of our revision of *Ngendayaho*, and incidentally a demonstration of the Track Changes feature.
- 13:00 Set up groups of three to review one another’s judgments on the second Saturday of each month. Copies to be circulated by email. Discussion can be by email, conference call, or in person, depending on each group’s circumstances.
- 13:15 Closing remarks.

II. Training Materials & PowerPoint Presentations

Sample Slides of Professor Raymond's Power Point Presentation



Rwanda MCC Threshold Program
JUSTICE STRENGTHENING PROJECT

Kwandika imanza mu bice bitanu byoroshye

James C. Raymond, Ph.D.
Translated by George Muwanguzi Kalisa

Rwanda MCC Threshold Program
JUSTICE STRENGTHENING PROJECT

Kwandika imanza mu bice bitanu byoroshye.

- 1. Erekena ibibazo maze buri kibazo ugihe umutwe ugisobanura.**
- 2. Kurikiranya ibibazo mu buryo busobanutse.**
- 3. Andika itangiriro mu buryo bw' inkuru ngufi isobanura neza ibyo bibazo.**
- 4. Sesengura buri kibazo.**
- 5. Andika umwanzuro.**

Rwanda MCC Threshold Program
JUSTICE STRENGTHENING PROJECT

Umwitozo wa mbere

- Andika umubare w'ibibazo biri mu rubanza uzi neza, bigomba gukemurwa.

NB. A complete set of Prof Raymond's PowerPoint presentation may be obtained at the JSP offices or as a separate document to this report.

A SHORT CHECKLIST FOR JUDGMENTS

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1. Read the first page.

How well does your beginning provide your readers with the factual overview they need in order to understand the issues?

Not at all 0	Somewhat 1	Very Well 2
-----------------	---------------	----------------

Does the beginning clearly list the issues in the order in which they will be decided?

Not at all 0	Somewhat 1	Very Well 2
-----------------	---------------	----------------

Does the beginning of your judgment include information that has no relevance to the issues at hand?

Yes, a lot 0	A few 1	None at all 2
-----------------	------------	------------------

2. Now check the headings.

Do your headings echo the issues/questions listed in the introduction?

Not at all 0	Somewhat 1	Very Well 2
-----------------	---------------	----------------

Does the typography clearly signal the difference between headings and subheadings?

Not at all 0	Somewhat 1	Very Well 2
-----------------	---------------	----------------

Are the headings listed in a logical sequence (e.g., threshold issues, like jurisdiction first, contingent issues like damages, last)?

Not at all 0	Somewhat 1	Very Well 2
-----------------	---------------	----------------

3. Now read the section immediately following the introduction.

In your judgment, if the section immediately following the list of questions addresses the first issue, please add two points to the score and skip to Question 4 below.

If the section immediately following the issue deals with procedural history or other information, is it justified? I.e., does it include facts or law common to more than one issue, or unresolved questions of procedure, or laws relevant to all the issues?

Not at all 0	Somewhat 1	Very Well 2
-----------------	---------------	----------------

4. Now read the analysis of the issues.

For each issue indicate whether the analysis is clear and succinct.

Not at all 0	Somewhat 1	Very Well 2
-----------------	---------------	----------------

Is the analysis persuasive?

Not at all 0	Somewhat 1	Very Well 2
-----------------	---------------	----------------

Is the losing party's position stated clearly and impartially?

Not at all 0	Somewhat 1	Very Well 2
-----------------	---------------	----------------

Could reader unfamiliar with the case tell why the losing party lost?

Not at all 0	Somewhat 1	Very Well 2
-----------------	---------------	----------------

5. Now check the ending.

Are the findings and rulings clearly indicated?

Not at all 0	Somewhat 1	Very Well 2
-----------------	---------------	----------------

Would the ending be improved by a recapitulation of the reasons?

Yes 0	Somewhat 1	No 2
----------	---------------	---------

Would the ending be improved by adding arguments from consequence?

Yes 0	Somewhat 1	No 2
----------	---------------	---------

**Please add all the points you awarded and provide a TOTAL: _____
(Max possible, 28)**

A CHECKLIST FOR JUDGMENTS

©James C. Raymond 2010

1. Read the first page.

An effective first page does three things:

- it tells Who (Allegedly) Did What to Whom (or Who’s Arguing about What) before anyone set foot in court;
- it sets out the issues to be decided in the order in which they are to be decided;
- it omits details (names, dates, procedural history, citation of laws or precedents, that have nothing to do with the issues at hand.

In other words, it sets out a “helicopter” view of the facts, followed by a list of questions that the court needs to resolve en route to resolving the case as a whole. It does this without legal jargon and without an alphanumeric soup of citations. If possible, it refers to parties by name, resorting to their positions in court (e.g., plaintiff, defendant), only when names are not practical (e.g., when there are multiple plaintiffs or defendant).

The helicopter view should be a brief story, composed of uncontested or stipulated facts. It can also include contested facts, introducing them with words like “allegedly” or “Mr. Brown contends that...” to let the reader know the validity of these assertions needs to be settled at trial. The introduction should be very short, less than half a page if possible, but no more than one full page. And it should be limited to the facts we need to understand the issues that follow.

After this introductory story, the statement of issues may be in bullet point form, or they may be in paragraph form, as long as each issue is phrased succinctly enough to be used as a heading or subheading in what follows.

A conventional beginning, on the other hand—the sort of beginning we would like to avoid—starts out with a procedural history, or a copy of the charge or indictment, or reference to laws that will be applied before we have enough information to know why these laws might be relevant. A conventional beginning often includes details that have no relevance to any of the issues.

How well does your beginning provide your readers with the factual overview they need in order to understand the issues?

Not at all 0	Somewhat 1	Very Well 2
-----------------	---------------	----------------

Does the beginning clearly list the issues in the order in which they will be decided?

Not at all 0	Somewhat 1	Very Well 2
-----------------	---------------	----------------

Does the beginning of your judgment include information that has no relevance to the issues at hand?

Yes, a lot 0	A few 1	None at all 2
-----------------	------------	------------------

2. Now check the headings.

In a conventional judgment, headings, if they exist at all, have no apparent logic. They merely announce topics. Sometimes they seem to be added after the judgment has been written, in an effort to give it an appearance of order.

Effective headings, however, have an obvious logic. They are brief, free of legal jargon and citations. And they clearly echo the issues as listed on the first page. Things that should be dealt with first (e.g., jurisdiction, if it is challenged) come first; things that have to be dealt with toward the end (e.g., sentence, damages) come last.

Do your headings echo the issues/questions listed in the introduction?

Not at all 0	Somewhat 1	Very Well 2
-----------------	---------------	----------------

Does the typography clearly signal the difference between headings and subheadings?

Not at all 0	Somewhat 1	Very Well 2
-----------------	---------------	----------------

Are the headings listed in a logical sequence (e.g., threshold issues, like jurisdiction first, contingent issues like damages, last)?

Not at all 0	Somewhat 1	Very Well 2
-----------------	---------------	----------------

3. Now read the section immediately following the introduction.

Normally it is possible to move directly from the introduction to the analysis of the first issue. Often, however, judges put all sorts of information about the history of the case (which we probably don't need) or the evidence heard, before they get around to analyzing the issues.

This sort of information in this place merely distracts the readers.

Factual details and citations of law should be deferred to the analysis of the issues to which they are relevant.

Information like this can be justified before the analysis of issues in only three situations:

- when there are facts common to more than one issue;
- when the same law applies to more than one issue;
- when there are questions of procedure that still need to be resolved.

Otherwise they are there simply because they are part of the record and the judge feels obliged to include them, even though they are irrelevant to the issues at hand,

In your judgment, if the section immediately following the introduction addresses the first issue, please add two points to the score and skip to question 4 below.

If the section immediately following the issue deals with procedural history or other information, is it justified? I.e., does it include facts or law common to more than one issue, or unresolved questions of procedure, or laws relevant to all the issues?

Not at all	Somewhat	Very Well
0	1	2

4. Now read the analysis of the issues.

An issue is by definition an argument, and the judge must either tell us or clearly imply each side's position.

For questions of law, it is often possible to begin with the losing party's position, followed by an indication of the flaw in that position. Normally it is not necessary to give the winning party's position, because it is likely to be the same as the court's.

For questions of fact, it is usually necessary to give first one party's position, then the others, then the court's position, *with reasons*. This last part is most important and can be quite difficult: revealing why you prefer one position over the other, especially since many grounds for finding of fact have turn out to be unreliable (e.g., eye-witness identification, demeanor of a witness).

In civil cases, you need to say *why* you find one party's evidence more credible than the other's.

In criminal cases, it's the prosecutor's evidence you should be regarding with a skeptical eye, not the defendant's. You must determine whether the prosecutor's evidence, *in itself*, proves the defendant's guilt beyond a reasonable doubt, regardless of what the defendant says or fails to say.

For each issue in your judgment, indicate whether the analysis is clear and succinct.

Not at all	Somewhat	Very Well
0	1	2

Is the analysis persuasive?

Not at all	Somewhat	Very Well
0	1	2

Is the losing party's position stated clearly and impartially?

Not at all	Somewhat	Very Well
0	1	2

Could reader unfamiliar with the case tell why the losing party lost?

Not at all	Somewhat	Very Well
0	1	2

5. Now check the ending.

In a simple case, it may be sufficient to say simply —For the reasons above, the Court finds that ... and orders that...

In a complex case, it may be helpful to recapitulate the reasons before announcing the finds and the orders.

In a controversial case, or in a case in which the law is not entirely clear, it may be useful to bolster the conclusion with an argument from consequence. A typical argument from consequence begins with a phrase like —To rule otherwise would be to invite . . . —followed by a list of patently unacceptable consequence that would ensue if the judge had ruled otherwise.

This device can also be used to assure the reader that certain negative consequences will NOT occur. If, for example, the public might be confused if a guilty verdict is remanded because of a procedural defect in the trial, it may be wise to remind the readers that remanding a case does not set accused person free. Or if it does, to explain why in sticking to the rules of procedure we protect everyone from government repression or overzealous prosecution.

Answer the following questions about your judgment.

<i>Are the findings and rulings clearly indicated?</i>		
Not at all 0	Somewhat 1	Very Well 2
<i>Would the ending be improved by a recapitulation of the reasons?</i>		
Yes 0	Somewhat 1	No 2
<i>Would the ending be improved by adding arguments from consequence?</i>		
Yes 0	Somewhat 1	No 2

**Please add all the points you awarded and provide a TOTAL: _____
(Max possible: 28)**

SAMPLE JUDGMENT

NGENDAHAYO (ORIGINAL VERSION TRANSLATED FROM KINYARWANDA)

RULING RPA 0220/08/CS

PAGE 1

THE SUPREME COURT, AT KIGALI, HEARING CRIMINAL MATTERS, HAS DECIDED CASE RPA 0220/08/CS TODAY THE 19/03/2010, AS FOLLOWS:

PARTIES:

Appellant: NGENDAHAYO Evariste, son of Misago and Kamikazi, born in 1952, resident of Rwintashya cell, Rukumberi sector, Ngoma district, Eastern Province, he owns nothing, a first offender, detained in Nsinda prison.

Respondent: THE PROSECUTION.

The Charge:

On 4/09/2000 at Murwa-Mirenge-Sake, Eastern Province, NGENDAHAYO Evariste, BIZIMANA Emmanuel and KAMPAYANA Innocent, everyone on his own, together or everyone being an accomplice of the others as provided for by articles 89, 90, and 91, committed murder, an offence provided for and punished by article 312 of the Penal Code.

I. BACKGROUND OF THE CASE

[1] As mentioned in the Prosecutor's charge, NGENDAHAYO Evariste and his friends were prosecuted for having committed the murder of BIZUMUREMYI Pascal on 05/09/2000 when he was guarding some crops in a garden, after killing him, they threw his body in River Akagera, they took his bicycle, radio, saucepans, a basket and a sum of 17.000 Rwf. NGENDAHAYO Evariste pleaded not guilty to the charge.

II. PROCEEDINGS BEFORE THE HIGH COURT.

[2] In the judgment RP 0044/HC/RWG read on 28/02/2007 by the High Court of the Republic, Rwamagana chamber, NGENDAHAYO Evariste was found guilty of murder and sentenced to 15 years imprisonment and a fine of 20.850 Rwf.

- [3] NGENDAHAYO Evariste appealed to the Supreme Court and his appeal was registered as n° RPA 0220/08/CS, a preliminary hearing was done, in the decision RP 0182/09/PRE-EX/CSc of 15/07/2009, the judge held that the appeal was properly before the court.

III. THE CASE BEFORE THE SUPREME COURT

- [4] The hearing was fixed on 10/02/2010, under the Chief Justice's Order n° 0003/2010/RP of 21/01/2010. On that day, the hearing was done in public, in the presence of NGENDAHAYO Evariste, and the Prosecution represented by RUBERWA Bonaventure, a national prosecutor.
- [5] After the reading of the report on the case by the judge, NGENDAHAYO Evariste explained the reasons of his appeal, saying that he appealed so that he can ask for forgiveness and request for reduction of his sentence. He went on saying that he was from his brother in law's bar together with KAMPAYANA Innocent who had a hoe-handle, when someone came and started pushing him with a machete, wanting to throw him in River Akagera, so he cried asking for help and Kampayana intervened by hitting the person with the hoe-handle and the person died immediately, therefore, he said, he recognizes his role as having helped Kampayana to throw BIZUMUREMYI Pascal's body in the Akagera, and but he found the sentence given by the court too severe.
- [6] NGENDAHAYO also said that the court got it wrong; in that he never committed murder because he neither knew the victim nor beat him; he however accepted that there had been murder because Kampayana killed a person trying to save him (NDENDAHAYO) but with no intention of killing him, he asked for forgiveness because it was by accident.
- [7] Asked if he shouldn't have been punished for his role, he answered that he should and added that it was by accident though, he asked for forgiveness, and reminded the court that he had been in detention since 2000.
- [8] Another reason of his appeal was that the victim caused his own death by provocation, after which KAMPAYANA Innocent, who killed him, asked him (NGENDAHAYO) to help him throw the body in Akagera.

- [9] The prosecutor, responding to the grounds of appeal, said that the court in the 3rd « RUSANZE » of the judgment, showed that the offence that was committed is murder and it's very clear through the seriousness and the murder weapon, because nothing but death should be expected when you hit someone with a hoe-handle on the head, he said he found the evidence enough.
- [10] Asked if the court found NGENDAHAYO Evariste as having had a role in a person's murder or in hiding evidence, he responded that he couldn't go against the decision of the court when the prosecution itself didn't make any appeal against it, he asked the court to refer to the provisions of articles 89, 90, 91 and 257 of the Penal Code, anyone who hides/conceals evidence to shield a perpetrator of a crime from punishment, gets the same punishment as the perpetrator.
- [11] NGENDAHAYO Evariste added that he never intended to kill the person, after his death however, he said, they threw his body and belongings, which included a bicycle, in the river wanting to hide all evidence against them, that if they were killers they would have taken it all with them, he closed his remarks requesting the court to reduce his sentence.
- [12] The Court closed the hearing, and the parties were informed that the judgment shall be read on 12/03/2010, it was not read on that day however, because one of the judges was in a mission outside the country, and so it was adjourned to 19/03/2009, after which the Court decided as follows:

IV. OPINION OF THE COURT

- [13] NGENDAHAYO Evariste's appeal is aimed at asking for reduction of the sentence that was given to him for murder that he however didn't commit, because what he accepted and asked for forgiveness is having helped KAMPAYANA Innocent after the latter had killed BIZUMUREMYI Pascal trying to save him (NDAHAYO), to throw his body and his belongings in the Akagera with an intention of hiding the evidence and escaping. He also said that combined with the victim's provocation, this should be a reason for the reduction of his punishment.
- [14] The High Court of the Republic, basing on articles 89 and 91, 3, found that NGENDAHAYO Evariste's role was in helping to hide evidence after realizing that the victim was dead and that act shows that he was an accomplice.

- [15] Article 89 of the Decree Law n° 21/77 of 18 August 1977 establishing the Penal Code, provides that *« accomplices get the same punishment as the offenders, except when the law provides otherwise »*. Among the accomplices, as listed in article 91, 5, there are: *« those who hide offenders or help them in the way provided for by article 257 of this Code »*. And that article states that *« anyone who will hide a person knowing clearly that he committed an offence or a serious crime, or that he is being prosecuted for having committed such a crime, or anyone who will make such a person escape from being arrested or found or anyone who will help him in hiding or escaping, shall be punished as an accomplice in the crime being prosecuted »*.
- [16] The court therefore, finds that basing on the above mentioned articles and what NGENDAHAYO Evariste admitted and on which the prosecution didn't disagree with, he was an accomplice in the murder that was committed against BIZUMUREMYI Pascal by KAMPAYANA Innocent, by intentionally helping him to throw away his body and belongings in the Akagera, to escape being prosecuted before the courts of law.
- [17] On the charge he was convicted of, the court finds that NGENDAHAYO did not show the kind of provocation the victim, BIZUMUREMYI Pascal committed against him that lead him to helping KAMPAYANA Innocent to throw his body into the river, to avoid prosecution, so he can't get any reduction of punishment basing on provocation.
- [18] As far as the appellant's request for reducing the punishment is concerned, the court finds that NGENDAHAYO Evariste was sentenced to 15 years of imprisonment instead of life imprisonment, as provided for by article 311 of the Decree Law n° 21/77 of 18 August 1977 establishing the Penal Code, his punishment was significantly reduced given that he was a first offender, therefore there is no reason of reducing it again.

V. DECISION OF THE COURT

- [19] The court finds NGENDAHAYO Evariste's appeal admissible, because it was properly brought before it.
- [20] The court, however, finds the appeal without merit.

[21] The court rules that the judgment RP 0044/HC/RWG read on 28/02/2007 by the High Court of the Republic, Rwamagana Chamber, remains unchanged.

[22] The Court orders NGENDAHAYO Evariste to pay court fees of 30.650 francs, the amount charged by the High Court inclusive, if not paid in a period of eight days, the state shall in addition to subjecting him to civil prison for 15 days, levy execution against him for recovery of the court fees.

THAT IS THE JUDGEMENT OF THE COURT, READ IN PUBLIC TODAY THE 19/03/2010 IN THE SUPREME COURT WITH THE FOLLOWING QUORUM: MUGENZI LOUIS MARIE, PRESIDENT, KAYITESI R. EMILY AND MUKANDAMAGE MARIE-JOSEE, JUDGES, ASSISTED BY MUSENGAMANA VIATEUR, THE COURT REGISTRAR.

**MUGENZI Louis Marie
President**

**KAYITESI R. Emily
Judge**

**MUKANDAMAGE Marie Josée
Judge**

**MUSENGAMANA Viateur
Court Registrar**

NGENDAHAYO
(REVISED IN KINYARWANDA)

Translated by George Kalisa

URUBANZA RPA 0220/08/CS – NGENDAHAYO – V – NPPA

I. ITANGIRIRO

- [1] NGENDAHAYO Evariste yahamijwe n’ Urukiko Rukuru rwa Repubulika, Urugereko rwa Rwamagana, icyaha cyo kwica BIZUMUREMYI Pascal kuwa 05/09/2000, rumukatira imyaka 15 y’igifungo, runamutegeka gutanga amafaranga 20.850frw y’amagarama y’urubanza.
- [2] Hakurikijwe ibyavuzwe mu rubanza, nyakwigendera yari araririye imyaka mu murima, ubwo uwajuriye na bagenzi be bamwicaga, bakajugunya umurambo we mu Kagera, ndetse bagatwara n’ibintu bye, birimo igare, radiyo, amasafuriya, urutaro rugosora imyaka n’ amafaranga 17.000frw.
- [3] NGENDAHAYO Evariste yaburanye avuga ko ari umwere, ko atigeze akora icyaha cy’ubwicanyi.
- [4] Muri ubu bujurire, aburana avuga ko igihano cye kigomba kugabanwa ashingiye ku ngingo eshatu:
- Ko ubwicanyi bwaturutse ku busembure;
 - Ko bitari byagambiriwe;
 - Ko kandi uko biri kose atagizemo uruhare rwa hafi.
- [5] Anavuga kandi ko ubujurire bwe bugamije gusaba imbabazi.
- [6] Mu bisanzwe, ingingo ebyiri za mbere ntago zigomba guhabwa agaciro kuko zakagombye gutangwa n’uwakoze icyaha, Atari uwajuriye muri uru rubanza kuko we ari umufatanyacyaha mu guhisha ibimenyetso. Icyakora ndabivugaho kuko igihano cy’ uwafashije abandi gukora icyaha ari kimwe n’ icy’ uwakoze icyaha. Iyo rero imwe muri izo mpamvu iba yaremewe mu rubanza rwa mbere, n’igihano cyari kuba cyaragabanijwe ku wakoze icyaha no ku wo bafatanije.

II. ISESENGURA

1. Ese koko ubwicanyi bwatewe n’ ubusembure?

- [7] NGENDAHAYO avuga ko byabaye igihe yari arikumwe na bagenzi be bavuye ku kabari. Agakomeza avuga ko nyakwigendera ari we wabanje kumushotora, amusunikisha umuhoro, ashaka kumuta mu Kagera. Avuga ko yatatse, hanyuma mugenzi we Kampayana agakubita nyakwigendera umuhini w’isuka mu mutwe.
- [8] Ubusembure, nk’impamvu y’ingabanya-gihano, ntibwakwemerwa muri uru rubanza kuko uwajuriye yahamijwe icyaha bishingiye ku bufatanyacyaha mu guhisha ibimenyetso, akaba rero atarahamijwe icyaha cy’ubwicanyi kubera ko yishe, kandi

ubusembure akaba atari impamvu y'ingabanya-gihano ku cyaha cyo guhisha ibimenyetso.

- [9] Niba koko haranabayeho ubusembure, iyo mpamvu yari guhabwa agaciro k' uwakoze icyaha nyirizina, aho kuba ku mufatanyacyaha; kandi yagombaga gutangwa mu rubanza rwa mbere. Kuko uwakoze icyaha yahamijwe ubwicanyi aho kuba ubuhotozi, bigaragara ko iyo ngabanya-gihano yatanzwe nabi cyangwa ikaba itaranatanzwe, Ntago byagaragajwe neza. Ariko icyaha cyarabaye cyose muri ibyo byombi, ntago cyasubirwaho mu bujirire uwakoze icyaha nyirizina atarimo.

2.Ese ubwicanyi bwakozwe bwagambiriwe?

- [10] Uwajuriye avuga ko, mu gukubita nyakwigendera umuhini w'isuka mu mutwe, KAMPAYANA Innocent nta kindi yari agendereye uretse kumutabara. Ko ataragambiriye kwica BIZUMUREMYI Pascal.
- [11] Iyi mvugo nayo ikaba itahabwa agaciro kubera impamvu zavuzwe haruguru. Uwajuriye yahamijwe icyaha kubera ubufatanyacyaha mu guhisha ibimenyetso, ntabwo yahamijwe kubera ko yishe. icyo uwakoze ubwicanyi yari agambiriye, rero, kikaba ntacyo gihindura kuri icyi kirego.
- [12] Ibyo aribyo byose ariko, mu rubanza rwa mbere, ubushinjacyaha bwabashije kwemeza urukiko ko uwishe yabikoze abigambiriye. Yamukubise umuhini w'isuka mu mutwe, iyo rero aba atagambiriye kumwica aba yaramukubise ahandi hatari mu kico.

3.Ese igihano yahawe kirakabiye, hakurikijwe ko uwajuriye ari umufatanyacyaha, akaba atari we wakoze icyaha nyirizina?

- [13] NGENDA HAYO Evariste yiyemerera ko yafashije mu kujugunya umurambo n'igare mu ruzi hagambiriwe kuzimanganya ibimenyetso. Ariko akavuga ko igihano cye gikabiye ukurikije ko nta ruhare rwa hafi yagize mu bwicanyi nyirizina.
- [14] Ku bireba igihano muri uru rubanza, hakaba hagomba gukurikizwa ingingo ya 89 y'Itegeko Teka n° 21/77 ryo ku wa 18 Kanama 1977, ivuga ko « Abafashije abandi gukora icyaha bahanishwa ibihano bimwe n'abakoze icyaha keretse igihe itegeko libiteganyaga ukundi». Mu busobanuro bw' abitwa abafashije abandi gukora icyaha mu ngingo ya 91, 5, harimo, umuntu wese uhisha umuntu wakoze icyaha gikomeye «ngo adafatwa cyangwa ataboneka cyangwa umufasha mubyo kwihisha cyangwa gucika».
- [15] Aha rero, mu gufasha KAMPAYANA Innocent kuzimanganya ibimenyetso, biragaragara neza ko uwajuriye yamufashije gukora icyaha, akaba rero agomba guhanwa kimwe n'uwakoze icyaha nyirizina.
- [16] Urukiko rukaba runibutsa ko uwajuriye yakatiwe imyaka 15 y'igifungo aho kuba igifungo cya burundu, nk'uko biteganyaga n' ingingo ya 311 y'Itegeko Teka n° 21/77 ryo ku wa 18 Kanama 1977 rishyiraho Igitabo cy'Amategeko Ahana. Igihano cye rero, kikaba cyaragabanijwe ku buryo bugaragara urukiko rushingiye ko nta bindi byaha yigeze akurikiranwaho bizwi, hakaba rero ntampamvu yo kongera kukigabanya.

III. ICYEMEZO CY'URUKIKO

- [17] Rwemeye kwakira ubujurire rwashyikirijwe na NGENDA HAYO Evariste kuko bwatanzwe mu nzira no mu buryo bikurikije amategeko.
- [18] Rwemeje ko ubwo bujurire nta shingiro bufite.
- [19] Rwemeje ko imikirize y'urubanza mu rukiko rwarubanjirije, idahindutse.
- [20] Rutegetse NGENDA HAYO Evariste kwishyura amafaranga 30.650 Frw y'amagarama y'urubanza, abariwemo n'ayo yaciwe n'Urukiko rwarubanjirije, atayatanze mu gihe cy'iminsi 8 agafungwa iminsi 15 y'ubugwatiramubiri, ayo mafaranga agakurwa mu bye ku ngufu za Leta.

REVISED, IN ENGLISH

I. INTRODUCTION

- [1] NGENDAHAYO Evariste has been convicted of the murder of BIZUMUREMYI Pascal on 05/09/2000 and sentenced to 15 years imprisonment and ordered to pay 20.850 Rwf as court fees.
- [2] According to the facts found at trial, the victim was guarding some crops in a garden when the appellant and some friends killed him, threw his body in the River Akagera, and took his bicycle, radio, saucepans, a basket, and a sum of 17.000 Rwf.
- [3] NGENDAHAYO Evariste pleaded not guilty to the charge of murder.
- [4] In this appeal, he argues that his sentence should be reduced on three grounds:
- that the killing was in response to provocation;
 - that it was not intentional;
 - and that in any event, he had no direct role in it.
- [5] He also says his purpose in appealing is to ask forgiveness.
- [6] Ordinarily the first two grounds of appeal would be irrelevant, because they would apply, if at all, to the principal perpetrator, not to the appellant, who was an accomplice in concealing evidence. I will discuss them, however, because the penalty for an accomplice is tied by statute to the penalty for the principal perpetrator. Had either of these defences been successful at trial, the charge and the penalty would have likely been reduced accordingly for both the principal perpetrator and the accomplice.

II. ANALYSIS

1. Was the Killing Provoked?

- [7] Mr. NGENDAHAYO claims that the incident occurred when he and his friends were on their way to the garden. He says that the victim provoked the attack by stopping him, pushing him with a machete, and threatening to throw him into the River Akagera. He says that when he called for help, his friend Kampayana Innocent hit the victim on the head with a hoe-handle, killing him instantly.
- [8] The defence of provocation does not apply in this case because the appellant's conviction was for complicity in concealing evidence, not murder, and provocation is not an available defence for concealing evidence.
- [9] If indeed there was provocation, it would apply to the principal perpetrator rather than to an accomplice, and the proper place to raise it would have been in the trial of the principal perpetrator. Because the principal perpetrator was convicted of murder rather than manslaughter, it is apparent that this defence was not successfully raised or perhaps not raised at all. The record is not clear. In either case, it is not subject to review in an appeal in which the principal perpetrator is not a party.

2. Was the Killing Deliberate?

- [10] The appellant contends that in striking the victim on the head with a hoe, KAMPAYANA Innocent merely intended to deter an attack on the appellant. He did not intend to kill BIZUMUREMYI Pascal.
- [11] This argument, too, is irrelevant for the reasons indicated above. The appellant has been convicted as an accomplice in concealing evidence, not murder. The intent of the principle perpetrator has no bearing on this charge.
- [12] In any case, the trial court was persuaded by the Prosecution's argument that the principal perpetrator had intended to kill the victim. He hit him on the head with a hoe handle. If his intent had been merely to defend the appellant he could have hit the victim on some less vulnerable part of his body.

3. Was the Sentence Excessive, Given the Appellant's Role as an Accomplice Rather than a Perpetrator?

- [13] NGENDA HAYO Evariste admits that he helped throw the body and the bicycle into the river in an attempt to conceal evidence. He contends, however, that his sentence was excessive in that he had no direct role in the killing itself.
- [14] The applicable law with respect to sentencing in these circumstances is found in Article 89 of the Decree Law n° 21/77 of 18 August 1977, which specifies that *«accomplices get the same punishment as the offenders, except when the law provides otherwise»*. The definition of accomplice in article 91, 5, includes anyone who helps a person who has committed a crime *«escape from being arrested or found or anyone who will help him in hiding evidence or escaping »*.
- [15] In this case, by helping KAMPAYANA Innocent conceal the body and the bicycle in order to avoid detection, the appellant was clearly guilty as an accomplice and therefore liable to the same sentence as the principal perpetrator of the crime.
- [16] This Court notes that the appellant was sentenced to 15 years of imprisonment instead of life imprisonment, as provided for by article 311 of the Decree Law n° 21/77 of 18 August 1977 establishing the Penal Code. His punishment has already been significantly reduced given that he was a first offender; there is no reason to reduce it again.

III. DECISION OF THE COURT

- [17] The court finds NGENDA HAYO Evariste's appeal admissible, because it was properly brought before it.
- [18] The court, however, finds the appeal without merit.

III. List of Attendees

Attendance List –Judgement Writing Course May 6 - 7, 2010

N°	NAMES	INSTITUTION	POSITION	GENDER		TEL N°	E-MAIL
				F	M		
1	RUKUNDAKUVUGA Régis	Supreme Court	Inspector		✓	078 8307915	fregis68@yahoo.fr
2	ITAMWA Emmanuel	Supreme Court	Inspector		✓	078 8304544	itamwa@yahoo.com
3	KALIWABO Charles	Supreme Court	Inspector		✓	078 8308059	ckaliwabo@yahoo.fr
4	KABALIRA Stanislas	Supreme Court	Inspector		✓	078 8307912	kabastani@yahoo.fr
5	NYIRANDABARUTA Agnès	Supreme Court	Inspector	✓		078 8306257	anyirandabaruta@gmail.com

IV. Selected Bibliography

Perhaps the most relevant additional reading would be the book covering the essential material in the course—and more—written by the consultant, to be published in Canada by Carswell Thomson. It will be called *Writing for the Court*—a deliberately ambiguous title to indicate its relevance to both judges and lawyers. Scheduled for publication 6 July 2010.

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