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Rwanda MCC Threshold Program

JUSTICE STRENGTHENING PROJECT

FINAL TRAINING REPORT

**JUDGMENT MODULE OF THE DIPLOMA COURSE AT
THE INSTITUTE OF LEGAL PRACTICE AND DEVELOPMENT
MAY 10-21, 2010**

JUNE 20, 2010

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RWANDA MCC THRESHOLD PROGRAM JUSTICE STRENGTHENING PROJECT

FINAL TRAINING REPORT:
Judgment Module of the Diploma Course at
the Institute of Legal Practice and Development
May 10-21, 2010

Nyanza, Rwanda

TRAINING REPORT:
June 20, 2010

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Training Report

Overview

Instructors: Professor James C. Raymond, Judges Angeline Rutazana, Justin Gakwaya, Jean-Marie Vianney Hitimana and Antoine Muhima.
Participants: Judges, Prosecutor and Lawyers
Venue: ILPD site, Nyanza.

Report

Professor James Raymond was invited to team teach with four judges the Module on Judging, part of the Institute of Legal Practice and Development (ILPD) Diploma on Legal Practice. The four judges that taught with Prof. Raymond had all previously been trained as trainers in judgment writing as part of the Rwanda Justice Strengthening Program's to enrich the faculty pool available at the ILPD.

During the two-week course, Professor Raymond mainly taught the morning sessions assisted by one of the four trainer-judges. These morning sessions focused on judgment writing. The afternoon sessions were led, on alternating days, by the teaching pair of Judges Rutazana and Gakwaya or Judges Hitimana and Muhima. These sessions dealt with substantive law matters and issues related to judging. This is detailed in the attached syllabus and course program.

As this blended into the Diploma on Legal Practice, all evaluations were conducted by ILPD and students were given an exam and grades at the end of the two week module. Of interest to the series of trainings supported by the Rwanda JSP, these two weeks served as valuable exposure to the rigors of teaching, class management and academic interaction for the four trainer-judges. It was the first opportunity for these four trainer-judges to put into practice the skills and knowledge that had been imparted since February, and a valuable experience as faculty at ILPD. These same judges will also be team teaching other judges specifically in judgment writing over the months of June and July 2010.

The students were introduced to Prof. Raymond's Five Steps to Judgment Writing and were asked to evaluate judgments on the basis of the checklist prepared with and for judges and court inspectors. The diversity of the students – some are judges, others prosecutors and private practice lawyers – resulted in various levels of interest and approaches to judgment writing. Ultimately, it was largely appreciated that successful writing aids not just judges, but also all legal practitioners as it facilitates resolution of legal and factual questions in a way that is clear, fair, efficient and effective; that it is in the interest of all parties and legal actors to write, and by extension reason and argue, well.

Annexes

I. Syllabus & Program

The following syllabus was prepared by Yves Sibomwa Gahizi, Head of Module/Lecturer, LL.M.

The topics for the judgment writing program are expressed rather generally. What actually happened—and what I recommend—is that each segment of the course began with a lecture on one of the “Five Easy Steps” (attached) followed by a writing assignment (which was turned in electronically), followed by a review of the writing projected on a screen.

Initially, the lawyers in the group expressed reluctance to write individually—which is understandable, because lawyers typically do very little writing at the trial level (and few of our participants were working at the appellate level).

As it happened, the class had been divided into six groups, each of which included at least one judge, who was able to provide the group with a summary of the facts and issues in a case he or she remembered well. The participants used this information to write a single judgment as a group, one step at a time (i.e., first identify the issues; second, arrange them in a logical sequence; third, write an appropriate introduction; fourth analyze each issue; fifth, write a conclusion).

These steps seem much easier than they are. In fact, the work done at each stage had to be done twice—in a sort of progressive approximation to the ideal. Fortunately, the time allotted for this course (four and a half hours daily for two weeks) allowed for the revision exercises that proved essential.

Lecturers:

- *Professor James C. RAYMOND, Professor Emeritus, University of Alabama.*
- *HITIMANA Jean-Marie Vianney, Vice- President of the High Court.*
- *RUTAZANA Angeline, Judge of the High Court Kigali.*
- *GAKWAYA Justin, President, High Court, Chamber of Rwamagana.*
- *MUHIMA Antoine, President, High Court, Chamber of Nyanza.*

Module objectives

General objective

The objective of this module is to give to students the necessary and sufficient knowledge in the art of judging. The module, intended for practitioners, also aims at developing their ability in legal reasoning, improving the quality of their written judgment and raising its standard. Last, this module is a transformation of judgments writing, for a perfect regional and international integration.

Specific objectives

Objectif général

Le module vise à transmettre aux étudiants les connaissances nécessaires et suffisantes dans l'art de juger. Par ailleurs, ce module destiné aux praticiens vise également à développer leur aptitude au raisonnement juridique, à améliorer la qualité de leurs jugements et à en relever le standard. Enfin, ce module est une transformation de la rédaction des jugements pour une intégration régionale et internationale parfaite.

Objectifs spécifiques

The module aims to assist students in improving their judgment writing skills. It also aims to make them able to write a good judgment.

Moreover this module aims students to

- identify common errors made in an oral judgment;
- identify and respond to the needs of different audiences;
- develop clear structure and transition;
- practice organizing an effective oral judgment;
- identify and analyze ethical issues;
- apply relevant ethical norms;
- understand the relevance of good communications to effective judging;
- identify the elements of good communication;
- identify and analyze various listening styles/skills;
- identify each one his or her own listening style and the strengths and challenges associated with that style of listening;
- understand the relationship between voice, movement, message and practice the use of all the three in simulated courtroom sessions;
- use the techniques designed to reduce fatigue in their work.

Le module vise à transmettre aux étudiants le savoir-faire qui leur permette d'améliorer la rédaction de leurs jugements. Il vise également à permettre aux étudiants d'être capables d'écrire un bon jugement.

En outre, ce module permet aux étudiants de :

- identifier les erreurs fréquentes commises dans un jugement oral ;
- identifier et Répondre aux besoins des différentes audiences ;
- développer une structure claire et des transitions ;
- effectuer des exercices de jugement oral efficace ;
- identifier et analyser différentes questions d'éthique ;
- appliquer les lois d'éthique appropriées ;
- comprendre la pertinence d'une bonne communication pour un jugement efficace ;
- identifier les éléments d'une bonne communication ;
- identifier et analyser les différents styles d'écoutes et acquérir le savoir-faire y relatif ;
- être capable d'identifier son style d'écoute et les forces et les défis associés à son style d'écoute ;
- comprendre la relation entre la voix, les mouvements et les messages, et être capables de les combiner à travers un procès fictif ;
- être capables d'utiliser les techniques mises en place pour réduire la fatigue dans leur travail de juger.

Module description

The module is designed to make students understanding well judging. It gives students the main principles of judging as well as the principles of judgment writing, by emphasizing the judgment of specific matters and judgment writing itself. The coverage of the module will range from the general principles of judging, the judicial independence and ethics, communication in the courtroom and controlling the court room, special judgments with an emphasis on

Ce module permet de comprendre la fonction de juger. Il fournit aux étudiants l'essentiel des principes d'un bon jugement et d'une bonne rédaction de jugement, en mettant l'accent sur le jugement de certaines affaires spécifiques et la rédaction des jugements elle-même. Les thèmes abordés successivement dans ce module sont : les principes généraux du jugement, l'indépendance judiciaire et l'éthique, la communication dans la salle d'audience et le contrôle de la salle d'audience,

dissident opinion and " habeas corpus ", judging civil, penal, and specific matters(minors cases, sexual crimes, administrative and commercial matters), judging appeal cases, the evaluation of evidences, and judgment writing.

The program includes lecturers, discussions, and workshops that stress the nature of good prose, special requirements and special problems of judgment writing.

Since writing is a skill that, like all skills, can be improved only through practice, much of the judgment writing part will center on written exercises and judgments.

les jugements spéciaux avec un accent sur l'opinion dissidente et «l'habeas corpus», le jugement des affaires civiles, administratives et commerciales, pénales (le cas des mineurs, les crimes sexuels), le jugement en appel, l'évaluation des preuves, et la rédaction des jugements.

Le programme comprend des exposés, des discussions, et des ateliers qui insistent sur une bonne prose, les exigences spéciales et les problèmes spécifiques de la rédaction des jugements.

L'enseignement sera basé essentiellement sur des exercices écrits et des jugements, ou que la rédaction, à l'instar de tous les autres savoir-faire, ne peut s'améliorer qu'avec la pratique.

Module requirements and evaluation

Students are required to submit to the Head of module a copy of a judgment they wrote themselves, prior to the module starting and not later than April 20th, 2010. This judgment sample will be used in Practical assignments.

Students are expected to have read the "Readings" for every day before the class starts.

The assessment will include the practical work in class, and the individual participation in the course. The practical work has a minimum of 3 pages and a maximum of 5 pages, including footnotes. The written work must be presented to the lecturer before the presentation (moot court).

Every day in the DLP starts with 30 minutes (from 8.00 to 8.30) language training (legal terminology). Per day 3 students get the assignment to, for the following day, prepare a lemma on a particular word or concept in three languages. The trainer chooses words or concepts that will be part of the next day's training.

Tuesday and Thursday from 2.00 to 2.30 a group of three students presents the summary and written comments in French and English on decisions of the Supreme Court.

All assignments will be marked.

Chaque étudiant(e) est prié(e) de soumettre au Chef du module la copie d'un jugement écrit par lui-même au plus tard le 25 Avril 2010. Ce jugement servira de base dans les exercices et travaux pratiques.

Les étudiants doivent avoir lu les documents leur indiqués avant de venir en classe.

L'évaluation inclut le travail pratique en classe, la participation individuelle au cours. Le travail pratique doit comprendre un minimum de 3 pages et un maximum de 5 pages, les notes infra- paginales incluses. Le travail écrit doit être présenté à l'enseignant avant l'exposé (moot court).

Chaque jour on commence avec 30 minutes (de 8h00 à 8h30) d'enseignement des langues (termes juridiques), où les étudiants doivent avoir le travail pratique sur les mots qu'ils vont définir en trois langues. Les formateurs doivent choisir les mots qui vont être utilisés dans l'enseignement du jour suivant.

Mardi et Jeudi, de 14h00 à 14h30, un groupe de trois étudiants présente un résumé et un commentaire en Français et en Anglais sur les décisions de la cour suprême.

Tous les travaux pratiques seront évalués.

MODULE CALENDAR

MONDAY, 10th May 2010

Lecturer : RUTAZANA Angeline, GAKWAYA Justin

08:00am-08:15am Introduction of the module by the Head of Module

08:15 am -10: 30am Juger: Principes généraux

10: 30am -10:50am Coffee Tea Break

10:50am- 12:30am Les devoirs et les obligations du juge

12:30am-02:00pm Lunch

Lecturer: Professor James C. RAYMOND

02:00pm -03:40pm Judgment writing

03:40pm -04:00pm Coffee Tea Break

04:00pm -05:00pm *Judgment writing*

Readings

Course material, pp.4-8

TUESDAY, 11th May 2010

Lecturer: Professor James C. RAYMOND

08:00am-08:30am: Legal terminology

08:30 am-10:30am Judgment writing

10:30am-10:50am Coffee Tea Break

10:50am-12:30am Judgment writing

12:30am-02:00pm Lunch

Lecturer : HITIMANA Jean-Marie Vianney, MUHIMA Antoine

02:00pm-03:00pm L'indépendance judiciaire et l'éthique : Principes généraux de l'éthique

03:00pm-03:40pm Principes éthiques communs aux acteurs judiciaires

03:40pm-04:00pm Coffee Tea Break

04:00pm-05:00pm Practical assignment/comments and questions

Readings

Course material, pp.26-42

WEDNESDAY, 12th May 2010

Lecturer: Professor James C. RAYMOND

08:00am-08:30am Legal English / 6 students present

08:30am-10:30am Judgment writing

10:30am-10: 50am Coffee tea break

10:50am- 12:30am Judgment writing

12:30am-02:00pm Lunch

Lecturer : RUTAZANA Angeline, GAKWAYA Justin

02:00pm-3:00pm La communication dans la salle d'audience

03: 00pm-03:40pm Le contrôle de la salle d'audience

03:40pm-04:00pm Coffee tea break

04:00pm-05:00pm Practical assignment/comments and questions

Readings

Course material, pp.43-45

THURSDAY, 13th May 2010

Lecturer: Professor James C. RAYMOND

8:00am- 8:30am *Legal English /6 students present*

8:30am- 10.30am Judgment writing

10:30am-10:50am Coffee Tea break

10:50am-12:30am Judgment writing

12:30am-02:00pm Lunch

Lecturer : HITIMANA Jean-Marie Vianney, MUHIMA Antoine

02:00pm-03:40pm *La gestion du procès: Le rôle du juge avant et pendant le jugement*

03.40pm-04:00pm **Coffee Tea break**

04:00pm-05:00pm *Practical assignment/comments and questions*

Readings

Course material, pp.8-19

FRIDAY, 14th May 2010

Lecturer: Professor James C. RAYMOND

08.00am-08.30am *Legal English / 6 students present*

08:30am -10:30am Judgment writing

10:30am-10:45am Coffee tea break

10:45am-12:30am Judgment writing

12:30am-01:30pm Lunch

Lecturer : RUTAZANA Angeline, GAKWAYA Justin

01:30pm -03:00pm *Les jugements spéciaux : L'opinion dissidente et le «habeas corpus»*

03:00pm-04:00pm *Practical assignment/comments and questions*

MONDAY, 17th May, 2010

Lecturer: Professor James C. RAYMOND

08.00am-08.30am *Legal English / 6 students present*

08:30am -10:30am Judgment writing

10:30am-10:50am Coffee tea break

10:50am-12:30am Judgment writing

12:30am-02:00pm Lunch

Lecturer : HITIMANA Jean-Marie Vianney, MUHIMA Antoine

02:00pm-3.40pm *Le jugement des affaires civiles*

03:40pm-04:00pm Coffee Tea Break

04:00pm-05:00pm *Practical assignment/comments and questions*

Readings

Course material, pp.14-15

TUESDAY 18th May, 2010

Lecturer: Professor James C. RAYMOND

08.00am-08.30am *Legal English / 6 students present*

08:30am -10:30am Judgment writing

10:30am-10:50am Coffee tea break

10:50am -12:30am Judgment writing

12:30am-02:00pm Lunch

Lecturer : RUTAZANA Angeline, GAKWAYA Justin

02:00pm-03:40pm Le jugement des affaires administratives et commerciales

03:40pm -04:00pm *Coffee tea break*

04:00pm -05:00pm Practical assignment/comments and questions

WEDNESDAY, 19th May, 2010

Lecturer: Professor James C. RAYMOND

08.00am-08.30am Legal English / 6 students present

08:30am -10:30am *Judgment writing*

10:30am- 10:50am **Coffee Tea Break**

10:50am -12:30am Judgment writing

Lecturer : HITIMANA Jean-Marie Vianney, MUHIMA Antoine

12:30am-02:00pm **Lunch**

02:00pm-03:40pm Le jugement des affaires pénales (le cas des mineurs, les crimes sexuels)

03:40pm -04:00pm **Coffee Tea Break**

04:00pm -05:00pm Practical assignment/comments and questions

Readings

Course material, pp.14-15

THURSDAY, 20th May, 2010

Lecturer: Professor James C. RAYMOND

08.00am-08.30am Legal English / 6 students present

08:30am -10:30am *Judgment writing*

10:30am- 10:50am **Coffee Tea Break**

10:50am -12:30am Judgment writing

12:30am-02:00pm **Lunch**

Lecturer : RUTAZANA Angeline, GAKWAYA Justin

02:00pm-03:40pm Le jugement en appel

03:40pm -04:00pm **Coffe tea break**

04:00pm -05:00pm Practical assignment/comments and questions

FRIDAY, 21st May, 2010

Lecturer: Professor James C. RAYMOND

08.00am-08.30am Legal English/6 students present

08:30am -10:30am Judgment writing

10:30am-10:45am **Coffee tea break**

10:45 am - 12:30am Judgment writing

12:30am-01:30pm **Lunch**

Lecturer : HITIMANA Jean-Marie Vianney, MUHIMA Antoine

01:30pm -03:00pm L'évaluation des preuves

03:00pm-04:00pm Practical assignment/comments and questions

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
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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	Somewhat	Very Well
0	1	2

4. Now read the analysis of the issues.

For each issue 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.

Are the findings and rulings clearly indicated?

Not at all	Somewhat	Very Well
0	1	2

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

Yes	Somewhat	No
0	1	2

Would the ending be improved by adding arguments from consequence?

Yes	Somewhat	No
0	1	2

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

A CHECKLIST FOR JUDGMENTS

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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
0

Somewhat
1

Very Well
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
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.

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/CS 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 bwatwe 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'igere 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 biteganywa 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] NGENDA HAYO 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] NGENDA HAYO 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. NGENDA HAYO 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	GENDER
1.	BIRABONEYE Prudence	M
2.	BURAYOBERA UMUZAYIRE Bibiane	F
3.	GATAMBIYE Sylvère	M
4.	HABIMANA Jean	M
5.	HAGUMA Diane	F
6.	HATEGEKIMANA Dany	M
7.	HITIMANA Christine	F
8.	HODARI Edgar	M
9.	KAGABO Théoneste	M
10.	KAGIRANEZA Kayihura Lievin	M
11.	KAMONYO R. Serge	M
12.	KAYITARE R. E. Bertin	M
13.	KIMENYI Francis	M
14.	KOMEZUSENGE Déogratias	M
15.	MUGENZI Espérance	F
16.	MUKABIBI Fatuma	F
17.	MUKAYIZA Patricie	F
18.	NDAYISABA Théophile	M
19.	NDUWAYO Pascal	M

N°	NAMES	GENDER
20.	NKIKABAHIZI François	M
21.	NKUSI Faustin	M
22.	NKUSI Sulait	M
23.	NSABIMANA Florienne	F
24.	NSANZIMANA Fidèle	M
25.	NYIRAGUHIRWA Judith	F
26.	NYIRAMIKENKE Claudine	F
27.	NYIRANGIRIMANA Astérie	F
28.	NYIRANKURIZA Laurence	F
29.	RUGAMBWA Emmanuel	M
30.	RUTAGARAMA Jean Claude	M
31.	SAFARI Fidèle	M
32.	UWIMANA Channy	F
33.	UWINEZA Grâce	F
34.	UWIZEYIMANA Jean Pierre	M
35.	WERABE Chantal	F
36.	NTAGARAMA Adelin	M
37.	MUNGANYIKI Kikyala Béatrice	F
38.	NSANZIMFURA Eugène	M

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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