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Critical Analysis of the Role of Courts in Fighting Against Economic Crimes in Rwanda: Case of Scope of Activism of Judge in Criminal Matters

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ABSTRACT

In a democratic state, courts are in the best place for protecting individual and institutional rights as well as the development and economy of a country. The activism of judge in criminal court as it is provided in civil law may highly contribute to the fight against the economic crimes. This study seeks to address the role of a court in collecting pieces of evidence with the purpose to fight against economic crimes. It examines the provisions governing the collection of evidence by the court with the aim to safeguard the rights of the accused person and the fight against the economic crimes. In this perspective, the legal framework of economic crimes in Rwanda and the criminal procedure and modes of administration of evidence in court hearing were qualitatively analyzed. This research argues that is true that the burden of proof is for the prosecution, but the first impressions of a best Rwandan judge could not be rejecting pieces of evidence of economic crimes produced by the prosecutor or accused person without its scrupulous examination. The recourse to the scientific and forensic evidence is helpful in case of assessing pieces of evidence relating to economic crimes. This contribution commends legislative enactment and the creation of awareness of the investigators and prosecutors toward on a carefulness investigation in case of collecting evidence of economic crimes and judges in case of judging those cases.

Keywords: Rwanda, prosecution, economic crimes, activism of the judge, evidence.

I. INTRODUCTION

The effectiveness of courts can be determined by the ability to achieve justice through transparent and prompt judicial procedures, effective remedies and case settled. Thus the courts are in the best place for protecting individual and institutional rights as well as the development and economy of a country. Normally, the effectiveness of courts decisions is closely related to the strict application of the law. As also pointed out by Conser, without the public confidence of the court practices, the courts become ineffective means of dispute

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settlement.² Consequently, people may lose confidence in the legal practice, it may create possible outbreaks of violence, and the economy of a country could be destroyed. Papaioannou posits that the negative effect of injustice goes beyond economic efficiency.³ He further points out that the legal inefficiency and the poor justice allow the elite and their political cronies to escape the law.⁴ In fact, the courts contribute highly to the fight against the economic crimes, actually known as white collar crimes.

The problem which the study seeks to address is to fight against economic crimes by the effectiveness of judging and court decisions. The risk concerns the legal challenges caused by the practices of court and prosecution in case of scope and limits of every organ in collecting pieces of evidence. For instance, the audit report of 30 Jun 2015 done in Rwanda Biomedical Center,⁵ has revealed some unjustified money and embezzlement of public assets in different hospitals in Rwanda.⁶ The investigation has been done and the prosecution filed different criminal cases in courts.⁷ Unfortunately, in most cases, the accused have been acquitted without showing or knowing the fate of the amount embezzled and who is responsible for that embezzlement. The courts have found their decisions on the lack of evidence on the part of the prosecution. On another side, the criminal procedure recommends to the court to collect itself evidence which has not been collected by the Public Prosecution.⁸ Notably, these legal understanding and weakness that exists in the criminal legal practice lead to great injustice to the citizens of Rwanda, and creates particularly some kind of barrier in fighting against economic crimes.

More importantly, data and information for this study have been gathered using doctrinal research method. It has been guided by the question relating to which extent of the meaning and scope of the prerogative of the court relating to collect pieces of evidence which have not been collected by the Public Prosecution, and the accused in order to fight economic crimes. Given the important role of pieces of evidence, judging and sentencing in deterring economic crimes without prejudice to the rights of an accused person, the objective of this research will

² Conser, J, Achievement of Judicial Effectiveness through Limits on Judicial Independence: A Comparative Approach, *North Carolina Journal of International Law and Commercial Regulation*, 2005, Vol.31, No. 1, pp.256-332, at p.256.

³ Papaioannou, E, *The Injustice of the Justice System*, Dartmouth College, Harvard University, 2011.

⁴ Ibid.

⁵ Rwanda Biomedical Center, Audit report of the Office of the auditor general of the state's finances, 2015.

⁶ Musanze Hospital 265.073.826 Frw has been embezzled, in Nyagatare Hospital 74.937.000 Frw, Huye Hospital 75.341.000 Frw, and in Gicumbi Hospital 84.160.500 Frw.

⁷ *Prosecution v. Ruhirwa*, Case No RP 0340/15/TGI/NYG, Intermediate Court of Nyagatare, judgment of 28/04/2016. *Prosecution v. Ndekezi*, case No RP 0045/016/TGI/MUS, Intermediate court of Musanze, judgment of 23/09/2016; *Prosecution v. Ngabo*, Case No RPA 00701/2016/HC/KIG-RPA 00724/2016/HC/KIG, judgment of 04/2018.

⁸ Law N° 027/2019 of 19/09/2019 relating to the code of criminal procedure, Article 109.

be to determine the scope of the activism of judges in case of collecting itself pieces of evidence in criminal cases, specifically in economic crimes. This study aims to contribute to the existing scholarship by suggesting alternative legal analyses that could be used by criminal courts in case of activism of judges when the court collect itself pieces of evidence. Ultimately, this paper examines the provisions governing the collection of pieces of evidence by the court with the aim to safeguard the rights of the accused person and the fight against the economic crimes. This article begins with the introduction. It proceeds to examine the legal framework for collecting evidence of economic crimes by the prosecution and the court of justice. Finally, the conclusion part gives a brief summary and recommendations.

II. THE LEGAL FRAMEWORK FOR ECONOMIC CRIMES IN RWANDA

Economic crime is a term used to identify different criminalized acts or omissions which can be committed in a corporation or organization by an individual or a group of individuals with the purpose of attaining unlawful benefit or professional advantage. Buhsal defined them as criminalized, systematic acts or omissions that are similar to entrepreneurship and have the aim of considerable benefit.⁹ He pointed out that they are committed to the business in order to gain economic advantages and can be committed against the state, other business and against individuals.¹⁰ Accordingly, economic crime covers a wide range of offenses, from financial crimes committed by public officials, crimes committed by banks, offenses related to launder money, and to tax among many others.

Rwandan law does not define economic crimes and its scope, but inventories a number of offenses which are considered as economic crimes. Among such offenses are corruption and related offenses;¹¹ misuse of public property;¹² money laundering;¹³ embezzlement or destruction of public property;¹⁴ tax evasion;¹⁵ fraudulent bankruptcy and related offenses;¹⁶ illegal award of public tenders;¹⁷ award of unjustified advantages during the execution of public tenders;¹⁸ counterfeiting, using or putting into circulation objects which can be mistaken for money or negotiable instruments;¹⁹ putting counterfeit money into circulation;²⁰

⁹ Dharma Raj Bhusal, *Economic Crime Law and Legal Practice in the context of Nepal*, Chemnitz University of Technology, Germany, 2009, p.14.

¹⁰ *Ibid.*

¹¹ Law N°30/2018 of 02/06/2018 determining the jurisdiction of courts, Article 38 (1).

¹² *Ibid.*, Article 38 (2).

¹³ *Ibid.*, Article 38 (3).

¹⁴ *Ibid.*, Article 38 (4).

¹⁵ *Ibid.*, Article 38 (5).

¹⁶ *Ibid.*, Article 38 (6).

¹⁷ *Ibid.*, Article 38 (7).

¹⁸ *Ibid.*, Article 38 (8).

¹⁹ *Ibid.*, Article 38 (9).

counterfeit, falsification or alteration of money and other offenses related to the embezzlement of public property provided for by law.²¹

Despite that there no definition in Rwandan legal context which largely and strictly explains what is meant economic crimes, the establishment of a specialized chamber is a great commitment in fighting against those crimes. Law n°30/2018 determining the jurisdiction of courts provides a specialized chamber for economic crimes at the Intermediate Court level which has the jurisdiction to hear at first instance the economic crimes.²² In addition, in Rwanda investigation Bureau as well as in Prosecution authority²³ there are also unities in charge of the investigation and prosecuting economic crimes. Thus, Rwanda recognized the role of Investigation Bureau, Prosecution authority, and courts in fighting those crimes. However, the mode of investigation and prosecution and administration of evidence remains the same as it does to other offenses. The implementation of legal measures, instructions and public policies can somehow helpful in the fight against economic crimes in Rwanda.

III. ROLE OF THE PROSECUTION AUTHORITY IN THE INVESTIGATION AND COLLECTING EVIDENCE IN CASE OF FINANCIAL CRIMES

The prosecution of the economic crimes requires to establish the responsible person or institution, gathering pieces of evidence towards the decriminalization of such illegal acts or activity. The high profits linked with economic crime make it a very attractive activity for individuals and organized crime groups. The complexity of the investigations diminishes the probability to detect and prosecute fraud associated with economic crimes as it is required. This is particularly with the development of the use of the internet, ICT, cross-border crimes, the offenses committed by persons highly experienced in different matters. The United Nations points out that while economic crimes can be perpetrated by individuals, the level of sophistication and organization involved in many such crimes, in particular, those where illicit profits are high, suggests the involvement of organized criminal groups.²⁴ Moreover, the perpetrators of those crimes develop a specific subdivision with a secret language and their own ethics. In this perspective, the investigation and prosecution of economic crimes have to be done scrupulously with more attention.

²⁰ Ibid, Article 38 (10).

²¹ Ibid, Article 38 (11).

²² Law N°30/2018 of 02/06/2018 determining the jurisdiction of courts, Article 38.

²³ Financial and economic crimes unit [<http://www.nppa.gov.rw/abo-turibo/incamake-yimyanya-yimirimo/>] accessed 28 April 2020.

²⁴ United Nations Congress on crimes prevention and criminal justice, Economic and financial crimes: challenges to sustainable development, A/CONF/203/7, Bangkok 18-25, April 2005, paragraph 9.

In the Rwandan legal system, even if the Judicial Police Officers have the primary responsibility to conduct preliminary investigation²⁵ sometimes upon instruction from the Public Prosecution,²⁶ they always working under the authority and supervision of the National Public Prosecution Authority with respect to the offenses being investigated.²⁷ When preliminary investigation is completed, the Judicial Police shall immediately submit a case file to the Public Prosecution.²⁸ Which at its turn, conducts the additional investigation if he considers that evidence contained in the case file submitted to him is insufficient,²⁹ and prosecutes before a court of law.³⁰ It is, thus, important to mention that the Rwandan prosecution authority has an essential hand in every decision made in the legal progress and process of every case that comes before the courts. This confers to the prosecution authority the principal representative of the state and people in all matters related to search and gathering of evidence and settlement of criminal offenses and fighting against the economic crimes.

From the above consideration, even if there is not any particularity for prosecuting, assessing and analysing the evidence in case of economic crimes. Prosecuting and assessing those crimes required a great attention. For instance, in the case of money laundering one of the necessary elements for facilitating the commission of this offense, as also pointed out by Buhsal, are bank secrecy laws.³¹ This situation can be technically complex and legally complicated and this creates a barrier to justice. It is true that the prosecution has to develop the skills in the matter related to the criminal offense but as this may not be possible, the Rwandan legislator has provided to recourse to scientific evidence in case of matters which is beyond the knowledge and skills of the prosecution authority.

IV. THE CRIMINAL COURT HEARING PROCEDURE

In criminal matters, it is a general principle that an accused appears in person in court assisted or not by a legal counsel and the judge has the duty to control and preside over the court hearings. The criminal procedure provided that the accused may appear through his legal counsel, only in case of a petty offence, if he gives serious reasons preventing his personal appearance; in other case, an accused must appear in person in court, assisted by an advocate

²⁵ Law N° 027/2019 of 19/09/2019 relating to the code of criminal procedure, Article 17.

²⁶ Ibid.

²⁷ Ibid, Article 17.

²⁸ Ibid, Article 22.

²⁹ Ibid, Article 24.

³⁰ Ibid, Article 24.

³¹ Bhusal, D.L, *Economic Crime Law and Legal Practice in the context of Nepal*, Chemnitz University of Technology, Germany, 2009, p.34.

or his legal counsel.³² The Code of Criminal Procedure set out the modalities for conducting criminal hearings in its article 127. First of all, the judge verifies the preliminary arrangement in court hearing in order to confirm that the accused person is the real person being charged with crime.³³

The court trial reads out particulars of the accused and the offence alleged against him/her.³⁴ The court trial asks the accused if he pleads not guilty or guilty;³⁵ after, the Public Prosecution present the pieces of evidence proving the guilt of the accused.³⁶ Without any kind of assessment whether the guilt of accused has been established, the court trial asks the accused to present his or her defense and explains the circumstances in which he committed the offence if he pleads guilty.³⁷

Generally, in criminal matters, judge or court trial remains active. In this phase, he examines the parties to the proceedings, prosecution or defense witnesses, or parties question witnesses or directly cross-examine and contested points of evidence are debated and the court decides thereon; if the court finds it necessary, consider the evidence that may help determine the truth;³⁸ after that the public prosecutor presents the unfolding of the alleged facts, with the evidence to the support and the punishment requested against him;³⁹ the court gives the last opportunity to the he accused person to be heard; if necessary, the accused verifies the conformity of the minute of hearing taken by the clerk before it is signed; the court closes the hearing and informs the parties present of the date and time at which the judgment will be pronounced.⁴⁰ In the court hearing, the judge may collect evidence not collected by all parties in trial.

The stage of proceedings in court hearing is very crucial in criminal proceedings. Therefore, the rights of accused persons have to be observed in every step of the court criminal proceedings as well as in the whole criminal court process. The equality before the law, equality of arms, cross-examination of witnesses, the equal opportunities in presentation before the court hearing, assisting by advocate, etc., equality between the prosecutor and the accused persons must be protected by the law and observed in criminal court proceeding as well as in preparation of the case. More importantly, on one view, theories of procedural

³² Law N° 027/2019 of 19/09/2019 relating to the code of criminal procedure, Article 123.

³³ *Ibid*, Article 127, 3.

³⁴ Code of Criminal Procedure, Articles 127.

³⁵ *Ibid*.

³⁶ *Ibid*.

³⁷ *Ibid*.

³⁸ *Ibid*.

³⁹ *Ibid*.

⁴⁰ *Ibid*.

fairness might apply as well as the guarantees of public hearing. In other words, in the context of court proceedings the dignity, independence and impartiality may play a great role in protecting the accused persons; thus, on a serious matter, an individual will have the opportunity to put his or her case and to make sure that the case will be treated, as being put in good faith.

V. JUDGES AND COLLECTING OF EVIDENCE IN CASE OF ECONOMIC CRIMES

The principal duties of a judge are to adjudicate a case. He assesses the evidence presented, interpret the law, control and preside over the court hearings. As provided by the Rwandan constitution, the judiciary is the guardian of freedoms and human rights.⁴¹ For achieving this duty judges must respect the relevant rules of law,⁴² be bound by the law and decide cases according to the evidence.⁴³ The later shall be produced using papers or documents, witness testimony, confessions, scientific evidence, and physical proofs.⁴⁴ Particularly in the criminal matter, evidence shall be based on all the facts and legal considerations provided that parties are given an opportunity to present adversary arguments. The court shall decide at its sole discretion on the veracity and admissibility of exculpatory or incriminating evidence.⁴⁵ In assessing evidence, decisions regarding their admissibility are left entirely to the discretion of the judge, who determines both the admissibility and the weight of the evidence presented.⁴⁶

The Rwandan code of criminal procedure, in its article 107 provides that the burden of proof shall be on the Public Prosecution.⁴⁷ The later must demonstrate that the accused is guilty before a jury. However, where evidence to support the offense is presented, the accused or his legal counsel must present all the defenses available to him, raise a plea of inadmissibility or show that the allegations against him do not constitute an offense or he is innocent and present all the facts challenging the veracity of incriminating evidence.⁴⁸ In all the same, a judge or court has the power to order to the prosecution and accused to produce of any evidence which it deems conclusive.⁴⁹ During the hearing, a judge may also collect evidence

⁴¹ The constitution of the Republic of Rwanda of 2003 revised in 2015, Article 43.

⁴² Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, Article 6.

⁴³ Law N° 15/2004 of 12/06/2004 relating to evidence and its production, Article 4.

⁴⁴ Law N° 15/2004 of 12/06/2004 relating to evidence and its production, Article 9.

⁴⁵ Law N° 027/2019 of 19/09/2019 relating to the code of criminal procedure, Article 107; Law N° 15/2004 of 12/06/2004 relating to evidence and its production, Article 119.

⁴⁶ Murray, J. (2010). Assessing Allegations: Judicial Evaluation of Testimonial Evidence in International Tribunals, *Chicago Journal of International Law*. 10 (2): 769-797, at p.792.

⁴⁷ Law N° 027/2019 of 19/09/2019 relating to the code of criminal procedure, Article 107.

⁴⁸ Ibid.

⁴⁹ Ibid, Article 109.

not collected by the plaintiff, the Public Prosecution, the accused or their representatives.⁵⁰ This prerogative of the court has been extensively explained in *Prosecution v. Gasasira*.⁵¹ In this case, it is stated that the court shall not have the obligation and duties of the prosecution authority of collecting pieces of evidence but during hearing the court, based on his personal conviction, may consider himself to collect pieces of evidence which have not collected by the parties but with intention to verify existing pieces of evidence already produced by the prosecution or accused person. The Supreme Court, in *Prosecutor v. Ntakyimana*,⁵² held that this appreciation of judge may lead to taking the decision to visit the scene of crimes or doing a field visit where the crime has been committed in order to collect the evidence which has not collected by the prosecutor. In this regard, those courts laid down an interesting interpretation which requires being followed by the courts in such cases, take account that is the position of the Supreme Court, in *Prosecutor v. Ntakyimana*, whose judgments and decisions are binding on all other lower courts of the country.

Despite that the prosecution must present all evidence for the conviction, the court in criminal matters remains active, in case of economic crimes which sometimes their perpetration are doing with some level of sophistication, ruse, technicity, professionalism, and so one, a judge have to refer to expertise or scientific pieces of evidence as provided in 2004 evidence act. It is worthless when a judge rejected evidence produced by the prosecutor or accused person without a scrupulous examination. This is also the position of the 2019 code of criminal procedure, in its article 111. It is stated that if the proceedings conducted as completely as possible do not enable judges to find reliable evidence proving beyond reasonable doubt that the accused committed the offense, the judges shall order his acquittal.

More importantly, the fighting against economic crimes requires a commitment of the investigation authority, prosecution authority, and courts, however, the court must not forget its constitutional obligation for protecting individual rights and observance of international fair trial standards. Thus, I am in point to affirm with Alsheban⁵³ that the principle of impartiality of the judge is one of the most important principles of judicial evidence, and is one of the most important principles limiting the judge's powers of proof in favour of the litigants. Normally, the departure of the judge from the principle of neutrality remains as a waste of justice, and this principle must be applied in all disputes before the court, so as not

⁵⁰ Ibid.

⁵¹ *Prosecution v. Gasasira*, Case No RP 0538/09/TGI/Nyge, the Intermediate court of Nyarugenge, judgment of 23 April 04/2010, para 61.

⁵² *Prosecutor v. Ntakyimana*, Case No RPAA 0005/07/CS, Supreme Court, Judgement of 01 Jun 2007.

⁵³ Alsheban, A, *Judicial Impartiality and Independence of the Judiciary*, IOSR Journal of Humanities and Social Science, 2017, Vol.22, No.5, pp.37-43.

to leave the judge from the judiciary to the department of the opponent.⁵⁴ Therefore, even if during the hearing, a criminal court trial has the power to collect pieces of evidence not collected by the Public Prosecution, and the accused or their representative, must balancing this prerogative with all requirements of institutional and procedural guarantees of fair trial. It is in this perspective, a good judges must confer to certain guarantees in order to eliminate any suspicion of impartiality, independence, public and fair hearing. The criminal court and the individuality of judge must appear to be fair to a reasonable person.

VI. CONCLUSION

It comes to underlined that the establishment of the best piece of evidence in criminal court is the best things in the road of fighting against economic crimes. In this sense, the court may contribute highly to the fight against the economic crimes. Therefore, itself collecting evidence during the hearing must not create any kind impartiality or risk of losing effective justice to the person of accused and society, because the purpose of the law is not to create any prejudice but is to uphold justice and to promote fairness.

Ordinarily, economic crime covers a wide range of offenses, from financial crimes committed by banks, crimes committed by public officials, offenses related to tax, to launder money among many others. Rwandan law does not define economic crimes and its scope, but has recently inventoried twelve (12) offences which are considered as economic crimes; and has established the specialized chambers for economic crimes at the Intermediate Court level which has the jurisdiction to hear at first instance the economic crimes. However, any legal measures, instructions and public policies in the matter have not been yet established.

With the development of the use of internet, information and communications technology (ICT), cross-border crimes, the offenses committed by persons highly experienced in the different matter, and the level of sophistication, the complexity of the investigations diminishes the probability to detect and prosecute fraud associated to economic crimes. The prosecution who has the burden of proof, have to develop the skills of directing investigation and the prosecution of the economic crimes. The obligation of the court is to render justice through adjudication of judgments. More importantly, the activism of judge in a court hearing of the offense related to economic crimes must be of paramount importance; but a judge may not have the obligation of the prosecution authority of collecting pieces of evidence but during hearing the court, based on his personal conviction, he may consider himself to collect pieces of evidence which have not collected by the all parties but in verifying existing pieces

⁵⁴ Ibid.

of evidence already produced by the prosecution or accused person. For instance, the court may order the descent to the scene of crimes, order the apparition of testimonies, producing or doing expertise, forensic evidence. In all the same a judge could not reject pieces of evidence of economic crimes produced by the prosecutor or accused person without its scrupulous examination. The recourse to the scientific and forensic evidence is helpful in case of assessing pieces of evidence relating to economic crimes.

What is needed now, prosecutors could always bear in mind that the burden of proof is for them. The activism of the judge may not be understood as they confer to the judge to collecting evidence in place of the prosecution or the accused. The legislator has to amend article 109 of 2019 Code of criminal procedure in line with the obligation of judges and writes it as it is understandable that the judge actively collaborates in researching the elements of proof that will establish his conviction. It is also needed the creation of awareness of the investigators and prosecutors toward on a carefulness investigation in case of collecting pieces of evidence pieces of evidence of economic crimes.

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