



**NATIONAL SERVICE OF GACACA
JURISDICTIONS
P.O BOX.1874 KIGALI**

BYUMA FRANCOIS XAVIER'S CASE

Like many other Rwandans, Mr. Byuma Francois-Xavier was summoned by Biryogo Gacaca Court of the Sector on 3rd May 2007 to answer charges of allegedly having participated in the 1994 Genocide in Biryogo Sector of Nyarugenge District, Kigali City. He was treated in the same manner as other accused and was duly informed of his charges even before he was summoned by the Court.

Byuma himself was aware of these accusations even before his organization, *Turengere Abana*, made claims against the Presiding Judge of the Court. The charges were disclosed during the initial stage of Gacaca, the collection of information, which required compulsory attendance and participation of all members of the community.

Prior to his summon on 2nd May 2007, Byuma had written to the National Service of Gacaca Courts and actually met the Executive Secretary in person expressing his concerns and doubting the impartiality of the Court. He claimed to be on bad terms with the Presiding Judge of the Court and requested for another bench there of to hear his case. Following these allegations, the original date of the hearing was postponed to 13th May 2007 to give the Court time to digest the claims.

Various individuals, bodies, institutions, and foreign missions operating both locally and internationally wrote to the National Service of Gacaca Courts expressing their concerns about the conduct of Byuma's case and specifically asked for Byuma's requests to be considered. Nevertheless, after a thorough examination of these claims, the Court found them baseless and unfounded. He was advised to appear and participate in Gacaca so as to reveal the truth. Instead, Byuma turned to the afore mentioned individuals and institutions claiming that the Gacaca Courts had failed him by not accepting his request.

The National Service of Gacaca Courts acknowledges that Byuma does not trust the relevant and competent organs which operate the Gacaca Courts. The National Service of Gacaca had taken the necessary precautions regarding this case.

For example, delegations were sent to monitor possible irregularities and audio-visual proceedings of the case were recorded for documentation purposes, future analysis and positive resolutions where necessary.

Byuma accused the entire bench of being incompetent and partial other than referring to specific individuals and requested to be tried by an entirely different bench but did not give adequate legal reasons founded on Article 16 of the Organic Law N° 16/2004 of 19/06/2004 as modified and completed to date. This law sets down grounds under which a judge can be recused and replaced. However, Byuma did not inform the Court of such a judge who fits the criteria provided for in the law.

Recusation of a judge is purely a judicial process, which comes into effect for a specific case. The Court independently examines the reasons given in relation to the criteria provided in the law. In Byuma's case, the Court declared that the accused failed to provide adequate grounds for the recusation of a Judge as set by Article 10 of the Organic Law N° 16/2004 of 19/06/2004.

Byuma has not had any personal grudge with the Presiding Judge of the Court sufficient enough to request his recusation in accordance with Article 10 Organic Law N° 16/2004 of 19/06/2004 as amended and modified to date. Byuma did not at any point give testimony to support the allegations brought forth by *Turengere Abana*, concerning the rape case nor did he ever personally summon the Judge for interrogations.

However, these allegations have not gone unnoticed for they have been and are still being investigated and dealt with by the competent authorities and shall continue to remain separate from Byuma's case before Gacaca Court. As far as we are concerned, the embattled Judge is innocent until proven guilty by the competent jurisdiction.

When brought before the Gacaca Court for his initial appearance, Byuma refused to speak and opted to remain silent which is against the spirit and participatory nature of the Gacaca process as a whole. The purpose of Gacaca is to allow the accused and each member of the community an opportunity to be heard and to listen, which are a prerequisite to revealing the truth.

Gacaca does not function as a classical western court. It is a community based form of justice. It is the community, not lawyers, that plays a substantial role in presenting the case. During trial, the community and the accused have the opportunity to share and tackle genocide experiences. The Court is not merely a form of punitive justice. The Court has been created to aid in the reconciliation process and truth building.

Having kept silent, Byuma was on 13th May placed under provisional detention on grounds that he could destroy the evidences against him but was later released on 20th May 2007 after court revisited the matter and determining that there were no serious threat to the evidence.

On the 27th May 2007 Byuma was heard before Biryogo Gacaca Court of the Sector and received a prison sentence of 19 years. He was found guilty of:

- Undergoing military training in a paramilitary group known as IREBERO belonging to Stanis SIMBIZI, the President of the CDR in Biryogo Sector;
- Beating BATAMULIZA when she was arrested and again during her interrogation;
- Participating in an attack when he was the leader of the Cell;
- Taking BATAMULIZA to the killing area with the intention to kill her.

It is important to note that cases tried at first instance by Gacaca Courts of the Sector may be appealed against or may be reviewed. It is under such grounds that Byuma appealed against the verdict as soon as it was pronounced on the same day, 27th May 2007.

The National Service of Gacaca Courts will continue to follow up the case so that, like any other Rwandan, the defendant receives a fair trial.

Kigali, 12th June 2007

Domitilla MUKANTAGANZWA

Executive Secretary,
National Service of Gacaca Courts

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