

# POSITIONING ON THE JUDGMENT OF THE COURT OF APPEAL

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## *Case of Josina Z. Machel Vs. Rofino Licuco*

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June 2020 has exposed the broken promises of independence 45 years ago. A news item in particular filled the citizens' concerns around democracy, justice and equality with frustration and great pain. This was the Judgment of the 2nd Criminal Appeal Section, of the Judicial Court of the City of Maputo, of 12 June 2020, which cleared Mr. Rofino Licuco of the accusation of serious physical violence against Josina Z. Machel, which resulted in the devastating loss of her eye.

This incomprehensible decision handed down by the courts is not only unjust and caused great harm to the victim, but it also has a serious impact on the way the country will henceforth frame crimes of domestic violence. For these reasons we as civil society organizations engaged in the defense of human rights, have hereby rejected and denounced the decision of the court of appeals, which was read with great disgust and regret.

For many years, despite the fact that equal rights between men and women have been included in the 1975 Constitution, it has been necessary to ensure the guarantee of equal rights within the family and conjugal relations, to deconstruct domestic violence as a "way of life" within couples and to reveal its criminal nature. It is also eminent that the ideals of citizenship doesn't end at the door, challenging the common notion that " a fight between a husband and wife, is not for others to enter " .

For many years there has been public debate, marches and press around this topic, and finally, despite much opposition, the law against domestic violence, Law No. 29/2009, of 29 September 2009 was passed. Thanks to this opposition, changes were made to the draft law that clashed with the internal logic of criminalizing the aggressor, victim support and education to stop the reproduction of inequality and violence in the family setting.

Despite Law No. 29/2009 coming in to effect, this law was important because it gave the idea that for the state of Mozambique it was unacceptable for women to be treated as second-class citizens and subordinated to male tutelage and power to use means of physical coercion as a form of control.

Simply having this law did not automatically mean that all obstacles to the criminalization of domestic violence were removed, as it continued to be necessary to fight against prejudices not only from the general public, but also from agents/systems of justice. Some of the police agents, prosecutors and judges have shown to not agree with the values that Law No. 29/2009 intends to change and were reluctant to apply it in its full sense or crafted creative solutions to avoid penalizing crimes of domestic violence. Therefore, the partial attitude of the appeals court's judges does not surprise us, we are used to facing this resistance.

Let us see in more detail the Judgment we have been referring to:

The court considers that it was unusual and bad practice that the expert examination was carried out at the complainant's home and only 30 days after the facts occurred; It is understood that if there is a disagreement

amongst the physicians and doctors on whether the injury to the eye was caused by a piercing/blunt object or not (which in this case would clear the respondent of the eye injury, since the aggression was committed with the hand). Thus, resulting in the evidence presented being devalued for the victims' defense;

The medical examiner never examined the victim Josina Machel, but gave his opinion based only on the reports of the other specialists, who concluded that the result was compatible with the aggression; The court interpreted the messages exchanged via cell phone between the defendant and the victim, apologizing for what happened, as a mere "good manners" and not as an admission of guilt for having suffered aggression, as the defense intends;

The disqualification of the charge of psychological violence for not having eyewitnesses and for being "the defendant's word against the victim".

In short, they (the court) say that they are facing an "irrefutable doubt" about the defendant's guilt, so they ruled in his favor as the law dictates, clearing him.

In view of this, we, civil society organizations, have deep disagreements with the court of appeal.

First of all, the court ignores or disparages some aspects:

Whether at the Central Hospital or at the Agarwal Hospital, Josina always mentioned that she had been assaulted and at the Central Hospital she pointed her finger at the aggressor who was present, which is why she was immediately called by the police of the police station in that establishment;

At the suggestion of the psychologist, the legal examination was carried out in the privacy of the complainant's residence, to avoid further trauma;

The expert examination was carried out only after the complainant had returned from a trip abroad for medical attention, in which she sought assistance for her injury, that is, after about a month;

The complainant was forced to file a complaint at that time, since the case opened on the day of the assault by the police had mysteriously "disappeared" and this is an "impossible" puzzle so far;

Domestic violence almost always occurs behind closed doors, in fact, this is one of its outstanding characteristics; thus, when deciding to use this argument, the appeals court's judges undermine and weaken the legal basis that supports the entire framework of these crimes, making it even more difficult from now on to take a case of this nature to court. Passing on to all women who are made to endure intimate, insidious and camouflaged violence the message that they should not dare to denounce or bring forward their case if they do not have witnesses, even when presenting the injuries as evidence;

The respondent in court, argued that he did not intend to cause the eye injury, assuming, by these words, that the aggression did occur. Since there was aggression, even if it has not been proved that it caused the loss of the victim's eye, how could the respondent be acquitted? Do the judges in question think that "domestic violence is equivalent to love", or that "arguments between a husband and wife, should not be interfered by others" or that men have the right to "educate" their wives or partners through physical and verbal aggression?

Given this and under the banner of the celebration of 45 years of Independence, we ask ourselves what justice is served to women? What rights do you possess? Was the liberation that came with independence only for men? We need you to explain: how can you be free constantly fearing for your physical, moral and sexual integrity and most of all your life?

The disservice that the judges have caused to women's rights is a dark and unworthy milestone. Deserving, therefore, the rejection and outrage of the whole society in defense of the rule of law. The rule of law which are unchallengeable values of the State that we are building so that the promises of June continue to shine for all Mozambicans.

For all these reasons, we as civil society organizations announce that we will continue the fight by other means so that justice is served to Josina Z. Machel and to all women who suffer in a discreet way or those who are the target of daily aggressions and vexations from the part of society from whom they should receive support, help and solidarity.

We have already battled on the streets in defense of the rule of law. We will return to the streets to defend what we have once achieved.

We also take this opportunity to denounce everyone who, in the public space, without knowing the reality of the facts, is limited to repeating misleading statements disseminated by the respondent's defense and giving vent to their own prejudices and their disagreement with the principle of gender equality. For example, to quote the arguments of the defense, some commentators repeat that the case has already been tried in South Africa, with the defendant being acquitted. What actually happened was that Josina Z. Machel, facing the harassment that continued to persist from her aggressor, asked for a precautionary measure to protect herself. Furthermore, there was no reason for a South African court to judge a crime that occurred in Mozambican territory. This "misinterpretation" was deliberately disseminated on social networks and continues to be repeated as if it were a truth, to discredit the victim and even her family members, in a personal and offensive attack.

We want to communicate that we will not stop and that we will fight to the end for justice! We call for the solidarity of all women and all good men to demand justice, equality and solidarity. It is not about defending a case, but a cause.

As long as there are women who suffer violence in their homes with the complicity of all and everyone who turns a blind eye, independence and freedom have not yet been bestowed.

Long live justice! Long live equality! Long live freedom!

Sincerely:

