



International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

96/H
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UNITED NATIONS
NATIONS UNIES

IN THE APPEALS CHAMBER

ICTR-99-46-A28
11 September 2008
(96/H - 91/H)

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Liu Daqun
Judge Andréia Vaz

Registrar: Mr. Adama Dieng

Decision of: 11 September 2008

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ICTR Appeals Chamber
Date: 11 September 2008
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IN RE.

ANDRÉ NTAGERURA

Case No. ICTR-99-46-A28

**DECISION ON MOTION FOR LEAVE TO APPEAL THE PRESIDENT'S
DECISION OF 31 MARCH 2008 AND THE DECISION OF TRIAL
CHAMBER III RENDERED ON 15 MAY 2008**

Counsel for the Applicant:

Mr. Philippe Larochelle

Mr. Avi Singh

Mr. Goran Sluiter

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seized of the "Motion of André Ntagerura for Permission to Appeal a Decision of the President of the ICTR of 31 March 2008 and a Decision of Trial Chamber III dated 15 May 2008", filed on 13 June 2008 ("Motion" and "Applicant", respectively).¹ The Registrar filed, as confidential, his submissions on 10 July 2008.²

A. Background

2. On 25 February 2004, the Applicant was acquitted of all charges by the Trial Chamber.³ This verdict was subsequently affirmed on appeal.⁴ However, since his acquittal, he has remained under the authority of the Tribunal, pending relocation to a third country.⁵ The Applicant asserts that he is in the "de facto custody of the Tribunal" and that the "restrictions" placed on him violate his fundamental human rights.⁶

3. On 24 October 2007, the Applicant filed a motion before the President of the Tribunal in which he claimed that, on 8 April 2004, the Registrar requested Canada to grant him asylum, and that this request was ignored.⁷ He further claimed that subsequent requests to Canada by the Registrar and his Counsel have also been ignored.⁸ The Applicant *inter alia* requested the President to order Canada to comply with the Registrar's request of 8 April 2004 and to notify the United Nations Security Council of Canada's refusal to implement the terms of this request "3 years and 5 months" after it had been made.⁹ On 31 March 2008, the President ruled that "in order for the applicant to have the opportunity for the invocation of Article 28 it would be necessary for a Trial

¹ On 17 June 2007, the Applicant filed a "Corrigendum to Motion of André Ntagerura for Permission to Appeal a Decision of the President of the ICTR of 31 March 2008 and a Decision of Trial Chamber III dated 15 May 2008 (Article 28 of the Statute of the Tribunal and Rule 54 of the Rules of Procedure and Evidence)".

² Registrar's Submissions under Rule 33 (B) of the Rules on the Motion of André Ntagerura for Permission to Appeal a Decision of the President of the ICTR of 31 March 2008 and a Decision of Trial Chamber III dated 15 May 2008 (Article 28 of the Statute of the Tribunal and Rule 54 of the Rules of the Procedure and Evidence).

³ *The Prosecutor v. André Ntagerura et al.*, Case No. ICTR-99-46-T, Judgement and Sentence, 25 February 2004.

⁴ *The Prosecutor v. André Ntagerura et al.*, Case No. ICTR-99-46-A, Dispositif de l'Arrêt concernant l'Appel du Procureur s'agissant de l'acquiescement d'André Ntagerura et Emmanuel Bagambiki, 8 February 2006 ("Disposition"); *The Prosecutor v. André Ntagerura et al.*, Case No. ICTR-99-46-A, Judgement, 7 July 2006.

⁵ Decision on the Motion by an Acquitted Person for Cooperation from Canada - Article 28 of the Statute, 15 May 2008 ("Decision of the Trial Chamber"), para. 1.

⁶ Motion, paras. 93, 94.

⁷ Motion of André Ntagerura Requesting an Order Directed at Canada and Asking the President to Report the Matter to the Security Council (Article 28 of the Statute of the Tribunal; Rules 7 bis, 19 and 54 of the Rules of Procedure and Evidence), 24 October 2007 ("Motion of 24 October 2007"), para. 3.

⁸ Motion of 24 October 2007, paras. 3-11.

⁹ Motion of 24 October 2007, para. 39.

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Chamber or a Judge to consider whether a request for the assistance of the Member State should be made."¹⁰ He then denied the Motion of 24 October 2007 in part, and referred it to Trial Chamber III for consideration.¹¹ On 15 May 2008, Trial Chamber III denied the Motion of 24 October 2007.¹² The Applicant now requests the Appeals Chamber to grant him leave to appeal the Decision of the President and the Decision of the Trial Chamber.¹³

B. Submissions

4. The Applicant contends that he has a right to appeal both the Decision of the President and the Decision of the Trial Chamber.¹⁴ He argues that this right is based on his due process rights and his right to effective relief pursuant to Article 14 of the International Covenant on Civil and Political Rights ("ICCPR"), which, in his view, is the inspiration for the due process rights contained in the Tribunal's Statute.¹⁵ The Applicant argues that the Statute and the Rules do not envisage his current situation, and that there are no provisions for acquitted persons to appeal post appeal decisions or rulings.¹⁶ He asserts that, given that the proceedings against him have concluded, the Motion falls outside the scope of Rule 73 of the Rules of Procedure and Evidence of the Tribunal ("Rules") and does not therefore require certification.¹⁷

5. The Applicant submits that any time limits pertaining to the filing of an appeal should not be applicable to him because his Counsel, who represent him on a *pro bono* basis, are in Canada and India, and have no indemnity which would allow them to provide the Applicant with proper consultation and representation.¹⁸ He requests the Appeals Chamber, should it grant him leave to appeal, to prescribe the time limits and other formal requirements in relation to the appeal, to the extent that they differ from the relevant Practice Direction.¹⁹

6. In relation to the scope of the appeal for which leave is sought, the Applicant argues that the Decision of the President and the Decision of the Trial Chamber differed as to whether a valid request for cooperation was made to Canada on 8 April 2004.²⁰ He claims that the Registrar's correspondence constituted a valid request for cooperation under Article 28 of the Statute²¹ and

¹⁰ Decision on Motion of André Ntagurura for Cooperation with Canada and for Reporting to the Security Council, 31 March 2008 ("Decision of the President"), para. 7.

¹¹ Decision of the President, p. 3

¹² Decision of the Trial Chamber, p. 3.

¹³ Motion, Prayer.

¹⁴ Motion, paras. 40-50.

¹⁵ Motion, para. 46.

¹⁶ Motion, para. 48.

¹⁷ Motion, para. 40.

¹⁸ Motion, paras. 43, 44.

¹⁹ Motion, para. 50.

²⁰ Motion, para. 57.

²¹ Motion, paras. 57, 58.

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argues that granting him leave to appeal will give the Appeals Chamber the opportunity to dissipate any doubts on this issue.²²

7. The Applicant submits that the Trial Chamber erred in holding that requests for cooperation with regard to his relocation could only have been addressed to Rwanda of which he is a national, and to Cameroon, where he was arrested.²³ He argues that the Tribunal is mandated by the international community to try the alleged perpetrators of crimes in Rwanda and therefore all member states are concerned by the resolution of these trials.²⁴

8. He submits that the President and the Trial Chamber erred in refusing to consider that Canada is seized of a valid request for cooperation, and consequently erred in not concluding that Canada is in violation of its obligations under the Tribunal's Statute.²⁵

9. The Applicant submits that he invoked Rule 7 *bis* of the Rules to request the President to report Canada's refusal to cooperate with the Tribunal to the Security Council, but that the President declined to do so, and concluded that such a report can only be made by the President at the request of a Trial Chamber or a Judge.²⁶ The Applicant claims that the President's conclusion is wrong, as the President himself is a Judge and he could have made the determination that a State has failed to comply with its obligations under Article 28 of the Statute.²⁷ He argues that in view of the President's "diplomatic mandate", he is most likely to be privy to such failures.²⁸

10. The Applicant contends that the President did not address the merits of the Motion of 24 October 2007 and therefore failed to exercise his inherent discretion.²⁹ He asserts that this motion asked the President to request Canada to act in accordance with an already existing request for cooperation, and to "denounce" Canada to the Security Council if it failed to do so.³⁰ The Applicant claims that Canada's response to the Tribunal's request is unknown to him, and that the President erred in refusing to grant his request to have Canada participate in the proceedings.³¹

11. The Applicant submits that his right to life and liberty are infringed because he remains in the "*de facto* custody" of the Tribunal, with his acquittal not given full effect.³² He also submits that his continued isolation from his family and his restricted movements in Tanzania violate his

²² Motion, para. 60.

²³ Motion, paras. 61-66.

²⁴ Motion, para. 65.

²⁵ Motion, paras. 69-73.

²⁶ Motion, paras. 75, 76.

²⁷ Motion, para. 77.

²⁸ Motion, para. 78.

²⁹ Motion, para. 82.

³⁰ Motion, para. 82.

³¹ Motion, paras. 84-91.

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rights.³³ The Applicant claims that the Decision of the President and the Decision of the Trial Chamber violate his due process rights to a fair hearing.³⁴

C. Discussion

12. The Applicant seeks leave of the Appeals Chamber to appeal against the Decision of the President and the Decision of the Trial Chamber. While neither the Statute nor the Rules provide for such appeals, the Appeals Chamber has inherent jurisdiction over the enforcement of its orders and any decisions rendered as a consequence thereof. The Appeals Chamber also recalls that it has inherent jurisdiction to review decisions issued by the President of the Tribunal in certain instances, including where such decisions are closely related to issues involving the fairness of proceedings before the Appeals Chamber.³⁵

13. The Appeals Chamber recalls that, on 8 February 2006, it affirmed the Trial Chamber's acquittal of the Applicant and ordered the Registrar to take, without delay, all necessary steps to effect such acquittal.³⁶ The Decision of the President and the Decision of the Trial Chamber are thus related to the order given to the Registrar to effect the Applicant's acquittal. Furthermore, the Applicant claims that he remains in *de facto* custody of the Tribunal and that full effect has not yet been given to his acquittal. The Appeals Chamber is concerned by this claim, in particular as to whether it raises an issue regarding the effectiveness of its judgements acquitting an accused. The Appeals Chamber considers this issue to be closely related to the fairness of the proceedings. Accordingly, the Appeals Chamber has inherent jurisdiction to review the Decision of the President and the Decision of the Trial Chamber.³⁷

D. Disposition

14. For the aforementioned reasons, the Appeals Chamber:

³² Motion, para. 94.

³³ Motion, para. 94.

³⁴ Motion, para. 97.

³⁵ See *The Prosecutor v. Ferdinand Nahimana et al.*, Case No. IT-99-52-A, Decision on "Appellant's Ngeze Motion for Leave to Permit his Defence Counsel to Communicate with him during Afternoon Friday, Saturday, Sunday and Public Holidays", 25 April 2005, p. 3; *The Prosecutor v. Ferdinand Nahimana et al.*, Case No. IT-99-52-A, Decision on Appellant Ferdinand Nahimana's Motion for Assistance from the Registrar in the Appeals Phase, 3 May 2005, paras. 4, 7; *The Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motion Contesting the Decision of the President Refusing to Review and Reverse the Decision of the Registrar relating to the Withdrawal of Co-Counsel, 23 November 2006 ("*Barayagwiza Decision*"), para. 9.

³⁶ Disposition, p. 2.

³⁷ The Appeals Chamber recalls that a review of decisions closely related to issues involving the fairness of proceedings "is neither a rehearing, nor an appeal, nor is it in any way similar to the review, which a Chamber may undertake of its own judgement in accordance with Rule 119 of the Rules", *Barayagwiza Decision*, para. 9.

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GRANTS the Applicant leave to seek the review of the Decision of the President and the Decision of the Trial Chamber insofar as they relate to the Registrar's enforcement of the Appeals Chamber's order to effect his acquittal;

DIRECTS the Applicant to file his motion within seven days from the date of this decision;

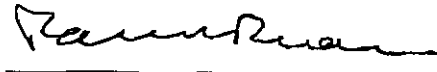
INVITES the Registrar to respond within seven days from the date of the filing of the Applicant's motion;

DIRECTS the Applicant to file his reply, if any, within four days from the date of the filing of the Registrar's response, as applicable;

DISMISSES the Motion in every other respect.

Done in English and French, the English text being authoritative.

Dated this the 11th day of September 2008,
at The Hague,
The Netherlands.



Judge Fausto Pocar,
Presiding





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