



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

102/H
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ICTR-2002-78-R11bis
1 September 2008
(102/H - 98/H)

IN THE APPEALS CHAMBER

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

Registrar: Mr. Adama Dieng

Decision of: 1 September 2008

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THE PROSECUTOR
v.
Gaspard KANYARUKIGA
Case No. ICTR-2002-78-R11bis

ICTR Appeals Chamber
Date: 1 September 2008
Action: P.T.
Copied To: concerned Judge
Republic of Rwanda, Parties,
SLS, LST, ALM, LST,
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**DECISION ON REQUEST FROM THE REPUBLIC OF RWANDA FOR
PERMISSION TO FILE AN *AMICUS CURIAE* BRIEF**

Counsel for Gaspard Kanyarukiga

Mr. Ernest Midagu Bahati
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Office of the Prosecutor

Mr. Hassan Bubacar Jallow
Mr. Bongani Majola
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Mr. Richard Karegyesa
Mr. Dior Fall
Mr. Neville Weston
Ms. Beatrice Chapaux
Mr. Ignacio Tredici

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: *KOFFI... KUMIELID... A... AFANDE*
SIGNATURE: *(Handwritten signature)* DATE: 02 SEPT 2008

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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 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively);

NOTING the "Decision on the Prosecutor's Request for Referral to the Republic of Rwanda" rendered pursuant to Rule 11*bis* of the Rules of Procedure and Evidence of the Tribunal ("Rules") by a Trial Chamber designated under Rule 11*bis* on 6 June 2008 ("Trial Chamber" and "Rule 11*bis* Decision", respectively);

NOTING that the Appeals Chamber is seized of an appeal by the Prosecution against the Rule 11*bis* Decision;¹

BEING SEIZED OF the "Request of the Republic of Rwanda for Permission to File an *Amicus Curiae* Brief Concerning the Prosecutor's Appeal of the Denial the by [*sic*] Trial Chamber of the Request for Referral of the Case of Gaspard Kanyarukiga to Rwanda Pursuant to Rule 11 *bis* of the Rules" ("Request") filed on 11 August 2008 by the Republic of Rwanda ("Rwanda"), in which Rwanda requests leave to file an *amicus curiae* brief and to make oral submissions if there is to be an oral hearing;

NOTING that, in support of its Request, Rwanda submits that it is best placed to provide information to the Appeals Chamber in relation to the law, legal procedure, witness protection programs and other state mechanisms applicable in Rwanda, and that, therefore, its submissions on several issues to be litigated on appeal would assist the Appeals Chamber in its determination of the case;²

NOTING the "Defence Response to the Request of the Republic of Rwanda for Leave of the Appeals Chamber to Appear as *Amicus Curiae*" ("Response") filed by Kanyarukiga on 15 August 2008, in which he submits that Rwanda was already granted *amicus curiae* status during the referral proceeding and that any submissions made in an *amicus curiae* brief on appeal would repeat those made during that proceeding;³

¹ Prosecution's Notice of Appeal (Rule 11 *bis* (H)), 23 June 2008.

² Request, para. 9.

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NOTING that Kanyarukiga further submits that Rwanda has indicated that the *amicus curiae* brief it filed in the case of *The Prosecutor v. Yussuf Munityakazi* ("Munityakazi") covers the same issues as those raised in the appeal in the present case;⁴

NOTING that Kanyarukiga therefore submits that further submissions from Rwanda would be repetitive, and that granting the Request would unnecessarily delay the proceedings and violate Kanyarukiga's right under Article 20 of the Statute of the Tribunal to be tried without undue delay;⁵

CONSIDERING that, pursuant to Rule 74 of the Rules, the Appeals Chamber "may, if it considers it desirable for the proper determination of the case, invite or grant leave to any State, organization or person to appear before it and make submissions on any issue specified by the Chamber";

CONSIDERING that granting leave to make submissions under Rule 74 of the Rules is a matter within the discretion of the Appeals Chamber;⁶

CONSIDERING that the primary criterion in determining whether to grant leave to an *amicus curiae* to make submissions is whether this would assist the Appeals Chamber in its consideration of the appeal;⁷

RECALLING that, pursuant to Rule 74 of the Rules, the Trial Chamber granted Rwanda leave to appear as *amicus curiae* during the referral proceeding⁸ and that, in this capacity, Rwanda made written submissions before the Trial Chamber;⁹

³ Response, paras. 6, 7, 9, 11.

⁴ Response, para. 10, referring to Request, para. 10.

⁵ Response, paras. 11-13.

⁶ See *The Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-A, Decision on the Admissibility of the *Amicus Curiae* Brief Filed by the "Open Society Justice Initiative" and on its Request to be Heard at the Appeals Hearing, 12 January 2007 ("*Nahimana Decision*"), p. 3. See also *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-80-AR108bis.1, Decision on the Prosecutor's Motion to Strike Request for Review under Rule 108bis, 13 December 2006, para. 7.

⁷ *Nahimana Decision*, p. 3; *Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-A, Decision on Association of Defence Counsel Request to Participate in Oral Argument, 7 November 2005, p. 3. See also *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision on *Amicus Curiae* Application of Paul Bisengimana, 30 March 2004, p. 3.

⁸ Decision on Defence Request to Grant *Amicus Curiae* Status to Four Non-Governmental Associations, 22 February 2008; Decision on *Amicus Curiae* Request by Human Rights Watch, 29 February 2008 ("*Decision on Amicus Curiae Request*").

⁹ In its request for permission to file an *amicus curiae* brief, Human Rights Watch requested that the Appeals Chamber admit the *amicus curiae* brief it had submitted in *The Prosecutor v. Fulgence Kayishema* (*The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-2001-67-I, Brief of Human Rights Watch as *Amicus Curiae* in Opposition to Rule 11bis Transfer, 3 January 2008). See Request for Leave to Appear as *Amicus Curiae* Pursuant to Rule 74 of the ICTR Rules of Procedure and Evidence, 27 February 2008. In its Decision on *Amicus Curiae* Request, the Trial Chamber stated at paragraph 4 that "In the Chamber's decision of 22 February 2008, Human Rights Watch was invited to provide written submissions no later than 7 March 2008. The organization has attached the brief it provided in the other Rule 11bis

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NOTING, however, that Rwanda proposes to make additional submissions on matters that were not covered by the *amicus curiae* brief it submitted during the referral proceeding, which it claims will provide clarification of the issues on appeal;¹⁰

NOTING further that although Rwanda requests permission to file an *amicus curiae* brief covering similar issues to those it addressed in the *amicus curiae* brief it filed in *Munyakazi*, it indicates that any submissions filed in the present appeal will contain necessary modifications and additions in light of the particular pleadings and challenges raised by Kanyarukiga;

RECALLING that the Appeals Chamber granted Rwanda permission to file an *amicus curiae* brief in *Munyakazi* on the basis that Rwanda had a practical interest in the determination of the appeal, and that the Appeals Chamber would be assisted in the determination of the appeal by further *amicus curiae* submissions from Rwanda on issues relevant to the determination of the appeal;¹¹

CONSIDERING that Rwanda also has a practical interest in the determination of the appeal in this case;

CONSIDERING that the issues identified by Rwanda in the Motion as matters about which it could provide further detail are relevant to the determination of the appeal and that the Appeals Chamber may therefore be assisted by further *amicus curiae* submissions from Rwanda;

FOR THE FOREGOING REASONS,

GRANTS leave to Rwanda to file an *amicus curiae* brief, to be submitted within 10 days of the filing of the present Decision and to be no more than 10 pages in length;

ORDERS Munyakazi and the Prosecution, if they wish to do so, to file responses to the *amicus curiae* brief of no more than 10 pages in length within 5 days of the filing of the brief;

DECLARES that if the Appeals Chamber deems it necessary to hold an oral hearing, it will issue a Scheduling Order, indicating whether oral submissions from *amicus curiae* will be permitted.

proceedings to its current Request. The Chamber will consider this brief in connection with its deliberation in the present case".

¹⁰ Request, para. 11.

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



Judge Fausto Pocar
Presiding

Dated this 1st day of September 2008,
at The Hague, The Netherlands.



¹¹ See *The Prosecutor v. Yussuf Muryakazi*, Case No. ICTR-97-36-R11bis, Decision on Request from the Republic of Rwanda for Permission to File an *Amicus Curiae* Brief, 18 July 2008, p. 3.



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

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**APPEALS CHAMBER – PROOF OF SERVICE
CHAMBRE D'APPEL - PREUVE DE NOTIFICATION**

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|---|---|---|
| 2 September 2008 | Case Name / <i>Affaire</i> : KANYARUKIGA Case No / <i>No. de l'affaire</i> : ICTR-2002-78-R11bis | THE PROSECUTOR v. Gaspard KANYARUKIGA |
| To: A: | ARUSHA JUDICIAL ARCHIVES 1795251 APPEALS UNIT ✘ Ms Félicité Talon, APPEALS CHAMBER ✘ Judge / Juge Fausto Pocar (Presiding) ✘ Judge / Juge Mohamed Shahabuddeen ✘ Judge / Juge Mehmet Güney ✘ Judge / Juge Liu Daqun ✘ Judge / Juge Andréia Vaz ✘ Ms Catherine Marchi-Uhel ✘ Mr Roman Boed ✘ Concerned Associate Legal Officers ✘ Ms. Kate Aboagye DEFENSE ✘ Accused / <i>accusé</i> : Mr. Gaspard KANYARUKIGA (complete CMS4 Form) ✘ Lead Counsel / <i>Conseil Principal</i> : Prof. E. Midagu BAHATI (name / nom) ✘ In Arusha (complete CMS 2) ✘ Fax: ✘ E-mail: maitrebahati@yahoo.fr ✘ Co-Counsel / <i>Conseil Adjoint</i> .: (name / nom) ✘ In Arusha (complete CMS 2) <input type="checkbox"/> Fax Number: ✘ E-mail: | JUDICIAL RECORDS ARCHIVE 2008 SEP - 2 P 2-42 |
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| Subject Objet: | Kindly find attached the following documents / <i>Veillez trouver en annexe les documents suivants</i> : | |
| Documents name / <i>Titre du document</i> | Date Filed / <i>Date d'enregistrement</i> | Pages |
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