

ICTR-00-56-A
26 March 2003
(35/h-31/h)

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

BEFORE A BENCH OF THE APPEALS CHAMBER

Before: Judge Fausto POCAR, Presiding
Judge David HUNT
Judge Asoka de Z. GUNAWARDANA

Registrar: Mr. Adama DIENG

Decision of: 26 March 2003

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Innocent SAGAHUTU
(Applicant)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-00-56-I

ICTR Appeals Chamber
Date: 26 March 2003
Action: PG
Copied To: All Judges, Parties
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All LOS
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**DECISION ON LEAVE TO APPEAL AGAINST THE
REFUSAL TO GRANT PROVISIONAL RELEASE**

Counsel for the Appellant

Mr. Fabien Segatwa
Mr. Didier Patry

Counsel for the Prosecution

Ms. Ciré Ali Bâ
Ms. Christine Graham

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: ROSETTE MOZIGO-MORRISON
SIGNATURE: [Signature] DATE: 26/03/03

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THIS BENCH OF 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 (“Bench” and “International Tribunal”, respectively),

BEING SEISED OF the “*Requête aux fins de demande d’autorisation d’interjeter appel contre la décision rendue le 25 septembre 2002*”, filed on 23 December 2002 (“Application”) by Innocent Sagahutu (“Applicant”);

NOTING the *Decision on Sagahutu’s Preliminary, Provisional Release and Severance Motions* (“Impugned Decision”), rendered on 25 September 2002 by Trial Chamber II (“Trial Chamber”), which dismissed the “*Requête de la défense soulevant des exceptions préjudicielles et demandant la mise en liberté provisoire de l’Accusé et la disjonction d’instance*”, filed by the Applicant on 25 June 2001 (“Motion”);

NOTING that the Prosecution filed the “*Prosecutor’s Response to the Accused Sagahutu’s Requête aux fins de demande d’autorisation d’interjeter appel contre la décision rendue le 25 septembre 2002*” on 6 January 2003 (“Prosecution Response”);

NOTING that the Applicant has not filed a Reply to the Prosecution’s Response;

NOTING that the Prosecution, in its Response, argues that the Application was untimely because the Defence failed to request an extension of time to the Appeals Chamber, pursuant to Rule 116 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”);

NOTING that the Impugned Decision was rendered on 25 September 2002, and that the Defence filed its Application only on 23 December 2002;

NOTING that Rule 65(D) of the Rules, as amended, provides that applications for leave to appeal decisions rendered under the rule “shall be filed within seven days of [the] filing of the impugned decision”;

NOTING that the reason given by the Defence for its late filing is that it received the official French translation of the Impugned Decision on 17 December 2002;

CONSIDERING that Rule 116(A) of the Rules provides that “the Appeals Chamber may grant a motion to extend a time limit upon a showing of good cause”;

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CONSIDERING that, in the view of the Appeals Chamber, a request for an extension of time should be filed prior to the expiration of the relevant time limit;

CONSIDERING that, in the view of the Appeals Chamber, notwithstanding that a decision is delivered in a working language other than that of the Defence, any request for an extension of time should be made in conformity with Rule 65(D), namely within seven days of the filing of the Impugned Decision, in its original language;

CONSIDERING FURTHER that, although the Defence may not have been in a position to understand fully the substance of the Impugned Decision without its translation, as the Defence was served with notice of the filing of the Impugned Decision, the calculation of the time limit to file its intent to appeal or a request for an extension before the Appeals Chamber commenced as of the date on which the Impugned Decision was filed;

FINDING that the Defence's failure to seek an extension of time to file its Application within seven days of the filing of the Impugned Decision renders the Application untimely;

CONSIDERING, nevertheless, that the Appeals Chamber deems it appropriate to consider the merits of the Application;

CONSIDERING that Rule 65(B) of the Rules provides, *inter alia*, that provisional release may be ordered by a Trial Chamber only "in exceptional circumstances, after hearing the host country and only if it is satisfied that the Accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person";

NOTING that the Motion was dismissed by the Trial Chamber, on the grounds that:

1. this Tribunal, including the Appeals Chamber, has consistently recognised that Rule 65 (B) of the Rules, with its "exceptional circumstances" provision, is an appropriate rule governing provisional release, and that exceptional circumstances had to be proved;
2. because the International Tribunal is a sovereign body, with a competence *rationae materiae* and *ratione temporis* distinct from that of the International Criminal Tribunal for the former Yugoslavia ("ICTY"), an amendment to the Rules, such as Rule 65, will be incorporated in the Rules of the International Tribunal only if the Judges so decide at a Plenary Meeting, and to the extent they deem it necessary;

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3. because the International Tribunal is a distinct body from the ICTY, the Judges of the International Tribunal are bound to apply the Rules of the International Tribunal, and, for these reasons, the Trial Chamber must apply each requirement as specified in Rule 65; and
4. in accordance with the Appeals Chamber's jurisprudence¹, the Trial Chamber found that the "length of the proceedings, the general complexity of the case, and the length of the Applicant's detention remain within acceptable limits and in the interests of justice" and, consequently, no exceptional circumstances existed in the case to justify provisional release;

NOTING that the Applicant argues, *inter alia*, in his Application, that:

1. the Trial Chamber erred when it determined that, if it is not satisfied of the existence of exceptional circumstances, provisional release shall not be granted, without any need to consider the other criteria pursuant to Rule 65(B);
2. the Trial Chamber erred when it failed to define the concept of exceptional circumstances, thereby prejudicing the rights of the Defence, rendering the burden of proof impossible for the Defence to satisfy, violating international law, and contradicting the texts and jurisprudence of the ICTY; and
3. the Trial Chamber erred when it applied different standards from the ICTY, which has eliminated the "exceptional circumstances" language from its Rules, thereby discriminating against the accused of the International Tribunal;

CONSIDERING that Rule 65(D) of the Rules provides that decisions on provisional release "shall be subject to appeal in cases where leave is granted by a bench of three Judges of the Appeals Chamber, upon good cause being shown";

CONSIDERING that "good cause" within the meaning of Rule 65(D) of the Rules requires that a party seeking leave to appeal under that provision satisfy the bench of the Appeals Chamber that the Trial Chamber may have erred in making its decision;²

NOTING that the Prosecution argues in its Response that the Defence failed to demonstrate "good cause" under Rule 65(D) of the Rules;

¹ *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-A, Appeals Chamber, Decision On Application for Leave to Appeal Filed Under Rule 65 (D) of the Rules of Procedure and Evidence, 13 June 2001, p. 3 .

² *Ndayambaje v. Prosecutor*, Case No. ICTR-96-8-A, Decision on Motion to Appeal Against the Provisional Release Decision of Trial Chamber II of 21 October 2002, 10 Jan. 2003, p. 5.

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NOTING that the Prosecution also argues in its Response that the Applicant's claim, that the burden of proving exceptional circumstances is too cumbersome for the accused and violates international law and principles of human rights, is specious because these issues were addressed and rejected during the adoption of the Rules;

CONSIDERING that, in the absence of exceptional circumstances, provisional release may not be granted;

CONSIDERING that, pursuant to Rule 65(B) of the Rules, if the Trial Chamber is not satisfied of the existence of exceptional circumstances, it need not make findings on each of the factors enumerated under the Rule, but that the Trial Chamber may consider evidence adduced in relation to those other factors, where relevant, when the issue of exceptional circumstances is raised;

CONSIDERING that the word "exceptional" provides a sufficiently clear meaning as to have no need of any further definition;

CONSIDERING that the International Tribunal is a distinct and separate jurisdiction from the ICTY, and that the International Tribunal, by applying its Rules equally to all parties, guards against any discrimination *vis-à-vis* the accused;

CONSIDERING that the Applicant has failed to establish that the Trial Chamber may have erred in its assessment of the requirements of Rule 65(B) and in denying the Applicant's request for provisional release;

FINDING that the Applicant therefore has failed to demonstrate good cause such that the Bench should grant leave to appeal;

REITERATING that the Application was not timely filed;

HEREBY DISMISSES the Application.

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


Done this 26th day of March 2003,

At The Hague,

The Netherlands.



[Seal of the Tribunal]


Fausto Pocar
Presiding Judge