



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

324/H
AW.

ICTR-96-14-A
03 DECEMBER 2003
(324/H — 321/H)
IN THE APPEALS CHAMBER

Before:

Judge Theodor MERON, Presiding
Judge Mohamed SHAHABUDEEN
Judge Fausto POCAR
Judge Wolfgang SCHOMBURG
Judge Inés Mónica WEINBERG DE ROCA

Registrar:

Mr. Adama DIENG

Decision of:

3 December 2003

ICTR Appeals Chamber
Date: 03/12/2003
Action: P. Gyalinié
Copies To: Concerned Appeals

Judges, the Parties, Appeals Unit, Arusha, Judicial Archive, SLOs, LOs, ALOs, LSS The Hague, Common Drive.
Thanks. AW'gum
03/12/2003.

2003 DEC -4 A 9:19

[Handwritten signature]

ICTR
JUDICIAL DEPARTMENT

Eliézer NIYTEGEKA
(Appellant)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-96-14-A

DECISION ON ELIEZER NIYTEGEKA'S URGENT MOTION FILED ON 22 OCTOBER 2003

Counsel for the Appellant

Ms. Sylvia Geraghty

Counsel for the Prosecutor

Ms. Mélanie Werrett

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR NOUS
NAME / NOM: AMINATTA L.R. N'GUM
SIGNATURE: *[Signature]* DATE: 03/12/2003

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 “International Tribunal” respectively),

NOTING the “Judgement and Sentence” rendered in this case by Trial Chamber I on 16 May 2003 (“Judgement”);

NOTING the Notice of Appeal re-filed on 17 October 2003 by Eliézer Niyitegeka (respectively “Notice of Appeal” and “Appellant”);

BEING SEISED of “Niyitegeka’s Urgent Motion seeking an Order to the Registrar to appoint an *amicus curiae* to conduct on-site investigations [Art.17(2) du Statut; Art.91(B) (ii) et 107 du Règlement]” (“Urgent Motion”) filed by the Appellant himself on 22 October 2003, in which he requests the Appeals Chamber to “order the Registrar to appoint an *amicus curiae* to conduct on-site investigations” and submits *inter alia* that:

1. the Prosecution did not conduct any on-site investigations before the submission of the indictment or afterwards;¹
2. the Commission of Enquiry created by the Rwandese Government established a list of people responsible for the massacres in the *Kibuye* Prefecture and the name of Eliézer Niyitegeka was not included therein;²
3. investigations by national authorities into the participation of the Appellant in the massacres in *Kibuye* were carried out in Rwanda and did not lead to the indictment of the Appellant;³
4. the Trial Chamber should not have relied on the Prosecution Witnesses whose testimonies have not been corroborated;⁴
5. Prosecution Witnesses GGD, GGY, GGO, GGH, HR, GGR, GGM, DAF, GGV and KJ gave false testimonies during the trial and therefore on-site investigations should be ordered in order “to verify their testimony” and if necessary engage proceedings against them for false testimony;⁵

¹ Paragraph 7 of the Urgent Motion.

² Paragraph 5 of the Urgent Motion.

³ Paragraph 6 of the Urgent Motion.

⁴ Paragraph 8 of the Urgent Motion.

⁵ Paragraph 11 of the Urgent Motion.

NOTING that the Prosecution did not file a Response to the Urgent Motion;

NOTING that Counsel for the Appellant sent a fax to the Registry of the International Tribunal indicating that the Appellant had personally prepared the Urgent Motion and that as "it is a matter for himself" she had no objection;⁶

CONSIDERING that the Appellant chose to have Counsel representing his interests before the Tribunal, whose fees are fully paid by the International Tribunal;

CONSIDERING that the object of the Urgent Motion is the production of additional evidence but that the Appellant has not explained why it has not been possible to make on-site investigations with a view to producing that evidence at trial;

CONSIDERING also that the Notice of Appeal filed by the Appellant on 17 October 2003 includes the substance of the allegations made by the Appellant in the Urgent Motion against Witnesses GGD⁷, GGY⁸, GGO⁹, GGH¹⁰, HR¹¹, GGR¹², GGM¹³, DAF¹⁴, GGV¹⁵ and KJ¹⁶ and that, on the record so far, the Appellant falls to be regarded as being prepared to demonstrate those allegations without further evidence;

CONSIDERING that, in all the circumstances, the Appeals Chamber is not satisfied that it is necessary to grant the Appellant's request;

⁶ Fax sent to the Registry of the Tribunal by Sylvia Geraghty on 29 October 2003 and filed on 3 November 2003.

⁷ See the general allegations made in paragraphs 23, 28 and 30 of the Notice of Appeal.

⁸ See paragraphs 40 and 48 of the Notice of Appeal.

⁹ See paragraph 48 of the Notice of Appeal.

¹⁰ See paragraphs 45 and 48 of the Notice of Appeal.

¹¹ See paragraphs 40, 41 and 48 of the Notice of Appeal.

¹² See paragraphs 40 and 48 of the Notice of Appeal.

¹³ See paragraph 48 of the Notice of Appeal.

¹⁴ See paragraphs 40, 48 and 53 of the Notice of Appeal.

¹⁵ See paragraphs 43 and 48 of the Notice of Appeal.

¹⁶ See paragraphs 42 and 48 of the Notice of Appeal.

321/H

FOR THE FOREGOING REASONS,

DISMISSES the Urgent Motion.

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



Theodor Meron

Presiding

Done this third day of December 2003,
At The Hague,
The Netherlands.



[Seal of the International Tribunal]