

ICTR-98-44-AR73 (F)

09 June 2004

C542/A-540/A

542/A



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before:

Judge Mohamed Shahabuddeen, Presiding
Judge Florence Ndepele Mwachande Mumba
Judge Fausto Pocar
Judge Wolfgang Schomburg
Judge Inés Mónica Weinberg de Roca

Registrar:

Mr. Adama Dieng

Decision of:

9 June 2004

ICTR Appeals Chamber

Date: 09 June 2004
 Action: PG
 Copied To: Concerned Judge
 Parties, Judicial Archive
 LO, LSS
[Signature]

Joseph NZIRORERA

v.

THE PROSECUTOR

Case No ICTR-98-44-AR73(F)

DECISION ON COUNSEL'S APPEAL FROM RULE 73(F) DECISIONS

Counsel for the Defence

Mr. Peter Robinson

Counsel for the Prosecution

Mr. Don Webster
Ms. Ifeoma Ojemeni
Ms. Hole Makwaia
Ms. Dior Fall

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
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NAME / NOM: ROSETTE MUZIGO-MORRISON
 DATE: 09/06/04

Case No. ICTR-98-44-AR73(F)

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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 ("International Tribunal"),

BEING SEISED OF the "Appeal of Lead Counsel from Decisions of Trial Chamber Imposing Sanctions Pursuant to Rule 73(F)" filed by Peter Robinson, counsel for Joseph Nzirorera ("Mr. Robinson") on 3 February 2004 ("Motion");

NOTING that Mr. Robinson seeks review by the Appeals Chamber of the sanctions imposed on him pursuant to Rule 73(F) of the Rules of Procedure and Evidence ("Rules"), in the following decisions: (i) "Decision on the Defence Motion to Order the Government of Rwanda to Show Cause" issued by Judge Williams, designated by Trial Chamber III pursuant to Rule 73(A), on 4 September 2003 ("4 September Decision"); (ii) "Decision on the Defence Request for Leave to Interview Potential Prosecution Witnesses Jean Kambanda, Georges Ruggiu and Omar Serushago", issued by Judge Vaz, designated by Trial Chamber III pursuant to Rule 73(A), on 29 September 2003 ("29 September Decision"); and (iii) "Decision on the Defence Motion for Disclosure of Exculpatory Evidence", issued by Trial Chamber III on 7 October 2003 ("7 October Decision") (together "Impugned Decisions");

NOTING that the 4 and 29 September Decisions pursuant to Rule 73(F) of the Rules sanctioned Mr. Robinson by directing the Registry not to pay any fees or costs associated with the related motions and that the 7 October Decision sanctioned Mr. Robinson by directing the Registry to deny payment of half of the costs associated with the related motion;

NOTING Mr. Robinson's request for certification to appeal the 4 September Decision, which was denied by Trial Chamber III on 23 September 2003;¹

NOTING Mr. Robinson's requests for reconsideration and for certification to appeal the 29 September Decision, which were denied by Trial Chamber III on 10 and 20 October 2003, respectively;²

¹ *Prosecutor v. Joseph Nzirorera et al*, Case No. ICTR-98-44-I, "Decision on the Defence Request for Certification to Appeal against the Decision on the Defence Motion to Order the Government of Rwanda to Show Cause", 23 September 2003.

² See *Prosecutor v. Joseph Nzirorera et al*, Case No. ICTR-98-44-I, "Decision on the Defence Motion for Reconsideration of Sanctions Imposed in Decision on the Defence Request for Leave to Interview Potential Prosecution Case No. ICTR-98-44-AR73(F)" 9 June 2004

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NOTING Mr. Robinson's request for review by the President of the International Tribunal of the Impugned Decisions³, which was denied on 26 January 2004 on the ground that "neither the Statute nor the Rules confer on the President the competence to review any decision handed down by a Chamber";⁴

NOTING that in the Motion, Mr. Robinson submits, *inter alia*, that (i) the imposition of sanctions is a serious matter with repercussions which go beyond the imposition of a monetary penalty as what is at stake is his professional reputation and his status at the California Bar and that (ii) "principles of fairness" require the Appeals Chamber, as it did in the *Vujin* Contempt Appeal, to exercise its inherent power to review the imposition of sanctions imposed on him which, as in the *Vujin* Contempt Appeal, are of a monetary nature;⁵

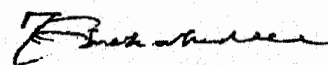
CONSIDERING that neither the Statute nor the Rules provide for a right of appeal from sanctions imposed pursuant to Rule 73(F) of the Rules;

CONSIDERING that a Rule 73(F) sanction is not a criminal sanction and therefore, contrary to what is submitted by Mr. Robinson, the case at hand bears no useful parallel to the *Vujin* Contempt Appeal;

FINDING that, for the foregoing reasons, there is no basis for granting a right of appeal in the present case;

HEREBY DISMISSES the Motion.

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



Mohamed Shahabuddeen
Presiding Judge

Done this day 9th of June 2004,
At The Hague,
The Netherlands.

[Seal of the International Tribunal]



Witnesses Jean Kambanda, Georges Ruggiu, and ~~Samuel Seromba~~ 10 October 2003 and, in the same case, "Decision Denying Defence Request for Certification to Appeal", 20 October 2003.

³ *Prosecutor v. Joseph Nzirorera et al*, Case No. ICTR-98-44-I, "Lead Counsel's Request to the President for Review of Sanctions Imposed Pursuant to Rule 73(f)", 30 September 2003 and, in the same case, "Lead Counsel's Second Request to the President for Review of Sanctions Imposed Pursuant to Rule 73(F)", 27 October 2003.

⁴ *Prosecutor v. Joseph Nzirorera et al*, Case No. ICTR-98-44-I, "The President's Decision on Lead Counsel's Applications for Review of Sanctions Imposed Under Rule 73(F)", p.4.

⁵ *Prosecutor v. Duško Tadić*, "Appeal Judgement on Allegation of Contempt against Prior Counsel, Milan Vujin", 27 February 2001, ("*Vujin* Contempt Appeal").

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