



ICTR-96-14-K  
20 June 2005 (285/h-281/h)  
International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda

285/H  
RMM

**BEFORE A BENCH OF THE APPEALS CHAMBER**

Original: English

Composed of: Judge Theodor Meron, Presiding  
Judge Mohamed Shahabuddeen  
Judge Florence Mumba  
Judge Wolfgang Schomburg  
Judge Inés Mónica Weinberg de Roca

Registrar: Mr. Adama Dieng

Decision of: 20 June 2005

ICTR Appeals Chamber  
Date: 20 June 2005  
Action:  
Copied To: Concerned Judges,  
Parties, LOs, Judicial  
Archives, LSS  
RMM

2005 JUN 21 A 9:29  
JUDICIAL RECORDS/ARCHIVES  
ICTR

ELIÉZER NIYITEGEKA  
(Applicant)

v.

THE PROSECUTOR  
(Respondent)

Case No. ICTR-96-14-R

**DECISION ON NIYITEGEKA'S URGENT REQUEST FOR LEGAL ASSISTANCE**

**For the Defence:**

Eliézer Niyitegeka, Applicant

**Office of the Prosecutor:**

James Stewart

Case No. ICTR-96-14-R

Inneke Onsea  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME  
COPIE CERTIFIÉE VRAI CONTENU DE L'ORIGINAL PAR MOI  
NAME / NOM: Rosette Muzigo-Morrison  
DATE: 20 June 2005  
SIGNATURE: [Signature]

284/H 2

**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 serious violations committed in the territory of neighbouring States, between 1 January and 31 December 1994 ("Tribunal"),

**NOTING** the *Requête en révision du jugement/réparation du préjudice causé par la violation, par le Procureur, du Règlement et des règlements internes* filed by Eliézer Niyitegeka ("Applicant"), on 27 October 2004 ("Motion for Review");<sup>1</sup>

**BEING SEISED** of the "Urgent Request for Legal Assistance" ("Request for Assistance") filed on 6 May 2005, by the Applicant in which the Applicant:

(i) states that the Defence Counsel Management Section within the Registry of the Tribunal has refused to reassign Ms. Geraghty, previous Counsel for the Applicant on appeal to assist with his application for a review of the Appeal Judgement;<sup>2</sup>

(ii) prays the Appeals Chamber to:

- order that the defence team that assisted him on appeal ("Defence Team") be allowed to resume its mandate to defend the Applicant's interests and be provided with the necessary and appropriate facilities to handle his Motion for Review file;<sup>3</sup>
- order that the Defence Team be granted leave to file any additional brief prior to the examination of the Motion for Review;<sup>4</sup>

**NOTING** that the Prosecutor orally notified the Appeals Chamber that he did not intend to respond to the Request for Assistance;

**NOTING** the "Registrar's Submission under Rule 33(B) of the Rules to Eleizer [sic] Niyitegeka's *Requête Urgente en Assistance de l'équipe de la Défense*" filed on 16 May 2005 ("Registrar's Submission"), in which the Registrar submits:

<sup>1</sup> On 1 December 2004, the Presiding Judge of the Appeals Chamber issued an Order assigning a bench of Judges to entertain the Motion for Review. Further to the said motion, the Applicant filed a corrigendum on 29 December 2004. On 7 February 2005, he again filed, still without the assistance of counsel, a "*Mémoire supplémentaire à la Requête en révision du jugement/réparation du préjudice causé par la violation, par le Procureur, du Règlement et des règlements internes*". The Prosecutor responded to both the Motion for Review and the *Mémoire supplémentaire* on 6 December 2004 and on 18 March 2005, respectively; the Applicant replied to the said Responses on 29 December 2004 and on 31 March 2005, respectively.

<sup>2</sup> Request for Assistance, paras. 8 and 9.

<sup>3</sup> Request for Assistance, para. 11(i).

<sup>4</sup> Request for Assistance, para. 11(ii).

283/H 3

- (i) an accused is only entitled to legal aid until "finality" of the case and, in this instance, the case reached finality when the appeal judgement was pronounced;<sup>5</sup>
- (ii) the procedure for review set forth under Article 25 of the Statute of the Tribunal ("Statute") and Rule 120 of the Rules of Procedure and Evidence ("Rules") is a reopening of the case,<sup>6</sup> but it is only after the preliminary examination of Rule 121 of the Rules and if the Appeals Chamber enters a finding as to the existence of a "new fact" that the question of the review of the Judgement arises;<sup>7</sup>
- (iii) in the instant case, once the Appeal Chamber finds that there are indeed new facts entitling the convicted person to have his case reviewed, the Registry will reimburse Counsel of all the expenses of the motion and subsequent proceedings;<sup>8</sup>

**NOTING** the "*Réplique à la soumission du Greffier à la «Requête urgente en assistance de l'équipe de la défense»*" ("Reply to the Registrar's Submission") filed by the Applicant on 25 May 2005;

**CONSIDERING** that Rule 45(I) of the Rules provides that assigned counsel shall represent the accused and conduct the case to finality;

**CONSIDERING** the judgement of the trial chamber has been appealed, the case reaches finality upon issuance of the appeal judgement;

**CONSIDERING** that, according to the letter and spirit of Article 25 of the Statute and Rules 120 and 121 of the Rules, a motion for review is an exceptional remedy;<sup>9</sup>

**CONSIDERING** that Articles 1(A) and 15(A) of the Directive on Assignment of Defence Counsel, when read together, provide that assigned counsel shall deal with all stages of procedure, including review;

**CONSIDERING**, however, that review must be authorized by the concerned Chamber, and that, before authorizing review, the Chamber must be satisfied "that the new fact, if it had been proven, could have been a decisive factor in reaching a decision";<sup>10</sup>

<sup>5</sup> Registrar's Submission, paras. 11 and 12.

<sup>6</sup> Registrar's Submission, para. 13.

<sup>7</sup> Registrar's Submission, para. 14.

<sup>8</sup> Registrar's Submission, para. 18.

<sup>9</sup> *Prosecutor v. Duško Tadić*, IT-94-1-R, "Decision on Motion for Review", 30 July 2002 ("*Tadić* Review Decision"), para. 24 ("[T]he review is an extraordinary way of appealing a decision, and its purpose is precisely that of permitting an accused or the Prosecution to have a case re-examined in the presence of exceptional circumstances, even after a number of years has elapsed.")

<sup>10</sup> Rule 121 of the Rules. This provision has been interpreted as requiring the moving party to satisfy four criteria at the preliminary examination: (a) there must be a new fact; (b) that new fact must not have been known to the

282/H 4

**CONSIDERING** therefore that the Applicant is only entitled to assigned Counsel if the Appeals Chamber authorizes the review;

**CONSIDERING**, however, that to ensure the fairness of proceedings the Applicant should have assistance from counsel at the stage of the preliminary examination;

**CONSIDERING** that the counsel chosen by the Applicant, namely Ms. Sylvia Geraghty, is not only well versed in the case, as she assisted the Applicant up to and including his appeal,<sup>11</sup> but has also personally requested to be reassigned to this matter,<sup>12</sup> and is prepared forthwith to assist the Applicant and to file any relevant additional submissions;

**FINDING** that the Registrar should re-assign Ms. Geraghty for a limited period to assist the Applicant at the stage of the preliminary examination;<sup>13</sup>

**FINDING** that, following this assignment, the Applicant should be allowed to file additional submissions to his Motion for Review;

**FINDING** that the Prosecutor may respond to the Applicant's additional submissions no later than 15 days after these have been filed, and that the Applicant may reply to any response no later than 7 days after such response has been filed;

**FOR THESE REASONS,**

**PARTIALLY GRANTS** the Request for Assistance;

**DIRECTS THE REGISTRAR** to assign Ms. Geraghty for a limited period for the purpose of assisting the Applicant at the stage of the preliminary examination;

---

moving party at the time of the original proceedings; (c) the lack of discovery of the new fact was not through the lack of due diligence on the part of the moving party; and (d) that new fact could have been a decisive factor in reaching the original decision. See *Prosecutor v. Jean-Bosco Barayagwiza*, ICTR-97-19-AR72, "Decision (Prosecutor's Request for Review or Reconsideration)", 31 March 2000 ("*Barayagwiza* Review Decision"), para. 41; *Prosecutor v. Delić*, IT-96-21-R-R119, "Decision on Motion for Review", 25 April 2002, para. 8; *Prosecutor v. Jelisić*, IT-95-10-R, "Decision on Motion for Review", 2 May 2002, pp. 2-3; *Tadić* Review Decision, para. 20; *Prosecutor v. Josipović*, IT-95-16-R2, "Decision on Motion for Review", 7 March 2003 ("*Josipović* Review Decision"), para. 12. In "wholly exceptional circumstances", where the impact of a "new fact" on the decision would be such that to ignore it would lead to a miscarriage of justice, review might be possible even though the "new fact" was known to the moving party, or was discoverable by it through the exercise of due diligence. See *Barayagwiza* Review Decision, para. 65; *Tadić* Review Decision, para. 26; *Josipović* Review Decision, para. 13.

<sup>11</sup> Registrar's Submission, para. 15.

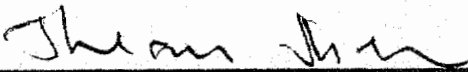
<sup>12</sup> Registrar's Submission, para. 4; Request for Assistance, para. 9.

<sup>13</sup> This assignment will be extended if the Appeals Chamber authorizes the review.

281/H 5

**INSTRUCTS THE APPLICANT**, should he deem it necessary, to file additional submissions not later than twenty (20) days after the date of assignment of Ms. Geraghty.

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

  
 \_\_\_\_\_  
**Theodor Meron, presiding**

Done at The Hague, The Netherlands, on 20<sup>th</sup> June 2005.

[Seal of the Tribunal]

