



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

6142/H
54
ICTR-99-52-A
06-December-2005
(6142A-6138/H)

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andrésa Vaz
Judge Theodor Meron

Registrar: Mr. Adama Dieng

Decision of: 6 December 2005

ICTR Appeals Chamber

Date: 06 December 2005

Action: R.J.

Copied To:

Concerned Judges, SLOs,
LOS & ALOS

Ferdinand NAHIMANA
Jean-Bosco BARAYAGWIZA
Hassan NGEZE
(Appellants)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-99-52-A

**DECISION ON HASSAN NGEZE'S MOTION TO SET ASIDE PRESIDENT
MŌSE'S DECISION AND REQUEST TO CONSUMMATE HIS MARRIAGE**

Counsel for Hassan Ngeze

Mr. Bharat B. Chadha
Mr. Behram Shroff

Counsel for Jean-Bosco Barayagwiza

Mr. Donald Herbert
Mr. Tanoo Mylvaganam

Counsel for Ferdinand Nahimana

Mr. Jean-Marie Biju-Duval
Ms. Diana Ellis

Office of the Prosecutor

Mr. James Stewart
Mr. Neville Weston
Mr. Abdoulaye Seye

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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NAME / NOM:

MALLES ZAMA

SIGNATURE:

DATE: 06/12/2005

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

BEING SEIZED OF "The Appellant Hassan Ngeze's Motion for Setting Aside the Decision of President Judge Erik Møse on his Application for Review of the Registrar's Decision of 12th January, 2005 and Allow his Request to Consummate his Marriage and to Have Conjugal Visits at the UNDF Centre in Arusha or in the Alternative, at The Hague", filed by Hassan Ngeze on 31 October 2005 ("Motion" and "Appellant", respectively), whereby the Appellant requests the Appeals Chamber to set aside the "Decision on Hassan Ngeze's Application for Review of the Registrar's Decision on 12 January 2005", rendered by the President of the Tribunal on 15 September 2005 ("President's Decision"), and to allow his request to consummate his marriage and to have conjugal visits at the United Nations Detention Facility ("UNDF") in Arusha or, in the alternative, in The Hague;¹

NOTING that the Prosecution has not filed a response;

NOTING the "Appellant Hassan Ngeze's Request for the Grant of Authorization to Marry and Other Consequential Reliefs at the ICTR Premises before the Determination of his Pending Appeal", filed by the Appellant before the Registrar on 7 October 2004;

NOTING the "Registrar's Decision Pursuant to Article 8(3) (C) on the Request for Marriage and Other Reliefs" of 12 January 2005 ("Registrar's Decision"), whereby the Registrar did not oppose the Appellant's right to marry but concluded that "the Registry ha[d] no authority under the law to ensure that such marriage is consummated or to grant the conjugal visits that the Applicant is asking for"² and that there were "no statutory provisions that empower" the Registrar "to transfer the Applicant to the UN Detention Centre of [the] ICTY at The Hague for the purpose of this marriage"³, leaving, however, the Applicant at liberty to appeal the Registrar's Decision since the issues raised therein were "of importance in the development of the Humanitarian law";⁴

NOTING the Appeals Chamber's "Decision on Hassan Ngeze's Motion Appealing the Registrar's Denial of Marriage Facilities" of 20 January 2005 that dismissed as frivolous "Appellant Hassan

¹ Motion, p. 2.

² Registrar's Decision, para. 16.

³ *Ibid.*, para. 18.

⁴ *Idem.*

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Ngeze's Motion for Setting Aside the Decision of the Registrar Dated 12th January 2005 Pursuant to Article 8(3) (C) on the Request for Marriage and Other Reliefs and to Grant Leave to Marry at the ICTR Premises Before the Determination of his Pending Appeal" of 17 January 2005, pursuant to Rule 19 of the Tribunal's Rules of Procedure and Evidence ("Rules of Procedure") and Rule 83 of the Rules Covering the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal⁵ ("Rules of Detention");

NOTING the "Appellant Hassan Ngeze's Application for Review of the Registrar's Decision of 12.01.05 Denying Permission to Get Married at the ICTR Premises Pending the Determination of his Appeal" filed by the Appellant before the President of the Tribunal on 12 January 2005;

NOTING that the President's Decision confirmed the UNDF detainees' right to marry but concluded that no applicable legal provisions or instruments "require[d] consummation of marriage and conjugal visits during detention" and that, therefore, the Registrar's Decision did "not amount to any unfairness which call[ed] for presidential intervention";⁶

NOTING that the "Appellant Hassan Ngeze's Request for the Reconsideration by the Honorable President - ICTR of his Decision Dated September 14th 2005 Relating to Consummation of Marriage and Further to Permit his Would Be Wife to Contribute the Sum of US \$ Seven Thousand (USD 7,000) with Return Tickets from Arusha to The Hague and Return to Arusha to Enable Solving the Registry Budgetary Problem in the Transferring the Appellant to The Hague Detention Center for his Wedding Ceremony & Consummation and Short Conjugal Visit at The Hague Detention Center" of 21 September 2005 was denied by the President of the Tribunal on 30 September 2005, on the ground that the existence of new facts, such as the contribution by the Appellant to the cost of the consummation of marriage, did not constitute a sufficient ground for review;⁷

NOTING that the Appellant challenges the President's Decision in light of "the significance of the issues raised" in his Motion, in particular those relating to "(i) [t]he concept of marriage and nullity; (ii) [p]risoners' right to marry, consummation and conjugal visits; (iii) [d]ifferential treatment and discrimination of ICTR prisoners";⁸

CONSIDERING that, pursuant to Rule 3 of the Rules of Detention, the Commanding Officer of the UNDF has primary responsibility for all aspects of the daily management of the Detention Unit

⁵ Adopted on 5 June 1998.

⁶ President's Decision, para. 19.

⁷ Letter of the President of the Tribunal to Detainee Hassan Ngeze, "Reconsideration of the President's Decision of 14 September 2005", 30 September 2005.

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and that, pursuant to Rules 82 and 83 of the Rules of Detention, where a detainee is not satisfied with the response of the Commanding Officer, he or she has the right to file a written complaint to the Registrar who shall forward it to the President of the Tribunal;

FINDING that, in the present case, this procedure was followed;

CONSIDERING that the Appeals Chamber has the statutory duty to ensure the fairness of the proceedings on appeal⁹ and, thus, has jurisdiction to review decisions of the Tribunal's Registrar and President;

CONSIDERING, however, that the exercise of such jurisdiction should be closely related to the fairness of proceedings on appeal and should not be used as a substitute for a general power of review which has not been expressly provided by the Rules of Detention;¹⁰

CONSIDERING that the Appellant has not identified any impact by the issues raised in his Motion on his right to fair proceedings;

FINDING that the detention conditions raised by the Appellant are not related to the fairness of proceedings on appeal and that, therefore, the Appellant's right to fair proceedings has not been infringed by the outcome of the President's Decision;

FINDING, therefore, that the Appellant has exhausted all available remedies and that the Appeals Chamber has no jurisdiction in this matter;

FOR THE FOREGOING REASONS,

DISMISSES the Motion.

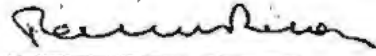
⁸ Motion, para. 5.

⁹ *Ferdinand Nahimana et al. v. Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Ferdinand Nahimana's Motion for Assistance from the Registrar in the Appeals Phase, 3 May 2005, paras 4 and 7; *Ferdinand Nahimana et al. v. Prosecutor*, Case No. ICTR-99-52-A, Decision on "Appellant Hassan Ngeze's Motion for Leave to Permit his Defence Counsel to Communicate with him during Afternoon Friday, Saturday, Sunday and Public Holidays", 25 April 2005, p. 3. See also, *Prosecutor v. Milan Milutinović et al.*, Case No. IT-99-37-AR.73.2, Decision on Interlocutory Appeal on Motion for Additional Funds, 13 November 2003, para. 19.

¹⁰ See, by analogy, *Prosecutor v. Milan Milutinović et al.*, Case No. IT-99-37-AR.73.2, Decision on Interlocutory Appeal on Motion for Additional Funds, 13 November 2003, para. 20.

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



Fausto Pocar
Presiding Judge



[Seal of the Tribunal]

Dated this 6th day of December 2005,
At The Hague, The Netherlands