



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

6149/A  
Maa

ICTR-99-52-A  
12-12-2005

BEFORE THE PRE-APPEAL JUDGE

(6149/A - 6146/A)

**Before:** Judge Andréia Vaz, Pre-Appeal Judge  
**Registrar:** Mr. Adama Dieng  
**Decision of:** 12 December 2005

Ferdinand NAHIMANA  
Jean-Bosco BARAYAGWIZA  
Hassan NGEZE  
(Appellants)

v.

THE PROSECUTOR  
(Respondent)

Case No. ICTR-99-52-A

Handwritten signature and date: 12/12/2005

**DECISION ON HASSAN NGEZE'S REQUEST TO GRANT HIM LEAVE TO  
BRING HIS COMPLAINTS TO THE APPEALS CHAMBER**

**Counsel for Hassan Ngeze**

Mr. Bharat B. Chadha  
Mr. Behram N. Shroff

**Counsel for Ferdinand Nahimana**

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

**Counsel for Jean-Bosco Barayagwiza**

Mr. D. Peter Herbert  
Mr. Tanoo Mylvaganam

**Office of the Prosecutor**

Mr. James K. Stewart  
Mr. Neville Weston

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I, **ANDRÉSIA VAZ**, Judge 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 ("Appeals Chamber" and "Tribunal", respectively) and Pre-Appeal Judge in this case;<sup>1</sup>

**BEING SEIZED OF** the "Appellant Hassan Ngeze's Request to Grant him Leave to Bring his Complaints to the Appeals Chamber When the Normal Procedure under the Rules of Detention Fails to Offer Any Solution" filed by Hassan Ngeze on 29 August 2005 ("Request" and "Appellant", respectively), in which the Appellant requests the Appeals Chamber to allow him "to bring his complaints concerning his marriage and unlawfully restrictive measures imposed on him by the Commanding Officer" of the United Nations Detention Facility in Arusha ("UNDF") before the Appeals Chamber";<sup>2</sup>

**NOTING** that the Prosecution has not filed a response to the Appellant's Request;

**NOTING** that, pursuant to Rule 3 of the Rules Covering the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal ("Detention Rules"),<sup>3</sup> the Commanding Officer of the UNDF has primary responsibility for all aspects of the daily management of the Detention Unit and that, pursuant to Rules 82 and 83 of the Detention Rules, when a detainee is not satisfied with the response of the Commanding Officer, he or she has the right to make a written complaint to the Registrar who shall forward it to the President of the Tribunal;

**CONSIDERING** that the Appeals Chamber has the statutory duty to ensure the fairness of the proceedings on appeal<sup>4</sup> and, thus, has jurisdiction to review decisions of the Tribunal's Registrar and President, but that the exercise of such jurisdiction should be closely related to issues

<sup>1</sup> *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Order of the Presiding Judge Designating the Pre-Appeal Judge, 19 August 2005; *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Corrigendum to the Order of the Presiding Judge Designating the Pre-Appeal Judge, 25 August 2005.

<sup>2</sup> Request, p. 2.

<sup>3</sup> Adopted on 5 June 1998.

<sup>4</sup> *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 ("*Nahimana et al.* Decision of 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 ("*Nahimana et al.* Decision of 25 April 2005"), p. 3. See also *Prosecutor v. Milan Mitutinović et al.*, Case No. IT-99-37-AR.73.2, Decision on Interlocutory Appeal on Motion for Additional Funds, 13 November 2003 ("*Mitutinović et al.* Decision of 13 November 2003"), para. 19.

involving 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 Detention Rules;<sup>5</sup>

**NOTING** that since filing the Request, the Appellant has brought before the Appeals Chamber two motions concerning his marriage<sup>6</sup> and the conditions of his detention;<sup>7</sup>

**CONSIDERING** that the issues related to the Appellant's complaints concerning the consummation of his marriage have been resolved by 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 by the Appeals Chamber's Decision on Consummation of Marriage, in which the Appeals Chamber found that "the Appellant ha[d] exhausted all available remedies and that the Appeals Chamber ha[d] no jurisdiction in this matter";<sup>8</sup>

**FINDING**, therefore, that the Appellant's request to bring before the Appeals Chamber his complaints concerning various issues related to his right to marry and consummate his marriage has become moot;

**RECALLING** that, with regard to his complaints concerning the conditions of his detention, including the restrictive measures, the Appeals Chamber found that "the complaint procedure for the detention conditions has not been duly followed by the Appellant and that he has not yet exhausted the remedies made available to him by the Detention Rules" and that, "had the procedure of the Detention Rules been followed, the Appeals Chamber would only have jurisdiction to review a Registrar's or President's decision if the issues in question were closely related to the fairness of the proceedings on appeal";<sup>9</sup>

<sup>5</sup> *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Decision on Hassan Ngeze's Motion to Set Aside President Møse's Decision and Request to Consummate his Marriage, 6 December 2005 ("Decision on Consummation of Marriage"), p. 4; *Milutinović et al.* Decision of 13 November 2003, para. 20.

<sup>6</sup> *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, "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 12<sup>th</sup> 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", 31 October 2005.

<sup>7</sup> *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, "The Appellant Hassan Ngeze's Urgent Motion to Order the Registrar to Arrange for an Urgent Psychological Examination and Treatment of the Appellant Hassan Ngeze under Rule 74 bis of the Rules of Procedure and Evidence by Experts on Account of the Mental Torture Suffered by him at the UNDF", 24 October 2005.

<sup>8</sup> Decision on Consummation of Marriage, p. 4.

<sup>9</sup> *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Decision on Hassan Ngeze's Motion for a Psychological Examination, 6 December 2005 ("Decision on Psychological Examination"), p. 4.

**ALSO RECALLING** that the Appellant has filed several motions on issues related to the conditions of his detention at the UNDF and that these motions are pending before the President of the Tribunal;<sup>10</sup>

**CONSIDERING** that if, after having followed the established procedure, the Appellant considers that his right to fair proceedings is infringed by measures imposed on him at the UNDF, he can raise the matter with the Appeals Chamber, which has the statutory duty to ensure the fairness of the proceedings on appeal;<sup>11</sup>

**FOR THE FOREGOING REASONS,**

**DISMISS** the Appellant's Request in its entirety.

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



Andréia Vaz  
Pre-Appeal Judge

Dated this 12<sup>th</sup> day of December 2005,  
At Arusha, Tanzania

[Seal of the Tribunal]

<sup>10</sup> *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, "Appellant Hassan Ngeze's Urgent Request for Receiving Visits, Phone Calls (in & out) from his Children, Family, Relatives and Friends", 5 October 2005; *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, "Appellant Hassan Ngeze's Motion for Necessary Orders against the UNDF Authorities for Imposing Restrictive Measures during 4<sup>th</sup> November to 12<sup>th</sup> November 2005 without any Request of the Prosecutor", 14 November 2005; *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, "Appellant Hassan Ngeze's Extremely Urgent Motion for Reversal of Request of the Prosecutor on Prohibition of Contacts Pursuant to Rule 64 of the Rules of Detention", 21 November 2005; *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, "Appellant Hassan Ngeze's Extremely Urgent Motion for Reversal of Request of the Prosecutor on Prohibition of Contacts Pursuant to Rule 64 of the Rules Detention", 22 November 2005.

<sup>11</sup> See, *Nahimana et al.* Decision of 3 May 2005, paras. 4 and 7; *Nahimana et al.* Decision of 25 April 2005, para. 3.

