



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

ICTR-01-64-A

16 December 2005

(571/H-567/H)

**IN THE APPEALS CHAMBER**

Before :

Judge Mohamed Shahabuddeen, Presiding Judge  
Judge Mehmet Güney  
Judge Liu Daqun  
Judge Theodor Meron  
Judge Wolfgang Schomburg

Registrar :

Mr. Adama Dieng

Date of filing :

16 December 2005

ICTR Appeals Chamber

Date: 16 December 2005  
Action: R.T.  
Copied To: Sec. Prof. & Service.

Sylvestre GACUMBITSI

v.

THE PROSECUTOR

Case No. ICTR-01-64-A

**DECISION ON THE APPELLANT'S MOTION OF 8 DECEMBER 2005**

**Counsel for the Appellant**

Mr. Kouengoua  
Ms. Anne Ngantio Mbatang

**Office of the Prosecutor**

Mr. James Stewart

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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NAME / NOM: *MR. GACUMBITSI* *MR. GACUMBITSI* *A. AFANDE*

SIGNATURE: *[Signature]* DATE: 16/12/2005

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1. 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") is seized of an "Extremely Urgent Motion" (*Requête En Extrême Urgence*), referred to hereinafter as "Motion") filed by Sylvestre Gacumbitsi ("Appellant") on 9 December 2005.

2. The Appellant seeks (1) the urgent translation into French of the "Scheduling Order" filed on 8 December 2005 and the "Decision on the Appellant's Rule 115 Motion and Related Motion by the Prosecution" filed on 21 October 2005 ("Rule 115 Decision"); (2) an order that he be provided with copies of all statements of witnesses and *parties civiles* in a Belgian court proceeding in the case of *Nzabonimana et al.*; and (3) a delay of the Appeal Hearing, which is currently scheduled for 8-9 February 2006, until 22 February 2006, to allow him to review these statements. The Prosecution has not yet responded. However, the Appeals Chamber considers that in the interests of justice it should decide the matter prior to the International Tribunal's recess rather than waiting for the response to be filed. Because the motion is being denied (apart from the request for translations), the Prosecution's interests will not be prejudiced.<sup>1</sup>

3. The Appeals Chamber agrees that the Appellant should be provided with the French translations he seeks and will request the Registry of the International Tribunal to provide them forthwith. The Appeals Chamber notes that, in general, counsel should address requests for translation to the Registry, in accordance with Rule 3(E) of the Rules of Procedure and Evidence of the International Tribunal ("the Rules").

4. The Appellant's request for materials from the Belgian court proceedings was effectively disposed of by the Rule 115 Decision, which the Appellant has apparently been unable to review because it has not yet been translated into French. That decision dealt, *inter alia*, with a request by the Appellant for the International Tribunal's assistance in enabling his counsel to travel to Brussels to obtain materials from the same proceedings. Although he now seeks only copies of the relevant

<sup>1</sup> Just before this Decision was to be filed, on 14 December 2005, the Prosecution filed a "Prosecutor's Response to 'Requête en Extrême Urgence'" ("Response"). The Appeals Chamber has not considered it. To do so without giving the Appellant a chance to reply would prejudice the Appellant, but to delay this decision in order to wait for the reply (which would require first waiting for the Response to be translated into French) would also prejudice the Appellant by impairing his ability to prepare effectively for his appeal hearing. Under these unusual circumstances, the Appeals Chamber feels that deciding the matter now without considering the Response is the fairest approach.

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statements and not financing for travel, the shortcoming of the present Motion is essentially the same.

5. As in his previous motion, the Appellant has not demonstrated grounds for obtaining the assistance of the Registrar in conducting an investigation. The Appeals Chamber noted in the *Media Case*:

In an exceptional case, the Appeals Chamber may order the Registrar to fund investigations at the appeal stage, if the moving party shows, for example, that it is in possession of specific information that needs to be further investigated in order to avoid a miscarriage of justice (in other words, the investigation will not merely be a fishing expedition), and that this specific information was not available at trial and could not have been discovered at trial even through the exercise of due diligence.<sup>2</sup>

Here, as in his previous motion, the Appellant has failed to point to any specific information he has that suggests that the material from the Belgian proceedings needs to be further investigated in order to avoid a miscarriage of justice.

6. As explained in the Rule 115 Decision, the mere fact that the Belgian court convicted other people for crimes stemming from the same events is insufficient to meet this standard:

[The Appellant's] description of the information simply asserts, without further explanation, that the trial results demonstrate that Mr. Nzabonimana planned, directed, and financed the genocide in Kibungo prefecture, that the *Interahamwe* who committed the genocide were under Mr. Nzabonimana's command, and that they were not travelling in vehicles from Rusomo commune. He does not point to particular findings in the Trial Judgement in his own case that are inconsistent with these results, and does not explain why, if the information had been available to the Trial Chamber, it could have resulted in a material difference in the decision. The Trial Chamber never held that the Appellant *and no one else* was responsible for the genocide in Kibungo prefecture. Indeed, it is obvious that the Appellant could not have committed these massacres single-handedly, and that multiple persons could bear criminal responsibility. If there is any specific reason to believe the evidence presented at the Belgian trial could undermine the Trial Chamber's findings in this case, the Appellant has not provided it. What is left is a mere "fishing expedition". The Appeals Chamber will not authorise it.<sup>3</sup>

The same analysis is applicable to the present Motion. The Appeals Chamber likewise sees no significance in the additional fact, emphasized in the Motion, that certain witnesses in his own trial also testified in the Belgian proceeding.<sup>4</sup> The Appellant has not established, for instance, any reason to believe that these witnesses' statements in Belgium contradicted their testimony in his

<sup>2</sup> *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-A, Decision on Appellant Ferdinand Nahimana's Motion for Assistance from the Registrar at the Appeal Phase, 3 May 2005 ("Media Case"), para. 3 (quotation marks and citations omitted).

<sup>3</sup> Rule 115 Decision, para. 16.

<sup>4</sup> Motion, paras. 30-32.

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own case in a way that would undermine the basis for his conviction. He thus has not shown that the International Tribunal's assistance in this matter is necessary or justified.<sup>5</sup>

7. The Appellant has not established good cause for a delay in his appeal hearing. In particular, he has not demonstrated that access to the materials from the Belgian proceeding is necessary in order to enable him to prepare for the hearing as scheduled.

### DISPOSITION

The Motion is hereby **GRANTED** insofar as it seeks French translations of the Scheduling Order and Rule 115 Decision, and is otherwise **DENIED**. The Registrar is requested to provide French translations of the Scheduling Order and Rule 115 Decision as well as the present decision to the Appellant on an urgent basis, and in any event no later than 6 January 2006 at 12:00 pm.

<sup>5</sup> Nor has the Appellant demonstrated any basis for his oblique suggestion that the Prosecution may have failed to comply with its obligation under Rule 66 to disclose exculpatory evidence in its possession. See Motion, para. 34. Indeed, there is no reason to believe that the Prosecution is in possession of the material the Appellant seeks at all.

