



**Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda**

**ICTR-99-52-A
07 April 2006
(7066/H-7064/H)**

7066/H

IN THE APPEALS CHAMBER

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

Registrar: Mr. Adama Dieng

Decision of: 7 April 2006

ICTR Appeals Chamber

Date: *07 April 2006*

Action: *RJ*

Copied To: *See Proof of Service*

**Ferdinand NAHIMANA
Jean-Bosco BARAYAGWIZA
Hassan NGEZE
(Appellants)**

v.

**THE PROSECUTOR
(Respondent)**

Case No. ICTR-99-52-A

CONFIDENTIAL

**DECISION ON "PROSECUTOR'S MOTION FOR RECONSIDERATION OF
THE APPEALS CHAMBER'S DECISION REGARDING THE TIMELINESS OF
THE FILING OF THE PROSECUTOR'S RESPONSE TO 'APPELLANT
HASSAN NGEZE'S MOTION FOR THE APPROVAL OF FURTHER
INVESTIGATION OF THE SPECIFIC INFORMATION RELATING TO THE
ADDITIONAL EVIDENCE OF WITNESS AEU'"**

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**

**CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS**

NAME / NOM: KOFFI KUMUHIRA A. ABEANDE

SIGNATURE: *[Signature]* DATE: 07 April 2006

7 April 2006

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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);

NOTING the "Decision on Appellant Hassan Ngeze's Six Motions for Admission of Additional Evidence on Appeal and/or Further Investigation at the Appeal Stage", issued confidentially on 23 February 2006 ("Decision"), in which the Appeals Chamber found that the "Prosecutor's Response to 'Appellant Hassan Ngeze's Motion for the Approval of Further Investigation of the Specific Information Relating to the Additional Evidence of Witness AEU'" ("Prosecution's Response to the Fourth Motion") had been filed one day late and consequently did not consider it in disposing of "Appellant Hassan Ngeze's Motion for the Approval of Further Investigation of the Specific Information Relating to the Additional Evidence of Witness AEU" filed on 16 June 2005 ("Fourth Motion");¹

CONSIDERING that the Appeals Chamber based such finding on the fact that the front page of the Prosecution's Response to the Fourth Motion was stamped as confidentially filed on 28 June 2005;

BEING SEIZED OF the "Prosecutor's Motion for Reconsideration of the Appeals Chamber's Decision Regarding the Timeliness of the Filing of the Prosecutor's Response to 'Appellant Hassan Ngeze's Motion for the Approval of Further Investigation of the Specific Information Relating to the Additional Evidence of Witness AEU'", filed on 3 March 2006 ("Motion"), in which the Prosecution submits that the date recorded in the Registry's stamp on the front page of the Prosecution's Response to the Fourth Motion is wrong and should have been dated one day earlier and requests the Appeals Chamber to reconsider the aforementioned finding,² to recognize the Prosecution's Response to the Fourth Motion as timely filed on 27 June 2005,³ and to correct the record accordingly;⁴

NOTING that in its Motion, the Prosecution specifies that it "does not request the Appeals Chamber to examine the Appellant's Motion and the Response afresh";⁵

NOTING that Appellant Hassan Ngeze did not file any response to the Motion;

¹ Decision, para. 3.

² Motion, para. 2.

³ *Ibid.*, para. 8.

⁴ *Ibid.*, para. 5.

⁵ *Ibid.*, para. 3.

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CONSIDERING that, after it rendered its Decision, the Appeals Chamber received a memorandum from the Registry dated 30 June 2005, which specifies that, with regard to the Prosecution's Response to the Fourth Motion, "the filing date should read 27 June 2005 and not 28 June 2005" and attaches the confidentially filed Prosecution's Response to the Fourth Motion bearing the Registry stamp of 27 June 2005;

CONSIDERING that the Appeals Chamber has an inherent discretionary power to reconsider its own previous interlocutory decisions if the existence of a clear error of reasoning has been demonstrated or if it is necessary in order to prevent an injustice;⁶

CONSIDERING that on the basis of the documents before it at the time it rendered its Decision, the Appeals Chamber did not err in finding that the Prosecution's Response to the Fourth Motion was untimely filed;

CONSIDERING that in its Decision, the Appeals Chamber dismissed the Fourth Motion and the Prosecution, as the prevailing party, was in no way prejudiced by the mistake made concerning the date of the filing of the Prosecution's Response to the Fourth Motion, and that the timeliness issue is therefore moot;

CONSIDERING that reconsideration of an Appeals Chamber's interlocutory decision is "exceptional"⁷ and that the Prosecution has provided no reason that this step should be taken other than "in order to correct the record" concerning a confidential decision by the Appeals Chamber,

FINDING therefore that the Prosecution has failed to demonstrate that this is an exceptional case meriting discretionary reconsideration; it has not demonstrated a "clear error" in the Appeals Chamber's reasoning, nor the necessity of reconsideration to prevent an injustice;⁸


On the basis of the foregoing, hereby **DISMISSES** the Motion.

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

Done this 7th day of April 2006,
At The Hague, The Netherlands.



[Seal of the Tribunal]


Fausto Pocar
Presiding Judge

⁶ *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, para. 203 ("Kajelijeli Appeals Judgement"); Decision on Jean-Bosco Barayagwiza's Request for Reconsideration of Appeals Chamber Decision of 19 January 2005, 4 February 2005, p. 2.

⁷ *Kajelijeli Appeals Judgement*, para. 204.

⁸ *Id.*