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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-01-71-A
14 June 2006

~~(543H-540H)~~

(1092/H-1089/H)

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IN THE APPEALS CHAMBER

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

Registrar: Mr. Adama Dieng

Decision of: 14 June 2006

EMMANUEL NDINDABAHIZI

v.

THE PROSECUTOR

Case No. ICTR-01-71-A

ICTR Appeals Chamber
Date: 14 June 2006
Action: P.T
Copied To: Concerned Judges,
parties, SLD, LOS, ADO, LOS

**DECISION ON DEFENCE "REQUÊTE DE L'APPELANT EN
RECONSIDÉRATION DE LA DÉCISION DU 4 AVRIL 2006 EN RAISON
D'UNE ERREUR MATÉRIELLE"**

Counsel for the Prosecution

Counsel for the Defence

Mr. James Stewart

Mr. Michel Konitz
Ms. Migali Pirard

CENTRAL REGISTRY

14 JUN 2006

ACTION: *appals*
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Tribunal pénal international pour le Rwanda
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Case No. ICTR-01-71-A

14 June 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 "International Tribunal", respectively) is seized of the "Requête de l'appelant en reconsidération de la décision du 4 avril 2006 en raison d'une erreur matérielle", filed by Emmanuel Ndindabahizi ("Appellant") on 24 April 2006 ("Motion for Reconsideration").

A. Procedural Background

1. On 4 April 2006, the Appeals Chamber rendered its "Decision on the Admission of Additional Evidence" ("Rule 115 Decision") in which it found that the Appellant had not shown good cause for his non-compliance with the time limit set out in Rule 115 of the Rules of Procedure and Evidence ("Rules"). Consequently, the Appeals Chamber dismissed the Appellant's motion to present additional evidence.¹ With his Motion for Reconsideration, the Appellant requests the Appeals Chamber to reconsider its Rule 115 Decision. The Prosecution filed the "Prosecutor's Response to Requête de l'appelant en reconsidération de la décision du 4 avril 2006 en raison d'une erreur matérielle" on 26 April 2006 ("Second Prosecution Response"). The Appellant did not file a reply.

B. Standard for Reconsideration

2. The Appeals Chambers of ~~both ICTR and ICTY~~ have repeatedly held that they have an inherent discretionary power to reconsider a previous interlocutory decision "if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice".²

C. Discussion

3. The Appellant argues that the Appeals Chamber erred in noting incorrect filing dates of the following two filings:

¹ "Deuxième requête de l'appelant en présentation de moyens de preuve supplémentaires – Article 115 du règlement", confidentially filed by the Appellant on 28 February 2006.

² *Kajelijeli v. Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, paras 203-04; *Nahimana et al. v. Prosecutor*, Case No. ICTR-99-52-A, Decision on Jean-Bosco Barayagwiza's Request for Reconsideration of Appeals Chamber Decision of 19 January 2005, 4 February 2005, p. 2; *Niyitegeka v. Prosecutor*, Case No. ICTR-96-14-A, Decision on Defence Extremely Urgent Motion for Reconsideration of Decision Dated 16 December 2003, 19 December 2003, pp. 2-3; *Prosecutor v. Galić*, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, p. 2.

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- "Prosecutor's Response to 'Deuxième Requête de l'Appellant en Présentation de Moyens de Preuve Supplémentaires – Art. 115 du Règlement'", filed on 10 March 2006 ("First Prosecution Response"), and
- "Réponse aux observations de l'intimé sur la deuxième requête de l'appellant en présentation de moyens de preuve supplémentaires – Article 115 du Règlement", filed on 20 March 2006 ("Appellant's Reply").

The Appellant submits that his lead counsel Mr. Michel Konitz had not been notified of the First Prosecution Response until 13 March 2006, and that the Appellant's Reply had in fact been filed on 17 March 2006. He argues that consequently, the Appellant had complied with the time limit provided by paragraph 12 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal, *i.e.* four days. He further submits that the Appeals Chamber might have come to a different conclusion in the Rule 115 Decision had it considered the Appellant's Reply.

4. The Appellant submits in Annex 2 to his Motion for Reconsideration the "Fiche de Transmission Pour Dépôt de Documents à la S.A.C." which shows the date of 17 March 2006 (Friday). This transmission sheet, however, does not prove that the Appellant's Reply had indeed been received at the ICTR on that day, as the date on it was not filled in by the Registry.

5. Annex 2 also contains a *lettre de transmission* of Mr. Konitz in which he requests the Registry to file the Appellant's Reply. While the letterhead indicates that the letter was written on 17 March 2006, the stamp in the upper right corner of the letter shows that it was received in the UNICTR Fax Centre on 18 March 2006 at 9.49 am local time. Furthermore, as this day (Saturday) was a non-working day of the Tribunal, the filing of the Appellant's Reply must be considered as falling on the first working day thereafter, *i.e.* Monday, 20 March 2006.

6. It is not necessary to examine whether the Defence had been notified of the First Prosecution Response as late as on 13 March 2006, as the time limit for filing the Appellant's Reply has not been met. Consequently, the Appellant has not satisfied the Appeals Chamber of the existence of a clear error of reasoning in the impugned decision, or of particular circumstances justifying its reconsideration in order to prevent injustice.

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D. Disposition

7. The Motion for Reconsideration is rejected.

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

Dated this fourteenth day of June 2006,
At The Hague,
The Netherlands.



W. Schomburg
Wolfgang Schomburg
Presiding Judge

[Seal of the International Tribunal]