



762/H

Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

ICTR-98-41-AR73  
04 October 2006  
[762/H - 757/H]

IN THE APPEALS CHAMBER

Before:

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

Registrar:

Mr. Adama Dieng

Decision of:

4 October 2006

ICTR Appeals Chamber

Date: 04 October 2006  
 Action: P.T.  
 Copied To: concerned Judges,  
 Parties, SLOS, LOS, ALOS, LSS,  
 Archives

2006 OCT 5 11 A 9 22  
 UNICTR  
 JUDICIAL RECORDS/ARCHIVES  
 RECEIVED

ALOYS NTABAKUZE

("Applicant")

v.

THE PROSECUTOR

Case No. : ICTR-98-41-AR73

DECISION ON MOTION FOR RECONSIDERATION

Counsel for the Applicant  
 Mr. Peter Erlinder  
 Mr. André Tremblay

Counsel for the Prosecution  
 Mr. James Stewart  
 Ms. Barbara Mulvany

International Criminal Tribunal for Rwanda  
 Tribunal pénal international pour le Rwanda

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

NAME / NOM: T. Chidimba, Patrice.....  
 SIGNATURE: ..... DATE: 04/10/06

761/H

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 1994 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seized of the "Aloys Ntabakuze Motion for Reconsideration of an Appeals Chamber Decision (or to Intervene in Such a Motion) and Ancillary Alternative Motion for Clarification of the Decision" filed on 14 July 2006 ("Motion") in which the Applicant requests

- (i) A reconsideration of a decision on interlocutory appeal concerning judicial notice rendered in another case ("Impugned Decision");<sup>1</sup> or, in the alternative,
- (ii) Leave to intervene in motions for reconsideration of the Impugned Decision filed by the accused in that case; and
- (iii) Clarification of the Impugned Decision.

2. The Prosecution filed a Response opposing the Motion and the Applicant subsequently filed his Reply thereto.<sup>2</sup>

3. **HEREBY RENDERS ITS DECISION** as follows:

#### **I. BACKGROUND**

4. On 16 June 2006, the Appeals Chamber issued the Impugned Decision, in which it directed the Trial Chamber in the *Karemera et al.* case to take judicial notice of facts 2, 5 and 6 listed in Annex A of the Prosecution's Interlocutory Appeal.<sup>3</sup> These facts are

<sup>1</sup> *The Prosecutor v. Edouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-AR73(C). Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006 ("Impugned Decision").

<sup>2</sup> "Prosecutor's Response to 'Aloys Ntabakuze Motion for Reconsideration of an Appeals Chamber Decision (or to Intervene in Such a Motion) and Ancillary Alternative Motion for Clarification of the Decision'", 21 July 2006 ("Response"); "Ntabakuze Reply to 'Prosecutor's Response to Aloys Ntabakuze Motion for Reconsideration of an Appeals Chamber Decision (or to Intervene in Such a Motion) and Ancillary Alternative Motion for Clarification of the Decision'", 25 July 2006 ("Reply"). "Appendix to Aloys Ntabakuze Motion for Reconsideration of an Appeals Chamber Decision (or to Intervene in Such a Motion) and Ancillary Alternative Motion for Clarification of the Decision", 20 September 2006, was not considered due to its late filing. Consequently, "The Prosecutor's Motion to Object to the Filing of Appendix to Aloys Ntabakuze Motion for Reconsideration of an Appeals Chamber Decision (or to Intervene in Such a Motion) and Ancillary Alternative Motion for Clarification of the Decision" of 25 September 2006, is moot. The Appeals Chamber will accordingly not consider it or the Applicant's Response of 26 September 2006, entitled "Ntabakuze Response to The Prosecutor's Motion to Object to the Filing of Appendix to Aloys Ntabakuze Motion for Reconsideration of an Appeals Chamber Decision (or to Intervene in Such a Motion) and Ancillary Alternative Motion for Clarification of the Decision".

<sup>3</sup> Impugned Decision, para. 57, referring to *The Prosecutor v. Edouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-AR73(C) ("*Karemera et al.* case").

**760/H**

(i) The following state of affairs existed in Rwanda between 6 April 1994 to 17 July 1994: There were throughout Rwanda widespread or systematic attacks against a civilian population based on Tutsi ethnic identification. During the attacks, some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to be of a Tutsi ethnic identity;

(ii) Between 1 January 1994 and 17 July 1994 in Rwanda there was an armed conflict not of an international character;

(iii) Between 6 April 1994 and 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group.<sup>4</sup>

5. In support of the Motion, the Applicant submits that he has the requisite standing to independently bring this matter before the Appeals Chamber. However, should it be held that he does not have standing, he requests leave to intervene in motions for reconsideration filed by the appellants in the *Karempera et al.* case.<sup>5</sup>

6. The Applicant avers that the findings in the Impugned Decision affect all pending cases before the Tribunal and his case in particular.<sup>6</sup> He argues that he has "an immediate, compelling interest" in this matter which he distinguishes from other accused, including the appellants in the *Karempera et al.* case.<sup>7</sup> According to the Applicant, his defence is based on advancing an alternative to the "genocide hypothesis", and his Defence team already introduced evidence in this regard.<sup>8</sup> However, the Impugned Decision has the impact of cutting off the presentation of evidence and eliminating defences which are still the subject of active litigation in his case and while evidence in his defence is still being presented.<sup>9</sup> The Applicant, in his view, is therefore immediately and severely prejudiced based on principles of fair trial.<sup>10</sup>

7. The Applicant submits that the Appeals Chamber has the inherent power to reconsider its decisions in instances where there are new circumstances or where such decisions were erroneous and caused prejudice.<sup>11</sup>

8. The Applicant also, as an alternative remedy, seeks clarification of the Impugned Decision. He submits that the precise parameters of the Impugned Decision must be clearly delineated to avoid any error as to any permissible inferences that may be drawn from it.<sup>12</sup> This will enable him

<sup>4</sup> *The Prosecutor v. Edouard Karempera, Mathieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-AR73(C), The Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (Rule 73 (c)), 9 December 2005, Annex A.

<sup>5</sup> Motion, para. (i).

<sup>6</sup> Motion, para. 1.

<sup>7</sup> Motion, para. 2.

<sup>8</sup> Motion, para. 2.

<sup>9</sup> Motion, para. 3.

<sup>10</sup> Motion, para. 3.

<sup>11</sup> Motion, para. 13.

<sup>12</sup> Motion, para. 40.

**759/H**

to determine the evidence that may or may not be presented in concluding his case and the treatment that will be accorded to the evidence already on record.<sup>13</sup>

9. The Prosecution responds that the Applicant has no standing to bring the Motion.<sup>14</sup> In its view, only Rules 74 and 107 of the Rules of Procedure and Evidence of the Tribunal ("Rules") could allow the Appeals Chamber to grant the Applicant standing in this case, but the Applicant has failed to satisfy the criteria set forth therein. Furthermore, the Applicant's request for reconsideration constitutes an exceptional discretionary remedy, and would only be justified where a clear error in reasoning, or injustice was demonstrated.<sup>15</sup> The Motion fails to satisfy this test.<sup>16</sup>

10. In addition, the Prosecution argues that the Applicant did not seek standing to intervene in motions for reconsideration filed in the *Karemera et al.* case in a timely manner.<sup>17</sup> He failed to intervene when the matter relating to the judicial notice of facts was being considered by the Trial Chamber and Appeals Chamber in the *Karemera et al.* case.<sup>18</sup> The Prosecution further argues that the Applicant's request for clarification of the Impugned Decision is baseless. The Prosecution avers that the Impugned Decision is sufficiently clear, and that it is up to the Trial Chamber in the Applicant's case to determine the scope of its application.<sup>19</sup> Accordingly, the Prosecution submits that the Motion should be dismissed in its entirety.

11. The Applicant replies that there is no predetermined regulatory regime that deals with the question of standing in this instance.<sup>20</sup> Rule 74 of the Rules is not applicable in his case as it is apparent that an *Amicus Curiae* is intended to assist a Chamber by being a "friend of the court" where someone else's interests are at stake.<sup>21</sup> In the present case, it is the Applicant's own interests that are at stake.<sup>22</sup> The Applicant argues that reconsideration procedure is based on the inherent jurisdiction and discretion of the Appeals Chamber to act in the interests of justice.<sup>23</sup> The exceptional remedy of reconsideration was created because there is no higher court to litigate matters that have been decided by the Appeals Chamber. It should therefore not be foreclosed to any one seeking redress on an issue that is causing him or her grave prejudice.<sup>24</sup>

12. The Applicant also submits in reply that there is no explicit Rule that limits standing to the original parties in the dispute. Any party that has been prejudiced by an Appeals Chamber decision

<sup>13</sup> Motion, paras. 38-41.

<sup>14</sup> Motion, para. 6.

<sup>15</sup> Response, para. 8.

<sup>16</sup> Response, paras. 8.

<sup>17</sup> Response, para. 9.

<sup>18</sup> Response para. 9.

<sup>19</sup> Response, para. 22.

<sup>20</sup> Reply, para. 12.

<sup>21</sup> Reply, para. 11.

<sup>22</sup> Reply, para. 11.

<sup>23</sup> Reply, para. 12.

**758/H**

may have standing to seek reconsideration in order to redress the prejudice suffered by that party.<sup>25</sup> The Applicant consequently maintains that he has standing to submit the Motion.

13. According to the Applicant, the Prosecution's submission that he failed to intervene before either the Trial Chamber or Appeals Chamber in the *Karemera et al.* case, has no merit.<sup>26</sup> Unlike the Office of the Prosecutor, which functions as one unit, Defence teams are barred from sharing information as they are bound by witness protection orders and counsel-client confidentiality.<sup>27</sup> The Applicant avers that in his case, the issue of judicial notice has already been decided and the Trial Chamber did not take judicial notice of genocide, or of the ethnic character of the widespread or systematic violence.<sup>28</sup> Consequently, prejudice only became a live issue with the rendering of the Impugned Decision.<sup>29</sup>

## II. DISCUSSION

14. The Appeals Chamber notes that the Applicant seeks reconsideration of a decision on interlocutory appeal in a case to which he is not a party. He acknowledges that neither the Statute of the Tribunal ("Statute") nor the Rules prescribe who has standing to seek reconsideration and argues that any party that is prejudiced by a decision may have standing to seek its reconsideration in order to redress the prejudice suffered by that party.<sup>30</sup> The Appeals Chamber confirms that neither the Statute nor the Rules expressly settle the question of standing to seek reconsideration of a decision. However, the Appeals Chamber rejects the assertion that any person who alleges some form of prejudice as a consequence of a particular decision has the requisite standing to seek its reconsideration.

15. As a general principle, only a party to a decision of the Appeals Chamber may ask the Chamber to reconsider that decision. To hold otherwise would open the Appeals Chamber's reconsideration procedures to any non-party who is affected by a decision of the Chamber. In this case, the Applicant is a stranger to the *Karemera et al.* case. Accordingly he has no standing to seek reconsideration of the Appeals Chamber's decision. Also, the Appeals Chamber does not propose to entertain the Applicant's request for intervention at this stage. Moreover, his request for clarification in another case to which he is not a party has no merit.

16. The Appeals Chamber observes that the Applicant is in no way prejudiced. If the Trial Chamber in his own case takes judicial notice of the same or similar facts, he may challenge the

---

<sup>24</sup> Reply, para. 12.

<sup>25</sup> Reply, para. 13.

<sup>26</sup> Reply, para. 14.

<sup>27</sup> Reply, para. 14.

<sup>28</sup> Reply, para. 15.

<sup>29</sup> Reply, para. 15.

**757/H**

matter there in accordance with his right to be heard. Finally, if the Applicant wants to seek further clarification [see above paragraph 1 (iii)] he may also do so in his own case.

### III. DISPOSITION

17. For the aforementioned reasons, the Appeals Chamber **DISMISSES** the Applicant's Motion in its entirety.

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



Mohamed Shahabuddeen  
Presiding Judge

Done this 4 October 2006,  
At The Hague,  
The Netherlands.



[Seal of the Tribunal]

<sup>30</sup> Motion, para. 15.