

1352/H



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-96-14-R

11 July 2007

(1352/H - 1350/H)

P.T.

Before:

Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Liu Daqun
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar:

Mr. Adama Dieng

Decision of:

11 July 2007

THE PROSECUTOR

v.

Eliézer NIYITEGEKA

Case No. ICTR-96-14-R

ICTR Appeals Chamber

Date: 11 July 2007

Action: P.T.

Copied To: Concerned Judges,

Parties, GAC, LDC, AG, CS, LDC

Archives

P.T. Dieng

11 JUL 12 P 12:10
JUDICIAL SECRETARIES/ARCHIVE
RECEIVED

Decision on Request for Disclosure

Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James Stewart
Inneke Onsea
François Nsanzuwera
Kentaro Kanyomozi

The Applicant:

Mr. Eliézer Niyitegeka, pro se

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: Patrice Tchidimbo	
SIGNATURE: [Signature]	DATE: 11/07/07

1351/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 and 31 December 1994 ("Appeals Chamber", "Tribunal") is seized of a motion filed by Eliézer Niyitegeka ("Applicant") on 29 June 2007, requesting the disclosure of confidential material from the *Muhimana* case.¹ The Prosecution filed its response on 6 July 2007,² and the Applicant did not reply.

2. In its Judgement of 9 July 2004, the Appeals Chamber dismissed the Applicant's appeal against his convictions of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, and murder, extermination, and other inhumane acts as crimes against humanity, and affirmed his life sentence.³ The Appeals Chamber has since considered and dismissed two subsequent requests for review filed by the Applicant.⁴

3. In the Motion, the Applicant requests the Appeals Chamber to order the disclosure of closed session transcripts of Defence Witness DD as well as Defence Exhibit 43 from the *Muhimana* case.⁵ The Applicant submits that he intends to use this material in connection with an eventual request for review, claiming that it relates to the credibility of Prosecution Witness DAF who testified in his case.⁶

4. Rule 75 of the Tribunal's Rules of Procedure and Evidence ("Rules") allows for the disclosure of confidential material from a particular case for use in another case. In this respect, Rule 75(G)(i) of the Rules provides that jurisdiction to consider such a request lies first and foremost with the "Chamber, however constituted, remaining seized of the first proceedings".⁷ If the

¹ *Requête urgente aux fins de communication du procès-verbal de la séance à huis clos et d'une pièce déposée sous scellé lors de la déposition du témoin DD dans le procès de Muka Muhimana (ICTR-95-1B-T)*, 29 June 2007 ("Motion").

² *Réponse du Procureur à "Requête urgente aux fins de communication du procès-verbal de la séance à huis clos et d'une pièce déposée sous scellé lors de la déposition du témoin DD dans le procès de Muka Muhimana (ICTR-95-1B-T)"*, 6 July 2007.

³ *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-A, Judgement, 9 July 2004, para. 270; *The Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-T, Judgement and Sentence, 16 May 2003, paras. 420, 429, 437, 447, 454, 467, 480, 502.

⁴ See Decision on Request for Review, 6 March 2007; Decision on Request for Review, 30 June 2006.

⁵ Motion, paras. 1-4.

⁶ Motion, paras. 3, 4, 6.

⁷ See also *The Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54A-A, Decision on Jean de Dieu Kamuhanda's Request Related to Prosecution Disclosure and Special Investigation, 7 April 2006, para. 5 ("The Appeals Chamber highlights that Mr. Kamuhanda may obtain public transcripts from the Registry and direct any request for confidential material to the Chamber seized of the given case.") ("Kamuhanda Appeal Decision"), citing *The Prosecutor v. Galić*, Case No. IT-98-29-A, Decision on Momčilo Perišić's Motion Seeking Access to Confidential Material in the Galić Case, 16 February 2006.

F2

1350/H

first proceedings have concluded, Rule 75(G)(ii) then gives the Chamber in the second proceedings jurisdiction to consider the request after consultation, if appropriate, with the Judges who ordered the protective measures.⁸

5. Bearing this in mind, the Appeals Chamber does not find it appropriate to consider the Applicant's request for disclosure. The Appeals Chamber is no longer seized of the *Muhimana* case. In addition, the Applicant has no case pending before the Appeals Chamber.⁹ Consequently, his request should be directed to the President of the Tribunal so that this matter can be assigned to an appropriate Chamber.

6. For the foregoing reasons, the Appeals Chamber **DISMISSES** the Applicant's Motion.

Done this 11th day of July 2007,
At The Hague,
The Netherlands.



[Signature]
Judge Fausto Pocar
Presiding

[Seal of the Tribunal]

⁸ See also Rule 75(H) of the Rules ("Before determining an application under paragraph (G)(ii) above, the Chamber seized of the second proceedings shall obtain all relevant information from the first proceedings, and shall consult with any Judge who ordered the protective measures in the first proceedings, if that Judge remains a Judge of the Tribunal.").

⁹ See *Kamuhanda* Appeal Decision, para. 5 (denying a post-appeal request for disclosure because the applicant had no pending case and directing the applicant to request publicly available material from the Registry and confidential material from the Chamber seized of the relevant case).