

89/H



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

ICTR-99-52-R  
28 February 2008  
(89/H - 87/H)

IN THE APPEALS CHAMBER

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

Registrar: Mr. Adama Dieng

Decision of: 28 February 2008

JUDICIAL RECORDS ARCHIVES  
2008 FEB 29 1 A P 04

**Hassan NGEZE**

v.

**THE PROSECUTOR**

Case No. ICTR-99-52-R

ICTR Appeals Chamber  
Date: 28 February 2008  
Action: FT  
Copied To: concerned Judges,  
Parbat, P.O. Box 1103, LS  
Archiver  
*[Signature]*

**DECISION ON HASSAN NGEZE'S MOTION TO OBTAIN ASSISTANCE FROM  
COUNSEL**

The Applicant

Mr. Hassan Ngeze, *pro se*

The Office of the Prosecutor

Mr. Hassan Bubacar Jallow

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: KEFELI... KUMELID... A... AFARIKÉ  
SIGNATURE: *[Signature]* DATE: 28/02/08

74

88/H

**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" and "Tribunal", respectively),

**BEING SEIZED OF** "Prisoner Hassan Ngeze's Motion for Having Preliminary Assistance from Counsel at the Stage of Preliminary Examination of Motion for Review of the Case", filed on 13 February 2008 ("Motion"), in which Hassan Ngeze ("Applicant") requests the Appeals Chamber to ensure that he obtains the assistance of Bharat B. Chadha and Dev Nath Kapoor, his former counsel, in preparing a motion for review of the Judgement rendered by the Appeals Chamber on 28 November 2007 in *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A ("Appeal Judgement");

**NOTING** that the Office of the Prosecutor has not responded to the Motion;<sup>1</sup>

**NOTING** that the Applicant argues that the Appeals Chamber has held that applicants in his situation "should have assistance from counsel at the stage of the preliminary examination for the motion for review"<sup>2</sup> and that articles 1(a) and 15(a) of the Directive on the Assignment of Defence Counsel provide that assigned counsel shall deal with all stages of the procedure, including review;<sup>3</sup>

**RECALLING** that review of a final judgement "is an exceptional remedy and that an [indigent] applicant is only entitled to assigned counsel, at the Tribunal's expense, if the Appeals Chamber authorizes the review";<sup>4</sup>

**RECALLING** further that if the Appeals Chamber deems it necessary in order to ensure the fairness of the proceedings, it may authorize assignment of counsel financed by the Tribunal at the preliminary examination stage;<sup>5</sup>

**CONSIDERING** that the present Motion fails to provide any information on the basis for a potential request for review;<sup>6</sup>

<sup>1</sup> As this Motion is not in itself a request for review pursuant to Rule 120 of the Rules of Procedure and Evidence of the Tribunal ("Rules"), a response, if any, was due within ten days of its filing; see also, by analogy, Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal, para. 11.

<sup>2</sup> Motion, para. 2(a).

<sup>3</sup> Motion, para. 2(c).

<sup>4</sup> *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-03-R, Decision on Requests for Reconsideration, Review, Assignment of Counsel, Disclosure, and Clarification, 8 December 2006 ("Rutaganda Decision of 8 December 2006"), para. 41.

<sup>5</sup> *Rutaganda Decision of 8 December 2006*, para. 41; *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Niyitegeka's Urgent Request for Legal Assistance, 20 June 2005, p. 4.

87/H

**CONSIDERING** therefore that the Appeals Chamber cannot, at this stage, authorize the review pursuant to Rule 121 of the Rules;

**CONSIDERING** further that in the absence of information as to the potential grounds for review, the Appeals Chamber cannot conclude that it would be necessary in order to ensure the fairness of the proceedings to authorize assignment of counsel to the Applicant under the Tribunal's legal aid scheme;

**FINDING** therefore, that the Applicant has not shown that he should receive the assistance of counsel at the expense of the Tribunal;

**FOR THE FOREGOING REASONS,**

**DISMISSES** the Motion.

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

Done this 28<sup>th</sup> day of February 2008,  
At The Hague, The Netherlands.



Fausto Pocar  
Presiding Judge

[Seal of the Tribunal]



\* In this respect, the Appeals Chamber recalls that review of a final judgement is not meant to provide an additional opportunity for a party to remedy its failings at trial or on appeal. Review may only be granted when the moving party satisfies the following cumulative criteria: (i) there is a new fact; (ii) the new fact was not known to the moving party at the time of the original proceedings; (iii) the lack of discovery of that new fact was not the result of lack of due diligence by the moving party; and (iv) the new fact could have been a decisive factor in reaching the original decisions (*Rwanda Decision of 8 December 2006, para. 8*).