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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-99-52B-R
22 April 2008
(46/H - 44/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: 21 April 2008

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Ferdinand NAHIMANA

v.

THE PROSECUTOR

Case No. ICTR-99-52B-R

ICTR Appeals Chamber

Date: 22 April 2008

Action: P.T.

Copied To: concerned Judges,
Mr. Phil. S. 825, 125, ALCS, 150,
Archives

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DECISION ON FERDINAND NAHIMANA'S "NOTICE OF APPLICATION FOR RECONSIDERATION OF APPEAL DECISION DUE TO FACTUAL ERRORS APPARENT ON THE RECORD"

Counsel for the Applicant

Mr. Jean-Marie Biju-Duval
Ms. Diana Ellis

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 MR.
COPIE CERTIFIÉE CONFORMÉ À L'ORIGINAL PAR NOUS
NAME / NOM: KREEL...KUMELID...A...AFRANDE...
SIGNATURE: *[Signature]* DATE: 22 April 2008

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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 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively),

BEING SEIZED OF Ferdinand Nahimana's "Notice of Application for Reconsideration of Appeal Decision Due to Factual Errors Apparent on the Record", filed on 27 March 2008 ("Applicant" and "Motion", respectively),¹ in which the Applicant requests reconsideration of one specific point in 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;

NOTING that the Applicant argues that the Appeals Chamber has inherent jurisdiction "to correct errors of fact and reasoning which are apparent on the record and which, if allowed to stand, would result in a miscarriage of justice";²

NOTING that the Applicant alleges that the Appeals Chamber erred in finding, at paragraph 830 of the Appeal Judgement, that he had not objected at trial to the evidence of Expert Witness Des Forges concerning his intervention at the RTLM to put an end to the attacks against UNAMIR and General Dallaire;³

RECALLING that the Appeals Chamber has held that there is no power to reconsider a final judgement as the Statute of the Tribunal only provides "for a right of appeal and the right of review but not for a second right of appeal by the avenue of reconsideration of a final judgement";⁴

NOTING that the Applicant submits that he is not asking "to revisit the findings of the Trial Chamber", but simply seeks to correct errors of fact in the Appeal Judgement, "namely the

¹ The Motion was prepared by *pro bono* Counsel for the Applicant (see letter of the Deputy-Registrar dated 11 February 2008).

² Motion, para. 2.

³ Motion, paras 14-15 (first para. 15), referring to 1) Motion to Restrict the Testimony of Alison Desforges [sic] to Matters Requiring Expert Evidence, 10 May 2002, paras 2, 3, 9(1) and conclusion; 2) T. 20 May 2002, pp. 77-96, 106-121; and 3) T. 23 May 2002, pp. 197-198 (closed session), and pp. 234-235. The Applicant also argues that he made this objection on appeal (Motion, para. 14.7).

⁴ *Prosecutor v. Zoran Žigić*, Case No. IT-98-30/1-A, Decision on Žigić's "Motion for Reconsideration of Appeals Chamber Judgement IT-98-30/1-A Delivered on 28 February 2005", 26 June 2006, para. 9. See also *Prosecutor v. Timohir Blaškić*, Case No. IT-95-14-R, Decision on Prosecutor's Request for Review or Reconsideration, 23 November 2006, paras 79-80 (Public Redacted Version); *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, para. 6; *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-Misc.1, Decision on Strugar's Request to Reopen Appeal Proceedings, 7 June 2007, para. 23; *Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-R, Decision on Hassan Ngeze's Motions and Requests related to Reconsideration, 31 January 2008, p. 3.

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assertion that the [Applicant] raised no specific objection to certain evidence given by expert witness Alison Des Forges which was outside the scope of evidence which is ordinarily permitted by an expert witness";⁵

CONSIDERING that this argument is in fact nothing more than an attempt to re-litigate issues finally decided on appeal;⁶

FINDING that the Motion is inadmissible;

FOR THE FOREGOING REASONS,

DISMISSES the Motion.

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

Done this 21st day of April 2008,
At The Hague, The Netherlands.



Fausto Pocar
Presiding Judge

[Seal of the Tribunal]

⁵ Motion, para. 20.

⁶ See Appeal Judgement, para. 830 and footnote 1906. The Appeals Chamber noted that the Applicant's Appellant's Brief did not mention any specific objection to this part of the evidence of Expert Witness Des Forges (the same can be said of his Brief in Reply). It also noted that the Defence for Applicant Nahimana had, in a motion filed on 10 May 2002, raised a general objection to the scope of Expert Witness Des Forges's evidence, and found that this objection was insufficiently specific to conclude that he had objected to the relevant part of Expert Witness Des Forges's testimony and report. The excerpts of the motion of 10 May 2002 now cited in the Motion fail to show that such conclusion was erroneous. The Applicant also refers to transcript excerpts which in his view show that he objected to the relevant part of Expert Witness Des Forges's evidence. But these references do not show that any specific objection was raised on this particular point:

1) T. 20 May 2002, pp. 77-96, 106-121: This is a reference to the submissions of Co-counsel Ellis during the *voir dire* on the qualifications of Alison Des Forges. Co-counsel Ellis argues, in general terms, that Ms. Des Forges should not be allowed to testify as an expert witness; at no time does Co-counsel Ellis object specifically to the part of Ms. Des Forges's report concerning the alleged intervention of Mr. Nahimana with the RTLM. While Co-counsel Ellis states that there is a risk that Ms. Des Forges will be testifying as a fact witness rather than as an expert, Co-counsel Ellis herself states that she "will deal with those points if they arise when we come to it" (p. 94).

2) T. 23 May 2002, pp. 197-198 (closed session): Co-counsel Ellis objects to the admission of Exhibit P107/41A-C, which apparently includes an article co-authored by Anne Chaon (P107/41C: a press report dated 10 July 1994) although the exhibit itself does not reveal the author of the article. However, this document is not the same as the one mentioned in footnote 1904 of the Appeal Judgement (a press report dated 7 July 2002), and does not concern the alleged intervention of the Applicant with the RTLM. Further, the transcripts reveal that Co-counsel Ellis objected to the allegation that the Applicant was a political advisor to the interim President contained in the press report (see T. 23 May 2002, pp. 186, 196 (closed session), 203 *et seq.*). The objection of Co-counsel Ellis cannot be understood as relating to the alleged intervention of the Applicant with the RTLM.

3) T. 23 May 2002, pp. 234-235: Co-counsel Ellis objects to the questions being asked to Ms. Des Forges on the content of a notebook of Ms. Chaon and to the admission of one page in this notebook (on which the Applicant allegedly wrote that he was a political advisor to the interim President of Rwanda: see T. 23 May 2002, pp. 238, 240-241; Exhibit P155). This objection does not relate to the alleged intervention of the Applicant with the RTLM.