

160/H

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Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

ICTR-99-52-R  
15 May 2008  
(160/H - 157/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: 15 May 2008

ICTR Appeals Chamber  
Date: 15 May 2008  
Action: A-J. Covered SLOS  
Copied To: Judge [unclear]  
106. ALO CHS [unclear]

**Hassan NGEZE**

v.

**THE PROSECUTOR**

Case No. ICTR-99-52-R

2008 MAY 16 11:14  
JUDICIAL RECORDS ARCHIVED  
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**DECISION ON HASSAN NGEZE'S MOTIONS OF 15 APRIL 2008 AND  
2 MAY 2008**

Counsel for Hassan Ngeze

The Office of the Prosecutor

Mr. Dev Nath Kapoor, Counsel *pro bono*

Mr. Hassan Bubacar Jallow

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME  
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NAME / NOM: KREKA... KUMELD... A... AFANDE...  
SIGNATURE: *[Signature]* DATE: 15 May 2008

159/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** motions filed by Hassan Ngeze ("Motions" and "Applicant", respectively):

- "Prisoner Hassan Ngeze's Urgent Additional Motion before the Appeals Chamber Seeking Permission of Having Additional Works Visit and Other Professional Communication with 2 New Legal Assistants Who Have Been Previously Working with the Media Case, and (1) Additional American Lawyer Who Will Be Working Under the Supervision of Lead Counsel Lawyer Dev. Nath Kapoor as a Temporally (Pro-Bono Counsel) for the Period of Preparation, Drafting and Filing the Motion of Reviewing the Case, Legal Advices, with Other Prisoner's Matters to Be Brought before the Appeals Chamber [sic]", filed on 15 April 2008 ("First Motion");<sup>1</sup>

- "Prisoner Hassan Ngeze's Extremely Urgent Motion before the Appeals Chamber Seeking Urgent Permission of Having Privileged Communication, Including Outgoing Phone Calls, Letters, Documents, with Other Protected Defense Materials with His Newly Assigned Lead Counsel Dev. Nath Kapoor, the Co Counsel (under Pro Bono System) and under the Cost of the Tribunal, as It Is With Other Lawyers, or Otherwise, Grant the Prisoner Hassan Ngeze Permission to Purchase a Cheapest Mobile Phone to Be Kept by the Prison's Authority, after Subscription to Telephone Network to Be Paid by the Prisoner for Purpose of Calling His Lawyers Whenever Required Probably under the Cost of the Prisoner Hassan Ngeze as It Is Stated Herein [sic]", filed on 2 May 2008 ("Second Motion");

**NOTING** that the Prosecution did not file a response to the Motions;

**NOTING** that the Applicant is currently detained in the UNDF;

**NOTING** that the Motions relate in part to the Applicant's motion filed on 19 March 2008,<sup>2</sup> which was dismissed by the Appeals Chamber on 11 April 2008;<sup>3</sup>

<sup>1</sup> While the Motion was received by the United Nations Detention Facility in Arusha, Tanzania ("UNDF") on 8 April 2008 it was filed with the Registry of the Tribunal only on 15 April 2008.

<sup>2</sup> Prisoner Hassan Ngeze's Motion Before the Appeals Chamber Seeking Permission of Meeting His Counsels for the Purpose of Discussing the Legal Meaning of the Judgement of 28<sup>th</sup> November 2007, and Step to Be Taken Further Once the English Version Is Made Available by the Registrar [sic], 19 March 2008.

<sup>3</sup> Decision on Hassan Ngeze's Motions of 25 February 2008, 6 and 19 March 2008, 11 April 2008 ("Decision of 11 April 2008").

158/H

NOTING that in the First Motion the Applicant requests privileged access to the UNDF and "professional communication" with him for two legal assistants and one lawyer<sup>4</sup> who would assist Mr. Dev Nath Kapoor, acting as *pro bono* Counsel ("Counsel"),<sup>5</sup> in the preparation of a motion for review of the Appal Judgement rendered on 28 November 2007<sup>6</sup> and in connection with matters relevant to his detention;

NOTING that in the Second Motion the Applicant requests privileged communication with the legal assistants/lawyer assisting his Counsel, including the exchange of case materials, faxes, letters and other documents;<sup>7</sup>

NOTING that, for the purpose of contacting his legal assistants/lawyer and Counsel, the Applicant further seeks authorization to make telephone calls at the Tribunal's expense or, in the alternative, to purchase a mobile phone and make telephone calls at his own expense and in the presence of UNDF staff;<sup>8</sup>

NOTING that Rule 65 of the Tribunal's Rules Covering the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal<sup>9</sup> ("Detention Rules") provides that "[e]ach detainee shall be entitled to communicate fully and without restraint with his Defence Counsel";

NOTING that visits to and communications with a detainee at the UNDF are governed by Rules 58 to 64 of the Detention Rules;

NOTING that Rule 65 of the Detention Rules only provides for privileged communications between the Applicant and his Counsel and that, in the absence of Counsel, legal assistants are generally allowed non-privileged visitations under Rule 61 of the Detention Rules;<sup>10</sup>

RECALLING that pursuant to Rule 3 of the Detention Rules, the Commanding Officer of the UNDF has primary responsibility for all aspects of the daily management of the UNDF, including communications and visitations, and that, pursuant to Rules 82 and 83 of the Detention Rules, when

<sup>4</sup> The Applicant does not identify the said legal assistants and lawyer.

<sup>5</sup> Subsequently to the filing of the Motion, the Applicant filed a power of attorney designating Mr. Dev Nath Kapoor as *pro bono* Counsel and the latter accepted his designation (Power of Attorney of Mr. Dev Nath Kapoor signed by Mr. Hassan Ngeze, 17 April 2008; Statement of Availability signed by Mr. Dev Nath Kapoor, 25 April 2008).

<sup>6</sup> *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Appal Judgement, 28 November 2007.

<sup>7</sup> Second Motion, p. 3, para. 3.

<sup>8</sup> Second Motion, p. 3, paras. 1 and 2.

<sup>9</sup> Adopted on 5 June 1998.

<sup>10</sup> Visits to the UNDF under Rule 65 are subject to the same security controls as are imposed under Rule 61 of the Detention Rules. However, communications between Counsel and a detainee under the privileged regime of Rule 65 are conducted "in the sight but not within the hearing, either direct or indirect, of the staff of the Detention Unit". See Decision on Jean-Bosco Barayagwiza's Urgent Motion Requesting Privileged Access to the Appellant Without Attendance of Lead Counsel, 17 August 2006, p. 3 referring to Status Conference, T. 7 April 2006, pp. 10-12.

157/H

a detainee is not satisfied with the response of the Commanding Officer to a specific request in that regard, he or she has the right to make a written complaint to the Registrar who shall forward it to the President of the Tribunal;<sup>11</sup>

**CONSIDERING** that as the Applicant has not exhausted the procedure made available to him under the Detention Rules for consideration of his request the Appeals Chamber will not consider the merits of the Motions;

**FOR THE FOREGOING REASONS,**

**DISMISSES** the Motions.

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

Done this 15<sup>th</sup> day of May 2008,  
At The Hague, The Netherlands.



Fausto Pocar  
Presiding Judge

[Seal of the Tribunal]



<sup>11</sup> See number of decisions delivered in the *Nahimana et al.* case, ICTR-99-52-A: Decision on Jean-Bosco Barayagwiza's Urgent Motion Requesting Privileged Access to the Appellant Without Attendance of Lead Counsel, 17 August 2006, p. 3; Decision on Hassan Ngeze's Request for a Status Conference, 13 December 2005, p. 3; Decision on Hassan Ngeze's Request to Grant him Leave to Bring his Complaints to the Appeals Chamber, 12 December 2005, p. 3; Decision on Hassan Ngeze's Motion for a Psychological Examination, 6 December 2005, p. 3; Decision on Hassan Ngeze's Motion to Set Aside President Mase's Decision and Request to Consummate his Marriage, 6 December 2005, pp. 3-4.