



**Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda**

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ICTR-99-52-R

24 July 2008

(229/H - 225/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: 23 July 2008

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Hassan NGEZE

v.

THE PROSECUTOR

Case No. ICTR-99-52-R

ICTR Appeals Chamber

Date: 24 July 2008

Action: P.T.

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DECISION ON HASSAN NGEZE'S MOTIONS OF 17 JUNE 2008 AND 10 JULY 2008

Counsel for Hassan Ngeze

Mr. Dev Nath Kapoor, Counsel *pro bono*

The Office of the Prosecutor

Mr. Hassan Bubacar Jallow

International Criminal Tribunal for Rwanda Tribunal pénal International pour le Rwanda	
CERTIFICATE TRUE COPY OF THE ORIGINAL SEEN BY ME COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS	
NAME / NOM: <i>Patrice Tchikanda</i>	
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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 the following motions filed by Hassan Ngeze ("Motions" and "Applicant", respectively):

- "Urgent Motion From 35 Years Sentenced Prisoner Hassan Ngeze Seeking the Appeals Chamber to Once Again Order the Registrar to Disclose to Prisoner Hassan Ngeze the Detailed Information and Registrar's Policy Regarding the Appointment of Private Lawyers, and Pro-Bono Lawyers, related to Facilities, Privileges, and Other Universal Treatment Given to a Private Lawyer Who Is Defending a Prisoner before the ICTR Tribunal, including Phone Communication and Confidentiality Between Lawyers and Clients [sic]", filed on 17 June 2008 ("First Motion");
- "Motion from Prisoner Hassan Ngeze of Extreme Urgency Before the Appeals Chamber Seeking the Appeals Chamber to Order the Registrar to Give Decision on 7 Prisoner's Motion Pending Before the Registrar's Office, so that in Case No Positive Response Are Given, Further Steps Be Taken Including to Bring the Matter to the ICTR President and to the Appeals Chamber as It Has Been Directed by the Appeals Chamber Decision Dated May 15th 2007, (Page 3 Para. 4) Read With (Page 2 Para. 4) of the Same Decision [sic]", filed on 17 June 2008 ("Second Motion");
- "Prisoner Hassan Ngeze's Motion/Response Before the Appeals Chamber Responding the Registrar's Submission Dated 23rd June 2008, Which Now the Prisoner Is Requesting the Appeals Chamber to Reject the Registrar's, Submission, as Its Contains Has Been Likely Answered in the Appeals Chamber's Decision Dated May 15th 2008, (Page 4 Para 1 Read With Para 2) of the Said Decision. And Further Requests the Appeals Chamber to Instruct the Registrar and Other Sections Under the Registry to Promptly Respond the Prisoner's Motion/Requests Pending Before their Offices, so that In Case the Prisoner Finds that He Is Not Satisfied With the Administrative Response, He Be Able to Address the ICTR President as a Second Stage, and Finally, the Appeals Chamber for a Final Decision after Having Exhausted All Procedures Available to Prisoner under UNDF Regulations, When the Prisoner Is Not Satisfies [sic] With the Response Given Under Rules 82 Read With 83 Stated by the Registrar [sic]", filed on 10 July 2008 ("Third Motion");

NOTING the "Registrar's Submissions under Rule 33(B) of the Rules on 'Urgent Motion From 35 Years Sentenced Prisoner Hassan Ngeze Seeking the Appeals Chamber to Once Again Order the

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Registrar to Disclose to Prisoner Hassan Ngeze the Detailed Information and Registrar's Policy Regarding the Appointment of Private Lawyers, and Pro Bono Lawyers, related to Facilities, Privileges, and Other Universal Treatment Given to a Private Lawyer Who Is Defending a Prisoner before the ICTR Tribunal, including Phone Communication and Confidentiality Between Lawyers and Clients [*sic*]”, filed on 23 June 2008 (“Registrar’s Submissions”);

NOTING that in his First Motion the Applicant claims that the Registrar has failed to provide him with detailed information on the procedures for the assignment of counsel as well as the terms and conditions governing the exercise of counsel’s functions;¹

NOTING that the Applicant requests the Appeals Chamber to order the Registrar to provide the sought information “without further delay”;²

CONSIDERING the Registrar’s submissions that the issues raised in the First Motion do not fall within the Appeals Chamber’s jurisdiction and should be dismissed as being improperly filed;³

RECALLING that the Appeals Chamber has the statutory duty to ensure the fairness of the proceedings before the Appeals Chamber and, thus, has jurisdiction to review decisions of the Tribunal’s Registrar and President under 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 (“Detention Rules”),⁴ where they are closely related to issues involving the fairness of proceedings, but that such review is available only after a detainee has followed the requisite complaints procedure in the Detention Rules;⁵

CONSIDERING that Rule 19 of the Rules of Procedure and Evidence (“Rules”) provides that the President, and not the Appeals Chamber, supervises the activities of the Registry, and that pursuant to Rule 83 of the Detention Rules, a detainee who is not satisfied with a response of the authorities

¹ First Motion, pp. 2-3.

² First Motion, p. 3. The Applicant provides a list of 15 distinct questions to be addressed to the Registrar. The Applicant also questions why he has not yet obtained the English translation 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. The Appeals Chamber notes that an English translation of the Judgement was publicly filed on 16 May 2008. A motion requesting that the Registrar be ordered to provide the English translation of the Judgement to the Applicant is currently pending before the President of the Tribunal. See “Extremely Urgent Motion Filed Before the ICTR President by Prisoner Hassan Ngeze Requesting the President to Order the Registrar to Provide the English Copy of the Media Judgement Rendered on 28th November 2007 – Which Until Today 1st July 2008 Is Yet to Be Given to Prisoners Concerned With the Media Case”, filed on 10 July 2008. Accordingly, this matter does not require any action on the part of the Appeals Chamber at that stage.

³ Registrar’s Submissions, para. 3.

⁴ Adopted on 5 June 1998.

⁵ *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Hassan Ngeze’s Motion to Set Aside President Mose’s Decision and Request to Consummate his Marriage, 6 December 2005, p. 4. The Appeals Chamber recalls that the exercise of such jurisdiction should be closely related to the fairness of proceedings before the Appeals Chamber and should not be used as a substitute for a general power of review which has not been expressly provided by the Detention Rules, *Id.*, p. 4.

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of the United Nations Detention Facility (UNDF), should file a written complaint to the Registrar who shall forward it to the President;⁶

CONSIDERING that the Applicant has not exhausted the procedure made available to him under the Rules and the Detention Rules for consideration of his request and that the Appeals Chamber will therefore not consider the merits of the First Motion;

NOTING that the Second Motion relates to the Applicant's motions filed on 15 April 2008 and 2 May 2008, requesting privileged access to the UNDF and privileged communication between him and two legal assistants and one lawyer who would assist Mr. Dev Nath Kapoor, acting as *pro bono* Counsel;⁷

NOTING that the Motions of 15 April 2008 and 2 May 2008 were dismissed by the Appeals Chamber on 15 May 2008 on the basis that the Applicant had not exhausted the procedure made available to him under the Detention Rules;⁸

NOTING that in his Second Motion the Applicant submits that in accordance with the Decision of 15 May 2008, he filed several motions before the Registrar who has failed to dispose of them;⁹

NOTING that the Applicant therefore requests the Appeals Chamber to order the Registrar to address the Applicant's motions "without further delay";¹⁰

CONSIDERING that the Appeals Chamber has already instructed the Appellant to follow the procedures set out in the Detention Rules,¹¹ and that the Appellant has not filed any complaint with the President;

⁶ *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Hassan Ngeze's Motion Appealing the Registrar's Denial of Marriage Facilities, 20 January 2005, p. 2.

⁷ 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; 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 ("Motions of 15 April 2008 and 2 May 2008").

⁸ Decision on Hassan Ngeze's Motions of 15 April 2008 and 2 May 2008, issued on 15 May 2008 ("Decision of 15 May 2008").

⁹ Second Motion, para. 2.

¹⁰ Second Motion, Prayer.

¹¹ Decision of 15 May 2008, p. 4.

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CONSIDERING that the Applicant has not exhausted the procedure made available to him under the Rules and the Detention Rules for consideration of his request and that the Appeals Chamber therefore declines to consider the merits of the Second Motion;

NOTING that in his Third Motion, the Applicant requests the Appeals Chamber, without elaboration, to reject the Registrar's Submissions, to order the Registrar to promptly dispose of the Applicant's motions pending before him and to remind the Registrar that the Applicant has the right to seize the Appeals Chamber to appeal the Registrar's decisions issued pursuant to Rules 82 and 83 of the Detention Rules;¹²

CONSIDERING that in his Third Motion, the Applicant mainly reiterates the arguments presented in the Second Motion and that to this extent and for the reasons given above, the Appeals Chamber declines to consider the merits of the Third Motion;

NOTING that the Applicant also requests the Appeals Chamber to advise the Registrar that a detained person may seize the Appeals Chamber of requests related to review proceedings pending before the Appeals Chamber;¹³

NOTING, further, the Registrar's submission that "detainees such as Mr. Ngeze who have already exhausted their appeals and other remedies may try to file motions before the Appeals Chamber rather than following the appropriate administrative procedures" and that "[i]t would be helpful if the Appeals Chamber would establish clear guidelines on the types of filings it will entertain from convicted persons and other detainees";¹⁴

FINDING that the Tribunal's Statute, Rules and jurisprudence provide sufficient guidance with regard to the Appeals Chamber's jurisdiction;

FOR THE FOREGOING REASONS,

DISMISSES the Motions.


¹² Third Motion, paras. 1-4, Prayer.

¹³ Third Motion, paras. 3-4. The Appeals Chamber notes that no review proceedings are currently pending before the Appeals Chamber.

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

Done this 23rd day of July 2008,
At The Hague, The Netherlands.



Fausto Pocar
Presiding Judge

[Seal of the ICTR Tribunal]



¹⁴ Registrar's Submissions, para. 4.