



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

IN THE APPEALS CHAMBER

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

Registrar: Mr. Adama Dieng

Decision of: 9 September 2008

Jean-Bosco BARAYAGWIZA

v.

THE PROSECUTOR

Case No. ICTR-99-52A-R

DECISION ON JEAN-BOSCO BARAYAGWIZA'S MOTION OF 2 MAY 2008

The Applicant

Mr. Jean-Bosco Barayagwiza, *pro se*

The Office of the Prosecutor

Mr. Hassan Bubacar Jallow

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),

NOTING the “Decision on Jean-Bosco Barayagwiza’s Motion of 6 March 2008”, issued on 11 April 2008 (“Impugned Decision”), in which the Appeals Chamber denied the Applicant’s request to order the Registrar to assign, pursuant to Rule 45 of the Rules of Procedure and Evidence (“Rules”), Mr. Donald Peter Herbert as Lead Counsel to assist him in the preparation of a motion for review and/or reconsideration 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”);

BEING SEIZED OF the “*Requête aux fins de reconsidération de la décision du 11 avril 2008 et de protection des droits fondamentaux du requérant Jean-Bosco Barayagwiza*” filed by Jean-Bosco Barayagwiza (“Applicant”) on 2 May 2008 (“Motion”), which requests the Appeals Chamber (i) to reconsider the Impugned Decision, and (ii) to order the Registrar to ensure that the Applicant is granted access to facilities and documents which have to date been withheld by the Registrar;¹

NOTING “The Registrar’s Rule 33(B) Submission on the Appeals Chamber’s Order to the Registrar regarding Communication of Documents”, filed on 21 July 2008 (“Registrar’s Submission of 21 July 2008”);²

NOTING that the Impugned Decision denied the Applicant’s request to order the Registrar to assign Mr. Donald Peter Herbert as Lead Counsel pursuant to Rule 45 of the Rules on the basis that (i) an indigent applicant is only entitled to assigned counsel, at the Tribunal’s expense, if the Appeals Chamber authorizes the review or if it deems it necessary in order to ensure the fairness of the proceedings at the preliminary examination stage;³ (ii) the Applicant failed to provide any information on the basis for a potential request for review; and that (iii) it therefore was not

¹ Motion, para. 29. See also Motion, para. 26, referring to documents and facilities mentioned in “The Registrar’s Submissions Regarding the ‘*Recours très urgent de Jean-Bosco Barayagwiza contre le refus du Greffier de répondre à la demande d’assistance juridique en vue de la révision et/ou réexamen de l’Arrêt du 28 novembre 2007*’”, filed on 14 March 2008 (“Registrar’s Submissions of 14 March 2008”), para. 10.

² See *Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-99-52A-R, Order to the Registrar regarding Communication of Documents, issued on 15 July 2008.

³ Impugned Decision, p. 3. The Appeals Chamber also found that it has no power to reconsider a final judgement and that the Applicant’s request to be assigned counsel for the purpose of preparing a request for reconsideration is therefore without merit. *Ibid.*

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;⁴

NOTING that the Applicant submits that the Impugned Decision requires reconsideration because it deprives the Applicant of the fundamental right to present a request for review of the Appeal Judgement, provided for in the Tribunal's Statute and Rules;⁵

NOTING that the Applicant submits that:

(i) without the assistance of counsel he is not in a position to satisfy the criteria required by the Appeals Chamber for a potential request for review which require extensive research, investigations, and analysis;⁶

(ii) that, in detention, he has no means to perform any investigation to discover the required "new facts", he has no access to the internet, the Tribunal's library, the jurisprudence of the Tribunal of the International Criminal Tribunal for the former Yugoslavia and of other national or international jurisdictions;

(iii) in any event, he does not possess the required expertise to prepare and present any relevant information as legal argument before the Appeals Chamber;⁷

NOTING, further, that the Applicant argues that Mr. Herbert is not available to assist the Applicant in the preparation of a motion for review on a *pro bono* basis,⁸ and that the only avenue available for him to obtain counsel is under the Tribunal's legal aid scheme;⁹

RECALLING that the Appeals Chamber may reconsider a previous decision pursuant to its inherent discretionary power if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice;¹⁰

CONSIDERING that the Impugned Decision is not premised on the understanding that Mr. Herbert would assist the Applicant in the preparation of a motion for review on a *pro bono* basis, but merely informs the Applicant that, while he failed to demonstrate that assignment of a counsel under the Tribunal's legal aid scheme was justified in the present circumstances, he may still,

⁴ Impugned Decision, p. 4.

⁵ Motion, paras. 25-28.

⁶ Motion, paras. 12-13.

⁷ Motion, paras. 12-13.

⁸ Motion, paras. 17-23.

⁹ Motion, paras. 15, 16, 24.

¹⁰ *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-A, Decision on Motion for Reconsideration of the Decision on Request to Admit Additional Evidence, 16 November 2007, p. 2; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.10, Decision on Ngirumpatse's Motion for Reconsideration, 5 October 2007, p. 3.

subject to certain conditions, be assisted by counsel in connection with a request for review at his own expense, at the expense of a third party or on a *pro bono* basis, and;¹¹

CONSIDERING that the Applicant merely reiterates his request for a blanket assignment of counsel under the Tribunal's legal aid scheme;

CONSIDERING that the Applicant has failed to demonstrate a clear error of reasoning in the Impugned Decision or that reconsideration is necessary to prevent an injustice;

NOTING, further, that the Applicant requests the Appeals Chamber to order the Registrar to ensure that the Applicant is granted access to documents which have to date been withheld by the Registrar;¹²

CONSIDERING the Registrar's submission that the requested documents have been provided to the Applicant;¹³

FINDS that this portion of the Motion is moot;

FOR THE FOREGOING REASONS,

DISMISSES the Motion.

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

Done this 9th day of September 2008,
At The Hague, The Netherlands.

Fausto Pocar
Presiding Judge

[Seal of the Tribunal]

¹¹ Impugned Decision, p. 4.

¹² Motion, para. 29(c). *See also* Motion, para. 26, referring to documents and facilities mentioned in the Registrar's Submissions of 14 March 2008, para. 10.

¹³ Registrar's Submission of 21 July 2008, paras. 5-8. It is not apparent from the Registrar's submission whether the Applicant has received the "documents relevant to the missions undertaken by former lead Counsel Mr. Barletta Calderera and his Team between 6 February 2001 and 24 June 2004" (*see* Motion, para. 26(5), referring to Registrar's Submission of 21 July 2008, para. 10 (vi), which refers to these documents). The Registrar however submits that "on 16 July 2008, all the files pertaining to the Applicant in the custody of the Registry were delivered to UNDF, so that the Applicant can peruse the files under the supervision of Registry staff, and make copies of the documents he is requesting", Registrar's Submission of 21 July 2008, para. 5. "On 18 July 2008, the Registry noted that the Applicant had been through all the files given to him and had chosen the documents he requested. In the process, the Applicant has identified and taken copies of several hundreds pages of documents for which a list is currently being compiled", Registrar's Submission of 21 July 2008, para. 6.