



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

100/H

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IN THE APPEALS CHAMBER

ICTR-01-71-R75
23 September 2008
(100/H - 97/H)

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Liu Daqun
Judge Theodor Meron

Registrar: Mr. Adama Dieng

Decision of: 23 September 2008

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Emmanuel NDINDABAHIZI

v.

THE PROSECUTOR

Case No. ICTR-01-71-R75

ICTR Appeals Chamber
Date: 23 September 2008
Action: P.T.
Copied To: concerned Judges
Parties, ECJ, LDC, ALD, LDC
Archives
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DECISION ON EMMANUEL NDINDABAHIZI'S REQUEST FOR ACCESS TO "CONFIDENTIAL INFORMATION"

The Applicant

Mr. Emmanuel Ndindabahizi, *pro se*

The Office of the Prosecutor

Mr. Hassan Bubacar Jallow
Mr. Alex Obote-Odora
Ms. Dior Fall
Ms. Inneke Onsea

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: KAFEL... KUMELID... A... AFANDE
SIGNATURE: *[Handwritten signature]* DATE: 23 Sept 2008

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 Emmanuel Ndingabahizi ("Motions" and "Applicant", respectively):

- *"Demande à la Chambre d'appel: a. d'ordonner au greffier de communiquer à Ndingabahizi Emmanuel les éléments de preuve relatifs aux 'informations confidentielles' dont il est fait mention au paragraphe 102 du jugement Ndingabahizi Emmanuel, au paragraphe 94 du mémoire de l'appelant et au paragraphe 101 du mémoire de l'intimé (procureur). Y joindre le procès verbal d'audience qui fait état de ces 'informations confidentielles'. b. d'ordonner au greffier de fournir au requérant les éléments de preuve relatifs aux 'raisons confidentielles' dont il est fait mention au paragraphe 82 1) de l'Arrêt de la Chambre d'appel. Y joindre le procès verbal d'audience qui fait état de ces 'informations confidentielles',* filed on 10 July 2008 ("First Motion");

- *"Requête demandant à la Chambre d'appel de: Ordonner au Greffier la communication des pièces à conviction relatives aux informations confidentielles et aux raisons confidentielles ainsi que des procès verbaux d'audience y relatifs. (Jugement du 15 juillet 2004, para. 102; Mémoire de l'Appelant, para. 94; Mémoire de l'Intimé, para. 101; Arrêt du 16 janvier 2007, para. 82 (1))",* filed on 8 August 2008 ("Second Motion");

NOTING that the Prosecution did not file a response;

NOTING the Applicant's submission that the Second Motion replaces the First Motion in which the Applicant inadvertently disclosed the identity of protected Witness DN;¹

FINDING therefore that the First Motion has been withdrawn;

NOTING that, with a view to a potential request for review, the Applicant seeks access to the "confidential information" referred to at paragraph 102 of the judgement and sentence rendered by the Trial Chamber in *The Prosecutor v. Emmanuel Ndingabahizi*, Case No. ICTR-2001-71-I, on 15 July 2004 ("Trial Judgement"), as well as to the transcripts referencing the "confidential information";²

¹ Second Motion, para. 22.

² Second Motion, paras. 1, 20, 21.

NOTING that the Applicant submits that the Trial Chamber relied on the "confidential information", referred to at paragraph 102 of the Trial Judgement, in order to assess and dismiss the testimony of Defence Witness DN;³

NOTING that the Applicant further submits that the "confidential information" referred to at paragraph 102 of the Trial Judgement does not form part of the trial record,⁴ and that it had not been communicated to the Applicant or his counsel;⁵

NOTING that the Applicant contends that the Registrar had been unable to provide the aforementioned "confidential information" upon the Applicant's request, because it had been impossible to identify the requested information;⁶

CONSIDERING that a review of paragraph 102 of the Trial Judgement reveals that the "confidential information" referred to by the Trial Chamber relates to Witness DN's identity stipulated in the witness's personal information sheet, which was admitted into evidence as Defence exhibit 40, under seal;

CONSIDERING that the "confidential information" sought by the Applicant forms part of the trial record of this case and that, as such, it is available to the Applicant;⁷

CONSIDERING further that the transcripts referencing this confidential information are part of the trial record and are available to the Applicant;⁸

NOTING that, in his appeal against the Trial Judgement, the Applicant argued "that the Trial Chamber should not have invoked 'confidential reasons' to rule on the credibility of [Witness DN]";⁹ and that the Applicant now seeks access to said "confidential reasons";¹⁰

³ Second Motion, paras. 8, 9.

⁴ Second Motion, paras. 15, 16.

⁵ Second Motion, para. 6.

⁶ Second Motion, paras. 12-14, 18. The Applicant also submits that he unsuccessfully requested the President of the Tribunal to intervene in this matter. Second Motion, para. 19.

⁷ Trial Judgement, para. 102, fn. 109. The Appeals Chamber also notes that the Registrar in fact did provide the "confidential information" sought by the Applicant in response to the Applicant's request. See correspondence from Ms. Felicite A. Talon to the Applicant, reproduced at page 5 of the Second Motion. See, in particular, paragraph 3 of the aforementioned correspondence, stating that the Registrar communicates Defence exhibit 40 to the Applicant.

⁸ T. 3 November 2003 pp. 14, 15.

⁹ *The Prosecutor v. Emmanuel Ndimubihizi*, Case No. ICTR-2001-71-A, Judgement, 16 January 2007 ("Appeal Judgement"), para. 82(1).

¹⁰ Second Motion, paras. 1, 21. The Applicant also seeks access to the transcripts referencing the "confidential reasons".

97/H

NOTING that the Appeals Chamber held that said "confidential reasons" were "known to the Parties" and that it was "only to protect the identity to Witness DN that the Trial Chamber spoke of 'confidential reasons'";¹¹

CONSIDERING that the "confidential reasons" referred to by the Appeals Chamber are identical to the "confidential information" invoked by the Trial Chamber, that they solely relate to Witness DN's identity, and therefore to information which is available to the Applicant;

FINDING therefore that the Applicant's Second Motion is moot;

FOR THE FOREGOING REASONS,

DECLARES the First Motion withdrawn;

DISMISSES the Second Motion; and

ORDERS the Registrar to place the First Motion under seal.

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

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



Fausto Pocar
Presiding Judge

[Seal of the Tribunal]



¹¹ Appeal Judgement, para. 82 (1).