



**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 Liu Daqun
Judge Theodor Meron

Registrar: Mr. Adama Dieng

Decision of: 24 September 2008

Emmanuel NDINDABAHIZI

v.

THE PROSECUTOR

Case No. ICTR-01-71-R

**DECISION ON EMMANUEL NDINDABAHIZI'S MOTION FOR
ASSIGNMENT OF COUNSEL AND THE PROSECUTION'S REQUEST TO
PLACE THE MOTION UNDER SEAL**

The Applicant

Mr. Emmanuel Ndingabahizi, *pro se*

The Office of the Prosecutor

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

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 “*Requête rappelant et complétant celle du 18 avril 2008 intitulée: ‘Demande de commission d’un conseil pour une durée limitée, pour la préparation d’une requête en révision’ - Article 45 du Règlement de procédure et de preuve*”, filed by Emmanuel Ndindabahizi (“Applicant”) on 16 July 2008 (“Motion for Assignment of Counsel”);

NOTING that the Prosecution filed its response on 25 July 2008,¹ and that the Applicant filed his reply on 4 August 2008;²

NOTING that the Applicant seeks the assignment of counsel to assist him with a potential request for review of the judgement rendered by the Appeals Chamber on 16 January 2007 in *Emmanuel Ndindabahizi v. The Prosecutor*, Case No. ICTR-01-71-A (“Appeal Judgement”);³

RECALLING that review of a final judgement is an exceptional remedy and that 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;⁴

CONSIDERING that the Applicant fails to provide any information on the basis for a potential request for review and merely contends that he is in possession of information which the Appeals Chamber, once being seized of his request for review, should accept as “new facts” pursuant to Article 25 of the Tribunal’s Statute;⁵

¹ Prosecutor’s Response to Ndindabahizi’s “*Requête rappelant et complétant celle du 18 avril 2008 intitulée: ‘Demande de commission d’un conseil pour une durée limitée, pour la préparation d’une requête en révision’ - Article 45 du Règlement de procédure et de preuve*”, filed on 25 July 2008.

² *Réplique à la Réponse du Procureur du 25 juillet 2008 intitulée : Prosecutor’s Response to Ndindabahizi’s “Requête rappelant et complétant celle du 18 avril 2008 intitulée: ‘Demande de commission d’un conseil pour une durée limitée, pour la préparation d’une requête en révision’ - Article 45 du Règlement de procédure et de preuve*”, filed on 4 August 2008 (“Reply”).

³ The Applicant submits that the Appeals Chamber failed to dispose of his previous motion seeking assignment of counsel, purportedly filed before the Appeals Chamber on 18 April 2008. The Appeals Chamber has not received said motion.

⁴ *Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-99-52A-R, Decision on Jean-Bosco Barayagwiza’s Motion of 6 March 2008, 11 April 2008, p. 3; *Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-R, Decision On Hassan Ngeze’s Motion To Obtain Assistance From Counsel, 28 February 2008, p. 2.

⁵ The Applicant submits that his convictions are based on the “false testimony” of Witnesses CGY and CGN. He recalls the witnesses’ testimonies and the related findings entered by the Trial Chamber and the Appeals Chamber, respectively. Motion for Assignment of Counsel, paras. 2-15. In his Reply, the Applicant, however, emphasizes that he

CONSIDERING that in the absence of information as to the potential grounds for review, the Appeals Chamber cannot conclude that it would be 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;

FINDING therefore, that the Applicant has not shown that he should receive the assistance of counsel at the expense of the Tribunal;

BEING ALSO SEIZED OF a confidential motion filed by the Prosecution on 25 July 2008, requesting that the Motion for Assignment of Counsel be placed under seal, because it discloses the identity of protected Witness CGY (“Prosecution Request to Place Motion Under Seal”);⁶

NOTING the Applicant’s response to the Prosecution Request to Place Motion Under Seal filed on 31 July 2008;⁷

NOTING the “Order for Non-Disclosure”, issued on 10 July 2001 by the Pre-trial Judge in this case, which, *inter alia*, orders the non-disclosure of Witness CGY’s identity;⁸

FINDING that the Motion for Assignment of Counsel reveals Witness CGY’s identity;

FOR THE FOREGOING REASONS,

DISMISSES the Motion for Assignment of Counsel;

GRANTS the Prosecution Request to Place Motion Under Seal and **ORDERS** the Registry to place the Motion for Assignment of Counsel under seal;

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

Done this 24th day of September 2008,
At The Hague,
The Netherlands.

Fausto Pocar

does not wish to present these elements as “new facts” and that he will only present the “new facts” in his possession in a future request for review. Reply, para. 3.

⁶ Prosecutor’s Request for Reclassification as Confidential Filing of Ndindabahizi’s “*Requête rappelant et complétant celle du 18 avril 2008 intitulée: ‘Demande de commission d’un conseil pour une durée limitée, pour la préparation d’une requête en révision’ - Article 45 du Règlement de procédure et de preuve*”, para. 2, fn. 3.

⁷ *Réponse de Ndindabahizi Emmanuel à la requête confidentielle du Procureur intitulée: Prosecutor’s Request for Reclassification as Confidential Filing of Ndindabahizi’s ‘Requête rappelant et complétant celle du 18 avril 2008 intitulée: ‘Demande de commission d’un conseil pour une durée limitée, pour la préparation d’une requête en révision’ - Article 45 du Règlement de procédure et de preuve*, 31 July 2008, para. 6. The Prosecution did not file a reply.

⁸ *The Prosecutor v. Emmanuel Ndindabahizi*, Case No. ICTR-2001-71-I, Order for Non-Disclosure, 10 July 2001.

[Seal of the Tribunal]

Presiding Judge