



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

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Liu Daqun
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar: Mr. Adama Dieng

Decision of: 25 September 2008

THE PROSECUTOR

v.

Tharcisse MUVUNYI

Case No. ICTR-00-55A-A

Decision on Muvunyi's Request for Provisional Release

Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. Alex Obote Odora
Mr. Neville Weston
Ms. Linda Bianchi
Ms. Renifa Madenga
Mr. François Nsanzuwera
Ms. Evelyn Kamau

Counsel for Tharcisse Muvunyi:

Mr. William E. Taylor III
Ms. Abbe Jolles

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 Judgement rendered by the Appeals Chamber on 29 August 2008 in the case of *The Prosecutor v. Tharcisse Muvunyi* (“Judgement”), which ordered the retrial of Tharcisse Muvunyi (“Muvunyi”) on a charge of direct and public incitement to commit genocide and reversed all of his other convictions;

BEING SEIZED OF the “Motion for an Order Ancillary to Judgement of August 29, 2008 for Provisional Release” filed confidentially by Muvunyi on 16 September 2008 (“Motion”);

NOTING that in the Motion, Muvunyi requests that the Appeals Chamber grant him provisional release pursuant to Rule 65 of the Rules of Procedure and Evidence (“Rules”) on the basis that he has been acquitted of all but one charge, that he does not pose a danger to anyone nor is a flight risk, and that he no longer faces a sentence of life imprisonment should he be convicted of the one remaining charge;¹

NOTING further that Muvunyi requests that a hearing be held so that the parties may make complete submissions regarding his provisional release;²

NOTING the “Response to Accused Tharcisse Muvunyi’s Motion for an Order Ancillary to Judgment of August 29, 2008 for Provisional Release”, filed by the Prosecution on 19 September 2008, in which it submits that Muvunyi erred in bringing the Motion before the Appeals Chamber rather than the Trial Chamber, that he has not complied with the mandatory provisions of Rule 65 of the Rules, and that he has not advanced any arguments as to why he should be granted provisional release;

NOTING the “Reply to Response to Accused Tharcisse Muvunyi’s Motion for an Order Ancillary to Judgment of August 29, 2008 for Provisional Release”, filed confidentially by Muvunyi on 22 September 2008 (“Reply”), in which he argues that he does not oppose submitting the Motion to the

¹ Motion, paras. 3, 4.

² Motion, para. 5.

Trial Chamber, but that given that no Trial Chamber had been constituted, the Appeals Chamber should consider the Motion, and submits that a hearing is necessary in order to allow for the full presentation of evidence relevant to the determination of whether he should be granted provisional release;

RECALLING that in the Judgement, the Appeals Chamber ordered that Muvunyi was “to remain in the custody of the Tribunal pending his retrial”;³

CONSIDERING that the Appeals Chamber, having ordered a retrial pursuant to Rule 118(C) of the Rules, is no longer seized of the case;

FINDING therefore that the Appeals Chamber lacks jurisdiction to consider the present request for provisional release;

FINDING that Muvunyi should direct his request for provisional release to the Trial Chamber assigned to the retrial, which has jurisdiction over such a request;

CONSIDERING further that neither the Motion nor the Reply contains material that would warrant them to be filed confidentially;

FOR THE FOREGOING REASONS,

DISMISSES the Motion;

DIRECTS the Registry to reclassify the Motion and the Reply as public documents.

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

Judge Fausto Pocar
Presiding

Dated this 25th day of September 2008,
at The Hague, The Netherlands.

³ Judgement, para. 171.

FSeal of the Tribunal