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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

ICTR-98-41-T  
22-10-2008  
(39925-39922)

39925  
S. Muna

TRIAL CHAMBER I

**Before:** Judge Erik Møse, presiding  
Judge Jai Ram Reddy  
Judge Sergei Alekseevich Egorov

**Registrar:** Adama Dieng

**Date:** 22 October 2008

2008 OCT 22 P 2:49  
S. Muna

**THE PROSECUTOR**

v.

**Théoneste BAGOSORA**

**Gratien KABILIGI**

**Aloys NTABAKUZE**

**Anatole NSENGIYUMVA**

*Case No. : ICTR-98-41-T*

**Decision on Defence Motions Concerning Appeal Chamber Jurisprudence After  
Closure of the Case**

**The Office of the Prosecutor**  
Hassan Bubacar Jallow  
Alex Obote-Odora

**Counsel for Aloys Ntabakuze**  
Peter Erlinder

**Counsel for the Other Accused**  
Raphaël Constant  
Paul Skolnik  
Kennedy Ogetto

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA,

39924

SITTING as Trial Chamber I, composed of Judge Erik Mose, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF five motions related to translation, the application of Appeals Chamber precedent and a stay of proceedings, filed on 12 December 2007, 10 January 2008, 28 February 2008 and 12 September 2008;

CONSIDERING the Prosecution responses, filed on 4 March 2008 and 17 September 2008;

HEREBY DECIDES these motions.

INTRODUCTION

1. On 1 June 2007, the Chamber heard closing arguments and adjourned the proceedings. The case is now under deliberation.

2. After the closing arguments, the ICTR Appeals Chamber delivered its judgement in French in the *Nahimana et al.* case on 28 November 2007.<sup>1</sup> That judgement dealt in part with the application of the legal principles relevant to the question of whether an accused has notice of the material facts and charges against him. On 12 December 2007, the Ntabakuze Defence requested the Chamber to expedite the translation of the *Nahimana et al.* judgement into English and allow additional argument based on it prior to rendering its judgment.<sup>2</sup> It argued that the Chamber would benefit from a detailed analysis of the application of the *Nahimana et al.* Appeal Judgement to the facts of the present case. On 10 January 2008, the Nsengiyumva Defence supported the Ntabakuze Defence.<sup>3</sup> The Prosecution did not respond to these submissions.

3. The Ntabakuze Defence filed an Addendum to its Final Trial Brief on 28 February 2008 on the basis of an unofficial translation of the relevant paragraphs of the *Nahimana et al.* Appeal Judgement. The same day, it filed a motion requesting the Chamber to stay proceedings, until the Prosecution complies with certain new obligations which, in its opinion, follow from the Appeals Chamber's *Nahimana et al.* Judgement.<sup>4</sup> The Prosecution responded that the motion should be dismissed.<sup>5</sup>

<sup>1</sup> *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement (AC), 28 November 2008 ("Nahimana et al. Appeal Judgement").

<sup>2</sup> Ntabakuze Urgent Motion for Expedited English Translation of the "Media" Case Appeals Judgement (*Nahimana et al.*) Entered on November 27 (*sic*), 2007 and to Delay Issuing a Judgement in This Matter Pending Receipt of Amended Argument, 12 December 2007, paras. 1-8.

<sup>3</sup> Nsengiyumva's Support for the Ntabakuze Urgent Motion for Expedited English Translation of the Media Case Appeals Judgement Entered on Nov 27, 2007, filed on 10 January 2008.

<sup>4</sup> Ntabakuze Motion for Stay of Proceedings, Pending OTP Compliance with Its Disclosure Obligations and the *Nahimana* Jurisprudence, 28 February 2008, paras. 1-5. In particular, it argues that the Prosecution now has an affirmative obligation to dismiss material facts not pleaded in the indictment and which on their own support separate charges, before the Chamber rules on them. In addition, the Ntabakuze Defence also requests a stay of proceedings, pending the Chamber's disposition of a separate Defence's motion for disclosure of exculpatory evidence. *Id.* paras. 6-9. The Chamber addresses this part of the motion in a separate decision. See *Bagosora et al.*, Decision on Ntabakuze Defence Motions Concerning Disclosure of Exculpatory Evidence (TC), 21 October 2008.

<sup>5</sup> Prosecution Response to Aloys Ntabakuze's Motion for Stay of Proceedings Pending OTP Compliance with its Disclosure Obligations and the *Nahimana* Jurisprudence and to Motion for Disclosure of Exculpatory Evidence Currently held by the Prosecutor, and Consideration of Newly Discovered Exculpatory Evidence: Absence of Planning, Conspiracy or Genocidal Intent by FAR Defending Forces, 4 March 2008, paras. 3-5, 15. That

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4. On 3 July 2008, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) delivered its judgement in the *Orić* case.<sup>6</sup> This case dealt in part with legal issues related to superior responsibility. The Ntabakuze Defence then filed a motion for the Chamber to apply the legal principles in *Orić* to the facts of this case or to authorise further submissions on this jurisprudence.<sup>7</sup> The Prosecution did not respond to this submission.

5. The ICTR Appeals Chamber rendered its judgement in the *Muvunyi* case on 29 August 2008.<sup>8</sup> That judgement deals in significant part with the application of the jurisprudence related to notice in the Indictment. The Ntabakuze Defence filed a motion on 12 September 2008 asking the Chamber to apply this jurisprudence and reiterated its previous submissions concerning the application of the *Orić* and *Nahimana et al.* Appeal Judgements. The Ntabakuze Defence submits that nearly all charges against the Accused should be dismissed in light of this case law and seeks additional briefing and oral submissions on the matter prior to the rendering of the judgment in this case.<sup>9</sup> The Prosecution responds that the motion should be dismissed.<sup>10</sup>

### DELIBERATIONS

6. The Chamber considers the Ntabakuze Motion of 12 December 2007, which is supported by the Nsengiyumva Defence, requesting an expedited translation of the *Nahimana et al.* Appeal Judgement to be moot. The official English translation was filed on 16 May 2008.<sup>11</sup>

7. The remaining submissions of the Ntabakuze Defence in each of its motions amount to the claim that the *Nahimana et al.*, *Orić* and *Muvunyi* Appeal Judgements either announce new principles or clarify the existing jurisprudence relevant to the law of notice and superior responsibility, such that additional submissions or action by the Prosecution are required prior to the rendering the judgement.

8. The Chamber emphasises that the case against the Accused is closed. Additional submissions relevant to the merits of the judgement should only be permitted in limited circumstances. The Ntabakuze Defence has made extensive submissions on notice and superior responsibility in its Closing Brief, which is currently under consideration. The Chamber closely follows developments in applicable jurisprudence.

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response also addresses the Ntabakuze Defence's Motion for disclosure of exculpatory material which is addressed in a separate decision. See *Bagosora et al.*, Decision on Ntabakuze Defence Motions concerning Disclosure of Exculpatory Evidence, 21 October 2008.

<sup>6</sup> *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Judgement (AC), 3 July 2008 ("*Orić* Appeal Judgement").

<sup>7</sup> Ntabakuze Motion for Application of the July 3, 2008 ICTY Appeals Chamber *Orić* Decision to "Command Responsibility" Issues Pending Before the Chamber, 10 July 2008, paras. 1-19. The motion also contains submissions on the application of the *Nahimana et al.* case, disclosure issues by the Prosecution in this case, and the application of the International Criminal Court's decision of 13 June 2008 in the *Dyilo* case related to disclosure. These aspects are considered in a separate decision delivered today. See *Bagosora et al.*, Decision on Ntabakuze Defence Motions Concerning Disclosure of Exculpatory Evidence (TC), 21 October 2008.

<sup>8</sup> *Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-2000-55A-A, Judgement (AC), 29 August 2008 ("*Muvunyi* Appeal Judgement").

<sup>9</sup> Motion for (A) Application of the *Nahimana*, *Orić* and *Muvunyi* Jurisprudence to the Facts of this Case to Dismiss Factual Allegations Outside the Indictment; (B) A "Not Guilty" Finding on All Pending Counts; or, (C) for Briefing and Argumentation of Application of Recent Appeals Chamber Jurisprudence to this Case, Prior to Judgment Being Entered by the Chamber, 12 September 2008, para. 13, p. 15.

<sup>10</sup> Response to Ntabakuze's Motion Filed on 12 September 2008, 17 September 2008, paras. 3-6.

<sup>11</sup> The Ntabakuze Defence also obtained an unofficial translation of relevant portions of this judgement prior to making additional submissions on 28 February 2008.

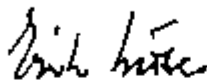
9. The Chamber sees no need for any additional briefing or action by the parties in light of these judgements, which would also delay the preparation of the judgement. For these reasons, the Chamber will also not consider the Addendum to the Ntabakuze Brief, filed on 28 February 2008, related to the *Nahimana et al.* Appeal Judgement.

**FOR THE ABOVE REASONS, THE CHAMBER**

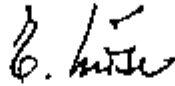
**CONSIDERS** the Ntabakuze Defence's request for translation to be moot;

**DENIES** the Ntabakuze Defence motions in all respects;

Arusha, 22 October 2008



Erik Mose  
Presiding Judge



Jai Ram Reddy  
P. P. Judge



Sergei Alekseevich Egorov  
Judge

[Seal of the Tribunal]

