



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

331/H

ICTR-99-52-R
29 October 2008
(331/H – 329/H)

IN THE APPEALS CHAMBER

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

Registrar: Mr. Adama Dieng

Decision of: 28 October 2008

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Hassan NGEZE

v.

THE PROSECUTOR

Case No. ICTR-99-52-R

ICTR Appeals Chamber
 Date: 29 October 2008
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DECISION ON HASSAN NGEZE'S MOTIONS OF 26 AND 28 AUGUST 2008

Counsel for Hassan Ngeze

The Office of the Prosecutor

Mr. Dev Nath Kapoor, Counsel *pro bono*

Mr. Hassan Bubacar Jallow

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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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 Hassan Ngeze (“Motions” and “Applicant”, respectively):

- “Urgent Motion before the Appeals Chamber under Rules 120, 121, 122, 123 Filed by Prisoner Hassan Ngeze, Seeking Permission to File the Newly Discovered Evidence in its Original Language Kinyarwanda or to Order its Official Translation from the Registry, the Evidence which is a Statement Made by a Person who was in Custody of a Military Camp under Colonel Anatole Nsengiyunva Starting 5th, 6th, 7th, 8th, 9th, 10th 11th of April 1994, the Person during the Trial Phase and Appeals Phase was Known to be Dead [sic]”, filed on 26 August 2008 (“First Motion”);

- “Urgent Additional Motion before the Appeals Chamber under Rules 120, 121, 123 of Procedure and Evidences read with Rule 25 of the ICTR Status Filed by Prisoner Hassan Ngeze, now Seeking Permission to Authorize, both the Prosecutor and the Defense of Hassan Ngeze, to Go in Canada to Meet and Interview, the Newly Witness Discovered, Known by now for Her Protection as (Madam Omega), the Meeting in which the Witness Will Explain to both Parties, Why She Could not be Located during the Trial Phase, and the Appeal Phase, then Produce for both Parties her Personal Statement Explaining, how she Was in Custody 1 day before the Genocide in a Military Camp under Colonel Anatole Nsengiyunva Starting the 5th, 6th, 7th, 8th, 9th, 10th 11th of April 1994 and how Prisoner Hassan Ngeze Found her and was Incarcerated with Her, Starting 6th of April till 9th of April 1994. As it Was Mentioned in her Statement Filed before the Appeals Chamber as Annex on 20th of August 2008 [sic]”, filed on 28 August 2008 (“Second Motion”);

NOTING 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”);

NOTING that in the Motions, the Applicant requests the Appeals Chamber “to accept the filing [in] Kinyarwanda, or as an alternative, to order the translation” of a statement made by a person designated as “Witness Omega”¹ who allegedly witnessed him in custody between 6 and 9 April

¹ First Motion, p. 2; Second Motion, pp. 1, 3.

1994² and to facilitate the travel to Canada of his Counsel and the Prosecution to interview Witness Omega and to take her statement;³

NOTING that the Applicant has filed the Motions pursuant to Article 25 of the Tribunal's Statute and Rules 120 to 123 of the Rules of Procedure and Evidence of the Tribunal related to review proceedings;

RECALLING that in order for the Appeals Chamber to proceed to the review of a decision, the moving party must demonstrate, *inter alia*, that the new fact, if proved, could have been a decisive factor in reaching the original decision;⁴

NOTING that in the Appeal Judgement, the Appeals Chamber reversed the Trial Chamber's findings on the Applicant's alibi for the period of 6 to 9 April 1994 and quashed all the convictions for acts he allegedly committed during that period;⁵

CONSIDERING, therefore, that the Applicant has not shown how the anticipated testimony of Witness Omega could have been a decisive factor in reaching the Appeal Judgement;

FINDING as a consequence that there is no need to consider whether the Motions satisfy the other criteria for authorizing investigations related to review proceedings;

FOR THE FOREGOING REASONS,

DISMISSES the Motions.

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

Done this 28th day of October 2008,
At The Hague, The Netherlands.



Fausto Pocar
Presiding Judge

² First Motion, p. 2.

³ First Motion, p. 2; Second Motion, p. 4

⁴ Article 25 of the Statute. See e.g. *Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52A-R, Decision on Hassan Ngeze's Motion to Obtain Assistance from Counsel, 28 February 2008, fn. 6; *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, fn. 10; *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Request for Review, 30 June 2006, paras. 6-7; *Rutaganda v. The Prosecutor*, Case No. ICTR-96-03-R, Decision on Requests for Reconsideration, Review, Assignment of Counsel, Disclosure and Clarification, 8 December 2006, para. 11; *Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Décision relative à la requête de l'Appellant Jean-Bosco Barayagwiza demandant l'examen de la requête de la Défense datée du 28 juillet 2000 et réparation pour abus de procédure, 23 June 2006 (with corrigendum of 28 June 2006), para. 20

⁵ Appeal Judgement, para. 474.