



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

328/H

Handwritten initials

ICTR-99-52-R
29 October 2008
(328/H – 325/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

2008 OCT 30 1A 10: 10
JUDICIAL RECORDS ARCHIVED
Handwritten signature

Hassan NGEZE

v.

THE PROSECUTOR

Case No. ICTR-99-52-R

ICTR Appeals Chamber
Date: 29 October 2008
Action: P.T.
Copied To: concerned Judges
Partia, Stos, Los, Alos, Archive
Handwritten signature

DECISION ON HASSAN NGEZE'S MOTIONS OF 8 AND 26 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
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS
NAME / NOM: *KDEFI... KUMELID... A... AFANDE...*
SIGNATURE: *[Signature]* DATE: 29 Oct 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 Hassan Ngeze (“Motions” and “Applicant”, respectively):

- “Urgent Motion Filed by Hassan Ngeze, before the Appeals Chamber Seeking to Order the Registrar to Investigate the Matter Regarding the Obstacles Put on Hassan Ngeze’s Lawyers, by UNDF Authorities, which Frequently Confiscated Documents from Lawyers, Which Were Given by their Client, Without Written Statement to the Incident, and Further, Humiliation Underwent by Lawyers, by Instructing Them that They Don’t Have Right to Take Out of UNDF Documents Given by Their Clients, and Phone Calls Made by UNDF Which Were Warning Counsel Dev Kappoor and Chadha to Immediately Brought Back any Document Given by Hassan Ngeze during the Defense Meeting, Various Documents Which until now Have Never Been Returned to Prisoner Hassan Ngeze or to His Lawyers. During the Appeals Stage, and still during the Present Phase [sic]”, filed on 8 August 2008 (“First Motion”);

- “Urgent Motion before the Appeals Chamber Filed by Prisoner Hassan Ngeze Based on Inherent Powers of Appeals Chamber, Seeking an Order which Authorizes Prisoner Ngeze to Address Fully the Registrar, the President under Rule under Rule 84 Read with 85 Rule Governing the Detention. Then, the President under Rule 82 Read with 83, and the Appeals Chamber after Having Exhausted the Stated Procedures Given by those Rules, and now while Waiting for the Directive, Prisoner Hassan Ngeze has Decided to Undergo on Manifestation which Might Lead to his Death, so that Judges of Appeals Chamber, and United Nations Understand the Obstacle and Harsh Condition Placed on Hassan Ngeze and his Defense Team Including the Refusal to Meet and Communicate with the Registrar’s Representative under Rule Mentioned herewith [sic]”, filed on 26 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 his First Motion the Applicant requests the Appeals Chamber to order the Registrar to investigate alleged confiscations by the United Nations Detention Facility (“UNDF”)

authorities of documents that he had provided to his counsel during working sessions in preparation of a motion for review;¹

NOTING that the Applicant asserts that he has filed various motions before the Registrar requesting an investigation into this matter and that the Registry has failed to respond;²

RECALLING that the Appeals Chamber has the statutory duty to ensure the fairness of the proceedings before the Appeals Chamber and, thus, has jurisdiction to review decisions of the Tribunal's Registrar and President under the Tribunal's Rules Covering the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal ("Detention Rules"),³ where they are closely related to issues involving the fairness of proceedings, but that such review is available only after a detainee has followed the requisite complaints procedure provided under the Detention Rules;⁴

CONSIDERING that Rule 19 of the Rules of Procedure and Evidence of the Tribunal ("Rules") provides that the President of the Tribunal, and not the Appeals Chamber, supervises the activities of the Registry, and that pursuant to Rule 83 of the Detention Rules, a detainee who is not satisfied with a response of the authorities of the UNDF, should file a written complaint with the Registrar who shall forward it to the President;⁵

CONSIDERING that the Applicant has not exhausted the remedies available to him under the Rules and the Detention Rules for consideration of his request;

FINDING therefore that the Appeals Chamber does not have jurisdiction to consider the First Motion;

NOTING that in his Second Motion the Applicant claims that he is prevented "from addressing freely the Registrar" and seeks an order authorizing him to "fully address the Registrar" and the President pursuant to Rules 82 to 85 of the Detention Rules;⁶

¹ First Motion, p. 2.

² *Ibidem*.

³ Adopted on 5 June 1998.

⁴ *Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-R, Decision on Hassan Ngeze's Motions of 17 June 2008 and 10 July 2008, 23 July 2008, p. 3; *Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-R, Decision on Hassan Ngeze's Motions of 15 April 2008 and 2 May 2008, 15 May 2008, pp. 3, 4, referring to a number of decisions delivered in *Nahimana et al.*, Case ICTR-99-52-A: Decision on Jean-Bosco Barayagwiza's Urgent Motion Requesting Privileged Access to the Appellant Without Attendance of Lead Counsel, 17 August 2006, p. 3; Decision on Hassan Ngeze's Request for a Status Conference, 13 December 2005, p. 3; Decision on Hassan Ngeze's Request to Grant him Leave to Bring his Complaints to the Appeals Chamber, 12 December 2005, p. 3; Decision on Hassan Ngeze's Motion for a Psychological Examination, 6 December 2005, p. 3; Decision on Hassan Ngeze's Motion to Set Aside President Møse's Decision and Request to Consummate his Marriage, 6 December 2005, pp. 3,4.

⁵ *Ibidem*.

⁶ Second Motion, pp. 1, 3.

CONSIDERING that this claim is misplaced before the Appeals Chamber and should be directed to the Registrar pursuant to Rule 83 of the Detention Rules, with a possible recourse before the President of the Tribunal in accordance with Rule 19(A) of the Rules;

NOTING that in his Second Motion the Applicant also claims that the Registry or the UNDF refrained from filing some of his motions, "petitions" and other documents addressed to the Appeals Chamber;

NOTING that the Applicant therefore requests the Appeals Chamber to "take into consideration [...] his last will", "understand [how the injustice he is facing in UNDF explain why he is] undergoing a manifestation which might lead [to his] death", to obtain the record of an "interview" he had with a representative of the Registry and UNDF officers and to obtain from UNDF authorities "all motions, petitions [and] other documents which [he] handed to UNDF" but which were not filed;⁷

CONSIDERING that, as already recalled, the President of the Tribunal, and not the Appeals Chamber, supervises the activities of the Registry, and that if the Applicant is not satisfied with a response of the authorities of the UNDF, he should file a written complaint with the Registrar who shall forward it to the President;

CONSIDERING furthermore that the Applicant fails to provide any specific reference to motions or other petitions which the Registry or the UNDF purportedly retained and failed to file;

CONSIDERING that the Applicant has not exhausted the remedies available to him under the Rules and the Detention Rules for consideration of his request;

FINDING therefore that the Appeals Chamber does not have jurisdiction to consider the Second Motion;

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

⁷ Second Motion, p. 3.