



**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 Andrézia Vaz
Judge Theodor Meron

Registrar: Mr. Adama Dieng

Decision of: 15 January 2009

Hassan NGEZE

v.

THE PROSECUTOR

Case No. ICTR-99-52-R

**DECISION ON HASSAN NGEZE'S MOTIONS OF 3, 7, 10, 13 AND 18
NOVEMBER 2008**

Counsel for Hassan Ngeze

Mr. Dev Nath Kapoor, Counsel *pro bono*

The Office of the Prosecutor

Mr. Hassan Bubacar Jallow

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 five motions filed by Hassan Ngeze (“Motions” and “Applicant”, respectively):

- “Ngeze’s Motion to Review the Judgement with the Immediate Acquittal filed before the Appeals Chamber 31st October 2008” dated 31 October 2008 and filed on 3 November 2008 (“First Motion”);
- “Ngeze’s Motion to Review the Judgement with the Immediate Acquittal filed before the Appeals Chamber 3rd November 2008” dated 3 November 2008 and filed on 7 November 2008 (“Second Motion”);
- “Motion seeking Permission from the Appeals Chamber to File Various Conclusion (sic) from Gacaca Court in Gisenyi Rwanda...” dated 6 November 2008 and filed on 10 November 2008 (“Third Motion”);
- “Motion of 7th November 2008 Seeking the Adjustment of Paragraph 474 of the Media Judgment...” dated 7 November 2008 and filed on 13 November 2008 (“Fourth Motion”);
- “Hassan Ngeze’s Motion ... Seeking the Exclusion from the Appeal’s Judgement All Appeals Findings Connected to Convictions in Which Hassan Ngeze was not Found Guilt (sic) by the Trial Chamber, or be Subject of the Prosecution’s Appeal...” dated 14 November 2008 and filed on 18 November 2008 (“Fifth Motion”);

NOTING that the Prosecution did not file a response to the Motions;

NOTING that in his First and Second Motions, the Applicant requests the review of 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”) and his “immediate acquittal”;¹

¹ First Motion, paras. 1,7, 8; Second Motion, paras. 1, 7, 8. The Second Motions is almost identical to the First Motion, except that it contains an additional submission: that in the Appeal Judgement, paragraph 474 contradicts paragraphs 699, 892, 545 “read with [paragraphs] 432 and 433”. Second Motion, pp. 7, 8.

NOTING that the Applicant argues that the Appeals Chamber's decision filed on 28 October 2008 which dismissed two of his previous motions constitutes a new fact² since in it the Appeals Chamber quashed all trial findings relating to crimes he allegedly committed between 6 and 9 April 1994;³

NOTING that the Applicant contends that, as a consequence, there is no factual basis supporting his conviction;⁴

NOTING that in the Second Motion the Applicant argues that paragraph 474 of the Appeal Judgement contradicts "paragraphs 699, 892 and 545 to be read with paragraphs 432 and 433 of the Appeal Judgement";⁵

NOTING that in the Fourth Motion the Applicant requests an amendment of paragraph 474 of the Appeal Judgement;⁶

NOTING that in the Fifth Motion the Applicant requests the exclusion from the Appeal Judgement of all findings connected to purported convictions entered for the first time on appeal;⁷

NOTING that the Applicant argues that, in the absence of a Prosecution appeal, it would be unfair to convict him on appeal for crimes for which the Trial Chamber failed to enter a conviction;⁸

RECALLING that the Decision of 28 October 2008 dismissed the Applicant's requests for authorizing investigations on the basis that the Appeals Chamber has already quashed all the relevant convictions in the Appeal Judgement;⁹

RECALLING that there is no power to reconsider a final judgement as the Statute of the Tribunal only provides "for a right of appeal and the right of review but not for a second right of appeal by the avenue of reconsideration of a final judgement";¹⁰

² First Motion, para. 2, referring to *Hassan Ngeze v. The Prosecutor*, ICTR-99-52-R, Decision on Hassan Ngeze's Motions of 26 and 28 August 2008 ("Decision of 28 October 2008").

³ First Motion, para. 1.

⁴ First Motion, paras. 1, 2.

⁵ Second Motion p. 7. The Appeals Chamber notes that on 4 November 2008, Hassan Ngeze filed a Motion before the Office of the President and the Registrar seeking that a team be set up to look into alleged contradictions within the Appeals Judgement. Motion before the Office of the President and the Registrar, filed 4 November 2008.

⁶ Fourth Motion, para. 1.

⁷ Fifth Motion, para. 1.

⁸ Fifth Motion, para. 8.

⁹ Decision of 28 October 2008, p. 3.

¹⁰ *Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-R, Decision on Hassan Ngeze's Motion of 25 February 2008, 3 March 2008, p. 2; *Prosecutor v. Zoran Žigić*, Case No. IT-98-30/1-A, Decision on Žigić's "Motion for Reconsideration of Appeal Chamber Judgement IT-98-30/1-A Delivered on 28 February 2005", 26 June 2006, para. 9. See also *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Request for Reconsideration of the Decision on Request for Review, 27 September 2006; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Decision on Prosecutor's Request for Review or Reconsideration, 23 November 2006, paras. 79, 80 (Public Redacted

CONSIDERING that the First and Second Motions do not demonstrate any basis for a review and, together with the Fourth and Fifth Motions, in fact amount to requests for reconsideration of the Appeal Judgement;¹¹

FINDING therefore that the First, Second, Fourth and Fifth Motions are inadmissible;

CONSIDERING, *proprio motu*, that the second annexes to the First and Second Motions reveal confidential information;

FINDING therefore that they must be placed under seal;

NOTING that in the Third Motion the Applicant seeks “the permission to file the transcripts and other proceedings which are part of proceedings of Gacaca sessions in Gisenyi Rwanda” arguing that in these Gacaca proceedings Witness AHI contradicted his testimony at the Applicant’s trial before the Tribunal;¹²

FINDING that, because the Appeal Judgement is the final judgement in this case and the Applicant has failed to demonstrate any grounds for opening the review proceedings, the Appeals Chamber lacks jurisdiction to entertain such a request;

FOR THE FOREGOING REASONS,

DISMISSES the Motions;

ORDERS the Registry to immediately place Annex II of the First Motion and Annex II of the Second Motion under seal.

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

Done this 15th day of January 2009,
At The Hague, The Netherlands.

Fausto Pocar
Presiding Judge

Version); *Georges Anderson Nderubumwe 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. 6; *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-Misc.1, Decision on Strugar’s Request to Reopen Appeal Proceedings, 7 June 2007, para. 23; *Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-R, Decision on Hassan Ngeze’s Motions and Requests Related to Reconsideration, 31 January 2008, p. 3.

¹¹ See *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, paras. 433, 467-474, 545, 668-672, 887-892, 964-968, 1015, 1016, 1113, 1114.

¹² Third Motion, para. 1.

[Seal of the Tribunal]