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ICTR-01-71-R75
22 January 2009
{142/H – 139/H}

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun

Registrar: Mr. Adama Dieng

Order of: 22 January 2009

ICTR Appeals Chamber
Date: 22 January 09
Action: R. T. J. J. J.
Copied To: Concerned Judges

Parties, Archives LSS, LDS
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Emmanuel NDINDABAHIZI

v.

THE PROSECUTOR

Case No. ICTR-01-71-R75

**ORDER TO THE REGISTRAR CONCERNING EMMANUEL
NDINDABAHIZI'S ACCESS TO DOCUMENTS**

The Applicant

Mr. Emmanuel Ndindabahizi, *pro se*

The Office of the Prosecutor

Mr. Hassan Bubacar Jallow
Mr. Alex Obote-Odora
Ms. Dior Fall
Ms. Inneke Onsea

2009 JAN 23 P 1:04
JUDICIAL RECORDS/ARCHIVES
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: ROSETTE MUZIGO-MORRISON
SIGNATURE: *[Handwritten signature]* DATE: 23/01/09

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 “*Requête urgente demandant un délai supplémentaire pour faire appel de la décision de la chambre [sic] de première instance I: Decision on Ndindabahizi’s Motion for Reconsideration or Certification to Appeal Decision of 5 March 2008 on Disclosure of Closed Session Testimony’ du 13 novembre 2008, reçue le 2 décembre 2008*”, filed by Emmanuel Ndindabahizi (“Applicant”) on 12 December 2008 (“Motion”);

NOTING that the Prosecution has not filed a response to the Motion;

NOTING that on 2 October 2007, the Applicant seized Trial Chamber I of the Tribunal (“Trial Chamber”) with a request for variation of protective measures to enable communication of closed session testimonies and sealed exhibits with respect to Witnesses CGE, CGX, CGF, CGB, and CGH who testified in the Applicant’s case before the Tribunal, to the Gahigiro-Gasharu *Gacaca* court in Rwanda, following an allegedly successful compensation claim by one of these witnesses against the Applicant before that court;¹

NOTING that on 5 March 2008 the Trial Chamber rejected the Applicant’s request, finding no basis to vary the witness protection measures in relation to these witnesses;²

NOTING that on 13 November 2008, the Trial Chamber denied the Applicant’s request for reconsideration or certification to appeal the Decision of 5 March 2008, finding that the Decision of 5 March 2008 was not based on an incorrect interpretation of the law or an incorrect conclusion of fact and that it was not unfair or unreasonable so as to constitute an abuse of discretion;³

NOTING that the Applicant seeks an extension of time to appeal the Decision of 13 November 2008, arguing that the Decision of 13 November 2008 was only served on him on 2 December 2008

¹ See *The Prosecutor v. Emmanuel Ndindabahizi*, Case No. ICTR-01-71-R75, Decision on Disclosure of Closed Session Testimony of Witnesses CGE, CGX, CGF, CGB and CGH”, issued on 5 March 2008 (“Decision of 5 March 2008”), p. 2.

² *Ibid.*, p. 3. On 9 September 2008, the Appeals Chamber denied an appeal filed by the Applicant against the Decision of 5 March 2008. The Appeals Chamber found that the matter was not properly before the Appeals Chamber, because the Applicant had previously filed a request for reconsideration of the Decision of 5 March 2008 which was still pending before the Trial Chamber. *Emmanuel Ndindabahizi v. The Prosecutor*, Case No. ICTR-01-71-R75, Decision on Emmanuel Ndindabahizi’s Application Concerning Variation of Protective Measures, 9 September 2008, pp. 2, 3.

³ *The Prosecutor v. Emmanuel Ndindabahizi*, Case No. ICTR-2001-71-R, Decision on Ndindabahizi’s Motion for Reconsideration or Certification to Appeal Decision of 5 March 2008 on Disclosure of Closed Session Testimony, 13 November 2008 (“Decision of 13 November 2008”), para. 10.

and that, at that moment, he no longer had access to his files because he followed the instructions received on 24 November 2008 from the Commander of the United Nations Detention Facilities to prepare his luggage because his transfer to a third country was imminent;⁴

CONSIDERING that Rule 75(G) of the Rules of Procedure and Evidence of the Tribunal ("Rules") which allows for the possibility of seeking to rescind, vary, or augment protective measures ordered at trial, does not provide for an appeal as of right, nor do the Rules address the issue of whether a decision rendered by a Trial Chamber after the close of trial and appeal proceedings is subject to appeal;

CONSIDERING however that the Appeals Chamber has previously held that an applicant is entitled to lodge an appeal against a decision rendered by a Trial Chamber, pursuant to Rule 75(G) of the Rules after the close of trial and appeal proceedings;⁵

FINDING that this right to appeal a decision taken by a Trial Chamber must equally apply where an applicant, after the close of trial proceedings, seeks to rescind, vary or augment protective measures in respect of a victim or witness ordered in his or her own case, pursuant to Rules 69 and 75 of the Rules;

CONSIDERING that the Rules do not specify a time limit in which Applicants must lodge Appeals against decisions taken under Rules 69 and 75 of the Rules;

CONSIDERING further that for purposes of proceedings management, such a time limit should be established in this case, and that in order to determine a time limit in which the Applicant must lodge his appeal against the Decision of 13 November 2008, the Appeals Chamber needs to be informed whether the Applicant is able to access his files and documentation to prepare his appeal;

FOR THE FOREGOING REASONS,

ORDERS the Registrar, pursuant to Rule 33(B) of the Rules, to make a written submission to the Appeals Chamber, within seven days of the filing of this Order, explaining whether at present and until his transfer to a third State, the Applicant continues to have access to both the appropriate facilities and the files and documentation required to prepare his appeal against the Decision of 13 November 2008;

⁴ Motion, p. 5.

⁵ *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R75, Decision on Motion for Clarification, 20 June 2008, para. 14. The Appeals Chamber held that issues related to access to confidential material by a convicted person concern the important question of balancing between a convicted person's access to potentially exculpatory material and the need to guarantee the protection of victims and witnesses.

REMAINS seized of the matter.

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

Done this 22nd day of January 2009,
At The Hague,
The Netherlands.



[Seal of the Tribunal]

Theodor Meron
Theodor Meron
Presiding Judge