



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

155/H

*FD*

ICTR-01-71-R75  
19<sup>th</sup> February 2009  
{155/H - 151/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

Decision of: 19 February 2009

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
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NAME / NOM: *KARIM KUMELWA A. AKAHDE*  
SIGNATURE: *[Signature]* DATE: *19 Feb 2009*

**Emmanuel NDINDABAHIZI**

v.

**THE PROSECUTOR**

Case No. ICTR-01-71-R75

1 2009 FEB 20 11A 9 36  
JUDICIAL RECORDS/ARCHIVES  
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**DECISION ON EMMANUEL NDINDABAHIZI'S MOTION FOR LEAVE TO  
FILE AN APPEAL AGAINST THE TRIAL CHAMBER'S DECISION OF 13  
NOVEMBER 2008 AND AN EXTENSION OF TIME**

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

ICTR Appeals Chamber  
Date: *19th February 2009*  
Action: *R. J. J. J.*  
Copied To: *Concerned Judges,*

*Parties, Judicial Archives,  
LOs, LSS*

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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 "*Requête urgente demandant un délai supplémentaire pour faire appel de la décision de la chambres [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 did not file a response to the Motion;

**NOTING** that on 5 March 2008, Trial Chamber I of the Tribunal ("Trial Chamber") rejected a request filed by the Applicant for variation of protective measures to enable communication of closed session testimonies and sealed exhibits with respect to certain witnesses, having found no basis to vary the witness protection measures in relation to these witnesses;<sup>1</sup>

**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;<sup>2</sup>

**RECALLING** that on 22 January 2009, the Appeals Chamber found that the right of an applicant to lodge an appeal against a decision taken by a Trial Chamber pursuant to Rule 75 (G) of the Tribunal's Rules of Procedure and Evidence ("Rules") after the close of trial and appeal proceedings, must equally apply where an applicant, after the close of trial proceedings, seeks to

<sup>1</sup> *The Prosecutor v. Emmanuel Ndindabahizi*, Case No. ICTR-01-71-R75, Decision on Disclosure of Closed Session Testimony of Witnesses CGE, CGX, CGR, CGB and CGH, 5 March 2008 ("Decision of 5 March 2008"), pp. 2, 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.

<sup>2</sup> *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. The Appeals Chamber recalls its decision in *Niyitegeka*, in which it held that Rule 73 of the Rules is only applicable during the proceedings before Trial Chambers. It follows that an applicant need not invoke this provision to appeal decisions made by a Trial Chamber during the post-appeal phase of his case. See *The Prosecutor v. Elzér Niyitegeka*, Case No. ICTR-96-14-R75, Decision on Motion for Clarification, 20 June 2008, para. 13. The Appeals Chamber notes that, in the present case, the Applicant is in the post-appeal phase of proceedings: he has been convicted and is currently awaiting transfer to a third State. The Appeals Chamber is therefore of the view that, in light of the particular circumstances of this case, it is in the interests of justice for the Appeals Chamber to consider the Applicant's appeal against the Trial Chamber's Decision of 13 November 2008 denying the Applicant's request for reconsideration or certification to appeal the decision of 5 March 2008.

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rescind, vary or augment a decision on protective measures ordered in his or her own case pursuant to Rules 69 and 75 of the Rules;<sup>3</sup>

NOTING that on 9 February 2009, the Applicant filed a "*Réaction urgente à la 'Registry's Submission under Rule 33 (B) of the Rules on [the] Order to the Registrar concerning Emmanuel Ndindabahizi's [A]ccess to [D]ocuments of 22 January 2009'*" ("Response of 9 February 2009");<sup>4</sup>

NOTING that in his Motion, the Applicant seeks an extension of time to appeal the Decision of 13 November 2008 until he settles in the State in which his sentence is to be served,<sup>5</sup> arguing that the Decision of 13 November 2008 was only served on him on 2 December 2008 and that he no longer has access to his files because he followed the instructions received on 24 November 2008 from the Commander of the United Nations Detention Facility in Arusha ("UNDF") to prepare his luggage because his transfer to a third State was imminent;<sup>6</sup>

RECALLING that on 22 January 2009, the Appeals Chamber ordered the Registrar, pursuant to Rule 33(B) of the Rules, to make a written submission to the Appeals Chamber, 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;<sup>7</sup>

CONSIDERING the correspondence from the Applicant to the Commander of the UNDF dated 26 January 2009, wherein the Applicant explains that, in anticipation of his imminent transfer, he packed his documents and therefore, whilst he still has possession of these materials, his access to them is more difficult;<sup>8</sup>

<sup>3</sup> *The Prosecutor v. Emmanuel Ndindabahizi*, Case No. ICTR-2001-71-R75, Order to the Registrar Concerning Emmanuel Ndindabahizi's Access to Documents, 22 January 2009 ("Order of 22 January 2009"), p. 3.

<sup>4</sup> The Appeals Chamber notes that in his Response of 9 February 2009, the Applicant also requests that the Appeals Chamber order the Registrar to: 1) explain why the Applicant was effectively put on "stand - by" by the UNDF pending his transfer to a third State, with the result that he was unable to access his files; 2) confirm to the Applicant that he may unpack and access his judicial files; and 3) notify the Applicant in advance of his transfer to a third State, so that he may re-pack his effects. The Appeals Chamber will not consider the said first and third submissions of the Applicant, since they go beyond his original request for additional time to file his appeal until he settles in the state in which he will serve his sentence. See Response of 9 February 2009, para. 13.

<sup>5</sup> Motion, p. 5.

<sup>6</sup> Motion, p. 5. See also Response of 9 February 2009, para. 10.

<sup>7</sup> See Order of 22 January 2009, p. 3.

<sup>8</sup> See Correspondence from Emmanuel Ndindabahizi to the Commander of the UNDF dated 26 January 2009, attached as Annex A to the Registry's Submission under Rule 33(B) of the Rules on Order to the Registrar concerning Emmanuel Ndindabahizi's Access to Documents of 22 January 2009, filed on 28 January 2009 ("Registrar's Submission"), paras. 3, 7.

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**CONSIDERING** that on 28 January 2009, the Registrar submitted that the Applicant continues to have access to the appropriate facilities, files, and documentation required to prepare his appeal against the Trial Chamber's Decision of 13 November 2008;<sup>9</sup>

**CONSIDERING** therefore that since the Applicant has had continued access to his files, he has failed to demonstrate that for the filing of his appeal he needs additional time until after his transfer to the State in which his sentence is to be served;

**CONSIDERING** that at the time the Applicant filed the Motion, the Rules did not specify a time limit for the filing of appeals against decisions taken, after the close of trial proceedings, under Rule 75 of the Rules;<sup>10</sup>

**CONSIDERING** that for the purposes of proceedings management, it is appropriate to establish time limits for the briefing in this case;<sup>11</sup>

**FOR THE FOREGOING REASONS,**

**GRANTS** the Applicant's request for leave to appeal the Decision of 13 November 2008;

**ORDERS** the Applicant to file any appeal within 15 days of the filing of this decision;

**ORDERS** the Prosecution to file any response within 10 days of the filing of the appeal;

**ORDERS** the Applicant to file any reply within four days of the filing of the response;

**INSTRUCTS** the Registrar to take the appropriate steps to ensure that the Applicant is able to access his judicial files in order to prepare his submissions in this matter; and

**DISMISSES** the remainder of the Motion.

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

<sup>9</sup> Registrar's Submission, para. 3. 7.

<sup>10</sup> See Order of 22 January 2009, p. 3. It is noted that Rule 75 of the Rules was amended on 2 February 2009, during a plenary session of the Judges of the Tribunal. This provision now prescribes time limits for the submission of appeals and related filings that concern decisions made under Rules 69 and 75(A) and (G), of the Rules. See Rule 75(J) of the Rules. See also *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-3-R, Decision on Georges A. N. Rutaganda's Motion for Leave to File an Appeal against the Trial Chamber's Decision of 3 April 2008 and an Extension of Time, 16 February 2009 ("*Rutaganda Decision*"), p. 2.

<sup>11</sup> See Order of 22 January 2009, p. 3. See also *Rutaganda Decision*, p. 2.