



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

159/H

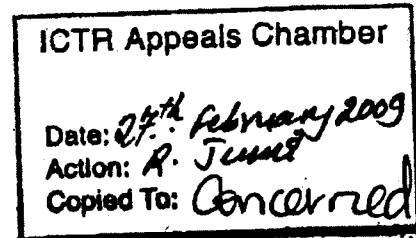
ICTR-01-71-R
27th February 2009
{159/H – 156/H}

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: 27 February 2009



Judicial Archives, Parties,
LDs, LSS
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Emmanuel NDINDABAHIZI

v.

THE PROSECUTOR

Case No. ICTR-01-71-R

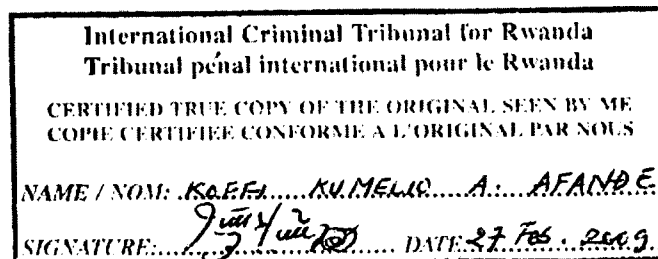
**DECISION ON EMMANUEL NDINDABAHIZI'S URGENT REQUEST FOR
CLARIFICATION OF THE APPEALS CHAMBER'S DECISION OF 24
SEPTEMBER 2008**

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



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 "Urgent Request for Clarification of the 'Decision on Emmanuel Ndindabahizi's Motion of [sic] Assignment of Counsel and the Prosecution's Request to Place the Motion under Seal' Delivered on 24 September 2008", filed by Emmanuel Ndindabahizi ("Applicant") on 22 December 2008 ("Motion");¹

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

NOTING that the Applicant seeks clarification and review of a decision delivered by the Appeals Chamber on 24 September 2008,² which denied the Applicant's request³ for assignment of counsel to assist him with a potential request for review of the judgement rendered by the Appeals Chamber on 16 January 2007 in this case;⁴

NOTING that the Applicant requests the Appeals Chamber, by way of remedy, to order the Registrar to provide him with the legal assistance that he sought in his Motion of 16 July 2008;⁵

CONSIDERING that in the present Motion the Applicant in fact seeks the reconsideration of the 24 September 2008 Decision;⁶

¹ The Appeals Chamber notes that the Motion was received by the Commanding Officer of the United Nations Detention Facility ("UNDF") on 19 December 2008, but was only transmitted to the Registry on 22 December 2008.

² Motion, paras. 13, 19. See also *Emmanuel Ndindabahizi v. The Prosecutor*, Case No. ICTR-01-71-R, Decision on Emmanuel Ndindabahizi's Motion for Assignment of Counsel and the Prosecution's Request to Place the Motion Under Seal, 24 September 2008 ("24 September 2008 Decision"). The Appeals Chamber recalls that the 24 September 2008 Decision was in fact only served on the parties on 12 December 2008, as a result of an enquiry made by the Appeals Chamber to the Registry as to the status of this service. See *Emmanuel Ndindabahizi v. The Prosecutor*, Case No. ICTR-01-71-R, Decision on Emmanuel Ndindabahizi's Motion of 1 December 2008, 17 December 2008 ("17 December 2008 Decision"), p. 2, fn. 4.

³ See « *Requête rappelant et complétant celle du 18 avril 2008 intitulée: 'Demande de commission d'un conseil pour une durée limitée, pour la préparation d'une requête en révision' - Article 45 du Règlement de procédure et de preuve* », filed on 16 July 2008 ("Motion of 16 July 2008").

⁴ *Emmanuel Ndindabahizi v. The Prosecutor*, Case No. ICTR-01-71-A, Judgement, 16 January 2007 ("Appeal Judgement").

⁵ Motion, para. 19.

⁶ The Appeals Chamber considers that the present decision is different from that of *Niyitegeka*, in which it held that the Appeals Chamber had no power to reconsider a final judgment. The Appeals Chamber held, by majority, that "because the Impugned Decision rejected Niyitegeka's requests for review of the Appeal Judgement, it is a final decision closing the proceedings in this case." See *Elizé 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, pp. 2, 3. In the present case, unlike in *Niyitegeka*, the proceedings will not be effectively terminated by this decision, as it deals with the assignment of counsel, rather than the review itself.

RECALLING that the Appeals Chamber has inherent discretionary power to reconsider its decisions if a clear error of reasoning has been demonstrated or if it is necessary in order to prevent an injustice;⁷

NOTING that the Applicant submits that, in the 24 September 2008 Decision, the Appeals Chamber misapprehended several submissions in his Motion of 16 July 2008,⁸ and consequently erred when making findings on these submissions;⁹

NOTING that the Applicant contends that the Appeals Chamber erred in stating that he does not wish to present certain "elements" drawn from the allegedly false testimonies of Witnesses CGY and CGN, as described in paragraphs 2 through 12 of his Motion of 16 July 2008, as part of his request for review of the Appeal Judgement;¹⁰

NOTING that the Applicant further submits that the Appeals Chamber failed to understand that the very reason why he wished to have counsel assigned was so that counsel: 1) could review and verify the "new information" in the Applicant's possession prior to it being communicated to the Appeals Chamber or the Prosecution; and 2) could merge this "new information" with "elements" drawn from the allegedly false testimonies of Witnesses CGY and CGN, so as to prepare a motion for review of the Appeal Judgement;¹¹

NOTING that the Applicant appears to contend that the decision by the Appeals Chamber to not assign counsel at the expense of the Tribunal to assist him in this regard is contrary to the interests of justice and amounts to a violation of the principle of equality of arms, since he is not qualified to review this "new information" on his own;¹²

NOTING that in its 24 September 2008 Decision, the Appeals Chamber considered that, in the absence of information as to the potential grounds for review, beyond the Applicant's mere contention that he was in possession of "new facts" which he would present to the Appeals Chamber in a future request for review, it could not conclude that assignment of counsel to the Applicant under the Tribunal's legal aid scheme was warranted;¹³

⁷ *The Prosecutor v. Jean-Bosco Barayagwiza*, Case No. ICTR-99-52A-R, Decision on Jean-Bosco Barayagwiza's Motion of 2 May 2008, 9 September 2008, p. 3; *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-A, Decision on Motion for Reconsideration of the Decision on Request to Admit Additional Evidence, 16 November 2007, p. 2; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.10, Decision on Ngirumpatse's Motion for Reconsideration, 5 October 2007, p. 3.

⁸ Motion, paras. 13, 15-18.

⁹ Motion, paras. 6, 18.

¹⁰ Motion, para. 6 citing 24 September 2008 Decision, fn. 5. See also Motion, paras. 7, 13, 14, 16-18.

¹¹ Motion, paras. 7, 13-15, 17, 18.

¹² Motion, paras. 7, 17, 19.

¹³ See 24 September 2008 Decision, pp. 2, 3.