



International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

69/H

ICTR-07-91-A
25th March 2009
{69/H – 66/H}

IN THE APPEALS CHAMBER

Before: Judge Mehmet Güney, Presiding
Judge Mohamed Shahabuddeen
Judge Liu Daqun
Judge Andrésia Vaz
Judge Theodor Meron

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: *KOFFI... KUMELID... A... AFANDE...*
SIGNATURE: *[Signature]* DATE: *25 March 2009*

Registrar: Mr. Adama Dieng

Decision of: 25 March 2009

LÉONIDAS NSHOGOZA

v.

THE PROSECUTOR

ICTR Appeals Chamber
Date: *25th March 2009*
Action: *R. Juma*
Copied To: *Concerned Judges, SLOs, LOs, ALOs, Parties, CMS/Arusha, LSS.*

Case No. ICTR-2007-91-A

DECISION ON LÉONIDAS NSHOGOZA'S APPLICATION FOR LEAVE TO REQUEST REVIEW OF A TRIAL CHAMBER DECISION

Counsel for the Defence
Ms. Allison Turner

Office of the Prosecutor
Mr. Hassan Bubacar Jallow
Mr. Richard Karegyesa
Mr. Abdoulaye Seye
Mr. Dennis Mabura

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25 March 2009

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 Defence Application for Leave to Request a Review of a Trial Chamber Decision Denying the Accused a Fair Trial”, filed by Léonidas Nshogoza on 2 March 2009 (“Application” and “Applicant”, respectively);

NOTING the Prosecution Response, filed on 5 March 2009,¹ and the Corrigendum to the Prosecution Response, filed on 9 March 2009, in which the Prosecution opposes the Application;²

NOTING that the Applicant did not file a reply;

NOTING the “Defence Request for Leave to File Further Submissions”, filed by the Applicant on 17 March 2009 (“Request for Leave to File Further Submissions”) in support of his Application;

NOTING that the Applicant seeks leave to request review of the “Decision on Defence Motion for Reconsideration of the Chamber’s Further Order for the Defence to Reduce its Witness List”, rendered by Trial Chamber III on 26 February 2009 (“Impugned Decision”);³

NOTING that the Applicant contends that the Impugned Decision unreasonably restricts his ability to call witnesses and that as a consequence “a fair trial is impossible”;⁴

NOTING that the Applicant submits that “[t]he Appeals Chamber has the inherent jurisdiction to review decisions, even if such review is not explicitly provided by the Statute and Rules”;⁵

NOTING that the Applicant contends that the Appeals Chamber’s intervention is warranted in this case because “after the commencement of the [...] [D]efence case” his prejudice “will be *irreparable*” and could not be corrected on appeal;⁶

¹ Prosecutor’s Response to “Urgent Defence Application for Leave to Request a Review of Trial Chamber Decision Denying the Accused a Fair Trial” filed on 02 March 2009, 5 March 2009 (“Prosecution Response”).

² Corrigendum to the Prosecutor’s Response to “Urgent Defence Application for Leave to Request a Review of Trial Chamber Decision Denying the Accused a Fair Trial” filed on 02 March 2009, 9 March 2009 (“Corrigendum to the Prosecution Response”).

³ Application, p. 8.

⁴ Application, para. 11.

⁵ Application, para. 10, referring to *In re André Ntagerura*, ICTR-99-46-A28, Decision on Motion for Leave to Appeal the President’s Decision of 31 March 2008 and the Decision of the Trial Chamber Rendered on 15 May 2008, 11 September 2008 (“*Ntagerura Decision*”), para. 12.

⁶ Application, para. 10.

NOTING that the Applicant asserts that he was “left with no option but to directly seek leave of the Appeals Chamber in order to secure the fair trial which is being denied by the Trial Chamber”;⁷

NOTING that the Applicant further contends that the Impugned Decision is manifestly unreasonable and *ultra vires* because the Trial Chamber acted outside the discretion granted to it by Rule 73ter (D) of the Rules of Procedure and Evidence of the Tribunal (“Rules”);⁸

NOTING that the Impugned Decision denied the Applicant’s request for reconsideration of an order delivered *proprio motu* by the presiding judge, Judge Khalida Rachid Khan, pursuant to Rule 54 of the Rules, on 23 February 2009, which ordered the Applicant to “reduce the number of witnesses on the Defence Witness List who will give oral testimony to no more than ten”, and to file a revised Defence Witness List by 25 February 2009;⁹

NOTING that in the *Ntagerura* Decision, on which the Applicant relies in support of his Application, the Appeals Chamber recalled its “inherent jurisdiction over the enforcement of its orders and any decisions rendered as a consequence thereof [as well as] [...] to review decisions issued by the President of the Tribunal in certain instances, where such decisions are closely related to issues involving the fairness of proceedings before the Appeals Chamber”;¹⁰

CONSIDERING that the circumstances of the present case are distinguishable from the circumstances of the *Ntagerura* Decision in that the Application does not concern the question of enforcement of an order of the Appeals Chamber or any decision rendered as a consequence thereof, and that it does not concern a matter closely related to issues involving the fairness of proceedings before the Appeals Chamber;

CONSIDERING that the Impugned Decision concerns an exercise of discretion of the Trial Chamber in relation to the conduct of proceedings before it pursuant to Rule 73ter of the Rules and that, as such, it is without interlocutory appeal save with certification of the Trial Chamber;¹¹

CONSIDERING that the Applicant has not obtained certification to appeal the Impugned Decision;

⁷ Application, para. 11.

⁸ Application, paras. 13-20.

⁹ Further Order for the Defence to Reduce its List of Witnesses, Rules 54 and 73ter(D) of the Rules, 23 February 2009, p. 3.

¹⁰ *Ntagerura* Decision, para. 12.

¹¹ Rule 73(B) of the Rules. See also *Édouard Karemera et al.*, ICTR-98-44-AR73.14, Decision on Mathieu Ndirumpatse’s Appeal From the Trial Chamber Decision of 17 September 2008, 30 January 2009; *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-AR73, Decision on Joseph Kanyabashi’s Appeal against the Decision of Trial Chamber II of 21 March 2007 concerning the Dismissal of Motions to Vary his Witness List, 21 August 2007.

FINDING therefore that the Appeals Chamber is not properly seized of the Application;

FINDING therefore that the Appeals Chamber need not address the Request for Leave to File Further Submissions, which merely relates to the merits of the Application, without shedding any light on the question of its admissibility;

FOR THE FOREGOING REASONS,

DISMISSES the Application;

DISMISSES the Request for Leave to File Further Submissions.

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

Done this 25th day of March 2009,

at The Hague,
The Netherlands.



[Seal of the Tribunal]

A handwritten signature in black ink, appearing to read "Mehmet Güney".

Judge Mehmet Güney
Presiding