



UNITED NATIONS  
NATIONS UNIES



**Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda**

70/H

**ICTR-96-13-R  
27<sup>th</sup> April 2009  
{70/H – 65/H}**

**IN THE APPEALS CHAMBER**

**Before:** Judge Andréia Vaz, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Liu Daqun

**Registrar:** Mr. Adama Dieng

**Decision of:** 23 April 2009

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**Alfred MUSEMA-UWIMANA**

v.

**THE PROSECUTOR**

*Case No. ICTR-96-13-R*

**DECISION ON MOTION FOR RECONSIDERATION OF DECISION ON  
REQUEST FOR ASSIGNMENT OF COUNSEL OF 27 FEBRUARY 2009**

ICTR Appeals Chamber  
Date: 27<sup>th</sup> April 2009  
Action: R-Judicial  
Copied To: Concerned Judges, Parties,  
Judicial Archives, LOs, LSS

**The Applicant**

Alfred Musema-Uwimana, *pro se*

**Office of the Prosecutor**

Hassan Bubacar Jallow  
Alex Obote-Odora  
George W. Mugwanya

**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**  
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME  
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NAME / NOM: KUREZI... KUNZU... A... A...  
SIGNATURE: [Signature] DATE: 27 APRIL 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),

**NOTING** the Trial Judgement and the Appeal Judgement rendered in this case on 27 January 2000 and 16 November 2001, respectively;<sup>1</sup>

**NOTING** the “Decision on Request for Assignment of Counsel” dated 27 February 2009, whereby the Appeals Chamber dismissed Alfred Musema-Uwimana’s request for assignment of counsel under the Tribunal’s legal aid scheme to assist him with a potential request for review of the Appeal Judgement (“Impugned Decision”);

**BEING SEIZED OF** the “*Requête de l’Appelant en révision de la ‘Decision on Request for Assignment of Counsel’ de la Chambre d’Appel rendue le 27 Février 2009*”, filed on 9 March 2009 (“Motion”) by Alfred Musema-Uwimana (“Applicant”), in which he requests the Appeals Chamber to “review” the Impugned Decision and order the assignment of counsel to him at the Tribunal’s expense;<sup>2</sup>

**NOTING** that the Applicant submits that (i) contrary to the Appeals Chamber’s statement in the Impugned Decision, he did file a reply to the Prosecution’s response within the prescribed time-limit;<sup>3</sup> (ii) the information that he filed a reply is a new fact that justifies a review of the Impugned Decision;<sup>4</sup> and (iii) the decision of the Appeals Chamber to dismiss his request for assignment of counsel on the ground that he did not file a reply causes him serious prejudice;<sup>5</sup>

**NOTING** that the Applicant reiterates that he is in possession of information which constitutes new facts and now provides the following details:

- (i) he has information as to the location of witnesses who could not be located during trial or appeal proceedings and who would prove his innocence;<sup>6</sup>

<sup>1</sup> *The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, Judgement and Sentence, 27 January 2000; *Alfred Musema v. The Prosecutor*, Case No. ICTR-96-13-A, Judgement, 16 November 2001 (“Appeal Judgement”).

<sup>2</sup> Motion, para. 29.

<sup>3</sup> Motion, paras. 3-15, annexing “*Réplique du Requérent à ‘Prosecutor’s Response to Musema’s Motion for Assignment of Counsel’*”, dated 9 February 2009, filed on 23 February 2009 (“Reply to Original Motion”).

<sup>4</sup> Motion, para. 16.

<sup>5</sup> Motion, para. 18.

<sup>6</sup> Motion, paras. 25, 26.

- (ii) he has information as to the existence of exculpatory documentary evidence not available at trial or on appeal which the Prosecution failed to disclose;<sup>7</sup>

**NOTING** the Applicant's argument that the role of the requested counsel would be to record the statements of these witnesses, collate the new exculpatory documentary evidence, and assess the weight and value of these new materials with a view to filing a motion for review;<sup>8</sup>

**NOTING** the Applicant's further argument that the principle of equality of arms justifies the assignment of counsel at the Tribunal's expense because the human resources at the disposal of the Prosecution are clearly greater than his;<sup>9</sup>

**NOTING** that the Prosecution opposes the Motion on the grounds that (i) the Appeals Chamber has no power to review the Impugned Decision; and (ii) in case the Motion were viewed as a request for reconsideration, the Applicant fails to show a clear error of reasoning on the part of the Appeals Chamber or that reconsideration is necessary to prevent an injustice;<sup>10</sup>

**NOTING** the Registry's submission filed under Rule 33(B) of the Rules of Procedure and Evidence of the Tribunal ("Rules") that the Applicant's Reply to Original Motion was received and transmitted to the parties and the Appeals Chamber by the Court Management Section on 23 February 2009 and that the delay in the filing of that reply may not be attributed to the Applicant;<sup>11</sup>

**NOTING** that the Applicant did not file a reply to the Prosecution Response within the prescribed time-limit;

**NOTING** the letter from Mr. Steven Kay, the Applicant's former Lead Counsel, signed on 10 March 2009 and filed with the Registry on 17 March 2009, requesting the Appeals Chamber, *inter alia*, to suspend consideration of the Applicant's request for assignment of counsel;

**NOTING** the Applicant's letter filed on 16 March 2009, in which he states that he subscribes to Mr. Kay's request;

<sup>7</sup> Motion, para. 26, referring as examples to the "*Rapport préliminaire d'identification des sites du génocide et des massacres d'avril-juillet 1994 au Rwanda*" published in February 2006 by the Ministry of Higher Education, Scientific Research and Culture, and to an investigative report prepared by Ms. Laretta Lynch in her capacity as Special Counsel commissioned by the Prosecutor in 2005.

<sup>8</sup> Motion, paras. 21, 25-27.

<sup>9</sup> Motion, para. 23.

<sup>10</sup> Prosecutor's Response to Musema's Request for Review of Decision on Request for Assignment of Counsel, 12 March 2009 ("Prosecution Response"), paras. 2-7.

<sup>11</sup> Registry's Submission under Rule 33(B) of the Rules on Alfred-Uwimana's "*Requête de l'Appelant en révision de la 'Decision on Request for Assignment of Counsel' de la Chambre d'Appel rendue le 27 Février 2009*", 17 March 2009.

**NOTING** the letter filed on 25 March 2009 by Gabrielle McIntyre in her capacity as Chef de Cabinet of the Office of the Presiding Judge of the Appeals Chamber, in which Mr. Kay was informed that he had no standing to file submissions in this case and that his request should be more appropriately addressed by way of a motion by the Applicant or by himself provided he follows the procedure to be assigned as the Applicant's counsel on a *pro bono* basis;

**NOTING** that, as of today, the Applicant has not filed a motion for suspension of his request for assignment of counsel and that Mr. Kay has not filed a power of attorney with the Registrar to represent the Applicant;

**CONSIDERING** therefore that the Applicant's statement that he subscribes to Mr. Kay's request for suspension is moot and that, in the circumstances, it is appropriate for the Appeals Chamber to rule on the Motion;

**RECALLING** that only a "final judgement" may be subject to review proceedings pursuant to Article 25 of the Tribunal's Statute and Rule 120 of the Rules;<sup>12</sup>

**NOTING** that the Impugned Decision rules on a request for assignment of counsel and thereby does not amount to a "final judgement";

**FINDING** therefore that the Appeals Chamber does not have jurisdiction to entertain a request for review of the Impugned Decision;

**CONSIDERING** however that, although the Applicant construed the present Motion as a request for review, he is in fact seeking the reconsideration of the Impugned Decision;

**RECALLING** that the Appeals Chamber may reconsider a previous decision pursuant to its inherent discretionary power if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice;<sup>13</sup>

**CONSIDERING** that the Appeals Chamber erroneously stated that the Applicant had not filed a reply to the Prosecution's response to his original request for assignment of counsel;<sup>14</sup>

<sup>12</sup> *Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-97-19-AR72, Decision (Prosecutor's Request for Review or Reconsideration), 31 March 2000, para. 49.

<sup>13</sup> *Emmanuel Ndingabahizi v. The Prosecutor*, Case No. ICTR-01-71-R, Decision on Emmanuel Ndingabahizi's Urgent Request for Clarification of the Appeals Chamber's Decision of 24 September 2008, 27 February 2009, p. 3; *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. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.10, Decision on Ndirumapatse's Motion for Reconsideration, 5 October 2007, p. 3.

<sup>14</sup> Impugned Decision, p. 2.

**CONSIDERING** however that, contrary to the Applicant's assertion, the Appeals Chamber did not base the Impugned Decision on the absence of a reply but, instead, on the absence of information as to the potential grounds for review;<sup>15</sup>

**CONSIDERING** further that, in his Reply to Original Motion, the Applicant did not provide any further information as to the potential grounds for review;<sup>16</sup>

**CONSIDERING** that, even if the Appeals Chamber had explicitly discussed the substance of the Reply to Original Motion in the Impugned Decision, it would not have changed its outcome;

**FINDING** therefore that the Appeals Chamber's erroneous statement does not constitute an error of reasoning or an injustice that would justify reconsideration of the Impugned Decision;

**RECALLING** that, as a matter of principle, it is not for the Tribunal to assist a convicted person whose case has reached finality with any new investigation he would like to conduct or any new motion he may wish to bring by assigning him legal assistance at the Tribunal's expense and that it is only in exceptional circumstances that a convicted person will be granted legal assistance by the Tribunal after a final judgement has been rendered against him;<sup>17</sup>

**CONSIDERING** that the Applicant should have provided the necessary information as to the potential grounds for review in his original request for assignment of counsel;

**CONSIDERING** in any event that the information on the nature of the "new facts" provided by the Applicant in his Motion would not have satisfied the Appeals Chamber that the assignment of counsel at the Tribunal's expense was necessary in order to ensure the fairness of the proceedings at the preliminary examination stage;<sup>18</sup>

**FINDING** therefore that the Applicant has failed to show a clear error of reasoning on the part of the Appeals Chamber in dismissing his request for the assignment of counsel under the Tribunal's legal aid scheme, or that reconsideration of the Impugned Decision is necessary in order to prevent injustice;

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<sup>15</sup> Impugned Decision, p. 3.

<sup>16</sup> The Applicant merely stated that, in case the Appeals Chamber were to need information on the basis for his potential request for review, he would provide it subject to any protective measures the requested counsel may ask for: Reply to Original Motion, para. 6.

<sup>17</sup> *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Fourth Request for Review, public redacted version, signed on 12 March 2009, filed on 21 April 2009, para. 52.

<sup>18</sup> *Cf. Ibid.*, para. 51, and references cited therein; Impugned Decision, p. 2.

**FOR THE FOREGOING REASONS,**

**DISMISSES** the Motion; and

**REMINDS** the Applicant that he may be assisted by counsel in connection with a request for review at his own expense, at the expense of a third party or on a *pro bono* basis, provided that counsel files a power of attorney with the Registrar and satisfies the requirements to appear before the Tribunal.

Done this twenty-third day of April 2009,  
at The Hague,  
The Netherlands.



Andréia Vaz  
Presiding Judge

[Seal of the Tribunal]