



UNITED NATIONS  
NATIONS UNIES



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

248/H

ICTR-2001-70-A  
21<sup>st</sup> January 2010  
{248/H - 246/H}

**IN THE APPEALS CHAMBER**

**Before:** Judge Patrick Robinson, Presiding  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Liu Daqun  
Judge Theodor Meron

**Registrar:** Mr. Adama Dieng

**Order of:** 21 January 2010

**THE PROSECUTOR**

v.

**EMMANUEL RUKUNDO**

*Case No. ICTR-2001-70-A*

**ORDER ON FILING OF GEORGES RUTAGANDA'S MOTION FOR  
ACCESS TO CONFIDENTIAL MATERIAL OF WITNESS "CSH" BEFORE  
THE APPEALS CHAMBER**

ICTR Appeals Chamber

**The Applicant**

Mr. Georges Rutaganda, *pro se*

**Counsel for Mr. Emmanuel Rukundo**

Ms. Aïsha Condé  
Mr. Benoît Henry

**Office of the Prosecutor**

Mr. Hassan Bubacar Jallow  
Mr. Alex Obote-Odora  
Ms. Linda Bianchi  
Mr. Ousman Jammeh  
Ms. Madeleine Schwarz

Date: 21<sup>st</sup> January 2010  
Action: R. Jammeh  
Copied To: Concerned Judges, Parties,

Judicial Archives, HQ, LSS

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
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NAME / NOM: K. O. J. A. ... R. U. M. E. L. I. C. ... A. ... N. E. A. N. D. E.  
SIGNATURE: DATE: 21 Jan. 2010

**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** “Rutaganda’s Extremely Urgent Motion for Access to Confidential Material of Witness ‘CSH’ in *Rukundo* Case (ICTR-2001-70-T)”, filed by Georges Rutaganda on 29 December 2009 before Trial Chamber II of the Tribunal (“Motion” and “Trial Chamber”, respectively);

**NOTING** the “Prosecutor’s Response to Rutaganda’s Exteremly [sic] Urgent Motion for Access to Confidential Material of Witness ‘CSH’ in *Rukundo* Case (ICTR 2001-70-T)”, filed on 7 January 2010 before the Trial Chamber (“Response”);

**BEING SEISED OF** the “Rejoinder to the ‘Prosecutor’s Response to Rutaganda’s Extremely Urgent Motion for Access to Confidential Material of Witness ‘CSH’ in *Rukundo* Case (ICTR-2001-70-T)”, filed on 11 January 2010 before the Appeals Chamber (“Reply”);

**NOTING** that both Mr. Rutaganda and the Prosecution have requested that the Motion be transferred to be heard before the Appeals Chamber;<sup>1</sup>

**RECALLING** that, pursuant to Rule 75(G) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), a party to proceedings before the Tribunal (“second proceedings”) seeking to rescind, vary, or augment protective measures previously ordered in other proceedings before the Tribunal (“first proceedings”) must apply: (i) to any Chamber, however constituted, remaining seized of the first proceedings; or (ii) if no Chamber remains seized of the first proceedings, to the Chamber seized of the second proceedings;

**RECALLING** that when the Appeals Chamber becomes seized of an appeal against a Trial Judgement, it becomes the Chamber “seised of the first proceedings” within the meaning of Rule 75(G)(i) of the Rules;<sup>2</sup>

<sup>1</sup> Response, para. 8; Reply, para. 6.

<sup>2</sup> *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Decision on Radovan Karadžić’s Motion for Variance of Protective Measures, 8 October 2009, para. 6; *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-A, Decision on Radovan Karadžić’s Motion for Variance of Protective Measures, 25 September 2009, para. 7; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Momčilo Perišić’s Motion Seeking Access to Confidential Material in the Blagojević and Jokić Case, 18 January 2006, para. 3. See also *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Decision on Michel Bagaragaza’s Motion for Access to Confidential Material, 14 May 2009 (assuming its jurisdiction without further discussion).

**CONSIDERING** that Mr. Rutaganda seeks access to confidential material from the case of *The Prosecutor v. Emmanuel Rukundo*, in which the Appeals Chamber is seised of an appeal against the Trial Judgement;<sup>3</sup>

**FINDING**, therefore, that the Motion and Response should have been filed before the Appeals Chamber;


**FOR THE FOREGOING REASONS,**

**HEREBY DIRECTS** the Registry to withdraw the filing of the Motion and Response from the Trial Chamber and to re-file the Motion, Response, and Reply before the Appeals Chamber in the present case.

Done this twenty-first day of January 2010  
At The Hague,  
The Netherlands.



[Seal of the Tribunal]

  
\_\_\_\_\_  
Judge Patrick Robinson  
Presiding

<sup>3</sup> See Prosecutor's Notice of Appeal, 14 April 2009; Prosecutor's Appellant's Brief, 14 May 2009; *Acte d'appel d'Emmanuel Rukundo du Jugement rendu le 27 février 2009*, 6 November 2009; *Mémoire d'appel de la défense*, 19 January 2010.