



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

2419/H

ICTR-96-14-R  
27<sup>th</sup> January 2010  
{2423/H - 2419/H}

**IN THE APPEALS CHAMBER**

Before:

Judge Patrick Robinson, Presiding  
Judge Fausto Pocar  
Judge Liu Daqun  
Judge Theodor Meron  
Judge Carmel Agius

Registrar:

Mr. Adama Dieng

Decision of:

27 January 2010

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME  
COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR NOUS  
NAME / NOM: *Koffi Koumela A. AFANDI*  
SIGNATURE: *[Signature]* DATE: *27/01/2010*

**Eliézer NIYITEGEKA**

v.

**THE PROSECUTOR**

*Case No. ICTR-96-14-R*

**Public Redacted Version**

**DECISION ON FIFTH REQUEST FOR REVIEW**

**The Applicant**

Mr. Eliézer Niyitegeka, *pro se*

**Office of the Prosecutor**

Mr. Hassan Bubacar Jallow  
Mr. Alex Obote-Odora

ICTR Appeals Chamber  
Date: *27<sup>th</sup> January 2010*  
Action: *R. Juma*  
Copied To: *Concerned Judges,  
Parties, Judicial Archives, LOs,  
LSS. [Signature]*

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1. 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), is seized of the "*Cinquième Requête d'Éliézer Niyitegeka aux fins d'une révision de l'Arrêt rendu par la Chambre d'appel le 09 juillet 2004*" filed confidentially on 27 October 2009 ("Fifth Request for Review" or "Request") by Éliézer Niyitegeka ("Niyitegeka"). On 2 December 2009, the Prosecution filed its confidential response.<sup>1</sup> Niyitegeka did not file a reply.

### I. PROCEDURAL BACKGROUND

2. On 16 May 2003, Trial Chamber I of the Tribunal ("Trial Chamber") convicted Niyitegeka, the former Minister of Information in the Rwandan Interim Government in 1994, of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, and murder, extermination, and other inhumane acts as crimes against humanity, and sentenced him to imprisonment for the remainder of his life.<sup>2</sup> In its Judgement of 9 July 2004, the Appeals Chamber dismissed Niyitegeka's appeal against his convictions and affirmed his sentence.<sup>3</sup>

3. On 27 October 2004, Niyitegeka filed his First Request for Review,<sup>4</sup> which the Appeals Chamber dismissed on 30 June 2006 ("First Review Decision").<sup>5</sup> On 27 September 2006, the Appeals Chamber dismissed Niyitegeka's request for reconsideration of the First Review Decision.<sup>6</sup> On 8 December 2006, Niyitegeka filed his Second Request for Review,<sup>7</sup> which the Appeals Chamber denied on 6 March 2007 ("Second Review Decision").<sup>8</sup> On 17 April 2007, the Appeals Chamber denied Niyitegeka's request for clarification of the Second Review Decision on the ground that the request was a veiled attempt to seek reconsideration of the final Appeal Judgement as well as the subsequent First and Second Review Decisions.<sup>9</sup> Niyitegeka filed a Third Request for

<sup>1</sup> Prosecutor's Response to Niyitegeka's Fifth Request for Review, confidential, 2 December 2009 ("Prosecution Response").

<sup>2</sup> *The Prosecutor v. Éliézer Niyitegeka*, Case No. ICTR-96-14-T, Judgement, 16 May 2003 ("Trial Judgement"), paras. 420, 429, 437, 447, 454, 467, 480, 502.

<sup>3</sup> *Éliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-A, Judgement, 9 July 2004 ("Appeal Judgement"), para. 270.

<sup>4</sup> *Requête en révision du jugement/réparation du préjudice causé par la violation, par le Procureur, du Règlement et des règlements internes*, 27 October 2004 ("First Request for Review"), which was supplemented with additional briefing, including written submissions from assigned counsel.

<sup>5</sup> Decision on Request for Review, 30 June 2006, paras. 1, 76.

<sup>6</sup> Decision on Request for Reconsideration of the Decision on Request for Review, 27 September 2006.

<sup>7</sup> *Requête en révision de l'Arrêt rendu par la Chambre d'appel le 9 juillet 2004 et, subséquemment, de la Décision de la Chambre d'appel du 30 juin 2006*, 8 December 2006 ("Second Request for Review").

<sup>8</sup> Decision on Request for Review, 6 March 2007, para. 31.

<sup>9</sup> Decision on Request for Clarification, 17 April 2007, paras. 4, 5.

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Review on 22 August 2007,<sup>10</sup> which the Appeals Chamber denied on 23 January 2008 ("Third Review Decision").<sup>11</sup>

4. In his Fourth Request for Review filed on 25 November 2008, Niyitegeka requested the Appeals Chamber to, *inter alia*, admit as "new facts" and as grounds for review six statements from individuals designated as R-9, R-10, R-11, R-12, R-13, and R-14 whose identities were not disclosed ("Additional Statements").<sup>12</sup> Niyitegeka, who did not provide the actual statements, explained that the information contained therein would reveal that Prosecution Witness GGV<sup>13</sup> was not credible.<sup>14</sup> The Appeals Chamber denied Niyitegeka's request in its entirety.<sup>15</sup>

5. Niyitegeka now requests the Appeals Chamber to (i) admit as "new facts" the statements of [redacted]; (ii) find that it erred in affirming the Trial Chamber's factual findings based on Witness GGV's testimony; and (iii) hear the parties' submissions on the review of the Appeal Judgement.<sup>16</sup>

## II. SUBMISSIONS

6. Niyitegeka submits that the statements of [redacted] rebut Witness GGV's testimony about the meetings in Kibuye Prefectoral Office and the attack in Kiziba in June 1994 where the witness claims he saw Niyitegeka.<sup>17</sup> He argues that the statements, as corroborated by Alison des Forges's testimony before a U.S. immigration court, are "new facts" because they provide new information which proves that Witness GGV's testimony before the Trial Chamber was false.<sup>18</sup> In his view, they call for a review of all factual findings based on Witness GGV's testimony.<sup>19</sup>

7. The Prosecution responds that Niyitegeka impermissibly repeats unsuccessful arguments from his Fourth Request for Review, and that his current Request should be dismissed on that basis alone.<sup>20</sup> In addition, the Prosecution submits that the annexed statements do not constitute "new

<sup>10</sup> *Requête aux fins d'une révision de l'Arrêt rendu par la Chambre d'appel le 09 juillet 2004 ou, alternativement, aux fins d'une ordonnance d'enquête sur les faux témoignages des témoins de l'Accusation*, confidential, 22 August 2007 ("Third Request for Review").

<sup>11</sup> Decision on Third Request for Review, 23 January 2008, paras. 9, 33.

<sup>12</sup> Fourth Request for Review of the Judgement Rendered by the Appeals Chamber on 9 July 2004, and for Legal Assistance, 3 February 2009 (French original filed on 25 November 2008) ("Fourth Request for Review"), paras. 65(ii) and (iii).

<sup>13</sup> Prosecution Witness GGV's sole testimony was relied upon at trial to convict Niyitegeka of certain charges. See Trial Judgement, paras. 208-229, 265-272. All of the Trial Chamber's findings in relation to Witness GGV were upheld on appeal. See Appeal Judgement, paras. 146-157.

<sup>14</sup> Fourth Request for Review, paras. 36, 51, 52, 59.

<sup>15</sup> Decision on Fourth Request for Review, public redacted version, dated 12 March 2009, 21 April 2009 ("Fourth Review Decision"), para. 54.

<sup>16</sup> Fifth Request for Review, para. 37.

<sup>17</sup> Fifth Request for Review, paras. 18-29, 33.

<sup>18</sup> Fifth Request for Review, paras. 30, 31, 33, 35, 36, 37(ii).

<sup>19</sup> Fifth Request for Review, paras. 32-34.

<sup>20</sup> Prosecution Response, paras. 4, 17-19.

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facts" for the purposes of review since they relate to the credibility of Witness GGV, a matter that ~~was litigated at trial and on appeal.~~<sup>21</sup> In the alternative, the Prosecution argues that Niyitegeka did not act with the requisite diligence in discovering and bringing the evidence forward, and that he fails to demonstrate that the alleged new facts could have been a decisive factor in the Trial or Appeal Judgements, or that not considering them would result in a miscarriage of justice.<sup>22</sup>

### III. DISCUSSION

8. In its Fourth Review Decision, the Appeals Chamber considered it could not properly assess whether the Additional Statements constituted "new facts" because Niyitegeka had not provided them.<sup>23</sup> However, it noted Niyitegeka's submission that the information contained in the Additional Statements revealed that Witness GGV was not credible.<sup>24</sup> Because Witness GGV's credibility had already been litigated at trial and on appeal, the Appeals Chamber considered that Niyitegeka's attempt to have the Additional Statements admitted as new facts for the purposes of review was bound to fail.<sup>25</sup>

9. A comparison of Niyitegeka's current Request with his Fourth Request for Review reveals that the four statements annexed to his current Request are the statements of individuals designated as R-9, R-10, R-11, and R-12 referred to in his previous request.<sup>26</sup> The arguments he makes to support his current Request in respect of these individuals are largely repetitive of those he made in his previous request.<sup>27</sup> An assessment of the annexed statements shows that their description in his Fourth Request for Review was accurate and comprehensive. Niyitegeka has not, therefore, submitted any new information in his current Request.

10. The Appeals Chamber reiterates that review proceedings are not an opportunity to re-litigate unsuccessful appeals or requests for review.<sup>28</sup> The issue as to whether the statements of [redacted] constitute new facts within the meaning of Article 25 of the Statute of the Tribunal and Rules 120 and 121 of the Rules of Procedure and Evidence of the Tribunal has already been litigated and adjudicated in the Fourth Review Decision. In the absence of any new additional information, the Appeals Chamber considers Niyitegeka's current Request to constitute an impermissible attempt to re-litigate a portion of his Fourth Request for Review.

<sup>21</sup> Prosecution Response, paras. 4, 20-24.

<sup>22</sup> Prosecution Response, paras. 4, 25-29.

<sup>23</sup> Fourth Review Decision, para. 46.

<sup>24</sup> Fourth Review Decision, para. 47.

<sup>25</sup> Fourth Review Decision, para. 47.

<sup>26</sup> See Fourth Request for Review, para. 49 (a)-(c), (f), 50; Fifth Request for Review, paras. 24-28, 30, 31.

<sup>27</sup> *Idem*. See also Fourth Request for Review, paras. 36, 37, 42, 43; Fifth Request for Review, paras. 19-22.

<sup>28</sup> See Third Review Decision, para. 7; First Review Decision, para. 72.

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**IV. DISPOSITION**

11. For the foregoing reasons, the Appeals Chamber **DENIES** Niyitegeka's Fifth Request for Review.

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

Done this 27<sup>th</sup> day of January 2010,  
at The Hague, The Netherlands.



[Seal of the Tribunal]

  
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Judge Patrick Robinson  
Presiding