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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-96-14-R
25th March 2010
{2475/H – 2472/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: 25 March 2010

ICTR Appeals Chamber
Date: 25th March 2010
Action: R. Tumoh
Copied To: Concerned Judges, SLO, LAs, ALOs, Parties, CMS, ...
LES, *[Signature]*

Eliézer NIYITEGEKA

v.

THE PROSECUTOR

Case No. ICTR-96-14-R

DECISION ON MOTION FOR RECONSIDERATION OF FIFTH REVIEW DECISION

The Applicant

Mr. Eliézer Niyitegeka, *pro se*

Office of the Prosecutor

Mr. Hassan Bubacar Jallow
Mr. Alex Obote-Odora

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: KOFFI AUMELIO A. AGANDE
SIGNATURE: *[Signature]* DATE: 25 March 2010

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 “*Requête en réexamen de la ‘Cinquième Requête d’Eliézer Niyitegeka aux fins d’une révision de l’Arrêt rendu par la Chambre d’appel le 09 juillet 2004’ et/ou de la ‘Decision on Fifth request for review’ rendue le 29 janvier 2010*” filed on 22 February 2010 (“Motion”) by Eliézer Niyitegeka (“Niyitegeka”).¹ The Prosecution filed its response on 25 February 2010, objecting to the Motion.² On 3 March 2010, the Registrar filed submissions under Rule 33(B) of the Rules of Procedure and Evidence of the Tribunal (“Rules”).³ Niyitegeka’s reply was filed on 8 March 2010.⁴

I. BACKGROUND

2. On 16 May 2003, Trial Chamber I of the Tribunal convicted Niyitegeka 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.⁵ In its Judgement of 9 July 2004, the Appeals Chamber dismissed Niyitegeka’s appeal against his convictions and affirmed his sentence.⁶

3. To date, Niyitegeka has filed five requests for review pursuant to Rules 120 and 121 of the Rules, which have all been dismissed by the Appeals Chamber.⁷ Niyitegeka’s attempts to have some of these decisions reconsidered were also rejected.⁸

¹ See also Corrigendum, confidential, 16 March 2010.

² Prosecutor’s Response to Niyitegeka’s “*Requête en réexamen de la ‘Cinquième Requête d’Eliézer Niyitegeka aux fins d’une révision de l’Arrêt rendu par la Chambre d’appel le 09 juillet 2004’ et/ou de la ‘Decision on Fifth Request for Review’ rendue le 29 janvier 2010*”, 25 February 2010, paras. 2, 11.

³ Registry’s Submission under Rule 33 (B) of the Rules on Eliezer [sic] Niyitegeka’s Assertion that He Filed a Reply to the Prosecutor’s Response to His Fifth Request for Review, 3 March 2010.

⁴ *Mémoire en réplique à la “Prosecutor’s Response to Niyitegeka’s ‘Requête en réexamen de la “Cinquième Requête d’Eliézer Niyitegeka aux fins d’une révision de l’Arrêt rendu par la Chambre d’appel le 09 juillet 2004” et/ou de la “Decision on Fifth request for review” rendue le 29 janvier 2010”*, 8 March 2010 (“Reply Relating to Reconsideration”). Niyitegeka explains that he was provided with the Prosecution’s Response only on 1 March 2010 (see Reply Relating to Reconsideration, para. 2). The Appeals Chamber also notes that, while filed on 8 March 2010, the Reply Relating to Reconsideration was received by the United Nations Detention Facility in Arusha, Tanzania on 4 March 2010 (see Transmission Sheet). In these circumstances, the Appeals Chamber accepts the Reply Relating to Reconsideration as validly filed.

⁵ *The Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-T, Judgement and Sentence, 16 May 2003 (“Trial Judgement”), paras. 429, 437, 447, 454, 467, 480, 502.

⁶ *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-A, Judgement, 9 July 2004 (“Appeal Judgement”), para. 270.

⁷ Decision on Request for Review, 30 June 2006, paras. 1, 76; Decision on Request for Review, 6 March 2007, paras. 1, 31; Decision on Third Request for Review, 23 January 2008, paras. 1, 33; Decision on Fourth Request for Review, public redacted version, dated 12 March 2009, filed 21 April 2009, paras. 1, 54; Decision on Fifth Request for Review, 27 January 2010 (“Fifth Review Decision”), paras. 1, 10, 11, *ruling on Cinquième Requête d’Eliézer Niyitegeka aux fins*

4. In the present Motion, Niyitegeka requests the Appeals Chamber to reconsider his Fifth Request for Review and/or the Fifth Review Decision on the ground that the Appeals Chamber ruled on the Fifth Request for Review without considering the reply he had timely submitted to the Prosecution's response.⁹ He submits that he was deprived of his right to a fair hearing and that, as a result, the Fifth Review Decision is manifestly unjust.¹⁰ He argues that had his arguments in reply been considered, the Appeals Chamber would have reached a different conclusion.¹¹

II. DISCUSSION

5. The Appeals Chamber recalls that decisions rejecting requests for review are final decisions closing the proceedings and, as such, are not subject to reconsideration.¹² The Appeals Chamber, however, acknowledges that it ruled on Niyitegeka's Fifth Request for Review without considering his Reply. Although the Appeals Chamber expressly inquired whether Niyitegeka had filed a reply, it was erroneously informed by the Registry that he had not.¹³ The Appeals Chamber considers that Niyitegeka should not be prejudiced by the Registry's failure to record and circulate his Reply in a timely manner. In these exceptional circumstances, the Appeals Chamber finds that, in fairness to Niyitegeka, it should consider the impact of the Reply on the Fifth Review Decision.¹⁴

6. The Reply was eventually provided to the Appeals Chamber on 4 March 2010.¹⁵ Having reviewed it, the Appeals Chamber concludes that Niyitegeka's submissions in reply would not have affected its decision to reject his Fifth Request for Review. The Fifth Request for Review was dismissed on the basis that, "[i]n the absence of any new additional information, the Appeals Chamber consider[ed] [the Fifth Request for Review] to constitute an impermissible attempt to re-litigate a portion of [Niyitegeka's] Fourth Request for Review".¹⁶ In his Reply, Niyitegeka mostly reiterates arguments advanced in his Fifth Request for Review, without adducing any information not already before the Appeals Chamber.

d'une révision de l'Arrêt rendu par la Chambre d'appel le 09 juillet 2004, confidential, 27 October 2009 ("Fifth Request for Review").

⁸ Decision on Request for Reconsideration of the Decision on Request for Review, 27 September 2006 ("Decision of 27 September 2006"); Decision on Request for Clarification, 17 April 2007 ("Decision of 17 April 2007"), paras. 4, 5.

⁹ Motion, paras. 12, 18-28, referring to *Mémoire en réplique à la* "Prosecutor's Response to Niyitegeka's Fifth Request for Review", confidential, 16 December 2009 ("Reply"). See also Reply Relating to Reconsideration, paras. 7-10.

¹⁰ Motion, paras. 20, 24-27.

¹¹ Reply Relating to Reconsideration, para. 14.

¹² Decision of 27 September 2006. See also Decision of 17 April 2007, para. 4.

¹³ E-mail from CMS, dated 12 January 2010.

¹⁴ Cf. *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-3-R, Decision on Rutaganda's Appeal Concerning Access to Confidential Materials in the *Karemera et al.* case, 10 July 2009, para. 18.

¹⁵ Reply.

¹⁶ Fifth Review Decision, para. 10.

III. DISPOSITION

7. For the foregoing reasons, the Appeals Chamber **DENIES** Niyitegeka's Motion.


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

Done this twenty-fifth day of March 2010,

at The Hague, The Netherlands.



[Seal of the Tribunal]



Judge Patrick Robinson
Presiding