



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

1928/H

IN THE APPEALS CHAMBER

ICTR-98-41-A  
09<sup>th</sup> June 2010  
{1928/H - 1926/H}

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

Registrar: Mr. Adama Dieng

Order of: 9 June 2010

ICTR Appeals Chamber  
Date: 9<sup>th</sup> June 2010  
Action: R. Juma  
Copied To: Concerned Judges,  
SLO, LO, ALOS, ALOS

CHC, 655-  
Jud Juma

**Théoneste BAGOSORA  
Aloys NTABAKUZE  
Anatole NSENGIYUMVA**

v.

**THE PROSECUTOR**

Case No. ICTR-98-41-A

International Criminal Tribunal for Rwanda  
Tribunal pénal International pour le Rwanda  
CERTIFIED TRUE COPY OF THE ORIGINAL, SENT BY ME  
COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR MOI  
NAME / NOM: SPER KUMELILO A. AFEANDE  
SIGNATURE: [Signature] DATE: 9 JUNE 2010

**ORDER IN RELATION TO ALOYS NTABAKUZE'S MOTION FOR INJUNCTIONS  
AGAINST THE GOVERNMENT OF RWANDA REGARDING THE ARREST AND  
INVESTIGATION OF LEAD COUNSEL PETER ERLINDER**

Counsel for Théoneste Bagosora

Raphaël Constant  
Richard Perras

Counsel for Aloys Ntabakuze

Peter Erlinder  
André Tremblay

Counsel for Anatole Nsengiyumva

Kennedy Ogetto  
Gershom Otachi Bw'Omanwa

Office of the Prosecutor

Hassan Bubacar Jallow  
Alex Obote-Odora  
George W. Mugwanya  
Inneke Onsea  
Renifa Madenga  
Abubacarr Tambadou  
Evelyn Kamau  
William Mubiru  
Aisha Kagabo

1927/H

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 seised of a motion filed on 3 June 2010 by Aloys Ntabakuze ("Ntabakuze") to order the Registrar to take immediate action to secure the release of his Lead Counsel, Peter Erlinder, arrested in Rwanda on 28 May 2010 and order the Government of Rwanda to stop all proceedings against his Lead Counsel.<sup>1</sup> The Prosecution has not yet responded to the Motion.

2. Ntabakuze submits that his Lead Counsel was arrested on 28 May 2010 by Rwandan authorities on charges of "genocide denial".<sup>2</sup> He alleges that, while his Lead Counsel was not in Rwanda in connection with his functions before the Tribunal, the "Prosecutor of Rwanda" made it clear that the charges against him are directly connected to statements he has made outside Rwanda, including before the Tribunal in the course of Ntabakuze's defence.<sup>3</sup> In his view, these charges "constitute intimidation and serious interference with a legal process"<sup>4</sup> and directly impact his rights to a fair and expeditious trial.<sup>5</sup> Under these circumstances, he submits that "the necessary treatment under Article 29(4) [of the Statute of the Tribunal] to protect the performance of defence members' functions is for the Tribunal to enjoin the Rwandan government, under Rule 54 [of the Rules of Procedure and Evidence of the Tribunal], to refrain from interfering with the functions of defence members, refrain from intimidating and harass[ing] defence members on the basis of their functions before this Tribunal, and therefore to release Lead Counsel [...] with immediate effect and to drop all charges brought against him."<sup>6</sup> In support of his request, he emphasises that his Lead Counsel's health is extremely fragile and that he is currently at serious risk.<sup>7</sup>

3. In its consideration of the Motion, the Appeals Chamber considers it necessary to obtain information regarding the exact nature and basis of the charges brought against Ntabakuze's Lead Counsel in Rwanda.

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<sup>1</sup> Aloys Ntabakuze's Extremely Urgent Request for Injunctions Against the Government of Rwanda for the Illegal Arrest of and Investigation Against Lead Counsel, P. Erlinder, for Statements Made in the Course of Appellant's Defence – Articles 19, 20, 28 & 29 of the Statute and Rule 54 of the RPE, 3 June 2010 ("Motion"), para. 25.

<sup>2</sup> Motion, paras. 1, 2.

<sup>3</sup> Motion, para. 16. See also *ibid.*, para. 2, referring to declarations of the Rwandan Police Spokesperson, Eric Kayingare, published in Rwandan newspaper New Times on 29 May 2010.

<sup>4</sup> Motion, para. 19.

<sup>5</sup> Motion, paras. 6, 19, 22.

<sup>6</sup> Motion, para. 23.

<sup>7</sup> Motion, paras. 5, 24.

4. Consequently, the Appeals Chamber, pursuant to Article 28 of the Statute of the Tribunal, hereby **INSTRUCTS** the Registrar, on an urgent basis, to:

- (1) request the assistance of Rwandan authorities for the purpose of obtaining all information relating to the exact nature and basis of the charges brought against Peter Erlinder;
- (2) report to the Appeals Chamber on the outcome of this request; and
- (3) provide any information to the Appeals Chamber that is furnished by Rwanda in response to this request.

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

Done this ninth day of June 2010,  
At The Hague,  
The Netherlands.



[Seal of the Tribunal]

A handwritten signature in black ink, appearing to be "K" followed by a long horizontal stroke.

Judge Patrick Robinson  
Presiding