



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

82/H

ICTR-99-52B-R
30th June 2010
{82/H - 80/H}

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mehmet Güney
Judge Andréia Vaz
Judge Theodor Meron
Judge Carmel Agius

Registrar: Mr. Adama Dieng

Decision of: 30 June 2010

Ferdinand NAHIMANA

v.

THE PROSECUTOR

Case No. ICTR-99-52B-R

**DECISION ON FERDINAND NAHIMANA'S MOTION FOR
RECONSIDERATION OF THE APPEAL JUDGEMENT**

The Applicant

Mr. Ferdinand Nahimana, *pro se*

The Office of the Prosecutor

Mr. Hassan Bubacar Jallow
Mr. Alex Obote-Odora
Ms. Christine Graham
Mr. Abdoulaye Seye

ICTR Appeals Chamber
Date: 30th June 2010
Action: 4 - *Final*
Copied To: Concerned Judges,
Parties, Judicial Archives,
LOs, LSS *[Signature]*

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: *KREEL...KUMIELD...A...AFANDE...*
SIGNATURE: *[Signature]* DATE: 30 JUNE 2010

24

81/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 1994 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seised of "*Demande de reconsidération*" filed by Ferdinand Nahimana on 7 May 2010 ("Motion for Reconsideration" and "Applicant", respectively).¹

2. On 28 November 2007, the Appeals Chamber affirmed the Applicant's convictions for direct and public incitement to commit genocide and persecution as a crime against humanity pursuant to Article 6(3) of the Statute of the Tribunal ("Statute"), and sentenced him to 30 years of imprisonment.²

3. On 7 May 2010, the Applicant filed his Motion for Reconsideration before the President of the Tribunal and the Appeals Chamber. Attached to the Motion for Reconsideration was a cover letter addressed to the President, requesting him to intervene so that the Appeals Chamber would entertain his Motion for Reconsideration. Insofar as neither the Statute nor the Rules of Procedure and Evidence of the Tribunal ("Rules") provide for the President to request the Appeals Chamber to entertain such a motion, the Appeals Chamber considers itself directly seised of the Applicant's Motion for Reconsideration.

4. The Applicant requests the Appeals Chamber to reconsider the convictions affirmed against him and the sentence imposed on appeal on the grounds that the Appeals Chamber: (i) committed errors of reasoning in the Appeal Judgement which have occasioned a miscarriage of justice; (ii) erred in admitting the evidence of a witness who was called as an expert but testified as a factual witness; and (iii) failed to comply with Rule 87(C) of the Rules and, as a result, determined the sentence arbitrarily.³ He submits that, in these particular circumstances, the Appeals Chamber should disregard its jurisprudence on reconsideration of a final judgement and consider that it has jurisdiction to reconsider a decision which is not subject to any further appeal or review proceedings in order to correct a clear miscarriage of justice.⁴

¹ *Demande de reconsidération – De la confirmation des « déclarations de culpabilité prononcées à l'encontre de l'Appelant Nahimana Ferdinand sur la base de l'article 6(3) du Statut, mais seulement à raison des émissions de la RTLM postérieures au 6 avril 1994 » – Arrêt du 28 novembre 2007; – De la peine – Arrêt du 28 novembre 2007, 7 May 2010.*

² *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007 ("Appeal Judgement"), p. 345.

³ Motion for Reconsideration, paras. 1-3. See also *ibid.*, paras. 14-106.

⁴ Motion for Reconsideration, paras. 4, 5, citing *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Request for Reconsideration of the Decision on Request for Review, Declaration of Judge Shahabuddeen, 27 September 2006, para. 4.

80/H

5. On 17 May 2010, the Prosecution responded that the Motion for Reconsideration should be rejected since "the Appeals Chamber has no jurisdiction to entertain an application for reconsideration of a final judgement".⁵ The Applicant replied on 28 May 2010 that the Appeals Chamber has the inherent power to reconsider its decisions, in particular in case of a blatant miscarriage of justice.⁶

6. The Appeals Chamber recalls that it has no power to reconsider its final judgements as the Statute only provides "for a right of appeal and a right of review but not for a second right of appeal by the avenue of reconsideration of a final judgement".⁷ The jurisprudence cited by the Applicant in support of his contention that the Appeals Chamber may reconsider the Appeal Judgement refers exclusively to the Appeals Chamber's inherent power to reconsider non-final decisions, not final judgements. The Appeals Chamber maintains that it does not have power to reconsider the Appeal Judgement.⁸

7. For the foregoing reasons, the Appeals Chamber **DISMISSES** the Applicant's Motion for Reconsideration.

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

Done this 30th day of June 2010
At The Hague, The Netherlands.



[Seal of the Tribunal]

A handwritten signature in black ink, appearing to read "Fausto Pocar".

Judge Fausto Pocar
Presiding

⁵ Further Prosecutor's Submissions on Mr. Nahimana's Letter to the President of the Tribunal concerning "Reconsideration [sic] de l'Arrêt du 28/11/2007", 17 May 2010, para. 2, referring to Prosecutor's Submissions on Mr. Nahimana's Letter to the President of the Tribunal concerning "Reconsideration [sic] de l'Arrêt du 28/11/2007", 13 May 2010.

⁶ Réplique à "Prosecutor's submissions" du 13 mai 2010, 28 May 2010, para. 5. See also Réplique à "Prosecutor's submissions" du 17 mai 2010, 29 June 2010.

⁷ *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Decision on Motion on Behalf of Veselin Šljivančanin Seeking Reconsideration of the Judgement Rendered by the Appeals Chamber on 5 May 2009 – or an Alternative Remedy, 8 December 2009, p. 2; *Ferdinand Nahimana v. The Prosecutor*, Case No. ICTR-99-52B-R, Decision on Ferdinand Nahimana's "Notice of Application for Reconsideration of Appeal Decision Due to Factual Errors Apparent on the Record", 21 April 2008 ("Nahimana Decision of 21 April 2008"), p. 2; *Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-R, Decision on Hassan Ngeze's Motions and Requests Related to Reconsideration, 31 January 2008, p. 3; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Decision on Prosecutor's Request for Review or Reconsideration, 23 November 2006, public redacted version, paras. 79, 80; *Prosecutor v. Zoran Žigić aka "Ziga"*, Case No. IT-98-30/1-A, Decision on Zoran Žigić's "Motion for Reconsideration of Appeals Chamber Judgement IT-98-30/1-A Delivered on 28 February 2005", 26 June 2006, para. 9. See also *Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-99-52A-R, Decision on Jean-Bosco Barayagwiza's Motion for Review and/or Reconsideration of the Appeal Judgement of 28 November 2007, 22 June 2009, paras. 20, 21; *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-03-R, Decision on Requests for Reconsideration, Review, Assignment of Counsel, Disclosure, and Clarification, 8 December 2006, para. 6.

⁸ See *Nahimana* Decision of 21 April 2008, pp. 2, 3.