



ICTR-00-55B-T
27-01-2011
(3298-3295)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED
NATIONS
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UNIES

OR: ENG

OFFICE OF THE PRESIDENT

Before Judge: Dennis C. M. Byron
President of the Tribunal

Registrar: Adama Dieng

Date: 27 January 2011

THE PROSECUTOR

v.

Idelphone HATEGEKIMANA
Case No: ICTR-00-55B-T

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**DECISION ON ILDELPHONSE HATEGEKIMANA'S MOTION SEEKING THE
NULLIFICATION AND SUSPENSION OF PROCEEDINGS AGAINST HIM AND HIS
IMMEDIATE RELEASE FOR VIOLATION OF HIS RIGHT TO PRESUMPTION OF
INNOCENCE**

Office of the Prosecution:
William Egbe
Peter Tafah
Guilain Disengi Mugeyo

Defence Counsel:
Jean de Dieu Momo

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INTRODUCTION

1. On 6 December 2010, Trial Chamber II of this Tribunal found the Accused Ildelphonse Hategekimana guilty of genocide and of crimes against humanity and sentenced him to a single sentence of life imprisonment.¹ On 17 December 2010, Hategekimana filed a Motion requesting the President of the Tribunal, Judge Dennis C. M. Byron ("The President") to declare that his fundamental rights including his right to a fair trial have been violated, notably his right to be tried by an independent and impartial tribunal and his right to the presumption of innocence; nullify the proceedings that led to the Judgement of 6 December 2010; order his immediate release; order that any further proceedings against him for the same facts be dismissed²; and order the suspension of the proceedings of appeal against the Judgement that found him guilty.³ In the alternative, Hategekimana requests the President to order a retrial by another Bench or by the same Trial Chamber with a different composition.⁴ Hategekimana further requests that the Tribunal be ordered to pay him \$ 50 000 in reparation of the moral prejudice he suffered.⁵ The Prosecution has not filed a response.

DELIBERATIONS

2. Hategekimana contends that during the months of May and June 2010, after the start of the deliberations in the case against him, a drawing competition was organized by the Tribunal involving students from five countries of the East African Sub-region.⁶ During the ceremony for the announcement of the winners of the competition held at the Tribunal's premises on the 25 October 2010, a young girl from Rwanda received the first prize for her drawing representing a Judge of this Tribunal pointing his finger at an accused with the words: "*You Hategekimana, tell what you have done in genocide. You Hategekimana, you will go in prison, 30 years*" while the Accused is shown uttering the words: "*I have killed 77 people*". Hategekimana submits that an enlarged version of the drawing was exhibited in the corridor of the Tribunal's main entrance⁷ and that, amongst the panel in charge of determining the winners were a senior officer from the Office of the Prosecutor ("OTP"), a

¹ Prosecutor v. Ildelphonse Hategekimana, Case No. ICTR00-55b-T, Judgement Summary, 06 December 2010, paras. 42, 43.

² Requête en extrême urgence du Lieutenant Ildelphonse Hategekimana aux fins de nullité de procédure et de sa mise en liberté avec arrêta des poursuites pour violation grave de son droit à la présomption d'innocence (Articles 20 et 25 du Statut et 5, 19 et 120 du Règlement de procédure et de preuve (RPP)), filed on the 17 December 2010 (« Motion »), para. 122.

³ Motion, para. 24.

⁴ Motion, para. 123.

⁵ *Id.*

⁶ Motion, para. 3.

⁷ *Ibid.*, para. 4.

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Legal Officer working within Trial Chamber II and a senior officer from the Registry.⁸ The ceremony of 25 October 2010 was attended by officials of the Tribunal, including Judges of Trial Chamber II.⁹

3. Ildelphonse Hategekimana argues that Trial Chamber II, by finding him guilty and sentencing him to life imprisonment for genocide and crimes against humanity merely endorsed what was announced by the drawing¹⁰ and that consequently the Tribunal has violated his rights, notably his right to the presumption of innocence and his right to be tried by an independent and impartial Tribunal which are protected under Article 20 of the Tribunal's Statute.¹¹ He claims that Trial Chamber II has been partial in its judgment, that there is a manifest conflict of interest that precludes the same bench from continuing to be seized of the case against him and that for this reason the case should be determined by the President.¹² He also argues that the panel was made of officials from the OTP, Trial Chamber II and the Registry, but without any member from the Defense¹³ and that the different organs of the Tribunal colluded to find him guilty prior to the pronouncement of the Trial judgment of his case.¹⁴ He further claims that a Legal Officer working within Trial Chamber II, Ms. Suzanne Chenault, has participated as a panel member of the competition while at the same time assisting the Judges in drafting the Judgement that found him guilty and that therefore she must have influenced the Judges who issued the judgement of 6 December 2010 and affected their impartiality.¹⁵

4. Ildelphonse Hategekimana admits that he does not raise these issues as a preliminary motion under Rule 72¹⁶; however he argues that the motion concerns an interlocutory matter the determination of which may affect the appeal proceedings against the Judgement in his case.¹⁷ On this basis, he requests the President to order the suspension of the appeal proceedings until the determination of the present motion seeking the nullification of the proceedings having lead to the Judgement.¹⁸ Hategekimana also applies for a request for review under Rule 120 and argues that the exhibition of an enlarged version of the drawing in the corridors of the Tribunal's main entrance constitutes a "new fact"¹⁹ meriting the review of a judgement under Rule 120.²⁰ While admitting that

⁸ *Ibid.*, paras. 5-6.

⁹ *Ibid.*, paras. 5-6.

¹⁰ *Ibid.*, para. 17.

¹¹ *Ibid.*, paras. 18-19.

¹² *Ibid.*, para. 22.

¹³ *Ibid.*, para. 52.

¹⁴ *Id.*

¹⁵ *Ibid.*, paras. 57-60.

¹⁶ Rule 72 (A) of the Rules defines and enumerates Preliminary Motions. It reads as follows: "(A) Preliminary motions, being motions which: (i) challenge jurisdiction; (ii) allege defects in the form of the indictment; (iii) seek the severance of counts joined in one indictment under Rule 49 or seek separate trials under Rule 82 (B); or (iv) raise objections based on the refusal of a request for assignment of counsel made under Rule 45 (C)".

¹⁷ *Ibid.*, para. 23.

¹⁸ *Ibid.*, para. 24.

¹⁹ *Ibid.*, para. 114.

²⁰ Rule 120 (A) of the Rules reads as follows: "(A) Where a new fact has been discovered which was not known to the moving party at the time of the proceedings before a Trial Chamber or the Appeals Chamber and could not have been discovered through the exercise of due diligence, the Defense or, within one year after the


such an issue should normally be brought to the original Trial Chamber, he argues that this is not warranted in the instance case because of the conflict of interest and because his principal request is the nullification of the proceedings and the immediate release and prohibition of any further proceedings against him for the same facts²¹.

5. The President considers that neither the Statute of the Tribunal nor its Rules confer upon him the jurisdiction to nullify trial proceedings, to review the conclusions reached by the Trial Chamber or to determine any of the other issues raised by the applicant including the suspension of the proceedings of appeal or the order for reparations alternatively sought by the applicant. In fact, the President is of the opinion that most of these issues are better suited for appellate submissions. The President also notes that under Rule 120 (A), applications for review of a judgement must be made to the Chamber that issued the judgement. Consequently, Ildelphonse Hategekimana's Motion is dismissed for lack of jurisdiction.

FOR THESE REASONS, THE PRESIDENT

DISMISSES Ildelphonse Hategekimana's Motion in its entirety;

Arusha, 26 January 2011, done in English and French, the English version being the original.


Dennis C. M. Byron
President



final judgement has been pronounced, the Prosecutor, may make a motion to that Chamber for review of the judgement. If, at the time of the request for review, any of the Judges who constituted the original Chamber are no longer Judges of the Tribunal, the President shall appoint a Judge or Judges in their place".

²¹ *Ibid.*, para. 114.