

3597/H

RMM



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-98-41-A
24th March 2011
{3597/H – 3595/H}

IN THE APPEALS CHAMBER

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

Registrar: Mr. Adama Dieng

Decision of: 24 March 2011

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: KOFFI KUMELIO A. FANDE
SIGNATURE: [Signature] DATE: 24 MARCH 2011

ICTR Appeals Chamber
Date: 24 March 2011
Action:
Copied To: Concerned Judges

Théoneste BAGOSORA
Aloys NTABAKUZE
Anatole NSENGIYUMVA

v.

THE PROSECUTOR

Case No. ICTR-98-41-A .

Parties, Judicial
Archives, L.O.s. LSS
[Signature]

**DECISION ON THE REQUEST OF THE BAR HUMAN RIGHTS
COMMITTEE FOR LEAVE TO APPEAR AS *AMICUS CURIAE***

Bar Human Rights Committee

Nicholas Grief
Sareta Ashraph
Sally Longworth

Office of the Prosecutor

Hassan Bubacar Jallow
James J. Arguin
George W. Mugwanya
Inneke Onsea
Renifa Madenga
Abubacarr Tambadou
Evelyn Kamau
William Mubiru
Aisha Kagabo
Marie Ndeye Ka

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

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),

NOTING the Scheduling Order issued on 27 January 2011, which set the dates of the appeal hearing in this case for 30 March, 31 March, and 1 April 2011;

BEING SEIZED OF the “Request for Leave to Appear as *Amicus Curiae* Pursuant to Rule 74 of the ICTR Rules of Procedure and Evidence” filed by the Bar Human Rights Committee of the Bar Council of England and Wales (“BHRC”) on 21 March 2011 (“Request”), in which the BHRC requests leave to make written submissions as *amicus curiae* in this case and that Professor Nicholas Grief and/or Sareta Ashraph be granted leave to appear at the appeal hearing to make oral submissions;¹

NOTING that BHRC seeks leave to file an *amicus curiae* brief in relation to the “joint issues of the independence of defence advocates as an integral component of fair trial rights and the scope of functional immunity of defence counsel”;²

NOTING that, in support of its Request, BHRC submits that its brief, appended to the Request as Annex A, will assist the Appeals Chamber in the determination of these issues which are relevant to the case at hand;³

CONSIDERING that, in light of the forthcoming appeal hearing, it is in the interests of justice to rule on the Request without awaiting the parties’ responses;

CONSIDERING that, pursuant to Rule 74 of the Rules of Procedure and Evidence of the Tribunal, the Appeals Chamber “may, if it considers it desirable for the proper determination of the case, invite or grant leave to any State, organization or person to appear before it and make submissions on any issue specified by the Chamber”;

CONSIDERING that the primary criterion in determining whether to grant leave to an *amicus curiae* to make submissions is whether they would assist the Appeals Chamber in its consideration of the matter before it;⁴

¹ Request, paras. 1, 12. BHRC further requests that the Appeals Chamber impose an expedited timetable for the filing of any parties’ responses. *See ibid.*, para. 10.

² Request, para. 1. *See also ibid.*, paras. 6, 10.

³ Request, paras. 6, 7, 9.

NOTING that the Appeals Chamber has already determined the issues relating to Defence counsel which were pending before it;⁵

NOTING that none of the appeals before it concerns the issues of the independence of advocates or the scope of functional immunity of Defence counsel;

CONSIDERING therefore that the issues on which BHRC requests leave to make submissions are not matters before the Appeals Chamber;

FINDING, as a result, that the *amicus curiae* submissions of BHRC would not assist the Appeals Chamber in the determination of the matters before it;

FOR THE FOREGOING REASONS,

DENIES the Request.

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

Done this twenty-fourth day of March 2011,
At The Hague,
The Netherlands.



[Seal of the Tribunal]



Judge Patrick Robinson
Presiding

⁴ Decision on the Motion of the Association of Defence Attorneys in Arusha for Leave to File *Amicus Curiae* Submissions in Relation to Aloys Ntabakuze's Motion Regarding the Arrest and Investigation of Lead Counsel Peter Erlinder, signed 29 June 2010, filed 30 June 2010, p. 2 and references cited therein; Decision on the Request of the International Criminal Bar for Leave to File *Amicus Curiae* Submissions in Relation to Aloys Ntabakuze's Motion Regarding the Arrest and Investigation of Lead Counsel Peter Erlinder, signed 29 June 2010, filed 30 June 2010, p. 2.

⁵ See Decision on Aloys Ntabakuze's Motions for Video-Conference Participation of Lead Counsel in the Appeal Hearing and for the Withdrawal of Registrar's Public Decision, 15 March 2011; Decision on Aloys Ntabakuze's Motion for Stay of Proceedings, 27 January 2011; Decision on Aloys Ntabakuze's Motion for Injunctions Against the Government of Rwanda Regarding the Arrest and Investigation of Lead Counsel Peter Erlinder, 6 October 2010.