



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

104/H

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ICTR-98-41A-A

21st April 2011

{104/H - 101/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

Order of: 21 April 2011

ICTR Appeals Chamber
Date: 21st April 2011
Action: R. Jund
Copied To: Concerned Judges,
SCs, LCs, ACs, Parties,
CHS, LSS.
[Handwritten signature]

Aloys NTABAKUZE

v.

THE PROSECUTOR

Case No. ICTR-98-41A-A

ORDER IMPOSING SANCTIONS ON NTABAKUZE'S LEAD COUNSEL

Counsel for Aloys Ntabakuze

Peter Erlinder
André Tremblay

Office of the Prosecutor

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

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS
NAME/NOM: KOFFI KUMELIO A. AFANDE
SIGNATURE: *[Handwritten signature]* DATE: 21 APRIL 2011

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 Trial Judgement rendered in this case by Trial Chamber I on 18 December 2008 and filed in English on 9 February 2009;¹

NOTING the appeal lodged by Aloys Ntabakuze (“Ntabakuze”) against the Trial Judgement;²

NOTING the Scheduling Order issued on 27 January 2011, which set the dates of the appeal hearing in the *Bagosora et al.* case, of which this case was then a part, for 30 March, 31 March, and 1 April 2011, in Arusha, Tanzania;³

NOTING that, on 27 January 2011, the Appeals Chamber dismissed Ntabakuze’s motion for a stay of proceedings⁴ and, pursuant to Rule 46(A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), warned his Counsel to continue to strictly adhere to their professional obligations as Counsel assigned by the Tribunal;⁵

NOTING that, on 15 March 2011, the Appeals Chamber denied Ntabakuze’s request for the participation of his Lead Counsel, Peter Erlinder, in the appeal hearing by way of video-conference⁶ and recalled that failure by Counsel to appear before the Tribunal may be a ground for the imposition of sanctions pursuant to Rules 45ter(B) and 46 of the Rules;⁷

¹ *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Judgement and Sentence, signed on 18 December 2008, filed on 9 February 2009 (“Trial Judgement”).

² Public Amended Notice of Appeal in the Interest of: Major Aloys Ntabakuze, 18 May 2009; Amended Appeal Brief in the Interest of: Major Aloys Ntabakuze, 24 June 2009; Prosecutor’s Brief in Response to Aloys Ntabakuze’s Appeal, 7 September 2009; Ntabakuze Brief in Reply, 6 October 2009.

³ *Théoneste Bagosora et al. v. The Prosecutor*, Case No. ICTR-98-41-A, Scheduling Order, 27 January 2011, p. 2.

⁴ Ntabakuze’s motion for a permanent stay of proceedings was based on “the intimidation of [his] Counsel, current and putative, by the Rwandan Government” with the result that his Counsel were unable to fully discharge their professional duties in the absence of a remedy and that Ntabakuze was consequently deprived of a fully effective representation. See *Théoneste Bagosora et al. v. The Prosecutor*, Case No. ICTR-98-41-A, Exceptional Public Motion for a Permanent Stay, to Uphold the Rule of Law and Appearance of Justice, in Proceedings Before this Chamber, 17 December 2010 (“Motion of 17 December 2010”), paras. 1, 66.

⁵ *Théoneste Bagosora et al. v. The Prosecutor*, Case No. ICTR-98-41-A, Decision on Aloys Ntabakuze’s Motion for Stay of Proceedings, 27 January 2011 (“Decision of 27 January 2011”), paras. 14, 15.

⁶ Ntabakuze’s request was based on considerations of personal safety for his Lead Counsel and on his Co-Counsel’s inability to travel to the appeal hearing. See *Théoneste Bagosora et al. v. The Prosecutor*, Case No. ICTR-98-41-A, Motion for Video-Link Participation [*sic*] of Lead Counsel at the Appeals Hearing, 23 February 2011 (“Motion of 23 February 2011”), paras. 5, 6, 8, 11-13, 17.

⁷ *Théoneste Bagosora et al. v. The Prosecutor*, Case No. ICTR-98-41-A, 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 of 15 March 2011”), paras. 15, 19.

NOTING that, on 25 March 2011, Ntabakuze's Lead Counsel informed the Appeals Chamber by a confidential and *ex parte* letter that he would not appear at the appeal hearing due to his medical condition;⁸

CONSIDERING that Lead Counsel informed the Appeals Chamber of his inability to attend the appeal hearing only five days prior to its scheduled date;

CONSIDERING FURTHER that Lead Counsel's multiple efforts to avoid traveling to Arusha suggest that he had no intention of appearing at the appeal hearing since at least January 2011;⁹

NOTING the Further Scheduling Order issued on 29 March 2011 in which the Appeals Chamber considered that it was in the interests of justice for Ntabakuze to be represented by counsel and accordingly ordered that Ntabakuze's oral arguments be heard at a later date due to the unavailability of Ntabakuze's Counsel to present the appeal as scheduled;¹⁰

NOTING further that, on 30 March 2011, the Appeals Chamber, by oral decision, ordered the severance of Ntabakuze's case from that of Théoneste Bagosora and Anatole Nsengiyumva pursuant to Rules 82(B) and 107 of the Rules;¹¹

CONSIDERING that Lead Counsel's conduct amounts to a failure to act diligently and in good faith and does not demonstrate the highest standards of professional conduct;¹²

CONSIDERING further that Lead Counsel's failure to inform the Appeals Chamber in a timely manner of his inability to attend the appeal hearing due to non-emergency medical reasons amounted to an obstruction of the proceedings and was contrary to the interests of his client;

RECALLING that, pursuant to Rule 46(A) of the Rules, "[a] Chamber may, after a warning, impose sanctions against a counsel if, in its opinion, his conduct remains offensive or abusive, obstructs the proceedings, or is otherwise contrary to the interests of justice";

CONSIDERING that the Appeals Chamber warned Lead Counsel twice about his duty to adhere to his professional obligations as Counsel assigned by the Tribunal;¹³

FINDING that the imposition of sanctions against Lead Counsel is warranted in the circumstances;

⁸ *Théoneste Bagosora et al. v. The Prosecutor*, Case No. ICTR-98-41-A, Letter from Peter Erlinder to Judges of the Appeals Chamber dated 25 March 2011, confidential and *ex parte*, 25 March 2011 ("Confidential and *Ex Parte* Letter of 25 March 2011").

⁹ See Motion of 17 December 2010; Motion of 23 February 2011.

¹⁰ *Théoneste Bagosora et al. v. The Prosecutor*, Case No. ICTR-98-41-A, Further Scheduling Order, 29 March 2011, p. 2.

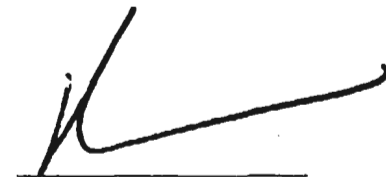
¹¹ *Théoneste Bagosora et al. v. The Prosecutor*, Case No. ICTR-98-41-A, T. 30 March 2011 p. 2.

NOTING further that Lead Counsel's asserted inability to travel to Arusha precludes him from appearing before the Tribunal as required pursuant to Article 13(v) of the Directive on the Assignment of Defence Counsel;¹⁴

HEREBY SANCTIONS Ntabakuze's Lead Counsel, Peter Erlinder, by refusing him audience before the Tribunal; and

INSTRUCTS the Registrar, pursuant to Rule 46(C) of the Rules, to replace Peter Erlinder as Ntabakuze's Lead Counsel as soon as possible.

Done this twenty-first day of April 2011,
At The Hague,
The Netherlands.



Judge Patrick Robinson
Presiding Judge

[Seal of the Tribunal]



¹² See Code of Professional Conduct for Defence Counsel, 8 June 1998, Introduction, Articles 5, 6.

¹³ See Decision of 27 January 2011, para. 14; Decision of 15 March 2011, para 15.

¹⁴ Directive on the Assignment of Defence Counsel, 15 June 2007.