



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

2537/H

ET

ICTR-96-14-R

10th May 2011

{2537/H - 2535/H}

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Fausto Pocar
Judge Liu Daqun
Judge Theodor Meron
Judge Carmel Agius

Registrar: Mr. Adama Dieng

Decision of: 10 May 2011

ICTR Appeals Chamber
Date: 10th May 2011
Action: R. Juma
Copied To: Concerned

Judges,
Parties, Judicial Archives,
LOs, LSS
[Signature]

Eliézer NIYITEGEKA

v.

THE PROSECUTOR

Case No. ICTR-96-14-R

DECISION ON MOTION FOR DISCLOSURE

The Applicant

Mr. Eliézer Niyitegeka, *pro se*

Office of the Prosecutor

Mr. Hassan Bubacar Jallow
Mr. James Arguin
Mr. Abdoulaye Seye
Ms. Inneke Onsea

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: *KOFFI... KUMLE... A... AFANDE*
SIGNATURE: *[Signature]* DATE: *10 MAY 2011*

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 the "Motion to Order Disclosure of Exculpatory Evidence and Other Relevant Material (Rule 68 of the Rules)", filed confidentially on 24 November 2010 ("Motion") by Eliézer Niyitegeka ("Niyitegeka").¹ The Prosecution responded on 6 December 2010.² Niyitegeka's reply was filed confidentially on 13 January 2011.³

2. In its Judgement of 9 July 2004, the Appeals Chamber dismissed Niyitegeka's appeal against his convictions for genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, and murder, extermination, and other inhumane acts as crimes against humanity, and affirmed his life sentence.⁴ The Appeals Chamber has since considered and dismissed five requests for review filed by Niyitegeka.⁵

3. In his Motion, Niyitegeka requests that the Appeals Chamber order the Prosecution to disclose a letter from Witness KJ to the Chief Military Prosecutor of Kigali.⁶ He submits that this letter constitutes exculpatory material within the meaning of Rule 68 of the Rules of Procedure and Evidence of the Tribunal ("Rules") because it may affect the credibility of Witness KJ, who testified in his case.⁷

¹ The English translation of the original French version was filed on 20 January 2011.

² Prosecutor's Response to Motion to Order Disclosure of Exculpatory Evidence and Other Relevant Material (Rule 68 of the Rules of Procedure and Evidence), 6 December 2010. The English translation of the original French version was filed on 21 December 2010.

³ *Réplique à la "Prosecutor's response to Motion to order disclosure of exculpatory evidence and relevant material, Rule 68 of the Rules of procedure and evidence"*, 13 January 2011.

⁴ *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-A, Judgement, 9 July 2004, para. 270; *The Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-T, Judgement and Sentence, 16 May 2003, paras. 420, 429, 437, 447, 454, 467, 480, 502.

⁵ See Decision on Request for Review, 30 June 2006; Decision on Request for Review, 6 March 2007; Decision on Third Request for Review, 23 January 2008; Decision on Fourth Request for Review, 21 April 2009 (public redacted version); Decision on Fifth Request for Review, 27 January 2010 (public redacted version). The Appeals Chamber rejected Niyitegeka's request to reconsider the Decision on Fifth Request for Review. See Decision on Motion for Reconsideration of Fifth Review Decision, 25 March 2010.

⁶ Motion, paras. 13, 14(ii). See also Reply, para. 5.

⁷ Motion, para. 12.

4. Niyitegeka's case is not before the Appeals Chamber. Therefore, the Appeals Chamber lacks jurisdiction to consider the Motion. Niyitegeka should file the Motion with the President of the Tribunal so that this matter can be assigned to an appropriate Chamber.⁸


5. For the foregoing reasons, the Appeals Chamber **DISMISSES** the Motion.

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

Done this tenth day of May 2011,
at The Hague,
The Netherlands.



[Seal of the Tribunal]



Judge Patrick Robinson
Presiding

⁸ See Decision on Request for Disclosure, 11 July 2007, para. 5; *The Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54A-A, Decision on Jean de Dieu Kamuhanda's Request Related to Prosecution Disclosure and Special Investigation, 7 April 2006, para. 5 (both dismissing post-appeal requests for disclosure of transcripts from another case pursuant to Rule 75 of the Rules for lack of jurisdiction). The Appeals Chamber has previously decided on the merits of post-appeal requests for disclosure made under Rule 68 of the Rules although the applicant had no pending case before it. See Decision on Motion to Order the Prosecution to Comply with a Trial Chamber Decision, 6 October 2010; *Jean de Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54A-R68, Decision on Motion for Disclosure, 4 March 2010; Decision on Request for Disclosure, 7 September 2009. However, the Appeals Chamber sees no reason to treat requests under Rule 68 of the Rules differently from requests under Rule 75 of the Rules.