



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

1449/H

RUM

ICTR-02-78-A

19 May 2011

{1449/H - 1446/H}

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andréia Vaz
Judge Theodor Meron

ICTR Appeals Chamber
Date: 19 May 2011
Action:
Copied To: Concerned Judges,

Registrar: Mr. Adama Dieng

Decision of: 19 May 2011

Parties, Judicial Archives,
LDs, LSS, ADC-ICTY
RUM

Gaspard KANYARUKIGA

v.

THE PROSECUTOR

Case No. ICTR-02-78-A

**DECISION ON ASSOCIATION OF DEFENCE COUNSEL (ADC-ICTY)
MOTION FOR LEAVE TO APPEAR AS *AMICUS CURIAE***

Association of Defence Counsel (ICTY)

Mr. Slobodan Zečević

Counsel for Gaspard Kanyarukiga

Mr. David Jacobs
Mr. David Paciocco

Office of the Prosecutor

Mr. Hassan Bubacar Jallow
Mr. James Arguin
Ms. Deborah Wilkinson
Mr. Steffen Wirth
Ms. Amina Buruma
Ms. Lydia Mugambe
Ms. Ndèye Marie Ka

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORMÉ À L'ORIGINAL PAR NOUS
NAME / NOM: ROSETTE MURIGO-MORRISON
SIGNATURE: [Signature] DATE: 19/05/11

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 that Trial Chamber II of the Tribunal ("Trial Chamber") pronounced its judgement in this case on 1 November 2010 and filed the written version on 9 November 2010;¹

NOTING the "Prosecutor's Notice of Appeal" filed on 10 December 2010 ("Prosecution Notice of Appeal");

NOTING the "Prosecutor's Appellant's Brief" filed on 23 February 2011 ("Prosecution Appeal Brief");²

BEING SEISED OF the "Association of Defence Counsel (ADC-ICTY) Motion for Leave to Appear as Amicus Curiae" filed on 8 April 2011 ("Motion"), in which the Association of Defence Counsel ("ADC") of the International Criminal Tribunal for the former Yugoslavia ("ICTY") requests to be granted *amicus curiae* standing in this case and to be permitted to file submissions in respect of the Prosecution's first ground of appeal, relating to the application of joint criminal enterprise;³

NOTING that, in its first ground of appeal, the Prosecution argues that the Trial Chamber erred in law when it found that Gaspard Kanyarukiga's ("Kanyarukiga") planning could not constitute a contribution to a joint criminal enterprise because, although it amounted to a substantial contribution to the crimes, he did not participate in the execution of the crime;⁴

NOTING that the ADC submits that it is a body recognised by the Registry of the ICTY as representing all Defence Counsel before the ICTY and that it is well-qualified to assist the Tribunal by helping the Appeals Chamber "understand how inappropriate the [P]rosecutor's request is in this case and as a matter of policy";⁵

¹ *The Prosecutor v. Gaspard Kanyarukiga*, Case No. 02-78-T, Judgement and Sentence, dated 1 November 2010, filed on 9 November 2010.

² See also Defence Respondent's Brief, 4 April 2011 ("Kanyarukiga Response Brief"); Prosecution's Reply Brief, 19 April 2011 ("Prosecution Reply Brief").

³ Motion, paras. 1, 9.

⁴ Prosecution Notice of Appeal, para. 2; Prosecution Appeal Brief, paras. 6, 7, 11.

⁵ Motion, para. 7. See also Motion, para. 3.

NOTING that the ADC contends that it strongly disagrees with the Prosecution's position, that it "wishes to offer its views as to why this Court should reject the [Prosecution's] first ground of appeal",⁶ and that "if this Court rules in the [Prosecution's] favour it will have serious implications for defendants' fair trial rights before the ICTR, the ICTY and before the International Criminal Court as well as other criminal tribunals";⁷

NOTING that Kanyarukiga responded on 26 April 2011, indicating that he supports the Motion;⁸

NOTING that the Prosecution did not respond;

CONSIDERING that, pursuant to Rule 74 of the Rules of Procedure and Evidence of the Tribunal ("Rules"), 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 granting leave to make submissions under Rule 74 of the Rules is a matter within the discretion of the Appeals Chamber;⁹

CONSIDERING that the primary criterion in determining whether to grant leave to an *amicus curiae* to make submissions is whether such submissions would assist the Appeals Chamber in its consideration of the matter before it;¹⁰

CONSIDERING that the ADC merely states that it opposes the Prosecution's first ground of appeal but fails to set out the nature of its proposed submissions and the reasons for considering that its submissions would aid in the proper determination of the issue;

FINDING, as a result, that *amicus curiae* submissions of the ADC would not assist the Appeals Chamber in the determination of the Prosecution's first ground of appeal;

⁶ Motion, para. 1 (emphasis in original).

⁷ Motion, para. 1. See also Motion, paras. 4, 7.

⁸ Defence Response to the Association of Defence Counsel (ADC-ICTY) Motion for Leave to Appear as Amicus Curiae, 26 April 2011, para. 1.

⁹ See *Théoneste Bagosora et al. v. The Prosecutor*, Case No. 98-41-A, 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, 30 June 2010, p. 2; *Théoneste Bagosora et al. v. The Prosecutor*, Case No. 98-41-A, 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, 30 June 2010, p. 2; *The Prosecutor v. Ildéphonse Hategekimana*, Case No. ICTR-00-55B-R11bis, Decision on Request from the Republic of Rwanda for Permission to File an Amicus Curiae Brief, 30 October 2008, p. 3. See also *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on David J. Scheffer's Application to File an Amicus Curiae Brief, 7 September 2010, p. 2; *In the Case Against Florence Hartmann*, Case No. IT-02-54-R77.5-A, Decision on Application for Leave to File Amicus Curiae Brief, 5 February 2010, para. 4.

¹⁰ *Idem*.

FOR THE FOREGOING REASONS,

DENIES the Motion.

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

Done this 19th day of May 2011
At The Hague
The Netherlands



A handwritten signature in black ink, appearing to be "P. Robinson", written over a horizontal line.

Judge Patrick Robinson
Presiding

[Seal of the Tribunal]