



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

212/H

CF

ICTR-98-42-A
30th September 2011
212/H - 209/H

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Liu Daqun
Judge Andréia Vaz
Judge Theodor Meron
Judge Carmel Agius

Registrar: Mr. Adama Dieng

Decision of: 30 September 2011

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
FOR THE CERTIFIED TRUE COPY OF THE ORIGINAL FOR NO. 1
NAME / NOM: *KOFFI KUMBLELA A. AZANZOU*
SIGNATURE: *[Signature]* DATE: *30 SEPT. 2011*

The PROSECUTOR

v.

Pauline NYIRAMASUHUKO
Arsène Shalom NTAHOBALI
Sylvain NSABIMANA
Alphonse NTÉZIRYAYO
Joseph KANYABASHI
Élie NDAYAMBAJE

Case No. ICTR-98-42-A

**DECISION ON PAULINE NYIRAMASUHUKO'S MOTION TO VOID
TRIAL CHAMBER DECISIONS**

Counsel for Pauline Nyiramasuhuko
Ms. Nicole Bergevin

Counsel for Arsène Shalom Ntahobali
Mr. Normand Marquis

Counsel for Sylvain Nsahimana
Ms. Josette Kadji

Counsel for Alphonse Ntéziriyayo
Mr. Titinga Frédéric Pacere

Counsel for Joseph Kanyabashi
Mr. Michel Marchand

Counsel for Élie Ndayambaje
Mr. Pierre Boulé

Office of the Prosecutor:
Mr. Hassan Bubacar Jallow
Mr. James Arguin
Ms. Deborah Wilkinson
Mr. Steffen Wirth

ICTR Appeals Chamber
Date: *30th September 11*
Action: *R. Gummy*
Copied To: *Concerned*

*Judges,
Parties, JPU, LSS, R. Gummy,
LOs*

the

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 pronounced by Trial Chamber II of the Tribunal ("Trial Chamber") on 24 June 2011, and issued in writing on 14 July 2011 ("Trial Judgement");¹

NOTING the decision on the variation of protective measures and the confidential decisions relating to allegations of contempt and false testimony issued by the Trial Chamber on 1 and 2 September 2011, respectively (together "Impugned Decisions");²

BEING SEISED of "Motion by Pauline Nyiramasuhuko to Void Trial Chamber Decisions Based on Lack of Jurisdiction" filed by Pauline Nyiramasuhuko on 5 September 2011 ("Motion"),³ in which Ms. Nyiramasuhuko requests the Appeals Chamber to void the Impugned Decisions, declare them null and of no effect, and order the Trial Chamber to refrain from issuing further decisions and orders;⁴

NOTING that, in support of her Motion, Ms. Nyiramasuhuko submits that: (i) the rendering of the Trial Judgement divested the Trial Chamber of jurisdiction over the matter; and (ii) the Trial Chamber was no longer the proper judicial forum to issue the Impugned Decisions as the Appeals Chamber was already seised of the proceedings in this case;⁵

NOTING the Prosecution's Response to the Motion, wherein it submits that the Trial Chamber had jurisdiction to issue the Impugned Decisions and that the Motion should accordingly be denied,⁶ arguing that: (i) the Appeals Chamber should hold that trial chambers retain jurisdiction

¹ *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Judgement and Sentence, delivered in public and signed 24 June 2011, filed on 14 July 2011. See also T. 24 June 2011.

² *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Re-Filing of Prosecutor's Ex-Parte Motion in Vary Protective Measures for Witnesses, 1 September 2011 ("Decision Varying Protective Measures"); *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Confidential Decision Following Amicus Curiae Report Related to Allegations of Contempt of the Tribunal and False Testimony and Witness QA, 2 September 2011 (confidential) ("Decision Concerning Witness QA"); *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Confidential Decision Following Amicus Curiae Report Related to Allegations of Contempt of the Tribunal and False Testimony and Witnesses QY and SJ, 2 September 2011 (confidential) ("Decision Concerning Witnesses QY and SJ").

³ See also Corrigendum to Motion by Pauline Nyiramasuhuko to Void Trial Chamber Decisions Based on Lack of Jurisdiction, 6 September 2011.

⁴ Motion, paras. 14, 18, 19, p. 6.

Motion, paras. 8, 12, 13, 15-18. Ms. Nyiramasuhuko submits that the issues should be decided by the Appeals Chamber. See Motion, paras. 14, 19.

⁶ Prosecutor's Response to Motion by Pauline Nyiramasuhuko to Void Trial Chamber Decisions Based on Lack of Jurisdiction, 15 September 2011 ("Response"), paras. 1-4, 11, 12, 15, 16.

for witness protection issues during both the trial and appeal proceedings' or find, in the alternative, that the Appeals Chamber "obtains jurisdiction on the day after the filing of a notice of appeal";⁸ and (ii) contempt proceedings are "independent of the proceedings out of which they arise";⁹

NOTING that, on 19 September 2011, Ms. Nyiramasuhuko replied, *inter alia*, that the Response is untimely and should therefore not be considered;¹⁰

CONSIDERING that paragraph 13 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal provides that a response to a motion filed during appeals from judgement shall be filed within ten days of the filing of the motion;

FINDING therefore that the Response was validly filed;

NOTING that the Decision Varying Protective Measures was a ruling on an application filed before the Trial Chamber on 7 June 2011, prior to the pronouncement of the Trial Judgement;¹¹

CONSIDERING that, when a Chamber pronounces its judgement on the merits of a case before it, it retains jurisdiction to dispose of pending ancillary matters of which it is properly seised;

FINDING, therefore, that the Trial Chamber had jurisdiction over the matters it ruled upon in the Decision Varying Protective Measures;

NOTING further that the proceedings subject of the Decision Concerning Witness QA and the Decision Concerning Witnesses QY and SJ were initiated in 2008 and 2009, respectively,¹² prior to the pronouncement of the Trial Judgement, and that proceedings for contempt and false testimony "are independent of the proceedings out of which they arise";¹³

⁷ Response, paras. 4-8.

⁸ Response, para. 10.

⁹ Response, para. 13, citing *Édouard Karemera et al. v. The Prosecutor*, Case No. ICTR-98-44-AR91.2, Decision on Joseph Nzirorera's and the Prosecutor's Appeals of Decision Not to Prosecute Witness BTH for False Testimony, 16 February 2010 ("*Karemera et al.* Decision"), para. 25.

¹⁰ Reply to Prosecutor's Response to Motion by Pauline Nyiramasuhuko to Void Trial Chamber Decisions Based on Lack of Jurisdiction, 19 September 2011, para. 4.

¹¹ See Decision Varying Protective Measures, p. 2, referring to the *Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Re-filing of Prosecutor's *Ex Parte* Motion to Vary Protective Measures for Witnesses, Art. 28 and Rule 75, 7 June 2011.

¹² See Decision Concerning Witness QA, para. 1; Decision Concerning Witnesses QY and SJ, para. 1.

¹³ *Karemera et al.* Decision, para. 25 and references cited therein. Cf. *The Prosecutor v. Hormisdas Nsengimana*, Case Nos. ICTR-01-69-A and ICTR-10-92, Decision on Prosecution Appeal of Decision Concerning Improper Contact with Prosecution Witnesses, 16 December 2010, in which the Appeals Chamber considered an appeal against a decision related to contempt allegations issued by Trial Chamber I after the rendering of the trial judgement in Mr. Nsengimana's case.

FINDING, therefore, that the Trial Chamber had jurisdiction over the matters it ruled upon in the Decision Concerning Witness QA and the Decision Concerning Witnesses QY and SJ.

FOR THE FOREGOING REASONS,

DISMISSES the Motion in its entirety.

Done this 30th day of September 2011,
at The Hague,
The Netherlands.



[Seal of the Tribunal]

A handwritten signature in black ink, appearing to read "Fausto Pocar".

Judge Fausto Pocar
Presiding