



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

139/H

CV

ICTR-99-52B-R

29th June 2012

{139/H – 135/H}

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andréia Vaz
Judge Carmel Agius

Registrar: Mr. Adama Dieng

Decision of: 29 June 2012

FERDINAND NAHIMANA

v.

THE PROSECUTOR

Case No. ICTR-99-52B-R

ICTR Appeals Chamber

Date: *29 June 2012*
Action: *R. Duma*
Copied To: *Concerned*

*Judges,
Parties, LOs, JPO
RUP*

**DECISION ON FERDINAND NAHIMANA'S MOTION FOR RECONSIDERATION OF
THE DECISION OF 27 SEPTEMBER 2011 AND OF HIS SENTENCE**

Applicant:
Ferdinand Nahimana, *pro se*

Office of the Prosecutor:
Hassan Bubacar Jallow
James J. Arguin
Erica Bussey

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: ROSETTE MUZIGO-MORRISON	
SIGNATURE: <i>[Signature]</i>	DATE: 29/06/12

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);

RECALLING that, on 28 November 2007, the Appeals Chamber affirmed the convictions of Ferdinand Nahimana (“Nahimana”) for direct and public incitement to commit genocide and persecution as a crime against humanity pursuant to Article 6(3) of the Statute of the Tribunal (“Statute”) in respect of *Radio télévision libre des mille collines* (“RTLM”) broadcasts after 6 April 1994, and reduced his sentence to 30 years of imprisonment;¹

NOTING that, on 22 April 2008 and 30 June 2010, the Appeals Chamber dismissed Nahimana’s applications to reconsider the Appeal Judgement;²

NOTING that, on 27 September 2011, the Appeals Chamber dismissed Nahimana’s motion to annul the Decisions of 22 April 2008 and 30 June 2010 and to reconsider the Appeal Judgement;³

BEING SEISED of requests to reconsider the Decision of 27 September 2011 and the sentence imposed by the Appeals Chamber on 28 November 2007, filed by Nahimana on 30 March 2012 (collectively, “Requests for Reconsideration”);⁴

NOTING that Nahimana seeks reconsideration of the Decision of 27 September 2011 on the grounds that: (i) it was signed solely by Judge Fausto Pocar;⁵ and (ii) Nahimana is not convinced that all five Judges of the bench actually examined his previous reconsideration requests and decided to dismiss them in their entirety given the clear error he asserts was committed by the

¹ *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, originally filed in French on 28 November 2007, English translation filed on 16 May 2008 (“Appeal Judgement”), p. 345.

² Decision on Ferdinand Nahimana’s Motion for Reconsideration of the Appeal Judgement, 30 June 2010 (“Decision of 30 June 2010”), para. 7; Decision on Ferdinand Nahimana’s “Notice of Application for Reconsideration of Appeal Decision Due to Factual Errors Apparent on the Record”, 22 April 2008 (“Decision of 22 April 2008”), p. 3.

³ Decision on Nahimana’s Motion to Annul the Decisions of 22 April 2008 and 30 June 2010 and for Reconsideration, 27 September 2011 (“Decision of 27 September 2011”), p. 2.

⁴ 1. *Demande de reconsidération de la décision du 27 septembre 2011 signée par le seul [J]uge Fausto Pocar* [;] 2. *Récusation de l’Honorable Juge Fausto Pocar* [;] 3. *Demande de reconsidération de la peine prononcée contre moi le 28/11/2007*, 30 March 2012 (“Motion”), paras. 11-22, 28-48. The Appeals Chamber notes that, in the Motion, Nahimana also requested the disqualification of Judge Fausto Pocar from the proceedings in this case. See Motion, paras. 23-27. This part of the Motion was denied on 6 June 2012 by Judge Theodor Meron as Presiding Judge of the Appeals Chamber pursuant to Rule 15(B) of the Rules of Procedure and Evidence of the Tribunal. See Decision on Request for Disqualification of Judge Pocar, 6 June 2012 (“Decision of 6 June 2012”), para. 20.

⁵ Motion, paras. 17-22. See also *Réplique à la réponse du Procureur à mes requêtes déposées le 19 mars 2012, enregistrées au Greffe du TPIR le 30 mars 2012*, 25 May 2012 (“Reply”), para. 3.

Appeals Chamber in finding that he had not objected to aspects of the testimony of Expert Witness Alison Des Forges;⁶

NOTING that, in support of his request for reconsideration of his sentence, Nahimana submits, *inter alia*, that the sentence imposed on appeal is not part of the Appeal Judgement and can, as such, be subject to reconsideration;⁷

NOTING that, on 5 April 2012, the Prosecution responded that the Requests for Reconsideration should be rejected on the grounds that: (i) Nahimana has not demonstrated that the standard for reconsideration of the Decision of 27 September 2011 has been met;⁸ and (ii) the sentence forms part of the Appeal Judgement and, accordingly, is not subject to reconsideration;⁹

NOTING that, on 25 May 2012, Nahimana replied that the arguments of the Prosecution are unfounded and should be rejected;¹⁰

NOTING that, on 5 June 2012, Nahimana's *pro bono* Counsel filed additional submissions in reply to the Prosecution Response;¹¹

NOTING that, on 6 June 2012, the Prosecution objected to the Additional Submissions on the grounds, *inter alia*, that they constitute an impermissible additional reply;¹²

CONSIDERING that the briefing in these proceedings had already been completed at the time of filing of the Additional Submissions, and that neither Nahimana nor his *pro bono* Counsel provides any justification for their failure to incorporate in the Reply the arguments developed in the Additional Submissions;¹³

FINDING therefore that the Additional Submissions were not validly filed and accordingly will not be considered;

⁶ Motion, paras. 11-21. *See also* Reply, paras. 3-5.

⁷ Motion, paras. 28, 29. *See also* Reply, paras. 11-13.

⁸ Prosecutor's Response to Nahimana's Requests for Reconsideration of the Appeals Chamber Decision of 27 September 2011, Disqualification of Judge Pocar, and Reconsideration of the Sentence Pronounced Against him in the Appeal Judgement of 28 November 2007, 5 April 2012 ("Prosecution Response"), paras. 3-7, 18.

⁹ Prosecution Response, paras. 3, 15-18.

¹⁰ Reply, paras. 6, 13, p. 5. Nahimana notes that he was served with the Prosecution Response on 22 May 2012. *See ibid.*, para. 1.

¹¹ *Mémoire additionnel au soutien de la Requête en reconsidération formée par Monsieur Ferdinand Nahimana*, 5 June 2012 ("Additional Submissions").

¹² Prosecutor's Response to Nahimana's "*Mémoire additionnel au soutien de la Requête en reconsidération formée par Monsieur Ferdinand Nahimana*", 6 June 2012, para. 3.

¹³ *See* Reply, para. 1; Additional Submissions, paras. 1, 2.

RECALLING that the Appeals Chamber has inherent discretionary power to reconsider a previous non-final decision if a clear error of reasoning has been demonstrated or if it is necessary in order to prevent an injustice;¹⁴

RECALLING that it is the consistent practice of the Appeals Chamber that decisions be signed by the Presiding Judge on behalf of the bench after the conclusion of deliberations;¹⁵

CONSIDERING that, in relation to the Decision of 27 September 2011, Nahimana merely repeats arguments already dismissed by the Appeals Chamber¹⁶ and fails to demonstrate any error of reasoning in the decision or that it is necessary to reconsider the decision in order to prevent an injustice;

RECALLING FURTHER that the Appeals Chamber has repeatedly held that it has no power to reconsider its final judgements as the Statute only provides “for a right of appeal and a right of review but not for a second right of appeal by the avenue of reconsideration of a final judgement”;¹⁷

CONSIDERING FURTHER that, whether or not it is the subject of separate deliberations or pronouncement, the sentence imposed on appeal is an integral part of the final judgement rendered by the Appeals Chamber and, as such, is not subject to reconsideration;

FINDING therefore that Nahimana’s request for reconsideration of the Decision of 27 September 2011 lacks merit and that the Appeals Chamber has no jurisdiction to reconsider the sentence imposed on 28 November 2007;

FOR THE FOREGOING REASONS,

DENIES the Requests for Reconsideration.

¹⁴ See, e.g., *Ildephonse Hategekimana v. The Prosecutor*, Case No. ICTR-00-55-B-A, Decision on Ildephonse Hategekimana’s Second Motion for an Extension of Time to File his Appellant’s Brief, 20 May 2011, para. 6; *Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-99-52A-R, Decision on Jean-Bosco Barayagwiza’s Motion for Review and/or Reconsideration of the Appeal Judgement of 28 November 2007, 22 June 2009, para. 14; *Emmanuel Ndindabahizi v. The Prosecutor*, Case No. ICTR-01-71-R, Decision on Emmanuel Ndindabahizi’s Urgent Request for Clarification of the Appeals Chamber’s Decision of 24 September 2008, 27 February 2009, p. 3.

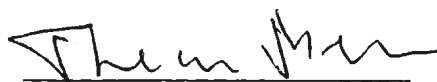
¹⁵ Decision of 6 June 2012, para. 17.

¹⁶ See Decision of 27 September 2011, pp. 1, 2. In any event, the Appeals Chamber notes that its decision to affirm the Trial Chamber’s conclusion relating to Nahimana’s effective control over the staff of RTLM after 6 April 1994 was not solely based on Expert Witness Des Forges’s testimony. See Appeal Judgement, paras. 823-834. Therefore, even if the Appeals Chamber were to reconsider the specific finding challenged by Nahimana concerning his objection to Expert Witness Des Forges’s testimony, any such reconsideration would not invalidate the Appeals Chamber’s decision to affirm the Trial Chamber’s conclusion in this regard.

¹⁷ Decision of 30 June 2010, para. 6 and references cited therein.

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

Done this 29th day of June 2012,
At The Hague,
The Netherlands.


Judge Theodor Meron
Presiding Judge

[Seal of the Tribunal]

