



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

706/H

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IN THE APPEALS CHAMBER

ICTR-98-44A-R

21st Feb. 2013

{706/H – 704/H}

Before:

Judge Patrick Robinson, Presiding
Judge Fausto Pocar
Judge Liu Daqun
Judge Andréia Vaz
Judge Carmel Agius

Registrar:

Mr. Bongani Majola

Order of:

21 February 2013

ICTR Appeals Chamber

21 FEB 2013

Date:

Action:

Copied To:

R. Juma
Chambers, Pocar, Agius, Vaz, Robinson, Majola

JUVÉNAL KAJELIJELI

v.

THE PROSECUTOR

Case No. ICTR-98-44A-R

ORDER IN RELATION TO JUVÉNAL KAJELIJELI'S REQUEST FOR REVIEW

Counsel for Juvénal Kajelijeli:

Mr. Lennox Hinds

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James J. Arguin
Mr. George W. Mugwanya
Ms. Evelyn Kamau
Ms. Aisha Kagabo
Mr. Leo Nwoye

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 MORRISON-MU260

SIGNATURE

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DATE

21/2/13

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 1994 and 31 December 1994 (“Appeals Chamber” and “Tribunal”, respectively);

NOTING the Appeal Judgement rendered on 23 May 2005 affirming Juvénal Kajelijeli’s (“Kajelijeli”) convictions, pursuant to Article 6(1) of the Statute, for genocide, direct and public incitement to commit genocide, and extermination as a crime against humanity, and imposing a single sentence of 45 years of imprisonment;¹

NOTING the request for review filed by Kajelijeli on 15 June 2011,² to which the Prosecution responded on 25 July 2011;³

NOTING that in support of one of the alleged new facts, Kajelijeli relies on a letter from Witness GAO to the President of the Busogo *Gacaca* Court in Rwanda dated 16 October 2006 (“Letter of 16 October 2006”);⁴

NOTING that Kajelijeli has filed the Letter of 16 October 2006 as Annex 2 of his Request for Review;

NOTING, however, that Kajelijeli has not filed the documents disclosed to him by the Prosecution in relation to the Letter of 16 October 2006, referred to in Annex 3 of his Request for Review;⁵

NOTING that, in paragraph 4 of the Disclosure Letter, it is stated that in two interviews for the preparation of another case, the witness explained that the Letter of 16 October 2006 was “false”, “written under duress”, and that he “was offered money”;⁶

¹ See *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005 (“Appeal Judgement”), paras. 324, 325. The Appeals Chamber vacated Kajelijeli’s convictions under Article 6(3) of the Statute on the basis that he was convicted for both individual responsibility and superior responsibility based on the same facts, which constituted a legal error invalidating the trial judgement. However, the Appeals Chamber affirmed the Trial Chamber’s finding of Kajelijeli’s superior position for the purposes of sentencing. See Appeal Judgement, paras. 81-91, 316-319.

² Juvénal Kajelijeli’s Application for Review, 15 June 2011 (confidential) (“Request for Review”).

³ Prosecutor’s Response to Juvénal Kajelijeli’s Application for Review, 25 July 2011 (“Response”). See also Corrigendum to Prosecutor’s Response to Juvénal Kajelijeli’s Application for Review, 30 September 2011. Kajelijeli replied on 9 August 2011 (see Applicant’s Reply to Prosecutor’s Response Brief, 9 August 2011 (confidential)) and filed an amended reply on 20 February 2012 (see Amended Reply Brief, 20 February 2012).

⁴ Request for Review, para. 53. See also *ibid.*, para. 16.

⁵ See Request for Review, Annex 3, Letter from the Prosecution to Kajelijeli entitled “Disclosure of documents pertinent to Prosecution Witnesses GBU and ANP (Rules 68&75)”, dated 23 March 2007 (“Disclosure Letter”), para. 3(iv), (vi)-(x).

⁶ See Disclosure Letter, para. 4(i)-(iii).

NOTING that the Disclosure Letter does not indicate in what form the information referred to in paragraph 4(i)-(iii) of the Disclosure Letter was provided;

NOTING that, in its Response, the Prosecution submits that the authenticity of Witness GAO's purported recantation is dubious based on an "explanation letter" by Witness GAO stating that the Letter of 16 October 2006 was a "ploy";⁷

NOTING that the Prosecution has not filed the "explanation letter" referred to in footnote 152 of its Response;

FOR THE FOREGOING REASONS,

HEREBY INSTRUCTS, pursuant to Rules 54 and 107 of the Rules of Procedure and Evidence of the Tribunal,

the Prosecution to file confidentially:

- (1) the "explanation letter" referred to in footnote 152 of its Response;
- (2) the document, if any, in which Witness GAO's explanations, referred to in paragraph 4(i)-(iii) of the Disclosure Letter, were given, and if the explanations were not given in a document, to state the form in which they were given; and
- (3) any other relevant document related to the Letter of 16 October 2006, including the documents communicated to Kajelijeli in the Disclosure Letter;⁸

and Kajelijeli to file confidentially any relevant document related to the Letter of 16 October 2006.


DIRECTS that the filings be made no later than 10 days from the filing of this order.

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

Done this 21st day of February 2013
at The Hague,
The Netherlands.



[Seal of the Tribunal]


Judge Patrick Robinson
Presiding

⁷ Response, para. 91, fn. 152, referring to "Papers Testifying in Defense of Kajelijeli Were Prepared by Niyigaba Michael and Written by Rusatira", dated 16 October 2006.

⁸ See *supra*, fn. 5.