



UNITED NATIONS
NATIONS UNIES

Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

606/H

ICTR-05-89-AR11bis

IN THE APPEALS CHAMBER

30th May 2013

{606/H - 603/H}

Before: Judge Theodor Meron, Presiding
Judge Mehmet Güney
Judge Arlette Ramaroson
Judge Andréia Vaz
Judge Khalida Rachid Khan

Registrar: Mr. Bongani Majola

Decision of: 30 May 2013

BERNARD MUNYAGISHARI

v.

THE PROSECUTOR

Case No. ICTR-05-89-AR11bis

**DECISION ON BERNARD MUNYAGISHARI'S MOTION FOR A STAY
OF HIS TRANSFER TO RWANDA**

Counsel for Bernard Munyagishari:

Mr. Philippe Moriceau
Ms. Natacha Fauveau Ivanović

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James J. Arguin
Mr. George Mugwanya
Ms. Ineke Onsea
Mr. Abdoulaye Seye
Mr. François Nsanzuwera

ICTR Appeals Chamber
30 MAY 2013
Date: *R. Juma*
Action: *Chambers, Defense,*
Copied To: *DTP, ARAB & TPA*
IN

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 MOI
NAME / NOM: *ROSETTE MUBIGO-MORRISON*
SIGNATURE: *[Signature]* DATE: *30/5/13*

605/H

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 decision issued in this case by the Referral Chamber Designated under Rule 11 *bis* (“Referral Chamber”) on 6 June 2012, which referred Mr. Bernard Munyagishari’s case to the authorities of the Republic of Rwanda (“Rwanda”) for trial before the High Court of Rwanda;¹

RECALLING the decision on the appeals lodged against the Referral Decision issued by the Appeals Chamber on 3 May 2013, which, *inter alia*, affirmed the referral of Mr. Munyagishari’s case to Rwanda and stayed his transfer to Rwanda pending the filing of an amended indictment;²

NOTING the “Amended Indictment Pursuant to Appeals Chamber’s Decision of 3 May 2013” filed by the Prosecution on 8 May 2013 (“Amended Indictment”);³

BEING SEISED of a motion filed by Mr. Munyagishari on 8 May 2013, in which he requests the Appeals Chamber to stay his transfer to Rwanda until he receives: (i) the French translation of the Decision on Appeals Against Referral Decision; (ii) the French translation of the Amended Indictment; and (iii) “information relating to the appointment of the monitoring mechanism or, at least, information regarding the time when the observers will visit him following his transfer to Rwanda”;⁴

NOTING that, in support of his Motion, Mr. Munyagishari submits that: (i) because he does not understand English but understands French and his Counsel’s working language is French, the French translations of the Decision on Appeals Against Referral Decision and the Amended Indictment are necessary for him and his Counsel to fully understand the Amended Indictment and the terms of referral of his case before he is transferred to Rwanda;⁵ and (ii) “in order [for him to] know when to expect a visit of observers after his transfer to Rwanda, he would like to, at least,

¹ *The Prosecutor v. Bernard Munyagishari*, Case No. ICTR-05-89-R11*bis*, Decision on the Prosecutor’s Request for Referral of the Case to the Republic of Rwanda, 6 June 2012 (“Referral Decision”), pp. 54-56.

² Decision on Bernard Munyagishari’s Third and Fourth Motions for Admission of Additional Evidence and on the Appeals Against the Decision on Referral under Rule 11 *bis*, 3 May 2013 (“Decision on Appeals Against Referral Decision”), para. 122.

³ The Appeals Chamber notes that the Prosecution filed a corrected cover page of the Amended Indictment on 13 May 2013, which replaced the original cover page filed on 8 May 2013. The 8 May 2013 Amended Indictment is therefore considered as the operative amended indictment.

⁴ Urgent Motion by Bernard Munyagishari’s Defence to Stay His Transfer to Rwanda, originally filed in French on 8 May 2013, English translation filed on 13 May 2013 (“Motion”), para. 10.

⁵ Motion, para. 6.

know the time limit for the appointment of said observers, in the event that they are not appointed before his transfer”;⁶

NOTING that the Prosecution responds that Mr. Munyagishari’s request for a stay of his transfer to Rwanda should be denied on the grounds that: (i) he has already received a French translation of the Referral Decision, which provides the substantive reasons supporting the referral of his case; (ii) he has already received the French translation of the Amended Indictment; and (iii) he has sufficient information regarding the monitoring mechanism;⁷

NOTING that, in reply, Mr. Munyagishari concedes that the part of his Motion related to the Amended Indictment is moot since he received the translation after he filed his Motion, but reiterates that a stay of his transfer should be granted pending his receipt of the French translation of the Decision on Appeals Against Referral Decision as well as information concerning the monitoring mechanism;⁸

CONSIDERING that Mr. Munyagishari was served with the French translation of the Amended Indictment on 10 May 2013⁹ and that this part of his Motion has therefore become moot;

CONSIDERING that, given that the Decision on Appeals Against Referral Decision modified the conditions of referral as imposed by the Referral Chamber, it is in the interests of justice to allow Mr. Munyagishari an opportunity to review the Decision on Appeals Against Referral Decision in a language he understands prior to his transfer to Rwanda;

RECALLING that the referral of Mr. Munyagishari’s case to Rwanda is conditioned on the appointment as monitor of an independent organization before or as soon as practicable after the transfer of Mr. Munyagishari to Rwanda;¹⁰

CONSIDERING that Mr. Munyagishari has failed to demonstrate how the absence of information on when monitors will be appointed or when they will visit him in Rwanda warrants the stay of his transfer;

⁶ Motion, para. 8.

⁷ Prosecutor’s Response to “*Requête urgente de la Défense de Bernard Munyagishari aux fins de sursis du transfert au Rwanda*”, 13 May 2013, paras. 1-11.

⁸ Reply by Bernard Munyagishari’s Defence to the Prosecutor’s Response to the Motion to Stay His Transfer to Rwanda, originally filed in French on 15 May 2013, English translation filed on 21 May 2013 (“Reply”), para. 7. See also *ibid.*, paras. 8-12.

⁹ See Reply, para. 7.

¹⁰ See Referral Decision, para. 214, p. 55. See also Decision on Appeals Against Referral Decision, paras. 87-92, 122.

HEREBY GRANTS the Motion **in part**;

ORDERS, pursuant to Rules 54 and 107 of the Rules of Procedure and Evidence of the Tribunal, that the transfer of Mr. Munyagishari take place no sooner than three (3) days after the service of the French translation of the Decision on Appeals Against Referral Decision; and

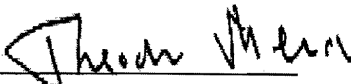
DISMISSES the remainder of the Motion.

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

Done this thirtieth day of May 2013,
At The Hague,
The Netherlands.



[Seal of the Tribunal]


Judge Theodor Meron
Presiding