



UNITED NATIONS
NATIONS UNIES

Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

683/h

OK

ICTR-05-89-AR11bis

IN THE APPEALS CHAMBER

17th June 2013

{683/H - 680/H}

Before: Judge Theodor Meron, Presiding
Judge William H. Sekule
Judge Mehmet Güney
Judge Arlette Ramaroson
Judge Khalida Rachid Khan

Registrar: Mr. Bongani Majola

Order of: 17 June 2013

BERNARD MUNYAGISHARI

v.

THE PROSECUTOR

Case No. ICTR-05-89-AR11bis

**INTERIM ORDER RELATING TO BERNARD MUNYAGISHARI'S
MOTION TO RECONSIDER THE DECISION ON APPEALS
AGAINST REFERRAL DECISION**

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. Inneke Onsea
Mr. Abdoulaye Seye
Mr. François Nsanzuwera

ICTR Appeals Chamber
17 JUN 2013 *OK*
Date: *Juma R.*
Action: *Chambers, Defence,*
Copied To: *OTR PALAD & IPX*

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 MUZIGO-MORRISON*
SIGNATURE: *[Signature]* DATE: *17/06/13*

682/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”) and the French translation of the Amended Indictment served on Mr. Munyagishari on 10 May 2013;³

NOTING the decision of 30 May 2013, in which the Appeals Chamber ordered that the transfer of Mr. Munyagishari take place no sooner than three days after the service of the French translation of the Decision on Appeals Against Referral Decision;⁴

NOTING that the French translation of the Decision on Appeals Against Referral Decision was filed on 7 June 2013;

BEING SEISED of a motion filed *pro se* by Mr. Munyagishari on 3 June 2013, in which he requests a stay of his transfer to Rwanda pending the filing of forthcoming motions;⁵

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 Decision on Bernard Munyagishari’s Motion for a Stay of his Transfer to Rwanda, 30 May 2013, p. 3.

⁵ Bernard Munyagishari’s Extremely Urgent Motion for a Stay of his Transfer to Rwanda, originally filed in French on 3 June 2013, English translation filed on 7 June 2013 (“*Pro Se Motion*”), paras. 3, 4.

BEING FURTHER SEISED of a motion filed by Counsel for Mr. Munyagishari on ~~3 June~~ ^{681/h} 2013 seeking reconsideration of the Decision on Appeals Against Referral Decision and, in the interim, a stay of Mr. Munyagishari's transfer to Rwanda pending a decision on the Motion for Reconsideration;⁶

NOTING that the Prosecution responds that: (i) Mr. Munyagishari has no right to appointed counsel to continue litigating matters related to the referral now that the Appeals Chamber has affirmed the referral order and, in the alternative, that Mr. Munyagishari has no right to proceed *pro se* while he continues to benefit from the services of appointed counsel; and (ii) in any event, both requests for a stay of Mr. Munyagishari's transfer to Rwanda should be denied on the ground, *inter alia*, that the request for reconsideration is without merit;⁷

NOTING that, in reply, Mr. Munyagishari submits that he filed the *Pro Se* Motion out of caution following issues of communication with his Counsel resulting from the geographic distance between them;⁸

CONSIDERING that, pending his transfer to Rwanda, Mr. Munyagishari retains the representation of his Counsel in accordance with Rule 45(I) of the Rules of Procedure and Evidence of the Tribunal ("Rules"),⁹ and that the Motion for Reconsideration is therefore validly filed;

CONSIDERING that, as a general matter, the Appeals Chamber does not entertain *pro se* submissions from a party who is represented by counsel¹⁰ and that the *Pro Se* Motion shall, as a result, not be considered as validly filed;

FINDING that it is in the interests of justice to stay the transfer of Mr. Munyagishari to Rwanda pending resolution of the Motion for Reconsideration;

⁶ Urgent Motion by Bernard Munyagishari's Defence for Reconsideration of the Decision Rendered on 3 May 2013, originally filed in French on 3 June 2013, English translation filed on 12 June 2013 ("Motion for Reconsideration"), para. 24.

⁷ Prosecutor's Consolidated Response to "*Requête extrêmement urgente de Bernard Munyagishari aux fins de sursis du transfert au Rwanda*" and "*Requête urgente de la Défense de Bernard Munyagishari aux fins de reconsidération de la Décision rendue le 3 mai 2013*", 7 June 2013, paras. 1-13, 19.

⁸ *Réplique de la Défense de Bernard Munyagishari à la Réponse du Procureur déposée le 7 juin 2013*, 10 June 2013, paras. 5, 6.

⁹ See also Code of Professional Conduct for Defence Counsel, 8 June 1998, Art. 4(1) ("Counsel must advise and represent their client until the client duly terminates Counsel's position, or Counsel is otherwise withdrawn with the consent of the Tribunal."). Cf. also *Jean Uwinkindi v. The Prosecutor*, Case No. ICTR-01-75-AR11bis, Interim Order on Uwinkindi's Motion for Review or Reconsideration of the Decision of 16 December 2011, 26 January 2012.

¹⁰ See *Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor*, Case No. ICTR-99-50-A, Decision on Prosper Mugiraneza's Motion for Extension of Time to File his Appellant's Brief, 26 January 2012, fn. 24.

HEREBY DISMISSES the *Pro Se* Motion as invalidly filed;

580/h

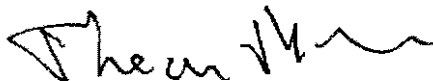
GRANTS the Motion for Reconsideration **in part**; and

ORDERS, pursuant to Rules 54 and 107 of the Rules, a stay of the transfer of Mr. Munyagishari pending full resolution of the Motion for Reconsideration by the Appeals Chamber.

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

Done this 17th day of June 2013,
At The Hague,
The Netherlands.





Judge Theodor Meron
Presiding

[Seal of the Tribunal]