



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

ICTR-05-89-AR11bis

24<sup>th</sup> July 2013

IN THE APPEALS CHAMBER

{772/H - 769/H}

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

**Registrar:** Mr. Bongani Majola

**Decision of:** 24 July 2013

**BERNARD MUNYAGISHARI**

v.

**THE PROSECUTOR**

Case No. ICTR-05-89-AR11bis

**DECISION ON BERNARD MUNYAGISHARI'S MOTION FOR RECONSIDERATION  
OF PRIOR RECONSIDERATION DECISIONS**

**Counsel for Bernard Munyagishari**

Philippe Moriceau  
Natacha Fauveau Ivanović

**Office of the Prosecutor**

Hassan Bubacar Jallow  
James J. Arguin  
George Mugwanya  
Inneke Onsea  
Abdoulaye Seye  
François Nsanzuwera

ICTR Appeals Chamber
<i>[Signature]</i> 24 JUL 2013
Date: <i>June R.</i>
Action: <i>Chambers Defense</i>
Copied To: <i>OTR-KAD &amp; PJ</i>

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 NOUS
NAME / NOM: <i>ROSETTE MUZIGO-MORRISON</i>
SIGNATURE: <i>[Signature]</i> DATE: <i>24/07/13</i>

**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* of the Rules of Procedure and Evidence of the Tribunal 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;<sup>1</sup>

**NOTING** the decision issued by the Appeals Chamber on 3 May 2013, which affirmed the referral of Mr. Munyagishari’s case to Rwanda;<sup>2</sup>

**NOTING** the decision issued by the Appeals Chamber on 8 July 2013, which dismissed Mr. Munyagishari’s request for reconsideration of the 3 May 2013 Decision;<sup>3</sup>

**NOTING** the decision issued by the Appeals Chamber on 19 July 2013, which denied Mr. Munyagishari’s requests for reconsideration of the 8 July 2013 Decision and for an order to the Registrar of the Tribunal to replace his assigned counsel;<sup>4</sup>

**BEING SEISED OF** a motion filed *pro se* by Mr. Munyagishari on 23 July 2013, in which he requests the Appeals Chamber to reconsider the 8 July 2013 Decision and the 19 July 2013 Decision (together “Reconsideration Decisions”) and to stay his transfer to Rwanda;<sup>5</sup>

**NOTING** that, in support of his Motion, Mr. Munyagishari submits, *inter alia*, that: (i) his representation was *de facto* non-existent when the Reconsideration Decisions were issued; (ii) the Appeals Chamber failed to consider his “reply” filed on 22 July 2013; (iii) the shortfalls in his legal

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<sup>1</sup> *The Prosecutor v. Bernard Munyagishari*, Case No. ICTR-05-89-R11bis, Decision on the Prosecutor’s Request for Referral of the Case to the Republic of Rwanda, 6 June 2012, pp. 54-56.

<sup>2</sup> 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 (“3 May 2013 Decision”), para. 122.

<sup>3</sup> Decision on Bernard Munyagishari’s Motion for Reconsideration of the Decision on Appeals against Referral Decision, 8 July 2013 (“8 July 2013 Decision”), para. 19.

<sup>4</sup> Decision on Bernard Munyagishari’s Motion for Reconsideration of the 8 July 2013 Decision and for Replacement of Counsel and on the Prosecution’s Motion to Strike, 19 July 2013 (“19 July 2013 Decision”), p. 3.

<sup>5</sup> *Demande de reconsidération des décisions du 8 juillet 2013 et du 19 juillet 2013*, 23 July 2013 (“Motion”), pp. 1, 5. In the interests of justice and in the absence of prejudice to the Prosecution given the outcome of the present decision, the Motion is disposed of without awaiting the Prosecution’s response.

representation impacted the Reconsideration Decisions; and (iv) he does not have the requisite expertise to provide the Appeals Chamber with the necessary legal arguments;<sup>6</sup>

**NOTING** the “Prosecutor’s Opposit[i]on to Bernard Munyagishari’s Motion for Reconsideration of Decisions Dated 8 July and 19 July 2013” filed on 24 July 2013;

**CONSIDERING** that it is in the interests of justice to dispose of the Motion expeditiously, the Appeals Chamber did not consider the Prosecution’s filing of 24 July 2013 in order not to prejudice Mr. Munyagishari for not being given the opportunity to reply;

**NOTING** that the assignment of Mr. Philippe Moriceau as Mr. Munyagishari’s counsel has not been withdrawn by the Registrar and that Mr. Moriceau therefore continues to represent Mr. Munyagishari pending his transfer to Rwanda;<sup>7</sup>

**CONSIDERING** that, as a general matter, the Appeals Chamber does not entertain *pro se* submissions from a party who is represented by counsel;<sup>8</sup>

**FINDING**, however, that given the nature of Mr. Munyagishari’s submissions in relation to his representation in the Motion, it is in the interests of justice in the particular circumstances of this case to consider the Motion as validly filed;<sup>9</sup>

**CONSIDERING** that the Appeals Chamber may reconsider an interlocutory appeal decision under its inherent discretionary power if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice;<sup>10</sup>

**CONSIDERING** that none of Mr. Munyagishari’s arguments demonstrates an error of reasoning in the Reconsideration Decisions or that it is necessary to reconsider the Reconsideration Decisions to prevent an injustice;<sup>11</sup>

**FINDING** therefore that Mr. Munyagishari fails to demonstrate that reconsideration of the Reconsideration Decisions is warranted;

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<sup>6</sup> Motion, paras. 1-8, referring to *Réplique de Bernard Munyagishari à la Réponse du Procureur du 18 juillet 2013*, 22 July 2013.

<sup>7</sup> See 19 July 2013 Decision, p. 2; Interim Order Relating to Bernard Munyagishari’s Motion to Reconsider the Decision on Appeals against Referral Decision, 17 June 2013, p. 2.

<sup>8</sup> See 19 July 2013 Decision, p. 2.

<sup>9</sup> Cf. 19 July 2013 Decision, p. 2.

<sup>10</sup> 19 July 2013 Decision, p. 2; 8 July 2013 Decision, para. 13.

<sup>11</sup> The Appeals Chamber notes that Mr. Munyagishari’s so-called “reply” filed on 22 July 2013 was in fact a response to the “Prosecutor’s Motion to Strike ‘*Deuxième Requête pro se extrêmement urgent[e] de Bernard Munyagishari aux fins de sursis du transfert au Rwanda*’” filed on 18 July 2013, a motion the Appeals Chamber denied in its 19 July 2013 Decision. See 19 July 2013 Decision, pp. 2, 3. See also *ibid.*, fn. 9.

**FINDING**, in light of the foregoing, that Mr. Munyagishari's request for a stay of his transfer to Rwanda is moot;

**HEREBY**

**DENIES** the Motion; and

**STRESSES** that the order for the transfer of Mr. Munyagishari to Rwanda remains in effect and will remain in force until the transfer is effectuated, unless stayed or vacated by an order of the Appeals Chamber.

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

Done this 24<sup>th</sup> day of July 2013,  
At The Hague,  
The Netherlands.



Judge Theodor Meron  
Presiding

[Seal of the Tribunal]