



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

2035/H  
RUM

IN THE APPEALS CHAMBER

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

**ICTR-98-44D-A**  
**16 October 2013**  
**{2035/H-2030/H}**

Registrar: Mr. Bongani Majola

Decision of: 16 October 2013

ICTR Appeals Chamber  
Date: 16 OCT 2013  
Action:  
Copied To: Judges,

CALLIXTE NZABONIMANA

v.

THE PROSECUTOR

Parties, JPU, LOs,  
LSS  
RUM

Case No. ICTR-98-44D-A

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**DECISION ON CALLIXTE NZABONIMANA'S NEW MOTION FOR REMEDIES**

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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
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NAME / NOM: ROSETTE MUZIGO-MORRISON  
SIGNATURE: [Signature] DATE: 16/Oct/2013

**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 Trial Judgement pronounced in this case by Trial Chamber III of the Tribunal (“Trial Chamber”) on 31 May 2012 and issued in writing on 25 June 2012;<sup>1</sup>

**NOTING** the notices of appeal filed by the Prosecution and Callixte Nzabonimana (“Nzabonimana”) on 29 June 2012 and 4 September 2013, respectively;<sup>2</sup>

**NOTING** the Decision of 17 June 2013 in which the Pre-Appeal Judge dismissed without prejudice the Motion for Remedies and the Abridged Motion for Remedies filed by Nzabonimana on 11 June 2013 and 13 June 2013, respectively, for violation of the Practice Direction on the Length of Briefs and Motions on Appeal of 8 December 2006 (“Practice Direction”), and reminded Nzabonimana to strictly abide by practice directions applicable on appeal;<sup>3</sup>

**BEING SEISED** of a motion filed by Nzabonimana on 25 June 2013 seeking remedies for the Prosecution’s alleged violations of Rules 66(A)(ii) and 68 of the Rules of Procedure and Evidence of the Tribunal (“Rules”);<sup>4</sup>

**NOTING** Nzabonimana’s submissions that: (i) the Prosecution disclosed, on 8 April 2013, 40 documents (“Disclosed Documents”), which were in the Prosecution’s database between 10 October 2000 and 10 July 2010;<sup>5</sup> (ii) the Prosecution has repeatedly breached its disclosure

<sup>1</sup> See T. 31 May 2012 pp. 1-11; *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Judgement and Sentence, pronounced on 31 May 2012, issued in writing on 25 June 2012 (“Trial Judgement”).

<sup>2</sup> Prosecutor’s Notice of Appeal, 29 June 2012; *Corrigendum* to Prosecutor’s Notice of Appeal, 23 August 2012; *Acte d’Appel amendé*, 4 September 2013. See also Decision on Callixte Nzabonimana’s Motion to Amend his Notice of Appeal and the Prosecution’s Motion to Strike Nzabonimana’s Appeal Brief, 30 August 2013.

<sup>3</sup> Decision on Prosecution’s Motions to Strike and for Extension of Time, and on Nzabonimana’s Motions for Extension of Words and for Remedies, 17 June 2013 (“Decision of 17 June 2013”), pp. 2, 3; *Requête de Callixte Nzabonimana afin d’obtenir les réparations appropriées compte tenu de nouvelles violations des articles 66(A)ii et 68 du Règlement de procédure et de preuve*, 11 June 2013 (public with confidential and public annexes) (“Motion for Remedies”); *Requête abrégée de Callixte Nzabonimana afin d’obtenir les réparations appropriées compte tenu de nouvelles violations des articles 66(A)ii et 68 du Règlement de procédure et de preuve*, 13 June 2013 (“Abridged Motion for Remedies”). See also Practice Direction, paras. C(3)-(5). The Pre-Appeal Judge determined that the Motion for Remedies and the Abridged Motion for Remedies both exceeded the 3000-word limit for motions filed before the Appeals Chamber and that Annexes A, B, C and D of the Abridged Motion for Remedies improperly contained legal and factual arguments. See Decision of 17 June 2013, pp. 2, 3. See also Decision of 30 August 2013, para. 29.

<sup>4</sup> Callixte Nzabonimana’s New Motion for Appropriate Remedies on Account of Further Violations of Rules 66(A)(ii) and 68 of the Rules of Procedure and Evidence, 12 July 2013 (original French version filed on 25 June 2013) (public with confidential and public annexes) (“Motion”).

<sup>5</sup> Motion, paras. 3, 22. Nzabonimana argues that: (i) 18 of the Disclosed Documents are in Kinyarwanda; (ii) he received translations of seven documents on 3 and 16 May 2013; and (iii) he continues to wait for further translations. See Motion, paras. 3, 6, 7, 15, 25.

obligations with respect to Prosecution Witnesses CNAAC and CNAC;<sup>6</sup> (iii) the Prosecution violated Rules 66(A)(ii) and 68 of the Rules as well as Article 20(4)(e) of the Statute of the Tribunal (“Statute”),<sup>7</sup> to his prejudice within the meaning of Rule 5 of the Rules;<sup>8</sup> and (iv) as relief, the Appeals Chamber should exclude the evidence of Witnesses CNAAC and CNAC or grant other relief deemed appropriate;<sup>9</sup>

**NOTING** the response filed confidentially by the Prosecution on 5 July 2013,<sup>10</sup> in which it submits that Nzabonimana: (i) is using the Motion to circumvent procedures for admission of new evidence on appeal under Rule 115 of the Rules;<sup>11</sup> and (ii) suffered no prejudice because, *inter alia*: (a) the Trial Chamber considered Witnesses CNAAC’s and CNAC’s credibility in assessing their evidence,<sup>12</sup> (b) information about Witness CNAAC in the Disclosed Documents was available to Nzabonimana in disclosures from 2009,<sup>13</sup> and (c) summaries of Witness CNAC’s *Gacaca* statements were disclosed by Nzabonimana to the Prosecution in 2010;<sup>14</sup>

**FINDING** that the reply filed by Nzabonimana on 12 July 2013, 3 days after the 9 July 2013 deadline, without any justification, is invalidly filed and, accordingly, will not be considered;<sup>15</sup>

**FINDING** that Nzabonimana violated paragraph C(4) of the Practice Direction as annexes A and B of the Motion are essentially the same as annexes A and B of the Abridged Motion for Remedies<sup>16</sup> and that this constitutes an attempt to circumvent the word limit imposed by the Practice Direction and the Decision of 17 June 2013;

<sup>6</sup> Motion, paras. 1, 8, 10, 11, 16, 17, 49, 54, 56. The Appeals Chamber notes the typographical error in paragraph 49 of the Motion, which refers to Witness CNAAC, but should refer to Witness CNAC as per the French version of the Motion.

<sup>7</sup> Motion, paras. 16-19. According to Nzabonimana, the Prosecution also violated several provisions of the Prosecutor’s Regulation No. 2 of 14 September 1999 (“Prosecutor’s Regulation”). See Motion, paras. 19, 20. However, the Appeals Chamber declines to consider any alleged violation of the Prosecutor’s Regulation since a violation of any of its provisions would be a matter for the Prosecutor to consider. See Prosecutor’s Regulation, Article 4. As to the alleged violation of Article 20(4)(e) of the Statute, Nzabonimana submits that he was deprived of the possibility of confronting Witnesses CNAAC and CNAC with the Disclosed Documents. See Motion, para. 18.

<sup>8</sup> Motion, paras. 14, 21-46.

<sup>9</sup> Motion, paras. 13, 50, 53, 54, p. 9.

<sup>10</sup> Prosecution Response to Nzabonimana’s Motion Concerning Violations of Rules 66 and 68, 5 July 2013 (confidential with confidential annexes) (“Response”).

<sup>11</sup> Response, paras. 1, 5-8.

<sup>12</sup> Response, paras. 2, 10, 11.

<sup>13</sup> Response, paras. 3, 12-18, 20-23.

<sup>14</sup> Response, para. 19. The Prosecution further argues that Nzabonimana failed to substantiate how he suffered prejudice in relation to Witness CNAC. See Response, para. 4.

<sup>15</sup> See *Réplique de Callixte Nzabonimana à la réponse du Procureur à sa requête visant à obtenir les réparations appropriées compte tenu de nouvelles violations des articles 66(A)ii et 68 du Règlement de procédure et de preuve*, 12 July 2013. See Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal, 8 December 2006, paras. 14, 20. The Appeals Chamber observes that Nzabonimana did not request a time extension on the basis of good cause to file his reply. See Rule 116(A) of the Rules. The Appeals Chamber further recalls that Nzabonimana was explicitly reminded to strictly abide by practice directions on appeal and in this instance failed to do so. See Decision of 17 June 2013, p. 3.

<sup>16</sup> Comparing the annexes of both motions, the Appeals Chamber observes the only difference to be that paragraphs 6 and 7 of Annex B of the Abridged Motion for Remedies were removed from Annex B of the Motion.

**CONSIDERING**, however, that in the interest of justice and judicial economy, the Motion, except annexes A and B, will be considered as validly filed;

**RECALLING** that pursuant to Rule 66(A)(ii) of the Rules, the Prosecutor has a duty to disclose to the Defence “copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial”;

**RECALLING** that pursuant Rule 68(A) of the Rules, the Prosecution has a positive and continuous obligation to, “as soon as practicable, disclose to the Defence any material, which in [its] actual knowledge [...] may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence”;

**RECALLING** that to establish a violation of Rule 68 of the Rules, the applicant must: (i) identify specifically the material sought; (ii) present a *prima facie* showing of its probable exculpatory nature; and (iii) prove that the material requested is in the custody or under the control of the Prosecution;<sup>17</sup>

**RECALLING** that where the Defence satisfies the relevant Chamber that the Prosecution has failed to comply with its Rule 68 obligations, the Chamber must examine whether the Defence has been prejudiced by that failure before considering whether a remedy is appropriate;<sup>18</sup>

**CONSIDERING** that the Motion merely states that the Disclosed Documents “irrefutably fall under the ambit of Rules 66(A)(ii) and 68 of the Rules” but fails to articulate specific elements necessary to establish a violation of these provisions;<sup>19</sup>

**NOTING** that, in relation to Witness CNAC, the Disclosed Documents contain three prior *Gacaca* statements (“CNAC *Gacaca* Statements”);<sup>20</sup>

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<sup>17</sup> See, e.g., *Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor*, Case No. ICTR-99-50-A, Judgement, 4 February 2013 (“*Mugenzi and Mugiraneza* Appeal Judgement”), para. 39 and references cited therein; *Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor*, Case No. ICTR-99-50-A, Decision on Motions for Relief for Rule 68 Violations, 24 September 2012 (“*Mugenzi and Mugiraneza* Decision of 24 September 2012”), para. 8.

<sup>18</sup> See, e.g., *Mugenzi and Mugiraneza* Appeal Judgement, para. 39; *Mugenzi and Mugiraneza* Decision of 24 September 2012, para. 8 and references cited therein.

<sup>19</sup> Motion, para. 16. See also Motion, para. 17. The Appeals Chamber notes that the Motion attempts to satisfy requirements under a general provision, Rule 5 of the Rules, while only discussing the specific provisions of Rules 66 and 68 of the Rules in a cursory manner. See Motion, paras. 14, 16, 17. The Appeals Chamber further observes that, while Nzabonimana’s arguments on the prejudice appear to discuss specific elements of Rules 66 and 68 of the Rules, his arguments lack specificity. In many instances, it is unclear which documents Nzabonimana refers to and, specifically, how each document would cast doubt on the credibility of the Prosecution witnesses or might otherwise suggest his innocence or mitigate his guilt with respect to the particular charges for which he was convicted. See, e.g., Motion, paras. 30, 38, 39, 41-44.

<sup>20</sup> Motion, para. 25. According to Nzabonimana, these are documents numbered 23, 24, and 25. See Motion, Annex 1 (confidential).

**CONSIDERING** that even if Nzabonimana had demonstrated that the Prosecution violated Rule 66(A)(ii) of the Rules, the resulting prejudice, if any, would be minimal as he had the CNAC *Gacaca* Statements in his possession at least on 12 March 2010,<sup>21</sup> prior to the cross-examination of Witness CNAC on 12 and 13 April 2010;<sup>22</sup>

**NOTING** that, in relation to Witness CNAAC, the Disclosed Documents contain transcripts of prior testimonies before the Tribunal (“CNAAC Transcripts”),<sup>23</sup> a prior statement (“CNAAC Prior Statement”),<sup>24</sup> and other documents alleging Witness CNAAC’s participation in the Rwandan genocide (“CNAAC Other Documents”);<sup>25</sup>

**CONSIDERING** that the Prosecution fulfilled its disclosure obligations when it provided Nzabonimana with the CNAAC Transcripts on 10 February 2009,<sup>26</sup> more than ten months before Witness CNAAC’s testimony on 14 to 16 December 2009;<sup>27</sup>

**CONSIDERING** that even if Nzabonimana had demonstrated the Prosecution’s disclosure violations in relation to the CNAAC Prior Statement and the CNAAC Other Documents, the resulting prejudice, if any, would be minimal as: (i) he used the CNAAC Prior Statement during the cross-examination of the witness;<sup>28</sup> (ii) he received *Gacaca* and Rwandan judicial documents regarding Witness CNAAC’s alleged crimes prior to the witness’s testimony at trial;<sup>29</sup> and (iii) the Trial

<sup>21</sup> See *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Revised and Amended Pre-Defence Brief, 8 April 2010 (original French version filed on 12 March 2010) (“Pre-Defence Brief”), para. 4 and Annex IV (Liste de documents amendée) (confidential) (“Defence Disclosure Index”), p. 51. See also Response, para. 19, Annexes I and II (O).

<sup>22</sup> See *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, T. 12 April 2010; T. 13 April 2010.

<sup>23</sup> See Motion, Annexes 10 and 11 (*The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, T. 28 and 29 January 1997); Annexes 12 (confidential), 13, 14 (confidential), 15, 16, 17 (confidential) (*The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, T. 22 September 2004 (closed session), 23 September 2004, 24 September 2004 (closed session), 27 September 2004, 28 September 2004, 25 May 2005 (closed session)); Annexes 18 (confidential), 19, 20 (confidential), 21, 22 (*The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, T. 11 July 2007 (closed session), 12 July 2007 (closed session), 16 July 2007, 18 July 2007).

<sup>24</sup> The Appeals Chamber notes that this is a Rwandan judicial document from Witness CNAAC dated 15 July 2008 and numbered 19 in the index of the Disclosed Documents. See Motion, para. 24, Annexes 1 (confidential), 3 (confidential), 5 (confidential).

<sup>25</sup> The Appeals Chamber observes the CNAAC Other Documents include 11 judicial records from the Rwandan governments and two *Gacaca* documents. See Motion, Annex 1 (confidential), documents numbered in the index of the Disclosed Documents 6-16, 21, 22. The Appeals Chamber notes that documents numbered 6, 7, 8, 10, 11, 12, 15, 16 are not attached in the annexes of the Motion.

<sup>26</sup> See *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Interoffice Memorandum from the Prosecution, Subject “Disclosure of Trial Transcripts under Rule 68 of the Rules of Procedure and Evidence in the Case *The Prosecutor v. Callixte Nzabonimana* ICTR-98-44D-T”, 10 February 2009 (confidential), Annex A.

<sup>27</sup> *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, T. 14 December 2009; T. 15 December 2009; T. 16 December 2009.

<sup>28</sup> See *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, T. 15 December 2009 p. 28 (closed session). Further, the Appeals Chamber notes that Nzabonimana disclosed the CNAAC Prior Statement on 12 March 2010. See Pre-Defence Brief, Defence Disclosure Index, p. 53 (document numbered 398A).

<sup>29</sup> See *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Interoffice Memorandum from the Prosecution, Subject “Disclosure of CNAAC *Gacaca* Records in the Case *The Prosecutor v. Callixte Nzabonimana* ICTR-98-44D”, 13 October 2009 (confidential). See also Response, Annex I.

Chamber explicitly considered Witness CNAAs credibility, his imprisonment for participation in the events of 1994, and allegations that he fabricated evidence against Nzabonimana,

**FINDING**, therefore, that Nzabonimana's request for a remedy is unwarranted;

**FINDING** further that Nzabonimana does not show how his fair trial rights under Article 20(4)(e) of the Statute have been violated;<sup>31</sup>

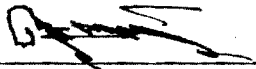
**FOR THE FOREGOING REASONS,**

**DENIES** the Motion in its entirety;

**FURTHER REMINDS** Nzabonimana to strictly abide by the practice directions applicable on appeal.

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

Done this 16th day of October 2013,  
At The Hague,  
The Netherlands.

  
\_\_\_\_\_  
Judge Mehmet Güney  
Presiding Judge

[Seal of the Tribunal]



<sup>30</sup> Trial Judgement, paras. 157-167, 173, 174, 194-199, 210, 211, 217, 221, 224, 226, 231, 237, 238, 256, 1044, 1045, 1064, 1065, 1076, 1079, 1080, 1142, 1143, 1181, 1190, 1196, 1210, 1211, 1457, 1480, 1481. The Appeals Chamber also notes that the Trial Chamber rejected fabrication arguments (*see* Trial Judgement, paras. 229, 231, 256, 1065, 1076, 1143, 1181, 1481) and applied caution to Witness CNAAs evidence (*see* Trial Judgement, paras. 80, 82, 239, 1064, 1142, 1210, 1480).

<sup>31</sup> Article 20(4)(e) of the Statute entitles an accused to have the witnesses against him examined and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.