



**Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda**

385/H

ICTR-01-75-AR11bis
19th April 2012
{385/H - 382/H}

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Patrick Robinson
Judge Mehmet Güney
Judge Andréia Vaz
Judge Carmel Agius

Registrar: Mr. Adama Dieng

Decision of: 19 April 2012

JEAN UWINKINDI

v.

THE PROSECUTOR

Case No. ICTR-01-75-AR11bis

**DECISION ON UWINKINDI'S MOTION FOR A STAY OF HIS TRANSFER TO
RWANDA AND FOR TIME TO FILE A REQUEST FOR RECONSIDERATION**

Counsel for Jean Uwinkindi:

Mr. Claver Sindayigaya

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
Ms. Erica Bussey

ICTR Appeals Chamber

Date: 19th April 2012
Action: R. Juma
Copied To: All concerned.

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
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NAME / NOM: N. Juma D. Jallow
SIGNATURE: [Signature] DATE: 19-04-2012

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

NOTING that, on 28 June 2011, a chamber of the Tribunal designated under Rule 11*bis* of the Rules of Procedure and Evidence of the Tribunal (“Referral Chamber” and “Rules”, respectively) ordered that Mr. Jean Uwinkindi’s case be referred to the authorities of the Republic of Rwanda for trial before the High Court of Rwanda;¹

RECALLING the Appeals Chamber’s decision of 16 December 2011, which, *inter alia*, dismissed Mr. Uwinkindi’s appeal against the Decision of 28 June 2011;²

RECALLING the Appeals Chamber’s decision of 23 February 2012, which dismissed Mr. Uwinkindi’s request for review or reconsideration of the Decision of 16 December 2011,³ but emphasized the Appeals Chamber’s clear expectation that “Mr. Uwinkindi’s transfer would not occur until a monitoring mechanism is in place”;⁴

NOTING President Vagn Joensen’s decision of 5 April 2012, which directed the Registrar, *inter alia*, to assign two legal officers from the Tribunal’s Registry or Chambers as interim monitors who will commence monitoring proceedings in Mr. Uwinkindi’s case in Rwanda upon his transfer, and requested the Registrar to ensure that the transfer of Mr. Uwinkindi to Rwanda takes place within 14 days of the Decision of 5 April 2012;⁵

BEING SEISED of a motion filed by Mr. Uwinkindi on 17 April 2012,⁶ in which he requests: (i) a stay of his transfer to Rwanda pending the resolution of a forthcoming second motion for

¹ *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75-R11*bis*, Decision on Prosecutor’s Request for Referral to the Republic of Rwanda, 28 June 2011 (“Decision of 28 June 2011”), p. 57 (disposition).

² Decision on Uwinkindi’s Appeal Against the Referral of his Case to Rwanda and Related Motions, 16 December 2011 (“Decision of 16 December 2011”), para. 89.

³ Decision on Uwinkindi’s Motion for Review or Reconsideration of the Decision on Referral to Rwanda and the Related Prosecution Motion, 23 February 2012 (“Decision of 23 February 2012”), para. 20.

⁴ Decision of 23 February 2012, para. 17.

⁵ *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75R11*bis*, Decision on the Monitoring Arrangements for the Trial of Jean Uwinkindi in the Republic of Rwanda, 5 April 2012 (“Decision of 5 April 2012”), pp. 6, 12, 13. In this decision, President Joensen noted “that the Defence has fully supported the appointment of the [Tribunal] legal staff who were nominated by the Registrar’s committee” as interim monitors. See Decision of 5 April 2012, para. 10.

⁶ Defence Extremely Urgent Motion for Stay of Uwinkindi’s Transfer to Rwanda, and Request for Time to File Second Motion for Reconsideration of the Decision of 16 December 2011 on Appeal Against the Referral of his Case to Rwanda, 17 April 2012 (“Motion”).

reconsideration containing more detailed submissions that he will not receive a fair trial in the High Court of Rwanda; and (ii) seven days in which to file the more detailed motion for reconsideration;⁷

NOTING that, according to the Motion, there is “compelling evidence” that, in the trial of Ms. Victoire Ingabire before the High Court of Rwanda, the national prosecuting authority in Rwanda “has acted in a manner inconsistent with any respect for that defendant’s right to a fair trial” and “the High Court has permitted serious violations of the defendant’s fair trial rights to go unchecked”;⁸

NOTING that Mr. Uwinkindi submits that the events relating to Ms. Ingabire’s trial highlighted in the Motion raise questions about whether he will receive a fair trial before the High Court of Rwanda and, accordingly, provide a reasonable basis to allow time for a fully argued motion for reconsideration of the Decision of 16 December 2011;⁹

NOTING that the Prosecution responded to the Motion on 18 April 2012;¹⁰

RECALLING that the Appeals Chamber may reconsider a decision issued pursuant to Rule 11*bis* of the Rules under its inherent discretionary power to do so if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice;¹¹

CONSIDERING that the Appeals Chamber has already concluded that the Referral Chamber acted within its discretion in distinguishing Mr. Uwinkindi’s case from other cases in Rwanda;¹²

CONSIDERING that, unlike other trials in Rwanda, Mr. Uwinkindi’s trial in Rwanda is subject to monitoring under the authority of the Tribunal and to additional protections and guarantees under Rwandan laws applicable to cases transferred from the Tribunal, and that the referral of his case may be revoked;¹³

⁷ Motion, paras. 3, 4, 15, 16.

⁸ Motion, para. 5. *See also* Motion, paras. 6-13.

⁹ Motion, paras. 3, 14, 15.

¹⁰ Prosecutor’s Response to Uwinkindi’s Motion for Stay of Uwinkindi’s Transfer and Request for Time to File Motion for Reconsideration, 18 April 2012 (“Response”). *See also* Corrigendum to Prosecutor’s Response to Uwinkindi’s Motion for Stay of Uwinkindi’s Transfer and Request for Time to File Motion for Reconsideration, 18 April 2012. In view of the need to expeditiously consider the Motion and the lack of prejudice to the Prosecution, the Appeals Chamber has not considered the Response, and therefore also does not need to await a reply.

¹¹ *See* Decision of 23 February 2012, para. 11 (and references therein).

¹² Decision of 16 December 2011, paras. 73-76. *See also* Decision of 28 June 2011, paras. 170-196.

¹³ *See, e.g.*, Decision of 5 April 2012, pp. 6-13; Decision of 23 February 2012, para. 17; Decision of 16 December 2011, paras. 37, 51, 52, 62-64, 66, 71, 75, 85; Decision of 28 June 2011, paras. 208, 217, 218, 221, pp. 57-59 (disposition).

CONSIDERING that the Appeals Chamber has previously expressed its confidence that, “should there be any violation of Mr. Uwinkindi’s fair trial rights, [...] it would be reported forthwith and a request for revocation of the referral would be made immediately”;¹⁴

CONSIDERING that, in view of the foregoing, Mr. Uwinkindi fails to show that either the allegations related to the trial of Ms. Ingabire contained in the Motion or additional, more detailed submissions with regard thereto would demonstrate a clear error of reasoning in the Decision of 16 December 2011 or require its reconsideration in the interests of justice;

FINDING, consequently, that there is no basis for staying the transfer of Mr. Uwinkindi to Rwanda pending the filing and resolution of a further motion for reconsideration;

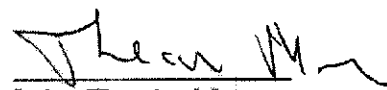
HEREBY DENIES the Motion in its entirety.

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

Done this 19th day of April 2012,
At The Hague,
The Netherlands.



[Seal of the Tribunal]


Judge Theodor Meron
Presiding

¹⁴ Decision of 16 December 2011, para. 52.