

MICT-12-13  
23/07/2012  
(0851-0848)

ICTR-95-1D  
12-6-2012  
(722-718)

0851  
MH

722  
KMM



**International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda**

UNITED NATIONS  
NATIONS UNIES

Arusha International Conference Centre  
P.O. Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzania  
Tel: 255 27 2504207-11 2504367-72 or 1 212 963 2850 Fax: 255 27 2504000/2504373 or 1 212 963 2848/49

Before: Judge Vagn Joensen, *President*  
Registrar: Adama Dieng  
Date Filed: 12 June 2012

**PROSECUTOR v. KAYISHEMA et al**  
Case No. ICTR-95-I  
**PROSECUTOR v. BAGILISHEMA**  
Case No. ICTR-95-1A  
**PROSECUTOR v. MUHIMANA**  
Case No. ICTR-95-1B  
**PROSECUTOR v. NDIRIBATI**  
Case No. ICTR-95-1  
**PROSECUTOR v. SIKUBWABO** ✓  
Case No. ICTR-95-1D  
**PROSECUTOR v. NIYITEGEKA**  
Case No. ICTR-96-14  
**PROSECUTOR v. MUSEMA**  
Case No. ICTR-96-13  
**PROSECUTOR v. MUNYAKAZI**  
Case No. ICTR-97-36A  
**PROSECUTOR v. KAREMERA et al**  
Case No. ICTR-98-44  
**PROSECUTOR v. NCHAMHIGO**  
Case No. ICTR-01-63  
**PROSECUTOR v. NDINDABAHIZI**  
Case No. ICTR-01-71

JUDICIAL RECORDS ARCHIVES  
UNICTR  
2012 JUN 12 P 5:30

**Prosecutor's Response to Motion for Reconsideration of the 28 May Decision in Relation to Jacques Mungwarere's Motion for Access to Materials and Notice Under Rule 67(D)**

**Office of the Prosecutor**  
Hassan Bubacar Jallow  
Richard Karegyesa  
Frederick Nyiti  
Lois Mbafor

**Counsel for Jacques Mungwarere**  
Philippe Larochele  
Christian Deslauriers  
Marc Nerenberg

**Ottawa Superior Court**  
c/o The Honourable Louis Z. Charbonneau

**Public Prosecution Service of Canada**  
Luc Boucher

Received by the Registry  
Mechanism for International Criminal Tribunals  
23/07/2012 11:17  
*Dieng prop*

**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**  
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME  
COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS  
NAME / NOM: *MOUTOU DIALLA*  
SIGNATURE: *[Signature]* DATE: *12/06/2012*

## A. Overview

1. On 7 June 2012, the Defence for Jacques Mungwarere (“Applicant”), currently facing prosecution in Canada for genocide and other serious crimes committed in Rwanda in 1994, filed a Motion seeking reconsideration of a Decision rendered by President Vagn Joensen on 28 May 2012.<sup>1</sup>

2. The Prosecutor hereby opposes the Motion. The Applicant fails to meet the standard for reconsideration as established by this Tribunal, namely that a Chamber or the President “may reconsider a previous decision pursuant to its inherent discretionary power if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice.”<sup>2</sup>

## B. Submissions

3. Reconsideration is an exceptional remedy.<sup>3</sup> The Applicant has not demonstrated that this is an exceptional case meriting discretionary reconsideration: he has not demonstrated a clear error in the President’s reasoning, nor the necessity of reconsideration to prevent an injustice.

### (i) First Ground

4. In his First Ground, the Applicant, in essence, seeks reconsideration based on an alleged lack of reasoned opinion.<sup>4</sup> He argues that the Decision should be reconsidered, because it does not take into account the Applicant’s Reply of 20 March 2012.<sup>5</sup>

---

<sup>1</sup> *The Prosecutor v. Kayishema et al*, Case No. ICTR-95-I, Motion for Reconsideration of the 28 May Decision in Relation to Jacques Mungwarere’s Motion for Access to Materials and Notice Under Rule 67(D), 7 June 2012 (“Motion”). See also *The Prosecutor v. Kayishema et al*, Case No. ICTR-95-I, Decision in Relation to Jacques Mungwarere’s Motion for Access to Materials and Notice under Rule 67(D), 28 May 2012 (“Decision”).

<sup>2</sup> *Kajelijeli v. the Prosecutor*, Case No. ICTR-98-44A-A, Appeal Judgement, 23 May 2005 (“*Kajelijeli* Appeal Judgement”), paras. 203-204; *The Prosecutor v. Hategekimana*, Case No. ICTR-00-55B-A, Decision on Idelphonse Hategekimana’s Second Motion for an Extension of Time to File his Appellant’s Brief, 20 May 2011, para. 6; *The Prosecutor v. Karemera et al*, ICTR-98-44-AR73.18, Decision on Request for Reconsideration, 8 March 2012, para. 7. As the Applicant rightly points out, the President has the same inherent power to reconsider his own decisions. See Motion, para. 14, with reference to *The Prosecutor v. Rutaganira*, Case No. ICTR-1995-1C-R73, Decision on the Motion for Reconsideration of the Denial of Early Release, 13 February 2008, para. 4.

<sup>3</sup> *Kajelijeli* Appeal Judgement, para. 204,

<sup>4</sup> Motion, paras. 15, 16-19.

<sup>5</sup> *The Prosecutor v. Kayishema et al*, Case No. ICTR-95-I, Reply to the Prosecutor’s Responses to Jacques Mungwarere’s First and Second Urgent Motion for Access to Material and Notice under Rule 67(D), 20 March 2012 (“Reply”), attached as Annex A to the Motion.

5. The mere fact that the President did not reference the Applicant's Reply does not render his Decision erroneous. It is well-established jurisprudence that a Chamber (or the President) does not have to explain its decision in every detail.<sup>6</sup> Moreover, the Applicant fails to show that he suffered prejudice in the current circumstance. He blatantly alleges that the President only considered the information provided in his Initial Motion to conclude that the material sought was not sufficiently identified,<sup>7</sup> without even attempting to demonstrate how the information provided in the Reply would have satisfied the specificity requirement.<sup>8</sup>

6. Indeed, a further review of the Reply shows that the information provided is still not specific enough to identify the material sought. The Applicant does not include sufficient reference, for example, to the particular date of the witnesses' testimony, the pseudonyms used to identify the witnesses or the exhibit numbers.<sup>9</sup>

7. Overall, the Applicant does not make any submissions in his Reply that would have altered the President's Decision. He fails to show that he suffered prejudice by the Decision not explicitly referring to his Reply.<sup>10</sup>

#### (ii) Second Ground

8. The Applicant also seeks reconsideration, arguing that the impugned Decision fails to specifically address the material sought in relation to the *Munyakazi* case.<sup>11</sup> However, the Decision does address the material sought in *Munyakazi*.<sup>12</sup>

---

<sup>6</sup> See, e.g., *Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Judgement, 2 February 2009 ("*Karera* Appeal Judgement"), para. 20.

<sup>7</sup> *The Prosecutor v. Kayishema et al.*, Case No. ICTR-95-I, Jacques Mungwarere's Urgent Motion for Access to Material, dated 29 February 2012 and filed on 1 March 2012 ("Initial Motion").

<sup>8</sup> Motion, paras. 17-19; Decision, paras. 15, 26.

<sup>9</sup> See Decision, para. 15, with reference in footnote 13 to *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Decision on Jacques Mungwarere's Motion for Access to Confidential Material, 17 May 2012, para. 17 and footnote 37.

<sup>10</sup> See *Rutaganda v. The Prosecutor*, Case No. ICTR-96-3-R, Decision on Rutaganda's Appeal concerning Access to Confidential Materials in the *Karemera et al.* Case, 10 July 2009, para. 18. Here, the Appeals Chamber held that a party denied the opportunity to file a reply, can show prejudice on appeal by demonstrating that it could have raised arguments in its reply to address those submissions contained in an opposing party's response.

<sup>11</sup> Motion, paras. 15, 20-21.

<sup>12</sup> Decision, p. 10.

9. In his Initial Motion, the Applicant submitted that no evidence was presented at the *Munyakazi* trial regarding the attacks in Bisesero, although Munyakazi was charged with several counts relating to these events.<sup>13</sup> In Annex 1 to his Reply, the Applicant requests the supporting material for these charges.<sup>14</sup>

10. In the impugned Decision, the President expressly denied the Applicant's request relating to the Munyakazi and Nchamihigo cases.<sup>15</sup> The Decision specifically explains that there is not a factual nexus in relation to the *Nchamihigo* case "which relates only broadly to events in the Bisesero area and does not refer specifically to the allegations against Mungwarere".<sup>16</sup> Similarly, given that no evidence was led at the *Munyakazi* trial, as the Applicant concedes, no factual nexus exists between the Applicant's case and the Munyakazi case. Once again, a Chamber (or the President) does not have to explain its decision in every detail.<sup>17</sup> It is clear from the impugned Decision that the Applicant's request with respect to the *Munyakazi* case has been addressed and denied.

(iii) Third Ground

11. In his Third Ground, the Applicant makes the unsubstantiated assertion that his submissions regarding Rule 67 (D) of the Rules of Procedure and Evidence have been "misinterpreted, ignored or misunderstood."<sup>18</sup>

12. However, the President was correct in concluding that that Rule 67 (D) should not apply *mutatis mutandis* to parties outside the Tribunal<sup>19</sup>. The Applicant merely repeats arguments raised before, and suggests another reading of the Rule, without demonstrating a clear error of reasoning or that reconsideration is necessary to prevent an injustice.

---

<sup>13</sup> Initial Motion, para. 37, with reference in footnote 49 to the *Munyakazi* trial judgement.

<sup>14</sup> Reply, Annex I, para. 47.

<sup>15</sup> Decision, Disposition, I (p. 10).

<sup>16</sup> Decision, para. 23, with reference in footnote 31 to the *Nchamihigo* trial judgement.

<sup>17</sup> *Karera* Appeal Judgement, para. 20.

<sup>18</sup> Motion, paras. 15, 22-25, esp. para. 23.

<sup>19</sup> Decision, para. 36.

**C. - RELIEF SOUGHT**

13. For all these reasons, the Prosecutor respectfully requests the President to dismiss the Motion in its entirety.

**Dated at Arusha 12 June 2012**



Richard Karegyesa

**Chief of Prosecutions**



**TRANSMISSION SHEET / FICHE DE TRANSMISSION  
FOR FILING OF DOCUMENTS WITH THE ARUSHA BRANCH OF  
THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS/  
POUR LE DEPOT DE DOCUMENTS A LA DIVISION D'ARUSHA DU  
MECHANISME POUR LES TRIBUNAUX PENaux INTERNATIONAUX**

**I - FILING INFORMATION / INFORMATIONS GENERALES**

<b>To/ A:</b>	MICT Registry/ Greffe du MPTI			
<b>From/ De:</b>	<input type="checkbox"/> Chambers/ Chambre	<input type="checkbox"/> Defence/ Défense	<input type="checkbox"/> Prosecution/ Bureau du Procureur	<input checked="" type="checkbox"/> Other/ Autre : <b>ICTR Registry M Hunt</b>
<b>Case Name/ Affaire:</b>	Sikubwabo		<b>Case Number/ Affaire No:</b>	MICT-12-13
<b>Date Created/ Daté du:</b>	12/06/2012		<b>Date transmitted/ Transmis le:</b>	23/07/2012
<b>No. of Pages/ No de pages:</b>	5	<b>Original Language / Langue de l'original:</b>	<input checked="" type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français <input type="checkbox"/> Kinyarwanda
<b>Title of Document/ Titre du document:</b>	<b>PROSECUTOR'S RESPONSE TO MOTION FOR RECONSIDERATION OF THE 28 MAY DECISION IN RELATION TO JACQUES MUNGWARERE'S MOTION FOR ACCESS TO MATERIALS AND NOTICE UNDER RULE 67 (D)</b>			
<b>Classification Level/ Catégories de classement:</b>	<input checked="" type="checkbox"/> Unclassified/ Non classé	<input type="checkbox"/> Strictly Confidential/ Strictement confidentiel		
	<input type="checkbox"/> Confidential/ Confidentiel	<input type="checkbox"/> Ex Parte (specify/ préciser):		
	<input type="checkbox"/> Ex Parte	<input type="checkbox"/> Ex Parte	<input type="checkbox"/> Other Ex Parte/ Ex Parte Autre (specify/ préciser):	
	Defence excluded/ Défense exclu	Prosecution excluded/ Bureau du Procureur exclu		
<b>Document type/ Type de document:</b>	<input type="checkbox"/> Indictment/ Acte d'accusation	<input type="checkbox"/> Order/ Ordre	<input type="checkbox"/> Appeal Book/ Livre d'appel	<input type="checkbox"/> Notice of Appeal/ Acte d'appel
	<input type="checkbox"/> Warrant/ Mandat	<input type="checkbox"/> Affidavit/ Déclaration sous serment	<input type="checkbox"/> Submission from non-parties/ Ecritures déposés par des tiers	
	<input type="checkbox"/> Motion/ Requête	<input type="checkbox"/> Correspondence	<input checked="" type="checkbox"/> Submission from parties/ Ecritures déposés par des parties	
	<input type="checkbox"/> Decision/ Décision	<input type="checkbox"/> Judgement/ Jugement	<input type="checkbox"/> Book of Authorities/ Livre de sources juridiques	

**II - TRANSLATION STATUS ON THE FILING DATE/ ETAT DE LA TRADUCTION AU JOUR DU DÉPÔT**

<input checked="" type="checkbox"/> Translation not required/ La traduction n'est pas requise			
<input type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ La Partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction (Word version of the document is attached/ La version en Word se trouve en annexe)			
<input type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	
<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ La Partie déposante soumet ci-joint l'original et la version traduite pour dépôt, comme suit :			
<b>Original/ Original en</b>	<input type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda
<b>Translation/ Traduction en</b>	<input type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ La Partie déposante soumettra la (les) version(s) traduite(e) sous peu, dans la (les) langue(s) suivante(s):			
<input type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	

Send completed transmission sheet to: [JudicialFilingsArusha@un.org](mailto:JudicialFilingsArusha@un.org)  
Veuillez soumettre cette fiche pour le dépôt des documents à: [JudicialFilingsArusha@un.org](mailto:JudicialFilingsArusha@un.org)