



INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

APPEALS CHAMBER

ICTR-05-89-AR11bis

21st June 2013

{680bis/H-674bis/H}

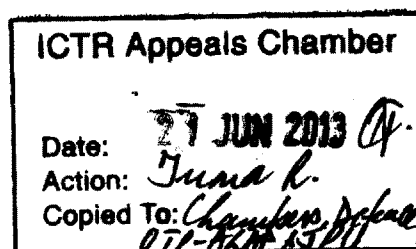
ENGLISH

Original: FRENCH

Before: Judge Theodor Meron, presiding
Judge William Sekule
Judge Mehmet Güney
Judge Arlette Ramaroson
Judge Khalida Rachid Khan

Registrar: Bongani Majola

Date: 10 June 2013



The Prosecutor

v.

Bernard Munyagishari
Case No. ICTR-2005-89-AR11 bis

**REPLY OF BERNARD MUNYAGISHARI'S DEFENCE TO THE PROSECUTOR'S
RESPONSE FILED ON 7 JUNE 2013**

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A13-0037 (E)

Translation certified by LSS, ICTR

I. INTRODUCTION

1. On 3 June 2013, Bernard Munyagishari's Defence (the "Defence") filed a motion for reconsideration of the Decision rendered by the Appeals Chamber on 3 May 2013 in Rwanda [*sic*] (the "Motion").¹ In its motion, the Defence requests the Appeals Chamber to reconsider its Decision of 3 May 2013 because of a decision rendered by the High Court of Kigali, to reverse the referral of Munyagishari's case to Rwanda and to stay transfer of the Accused until a decision is rendered on the said Motion. Alternatively, the Defence requests a stay of the transfer to Rwanda until monitors are appointed.²

2. On the same day, 3 June 2013, the Accused himself filed a motion for a stay of his transfer to Rwanda (the "Accused's Motion").³

3. On 7 June 2013, the Prosecutor filed a consolidated response to the two motions filed by the Defence and the Accused himself respectively (the "Response").⁴ The Defence received the said Response by the Prosecutor on 8 June 2013. In his response, the Prosecutor objected to the two motions.⁵ In addition, the Prosecutor appended to his response the Decision of the High Court of Kigali referred to by the Defence in its motion.⁶

¹ Urgent Motion by Bernard Munyagishari's Defence for Reconsideration of the Decision rendered on 3 May 2013.

² Motion, para. 24.

³ Extremely Urgent Motion by Bernard Munyagishari to Stay his Transfer to Rwanda.

⁴ Prosecutor's Consolidated Response to the Extremely Urgent Motion by Bernard Munyagishari to Stay his Transfer to Rwanda and Urgent Motion by Bernard Munyagishari's Defence for Reconsideration of the Decision of 3 May 2013.

⁵ Response, para. 19.

⁶ Response, Annex C.

4. Since the Defence did not have the decision of the High Court of Kigali at its disposal when it filed its motion, and in order to respond to the Prosecutor's arguments, the Defence files the present reply.

II. THE ACCUSED'S MOTION

5. In his response, the Prosecutor contends that the filing of motions by the Accused and by the Defence is unusual and improper.⁷ The Defence is aware that the Tribunal requests accused persons represented by Counsel to file all documents through the appointed Counsel. However, as the Prosecutor himself notes, the Appeals Chamber Decision rendered on 3 May 2013 (the "Decision")⁸ is the Tribunal's final decision.⁹ That being the case, the Accused, who indisputably has communication difficulties with his Counsel owing to the geographical distance between them, feared that his Counsel was no longer empowered to act, and took steps himself to inform the Chamber that he wanted his Counsel to pursue action to obtain a reconsideration of the Decision. Out of caution, he also asked for a stay of his transfer to Rwanda.

6. Although the step taken by the Accused is unusual, it cannot be described as improper. The Accused simply tried to assert his rights before the Appeals Chamber while indicating that his Counsel was going to file motions, which his Counsel actually did on the same day.

III. REQUEST FOR RECONSIDERATION

7. In his response, the Prosecutor pleads that the decision of the High Court is not a new fact, since the issue of investigators has already been raised.¹⁰ The Defence does not deny that

⁷ Response, para. 1.

⁸ "Decision on Bernard Munyagishari's Third and Fourth Motions for Admission of Additional Evidence and on the Appeal against the Decision on Referral under Rule 11 *bis*".

⁹ Response, para. 2.

¹⁰ *Ibid.*, paras. 14 and 15.

the issue of investigators has already been raised. However, at the time it was raised, it was not known how it would be resolved in Rwanda. Furthermore, the Appeals Chamber only ruled that it did not consider that the monitors' reports to which the Defence had referred could have been a decisive factor.¹¹

8. Although the decision of the High Court deals with the issue of investigators, it is entirely different in nature. The decision shows unquestionably that in Rwanda the Defence is in an unfair and unfavourable position as compared to the Prosecution.¹² Further, it shows that the Rwandan system, in which cases referred by the Tribunal are governed by a special law,¹³ is not effective. In fact, even in the referred cases, the Judges are obliged to apply the ordinary law of Rwanda and to interpret the Organic Law within that framework.¹⁴ In so doing, the Organic Law becomes totally meaningless and is inadequate to guarantee the rights of the Accused.¹⁵

9. The decision of the High Court to which the Defence is referring was rendered on 16 May 2013 and is therefore a new fact.

10. In his response, the Prosecutor submits that the High Court generally confirmed that in Rwanda investigations are conducted by the judicial police and that it is therefore not necessary

¹¹ "Decision on Bernard Munyagishari's First and Second Motions for Admission of Additional Evidence", rendered on 25 February 2013, para. 27.

¹² Motion, paras. 16 to 18.

¹³ Organic Law No. 11/2007 of 16 March 2007 concerning the transfer of cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and other States as amended by Organic Law No. 03/2009 of 26 May 2009 modifying and complementing the Organic Law of 11/2007 of 16 March 2007 concerning the transfer of cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and other States, Prosecutor's Request for the referral of the Case of Bernard Munyagishari to Rwanda pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence, filed on 9 November 2011, Annex G.

¹⁴ Decision of the High Court, Response, Annex C, paras. 15 to 18.

¹⁵ Motion, paras. 11 to 14.

to assign private investigators.¹⁶ However, the High Court has held that “since the Accused claims to have witnesses for his defence, himself or his Counsel have the duty to search for them.”¹⁷ Consequently, it would appear that the High Court accepts that the Defence can conduct its own investigations but refuses to provide it with adequate resources to do so, thereby placing the Defence in an unfavourable position as compared to the Prosecution.

11. Contrary to the Prosecutor's contentions,¹⁸ the Defence did not assert that the High Court was suggesting that funds for Defence investigations would never be provided. The Defence simply noted that the said funds have not yet been secured.¹⁹ Be that as it may, the Defence considers that it is particularly disturbing that, more than a year after his transfer to Rwanda, Jean Uwinkindi's Defence has still not been able to resolve the issue of funding for investigations.

12. The Defence recalls that, in accordance with international human rights standards, an accused is entitled to a fair and public hearing and to the right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. These rights are guaranteed in Article 14(1) and 14(3)(e) of the International Covenant on Civil and Political Rights which Rwanda ratified on 12 February 1975 and by Article 20(2) and 20(4)(e) of the Statute of the Tribunal. Furthermore, the same rights are repeated in Article 13(1) and 13(10) of the Organic Law.²⁰

¹⁶ Response, para. 16.

¹⁷ Decision of the High Court, Response, Annex C, para. 21.

¹⁸ Response, para. 17.

¹⁹ Motion, para. 18 [*sic*], rather para. 19.

²⁰ Organic Law No. 11/2007 of 16 March 2007 concerning the transfer of cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and other States, as amended by Organic Law No. 03/2009 of 26 May 2009 modifying and complementing Organic Law No. 11/2007 of 16 March 2007 concerning the transfer of cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and other States, Prosecutor's Request for Referral of the Case of Bernard Munyagishari to Rwanda pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence, filed on 9 November 2011, Annex G.

13. In refusing to assign qualified and professional investigators to the Defence, the High Court is undermining the rights of the Defence, in violation of the above-mentioned legislation. To maintain the referral of the present case to Rwanda under such conditions, would constitute a manifest injustice.

IV. APPOINTMENT OF MONITORS

14. In its motion, the Defence requests, in the alternative, that if the Appeals Chamber maintains referral of the case to Rwanda, the transfer should be stayed until monitors are appointed.²¹ This request is based exclusively on the decision rendered by the High Court of Kigali which proves that the rights of the Defence, guaranteed by the Organic Law, can easily be undermined in Rwanda.

15. Although the Defence considers that only a reversal of the referral may safeguard the rights of the Accused in this case, it is however aware that the appointment of monitors before the transfer of the Accused to Rwanda would offer the Accused at least a semblance of judicial security. Such appointment will further testify to the Tribunal's willingness to monitor his case in Rwanda and ensure as much as possible that his rights are respected. Thus, the appointment of monitors before the transfer of the Accused to Rwanda would be beneficial to both the Accused and the Tribunal and would serve the interests of justice.

²¹ Motion, paras. 23 and 24.

V. CONCLUSION

16. For the reasons set forth above and those provided in the Motion of 3 June 2013, the Defence respectfully requests the Appeals Chamber,

- **To grant the Motion filed on 3 June 2013.**

Done at Arusha this 10th day of June 2013

[Signed]

Philippe Moriceau

Lead Counsel



**COURT MANAGEMENT
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			ICTR-05-89-AR11bis		
		Case No / no. de l'affaire:			
To: A:	Bernard MUNYAGISHARI, UNDF ARUSHA	TO BE FILLED IN BY THE DETAINEE A COMPLETER PAR LE DETENU Signature _____ Date, Time / Heure _____ I acknowledge receipt of the documents listed below. <i>J'accuse réception des documents mentionnés ci-dessous.</i>			
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Documents name / titre du document			Date Filed / Date enregistré	Pages	
Reply of Bernard Munyagishari's Defence of the Prosecutor's Response filed on 7 June 2013			21/06/13	680bis/H – 674bis/H	