



International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

5719/A

ICR-97-20-A
(14-04-2005)
(5719/A - 5716/A)

APPEALS CHAMBER

Before: Judge Theodor Meron, *Presiding*
Judge Mohamed Shahabuddeen,
Judge Mehmet Güney,
Judge Fausto Pocar,
Judge Inés Mónica Weinberg de Roca

Registrar: Mr. Adama DIENG

Date of Filing: 14 April 2005

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THE PROSECUTOR

v.

LAURENT SEMANZA

Case No. ICTR-97-20-A

PROSECUTOR'S RESPONSE
to Defense Extremely Urgent Motion for Reconsideration of Appeals Chamber Decision on Laurent Semanza's Motion for the Admission of Additional Evidence Dated April 5, 2005 in the Interest of Justice and on the Basis of New Evidence

Office of the Prosecutor

James STEWART
Neville WESTON
Linda BIANCHI

Counsel for Appellant Semanza

Chief Fuatabong ACHA
Charles A. TAKU

OVERVIEW

1. The Prosecution files this response to the Motion for Reconsideration, filed on 11 April 2005 (the "Motion") by the Appellant, Laurent Semanza, but only received by the Office of the Prosecutor on the evening of 12 April 2005. In the Motion, the Appellant requests the Appeals Chamber to reconsider its decision of 5 April 2005 dismissing the Appellant's motion to have new evidence admitted pursuant to Rule 115.

ARGUMENT

2. The Motion, as submitted, is a defective and improper filing. At paragraph 18 of the Motion, the Appellant refers to a new statement made by Witness FPK2, supposedly "volunteered" by Witness FPK2 himself. The Motion refers to this statement as Annex E to the Motion. No such statement, however, is attached to the Motion.

3. The only material that appears after Annex D to the Motion is another copy of the transcript of Witness FPK2's testimony in the *Aloys Simba* trial, taken on 16 December 2004, which transcript formed the basis of the Appellant's Rule 115 Motion, that was dismissed by this Appeals Chamber on 5 April 2005. At the top of this copy of the transcript there appears an "E" in capital letters, but this "E" is crossed out.

4. The alleged new statement, supposedly provided by FPK2, upon which the entire Motion is founded, is not attached to this motion. In fact, the only material attached to the Motion are copies of the pleadings and a copy of the Appeals Chamber decision in relation to the first Rule 115 Motion brought by the Appellant in relation to Witness FPK2. This material already forms part of the Court record and, as such, it is unnecessary and a misuse of the Tribunal's resources to attach all of these documents, comprising 61 pages, to this motion.

5. Given that the only "new" document to the Motion is not attached, the Office of the Prosecution is unable to respond to the Motion on its merits, as submitted.

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6. Based on the limited review possible on the Motion itself, however, the Motion appears to be deficient. The Appellant does not specify how anything said in the statement by FPK2 is different than, and thereby possibly “new”, evidence from what was relied upon in the original Rule 115 Motion. In fact, from paragraphs 10 and 19 of the Motion, it appears that the purpose of providing this “new” statement of Witness FPK2 is solely to allow him to come before the Appeals Chamber to “give more precision and specificity to his answers”¹ and to “answer any questions”² relating to the testimony this Witness gave in the *Simba* trial. This is clearly not new evidence.

7. In addition, the Appellant fails to address the legal test that must be met in order to warrant a reconsideration of a decision. The Appellant further fails to relate any of his arguments to this test, leaving his submissions obscured and forcing the Office of the Prosecutor and the Appeals Chamber to engage in a guessing game as to what exactly are his submissions. This is impermissible.

8. The test for reconsideration employs a high standard. It requires that, before the Appeals Chamber will invoke its inherent discretionary power to reconsider a previous decision, the Appellant must demonstrate a clear error of reasoning, that it is necessary to do so in order to prevent an injustice or that special circumstances exist.³ Based on the total lack of argument made by the Appellant in this regard in the Motion, the Appellant cannot meet the standard for reconsideration.

9. The jurisprudence of the Appeals Chamber indicates that a failure to attach the relevant material to a motion is fatal to that motion.⁴ The Appellant has placed nothing before the Appeals Chamber upon which any response or deliberation by the Appeals Chamber could be made. The Motion ought to be dismissed on this basis.

¹ See para. 10 of the Motion.

² See para. 19 of the Motion.

³ *Prosecutor v. Barayagwiza et. al.*, Case No. ICTR-99-52-A “Decision of Jean-Bosco Barayagwiza’s Request for Reconsideration of Appeals Chamber Decision of 19 January 2005”, dated 4 February 2005, p. 2; *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-AR72, “Decision (Motion for Review or Reconsideration)”, dated 12 September, 2000, p. 3; *Prosecutor v. Niyitegeka*, Case No. ICTR-96-14-A, “Decision of Eliezer Niyitegeka’s Urgent Motion for Reconsideration of Appeals Chamber Decision Dated 3 December 2003”, dated 4 February 2004, p. 4; *Prosecutor v. Semanza*, Case No. ICTR-97-20-A, “Decision on Application for Reconsideration of Amicus Curiae Application of Paul Bisengimana”, dated 19 May 2004, p. 2.

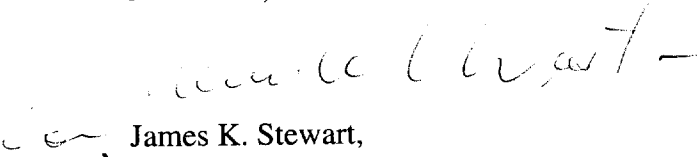
⁴ See *Prosecutor v. Kvočka et. al.* “Decision On Appellant’s Motions to Admit Additional Evidence Pursuant to Rule 115”, dated 16 February 2004, IT-98-30/1-A, page 4 and 5.

10. Otherwise, it is in the discretion of the Appeals Chamber to order the Appellant to deliver the statement upon which he relies forthwith,⁵ and to allow the Office of the Prosecutor sufficient time therefrom to respond.

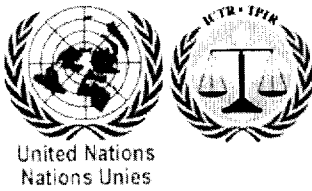
RELIEF SOUGHT

11. The Office of the Prosecutor, therefore, requests that the Appeals Chamber either dismiss the Motion in its entirety for failure to comply with established rules of procedure or, alternatively, order the Appellant to serve the alleged new statement forthwith and grant the Office of the Prosecutor 10 days from receipt of the alleged new statement to respond to the merits of the Motion.

Dated 14 APRIL 2005,
At Arusha, Tanzania.


James K. Stewart,
Senior Appeals Counsel

⁵ See *Prosecutor v. Kajelijeli*, Case No. ICTR-98-44-A, "Order for the Defence to File Additional Evidence in Support of Defence Motion for the Admission of Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence", dated 26 February 2004.



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