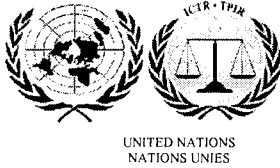


0044/2

ICTR-95-1C-A  
(14-08-2006)  
(9/A-6A)

8/A  
VB



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

**APPEALS CHAMBER**

Case N<sup>o</sup>. ICTR-95-IC-T

ENGLISH  
Original: FRENCH

Before: Judge Fausto Pocar, presiding

Registrar: Adama Dieng

Date filed: 13 July 2006

**VINCENT RUTAGANIRA**

v.

**THE PROSECUTOR**

JUDICIAL RECORDS/ARCHIVES  
UNICTR  
RECEIVED

2006 AUG 14 P 3:21

**PROSECUTION MOTION FOR DISMISSAL OF VINCENT RUTAGANIRA'S  
NOTICE OF APPEAL OF 4 JULY 2006 AGAINST THE PRESIDENT  
OF THE TRIBUNAL'S DECISION OF 2 JUNE 2006 DENYING  
HIS REQUEST FOR EARLY RELEASE**

Office of the Prosecutor:

James Stewart  
Dior Sow Fall  
Abdoulaye Seye

Counsel for the Defence:

François Roux  
Maroufa Diabira  
Soraya Brikci-Laucci

**INTRODUCTION**

1. Following the Decision of the President of the Tribunal, dated 2 June 2006,<sup>1</sup> denying his Request for Early Release, filed on 5 March 2006, Vincent Rutaganira filed an appeal against the Decision on 4 July 2006.<sup>2</sup>
2. The Prosecutor does not intend to respond to the arguments put forward in the Notice of Appeal, as neither the Rules of Procedure and Evidence<sup>3</sup> nor the Practice Direction on Formal Requirements for Appeals from Judgement<sup>4</sup> provides for a response to a notice of appeal, except to an appellant's brief, a respondent's brief and a brief in reply.<sup>5</sup>
3. The Prosecutor, nonetheless, deems it appropriate to file the present Motion, and submits, pursuant to Rules 107, 107*bis*, and 108 of the Rules, and the above-mentioned Practice Direction, that the Notice of Appeal ought to be dismissed by the Appeals Chamber for want of merit. Neither Rule 108 of the Rules nor the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence and Early Release of Persons Convicted by the International Criminal Tribunal, permits Mr. Rutaganira to appeal the President's Decision.

**ARGUMENTS****The Notice of Appeal filed pursuant to Rule 108 of the Rules and Article 24 of the Statute lacks merit**

4. Rule 108 of the Rules provides for "appeal of a judgement or sentence". The term "judgement" would be open to interpretation were it not clearly defined by the Practice Direction on Formal Requirements for Appeals from Judgement. Part II, paragraph 1 of the Practice Direction, "Formal Requirements", states that a notice of appeal shall be filed against "a judgement of a Trial Chamber". Rule 108 of the Rules does not apply in this instance, and Mr. Rutaganira has not demonstrated the contrary.
5. Moreover, Article 24 of the Statute of the Tribunal entitles persons convicted by the Chamber and the Prosecutor to appeal. It sets forth the powers of the Appeals Chamber. Article 24 of the Statute defines the grounds for hearing appeals from persons convicted by the Trial Chamber or from the Prosecutor. It must be either an error on a question of law invalidating the decision or an error of fact which has occasioned a miscarriage of justice.
6. The Decision rendered by the President, pursuant to Rule 125 of the Rules and Article 27 of the Statute, falls within the powers vested mainly in the President, who decides in the interests of justice and on the basis of the general principles of law. The Decision does not fall within the ambit of Article 24 of the Statute.

<sup>1</sup> See Decision on Request for Early Release, 2 June 2006.

<sup>2</sup> See Notice of Appeal, 4 July 2006.

<sup>3</sup> See Rules 108, 111-113, and 117*bis* of the Rules.

<sup>4</sup> See Practice Direction on Formal Requirements for Appeals from Judgement, 16 September 2002, [hereinafter "Practice Direction"], paras. 1, 2, 3 and 4.

<sup>5</sup> In this connection, see *The Prosecutor v. Ntagerura et al.*, Decision (*Requête urgente du Procureur aux fins de rejet des réponses à l'Acte d'Appel du Procureur, Requête de la Défense d'Emmanuel Bagambiki en vue du report du délai de dépôt de sa réponse*), 10 November 2004, p. 5.

**The Decision of the President of the Tribunal is final and without appeal**

7. Pursuant to paragraph 10 of the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence and Early Release of Persons Convicted by the International Criminal Tribunal for Rwanda, the President's Decision on the matter is "final and without appeal".<sup>6</sup>

8. It should be noted that in support of his Request for Early Release, Vincent Rutaganira refers to ICTY decisions,<sup>7</sup> rendered pursuant to the Practice Direction of the said Tribunal, dated 7 April 1999, for the determination of applications for pardon, commutation of sentence and early release of persons convicted by the International Tribunal. In this connection, the Prosecutor notes that paragraph 9 of the ICTY Practice Direction is identical to paragraph 10 of the ICTR Practice Direction, *supra*, on the same subject.<sup>8</sup>

**RELIEF SOUGHT**

9. For the foregoing reasons, the Prosecutor prays the Appeals Chamber to dismiss Vincent Rutaganira's appeal for want of merit.

Dated 13 July 2006

[Signed]

Dior Sow Fall  
Senior Legal Officer, Appeals

[Signed]

Abdoulaye Seye  
Legal Officer, Appeals

-----

---

<sup>6</sup> See Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence and Early Release of Persons Convicted by the International Criminal Tribunal for Rwanda, 10 May 2000, para. 10.

<sup>7</sup> See Vincent Rutaganira's Request for Early Release, 5 March 2006, paras. 18, 20.

<sup>8</sup> See Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence and Early Release of Persons Convicted by the International Tribunal, 7 April 1999, para. 9.



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

Arusha International Conference Centre  
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie  
Tel: 255 57 504207-11 504367-72 or 1 212 963 2850 Fax: 255 57 504000/504373 or 1 212 963 2848/49

**INTERLOCUTORY APPEALS - PROOF OF SERVICE – ARUSHA  
PREUVE DE NOTIFICATION – APPELS INTERLOCUTOIRES - ARUSHA**

<b>Date:</b>	<b>14 AUGUST 2006</b>	<b>Case Name / affaire:</b>	<b>The Prosecutor vs.</b>	<b>- V. RUTAGANIRA</b>
		<b>Case No / no. de l'affaire:</b>	<b>ICTR-95-IC-T</b>	
<b>To:</b> <b>A:</b>	<input type="checkbox"/> TC1	Received by / reçu par:	<b>ALO:</b>	Received by / reçu par
	<input type="checkbox"/> Judge E. Møse, President	.....	<input type="checkbox"/>	.....
	<input type="checkbox"/> Judge J. R. Reddy	.....	<input type="checkbox"/>	.....
	<input type="checkbox"/> Judge S. A. Egorov	.....	<input type="checkbox"/>	.....
<input type="checkbox"/> Judge F. Lattanzi (Mpambara)	.....	<input type="checkbox"/>	<input type="checkbox"/>	.....
<input type="checkbox"/> Judge F. R. Arrey (Karera)	.....	<input type="checkbox"/>	<input type="checkbox"/>	.....
<input type="checkbox"/> ....., SLO	.....	<input type="checkbox"/>	<input type="checkbox"/>	.....
<input type="checkbox"/> C. Gosnell, Co-ordinator	.....	<input type="checkbox"/>	<input type="checkbox"/>	.....
<input type="checkbox"/> TC2	Received by / reçu par:	<b>ALO:</b>	Received by / reçu par	
<input type="checkbox"/> Judge W. H. Sekule	.....	<input type="checkbox"/>	(Vacant).....	
<input type="checkbox"/> Judge A. Ramaroso	.....	<input type="checkbox"/>	M. Andrianaivo.....	
<input type="checkbox"/> Judge K.R. Khan	.....	<input type="checkbox"/>	(Vacant).....	
<input type="checkbox"/> Judge J. A. N. de Silva	.....	<input type="checkbox"/>	I. Endeley.....	
<input type="checkbox"/> Judge S. B. Bossa (Nyiramasuhuko et al.)	.....	<input type="checkbox"/>	K. Greve.....	
<input type="checkbox"/> Judge F. Lattanzi (Muvunyi)	.....	<input type="checkbox"/>	P. Mathiam.....	
<input type="checkbox"/> Judge L. G. Muthoga (Bizimungu et al.)	.....	<input type="checkbox"/>	S. Unnikrishnan.....	
<input type="checkbox"/> Judge F. R. Arrey (Muvunyi)	.....	<input type="checkbox"/>	K. Ardault.....	
<input type="checkbox"/> Judge E. F. Short (Bizimungu et al.)	.....	<input type="checkbox"/>	C. Duffy.....	
<input type="checkbox"/> Judge T. Hikmet (Ndindiliyimana et al.)	.....	<input type="checkbox"/>	B. Zehnder.....	
<input type="checkbox"/> Judge S. K. Park (Ndindiliyimana et al.)	.....	<input type="checkbox"/>	B. Zehnder.....	
<input type="checkbox"/> M. Niang: SLO	.....	<input type="checkbox"/>		
<input type="checkbox"/> A. Leroy, Co-ordinator	.....	<input type="checkbox"/>		
<input type="checkbox"/> A. Marong, Judgement Co-ordinator	.....	<input type="checkbox"/>		
<input type="checkbox"/> S. Mawalla, Judgement Co-ordinator	.....	<input type="checkbox"/>		
<input type="checkbox"/> W. Romans, Judgement Co-ordinator	.....	<input type="checkbox"/>		
<input checked="" type="checkbox"/> TC3	Received by / reçu par:	<b>ALO:</b>	Received by / reçu par	
<input type="checkbox"/> Judge A. Vaz (Seromba)	.....	<input type="checkbox"/>	P. Mathiam.....	
<input type="checkbox"/> Judge I. M. Weinberg de Roca	.....	<input type="checkbox"/>	C. Rassi.....	
<input type="checkbox"/> Judge K. R. Khan	.....	<input type="checkbox"/>	(Vacant).....	
<input type="checkbox"/> Judge D. C. M. Byron	.....	<input type="checkbox"/>	J. Greenspoon.....	
<input type="checkbox"/> Judge F. Lattanzi (Bikindi & Rukundo)	.....	<input type="checkbox"/>	P. Mathiam.....	
<input type="checkbox"/> Judge L. G. Muthoga (Zigiranyirazo)	.....	<input type="checkbox"/>	S. Unnikrishnan.....	
<input type="checkbox"/> Judge F. R. Arrey (Rukundo)	.....	<input type="checkbox"/>	K. Ardault.....	
<input type="checkbox"/> Judge E. F. Short (Karemera et al.)	.....	<input type="checkbox"/>	C. Duffy.....	
<input type="checkbox"/> Judge K. Hökberg (Seromba & Rwamakuba)	.....	<input type="checkbox"/>	N. Ferraro.....	
<input type="checkbox"/> Judge G. G. Kam (Seromba, Karemera et al. Rwamakuba)	.....	<input type="checkbox"/>	M. I. Mbadinga.....	
<input type="checkbox"/> E. O'Donnell, SLO	.....	<input type="checkbox"/>		
<input type="checkbox"/> C. Denis, Co-ordinator (Karemera et al. & Rwamakuba)	.....	<input type="checkbox"/>		
<input type="checkbox"/> H. Gogo, Co-ordinator (Seromba)	.....	<input type="checkbox"/>		
<input type="checkbox"/> <b>OTP / BUREAU DU PROCUREUR</b>				
<input type="checkbox"/>	<b>Stephen Rapp</b> , Chief of Prosecutions	Received by.....		
<input type="checkbox"/> <b>DEFENSE:</b>				
<input type="checkbox"/>	Accused / Accusé:	<b>RUTAGANIRA</b>	<input checked="" type="checkbox"/>	Complete / Remplir "CMS4 FORM"
<input type="checkbox"/>	Lead Counsel Conseil Principal:.....	<b>F. Roux</b>		
<input type="checkbox"/>	In / à Arusha	.....(signature)	<input type="checkbox"/>	by fax complete / remplir "CMS3bis FORM"
<input type="checkbox"/>	Co-Counsel / Conseil Adjoint:.....	<b>M. Diabira</b>		
<input type="checkbox"/>	In / à Arusha	.....(signature)	<input type="checkbox"/>	by fax complete / remplir "CMS3bis FORM"
<b>All Decisions:</b> <input type="checkbox"/> Appeal Chamber Unit, The Hague <input type="checkbox"/> S. Chenault, Jurist Linguist				
<b>All Decisions &amp; Important Public Documents:</b> <input type="checkbox"/> Press & Public Affairs <input type="checkbox"/> Legal Library				
<b>From:</b>	<input type="checkbox"/> J. P Fomété (Chief, CMS)	<input type="checkbox"/> N. Diallo (TC 1)	<input type="checkbox"/> R. Kouambo (TC 2)	<input checked="" type="checkbox"/> <b>C. Hometou (TC 3)</b>
<b>De:</b>	<input type="checkbox"/> M Diop (D.Chief, CMS)			<input type="checkbox"/> F.Talon (Appeals/ Team IV)
<b>Cc:</b>	<input type="checkbox"/> Registrar	<input type="checkbox"/> A. Miller, OLA, NY	<input type="checkbox"/> Deputy Registrar	<input type="checkbox"/> M. Niang, SAR
	<input type="checkbox"/> WVSS	<input type="checkbox"/> E. O'Donnell, CSS	<input type="checkbox"/> S. Menon, SADR	<input type="checkbox"/> DCDMS
				<input type="checkbox"/> Other
<b>Subject</b> <b>Objet:</b>	Kindly find attached the following document(s) / Veuillez trouver en annexe le(s) document(s) suivant(s):			

<b>Documents name / titre du document</b>	<b>Date Filed / Date enregistrée</b>	<b>Pages</b>
<b>PROSECUTION MOTION FOR DISMISSAL OF VINCENT RUTAGANIRA'S NOTICE OF APPEAL OF JULY 4 2006 AGAINST THE PRESIDENT OF THE TRIBUNAL'S</b>	<b>14 AUGUST 2006</b>	<b>3</b>