

ICTR-96-13-R
07-05-2009
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International Criminal Tribunal for Rwanda



Tribunal Pénal International pour le Rwanda

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APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun
Judge Andréia Vaz

Registrar: Mr. Adama Dieng

Date filed: 7 May 2009

2009 MAY - 7 1 P 12: 07
JUDICIAL RECORDS ARCHIVE
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ALFRED MUSEMA-UWIMANA

v.

THE PROSECUTOR

Case No. ICTR-96-13-R

**PROSECUTOR'S RESPONSE TO
APPLICANT'S REQUEST FOR PRELIMINARY CONFERENCE
WITH FORMER LEGAL COUNSEL IN THE HAGUE**

Office of the Prosecutor

Alex Obote-Odora
George W. Mugwanya
Inneke Onsea

The Applicant

Alfred Musema-Uwimana

90/A

RESPONSE

1. On 1 May 2009, the Applicant, Alfred Musema-Uwimana, filed confidentially his *Motion Requesting Preliminary Conference with Former Legal Team for the Preparation of a Request for the Assignment of Counsel for the Purpose of a Review*, dated 27 April 2009 (Request).¹ In this Request, the Applicant seeks the Appeals Chamber “to use its inherent jurisdiction to facilitate a conference with his former legal team in The Hague for the purpose of receiving legal advice on potential grounds of review and the assignment of counsel in the event that there are sufficient grounds to merit an application for review”, during a period of 14 days.²

2. In response, the Prosecutor submits that the Applicant’s Request is without merit. The Appeals Chamber has consistently held, as recently in the Applicant’s case, that “as a matter of principle, it is not for the Tribunal to assist a convicted person whose case has reached finality with any investigation he would like to conduct or any new motion he may wish to bring by assigning him legal assistance at the Tribunal’s expense and that it is only in exceptional circumstances that a convicted person will be granted legal assistance by the Tribunal after a final judgement has been rendered against him.”³ In this context, the Applicant’s Request is unfounded.

3. In addition, the information provided by the Applicant now as to the potential grounds of appeal does not justify the Applicant’s Request.⁴ With respect to the alleged

¹ This Request has been filed following a letter from the Chef de Cabinet of the President of the Appeals Chamber addressed to the Applicant’s former counsel, Mr. Steven Kay, dated 25 March 2009. Mr. Kay was informed in this letter that the Appeals Chamber could not consider a similar request, filed by him, since he has no longer standing to file submissions in the Applicant’s case, and that “such a request should be addressed to the Appeals Chamber by way of a motion by Mr. Musema”. See also Request, para. 15.

Although the Request has been filed confidentially, the Prosecutor is filing his response publicly, since no information is included which warrants a confidential filing.

² Request, paras. 1 and 24.

³ *Decision on Motion for Reconsideration of Decision on Request for Assignment of Counsel of 27 February 2009*, 23 April 2009, p. 5 (*Musema Decision*), with reference in footnote 17 to *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Fourth Request for Review, public redacted version, signed on 12 March 2009, filed on 21 April 2009, para. 52. The Prosecutor notes in this context the correspondence from the Applicant dated 5 May 2009, but received on 6 May 2009, in which he observes that he was not aware of the *Musema Decision* while submitting his Request. Nevertheless, the Prosecutor will rely upon this Decision, since it is of merit in the instant case.

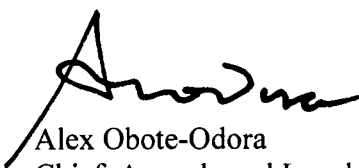
⁴ Request, para 23 (vi)-(vii).

'new facts going to the date and identity of the attackers at Nyakavumu Cave'⁵, for example, the information provided does not amount to a "new fact", and would not constitute a potential ground for review. The Applicant seems to argue that this information could bolster his alibi and challenge the credibility of Prosecution witnesses in relation to this attack, issues which were heavily litigated at trial and on appeal.⁶

4. Moreover, it appears that the Applicant is relying on similar information as provided in his previous request,⁷ especially regarding 'significant witnesses and potential documentation not traceable during the trial or appeal'⁸. In this respect, the Appeals Chamber has already considered that "the information on the nature of the 'new facts' provided by the Applicant in his Motion would not have satisfied the Appeals Chamber that the assignment of counsel at the Tribunal's expense was necessary in order to ensure the fairness of the proceedings at the preliminary examination stage".⁹ Similarly, the information provided now does not justify the Applicant's Request "for the purpose of receiving legal advice on potential grounds of review and the assignment of counsel"¹⁰.

5. For these reasons, the Prosecutor respectfully submits that the Request should be dismissed in its entirety.

DATED 7 May 2009, at Arusha, Tanzania.



Alex Obote-Odora
Chief, Appeals and Legal Advisory Division

⁵ Request, para 23 (vi).

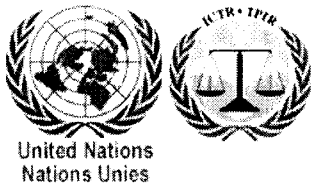
⁶ See, e.g., *Alfred Musema v. The Prosecutor*, Case No. ICTR-96-13-A, Judgement, paras. 142-164 (alleged errors in Trial Chamber's assessment of Prosecution evidence with respect to the attack at Nyakavumu cave); paras. 319-329 (alleged errors in Trial Chamber's assessment of the Applicant's alibi with regard to Nyakavumu cave).

⁷ *Requête de l'Appellé en révision de la 'Decision on Request for Assignment of Counsel' de la Chambre d'Appel rendue le 27 février 2009*, filed on 9 March 2009, paras. 19-27.

⁸ Request, para. 23 (vii).

⁹ *Musema Decision*, p. 5.

¹⁰ Request, para. 1.



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Case Name:	The Prosecutor vs. Alfred Musema-Uwimana		Case Number: ICTR-96-13-R	
Dates:	Transmitted: 7 May 2009		Document's date: 7 May 2009	
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