ICTR-99-54A-R
18-05-2009
(17/A-15/A)

17/A

International Criminal Tribunal for Rwanda

Tribunal Pénal International pour le Rwanda

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APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohammed Shahabuddeen
Judge Liu Daqun
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar: Mr. Adama Dieng

Date filed: 18 May 2009

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KAMUHANDA JEAN DE DIEU

v.

THE PROSECUTOR

Case No. ICTR-99-54A-R

PROSECUTOR'S RESPONSE TO KAMUHANDA'S

"REQUETE AUX FINS DE DEMANDE D'UNE ASSISTANCE JURIDIQUE POUR LA PROCEDURE PRELIMINAIRE DE REVISION DE L'ARRET RENDU PAR LA CHAMBRE D'APPEL LE 19 SEPTEMBRE 2005"

Office of the Prosecutor

Alex Obote-Odora
George Mugwanya
Evelyn Kamau

The Applicant

Jean de Dieu Kamuhanda

16/A

RESPONSE

Introduction

1. On 15 May 2009 the Applicant, Jean de Dieu Kamuhanda, filed his *Requête aux fins de demande d'une assistance juridique pour la procedure preliminaire de revision de L'arret rendu par la chambre d'appel le 19 Septembre 2005,* hereinafter, "the Motion". In the Motion the Applicant alleged that he had obtained new fact that was not available during the appeals process in his case.[1] He therefore requested the Appeals Chamber to assign him counsel to assist in presenting a request for review based on the new facts.[2]

2. The Prosecutor submits that the Motion is without merit and should be dismissed in its entirety.

Submissions

3. With regard to requests for legal assistance in review proceedings, the Appeals Chamber has held that counsel may be assigned at the preliminary examination stage, only in very limited circumstances, where the Appeals Chamber finds it necessary to ensure the fairness of the proceedings.[3] The Prosecutor submits that the Applicant's proposed review proceedings would not suffer unfairness should counsel not be assigned at this stage.

4. Firstly, the Applicant in the Motion has sufficiently briefed the alleged new facts he would be presenting in the subsequent review proceedings. The Applicant addresses in detail the following four categories of fact that he alleges are new and which if considered in the review proceeding would allegedly establish his innocence: the investigation report of Mrs Lorretta Lynch;[4] evidence collected from the trial of Leonidas Nshogoza;[5] evidence from the trial of Andre Rwamakuba;[6] and new evidence from several Gacaca trials.[7] Without addressing the merits of the Applicant's alleged new

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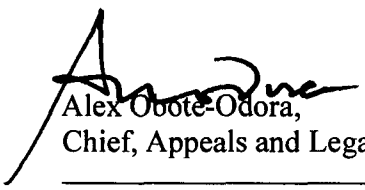
[1] Motion, para. 4.
[2] Motion, para. 5.
[3] *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-03-R, Decision on Requests for Reconsideration, Review, Assignment of Counsel, Disclosure, and Clarification, 8 December 2006, para. 41 (*Rutaganda* Decision), and *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Request for Review, 6 March 2007, para. 30 (*Niyitegeka* Decision).
[4] Motion, paras. 7-37.
[5] Motion, paras. 38-40.
[6] Motion, paras. 41-52.
[7] Motion, paras. 53-58.

facts[8], the Prosecutor submits that the Applicant's submissions are already extensive and detailed, explaining why the alleged facts are new and would allegedly establish his innocence if considered during a review proceeding. Due to this sufficient and extensive briefing, the Applicant's proceedings would suffer no unfairness if he were to present the allegedly new facts. Moreover, the Appeals Chamber has in such circumstances not granted the assignment of Counsel Applicant where the issues at stake are sufficiently briefed.[9]

5. Secondly, the justification the Applicant provides for why he should be provided with counsel, i.e. he does not know the law,[10] does not know English,[11] requires the Prosecutor to communicate documents in his possession,[12] and because there is no registrar's office at the detention centre,[13] are unmeritorious. Despite the justifications the Applicant alleges above, he was able to prepare the present detailed Motion in one of the official languages of the Tribunal, have it transmitted from his place of incarceration to the seat of the Tribunal, and to have it presented to the Prosecution and Appeals Chamber.

6. For all of the foregoing reasons, the Prosecutor respectfully requests that the Appeals Chamber dismiss the Motion in its entirety.

WORD COUNT: 693
Dated 18 May 2009, at Arusha, Tanzania.



Alex Obote-Odora,
Chief, Appeals and Legal Advisory Division

George Mugwanya
Senior Appeals Counsel

[8] The Prosecutor will not address this new evidence in detail here in his Response since they pertain to a potential request for review to be submitted by the Applicant. Respectfully, these alleged "new facts" will be addressed if and when the Applicant decides to file a motion pursuant to Rule 120 of the Rules.
[9] *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Niyitegeka's Urgent Request for Legal Assistance, 20 June 2005, p. 4 (*Niyitegeka* Decision on Legal Assistance); *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-03-R, Decision on Requests for Reconsideration, Review, Assignment of Counsel, Disclosure, and Clarification, 8 December 2006, para. 41 (*Rutaganda* Decision); *Eliézer Niyitegeka v. The Prosecutor*, ICTR-96-14-R, Decision on Request for Review, 6 March 2007 para. 30 (*Niyitegeka* Second Review Decision); *Eliézer Niyitegeka v. the Prosecutor*, Case No. ICTR-96-14-R, Decision on Third Request for Review, 23 January 2008, para. 12 (*Niyitegeka* Third Review Decision).
[10] Motion, paras. 60-66.
[11] Motion, paras. 67-68.
[12] Motion, paras. 69-71.
[13] Motion, paras. 72-82.

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From:	☐ Chamber (names)	☐ Defence (names)	☒ Prosecutor's Office **Alex Obote-Odora** (names) for	☐ Other: (names)
Case Name:	The Prosecutor vs. **Jean De Dieu Kamuhanda**		**Case Number:** ICTR-99-54A-R	
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