



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

94/H

**ICTR-96-13-R
18th June 2009
{94/H - 92/H}**

IN THE APPEALS CHAMBER

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

Registrar: Mr. Adama Dieng

Decision of: 18 June 2009

ICTR Appeals Chamber
Date: 18th June 2009
Action: R. Juma
Copied To: ~~Consent~~ Judges,

Judicial Archives, Parties,
LOs, LSS [Signature]

Alfred MUSEMA-UWIMANA

v.

THE PROSECUTOR

Case No. ICTR-96-13-R

**DECISION ON 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**

The Applicant

Mr. Alfred Musema-Uwimana, *pro se*

Office of the Prosecutor

Mr. Hassan Bubacar Jallow
Mr. Alex Obote-Odora
Mr. George W. Mugwanya
Ms. Inneke Onsea

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS
NAME / NOM: KOFFI... KUMELI... A... AFANDI...
SIGNATURE: [Signature] DATE: 18 June 2009

2009 JUN 18 1 P 5:08
JUDICIAL ARCHIVES
RECEIVED

93/H

THE APPEALS CHAMBER of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (“Appeals Chamber” and “Tribunal”, respectively),

BEING SEIZED OF the “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”, filed confidentially on 1 May 2009 (“Motion”) by Mr. Alfred Musema-Uwirana (“Applicant”), in which he requests the Appeals Chamber to use its inherent jurisdiction to facilitate a “preliminary stage pre-review conference” with his former legal team in The Hague, The Netherlands, for a period of 14 days in order to receive legal advice on potential grounds of review and the assignment of counsel if sufficient grounds exist to apply for review;¹

NOTING that the Prosecution opposes the Motion on the grounds that (i) the Appeals Chamber has consistently held that, “as a matter of principle, it is not for the Tribunal to assist a convicted person whose case has reached finality with any new 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”;² and (ii) the information provided by the Applicant as to the potential grounds of review and the assignment of counsel does not justify the Applicant’s request;³

NOTING the Appeal Judgement of 16 November 2001 affirming the sentence of life imprisonment imposed on the Applicant who was convicted by Trial Chamber I on 27 January 2000;⁴

NOTING the transfer of the Applicant to the Republic of Mali for the enforcement of his sentence;⁵

NOTING the Agreement between the Government of the Republic of Mali and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for Rwanda signed on 12 February 1999 (“Agreement”);

¹ Motion, paras. 1, 24.

² Prosecutor’s Response to Applicant’s Request for Preliminary Conference with Former Legal Counsel in The Hague, 7 May 2009 (“Response”), para. 2.

³ Response, para. 3.

⁴ *The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, Judgement and Sentence, 27 January 2000, p. 285; *Alfred Musema v. The Prosecutor*, Case No. ICTR-96-13-A, Judgement, 16 November 2001, p. 130.

⁵ Motion, para. 4.

92/H

RECALLING that the Applicant may be assisted by a counsel in connection with a request for review at his own expense, at the expense of a third party, or on a *pro bono* basis, provided that the counsel files a power of attorney with the Registrar and satisfies the requirements to appear before the Tribunal;⁶

CONSIDERING that a counsel representing a convicted person on such a basis would be able to obtain access to the trial and appellate record from the Registry or his client and would also be able to meet with his client at his place of detention at his own expense;

CONSIDERING that nothing in the Statute, Rules of Procedure and Evidence, or practice of the Tribunal provides for the transfer of a convicted person to another State for purposes of meeting with a counsel;

CONSIDERING that, pursuant to Article 4 of the Agreement, the transfer of a person whose sentence is being enforced in the Republic of Mali is envisioned only in the event that the Tribunal orders that the person appear as a witness before it;

NOTING that the Motion contains no information requiring confidential status;

CONSIDERING that all submissions filed before the Appeals Chamber shall be public unless there are exceptional reasons for keeping them confidential;⁷

FOR THE FOREGOING REASONS,

DISMISSES the Motion and **DIRECTS** the Registrar to remove its confidential status.

Done this 18th day of June 2009,
at The Hague,
The Netherlands.



Patrick Robinson
Presiding Judge

[Seal of the Tribunal]

⁶ Decision on Motion for Reconsideration of Decision on Request for Assignment of Counsel of 27 February 2009, 23 April 2009, p. 6; see *Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-99-52A-R, Decision on Jean-Bosco Barayagwiza's Motion of 6 March 2008, 11 April 2008, p. 4.

⁷ Cf. Rules 78 and 107 of the Rules of Procedure and Evidence of the Tribunal; see also *Sylvestre Gacumbitsi v. The Prosecutor*, Case No. ICTR-01-64-A, Decision on the Appellant's Rule 115 Motion and Related Motion by the Prosecution, 21 October 2005, para. 5.

087


UNITED NATIONS
NATIONS UNIES
**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

 REGISTRY AT THE HAGUE
 Churchillplein 1, 2517 JW The Hague, The Netherlands
 Tel: + 31 (0) 70 512-8225 / 8237 Fax: + 31 (0) 70 512 -8932

 UNICTR
 FAX CENTRE
 RECEIVED

2009 JUN 18 P 3: 50

**APPEALS CHAMBER – PROOF OF SERVICE
CHAMBRE D'APPEL - PREUVE DE NOTIFICATION**

Date: 18 June 2009	Case Name / Affaire: MUSEMA Case No / No. de l'affaire: ICTR-96-13-A	Alfred MUSEMA v. THE PROSECUTOR
To: A:	APPEALS UNIT ✘ Ms Félicité Talon APPEALS CHAMBER ✘ Judge / Juge Patrick Robinson, Presiding ✘ Judge / Juge Mehmet Güney ✘ Judge / Juge Fausto Pocar ✘ Judge / Juge Liu Daqun ✘ Judge / Juge Andréia Vaz ✘ Ms Catherine Marchi-Uhel ✘ Mr Roman Boed ✘ Concerned Associate Legal Officers ✘ Ms. Kate Aboagye DEFENSE ✘ Accused / accusé : Alfred MUSEMA, pro se ✘ Lead Counsel / Conseil Principal: ✘ Fax Number: ✘ E-mail:	<div style="border: 1px solid black; padding: 5px; text-align: center;"> ICTR CENTRAL REGISTRY 18 JUN 2009 ACTION: APPEALS/cas COPY 1: </div>
From: De:	✘ Koffi Afande	✘ Rosette Muzigo-Morrison 
Subject Objet:	Kindly find attached the following documents / Veuillez trouver en annexe les documents suivants:	
Documents name / Titre du document	Date Filed / Date d'enregistrement	Pages
Decision on Motion Requesting Preliminary Conference with Former Legal Team for the preparation of Request for the Assignment of Counsel for the purpose of a Review	18 June 2009	94/H - 92/H