



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

92/H

ICTR-01-69-A  
19<sup>th</sup> April 2010  
{92/H – 89/H}

**IN THE APPEALS CHAMBER**

**Before:** Judge Liu Daqun, Presiding  
Judge Mehmet Güney  
Judge Andréia Vaz  
Judge Theodor Meron  
Judge Carmel Agius

**Registrar:** Mr. Adama Dieng

**Decision of:** 19 April 2010

ICTR Appeals Chamber  
Date: 19<sup>th</sup> April 2010  
Action: h. Juma  
Copied To: Concerned Judges,  
Parties, Judicial Archives,  
LOs, LSS

**THE PROSECUTOR**

v.

**Hormisdas NSENGIMANA**

Case No. ICTR-01-69-A

*CONFIDENTIAL*

**DECISION ON SUBMISSIONS BY THE DEFENCE TEAM OF HORMISDAS NSENGIMANA**

**Office of the Prosecutor:**

Hassan Bubacar Jallow  
Alex Obote-Odora  
Abdoulaye Seye

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
CERTIFIED TRUE COPY OF THE ORIGINAL SENT BY ME  
COPIE CERTIFIÉE CONFORMÉ À L'ORIGINAL PAR MOI  
NAME / NOM: HASSAN BUBACAR JALLOW  
SIGNATURE: DATE: 19 April 2010

**Counsel for Hormisdas Nsengimana:**

Emmanuel Altit  
David Hooper

**Interested Parties:**

Léonard Safari  
Rémi Mazas

1. 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), is seized of the “Prosecutor’s Motion for Rejection of the ‘*Réponse de l’Equipe de Défense du Père Hormidas [sic] Nsengimana à l’Acte d’appel (77J) déposé par le Procureur le 2 février 2010*’” filed by the Prosecution on 15 February 2010 (“Motion”) opposing the Response to the Notice of Appeal<sup>1</sup> filed by Mr. Nsengimana’s Defence Team (“Defence Team”) on 9 February 2010.

#### A. Procedural Background

2. On 17 November 2009, Trial Chamber I of the Tribunal (“Trial Chamber”) orally delivered its Judgement in this case, acquitting the accused of all counts in the indictment.<sup>2</sup> The written Judgement was filed on 18 January 2010.<sup>3</sup> On the same day, the Trial Chamber issued a confidential decision<sup>4</sup> in which it declined to exercise its discretion pursuant to Rule 77(A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) to initiate contempt investigations or proceedings against two investigators in Mr. Nsengimana’s defence team for their alleged improper contact with Prosecution witnesses.<sup>5</sup>

3. On 2 February 2010, the Prosecutor filed a Notice of Appeal, pursuant to Article 24 of the Statute of the Tribunal and Rule 77(J) of the Rules, against the 18 January 2010 Decision. The Defence Team filed its Response to the Notice of Appeal on 9 February 2010. On 15 February 2010, the Prosecution filed the present Motion, requesting that the Appeals Chamber reject the Response to the Notice of Appeal. The Prosecution filed a brief pursuant to Rule 77(J) of

<sup>1</sup> *Réponse de l’Equipe de Défense du Père Hormidas Nsengimana à L’Acte d’appel (77J) déposé par le Procureur le 2 février 2010*, 9 February 2010 (“Response to the Notice of Appeal”).

<sup>2</sup> See *The Prosecutor v. Hormidas Nsengimana*, Case No. ICTR-01-69-T, Judgement, 17 November 2009, paras. 853, 854.

<sup>3</sup> The Appeals Chamber notes that the Prosecution subsequently indicated that it does not intend to launch an appeal against acquittal in these proceedings. See *The Prosecutor v. Hormidas Nsengimana*, Case No. ICTR-01-69-T, Prosecution’s Further Filing to its Motion Requesting Imposition of Conditions on Nsengimana’s Liberty Pending its Decision to Appeal, 17 February 2010.

<sup>4</sup> *The Prosecutor v. Hormidas Nsengimana*, Case No. ICTR-01-69-T, Confidential Decision on Prosecution and Defence Requests Concerning Improper Contact with Prosecution Witnesses, 18 January 2010 (confidential) (“18 January 2010 Decision”).

<sup>5</sup> 18 January 2010 Decision, paras. 55, 59, disposition. The two investigators subject to the 18 January 2010 Decision are Léonard Safari and Father Rémi Mazas (“Investigators”).

the Rules on 17 February 2010.<sup>6</sup> On 1 March 2010, the Defence Team filed confidentially the Response to the Appellant's Brief.<sup>7</sup> The Prosecution filed its Reply on 5 March 2010.<sup>8</sup>

### B. Submissions

4. The Prosecution requests that the Appeals Chamber reject the Response to the Notice of Appeal in its entirety on the basis that there is no provision for filing such a response pursuant to Rules 54, 77, 107 of the Rules and paragraphs 4 to 8 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal.<sup>9</sup>

### C. Discussion

5. As a preliminary matter, the Appeals Chamber notes that Mr. Emmanuel Altit, Lead Counsel for Mr. Nsengimana, filed the Response to the Notice of Appeal and the Response to the Appellant's Brief ("Defence Team Submissions") on behalf of the Defence Team of Mr. Nsengimana.<sup>10</sup> Although the standing of the Defence Team was not challenged by the Prosecution, the Appeals Chamber *proprio motu* finds that the Defence Team as such has no standing before this Tribunal in the present proceedings. Consequently, the Defence Team Submissions are invalidly filed and fall to be rejected. Equally, the Reply cannot be considered and falls to be rejected for this reason.

6. While the Defence Team *per se* has no standing before this Tribunal, the Appeals Chamber considers that it is in the interests of justice to afford the Investigators the opportunity to respond to the Prosecution's submissions.<sup>11</sup> The Appeals Chamber observes that the interests of the Investigators were represented through Mr. Nsengimana's counsel before the Trial Chamber<sup>12</sup> and that the Investigators continue to have an active interest in the outcome of this case on appeal. Consequently, the Appeals Chamber believes that the Investigators should be permitted to make

<sup>6</sup> Prosecutor's Appellant's Brief, 17 February 2010 (confidential) ("Appellant's Brief").

<sup>7</sup> *Réponse de l'Equipe de Défense du Père Nsengimana au Mémoire d'appel (77J) déposé par le Procureur le 17 février 2010*, 1 March 2010 (confidential) ("Response to the Appellant's Brief").

<sup>8</sup> Prosecutor's Reply To [sic] the « *Réponse de l'Equipe de défense du Père Hormidas [sic] au Mémoire d'appel (77J) déposé par le Procureur le 17 février 2010* », 5 March 2010 (confidential) ("Reply").

<sup>9</sup> Motion, paras. 2-4. See also Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal, 8 December 2006. See also Motion, paras. 5-8.

<sup>10</sup> See also Response to Notice of Appeal, para. 1, prayer. The Appeals Chamber further notes that similar language is used in the title and paragraph 1 of the Response to the Appellant's Brief.

<sup>11</sup> The Appeals Chamber notes that the Investigators would have standing in the event that contempt proceedings were initiated against them pursuant to Rule 77(C) and (D) of the Rules.

<sup>12</sup> See, e.g., *The Prosecutor v. Hormidas Nsengimana*, Case No. ICTR-01-69-T, *Requête urgente de la défense aux fins de protection de l'enquêteur de la défense*, 30 January 2010; *The Prosecutor v. Hormidas Nsengimana*, Case No. ICTR-01-69-T, Defence Response to the Prosecutor's Application to File Contempt Proceedings Against Safari Leonard [sic], FR Remi [sic] Mazas and FR Denis Sekamana, 9 June 2008.

representations in response to the Prosecution's appeal on an exceptional basis.<sup>13</sup> In so doing, the Appeals Chamber considers that it may be inappropriate for Mr. Nsengimana's counsel to advise or represent the Investigators given that a conflict of interest may arise owing to the nature of their professional relationship.<sup>14</sup>

7. In light of the above, the Prosecution's Motion is moot.

**D. Disposition**

For the foregoing reasons, the Appeals Chamber:

**REJECTS** the Defence Team Submissions as invalidly filed and **REJECTS** the Reply;

**DISMISSES** the Motion as moot;

**INVITES** Léonard Safari and Father Rémi Mazas to file a response to the Prosecution Appellant's Brief within 10 days of the date of this decision.

Done in English and French, the English version being authoritative.

Done this 19<sup>th</sup> day of April 2010,  
At The Hague, The Netherlands.



[Seal of the Tribunal]

A handwritten signature in black ink, appearing to read "Liu Daqun", written over a horizontal line.

Judge Liu Daqun  
Presiding Judge

<sup>13</sup> The Appeals Chamber notes that there is no provision for filing a response to a Notice of Appeal pursuant to Rules 54, 77, 107 of the Rules and paragraphs 4 to 8 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal.

<sup>14</sup> See Article 9 of the Code of Professional Conduct of Defence Counsel, 14 March 2008.



**COURT MANAGEMENT  
ADMINISTRATION DES CHAMBRES**

UNITED NATIONS  
NATIONS UNIES

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

**PROOF OF SERVICE – BY FAX  
PREUVE DE NOTIFICATION - CHAMBRE D'APPEL**

|  |  |  |  |
|--|--|--|--|
| Date: <b>20/04/2009</b>  |  | Case Name / affaire: <b>Hormisdas NSENGIMANA</b> |  |
|  |  | ICTR-01-69- A                                    |  |
| Case No / no. de l'affaire:  |  |  |  |
| To:<br>A:  | <b>Appeals Chamber Support Unit, The Hague:</b><br>- Mr. Koffi Afande<br>- Mr. Ramadhani T. Juma<br>- Ms. Rosette Muzigo-Morrison  |  | <input checked="" type="checkbox"/> Judge / Juge Mehmet Guney, Presiding<br><input checked="" type="checkbox"/> Judge / Juge Liu Daqun<br><input checked="" type="checkbox"/> Judge / Juge Andresia Vaz<br><input checked="" type="checkbox"/> Judge / Juge Theodor Meron<br><input checked="" type="checkbox"/> Judge / Juge Carmel Agius |
|  | <b>ACCUSED / DEFENSE</b><br><input checked="" type="checkbox"/> Accused / Accusé <b>NSENGIMANA</b> <small>see / voir "CMS4"</small><br><input checked="" type="checkbox"/> Lead Counsel / Conseil Principal: <b>Me. E. Altit</b> <input type="checkbox"/> In Arusha / à Arusha: (see / voir CMS3) <input type="checkbox"/> Fax:<br><input type="checkbox"/> Co-Counsel / Conseil Adjoint:<br><input type="checkbox"/> Arusha (see / voir CMS3) <input type="checkbox"/> Fax: |  |  |
| <b>OTP / BUREAU DU PROCUREUR</b><br><input type="checkbox"/> Hassan Bubacar Jallow, Prosecutor<br><input type="checkbox"/> R. Karegyesa, Chief of Prosecutions<br><input type="checkbox"/> B. Majola, Deputy Prosecutor<br><input type="checkbox"/> Don Webster Senior Trial Attorney in charge of case: ( <input type="checkbox"/> name )<br><input type="checkbox"/> The Hague / La Haye <input type="checkbox"/> Arusha (see / voir CMS3) <input type="checkbox"/> Kigali |  |  |  |
| From:<br>De:   | <input type="checkbox"/> JP. Fomété (Chief, CMS) <input checked="" type="checkbox"/> <b>N. M. DIALLO ( TC 1 )</b> <input type="checkbox"/> F. A. Talon (Appeals/Team IV)<br><input type="checkbox"/> Other   |  |  |
| CC:  | <input type="checkbox"/> Registrar <input type="checkbox"/> OLA, NY <input checked="" type="checkbox"/> D. Registrar <input type="checkbox"/> P&PA <input type="checkbox"/> ICTR Spokesperson<br><input type="checkbox"/> SAR <input type="checkbox"/> WVSS <input type="checkbox"/> DCMS <input type="checkbox"/> CSS <input type="checkbox"/> SADR <input type="checkbox"/> Other  |  |  |
| Subject<br>Objet:  | <b>Kindly find attached the following documents / Veuillez trouver en annexe les documents suivants:</b>   |  |  |
| Documents name / titre du document   |  | Date Filed / Date enregistré                     | Pages  |
| <b>DECISION ON SUBMISSIONS BY THE DEFENCE TEAM OF HORMISDAS NSENGIMANA</b>   |  | <b>19/04/2010</b>                                | <b>92/H – 89/H</b>   |

JUDICIAL RECORDS ARCHIVE  
 2010 APR 20 4:08:55

**CENTRAL REGISTRY: ALL FAX TRANSMISSION SHEETS MUST BE ANNEXED TO THIS FORM** No. of pages transmitted including this cover sheet / Nombre de pages transmises, page de garde comprise: 111  
 In case of transmission difficulties, please contact: Central Registry / En cas de difficulté de transmission, veuillez contacter:  
 Tel: 212-963 4828 ext. 5333, 5063 Fax: 212-963 2848 Email: gjani@un.org or lipscombe@un.org

C:\Documents and Settings\AMh\My Documents\NsengimanaCMS3fz.doc