

ICIR-99-52B-R  
13-05-2010  
(49/A-47/A)

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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda

Arusha International Conference Centre  
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Before: Judge Dennis C. M. Byron, President of the Tribunal

Registrar: Mr. Adama Dieng

Date filed: 13 May 2010

Ferdinand NAHIMANA

v.

THE PROSECUTOR

2010 MAY 13 10:41:23  
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**PROSECUTOR'S SUBMISSIONS**

*on Mr. Nahimana's Letter to the President of the Tribunal concerning  
"Reconsideration de l'Arrêt du 28/11/2007"*

**For the Prosecutor**

Alex Obote-Odora  
Christine Graham  
Abdoulaye Seye

**For Ferdinand Nahimana**

Self-represented

48/A

**(i) Overview and Prosecutor's Position**

1. On 7 May 2010, Mr. Ferdinand Nahimana filed a letter in which he requests the President of the Tribunal, Judge Dennis C. M. Byron, to intervene before the Appeals Chamber with the aim of moving the Appeals Chamber to consider his second request for reconsideration of the Appeal Judgement in his case.<sup>1</sup>

2. Mr. Nahimana's request should be rejected. There is no provision in the Statute or the Rules of Procedure and Evidence ["Rules"] under which the President may intervene to move the Appeals Chamber as requested by Mr. Nahimana.

**(ii) Submissions**

3. First, Mr. Nahimana has exhausted his right of appeal. The Appeals Chamber rendered final Judgement against him on 28 November 2007. He now appears to seek a reconsideration of that Judgement.<sup>2</sup> This is impermissible. Neither the Statute nor the Rules allow for the President of the Tribunal to request the Appeals Chamber to entertain a motion for reconsideration of a final judgement.

4. Secondly, the Appeals Chamber has specifically found that it "does not have an inherent power to reconsider final judgements".<sup>3</sup> Mr. Nahimana had already filed an application similar to the one at hand, where he requested reconsideration of the Appeal Judgement against him based on certain alleged errors.<sup>4</sup> The Appeals Chamber dismissed this request.<sup>5</sup> In the present Application, Mr. Nahimana does not make any reference to this

<sup>1</sup> Reconsidération de l'Arrêt du 28/11/2007, filed on 7 May 2010 ["Letter" and "Application"].

<sup>2</sup> Application, para. 3.

<sup>3</sup> *Jean-Bosco Barayagwiza v. The Prosecutor*, Case No.: ICTR-99-52A-R, Decision on Jean-Bosco Barayagwiza's Motion for Review and/or Reconsideration of the Appeal Judgement of 28 November 2007, 22 June 2009, para. 20, referring to *The Prosecutor v. Zoran Zigic*, Case No.: IT-98-30/1-A, Decision on Zoran Zigic's "Motion for Reconsideration of Appeals Chamber Judgement IT-98-30/1-A delivered on 28 February 2005", 26 June 2006 ("*Zigic Decision*"), para. 9.

<sup>4</sup> *Ferdinand Nahimana v. The Prosecutor*, Case No. ICTR-99-52-B-R, Notice of application for Reconsideration of Appeal Decision due to Factual Errors Apparent on the Record, 27 March 2008.

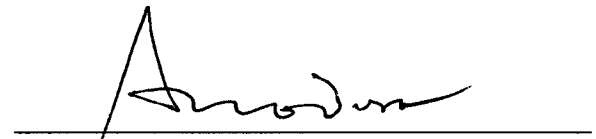
<sup>5</sup> *Ferdinand Nahimana v. The Prosecutor*, Case No.: ICTR-99-52-B-R, Decision on Ferdinand Nahimana's "Notice of application for Reconsideration of Appeal Decision due to Factual Errors Apparent on the Record", 21 April 2008 ["Decision on First Application for Reconsideration"].

previous decision. He fails to refer to the Appeals Chamber's finding in that decision that it has "no power to reconsider a final judgement as the Statute of the Tribunal only provides 'for a right of appeal and the right of review but not for a second right of appeal by the avenue of reconsideration of a final judgement'".<sup>6</sup> Similarly, he fails to mention that the Appeals Chamber held that his argument "is in fact nothing more than an attempt to re-litigate issues finally decided on appeal."<sup>7</sup> These findings by the Appeals Chamber apply with equal force to the issues Mr. Nahimana raises in the Letter and Application as they have already been finally decided on appeal.

**(iii) Relief sought**

5. For the foregoing reasons, Mr. Nahimana's request should be rejected.

DATED this 13<sup>th</sup> May 2010 at Arusha, Tanzania.



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Alex Obote-Odora  
Chief, Appeals and Legal Advisory Division

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<sup>6</sup> Decision on First Application for Reconsideration, p. 2.

<sup>7</sup> Decision on First Application for Reconsideration, p. 3 and footnote 6.

