



UNITED NATIONS
NATIONS UNIES

Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-00-55B-A
26th August 2011
{1112/H – 1110/H}

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mehmet Güney
Judge Andréia Vaz
Judge Theodor Meron
Judge Carmel Agius

ICTR Appeals Chamber

Date: 26th August 2011
Action: R. Dieng
Copied To: Concerned Judges,

Registrar: Mr. Adama Dieng

Parties, JPU, LOs, LSS

Decision of: 26 August 2011

ILDEPHONSE HATEGEKIMANA

v.

THE PROSECUTOR

Case No. ICTR-00-55B-A

DECISION ON ILDEPHONSE HATEGEKIMANA'S MOTION TO ORDER THE PROSECUTION TO DISCLOSE DOCUMENTS

Counsel for Ildephonse Hategekimana:

Mr. Jean de Dieu Momo

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James J. Arguin
Mr. Alphonse Van
Mr. Alfred Orono Orono
Ms. Thembile Segoete
Mr. Leo Nwoye
Ms. Ndeye Marie Ka

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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NAME / NOM: KOFEL... KUMELIO... A... AFANDE..

SIGNATURE: DATE: 26 AUG. 2011.

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 SEISED of a Motion filed on 28 July 2011 by Mr. Ildephonse Hategekimana, in which he requests the Appeals Chamber to order the Prosecution to disclose various documents from domestic judicial proceedings in Rwanda, Belgium, and Canada (“Requested Documents”);¹

NOTING the Prosecution’s Response filed on 10 August 2011,² and Mr. Hategekimana’s Reply filed on 15 August 2011;³

CONSIDERING that the Response was filed after the expiration of the prescribed time-limit;⁴

FINDING, nonetheless, that it is in the interests of justice to consider the Response;⁵

NOTING Mr. Hategekimana’s submission that the Requested Documents could mitigate his guilt, thus rendering several of his convictions unsafe;⁶

NOTING that Mr. Hategekimana “is convinced” that the Prosecution is in possession of the Requested Documents⁷ because it recently disclosed two related judicial documents from Rwanda;⁸

NOTING that the Prosecution responds that Mr. Hategekimana has not demonstrated that it is in possession of the Requested Documents or that they are exculpatory;⁹

¹ *Requête en extrême urgence de Ildephonse Hategekimana [sic] aux fins d’enjoindre au Procureur de divulguer toutes les pièces en sa possession concernant le procès de l’accusé en vertu de l’article 68 du Règlement de preuve et de procédure [sic] (RPP)*, 28 July 2011 (“Motion”), para. 8, p. 5.

² *Réponse du Procureur à la «Requête en extrême urgence d’Ildephonse Hategekimana aux fins d’enjoindre au Procureur de divulguer toutes les pièces en sa possession concernant le procès de l’accusé en vertu de l’article 68 du Règlement de preuve et de procédure [sic] (RPP)» déposée le 28 juillet 2011*, 10 August 2011 (“Response”).

³ *Réplique à la réponse du Procureur à la requête en extrême urgence de Ildephonse Hategekimana [sic] aux fins d’enjoindre au Procureur de divulguer toutes les pièces en sa possession concernant le procès de l’accusé en vertu de l’article 68 du Règlement de preuve et de procédure [sic] (RPP)*, 15 August 2011 (“Reply”).

⁴ In accordance with paragraphs 13 and 14 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal, 8 December 2006 (“Practice Direction”), a response should be filed within ten days of the filing of the motion and a reply within four days of the filing of the response.

⁵ Pursuant to paragraph 19 of the Practice Direction, the Appeals Chamber may exercise its discretion to recognise “as validly done any act done after the expiration of a time-limit so prescribed.”

⁶ Reply, paras. 13, 14.

⁷ Motion, para. 7. *See also* Reply, para. 12.

⁸ Motion, paras. 3-5. *See also* Response, paras. 5-7, 10.

⁹ Response, paras. 4, 16.

NOTING that Mr. Hategekimana replies that the Prosecution has not explicitly indicated that the Requested Documents are not in its possession;¹⁰

CONSIDERING that Mr. Hategekimana has not supported his claim that the Requested Documents are in the custody or under the control of the Prosecution;

CONSIDERING that the Prosecution has no obligation to obtain judicial material related to its witnesses from Rwanda or other domestic jurisdictions;¹¹

HEREBY

DENIES the Motion.

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

Done this twenty-sixth day of August 2011,
at The Hague,
The Netherlands.



Fausto Pocar

Judge Fausto Pocar
Presiding Judge

¹⁰ Reply, para. 11.

¹¹ See, e.g., *Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Judgement, 20 October 2010, para. 25; *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. 45; *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, para. 263.