

ICTR-99-52-R
6-6-2012
(134/A-132/A)

134/A



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

APPEALS CHAMBER

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

Registrar: Adama Dieng

Date of filing: 6 June 2012

Ferdinand NAHIMANA

v.

THE PROSECUTOR

Case No. ICTR-99-52B-R

2012 JUN 14 10:40
JUDICIAL RECORDS/REGISTRY
UNICTR

**PROSECUTOR'S RESPONSE TO NAHIMANA'S "MÉMOIRE
ADDITIONNEL AU SOUTIEN DE LA REQUÊTE EN RECON-
SIDÉRATION FORMÉE PAR MONSIEUR FERDINAND
NAHIMANA"**

Office of the Prosecutor

Hassan Bubacar Jallow
James J. Arguin
Erica Bussey

Ferdinand Nahimana

Jean-Marie Biju-Duval
Diana Ellis
Joanna Evans

1. On 30 March 2012, Mr. Nahimana filed a motion in which he requested *inter alia*, that the Appeals Chamber reconsider the sentence pronounced against him in the Appeal Judgement of 28 November 2007, as well as a previous decision dismissing a request for reconsideration of the Appeal Judgement.¹ The Prosecutor filed his response to this motion on 4 April 2012.² Mr. Nahimana filed his reply to the Prosecutor's Response on 25 May 2012.³

2. On 5 June 2012, Mr. Nahimana's *pro bono* counsel filed a "Mémoire additional au soutien de la requête en reconsidération formée par Monsieur Ferdinand Nahimana", in which he claims to make supplementary submissions in reply to the Prosecutor's 5 April 2012 Response.⁴

3. As Mr. Nahimana has already filed his Reply, he is not now entitled to file further submissions, via *pro bono* counsel or otherwise, that in effect constitute an additional "reply" to the Prosecutor's Response, particularly as these additional submissions do not address any new issues that could not have been incorporated into his initial Reply.⁵ The Prosecutor therefore submits that the Appeals Chamber should not consider these additional submissions in adjudicating the Motion.

4. In any event, even if considered, the supplementary submissions add nothing new. They are yet another attempt by Mr. Nahimana to re-litigate issues

¹ *Ferdinand Nahimana v. The Prosecutor*, Case No. ICTR-99-52-A, "1. Demande de reconsidération de la décision du 27 septembre 2011 signée par le seul juge Fausto Pocar. 2. Récusation de l'Honorable Juge Fausto Pocar 3. Demande de reconsidération de la peine prononcée contre moi le 28/11/2007", 30 March 2012 ("Motion").

² *Ferdinand Nahimana v. The Prosecutor*, Case No. ICTR-99-52-A, Prosecutor's Response to Nahimana's Requests for Reconsideration of the Appeals Chamber Decision of 27 September 2011, Disqualification of Judge Pocar, and Reconsideration of the Sentence Pronounced Against him in the Appeal Judgement of 28 November 2007, 5 April 2012.

³ *Ferdinand Nahimana v. The Prosecutor*, Case No. ICTR-99-52-A, Réplique à la réponse du Procureur à mes requêtes déposées le 19 mars 2012, enregistrées au Greffe du TPIR le 30 mars 2012", 25 May 2012 ("Reply"). In the Reply, Mr. Nahimana submits that he only received the Prosecutor's Response on 22 May 2012. See Reply, para. 1.

⁴ *Ferdinand Nahimana v. The Prosecutor*, Case No. ICTR-99-52-A, Mémoire additional au soutien de la requête en reconsidération formée par Monsieur Ferdinand Nahimana, 5 June 2012, para. 1 ("Supplementary Submissions").

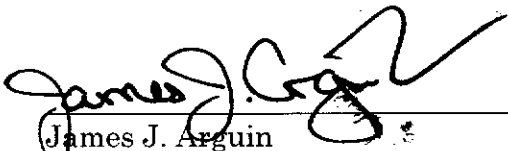
⁵ Further, these supplementary submissions are filed out of time. In his Reply, Mr. Nahimana requests that the Appeals Chamber wait for and consider further submissions to be made by his *pro bono* counsel, but has shown no good cause as to why an extension of time was required by counsel in which to file these submissions. See Reply, para. 1.

already adjudicated by the Appeals Chamber in its decisions dismissing Mr. Nahimana's previous motions for reconsideration of the Appeal Judgement.⁶ As the Appeals Chamber held in these decisions, it has no power to reconsider its final judgements.⁷

5. The Prosecutor, therefore, respectfully requests the Appeals Chamber to dismiss the supplementary submissions in their entirety.

Word Count: 756

Dated and signed this 6th day of June 2012, Arusha, Tanzania.


James J. Arguin
Chief, Appeals & Legal Advisory Division

⁶ On 22 April 2008 and 30 June 2010, the Appeals Chamber dismissed two successive applications filed by Mr. Nahimana to reconsider the Appeal Judgement of 28 November 2007. *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Ferdinand Nahimana's "Notice of Application for Reconsideration of Appeal Decision Due to Factual Errors Apparent on the Record" ("22 April 2008 Decision"); *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Ferdinand Nahimana's Motion for Reconsideration of the Appeal Judgement, 30 June 2010 ("30 June 2010 Decision"). On 27 September 2011, the Appeals Chamber dismissed a further motion filed by Mr. Nahimana to annul the Appeals Chamber decisions of 22 April 2008 and 30 June 2008 and for reconsideration of the Appeal Judgement. *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Nahimana's Motion to Annul the Decisions of 22 April 2008 and 30 June 2010 and for Reconsideration, 27 September 2011.

⁷ 22 April 2008 Decision, p. 2; 30 June 2010 Decision, para. 6. See also *Jean de Dieu Kamuhanda v. Prosecutor*, Case No. ICTR-99-54A-R, Decision on Request for Review, 25 August 2011, para. 56; *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, paras. 20-21; *Georges 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. 6.



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Case Name:	The Prosecutor vs. Ferdinand Nahimana		Case Number: ICTR-99-52B-R
Dates:	Transmitted: 6 June 2012		Document's date: 6 June 2012
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