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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before: Judge Vagn Joensen
Sitting Pursuant to Rule 75(I)

Registrar: Adama Dieng

Date: 27 June 2012

THE PROSECUTOR
v.
NTAKIRUTIMANA, Case Nos. ICTR-96-10 and ICTR-96-17
MUSEMA, Case No. ICTR-96-13
KAYISHEMA, Case No. ICTR-95-1
MUNYAKAZI, Case No. ICTR-97-36A
BAGILISHEMA, Case No. ICTR-95-1A
MUHIMANA, Case No. ICTR-95-1B
NCHAMIHIGO, Case No. ICTR-01-63
NDIMBATI, Case No. ICTR-95-1
NDINDABAHIZI, Case No. ICTR-01-71
SIKUBAWABO, Case No. ICTR-95-1D
NIYITEGEKA, Case No. ICTR-96-14

DECISION ON MOTION FOR RECONSIDERATION OF THE 28 MAY DECISION IN RELATION TO JACQUES MUNGWARERE'S MOTIONS FOR ACCESS TO MATERIALS AND NOTICE UNDER RULE 67(D)

Rules 54 and 73 of the Rules of Procedure and Evidence

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I. INTRODUCTION

1. On 28 May 2012, I, sitting pursuant to Rule 75(I), rendered a Decision (the "Impugned Decision") denying Jacques Mungwarere's request for access to materials in various cases and for notice pursuant to Rule 67(D) of the Rules of Procedure and Evidence. I: (1) denied Jacque Mungwarere's request relating to the *Munyakazi* and *Nchamihigo* cases; (2) ordered the Prosecution to communicate *ex parte* to the Chamber and the WVSS certain identifying information of protected witnesses in the *Ntakirutimana et al.* case; (3) directed the WVSS to contact protected witnesses in the *Ntakirutimana et al.*, *Kayishema et al.*, *Muhimana*, and *Ndindabahizi* cases; (4) ordered the WVSS to explain to the Protected witnesses the implication of their consent to the variation of the protective measures they currently enjoy; (5) instructed the WVSS to inform the Chamber of any difficulties in fulfilling the present Order; (6) ordered the Prosecution to communicate *ex parte* with the Chamber the witness statements of witnesses identified in part III; (7) reserved a decision regarding the witnesses identified in part III; and (8) rejected Jacques Mungwarere's request in all other aspects.[1]

II. SUBMISSIONS OF THE PARTIES

Mungwarere Motion for Reconsideration

2. Mungwarere requests the Chamber to reconsider the Impugned Decision in its entirety and to allow for access to materials and for Notice under Rule 67(D).[2]

Reconsideration

3. Mungwarere submits that the Impugned Decision should be reconsidered on a number of grounds.[3] He asserts that the Impugned Decision does not take into account the additional information contained in Mungwarere's Reply Motion of 20 March 2012, does not address Mungwarere's submissions regarding the *Munyakazi* case, and misconstrues proper Notice under Rule 67(D).[4]

4. Mungwarere first contends that the Impugned Decision was based on an alleged lack of reasoned opinion by the Chamber.[5] In particular, he submits that the Chamber committed an error in not taking into account information provided in Mungwarere's

[1] Decision in Relation to Jacques Mungwarere's Motions for Access to Materials and Notice Under Rule 67(D), 28 May 2012, Dispositions I-VIII, pp. 10-11.
[2] Motion for Reconsideration of the 28 May Decision in Relation to Jacques Mungwarere's Motions for Access to Materials and Notice Under Rule 67(D), 7 June 2012 ("Motion for Reconsideration"), paras. 8, 26.
[3] Motion for Reconsideration, para. 15.
[4] Motion for Reconsideration, para. 15.
[5] Motion for Reconsideration, paras. 16-19.

Reply Motion of 20 March 2012.[6] Mungwarere contends that this error "result[ed] in an injustice that warrants reconsideration."[7]

5. Mungwarere further contends that the Impugned Decision failed to specifically address the material sought in relation to the *Munyakazi* case made in his 1 March 2012 Motion.[8] Therefore, he contends that the reasoning of the Impugned Decision "is erroneous [and] result[s] in an injustice that warrants reconsideration."[9]

6. Mungwarere additionally asserts that the Chamber's interpretation of his submissions regarding Rule 67(D) of the Rules of Procedure and Evidence have been "misinterpreted, ignored or misunderstood."[10] He contends that the reasoning of the Impugned Decision "is erroneous [and] result[s] in an injustice which warrants reconsideration."[11]

Prosecution Response

7. The Prosecution requests the Chamber to dismiss the Motion for Reconsideration in its entirety.[12]

Reconsideration

8. The Prosecution submits that the Impugned Decision should not be reconsidered, as Mungwarere has not met his burden of demonstrating any clear errors in the reasoning of the Impugned Decision.[13] The Prosecution further submits that Mungwarere has not met his burden of showing the necessity of reconsideration in order to prevent injustice in this case.[14]

9. The Prosecution further submits that the Impugned Decision's lack of reference to Mungwarere's Reply Motion does not render that decision erroneous.[15] Tribunal jurisprudence demonstrates that a Chamber is not required to explain every decision in complete detail.[16] Furthermore, the Prosecution contends that Mungwarere failed to show that he had suffered any prejudice in this instance.[17]

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[6] Motion for Reconsideration, paras. 15, 19.
[7] Motion for Reconsideration, para. 18.
[8] Motion for Reconsideration, para. 15, 20.
[9] Motion for Reconsideration, para. 21.
[10] Motion for Reconsideration, paras. 15, 23.
[11] Motion for Reconsideration, para. 25.
[12] Prosecutor's Response to Motion for Reconsideration of the 28 May Decision in Relation to Jacques Mungwarere's Motion for Access to Materials and Notice Under Rule 67(D), 12 June 2012 ("Prosecutor's Response"), para. 13.
[13] Prosecutor's Response, paras. 2-3.
[14] Prosecutor's Response, paras. 2-3.
[15] Prosecutor's Response, para. 5.
[16] Prosecutor's Response, para. 5 (citing *Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Judgement, 2 February 2009, para. 20).
[17] Prosecutor's Response, para. 5.

10. Additionally, the Prosecution submits that Mungwarere's Reply Motion, nonetheless, fails to provide sufficiently specific information to identify the material being sought.[18] Ultimately, the Prosecution submits that Mungwarere does not make submissions in his Reply Motion that would have altered the conclusion in the Impugned Decision.[19]

11. Concerning Mungwarere's second ground for reconsideration, the Prosecution submits that the Impugned Decision does, in fact, address the material sought from the *Munyakazi* case.[20] The Prosecution cites to the Impugned Decision's explanation that there is no factual nexus between Mungwarere and the *Munyakazi* and *Nchamihigo* cases.[21] Again, a Chamber or a Judge is not required to explain every decision in complete detail.[22] Accordingly, the Prosecution submits, Mungwarere's request regarding the *Munyakazi* case has been appropriately addressed and denied by the Impugned Decision.[23]

12. Regarding Mungwarere's third ground for reconsideration, the Prosecution further submits that I was correct in determining that Rule 67(D) should not apply *mutatis mutandis* outside of the Tribunal.[24] The Prosecution contends that Mungwarere failed to demonstrate either a clear error of reasoning on my part or that reconsideration is required to prevent an injustice in this instance.[25]

III. DELIBERATIONS

Reconsideration

13. I recall the Tribunal's jurisprudence on reconsideration:[26]

> . . . the Rules do not provide for the reconsideration of the decision. The Tribunal has an interest in the certainty and finality of its decisions, in order that parties may rely on its decisions, without fear that they will be easily altered. The fact that the Rules are silent as to reconsideration, however, is not, in itself, determinative of the issue whether or not reconsideration is available in "particular circumstances", and a judicial body has inherent jurisdiction to reconsider its decision in "particular circumstances". Therefore,

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[18] Prosecutor's Response, para. 6.
[19] Prosecutor's Response, para. 7.
[20] Prosecutor's Response, para. 8.
[21] Prosecutor's Response, para. 10 (citing Impugned Decision, para. 23).
[22] Prosecutor's Response, para. 10 (citing *Karera*, para. 20).
[23] Prosecutor's Response, para. 10.
[24] Prosecutor's Response, para. 12.
[25] Prosecutor's Response, para. 12.
[26] *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecutor's Second Motion for Reconsideration of the Trial Chamber's "Decision on Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73*bis*(E)" (TC), 14 July 2004, ("*Bagosora et al.* Decision of 14 July 2004"), para. 7; *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecutor's Motion for Reconsideration of the Trial Chamber's "Decision on Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73*bis*(E)" (TC), 15 June 2004 ("*Bagosora et al.* Decision of 15 June 2004"), para. 7.

> although the Rules do not explicitly provide for it, the Chamber has an inherent power to reconsider its own decisions. However, it is clear that reconsideration is an exceptional measure that is available only in particular circumstances.[27]

14. Reconsideration is permissible when: (1) a new fact has been discovered that was not known to the Chamber at the time it made its original decision, (2) there has been a material change in the circumstances since it made its original decision, or (3) there is reason to believe that its original decision was erroneous or constituted an abuse of power on the part of the Chamber, resulting in an injustice.[28] The burden rests upon the party seeking reconsideration to demonstrate the existence of sufficiently special circumstances.[29]

15. The Impugned Decision denied Mungwarere's request relating to the *Munyakazi, Nchamihigo, Ntakirutimana et al., Kayishema et al., Bagilishema, Muhimana, Ndimbati, Sikuwabo, Niyitegeka, Musema, Ndindabahizi, Karema et al., Bizimungu et al.*, and *Ndindiliyimana* cases.[30]

16. Mungwarere seeks reconsideration of the entire Impugned Decision.[31]

17. Mungwarere submits that I erred in three distinct manners in the Impugned Decision and that each error resulted in an injustice that warrants reconsideration.[32] The separate criteria for reconsideration are not cumulative in nature. Only one of the three factors needs to be satisfied in order to warrant the reconsideration of the Impugned Decision.[33]

18. All three of Mungwarere's arguments were considered and adequately addressed in the Impugned Decision. Mungwarere has demonstrated none of the three bases for reconsideration. Specifically, he has failed to demonstrate a clear error in my reasoning or the necessity of reconsideration in order to prevent injustice.

19. In assessing Mungwarere's first ground for reconsideration based on an alleged lack of reasoned opinion in the Impugned Decision, I reaffirm the precedent of the Tribunal in holding that a Chamber or a Judge does not have to explain its decision in

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[27] *Bagosora et al.* Decision of 15 June 2004, para. 7.

[28] *Bagosora et al.* Decision of 15 June 2004, para. 9; *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Motion for Reconsideration of Decision on Joseph Nzirorera's Motion for Inspection: Michel Bagaragaza (TC), 29 September 2008, ("*Karemera et al.*"), para. 4; *The Prosecutor v. Kanyarukiga*, Case No. ICTR-2002-78-T, Decision on the Defence Motion for Reconsideration of the Chamber's 13 January 2010 Decision on Video-Link Testimony (TC), 29 January 2010, para. 5.

[29] *See e.g., The Prosecutor v. Ndindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on Prosecution's Motion for Reconsideration of the Chamber's Decision Dated 18 February 2009 (TC), 19 March 2009, para. 2; *Karemera et al.*, para. 4.

[30] Impugned Decision, Dispositions I-VIII, pp. 10-11.

[31] Motion for Reconsideration, paras. 8, 26.

[32] Motion for Reconsideration, paras. 15, 19, 21, 25.

[33] Motion for Reconsideration, para. 10 (citing *The Prosecutor v. Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on the Urgent and Confidential Defence Motion Requesting Reconsideration of the 1 March 2007 Ruling Refusing a Subpoena for the Witness JPFR3, 20 March 2007, para. 3).

minute detail.[34] Additionally, Mungwarere has failed to demonstrate any prejudice that he has suffered as a result of the current situation. I further note that Mungwarere has failed to indicate how the additional information contained within his Reply Motion would have satisfied the specificity requirement.[35] Mungwarere has failed to demonstrate any new facts discovered that were unknown to me at the time I made the original decision, that there has been a material change in the circumstances since I made its original decision, or that there is reason to believe that my original decision was erroneous or constituted an abuse of power on my part, resulting in an injustice. For that reason, the first ground for reconsideration is denied.

20. In assessing Mungwarere's second ground for reconsideration based on an alleged failure to specifically address the material sought in relation to the *Munyakazi* case, I conclude that the Impugned Decision does properly address the material sought in *Munyakazi*.[36] The Impugned Decision expressly notes that there is no factual nexus between Mungwarere and the *Munyakazi* case.[37] The Impugned Decision clearly addresses and denies Mungwarere's request with respect to the *Munyakazi* case. Again, Mungwarere has failed to demonstrate any new facts discovered that were unknown to me at the time I made my original decision, that there has been a material change in the circumstances since I made my original decision, or that there is reason to believe that my original decision was erroneous or constituted an abuse of power on my part, resulting in an injustice. Therefore the second ground for reconsideration is also denied.

21. In assessing Mungwarere's third ground for reconsideration based on an assertion that I have misinterpreted his submissions regarding Rule 67(D) of the Rules of Procedure and Evidence, I hold that the Impugned Decision contained a correct reading of the rule. Rule 67(D) should not apply *mutatis mutandis* to parties outside the Tribunal.[38] Therefore, if the Prosecution provides materials to foreign counterparts in foreign jurisdictions, the domestic law of that jurisdiction would apply.[39] Here, Mungwarere has simply repeated previous arguments raised in prior motions and has failed to demonstrate any new facts discovered that were unknown to me at the time I made my original decision, that there has been a material change in the circumstances since I made my original decision, or that there is reason to believe that my original decision was erroneous or constituted an abuse of power on my part, resulting in an injustice. Therefore, the third ground for reconsideration is also denied.

22. A motion for reconsideration is not an interlocutory appeal. Decisions should only be reconsidered based on one of the three distinct grounds for reconsideration. Barring a showing of one of the three grounds for reconsideration, a decision cannot be re-evaluated.

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[34] *See, e.g.*, *Karera*, para. 20.
[35] Motion for Reconsideration, paras. 17-19; Impugned Decision, paras. 15, 26.
[36] Impugned Decision, Disposition I, p. 10.
[37] Impugned Decision, Disposition I, p. 10.
[38] Impugned Decision, para. 36.
[39] Impugned Decision, para. 36.

FOR THE ABOVE REASONS, I

DENY the Motion for Reconsideration in its entirety.

Arusha, 27 June 2012

Judge Vagn Joensen

[Seal of the Tribunal]

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