

ICTR-99-52B-R
(114657-2012
11361/A)

11761/A



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

ENGLISH
Original: FRENCH

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

Registrar: Adama Dieng

Date: 23 May 2012

FERDINAND NAHIMANA

v.

THE PROSECUTOR

Case No. ICTR-99-52B-R

UNICTR
JUDICIAL RECORDS/REGISTRE
RECEIVED

2012 JUN 04 A 10: 24

**REPLY TO THE PROSECUTOR'S RESPONSE TO MY REQUESTS FILED ON 19
MARCH 2012 AND RECEIVED AT THE REGISTRY OF ICTR ON 30 MARCH 2012**

A12-0172 (E)

Translation certified by LSS, ICTR

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I. Excessive delay in the service of the Prosecutor's Response to my Requests

1. May it please the Appeals Chamber to note that, on 5 April 2012, the Prosecutor of ICTR responded to the Requests that I filed with the Administration of the ICTR Penitentiary Facility in Koulikoro, Mali, on 19 March 2012 and which were received at the Registry of ICTR on 30 March 2012. The Prosecutor's Response was delivered to me today, 22 May 2012, at 8.52 a.m. local time.

I hasten to reply to the Prosecutor's Response. I pray the Appeals Chamber to admit and favourably consider the present Reply. I also request the Appeals Chamber to kindly permit my *pro bono* counsel, Mr Jean-Marie Biju-Duval, with whom I have just spoken on the telephone, to hold a brief for me before the Tribunal in respect of the jurisprudential aspects of this matter.

II. Rebuttal of the Prosecutor's arguments on reconsideration of the 27 September 2011 Decision

2. As the Prosecutor quite rightly recalls, "*the Appeals Chamber may reconsider a previous decision 'pursuant to its inherent discretionary power if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice.'*"¹
3. Although he held that "*in accordance with the consistent practice of the Appeals Chamber, the Presiding Judge signs decisions on behalf of the Bench after the conclusion of deliberations on a Motion,*"² Honourable Judge Fausto Pocar did not cite any article of the Statute or Rules of Procedure and Evidence of ICTR on which such practice is based. Instead of finding that my request called into question such practice which is not based on any text (Statute or Rules of Procedure and Evidence), he once again, signed alone the 27 September 2011 Decision. Nowhere does he state why the four other judges who were regularly assigned to my case did not sign the

¹ 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.

² Decision of 27 September 2011, p. 2.

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various decisions relating to my motions and requests and why they did not equally sign the 27 September 2011 Decision.

4. Such a procedure already denies me true justice. Worse still, the 27 September 2011 Decision demonstrates that Honourable Judge Fausto Pocar has never really considered my argument to the effect that the Appeals Chamber, in its Judgement of 28 November 2007, committed an error of reasoning that occasioned a gross miscarriage of justice, when it upheld the position of the Trial Chamber in considering Expert Witness Alison Des Forges as an ordinary witness, and when it based my conviction on the testimony of that sole Witness.
5. Indeed, the Appeals Chamber claimed that I did not raise any objections when the Prosecutor tried to use Alison Des Forges as an ordinary witness. When he dismissed my 13 September 2011 Request on 27 September 2011, Honourable Judge Fausto Pocar did not bother to ascertain that, in the requests in which I asked for reconsideration, I actually showed that I had raised objections to that effect and the Trial Chamber considered them relevant and noted them and, lastly, that I was not trying to re-litigate my case but simply requesting the Appeals Chamber to rectify the error that had occasioned a serious miscarriage of justice in my case. By so doing, Honourable Judge Fausto Pocar failed to rectify the error that occasioned the serious miscarriage of justice.
6. The Prosecutor's arguments with a view to denying the relevance of my request should be dismissed because they are groundless.

III. Rebuttal of the Prosecutor's arguments on the disqualification of Honourable Judge Fausto Pocar

7. The Prosecutor refuses to recognize that my request for the disqualification of Honourable Judge Fausto Pocar is based on the fact that he used the testimony of Expert Witness Alison Des Forges, who was improperly accepted as an ordinary

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witness, to convict me, whereas her testimony should not have been taken into consideration.

8. By dismissing the requests that demonstrate that the Appeals Chamber should not have accepted that Witness, and, accordingly, that no judge would have relied on such testimony, Honourable Judge Fausto Pocar adopts the posture of one who does not want the truth and justice to prevail in my case. Why, when he realized that I was challenging his sole signature, did he not deign to consider my requests with the four other judges, and why did he not give them the opportunity to certify their respective positions by appending their signatures on the decisions taken in my case? Apart from the signatures appended on the decision that was delivered, there is no other proof that the five judges regularly assigned by the President of the Appeals Chamber jointly considered a request and took a decision thereupon.
9. Any reasonable person, upon learning that Honourable Judge Fausto Pocar signed alone even the decision on my request to disqualify him, will conclude without hesitation that Judge Pocar does not want the entire Chamber to notice the error of having based my conviction on the testimony of an expert witness wrongly used as an ordinary witness.
10. In light of the foregoing, it is clear that the Prosecutor's arguments in response to my request to disqualify Honourable Judge Fausto Pocar are baseless and should be dismissed in their entirety.

IV. Rebuttal of the Prosecutor's arguments on my request for reconsideration of my sentence

11. As I draft this request, there are two prisoners in The Hague who have already been tried by two international courts and found guilty of a number of crimes; they are Thomas Lubanga, tried by the ICC, and Charles Taylor, tried by the Special Court for Sierra Leone. To date, these Courts have still not delivered the sentences in those trials. In other words, although the determination of the sentence is based on the

“found guilty” disposition in the judgement, it remains distinct from the textual body of the judgements. Therefore, if ever a reconsideration of such sentences is requested, it will not entail a review of the judgement delivered.

12. I recall that, even in ICTR itself, in the early years of existence of the determination and pronouncement of the sentence was not done on the day the judgement was delivered. This notably happened in the case of Jean Paul Akayesu, the first person to be tried and convicted by ICTR.
13. I request a reconsideration of my sentence. Contrary to what the Prosecutor wants to mislead you to believe, my request does not seek to re-litigate my trial on appeal or to have the judgement reviewed. The fact that the Prosecutor did not rebut my arguments is clear evidence that he found them relevant and it therefore vindicates my argument for a reconsideration of my sentence. Accordingly, I pray the Chamber to dismiss in its entirety the Prosecutor’s Response on this point.

MAY IT PLEASE THE APPEALS CHAMBER TO:

- **GRANT** all three requests on the strength of my arguments in rebuttal of the Prosecutor’s Response (see the Prosecutor’s Response of 5 April 2012);
- **DISMISS** the Prosecutor’s Response in its entirety;
- **GRANT** my requests, and thus further the cause of international justice.

Done at Koulukro, 23 May 2012

[Signed]

Ferdinand Nahimana
