



UNITED NATIONS
NATIONS UNIES



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

874/H

IN THE APPEALS CHAMBER

ICTR-01-73-A
26th February 2013
{874/H-869/H}

Before: Judge Theodor Meron, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun
Judge Carmel Agius

Registrar: Mr. Bongani Majola

Decision of: 26 February 2013

ICTR Appeals Chamber
Date: 26 FEB 2013
Action: *h. Guand*
Copied To: *Chambers, Defence, OIP-ALAB-17 PUCMS.*

PROTAIS ZIGIRANYIRAZO

v.

THE PROSECUTOR

Case No. ICTR-01-73-A

**DECISION ON PROTAIS ZIGIRANYIRAZO'S REQUEST TO APPEAL
TRIAL CHAMBER III'S DECISION OF 18 JUNE 2012**

Counsel for Protais Zigiranyirazo:

Mr. John Philpot
Mr. Charles Taku

Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James Arguin

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: *ROSETTE MUZIGO-MORRISON*
SIGNATURE: DATE: *26/02/13*

1. 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 1994 and 31 December 1994 (“Appeals Chamber” and “Tribunal”, respectively) is seised of a request filed by Mr. Protais Zigiranyirazo on 29 June 2012 for leave to appeal a decision of Trial Chamber III of the Tribunal (“Trial Chamber”) issued on 18 June 2012.¹ The Prosecution responded on 9 July 2012.² Mr. Zigiranyirazo replied on 11 July 2012.³

A. Background

2. Mr. Zigiranyirazo, a former businessman, politician, and prefect,⁴ was charged before the Tribunal for his alleged role in crimes committed in Rwanda in 1994.⁵ He was arrested in Belgium on 26 July 2001 and transferred to the United Nations Detention Facility in Arusha, Tanzania, on 3 October 2001.⁶ On 18 December 2008, the Trial Chamber convicted Mr. Zigiranyirazo of genocide and extermination as a crime against humanity.⁷ On 16 November 2009, the Appeals Chamber reversed these convictions, entered a verdict of acquittal, and ordered his immediate release.⁸ Mr. Zigiranyirazo currently resides in a safe house in Arusha awaiting relocation to another country.⁹

3. In acquitting Mr. Zigiranyirazo, the Appeals Chamber found that the Trial Chamber erred in its assessment of his alibi in relation to the events which underpinned his convictions.¹⁰ Specifically, the Appeals Chamber concluded that “the Trial Judgement misstated the principles of law governing the distribution of the burden of proof with regards to alibi and seriously erred in its handling of the evidence.”¹¹ The Appeals Chamber further noted that “Zigiranyirazo’s resulting

¹ Motion for Leave to Appeal or for Review of Trial Chamber Decision of 18 June 2012, 29 June 2012 (“Motion”); *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73, Decision on Protais Zigiranyirazo’s Motion for Damages, 18 June 2012 (“Impugned Decision”).

² Prosecutor’s Response to Zigiranyirazo’s “Motion for Leave to Appeal or for Review of Trial Chamber Decision of 18 June 2012”, 9 July 2012 (“Response”).

³ Reply to Prosecutor’s Response to Zigiranyirazo’s “Motion for Leave to Appeal or for Review of Trial Chamber Decision of 18 June 2012”, 11 July 2012.

⁴ Judgement, 16 November 2009 (“Appeal Judgement”), para. 2; *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-01-73-T, Judgement, 18 December 2008 (“Trial Judgement”), para. 5.

⁵ Trial Judgement, para. 6.

⁶ Impugned Decision, para. 1. *See also* Trial Judgement, para. 7.

⁷ Trial Judgement, paras. 410, 426, 427, 436, 439, 447. *See also* Appeal Judgement, para. 3.

⁸ Appeal Judgement, paras. 52, 74, 79.

⁹ Motion, para. 14.

¹⁰ Appeal Judgement, paras. 51, 73, 75.

¹¹ Appeal Judgement, para. 75.

convictions [...] violated the most basic and fundamental principles of justice”, thus requiring their reversal.¹²

4. On 24 February 2012, Mr. Zigiranyirazo filed a motion seeking financial compensation in the amount of 1,006,550 United States Dollars for the period spent in detention pending his acquittal and for various alleged violations of his fair trial rights.¹³ He also requested to be relocated to Belgium and costs for his legal team.¹⁴ On 18 June 2012, the Trial Chamber denied his request in its entirety.¹⁵

5. Mr. Zigiranyirazo seeks leave to appeal the Impugned Decision.¹⁶ He advances four proposed grounds of appeal, which he intends to develop in further briefing if leave is granted.¹⁷ Specifically, he submits that the Trial Chamber erred in: (i) refusing to award compensation for violations of his fair trial rights; (ii) refusing to order his return to Belgium; (iii) rejecting his claim that he was entitled to assignment of legal counsel in Belgium after his arrest; and (iv) denying his claim for legal costs.¹⁸ Mr. Zigiranyirazo also invites the Appeals Chamber to consider *proprio motu* two further issues addressed in the Impugned Decision related to an award of compensation for undue delay in the proceedings and an award of compensation based on a theory of strict liability.¹⁹ The Prosecution responded only in relation to these latter two matters.²⁰

B. Discussion

6. As Mr. Zigiranyirazo correctly acknowledges,²¹ neither the Statute of the Tribunal (“Statute”) nor the Rules of Procedure and Evidence of the Tribunal provide for an appeal of the Impugned Decision.²² That said, the Appeals Chamber retains inherent jurisdiction over the enforcement of its orders and any decisions issued as a consequence thereof.²³ The Appeals Chamber will accordingly examine each of Mr. Zigiranyirazo’s proposed grounds of appeal in turn to determine whether it falls within this limited category of jurisdiction and, if so, whether the Appeals Chamber should grant leave to appeal and authorize further briefing.

¹² Appeal Judgement, para. 75.

¹³ See Impugned Decision, para. 2.

¹⁴ See Impugned Decision, para. 2; Motion, para. 63.

¹⁵ Impugned Decision, p. 19.

¹⁶ Motion, paras. 3, 67, 69.

¹⁷ Motion, para. 69.

¹⁸ Motion, paras. 26-63.

¹⁹ Motion, paras. 64-66.

²⁰ Response, para. 3.

²¹ Motion, para. 23.

²² See *In re André Ntagerura*, Case No. ICTR-99-46-A28, Decision on Motion for Leave to Appeal the President’s Decision of 31 March 2008 and the Decision of Trial Chamber III Rendered on 15 May 2008, 11 September 2008 (“*Ntagerura* Appeal Decision of 11 September 2008”), para. 12.

²³ *Ntagerura* Appeal Decision of 11 September 2008, para. 12.

1. Compensation

7. In his first proposed ground of appeal, Mr. Zigiranyirazo challenges the Trial Chamber's rejection of his claim for compensation arising from the Appeals Chamber's statement that his conviction "violated the most basic and fundamental principles of justice."²⁴ In rejecting his claim for compensation, the Trial Chamber determined that it has authority to award compensation "in exceptional circumstances" if it determines that there had been a "grave and manifest miscarriage of justice."²⁵ However, the Trial Chamber reasoned that this high threshold had not been met given the delay in advancing the claim, the nature of the errors at trial, their correction on appeal, and the absence of a clear violation of Mr. Zigiranyirazo's fundamental rights as set out in Article 20(4) of the Statute.²⁶

8. According to Mr. Zigiranyirazo, the Trial Chamber misinterpreted the operative statement in the Appeal Judgement that his convictions "violated the most basic and fundamental principles of justice."²⁷ He submits that this language entitles him to a remedy under the Tribunal's jurisprudence.²⁸ The Appeals Chamber finds no merit in this claim. Nothing in the Appeal Judgement could be reasonably interpreted as authorizing a claim for compensatory damages. The cited language simply characterizes the nature of the factual and legal errors identified in the Trial Judgement that were corrected on appeal. Had the Appeals Chamber considered it appropriate to grant any remedy other than a reversal of Mr. Zigiranyirazo's convictions, the Appeals Chamber would have expressly provided for it.²⁹ As an appeal on this point would not relate to the enforcement of the Appeal Judgement, it lies outside the jurisdiction of the Appeals Chamber.³⁰

2. Relocation to Belgium

9. In his second proposed ground of appeal, Mr. Zigiranyirazo contends that the Trial Chamber erred in refusing to invoke Article 28 of the Statute and order his return to the place of his arrest, Belgium.³¹ The Trial Chamber dismissed this claim.³² Specifically, the Trial Chamber noted

²⁴ Motion, para. 27, quoting Appeal Judgement, para. 75.

²⁵ Impugned Decision, para. 19 (emphasis omitted). In concluding that it had authority to award compensation, the Trial Chamber relied on Article 85(3) of the Rome Statute of the International Criminal Court, which it considered a reflection of customary international law. See Impugned Decision, para. 19.

²⁶ Impugned Decision, paras. 20-22.

²⁷ Motion, paras. 27, 28 (emphasis omitted).

²⁸ Motion, para. 27.

²⁹ See, e.g., *André Rwamakuba v. The Prosecutor*, Case No. ICTR-98-44C-A, Decision on Appeal Against Decision on Appropriate Remedy, 13 September 2007, paras. 23, 24; *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision, originally filed in French on 1 June 2000, English translation filed on 4 July 2001, p. 34; *Jean Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-97-19-AR72, Decision (Prosecutor's Request for Review or Reconsideration), originally filed in French on 31 March 2000, English translation filed on 7 April 2000, para. 75.

³⁰ See *supra*, para. 6.

³¹ Motion, paras. 43-50.

³² Impugned Decision, para. 57.

Mr. Zigiranyirazo's submission that he had travelled to Belgium to apply for refugee status prior to his arrest but explained the Tribunal's lack of authority to review refugee claims or to confer refugee status on acquitted persons.³³ Furthermore, the Trial Chamber recalled that, in accordance with the Appeals Chamber's jurisprudence, Article 28 of the Statute does not require states to cooperate in the relocation of acquitted persons.³⁴

10. Mr. Zigiranyirazo submits that the Trial Chamber misunderstood his request.³⁵ He notes that he was not asking for the Tribunal to grant him refugee status in Belgium, but simply asking to be placed in the position *status quo ante* his arrest.³⁶ Moreover, Mr. Zigiranyirazo contends that the Trial Chamber erred in applying the *Ntagerura* Appeal Decision of 18 November 2008, as his situation is factually distinguishable.³⁷ In particular, Mr. Zigiranyirazo notes that Mr. André Ntagerura sought relocation to a country other than that in which he was arrested, whereas Mr. Zigiranyirazo is seeking return to the country of his arrest.³⁸

11. The Appeals Chamber has previously held that decisions on matters of relocation of acquitted persons relate to the enforcement of appeal judgements and therefore fall within its jurisdictional ambit.³⁹ However, the Appeals Chamber recalls that "there is no legal duty under Article 28 of the Statute for States to cooperate in the relocation of acquitted persons."⁴⁰ Consequently, the Tribunal lacks the authority to compel the cooperation of Belgium, irrespective of the particular circumstances of this case. Given that Mr. Zigiranyirazo is not disputing the nature of the Registry's efforts in relation to his release,⁴¹ the Appeals Chamber considers that allowing an appeal on this point would serve no purpose in view of the clearly established limits on the Tribunal's authority. Accordingly, the Appeals Chamber declines to exercise its discretion to grant leave to appeal on this point.

3. Right to Counsel upon Arrest in Belgium

12. In his third proposed ground of appeal, Mr. Zigiranyirazo contends that the Trial Chamber erred in finding that he was not entitled to assigned counsel at the time of his arrest in Belgium.⁴²

³³ Impugned Decision, para. 55.

³⁴ Impugned Decision, para. 56, quoting, *inter alia*, *In re André Ntagerura*, Case No. ICTR-99-46-A28, Decision on Motion to Appeal the President's Decision of 31 March 2008 and the Decision of Trial Chamber III of 15 May 2008, 18 November 2008 ("*Ntagerura* Appeal Decision of 18 November 2008"), paras. 14, 15.

³⁵ Motion, para. 44.

³⁶ Motion, para. 44.

³⁷ Motion, para. 45.

³⁸ Motion, paras. 48, 49, quoting *Ntagerura* Appeal Decision of 18 November 2008, para. 13.

³⁹ *Ntagerura* Appeal Decision of 11 September 2008, para. 13.

⁴⁰ *Ntagerura* Appeal Decision of 18 November 2008, para. 15.

⁴¹ *But cf.* Motion, para. 44 (arguing that the Registrar should have invoked Article 28 of the Statute following his acquittal so as to return him to Belgium).

⁴² Motion, paras. 51-62.

Mr. Zigiranyirazo submits that, had he been assigned counsel, his counsel could have negotiated and assured his right to return in the event of an acquittal before the Tribunal.⁴³ The Appeals Chamber observes that this proposed ground of appeal is linked with Mr. Zigiranyirazo's claim that the Tribunal has the authority to compel Belgium to accept his return.⁴⁴ As noted above, no such authority exists. Accordingly, the Appeals Chamber declines to exercise its discretion to grant leave to appeal on this point.

4. Legal Costs

13. In his fourth proposed ground of appeal, Mr. Zigiranyirazo submits that the Trial Chamber erred in not ruling on his requests for legal costs related to bringing his claim for compensation and other relief.⁴⁵ Mr. Zigiranyirazo, however, has not identified any link between this ground and the enforcement of the Appeal Judgement. In addition, the Appeals Chamber can find no basis in the legal framework of the Tribunal for the award of such costs. Accordingly, an appeal on this point cannot be allowed.

5. Other Issues

14. Finally, Mr. Zigiranyirazo invites the Appeals Chamber to consider *proprio motu* two further issues addressed in the Impugned Decision.⁴⁶ Mr. Zigiranyirazo concedes that these two issues "do not flow directly from the interpretation and implementation of the [Appeal] Judgement".⁴⁷ Accordingly, the Appeals Chamber need not consider them further given the limited scope of its jurisdiction.

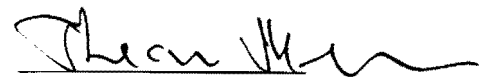
C. Disposition

15. For the foregoing reasons, the Motion is **DENIED**.

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

Done this 26th day of February 2013,
At The Hague,
The Netherlands.




Judge Theodor Meron
Presiding

[Seal of the Tribunal]

⁴³ Motion, paras. 57, 61.

⁴⁴ See Motion, para. 34.

⁴⁵ Motion, para. 63.

⁴⁶ Motion, paras. 64-66.

⁴⁷ Motion, para. 65.