

MICT-14-77-R90.1

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UNITED
NATIONS



Mechanism for International Criminal Tribunals

Case No : MICT-14-77-R

Date : 22 June 2016

Original : English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Jean Claude Antonetti
Judge Patrick Robinson
Judge Alphonse Orié
Judge Liu Daqun

Registrar: Mr. John Hocking

Aloys NTABAKUZE

v.

THE PROSECUTOR

**NTABAKUZE'S MOTION TO VACATE THE SINGLE JUDGE'S 23 MAY
2016 DECISION ON NTABAKUZE'S 12 MAY 2016 MOTION**

The Applicant

Sandrine Gaillot, Esq.

The Office of the Prosecutor

Mr. Serge Brammertz
Mr. Richard Karegyesa
Mr. Sunkarie Ballah-Conteh

Received by the Registry
Mechanism for International Criminal Tribunals
28/06/2016 14:12

A handwritten signature in black ink, appearing to be 'L. DuBois'.

BACKGROUND

1. On 12 May 2016, Ntabakuze filed a Motion for Execution of the 23 March 2016 Order to disclose exculpatory evidence in the possession of the Prosecutor and to find the Prosecutor in contempt for failure to comply with the Judge's order, pursuant to Rules 90 of MICT Rules.
2. On 17 May 2016, in his Response to the Motion, the Prosecutor argues that Ntabakuze's motion should be dismissed on procedural grounds, due to the failure to seek leave to appeal a prior decision. The Prosecutor misconstrued the Motion as an Appeal, which it was not. Therefore, his Response was besides the point and moot.
3. On 19 May 2016, Ntabakuze filed a **REPLY** to this Response, with a 26 pages Annex. The Registry confirmed receipt of the filing on 20 May 2016 and confirmed to Ntabakuze's counsel that said Reply would be filed confidentially due to the nature of its Annex. On 20 May 2016, Counsel acknowledged receipt of the notification and thanked the Registry.
4. On 23 May 2016, the Single Judge issued his Decision, dismissing the Motion on the grounds that the Prosecutor had, on May 16th, transmitted "an additional copy" of the sought-after exculpatory Declaration by separate transmission, via the Registry. Ntabakuze's Reply had not been taken into account.
5. On 23 June 2016, after Ntabakuze's Counsel requested the Registry to resend the actual service email of the Reply, the Registry filed a Rule 31(B) Submission, recognizing that Ntabakuze had in fact filed his Reply within the time-limits, apologizing for the oversight in not communicating said Reply to the Single Judge and the Parties, and assuring the Court that adequate systems, guidelines and controls are in place to ensure accuracy of filing and distribution mechanisms.

SUBMISSION

6. In his Reply, Ntabakuze clearly lays out the facts, procedures, circumstances, and the law in support of a finding that the "additional declaration" communicated by the Prosecutor on May 16th was NOT and NEVER was part of the *Military I* record.
7. Furthermore, the 26-page confidential Annex, attached to the Reply, and bearing the Registry's filing and case identification numbers (referring to another case), supports Ntabakuze's position that this Declaration was never part of his trial record.
8. Finally, the Single Judge, in his 23 June Decision did not address point 9 of Ntabakuze's

Reply, which raises a seriously disturbing inconsistency regarding the existence or not, in the record, of *any* evidence supporting the presence of other (non-Para Commando) camouflage-wearing units in the vicinity of Nyanza. The resolution of this inconsistency is all the more important, especially in light of the *Military I* Trial and Appeals Chambers' findings concerning this material fact (or the lack of suggestion thereof), the lack of such supporting evidence, and the direct impact this finding has on a subsequent finding that this information constitutes a new fact.

9. Finally, and in the present context, it is not sufficient that the Registry assures the Court that adequate systems, guidelines and controls are in place to ensure accuracy of filing and distribution mechanisms. While the Registry cannot provide a tangible remedy for the failure of the Court to consider a timely filed Reply by Mr. Ntabakuze, it is the Single Judge's duty to do so by withdrawing the 23 May Decision in this matter and rendering a new decision.

CONCLUSION

10. In light of the foregoing, it is respectfully requested that the Single Judge withdraw his initial decision, take notice of the Registry's acknowledgement of its transmission error, and remedy this oversight by Reviewing the Motion, Response and Reply anew in order to issue a new Decision, which Mr. Ntabakuze, having complied with the Rules and Practice Directions concerning filings, is entitled to as of right.

Word count : 692



Sandrine Gaillot, Esq.

Pro bono Counsel for Ntabakuze



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