

ICTR-2001-65-A
25/Nov./2002
(50/h-47/h)

50/h
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International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

BEFORE A BENCH OF THE APPEALS CHAMBER

Before:

Judge Mohamed SHAHABUDEEN, Presiding
Judge Fausto POCAR
Judge Theodor MERON

Registrar:

Mr. Adama DIENG

Decision of:

25 November 2002

ICTR Appeals Chamber
Date: 25 November 2002
Action: PG
Copied To: All Judges, Partie

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ICTR
JUDICIAL RECORDS/ARCHIVES
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Jean MPAMBARA
(Appellant)

v.

THE PROSECUTOR
(Respondent)

Judicial Archives (origin)
SLD, LDs, ALDs
[Signature]

Case No. ICTR-2001-65-A

**DECISION ON MOTION TO APPEAL AGAINST THE DECISION OF
TRIAL CHAMBER I OF 22 OCTOBER 2002**

Counsel for the Appellant

Mr. Mario Spandre

Counsel for the Prosecution

Mr. Richard Karegyesa
Mrs Andra Mobberley

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR NOUS
NAME / NOM: ROSETTE MUZIGO-MORRISON
SIGNATURE: *[Signature]* DATE: 25/11/02

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THIS BENCH OF 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 ("Tribunal"),

BEING SEISED OF the "*Demande d'autorisation d'interjeter appel de la décision du 22 octobre 2002 rendue par la Chambre de première instance I du Tribunal de rejet de la requête de mise en liberté introduite le 16 juillet 2002 sur le fondement des articles 73 et 65 du Règlement de procédure et de preuve*" ("Motion") filed on 29 October 2002 against the *Décision (Requête de la Défense aux fins de la mise en liberté de l'accusé)* ("Impugned Decision") rendered on 22 October 2002 by Trial chamber I which dismissed a motion for provisional release filed by Jean Mpambara ("Appellant");

NOTING that the Appellant submits in his Motion that:

- 1) The Trial Chamber committed an error of fact by wrongly assuming that the Appellant did not exhaust the administrative remedies and should have brought his complaint regarding the Registrar's alleged delay and refusal to make payments of certain Defence team expenses directly to the Registrar;¹
- 2) The Trial Chamber committed an error of law by finding that the Appellant needed to bring a complaint (regarding the Registrar's refusal to allow Defence assistant and investigators access to the Accused in the detention center) directly to the Commanding Officer of the detention center in furtherance of Rules 82 to 86 of the Rules governing the detention of persons awaiting trial or appeal before the Tribunal or otherwise detained on the authority of the Tribunal ("Rules on Detention");²
- 3) The Trial Chamber committed an error of law by finding that there is no violation of the principle of fair trial and that it falls within the power of the Registrar under the authority of the President of the Tribunal to determine the practical modalities of payment of fees and expenses of counsel;³

NOTING the "Prosecutor's Response to Motion to Appeal Against the Decision of Trial Chamber I Dismissing Request for Release of the Accused" ("Prosecutor's Response") filed on 4 November

¹ See page 3 of the Motion

² See page 4 of the Motion

³ See page 5 to 6 of the Motion

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2002 in which the Prosecutor submits that there is no legal basis for leave to appeal to be granted and that therefore the Motion should be dismissed;

NOTING the "Registrar's Response to the Motion to Appeal Against the Decision of Trial Chamber I Dismissing Request for Release of the Accused" ("Registrar's Response") filed on 13 November 2002 in which the Registrar submits that:

- 1) The responsibilities of the delays put forward by the Appellant are shared and that the Defence team has its own part of responsibility as it did not always submit properly its financial claims;⁴
- 2) In furtherance of an established jurisprudence, the privilege of confidentiality as provided for in Rule 65 of the Rules on Detention is only applicable to Counsel and Co-Counsel and that consequently visits of investigators and legal assistants, if unaccompanied by Counsel or Co-Counsel, are considered as private visits falling within the ambit of Rule 61 of the Rules on Detention;⁵
- 3) The practice of the Tribunal is that, save in exceptional circumstances properly demonstrated by the Appellant, the Registry will not allow confidential visits by investigators and legal assistants without the presence of a Counsel or Co-Counsel and that this practice is intended to ensure that the Accused person benefits from the best legal representation throughout the case;⁶

NOTING that the Defence has not to date replied to the Prosecutor's Response;

NOTING the "*Réplique à la communication par le greffe de sa réponse en date du 13 novembre 2002*" ("Reply") filed on 19 November 2002, which is one day out of time according to paragraph 6 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal;

CONSIDERING that the delay in the filing of the Reply did not prejudice the proceedings in this appeal;

FINDING that there is good cause in the terms of Rule 116⁷ of the Rules of Procedure and Evidence ("Rules") and therefore **RECOGNISING** the filing of the Reply as validly done;

⁴ See paragraph 10 of the Registrar's Response.

⁵ See paragraphs 16 to 23 of the Registrar's Response.

⁶ See paragraph 29 of the Registrar's Response.

⁷ Rule 116 of the Rules provides that "the Appeals Chamber may grant a motion to extend a time limit upon a showing of good cause".

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CONSIDERING that Rule 65(B) of the Rules provides that provisional release may only be ordered by a Trial Chamber "in exceptional circumstances, after hearing the host country and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person";

CONSIDERING that Rule 65(D) of the Rules provides *inter alia* that decisions on provisional release "shall be subject to appeal in cases where leave is granted by a bench of three Judges of the Appeals Chamber, upon good cause being shown";


CONSIDERING that "good cause" within the meaning of Rules 65(D) of the Rules requires that a party seeking leave to appeal under that provision satisfies the bench of the Appeals Chamber that the Trial Chamber may have erred in making its decision;

CONSIDERING that the Applicant has failed to demonstrate how the Trial Chamber may have erred in the conclusions reached in paragraph 5 and 6 of the Impugned Decision;

CONSIDERING in any event that the grievances advanced by the Appellant in his Motion are mostly of an administrative nature and do not in the circumstances of this case constitute "exceptional circumstances" warranting the provisional release of the Appellant;

HEREBY DISMISSES the Motion.

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


Judge Mohamed Shahabuddeen
Presiding Judge

Done this day twenty fifth of November 2002,

at The Hague,

The Netherlands.



[Seal of the Tribunal]