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Judgment Summary: International Criminal Tribunal for Rwanda

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JUDGMENT SUMMARY: INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

THE PROSECUTOR V. MUGENZI AND MUGIRANEZA, APPEALS JUDGMENT, CASE No. ICTR-99-50-A

On February 4, 2013, the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) issued its judgment in the case against Justin Mugenzi and Prosper Mugiraneza. On September 30, 2011, the Trial Chamber found Mugenzi and Mugiraneza guilty of conspiracy to commit genocide and of direct and public incitement to commit genocide. In the same judgment, the Trial Chamber acquitted Mugenzi's and Mugiraneza's co-accused, Casimir Bizimungu and Jérôme-Clément Bicamumpaka. Both Mugenzi and Mugiraneza were sentenced by the Trial Chamber to thirty years imprisonment. Despite denying Mugenzi's and Mugiraneza's claims that their right to a fair trial was violated, the Appeals Chamber reversed the Trial Chamber's judgment and acquitted both accused.

Both Mugenzi and Mugiraneza advanced several grounds of appeal — eighteen and seven, respectively — challenging their convictions and sentence. Among the grounds for appeal submitted by both men was a claim that their right to a fair trial was violated because of alleged undue delay. In all, the period between Mugenzi's and Mugiraneza's arrest on April 6, 1999 and the pronouncement of the Trial Judgment was twelve years, five months, and twenty-four days.

In Mugenzi's appeal, he argued that the Trial Court erred in concluding that the delay in his case could be justified by the size and complexity of the proceedings. Instead, Mugenzi argued that the delay was a result of: (1) the organizational failures of the Tribunal, (2) its treatment of his claims of delay during pre-trial proceedings, and (3) the inflated indictment advanced by the Prosecution because of its improper investigation and assessment of evidence. He also stressed the prejudice he suffered because of the time he was forced to spend away from his family and his inability to access witnesses. Mugiraneza argued that the Trial Chamber did not adequately consider the length of time between the closing arguments of the case and the issuance of the Trial Judgment, a period of almost three years. According to Mugiraneza, this delay was directly attributable to the fact that some of the judges were staffed on multiple cases at the same time and that the United Nations' completion strategy for the ICTR had affected staff retention, thereby slowing the work of the Tribunal. Additionally, similar to Mugenzi, Mugiraneza argued that the complexity of the case was due to the volume of evidence, much of which was irrelevant to his individual case. He also claimed that his twelve-year incarceration amounted to prejudice and a violation of his right to pre-trial release.

In its consideration of the arguments of Mugenzi and Mugiraneza, the Appeals Chamber began by reiterating that the ICTR Statute guarantees the right to be tried without undue delay in Article 20(4)(c). It also recalled that claims of undue delay have always been decided on a case-by-case basis. In order to assess the particular arguments made by the appellants here, the Appeals Chamber assessed: (1) the length of the delay, (2)

the complexity of the proceedings, (3) the conduct of the parties, (4) the conduct of the authorities, and (5) the prejudice to the accused. In conducting this analysis, the Appeals Chamber found that since this case was one of the largest ever heard by the Tribunal, it was not unreasonable to expect a long process. It also determined Mugenzi's claim that the Prosecution failed to properly investigate and assess the weakness of its evidence to be unsupported. Further, the Chamber found that Mugiraneza had failed to demonstrate that his inclusion within the larger case resulted in prolonging his trial. Nor was it convinced that organizational failings or other judicial or trial management activity caused undue delay in the case proceedings. Finally, it rejected the notion that the accused had suffered prejudice as a result of the delay. As a result, the majority of the Appeals Chamber dismissed Mugenzi and Mugiraneza's claims that the Trial Chamber violated their right to trial without undue delay. Judge Robinson wrote a separate, partially dissenting opinion in which he concluded that the almost three year lapse between the closing arguments and issuance of the Trial Judgment breached the appellants' right to a trial without undue delay. According to Judge Robinson, this delay directly resulted from the judges' workload and concluded that "[w]hen delay results from the manner in which the Tribunal has organized and managed its resources, it is no answer to a claim of undue delay that the exigencies of the Tribunal's work dictated that course, if the claim for undue delay is otherwise well-grounded."

In addition to their contention that the undue delay violated their right to a fair trial, both Mugenzi and Mugiraneza argued that the Prosecution violated Rule 68 of the ICTR's Rules of Procedure and Evidence, which provides that the Prosecution "shall, as soon as practicable, disclose to the Defense any material, which, in the actual knowledge of the Prosecutor, may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence." In response, the Appeals Chamber agreed that the Prosecution had violated its disclosure obligations by failing to disclose exculpatory material that emerged in other cases being tried before the ICTR during the time that the case against Mugenzi and Mugiraneza was ongoing. However, the Chamber did not find that these failures materially impacted the ability of Mugenzi and Mugiraneza to prepare their defense. Thus, although the Appeals Chamber reminded the Prosecution of the fundamental importance of its continuous obligation to disclose under Rule 68, it dismissed the Defense's claim that the disclosure violation violated the right of the accused to a fair trial.

After addressing the appellants' fair trial challenges, the Appeals Chamber turned to their challenges against their convictions, beginning with the convictions for conspiracy to commit genocide. The Trial Chamber found both men guilty of this charge based on their roles in the removal of Jean-Baptiste Habyalimana, a Tutsi, from his role as the prefect of Butare Prefecture on April 17, 1994. At the time, Mugenzi served as the Minister of Trade and Industry in the Interim

Government and Mugiraneza served as the Minister of Civil Service. According to the Trial Chamber, both accused, acting in concert with other members of the Interim Government, made the decision to remove Habyalimana from his post with the intention to “undercut the real and symbolic resistance the Tutsi prefect posed to the targeted killing of Tutsi civilians inhabiting Butare.” The Chamber also considered evidence suggesting that Habyalimana had effectively obstructed the killing of Tutsis in Butare Prefecture and that, after his removal, these killings “rapidly increased and became more widespread.” On this evidence, the Trial Chamber found that Mugenzi and Mugiraneza possessed genocidal intent when making the decision to dismiss Habyalimana and thus convicted them of conspiracy to commit genocide.

On appeal, Mugenzi and Mugiraneza argued, *inter alia*, that the Trial Chamber erred by “failing to properly consider other relevant circumstantial evidence that demonstrated the absence of genocidal purpose in Habyalimana’s removal.” The Appeals Chamber agreed, reiterating that, where a conviction for genocide is based on circumstantial evidence, guilt must be the *only reasonable inference* available from the evidence. Here, the Trial Chamber had been presented not only with the evidence it cited in support of its finding of genocidal intent, but also with evidence that Habyalimana was removed from his post for “administrative reasons” and/or on the basis of his purported ties to the Rwandan Patriotic Front, which was fighting the Interim Government at the time of his removal. While the Trial Chamber acknowledged these alternative explanations and dismissed them, a majority of the Appeals Chamber found that these explanations presented additional reasonable conclusions that could be drawn from the evidence. Thus, the Appeals Chamber, with Judge Liu dissenting, overturned the Trial Chamber’s convictions. Judge Liu wrote a dissenting opinion expressing his view that that Trial Chamber “carefully considered and reasonably rejected the alternative explanations advanced by the Defense for the reasons behind the decision to dismiss Habyalimana from his post,” disagreeing with the Appeal Chamber’s majority’s decision overturning the conspiracy convictions.

Finally, the Appeals Chamber addressed the appellants’ challenges to their conviction for direct and public incitement to genocide, which was based on their participation in a ceremony to install Sylvain Nsabimana as the new prefect of the Butare Prefecture on April 19, 1994. During this ceremony, Interim President Théodore Sindikubwabo delivered a speech calling for the killing of Tutsis, which the Trial Chamber determined was made for the purpose of inciting genocide. The Trial Chamber then determined that Mugenzi and Mugiraneza “possessed the same genocidal intent held by Sindikubwabo,” relying in part on the fact that they participated in the decision to remove Habyalimana as prefect two days before and that they attended the ceremony installing Nsabimana. The Trial Chamber also cited to evidence suggesting that they knew of the content of Sindikubwabo’s speech before it was delivered. On appeal, Mugenzi and Mugiraneza challenged the Trial Chamber’s finding that they acted with the requisite *mens rea*. Once again, the Appeals Chamber agreed, finding that the Trial Chamber erred in “concluding that the only reasonable inference that could be drawn from the evidence on the record is that Mugenzi and Mugiraneza knew that Sindikubwabo’s speech at the ceremony would be aimed at sparking the killing of Tutsis and that, therefore, their presence at the ceremony demonstrates their shared genocidal intent.” In support of this conclusion, the Appeals Chamber stressed that there was no direct evidence that Mugenzi and Mugiraneza met with Sindikubwabo immediately prior to the ceremony, nor was there any other direct evidence of “pre-planning.” Accordingly, the Appeals Chamber reversed the Trial Chamber’s convictions. Based on its decisions overturning the convictions of Mugenzi and Mugiraneza in their entirety, the Appeals Chamber ordered the immediate release of both men.

Written by Megan Race, a first-year law student at American University Washington College of Law, and edited by Katherine Cleary Thompson, Assistant Director of the War Crimes Research Office.