

UNITED
NATIONS

MICT-12-25-R14.1
27-11-2015
(9 - 1/2459bis)

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MICT-12-25-R14.1

Mechanism for International Criminal Tribunals 18 November 2015
Original: FRENCH

THE TRIAL CHAMBER

Before: THE APPEALS CHAMBER

Assisted by: Mr JOHN HOCKING, REGISTRAR

THE PROSECUTOR

v.

JEAN UWINKINDI

PUBLIC

NOTICE OF APPEAL FROM THE DEFENCE OF JEAN UWINKINDI

DEFENCE COUNSEL:

Mr Gatera Gashabana

OFFICE OF THE PROSECUTOR

Mr. Hassan Bubacar Jallow

Received by the Registry
Mechanism for International Criminal Tribunals

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I. INTRODUCTION

1. On 22 October 2015, in Arusha, in the case MICT-12-25-R14.1, The Prosecutor v. Jean Uwinkindi, the Trial Chamber issued a Decision on the request for the revocation of the Order referring the Jean Uwinkindi case-file to the Republic of Rwanda ("Decision").¹
2. This Decision was received by the Registry and disclosed to the parties at 1242 hours on the same day.
3. On 12 November 2015, the Defence examined the French translation of the Decision and was in a better position to analyse its contents.²
4. It follows from the disposition that the Trial Chamber systematically dismissed all of the requests that it was seized of, primarily the one to revoke the referral Order.³
5. In so doing, it committed a number of discernible errors of law and fact that, taken individually and/or cumulatively are sufficient to justify an invalidation of the said legal decision.
6. Indeed, these errors constitute a miscarriage of justice, which clearly demonstrates that the Chamber has not properly exercised its discretionary power.
7. Any errors on a question of law, considered individually and/or cumulatively, is sufficient to invalidate the Decision. All errors of fact concern the facts on which the Trial Chamber exercised its discretion. Any of the errors of fact, considered individually and/or cumulatively, cause a miscarriage of justice and demonstrate that the Trial Chamber has incorrectly exercised its discretion.
8. In view of the undeniable and proven nature of these errors, and pursuant to Rule 133 of the Rules of Procedure and Evidence and item 3 of the Practice Direction on Requirements and Procedures for Appeals, the Defence of Jean Uwinkindi hereby files a Notice of Appeal against the Decision rendered on 22 October 2015, the contents of which it examined in the French language on 12 November 2015.

¹ Decision on Uwinkindi's Request for Revocation, Case no: MICT-12-25-R14.1.

² *Décision relative à la demande d'annulation présentée par Jean Uwinkindi.*

³ Decision on Uwinkindi's Request for Revocation, page 20, filing number 2379. Decision on Uwinkindi's Motion for a Stay of Proceedings before the High Court of Rwanda, an Oral Hearing, and Other Related Matters.

9. For the reasons presented below, which will be elaborated more extensively in the Appellant's Briefs, Jean Uwinkindi ("the Accused") believes that the Decision rendered by the Chamber must be reversed, that an invalidation of the Decision to refer the case to Rwandan authorities must be ordered, and that the Accused must be transferred without delay to the seat of the Mechanism at the Arusha branch in Tanzania.
10. The Accused reserves the right to provide, in his Appellant's Briefs, additional and more detailed facts in support of his appeal.

II. GROUNDS OF APPEAL

Ground 1: *The Trial Chamber committed an error of law invalidating the Decision when it found that the multiple violations of Jean Uwinkindi's right to a fair trial did not reach the stage of last resort and could still be remedied.*

11. The Trial Chamber committed an error of law invalidating the Decision when it reached conclusions in violation of Articles 5 and 6 (6) of the Statute and Rule 15 of the Rules of Procedure and Evidence which give it primacy over national courts, and therefore the right to condemn any violation of the right to a fair trial, even if committed at the trial stage.
12. The Trial Chamber committed an error of fact when it found that the Accused wilfully obstructed national proceedings in an effort to have the case revoked by the Mechanism, which demonstrates that it has incorrectly exercised its discretion and thus caused a miscarriage of justice. The Chamber has thus disregarded multiple violations of the Accused's right to a fair trial committed by administrative and judicial institutions.
13. This ground of appeal concerns paragraphs 7 to 9 of the Decision.

SECOND GROUND: *The Trial Chamber committed errors of law and of fact regarding the conditions of detention.*

14. The Trial Chamber committed an error of law invalidating the Decision when it reached conclusions in violation of Articles 9 and 14 of the International Covenant on Civil and Political Rights ("International Covenant"), as well as Articles 37, 38, 39, 40, 89, 90 and 104 of Law 30/2013 of 24 May 2013 on the Code of Criminal Procedure.
15. The Chamber also committed an error of fact when it found that it is not in the interests of justice to revoke the Order to refer his case, which demonstrates that it has incorrectly exercised its discretion and thus caused a miscarriage of

justice whereas the evidence on the record proves flagrant and obvious violations of the detention procedure.

16. The Trial Chamber committed an error of fact when it stated, without prior consideration of the legal arguments submitted by the Accused, that he did not challenge the length of his pre-trial detention before the High Court.
17. This ground of appeal concerns paragraphs 12 to 14 of the Decision.

THIRD GROUND OF APPEAL:

The Trial Chamber committed an error of law when it found, in violation of Rule 16 of the Rules of Procedure and Evidence, that because Uwinkindi was not convicted for the crime of complicity in genocide, the principle of non bis in idem did not apply.

18. The Trial Chamber committed an error of law when it dismissed the application of Rule 16 of the Rules of Procedure and Evidence concerning the principle of *non bis in idem* with regard to the crime of complicity in genocide that Jean Uwinkindi was charged with.
19. This ground of appeal concerns paragraph 17 of the Decision.

FOURTH GROUND OF APPEAL:

The Trial Chamber committed errors of law and fact when it found that the Accused's right to an effective defence has been ensured before the High Court.

20. The Trial Chamber committed an error of law invalidating its Decision when it found that the right of an accused to be assisted by counsel of his own choosing is not absolute. By doing so, it violated a constitutional principle stemming from Article 18, paragraph 3 of the Rwandan Constitution which, in terms of the hierarchy of formal legal sources, has precedence over the decisions made by international courts.
21. The Trial Chamber committed errors of fact when it found that it was not satisfied that Jean Uwinkindi had shown that it was unreasonable for the High Court to appoint new counsel to represent him. The Chamber thus exercised its discretion

incorrectly, causing a miscarriage of justice by finding that the newly appointed counsel had sufficient experience to represent him. It also violated its own jurisprudence, such as that arising from the decision issued in the case of Bernard Munyagishari.

22. The Trial Chamber committed an error of fact likely to invalidate its Decision when it found that Uwinkindi's initial counsel had an obligation to continue representing him notwithstanding the termination of their contract, in spite of what Article 6, paragraph 2 of the said contract provides, and by doing so it endorsed the Ministry's illegal decision to terminate a contract to which it was not a party.
23. The Chamber committed an error of fact that justifies the invalidation of its Decision by demonstrating that it incorrectly exercised its discretion and caused a miscarriage of justice when it found that it was not satisfied that the replacement of Uwinkindi's initial Counsel prevents the possibility of a fair trial or, so to speak, necessitates revoking the Order to refer his case.
24. The Chamber committed an error of fact demonstrating that it incorrectly exercised its discretion when it found that Jean Uwinkindi was not entitled to refuse Counsel imposed on him for purposes other than the interest of justice, whereas this right is recognised in Article 18, paragraph 3 of the Constitution and Article 39, paragraph 3 of the Code of Criminal Procedure.
25. The Trial Chamber committed errors of fact when it found that the new appearance of witnesses was different from the one in March that was contested, which demonstrates that it has incorrectly exercised its discretion and thus caused a miscarriage of justice.
26. The Trial Chamber committed errors of fact when it found that there was hope of remedying the violations of Jean Uwinkindi's fair trial rights.
27. The Trial Chamber committed errors of fact when it found that the list of 66 counsel that was presented to him comprised counsel who were assigned on a regular basis, which demonstrates that it has incorrectly exercised its discretion and thus caused a miscarriage of justice.
28. This ground of appeal concerns paragraphs 24 to 29 of the Decision.

FIFTH GROUND OF APPEAL:

The Trial Chamber committed errors of law and fact when it considered that it was not within its purview to consider in detail the Rwandan legal aid budget, inquire into its sufficiency or decide on the fees that should be paid to counsel representing accused in transferred cases.

29. The Chamber has endorsed the violations of the principle of equality of arms denounced by the Defence, thus upholding all the illegal acts committed by the authorities in violation of the Accused's rights.
30. The Trial Chamber committed errors of fact when it found that since the Rwanda Bar Association had agreed to the new flat-rate remuneration policy for counsel, this constituted a sufficient fact proving that the Accused would benefit from a fair trial, which demonstrates that the Chamber has incorrectly exercised its discretion and thus caused a miscarriage of justice.
31. The Trial Chamber committed errors of fact when it noted that the police is responsible for gathering evidence both for the prosecution and the defence, whereas no initiative of this kind could be undertaken by the prosecution authorities after the transfer of the Accused, which demonstrates that the Chamber has incorrectly exercised its discretion and thus caused a miscarriage of justice.
32. The Trial Chamber committed errors of fact when it failed to examine a report drafted by Prosecution expert WITTEVEEN on the fact that there is great disparity between the Prosecution and the Defence, which demonstrates that the Chamber has incorrectly exercised its discretion and thus caused a miscarriage of justice.
33. This ground of appeal concerns paragraphs 33 to 36 of the Decision.

SIXTH GROUND OF APPEAL:

The Trial Chamber committed errors of law and fact when it found that the Accused had adequate facilities to prepare his defence, in particular the appearance of defence witnesses under equal conditions as the prosecution

witnesses, thereby violating Rule 82 of the Mechanism's Rules of Procedure and Evidence and the Law on the referral of cases to the Republic of Rwanda.

34. The Trial Chamber committed errors of fact when it noted that, on 6 August 2015, the President of the Supreme Court of Rwanda issued a practice direction setting out the conditions for funding additional defence investigations, basing this observation on Annex 18 of the Prosecution's Response, from which it is apparent that this direction has never been published in the *Official Gazette*, which demonstrates that the Chamber has incorrectly exercised its discretion and thus caused a miscarriage of justice.
35. The Trial Chamber committed errors of fact when it failed to examine the crucial problem of defence witnesses living outside Rwanda, which demonstrates that it has incorrectly exercised its discretion and thus caused a miscarriage of justice.
36. The Trial Chamber committed errors of fact when it wrongly found that Jean Uwinkindi failed to show that the conditions for the referral of his case are no longer met and that it is in the interests of justice to revoke the referral Order, which demonstrates that the Chamber has incorrectly exercised its discretion and thus caused a miscarriage of justice.

SEVENTH GROUND OF APPEAL:

The Trial Chamber committed errors of fact when it found that Jean Uwinkindi has exercised his right to be tried before an impartial tribunal, which demonstrates that it has incorrectly exercised its discretion and thus caused a miscarriage of justice.

37. This ground of appeal concerns paragraphs 38 to 41.

CONCLUSION

38. For the foregoing reasons, which will be elaborated more extensively in the Appellant's Briefs, Jean Uwinkindi ("the Accused") believes that the Decision rendered by the Chamber

must be reversed, that an invalidation of the Decision to refer the case to Rwandan authorities must be ordered, and that the Accused must transferred without any delay to the seat of the Mechanism at the Arusha Branch in Tanzania.

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