

MICT-13-43
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Mechanism for International Criminal Tribunals

Case No: MICT-13-43

Date: 19 June 2015

Original: English

THE OFFICE OF THE PRESIDENT

Before: Judge Vagn Joensen

Registrar: Mr. John Hocking

THE PROSECUTOR

v.

F.X. NZUWONEMEYE

**PROSECUTOR'S FURTHER SUBMISSIONS ON MOTION FOR
COMPENSATION AND DAMAGES FOR VIOLATION OF THE
FUNDAMENTAL RIGHTS OF F.X NZUWONEMEYE**

Office of the Prosecutor

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I. INTRODUCTION

1. On 19 May 2015, the Single Judge issued his decision on “Request for Leave to Exceed the Word Limit for Motions for Compensation and Damages for Violations of the Fundamental Rights of F.X Nzuwonemeye” in which he invited the parties and the Registrar to file submissions on whether a claim for compensation for an alleged violation of a fair trial right may be raised after the criminal proceedings have been completed by a trial or appeal judgment, which does not specifically authorize that the matter be raised.¹

2. The Prosecutor hereby files his submissions on the matter.

II. SUBMISSIONS

3. The Prosecutor recognizes that although there is no express provision for financial compensation in the Statute of the Tribunal, there is a right in international law to an effective remedy for violations of the rights of the accused.² This remedy may include an award of financial compensation where the court finds conclusive facts showing that there has been a grave and manifest miscarriage of justice.³

4. For a claim of financial compensation to be admissible however, it must have been authorized as an appropriate remedy by either a Trial Chamber or an Appeals Chamber in the matter.⁴ Absent such authorization Nzuwonemeye’s claim for financial compensation is inadmissible.

5. The Tribunal has adopted a case by case approach in determining the most appropriate remedy to apply where a violation of a fundamental right has been established, taking into consideration the gravity of the harm suffered, if any.⁵ There is therefore, no right to financial compensation for an acquittal *per se*.

¹*Prosecutor v. F.X.Nzuwonemeye*, Case No. MICT-13-43, Decision on Request for Leave to Exceed the Word Limits for Motion for Compensation and Damages for Violations of the Fundamental Rights of F.X Nzuwonemeye and Invitation to Make Further Submissions, 19 May 2015.

² Article 2(3)(a) ICCPR

³ *Protais Zigiranyirazo v. the Prosecutor*, Case No. ICTR-01-73, Decision on Protais Zigiranyirazo’s Motion for damages, 18 June 2012, para. 19.

⁴ *Protais Zigiranyirazo v. the Prosecutor*, Case No. ICTR-01-73, Decision on ProtaisZigiranyirazo’s Request to Appeal Trial Chamber III’s Decision of 18 June 2012, 26 February 2013, para.8.

⁵ *Rwamakuba*, Appeal Decision, 13 September 2007, para. 25.

6. It is implicit in the jurisprudence of the Tribunal that it is for either the Trial Chamber or Appeals Chamber to determine, in or before the final judgment, whether there has been “a grave and manifest miscarriage of justice” warranting financial compensation, as in the cases of *Semanza*, *Barayagwiza* and *Rwamakuba*, as opposed to a standard error which may result in a reduction of sentence or an acquittal, but not compensation, as in the *Kajelijeli* case.⁶

7. In the cases of *Semanza* and *Barayagwiza* the Appeals Chamber expressly found that the rights of the accused had been violated and made provision for a reduction of sentence in the event of a conviction, or financial compensation in the event of an acquittal.⁷ In the *Rwamakuba* case, the Appeals Chamber explicitly made provision for financial compensation after finding that Rwamakuba’s fair trial rights had been violated.⁸

8. In dismissing, Protais Zigiranyirazo’s request to appeal Trial Chamber II’s decision of 18 June 2012, rejecting his application for financial compensation for violations of his fair trial rights, the Appeals Chamber observed that “nothing in the Appeal Judgment could be reasonably interpreted as authorizing a claim for compensatory damages.” The Chamber went on to state that “had the Appeals Chamber considered it appropriate to grant any remedy other than a reversal of Zigiranyirazo’s convictions, the Appeals Chamber would have expressly provided for it.”⁹

⁶*Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision 31 May 2000, paras.127-128; *Jean Bosco Barayagwiza v the Prosecutor*, Case No. ICTR-97-17-AR72, Decision Prosecutor’s Request for Review or Reconsideration, 31 March 2000, para.75; *Prosecutor v André Rwamakuba*, Case No. ICTR-98-44C-T, Decision on the Defence Motion Concerning the Illegal Arrest and Illegal Detention of the Accused, 12 December 2000; *Prosecutor v André Rwamakuba*, Case No. ICTR-98-44C-A, Decision on Appeal against Dismissal of Motion Concerning Illegal Arrest and Detention, 11 June 2001; *Prosecutor v André Rwamakuba*, Case No. ICTR-98-44C-T, Judgment, 20 September 2006, para.220; *Juvenal Kajelijeli v. Prosecutor*, Case No. ICTR-98-44A-A, 23 May 2005, para.255.

⁷*Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision 31 May 2000, paras.127-128; *Jean Bosco Barayagwiza v the Prosecutor*, Case No. ICTR-97-17-AR72, Decision Prosecutor’s Request for Review or Reconsideration, 31 March 2000, para. 75.

⁸*Prosecutor v André Rwamakuba*, Case No. ICTR-98-44C-T, Decision on the Defence Motion Concerning the Illegal Arrest and Illegal Detention of the Accused, 12 December 2000; *Prosecutor v André Rwamakuba*, Case No. ICTR-98-44C-A, Decision on Appeal against Dismissal of Motion Concerning Illegal Arrest and Detention, 11 June 2001; *Prosecutor v André Rwamakuba*, Case No. ICTR-98-44C-T, Judgment, 20 September 2006, para. 220.


⁹*Protais Zigiranyirazo v. the Prosecutor*, Case No. ICTR-01-73, Decision on Protais Zigiranyirazo’s Request to Appeal Trial Chamber III’s Decision of 18 June 2012, 26 February 2013, para.8.

9. In his own case, having found that Nzuwonemeye lacked notice for his conviction of aiding and abetting the killings of the Prime Minister and his conviction pursuant to Article 6(3) for the killing of the Belgian soldiers, a violation of his right to a fair trial, the Appeals Chamber accordingly reversed his conviction for those charges, as a remedy for the violation. Had the Appeals Chamber considered the violation egregious or deemed that Nzuwonemeye had suffered “a grave and manifest miscarriage of justice” requiring compensation, it would have made provisions for it, but did not.

10. Likewise, had Nzwonemeye shown that he was denied the right to a fair and expeditious trial as provided for by Article 20 of the ICTR Statute, as he attempted to do in ground 1 of his Appellant’s brief,¹⁰ the Appeals Chamber would have made this finding and provided an appropriate remedy for the violation at the final judgment.

11. In light of the forgoing, and without prejudice to the Prosecutor’s consolidated response to “Motion for Compensation and Damages for Violations of the Fundamental Rights of F.X Nzuwonemeye...”, the Prosecutor submits that Nzuwonemeye’s claim for compensation should not be entertained by the Single Judge as compensation was not provided for by either the Trial or the Appeals Chamber during Nzuwonemeye’s case.

Dated at Arusha this 19th day of June 2015



Richard Karegyesa
Senior Legal Officer



Sunkarie Ballah-Conteh
Legal Advisor

Word Count
1055

¹⁰*The Prosecutor v. F.X. Nzuwonemeye*, Case No. ICTR-00-56-A, Nzuwonemeye’s Appellant’s Brief, ground 1, paras. 1-6.