



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

THE APPEALS CHAMBER

Before:

Judge Mohamed SHAHABUDEEN, Presiding
Judge Asoka de Zoysa GUNAWARDANA
Judge Fausto POCAR
Judge Theodor MERON

Registry: Adama DIENG

Decision of: 22 November 2002

CASE

MISCELLANEOUS-KABUGA FAMILY-01-A

DECISION

**(APPEAL OF THE FAMILY OF FELICIEN KABUGA AGAINST DECISIONS
OF THE PROSECUTOR AND PRESIDENT OF THE TRIBUNAL)**

Counsel for the Prosecutor

Carla Del Ponte

Counsel for the Appellant

Michel Aurillac

Jean-Pierre Mignard

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 ("Appeals Chamber" and "Tribunal" respectively),

NOTING the Order dated 9 October 2002 from the Presiding Judge of the Appeals Chamber appointing this Bench to hear and determine the "*Requête à Monsieur le*

Président et Mesdames et Messieurs les membres de la Chambre d'appel près de la Chambre d'Appel" filed by the family of Félicien Kabuga on 15 March 2001 ("Appeal" and "Appellant" respectively);

NOTING that there is not on record any document filed by the Prosecutor on this matter;

NOTING that, according to the Appeal,

(i) on 30 September 1999, the Prosecutor sent a "*Demande d'entraide adressée par le Procureur du Tribunal Pénal International pour le Rwanda à Madame la Garde des Sceaux, Ministre de la Justice de la République Française*" to the French authorities ("*Demande d'entraide*") requesting them, in furtherance of Article 28 of the Statute of the Tribunal and Rule 40 of the Rules of Procedure and Evidence ("Statute" and "Rules" respectively), to seal certain bank accounts of the Appellant and his family and to seize a number of related documents;

(ii) the French authorities complied with the *Demande d'entraide* and enforced the provisional measures sought by the Prosecutor in November 1999;

(iii) on 22 March 2000, the Appellant seized the Prosecutor with a "*Requête à Madame le Procureur près le Tribunal International pour le Rwanda*", in which the Appellant asked, *inter alia*, the Prosecutor to lift the provisional measures ("Request");

(iv) by response dated 12 September 2000 ("Decision of 12 September 2000"), the Prosecutor declined to grant the Request "in light of the internal report made by investigators of the Office of the Prosecutor";

(v) thereafter, on 26 January 2001, the Appellant presented a "*Requête à Madame le Président et Mesdames et Messieurs composant le Tribunal Pénal International pour le Rwanda*", in which the Appellant requested the President of the Tribunal, *inter alia*, to overturn the Decision of 12 September 2000 and to order the lifting of the provisional measures ("Request to the President");

(vi) on 8 February 2001, the Officer in Charge of the Court Management Section, on instruction from the President of the Tribunal, informed the Appellant that its Request to the President could not be considered as the Appellant had no *locus standi* in this case ("Decision of the President");

(vii) the indictment against Félicien Kabuga and the warrant of arrest are dated 29 August 1998 and 30 August 1999 respectively, and that Félicien Kabuga has yet to be apprehended;

CONSIDERING that, in its Appeal, the Appellant requests the Appeals Chamber, *inter alia*, to overturn the Decisions of 12 September 2000 and of the President, and to order the lifting of the provisional measures carried out by the French authorities on the basis of the *Demande d'entraide*, and submits, *inter alia*, that:

- i) the Decision of the President amounts to a miscarriage of justice when it finds that a decision of the Prosecutor against individuals, who are not indicted by the Tribunal, cannot be subject to appeal, violating in this way fundamental human rights enshrined in Articles 8 and 10 of the Universal Declaration of Human Rights of 10 December 1948;
- ii) the Decision of 12 September 2000 violates, *inter alia*, firstly the principle *audi alteram partem* by relying on an internal report produced by the Office of the Prosecutor which is not communicated to the Appellant and secondly the principle according to which there cannot be any criminal solidarity ("*solidarité pénale*") between members of the same family;
- iii) the funds seized in furtherance of the *Demande d'entraide* cannot be linked to the charges concerning Félicien Kabuga as they were accumulated prior to the events alleged by the Prosecutor;
- iv) the provisional measures constitute pressure and harassment in order to obtain information on the whereabouts of Félicien Kabuga and therefore violate various articles of the Universal Declaration of Human Rights of 10 December 1948;

CONSIDERING that the Appeal is not grounded on a particular provision of the Statute or the Rules, but appears to be founded on an alleged right of direct recourse to the Appeals Chamber by a non-party against a decision taken by the Prosecutor towards individuals who are not under investigation or accused by the Tribunal;

CONSIDERING that the Statute or the Rules do not provide the Appellant with such direct recourse to the Appeals Chamber;

CONSIDERING however that, in the exercise of her discretion under Rule 40(A) of the Rules, it is the responsibility of the Prosecutor to inquire whether provisional measures decided at a point in time are still justified given, *inter alia*, the stage of the investigation and the expected results;

CONSIDERING therefore that the Appellant is not precluded from seizing the Prosecution anew for reconsideration of the Decision of 12 September 2000, particularly given the fact that that decision was taken more than two years ago;

CONSIDERING moreover that the action of the Prosecutor was taken pursuant to a Rule made by the Judges and that, by implication, the Judges, through the appropriate mechanism of a Trial Chamber, retain a responsibility to review the working of such action, particularly where hardship is alleged by a non-party;

CONSIDERING in addition that a decision of a non-judicial body which affects the liberty of individuals or their property should be subject to judicial review ;

CONSIDERING therefore that, in the view of the Appeals Chamber, the Appellant has a right to request a judicial review by a Trial Chamber of the Decision of 12 September 2000;

FOR THE FOREGOING REASONS,

DISMISSES the Appeal.

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

_____ Judge Mohamed Shahabuddeen, Presiding	_____ Judge Mehmet Güney	_____ Judge Asoka de Zoysa Gunawardana
_____ Judge Fausto Pocar	_____ Judge Theodor Meron	

[Judge Shahabuddeen](#) and [Judge Gunawardana](#) append Declarations to this Decision

Done this twenty-second of November, 2002

At The Hague

The Netherlands

[Seal of the Tribunal]