

PAUL RUSESABAGINA
CASE RP00018-2020-HC-HCCI

BEFORE:
THE HIGH COURT CHAMBER FOR INTERNATIONAL CRIMES
HIS HONOUR JUDGE ANTOINE MUHIMA, PRESIDING

DEFENDANT: RUSESABAGINA PAUL, SON OF RUPFURE THOMAS AND NYIRAMPARA KESIA, BORN ON 15 JUNE 1954, IN THE FORMER NYAKABUNGO CELL, NKOMERO SECTOR, MURAMA COMMUNE, BELGIAN NATIONAL AND RESIDENT OF KRAAINEM. BRUSSELS, CURRENTLY DETAINED AT NYARUGENGE CENTRAL PRISON, RWANDA

**SECOND REQUEST SEEKING REQUEST FOR A REMEDY FOR VIOLATION OF
FUNDAMENTAL RIGHTS
&
APPLICATION FOR PROVISIONAL RELEASE**

I. SUMMARY OF THE COMPLAINT

1. The trial in the present proceedings is scheduled to commence on 17 February 2021. On 20 January 2021, Paul Rusesabagina (“the Defendant”) filed his *Request for a Remedy for Violation of Fundamental Rights and Application for Provisional Release* (“First Request”). In this First Request, the Defendant raised on-going violations both his rights as an accused, and his basic human rights.
2. Specifically, in the First Request, the Defendant argued that the circumstances of his illegal and enforced disappearance and extraordinary rendition to Rwanda are so egregious as to undermine the integrity of any judicial process that follows. The only sufficient remedy for the violation of the Defendant’s rights is his immediate release, and a permanent stay of the proceedings against him.

3. Secondly, the Defendant also sought a remedy for the violations which have undermined his ability to prepare for trial, including the confiscation of his legal documents, his lack of access to the materials necessary to prepare for trial, and his deprivation of access to legal counsel of his choosing. The First Request also included a request for the Defendant's immediate provisional release.
4. The Defendant hereby informs the Court that the violations outlined in his First Request continue as at the time of filing. Moreover, since the First Request, the Defendant has received additional information and materials which are directly relevant to the submissions made before this Honourable Court as regards two specific issues; (i) the kidnapping and enforced disappearance of the Defendant from Dubai, United Arab Emirates to Rwanda; and (ii) the violation of the Defendant's right to counsel of his own choosing. As such, the Defendant files this Second Request to inform the Chamber of this new material and information. The Defendant also requests additional relief, being a postponement of the start of the proceedings until these fundamental issues raised by the Defendant have been adjudicated.

II. SUBMISSIONS

A. ADDITIONAL INFORMATION: IRREGULARITIES IN THE DEFENDANT'S ARREST AND DETENTION

5. The circumstances of the Defendant's kidnap and extraordinary rendition to Rwanda were set out in the First Request. As noted, no legal process for extradition or deportation from the United States of America or Belgium had been sought by the Rwandan government to facilitate the Defendant's legal transfer to Rwanda. His detention in Rwanda is therefore unlawful, as per article 143(9) of the *Law relating to the criminal procedure* no. 027/2019 of 19/09/2019.
6. Notably, the Indictment against the Defendant provides at paragraph 71 that on 10 January 2012, after having noted that the Defendant had Belgian nationality and that it was not possible for him to be sent to Rwanda for trial, the NPPA transmitted a file to the Attorney General of Belgium asking that the Defendant be prosecuted before the Belgian courts. The following paragraphs 72 to 75 of the Indictment then explain that a process was made to initiate proceedings against the Defendant in response to this request from the Respondent to Belgian. In these circumstances, and given that proceedings were underway in Belgium, there was no reason or legal justification for the Defendant's forced rendition to Rwanda.

7. Since the filing of the First Request, the Defendant received a disclosed statement of Mr Constantin NIYOMWUNGERE, who admits that he collaborated with the Rwandan Investigation Bureau (“RiB”) to organise the Defendant’s kidnapping, and that the plane used in the kidnapping was provided by the RiB. While the Defendant does not accept the entire statement for the truth of its contents, Mr NIYOMWUNGERE corroborates the Defendant’s position that in boarding the flight from Dubai on 28 August 2020, the Defendant believed that he was going to Burundi, and not Rwanda, a country to which he had no intention to return. As such, the Defendant was transferred across state borders in a manner outside the confines of legal procedure, and without access to counsel or any judicial body to contest this transfer.
8. “Luring” an individual to their arrest by forcibly transporting them across state borders is illegal. The Defendant was lured from the United States to Dubai and then taken to Rwanda outside of any legal process, and without any legal protections, including the opportunity to contest his removal from Dubai or any opportunity to claim asylum and contest his return because he had a well-founded fear of persecution. Due process requires that no deprivation of liberty occur outside of a legal process designed and equipped to assess the legality of the deprivation before, after, and during the period of detention. To transfer an individual “outside the confines of any legal procedure, such as extradition, and [without] access to counsel or to any judicial body to contest the transfers”,¹ constitutes a breach of international law, specifically a violation of Article 9 of the International Covenant on Civil and Political Rights, to which Rwanda is a signatory.
9. The statement of Constantin NIYOMWUNGERE confirms what that Defendant asserts in the First Request; that he was trapped by Rwandan authorities through a sophisticated scheme with the aim of illegally bringing him before the Rwandan Courts. An independent judiciary cannot condone international kidnapping, and must rule on the legality of the arrest and detention of the Defendant, and by extension their competence to hear the case.

B. ADDITIONAL INFORMATION: DENIAL OF THE DEFENDANT’S RIGHTS TO LEGAL ASSISTANCE OF HIS CHOOSING

10. Since the filing of the First Request, the Rwanda Bar Association has written to the Defendant’s lawyer in Rwanda in the following terms:

¹ A/HRC/4/40/Add.1 *Walid Muhammad Shahir Muhammad al-Qadasi v. Yemen*, Opinion No. 47/2005.

Inyankdiko (email) yanu yo kwa 18/01/2021 mwatwandikiye mutemenyesha amazina y'abandi bunganzizi (Kate Gibson, Philippe Larochelle, Peter Choharis) babafasha kunganira Bwana Paul RUSESABAGINA mu rubanza rwe yatugezeho.

Nyuma yo kubona ubusabe bwanyu twagirango tubamenyeshe ko Bwana RUSEABAGINA yamenyeshejwe ibisabwa kugirango yunganirwe n'Abavoka baturuka m'Urugaga rw'Abavoka rwo mu mahanga ku wa 16/10/2020 nkuko mugyisanga k'umugereka wiya baruwa akaba yarayibonye binyuze k'ubuyobozi bwa Gereza ku wa 19/10/2020.

Ni muri urwo rwego musanze nkumwe mu bavoka bafite uburambe mu kazi m'Urugaga rw'Abavoka mu Rwanda mutakunganira uko bikwiye Bwana Paul RUSESABAGINA mwenyine mukaba mukeneye abandi babafasha kunganira Bwana Paul RUSESABAGINA mwamungira inama cyangwa mukamufasha gutoranya abandi bavoka bujije ibisabwa. Mushobora kureba k'Urutonde rw'abavoka m'u Rwanda ruriho abavoka barenga 1100 harimo n'abafite uburambe mu mwunga bw'imyake irenga 20.

Mwadufasha kumenyesha Bwana Paul RUSESABAGINA ko abavoka asaba ko mwafatanywe m'urubanza rwe batagaragaza ko bari k'Urutonde rw'Abavoka mu Rwanda cyangwa m'Urugaga rw'Abavoka rufitanye umubano (Réciprocité) n'Urugaga rw'Abavoka (Conseil de l'Ordre) uwo mwavoka aturukamo n'Inama y'Urugaga rw'Abavoka mu Rwanda nkuko biteganywe mu ngingo ya 6 agace ka 2 n'ingingo ya 7 agace ka mbere (1) z'Itegeko No 83/2013 ryo kuwa 11/09/2013 rishyiraho Urugaga rw'Abavoka mu Rwanda rikangagena imitunganyirize n'imikorere byarwo.

11. In adopting this stance, the RBA is acting in a manner incompatible with past practice. As cited in the First Request, (former) Kigali Bar Association authorised Mr Iain Edwards to represent Madame Victoire Ingabire in her proceedings in Rwanda, despite the Bar of England and Wales having no reciprocity in place.²
12. Significantly, the Rwandan authorities have repeatedly asserted in extradition and transfer proceedings that accused in Rwanda are “free to appoint foreign Defence counsel”.³ The former Prosecutor General of the Republic of Rwanda, Mr Martin Ngoga, in his Affidavit in Support of Extradition Requests, dated 2 April 2013, attested that “*foreign attorneys can be admitted to practice before Rwandan Courts*”, stating that “*in the past 4 years, attorneys from the United Kingdom, United States of America, Canada, Uganda and Cameroon have been admitted*”.⁴ Bar Associations in the United Kingdom, the United States of America and Cameroon do not enjoy reciprocity with the Rwandan Bar Association. It cannot be the case

² *Prosecutor v. Uwinkindi*, ICTR-200 1-75-Rule 11bis, Amicus Curiae Brief of the Kigali Bar Association in the Matter of the Prosecutor's Request for the Referral of the Case of UWINKINDI Jean, 26 April 2001, para. 18.

³ See, *Ahorugeze v. Sweden*, Application no. 37075/09, European Court of Human Rights, 27 October 2011, para. 124.

⁴ Affidavit of Martin Ngoga, Attorney-General of the Republic of Rwanda, 2 April 2013, para. 228.

that the relevant authorities assert one thing when trying to have cases transferred or extradited to Rwanda, but then change the rules for a particular defendant.

III. RELIEF REQUESTED

13. Given the ongoing violation of the Defendant's rights, the relief requested in the First Request, including the Defendant's application for immediate provisional release, is hereby maintained.

14. In addition, the Defendant respectfully requests **a postponement of the start of the trial** until the issues raised by the Defendant have been adjudicated, and until adequate and reasonable time and facilities have been provided for his preparation for trial. Continuing with the trial before the resolution of fundamental questions of legal representation, access to adequate medical treatment, and the competence of the Court to adjudicate the present case, would cause irremediable prejudice to the accused's rights. Moreover, starting the trial when the Defendant has had manifestly inadequate time and resources to prepare to respond to the case against would give rise to significant prejudice and undermine the fairness of the proceedings before they even commenced.

The whole respectfully submitted, this 12st day of February 2020

Maitre Gatera Gashabana
Lawyer of Mr. Paul Rusesabagina