

Maître Gatera Gashabana

Avocat au Barreau du Rwanda

Kigali City, Gasabo District, Kinyinya Sector, Estate Umucyo , N0 41

Tél Mob. +250788303744 , Adresse email : kavinc57@yahoo.fr

**MR THE PRESIDENT
OF THE SPECIALISED CHAMBER OF THE HIGH
COURT WITH JURISDICTION INTERNATIONAL
CRIMES AND TRANSNATIONAL CRIMES .**

**RE: DIFFICULTIES ENCOUNTERED IN VISTING PAUL RUSESABAGINA AT
NYARUGENGE CENTRAL PRISON, UNECESSARY SEIZURES OF DOCUMENTS
CONSTITUTING THE CASE FILE THAT ARE VITAL IN PREPARATION OF THE
DEFENSE SUBMISSIONS .**

Your lordship

I am acting for and on behalf of my client Mr Paul Rusesabagina for whom I am a Defence Counsel in case RP 00018-2020-HC-HCCI and I have expressed and equivocal instruction from him to inform the following :

That on 27th November 2020 I was delighted by the decision of the President of the intermediate Court of Nyarugenge which granted me the right to have access to my client in a bid to exchange information and prepare his defense.

There after I was able to access the case file and all others documents connected with it :

- The documenting constituting the indictment (Nyungwe Case)
- The Directorate of public prosecution submissions requesting for joinder of Rusesabaginas case with that of Nsabimana Callixte and Herman Nsengimana

- **Your Order concerning the joinder of the 3 aforementioned cases .**
- **The Order fixing the day of hearing on 26/01/2021**
- **Others various documents in the case file .**

Because of the gravity of the offences Rusesabagina is charged of, we had a conversation on a wide range of issues concerning his cases so that he can get more insight as the nature of the offences he is alleged to have committed and agree a common strategy of defending his cases. During these exchange I met some difficulties which require to be solved by your honor

I. LACK OF DOCUMENTS AND EQUIPMENTS WHICH CAN HELP HIM TO PREPARE THE TRIAL

Due to the seriousness of the allegations I had get in touch with Paul Rusesabagina. we had different conversations in order to have a better understand the nature of its contents level of defense strategy

During the meeting we noted that the case was constituted by at least five thousand papers . Rusesabagina had to prepare the case in the absence of essential material as computer, generated paper, pens, criminal law, jurisprudence and more based on the problems he is facing right now. In this regard we call for the best possible efforts to those barriers should be addressed

We also encountered difficulties caused by the Prison authorities who seized the documents illegally that could have helped to prepare his defence submission.

II. SEIZURES OF VARIOUS DOCUMENTS BY THE DIRECTOR OF THE NYARUGENGE PRISON WHICH WOULD HAVE HELPED RUSESABAGINA TO PREPARE HIS DEFENSE SUBMISSIONS OF HIS CASE FILE .

Although we are given a good reception when we reach at Nyarugenge Central prison and much as we are given a comfortable room where to consult with our client and confidentially is respected after bidding farewell to the client, he meets a lot of problems, especially concerning dispossessions of all the documents given to him is .All documents are confiscated by the Director of the prison. immediately I leave the prison compound.

This is contrary to Article 54 of the law 83/2013 of 11th September 2013 concerning the scope of professional secrecy Professional which provides that secrecy shall cover what was said in the Advocate's Office , correspondences exchanged between an Advocate and his/her clients and those between Advocates. It shall also concern discussions and negotiations between Advocates as well as the grounds for such negotiations unless the fact of the existence has to be revealed for a sound reason, at the discretion of the President of the Bar Association

This is also contrary to the provision of the article 130 (3) of the internal regulation rules of Rwanda Bar Association which provides that Professional secrecy Professional secrecy is the duty imposed on the Advocate to keep secret the information he/she obtained on his/her client in the exercise of his/her profession. The professional secrecy which governs the profession of Advocate is the principle that the conversations and information exchanged between a client and his/her Advocate are protected from disclosure when they meet certain criteria. We often hear "professional secrecy of the Advocate". In fact, the privilege of professional secrecy is not meant for the Advocate, but rather to the client. This obligation of absolute confidentiality towards the client shall remain in force throughout the life of the Advocate, either when he/she ceased to represent his/her client or stopped practicing.

Much more Article 17 of the law no 47/2013 Official Gazette n° Special Bis of 16/06/2013 LAW N° 47/2013 OF 16/06/2013 relating transfer of cases to the Republic of Rwanda which provides that without prejudice to the provisions of other laws of Rwanda, Defence Counsels and their support staff shall have the right to enter into Rwanda and move freely within Rwanda to perform their duties. They shall not be subject to search, seizure, arrest or detention in the performance of their legal duties. The Defence Counsel and his/her support staff shall be provided with appropriate security and protection, at their request.

Having seen that the confiscation mentioned above is done in a manner that violates the law as already demonstrated above and violated rights to exercise our profession with freedom . This is absurd and worrying especially because it denies the accused his rights to prepare his defense submissions of the case .

The consequences of the confiscation of various documents that constitutes exculpatory made Rusesabagina and his defence lawyers incapable of preparing their defence submission and this is contrary to the equality of arms.

In accordance with the provisions of Article 16 of Law 27/2019 of 19/09/2019 on Criminal Procedure, where the investigators are preparing a criminal case, they are required to look for evidence against the defendants and what they have not done and what Rusesabagina's lawyers have been able to obtain. makes it impossible for him to find a way to defend himself and makes it impossible for him to get a fair trial (Lack of due process of the law

We request you honor kindly to order the authorities to stop these practices with immediate effects so that Rusesabagina can have the right to adequate time and all that is necessary so that he can prepare his defence .

III. REGARDING THE RIGHT TO DEFENCE BY A LAWYER OF HIS CHOICE

Paul Rusesabagina decided to hire the international lawyers who will work with me and they are the are the following :

- 1. Kate Gibson**
- 2. Philippe La Rochelle**
- 3. Peter Choharis**

Paul Rusesabagina wrote to the authorities of Prisons of Nyarugenge to confirm and acknowledge the receipt of the letter so that it could be transmitted to the governing Council of the Bar association and that letter was also confiscated by the prison Authorities . This act is contrary to right of freedom of choice of a lawyer of Rusesabagina and it also denies the right to prepare his defence submission without any encumbrances.

The rights mentioned above are enshrined in

- Article 29 of the constitution of the republic of Rwanda**
- Article 68 of the criminal procedure code**
- Article 14 of the law number 47/2013 relating transfer of cases to the Republic of Rwanda .**

IV. CONCERNING RUSESABAGINA'S HEALTH .

Paul Rusesabagina suffers from High blood pressure . This kind of disease requires Medical attention on a regular basis by specialized Doctors . Therefore he must be given prescribed medication as evidenced by the Medical prescription

written by his doctor in his September 18, 2020 letter . Before his arrest and detention that how it was done but since his detention he has been denied of that right . This has led to an increase in blood pressure, which can lead to cerebral palsy, resulting in what is called a vascular accident(stroke).

As his Defence Lawyer we requested to meet a Doctor so as to know if the medicines given to him is the same as the one he used to prescribe to him but we were never successful .

We also requested the prison Authorities to allow us to meet with the doctor or nurses who follow up his health problems on a daily basis but all our attempts were frustrated .

During we are preparing our defense submission requesting his release on bail which will be based on Articles . 96 97 na 76.6 of the law no 27/2019 relating to criminal procedure , we resolved that it was important to submit to your honor all these preliminary issues in order to request for an urgent decisions of the matter FOR ALL THESE REASONS STATED ABOVE WE PRAY YOUR HONNOR

- Order the Prison Administration to return all documents confiscated from Rusesabagina
- Recognize the right of Rusesabagina to various tools mentioned above consisting of Computer, Paper, Pen, Law and other things that would help him to prepare the Judgment.
- Resolve the defense issue identified above.
- Order that Rusesabagina be given the right to be diagnosed by his Doctor in collaboration with a Rwandan Specialist cardiologist .

As for the rest of the matters related to his case we shall put in our submissions shortly before the hearing. We remain to your entire disposal for any information you may require

Sincerely

Maitre Gatera Gashabana

Counsel

