JUDICIARY OF
ENGLAND AND WALES

Lord Justice Irwin and Mr Justice Foskett

Friday 28 July 2017

CO/311/2016 Government Of Rwanda v Brown

CO/313/2016 Government Of Rwanda v Munyaneza

CO/314/2016 Government Of Rwanda v Matabaruka

CO/315/2016 Government Of Rwanda v Ugirashebuja

CO/3/2016 Government Of Rwanda v Nteziryayo

Press Summary to accompany judgment

1. This case arises from the truly dreadful events that took place in Rwanda between April and July 1994, the months during which the Rwandan genocide took place. Hundreds of thousands of Tutsis (and moderate Hutus who were sympathetic to them) were slaughtered.

2. The five Respondents to this appeal are alleged by the present authorities in Rwanda to have played an active part in the genocide. Each has been in the UK for a good number of years. Their return to Rwanda is sought to face trial on charges arising from the genocide.

3. It must be clear that these are charges of the most serious kind. It is highly desirable that trial in such cases should take place in the country concerned. Anyone against whom there is apparently credible evidence of involvement in

genocide should face trial and, subject to the requirements of law, any such trial should take place in Rwanda. It is highly undesirable that Britain should become a haven for *genocidaires* fleeing trial or seeking impunity.

4. Each Respondent strenuously denies the allegations made.

5. The primary issue in these extradition proceedings is whether they are at real risk of a flagrant denial of justice if returned to Rwanda. Their case is that they are.

6. These proceedings are a sequel to proceedings that took place in 2008 and 2009 involving four out of these five Respondents. The Divisional Court on that occasion (Laws and Sullivan LJJ) decided, on the evidence then available, that the four Respondents with whom they were dealing (Brown/Bajinya, Munyaneza, Nteziryayo and Ugirashebuja) would be at real risk of not receiving a fair trial if returned to Rwanda and should not be extradited: see [2009] EWHC 770 (Admin). That decision was not appealed. It forms an important backdrop to the present proceedings.

7. In 2010, Parliament passed legislation which would allow these men to be tried for these alleged crimes in England. The Government of Rwanda has declined to cooperate in such trials, which has meant they could not be mounted.

8. Issues other than that identified in paragraph 5 above have arisen in the present proceedings, but the principal question has been whether there are sufficient grounds for thinking that the Rwandan justice system has changed over recent years, such that this court can now find that the Respondents would not be at real risk of unfair trial in Rwanda if returned. The then Deputy Senior District Judge, now Senior District Judge Arbuthnot, sitting in the Westminster Magistrates' Court, decided in December 2015 after a

lengthy hearing that they would not receive a fair trial and declined to order extradition because, in summary, the defence of each Respondent could not be adequately deployed in Rwanda so as to overcome inbuilt concerns about the fairness of the judicial system. The role of this court has been to decide whether she was right.

9. We have concluded that, as matters stand, SDJ Arbuthnot was right: there is a real risk of a flagrant denial of justice for these men if returned to Rwanda. The system there is such that there is a real risk that innocent men might be wrongly convicted. That judgment is based on a detailed examination of extensive evidence, some of it having emerged since the proceedings before the Senior District Judge. We do not attempt to summarise it here, since the picture might be over-simplified or reduced to generalisations. Our reasoning is fully set out in the judgment. Our concerns focus on the political pressures on the judicial system, the independence of the judges, the difficulties and fears of witnesses and particularly the capacity of defendants to allegations of genocide to obtain and present evidence and be adequately represented in their defence.

10. In relation to two of the men (Mutabaruka and Nteziryayo), we have concluded they should not in any event be returned. They have each been the subject of earlier criminal proceedings in their absence in Rwanda, conducted in courts known as *gacaca* courts: the word means 'lawn'. These were courts set up under Rwandan law, conducted with no professional judges or lawyers, and limited formality or procedural regularity. The *gacaca* courts have convicted many people and passed extremely lengthy prison sentences. These two men have been convicted or acquitted (or both) in *gacaca* courts. Their return would breach the principle of double jeopardy or would represent an abuse of process, for the reasons set out in the judgment.

11. In respect of the other three men (Brown/Bajinya, Munyaneza and Ugirashebuja) we have concluded the Government of Rwanda should have a final opportunity to give firm and reliable undertakings to put in place conditions which would reduce the risk of unfair trial, so that they may lawfully be returned. We have done so for the reasons set out in paragraph 3 above: it is highly desirable that trial for these crimes should take place in Rwanda. Unless conditions are put in place which satisfy us, they will not be returned.

12. If they are not returned to Rwanda, these three can still be tried here, provided the Government of Rwanda cooperates. If their guilt is established, that means there will be no impunity for those guilty of genocide. If they are innocent, their innocence will be established. In the event that there is no extradition, whether a trial takes place here is also in the hands of the Government of Rwanda.