



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

IN THE APPEALS CHAMBER

Before:

Judge Rafael NIETO-NAVIA

Registrar:

Mr Agwu U. OKALI

Decision of: 26 September 2000

**Clément KAYISHEMA and
Obed RUZINDANA**
(Appellants)

v

THE PROSECUTOR
(Cross-Appellant)

Case No: ICTR-95-1-A

ORDER

(PROSECUTION MOTION ON THE FILING OF THE PROSECUTION'S BRIEF IN
RESPONSE TO THE APPEAL BRIEF OF CLÉMENT KAYISHEMA)

Counsel for the Appellant Clément KAYISHEMA:

Mr André FERRAN
Mr Phillipe MORICEAU

Counsel for the Appellant Obed RUZINDANA:

Mr Pascal BESNIER
Mr William van der GRIEND

Counsel for the Prosecutor :

Mr Solomon LOH

I, Rafael Nieto-Navia, Pre-Hearing Judge in this matter on appeal, designated by the Presiding Judge of the Chamber under Rule 108 *bis* of the Rules of Procedure and Evidence ("the Rules");

NOTING the Judgement and Sentence rendered on 21 May 1999 ("the Judgement") by Trial Chamber II (a) finding Clément Kayishema ("the first Appellant") and Obed Ruzindana ("the second Appellant") guilty of four counts of genocide and one count of genocide respectively and (b) sentencing the first Appellant to four terms of imprisonment for the remainder of his life and the second Appellant to one term of twenty-five years;

NOTING the Notices of Appeal against the Judgement filed on 18 June 1999 by the first Appellant, the second Appellant and the Prosecutor ("the Cross-Appellant");

NOTING the Scheduling Order of 26 May 2000 which obliged all the Parties to file their Briefs in Response on 23 June 2000 at the latest and their Briefs in Reply on 7 July 2000 at the latest;

NOTING that the "*Prosecution's Brief in Response to the Appeal Brief of Clément Kayishema*" ("the Brief in Response") was registered by the Registry as filed by the Cross-Appellant on 24 July 2000, and the "Brief in reply to the Brief in Response filed by the Appellant Clément Kayishema" was filed on 7 July 2000;

NOTING the "Prosecution Motion on the Filing of the Prosecution's Brief in Response to the Appeal Brief of Clément Kayishema" ("the Motion") filed on 28 July 2000 in which the Prosecutor maintains that the Brief in Response was transmitted to the Registry by fax on 15 June 2000 and consequently requests the Appeals Chamber (a) to make an Order giving her notice that the Brief in Response was filed on that date, or (b) to make an Order in implementation of Rule 116 to validate the filing of the Brief in Response on 24 July 2000, the date on which the Registry actually registered the Brief, and (c) in any eventuality to deliver a Scheduling Order allowing the first Appellant 15 days to file his Brief in Reply;

NOTING the response, filed on 8 August 2000 by the first Appellant, to the Motion in which the first Appellant submits that the Registry, relying on the records of its Communications Centre, stated categorically that it had not received the Brief in Response on 15 June 2000, that there was therefore cause to rule the Prosecutor time-barred and the Brief in Response inadmissible, and that consequently the Motion must be dismissed;

CONSIDERING that the Prosecutor maintains in her written submissions that she did file the Brief in Response on 15 June 2000 and that to that end produced three fax transmission sheets to attest to the fact that transmission actually took place;

CONSIDERING that it is apparent from the transmission sheets that the Brief in Response was not transmitted in its entirety; and that in particular 75 pages out of the 149 in the document were not transmitted, as shown by Annex III to the Motion;

CONSIDERING that the Prosecutor had attempted transmission, although incomplete, of the Brief in Response; and that that act demonstrates a desire on her part to comply with Rule 112 of the Rules of Procedure and Evidence;

CONSIDERING that under Rule 116 the Appeals Chamber may grant leave to file after expiry of the time limit if the delay is justified and if such filing does not prejudice the interests of the other Party;

CONSIDERING that the late filing of the Brief in Response is justified by the aforementioned circumstances; and that the Appellants do not plead that filing the Brief in Response would prejudice their case;

FOR THESE REASONS

GRANTS an extension of time for the filing of the Brief in Response to 24 July 2000, and

ORDERS that filing be confirmed as having occurred on the date on which the Registry did register the Brief in Response.

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

Rafael Nieto-Navia
Pre-Hearing Judge

Dated this twenty-seventh day of September 2000
At The Hague,
The Netherlands.

[Seal of the Tribunal]