



ICTR-99-50-A
 13 December 2002
 (193/h-189/h)
 International Criminal Tribunal for Rwanda
 Tribunal Pénal International pour le Rwanda

193/h
 Rmn

BEFORE A BENCH OF THE APPEALS CHAMBER

Before: Judge Theodor MERON, Presiding
 Judge Asoka de Z. GUNAWARDANA
 Judge Fausto POCAR

Registrar: Mr. Adama DIENG

Decision of: 13 December 2002

ICTR Appeals Chamber
 Date: 13 December 2002
 Action: PS
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Casimir BIZIMUNGU
(Appellant)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-99-50-A

**DECISION ON THE APPLICATION TO APPEAL AGAINST THE
 PROVISIONAL RELEASE DECISION OF TRIAL CHAMBER II OF 4
 NOVEMBER 2002**

Counsel for the Appellant

Ms. Michelyne C. St-Laurent

Counsel for the Prosecution

Mr. Douglas Marks Moore
 Mr. Ibukunolu A. Babajide

International Criminal Tribunal for Rwanda
 Tribunal pénal international pour le Rwanda
 CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
 COPIE CERTIFIÉE CONFORMÉ À L'ORIGINAL PAR NOUS
 NAME / NOM: ROSETTE MOZIGD-MORRISON
 SIGNATURE: [Signature] DATE: 13 Dec 2002

THIS BENCH OF 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 (“Tribunal”),

BEING SEISED OF the “*Demande aux fins d’obtenir l’autorisation d’interjeter appel de la décision de la Chambre de première instance II intitulée*” “Decision on Bizimungu’s motion for provisional release pursuant to Rule 65 of the Rules” (“Application”), filed by Casimir Bizimungu (“Applicant”), on 14 November 2002, against Trial Chamber II’s Decision of 4 November 2002 (“Impugned Decision”), which dismissed a motion for provisional release (“Motion”) pursuant to Rule 65(B) of the Rules of Procedure and Evidence (“Rules”);

NOTING that Rule 65(D) of the Rules requires applications for leave to appeal decisions concerning provisional release to be filed within seven days of the impugned decision;

NOTING that the Impugned Decision was rendered on 4 November 2002;

NOTING that the Defence became aware of the Impugned Decision on 8 November 2002;

NOTING that the Application was filed on 14 November 2002, after the seven-day time-limit imposed by Rule 65(D) of the Rules;

CONSIDERING, however, that proof of service from the Registry shows that the Impugned Decision was formally communicated to the Defence on 18 November 2002;

CONSIDERING that Rule 116(A) of the Rules authorises the bench of the Appeals Chamber to grant an extension of time limits upon a showing of good cause;¹

FINDING that, in the circumstances of this case, good cause exists to accept the Application;

NOTING that the Applicant submits in the Application that:

- 1) the Trial Chamber erred by denying his request for an oral hearing, which denied him the right to call two key witnesses who were reluctant to testify by way of affidavit;
- 2) the Judges of the Trial Chamber erred in fact and law by refusing the Applicant’s challenge to the “exceptional circumstances” requirement of Rule 65(B) of the Rules;

¹ See also Practice Direction on Procedure for the Filing of Written Submissions, para. 16.
ICTR-99-50-A

- 3) the Trial Chamber erred by failing to identify and consider the correct submissions, as stated in the Motion, relating to the “exceptional circumstances” requirement of Rule 65(B) of the Rules;
- 4) the Trial Chamber erred by stating that no evidence was proffered by the Applicant that showed that he could have voluntarily surrendered; and
- 5) the Impugned Decision denied him the only right to invoke the underlying matters of principle arising from the illegal, unfair and unreasonable Rules;²

NOTING the “Prosecutor’s Application For Summary Rejection of the Defence’s Notice of Appeal Relating to a Request to Appeal Against the Trial Chamber of First Instance’s Decision Titled Bizimungu’s Motion for Provisional Release and in the Alternative An Application For an Extension of Time within which to Reply to the Defence Notice of Appeal,” (“Prosecution’s Response”) filed on 27 November 2002, after the time-limit of ten days, prescribed in paragraph 5 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal;

NOTING that the Applicant has not filed a Reply to the Prosecution’s Response as permitted under paragraph 6 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal;

NOTING the Prosecution’s alternative request for an extension of time in which to file a proper response on the basis that it has not been provided with an English translation of the Application;

CONSIDERING that the Prosecution did not submit a request for an extension of time prior to the expiration of the deadline;

CONSIDERING that Rule 116(B) of the Rules provides that “where the ability of the accused to make full answer and defense depends on the availability of a decision in an official language other than that in which it was originally issued, that circumstance shall be taken into account as a good cause. . .”, yet there is no similar provision in the rule which is applicable to the Prosecution;

CONSIDERING that in the opinion of the bench of the Appeals Chamber, the Office of the Prosecutor must be able to work equally in English and French;

FINDING that the Prosecution’s reason for the late filing of its Response does not constitute “good cause” within the meaning of Rule 116 of the Rules;

² *Application*, Parts I-V.

CONSIDERING that Rule 65(B) of the Rules provides that provisional release may be ordered by a Trial Chamber only “in exceptional circumstances, after hearing the host country and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person”;

CONSIDERING that Rule 65(D) of the Rules provides *inter alia* that decisions on provisional release “shall be subject to appeal in cases where leave is granted by a bench of three Judges of the Appeals Chamber, upon good cause being shown”;

CONSIDERING that “good cause” within the meaning of Rule 65(D) of the Rules requires that a party seeking leave to appeal under that provision satisfies the bench of the Appeals Chamber that the Trial Chamber may have erred in making its decision;³

CONSIDERING that the Applicant has failed to demonstrate how the Trial Chamber may have erred by:

- 1) denying the Applicant’s request for an oral hearing, given that the Applicant sought only to put on testimony by character witnesses, whose testimony offered no prospect of establishing the exceptional circumstances required by Rule 65(B);
- 2) refusing to entertain the Applicant’s request to amend Rule 65(B) from the Bench by disregarding the “exceptional circumstances” requirement of the Rule;
- 3) stating that the Applicant has proffered no evidence showing that he could have voluntarily surrendered; and
- 4) denying the Applicant’s attempt to challenge Rule 65(B) as illegal, unfair and unreasonable;

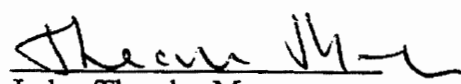
FINDING that the Applicant has therefore failed to show “good cause” as required by Rule 65(D) of the Rules;

HEREBY REJECTS the Prosecution’s request for an extension of time; **DEEMS INADMISSIBLE** the Prosecution’s Response; and **DISMISSES** the Application.

³ See *Mpambara v Prosecutor*, ICTR-2001-65-A, Decision on Motion to Appeal Against the Decision of Trial Chamber I of 22 October 2002, 25 November 2002.

189/w

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


Judge Theodor Meron
Presiding Judge

Done this thirteenth day of December 2002,
at The Hague,
The Netherlands.

[Seal of the Tribunal]

