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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before: Judge Mohamed SHAHABUDEEN, Pre-Appeal Judge
Registrar: Mr. Adama DIENG
Decision of: 22 August 2003

THE PROSECUTOR

v.

ALPHONSE NTEZIRYAYO

Case No. ICTR-97-29-A

2003 AUG 25 | A 10: 18
JUDICIAL RECORDS ARCHIVES
ICTR

DECISION ON REQUESTS FOR EXTENSION OF TIME

Counsel for the Prosecutor

Ms. Silvana Arbia
Mr. Jonathan Moses
Mr. Gregory Townsend
Mr. Manuel Bouwknecht

Counsel for the Defence

Mr. Tinting Frédéric Pacere
Mr. Richard Perras

ICTR-97-29-ARISbi(D)
25th August 2003
(77/A - 74/A)

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I, MOHAMED SHAHABUDEEN, Judge 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 and 31 December 1994 ("International Tribunal"),

NOTING the "Acte d'Appel: Appel par Alphone Nteziryayo de la Décision 'Decision in the matter of proceedings under Rule 15bis(D)' rendue par les Honorables Juges Sekule, Président, et Ramaroson le 15 Juillet 2003" filed on 18 July 2003 ("Notice of Appeal" and "Appellant" respectively) against the "Decision in the matter of proceedings under Rule 15BIS(D)" rendered on 15 July 2003 by Trial Chamber II ("Impugned Decision");

NOTING the "Order of the Presiding Judge assigning Judges to related cases before the Appeals Chamber and designating a Pre-Appeal Judge" filed on 29 July 2003, which *inter alia* designated me to serve as Pre-Appeal Judge in this case;

BEING SEISED OF a "Demande de report de délais sur appel du jugement; decision in the matter of proceedings under Rule 15bis (D) du Tribunal pénal international pour le Rwanda, Chambre II instance I du 15 Juillet 2003 (sic)" filed on 4 August 2003 ("First Motion");

NOTING that, in his First Motion, the Appellant submits *inter alia* that he does only speak French and has therefore not been able to understand the Impugned Decision and the various filings of the Prosecutor which have been filed in English and that, in furtherance of *inter alia* Rule 116(A) and (B) of the Rules of Procedure and Evidence ("Rules") as well as the fundamental right for an accused to be able to read in a language he or she understands the indictment and the various decisions of the Trial Chamber in charge of his trial, he requests the Appeals Chamber to:

1. grant him an extension of time in order to respond or complete his filings;
2. order the translation in French and the communication to the Appellant of the Impugned Decision, the filings by the Prosecutor in this case at trial and on appeal and any further filings in English at the appeal stage;
3. order that the deadlines for "observations or replies" be suspended and that the latter start to run only from the time when the Appellant receives the translation in French of the Impugned Decision and various other documents filed in English in this case.

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NOTING the "Prosecutor's Response to Nteziryayo's 'Demande de report de délais sur appel du jugement: Decision: In the matter of Proceedings Under Rule 15BIS(D)" filed on 6 August 2003 ("Prosecutor's Response"), in which the Prosecutor submits *inter alia* that the Appellant filed full reasons in support of his appeal, that at no stage he sought to extend the time for filing his appeal due to the Impugned Decision not having been translated, that he never suggested that he had been unable to fully argue the matters raised in the Impugned Decision by virtue of not being in receipt of the translation of the latter and submits that the filing of the First Motion is frivolous and the First Motion is moot by virtue of the fact that the Appellant was able to file both his Notice of Appeal and a reply to the Prosecutor's Response;

NOTING Rule 116(B) of the Rules which stipulates that "where the ability of the accused to make full answer and defence 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 under the present Rule";

CONSIDERING that the purpose of Rule 116(B) of the Rules is to enable the accused to make full answer and defence, and that, by filing his Notice of Appeal, comprising of 14 pages of pleadings and 18 pages of annexes, and the "Réplique à la 'Prosecutor's Response to the Appeals by Nytramasuhuko, Ntahobali, Nteziryayo, Kanyabashi and Ndayambaje of the Decision by the Trial Chamber in the Matter of Proceedings under Rule 15BIS(D)" on 1 August 2003, comprising of 5 pages of pleadings and 33 pages of annexes ("Reply to the Prosecutor's Response to the Notice of Appeal"), the Appellant has shown that the unavailability of the Impugned Decision in French did not affect his capacity to file an appeal and make a full defence;

BEING ALSO SEISED OF a "Requête de Alphonse Nteziryayo contre 'Prosecutor's Response to Nteziryayo's demande de délais sur appel du jugement: Decision: in the matter of proceedings under Rule 15bis(D)' pour obtention préalable de la version française de l'acte et de report préalable de délai" filed on 8 August 2003 ("Second Motion"), in which the Appellant submits *inter alia* that he is unable to understand the Prosecutor's Response as it was filed in English and wishes the Appeals Chamber to order the translation in French and the communication to the Appellant of the Prosecutor's Response and to grant him an extension of time to respond to it;

NOTING that the Prosecutor did not file a response to the Second Motion and indicated by letter dated 15 August 2003 to a legal officer of the Appeals Chamber that she was "content for the Appeals Chamber to proceed to determine the matters";

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CONSIDERING that the Appellant specifies in his First Motion that his co-counsel "understands and speaks both languages" English and French¹, that the Appellant filed a Notice of Appeal against the Impugned Decision only available in English and a reply to the Prosecutor's Response to the Notice of Appeal, which was also only available in English, and that therefore he has not shown how his Co-Counsel could not help the Lead Counsel and the Appellant in understanding the Prosecutor's Response comprising of 7 paragraphs;

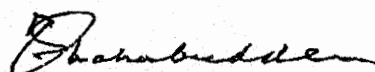
FINDING that the Second Motion is frivolous within the meaning of Rule 73(F) of the Rules;

FOR THESE REASONS

DISMISS the First and Second Motions but **DIRECT** the Registrar:

1. to make available to the Appellant the translation in French of the Impugned Decision and the various other documents filed in English in this case as soon as possible,
2. and, pursuant to Rule 73(F) of the Rules, not to pay the Defence Counsel for the Appellant any fees or costs associated with the Second Motion.

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



Mohamed Shahabuddeen

Done this twenty-second day of August 2003,
At The Hague,
The Netherlands.

[Seal of the International Tribunal]

¹ Paragraph 8 of the First Motion
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22 August 2003