



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

IN THE APPEALS CHAMBER

Before:

Judge Theodor MERON, Presiding
Judge Mohamed SHAHABUDDEEN
Judge Fausto POCAR
Judge Wolfgang SCHOMBURG
Judge Inés Mónica WEINBERG DE ROCA

Registrar: Mr. Adama DIENG

Decision of: 16 October 2003

Eliézer NIYITEGEKA
(Appellant)

V.

THE PROSECUTOR
(Respondent)

Case No. ICTR-96-14-A

**DECISION ON ELIEZER NIYITEGEKA'S URGENT MOTION FILED ON 4
SEPTEMBER 2003**

Counsel for the Appellant

Ms. Sylvia Geraghty

Counsel for the Prosecutor

Ms. Mélanie Werrett

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 (“Appeals Chamber”),

NOTING the “Judgement and Sentence” rendered in this case by Trial Chamber I on 16 May 2003 (“Judgement”);

NOTING the Notice of Appeal filed on 20 June 2003, in which Eliézer Niyitegeka (“Appellant”) alleges, as one of his grounds of appeal, that his trial was “unfair and unjust and in breach of his rights” as he was tried by a team of Prosecutors that included a counsel, Ms Melinda Pollard, that was suspended from legal practice by her home Bar Association for one year commencing on 16 January 2002;

NOTING the “Decision on Prosecution Motion concerning Defects in the Appellant’s Notice of Appeal” rendered on 26 September 2003, which orders the Appellant to re-file a Notice of Appeal of no more than 15 pages in accordance with the requirements of Rule 108 of the Rules of Procedure and Evidence (“Rules”) and Article 1 of the Practice Direction on Formal Requirements for Appeals from Judgements^[1];

BEING SEISED of the “Extremely Urgent Defence Motion” filed on 4 September 2003 (“Urgent Motion”), in which the Appellant submits *inter alia* that he sent a letter dated 9 August 2003 to the Prosecutor raising 17 questions concerning the Trial Attorney Melinda Pollard, to which he did not receive any answer, and requests the Appeals Chamber to order the Prosecutor to reply to “each and every one of the 17 issues raised in the letter dated 9 August 2003” as well as to conduct an enquiry into the matters raised and submit the report of this enquiry to the Defence;

NOTING the “Prosecution’s Response to ‘Extremely Urgent Defence Motion’ filed on 4 September 2003” filed on 15 September 2003 (“Prosecution’s Response”), in which the Prosecutor submits *inter alia* that there is no merit in the Appellant’s requests as most of the matters raised in the letter of the Appellant dated 9 August 2003 have been addressed in the Prosecution’s letter to the Appellant dated 12 September 2003, that the Appeals Chamber should not be drawn into ordering an enquiry into matters which may constitute factual bases for the existing grounds of appeal, and that, the “initiation and conduct of any internal investigations in the OTP fall strictly within the discretion and purview of the Prosecutor”;

NOTING the “Extremely Urgent Defence Reply to Prosecutors (sic) Response dated 15 September 2003” filed on 22 September 2003 (“Defence Reply”), which is 3 days out of time according to paragraph 12 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal^[2] (“Practice Direction”), and in which the Appellant prays the pre-Appeal Judge to permit him to vary the terms of the relief sought in his Urgent Motion and requests the pre-Appeal Judge to order that:

i) “an independent, impartial and comprehensive investigation be immediately carried out, into all matters touching and concerning the involvement of Ms Pollard”;

ii) an independent, impartial and trustworthy person be appointed to carry out the said investigation;

iii) a copy of the final report of this investigation be communicated to the Defence;

iv) an extension of time be granted to allow the Appellant to file his Appellant's brief 45 days from the date when the final report of this investigation is served on the Appellant and not 45 days from the date on which the Judgement in French is made available;

NOTING the "Prosecution Response to 'Extremely Urgent Defence Reply' filed on 22 September 2003" filed on 26 September 2003 ("Prosecution Response to the Reply"), in which the Prosecutor seeks leave to file this response as the Appellant raised "fresh arguments and/or new requests" in the Defence Reply that had not been previously offered;

NOTING the "Extremely Urgent Defence Reply to Prosecutors (sic) Second Response dated 26 September 2003" filed on 30 September 2003 ("Defence Reply to the Prosecutor's Second Response"), in which the Appellant seeks leave to file and have admitted this reply;

NOTING that paragraph 16 of the Practice Direction provides that the Appeals Chamber "may vary any time-limit prescribed under this Practice Direction or recognise as validly done any act done after the expiration of a time-limit so prescribed";

CONSIDERING that the delay in the late filing of the Defence Reply did not prejudice the proceedings in this appeal;

RECOGNISES the filing of the Defence Reply as validly done;

CONSIDERING that as the Defence Reply contains new arguments and a new set of relief, the Prosecutor should be given an opportunity to respond to these new arguments;

RECOGNISES therefore the filings of the Prosecution Response to the Reply and the Defence Reply to the Prosecutor's Second Response as validly done;

CONSIDERING that, as some of the Appellant's requests involved consideration by the Appeals Chamber, the decision in this case is being made by the Appeals Chamber;

CONSIDERING that the central ruling sought by the Appellant in his Defence Reply is a request for the appointment of an independent and impartial person who would conduct a comprehensive investigation into "all matters touching and concerning the involvement of Ms Pollard and the conduct, before, during and after the trial of Eliézer Niyitegeka, to include the circumstances surrounding the failure of the Prosecution to notify the Appellant of the status of Ms Pollard", and that this request would amount to an incorrect encroachment by the Appeals Chamber on the independence of the Prosecutor;

CONSIDERING that, as the Appeals Chamber cannot order an investigation as requested, the request for an extension of time for the filing of the Appellant's brief, which is based on such an investigation, fails;

CONSIDERING moreover that nothing prevents the Appellant, on the basis of the existing information provided by the Prosecutor in his letter dated 12 September 2003, from filing his Appellant's brief no later than 17 November 2003, as the Pre-Appeal Judge requested him to do in the "Decision on Eliézer Niyitegeka's Extremely Urgent Motion for an Extension of Time" rendered on 6 October 2003;

NOTING that, should more information or material become available to the Appellant at a later stage, he will always be able to file an addendum to his Appellant's brief, on good cause being shown by him;

RECALLING the continuous obligations of the Prosecutor under Rule 68 of the Rules, which provides that the Prosecutor "shall, as soon as practicable, disclose to the defence the existence of evidence known to the Prosecutor which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of the prosecution evidence" and **NOTING** that the Prosecutor has expressed willingness to abide by that requirement;

FOR THE FOREGOING REASONS,

DISMISSES the Urgent Motion.

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

Theodor Meron
Presiding

Done this sixteenth day of October 2003,
At The Hague,
The Netherlands.

[Seal of the International Tribunal]

[\[1\]](#) Practice Direction on Formal Requirements for Appeals from Judgement, 16 September 2002.

[\[2\]](#) Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal, 16 September 2002.