IN THE APPEALS CHAMBER

Before:
Judge Theodor Meron, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Fausto Pocar
Judge Inés Mónica Weinberg de Roca

Registrar: Mr. Adama Dieng

Decision of: 23 October 2003

Emmanuel RUKUNDO
(Appellant)
v.
THE PROSECUTOR
(Respondent)

Case No. ICTR-2001-70-AR108

DECISION ON MOTION FOR EXTENSION OF TIME TO FILE INTERLOCUTORY APPEAL

Counsel for the Appellant
Mr. Philippe Moriceau
Mr. Wenceslas Habiyaremye

Counsel for the Prosecution
Ms. Silvana Arbia

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" and "International Tribunal", respectively),

BEING SEISED OF the "Requête en prorogation de délai pour interjeter appel de la décision du 18 août 2003" ("Motion") filed on 17 September 2003 by Emmanuel Rukundo ("Appellant");

NOTING the "Decision on Defence Motion to Fix a Date for the Commencement of the Trial of Father Emmanuel Rukundo or, in the Alternative, to Request His Provisional Release," rendered by Trial Chamber III on 18 August 2003 ("Decision"), which denied the Appellant's "Motion to Fix a Date for the Commencement of Trial of Father Emmanuel Rukundo or, in the Alternative, to Request His Provisional Release," filed on 21 May 2003;

NOTING that, in his Motion, the Appellant requests that the time for filing his appeal from the Decision be extended on the ground that the Decision has not yet been communicated to him in French;

NOTING that the Motion challenges the Trial Chamber's denial of the Appellant's request that the Trial Chamber immediately set a date for trial, as well as the Trial Chamber's denial of the Appellant's request for provisional release, which the Motion contends was partially influenced by submissions made by the Registrar of the International Tribunal to the Trial Chamber;

NOTING that the Prosecutor has not filed a response to the Motion in the Appeals Chamber, but did file a "Prosecutor's Response to Rukundo's Motion for Extension of Time to File an Appeal to the Decision of 18 August 2003," in Trial Chamber III on 19 September 2003;

NOTING that the Motion purports to be based on Rule 108 of the Rules of Procedure and Evidence of the International Tribunal ("Rules");

CONSIDERING that Rule 108 of the Rules, which applies to appeals from judgment or sentence, does not apply to interlocutory appeals;

CONSIDERING that an interlocutory appeal of a decision dismissing a motion to set a date for trial, which is not a preliminary motion of the type enumerated in Rule 72(A) of the Rules, is governed by Rule 73(B) of the Rules, which provides that decisions rendered on motions are without interlocutory appeal save with certification by the Trial Chamber;

CONSIDERING that, under Rule 73(C) of the Rules, requests for certification of an interlocutory appeal under Rule 73(B) of the Rules must be filed within seven days of the filing of the impugned decision;

CONSIDERING that the period for seeking certification of an appeal from the Decision, to the extent it denied the motion to set a date for trial, expired on 25 August 2003;

CONSIDERING that the Appellant has not shown that he timely sought and obtained certification to take an interlocutory appeal pursuant to Rule 73(B) of the Rules;

CONSIDERING that an interlocutory appeal of a decision denying provisional release is governed by Rule 65(D) of the Rules, which provides that appeals may be taken from decisions where leave is granted by a bench of three Judges of the Appeals Chamber, upon good cause being shown;

CONSIDERING that applications for leave to appeal under Rule 65(D) of the Rules must be filed within seven days of the impugned decision;

CONSIDERING that the period for applying for leave to appeal from the Decision, to the extent it denied the motion for provisional release, expired on 25 August 2003;

CONSIDERING that the Appellant has not shown that he has timely applied for and received leave to appeal pursuant to Rule 65(D) of the Rules;

CONSIDERING that, were the Motion granted in its present form, the Appellant's interlocutory appeal would nonetheless be dismissed for failure to comply with the applicable Rules governing interlocutory appeals from decisions on motions and from decisions regarding provisional release;

CONSIDERING that the Motion does not request an extension of time in which to request certification from the Trial Chamber under Rule 73(B) of the Rules or apply for leave to appeal under Rule 65(D) of the Rules;

CONSIDERING that a motion by the Appellant for an extension of time to request certification or apply for leave to appeal should have been filed "prior to the expiration of the relevant time limit,"[1] thus before 25 August 2003;

CONSIDERING that the requirement of filing a request for an extension prior to expiry of the relevant time limit applies "notwithstanding that a document is filed in a working language other than that of the Defense," and that the Appellant was specifically notified of this requirement in the decision of 10 June 2003 in this case;[2]

CONSIDERING, therefore, that any request for an extension of time in which to request certification or apply for leave to appeal would be untimely;

CONSIDERING, however, that the Appellant appears to have erroneously proceeded on the ground that the Decision could have been appealed under Rule 108 of the Rules;

CONSIDERING that appeals under Rule 108 of the Rules may be filed within thirty days of the judgment or sentence appealed from and that the Appellant filed the Motion thirty days after the Decision was filed;

CONSIDERING therefore that the Appellant appears to have attempted to file a timely request for an extension;

CONSIDERING further that the grounds for granting an extension of the time to apply for leave to appeal under Rule 65(D) of the Rules would be similar to the grounds asserted in the Motion;

CONSIDERING that it would delay the proceedings unnecessarily for the Appellant to submit to the Appeals Chamber a motion for an extension of time to apply for leave to appeal that was essentially identical to the instant Motion;

CONSIDERING that Rule 116(A) of the Rules permits the Appeals Chamber to grant a motion to extend a time limit "upon a showing of good cause," and that Rule 116(B) provides that "[w]here 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 working language of the Appellant's counsel in this case is French;

CONSIDERING that, if the Appellant chooses to seek leave to appeal under Rule 65(D) of the Rules, good cause exists for permitting the Appellant to do so after his counsel receives the French translation of the Decision;

HEREBY DENIES the Motion; and

ORDERS that, should the Appellant choose to file an application for leave to appeal under Rule 65(D) of the Rules in the Appeals Chamber, such request or application shall be deemed timely if filed within seven days of the appellant's receipt of the Decision in French.

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

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Judge Theodor Meron
Presiding

Done this 23rd day of October 2003,
At The Hague,
The Netherlands.

[Seal of the Tribunal]

[1] *Sagahutu v. Prosecutor*, No. ICTR-00-56-I, Decision on Leave to Appeal Against the Refusal to Grant Provisional Release, 26 March 2003, p. 3; see also *Rukundo v. Prosecutor*, No. ICTR-2001-70-AR72, Decision on Motion for Extension of Time to File Reply, 10 June 2003 ("*Rukundo* June Decision"), p. 3.

[2] *Rukundo* June Decision, p. 3.