

ICTR-96-14-A
16 December 2003

337h
RB

(337h - 333h)



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: 16 December 2003

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INDOAL REPO

ICTR Appeals Chamber
Date: 16 December 03
Action: P. G.
Copied To: Concerned Judges;

Eliézer NIYITEGEKA
(Appellant)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-96-14-A

Parties
Judicial Archives
LOs
LSS
Rhys Burris

**DECISION ON DEFENCE MOTION ON THE LENGTH OF THE
APPELLANT'S BRIEF**

Counsel for the Appellant

Ms. Sylvia Geraghty

Counsel for the Prosecutor

Mr. Hassan Bubacar Jallow
Mr. Mélanie Werrett
Mr. Alex Obote-Odora

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS
NAME / NOM: Rhys Burris
SIGNATURE: Rhys Burris DATE: 16 Dec 03

336 h

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 "Judgement and Sentence" rendered in this case by Trial Chamber I on 16 May 2003 ("Judgement");

NOTING the Notice of Appeal re-filed on 17 October 2003 by Eliézer Niyitegeka ("Appellant");

NOTING the "Decision on Prosecution Motion concerning Defects in the Appellant's Notice of Appeal" rendered on 26 September 2003, which reminded the Appellant that, "pursuant to the Practice Direction on the Length of Briefs and Motions on Appeal¹, the Appellant's brief should not exceed 100 pages or 30,000 words, whichever is greater";

NOTING the "Decision on Prosecution's Urgent Motion concerning Defects in the Appellant's Notice of Appeal" rendered on 27 November 2003, which ordered the Appellant to file his Appellant's Brief no later than 2 December 2003;

NOTING the "Appeal Brief of Eliézer Niyitegeka" filed on 2 December 2003 which comprises 100 pages and 45, 386 words ("Appellant's brief");

NOTING the "Decision on the Length of the Appellant's Brief" rendered on 4 December 2003 ("Decision of 4 December 2003"), which stated that the Appellant's brief, made up of 45, 386 words without the cover page, does not respect the Practice Direction on the Length of Briefs and Motions on Appeal ("Practice Direction") and ordered the Appellant to re-file the Appellant's brief in accordance with the requirements of the Practice Direction no later than 18 December 2003;

¹ Practice Direction on the Length of Briefs and Motions on Appeal, 16 September 2002, article C.1.a).
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BEING SEISED of the "Urgent Defence Motion pursuant to (i) paragraph (C) 1(a) of Practice Direction of 16 September 2002 (Length of Brief) and (ii) Rule 108 of the Rules of Procedure and Evidence ICTR, (to vary the Grounds of Appeal set out in the Notice of Appeal)" ("Urgent Motion"), in which the Appellant submits *inter alia* that:

- 1) he understood the requirement of the Practice Direction to leave two options for the length of the Appellant's brief, i.e. it should not exceed either 100 pages or 30, 000 words whichever is greater;²
- 2) he therefore "chose the 'pages' rather than the 'words' option" and filed a "brief of 100 pages, it being the *greater* and as such serving to free him from the restriction of the *word* option";³
- 3) if the Appellant should be ordered to reduce his brief to 30, 000 words, there would be a "serious danger that his minimum guaranteed rights under the Statute would be infringed"⁴ and that therefore the pre-appeal Judge should recognise as validly filed the Appellant's brief filed on 2 December 2003;
- 4) alternatively, "should the Learned pre-Appeal Judge decide that the said Direction has been misinterpreted and that the brief should be re-filed, that adequate time, say 14 days [...] would be allowed" to the Appellant to carry out the work⁵;
- 5) he also applies for a variation of the Notice of Appeal as certain "minor typographical errors or reprints of 'minor extracts from earlier draft documents have inadvertently found their way into either the Notice of Appeal and/of the Appellate brief';⁶

CONSIDERING that the second part of the Urgent Motion to vary his Notice of Appeal will be examined in due course, after having considered the response of the Prosecutor to the Urgent Motion and the reply from the Appellant, if he wishes to file one;

CONSIDERING, with respect to the first part of the Urgent Motion, that the Practice Direction provides that "the brief on an appellant on appeal from a final judgement of a Trial Chamber will not exceed 100 pages or 30, 000 words, whichever is greater";

² See paragraphs 6-11 of the Urgent Motion.

³ See paragraphs 9 and 10 of the Urgent Motion.

⁴ See paragraph 11 of the Urgent Motion.

⁵ See page 5 of the Urgent Motion.

⁶ See paragraph 13 of the Urgent Motion.

CONSIDERING that, in the practice of the Tribunal, the Practice Direction has always been understood to mean that an Appellant's brief should exceed neither 100 pages nor 30, 000 words⁷ and that the Appellant, who is now asking for 14 days to reduce the word count of the Appellant's brief, has already been given 14 days in the Decision of 4 December 2003, when the latter ordered him to file an "Appellant's brief in accordance with the requirements of the Practice Direction on the Length of Briefs and Motions on Appeal no later than 18 December 2003";

CONSIDERING that the Urgent Motion does not contain a motion for an extension of page limits or word numbers but that, in order to ensure that the proceedings are not unduly delayed, this decision will consider whether such an extension should be given;

NOTING that, paragraph 6 of the Practice Direction provides that "a motion to exceed the page limits in this Practice Direction may be disposed of without giving the other party the opportunity to respond to the motion if, on the face of the motion, the Appeals Chamber, a bench of three Judges of the Appeals Chamber or the Pre-Appeal Judge is of the opinion that no prejudice would be caused to the other party";

NOTING that paragraph 5 of the Practice Direction provides for an explanation of exceptional circumstances that necessitate an oversized filing;

CONSIDERING that, the particularities of this appeal justify the Appellant being granted an extension of word limit;

CONSIDERING also that the Appellant has been aware, since the Decision of 4 December 2003, that he has been ordered to re-file his Appellant's brief in accordance with the requirements of the Practice Direction by 18 December 2003 and that therefore granting an extension of time of 14 days or more from the date of this decision would unduly delay the proceedings in this case;

⁷ See also for example the "Decision ('Prosecution's urgent motion for an extension of time to file its appeal brief in compliance with the practice direction on the length of briefs and motions on appeal')", *Prosecutor v. Ignace Bagilishema*, case number ICTR-95-1A-A, 19 December 2001.
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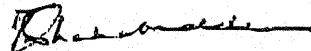
FOR THE FOREGOING REASONS,

ORDER the Appellant to re-file his Appellant's brief of no more than 35,000 words by 23 December 2003;

STATE that the motion to vary the grounds of appeal set out in the Urgent Motion will be examined after receiving the response of the Prosecutor to the Urgent Motion and the reply, if any, of the Appellant;

REMIND the Prosecutor that, pursuant to Rule 112 of the Rules of Procedure and Evidence, he will have 40 days from 23 December 2003 to file his Respondent's brief.

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



Mohamed Shahabuddeen
Pre-Appeal Judge

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



[Seal of the International Tribunal]