

ICTR-96-14-A
19 DECEMBER 2003
(346/H-343/H)

346



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before:

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

Registrar:

Mr. Adama DIENG

Decision of:

19 December 2003

ICTR Appeals Chamber
Date: 19 Dec 03
Action: PC
Copied To: Counsel

Eliézer NIYITEGEKA
(Appellant)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-96-14-A

Judge,
ALOs, ILOs;
LSS;
Parties;
Judicial Archive
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**DECISION ON DEFENCE EXTREMELY URGENT MOTION FOR
RECONSIDERATION OF DECISION DATED 16 DECEMBER 2003**

Counsel for the Appellant

Ms. Sylvia Geraghty

Counsel for the Prosecutor

Mr. Hassan Bubacar Jallow
Ms. Melanie Werrett
Mr. Alex Obote-Odora

Case No. ICTR-96-14-A

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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SIGNATURE: Rhye B... DATE: 19 XII 03

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),

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 Appeal, the Appellant’s brief should not exceed 100 pages or 30,000 words, whichever is greater”¹ (“Practice Direction”);

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”, which stated that the Appellant’s brief, made up of 45,386 words without the cover page, does not respect the 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;

NOTING the “Decision on Defence Motion on the Length of the Appellant’s Brief” rendered on 16 December 2003 (“Decision of the Pre-Appeal Judge of 16 December 2003”), which stated 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 words”²; granted the Appellant an

¹ Practice Direction on the Length of Briefs and Motions on Appeal, 16 September 2002, article C.1.a). Paragraph B) of the Practice Direction provides also that “the typeface will be 12 points with 1.5 line spacing. An average page should contain fewer than 300 words.”

² 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 or “Decision on Appellant’s Objection to Prosecution’s Re-Filed Supplemental Filing of 8 December 2003”, *Prosecutor v. Tihomir Blaškić*, case number IT-95-14-A, 16 December 2003.

extension of time to file his brief and an extension of word limit, and ordered him to re-file his Appellant's brief of no more than 35,000 words by 23 December 2003;

BEING SEISED OF the "Extremely Urgent Defence Motion for Re-Consideration by the Appeals Chamber of Decision of 16 December 2003 concerning Paragraph 1(C) of Practice Direction, of 16 September 2002 (Length of Brief)" ("Extremely Urgent Motion"), in which the Appellant submits *inter alia* that the Appeals Chamber should "re-consider and amend the terms of the Order contained in the Decision of 16 December 2003" for the following reasons:

- 1) the Appellant 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;³
- 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";⁴
- 3) if the Appellant should be ordered to reduce his brief to 35,000 words, there would be a "serious danger that his minimum guaranteed rights under the Statute would be infringed"⁵ and that therefore the pre-appeal Judge should recognise as validly filed the Appellant's brief filed on 2 December 2003;
- 4) "it would be manifestly unfair and unjust to again order the Appellant to limit his Appeal in such a way as to permit him to put forward, only as part of his Appeal which could be contained in 35,000 words";⁶
- 5) the full Appeals Chamber should therefore consider the Appeal Brief of 2 December 2003 as validly filed; alternatively, sufficient time should be given to the Appellant to re-file the Appellant's brief;

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";

³ See paragraph 6 (i) of the Extremely Urgent Motion.

⁴ See paragraph 6 (iv) of the Extremely Urgent Motion.

⁵ See paragraph 6 (vi) of the Extremely Urgent Motion.

⁶ See page 4 of the Extremely Urgent Motion.

NOTING that Rule 108*bis* (F) of the Rules of Procedure and Evidence (“Rules”) provides that the Pre-Appeal Judge may refer issues that are in dispute to the Appeals Chamber and that Rule 108*bis* (H) of the Rules states that “the Appeals Chamber may *proprio motu* exercise any of the functions of the Pre-Appeal Judge”;

CONSIDERING that the Appellant has not shown any clear error made in the Decision of the Pre-Appeal Judge of 16 December 2003⁷ or any particular circumstances justifying a re-consideration of the Decision of the Pre-Appeal Judge of 16 December 2003;

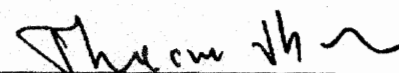
FOR THE FOREGOING REASONS,

DISMISSES the Extremely Urgent Motion;

CONFIRMS the Decision of the Pre-Appeal Judge of 16 December 2003;

ORDERS the Appellant to re-file his Appellant’s brief of no more than 35,000 words by 23 December 2003, before 17:30 local time, at the seat of the International Tribunal in Arusha;

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



Theodor Meron
Presiding Judge

Done this 19th day of December 2003,
At The Hague,
The Netherlands.



⁷ See “Decision (Motion for Review or reconsideration)”, *Joseph Kanyabashi v. The Prosecutor*, case number ICTR-96-15-AR72, 12 September 2000, p.2.
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