

ICTR
ICTR-99-52-A
2 MARCH 2004
(100/H-97/H)

100/H



UNITED NATIONS
NATIONS UNIES

Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Weinberg de Roca, Pre-Appeal Judge
Registrar: Mr. Adama Dieng
Decision of: 2 March 2004

2004 MAR 23 A 9:10
[Handwritten signature]

Ferdinand NAHIMANA
Jean-Bosco BARAYAGWIZA
Hassan NGEZE
(Appellants)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-99-52-A

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 MOI
NAME / NOM: RMTS BURESS
SIGNATURE: *[Signature]* DATE: 2-iii-04

DECISION ON NGEZE'S MOTION FOR CLARIFICATION OF THE SCHEDULE AND SCHEDULING ORDER

Counsel for the Appellants

Mr. Jean-Marie Biju-Duval
Mr. Giacomo Barletta-Caldarera
Mr. John C. Floyd III

Counsel for the Prosecutor

Ms. Melanie Werrett

ICTR Appeals Chamber
Date: 2-iii-04
Action: PG
Copied To: Jud 605

AWs / LOS
Parties
LSS
Archive
Rhs Burre

99/H

I, Inés Mónica Weinberg de Roca, 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;

NOTING the "Judgement and Sentence" rendered in the English language by Trial Chamber I in this case on 3 December 2003 ("Judgement");

BEING SEISED OF the "Motion for Clarification of the Schedule" filed on 13 February 2004 by counsel on behalf of Appellant Ngeze ("Motion"), which requests a clarification of the schedule for filing the appellant's brief;

CONSIDERING that although motions for clarification will be granted only in exceptional circumstances,¹ a clarification of the briefing schedule for all three appellants may facilitate the efficient administration of justice;

NOTING the "Decision on Motions for an Extension of Time to File Appellants' Notices of Appeal and briefs" of 19 December 2003 ("First Decision"), which (i) ordered the Appellants Barayagwiza and Nahimana to file their Notices of Appeal no later than thirty days from the communication of the Judgement in the French language and to file their Appellants' Briefs no later than seventy-five days from the communication of the Judgement in the French language; and (ii) which granted the relief sought in the motion filed by counsel on behalf of Ngeze,² and ordered the Appellant Ngeze to file his Notice of Appeal no later than 9 February 2004 and to file his Appellant's Brief no later than seventy-five days thereafter in accordance with Rule 109;

NOTING the subsequent "Decision on Ngeze's Motion for an Additional Extension of Time to File his Notice of Appeal and Brief" of 6 February 2004 ("Second Decision"), which granted the further extension requested by the Appellant Ngeze personally,³ and ordered the Appellant Ngeze to file his Notice of Appeal no later than thirty days from the communication of the Judgement in the French language and to file his Appellant's Brief no later than seventy-five days from the communication of the Judgement in the French language;

NOTING that on 7 February 2004, Counsel for Ngeze filed a Notice of Appeal in accordance with the First Decision;

¹ *Prosecutor v. Dragan Nikolić*, IT-94-2-AR73, Decision on Motion Requesting Clarification, 6 August 2003.

² Motion of the Ngeze Defence seeking an extension of time for filing the Notice of Appeal, 19 December 2004.

³ Motion seeking a further extension of time for filing the notice of appeal, 5 February 2004.

98/H

NOTING FURTHER the "Notification de la demande d'annulation du Jugement rendu le 3 décembre 2003 par la Chambre I dans l'affaire 'Le Procureur contre Ferdinand Nahimana, Jean-Bosco Barayagwiza et Hassan Ngeze, ICTR-99-52-T'" filed personally by Appellant Barayagwiza on 3 February 2004 ("Barayagwiza Motion for Annulment"), in which Appellant Barayagwiza seeks the annulment of the Judgement;

NOTING FURTHER the "Prosecution Response to Barayagwiza Motion for Annulment of Judgement Rendered on 3 December 2003" filed on 26 February 2004, in which the Prosecution argues that the Motion for Annulment should be dismissed because the Appeals Chamber is without jurisdiction to deal the issues raised therein by way of interlocutory motion on appeal and to order that the issues be re-framed in Notice of Appeal pursuant Rule 108 of the Rules;

CONSIDERING that Rules 108 and 111 of the Rules of Procedure and Evidence ("Rules"), the Practice Direction on Formal Requirements for Appeals from Judgement of 16 September 2002, and the Practice Direction on the Length of Briefs and Motions on Appeal of 16 September 2002 contemplate that a party will file a *single* Notice of Appeal and a *single* Appellant's Brief within the page and time limits prescribed therein;

CONSIDERING that the Second Decision granted a further extension from the time limit for filing the single Notice of Appeal and the single Appellant's Brief of Appellant Ngeze;

CONSIDERING that although the Ngeze Notice of Appeal was filed before the time limit set in the Second Decision, the Appellant Ngeze may seek to vary the grounds of appeal by showing good cause pursuant to Rule 108 of the Rules, and that good cause has been shown by the apparent failure of communication between the Appellant Ngeze and counsel regarding the requests for extensions and the filing of the Notice of Appeal;

CONSIDERING FURTHER that the Barayagwiza Motion for Annulment challenges the legal and procedural basis of the Judgement and will therefore be treated as the Appellant's Notice of Appeal pursuant to Rule 108 of the Rules;

CONSIDERING that the Appellant Barayagwiza may seek to vary his grounds of appeal by showing good cause pursuant to Rule 108 of the Rules and that good cause has been demonstrated by the fact Appellant Barayagwiza filed his Motion for Annulment without knowing that it would be considered as a Notice of Appeal;

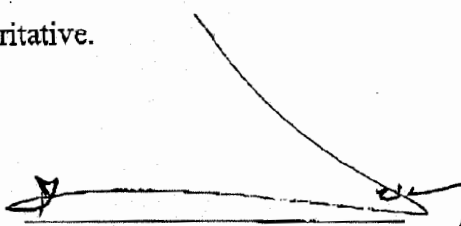
97/H

HEREBY ORDERS

1. Each Appellant to file his single Notice of Appeal no later than thirty days from the communication of the Judgement in the French language;
2. Each Appellant to file his single Appellant's Brief no later than seventy-five days from the communication of the Judgement in the French language;
3. That the Appellants' Ngeze and Barayagwiza may, if they so wish, amend the Notices of Appeal (including the Motion for Annulment) filed before 2 March 2004 at any time prior to the deadline for filing the Notice of Appeal set out in paragraph 1 above.

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

Dated this 2nd day of March 2004,
At The Hague, The Netherlands.


Judge Inés Mónica Weinberg de Roca
Pre-Appeal Judge

[Seal of the International Tribunal]

