

ICTR-99-52-A
1 SEPTEMBER 2004
(1200/H-1197/H)

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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

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

Registrar: Mr. Adama Dieng

Decision of: 31 August 2004

ICTR Appeals Chamber
Date: 01 September 04
Action: PG
Copied To: Concerned Jud

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ICTR
JUDICIAL RECORDS/ARCHIVES
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Ferdinand NAHIMANA
Jean-Bosco BARAYAGWIZA
Hassan NGEZE
(Appellants)

Parties, Judicial Arch
LOs, LSS
[Signature]

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-99-52-A

DECISION ON FERDINAND NAHIMANA'S SECOND MOTION FOR AN EXTENSION OF PAGE LIMITS FOR APPELLANT'S BRIEF

Counsel for the Appellants

Mr. Jean-Marie Biju-Duval
Mr. Bharat Chadha

Counsel for the Prosecutor

Mr. James Stewart
Ms. Melanie Werrett

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: ROSETTE NUZIERO-MORRISON
SIGNATURE: [Signature] DATE: 01/09/04

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 “Tribunal”, respectively);

BEING SEISED of the “*Requête de la défense aux fins de dépôt du mémoire d’appel révisé*” filed 8 July 2004 (Motion), in which Ferdinand Nahimana (Appellant) asks that the Appeals Chamber, rather than the Pre-Appeal Judge, consider his request to file an Appellant’s Brief in excess of the page limits prescribed in the Practice Direction on the Length of Briefs and Motions on Appeal dated 16 September 2002 (“Practice Direction on Length of Briefs”), submitting *inter alia* that it would be impossible to reduce the length of the Appellant’s Brief any further without abandoning grounds of appeal, which would affect the Appellant’s right to a full defence guaranteed by Article 20 of the Statute and which would be contrary to counsel’s ethical obligations to his client;

RECALLING the “Decision on Ferdinand Nahimana’s Motion for an Extension of Page Limits for Appellant’s Brief and on Prosecution’s Motion Objecting to Nahimana’s Appellant’s Brief,” rendered by the Pre-Appeal Judge on 24 June 2004 (“Pre-Appeal Judge’s Decision”), in which the Pre-Appeal Judge rejected a motion for an extension of page limits and ordered the Appellant to “re-file his Appellant’s Brief in strict compliance with the Rules and the Practice Directions no later than 9 July 2004”;¹

NOTING the Appellant’s Brief consisting of 174 pages plus 12 pages of annexes, which was unsuccessfully faxed to the Registry along with the Motion on 8 July 2004, and which was re-transmitted on 20 July 2004;²

NOTING the “Prosecutor’s Response” filed 23 July 2004 (“Response”), in which the Prosecution objects to the filing of the Appellant’s Brief in its present form, arguing that it is merely a repeated attempt to file an oversized brief that does not comply with either the Pre-Appeal Judge’s Decision or the Practice Direction on Length of Briefs;

NOTING the “*Réplique de la Défense a la réponse du procureur visant a voir rejeter la requête de la défense aux fins de dépôt du mémoire d’appel révisé*” filed 30 July 2004 (“Reply”);

¹ Pre-Appeal Judge’s Decision, p. 3.

² In the original transmission, the Registry received 173 of 186 pages.

CONSIDERING that Rule 108(H) of the Rules of Procedure and Evidence of the International Tribunal ("Rules") permits the Appeals Chamber to exercise any of the functions of the Pre-Appeal Judge, and that the Pre-Appeal Judge has referred this matter to the attention of the full bench;

CONSIDERING that although the ten-day time limit for filing a response prescribed in paragraph 11 of the Practice Direction on Procedure for the Filing of Written Submission in Appeal Proceedings before the Tribunal of 16 September 2002 ("Practice Direction on Procedure") ordinarily runs from the filing of a motion, it was reasonable in this case for the Prosecution to wait for the filing of the full version of the Appellant's Brief on 20 July 2004 before filing a response, and that therefore the Appeals Chamber recognizes the Response as validly filed;

CONSIDERING that although the Appellant's Reply was filed on 30 July 2004, after the expiry on 27 July 2004 of the four-day period for filing a reply prescribed in paragraph 12 of the Practice Direction on Procedure, the late filing of the Appellant's Reply did not delay the proceedings in this case and it is in the interests of justice to recognize it as validly filed;

CONSIDERING that paragraph 1(a) of the Practice Direction on Length of Briefs provides that "the brief of an appellant on appeal from a final judgement of a Trial Chamber will not exceed 100 pages or 30,000 words, whichever is greater" and that paragraph 5 of the Practice Direction on Length of Briefs requires a party seeking an extension of the page limit to "provide an explanation of the exceptional circumstances that necessitate the oversized filing";

CONSIDERING that, although this appeal raises important legal and factual issues adjudicated in a long Judgement, the Appellant has not demonstrated exceptional circumstances which distinguish this case and which necessitate an extension of the page limits prescribed in the Practice Direction on Length of Briefs;

CONSIDERING that the effectiveness of an appellant's brief does not depend on its length but on the clarity and persuasiveness of the arguments and that the Appeals Chamber may, if it considers it necessary, request elaboration of a ground of appeal in a further written brief or during oral argument of the appeal;

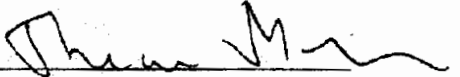
FOR THE FOREGOING REASONS,

HEREBY DISMISSES the Motion; and

ORDERS Appellant Nahimana to re-file his Appellant's Brief in strict compliance with the Rules and the Practice Directions no later than 30 September 2004.

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

Dated this 31st day of August 2004,
At The Hague,
The Netherlands.


Theodor Meron
Presiding Judge

[Seal of the International Tribunal]

