

ICTR-99-52-A

17 May 2005

(2916/H-2912/H)

2916/H
RMMUNITED NATIONS
NATIONS UNIESTribunal Pénal International pour le Rwanda
International Criminal Tribunal for RwandaIN THE APPEALS CHAMBER

Before:

Judge Theodor Meron, Presiding
Judge Mohamed Shahabuddeen
Judge Florence Mumba
Judge Fausto Pocar
Judge Inés Mónica Weinberg de RocaReceived
17 May 2005

Registrar:

Mr. Adama Dieng

Decision of:

17 May 2005

Concerned Judges,
Parties, Judicial Archiv
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JUDICIAL ARCHIVESFerdinand NAHIMANA
Jean-Bosco BARAYAGWIZA
Hassan NGEZE
(Appellants)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-99-52-A

**DECISION ON "APPELLANT JEAN-BOSCO BARAYAGWIZA'S URGENT MOTION
FOR LEAVE TO HAVE FURTHER TIME TO FILE THE APPEALS BRIEF AND THE
APPEAL NOTICE"**

Counsel for the Appellant, Jean-Bosco Barayagwiza

D. Peter Herbert

Counsel for the ProsecutorJames Stewart
Neville Weston
Abdoulaye Seye

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: ROSETTE MUZIGO-MORRISON	
SIGNATURE: [Signature]	DATE: 17 May 05

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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 ("Tribunal");

NOTING the "Acte d'appel modifié" submitted by Appellant Jean-Bosco Barayagwiza ("Appellant") on 27 April 2004¹ and the "Mémoire d'appel" submitted by Mr. Barletta-Caldarera, former lead counsel for Appellant, on 25 June 2004;

BEING SEISED OF the "Appellant Jean-Bosco Barayagwiza's Urgent Motion for Leave to Have Further Time to File the Appeals Brief and the Appeal Notice", filed 4 May 2005 ("Motion"),² in which the Appellant requests that he be allowed to file a new Appellant's Brief of up to 300 pages³ and prays the Appeals Chamber to:

- (a) Authorise the Appellant to file his modified Notice of Appeal on 1st [of] May 2006;
- (b) Authorise the Appellant to file his Brief 75 days after the filing of the Notice of Appeal;
- (c) Order the Registrar to allow Appellant's defence counsel to make at least six visits to Arusha;
- (d) Order the Registrar to authorise privileged meetings at the UNDF between the Appellant and the Legal Assistants without the presence of any counsel and grant them at least four visits to Arusha;
- (e) Order the Registrar to instruct the UNDF Commanding Officer to allow the Appellant to receive and conduct, without interruption, a telephone conference with the Counsel every Monday;
- (f) Order the Registrar to instruct the UNDF Commandant to expedite legal correspondence between the Appellant and his Defence team, especially via a fax facility that is easily accessible to him;
- (g) Order the Registrar to facilitate correspondence between the Appellant and his Counsel by secure e-mail;
- (h) Issue other orders or directions deemed necessary to expedite the preparation of the Appellant's Notice of Appeal;⁴

NOTING the "Prosecutor's Response to 'Appellant Jean-Bosco Barayagwiza's Urgent Motion for Leave to Have Further Time to File the Appeals Brief and the Appeal Notice'", filed 5 May 2005 ("Response"), in which the Prosecution objects to the Appellant's requests for an extension of time and an extension of length of the Appellant's Brief;

NOTING the "Appellant's Response [sic] to Prosecutor's Response to the Appellant Jean-Bosco Barayagwiza's Urgent Motion for Leave to Have further Time to File the Appeals Brief and the Appeal Notice", filed 13 May 2005 ("Reply");

¹ "Notification sur la détermination de mon Acte d'appel", filed 5 May 2004.

² The Motion presumably replaces the "Appellant Jean-Bosco Barayagwiza's Urgent Motion for Leave to Have Further Time to File the Appeals Brief and the Appeal Notice", filed 2 May 2005.

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FINDING that, although the Reply was submitted out of time, good cause has been shown for this since it appears that the Appellant did not receive the Response before 9 May 2005;

As to the Request for an Extension of the Length of the Appellant's Brief

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 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;

FINDING 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;⁵

As to the Request for an Extension of Time

CONSIDERING that Counsel for the Appellant was assigned by the Registrar on 30 November 2004, that the Appellant challenged this decision,⁶ that this challenge was rejected by the Appeals Chamber,⁷ that the Appellant requested the Appeals Chamber to reconsider its rejection of his

³ Motion, p. 16.

⁴ Motion, p. 17.

⁵ In this connection, the Appeals Chamber is not convinced by the Appellant's argument that his case is more complex than that of his co-appellants because "the Appellant has had three judgements: the first connected with the Appeals Chamber Decision of 3/11/1999; the second, with the Appeals Chamber decision of 31/3/2000; and the third with the Judgement of the trial itself on 3/12/2003" (Motion, pp. 11-12), as the Appeals Chamber considers that the matters decided in its previous decisions need not be re-examined. Further, the Appeals Chamber notes that the requests for extension of the length of the briefs submitted by the co-appellants were also denied: "Decision on Ngeze's Motion for an Extension of Page Limits for Appeals Brief", issued 2 March 2004; "Decision on Ngeze's Motion for Reconsideration of the Decision Denying an Extension of Page Limits [of] his Appellant's Brief", issued 11 March 2004; "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", issued 24 June 2004; "Decision on Ferdinand Nahimana's Second Motion for an Extension of Page Limits for Appellant's Brief", issued 31 August 2004.

⁶ "*Recours très urgent contre le refus du Greffier de commettre M. Richard Harvey comme mon Conseil principal en exécution de la décision de la Chambre d'appel du 03[sic] novembre 2004*", filed on 6 December 2004.

⁷ "Decision on Jean-Bosco Barayagwiza's Motion Concerning the Registrar's Decision to Appoint Counsel", 19 January 2005.

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challenge,⁸ that the Appeals Chamber rejected this request for reconsideration,⁹ that the Appellant was only able to meet for the first time with assigned Counsel at the end of March 2005, and that the Appellant's Legal Team has not been completely assigned yet;¹⁰

CONSIDERING that the amount of material to be reviewed by Counsel is quite substantial and that the other appellants in this case have benefited from significant extensions of time to file their Notices of Appeal and their Appellant's Briefs;¹¹

FINDING that a 4-month period of time, starting from the moment the Appellant's Legal Team is complete, should be sufficient to allow the preparation of an amended Notice of Appeal and of a new Appellant's Brief;¹²

As to the Request for Additional Travel to Arusha

CONSIDERING that the Registrar has the primary responsibility for the administration of the legal aid scheme in general, and in particular for authorising travel expenses;¹³

CONSIDERING that the Directive on the Assignment of Counsel provides a procedure for the settlement of disputes¹⁴ and that if, after having gone through this procedure, the Appellant still considers that his right to fair proceedings is infringed by restrictions on the travel of his legal team, he can raise the matter with the Appeals Chamber, which has the statutory duty to ensure the fairness of the proceedings on appeal;¹⁵

⁸ "Demande de réexamen de la décision de la Chambre d'Appel du 19 janvier 2005 rejetant mon 'Recours très urgent contre le refus du Greffier de commettre M. Richard Harvey comme mon Conseil principal en exécution de la décision de la Chambre d'appel du 03[sic] novembre 2004'", filed 25 January 2005.

⁹ "Decision on Jean-Bosco Barayagwiza's Request for Reconsideration of Appeals Chamber Decision of 19 January 2005", filed 4 February 2005.

¹⁰ Two legal assistants were assigned on 30 March 2005, but Co-Counsel has not yet been assigned.

¹¹ As to Appellant Ferdinand Nahimana: "Decision on Motions for an Extension of Time to File Appellant's Notices of Appeal and Briefs", issued 19 December 2003; "Decision on Ferdinand Nahimana's Second Motion for an Extension of Page Limits for Appellant's Brief", issued 31 August 2004, p. 4.

As to Appellant Hassan Ngeze: "Decision on Motions for an Extension of Time to File Appellant's Notices of Appeal and Briefs", issued 19 December 2003; "Decision on Ngeze's motion for an Additional Extension of Time to File His Notice of Appeal and Brief", issued 6 February 2004; "Decision on Ngeze's Motion for Clarification of the Schedule and Scheduling Order", issued 2 March 2004; "Decision on Hassan Ngeze's Motion for an Extension of Time", issued 2 December 2004; "Decision on Hassan Ngeze's Motion for an Extension of Time", issued 4 February 2005.

¹² Nevertheless, the Appeals Chamber emphasizes that Counsel should not wait for the assignment of Co-counsel before starting work on the Appellant's Brief and Notice of Appeal.

¹³ See in particular Articles 27 and 28 of the Directive on the Assignment of Counsel, adopted 9 January 1996, as modified.

¹⁴ Article 30. The Appellant should file a formal complaint with the Registrar, explaining why funding for additional travel is necessary. The Registrar shall then make a decision after consulting the President and, if necessary, the Advisory Panel, on an equitable basis.

¹⁵ "Decision on Appellant Ferdinand Nahimana's Motion for Assistance from the Registrar in the Appeals Phase", issued 3 May 2005, para. 4. This decision was reaffirmed on 6 May 2005 ("Further Decision on Appellant Ferdinand Nahimana's Motion for Assistance from the Registrar in the Appeals Phase").

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As to the Requests Relating to Communications Between the Appellant and his Legal Team

CONSIDERING that, pursuant to Rule 3 of "The Rules Covering the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal" ("Rules on Detention"), the Commanding Officer of the United Nations Detention Unit has the sole responsibility for all aspects of the daily management of the Detention Unit;¹⁶

CONSIDERING that Rule 65 of the Rules on Detention provides that "[e]ach detainee shall be entitled to communicate fully and without restraint with his Defence Counsel" and that these communications shall be privileged;

CONSIDERING that, if the Appellant disagrees with the interpretation of this rule given by the Commanding Officer, he may make a written complaint to the Registrar who shall forward it to the President;¹⁷

CONSIDERING that, in the present case, it does not appear that this procedure was followed;

CONSIDERING that, if after having gone through the prescribed procedure, the Appellant still considers that his right to fair proceedings is being infringed by the alleged restriction, he can raise the matter with the Appeals Chamber which, as already noted, has the statutory duty to ensure the fairness of the proceedings on appeal;¹⁸

HEREBY

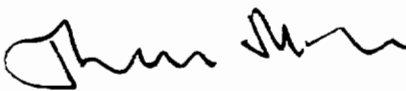
ORDERS the Appellant to file any amended Notice of Appeal and his new Appellant's Brief not later than 4 months after Co-Counsel has been assigned;

DISMISSES the Motion in all other respects.

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

Dated this 17th day of May 2005,
At The Hague, The Netherlands.




Theodor Meron
Presiding Judge

¹⁶ Rule 3 of the Rules on Detention.

¹⁷ Rule 83 of the Rules on Detention.

¹⁸ "Decision on Appellant Ferdinand Nahimana's Motion for Assistance from the Registrar in the Appeals Phase", issued 3 May 2005, para. 7. This decision was reaffirmed on 6 May 2005 ("Further Decision on Appellant Ferdinand Nahimana's Motion for Assistance from the Registrar in the Appeals Phase").