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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-99-52-A
06 September 2005
(4928/H-4923/H)

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Andresia Vaz, Pre-Appeal Judge
Registrar: Mr. Adama Dieng
Decision of: 6 September 2005

2005 SEP -7 P 2:59
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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
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SIGNATURE: *[Signature]* DATE: 06/09/05

**DECISION ON CLARIFICATION OF TIME LIMITS AND ON APPELLANT
BARAYAGWIZA'S EXTREMELY URGENT MOTION FOR EXTENSION
OF TIME TO FILE HIS NOTICE OF APPEAL AND HIS APPELLANT'S
BRIEF**

Counsel for the Appellant
Mr. Donald Herbert
Mr. Tanoo Mylvaganam

Office of the Prosecutor
Mr. James Stewart
Mr. Neville Weston

Counsel for Ferdinand Nahimana
Mr. Jean-Marie Biju-Duval
Mrs. Diana Ellis

Counsel for Hassan Ngeze
Mr. Bharat B. Chadha
Mr. Behram Shroff

ICTR Appeals Chamber
Date: 06 September 2005
Action: R.J.
Copied To: Concerned Judges, Parties,
Judicial Archives, LAs, LSS.
[Signature]

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I, Andresia Vaz, 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 1994 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively), and Pre-Appeal Judge in this case,¹

NOTING the "Decision on Appellant Jean-Bosco Barayagwiza's Urgent Motion for Leave to Have Further Time to File the Appeals Brief and the Appeal Notice", rendered on 17 May 2005 ("Decision of 17 May 2005" and "Appellant", respectively), in which the Appeals Chamber found, with regard to the request for an extension of time 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";²

NOTING that in the same decision, the Appeals Chamber ordered "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";³

NOTING the letter of 10 August 2005 addressed by the Appellant to the Pre-Appeal Judge in which the Appellant requests the Pre-Appeal Judge to confirm that the filing of the Appellant's Brief is due on 12 October 2005;

NOTING the Prosecution's "Response to letter of 10 August 2005", dated 16 August 2005 in which the Prosecution objects to the Appellant's request and submits that 23 September 2005 should be the date of filing of the Appellant's Brief;

NOTING the letter of 18 August 2005 in which the Appellant requests the President of the Appeals Chamber to confirm that the Appellant's Brief is due on 12 October 2005 and otherwise requests a status conference;

CONSIDERING that the operative part of the Decision of 17 May 2005 clearly states that the four-month period starts from the appointment of Co-Counsel;⁴

¹ Order of the Presiding Judge Designating the Pre-Appeal Judge, 19 August 2005 and Corrigendum to the Order of the Presiding Judge Designating the Pre-Appeal Judge, 25 August 2005.

² Decision of 17 May 2005, p. 4.

³ *Ibid.*, p. 5.

⁴ Since the issue of the appointment of a Third Legal Assistant had not been raised by the Appellant prior to the Decision of 17 May 2005, the Appeals Chamber considered in this decision that the only member to be appointed to

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CONSIDERING, however, that the potential inconsistency between the expressions “from the moment the Appellant’s Legal Team is complete” and “after Co-Counsel has been assigned” in the Decision of 17 May 2005 might have created doubts as to the starting date of the four-month period;

FINDING that, in light of this inconsistency, the four-month period should run from the moment the Appellant’s Third Legal Assistant was appointed, to wit 12 June 2005;

BEING SEIZED OF the “Appellant Jean-Bosco Barayagwiza’s Extremely Urgent Motion for Leave to Have Further Time to File the Appeals Brief and the Appeal Notice”, filed confidentially on 16 August 2005 (“Motion”),⁵ in which Jean-Bosco Barayagwiza requests an extension of time to file his Notice of Appeal and Appellant’s Brief “on a date no later than the 12th of February 2006”⁶ because of (i) unforeseen obstacles he encountered despite his efforts to comply with the timetable, specifically the difficulties related to the late appointment of Lead Counsel and of his third assistant – the latter being the only member of the Legal Team speaking both Kinyarwanda and French⁷ – and to the delay in obtaining relevant material and documents from the Registry and former Counsel,⁸ and (ii) specific difficulties such as the complexity of the case,⁹ the seriousness of the charges faced¹⁰ and the unexpected unavailability of Lead Counsel due to holiday schedule and professional obligations relating to terrorist attacks in London;¹¹

NOTING the “Prosecutor’s Response to ‘Appellant Jean-Bosco Barayagwiza’s Extremely Urgent Motion for Leave to Have Further Time to File the Appeals Brief and the Appeal Notice’”, filed on 23 August 2005 (“Response”),¹² in which the Prosecution opposes the Motion and submits that the arguments raised by the Appellant in his Motion have either been considered during the Status

complete the Appellant’s Legal Team was Co-Counsel. This is confirmed by footnotes 10 and 12 of the Decision of 17 May 2005.

⁵ The Appeals Chamber reminds the parties that pursuant to the Practice Direction on the Length of Briefs and Motions on Appeal, issued 16 September 2002 as modified, the motions are limited to 10 pages or 3,000 words. Paragraph 5 of the Practice Direction on Length of Briefs and Motions on Appeal requires a party seeking an extension of the page limit to “provide an explanation of the exceptional circumstances that necessitate the oversized filing”. The Appeals Chamber notes that the Motion exceeds such a limit and that no good cause has been shown to justify such enlargement. The Appeals Chamber will consider the Motion but urges the Appellant to abide by the Practice Direction on the Length of Briefs and Motions on Appeal and warns that it is entitled to ignore what goes beyond the relevant limit.

⁶ While the Appellant puts forward two other requests regarding adequate time and facilities and “any further order or direction which the [...] Appeals Chamber may deem necessary,” the Appeals Chamber considers that they are all related to the request for an extension of time.

⁷ Motion, paras. 17, 30, 39, 40.

⁸ Motion, paras. 19-25, 38, 41.

⁹ Motion, paras. 31, 33-37, 56-62.

¹⁰ Motion, paras. 48-55.

¹¹ Motion, paras. 45, 46.

¹² The Appeals Chamber notes that the Response also exceeds the 10 pages or 3,000 word limit set in the Practice Direction on the Length of Briefs and Motions on Appeal. However, the Appeals Chamber notes that the Response expressly addressed such enlargement. The Appeals Chamber further deems that, since it has considered the entirety of

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Conference on 1 April 2005 and in the Decision of 17 May 2005¹³ or are irrelevant to the issue of extension of time,¹⁴ and that further delay would be manifestly unfair to co-appellants Ferdinand Nahimana and Hassan Ngeze ("Co-Appellants") because the Appellant will have been granted more time than the Co-Appellants to prepare his Appellant's Brief, and that it would unduly delay the appeals hearings;¹⁵

NOTING the "Appellant's Preliminary Response to Prosecutions [sic] Reply to Appellant's Request for Further Time to Lodge Appeal Brief Dated 16th August 2005", filed on 29 August 2005 ("Reply"), in which the Appellant reiterates the arguments put forward in the Motion and adds that the Co-Appellants' Legal Teams were placed in a better situation than the Appellant's Legal Team "to fulfil their function within the prescribed time frame";¹⁶

NOTING ALSO that in the Reply, "[a] request is made for a further five days in which to serve any additional relevant matters";¹⁷

NOTING the "Prosecutor's Urgent Motion for an Order that the "Appellant's Preliminary Response to Prosecution Reply [sic] to Appellant's Request to Appoint an Investigator" and the "Appellant's Preliminary Response to Prosecution Reply [sic] to Appellant's Request for Further Time to Lodge Appeal Brief dated 16th August 2005' Be Deemed as the Actual Replies of the Appellant And For Rejection of the Requests for an Extension of Time to File Additional Replies", filed on 2 September 2005, in which the Prosecution requests "the Appeals Chamber [...] to consider the filings as the actual replies and to reject the request for extension of time to file further replies";¹⁸

CONSIDERING that, if the Appellant sought an extension of time to file his reply, he should have filed a motion to this effect rather than file a reply and request therein a further delay;

the Motion, it will also consider all of the Response but also recalls that the warning it addressed to the Appellant also applies to the Prosecution.

¹³ Response, paras. 8, 11-14, 25, 27, 33.

¹⁴ Response, paras. 4, 23.

¹⁵ Response, paras. 37-39.

¹⁶ In support of this argument, the Appellant submits that the Co-Appellants' Legal team were familiar with the evidence and Tribunal's jurisprudence due to (i) their previous participation in trial proceedings in this case; (ii) Hassan Ngeze's Counsel's seniority as duty Counsel at the ICTR and (iii) Ferdinand Nahimana's Counsel fluency in French. He also contends that unlike the Co-Appellants, the Appellant is currently challenging the quality of representation that he received which requires careful consideration and additional investigation. See, Reply, paras. 19-23.

¹⁷ Reply, para. 1.

¹⁸ Prosecutor's Urgent Motion for an Order that the "Appellant's Preliminary Response to Prosecution Reply [sic] to Appellant's Request to Appoint an Investigator" and the "Appellant's Preliminary Response to Prosecution Reply [sic] to Appellant's Request for Further Time to Lodge Appeal Brief dated 16th August 2005' Be Deemed as the Actual Replies of the Appellant And For Rejection of the Requests for an Extension of Time to File Additional Replies, 2 September 2005, para. 3.

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CONSIDERING that it is in the interest of justice to avoid any further delay to the proceedings in this case;

CONSIDERING ALSO that one of the purposes of appointing a Co-Counsel is to ensure legal representation for the Appellant even when Lead Counsel is temporarily unavailable and that pursuant to the Code of Professional Conduct for Defence Counsel the Counsel and Co-Counsel are subject to the same duties, rights and obligations;¹⁹

CONSIDERING that the Reply addresses the arguments of the Prosecution in its Response;

FINDING, therefore, that the Appellant need not be given a further five days to improve his Reply;

NOTING that Rule 116 of the Rules of Procedure and Evidence ("Rules") provides that the "Appeals Chamber may grant a motion to extend a time limit upon a showing of good cause";

CONSIDERING that the Appellant has already been granted a significant extension of time in the Decision of 17 May 2005;²⁰

CONSIDERING that the time limit pursuant to Rule 111 of the Rules already takes into consideration the complexity of cases that are litigated before the Appeals Chamber of the Tribunal;

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CONSIDERING that in the Decision of 17 May 2005, due consideration was given by the Appeals Chamber to the difficulties arising from the appointment of new Counsel and subsequent reorganization of the Legal Team, the seriousness of the charges, the substantial amount of material to be reviewed by Counsel and the significant extensions of time the Co-Appellants have been granted to file their Notices of Appeal and their Appellant's Briefs;²²

CONSIDERING ALSO that a Counsel, when accepting assignment as Lead Counsel in a case before the Tribunal, is under an obligation to give absolute priority to observe the time limits as foreseen in the Rules;²³

CONSIDERING that the unexpected unavailability of Lead Counsel due to holiday schedule and other professional duties does not amount to good cause within the meaning of Rule 116 of the Rules;²⁴

¹⁹ Code of Professional Conduct for Defence Counsel, Article 1(1).

²⁰ Decision of 17 May 2005, p. 5.

²¹ See *Emmanuel Ndingabahizi v. The Prosecutor*, ICTR-01-71-A, Decision on « Requête Urgente aux Fins de Prorogation de Délai pour le Dépôt du mémoire en Appel », 5 April 2005 ("Ndingabahizi Decision"), p. 3.

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PURSUANT TO Rule 116 of the Rules;

HEREBY

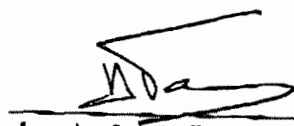
DENY the Motion;

ORDER the Appellant to file his Notice of Appeal and his Appellant's Brief not later than 12 October 2005;

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

Done this 6th day of September 2005
At The Hague,
The Netherlands.




Judge Andresia Vaz
Pre-Appeal Judge

[Seal of the Tribunal]

²² Decision of 17 May 2005, pp. 3, 4 (footnotes omitted).

²³ *Ndindabahizi* Decision p. 3.

²⁴ As explained above, one of the reasons for appointing Co-Counsel is to ensure the continued representation of the Appellant even when Lead Counsel is temporarily unavailable.