

5626/H
(TV)

Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-99-52-A
14 November 2005
(5626/H - 5624/H)

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Mohamed Shahabuddeen
Judge Florence Ndepele Mwachande Mumba
Judge Fausto Pocar
Judge Andrésia Vaz

Registrar: Mr. Adama Dieng

Order of: 14 November 2005

ICTR Appeals Chamber

Date: 14 November 2005

Action: R.J.

Copied To: Sec. Pres. of Senate +
Concerned SLOs, LDs, ALOS

Ferdinand NAHIMANA
Jean-Bosco BARAYAGWIZA
Hassan NGEZE
(Appellants)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-99-52-A

ORDER CONCERNING APPELLANT JEAN-BOSCO BARAYAGWIZA'S FILINGS OF 7 NOVEMBER 2005

Counsel for Jean-Bosco Barayagwiza

Mr. Donald Herbert
Mr. Tanoo Mylvaganam

Counsel for Ferdinand Nahimana

Mr. Jean-Marie Biju-Duval
Ms. Diana Ellis

Counsel for Hassan Ngeze

Mr. Bharat B. Chadha
Mr. Behram Shroff

Office of the Prosecutor

Mr. James Stewart
Mr. Neville Weston
Mr. 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: KDEFI... KIMELID... A... AFANDE...

SIGNATURE: [Signature] DATE: 14/11/2005

5625/4

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"),

RECALLING that, pursuant to Rule 54 of the Rules of Procedure and Evidence ("Rules") read together with Rule 107 of the Rules, the Appeals Chamber may, *proprio motu*, issue such orders as may be necessary for the purposes of the preparation or conduct of the proceedings before it;

RECALLING ALSO that, pursuant to the Practice Direction on Formal Requirements for Appeals from Judgement, "[w]here a party fails to comply with the requirements laid down in this Practice Direction (...) the Appeals Chamber may, within its discretion, decide upon an appropriate sanction", which can include an order for clarification or re-filing, rejection of a filing or dismissal of submissions therein;¹

NOTING that the Appellant Jean-Bosco Barayagwiza ("Appellant") has benefited from a substantial extension of time to file his Appellant's Brief and any amended Notice of Appeal;²

NOTING the "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", issued on 6 September 2005 ("Decision on Extension of Time"), in which the Appeals Chamber ordered the Appellant, *inter alia*, to file his Notice of Appeal and Appellant's Brief no later than 12 October 2005³;

NOTING that on 12 October 2005, the Appellant filed both his "Amended Notice of Appeal" and "Appellant's Appeal Brief";

NOTING that on 7 November 2005, the Appellant filed an "Amended Notice of Appeal" to which was appended a document entitled "Corrections to Appeal Brief", and a confidential "Appellant's Appeal Brief" ("Filings of 7 November 2005");

NOTING the "Extremely Urgent Prosecutor's Motion For Rejection of the Appellant Jean-Bosco Barayagwiza's Amended Notice of Appeal and Appellant's Brief dated 3 November 2005, and for

¹ Practice Direction on Formal Requirements for Appeals from Judgement, issued 4 July 2005 ("Practice Direction"), para. 13.

² *Prosecutor v. Ferdinand Nahimana et al.*, 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'", 17 May 2005, p. 5. In this decision, the Appeals Chamber granted the Appellant four months after co-Counsel had been assigned to file any amended Notice of Appeal and his new Appellant's Brief.

³ Decision on Extension of Time, p. 6.

5624/H

an Order to expunge the same from the record", filed on 9 November 2005 ("Prosecution" and "Motion", respectively);

CONSIDERING that the Appellant has not referred to any provision of the Statute, Rules or Directives that would entitle him to file a further Notice of Appeal and Appellant's Brief after the prescribed time limit;

CONSIDERING that, absent leave of the Appeals Chamber, the parties may not vary their grounds of appeal outside the periods prescribed for filing their Notice of Appeal;⁴

CONSIDERING that the Appellant has not filed a motion requesting the Appeals Chamber to grant leave to submit the Filings of 7 November 2005 and demonstrated good cause for the Appeals Chamber to authorise them;⁵

PURSUANT to Rules 54 and 107 of the Rules:

HEREBY

REJECTS the Filings of 7 November 2005;

DIRECTS the Registry to return the Filings of 7 November 2005 to the Appellant and to expunge them from the record;

RECALLS that the forty-day time-period for the Prosecution to file its response started running from 12 October 2005; and

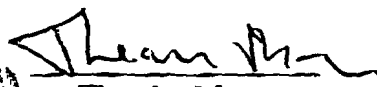
FINDS that the Motion is, therefore, rendered moot.

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

Dated this 14th day of November 2005,
At The Hague, The Netherlands



[Seal of the Tribunal]


Theodor Meron
Presiding Judge

⁴ Rule 108 of the Rules; Practice Direction, paras. 2, 3.

⁵ *Ibid.*