



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Andrézia Vaz, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 6 December 2005

Ferdinand NAHIMANA
Jean-Bosco BARAYAGWIZA
Hassan NGEZE
(Appellants)
v.
THE PROSECUTOR
(Respondent)

Case No. ICTR-99-52-A

**DECISION ON JEAN-BOSCO BARAYAGWIZA’S AND HASSAN NGEZE’S
URGENT MOTIONS FOR EXTENSION OF PAGE AND TIME LIMITS FOR
THEIR REPLIES TO THE CONSOLIDATED PROSECUTION RESPONSE**

Counsel	for	Jean-Bosco	Barayagwiza	Office	of	the	Prosecutor
Mr.	D.	Peter	Herbert	Mr.	James	K.	Stewart
Mr.	Tanoo		Mylvaganam	Mr. Neville	Weston		
Counsel	for	Hassan	Ngeze				
Mr.	Bharat	B.	Chadha				
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Counsel	for	Ferdinand	Nahimana				
Mr.	Jean-Marie		Biju-Duval				
Ms. Diana Ellis							

I, ANDRÉZIA 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]

BEING SEIZED OF “The Appellant Jean-Bosco Barayagwiza’s Extremely Urgent Motion for an Extension of Page Limits to the Defence Reply to the Consolidated Prosecution Response and an Extension of Time for Filing” filed by Jean-Bosco Barayagwiza on 21 November 2005 (“Appellant Barayagwiza” and “Barayagwiza’s Motion”, respectively), in which he seeks “an extension of pages for the Appellant’s reply to 50 pages or 10,000 words, whichever is greater; and [...] an extension of time to file the Defence reply to the Respondent’s brief of a period of 21 days”,^[2] or “an extension of 7 days”,^[3]

BEING ALSO SEIZED OF “The Appellant Hassan Ngeze’s Extremely Urgent Motion for an Extension of Time for Filing the Appellant’s Reply Brief under Rule 116 of the Rules of Procedure and Evidence & for an Extension of Page Limits to the Appellant’s Reply Brief to the Consolidated Prosecution’s Response under Paragraph 5 of Practice Direction on the Length of Briefs and Motions on Appeal (of 16th September 2002)” filed by Hassan Ngeze on 28 November 2005 (“Appellant Ngeze” and “Ngeze’s Motion”, respectively), in which he seeks an extension of “the time for filing the Appellant’s Reply Brief to the Prosecutor’s Consolidated Respondent’s Brief [...] for a period of 30 days” and an extension of “the page limits of the Appellant’s Reply Brief up to 60 pages or 18,000 words, whichever is greater”,^[4]

NOTING the “Prosecutor’s Response to ‘The Appellant Jean-Bosco Barayagwiza’s Extremely Urgent Motion for an Extension of Page Limits [*sic*] to the Consolidated Prosecution Response and an Extension of Time for Filing’” filed on 22 November 2005 (“Prosecution” and “Prosecution Response to Barayagwiza’s Motion”, respectively), in which the Prosecution does not oppose the Appellant’s request for an extension of time, but submits that the request for an extension of the page limit should be dismissed;^[5]

NOTING that Appellant Barayagwiza has not filed a reply to the Prosecution Response to Barayagwiza’s Motion;

NOTING the “Prosecutor’s Response to ‘The Appellant Hassan Ngeze’s Extremely Urgent Motion for an Extension of Time for Filing the Appellant’s Reply Brief under Rule 116 of the Rules of Procedure and Evidence & for an Extension of Page Limits to the Appellant’s Reply Brief to the Consolidated Prosecution’s Response under Paragraph 5 of Practice Direction on the Length of Briefs and Motions on Appeal (of 16th September 2002)’ and Request for Clarification Regarding the Time Limits Applicable to All Three Appellants’ Brief in Reply in this Joint Appeal” filed on 5 December 2005 (“Prosecution Response to Ngeze’s Motion”), in which the Prosecution submits that Appellant Ngeze has failed to show good cause for his requests regarding the extension of both page and time limits^[6] and requests clarification of the time limits applicable to all three Appellants’ Briefs in Reply in this joint appeal;^[7]

NOTING that Appellant Ngeze has not yet filed a reply to the Prosecution Response to Ngeze’s Motion;

RECALLING the Pre-Appeal Judge’s “Decision on the Prosecutor’s Extremely Urgent Motion for Extension of Page Limits” of 15 November 2005 allowing in part the Prosecution’s request for an extension of the page limit for the Consolidated Respondent’s Brief;^[8]

CONSIDERING that the “Appellant Jean Bosco Barayagwiza’s Response to the Prosecutor’s Extremely Urgent Motion for Extension of Page Limits” filed on 16 November 2005, is moot in light of the 15 November 2005 Decision;

NOTING the “Consolidated Respondent’s Brief” filed by the Prosecution on 22 November 2005 (“Consolidated Respondent’s Brief”);

RECALLING also the Pre-Appeal Judge’s “Order Expunging from the Record Annexures A through G of Appendix A to the Consolidated Respondent’s Brief Filed on 22 November 2005” of 30 November 2005;

CONSIDERING that in accordance with paragraph 1(c) of the Practice Direction on the Length of Briefs and Motions on Appeal, “[t]he reply brief of an appellant in an appeal from a final judgement of a Trial Chamber shall not exceed 30 pages or 9,000 words, whichever is greater”;^[9]

CONSIDERING that, in conformity with paragraph 5 of the Practice Direction, a party seeking authorisation to exceed the page limits “must provide an explanation of the exceptional circumstances that necessitate the oversized filing”;

NOTING that both Appellants Barayagwiza and Ngeze submit that they have to make extensive replies to the Consolidated Respondent’s Brief, because, given the nature of the charges against them, they will have to analyse Prosecution’s allegations made with respect of the three co-Appellants in this case;^[10]

NOTING also that both Appellants invoke the principle of equality of arms between the parties and recall that the Decision of 15 November 2005 allowed the Prosecution exceed the page limit for the Consolidated Respondent’s Brief by 30 pages;^[11]

NOTING that the Prosecution submits that Barayagwiza’s Motion was “premature and based on conjecture”,^[12] since it was brought before the Consolidated Respondent’s Brief was filed and that Appellant Barayagwiza has not shown any good cause in support of his request;

CONSIDERING that, pursuant to paragraphs 5 and 6 of the Practice Direction on Formal Requirements for Appeals from Judgement,^[13] a Respondent’s Brief should contain statements and arguments for each ground of appeal presented by one or several appellants, while an Appellant’s brief in reply should be limited to arguments in reply to the Respondent’s brief;

CONSIDERING that the Prosecution has had to respond to three Appellant's Briefs containing "a considerable and diverse number of alleged errors",^[14] while the Appellants only have to reply to the arguments in the Consolidated Respondent's Brief responding to the arguments in their Appellant's Briefs;

CONSIDERING that, in the circumstances of the present case, the Appellants have not shown that their right to fair proceedings and the principle of equality of arms will be breached unless they are granted an extension of page limits;

CONSIDERING, in addition, that the effectiveness of an appellant's brief in reply 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 matter in a further written brief or during oral argument of the appeal;^[15]

FINDING that, although this appeal raises important legal and factual issues adjudicated in the Trial Judgement, the Appellants have not demonstrated the existence of exceptional circumstances that would justify their request for an extension of the page limit;

FURTHER CONSIDERING that, pursuant to Rule 113 of the Tribunal's Rules of Procedure and Evidence ("Rules"), an appellant's brief in reply should be filed within fifteen days after the filing of the Respondent's brief;

CONSIDERING that Rule 116 of the Rules, read together with Rule 108*bis*, empowers the Pre-Appeal Judge to "grant a motion to extend a time limit upon a showing of good cause";

NOTING that, in support of his request for an extension of time, Appellant Barayagwiza argues that the facilities for communication with his legal team are limited, making it impossible for him "to present effective instructions without extra time which recognises the significant barriers to speedy communication",^[16]

NOTING that Prosecution does not oppose Appellant Barayagwiza's request for an extension of time up to 21 days,^[17] but does oppose Appellant Ngeze's respective request for an extension of time up to 30 days;^[18]

NOTING also the Letters from Appellant Barayagwiza's Counsel filed on 24 and 25 November 2005, informing the Pre-Appeal Judge of technical difficulties encountered by Counsel while receiving the Consolidated Respondent's Brief on 22, 23 and 24 November 2005, and seeking permission "to file [the] reply within 21 days of 28th November 2005", the date on which, in Counsel's submission, Appellant Barayagwiza was served with a copy of the Consolidated Respondent's Brief;

NOTING, however, the communication received from the Tribunal's Appeals Unit Court Management Section ("CMS") on 28 November 2005, informing the Pre-Appeal Judge (i) that the Consolidated Respondent's Brief was received by the CMS on 22 November

2005 “after working hours”; (ii) that a hard copy of the Consolidated Respondent’s Brief was served on Appellant Barayagwiza on 24 November 2005; and (iii) that, while some technical difficulties occurred during transmission of the same document to Appellant Barayagwiza’s Counsel, the latter received the full document on 24 November 2005;

CONSIDERING that Appellant Barayagwiza and his Counsel were served with the Consolidated Respondent’s Brief two days after it had been filed;

CONSIDERING also that the requested extension is reasonable in light of difficulties referred to by Appellant Barayagwiza in maintaining communication with his Defence team;

FINDING that Appellant Barayagwiza has shown good cause for his request to extend the time limit to file his reply to the Consolidated Respondent’s Brief up to 21 days;

NOTING that Appellant Ngeze submits that granting his request for extension of time “will not prejudice the Prosecutor” in light of the Pre-Appeal Judge’s Oral Decision allowing Ferdinand Nahimana to file his reply to the Consolidated Respondent’s Brief no later than fifteen days after the French translation is served on Ferdinand Nahimana and his Defence team;^[19]

CONSIDERING, however, that, apart from the reference to the “advanced stage of proceedings”,^[20] Appellant Ngeze has not presented any further arguments that would show good cause for extending the time limit for the filing of his reply to the Consolidated Respondent’s Brief up to 30 days;

RECALLING that the Pre-Appeal Judge has already considered that, in the circumstances of this joined case, it is reasonable to extend the deadline for the filing of the other Appellants’ replies;^[21]

NOTING the Pre-Appeal Judge’s “Scheduling Order Concerning Filing of Ferdinand Nahimana’s Reply to the Consolidated Respondent’s Brief” of 6 December 2005 directing the Registrar to expedite the translation of the Consolidated Respondent’s Brief and serve it on Ferdinand Nahimana and his Counsel in the French language not later than 31 March 2006, as well as ordering Ferdinand Nahimana to file his reply to the Consolidated Respondent’s Brief no later than 15 days from the communication of the translated Consolidated Respondent’s Brief;^[22]

CONSIDERING that it is fair and reasonable to grant an extension of the time limits for filing of Appellant Ngeze’s brief in reply in the circumstances where the time limits for filing of the Appellant’s brief in reply is suspended until 31 March 2005 for Ferdinand Nahimana and where an extension of the respective time limits is granted to Appellant Barayagwiza;

CONSIDERING also that, in the present circumstances and taking into account the date of the present decision, a reasonable extension of the time limits for filing of Appellants

Barayagwiza's and Ngeze's respective replies to the Consolidated Respondent's Brief will not cause any prejudice to the other parties;

FOR THE FOREGOING REASONS,

DISMISS Appellants Baraygwiza's and Ngeze's respective requests for an extension of the page limit for the their briefs in reply;

GRANT, in part, Appellants Barayagwiza's and Ngeze's respective requests for an extension of the time limit to file their replies to the Consolidated Respondent's Brief; and

ORDER that Appellants Barayagwiza's and Ngeze's replies be filed no later than 15 December 2005.

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

Andrésia Vaz
Pre-Appeal Judge

Dated this 6th day of December 2005,
At The Hague, The Netherlands

[Seal of the Tribunal]

^[1] *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Order of the Presiding Judge Designating the Pre-Appeal Judge, 19 August 2005; *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Corrigendum to the Order of the Presiding Judge Designating the Pre-Appeal Judge, 25 August 2005.

^[2] Barayagwiza's Motion, para. 1 and p. 3.

^[3] *Id.*, para. 15.

^[4] Ngeze's Motion, p. 2.

^[5] Prosecution Response to Barayagwiza's Motion, para. 6.

^[6] Prosecution Response to Ngeze's Motion, paras 4, 9, 15.

^[7] *Id.*, paras 16 – 18.

^[8] *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Decision on the Prosecutor's Extremely Urgent Motion for Extension of Page Limits, 15 November 2005 ("Decision of 15 November 2005").

[\[9\]](#) Practice Direction on the Length of Briefs and Motions on Appeal, 16 September 2002, as amended (“Practice Direction”).

[\[10\]](#) Barayagwiza’s Motion, paras. 6 and 10; Ngeze’s Motion, para. 4.

[\[11\]](#) Barayagwiza’s Motion, paras 3 and 11; Ngeze’s Motion, paras 1, 9 and 11.

[\[12\]](#) Prosecution Response to Barayagwiza’s Motion, para. 4.

[\[13\]](#) Practice Direction on Formal Requirements for Appeals from Judgement, 4 July 2005.

[\[14\]](#) Decision of 15 November 2005, p. 3.

[\[15\]](#) *Ferdinand Nahimana et al. v. The Prosecutor*, 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. 3; *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Decision on Ferdinand Nahimana’s Second Motion for an Extension of Page Limits for Appellant’s Brief, 31 August 2004, p. 3; *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, 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, 24 June 2004, p. 3.

[\[16\]](#) Barayagwiza’s Motion, paras. 13-14.

[\[17\]](#) Prosecution Response to Barayagwiza’s Motion, para. 6.

[\[18\]](#) Prosecution Response to Ngeze’s Motion, para. 9.

[\[19\]](#) *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Status Conference, 9 March 2005 (“Oral Decision of 9 March 2005”), p. 7, lines 2-5.

[\[20\]](#) Ngeze’s Motion, p. 3.

[\[21\]](#) *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Decision on Ngeze’s Motion for an Additional Extension of Time to File his Notice of Appeal and Brief, 6 February 2004, p. 3; *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Decision on Motions for an Extension of Time to File Appellants’ Notices of Appeal and Briefs, 19 December 2003, p. 4.

[\[22\]](#) *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Scheduling Order Concerning Filing of Ferdinand Nahimana’s Reply to the Consolidated Respondent’s Brief, 6 December 2005, p. 3.