



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

ICTR-95-1B-A

22 February 2006

(44/H - 41/H)

C.

### IN THE APPEALS CHAMBER

**Before:** Judge Fausto Pocar, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Liu Daqun  
Judge Wolfgang Schomburg

**Registrar:** Mr. Adama Dieng

**Order of:** 22 February 2006

**Mikaeli MUHIMANA**  
(Appellant)

v.

**THE PROSECUTOR**  
(Respondent)

Case No. ICTR-95-1B-A

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
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NAME / NOM: Charles Zama	SIGNATURE: [Signature]
DATE: 22 February 2006	

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[Signature]

### ORDER CONCERNING THE FILING OF THE NOTICE OF APPEAL

#### Counsel for the Prosecution

Mr. Charles Adeogun-Phillips  
Mr. Wallace Kapaya  
Mr. Peter Tafah  
Ms. Renifa Madenga  
Ms. Florida Kabasinga  
Ms. Maymuchka Lauriston

#### Counsel for the Appellant

Mr. Nyabirungu mwene Songa  
Mr. Kazadi Kabimba  
Mr. Mathias Sahinkuye

ICTR Appeals Chamber

Date: 22 February 2006

Action: R.J.

Copied To: Prosecution Judges, SLOs, LOs, ALOs and

**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 and 31 December 1994 ("Tribunal"),

**NOTING** the "Judgement and Sentence" rendered in English by Trial Chamber III on 28 April 2005 ("Trial Judgement");

**NOTING** the "Decision on Motion for Extension of Time for Filing of Notice of Appeal" issued on 2 June 2005 ("Decision on Extension of Time"), in which the Pre-Appeal Judge granted Mikaeli Muhimana ("Appellant"), an extension of "no more than thirty days from the date of the filing of the French translation of the Trial Judgement" to file his notice of appeal pursuant to Rule 116(B) of the Rules of Procedure and Evidence of the Tribunal ("Rules");<sup>1</sup>

**NOTING** that the French translation of the Trial Judgement was filed on 19 December 2005;<sup>2</sup>

**NOTING** the "*Acte d'appel*" filed on 26 January 2006 ("Notice of Appeal") by Counsel for the Appellant;

**FINDING** that because the Decision on Extension of Time clearly states that the Appellant was to file his Notice of Appeal no more than 30 days from the filing of the French translation of the Trial Judgement, or by 18 January 2006, the Notice of Appeal was filed out of time by eight days;

**EMPHASIZING** that Counsel in a case before the Tribunal must, at all times, comply with the Rules and rulings of the Tribunal, including those concerning time limits;<sup>3</sup>

**EMPHASIZING** that the filing of a notice of appeal marks the beginning of the appeal proceedings in a case, and that since the time limits for the filing of an appellant's brief, respondent's brief, and the appellant's brief in reply are calculated from the date on which the notice of appeal is filed, any delays at such an early stage will affect subsequent filings;<sup>4</sup>

<sup>1</sup> Decision on Extension of Time, p. 4. The French translation, *Décision relative à la requête aux fins du report du délai de dépôt de l'acte d'appel* was filed on 7 June 2005.

<sup>2</sup> *Le Procureur c. Mikaeli Muhimana*, Affaire n° ICTR-95-1B-T, *Jugement et sentence*, 19 December 2005.

<sup>3</sup> See Code of Professional Conduct for Defence Counsel, Art. 12(1). See also *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Decision on Defence Request for Extension of Time, 9 May 2005, p. 2.

<sup>4</sup> Decision on Extension of Time, p. 3.

**CONSIDERING** that Rule 116(A) of the Rules provides that the Appeals Chamber may grant a motion to extend a time limit upon a showing of good cause but that such a motion should be filed prior to expiry of the time limit at issue;<sup>5</sup>

**CONSIDERING** that the Appellant failed to file a second motion for a extension of time limit prior to or on 18 January 2006 with regard to filing his Notice of Appeal;

**CONSIDERING** however, that the Appeals Chamber may "recognise, as validly done any act done after the expiration of a time limit";<sup>6</sup>

**NOTING** that Counsel for the Appellant submits that the Notice of Appeal was filed 30 days from the date of his receipt of the French version of the Trial Judgement;

**CONSIDERING** that the Registry has confirmed that the French translation of the Trial Judgement was only served upon Counsel for the Appellant on 26 December 2005, that is, 7 days after its filing;<sup>7</sup>

**CONSIDERING** that pursuant to Rule 116(B) of the Rules, good cause exists for extension of a time limit "[w]here the ability of the accused to make full answer and Defence depends on the availability of a decision in an official language other than that in which it was originally issued [...]";

**FINDING** that similarly, in this case, good cause exists to recognize the filing of the Appellant's Notice of Appeal as validly done because it was only as of the date that the French translation of the Trial Judgement was made available to Counsel for the Appellant that the Appellant was in a position to consider the Trial Judgement in order to formulate his grounds of appeal from that judgement;<sup>8</sup>

**NOTING FURTHER** that the Notice of Appeal was filed publicly;

<sup>5</sup> *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54A-A, Decision on Jean de Dieu Kamuhanda's Motion for an Extension of Time, 19 April 2005, pp. 2-3 & n. 3. In this case, the Pre-Appeal Judge exceptionally granted a motion for an extension of time to file a reply, which was filed 136 days after the filing of the Respondent's Brief, that is, 121 days after the expiration of the 15-day deadline for filing briefs in reply during which the appellant should have filed any motion for extension of time. The Pre-Appeal Judge reprimanded the appellant for failing to file his motion for an extension of time within the 15-day deadline for filing the reply.

<sup>6</sup> See Practice Direction on Formal Requirements for Appeals from Judgement, 4 July 2005, para. 12. See also *id.*, para. 1.

<sup>7</sup> The French translation of the Trial Judgment was delivered to Counsel for the Appellant by DHL International.

<sup>8</sup> The Appeals Chamber notes that because Counsel for the Appellant received the French translation of the Trial Judgement on 26 December 2005, his Notice of Appeal filed on 26 January 2006 was actually filed 31 days from receipt of that translation of the Trial Judgement. However, the Appeals Chamber does not find that this extra day affects its decision to recognize the filing of the Appellant's Notice of Appeal as validly done.

**NOTING**, however, that the Notice of Appeal discloses information as to a protected witness not found in the Trial Judgement, which risks identifying that protected witness;<sup>9</sup>

**NOTING** that in the exercise of caution the Registry temporarily placed the Notice of Appeal under seal;<sup>10</sup>

**PURSUANT TO** Rule 75(A) as read with Rule 107 of the Rules;

**HEREBY DIRECTS**, *proprio motu*, the Registry to designate the Notice of Appeal a confidential document;


**ORDERS** the Appellant to re-examine the contents of the Notice of Appeal with a view to identifying all passages that are in contravention of any of the protective measures ordered by the Trial Chamber;

**ORDERS** the Appellant to file a public and redacted version of the Notice of Appeal within sixty (60) days of the filing of this order;

**REMINDS** the Appellant that this obligation does not change his pre-existing obligation to file his Appellant's brief, which shall be filed within 75 days of filing of the Notice of Appeal under Rule 111 of the Rules, that is, no later than 11 April 2006;

**FURTHER REMINDS** the parties that the information contained in the confidential Notice of Appeal shall not be communicated to any third party.

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



Judge Fausto Pocar  
Presiding Judge

Dated this 22nd day of February 2006,  
At The Hague, The Netherlands.



[Seal of the Tribunal]

<sup>9</sup> The Appeals Chamber notes that the protective measures applicable to this witness have not been rescinded, varied or augmented in accordance with Rule 75 of the Rules.

<sup>10</sup> The Appeals Chamber notes that this was pursuant to a request by a Legal Officer from the Appeals Chamber dated 22 January 2006.