



UNITED NATIONS  
NATIONS UNIES



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

190/H

ICTR-95-1B-A  
26 April 2006  
(190/H - 187/H)

**BEFORE THE PRE-APPEAL JUDGE**

Before: Judge Liu Daqun,  
Pre-Appeal Judge  
Registrar: Mr. Adama Dieng  
Decision of: 26 April 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  
CERTIFIED TRUE COPY OF THE ORIGINAL, SEEN BY ME  
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NAME / NOM: ROBERT KUMWELI A. ABERNETHY  
SIGNATURE: [Signature] DATE: 26 April 2006

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**DECISION ON APPELLANT'S REQUEST FOR EXTENSION OF TIME TO FILE  
ADDITIONAL EVIDENCE MOTION**

ICTR Appeals Chamber

Date: 26 April 2006  
Action: R.S.  
Copied To: [Handwritten]

Counsel for the Prosecution

Mr. James Stewart  
Mr. François-Xavier Nsanzuwera  
Ms. Linda Bianchi

Counsel for the Appellant

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

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I, LIU DAQUN, 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 and 31 December 1994 ("Tribunal") and the Pre-Appeal Judge in this case,<sup>1</sup>

BEING SEIZED of the "*Requête de l'Appelant aux fins de prorogation de délai pour la présentation des moyens de preuve supplémentaires*" filed on 13 March 2006 ("Request"),<sup>2</sup> by counsel for Mikaeli Muhimana ("Defence"), in which the Defence requests an extension of forty-five days to file a motion to present additional evidence pursuant to Rule 115 of the Rules of Procedure and Evidence of the Tribunal ("Rules");

NOTING the "*Réponse du Procureur à la requête de l'Appelant aux fins de prorogation de délai pour la présentation des moyens de preuve supplémentaires*" filed by the Office of the Prosecutor on 17 March 2006 ("Response"),<sup>3</sup> opposing the Request;

NOTING that the reply was filed out of time, that good cause has not been shown for the late filing, and that in consequence the reply will not be considered;<sup>4</sup>

CONSIDERING that a party requesting the admission of additional evidence on appeal pursuant to Rule 115 shall do so by motion filed "not later than seventy-five days from the date of the judgement, unless good cause is shown for further delay";

CONSIDERING FURTHER that the good cause requirement in Rule 115 obliges the moving party to demonstrate that it was not able to comply with the prescribed time limit, and that it submitted the motion in question as soon as possible after it became aware of the existence of the evidence sought to be admitted;<sup>5</sup>

NOTING the Defence's submission that it "has difficulty" complying with the prescribed time-limit because "the new information [...] obtained must be verified in Rwanda and elsewhere, and

<sup>1</sup> Order Re-Assigning Judges to a Case Before the Appeals Chamber and Re-Appointing a Pre-Appeal Judge, 1 February 2006, p. 3.

<sup>2</sup> See also the English translation of the Request, Appellant's Motion for Extension of Time to Present Additional Evidence, filed on 21 March 2006.

<sup>3</sup> The English translation entitled Prosecutor's Response to Appellant's "Motion for Extension of Time to Present Additional Evidence" was filed on 28 March 2006.

<sup>4</sup> *Réplique de l'Appelant à la réponse du Procureur à la requête aux fins de prorogation de délai pour la présentation des moyens de preuve*, filed on 29 March 2006 ("Reply"). Paragraph 12 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal provides that a reply may be filed within four days of the filing of the response.

<sup>5</sup> *Ndindabahizi v. Prosecutor*, Case No. ICTR-01-71-A, Decision on the Admission of Additional Evidence, 4 April 2006, p. 3.

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[...] the only person who can verify the information was assigned to the Defence team only on 31 March 2006 [...]. Moreover, at the time he was assigned to the Appellant's Defence team, he was on mission abroad on behalf of another Accused [...]."<sup>6</sup>

**NOTING** the Prosecution's submission that the arguments put forward do not amount to a showing of good cause because:

- a) The Defence argument is vague and cannot justify the requested extension;<sup>7</sup>
- b) The investigator was not assigned to the Defence team on 31 March 2006, as submitted by the Defence, but on 31 January 2006, effective from 1 February 2006;<sup>8</sup>
- c) The Appeals Chamber need not take into account other professional commitments of the Defence team in setting deadlines;<sup>9</sup>
- d) The Defence's request is premature and that even if the extension of forty-five days were to be granted, the Defence would still have to show good cause for filing an application under Rule 115 out of time;<sup>10</sup>

**NOTING** that the French version of the Judgement was served on the Defence on 26 December 2005 and that, accordingly, the deadline for filing a motion pursuant to Rule 115 was 13 March 2006;<sup>11</sup>

**CONSIDERING** that the Defence has failed to demonstrate why it was not able to comply with the prescribed time limit and provides no indication as to when it became aware of the new information;

**CONSIDERING** further that the Defence has not provided sufficiently detailed submissions, in that it states that the new information obtained must be verified in Rwanda and elsewhere, but fails to explain what the new information is, why it needs verification and why it could not have been verified earlier, and further fails to expound upon its submission that there is only one person who can verify this information;

<sup>6</sup> Request, para. 6.

<sup>7</sup> Response, para. 6.

<sup>8</sup> Response, para. 8.

<sup>9</sup> Response, para. 9.

<sup>10</sup> Response, para. 10.

<sup>11</sup> The seventy-five days start running from the date on which the French translation of the Trial Judgement was filed, see Order Concerning the Filing of the Notice of Appeal, 22 February 2006; Decision on Motion for Extension of Time for Filing of the Notice of Appeal, 2 June 2005; see also Rule 7 *ter* of the Rules which provides that where a time limit expires on a Saturday, as in this case, the time limit shall automatically be extended to the subsequent working day.

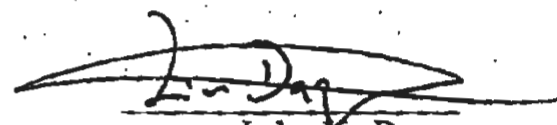
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**FINDING** that the Defence submissions do not demonstrate good cause;

**FOR THE FOREGOING REASONS,**

**DISMISS** the Request.

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



Judge Liu Daqun  
Pre-Appeal Judge

Done this 26<sup>th</sup> day of April 2006,  
At The Hague,  
The Netherlands.



[Seal of the Tribunal]