



UNITED NATIONS
NATIONS UNIES



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-95-1B-A
21 June 2006
(420/H - 417/H)

P.T.

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Liu Daqun,
Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 21 June 2006

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22-06-2006

Mikaell MUHIMANA
(Appellant)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-95-1B-A

ICTR Appeals Chamber

Date: 21 June 2006

Action: P.T.

Copied To: Learned Judges
parties, SLOC, LOS, ALOS, LSP

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**DECISION ON APPELLANT'S MOTION FOR EXTENSION OF TIME TO FILE A BRIEF
IN REPLY AND POSTPONEMENT OF A STATUS CONFERENCE**

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

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	
NAME / NOM: <i>Mikaell Muhimana</i>	<i>A. A. A. A.</i>
SIGNATURE: <i>[Signature]</i>	DATE: 21 June 2006

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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,¹

BEING SEIZED of the "*Requête de l'appelant aux fins de réaménagement du calendrier judiciaire*" filed on 14 June 2006 ("Request"), by Counsel for Mikaeli Muhimana ("Defence" and "Appellant" respectively), in which the Defence requests an extension of time to file its brief in reply and further requests that the scheduled date of a Status Conference be postponed;

NOTING the "*Réponse du procureur à la Requête de l'appelant aux fins de réaménagement du calendrier judiciaire*" filed by the Prosecution in French on 16 June 2006, in which the Prosecution opposes the Request;

NOTING that the Defence has not filed a reply;

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

NOTING the "*Acte d'appel*" ("Notice of Appeal")² and the confidential "*Memoire d'appel*" ("Appeal Brief") filed by the Appellant on 26 January 2006 and 12 April 2006 respectively;

NOTING the "*Memoire de l'intime*" ("Respondent's Brief") filed partly in English and French by the Prosecution on 22 May 2006;

NOTING that the Defence has not yet received the French translation of the Respondent's Brief and requests that if it becomes available between 14 June 2006 and 10 July 2006, the time limit for the filing of the brief in reply should start running on 10 July 2006;³

NOTING the Defence's submission that both Lead Counsel and Co-Counsel would be temporarily unavailable to reply to the Respondent's Brief because they have "been invited to attend the 89th

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

² The Notice of Appeal was placed under seal pursuant to the Order Concerning the Filing of the Notice of Appeal, filed on 22 February 2006; on 24 April 2006, the Appellant filed, *Acte d'appel (Public et Caviarde)*.

³ Request, paras. 14, 19. The Defence appears to imply that an extension of time would also be required pending the receipt of the Kinyarwanda translation of the response brief for the benefit of the Appellant. In light of the Pre-Appeal Judge's previous holding that an extension of time on such basis would not be appropriate since Counsel for the Appellant may discuss possible submissions with him as soon as a French translation is available, this point will not be considered further. See Decision on Motion for Extension of Time for Filing of Notice of Appeal, 2 June 2005, p. 3.

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Annual International Convention of the International Association of Lions Clubs in Boston from 30 June to 4 July 2006";⁴

CONSIDERING that pursuant to Rule 116(A) of the Rules of Procedure and Evidence ("Rules") a motion to extend a time limit may be granted upon a showing of good cause;

CONSIDERING that the Defence fails to explain why the attendance of Counsel at the Annual Lions Club Convention would constitute good cause within the meaning of Rule 116(A) of the Rules for extending the deadline for filing the brief in reply;

CONSIDERING ALSO that Counsel, when accepting an assignment as 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;⁵

CONSIDERING that the unexpected and probable unavailability of Counsel due to other professional duties does not amount to good cause within the meaning of Rule 116 of the Rules;⁶

NOTING the Scheduling Order for this case filed on 13 June 2006 scheduling a Status Conference to be held on 7 July 2006 in Arusha, Tanzania;

NOTING that the Defence additionally requests the postponement of the Status Conference because on the date scheduled "Counsel could be in mid-air on the return journey to Kinshasa from the Annual Lions Club Convention";⁷

NOTING that the Defence further submits that "so long as Counsel for the Appellant has not received the French translation of the Respondent's Brief, and the Appellant has not received the Kinyarwanda translation, the Status Conference would be pointless";⁸

CONSIDERING that Status Conferences allow a person in custody pending appeal the opportunity to raise issues in relation thereto, including the mental and physical condition of that person;⁹

⁴ Request, as per the Registry Translation (uncertified) ("Translation of the Request"), para. 15.

⁵ See *Emmanuel Ndingabakizi 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, p. 3; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, 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, 6 September 2005 ("Barayagwiza Decision"), p. 5.

⁶ Barayagwiza Decision, p. 5.

⁷ Translation of the Request, para. 20.

⁸ Translation of the Request, para. 19.

⁹ *Emmanuel Ndingabakizi v. The Prosecutor*, Case No. ICTR-01-71-A, Scheduling Order, 20 July 2005, p. 2.

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CONSIDERING HOWEVER that the Appellant does not object to the postponement of the scheduled Status Conference;¹⁰

FOR THE FOREGOING REASONS,

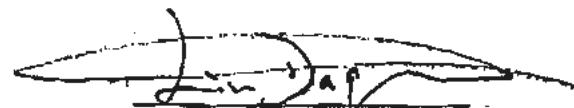
GRANT the Request in part,

CANCEL the scheduled Status Conference;

DISMISS the Request for extension of time to file the brief in reply; and

REMAND the Defence that the brief in reply, if any, shall be filed within 15 days of service to the Defence of the French translation of the Respondent's Brief.

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



Judge Liu Daqun
Pre-Appeal Judge

Done this 21st day of June 2006,
At The Hague,
The Netherlands.



[Seal of the Tribunal]

¹⁰ See Request, Annex III entitled "Solemn Declaration by the Applicant in Support of his Motion for Readjustment of the Judicial Calendar".