



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

529/H

ICTR-95-1B-A

11 September 2006

BEFORE THE PRE-APPEAL JUDGE (529/H - 527/H)

Before: Judge Liu Daqun,
Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 11 September 2006

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Mikaell MUHIMANA
(Appellant)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-95-1B-A

ICTR Appeals Chamber
Date: 11 September 06
Action: R-J.
Copied To: Concerned Judges,
Parties, SLOS, LOS, ALOS,
Lia, Archiver

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**DECISION ON THE APPELLANT'S MOTION TO NOTE THE FAILURE TO FILE THE
RESPONDENT'S BRIEF WITHIN THE PRESCRIBED TIME LIMIT**

Counsel for the Prosecution

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

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
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NAME / NOM: Tchidimbo Patrice
SIGNATURE: *[Signature]* DATE: 11/9/06

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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 ("Appeals Chamber" and "International Tribunal", respectively) and the Pre-Appeal Judge in this case,¹

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 "Mémoire d'appel" ("Appeal Brief")³ filed by the Appellant on 26 January 2006 and 12 April 2006 respectively;

BEING SEIZED of the "Requête de l'Appellant aux fins de constater le défaut de dépôt dans les délais du mémoire de l'intimé" filed on 5 June 2006 ("Motion"),⁴ by Counsel for Mikaeli Muhimana ("Defence" and "Appellant" respectively), in which the Defence requests the Appeals Chamber to (i) consider that the time limit for the filing of the brief in reply starts to run only from the date when the Defence receives the French translation of the Respondent's Brief; (ii) direct the Registrar to provide the French translation of the Respondent's Brief without undue delay and a Kinyarwanda translation as soon as practicable; and (iii) to direct the Registrar to inform the Appeals Chamber when these translations have been served on the Appellant and Defence;

NOTING that the "Prosecutor's Response to 'Requête de l'Appellant aux fins de constater le défaut de dépôt dans les délais du mémoire de l'intimé'" filed on 7 June 2006 ("Response") does not oppose the Motion and that the Prosecutor additionally requests that the Appeals Chamber order the Registrar to also inform the Prosecutor when the French translation has been served on the Appellant and Defence;

NOTING that the Defence did not file a reply;

NOTING that the Kinyarwanda translation of the Respondent's brief was filed on 31 August 2006;

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. The Appellant filed a public and redacted version of the Notice of Appeal on 24 April 2006.

³ The Appellant filed a public and redacted version of the Appeal Brief on 30 August 2006, pursuant to the "Decision on Prosecutor's Motion requesting the Appellant to file a non-confidential appeal brief", filed on 14 August 2006.

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NOTING that the Registry has informed the Pre-Appeal Judge that the French translation of the Respondent's brief will be provided by 15 October 2006;

CONSIDERING that the "Decision on Appellant's Motion for extension of time to file a brief in reply and postponement of a status conference", filed on 21 June 2006 explicitly states that the time limit for the filing of the brief in reply will start to run from the date of service to the Defence of the French translation of the Respondent's Brief;⁵

FOR THE FOREGOING REASONS

GRANT the Motion in part;

DIRECT the Registry to inform the Appeals Chamber and the Prosecution when the French translation of the Respondent's Brief has been served on the Defence;

DECLARE the Motion moot in all other respects.

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

Done this 11th day of September 2006,
At The Hague,
The Netherlands.



[Seal of the International Tribunal]

A handwritten signature in black ink, appearing to read "Liu Daguin", written over a horizontal line.

Judge Liu Daguin
Pre-Appeal Judge

⁴ See also the English translation of the Motion, "Appellant's Motion to Note the Failure to File the Respondent's Brief within Prescribed Time Limit", filed on 17 August 2006.

⁵ See Decision of 21 June 2006, p. 4: "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."