



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

532/H

ICTR-95-1B-A  
26 September 2006  
(532/H - 530/H)

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

**Decision of:** 25 September 2006

**ICTR Appeals Chamber**  
Date: 26 September 2006  
Action: P.T.  
Copied To: Concerned Judges  
Pocar, SLOS, LOR, ALOS

**Mikaeli MUHIMANA**  
(Appellant)

v.

**THE PROSECUTOR**  
(Respondent)

Case No. ICTR-95-1B-A

JUDICIAL RECORDS/ARCHIVES  
UNICTR  
2006 SEP 26 P 4:23

**DECISION ON APPELLANT'S MOTION TO PRESENT ADDITIONAL EVIDENCE**

Counsel for the Prosecution

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

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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531/H

1. **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"), is seized of the "*Requête de l'appellant aux fins de la présentation des moyens de preuve supplémentaires*" filed on 25 April 2006<sup>1</sup> by Mikaeli Muhimana ("Rule 115 Motion" and "Appellant", respectively).

2. On 28 April 2005, Trial Chamber III convicted the Appellant of genocide, and rape and murder as crimes against humanity pursuant to Articles 2 and 3 of the Statute of the Tribunal ("Statute") respectively. He was sentenced to life imprisonment on each of the three counts, with the sentences to run concurrently.<sup>2</sup> The Appellant subsequently filed an appeal against the Trial Judgement,<sup>3</sup> and it is for this purpose that the Appellant seeks the admission of additional evidence.

3. As a preliminary matter, the Appeals Chamber notes that the French version of the Trial Judgement was served on the Appellant on 26 December 2005 and that, accordingly, the deadline for filing a motion pursuant to Rule 115 of the Rules of Procedure and Evidence ("Rules") was 13 March 2006.<sup>4</sup> However, on that day, the Appellant requested an extension of time to file a motion pursuant to Rule 115,<sup>5</sup> submitting that he had difficulties complying with the prescribed time-limit because the new information had to be verified in Rwanda and elsewhere. He claimed that the only person who could verify the information had only recently been assigned to the Defence team and was at that time on mission abroad on behalf of another accused.<sup>6</sup> While making these claims in the Request, the Appellant failed to indicate when he became aware of the new information so as to establish that it had not been possible for him to comply with the time-limits for the reasons he gave in the Request.<sup>7</sup> The Appellant further failed to explain what the new information was and why it needed verification, and further failed to expound upon the submission that there was only one

<sup>1</sup> The certified English translation, "Appellant's Motion to Present Additional Evidence" was filed on 13 July 2006. Prosecutor's Response to "*Requête de l'appellant aux fins de la présentation des moyens de preuve supplémentaires*", 5 May 2006 ("Response"), para. 3. The Appellant did not file a reply.

<sup>2</sup> *Prosecutor v. Mikaeli Muhimana*, Case No. ICTR-95-1B, Judgement and Sentence, 28 April 2005 ("Trial Judgement"), pp. 107 and 113.

<sup>3</sup> See *Acte d'appel*, filed on 26 January 2006.

<sup>4</sup> Rule 115(A) provides that a motion to present additional evidence shall be filed no later than seventy-five days from the date of judgement. In this case, the seventy-five days start running from the date on which the French translation of the Trial Judgement was served on the Appellant, see Order Concerning the Filing of the Notice of Appeal, 22 February 2006, p. 3. See also Rule 7ter 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.

<sup>5</sup> *Requête de l'Appellant aux fins de prorogation de délai pour la présentation des moyens de preuve supplémentaires*, 13 March 2006 ("Request").

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

<sup>7</sup> Decision on Appellant's Request for Extension of Time to File Additional Evidence Motion ("Decision on Extension of Time"), 26 April 2006, p. 3.

530/H

person who could verify this information.<sup>8</sup> As a result, the Pre-Appeal Judge found that the Appellant's submissions did not demonstrate good cause warranting an extension of time to file a Rule 115 motion and dismissed the Request in a decision dated 26 April 2006.<sup>9</sup>

4. However, one day prior to the Pre-Appeal Judge's decision dismissing the Request,<sup>10</sup> the Appellant filed his Rule 115 Motion. In that Rule 115 Motion, the Appellant proffers three items of purported additional evidence consisting of two experts' reports and a letter. He also makes submissions relating to a cassette, which is not tendered with the Rule 115 Motion.<sup>11</sup> In the Rule 115 Motion, the Appellant fails to make any submissions relating to whether good cause has been shown for the delay pursuant to Rule 115(A), nor does he indicate whether or how the submissions made in the Request concerning the good cause requirement relate to the present motion. The Appeals Chamber further notes that it is apparent from the Rule 115 Motion that the materials sought to be admitted as additional evidence were available prior to the rendering of the Trial Judgement and consequently are not the "new information" that the Appellant was referring to in the Request.<sup>12</sup> For these reasons, the Appeals Chamber finds that good cause has not been shown for the delay in filing the present Rule 115 Motion.<sup>13</sup>

For the foregoing reasons, the Appeals Chamber **DISMISSES** the Rule 115 Motion.

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



Judge Fausto Pocar  
Presiding



[Seal of the Tribunal]

Dated this 25<sup>th</sup> day of September 2006,  
At The Hague, The Netherlands.

<sup>8</sup> *Ibid.*

<sup>9</sup> Decision on Extension of Time, p. 4.

<sup>10</sup> The Appeals Chamber notes that the Rule 115 Motion was subsequently re-filed on 28 April 2006 and that the new version included annexes referred to in paras 17, 21 and 23 of the Rule 115 Motion.

<sup>11</sup> With the exception of the cassette, these items are attached to the Rule 115 Motion. The First and Second Expert's Reports relate to issues which, by the Appellant's own admission, were discussed during trial, and as such could have been proffered as evidence at trial, (*see* Rule 115 Motion, paras 14, 18-20). The letter is dated 13 October 2004 and was thus also clearly available before the rendering of the Trial Judgement.

<sup>12</sup> The Appeals Chamber has previously taken into account the availability of documents in its assessment of the good cause requirement, *see Prosecutor v. Stanislav Galic*, Case No. IT-98-29-A, Decision on Defence Second Motion for Additional Evidence Pursuant to Rule 115, 21 March 2005, para. 5.

<sup>13</sup> A Rule 115 motion may be dismissed on this basis alone, *see Prosecutor v. Emmanuel Ndiindabahizi*, Case No. ICTR-95-1B-A, Decision on the Admission of Additional Evidence, 4 April 2006, p. 3.