



ICTR-01-76-A
 19-10-2006
 (1023bis/A - 1020bis/A)

1023bis/A

Tribunal Pénal International pour le Rwanda
 International Criminal Tribunal for Rwanda

APPEALS CHAMBER

Case No. ICTR-01-76-A

ENGLISH
 Original: FRENCH

Before: Liu Daqun, Pre-Appeal Judge

Registrar: Adama Dieng

Date rendered: 4 October 2006

2006 OCT 19 11 A.M. 01
 JUDICIAL RECORDS ARCHIVES
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THE PROSECUTOR

v.

ALOYS SIMBA

DECISION ON ALOYS SIMBA'S MOTION TO FILE HIS APPELLANT'S BRIEF

Office of the Prosecutor:
 James Stewart
 Dior Fall
 George William Mugwanya
 Inneke Onsea
 Evelyn Kamau

Counsel for Aloys Simba:
 Sadikou Ayo Alao
 Wenceslas de Souza

1. The Pre-Appeal Judge is, in the present case, being seized of a motion by Aloys Simba (hereinafter the "Appellant") entitled "*Requête en extrême urgence de la défense en vue de solliciter exceptionnellement l'interprétation du paragraphe C1a) de la Directive relative à la longueur des mémoires et des requêtes en appel et l'autorisation de dépasser le nombre de mots limite et de transmettre le mémoire d'appel uniquement par courrier express (article 73 du RPP)*", filed on 3 October 2006 (hereinafter "3 October 2006 Motion" and "Practice Direction," respectively). On the same day, the Prosecutor filed a Response to this Motion.¹

2. On 29 September 2006, the Pre-Appeal Judge issued an order² mainly (i) rejecting both the electronic versions and hard copies of the Appellant's Brief filed respectively on 6 and 21 September 2006; (ii) instructing the Appellant to re-file his Appellant's Brief with the Registry of the Tribunal no later than 6 October 2006, in strict compliance with the page and word limits set out in the Practice Direction; (iii) requesting the Registrar to withhold the payment of fees, if claimed, associated with the rejected filings.

3. On 2 October 2006, the Appellant filed his "Extremely Urgent Defence Motion Seeking Review of the Order Concerning Aloys Simba's Appellant's Brief (Rule 73 of the Rules) ("2 October 2006 Motion"), pending before the Pre-Appeal Judge.

4. In the operative paragraph of the 3 October 2006 Motion, the Appellant requests (i) interpretation of the provisions of Article C(1)(a) of the Practice Direction, in order to specify if the length limitations of an appellant's brief, that is, 100 pages or 30,000 words, must be interpreted as "optional and not cumulative"³ (hereinafter "First Request"); (ii) exceptional leave to exceed, if necessary, the limit of 300 words per page (hereinafter "Second Request"); (iii) leave to send the Appellant's Brief and its annexes by express mail exclusively, with the dispatch note to the mail agent being proof of the date of dispatch (hereinafter "Third Request"); and (iv) lifting of the sanction imposed by the Order of 29 September 2006 (hereinafter "Fourth Request").

5. There will be no ruling on the Fourth Request, since an identical measure had earlier been requested in the 2 October 2006 Motion pending before the Pre-Appeal Judge. The Appellant's practice of repeating in a second Request a request already made in a previous one that is still pending, is likely to complicate the work of the Appeals Chamber unnecessarily and could, if it were repeated, be considered as an abuse of process necessitating appropriate sanctions.

6. Regarding the First Request, the 29 September 2006 Order has already reiterated the relevant provisions of the Practice Direction on the page and word limits imposed on an appellant's brief.⁴ Article C(1)(a) of the Practice Direction, which states that "[t]he brief

¹ Prosecutor's Response to the "*Requête en extrême urgence de la défense en vue de solliciter exceptionnellement l'interprétation du paragraphe C1a) de la Directive relative à la longueur des mémoires et des requêtes en appel et l'autorisation de dépasser le nombre de mots limite et de transmettre le mémoire d'appel uniquement par courrier express (article 73 du RPP)*", déposée le 3 octobre 2006 ("Response").

² *The Prosecutor v. Simba*, Case No. ICTR-01-76-A, Order concerning Aloys Simba's Appellant's Brief, 29 September 2006 (hereinafter "29 September 2006 Order").

³ Motion, p. 4.

⁴ Order, 29 September 2006, p. 2.

of an appellant on appeal from a final judgement of a Trial Chamber will not exceed 100 pages or 30,000 words” must be read jointly with Articles (A) and (B). Article (A) determines the format for submitting the appellant’s brief and Article (B) specifies that “[a]n average page should contain fewer than 300 words”.⁵ Hence, a reading of the relevant provisions shows that an appellant’s brief which contains more than 30,000 words exceeds the authorized limit.⁶ Furthermore, the Appellant, enlightened upon reading the Order of 29 September 2006, seems to have quite grasped its exact scope.⁷

7. Regarding the Second Request seeking exceptional leave to exceed “the limit of 300 words per page”,⁸ the Pre-Appeal Judge reiterates that this is an average number, the relevant limit being 30,000 words. Hence, the Appellant’s request must be interpreted as a request to exceed the limit of 30,000 words. The Appellant substantiates this request by raising: his inability to verify the number of words in his filings;⁹ the importance of footnotes, a drastic reduction of which could reduce the effectiveness of the Appellant’s Brief;¹⁰ the need to comply with Article 4 of the Practice Direction on formal requirements for appeals from judgement (hereinafter “Practice Direction on formal requirements”);¹¹ and his numerous grounds of appeal.¹²

8. The Pre-Appeal Judge reiterates that under paragraph 5 of the Practice Direction, “[a] party must seek authorization in advance from the Appeals Chamber [...] or the Pre-Appeal Judge to exceed the page limits in this Practice Direction and must provide an explanation of the exceptional circumstances that necessitate the oversized filing”. The request to exceed page limits filed by the Appellant must, accordingly, be dismissed without any further consideration because of its vagueness, the Appellant having failed to explain how the materials mentioned would constitute exceptional circumstances necessitating an unfettered leave to exceed the word limit authorized by the Practice Direction. Simply asserting that the Appellant must comply with paragraph 4 of the Practice Direction on Formal Requirements and that the Notice of Appeal contains more than 100 grounds is not sufficient to explain such exceptional circumstances.

9. The Third Request is vague. However, the Pre-Appeal Judge understands that the Appellant is seeking leave to prove that he has met his obligation to re-file his Appellant’s Brief no later than 6 October 2006, pursuant to the Order of 29 September 2006, by producing a dispatch note showing that these documents were handed on 6 October 2006 to an express mail agent to send to the Registry of the Tribunal in Arusha, Tanzania. The Pre-Appeal Judge is of the opinion that, given the circumstances described in the Motion,¹³ this request is reasonable. However, the Appellant must send to the Registry of the Tribunal an electronic copy of the Appellant’s Brief, which is useful in the word count and

⁵ Practice Direction on the Length of Briefs and Motions on Appeal, 16 September 2002. Paragraph 4 of this Direction indicates materials excluded or not from page and word limits.

⁶ On the other hand, a brief containing more than 100 pages could be ruled valid if the party concerned establishes that it contains less than 30,000 words.

⁷ Motion, paras. 6 and 13.

⁸ Ibid., para. 13.

⁹ Ibid., para. 9.

¹⁰ Ibid., para. 10.

¹¹ Adopted on 4 July 2005, Motion, para. 11.

¹² Ibid., p. 3, footnote 2.

¹³ Ibid., para. 14.

in facilitating the work of the translation service. The Appellant is requested to send this electronic copy to the Registry of the Tribunal through the usual channel.

FOR THE FOREGOING REASONS,

THE APPEALS CHAMBER:

REITERATES the relevant provisions of the Order of 29 September 2006;

ORDERS the Appellant to file, pursuant to the modalities defined above, an Appellant's Brief not exceeding 30,000 words;

GRANTS LEAVE to the Appellant to establish that he has complied with the Order of 29 September 2006 by producing the dispatch note showing that he had handed, no later than 6 October 2006, the signed version of the Appellant's Brief and its annexes to the express mail agent to send to the Registry of the Tribunal in Arusha, Tanzania. The Appellant must take the necessary measures to ensure that the above-mentioned documents reach the Registry of the Tribunal in Arusha, no later than 13 October 2006.

DIRECTS the Prosecutor to file his Respondent's Brief, if necessary, within 40 days from the date on which the Registry of the Tribunal recorded the filing of the signed version of the Appellant's Brief.

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

Liu Daqun
Pre-Appeal Judge

Done on 4 October 2006,
At The Hague (The Netherlands)

[Seal of the Tribunal]

