

132/H



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-00-55A-A
15 February 2007
[132/H -129/H]

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Liu Daqun,
Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 15 February 2007

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Tharcisse MUVUNYI

v.

THE PROSECUTOR

Case No. ICTR-2000-55A-A

ICTR Appeals Chamber
Date: 15 February 2007
Action: P.T.
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**DECISION ON "ACCUSED THARCISSE MUVUNYI'S MOTION TO
EXTEND TIME TO FILE HIS BRIEF IN REPLY TO THE PROSECUTOR'S
APPELLANT'S BRIEF"**

Counsel for the Appellant

Mr. William E. Taylor III

Office of the Prosecutor

Mr. Hassan Bubacar Jallow
Mr. James Stewart
Ms. Linda Bianchi
Ms. Evelyn Kamau

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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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 "Tribunal", respectively);

BEING SEIZED OF "Accused Tharcisse Muvunyi's Motion to Extend Time to File his Brief in Reply to the Prosecutor's Appellant's Brief", filed on 11 January 2007 ("Motion"), in which Tharcisse Muvunyi ("Appellant") requests leave to file his response to the Prosecution's appeal forty-five days after he has filed his Appellant's brief;¹

NOTING that the Appellant submits that: (i) it is imperative that he files a full and complete brief on appeal before responding to the Prosecution's appeal;² (ii) the Rules of Procedure and Evidence of the Tribunal ("Rules") do not contemplate the filing of an Appellant's brief and at the same time complying with the time limits for the filing of a Respondent's brief to the Prosecution's Appellant's brief;³ (iii) the Appeals Chamber may extend the time limits in accordance with Rule 116 of the Rules;⁴ (iv) it will take many hours of work to address all the problems created by the Trial Chamber's handling of Count Four of the Indictment, which is the subject of the Prosecution's appeal;⁵ (v) only Lead Counsel has been appointed to the Appellant and a request for additional legal assistance, which is required for a fair, just and complete presentation of his case, is pending with the Registrar;⁶ and (vi) the Appeals Chamber should put in place a time schedule taking into consideration the doctrine of due process, effective assistance of counsel, and equality of arms, as well as allowing sufficient time for the Registrar to appoint the Defence team;⁷

NOTING that the Prosecution filed a Response to the Motion,⁸ in which it submitted that: (i) its Appellant's brief was filed on 15 December 2006, two weeks earlier than required; however it would have no objections if the time for the filing of the Respondent's brief began to run from 2 January 2007, the expected filing date of the Prosecution's Appellant's brief;⁹ (ii) an extension of

¹ Motion, para. 9.

² Motion, para. 6.

³ Motion, para. 6.

⁴ Motion, para. 6.

⁵ Motion, para. 7.

⁶ "Accused Tharcisse Muvunyi's Reply to the Prosecutor's Response to Accused Tharcisse Muvunyi's Motion to Extend Time to File his Brief in Reply to the Prosecutor's Appellant's Brief", 25 January 2007, ("Reply"), para. 8.

⁷ Reply, para. 8.

⁸ "Prosecutor's Response to 'Accused Tharcisse Muvunyi's Motion to Extend Time to File his Brief in Reply to the Prosecutor's Appellant's Brief'", 22 January 2007 ("Response").

⁹ Response, para. 4.

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time beyond this two week period is not justified, as the Defence has failed to establish good cause for this further delay;¹⁰ (iii) the Appellant's claim that the Rules did not contemplate him filing his Appellant's brief and at the same time complying with the time limits for the filing of his Respondent's brief is erroneous¹¹ and this explanation alone cannot amount to good cause;¹² (iv) the Appellant has not expounded on his submission that the Prosecution's appeal is closely related to the issues that are the subject of his appeal, which would affect his ability to comply with the prescribed time limits;¹³ and (v) the alleged errors identified by the Prosecution constitute a narrow appeal and the Appellant should therefore be in a position to respond to this appeal within the allocated time;¹⁴

NOTING that pursuant to Rule 33 (B) of the Rules, the Registrar submitted that: (i) the Appellant provided his initial list of candidates for Co-Counsel on 30 October 2006 and Ms. Cynthia Cline who served as his Legal Assistant for his trial, was his preferred choice;¹⁵ (ii) the Registrar approved Ms. Cline's assignment on the condition that she withdraw from her position as Legal Assistant in another case;¹⁶ (iii) Ms. Cline communicated her refusal to withdraw from that Defence team on 2 December 2006;¹⁷ (iv) on 18 January 2007, the Appellant submitted a new list of proposed candidates for Co-Counsel and on 30 January 2007, the Registrar assigned Co-Counsel;¹⁸ and (v) the Registrar is currently processing the application for a legal assistant;¹⁹

CONSIDERING that pursuant to Rule 112 (A) of the Rules, a Respondent's brief must be filed within forty days of the filing of the Appellant's brief and in cases where the appeal is limited to the sentence, within thirty days from the filing of the Appellant's brief;

CONSIDERING that pursuant to Rule 116 (A) of the Rules, the Appeals Chamber may grant leave to extend a time limit upon a showing of good cause and that, in this case, the fact that the full

¹⁰ Response, para. 6.

¹¹ Response, para. 7.

¹² Response, para. 8.

¹³ Response, para. 10.

¹⁴ Response, para. 11.

¹⁵ "The Registrar's Submission Under Rule 33 (B) of the Rules of Procedure to the Accused Tharcisse Muvunyi's Reply to the 'Prosecutor's Response to Accused Tharcisse Muvunyi's Motion to Extend Time to File his Brief in Reply to the Prosecutor's Appellant's Brief'", 31 January 2007, ("Registrar's Submission"), para. 2.

¹⁶ Registrar's Submission, para. 4.

¹⁷ Registrar's Submission, para. 5.

¹⁸ Registrar's Submission, para. 6.

¹⁹ Registrar's Submission, para. 7.

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composition of the Appellant's Defence team had not been assigned constitutes good cause that warrants an extension of time for the filing of his Respondent's brief;²⁰

CONSIDERING FURTHER that Co-Counsel was assigned to the Appellant on 30 January 2006;²¹

FOR THE AFOREMENTIONED REASONS,

GRANTS the Appellant's Motion in part;

ORDERS that the Appellant files his Respondent's Brief within forty days of the assignment of his Co-Counsel, that is, no later than 12 March 2007.

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


Judge Liu Datun
Pre-Appeal Judge

Dated this 15th day of February 2007,
At The Hague,
The Netherlands.



[Seal of the Tribunal]

²⁰ *Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on "Appellant Jean-Bosco Barayagwiza's Urgent Motion for Leave to have Further Time to File the Appeal's Brief and the Appeal Notice", 17 May 2005, p. 4; *George Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-3-A, Scheduling Order (Extremely Urgent Motion for Suspension of Time Limits), 2 March 2001, p. 3.

²¹ "The Registrar's Submission Under Rule 33 (B) of the Rules of Procedure to the Accused Tharcisse Muvunyi's Reply to the Prosecutor's Response to Accused Tharcisse Muvunyi's Motion to Extend Time to File his Brief in Reply to the Prosecutor's Appellant's Brief", 31 January 2007, para. 6.



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

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| To: A: | <p>JUDICIAL ARCHIVES - ARUSHA ✖ Fax Number: 1795251</p> <p>APPEALS UNIT ✖ Ms Félicité Talon,</p> <p>APPEALS CHAMBER ✖ Judge / Juge Mohamed Shahabuddeen ✖ Judge / Juge Mehmet Güney ✖ Judge / Juge Liu Daqun ✖ Judge / Juge Theodor Meron ✖ Judge / Juge Wolfgang Schomburg</p> <p>✖ Ms Catherine Marchi-Uhel ✖ Mr Roman Boed ✖ Concerned Associate Legal Officers ✖ Mr Fatou Fall</p> <p>DEFENSE ✖ Accused / <i>accusé</i> : Mr. Tharcisse MUVUNYI (complete CMS4 Form)</p> <p>✖ Lead Counsel / <i>Conseil Principal</i>: William E. Taylor (name / nom) ✖ In Arusha (complete CMS 2) <input type="checkbox"/> Fax Number: 1 832 912 1470 ✖ E-mail: bill@williamtaylor.org</p> <p>✖ Co-Counsel / <i>Conseil Adjoint</i>: Mr. Cynthia J. Cline (name / nom) ✖ In Arusha (complete CMS 2) <input type="checkbox"/> Fax Number: ✖ E-mail:</p> | |
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