



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

200/H

ICTR-2000-55A-A  
19<sup>th</sup> March 2007  
[200/H - 193/H]

Before:

Judge Fausto Pocar, Presiding  
Judge Mohamed Shahabuddeen  
Judge Liu Daqun  
Judge Theodor Meron  
Judge Wolfgang Schomburg

Registrar:

Mr. Adama Dieng

Decision of:

19 March 2007

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME  
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NAME / NOM: *J. Chirinda*  
SIGNATURE: *[Signature]* DATE: 19/03/07

Tharcisse MUVUNYI

v.

THE PROSECUTOR

Case No. ICTR-2000-55A-A

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**DECISION ON "ACCUSED THARCISSE MUVUNYI'S MOTION FOR LEAVE TO AMEND HIS GROUNDS FOR APPEAL AND MOTION TO EXTEND TIME TO FILE HIS BRIEF ON APPEAL" AND "PROSECUTOR'S MOTION OBJECTING TO 'ACCUSED THARCISSE MUVUNYI'S AMENDED GROUNDS FOR APPEAL'"**

Counsel for the Appellant

Mr. William E. Taylor III

Office of the Prosecutor

Mr. Hassan Bubacar Jallow  
Mr. James Stewart  
Ms. Linda Bianchi  
Ms. Renifa Madenga  
Mr. Francois Nsanzuwera  
Ms. Evelyn Kamau

ICTR Appeals Chamber  
Date: 19 March 2007  
Action: P/L  
Copied To: *continued Judges, Parties*  
*SLD, LOS, ALUS, LSS*

Archival

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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 ("Appeals Chamber" and "Tribunal", respectively) is seized of "Accused Tharcisse Muvunyi's Motion for Leave to Amend his Grounds for Appeal and Motion to Extend Time to File his Brief on Appeal" filed by Tharcisse Muvunyi on 12 December 2006 ("Appellant" and "Appellant's Motion", respectively), requesting:

- (i) leave to file amended grounds of appeal on or before 15 January 2007; and
- (ii) an extension of the time for filing his Appellant's brief until 15 April 2007.<sup>1</sup>

2. The Prosecution responded to the Appellant's Motion on 20 December 2006.<sup>2</sup> On 17 January 2007, the Appellant filed his "Amended Grounds for Appeal".<sup>3</sup> On 29 January 2007, the Prosecution filed the "Prosecutor's Motion Objecting to 'Accused Tharcisse Muvunyi's Amended Grounds for Appeal'" ("Prosecution's Motion") requesting the Appeals Chamber to disregard the Appellant's Amended Grounds for Appeal as *invalidly filed since the filing was done without leave of the Appeals Chamber.*<sup>4</sup>

#### A. Background and Submissions

3. The Appellant was convicted of genocide, direct and public incitement to commit genocide and other inhumane acts as a crime against humanity,<sup>5</sup> and sentenced to twenty-five years of imprisonment.<sup>6</sup> On 10 October 2006, the Appellant filed his Notice of Appeal,<sup>7</sup> requesting that his convictions be set aside, as they are not supported by the facts and law, and that a finding of not guilty be entered in respect of each count.<sup>8</sup> Alternatively, the Appellant requested reduction of the sentence.<sup>9</sup> The Appellant now seeks leave to amend his Notice of Appeal pursuant to Rule 108 of the Rules of Procedure and Evidence of the Tribunal ("Rules") and requests an extension of time for the filing of the Appellant's brief, pursuant to Rule 116(A) of the Rules.

<sup>1</sup> Appellant's Motion, paras. 8, 9.

<sup>2</sup> Prosecutor's Response to "Accused Tharcisse Muvunyi's Motion for Leave to Amend his Grounds for Appeal and Motion to Extend Time to File his Brief on Appeal", 20 December 2006 ("Prosecution's Response"). The Appellant did not file a reply.

<sup>3</sup> "Accused Tharcisse Muvunyi's Amended Grounds for Appeal", 16 January 2007 ("Amended Grounds of Appeal").

<sup>4</sup> Prosecution's Motion, para. 6. The Appellant did not file a response.

<sup>5</sup> Judgement and Sentence, 12 September 2006 ("Trial Judgement"), para. 531.

<sup>6</sup> Trial Judgement, para. 545.

<sup>7</sup> "Accused Tharcisse Muvunyi's Notice of Appeal", 10 October 2006 ("Notice of Appeal").

<sup>8</sup> Notice of Appeal, para. 15.

<sup>9</sup> Notice of Appeal, para. 15.

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4. The Appellant submits that since the filing of the Notice of Appeal, he has identified "other compelling and egregious errors that would constitute grounds for appeal that must, in the interest of justice, be addressed by the Appeals Chamber [...]"<sup>10</sup> The Appellant avers that there has been a delay in the preparation of a "concise, complete and orderly statement of issues" on appeal because the Trial Chamber "created new and different issues for the Accused to combat and has chosen to ignore the established jurisprudence of the tribunal [... forcing him] to focus on issues entirely different from those advanced by the prosecutor and briefed extensively by both sides during trial."<sup>11</sup> Additionally, the Appellant argues that the Appeals Chamber has allowed the Prosecution to file its Notice of Appeal out of time and that this has "expanded the issues the Accused must be prepared to address and has further inhibited his ability to effectively address all cogent issues raised by this case [...] within the time frame set out in the rules."<sup>12</sup> Finally, the Appellant submits that his Defence team is still in the process of being approved by the Registrar and that his Counsel has other clients in custody who require his attention.<sup>13</sup>

5. The Prosecution responds that granting leave to amend a notice of appeal is a matter within the discretion of the Appeals Chamber and therefore raises no specific objection to the Appellant's Motion, without conceding the merits of any of the arguments raised by the Appellant.<sup>14</sup> However, the Prosecution submits that the failure to properly articulate issues in the Notice of Appeal due to Counsel's conflicting obligations cannot constitute good cause, since counsel have the obligation to competently represent their clients and to respect all time limits and deadlines when they accept an assignment at the Tribunal.<sup>15</sup> Finally, the Prosecution argues that the Appellant's challenge of some grounds raised in the Prosecution's Appeal Brief cannot constitute good cause for the purpose of amending the Appellant's Notice of Appeal since the proper venue for challenging the Prosecution's appeal is in his Respondent's Brief.<sup>16</sup>

#### **B. Applicable Law**

6. The Appeals Chamber "may, on good cause being shown by motion, authorise a variation of the grounds of appeal" set out in a notice of appeal, pursuant to Rule 108 of the Rules. This motion

<sup>10</sup> Appellant's Motion, para. 4.

<sup>11</sup> Appellant's Motion, para. 5.

<sup>12</sup> Appellant's Motion, para. 6.

<sup>13</sup> Appellant's Motion, paras. 5, 7.

<sup>14</sup> Prosecution's Response, paras. 3, 11.

<sup>15</sup> Prosecution's Response, para. 8.

<sup>16</sup> Prosecution's Response, para. 10.

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should be submitted as soon as possible after the moving party has identified the alleged error.<sup>17</sup> Generally, the motion must explain precisely what amendments are being sought and show with respect to each amendment that the good cause requirement is satisfied.<sup>18</sup> The "good cause" requirement encompasses both good reason for including the proposed new or amended grounds of appeal and good reason for showing why those grounds were not included (or were not correctly articulated) in the original notice of appeal.<sup>19</sup>

7. In its previous determinations that proposed variations to the notice of appeal may be authorized within the scope of the good cause requirement, the Appeals Chamber has considered the following factors to be of relevance: (i) the variation is so minor that it does not affect the content of the notice of appeal; (ii) the opposing party has not opposed the variation or would not be prejudiced by it; (iii) the variation would bring the notice of appeal into conformity with the appeal brief;<sup>20</sup> (iv) the variation does not unduly delay the appeal proceedings;<sup>21</sup> or (v) the variation could be of substantial importance to the success of the appeal such as to lead to a miscarriage of justice if it is excluded.<sup>22</sup>

### C. Discussion

8. The Appeals Chamber first considers the Prosecution's Motion objecting to the filing of the Amended Grounds of Appeal. Since the Appeals Chamber has not yet ruled on the Appellant's

<sup>17</sup> *Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motions for Leave to Submit Additional Grounds of Appeal, to Amend the Notice of Appeal and to Correct his Appellant's Brief, 17 August 2006 ("Nahimana Decision"), para. 9.

<sup>18</sup> *Nahimana Decision*, para. 9 referring to *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Dragan Jokić's Motion to Amend Notice of Appeal, 14 October 2005 ("Blagojević Decision of 14 October 2005"), para. 7.

<sup>19</sup> *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Motion of Dragan Jokić for Leave to File Third Amended Notice of Appeal and Amended Appellate Brief, 26 June 2006 ("Blagojević Decision of 26 June 2006"), para. 7; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Motions Related to the Pleadings in Dragan Jokić's Appeal, 24 November 2005 ("Blagojević Decision of 24 November 2005"), para. 10; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Defence Motion for Extension of Time in Which to File the Defence Notice of Appeal, 15 February 2005, pp. 2-3.

<sup>20</sup> *Blagojević Decision of 26 June 2006*, para. 9 (citations omitted).

<sup>21</sup> *Nahimana Decision*, para. 13; cf. *Blagojević Decision of 26 June 2006*, para. 8.

<sup>22</sup> *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Decision Granting Leave to Dario Kordić to Amend His Grounds of Appeal, 9 May 2002, para. 5; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Prosecution's Request for Leave to Amend Notice of Appeal in Relation to Vidoje Blagojević, 20 July 2005, p. 4; *Blagojević Decision of 24 November 2005*, para. 8. But see *Blagojević Decision of 26 June 2006*, para. 9, wherein it is stated that "the Appeals Chamber has under limited circumstances permitted amendments even where there was no good cause for failure to include the new or amended grounds in the original notice—that is where the failure resulted from counsel negligence or inadvertence. In such instances, the Appeals Chamber has permitted amendments which are of substantial importance to the success of the appeal such as to lead to a miscarriage of justice if the grounds were excluded." The Appeals Chamber does not consider that this holding is contrary to its previous case law, which allows for it to accept proposed amendments to a Notice of Appeal within the good cause requirement where it finds that amendment to be of substantial importance to the success of the appeal such as to lead to a miscarriage of justice if it is excluded. Rather, this holding provides that counsel negligence or inadvertence alone may never amount to good cause but, nevertheless, where there is such negligence or inadvertence, the Appeals Chamber may ensure under certain circumstances that an accused is not prejudiced by the failure of his counsel.

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request for leave to amend his Notice of Appeal, the filing of the Amended Grounds of Appeal can only be understood as a supplement to the Appellant's Motion. Accordingly, it would not be appropriate to disregard this filing and, therefore, the Appeals Chamber will dismiss the Prosecution's Motion.

9. The Appellant submits that he identified *additional* alleged errors in the Trial Judgement after the filing of his Notice of Appeal and seeks leave to amend his Notice of Appeal.<sup>23</sup> The Appeals Chamber has previously stated that where an amendment of a notice of appeal is requested as a result of "further analysis undertaken over the course of time", this alone cannot constitute good cause for this purpose.<sup>24</sup> In filing its notice of appeal pursuant to Rule 108 of the Rules, the appealing party is expected to have conducted a comprehensive review of the impugned Judgement within the prescribed time period.<sup>25</sup> Allowing an appealing party to amend its notice of appeal after such period for this sole reason would essentially allow it to "restart the appeal process at will."<sup>26</sup>

10. The Appellant submits that there was a delay in the preparation of "a concise, complete and orderly statement of issues" on appeal because the Trial Chamber ignored established jurisprudence and focused on issues different from those argued by the parties during trial.<sup>27</sup> Where it is alleged that the Trial Chamber committed an error, it may be the subject of an appeal pursuant to Article 24(1)(a) of the Tribunal's Statute. However, the Appeals Chamber considers that the nature of the alleged error does not show good reason for not completing the preparation required for the filing of a complete notice of appeal within the prescribed time limits.

11. The Appellant further submits that the issues that need to be addressed on appeal have been expanded due to the fact that the Appeals Chamber extended the deadline for the Prosecution to file its notice of appeal.<sup>28</sup> He argues that this resulted in the Prosecution filing an appeal which relates to Count 4 of the Indictment, even though the Prosecution sought to abandon this count during the early stages of trial.<sup>29</sup> The Appeals Chamber considers that, pursuant to Rule 108 of the Rules, an appeal against a trial Judgement commences with the filing of a notice of appeal, which sets forth the grounds of appeal. The purpose of a notice of appeal is to identify alleged errors of law and fact in an impugned Judgement and not to respond to an opposing party's appeal. Such a response will

<sup>23</sup> Appellant's Motion, para. 4.

<sup>24</sup> *Aloys Simba v. The Prosecutor*, Case No. ICTR-01-76-A, Decision on "Prosecutor's Motion for Variation of Notice of Appeal Pursuant to Rule 108", 17 August 2006 ("Simba Decision"), para. 9, referring to *Blagojević* Decision of 24 November 2005, para. 10.

<sup>25</sup> *Simba* Decision, para. 9.

<sup>26</sup> *Simba* Decision, para. 9, referring to *Blagojević* Decision of 26 June 2006, para. 8.

<sup>27</sup> Appellant's Motion, para. 5.

<sup>28</sup> Appellant's Motion, para. 6.

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normally be undertaken in a respondent's brief pursuant to Rule 112 of the Rules. Accordingly, the fact that the Appeals Chamber granted the Prosecution a six-day extension to file its notice of appeal does not constitute good cause for the purpose of amending the Appellant's Notice of Appeal.

12. The Appellant's final contention seems to be that he is assigned insufficient legal assistance to enable him to lodge an adequate appeal. If this is the case, the Appellant ought to have raised this matter before filing the Notice of Appeal. Furthermore, if the Appellant required an extension of the time limit to complete all necessary preparation for the filing of the Notice of Appeal, he should have requested it before filing the Notice of Appeal. It is futile to argue, after the filing of the Notice of Appeal, that the Appellant had insufficient time and legal assistance to undertake the required work.

13. The Appellant submits that Counsel is unable to devote all his time to the urgent needs of the appeal because he has other clients whose cases require his attention.<sup>30</sup> The Appeals Chamber has previously stated that "a Counsel, when accepting an assignment as Lead 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".<sup>31</sup> The Appeals Chamber highlights that pursuant to the Code of Professional Conduct for Defence Counsel, "Counsel must represent a client diligently in order to protect the client's best interests."<sup>32</sup> Counsel's competing professional commitments therefore cannot constitute good cause.

14. Having considered the Appellant's submissions, the Appeals Chamber finds that he has not established good cause pursuant to Rule 108 of the Rules to warrant a variation of his Notice of Appeal.

15. The Appeals Chamber recalls that where an omission of a ground of appeal or the inaccurate articulation of an existing ground of appeal arose as a result of counsel's negligence or inadvertence, the proposed new ground of appeal or the revision of an existing ground of appeal, will be allowed provided it is of substantial importance to the success of the appeal such as to lead to a miscarriage of justice if the ground is excluded.<sup>33</sup> This reasoning has also been employed where

<sup>29</sup> Appellant's Motion, para. 6.

<sup>30</sup> Appellant's Motion, para. 7.

<sup>31</sup> *Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Clarification of Time Limits and on Appellant's Barayagwiza's Extremely Urgent Motion for Extension of Time to File his Notice of Appeal and his Appellant's Brief, 6 September 2005, p. 5.

<sup>32</sup> Article 6, Code of Professional Conduct for Defence Counsel, 8 June 1998.

<sup>33</sup> *Blagojević* Decision of 26 June 2006, para. 9.

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proposed amendments to grounds of appeal have not been pleaded with sufficient clarity.<sup>34</sup> In the present case, the Appellant has not specifically identified the proposed new amendments to his Notice of Appeal, nor has he explained why they are of substantial importance such that their exclusion would lead to a miscarriage of justice. The Appeals Chamber is of the view that the Appellant should be afforded another opportunity to request amendments to his Notice of Appeal, to avoid a miscarriage of justice.

16. Lastly, the Appellant requested an extension of time to enable him to file his Appellant's brief by 15 April 2007.<sup>35</sup> The Appeals Chamber observes that on 13 March 2007, the Appellant filed his Appellant's Brief.<sup>36</sup> However, the Appellant's Brief was filed outside the time-limits prescribed in Rule 111 of the Rules. Consequently, the Appeals Chamber will consider whether good cause exists within the ambit of Rule 116 of the Rules to warrant the late filing of the Appellant's Brief.

17. The Appellant submits that "because of the complexity and unique nature of the issues [...] and the approach of the holiday recess, time for filing his Appellant's brief be extended."<sup>37</sup> This submission is of little assistance as the Appellant has failed to demonstrate how the alleged complexity and unique nature of the issues in his case could justify an extension of time for the filing of his Appellant's Brief. Furthermore, the Tribunal's recess does not mean that the prescribed time limits under the Rules and the relevant Practice Directions stop running, and therefore this ground does not constitute good cause.<sup>38</sup>

18. The Appeals Chamber considers the Appellant's submission that his Defence team has had to be reconstituted since the end of the trial and is still in the process of being approved by the Registrar, which has "delayed the preparation of a concise, complete and orderly statement of issues at interest."<sup>39</sup> This constitutes good cause within the meaning of Rule 116 of the Rules.<sup>40</sup> The Appeals Chamber will therefore allow the late filing of the Appellant's Brief.

<sup>34</sup> *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Dragan Jokić's Request to Amend Notice of Appeal, 14 October 2005, para. 8.

<sup>35</sup> Appellant's Motion, para. 9.

<sup>36</sup> Accused Tharcisse Muvunyi's Brief on Appeal, 12 March 2007 ("Appellant's Brief").

<sup>37</sup> Appellant's Motion, para. 9.

<sup>38</sup> *Prosecutor v. Zoran Zigić*, Case No. IT-98-30/1-R-2, Decision on Zoran Zigić's Request for Review under Rule 119, 25 August 2006, para. 2.

<sup>39</sup> Appellant's Motion, para. 5.

<sup>40</sup> *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.

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**FOR THE AFOREMENTIONED REASONS, the Appeals Chamber**

**GRANTS** the Appellant's Motion in part;

**DENIES** the Appellant's request to amend his Notice of Appeal, without prejudice to him filing a new motion, if he so wishes, within seven days from the date of this Decision, in which he:

- (1) identifies the amendments sought to the Notice of Appeal; and
- (2) explains why there is "good cause" for each change within the meaning of Rule 108 of the Rules.

**DISMISSES** the Appellant's Motion in all other respects; and

**DISMISSES** the Prosecution's Motion.

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

Done this 19th day of March 2007,  
At The Hague,  
The Netherlands.



[ Seal of the Tribunal ]

A handwritten signature in black ink, appearing to read "Fausto Pocar", is written over a horizontal line.

Judge Fausto Pocar  
Presiding