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Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

ICTR-00-55A-A

4 April 2007

(250/H - 248/H)

**BEFORE THE PRE-APPEAL JUDGE**

Before:

Judge Liu Daqun, Pre-Appeal Judge

Registrar:

Mr. Adama Dieng

Decision of:

4 April 2007

**THE PROSECUTOR**

v.

**Tharcisse MUVUNYI**

Case No. ICTR-00-55A-A

ICTR Appeals Chamber

Date: 4 April 2007

Action: P.T.

Copied To: concerned Judge  
Barber, 2007-05-11-28  
LH, Archives**Decision on Motion to Allow Filing of Response Brief Out of Time****Office of the Prosecutor:**

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

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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NAME / NOM: Patrice TchidimboSIGNATURE: [Signature] DATE: 04/04/07**Counsel for Tharcisse Muvunyi:**

Mr. William E. Taylor  
Ms. Abbe Jolles  
Mr. Dorian Cotlar

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1. 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 ("Tribunal") and Pre-Appeal Judge in this case am seized of a motion filed by Mr. Tharcisse Muvunyi to accept the filing of his Response Brief out of time.<sup>1</sup> The Prosecution has not filed a response to this motion, but has informed the Appeals Chamber that it does not oppose it.

2. On 12 September 2006, Trial Chamber II convicted Mr. Muvunyi of three counts of genocide, direct and public incitement to commit genocide, and other inhumane acts as crimes against humanity, and sentenced him to twenty-five years' imprisonment.<sup>2</sup> On 12 October 2006, Mr. Muvunyi appealed against his convictions and sentence.<sup>3</sup> The Prosecution also appealed against the Trial Judgement and filed its Appeal Brief on 15 December 2006.<sup>4</sup> On 11 January 2007, Mr. Muvunyi requested an extension of time to file his response to the Prosecution Appeal Brief.<sup>5</sup> This request was granted in part, and it was ordered that Mr. Muvunyi's Response Brief be filed no later than 12 March 2007.<sup>6</sup> Mr. Muvunyi, however, filed his Response Brief on 28 March 2007.<sup>7</sup>

3. In the Motion, Mr. Muvunyi's counsel states that, when the Pre-Appeal Judge set the date for filing the Response Brief, he mistakenly considered this as the date for filing the Appellant's Brief.<sup>8</sup> He notes that, instead of filing the Response Brief on 12 March 2007, on that date he sent the Muvunyi Appeal Brief to the Tribunal's Registry for filing.<sup>9</sup> At the time, Mr. Muvunyi also had a pending request to extend the time for filing his Appellant's Brief, and his counsel states that he only realized the mistake when the Appeals Chamber issued its decision on 17 March 2007, allowing the late-filing of the Appeal Brief.<sup>10</sup> The Motion requests the Appeals Chamber to accept

<sup>1</sup> Accused Tharcisse Muvunyi's Motion to File His Response To Prosecutor's Appellant's Brief Out of Time, 28 March 2007 ("Muvunyi Motion").

<sup>2</sup> *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, Judgement and Sentence, 18 September 2006, paras. 531, 545 ("Trial Judgement"). The Trial Judgement was pronounced on 12 September 2006, and the written judgement was filed with the Registry on 18 September 2007.

<sup>3</sup> Accused Tharcisse Muvunyi's Notice of Appeal, 12 October 2006 ("Notice of Appeal").

<sup>4</sup> Prosecutor's Notice of Appeal and Motion for an Extension of Time within which to File Notice of Appeal, 17 October 2006 ("Prosecution Notice of Appeal"); Prosecutor's Appellant's Brief, 15 December 2006 ("Prosecution Appeal Brief").

<sup>5</sup> See Decision On "Accused Tharcisse Muvunyi's Motion To Extend Time To File His Brief In Reply To The Prosecutor's Appellant's Brief", 15 February 2007, p. 2 ("Muvunyi Extension of Time Decision").

<sup>6</sup> Muvunyi Extension of Time Decision, p. 4.

<sup>7</sup> Accused Tharcisse Muvunyi's Response to Prosecutor's Appellant's Brief, 28 March 2007 ("Muvunyi Response Brief").

<sup>8</sup> Muvunyi Motion, para. 6.

<sup>9</sup> Muvunyi Motion, paras. 3, 5, 6.

<sup>10</sup> Muvunyi Motion, para. 7.

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the late-filing of Mr. Muvunyi's Response Brief and not to penalize Mr. Muvunyi for the "honest mistake" of his counsel.<sup>11</sup>

4. Rule 116(A) of the Rules permits the Appeals Chamber to extend a time limit upon a showing of good cause. Moreover, Paragraph 19 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal allows the Appeals Chamber to "recognize as validly done any act done after the expiration of a time-limit so prescribed."<sup>12</sup> The late-filing of the Response Brief appears to be inadvertent, which itself does not suffice to demonstrate good cause. However, the Prosecution has not opposed the present Motion, and any delay resulting from this late-filing will not impact the overall timing for the consideration of this appeal. Significantly, as the Prosecution appeal seeks to increase Mr. Muvunyi's sentence to life-imprisonment and to enter a new conviction against him for rape as a crime against humanity,<sup>13</sup> in the present circumstances, it would be a miscarriage of justice not to consider Mr. Muvunyi's Response Brief based solely on this brief delay resulting from his counsel's inadvertence. Accordingly, in the context of this case, there is good cause to allow the late-filing of Mr. Muvunyi's Response Brief.<sup>14</sup> Counsel, however, is reminded to adhere strictly to the deadlines set by the Tribunal and, furthermore, is warned that future professional lapses of this nature may not be similarly excused.

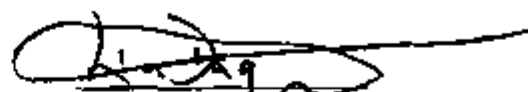
5. For the foregoing reasons, Mr. Muvunyi's motion to file his Response Brief out of time is **GRANTED**.

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

Done this 4<sup>th</sup> day of April 2007,  
At The Hague,  
The Netherlands.



[Seal of the Tribunal]

  
Judge Liu Dazun  
Pre-Appeal Judge

<sup>11</sup> Muvunyi Motion, paras. 8, 9.

<sup>12</sup> 8 December 2006.

<sup>13</sup> Prosecution Notice of Appeal, para. 12; Prosecution Appeal Brief, para. 174.

<sup>14</sup> See, e.g., *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-AR73, Decision on Request for Extension of Time to File Reply, 3 July 2006, paras. 2, 3 (finding good cause and allowing a brief extension of time, *inter alia*, given the importance of hearing the party on the issue and the lack of objection by the Prosecution).

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CHAMBRE D'APPEL - PREUVE DE NOTIFICATION

4 April 2007	Case Name / Affaire: Tharcisse MUVUNYI Case No / No. de l'affaire: ICTR-00-55A-AR	THE PROSECUTOR v. Tharcisse MUVUNYI
To: A:	<b>JUDICIAL ARCHIVES - ARUSHA</b> ✕ Fax Number: 1795251  <b>APPEALS UNIT</b> ✕ Ms Félicité Talon,  <b>APPEALS CHAMBER</b> ✕ Judge / Juge Fausto Pocar, Presiding ✕ Judge / Juge Mohamed Shahabuddeen ✕ Judge / Juge Liu Daqun ✕ Judge / Juge Theodor Meron ✕ Judge / Juge Wolfgang Schomburg  ✕ Ms Catherine Marchi-Uhel ✕ Mr Ruman Boed ✕ Concerned Associate Legal Officers ✕ Mr Patou Fall  <b>DEFENSE</b> ✕ Accused / accusé : Mr. Tharcisse MUVUNYI (complete CMS Form)  ✕ Lead Counsel / Conseil Principal: William E. Taylor (name / nom) ✕ In Arusha (complete CMS 2) <input type="checkbox"/> Fax Number: 1 832 912 1470 ✕ E-mail: bill@williamtaylor.org  ✕ Co-Counsel / Conseil Adjoint: Mr. Cynthia J. Cline (name / nom) ✕ In Arusha (complete CMS 2) <input type="checkbox"/> Fax Number: ✕ E-mail:	
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