

532/H



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

ICTR-00-55A-A  
18 April 2007  
(532/H - 529/H)

IN THE APPEALS CHAMBER

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

**Registrar:** Mr. Adama Dieng

**Decision of:** 18 April 2007

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**THE PROSECUTOR**

v.

**Tharcisse MUVUNYI**

Case No. ICTR-00-55A-A

ICTR Appeals Chamber  
Date: 18 April 2007  
Action: P.T.  
Copied To: concerned Judge  
Parties, SPS, LOS, MOS  
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*[Signature]*

**Decision on Motion to Amend Grounds of Appeal**

Office of the Prosecutor:

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

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Tribunal pénal international pour le Rwanda  
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NAME / NOM: *Patricia T. Muvunyi*  
SIGNATURE: *[Signature]* DATE: *18/04/07*

Counsel for Tharcisse Muvunyi:

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

*TU*

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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 a motion filed by Mr. Tharcisse Muvunyi to amend his grounds of appeal ("Second Request").<sup>1</sup> The Prosecution has not filed a response to the Second Request, but has informed the Appeals Chamber that it does not oppose it.

## Background

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 filed twelve grounds of appeal against his convictions and sentence.<sup>3</sup> The Prosecution has also appealed against the Trial Judgement.<sup>4</sup>

3. On 12 December 2006, Mr. Muvunyi filed a request to amend his Notice of Appeal ("First Request"), which sought to introduce new grounds of appeal.<sup>5</sup> The Prosecution did not oppose the First Request.<sup>6</sup> On 13 March 2007, while the First Request was under consideration by the Appeals Chamber, Mr. Muvunyi filed his Appeal Brief, which was outside of the time-limits prescribed in Rule 111 of the Rules of Procedure and Evidence of the Tribunal ("Rules").<sup>7</sup> His Appeal Brief contained an additional ground of appeal not included in his Notice of Appeal.<sup>8</sup> On 19 March 2007, the Appeals Chamber denied the First Request, but allowed the late filing of Mr. Muvunyi's Appeal

<sup>1</sup> Accused Tharcisse Muvunyi's Motion to Amend His Grounds For Appeal, 27 March 2007 ("Second Request").

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

<sup>3</sup> Accused Tharcisse Muvunyi's Notice of Appeal, 12 October 2006, paras. 3-14 ("Muvunyi 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.

<sup>5</sup> 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'", 19 March 2007, para. 1 ("Muvunyi First Amendment Decision").

<sup>6</sup> See 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. See also *Muvunyi First Amendment Decision*, para. 5.

<sup>7</sup> Accused Tharcisse Muvunyi's Brief on Appeal, 13 March 2007 ("Muvunyi Appeal Brief"). See also *Muvunyi First Amendment Decision*, para. 16.

<sup>8</sup> Muvunyi Appeal Brief, paras. 106-109.

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Brief.<sup>9</sup> In dismissing the First Request, the Appeals Chamber afforded Mr. Muvunyi another opportunity to demonstrate good cause for allowing the proposed amendments.<sup>10</sup>

4. In the Second Request, Mr. Muvunyi seeks leave to raise an additional ground of appeal, which is already included in his Appellant's Brief.<sup>11</sup> This ground of appeal alleges that the Trial Chamber erred in law in convicting him under Count 5 of the Indictment for other inhumane acts as crimes against humanity for various beatings and injuries at Benéberika Convent.<sup>12</sup> In particular, Mr. Muvunyi contends that the Trial Chamber convicted him based on findings that were not pleaded in the Indictment or pursued by the Prosecution at trial.<sup>13</sup> He submits that this ground of appeal mirrors two other existing grounds of appeal alleging the same legal error against his conviction for other inhumane acts which are directed at different underlying acts.<sup>14</sup> He requests the Appeals Chamber to consider this ground of appeal, even if it determines that the omission resulted from his counsel's negligence or inadvertence, in order to avoid a miscarriage of justice.<sup>15</sup>

#### Discussion

5. In accordance with Rule 108 of the Rules, the Appeals Chamber may, on good cause being shown, authorize a variation of the grounds of appeal set out in the notice of appeal.<sup>16</sup> The Appeals Chamber is satisfied that there is good cause for allowing the proposed amendment to Mr. Muvunyi's Notice of Appeal. The Appeals Chamber notes that the Prosecution has not opposed the variation. Moreover, the amendment would bring the Notice of Appeal into conformity with the Appeal Brief, which already contains this argument, and allowing the amendment would not result in any undue delay in the appeals proceedings. Finally, the new ground of appeal concerns an alleged defect in the Indictment, and varying the grounds of appeal could thus be of substantial importance to the success of the appeal. Accordingly, the Appeals Chamber will allow the amendment to the Notice of Appeal proposed in the Second Request, notwithstanding counsel's inadvertence in omitting it from the original Notice of Appeal, in order to avoid a possible miscarriage of justice.<sup>17</sup>

<sup>9</sup> *Muvunyi First Amendment Decision*, paras. 14, 19.

<sup>10</sup> *Muvunyi First Amendment Decision*, para. 15.

<sup>11</sup> See *Second Request*, para. 6; *Muvunyi Appeal Brief*, paras. 106-109.

<sup>12</sup> *Second Request*, paras. 6, 7.

<sup>13</sup> *Second Request*, paras. 6, 7.

<sup>14</sup> *Second Request*, para. 7, referring to grounds 10 and 11.

<sup>15</sup> *Second Request*, para. 7.

<sup>16</sup> See *Muvunyi First Amendment Decision*, paras. 6, 7.

<sup>17</sup> See *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, *Decision on the Prosecutor's Motion to Pursue the Oral Request for the Appeals Chamber to Disregard Certain Arguments Made by Counsel for Appellant Barayagwiza at the Appeals Hearing on 17 January 2007, 5 March 2007*, para. 15.

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**Disposition**

6. For the foregoing reasons, the Appeals Chamber **GRANTS** Mr. Muvunyi's Second Request and **ALLOWS** a variation to his Notice of Appeal by including Ground XIII as set out in the Second Request and Mr. Muvunyi's Appeal Brief.

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

Done this 18th day of April 2007,  
At The Hague,  
The Netherlands.



  
Judge Fausto Pocar  
Presiding

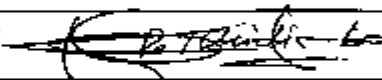


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**APPEALS CHAMBER – PROOF OF SERVICE  
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