



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

160/H

ICTR-01-74-A
03 April 2008
{160/H - 157/H}

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Fausto Pocar, Pre-Appeal Judge
Registrar: Mr. Adama Dieng
Decision of: 3 April 2008

ICTR Appeals Chamber
Date: 3 April 2008
Action: PT
Copied To: ~~Col~~ Judges
Parties, ~~Prosecution~~ ~~Defence~~ ~~Amicus~~

FRANÇOIS KARERA

v.

THE PROSECUTOR

Case No. ICTR-01-74-A

Archives

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DECISION ON MOTION FOR LEAVE TO EXCEED THE WORD LIMIT

Counsel for the Appellant:
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Mr. Abdoulaye Seye
Mr. François-Xavier Nsanzuwera
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: Patrice Tchidimbo
SIGNATURE: DATE: 03/04/08

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I, FAUSTO POCAR, Presiding 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,

NOTING that Trial Chamber I of the Tribunal delivered its Judgement against François Karera on 7 December 2007 and issued its reasons in English on 14 December 2007 ("Trial Judgement");

NOTING the "*Mémoire d'appel (Article 24 du Statut, Règle 111 du Règlement de Procédure et de Preuve)*" filed on 28 March 2008 ("Appellant's Brief") by François Karera ("Appellant");

BEING SEIZED OF the "*Requête extrêmement urgente de la défense de Karera aux fins de dépassement du nombre limite de mots (Articles 5 et 6 de la Directive Pratique Relative à la Longueur des Mémoires et des Requêtes en Appel)*" filed by the Appellant on 28 March 2008 ("Motion"), in which the Appellant requests the Appeals Chamber to declare as validly filed his Appellant's Brief despite its non-compliance with the prescribed word limit;¹

NOTING the "Response [*sic*] du Procureur à la « *Requête extrêmement urgente de la défense de Karera aux fins de dépassement du nombre limite de mots (Articles 5 et 6 de la Directive Pratique Relative à la Longueur des Mémoires et des Requêtes en Appel)* »", filed by the Prosecution on 2 April 2008 ("Prosecution Response"), in which the Prosecution opposes the Motion and requests the Appeals Chamber to order the Appellant to file an Appellant's Brief containing no more than 30,000 words;²

CONSIDERING that, pursuant to Rule 108bis of the Rules of Procedure and Evidence of the Tribunal, the Pre-Appeal Judge shall ensure that the proceedings are not unduly delayed and shall take any measure related to procedural matters with a view to preparing the case for a fair and expeditious hearing;

NOTING that paragraph C(1)(a) of the Practice Direction on the Length of Briefs and Motions on Appeal, dated 8 December 2006, ("Practice Direction") provides that "the brief of an appellant on appeal from a final judgement of a Trial Chamber will not exceed 30,000 words [...]";

¹ Motion, p. 4. The Appellant states that the body of the Appellant's Brief contains 32,591 words. In addition, its footnotes comprise 4,366 words and the Glossary comprises 799 words (Motion, para. 7).

² Prosecution Response, para. 10.

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~~CONSIDERING~~ that the Appellant's Brief exceeds the word limit imposed by the Practice Direction by approximately 7,000 words;³

CONSIDERING that, pursuant to paragraph C(5) of the Practice Direction, a party intending to file a document which exceeds the word limit prescribed by the Practice Direction "must seek authorization in advance from the Appeals Chamber or the Pre-Appeal Judge [...] and must provide an explanation of the exceptional circumstances that necessitate the oversized filing";

CONSIDERING that the Motion and the Appellant's Brief were submitted for filing and were filed on the same date, namely, 28 March 2008;⁴

FINDING therefore that the Appellant has failed to comply with his obligation to seek advance authorisation to exceed the word limit;

NOTING FURTHER that the Appellant submits that exceptional circumstances justify the oversized filing, in particular the fact that the Appellant's Brief is written in French;⁵ the number (28) of grounds of appeal;⁶ the nature of the alleged errors;⁷ the increasingly extensive *ad hoc* Tribunals' case law;⁸ as well as the fact that the Appellant approved the Appellant's Brief on 28 March 2008, after it had already been significantly reduced in length and that subsequently Counsel for the Appellant was unable to contact the Appellant to obtain his agreement on a further reduction;⁹

CONSIDERING that the Appellant's claim that writing in French requires more words than in English is irrelevant, since the Appellant's Brief is not a translation, and, in any case, the veracity of this submission has not been demonstrated by the Appellant;¹⁰

CONSIDERING that presenting numerous grounds of appeal is not uncommon and does not in itself amount to an exceptional circumstance justifying an oversized filing;

³ The Pre-Appeal Judge does not take into account the Chronary which, as an appendix, is outside the prescribed word limit (Practice Direction, para. C(4)).

⁴ Facsimile sent by the Appellant's Counsel to the Registry on 28 March 2008 transmitting the Motion and the Appellant's Brief (Index number 152/A).

⁵ Motion, para. 6.1. The Appellant appears to submit that writing in French requires more words than in English.

⁶ Motion, para. 6.5.

⁷ Motion, paras 6.2-6.3.

⁸ The Appellant also claims that he decided to reproduce excerpts from the case law in his brief for the sake of clarity, Motion, para. 6.4.

⁹ Motion, paras 6.6-6.7.

¹⁰ Motion, para. 6.1 and fn. 1, asserting on the basis of a page count rather than a word count, that the English [sic] version of the *Ntagirira et al.* Appeal Judgement is 31% longer than the French version.

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CONSIDERING that allegations of errors in assessing the evidence do not automatically call for extensive quotations from evidentiary material in the main body of an appellant's brief;¹¹

CONSIDERING that demonstrating the existence of legal errors requires the presentation of sound arguments supported by specific and accurate references to the relevant law and jurisprudence rather than lengthy quotations of the *ad hoc* Tribunals' case law;

CONSIDERING, finally, that the fact that, after approving the Appellant's Brief in the morning of 28 March 2008, the Appellant could not be reached "directly" by his Counsel for approval of a shorter version is not sufficient to establish exceptional circumstances justifying an extension of the word limit;

CONSIDERING that the Appellant has not shown that the prescribed word limit is insufficient to argue his grounds of appeal;

FINDING consequently that the Appellant has not demonstrated the existence of exceptional circumstances that would justify an oversized filing.

FOR THE FOREGOING REASONS,

DISMISS the Motion;

REJECT the Appellant's Brief; and

ORDER the Appellant to re-file his Appellant's Brief of no more than 30,000 words by 7 April 2008, before 17:30 local time, at the seat of the Tribunal in Arusha.

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

Issued this 3rd day of April 2008.




Judge Fausto Pocar
Pre-Appeal Judge

¹¹ An appellant may submit with his appellant's brief an appendix containing "references, source materials, items from the record, exhibits, and other relevant, non-argumentative material" (Practice Direction, para. C(4)).