



UNITED NATIONS  
NATIONS UNIES

**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

OR: ENG

**TRIAL CHAMBER II**

**Before Judges:** Khalida Rachid Khan, presiding  
Lee Gacuiga Muthoga  
Emile Francis Short

**Registrar:** Mr. Adama Dieng

**Date:** 2 September 2008

**THE PROSECUTOR**  
v.  
**CASIMIR BIZIMUNGU**  
**JUSTIN MUGENZI**  
**JÉRÔME-CLÉMENT BICAMUMPAKA**  
**PROSPER MUGIRANEZA**

**Case No. ICTR-99-50-T**

**DECISION ON JUSTIN MUGENZI'S COMPOSITE MOTION CONCERNING  
PAGE LIMITS ON CLOSING BRIEFS**

**Office of the Prosecutor:**

Mr. Paul Ng'arua  
Mr. Ibukunolu Babajide  
Mr. Justus Bwonwonga  
Mr. Elvis Bazawule  
Mr. Shyamlal Rajapaksa  
Mr. Olivier De Schutter  
Mr. Kartik Murukutla  
Ms. Ndeye Marie Ka

**Counsel for the Defence:**

Ms. Michelyne C. St. Laurent and Ms. Andrea Valdivia for **Casimir Bizimungu**  
Mr. Ben Gumpert and Mr. Jonathan Kirk for **Justin Mugenzi**  
Mr. Michel Croteau and Mr. Philippe Larochelle for **Jérôme-Clément Bicamumpaka**  
Mr. Tom Moran and Ms. Cynthia Cline for **Prosper Mugiraneza**

## INTRODUCTION

1. On 24 June 2008, the Chamber issued an Order regarding the filing of closing briefs in this case.<sup>1</sup> In the Order, the Chamber limited the number of pages for each Final Trial Brief filed to not more than 300 pages, including all annexes.

2. The Order authorized any Party unable to comply with the page limit to seek authorisation from the Chamber to vary the length of the brief, and stated that “variation will only be granted if the Chamber is satisfied that the circumstances necessitate an increase in the aforementioned limitations.”<sup>2</sup>

3. The Defence for Justin Mugenzi (“Defence”) brought a Motion inviting the Chamber to reconsider the Order.<sup>3</sup> In its First Reconsideration Motion, the Defence raised four arguments against the Order, namely, that: (i) the usual practice in this case has been to proceed by consensus, and the Chamber’s failure to do so in this instance was unjustified;<sup>4</sup> (ii) the issuance of the Order without consultation, ran afoul of the Accused’s right to be heard on any issue which may prejudice him;<sup>5</sup> (iii) the 300 page limit is “arbitrary”, as the Chamber had not expressly considered the lengths of briefs in other multiple accused trials heard by this Tribunal;<sup>6</sup> and, (iv) given the duration and complexity of the trial, and the number of witnesses and exhibits, the Defence would need 700 pages for its brief.<sup>7</sup> The Chamber denied the Defence for Justin Mugenzi’s request to reconsider the Order.<sup>8</sup>

4. The Defence now moves the Chamber to: (i) reconsider the First Reconsideration Decision; or (ii) to certify the First Reconsideration Decision for Appeal; or (iii) to grant it authority to vary the 300 page limit as contemplated by the Order.<sup>9</sup> The Prosecution opposes the Defence’s reconsideration and certification requests, but not its request to vary the page limit.<sup>10</sup>

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<sup>1</sup> Further Orders Regarding the Filing of Closing Briefs, 24 June 2008 (“Order”).

<sup>2</sup> *Ibid.*

<sup>3</sup> Justin Mugenzi’s Motion for Reconsideration of the Chamber’s Further Orders Regarding the Filing of Closing Briefs, filed 27 June 2008 (“First Reconsideration Motion”).

<sup>4</sup> First Reconsideration Motion, para. 7.

<sup>5</sup> *Ibid.*, paras. 9-12.

<sup>6</sup> *Ibid.*, paras. 13-19.

<sup>7</sup> *Ibid.*

<sup>8</sup> Decision on Justin Mugenzi’s Motion for Reconsideration of the Chamber’s Further Orders Regarding the Filing of Closing Briefs, 23 July 2008 (“First Reconsideration Decision”).

<sup>9</sup> Justin Mugenzi’s Composite Motion for 1) Reconsideration of the Chamber’s Decision of Justin Mugenzi’s Motion for Reconsideration of the Chamber’s Further Orders Regarding the Filing of Closing Briefs; 2) Certification for Interlocutory Appeal of the Decision on Justin Mugenzi’s Motion for Reconsideration of the Chamber’s Further Orders Regarding the Filing of Closing Briefs; 3) Relief Under Paragraph III of the Chambers Orders Regarding the Filing of Closing Briefs of 24 June 2008, filed 31 July 2008 (“Composite Motion”).

<sup>10</sup> Prosecutor’s Response to Justin Mugenzi’s Composite Motion Dated 31 July 2008, filed 4 August 2008 (“Prosecution Response”).

## DISCUSSION

### *The Request for Reconsideration of the First Reconsideration Decision*

5. The Chamber has an inherent power to reverse or revise a prior decision where new material circumstances have arisen that did not exist at the time of the original decision, or where the decision was erroneous or constituted an abuse of the Chamber's authority and has caused prejudice or injustice to a party.<sup>11</sup> The onus is on the party seeking reconsideration to demonstrate special circumstances warranting such reconsideration.<sup>12</sup>

6. The Chamber considers the Defence's request for reconsideration of the First Reconsideration Decision to be unfounded and an abuse of process. The substance of the First Reconsideration Decision is not a new material circumstance authorizing a second challenge at the substance of the Order.<sup>13</sup>

7. Nor, as the Chamber stated in the First Reconsideration Decision, was the Order an abuse of the Chamber's authority. Rule 54 authorizes the Chamber to issue, *proprio motu*, such orders as may be necessary for the conduct of the trial. The Chamber considers its Order setting page limits on closing briefs to fall squarely within this broad grant of authority.

8. Finally, the Order does not prejudice any party. As a general matter, the setting of page limits for closing briefs is an administrative decision that promotes judicial economy and does not impact the rights of any parties, and thus does not require that they be heard on the matter. The ICTY example is instructive. As the Chamber noted in the First Reconsideration Decision and the Defence acknowledges in its Composite Motion, page limits are set as a matter of course for all closing briefs at the trial level before the ICTY.<sup>14</sup> This page limit applies to all trials before the ICTY, regardless of their duration, or the number of witnesses heard or exhibits admitted into evidence. The Chamber rejects the Defence suggestion that the present proceedings are so different from those heard at the

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<sup>11</sup> Decision on Casimir Bizimungu's Motion in Reconsideration of the Trial Chamber's Decision dated February 8, 2007, in Relation to Condition (B) Requested by the United States Government (TC), 26 April 2007, para. 7; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Second Motion for Reconsideration of Sanctions, 8 November 2007, para. 6; *Karemera et al.*, Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses, 29 August 2005, para. 8; *Karemera et al.*, Decision on Defence Motion for Modification of Protective Order: Timing of Disclosure, 31 October 2005, para. 3; *Karemera et al.*, Decision on Motion for Reconsideration or Certification to Appeal Decision on Motion for Order Allowing Meeting with Defence Witness, 11 October 2005, para. 8 (note also the authorities cited in footnotes contained within that paragraph).

<sup>12</sup> See *Karemera et al.*, Case No. ICTR-98-44-T, Decision on the Defence Motion for Reconsideration of Sanctions Imposed on the Defence Request for Leave to Interview Potential Prosecution Witnesses Jean Kambanda, Georges Ruggiu and Omar Serushago, 10 October 2003, para 6.

<sup>13</sup> Cf. *Karemera et al.*, Decision on Defence Second Motion for Reconsideration of Sanctions, 8 November 2007, para. 7.

<sup>14</sup> IT/184/Rev.2, Practice Direction on the Length of Briefs and Motions, 16 September 2005 (The ICTY Practice Direction stipulates that Final Trial Briefs shall not exceed 60,000 words; to the Chamber's knowledge, the authority of this Practice Direction has not been challenged). Though the Chamber is not bound by the practice in other Chambers, it is worth noting that Trial Chamber II recently issued an Order that included a set page limit for Final Trial Briefs. See also *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Joint Case No. ICTR-98-42-T, Scheduling Order, 2 July 2008.

ICTY as to render any page limits inappropriate in this case.<sup>15</sup> Moreover, as noted above, the Chamber was aware that the directed page limit may be onerous under exceptional circumstances. For this reason, the Order allows an aggrieved party to seek permission to exceed the limit.

9. Regardless of whether parties opt to submit closing briefs or make closing arguments,<sup>16</sup> Rule 87 (A) requires that Judges deliberate before reaching any determination on ultimate issues. Determinations of guilt may only be reached “when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt.”<sup>17</sup> Article 22 of the Statute obligates Chambers to deliver a final judgement accompanied by a reasoned opinion.<sup>18</sup> In its written judgement, a Chamber must identify the authorities and precedents upon which its legal findings are based, and make findings on those facts essential to a determination of whether an accused is guilty or not guilty of each count against him.<sup>19</sup> In sum, the Chamber is obliged to deliberate and render a reasoned, written judgement based on the applicable law and the evidence presented regardless of whether any closing submissions, oral or written, are presented by the parties. Where the Chamber fails to meet these obligations, its findings of fact and rulings of law may be overturned on appeal.

#### *The Request for Certification to Appeal*

10. Rule 73 (B) of the Rules states that leave to file an interlocutory appeal of a decision may be granted if the issue involved “would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial” and where “an immediate resolution by the Appeals Chamber may materially advance the proceedings”. Even where these criteria are met, the decision to certify is discretionary and should remain exceptional.<sup>20</sup>

11. The Defence argues that the Chamber’s refusal to reconsider the Order affects the fair conduct of the proceedings and the outcome of the trial because the Defence “will not be able to advance their submissions on the evidence which affects his guilt or innocence ... within the 300 page limit which has been imposed by the Chamber.” For the reasons stated in paragraph 9 above, the page limit cannot, as a matter of law, affect the outcome of the proceedings. The Chamber is obligated to consider all relevant evidence in light of applicable law regardless of whether the Defence presents any closing submissions.

12. The Chamber rejects the argument that an administrative decision regarding page limits affects the fair conduct of the proceedings, and notes that page limits affirmatively promote the expeditious conduct of the proceedings. Moreover, pursuant to the plain

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<sup>15</sup> The Chamber does not consider it necessary to engage in a detailed comparison of the present proceedings with proceedings heard before the ICTY. Suffice it to say that the ICTY has heard several multi-accused cases of long duration involving multiple counts and complex modes of liability, such as JCE.

<sup>16</sup> Rule 86 of the Rules of Procedure and Evidence states that the Prosecution and Defence *may* present closing arguments, it does not obligate them to do so.

<sup>17</sup> Rule 87 (A) of the Rules.

<sup>18</sup> See also Rule 88 (C) of the Rules.

<sup>19</sup> See e.g., *Prosecutor v. Enver Hadžihasanović & Amir Kubura*, Case No. IT-01-47-A, Judgement (AC), 22 April 2008, para. 13.

<sup>20</sup> See e.g., Decision on Casimir Bizimungu’s Request for Certification to Appeal the Decision on Casimir Bizimungu’s Motion in Reconsideration of the Trial Chamber’s Decision Dated February 8, 2007, in Relation to Condition (B) Requested by the United States Government (TC), 22 May 2007, para.6.

language of the Order itself, a party who believes he or she is specifically prejudiced by the page limit may approach the Chamber for relief. Seeking certification to appeal before exhausting this relief mechanism is inappropriate, and granting such a premature application would not materially advance the proceedings.

13. For these reasons, the Chamber rejects the Defence request that it grant certification to appeal the First Reconsideration Decision.

*Request for Relief Pursuant to the Order*

14. The Defence's third alternative request is for the Chamber to expand the page limit for its closing brief as contemplated by the Order. The Defence requests that it be authorized to file a closing brief of up to 700 pages.

15. In support of its request, the Defence notes that, in its current form, its closing brief consists of 370 pages of analysis of the testimony of relevant witnesses and the contents of "public broadcasts and official documents made or issued on behalf of the Interim Government." The Defence submits that its analysis of witnesses specific to Justin Mugenzi is approximately two thirds complete, and that its analysis of the broadcasts and documents relevant to the Interim Government is approximately 90% complete. In addition, the Defence notes that it intends to include submissions on other matters, including the inadequacy of the Indictment and notice issues, legal submissions on discrete areas of law such as joint criminal enterprise and command responsibility, expert evidence, and other factual areas relevant to the Prosecution's case against Justin Mugenzi.

16. The information provided by the Defence is relevant to a determination as to whether the page limit should be varied. Nonetheless, the Chamber considers the Defence's request to be premature. The Defence has not yet completed an initial draft of its closing brief, and it is not clear that there has been any attempt to shorten the brief as a result of the Order. In addition, the Prosecution's closing brief has yet to be filed. The Chamber expressly authorized all the Defence teams to file their briefs after receipt of the Prosecution's closing brief so that the Defence teams would have a clearer idea of the Prosecution's case(s) against the co-Accused. This knowledge should assist the Defence teams in focusing, and thus limiting their briefs. Should the Defence wish to renew its request after taking steps to reduce its closing brief that are consistent with the Order and receiving and assessing the Prosecution's closing brief, the Chamber will consider its request at that time. At this time, the Chamber reserves determination of this request.

17. Finally, the Chamber considers that some limited guidelines concerning the closing briefs may assist the Parties in limiting their length. With regard to the treatment of evidence, the Chamber does not consider lengthy summaries of witness testimony or exhibits to be necessary or useful. Nor is it necessary to recite the applicable law in detail. In both cases, recitation should give way to citation, whether to relevant transcript pages and exhibits or legal authorities, whenever possible.

**FOR THESE REASONS**, the Chamber

**DENIES** the Composite Motion regarding Reconsideration and Certification to Appeal; and

**RESERVES** final determination on the issue of variance of the page limit pursuant to the Order until such time as the Chamber receives a renewed request for variance consistent with this Decision.

Arusha, 2 September 2008

For and on behalf of  
Khalida Rachid Khan  
Presiding Judge

Lee Gacuiga Muthoga  
Judge

For and on behalf of  
Emile Francis Short  
Judge

[Seal of the Tribunal]