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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-98-41-A
02nd March 2009
{60/H - 55/H}

IN THE APPEALS CHAMBER

Before: Judge Mehmet Güney, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 2 March 2009

ICTR Appeals Chamber
Date: 02nd March 2009
Action: P. June 2
Copied To: Concerned Judges,

THE PROSECUTOR

Parties, Judicial Archives,
LOS LSS *[Signature]*

v.

Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA

Case No. ICTR-98-41-A

JUDICIAL RECORDS/ARCHIVES
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DECISION ON ANATOLE NSENGIYUMVA'S MOTION FOR EXTENSION OF TIME FOR FILING APPEAL SUBMISSIONS

Defence Counsel

Raphaël Constant for Théoneste Bagosora
Paul Skolnik for Gratien Kabiligi
Peter Erlinder for Aloys Ntabakuze
Kennedy Ogetto for Anatole Nsengiyumva

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR NOUS
NAME / NOM: *KOFFI KUMELI A. AFANDE*
SIGNATURE: *[Signature]* DATE: *02 March 2009*

Office of the Prosecutor

Hassan Bubacar Jallow
Alex Obote-Odora
George Mugwanya

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I, **Mehmet GÜNEY**, 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,¹

NOTING that Trial Chamber I of the Tribunal pronounced its judgement in this case on 18 December 2008 and announced that the written Trial Judgement would be "available in the coming days";²

NOTING that, on 15 January 2009, I granted the request of Anatole Nsengiyumva ("Nsengiyumva") to file his notice of appeal within 30 days of the date of the filing of the written Trial Judgement pursuant to Rule 116(A) of the Rules of Procedure and Evidence of the Tribunal ("Rules");³

NOTING that the written Trial Judgement ("Trial Judgement") was filed in English on 9 February 2009 and served on the parties on 11 February 2009;⁴

BEING SEIZED OF "Nsengiyumva Extremely Urgent Motion for Extension of Time to File Notice of Appeal, Appeal Brief and Motion for Additional Evidence" filed on 19 February 2009 ("Motion"), in which Nsengiyumva requests from the Appeals Chamber:

- (i) an extension of time for filing his notice of appeal within 30 days of the filing of the French translation of the Trial Judgement;
- (ii) an extension of time for filing his Appellant's brief within 75 days of the filing of his notice of appeal;
- (iii) an extension of time for filing his brief in reply, if any, within 15 days of the filing of the French translation of the Prosecution's Respondent's brief;
- (iv) an extension of time for filing a motion for additional evidence, if any, within 75 days of the filing of the French translation of the Trial Judgement;

¹ *Anatole Nsengiyumva v. The Prosecutor*, Case No. ICTR-41C-A, Order Assigning Judges in a Case before the Appeals Chamber and Assigning a Pre-Appeal Judge, 15 January 2009.

² T. 18 December 2008 p. 2.

³ *Anatole Nsengiyumva v. The Prosecutor*, Case No. ICTR-41C-A, Decision on Anatole Nsengiyumva's Motion for Extension of Time for Filing Notice of Appeal, 15 January 2009.

⁴ E-mail from Mr. Nouhou Diallo, CMS Coordinator, dated 11 February 2009.

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- (v) a direction to the Registrar to provide him and his Counsel with a French translation of the Trial Judgement as soon as practicable;
- (vi) a direction to the Registrar to inform him and his Counsel when the French translation of the Trial Judgement is expected to be served;

NOTING that, in support of his Motion, Nsengiyumva submits, *inter alia*, that:

- (i) as a francophone, he needs the French translation of the Trial Judgement to give proper, appropriate and comprehensive instructions to his Counsel to formulate grounds for appeal, draft the Appellant's brief and discuss with him any need for additional evidence;⁵
- (ii) apart from the Lead Counsel, all other team members for the trial proceedings left the team;⁶
- (iii) there would be no prejudice to the fair and expeditious hearing of the proceedings as one party has already been granted similar extensions of time;⁷

NOTING the "Prosecutor's Response to Nsengiyumva's Motion for Extension of Time" filed on 25 February 2009 ("Response"), in which the Prosecution submits that good cause has not been shown to grant an extension of time for filing the notice of appeal or a motion for additional evidence,⁸ but that it would be in the interests of justice to grant an extension of time for filing the Appellant's brief 40 days from the date of filing of the French translation of the Trial Judgement⁹ and to grant the requested extension of time for the filing of the brief in reply;¹⁰

NOTING "Nsengiyumva Reply to 'Prosecutor's Response to Nsengiyumva's Motion for Extension of Time'" filed on 26 February 2009 ("Reply"), in which Nsengiyumva submits, *inter alia*, that:

- (i) given the extensions of time granted to Théoneste Bagosora, the requested extensions of time would not prejudice any of the parties nor affect the expeditious conduct of the appellate process;¹¹

⁵ Motion, paras. 1, 5, 7, 10.

⁶ Motion, para. 9.

⁷ Motion, para. 12.

⁸ Response, paras. 4, 5, 8, 9.

⁹ Response, paras. 6, 9.

¹⁰ Response, paras. 7, 9.

¹¹ Reply, paras. 1, 3, 7.

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- (ii) his Lead Counsel does not speak French and, as a result, cannot effectively and sufficiently "instruct" him on the Trial Judgement which is "voluminous and a complex articulation of facts and law";¹²
- (iii) he must not "restructure" but "assemble" a new defence team for the appellate process and does not currently benefit from the assistance of a Co-Counsel;¹³
- (iv) a "disparate and disjointed procedural schedule" would ill-serve a joint appeal;¹⁴

CONSIDERING that Rule 116 of the Rules provides that:

- (A) The Appeals Chamber or the Pre-appcal Judge may grant a motion to extend a time limit upon a showing of good cause.
- (B) Where the ability of the accused to make full answer and defence depends on the availability of a decision in an official language other than that in which it was originally issued, that circumstance shall be taken into account as a good cause under the present Rule;

CONSIDERING that the filing of a notice of appeal marks the commencement of the appeal proceedings in a case and that, since the time limits for the filing of the subsequent briefs are calculated from the date on which the notice of appeal is filed, any delay at such an early stage will affect subsequent filings;

CONSIDERING that, even if the Prosecution were to file a consolidated Respondent's brief, the delayed filing of Nsengiyumva's notice of appeal would still affect the filing of his Appellant's brief;

CONSIDERING that, since the Appeals Chamber may commence its consideration of Nsengiyumva's appeal as soon as his grounds of appeal are known, the delayed filing of his notice of appeal would impact the fair and expeditious conduct of the appeal proceedings;

CONSIDERING that Nsengiyumva's Lead Counsel works in English and is therefore able to understand the Trial Judgement in its original language;

CONSIDERING that the Lead Counsel's justification with respect to his inability to speak French does not relieve him from his basic duty to represent his client, which, on appeal, requires him to

¹² Reply, paras. 4, 6.

¹³ Reply, para. 5.

¹⁴ Reply, para. 10.

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discuss with his client possible grounds of appeal and to advise him as to potential errors of facts and law contained in the Trial Judgement;

CONSIDERING that the determination of potential grounds of appeal falls primarily within the purview of Defence Counsel and that, if an application is made after the Trial Judgement becomes available in French and good cause is shown, leave may be granted to vary the grounds of appeal according to Rule 108 of the Rules;

CONSIDERING further that the changes in Nsengiyumva's Defence team do not constitute "good cause" within the meaning of Rule 116(A) of the Rules;

FINDING therefore that Nsengiyumva fails to show "good cause" for a further extension of time to file his notice of appeal;

CONSIDERING, however, that it is in the interests of justice to allow Nsengiyumva adequate time to read the Trial Judgement in a language he understands and to consult with his Counsel before filing his Appellant's brief;

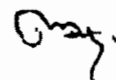
FINDING that, since Counsel may commence the preparation of the appeal in consultation with Nsengiyumva before the French translation of the Trial Judgement is available, good cause exists to grant an extension of time of 45 days from the date of filing of the French translation of the Trial Judgement for filing the Appellant's brief;

CONSIDERING further that it is in the interests of justice to allow Nsengiyumva adequate time to read the Prosecution's Respondent's brief in a language he understands and to consult with his Counsel before filing his brief in reply, if any;

FINDING therefore that good cause is shown to grant an extension of time of 15 days from the date of filing of the French translation of the Prosecution's Respondent's brief for filing the brief in reply, if any;

NOTING that, pursuant to Rule 115 of the Rules, a party may apply by motion to present additional evidence "not later than thirty days from the date for filing of the brief in reply";

CONSIDERING that, in this case, the deadline for filing a request for additional evidence will in fact be later than the delay requested by Nsengiyumva;



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FINDING accordingly that Nsengiyumva's request for extension of time for filing a motion for additional evidence is moot;

NOTING that the Language and Conference Services Section of the Tribunal has informed me that, due to the length of the Trial Judgement and the current workload of the Section, the French translation of the Trial Judgement will not be available before the end of November 2009;

FOR THE FOREGOING REASONS,

GRANT the Motion in part;

ORDER Nsengiyumva

- to file his notice of appeal no later than 13 March 2009;
- to file his Appellant's brief no later than forty-five (45) days from the date of the filing of the French translation of the Trial Judgement;
- to file his brief in reply, if any, no later than fifteen (15) days from the date of the filing of the French translation of the Prosecution's Respondent's brief;

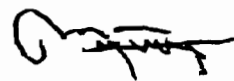
DIRECT the Registrar

- to provide the French translation of the Trial Judgement to the parties as soon as practicable, but in any event no later than 1 December 2009;
- to inform the Appeals Chamber when the French translation of the Trial Judgement has been served on the parties;

DENY the Motion in all other respects.

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

Done this 2nd day of March 2009,
At The Hague, The Netherlands



Judge Mehmet Güney
Pre-Appeal Judge



[Seal of the Tribunal]