



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

157/H

*[Handwritten initials]*

ICTR-01-73-A  
18<sup>th</sup> March 2009  
{157/H – 154/H}

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Liu Daqun

Registrar: Mr. Adama Dieng

Decision of: 18 March 2009

ICTR Appeals Chamber  
Date: 18<sup>th</sup> March 2009  
Action: R-Jura  
Copied To: Concerned Judges

*Judicial Archives,  
Parties, LDs, LSS  
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PROTAIS ZIGIRANYIRAZO

v.

THE PROSECUTOR

Case No. ICTR-01-73-A

**DECISION ON PROTAIS ZIGIRANYIRAZO'S  
MOTION FOR LEAVE TO AMEND NOTICE OF APPEAL**

The Office of the Prosecutor

Mr. Hassan Bubacar Jallow  
Mr. Alex Obote-Odora  
Ms. Christine Graham  
Ms. Linda Bianchi

Counsel for the Defence

Mr. John Philpot  
Mr. Peter Zaduk

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
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NAME / NOM: *KOFFI... KUMELID... A... AFA...*  
SIGNATURE: *[Handwritten signature]* DATE: 18 March 2009

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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 1994 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seized of a motion,<sup>1</sup> filed by Protais Zigiranyirazo on 10 February 2009, requesting leave to amend his Notice of Appeal.<sup>2</sup> The Prosecution responded on 19 February 2009.<sup>3</sup>

#### BACKGROUND

2. On 18 December 2008, Trial Chamber III convicted Mr. Zigiranyirazo of two counts of genocide and extermination as a crime against humanity and sentenced him to a total of 20 years of imprisonment.<sup>4</sup> The Trial Judgement was filed in English, and Mr. Zigiranyirazo was granted an extension of time to submit his Appellant's Brief after the filing of a French translation of the judgement, which is anticipated around 16 April 2009.<sup>5</sup>

3. Mr. Zigiranyirazo filed his Notice of Appeal against his convictions and sentence on 19 January 2009. He now seeks leave to amend his Notice of Appeal pursuant to Rule 108 of the Rules of Procedure and Evidence of the Tribunal ("Rules") in order to reorganize his submissions to conform with his Appellant's Brief, to abandon three grounds, and to add a ground relating to joint criminal enterprise.<sup>6</sup> Mr. Zigiranyirazo contends that, aside from his additional submissions on joint criminal enterprise, the proposed Amended Notice of Appeal contains no substantive changes.<sup>7</sup> He submits that, since the Motion was submitted early in the appeal proceedings, it will entail no delay.<sup>8</sup> The Prosecution takes no position on the Motion.<sup>9</sup>

<sup>1</sup> Motion for Leave to Amend Notice of Appeal (Rule 108 R.P.E.), 10 February 2009 ("Motion"). Mr. Zigiranyirazo attaches to his Motion: (1) an Amended Notice of Appeal (Annex A); and (2) a Table of Changes to his Notice of Appeal (Annex B).

<sup>2</sup> Notice of Appeal (Rule 108 R.P.E), 19 January 2009, para. 4 ("Notice of Appeal").

<sup>3</sup> Prosecutor's Response to "Motion for Leave to Amend Notice of Appeal", 19 February 2009 ("Response").

<sup>4</sup> *The Prosecution v. Protais Zigiranyirazo*, Case No. ICTR-01-73-T, Judgement, 18 December 2008, paras. 447, 468-471 ("Trial Judgement"). Specifically, the Trial Chamber sentenced Mr. Zigiranyirazo to two terms of 20 years of imprisonment for genocide and extermination as a crime against humanity in relation to events at Kesho Hill and to a term of 15 years of imprisonment for genocide with respect to Kiyovu roadblock. The sentences are to run concurrently.

<sup>5</sup> Decision on Protais Zigiranyirazo's Motion for Extension of Time, 28 January 2009, p. 3.

<sup>6</sup> Motion, paras. 4-7, Annex B. The Appeals Chamber notes that Mr. Zigiranyirazo seeks to abandon Grounds D.f, G.f and H.a of his Notice of Appeal, as he recognizes that he would be unable to satisfy the burden of proof required on appeal. See Motion, paras. 4-8, Annex B.

<sup>7</sup> Motion, paras. 6(a), 11, 14.

<sup>8</sup> Motion, paras. 10, 12.

<sup>9</sup> Response, para. 2.

## DISCUSSION

4. In accordance with Rule 108 of the Rules, the Appeals Chamber may, on good cause being shown by motion, authorize a variation of the grounds of appeal set out in the notice of appeal.<sup>10</sup> This motion should be submitted as soon as possible after the moving party has identified the alleged error.<sup>11</sup> Generally, the motion must explain precisely what amendments are being sought and show with respect to each amendment that the good cause requirement is satisfied.<sup>12</sup> In its previous determinations that proposed variations to the notice of appeal may be authorized within the scope of the good cause requirement, the Appeals Chamber has considered the following factors to be of relevance: (i) the variation is minor but clarifies the notice of appeal without affecting its content; (ii) the opposing party has not opposed the variation or would not be prejudiced by it; (iii) the variation would bring the notice of appeal into conformity with the appellant's brief; (iv) the variation does not unduly delay the appeal proceedings; or (v) the variation could be of substantial importance to the success of the appeal such as to lead to a miscarriage of justice if it is excluded.<sup>13</sup>

5. The Appeals Chamber is satisfied that there is good cause for allowing the proposed amendments to Mr. Zigiranyirazo's Notice of Appeal. The requested variation is minor and consists mainly of removing certain grounds as well as restructuring the original Notice of Appeal, primarily to bring it into conformity with the anticipated structure of the appellant's brief. There is only one new ground, related to joint criminal enterprise, which apparently came after consultations between Mr. Zigiranyirazo and his Lead Counsel.<sup>14</sup> The delay in adding this ground appears to have resulted from the present unavailability of the French version of the Trial Judgement and Mr. Zigiranyirazo's limited ability to understand English, which prevented him from giving instructions

<sup>10</sup> *The Prosecutor v. Athanase Seromba*, Case No. ICTR-2001-66-A, Decision on Defence Extremely Urgent Motion to Vary the Grounds of Appeal Contained in its Notice of Appeal, 26 July 2007 ("*Seromba* Appeal Decision"), para. 6; *Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-2000-55A-A, Decision on Motion to Amend Grounds of Appeal, 18 April 2007, para. 5; *Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-2000-55A-A, 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, ("*Muvunyi* Appeal Decision of 19 March 2007"), paras. 6, 7; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motions for Leave to Submit Additional Grounds of Appeal, to Amend the Notice of Appeal and to Correct his Appellant's Brief, 17 August 2006, ("*Nahimana et al.* Appeal Decision"); *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Motion of Dragan Jokić for Leave to File Third Amended Notice of Appeal and Amended Appellate Brief, 26 June 2006, para. 7 ("*Blagojević and Dragan Jokić* Appeal Decision of 26 June 2006"); *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Dragan Jokić's Motion to Amend Notice of Appeal, 14 October 2005, para. 6 ("*Blagojević and Dragan Jokić* Appeal Decision of 14 October 2005"); *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Prosecution's Request for Leave to Amend Notice of Appeal in Relation to Vidoje Blagojević, 20 July 2005, p. 2 ("*Blagojević and Dragan Jokić* Appeal Decision of 20 July 2005").

<sup>11</sup> *Seromba* Appeal Decision, para. 6; *Muvunyi* Appeal Decision of 19 March 2007, para. 6; *Nahimana et al.* Appeal Decision, para. 9; *Prosecutor v. Mladen Naletilić, a.k.a. "Tuta", and Vinko Martinović, a.k.a. "Štela"*, Case No. IT-98-34-A, Decision on Mladen Naletilić's Motion for Leave to File Pre-Submission Brief, 13 October 2005, pp. 2, 3.

<sup>12</sup> *Muvunyi* Decision of 19 March 2007, para. 6. See also *Seromba* Appeal Decision, para. 6; *Nahimana et al.* Appeal Decision, para. 9; *Blagojević and Dragan Jokić* Appeal Decision of 14 October 2005, para. 7.

<sup>13</sup> *Muvunyi* Appeal Decision of 19 March 2007, para. 7; *Blagojević and Dragan Jokić* Appeal Decision of 26 June 2006, paras. 7-9; *Blagojević and Dragan Jokić* Appeal Decision of 20 July 2005, p. 3.

to his Lead Counsel on this ground prior to the filing of the original Notice of Appeal.<sup>15</sup> Additionally, the Prosecution does not oppose the Motion. Finally, the Appeals Chamber is satisfied that, given the nature of the amendments, the variation would not result in any undue delay in the appeals proceedings.

#### DISPOSITION

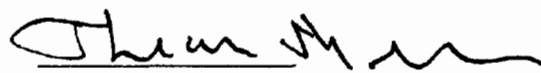
6. For the foregoing reasons, the Appeals Chamber **GRANTS** the request to amend the Notice of Appeal and **ACCEPTS** as filed the Amended Notice of Appeal contained in Annex A to the Motion.

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

Done this 18th day of March 2009,  
At The Hague,  
The Netherlands.



[Seal of the Tribunal]

  
Judge Theodor Meron  
Presiding

<sup>14</sup> Motion, para. 15.

<sup>15</sup> Motion, para. 14. Mr. Zigiranyirazo's submits that, as a consequence, his Defence team developed the submissions on joint criminal enterprise some days after the Notice of Appeal was filed. It appears that Mr. Zigiranyirazo's Defence team then met in early February to examine both this ground and the Notice of Appeal as a whole, which resulted in the present Motion being filed. *See* Motion, para. 15.