



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

170/H

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ICTR-01-63-A
29th April 2009
{170/H – 166/H}

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 29 April 2009

ICTR Appeals Chamber
Date: 29th April 2009
Action: R. J. J. J.
Copied To: ~~Concerned~~ Judges, Parties
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SIMÉON NCHAMIHIGO

v.

THE PROSECUTOR

Case No. ICTR-2001-63-A

JUDICIAL RECORDS/ARCHIVES
APR 29 P 5:37
14/05/09

**DECISION ON PROSECUTION MOTION ON THE FILING OF THE
DEFENCE REVISED NOTICE OF APPEAL**

Counsel for Mr. Siméon Nchamihigo

Mr. Denis Turcotte
Ms. Nathalie Leblanc

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Ms. Renifa Madenga
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Mr. William Mubiru
Ms. Priyadarshini Narayanan
Ms. Aisha Kagabo

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: ROSEITE MUZIGO-MORRISON
SIGNATURE: *[Signature]* DATE: 29 April 09

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I, FAUSTO POCAR, Pre-Appeal Judge in this case,¹

NOTING the Trial Judgement rendered orally by Trial Chamber III of the Tribunal ("Trial Chamber") against Siméon Nchamihigo ("Appellant") on 24 September 2008;

NOTING the written Trial Judgement filed on 12 November 2008;²

NOTING the Notice of Appeal filed confidentially on 6 March 2009;³

NOTING the Decision on Prosecution Motion on the Filing of the Defence Notice of Appeal filed on 30 March 2009,⁴ in which the Appeals Chamber ordered the Appellant to file publicly, within 10 days, a revised version of his Notice of Appeal which conforms to the requirements of the Practice Direction on Formal Requirements for Appeals from Judgement of 4 July 2005 ("Practice Direction");

NOTING the Revised Notice of Appeal filed on 14 April 2009;⁵

BEING SEIZED of the Prosecutor's Motion on the Defence Revised Notice of Appeal filed on 14 April 2009, filed on 16 April 2009 ("Motion"), seeking that the Appeals Chamber further order the Appellant to comply with the requirements of the Practice Direction;⁶

NOTING the response of the Appellant, filed on 24 April 2009, objecting to the Prosecution Motion;⁷

NOTING the Prosecution's reply, filed on 28 April 2009, in which the Prosecution requests, as an alternative to the relief sought in the Motion, that the Appeals Chamber "strike Ground 35 from the Revised Notice of Appeal due to the material prejudice it would cause to the Prosecutor if retained in its current form";⁸

¹ Order Designating a Pre-Appeal Judge, 29 April 2009.

² *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-01-63-T, Judgement and Sentence, 12 November 2008 ("Trial Judgement"). A French translation of the Trial Judgement was filed on 6 February 2009.

³ *Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-01-63-A, *Acte d'Appel de la Défense, Art. 24 du Statut du Tribunal et Art. 108 du Règlement de procédure et de preuve*, 6 March 2009 ("Notice of Appeal").

⁴ *Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-2001-63-A, Decision on Prosecution Motion on the Filing of the Defence Notice of Appeal, 30 March 2009 ("Decision of 30 March 2009").

⁵ *Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-01-63-A, *Acte d'Appel Révisé de la Défense, Art. 24 du Statut du Tribunal et Art. 108 du Règlement de procédure et de preuve*, 14 April 2009 ("Revised Notice of Appeal").

⁶ Prosecution Motion, para. 6.

⁷ *Réponse de Siméon Nchamihigo à la «Prosecutor's Motion on the Defence Revised Notice of Appeal Filed on 14 April 2009»*, 24 April 2009 ("Response").

⁸ Prosecutor's Reply to "*Réponse de Siméon Nchamihigo à la Prosecutor's Motion on the Defence Revised Notice of Appeal Filed on 14 April 2009*", 28 April 2009 ("Reply"), para. 8.

CONSIDERING Rule 108bis(B) of the Rules of Procedure and Evidence of the Tribunal ("Rules");

RECALLING that in the Decision of 30 March 2009, the Appeals Chamber, considering, *inter alia*, that ground of appeal 35 did not conform to paragraph 1(c)(iii) of the Practice Direction,⁹ ordered the Appellant to file publicly, within 10 days, a revised version of his Notice of Appeal which conforms to the requirements of the Practice Direction;¹⁰

NOTING the Prosecution's contention that "[t]hough the Appellant has added [in the Revised Notice of Appeal] 20 paragraph references from the trial judgement to Ground [of appeal] 35 of his Notice of Appeal, he has failed to identify the specific finding(s) or ruling(s) challenged in those 20

NOTING that the Prosecution argues that ground of appeal 35 remains vague and imprecise, as it contains only a broad and general formulation of a blanket allegation that the Trial Chamber failed to consider documentary evidence, Tribunal case law, and other submissions made by the defence during trial, without providing "the sufficient detail required of the argument the Appellant intends to make in support of this ground of appeal";¹²

NOTING that the Appellant claims that ground of appeal 35 complies with paragraph 1(c)(iii) of the Practice Direction;¹³

NOTING that the Appellant specifies that ground of appeal 35 will be elaborated through the other grounds of appeal which in turn refer specifically to paragraphs of the judgement or oral or written decisions in conformity with the Practice Direction;¹⁴

NOTING further the Appellant's contention that it is for the sake of "transparency" that he raised in a separate ground of appeal the Trial Chamber's alleged failure to take into account documentary evidence;¹⁵

NOTING finally that the Appellant states that ground of appeal 35 will not refer to any factual or legal conclusion not already addressed in the other grounds of appeal;¹⁶

⁹ Decision of 30 March 2009, p. 2.

¹⁰ Decision of 30 March 2009, p. 3.

¹¹ Motion, para. 5 and fn. 8, referring to the Revised Notice of Appeal, fn. 59, p. 37.

¹² Motion, para. 5.

¹³ Response, para. 4.

¹⁴ Response, para. 5.

¹⁵ Response, para. 5, referring to "exhibits, Cyangugu Trial and Appeal Judgement and Defence submissions".

¹⁶ Response, para. 6.

RECALLING that Rule 108 of the Rules requires a notice of appeal to identify “the order, decision or ruling challenged with specific reference to the date of its filing, and/or the transcript page, and indicate the substance of the alleged errors and the relief sought”;

RECALLING further that, pursuant to paragraph 1(C)(i) to (v) of the Practice Direction, a notice of appeal shall clearly specify in respect of each ground of appeal “any alleged error on a question of law invalidating the decision and/or any alleged error of fact which has occasioned a miscarriage of justice” and shall identify “the finding or ruling challenged in the judgement, with specific reference to the page number and paragraph number”; any other “order, decision or ruling challenged with specific reference to the date of its filing, and/or the transcript page”; and the precise relief sought;

NOTING that under ground of appeal 35, the Revised Notice of Appeal provides a non-exhaustive list of references to paragraphs of the Trial Judgement;¹⁷

NOTING that the Appellant appears also to challenge under this ground of appeal other findings made in the Trial Judgement which are mentioned elsewhere in the Revised Notice of Appeal under other grounds;¹⁸

CONSIDERING that in providing incomplete and imprecise references to the findings challenged under ground of appeal 35, and in referencing them by way of a vague cross-reference to all other grounds of appeal, the Appellant has failed to properly inform the Prosecution and the Appeals Chamber of the exact scope of his appeal;

FINDING therefore that, in ground of appeal 35, the Revised Notice of Appeal fails to specify the substance of the alleged error and to properly identify the challenged findings made in the Trial Judgement or rulings or decisions of the Trial Chamber;

FOR THE FOREGOING REASONS,

GRANT the Motion;

ORDER the Appellant to file publicly, within 10 days, a further revised version of his notice of appeal which conforms to the requirements of Rule 108 of the Rules and the Practice Direction;

¹⁷ See Revised Notice of Appeal, fn. 59 which states “[v]oir notamment les paragraphes 346, 347, 349, 350, 353, 354, 356, 357, 359, 360, 367 à 369, 3710, 371, 373, 374, 375, 376, 377 et 378” of the Trial Judgement.

¹⁸ Response, paras. 5, 6.

REMIND the Appellant that this does not change his pre-existing obligation to file his Appellant's brief, if any, within 75 days of the filing of the Notice of Appeal under Rule 111 of the Rules, that is, no later than 20 May 2009.

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

Done this 29th April 2009,
At The Hague,
The Netherlands.



[Seal of the Tribunal]

A handwritten signature in black ink, appearing to read "Fausto Pocar".

Judge Fausto Pocar
Pre-Appeal Judge