



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

221/H

ICTR-01-63-A
12th May 2009
{221/H – 219/H}

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Fausto Pocar, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 12 May 2009

ICTR Appeals Chamber
Date: 12th May 2009
Action: R. J. J. J.
Copied To: Concerned Judges, SLOs, LOs, AOs,
Prosec, CME, HSS.

SIMÉON NCHAMIHIGO

v.

THE PROSECUTOR

Case No. ICTR-2001-63-A

2009 MAY 20 12: 06
 JUDICIAL RECORDS/ARCHIVES
 RECEIVED
 20/05/2009

**DECISION ON DEFENCE MOTION FOR LEAVE TO EXCEED THE WORD
LIMIT**

Counsel for Mr. Siméon Nchamihigo

Mr. Denis Turcotte
Ms. Nathalie Leblanc

Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. Alex Obote-Odora
Mr. George Mugwanya
Ms. Inneke Onsea
Ms. Renifa Madenga
Ms. Evelyn Kamau
Mr. William Mubiru
Ms. Priyadarshini Narayanan
Ms. Aisha Kagabo

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

NOTING the Trial Judgement rendered orally by Trial Chamber III of the Tribunal 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 on 6 March 2009³ and the Second Revised Notice of Appeal filed on 11 May 2009;⁴

BEING SEIZED of the Defence Motion for Extension of Word Limits, filed on 11 May 2009 (“Motion”), in which the Appellant requests an extension of the word limit for his Appellant’s Brief from 30,000 to 38,000 words;⁵

NOTING that the Prosecution has not yet filed a response;

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 measures related to procedural matters with a view to preparing the case for a fair and expeditious hearing;

CONSIDERING that the Pre-Appeal Judge may dispose of a motion for an extension of word limits without hearing the other party unless he considers that there is a risk that the other party may be prejudiced;⁶

NOTING that the Appellant’s Brief is due by 20 May 2009;⁷

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; *See also 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; *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; *Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-2001-63-A, Decision on Prosecution Motion on the Filing of the Defence Revised Notice of Appeal, 29 April 2009.

⁴ *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*, 11 May 2009 (“Second Revised Notice of Appeal”).

⁵ *Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-01-63-A, *Requête de l’Appellant aux fins de dépassement du nombre limité de mots pour le mémoire d’appel (Article 5 de la Directive pratique relative à la longueur des mémoires et requêtes en appel)*, p. 3 (“Motion”).

⁶ Practice Direction on the Length of Briefs and Motions on Appeal, dated 8 December 2006, para. C(6) (“Practice Direction”).

⁷ *Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-01-63-A, Decision on Prosecution Motion on the Filing of the Defence Revised Notice of Appeal, 29 April 2009.

CONSIDERING that the Appellant submits that exceptional circumstances justify the oversized filing, in particular that the grounds of appeal are numerous and that by their nature they call for an in-depth analysis of the evidence;⁸

CONSIDERING that the Appellant further submits that it is in the interest of justice to allow him an extension of the word limit, as the word limit imposed by the Practice Direction would prevent him from fully presenting his arguments on appeal;⁹

CONSIDERING that paragraph C(1)(a) of the 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 [...]”;

CONSIDERING that pursuant to paragraph C(7) of the Practice Direction, variations from word limits may be authorized if requested in advance and supported by an explanation of the exceptional circumstances that justify the oversized filing;

CONSIDERING that presenting numerous grounds of appeal is not uncommon and does not in itself amount to an exceptional circumstance justifying an oversized filing;¹⁰

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

RECALLING that the quality and effectiveness of an appellant’s brief does not depend on the length but on the clarity and cogency of the presented arguments and that, therefore, excessively long briefs do not necessarily serve the cause of efficient administration of justice;¹²

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;

⁸ Motion, paras. 4, 5. The Appellant points out that there are 36 grounds of appeal.

⁹ Motion, paras. 7, 8. The Appellant asserts that, despite his efforts to “rationalize” the grounds of appeal with the aim of reducing the length of his arguments, at present he is not able to comply with the paragraph C(1)(a) of the Practice Direction. Motion, paras. 5, 6.

¹⁰ *François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Decision on Motion for Leave to Exceed the Word Limit, 3 April 2008, p. 3 (“*Karera* Decision of 3 April 2008”).

¹¹ *Karera* Decision of 3 April 2008, p. 4. 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).

¹² *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Decision on Defence Motion for Extension of Word Limit for Defence Appellant’s Brief, 6 October 2006, p. 3; *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, Decision on Prosecution’s Request for Authorisation to Exceed Prescribed Page Limits, 26 July 2002, p. 2.

FOR THE FOREGOING REASONS,

DISMISS the Motion;

REMIND the Appellant of 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 12th day of May 2009,
At The Hague,
The Netherlands.



Judge Fausto Pocar
Pre-Appeal Judge

