



Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-01-73-A
14th May 2009
{223/H – 220/H}

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 14 May 2009

PROTAIS ZIGIRANYIRAZO

v.

THE PROSECUTOR

Case No. ICTR-01-73-A

JUDICIAL RECORDS ARCHIVES
2009 MAY 15 1A 10:56

**DECISION ON PROSECUTOR'S MOTION TO STRIKE PORTIONS OF
PROTAIS ZIGIRANYIRAZO'S RESPONDENT'S BRIEF**

Counsel for Protais Zigiranyirazo:

Mr. John Philpot
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Mr. Kyle Gervais

The Office of the Prosecutor:

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

ICTR Appeals Chamber
Date: 14th May 2009
Action: R. J. Turner
Copied To: Concerned Judges, Parties,
Judicial Archives, LAs, LSS

Handwritten signature and notes

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL FILED BY ME
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NAME / NOM: KOFFI... KUMELI... A... AEFANDE
SIGNATURE: *[Signature]* DATE: 14 May 2009

1. I, Theodor Meron, 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, am seized of a motion filed by the Prosecution on 6 May 2009 to strike portions of Protais Zigiranyirazo's Respondent's brief.¹ Mr. Zigiranyirazo responded on 8 May 2009.² The Prosecution has not filed a reply.

BACKGROUND

2. On 18 December 2008, Trial Chamber III convicted Mr. Zigiranyirazo of one count of genocide and one count of extermination as a crime against humanity and sentenced him to a total of 20 years of imprisonment.³ The Prosecution filed its Notice of Appeal, which is limited to sentencing, on 15 January 2009.⁴ The Prosecution's Appellant's brief was filed on 16 February 2009.⁵ Mr. Zigiranyirazo filed his Respondent's brief on 1 May 2009,⁶ and the Prosecution filed its Reply brief on 11 May 2009.⁷

3. The Prosecution requests the Appeals Chamber to strike out paragraphs 9, 10, 21, and 73 through 100 of Mr. Zigiranyirazo's Respondent's brief for failure to comply with the Practice Direction on Formal Requirements for Appeal from Judgement ("Practice Direction").⁸ It submits that these paragraphs do not respond to arguments raised in the Prosecution's Appellant's brief and instead raise arguments that relate to Mr. Zigiranyirazo's own appeal.⁹ In this respect, the Prosecution notes that paragraphs 9, 10, and 21 explicitly refer to arguments which may be included

¹ Prosecutor's Urgent Motion Regarding Zigiranyirazo's Response to the Prosecutor's Appellant's Brief Filed on 1 May 2009, 6 May 2009 ("Motion").

² Response to Prosecutor's Urgent Motion Regarding Zigiranyirazo's Response to the Prosecutor's Appellant's Brief Filed on 1 May 2009, 8 May 2009 ("Response").

³ *The Prosecutor 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.

⁴ Prosecutor's Notice of Appeal, 15 January 2009 (English version), 28 January 2009 (French version). Mr. Zigiranyirazo filed his Notice of Appeal on 19 January 2009. See Notice of Appeal (Rule 108 R.P.E.), 19 January 2009. The Appeals Chamber granted him leave to file an amended version on 18 March 2009. See Decision on Protais Zigiranyirazo's Motion for Leave to Amend Notice of Appeal, 18 March 2009, para. 6.

⁵ Prosecutor's Appellant's Brief, 16 February 2009.

⁶ Defence Response to Prosecutor's Appellant's Brief, 1 May 2009 ("Respondent's brief"). Mr. Zigiranyirazo was granted a 15 day extension of time to file his Respondent's brief from the filing of the French versions of the Trial Judgement and the Prosecutor's Appellant's brief. See Decision on Protais Zigiranyirazo's Motion for an Extension of Time for the Filing of the Respondent's Brief, 10 March 2009, para. 6.

⁷ Prosecutor's Brief in Reply, 11 May 2009 ("Reply brief").

⁸ Motion, paras. 2-10.

⁹ Motion, paras. 5, 6, 9.

in Mr. Zigiranyirazo's forthcoming Appellant's brief.¹⁰ Furthermore, paragraphs 73 through 100 of the Respondent's brief contain the argument that the Trial Chamber erred in not finding any mitigating circumstances and that the sentence should be reduced, accordingly.¹¹ The Prosecution contends that such relief is only available to Mr. Zigiranyirazo in his own appeal.¹²

4. Mr. Zigiranyirazo opposes the Motion.¹³ He argues that the Prosecution extensively referred to the absence of mitigating circumstances throughout its Appellant's brief, and thus his discussion of the Trial Chamber's error in rejecting several mitigating factors is directly in response to the Prosecutor's submissions.¹⁴ Mr. Zigiranyirazo contends that the interests of justice require that all issues should be dealt with together.¹⁵ In addition, he points to paragraph 5 of the Practice Direction which provides: "[...] if an Appellant relies on a particular ground to reverse an acquittal, the Respondent may support the acquittal on additional grounds."¹⁶ By analogy, Mr. Zigiranyirazo argues: "[i]f a Respondent can provide alternative grounds for acquittal where the Prosecutor is seeking to overturn the acquittal, then the Respondent ought to be permitted to give alternative grounds so that the sentence not be increased."¹⁷

DISCUSSION

5. Paragraph 5 of the Practice Direction provides: "[t]he statements and the arguments [of the Respondent's Brief] must be set out and numbered in the same order as in the Appellant's Brief and shall be limited to arguments made in response to that brief."

6. A review of paragraphs 9, 10, 21, and 73 through 100 of Mr. Zigiranyirazo's Respondent's brief reveal that they primarily concern the Trial Chamber's alleged error in rejecting several mitigating circumstances in considering an appropriate sentence.¹⁸ As Mr. Zigiranyirazo correctly notes, these arguments respond to the Prosecution's assertion in its Appellant's brief that there were no mitigating factors. Mr. Zigiranyirazo's inclusion of these arguments in his Respondent's brief is therefore consistent with the requirements of the Practice Direction. In its Reply brief, the Prosecution elected not to address these arguments in view of this Motion.¹⁹ It may do so, however,

¹⁰ Motion, para. 5.

¹¹ Motion, para. 5.

¹² Motion, para. 6.

¹³ Response, para. 8.

¹⁴ Response, para. 4.

¹⁵ Response, para. 5.

¹⁶ Response, para. 6.

¹⁷ Response, para. 7.

¹⁸ Paragraph 9 of the Respondent's brief contains an argument that the Trial Chamber erred in convicting Mr. Zigiranyirazo for the underlying events. This argument is not developed in the brief and simply cross-references Mr. Zigiranyirazo's forthcoming Appellant's brief.

¹⁹ Reply brief, para. 2.

in response to Mr. Zigiranyirazo's own sentencing appeal, provided he will submit these arguments therein.

DISPOSITION

7. For the foregoing reasons, the Motion is **DENIED**.

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

Done this 14th day of May 2009,
At The Hague,
The Netherlands.



[Seal of the Tribunal]

A handwritten signature in black ink, appearing to read "Theodor Meron".

Judge Theodor Meron
Pre-Appeal Judge