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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-98-41-A
15th May 2009
{314/H – 311/H}

IN THE APPEALS CHAMBER

Before: Judge Mehmet Güney, Pre-Appeal Judge
Registrar: Mr. Adama Dieng
Decision of: 15 May 2009

ICTR Appeals Chamber
Date: 15th May 2009
Action: R. Juvénal
Copied To: Concerned Judges

Théoneste BAGOSORA
Aloys NTABAKUZE
Anatole NSENGIYUMVA

v.
THE PROSECUTOR

Case No. ICTR-98-41-A

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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COMME CERTIFIÉE CONFORMÉ À L'ORIGINAL NOUS
NAME / NOM: JOSEPH KUMBERO A. CHANDE
SIGNATURE: [Signature] DATE: 15 May 2009

Parties Judicial Archives,
L.D., L.S.
[Signature]

**DECISION ON ALOYS NTABAKUZE'S MOTION FOR LEAVE
TO FILE AN AMENDED NOTICE OF APPEAL
PURSUANT TO THE 16 APRIL 2009 DECISION**

Counsel for Théoneste Bagosora
Raphaël Constant

Counsel for Aloys Ntabakuze
Peter Erlinder
André Tremblay

Counsel for Anatole Nsengiyumva
Kennedy Ogetto

Office of the Prosecutor
Hassan Bubacar Jallow
Alex Obote-Odora
George W. Mugwanya
Renifa Madenga
Inneke Onsea
Evelyn Kamau
William Mubiru
Priyadarshini Narayan
Aisha Kagabo

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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,

NOTING the notice of appeal filed by Aloys Ntabakuze ("Ntabakuze") on 11 March 2009¹ against the Trial Judgement pronounced in this case on 18 December 2008 and filed on 9 February 2009;²

NOTING the "Decision on Prosecution Motion Requesting Compliance with Requirements for Filing Notices of Appeal" issued on 16 April 2009, in which I ordered Ntabakuze to file a revised version of his notice of appeal in full compliance with Rule 108 of the Rules of Procedure and Evidence of the Tribunal ("Rule 108") and with the Practice Direction on Formal Requirements for Appeals from Judgement;³

BEING SEIZED OF the "Motion for Leave to File an Amended Notice of Appeal Pursuant to this Chamber's Decision of April 16, 2009" filed confidentially by Ntabakuze on 23 April 2009 ("Motion"), in which Ntabakuze moves the Appeals Chamber for leave to file the amended notice of appeal appended to his Motion ("Amended Notice of Appeal");

NOTING that Ntabakuze submits that, should any deficiencies remain in the Amended Notice of Appeal, he will immediately rectify them to comply with the instruction of the Appeals Chamber;⁴

NOTING the "Prosecution Response to Ntabakuze's Motion for Leave to File an Amended Notice of Appeal" filed on 4 May 2009 ("Response"), in which the Prosecution submits that (i) it is unnecessary for Ntabakuze to seek leave to file an amended notice of appeal he was ordered to file;⁵ (ii) the Amended Notice of Appeal is still not in compliance with Rule 108 and the Practice Direction on Formal Requirements;⁶ and (iii) a confidential filing of the Amended Notice of Appeal is not justified;⁷

¹ Notice of Appeal in the Interest of: Major Aloys Ntabakuze, 11 March 2009.

² *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Judgement and Sentence, signed on 18 December 2008, filed on 9 February 2009 ("Trial Judgement").

³ Practice Direction on Formal Requirements for Appeals from Judgement, 4 July 2005 ("Practice Direction on Formal Requirements").

⁴ Motion, para. 5.

⁵ Response, para. 2.

⁶ Response, paras. 3-5.

⁷ Response, paras. 3, 6.

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NOTING that the Prosecution requests the Appeals Chamber (i) to order that the appropriate revisions to the Amended Notice of Appeal be made; (ii) to order that the filing of the Amended Notice of Appeal be made public; and (iii) to impose sanctions pursuant to Rule 73(F) of the Rules "in light of the persistent failure to comply with Rule 108, the Practice Direction on Formal Requirements [...] and the Decision of 16 April 2009";⁸

NOTING that the "Reply to the Prosecutor: Regarding Objections to Notice of Appeal, and Request for Sanctions" filed by Ntabakuze on 12 May 2009 ("Reply") was not filed within the four-day time limit prescribed under paragraph 14 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal;

CONSIDERING therefore that the Reply was not validly filed and, as such, will not be considered;

CONSIDERING that it is unnecessary for a party to request leave to file material it was ordered to file but that, in light of the Prosecution's contentions, it is appropriate to rule on the Motion;

RECALLING that Rule 108 and paragraph 1(c)(iii) and (iv) of the Practice Direction on Formal Requirements provide that a party seeking to appeal from a judgement of a Trial Chamber should identify in the notice of appeal "the finding or ruling challenged in the judgement, with specific reference to the page number and paragraph number"⁹ and any other "order, decision, or ruling challenged with specific reference to the date of its filing, and/or the transcript page";¹⁰

NOTING that the headings to which specific references have been attached in the Amended Notice of Appeal clearly identify the findings or rulings challenged in the Trial Judgement and that, where necessary, additional references have been provided in the body of the text;

FINDING therefore that, as it stands, the Amended Notice of Appeal fully complies with the requirements set out in Rule 108 and in the Practice Direction on Formal Requirements and clearly informs the Prosecution and the Appeals Chamber of the scope of Ntabakuze's appeal;

CONSIDERING that, in the circumstances, the Prosecution's request for sanctions is wholly unjustified;

ADVISING the Prosecution that excessive formalism may in certain situations create unnecessary litigation;

⁸ Response, para. 7.

⁹ Practice Direction on Formal Requirements, para. 1(c)(iii).

¹⁰ Rule 108; Practice Direction on Formal Requirements, para. 1(c)(iv).

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CONSIDERING, however, that there is no reason for the Motion and the Amended Notice of Appeal to be placed in the public record;

CONSIDERING further that, for the sake of clarity of the record, it would be appropriate for Ntabakuze to re-file his Amended Notice of Appeal as a single document not attached to any motion of any kind;

FOR THE FOREGOING REASONS,

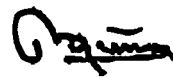
GRANT the Motion;

INSTRUCT the Registrar to place the Motion and the appended Amended Notice of Appeal in the public record; and

INSTRUCT Ntabakuze to re-file publicly his Amended Notice of Appeal as a single document no later than Monday 18 May 2009.

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

Done this fifteenth day of May 2009,
At The Hague, The Netherlands



Judge Güney
Pre-Appeal Judge



[Seal of the Tribunal]