



**Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda**

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 15 May 2009

SIMÉON NCHAMIHIGO

v.

THE PROSECUTOR

Case No. ICTR-2001-63-A

**DECISION ON PROSECUTION MOTION REQUESTING EXTENSION OF
TIME TO FILE RESPONDENT'S BRIEF**

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 (“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 by the Appellant on 6 March 2009,³ the Revised Notice of Appeal filed on 14 April 2009⁴ and the Second Revised Notice of Appeal filed on 11 May 2009;⁵

BEING SEIZED of the Prosecution’s “Motion Requesting Extension of Time to File Respondent’s Brief”, filed on 13 May 2009 (“Motion”), seeking an extension of 21 days for the filing of the Prosecution’s Respondent’s Brief;⁶

CONSIDERING that, pursuant to Rule 108*bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”), 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;

NOTING that the Appellant has not yet filed a response to the Motion;

FINDING that the Motion can be disposed of before the expiration of the time-limit for the filing of the Appellant’s response, as the outcome of the present Decision will not cause any prejudice to the Appellant;

NOTING the Prosecution’s submission that its right to receive proper notification of the potential grounds of appeal was violated and that it suffered a “very significant prejudice” because the Appellant failed to initially comply with the requirements of Rule 108 of the Rules and of the Practice Direction on Formal Requirements for Appeals from Judgement of 4 July 2005 (“Practice

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-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”).

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

⁶ Motion, para. 8.

Direction”) and presented over time four different versions of his Notice of Appeal, the last version having been filed on 11 May 2009;⁷

NOTING the Prosecution’s contention that it was obliged to focus on “the many deficiencies in the different Notices of Appeal requiring extensive litigation”;⁸

NOTING finally the Prosecution’s claim that the only appropriate remedy for the significant prejudice it allegedly suffered from “the Appellant’s continued non-compliance with Rule 108 Fof the Rulesğ and the Practice Direction F...ğ would be an extension of time to file its Respondent’s Brief”;⁹

RECALLING that, pursuant to Rules 112(A) and 116(A) of the Rules, the Respondent’s Brief is to be filed 40 days after the Appellant’s Brief but the Pre-Appeal Judge may, at a request of a party, extend a time limit upon a showing of good cause;

RECALLING that the calculation of the time-limit for filing a Respondent’s Brief runs from the filing of the Appellant’s Brief, rather than from the filing of the Notice of Appeal;¹⁰

CONSIDERING that the Appellant’s Brief is due by 20 May 2009;¹¹

RECALLING that, in the Decision of 30 March 2009,¹² the Appeals Chamber found that the Notice of Appeal did not conform to the requirements set out in paragraph 1(c)(iii) of the Practice Direction with respect to 7 out of 36 grounds of appeal,¹³ noted that many of these flaws had been corrected by the Appellant, and concluded that only one ground of appeal, ground 35, remained uncorrected;¹⁴

⁷ Motion, paras. 4-6.

⁸ Motion, para. 6.

⁹ Motion, paras. 7, 8.

¹⁰ Rule 112(A) of the Rules.

¹¹ *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 (“Decision of 29 April 2009”). This decision was only served on the parties on 14 May 2009.

¹² *Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-01-63-A, Decision on Prosecution Motion on the Filing of the Defence Notice of Appeal, 30 March 2009 (“Decision of 30 March 2009”).

¹³ Decision of 30 March 2009, p. 2.

¹⁴ Decision of 30 March 2009, pp. 2, 3. *See also* *Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-01-63-A, *Réponse de Siméon Nchamihigo à la “Prosecution Motion on the Filing of the Defence Notice of Appeal”*, 20 March 2009, Annex 2.

RECALLING that, in the Decision of 29 April 2009, I found that the Revised Notice of Appeal, filed on 14 April 2009, still failed to comply with the requirements of Rule 108 of the Rules and of the Practice Direction with respect to ground of appeal 35;¹⁵

NOTING that the Prosecution does not object to the Second Revised Notice of Appeal, filed on 11 May 2009 in compliance with the Decision of 29 April 2009;

CONSIDERING therefore that the Prosecution's contention that the Appellant continuously failed to comply with Rule 108 of the Rules and the Practice Direction only applies to ground 35 of the Notice of Appeal;

CONSIDERING that, while in the Second Revised Notice of Appeal ground 35 is presented in clearer and more detailed terms than in the Notice of Appeal and the Revised Notice of Appeal,¹⁶ it only contains a few additional potential arguments to the grounds of appeal previously identified by the Appellant;

CONSIDERING that the Prosecution fails to show how it is significantly prejudiced in the preparation of its Respondent's Brief by these limited additions;

FINDING therefore that the Prosecution has not demonstrated good cause for an extension of time for filing its Respondent's Brief;

FOR THE FOREGOING REASONS,

DISMISS the Motion.

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

Done this 15th day of May 2009,
At The Hague,
The Netherlands.

Judge Fausto Pocar

FSeal of the Tribunal

¹⁵ Decision of 29 April 2009, p. 3.

¹⁶ Second Revised Notice of Appeal, pp. 38-41.