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Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

ICTR-98-41-A  
25<sup>th</sup> May 2009  
{365/H – 363/H}

**IN THE APPEALS CHAMBER**

**Before:** Judge Mehmet Güney, Pre-Appeal Judge  
**Registrar:** Mr. Adama Dieng  
**Decision of:** 25 May 2009

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JUDICIAL RECORDS/ARCHIVES RECEIVED

**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  
CERTIFIED TRUE COPY OF THE ORIGINAL SENT BY ME  
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NAME / NOM: ROSEITE MUGIRO-MORRISON  
SIGNATURE: *[Signature]* DATE: 25/05/09

**DECISION ON PROSECUTION MOTION REGARDING NSENGIYUMVA'S  
AMENDED NOTICE OF APPEAL FILED ON 23 APRIL 2009**

**Counsel for Théoneste Bagosora**

Raphaël Constant

**Counsel for Aloys Ntabakuze**

Peter Erlinder  
André Tremblay

**Counsel for Anatole Nsengiyumva**

Kennedy Ogetto

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

ICTR Appeals Chamber  
Date: 25<sup>th</sup> May 2009  
Action: R. Jurist  
Copied To: Concerned

Judges, Parties,  
Judicial Archives, L0s, LSS  
*[Signature]*

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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 Anatole Nsengiyumva ("Nsengiyumva") on 13 March 2009<sup>1</sup> against the Trial Judgement pronounced in this case on 18 December 2008 and filed on 9 February 2009;<sup>2</sup>

**NOTING** the "Decision on Prosecution Motion Requesting Compliance with Requirements for Filing Notices of Appeal" issued on 16 April 2009 ("16 April 2009 Decision"), in which I ordered Nsengiyumva 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 ("Practice Direction");

**NOTING** the "Amended Nsengiyumva's Notice of Appeal Pursuant to Article 24, Rule 108 of the Rules of Procedure and Evidence" filed by Nsengiyumva on 23 April 2009 ("Amended Notice of Appeal");

**BEING SEIZED OF** the "Prosecution Motion Regarding Nsengiyumva's Amended Notice of Appeal Filed on 23 April 2009" filed on 4 May 2009 ("Motion"), in which the Prosecution requests the Appeals Chamber:

- (i) to find that the Amended Notice of Appeal is not in compliance with Rule 108, the Practice Direction, and the 16 April 2009 Decision, and to order that the appropriate revisions be made;
- (ii) to strike paragraph 22 from the Amended Notice of Appeal; and
- (iii) to order that the filing of the Amended Notice of Appeal be made public;<sup>3</sup>

**NOTING** that, in support of its Motion, the Prosecution argues that: (i) Nsengiyumva has failed to exhaustively define the challenged findings with references to page and paragraph numbers with respect to paragraphs 49 and 55 of the Amended Notice of Appeal; (ii) the "unchanged phrasing of paragraph 22 [of the Amended Notice of Appeal] demonstrates Nsengiyumva's continued non-

<sup>1</sup> Nsengiyumva's Notice of Appeal Pursuant to Article 24, Rule 108 of the Rules of Procedure and Evidence, 13 March 2009.

<sup>2</sup> *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").

<sup>3</sup> Motion, para. 6.

compliance with appellate requirements" and "significantly" prejudices the Prosecution; and (iii) a confidential filing of the Amended Notice of Appeal is not justified;<sup>4</sup>

**NOTING** "Nsengiyumva's Response to the Prosecution's Motion Regarding the Amended Notice of Appeal Filed on 23 April 2009" filed on 12 May 2009 ("Response"), in which Nsengiyumva argues that no prejudice has been caused to the Prosecution, but nonetheless submits that:

- (i) he has no objection to the striking out of paragraph 22;<sup>5</sup>
- (ii) the phrase "for instance" in paragraphs 49 and 55 is "an erroneous and inadvertent retention from the original [notice of appeal] and should be disregarded";<sup>6</sup> and
- (iii) the submission of the Amended Notice of Appeal as a confidential filing was an error which has already been corrected;<sup>7</sup>

**NOTING** that the Prosecution has not filed a reply;

**NOTING** that, on 25 April 2009, Nsengiyumva informed the Registry that the confidential filing of the Amended Notice of Appeal was a mistake and that the document should instead be filed publicly;<sup>8</sup>

**CONSIDERING** however that the Registry failed to place the Amended Notice of Appeal in the public record and to inform all parties of the change of status of the said filing;

**FINDING** that the Amended Notice of Appeal should be placed in the public record;

**CONSIDERING** that the revised version of paragraph 22 in the Amended Notice of Appeal clearly demonstrates Nsengiyumva's intention to first seek leave from the Appeals Chamber to vary his notice of appeal before pleading in his appeal brief further grounds of appeal on fair trial issues;

**CONSIDERING** that paragraph 22 of the Amended Notice of Appeal does not contravene the formal requirements applicable on appeal and that the Prosecution fails to demonstrate that it has been "significantly prejudiced" by Nsengiyumva's alleged "persistent non-compliance" in this regard;

<sup>4</sup> Motion, paras. 2-5.

<sup>5</sup> Response, paras. 3, 7.

<sup>6</sup> Response, paras. 4, 5, 7.

<sup>7</sup> Response, para. 6.

<sup>8</sup> See "Annexe to Nsengiyumva's Response to Prosecution Motion Regarding the Amended Notice of Appeal", filed separately on 13 May 2009, containing an exchange of e-mails between Nsengiyumva's Counsel and the Registry dated 24 and 25 April 2009.

**FINDING** therefore that, although Nsengiyumva does not object to the striking out of paragraph 22 of the Amended Notice of Appeal, there is no valid justifications to further modify the Amended Notice of Appeal in this respect;

**CONSIDERING** that the use of the phrase "for instance" in paragraphs 49 and 55 of the Amended Notice of Appeal implies that the challenged findings have not been exhaustively identified, which contravenes Rule 108 and paragraph 1(c)(iii) of the Practice Direction;

**CONSIDERING** that Nsengiyumva explained in his Response that, in relation to the alleged errors pleaded under paragraphs 49 and 55 of the Amended Notice of Appeal, he was only challenging the findings expressly referred to therein;

**CONSIDERING** that it would not be appropriate to simply disregard the phrase "for instance" in paragraphs 49 and 55 of the Amended Notice of Appeal as suggested by Nsengiyumva;

**FINDING** therefore that Nsengiyumva should file a revised version of his Amended Notice of Appeal not containing the impugned phrase so as to comply with the formal requirements applicable on appeal which were recalled in the 16 April 2009 Decision;

**FOR THE FOREGOING REASONS,**

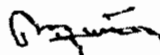
**GRANT** the Motion in part;

**ORDER** Nsengiyumva to file no later than Tuesday 26 May 2009 a public revised version of his Amended Notice of Appeal in which the phrase "for instance" will have been deleted from paragraphs 49 and 55; and

**INSTRUCT** the Registrar to place the Amended Notice of Appeal in the public record.

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

Done this twenty-fifth day of May 2009,  
At The Hague, The Netherlands



Judge Güney  
Pre-Appeal Judge



[Seal of the Tribunal]