



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

ICTR-01-72-A  
30<sup>th</sup> June 2009  
{601/H – 597/H}

**IN THE APPEALS CHAMBER**

**Before:** Judge Patrick Robinson, Presiding  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Liu Daqun  
Judge Theodor Meron

**Registrar:** Mr. Adama Dieng

**Order of:** 30 June 2009

ICTR Appeals Chamber  
Date: 30<sup>th</sup> June 2009  
Action: R. Juma  
Copied To: Concerned Judges,  
SCJ, LD's, ALG, P. T. J.,  
CM Amaha, LSC.  
Juma

*Handwritten signature*  
ICTR-01-72-A-913

Simon BIKINDI

v.

**THE PROSECUTOR**

Case No. ICTR-01-72-A

**ORDER ON THE APPELLANT'S MOTIONS TO ADMIT ADDITIONAL EVIDENCE ON EVENTS IN KIVUMU**

**Counsel for the Appellant:**

**Office of the Prosecutor**

Mr. Andreas O'Shea

Mr. Hassan Bubacar Jallow  
Mr. Alex Obote-Odora  
Ms. Dior Fall

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME  
COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR NOUS  
NAME / NOM: KOFEI KUMELLO A. AFANDE  
SIGNATURE: [Signature] DATE: 30 June 2009

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”);

**NOTING** the Judgement rendered by Trial Chamber III on 2 December 2008;<sup>1</sup>

**NOTING** that Simon Bikindi (“Appellant”) has filed an appeal against his conviction and sentence before the Appeals Chamber;<sup>2</sup>

**NOTING** the “Defence Motion to Admit Additional Evidence on Events in Kivumu” filed publicly by the Appellant on 9 June 2009 (“Motion”);

**NOTING** the “Confidential *Corrigendum* to Defence Motion to Admit Additional Evidence on Events in Kivumu” filed confidentially on 10 June 2009 (“Corrigendum”);

**NOTING** that in his Corrigendum, the Appellant appears to re-file a revised version of the Appellant’s Motion of 9 June 2009 as a corrigendum (“Re-Filed Motion”);<sup>3</sup>

**NOTING** that the Prosecution has not yet replied to the above filings;

**NOTING** Rule 115 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), and the Practice Direction of 8 December 2006;<sup>4</sup>

**CONSIDERING** that whereas the Motion was filed publicly, it contains confidential information about protected witnesses;<sup>5</sup>

**FINDING** therefore that the Motion must be placed under seal;

**NOTING** that the Appellant seeks to admit a number of items of additional evidence in support of his appeal against conviction, which, he contends, relate to various matters which arose at trial, and

<sup>1</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-01-72-T, Judgement, 2 December 2008 (“Trial Judgement”).

<sup>2</sup> See Notice of Appeal, 31 December 2008; Defence Appellant’s Brief, 16 March 2009 (“Bikindi’s Appellant’s Brief”); Corrigendum to Defence Appellant’s Brief, 19 March 2009. See also Prosecutor’s Respondent’s Brief, 27 April 2009; Defence Appellant’s Reply Brief, 11 May 2009 (Bikindi’s Appellant’s Reply”).

<sup>3</sup> Corrigendum, paras. 1, 5 and Defence Motion to Admit Additional Evidence on Events in Kivumu, annexed to the thereto. The Appeals Chamber notes that the Appellant indicates a re-filing date of 10 June 2009 on the Re-Filed Motion. See Re-Filed Motion, Registry Index page 618/H.

<sup>4</sup> Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal, 8 December 2006. The Appeals Chamber notes that paragraph 20 of the Practice Direction provides, *inter alia*, that “[t]he Appeals Chamber may also reject a filing or dismiss submissions therein.”

<sup>5</sup> Corrigendum, para. 5.

that this evidence is also to be considered as “appeal evidence” insofar as it supports the Appellant’s claim under Ground 5 of his Appeal as to ineffective assistance of counsel;<sup>6</sup>

**NOTING** that in his Corrigendum, the Appellant indicates that he experienced technical problems in printing certain documents from the *Gacaca* courts prior to filing the Motion, that mere summaries of the said documents were included in his Motion and that the Corrigendum “incorporates [the] original documents” which “were re-sent in a printable form [...] after the filing of the [M]otion”;<sup>7</sup>

**NOTING** further that the Appellant submits that problems were also experienced in locating the defence’s electronic copy of the magazine *Dialogue*, discussed in the Motion, which was subsequently located and is attached to the Re-Filed Motion;<sup>8</sup>

**NOTING** finally that the Appellant indicates that he has made “minor rectifications” to the labelling of the annexures to facilitate reference to the various documents;<sup>9</sup>

**CONSIDERING** that Annexures A, C, E, G and H to the Motion and Annexures A, C, E, F, H/1 to H/4 and I to the Re-Filed Motion are of a poor quality of reproduction and are illegible in parts;<sup>10</sup>

**CONSIDERING** that the documents contained under the annexures labelled A to I of the Re-Filed Motion differ from those annexed under labels bearing the same lettering in the original Motion;

**CONSIDERING** that whereas the Motion contains cross-references to the annexures attached thereto, the Re-Filed Motion does not provide any clear method for cross-referencing the documents attached to the Re-Filed Motion with the references contained in the original Motion or in the Re-Filed Motion itself;<sup>11</sup>

**CONSIDERING** that the double filing of the Motion and the Re-Filed Motion is also confusing insofar as there appear to be slight discrepancies between the wording of the Re-Filed Motion and

<sup>6</sup> Motion, paras. 2-4; Re-Filed Motion, paras. 2-4. *See also* Bikindi’s Appellant’s Brief, paras. 71-89; Bikindi’s Appellant’s Reply, paras. 43-68.

<sup>7</sup> Corrigendum, para. 2.

<sup>8</sup> Corrigendum, para. 3.

<sup>9</sup> Corrigendum, para. 4. The Appeals Chamber notes that the Appellant acknowledges that he mistakenly filed his Motion publicly. *See* Corrigendum, para. 5.

<sup>10</sup> *See* Re-Filed Motion, Annexures A-C, Registry Index pages 608/H to 598/H; Annexure H1 to H4, Registry Index pages 537/H to 580/H, Annexure I, Registry Index page 534/H.

<sup>11</sup> The Appeals Chamber notes for example that in paragraph 14 of his Re-Filed Motion, the Appellant indicates that Annexure A contains the evidence of Witness DKR. However, in paragraph 17 of his Re-Filed Motion, the Appellant states that Annexure A consists of a single attestation signed by four persons involved in *Gacaca* proceedings in Kivumu. It also appears that the latter document is contained in Annexure F, not Annexure A. The Appeals Chamber further notes that in the Re-Filed Motion, the Applicant refers to Annexures H1 to H7, while only Annexures H1 to H4 are annexed to it. *See* Re-Filed Motion, paras. 14, 19.

the original Motion and a lack of clarity in the wording of the Re-Filed Motion as to the nature of the evidence which the Appellant seeks to admit;<sup>12</sup>

**CONSIDERING** that the Appellant has not precisely identified and explained in his Corrigendum the extent of the alterations made to the Motion and his reasons for making these changes;

**FINDING** therefore that the Motion and the Re-Filed Motion constitute incomplete and deficient filings;

**FINDING** that it is in the interests of justice to allow the Appellant an opportunity to re-file his Motion and accompanying annexures in a more organised, precise, and legible format, so that they may be properly considered by the Appeals Chamber;

**FOR THE FOREGOING REASONS,**

**ORDERS** the Registry to place the Motion and its annexures under seal;

**REJECTS** the Motion and Re-Filed Motion and accompanying annexures as invalid;

**INSTRUCTS** the Appellant to file, no later than ten (10) days after his receipt of this Order, a confidential consolidated motion ("Consolidated Motion") with any annexures upon which he seeks to rely;

**INSTRUCTS** the Appellant to ensure that any annexures to the Consolidated Motion be in a legible form;

**FURTHER INSTRUCTS** the Appellant to ensure that the annexures to the Consolidated Motion are clearly labelled and organised and are correctly cross referenced in the text of the Consolidated Motion itself;

**INVITES** the Appellant to clearly describe, in the Consolidated Motion, the nature of the evidence on which he seeks to rely and its relevance to his appeal, as well as the specific measures sought;

**ORDERS** that the time limit for the Prosecution's response, if any, shall run from the date of filing of the Consolidated Motion;

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<sup>12</sup> The Appeals Chamber notes for example that the Appellant's statement that he seeks to admit, *inter alia*, "the evidence of witnesses DKR; DKV; DKM and [himself], statements annexed [to the Re-Filed Motion] as Annexures

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

Done this 30<sup>th</sup> day of June 2009,  
At The Hague, The Netherlands



Judge Patrick Robinson,  
Presiding Judge

[Seal of the International Tribunal]

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'A', 'B', 'C' and 'D'[...] is unclear as to the scope of the request to admit additional evidence. *See* Re-Filed Motion, para. 14.