

352/H



UNITED NATIONS  
NATIONS UNIES

Tribunal pénal international pour le Rwanda  
International Criminal Tribunal for Rwanda

ICTR-01-73-A  
3<sup>rd</sup> July 2009  
{352/H – 349/H}

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 3 July 2009

ICTR Appeals Chamber  
Date: 3<sup>rd</sup> July 2009  
Action: R. Juma  
Copied To: Concerned Judges

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LOS, LSS  
*[Signature]*

PROTAIS ZIGIRANYIRAZO

v.

THE PROSECUTOR

Case No. ICTR-01-73-A

**DECISION ON PROTAIS ZIGIRANYIRAZO'S MOTION FOR AN EXTENSION  
OF TIME FOR THE FILING OF THE REPLY BRIEF**

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Counsel for Protais Zigiranyirazo:

Mr. John Philpot  
Mr. Peter Zaduk

The Office of the Prosecutor:

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

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
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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 on 2 July 2009 by Protais Zigiranyirazo for an extension of the time for the filing of his Reply brief.<sup>1</sup> The Prosecution has not yet responded to the motion.

2. On 18 December 2008, Trial Chamber III convicted Mr. Zigiranyirazo of two counts of genocide and extermination as a crime against humanity and sentenced him to a total of 20 years of imprisonment.<sup>2</sup> Mr. Zigiranyirazo filed his Notice of Appeal on 19 January 2009.<sup>3</sup> On 28 January 2009, he was granted a 40-day extension of time to file his Appellant's brief from the filing of the French translation of the Trial Judgement.<sup>4</sup> His Appellant's brief was filed on 19 May 2009.<sup>5</sup> The Prosecution filed its Respondent's brief on 29 June 2009.<sup>6</sup> According to the Motion, Mr. Zigiranyirazo does not understand English.<sup>7</sup> He therefore requests an extension of time to file his Reply brief within 14 days from the filing of the French translation of the Prosecution's Respondent's brief, as he believes his active participation is required in relation to the factual arguments raised therein.<sup>8</sup>

3. According to Rule 113 of the Rules of Procedure and Evidence of the Tribunal ("Rules"), the Reply brief is to be filed 15 days after the Respondent's brief, which in this case would be 14 July 2009. Rule 116(A) of the Rules allows the Pre-Appeal Judge to extend a time limit upon a showing of good cause. In support of the Motion, Mr. Zigiranyirazo points primarily to Rule 116(B) of the Rules,<sup>9</sup> which provides that the requirement for good cause is satisfied "[w]here the ability of the accused to make full answer and Defence depends on the availability of a decision in an official

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<sup>1</sup> Urgent Motion for Extension of Time for the Filing of the Appellant's Reply to Prosecutor's Respondent's Brief (Rule 116(B) R.P.E.), 2 July 2009 ("Motion").

<sup>2</sup> *The Prosecution 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.

<sup>3</sup> Notice of Appeal (Rule 108 R.P.E.), 19 January 2009. Mr. Zigiranyirazo was granted leave to file an amended Notice of Appeal on 18 March 2009. See Decision on Protais Zigiranyirazo's Motion for Leave to Amend Notice of Appeal, 18 March 2009, para. 6.

<sup>4</sup> Decision on Protais Zigiranyirazo's Motion for Extension of Time, 28 January 2009, p. 3 ("Decision of 28 January 2009"). Mr. Zigiranyirazo also received an extension of time for the filing of his Respondent's brief in connection with the Prosecution's sentencing appeal. 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 ("Decision of 10 March 2009").

<sup>5</sup> Appellant's Brief, 19 May 2009.

<sup>6</sup> Prosecutor's Respondent's Brief, 29 June 2009.

<sup>7</sup> Motion, para. 8.

<sup>8</sup> Motion, para. 9-11, 17, 19, 20, 21.

<sup>9</sup> Motion, paras. 12, 13, 18.

language other than that in which it was originally issued". He argues that this provision must be construed to enable his active participation in the entire appeal.<sup>10</sup>

4. The plain meaning of Rule 116(B) of the Rules, however, is clear. It applies to extensions of time based on the translation of the impugned decision – in this case the Trial Judgement – not the opposing party's submissions. As the Trial Judgement has already been translated into French, Rule 116(B) of the Rules does not provide a basis for the requested extension of time.

5. Aside from Rule 116(B) of the Rules, extensions of time for the purposes of translation are generally accorded only where an appellant's counsel works in a language other than the one in which the Prosecution filed its submissions.<sup>11</sup> In this case, Mr. Zigiranyirazo's counsel works in both English and in French and is therefore able to discuss the contents of the Prosecution's Respondent's brief with him.<sup>12</sup>

6. In limited cases, an extension of time has also been granted for the translation of the Prosecution's submissions into French, even where the appellant's counsel works in English. Typically, this occurs where the extension will not impact the overall amount of time dedicated to considering the appeal.<sup>13</sup> The Tribunal's deadlines for the filing of briefs pursuant to the Rules are essential to ensure the expeditious preparation of the case.<sup>14</sup> The Reply brief is the only remaining submission to be filed in this appeal, and the Appeals Chamber anticipates hearing this case at the end of September 2009. Any extension of time may therefore adversely impact the ability of the Appeals Chamber to hear this case in a timely manner.

7. Mr. Zigiranyirazo has made only general arguments about the need to assist his counsel with the factual arguments raised in the Prosecution's Respondent's brief. Notably, on appeal, counsel

<sup>10</sup> Motion, para. 13.

<sup>11</sup> See, e.g., *The Prosecutor v. Emmanuel Rukundo*, Case No. 2001-70-A, Decision on Motions for Extension of Time, 25 March 2009, p. 3; *Théoneste Bagosora v. The Prosecutor*, Case No. ICTR-98-41B-A, Decision on Théoneste Bagosora's Motion for Extension of Time for Filing Appeal Submissions, 15 January 2009, p. 3; *Édouard Karemera et al. v. The Prosecutor*, Case No. ICTR-98-44-AR73.16, Decision on Requests for Extension of Time, 24 March 2009, para. 4 ("*Karemera et al.* Appeal Decision"); *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.7, Decision on Request for Extension of Time, 24 March 2006, para. 2.

<sup>12</sup> Decision of 10 March 2009, para. 5; Decision of 28 January 2009, pp. 2, 3. It is also noted that Mr. Zigiranyirazo's counsel has filed all of his submissions on appeal in English.

<sup>13</sup> Decision of 10 March 2009, para. 4; *Karemera et al.* Appeal Decision, para. 6. Mr. Zigiranyirazo's relies on an order issued by the Appeals Chamber in the *Akayesu* case for the translation of all appeals briefs in support of his contention that "it is imperative [...] that [...] written submissions [be] translated into the Tribunal's two working languages". See Motion, para. 14, citing *Jean-Paul Akayesu v. The Prosecutor*, Case No. ICTR-96-4-A, Order (For Translation of Appellant's Briefs), 29 March 2001. The order however was issued after the briefing and appeals hearing were completed and thus does not support the request for an extension of time to file the Reply brief.

<sup>14</sup> See, e.g., *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009, p. 3 ("*Šainović et al.* Appeal Decision"); *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-A, Decision on Johan Tarčulovski's Motion for Extension of Time to File Appeal Brief, 16 October 2008, p. 2 ("*Bošković and Tarčulovski* Appeal Decision").

bears the "main burden" in preparing submissions.<sup>15</sup> Furthermore, it is assumed that Mr. Zigiranyirazo has fully discussed the factual issues relevant to his appeal in the preparation of the Appellant's brief. Given the limited size and scope of a Reply brief, as well as the ability of Mr. Zigiranyirazo's counsel to work in French and English, Mr. Zigiranyirazo should be able to adequately advise his counsel in its preparation.

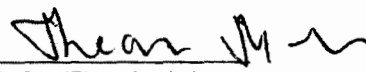
8. In any event, it is expected that a French translation of the Prosecution's Respondent's brief will be available prior to the appeals hearing. Mr. Zigiranyirazo will therefore have the opportunity to review it and to provide any additional instruction to his counsel, if necessary. Any additional matters arising from such a review can be raised during the hearing or, on good cause shown, through a motion to amend the Reply brief.

9. For the foregoing reasons, Mr. Zigiranyirazo has not demonstrated good cause for an extension of time for the filing of his Reply brief, and, accordingly, the Motion is **DENIED**. Mr. Zigiranyirazo's counsel is reminded that the filing date for the Reply brief, if any, is 14 July 2009.

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

Done this 3rd day of July 2009,  
At The Hague,  
The Netherlands.



  
Judge Theodor Meron  
Pre-Appeal Judge

[Seal of the Tribunal]

<sup>15</sup> *Šainović et al.* Appeal Decision, p. 3 ("on appeal, the main burden lies on counsel in preparing the submissions as he has the legal expertise to advise the appellant whether any potential errors of law and fact."), quoting *Bošković and Tarčulovski* Appeal Decision, p. 2.