

080

866/H



UNITED NATIONS
NATIONS UNIES

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

Q

2009 AUG 27 P 2:01
ICTR-98-41-A
27th August 2009

IN THE APPEALS CHAMBER

{863/H - 866/H}

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

Registrar: Mr. Adama Dieng

Decision of: 27 August 2009

JUDICIAL RECORDS ARCHIVE
2009 AUG 27 1 P 2:01

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: COPY KUMWILD A. AFANA
SIGNATURE: [Signature] DATE: 27/8/2009

ICTR Appeals Chamber
Date: 27th August 09
Action: R. J. J. J.
Copied To: Named Judges
SLC, ALC, LCI, CMS
Parties, GSS.
[Signature]

Théoneste BAGOSORA
Aloys NTABAKUZE
Anatole NSENGIYUMVA

v.

THE PROSECUTOR

Case No. ICTR-98-41-A

ICTR
CENTRAL REGISTRY
27 AUG 2009
ACTION: APPEALS/CMS
COPY 1:

**DECISION ON ALOYS NTABAKUZE'S MOTION TO TIME-BAR
PROSECUTION RESPONSE BRIEF**

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
Inneke Onsea
Renifa Madenga
Evelyn Kamau
William Mubiru
Priyadarshini Narayanan
Aisha Kagabo

865/H

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 (“Appeals Chamber” and “Tribunal”, respectively),

NOTING the appeal lodged by Aloys Ntabakuze (“Ntabakuze”)¹ against the Trial Judgement pronounced in this case on 18 December 2008 and filed on 9 February 2009;²

NOTING the appeal brief and the amended appeal brief filed by Ntabakuze on 25 May 2009 and 24 June 2009, respectively;³

BEING SEIZED OF the “Motion (a) to Time-Bar the Prosecutor’s Out-Of-Time Response to Appellant’s Timely Filed Brief on Appeal; and, (b) For Immediate Decision on Appellant’s Unapposed [sic] Brief; and/or (c) For a Judgement of Acquittal on Convictions Entered at Trial” filed by Ntabakuze on 17 July 2009 (“Motion”);

NOTING that, in his Motion, Ntabakuze requests the Appeals Chamber to time-bar the Prosecution “from further participation in this appeal in the form of pleadings or submission[s] contesting the issues raised in [his Appeal Brief]” on the ground that the Prosecution failed to file its response brief within 40 days of the filing of his Appeal Brief and “prays for an immediate decision on his appeal and, or in the alternative, for a Judgement of Acquittal on all convictions entered by the Trial Chamber”;⁴

NOTING that, in its response filed on 21 July 2009, the Prosecution submits that “the Motion is frivolous and constitutes an abuse of process, since it entails the mere repetition of arguments already presented in previous filings by Ntabakuze on a matter which is currently pending before the Appeals Chamber” and that it should therefore be dismissed;⁵

NOTING the reply filed by Ntabakuze on 24 July 2009, in which he submits *inter alia* that the Prosecution refers to previous submissions that were filed before the expiration of the 40-day time

¹ See Notice of Appeal in the Interest of: Major Aloys Ntabakuze, 11 March 2009; Public Amended Notice of Appeal in the Interest of: Major Aloys Ntabakuze, 18 May 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 Appeal Brief in the Interest of: Major Aloys Ntabakuze, 25 May 2009 (“Appeal Brief”); Amended Appeal Brief in the Interest of: Major Aloys Ntabakuze, 24 June 2009.

⁴ Motion, paras. 41-42. See also *ibid.*, para. 40.

⁵ Prosecution Response to Ntabakuze’s Motion to Time-Bar the Prosecutor’s Response and Other Related Reliefs, 21 July 2009, para. 2. See also *ibid.*, paras. 3, 5.

864/H

limit for the filing of the response brief, namely 6 July 2009, "when the issues raised in the [Motion] first became *ripe* for resolution";⁶

NOTING that on 12 June 2009, the Prosecution notified the Appeals Chamber and the parties that it intended to respond to the appeal briefs of Ntabakuze, Anatole Nsengiyumva and Théoneste Bagosora in a consolidated response brief rather than in separate response briefs;⁷

NOTING that on 24 June 2009, Ntabakuze filed a motion requesting, *inter alia*, that the Appeals Chamber bar the filing of the Prosecution's response brief as untimely and dismiss his convictions;⁸

CONSIDERING that on 24 July 2009, the Appeals Chamber dismissed Ntabakuze's request to preclude the Prosecution from filing a response brief and summarily rejected his request for acquittal;⁹

CONSIDERING therefore that the Motion seeks relief that has already been denied, repeating arguments advanced in prior filings;¹⁰

FINDING therefore that the Motion is moot;

NOTING further that generally, the filing of submissions merely repeating arguments advanced in prior filings may constitute an abuse of process justifying sanctions under Rule 73(F) of the Rules of Procedure and Evidence of the Tribunal;

REMINDING, therefore, Ntabakuze's Counsel to exercise greater diligence in preparing submissions before the Appeals Chamber;

⁶ Reply-Motion (a) to Time-Bar the Prosecutor's Response to the Appeal and (b) For Immediate Decision on Appellant's Appeal or, in the Alternative, for a (c) Judgement of Acquittal, 24 July 2009 ("Reply"), para. 9.

⁷ Prosecutor's Notice Regarding the Filing of a Consolidated Respondent's Brief, 12 June 2009, para. 3.

⁸ Extremely Urgent Motion for: (a) Severance, and Retention of Briefing Schedule; or, in the Alternative, (b) Judicial Bar to the Untimely Filing of Respondent's Brief, and Dismissal of Appellant's Conviction, 24 June 2009 ("24 June 2009 Motion"), paras. 31-33, Conclusion at p. 11. Ntabakuze's request for barring the filing of the Prosecution's response brief was conditioned on the Prosecution not filing a response brief within 40 days of the filing of his Appeal Brief. Since the Prosecution elected not to do so, the Appeals Chamber became seized of the matter and considered its merits.

⁹ Decision on Aloys Ntabakuze's Motion for Severance, Retention of the Briefing Schedule and Judicial Bar to the Untimely Filing of the Prosecution's Response Brief, 24 July 2009, paras. 42, 48, 49.

¹⁰ See 24 June 2009 Motion, paras. 3-7, 17-33, Conclusion at p. 11; Motion for Provisional Release, 25 June 2009, paras. 8, 9, 21, 24, 27. See also Reply-Motion for Severance, 10 July 2009, paras. 2-13; Reply-Motion for Provisional Release, 10 July 2009, paras. 5, 17-19.

863/H


FOR THE FOREGOING REASONS,

DISMISSES the Motion as moot.

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

Done this twenty-seventh day of August 2009,
At The Hague,
The Netherlands





Judge Patrick Robinson
Presiding

[Seal of the Tribunal]