

47/H

AK



UNITED NATIONS
NATIONS UNIES

Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-05-88-A
31st August 2009
47/H - 43/H

IN THE APPEALS CHAMBER

Before: Judge Andréia Vaz, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 31 August 2009

JUDICIAL RECORDS/ARCHIVES
2009 AUG 31 11:49:35
UNITED NATIONS

CALLIXTE KALIMANZIRA

v.

THE PROSECUTOR

Case No. ICTR-05-88-A

**DECISION ON CALLIXTE KALIMANZIRA'S MOTION FOR LEAVE TO FILE
AN AMENDED NOTICE OF APPEAL AND FOR AN EXTENSION OF TIME
FOR THE FILING OF HIS APPELLANT'S BRIEF**

Counsel for Callixte Kalimanzira:

Mr. Arthur Vercken
Mr. Anta Guissé

The Office of the Prosecutor:

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

ICTR Appeals Chamber
Date: 31st August 2009
Action: R. J. J. J.
Copied To: Concerned

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

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR MOI
NAME / NOM: ROSETTE MUZIGO-MORRISON
SIGNATURE: *[Signature]* DATE: 31-08-09

AK

1. I, Andrézia Vaz, 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 request, filed on 26 August 2009, by Callixte Kalimanzira for leave to file an amended notice of appeal and for an extension of time to file his Appellant's brief.¹ The Prosecution has not yet filed a response.

2. On 22 June 2009, Trial Chamber III of the Tribunal convicted Mr. Kalimanzira of one count of genocide and one count of direct and public incitement to commit genocide and sentenced him to a total of 30 years of imprisonment.² The Trial Judgement was rendered in English, and a French translation is anticipated around 30 October 2009.³ On 20 July 2009, Mr. Kalimanzira's motion for a 30 day extension of time for the filing of his Notice of Appeal from the availability of the French translation of the Trial Judgement was denied because his Counsel has indicated his ability to work in English.⁴ On 21 July 2009, Mr. Kalimanzira filed his Notice of Appeal against his convictions and sentence.⁵ The next day, the Prosecution filed its Notice of Appeal.⁶

3. Mr. Kalimanzira seeks leave to file an amended notice of appeal within 30 days of the filing of the French translation of the Trial Judgement and to extend the time for the filing of his Appellant's brief to 75 days from the filing of his amended notice of appeal.⁷ According to the Motion, Mr. Kalimanzira speaks only Kinyarwanda and French and thus, in violation of his rights, cannot effectively participate in his defence strategy on appeal in the absence of the French translation.⁸ Mr. Kalimanzira further contends that, even though his Lead Counsel has a good knowledge of English, he is not bi-lingual and works in French.⁹ In support of his request, he points

¹ *Requête complémentaire à la demande de délai pour le dépôt du mémoire d'appel figurant dans l'Acte d'appel du 21 juillet 2009*, 26 August 2009 ("Motion").

² *The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-T, Judgement, 22 June 2009, paras. 739, 756 ("Trial Judgement").

³ Decision on Callixte Kalimanzira's Motion for an Extension of Time for the Filing of Notice of Appeal, 20 July 2009, para. 2 ("Extension of Time Decision").

⁴ Extension of Time Decision, paras. 6, 7.

⁵ *Acte d'appel*, 21 July 2009 ("Kalimanzira Notice of Appeal").

⁶ Prosecutor's Notice of Appeal, 22 July 2009. A French translation was filed on 12 August 2009.

⁷ Motion, para. 15, p. 5. Mr. Kalimanzira made the same request in his Notice of Appeal. See Motion, para. 4; Kalimanzira Notice of Appeal, paras. 18, 19. A notice of appeal, however, is not the proper vehicle for seeking such relief. See Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal, 8 December 2006, para. 12 ("Where an appeal has been filed from a judgement, a party wishing to move the Appeals Chamber for a specific ruling or relief [...] shall file, in accordance with the Rules, a motion containing: (a) the precise ruling or relief sought; (b) the specific provision of the Rules under which the ruling or relief is sought; (c) the grounds on which the ruling or relief is sought.").

⁸ Motion, paras. 7-9, 11, 16.

⁹ Motion, paras. 10, 15.

to several decisions of the Appeals Chamber allowing extensions of time for a convicted person's notice of appeal or briefs.¹⁰

4. With respect to the request to file an amended notice of appeal, Mr. Kalimanzira is seeking the identical relief that he sought in his motion of 20 July 2009: to effectively commence his appeal 30 days following the French translation of the Trial Judgement. As noted above, this request was already considered and denied in line with the current practice of the Appeals Chamber, in light of the ability of Mr. Kalimanzira's Lead Counsel to work in English.¹¹ As stated in the Extension of Time Decision, Mr. Kalimanzira may seek leave to amend his Notice of Appeal after receipt of the French translation of the Trial Judgement if good cause is shown.¹²

5. Turning to the request concerning the Appellant's brief, Rule 116(A) of the Tribunal's Rules of Procedure and Evidence ("Rules") allows for the extension of time of any deadline on a showing of good cause. According to Rule 116(B) of the Rules, 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 language other than that in which it was originally issued". This provision provides a basis for extending the time for the filing of a convicted person's brief on appeal pending the translation of the Trial Judgement into a working language he or she understands.¹³

6. Accordingly, good cause exists to extend the time for the filing of Mr. Kalimanzira's Appellant's brief from the filing of the French version of the Trial Judgement. The question remains as to the length of the extension of time. In current practice, where a Counsel's main working language is the same as the one in which the Trial Judgement was issued, only a limited extension

¹⁰ Motion, paras. 12, 13.

¹¹ Extension of Time Decision, paras. 6, 7, citing *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-A, Decision on Anatole Nsengiyumva's Motion for Extension of Time for Filing Appeal Submissions, 2 March 2009, p. 4 ("*Bagosora et al.* Appeal Decision of 2 March 2009"); *François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Decision on François Karera's Motion for Extension of Time for Filing the Notice of Appeal, 21 December 2007, p. 2 ("*Karera* Appeal Decision"). See also *Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-2001-63-A, Decision on Defence Motion for a French Translation of the Prosecutor's Respondent's Brief and for Extension of Time for the Filing of the Reply Brief, 8 July 2009, para. 6, fn. 19 (noting that in granting an extension of time for the appellant's notice of appeal the Appeals Chamber had not yet been informed that the French speaking Counsel had good knowledge and ability to work in English). The case law cited by Mr. Kalimanzira (Motion, paras. 12, 13, fns. 3, 4) is either no longer the practice of the Appeals Chamber, relates to extensions of time where a convicted person's counsel was not identified to the Appeals Chamber as working in both languages, or concerns extensions of times for briefs, which is discussed below.

¹² Extension of Time Decision, para. 6.

¹³ See, e.g., *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 Respondent's Brief, 10 March 2009, paras. 4, 6 ("*Zigiranyirazo* Appeal Decision of 10 March 2009"); *Bagosora et al.* Appeal Decision of 2 March 2009, pp. 5, 6; *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Decision on Protais Zigiranyirazo's Motion for an Extension of Time, 28 January 2009, p. 3 ("*Zigiranyirazo* Appeal Decision of 28 January 2009"). However, once a French version of the Trial Judgement is filed, Rule 116(B) does not establish good cause for an extension of time to file briefs on appeal where the convicted person's Counsel can work in the language in which it was filed. See, e.g., *Nchamihigo* Appeal Decision of 8 July 2009, paras. 5, 6, 9; *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A,

of time has been accorded.¹⁴ Given that the main working language of Mr. Kalimanzira's Counsel is French,¹⁵ it is appropriate in this instance to allow an extension of time for the full 75 day period envisioned in Rule 111(A) of the Rules.

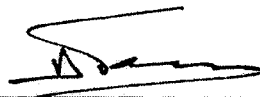
7. For the foregoing reasons, a 75-day extension of time for the filing of Mr. Kalimanzira's Appellant's brief is **GRANTED** from the filing of the French translation of the Trial Judgement. The Motion is **DENIED** in all other respects.

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

Done this 31st day of August 2009,
At The Hague,
The Netherlands.



[Seal of the Tribunal]


Judge Andréia Vaz
Pre-Appeal Judge

Decision on Protais Zigiranyirazo's Motion for an Extension of Time for the Filing of the Reply Brief, 3 July 2009, paras. 4-6, 9.

¹⁴ See, e.g., *Zigiranyirazo* Appeal Decision of 10 March 2009, paras. 5, 6 (granting 15 days for Respondent's brief); *Bagosora et al.* Appeal Decision of 2 March 2009, pp. 5, 6 (granting 45 days for Appellant's brief); *Zigiranyirazo* Appeal Decision of 28 January 2009, p. 3 (granting 40 days for Appellant's brief).

¹⁵ Motion, paras. 10, 14.