



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-98-41-A

16th September 2009

{1128/H - 1124/H}

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IN THE APPEALS CHAMBER

Before: Judge Mehmet Güney, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 16 September 2009

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: *KRFFI... KUMELIO... A... AFANYE*
SIGNATURE: *[Signature]* DATE: *16 Sept. 2009*

ICTR Appeals Chamber
Date: *16th September 2009*
Action: *n. Güney*
Copied To: *Concerned Judges, ALOs, CMS,*
SLB, LO, ALOs, CMS,

Parties, USS.

[Signature]

**Théoneste BAGOSORA
Aloys NTABAKUZE
Anatole NSENGIYUMVA**

v.

THE PROSECUTOR

Case No. ICTR-98-41-A

2009 SEP 16 A 9: 28
JUDICIAL RECORDS/ARCHIVES
[Signature]

DECISION ON ALOYS NTABAKUZE'S MOTION TO DECLARE THE PROSECUTION'S RESPONSE BRIEF INADMISSIBLE AND THE PROSECUTION'S MOTION FOR LEAVE TO FILE A SUR-REPLY

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Counsel for Anatole Nsengiyumva

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Renifa Madenga
Madeleine Schwarz
Abubacar Tambadou
Evelyn Kamau
William Mubiru
Priyadarshini Narayanan
Aisha Kagabo

[Signature]

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 (“Appeals Chamber” and “Tribunal”, respectively), and Pre-Appeal Judge in this case,

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

NOTING the decision issued on 24 July 2009 in which the Appeals Chamber ordered, *inter alia*, that the Prosecution file a separate response brief to Ntabakuze’s Amended Appeal Brief no later than 40 days after the filing of that decision;⁴

NOTING the “Prosecutor’s Brief in Response to Aloys Ntabakuze’s Appeal” filed on 7 September 2009 (“Response Brief”);

BEING SEIZED OF “Ntabakuze Extremely Urgent Motion to Time-Bar Prosecution’s Response to the Appellant’s Brief” filed by Ntabakuze on 8 September 2009 (“Ntabakuze’s Motion”), in which Ntabakuze requests the Appeals Chamber to “declare the Prosecution time-barred from filing a Respondent’s Brief in this case and declare any Respondent’s Brief filed after 2 September 2009 inadmissible”;⁵

NOTING that Ntabakuze submits that, since the Decision was officially filed on 24 July 2009, the Prosecution failed to file its Response Brief within the time-limit imposed by the Appeals Chamber and that this failure prejudicially affects the Defence;⁶

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.

³ Appeal Brief in the Interest of: Major Aloys Ntabakuze, 25 May 2009; Amended Appeal Brief in the Interest of: Major Aloys Ntabakuze, 24 June 2009 (“Amended Appeal Brief”).

⁴ 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 (“Decision”), para. 49.

⁵ Ntabakuze’s Motion, paras. 10, 14, 15.

⁶ Ntabakuze’s Motion, paras. 1, 4, 5, 8-13.

NOTING that the Prosecution responds that Ntabakuze's Motion should be dismissed since the Decision was filed and served on the Prosecution on 27 July 2009, which implied that the Response Brief was due no later than 7 September 2009;⁷

NOTING that, in support of its response, the Prosecution relies on (i) a stamp on the cover page of the Decision; (ii) the Court Management form for the proof of service attached to the Decision; and (iii) an e-mail of 27 July 2009 from the Court Management Section ("CMS") distributing to the Parties an electronic copy of the Decision;⁸

NOTING that, in reply, Ntabakuze submits that the actual filing date of the Decision was 24 July 2009 and reiterates that the late filing of the Prosecution's Response Brief causes prejudice to the Defence;⁹

NOTING that, in support of his claim, Ntabakuze relies on (i) a Court Management form for the proof of service of the Decision indicating 24 July 2009 as the filing date; (ii) the front page of the Decision as communicated on 24 July 2009 with the date of 24 July 2009 on three different stamps; (iii) the distribution list of an e-mail sent by CMS on 24 July 2009; and (iv) an exchange of e-mails between the Defence and an officer of the Registry based in The Hague where the latter indicated, on 14 August 2009, that the filing date of the Decision was 24 July 2009;¹⁰

BEING FURTHER SEIZED OF "Prosecutor's Extremely Urgent Motion for Leave to File Sur-Reply to 'Appellant's Reply to Prosecutor's Response to Appellant's Motion to Time-Bar Prosecutor's Reply Brief'" filed by the Prosecution on 10 September 2009 ("Prosecution's Motion for Leave to File a Sur-Reply"), in which the Prosecution requests leave to file a "sur-reply" to Ntabakuze's Reply in order to address new issues raised therein;¹¹

NOTING that Ntabakuze objected to the Prosecution's Motion for Leave to File a Sur-Reply on 11 September 2009;¹²

NOTING that, in a submission made pursuant to Rule 33(B) of the Tribunal's Rules of Procedure and Evidence, the Registrar explained on 15 September 2009 that: (i) the Decision was filed on

⁷ Prosecutor's Response to "Ntabakuze Extremely Urgent Motion to Time-Bar Prosecution's Response to the Appellant's Brief", 9 September 2009 ("Prosecution's Response"), paras. 1, 5.

⁸ Prosecution's Response, paras. 3, 4 and Annexures A and B.

⁹ Appellant's Reply to Prosecutor's Response to Appellant's Motion to Time-Bar Prosecutor's Reply-Brief, 10 September 2009 ("Ntabakuze's Reply"), paras. 3, 12.

¹⁰ Ntabakuze's Reply, paras. 5-11 and Annexes A, B, C, D.

¹¹ Prosecution's Motion for Leave to File a Sur-Reply, paras. 2-4.

¹² Ntabakuze Response to Prosecutor's Extremely Urgent Motion for Leave to File Sur-Reply to "Appellant's Reply to Prosecutor's Response to Appellant's Motion to Time-Bar Prosecution's Response to the Appellant's Brief", 11 September 2009.

24 July 2009 with the Other Registry Services Sub-Unit, within the Appeals Chamber Support Unit in The Hague, and was sent the same day to the CMS Judicial Proceedings Unit (“JPU”) in Arusha with a copy to a member of the Prosecution; (ii) the JPU in Arusha “stamped the decision afresh with the date of 27 July 2009, considered to be the filing date in Arusha, and notified it to the [Prosecution] the same day”;¹³

FINDING that additional submissions are unnecessary in light of the Registrar’s Submission but that, given the specific circumstances of this case and in the interests of justice, the arguments raised in the Prosecution’s Motion for Leave to File a Sur-Reply and Ntabakuze’s response thereto should be considered;

CONSIDERING the Registrar’s submission that, although the Decision was filed in The Hague on 24 July 2009, the Decision was file-stamped anew in Arusha on 27 July 2009 and distributed officially to the Parties only then;

CONSIDERING that the discrepancy in the filing date is reflected both on the cover page of the copy of the Decision distributed to the Parties and on the different Court Management forms for the proof of service;

CONSIDERING that the e-mail messages sent by Registry representatives on 12 and 14 August 2009 fostered the confusion caused by the re-stamping of the Decision in Arusha;¹⁴

CONSIDERING that, in the circumstances, it was not unreasonable for the Prosecution to rely on the date of 27 July 2009 as the authoritative filing date for the Decision and, accordingly, as the starting point for the deadline imposed by the Appeals Chamber for filing its response brief;

FINDING therefore that, by filing it on 7 September 2009, the Prosecution filed its Response Brief within the time-limit imposed by the Appeals Chamber in its Decision;

¹³ Registrar’s Submission Under Rule 33(B) of the Rules on the Implementation of the Appeals Chamber’s “Decision on Aloys Ntabakuze’s Motion for Severance, Retention of the Briefing Schedule and Judicial Bar to Untimely Filing of the Prosecution’s Brief” (24 July 2009), 15 September 2009 (“Registrar’s Submission”).

¹⁴ See Ntabakuze’s Reply, para. 10; Prosecution’s Motion for Leave to File a Sur-Reply, para. 3(b) and Annexure A.

FOR THE FOREGOING REASONS,

DISMISS the Prosecution's Motion for Leave to File a Sur-Reply; and

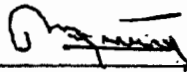
DISMISS Ntabakuze's Motion.

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

Done this sixteenth day of September 2009

At The Hague,
The Netherlands




Judge Mehmet Güney
Pre-Appeal Judge

[Seal of the Tribunal]