



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

1296/H

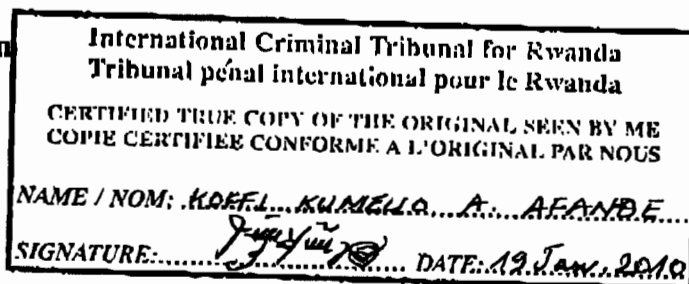
IN THE APPEALS CHAMBER

ICTR-98-41-A
19th January 2010
{1296/H – 1291/H}

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

Registrar: Mr. Adama Dieng

Decision of: 19 January 2010



ICTR Appeals Chamber

Date: 19th January 2010
Action: R. Juma
Copied To: Concerned Judges,

Théoneste BAGOSORA
Aloys NTABAKUZE
Anatole NSENGIYUMVA

v.

Parties, Judicial Archives,

LOs, WSS

THE PROSECUTOR

Case No. ICTR-98-41-A

**DECISION ON ALOYS NTABAKUZE'S MOTION FOR SCHEDULING
OF THE APPEAL HEARING**

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Madeleine Schwarz
Abubacarr Tambadou
Evelyn Kamau
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Aisha Kagabo

1295

1. 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 1994 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seized of a "Motion for Scheduling of the Appeal Hearing" filed by Aloys Ntabakuze ("Ntabakuze") on 1 December 2009 ("Motion"), in which Ntabakuze requests that the Appeals Chamber set the date for the hearing of his appeal by 31 January 2010, or as expeditiously as possible.¹ On 8 December 2009, the Prosecution filed its response seeking dismissal of Ntabakuze's Motion for lack of merit,² to which Ntabakuze replied on 14 December 2009.³

A. Procedural Background

2. In its Judgement pronounced on 18 December 2008 and filed in English on 9 February 2009, Trial Chamber I of the Tribunal convicted Théoneste Bagosora ("Bagosora"), Anatole Nsengiyumva ("Nsengiyumva"), and Ntabakuze (collectively, "Co-Appellants") of genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, and sentenced them to life imprisonment.⁴

3. The time limits for the filing of Bagosora's and Nsengiyumva's appeal submissions have been adjusted to accommodate their respective needs for a French translation of the Trial Judgement.⁵ This has resulted in a separate appeal briefing schedule for each Co-Appellant, with Ntabakuze's schedule concluding first.⁶ After Ntabakuze filed his notice of appeal and his appeal brief,⁷ the Prosecution announced its intention to file a consolidated response brief as opposed to

¹ Motion, para. 31.

² Prosecution Response to Motion for Scheduling of the Appeal Hearing, 8 December 2009 ("Response"), paras. 3, 16.

³ Reply to the Prosecution Response to Appellant's Motion for Scheduling of the Appeal Hearing, 14 December 2009 ("Reply").

⁴ *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"), paras. 2258, 2277-2279.

⁵ Because Bagosora does not understand English and his Counsel's working language is French, he has been permitted to file his notice of appeal within 30 days of the filing of the French translation of the Trial Judgement, his appeal brief within 75 days of the date of the filing of his notice of appeal, and his reply brief within 15 days of the filing of the French translation of the Prosecution's response brief. See Decision on Théoneste Bagosora's Motion for Extension of Time for Filing Appeal Submissions, 15 January 2009, p. 4. Because Nsengiyumva does not understand English but his Counsel does, he was ordered to file his notice of appeal no later than 13 March 2009, his appeal brief within 45 days of the filing of the French translation of the Trial Judgement, and his reply brief within 15 days of the filing of the French translation of the Prosecution's response brief. See Decision on Anatole Nsengiyumva's Motion for Extension of Time for Filing Appeal Submissions, 2 March 2009, p. 6; Decision on Anatole Nsengiyumva's Motion for Extension of Time for Filing Notice of Appeal, 15 January 2009, p. 3.

⁶ Ntabakuze did not request an extension of time to file his appeal submissions for language purposes.

⁷ 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; 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 ("Appeal Brief").

1294

separate briefs in response to each Co-Appellant's appeal brief.⁸ In turn, Ntabakuze requested, *inter alia*, severance of his case from his Co-Appellants and enforcement of the briefing schedule.⁹

4. On 24 July 2009, the Appeals Chamber granted Ntabakuze's motion in part, ordering the Prosecution to file a separate response brief to each Co-Appellant's brief, but denied his request for severance.¹⁰ It considered that Bagosora's and Nsengiyumva's interests in waiting for the French translation of the Trial Judgement diverged from Ntabakuze's, and recognised that the delay incurred by Ntabakuze due to the translation and the Prosecution's filing of a consolidated response brief would amount to approximately 10 months.¹¹ However, the Appeals Chamber concluded that in light of the specific circumstances of the case, such delay would not cause serious prejudice to Ntabakuze and that severance would not be necessary to protect the interests of justice.¹² Rather, the Appeals Chamber found that a joint appeal would afford Ntabakuze a number of significant advantages, and noted that he would potentially benefit from his Co-Appellants' successful challenge of common findings.¹³

5. In accordance with the Decision on Severance, the Prosecution responded to Ntabakuze's Appeal Brief on 7 September 2009,¹⁴ to which Ntabakuze replied on 6 October 2009.¹⁵

6. The French translation of the Trial Judgement was filed on 10 December 2009 and Bagosora filed his notice of appeal on 8 January 2010.¹⁶ On 11 January 2010, Nsengiyumva was granted an extension of time until 1 February 2010 to file his appeal brief.¹⁷

⁸ Prosecutor's Notice Regarding the Filing of a Consolidated Respondent's Brief, 12 June 2009.

⁹ Extremely Urgent Motion for: (a) Severance, and Retention of the 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 ("Motion for Severance").

¹⁰ 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 on Severance"), para. 49.

¹¹ Decision on Severance, para. 27.

¹² Decision on Severance, paras. 29-32, 39, 40.

¹³ Decision on Severance, paras. 32-37, 40.

¹⁴ Prosecutor's Brief in Response to Aloys Ntabakuze's Appeal, 7 September 2009 ("Prosecution Response Brief to Ntabakuze").

¹⁵ Ntabakuze Brief in Reply, 6 October 2009.

¹⁶ *Avis d'appel – Appellant : Théoneste Bagosora*, 8 January 2010 ("Bagosora Notice of Appeal").

¹⁷ Decision on Anatole Nsengiyumva's Motion for Extension of Time for Filing his Appeal Brief, 11 January 2010. The Pre-Appeal Judge considered that the late service of the French translation of the Trial Judgement constituted good cause for an extension of time.

B. Discussion

7. Ntabakuze requests that the Appeals Chamber schedule his appeal hearing by 31 January 2010, or as soon as the schedule of the Appeals Chamber permits.¹⁸ He argues that “now that all briefing has been completed, the Chamber is in a position to verify that the facts and issues in his appeal are not ‘overlapping’, with the facts and legal issues of his co-Appellants’ respective appeals”.¹⁹ The crux of Ntabakuze’s argument rests on the fact that his appeal is now fully briefed, while his Co-Appellants’ are not. He distinguishes the current stage of his appeal from the stage at which he requested, and was denied, severance, by asserting that the briefs filed after the Decision on Severance was rendered have clarified that the issues raised in his grounds of appeal are unrelated to those raised in his Co-Appellants’ appeals.²⁰

8. The remainder of Ntabakuze’s arguments repeat those he made in support of his Motion for Severance, asserting, *inter alia*, his right to be tried without undue delay and to enjoy the same rights as a single appellant.²¹ He also reiterates that the crimes for which he was convicted do not form part of the same transaction as, nor are they comparable to, those of his co-Appellants.²² Ntabakuze essentially contends that the considerations which justified the joinder of his trial to those of his Co-Appellants no longer apply at this stage of his case.²³

9. Ntabakuze states that he “is not requesting this Chamber to pre-empt the outcome of its adjudication on the merits of his Appeal”,²⁴ and asserts that, contrary to the Prosecution’s contention,²⁵ he is not moving for severance.²⁶ He contends instead that his Motion is filed pursuant to Rule 114 of the Rules of Procedure and Evidence of the Tribunal (“Rules”)²⁷ and, as such, he requests that the Appeals Chamber set a date for the hearing “within a reasonable time” after the conclusion of the briefing in his appeal.²⁸

10. The Appeals Chamber considers that Ntabakuze’s current request for an immediate and separate hearing is akin to his previous Motion for Severance. His interpretation of Rule 114 of the Rules disregards the joint nature of his appeal and ignores the fact that the time-limits for the filings related to his Co-Appellants’ appeals have not yet expired. The Appeals Chamber therefore

¹⁸ Motion, para. 31.

¹⁹ Motion, para. 10. *See also ibid.*, paras. 14, 21, 22, 30.

²⁰ Motion, paras. 10, 21, 30. *See also* Reply, paras. 9-21.

²¹ Motion, paras. 12-15.

²² Motion, paras. 18-29.

²³ Motion, para. 16.

²⁴ Motion, para. 19.

²⁵ Response, paras. 11, 12.

²⁶ Reply, para. 1.

²⁷ Reply, paras. 1, 4, 19, 22.

²⁸ Reply, paras. 4, 5, 22.

1292

considers Ntabakuze's present motion to be a veiled request for reconsideration of its Decision on Severance. The Appeals Chamber recalls that it may reconsider a previous decision pursuant to its inherent discretionary power if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice.²⁹

11. The Appeals Chamber notes that the Prosecution Response Brief to Ntabakuze appropriately focuses solely on Ntabakuze's appeal, in compliance with the Appeals Chamber's order that it file separate response briefs for each Co-Appellant. Accordingly, Ntabakuze's contention that the Prosecution Response Brief to Ntabakuze establishes that there will be no common ground in the Co-Appellants' appeals³⁰ is unfounded. At the time of the filing of Ntabakuze's present Motion, neither Bagosora nor Nsengiyumva had filed any briefs after the Decision on Severance was rendered. With no substantive changes in Ntabakuze's position relative to his Co-Appellants, the Appeals Chamber finds that Ntabakuze did not establish a clear error of reasoning in the Decision on Severance, or that reconsideration is necessary to prevent an injustice.

12. The recent filing of Bagosora's Notice of Appeal confirms this conclusion. A review of Bagosora's Notice of Appeal reveals issues which overlap with Ntabakuze's appeal.³¹ As the Appeals Chamber stated earlier, severance in this case could contradict the interests of justice.³² To grant Ntabakuze an immediate hearing would deny him the opportunity to examine his Co-Appellants' briefs and the Prosecution's responses thereto before being heard. Consequently, the Appeals Chamber declines to reconsider the Decision on Severance or to grant Ntabakuze's request for a separate and immediate hearing.

²⁹ See, e.g., *Édouard Karemera et al. v. The Prosecutor*, Case No. ICTR-98-44-AR82, Decision on Matthieu Ndirumpatsé's Further Motions for Extension of Time and Motion for Reconsideration and on the Appeal Filed on 25 September 2009, 29 September 2009, para. 18; *Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-99-52A-R, Decision on Jean-Bosco Barayagwiza's Motion for Review and/or Reconsideration of the Appeal Judgement of 28 November 2007, 22 June 2009, para. 14; *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-A, Decision on Motion for Reconsideration of the Decision on Request to Admit Additional Evidence, 16 November 2007, p. 2.

³⁰ Motion, paras. 21, 22.

³¹ For instance, Bagosora intends to appeal his conviction under Article 6(3) of the Statute for the crimes which took place at Kabcza. See Bagosora Notice of Appeal, pp. 11-13. Ntabakuze is also appealing his superior responsibility for these crimes. See Ntabakuze Notice of Appeal, paras. 23, 32, 33, 53-56, 59-61, 74-86, 99-110, 118-121.

³² Decision on Severance, paras. 33-40.

1291


13. For the foregoing reasons, the Appeals Chamber **DENIES** Ntabakuze's Motion.

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

Done this nineteenth day of January 2010
At The Hague, The Netherlands.



[Seal of the Tribunal]



Judge Patrick Robinson
Presiding