

365/H



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-05-88-A
05th March 2010
{365/H – 361/H}

IN THE APPEALS CHAMBER

Before:

Judge Theodor Meron, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andréia Vaz
Judge Carmel Agius

ICTR Appeals Chamber
Date: 05th March 2010
Action: R. Dieng
Copied To: Concerned Judges, Parties,
Judicial Archives, HDs, LSS

Registrar:

Mr. Adama Dieng

Decision of:

5 March 2010

THE PROSECUTOR

v.

Callixte KALIMANZIRA

Case No. ICTR-05-88-A

**DECISION ON THE PROSECUTION'S REQUESTS MADE
IN RELATION TO KALIMANZIRA'S "OBSERVATIONS ON THE
PROSECUTOR'S APPELLANT'S BRIEF DATED 5 OCTOBER 2009"**

Office of the Prosecutor

Hassan Bubacar Jallow
Alex Obote-Odora
Alphonse Van
Charity Kagwi
François Nsanzuwera
Clair Duffy

Counsel for Callixte Kalimanzira

Arthur Vercken
Anta Guissé

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: ROSETTE MUZIGO-MORRISON
SIGNATURE: [Signature] DATE: 5/3/10

364/H

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 seised of requests made by the Office of the Prosecutor ("Prosecution") in "The Prosecutor's Response to Respondent Callixte Kalimanzira's 'Observations on the Prosecutor's Appellant's Brief Dated 5 October 2009'" filed by the Prosecution on 25 January 2010 ("Response").¹ Callixte Kalimanzira ("Kalimanzira") has not responded to the Prosecution.

I. INTRODUCTION

2. On 22 June 2009, Trial Chamber III of the Tribunal ("Trial Chamber") convicted Kalimanzira of genocide and direct and public incitement to commit genocide, and sentenced him to 30 years of imprisonment.² Kalimanzira and the Prosecution filed their notices of appeal against the Trial Judgement on 21 and 22 July 2009, respectively.³ The Prosecution filed its appeal brief on 5 October 2009.⁴ On 26 October 2009, the Pre-Appeal Judge granted Kalimanzira a 40-day extension of time for the filing of his Respondent's brief from the filing of the French translations of the Trial Judgement and the Prosecution Appeal Brief, whichever was later.⁵ The French translations of the Trial Judgement and the Prosecution Appeal Brief were filed on 16 November and 8 December 2009, respectively.

3. On 19 January 2010, Kalimanzira filed a document entitled "Observations on the Prosecutor's Appellant's Brief Dated 5 October 2009",⁶ in which he indicates that he opposes the Prosecution's appeal in its entirety but that, since the Prosecution's grounds of appeal concern facts and findings which he also appeals, he reserves the totality of his arguments for his own appeal brief.⁷

4. In its Response, the Prosecution submits that Kalimanzira's Observations Submission should be considered as Kalimanzira's Respondent's brief.⁸ It further submits that the Observations

¹ Originally filed in French; English translation filed on 2 February 2010.

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

³ Notice of Appeal, originally filed in French on 21 July 2009, English translation filed on 27 August 2009; Prosecutor's Notice of Appeal, 22 July 2009 ("Prosecution Notice of Appeal"), raising two grounds of appeal.

⁴ Prosecutor's Appellant's Brief, 5 October 2009 ("Prosecution Appeal Brief").

⁵ Decision on Callixte Kalimanzira's Motion for an Extension of Time for the Filing of His Respondent's Brief, 26 October 2009, p. 2.

⁶ Originally filed in French, English translation filed on 5 February 2010 ("Observations Submission").

⁷ Observations Submission, paras. 8, 11, 16.

⁸ Response, paras. 2, 7, 16.

363/H

Submission was filed one day after the prescribed time-limit and fails to comply with the formal requirements for Respondents' briefs set out in paragraph 5 of the Practice Direction on Formal Requirements for Appeals from Judgement ("Practice Direction").⁹ It also contends that it is not permissible for Kalimanzira to respond to the Prosecution's arguments in his Appellant's brief.¹⁰ In addition, the Prosecution argues that Kalimanzira's request for an extension of time to file his Respondent's brief and subsequent delay in filing, as well as his failure to file a proper Respondent's brief, constitute an abuse of process.¹¹ For these reasons, the Prosecution requests the Appeals Chamber: (i) to consider Kalimanzira's Observations Submission as Kalimanzira's Respondent's brief;¹² (ii) to prevent Kalimanzira from combining his Appellant's brief with the Respondent's brief;¹³ and (iii) to impose sanctions on Kalimanzira for the procedural violations he committed.¹⁴

II. DISCUSSION

5. Pursuant to Rule 112 of the Rules of Procedure and Evidence of the Tribunal ("Rules"), a "Respondent's brief of argument and authorities" must be filed within forty days of the Appellant's brief. Paragraph 5 of the Practice Direction further provides that the Respondent's brief should contain for each ground of appeal "(a) a statement on whether or not the relief sought by the Appellant is opposed; (b) a statement on whether or not the ground of appeal is opposed; (c) arguments in support of these statements [...]".

6. In his Observations Submission, Kalimanzira submits that "[t]o respond to the Prosecutor in respect of [its] grounds of appeal would amount to the Defence setting out [...] its challenge to the Trial Chamber's judgement" and refers the Appeals Chamber to his Appellant's brief.¹⁵ Nonetheless, Kalimanzira clearly states in his Observations Submission that he opposes the relief sought by the Prosecution, as well as its grounds of appeal, and provides some arguments supporting his opposition.¹⁶ In light of its content, the Appeals Chamber considers that Kalimanzira's Observations Submission was meant to serve as the Respondent's brief and should be considered as such.

7. The Observations Submission, however, was filed one day after the time-limit prescribed by the Pre-Appeal Judge for the filing of Kalimanzira's Respondent's brief, and is not accompanied by

⁹ Response, paras. 2, 7-13. See also Practice Direction, dated 4 July 2005, para. 5.

¹⁰ Response, para. 13.

¹¹ Response, para. 14. See also *ibid.*, paras. 2, 7.

¹² Response, para. 16.

¹³ Response, para. 17.

¹⁴ Response, para. 18. See also *ibid.*, paras. 2, 7.

¹⁵ Observations Submission, para. 9. See also *ibid.*, para. 10.

362/H

any excuse or justification for the late filing.¹⁷ Although the Prosecution requests sanctions against Kalimanzira partly on this basis, the Appeals Chamber notes that the Prosecution does not request that the Observations Submission be declared invalidly filed. Moreover, given the nature of Kalimanzira's response to the Prosecution's appeal, the Appeals Chamber considers that no prejudice was caused to the Prosecution by the delay in the filing. In these circumstances, and taking into account that the filing was only one day late, the Appeals Chamber does not deem it appropriate to reject Kalimanzira's Observations Submission on the basis of the late filing.

8. The question remains as to whether Kalimanzira's Observations Submission complies with the formal requirements prescribed for Respondents' briefs. As noted above, the Appeals Chamber is satisfied that Kalimanzira stated whether he opposes the relief sought by the Prosecution and its grounds of appeal, as required under paragraph 5(a) and (b) of the Practice Direction. The Appeals Chamber is also satisfied that Kalimanzira's specific submissions relating to the Prosecution's grounds of appeal constitute arguments within the meaning of Rule 112 of the Rules and paragraph 5(c) of the Practice Direction.

9. The Appeals Chamber observes, however, that though Kalimanzira provides arguments addressing all of the Prosecution's second ground of appeal, he only provides arguments opposing one part of the Prosecution's first ground of appeal. The Prosecution's first ground of appeal relates to the legal qualification of Kalimanzira's participation in two incidents: killings at a roadblock on the Butare-Gisagara road in April 1994 and massacres on Kabuye hill on 23 April 1994.¹⁸ Kalimanzira explicitly addresses the Butare-Gisagara roadblock but does not make any submissions regarding Kabuye hill.¹⁹ By failing to state the reasons for opposing the entirety of the Prosecution's first ground of appeal, the Observations Submission does not fully comply with paragraph 5(c) of the Practice Direction. The Appeals Chamber nonetheless considers that, in light of Kalimanzira's unambiguous statement that he opposes the Prosecution's appeal in its entirety and the likelihood that his arguments would be very similar to those addressing the Butare-Gisagara roadblock, this defect is without consequence and does not require that the Observations Submission be supplemented.

¹⁶ Observations Submission, paras. 11, 13, 15, 16.

¹⁷ See *supra*, para. 2.

¹⁸ Prosecution Notice of Appeal, paras. 1-14; Prosecution Appeal Brief, paras. 4, 5, 28-76.

¹⁹ See Observations Submission, paras. 12, 13.

361/H

10. The Prosecution requests that Kalimanzira be prevented from responding to the Prosecution's arguments in his Appellant's brief,²⁰ which was filed on 1 February 2010.²¹ The Appeals Chamber observes that the Kalimanzira Appeal Brief is confined to Kalimanzira's own grounds of appeal. The Prosecution's request is therefore moot. The Appeals Chamber also finds that Kalimanzira's making full use of the extension granted to file his Respondent's brief does not in itself amount to an abuse of process.

11. For the reasons discussed above,²² the Appeals Chamber declines to exercise its discretion to impose sanctions for Kalimanzira's failure to file his Respondent's brief on time and to fully comply with the Practice Direction.

III. DISPOSITION

12. For the foregoing reasons, the Appeals Chamber,

DECLARES that Kalimanzira's Observations Submission shall be considered as his Respondent's brief;

DECLARES moot the Prosecution's request that Kalimanzira be prevented from responding to the Prosecution's arguments in his Appellant's brief; and


DENIES the Prosecution's request for sanctions.

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

Done this fifth day of March 2010
At The Hague,
The Netherlands.



[Seal of the Tribunal]



Judge Theodor Meron
Presiding

²⁰ Response, para. 17.

²¹ *Mémoire d'appel pour Callixte Kalimanzira*, filed confidentially on 1 February 2010 ("Kalimanzira Appeal Brief").

²² See *supra*, paras. 7, 9.