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Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-01-70-A
04th May 2010
{364/H - 362/H}

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 4 May 2010

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EMMANUEL RUKUNDO

v.

THE PROSECUTOR

Case No. ICTR-2001-70-A

**DECISION ON RECONSIDERATION OF THE DECISION ON THE FILING OF
EMMANUEL RUKUNDO'S REPLY BRIEF**

Counsel for Emmanuel Rukundo:

Ms. Aïsha Condé
Mr. Benoît Henry

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. Alex Obote-Odora
Ms. Linda Bianchi
Mr. Ousman Jammeh
Ms. Madeleine Schwarz

ICTR Appeals Chamber

Date: 04th May 2010
Action: R. Jammeh
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363/H

1. I, Fausto Pocar, 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 an urgent motion, filed by Mr. Emmanuel Rukundo on 29 April 2010,¹ seeking reconsideration of the Decision of 22 April 2010 ordering the filing of his Reply brief, if any, by 10 May 2010.² The Prosecution filed its response on 3 May 2010.³ In view of the urgency of this matter, the Prosecution's response has not been considered, and therefore there is no need to await a reply.

2. On 27 February 2009, Trial Chamber II of the Tribunal convicted Emmanuel Rukundo of three counts of genocide, murder as a crime against humanity, and extermination as a crime against humanity and sentenced him to 25 years of imprisonment.⁴ The written judgement was filed in English on 13 March 2009.

3. On 25 March 2009, Judge Mehmet Güney, who was then Pre-Appeal Judge in this case, decided that time limits under the Rules for the filing of Mr. Rukundo's Notice of Appeal and Appellant's brief should run from the filing of the French version of the Trial Judgement.⁵ In addition, Judge Güney determined that the 15-day time period for the filing of Mr. Rukundo's Reply brief should run from the filing of the French version of the Prosecution's Respondent's brief.⁶ The Respondent's brief is currently undergoing translation into French. On 22 April 2010, the time period for filing the Reply brief was changed by me *proprio motu* to 10 May 2010 in light of the addition of a bilingual Co-Counsel, Mr. Benoît Henry, to Mr. Rukundo's Defence team.⁷

4. Mr. Rukundo seeks reconsideration of the Decision of 22 April 2010 and requests that the time limit for filing his Reply brief be extended to 30 May 2010.⁸ He submits that Mr. Henry was only assigned as Co-Counsel for a limited duration and has already exhausted his allotted hours to work on the case.⁹ The rest of the team works exclusively in French.¹⁰ Furthermore, his Lead Counsel, Ms. Aïcha Condé was on vacation from 15 to 28 April 2010 and thus lost six days of

¹ *Requête en extrême urgence en reconsidération de la décision du 22 avril 2010*, 29 April 2010 ("Motion").

² Decision on the Filing of Emmanuel Rukundo's Reply Brief, 22 April 2010 ("Decision of 22 April 2010"), para. 8.

³ Prosecutor's Response to Rukundo's "*Requête en extrême urgence en reconsidération de la décision du 22 Avril [sic] 2010*", Filed on 29 April 2010, 3 May 2010.

⁴ *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Judgement, 27 February 2009 ("Trial Judgement"), paras. 591, 608.

⁵ Decision on Motions for Extension of Time, 25 March 2009 ("Decision of 25 March 2009"), pp. 3, 4.

⁶ Decision of 25 March 2009, pp. 3, 4.

⁷ Decision of 22 April 2010, paras. 5, 8.

⁸ Motion, pp. 2-4.

⁹ Motion, p. 3.

¹⁰ Motion, p. 3.

362/H

preparation time.¹¹ One of the legal assistants is also currently on vacation until 17 May 2010.¹² Finally, Mr. Rukundo seeks permission to file an addendum to his Reply brief after the filing of the French version of the Respondent's brief.¹³

5. The Appeals Chamber 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.¹⁴ One of the key purposes of assigning Co-Counsel is to ensure the continuity of an appellant's representation in the very situation presented by the Motion. The fact that Mr. Henry has already used his allotted hours does not absolve him of his obligation to represent Mr. Rukundo in these circumstances. To the extent that additional resources are required, an appropriate request can be made to the Registrar. In any case, it is noted that Ms. Condé is no longer on vacation. The Decision of 22 April 2010 also granted Mr. Rukundo a period of 18 days to file his Reply brief from the date of the decision. It thus already provided additional time from the normal 15-day period from the filing of the Respondent's brief for filing a Reply brief to compensate for the change in circumstances. Accordingly, Mr. Rukundo has not demonstrated any clear error of reasoning in the Decision of 22 April 2010 or that he would suffer an injustice as a result of the deadline of 10 May 2010 for the filing of his Reply brief.

6. Finally, Mr. Rukundo's request to file an addendum to his Reply brief is premature. The Decision of 22 April 2010 noted that a French translation of the Respondent's brief would be available before the hearing where any additional arguments arising from the translation could be addressed.¹⁵ To the extent that proves to be insufficient, Mr. Rukundo may then seek leave to file an addendum with supporting justifications.

7. For the foregoing reasons, Mr. Rukundo's Motion is denied.

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

Done this 4th day of May 2010,
At The Hague,
The Netherlands.



[Seal of the Tribunal]

Judge Fausto Pocar
Pre-Appeal Judge

¹¹ Motion, p. 3.

¹² Motion, p. 3.

¹³ Motion, pp. 3, 4.

¹⁴ See, e.g., *Théoneste Bagosora et al. v. The Prosecutor*, Case No. ICTR-98-41-A, Decision on Aloys Ntabakuze's Motion for Scheduling of the Appeal Hearing, 19 January 2010, para. 10; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.16, Decision on Jadranko Prlić's Interlocutory Appeal against the Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence, 3 November 2009, para. 18.

¹⁵ Decision of 22 April 2010, para. 7.