



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

1372/H

CA

IN THE APPEALS CHAMBER

ICTR-97-31-A
07th June 2010
{1372/H – 1368/H}

Before: Judge Carmel Agius, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun
Judge Theodor Meron

Registrar: Mr. Adama Dieng

Decision of: 7 June 2010

ICTR Appeals Chamber
Date: *7th June 2010*
Action: *R. Juma*
Copied To: *Concerned Judges, SCOS, LD's, ALD's, Pastors, CMS, CSS.*

Tharcisse RENZAHO

THE PROSECUTOR

Case No. ICTR-97-31-A

DECISION ON RENZAHO'S MOTION TO POSTPONE APPEAL HEARING

Counsel for Mr. Tharcisse Renzaho:

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: *KSEFI KUMELIR A. AFANDE*
SIGNATURE: *[Signature]* DATE: *7 JUNE 2010*

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 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seised of the "*Requete* [sic] *aux fins de report de l'audience des plaidoiries*" ("Motion") filed by Tharcisse Renzaho ("Renzaho") on 31 May 2010.¹

I. INTRODUCTION

2. Trial Chamber I pronounced its judgement against Renzaho on 14 July 2009 and issued its opinion in writing on 14 August 2009.² Renzaho filed his Notice of Appeal on 2 October 2009,³ and his Appellant's Brief on 2 March 2010.⁴ The Prosecution filed its Respondent's Brief on 13 April 2010.⁵ With the filing of Renzaho's Brief in Reply on 5 May 2010,⁶ the briefing in this case has concluded. The hearing is scheduled for 16 June 2010.⁷

3. In the Motion, Renzaho requests the postponement of the appeal hearing.⁸ He advances three principal reasons why the Defence team will not be able to adequately prepare for the appeal hearing.

4. First, Renzaho submits that the appeal hearing should not take place before the Appeals Chamber adjudicates all pending motions.⁹ Renzaho points to a motion filed on 31 May 2010 in which he requests an investigation and a stay of proceedings until the completion of the investigation ("Motion for Investigation"),¹⁰ and argues that it concerns a fundamental issue which puts into question the fairness of the proceedings.¹¹ Renzaho next points to a motion filed on 1 June 2010 pursuant to Rule 115 of the Rules of Procedure and Evidence of the Tribunal

¹ The Prosecution filed a response on 4 June 2010. See *Réponse du Procureur à la "Requête aux fins de report de l'audience des plaidoiries"*, 4 June 2010 ("Response"). The Appeals Chamber has not considered the Response and therefore need not wait for a reply from Renzaho.

² *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-T, Judgement and Sentence, dated 14 July 2009 and filed on 14 August 2009 ("Trial Judgement").

³ *Acte d'Appel*, 2 October 2009 ("Notice of Appeal"). See also *Réponse à la demande de la Chambre d'Appel du 14 octobre 2009*, 23 October 2009.

⁴ *Mémoire d'Appel*, 2 March 2010 (confidential) ("Appellant's Brief"). See also *Livre d'appel de l'appelant*, 2 March 2010 (confidential); *Mémoire d'Appel Public*, 2 April 2010; *Erratum – Requête en rectification d'erreur matérielle* [sic] *Mémoire d'Appel*, 7 April 2010.

⁵ Prosecutor's Respondent's Brief, 13 April 2010 ("Respondent's Brief").

⁶ *Réplique de l'appelant. Art. 113 RPP*, 5 May 2010 ("Brief in Reply").

⁷ Scheduling Order, 21 May 2010.

⁸ Motion, paras. 2, 30.

⁹ Motion, paras. 3-11.

¹⁰ Motion, paras. 3-8, referring to *Requête en demande d'enquete* [sic], 31 May 2010.

¹¹ Motion, para. 4.

("Rules") ("First Rule 115 Motion"),¹² and states that he plans to file another motion pursuant to Rule 115 of the Rules in the coming days ("Second Rule 115 Motion", collectively, "Rule 115 Motions").¹³ Renzaho claims that the Defence will not be able to prepare for the appeal hearing without a decision on these motions.¹⁴

5. Second, Renzaho submits that certain documents which are important to the appeal have yet to be translated.¹⁵ He states that some of the documents which are the subject of the Rule 115 Motions are in Kinyarwanda,¹⁶ and submits that the Appeals Chamber will not be able to properly decide these motions without translation.¹⁷ Renzaho also states that he has not yet received the French translation of the Prosecution's Respondent's Brief,¹⁸ or a translation of the *pro justitia* statement of Dieudonné Nkulikiyinka, which the Registrar was instructed to provide.¹⁹

6. Finally, Renzaho submits that his Defence team will have difficulty preparing for and attending the appeal hearing due to other professional obligations.²⁰ He states that lead counsel has an important hearing in Paris on 16 June 2010 and that co-counsel is involved in a matter before the Extraordinary Chambers in the Courts of Cambodia until 15 June 2010.²¹ Renzaho notes that the members of his Defence team live or are currently in different countries, and are therefore not able to communicate with him.²² Renzaho claims that it is indispensable that the Defence team be given the opportunity to work with him on the key points of the appeal prior to the appeal hearing.²³

II. DISCUSSION

7. With respect to Renzaho's arguments concerning the pending motions, the Appeals Chamber notes that neither the Rules nor the relevant Practice Direction require the Appeals Chamber to dispose of all motions prior to the appeal hearing.²⁴ The Appeals Chamber notes that

¹² Motion, para. 9, referring to *Requete [sic] aux fins d'admission de nouveaux documents au dossier*, 1 June 2010. On the same day, Renzaho also filed a confidential version of the First Rule 115 Motion.

¹³ Motion, para. 10. See *Requete [sic] aux fins d'admission de nouveaux documents au dossier*, 4 June 2010.

¹⁴ Motion, para. 11.

¹⁵ Motion, paras. 11-19.

¹⁶ Motion, para. 11.

¹⁷ Motion, para. 13.

¹⁸ Motion, paras. 14-17. See also Decision on Tharcisse Renzaho's Motion for Extension of Time for the Filing of Brief in Reply, 20 April 2010.

¹⁹ Motion, para. 18, referring to Order for Translation and Documents, 19 May 2010.

²⁰ Motion, paras. 20-27.

²¹ Motion, para. 22.

²² Motion, paras. 22, 23, 27.

²³ Motion, para. 25.

²⁴ See Rule 108bis(E) of the Rules does not impose such an obligation: "A motion made in the course of the proceedings shall be determined before the hearing unless the Pre-Appeal Judge, for good cause, orders that it be deferred for determination by the Appeals Chamber." Further, the Appeals Chamber does not consider that Rule 115(C) of the Rules creates such an obligation. See also Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal, 8 December 2006 ("Practice Direction"); *François Karera v. The*

Renzaho filed both the Motion for Investigation and the Rule 115 Motions very recently, and that the Prosecution has not yet had a chance to respond to them. The Appeals Chamber does not find, without prejudice to the merits of either the Motion for Investigation or the Rule 115 Motions, that Renzaho has demonstrated that a decision on these motions is necessary for the hearing of the appeal. In particular, there is no basis, at this time, to find that Renzaho would suffer prejudice from proceeding with the appeal hearing as scheduled. The Appeals Chamber further notes that it has the discretion to request additional written submissions or oral arguments on a motion should it deem it necessary after the hearing of the appeal.²⁵

8. The Appeals Chamber further notes that it has been informed by the Registry that Renzaho was provided with both the French translation of the Respondent's Brief, and the certified translations (in French and English) of the *pro justitia* statement of Dieudonné Nkulikiyinka on 31 May 2010.²⁶ With respect to the other translations that Renzaho claims are necessary to the appeal hearing, the Appeals Chamber notes that he fails to substantiate this claim by identifying the documents awaiting translation, or particularising why they are important to the appeal hearing.

9. Finally, the Appeals Chamber recalls that "a counsel in a case before the Tribunal is under an obligation to give absolute priority to his commitments to the Tribunal and to observe the time limits in the Rules or in an order of a Chamber."²⁷ Furthermore, "other professional commitments of counsel should not have any bearing on the responsibilities of counsel towards their client and the [...] Tribunal."²⁸ As such, the Appeals Chamber does not find that the Defence team's difficulties in preparing for and attending the appeal hearing constitute good cause for delaying the hearing.

Prosecutor, Case No. ICTR-01-74-A, Decision on the Appellant's Request to Admit Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence, 29 October 2008, para. 3.

²⁵ See, e.g., Article 19 of the Practice Direction. The Appeals Chamber notes that Renzaho has filed two additional motions. See *Requete [sic] aux fins d'admission de nouveaux documents au dossier*, 7 June 2010 (confidential); *Requete [sic] en demande [sic] d'enquete [sic] sur l'identite [sic] du temoin [sic] BUO et en admission de nouveaux documents au dossier*, 7 June 2010. The Appeals Chamber finds that these additional motions do not constitute a reason to postpone the appeal hearing.

²⁶ Internal correspondence, 31 May 2010.

²⁷ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on Momčilo Krajišnik's Motion for Permission for Nathan Z. Dershowitz to Act as Counsel with Alan M. Dershowitz and for Extension of Time, 8 September 2008 ("*Krajišnik Decision*"), para. 10, (internal citations omitted), referring to *Emmanuel Ndingabahizi v. The Prosecutor*, Case No. ICTR-01-71-A, Decision on "*Requete [sic] urgente aux fins de prorogation de delai [sic] pour le depot [sic] du memoire [sic] en appel*", 5 April 2005, p. 3.

²⁸ *Krajišnik Decision*, para. 10 (quotation marks omitted).

III. DISPOSITION

10. For the foregoing reasons, the Appeals Chamber


DISMISSES the Motion.

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

Done this seventh day of June 2010,
at The Hague,
The Netherlands.



[Seal of the Tribunal]



Judge Carmel Agius
Presiding