



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

268/H

IN THE APPEALS CHAMBER *ICTR-98-44D-AR7bis.2*
08th June 2010

Before:

Judge Patrick Robinson, Presiding
Judge Fausto Pocar
Judge Liu Daqun
Judge Andrézia Vaz
Judge Carmel Agius

{268/H – 262/H}

Registrar:

Mr. Adama Dieng

Decision of:

8 June 2010

CALLIXTE NZABONIMANA

v.

THE PROSECUTOR

Case No. ICTR-98-44D-AR7bis.2

**DECISION ON NZABONIMANA'S URGENT MOTION FOR AN
EXTENSION OF TIME TO FILE AN INTERLOCUTORY APPEAL**

Counsel for the Defence:

Vincent Courcelle-Labrousse
Philippe Larochelle

Office of the Prosecutor:

Paul Ng'arua
Memory Maposa
Simba Mawere
Mary Diana Karanja

ICTR Appeals Chamber
Date: *8th June 2010*
Action: *R. Tumb*
Copied To: *Concerned Judges, SLOs, LOs, ALOs,*
Parties, CAS, LSS.

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**
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NAME / NOM: *KREEL KUMELID. A. AFANAE*
SIGNATURE: DATE: *8 JUNE 2010*

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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 seized of "Nzabonimana's Urgent Motion for an Extension of Time to File the Interlocutory Appeal on the Order Rescinding the 4 March 2010 Decision" ("Motion"), filed by Counsel for Callixte Nzabonimana ("Nzabonimana") on 1 June 2010. The Appeals Chamber has decided to consider the Motion without awaiting a response in view of the urgency of this matter and the lack of prejudice to the Prosecution.

2. On 23 April 2010, Trial Chamber III of the Tribunal rescinded a decision of 4 March 2010 by which it had requested the President of the Tribunal to report, pursuant to Rule 7bis of the Rules of Procedure and Evidence of the Tribunal ("Rules"), the failure of the Government of France to comply with its obligations of cooperation with the Tribunal to the United Nations Security Council ("Security Council").¹ On 5 May 2010, in light of the 23 April 2010 Order, the President of the Tribunal dismissed as moot a motion filed on 21st April 2010 by Nzabonimana² requesting him to implement the 4 March 2010 Decision.³ On 10 May 2010, Nzabonimana filed a motion with the Appeals Chamber seeking leave to appeal the 5 May 2010 President's Decision,⁴ which is still pending before the Appeals Chamber. On 27 May 2010, the Trial Chamber granted Certification to Appeal the 23 April 2010 Order.⁵

¹ *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44-D-T, Order Requesting the President of the Tribunal to Rescind the Decision of 4 March 2010, 23 April 2010 ("23 April 2010 Order"). See also *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44-D-T, Decision on Defence Motion to Reconsider Prior Trial Chamber Decisions on France's Cooperation with the Tribunal, 4 March 2010 ("4 March 2010 Decision").

² *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44-D-T, Nzabonimana's Motion for the Implementation of the Order of Trial Chamber III of 4 March 2010 and for Allowing the Defence to Make Submissions Before the Security Council, 21 April 2010.

³ *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44-D-T, Decision on Nzabonimana's Motion for the Implementation of the Order of Trial Chamber III of 4 March 2010 and for Allowing the Defence to Make Submissions Before the Security Council, 5 May 2010 ("5 May 2010 President's Decision").

⁴ Nzabonimana's Motion for Leave to Appeal the Decision of the President of the International Criminal [sic] for Rwanda "Decision on Nzabonimana's Motion for the Implementation of the Order of Trial Chamber III of March 2010 and for Allowing the Defence to Make Submissions Before the Security Council Dated 5 May 2010", 10 May 2010 ("Motion for Leave to Appeal the 5 May 2010 President's Decision"). See also Prosecutor's Response to Nzabonimana's Motion for Leave to Appeal the Decision of the President of the International [sic] Tribunal for Rwanda "Decision on Nzabonimana's Motion for the Implementation of the Order of Trial Chamber III of 4 March 2010 and for Allowing the Defence to Make Submissions Before the Security Council Dated 5 May 2010 and Annex 'A'" [sic], 17 May 2010; Reply to Prosecutor's Response to "Nzabonimana's Motion for Leave to Appeal the Decision of the President of the International Criminal [sic] for Rwanda 'Decision on Nzabonimana's Motion for the Implementation of the Order of Trial Chamber III of 4 March 2010 and for Allowing the Defence to Make Submissions Before the Security Council Dated 5 May 2010'", 24 May 2010.

⁵ *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44-D-T, Decision on Defence Motion for Certification to Appeal the Decision of 23 April 2010, 27 May 2010 ("Certification Decision"). See also *The Prosecutor v. Callixte*

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3. Nzabonimana requests a one week extension of time, until 11 June 2010, to file his interlocutory appeal of the 23 April 2010 Order ("Appeal").⁶ In support of his request, Nzabonimana submits that: (i) he will need to refer in his Appeal to a lengthy procedural history spanning from January 2009 to May 2010;⁷ (ii) his Defence Counsel cannot meet him to discuss the matter before Friday morning, 4 June 2010, because they are both involved in the presentation of his Defence case and the present session is scheduled to end on 3 June 2010;⁸ (iii) both Co-Counsel and Lead Counsel intended to travel to Canada and France, respectively, "from 3-5 June 2010";⁹ and (iv) as the Appeal will be written in English and Nzabonimana speaks French, a translation by the Defence team into French of the draft Appeal will be required prior to the filing of the Appeal.¹⁰ Nzabonimana argues that these circumstances constitute "good cause" for an extension of time to file his Appeal pursuant to Rule 116(A) of the Rules.¹¹

4. Pursuant to Rule 73(C) of the Rules, once certification is granted, a party shall appeal to the Appeals Chamber within seven days of the filing of the decision to certify.¹² The Certification Decision was filed on 27 May 2010. Accordingly, Nzabonimana's Interlocutory Appeal was due by 3 June 2010. The Appeals Chamber notes that Nzabonimana has filed his Motion only two days before the expiration of the prescribed time-limit. The Appeals Chamber considers that a motion for extension of time based on Rule 116(A) of the Rules should be filed as soon as possible after the decision granting certification, so as to allow the opposite party a chance to respond and time for the Appeals Chamber to conduct a fair assessment of the request.

5. The Appeals Chamber finds that the need to provide a lengthy procedural background does not, in itself, constitute "good cause", as the issues at stake in the Appeal are closely linked to the pending Motion for Leave to Appeal the 5 May 2010 President's Decision in which Nzabonimana already provided most of the relevant procedural background.¹³ Additionally, the Appeals Chamber does not find that the need to provide Nzabonimana with translations of the draft Appeal, which the Defence intends to file in English, constitutes, in itself, "good cause", since the Defence Counsel,

Nzabonimana, Case No. ICTR-98-44-D-T, Urgent Motion of Defendant Nzabonimana for Certification of the Trial Chamber's "Order Requesting the President of the Tribunal to Rescind the Decision of 4 March 2010", 27 April 2010.

⁶ Motion, paras. 1, 2, 8, p. 4.

⁷ Motion, para. 6.

⁸ Motion, para. 7.

⁹ Motion, para. 8.

¹⁰ Motion, para. 9. In addition, Nzabonimana submits that the drafting of the procedural history "will require English summaries of French letters, decisions and motions." *Ibid.*

¹¹ Motion, paras. 6-10.

¹² See also Practice Direction on Procedure for the Filing of Written Submission In Appeal Proceedings Before the Tribunal, 8 December 2006, para. 9.

¹³ See Motion for Leave to Appeal the 5 May 2010 President's Decision, paras. 7-26. See also *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44-D, Nzabonimana's Motion for the Implementation of the Order of Trial Chamber III of 4 March 2010 and for Allowing the Defence to Make Submissions Before the Security Council, 21 April 2010, paras. 5-16.

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who "are both francophone",¹⁴ can write their submissions directly in French, a language that Nzabonimana understands. With regard to the alleged inability of Defence Counsel to meet with Nzabonimana and discuss the Appeal due to their involvement in the presentation of the Defence case, the Appeals Chamber recalls that "[c]ounsel assigned to represent accused at this Tribunal are expected to organise their work schedules in order to meet their obligations to respect the time limits for filings on appeals".¹⁵ This circumstance therefore does not, in itself, constitute "good cause" for granting an extension of time. Further, the fact that Co-Counsel and Lead Counsel intended to travel - on or shortly after the deadline for filing submissions - does not, in itself, constitute "good cause" under Rule 116 of the Rules for granting an extension of time.

6. The Appeals Chamber, however, notes the complexity of the proceedings related to the 23 April 2010 Order, including the circumstance that the Appeal seems intertwined with the pending Motion for Leave to Appeal the 5 May 2010 President's Decision. The Appeals Chamber also notes that, in the current phase of the Defence case, Nzabonimana's Counsel cannot easily discuss with him the issues relevant to the Appeal¹⁶ and that the Defence is planning and preparing the Appeal in a period when the Defence is also fully involved in the presentation of the Defence case. The Appeals Chamber considers that these specific circumstances, when viewed cumulatively, constitute good cause for the requested extension of time.

7. For the foregoing reasons, the Appeals Chamber, Judges Pocar and Liu dissenting,

GRANTS the Motion; and

ALLOWS Nzabonimana to file the Appeal no later than 11 June 2010.

Judges Pocar and Liu append a joint dissenting opinion.

¹⁴ Motion, para. 9.

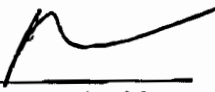
¹⁵ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-A, Decision on Milan Lukić's Urgent Motion for Enlargement of Time to File Notice of Appeal, 19 August 2009, para. 11 referring to *The Prosecutor v. Rasim Delić*,

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Done this 8th day of June 2010,
at The Hague, The Netherlands.



[Seal of the Tribunal]



Judge Patrick Robinson
Presiding

Case No. IT-04-83AR72, Decision on Interlocutory Appeal Challenging the Jurisdiction of the Tribunal, 8 December 2005, para. 3.

¹⁶ Motion, para. 7.