



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

2068/H

*Ex.*

IN THE APPEALS CHAMBER

ICTR-98-41-A

23<sup>rd</sup> June 2010

{2068/H – 2065/H}

Before: Judge Mehmet Güney, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 23 June 2010

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA Tribunal pénal international pour le Rwanda COPIE CERTIFIÉE ONIGRAPHIÉE ALPHABÉTIQUE NOM / NAME: ROSE KUMELI, A. AFIANDU SIGNATURE: <i>Rose Kumeli</i> DATE: 23 JUNE 2010
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ICTR Appeals Chamber  
 Date: 23<sup>rd</sup> June 2010  
 Action: R. June 2  
 Copied To: Concerned Judges

Théoneste BAGOSORA  
 Aloys NTABAKUZE  
 Anatole NSENGIYUMVA

Parties, Judicial Archives,  
 LOs, LSS  
*[Signature]*

v.

THE PROSECUTOR

Case No. ICTR-98-41-A

**DECISION ON ANATOLE NSENGIYUMVA'S MOTION FOR EXTENSION OF TIME FOR FILING HIS BRIEF IN REPLY**

Counsel for Théoneste Bagosora

Raphaël Constant  
 Richard Perras

Counsel for Aloys Ntabakuze

Peter Erlinder  
 André Tremblay

Counsel for Anatole Nsengiyumva

Kennedy Ogetto  
 Gershom Otachi Bw'Omanwa

Office of the Prosecutor

Hassan Bubacar Jallow  
 Alex Obote-Odora  
 George W. Mugwanya  
 Inneke Onsea  
 Renifa Madenga  
 Abubacarr Tambadou  
 Evelyn Kamau  
 William Mubiru  
 Aisha Kagabo  
 Ndeye Marie Ka

*[Handwritten mark]*

I, **Mehmet GÜNEY**, 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 (“Appeals Chamber” and “Tribunal”, respectively), and Pre-Appeal Judge in this case;

**NOTING** the appeal lodged by Anatole Nsengiyumva (“Nsengiyumva”)<sup>1</sup> against the Trial Judgement pronounced in this case on 18 December 2008 and filed in English on 9 February 2009;<sup>2</sup>

**NOTING** the decision issued on 2 March 2009 in which I ordered Nsengiyumva, *inter alia*, to file his brief in reply, if any, no later than 15 days from the date of the filing of the French translation of the Prosecution’s response brief;<sup>3</sup>

**NOTING** that the French translation of the Prosecution Response Brief of 15 March 2010 was filed on 9 June 2010,<sup>4</sup> and that Nsengiyumva’s reply brief is accordingly due to be filed no later than 24 June 2010;

**BEING SEIZED OF** “Urgent Motion for Extension of Time for Filing of Brief in Reply to Respondent’s Brief in Anatole Nsengiyumva’s Appeal”, filed on 18 June 2010 (“Motion”), in which Nsengiyumva requests an extension of time for filing his brief in reply to 9 July 2010;<sup>5</sup>

**NOTING** that, in support of his Motion, Nsengiyumva indicates that he was not served with the French translation of the Prosecution Response Brief until 14 June 2010, and submits that considering that the Appeals Chamber previously held that it was in the interests of justice to allow him adequate time to read the Prosecution Response Brief in a language he understands and to consult with Counsel before filing his brief in reply, it would be in the interests of justice to permit him to file his brief in reply 15 days after the service of the translated Prosecution Response Brief;<sup>6</sup>

<sup>1</sup> See Nsengiyumva’s Notice of Appeal, 13 March 2009; Nsengiyumva’s Third Amended Notice of Appeal Pursuant to Appeals Chamber Decision of 28 January 2010, 1 February 2010; Nsengiyumva’s Appeal Brief, 1 February 2010.

<sup>2</sup> *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”).

<sup>3</sup> Decision on Anatole Nsengiyumva’s Motion for Extension of Time for Filing Appeal Submissions, 2 March 2009, p. 6 (“2 March 2009 Decision”).

<sup>4</sup> Prosecutor’s Brief in Response to Anatole Nsengiyumva’s Appeal, 15 March 2010 (“Prosecution Response Brief”); *Mémoire en réponse du Procureur concernant l’appel d’Anatole Nsengiyumva*, 9 June 2010.

<sup>5</sup> Motion, p. 5. See also Addendum to the Urgent Motion for Extension of Time for Filing of Brief in Reply to Respondent’s Brief in Anatole Nsengiyumva’s Appeal, 21 June 2010 (“Addendum”); Corrigendum to the Urgent Motion for Extension of Time for Filing of Brief in Reply to Respondent’s Brief in Anatole Nsengiyumva’s Appeal, 22 June 2010 (“Corrigendum”).

<sup>6</sup> Motion, para. 7, referring to 2 March 2009 Decision; Corrigendum, para. 2. See also Motion, paras. 5, 6, 8.

**NOTING** that, “[f]urther or in the alternative”, Nsengiyumva submits that his Counsel were retained to represent Peter Erlinder in Kigali when the French translation of the Prosecution Response Brief was filed and served, and that, “in the unusual and exceptional circumstances of this case, it was not logistically possible for either Counsel to return to Arusha to take instructions from [Nsengiyumva]”;<sup>7</sup>

**NOTING** further that Nsengiyumva claims that the earliest his Counsel could take instructions from him and start drafting a meaningful brief in reply would be 21 June 2010;<sup>8</sup>

**CONSIDERING** that in light of the urgency of the matter and given that the Prosecution will not be prejudiced by the outcome of this decision, it is in the interests of justice to render the present decision prior to the expiration of the deadline for filing a response to the Motion;

**CONSIDERING** that Rule 116 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) provides that the Pre-Appeal Judge may grant a motion to extend a time limit upon a showing of good cause;

**REITERATING** that it is in the interests of justice to allow Nsengiyumva adequate time to read the Prosecution Response Brief in a language he understands and to consult with his Counsel before filing his brief in reply;<sup>9</sup>

**CONSIDERING** that Nsengiyumva was served with the French translation of the Prosecution Response Brief on 14 June 2010;<sup>10</sup>

**CONSIDERING** further that a limited extension of time would not adversely impact the Appeals Chamber’s ability to hear the case in a timely manner;

**FINDING** therefore that the late service of the French translation of the Prosecution Response Brief constitutes good cause for an extension of time equivalent to the delay in service of the translation;

**CONSIDERING**, however, that Counsel assigned to represent accused at this Tribunal are expected to organise their work schedules in order to meet their obligation to respect the time limits for filing appeal submissions and that the unexpected unavailability of Nsengiyumva’s Counsel due

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<sup>7</sup> Motion, paras. 9-13. *See also* Addendum, p. 2, Annexes A and B.

<sup>8</sup> Motion, para. 14. *See also* Addendum, p. 2, Annex B.

<sup>9</sup> *See* 2 March 2009 Decision, p. 5.

<sup>10</sup> *See* Proof of Service to Detainees, signed by Nsengiyumva on 14 June 2010.

to other professional duties does not amount to good cause within the meaning of Rule 116 of the Rules;<sup>11</sup>

**CONSIDERING** further that Counsel bear the main burden in preparing submissions<sup>12</sup> and that since Nsengiyumva's Counsel work in English, they were able to understand the Prosecution Response Brief in its original language;

**FINDING** therefore that Nsengiyumva fails to show good cause for an extension of time until 9 July 2010 to file his brief in reply;

**FOR THE FOREGOING REASONS,**

**GRANT** the Motion in part;

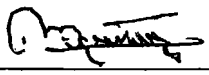
**ORDER** Nsengiyumva to file his brief in reply no later than 15 days from the date that he was served with the French version of the Prosecution Response Brief, which is no later than 29 June 2010.

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

Done this twenty-third day of June 2009,  
At The Hague, The Netherlands



[Seal of the Tribunal]

  
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Judge Mehmet Güney  
Pre-Appeal Judge

<sup>11</sup> See *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-A, Decision on Milan Lukić's Motion to Enlarge Time for Filing Reply Brief, 2 February 2010, p. 2; *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; *Mikaeli Muhimana v. The Prosecutor*, Case No. ICTR-95-1B-A, Decision on Appellant's Motion for Extension of Time to File a Brief in Reply and Postponement of a Status Conference, 21 June 2006, p. 3.

<sup>12</sup> *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-A, Decision on the Filing of Emmanuel Rukundo's Reply Brief, 22 April 2010, para. 6; *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-A, Decision on Tharcisse Renzaho's Motion for Extension of Time for the Filing of Brief in Reply, 20 April 2010, para. 7; *The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-A, Decision on Callixte Kalimanzira's Motion for an Extension of Time for the Filing of his Reply Brief, 6 April 2010, para. 5.