



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

*EV*

ICTR-04-81-A  
2 July 2010  
{189/H - 186/H}

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Liu Daqun  
Judge Carmel Agius

Registrar: Mr. Adama Dieng

Decision of: 2 July 2010

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
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NAME / NOM: K. BEEL... K. MEH... A... A. FANBE...  
SIGNATURE: *[Signature]* DATE: 02 JULY 2010

ICTR Appeals Chamber  
Date: 02<sup>nd</sup> July 2010  
Action: *A. Turner*  
Copied To: *Concerned Judges,*

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

THE PROSECUTOR

v.

Ephrem SETAKO

Case No. ICTR-04-81-A

**DECISION ON EPHREM SETAKO'S MOTION FOR EXTENSION OF TIME FOR THE FILING OF APPELLANT'S BRIEF**

Counsel for Mr. Ephrem Setako:

Prof. Lennox Hinds

Office of the Prosecutor:

Mr. Hassan Bubacar Jallow  
Mr. Alex Obote-Odora  
Ms. Deborah Wilkinson

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 a motion filed on 12 April 2010 by Ephrem Setako for an extension of time to file his Appellant’s Brief (“Motion”).<sup>1</sup> The Prosecution filed its response on 22 April 2010,<sup>2</sup> and Mr. Setako replied on 26 April 2010.<sup>3</sup>

2. Trial Chamber I of the Tribunal pronounced its judgement against Mr. Setako on 25 February 2010,<sup>4</sup> and issued its reasoned opinion in writing in English on 1 March 2010.<sup>5</sup> On 29 March 2010, the Prosecution filed its Notice of Appeal.<sup>6</sup> Setako’s Notice of Appeal was filed on 12 April 2010.<sup>7</sup> On 19 April 2010, the Prosecution filed a motion to dismiss Setako’s Notice of Appeal.<sup>8</sup> On 2 July 2010, the Appeals Chamber denied such motion.<sup>9</sup>

3. Mr. Setako requests an extension of time to file his Appellant’s Brief within 75 days from his receipt of the French translation of the Trial Judgement.<sup>10</sup> In support of his request, Mr. Setako submits that, because he is francophone, “[i]n order for him [to] fully understand the Trial Judgement and actively participate in the drafting of his Appellant’s Brief”, he needs the French version of the Trial Judgement.<sup>11</sup> He argues that these circumstances constitute good cause for an extension of time to file his Appellant’s Brief pursuant to Rule 116(B) of the Rules of Procedure

<sup>1</sup> Motion for an Extension of Time to File Appellant’s Brief, 12 April 2010.

<sup>2</sup> Prosecutor’s Response to Defendant’s Motion for Extension of Time to File Brief, 22 April 2010 (“Response”).

<sup>3</sup> Reply to Prosecutor’s Opposition to Appellant’s Motion for an Extension of Time to File Appellant’s Brief, 26 April 2010 (“Reply”). See also Corrigendum to Reply to Prosecutor’s Opposition to Appellant’s Motion for an Extension of Time to File Appellant’s Brief, 27 April 2010 (“Corrigendum”), through which Mr. Setako provided Annex 4 of the Reply.

<sup>4</sup> *The Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-T, T. 25 February 2010.

<sup>5</sup> *The Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-T, Judgement and Sentence, dated 25 February 2010 and filed on 1 March 2010 (“Trial Judgement”). The Trial Judgement was served on Defence Counsel and Prosecution on 2 March 2010. It was served on Mr. Setako himself on 3 March 2010. See *The Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-T, Proof of Service – Arusha, dated 2 March 2010; *The Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-T, Proof of Service To Detainees, signed on 3 March 2010. See also Submissions by the Registrar under Rule 33(B) of the Rules of Procedure and Evidence in respect of the Appeals Chamber Order to the Registrar dated 13 May 2010, 20 May 2010, para. 3.

<sup>6</sup> Notice of Appeal, 29 March 2010 (“Prosecution’s Notice of Appeal”). See also Corrigendum to Prosecutor’s Notice of Appeal, 31 March 2010. The Prosecution filed its Appellant’s brief on 14 June 2010. See Prosecutor’s Appellant’s Brief, 14 June 2010. On 16 June 2010, Mr. Setako filed a motion seeking an extension of time to file his Respondent’s brief, which is pending before the Appeals Chamber. See Motion for an Extension of Time to File Respondent’s Brief, 16 June 2010.

<sup>7</sup> Notice of Appeal, 12 April 2010 (“Setako’s Notice of Appeal”).

<sup>8</sup> Motion to Dismiss Defendant’s Notice of Appeal, 19 April 2010 (“Motion to Dismiss Setako’s Notice of Appeal”).

<sup>9</sup> Decision on the Prosecution’s Motion to Dismiss Ephrem Setako’s Notice of Appeal, 2 July 2010, p. 5 (“Decision on Setako’s Notice of Appeal”).

<sup>10</sup> Motion, para. 15.

<sup>11</sup> Motion, para. 11.

and Evidence of the Tribunal ("Rules").<sup>12</sup> He further contends that, in the interests of justice, he should be allowed adequate time to read the Trial Judgement in French and consult with his Counsel before filing his Appellant's Brief.<sup>13</sup> In addition, Mr. Setako submits that, because his Counsel does not speak French, he is unable to consult with him in the preparation of his Appellant's Brief "in the same manner as a counsel who speaks both the language of a judgment and the main language of his client".<sup>14</sup>

4. The Appeals Chamber notes that the Registrar of the Tribunal informed Mr. Setako that the certified French version of the Trial Judgement is expected to be available by 31 July 2010.<sup>15</sup>

5. Rule 116(A) of the Rules allows for the extension of time upon a showing of good cause. Pursuant to Rule 116(B) of the Rules, where the ability of the convicted person to make full answer and Defence depends on the availability of a decision in an official language other than that in which it was originally issued, that circumstance shall be taken into account as a good cause. This provision may provide a basis for an extension of time, upon request, for the filing of the convicted person's Appellant's Brief pending the translation of the Trial Judgement into a working language of the Tribunal which he or she understands.<sup>16</sup>

6. Accordingly, the Appeals Chamber finds that Mr. Setako's circumstances constitute good cause, under Rule 116(B) of the Rules, to extend the time for the filing of his Appellant's Brief from the date of the filing of the French translation of the Trial Judgement.

7. With regard to the length of the extension of time, the Appeals Chamber recalls that where a Counsel's main working language is the same as that in which the Trial Judgement was issued, only

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<sup>12</sup> Motion, paras. 7-9, 11.

<sup>13</sup> Motion, paras. 10, 12.

<sup>14</sup> Motion, para. 13. *See also* Motion, para. 14. Mr. Setako submits that the Appeals Chamber has granted an extension in cases where a Counsel's main working language was the language in which the Trial Judgement was rendered but was different from the Appellant's language. The Appeals Chamber does not need to address the Prosecution's Response, which, referring to the arguments presented in the Motion to Dismiss Setako's Notice of Appeal, requests the dismissal of the present motion on the ground that Mr. Setako does not have an appeal properly pending before the Appeals Chamber. *See* Response, paras. 9-12. For the same reasons, there is no need to address Mr. Setako's Reply related to this argument.

<sup>15</sup> *See* Letter by the Registrar to Prof. Lennox S. Hinds, Re: Translation of the judgment of 2 March 2010, *Prosecutor v. Setako*, Ref: ICTR/RO/04/10/127, 13 April 2010.

<sup>16</sup> *See, e.g., 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 Appellant's Brief, 21 October 2009, para. 4 ("*Renzaho Decision*"); *Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Decision on Callixte Kalimanzira's Motion for Leave to File an Amended Notice of Appeal and for an Extension of Time for the Filing of his Appellant's Brief, 31 August 2009, para. 5 ("*Kalimanzira Decision*"); *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Decision on Protais Zigiranyirazo's Motion for an Extension of Time for the Filing of the Respondent's Brief, 10 March 2009, paras. 3, 4 ("*10 March 2009 Zigiranyirazo Decision*"); *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-A, Decision on Anatole Nsengiyumva's Motion for Extension of Time for Filing Appeal Submissions, 2 March 2009, pp. 4-5 ("*Bagosora Decision*").

a limited extension of time has been granted.<sup>17</sup> Mr. Setako's Lead Counsel's language is English and he is therefore able to understand the Trial Judgement in its original language. As to Mr. Setako's argument with respect to his Counsel's inability to speak French, the Appeals Chamber observes that Counsel has a duty to represent his client, which, on appeal, requires him, *inter alia*, to discuss with his client the draft of the Appellant's Brief and to consult with him before filing it.<sup>18</sup> Further, the Appeals Chamber notes that his legal assistant can work in both English and French.<sup>19</sup> She can therefore assist the Defence Counsel in his communications with Mr. Setako. Accordingly, there is no impediment preventing Mr. Setako's Counsel from starting to prepare Mr. Setako's Appellant's Brief, which can then be finalized once the French Translation of the Trial Judgement is available. It is therefore appropriate to allow only a limited extension of time.

8. For the foregoing reasons, the Appeals Chamber **GRANTS** the Motion **IN PART**. Mr. Setako may file his Appellant's brief no later than 40 days of being served the French translation of the Trial Judgement.

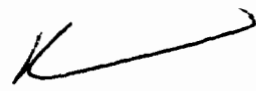
9. The Registrar is **DIRECTED** to serve Mr. Setako with a French translation of the Trial Judgement no later than 31 July 2010, or to provide a reasoned explanation if he cannot comply with this instruction.

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

Done this 2<sup>nd</sup> day of July 2010,  
at The Hague,  
The Netherlands.



[Seal of the Tribunal]

  
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Judge Patrick Robinson  
Presiding

<sup>17</sup> *Kalimanzira* Decision, para. 6, referring to 10 March 2009 *Zigiranyirazo* Decision, paras. 5, 6; *Bagosora* Decision, pp. 5, 6; *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Decision on Protais Zigiranyirazo's Motion for an Extension of Time, 28 January 2009, pp. 2, 3. See also *Renzaho* Decision, para. 6.

<sup>18</sup> E.g. *Bagosora* Decision, pp. 4-6.

<sup>19</sup> See the relevant DCDMS 4 Form (Initial Request for Legal Assistant), dated 15/00/2010 [*sic*] and attached *curriculum vitae*, submitted to the Registrar for approval. See also Approval of contract by DCDMS, Ref: ICTR-JUD-11-5-2-10-556-mk, dated 23 March 2010.