



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

194/H

*DX*

IN THE APPEALS CHAMBER

ICTR-04-81-A  
16<sup>th</sup> July 2010  
{194/H – 190/H}

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

Registrar: Mr. Adama Dieng

Decision of: 16 July 2010

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
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NAME / NOM: *KOFFI... KUMEKI... A... AFANDE...*  
SIGNATURE: *[Signature]* DATE: *16 JULY 2010*

ICTR Appeals Chamber  
Date: *16<sup>th</sup> July 2010*  
Action: *R. Dieng*  
Copied To: *Concerned*

Ephrem SETAKO  
*Judges,*  
*Parties, LOs, Judicial Archives,*  
*S. [Signature]*  
THE PROSECUTOR

Case No. ICTR-04-81-A

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DECISION ON EPHREM SETAKO'S MOTION FOR AN EXTENSION OF TIME FOR  
THE FILING OF THE RESPONDENT'S BRIEF

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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 17 June 2010 by Ephrem Setako for an extension of time to file his Respondent’s brief (“Motion”).<sup>1</sup> The Prosecution responded to the Motion on 28 June 2010,<sup>2</sup> and Mr. Setako replied on 2 July 2010.<sup>3</sup>

#### A. Background

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 on 1 March 2010, in English.<sup>5</sup> On 29 March 2010, the Prosecution filed its Notice of Appeal.<sup>6</sup> Mr. Setako’s Notice of Appeal was filed on 12 April 2010.<sup>7</sup> On 14 June 2010, the Prosecution filed its Appellant’s brief, in English.<sup>8</sup> On 2 July 2010, the Appeals Chamber denied the Prosecution’s motion to dismiss the Setako Notice of Appeal.<sup>9</sup> On the same date, the Appeals Chamber allowed Mr. Setako to file his Appellant’s brief within 40 days of being served the French translation of the Trial Judgement.<sup>10</sup> The Registry 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>11</sup>

<sup>1</sup> Motion for an Extension of Time to File Respondent’s Brief, 17 June 2010. *See also* Corrigendum to Motion for an Extension of Time to File Respondent’s Brief, 18 June 2010.

<sup>2</sup> Appellant’s Response to Defendant’s Motion for Extension of Time to File Respondent’s Brief, 28 June 2010 (“Response”).

<sup>3</sup> Reply to the Prosecutor’s Response to Ephrem Setako’s Motion for an Extension of Time to File Respondent’s Brief, 2 July 2010 (“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”).

<sup>6</sup> Notice of Appeal, 29 March 2010. *See also* Corrigendum to Prosecutor’s Notice of Appeal, 31 March 2010.

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

<sup>8</sup> Prosecutor’s Appellant’s Brief, 14 June 2010 (“Prosecution Appellant’s brief”).

<sup>9</sup> Decision on the Prosecution’s Motion to Dismiss Ephrem Setako’s Notice of Appeal, 2 July 2010. *See also* Motion to Dismiss Defendant’s Notice of Appeal, 19 April 2010; Corrigendum to Motion to Dismiss Defendant’s Notice of Appeal, 20 April 2010.

<sup>10</sup> Decision on Ephrem Setako’s Motion for Extension of Time for the Filing of Appellant’s Brief, 2 July 2010 (“Decision on Extension of Time”).

<sup>11</sup> Letter by the Registrar to Professor Lennox S. Hinds, Re: Translation of the judgment of 2 March 2010, *Prosecutor v. Setako*, Ref: ICTR/RO/04/10/127, 14 April 2010. *See also* Motion, Annex 1 (Correspondence dated 26 May 2010 addressed by Mr. Diallo, Co-ordinator of Trial Chamber I, Court Management Section, to Professor Lennox S. Hinds, Ref: ICTR/RO/04/10/127, 26 May 2010; Decision on the Motion, Ref: ICTR/RO/04/10/127, 26 May 2010).

### B. Submissions

3. Mr. Setako requests an extension of time to file his Respondent's brief. He is francophone and therefore seeks to file his Respondent's brief 40 days from the date of his receipt of the French translation of the Trial Judgement, or from the receipt of the French translation of the Prosecution Appellant's brief, whichever is later, so that he can discuss these documents with his Counsel.<sup>12</sup> Mr. Setako also submits that, because his Counsel does not speak French, he is unable to consult with him in the preparation of his Respondent's brief "in the same manner as counsel who speaks both the language of a judgement or appeal submission and the main language of his client".<sup>13</sup>

4. The Prosecution does not oppose Mr. Setako's request for extension of time until after the French translation of the Trial Judgement is filed,<sup>14</sup> although it submits that a limited extension of time, between seven to ten days, would be appropriate, given that the Counsel's main working language is English and a member of the defence team is bilingual.<sup>15</sup> However, the Prosecution opposes Mr. Setako's request for extension of time until after the French translation of the Prosecution Appellant's brief is available: according to the Prosecution, Mr. Setako's request is not supported by the Rules of Procedure and Evidence of the Tribunal ("Rules") or the jurisprudence,<sup>16</sup> and such an extension would "further delay the overall amount of time dedicated to considering the appeal".<sup>17</sup>

<sup>12</sup> Motion, paras. 10, 18, 19, 22. Mr. Setako argues that it is in the interests of justice to allow him the opportunity to review the French translation of both the Trial Judgement and the Prosecution Appellant's brief before filing his Respondent's brief. Motion, paras. 17, 20, referring to *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, para. 4 ("*Zigiranyirazo* 10 March 2009 Decision"). In addition, Mr. Setako submits that an extension of time from the date of the translation of the appeal submissions has been granted even where counsel works in the language of the appeal submissions where such an extension does not impact the overall time for considering the appeal. See Motion, para. 16, referring to *Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Decision on Callixte Kalimanzira's Motion for an Extension of Time for the Filing of his Respondent's Brief, 26 October 2009, para. 5 ("*Kalimanzira* 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. 5, 6 ("*Bagosora* Decision").

<sup>13</sup> Motion, para. 21. Mr. Setako also notes that he does not have a co-counsel. See Reply, para. 10.

<sup>14</sup> Response, paras. 2, 5.

<sup>15</sup> Response, para. 6, referring to *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 Reply Brief, 3 July 2009, para. 7 ("*Zigiranyirazo* 3 July 2009 Decision"). The Prosecution argues that Defence Counsel bears the main burden in preparing submissions on appeal and that the Defence team can discuss the draft of his Respondent's brief with Mr. Setako pending the filing of the French translation of the Trial Judgement. See Response, para. 6.

<sup>16</sup> Response, paras. 7, 8, referring to *Kalimanzira* Decision, para. 5; *Zigiranyirazo* 3 July 2009 Decision, paras. 4-7, 9; *Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-2001-63-A, Decision on Defence Motion for a French Translation of the Prosecutor's Respondent's Brief and for Extension of Time for the Filing of the Reply Brief, 8 July 2009, paras. 6-8.

<sup>17</sup> Response, para. 9.

5. Mr. Setako replies that a full 40-day extension of time is appropriate in this case,<sup>18</sup> and that precedent exists for the extension of time to be granted from the date of the French translation of the Prosecution Appellant's brief, if that is later than the French translation of the Trial Judgement.<sup>19</sup>

### C. Discussion

6. According to Rule 112(A) of the Rules, a Respondent's brief of argument and authorities must be filed within forty days of filing of the Appellant's brief, which in this case would be 26 July 2010. However, Rule 116(A) of the Rules allows for an extension of time upon a showing of good cause. Pursuant to Rule 116(B) of the Rules, "[w]here the ability of the accused 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".

7. The Appeals Chamber recalls that it found good cause to grant Mr. Setako a 40-day extension of time from receipt of the French translation of the Trial Judgement to file his Appellant's brief.<sup>20</sup> Similarly, the Appeals Chamber finds that good cause exists to extend the time for the filing of Mr. Setako Respondent's brief from the filing of the French version of the Trial Judgement. The Appeals Chamber further finds that it is in the interests of justice to allow Mr. Setako the opportunity to review the French translation of the Prosecution Appellant's brief before filing his Respondent's brief.<sup>21</sup> Furthermore, an extension of time will not impact the overall time for considering the appeal, since the Language Services Section of the Tribunal confirmed that the translation of the Prosecution Appellant's brief will be available by 2 August 2010, which is only two days after the French version of the Trial Judgement is expected to be available.<sup>22</sup>

8. However, a full 40-day extension of time is not warranted in this case. Mr. Setako's Counsel works in English and is therefore able to understand the Trial Judgement and the Prosecution Appellant's brief in their original language. The Appeals Chamber has already held, with respect to Mr. Setako's argument regarding his Counsel's inability to speak French, that Counsel has a duty to represent his client.<sup>23</sup> This also requires him, *inter alia*, to discuss with his client the draft of the

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<sup>18</sup> Reply, paras. 9, 10, referring to *Kalimanzira* Decision, para. 6; *Zigiranyirazo* 10 March 2009 Decision. He points out that, in the *Kalimanzira* Decision, a 40-day extension of time was granted for the filing of Kalimanzira's Respondent's brief even though Kalimanzira's Counsel was bilingual and could communicate with Mr. Kalimanzira in his own language. With regard to the *Zigiranyirazo* 10 March 2009 Decision, Mr. Setako notes that a 15-day extension of time was granted and counsel was also bilingual.

<sup>19</sup> Reply, paras. 11-13, referring to *Kalimanzira* Decision, paras. 5, 6; *Zigiranyirazo* 10 March 2009 Decision, paras. 3, 4, 6. See also Reply, para. 16.

<sup>20</sup> Decision on Extension of Time, paras. 6, 8.

<sup>21</sup> *Zigiranyirazo* 10 March 2009 Decision, para. 4.

<sup>22</sup> E-mail from Language Services Section to the Appeals Chamber Unit, dated 1 July 2010.

<sup>23</sup> Decision on Extension of Time, para. 7, referring to *Bugagaza* Decision, pp. 4-6.

Respondent's brief and to consult with him before filing it. Further, the Appeals Chamber has previously noted that his legal assistant, being able to work in both English and French, can assist him in his communication with Mr. Setako.<sup>24</sup> It is therefore appropriate to allow only a limited extension of time.

#### D. Disposition

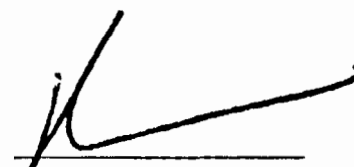
9. For the foregoing reasons, the Appeals Chamber **GRANTS** the Motion **IN PART** and **ALLOWS** Mr. Setako to file his Respondent's brief no later than 15 days after being served the French translation of the Trial Judgement or the French translation of the Prosecution Appellant's brief, whichever is later.

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

Done this 16<sup>th</sup> day of July 2010,  
at The Hague,  
The Netherlands.



[Seal of the Tribunal]

  
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Judge Patrick Robinson  
Presiding

<sup>24</sup> Decision on Extension of Time, para. 7 (noting that Counsel's legal assistant is bilingual). See 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 request by DCDMS, Ref: ICTR/TD 11.5.0.10.556, dated 22 March 2010.