

14/H



Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-97-36A-A
22nd July 2010
{14/H - 11/H}

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 22 July 2010

THE PROSECUTOR

v.

YUSSUF MUNYAKAZI

Case No. ICTR-97-36A-A

JUDICIAL AUTHORITY
2010 JUL 22 P 14:05

**DECISION ON YUSSUF MUNYAKAZI'S MOTION FOR AN EXTENSION OF
TIME FOR THE FILING OF THE NOTICE OF APPEAL**

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow

Counsel for Yussuf Munyakazi:

Mr. Barnabé Nékouie

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS	
NAME / NOM: <u>NOUMHON DIAKÉ</u>	
SIGNATURE: <u>[Signature]</u>	DATE: <u>23/07/2010</u>

1. I, Patrick Robinson, Presiding 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 ("Tribunal") and Pre-Appeal Judge in this case, am seized of a request, filed on 20 July 2010, by Yussuf Munyakazi for an extension of time to file his notice of appeal.¹ The Prosecution has not yet filed a response.

2. On 30 June 2010, Trial Chamber I of the Tribunal convicted Mr. Munyakazi of one count of genocide and one count of extermination as a crime against humanity and sentenced him to a total of 25 years of imprisonment.² The Trial Judgement was filed in English on 5 July 2010.

3. According to the Motion, Mr. Munyakazi only understands and reads Kinyarwanda and, thus, requests an extension of time pending the translation of the Trial Judgement into that language.³ In addition, he also seeks an extension of time in light of the murder of his lead counsel, Professor Jwani Timothy Mwaikusa, which occurred after the filing of the Trial Judgement.⁴ Mr. Munyakazi leaves it to the discretion of the Appeals Chamber to grant a reasonable extension of time in view of these circumstances.⁵

4. Pursuant to Rule 108 of the Rules of Procedure and Evidence of the Tribunal ("Rules"), the notice of appeal must be filed not more than 30 days from the date on which the judgement was pronounced. The Appeals Chamber, however, recently decided that the time limit to file a notice of appeal runs from the date of the filing of the trial judgement.⁶ Therefore, the deadline for the filing of the notice of appeal in this case is 4 August 2010. Rule 116(A) of the Rules allows for the extension of any deadline on a showing of good cause. In support of the Motion, Mr. Munyakazi relies initially on Rule 116(B) of the Rules,⁷ which provides that the requirement for good cause is satisfied "[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". The official working languages of the Tribunal are English and French.⁸

¹ Extremely Urgent Motion for Extension of Time Limit to File the Grounds of Appeal Pursuant to Rule 116 of the Rules of Procedure and Evidence, 20 July 2010 ("Motion").

² *The Prosecutor v. Yussuf Munyakazi*, Case No. ICTR-97-36A-A, Judgement and Sentence, 5 July 2010, paras. 502, 508, 522 ("Trial Judgement").

³ Motion, para. 4.

⁴ Motion, paras. 5, 6.

⁵ Motion, para. 7.

⁶ *The Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-A, Decision on the Prosecution's Motion to Dismiss Ephrem Setako's Notice of Appeal, 2 July 2010, para. 12.

⁷ Motion, para. 4.

⁸ ICTR Statute, art. 31.

5. The filing of a notice of appeal marks the commencement of the appeal proceedings in a case and, since the time limits for the filing of the subsequent briefs are calculated from the date on which the notice of appeal is filed, any delay at such an early stage will affect subsequent filings.⁹ In practice, Rule 116(B) of the Rules does not provide a basis for an extension of time for the filing of a notice of appeal where the convicted person's counsel can work in the language in which the Trial Judgement was pronounced.¹⁰

6. Mr. Munyakazi's counsel works in English and is therefore able to discuss the contents of the Trial Judgement as well as any possible grounds of appeal with Mr. Munyakazi. Furthermore, the determination of potential grounds of appeal falls primarily within the purview of defence counsel and, if application is made after the Trial Judgement becomes available in Kinyarwanda and good cause is shown, leave may be granted to vary the grounds of appeal pursuant to Rule 108 of the Rules.¹¹ Accordingly, the fact that the Trial Judgement has not yet been translated into Kinyarwanda does not amount to good cause to extend the time for filing the notice of appeal.

7. Turning to the additional basis for the request, although a new lead counsel has not yet been appointed, Mr. Munyakazi continues to be represented by his co-counsel. One of the key purposes of assigning a co-counsel is to ensure the continuity of an appellant's representation in such circumstances.¹² However, the death of a lead counsel during an important phase of the appeal process is clearly destabilizing. Accordingly, the death of Mr. Munyakazi's lead counsel following the issuance of the Trial Judgement does constitute good cause for a limited extension of time for the filing of the notice of appeal.

⁹ See, e.g., *Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88A, Decision on Callixte Kalimanzira's Motion for an Extension of Time for the Filing of Notice of Appeal, 20 July 2009, para. 5 ("*Kalimanzira* Appeal 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, p. 4 ("*Bagosora et al.* Appeal Decision"); *François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Decision on François Karera's Motion for Extension of Time for Filing the Notice of Appeal, 21 December 2007, p. 2 ("*Karera* Appeal Decision").

¹⁰ See, e.g., *Kalimanzira* Appeal Decision, para. 5; *Bagosora et al.* Appeal Decision, pp. 4, 5; *Karera* Appeal Decision, pp. 2, 3.

¹¹ See, e.g., *Kalimanzira* Appeal Decision, para. 6; *Bagosora et al.* Appeal Decision, p. 5; *Karera* Appeal Decision, p. 3.

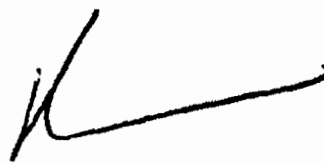
¹² See *Emmanuel Rukundo v. The Prosecutor*, Case No. ICTR-2001-70A, Decision on Reconsideration of the Decision on the Filing of Emmanuel Rukundo's Reply Brief, 4 May 2010, para. 5.

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8. For the foregoing reasons, the Motion is **GRANTED**, in part, and Mr. Munyakazi is ordered to file his notice of appeal, if any, by Monday, 23 August 2010.

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

Done this 22nd day of July 2009,
At The Hague,
The Netherlands.



Judge Patrick Robinson
Pre-Appeal Judge

[Seal of the Tribunal]

