



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-05-82-A
24 August 2010
15/H - 12/H

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Pre-Appeal Judge
Registrar: Mr. Adama Dieng
Decision of: 24 August 2010

ICTR Appeals Chamber
Date: 24 August 2010
Action: K. R. A. A.
Copied To: Concerned Judges,
SLO's, LO's, ALO's, CMS, /

Parties, LSS-U.

Dominique NTAWUKULILYAYO

*Jury 2
J / CMS*

v.

THE PROSECUTOR

Case No. ICTR-05-82-A

**DECISION ON DOMINIQUE NTAWUKULILYAYO'S MOTION FOR
EXTENSIONS OF TIME FOR FILING APPEAL SUBMISSIONS**

Counsel for Dominique Ntawukulilyayo:

Maroufa Diabira
Dorothee Le Fraper du Hellen

Office of the Prosecutor:

Hassan Bubacar Jallow

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIEE CONFORME A L'ORIGINAL PAR NOUS
NAME / NOM: KOFFI... KUMELID... A. AFANDE.
SIGNATURE: *[Signature]* DATE: 24 Aug 2010

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 (“Appeals Chamber” and “Tribunal”, respectively) and Pre-Appeal Judge in this case, am seized of a request filed on 12 August 2010 by **Dominique Ntawukulilyayo** for extensions of time to file his appeal submissions.¹ The Prosecution has not filed a response.

2. On 3 August 2010, Trial Chamber III of the Tribunal convicted Mr. Ntawukulilyayo of one count of genocide and sentenced him to 25 years of imprisonment.² The written Trial Judgement was filed in English on 6 August 2010 (“Trial Judgement”). Consultation with the Tribunal’s Language and Conference Services Section indicate that a French translation of the Trial Judgement will not be available until around 10 December 2010.

3. Mr. Ntawukulilyayo submits that neither he nor his Counsel, Mr. Maroufa Diabira, speak English and that, as a result, they are not in a position to understand the Trial Judgement.³ He therefore requests that the 30-day time limit for filing his notice of appeal start running from the date on which the Trial Judgement is served on him and his Counsel in French, and that the 75-day time limit for filing his Appellant’s brief start running from the date of filing of his notice of appeal.⁴ In addition, Mr. Ntawukulilyayo requests an extension of time to file his brief in reply 15 days from the date of filing of the French translation of the Prosecution’s Respondent’s brief.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

¹ *Requête urgente de la Défense aux fins de report des délais pour le dépôt de l’acte d’appel, du mémoire d’appel et des moyens de preuve supplémentaires en application des articles 108, 111, 113 et 116 du Règlement de Procédure et de Preuve*], 12 August 2010 (“Motion”).

² *The Prosecutor v. Dominique Ntawukulilyayo*, Case No. ICTR-05-82-T, Judgement and Sentence, dated 3 August 2010, filed 6 August 2010, paras. 461, 479.

³ Motion, pp. 3-5.

⁴ Motion, pp. 3-6. In light of the contents of the Motion and the specific reference to Rules 108, 111, 113, and 116 of the Rules of Procedure and Evidence in its title, I understand that the reference to the filing of additional evidence in the title of the Motion was a mistake. Incidentally, I recall that pursuant to Rule 115 of the Rules, a party may apply by motion to present additional evidence “not later than thirty days from the date for filing of the brief in reply”.

⁵ Motion, pp. 3, 5, 6.

⁶ *The Prosecutor v. Yussuf Munyakazi*, Case No. ICTR-97-36A-A, Decision on Yussuf Munyak[a]zi’s Motion for an Extension of Time for the Filing of the Notice of Appeal, 22 July 2010 (“*Munyakazi Appeal Decision*”), para. 4; *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.

of the notice of appeal in this case is 6 September 2010. Under Rule 111 of the Rules, the Appellant's brief shall be filed within 75 days of filing of the notice of appeal.⁷

5. Rule 116(A) of the Rules allows for the extension of any deadline on a showing of good cause, and Rule 116(B) of the Rules 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". Article 31 of the Statute of the Tribunal provides that the official working languages of the Tribunal are English and French.

6. 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.⁸ 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.⁹ This provision may, however, 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 understands.¹⁰

7. In the present case, it follows from information provided by the Registry that Mr. Ntawukulilyayo's Lead Counsel, Mr. Maroufa Diabira, requested that he be assisted for the appeal proceedings by his Co-Counsel at trial, Ms. Dorothée Le Fraper du Hellen.¹¹ While Mr. Diabira has indicated to the Registry that he has a level of English which is "moyen" and needs interpretation, Ms. Le Fraper du Hellen has indicated that she has a good knowledge of English.¹² Mr. Ntawukulilyayo's Co-Counsel is therefore able to understand the Trial Judgement in its original language and discuss the contents of the Trial Judgement as well as any possible grounds of appeal with Mr. Ntawukulilyayo and his Lead Counsel. In this respect, it is to be recalled that the

⁷ Where limited to sentencing, the Appellant's brief shall be filed within 30 days of the filing of the notice of appeal. See Rules 111 of the Rules.

⁸ See, e.g., *Munyakazi Appeal Decision*, para. 5; *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 Notice of Appeal, 20 July 2009 ("*Kalimanzira Appeal Decision*"), para. 5; *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.

⁹ See, e.g., *Munyakazi Appeal Decision*, para. 5; *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 Notice of Appeal and Brief in Reply, 22 September 2009 ("*Renzaho Appeal Decision*"), para. 4; *Kalimanzira Appeal Decision*, para. 5.

¹⁰ See, e.g., *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, 2 July 2010, para. 5; *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 Appeal Decision*, para. 4.

¹¹ E-mail from Koffi Kumelio A. Afande, Legal Officer, Appeals Chamber Support Unit, dated 23 August 2010.

determination of potential grounds of appeal falls primarily within the purview of Defence Counsel, and that, if application is made after the Trial Judgement becomes available in French and good cause is shown, leave may be granted to vary the grounds of appeal under Rule 108 of the Rules.¹³

8. For these reasons, Mr. Ntawukulilyayo has not demonstrated good cause for an extension of time for the filing of his notice of appeal. However, Mr. Ntawukulilyayo's circumstances constitute good cause to extend the time limit for the filing of his Appellant's Brief from the filing of the French translation of the Trial Judgement. Since Mr. Ntawukulilyayo's Co-Counsel has the ability to work in both English and French, she may discuss the draft of the Appellant's Brief with Mr. Ntawukulilyayo and the Lead Counsel, subject to Mr. Ntawukulilyayo's final approval once the French translation of the Trial Judgement is filed. It is therefore appropriate in this instance to allow a limited extension of time.

9. According to Rule 113 of the Rules, the brief in reply is to be filed 15 days after the Respondent's brief. Mr. Ntawukulilyayo seeks an extension of time in the event that the Prosecution's Respondent's brief is filed in English. However, I find this request premature in the circumstances and therefore decline to address it, without prejudice to Mr. Ntawukulilyayo's right to reiterate his request, if and when the need arises.

10. For the foregoing reasons, the Motion is **GRANTED** in part. Mr. Ntawukulilyayo is **ORDERED** to file his notice of appeal, if any, no later than 6 September 2010 and his Appellant's brief, if any, no later than forty-five (45) days from the date on which the French translation of the Trial Judgement is served on him and his counsel. I further **DIRECT** the Registrar to serve a French translation of the Trial Judgement as soon as possible and to inform the Appeals Chamber when this translation has been served on Mr. Ntawukulilyayo and his counsel.

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

Done this 24th day of August 2010,
At The Hague, The Netherlands



[Seal of the Tribunal]

Judge Patrick Robinson
Pre-Appeal Judge

¹² The Registry transmitted to the Appeals Chamber a copy of the Curriculum Vitae provided by Mr. Diabira and Ms. Le Fraper du Hellen, as well as the IL2 forms they completed on 7 August 2005 and 4 February 2008, respectively.

¹³ See, e.g., *Munyakazi* Appeal Decision, para. 6; *Renzaho* Appeal Decision, para. 5; *Kalimanzira* Appeal Decision, para. 6.