



94/H

Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-01-69-A
ICTR-2010-92
25 August 2010
94/H - 92/H

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 25 August 2010

ICTR Appeals Chamber
Date: 25 August 2010
Action: K.K.A.A.
Copied To: Concursing Judge,
SUBS. LOS, ALO, CMB.

THE PROSECUTOR

v.

Hormisdas NSENGIMANA

Parties, LSS-U.
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Case Nos. ICTR-01-69-A
ICTR-2010-92

PUBLIC

Re: Léonard Safari and Rémi Mazas

**DECISION ON PROSECUTION MOTION REGARDING THE FILING OF A
PUBLIC REDACTED VERSION OF ITS APPELLANT'S BRIEF**

Office of the Prosecutor:

Hassan Bubacar Jallow
Deborah Wilkinson
Abdouleye Seye

Counsel for Hormisdas Nsengimana

Emmanuel Altit
David Hooper

Interested Parties:

Léonard Safari
Rémi Mazas

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: *KOFFI KUMELIO A. AFANDE*
SIGNATURE: *[Handwritten signature]* DATE: *25 Aug. 2010*

1. I, LIU DAQUN, 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,¹ am seised of the "Prosecutor's Submissions and Request Regarding Order to File a Public Redacted Version of 'Prosecutor's Appellant's Brief'" filed by the Prosecution on 6 July 2010 ("Motion").

A. Background

2. On 18 January 2010, Trial Chamber I issued a confidential decision² in which it declined to exercise its discretion pursuant to Rule 77(A) of the Rules of Procedure and Evidence of the Tribunal ("Rules") to initiate contempt investigations or proceedings against Léonard Safari and Rémi Mazas for their alleged improper contact with Prosecution witnesses in the *Nsengimana* case.³

3. On 2 February 2010, the Prosecution filed a notice of appeal, pursuant to Rule 77(J) of the Rules, against the Decision of 18 January 2010. The Prosecution filed its Appellant's brief pursuant to Rule 77 of the Rules and the relevant Practice Direction⁴ on 17 February 2010.⁵

4. On 1 June 2010, the Appeals Chamber directed the Registrar to lift the confidential status of various filings in this appeal and ordered the Prosecution to file a public redacted version of its Appellant's Brief, or to indicate that there is no basis for maintaining the confidentiality thereof, within 10 days of the filing of the decision.⁶

¹ *The Prosecutor v. Hormisdas Nsengimana*, Case No. ICTR-01-69-A, Order Designating the Pre-Appeal Judge, 11 December 2009.

² *The Prosecutor v. Hormisdas Nsengimana*, Case No. ICTR-01-69-T, Confidential Decision on Prosecution and Defence Requests Concerning Improper Contact with Prosecution Witnesses, 18 January 2010 (confidential) ("Decision of 18 January 2010").

³ Decision of 18 January 2010, paras. 55, 59, Disposition.

⁴ Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal, 8 December 2006 ("Practice Direction"), para. 5.

⁵ *The Prosecutor v. Hormisdas Nsengimana*, Case No. ICTR-01-69-A, Prosecutor's Appellant's Brief, 17 February 2010 (confidential) ("Appellant's Brief").

⁶ Re: Léonard Safari and Rémi Mazas: Decision on Registrar's Submission Pursuant to Rule 33(B), 1 June 2010, Disposition.

B. Submissions

5. In the Motion, the Prosecution apologises for having inadvertently missed the deadline to comply with the Appeals Chamber's order.⁷ It explains that the Appellant's Brief was filed confidentially because the decision on appeal, namely the Decision of 18 January 2010, was issued on a confidential basis and notes that various parts of the decision are quoted or referred to in the Appellant's Brief.⁸

6. The Prosecution therefore seeks the authorization to cite certain excerpts of the Decision of 18 January 2010 at paragraphs 17, 22, 34, 36 and 54 of the public redacted version of the Appellant's Brief because no exceptional reasons exist for keeping them confidential.⁹ The Prosecution further submits that information contained in paragraphs 37 and 56 of the Appellant's Brief should be redacted to safeguard the identity of protected witnesses.¹⁰

C. Analysis

7. Having reviewed paragraphs 17, 22, 34, 36 and 54 of the Appellant's Brief, I am satisfied that there are no exceptional reasons for maintaining the confidentiality of the information cited therein. However, any confidential information contained in paragraphs other than those above-mentioned should be redacted pending a further request to lift the confidentiality thereof.

For the foregoing reasons, I hereby

GRANT the Motion;

ALLOW the Prosecution to file a public redacted version of its Appellant's Brief.

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

Dated this twenty-fifth day of August 2010,
At The Hague,
The Netherlands.



[Seal of the Tribunal]

A handwritten signature in black ink, appearing to read "Liu Daqun", is written over a horizontal line.

Judge Liu Daqun
Pre-Appeal Judge

⁷ Motion, para. 2.

⁸ Motion, para. 3.

⁹ Motion, para. 5.

¹⁰ Motion, para. 4.