

782/H



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-04-81-A
16th September 2010
{782/H - 779/H}

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Order of: 16 September 2010

ICTR Appeals Chamber

Date: 16th September 2010
Action: R. Guma
Copied To: Concerned Judges,

Ephrem SETAKO

v.

THE PROSECUTOR

Parties, Judicial Archives,
LOs, LSS

Case No. ICTR-04-81-A

ORDER RELATING TO SETAKO'S RULES 68 AND 115 MOTION

Counsel for Mr. Ephrem Setako:

Office of the Prosecutor:

Prof. Lennox Hinds

Mr. Hassan Bubacar Jallow

Mr. Alex Obote-Odora

Ms. Deborah Wilkinson

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORMÉ À L'ORIGINAL PAR MOI

NAME / NOM: ROSETTE MUZIGO-MORRISON

SIGNATURE: DATE: 16/09/10

I, **PATRICK ROBINSON**, 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;¹

NOTING the Trial Judgement rendered on 25 February 2010;²

NOTING the notice of appeal,³ and the Appellant's brief,⁴ filed by Ephrem Setako ("Setako") on 12 April 2010 and 8 September 2010, respectively;

NOTING (i) the "Motion for Leave to Amend Notice of Appeal" ("Motion to Amend the Notice of Appeal");⁵ and (ii) the strictly confidential "Appellant's Motion Pursuant to Rule 68 and Rule 115 of the R.P.E" ("Rules 68 and 115 Motion"), filed by Setako on 21 July 2010 and 8 September 2010, respectively, which are pending before the Appeals Chamber;

NOTING that Setako seeks leave to vary his Notice of Appeal in order to introduce new grounds of appeal based on the discovery of purported exculpatory evidence ("New Evidence") that the Prosecution allegedly failed to disclose in violation of Rule 68 of the Rules of Procedures and Evidence of the Tribunal ("Rules");⁶

NOTING that in the Rules 68 and 115 Motion, Setako seeks the admission of the New Evidence as a remedy for the alleged violation by the Prosecution of its disclosure obligations under Rule 68 of the Rules or, alternatively, as additional evidence on appeal pursuant to Rule 115 of the Rules;⁷

¹ See Order Designating a Pre-Appeal Judge, 10 September 2010.

² *The Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-T, T. 25 February 2010, pp. 4, 5; *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").

³ Notice of Appeal, 12 April 2010 ("Notice of Appeal").

⁴ Ephrem Setako's Appellant's Brief, 8 September 2010 (Strictly Confidential) ("Appellant's Brief").

⁵ Along with the Motion, Setako filed his proposed amended notice of appeal. See Motion, Annex 1 ("Proposed Amended Notice of Appeal"). See also Prosecutor's Response to Defendant's Motion for Leave to Amend Notice of Appeal, (Strictly Confidential), 2 August 2010 ("Response to Motion to Amend Notice of Appeal"); Reply to the Prosecutor's Opposition to the Appellant's Motion for Leave to Amend Notice of Appeal, 5 August 2010.

⁶ Motion to Amend the Notice of Appeal, paras. 2, 11, 27. Setako points to two documents described as: (1) "Preliminary Report on Identification of Sites of the Genocide and Massacres that Took Place from April to July 1994" prepared by the Commission for the Memorial of the Genocide and Massacres in Rwanda appointed by the Ministry of Higher Education, Scientific Research and Culture of the Rwandan Government, dated February 1996 ("Report") and (2) "UNAMIR Force Hq, Outgoing Facsimile of 25 April; Subject: Special Sitrep 250800B APR 251900B APR 94" ("UNAMIR Facsimile"). See Motion to Amend Notice of Appeal, pp. 4-6. The Report and the UNAMIR Facsimile are annexed to the Response to Motion to Amend Notice of Appeal and to the Rules 68 and 115 Motion.

⁷ Rules 68 and 115 Motion, paras. 2, 3, 29-32.

CONSIDERING therefore that the issues raised in the Motion to Amend the Notice of Appeal and the Rules 68 and 115 Motion are intertwined;

NOTING that the briefing relating to the Motion to Amend the Notice of Appeal is complete, while the briefing relating to the Rules 68 and 115 Motion remains to be completed;

NOTING, with regards to this briefing process, that time-limits for the filing of parties' submissions are different depending on whether a motion is filed pursuant to Rule 68 or Rule 115 of the Rules⁸ and that the Pre-Appeal Judge may vary the time limits;⁹

NOTING that in the Appellant's Brief, Setako addresses the new grounds of appeal contained in the Proposed Amended Notice of Appeal;¹⁰

NOTING that the Prosecution is expected to file its Respondent's brief, pursuant to Rule 112 of the Rules, within forty days of the filing of the Appellant's Brief, which is no later than 18 October 2010;

CONSIDERING that the scope of the Respondent's brief might be affected by the outcome of the pending Rules 68 and 115 Motion and Motion to Amend the Notice of Appeal;

CONSIDERING therefore that it is in the interest of the efficient administration of justice to establish a schedule for filings related to the Rules 68 and 115 Motion;

FOR THE FOREGOING REASONS,

⁸ See Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal, 8 December 2006 ("Practice Direction"), paras. 13, 14, which provide that "the opposite party shall file a response [to any motion filed during appeals from judgement] within ten days of the filing of the motion or, in the event of a motion pursuant to Rule 115, within 30 days of the motion" and that "[t]he moving party may file a reply within 4 days of the filing of the response or, in the event of a motion pursuant to Rule 115, within 14 days of the response."

⁹ See Practice Direction, para. 19, which reads: "The provisions of this Practice Direction are without prejudice to any such orders or decisions that may be made by the Appeals Chamber, or a Pre-Appeal Judge. In particular, the Appeals Chamber, or a Pre-Appeal Judge may vary any time-limit prescribed under this Practice Direction [...]"

¹⁰ See Appellant's Brief, paras. 254-273; Proposed Amended Notice of Appeal, paras. 68-75

779/H

ORDER that any response to the Rules 68 and 115 Motion shall be filed within 15 days of the filing of the Rules 68 and 115 Motion and that any reply shall be filed within 5 days of the filing of the response.

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



Judge Patrick Robinson
Pre-Appeal Judge

Dated this 16th day of September 2010,
At The Hague, The Netherlands.



[Seal of the Tribunal]