



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

321/H

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IN THE APPEALS CHAMBER

ICTR-05-82-A
07th March 2011
{321/H – 318/H}

Before: Judge Patrick Robinson, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 7 March 2011

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
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NAME/NOM: <u>KSEFI KUMERIS A. AFAYDE</u>	
SIGNATURE: <u>[Signature]</u> DATE: <u>27 April 2011</u>	

Dominique NTAWUKULILYAYO

ICTR Appeals Chamber
Date: <u>07th March 2011</u>
Action: <u>A. Jumez</u>
Copied To: <u>Concerned Judges, SLD, LO, ALO, Parties</u>

v.

THE PROSECUTOR

Case No. ICTR-05-82-A

CMS, LSS. [Signature]

DECISION ON DOMINIQUE NTAWUKULILYAYO'S MOTION FOR EXTENSION OF TIME FOR FILING BRIEF IN REPLY

Counsel for Dominique Ntawukulilyayo:

Maroufa Diabira
Dorothee Le Fraper du Hellen

Office of the Prosecutor:

Hassan Bubacar Jallow
James Arguin
Alphonse Van
Ousman Jammeh
Priyadarshini Narayanan
Deo Mbuto

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 3 March 2011 by Dominique Ntawukulilyayo for an extension of time to file his brief in reply.¹ The Prosecution has not yet filed a response.²

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.³ The written Trial Judgement was filed in English on 6 August 2010.

3. On 24 August 2010, I denied Mr. Ntawukulilyayo’s request that the 30-day time limit for filing his notice of appeal commence from the service of the French translation of the Trial Judgement and that the 75-day time limit for filing his Appellant’s brief commence from the date of the filing of his notice of appeal.⁴ In addition, I declined to address his request for an extension of time to file his brief in reply in the event that the Prosecution would file its Respondent’s brief in English, because I considered the request to be premature at that time.⁵ I nonetheless granted Mr. Ntawukulilyayo leave to file his Appellant’s brief within 45 days from the date on which the French translation of the Trial Judgement was served on him and his counsel.⁶

4. Mr. Ntawukulilyayo filed his notice of appeal on 6 September 2010 and an amended version thereof on 18 January 2011.⁷ The French translation of the Trial Judgement was served on him and his counsel on 3 December 2010.⁸ Mr. Ntawukulilyayo filed his Appellant’s brief on 17 January 2011.⁹ On 28 February 2011, the Prosecution filed its Respondent’s brief in English.¹⁰ Mr.

¹ *Requête en extreme urgence en extension de délai pour le dépôt du mémoire en réplique de Ntawukulilyayo*, 3 March 2011 (“Motion”).

² I consider that the Prosecution will not be prejudiced by the outcome of this decision and that it is in the interests of justice to render this decision without awaiting the Prosecution’s response.

³ *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 (“Trial Judgement”).

⁴ Decision on Dominique Ntawukulilyayo’s Motion for Extensions of Time for Filing Appeal Submissions, 24 August 2010 (“Decision of 24 August 2010”), paras. 3, 8, 10.

⁵ Decision of 24 August 2010, para. 9.

⁶ Decision of 24 August 2010, para. 10.

⁷ *Acte d’appel*, 6 September 2010; *Acte d’appel amendé*, 18 January 2011.

⁸ See Information to the Appeals Chamber as Directed in the Decision on Dominique Ntawukulilyayo’s Motion for Extensions of Time for Filing Appeal Submissions Dated 29 [sic] August 2010, 3 December 2010, para. 2.

⁹ *Mémoire d’appel*, confidential, 17 January 2011.

¹⁰ Prosecutor’s Respondent Brief, 28 February 2011 (“Respondent’s Brief”).

Ntawukulilyayo now reiterates his request that the 15-day time limit for filing his brief in reply commence from the service of the French translation of the Respondent's Brief.¹¹

5. Rule 113 of the Rules of Procedure and Evidence of the Tribunal ("Rules") provides that an appellant may file a brief in reply within 15 days of the filing of the respondent's brief, which in this case would be 15 March 2011. Rule 116(A) of the Rules allows for the extension of any deadline on a showing of good cause. In support of his request, Mr. Ntawukulilyayo submits that he does not understand English, that his Lead Counsel is exclusively francophone, and that his Defence team works primarily in French.¹² He further submits that, although his Co-Counsel may comprehend English to the extent that she can discuss the broad outlines of the Respondent's Brief with him and Lead Counsel, no current member of his Defence team can analyze the linguistic subtleties of a 72-page complex legal document and discuss them with him in view of producing a meaningful reply in only 15 days.¹³

6. Although Mr. Ntawukulilyayo may not be able to understand English, on appeal, counsel bears the main burden of preparing submissions.¹⁴ I recall that information provided by the Registry shows that, while Lead Counsel has indicated that he has a level of English which is "*moyen*" and needs interpretation, Co-Counsel has indicated that she has a good knowledge of English.¹⁵ Co-Counsel is therefore able to understand the Respondent's Brief in its original language and discuss its contents with Mr. Ntawukulilyayo and Lead Counsel. In addition, Mr. Ntawukulilyayo was granted extra time to fully discuss with Counsel the issues relevant to his appeal in the preparation of his Appellant's Brief. The brief in reply is the only remaining submission to be filed in this appeal. An extension of time until 15 days after the French translation of the Respondent's Brief becomes available may therefore adversely impact the ability of the Appeals Chamber to hear this case in a timely manner.

7. Mr. Ntawukulilyayo correctly points out that the schedule for the appeals hearing in this case has not yet been set.¹⁶ It is nevertheless expected that a French translation of the Respondent's Brief will be available prior to the appeal hearing. Mr. Ntawukulilyayo will therefore have the

¹¹ Motion, para. 5, p. 5. *See also 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, pp. 3, 5, 6.

¹² Motion, para. 11.

¹³ Motion, paras. 12, 13.

¹⁴ *See Tharcisse Renzaho v. The Prosecutor*, Case No. ICTR-97-31-A, Decision on Tharcisse Renzaho's Motion for an Extension of Time for the Filing of Brief in Reply, 20 April 2010, para. 7, 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 Reply Brief, 6 April 2010, para. 5.

¹⁵ *See* Decision of 24 August 2010, para. 7, referring to E-mail from Other Registry Services Unit, Appeals Chamber Support Unit, dated 23 August 2010.

¹⁶ Motion, para. 15.

opportunity to review it and to provide any additional instruction to Counsel, if necessary. Any additional matters arising from such a review can be raised during the hearing.

8. For these reasons, Mr. Ntawukulilyayo has not demonstrated good cause for any extension of time to file his brief in reply. However, considering Mr. Ntawukulilyayo's diligence in requesting the extension of time, the importance of the issues in this case, and the comparatively low impact it would have on the ability of the Appeals Chamber to hear this case in a timely manner, I, pursuant to Rules 108*bis* and 116 of the Rules and paragraph 12 of the Practice Direction on Formal Requirements for Appeals from Judgement, allow Mr. Ntawukulilyayo a limited extension of time to file his brief in reply.

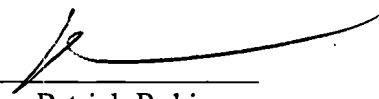
9. For the foregoing reasons, I hereby **GRANT** the Motion in part and **ALLOW** Mr. Ntawukulilyayo to file his brief in reply no later than 22 March 2011.

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

Done this seventh day of March 2011,
at The Hague,
The Netherlands.



[Seal of the Tribunal]



Judge Patrick Robinson
Pre-Appeal Judge