



UNITED NATIONS
NATIONS UNIES



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

170/H

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ICTR-98-42-A
25th July 2011
{170/H - 164/H}

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Pre-Appeal Judge
Registrar: Mr. Adama Dieng
Decision of: 22 July 2011

ICTR Appeals Chamber
Date: 25th July 2011
Action: R. Juma
Copied To:

Pauline NYIRAMASUHUKO
Arsène Shalom NTAHOBALI
Sylvain NSABIMANA
Alphonse NTÉZIRYAYO
Joseph KANYABASHI
Élie NDAYAMBAJE

v.

THE PROSECUTOR

Case No. ICTR-98-42-A

**DECISION ON MOTIONS FOR EXTENSION OF TIME FOR
THE FILING OF APPEAL SUBMISSIONS**

Counsel for the Applicants:

Ms. Nicole Bergevin for Pauline Nyiramasuhuko
Mr. Normand Marquis for Arsène Shalom Ntahobali
Ms. Josette Kadji for Sylvain Nsabimana
Mr. Titinga Frédéric Pacere for Alphonse Ntéziriyayo
Mr. Michel Marchand for Joseph Kanyabashi
Mr. Pierre Boulé for Élie Ndayambaje

Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James Arguin
Ms. Deborah Wilkinson

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: CONSTANT HOMETORU
SIGNATURE: [Signature] DATE: 25-07-2011

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1. I, Fausto POCAR, 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 am seised of a joint motion filed by Pauline Nyiramasuhuko, Arsène Shalom Ntahobali, Sylvain Nsabimana, Joseph Kanyabashi, and Élie Ndayambaje ("Joint Applicants"),² and a confidential motion filed by Alphonse Ntéziryayo³ for extensions of time to file their appeal submissions, as well as a motion filed by the Prosecution for extension of time to file its notice of appeal.⁴ The Prosecution responded to the Joint Motion on 21 July 2011.⁵ The Joint Applicants responded to the Prosecution Motion on 22 July 2011.⁶ None of the parties have filed a reply.⁷ The Prosecution also has not yet responded to the Ntéziryayo Motion.⁸

A. Procedural Background

2. On 24 June 2011, Trial Chamber II of the Tribunal ("Trial Chamber") convicted Ms. Nyiramasuhuko, Mr. Ntahobali, Mr. Nsabimana, Mr. Kanyabashi, and Mr. Ndayambaje of genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II.⁹ In addition, the Trial Chamber convicted Ms. Nyiramasuhuko of conspiracy to commit genocide, and Mr. Kanyabashi and Mr. Ndayambaje

¹ Order Assigning a Pre-Appeal Judge, 21 July 2011.

² *Requête commune de Arsène Shalom Ntahobali, Pauline Nyiramasuhuko, Sylvain Nsabimana, Joseph Kanyabashi et Élie Ndayambaje en extension de délais pour la production de l'acte d'appel et du mémoire en appel*, 13 July 2011 ("Joint Motion"). The same motion was filed by all Joint Applicants separately, on 13, 14, and 21 July 2011. Each of the Joint Applicants filed the motion publicly except for Mr. Nsabimana, who filed his version confidentially. As there is no reason to treat the Joint Motion as confidential, I consider the motion filed by Mr. Nsabimana on 14 July 2011 as public.

³ *Requête de l'accusé Alphonse Ntéziryayo tendant à prorogation des délais de production éventuelle d'acte d'appel et de son mémoire d'appel conformément aux articles 20, 31 du Statut et aux articles 108, 115 et 116 du Règlement de procédure et de preuve du Tribunal*, 15 July 2011 (confidential) ("Ntéziryayo Motion").

⁴ Prosecution Motion for Extension of Time for Filing its Notice of Appeal, 21 July 2011 ("Prosecution Motion").

⁵ Prosecution Response to Joint Request of Arsène Shalom Ntahobali, Sylvain Nsabimana, Joseph Kanyabashi, and Élie Ndayambaje for Extension of Time for Filing of Notices of Appeal and Appeal Briefs, 21 July 2011 ("Prosecution Response").

⁶ *Réponse de Arsène Shalom Ntahobali, Pauline Nyiramasuhuko, Sylvain Nsabimana, Joseph Kanyabashi et Élie Ndayambaje à la requête du Procureur en extension de délais pour la production de l'acte d'appel et du mémoire en appel*, 22 July 2011.

⁷ I consider that it is in the interests of justice to render this decision without awaiting the Prosecution's or the Joint Applicants' reply to their respective motions.

⁸ 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 to the Ntéziryayo Motion.

⁹ *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Judgement and Sentence, pronounced on 24 June 2011, issued in writing on 14 July 2011 ("Trial Judgement"), para. 6186. See also Trial Judgement, paras. 6200, 6210, 6223, 6244, 6257.

of direct and public incitement to commit genocide.¹⁰ Mr. Ntéziryayo was convicted of direct and public incitement to commit genocide.¹¹ The Trial Chamber sentenced Ms. Nyiramasuhuko, Mr. Ntahobali, and Mr. Ndayambaje to life imprisonment, Mr. Kanyabashi to 35 years of imprisonment, Mr. Ntéziryayo to 30 years of imprisonment, and Mr. Nsabimana to 25 years of imprisonment.¹² The written Trial Judgement was filed in English on 14 July 2011, and the filing of the French translation is not anticipated before 2012.

B. Applicable Law

3. Rule 116(A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) allows for the extension of time of any deadline on a showing of good cause. 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 [d]efence depends on the availability of a decision in an official language other than that in which it was originally issued”.

4. The Appeals Chamber has held that the 30-day time limit to file the notice of appeal runs from the date of the filing of the written Trial Judgement.¹³ Therefore, the notices of appeal of the parties in this case should normally be filed no later than 15 August 2011. Under Rule 111 of the Rules, the parties’ appeal briefs shall be filed within 75 days of the filing of the notice of appeal.¹⁴

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.¹⁵ In accordance with the practice of the Tribunal, 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.¹⁶ This provision may,

¹⁰ Trial Judgement, para. 6186. *See also* Trial Judgement, paras. 6200, 6244, 6257.

¹¹ Trial Judgement, para. 6186. *See also* Trial Judgement, para. 6234.

¹² Trial Judgement, para. 6271.

¹³ *See, e.g., Augustin Ndindiliyimana et al. v. The Prosecutor*, Case No. ICTR-00-56-A, Decision on Motions for Extension of Time for the Filing of Appeal Submissions, 11 July 2011 (“*Ndindiliyimana et al.* Decision”), para. 4; *The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-A, Decision on Ildephonse Hategekimana’s Second Motion for Extension of Time for the Filing of the Notice of Appeal, 28 February 2011 (“*Hategekimana* Decision”), para. 2.

¹⁴ Rule 111(A) of the Rules provides that, where limited to sentencing, the appeal brief shall be filed within 30 days of the filing of the notice of appeal.

¹⁵ *See, e.g., Ndindiliyimana et al.* Decision, para. 5; *Hategekimana* 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* 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.

¹⁶ *See, e.g., Ndindiliyimana et al.* Decision, para. 5; *Hategekimana* 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* Decision”), para. 4; *Kalimanzira* Decision, para. 5.

however, provide a basis for an extension of time for the filing of the notice of appeal where the convicted person's counsel does not work in English.¹⁷ It may also provide a basis for an extension of time, upon request, for the filing of the convicted person's appeal brief pending the translation of the trial judgement into a working language of the Tribunal which he or she understands.¹⁸

C. Discussion

1. Joint Motion

6. The Joint Applicants request leave to file their respective notices of appeal within 90 days of the service on the Joint Applicants and their Counsel of the Trial Judgement.¹⁹ The Joint Applicants also request leave to file their respective appeal briefs within 90 days of service on the Joint Applicants and their Counsel of the French translation of the Trial Judgement.²⁰

7. In support of the Joint Motion, the Joint Applicants submit, *inter alia*, that: (i) none of the Joint Applicants can speak or read English, but they do have a good understanding of French;²¹ (ii) all of the Joint Applicants' respective Counsels are francophone, but they do have a working knowledge of English;²² (iii) at approximately 1500 pages long, the Trial Judgement is of an unprecedented length;²³ and (iv) there is also a need to review the interlocutory decisions and other various situations which occurred throughout of the trial.²⁴

8. The Prosecution responds that the circumstances set out by the Joint Applicants establish good cause for extending the time limit for the filing of their notices of appeal and appeal briefs.²⁵

9. I note that the Trial Judgement is 1468 single-spaced pages in length, excluding annexes, and is the lengthiest judgement to have been rendered before this Tribunal to date. On the basis of this factor, I consider the request for an extension of time of 60 additional days for the filing of the Joint Applicants' notices of appeal to be justified.

10. I also note that the Trial Judgement was issued in writing on 14 July 2011, but served on the parties on 18 July 2011.²⁶ The Appeals Chamber has previously held that delayed service of a trial

¹⁷ See, e.g., *Ndindiliyimana et al.* Decision, para. 12.

¹⁸ See, e.g., *Ndindiliyimana et al.* Decision, para. 5; *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; *Renzaho* Decision, para. 4.

¹⁹ Joint Motion, Prayer. See also Joint Motion, para. 23.

²⁰ Joint Motion, Prayer. See also Joint Motion, para. 73.

²¹ Joint Motion, paras. 10, 45, 47.

²² Joint Motion, paras. 11, 12, 16, 46.

²³ Joint Motion, paras. 12, 13, 15, 60, 73.

²⁴ Joint Motion, paras. 21, 22.

²⁵ Prosecution Response, paras. 5, 6.

judgement to the parties constitutes good cause for a limited extension of time.²⁷ I therefore consider that the time limit for the filing of the notices of appeal, including the 60 additional days, will commence from 18 July 2011.

11. With respect to their appeal briefs, I consider that the Joint Applicants' inability to understand the English language renders them unable to make full answer and defence until the availability of the French translation of the Trial Judgement. However, I recall that such translation is not anticipated before 2012. I further recall that the Joint Applicants' respective Counsels have stated their abilities to work in both English and French, and may therefore discuss their drafts of the appeal briefs with their clients, subject to the Joint Applicants' final approval once the French translation of the Trial Judgement is filed. I, therefore, consider it appropriate in this instance to allow a limited extension of time of 60 days from the date of service of the French translation of the Trial Judgement.

2. Ntéziriyayo Motion

12. Mr. Ntéziriyayo requests a 90-day extension of time to file his notice of appeal from the date of service on him and his Counsel of the French translation of the Trial Judgement.²⁸ He also seeks leave to file his appeal brief within 90 days of the filing of his notice of appeal.²⁹ In support of his motion, Mr. Ntéziriyayo submits, *inter alia*, that he and his Counsel are exclusively francophone,³⁰ and that it is anticipated that the French translation of the Trial Judgement will comprise at least 1750 pages.³¹ Accordingly, Mr. Ntéziriyayo submits that he should be accorded sufficient time to prepare his appeal after the filing of the French translation of the Trial Judgement.³²

13. I consider that Mr. Ntéziriyayo's, as well as his Counsel's, inability to work in English renders him unable to make full answer and defence until the availability of the French translation of the Trial Judgement for the preparation of his notice of appeal and appeal brief. I also consider the length of the Trial Judgement in this case to warrant additional extensions of time. As such, I grant Mr. Ntéziriyayo's requests for 90 days' time for the filing of his notice of appeal from the service of the French translation of the Trial Judgement, and 90 days' time for the filing of his appeal brief from the date of the filing of his notice of appeal. However, these time limits may be

²⁶ See Prosecution Motion, para. 2; Prosecution Response, para. 3. See also E-mail correspondence of 20 July 2011 with the Registry of the Tribunal.

²⁷ See, e.g., *Augustin Ndingiriyimana et al. v. The Prosecutor*, Case No. ICTR-00-56-A, Decision on Request to Reconsider Decision on Motions for Extension of Time for the Filing of Appeal Submission, 15 July 2011, p. 2.

²⁸ Ntéziriyayo Motion, paras. 11, 48.

²⁹ Ntéziriyayo Motion, paras. 11, 49.

³⁰ Ntéziriyayo Motion, para. 4.

³¹ Ntéziriyayo Motion, para. 37.

³² Ntéziriyayo Motion, paras. 11, 43.

reconsidered in light of any subsequent changes in the composition of Mr. Ntéziriyayo's Defence team.³³

3. Prosecution Motion

14. The Prosecution seeks leave to file its notice of appeal within 60 days of the service on the parties of the Trial Judgement.³⁴ The Prosecution submits that the length and complexity of the Trial Judgement, the magnitude of the record, the length of the trial, and the amount of evidence admitted during the trial, constitute good cause for a 60-day extension of time for the filing of its notice of appeal.³⁵ It contends that all parties to the appeal should be on equal footing in the time allowed them for their filings.³⁶

15. As indicated above, I consider the length of the Trial Judgement to justify an extension of time for the filing of the notice of appeal in this case. However, I do not consider such length, on its own, to necessarily justify an equally lengthy extension. In this respect, I note that the resources available to the Prosecution at this stage in comparison to those available to the Joint Applicants' and Mr. Ntéziriyayo's Defence teams cannot be ignored. I therefore consider it appropriate to grant a limited extension of 14 additional days' time to the Prosecution for the filing of its notice of appeal from the date of service of the written Trial Judgement.

D. Disposition

16. For the foregoing reasons, I hereby

GRANT the Joint Motion, in part; and

ORDER the Joint Applicants, Ms. Nyiramasuhuko, Mr. Ntahobali, Mr. Nsabimana, Mr. Kanyabashi, and Mr. Ndayambaje, to file

- their respective notices of appeal no later than 17 October 2011; and
- their respective appeal briefs no later than 60 days from the date on which they are served with the French translation of the Trial Judgement;

GRANT the Ntéziriyayo Motion in its entirety; and

ORDER Mr. Ntéziriyayo to file

³³ See, e.g., *Ndindiliyimana et al.* Decision, para. 12.

³⁴ Prosecution Motion, para. 1, 2, 8, 9. See also Prosecution Response, para. 5.

³⁵ Prosecution Motion, para. 2. See also Prosecution Motion, paras. 1, 4, 5.

³⁶ Prosecution Motion, para. 8.

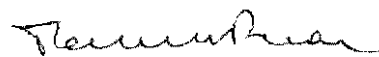
- his notice of appeal no later than 90 days from the date on which he is served with the French translation of the Trial Judgement; and
- his appeal brief no later than 90 days from the date of which he files his notice of appeal;

GRANT the Prosecution Motion, in part; and

ORDER the Prosecution to file its notice of appeal no later than 1 September 2011.

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

Done this twenty second day of July 2011,
At The Hague, The Netherlands.



Judge Fausto Pocar
Pre-Appeal Judge

