



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

646/H

S.A

ICTR-00-56-A
19 JANUARY 2012
(646/H - 642/H)

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Patrick Robinson
Judge Liu Daqun
Judge Andréia Vaz
Judge Carmel Agius

Registrar: Mr. Adama Dieng

Decision of: 19 January 2012

Augustin NDINDILYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU

v.

THE PROSECUTOR

Case No. ICTR-00-56-A

ICTR Appeals Chamber
Date: 19 JANUARY
Action: SHARIFAH ADONG
Copied To: Concerned Judges
S-LCS, L-OS, ALCS, parolists
C.M.S., L.S.S.

Sharifah

**DECISION ON AUGUSTIN BIZIMUNGU'S MOTION FOR LEAVE TO AMEND HIS
NOTICE OF APPEAL**

Defence Counsel:

Mr. Christopher Black for Augustin Ndindiliyimana
Mr. Gilles St-Laurent for Augustin Bizimungu
Mr. Charles A. Taku for François-Xavier Nzuwonemeye
Mr. Fabien Segatwa for Innocent Sagahutu

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James J. Arguin
Mr. Abubacarr Tambadou
Mr. Abdoulaye Seye

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: SHARIFAH ADONG

1. 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) is seised of a motion filed on 21 November 2011 by Mr. Augustin Bizimungu requesting leave to amend his notice of appeal.¹

A. Procedural Background

2. On 17 May 2011, Trial Chamber II of the Tribunal ("Trial Chamber") convicted Mr. Bizimungu of genocide as well as murder, extermination, and rape as crimes against humanity and murder and rape as violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, and sentenced him to thirty years' imprisonment.² The written judgement was filed in English on 17 June 2011.³

3. On 11 July 2011, the Pre-Appeal Judge granted in part Mr. Bizimungu's request for an extension of time for the filing of his appeal submissions and ordered Mr. Bizimungu to file his Appellant's brief, if any, no later than 40 days from the date on which the French translation of the Trial Judgement is filed.⁴ The Pre-Appeal Judge denied Mr. Bizimungu's request for an extension of time to file his notice of appeal.⁵ On 15 July 2011, the Pre-Appeal Judge granted Mr. Bizimungu's request for reconsideration of the Decision of 11 July 2011, and, *inter alia*, ordered Mr. Bizimungu to file his notice of appeal, if any, no later than 20 July 2011 to account for the delayed service of the written judgement on the parties on 20 June 2011.⁶ On 20 July 2011, Mr. Bizimungu filed his notice of appeal advancing 23 grounds of appeal.⁷

¹ *Requête du Général Augustin Bizimungu en autorisation d'amender son acte d'appel conformément à l'article 108 du Règlement de procédure et de preuve*, 21 November 2011 ("Motion").

² T. 17 May 2011 pp. 24, 26. See also *The Prosecutor v. Augustin Ndingiyimana et al.*, Case No. ICTR-00-56-T, Judgement and Sentence, dated 17 May 2011 and filed on 17 June 2011 ("Trial Judgement"), paras. 73, 2106, 2120, 2128, 2153, 2162, 2163, 2266.

³ The French translation of the Trial Judgement was filed on 14 December 2011.

⁴ Decision on Motions for Extension of Time for the Filing of Appeal Submissions, 11 July 2011 ("Decision of 11 July 2011"), paras. 16, 21.

⁵ Decision of 11 July 2011, paras. 15, 21.

⁶ Decision on Request to Reconsider Decision on Motions for Extension of Time for the Filing of Appeal Submissions, 15 July 2011, p. 2.

⁷ *Acte d'appel en vertu de l'appel [sic] 24 du Statut et 108 du Règlement de procédure et de preuve*, 20 July 2011 ("Notice of Appeal").

4. On 21 November 2011, Mr. Bizimungu filed the Motion, to which he attached as an annex his proposed amended notice of appeal.⁸ The Prosecution responded to the Motion on 1 December 2011.⁹ Mr. Bizimungu did not file a reply.

B. Submissions

5. Mr. Bizimungu requests leave to amend his Notice of Appeal pursuant to Rule 108 of the Rules of Procedure and Evidence of the Tribunal ("Rules").¹⁰ In particular, he seeks to: alter the presentation and order of his grounds of appeal; change the position of certain paragraphs; correct typographical errors and errors of syntax; remove repetition; and improve the presentation of the Notice of Appeal, including the table of contents and headings therein.¹¹ Mr. Bizimungu submits that the proposed changes serve to clarify the Notice of Appeal and do not alter its substance and that the Prosecution will not suffer any prejudice as a result.¹² He further submits that, since he has not yet filed his Appellant's brief, the proposed amendments will cause no undue delay in the appeal proceedings.¹³ Mr. Bizimungu asserts that he submitted the Motion as soon as he identified the errors he wishes to correct and realized the need to bring his Notice of Appeal into conformity with his prospective Appellant's brief.¹⁴ He adds that it is in the interests of justice to grant the Motion.¹⁵

6. The Prosecution responds that it does not oppose the Motion because the proposed amendments are largely stylistic or structural, do not alter the substantive grounds of appeal, and, in some instances, add clarity.¹⁶

C. Applicable Law

7. In accordance with Rule 108 of the Rules, the Appeals Chamber may, on good cause being shown by motion, authorise a variation of the grounds of appeal set out in the notice of appeal. Such a motion should be submitted as soon as possible after identifying the new alleged error of the trial chamber or after discovering any other basis for seeking to vary the notice of appeal.¹⁷ Generally,

⁸ See Motion, Annex A, *Acte d'appel amendé en vertu de l'article 24 du Statut et de l'article 108 du Règlement de procédure et de preuve*, 21 November 2011 ("Proposed Amended Notice of Appeal").

⁹ Prosecutor's Response to Augustin Bizimungu's Motion for leave to file an Amended Notice of Appeal, 1 December 2011 ("Response").

¹⁰ Motion, paras. 4, 12. See also Motion, paras. 13-17.

¹¹ Motion, para. 2. See also Motion, para. 18.

¹² Motion, paras. 3, 18, 19.

¹³ Motion, para. 20.

¹⁴ Motion, para. 21.

¹⁵ Motion, para. 22.

¹⁶ Response, paras. 2-4.

¹⁷ See, e.g., *Ildephonse Hategekimana v. The Prosecutor*, Case No. ICTR-00-55B-A, Decision on Ildephonse Hategekimana's Motion for Leave to Amend his Notice of Appeal, 11 July 2011 ("*Hategekimana Appeal Decision*"), para. 7; *Dominique Ntawukulilyayo v. The Prosecutor*, Case No. ICTR-05-82-A, Decision on Dominique

the motion must explain precisely what amendments are being sought and show, with respect to each amendment, that the "good cause" requirement is satisfied.¹⁸ The "good cause" requirement encompasses both good reason for including the proposed new or amended grounds of appeal and good reason as to why the proposed amendments were not included or correctly articulated in the original notice of appeal.¹⁹

8. In its previous determinations as to which proposed variations to a notice of appeal may be authorised within the scope of the good cause requirement, the Appeals Chamber has considered the following factors to be of relevance: (i) the proposed variation is minor but clarifies the notice of appeal without affecting its content; (ii) the opposing party has not opposed the variation or would not be prejudiced by it; (iii) the variation would bring the notice of appeal into conformity with the appeal brief; (iv) the variation does not unduly delay the appeal proceedings; or (v) the variation could be of substantial importance to the success of the appeal such as to lead to a miscarriage of justice if it is excluded.²⁰

D. Discussion

9. The Appeals Chamber considers that the proposed amendments are minor and essentially serve to clarify and improve the legibility and comprehensibility of Mr. Bizimungu's Notice of Appeal, without affecting its content. The Appeals Chamber also considers that the filing of the Proposed Amended Notice of Appeal at this stage of the appeal proceedings would not result in any undue delay in the proceedings or affect the briefing schedule. In the absence of any objection from the Prosecution, and in view of the nature of the proposed amendments, the reasons why they are being sought at this time, and the fact that they will not cause any delay or prejudice, the Appeals

Ntawukulilyayo's Motion for Leave to Amend his Notice of Appeal, 14 January 2011 ("*Ntawukulilyayo* Appeal Decision"), para. 10; *Tharcisse Renzaho v. The Prosecutor*, Case No. ICTR-97-31-A, Decision on Renzaho's Motion to Amend Notice of Appeal, 18 May 2010 ("*Renzaho* Appeal Decision"), para. 9; *The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-A, Decision on Callixte Kalimanzira's Motion for Leave to Amend his Notice of Appeal, 5 March 2010 ("*Kalimanzira* Appeal Decision"), para. 7; *Théoneste Bagosora et al. v. The Prosecutor*, Case No. ICTR-98-41-A, Decision on Anatole Nsengiyumva's Motion for Leave to Amend his Notice of Appeal, 29 January 2010 ("*Bagosora et al.* Appeal Decision"), para. 10.

¹⁸ See, e.g., *Hategekimana* Appeal Decision, para. 7; *Ntawukulilyayo* Appeal Decision, para. 10; *Renzaho* Appeal Decision, para. 9; *Kalimanzira* Appeal Decision, para. 7; *Bagosora et al.* Appeal Decision, para. 10. See also Practice Direction on Formal Requirements for Appeals from Judgement, 4 July 2005, paras. 2, 3.

¹⁹ See, e.g., *Hategekimana* Appeal Decision, para. 7; *Ntawukulilyayo* Appeal Decision, para. 10; *Renzaho* Appeal Decision, para. 9; *Kalimanzira* Appeal Decision, para. 7; *Bagosora et al.* Appeal Decision, para. 10.

²⁰ See, e.g., *Hategekimana* Appeal Decision, para. 8; *Kalimanzira* Appeal Decision, para. 8; *Bagosora et al.* Appeal Decision, para. 11; *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Decision on Protais Zigiranyirazo's Motion for Leave to Amend Notice of Appeal, 18 March 2009, para. 4; *Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-2000-55A-A, Decision on "Accused Tharcisse Muvunyi's Motion for Leave to Amend his Grounds for Appeal and Motion to Extend Time to File his Brief on Appeal" and "Prosecutor's Motion Objecting to 'Accused Tharcisse Muvunyi's Amended Grounds for Appeal'", 19 March 2007, para. 7; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Motion of Dragan Jokić for Leave to File Third Amended Notice of Appeal and Amended Appellate Brief, 26 June 2006, para. 7.

Chamber is satisfied that there is good cause for allowing the amendments to Mr. Bizimungu's Notice of Appeal.

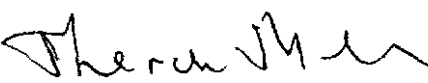
E. Disposition

10. For the foregoing reasons, the Appeals Chamber **GRANTS** the Motion and **ACCEPTS** the Proposed Amended Notice of Appeal as Mr. Bizimungu's operative notice of appeal in this case.

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

Done this 19th day of January 2012,
At The Hague,
The Netherlands.




Judge Theodor Meron
Presiding

[Seal of the Tribunal]