



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

97/H

S. A

ICTR-99-50-A
26 JANUARY 2012
93/H – 97/H

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 26 January 2012

ICTR Appeals Chamber
Date: 26/01/2012
Action: SHARIFAH ADONG
Copied To: concerned Judges
S-L-OS, L-OS, A-L-OS, parties
CMS, L-S-S
Sharifah

JUSTIN MUGENZI
PROSPER MUGIRANEZA

v.

THE PROSECUTOR

Case No. ICTR-99-50-A

**DECISION ON PROSPER MUGIRANEZA'S MOTION FOR EXTENSION
OF TIME TO FILE HIS APPELLANT'S BRIEF**

Defence Counsel:

Ms. Kate Gibson and Mr. Christopher Gosnell for Justin Mugenzi
Mr. Tom Moran and Ms. Cynthia J. Cline for Prosper Mugiraneza

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James J. Arguin
Mr. George W. Mugwanya
Mr. William M. Mubiru
Mr. Ousman Jammeh

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
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NAME / NOM: SHARIFAH ADONG
SIGNATURE: Sharifah DATE: 26/01/2012

1. I, **Theodor MERON**, 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 seized of a motion filed on 17 January 2012 by Counsel for Mr. Prosper Mugiraneza for an extension of time to file his Appellant’s brief.² On 19 January 2012, Mr. Justin Mugenzi filed a response to the Motion.³ Mr. Mugiraneza replied to this response on 24 January 2012.⁴ The Prosecution has not yet filed a response to the Motion.⁵ On 25 January 2012, Mr. Mugiraneza filed a *pro se* submission in relation to the Motion.⁶

2. On 30 September 2011, Trial Chamber II of the Tribunal (“Trial Chamber”) convicted Mr. Mugiraneza and Mr. Mugenzi for conspiracy to commit genocide based on their role in the removal on 17 April 1994 of Mr. Jean-Baptiste Habyalimana as the prefect of Butare Prefecture.⁷ According to the Trial Judgement, Prefect Habyalimana was dismissed to further the killing of Tutsi civilians in Butare Prefecture by undercutting the real and symbolic resistance that he posed to such crimes.⁸

3. The Trial Chamber also found Mr. Mugiraneza and Mr. Mugenzi guilty of direct and public incitement to commit genocide based on their role in the installation ceremony of Mr. Sylvain Nsabimana as the new prefect of Butare Prefecture on 19 April 1994 where, according to the Trial Judgement, Interim President Théodore Sindikubwabo delivered an inflammatory speech calling for the elimination of Tutsis.⁹ The Trial Chamber sentenced Mr. Mugiraneza and Mr. Mugenzi each to 30 years of imprisonment.¹⁰

¹ Order Assigning a Pre-Appeal Judge, 30 November 2011.

² Prosper Mugiraneza’s Motion for Extension of Time to File Appellate Brief, 17 January 2012 (“Motion”).

³ Mugenzi Response to Mugiraneza Motion for Extension of Time to File Appellate Brief, 19 January 2012 (“Response”).

⁴ Prosper Mugiraneza’s Reply to Justin Mugenzi’s Response to Prosper Mugiraneza’s Motion for Extension of Time to File Appellate Brief, 24 January 2012 (“Reply”).

⁵ In light of the relative urgency of the matter, it is in the interest of justice to rule on the Motion without awaiting the response of the Prosecution. In so doing, I am satisfied that the Prosecution does not suffer any prejudice.

⁶ Prosper Mugiraneza’s Address Following his Motion for Extension of Time to File Appellate Brief, 25 January 2012 (“*Pro Se* Address”).

⁷ *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Judgement and Sentence, dated 30 September 2011 and filed on 19 October 2011 (“Trial Judgement”), paras. 1222-1250, 1959-1962, 1988.

⁸ Trial Judgement, paras. 1246, 1250, 1959.

⁹ Trial Judgement, paras. 1322-1383, 1959-1962, 1976-1987, 1988.

¹⁰ Trial Judgement, paras. 2021, 2022.

4. Mr. Mugiraneza and Mr. Mugenzi filed their respective notices of appeal on 21 October 2011.¹¹ Pursuant to Rule 111(A) of the Rules of Procedure and Evidence of the Tribunal ("Rules"), Mr. Mugiraneza's and Mr. Mugenzi's Appellant's briefs are currently due on 6 February 2012.

5. On 21 December 2011, Trial Chamber III of the Tribunal pronounced its judgement in the *Karemera and Ngirumpatse* case.¹² The *Karemera and Ngirumpatse* Trial Judgement also concerns the events related to the removal of Prefect Habyalimana and the installation of Mr. Nsabimana as the new prefect of Butare Prefecture.¹³ The written version of the *Karemera and Ngirumpatse* Trial Judgement has not yet been issued.

6. In the Motion, Counsel for Mr. Mugiraneza requests a 30-day extension of time for the filing of the Appellant's brief from the date on which the Defence has access to the written version of the *Karemera and Ngirumpatse* Trial Judgement or until 4 June 2012, whichever is later.¹⁴ Counsel for Mr. Mugiraneza submits that the appeal is complex and that he requires access to all necessary material in order to properly prepare the Appellant's brief.¹⁵

7. In particular, Counsel for Mr. Mugiraneza contends that the written version of the *Karemera and Ngirumpatse* Trial Judgement will likely contain exculpatory information demonstrating that Prefect Habyalimana was not replaced in order to further the killings of Tutsis.¹⁶ Consequently, he argues that the *Karemera and Ngirumpatse* Trial Judgement is relevant to Mr. Mugiraneza's conviction for conspiracy to commit genocide and that an extension of time to file the Appellant's brief is warranted because the Defence team needs access to and time to analyse that judgement.¹⁷ Counsel for Mr. Mugiraneza further submits that, for technical reasons, it is difficult for his team to access material from other cases through the TRIM database.¹⁸ Counsel for Mr. Mugiraneza also observes that his "database of the testimony" in the present case includes thousands of pages of documents and hundreds of exhibits.¹⁹

8. In response, Mr. Mugenzi states that, given the "extraordinary delays" at the trial stage, he has a strong interest in an expeditious appeal proceeding and would be compelled to request

¹¹ Prosper Mugiraneza's Notice of Appeal, 21 November 2011; Justin Mugenzi's Notice of Appeal, 21 November 2011. On 22 November 2011, Mr. Mugiraneza filed a corrected version of his notice of appeal.

¹² See *The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98-44-T, T. 21 December 2011 ("*Karemera and Ngirumpatse* Trial Judgement") pp. 1-16.

¹³ *Karemera and Ngirumpatse* Trial Judgement, p. 7.

¹⁴ Motion, para. 14.

¹⁵ Reply, paras. 3-5.

¹⁶ See Motion, paras. 5, 6, 8, referring to *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-I, Amended Indictment, paras. 6, 43, and *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, T. 1 May 2007 pp. 6-8, 14, 17, T. 26 May 2008 pp. 34-36.

¹⁷ Motion, paras. 8, 9.

¹⁸ Motion, para. 12. See also Reply, para. 5, referring to transcripts of testimony in the *Karemera et al.* case.

¹⁹ Motion, para. 10.

severance from Mr. Mugiraneza's case should the proposed extension of time be granted.²⁰ In any event, Mr. Mugenzi submits that fairness requires uniform filing deadlines in this case and that any extension granted to Mr. Mugiraneza should therefore also apply to him.²¹

9. Rule 116(A) of the Rules allows for the extension of time of any deadline on a showing of good cause. Counsel for Mr. Mugiraneza has not, however, sufficiently explained why the need to review the *Karemera and Ngirumpatse* Trial Judgement and the evidence in that case or others for new exculpatory material prevents him from timely completing the Appellant's brief. In particular, according to Rule 115(A) of the Rules, the deadline for the submission of additional evidence on appeal does not commence until the filing of the brief in reply. Moreover, under Rule 108 of the Rules, Mr. Mugiraneza may seek, on good cause being shown, to vary his grounds of appeal in view of any subsequently discovered material.²² Furthermore, although an extensive trial record may in some instances justify an extension of time,²³ the Motion offers no compelling explanation why the size of the trial record in the present case, in particular in relation to the more narrow scope of the case on appeal, prevents the timely completion of the Appellant's brief. Accordingly, Counsel for Mr. Mugiraneza has not demonstrated that good cause exists for an extension of time.

10. That said, I note with significant concern the information provided by Mr. Mugiraneza in his *Pro Se* Address, which was made in relation to the Motion.²⁴ Specifically, Mr. Mugiraneza notes that he has not yet had the opportunity to discuss the contents of the Appellant's brief with his Counsel and that his Counsel only intended to meet with him after the expiration of the current filing deadline.²⁵ Counsel for Mr. Mugiraneza should not have based his work plans on the expectation that the Motion would be granted. This should not, however, prejudice Mr. Mugiraneza's ability to participate in the preparation of his Appellant's brief. Therefore, I find *proprio motu* that good cause exists to grant a 14-day extension of time to allow Mr. Mugiraneza to discuss the contents of the Appellant's brief with his Counsel. Out of fairness, this extension should equally be accorded to Mr. Mugenzi. Given its limited nature, the extension will not impact the overall timeframe for the hearing of this case.

²⁰ Response, para. 2.

²¹ Response, para. 3.

²² *Ildephonse Hategekimana v. The Prosecutor*, Case No. ICTR-00-55B-A, Decision on Ildephonse Hategekimana's Motion for an Extension of Time to File his Appellant's Brief, 13 April 2011, para. 6; *Tharcisse Renzaho v. The Prosecutor*, Case No. ICTR-97-31-A, Decision on Motion for Disclosure and for Extension of Time for the Filing of Appellant's Brief, 26 February 2010 ("*Renzaho* Appeal Decision"), para. 13.

²³ See *Renzaho* Appeal Decision, para. 11; *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009, p. 4.

²⁴ As a general matter, the Appeals Chamber will not entertain *pro se* submissions from an appellant who is represented by counsel. The *Pro Se* Address is considered on an exceptional basis since Mr. Mugiraneza raises specific concerns about the conduct of his Counsel.

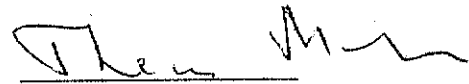
²⁵ *Pro Se* Address, paras. 1, 2.

11. For the foregoing reasons, Mr. Mugiraneza and Mr. Mugenzi are **AUTHORIZED** *proprio motu* to file their Appellant's briefs no later than 20 February 2012. The Motion is **DISMISSED** in its entirety.

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

Done this 26th day of January 2012
At The Hague,
The Netherlands.




Judge Theodor Meron
Pre-Appeal Judge

[Seal of the Tribunal]