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ICTR-98-44A-R
15th February 2012

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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Pre-Review Judge
Registrar: Mr. Adama Dieng
Decision of: 15 February 2012

JUVÉNAL KAJELIJELI

v.

THE PROSECUTOR

Case No. ICTR-98-44A-R

**DECISION ON MOTIONS FOR LEAVE TO AMEND REPLY BRIEF AND
EXCEED WORD LIMIT OF REPLY BRIEF**

Counsel for Juvénal Kajelijeli:

Mr. Lennox Hinds

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James J. Arguin
Mr. George W. Mugwanya
Ms. Evelyn Kamau
Ms. Aisha Kagabo
Mr. Leo Nwoye

ICTR Appeals Chamber
Date: 15th February 2012
Action: SHARIFAH ADONG
Copied To: Concerned Judges,
S.L.O.S, L.G.S, A.L.O.S, parties,
C.M.S., L.S.S.

Sharifah

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR MOI
NAME / NOM: SHARIFAH ADONG
SIGNATURE: *Sharifah* DATE: 15/02/2012

1. 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-Review Judge in this case,¹ am seised of motions filed by Mr. Juvénal Kajelijeli for leave to amend his reply brief and exceed the word limit for a reply brief.²

A. Introduction

2. On 23 May 2005, the Appeals Chamber affirmed Mr. Kajelijeli's convictions, pursuant to Article 6(1) of the Statute, on three counts of genocide, direct and public incitement to commit genocide, and extermination as a crime against humanity and entered against him a single sentence of 45 years of imprisonment.³

3. On 15 June 2011, Mr. Kajelijeli filed a request for review of the Appeal Judgement,⁴ to which the Prosecution responded on 25 July 2011.⁵ On 4 August 2011, I denied Mr. Kajelijeli's request for an extension of time to file his reply brief 15 days from receipt of the French translation of the Prosecution's Response Brief.⁶ Mr. Kajelijeli filed his Reply Brief on 9 August 2011.⁷ The French translation of the Response Brief was filed on 25 October 2011.⁸

4. Mr. Kajelijeli filed the Motion to Amend Reply Brief on 11 January 2012. The Prosecution responded on 23 January 2012 and Mr. Kajelijeli replied on 2 February 2012.⁹ Mr. Kajelijeli filed his Motion to Exceed Word Limit on 1 February 2012 and the Prosecution responded on 13 February 2012.¹⁰ Mr. Kajelijeli has not yet replied to the Response to Motion to Exceed Word Limit, but, given that Mr. Kajelijeli will not be prejudiced by the outcome of this decision,

¹ Order Assigning a Pre-Review Judge, 4 August 2011.

² Applicant's Motion for Leave to Amend his Reply Brief, 11 January 2012 ("Motion to Amend Reply Brief"), as corrected by Corrigendum to Applicant's Motion for Leave to Amend his Reply Brief, 13 January 2012 and Second Corrigendum to Applicant's Motion for Leave to Amend his Reply Brief, 26 January 2012; Motion for Leave to Exceed Word Limit on Reply Brief, 1 February 2012 ("Motion to Exceed Word Limit").

³ See *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005 ("Appeal Judgement"), paras. 3, 325.

⁴ Juvénal Kajelijeli's Application for Review, 15 June 2011, confidential ("Request for Review").

⁵ Prosecutor's Response to Juvénal Kajelijeli's Application for Review, 25 July 2011 ("Response Brief").

⁶ Decision on Request for Extension of Time, 4 August 2011 ("Decision on Extension of Time"), p. 2.

⁷ Applicant's Reply to Prosecutor's Response Brief, 9 August 2011, confidential ("Reply Brief").

⁸ *Réponse du Procureur à la requête intitulée « Juvénal Kajelijeli's Application for Review »*, 25 October 2011.

⁹ Prosecutor's Response to Juvénal Kajelijeli's Motion for Leave to Amend his Reply Brief, 23 January 2012 ("Response to Motion to Amend Reply Brief"); Reply to Prosecutor's Response to Applicant's Motion for Leave to Amend his Reply Brief, 2 February 2012 ("Reply Relating to Motion to Amend Reply Brief").

¹⁰ Prosecutor's Response to Juvénal Kajelijeli's Motion for Leave to Exceed Word Limit on Reply Brief, 13 February 2012 ("Response to Motion to Exceed Word Limit").

I consider that it is in the interests of justice to render the present decision without waiting for Mr. Kajelijeli's reply.

B. Submissions

5. Mr. Kajelijeli seeks leave to amend his Reply Brief to include further arguments regarding the credibility of Witnesses GAP, GAO, GDQ, and GBV ("Proposed Amendments").¹¹ Mr. Kajelijeli submits that the Proposed Amendments were not included or fully articulated in his Reply Brief because he did not have the opportunity to read, understand or analyze the Prosecution's Response Brief in a language he understands before the filing of his Reply Brief.¹² He also argues that the Proposed Amendments could be of substantial importance to the success of his Request for Review.¹³

6. The Prosecution opposes the Motion to Amend Reply Brief in its entirety.¹⁴ It argues that: (i) Mr. Kajelijeli has not shown any good cause for his Proposed Amendments or to justify his failure to include them in the Reply Brief; (ii) the Proposed Amendments are not of substantial importance to the success of the review proceedings; and (iii) the Motion to Amend Reply Brief is untimely and granting it would unduly delay the review proceedings.¹⁵ The Prosecution additionally argues that the inclusion of the Proposed Amendments would amount to an impermissible extension of the word limit allowed for a reply brief.¹⁶

7. Following the Prosecution's Response to Motion to Amend Reply Brief, Mr. Kajelijeli sought leave to exceed the word limit for his amended brief in reply.¹⁷ In support of his request, Mr. Kajelijeli submits that the lack of clear rules on word limits applicable to review proceedings, the length, scope, and complexity of the Response Brief, as well as the importance of the Proposed Amendments constitute exceptional circumstances justifying an increase in the word limit from 9,000 to 10,746 words.¹⁸ The Prosecution opposes the Motion to Exceed Word Limit, arguing that Mr. Kajelijeli failed to demonstrate the existence of exceptional circumstances justifying an oversized filing.¹⁹

¹¹ Motion to Amend Reply Brief, paras. 3, 12-16.

¹² Motion to Amend Reply Brief, paras. 9, 10. *See also ibid.*, para. 3.

¹³ Motion to Amend Reply Brief, para. 11. *See also* Reply Relating to Motion to Amend Reply Brief, paras. 8-10.

¹⁴ Response to Motion to Amend Reply Brief, paras. 3, 38.

¹⁵ Response to Motion to Amend Reply Brief, paras. 3, 9-33, 36, 37.

¹⁶ Response to Motion to Amend Reply Brief, paras. 3, 34, 35.

¹⁷ Motion to Exceed Word Limit, paras. 4, 15.

¹⁸ Motion to Exceed Word Limit, paras. 4, 6-15.

¹⁹ Response to Motion to Exceed Word Limit, paras. 2, 4, 6, 7.

C. Discussion

8. I consider that the unavailability of the Response Brief in a language Mr. Kajelijeli understands at the time of filing of his Reply Brief constitutes good cause as to why the Proposed Amendments were not included in the Reply Brief. Having reviewed the Proposed Amendments, I likewise find that Mr. Kajelijeli's ability to review the French version of the Response Brief and give input to his Counsel constitutes good cause for including the Proposed Amendments. In this regard, I recall that, in my Decision on Extension of Time of 4 August 2011, I specifically noted that Mr. Kajelijeli may seek leave to amend his reply brief after reviewing the French translation of the Response Brief.²⁰ I also consider that, given the complexity of the review proceedings in this case, the nature of the Proposed Amendments, and the necessity for Mr. Kajelijeli to fully discuss the relevant issues with his Counsel before moving for any variation, the late filing of the Motion to Amend Reply Brief does not justify its rejection.

9. Furthermore, without expressing any views on the merits of Mr. Kajelijeli's Request for Review, I consider that the Proposed Amendments are such that they could be of substantial importance to the success of this request. Finally, I consider that the amendment of the Reply Brief as requested by Mr. Kajelijeli would not cause undue delay to the review proceedings or result in any prejudice.

10. Turning to Mr. Kajelijeli's request to exceed the word limit, I note that the Rules of Procedure and Evidence of the Tribunal ("Rules") are silent on word limits for requests for review filed under Rule 120 of the Rules and any responses or replies to those requests, and recall that the Practice Direction on the Length of Briefs and Motions on Appeal of 8 December 2006 does not apply to a request for review of a judgement.²¹ I observe, nonetheless, that it is the general practice of the Appeals Chamber that the word limit for a reply is approximately one-third the word limit of the original brief²² and that a reply brief relating to a request for review should reasonably not exceed the maximum limit of 9,000 words provided for a reply to an appeal from judgement.²³ The Reply Brief as amended by the inclusion of the Proposed Amendments would therefore exceed the word limit generally allowed for reply briefs.

²⁰ Decision on Extension of Time, p. 2.

²¹ See *Prosecutor v. Veselin Šljivčanin*, Case No. IT-95-13/1-R.1, Decision on Veselin Šljivčanin's Motion Requesting an Order to the Prosecution to Justify its Oversized Filing, 22 March 2010 ("*Šljivčanin Decision*"), p. 2; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Decision on Word Limits in Review Proceedings, 1 February 2006 ("*Blaškić Decision*"), fn. 8.

²² *Šljivčanin Decision*, p. 2; *Blaškić Decision*, p. 4. The Request for Review is 11,850 words long.

²³ Cf. *Blaškić Decision*, p. 5.

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11. However, I consider that, in light of the large number of alleged new facts submitted by Mr. Kajelijeli in his Request for Review and the considerable length of the Prosecution's Response Brief,²⁴ Mr. Kajelijeli's request to file an amended reply brief of 10,746 words is reasonable.

12. I am therefore satisfied that Mr. Kajelijeli has demonstrated good cause justifying the requested amendment of his Reply Brief and the oversized filing. Accordingly, I grant Mr. Kajelijeli leave to amend his Reply Brief as requested. For the sake of clarity of the record, Mr. Kajelijeli should file his amended reply brief as a single document.


D. Disposition

13. For the foregoing reasons, I **GRANT** Mr. Kajelijeli's Motion to Amend Reply Brief and Motion to Exceed Word Limit, and **INSTRUCT** him to file the amended reply brief no later than 22 February 2012.

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

Done this 15th day of February 2012,
at The Hague,
The Netherlands.





Judge Patrick Robinson
Pre-Review Judge

[Seal of the Tribunal]

²⁴ The Response Brief is 26,865 words long.