



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

936/H

GA.

ICTR-98-42-A

22nd Feb. 2012

936/H - 932/H

IN THE APPEALS CHAMBER

Before:

Judge Fausto Pocar, Presiding
Judge Patrick Robinson
Judge Liu Daqun
Judge Andrésia Vaz
Judge Carmel Agius

ICTR Appeals Chamber

Date: 22nd February 2012
Action: R. Juvard
Copied To: All concerned
Prunier

Registrar:

Mr. Adama Dieng

Decision of:

22 February 2012

The PROSECUTOR

v.

Pauline NYIRAMASUHU
Arsène Shalom NTAHOBALI
Sylvain NSABIMANA
Alphonse NTEZIRYAYO
Joseph KANYABASHI
Élie NDAYAMBAJE

Case No. ICTR-98-42-A

**DECISION ON PAULINE NYIRAMASUHU'S
AND ARSÈNE SHALOM NTAHOBALI'S MOTIONS
TO AMEND NOTICES OF APPEAL**

Counsel for Pauline Nyiramasuhuko
Nicole Bergevin and Guy Poupard

Counsel for Arsène Shalom Ntahobali
Normand Marquis

Counsel for Sylvain Nsabimana
Josette Kadji and Pierre Tientcheu Weledji

Counsel for Alphonse Nteziryayo
Titinga Frédéric Pacere

Counsel for Joseph Kanyabashi
Michel Marchand and Alexandra Marcil

Counsel for Élie Ndayambaje
Pierre Boulé

Office of the Prosecutor

Hassan Bubacar Jallow
James Arguin
Deborah Wilkinson
Steffen Wirth
Althea Alexis-Windsor

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 NOUS	
NAME / NOM: SHARIFAH ADONG	
SIGNATURE: Sharifah	DATE: 22/02/2012

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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 two motions filed by Ms. Pauline Nyiramasuhuko and Mr. Arsène Shalom Ntahobali on 25 October and 9 November 2011, respectively, for leave to amend their notices of appeal.¹

A. Procedural Background

2. On 24 June 2011, Trial Chamber II of the Tribunal ("Trial Chamber") convicted Ms. Nyiramasuhuko and Mr. Ntahobali of genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II.² Ms. Nyiramasuhuko was also convicted of conspiracy to commit genocide.³ The Trial Chamber sentenced both Ms. Nyiramasuhuko and Mr. Ntahobali to life imprisonment.⁴

3. On 22 July 2011, the Pre-Appeal Judge granted in part the joint request of Ms. Nyiramasuhuko and Mr. Ntahobali for an extension of time for the filing of their appeal submissions and ordered that their respective notices of appeal be filed no later than 17 October 2011.⁵ Ms. Nyiramasuhuko and Mr. Ntahobali filed their notices of appeal on 17 October 2011.⁶ On 19 October 2011, Ms. Nyiramasuhuko filed a corrected version of her notice of appeal.⁷

4. On 25 October 2011, Ms. Nyiramasuhuko filed the *Nyiramasuhuko* Motion, to which she attached as an annex her proposed amended notice of appeal.⁸ Mr. Ntahobali filed the *Ntahobali* Motion on 9 November 2011, and likewise attached as an annex his proposed amended notice of

¹ Pauline Nyiramasuhuko's Motion for Leave to File an Amended Notice of Appeal, originally filed in French on 25 October 2011, English translation filed on 6 January 2012 ("*Nyiramasuhuko* Motion"); Arsène Shalom Ntahobali's Motion to Amend his Notice of Appeal, originally filed in French on 9 November 2011, English translation filed on 9 January 2012 ("*Ntahobali* Motion"). The annexes attached to these motions were not translated into English.

² *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 ibid.*, paras. 6200, 6210.

³ Trial Judgement, para. 6186. *See also ibid.*, para. 6200.

⁴ Trial Judgement, para. 6271.

⁵ Decision on Motions for Extension of Time for the Filing of Appeal Submissions, signed 22 July 2011, filed 25 July 2011, para. 16.

⁶ *Acte d'appel du [sic] Pauline Nyiramasuhuko*, 17 October 2011; *Acte d'appel d'Arsène Shalom Ntahobali*, 17 October 2011 ("*Ntahobali* Notice of Appeal").

⁷ *Corrigendum de l'Acte d'appel de Pauline Nyiramasuhuko*, 19 October 2011 ("*Nyiramasuhuko* Notice of Appeal").

⁸ *See Requête de l'Appelante Pauline Nyiramasuhuko aux fins de déposer un acte d'appel modifié*, 25 October 2011, *Annexe A, Acte d'appel modifié de Pauline Nyiramasuhuko* ("*Nyiramasuhuko* Proposed Amended Notice of Appeal").

appeal.⁹ The Prosecution informed the Appeals Chamber that it did not oppose either the *Nyiramasuhuko* Motion or the *Ntahobali* Motion.¹⁰

B. Submissions

5. Ms. Nyiramasuhuko requests leave to amend the *Nyiramasuhuko* Notice of Appeal and to replace it with the *Nyiramasuhuko* Proposed Amended Notice of Appeal annexed to her motion.¹¹ In particular, Ms. Nyiramasuhuko seeks to: (i) fully comply with the Practice Direction on Formal Requirements for Appeals from Judgement by clearly articulating the grounds of appeal through headings and mentioning the relief sought for each group of grounds of appeal; (ii) clarify the various grounds of appeal by specifically pleading them under 30 separate grounds of appeal; and (iii) correct errors of form.¹² Ms. Nyiramasuhuko submits that “she should not be made to suffer because of the errors of form committed by her Counsel acting in good faith.”¹³

6. Mr. Ntahobali likewise requests leave to amend the *Ntahobali* Notice of Appeal and replace it with the *Ntahobali* Proposed Amended Notice of Appeal annexed to his motion.¹⁴ Specifically, Mr. Ntahobali seeks to include two new grounds of appeal relating to the assessment of the circumstantial evidence concerning the killing of the Rwamukwaya family and incidents at the Butare Prefecture Office which were mistakenly omitted from the *Ntahobali* Notice of Appeal as a result of the re-organisation of the notice in the days prior to the filing.¹⁵ Mr. Ntahobali submits that the fact that the *Ntahobali* Motion was filed as soon as he realised the problem, that the appeal proceedings are at an early stage, and that the Prosecution would not be prejudiced constitute good cause for the amendments sought.¹⁶ In addition, Mr. Ntahobali contends that the proposed additional grounds of appeal are of substantial importance to the success of his appeal, and that he “should not suffer from his Counsel’s failures.”¹⁷

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.

⁹ See *Requête d’Arsène Shalom Ntahobali pour amender son Acte d’appel*, 9 November 2011 (“*Ntahobali* Motion (French)”), *Annexe B, Acte d’appel amendé d’Arsène Shalom Ntahobali* (“*Ntahobali* Proposed Amended Notice of Appeal”).

¹⁰ Emails from Steffen Wirth, Appeals and Legal Advisory Division, Office of the Prosecutor, dated 2 and 9 November 2011 regarding the *Nyiramasuhuko* Motion and the *Ntahobali* Motion, respectively.

¹¹ *Nyiramasuhuko* Motion, para. 12, pp. 3, 4.

¹² *Nyiramasuhuko* Motion, paras. 9-14. See also *ibid.*, para. 8.

¹³ *Nyiramasuhuko* Motion, para. 15.

¹⁴ *Ntahobali* Motion, para. 5, p. 8.

¹⁵ *Ntahobali* Motion, paras. 5, 13-17. See also *Ntahobali* Motion (French), *Annexe A, Ajouts demandés*.

¹⁶ *Ntahobali* Motion, paras. 17-19.

¹⁷ *Ntahobali* Motion, paras. 20-24.

Such a motion should be submitted as soon as possible after the moving party has identified the new alleged error of the trial chamber or after discovering any other basis for seeking to vary the notice of appeal.¹⁸ Generally, the motion must explain precisely what amendments are being sought and show, with respect to each amendment, that the "good cause" requirement is satisfied.¹⁹ 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.²⁰

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.²¹

D. Discussion

9. The Appeals Chamber considers that the amendments sought by Ms. Nyiramasuhuko are minor and essentially serve to correct mistakes, as well as clarify and improve the legibility and comprehensibility of the *Nyiramasuhuko* Notice of Appeal, without affecting its content. The Appeals Chamber also considers that the filing of the *Nyiramasuhuko* Proposed Amended Notice of Appeal would not result in any 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, Ms. Nyiramasuhuko's diligence in requesting them,²² and the fact that they will not cause any delay or prejudice, the Appeals Chamber is satisfied that there is good cause for allowing the proposed amendments to the *Nyiramasuhuko* Notice of Appeal.

¹⁸ See, e.g., *Augustin Ndindiliyimana et al. v. The Prosecutor*, Case No. ICTR-00-56-A, Decision on Augustin Bizimungu's Motion for Leave to Amend his Notice of Appeal, 19 January 2012 ("*Ndindiliyimana et al.* Decision"), para. 7; *Jean-Baptiste Gatete v. The Prosecutor*, Case No. ICTR-00-61-A, Decision on Motion to Amend Notice of Appeal, 25 October 2011 ("*Gatete* Decision"), para. 8; *Ildephonse Hategekimana v. The Prosecutor*, Case No. ICTR-00-55B-A, Decision on Ildephonse Hategekimana's Motion for Leave to Amend Notice of Appeal, 11 July 2011 ("*Hategekimana* Decision"), para. 7.

¹⁹ See, e.g., *Ndindiliyimana et al.* Decision, para. 7; *Gatete* Decision, para. 8; *Hategekimana* Decision, para. 7. See also Practice Direction on Formal Requirements for Appeals from Judgement, 4 July 2005, paras. 2, 3.

²⁰ See, e.g., *Ndindiliyimana et al.* Decision, para. 7; *Gatete* Decision, para. 8; *Hategekimana* Decision, para. 7.

²¹ See, e.g., *Ndindiliyimana et al.* Decision, para. 8; *Gatete* Decision, para. 9; *Hategekimana* Decision, para. 8.

²² The Appeals Chamber notes that the *Nyiramasuhuko* Motion was filed shortly after the filing of the *Nyiramasuhuko* Notice of Appeal.

10. Mr. Ntahobali's proposed amendments, on the other hand, are not minor variations, but would modify the substance of the *Ntahobali* Notice of Appeal by adding new allegations of error concerning the killing of the Rwamukwaya family and incidents at the Butare Prefecture Office. The Appeals Chamber, however, notes the reasons advanced by Mr. Ntahobali for not including the two proposed new grounds of appeal in his original notice of appeal, the diligence with which he filed the *Ntahobali* Motion after realising the problem, and the absence of objection from the Prosecution. Without pronouncing itself on the merits of Mr. Ntahobali's appeal, the Appeals Chamber also considers that the proposed new grounds of appeal could be of substantial importance to the success of his appeal. The Appeals Chamber further considers that the filing of the *Ntahobali* Proposed Amended Notice of Appeal would not prejudice the Prosecution, delay the proceedings, or impact the briefing schedule. For these reasons, the Appeals Chamber is satisfied that there is good cause for allowing the proposed amendments.

11. Accordingly, the Appeals Chamber grants leave to Ms. Nyiramasuhuko and Mr. Ntahobali to amend their notices of appeal and to replace them with the *Nyiramasuhuko* Proposed Amended Notice of Appeal and the *Ntahobali* Proposed Amended Notice of Appeal, respectively. For the sake of clarity of the record, Ms. Nyiramasuhuko should re-file a version of the *Nyiramasuhuko* Proposed Amended Notice of Appeal as a separate document without any underlining. Similarly, Mr. Ntahobali should re-file the *Ntahobali* Proposed Amended Notice of Appeal as a separate document.

E. Disposition

12. For the foregoing reasons, the Appeals Chamber

GRANTS the *Nyiramasuhuko* Motion and the *Ntahobali* Motion; and

INSTRUCTS Ms. Nyiramasuhuko and Mr. Ntahobali to file the *Nyiramasuhuko* Proposed Amended Notice of Appeal and the *Ntahobali* Proposed Amended Notice of Appeal, respectively, no later than 24 February 2012.

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

Done this 22nd day of February 2012,
at The Hague,
The Netherlands.



[Seal of the Tribunal]

A handwritten signature in dark ink, appearing to read "Fausto Pocar".

Judge Fausto Pocar
Presiding