

1222

900/H



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-99-50-A
10th May 2012
900/H-897/H

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Pre-Appeal Judge
Registrar: Mr. Adama Dieng
Decision of: 10 May 2012

**JUSTIN MUGENZI
PROSPER MUGIRANEZA**

v.

THE PROSECUTOR

Case No. ICTR-99-50-A

**DECISION ON PROSPER MUGIRANEZA'S REQUESTS FOR A WRIT OF MANDAMUS
AND AN EXTENSION OF TIME**

Defence Counsel:

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

The Office of the Prosecutor:

Hassan Bubacar Jallow
James J. Arguin
George William Mugwanya
Evelyn Kamau
Memory Maposa
Aisha Kagabo
Ndeye Marie Ka
Lansana Dumbuya

ICTR Appeals Chamber
Date: 10th May 2012
Action: R. Gunda
Copied To: all concerned

**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: CONSTANT K. HOMETOWU
SIGNATURE: [Signature] DATE: 10-05-2012

I, **THEODOR MERON**, Presiding 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

NOTING that Mr. Mugenzi and Mr. Mugiraneza filed their notices of appeal and their Appellant’s briefs on 21 November 2011 and 20 February 2012, respectively;²

NOTING that, on 2 April 2012, the Prosecution filed separate Respondent’s briefs in relation to each appellant;³

RECALLING that, on 16 April 2012, I found that these Respondent’s briefs exceeded the word limit and could not be considered as validly filed;⁴

RECALLING that, on 25 April 2012, I denied the Prosecution’s request to exceed the word limit provided for in the Practice Direction on the Length of Briefs and Motions on Appeal dated 8 December 2006 (“Practice Direction”) and ordered “the Prosecution to file its Respondent’s brief(s) in compliance with paragraph (C)1 of the Practice Direction within five days”;⁵

NOTING that, in accordance with the Decision of 25 April 2012, the Prosecution filed a consolidated Respondent’s brief on 30 April 2012 in relation to Mr. Mugenzi’s and Mr. Mugiraneza’s respective appeals;⁶

BEING SEISED of a motion filed by Mr. Mugiraneza on 26 April 2012, in which he requests an order to the Registrar to establish a method by which he can exchange documents and communicate with his legal team in connection with the preparation of his brief in reply;⁷

NOTING that, because the Prosecution re-filed its Respondent’s brief, Mr. Mugiraneza requires further consultation with his counsel to prepare a new version of his brief in reply and that his

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

² Justin Mugenzi’s Notice of Appeal, 21 November 2011; Prosper Mugiraneza’s Notice of Appeal, 21 November 2011; Justin Mugenzi’s Appeal Brief, 20 February 2012; Prosper Mugiraneza’s Appellate Brief, 20 February 2012. On 22 November 2011, Mr. Mugiraneza filed a corrected version of his notice of appeal.

³ See Prosecutor’s Brief in Response to Justin Mugenzi’s Appeal, 2 April 2012; Prosecutor’s Brief in Response to Prosper Mugiraneza’s Appeal, 2 April 2012.

⁴ Decision on Motions for an Order Requiring the Prosecution to Re-File its Response Briefs, 16 April 2012 (“Decision of 16 April 2012”), p. 4.

⁵ Decision on the Prosecution’s Motion for an Extension of the Word Limit for its Respondent’s Briefs, 25 April 2012 (“Decision of 25 April 2012”), p. 3.

⁶ Prosecutor’s Brief in Response to Justin Mugenzi[’s] and Prosper Mugiraneza’s Appeals, 30 April 2012.

counsel is unwilling to return to Arusha due to his concerns about reimbursement for air travel expenses;⁸

NOTING that Mr. Mugiraneza proposes specific measures to facilitate communication with his legal team and makes additional submissions concerning the reimbursement of expenses incurred by the defence;⁹

RECALLING that, on 1 May 2012, I requested the Registrar, pursuant to Rule 33(B) of the Rules of Procedure and Evidence of the Tribunal, to provide written submissions in response to the Motion;¹⁰

NOTING that, on 4 May 2012, the Registrar filed submissions, in which he outlines the Tribunal-facilitated means of communication between counsel and a client detained at the United Nations Detention Facility, describes the proper administrative procedure for requesting variations of such communication means, notes that Mr. Mugiraneza has not followed this procedure, and responds to Mr. Mugiraneza's submissions concerning reimbursement of counsel's travel expenses;¹¹

NOTING that, on 7 May 2012, Mr. Mugiraneza responded to the Registrar's Submissions, *inter alia* emphasizing the importance of having alternate means of communicating with his counsel in connection with the preparation of the brief in reply and seeking a two-week extension of time for the filing of his brief in reply;¹²

CONSIDERING that Mr. Mugiraneza has not exhausted the administrative procedure available to him for obtaining alternative means of communication with his counsel;¹³

CONSIDERING that, on appeal, counsel bears the main responsibility for preparing submissions and that it is assumed that Mr. Mugiraneza has fully discussed the issues relevant to his appeal in the preparation of the Appellant's brief and the initial version of the brief in reply;¹⁴

⁷ Prosper Mugiraneza's Application for Writ of Mandamus, 26 April 2012 ("Motion"), paras. 1, 10, 25.

⁸ Motion, paras. 2-8.

⁹ Motion, paras. 1-10, 12, 15, 16, 19-23.

¹⁰ Order Requesting Submissions Pursuant to Rule 33(B) of the Rules, 1 May 2012, p. 1.

¹¹ Registrar's Submissions in Response to the Order of 1 May 2012, 4 May 2012, paras. 4-12 ("Registrar's Submissions").

¹² Prosper Mugiraneza's Response to the Registrar's Submissions in Response to the Order of 1 May 2012, 7 May 2012, paras. 3-22, 28.

¹³ See *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Jean-Bosco Barayagwiza's Urgent Motion Requesting Privileged Access to the Appellant without Attendance of Lead Counsel, 17 August 2006 ("*Nahimana et al.* Appeal Decision"), p. 3 ("[...] the Appeals Chamber has the statutory duty to ensure the fairness of the proceedings on appeal and, thus, has jurisdiction to review decisions of the Tribunal's Registrar and President under the Detention Rules where they are closely related to issues involving the fairness of proceedings on appeal but that such review is ordinarily available only after a detainee has followed the requisite complaints procedure in the Detention Rules")(internal citations omitted). See also *Nahimana et al.* Appeal Decision, p. 4.

897/H
63/H

CONSIDERING that Mr. Mugiraneza may provide any additional instruction to his counsel through the existing means of communication and will have the opportunity to provide further instruction to his counsel prior to the hearing;

CONSIDERING that Mr. Mugiraneza has not demonstrated good cause for an extension of time to file his brief in reply;

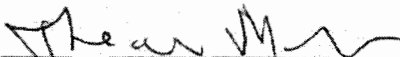
FINDING, therefore, that there is no basis for ordering alternative means of communication or extending the time for the filing of the brief in reply;

FOR THE FOREGOING REASONS,

DENY the Motion.

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

Done this 10th day of May 2012,
At The Hague,
The Netherlands.



Judge Theodor Meron
Pre-Appeal Judge

[Seal of the Tribunal]



¹⁴ See *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 his Reply Brief, 6 April 2010, para. 5. See also Motion, paras. 5, 6 (noting that counsel consulted with Mr. Mugiraneza in Arusha in February and March 2012 in relation to the preparation of the Appellant's brief and in April 2012 in relation to the initial version of the brief in reply).