



UNITED NATIONS
NATIONS UNIES

**Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda**

3103/H

ICTR-00-56-A

17th May 2012

{3103/H – 3099/H}

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 17 May 2012

ICTR Appeals Chamber
Date: 17th May 2012
Action: R. Jumeil
Copied To: All concerned

**Augustin NDINDILYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU**

v.

THE PROSECUTOR

Case No. ICTR-00-56-A

**DECISION ON INNOCENT SAGAHUTU'S MOTION FOR DISMISSAL OF THE
PROSECUTION'S RESPONSE BRIEF TO SAGAHUTU'S APPEAL**

Defence Counsel:

Mr. Christopher Black and Mr. Vincent Lurquin for Augustin Ndindiliyimana
Mr. Gilles St-Laurent for Augustin Bizimungu
Mr. Charles A. Taku and Ms. Beth Lyons for François-Xavier Nzuwonemeye
Mr. Fabien Segatwa and Mr. Scott Martin for Innocent Sagahutu

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James J. Arguin
Mr. Abdoulaye Seye
Mr. Abubacar Tambadou
Mr. Thembile M. Segoete

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: Nouhou Di'Allo
SIGNATURE: DATE: 17/05/2012

1. 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 am seised of “Sagahutu Defence Urgent Motion for Dismissal of the Prosecution’s Response to the Sagahutu Appeal Brief” filed by Innocent Sagahutu on 8 May 2012.² The Prosecution responded on 14 May 2012.³ Mr. Sagahutu replied on 16 May 2012.⁴

2. On 17 May 2011, Trial Chamber II of the Tribunal convicted Augustin Ndingiyimana, Augustin Bizimungu, François-Xavier Nzuwonemeye, and Mr. Sagahutu in the *Ndingiyimana et al.* case.⁵ All parties appealed the Trial Judgement.⁶ Mr. Sagahutu filed his Notice of Appeal on 13 January 2012⁷ and his Appellant’s brief on 27 March 2012.⁸ The Prosecution filed its Respondent’s brief on 7 May 2012.⁹

3. Mr. Sagahutu requests the Appeals Chamber to reject the Prosecution’s Respondent’s Brief (Sagahutu) and to order the Prosecution to re-file it as it exceeds the word limit for Respondent’s briefs set out in the Practice Direction on the Length of Briefs and Motions on Appeal.¹⁰ In this regard, he recalls that the rule on the word limits for Respondent’s briefs set out in the Practice

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

² Sagahutu Defence Urgent Motion for Dismissal of the Prosecution’s Response to the Sagahutu Appeal Brief, 8 May 2012 (“Motion”).

³ Prosecutor’s Response to “Sagahutu Defence Urgent Motion for Dismissal of the Prosecution’s Response to the Sagahutu Appeal Brief” and Alternative Request that the Pre-Appeal Judge Deems his Brief Validly Filed in the Circumstances or Allows an Expansion of the Word Count in this Case *Nunc Pro Tunc*, 14 May 2012 (“Response”).

⁴ Sagahutu’s Reply to the Prosecutor’s Response to Defence Urgent Motion for Dismissal of the Prosecution’s Response to the Sagahutu Appeal Brief, 16 May 2012 (“Reply”).

⁵ T. 17 May 2011 pp. 23-25. 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, para. 2163.

⁶ See Notice of Appeal on Behalf of Augustin Ndingiyimana, Pursuant to Rule 108, 20 July 2011; Prosecutor’s Notice of Appeal, 20 July 2011; Notice of Appeal, 20 July 2011 (confidential, public redacted version filed on 9 August 2011); *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 (annexed to *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) (see also Decision on Augustin Bizimungu’s Motion for Leave to Amend his Notice of Appeal, 19 January 2012, para. 10); *Acte d’appel d’Innocent Sagahutu*, 13 January 2012 (“Sagahutu Notice of Appeal”).

⁷ Sagahutu Notice of Appeal.

⁸ *Mémoire d’appel d’Innocent Sagahutu*, 27 March 2012 (confidential, public redacted version filed on 30 March 2012) (“Appeal Brief”).

⁹ Prosecution’s Respondent’s Brief in Response to Innocent Sagahutu’s Appellant’s Brief, 7 May 2012 (“Prosecution’s Respondent’s Brief (Sagahutu)”).

¹⁰ Motion, paras. 1, 12, referring to Practice Direction on the Length of Briefs and Motions on Appeal, 8 December 2006 (“Practice Direction”).

Direction was recently clarified in the *Mugenzi and Mugiraneza* Decision.¹¹ He submits that the Prosecution's Respondent's briefs to his appeal and to those of Mr. Ndindiliyimana, Mr. Bizimungu, and Mr. Nzuwonemeye cumulatively total 117,144 words, whereas the Prosecution was only entitled to a total of 80,000 words.¹² Mr. Sagahutu asserts that the Prosecution's disregard for the rule is demonstrably unfair and undermines his right to equality of arms and the proper administration of justice.¹³ In the alternative, Mr. Sagahutu requests to be allowed to re-file his Appeal Brief with a proportional increase to its length, to file a supplemental appeal brief, or to be allowed additional time to file and an extension of words for his brief in reply to the Prosecution's Respondent's Brief (Sagahutu).¹⁴

4. The Prosecution responds that the Motion should be dismissed in its entirety.¹⁵ It asserts that the Prosecution's Respondent's Brief (Sagahutu) was filed in compliance with paragraph (C)1 of the Practice Direction which, it argues, has consistently been interpreted by Pre-Appeal Judges of the Tribunal and the International Criminal Tribunal for the former Yugoslavia ("ICTY") as allowing a respondent to file a brief of the same length as the Appellant's brief.¹⁶ The Prosecution submits that the *Mugenzi and Mugiraneza* Decision is inapplicable to this case as no extension of the word limit was granted in that case.¹⁷ It adds that to apply the word limits as applied in the *Mugenzi and Mugiraneza* Decision would be unworkable in this case given the different filing schedules for the appellants, the significant disparity in length that would result between the Appellants' and Respondents' briefs, and the disparate issues raised by each of the appellants.¹⁸ Nonetheless, should the Prosecution's Respondent's Brief (Sagahutu) be deemed to exceed the word limit, the Prosecution requests that the Pre-Appeal Judge grant, *proprio motu*, an extension of the word limit in light of the complexity of the case.¹⁹

¹¹ Motion, para. 6, referring to *Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor*, Case No. ICTR-99-50-A, Decision on Motions for an Order Requiring the Prosecution to Re-file its Response Briefs, 16 April 2012 ("*Mugenzi and Mugiraneza* Decision"). See also Reply, paras. 4-8, 10.

¹² Motion, paras. 7, 8; Reply, para. 3. In his Reply, Mr. Sagahutu corrects his initial calculation of the cumulative number of words to which the Prosecution was entitled.

¹³ Motion, para. 10.

¹⁴ Motion, para. 12.

¹⁵ Response, para. 23.

¹⁶ Response, paras. 2, 5, 6, referring to *Prosecutor v. Ante Gotovina and Mladen Markač*, Case No. IT-06-90-A, Decision on Ante Gotovina's and Mladen Markač's Motions for Leave to Exceed the Word Limit, 20 July 2011 ("*Gotovina and Markač* Decision"), p. 3; *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-A, Decision on Momčilo Perišić's Motion for Leave to Exceed the Word Limit for the Appeal Brief, 30 January 2012 ("*Perišić* Decision"), p. 2; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Motions for Extension of Time and for Permission to Exceed Word Limitations, 20 October 2010 ("*Popović et al.* Decision"), pp. 6, 7; *Théoneste Bagosora et al. v. The Prosecutor*, Case No. ICTR-98-41-A, Decision on Anatole Nsengiyumva's Motion for Extension of Word Limit for his Appeal Brief, 19 January 2010 ("*Bagosora et al.* Decision"), p. 4; *Jean Uwinkindi v. The Prosecutor*, Case No. ICTR-01-75-AR11bis, Decision on Request for Extension of Word Limit, 5 September 2011, p. 2. See also Response, paras. 10-12.

¹⁷ Response, paras. 9, 10.

¹⁸ Response, paras. 13-17.

¹⁹ Response, paras. 21, 23.

5. The Practice Direction provides that:

(a) The brief of an appellant on appeal from a final judgement of a Trial Chamber will not exceed 30,000 words [...]:

(i) provided that, where the Prosecutor, as appellant, files a separate brief in respect of each appellee or a consolidated brief, the total number of words shall not exceed 30,000 in respect of one appellee and a further 10,000 words in respect of each additional appellee; [...]

(b) The response of an appellee on an appeal from a final judgment of a Trial Chamber will not exceed 30,000 words [...], subject to the proviso in (a) (i) applying *mutatis mutandis* to any brief in response filed by the Prosecutor [...].²⁰

6. As the *Mugenzi and Mugiraneza* Decision recently confirmed, regardless of whether the Prosecution decides to file separate Respondent's briefs or a consolidated Respondent's brief, the Prosecution is entitled to 30,000 words in respect of one appellant and a further 10,000 words in respect of each additional appellant in accordance with the Practice Direction.²¹ The cases cited by the Prosecution do not suggest otherwise. In those cases, the Pre-Appeal Judges granted extensions of the word limit for the Respondent's briefs either upon the request of the Prosecution or *proprio motu*.²² Therefore, contrary to the Prosecution's submission, these cases do not demonstrate that there is an automatic right to file a Respondent's brief of equal length to the Appellant's brief; instead, in each case, the filing of an oversized Respondent's brief was expressly authorized by the Pre-Appeal Judge.

7. In accordance with paragraph (C)1(b) of the Practice Direction, the Prosecution in this case would therefore be entitled to file Respondent's briefs to the appeals of the four convicted persons of up to a cumulative total of 60,000 words. However, on 20 January 2012, I granted, in part, Mr. Bizimungu's and Mr. Nzuwonemeye's requests for extensions of the word limits for their Appellant's briefs in view of the complexity of the case.²³ In the same decision, I allowed the Prosecution an equivalent extension of the word limit and granted a 10,000 word extension to respond to each of Mr. Bizimungu's and Mr. Nzuwonemeye's Appellant's briefs.²⁴ Accordingly, at present, the Prosecution is entitled to file Respondent's briefs to the appeals of Mr. Ndindiliyimana, Mr. Bizimungu, Mr. Nzuwonemeye, and Mr. Sagahutu of up to a cumulative total of 80,000 words.

²⁰ Practice Direction, para. (C)1.

²¹ *Mugenzi and Mugiraneza* Decision, p. 3.

²² See *Perišić* Decision, p. 2; *Gotovina and Markač* Decision, p. 1; *Popović et al.* Decision, p. 6; *Bagosora et al.* Decision, p. 4.

²³ Decision on Bizimungu's and Nzuwonemeye's Motions for Extensions of the Word Limits for their Appellant's Briefs, 20 January 2012 ("Decision on Extension of Word Limits"), paras. 6, 7.

²⁴ Decision on Extension of Word Limits, para. 7.

8. The Prosecution's Respondent's briefs to the four appeals amount to a total of 117,144 words²⁵ which is 37,144 words over the cumulative word limit. The Prosecution should therefore have requested leave to exceed the word limit. Nonetheless, I have previously noted the complexity of this case.²⁶ Furthermore, I note that to require the Prosecution to re-file its Respondent's briefs would disrupt the briefing schedule which is almost completed. In view of the foregoing, I consider that it is in the interests of the efficient administration of justice to accept the Prosecution's Respondent's Brief (Sagahutu) as validly filed. In so doing, I remind the Prosecution that in future cases, should it wish to exceed the word limits set out in the Practice Direction, it must request permission to do so.

9. Turning to Mr. Sagahutu's alternative requests, I am not convinced in the circumstances of this case that allowing the Prosecution to exceed the word limit in relation to its Respondent's briefs in itself justifies permitting Mr. Sagahutu to re-file a lengthier Appellant's brief, to file a supplemental appeal brief, or to exceed the word limit for his brief in reply. In this respect, I am mindful that in other multi-appellant cases where the Prosecution was allowed to file 30,000 word Respondent's briefs in relation to each of the convicted persons' appeals, this factor alone did not justify extending the word limits for the other appellants' submissions.²⁷ Mr. Sagahutu has not demonstrated the need for the requested relief, and I therefore do not consider that exceptional circumstances have been established warranting the grant of this relief. In view of the foregoing, and given that the period for filing his brief in reply has not yet expired, I also do not consider it necessary to grant Mr. Sagahutu additional time to file his brief in reply.

10. For the foregoing reasons, the Motion is **DISMISSED**.

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

Done this 17th day of May 2012,
At The Hague,
The Netherlands.



[Seal of the Tribunal]

Theodor Meron

Judge Theodor Meron
Pre-Appeal Judge

²⁵ The Prosecution's Respondent's brief to Mr. Ndindiliyimana's Appeal is 29,532 words (*see* Prosecution's Respondent's Brief in Response to Augustin Ndindiliyimana's Appellant's Brief, 5 March 2012, p. 101), the Prosecution's Respondent's brief to Mr. Bizimungu's Appeal is 34,267 words (*see* Prosecution Respondent's Brief in Response to Augustin Bizimungu's Appellant's Brief, 5 March 2012, p. 102), the Prosecution's Respondent's brief to Mr. Nzuwonemeye's Appeal is 26,588 words (*see* Prosecution's Respondent's Brief in Response to François-Xavier Nzuwonemeye Appellant's Brief, 5 March 2012, p. 108), and the Prosecution's Respondent's Brief (Sagahutu) is 26,757 words (*see* Prosecution's Respondent's Brief (Sagahutu), p. 106).

²⁶ Decision on Extension of Word Limits, para. 6.

²⁷ *See, e.g., Bagasora et al.* Decision, p. 4.