



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

43/H

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ICTR-05-89-AR11bis

28th June 2012

{43/H - 40/H}

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Pre-Appeal Judge
Registrar: Mr. Adama Dieng
Decision of: 28 June 2012

BERNARD MUNYAGISHARI

v.

THE PROSECUTOR

Case No. ICTR-05-89-AR11bis

**DECISION ON BERNARD MUNYAGISHARI'S MOTION FOR EXTENSION OF TIME
AND OTHER RELIEF**

Counsel for Bernard Munyagishari:

Philippe Moriceau
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Abdoulaye Seye
François Nsanzuwera
Erica Bussey

ICTR Appeals Chamber
Date: 28th June 2012
Action: R. Jumea
Copied To: All concerned
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**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. HOMERONWA
SIGNATURE: *[Signature]* DATE: 28-06-2012

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 a motion filed on 19 June 2012 by Mr. Bernard Munyagishari requesting an extension of time to file his appeal brief and other relief.² The Prosecution responded to the Motion on 21 June 2012,³ and Mr. Munyagishari replied on 25 June 2012.⁴

2. Mr. Munyagishari is charged before the Tribunal with conspiracy to commit genocide, genocide, complicity in genocide, and murder and rape as crimes against humanity.⁵ On 6 June 2012, the Referral Chamber Designated under Rule 11 *bis* ordered Mr. Munyagishari's case to be referred to the authorities of the Republic of Rwanda for trial before the High Court of Rwanda, subject to certain conditions.⁶ The Referral Decision was originally issued in English. Mr. Munyagishari and the Prosecution filed notices of appeal against the Referral Decision on 19 and 20 June 2012, respectively.⁷ In accordance with paragraph 5 of the Practice Direction,⁸ the appeal briefs of Mr. Munyagishari and the Prosecution are due within 15 days of the filing of their notices of appeal, *i.e.* on 4 and 5 July 2012, respectively.

3. Mr. Munyagishari requests leave to file his appeal brief within 30 days of service of the French translation of the Referral Decision pursuant to Rule 116 of the Rules of Procedure and Evidence of the Tribunal ("Rules").⁹ In support of his Motion, Mr. Munyagishari submits that, while he knows French, he does not know English, and that it is crucial for him to read the Referral Decision in a language he understands in order to give instructions to his Counsel for the appeal brief.¹⁰ He argues that the requested 30-day extension is reasonable and necessary given the importance and relative length of the Referral Decision, as well as the need for his Counsel to travel

¹ Order Assigning a Pre-Appeal Judge, 21 June 2012.

² *Requête de la Défense de Bernard Munyagishari aux fins de prolongation du délai pour le mémoire d'appel*, 19 June 2012 ("Motion").

³ Prosecutor's Response to Munyagishari's Request for Extension of Time to File Appeal Brief, 21 June 2012 ("Response").

⁴ *Réplique de la Défense de Bernard Munyagishari à la Réponse du Procureur relative à la prolongation du délai pour le mémoire d'appel*, 25 June 2012 ("Reply").

⁵ *The Prosecutor v. Bernard Munyagishari*, Case No. ICTR-05-89-I, Indictment, 8 September 2005.

⁶ *The Prosecutor v. Bernard Munyagishari*, Case No. ICTR-05-89-R11bis, Decision on the Prosecutor's Request for Referral of the Case to the Republic of Rwanda, 6 June 2012 ("Referral Decision"), pp. 54, 55.

⁷ *Acte d'appel de la Défense de Bernard Munyagishari*, 19 June 2012 ("Notice of Appeal"); Prosecutor's Notice of Appeal Pursuant to Rule 11 *bis* (H), 20 June 2012.

⁸ Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal, dated 8 December 2006 ("Practice Direction").

⁹ Motion, para. 13.

to Arusha to consult with him after he is served with the relevant French translation.¹¹ For the same reasons, Mr. Munyagishari also requests leave to amend his Notice of Appeal within 15 days of the service of the French translation of the Referral Decision.¹²

4. The Prosecution responds that the Appeals Chamber should order Mr. Munyagishari to file his appeal brief within 15 days from the filing of the French translation of the Referral Decision, and that Mr. Munyagishari's request for leave to amend his Notice of Appeal is "misplaced".¹³

5. Rule 116 of the Rules allows for the extension of time of any deadline on a showing of good cause and provides that the requirement of good cause is satisfied "[w]here the ability of the accused to make full answer and Defence depends on the availability of a decision in an official language other than that in which it was originally issued".

6. I consider that Mr. Munyagishari's ability to make full answer and defence depends on the availability of the French translation of the Referral Decision for the preparation of his appeal brief. Accordingly, I am satisfied that there is good cause for extending the time-limit for the filing of Mr. Munyagishari's appeal brief to run from the day that he is served with the French translation of the Referral Decision.

7. However, I consider that neither the Referral Decision's length nor the other factors advanced by Mr. Munyagishari warrant the 30-day extension requested. I also note that Mr. Munyagishari's Counsel are able to work in English¹⁴ and thus may immediately commence the preparation of the appeal brief and discuss the draft with Mr. Munyagishari, subject to his final approval once he is served with the French translation of the Referral Decision. It is therefore appropriate in this instance to allow a more limited extension of time than the extension requested. As noted above, paragraph 5 of the Practice Direction provides for the filing of the appeal brief within 15 days of the filing of the notice of appeal. In the present circumstances, I consider that a 15-day extension of time from the date on which Mr. Munyagishari is served with the French translation of the Referral Decision should be sufficient for Mr. Munyagishari to review the translation, to further consult with his Counsel, and to give his final approval to the appeal brief.

¹⁰ Motion, paras. 3, 8, 9. *See also ibid.*, para. 11.

¹¹ Motion, para. 10. *See also Reply*, paras. 6-8.

¹² Motion, paras. 12, 13. *See also Reply*, para. 9.

¹³ Response, paras. 3-10. The Prosecution also requests the Appeals Chamber to require the Registry to prioritize the translation of the Referral Decision. *See ibid.*, paras. 8, 10. I note that the filing of the French translation of the Referral Decision is anticipated around 31 August 2012. Considering this date and the current workload of the Tribunal's Languages Services Section, I consider that there is no need to issue any specific instruction to the Registry in this regard.

¹⁴ *See* Motion, para. 5, referring to the preparation of Mr. Munyagishari's Notice of Appeal based on the English version of the Referral Decision.

8. Finally, I consider that Mr. Munyagishari's request for leave to amend his Notice of Appeal within 15 days of the service of the French translation of the Referral Decision is premature. Requests for variation of a notice of appeal require the precise identification of the amendments sought, as well as a showing of good cause with respect to each amendment.¹⁵ Upon receipt of the French translation of the Referral Decision, it will be incumbent upon Mr. Munyagishari to precisely identify any necessary amendment(s) he may then wish to make and to move the Appeals Chamber as soon as possible for leave to amend his Notice of Appeal.¹⁶

9. For the foregoing reasons, I hereby

GRANT the Motion in part;


ORDER Mr. Munyagishari to file his appeal brief within 15 days of the date on which he is served with the French translation of the Referral Decision;

DIRECT the Registry to serve Mr. Munyagishari with the French translation of the Referral Decision as soon as it is available and to inform the Appeals Chamber when this translation has been served on Mr. Munyagishari; and

DENY the Motion in all other respects.

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

Done this 28th of June 2012,
At The Hague,
The Netherlands.


Judge Theodor Meron
Pre-Appeal Judge

[Seal of the Tribunal]



¹⁵ See, e.g., *Augustin Ndingiyimana 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 ("*Ndingiyimana et al. Decision*"), para. 7, and references cited therein. Although it has been held that "an appeal pursuant to Rule 11bis of the Rules is more akin to an interlocutory appeal than to an appeal from a judgement" (*Jean Uwinkindi v. The Prosecutor*, Case No. ICTR-01-75-AR11bis, Decision on Uwinkindi's Motion for Review or Reconsideration of the Decision on Referral to Rwanda and the Related Prosecution Motion, 23 February 2012, para. 11, and references cited therein), I consider that the requirements set out in the Appeals Chamber's jurisprudence for requests for variation of a notice of appeal against a judgement should likewise apply to requests for variation of a notice of appeal against a Rule 11bis decision.

¹⁶ See *Ndingiyimana et al. Decision*, para. 7.