



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

5200/H

*CV*

ICTR-98-42-A  
14<sup>th</sup> March 2013  
{5200/H – 5198/H}

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Pre-Appeal Judge

**Registrar:** Mr. Bongani Majola

**Decision of:** 14 March 2013

ICTR Appeals Chamber  
14 MAR 2013  
Date: R. Juma  
Action: Chambers, Defence,  
Copied To: DTP-ALAS & TPU/CAS.

**THE PROSECUTOR**

*CV*

**Pauline NYIRAMASUHUKO  
Arsène Shalom NTAHOBAI  
Sylvain NSABIMANA  
Alphonse NTEZIRYAYO  
Joseph KANYABASHI  
Élie NDAYAMBAJE**

Case No. ICTR-98-42-A

**DECISION ON PROSECUTION'S URGENT MOTION  
FOR AN ORDER TO RE-FILE**

**Counsel for Pauline Nyiramasuhuko**

Nicole Bergevin and Guy Poupart

**Counsel for Arsène Shalom Ntahobali**

Normand Marquis and Mylène Dimitri

**Counsel for Sylvain Nsabimana**

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**Counsel for Alphonse Nteziryayo**

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**Counsel for Joseph Kanyabashi**

Michel Marchand and Alexandra Marcil

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Pierre Boulé and Claver Sindayigaya

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Hassan Bubacar Jallow

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Tajesh Adhichetty

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: ROSETTE MUZIGO-MORRISON  
SIGNATURE: *[Signature]* DATE: 14-03-13

I, **FAUSTO POCAR**, 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;<sup>1</sup>

**NOTING** the motion filed by **Élie Ndayambaje** (“Ndayambaje”) on 5 March 2013, in which Ndayambaje seeks leave to amend his notice of appeal;<sup>2</sup>

**BEING SEISED** of a motion filed by the Prosecution on 12 March 2013, in which the Prosecution requests the Appeals Chamber to find that because Ndayambaje has failed to comply with the requirement to specify all proposed amendments to his notice of appeal the Ndayambaje Motion is not validly filed, and to order Ndayambaje to correct and to re-file the two supporting documents attached to the Ndayambaje Motion, namely the annotated proposed notice of appeal (“Annex A”) and the proposed amended notice of appeal (“Annex B”);<sup>3</sup>

**NOTING** the Prosecution’s submissions that Annex A and Annex B contain inconsistencies and errors resulting in ambiguity which makes it impossible to identify the amendments proposed by Ndayambaje;<sup>4</sup>

**NOTING** that the Prosecution further submits that it will only be in a position to address the proposed amendments and to respond to the Ndayambaje Motion after Annex A and Annex B are corrected and re-filed, and that the time-limit to respond should run from the date of the re-filing;<sup>5</sup>

**NOTING** that Ndayambaje’s operative notice of appeal against the judgement pronounced by Trial Chamber II of the Tribunal on 24 June 2011<sup>6</sup> was filed on 4 January 2012;<sup>7</sup>

**CONSIDERING**, *proprio motu*, that Ndayambaje fails to refer to the operative notice of appeal in the Ndayambaje Motion;<sup>8</sup>

<sup>1</sup> Order Assigning a Pre-Appeal Judge, 21 July 2011.

<sup>2</sup> *Requête en extrême urgence d’Élie Ndayambaje en modification de son Acte*, 5 March 2013 (“Ndayambaje Motion”).

<sup>3</sup> Prosecution Urgent Motion for an Order to Re-file, 12 March 2013 (“Motion”), paras. 2, 9. In the interests of justice, and given the urgency of the Motion, it is disposed of without awaiting Ndayambaje’s response.

<sup>4</sup> Motion, paras. 3, 4.

<sup>5</sup> Motion, para. 9.

<sup>6</sup> *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Judgement and Sentence, delivered in public and signed on 24 June 2011, filed on 14 July 2011.

<sup>7</sup> Corrigendum to *Élie Ndayambaje’s Notice of Appeal*, 13 February 2012 (original French version filed on 4 January 2012) (“Ndayambaje Notice of Appeal”).

<sup>8</sup> Ndayambaje Motion, para. 4, pp. 6, 10, 11.

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**RECALLING** that an appellant is not free to vary his notice of appeal in any way without prior leave of the Appeals Chamber and that all proposed variations to a notice of appeal must be indicated in the request for leave to amend the notice of appeal;<sup>9</sup>

**RECALLING FURTHER** that, pursuant to the Practice Direction on Formal Requirements for Appeals from Judgement, where the wording of a filing is unclear or ambiguous, a Pre-Appeal Judge or the Appeals Chamber may issue an order for re-filing;<sup>10</sup>

**FINDING** that Annex A and Annex B contain numerous inconsistencies and erroneous references to Ndayambaje Notice of Appeal, and fail to reflect properly the amendments sought in the Ndayambaje Motion as well as to identify accurately the proposed variations between Ndayambaje Notice of Appeal and the proposed notice of appeal;

**FOR THE FOREGOING REASONS,**

**GRANT** the Motion; and

**ORDER** Ndayambaje to re-file the Ndayambaje Motion with the appropriate references to the Notice of Appeal as well as the revised versions of Annex A and Annex B no later than 18 March 2013.

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

Done this fourteenth day of March 2013,  
at The Hague,  
The Netherlands.



[Seal of the Tribunal]

A handwritten signature in black ink, appearing to read "Fausto Pocar". The signature is fluid and cursive, written over a horizontal line.

Fausto Pocar  
Pre-Appeal Judge

<sup>9</sup> See Decision on Pauline Nyiramasuhuko's Motion to Amend her Amended Notice of Appeal, 18 February 2013, para. 16 and references cited therein.

<sup>10</sup> Practice Direction on Formal Requirements for Appeals from Judgement, 4 July 2005, para. 13.