



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

ICTR-98-42-A
15th April 2013
{7364/H-7362/H}

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Pre-Appeal Judge

Registrar: Mr. Bongani Majola

Order of: 15 April 2013

ICTR Appeals Chamber

15 APR 2013

Date:

Action: CI

Copied To:

Judges, Parties,

LDs, LSS, JPU

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The PROSECUTOR

v.

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

Case No. ICTR-98-42-A

**ORDER ISSUING A FORMAL WARNING TO COUNSEL FOR
NTAHOBALI, KANYABASHI, AND NDAYAMBAJE**

Counsel for Pauline Nyiramasuhuko

Nicole Bergevin and Guy Poupart

Counsel for Arsène Shalom Ntahobali

Normand Marquis and Mylène Dimitri

Counsel for Sylvain Nsabimana

Josette Kadji and Pierre Tientcheu Weledji

Counsel for Alphonse Nteziryayo

Titinga Frédéric Pacere and
Gershon Otachi Bw'Omanwa

Counsel for Joseph Kanyabashi

Michel Marchand and Alexandra Marcil

Counsel for Élie Ndayambaje

Pierre Boulé and Claver Sindayigaya

Office of the Prosecutor

Hassan Bubacar Jallow

James J. Arguin

Deborah Wilkinson

Steffen Wirth

Tajesh Adhietty

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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NAME / NOM:

ROSETTE MUZIGO-MORRISON

SIGNATURE:

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DATE:

15/05/13

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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,¹

NOTING the appeal briefs filed, respectively, by Arsène Shalom Ntahobali (“Ntahobali”), Joseph Kanyabashi (“Kanyabashi”), and Élie Ndayambaje (“Ndayambaje”) on 8 April 2013;²

RECALLING the “Decision on Nyiramasuhuko’s, Ntahobali’s, Kanyabashi’s, and Ndayambaje’s Motions for Extensions of the Word Limit for Their Appeal Briefs” issued on 13 December 2012 (“Decision of 13 December 2012”) authorising: (i) Ntahobali to file an appeal brief not exceeding 80,000 words; (ii) Kanyabashi to file an appeal brief not exceeding 40,000 words; and (iii) Ndayambaje to file an appeal brief not exceeding 50,000 words, and reminding all the parties to abide by the practice directions applicable on appeal as well as warning them against any attempt to circumvent these procedural requirements;³

RECALLING FURTHER the “Decision on Pauline Nyiramasuhuko’s Motion to Amend Her Amended Notice of Appeal” issued on 18 February 2013 (“Decision of 18 February 2013”) reminding again all the parties to abide by the practice directions applicable on appeal after having explicitly noticed the omissions of spaces between words and numbers;⁴

NOTING that the vast majority of necessary spaces between words, numbers, and punctuation marks have systematically been omitted from the footnotes of the Appeal Briefs, such that words, numbers, and punctuation marks are incorrectly joined;

RECALLING that, pursuant to the Practice Direction on the Length of Briefs and Motions on Appeal, footnotes count towards the word limit;⁵

¹ Order Assigning a Pre-Appeal Judge, 21 July 2011.

² *Mémoire d’appel d’Arsène Shalom Ntahobali*, 8 April 2013 (confidential) (“Ntahobali Appeal Brief”); *Mémoire d’appel de Joseph Kanyabashi*, 8 April 2013 (“Kanyabashi Appeal Brief”); *Mémoire d’appel d’Élie Ndayambaje*, 8 April 2013 (“Ndayambaje Appeal Brief”) (together “Appeal Briefs”).

³ Decision of 13 December 2012, paras. 7, 20.

⁴ Decision of 18 February 2013, fn. 1, para. 28.

⁵ Practice Direction on the Length of Briefs and Motions on Appeal, 8 December 2006 (“Practice Direction”), para. C(4). See also Decision of 13 December 2012, para. 6; Decision of 18 February 2013, fn. 1.

CONSIDERING that, if corrected, the omission of the necessary spaces would impact the word count and the Appeal Briefs would exceed the word limits imposed in the Decision of 13 December 2012;

CONSIDERING therefore that the Appeal Briefs do not comply with the Decision of 13 December 2012 and the Practice Direction;

RECALLING that Counsel bears the main burden in preparing submissions on appeal;⁶

CONSIDERING, in light of the vast number of omission of necessary spaces in the footnotes, that Counsel for Ntahobali, Kanyabashi, and Ndayambaje cannot be presumed to have acted in good faith and that this omission was an attempt to circumvent the word limit imposed in the Decision of 13 December 2012;

FINDING that this attempt to circumvent the procedural requirements imposed by the Appeals Chamber and the Practice Direction amounts to abusive conduct;


HEREBY ISSUE A FORMAL WARNING to Counsel for Ntahobali, Kanyabashi, and Ndayambaje, within the meaning of Rule 46(A) of the Rules of Procedure and Evidence of the Tribunal, to strictly abide by the Appeals Chamber's decisions and practice directions applicable on appeal subject to sanctions for abusive conduct; and

FIND, in light of the need to facilitate expeditious appellate proceedings and in order not to prejudice Ntahobali, Kanyabashi, and Ndayambaje for the misconduct of their respective Counsel, that the Ntahobali Appeal Brief, Kanyabashi Appeal Brief, and Ndayambaje Appeal Brief are validly filed.

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

Done this fifteenth day of April 2013,
At The Hague,
The Netherlands.





Judge Fausto Pocar
Pre-Appeal Judge

[Seal of the Tribunal]

⁶ See, e.g., *Augustin Ndindiliyimana et al. v. The Prosecutor*, Case No. ICTR-00-56-A, Decision on Bizimungu's Motion for Extension of Time to File His Reply Brief, 8 March 2012, p. 2183/H (Registry pagination).