



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

8926/H

**IN THE APPEALS CHAMBER**

**ICTR-98-42-A**

**11 June 2013**

**{8926/H - 8923/H}**

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

**Registrar:** Mr. Bongani Majola

**Decision of:** 11 June 2013

ICTR Appeals Chamber  
11 JUN 2013  
Date: June R. Q.  
Action: Chambers, Defense,  
Copied To: DIP-ACAD, JPY

**THE PROSECUTOR**

v.

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

*Case No. ICTR-98-42-A*

**DECISION ON PROSECUTION'S MOTION FOR EXTENSION OF TIME  
TO RESPOND TO NDAYAMBAJE'S THIRD RULES 68 AND 115 MOTION**

**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 Nteziriyayo**

Titinga Frédéric Pacere and  
Gershom 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

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: [Handwritten Signature] DATE: 11/06/13

**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 “*Troisième requête d’Élie Ndayambaje en violation de l’obligation de communication de l’Accusation et pour l’admission de moyens de preuve supplémentaires*” filed confidentially by Élie Ndayambaje on 4 June 2013 (“Ndayambaje Third Rules 68 and 115 Motion”);

**NOTING** that, pursuant to paragraph 13 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal of 8 December 2006 (“Practice Direction”), the Prosecution shall file its response to the Ndayambaje Third Rules 68 and 115 Motion within 30 days of the filing of the motion, that is no later than 4 July 2013;

**BEING SEISED** of the “Prosecution Urgent Motion for Extension of Time to Respond to Ndayambaje Rule 68 and 115 Motion” filed on 7 June 2013 (“Motion”), in which the Prosecution requests a 28-day extension of the time-limit, to 1 August 2013, for filing its response to the Ndayambaje Third Rules 68 and 115 Motion, as well as an expedited briefing schedule for the present Motion;<sup>2</sup>

**NOTING** that the Prosecution submits that good cause exists for the requested extension of the time-limit because: (i) the Prosecution is simultaneously engaged in preparing its responses to six separate appeal briefs, five of which are due on 17 July 2013, four of which are of “significant length”, and all of which “involve complex issues”;<sup>3</sup> (ii) this is the second Rule 115 motion filed by Mr. Ndayambaje at a time of “scarce resources” rendering the Prosecution unable to “dedicate the necessary time and staff” to preparing its response until after the 17 July 2013 deadline;<sup>4</sup> (iii) the requested extension of time will not delay the proceedings or prejudice Mr. Ndayambaje;<sup>5</sup> (iv) the Prosecution should not be disadvantaged and burdened by Mr. Ndayambaje’s “piecemeal” approach to filing Rules 68 and 115 motions;<sup>6</sup> and (v) it will enable Mr. Ndayambaje to provide the Appeals

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

<sup>2</sup> Motion, paras. 1, 9-11.

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

<sup>4</sup> Motion, para. 5.

<sup>5</sup> Motion, para. 6.

<sup>6</sup> Motion, para. 7. *See also* Motion, para. 3.

Chamber with a “more informed reply” since it will permit him to review the Prosecution’s arguments in response to his appeal before replying;<sup>7</sup>

**NOTING** that the Prosecution further submits that an expedited briefing schedule for the present Motion is appropriate given the need for the Prosecution to plan the allocation of its resources in order to meet the deadlines for the submission of its response to the Ndayambaje Third Rules 68 and 115 Motion and its responses to the six appeal briefs;<sup>8</sup>

**NOTING** that Mr. Ndayambaje responded on 10 June 2013 that he does not object to the requested extension of the time-limit;<sup>9</sup>

**FINDING** that the Prosecution’s request for an expedited briefing schedule is therefore moot;

**CONSIDERING** that, pursuant to paragraph 19 of the Practice Direction, the Pre-Appeal Judge may vary any time-limit prescribed under the Practice Direction;

**CONSIDERING** that the Ndayambaje Third Rules 68 and 115 Motion alleges the violation of disclosure obligations concerning the evidence of seven witnesses and requests the admission of several transcripts and statements,<sup>10</sup> and that responding to it requires the analysis of a sizeable number of transcript references and judgement paragraphs;

**CONSIDERING** that the current time-limit prescribed for the filing of the response to the Ndayambaje Third Rules 68 and 115 Motion would necessitate the Prosecution to prepare its response concurrently with the preparation of its response briefs to six appeal briefs, some of which raise procedural, factual, and legal issues of significant complexity or require the examination and discussion of considerable parts of the voluminous trial record;<sup>11</sup>

**CONSIDERING** that, given that the Ndayambaje Third Rules 68 and 115 Motion requires deliberation in the context of the entirety of the arguments developed by Mr. Ndayambaje in support of his appeal,<sup>12</sup> the Prosecution’s requested extension of time would not impact the overall time dedicated to considering the latter motion or the appeals in this case;

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<sup>7</sup> Motion, para. 8.

<sup>8</sup> Motion, para. 9.

<sup>9</sup> *Réponse d’Élie Ndayambaje au “Prosecution Urgent Motion for Extension of Time to Respond to Ndayambaje Rule 68 and 115 Motion”*, 10 June 2013, para. 2.

<sup>10</sup> See Ndayambaje Third Rules 68 and 115 Motion, paras. 3-5, 9, 14-55, p. 28.

<sup>11</sup> See Decision on Prosecution’s Motion for Extension of Time to File its Response Briefs, 22 April 2013, p. 3.

<sup>12</sup> In this regard, I refer to the status conference held on 10 May 2013 during which I indicated that the decisions on the pending motions filed pursuant to Rules 68 and 115 of the Rules will not be rendered before the Appeals Chamber has considered all of the appeal briefs, including briefs in response and in reply. See Status Conference, AT. 10 May 2013 pp. 13, 14.

**FINDING**, in light of the foregoing, that there is good cause for the requested extension of the time-limit for the filing of the Prosecution's response to the Ndayambaje Third Rules 68 and 115 Motion;

**HEREBY GRANT** the Prosecution's Motion, in part;

**DISMISS** as moot the Prosecution's request for an expedited briefing schedule; and

**ORDER** that the Prosecution shall file its response to the Ndayambaje Third Rules 68 and 115 Motion no later than Thursday, 1 August 2013.

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

Done this eleventh day of June 2013,  
at The Hague,  
The Netherlands.



*Fausto Pocar*  
Judge Fausto Pocar  
Pre-Appeal Judge

[Seal of the Tribunal]