



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

189/H

ICTR-00-55C-A

18th June 2013

{189/h - 189/h}

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge William H. Sekule
Judge Patrick Robinson
Judge Mehmet Güney
Judge Arlette Ramaroson

Registrar: Mr. Bongani Majola

Decision of: 18 June 2013

ILDÉPHONSE NIZEYIMANA

v.

THE PROSECUTOR

Case No. ICTR-00-55C-A

DECISION ON MOTION BY ILDÉPHONSE NIZEYIMANA TO AMEND HIS NOTICE OF APPEAL

Counsel for Ildéphonse Nizeyimana

John Philpot

Office of the Prosecutor

Hassan Bubacar Jallow
James J. Arguin
Abdoulaye Seye
Althea Alexis
Thembile M. Segoete
Memory Maposa
Ndeye Marie Ka
William Mubiru
Lydia Mugambe
Mary Diana Karanja
Deo Mbuto

ICTR Appeals Chamber

18 JUN 2013

Date:

Action:

Copied To:

*Junia R.
Chambers, Defense
DIPAN AD
CH.*

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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*ROSETTE MUZIGO-MORRISON
[Signature] 18/6/13*

1. 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) is seised of a motion filed by Mr. Ildéphonse Nizeyimana on 14 May 2013, requesting leave to amend his notice of appeal.¹

A. Procedural Background

2. On 19 June 2012, Trial Chamber III of the Tribunal (“Trial Chamber”) convicted Mr. Nizeyimana of genocide, extermination and murder as crimes against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.² The written Trial Judgement was filed in English on 22 June 2012.³ The Trial Chamber sentenced Mr. Nizeyimana to life imprisonment.⁴

3. On 29 June 2012, the Prosecution filed a notice of appeal against the Trial Judgement.⁵ Mr. Nizeyimana filed his notice of appeal on 23 July 2012.⁶ On 12 September 2012, the Prosecution filed its Appellant’s brief.⁷ The Pre-Appeal Judge ordered Mr. Nizeyimana to file his Appellant’s brief, if any, no later than 40 days from the date on which he is served with the French translation of the Trial Judgement⁸ and granted in part Mr. Nizeyimana’s request for an extension of the word limit for his Appellant’s brief.⁹

4. On 14 May 2013, Mr. Nizeyimana filed the Motion to amend his Notice of Appeal, to which he attached as an annex his proposed amended notice of appeal.¹⁰ The Prosecution did not file a response.

¹ Motion by Ildéphonse Nizeyimana to Amend his Notice of Appeal Pursuant to Rule 108, 14 May 2013 (“Motion”).

² T. 19 June 2012 pp. 10, 11.

³ *The Prosecutor v. Ildéphonse Nizeyimana*, Case No. ICTR-00-55C-T, Judgement and Sentence, pronounced on 19 June 2012, filed on 22 June 2012 (“Trial Judgement”).

⁴ Trial Judgement, para. 1599.

⁵ Prosecutor’s Notice of Appeal, 29 June 2012.

⁶ Ildéphonse Nizeyimana’s Notice of Appeal, 23 July 2012 (“Notice of Appeal”).

⁷ Prosecutor’s Appellant’s Brief, 12 September 2012.

⁸ Decision on Ildéphonse Nizeyimana’s Motion for Extension of Time for the Filing of the Appellant’s Brief, 19 July 2012, p. 3.

⁹ Decision on Ildéphonse Nizeyimana’s Motion Requesting an Extension of the Word Limit for his Brief on Appeal, 16 April 2013, para. 9.

¹⁰ See Motion, Annex A “Ildéphonse Nizeyimana’s Amended Notice of Appeal” (“Proposed Amended Notice of Appeal”).

B. Applicable Law

5. In accordance with Rule 108 of the Rules of Procedure and Evidence of the Tribunal, the Appeals Chamber may, on good cause being shown by motion, authorise a variation of the grounds of appeal set out in the notice of appeal. Such a motion should be submitted as soon as possible after the moving party has identified the new alleged error of the trial chamber or after discovering any other basis for seeking to vary the notice of appeal.¹¹ The motion must explain precisely what amendments are being sought and show, with respect to each amendment, that the “good cause” requirement is satisfied.¹² The “good cause” requirement encompasses both good reason for including the proposed new or amended grounds of appeal and good reason as to why the proposed amendments were not included or correctly articulated in the original notice of appeal.¹³

6. In its previous determinations as to which proposed variations to a notice of appeal may be authorised within the scope of the good cause requirement, the Appeals Chamber has considered the following factors to be of relevance: (i) the proposed variation is minor but clarifies the notice of appeal without affecting its content; (ii) the opposing party has not opposed the variation or would not be prejudiced by it; (iii) the variation would bring the notice of appeal into conformity with the appeal brief; (iv) the variation would not unduly delay the appeal proceedings; or (v) the variation could be of substantial importance to the success of the appeal such as to lead to a miscarriage of justice if it is excluded.¹⁴

C. Discussion

7. Mr. Nizeyimana requests leave to amend his Notice of Appeal and to replace it with the Proposed Amended Notice of Appeal annexed to his Motion.¹⁵ Specifically, Mr. Nizeyimana seeks

¹¹ See, e.g., *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Decision on Nteziryayo’s Motion to Amend his Notice of Appeal and on Prosecution’s Motion to Strike Nteziryayo’s New Appeal Grounds, 8 May 2013 (“*Nyiramasuhuko et al.* 8 May 2013 Decision”), para. 12; *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Decision on Élie Ndayambaje’s Motion to Amend his Notice of Appeal, 5 April 2013 (“*Nyiramasuhuko et al.* 5 April 2013 Decision (Ndayambaje)”), para. 9; *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Decision on Joseph Kanyabashi’s Motion to Amend his Notice of Appeal, 5 April 2013 (“*Nyiramasuhuko et al.* 5 April 2013 Decision (Kanyabashi)”), para. 9; *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Decision on Pauline Nyiramasuhuko’s Motion to Amend her Amended Notice of Appeal, 18 February 2013 (“*Nyiramasuhuko et al.* 18 February 2013 Decision”), para. 7.

¹² See, e.g., *Nyiramasuhuko et al.* 8 May 2013 Decision, para. 12; *Nyiramasuhuko et al.* 5 April 2013 Decision (Ndayambaje), para. 9; *Nyiramasuhuko et al.* 5 April 2013 Decision (Kanyabashi), para. 9; *Nyiramasuhuko et al.* 18 February 2013 Decision, para. 7. See also Practice Direction on Formal Requirements for Appeals from Judgement, 15 June 2007, paras. 2, 3.

¹³ See, e.g., *Nyiramasuhuko et al.* 8 May 2013 Decision, para. 12; *Nyiramasuhuko et al.* 5 April 2013 Decision (Ndayambaje), para. 9; *Nyiramasuhuko et al.* 5 April 2013 Decision (Kanyabashi), para. 9; *Nyiramasuhuko et al.* 18 February 2013 Decision, para. 7.

¹⁴ See, e.g., *Nyiramasuhuko et al.* 8 May 2013 Decision, para. 13; *Nyiramasuhuko et al.* 5 April 2013 Decision (Ndayambaje), para. 10; *Nyiramasuhuko et al.* 5 April 2013 Decision (Kanyabashi), para. 10; *Nyiramasuhuko et al.* 18 February 2013 Decision, para. 8.

¹⁵ Motion, paras. 6, 7, p. 4.

to change the order of certain grounds of appeal.¹⁶ Given that former grounds 36 and 38 are interrelated, he proposes that former ground 38 will become ground 36, former ground 36 will become ground 37 and former ground 37 will become ground 38.¹⁷ Mr. Nizeyimana submits that the proposed reorganisation would accurately reflect the anticipated structure and logical organisation of his Appellant's brief and significantly improve the clarity of the grounds as a whole.¹⁸ He argues that these proposed variations do not alter the substance of his grounds, will not delay the proceedings, as he has not yet been served with the French translation of the Judgement and therefore the 40-day delay for the filing of his Appellant's brief has not started to run, and will not prejudice the Prosecution.¹⁹

8. Mr. Nizeyimana submits that this request for leave to amend his Notice of Appeal ensues from meeting with his Defence team in May 2013 in Arusha and is largely due to the present unavailability of the French version of the Judgement and his limited ability to understand English, which necessarily prevented him from issuing instructions prior to the filing of the original Notice of Appeal.²⁰

9. The Appeals Chamber considers that the amendments sought by Mr. Nizeyimana are minor and essentially serve to clarify and improve the legibility, comprehensibility, and structure of Mr. Nizeyimana's Notice of Appeal, without affecting its content. The Appeals Chamber also considers that allowing these requested amendments at the present stage of the proceedings would not result in any delay or affect the briefing schedule, given that the official French translation of the Trial Judgement has not yet been filed and that Mr. Nizeyimana is yet to file his Appellant's brief. In the absence of any objection from the Prosecution, and in view of the nature of these proposed amendments, the reasons they are being sought at this time, and the fact that they will not cause any delay or prejudice, the Appeals Chamber is satisfied that good cause exists and that it is in the interests of justice to allow them in the proposed form.²¹

¹⁶ Motion, paras. 6, 12.

¹⁷ Motion, paras. 6, 13.

¹⁸ Motion, paras. 13, 14.

¹⁹ Motion, paras. 12, 15, 16.

²⁰ Motion, paras. 10, 11.

²¹ See, e.g., *Nyiramasuhuko et al.* 8 May 2013 Decision, para. 21; *Nyiramasuhuko et al.* 5 April 2013 Decision (Ndayambaje), para. 22; *Nyiramasuhuko et al.* 5 April 2013 Decision (Kanyabashi), paras. 19, 20; *Nyiramasuhuko et al.* 18 February 2013 Decision, paras. 13, 16.

D. Disposition

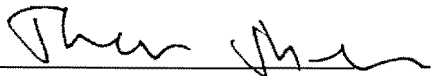
10. For the foregoing reasons, the Appeals Chamber **GRANTS** the Motion and **ACCEPTS** the Proposed Amended Notice of Appeal as Mr. Nizeyimana's operative notice of appeal in this case.

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

Done this 18th day of June 2013,
At The Hague,
The Netherlands.



[Seal of the Tribunal]



Judge Theodor Meron
Presiding