



ICTR-98-42-A

$$\{10613/H - 10611/H\}$$

Before: Judge Fausto Pocar, Pre-Appeal Judge

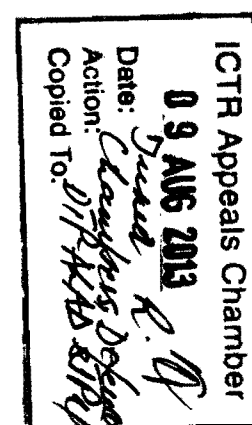
Registrar: Mr. Bongani Majola

Decision of: 9 August 2013

v.

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

Case No. ICTR-98-42-A



**DECISION ON NDAYAMBAJE’S MOTION FOR EXTENSION OF THE
WORD LIMIT FOR HIS REPLY RELATING TO
HIS 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 Nteziryayo

Frédéric Titinga Pacéré 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

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 “*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 the “Prosecution Response to Ndayambaje Rule [sic] 68 and 115 Motion” filed on 1 August 2013 (“Response to Ndayambaje Third Rules 68 and 115 Motion”), in which the Prosecution asks the Appeals Chamber to deny the Ndayambaje Third Rules 68 and 115 Motion in its entirety;²

NOTING that pursuant to paragraph 14 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal of 8 December 2006, Mr. Ndayambaje may file a reply to the Response to Ndayambaje Third Rules 68 and 115 Motion (“Reply”) within 14 days of the filing of the response, which is no later than 15 August 2013;

NOTING that pursuant to paragraph C(3) of the Practice Direction on the Length of Briefs and Motions on Appeal of 8 December 2006 (“Practice Direction on Length of Briefs”), replies “related to Rule 115 additional evidence” shall not exceed 3,000 words;

BEING SEISED OF the “*Requête en extrême urgence d’Élie Ndayambaje en extension de la limite de mots pour sa Réplique au Prosecution Response to Ndayambaje Rule 68 and 115 Motion*” filed on 7 August 2013 (“Motion”), in which Mr. Ndayambaje requests an extension of the word limit of his Reply to 7,000 words and that a decision on his Motion be issued prior to the expiry of the deadline for the filing of a response given the immediate date for the filing of his Reply and that doing so would not prejudice the Prosecution;³

NOTING that, in support of his Motion, Mr. Ndayambaje submits, *inter alia*, that: (i) the Response to Ndayambaje Third Rules 68 and 115 Motion deals with complex and important issues and contains errors which require additional words to be adequately addressed in the Reply; (ii) he will

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

² Response to Ndayambaje Third Rules 68 and 115 Motion, paras. 4, 65.

need to analyse in the Reply voluminous transcripts pages referred to in the Response to Ndayambaje Third Rules 68 and 115 Motion; (iii) it is in the interests of justice to allow him to provide the Appeals Chamber with all necessary details concerning the evidence on the record in this case, and, according to current estimates, the references to transcripts will necessitate almost 2,000 words; (iv) the requested extension is reasonable and will not prejudice the Prosecution; (v) the filing of a clear and complete reply will assist the Appeals Chamber in its deliberations; (vi) his right to make full answer and defence should prevail over considerations of judicial economy; (vii) his Reply cannot be further reduced in length without compromising its quality; and (viii) the extension will not delay evaluation of the Ndayambaje Third Rules 68 and 115 Motion;⁴

NOTING that the Prosecution has not yet responded to the Motion;

NOTING that pursuant to paragraph C(6) of the Practice Direction on Length of Briefs, a motion to exceed a word limit may be disposed of without giving the other party the opportunity to respond to the motion if the Pre-Appeal Judge is of the opinion that no prejudice would be caused to the other party;

FINDING that it is in the interests of justice to rule on the present Motion as soon as possible and that disposing of the Motion without awaiting the Prosecution's response would not cause it prejudice;

NOTING that pursuant to paragraph C(5) of the Practice Direction on Length of Briefs, a party may be authorised to exceed a word limit set in this practice direction if the applicant demonstrates "exceptional circumstances" in advance of the filing date;

RECALLING that "concision and cogency are the mark of an effective brief and that excessive length often frustrates the efficient administration of justice";⁵

RECALLING that a reply shall be limited to arguments in reply to the other party's response;⁶

³ Motion, paras. 3, 13, 18, p. 4.

⁴ Motions, paras. 8-17.

⁵ See, e.g., *Édouard Karemera and Matthieu Ngirumpatse v. The Prosecutor*, Case No. ICTR-98-44-A, Decision on Édouard Karemera's Motion for an Extension of the Word Limit for his Appellant's Brief, 3 January 2013, para. 9 and references cited therein. See also Decision on Nyiramasuhuko's, Ntahobali's, Kanyabashi's, and Ndayambaje's Motions for Extension of the Word Limit for their Appeal Briefs, 13 December 2012, para. 18 and references cited therein.

⁶ See *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motion for Leave to Present Additional Evidence pursuant to Rule 115, 5 May 2006, para. 8 ("In addition, the Appeals Chamber recalls that a reply should be limited to arguments contained in the response and that, to the extent the Rule 115 Reply included any completely new submission of law or fact, it was improper.").

RECALLING further that parties are allowed to append annexes of reasonable length to their filings containing references, source materials and other non-argumentative material and that those appendix do not count towards the word limit;⁷

CONSIDERING that, while the Reply will require analysis of the numerous references cited in the Response to Ndayambaje Third Rules 68 and 115 Motion, the justifications put forward by Mr. Ndayambaje do not warrant the exceptional extension of words requested;

FINDING that only a limited extension of 1,500 words is appropriate in the present circumstances;

HEREBY GRANT the Motion **in part**; and

AUTHORISE Mr. Ndayambaje to file a reply to the Response to Ndayambaje Third Rules 68 and 115 Motion not exceeding 4,500 words.

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

Done this nineteenth day of August 2013,
At The Hague,
The Netherlands.



[Seal of the Tribunal]

Judge Fausto Pocar
Pre-Appeal Judge

⁷ See Practice Direction on Length of Briefs, para. C(4).