



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

11757/H

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ICTR-98-42-A

22 August 2013

{11757/H - 117554/H}

Before: Judge Fausto Pocar, Pre-Appeal
Registrar: Mr. Bongani Majola
Decision of: 22 August 2013

THE PROSECUTOR

v.

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

Case No. ICTR-98-42-A

**ORDER CONCERNING NDAYAMBAJE'S THIRD RULES 68 AND 115
REPLY AND SANCTIONING NDAYAMBAJE'S COUNSEL**

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 Marciel

Counsel for Élie Ndayambaje

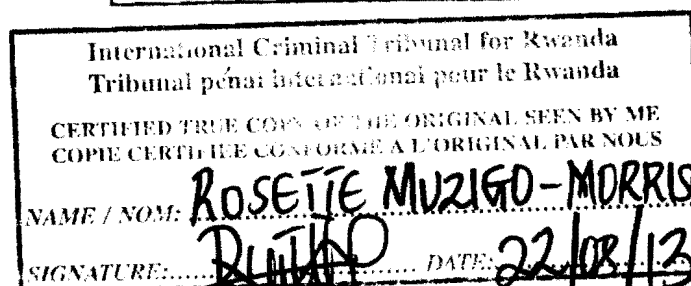
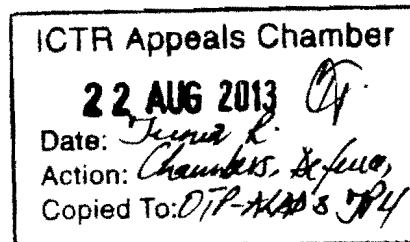
Pierre Boulé and Claver Sindayigaya

Office of the Prosecutor

Hassan Bubacar Jallow

James 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 (“Ndayambaje”) on 4 June 2013;

NOTING the “Prosecution Response to Ndayambaje Rule [*sic*] 68 and 115 Motion” filed by the Prosecution on 1 August 2013 (“Response to Ndayambaje Third Rules 68 and 115 Motion”);

NOTING the decision issued on 9 August 2013, in which I authorised Ndayambaje to file a reply to the Response to Ndayambaje Third Rules 68 and 115 Motion not exceeding 4,500 words;²

NOTING the “*Réplique d’Élie Ndayambaje à la ‘Prosecution Response to Ndayambaje Rule 68 and 115 Motion’*” filed by Ndayambaje on 15 August 2013 (“Ndayambaje Third Rules 68 and 115 Reply”);

RECALLING the decision issued on 13 December 2012, in which I, *inter alia*, warned Ndayambaje against any attempt to circumvent the procedural requirements of the Practice Direction on the Length of Briefs and Motions on Appeal of 8 December 2006 (“Practice Direction”) and reminded all the parties to abide by the practice directions applicable on appeal;³

RECALLING the decision issued on 18 February 2013, in which the Appeals Chamber, *inter alia*, reminded 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

RECALLING the order issued on 15 April 2013, in which I, *inter alia*, found that Ndayambaje attempted to circumvent the procedural requirements imposed by the Appeals Chamber and the Practice Direction by omitting spaces between words, numbers, and punctuation marks and warned

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

² Decision on Ndayambaje’s Motion for Extension of the Word Limit for His Reply Relating to His Third Rules 68 and 115 Motion, 9 August 2013 (“Decision of 9 August 2013”), p. 3.

³ Decision on Nyiramasuhuko’s, Ntahobali’s, Kanyabashi’s, and Ndayambaje’s Motions for Extensions of the Word Limit for Their Appeal Briefs, 13 December 2012 (“Decision of 13 December 2012”), paras. 7, 20.

⁴ Decision on Pauline Nyiramasuhuko’s Motion to Amend Her Amended Notice of Appeal, 18 February 2013, fn. 1, para. 28.

Counsel for Ndayambaje, within the meaning of Rule 46(A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), to abide strictly by the Appeals Chamber’s decisions and practice directions applicable on appeal subject to sanctions for abusive conduct;⁵

RECALLING FURTHER the status conference held in Arusha, Tanzania, on 10 May 2013, during which I, *inter alia*, again reminded all the parties to abide by the procedural requirements applicable on appeal and warned them to abide strictly by the Appeals Chamber’s decisions subject to refusal to declare filings admissible and to sanctions pursuant to Rule 46(A) of the Rules;⁶

NOTING that, in nearly all the paragraphs of the Ndayambaje Third Rules 68 and 115 Reply, a significant number of necessary spaces between words as well as between words and punctuation marks have been omitted from the text and the footnotes, such that words are incorrectly joined;

CONSIDERING that, if corrected, the omission of the necessary spaces would impact the word count and the Ndayambaje Third Rules 68 and 115 Reply would exceed the word limit imposed in the Decision of 9 August 2013;

CONSIDERING therefore that the Ndayambaje Third Rules 68 and 115 Reply does not comply with the Decision of 9 August 2013 and the Practice Direction;

RECALLING that Counsel bears the main responsibility in preparing submissions on appeal;⁷

CONSIDERING that, in light of the omission of a vast number of the necessary spaces, Counsel for 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 9 August 2013;

HEREBY FIND that the attempt to circumvent the procedural requirements imposed by the Decision of 9 August 2013 and the Practice Direction amounts to abusive conduct;

IMPOSE A SANCTION against Counsel for Ndayambaje, pursuant to Rule 46(A) of the Rules, in the form of non-payment of fees associated with the Ndayambaje Third Rules 68 and 115 Reply;

INSTRUCT the Registrar to implement this order; and

⁵ Order Issuing a Formal Warning to Counsel for Ntahobali, Kanyabashi, and Ndayambaje, 15 April 2013 (“Order of 15 April 2013”), pp. 1, 2.

⁶ AT. 10 May 2013 pp. 11-13.

⁷ See, e.g., Order of 15 April 2013, p. 2; *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).

FIND that the Ndayambaje Third Rules 68 and 115 Reply is not validly filed and, accordingly, will be disregarded.

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

Done this twenty-second day of August 2013
at The Hague,
The Netherlands.



Judge Fausto Pocar
Pre-Appeal Judge

[Seal of the Tribunal]