



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

11867/H/H

[Handwritten initials]

IN THE APPEALS CHAMBER

ICTR-98-42-A
27th Aug. 2013

{11867/H - 11862/H}

Before: Judge Fausto Pocar, Pre-Appeal Judge
Registrar: Mr. Bongani Majola
Decision of: 27 August 2013

The PROSECUTOR

v.

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

Case No. ICTR-98-42-A

**DECISION ON MOTIONS FOR EXTENSIONS OF TIME LIMIT AND
WORD LIMIT FOR THE FILING OF THE REPLY BRIEFS**

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

ICTR Appeals Chamber
27 AUG 2013 *[Handwritten initials]*
Date: *June 20 R.*
Action: *Chambers. Defend.*
Copied To: *DTP-ARAD & JPC*

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: **27/8/13**

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;¹

NOTING the Trial Judgement pronounced in this case by Trial Chamber II of the Tribunal on 24 June 2011 and issued in writing in English on 14 July 2011;²

NOTING the appeal briefs filed by Pauline Nyiramasuhuko (“Nyiramasuhuko”), Arsène Shalom Ntahobali (“Ntahobali”), Sylvain Nsabimana (“Nsabimana”), Joseph Kanyabashi (“Kanyabashi”), and Élie Ndayambaje (“Ndayambaje”) on 8 April 2013,³ and the appeal brief filed by Alphonse Nteziryayo (“Nteziryayo”) on 13 May 2013;⁴

NOTING the consolidated response brief filed confidentially and in English by the Prosecution on 21 August 2013;⁵

NOTING that, pursuant to Rule 113 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), the appellants may file briefs in reply within 15 days of the filing of the Response Brief;

NOTING that, pursuant to paragraph C(1)(c) of the Practice Direction on the Length of Briefs and Motions on Appeal of 8 December 2006 (“Practice Direction”), a reply brief in an appeal from judgement shall not exceed 9,000 words;

BEING SEISED OF four motions filed, respectively, by Ntahobali on 23 August 2013, Nyiramasuhuko on 26 August 2013, Ndayambaje on 26 August 2013, and Kanyabashi on 27 August 2013, seeking an extension of time to file their reply briefs and leave to exceed the word

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

² *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Judgement and Sentence, delivered in public and signed on 24 June 2011, filed on 14 July 2011 (“Trial Judgement”).

³ *Mémoire d'appel de Pauline Nyiramasuhuko*, 8 April 2013 (confidential); *Mémoire d'appel d'Arsène Shalom Ntahobali*, 8 April 2013 (confidential); *Mémoire d'appel*, 8 April 2013; *Mémoire d'appel de Joseph Kanyabashi*, 8 April 2013; *Mémoire d'appel d'Élie Ndayambaje*, 8 April 2013 (confidential) as corrected by *Corrigendum du Mémoire d'appel d'Élie Ndayambaje*, 19 April 2013 (confidential).

⁴ Revised Confidential Appeal Brief on Behalf of Alphonse Nteziryayo, 13 May 2013 (confidential) as corrected by Confidential Corrected Revised Appeal Brief on Behalf of Alphonse Nteziryayo, 14 June 2013 (confidential).

⁵ Prosecution Consolidated Respondent's Brief, 21 August 2013 (confidential) (“Response Brief”).

limit as well as a motion filed by Nsabimana on 26 August 2013 seeking an extension of time to file his reply brief;⁶

NOTING that, in support of his request for an extension of the time limit to 60 days as well as an extension of the word limit of his reply brief to 30,000 words,⁷ Ntahobali submits that good cause and exceptional circumstances justifying the requested extensions exist due to: (i) the complexity and significance of the issues raised on appeal as well as the length of the Trial Judgement; (ii) the complexity and length of the Response Brief, including the fact that Ntahobali must also analyse parts of the Response Brief responding to Nyiramasuhuko's and Nsabimana's appeal briefs with respect to the Butare Prefecture Office; (iii) the fact that Ntahobali does not read English and needs additional time to discuss and give instructions to his Counsel; and (iv) the interests of justice to prepare a comprehensive reply brief;⁸

NOTING that, in support of her request for an extension of the time limit to 60 days as well as an extension of the word limit of her reply brief to 30,000 words,⁹ Nyiramasuhuko submits that good cause and exceptional circumstances justifying the requested extensions exist due to: (i) the complexity and length of the Trial Judgement and, accordingly, of her appeal brief as well as the significance and unprecedented character of the issues raised on appeal; (ii) the complexity and length of the Response Brief; (iii) the fact that the main working language of her Defence team is French; (iv) the fact that the requested extension will not delay the proceedings; and (v) the interests of justice to prepare a meaningful reply brief;¹⁰

NOTING that, in support of his request for an extension of the time limit to 35 days as well as an extension of the word limit of his reply brief to 20,000 words,¹¹ Ndayambaje submits that good cause and exceptional circumstances justifying the requested extensions exist due to: (i) the interests of justice to prepare a comprehensive reply brief; (ii) the complexity and length of the Trial Judgement; (iii) the complexity and length of the Response Brief, including the fact that Ndayambaje must also analyse parts of the Response Brief responding to the appeal brief of Nteziryayo with respect to Ndayambaje's swearing-in ceremony on 22 June 1994 as well as the fact

⁶ *Requête d'extrême urgence d'Arsène Shalom Ntahobali en extension de délais et de mots pour la production du Mémoire en réplique*, 23 August 2013 ("Ntahobali Motion"); *Requête urgente de Pauline Nyiramasuhuko en extension de délai et de mots pour le dépôt du Mémoire en réplique*, 26 August 2013 ("Nyiramasuhuko Motion"); *Requête en extrême urgence d'Elie Ndayambaje en extension de délai et de la limite de mots de son Mémoire d'appel en réplique*, 26 August 2013 ("Ndayambaje Motion"); *Requête urgente de Joseph Kanyabashi sollicitant l'augmentation du nombre de mots pour son Mémoire en réplique ainsi qu'un délai additionnel*, 27 August 2013 ("Kanyabashi Motion"); *Requête en extrême urgence de l'appelant Sylvain Nsabimana en prorogation de délai pour le dépôt de son Mémoire en réplique*, 26 August 2013 ("Nsabimana Motion") (collectively "Motions").

⁷ Ntahobali Motion, para. 1, pp. 7, 8.

⁸ Ntahobali Motion, paras. 6-22.

⁹ Nyiramasuhuko Motion, paras. 9, 27, 38, p. 11838/H (Registry's pagination).

¹⁰ Nyiramasuhuko Motion, paras. 12-26; 30-37.

that the Response Brief contains incorrect factual assertions and deviations from the relevant jurisprudence; (iv) the fact that the main working language of his Defence team is French; (v) the fact that his Defence team must travel to Arusha to consult with him; (vi) the fact that the requested extension will not delay the proceedings; and (vii) the absence of prejudice to the Prosecution;¹²

NOTING that, in support of his request for an extension of the time limit to 45 days as well as an extension of the word limit of his reply brief to 15,000 words,¹³ Kanyabashi submits that good cause and exceptional circumstances justifying the requested extensions exist due to: (i) the complexity and significance of the issues raised on appeal as well as the length of the Trial Judgement; (ii) the complexity and length of the Response Brief, including the fact that Kanyabashi must read the Response Brief in its entirety given the overlapping factual and legal considerations that are developed in parts of the Response Brief dedicated, in particular, to Nyiramasuhuko's and Ntahobali's appeals; (iii) the fact that the main working language of his Defence team is French; and (iv) the fact that the requested extension will not delay the proceedings;¹⁴

NOTING that, in support of his request for an extension of the time limit to 45 days,¹⁵ Nsabimana submits that good cause justifying the requested extension exists due to: (i) the complexity and length of the Response Brief, including the fact that Nsabimana must also analyse parts of the Response Brief responding to Ntahobali's and Nyiramasuhuko's appeal briefs with respect to the Butare Prefecture Office; (ii) the fact that he must read the Response Brief in its entirety or at least the parts responding to Ntahobali's, Nyiramasuhuko's, Nteziryayo's, and Kanyabashi's appeal briefs, given the conflict of interests between the co-appellants in this case; and (iii) the complexity of the case and the volume of the trial record;¹⁶

NOTING that Ntahobali, Nyiramasuhuko, Ndayambaje, and Kanyabashi further argue that, absent extensions of time limit and word limit, they will not be in a position to reply properly to the Response Brief;¹⁷

NOTING that the Prosecution has not responded to the Motions yet;¹⁸

¹¹ Ndayambaje Motion, paras. 4, 12, 28, p. 9.

¹² Ndayambaje Motion, paras. 10-36.

¹³ Kanyabashi Motion, paras. 8, 9, 18, 20, 21.

¹⁴ Kanyabashi Motion, paras. 11-19.

¹⁵ Nsabimana Motion, para. 3, p. 3.

¹⁶ Nsabimana Motion, paras. 6-15.

¹⁷ Ntahobali Motion, para. 22; Nyiramasuhuko Motion, paras. 33, 35; Ndayambaje Motion, paras. 11, 13, 34; Kanyabashi Motion, para. 11.

¹⁸ I note that, in light of the 15-day deadline for the filing of their reply briefs, Ntahobali, Ndayambaje, and Nsabimana request that their motions be considered without awaiting the prosecution's response. *See* Ntahobali Motion, para. 23; Ndayambaje Motion, para. 37; Nsabimana Motion, para. 16. In light of the appellants' immediate need for clarity as to the time limit and word limit for the filing of their reply briefs and the absence of prejudice to the Prosecution, I

CONSIDERING that Rule 116(A) of the Rules allows for the extension of a time limit upon a showing of good cause;

CONSIDERING that paragraph C(5) of the Practice Direction allows for the extension of a word limit upon a showing of exceptional circumstances in advance of the filing date;

CONSIDERING that, in the special circumstances of this case, good cause and exceptional circumstances justifying extensions of the time limit and the word limit have been demonstrated by: (i) the length of the Response Brief, which contains 260,407 words; (ii) the significance, scope, and complexity of the arguments to which each appellant may reply; and (iii) the fact that the requested extensions will not impact the overall time dedicated to considering these appeals and that it is in the interests of justice to ensure that the appellants have sufficient time to prepare meaningful and comprehensive reply briefs in full conformity with the applicable provisions;

FINDING in light of the foregoing that there is good cause for extensions of the time limit for the filing of all the appellants' reply briefs and exceptional circumstances for extensions of the word limit for the filing of the reply briefs of Ntahobali, Nyiramasuhuko, Ndayambaje, and Kanyabashi;

CONSIDERING, however, that the extensions of the time limit requested by Ntahobali, Nyiramasuhuko, Kanyabashi, and Nsabimana are not justified by the circumstances of this case and that more limited extensions are warranted;

CONSIDERING FURTHER that, pursuant to paragraph 6 of the Practice Direction on Formal Requirements for Appeals from Judgement of 4 July 2005, reply briefs shall be limited to arguments in reply to the response brief and, therefore, that more limited extensions of word limit than the extensions requested by Ntahobali, Nyiramasuhuko, Ndayambaje, and Kanyabashi are justified in the present case and that these extensions should be proportional to the length of the arguments in the Response Brief to which Ntahobali, Nyiramasuhuko, Ndayambaje, and Kanyabashi may reply;

HEREBY GRANT the Motions **in part**;

ORDER:

consider that it is in the interests of justice to dispose of the Motions without awaiting the Prosecution's response. *See* Practice Direction, para. 6.

(i) Ntahobali and Nyiramasuhuko to file their reply briefs no later than **45 days** from the date of the filing of the Response Brief, *i.e.* on **7 October 2013**;¹⁹

(ii) Ndayambaje to file his reply brief no later than **35 days** from the date of the filing of the Response Brief, *i.e.* on **25 September 2013**;

(iii) Nsabimana and Kanyabashi to file their reply briefs no later than **30 days** from the date of the filing of the Response Brief, *i.e.* on **20 September 2013**;

AUTHORISE, *proprio motu*, Nteziryayo to file his reply brief no later than **30 days** from the date of the filing of the Response Brief, *i.e.* on **20 September 2013**;

AUTHORISE:

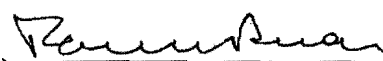
- (i) Ntahobali to file a reply brief not exceeding 23,000 words;
- (ii) Nyiramasuhuko to file a reply brief not exceeding 21,000 words;
- (iii) Ndayambaje to file a reply brief not exceeding 16,000 words;
- (iv) Kanyabashi to file a reply brief not exceeding 11,000 words; and

REMINDE all the parties to abide strictly by the practice directions applicable on appeal.

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

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




Judge Fausto Pocar
Pre-Appeal Judge

[Seal of the Tribunal]

¹⁹ I note that Ntahobali's and Nyiramasuhuko's reply briefs are to be filed no later than 5 October 2013, which is a Saturday. According to paragraph 16 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal of 8 December 2006, "[s]hould the last day of a time prescribed fall upon a non-working day of the Tribunal, it shall be considered as falling on the first working day thereafter".