



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

18157/H

Q

IN THE APPEALS CHAMBER

ICTR-98-42-A

27th March 2015

{18157H - 18153/H}

Before: Judge Fausto Pocar, Presiding
Judge Liu Daqun
Judge Carmel Agius
Judge Khalida Rachid Khan
Judge Bakhtiyar Tuzmukhamedov

Registrar: Mr. Bongani Majola

Decision of: 27 March 2015

ICTR Appeals Chamber
Date: **27 MAR 2015**
Action: *Filed*
Copied To: *Chambers, Safeco, OIPALAD & HAS*

THE PROSECUTOR

v.

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

Case No. ICTR-98-42-A

**DECISION ON NTAHOBALI'S FIFTH MOTION TO PRESENT
ADDITIONAL EVIDENCE**

Counsel for Pauline Nyiramasuhuko

Nicole Bergevin and Guy Poupert

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 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 MOI
NAME / NOM: **ROSETTE MUZIGO-MORRISON**
SIGNATURE: *[Signature]* DATE: **27 MAR 2015**

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);

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;¹

NOTING that Arsène Shalom Ntahobali (“Ntahobali”) was found guilty of genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and sentenced to a single term of life imprisonment;²

NOTING that Ntahobali filed his initial notice of appeal against the Trial Judgement on 17 October 2011³ and that the filing of the submissions related to his appeal was completed on 7 October 2013 by the filing of his brief in reply;⁴

BEING SEISED OF a motion filed by Ntahobali on 7 March 2014, in which he requests the admission as additional evidence on appeal pursuant to Rule 115 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) of satellite photographs of Butare Town taken by the United States of America on 23, 28, and 30 May 1994 as well as on 1 June 1994 (“Satellite Photographs”);⁵

NOTING the response filed by the Prosecution on 7 April 2014, in which it objects to the Motion on the ground, *inter alia*, that Ntahobali did not show good cause for filing it after the expiration of the prescribed time limit, since he was in possession of the Satellite Photographs several days prior

¹ *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Judgement and Sentence, pronounced on 24 June 2011, issued in writing on 14 July 2011 (“Trial Judgement”).

² Trial Judgement, paras. 6186, 6271. *See also ibid.*, para. 6210.

³ *Acte d’appel d’Arsène Shalom Ntahobali*, 17 October 2011.

⁴ Arsène Shalom Ntahobali’s Brief in Reply, 5 August 2014 (confidential; original French version filed on 7 October 2013). The Appeals Chamber reclassified as confidential the original French version. *See* Decision on Prosecution’s Motion to Withdraw Public Filings and on Nyiramasuhuko’s and Ntahobali’s Counter Motions to Reclassify Confidential Status, 17 March 2014, para. 29.

⁵ Arsène Shalom Ntahobali’s Fifth Motion to Present Additional Evidence, 20 August 2014 (public with confidential annexes; original French version filed on 7 March 2014) (“Motion”), para. 1, p. 22. Ntahobali also outlines the numerous steps he took to obtain additional photographs as well as photographs of better quality without annotations and comments. *See ibid.*, paras. 2-39.

to the expiration of that time limit and nevertheless waited four additional months before filing his Motion without reasonable justification;⁶

NOTING the reply filed by Ntahobali on 22 April 2014, in which he submits, *inter alia*, that: (i) he proceeded as expeditiously as the circumstances of the case permitted;⁷ (ii) he “was justified, before filing his Rule 115 Motion, in making every possible attempt to obtain other photographs that proved that he was innocent of the very serious crimes for which he was held responsible”;⁸ and (iii) “it would have been contrary to the interests of justice to file more than one motion in respect of the photographs by separating those with comments or adding those without comments” and “counterproductive to file more than one motion had [he] obtained photographs other than those here concerned”;⁹

RECALLING that, pursuant to Rule 115(A) of the Rules, a party may apply to present additional evidence on appeal by a motion filed no later than 30 days from the date for filing of the brief in reply unless good cause or, after the appeal hearing, cogent reasons are shown for a delay;

NOTING that, in the present case, the 30-day time limit to submit a request to present additional evidence expired for Ntahobali on 6 November 2013;

RECALLING that, on 14 November 2013, the Pre-Appeal Judge reminded all the parties that for all motions filed after the expiration of the prescribed time limit, the moving party must “demonstrate that it was not able to comply with the time limit set out in the Rule, and that it submitted the motion in question as soon as possible after it became aware of the existence of the evidence sought to be admitted”;¹⁰

NOTING that the Motion was filed four months after the expiration of the time limit;

⁶ Response to Ntahobali’s 5th Rule 115 Motion, 7 April 2014 (“Response”), paras. 1, 5-9, 43. The Prosecution also highlights that only one out the six photographs he seeks to have admitted contains annotations and comments. *See ibid.*, para. 8.

⁷ Arsène Shalom Ntahobali’s Reply to the Response to Ntahobali’s 5th Rule 115 Motion, 3 October 2014 (original French version filed on 22 April 2014) (“Reply”), para. 2.

⁸ Reply, para. 3.

⁹ Reply, para. 4.

¹⁰ Decision on Ndayambaje’s Motion for Extension of the Time Limit for the Filing of a Motion to Present Additional Evidence, 14 November 2013, p. 3 (emphasis omitted). *See also Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Vujadin Popović’s Sixth Motion for Admission of Additional Evidence on Appeal Pursuant to Rule 115, 22 July 2014, pp. 1, 2; Decision on Ndayambaje’s Motion for Extension of the Time Limit for the Filing of a Motion to Present Additional Evidence, 14 November 2013, p. 3; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Vujadin Popović’s Fourth Motion for Admission of Additional Evidence Pursuant to Rule 115 of the Rules, 7 October 2013, para. 13.

NOTING that Ntahobali concedes that he became aware of the existence of the Satellite Photographs in February or March 2012 during the trial of Béatrice Munyenyezi in the United States of America (“Munyenzezi Trial”);¹¹

NOTING further that Ntahobali received the electronic versions of the photographs he now seeks to have admitted on appeal on 1 November 2013;¹²

CONSIDERING that, whilst Ntahobali argues that the photographs he received “did not meet his requirements”,¹³ the only explanation he provides for his decision to let the Rule 115(A) deadline lapse while he persisted in attempting to obtain additional photographs and photographs without annotations is that it would have been contrary to the interests of justice and counterproductive to file more than one motion;

CONSIDERING that the Government of the United States of America (“United States Government”) had repeatedly, from August 2012, indicated to Ntahobali that it did not have other information that would be responsive to his requests and could not remove the further markings,¹⁴ and that it considered “this matter to be closed” on 21 November 2013;¹⁵

CONSIDERING also that Ntahobali acknowledges that, as early as 5 February 2013, the United States Government informed him “that they did not have any ‘photographs, prints or other images’ apart from those” of 23, 28, and 30 May as well as of 1 June 1994, which were publicly available all along and could be obtained from the court where the Munyenyezi Trial took place;¹⁶

CONSIDERING further that, despite the Appeals Chamber’s ruling on 13 February 2014 that Ntahobali had failed to demonstrate that the United States Government was capable of removing the further markings on the photographs it provided to him or was in possession of additional photographs that would be responsive to his requests,¹⁷ Ntahobali did not file the Satellite Photographs he received on 1 November 2013 until 7 March 2014;

¹¹ Motion, paras. 2, 3.

¹² Motion, Annex Z (confidential), p. 15779/H (Registry pagination). Ntahobali asserts that the original photographs were received by post on 7 November 2013. *See* Motion, para. 25.

¹³ Motion, para. 26.

¹⁴ *See* Motion, Annex G (confidential), p. 15836/H (Registry pagination); Annex M (confidential), p. 15814/H (Registry pagination); Annex BB (confidential), p. 15773/H (Registry pagination).

¹⁵ Motion, Annex BB (confidential), p. 15773/H (Registry pagination).

¹⁶ Motion, paras. 7, 13. *See also* Motion, Annex M (confidential), p. 15814/H (Registry pagination).

¹⁷ Decision on Ntahobali’s Motion for an Order Requesting Cooperation from the United States of America, 13 February 2014 (confidential and *ex parte*), p. 3. The Appeals Chamber notes that the confidential and *ex parte* status was granted to preserve Ntahobali’s rights but that there is no longer any reason to keep the information disclosed in this decision from the public domain.

FINDING, therefore, that Ntahobali has not shown good cause for his failure to comply with the time limit set out in Rule 115(A) of the Rules as he has failed to demonstrate that the Motion was filed as soon as possible after he became aware of the existence of the Satellite Photographs;

FOR THE FOREGOING REASONS,

DISMISSES the Motion in its entirety.

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

Done this twenty-seventh day of March 2015,
at The Hague,
The Netherlands.



[Seal of the Tribunal]

A handwritten signature in black ink, which appears to read "Fausto Pocar".

Judge Fausto Pocar
Presiding Judge