

**THE APPEALS CHAMBER**

Case No.: STL-11-01/PT/AC/AR126.1

Before: Judge David Baragwanath, Presiding
Judge Ralph Riachy
Judge Afif Chamseddine
Judge Daniel David Ntanda Nsereko, Judge Rapporteur
Judge Kjell Erik Björnberg

Registrar: Mr Herman von Hebel

Date: 31 August 2012

Original language: English

Classification: Public

THE PROSECUTOR

v.

**SALIM JAMIL AYYASH
MUSTAFA AMINE BADREDDINE
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA**

**DECISION ON DEFENCE REQUESTS FOR EXTENSION OF TIME TO FILE
APPEAL**

Prosecutor:
Mr Norman Farrell

Counsel for Mr Salim Jamil Ayyash:
Mr Eugene O'Sullivan
Mr Emile Aoun

Head of Defence Office:
Mr François Roux

Counsel for Mr Mustafa Amine Badreddine:
Mr Antoine Korkmaz
Mr John Jones

Counsel for Mr Hussein Hassan Oneissi:
Mr Vincent Courcelle-Labrousse
Mr Yasser Hassan

Counsel for Mr Assad Hassan Sabra:
Mr David Young
Mr Guénaél Mettraux





INTRODUCTION

1. We are seized of a request by Defence Counsel for Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi, and Assad Hassan Sabra¹ for an extension of time to file an appeal against the Trial Chamber's "Decision on Reconsideration of the Trial *In Absentia* Decision" of 11 July 2012 ("Reconsideration Decision").² Specifically, Counsel seek an order allowing them to file their appeals five working days after they receive certain confidential documents from the Registry.³ However, while we find that good cause has been shown to justify an extension, we hold that an extension of two days (four working days after the Defence received the materials) to file an appeal is sufficient under the circumstances.

PROCEDURAL BACKGROUND

2. On 11 July 2012, the Trial Chamber issued its Reconsideration Decision dismissing the Defence's motions seeking reconsideration of its "Decision to Hold Trial *In Absentia*."⁴ On 23 August 2012, the Trial Chamber granted certification to the four Accused to appeal the Reconsideration Decision.⁵ Pursuant to Rule 126(E) of the Rules, the Defence appeals are presently due on 3 September 2012.

3. On 22-24 May 2012, the Defence requested access to a number of *ex-parte* documents relied on by the Trial Chamber in its *In Absentia* Decision.⁶ The Trial Chamber granted the request and

¹ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/AC/AR126.1: Requête de la Défense de MM. Badreddine, Oneissi et Sabra en prorogation du délai de dépôt du mémoire d'appel à l'encontre de la «Décision relative au réexamen de la décision portant ouverture d'une procédure par défaut», 30 August 2012 ("Request"), Salim Ayyash's Joinder in Joint Defence Motion Regarding Reconsideration Filed on 30 August 2012, 31 August 2012 ("Joinder").

² STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/TC, Decision on Reconsideration of the Trial *In Absentia* Decision, 11 July 2012

³ Request, para. 7; Joinder, para. 3.

⁴ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/TC, Decision to Hold Trial *In Absentia*, 1 February 2012 ("*In Absentia* Decision")

⁵ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/AC, Decision Certifying for Appeal the "Decision on Reconsideration of the Trial *In Absentia* Decision", 23 August 2012.

⁶ STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/TC, Request of the Defence for Mr Badreddine for Reconsideration of the "Decision to Hold Trial *In Absentia*" Rendered by the Trial Chamber on 1 February 2012, 22 May 2012, para. 4; Sabra Motion for Reconsideration of the Trial Chamber's Order to Hold a Trial *In Absentia*, 23 May 2012, para. 2; Request by the Oneissi Defence for Reconsideration of the Decision to Hold Trial *In Absentia* of 1 February 2012, 24 May 2012, para. 3, Ayyash Motion Joining Sabra Motion for Reconsideration of the Trial Chamber's Order to Hold a Trial *In Absentia*, 24 May 2012, para. 4.



released the documents to the Defence on 21 June 2012.⁷ On 27 June 2012, Counsel filed a joint supplementary submission stating that the communication of these documents “appear[ed] to have been incomplete.”⁸

4. On 30 August 2012, after applying appropriate redactions, the Trial Chamber instructed the Registry to disclose the remaining requested documents to Defence Counsel.⁹ That same day, Counsel for Messrs Badreddine, Oneissi, and Sabra filed the present Request before the Appeals Chamber. On 31 August 2012, Counsel for Mr Ayyash joined their submission in all respects, stating that the Defence had received the material on 30 August 2012.¹⁰ The Prosecutor has indicated to the Legal Officer in the Appeals Chamber that he will not file a response.

5. The Presiding Judge of the Appeals Chamber designated Judge Nsereko as Judge Rapporteur in this matter pursuant to Rule 36.

DISCUSSION

6. Counsel asserts that, assuming they received the complete set of documents from the Registry by 30 August 2012, they would only have two working days in which to analyze them and incorporate them into their appeals.¹¹ Furthermore, they state that the Trial Chamber indicated in its Reconsideration Decision that it relied on them as “the most relevant documents.”¹² Accordingly, not allowing for an extension of time to file an appeal would be a violation of the principles of due process and equality of arms.¹³

7. Rule 9 allows the Appeals Chamber to enlarge any time limit prescribed by the Rules on good cause being shown by motion. Taking into consideration that the Defence only received the relevant documents from the Registry on 30 August 2012,¹⁴ as well as the importance that the

⁷ STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/TC, Order on *Ex-Parte* Documents Used in Decision of 1 February 2012, 21 June 2012.

⁸ STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/TC, Joint Submissions Regarding the Material Relied upon by the Trial Chamber in its *Absentia* Decision, 27 June 2012, para. 15. In its Reconsideration Decision (fn 39), the Trial Chamber noted that due to an administrative oversight, some documents had not been disclosed.

⁹ STL, *Prosecutor v Ayyash et al*, Case No. STL-11-01/PT/TC, Order on Confidential Documents Used in Decision of 1 February 2012, 30 August 2012.

¹⁰ Joinder, para. 2.

¹¹ Request, para. 3.

¹² Request, para. 4, referring to *In Absentia* Decision, para. 76.

¹³ Request, para. 5.

¹⁴ Joinder, para. 2.



Defence attaches to these materials, we are satisfied that the Defence has shown good cause to warrant an extension of time to file their appeals. However, the Chamber finds that four working days from the date the materials were received are sufficient for the Defence to familiarize itself with their content. Given that the appeals are due on 3 September 2012, we find that an extension of time of two days is warranted under the circumstances.

DISPOSITION

FOR THESE REASONS;

THE APPEALS CHAMBER, deciding unanimously;

PURSUANT to Rules 126 and 9 of the Rules;

GRANTS IN PART the Request of Counsel for Messrs Ayyash, Badreddine, Oneissi, and Sabra for an extension of time and;

ORDERS them to file their appeals by 5 September 2012.

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

Dated this 31st day of August 2012,

Leidschendam, the Netherlands

Judge David Baragwanath

Presiding

