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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-97-31-A
26th February 2010
{85/H - 80/H}

IN THE APPEALS CHAMBER

Before: Judge Carmel Agius, Pre-Appeal Judge

Registrar: Mr. Adama Dieng

Decision of: 26 February 2010

ICTR Appeals Chamber
Date: 26th February 2010
Action: A. J. J. J.
Copied To: Concerned Judges,
Parties, Judicial Archives,
HQ, HSS
[Signature]

Tharcisse RENZAHO

v.

THE PROSECUTOR

Case No. ICTR-97-31-A

**DECISION ON MOTION FOR DISCLOSURE AND FOR EXTENSION OF TIME FOR
THE FILING OF APPELLANT'S BRIEF**

Counsel for Tharcisse Renzaho:

François Cantier, Lead Counsel

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
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NAME / NOM: *KOFFI KUMELIO A. AFANDÉ*

SIGNATURE: *[Signature]* DATE: *28 Feb 2010*

Office of the Prosecutor:

Hassan Bubacar Jallow

Alex Obote-Odora

Alphonse Van

Abdoulaye Seye

Clair Duffy

Florida Kabasinga

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1. I, CARMEL AGIUS, 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, am seised of a motion filed on 9 February 2010 by Tharcisse Renzaho for the disclosure of documents and an extension of time to file his Appellant's Brief.¹ On 19 February 2010, the Office of the Prosecutor ("Prosecution") filed its response and disclosed some of the documents requested by Mr. Renzaho in his Motion.² On 23 February 2010, Mr. Renzaho filed his reply.³

A. Background

2. Trial Chamber I pronounced its judgement against Mr. Renzaho on 14 July 2009 and issued its opinion in writing in English on 14 August 2009.⁴ On 22 September 2009, I denied Mr. Renzaho's request for a 30-day extension of time to file his Notice of Appeal from the filing of the French translation of the Trial Judgement because his Counsel is able to work in English.⁵ However, on 21 October 2009, I found Mr. Renzaho's inability to speak or read English to constitute good cause to allow for a limited extension of time to file his Appellant's Brief.⁶

3. On 2 October 2009, Mr. Renzaho filed his Notice of Appeal.⁷ The French translation of the Trial Judgement was served on the Parties on 21 January 2010. Accordingly, Mr. Renzaho's Appellant's Brief is due no later than 2 March 2010.⁸

¹ *Requête en demande de communication de pièces (articles 66 et 68 du RPP) et demande de report de délai (article 116 RPP)*, 9 February 2010 ("Motion").

² *Réponse du Procureur à la "Requête en demande de communication de pièces (articles 66 et 68 du RPP) et Demande de report de Délai (article 116 RPP)"*, 19 February 2010 ("Response"); *Communication de pièces – Articles 66, 68 et 75(F) du Règlement*, confidential, 19 February 2010 ("Disclosure").

³ *Réplique en extrême urgence à la Réponse du Procureur*, 23 February 2010 ("Reply").

⁴ *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-T, Judgement and Sentence, dated 14 July 2009 and filed on 14 August 2009 ("Trial Judgement").

⁵ *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-A, Decision on Tharcisse Renzaho's Motion for Extension of Time for the Filing of Notice of Appeal and Brief in Reply, 22 September 2009, paras. 2, 5, 8 ("Decision of 22 September 2009"). Mr. Renzaho also requested a 15-day extension of time for the filing of his Brief in Reply from the filing of the French translation of the Prosecution's Respondent's Brief, should it be filed in English. This request was considered premature and therefore declared moot. See Decision of 22 September 2009, paras. 7, 8.

⁶ *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-A, Decision on Tharcisse Renzaho's Motion for Extension of Time for the Filing of Appellant's Brief, 21 October 2009, paras. 3, 5, 7 ("Decision of 21 October 2009"). Mr. Renzaho was granted a 40-day extension of time for the filing of his Appellant's Brief from the filing of the French Translation of the Trial Judgement in light of the fact that Counsel has the ability to work in both English and French, and could therefore discuss the draft of the Appellant's Brief with Mr. Renzaho, subject to his final approval once the French translation of the Trial Judgement was filed. See Decision of 21 October 2009, para. 6.

⁷ *Acte d'Appel*, 2 October 2009 ("Notice of Appeal").

⁸ Decision of 21 October 2009, para. 7.

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B. Submissions

4. Mr. Renzaho requests that the time-limit for the filing of his Appellant's Brief should start running from the date on which the Prosecution discloses all materials he requested in two letters to the Prosecution dated 15 January and 2 February 2010,⁹ as well as any other relevant materials in its possession ("Requested Documents").¹⁰

5. He submits that, despite his two written requests, the Prosecution has failed to disclose relevant and exculpatory documents which are essential to the preparation of his defence on appeal.¹¹ He contends that the Requested Documents go to the heart of the credibility of witnesses and constitute potential new facts to be considered by the Appeals Chamber.¹² He submits that the Prosecution's disclosure violations under Rules 66 and 68 of the Rules of Procedure and Evidence of the Tribunal ("Rules") constitute good cause pursuant to Rule 116 of the Rules to allow for the requested extension of time to file his Appellant's Brief.¹³

6. The Prosecution opposes the Motion in its entirety.¹⁴ It argues that the Motion is unfounded in law, insufficiently precise as to the majority of Requested Documents, and that it does not demonstrate that they are exculpatory or essential to Mr. Renzaho's defence at this stage of the proceedings.¹⁵ The Prosecution further contends that a request so vague and unsubstantiated cannot constitute good cause to further delay the filing of Mr. Renzaho's Appellant's Brief.¹⁶ Nevertheless, and without prejudice to its position, the Prosecution states that it has disclosed some of the Requested Documents ("Provided Documents").¹⁷

⁹ Motion, p. 4. See also paras. 1, 3.

¹⁰ Motion, para. 27, p. 4.

¹¹ Motion, paras. 1-4, 19-21, p. 4. I note that Mr. Renzaho has not provided the aforementioned letters of 15 January and 2 February 2010. The Requested Documents as enumerated in para. 10 of the Motion are:

(1) Rugenge Gacaca judgement of 24 October 2003 against Alphonse Macumi with reference number RP 199/CSK/RMP2250/S12, as well as the *pro-justicia* statements in this Gacaca trial of *Renzaho* Prosecution Witnesses ACK and HAD;

(2) Rwandan Military Court judgement of 16 November 2006 against General Munyakazi with reference number RMP5515/SI/AM/KGL/IKT/97;

(3) Exhibit P54 tendered on 20 April 2009 in the *Setako* case;

(4) A document of Lieutenant Colonel Munyakazi dated 14 September 1995 with reference numbers K0178577-K0178578;

(5) A UNAMIR document covering the period of 11 to 12 April 1994 with reference number K0000702;

(6) A list of *Renzaho* Prosecution witnesses who subsequently testified in other cases before the Tribunal, including their public and private transcripts;

(7) A copy of all judgements and/or statements from jurisdictions outside the Tribunal in the Prosecution's possession involving any witness called in the *Renzaho* case.

¹² Motion, para. 12.

¹³ Motion, paras. 18, 23-27.

¹⁴ Response, paras. 2, 9, 19.

¹⁵ Response, paras. 2-8.

¹⁶ Response, paras. 2, 12-18.

¹⁷ Response, paras. 6, 7, 10; Disclosure, para. 3, and annexes. The Provided Documents are:

(1) The Rugenge Gacaca judgement with reference number RP 199/CSK/RMP2250/S12;

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7. The Prosecution indicates that it has not found the 16 November 2006 Rwandan Military Court judgement against General Munyakazi.¹⁸ Further, it maintains that Mr. Renzaho's request for copies of all judgements and/or statements from jurisdictions outside the Tribunal in the Prosecution's possession involving any witness called in the *Renzaho* case is unreasonable and amounts to a "fishing expedition".¹⁹

8. In reply, Mr. Renzaho submits that the Prosecution's partial disclosure of the Requested Documents clearly establishes that the Prosecution violated its obligations under Rule 68 of the Rules, given that the documents were in its possession for several months.²⁰ He reiterates the importance of these materials in relation to the credibility of witnesses and submits that an extension of time should be granted until such time as the Prosecution discloses all of the Requested Documents so as to permit him to integrate them into his Appellant's Brief and defence strategy.²¹

9. In the alternative, he requests a reconsideration of the Decision of 21 October 2009 and a 75-day extension of time for the filing of his Appellant's Brief from the filing of the French translation of the Trial Judgement on the basis of his and his Defence team's limited grasp of the English language, which, combined with the complexity of the case, the multiplicity of the sites involved, and the linguistic subtleties contained in the English version of the Trial Judgement, make it impossible for him to respect the current deadline.²²

C. Preliminary Matter

10. The Prosecution filed its Response 10 days after the Motion. In his Reply, Mr. Renzaho objects to the late filing of the Prosecution's Response, relying on Rules 73(E) and 107 of the Rules.²³ Section V of the Practice Direction on the Filing of Written Submissions on Appeal,²⁴ which specifically governs the filing of motions during appeals from judgement, provides that "[t]he opposite party shall file a response within ten days of the filing of the motion".²⁵

(2) *Setako* Exhibit P54;

(3) Lieutenant Munyakazi's letter of 24 September 1995 with reference numbers K0178577-K0178578;

(4) UNAMIR cable of 12 April 1994 with reference number K0000701-K0000705;

(5) Transcripts of the testimonies of certain witnesses who testified in the *Setako* case, as well as exhibits entered into evidence through those witnesses.

¹⁸ Response, para. 7.

¹⁹ Response, para. 8.

²⁰ Reply, pp. 2, 3.

²¹ Reply, pp. 3, 4.

²² Reply, pp. 3, 4.

²³ Reply, pp. 1, 3.

²⁴ Practice Direction on the Filing of Written Submissions in Appeal Proceedings before the Tribunal, 8 December 2006 ("Practice Direction on the Filing of Written Submissions on Appeal").

²⁵ Practice Direction on the Filing of Written Submissions on Appeal, para. 13.

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Accordingly, the Prosecution's Response was filed in a timely manner and Mr. Renzaho's objection to the validity of its filing is dismissed.

D. Discussion

11. Mr. Renzaho's Motion is at this stage essentially a request for an extension of time, on the basis of failed or delayed disclosure from the Prosecution. Rule 116(A) of the Rules allows the Appeals Chamber to extend any deadline on a showing of good cause. Factors which have previously been found to constitute good cause include the availability of a decision in an official language other than that in which it was issued, the volume of the trial record, the length of the Trial Judgement, and the complexity of the issues raised on appeal.²⁶

12. As to whether good cause has been shown in this case, Mr. Renzaho has merely made unsubstantiated assertions that the Requested Documents are exculpatory and material to his defence. I note that Mr. Renzaho first sought the Requested Documents on 15 January 2010, less than one month before the Motion was filed.²⁷ I further note that the Prosecution appears to have largely provided the Requested Documents to Mr. Renzaho on 19 February 2010.²⁸ However, particularly given that Mr. Renzaho has had limited time to examine their contents,²⁹ this decision is without prejudice to any future submissions regarding the Prosecution's disclosure obligations.

13. Nevertheless, insofar as Mr. Renzaho requests more time to peruse the Provided Documents or any further materials received by the Prosecution so as to integrate possibly relevant or exculpatory elements contained therein into his Appellant's Brief and defence strategy, I do not consider an extension of time to be necessary. Under Rule 115(A) of the Rules, Mr. Renzaho may seek to introduce additional evidence on appeal within 30 days of the filing of his Brief in Reply, unless good cause or, after the appeal hearing, cogent reasons are shown for a delay. Moreover, under Rule 108 of the Rules, Mr. Renzaho may seek, on good cause being shown, to vary his grounds of appeal. Given these options, Mr. Renzaho has not demonstrated good cause to extend the current time-limit for the filing of his Appellant's Brief.

14. I note, however, that the Prosecution has indicated that it remains conscious of its obligations and has undertaken to continue in its research and to communicate as soon as possible any further document(s) which it deems to be relevant or exculpatory.³⁰ I expect that the

²⁶ See, e.g., Decision of 21 October 2009, para. 4; *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Joint Request for Extension of Time to File Respondent's Brief, 27 July 2009, p. 3.

²⁷ Motion, para. 1.

²⁸ *Supra*, fn. 17.

²⁹ Reply, p. 1.

³⁰ Response, paras. 3, 11; Disclosure, para. 5.

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Prosecution will provide a timely response to Mr. Renzaho concerning any Requested Documents which have not already been addressed in some manner by the Prosecution,³¹ or any other materials which may be of relevance or exculpatory to Mr. Renzaho. I recall that Rules 66(B) and 68(A) of the Rules apply to appellate proceedings³² and that the Prosecution is required under Rule 112(B) of the Rules to declare in its Respondent's Brief that disclosure has been completed with respect to the material available to the Prosecution at the time of filing the brief.

15. Finally, with respect to Mr. Renzaho's alternative request, I recall that I have inherent discretionary power to reconsider prior decisions if a clear error of reasoning has been demonstrated or if it is necessary in order to prevent an injustice.³³ In this case, I am not persuaded by Mr. Renzaho's submissions regarding linguistic difficulties, which were fully taken into account when granting the original extension of time. With no demonstrable error of reasoning or ensuing injustice, Mr. Renzaho's alternative request is therefore dismissed.


16. For the foregoing reasons, I **DISMISS** the Motion in its entirety.

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

Done this twenty-sixth day of February 2010,
at The Hague,
The Netherlands.



[Seal of the Tribunal]


Judge Carmel Agius
Pre-Appeal Judge

³¹ I note that the Prosecution does not appear to have provided or made submissions with respect to: (i) the *pro-justicia* statements in the Rugenge Gacaca trial against Alphonse Macumi of *Renzaho* Prosecution Witnesses ACK and HAD; and (ii) the requested list of *Renzaho* Prosecution witnesses who subsequently testified in other cases before the Tribunal, and their public and private transcripts. *Compare* Motion, para. 10 with Response, paras. 6-8, 10 and Disclosure, para. 3, annexes.

³² *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Motions Relating to the Appellant Hassan Ngeze's and the Prosecution's Requests for Leave to Present Additional Evidence of Witnesses ABC1 and EB, Public Redacted Version, 27 November 2006, para. 16, referring to *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Confidential Decision on the Prosecution's Motion to Be Relieved of Obligation to Disclose Sensitive Information Pursuant to Rule 66(C), 27 March 2003, p. 4; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, *Décision sur les requêtes de Ferdinand Nahimana aux fins de divulgation d'éléments en possession du Procureur et nécessaires à la défense de l'Appelant et aux fins d'assistance du Greffe pour accomplir des investigations complémentaires en phase d'appel*, 8 December 2006, para. 7.

³³ See, e.g., *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-A, Decision on Motion for Reconsideration of the Decision on Request to Admit Additional Evidence, 16 November 2007, p. 2; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73(C), Decision on Motions for Reconsideration, 1 December 2006, para. 6; *The Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-A, Decision on the Appellant's Request for Reconsideration of the Order Concerning Aloys Simba's Appellant's Brief, 8 November 2006, p. 2; *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, 23 May 2005, Judgment, para. 203; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Jean-Bosco Barayagwiza's Request for Reconsideration of Appeals Chamber Decision of 19 January 2005, 4 February 2005 p. 2.