



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

79/H

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ICTR-05-89-AR11bis

18th July 2012

{79/H - 76/H}

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Pre-Appeal Judge
Registrar: Mr. Adama Dieng
Decision of: 18 July 2012

BERNARD MUNYAGISHARI

v.

THE PROSECUTOR

Case No. ICTR-05-89-AR11bis

**DECISION ON THE PROSECUTOR'S MOTION REQUESTING COMPLIANCE WITH
THE REQUIREMENTS FOR FILING A NOTICE OF APPEAL**

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George Mugwanya
Inneke Onsea
Abdoulaye Seye
François Nsanzuwera
Erica Bussey

ICTR Appeals Chamber
Date: 18th July 2012
Action: R. Juma
Copied To: All Concerned

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**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR NOUS
NAME / NOM: Martha Hunt
SIGNATURE: *[Signature]* DATE: 18 July 2012

1. I, **Theodor Meron**, Presiding 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 am seized of a motion filed on 21 June 2012 by the Prosecution requesting compliance with the requirements for filing a notice of appeal.² Mr. Munyagishari responded to the Motion on 28 June 2012.³ The Prosecution has not filed a reply.

2. Mr. Munyagishari is charged before the Tribunal with conspiracy to commit genocide, genocide, complicity in genocide, and murder and rape as crimes against humanity.⁴ On 6 June 2012, the Referral Chamber Designated under Rule 11 *bis* ordered Mr. Munyagishari’s case to be referred to the authorities of the Republic of Rwanda for trial before the High Court of Rwanda, subject to certain conditions.⁵ Mr. Munyagishari and the Prosecution filed notices of appeal against the Referral Decision on 19 and 20 June 2012, respectively.⁶

3. The Prosecution submits that Mr. Munyagishari’s Notice of Appeal fails to comply with the formal requirements provided for in Rule 108 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) and in the Practice Direction on Formal Requirements for Appeals from Judgement dated 4 July 2005 (“Practice Direction on Formal Requirements”),⁷ which, in the Prosecution’s view, “establish the specificity required for any Notice of Appeal filed before [the Appeals] Chamber.”⁸ In particular, the Prosecution argues that, in various parts of his Notice of Appeal, Mr. Munyagishari broadly alleges errors without specifying the particular factual or legal findings that he intends to challenge.⁹ The Prosecution contends that, “absent greater specificity, the Prosecutor and [the] Appeals Chamber are left to guess as to the nature of the error alleged” and “are unable to commence meaningful review of the grounds of appeal”, which is “particularly

¹ Order Assigning a Pre-Appeal Judge, 21 June 2012.

² Prosecutor’s Motion Requesting Compliance with the Requirements for Filing a Notice of Appeal, 21 June 2012 (“Motion”).

³ *Réponse de la Défense de Bernard Munyagishari à la Requête du Procureur demandant le respect des conditions exigées pour l’acte d’appel*, 28 June 2012 (“Response”).

⁴ *The Prosecutor v. Bernard Munyagishari*, Case No. ICTR-05-89-I, Indictment, 8 September 2005.

⁵ *The Prosecutor v. Bernard Munyagishari*, Case No. ICTR-05-89-R11*bis*, Decision on the Prosecutor’s Request for Referral of the Case to the Republic of Rwanda, 6 June 2012 (“Referral Decision”), pp. 54, 55.

⁶ *Acte d’appel de la Défense de Bernard Munyagishari*, 19 June 2012 (“Notice of Appeal”); Prosecutor’s Notice of Appeal Pursuant to Rule 11 *bis* (H), 20 June 2012.

⁷ Motion, paras. 2-4, 6, 7.

⁸ Motion, para. 3.

⁹ Motion, paras. 6, 7, referring, in particular, to Notice of Appeal, Grounds 3, 4, 7-9.

prejudicial to the Prosecutor, who is only permitted 10 days to file his respondent's brief."¹⁰ The Prosecution accordingly requests that the Appeals Chamber order Mr. Munyagishari to file a revised version of his Notice of Appeal in full compliance with Rule 108 of the Rules and the Practice Direction on Formal Requirements within seven days of the filing of a decision on the Motion.¹¹

4. Mr. Munyagishari responds that his Notice of Appeal fully complies with Rule 108 of the Rules as well as with all relevant jurisprudential requirements.¹² He submits that the Practice Direction on Formal Requirements does not apply to appeal submissions filed against a decision issued pursuant to Rule 11*bis* of the Rules,¹³ and that, even if it did, his Notice of Appeal complies with the formal requirements prescribed in this practice direction.¹⁴

5. I observe that Rule 11*bis* of the Rules does not prescribe any formal requirements for a notice of appeal filed against a Rule 11*bis* decision. As for Rule 108 of the Rules, it provides in relevant part that a party "seeking to appeal a judgement or sentence" should set forth the grounds in a notice of appeal and should also identify "the order, decision, or ruling challenged with specific reference to the date of its filing, and/or the transcript page, and indicate the substance of the alleged errors and the relief sought." I recall, however, that it has been held that "an appeal pursuant to Rule 11*bis* of the Rules is more akin to an interlocutory appeal than to an appeal from a judgement".¹⁵ Accordingly, I consider that Rule 108 of the Rules, which expressly applies to appeals from a judgement or sentence, does not apply to a notice of appeal filed pursuant to Rule 11*bis* of the Rules.

6. I further note that the filing of written submissions in Rule 11*bis* appeal proceedings is not governed by the Practice Direction on Formal Requirements, but by the Practice Direction for the Filing of Written Submissions.¹⁶ However, while the Practice Direction for the Filing of Written Submissions lays down formal requirements for an appeal brief filed against a Rule 11*bis* decision,

¹⁰ Motion, para. 8.

¹¹ Motion, para. 10.

¹² Response, paras. 5, 7, 8.

¹³ Response, para. 6. Mr. Munyagishari submits that the filing of Rule 11*bis* appeal submissions is governed by Section III of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal dated 8 December 2006 ("Practice Direction for the Filing of Written Submissions"). *See Idem.*

¹⁴ Response, para. 7. *See also ibid.*, para. 8. Mr. Munyagishari nonetheless acknowledges that, for practical reasons, he did not specify the relevant page numbers of the Referral Decision as required by the Practice Direction on Formal Requirements. *See ibid.*, para. 7.

¹⁵ Decision of 28 June 2012, fn. 15, and references contained therein.

¹⁶ *See* Practice Direction for the Filing of Written Submissions, Section III, paras. 4-8; *The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-R11*bis*, Decision on a Request for an Extension of Time to File a Cross-Appeal, 16 September 2008, p. 3; *The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-R11*bis*, Decision on Request for Clarification of Time Limits, 25 August 2008, p. 3.

it is silent regarding the form that a notice of appeal filed pursuant to Rule 11*bis* of the Rules should have.¹⁷

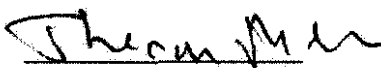
7. Given the silence of Rule 11*bis* of the Rules and the relevant practice direction, I consider that a party seeking to appeal a Rule 11*bis* decision can only be required to file a notice of appeal containing the information necessary to give notice of the nature and scope of the appeal, such as the precise title and date of filing of the impugned decision, the grounds on which the appeal is made, and the relief sought.

8. Having carefully reviewed the Notice of Appeal, I find that it gives sufficient notice to the Appeals Chamber and the Prosecution of what is being appealed. If the Prosecution considers upon receiving Mr. Munyagishari's appeal brief that it will not be in a position to respond to the appeal brief within the prescribed time-limit,¹⁸ it will be incumbent upon it to move the Appeals Chamber for an extension of time and demonstrate good cause for the requested extension.

9. For the foregoing reasons, I hereby **DENY** the Motion.

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

Done this 18th day of July 2012,
At The Hague,
The Netherlands.


Judge Theodor Meron
Pre-Appeal Judge

[Seal of the Tribunal]



¹⁷ See Practice Direction for the Filing of Written Submissions, Section III, paras. 4, 5.

¹⁸ See Motion, para. 8.