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A

Case No. MICT-12-09-AR14

Mechanism for International Criminal Tribunals

Date: 24 August 2012

IN THE APPEALS CHAMBER

MICT-12-09-AR14

Before:

Judge Theodor Meron, Presiding
Judge Patrick Robinson
Judge Carmel Agius
Judge Liu Daqun
Judge Prisca Matimba Nyambe

24-08-2012

(35/A - 33/A)

Registrar:

John Hocking

PHÉNÉAS MUNYARUGARAMA

v.

PROSECUTOR

PUBLIC

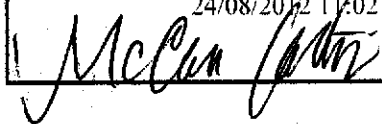
PROSECUTOR'S MOTION TO STRIKE REPLY BRIEF

The Office of the Prosecutor:

Hassan Bubacar Jallow
James J. Arguin
George Mugwanya
Inneke Onsea
Abdoulaye Seye
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Mechanism for International Criminal Tribunals

24/08/2012 11:02



Counsel for Phénéas Munyarugarama

Francis K. Stolla (Duty Counsel)

1. On 17 August 2012, the Appellant Phénéas Munyarugarama filed “Duty Counsel Submissions in Reply to the Prosecutor’s Response Brief” (“Reply Brief”).¹

2. In accordance with paragraph 7 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal,² the Prosecutor files this Motion to strike the Reply Brief because it was filed after the filing deadline expired without a showing of good cause.

3. The Prosecutor’s Response Brief was filed on 7 August 2012.³ Based on the Practice Direction, an Appellant wishing to file a reply to the opposite party’s response to an appeal of a Trial Chamber’s decision pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules of the Tribunal”), must file the reply within four days of the filing of the response. Therefore, the Reply Brief should have been filed by 13 August 2012, unless the Defence obtained an extension of the time limit for filing under Rule 154(A) of the Rules of Procedure and Evidence of the Mechanism (Rule 116 of the Rules of the Tribunal). No extension was sought and none was allowed. Accordingly, the Defence’s purported Reply Brief is four days too late.

4. The Appeals Chamber has consistently stressed that, without a showing of good cause, violations of time limits imposed by the Rules and Practice Directions

¹ *Phénéas Munyarugarama v. The Prosecutor*, Case No. MICT-12-09-AR14, Confidential Duty Counsel Submissions in Reply to the Prosecutor’s Response Brief, 17 August 2012. The Reply Brief was only circulated to the parties by the Registry of the Mechanism for International Criminal Tribunals (“Mechanism”) on 22 August 2012. The Prosecutor notes that Munyarugarama filed his Reply Brief confidentially, but there appears to be no justification for this designation. Therefore, the Prosecutor submits this motion as a public filing. See, e.g., *Dominique Ntawukulilyayo v. The Prosecutor*, Case No. ICTR-05-82-A, Decision on Prosecutor Motion for Public Filings, 15 April 2011, p. 1.

² Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal, 8 December 2006 (“Practice Direction”). This Practice Direction applies *mutatis mutandis* to appeals filed before the Mechanism. See Mechanism Practice Direction Related to Appeals, 5 July 2012, para. 1.

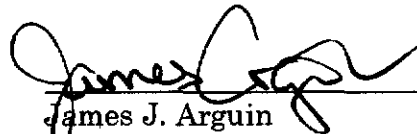
³ *Phénéas Munyarugarama v. The Prosecutor*, Case No. MICT-12-09-AR14, Prosecutor’s Response Brief, 7 August 2012.

for filing notices of appeal and briefs will not be tolerated.⁴ This is because these time limits are indispensable for the proper functioning of the Tribunal and to the fulfillment of its mission to do justice.⁵ Similarly, the filing of this Reply Brief out of time, without even trying to explain good cause, should not be allowed. These general rules have even more resonance here, as this is not the first time Duty Counsel has submitted filings to this Chamber out of time.⁶

5. For all these reasons, the Prosecutor requests the Appeals Chamber to strike Munyarugarama's untimely Reply Brief.

Word Count: 328

Dated and signed this 24th day of August 2012, Arusha, Tanzania.



James J. Arguin
Chief, Appeals and Legal Advisory Division
(Pursuant to the MICT Prosecutor's 26 July 2012
Interim Designation)

⁴ See, e.g., *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Judgement, 1 June 2001, para. 46.

⁵ *Ibid.*; *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Decision on Protais Zigiranyirazo's Motion for an Extension of Time for the Filing of the Reply Brief, 3 July 2009, para. 6.

⁶ Duty Counsel filed the Appeal Brief in this case after the filing deadline had expired without prior notice of the Chamber, submitting that he had shown good cause for the late filing due to a family emergency. The Prosecutor opposed this late filing in paras. 1 and 3-7 of its Response Brief. Moreover, in the *Ntaganzwa* case, Duty Counsel submitted his Notice of Appeal 16 days too late. See *Ladislav Ntaganzwa v. The Prosecutor*, Case No. 96-9-AR11bis, Confidential Notice of Appeal, 8 July 2012 and *Ladislav Ntaganzwa v. The Prosecutor*, Case No. 96-9-AR11bis, Prosecutor's Motion to Strike Notice of Appeal, 8 June 2012. The Appeals Chamber accordingly rejected the Notice of Appeal as inadmissible. See *Ladislav Ntaganzwa v. The Prosecutor*, Case No. 96-9-AR11bis, Decision on Admissibility of Notice of Appeal against Referral Decision, 5 July 2012.



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Case Name/ Affaire:	The Prosecutor v. Pheneas Munyarugarama	Case Number/ Affaire No:	MICT-12-09-AR14
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Classification Level/ Catégories de classement:	<input checked="" type="checkbox"/> Unclassified/ Non classé <input type="checkbox"/> Confidential/ Confidentiel <input type="checkbox"/> Ex Parte Defence excluded/ Défense exclu	<input type="checkbox"/> Strictly Confidential/ Strictement confidentiel <input type="checkbox"/> Ex Parte (specify/ préciser): <input type="checkbox"/> Ex Parte Prosecution excluded/ Bureau du Procureur exclu	<input type="checkbox"/> Other Ex Parte/ Ex Parte Autre (specify/ préciser):
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