



ICTR-01-73-A
09-07-2012
(866/A - 862/A)

866/A
G

**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun
Judge Carmel Agius

Registrar: Adama Dieng

Date of filing: 9 July 2012

JUDICIAL RECORDS ARCHIVES
UNICTR
2012 JUL 9 A 9:39
[Signature]

PROTAIS ZIGIRANYIRAZO

v.

THE PROSECUTOR

Case No. ICTR-01-73-A

**PROSECUTOR'S RESPONSE TO
ZIGIRANYIRAZO'S "MOTION FOR LEAVE TO APPEAL OR FOR
REVIEW OF TRIAL CHAMBER DECISION OF 18 JUNE 2012"**

Office of the Prosecutor
Hassan Bubacar Jallow
James J. Arguin

Counsel for Protais Zigiranyirazo
John Philpot
Charles Taku

PROSECUTOR'S SUBMISSIONS

1. By decision filed on 18 June 2012, Trial Chamber III denied Protais Zigiranyirazo's Motion, requesting compensation for the period he spent in detention until his acquittal and for violation of his fair trial rights.¹ He sought, in particular, 1,006,550 USD in compensation and relocation to Belgium.²

2. Zigiranyirazo's is now applying for leave to appeal the Impugned Decision and for a scheduling order with respect to the briefing in this case.³

3. The Prosecutor responds to what Zigiranyirazo identifies as "remaining issues", namely his invitation to the Appeals Chamber to review *proprio motu* the Chamber's findings regarding his request for compensation for alleged undue delay and his request for compensation based on strict liability.⁴ These are the only issues directed toward the Prosecutor; the other issues identified in Zigiranyirazo's motion are directed toward the Registry and Chambers.⁵ In addition, the Prosecutor responds to Zigiranyirazo's proposed scheduling order for briefing should his request to appeal be allowed.⁶

4. First, Zigiranyirazo's request to review the Trial Chamber's findings on compensation for alleged violation of his right to an expeditious trial and on compensation based on the theory of strict liability, is procedurally flawed. Zigiranyirazo rightly concedes that, on the basis of the standard set out in

¹ *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-2001-01-073, Decision on Protais Zigiranyirazo's Motion for Damages, 18 June 2012 ("Impugned Decision"), 18 June 2012, p. 19 and para. 2; *Protais Zigiranyirazo v. The Prosecutor*, Motion for Damages for Violations of the Fundamental Rights of Protais Zigiranyirazo and Motion for Judicial Cooperation with the Kingdom of Belgium, 24 February 2012.

² Impugned Decision, para. 2.

³ *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-2001-01-73-A, Motion for Leave to Appeal or for Review of Trial Chamber Decision of 18 June 2012, 29 June 2012 ("Motion"), para. 3, p. 12-13.

⁴ Motion, paras. 64-66.

⁵ *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-01-73-A, Prosecutor's Response to Motion for Damages for Violations of the Fundamental Rights of Protais Zigiranyirazo and Motion for Judicial Cooperation with the Kingdom of Belgium, 18 April 2012 ("Prosecutor's Response"), in which the Prosecutor addressed these issues in the underlying procedure before the Trial Chamber.

⁶ Motion, para. 68.

Ntagerura, he cannot appeal these “remaining issues”.⁷ Indeed, these remaining issues do not relate to the enforcement of the Appeals Chamber’s orders or any decisions rendered as a consequence thereof.⁸

5. Moreover, a *proprio motu* review of these findings, as requested by Zigiranyirazo, is not warranted because review is only warranted if the issue raised is of general significance to the Tribunal’s jurisprudence.⁹ Zigiranyirazo does not even attempt to explain why this is an exceptional case meriting *proprio motu* consideration. His unsubstantiated allegation that these are “open questions in international criminal law” does not demonstrate at all that these issues are of general significance.¹⁰

6. Further, as argued by the Prosecutor in the underlying proceedings before the Trial Chamber and endorsed by the Trial Chamber in the Impugned Decision, Zigiranyirazo never objected to the expediency of his proceedings or pre-trial detention.¹¹ He, therefore, waived his right to seek compensation on the issue and cannot pursue this abandoned claim on appeal, either as of right (which he concedes) or as a matter of general policy.¹² On the latter point, the Trial Chamber correctly noted that Zigiranyirazo’s submissions in support of his claim for damages arising from the alleged denial of his right to an expeditious trial and compensation for strict liability were entirely unsubstantiated and did not even attempt to apply the circumstances of his case to the standards required to establish any claim for undue delay.¹³ Accordingly, his request for this

⁷ Motion, paras. 65, 23, with reference to *In re. André Ntagerura*, Case No. ICTR-99-46-A28, Decision on Motion for Leave to Appeal the President’s Decision of 31 March 2008 and the Decision of Trial Chamber III rendered on 15 May 2008, 11 September 2008 (“*Ntagerura* Decision”), para. 12.

⁸ *Ntagerura* Decision, para. 12.

⁹ See, e.g., *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007 para. 12; *Emmanuel Ndindabahizi v. The Prosecutor*, Case No. ICTR-01-71-A, Judgement, 16 January 2007, para. 13.

¹⁰ Motion, para. 66.

¹¹ See Prosecutor’s Response, paras. 2 (a), 22-23; Impugned Decision, paras. 33-42, esp. para. 42 (“Thus, the Chamber concludes that the Claimant repeatedly failed to assert his right without undue delay using the remedies available to him at trial and on appeal.”)

¹² *Théoneste Bagosora and Anatole Nsegyumva*, Case No. ICTR-98-41-A, Judgement, 14 December 2011, para. 31 (“if a party raises no objection to a particular issue before the Trial Chamber, in the absence of special circumstances, the Appeals Chamber will find that the party has waived its right to adduce the issue as a valid ground of appeal”).

¹³ Impugned Decision, paras. 35, 49-50.

Chamber to review those undeveloped arguments *proprio motu* should be deemed waived or abandoned.¹⁴

7. Second, assuming the Appeals Chamber elects to recognize Zigiranyirazo's right to appeal any of these matters, the briefing schedule he proposes should be rejected. Zigiranyirazo suggests that briefing should be scheduled in a manner conducive to his counsel's vacation schedule.¹⁵ This is not appropriate. The Appeals Chamber has repeatedly underscored that Counsel assigned to represent accused at this Tribunal are expected to organise their work schedules to meet their obligation to respect the time limits established by the relevant Practice Directions and scheduling orders issued by this Chamber or the Pre-Appeal Judge.¹⁶ Thus, a planned vacation or holiday is not good cause for an enlargement of time. The same holds true here. Accordingly, if any appeal is allowed, the usual time limits established by the Appeals Chamber in similar cases should apply.¹⁷

8. In sum, Zigiranyirazo's request for *proprio motu* review of the so-called "remaining issues" relating to his abandoned claim for damages arising from alleged undue delay or strict liability should be summarily denied. And, if any appeal is allowed, briefing should proceed in the ordinary course. Counsel's vacation schedule is not good cause to deviate from the usual briefing schedule.

¹⁴ The Appeals Chamber has held that where grounds of appeal are identified in the notice of appeal, but those grounds are not developed in the appellant's brief with arguments or citations to pertinent authorities, the right to appeal on those undeveloped grounds may be deemed waived or abandoned. *See, e.g., Aloys Ntabakuze v. The Prosecutor*, Case No. ICTR-98-41A-A, Judgement, 8 May 2012, para. 152, n. 331. Such reasoning should also apply to Zigiranyirazo's undeveloped arguments submitted before Trial Chamber III, especially because he never raised claims of undue delay at trial or on appeal.

¹⁵ Motion, para. 68.

¹⁶ *See, e.g., The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-A, Decision on Anatole Nsengiyumva's Motion for Extension of Time for Filing his Brief in Reply, 23 June 2010, pp. 3-4; *Ildephonse Hategekimana v. The Prosecutor*, Case No. ICTR-00-55B-A, Decision on Ildephonse Hategekimana's Second Motion for an Extension of Time to File His Appellant's Brief, 20 May 2011.

¹⁷ No procedural rules seem to be prescribed for the disposal of such appeals. *See, e.g., André Rwamakuba v. The Prosecutor*, Case No. ICTR-98-44C-A, Decision on Prosecution's Notice of Appeal and Scheduling Order, 18 April 2007, para. 8; *Ntagerura* Decision, para. 14.

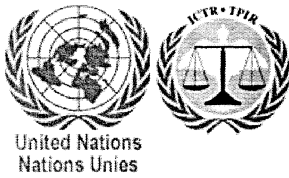
862/A

Dated 9 July 2012 at Arusha, Tanzania

Word Count: 1204

A handwritten signature in black ink, appearing to read 'James J. Arguin', written over a horizontal line.

James J. Arguin
Chief, Appeals and Legal Advisory Division



TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input type="checkbox"/> Team I N. M. Diallo	<input type="checkbox"/> Team II C. K. Hometownu N. M. Diallo	<input type="checkbox"/> Team III C. K. Hometownu
	<input type="checkbox"/> OIC, JLSD P. Besnier	<input type="checkbox"/> OIC, JPU C. K. Hometownu	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison
From:	<input type="checkbox"/> Chamber (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office James Arquin (names)
Case Name:	PROTAIS ZIGIRANYIRAZO v. The Prosecutor		Case Number: ICTR-01-73-A
Dates:	Transmitted 9 July 2012		Document's date: 9 July 2012
No. of Pages:	5	Original Language:	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	PROSECUTOR'S RESPONSE TO ZIGIRANYIRAZO'S "MOTION FOR LEAVE TO APPEAL OR FOR REVIEW OF TRIAL CHAMBER DECISION OF 18 JUNE 2012"		
Classification Level:	TRIM Document Type:		
<input type="checkbox"/> Ex Parte	<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
<input type="checkbox"/> Strictly Confidential / Under Seal	<input type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input type="checkbox"/> Confidential	<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
<input checked="" type="checkbox"/> Public	<input type="checkbox"/> Judgement	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities
			<input type="checkbox"/> Submission from non-parties
			<input type="checkbox"/> Submission from parties
			<input type="checkbox"/> Accused particulars

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

English French Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party **will be submitting the translated version(s)** in due course in the following language(s):

English French Kinyarwanda

KINDLY FILL IN THE BOXES BELOW

<input type="checkbox"/> The OTP is overseeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	<input type="checkbox"/> DEFENCE is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:
---	--

III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: