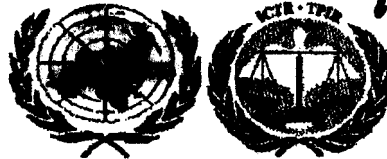


ICTR-98-41-A
17-03-2009
(135/A-132/A)



International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

135/A
S. Muwase

IN THE APPEALS CHAMBER

Before: Judge Mehmet Güney, Pre-Appeal Judge
Registrar: Mr. Adama Dieng
Filing Date: 17 March 2009

THE PROSECUTOR
v.
Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA

JUDICIAL RECORDS ARCHIVE
2009 MAR 17 A 8:58

Case No. ICTR-98-41-A

**MOTION TO PRECLUDE THE PROSECUTION FROM FILING A NOTICE
OF APPEAL AGAINST GENERAL KABILIGI**

Office of the Prosecutor

Mr. Hassan Bubacar Jallow
Mr. Alex Obote-Odora
Mr. George Mugwanya

Defence Counsel

Mr. Paul Skolnik

Other Defence Counsel

Mr. Raphael Constant
Mr. Richard Perras
Mr. Peter Erlinder
Mr. André Tremblay
Mr. Kennedy Ogetto

134/A

I. BACKGROUND

1. On 18 December 2008, Trial Chamber I rendered its judgment in this case, acquitting General Gratién Kabiligi of all counts against him, and ordering his immediate release. The Trial Chamber announced that the written judgement would be "available in the coming days".¹
2. On 29 December 2008, the Prosecution filed the «Prosecutor's Motion for An Extension Of Time To File A Notice of Appeal. »
3. In the aforesaid Prosecutor's Motion the Prosecutor stated in par.6 "Due to the circumstances described above and in the interests of justice, the Prosecutor requests that according to Rule 108, the 30 day time limit to start running from the date the written judgment is issued."
4. The Respondent Kabiligi did not oppose the said motion of the Prosecutor for an extension of time to file a Notice of Appeal.
5. On 15 January 2009, Pre-Appeal Judge Güney rendered the *Decision on Prosecution Motion for Extension of Time for Filing Notice of Appeal*, in which the prosecution was ordered to file any notice of appeal against the acquittal of General Kabiligi "no later than thirty (30) days from the date of filing of the written trial judgment."²
6. The written trial judgment was filed on 9 February 2009. Accordingly the deadline for filing any Notice of Appeal expired on 11 March 2009, which was 30 days from the date of filing of the written Trial Judgment.
7. On 11 March 2009, Lead Counsel for General Kabiligi, Maitre Paul Skolnik sent an email to Mr. Nouhou Diallo, the Coordinator of Trial Chamber I, asking whether the Prosecution had filed a Notice of Appeal against the acquittal of General Kabiligi. On 12 March 2009, Mr. Diallo responded via email stating: "Please be informed that until today, Thursday 12 March 2009 we have not received any filing from the Prosecution against Kabiligi."-as more fully appears from a copy of the said emails herewith annexed.
8. On 16 March 2009, Lead Counsel Skolnik telephoned the office of the Coordinator of Trial Chamber I and spoke with Marianne Ben Salimo, who advised Counsel Skolnik that as of 16 March 2009, there had been no filings by the prosecution regarding General Kabiligi. Ms Ben Salimo also told Counsel Skolnik that following his previous enquiry, Mr. Diallo had contacted the Office of the Prosecutor who advised that they would not be filing a notice of appeal against General Kabiligi's acquittal.

II. ARGUMENT

9. The Respondent Kabiligi hereby requests that the Appeals Chamber render an order precluding the subsequent filing of any notice of appeal by the prosecution, against the acquittal of General Gratién Kabiligi. Such an order is warranted on the basis that:

¹ T. 18 December 2009, p. 2

² *The Prosecutor v. Gratién Kabiligi*, ICTR-98-41-A, Decision on Prosecution's Motion for Extension of Time for Filing Notice of Appeal, 15 January 2009, page 2.

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(i) The Prosecution failed to comply with Rule 108 of the *Rules of Procedure and Evidence*, and the order of the Pre-Appeal Judge mandating that any appeal be filed within 30 days of the filing of the written trial judgment.

(ii) The Respondent Kabiligi further requests that the Appeals Chamber direct the Registrar to issue a Certificate of Non-Appeal against General Kabiligi, in the present proceedings (ICTR-98-41-A).

10. An order from the Appeals Chamber, and a Certificate of Non-Appeal, would assist General Kabiligi as he now intends to attempt to leave Tanzania, the country in which he was incarcerated for over 11 years while waiting for his acquittal. These documents from the Tribunal would assist him in providing written support for his request for relocation to another country and provide support for his claims that no appeal is pending against him at the ICTR.

III-CONCLUSION

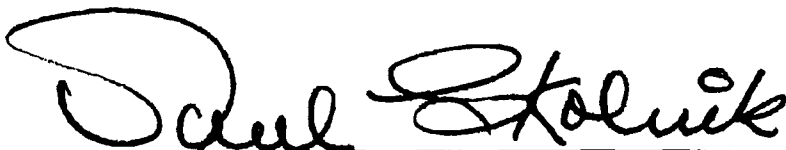
For all of the above reasons, the Respondent Kabiligi respectfully requests that the Appeals Chamber:

ORDER that the Prosecution is precluded from filing a Notice of Appeal against the acquittal of General Gratien Kabiligi by Trial Chamber I of the International Criminal Tribunal for Rwanda;

DIRECT the Registrar of the ICTR to provide General Gratien Kabiligi with a Certificate of Non-Appeal in the current proceedings, at his earliest possible convenience.

THE WHOLE respectfully submitted,

Montreal Canada, 16 March 2009



PAUL SKOLNIK

Lead Counsel for General Gratien Kabiligi

Word Count: 807 including footnotes

Re: Prosecution Appeal in Military1 - 'Yahoo! Mail'

Page 1 of 1

132/A



Re: Prosecution Appeal in Military1

Thursday, March 12, 2009 2:44 AM

From: "Nouhou Diallo" <diallon@un.org>

To: paulskolnik@yahoo.ca

Cc: "Caroline Buisman" <cmbuismanster@gmail.com>, "Nouhou Diallo" <diallon@un.org>, "General Gratien Kabiligi" <kabiligi@yahoo.com>, "Kate Gibson" <kategibson1@gmail.com>, marcnerneberg@hotmail.com, "Marianne Ben Salimo" <salimo@un.org>

Dear Skolnik,

Please, be informed that until today, Thursday, 12th March 2009, we have not received any filing from the Prosecution against Kabiligi.

Best regards

paul skolnik
<paulskolnik@yahoo.ca> To: Nouhou Diallo <diallon@un.org>
cc: General Gratien Kabiligi <kabiligi@yahoo.com>, Kate Gibson <kategibson1@gmail.com>, marcnerneberg@hotmail.com, Caroline Buisman <cmbuismanster@gmail.com>
12/03/2009 12:43 AM
Please respond to paulskolnik Subject: Prosecution Appeal in Military1

Bonjour Nouhou:%
Can you confirm whether the Prosecution has filed an appeal against Kabiligi's acquittal?
Regards
Paul Skolnik

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	<input checked="" type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
From:	<input type="checkbox"/> Chamber (names)	<input checked="" type="checkbox"/> Defence KABILIGI- PAUL SKOLNIK-LEAD COUNSEL (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. GRATIEN KABILIGI			Case Number: ICTR-98-41A
Dates:	Transmitted: 17 MARCH 2009		Document's date: 16 MARCH 2009	
No. of Pages:	5 [INCLUDING THIS PAGE]	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
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<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Judgement <input type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities		

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

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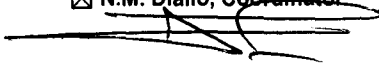


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		Case No / no. de l'affaire:	ICTR-98-41- A
To: A:	Rosette Muzigo-Morrison, Legal Officer, Appeals Unit, The Hague.	<input checked="" type="checkbox"/> Judge / Patrick L. Robinso, Presiding <input checked="" type="checkbox"/> Judge / Mohamed Shahabuddeen <input checked="" type="checkbox"/> Judge / Mehmet Guney <input checked="" type="checkbox"/> Judge / Fausto Pocar <input checked="" type="checkbox"/> Judge / Liu Daqun	
	ACCUSED / DEFENSE <input checked="" type="checkbox"/> Accused / Accusé T. Bagosora, Kabiligi, Ntabakuze & Nsengiyumva <small>see / voir *CMS4</small> <input checked="" type="checkbox"/> Lead Counsel / Conseil Principal: Me. R. Constant, Skolnik, Erlinder & Ogetto <input type="checkbox"/> In Arusha / à Arusha: <small>(see / voir CMS3) <input type="checkbox"/> Fax:</small> <input type="checkbox"/> Co-Counsel / Conseil Adjoint: Me. <input type="checkbox"/> Arusha <small>(see / voir CMS3)</small> <input type="checkbox"/> Fax: OTP / BUREAU DU PROCUREUR <input type="checkbox"/> , Prosecutor <input checked="" type="checkbox"/> Hassan Jallow, Chief OTP <input type="checkbox"/> B. Majola, Deputy Chief <input type="checkbox"/> OTP, Trial Attorney in charge of case <small>(name)</small> <input type="checkbox"/> The Hague / La Haye <input type="checkbox"/> Arusha <small>(see / voir CMS3)</small> <input type="checkbox"/> Kigali		
From: De:	<input type="checkbox"/> JP. Fomété <input type="checkbox"/> Other	<input checked="" type="checkbox"/> N.M. Diallo, Coordinator 	<input type="checkbox"/> Matar Diop (DP Chief, CMS)
CC:	<input checked="" type="checkbox"/> Registrar <input type="checkbox"/> WVSS-P	<input type="checkbox"/> OLA, NY <input type="checkbox"/> WVSS-D	<input checked="" type="checkbox"/> D. Reg. <input checked="" type="checkbox"/> DCMS <input type="checkbox"/> P&PA <input checked="" type="checkbox"/> CSS <input type="checkbox"/> Spokesman <input checked="" type="checkbox"/> Other
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