



UNITED NATIONS
NATIONS UNIES

ICTR-01-69
11-12-2009
C13/A-10/A

13/A

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

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IN THE APPEALS CHAMBER

Before: Judge Mehmet Güney, Presiding
Judge Liu Daqun
Judge Andréia Vaz
Judge Theodor Meron
Judge Carmel Agius

Registrar: Adama Dieng

Filed on: 11 December 2009

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THE PROSECUTOR

V.

HORMISDAS NSENGIMANA

Case No. ICTR-01-69-A

**PROSECUTOR'S REPLY TO HORMISDAS NSENGIMANA'S RESPONSE
TO PROSECUTOR'S MOTION FOR AN EXTENSION OF TIME TO FILE A
NOTICE OF APPEAL**

Office of the Prosecutor:

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Priyadarshini Narayanan
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Defence Counsel

Emmanuel Altit
David Hooper

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A. — Overview

1. On 2 December 2009, the Prosecutor filed a motion for an extension of time to file a Notice of Appeal, requesting that the thirty-day time limit for filing the Notice of Appeal start running from the date when the written Judgement is issued.
2. On 10 December 2009, Hormisdas Nsengimana filed his “Reponse de L’equipe Defense du Pere Nsengimana a la Requete du Procureur intitulee ‘Prosecutor’s Motion for an Extension of Time to File a Notice of Appeal’ en date du 2 December 2009”. The Prosecutor herein files his Reply to Nsengimana’s Response.
3. On 17 November 2009, Trial Chamber I delivered its Judgement in the case of *The Prosecutor v Hormisdas Nsengimana* in which it acquitted Nsengimana on all counts.¹ When the Chamber delivered the oral summary of the Judgement, it noted that the authoritative written Judgement will be available soon after the conclusion of the editorial process.²
4. At the time of the filing of this Reply, the written Judgement has not been issued and the Trial Chamber has not given any further information about the date of the issuance of the written Judgement.

B. — Submissions

5. In his Response, Nsengimana agrees that the Prosecutor ought to receive an extension of time for the filing of his Notice of Appeal in the interests of justice.³ However, he then goes on to suggest that the Prosecutor should only have until 17 January 2010 to file his Notice of Appeal. The imposition of a set date for the filing of the Prosecutor’s Notice of Appeal, in the absence of the receipt of the written Judgement, is arbitrary, unreasonable, unworkable and does not promote the interests of justice in this case.
6. Contrary to Nsengimana’s suggestion at paragraph 11 of his Response, it is impossible for the Prosecutor to indicate the date when the written Judgement would be available. Such a date is entirely and solely within the purview of Trial Chamber I. The Prosecutor has not received any information respecting a possible date of delivery of the written Judgement.

¹ Summary of Judgement, 17 November 2009.

² *Ibid.*, para. 3.

³ Response, para. 8.

7. There is no basis for selecting the date of 17 January 2010, or any other date for that matter, for the filing of the Prosecutor's Notice of Appeal. There is no indication that the written Trial Judgement will be delivered on 18 December 2009. Therefore, such an imposition of an arbitrary date would unjustifiably and unfairly result in the truncation of the 30-day time frame to allow the Prosecution to review the written Judgement. Furthermore, there is no indication that the written Judgement will even be delivered prior to 17 January 2010.

8. The 30-day time period prescribed by Rule 108 of the Rules of Procedure and Evidence is to ensure that a party has sufficient time to review the written reasons of a judgement. Indeed, the Appeals Chamber has recognized this as the very basis for allowing an extension for the filing of a Notice of Appeal where the delivery of a written judgement is delayed: "the delayed filing of the written Trial Judgement after its pronouncement constitutes good cause for extending the deadline for filing the notice of appeal *so as to allow the Prosecution to fully acquaint itself with the Trial Judgement prior to doing so.*"⁴ The imposition of a random date for the filing of the Notice of Appeal would undercut the underlying principle of the Rule.

9. The date for the filing of the Notice of Appeal can only be determined from the trigger date of the delivery of the written judgement. Until that time, the Prosecutor will not have access to the full reasoning of the Judgement and will not be in a position to prepare a Notice of Appeal. The imposition of any other date would obstruct the Prosecutor's ability to assess the Trial Judgement fully and fairly.

10. It should be noted that in the *Kabiligi* case, which involved the similar situation of the acquittal of Kabiligi on all charges against him, and where the delivery of the written judgement had been delayed, the Appeals Chamber granted the Prosecution the full 30 days

⁴ *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-A, "Decision on Prosecution's Motion for Extension of Time For Filing Notice of Appeal", 16 January 2009, p. 3 (Emphasis Added); See also *Prosecutor v. Rukundo*, Case No. ICTR-2001-70-A, "Decision on Motions for Extension of Time", p.3; *Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-A, "Decision on Motions for Extension of Time For Filing of Notices of Appeal", 11 November 2008, p. 2; *Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-A, "Decision on the Prosecution Motion for Extension of Time for Filing the Notice of Appeal", 22 November 2006, p. 3; and, *Prosecutor v. Vidoje Blagojevic and Dragon Jokic*, Case No. IT-02-60, "Decision on the Prosecution Motion for extension of time in which to file the Prosecution Notice of Appeal", 15 February 2005, p. 3.

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from the date of the delivery of the written Judgement, with no truncation or set date imposed on the Prosecutor.⁵

C. — Relief Sought

11. The Prosecutor respectfully requests that, in accordance with Rules 108 and 116, the 30-day time limit for filing a Notice of Appeal start running from the date the written Judgement is issued.

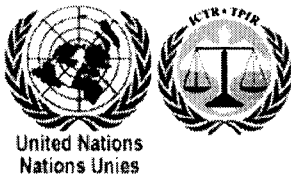
Dated 11th December 2009, at Arusha, Tanzania

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Linda Bianchi
Senior Appeals Counsel

⁵ *Prosecutor v. Kabiligi*, Case No. ICTR-98-41-A, “Decision on Prosecution’s Motion for Extension of Time for Filing a Notice of Appeal”, 15 January 2009.



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