



ICTR-01-69-A
15-02-2010
(40/A-37/A)

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

40/A
109h

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IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, *Presiding*

Registrar: Mr. Adama Dieng

Date of filing: 15 February 2010

THE PROSECUTOR

v.

HORMIDAS NSENGIMANA

JUDICIAL RECORDS ARCHIVES
RECEIVED
2010 FEB 15 P.S:26

Case No. ICTR-01-69-T

PROSECUTOR'S MOTION

For Rejection of the "Réponse de l'Equipe de Défense du Père Hormidas Nsengimana à l'Acte d'appel (77J) déposé par le Procureur le 2 février 2010"

Office of the Prosecutor

Hassan Bubacar Jallow
Alex Obote-Odora
Abdoulaye Seye

Counsel for Hormidas Nsengimana

Emmanuel Altit
David Hooper

I - Overview

1. Lead Counsel for Hormidas Nsengimana [“The Respondent”] filed, on 8 February 2010, a response to the Prosecutor’s Notice of Appeal that was filed under Rule 77(J) of the Rules of Procedure and Evidence [“The Rules”].¹
2. The Prosecutor, who is the Appellant in the appeal, hereby moves the Appeals Chamber, pursuant to Rules 54, 77 and 107 of the Rules and paragraphs 4 to 8 of the *Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal*, to reject the Response in its entirety. Neither the ICTR Rules nor the Practice Direction of the Appeals Chamber make provision for a response to a Notice of Appeal. The Respondent’s reliance on a Trial Chamber’s decision in the ICTY case of *Seselj* is mischievous and misleading. In addition, the Respondent’s arguments are unmeritorious and display a misunderstanding of the procedure under Rule 77 of the Rules and the nature of the Prosecutor’s appeal. They are however premature and need not be addressed in detail in this motion.

II - ARGUMENTS

(i) *The Respondent had no standing to file the Response*

3. While a party may move to have a filing rejected for some defect in form, or, for that matter, while the Appeals Chamber on its own motion may so reject a filing, the Respondent impermissibly filed a Response to the Prosecutor’s Notice of Appeal, in which he purported to challenge the merits of the Prosecutor’s appeal.
4. First, there is no provision for such a response to a Notice of Appeal under the relevant legislation. Rule 77(J) of the Rules confers a right of appeal against a decision dismissing a request to initiate contempt proceedings, which is a decision disposing of the contempt case. An appeal as of right lies from such a decision.² Appeal proceedings from a Rule 77 decision is specifically regulated by Rules 77(J) of the Rules and paragraphs 4 to 8

¹ *Prosecutor c. Nsengimana*, Affaire No. ICTR-2001-69-T, Réponse de l’Equipe de Défense du Père Hormidas Nsengimana à l’Acte d’appel (77J) déposé par le Procureur le 2 février 2010, datée du 8 février 2010 et transmise le 9 février 2010 [“The Response”].

² *Prosecutor v. Seselj*, Case No. IT-03-67-AR77.2, Decision on the Prosecution’s Appeal against the Trial Chamber’s Decision of 10 June 2008 [Public redacted version], 25 July 2008, paras. 12, 13.

of the *Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal*.³ The rules and procedures concerning appellate proceedings also apply *mutatis mutandis* to proceedings under Rule 77 of the Rules.⁴ Neither these rules nor the Practice Direction contain a provision for a response to a Notice of Appeal filed under Rule 77 of the Rules.

5. The only provision for the filing of a response concerns the Respondent's Brief, which is filed only after an Appellant has filed a Notice of Appeal and an Appellant's Brief, specifically, "within ten days of the filing of an appeal brief."⁵

6. Second, the Respondent's reliance on a decision in the ICTY case of *Seselj* as authorizing him to file a response is mischievous and misleading.⁶ The circumstances in that case were materially different. The Chamber in *Seselj* was not concerned by a response to a notice of appeal under Rule 77(J). Even the title of the decision relied upon shows that the Accused *Seselj* made an oral request to file a reply to the Prosecution response to his motion for contempt. He contented that he had not received the Prosecution response in a language he understands before the Trial Chamber issued its decision on his motion for contempt.⁷ For this reason, he was authorized to file such a reply - and not a response to a notice of appeal by the Prosecutor. In any case, the fact that an ICTY Trial Chamber authorized an accused person before it to file a reply to a Prosecutor's response to a motion cannot be construed, in any way, as an authority authorizing another accused person before the ICTR to file a response to a Notice of appeal.

7. The Response should be rejected on these bases.

³ Practice Direction. Likewise, the *Practice Direction on the Length of Briefs and Motions on Appeal* and the *Practice Direction on the Length of Briefs and Motions on Appeal* do not make any provision for the filing of a response to a Notice of Appeal.

⁴ See Rule 77(E). See Respondent's erroneous submissions at paragraphs 4 to 10 and 58 to 62 of his Response.

⁵ Practice Direction, para. 6.

⁶ Response, para. 2.

⁷ *Prosecutor v. Seselj*, Case No. IT-03-67-PT, Decision on the Accused's Oral Request to reply to the Prosecution Response to his Motion for Contempt Proceedings (submissions 293) and on Prosecution's Motion for variation of the Time Limit in Which to Seek certification Under Rule 73, 20 June 2007, pg. 1.

(ii) *The Respondent's submissions are premature and need not be addressed in detail in this motion*

8. The rest of the Respondent's submissions essentially concern the applicability of Rule 77 and the need to protect witnesses after trial judgement is rendered⁸; the lack of proof of the defence investigators' *mens rea* for contempt⁹; and the discretionary power of the Trial Chamber.¹⁰ These submissions are both premature and unmeritorious.

9. The Respondent's arguments also show a misunderstanding of the laws concerning witness protection, contempt and appeal procedures before the Tribunal. They however go to the merits of the Prosecution's appeal and need not be addressed further in this motion. If the Respondent wishes to place these arguments before the Appeals Chamber, he should do so in his Respondent's Brief. The Appellant will then file a reply brief if he so wishes.¹¹

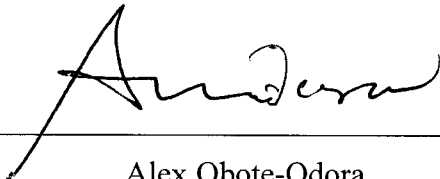
III – Relief sought

10. For all the foregoing reasons, the Prosecutor requests the Appeals Chamber to reject the Respondent's Response in its entirety.

All of which is respectfully submitted.

WORD COUNT: 1000

DATED: 15 February 2010, Arusha, Tanzania



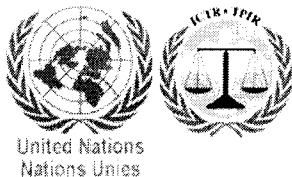
Alex Obote-Odora
Chief, Appeal & Legal Advisory Division

⁸ Response, paras. 3 to 10, 12.

⁹ Response, paras. 43, 44.

¹⁰ Response, paras. 13 to 30.

¹¹ Practice Direction, paras. 6, 7.



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

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

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From:	<input type="checkbox"/> Chamber (names)	<input type="checkbox"/> Defence (names)	<input checked="" type="checkbox"/> Prosecutor's Office ALEX OBOTE- ODORA (names)
			<input type="checkbox"/> Other: <i>A. BEYE</i> (names)
Case Name:	The Prosecutor vs. HORMIDAS NSENGIMANA		Case Number: ICTR-01-69-T
Dates:	Transmitted: 15 FEBRUARY 2010		Document's date: 15 FEBRUARY 2010
No. of Pages:	4	Original Language:	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	Prosecutor's Motion for Rejection of the "Réponse de l'Equipe de Défense du Père Hormidas Nsengimana à l'Acte d'appel (77J) déposé par le Procureur le 2 février 2010"		
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
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<input type="checkbox"/> Submission from parties			
<input type="checkbox"/> Accused particulars			

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Target Language(s):

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III - TRANSLATION PRIORITISATION (For Official use ONLY)

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<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date: