



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

205/H

CA

ICTR-98-41-A
03rd April 2009
{205/H – 203/H}

IN THE APPEALS CHAMBER

Before: Judge Mehmet Güney, Pre-Appeal Judge
Registrar: Mr. Adama Dieng
Decision of: 3 April 2009

ICTR Appeals Chamber
Date: 3rd April 2009
Action: R. Juma
Copied To: Concerned Judges,
Parties, Judicial Archives,
LOs, LSS

THE PROSECUTOR

v.

**Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA**

Case No. ICTR-98-41-A

**DECISION ON GRATIEN KABILIGI'S MOTION TO PRECLUDE THE
PROSECUTION FROM FILING A NOTICE OF APPEAL AGAINST HIM**

Defence Counsel

Raphaël Constant for Théoneste Bagosora
Paul Skolnik for Gratien Kabiligi
Peter Erlinder for Aloys Ntabakuze
Kennedy Ogetto for Anatole Nsengiyumva

Office of the Prosecutor

Hassan Bubacar Jallow
Alex Obote-Odora
George Mugwanya

I, **Mehmet GÜNEY**, Judge of the Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994 (“Tribunal”), and Pre-Appeal Judge in this case,

NOTING the judgement pronounced in this case by Trial Chamber I of the Tribunal (“Trial Chamber”) on 18 December 2008;

NOTING that, on 15 January 2009, I granted the request of the Prosecution to file its notice of appeal no later than thirty days from the date of the filing of the written judgement pursuant to Rule 116(A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”);¹

NOTING that the written judgement was filed on 9 February 2009 (“Trial Judgement”);

NOTING that the Prosecution did not file a notice of appeal within the prescribed time limit;

BEING SEIZED OF the “Motion to Preclude the Prosecution from Filing a Notice of Appeal Against General Kabiligi” and “Addendum to Motion to Preclude the Prosecution from Filing a Notice of Appeal Against General Kabiligi” filed by Gratien Kabiligi (“Kabiligi”) on 17 March 2009 (together “Motion”), in which Kabiligi requests the Appeals Chamber to (i) render an order precluding the subsequent filing of any notice of appeal by the Prosecution against his acquittal; and (ii) direct the Registrar to issue a “Certificate of Non-Appeal”;²

NOTING that, in support of his Motion, Kabiligi submits that (i) the Prosecution failed to comply with Rule 108 of the Rules and the order of the Pre-Appeal Judge mandating that any appeal be filed within thirty days of the filing of the written judgement;³ and (ii) a “Certificate of Non-Appeal” would assist him in providing written support for his request for relocation and for his claims that no appeal is pending against him at the Tribunal;⁴

NOTING that the Prosecution did not file a response to the Motion;

¹ *The Prosecutor v. Gratien Kabiligi*, Case No. ICTR-98-41-A, Decision on Prosecution’s Motion for Extension of Time for Filing Notice of Appeal, 15 January 2009.

² Motion, para. 9(i) and (ii), p. 3.

³ Motion, para. 9(i).

⁴ Motion, para. 10.

NOTING, however, that on 18 March 2009, the Prosecution filed a motion before the Trial Chamber requesting that the conditions imposed by the Trial Chamber on Kabiligi's liberty be lifted on the ground that it had decided not to file an appeal in this case;⁵

NOTING that Judge Erik Møse, ruling on the Prosecution's motion in his capacity as Judge designated by the Trial Chamber pursuant to Rule 73(A) of the Rules, decided to rescind the Decision Imposing Conditions on Kabiligi's Liberty in light of the Prosecution's decision not to appeal Kabiligi's acquittal ("24 March 2009 Decision");⁶

FINDING that Kabiligi's request for an order precluding the filing of any notice of appeal by the Prosecution against his acquittal is rendered moot by the Prosecution's statement that it decided not to file an appeal in this case and by the fact that the Prosecution did not file a notice of appeal within the prescribed time limit;

CONSIDERING that the 24 March 2009 Decision makes clear that the Tribunal is not seized of any appeal against Kabiligi's acquittal and may therefore substantiate Kabiligi's claims for relocation purposes that no appeal is pending against him before the Tribunal;

FINDING therefore that Kabiligi's request for a "Certificate of Non-Appeal" has become moot;

FOR THE FOREGOING REASONS,

DISMISS the Motion as moot.

Done in English and French, the English version being authoritative.

Done this third day of April 2009,
At The Hague, The Netherlands



Judge Mehmet Güney
Pre-Appeal Judge

[Seal of the Tribunal]

⁵ *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Prosecutor's Motion Requesting the Trial Chamber to Lift Conditions on Kabiligi's Liberty Imposed in the "Decision on the Prosecution Motion to Impose Conditions on Kabiligi's Liberty" Dated 31 December 2008, 18 March 2009, referring to *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecution Motion to Impose Conditions on Kabiligi's Liberty, 31 December 2008 ("Decision Imposing Conditions on Kabiligi's Liberty").

⁶ *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecution Motion Requesting the Trial Chamber to Lift Conditions on Kabiligi's Liberty, 24 March 2009, para. 5, Disposition.

NOTING, however, that on 18 March 2009, the Prosecution filed a motion before the Trial Chamber requesting that the conditions imposed by the Trial Chamber on Kabiligi's liberty be lifted on the ground that it had decided not to file an appeal in this case;⁵

NOTING that Judge Erik Møse, ruling on the Prosecution's motion in his capacity as Judge designated by the Trial Chamber pursuant to Rule 73(A) of the Rules, decided to rescind the Decision Imposing Conditions on Kabiligi's Liberty in light of the Prosecution's decision not to appeal Kabiligi's acquittal ("24 March 2009 Decision");⁶

FINDING that Kabiligi's request for an order precluding the filing of any notice of appeal by the Prosecution against his acquittal is rendered moot by the Prosecution's statement that it decided not to file an appeal in this case and by the fact that the Prosecution did not file a notice of appeal within the prescribed time limit;

CONSIDERING that the 24 March 2009 Decision makes clear that the Tribunal is not seized of any appeal against Kabiligi's acquittal and may therefore substantiate Kabiligi's claims for relocation purposes that no appeal is pending against him before the Tribunal;

FINDING therefore that Kabiligi's request for a "Certificate of Non-Appeal" has become moot;

FOR THE FOREGOING REASONS,

DISMISS the Motion as moot.

Done in English and French, the English version being authoritative.

Done this third day of April 2009,
At The Hague, The Netherlands



[Seal of the Tribunal]

A handwritten signature in black ink, appearing to read "Mehmet Güney".

Judge Mehmet Güney
Pre-Appeal Judge

⁵ *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Prosecutor's Motion Requesting the Trial Chamber to Lift Conditions on Kabiligi's Liberty Imposed in the "Decision on the Prosecution Motion to Impose Conditions on Kabiligi's Liberty" Dated 31 December 2008, 18 March 2009, referring to *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecution Motion to Impose Conditions on Kabiligi's Liberty, 31 December 2008 ("Decision Imposing Conditions on Kabiligi's Liberty").

⁶ *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecution Motion Requesting the Trial Chamber to Lift Conditions on Kabiligi's Liberty, 24 March 2009, para. 5, Disposition.