

ICTR-98-44A-R

(2-2-2012  
(667/A - 662/A))

667/A



International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda

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**APPEALS CHAMBER I**

Before: Judge Patrick Robinson, Presiding  
Judge Fausto Pocar  
Judge Liu Daqun  
Judge Andrézia Vaz  
Judge Carmel Agius

Registrar: Mr. Adama Dieng

Date: 1 February 2012

**JUVÉNAL KAJELIJELI**

v.

**THE PROSECUTOR**

*Case No. ICTR-98-44A-R*

JUDICIAL RECORDS ARCHIVES  
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**REPLY TO PROSECUTOR'S RESPONSE TO APPLICANT'S MOTION FOR  
LEAVE TO AMEND HIS REPLY BRIEF**

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**Counsel for the Applicant:**

Professor Lennox Hinds

**Office of the Prosecutor:**

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James J. Arguin  
George W. Mugwanya  
Evelyn Kamau  
Aisha Kagabo  
Leo Nwoye

- 664
1. The Applicant Juvénal Kajelijeli files this reply to the Prosecutor's opposition to the Applicant's Motion for Leave to Amend his Reply Brief ("Motion") in the matter of *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-R.
  2. On 11 January 2012, the Applicant filed a motion requesting leave to amend his reply brief on the basis that after reviewing the French version of the Prosecutor's response to his application for review he saw the need to modify his reply with additional elements of substantial importance to his review proceedings.
  3. On 23 January 2012, the Prosecutor responded to the Applicant's motion by opposing the motion on the grounds that good cause to amend had not been established, and that the proposed amendments were not of substantial importance to the success of the review proceedings ("Response").
  4. The Prosecutor additionally opposed the proposed amendments on the grounds that they were untimely, and would cause the Applicant to impermissibly exceed the word limit for his brief-in-reply.
  5. The Applicant will address the relevant arguments in the order of the Response.
  6. At paragraphs 11-12, the Prosecutor argued that a lack of an oral hearing does not constitute good cause to allow an amendment to a reply brief in review proceedings even though this is a consideration in appeal proceedings, because appeal and review proceedings are different and cannot be compared. This argument is not persuasive. The Prosecutor himself readily analogizes the two proceedings in his discussion on applicable law, at paragraphs 7-9. Either these two proceedings can be compared, or they cannot. The Prosecutor is not at liberty to deny comparability when it suits him.
  7. The Prosecutor does not refute the fact that there is no oral hearing in the first stage of review proceedings and that the reply brief is the Applicant's last opportunity to be heard before the Tribunal makes a decision on his request for review.
  8. At paragraph 12, the Prosecutor alleges that the proposed amendments relate to issues already raised in the Applicant's reply brief and should not be allowed for this reason. This is false. The proposed amendments relate to portions of witness testimony in other trials that were not discussed in the reply brief. The French version of the response brief only became available to the Applicant after the filing of his reply brief. It was only at that time that the Applicant understood the extent to which the

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Prosecutor had attempted to mislead the Appeals Chamber concerning the credibility of witness GAP and others. He was then able to discuss with Counsel the additional elements needed in the reply to address this issue.

9. At paragraphs 16-18, the Prosecutor argues that the Applicant has failed to demonstrate how his personal reading of the response brief in his own language could reveal additional information that his Counsel did not identify. The Prosecutor ignores the Applicant's motion. At paragraph 10 of his motion, the Applicant explains that due to the length and complexity of the Prosecutor's response, it was impossible for Applicant's Counsel to comprehensively convey to the Applicant each new argument and reference advanced by the Prosecutor. Therefore, the Applicant's reading of the brief in a language he understands revealed additional information important to the success of his review proceedings.
10. At paragraphs 19-25 of his response to the Applicant's motion, the Prosecutor is unable to refute any of the witness testimony revealed by the Applicant in the new proposed amendments. He does not contest that Applicant's assertion that the passages demonstrate conclusively and clearly that witnesses GAP, GAO, GBV, and GDQ are not credible witnesses, contrary to the Prosecutor's position in his response brief. The proposed amendments serve to confirm the veracity of the witnesses' recantations before the Gacaca Tribunal.
11. Turning now to the Prosecutor's procedural opposition to the Applicant's motion, the Prosecutor claims that the Applicant would be in violation of the Practice Direction on the Length of Briefs and Motions if he was granted leave to amend his reply brief because it would exceed the permissible word limit.<sup>1</sup> This is not true. It must be clearly noted that there is no procedural rule or practice direction limiting the word count for briefs in review proceedings.
12. The case cited by the Prosecutor in support of his position on word limits, *The Prosecutor v. Blaškić*, stands for the proposition that word limits in review proceedings should be set in accordance with a ratio elaborated by the Appeals

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<sup>1</sup> Response to Motion, para. 35.

Chamber whereby limits for briefs and responses should be equal, and briefs-in-reply should be one-third the length of the original brief.<sup>2</sup>

- 13. In *Blaškić*, if the Appeals Chamber had applied the statutory rules on word limits found in the practice direction concerning appeal proceedings, it would have allowed the word limit for the Prosecutor's reply brief to be 9,000 words, without further discussion.<sup>3</sup> Instead, it chose to engage in a comparative exercise to determine whether the ratio of word counts in each brief was reasonable. It found that 9,000 words would exceed the word limit for the reply brief because 9,000 words was more than one-third the length of the original brief.<sup>4</sup>
- 14. It is clear therefore that the Appeals Chamber has not simply reduced the question of word limits in review proceedings to whether or not statutory word limits in appeal proceedings are applicable to review proceedings. It has also engaged in a proportionality analysis that can lead to different actual word limits in each review case.
- 15. In the present case, neither party has followed the ratios elaborated in *Blaškić*. The Prosecution's response to the Applicant's original request was not proportionate because it contained 26,865 words, over twice as many words as the Applicant's request. The Applicant in his turn submitted a reply to the Prosecutor's response that was greater than one-third the length of his original application, in order to make an adequate reply.
- 16. The Applicant submits that because neither party adhered to the general practice on word count ratios elaborated in *Blaškić*, and given the absence of statutory rules on word limits in review proceedings, it would be unfairly prejudicial to enforce word limit practices against only the Applicant in these proceedings and not the Prosecution, as the Prosecution suggests.<sup>5</sup>
- 17. The Prosecutor additionally claims that the timing of the Applicant's request to amend his brief in reply amounts to an abuse of process because it was not filed

<sup>2</sup> *The Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Decision on Word Limits in Review Proceedings, 1 February 2006, p. 4.

<sup>3</sup> Practice Direction C (1) (c) provides that the word count for an appellant's brief-in-reply in an appeal proceeding shall not exceed 9,000 words.

<sup>4</sup> *Blaškić*, pp. 4-5.

<sup>5</sup> Response to Motion, para. 35.

within 15 days of the availability of the French translation of the response brief, and no reason for this was provided.<sup>6</sup> This argument ignores both the jurisprudence and the Applicant's motion. The jurisprudence of the Tribunal is that a motion to amend should be submitted as soon as possible after the moving party has identified the alleged error.<sup>7</sup> Therefore, the Tribunal does not set a time limit for requests to amend equivalent to the original prescription period.

18. It should be recalled that the main reason the Applicant needed to spend the amount of time he did reviewing the French version of the Response Brief was due to the length and complexity of the Brief,<sup>8</sup> which introduced new documents not present in the original request.<sup>9</sup>
19. In addition, the Applicant was faced with the challenge not only of reviewing the French version of the Brief, but discussing with Counsel to ascertain whether the areas he identified as lacking were in fact missing from the English version of his reply brief, given that he did not have a French translation of the reply brief.
20. The Prosecutor further argues that the additional amendments would be a burden on the administration of justice.<sup>10</sup> This argument is not persuasive. The Applicant's request for review is still pending before the Appeals Chamber. Therefore, the Tribunal has not made a decision concerning the request. The request to amend his reply brief is still timely, and the length of the amendment- 1,746 words- is short. The Applicant has been aware of the need for judicial economy throughout these proceedings, and has respected this need, beginning with the fact that he filed a concise request for review of 11,850 words.
21. Furthermore, and most significantly, the Applicant through his proposed amendments will bring clarity to the main thrust of his request for review, which is that the witnesses who testified against him cannot safely be relied upon to provide credible testimony. Therefore, it is in the interests of judicial efficiency that the amendments be allowed, despite the delay in bringing them before the Tribunal.

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<sup>6</sup> Response to Motion, para. 37.

<sup>7</sup> *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Decision on Protais Zigiranyirazo's Motion for Leave to Amend Notice of Appeal, 18 March 2009, para. 4.

<sup>8</sup> Motion, para. 10.

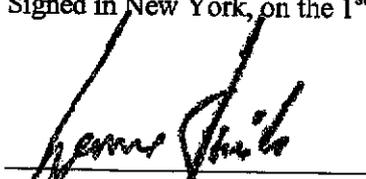
<sup>9</sup> See Response Brief, para. 85.

<sup>10</sup> Response to Motion, para. 37.

22. For the reasons herein, the Applicant by and through his Counsel respectfully requests the Appeals Chamber to reject the Prosecutor's opposition to his motion and grant the Applicant leave to amend his reply brief.

Word Count: 1,472

Signed in New York, on the 1<sup>st</sup> day of February, 2012.



Professor Lennox S. Hinds  
Lead Counsel

